BTXN 049 (rev. 03/15)

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS

In Re:	§	
Highland Capital Management, L.P.	§	
	§	Case No.: 19−34054−sgj11
Debtor(s)	§	Chapter No.: 11
HIGHLAND CAPITAL MANAGEMENT, L.P.	§	
Appellant(s)	§	
vs.	§	
NEXPOINT ASSET MANAGEMENT; et al	§	
Appellee(s)	§	
	§	
	§	
	§	
	§	

NOTICE OF TRANSMITTAL

I am transmitting:

- ☐ The Motion for leave to Appeal 28 U.S.C. § (USDC Civil Action No. DNC Case).
- ☐ The Motion for Stay Pending Appeal (USDC Action No. − DNC Case).
- ☐ The Proposed Findings of Fact and Conclusions of Law.
- ☐ The Motion to Extend Time To File Designation (USDC Civil Action No DNC Case).
- ☐ On , the Record on Appeal was transmitted. The designation of record or item(s) designated by were not filed when the record was transmitted. The item(s) were filed on awaiting instructions from the assigned district judge.
- ☑ Other Transmitting 233 appellant volumes for a 5th circuit appeal: 23−10911.
- ☐ Copies of:

TO ALL ATTORNEYS: File all subsequent papers captioned and numbered with the appropriate division of the United States District Clerk's Office. Any questions concerning this proceeding should be directed to the U.S. District Clerk's Office at (214) 753−2200.

DATED: 1/9/24

FOR THE COURT:
Robert P. Colwell, Clerk of Court

by: /s/J. Blanco, Deputy Clerk

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Counsel for Highland Capital Management, L.P.

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

HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
Plaintiff,	§	
vs.	§	Adv. Proc. No. 21-03003-sgj
JAMES DONDERO, NANCY DONDERO, AND THE DUGABOY INVESTMENT TRUST,	§	Case No. 3:21-cv-00881-X
Defendants.	§	

HIGHLAND CAPITAL MANAGEMENT, L.P., Plaintiff, vs. HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, L.P., Defendant.	§ § § § § § § § § § § § § §	Adv. Proc. No. 21-03004-sgj Case No. 3:21-cv-00881-X
HIGHLAND CAPITAL MANAGEMENT, L.P., Plaintiff, vs. NEXPOINT ADVISORS, L.P., JAMES DONDERO, NANCY DONDERO, AND THE DUGABOY INVESTMENT TRUST, Defendants.	§ § § § § § § § § § § § § §	Adv. Proc. No. 21-03005-sgj Case No. 3:21-cv-00881-X
HIGHLAND CAPITAL MANAGEMENT, L.P., Plaintiff, vs. HIGHLAND CAPITAL MANAGEMENT SERVICES, INC., JAMES DONDERO, NANCY DONDERO, AND THE DUGABOY INVESTMENT TRUST, Defendants.	§ § § § § § § § § § § § § §	Adv. Proc. No. 21-03006-sgj Case No. 3:21-cv-00881-X

HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	
	§	Adv. Proc. No. 21-03007-sgj
Plaintiff,	§	
	§	
vs.	§	
	§	Case No. 3:21-cv-00881-X
HCRE PARTNERS, LLC (n/k/a NexPoint Real Estate Partners, LLC), JAMES DONDERO, NANCY DONDERO, AND THE DUGABOY INVESTMENT TRUST,	§	
	§	
	§	
	§	
	§	
	§	
Defendants.	§	

NOTICE OF ATTORNEYS' FEES CALCULATION
AND BACKUP DOCUMENTATION OF HAYWARD PLLC

PLEASE TAKE NOTICE that Highland Capital Management, L.P. ("Highland" or "Plaintiff"), the reorganized debtor in the above-captioned chapter 11 case (the "Bankruptcy Case") and plaintiff in the above-referenced adversary proceedings (the "Adversary Proceedings"), hereby files this *Notice of Attorneys' Fees Calculation and Backup Documentation of Hayward PLLC* (the "Notice") in support of its *Proposed Form of Judgment*, in accordance with the Court's directive in its *Report and Recommendation to District Court: Court Should Grant Plaintiff's Motion for Partial Summary Judgment Against All Five Note Maker Defendants (With Respect to All Sixteen Promissory Notes) in the Above-Referenced Consolidated Note Actions* (the "R&R")[1] entered on July 19, 2022.

[1] Identical copies of the R&R were filed in Adv. Pro. No. 21-03003 at Docket No. 191; Adv. Pro. No. 21-03004 at Docket No. 163; Adv. Pro. No. 21-03005 at Docket No. 207; Adv. Pro. No. 21-03006 at Docket No. 213; and Adv. Pro. No. 21-03007 at Docket No. 208.

1. Attached as **Exhibit 1** is the *Declaration of Zachery Z. Annable in Support of Highland Capital Management, L.P.'s Proposed Form of Judgment* (the "Annable Declaration") and backup documentation supporting the calculation of attorneys' fees.

Dated: August 5, 2022

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-and-

HAYWARD PLLC

/s/ Zachery Z. Annable

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EXHIBIT 1

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Counsel for Highland Capital Management, L.P.

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

HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
Plaintiff,	§	
vs.	§	Adv. Proc. No. 21-03003-sgj
JAMES DONDERO, NANCY DONDERO, AND THE DUGABOY INVESTMENT TRUST,	§	Case No. 3:21-cv-00881-X
Defendants.	§	

HIGHLAND CAPITAL MANAGEMENT, L.P., Plaintiff, vs. HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, L.P., Defendant.	§ § § § § § § § § § § § § §	Adv. Proc. No. 21-03004-sgj Case No. 3:21-cv-00881-X
HIGHLAND CAPITAL MANAGEMENT, L.P., Plaintiff, vs. NEXPOINT ADVISORS, L.P., JAMES DONDERO, NANCY DONDERO, AND THE DUGABOY INVESTMENT TRUST, Defendants.	§ § § § § § § § § § § § § §	Adv. Proc. No. 21-03005-sgj Case No. 3:21-cv-00881-X
HIGHLAND CAPITAL MANAGEMENT, L.P., Plaintiff, vs. HIGHLAND CAPITAL MANAGEMENT SERVICES, INC., JAMES DONDERO, NANCY DONDERO, AND THE DUGABOY INVESTMENT TRUST, Defendants.	§ § § § § § § § § § § § § §	Adv. Proc. No. 21-03006-sgj Case No. 3:21-cv-00881-X

HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	
	§	Adv. Proc. No. 21-03007-sgj
Plaintiff,	§	
	§	
vs.	§	
	§	Case No. 3:21-cv-00881-X
HCRE PARTNERS, LLC (n/k/a NexPoint Real Estate Partners, LLC), JAMES DONDERO, NANCY DONDERO, AND THE DUGABOY INVESTMENT TRUST,	§	
	§	
	§	
	§	
	§	
	§	
Defendants.	§	

DECLARATION OF ZACHERY Z. ANNABLE IN SUPPORT OF HIGHLAND CAPITAL MANAGEMENT L.P.'S PROPOSED FORM OF JUDGMENT

I, Zachery Z. Annable, pursuant to 28 U.S.C. § 1746, under penalty of perjury, declare as follows:

1. I am a partner in the law firm of Hayward PLLC (the "Firm"), local counsel to Highland Capital Management, L.P. ("Highland" or "Plaintiff"), the reorganized debtor in the above-captioned chapter 11 case (the "Bankruptcy Case") and the plaintiff in the above-referenced adversary proceedings (each, a "Note Litigation," and collectively, the "Notes Litigation"). I submit this Declaration in support of *Highland Capital Management, L.P.'s Proposed Forms of Judgment* (the "Proposed Judgments").

2. I have overseen my Firm's representation of Plaintiff in all aspects of the Notes Litigation. This Declaration is based on my personal knowledge and review of the documents described below.

3. On July 19, 2022, the Bankruptcy Court rendered a *Report and Recommendation to District Court: Court Should Grant Plaintiff's Motion for Partial Summary Judgment Against All Five Note Maker Defendants (With Respect to All Sixteen Promissory Notes) in the Above-*

Referenced Consolidated Note Actions (the "R&R").[1] In the R&R, the Court directed Highland to "submit a form of Judgment applicable to each Note Maker Defendant that calculates proper amounts due pursuant to th[e] Report and Recommendation, including interest accrued to date (and continuing per diem), as well as attorneys' fees incurred." R&R at 44-45.

4. As set forth below, and in accordance with the Court's direction in the R&R, I and others working at my direction have reviewed my Firm's time entries as they relate to the Notes Litigation and calculated the amount of attorneys' fees incurred in connection therewith.

5. In the ordinary course of business, timekeepers (including attorneys and legal assistants) at my Firm record billable time in increments of one-tenth of an hour.

6. Attached as **Exhibit A** are the Firm's time entries for the period January 1, 2021, through July 31, 2022, that reflect the Firm's time billed to the Notes Litigation. Three Firm professionals billed time to the Notes Litigation: (i) Melissa S. Hayward, attorney, at the rate of $450/hour; (ii) Zachery Z. Annable, attorney, at the rate of $400/hour; and (iii) Melanie Holmes, paralegal, at the rates of $175/hour to $195/hour.

7. I have reviewed the attached time entries and, based on that review, believe the attached time entries capture and reflect fees properly charged to the Notes Litigation.

8. For the period January 1, 2021, through July 31, 2022, the fees billed by the Firm's timekeepers with respect to the Notes Litigation total $76,059.50 (the "Fees"). The hours billed by the Firm's timekeepers with respect to the Notes Litigation total 190.3 hours. The average hourly rate for work done by the Firm's professionals with respect to the Notes Litigation was $399.68.

[1] Identical copies of the R&R were filed in Adv. Pro. No. 21-03003 at Docket No. 191; Adv. Pro. No. 21-03004 at Docket No. 163; Adv. Pro. No. 21-03005 at Docket No. 207; Adv. Pro. No. 21-03006 at Docket No. 213; and Adv. Pro. No. 21-03007 at Docket No. 208.

9. As the Court is aware, there was substantial overlap in the legal and factual issues in the five adversary proceedings. Consequently, there was no reasonable way to allocate the Fees separately between each Note Litigation, and I believe the fairest method of allocating the Fees is to charge each group of defendants in the five adversary proceedings for one-fifth the total, or $15,211.90 per adversary proceeding.

10. I declare under penalty of perjury that the forgoing is true and correct.

Dated: August 5, 2022

/s/ Zachery Z. Annable
Zachery Z. Annable

EXHIBIT A

Date	TK	Description	Hrs	Rate	Amount
01/12/2021	MSH	Exchange email with H. Winograd and Z. Annable regarding Aps regarding demand notes and writs of attachments (.10).	0.1	$450.00	$ 45.00
01/12/2021	ZZA	Review correspondence from H. Winograd regarding issues related to collection of demand notes (.1).	0.1	$400.00	$ 40.00
01/22/2021	MSH	Review complaints regarding Dondero et al notes and exchange email regarding coordination of filing of same and exhibits (.20).	0.2	$450.00	$ 90.00
01/22/2021	ZZA	Review correspondence from J. Morris regarding numerous complaints to be filed on demand notes (.1); review and revise five draft complaints for collection of demand notes (1.0); review correspondence from H. Winograd regarding issues related to complaints to collect on notes (.1); prepare cover sheets for suits on notes (.3); exchange multiple correspondence with J. Morris and H. Winograd regarding issues related to finalization of complaints to collect on notes (.2); exchange correspondence with H. Winograd regarding exhibits for complaints on notes (.1); review correspondence from H. Winograd regarding issues related to complaints to collect on notes (.1); correspond with H. Winograd regarding issues related to finalization of complaints for collection of notes (.1); review correspondence from J. Morris regarding complaints to be filed regarding notes (.1); finalize and file five complaints for collection of notes (.7).	2.8	$400.00	$ 1,120.00
01/28/2021	ZZA	Correspond with counsel for J. Dondero regarding acceptance of service of summons in AP 21-3003 and 21-3006 (.1); correspond with counsel for HCMFA and NPA regarding acceptance of service of summons in AP 21-3004 and 21-3005 (.1); review multiple correspondence from M. Lynn, counsel for Dondero, advising of acceptance of service of summons (.1); review correspondence from G. Demo regarding additional service issues related to note adversaries (.1); correspond with T. Ellison and M. Edmond regarding need for issuance of new summons to correct name of defendant in 21-3007 (.2); follow-up correspondence with M. Lynn regarding his notice that his firm does not represent HCMSI (.1); review new summons issued in AP 21-3007 (.1); exchange correspondence with M. Edmond regarding new summons issued in AP 21-3007 (.1); correspond with L. Drawhorn, counsel for HCMSI, requesting acceptance of summons in 21-3006 (.1); correspond with L. Drawhorn, counsel for HCRE, requesting acceptance of summons in 21-3007 (.1); correspond with M. Lynn serving him with summons and complaint in AP 21-3003 (.1).	1.2	$400.00	$ 480.00
01/29/2021	ZZA	Follow-up correspondence with counsel for HCMFA and NPA regarding acceptance of service of summons and complaint in AP 21-3004 and 21-3005 (.1); follow-up correspondence with counsel for HCMSI and HCRE regarding acceptance of service of summons and complaint in AP 21-3006 and 21-3007 (.1); review correspondence from D. Rukavina, counsel for HCMFA and NPA, agreeing to accept service of summons and complaint in APs 21-3004 and 21-3005 (.1); serve D. Rukavina with complaint and summons in AP 21-3004 and 21-3005 (.1).	0.4	$400.00	$ 160.00
01/31/2021	ZZA	Review multiple correspondence from L. Drawhorn, counsel for HCMSI and HCRE, requesting summons and complaint in AP 21-3006 and 21-3007 (.1).	0.1	$400.00	$ 40.00

02/01/2021	ZZA	Correspond with L. Drawhorn, counsel for HCMSI and HCRE, providing complaint and summons in APs 21-3006 and 21-3007 and requesting acceptance of service (.3); review multiple correspondence from L. Drawhorn regarding issues related to acceptance of service on behalf of HCMSI and HCRE (.1); correspond with J. Morris regarding issues related to service of summons and complaint on HCMSI and HCRE (.1); follow-up correspondence with J. Morris regarding issues related to service of summons and complaint on HCMSI and HCRE (.1); review correspondence from J. Morris regarding issues related to service of summons and complaint on HCMSI and HCRE (.1); multiple correspondence with L. Drawhorn regarding issues related to service of summons and complaint on her clients HCMSI and HCRE (.2).	0.9	$400.00	$ 360.00
02/02/2021	ZZA	Multiple follow-up correspondence with L. Drawhorn, counsel for HCMSI and HCRE, regarding her acceptance of service of summons and complaint in APs 21-3006 and 21-3007 (.2).	0.2	$400.00	$ 80.00
02/09/2021	ZZA	Prepare and file notices of service of summons and complaints in Aps 21-3003, 21-3004, 21-3005, 21-3006, and 21-3007 (.7); correspond with J. Morris providing file-stamped copies of service summons executed in multiple APs (.1).	0.8	$400.00	$ 320.00
02/11/2021	ZZA	Exchange correspondence with C. Taylor, counsel for J. Dondero, regarding waiver of service of summons in AP 21-3003 (.2); review follow-up correspondence from C. Taylor regarding issues related to deadlines in AP 21-3003 (.1); review multiple follow-up correspondence from C. Taylor and J. Morris regarding deadline for J. Dondero to answer complaint in AP 21-3003 (.1).	0.4	$400.00	$ 160.00
02/12/2021	ZZA	Review draft stipulation regarding answer date in AP 21-3003 received from C. Taylor (.1).	0.1	$400.00	$ 40.00
03/01/2021	ZZA	Review Advisors' answers to complaints filed in APs 21-3004 and 21-3005 (.3).	0.3	$400.00	$ 120.00
03/02/2021	ZZA	Multiple correspondence with J. Morris regarding Advisors' answers filed in response to debtor's complaints in APs 21-3004 and 21-3005 (.2); review multiple correspondence from J. Morris regarding ECF notice issues in APs 21-3004 and 21-3005 (.1); exchange correspondence with H. Winograd regarding ECF notice issues in APs 21-3004 and 21-3005 (.1); review correspondence from J. Morris regarding analysis of Advisors' answers to complaints (.1).	0.5	$400.00	$ 200.00
03/03/2021	ZZA	Review HCM Services' answer to debtor's complaint in AP 21-3006 (.2); review HCRE's answer to debtor's complaint in AP 21-3007 (.1); correspond with J. Morris providing him with copies of HCM Services' and HCRE's answers and seeking confirmation of his receipt of ECF notices in APs (.1).	0.4	$400.00	$ 160.00
03/04/2021	ZZA	Review correspondence and draft scheduling orders regarding Aps 21-3004 and 21-3005 received from J. Morris (.2); review correspondence from L. Hogewood regarding proposed scheduling order in APs 21-3004 and 21-3005 (.1).	0.3	$400.00	$ 120.00
03/05/2021	ZZA	Review correspondence from L. Drawhorn, counsel for HCMSI and HCRE, regarding proposed scheduling orders in APs 21-3006 and 21-3007 (.1); review proposed scheduling orders in APs 21-3006 and 21-3007 received from J. Morris (.2).	0.3	$400.00	$ 120.00

03/08/2021	ZZA	Finalize and file pretrial stipulations and proposed orders thereon in AP 21-3004 and 21-3005 (.2); correspond with T. Ellison, courtroom deputy, regarding filing of stipulations and submission of proposed scheduling orders for court review (.1); review correspondence from T. Ellison advising of revisions needed to scheduling orders to comply with court's schedule (.1); review multiple correspondence from J. Morris and H. Winograd regarding revisions to be made to scheduling orders (.1); research court's upcoming trial docket call dates and exchange multiple correspondence with H. Winograd and J. Morris regarding same (.2); correspondence from L. Drawhorn, counsel for HCMSI and HCRE, regarding requested revisions to AP scheduling orders (.1); review draft revised scheduling order for AP 21-3004 received from H. Winograd (.1).	0.9	$400.00	$ 360.00
03/09/2021	ZZA	Review correspondence from J. Morris regarding revisions to be made to scheduling order in AP 21-3004 (.1); review correspondence from L. Drawhorn, counsel for HCMSI and HCRE, regarding proposed revisions to scheduling orders in APs 21-3006 and 21-3007 (.1); view correspondence from H. Winograd regarding revisions to scheduling order in AP 21-3004 (.1); review correspondence from H. Winograd regarding revisions to scheduling orders in APs 21-3006 and 21-3007 (.1); review multiple follow-up correspondence from J. Morris regarding revision of dates in proposed scheduling orders with HCMSI and HCRE (.1); review correspondence from H. Winograd regarding issues related to HCMSI's and HCRE's requested revisions to scheduling orders (.1); review follow-up correspondence from J. Morris regarding revision of deadlines in scheduling orders for APs 21-3006 and 21-3007 (.1); review correspondence from J. Morris regarding proposed trial docket call dates in pending note adversaries (.1); review correspondence from D. Rukavina approving proposed scheduling orders in APs 21-3004 and 21-3005 (.1); correspond with J. Morris and H. Winograd regarding issues related to scheduling orders to be presented in APs 21-3004 and 21-3005 (.1); review multiple correspondence from H. Winograd regarding finalization of scheduling orders in APs 21-3006 and 21-3007 (.1); finalize and file stipulations regarding scheduling orders in APs 21-3004 and 21-3005 (.2); prepare draft orders approving stipulations in APs 21-3006 and 21-3007 and correspond with J. Morris and H. Winograd regarding same (.2); review and revise stipulations regarding scheduling orders in APs 21-3006 and 21-3007 and prepare draft orders approving stipulations (.4); correspond with H. Winograd regarding proposed revisions to stipulations in APs 21-3006 and 21-3007 (.1); exchange follow-up correspondence with H. Winograd regarding	2.5	$400.00	$ 1,000.00
03/10/2021	ZZA	Review correspondence from T. Ellison regarding revisions needed in orders approving stipulations in APs 21-3004 and 21-3005 (.1); revise proposed orders approving stipulations in APs 21-3004 and 21-3005 and correspond with D. Rukavina and J. Morris regarding same (.2); exchange correspondence with D. Rukavina regarding approval of orders approving stipulations in APs 21-3004 and 21-3005 (.1); finalize and upload revised proposed orders approving stipulations in APs 21-3004 and 21-3005 and correspond with T. Ellison regarding same (.2).	0.6	$400.00	$ 240.00

03/11/2021	ZZA	Exchange correspondence with L. Drawhorn, counsel for HCMSI and HCRE, regarding approving of stipulations and orders in APs 21-3006 and 21-3007 (.1); correspond with H. Winograd regarding issues related to proposed scheduling orders in APs 21-3006 and 21-3007 (.1); review follow-up correspondence from H. Winograd regarding finalization and filing of stipulations regarding scheduling in APs 21-3006 and 21-3007 (.1); finalize and file stipulations regarding pretrial scheduling in APs 21-3006 and 21-3007 (.2); upload proposed orders approving stipulations in APs 21-3006 and 21-3007 and correspond with T. Ellison regarding same (.2).	0.7	$400.00	$ 280.00
03/17/2021	ZZA	Review court's orders approving stipulations and scheduling in APs 21-3004, 21-3005, 21-3006, and 21-3007 (.2); review Dondero's answer in AP 21-3003 (.1).	0.3	$400.00	$ 120.00
03/24/2021	ZZA	Exchange correspondence with H. Winograd regarding Dondero's answer in AP 21-3003 (.1).	0.1	$400.00	$ 40.00
03/25/2021	ZZA	Exchange correspondence with J. Morris regarding additional discovery to be taken in adversary proceedings (.2); exchange correspondence with J. Morris regarding revisions to deposition notice of J. Dondero in AP 21-3003 (.2); finalize and file notice of deposition of J. Dondero in AP 21-3003 (.1); correspond with J. Morris regarding Dondero deposition notice in AP 21-3003 (.1).	0.6	$400.00	$ 240.00
03/26/2021	ZZA	Review Dondero's motion to amend scheduling order in AP 21-3003 (.1); review Dondero's motion for expedited hearing on motion to amend scheduling order (.1); correspond with J. Morris regarding Dondero's request to amend scheduling order in AP 21-3003 (.1); exchange multiple correspondence with J. Morris regarding Dondero's request for emergency hearing on motion to amend scheduling order and actions to be taken regarding same (.3); correspond with T. Ellison regarding Dondero's motion to amend scheduling order, debtor's opposition to same, and debtor's lack of opposition to Dondero's motion for emergency hearing on motion to amend scheduling order (.2); exchange follow-up correspondence with T. Ellison regarding debtor's deadline to file response to Dondero's motion to amend scheduling order (.1); calendar deadline for debtor to respond to Dondero's motion to amend scheduling order and correspond with PSZJ team regarding same (.1).	1.0	$400.00	$ 400.00

03/30/2021	ZZA	Review correspondence from J. Morris regarding exhibits for debtor's objection to Dondero's motion to amend scheduling order in AP 21-3003 (.1); review multiple correspondence from L. Canty regarding exhibit and evidence issues related to debtor's objection to amendment of scheduling order (.2); review follow-up correspondence from J. Morris regarding issues related to Dondero's motion to amend scheduling order and discussions regarding same (.1); review and revise debtor's objection to Dondero's motion to amend scheduling order and correspond with J. Morris regarding revisions (.7); review and revise Morris declaration in support of debtor's objection and correspond with J. Morris regarding revisions (.2); review multiple follow-up correspondence from J. Morris regarding revisions to objection and declaration and filing of same (.1); exchange correspondence with L. Canty regarding exhibits to debtor's objection (.1); finalize and file debtor's objection to Dondero's motion to amend scheduling order (.2); finalize and file Morris declaration and exhibits in support of debtor objection (.2); correspond with T. Ellison advising of filing of debtor's objection to Dondero motion to amend scheduling order (.1); exchange follow-up correspondence with J. Morris regarding debtor's objection to Dondero's motion to amend scheduling order (.1); review correspondence from T. Ellison regarding debtor's redacted exhibits filed with Morris declaration (.1); review follow-up correspondence from T. Ellison regarding court's ruling on Dondero's motion to amend scheduling order (.1).	2.3	$400.00	$ 920.00
04/02/2021	ZZA	Calendar deadlines for discovery responses in AP 21-3005 and correspond with PSZJ attorneys regarding same (.1).	0.1	$400.00	$ 40.00
04/05/2021	ZZA	Review and revise proposed scheduling order in AP 21-3003 and correspond with H. Winograd regarding revisions (.2); exchange multiple follow-up correspondence with H. Winograd regarding revisions to proposed scheduling order in AP 21-3003 (.2).	0.4	$400.00	$ 160.00
04/06/2021	ZZA	Review committee's notice of appearances in note adversaries and correspond with PSZJ team regarding same (.3); review J. Dondero's amended answer in AP 21-3003 and correspond with PSZJ attorneys regarding same (.2).	0.5	$400.00	$ 200.00
04/07/2021	ZZA	Review proposed amended scheduling order in AP 21-3003 received from B. Assink, counsel for J. Dondero (.1).	0.1	$400.00	$ 40.00
04/09/2021	ZZA	Review court's amended scheduling order in AP 21-3003 (.1).	0.1	$400.00	$ 40.00
04/13/2021	ZZA	Review Advisors' motions to withdraw the reference filed in APs 21-3004 and 21-3005 (.6); review notices of hearing on motions to withdraw reference in APs 21-3004 and 21-3005 (.1); exchange correspondence with J. Pomerantz regarding motions to withdraw the reference filed in APs 21-3004 and 21-3005 (.1).	0.8	$400.00	$ 320.00

04/15/2021	ZZA	Exchange correspondence with J. Morris regarding discovery issues in AP 21-3003 (.1); review and revise Rule 26 disclosures in AP 21-3003 and correspond with J. Morris regarding same (.2); review Dondero's motion to withdraw the reference in AP 21-3003 (.4); review Dondero's motion to stay proceedings filed in AP 21-3003 (.2).	0.9	$400.00	$ 360.00
04/16/2021	ZZA	Review Dondero's motion for expedited hearing on motion to withdraw reference in AP 21-3003 (.2).	0.2	$400.00	$ 80.00
04/18/2021	ZZA	Review notice of transmittal of motion to withdraw reference filed in AP 21-3005 to case no. 3:21-cv-880 (.1); correspond with PSZJ attorneys regarding transfer of motion to withdraw reference and need for filing of phv applications in district court case 3:21-cv-880 (.2); review notice of transmittal of motion to withdraw reference filed in AP 21-3004 to case no. 3:21-cv-881 (.1); correspond with PSZJ attorneys regarding transfer of motion to withdraw reference and need for filing of phv applications in case 3:21-cv-881 (.2); review multiple follow-up correspondence from G. Demo and L. Canty regarding preparation of phv applications for PSZJ attorneys (.1); review draft objection to Dondero's motion to expedite hearing on stay motion (.2).	0.9	$400.00	$ 360.00
04/19/2021	MSH	Exchange email regarding objection to Dondero motion to stay AP and opposition to expedited hearing and review emails with court regarding same and setting (.30); review email from court denying motion for expedited hearing on Dondero motion to stay (.10).	0.4	$450.00	$ 180.00
04/19/2021	ZZA	Review notice of appearance of D. Deitsch-Perez as counsel for J. Dondero in AP 21-3003 (.1).	0.1	$400.00	$ 40.00
04/19/2021	ZZA	Review correspondence from J. Morris regarding issues related to debtor's forthcoming response to Dondero's motion for expedited consideration of motion to stay (.1); exchange correspondence with H. Winograd regarding issues related to forthcoming responses to motions for withdrawal of reference (.1); correspond with T. Ellison regarding debtor's intent to file response to Dondero motion for expedited hearing on stay motion (.1); review multiple correspondence from J. Morris regarding debtor's forthcoming response to Dondero's motion for expedited hearing (.1); review correspondence from T. Ellison regarding scheduling of status conference on Dondero's motion to withdraw reference (.1);	0.5	$400.00	$ 200.00
04/20/2021	ZZA	Finalize and file notice of deposition of HCMFA in AP 21-3004 (.2).	0.2	$400.00	$ 80.00

04/20/2021	ZZA	Review multiple correspondence from J. Morris regarding discovery to be issued in notes litigation (.2); correspond with D. Rukavina, counsel for Advisors, serving him with discovery in notes litigation (.1); calendar deadline for HCMFA to respond to discovery requests and correspond with PSZJ attorneys regarding same (.1); correspond with J. Morris following up on discovery in notes litigation (.1);	0.5	$400.00	$ 200.00
04/22/2021	ZZA	Finalize and file notice of deposition of J. Dondero in AP 21-3003 (.2); review notice of status conference on J. Dondero's motion to withdraw reference in AP 21-3003 (.1); calendar status conference in AP 21-3003 and correspond with PSZJ attorneys regarding same (.1); review and respond to inquiry from M. DesJardien regarding pending adversary proceedings in Highland case (.2); correspond with M. DesJardien regarding notice of deposition of J. Dondero in AP 21-3003 (.1).	0.7	$400.00	$ 280.00
04/22/2021	ZZA	Review correspondence from J. Seery regarding issues related to HCMS and HCRE requests to amend answers in notes litigation (.1); review multiple follow-up correspondence from J. Morris and J. Seery regarding issues related to HCMS and HCRE requests to amend answers (.2); review correspondence from L. Drawhorn, counsel for HCMS and HCRE, regarding additional defenses defendants seek to assert in notes litigation (.1).	0.4	$400.00	$ 160.00
04/25/2021	ZZA	Review correspondence from J. Morris regarding issues related to HCMS and HCRE requests to amend answers in notes litigation (.1).	0.1	$400.00	$ 40.00
05/04/2021	ZZA	finalize and file debtor's response to motion to withdraw the reference in AP 21-3005 (.3); correspond with V. Trang providing instructions for service of debtor's response in 21-3005 (.1); review follow-up correspondence from J. Kim regarding debtor's response to HCMFA's motion to withdraw the reference (.1); finalize and file debtor's response to HCMFA's motion to withdraw reference in AP 21-3004 (.2); correspond with J. Kim regarding responses to reference withdrawal motions filed in APs 21-3004 and 21-3005 (.1).	0.8	$400.00	$ 320.00
05/04/2021	ZZA	Correspond with V. Trang providing instructions for service of objection to Dondero's stay motion (.1); correspond with V. Trang providing instructions for service of response in AP 21-3004 (.1).	0.2	$400.00	$ 80.00
05/06/2021	MSH	Exchange email regarding objection to Dondero motion to withdraw reference in AP (.10).	0.1	$450.00	$ 45.00
05/06/2021	ZZA	Finalize and file debtor's response to Dondero's motion to withdraw the reference in AP 21-3003 (.2).	0.2	$400.00	$ 80.00
05/07/2021	MSH	Review addendum to Dondero motion to withdraw reference in Note AP (.10).	0.1	$450.00	$ 45.00
05/07/2021	ZZA	Review correspondence from J. Kim regarding addendum to opposition to Dondero's motion to withdraw reference in AP 21-3003 (.1).	0.1	$400.00	$ 40.00

05/10/2021	ZZA	Review HCMSI's motion for leave to amend Highland Capital Management, L.P. answer in AP 21-3006 (.2); review HCRE's motion for leave to amend answer in AP 21-3007 (.1); correspond with J. Pomerantz, J. Morris, and G. Demo regarding HCMSI's and HCRE's motions for leave to amend answers (.1); review notices of hearing on motions for leave to amend answers in APs 21-3006 and 21-3007 (.1); correspond with PSZJ team regarding notices of hearing filed by HCMSI and HCRE (.1); exchange correspondence with J. Morris regarding deadlines to respond to motions for leave to amend answers (.1); calendar deadlines related to motions for leave to amend answers in APs 21-3006 and 21-3007 and correspond with PSZJ team regarding same (.2).	0.9	$400.00	$ 360.00
05/13/2021	ZZA	Review notice of deposition of debtor representative filed by J. Dondero in AP 21-3003 (.1).	0.1	$400.00	$ 40.00
05/18/2021	ZZA	Finalize and file debtor's response to motion to compel Seery testimony in AP 21-3003 (.1); review defendants' replies in support of motions to withdraw reference filed in APs 21-3004 and 21-3005 (.2); correspond with PSZJ team regarding defendants' replies in support of motions to withdraw reference filed in APs 21-3004 and 21-3005 (.1);	0.3	$400.00	$ 120.00
05/19/2021	ZZA	Review notice of hearing on Dondero motion to compel in AP 21-3003 (.1); correspond with PSZJ team regarding 5/20 hearing setting on motion to compel in AP 21-3003 (.1); exchange multiple follow-up correspondence with L. Canty and J. Pomerantz regarding 5/20 hearing setting on motion to compel in AP 21-3003 (.2); calendar 5/20 hearing on Dondero's motion to compel in AP 21-3003 and correspond with PSZJ team regarding same (.1).	0.5	$400.00	$ 200.00
05/21/2021	HOL	Email correspondence with Z. Annable regarding request for 5/20 transcript in AP 21-3003 (0.2); prepare request for transcript of 5/20 hearings, email correspondence with court regarding same (0.2); email correspondence with court reporter regarding 5/20 hearing transcript (0.2)	0.6	$175.00	$ 105.00
05/21/2021	ZZA	Finalize and file witness and exhibit lists and exhibits relating to motions for stay pending motion to withdraw reference in APs 21-3003, 21-3005, and 21-3005 (.6); review Dondero's reply in support of motion to withdraw reference in AP 21-3003 (.3).	0.9	$400.00	$ 360.00
05/22/2021	ZZA	Review HCMFA's motion for leave to file amended answer in AP 21-3004 (.3).	0.3	$400.00	$ 120.00
05/23/2021	ZZA	Review HCMFA's notice of hearing on motion for leave to amend answer (.1).	0.1	$400.00	$ 40.00
05/25/2021	HOL	Prepare transcript requests for 5/25 hearings in Advs. 21-03003, 21-03004, and 21-03005, email correspondence regarding same (0.3);	0.3	$175.00	$ 52.50
05/28/2021	MSH	Receive and review Dondero motion to compel discovery in AP (.10).	0.1	$450.00	$ 45.00
05/28/2021	ZZA	Calendar hearing on HCMFA's motion for leave to file amended answer and correspond with PSZJ team regarding same (.1); review Dondero's motion to compel filed in AP 21-3003 (.2).	0.3	$400.00	$ 120.00

05/31/2021	ZZA	Review correspondence from H. Winograd regarding forthcoming objections to motions to amend in APs 21-3006 and 21-3007 (.1).	0.1	$400.00	$ 40.00
06/01/2021	MSH	Exchange email regarding finalization of objection to HCMS and HCRE motions to amend answer and filing issues (.40).	0.4	$450.00	$ 180.00
06/01/2021	ZZA	Finalize and upload to court order granting in part Dondero's motion to stay proceedings pending withdrawal of reference in AP 21-3003 (.2); correspond with T. Ellison advising of submission of proposed order in AP 21-3003 (.1); work on finalizing, filing, and service of debtor's objections and related documents to HCRE and HCMS motions for leave to file amended complaints in APs 21-3006 and 21-3007 (1.2).	1.5	$400.00	$ 600.00
06/02/2021	ZZA	Exchange correspondence with J. Morris regarding deadline to motion to compel filed in AP 21-3003 (.1).	0.1	$400.00	$ 40.00
06/03/2021	MSH	Review various notices of depositions issued in Dondero AP (.20).	0.2	$450.00	$ 90.00
06/03/2021	ZZA	Finalize and file notices of deposition of A. Johnson, B. McGovern, and N. Dondero in AP 21-3003 (.2); exchange correspondence with J. Morris regarding parties to be served with deposition notices in AP 21-3003 (.1); multiple correspondence with PSZJ team providing copies of motions to withdraw reference, briefs in support, and appendices filed in APs 21-3006 and 21-3007 (.2); review notices of appearance of counsel filed in APs 21-3006 and 21-3007 (.1); correspond with PSZJ team providing them with copies of just-filed motions to stay pending resolution of withdrawal of reference and motions for expedited hearing thereon filed in APs 21-3006 and 21-3007 (.2); review HCMS and HCRE motions to withdraw reference, briefs in support, motions for stay pending resolution of reference withdrawal, and motions for expedited hearing in APs 21-3006 and 21-3007 (.7).	1.5	$400.00	$ 600.00
06/04/2021	MSH	Review order staying AP pending motion to withdraw reference (.10).	0.1	$450.00	$ 45.00
06/04/2021	ZZA	Review court's order staying AP 21-3003 until 7/28/21 (.1).	0.1	$400.00	$ 40.00
06/07/2021	ZZA	Review multiple correspondence from G. Demo and H. Winograd regarding issues related to debtor's response to HCMFA's motion for leave to amend answer in AP (.1); correspond with H. Winograd regarding issues related to debtor's forthcoming response to HCMFA's motion for leave to amend answer (.1); finalize and file notice of deposition of HCMSI in AP 21-3006 (.1); review notices of status conference on motions to withdraw reference in APs 21-3006 and 21-3007 (.1).	0.4	$400.00	$ 160.00

06/09/2021	ZZA	Review and analyze HCMSI's and HCRE's replies in support of motions for leave to file amended answers in APs 21-3006 and 21-3007 (.5); correspond with J. Pomerantz, J. Morris, and G. Demo regarding replies filed in APs 21-3006 and 21-3007 (.1); review and analyze NexPoint's motion for leave to amend answer in AP 21-3005 and correspond with J. Pomerantz, J. Morris, and G. Demo regarding same (.4).	1.0	$400.00	$ 400.00
06/11/2021	ZZA	Review amended answers filed by defendants in APs 21-3006 and 21-3007 (.2);	0.2	$400.00	$ 80.00
06/12/2021	ZZA	Review correspondence from G. Demo regarding analysis of amended answers filed by defendants in APs 21-3006 and 21-3007 (.1).	0.1	$400.00	$ 40.00
06/14/2021	ZZA	Review notice of transmission of motion to withdraw the reference to district court filed in AP 21-3007 (.1); review notice of transmission of motion to withdraw the reference to district court in AP 21-3006 (.1); correspond with J. Pomerantz, J. Morris, and G. Demo regarding district court case proceedings related to motions withdraw reference in APs 21-3006 and 21-3007 (.1).	0.3	$400.00	$ 120.00
06/16/2021	ZZA	Review Judge Fish's request for recusal in 3:21-cv-1379 (.1);	0.1	$400.00	$ 40.00
06/18/2021	ZZA	Review re-filed notice of subpoena on PwC filed in AP 21-3006 and correspond with PSZJ team regarding same (.1); review court's order granting HCMSI's motion for leave to amend answer in AP 21-3006 (.1); review court's order granting HCRE's motion for leave to amend answer in AP 21-3007 (.1).	0.3	$400.00	$ 120.00
06/21/2021	ZZA	Review clerk's correspondence requesting order from NexPoint in AP 21-3005 (.1);	0.1	$400.00	$ 40.00
06/30/2021	ZZA	Review motion for protective order filed by HCMFA and NexPoint Advisors in APs 21-3004 and 21-3005 (.4);	0.4	$400.00	$ 160.00
07/02/2021	ZZA	Review notices of hearing on motions for protective orders filed in APs 21-3004 and 21-3005 (.1); calendar hearings on motions for protective orders in APs 21-3004 and 21-3005 and correspond with PSZJ team regarding same (.1); review court's order granting leave for HCMFA to file amended answer in AP 21-3004 (.1).	0.3	$400.00	$ 120.00
07/06/2021	ZZA	Review HCMFA's amended answer filed in AP 21-3004 (.2); review amended notices of hearing on motions for protective order in APs 21-3004 and 21-3005 (.1); review HCRE's responses to debtor's discovery requests in AP 21-3007 (.3); correspond with G. Demo and H. Winograd regarding HCRE's discovery responses in AP 21-3007 (.1).	0.7	$400.00	$ 280.00

07/07/2021	ZZA	Review and analyze court's report and recommendation regarding withdrawal of the reference in AP 21-3003 (.4); review notices of transmission of report and recommendation regarding withdrawal of the reference (.1).	0.5	$400.00	$ 200.00
07/08/2021	ZZA	Review court's report and recommendation on withdrawal of reference in AP 21-3004 (.2).	0.2	$400.00	$ 80.00
07/09/2021	ZZA	Review notice of transmission of report on withdrawal of reference from AP 21-3004 to district court and correspond with PSZJ team regarding same and filing of phv applications in proceeding (.2); review notice of transmission of report on withdrawal of reference from AP 21-3005 to district court (.1).	0.3	$400.00	$ 120.00
07/14/2021	ZZA	Review court's reports and recommendations with respect to motions to withdraw reference filed in APs 21-3006 and 21-3007 (.2); multiple correspondence with PSZJ team regarding court's reports and recommendations issued in APs 21-3006 and 21-3007 (.2).	0.4	$400.00	$ 160.00
07/15/2021	ZZA	Review notice of transmittal of report and recommendation on motion to withdraw reference in AP 21-3006 to district court (.1); review notice of transmittal of report and recommendation on motion to withdraw reference in AP 21-3007 to district court (.1).	0.2	$400.00	$ 80.00
07/19/2021	ZZA	Review NPA's CNO regarding motion for leave to amend answer filed in AP 21-3005 (.1).	0.1	$400.00	$ 40.00
07/21/2021	ZZA	Review and analyze Dondero's limited objection to report and recommendation on withdrawal of reference filed in 3:21-cv-1010 (.4); multiple correspondence with J. Pomerantz, J. Morris, and G. Demo regarding Dondero's objection to report and recommendation and appendix in support (.1); exchange multiple correspondence with J. Pomerantz and J. Morris regarding issues related to Dondero's objection to report and recommendation on withdrawal of reference (.3).	0.8	$400.00	$ 320.00
07/22/2021	MSH	Exchange email regarding objection to R&R and legal analysis regarding same (.10).	0.1	$450.00	$ 45.00
07/23/2021	ZZA	Review correspondence from J. Morris regarding subpoenas to be issued in notes litigation (.1); review and revise notices of subpoenas to be issued regarding notes litigation and correspond with J. Morris regarding revisions (.4); prepare subpoenas for service in notes litigation (.5); exchange multiple correspondence with J. Morris regarding additional issues related to issuance of subpoenas on notes litigation (.2).	1.2	$400.00	$ 480.00
07/24/2021	ZZA	Review multiple correspondence from J. Morris regarding subpoenas to be issued in notes litigation (.1).	0.1	$400.00	$ 40.00

07/26/2021	ZZA	Review district court's order on motion to withdraw reference originally filed in AP 21-3006 and correspond with J. Morris, J. Pomerantz, and G. Demo regarding issues related to same (.2).	0.2	$400.00	$ 80.00
07/26/2021	ZZA	Finalize and file notices of subpoenas issued to PricewaterhouseCoopers in notes litigation (.7); follow-up correspondence with J. Morris regarding filing of subpoenas in notes litigation (.1).	0.8	$400.00	$ 320.00
07/27/2021	ZZA	Review HCMSI's limited objection to report and recommendation regarding withdrawal of reference and motion to reconsider order on withdrawal of reference filed in 3:21-cv-1378 (.4); review HCRE's limited objection to report and recommendation regarding withdrawal of reference filed in 3:21-cv-1379 (.2); multiple correspondence with PSZJ team regarding HCRE and HCMSI objections to reports and recommendations on withdrawal of reference and ECF noticing issues in cases 3:21-cv-1378 and 3:21-cv-1379 (.2);	0.8	$400.00	$ 320.00
07/28/2021	ZZA	Review district court's order adopting report and recommendation on withdrawal of reference in 3:21-cv-880 (.1); correspond with J. Pomerantz, J. Morris, and G. Demo regarding substance of district court's order adopting report and recommendation of bankruptcy court on withdrawal of reference (.1);	0.2	$400.00	$ 80.00
07/29/2021	ZZA	Review clerk's correspondence requesting order from HCRE regarding motion to stay in AP 21-3007 (.1); review clerk's correspondence requesting order from HCMSI regarding motion to stay in AP 21-3006 (.1); review court's order granting NPA's motion for leave to file amended answer in AP 21-3005 (.1).	0.3	$400.00	$ 120.00
07/30/2021	ZZA	Review correspondence from H. Winograd regarding deadlines and issues related to pending notes litigation (.1).	0.1	$400.00	$ 40.00
08/02/2021	ZZA	Correspond with H. Winograd regarding deadlines and issues related to pending notes litigation (.1); exchange further correspondence with H. Winograd regarding deadlines related to notes litigation (.1).	0.2	$400.00	$ 80.00
08/04/2021	ZZA	review, finalize, and file debtor's reply to Dondero's limited objection to report and recommendation regarding withdrawal of reference in AP 21-3003 (.4); review motions to withdraw as counsel filed by J. Rudd and L. Drawhorn in APs 21-3006 and 21-3007 (.1).	0.5	$400.00	$ 200.00
08/05/2021	ZZA	Review, finalize, and file debtor's reply to HCMFA's limited objection to report and recommendation on withdrawal of reference in AP 21-3004 (.4).	0.4	$400.00	$ 160.00
08/06/2021	ZZA	Review court's orders granting motions to withdraw as counsel in APs 21-3006 and 21-3007 (.1)	0.1	$400.00	$ 40.00
08/06/2021	ZZA	Exchange correspondence with J. Morris regarding issues related to pending notes litigation and scheduled hearings thereon (.2).	0.2	$400.00	$ 80.00

08/06/2021	ZZA	exchange correspondence with ECF help desk for district court regarding revision to docket entry in 3:21-cv-881 (.2); review correspondence from G. Demo regarding finalization and filing of certificates of interested persons in pending district court cases (.1); finalize and file certificates of interested persons in cases 3:21-cv-881 and 3:21-cv-1010 (.3).	0.6	$400.00	$ 240.00
08/09/2021	MSH	Review response to motion for protective order in HCMFA AP (.10); review response filed in NexPoint AP (.10); review OCC objections to motion for protective order in HCMFA and NexPoint APs (.10).	0.3	$450.00	$ 135.00
08/09/2021	ZZA	Review NPA's amended answer filed in AP 21-3005 (.2); review and revise debtor's opposition to HCMFA's motion for protective order in AP 21-3004 and correspond with J. Morris regarding revisions (.4); prepare debtor's opposition to NPA's request for protective order in AP 21-3005 and declaration of J. Morris in support of opposition and correspond with J. Morris regarding same (.5); finalize and file debtor's opposition to motions for protective orders in APs 21-3004 and 21-3005 and declaration of J. Morris in support of opposition (.4); review committee's objections to motions for protective order in APs 21-3004 and 21-3005 (.2).	1.7	$400.00	$ 680.00
08/10/2021	ZZA	Revise, finalize, and file debtor's reply to HCRE's limited objection to report and recommendation on withdrawal of reference in AP 21-3007 (.4).	0.4	$400.00	$ 160.00
08/16/2021	ZZA	Review, finalize, and file debtor's opposition to HCMSI's motion to reconsider order adopting report and recommendation on withdrawal of reference in 3:21-cv-1378 (.4); correspond with V. Trang of KCC providing instructions for service of opposition (.1); correspond with J. Kim regarding filing of debtor's opposition and provide him file-stamped copy of same (.1);	0.6	$400.00	$ 240.00
08/17/2021	ZZA	Review multiple correspondence from J. Morris regarding forthcoming motions to file amended complaints in notes actions (.2); review multiple correspondence from L. Canty regarding exhibits for motions to file amended complaints (.1); review and revise motions to file amended complaints in notes actions and exchange correspondence with J. Morris regarding same (.6); finalize and file debtor's motions for leave to file amended complaints in notes actions (.5); exchange multiple correspondence with V. Trang of KCC providing instructions for service of motions for leave (.2); review follow-up correspondence from J. Morris regarding motions for leave to file amended complaints (.1).	1.7	$400.00	$ 680.00
08/17/2021	ZZA	Review district court's order accepting report and recommendation in 3:21-cv-1379 (.1);	0.1	$400.00	$ 40.00

08/18/2021	ZZA	Correspond with T. Ellison advising of debtor's filing of unopposed motions for leave to amend complaints in notes litigation (.1); review correspondence from T. Ellison requesting submission of proposed orders on motions to amend complaints in notes actions (.1); exchange correspondence with L. Canty requesting proposed orders on motion to amend complaints in notes actions (.1); review and revise proposed order on motion to amend complaints in notes actions and correspond with J. Morris regarding same (.2);	0.5	$400.00	$ 200.00
08/19/2021	ZZA	Review court orders granting motion to stay entered in 21-3006 and 21-3007 (.1); exchange correspondence with J. Morris regarding proposed revisions to orders granting motions to amend complaints in notes actions (.1); revise all proposed orders granting motions to amend complaints in notes actions and correspond with M. Aigen regarding same (.3); review correspondence from M. Aigen approving revised orders on motions to amend complaint filed in notes actions (.1); finalize and submit proposed orders on motions to amend complaints filed in notes actions and correspond with T. Ellison regarding same (.3).	0.9	$400.00	$ 360.00
08/20/2021	ZZA	Review notice of appearance of J. Levinger as counsel to Dondero in AP 21-3003 (.1).	0.1	$400.00	$ 40.00
08/23/2021	ZZA	review agreed protective order entered in AP 21-3004 (.1); review orders granting motion for leave to amend complaints and agreed protective orders entered in notes actions (.2); exchange multiple correspondence with V. Trang regarding instructions for service of orders entered in notes actions (.3); correspond with J. Morris regarding filing of amended complaints in notes actions (.1);	0.7	$400.00	$ 280.00
08/24/2021	ZZA	Exchange multiple correspondence with H. Winograd regarding scheduling stipulations related to notes actions (.2).	0.2	$400.00	$ 80.00
08/25/2021	ZZA	Review and revise proposed orders setting notes actions discovery deadlines and correspond with H. Winograd regarding same (.5);	0.5	$400.00	$ 200.00
08/26/2021	ZZA	Review correspondence from J. Morris regarding issues related to forthcoming amended complaints to be filed in notes actions (.1); review and revise amended complaints to be filed in notes actions and correspond with J. Morris regarding issues related to same (.6); review correspondence from H. Winograd regarding exhibits to amended notes complaints (.1).	0.8	$400.00	$ 320.00

08/27/2021	ZZA	Review correspondence from J. Morris regarding issues related to amended complaints to be filed in notes actions (.1); review multiple correspondence from H. Winograd and J. Morris regarding stipulations and proposed orders regarding discovery issues in notes actions (.2); review, finalize, and file stipulations regarding discovery issues in notes actions (.5); review, finalize, and file orders approving stipulations in notes actions and correspond with T. Ellison regarding same (.4); multiple correspondence with V. Trang of KCC providing instructions for service of stipulations (.2); prepare amended cover sheet for amended complaint in AP 21-3003 and correspond with PSZJ team regarding same (.3); review correspondence from H. Winograd regarding amended cover sheets in notes actions (.1); finalize and file amended complaints in notes action adversaries (.6); multiple correspondence with V. Trang regarding instructions for service of amended complaints (.2).	2.6	$400.00	$ 1,040.00
09/01/2021	MSH	Review motions to compel arbitration and motions to dismiss filed by Dondero et al in APs (.20).	0.2	$450.00	$ 90.00
09/01/2021	ZZA	Review NexPoint's answer to complaint in AP 21-3005 (.2); review motion to compel arbitration, motion to dismiss HCM's 5th, 6th, and 7th claims, and Dondero's answer to complaint filed in AP 21-3003 (1.5); briefly review motions to compel arbitration, motions to dismiss HCM's 5th, 6th, and 7th claims, and answers filed by defendants in APs 21-3005, 21-3006, and 21-3007 (.6).	2.3	$400.00	$ 920.00
09/02/2021	ZZA	Review refiled motions to compel arbitration in APs 21-3003, 21-3005, 21-3006, and 21-3007 (.2).	0.2	$400.00	$ 80.00
09/07/2021	ZZA	Review court's order approving stipulation regarding discovery in AP 21-3003 (.1); review court's order approving stipulation in AP 21-3004 (.1); review court's additional orders approving stipulation regarding discovery in Aps 21-3005, 21-3006, and 21-3007 (.2).	0.4	$400.00	$ 160.00
09/09/2021	ZZA	Exchange correspondence with H. Winograd regarding deadlines to respond to motions to dismiss and motions to compel arbitration filed in notes actions (.2).	0.2	$400.00	$ 80.00
09/14/2021	ZZA	Review correspondence from J. Morris regarding extended deadlines in notes litigation (.1).	0.1	$400.00	$ 40.00
09/14/2021	ZZA	Review court's order accepting report and recommendation in 3:21-cv-881 (.1);	0.1	$400.00	$ 40.00
09/15/2021	ZZA	Review notices of hearing on motions to compel and dismiss filed in notes cases (.2); calendar hearing on defendants' 12(b)(6) motions and motions to compel arbitration in notes actions and correspond with PSZJ team regarding same (.2).	0.4	$400.00	$ 160.00
09/23/2021	ZZA	Exchange correspondence with H. Winograd regarding issues related to HCM's forthcoming responses to motions to dismiss and motions to compel arbitration in notes actions (.2).	0.2	$400.00	$ 80.00

09/27/2021	ZZA	Review correspondence from H. Winograd regarding forthcoming responses to motions to dismiss and motions to compel arbitration in notes actions (.1).	0.1	$400.00	$ 40.00
09/28/2021	ZZA	exchange multiple correspondence with H. Winograd regarding issues related to and review of responses to motions to dismiss and motions to compel arbitration in notes actions (.2); review and revise HCM's response to motions to dismiss in notes actions and exchange correspondence with H. Winograd regarding revisions (.3); review and revise brief in support of HCM's response to motion to compel arbitration in notes actions and correspond with J. Morris regarding revisions (1.2); exchange correspondence with H. Winograd regarding HCM's brief in support of response to motions to dismiss (.1); review correspondence from J. Morris regarding his declaration in support of response (.1); review and revise HCM's brief in support of response to motions to dismiss in notes actions and correspond with H. Winograd regarding revisions (1.3); work on drafting, revising, finalizing, filing, and service of HCM's responses to motions to compel arbitration and motions to dismiss in notes actions (2.7).	5.9	$400.00	$ 2,360.00
10/02/2021	ZZA	Review multiple correspondence from J. Morris and H. Winograd regarding deposition notices to be served in notes litigation (.2).	0.2	$400.00	$ 80.00
10/04/2021	ZZA	Review, finalize, and file numerous notices of deposition and subpoena in notes actions (.6); multiple correspondence with A. Duarte providing instructions for service of notices (.2); exchange multiple correspondence with J. Morris regarding ECF issues and issues related to serving of deposition notices and subpoenas (.3).	1.1	$400.00	$ 440.00
10/08/2021	ZZA	Finalize and file amended notice of depositions to be taken in notes actions (.3); correspond with A. Duarte of KCC providing instructions for service of deposition notices (.1); exchange correspondence with J. Morris regarding filing and service of amended deposition notices (.1).	0.5	$400.00	$ 200.00
10/15/2021	ZZA	Review correspondence from J. Morris regarding issues related to discovery in notes actions (.1); review correspondence from J. Morris regarding issues related to notes defendants' discovery requests (.1).	0.2	$400.00	$ 80.00
10/26/2021	ZZA	Exchange correspondence with H. Winograd regarding correction to be made regarding brief in opposition to motion to dismiss in notes litigation (.2).	0.2	$400.00	$ 80.00
10/27/2021	ZZA	Exchange correspondence with H. Winograd regarding errata sheets to be filed in notes actions (.2).	0.2	$400.00	$ 80.00

10/28/2021	ZZA	Review and revise multiple deposition notices related to notes litigation and exchange correspondence with J. Morris regarding revisions and additional issues for consideration (.7); exchange multiple correspondence with H. Winograd regarding issues related to errata sheets to be filed related to briefs in opposition to motions to dismiss in notes actions (.2); finalize and file errata sheets to HCM's brief in opposition to motions to dismiss in notes actions (.2); exchange multiple correspondence with A. Duarte regarding instructions for service of errata sheets (.2);	1.3	$400.00	$ 520.00
10/29/2021	ZZA	Telephone conference with J. Morris regarding issues related to withdrawal of reference on notes cases (.4); review HCMS's and HCRE's motions to extend expert disclosure and discovery deadlines in APs 21-3006 and 21-3007 (.2).	0.6	$400.00	$ 240.00
10/30/2021	ZZA	Work on analysis of issues related to pending report and recommendation regarding withdrawal of the reference in notes actions pursuant to telephone conference with J. Morris (1.0); exchange correspondence with J. Morris regarding remaining district court case where bankruptcy court's report and recommendation has not been adopted (.1).	1.1	$400.00	$ 440.00
10/31/2021	ZZA	Review email trail from H. Winograd regarding pending issues in notes actions (.2).	0.2	$400.00	$ 80.00
11/01/2021	ZZA	Finalize and file notice of subpoena served on D. Sauter in AP 21-3004 (.2); correspond with A. Duarte of KCC providing instructions for service of notice (.1); exchange follow-up correspondence with H. Winograd regarding notice of service of Sauter subpoena (.1); finalize and file amended notice of deposition of HCMFA in AP 21-3004 (.2); correspond with A. Duarte providing instructions for service of deposition notice (.1).	0.7	$400.00	$ 280.00
11/05/2021	ZZA	Review replies in support of defendants' motions to compel arbitration and stay proceedings in notes litigation (.3); review replies in support of defendants' motions to dismiss in notes litigation (.3); review defendants' witness and exhibit list for hearing on motions to dismiss, motions to compel arbitration, and motions to stay filed in notes litigation (.3).	0.9	$400.00	$ 360.00
11/08/2021	ZZA	Review notice of hearing on NPA's motion to extend expert deadlines in AP 21-3005 (.1); review notices of hearing on HCMS's and HCRE's motions to extend deadlines in APs 21-3006 and 21-3007 (.2).	0.3	$400.00	$ 120.00
11/09/2021	ZZA	Attend hearing on motions to compel arbitration and motion to dismiss certain claims in notes litigation pending in bankruptcy court (3.5).	3.5	$400.00	$ 1,400.00
11/11/2021	ZZA	Calendar multiple upcoming deadlines related to notes litigation and pending appeals and correspond with PSZJ team regarding same (.2).	0.2	$400.00	$ 80.00

11/12/2021	ZZA	Review clerk's notes on hearings held in notes litigation (.2); review court's informal bench ruling on matters heard 11/9 in notes litigation (.3).	0.5	$400.00	$ 200.00
11/19/2021	ZZA	Review and revise proposed stipulation regarding experts in notes litigation and correspond with H. Winograd regarding revisions and preparation of order approving stipulation (.3); review correspondence from J. Morris regarding parties' consent to stipulation regarding expert deadlines in notes litigation (.1); review and revise proposed order approving stipulation regarding expert deadlines (.2); review multiple correspondence from H. Winograd regarding issues related to stipulation about expert deadlines in notes litigation (.1); finalize and file stipulations in APs 21-3005, 21-3006, and 21-3007 regarding expert deadlines (.2); exchange multiple correspondence with A. Duarte regarding instructions for service of stipulations (.2); finalize and file proposed orders approving stipulations in notes litigation and multiple correspondence to T. Ellison advising of filing of stipulations and submission of proposed orders thereon (.3); exchange correspondence with J. Morris regarding issues related to scheduling order on summary judgment motions in notes litigation (.2).	1.6	$400.00	$ 640.00
11/22/2021	ZZA	review multiple notices from clerk's office regarding issues related to proposed orders submitted in notes litigation (.1); multiple correspondence with H. Winograd, M. Hayward, and M. Holmes regarding issues related to proposed orders on stipulations regarding briefing and hearing schedules in notes litigation and possible fixes for same (.6).	0.7	$400.00	$ 280.00
11/30/2021	ZZA	Review court's orders approving stipulations in notes cases and correspond with A. Duarte providing instructions for service of same (.4); review HCMFA's second motion for leave to amend answer in AP 21-3004 and provide copy of same to PSZJ team (.6); review HCMFA's appendix in support of motion and provide copy of same to PSZJ team (.2);	1.2	$400.00	$ 480.00
12/01/2021	ZZA	Review HCMFA's proposed second amended answer filed in AP 21-3004 (.3); review multiple correspondence from clerk issued in 21-3003 and 21-3005 regarding need for defendants to submit proposed orders (.2); review clerk's correspondence in AP 21-3006 requesting order (.1); review clerk's correspondence in AP 21-3007 requesting order on motion (.1); finalize and file debtor's response to motions to extend discovery, brief in support, and declaration of J. Morris in APs 21-3005, 21-3006, and 21-3007 (.4); exchange multiple correspondence with A. Duarte regarding instructions for service of filed documents (.3);	1.4	$400.00	$ 560.00
12/02/2021	ZZA	correspond with PSZJ team providing them with supplemental documents filed in AP 21-3004 (.1); review HCMFA's appendix in support of motion for leave to file second amended answer (.1).	0.2	$400.00	$ 80.00

12/03/2021	ZZA	Exchange correspondence with J. Morris regarding hearing transcripts in AP 21-3003 (.2); review correspondence from M. Holmes regarding hearing transcript in AP 21-3003 (.1); review multiple correspondence from J. Morris, L. Canty, H. Winograd, and G. Demo regarding pleadings and exhibits related to forthcoming motion to consolidate notes actions (.4); review and revise brief in support of motion to consolidate notes actions and correspond with J. Morris regarding revisions (1.1); review correspondence from H. Winograd regarding revisions to brief in support of motion to consolidate notes actions (.1); review and revise motion to consolidate notes actions and correspond with H. Winograd regarding revisions (.3); review memorandum opinion and order denying motions to compel arbitration and stay litigation filed in notes actions (.5); correspond with PSZJ team providing compressed copy of HCMFA's appendix filed in AP 21-3004 (.1); review correspondence from H. Winograd regarding further revisions to be made to motion to consolidate notes (.2); review and revise proposed order granting motion to consolidate notes actions and correspond with H. Winograd regarding revisions (.3); exchange correspondence with H. Winograd regarding issues related to appendix to be filed with motion to consolidate (.2);	3.5	$400.00	$ 1,400.00
12/04/2021	ZZA	Review correspondence from J. Morris regarding forthcoming motion to consolidate notes actions (.1).	0.1	$400.00	$ 40.00
12/05/2021	ZZA	Review multiple correspondence from D. Deitsch-Perez and J. Morris regarding motion to consolidate notes actions (.2).	0.2	$400.00	$ 80.00
12/06/2021	ZZA	Review correspondence from D. Deitsch-Perez regarding issues related to motion to consolidate notes actions (.1); review multiple correspondence from H. Winograd regarding documents related to motion to consolidate notes actions (.1).	0.2	$400.00	$ 80.00

12/07/2021	ZZA	Work on finalizing documents for motion to consolidate notes actions and correspond with H. Winograd regarding same (.2); review multiple correspondence and documents received from L. Canty and H. Winograd regarding motion to consolidate notes actions (.2); work on revising proposed order on motion to consolidate notes actions and correspond with M. Holmes regarding revisions to same (.2); revise motion to consolidate notes actions and correspond with H. Winograd regarding further revisions (.2); review multiple correspondence from J. Morris regarding issues related to forthcoming motion to consolidate notes actions (.2); review orders denying motions to dismiss in APs 21-3003, 21-3005, 21-3006, and 21-3007 (.2); correspond with A. Duarte providing instructions for service of orders (.2); exchange multiple correspondence with H. Winograd, J. Morris, and G. Demo regarding issues related to forthcoming motion to consolidate notes actions (.5); review correspondence from J. Morris regarding filing of motion to consolidate notes actions (.1); revise certificate of conference on motion to consolidate and correspond with J. Morris regarding revisions (.2); finalize and file motion to consolidate notes actions, brief in support, and appendix in support (.3); correspond with A. Duarte providing instructions for service of documents related to motion to consolidate (.1); correspond with chambers of Judge Brown providing copy of proposed order on motion to consolidate notes actions (.2); review correspondence from J. Pomerantz regarding issues related to motion to consolidate notes actions (.1).	2.9	$400.00	$ 1,160.00
12/07/2021	ZZA	Review court's order denying motion for reconsideration in 3:21-cv-1378 (.2); correspond with A. Duarte providing instructions for service of order on motion for reconsideration (.1);	0.3	$400.00	$ 120.00
12/08/2021	ZZA	Correspond with PSZJ team providing copies of replies filed in notes cases earlier today (.1);	0.1	$400.00	$ 40.00
12/09/2021	ZZA	Exchange multiple correspondence with G. Demo, L. Canty, and H. Winograd regarding issues related to preparations for upcoming WebEx hearing on discovery and expert motions in notes cases (.5); review amended notice of hearing regarding expert motion in AP 21-3005 (.1);	0.6	$400.00	$ 240.00
12/10/2021	ZZA	Exchange multiple correspondence with D. Klos regarding upcoming hearing on expert/discovery motions in notes actions (.2);	0.2	$400.00	$ 80.00
12/11/2021	ZZA	Review expert report of Steven Pully filed in AP 21-3005 (.6); review defendants' motions to consolidate notes cases pending in the NDTX (.5); multiple correspondence with PSZJ team providing them with file-stamped copies of motions to consolidate, briefs in support, and appendices in support filed in district court notes cases (.5); review multiple correspondence from J. Morris and H. Winograd regarding issues related to defendants' motions to consolidate notes cases (.2).	1.8	$400.00	$ 720.00
12/13/2021	HOL	prepare requests for 12/13 hearings in 21-3005, 21-3006, and 21-3007, email correspondence regarding same (0.3).	0.3	$195.00	$ 58.50

12/13/2021	ZZA	Review multiple correspondence from J. Morris regarding draft notice of motion to consolidate notes actions in district court (.3); revise notice of motion to consolidate notes actions and correspond with J. Morris regarding issues related to same (.3); exchange correspondence with J. Morris regarding deadlines related to motions to consolidate notes actions (.2); review revised notice of motion to consolidate notes actions received from J. Morris (.1); review correspondence from J. Pomerantz regarding issues related to notice of motion to consolidate notes actions (.1); correspond with J. Pomerantz and J. Morris regarding issues related to notice of motion to consolidate notes actions (.1); attend hearing on defendants' motions to extend expert and discovery deadlines in APs 21-3005, 21-3006, and 21-3007 (1.4); review follow-up correspondence from J. Morris regarding notice of motion to consolidate (.1); exchange additional correspondence with J. Pomerantz and J. Morris regarding notice of motion to consolidate (.2); further revision of notice of motion to consolidate notes actions and correspond with J. Morris regarding same (.2); finalize and file notice of motion to consolidate notes actions in district court cases (.2); multiple correspondence with A. Duarte providing instructions for service of notices (.2); follow-up correspondence with J. Morris regarding filing and service of notices (.1); review multiple correspondence from H. Winograd and J. Morris regarding proposed order denying motion to extend discovery deadlines (.3); revise proposed order denying motions to extend expert disclosure and discovery deadlines and exchange correspondence with H. Winograd regarding revisions (.2); review multiple follow-up correspondence from J. Pomerantz and J. Morris regarding revisions to proposed order on expert and discovery deadlines (.1); review correspondence and proposed forms of order submitted by D. Deitsch-Perez, counsel for defendants, in district court	4.6	$400.00	$ 1,840.00
12/14/2021	ZZA	Calendar deadline to file response to motion to consolidate notes actions and correspond with PSZJ team regarding same (.1);	0.1	$400.00	$ 40.00
12/16/2021	MSH	Exchange email regarding MSJs and filing preparations (.30); review HCMFA objection to motion to consolidate note actions (.10); review order reassigning DC cases to Starr (.10).	0.5	$450.00	$ 225.00
12/16/2021	ZZA	Review notices of appeal of orders on motions to compel filed in notes actions (.4); review HCMFA's objection and appendix in response to motion to consolidate district court notes cases and correspond with PSZJ team regarding same (.5);	0.9	$400.00	$ 360.00
12/16/2021	ZZA	Review multiple correspondence from A. Duarte and J. Morris regarding service issues related to forthcoming summary judgment motion (.1); review order reassigning 3:21-cv-880 to Judge Starr and correspond with PSZJ team regarding same (.2); correspond with J. Morris regarding issues related to filing and service of forthcoming summary judgment motion (.2); correspond with A. Duarte providing instructions for service of order in 3:21-cv-880 (.1); review order reassigning case 3:21-cv-1010 to Judge Starr and correspond with PSZJ team regarding same (.1); correspond with A. Duarte providing instructions for service of order in 3:21-cv-1010 (.1); review multiple correspondence from J. Morris and L. Canty regarding forthcoming motion for summary judgment and exhibits thereto (.2); correspond with M. Hayward and M. Holmes regarding logistical issues related to filing of forthcoming motion for summary judgment (.1);	1.1	$400.00	$ 440.00
12/17/2021	MSH	Exchange email regarding MSJs, stipulation regarding exhibits, and finalization and filing of same (.60).	0.6	$450.00	$ 270.00

12/17/2021	ZZA	Review multiple correspondence from L. Canty and M. Holmes regarding exhibits to motions for summary judgment in notes actions (.3); correspond with M. Holmes regarding preparation of exhibits for filing in connection with summary judgment motions in notes actions (.1); exchange correspondence with H. Winograd regarding issues related to motion for summary judgment in notes actions (.2); review multiple correspondence from L. Canty regarding summary judgment exhibits (.1); exchange correspondence with J. Morris regarding issues related to possible need to seal certain exhibits to MSJ in notes actions (.2); review multiple notices from clerk regarding appeals filed in notes actions (.3); work on drafting, reviewing, revising, finalizing, filing, and service of motions for partial summary judgment and ancillary documents in notes actions (8.7).	9.9	$400.00	$ 3,960.00
12/18/2021	MSH	Email from H. Winograd regarding amendment to MSJ to correct appx and list of parties, definitions, and witnesses (.10).	0.1	$450.00	$ 45.00
12/18/2021	ZZA	Continue work on finalizing and filing appendix with exhibits in support of motions for partial summary judgment in notes actions (2.5); review correspondence from A. Duarte regarding document service issues regarding motions for summary judgment (.1); review and revise draft errata sheet related to MSJ in notes actions and exchange correspondence with H. Winograd regarding same (.4); exchange correspondence with J. Morris regarding errata sheet related to MSJ in notes actions (.1).	3.1	$400.00	$ 1,240.00
12/20/2021	MSH	Exchange email regarding amended MSJ brief and exhibits and filing of same (.30);	0.3	$450.00	$ 135.00
12/20/2021	ZZA	Work on finalizing, filing, and service of amended briefs in support of summary judgment motions and notices of filing of same in notes actions (1.1); review correspondence from J. Morris regarding amended briefs filed in notes actions (.1); review correspondence from T. Ellison inquiring about hearing setting for summary judgment motions in notes actions (.1); review multiple correspondence from A. Duarte regarding issues related to service of documents filed in notes actions (.2); correspond with J. Morris providing file-stamped copies of briefs filed in notes actions (.1); exchange multiple correspondence with J. Morris regarding scheduling of hearing on MSJs in notes actions (.2); correspond with T. Ellison regarding hearing setting on MSJs in notes actions (.1); review multiple correspondence from H. Winograd and J. Morris regarding stipulation in AP 21-3004 (.1); revise stipulation in AP 21-3004 and correspond with H. Winograd regarding revisions (.2).	2.0	$400.00	$ 800.00

12/21/2021	ZZA	Review multiple correspondence from T. Ellison and J. Morris regarding possible hearing setting for summary judgment motions in notes actions (.2); review clerk's notices regarding appeal in AP 21-3006 (.1); review, finalize, and upload proposed orders denying motions to extend expert disclosure and discovery deadlines in notes actions and correspond with T. Ellison advising of submission of orders (.3); review correspondence from D. Deitsch-Perez and J. Morris regarding hearing setting on PMSJ in notes actions (.1); correspond with T. Ellison regarding hearing setting for PMSJ in notes actions (.1); review and revise proposed order approving stipulation and briefing schedule in AP 21-3004 and correspond with H. Winograd regarding same (.2); review correspondence form T. Ellison regarding hearing availability for hearing PMSJ in notes actions (.1); finalize and file stipulation on briefing schedule in AP 21-3004 (.2); correspond with A. Duarte providing instructions for service of stipulation (.1); finalize and upload proposed order approving stipulation in AP 21-3004 and correspond with T. Ellison regarding submission of same (.2);	1.6	$400.00	$ 640.00
12/22/2021	ZZA	Prepare notice of hearing on motions for summary judgment in notes actions and correspond with J. Morris regarding same (.4); review orders denying motions to extend expert disclosure and discovery deadlines entered in notes actions and correspond with A. Duarte of KCC providing instructions for service of orders (.2); finalize and file notices of hearing on motions for summary judgment in notes actions and correspond with A. Duarte providing instructions for service of notice (.3); calendar hearing on motions for summary judgment in notes actions and correspond with PSZJ	1.0	$400.00	$ 400.00
12/23/2021	ZZA	Review clerk's notices regarding appeal of order on motion to compel in AP 21-3007 (.2); review court's order approving stipulation and briefing schedule in AP 21-3004 (.1); correspond with A. Duarte providing instructions for service of order (.1);	0.4	$400.00	$ 160.00
12/27/2021	ZZA	Calendar multiple upcoming deadlines in AP 21-3004 and correspond with PSZJ team regarding same (.2); review multiple correspondence from J. Morris and H. Winograd regarding reply to be filed in support of motion to consolidate notes actions in district court (.1); review and revise HCM's draft reply in support of motion to consolidate notes actions in district court and exchange correspondence with J. Morris regarding revisions (.4); review HCMFA's notices of filed objections regarding case consolidation filed in 3:21-cv-880, 3:21-cv-881, 3:21-cv-1378, and 3:21-cv-1379 (.4); review and revise current version of HCM's draft reply in support of motion to consolidate notes actions in district court and correspond with J. Morris regarding revisions (.3); review multiple correspondence from J. Morris and J. Pomerantz regarding further revisions to HCM reply, further revise reply, and correspond with J. Morris regarding updated version of reply (.3); exchange correspondence with J. Morris and H. Winograd regarding approval to file reply (.1); finalize and file replies in support of HCM's motions to consolidate notes actions in district court (.3); multiple correspondence with A. Duarte providing instructions for service of replies (.2); review follow-up correspondence from A. Duarte regarding service of replies (.1);	2.4	$400.00	$ 960.00

12/29/2021	ZZA	Review correspondence from H. Winograd regarding forthcoming response to HCMFA's second motion for leave to amend answer in AP 21-3004 (.1).	0.1	$400.00	$ 40.00
12/30/2021	MSH	Exchange email regarding response to HCMFA motion (.10); review objection to HCMFA motion to amend answer (.20).	0.3	$450.00	$ 135.00
12/30/2021	ZZA	Review multiple correspondence from J. Morris regarding issues related to response to HCMFA's second motion for leave to amend answer in AP 21-3004 (.2); exchange multiple correspondence with H. Winograd regarding issues and tasks to be completed related to HCM's response to HCMFA's motion for leave (.2); review and revise draft brief in response to HCMFA's motion for leave and correspond with J. Morris regarding revisions (1.1); review appellants' record designations in appeals denying arbitration request in APs 21-3003, 21-3005, 21-3006, and 21-3007 (.4); prepare response to HCMFA's motion for leave and correspond with H. Winograd regarding same (.3); exchange correspondence with H. Winograd regarding issues related to appendix to response to HCMFA's motion for leave (.3); review and revise H. Winograd declaration in support of response (.2); review multiple correspondence from J. Morris and D. Rukavina regarding short extension of time to file response to HCMFA's motion for leave (.2); work on finalizing and filing of HCM's response, brief, and appendix in opposition to HCMFA's second motion for leave to amend answer in AP 21-3004 (.8); exchange multiple correspondence with A. Duarte regarding instructions for service of response, brief, and appendix (.2);	3.9	$400.00	$ 1,560.00
01/02/2022	ZZA	Review stipulation with NexPoint regarding affirmative defense in AP 21-3005 (.1).	0.1	$400.00	$ 40.00
01/04/2022	ZZA	Review clerk's correspondence seeking amended record designation from defendants in AP 21-3003 (.1);	0.1	$400.00	$ 40.00
01/05/2022	ZZA	Review NexPoint's objection to bankruptcy court's order denying motions to extend expert disclosure and discovery deadlines filed in 3:21-cv-880 (.5); review defendants' amended record designations regarding appeal of arbitration issue filed in notes cases (.4); review NexPoint's notice filed in AP 21-3005 regarding documents filed in district court case (.1); correspond with PSZJ team regarding NexPoint notice filed in AP 21-3005 (.1); review HCMSI's and HCRE's objections filed in 3:21-cv-1378 and 3:21-cv-1379 to bankruptcy court order denying motions to extend expert and discovery deadlines and corresponding notices filed in AP 21-3006 and 21-3007 (.4);	1.5	$400.00	$ 600.00
01/06/2022	ZZA	Review district court orders consolidating all notes cases before Judge Starr (.1); lengthy correspondence with A. Duarte regarding service of order consolidating notes cases in district court and service issues related to same (.2);	0.3	$400.00	$ 120.00
01/07/2022	ZZA	Exchange correspondence with H. Winograd regarding issues related to forthcoming responses to motions for reconsideration in 3:21-cv-880 and 3:21-cv-1378 (.2); review analysis of issues related to motions for reconsideration in 3:21-1378 and 3:21-cv-880 received from H. Winograd (.2);	0.4	$400.00	$ 160.00
01/10/2022	ZZA	Attend hearing on HCMFA's second motion for leave to amend answer in AP 21-3004 (4.7);	4.7	$400.00	$ 1,880.00

01/11/2022	ZZA	Review correspondence from J. Morris regarding extension of deadline for defendants to respond to motions for summary judgment in notes actions (.1);	0.1	$400.00	$ 40.00
01/12/2022	ZZA	review proposed Revisions to stipulation regarding notes msj briefing schedule received from J. Morris (.1); review finalized stipulations regarding notes msj briefing schedule filed in notes actions (.2);	0.3	$400.00	$ 120.00
01/13/2022	ZZA	Exchange correspondence with PSZJ team regarding filing of supplemental record designations in appeals of arbitration orders in notes actions (.2); calendar deadlines related to pending MSJs in notes actions and correspond with PSZJ team regarding same (.2); review, finalize, and file HCM's supplemental record designations in appeals of orders denying arbitration in notes actions (.3);	0.7	$400.00	$ 280.00
01/14/2022	ZZA	Review NexPoint's motion for ruling on pending objections in consolidated cases filed in 3:21-cv-881 (.2); review proposed order on NexPoint's motion for ruling on pending objections received from J. Vasek (.1);	0.3	$400.00	$ 120.00
01/19/2022	MSH	Review HCMFA brief in opposition to MSJ (.20).	0.2	$450.00	$ 90.00
01/19/2022	ZZA	Review emergency motions for leave to exceed page limits in defendants' response to HCM's motions for summary judgment in notes actions and motions for expedited consideration of same (.3); review HCMFA's response to HCM's motion for partial summary judgment in notes actions (.7).	1.0	$400.00	$ 400.00
01/20/2022	MSH	Review responses filed in note proceedings in response to MSJs (.20);	0.2	$450.00	$ 90.00
01/20/2022	ZZA	Review correspondence from J. Morris regarding possibility of moving hearing on partial summary judgment motions in notes actions (.1); correspond with T. Ellison regarding court availability for new hearing date on motions for summary judgment in notes actions if necessary (.1); exchange follow-up correspondence with T. Ellison regarding possible new hearing dates for PMSJs in notes actions (.1); review amended agreed emergency motions to exceed page limits filed notes actions (.2);	0.5	$400.00	$ 200.00
01/21/2022	ZZA	Review district court's orders consolidating notes cases pending before it (.2); review defendants' responses to motions for partial summary judgment in notes actions 21-3003, 21-3005, 21-3006, and 21-3007 (1.5); review notices of stipulation consolidating and staying briefing of appeal of orders denying motions to compel arbitration filed in APs 21-3005, 21-3006, and 21-3007 (.2);	1.9	$400.00	$ 760.00
01/21/2022	ZZA	Review Dondero's motion for entry of order on pending motion filed in 3:21-cv-881 (.1);	0.1	$400.00	$ 40.00
01/24/2022	ZZA	Review court's orders granting motions to exceed page limits for responses to PMSJs in notes actions (.2);	0.2	$400.00	$ 80.00
01/24/2022	ZZA	Review correspondence from H. Winograd regarding forthcoming stipulation in 3:21-cv-881 (.1);	0.1	$400.00	$ 40.00
01/25/2022	ZZA	Review correspondence from J. Morris regarding scheduling of hearing on PMSJs in notes actions (.1);	0.1	$400.00	$ 40.00
01/25/2022	ZZA	Review and revise stipulation regarding briefing schedule in 3:21-cv-881 and exchange correspondence with H. Winograd regarding same (.3);	0.3	$400.00	$ 120.00

01/26/2022	ZZA	Review correspondence from M. Aigen regarding defendants' availability for hearing on PMSJ in notes actions (.1); exchange correspondence with J. Morris regarding preparation of amended notice of hearing on PMSJs in notes actions (.1); correspond with T. Ellison regarding hearing time for hearing on PMSJs in notes actions (.1); review correspondence from T. Ellison regarding issues relating to new hearing date for hearing on PMSJs in notes actions (.1);	0.4	$400.00	$ 160.00
01/26/2022	ZZA	Exchange correspondence with H. Winograd and J. Morris regarding issues related to forthcoming response to motions refiled in 3:21-cv-881 (.2);	0.2	$400.00	$ 80.00
01/27/2022	ZZA	Review correspondence from T. Ellison regarding need for filing of motion to continue hearing on PMSJs in notes actions (.1);	0.1	$400.00	$ 40.00
01/31/2022	ZZA	Review correspondence from H. Winograd regarding forthcoming objection to NexPoint's motion for reconsideration in 3:21-cv-881 (.1); review multiple correspondence from H. Winograd regarding status of response to motion to reconsider in 3:21-cv-881 (.1); review, revise, finalize, and file HCM's response in opposition to motion to reconsider bankruptcy court order in 3:21-cv-881, and exchange numerous correspondence with PSZJ team regarding revisions (1.3); exchange multiple correspondence with A. Duarte regarding instructions for service of response (.2); exchange correspondence with H. Winograd regarding issues related to filing and service of response in 3:21-cv-881 (.1);	1.8	$400.00	$ 720.00
02/01/2022	ZZA	Exchange correspondence with H. Winograd regarding issues related to HCM's response to HCMFA's motion for reconsideration in 3:21-cv-881 (.2);	0.2	$400.00	$ 80.00
02/04/2022	ZZA	Review correspondence from J. Morris regarding forthcoming replies in support of PMSJs (.1); exchange correspondence with A. Duarte regarding service issues related to forthcoming replies in support of PMSJs in notes actions (.2); correspond with J. Morris regarding issues related to forthcoming replies to be filed in notes actions (.1);	0.4	$400.00	$ 160.00
02/06/2022	ZZA	Review draft brief on motion to strike and for sanctions and contempt to be filed in notes actions and multiple correspondence from J. Morris regarding issues related to same (.5); review multiple correspondence from G. Demo, J. Morris, and J. Pomerantz regarding motion to strike (.2); exchange multiple correspondence with J. Morris regarding issues related to motion to strike and for sanctions and contempt (.3); review correspondence from J. Pomerantz regarding content of motion to strike and for sanctions and contempt (.1).	1.1	$400.00	$ 440.00
02/07/2022	HOL	Work on omnibus motion, email correspondence with Z. Annable regarding same (0.3).	0.3	$195.00	$ 58.50
02/07/2022	MSH	Review reply ISO MSJ in note litigation (.30).	0.3	$450.00	$ 135.00

02/07/2022	ZZA	Review current draft brief on motion to strike and correspondence from H. Winograd regarding issues related to same (.4); review redline of current draft of brief on motion to strike and for sanctions and for contempt (.3); review multiple correspondence from J. Morris and H. Winograd regarding call to discuss status of pleadings for filing (.2); prepare motion to strike and for contempt and sanctions and proposed order thereon and correspond with J. Morris regarding issues related to same (1.0); telephone conference with PSZJ attorneys regarding issues related to replies in support of PMSJs in notes actions and motion to strike (.4); work on reviewing, revising, finalizing, filing, and service of motion to strike and for sanctions and for contempt and related documents as well as reply brief in support on PMSJs in notes actions (6.1);	8.4	$400.00	$ 3,360.00
02/08/2022	ZZA	Exchange multiple correspondence with J. Morris regarding issues related to obtaining hearing on motion to strike, response deadlines related to same, and hearing on PMSJs (.4);	0.4	$400.00	$ 160.00
02/09/2022	ZZA	Exchange multiple correspondence with T. Ellison regarding need for motion continuing hearing on PMSJs in notes actions (.2); prepare motion to continue hearing on PMSJs in notes actions and proposed order granting motion and correspond with J. Morris regarding same (.7); exchange multiple correspondence with J. Morris regarding revisions to motion to continue hearing on PMSJs in notes actions (.2); finalize and file motions to continue hearing on PMSJs in notes actions and upload proposed orders approving continuance (.4); exchange multiple correspondence with A. Duarte regarding instructions for service of motions (.2); multiple correspondence with T. Ellison regarding filing of motions for continuance of hearing on PMSJs in notes actions and submission of proposed orders regarding same (.2);	1.9	$400.00	$ 760.00
02/10/2022	ZZA	Correspond with T. Ellison requesting hearing setting on motions to strike and for sanctions and contempt filed in notes actions (.2); review correspondence from T. Ellison approving hearing of motions to strike at same time as PMSJs in notes actions (.1); exchange multiple correspondence with J. Morris regarding issues related to motions to strike filed in notes actions (.2); correspond with T. Ellison clarifying which notes actions motions to strike were filed in (.2);	0.7	$400.00	$ 280.00

02/11/2022	ZZA	Review order continuing hearing on PMSJs in notes actions (.1); calendar new hearing date for PMSJs in notes actions and correspond with PSZJ team regarding same (.1); prepare notice of hearing on motions to strike filed in notes actions and correspond with J. Morris regarding same (.4); exchange follow-up correspondence with J. Morris regarding issues related to motions to strike filed in notes actions (.1); review correspondence from H. Winograd regarding issues related to notice of hearing on motions to strike in notes actions (.1); finalize and file notices of hearing on motions to strike in notes actions (.2); exchange multiple correspondence with A. Duarte regarding instructions for service of notices of hearing in notes actions (.2); correspond with T. Ellison inquiring as to status of additional orders continuing hearing on PMSJs in notes actions (.1); review correspondence from T. Ellison to clerk's office staff regarding entry of additional orders continuing hearing on PMSJs in notes actions (.1); review additional orders entered in notes actions continuing hearing on PMSJs and correspond with A. Duarte providing instructions for service of same (.4); exchange follow-up correspondence with M. Edmond regarding entry of orders continuing hearing on PMSJs in notes actions (.1);	1.9	$400.00	$ 760.00
02/14/2022	MSH	Review NexPoint reply regarding expert disclosure and discovery (.10).	0.1	$450.00	$ 45.00
02/14/2022	ZZA	Review NexPoint reply and supporting documents in support of motion to reconsider bankruptcy court order regarding expert and discovery deadlines filed in 3:21-cv-881 (.4); review HCMSI and HCRE joinder in NexPoint reply (.1);	0.5	$400.00	$ 200.00
02/15/2022	ZZA	Prepare amended notice of hearing on PMSJs in notes actions and correspond with PSZJ attorneys regarding same (.3); exchange multiple correspondence with J. Morris regarding issues related to amended notice of hearing (.2); review correspondence from G. Demo and H. Winograd regarding amended notice of hearing (.1); finalize and file amended notices of hearing on PMSJs in notes actions (.2); exchange multiple correspondence with A. Duarte regarding service of notices of hearing in notes actions (.2);	1.0	$400.00	$ 400.00
02/17/2022	ZZA	Finalize and file response to HCMFA's motion to reconsider, brief in support, and appendix in support in 3:21-cv-881 (.4); exchange multiple correspondence with A. Duarte regarding instructions for service of documents filed in 3:21-cv-881 (.2); correspond with H. Winograd providing file-stamped copies of response, brief, and appendix (.1);	0.7	$400.00	$ 280.00

02/18/2022	ZZA	Review multiple correspondence from H. Winograd, J. Morris, and L. Canty regarding correction needed to J. Morris declaration in support of motion to strike and for contempt (.2); exchange multiple correspondence with H. Winograd and J. Morris regarding issues related to correction to be made to exhibits attached to J. Morris declaration (.5); review and revise draft errata sheet regarding J. Morris declaration in support of motion to strike and for contempt and correspond with H. Winograd regarding revisions (.3); exchange multiple correspondence with J. Morris and L. Canty regarding sealing of exhibit in appendix to response to HCMFA's motion to reconsider and issues related thereto (.4); prepare draft correspondence to counsel for HCMFA regarding sealing of exhibit in appendix and exchange correspondence with J. Morris regarding revisions to draft correspondence (.5); review correspondence from H. Winograd and J. Morris approving revised errata sheet to be filed in notes actions (.1); finalize and file errata sheet to declaration of J. Morris in support of motion to strike filed in notes actions (.2); exchange correspondence with A. Duarte regarding instructions for service of errata sheets in notes actions (.2);	2.4	$400.00	$ 960.00
02/21/2022	MSH	Email from Z. Annable to counsel regarding filing of appendix exhibits under seal (.10).	0.1	$450.00	$ 45.00
02/21/2022	ZZA	Correspond with D. Rukavina and J. Vasek regarding issues related to sealing of HCMFA financial statement in HCM's appendix in support of response to HCMFA's motion to reconsider (.4);	0.4	$400.00	$ 160.00
02/24/2022	ZZA	Review correspondence from J. Morris regarding issues related to appendix in support of reply in support of PMSJs in notes actions (.1); research issues related to introduction of evidence in reply appendix in support of PMSJs in notes actions and provide multiple correspondence to J. Morris regarding analysis of same (1.8); exchange correspondence with M. Hayward regarding same (.1); exchange correspondence with J. Morris following up on issues related to introduction of evidence in reply appendix (.1); review multiple correspondence from J. Morris and H. Winograd regarding issues related to introduction of evidence in reply appendix in support of PMSJs in notes actions (.2); exchange correspondence with J. Morris regarding issues related to HCMFA's failure to respond to inquiries regarding sealing of exhibits related to motion for reconsideration (.2);	2.5	$400.00	$ 1,000.00
02/25/2022	MSH	Review motions to strike SJ reply appendix (.10).	0.1	$450.00	$ 45.00
02/25/2022	ZZA	Review multiple correspondence from J. Morris regarding communications with D. Rukavina related to sealing of exhibit in 3:21-cv-881 (.2); review motions to strike reply appendices and appendices in support filed in notes actions (.4); review notices of district court orders consolidating notes cases in case 3:21-cv-881 entered on docket in bankruptcy case (.2); correspond with J. Morris following up on sealing of exhibit in appendix to response to HCMFA's motion to reconsider (.1);	0.9	$400.00	$ 360.00
02/28/2022	MSH	Review responses to motion to strike and for sanctions for MSJ responses (.20);	0.2	$450.00	$ 90.00

02/28/2022	ZZA	Exchange correspondence with J. Morris regarding issues and deadlines related to defendants' motions to strike in notes actions (.2); review notice hearing on defendants' motion to strike in notes actions (.1); calendar hearing on defendants' motion to strike in notes actions and correspond with PSZJ team regarding same (.1); review notes defendants' objections to omnibus motion to strike and for sanctions and contempt filed in notes actions (1.1);	1.5	$400.00	$ 600.00
03/11/2022	ZZA	Exchange correspondence with H. Winograd regarding need for motion to extend page limits of reply in support of omnibus motion to strike and for sanctions and contempt (.2); exchange follow-up correspondence with J. Morris and H. Winograd regarding motion to extend page limits of reply and issues with PACER availability (.2);	0.4	$400.00	$ 160.00
03/13/2022	ZZA	Review correspondence from H. Winograd regarding draft motion to file reply in excess of page limits in support of omnibus motion to strike (.1);	0.1	$400.00	$ 40.00
03/14/2022	ZZA	Review and revise motion to file reply in excess of page limits in support of omnibus motion to strike, prepare proposed order on same, exchange multiple correspondence with H. Winograd regarding revisions to documents, finalize and file motions and proposed in notes actions, and correspond with A. Duarte of KCC providing instructions for service of motions (1.0); correspond with T. Ellison and M. Edmond regarding filing of motions to exceed page limits and submission of orders regarding same (.2); review follow-up correspondence from M. Edmond regarding proposed orders submitted on motions to file reply in excess of page limits in notes actions (.1); review multiple correspondence from H. Winograd, J. Morris, and L. Canty regarding hearing on defendants' motion to strike PMSJ evidence (.1); review and revise draft reply in support of omnibus motion to strike in notes actions and J. Morris declaration in support of same and correspond with H. Winograd regarding revisions (.6); review revised reply in support of omnibus motion to strike received from H. Winograd (.1); finalize and file replies and Morris declarations in support of omnibus motions to strike in notes actions (.4); exchange correspondence with A. Duarte regarding instructions for service of replies and declarations (.3); correspond with H. Winograd regarding filing of replies and declarations and service of same (.1);	2.9	$400.00	$ 1,160.00
03/15/2022	ZZA	Exchange multiple correspondence with H. Winograd regarding issues related to defendants' motions to strike PMSJ evidence in notes actions (.3);	0.3	$400.00	$ 120.00

03/18/2022	ZZA	Review correspondence from H. Winograd regarding forthcoming response to defendants' motions to strike evidence in notes actions (.1); review and revise response to defendants' motions to strike and correspond with H. Winograd regarding revisions (.2); review follow-up correspondence from H. Winograd regarding brief and appendix in support of response to defendants' motions to strike (.1); review and revise current draft response to motions to strike and appendix in support and correspond with H. Winograd regarding revisions (.2); review and revise brief in support of response to defendants' motions to strike evidence in notes actions and correspond with H. Winograd regarding revisions (.7); review and revise updated draft of brief in support of response to defendants' motions to strike and correspond with H. Winograd regarding revisions (.4); finalize and file responses to defendants' motions to strike evidence in notes actions, briefs in support, and appendices in support (.4); exchange multiple correspondence with A. Duarte regarding instructions for service of responses, briefs, and appendices (.3); exchange correspondence with H. Winograd regarding filing and service of response (.1); review phv applications of J. Root in APs 21-3006 and 21-3007 (.1);	2.6	$400.00	$ 1,040.00
03/19/2022	ZZA	Review correspondence from J. Morris regarding issues related to upcoming hearing on PMSJs and motions to strike in notes actions (.1);	0.1	$400.00	$ 40.00
03/20/2022	ZZA	Review multiple correspondence from T. Ellison and J. Morris regarding court's availability for hearing on PMSJs in notes actions (.2);	0.2	$400.00	$ 80.00
03/21/2022	ZZA	Review multiple correspondence from J. Morris and T. Ellison regarding new hearing date of 4/20 for hearing on PMSJs in notes actions (.1); review and revise amended notice of hearing on PMSJs and exchange multiple correspondence with H. Winograd regarding revisions (.3); finalize and file amended notices of hearing on PMSJs in notes actions (.2); exchange multiple correspondence with A. Duarte regarding instructions for service of amended notices of hearing (.2);	0.8	$400.00	$ 320.00
03/22/2022	ZZA	Calendar new hearing dates in notes actions and correspond with PSZJ team regarding same (.2);	0.2	$400.00	$ 80.00
03/24/2022	ZZA	Review information received from J. Morris regarding request to recover attorneys' fees from defendants in notes actions (.2);	0.2	$400.00	$ 80.00
03/26/2022	ZZA	Review follow-up correspondence from J. Pomerantz and J. Morris regarding issues related to recovery of attorneys' fees from defendants in notes actions (.1);	0.1	$400.00	$ 40.00
03/28/2022	ZZA	Review court's order granting HCM's motion to exceed page limits in replies in notes actions (.1);	0.1	$400.00	$ 40.00
04/01/2022	ZZA	Review defendants' reply in support of motion to strike PMSJ evidence and appendix in support of reply (.4);	0.4	$400.00	$ 160.00
04/02/2022	ZZA	Review NexPoint's reply in support of motion to strike PMSJ evidence and appendix in support of reply (.1);	0.1	$400.00	$ 40.00

04/19/2022	ZZA	Review and revise notice of agenda of matters to be heard in notes actions on 4/20 and correspond with J. O'Neill regarding revisions (.5); review follow-up correspondence from J. O'Neill regarding revised hearing agenda (.1); finalize and file notice of agenda of matters to be heard in notes actions (.2); exchange multiple correspondence with A. Duarte regarding instructions for service of 4/20 hearing agenda (.2); correspond with T. Ellison regarding filing of notice of 4/20 hearing agenda and provide copy of same (.2); exchange correspondence with J. O'Neill regarding filing of hearing agenda and provide copy of same (.1);	1.3	$400.00	$ 520.00
04/20/2022	ZZA	Review correspondence from J. Morris regarding PowerPoint slides to be used at hearing today (.1); attend hearing on motions for partial summary judgment and motions to strike filed in notes actions (7.2);	7.3	$400.00	$ 2,920.00
04/22/2022	ZZA	Review and revise proposed order granting in part and denying in part HCM's omnibus motion to strike and for sanctions and for contempt and exchange multiple correspondence with J. Morris regarding revisions and additions to proposed order (1.0);	1.0	$400.00	$ 400.00
04/25/2022	ZZA	Exchange additional correspondence with J. Morris regarding issues related to draft proposed orders granting in part and denying in part HCM's motions to strike in notes actions (.3); finalize and submit proposed order granting in part and denying in part HCM's motions to strike in notes actions and correspond with T. Ellison advising of submission of same (.5);	0.8	$400.00	$ 320.00
04/27/2022	ZZA	Review court's orders granting in part and denying in part HCM's motions to strike in notes actions (.2);	0.2	$400.00	$ 80.00
07/19/2022	ZZA	Review court's report and recommendation with respect to PMSJs in notes actions (1.0); exchange multiple correspondence with A. Duarte regarding instructions for service of court's report and recommendation issued in notes actions (.2); correspond with PSZJ attorneys providing copies of court's report and recommendation entered in notes actions (.2);	1.4	$400.00	$ 560.00
TOTAL			**190.3**		**$ 76,059.50**

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

HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
Plaintiff,	§	
vs.	§	Adv. Proc. No. 21-03003-sgj
JAMES DONDERO, NANCY DONDERO, AND THE DUGABOY INVESTMENT TRUST,	§	Case No. 3:21-cv-00881-X
Defendants.	§	

HIGHLAND CAPITAL MANAGEMENT, L.P., Plaintiff, vs. HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, L.P., Defendant.	§ § § § § § § § § § § § § §	Adv. Proc. No. 21-03004-sgj Case No. 3:21-cv-00881-X
HIGHLAND CAPITAL MANAGEMENT, L.P., Plaintiff, vs. NEXPOINT ADVISORS, L.P., JAMES DONDERO, NANCY DONDERO, AND THE DUGABOY INVESTMENT TRUST, Defendants.	§ § § § § § § § § § § § § §	Adv. Proc. No. 21-03005-sgj Case No. 3:21-cv-00881-X
HIGHLAND CAPITAL MANAGEMENT, L.P., Plaintiff, vs. HIGHLAND CAPITAL MANAGEMENT SERVICES, INC., JAMES DONDERO, NANCY DONDERO, AND THE DUGABOY INVESTMENT TRUST, Defendants.	§ § § § § § § § § § § § § §	Adv. Proc. No. 21-03006-sgj Case No. 3:21-cv-00881-X

HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	
	§	Adv. Proc. No. 21-03007-sgj
Plaintiff,	§	
	§	
vs.	§	
	§	Case No. 3:21-cv-00881-X
HCRE PARTNERS, LLC (n/k/a NexPoint Real Estate Partners, LLC), JAMES DONDERO, NANCY DONDERO, AND THE DUGABOY INVESTMENT TRUST,	§	
	§	
	§	
	§	
	§	
	§	
Defendants.	§	

DECLARATION OF DAVID KLOS IN SUPPORT OF HIGHLAND CAPITAL MANAGEMENT L.P.'S PROPOSED FORM OF JUDGMENT

I, David Klos, pursuant to 28 U.S.C. § 1746, under penalty of perjury, declare as follows:

1. I am the Chief Financial Officer ("CFO") of the reorganized Highland Capital Management, L.P. ("Highland"), and I submit this Declaration in support of *Highland Capital Management, L.P.'s Proposed Form of Judgment* (the "Proposed Judgment"). I have personal knowledge of the work and arithmetic calculations described below.

2. I joined Highland in 2009 and served as Controller from 2017 to 2020 and Chief Accounting Officer from 2020 to February 2021. At all relevant times, I reported to Frank Waterhouse until he left the company in February 2021. I was appointed CFO in March 2021 following confirmation of Highland's Plan.[1]

3. I understand that on July 19, 2022, the Bankruptcy Court rendered a *Report and Recommendation to District Court: Court Should Grant Plaintiff's Motion for Partial*

[1] Capitalized terms not defined herein shall have the meanings ascribed in *Highland Capital Management, L.P.'s Amended Memorandum of Law in Support of Motion for Partial Summary Judgment* filed in Adv. Pro. No. 21-03003 at Docket No. 137; Adv. Pro. No. 21-03004 at Docket No. 95; Adv. Pro. No. 21-03005 at Docket No. 136; Adv. Pro. No. 21-03006 at Docket No. 133; and Adv. Pro. No. 21-03007 at Docket No. 128 (the "Motion").

Summary Judgment Against All Five Note Maker Defendants (With Respect to All Sixteen Promissory Notes) in the Above-Referenced Consolidated Note Actions (the "R&R"),[2] and that in the R&R, the Court directed Highland to "submit a form of Judgment applicable to each Note Maker Defendant that calculates proper amounts due pursuant to th[e] Report and Recommendation, including interest accrued to date (and continuing per diem), as well as attorneys' fees incurred." R&R at 44-45.

4. As set forth below, and in accordance with the Court's direction in the R&R, I and others working at my direction have calculated the proper amounts due under each of the sixteen (16) Notes at issue, including (a) unpaid principal and interest due as of August 8, 2022, and (b) the applicable per diem rate of interest at different points in time.

A. SUMMARY OF PRINCIPAL AND INTERST DUE AS OF AUGUST 8, 2022

5. Attached as **Exhibit A** is a summary of the amount of principal and unpaid interest due and owing to Highland as of August 8, 2022, on each Note.

6. **Exhibit A** sets forth (a) an informal name identifier for each Note; (b) the original date of each Note (which is the same day that each Obligor borrowed the principal amount of each Note from Highland); (c) the amount of principal and unpaid interest due and owing as of December 17, 2021 (the date of the calculations used for the Motion), under each Note; (d) the amount of principal and unpaid interest due and owing as of August 8, 2022, under each Note; (e) the amount of interest accruing per day as of August 8, 2022, under each Note (*i.e.*, the "per diem" interest); (f) the future date upon which the per diem interest will change (see further discussion

[2] Identical copies of the R&R were filed in Adv. Pro. No. 21-03003 at Docket No. 191; Adv. Pro. No. 21-03004 at Docket No. 163; Adv. Pro. No. 21-03005 at Docket No. 207; Adv. Pro. No. 21-03006 at Docket No. 213; and Adv. Pro. No. 21-03007 at Docket No. 208.

below); and (g) the amount of interest accruing on each Note per day upon the next date that interest is capitalized into principal.

7. As shown on **Exhibit A**, the aggregate principal and interest due and owing as of August 8, 2022 is **$59,533,057.65**, with per diem interest of **$8,049.17** as of the same date.[3]

B. METHODOLOGY FOR CALCULATING PRINCIPAL AND INTEREST DUE

8. In the ordinary course of business, accounting personnel at Highland working under my direction maintain a schedule of promissory notes issued in exchange for loans made by Highland, including the Notes at issue in these cases (the "Note Schedule"). The Note Schedule is updated monthly to calculate interest due under outstanding promissory notes (again, including each of the Notes at issue) and reconciled to Highland's general ledger.

9. Using the Note Schedule as applicable to each Note, interest was calculated through August 8, 2022, based on actual days elapsed at the applicable interest rate for each note, based on a 365-day year. Certain Obligors made payments under certain of their respective Notes between December 17, 2021 and December 31, 2021 (the "Subsequent Payments"). In accordance with the terms of each Note, the Subsequent Payments were applied first to outstanding interest as of December 31, 2021, and then to principal to the extent the amount of any Subsequent Payment exceeded the outstanding unpaid interest as of December 31, 2021. In other words, the Subsequent Payments reduced the total principal and accrued but unpaid interest that otherwise would have been outstanding.

[3] For the avoidance of doubt, this amount does not include amounts due and owing by HCMFA under two additional notes issued by HCMFA in February 26, 2014 and February 26, 2016, respectively, which are the subject of a separate collection action commenced by Highland against HCMFA. *See* Adv. Proc. 21-03082-sgj.

10. To calculate a per diem interest amount for each of the Notes, the outstanding principal balance of each Note as of August 8, 2022, was multiplied by the stated interest rate for that Note and then divided by 365 to determine a per diem amount.

11. Additionally, and in accordance with the terms of each Note, accrued and unpaid interest is capitalized on the anniversary of the original date of the applicable Note (for example, for a Note dated May 31, 2017, unpaid and outstanding interest is added to the outstanding principal balance on May 31 each year, and outstanding interest is reduced to zero). On these anniversary dates, the per diem amount increases because the outstanding principal amount has increased (in other words, interest is compounding annually).

12. Accordingly, in addition to providing the per diem amount for each of the Notes as of August 8, 2022, an additional calculation has been included to denote (a) the next date after August 8, 2022, that interest will be capitalized and (b) the new per diem amount from that date until the next anniversary of the original date of the Note.[4] The calculation of the new per diem amount is identical to the calculation of the current per diem amount, except that rather than using the outstanding principal balance as of August 8, 2022, it uses the outstanding principal balance as of the next date that outstanding interest is scheduled to be capitalized into the principal balance.

C. CALCULATION OF PRINCIPAL AND INTEREST DUE UNDER EACH NOTE AS OF AUGUST 8, 2022, AND THE APPLICABLE PER DIEM RATES THEREAFTER

[4] These calculations assume that none of the Obligors will make any further Subsequent Payments under any of the Notes until any judgment that may be entered is satisfied.

13. Following the methodology described above, attached as **Exhibit B** is a spreadsheet showing that Mr. James Dondero ("Dondero") will owe Highland **$3,873,613.93** in accrued but unpaid principal and interest due under the First Dondero Note (issued on February 2, 2018) as of August 8, 2022, after application of all payments to outstanding principal and interest. As of August 9, 2022, interest will continue to accrue on the First Dondero Note at the rate of **$278.50** per day and will increase to **$285.91** per day on **February 2, 2023.**

14. Following the methodology described above, attached as **Exhibit C** is a spreadsheet showing that Mr. Dondero will owe Highland **$2,778,356.23** in accrued but unpaid principal and interest due under the Second Dondero Note (issued on August 1, 2018), as of August 8, 2022, after application of all payments to outstanding principal and interest. As of August 9, 2022, interest will continue to accrue on the Second Dondero Note at the rate of **$224.43** per day and will increase to **$231.05** per day on **August 1, 2023.**

15. Following the methodology described above, attached as **Exhibit D** is a spreadsheet showing that Mr. Dondero will owe Highland **$2,778,339.88** in accrued but unpaid principal and interest due under the Third Dondero Note (issued on August 13, 2018), as of August 8, 2022, after application of all payments to outstanding principal and interest. As of August 9, 2022, interest will continue to accrue on the Third Dondero Note at the rate of **$218.20** per day and will increase to **$224.64** per day on **August 13, 2022.**

16. Following the methodology described above, attached as **Exhibit E** is a spreadsheet showing that HCMFA will owe Highland **$2,552,628.61** in accrued but unpaid principal and interest due under the First HCMFA Note (issued on May 2, 2019), as of August 8, 2022, after application of all payments to outstanding principal and interest. As of August 9, 2022,

interest will continue to accrue on the First HCMFA Note at the rate of **$166.08** per day and will increase to **$170.05** per day on **May 2, 2023.**

17. Following the methodology described above, attached as **Exhibit F** is a spreadsheet showing that HCMFA will owe Highland **$5,317,989.86** in accrued but unpaid principal and interest due under the Second HCMFA Note (issued on May 3, 2019), as of August 8, 2022, after application of all payments to outstanding principal and interest. As of August 9, 2022, interest will continue to accrue on the Second HCMFA Note at the rate of **$346.02** per day and will increase to **$354.29** per day on **May 3, 2023.**

18. Following the methodology described above, attached as **Exhibit G** is a spreadsheet showing that HCMS will owe Highland **$166,196.60** in accrued but unpaid principal and interest due under the First HCMS Demand Note (issued on March 28, 2018), as of August 8, 2022, after application of all payments to outstanding principal and interest. As of August 9, 2022, interest will continue to accrue on the First HCMS Demand Note at the rate of **$12.98** per day and will increase to **$13.35** per day on **March 28, 2023.**

19. Following the methodology described above, attached as **Exhibit H** is a spreadsheet showing that HCMS will owe Highland **$222,917.23** in accrued but unpaid principal and interest due under the Second HCMS Demand Note (issued on June 25, 2018), as of August 8, 2022, after application of all payments to outstanding principal and interest. As of August 9, 2022, interest will continue to accrue on the Second HCMS Demand Note at the rate of **$18.56** per day and will increase to **$19.13** per day on **June 25, 2023.**

20. Following the methodology described above, attached as **Exhibit I** is a spreadsheet showing that HCMS will owe Highland **$425,435.63** in accrued but unpaid principal and interest due under the Third HCMS Demand Note (issued on May 29, 2019), as of August 8,

2022, after application of all payments to outstanding principal and interest. As of August 9, 2022, interest will continue to accrue under the Third HCMS Demand Note at the rate of **$27.73** per day and will increase to **$28.39** per day on **May 29, 2023.**

21. Following the methodology described above, attached as **Exhibit J** is a spreadsheet showing that HCMS will owe Highland **$159,454.92** in accrued but unpaid principal and interest due under the Fourth HCMS Demand Note (issued on June 26, 2019), as of August 8, 2022, after application of all payments to outstanding principal and interest. As of August 9, 2022, interest will continue to accrue on the Fourth HCMS Demand Note at the rate of **$10.32** per day and will increase to **$10.57** per day on **June 26, 2023.**

22. Following the methodology described above, attached as **Exhibit K** is a spreadsheet showing that HCMS will owe Highland **$6,071,718.32** in accrued but unpaid principal and interest due under the HCMS Term Note (issued on May 31, 2017), as of August 8, 2022, after application of all payments to outstanding principal and interest. As of August 9, 2022, interest will continue to accrue on the HCMS Term Note at the rate of **$455.09** per day and will increase to **$467.61** per day on **May 31, 2023.**

23. Following the methodology described above, attached as **Exhibit L** is a spreadsheet showing that HCRE will owe Highland **$195,476.70** in accrued but unpaid principal and interest due under the First HCRE Demand Note (issued on November 27, 2013), as of August 8, 2022, after application of all payments to outstanding principal and interest. As of August 9, 2022, interest will continue to accrue on the First HCRE Demand Note at the rate of **$40.58** per day and will increase to **$43.83** per day on **November 27, 2022.**

24. Following the methodology described above, attached as **Exhibit M** is a spreadsheet showing that HCRE will owe Highland **$3,551,285.37** in accrued but unpaid principal

and interest due under the Second HCRE Demand Note (issued on October 12, 2017), as of August 8, 2022, after application of all payments to outstanding principal and interest. As of August 9, 2022, interest will continue to accrue on the Second HCRE Demand Note at the rate of **$730.34** per day and will increase to **$788.77** per day on **October 12, 2022.**

25. Following the methodology described above, attached as **Exhibit N** is a spreadsheet showing that HCRE will owe Highland **$986,472.32** in accrued but unpaid principal and interest due under the Third HCRE Demand Note (issued on October 15, 2018), as of August 8, 2022, after application of all payments to outstanding principal and interest. As of August 9, 2022, interest will continue to accrue on the Third HCRE Demand Note at the rate of **$203.00** per day and will increase to **$219.24** per day on **October 15, 2022.**

26. Following the methodology described above, attached as **Exhibit O** is a spreadsheet showing that HCRE will owe Highland **$866,600.77** in accrued but unpaid principal and interest due under the Fourth HCRE Demand Note (issued on September 25, 2019), as of August 8, 2022, after application of all payments to outstanding principal and interest. As of August 9, 2022, interest will continue to accrue under the Fourth HCRE Demand Note at the rate of **$177.60** per day and will increase to **$191.81** per day on **September 25, 2022.**

27. Following the methodology described above, attached as **Exhibit P** is a spreadsheet showing that HCRE will owe Highland **$6,196,688.51** in accrued but unpaid principal and interest due under the HCRE Term Note (issued on May 31, 2017), as of August 8, 2022, after application of all payments to outstanding principal and interest. As of August 9, 2022, interest will continue to accrue on the HCRE Term Note at the rate of **$1,337.94** per day and will increase to **$1,444.98** per day on **May 31, 2023.**

28. Following the methodology described above, attached as **Exhibit Q** is a spreadsheet showing that NexPoint will owe Highland **$23,389,882.79** in accrued but unpaid principal and interest due under the NexPoint Term Note (issued on May 31, 2017), as of August 8, 2022, after application of all payments to outstanding principal and interest. As of August 9, 2022, interest will continue to accrue on the NexPoint Term Note at the rate of **$3,801.79** per day and will increase to **$4,029.90** per day on **May 31, 2023.**

29. I declare under penalty of perjury that the forgoing is true and correct.

Dated: August 5, 2022

/s/ David Klos
David Klos

EXHIBIT A

Summary*

Principal and interest due on various notes as of specific dates, along with per diem amounts and the dates of changes in per diem

	Original Date of Note	As of December 17, 2021	As of August 8, 2022	Per Diem as of August 8, 2022	Next date of change in per diem (from capitalization of interest)	Per Diem for next year following date of change in per diem	
Dondero							
Dondero #4	2/2/2018	3,808,783.89	3,873,613.93	$ 278.50	2/2/2023	$ 285.91	
Dondero #5	8/1/2018	2,727,300.55	2,778,356.23	$ 224.43	8/1/2023	$ 231.05	
Dondero #6	8/13/2018	2,727,280.61	2,778,339.88	$ 218.20	8/13/2022	$ 224.64	
Dondero Total		$ 9,263,365.05	**$ 9,430,310.03**	**$ 721.13**			
Per R&R		$ 9,263,365.05					
Difference		-					
Highland Capital Management Fund Advisors, LP (HCMFA)							
HCMFA #6	5/2/2019	2,553,982.49	2,552,628.61	$ 166.08	5/2/2023	$ 170.05	
HCMFA #7	5/3/2019	5,320,453.60	5,317,989.86	$ 346.02	5/3/2023	$ 354.29	
HCMFA Total**		$ 7,874,436.09	**$ 7,870,618.47**	**$ 512.10**			
Per R&R		$ 7,874,436.09					
Difference		-					
HCM Services, Inc. (Demand only)							
HCMSI #46	3/26/2018	166,777.82	166,196.60	$ 12.98	3/26/2023	$ 13.35	
HCMSI #47	6/25/2018	222,082.34	222,917.23	$ 18.56	6/25/2023	$ 19.13	
HCMSI #48	5/29/2019	424,922.32	425,435.63	$ 27.73	5/29/2023	$ 28.39	
HCMSI #49	6/26/2019	158,980.33	159,454.92	$ 10.32	6/26/2023	$ 10.57	
HCM Services Demand Total**		$ 972,762.81	**$ 974,004.37**	**$ 69.59**			
Per R&R		$ 972,762.81					
Difference		-					
HCM Services, Inc. (Term only)							
HCMSI Term**	5/31/2017	$ 6,748,456.31	**$ 6,071,718.32**	**$ 455.09**	5/31/2023	$ 467.61	
Per R&R		$ 6,748,456.31					
Difference		-					
HCRE (Demand only)							
HCRE #9	11/27/2013	185,979.85	195,476.70	$ 40.58	11/27/2022	$ 43.83	
HCRE #10	10/12/2017	3,380,385.47	3,551,285.37	$ 730.34	10/12/2022	$ 788.77	
HCRE #11	10/15/2018	938,970.62	986,472.32	$ 203.00	10/15/2022	$ 219.24	
HCRE #12	9/25/2019	825,042.29	866,600.77	$ 177.60	9/25/2022	$ 191.81	
HCRE Demand Total		$ 5,330,378.23	**$ 5,599,835.16**	**$ 1,151.53**			
Per R&R		$ 5,330,378.23					
Difference		-					
HCRE (Term only)							
HCRE Term	5/31/2017	$ 5,899,962.22	**$ 6,196,688.51**	**$ 1,337.94**	5/31/2023	$ 1,444.98	
Per R&R		$ 5,899,962.22					
Difference		-					
NexPoint Advisors, LP							
NexPoint Term**	5/31/2017	$ 24,383,877.27	**$ 23,389,882.79**	**$ 3,801.79**	5/31/2023	$ 4,029.90	
Per R&R		$ 24,383,877.27					
Difference		-					
Grand Total from Summary Judgment			**$ 59,533,057.65**	**$ 8,049.17**	Per diem	$ 8,523.50	Future per diem, post-PIK

**** Not included above are collection of costs of recovery and attorneys' fees***

***** Note that one or more payments made between December 17, 2021 and August 8, 2022 has been applied to outstanding principal and/or interest. The balances as of August 8, 2022 reflect the application of such payment(s).***

EXHIBIT B

Dondero #4

Closing Date		2/2/2018
Total Commitment	$	3,825,000
Rate		2.660%

Date	Interest Accrual	Interest Paid	Accrued Interest	Beg Prin Bal	Principal Paid	Ending Prin Bal	Total of Outstanding Principal and Interest (selected dates)	Total Paid	
2/2/2018						3,825,000.00			
2/28/2018	7,247.59		7,247.59	3,825,000.00		3,825,000.00			
3/31/2018	8,641.36		15,888.95	3,825,000.00		3,825,000.00			
4/30/2018	8,362.60		24,251.55	3,825,000.00		3,825,000.00			
5/31/2018	8,641.36		32,892.90	3,825,000.00		3,825,000.00			
6/30/2018	8,362.60		41,255.51	3,825,000.00		3,825,000.00			
7/31/2018	8,641.36		49,896.86	3,825,000.00		3,825,000.00			
8/31/2018	8,641.36		58,538.22	3,825,000.00		3,825,000.00			
9/30/2018	8,362.60		66,900.82	3,825,000.00		3,825,000.00			
10/31/2018	8,641.36		75,542.18	3,825,000.00		3,825,000.00			
11/30/2018	8,362.60		83,904.78	3,825,000.00		3,825,000.00			
12/31/2018	8,641.36		92,546.14	3,825,000.00		3,825,000.00			
1/31/2019	8,641.36		101,187.49	3,825,000.00		3,825,000.00			
2/2/2019	557.51	(101,745.00)	-	3,825,000.00	101,745.00	3,926,745.00		-	**Annual Compound Interest*
2/28/2019	7,440.37		7,440.37	3,926,745.00		3,926,745.00			
3/31/2019	8,871.22		16,311.59	3,926,745.00		3,926,745.00			
4/30/2019	8,585.05		24,896.64	3,926,745.00		3,926,745.00			
5/31/2019	8,871.22		33,767.86	3,926,745.00		3,926,745.00			
6/30/2019	8,585.05		42,352.90	3,926,745.00		3,926,745.00			
7/31/2019	8,871.22		51,224.12	3,926,745.00		3,926,745.00			
8/31/2019	8,871.22		60,095.34	3,926,745.00		3,926,745.00			
9/30/2019	8,585.05		68,680.38	3,926,745.00		3,926,745.00			
10/15/2019	4,292.52		72,972.91	3,926,745.00		3,926,745.00			
10/31/2019	4,578.69		77,551.60	3,926,745.00		3,926,745.00			
11/30/2019	8,585.05		86,136.65	3,926,745.00		3,926,745.00			
12/23/2019	6,581.87	(166,840.32)	(74,121.80)	3,926,745.00	(239,475.29)	3,687,269.71		(406,315.61)	*Principal + interest*
12/31/2019	2,149.73		(71,972.07)	3,687,269.71		3,687,269.71			
1/31/2020	8,330.20		(63,641.87)	3,687,269.71		3,687,269.71			
2/2/2020	537.43		(63,104.44)	3,687,269.71	-	3,687,269.71			
2/29/2020	7,255.33		(55,849.11)	3,687,269.71		3,687,269.71			
3/31/2020	8,330.20		(47,518.91)	3,687,269.71		3,687,269.71			
4/30/2020	8,061.48		(39,457.43)	3,687,269.71		3,687,269.71			
5/31/2020	8,330.20		(31,127.23)	3,687,269.71		3,687,269.71			
6/30/2020	8,061.48		(23,065.74)	3,687,269.71		3,687,269.71			
7/31/2020	8,330.20		(14,735.55)	3,687,269.71		3,687,269.71			
8/31/2020	8,330.20		(6,405.35)	3,687,269.71		3,687,269.71			
9/30/2020	8,061.48		1,656.14	3,687,269.71		3,687,269.71			
10/31/2020	8,330.20		9,986.34	3,687,269.71		3,687,269.71			
11/30/2020	8,061.48		18,047.82	3,687,269.71		3,687,269.71			
12/31/2020	8,330.20		26,378.02	3,687,269.71		3,687,269.71			
1/31/2021	8,330.20		34,708.22	3,687,269.71		3,687,269.71			
2/2/2021	537.43	(35,245.65)	-	3,687,269.71	35,245.65	3,722,515.36		-	**Annual Compound Interest*
2/28/2021	7,053.40		7,053.40	3,722,515.36		3,722,515.36			
3/31/2021	8,409.83		15,463.23	3,722,515.36		3,722,515.36			
4/30/2021	8,138.54		23,601.77	3,722,515.36		3,722,515.36			
5/31/2021	8,409.83		32,011.59	3,722,515.36		3,722,515.36			
6/30/2021	8,138.54		40,150.13	3,722,515.36		3,722,515.36			
7/31/2021	8,409.83		48,559.96	3,722,515.36		3,722,515.36			
8/31/2021	8,409.83		56,969.78	3,722,515.36		3,722,515.36			
9/30/2021	8,138.54		65,108.32	3,722,515.36		3,722,515.36			
10/31/2021	8,409.83		73,518.15	3,722,515.36		3,722,515.36			
11/30/2021	8,138.54		81,656.69	3,722,515.36		3,722,515.36			
12/17/2021	4,611.84		86,268.53	3,722,515.36		3,722,515.36	**3,808,783.89**		
1/31/2022	12,207.81		98,476.34	3,722,515.36		3,722,515.36			
2/2/2022	542.57	(99,018.91)	-	3,722,515.36	99,018.91	3,821,534.27		-	**Annual Compound Interest*
2/28/2022	7,241.02		7,241.02	3,821,534.27		3,821,534.27			
3/31/2022	8,633.53		15,874.55	3,821,534.27		3,821,534.27			
4/30/2022	8,355.03		24,229.57	3,821,534.27		3,821,534.27			
5/31/2022	8,633.53		32,863.10	3,821,534.27		3,821,534.27			
6/30/2022	8,355.03		41,218.13	3,821,534.27		3,821,534.27			
7/31/2022	8,633.53		49,851.65	3,821,534.27		3,821,534.27			
8/8/2022	2,228.01		52,079.66	3,821,534.27		3,821,534.27	**3,873,613.93**		
9/30/2022	14,760.55		66,840.20	3,821,534.27		3,821,534.27			
10/31/2022	8,633.53		75,473.73	3,821,534.27		3,821,534.27			
11/30/2022	8,355.03		83,828.76	3,821,534.27		3,821,534.27			
12/31/2022	8,633.53		92,462.28	3,821,534.27		3,821,534.27			
1/31/2023	8,633.53		101,095.81	3,821,534.27		3,821,534.27			
2/2/2023	557.00	(101,652.81)	-	3,821,534.27	101,652.81	3,923,187.08		-	**Annual Compound Interest*

EXHIBIT C

Dondero #5

Closing Date		8/1/2018
Total Commitment	$	2,500,000
Rate		2.950%

Date	Interest Accrual	Interest Paid	Accrued Interest	Beg Prin Bal	Principal Paid	Ending Prin Bal	Total of Outstanding Principal and Interest (selected dates)	Total Paid	
8/1/2018						2,500,000.00			
8/31/2018	6,061.64		6,061.64	2,500,000.00		2,500,000.00			
9/30/2018	6,061.64		12,123.29	2,500,000.00		2,500,000.00			
10/31/2018	6,263.70		18,386.99	2,500,000.00		2,500,000.00			
11/30/2018	6,061.64		24,448.63	2,500,000.00		2,500,000.00			
12/31/2018	6,263.70		30,712.33	2,500,000.00		2,500,000.00			
1/31/2019	6,263.70		36,976.03	2,500,000.00		2,500,000.00			
2/28/2019	5,657.53		42,633.56	2,500,000.00		2,500,000.00			
3/31/2019	6,263.70		48,897.26	2,500,000.00		2,500,000.00			
4/30/2019	6,061.64		54,958.90	2,500,000.00		2,500,000.00			
5/31/2019	6,263.70		61,222.60	2,500,000.00		2,500,000.00			
6/30/2019	6,061.64		67,284.25	2,500,000.00		2,500,000.00			
7/31/2019	6,263.70		73,547.95	2,500,000.00		2,500,000.00			
8/1/2019	202.05	(73,750.00)	-	2,500,000.00	73,750.00	2,573,750.00		-	**Annual Compound Interest*
8/31/2019	6,240.46		6,240.46	2,573,750.00		2,573,750.00			
9/30/2019	6,240.46		12,480.92	2,573,750.00		2,573,750.00			
10/15/2019	3,120.23		15,601.16	2,573,750.00		2,573,750.00			
10/31/2019	3,328.25		18,929.40	2,573,750.00		2,573,750.00			
11/30/2019	6,240.46		25,169.86	2,573,750.00		2,573,750.00			
12/23/2019	4,784.35	(29,954.22)	(0.00)	2,573,750.00		2,573,750.00		(29,954.22)	*Interest*
12/31/2019	1,664.12		1,664.12	2,573,750.00		2,573,750.00			
1/31/2020	6,448.48		8,112.60	2,573,750.00		2,573,750.00			
2/29/2020	6,032.45		14,145.05	2,573,750.00		2,573,750.00			
3/31/2020	6,448.48		20,593.52	2,573,750.00		2,573,750.00			
4/30/2020	6,240.46		26,833.99	2,573,750.00		2,573,750.00			
5/31/2020	6,448.48		33,282.46	2,573,750.00		2,573,750.00			
6/30/2020	6,240.46		39,522.93	2,573,750.00		2,573,750.00			
7/31/2020	6,448.48		45,971.41	2,573,750.00		2,573,750.00			
8/1/2020	208.02	(46,179.42)	0.00	2,573,750.00	46,179.42	2,619,929.42		-	**Annual Compound Interest*
8/31/2020	6,352.43		6,352.43	2,619,929.42		2,619,929.42			
9/30/2020	6,352.43		12,704.86	2,619,929.42		2,619,929.42			
10/31/2020	6,564.18		19,269.04	2,619,929.42		2,619,929.42			
11/30/2020	6,352.43		25,621.47	2,619,929.42		2,619,929.42			
12/31/2020	6,564.18		32,185.65	2,619,929.42		2,619,929.42			
1/31/2021	6,564.18		38,749.83	2,619,929.42		2,619,929.42			
2/28/2021	5,928.94		44,678.77	2,619,929.42		2,619,929.42			
3/31/2021	6,564.18		51,242.95	2,619,929.42		2,619,929.42			
4/30/2021	6,352.43		57,595.38	2,619,929.42		2,619,929.42			
5/31/2021	6,564.18		64,159.56	2,619,929.42		2,619,929.42			
6/30/2021	6,352.43		70,511.99	2,619,929.42		2,619,929.42			
7/31/2021	6,564.18		77,076.17	2,619,929.42		2,619,929.42			
8/1/2021	211.75	(77,287.92)	(0.00)	2,619,929.42	77,287.92	2,697,217.34		-	**Annual Compound Interest*
8/31/2021	6,539.83		6,539.83	2,697,217.34	-	2,697,217.34			
9/30/2021	6,539.83		13,079.65	2,697,217.34		2,697,217.34			
10/31/2021	6,757.82		19,837.48	2,697,217.34		2,697,217.34			
11/30/2021	6,539.83		26,377.31	2,697,217.34		2,697,217.34			
12/17/2021	3,705.90		30,083.21	2,697,217.34		2,697,217.34	**2,727,300.55**		
1/31/2022	9,809.74		39,892.95	2,697,217.34		2,697,217.34			
2/28/2022	6,103.84		45,996.79	2,697,217.34		2,697,217.34			
3/31/2022	6,757.82		52,754.61	2,697,217.34		2,697,217.34			
4/30/2022	6,539.83		59,294.44	2,697,217.34		2,697,217.34			
5/31/2022	6,757.82		66,052.26	2,697,217.34		2,697,217.34			
6/30/2022	6,539.83		72,592.09	2,697,217.34		2,697,217.34			
7/31/2022	6,757.82		79,349.92	2,697,217.34		2,697,217.34			
8/1/2022	217.99	(79,567.91)	-	2,697,217.34	79,567.91	2,776,785.25		-	**Annual Compound Interest*
8/8/2022	1,570.98		1,570.98	2,776,785.25		2,776,785.25	**2,778,356.23**		
9/30/2022	11,894.53		13,465.51	2,776,785.25		2,776,785.25			
10/31/2022	6,957.18		20,422.68	2,776,785.25		2,776,785.25			
11/30/2022	6,732.75		27,155.44	2,776,785.25		2,776,785.25			
12/31/2022	6,957.18		34,112.62	2,776,785.25		2,776,785.25			
1/31/2023	6,957.18		41,069.79	2,776,785.25		2,776,785.25			
2/28/2023	6,283.90		47,353.70	2,776,785.25		2,776,785.25			
3/31/2023	6,957.18		54,310.88	2,776,785.25		2,776,785.25			
4/30/2023	6,732.75		61,043.63	2,776,785.25		2,776,785.25			
5/31/2023	6,957.18		68,000.81	2,776,785.25		2,776,785.25			
6/30/2023	6,732.75		74,733.56	2,776,785.25		2,776,785.25			
7/31/2023	6,957.18		81,690.74	2,776,785.25		2,776,785.25			
8/1/2023	224.43	(81,915.16)	-	2,776,785.25	81,915.16	2,858,700.41		-	**Annual Compound Interest*

EXHIBIT D

Dondero #6

Closing Date		8/13/2018
Total Commitment	$	2,500,000
Rate		2.950%

Date	Interest Accrual	Interest Paid	Accrued Interest	Beg Prin Bal	Principal Paid	Ending Prin Bal	Total of Outstanding Principal and Interest (selected dates)	Total Paid	
8/13/2018						2,500,000.00			
8/31/2018	3,636.99		3,636.99	2,500,000.00		2,500,000.00			
9/30/2018	6,061.64		9,698.63	2,500,000.00		2,500,000.00			
10/31/2018	6,263.70		15,962.33	2,500,000.00		2,500,000.00			
11/30/2018	6,061.64		22,023.97	2,500,000.00		2,500,000.00			
12/31/2018	6,263.70		28,287.67	2,500,000.00		2,500,000.00			
1/31/2019	6,263.70		34,551.37	2,500,000.00		2,500,000.00			
2/28/2019	5,657.53		40,208.90	2,500,000.00		2,500,000.00			
3/31/2019	6,263.70		46,472.60	2,500,000.00		2,500,000.00			
4/30/2019	6,061.64		52,534.25	2,500,000.00		2,500,000.00			
5/31/2019	6,263.70		58,797.95	2,500,000.00		2,500,000.00			
6/30/2019	6,061.64		64,859.59	2,500,000.00		2,500,000.00			
7/31/2019	6,263.70		71,123.29	2,500,000.00		2,500,000.00			
8/13/2019	2,626.71	(73,750.00)	-	2,500,000.00	73,750.00	2,573,750.00		-	**Annual Compound Interest*
8/31/2019	3,744.28		3,744.28	2,573,750.00		2,573,750.00			
9/30/2019	6,240.46		9,984.74	2,573,750.00		2,573,750.00			
10/15/2019	3,120.23		13,104.97	2,573,750.00		2,573,750.00			
10/31/2019	3,328.25		16,433.22	2,573,750.00		2,573,750.00			
11/30/2019	6,240.46		22,673.68	2,573,750.00		2,573,750.00			
12/23/2019	4,784.35	(27,458.03)	0.00	2,573,750.00		2,573,750.00		(27,458.03)	*Interest*
12/31/2019	1,664.12		1,664.13	2,573,750.00		2,573,750.00			
1/31/2020	6,448.48		8,112.61	2,573,750.00		2,573,750.00			
2/29/2020	6,032.45		14,145.05	2,573,750.00		2,573,750.00			
3/31/2020	6,448.48		20,593.53	2,573,750.00		2,573,750.00			
4/30/2020	6,240.46		26,833.99	2,573,750.00		2,573,750.00			
5/31/2020	6,448.48		33,282.47	2,573,750.00		2,573,750.00			
6/30/2020	6,240.46		39,522.93	2,573,750.00		2,573,750.00			
7/31/2020	6,448.48		45,971.41	2,573,750.00		2,573,750.00			
8/13/2020	2,704.20	(48,675.61)	0.00	2,573,750.00	48,675.61	2,622,425.61		-	**Annual Compound Interest*
8/31/2020	3,815.09		3,815.09	2,622,425.61		2,622,425.61			
9/30/2020	6,358.48		10,173.57	2,622,425.61		2,622,425.61			
10/31/2020	6,570.43		16,744.01	2,622,425.61		2,622,425.61			
11/30/2020	6,358.48		23,102.49	2,622,425.61		2,622,425.61			
12/31/2020	6,570.43		29,672.93	2,622,425.61		2,622,425.61			
1/31/2021	6,570.43		36,243.36	2,622,425.61		2,622,425.61			
2/28/2021	5,934.59		42,177.94	2,622,425.61		2,622,425.61			
3/31/2021	6,570.43		48,748.38	2,622,425.61		2,622,425.61			
4/30/2021	6,358.48		55,106.86	2,622,425.61		2,622,425.61			
5/31/2021	6,570.43		61,677.30	2,622,425.61		2,622,425.61			
6/30/2021	6,358.48		68,035.78	2,622,425.61		2,622,425.61			
7/31/2021	6,570.43		74,606.21	2,622,425.61		2,622,425.61			
8/13/2021	2,755.34	(77,361.56)	(0.00)	2,622,425.61	77,361.56	2,699,787.17		-	**Annual Compound Interest*
8/31/2021	3,927.64		3,927.63	2,699,787.17	-	2,699,787.17			
9/30/2021	6,546.06		10,473.69	2,699,787.17		2,699,787.17			
10/31/2021	6,764.26		17,237.95	2,699,787.17		2,699,787.17			
11/30/2021	6,546.06		23,784.01	2,699,787.17		2,699,787.17			
12/17/2021	3,709.43		27,493.44	2,699,787.17		2,699,787.17	**2,727,280.61**		
1/31/2022	9,819.09		37,312.53	2,699,787.17		2,699,787.17			
2/28/2022	6,109.66		43,422.19	2,699,787.17		2,699,787.17			
3/31/2022	6,764.26		50,186.45	2,699,787.17		2,699,787.17			
4/30/2022	6,546.06		56,732.51	2,699,787.17		2,699,787.17			
5/31/2022	6,764.26		63,496.77	2,699,787.17		2,699,787.17			
6/30/2022	6,546.06		70,042.83	2,699,787.17		2,699,787.17			
8/8/2022	8,509.88		78,552.71	2,699,787.17		2,699,787.17	**2,778,339.88**		
8/13/2022	1,091.01	(79,643.72)	-	2,699,787.17	79,643.72	2,779,430.89		-	**Annual Compound Interest*

EXHIBIT E

HCMFA #6

Closing Date		5/2/2019
Total Commitment	$	2,400,000
Rate		2.390%

Date	Interest Accrual	Interest Paid	Accrued Interest	Beg Prin Bal	Principal Paid	Ending Prin Bal	Total of Outstanding Principal and Interest (selected dates)	Total Paid	
5/2/2019						2,400,000.00			
5/31/2019	4,557.37		4,557.37	2,400,000.00		2,400,000.00			
6/30/2019	4,714.52		9,271.89	2,400,000.00		2,400,000.00			
7/31/2019	4,871.67		14,143.56	2,400,000.00		2,400,000.00			
8/31/2019	4,871.67		19,015.23	2,400,000.00		2,400,000.00			
9/30/2019	4,714.52		23,729.75	2,400,000.00		2,400,000.00			
10/15/2019	2,357.26		26,087.01	2,400,000.00		2,400,000.00			
10/31/2019	2,514.41		28,601.42	2,400,000.00		2,400,000.00			
11/30/2019	4,714.52		33,315.95	2,400,000.00		2,400,000.00			
12/31/2019	4,871.67		38,187.62	2,400,000.00		2,400,000.00			
1/31/2020	4,871.67		43,059.29	2,400,000.00		2,400,000.00			
2/29/2020	4,557.37		47,616.66	2,400,000.00		2,400,000.00			
3/31/2020	4,871.67		52,488.33	2,400,000.00		2,400,000.00			
4/30/2020	4,714.52		57,202.85	2,400,000.00		2,400,000.00			
5/2/2020	314.30	(57,517.15)	0.00	2,400,000.00	57,517.15	2,457,517.15		-	**Annual Compound Interest*
5/31/2020	4,666.59		4,666.59	2,457,517.15		2,457,517.15			
6/30/2020	4,827.51		9,494.10	2,457,517.15		2,457,517.15			
7/31/2020	4,988.42		14,482.52	2,457,517.15		2,457,517.15			
8/31/2020	4,988.42		19,470.94	2,457,517.15		2,457,517.15			
9/30/2020	4,827.51		24,298.45	2,457,517.15		2,457,517.15			
10/31/2020	4,988.42		29,286.87	2,457,517.15		2,457,517.15			
11/30/2020	4,827.51		34,114.38	2,457,517.15		2,457,517.15			
12/31/2020	4,988.42		39,102.80	2,457,517.15		2,457,517.15			
1/31/2021	4,988.42		44,091.22	2,457,517.15		2,457,517.15			
2/28/2021	4,505.67		48,596.90	2,457,517.15		2,457,517.15			
3/31/2021	4,988.42		53,585.32	2,457,517.15		2,457,517.15			
4/30/2021	4,827.51		58,412.83	2,457,517.15		2,457,517.15			
5/2/2021	321.83	(58,734.66)	-	2,457,517.15	58,734.66	2,516,251.81		-	**Annual Compound Interest*
5/31/2021	4,778.12		4,778.12	2,516,251.81		2,516,251.81			
6/30/2021	4,942.88		9,721.00	2,516,251.81		2,516,251.81			
7/31/2021	5,107.65		14,828.65	2,516,251.81		2,516,251.81			
8/31/2021	5,107.65		19,936.30	2,516,251.81		2,516,251.81			
9/30/2021	4,942.88		24,879.18	2,516,251.81		2,516,251.81			
10/31/2021	5,107.65		29,986.83	2,516,251.81		2,516,251.81			
12/17/2021	7,743.85		37,730.68	2,516,251.81		2,516,251.81	**2,553,982.49**		
12/31/2021	2,306.68	(40,037.36)	(0.00)	2,516,251.81		2,516,251.81		(40,037.36)	*Interest*
1/31/2022	5,107.65		5,107.64	2,516,251.81		2,516,251.81			
2/28/2022	4,613.36		9,721.00	2,516,251.81		2,516,251.81			
3/31/2022	5,107.65		14,828.65	2,516,251.81		2,516,251.81			
4/30/2022	4,942.88		19,771.53	2,516,251.81		2,516,251.81			
5/2/2022	329.53	(20,101.06)	-	2,516,251.81	20,101.06	2,536,352.87		-	**Annual Compound Interest*
5/31/2022	4,816.29		4,816.29	2,536,352.87		2,536,352.87			
6/30/2022	4,982.37		9,798.66	2,536,352.87		2,536,352.87			
7/31/2022	5,148.45		14,947.11	2,536,352.87		2,536,352.87			
8/8/2022	1,328.63		16,275.74	2,536,352.87		2,536,352.87	**2,552,628.61**		
9/30/2022	8,802.19		25,077.93	2,536,352.87		2,536,352.87			
10/31/2022	5,148.45		30,226.38	2,536,352.87		2,536,352.87			
11/30/2022	4,982.37		35,208.75	2,536,352.87		2,536,352.87			
12/31/2022	5,148.45		40,357.20	2,536,352.87		2,536,352.87			
1/31/2023	5,148.45		45,505.64	2,536,352.87		2,536,352.87			
2/28/2023	4,650.21		50,155.86	2,536,352.87		2,536,352.87			
3/31/2023	5,148.45		55,304.31	2,536,352.87		2,536,352.87			
4/30/2023	4,982.37		60,286.68	2,536,352.87		2,536,352.87			
5/2/2023	332.16	(60,618.83)	-	2,536,352.87	60,618.83	2,596,971.70		-	**Annual Compound Interest*

EXHIBIT F

HCMFA #7

Closing Date		5/3/2019
Total Commitment	$	5,000,000
Rate		2.390%

Date	Interest Accrual	Interest Paid	Accrued Interest	Beg Prin Bal	Principal Paid	Ending Prin Bal	Total of Outstanding Principal and Interest (selected dates)	Total Paid	
5/3/2019						5,000,000.00			
5/31/2019	9,167.12		9,167.12	5,000,000.00		5,000,000.00			
6/30/2019	9,821.92		18,989.04	5,000,000.00		5,000,000.00			
7/31/2019	10,149.32		29,138.36	5,000,000.00		5,000,000.00			
8/31/2019	10,149.32		39,287.67	5,000,000.00		5,000,000.00			
9/30/2019	9,821.92		49,109.59	5,000,000.00		5,000,000.00			
10/15/2019	4,910.96		54,020.55	5,000,000.00		5,000,000.00			
10/31/2019	5,238.36		59,258.90	5,000,000.00		5,000,000.00			
11/30/2019	9,821.92		69,080.82	5,000,000.00		5,000,000.00			
12/31/2019	10,149.32		79,230.14	5,000,000.00		5,000,000.00			
1/31/2020	10,149.32		89,379.45	5,000,000.00		5,000,000.00			
2/29/2020	9,494.52		98,873.97	5,000,000.00		5,000,000.00			
3/31/2020	10,149.32		109,023.29	5,000,000.00		5,000,000.00			
4/30/2020	9,821.92		118,845.21	5,000,000.00		5,000,000.00			
5/3/2020	982.19	(119,827.40)	(0.00)	5,000,000.00	119,827.40	5,119,827.40		-	**Annual Compound Interest*
5/31/2020	9,386.82		9,386.82	5,119,827.40		5,119,827.40			
6/30/2020	10,057.30		19,444.12	5,119,827.40		5,119,827.40			
7/31/2020	10,392.55		29,836.67	5,119,827.40		5,119,827.40			
8/31/2020	10,392.55		40,229.22	5,119,827.40		5,119,827.40			
9/30/2020	10,057.30		50,286.52	5,119,827.40		5,119,827.40			
10/31/2020	10,392.55		60,679.07	5,119,827.40		5,119,827.40			
11/30/2020	10,057.30		70,736.37	5,119,827.40		5,119,827.40			
12/31/2020	10,392.55		81,128.92	5,119,827.40		5,119,827.40			
1/31/2021	10,392.55		91,521.47	5,119,827.40		5,119,827.40			
2/28/2021	9,386.82		100,908.29	5,119,827.40		5,119,827.40			
3/31/2021	10,392.55		111,300.84	5,119,827.40		5,119,827.40			
4/30/2021	10,057.30		121,358.14	5,119,827.40		5,119,827.40			
5/3/2021	1,005.73	(122,363.87)	-	5,119,827.40	122,363.87	5,242,191.27		-	**Annual Compound Interest*
5/31/2021	9,611.16		9,611.16	5,242,191.27		5,242,191.27			
6/30/2021	10,297.67		19,908.84	5,242,191.27		5,242,191.27			
7/31/2021	10,640.93		30,549.77	5,242,191.27		5,242,191.27			
8/31/2021	10,640.93		41,190.70	5,242,191.27		5,242,191.27			
9/30/2021	10,297.67		51,488.37	5,242,191.27		5,242,191.27			
10/31/2021	10,640.93		62,129.30	5,242,191.27		5,242,191.27			
12/17/2021	16,133.02		78,262.33	5,242,191.27		5,242,191.27	**5,320,453.60**		
12/31/2021	4,805.58	(83,053.85)	14.06	5,242,191.27		5,242,191.27		(83,053.85)	*Interest*
1/31/2022	10,640.93		10,654.99	5,242,191.27		5,242,191.27			
2/28/2022	9,611.16		20,266.15	5,242,191.27		5,242,191.27			
3/31/2022	10,640.93		30,907.08	5,242,191.27		5,242,191.27			
4/30/2022	10,297.67		41,204.75	5,242,191.27		5,242,191.27			
5/3/2022	1,029.77	(42,234.52)	-	5,242,191.27	42,234.52	5,284,425.79		-	**Annual Compound Interest*
5/31/2022	9,688.60		9,688.60	5,284,425.79		5,284,425.79			
6/30/2022	10,380.64		20,069.24	5,284,425.79		5,284,425.79			
7/31/2022	10,726.66		30,795.90	5,284,425.79		5,284,425.79			
8/8/2022	2,768.17		33,564.07	5,284,425.79		5,284,425.79	**5,317,989.86**		
9/30/2022	18,339.13		51,903.20	5,284,425.79		5,284,425.79			
10/31/2022	10,726.66		62,629.86	5,284,425.79		5,284,425.79			
11/30/2022	10,380.64		73,010.50	5,284,425.79		5,284,425.79			
12/31/2022	10,726.66		83,737.16	5,284,425.79		5,284,425.79			
1/31/2023	10,726.66		94,463.82	5,284,425.79		5,284,425.79			
2/28/2023	9,688.60		104,152.41	5,284,425.79		5,284,425.79			
3/31/2023	10,726.66		114,879.07	5,284,425.79		5,284,425.79			
4/30/2023	10,380.64		125,259.71	5,284,425.79		5,284,425.79			
5/3/2023	1,038.06	(126,297.78)	-	5,284,425.79	126,297.78	5,410,723.57		-	**Annual Compound Interest*

EXHIBIT G

HCMSI #46

Closing Date		3/26/2018
Total Commitment	$	150,000
Rate		2.880%

Date	Interest Accrual	Interest Paid	Accrued Interest	Beg Prin Bal	Principal Paid	Ending Prin Bal	Total of Outstanding Principal and Interest (selected dates)	Total Paid	
3/26/2018						150,000.00			
3/31/2018	59.18		59.18	150,000.00		150,000.00			
4/30/2018	355.07		414.25	150,000.00		150,000.00			
5/31/2018	366.90		781.15	150,000.00		150,000.00			
6/30/2018	355.07		1,136.22	150,000.00		150,000.00			
7/31/2018	366.90		1,503.12	150,000.00		150,000.00			
8/31/2018	366.90		1,870.03	150,000.00		150,000.00			
9/30/2018	355.07		2,225.10	150,000.00		150,000.00			
10/31/2018	366.90		2,592.00	150,000.00		150,000.00			
11/30/2018	355.07		2,947.07	150,000.00		150,000.00			
12/31/2018	366.90		3,313.97	150,000.00		150,000.00			
1/31/2019	366.90		3,680.88	150,000.00		150,000.00			
2/28/2019	331.40		4,012.27	150,000.00		150,000.00			
3/26/2019	307.73	(4,320.00)	-	150,000.00	4,320.00	154,320.00		-	**Annual Compound Interest*
3/31/2019	60.88		60.88	154,320.00		154,320.00			
4/30/2019	365.29		426.18	154,320.00		154,320.00			
5/31/2019	377.47		803.65	154,320.00		154,320.00			
6/30/2019	365.29		1,168.94	154,320.00		154,320.00			
7/31/2019	377.47		1,546.41	154,320.00		154,320.00			
8/31/2019	377.47		1,923.88	154,320.00		154,320.00			
9/30/2019	365.29		2,289.18	154,320.00		154,320.00			
10/15/2019	182.65		2,471.83	154,320.00		154,320.00			
10/31/2019	194.82		2,666.65	154,320.00		154,320.00			
11/30/2019	365.29		3,031.94	154,320.00		154,320.00			
12/31/2019	377.47		3,409.42	154,320.00		154,320.00			
1/31/2020	377.47		3,786.89	154,320.00		154,320.00			
2/29/2020	353.12		4,140.00	154,320.00		154,320.00			
3/26/2020	316.59	(4,456.59)	0.00	154,320.00	4,456.59	158,776.59		-	**Annual Compound Interest*
3/31/2020	62.64		62.64	158,776.59		158,776.59			
4/30/2020	375.84		438.49	158,776.59		158,776.59			
5/31/2020	388.37		826.86	158,776.59		158,776.59			
6/30/2020	375.84		1,202.70	158,776.59		158,776.59			
7/31/2020	388.37		1,591.07	158,776.59		158,776.59			
8/31/2020	388.37		1,979.45	158,776.59		158,776.59			
9/30/2020	375.84		2,355.29	158,776.59		158,776.59			
10/31/2020	388.37		2,743.66	158,776.59		158,776.59			
11/30/2020	375.84		3,119.51	158,776.59		158,776.59			
12/31/2020	388.37		3,507.88	158,776.59		158,776.59			
1/31/2021	388.37		3,896.25	158,776.59		158,776.59			
2/28/2021	350.79		4,247.04	158,776.59		158,776.59			
3/26/2021	325.73	(4,572.77)	-	158,776.59	4,572.77	163,349.36		-	**Annual Compound Interest*
3/31/2021	64.44		64.44	163,349.36		163,349.36			
4/30/2021	386.67		451.11	163,349.36		163,349.36			
5/31/2021	399.56		850.67	163,349.36		163,349.36			
6/30/2021	386.67		1,237.34	163,349.36		163,349.36			
7/31/2021	399.56		1,636.89	163,349.36		163,349.36			
8/31/2021	399.56		2,036.45	163,349.36		163,349.36			
9/30/2021	386.67		2,423.12	163,349.36		163,349.36			
10/31/2021	399.56		2,822.68	163,349.36		163,349.36			
12/17/2021	605.78		3,428.46	163,349.36		163,349.36	**166,777.82**		
12/31/2021	180.45	(3,608.90)	0.00	163,349.36		163,349.36		(3,608.90)	*Interest*
1/31/2022	399.56		399.56	163,349.36		163,349.36			
2/28/2022	360.89		760.45	163,349.36		163,349.36			
3/26/2022	335.11	(1,095.56)	-	163,349.36	1,095.56	164,444.92		-	**Annual Compound Interest*
3/31/2022	64.88		64.88	164,444.92		164,444.92			
4/30/2022	389.26		454.14	164,444.92		164,444.92			
5/31/2022	402.24		856.38	164,444.92		164,444.92			
6/30/2022	389.26		1,245.64	164,444.92		164,444.92			
7/31/2022	402.24		1,647.87	164,444.92		164,444.92			
8/8/2022	103.80		1,751.68	164,444.92		164,444.92	**166,196.60**		
9/30/2022	687.70		2,439.37	164,444.92		164,444.92			
10/31/2022	402.24		2,841.61	164,444.92		164,444.92			
11/30/2022	389.26		3,230.87	164,444.92		164,444.92			
12/31/2022	402.24		3,633.11	164,444.92		164,444.92			
1/31/2023	402.24		4,035.34	164,444.92		164,444.92			
3/26/2023	700.67	(4,736.01)	-	164,444.92	4,736.01	169,180.93		-	**Annual Compound Interest*

EXHIBIT H

HCMSI #47

Closing Date		6/25/2018
Total Commitment	$	200,000
Rate		3.050%

Date	Interest Accrual	Interest Paid	Accrued Interest	Beg Prin Bal	Principal Paid	Ending Prin Bal	Total of Outstanding Principal and Interest (selected dates)	Total Paid	
6/25/2018						200,000.00			
6/30/2018	83.56		83.56	200,000.00		200,000.00			
7/31/2018	518.08		601.64	200,000.00		200,000.00			
8/31/2018	518.08		1,119.73	200,000.00		200,000.00			
9/30/2018	501.37		1,621.10	200,000.00		200,000.00			
10/31/2018	518.08		2,139.18	200,000.00		200,000.00			
11/30/2018	501.37		2,640.55	200,000.00		200,000.00			
12/31/2018	518.08		3,158.63	200,000.00		200,000.00			
1/31/2019	518.08		3,676.71	200,000.00		200,000.00			
2/28/2019	467.95		4,144.66	200,000.00		200,000.00			
3/31/2019	518.08		4,662.74	200,000.00		200,000.00			
4/30/2019	501.37		5,164.11	200,000.00		200,000.00			
5/31/2019	518.08		5,682.19	200,000.00		200,000.00			
6/25/2019	417.81	(6,100.00)	-	200,000.00	6,100.00	206,100.00		-	**Annual Compound Interest*
6/30/2019	86.11		86.11	206,100.00		206,100.00			
7/31/2019	533.88		619.99	206,100.00		206,100.00			
8/31/2019	533.88		1,153.88	206,100.00		206,100.00			
9/30/2019	516.66		1,670.54	206,100.00		206,100.00			
10/15/2019	258.33		1,928.87	206,100.00		206,100.00			
10/31/2019	275.55		2,204.42	206,100.00		206,100.00			
11/30/2019	516.66		2,721.08	206,100.00		206,100.00			
12/31/2019	533.88		3,254.97	206,100.00		206,100.00			
1/31/2020	533.88		3,788.85	206,100.00		206,100.00			
2/29/2020	499.44		4,288.29	206,100.00		206,100.00			
3/31/2020	533.88		4,822.18	206,100.00		206,100.00			
4/30/2020	516.66		5,338.84	206,100.00		206,100.00			
5/31/2020	533.88		5,872.72	206,100.00		206,100.00			
6/25/2020	430.55	(6,303.27)	0.00	206,100.00	6,303.27	212,403.27		-	**Annual Compound Interest*
6/30/2020	88.74		88.75	212,403.27		212,403.27			
7/31/2020	550.21		638.96	212,403.27		212,403.27			
8/31/2020	550.21		1,189.17	212,403.27		212,403.27			
9/30/2020	532.46		1,721.63	212,403.27		212,403.27			
10/31/2020	550.21		2,271.84	212,403.27		212,403.27			
11/30/2020	532.46		2,804.31	212,403.27		212,403.27			
12/31/2020	550.21		3,354.52	212,403.27		212,403.27			
1/31/2021	550.21		3,904.73	212,403.27		212,403.27			
2/28/2021	496.97		4,401.70	212,403.27		212,403.27			
3/31/2021	550.21		4,951.91	212,403.27		212,403.27			
4/30/2021	532.46		5,484.37	212,403.27		212,403.27			
5/31/2021	550.21		6,034.58	212,403.27		212,403.27			
6/25/2021	443.72	(6,478.30)	-	212,403.27	6,478.30	218,881.57		-	**Annual Compound Interest*
6/30/2021	91.45		91.45	218,881.57		218,881.57			
7/31/2021	566.99		658.44	218,881.57		218,881.57			
8/31/2021	566.99		1,225.44	218,881.57		218,881.57			
9/30/2021	548.70		1,774.14	218,881.57		218,881.57			
10/31/2021	566.99		2,341.13	218,881.57		218,881.57			
12/17/2021	859.63		3,200.77	218,881.57		218,881.57	**222,082.34**		
12/31/2021	256.06	(3,456.83)	(0.00)	218,881.57		218,881.57		(3,456.83)	*Interest*
1/31/2022	566.99		566.99	218,881.57		218,881.57			
2/28/2022	512.12		1,079.12	218,881.57		218,881.57			
3/31/2022	566.99		1,646.11	218,881.57		218,881.57			
4/30/2022	548.70		2,194.81	218,881.57		218,881.57			
5/31/2022	566.99		2,761.81	218,881.57		218,881.57			
6/25/2022	457.25	(3,219.06)	-	218,881.57	3,219.06	222,100.63		-	**Annual Compound Interest*
6/30/2022	92.80		92.80	222,100.63		222,100.63			
7/31/2022	575.33		668.13	222,100.63		222,100.63			
8/8/2022	148.47		816.60	222,100.63		222,100.63	**222,917.23**		
9/30/2022	983.63		1,800.23	222,100.63		222,100.63			
10/31/2022	575.33		2,375.56	222,100.63		222,100.63			
11/30/2022	556.77		2,932.34	222,100.63		222,100.63			
12/31/2022	575.33		3,507.67	222,100.63		222,100.63			
1/31/2023	575.33		4,083.00	222,100.63		222,100.63			
2/28/2023	519.65		4,602.66	222,100.63		222,100.63			
3/31/2023	575.33		5,177.99	222,100.63		222,100.63			
4/30/2023	556.77		5,734.76	222,100.63		222,100.63			
5/31/2023	575.33		6,310.09	222,100.63		222,100.63			
6/25/2023	463.98	(6,774.07)	-	222,100.63	6,774.07	228,874.70		-	**Annual Compound Interest*

EXHIBIT I

HCMSI #48

Closing Date	5/29/2019
Total Commitment	$ 400,000
Rate	2.390%

Date	Interest Accrual	Interest Paid	Accrued Interest	Beg Prin Bal	Principal Paid	Ending Prin Bal	Total of Outstanding Principal and Interest (selected dates)	Total Paid	
5/29/2019						400,000.00			
5/31/2019	52.38		52.38	400,000.00		400,000.00			
6/30/2019	785.75		838.14	400,000.00		400,000.00			
7/31/2019	811.95		1,650.08	400,000.00		400,000.00			
8/31/2019	811.95		2,462.03	400,000.00		400,000.00			
9/30/2019	785.75		3,247.78	400,000.00		400,000.00			
10/15/2019	392.88		3,640.66	400,000.00		400,000.00			
10/31/2019	419.07		4,059.73	400,000.00		400,000.00			
11/30/2019	785.75		4,845.48	400,000.00		400,000.00			
12/31/2019	811.95		5,657.42	400,000.00		400,000.00			
1/31/2020	811.95		6,469.37	400,000.00		400,000.00			
2/29/2020	759.56		7,228.93	400,000.00		400,000.00			
3/31/2020	811.95		8,040.88	400,000.00		400,000.00			
4/30/2020	785.75		8,826.63	400,000.00		400,000.00			
5/29/2020	759.56	(9,586.19)	0.00	400,000.00	9,586.19	409,586.19		-	**Annual Compound Interest*
5/31/2020	53.64		53.64	409,586.19		409,586.19			
6/30/2020	804.58		858.23	409,586.19		409,586.19			
7/31/2020	831.40		1,689.63	409,586.19		409,586.19			
8/31/2020	831.40		2,521.03	409,586.19		409,586.19			
9/30/2020	804.58		3,325.62	409,586.19		409,586.19			
10/31/2020	831.40		4,157.02	409,586.19		409,586.19			
11/30/2020	804.58		4,961.61	409,586.19		409,586.19			
12/31/2020	831.40		5,793.01	409,586.19		409,586.19			
1/31/2021	831.40		6,624.41	409,586.19		409,586.19			
2/28/2021	750.95		7,375.36	409,586.19		409,586.19			
3/31/2021	831.40		8,206.76	409,586.19		409,586.19			
4/30/2021	804.58		9,011.35	409,586.19		409,586.19			
5/29/2021	777.76	(9,789.11)	-	409,586.19	9,789.11	419,375.30		-	**Annual Compound Interest*
5/31/2021	54.92		54.92	419,375.30		419,375.30			
6/30/2021	823.81		878.73	419,375.30		419,375.30			
7/31/2021	851.27		1,730.01	419,375.30		419,375.30			
8/31/2021	851.27		2,581.28	419,375.30		419,375.30			
9/30/2021	823.81		3,405.10	419,375.30		419,375.30			
10/31/2021	851.27		4,256.37	419,375.30		419,375.30			
12/17/2021	1,290.64		5,547.01	419,375.30		419,375.30	**424,922.32**		
12/31/2021	384.45	(5,931.46)	0.00	419,375.30		419,375.30		(5,931.46)	*Interest*
1/31/2022	851.27		851.27	419,375.30		419,375.30			
2/28/2022	768.89		1,620.17	419,375.30		419,375.30			
3/31/2022	851.27		2,471.44	419,375.30		419,375.30			
4/30/2022	823.81		3,295.26	419,375.30		419,375.30			
5/29/2022	796.35	(4,091.61)	-	419,375.30	4,091.61	423,466.91		-	**Annual Compound Interest*
5/31/2022	55.46		55.46	423,466.91		423,466.91			
6/30/2022	831.85		887.31	423,466.91		423,466.91			
7/31/2022	859.58		1,746.89	423,466.91		423,466.91			
8/8/2022	221.83		1,968.72	423,466.91		423,466.91	**425,435.63**		
9/30/2022	1,469.60		3,438.32	423,466.91		423,466.91			
10/31/2022	859.58		4,297.90	423,466.91		423,466.91			
11/30/2022	831.85		5,129.75	423,466.91		423,466.91			
12/31/2022	859.58		5,989.33	423,466.91		423,466.91			
1/31/2023	859.58		6,848.91	423,466.91		423,466.91			
2/28/2023	776.39		7,625.30	423,466.91		423,466.91			
3/31/2023	859.58		8,484.88	423,466.91		423,466.91			
4/30/2023	831.85		9,316.74	423,466.91		423,466.91			
5/29/2023	804.12	(10,120.86)	-	423,466.91	10,120.86	433,587.77		-	**Annual Compound Interest*

EXHIBIT J

HCMSI #49

Closing Date	6/26/2019
Total Commitment	$ 150,000
Rate	2.370%
Note:	Payable On Demand; compounded annually on anniversary date

Date	Interest Accrual	Interest Paid	Accrued Interest	Beg Prin Bal	Principal Paid	Ending Prin Bal	Total of Outstanding Principal and Interest (selected dates)	Total Paid	
6/26/2019						150,000.00			
6/30/2019	38.96		38.96	150,000.00		150,000.00			
7/31/2019	301.93		340.89	150,000.00		150,000.00			
8/31/2019	301.93		642.82	150,000.00		150,000.00			
9/30/2019	292.19		935.01	150,000.00		150,000.00			
10/15/2019	146.10		1,081.11	150,000.00		150,000.00			
10/31/2019	155.84		1,236.95	150,000.00		150,000.00			
11/30/2019	292.19		1,529.14	150,000.00		150,000.00			
12/31/2019	301.93		1,831.07	150,000.00		150,000.00			
1/31/2020	301.93		2,133.00	150,000.00		150,000.00			
2/29/2020	282.45		2,415.45	150,000.00		150,000.00			
3/31/2020	301.93		2,717.38	150,000.00		150,000.00			
4/30/2020	292.19		3,009.58	150,000.00		150,000.00			
5/31/2020	301.93		3,311.51	150,000.00		150,000.00			
6/26/2020	253.23	(3,564.74)	(0.00)	150,000.00	3,564.74	153,564.74		-	*Annual Compound Interest*
6/30/2020	39.88		39.88	153,564.74		153,564.74			
7/31/2020	309.11		348.99	153,564.74		153,564.74			
8/31/2020	309.11		658.10	153,564.74		153,564.74			
9/30/2020	299.14		957.23	153,564.74		153,564.74			
10/31/2020	309.11		1,266.34	153,564.74		153,564.74			
11/30/2020	299.14		1,565.48	153,564.74		153,564.74			
12/31/2020	309.11		1,874.58	153,564.74		153,564.74			
1/31/2021	309.11		2,183.69	153,564.74		153,564.74			
2/28/2021	279.19		2,462.88	153,564.74		153,564.74			
3/31/2021	309.11		2,771.99	153,564.74		153,564.74			
4/30/2021	299.14		3,071.13	153,564.74		153,564.74			
5/31/2021	309.11		3,380.23	153,564.74		153,564.74			
6/26/2021	259.25	(3,639.48)	-	153,564.74	3,639.48	157,204.22		-	*Annual Compound Interest*
6/30/2021	40.83		40.83	157,204.22		157,204.22			
7/31/2021	316.43		357.26	157,204.22		157,204.22			
8/31/2021	316.43		673.70	157,204.22		157,204.22			
9/30/2021	306.23		979.92	157,204.22		157,204.22			
10/31/2021	316.43		1,296.35	157,204.22		157,204.22			
12/17/2021	479.75		1,776.11	157,204.22		157,204.22	**158,980.33**		
12/31/2021	142.91	(1,919.01)	0.00	157,204.22		157,204.22		(1,919.01)	*Interest*
1/31/2022	316.43		316.43	157,204.22		157,204.22			
2/28/2022	285.81		602.24	157,204.22		157,204.22			
3/31/2022	316.43		918.68	157,204.22		157,204.22			
4/30/2022	306.23		1,224.90	157,204.22		157,204.22			
5/31/2022	316.43		1,541.33	157,204.22		157,204.22			
6/26/2022	265.40	(1,806.73)	-	157,204.22	1,806.73	159,010.95		-	*Annual Compound Interest*
6/30/2022	41.30		41.30	159,010.95		159,010.95			
7/31/2022	320.07		361.37	159,010.95		159,010.95			
8/8/2022	82.60		443.97	159,010.95		159,010.95	**159,454.92**		
9/30/2022	547.22		991.18	159,010.95		159,010.95			
10/31/2022	320.07		1,311.25	159,010.95		159,010.95			
11/30/2022	309.74		1,621.00	159,010.95		159,010.95			
12/31/2022	320.07		1,941.07	159,010.95		159,010.95			
1/31/2023	320.07		2,261.14	159,010.95		159,010.95			
2/28/2023	289.09		2,550.23	159,010.95		159,010.95			
3/31/2023	320.07		2,870.30	159,010.95		159,010.95			
4/30/2023	309.74		3,180.04	159,010.95		159,010.95			
5/31/2023	320.07		3,500.11	159,010.95		159,010.95			
6/26/2023	268.45	(3,768.56)	-	159,010.95	3,768.56	162,779.51		-	*Annual Compound Interest*

EXHIBIT K

HCMSI Term

Closing Date		5/31/2017
Total Commitment	$	20,247,628
Rate		2.750%

Date	Interest Accrual	Interest Paid	Accrued Interest	Beg Prin Bal	Principal Paid	Ending Prin Bal	Total of Outstanding Principal and Interest (selected dates)	Total Paid	
5/31/2017						20,247,628.02			
5/31/2017	-		-	20,247,628.02		20,247,628.02			
6/23/2017	35,086.64	(35,086.64)	-	20,247,628.02	(950,129.80)	19,297,498.22		(985,216.44)	
6/30/2017	10,177.45		10,177.45	19,297,498.22		19,297,498.22		-	
7/6/2017	8,723.53	(18,900.97)	-	19,297,498.22	(888,395.28)	18,409,102.95		(907,296.25)	
7/18/2017	16,643.85	(16,643.85)	0.00	18,409,102.95	(1,014,819.85)	17,394,283.10		(1,031,463.70)	
7/31/2017	17,036.87		17,036.87	17,394,283.10		17,394,283.10		-	
8/25/2017	32,763.20	(199,329.33)	(149,529.26)	17,394,283.10	(1,771,930.80)	15,622,352.30		(1,971,260.13)	
8/31/2017	7,062.16		(142,467.10)	15,622,352.30		15,622,352.30		-	
9/30/2017	35,310.80		(107,156.30)	15,622,352.30		15,622,352.30		-	
10/31/2017	36,487.82		(70,668.48)	15,622,352.30		15,622,352.30		-	
11/30/2017	35,310.80		(35,357.68)	15,622,352.30		15,622,352.30		-	
12/21/2017	24,717.56		(10,640.13)	15,622,352.30	(1,500,000.00)	14,122,352.30		(1,500,000.00)	
12/31/2017	10,640.13		0.00	14,122,352.30		14,122,352.30		-	
1/31/2018	32,984.40		32,984.40	14,122,352.30		14,122,352.30		-	
2/28/2018	29,792.36		62,776.76	14,122,352.30		14,122,352.30		-	
3/31/2018	32,984.40		95,761.16	14,122,352.30		14,122,352.30		-	
4/30/2018	31,920.39		127,681.54	14,122,352.30		14,122,352.30		-	
5/31/2018	32,984.40	(160,665.94)	0.00	14,122,352.30	160,665.94	14,283,018.24		-	*Annual Compound Interest*
6/30/2018	32,283.53		32,283.54	14,283,018.24		14,283,018.24		-	
7/31/2018	33,359.65		65,643.19	14,283,018.24		14,283,018.24		-	
8/31/2018	33,359.65		99,002.84	14,283,018.24		14,283,018.24		-	
9/30/2018	32,283.53		131,286.37	14,283,018.24		14,283,018.24		-	
10/8/2018	8,608.94	(412,000.00)	(272,104.68)	14,283,018.24	(588,000.00)	13,695,018.24		(1,000,000.00)	*Principal and interest*
10/31/2018	23,731.78		(248,372.91)	13,695,018.24		13,695,018.24		-	
11/30/2018	30,954.49		(217,418.41)	13,695,018.24		13,695,018.24		-	
12/31/2018	31,986.31		(185,432.10)	13,695,018.24		13,695,018.24		-	
1/31/2019	31,986.31		(153,445.79)	13,695,018.24		13,695,018.24		-	
2/28/2019	28,890.86		(124,554.93)	13,695,018.24		13,695,018.24		-	
3/5/2019	5,159.08	(37,904.91)	(157,300.76)	13,695,018.24	(977,095.09)	12,717,923.15		(1,015,000.00)	*Principal and interest*
3/31/2019	24,913.19		(132,387.57)	12,717,923.15		12,717,923.15		-	
4/30/2019	28,745.99		(103,641.58)	12,717,923.15		12,717,923.15		-	
5/31/2019	29,704.19		(73,937.39)	12,717,923.15		12,717,923.15		-	
6/30/2019	28,745.99		(45,191.40)	12,717,923.15		12,717,923.15		-	
7/31/2019	29,704.19		(15,487.21)	12,717,923.15		12,717,923.15		-	
8/9/2019	8,623.80		(6,863.41)	12,717,923.15	(550,000.00)	12,167,923.15		(550,000.00)	*Principal*
8/21/2019	11,001.14	(4,137.73)	(0.00)	12,167,923.15	(5,595,862.27)	6,572,060.88		(5,600,000.00)	*Principal and interest*
8/31/2019	4,951.55		4,951.55	6,572,060.88		6,572,060.88		-	
9/30/2019	14,854.66		19,806.21	6,572,060.88		6,572,060.88		-	
10/15/2019	7,427.33		27,233.54	6,572,060.88		6,572,060.88			
10/31/2019	7,922.48		35,156.02	6,572,060.88		6,572,060.88		-	
11/30/2019	14,854.66		50,010.68	6,572,060.88		6,572,060.88		-	
12/30/2019	14,854.66	(65,360.49)	(495.15)	6,572,060.88		6,572,060.88		(65,360.49)	*Interest*
12/31/2019	495.16		0.00	6,572,060.88		6,572,060.88		-	
1/31/2020	15,349.81		15,349.82	6,572,060.88		6,572,060.88		-	
2/29/2020	14,359.50		29,709.32	6,572,060.88		6,572,060.88		-	
3/31/2020	15,349.81		45,059.13	6,572,060.88		6,572,060.88		-	
4/30/2020	14,854.66		59,913.79	6,572,060.88		6,572,060.88		-	
5/31/2020	15,349.81	(75,263.60)	-	6,572,060.88	75,263.60	6,647,324.48		-	*Annual Compound Interest*
6/30/2020	15,024.77		15,024.77	6,647,324.48		6,647,324.48		-	
7/31/2020	15,525.60		30,550.37	6,647,324.48		6,647,324.48		-	
8/31/2020	15,525.60		46,075.98	6,647,324.48		6,647,324.48		-	
9/30/2020	15,024.77		61,100.75	6,647,324.48		6,647,324.48		-	
10/31/2020	15,525.60		76,626.35	6,647,324.48		6,647,324.48		-	
11/30/2020	15,024.77		91,651.12	6,647,324.48		6,647,324.48		-	
12/31/2020	15,525.60		107,176.72	6,647,324.48		6,647,324.48		-	
1/21/2021	10,517.34	(117,694.07)	-	6,647,324.48	(63,532.76)	6,583,791.72		(181,226.83)	*Principal and interest*
1/31/2021	4,960.39		4,960.39	6,583,791.72		6,583,791.72		-	
2/28/2021	18,849.49		18,849.49	6,583,791.72		6,583,791.72		-	
3/31/2021	15,377.21		34,226.70	6,583,791.72		6,583,791.72		-	
4/30/2021	14,881.17		49,107.87	6,583,791.72		6,583,791.72		-	
5/31/2021	15,377.21	(64,485.08)	-	6,583,791.72	64,485.08	6,648,276.80		-	*Annual Compound Interest*
6/30/2021	15,026.93		15,026.93	6,648,276.80		6,648,276.80		-	
7/31/2021	15,527.82		30,554.75	6,648,276.80		6,648,276.80		-	
8/31/2021	15,527.82		46,082.58	6,648,276.80		6,648,276.80		-	
9/30/2021	15,026.93		61,109.50	6,648,276.80		6,648,276.80		-	
10/31/2021	15,527.82		76,637.33	6,648,276.80		6,648,276.80		-	
12/17/2021	23,542.19		100,179.51	6,648,276.80		6,648,276.80	**6,748,456.31**	-	
12/31/2021	7,012.57	(107,192.08)	(0.00)	6,648,276.80	(675,905.80)	5,972,371.00		(783,097.88)	*Principal and interest*
1/31/2022	13,949.17		13,949.17	5,972,371.00		5,972,371.00		-	
2/28/2022	12,599.25		26,548.42	5,972,371.00		5,972,371.00		-	
3/31/2022	13,949.17		40,497.58	5,972,371.00		5,972,371.00		-	
4/30/2022	13,499.19		53,996.78	5,972,371.00		5,972,371.00		-	
5/31/2022	13,949.17	(67,945.95)	-	5,972,371.00	67,945.95	6,040,316.95		-	*Annual Compound Interest*
6/30/2022	13,652.77		13,652.77	6,040,316.95		6,040,316.95		-	
7/31/2022	14,107.86		27,760.63	6,040,316.95		6,040,316.95		-	
8/8/2022	3,640.74		31,401.37	6,040,316.95		6,040,316.95	**6,071,718.32**	-	
9/30/2022	24,119.90		55,521.27	6,040,316.95		6,040,316.95		-	
10/31/2022	14,107.86		69,629.13	6,040,316.95		6,040,316.95		-	
11/30/2022	13,652.77		83,281.90	6,040,316.95		6,040,316.95		-	
12/31/2022	14,107.86		97,389.77	6,040,316.95		6,040,316.95		-	
1/31/2023	14,107.86		111,497.63	6,040,316.95		6,040,316.95		-	
2/28/2023	12,742.59		124,240.22	6,040,316.95		6,040,316.95		-	
3/31/2023	14,107.86		138,348.08	6,040,316.95		6,040,316.95		-	
4/30/2023	13,652.77		152,000.85	6,040,316.95		6,040,316.95		-	
5/31/2023	14,107.86	(166,108.72)	-	6,040,316.95	166,108.72	6,206,425.66		-	*Annual Compound Interest*

EXHIBIT L

HCRE #9

Closing Date		11/27/2013
Total Commitment	$	100,000
Rate		8.000%

Date	Interest Accrual	Interest Paid	Accrued Interest	Beg Prin Bal	Principal Paid	Ending Prin Bal	Total of Outstanding Principal and Interest (selected dates)	Total Paid	
11/27/2013						100,000.00			
11/30/2013	65.75		65.75	100,000.00		100,000.00			
12/31/2013	679.45		745.21	100,000.00		100,000.00			
1/31/2014	679.45		1,424.66	100,000.00		100,000.00			
2/28/2014	613.70		2,038.36	100,000.00		100,000.00			
3/31/2014	679.45		2,717.81	100,000.00		100,000.00			
4/30/2014	657.53		3,375.34	100,000.00		100,000.00			
5/31/2014	679.45		4,054.79	100,000.00		100,000.00			
6/30/2014	657.53		4,712.33	100,000.00		100,000.00			
7/31/2014	679.45		5,391.78	100,000.00		100,000.00			
8/31/2014	679.45		6,071.23	100,000.00		100,000.00			
9/30/2014	657.53		6,728.77	100,000.00		100,000.00			
10/31/2014	679.45		7,408.22	100,000.00		100,000.00			
11/27/2014	591.78	(8,000.00)	-	100,000.00	8,000.00	108,000.00		-	*Annual Compound Interest
11/30/2014	71.01		71.01	108,000.00		108,000.00			
12/31/2014	733.81		804.82	108,000.00		108,000.00			
1/31/2015	733.81		1,538.63	108,000.00		108,000.00			
2/28/2015	662.79		2,201.42	108,000.00		108,000.00			
3/31/2015	733.81		2,935.23	108,000.00		108,000.00			
4/30/2015	710.14		3,645.37	108,000.00		108,000.00			
5/31/2015	733.81		4,379.18	108,000.00		108,000.00			
6/30/2015	710.14		5,089.32	108,000.00		108,000.00			
7/31/2015	733.81		5,823.12	108,000.00		108,000.00			
8/31/2015	733.81		6,556.93	108,000.00		108,000.00			
9/30/2015	710.14		7,267.07	108,000.00		108,000.00			
10/31/2015	733.81		8,000.88	108,000.00		108,000.00			
11/27/2015	639.12	(8,640.00)	-	108,000.00	8,640.00	116,640.00		-	*Annual Compound Interest
11/30/2015	76.69		76.69	116,640.00		116,640.00			
12/31/2015	792.51		869.21	116,640.00		116,640.00			
1/31/2016	792.51		1,661.72	116,640.00		116,640.00			
2/29/2016	741.38		2,403.10	116,640.00		116,640.00			
3/31/2016	792.51		3,195.62	116,640.00		116,640.00			
4/30/2016	766.95		3,962.56	116,640.00		116,640.00			
5/31/2016	792.51		4,755.08	116,640.00		116,640.00			
6/30/2016	766.95		5,522.03	116,640.00		116,640.00			
7/31/2016	792.51		6,314.54	116,640.00		116,640.00			
8/31/2016	792.51		7,107.05	116,640.00		116,640.00			
9/30/2016	766.95		7,874.00	116,640.00		116,640.00			
10/31/2016	792.51		8,666.51	116,640.00		116,640.00			
11/27/2016	690.25	(9,356.76)	0.00	116,640.00	9,356.76	125,996.76		-	*Annual Compound Interest
11/30/2016	82.85		82.85	125,996.76		125,996.76			
12/31/2016	856.09		938.94	125,996.76		125,996.76			
1/31/2017	856.09		1,795.03	125,996.76		125,996.76			
2/28/2017	773.24		2,568.27	125,996.76		125,996.76			
3/31/2017	856.09		3,424.36	125,996.76		125,996.76			
4/30/2017	828.47		4,252.83	125,996.76		125,996.76			
5/31/2017	856.09		5,108.91	125,996.76		125,996.76			
6/30/2017	828.47		5,937.39	125,996.76		125,996.76			
7/31/2017	856.09		6,793.47	125,996.76		125,996.76			
8/31/2017	856.09		7,649.56	125,996.76		125,996.76			
9/30/2017	828.47		8,478.03	125,996.76		125,996.76			
10/31/2017	856.09		9,334.12	125,996.76		125,996.76			
11/27/2017	745.62	(10,079.75)	(0.00)	125,996.76	10,079.75	136,076.51		-	*Annual Compound Interest
11/30/2017	89.47		89.47	136,076.51		136,076.51			
12/31/2017	924.57		1,014.05	136,076.51		136,076.51			
1/31/2018	924.57		1,938.62	136,076.51		136,076.51			
2/28/2018	835.10		2,773.72	136,076.51		136,076.51			
3/31/2018	924.57		3,698.29	136,076.51		136,076.51			
4/30/2018	894.75		4,593.04	136,076.51		136,076.51			
5/31/2018	924.57		5,517.62	136,076.51		136,076.51			
6/30/2018	894.75		6,412.37	136,076.51		136,076.51			
7/31/2018	924.57		7,336.94	136,076.51		136,076.51			
8/31/2018	924.57		8,261.52	136,076.51		136,076.51			
9/30/2018	894.75		9,156.27	136,076.51		136,076.51			
10/31/2018	924.57		10,080.84	136,076.51		136,076.51			
11/27/2018	805.27	(10,886.12)	(0.00)	136,076.51	10,886.12	146,962.63		-	*Annual Compound Interest
11/30/2018	96.63		96.63	146,962.63		146,962.63			
12/31/2018	998.54		1,095.17	146,962.63		146,962.63			
1/31/2019	998.54		2,093.71	146,962.63		146,962.63			
2/28/2019	901.91		2,995.62	146,962.63		146,962.63			
3/31/2019	998.54		3,994.16	146,962.63		146,962.63			
4/30/2019	966.33		4,960.49	146,962.63		146,962.63			
5/31/2019	998.54		5,959.03	146,962.63		146,962.63			
6/30/2019	966.33		6,925.36	146,962.63		146,962.63			
7/31/2019	998.54		7,923.90	146,962.63		146,962.63			
8/31/2019	998.54		8,922.44	146,962.63		146,962.63			
9/30/2019	966.33		9,888.77	146,962.63		146,962.63			
10/15/2019	483.16		10,371.93	146,962.63		146,962.63			
10/31/2019	515.38		10,887.31	146,962.63		146,962.63			
11/27/2019	869.70	(11,757.01)	(0.00)	146,962.63	11,757.01	158,719.64		-	*Annual Compound Interest

HCRE #9

Closing Date		11/27/2013
Total Commitment	$	100,000
Rate		8.000%

Date	Interest Accrual	Interest Paid	Accrued Interest	Beg Prin Bal	Principal Paid	Ending Prin Bal	Total of Outstanding Principal and Interest (selected dates)	Total Paid	
11/30/2019	104.36		104.36	158,719.64		158,719.64			
12/31/2019	1,078.42		1,182.78	158,719.64		158,719.64			
1/31/2020	1,078.42		2,261.21	158,719.64		158,719.64			
2/29/2020	1,008.85		3,270.06	158,719.64		158,719.64			
3/31/2020	1,078.42		4,348.48	158,719.64		158,719.64			
4/30/2020	1,043.64		5,392.12	158,719.64		158,719.64			
5/31/2020	1,078.42		6,470.54	158,719.64		158,719.64			
6/30/2020	1,043.64		7,514.18	158,719.64		158,719.64			
7/31/2020	1,078.42		8,592.60	158,719.64		158,719.64			
8/31/2020	1,078.42		9,671.02	158,719.64		158,719.64			
9/30/2020	1,043.64		10,714.66	158,719.64		158,719.64			
10/31/2020	1,078.42		11,793.08	158,719.64		158,719.64			
11/27/2020	939.27	(12,732.36)	(0.00)	158,719.64	12,732.36	171,452.00		-	**Annual Compound Interest*
11/30/2020	112.74		112.73	171,452.00		171,452.00			
12/31/2020	1,164.93		1,277.67	171,452.00		171,452.00			
1/21/2021	789.15	-	2,066.81	171,452.00	-	171,452.00			
1/31/2021	375.79		2,442.60	171,452.00		171,452.00			
2/28/2021	1,052.20		3,494.80	171,452.00		171,452.00			
3/31/2021	1,164.93		4,659.73	171,452.00		171,452.00			
4/30/2021	1,127.36		5,787.09	171,452.00		171,452.00			
5/31/2021	1,164.93		6,952.02	171,452.00		171,452.00			
6/30/2021	1,127.36		8,079.38	171,452.00		171,452.00			
7/31/2021	1,164.93		9,244.31	171,452.00		171,452.00			
8/31/2021	1,164.93		10,409.25	171,452.00		171,452.00			
9/30/2021	1,127.36		11,536.60	171,452.00		171,452.00			
10/31/2021	1,164.93		12,701.54	171,452.00		171,452.00			
11/27/2021	1,014.62	(13,716.16)	-	171,452.00	13,716.16	185,168.16		-	**Annual Compound Interest*
11/30/2021	121.75		121.75	185,168.16		185,168.16			
12/17/2021	689.94		811.70	185,168.16		185,168.16	**185,979.85**		
1/31/2022	1,826.32		2,638.01	185,168.16		185,168.16			
2/28/2022	1,136.37		3,774.39	185,168.16		185,168.16			
3/31/2022	1,258.13		5,032.52	185,168.16		185,168.16			
4/30/2022	1,217.54		6,250.06	185,168.16		185,168.16			
5/31/2022	1,258.13		7,508.19	185,168.16		185,168.16			
6/30/2022	1,217.54		8,725.73	185,168.16		185,168.16			
7/31/2022	1,258.13		9,983.86	185,168.16		185,168.16			
8/8/2022	324.68		10,308.54	185,168.16		185,168.16	**195,476.70**		
9/30/2022	2,150.99		12,459.53	185,168.16		185,168.16			
10/31/2022	1,258.13		13,717.66	185,168.16		185,168.16			
11/27/2022	1,095.79	(14,813.45)	-	185,168.16	14,813.45	199,981.61		-	**Annual Compound Interest*

EXHIBIT M

HCRE #10

Closing Date		10/12/2017
Total Commitment	$	2,500,000
Rate		8.000%

Date	Interest Accrual	Interest Paid	Accrued Interest	Beg Prin Bal	Principal Paid	Ending Prin Bal	Total of Outstanding Principal and Interest (selected dates)	Total Paid	
10/12/2017						2,500,000.00			
10/31/2017	10,410.96		10,410.96	2,500,000.00		2,500,000.00			
11/30/2017	16,438.36		26,849.32	2,500,000.00		2,500,000.00			
12/31/2017	16,986.30		43,835.62	2,500,000.00		2,500,000.00			
1/31/2018	16,986.30		60,821.92	2,500,000.00		2,500,000.00			
2/28/2018	15,342.47		76,164.38	2,500,000.00		2,500,000.00			
3/31/2018	16,986.30		93,150.68	2,500,000.00		2,500,000.00			
4/30/2018	16,438.36		109,589.04	2,500,000.00		2,500,000.00			
5/31/2018	16,986.30		126,575.34	2,500,000.00		2,500,000.00			
6/30/2018	16,438.36		143,013.70	2,500,000.00		2,500,000.00			
7/31/2018	16,986.30		160,000.00	2,500,000.00		2,500,000.00			
8/31/2018	16,986.30		176,986.30	2,500,000.00		2,500,000.00			
9/30/2018	16,438.36		193,424.66	2,500,000.00		2,500,000.00			
10/12/2018	6,575.34	(200,000.00)	-	2,500,000.00	200,000.00	2,700,000.00		-	**Annual Compound Interest*
10/31/2018	11,243.84		11,243.84	2,700,000.00		2,700,000.00			
11/30/2018	17,753.42		28,997.26	2,700,000.00		2,700,000.00			
12/31/2018	18,345.21		47,342.47	2,700,000.00		2,700,000.00			
1/31/2019	18,345.21		65,687.67	2,700,000.00		2,700,000.00			
2/28/2019	16,569.86		82,257.53	2,700,000.00		2,700,000.00			
3/31/2019	18,345.21		100,602.74	2,700,000.00		2,700,000.00			
4/30/2019	17,753.42		118,356.16	2,700,000.00		2,700,000.00			
5/31/2019	18,345.21		136,701.37	2,700,000.00		2,700,000.00			
6/30/2019	17,753.42		154,454.79	2,700,000.00		2,700,000.00			
7/31/2019	18,345.21		172,800.00	2,700,000.00		2,700,000.00			
8/31/2019	18,345.21		191,145.21	2,700,000.00		2,700,000.00			
9/30/2019	17,753.42		208,898.63	2,700,000.00		2,700,000.00			
10/12/2019	7,101.37	(216,000.00)	-	2,700,000.00	216,000.00	2,916,000.00		-	**Annual Compound Interest*
10/15/2019	1,917.37		1,917.37	2,916,000.00		2,916,000.00			
10/31/2019	10,225.97		12,143.34	2,916,000.00		2,916,000.00			
11/30/2019	19,173.70		31,317.04	2,916,000.00		2,916,000.00			
12/31/2019	19,812.82		51,129.86	2,916,000.00		2,916,000.00			
1/31/2020	19,812.82		70,942.68	2,916,000.00		2,916,000.00			
2/29/2020	18,534.58		89,477.26	2,916,000.00		2,916,000.00			
3/31/2020	19,812.82		109,290.08	2,916,000.00		2,916,000.00			
4/30/2020	19,173.70		128,463.78	2,916,000.00		2,916,000.00			
5/31/2020	19,812.82		148,276.60	2,916,000.00		2,916,000.00			
6/30/2020	19,173.70		167,450.30	2,916,000.00		2,916,000.00			
7/31/2020	19,812.82		187,263.12	2,916,000.00		2,916,000.00			
8/31/2020	19,812.82		207,075.95	2,916,000.00		2,916,000.00			
9/30/2020	19,173.70		226,249.64	2,916,000.00		2,916,000.00			
10/12/2020	7,669.48	(233,919.12)	0.00	2,916,000.00	233,919.12	3,149,919.12		-	**Annual Compound Interest*
10/31/2020	13,117.47		13,117.47	3,149,919.12		3,149,919.12			
11/30/2020	20,711.80		33,829.27	3,149,919.12		3,149,919.12			
12/31/2020	21,402.19		55,231.46	3,149,919.12		3,149,919.12			
1/21/2021	14,498.26	(69,729.72)	(0.00)	3,149,919.12		3,149,919.12		(69,729.72)	*Interest*
1/31/2021	6,903.93		6,903.93	3,149,919.12		3,149,919.12			
2/28/2021	19,331.01		26,234.94	3,149,919.12		3,149,919.12			
3/31/2021	21,402.19		47,637.13	3,149,919.12		3,149,919.12			
4/30/2021	20,711.80		68,348.93	3,149,919.12		3,149,919.12			
5/31/2021	21,402.19		89,751.12	3,149,919.12		3,149,919.12			
6/30/2021	20,711.80		110,462.92	3,149,919.12		3,149,919.12			
7/31/2021	21,402.19		131,865.11	3,149,919.12		3,149,919.12			
8/31/2021	21,402.19		153,267.30	3,149,919.12		3,149,919.12			
9/30/2021	20,711.80		173,979.09	3,149,919.12		3,149,919.12			
10/12/2021	8,284.72	(182,263.81)	0.00	3,149,919.12	182,263.81	3,332,182.93		-	**Annual Compound Interest*
10/31/2021	13,876.49		13,876.49	3,332,182.93		3,332,182.93			
11/30/2021	21,910.24		35,786.73	3,332,182.93		3,332,182.93			
12/17/2021	12,415.80		48,202.54	3,332,182.93		3,332,182.93	**3,380,385.47**		
1/31/2022	32,865.37		81,067.91	3,332,182.93		3,332,182.93			
2/28/2022	20,449.56		101,517.47	3,332,182.93		3,332,182.93			
3/31/2022	22,640.59		124,158.05	3,332,182.93		3,332,182.93			
4/30/2022	21,910.24		146,068.30	3,332,182.93		3,332,182.93			
5/31/2022	22,640.59		168,708.88	3,332,182.93		3,332,182.93			
6/30/2022	21,910.24		190,619.13	3,332,182.93		3,332,182.93			
7/31/2022	22,640.59		213,259.71	3,332,182.93		3,332,182.93			
8/8/2022	5,842.73		219,102.44	3,332,182.93		3,332,182.93	**3,551,285.37**		
9/30/2022	38,708.10		257,810.54	3,332,182.93		3,332,182.93			
10/12/2022	8,764.10	(266,574.64)	-	3,332,182.93	266,574.64	3,598,757.57		-	**Annual Compound Interest*

EXHIBIT N

HCRE #11

Closing Date		10/15/2018
Total Commitment	$	750,000
Rate		8.000%

Date	Interest Accrual	Interest Paid	Accrued Interest	Beg Prin Bal	Principal Paid	Ending Prin Bal	Total of Outstanding Principal and Interest (selected dates)	Total Paid	
10/15/2018						750,000.00			
10/31/2018	2,630.14		2,630.14	750,000.00		750,000.00			
11/30/2018	4,931.51		7,561.64	750,000.00		750,000.00			
12/31/2018	5,095.89		12,657.53	750,000.00		750,000.00			
1/31/2019	5,095.89		17,753.42	750,000.00		750,000.00			
2/28/2019	4,602.74		22,356.16	750,000.00		750,000.00			
3/31/2019	5,095.89		27,452.05	750,000.00		750,000.00			
4/30/2019	4,931.51		32,383.56	750,000.00		750,000.00			
5/31/2019	5,095.89		37,479.45	750,000.00		750,000.00			
6/30/2019	4,931.51		42,410.96	750,000.00		750,000.00			
7/31/2019	5,095.89		47,506.85	750,000.00		750,000.00			
8/31/2019	5,095.89		52,602.74	750,000.00		750,000.00			
9/30/2019	4,931.51		57,534.25	750,000.00		750,000.00			
10/15/2019	2,465.75	(60,000.00)	-	750,000.00	60,000.00	810,000.00		-	**Annual Compound Interest*
10/31/2019	2,840.55		2,840.55	810,000.00		810,000.00			
11/30/2019	5,326.03		8,166.58	810,000.00		810,000.00			
12/31/2019	5,503.56		13,670.14	810,000.00		810,000.00			
1/31/2020	5,503.56		19,173.70	810,000.00		810,000.00			
2/29/2020	5,148.49		24,322.19	810,000.00		810,000.00			
3/31/2020	5,503.56		29,825.75	810,000.00		810,000.00			
4/30/2020	5,326.03		35,151.78	810,000.00		810,000.00			
5/31/2020	5,503.56		40,655.34	810,000.00		810,000.00			
6/30/2020	5,326.03		45,981.37	810,000.00		810,000.00			
7/31/2020	5,503.56		51,484.93	810,000.00		810,000.00			
8/31/2020	5,503.56		56,988.49	810,000.00		810,000.00			
9/30/2020	5,326.03		62,314.52	810,000.00		810,000.00			
10/15/2020	2,663.01	(64,977.53)	0.00	810,000.00	64,977.53	874,977.53		-	**Annual Compound Interest*
10/31/2020	3,068.41		3,068.42	874,977.53		874,977.53			
11/30/2020	5,753.28		8,821.70	874,977.53		874,977.53			
12/31/2020	5,945.05		14,766.75	874,977.53		874,977.53			
1/21/2021	4,027.29	(18,794.04)	0.00	874,977.53		874,977.53		(18,794.04)	*Interest*
1/31/2021	1,917.76		1,917.76	874,977.53		874,977.53			
2/28/2021	5,369.73		7,287.49	874,977.53		874,977.53			
3/31/2021	5,945.05		13,232.54	874,977.53		874,977.53			
4/30/2021	5,753.28		18,985.82	874,977.53		874,977.53			
5/31/2021	5,945.05		24,930.87	874,977.53		874,977.53			
6/30/2021	5,753.28		30,684.15	874,977.53		874,977.53			
7/31/2021	5,945.05		36,629.20	874,977.53		874,977.53			
8/31/2021	5,945.05		42,574.25	874,977.53		874,977.53			
9/30/2021	5,753.28		48,327.53	874,977.53		874,977.53			
10/15/2021	2,876.64	(51,204.17)	(0.00)	874,977.53	51,204.17	926,181.70		-	**Annual Compound Interest*
10/31/2021	3,247.98		3,247.98	926,181.70		926,181.70			
11/30/2021	6,089.96		9,337.94	926,181.70		926,181.70			
12/17/2021	3,450.98		12,788.92	926,181.70		926,181.70	**938,970.62**		
1/31/2022	9,134.94		21,923.86	926,181.70		926,181.70			
2/28/2022	5,683.96		27,607.82	926,181.70		926,181.70			
3/31/2022	6,292.96		33,900.78	926,181.70		926,181.70			
4/30/2022	6,089.96		39,990.75	926,181.70		926,181.70			
5/31/2022	6,292.96		46,283.71	926,181.70		926,181.70			
6/30/2022	6,089.96		52,373.67	926,181.70		926,181.70			
7/31/2022	6,292.96		58,666.63	926,181.70		926,181.70			
8/8/2022	1,623.99		60,290.62	926,181.70		926,181.70	**986,472.32**		
9/30/2022	10,758.93		71,049.55	926,181.70		926,181.70			
10/15/2022	3,044.98	(74,094.53)	-	926,181.70	74,094.53	1,000,276.23		-	**Annual Compound Interest*

EXHIBIT O

HCRE #12

Closing Date	9/25/2019
Total Commitment	$ 900,000
Rate	8.000%
Note:	Payable On Demand; compounded annually on anniversary date

Date	Interest Accrual	Interest Paid	Accrued Interest	Beg Prin Bal	Principal Paid	Ending Prin Bal	Total of Outstanding Principal and Interest (selected dates)	Total Paid	
9/25/2019						900,000.00			
9/30/2019	986.30	(986.30)	0.00	900,000.00	(204,732.70)	695,267.30		(205,719.00)	
10/15/2019	2,285.81		2,285.81	695,267.30		695,267.30			
10/31/2019	2,438.20		4,724.01	695,267.30		695,267.30			
11/30/2019	4,571.62		9,295.63	695,267.30		695,267.30			
12/31/2019	4,724.01		14,019.64	695,267.30		695,267.30			
1/31/2020	4,724.01		18,743.65	695,267.30		695,267.30			
2/29/2020	4,419.23		23,162.88	695,267.30		695,267.30			
3/31/2020	4,724.01		27,886.89	695,267.30		695,267.30			
4/30/2020	4,571.62		32,458.51	695,267.30		695,267.30			
5/31/2020	4,724.01		37,182.52	695,267.30		695,267.30			
6/30/2020	4,571.62		41,754.14	695,267.30		695,267.30			
7/31/2020	4,724.01		46,478.14	695,267.30		695,267.30			
8/31/2020	4,724.01		51,202.15	695,267.30		695,267.30			
9/25/2020	3,809.68	(55,011.84)	(0.00)	695,267.30	55,011.84	750,279.14		-	**Annual Compound Interest*
9/30/2020	822.22		822.22	750,279.14		750,279.14			
10/31/2020	5,097.79		5,920.01	750,279.14		750,279.14			
11/30/2020	4,933.34		10,853.35	750,279.14		750,279.14			
12/31/2020	5,097.79		15,951.14	750,279.14		750,279.14			
1/21/2021	3,453.34	-	19,404.48	750,279.14		750,279.14			
1/31/2021	1,644.45		21,048.92	750,279.14		750,279.14			
2/28/2021	4,604.45		25,653.38	750,279.14		750,279.14			
3/31/2021	5,097.79		30,751.16	750,279.14		750,279.14			
4/30/2021	4,933.34		35,684.51	750,279.14		750,279.14			
5/31/2021	5,097.79		40,782.29	750,279.14		750,279.14			
6/30/2021	4,933.34		45,715.63	750,279.14		750,279.14			
7/31/2021	5,097.79		50,813.42	750,279.14		750,279.14			
8/31/2021	5,097.79		55,911.21	750,279.14		750,279.14			
9/25/2021	4,111.12	(60,022.33)	(0.00)	750,279.14	60,022.33	810,301.47		-	**Annual Compound Interest*
9/30/2021	888.00		888.00	810,301.47		810,301.47			
10/31/2021	5,505.61		6,393.61	810,301.47		810,301.47			
11/30/2021	5,328.01		11,721.62	810,301.47		810,301.47			
12/17/2021	3,019.21		14,740.82	810,301.47		810,301.47	**825,042.29**		
1/31/2022	7,992.01		22,732.84	810,301.47		810,301.47			
2/28/2022	4,972.81		27,705.65	810,301.47		810,301.47			
3/31/2022	5,505.61		33,211.26	810,301.47		810,301.47			
4/30/2022	5,328.01		38,539.27	810,301.47		810,301.47			
5/31/2022	5,505.61		44,044.88	810,301.47		810,301.47			
6/30/2022	5,328.01		49,372.89	810,301.47		810,301.47			
7/31/2022	5,505.61		54,878.50	810,301.47		810,301.47			
8/8/2022	1,420.80		56,299.30	810,301.47		810,301.47	**866,600.77**		
9/25/2022	8,524.82	(64,824.11)	-	810,301.47	64,824.11	875,125.58		-	**Annual Compound Interest*

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EXHIBIT P

HCRE Term

Closing Date	5/31/2017
Total Commitment	$ 6,059,832
Rate	8.000%

Date	Interest Accrual	Interest Paid	Accrued Interest	Beg Prin Bal	Principal Paid	Ending Prin Bal	Total of Outstanding Principal and Interest (selected dates)	Total Paid	
5/31/2017						$ 6,059,832			
6/30/2017	39,845.47		39,845.47	6,059,831.51		6,059,831.51			
7/31/2017	41,173.65		81,019.12	6,059,831.51		6,059,831.51			
8/31/2017	41,173.65		122,192.77	6,059,831.51		6,059,831.51			
9/30/2017	39,845.47		162,038.23	6,059,831.51		6,059,831.51			
10/31/2017	41,173.65		203,211.88	6,059,831.51		6,059,831.51			
11/30/2017	39,845.47		243,057.35	6,059,831.51		6,059,831.51			
12/27/2017	35,860.92		278,918.27	6,059,831.51		6,059,831.51			
12/31/2017	5,312.73	(284,231.00)	0.00	6,059,831.51	(201,994.38)	5,857,837.13		(486,225.38)	*Principal and interest*
1/31/2018	39,801.19		39,801.20	5,857,837.13		5,857,837.13			
2/28/2018	35,949.47		75,750.66	5,857,837.13		5,857,837.13			
3/31/2018	39,801.19		115,551.86	5,857,837.13		5,857,837.13			
4/30/2018	38,517.29		154,069.14	5,857,837.13		5,857,837.13			
5/31/2018	39,801.19	(193,870.34)	(0.00)	5,857,837.13	193,870.34	6,051,707.47		-	**Annual Compound Interest*
6/30/2018	39,792.05		39,792.05	6,051,707.47		6,051,707.47			
7/31/2018	41,118.45		80,910.50	6,051,707.47		6,051,707.47			
8/31/2018	41,118.45		122,028.95	6,051,707.47		6,051,707.47			
9/30/2018	39,792.05		161,821.00	6,051,707.47		6,051,707.47			
10/31/2018	41,118.45		202,939.45	6,051,707.47		6,051,707.47			
11/30/2018	39,792.05		242,731.50	6,051,707.47		6,051,707.47			
12/19/2018	25,201.63	(453,220.06)	(185,286.93)	6,051,707.47	(201,994.38)	5,849,713.09		(655,214.44)	*Principal and interest*
12/31/2018	15,385.55		(169,901.39)	5,849,713.09		5,849,713.09			
1/31/2019	39,746.00		(130,155.39)	5,849,713.09		5,849,713.09			
2/28/2019	35,899.61		(94,255.78)	5,849,713.09		5,849,713.09			
3/31/2019	39,746.00		(54,509.78)	5,849,713.09		5,849,713.09			
4/30/2019	38,463.87		(16,045.92)	5,849,713.09		5,849,713.09			
5/31/2019	39,746.00	(23,700.08)	(0.00)	5,849,713.09	23,700.08	5,873,413.17		-	**Annual Compound Interest*
6/30/2019	38,619.70		38,619.70	5,873,413.17		5,873,413.17			
7/31/2019	39,907.03		78,526.73	5,873,413.17		5,873,413.17			
8/31/2019	39,907.03		118,433.75	5,873,413.17		5,873,413.17			
9/30/2019	38,619.70		157,053.46	5,873,413.17		5,873,413.17			
10/15/2019	19,309.85		176,363.31	5,873,413.17		5,873,413.17			
10/31/2019	20,597.17		196,960.48	5,873,413.17		5,873,413.17			
11/30/2019	38,619.70		235,580.19	5,873,413.17		5,873,413.17			
12/30/2019	38,619.70	-275,487.21	(1,287.32)	5,873,413.17	-201,994.40	5,671,418.77		(477,481.61)	*Principal and interest*
12/31/2019	1,243.05		(44.27)	5,671,418.77		5,671,418.77			
1/31/2020	38,534.57		38,490.30	5,671,418.77		5,671,418.77			
2/29/2020	36,048.47		74,538.77	5,671,418.77		5,671,418.77			
3/31/2020	38,534.57		113,073.34	5,671,418.77		5,671,418.77			
4/30/2020	37,291.52		150,364.86	5,671,418.77		5,671,418.77			
5/31/2020	38,534.57	(188,899.43)	0.00	5,671,418.77	188,899.43	5,860,318.20		-	**Annual Compound Interest*
6/30/2020	38,533.60		38,533.60	5,860,318.20		5,860,318.20			
7/31/2020	39,818.05		78,351.66	5,860,318.20		5,860,318.20			
8/31/2020	39,818.05		118,169.71	5,860,318.20		5,860,318.20			
9/30/2020	38,533.60		156,703.31	5,860,318.20		5,860,318.20			
10/31/2020	39,818.05		196,521.36	5,860,318.20		5,860,318.20			
11/30/2020	38,533.60		235,054.96	5,860,318.20		5,860,318.20			
12/31/2020	39,818.05		274,873.01	5,860,318.20		5,860,318.20			
1/21/2021	26,973.52	(274,917.29)	26,929.24	5,860,318.20	(390,893.80)	5,469,424.40		(665,811.09)	*Principal and interest*
1/31/2021	11,987.78		38,917.02	5,469,424.40		5,469,424.40			
2/28/2021	33,565.78		72,482.80	5,469,424.40		5,469,424.40			
3/31/2021	37,162.12		109,644.92	5,469,424.40		5,469,424.40			
4/30/2021	35,963.34		145,608.26	5,469,424.40		5,469,424.40			
5/31/2021	37,162.12	(182,770.37)	-	5,469,424.40	182,770.37	5,652,194.77		-	**Annual Compound Interest*
6/30/2021	37,165.12		37,165.12	5,652,194.77		5,652,194.77			
7/31/2021	38,403.95		75,569.07	5,652,194.77		5,652,194.77			
8/31/2021	38,403.95		113,973.02	5,652,194.77		5,652,194.77			
9/30/2021	37,165.12		151,138.14	5,652,194.77		5,652,194.77			
10/31/2021	38,403.95		189,542.09	5,652,194.77		5,652,194.77			
11/30/2021	37,165.12		226,707.21	5,652,194.77		5,652,194.77			
12/17/2021	21,060.23		247,767.44	5,652,194.77		5,652,194.77	**5,899,962.22**		
1/31/2022	55,747.67		303,515.12	5,652,194.77		5,652,194.77			
2/28/2022	34,687.44		338,202.56	5,652,194.77		5,652,194.77			
3/31/2022	38,403.95		376,606.51	5,652,194.77		5,652,194.77			

HCRE Term

Closing Date	5/31/2017
Total Commitment	$ 6,059,832
Rate	8.000%

Date	Interest Accrual	Interest Paid	Accrued Interest	Beg Prin Bal	Principal Paid	Ending Prin Bal	Total of Outstanding Principal and Interest (selected dates)	Total Paid	
4/30/2022	37,165.12		413,771.63	5,652,194.77		5,652,194.77			
5/31/2022	38,403.95	(452,175.58)	-	5,652,194.77	452,175.58	6,104,370.36		-	**Annual Compound Interest*
6/30/2022	40,138.33		40,138.33	6,104,370.36		6,104,370.36			
7/31/2022	41,476.27		81,614.60	6,104,370.36		6,104,370.36			
8/8/2022	10,703.55		92,318.15	6,104,370.36		6,104,370.36	**6,196,688.51**		
9/30/2022	70,911.04		163,229.19	6,104,370.36		6,104,370.36			
10/31/2022	41,476.27		204,705.46	6,104,370.36		6,104,370.36			
11/30/2022	40,138.33		244,843.79	6,104,370.36		6,104,370.36			
12/31/2022	41,476.27		286,320.06	6,104,370.36		6,104,370.36			
1/31/2023	41,476.27		327,796.33	6,104,370.36		6,104,370.36			
2/28/2023	37,462.44		365,258.76	6,104,370.36		6,104,370.36			
3/31/2023	41,476.27		406,735.03	6,104,370.36		6,104,370.36			
4/30/2023	40,138.33		446,873.36	6,104,370.36		6,104,370.36			
5/31/2023	41,476.27	(488,349.63)	-	6,104,370.36	488,349.63	6,592,719.99		-	**Annual Compound Interest*

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EXHIBIT Q

NPA Term

Closing Date	5/31/2017
Total Commitment	$ 30,746,812
Rate	6.000%
Maturity:	12/31/2047

Date	Interest Accrual	Interest Paid	Accrued Interest	Beg Prin Bal	Principal Paid	Ending Prin Bal	Total of Outstanding Principal and Interest (selected dates)	Total Paid	
5/31/2017						30,746,812.33			
6/30/2017	151,628.12		151,628.12	$ 30,746,812		30,746,812.33			
7/31/2017	156,682.39		308,310.50	30,746,812.33		30,746,812.33			
8/31/2017	156,682.39		464,992.89	30,746,812.33		30,746,812.33			
9/30/2017	151,628.12		616,621.00	30,746,812.33		30,746,812.33			
10/20/2017	101,085.41	(717,706.41)	-	30,746,812.33	(82,293.59)	30,664,518.74		(800,000.00)	*Principal and interest*
10/31/2017	55,448.17		55,448.17	30,664,518.74		30,664,518.74			
11/30/2017	151,222.28		206,670.46	30,664,518.74		30,664,518.74			
12/5/2017	25,203.71	(358,904.83)	(127,030.67)	30,664,518.74	(942,600.16)	29,721,918.58		(1,301,504.99)	*Principal and interest*
12/31/2017	127,030.67		(0.00)	29,721,918.58		29,721,918.58			
1/31/2018	151,459.64		151,459.64	29,721,918.58		29,721,918.58			
2/28/2018	136,802.26		288,261.90	29,721,918.58		29,721,918.58			
3/31/2018	151,459.64		439,721.54	29,721,918.58		29,721,918.58			
4/10/2018	48,857.95	(439,721.54)	48,857.95	29,721,918.58		29,721,918.58		(439,721.54)	*Interest*
4/30/2018	97,715.90		146,573.85	29,721,918.58		29,721,918.58			
5/1/2018	4,885.79	(146,573.85)	4,885.79	29,721,918.58		29,721,918.58		(146,573.85)	*Interest*
5/9/2018	39,086.36	(879,927.65)	(835,955.50)	29,721,918.58		29,721,918.58		(879,927.65)	*Interest*
5/31/2018	107,487.49		(728,468.01)	29,721,918.58		29,721,918.58			
6/30/2018	146,573.85		(581,894.17)	29,721,918.58		29,721,918.58			
7/31/2018	151,459.64		(430,434.53)	29,721,918.58		29,721,918.58			
8/31/2018	151,459.64		(278,974.89)	29,721,918.58		29,721,918.58			
9/5/2018	24,428.97		(254,545.91)	29,721,918.58	(280,765.40)	29,441,153.18		(280,765.40)	*Principal*
9/21/2018	77,434.27		(177,111.65)	29,441,153.18	(1,023,750.00)	28,417,403.18		(1,023,750.00)	*Principal*
9/30/2018	42,042.19		(135,069.46)	28,417,403.18		28,417,403.18			
10/31/2018	144,811.97		9,742.51	28,417,403.18		28,417,403.18			
11/30/2018	140,140.62		149,883.13	28,417,403.18		28,417,403.18			
12/18/2018	84,084.37	(294,695.10)	(60,727.60)	28,417,403.18		28,417,403.18		(294,695.10)	*Interest*
12/31/2018	60,727.60		(0.00)	28,417,403.18		28,417,403.18			
1/31/2019	144,811.97		144,811.97	28,417,403.18		28,417,403.18			
2/28/2019	130,797.91		275,609.88	28,417,403.18		28,417,403.18			
3/29/2019	135,469.26	(411,079.15)	(0.00)	28,417,403.18	(338,920.85)	28,078,482.33		(750,000.00)	*Principal and interest*
3/31/2019	9,231.28		9,231.28	28,078,482.33		28,078,482.33			
4/16/2019	73,850.25	(83,081.53)	0.00	28,078,482.33	(1,216,918.47)	26,861,563.86		(1,300,000.00)	*Principal and interest*
4/30/2019	61,818.39		61,818.40	26,861,563.86		26,861,563.86			
5/31/2019	136,883.59	(198,701.98)	0.00	26,861,563.86	198,701.98	27,060,265.84		-	**Annual Compound Interest*
6/4/2019	17,793.05	(17,793.05)	0.00	27,060,265.84	(282,206.95)	26,778,058.89		(300,000.00)	*Principal and interest*
6/19/2019	66,028.09	(66,028.10)	(0.00)	26,778,058.89	(2,033,971.90)	24,744,086.99		(2,100,000.00)	*Principal and interest*
6/30/2019	44,742.73		44,742.73	24,744,086.99		24,744,086.99			
7/9/2019	36,607.69	(81,350.42)	(0.00)	24,744,086.99	(548,649.58)	24,195,437.41		(630,000.00)	*Principal and interest*
7/31/2019	87,501.31		87,501.31	24,195,437.41		24,195,437.41			
8/13/2019	51,705.32	(139,206.62)	0.00	24,195,437.41	(1,160,793.38)	23,034,644.03		(1,300,000.00)	*Principal and interest*
8/31/2019	68,157.30		68,157.31	23,034,644.03		23,034,644.03			
9/30/2019	113,595.50		181,752.81	23,034,644.03		23,034,644.03			
10/15/2019	56,797.75		238,550.56	23,034,644.03		23,034,644.03			
10/31/2019	60,584.27		299,134.83	23,034,644.03		23,034,644.03			
11/30/2019	113,595.50		412,730.34	23,034,644.03		23,034,644.03			
12/30/2019	113,595.50	(530,112.36)	(3,786.52)	23,034,644.03		23,034,644.03			
12/31/2019	3,786.52		0.00	23,034,644.03		23,034,644.03			
1/31/2020	117,382.02		117,382.02	23,034,644.03		23,034,644.03			
2/29/2020	109,808.99		227,191.01	23,034,644.03		23,034,644.03			
3/31/2020	117,382.02		344,573.03	23,034,644.03		23,034,644.03			
4/30/2020	113,595.50		458,168.54	23,034,644.03		23,034,644.03			
5/31/2020	117,382.02	(575,550.56)	(0.00)	23,034,644.03	575,550.56	23,610,194.59		-	**Annual Compound Interest*
6/30/2020	116,433.84		116,433.83	23,610,194.59		23,610,194.59			
7/31/2020	120,314.96		236,748.80	23,610,194.59		23,610,194.59			
8/31/2020	120,314.96		357,063.76	23,610,194.59		23,610,194.59			
9/30/2020	116,433.84		473,497.60	23,610,194.59		23,610,194.59			
10/31/2020	120,314.96		593,812.56	23,610,194.59		23,610,194.59			
11/30/2020	116,433.84		710,246.40	23,610,194.59		23,610,194.59			
12/31/2020	120,314.96		830,561.36	23,610,194.59		23,610,194.59			
1/14/2021	54,335.79	(830,561.36)	54,335.79	23,610,194.59	(575,550.56)	23,034,644.03		(1,406,111.92)	*Principal and interest*

NPA Term

Closing Date	5/31/2017
Total Commitment	$ 30,746,812
Rate	6.000%
Maturity:	12/31/2047

Date	Interest Accrual	Interest Paid	Accrued Interest	Beg Prin Bal	Principal Paid	Ending Prin Bal	Total of Outstanding Principal and Interest (selected dates)	Total Paid	
1/31/2021	64,370.79		118,706.58	23,034,644.03		23,034,644.03			
2/28/2021	106,022.47		224,729.05	23,034,644.03		23,034,644.03			
3/31/2021	117,382.02		342,111.07	23,034,644.03		23,034,644.03			
4/30/2021	113,595.50		455,706.58	23,034,644.03		23,034,644.03			
5/31/2021	117,382.02	(573,088.60)	-	23,034,644.03	573,088.60	23,607,732.63		-	**Annual Compound Interest*
6/30/2021	116,421.70		116,421.70	23,607,732.63		23,607,732.63			
7/31/2021	120,302.42		236,724.11	23,607,732.63		23,607,732.63			
8/31/2021	120,302.42		357,026.53	23,607,732.63		23,607,732.63			
9/30/2021	116,421.70		473,448.23	23,607,732.63		23,607,732.63			
10/31/2021	120,302.42		593,750.65	23,607,732.63		23,607,732.63			
12/17/2021	182,393.99		776,144.63	23,607,732.63		23,607,732.63	**24,383,877.27**		
12/31/2021	54,330.12	(830,474.76)	-	23,607,732.63	(1,040,339.37)	22,567,393.26		(1,870,814.13)	*Principal and interest*
1/31/2022	115,000.96		115,000.96	22,567,393.26		22,567,393.26			
2/28/2022	103,871.84		218,872.80	22,567,393.26		22,567,393.26			
3/31/2022	115,000.96		333,873.76	22,567,393.26		22,567,393.26			
4/30/2022	111,291.25		445,165.02	22,567,393.26		22,567,393.26			
5/31/2022	115,000.96	(560,165.98)	-	22,567,393.26	560,165.98	23,127,559.24		-	**Annual Compound Interest*
6/30/2022	114,053.72		114,053.72	23,127,559.24		23,127,559.24			
7/31/2022	117,855.51		231,909.22	23,127,559.24		23,127,559.24			
8/8/2022	30,414.32		262,323.55	23,127,559.24		23,127,559.24	**23,389,882.79**		
9/30/2022	201,494.90		463,818.45	23,127,559.24		23,127,559.24			
10/31/2022	117,855.51		581,673.96	23,127,559.24		23,127,559.24			
11/30/2022	114,053.72		695,727.67	23,127,559.24		23,127,559.24			
12/31/2022	117,855.51		813,583.18	23,127,559.24		23,127,559.24			
1/31/2023	117,855.51		931,438.69	23,127,559.24		23,127,559.24			
2/28/2023	106,450.14		1,037,888.82	23,127,559.24		23,127,559.24			
3/31/2023	117,855.51		1,155,744.33	23,127,559.24		23,127,559.24			
4/30/2023	114,053.72		1,269,798.05	23,127,559.24		23,127,559.24			
5/31/2023	117,855.51	(1,387,653.55)	-	23,127,559.24	1,387,653.55	24,515,212.80		-	**Annual Compound Interest*

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

In re:	§	**Case No. 19-34054**
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.	§	**Chapter 11**
	§	
Debtor.	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	
Plaintiff,	§	**Adv. Proc. No. 21-03003-sgj**
	§	
vs.	§	
	§	
JAMES DONDERO, NANCY DONDERO,	§	
AND THE DUGABOY INVESTMENT TRUST,	§	
	§	
Defendants.	§	

HIGHLAND CAPITAL MANAGEMENT, L.P., **Plaintiff,** **vs.** **HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, L.P.,** **Defendant.**	§ § § § § § § § § §	**Adv. Proc. No. 21-03004-sgj**
HIGHLAND CAPITAL MANAGEMENT, L.P., **Plaintiff,** **vs.** **NEXPOINT ADVISORS, L.P., JAMES DONDERO, NANCY DONDERO, AND THE DUGABOY INVESTMENT TRUST,** **Defendants.**	§ § § § § § § § § §	**Adv. Proc. No. 21-03005-sgj**
HIGHLAND CAPITAL MANAGEMENT, L.P., **Plaintiff,** **vs.** **HIGHLAND CAPITAL MANAGEMENT SERVICES, INC., JAMES DONDERO, NANCY DONDERO, AND THE DUGABOY INVESTMENT TRUST,** **Defendants.**	§ § § § § § § § § §	**Adv. Proc. No. 21-03006-sgj**
HIGHLAND CAPITAL MANAGEMENT, L.P., **Plaintiff,** **vs.** **HCRE PARTNERS, LLC (n/k/a NexPoint Real Estate Partners, LLC), JAMES DONDERO, NANCY DONDERO, AND THE DUGABOY INVESTMENT TRUST,** **Defendants.**	§ § § § § § § § § § §	**Adv. Proc. No. 21-03007-sgj**

DEFENDANTS' OBJECTIONS TO PLAINTIFF'S PROPOSED FORM OF JUDGMENT AWARDING ATTORNEY'S FEES AND COSTS

Plaintiff Highland Capital Management, L.P. ("Plaintiff") is requesting an excessive award of attorneys' fees and costs. Plaintiff has requested an award of $2,797,105.35. Of that amount, almost all of it is for attorneys' fees billed by Plaintiff's attorneys of the law firm of Pachulski, Stang, Ziehl & Jones LLP ($2,663,585.30), specifically, 95% of the total attorneys' fees and costs.

Defendants James Dondero ("Dondero"), Highland Capital Management Fund Advisors, L.P. ("HCMFA"), NexPoint Advisors, L.P. ("NexPoint"), Highland Capital Management Services, Inc. ("HCMS"), and HCRE Partners, LLC ("HCRE") (collectively, the "Defendants") object to Plaintiff's proposed award of attorneys' fees and costs. The Court should reject the proposed award because it contains a material math error of almost $400,000, fails to allocate the work to the specific cases and Defendants from whom fees are sought, and seeks fees for unnecessary work and/or for matters in which Plaintiff did not prevail or for which recovery of attorneys' fees is not permitted. Defendants request that the Court reduce any award of attorneys' fees and costs as requested herein to account for the math error, to reduce the fees to local rates, eliminate fees for unnecessary/unsuccessful/non-contract-claim-related work, and to eliminate time not properly allocated (or remand for such allocation to be done).

I. STATEMENT OF FACTS

Each of the thirteen Demand Notes and three Term Notes under which the Court has recommended an award of attorneys' fees to Plaintiff permit the holder of the note to collect from the Maker only "actual expenses of collection, all court costs and ***reasonable*** attorneys' fees and expenses incurred by the holder hereof[,]" as stated in its Report and Recommendation (the "R&R"). R&R at 13, 16 (emphasis added). The R&R proposes awarding judgment to Plaintiff on all the Demand Notes and Term Notes, including "reasonable attorneys' fees" and costs.

Plaintiff's Proposed Form of Judgment proposes that each of the five Defendants—Dondero, HCMFA, HCMS, HCRE, and NexPoint—pay "one-fifth of the total allocable and actual expenses of collection, including attorneys' fees and costs, incurred by [Plaintiff]" "pursuant to the terms of each

applicable Note."[1] However, there were different arguments for different Defendants and for different Notes, there were depositions that related to all defendants and depositions that related to only some cases and some Defendants. There were arguments and proceedings that related only to the term loans and there were arguments that related to HCMFA only. There are issues that are addressed in the Court's Report and Recommendation and issues that are not, such as the claims attempted to be added by amendment and subject to the motion to compel arbitration and/or to dismiss, that Plaintiff indicated would be dismissed if it prevailed on the Note claims. Moreover, Plaintiff's proposed fee award seeks fees for work related to the claims sought to be added by Plaintiff's amendment even though these claims (unlike contract claims) are subject to the American Rule (prohibiting fee-shifting).

Finally, and as described in greater detail below, Plaintiff has incorrectly totaled the fees for which it seeks recovery, adding almost $400,000 to the total.

II. ARGUMENTS AND OBJECTIONS

A. Applicable Law

1. Whether Segregation of an Award of Fees By Each Defendant is Required is a Question of Law.

"State law controls both the award of and the reasonableness of fees awarded where state law supplies the rule of decision." *Mathis v. Exxon Corp.*, 302 F.3d 448, 461 – 62 (5th Cir. 2002) (citation omitted). Here, the rule of decision on the Notes comes under Texas state law. Under Texas state law, "[t]he trial court's decision as to whether segregation is required is a question of law [the reviewing court] review[s] de novo." *Clearview Properties, L.P. v. Property Texas SC One Corp.*, 287 S.W.3d 132, 143 (Tex. App. 2009).

[1] Adv. Proc. No. 21-3003, Proposed Form of Judgment, ¶ 4; Adv. Proc. No. 21-3004, Proposed Form of Judgment, ¶ 3; Adv. Proc. No. 21-3005, Proposed Form of Judgment, ¶ 2; Adv. Proc. No. 21-3006, Proposed Form of Judgment, ¶ 6; Adv. Proc. No. 21-3007, Proposed Form of Judgment, ¶ 6.

2. Federal Courts Consider a Number of Factors in Determining the Reasonableness of an Award of Attorneys' Fees.

Federal courts and Texas courts generally determine reasonableness of an award of attorneys' fees based on the two-step lodestar method:

> Courts must apply a two-step method for determining a reasonable fee award. First, they calculate the lodestar, which is equal to the **numbers of hours reasonably expended multiplied by the prevailing hourly rate in the community for similar work**. **In calculating the lodestar, the court should exclude all time that is excessive, duplicative, or inadequately documented.** Second, the court should consider whether to decrease or enhance the lodestar based on the *Johnson* factors. The court must provide a reasonably specific explanation for all aspects of a fee determination.
>
> The *Johnson* factors are: (1) **the time and labor required**; (2) **the novelty and difficulty of the issues in the case**; (3) the skill requisite to perform the legal services properly; (4) the preclusion of other employment by the attorney due to acceptance of the case; (5) **the customary fee charged for those services in the relevant community**; (6) whether the fee is fixed or contingent; (7) time limitations imposed by the client or the circumstances; (8) **the amount involved and the results obtained**; (9) the experience, reputation, and ability of the attorneys; (10) the undesirability of the case; (11) the nature and length of the professional relationship with the client; and (12) awards in similar cases.

Combs v. City of Huntington, Texas, 829 F.3d 388, 391 n.1 (5th Cir. 2016) (citations and internal marks omitted) (emphasis added); *see also In re Texans CUSO Inc. Grp., LLC*, 426 B.R. 194, 222–23 (Bankr. N.D. Tex. 2010) (citing *Arthur Andersen & Co. v. Perry Equipment Corp.*, 945 S.W.2d 812, 818 (Tex. 1997)).

". . . [T]he trial court's award must be based on supporting evidence." *McGibney v. Rauhauser*, 549 S.W.3d 816, 821 (Tex. App. 2018). ". . . [A] trial judge is obliged to do more than simply act as a rubber-stamp, accepting carte blanche the amount appearing on the bill." *Id.* "The District Court has the duty to cut fees which the applicant has not shown to be reasonable." *United States v. Wagner*, 930 F. Supp. 1148, 1154 (N.D. Tex. 1996) (citation omitted).

B. Arguments

1. The Court Should Reduce the Proposed Award by the Amount of the Math Error in the Calculation of Fees Charged by PSZJ.

The amount of fees claimed by Pachulski, Stang, Ziehl & Jones LLP ($2,663,585.30) is $395,996.50 in excess of the total of the non-redacted time entries in the PSZJ Notice. Defendants added

up the non-redacted entries in the PSZJ Notice. There is a difference of $395,996.50 between the sum claimed by Plaintiff for PSZJ attorneys' fees and the total of the non-redacted entries for PSZJ.

Using the PSZJ Notice, Defendants added each non-redacted entry listed from bate-stamp page number 12 to 236 and 264 to 294 and each aggregate entry on page numbers 245, 263, 305, 314, 319, 321, and 332. The sum of those entries from page 12 to 332 was $2,267,588.80. The amount claimed on bate stamp page number 356 of the PSZJ Notice for PSZJ attorneys' fees is $2,663,585.30. The difference between the two amounts is $395,996.50. The Court must exclude $395,996.50 from the proposed award.[2]

2. Overly Redacted Time Records are not Sufficient Evidence to Support a Fee Award.

"Redacted entries must be excluded if they do not provide sufficient information to classify and evaluate the activities and hours expended." *Randolph v. Dimension Films*, 634 F. Supp. 2d 779, 800 (S.D. Tex. 2009). Where a description is "so heavily redacted as to be meaningless," a court must not award fees related to such an entry. *McGibney v. Rauhauser*, 549 S.W.3d 816, 822 (Tex. App. 2018). Here, nearly all of the PSZJ Notice entries documented on pages 1 to 231 of the PSZJ Notice are entirely redacted—date, timekeeper, matter, description, hours, rate, amount—all completely redacted. Many of the PSZJ Notice entries from pages 232 to 332 also are entirely redacted or a particular element is entirely redacted, such as the description of the work performed or accounting for the number of hours worked. The entries are redacted "so heavily as to be meaningless." *McGibney v. Rauhauser*, 549 S.W.3d 816, 822 (Tex. App. 2018).

3. Recoverable Fees are Limited to Breach of Contract and Turnover, Which are the Only Claims Plaintiff Prevailed on and are the Only Claims For Which Plaintiff Sought Attorneys' Fees.

In its Amended Complaint, Plaintiff asserted claims for breach of contract, turnover of property, fraudulent transfer (under 11 U.S.C. sec. 548), fraudulent transfer (under 11 U.S.C. secs. 544(b) and 550), declaratory relief, breach of fiduciary duty, and aiding and abetting breach of fiduciary duty. In its written

[2] There may be a small portion of that amount attributable to partially redacted entries for which the total was redacted, making it unduly difficult to decipher.

request for fees, Plaintiff correctly only sought to recover attorneys' fees for its breach of contract and turnover claims in its Amended Complaint and those are the only claims addressed by the R&R issued by the Court. In other words, Plaintiff was only the prevailing party on its claims for breach of contract and turnover of property and, thus, it is not entitled to recover any attorneys' fees for work done on its other claims. *Tony Gullo Motors I, L.P. v. Chapa*, 212 S.W.3d 299, 311 (Tex. 2006) ("Absent a contract or statute, trial courts do not have inherent authority to require a losing party to pay the prevailing party's fees.").

Because not all fees are recoverable, fee claimants have always been required to segregate fees between claims for which they are recoverable and claims for which they are not. *G.R.A.V.I.T.Y. Enterprises, Inc. v. Reece Supply Co.*, 177 S.W.3d 537, 547 (Tex. App. 2005) ("As the supreme court has made clear, section 38.001 requires recovery of damages for a claimant to be eligible to recover attorneys' fees."). Moreover, attorneys' fees are not recoverable for the claims asserted by Plaintiff other than breach of contract and turnover. *In re Jenkins,* 617 B.R. 91, 113 (Bankr. N.D. Tex. 2020) ("With this bedrock principle in mind, neither section 548 nor section 550 of the Bankruptcy Code provides for the recovery of attorneys' fees and expenses in a fraudulent transfer case."); *Massachusetts Mut. Life Ins. Co. v. Sanders*, 787 F.Supp.2d 628, 641 (S.D. Tex. 2011) (denying motion for award of attorneys' fees because the federal Declaratory Judgment Act does not provide statutory authority to award attorneys' fees); *Life Ins. Co. Robbins v. Robbins*, 550 S.W.3d 846, 855 (Tex. App. 2018) ("Attorney's fees are not available for a breach-of-fiduciary duty claim.").

Whether by mistake or otherwise, despite nominally only requesting fees for its contract claims, Plaintiff's fee request includes time for at least $222,000 in fees devoted to amending the complaint to add these claims for which fees cannot be recovered and then addressing the motions to dismiss those claim or compel arbitration. There are doubtless additional amounts that are hard to discern because included in general descriptions, but the readily identifiable time entries for this work for which fees may not be recovered are:

Plaintiff spent at least $35,753.50 amending its complaint, to add claims that are unrelated to the recover on the Notes and for which Plaintiff cannot recover fees.

07/04/2021	JE	BL	Prepare memo on implications of amending Note Suit Complaints to add fraudulent transfer cause of action.	10.00	1195.00	$11,950.00
07/06/2021	JAM	BL	E-mail to M. Aigen, other defense counsel on notes litigation, concerning proposed Amended Complaint and scheduling matters (0.3); review written responses and document production from HCRE in notes litigation (0.3).	0.60	1245.00	$747.00
07/07/2021	JAM	BL	E-mails w/ D. Rukavina re: proposed amended complaint (0.2).	0.20	1245.00	$249.00
07/11/2021	JAM	BL	Work on Amended Complaints in notes litigation (2.2); e-mails w/ D. Rukavina re: NexPoint amended answer (0.1).	2.30	1245.00	$2,863.50
07/13/2021	JAM	BL	E-mail to D. Rukavina re: NexPoint amended answer (0.2); e-mails w/ D. Klos, J. Seery re: HCMFA amended answer (0.2); review revise draft Amended Complaint for Dondero (0.4); review/revise draft Amended Complaint for HCMFA (0.9); review/revise draft Amended Complaint for NexPoint (0.9); review/revise draft Amended Complaint for HCRE (0.9); review/revise draft Amended Complaint for HCM Services, Inc. (0.9); draft e-mail to M. Aigen and other defense counsel re: schedule and related matters (0.6); e-mail to J. Seery re: amended complaints and HCMFA (0.2); tel c. w/ J. Seery re: HCMFA proposed amended complaint (0.2); e-mail to M. Aigen and other defense counsel, J. Pomerantz, G Demo re: Amended Complaints (0.1).	5.50	1245.00	$6,847.50
08/09/2021	HRW	BL	Call with J. Morris re: amended complaints re: notes	0.20	695.00	$139.00
08/11/2021	HRW	NL	Draft motion to file amended complaints for notes litigations (2.8)	2.80	695.00	$1,946.00
08/12/2021	HRW	NL	Draft motion to file amended complaints for notes litigations (3.0)	3.00	695.00	$2,085.00
08/13/2021	JAM	NL	Review motion to amend complaint and proposed orders (0.9); e-mails w/ G. Demo, H. Winograd re: motion to amend complaint and proposed orders (0.2); e-mails w/ M. Aigen, others, re: scheduling order and motion to amend complaints (0.4).	1.50	1245.00	$1,867.50
08/13/2021	HRW	NL	Edit and finalize motions to file amended complaints in notes litigations (1.2).	1.20	695.00	$834.00

08/17/2021	JAM	NL	Review/revise motions for leave to amend complaints in Notes Litigation (1.1); e-mail to L. Canty, Z. Annable, H. Winograd re: motions for leave to amend complaints in Notes Litigation and related matters (0.2); e-mails w/ Z. Annable, H. Winograd re: motions to amend complaints in Notes Litigation (0.1).	1.40	1245.00	$1,743.00
08/17/2021	LSC	NL	Prepare and transmit exhibits to motions to amend.	0.50	460.00	$230.00
08/18/2021	JAM	NL	Communications w/ M. Aigen, Z. Annable re: form of Order for motions for leave to amend complaints (0.2); tel c. w/ D. Rukavina re: Advisors' motion for protective order (0.2).	0.40	1245.00	$498.00
08/18/2021	LSC	NL	Transmit proposed orders on motions to amend.	0.20	460.00	$92.00
08/26/2021	JAM	NL	E-mails w/ H. Winograd, Z. Annable re: filing of Amended Complaints (0.2); e-mails w/ H. Winograd, D. Rukavina re: scheduling order for HCMFA notes litigation (not subject to amended complaint) (0.2).	0.40	1245.00	$498.00
08/26/2021	LSC	NL	Prepare exhibits to amended complaints (.7); prepare exhibits to orders approving discovery stipulations (.3).	1.00	460.00	$460.00
08/26/2021	HRW	NL	Prepare and review amended complaints and exhibits for notes litigations filings (1.5); Communicate with opposing counsel for Advisors re: discovery stipulations (0.1); Review discovery stipulations for notes litigations (0.1).	1.70	695.00	$1,181.50
08/27/2021	JAM	NL	E-mails w/ D. Rukavina, M. Aigen re: timing of answers and discovery demands (0.1); e-mails w/ Z. Annable re: filing of amended answers and orders approving scheduling stipulations (0.2).	0.30	1245.00	$373.50
08/27/2021	HRW	NL	Review adversary cover sheets for notes litigations (0.2); Review and prepare discovery stipulations and proposed orders for notes litigations (1.0).	1.20	695.00	$834.00
08/29/2021	JMF	NL	Review amended complaints re notes litigation.	0.30	1050.00	$315.00

Plaintiff spent $84,139.00 drafting a response to a motion to dismiss the claims for which attorneys' fees are not recoverable:

09/13/2021	HRW	NL	Review motion to dismiss in notes litigations (2.0).	2.00	695.00	$1,390.00
09/14/2021	HRW	NL	Review motion to dismiss complaint in notes litigation (2.0).	2.00	695.00	$1,390.00
09/15/2021	HRW	NL	Research re: motion to dismiss complaint in notes litigation (3.5).	3.50	695.00	$2,432.50
09/17/2021	HRW	NL	Review and research re: motion to dismiss in notes litigations (3.5).	3.50	695.00	$2,432.50

09/18/2021	HRW	NL	Draft and research re: motion to dismiss in notes litigations (5.5).	5.50	695.00	$3,822.50
09/19/2021	HRW	NL	Draft and research re: motion to dismiss in notes litigations (8.5).	8.50	695.00	$5,907.50
09/20/2021	HRW	NL	Draft opposition to motion to dismiss in notes litigations (13.0).	13.00	695.00	$9,035.00
09/21/2021	HRW	NL	Draft opposition to motion to dismiss in notes litigations (9.0).	9.00	695.00	$6,255.00
09/22/2021	HRW	NL	Draft opposition to motion to dismiss in notes litigations (11.0).	11.00	695.00	$7,645.00
09/23/2021	JAM	NL	Tel c. w/ L. Canty re: document review (0.1); tel c. w/ J. Seery re: strategy for responding to motions (0.2); tel c. w/ J. Pomerantz re: strategy for responding to motions (0.1); review documents (3.1).	3.50	1245.00	$4,357.50
09/23/2021	HRW	NL	Draft opposition to motion to dismiss in notes litigations (12.0).	12.00	695.00	$8,340.00
09/24/2021	HRW	NL	Draft opposition to motion to dismiss in notes litigations (9.0).	9.00	695.00	$6,255.00
09/26/2021	HRW	NL	Draft opposition to motion to dismiss in notes litigations (7.0).	7.00	695.00	$4,865.00
09/27/2021	JAM	NL	Review/revise opposition to motion to dismiss (2.5); review/revise written responses to discovery (2.4); e-mails w/ J. Seery, J. Pomerantz, G. Demo, H. Winograd re: written responses to discovery (0.2); tel c. w. J. Seery re: written responses to discovery (0.2); tel c. w/ J. Pomerantz re: oppositions to MTD and arbitration (0.2); tel c. w/ J. Pomerantz, J. Koop re: opposition to motion to compel arbitration (0.4); further revisions to written responses to discovery (0.2); communications w/ J. Seery re: responses to written discovery (0.1).	6.20	1245.00	$7,719.00
09/27/2021	GVD	NL	Review response to motion to dismiss litigation	0.60	950.00	$570.00
09/27/2021	HRW	NL	Draft opposition to motion to dismiss in notes litigations (7.5).	7.50	695.00	$5,212.50
09/28/2021	GVD	NL	Review motion to dismiss response	1.00	950.00	$950.00
09/28/2021	HRW	NL	Draft and file opposition to motion to dismiss in notes litigations (8.0).	8.00	695.00	$5,560.00

Plaintiff spent $67,283.50 drafting a response to the motion to compel arbitration:

09/13/2021	JAK	NL	Begin review of motion to compel arbitration (0.8); strategy and planning discussion with John Morris, Jeff Pomerantz, and Hayley Winograd (0.8); follow-up discussion with Jeff Pomerantz regarding arbitration motion (0.2); additional review and analysis of arbitration motion (1.1);	2.90	1100.00	$3,190.00
09/17/2021	JAK	NL	Review previous pleadings and begin outlining opposition to demand for arbitration;	1.40	1100.00	$1,540.00
09/19/2021	JAM	NL	Review of documents and docket and e-mails to J. Kropp, J. Pomerantz, G. Demo, H. Winograd re: facts and arguments concerning opposition to motion to compel arbitration (3.0); further communications w/ J. Kroop re: arbitration motion (0.1).	3.10	1245.00	$3,859.50
09/19/2021	JAK	NL	Email correspondence with John Morris regarding various arguments pertaining to waiver and estoppel for arbitration motion objection; review and analyze transcripts from previous hearing; begin research regarding various arguments for arbitration objection;	3.30	1100.00	$3,630.00
09/20/2021	JAK	NL	Drafting of portions of objection to arbitration motion; research legal issues for use in same; emails with John Morris regarding additional arguments and support for same; review and analyze provisions of limited partnership agreement for use in arguments in opposition of arbitration agreement; memo outlining legal issues to be researched and supporting direction;	4.40	1100.00	$4,840.00
09/22/2021	JJK	NL	Research for opp. to motion re: arbitration.	4.80	995.00	$4,776.00
09/22/2021	JJK	NL	Research for opp. to arbitration motion and emails Kroop on same.	1.40	995.00	$1,393.00
09/22/2021	JAK	NL	Extensive drafting of opposition to arbitration motion; legal research regarding issues and arguments for same; emails with internal research group regarding issues for researching and related matters;	6.90	1100.00	$7,590.00
09/23/2021	JJK	NL	Research for opp. to arbitration motion; conf. call Kroop and Keane on same (0.6).	5.80	995.00	$5,771.00
09/23/2021	JJK	NL	Research for opp. to arbitration motion.	3.10	995.00	$3,084.50
09/23/2021	JAK	NL	Review and analyze initial research results on issues pertaining to arbitration opposition from Jonathan Kim and Peter Keane; extensive drafting of arbitration opposition; additional case research and analysis regarding arguments for same; confer with Jonathan Kim and Peter Keane regarding same;	4.90	1100.00	$5,390.00

09/27/2021	JAK	NL	Strategy discussion with John Morris and Jeff Pomerantz regarding opposition to arbitration motion and related matters; extensive additional drafting, research, and review of issues and portions of arbitration motion opposition; work with Greg Demo regarding confirmation-related citations and background for use in opposition; additional drafting and revisions to arbitration opposition;	3.10	1100.00	$3,410.00
09/28/2021	JAM	NL	Review/revise draft opposition to motion to compel arbitration (4.8); e-mails w/ J. Seery, J. Pomerantz, J. Koop, G. Demo, H. Winograd re: opposition to motion to compel arbitration (0.4); tel c. w/ J. Seery re: opposition to motion to compel arbitration (0.1);	9.10	1245.00	$11,329.50
09/28/2021	JAK	NL	Extensive revisions, review, and editing of opposition to arbitration motion; edits and review of declaration in support of same; confer over telephone and emails with John Morris and Jeff Pomerantz regarding same; final edits and preparation of opposition for filing and service; supervise filing and service of same, with drafting of cover response per local rules;	6.80	1100.00	$7,480.00

Plaintiff spent at least $15,654.50 on one day of work on the reply brief for its motion to amend the complaint:[3]

05/20/2021	JE	BL	Work on reply brief (11.0); review motion to amend complaint (.4); call with Mr. Morris regarding briefing (.3); research judgment issues (1.4).	13.10	1195.00	$15,654.50

Plaintiff spent $19,336.50 for five attorneys to conduct the half-day hearing on a motion to dismiss and motion to compel arbitration:

11/09/2021	JNP	NL	Prepare for hearings.	1.00	1295.00	$1,295.00
11/09/2021	JNP	NL	Participate in hearings on motion to compel arbitration and motion to dismiss.	3.50	1295.00	$4,532.50
11/09/2021	LSC	NL	Prepare for and assist at hearing on motions to stay and motions to dismiss.	3.50	460.00	$1,610.00
11/09/2021	GVD	NL	Attend hearing on notes litigation	3.70	950.00	$3,515.00
11/09/2021	HRW	NL	Hearing on motions to dismiss and compel arbitration (3.2).	3.20	695.00	$2,224.00

[3] Alternatively, Defendants object to any recovery related to this work because it does not appear to be related to this litigation. This entry refers to 11 hours of work with the description, "Work on reply brief." However, there does not appear to be any reply brief filed by Plaintiff any time near this time period. Therefore, these funds should be deducted because they were either unnecessary because they relate to a reply for a motion to amend that was never filed or because they are completely unrelated to this litigation and were erroneously included in the fee statements.

11/09/2021	JAK	NL	Preparation and additional research in preparation for arbitration and dismissal hearings (1.9); attend and conduct hearings on arbitration and dismissal motions (3.5); follow-up call with team regarding hearing results (0.2).	5.60	1100.00	$6,160.00

4. The Court Should Exclude All Entries That are Not Segregated By Defendant.

"When a plaintiff seeks to charge a defendant with its attorneys' fees, the plaintiff must prove that the fees were incurred while suing the defendant sought to be charged with the fees on a claim which allows recovery of such fees." *In re Mud King Products, Inc.*, 525 B.R. 43, 55 (Bankr. S.D. Tex. 2015) (internal marks omitted) (quoting *Stewart Title Guar. Co. v. Sterling*, 822 S.W.2d 1 (Tex. 1991)). "In cases with multiple defendants, to recover its attorneys' fees, the plaintiff must segregate the fees owed by each defendant so that defendants are not charged fees for which they are not responsible." *Id.* In *Mud King Products*, the court excluded from the award time spent in prosecution of claims against other defendants. *Id.*, at 56; *see also Jackson Law Office, P.C. v. Chappell*, 37 S.W.3d 15, 23 (Tex. App. 2000) ("When a lawsuit involves multiple claims or multiple parties, the proponent has a duty to segregate non-recoverable fees from recoverable fees, *and to segregate the fees owed by different parties*.") (emphasis added).

Here, there are multiple Defendants: Dondero, HCMFA, HCMS, HCRE, and NexPoint. Therefore, to recover its attorneys' fees, Plaintiff must segregate the fees owed by each Defendant so that Defendants are not charged fees for which they are not responsible. *See Mud King Products*, 525 B.R. at 55. Because Plaintiff has failed to segregate fees owed by each Defendant, the Court, as in *Mud King Products*, should exclude from the award against each Defendant all time spent in prosecution of claims against other Defendants. *See id.*, at 56.

Plaintiff incorrectly alleges that the "there was no reasonable way to allocate the Fees and Expenses separately between each Note Litigation" because "there was substantial overlap in the legal and factual issues in the five adversary proceedings."[4] Under Texas law, "[t]he party seeking to recover

[4] *See e.g.,* Adv. Proc. No. 21-3003, Dkt. 197, Ex. 1, ¶ 16.

attorney's fees bears the burden of demonstrating segregation is not required." *Clearview Properties, L.P. v. Property Texas SC One Corp.*, 287 S.W.3d 132, 144 (Tex. App. 2009). Here, Plaintiff has not carried its burden.

The court in *Clearview Properties* clarified that the burden is not met by simply claiming, as Plaintiff essentially does here, that all the claims "arise from the same factual base." *Clearview Properties*, 287 S.W.3d, at 144. "[J]ust because the claims overlap among the [] defendants does not mean that their legal defenses were identical." *Id.* As a result, the *Clearview Properties* court required segregation and remanded for proper proof of attorneys' fees. *Id.*, at 144–45.

Several federal circuit courts of appeal have held that segregation of fees among multiple defendants is appropriate under the circumstances. *Torres-Rivera v. O'Neill-Cancel*, 524 F.3d 331, 337 (1st Cir. 2008); *El-Haken v. BJY Inc.,* 415 F.3d 1068, 1075–75 (9th Cir. 2005); *Koster v. Perales*, 903 F.2d 131, 139 (2d. Cir. 1990); *see also Roggio v. Grasmuck*, 18 F.Supp.3d 49, 60 (D. Mass. 2014); *see also Fischer as Trustee v. Fischer as Co-Trustee*, 332 So.3d 516, 519 – 20 (Fla. App. 4th 2021) (holding that, where claims were filed separately and later consolidated, apportionment was required). Among the types of apportionment that may be used, "time expended" per defendant is appropriate when time dedicated to one defendant is clearly disproportionate to another defendant. *Torres-Rivera*, 524 F.3d, at 337.

In this case, there clearly has been time expended for some Defendants that is clearly disproportionate to other Defendants. For example, Dondero and other defendants (e.g., Nancy Dondero and Dugaboy) that were not party to the Notes on which the proposed judgment is based and are not part of the proposed judgment in the R&R filed a motion to dismiss and motion to compel arbitration of certain breach of fiduciary duty claims (separate claims from the Notes).[5] In response to the motion to dismiss and motion to compel, as shown above, Plaintiff spent **$84,139.00** drafting a response; an additional **$67,283.50** drafting a response to Defendants' motion to compel arbitration; at least

[5] *See e.g.,* Adv. Proc. No. 21-3005, Dkt. 68, Dkt. 69.

$15,654.50 for one day's work on a reply brief for its motion to amend the complaint; and finally **$19,336.50** for five attorneys to conduct the half-day hearing on Defendants' motion to dismiss and motion to compel arbitration. And it also racked up at least **$35,753.50** on amending its complaint in the first place, something that did not involve HCMFA, HCMS, HCRE, and NexPoint at all.

Therefore, it clearly would be inequitable to hold HCMFA, HCMS, HCRE, and NexPoint responsible for such fees because they had nothing to do with the litigation. But more importantly, as noted above, because the motion to dismiss and motion to compel arbitration are not part of the Report and Recommendation at all, and concerned claims ***for which attorneys' fees were not even sought and even if successful, attorneys' fees and costs could not be recovered***, these fees cannot be awarded against any Defendant.[6]

Defendants calculate at least **$222,000** spent on the claims for which they are not entitled to seek fees, not including all the time included in billing entries largely related to other matters for which it is not easy to segregate out the non-recoverable time. "The [proposed] fee award, therefore, cannot stand." *Torres-Rivera v. O'Neill-Cancel*, 524 F.3d 331, 339 (1st Cir. 2008). Where "time records of the attorneys do not generally segregate the time spent," because "plaintiff bears the burden of proving that the time entries are reasonable," "if a time entry includes both recoverable costs and non-recoverable costs, and there is no clear way to segregate them, the court may simply exclude the entire entry." *Roggio v. Grasmuck*, 18 F.Supp.3d 49, 60 (D. Mass. 2014) (citing *Torres-Rivera v. O'Neill-Cancel*, 524 F.3d 331, 336 (1st Cir. 2008)).

Here, by Defendants' estimate, after a review of the PSZJ Notice and Hayward Notice, Plaintiff has identified a particular Defendant or particular Defendants in about 300 entries of the total of 1,482 time entries submitted as part of the proposed fee award. The fact that Plaintiff sometimes identifies the Defendant or issue clearly enough to determine what party should be charged, means that segregation was not impossible. The Court should exclude the fees for all entries that do not identify a Defendant and the

[6] See Section 0.

case, as well as all entries where it is impossible to tell whether impermissible items are included, such as where time for dealing with the non-contract claims is mixed in with time dealing with the contract claims.

In the alternative, the Court should reduce the award for the clearly impermissible time and require Plaintiff to submit additional evidence that segregates the remaining fees per Defendant. "Where fees are authorized, fee claimants have always been required to segregate fees between claims for which they are recoverable and claims for which they are not." *Transverse, L.L.C. v. Iowa Wireless Services, L.L.C.*, 992 F.3d 336, 344 (5th Cir. 2021) (internal marks omitted); *see also Wal-Mart Stores, Inc. v. Qore, Inc.*, 647 F.3d 237, 244, 246–48 (5th Cir. 2011) (holding the "multiple claims against multiple parties" "could have been easily segregated"). In *Transverse*, even though various claims had a "common set of underlying facts" and "rest[] on the same evidence and seek[] the same damages," the claims based on different contracts required segregation of fees. *Transverse, L.L.C.*, 992 F.3d, at 344–45. The court required a determination on remand on the basis of evidence in the form of affidavits and exhibits that would afford the Court "adequate bases for making a fee award" and also noted that it was an appropriate remedy for awarded fees simply be cut its fees in half. *Id.*, at 346.

5. The Court Should Reduce the Proposed Award by the Amount of all Fees Charged to Plaintiff that are Related to Unsuccessful Litigation by Plaintiff.

"A plaintiff should not recover attorneys' fees for work on claims as to which he or she did not prevail." *Roggio v. Grasmuck*, 18 F. Supp. 3d 49, 56 (D. Mass. 2014) (citing *See Torres–Rivera,* 524 F.3d, at 336); *see also Wal-Mart Stores, Inc. v. Qore, Inc.*, 647 F.3d 237, 246–48 (5th Cir. 2011) (vacating the district court's fee award because Wal-Mart failed to present competent evidence by which to allocate its legal fees among successful and unsuccessful claims). "When a plaintiff prevails on some, but not all, of multiple claims . . . the court must filter out the time spent on unsuccessful claims and award the prevailing party fees related solely to time spent litigating the winning claim(s)." *Roggio*, 18 F. Supp. 3d, at 56 (internal marks omitted) (citing *Gay Officers Action League v. Puerto Rico,* 247 F.3d 288, 298 (1st Cir.2001)). For example, time spent on discovery regarding damages that were not recovered

should be excluded. *Id.* at 57. Further, where the court 'cannot determine the extent of the overlap, because plaintiff did not explain what motions [] they were working on with specificity," entries including time for unsuccessful claims should be excluded in their entirety. *Id.*

Here, Plaintiff did not prevail in a number of matters litigated against Defendants. First, Plaintiff lost its opposition to Defendants' motion to strike the Klos declaration.[7] Plaintiff's time entries devoted to opposing the motion to strike appear to run from March 8, 2022 to March 21, 2022. Work on the Klos declaration is set forth in entries dated December 16, 2021. The Klos declaration was integrated into the Plaintiff's motion for summary judgment. Many of the time entries running from December 2, 2021 to December 20, 2021 were devoted to the motion for summary judgment, and it is unclear what amount of the time devoted to the motion for summary judgment was devoted to facts furnished by the stricken Klos declaration.

Second, Plaintiff lost its motion for sanctions.[8] Plaintiff's time entries devoted to reply brief for the motion for sanctions appear to run from March 11, 2022 to March 14, 2022. Just the reply brief entries that were relatively easy to find in the billing entries amount to over $30,000, before even considering the time spent on the motion. It is unclear what time was spent on the actual motion because Plaintiff's time entries are not detailed enough to include that information. Plaintiff should be compelled to provide that information so that the time spent on this unsuccessful motion can be identified and deducted.

Plaintiff spent $30,634.50 drafting a reply regarding Plaintiff's motion for sanctions.

03/11/2022	HRW	Draft reply ISO motion for sanctions (7.5).	7.50	750.00	$5,625.00
03/12/2022	HRW	Draft reply ISO motion for sanctions and related tasks (6.5).	6.50	750.00	$4,875.00
03/13/2022	HRW	Draft reply ISO motion for sanctions and related tasks (8.5).	8.50	750.00	$6,375.00

[7] *See e.g.,* Adv. Proc. No. 21-3006, Dkt. 207.
[8] *See e.g.,* Adv. Proc. No. 21-3006, Dkt. 208.

03/14/2022	JAM	Review/revise draft reply on motion to strike/sanctions/contempt (4.2); tel c. w/ H. Winograd re: revisions/status of reply on motion to strike/sanctions/contempt (0.2); tel c. w/ H. Winograd re: revisions/status of reply on motion to strike/sanctions/contempt (0.2); further review/revisions to reply brief in support of motion to strike/sanctions/contempt (1.5).	6.10	1395.00	$8,509.50
03/14/2022	HRW	Draft reply ISO motion for sanctions and related tasks (7.0).	7.00	750.00	$5,250.00

Third, Plaintiff's work on a motion to consolidate (over $56,000) was unnecessary, because Defendants had agreed to consolidate and Plaintiff wasted everyone's time with its unsuccessful motion to consolidate before a judge that was not presiding over the first filed district court case, which was denied in favor of the successful motion Defendants were forced to file, seeking consolidation before the correct court.[9] Plaintiff's time entries for the motion to consolidate, as shown below, run from November 23, 2021 to December 6, 2021.

Plaintiff spent at least $56,066.00 drafting a motion to consolidate cases regarding the Demand Notes and Term Notes.

11/23/2021	HRW	NL	Draft motion to consolidate note actions (6.0).	6.00	695.00	$4,170.00
11/24/2021	JAM	NL	Review/revise draft motion to consolidate notes litigations in the District Court (2.6).	2.60	1245.00	$3,237.00
11/24/2021	HRW	NL	Review motion to consolidate note actions (1.5).	1.50	695.00	$1,042.50
11/25/2021	JAM	NL	Review/revise draft Memorandum of Law in support of motion to consolidate notes litigations pending in the United States District Courts (5.1); communications w/ H. Winograd, L. Canty re: draft	5.30	1245.00	$6,598.50

[9] *See e.g.,* Adv. Proc. No. 21-3006, Dkt. 212.

			Memorandum of Law in support of motion to consolidate notes litigations pending in the United States District Courts and exhibits for summary judgment motion (0.2).			
11/26/2021	JAM	NL	Review/revise draft Memorandum of Law in support of motion to consolidate notes litigations pending in the United States District Courts (2.7); e-mails to J. Pomerantz, G. Demo, H. Winograd re: draft Memorandum of Law in support of motion to consolidate notes litigations pending in the United States District Courts (0.2).	2.90	1245.00	$3,610.50
11/26/2021	GVD	NL	Review motion to consolidate and correspondence with J. Morris re same	0.30	950.00	$285.00
11/26/2021	HRW	NL	Draft motion to consolidate notes litigations (9.0).	9.00	695.00	$6,255.00
11/27/2021	JAM	NL	Continued work on motion to consolidate notes actions in district court (5.0); communications w/ J. Pomerantz, G. Demo, H. Winograd re: motion to consolidate notes actions in district court (0.2).	5.20	1245.00	$6,474.00
11/27/2021	HRW	NL	Draft motion to consolidate notes litigations (9.5).	9.50	695.00	$6,602.50
11/28/2021	JAM	NL	Continued work on motion to consolidate notes actions in district court (3.1); e-mails to J. Pomerantz, G. Demo, H. Winograd re: revised motion to consolidate notes actions in district court (0.2).	3.30	1245.00	$4,108.50
11/28/2021	GVD	NL	Review and revise motion to consolidate notes litigations	0.90	950.00	$855.00
12/02/2021	HRW	NL	Draft motion to consolidate notes litigations and ancillary documents (4.0).	4.00	695.00	$2,780.00
12/03/2021	JAM	NL	Review/revise motion for consolidation of notes cases in District Court (4.1); e-mails w/ D. Rukavina re: scheduling and sanctions motion (0.3) tel c. w/ H. Winograd re: motion to consolidate (0.4); review draft order and motion (0.2).	5.00	1245.00	$6,225.00
12/03/2021	HRW	NL	Draft motion to consolidate notes litigations and ancillary documents (2.5).	2.50	695.00	$1,737.50
12/06/2021	HRW	NL	Review and finalize motion to consolidate (3.0).	3.00	695.00	$2,085.00

The Court "must filter out the time spent on unsuccessful claims and award the prevailing party fees related solely to time spent litigating the winning claim(s)." *See Roggio*, 18 F. Supp. 3d, at 56. The time spent preparing the Klos declaration and the Klos-related parts of the motion for summary judgment, the time spent opposing the motion to strike, the time spent on the motion for sanctions, and the time spent on the motion to consolidate, which based on the above, total over $86,000, should be excluded. *Id.* at 57. Where the Court "cannot determine the extent of the overlap" between entries that are related to

the Klos declaration, motion to strike, motion for sanctions, or motion to consolidate, on the one hand, and entries that may be related something else, on the other hand, the Court should exclude all such entries that may be related "because plaintiff did not explain what [] they were working on with specificity." *Id.*

6. Plaintiff's Law Firm of Pachulski, Stang, Ziehl & Jones Charged Rates Far in Excess of the Customary Rates in the Northern District of Texas.

Plaintiff's attorneys of the law firm of Pachulski, Stang, Ziehl & Jones LLP ("PSZJ") charged attorneys' fees at rates that are not customary in the Northern District of Texas and are therefore unreasonable.

The "relevant market for purposes of determining the prevailing rate to be paid in a fee award is the community in which the district court sits." *Tollett v. City of Kemah*, 285 F.3d 357, 369 (5th Cir. 2002) (citations and internal marks omitted). Here, the relevant market is Dallas, Texas. "Generally, the reasonable hourly rate for a particular community is established through affidavits of other attorneys practicing there." *Tollett v. City of Kemah*, 285 F.3d 357, 368–69 (5th Cir. 2002) (citation omitted). Here, Plaintiff's attorneys offered no such affidavits.

However, according to the documentation provided by Plaintiff regarding their attorneys' fees in this case, specifically the Hayward Notice, Plaintiff's local counsel, Hayward PLLC, with its office in Dallas, Texas, charged $400.00 to $450.00 per hour. PSZJ, on the other hand, with its office in Los Angeles, California, according to the pleadings and bills in the exhibits to the PSZJ Notice, and with its attorneys (that billed the time to be awarded) having bar licenses in California and New York according to the pleadings and the PSZJ Notice, charged rates from $460 to **$1,265** per hour.

In one case in which the federal Fifth Circuit Court of Appeals did "not perceive [the case] to have been extraordinarily difficult" and the type of matter "has been the subject of legal discourse for many years," the court held that the trial court's decision to cut the billing attorney's Washington D.C. rate in half to meet Dallas rates was not an abuse of discretion. *Hopwood v. State of Texas*, 236 F.3d 256, 281 (5th Cir.

2000). Here, the Court should do the same and cut PSZJ's Los Angeles and New York rates in half to bring them on par with Dallas rates.

The exception that would support an award using out-of-district rates does not apply here. "Courts have found the use of out-of-district prevailing rates proper where a case is transferred for the convenience of the parties and witnesses," and the party wishes to retain previously retained counsel from the initial district. *Midkiff v. Prudential Ins. Co. of Am.*, 571 F. Supp. 3d 660, 667 (W.D. Tex. 2021) (citations omitted). Here, the bankruptcy was originally filed in Delaware and transferred to the Northern District of Texas. Plaintiff's attorneys of PSZJ appear to be located in Los Angeles and New York. They also have not pled that their out-of-district rates should apply. There is no reason to award fees in this case at Los Angeles or New York rates.

7. Plaintiff's Suggested Manner of Distribution of the Fees and Costs Among the Defendants is Unreasonable Because it Ignores Each Defendant's Proposed Relative Liability.

Plaintiff's proposed award of attorneys' fees is unreasonable because it arbitrarily advocates for a distribution of the fees among the five Defendants equally (one-fifth each) regardless of the amount of the proposed judgment against each Defendant and their involvement in the case.

Where a party is assigned liability for attorneys' fees and costs in excess of their "interest" and "part of the entire controversy," it is an abuse of discretion and "justice requires that the part of the judgment relating to taxing costs in the trial court be reformed." *Gasperson v. Madill Nat. Bank*, 455 S.W.2d 381, 386, 399 (Tex. Civ. App. 1970). For example, in *Gasperson*, where a defendant was responsible for about 9% of the money judgment and initially apportioned 66% of the fees and costs (jointly and severally with other parties), the court reversed and reformed the judgment to apportion the defendant about 9% of the fees and costs. *Gasperson v. Madill Nat. Bank*, 455 S.W.2d 381, 386, 399 (Tex. Civ. App. 1970). Plaintiff's Proposed Form of Judgment proposes that each Defendant pay **20.00%** of the proposed award of fees and

costs.[10] It would be an abuse of discretion to award fees and costs in this manner. *See Gasperson*, 455 S.W.2d, at 386, 399.

III. CONCLUSION

Defendants object to Plaintiff's proposed award of attorneys' fees and costs. Defendants request that the Court reduce any award of attorneys' fees and costs as requested herein to account for the $395,996.50 math error, to reduce the fees to local rates, eliminate fees for unnecessary/unsuccessful/non-contract-related work, and to eliminate time not properly allocated (or remand for such allocation to be done, or reduce the fees by 50% after eliminating the impermissible entries).

Respectfully submitted,

/s/Deborah Deitsch-Perez

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[10] Adv. Proc. No. 21-3003, ¶ 4; Adv. Proc. No. 21-3004, ¶ 3; Adv. Proc. No. 21-3005, ¶ 2; Adv. Proc. No. 21-3006, ¶ 6; Adv. Proc. No. 21-3007, ¶ 6.

CERTIFICATE OF SERVICE

I certify that on August 23, 2022, a true and correct copy of the foregoing document was served via the Court's Electronic Case Filing system to the parties that are registered or otherwise entitled to receive electronic notices in this adversary proceeding.

/s/ Michael P. Aigen
Michael P. Aigen

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Counsel for Highland Capital Management, L.P.

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

HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
Plaintiff,	§	
vs.	§	Adv. Proc. No. 21-03003-sgj
JAMES DONDERO, NANCY DONDERO, AND THE DUGABOY INVESTMENT TRUST,	§	Case No. 3:21-cv-00881-X
Defendants.	§	

HIGHLAND CAPITAL MANAGEMENT, L.P., Plaintiff, vs. HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, L.P., Defendant.	§ § § § § § § § § § § § § §	Adv. Proc. No. 21-03004-sgj Case No. 3:21-cv-00881-X
HIGHLAND CAPITAL MANAGEMENT, L.P., Plaintiff, vs. NEXPOINT ADVISORS, L.P., JAMES DONDERO, NANCY DONDERO, AND THE DUGABOY INVESTMENT TRUST, Defendants.	§ § § § § § § § § § § § §	Adv. Proc. No. 21-03005-sgj Case No. 3:21-cv-00881-X
HIGHLAND CAPITAL MANAGEMENT, L.P., Plaintiff, vs. HIGHLAND CAPITAL MANAGEMENT SERVICES, INC., JAMES DONDERO, NANCY DONDERO, AND THE DUGABOY INVESTMENT TRUST, Defendants.	§ § § § § § § § § § § § §	Adv. Proc. No. 21-03006-sgj Case No. 3:21-cv-00881-X

HIGHLAND CAPITAL MANAGEMENT, L.P., Plaintiff, vs. HCRE PARTNERS, LLC (n/k/a NexPoint Real Estate Partners, LLC), JAMES DONDERO, NANCY DONDERO, AND THE DUGABOY INVESTMENT TRUST, Defendants.	§ § § § § § § § § § § § § §	Adv. Proc. No. 21-03007-sgj Case No. 3:21-cv-00881-X

HIGHLAND CAPITAL MANAGEMENT, L.P.'S MOTION FOR LEAVE TO SUPPLEMENT BACKUP DOCUMENTATION IN SUPPORT OF PROPOSED JUDGMENT

Highland Capital Management, L.P. (the "Plaintiff" or "Highland"), by and through its undersigned counsel, hereby files this motion (the "Motion") to supplement its backup documentation (the "Backup Documentation") in support of its *Notice of Attorneys' Fees Calculation and Backup Documentation*[1] (the "Notice of Attorneys' Fees") in support of its *Proposed Form of Judgment* (the "Proposed Judgment") in connection with the above-captioned adversary proceedings (the "Adversary Proceedings" or "Notes Litigation").

I. RELEVANT BACKROUND

1. On December 17, 2021, Plaintiff moved for summary judgment in the Adversary Proceedings against Highland Capital Management Fund Advisors, L.P. ("HCMFA"), and for partial summary judgment against James D. Dondero ("Dondero"), NexPoint Advisors, L.P. ("NexPoint"), Highland Capital Management Services, Inc. ("HCMS"), and HCRE Partners, LLC (n/k/a NexPoint Real Estate Partners, LLC) ("HCRE") (collectively, the "Defendants"). *See* Adv.

[1] *See* Adv. Pro. No. 21-03003 at Docket No. 197; Adv. Pro. No. 21-03004 at Docket No. 169; Adv. Pro. No. 21-03005 at Docket No. 214; Adv. Pro. No. 21-03006 at Docket No. 219; and Adv. Pro. No. 21-03007 at Docket No. 214.

Proc. Nos. 21-03003-sgj at Docket No. 132;[2] 21-03004-sgj at Docket No. 83; 21-03005-sgj at Docket No. 131; 21-03006-sgj at Docket No. 129; and 21-03007-sgj at Docket No. 124 (collectively referred to as the "Motion for Summary Judgment"). Oral argument on the Motion for Summary Judgment was held on April 20, 2022.

2. On July 20, 2022, the Bankruptcy Court issued its *Report and Recommendation to the District Court: Court Should Grant Plaintiff's Motion for Partial Summary Judgment Against All Five Note Maker Defendants (With Respect to All Sixteen Promissory Notes) in the Above-Referenced Consolidated Note Actions* [D. Ct. Docket No. 50-1][3] (the "R&R"), in which it recommended that this Court grant the Motion for Summary Judgment against all Defendants.

3. On August 5, 2022, in accordance with the Bankruptcy Court's directive in the R&R, Highland filed the Notice of Attorneys' Fees with respect to, among other things, Plaintiff's cost of collection arising from legal services provided by its lead counsel, Pachulski Stang Ziehl & Jones LLP ("PSZJ").

4. On August 23, 2022, Defendants filed their objections to (a) the R&R[4] (the "R&R Objection") and (b) the Proposed Judgment[5] (the "Proposed Judgment Objection").

5. As relevant here, Defendants objected to the Proposed Judgment on the ground that, in pertinent part, there was an alleged "math error" of $395,996.50, *see* Proposed Judgment Objection at 5-6 (the "Alleged Math Error"), and "[t]here may be a small portion of that amount

[2] Refers to the docket maintained in the United States Bankruptcy Court for the Northern District of Texas, Dallas Division (the "Bankruptcy Court").

[3] Refers to the docket maintained in the District Court.

[4] *See* D. Ct. Docket Nos. 62 and 63.

[5] *See* Adv. Pro. No. 21-03003 at Docket No. 204; Adv. Pro. No. 21-03004 at Docket No. 173; Adv. Pro. No. 21-03005 at Docket No. 221; Adv. Pro. No. 21-03006 at Docket No. 226; and Adv. Pro. No. 21-03007 at Docket No. 221.

attributable to partially redacted entries for which the total was redacted, making it unduly difficult to decipher," *id.* at 6 n. 2 (the "Relevant Objection").

6. On September 20, 2022, Highland's counsel emailed Defendants' counsel in an attempt to resolve the Relevant Objection. **Morris Dec. Ex. A**.[6]

7. Specifically, Highland's counsel informed Defendants' counsel that there is no Alleged Math Error because there are two simple reasons for the discrepancy: (a) Highland inadvertently omitted from its Backup Documentation the invoices for January and February 2022, and (b) some entries were redacted because they referred to tasks unrelated to the Notes Litigation, but the unredacted time should be added up and multiplied by the hourly rate of the applicable timekeeper. **Morris Dec. Ex. A**. Highland also attached to its email, *inter alia*, the invoices for January and February 2022 (the "Supplemental Invoices"), which total $307,493.50 (and which therefore accounts for almost 80% of the Alleged Math Error). **Morris Dec. Ex B** and **Ex. C**, respectively.

8. Highland's counsel also proposed to stipulate to this issue in order to reduce the burden on the Court, advising Defendants' counsel that if they did not respond by noon on Friday, September 23, 2022, Highland would move for leave to supplement the Backup Documentation with the Supplemental Invoices. **Morris Dec. Ex. A**.

9. Defendants' counsel did not respond by September 23, 2022 (or anytime thereafter). Accordingly, Highland files the instant Motion.

[6] References to "Morris Dec." are to the *Declaration of John A. Morris in Support of Highland Capital Management, L.P.'s Motion for Leave to Supplement Backup Documentation in Support of Proposed Judgment*, filed concurrently herewith.

II. RELIEF REQUESTED

10. Highland respectfully requests leave, pursuant to Local Rule 56.7, to supplement the Backup Documentation with the Supplemental Invoices, as the Supplemental Invoices were inadvertently omitted from the Backup Documentation when the Notice of Attorneys' Fees was originally filed on August 5, 2022.

III. CONCLUSION

WHEREFORE, Highland respectfully requests that the Court enter an order, substantially in the form attached hereto as **Exhibit A**, granting Highland leave to supplement its Backup Documentation with the Supplemental Invoices, and granting Highland such other and further relief it deems just and proper.

[*Remainder of Page Intentionally Blank*]

Dated: September 27, 2022.

PACHULSKI STANG ZIEHL & JONES LLP

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- and -

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Counsel for Highland Capital Management, L.P.

CERTIFICATE OF CONFERENCE

The undersigned hereby certifies that, on September 20, 2022, counsel for Highland corresponded with counsel for Defendants regarding the relief requested in the foregoing Motion, and counsel for Defendants did not respond regarding the relief requested in the Motion.

/s/ Zachery Z. Annable
Zachery Z. Annable

EXHIBIT A

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

HIGHLAND CAPITAL MANAGEMENT, L.P., Plaintiff, vs. JAMES DONDERO, NANCY DONDERO, AND THE DUGABOY INVESTMENT TRUST, Defendants.	§ § § § § § § § § § § § §	Adv. Proc. No. 21-03003-sgj Case No. 3:21-cv-00881-X

HIGHLAND CAPITAL MANAGEMENT, L.P., Plaintiff, vs. HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, L.P., Defendant.	§	Adv. Proc. No. 21-03004-sgj Case No. 3:21-cv-00881-X
HIGHLAND CAPITAL MANAGEMENT, L.P., Plaintiff, vs. NEXPOINT ADVISORS, L.P., JAMES DONDERO, NANCY DONDERO, AND THE DUGABOY INVESTMENT TRUST, Defendants.	§	Adv. Proc. No. 21-03005-sgj Case No. 3:21-cv-00881-X
HIGHLAND CAPITAL MANAGEMENT, L.P., Plaintiff, vs. HIGHLAND CAPITAL MANAGEMENT SERVICES, INC., JAMES DONDERO, NANCY DONDERO, AND THE DUGABOY INVESTMENT TRUST, Defendants.	§	Adv. Proc. No. 21-03006-sgj Case No. 3:21-cv-00881-X

HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	
	§	Adv. Proc. No. 21-03007-sgj
Plaintiff,	§	
	§	
vs.	§	
	§	Case No. 3:21-cv-00881-X
HCRE PARTNERS, LLC (n/k/a NexPoint Real Estate Partners, LLC), JAMES DONDERO, NANCY DONDERO, AND THE DUGABOY INVESTMENT TRUST,	§	
	§	
	§	
	§	
	§	
	§	
Defendants.	§	

ORDER GRANTING
HIGHLAND CAPITAL MANAGEMENT, L.P.'S MOTION FOR LEAVE TO SUPPLEMENT BACKUP DOCUMENTATION IN SUPPORT OF PROPOSED JUDGMENT

Upon consideration of *Highland Capital Management, L.P.'s Motion for Leave to Supplement Backup Documentation in Support of Proposed Judgment* [Docket No. __] (the "Motion")[1] filed by Highland Capital Management, L.P. ("Highland" or "Plaintiff"), the plaintiff in the above-captioned Adversary Proceedings; and this Court having considered the arguments and evidence set forth in (a) the Motion; (b) the *Declaration of John A. Morris in Support of Highland Capital Management, L.P.'s Motion for Leave to Supplement Backup Documentation in Support of Proposed Judgment* [Docket No. __] (the "Morris Dec."); and (c) the exhibits annexed to the Morris Dec.; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and this Court having found that venue of this proceeding and the Motion in this District is proper pursuant to 28 U.S.C. § 1409; and this Court having found that the Plaintiff's notice of the Motion and opportunity for a hearing on the Motion was appropriate and that no other notice need be provided; and upon all of the proceedings had before this Court; and after due

[1] Capitalized terms not defined herein shall take on the meaning ascribed thereto in the Motion.

deliberation and sufficient cause appearing therefor, it is **HEREBY ORDERED THAT**:

1. The Motion is **GRANTED**.

2. The Backup Documentation to the Notice of Attorneys' Fees in support of the Proposed Judgment is hereby deemed supplemented with the Supplemental Invoices, as attached to the Morris Dec. as Exhibits B and C, which is attached hereto as **Exhibit 1**.

###End of Order###

EXHIBIT 1

Pachulski Stang Ziehl & Jones LLP

10100 Santa Monica Blvd.
13th Floor
Los Angeles, CA 90067

January 31, 2022
Invoice 129683
Client 36027
Matter 00004
JNP

Board of Directors
Highland Capital Management LP
100 Crescent Court, Suite 1850
Dallas, TX 75201

RE: Notes Litigation

STATEMENT OF PROFESSIONAL SERVICES RENDERED THROUGH 01/31/2022

FEES	$140,045.50
TOTAL CURRENT CHARGES	**$140,045.50**
TOTAL BALANCE DUE	**$140,045.50**

Pachulski Stang Ziehl & Jones LLP
Highland Capital Management LP
36027 - 00004

Invoice 129683
January 31, 2022

Summary of Services by Professional

ID	Name	Title	Rate	Hours	Amount
GVD	Demo, Gregory Vincent	Counsel	1095.00	1.50	$1,642.50
HRW	Winograd , Hayley R.	Associate	750.00	83.50	$62,625.00
JAK	Kroop, Jordan A.	Counsel	1195.00	0.80	$956.00
JAM	Morris, John A.	Partner	1395.00	42.30	$59,008.50
JE	Elkin, Judith	Counsel	1325.00	1.20	$1,590.00
JMF	Fried, Joshua M.	Partner	1145.00	2.80	$3,206.00
JNP	Pomerantz, Jeffrey N.	Partner	1445.00	3.00	$4,335.00
LSC	Canty, La Asia S.	Paralegal	495.00	13.50	$6,682.50
				148.60	$140,045.50

Summary of Services by Task Code

Task Code	Description	Hours	Amount
		148.60	$140,045.50
		148.60	$140,045.50

			Hours	Rate	Amount
06/13/2021	HRW	Call with J. Morris, J. Pomerantz, and J. Kroop (0.8).	0.80	750.00	$600.00
06/13/2021	HRW	Review motion to dismiss in notes litigations (2.0).	2.00	750.00	$1,500.00
01/04/2022	JAM	E-mails w/ D. Rukavina, Z. Annable re: hearing on HCMFA motion for leave to amend and Sauter testimony (0.2).	0.20	1395.00	$279.00
01/05/2022	JNP	Review motion to reconsider notes; Conference with Gregory V. Demo and John A. Morris regarding same.	0.30	1445.00	$433.50
01/05/2022	JMF	Review motion for reconsideration of order denying expert disclosure.	0.30	1145.00	$343.50
01/05/2022	JAM	Tel c. w/ L. Canty re: witness and exhibit list (0.1); communications w/ J. Seery, D. Klos re: default letter to HCRE (0.1).	0.20	1395.00	$279.00
01/05/2022	LSC	Preparation of exhibit list and exhibits for 1_10_22 hearing on HCMFA's second motion to amend.	1.70	495.00	$841.50
01/06/2022	JNP	Conference with John A. Morris regarding upcoming hearing on answer amendment and related issues.	0.30	1445.00	$433.50
01/06/2022	JAM	E-mails w/ Z. Annable, J. Pomerantz, G. Demo, H. Winograd re: cross-examination of Sauter and communications with Court (0.3).	0.30	1395.00	$418.50
01/06/2022	LSC	Preparation of materials for 1_10_22 hearing on HCMFA second motion to amend (.5); finalize and transmit exhibits to local counsel for filing (.6).	1.10	495.00	$544.50
01/06/2022	JE	Review order to consolidate, motion on discovery to district court and related briefing and various related pleadings.	1.20	1325.00	$1,590.00
01/06/2022	HRW	Email J. Pomerantz, J. Morris, G. Demo re: Order consolidating notes cases (0.2).	0.20	750.00	$150.00
01/06/2022	HRW	Review Order consolidating notes cases (0.3).	0.30	750.00	$225.00
01/07/2022	JMF	Review reply re motion to amend amend answers in notes litigation.	0.50	1145.00	$572.50
01/07/2022	JAM	Prepare for evidentiary hearing on HCMFA's motion for leave to amend answer (1.2).	1.20	1395.00	$1,674.00
01/07/2022	HRW	Research re: appeal of order denying motion to extend discovery (1.0).	1.00	750.00	$750.00
01/07/2022	HRW	Email J. Morris, J. Pomerantz, G. Demo re: HCMFA	0.10	750.00	$75.00

			Hours	Rate	Amount
		reply ISO second motion to amend the answer (0.1).			
01/07/2022	HRW	Review HCMFA reply ISO second motion to amend the answer (0.8).	0.80	750.00	$600.00
01/07/2022	HRW	Email J. Pomerantz, J. Morris, G. Demo re: appeal of order denying motion to extend discovery (0.5).	0.50	750.00	$375.00
01/07/2022	HRW	Email Z. Annable re: appeal of order denying motion to extend discovery (0.1).	0.10	750.00	$75.00
01/08/2022	JAM	Prepare for evidentiary hearing on HCMFA's motion for leave to amend its answer (4.1).	4.10	1395.00	$5,719.50
01/10/2022	JNP	Conference with John A. Morris regarding hearing on motion to amend answer.	0.10	1445.00	$144.50
01/10/2022	JAM	Prepare for hearing on HCMFA's motion for leave to amend (7.2); hearing on HCMFA's motion for leave to amend (4.7); tel c. w/ G. Demo re: follow up to hearing (0.1).	12.00	1395.00	$16,740.00
01/10/2022	JAM	Tel c. w/ J. Pomerantz, G. Demo, adversaries, court re: consolidation implications and briefing (0.4).	0.40	1395.00	$558.00
01/10/2022	LSC	Revise witness and exhibit list and coordinate filing of same with local counsel (.3); prepare for and assist at hearing on HCMFA's Second Motion to Amend Answer (5.5).	6.40	495.00	$3,168.00
01/10/2022	GVD	Conference with J. Morris re follow up to hearing re amendment of complaint	0.10	1095.00	$109.50
01/10/2022	HRW	Email J. Morris re: second HCMFA adversary proceeding (0.1).	0.10	750.00	$75.00
01/10/2022	HRW	Research re: motion to reconsider order denying motion to extend discovery (1.5).	1.50	750.00	$1,125.00
01/10/2022	HRW	Hearing on HCMFA second motion to amend answer (4.5).	4.50	750.00	$3,375.00
01/10/2022	HRW	Review HCMFA rule 26 disclosures (0.2).	0.20	750.00	$150.00
01/10/2022	HRW	Email J. Pomerantz, J. Morris, G. Demo re: motion for reconsideration of order denying motion to extend discovery (0.3).	0.30	750.00	$225.00
01/11/2022	JAM	E-mails w/ J. Pomerantz, G. Demo, M. Aigen re: request for extension of time to oppose motion for PSJ (0.3).	0.30	1395.00	$418.50
01/11/2022	HRW	Research re: appeal of order denying motion to extend discovery (3.0).	3.00	750.00	$2,250.00
01/11/2022	HRW	Review emails from opposing counsel and J. Morris re: scheduling for MSJ (0.1).	0.10	750.00	$75.00

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			Hours	Rate	Amount
01/11/2022	HRW	Email J. Kroop re: appeal of order denying motion to extend discovery (0.2).	0.20	750.00	$150.00
01/11/2022	HRW	Email J. Kroop re: consolidation of appeals of order denying arbitration (0.1).	0.10	750.00	$75.00
01/11/2022	HRW	Email J. Pomerantz, J. Kroop, J. Morris, G. Demo re: appeal of order denying motion to extend discovery (0.3).	0.30	750.00	$225.00
01/11/2022	JAK	Review of strategic considerations for consolidation of four appeals of arbitration denial in emails with Hayley Winograd.	0.30	1195.00	$358.50
01/11/2022	JAK	Analyze legal issues pertaining to motion for reconsideration under Rule 72 as opposed to direct appeal with Hayley Winograd.	0.50	1195.00	$597.50
01/12/2022	JNP	Conference with Hayley R. Winograd, John A. Morris and Gregory V. Demo regarding consolidation order and next steps.	0.50	1445.00	$722.50
01/12/2022	JAM	Review draft stipulation extending briefing schedule on PSJ motion (0.2); e-mails w/ Defense counsel re: stipulation extending briefing schedule on PSJ motion (0.1); tel c. w/ J. Pomerantz, G. Demo, H. Winograd re: strategy for addressing motions in District Court (0.5).	0.80	1395.00	$1,116.00
01/12/2022	GVD	Conference with J. Pomerantz, J. Morris, and H. Winograd re notes litigation issues and next steps	0.50	1095.00	$547.50
01/12/2022	HRW	Email J. Morris, J. Pomerantz, G. Demo re: pending motions in consolidated cases (0.1).	0.10	750.00	$75.00
01/12/2022	HRW	Call with G. Demo, J. Morris, G. Demo re: nexpoint objection to order denying motion to extend (0.6).	0.60	750.00	$450.00
01/12/2022	HRW	Review order re: pending motions in consolidated cases (0.1).	0.10	750.00	$75.00
01/12/2022	HRW	Research re: response to nexpoint objection to order denying motion to extend (3.0).	3.00	750.00	$2,250.00
01/13/2022	HRW	Research and draft response to nexpoint objection to order denying motion to extend (5.0).	5.00	750.00	$3,750.00
01/14/2022	JNP	Emails regarding response to motion for reconsideration of expert discovery order.	0.10	1445.00	$144.50
01/14/2022	JAM	Review/revise HCMFA's draft stipulation concerning the withdrawal of the reference in HCMFA II (0.7); e-mail to defense counsel, J. Pomerantz, G. Demo, H. Winograd re: revised draft stipulation concerning the withdrawal of the reference in HCMFA II (0.1).	0.80	1395.00	$1,116.00

			Hours	Rate	Amount
01/14/2022	HRW	Email Z. Annable re: objection to order denying motion to extend (0.1).	0.10	750.00	$75.00
01/14/2022	HRW	Draft response to nexpoint objection to order denying motion to extend (2.5).	2.50	750.00	$1,875.00
01/14/2022	HRW	Email J. Morris stipulation re: briefing schedule on nexpoint objection to order denying motion to extend (0.1).	0.10	750.00	$75.00
01/14/2022	HRW	Review nexpoint motion re: objection to order denying motion to extend (0.2).	0.20	750.00	$150.00
01/14/2022	HRW	Call with J. Morris re: nexpoint objection to order denying motion to extend (0.2).	0.20	750.00	$150.00
01/14/2022	HRW	Draft stipulation re: briefing schedule on nexpoint objection to order denying motion to extend (0.5).	0.50	750.00	$375.00
01/14/2022	HRW	Email J. Pomerantz, J. Morris, G. Demo re: nexpoint objection to order denying motion to extend (0.2).	0.20	750.00	$150.00
01/17/2022	HRW	Draft response to nexpoint objection to order denying motion to extend (6.5).	6.50	750.00	$4,875.00
01/18/2022	JNP	Review stipulation with retail boards regarding discovery and conference with John A. Morris regarding same.	0.20	1445.00	$289.00
01/18/2022	HRW	Draft response to nexpoint objection to order denying motion to extend (6.0).	6.00	750.00	$4,500.00
01/19/2022	JNP	Review of retail boards stipulation; Conference with John A. Morris regarding.	0.20	1445.00	$289.00
01/19/2022	JAM	E-mails w/ M. Aigen, J. Pomerantz, G. Demo, H. Winograd re: request for extension of page limit (0.2).	0.20	1395.00	$279.00
01/19/2022	HRW	Draft response to nexpoint objection to order denying motion to extend (7.0) / Code: NL	7.00	750.00	$5,250.00
01/19/2022	HRW	Review email from opposing counsel to Court re: re: extension of page limit for MSJ (0.1).	0.10	750.00	$75.00
01/19/2022	HRW	Review email between J. Morris and opposing counsel re: extension of page limit for MSJ (0.1).	0.10	750.00	$75.00
01/20/2022	JNP	Conference with John A. Morris regarding various litigation updates.	0.20	1445.00	$289.00
01/20/2022	JNP	Review emails regarding motion to extend page limit for response.	0.10	1445.00	$144.50
01/20/2022	JNP	Conference with John A. Morris regarding summary judgment motion and related.	0.20	1445.00	$289.00
01/20/2022	JMF	Review opposition to motion for summary	0.50	1145.00	$572.50

			Hours	Rate	Amount
		judgment.			
01/20/2022	JAM	E-mails w/ defense counsel, court, internal team re: page limit issues (0.6); review J. Dondero Declaration for HCMFA opposition (0.4); tel c. w/ H. Winograd re: notes litigation (0.1); tel c. w/ J. Pomerantz re: status, HCMFA filing (0.2).	1.30	1395.00	$1,813.50
01/20/2022	GVD	Review responses to motions for summary judgment	0.50	1095.00	$547.50
01/20/2022	HRW	Review stipulation re: briefing schedule on nexpoint objection to order denying motion to extend (0.2).	0.20	750.00	$150.00
01/20/2022	HRW	Review email between J. Morris and opposing counsel re: extension of page limit for MSJ (0.2).	0.20	750.00	$150.00
01/20/2022	HRW	Review J. Morris email from J. Morris to Court re: extension of page limit for MSJ (0.1).	0.10	750.00	$75.00
01/20/2022	HRW	Draft response to nexpoint objection to order denying motion to extend (7.0).	7.00	750.00	$5,250.00
01/20/2022	HRW	Email J. Morris re: stipulation on briefing schedule for nexpoint objection to order denying motion to extend (0.1).	0.10	750.00	$75.00
01/20/2022	HRW	Review emails re: scheduling of MSJ oral argument (0.1).	0.10	750.00	$75.00
01/21/2022	JNP	Conference with John A. Morris regarding potential sanctions for order violations.	0.20	1445.00	$289.00
01/21/2022	JMF	Review motion to withdraw reference re Dondero notes litigation proceeding.	0.50	1145.00	$572.50
01/21/2022	JAM	E-mails w/ defense counsel, J. Pomerantz, J. Seery re: timing of oral argument on notes litigation (0.3); review appendix in support of defendants' opposition (0.5); draft e-mail re: potential contempt motion (0.6).	1.40	1395.00	$1,953.00
01/21/2022	GVD	Conference with J. Morris re responses to motions for summary judgment and next steps (0.1); review draft email from J. Morris re contempt issues (0.1)	0.20	1095.00	$219.00
01/21/2022	HRW	Review J. Morris email re: motion to move argument on MSJ motion (0.1).	0.10	750.00	$75.00
01/21/2022	HRW	Review email from J. Morris re: notice of intent to file contempt motion re: MSJ evidence (0.1).	0.10	750.00	$75.00
01/21/2022	HRW	Review B. Asskin email re: motion to exceed page limit in MSJ response (0.1).	0.10	750.00	$75.00
01/21/2022	HRW	Review J. Morris email re: contempt for MSJ evidence (0.1).	0.10	750.00	$75.00
01/21/2022	HRW	Review Dondero renewed motion for ruling on R&R	0.20	750.00	$150.00

			Hours	Rate	Amount
		(0.2).			
01/21/2022	HRW	Review email J. Pomerantz and J. Morris re: Dondero renewed motion for ruling on R&R (0.1).	0.10	750.00	$75.00
01/21/2022	HRW	Email J. Morris, J. Pomerantz, G. Demo re: re: notice of intent to file contempt motion re: MSJ evidence (0.1).	0.10	750.00	$75.00
01/21/2022	HRW	Email J. Pomerantz re: Dondero renewed motion for ruling on R&R (0.1).	0.10	750.00	$75.00
01/21/2022	HRW	Review consolidation order (0.2).	0.20	750.00	$150.00
01/22/2022	JAM	E-mails w/ J. Seery, J. Pomerantz, G. Demo, H. Winograd, defense counsel re: possible contempt motion (0.3).	0.30	1395.00	$418.50
01/22/2022	HRW	Review email from J. Morris re: re: notice of intent to file contempt motion re: MSJ evidence (0.1).	0.10	750.00	$75.00
01/24/2022	JMF	Review motion to withdraw reference re Dondero adversary.	0.30	1145.00	$343.50
01/24/2022	JAM	Review/analyze briefs in opposition to SJ motion (4.3); e-mails w/ M. Aigen re: contempt motion (0.2); tel c. w/ H. Winograd re: review of opposition papers and plans for reply (0.5).	5.00	1395.00	$6,975.00
01/24/2022	HRW	Edit stipulation for motion for reconsideration (0.1).	0.10	750.00	$75.00
01/24/2022	HRW	Email J. Morris re: stipulation for motion for reconsideration (0.1).	0.10	750.00	$75.00
01/24/2022	HRW	Email D. Rukavina and M. Aigen re: stipulation for motion for reconsideration (0.1).	0.10	750.00	$75.00
01/24/2022	HRW	Call with J. Morris re: MSJ reply (0.5).	0.50	750.00	$375.00
01/25/2022	JAM	Review/revise stipulation concerning "appeal" of expert order (0.1); e-mails w/ M. Aigen, others re: contempt (0.1); review opposition papers (1.1).	1.30	1395.00	$1,813.50
01/25/2022	HRW	Review emails re: scheduling of MSJ hearing (0.1).	0.10	750.00	$75.00
01/25/2022	HRW	Review emails from J. Morris and M. Aigen re: MSJ evidence (0.2).	0.20	750.00	$150.00
01/25/2022	HRW	Email J. Morris, G. Demo, J. Pomerantz re: contempt motion re: MSJ filing (0.2).	0.20	750.00	$150.00
01/25/2022	HRW	Email D. Rukavina and M. Aigen re: stipulation for motion for reconsideration (0.1).	0.10	750.00	$75.00
01/25/2022	HRW	Research for contempt motion re: MSJ filing (1.0).	1.00	750.00	$750.00
01/26/2022	JAM	E-mail to defense counsel re: possible contempt motion (0.9); work on reply brief (1.7).	2.60	1395.00	$3,627.00

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			Hours	Rate	Amount
01/26/2022	HRW	Draft response to nexpoint objection to order denying motion to extend (6.0).	6.00	750.00	$4,500.00
01/26/2022	HRW	Draft HCMFA discovery requests for second notes adversary (0.5).	0.50	750.00	$375.00
01/26/2022	HRW	Review emails from J. Morris and M. Aigen re: MSJ evidence (0.1).	0.10	750.00	$75.00
01/26/2022	HRW	Review D. Rukavina email re: scheduling of briefing on motion for reconsideration (0.1).	0.10	750.00	$75.00
01/27/2022	JNP	Review reply regarding motion for reconsideration and conference with Hayley R. Winograd regarding same.	0.30	1445.00	$433.50
01/27/2022	JMF	Review motion for reconsideration re order denying request to amended answer.	0.40	1145.00	$458.00
01/27/2022	JAM	Review/revise draft brief in opposition to motion for reconsideration of denial of expert motion (1.0); continued review of opposition papers (2.8).	3.80	1395.00	$5,301.00
01/27/2022	GVD	Conference with J. Morris re status of notes litigation	0.20	1095.00	$219.00
01/27/2022	HRW	Draft response to nexpoint objection to order denying motion to extend (1.8).	1.80	750.00	$1,350.00
01/27/2022	HRW	Email J. Pomerantz, G. Demo, J. Morris re: response and objection to motion for reconsideration (0.2).	0.20	750.00	$150.00
01/27/2022	HRW	Email J. Pomerantz, G. Demo, J. Morris re: HCMFA motion for reconsideration of order denying motion to amend (0.1).	0.10	750.00	$75.00
01/27/2022	HRW	Email L. Canty re: response and objection to motion for reconsideration (0.1).	0.10	750.00	$75.00
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
01/27/2022	HRW	Call with J. Pomerantz re: response and objection to motion for reconsideration (0.1).	0.10	750.00	$75.00
01/27/2022	HRW	Review HCMFA motion for reconsideration of order denying motion to amend (0.3).	0.30	750.00	$225.00
01/28/2022	JNP	Conference with John A. Morris regarding summary judgment and related issues.	0.20	1445.00	$289.00
01/28/2022	JAM	Continued work on reply for partial summary judgment motion (3.6).	3.60	1395.00	$5,022.00
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]

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			Hours	Rate	Amount
01/29/2022	HRW	Draft response to nexpoint motion for reconsideration (2.5).	2.50	750.00	$1,875.00
01/30/2022	JAM	[redacted] review/revise objection to appeal of order denying extension of expert discovery deadline (0.4); tel c. w/ H. Winograd re: reply briefs for notes litigation SJ motion (0.5).	[redacted]	1395.00	[redacted]
01/30/2022	LSC	Preparation of appendix in support of objection to motion for reconsideration, including updates to objection and amendments to same.	4.30	495.00	$2,128.50
01/30/2022	HRW	Email J. Seery re: nexpoint motion for reconsideration (0.1).	0.10	750.00	$75.00
01/30/2022	HRW	Draft response to nexpoint motion for reconsideration (1.0).	1.00	750.00	$750.00
01/30/2022	HRW	Call with L. Canty re: nexpoint motion for reconsideration (0.1).	0.10	750.00	$75.00
01/30/2022	HRW	Call with J. Morris re: MSJ (0.5).	0.50	750.00	$375.00
01/31/2022	JNP	Review final draft of response regarding motion for reconsideration.	0.10	1445.00	$144.50
01/31/2022	JMF	Review reply to motion for reconsideration of bankruptcy order re expert discovery.	0.30	1145.00	$343.50
01/31/2022	JAM	Communications w/ H. Winograd re: revisions to brief in opposition to reconsideration of order denying extension of expert discovery deadline (0.3); review final brief in opposition to reconsideration of expert discovery order (0.2); [redacted].	[redacted]	1395.00	[redacted]
01/31/2022	HRW	Email J. Morris re: response to nexpoint motion for reconsideration (0.1).	0.10	750.00	$75.00
01/31/2022	HRW	Research re: reply to HCMFA summary judgment (2.5).	2.50	750.00	$1,875.00
01/31/2022	HRW	Call with J. Morris re: response to nexpoint motion for reconsideration (0.1).	0.10	750.00	$75.00
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
01/31/2022	HRW	Call with L. Canty re: nexpoint motion for reconsideration (0.1).	0.10	750.00	$75.00
01/31/2022	HRW	Draft and file response to nexpoint motion for reconsideration (2.5).	2.50	750.00	$1,875.00

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			Hours	Rate	Amount
01/31/2022	HRW	Email Z. Annable re: response to nexpoint motion for reconsideration (0.2).	0.20	750.00	$150.00
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
			148.60		**$140,045.50**

TOTAL SERVICES FOR THIS MATTER: $140,045.50

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REMITTANCE ADVICE

Please inlcude this Remittance with your payment

For current services rendered through: 01/31/2022

Total Fees	**$140,045.50**
Total Due on Current Invoice	**$140,045.50**

Outstanding Balance from prior invoices as of 01/31/2022 (May not include recent payments)

A/R Bill Number	Invoice Date	Fees Billed	Expenses Billed	Balance Due

Total Amount Due on Current and Prior Invoices: $140,045.50

Pachulski Stang Ziehl & Jones LLP

10100 Santa Monica Blvd.
13th Floor
Los Angeles, CA 90067

February 28, 2022

James P. Secry, Jr.
Highland Capital Management LP
100 Crescent Court, Suite 1850
Dallas, TX 75201

Invoice 129792
Client 36027
Matter 00004
JNP

RE: Notes Litigation

STATEMENT OF PROFESSIONAL SERVICES RENDERED THROUGH 02/28/2022

FEES	$172,582.50
TOTAL CURRENT CHARGES	**$172,582.50**
BALANCE FORWARD	**$140,045.50**
LAST PAYMENT	**$140,045.50**
TOTAL BALANCE DUE	**$172,582.50**

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Summary of Services by Professional

ID	Name	Title	Rate	Hours	Amount
GVD	Demo, Gregory Vincent	Counsel	1095.00	2.40	$2,628.00
HRW	Winograd , Hayley R.	Associate	750.00	103.00	$77,250.00
JAM	Morris, John A.	Partner	1395.00	51.80	$72,261.00
JMF	Fried, Joshua M.	Partner	1145.00	2.20	$2,519.00
JNP	Pomerantz, Jeffrey N.	Partner	1445.00	1.10	$1,589.50
LSC	Canty, La Asia S.	Paralegal	495.00	33.00	$16,335.00
				193.50	$172,582.50

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Summary of Services by Task Code

Task Code	Description	Hours	Amount
		193.50	$172,582.50
		193.50	$172,582.50

			Hours	Rate	Amount
12/03/2021	LSC	Prepare appendix in support of motion to consolidate actions.	0.40	495.00	$198.00
01/26/2022	LSC	Research and transmittal of various documents, including discovery, in connection with preparation for response to motion for reconsideration.	2.10	495.00	$1,039.50
02/01/2022	JAM	Tel c. w/ H. Winograd re: motion to strike and for sanctions re: Tully Report and barred defense (0.4).	0.40	1395.00	$558.00
02/01/2022	HRW	Draft reply ISO motion for summary judgment (3.5).	3.50	750.00	$2,625.00
02/01/2022	HRW	Call with J. Morris re: reply ISO motion for summary judgment (0.3).	0.30	750.00	$225.00
02/01/2022	HRW	Email J. Pomerantz, J. Morris, G. Demo re: HCMFA motion for reconsideration of order denying motion to amend (0.1).	0.10	750.00	$75.00
02/01/2022	HRW	Email J. Morris re: reply ISO motion for summary judgment (0.1).	0.10	750.00	$75.00
02/02/2022	JAM	Work on reply papers (3.7).	3.70	1395.00	$5,161.50
02/02/2022	HRW	Draft reply ISO motion for summary judgment (7.5).	7.50	750.00	$5,625.00
02/03/2022	JAM	Tel c. w/ H. Winograd re: HCMFA opposition to motion for summary judgment (0.2); work on reply in support of motion for partial summary judgment (5.5).	5.70	1395.00	$7,951.50
02/03/2022	HRW	Draft reply ISO summary judgment (8.5).	8.50	750.00	$6,375.00
02/04/2022	JAM	Begin drafting sanctions motion (2.2).	2.20	1395.00	$3,069.00
02/04/2022	JAM	Continued work on reply for PSJ motion (4.1); tel c. w/ H. Winograd re: status of drafting replies (0.1).	4.20	1395.00	$5,859.00
02/04/2022	HRW	Draft reply ISO summary judgment (9.0).	9.00	750.00	$6,750.00
02/05/2022	JAM	Work on contempt motion (3.7);	3.70	1395.00	$5,161.50
02/05/2022	HRW	Draft reply ISO summary judgment (9.5).	9.50	750.00	$7,125.00
02/06/2022	JAM	Continued work on Reply for Alleged Agreement Defendants (7.5); tel c. w/ J. Seery re: reply for motion for partial summary judgment and related matters (0.2); e-mails w/ J. Seery, PSZJ team re: reply brief (0.2).	7.90	1395.00	$11,020.50
02/06/2022	JAM	Continued work on contempt motion (1.6); e-mail to PSZJ team re: contempt motion (0.1); e-mail to L. Canty, H. Winograd re: exhibits for contempt motion (0.2).	1.90	1395.00	$2,650.50

Pachulski Stang Ziehl & Jones LLP
Highland Capital Management LP
36027 - 00004

Page: 5
Invoice 129792
February 28, 2022

			Hours	Rate	Amount
02/06/2022	LSC	Preparation of appendix and exhibits to motion for sanctions/contempt.	1.40	495.00	$693.00
02/06/2022	GVD	Review draft contempt motion	0.50	1095.00	$547.50
02/06/2022	HRW	Draft reply ISO summary judgment (10.0).	10.00	750.00	$7,500.00
02/06/2022	HRW	Draft motions for contempt and to strike summary judgment evidence (2.0).	2.00	750.00	$1,500.00
02/07/2022	JNP	Conference with John A. Morris regarding motion to strike.	0.30	1445.00	$433.50
02/07/2022	JNP	Review latest version of motion to strike.	0.10	1445.00	$144.50
02/07/2022	JMF	Review motions to strike and sanctions re expert discovery.	0.60	1145.00	$687.00
02/07/2022	JAM	Continued work on contempt motion (3.4); e-mails to J.. Seery, PSZJ team re: contempt motion (0.1).	3.50	1395.00	$4,882.50
02/07/2022	JAM	Work on reply papers (including HCMFA brief, non-HCMFA brief, JAM Declaration, Klos Declaration) (10.3): tel c. w/ H. Winograd re: reply papers (0.1); tel c. w/ G. Demo re: reply papers (0.1); tel c. w/ D. Klos re: Klos Declaration (0.2); tel c. w/ J. Pomerantz re: reply papers (0.3); tel c. w/ D. Klos re: Klos Declaration (0.2); tel c. w/ J. Seery re: reply papers (0.1); tel c. w/ J. Seery, D. Klos re: Klos Declaration (0.1); tel c. w/ H. Winograd re: reply papers (0.1); tel c. w/ L. Canty, H. Winograd, Z. Annable re: reply papers (0.4); tel c. w/ H. Winograd re: reply papers (0.1).	12.00	1395.00	$16,740.00
02/07/2022	LSC	Assist with preparation of contempt motion, including preparation of additional exhibits, preparation of declaration in support of same, and revisions to same.	3.60	495.00	$1,782.00
02/07/2022	LSC	Assist with preparation of reply in support of summary judgment (non-HCMFA parties), including research, revisions, and insertion of pincites in the same.	3.90	495.00	$1,930.50
02/07/2022	LSC	Assist with preparation of reply in support of summary judgment (HCMFA), including research, revisions, and insertion of pincites in the same.	4.60	495.00	$2,277.00
02/07/2022	GVD	Conference with J. Morris re status of notes litigation	0.10	1095.00	$109.50
02/07/2022	GVD	Review motion for contempt	0.30	1095.00	$328.50
02/07/2022	GVD	Review transcript re DC Sauter testimony	1.10	1095.00	$1,204.50
02/07/2022	HRW	Draft reply ISO summary judgment (10.0).	10.00	750.00	$7,500.00

			Hours	Rate	Amount
02/07/2022	HRW	Draft motions for contempt and to strike summary judgment evidence (1.5).	1.50	750.00	$1,125.00
02/08/2022	JNP	Conference with John A. Morris regarding summary judgment papers and related issues.	0.20	1445.00	$289.00
02/08/2022	JMF	Review reply to summary judgment opposition.	0.40	1145.00	$458.00
02/10/2022	HRW	Review email from Z. Annable with Court re: scheduling for motion to strike and for contempt (0.1).	0.10	750.00	$75.00
02/11/2022	HRW	Review notice of hearing re: motion to strike and for contempt (0.1).	0.10	750.00	$75.00
02/11/2022	HRW	Email Z. Annable re: notice of hearing on motion to strike and for contempt (0.1).	0.10	750.00	$75.00
02/13/2022	HRW	Draft objection and response to HCMFA motion for reconsideration of order denying motion to amend (2.5).	2.50	750.00	$1,875.00
02/14/2022	JNP	Review reply regarding expert witness reconsideration motion.	0.10	1445.00	$144.50
02/14/2022	HRW	Draft objection and response to HCMFA motion for reconsideration (6.5).	6.50	750.00	$4,875.00
02/14/2022	HRW	Review email from J. Pomerantz re: NexPoint reply ISO motion for reconsideration (0.1).	0.10	750.00	$75.00
02/14/2022	HRW	Review NexPoint reply ISO motion for reconsideration (0.5).	0.50	750.00	$375.00
02/15/2022	JMF	Review reply to motion to extend expert discovery.	0.30	1145.00	$343.50
02/15/2022	HRW	Draft objection and response to HCMFA motion for reconsideration (7.5).	7.50	750.00	$5,625.00
02/15/2022	HRW	Email Z. Annable MSJ amended notice of hearing (0.1).	0.10	750.00	$75.00
02/15/2022	HRW	Review MSJ amended notice of hearing (0.1).	0.10	750.00	$75.00
02/15/2022	HRW	Call with L. Canty re: objection and response to HCMFA motion for reconsideration (0.1).	0.10	750.00	$75.00
02/16/2022	JAM	Tel c. w/ H. Winograd re: objection to appeal of order denying HCMFA leave to amend (0.1).	0.10	1395.00	$139.50
02/16/2022	LSC	Review and revise draft opposition to motion for reconsideration and continued preparation of appendix/exhibits.	5.30	495.00	$2,623.50
02/16/2022	HRW	Draft objection and response to HCMFA motion for reconsideration (11.0).	11.00	750.00	$8,250.00
02/17/2022	JNP	Review reply regarding motion for reconsideration	0.20	1445.00	$289.00

			Hours	Rate	Amount
		and email to and from Hayley R. Winograd regarding same.			
02/17/2022	JMF	Review oppo to motion to district court to amend answer re review of bankruptcy court order denying motion.	0.50	1145.00	$572.50
02/17/2022	JAM	Review/revise opposition to HCMFA appeal of denial of motion to amend answer (3.7); communications w/ H. Winograd, Z. Annable re: opposition to HCMFA appeal of denial of motion to amend answer (0.6).	4.30	1395.00	$5,998.50
02/17/2022	LSC	Assist with preparation of objection to HCMFA motion for reconsideration, including continued preparation of appendix and additional exhibits, review and revisions to objection, and confer and correspond regarding the same.	8.60	495.00	$4,257.00
02/17/2022	GVD	Review draft response to motion for reconsideration	0.40	1095.00	$438.00
02/17/2022	HRW	Draft objection and response to HCMFA motion for reconsideration and related tasks (9.5).	9.50	750.00	$7,125.00
02/18/2022	JAM	Tel c. w/ H. Winograd re: status of notes litigation/briefing (0.2); tel c. w/ H. Winograd re: correction to Appendix, appeals to district court (0.3); e-mail to H. Winograd, L. Canty re: supplementing the appendix for additional costs and expenses in notes litigation (0.2).	0.70	1395.00	$976.50
02/18/2022	LSC	Attention to amendment to brief in support of motion to strike, including preparation of amended exhibit and confer and correspond with attorneys regarding the same (.4); research and correspondence regarding issue with sealed exhibit (.3).	0.70	495.00	$346.50
02/18/2022	HRW	Review email from Z. Annable and J. Morris re: response to HCMFA motion for reconsideration and related tasks (0.2).	0.20	750.00	$150.00
02/18/2022	HRW	Email Z. Annable and J. Morris re: motion for contempt and to strike (0.2).	0.20	750.00	$150.00
02/18/2022	HRW	Draft errata re: motion for contempt and to strike (0.5).	0.50	750.00	$375.00
02/24/2022	JAM	E-mails w/ Z. Annable, H. Winograd re: propriety of filing an Appendix in support of the Reply (0.3); review cases concerning the same (0.2).	0.50	1395.00	$697.50
02/24/2022	LSC	Begin preparation of additional exhibits in connection with summary judgment hearing.	1.30	495.00	$643.50
02/24/2022	HRW	Review email from M. Aigen and J. Morris re:	0.10	750.00	$75.00

			Hours	Rate	Amount
		motion to strike appendix in reply to MSJ pleading (0.1).			
02/24/2022	HRW	Review emails from J. Morris and Z. Annable re: motion to strike appendix in reply to MSJ pleading (0.2).	0.20	750.00	$150.00
02/24/2022	HRW	Email J. Morris and Z. Annable re: motion to strike appendix in reply to MSJ pleading (0.2).	0.20	750.00	$150.00
02/24/2022	HRW	Research re: motion to strike appendix in reply to MSJ pleading (1.0).	1.00	750.00	$750.00
02/25/2022	JNP	Review motion to strike.	0.20	1445.00	$289.00
02/25/2022	JMF	Review motion to strike appendix re notes litigation.	0.40	1145.00	$458.00
02/25/2022	JAM	E-mails w/ D. Rukavina, Z. Annable re: sealing of HCMFA 2018 audit report (0.2); preliminary review of motion to strike and communications w/ J. Pomerantz, G. Demo, H. Winograd concerning the same (0.2).	0.40	1395.00	$558.00
02/25/2022	HRW	Review defendants' motion to strike appendix in MSJ reply (0.3).	0.30	750.00	$225.00
02/25/2022	HRW	Review emails from J. Morris and D. Rukavina re: HCMFA motion for reconsideration materials and motion to seal document (0.1).	0.10	750.00	$75.00
02/28/2022	JAM	Preliminary work on response to motion to strike (0.3); preliminary review of opposition to motion to strike/sanctions/contempt (0.3).	0.60	1395.00	$837.00
02/28/2022	LSC	Preparation of additional exhibits in connection with summary judgment.	1.10	495.00	$544.50
			193.50		**$172,582.50**

TOTAL SERVICES FOR THIS MATTER: $172,582.50

Pachulski Stang Ziehl & Jones LLP
Highland Capital Management LP
36027 - 00004

Invoice 129792
February 28, 2022

REMITTANCE ADVICE

Please inlcude this Remittance with your payment

For current services rendered through: 02/28/2022

Total Fees	**$172,582.50**
Total Due on Current Invoice	**$172,582.50**

Outstanding Balance from prior invoices as of 02/28/2022 (May not include recent payments)

A/R Bill Number	Invoice Date	Fees Billed	Expenses Billed	Balance Due

Total Amount Due on Current and Prior Invoices: $172,582.50

PACHULSKI STANG ZIEHL & JONES LLP
Jeffrey N. Pomerantz (CA Bar No. 143717) (*admitted pro hac vice*)
John A. Morris (NY Bar No. 2405397) (*admitted pro hac vice*)
Gregory V. Demo (NY Bar No. 5371992) (*admitted pro hac vice*)
Hayley R. Winograd (NY Bar No. 5612569) (*admitted pro hac vice*)
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Dallas, TX 75231
Telephone: (972) 755-7100
Facsimile: (972) 755-7110

Counsel for Highland Capital Management, L.P.

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

HIGHLAND CAPITAL MANAGEMENT, L.P., Plaintiff, vs. JAMES DONDERO, NANCY DONDERO, AND THE DUGABOY INVESTMENT TRUST, Defendants.	§ § § § § § § § § § §	Adv. Proc. No. 21-03003-sgj Case No. 3:21-cv-00881-X
HIGHLAND CAPITAL MANAGEMENT, L.P., Plaintiff, vs. HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, L.P., Defendant.	§ § § § § § § § § § §	Adv. Proc. No. 21-03004-sgj Case No. 3:21-cv-00881-X

HIGHLAND CAPITAL MANAGEMENT, L.P., Plaintiff, vs. NEXPOINT ADVISORS, L.P., JAMES DONDERO, NANCY DONDERO, AND THE DUGABOY INVESTMENT TRUST, Defendants.	§	Adv. Proc. No. 21-03005-sgj Case No. 3:21-cv-00881-X
HIGHLAND CAPITAL MANAGEMENT, L.P., Plaintiff, vs. HIGHLAND CAPITAL MANAGEMENT SERVICES, INC., JAMES DONDERO, NANCY DONDERO, AND THE DUGABOY INVESTMENT TRUST, Defendants.	§	Adv. Proc. No. 21-03006-sgj Case No. 3:21-cv-00881-X
HIGHLAND CAPITAL MANAGEMENT, L.P., Plaintiff, vs. HCRE PARTNERS, LLC (n/k/a NexPoint Real Estate Partners, LLC), JAMES DONDERO, NANCY DONDERO, AND THE DUGABOY INVESTMENT TRUST, Defendants.	§	Adv. Proc. No. 21-03007-sgj Case No. 3:21-cv-00881-X

DECLARATION OF JOHN A. MORRIS IN SUPPORT OF HIGHLAND CAPITAL MANAGEMENT, L.P.'S MOTION FOR LEAVE TO SUPPLEMENT BACKUP DOCUMENTATION IN SUPPORT OF PROPOSED JUDGMENT

I, John A. Morris, pursuant to 28 U.S.C. § 1746 and under penalty of perjury, declare as follows:

1. I am an attorney in the law firm of Pachulski, Stang, Ziehl & Jones LLP, counsel to Highland Capital Management, L.P. ("Highland" or "Plaintiff"), and I submit this Declaration in support of *Highland Capital Management, L.P.'s Motion for Leave to Supplement Backup Documentation in Support of Proposed Judgment* (the "Motion")[1] being filed concurrently with this Declaration. I submit this Declaration based on my personal knowledge and review of the documents listed below.

2. Attached as **Exhibit A** is a true and correct copy of an email communication between myself and Defendants' counsel, dated September 20, 2022.

3. Attached as **Exhibit B** is a true and correct copy of the January 2022 invoice, which was inadvertently omitted from the Backup Documentation.

4. Attached as **Exhibit C** is a true and correct copy of the February 2022 invoice, which was inadvertently omitted from the Backup Documentation.

Dated: September 27, 2022

/s/ John A. Morris
John A. Morris

[1] Capitalized terms not defined herein shall take on the meanings ascribed thereto in the Motion.

EXHIBIT A

From: John A. Morris
Sent: Tuesday, September 20, 2022 5:21 PM
To: Aigen, Michael P. (michael.aigen@stinson.com) <michael.aigen@stinson.com>; Deborah R. Deitsch-Perez (deborah.deitschperez@stinson.com) <deborah.deitschperez@stinson.com>; Rukavina, Davor (drukavina@munsch.com) <drukavina@munsch.com>; Berghman, Thomas (tberghman@munsch.com) <tberghman@munsch.com>
Cc: Hayley R. Winograd <hwinograd@pszjlaw.com>
Subject: Highland: Defendants' Objections to Proposed Forms of Order

Counsel:

We write with respect to the Defendants' first two objections to the proposed forms of judgment: (a) the alleged "math error" of $395,996.50, and (b) redactions (the "Relevant Objections").

1. There was no math error

We do not believe there was any "math error." There difference is accounted for in two ways.

- First, as you presumably saw, we inadvertently omitted the invoices for January and February 2022 from HCMLP's initial submission, two particularly heavy months given the substantial motion practice.
- Second, as indicated in Defendants' footnote 2, some entries were redacted because they referred to tasks unrelated to the Notes litigation; but if you add the un-redacted time and multiplied it by the hourly rate of the applicable time keeper, you'd have compensable time.

Attached is a zip file with certain information.

Included are the invoices for January and February 2022, which total $307,493.50 (and which therefore accounts for almost 80% of the alleged "math error").

Also included at the bottom of the zip file is a "summary" of the PSZJ fees.

The "back up" for each monthly amount on the "summary" lists the entries on each invoice for which compensation is sought; we also included the actual, redacted invoices for your convenience.

If you take the two issues identified above into account, we find no error.

2. Redactions

As I explained in my Declaration, HCMLP does not seek to charge the Defendants for any entries that are redacted (*see* paragraph 10). Redactions were heavy until August 2021 because ALL litigation was charged under the generic code "BL" (for "bankruptcy litigation"). The redacted entries were for work unrelated to the Notes Litigation; again, ***no*** compensation is sought for those entries. Note that, as reflected in the "back up," if portions of an entry are un-redacted, then compensation is sought for those portions but (again) you have to manually add the time and multiply it by the hourly rate of the time keeper.

3. Proposal

We would like to try to stipulate these issues to reduce the burden on the Court – particularly issues for which there should be an objectively "final answer" – and we have two options:

A. After reviewing the summary and the "back up," stipulate (a) to an aggregate number, (b) that HCMLP does not seek compensation for any "redacted entries," and (c) the Defendants withdraw the Relevant Objections. We can draft a simple Stipulation for your consideration if that would be helpful.

B. If not, we'll file a motion for leave to supplement the record with the attached documents and we'll lay all of this out for the Court, but please let us know if Defendants are opposed or unopposed to such a motion.

Please let us know if you have any questions about the information in the zip file. Otherwise, please let us know how the Defendants would like to proceed by noon on Friday.

Regards,

John

John A. Morris
Pachulski Stang Ziehl & Jones LLP
Direct Dial: 212.561.7760
Tel: 212.561.7700 | Fax: 212.561.7777
jmorris@pszjlaw.com
vCard | Bio | LinkedIn

PACHULSKI STANG ZIEHL & JONES

Los Angeles | San Francisco | Wilmington, DE | New York | Houston

EXHIBIT B

Pachulski Stang Ziehl & Jones LLP

10100 Santa Monica Blvd.
13th Floor
Los Angeles, CA 90067

January 31, 2022
Invoice 129683
Client 36027
Matter 00004
JNP

Board of Directors
Highland Capital Management LP
100 Crescent Court, Suite 1850
Dallas, TX 75201

RE: Notes Litigation

STATEMENT OF PROFESSIONAL SERVICES RENDERED THROUGH 01/31/2022

FEES	$140,045.50
TOTAL CURRENT CHARGES	**$140,045.50**
TOTAL BALANCE DUE	**$140,045.50**

Pachulski Stang Ziehl & Jones LLP
Highland Capital Management LP
36027 - 00004

Invoice 129683
January 31, 2022

Summary of Services by Professional

ID	Name	Title	Rate	Hours	Amount
GVD	Demo, Gregory Vincent	Counsel	1095.00	1.50	$1,642.50
HRW	Winograd , Hayley R.	Associate	750.00	83.50	$62,625.00
JAK	Kroop, Jordan A.	Counsel	1195.00	0.80	$956.00
JAM	Morris, John A.	Partner	1395.00	42.30	$59,008.50
JE	Elkin, Judith	Counsel	1325.00	1.20	$1,590.00
JMF	Fried, Joshua M.	Partner	1145.00	2.80	$3,206.00
JNP	Pomerantz, Jeffrey N.	Partner	1445.00	3.00	$4,335.00
LSC	Canty, La Asia S.	Paralegal	495.00	13.50	$6,682.50
				148.60	$140,045.50

Pachulski Stang Ziehl & Jones LLP
Highland Capital Management LP
36027 - 00004

Invoice 129683
January 31, 2022

Summary of Services by Task Code

Task Code	Description	Hours	Amount
		148.60	$140,045.50
		148.60	$140,045.50

Pachulski Stang Ziehl & Jones LLP
Highland Capital Management LP
36027 - 00004

Invoice 129683
January 31, 2022

			Hours	Rate	Amount
06/13/2021	HRW	Call with J. Morris, J. Pomerantz, and J. Kroop (0.8).	0.80	750.00	$600.00
06/13/2021	HRW	Review motion to dismiss in notes litigations (2.0).	2.00	750.00	$1,500.00
01/04/2022	JAM	E-mails w/ D. Rukavina, Z. Annable re: hearing on HCMFA motion for leave to amend and Sauter testimony (0.2).	0.20	1395.00	$279.00
01/05/2022	JNP	Review motion to reconsider notes; Conference with Gregory V. Demo and John A. Morris regarding same.	0.30	1445.00	$433.50
01/05/2022	JMF	Review motion for reconsideration of order denying expert disclosure.	0.30	1145.00	$343.50
01/05/2022	JAM	Tel c. w/ L. Canty re: witness and exhibit list (0.1); communications w/ J. Seery, D. Klos re: default letter to HCRE (0.1).	0.20	1395.00	$279.00
01/05/2022	LSC	Preparation of exhibit list and exhibits for 1_10_22 hearing on HCMFA's second motion to amend.	1.70	495.00	$841.50
01/06/2022	JNP	Conference with John A. Morris regarding upcoming hearing on answer amendment and related issues.	0.30	1445.00	$433.50
01/06/2022	JAM	E-mails w/ Z. Annable, J. Pomerantz, G. Demo, H. Winograd re: cross-examination of Sauter and communications with Court (0.3).	0.30	1395.00	$418.50
01/06/2022	LSC	Preparation of materials for 1_10_22 hearing on HCMFA second motion to amend (.5); finalize and transmit exhibits to local counsel for filing (.6).	1.10	495.00	$544.50
01/06/2022	JE	Review order to consolidate, motion on discovery to district court and related briefing and various related pleadings.	1.20	1325.00	$1,590.00
01/06/2022	HRW	Email J. Pomerantz, J. Morris, G. Demo re: Order consolidating notes cases (0.2).	0.20	750.00	$150.00
01/06/2022	HRW	Review Order consolidating notes cases (0.3).	0.30	750.00	$225.00
01/07/2022	JMF	Review reply re motion to amend amend answers in notes litigation.	0.50	1145.00	$572.50
01/07/2022	JAM	Prepare for evidentiary hearing on HCMFA's motion for leave to amend answer (1.2).	1.20	1395.00	$1,674.00
01/07/2022	HRW	Research re: appeal of order denying motion to extend discovery (1.0).	1.00	750.00	$750.00
01/07/2022	HRW	Email J. Morris, J. Pomerantz, G. Demo re: HCMFA	0.10	750.00	$75.00

			Hours	Rate	Amount
		reply ISO second motion to amend the answer (0.1).			
01/07/2022	HRW	Review HCMFA reply ISO second motion to amend the answer (0.8).	0.80	750.00	$600.00
01/07/2022	HRW	Email J. Pomerantz, J. Morris, G. Demo re: appeal of order denying motion to extend discovery (0.5).	0.50	750.00	$375.00
01/07/2022	HRW	Email Z. Annable re: appeal of order denying motion to extend discovery (0.1).	0.10	750.00	$75.00
01/08/2022	JAM	Prepare for evidentiary hearing on HCMFA's motion for leave to amend its answer (4.1).	4.10	1395.00	$5,719.50
01/10/2022	JNP	Conference with John A. Morris regarding hearing on motion to amend answer.	0.10	1445.00	$144.50
01/10/2022	JAM	Prepare for hearing on HCMFA's motion for leave to amend (7.2); hearing on HCMFA's motion for leave to amend (4.7); tel c. w/ G. Demo re: follow up to hearing (0.1).	12.00	1395.00	$16,740.00
01/10/2022	JAM	Tel c. w/ J. Pomerantz, G. Demo, adversaries, court re: consolidation implications and briefing (0.4).	0.40	1395.00	$558.00
01/10/2022	LSC	Revise witness and exhibit list and coordinate filing of same with local counsel (.3); prepare for and assist at hearing on HCMFA's Second Motion to Amend Answer (5.5).	6.40	495.00	$3,168.00
01/10/2022	GVD	Conference with J. Morris re follow up to hearing re amendment of complaint	0.10	1095.00	$109.50
01/10/2022	HRW	Email J. Morris re: second HCMFA adversary proceeding (0.1).	0.10	750.00	$75.00
01/10/2022	HRW	Research re: motion to reconsider order denying motion to extend discovery (1.5).	1.50	750.00	$1,125.00
01/10/2022	HRW	Hearing on HCMFA second motion to amend answer (4.5).	4.50	750.00	$3,375.00
01/10/2022	HRW	Review HCMFA rule 26 disclosures (0.2).	0.20	750.00	$150.00
01/10/2022	HRW	Email J. Pomerantz, J. Morris, G. Demo re: motion for reconsideration of order denying motion to extend discovery (0.3).	0.30	750.00	$225.00
01/11/2022	JAM	E-mails w/ J. Pomerantz, G. Demo, M. Aigen re: request for extension of time to oppose motion for PSJ (0.3).	0.30	1395.00	$418.50
01/11/2022	HRW	Research re: appeal of order denying motion to extend discovery (3.0).	3.00	750.00	$2,250.00
01/11/2022	HRW	Review emails from opposing counsel and J. Morris re: scheduling for MSJ (0.1).	0.10	750.00	$75.00

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			Hours	Rate	Amount
01/11/2022	HRW	Email J. Kroop re: appeal of order denying motion to extend discovery (0.2).	0.20	750.00	$150.00
01/11/2022	HRW	Email J. Kroop re: consolidation of appeals of order denying arbitration (0.1).	0.10	750.00	$75.00
01/11/2022	HRW	Email J. Pomerantz, J. Kroop, J. Morris, G. Demo re: appeal of order denying motion to extend discovery (0.3).	0.30	750.00	$225.00
01/11/2022	JAK	Review of strategic considerations for consolidation of four appeals of arbitration denial in emails with Hayley Winograd.	0.30	1195.00	$358.50
01/11/2022	JAK	Analyze legal issues pertaining to motion for reconsideration under Rule 72 as opposed to direct appeal with Hayley Winograd.	0.50	1195.00	$597.50
01/12/2022	JNP	Conference with Hayley R. Winograd, John A. Morris and Gregory V. Demo regarding consolidation order and next steps.	0.50	1445.00	$722.50
01/12/2022	JAM	Review draft stipulation extending briefing schedule on PSJ motion (0.2); e-mails w/ Defense counsel re: stipulation extending briefing schedule on PSJ motion (0.1); tel c. w/ J. Pomerantz, G. Demo, H. Winograd re: strategy for addressing motions in District Court (0.5).	0.80	1395.00	$1,116.00
01/12/2022	GVD	Conference with J. Pomerantz, J. Morris, and H. Winograd re notes litigation issues and next steps	0.50	1095.00	$547.50
01/12/2022	HRW	Email J. Morris, J. Pomerantz, G. Demo re: pending motions in consolidated cases (0.1).	0.10	750.00	$75.00
01/12/2022	HRW	Call with G. Demo, J. Morris, G. Demo re: nexpoint objection to order denying motion to extend (0.6).	0.60	750.00	$450.00
01/12/2022	HRW	Review order re: pending motions in consolidated cases (0.1).	0.10	750.00	$75.00
01/12/2022	HRW	Research re: response to nexpoint objection to order denying motion to extend (3.0).	3.00	750.00	$2,250.00
01/13/2022	HRW	Research and draft response to nexpoint objection to order denying motion to extend (5.0).	5.00	750.00	$3,750.00
01/14/2022	JNP	Emails regarding response to motion for reconsideration of expert discovery order.	0.10	1445.00	$144.50
01/14/2022	JAM	Review/revise HCMFA's draft stipulation concerning the withdrawal of the reference in HCMFA II (0.7); e-mail to defense counsel, J. Pomerantz, G. Demo, H. Winograd re: revised draft stipulation concerning the withdrawal of the reference in HCMFA II (0.1).	0.80	1395.00	$1,116.00

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			Hours	Rate	Amount
01/14/2022	HRW	Email Z. Annable re: objection to order denying motion to extend (0.1).	0.10	750.00	$75.00
01/14/2022	HRW	Draft response to nexpoint objection to order denying motion to extend (2.5).	2.50	750.00	$1,875.00
01/14/2022	HRW	Email J. Morris stipulation re: briefing schedule on nexpoint objection to order denying motion to extend (0.1).	0.10	750.00	$75.00
01/14/2022	HRW	Review nexpoint motion re: objection to order denying motion to extend (0.2).	0.20	750.00	$150.00
01/14/2022	HRW	Call with J. Morris re: nexpoint objection to order denying motion to extend (0.2).	0.20	750.00	$150.00
01/14/2022	HRW	Draft stipulation re: briefing schedule on nexpoint objection to order denying motion to extend (0.5).	0.50	750.00	$375.00
01/14/2022	HRW	Email J. Pomerantz, J. Morris, G. Demo re: nexpoint objection to order denying motion to extend (0.2).	0.20	750.00	$150.00
01/17/2022	HRW	Draft response to nexpoint objection to order denying motion to extend (6.5).	6.50	750.00	$4,875.00
01/18/2022	JNP	Review stipulation with retail boards regarding discovery and conference with John A. Morris regarding same.	0.20	1445.00	$289.00
01/18/2022	HRW	Draft response to nexpoint objection to order denying motion to extend (6.0).	6.00	750.00	$4,500.00
01/19/2022	JNP	Review of retail boards stipulation; Conference with John A. Morris regarding.	0.20	1445.00	$289.00
01/19/2022	JAM	E-mails w/ M. Aigen, J. Pomerantz, G. Demo, H. Winograd re: request for extension of page limit (0.2).	0.20	1395.00	$279.00
01/19/2022	HRW	Draft response to nexpoint objection to order denying motion to extend (7.0) / Code: NL	7.00	750.00	$5,250.00
01/19/2022	HRW	Review email from opposing counsel to Court re: re: extension of page limit for MSJ (0.1).	0.10	750.00	$75.00
01/19/2022	HRW	Review email between J. Morris and opposing counsel re: extension of page limit for MSJ (0.1).	0.10	750.00	$75.00
01/20/2022	JNP	Conference with John A. Morris regarding various litigation updates.	0.20	1445.00	$289.00
01/20/2022	JNP	Review emails regarding motion to extend page limit for response.	0.10	1445.00	$144.50
01/20/2022	JNP	Conference with John A. Morris regarding summary judgment motion and related.	0.20	1445.00	$289.00
01/20/2022	JMF	Review opposition to motion for summary	0.50	1145.00	$572.50

			Hours	Rate	Amount
		judgment.			
01/20/2022	JAM	E-mails w/ defense counsel, court, internal team re: page limit issues (0.6); review J. Dondero Declaration for HCMFA opposition (0.4); tel c. w/ H. Winograd re: notes litigation (0.1); tel c. w/ J. Pomerantz re: status, HCMFA filing (0.2).	1.30	1395.00	$1,813.50
01/20/2022	GVD	Review responses to motions for summary judgment	0.50	1095.00	$547.50
01/20/2022	HRW	Review stipulation re: briefing schedule on nexpoint objection to order denying motion to extend (0.2).	0.20	750.00	$150.00
01/20/2022	HRW	Review email between J. Morris and opposing counsel re: extension of page limit for MSJ (0.2).	0.20	750.00	$150.00
01/20/2022	HRW	Review J. Morris email from J. Morris to Court re: extension of page limit for MSJ (0.1).	0.10	750.00	$75.00
01/20/2022	HRW	Draft response to nexpoint objection to order denying motion to extend (7.0).	7.00	750.00	$5,250.00
01/20/2022	HRW	Email J. Morris re: stipulation on briefing schedule for nexpoint objection to order denying motion to extend (0.1).	0.10	750.00	$75.00
01/20/2022	HRW	Review emails re: scheduling of MSJ oral argument (0.1).	0.10	750.00	$75.00
01/21/2022	JNP	Conference with John A. Morris regarding potential sanctions for order violations.	0.20	1445.00	$289.00
01/21/2022	JMF	Review motion to withdraw reference re Dondero notes litigation proceeding.	0.50	1145.00	$572.50
01/21/2022	JAM	E-mails w/ defense counsel, J. Pomerantz, J. Seery re: timing of oral argument on notes litigation (0.3); review appendix in support of defendants' opposition (0.5); draft e-mail re: potential contempt motion (0.6).	1.40	1395.00	$1,953.00
01/21/2022	GVD	Conference with J. Morris re responses to motions for summary judgment and next steps (0.1); review draft email from J. Morris re contempt issues (0.1)	0.20	1095.00	$219.00
01/21/2022	HRW	Review J. Morris email re: motion to move argument on MSJ motion (0.1).	0.10	750.00	$75.00
01/21/2022	HRW	Review email from J. Morris re: notice of intent to file contempt motion re: MSJ evidence (0.1).	0.10	750.00	$75.00
01/21/2022	HRW	Review B. Asskin email re: motion to exceed page limit in MSJ response (0.1).	0.10	750.00	$75.00
01/21/2022	HRW	Review J. Morris email re: contempt for MSJ evidence (0.1).	0.10	750.00	$75.00
01/21/2022	HRW	Review Dondero renewed motion for ruling on R&R	0.20	750.00	$150.00

			Hours	Rate	Amount
		(0.2).			
01/21/2022	HRW	Review email J. Pomerantz and J. Morris re: Dondero renewed motion for ruling on R&R (0.1).	0.10	750.00	$75.00
01/21/2022	HRW	Email J. Morris, J. Pomerantz, G. Demo re: re: notice of intent to file contempt motion re: MSJ evidence (0.1).	0.10	750.00	$75.00
01/21/2022	HRW	Email J. Pomerantz re: Dondero renewed motion for ruling on R&R (0.1).	0.10	750.00	$75.00
01/21/2022	HRW	Review consolidation order (0.2).	0.20	750.00	$150.00
01/22/2022	JAM	E-mails w/ J. Seery, J. Pomerantz, G. Demo, H. Winograd, defense counsel re: possible contempt motion (0.3).	0.30	1395.00	$418.50
01/22/2022	HRW	Review email from J. Morris re: re: notice of intent to file contempt motion re: MSJ evidence (0.1).	0.10	750.00	$75.00
01/24/2022	JMF	Review motion to withdraw reference re Dondero adversary.	0.30	1145.00	$343.50
01/24/2022	JAM	Review/analyze briefs in opposition to SJ motion (4.3); e-mails w/ M. Aigen re: contempt motion (0.2); tel c. w/ H. Winograd re: review of opposition papers and plans for reply (0.5).	5.00	1395.00	$6,975.00
01/24/2022	HRW	Edit stipulation for motion for reconsideration (0.1).	0.10	750.00	$75.00
01/24/2022	HRW	Email J. Morris re: stipulation for motion for reconsideration (0.1).	0.10	750.00	$75.00
01/24/2022	HRW	Email D. Rukavina and M. Aigen re: stipulation for motion for reconsideration (0.1).	0.10	750.00	$75.00
01/24/2022	HRW	Call with J. Morris re: MSJ reply (0.5).	0.50	750.00	$375.00
01/25/2022	JAM	Review/revise stipulation concerning "appeal" of expert order (0.1); e-mails w/ M. Aigen, others re: contempt (0.1); review opposition papers (1.1).	1.30	1395.00	$1,813.50
01/25/2022	HRW	Review emails re: scheduling of MSJ hearing (0.1).	0.10	750.00	$75.00
01/25/2022	HRW	Review emails from J. Morris and M. Aigen re: MSJ evidence (0.2).	0.20	750.00	$150.00
01/25/2022	HRW	Email J. Morris, G. Demo, J. Pomerantz re: contempt motion re: MSJ filing (0.2).	0.20	750.00	$150.00
01/25/2022	HRW	Email D. Rukavina and M. Aigen re: stipulation for motion for reconsideration (0.1).	0.10	750.00	$75.00
01/25/2022	HRW	Research for contempt motion re: MSJ filing (1.0).	1.00	750.00	$750.00
01/26/2022	JAM	E-mail to defense counsel re: possible contempt motion (0.9); work on reply brief (1.7).	2.60	1395.00	$3,627.00

Pachulski Stang Ziehl & Jones LLP
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January 31, 2022

			Hours	Rate	Amount
01/26/2022	HRW	Draft response to nexpoint objection to order denying motion to extend (6.0).	6.00	750.00	$4,500.00
01/26/2022	HRW	Draft HCMFA discovery requests for second notes adversary (0.5).	0.50	750.00	$375.00
01/26/2022	HRW	Review emails from J. Morris and M. Aigen re: MSJ evidence (0.1).	0.10	750.00	$75.00
01/26/2022	HRW	Review D. Rukavina email re: scheduling of briefing on motion for reconsideration (0.1).	0.10	750.00	$75.00
01/27/2022	JNP	Review reply regarding motion for reconsideration and conference with Hayley R. Winograd regarding same.	0.30	1445.00	$433.50
01/27/2022	JMF	Review motion for reconsideration re order denying request to amended answer.	0.40	1145.00	$458.00
01/27/2022	JAM	Review/revise draft brief in opposition to motion for reconsideration of denial of expert motion (1.0); continued review of opposition papers (2.8).	3.80	1395.00	$5,301.00
01/27/2022	GVD	Conference with J. Morris re status of notes litigation	0.20	1095.00	$219.00
01/27/2022	HRW	Draft response to nexpoint objection to order denying motion to extend (1.8).	1.80	750.00	$1,350.00
01/27/2022	HRW	Email J. Pomerantz, G. Demo, J. Morris re: response and objection to motion for reconsideration (0.2).	0.20	750.00	$150.00
01/27/2022	HRW	Email J. Pomerantz, G. Demo, J. Morris re: HCMFA motion for reconsideration of order denying motion to amend (0.1).	0.10	750.00	$75.00
01/27/2022	HRW	Email L. Canty re: response and objection to motion for reconsideration (0.1).	0.10	750.00	$75.00
[redacted]					
01/27/2022	HRW	Call with J. Pomerantz re: response and objection to motion for reconsideration (0.1).	0.10	750.00	$75.00
01/27/2022	HRW	Review HCMFA motion for reconsideration of order denying motion to amend (0.3).	0.30	750.00	$225.00
01/28/2022	JNP	Conference with John A. Morris regarding summary judgment and related issues.	0.20	1445.00	$289.00
01/28/2022	JAM	Continued work on reply for partial summary judgment motion (3.6).	3.60	1395.00	$5,022.00
[redacted]					
[redacted]					

Pachulski Stang Ziehl & Jones LLP
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			Hours	Rate	Amount
01/29/2022	HRW	Draft response to nexpoint motion for reconsideration (2.5).	2.50	750.00	$1,875.00
01/30/2022	JAM	[redacted] review/revise objection to appeal of order denying extension of expert discovery deadline (0.4); tel c. w/ H. Winograd re: reply briefs for notes litigation SJ motion (0.5).	[redacted]	1395.00	[redacted]
01/30/2022	LSC	Preparation of appendix in support of objection to motion for reconsideration, including updates to objection and amendments to same.	4.30	495.00	$2,128.50
01/30/2022	HRW	Email J. Seery re: nexpoint motion for reconsideration (0.1).	0.10	750.00	$75.00
01/30/2022	HRW	Draft response to nexpoint motion for reconsideration (1.0).	1.00	750.00	$750.00
01/30/2022	HRW	Call with L. Canty re: nexpoint motion for reconsideration (0.1).	0.10	750.00	$75.00
01/30/2022	HRW	Call with J. Morris re: MSJ (0.5).	0.50	750.00	$375.00
01/31/2022	JNP	Review final draft of response regarding motion for reconsideration.	0.10	1445.00	$144.50
01/31/2022	JMF	Review reply to motion for reconsideration of bankruptcy order re expert discovery.	0.30	1145.00	$343.50
01/31/2022	JAM	Communications w/ H. Winograd re: revisions to brief in opposition to reconsideration of order denying extension of expert discovery deadline (0.3); review final brief in opposition to reconsideration of expert discovery order (0.2); [redacted].	[redacted]	1395.00	[redacted]
01/31/2022	HRW	Email J. Morris re: response to nexpoint motion for reconsideration (0.1).	0.10	750.00	$75.00
01/31/2022	HRW	Research re: reply to HCMFA summary judgment (2.5).	2.50	750.00	$1,875.00
01/31/2022	HRW	Call with J. Morris re: response to nexpoint motion for reconsideration (0.1).	0.10	750.00	$75.00
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
01/31/2022	HRW	Call with L. Canty re: nexpoint motion for reconsideration (0.1).	0.10	750.00	$75.00
01/31/2022	HRW	Draft and file response to nexpoint motion for reconsideration (2.5).	2.50	750.00	$1,875.00

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January 31, 2022

			Hours	Rate	Amount
01/31/2022	HRW	Email Z. Annable re: response to nexpoint motion for reconsideration (0.2).	0.20	750.00	$150.00
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
			148.60		**$140,045.50**

TOTAL SERVICES FOR THIS MATTER: $140,045.50

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January 31, 2022

REMITTANCE ADVICE

Please inlcude this Remittance with your payment

For current services rendered through: 01/31/2022

Total Fees	**$140,045.50**
Total Due on Current Invoice	**$140,045.50**

Outstanding Balance from prior invoices as of 01/31/2022 (May not include recent payments)

A/R Bill Number	Invoice Date	Fees Billed	Expenses Billed	Balance Due

Total Amount Due on Current and Prior Invoices: $140,045.50

EXHIBIT C

Pachulski Stang Ziehl & Jones LLP

10100 Santa Monica Blvd.
13th Floor
Los Angeles, CA 90067

February 28, 2022
Invoice 129792
Client 36027
Matter 00004
JNP

James P. Secry, Jr.
Highland Capital Management LP
100 Crescent Court, Suite 1850
Dallas, TX 75201

RE: Notes Litigation

STATEMENT OF PROFESSIONAL SERVICES RENDERED THROUGH 02/28/2022

FEES	$172,582.50
TOTAL CURRENT CHARGES	**$172,582.50**
BALANCE FORWARD	**$140,045.50**
LAST PAYMENT	**$140,045.50**
TOTAL BALANCE DUE	**$172,582.50**

Pachulski Stang Ziehl & Jones LLP
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Summary of Services by Professional

ID	Name	Title	Rate	Hours	Amount
GVD	Demo, Gregory Vincent	Counsel	1095.00	2.40	$2,628.00
HRW	Winograd , Hayley R.	Associate	750.00	103.00	$77,250.00
JAM	Morris, John A.	Partner	1395.00	51.80	$72,261.00
JMF	Fried, Joshua M.	Partner	1145.00	2.20	$2,519.00
JNP	Pomerantz, Jeffrey N.	Partner	1445.00	1.10	$1,589.50
LSC	Canty, La Asia S.	Paralegal	495.00	33.00	$16,335.00
				193.50	$172,582.50

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February 28, 2022

Summary of Services by Task Code

Task Code	Description	Hours	Amount
		193.50	$172,582.50
		193.50	$172,582.50

Pachulski Stang Ziehl & Jones LLP
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			Hours	Rate	Amount
12/03/2021	LSC	Prepare appendix in support of motion to consolidate actions.	0.40	495.00	$198.00
01/26/2022	LSC	Research and transmittal of various documents, including discovery, in connection with preparation for response to motion for reconsideration.	2.10	495.00	$1,039.50
02/01/2022	JAM	Tel c. w/ H. Winograd re: motion to strike and for sanctions re: Tully Report and barred defense (0.4).	0.40	1395.00	$558.00
02/01/2022	HRW	Draft reply ISO motion for summary judgment (3.5).	3.50	750.00	$2,625.00
02/01/2022	HRW	Call with J. Morris re: reply ISO motion for summary judgment (0.3).	0.30	750.00	$225.00
02/01/2022	HRW	Email J. Pomerantz, J. Morris, G. Demo re: HCMFA motion for reconsideration of order denying motion to amend (0.1).	0.10	750.00	$75.00
02/01/2022	HRW	Email J. Morris re: reply ISO motion for summary judgment (0.1).	0.10	750.00	$75.00
02/02/2022	JAM	Work on reply papers (3.7).	3.70	1395.00	$5,161.50
02/02/2022	HRW	Draft reply ISO motion for summary judgment (7.5).	7.50	750.00	$5,625.00
02/03/2022	JAM	Tel c. w/ H. Winograd re: HCMFA opposition to motion for summary judgment (0.2); work on reply in support of motion for partial summary judgment (5.5).	5.70	1395.00	$7,951.50
02/03/2022	HRW	Draft reply ISO summary judgment (8.5).	8.50	750.00	$6,375.00
02/04/2022	JAM	Begin drafting sanctions motion (2.2).	2.20	1395.00	$3,069.00
02/04/2022	JAM	Continued work on reply for PSJ motion (4.1); tel c. w/ H. Winograd re: status of drafting replies (0.1).	4.20	1395.00	$5,859.00
02/04/2022	HRW	Draft reply ISO summary judgment (9.0).	9.00	750.00	$6,750.00
02/05/2022	JAM	Work on contempt motion (3.7);	3.70	1395.00	$5,161.50
02/05/2022	HRW	Draft reply ISO summary judgment (9.5).	9.50	750.00	$7,125.00
02/06/2022	JAM	Continued work on Reply for Alleged Agreement Defendants (7.5); tel c. w/ J. Seery re: reply for motion for partial summary judgment and related matters (0.2); e-mails w/ J. Seery, PSZJ team re: reply brief (0.2).	7.90	1395.00	$11,020.50
02/06/2022	JAM	Continued work on contempt motion (1.6); e-mail to PSZJ team re: contempt motion (0.1); e-mail to L. Canty, H. Winograd re: exhibits for contempt motion (0.2).	1.90	1395.00	$2,650.50

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Invoice 129792
February 28, 2022

			Hours	Rate	Amount
02/06/2022	LSC	Preparation of appendix and exhibits to motion for sanctions/contempt.	1.40	495.00	$693.00
02/06/2022	GVD	Review draft contempt motion	0.50	1095.00	$547.50
02/06/2022	HRW	Draft reply ISO summary judgment (10.0).	10.00	750.00	$7,500.00
02/06/2022	HRW	Draft motions for contempt and to strike summary judgment evidence (2.0).	2.00	750.00	$1,500.00
02/07/2022	JNP	Conference with John A. Morris regarding motion to strike.	0.30	1445.00	$433.50
02/07/2022	JNP	Review latest version of motion to strike.	0.10	1445.00	$144.50
02/07/2022	JMF	Review motions to strike and sanctions re expert discovery.	0.60	1145.00	$687.00
02/07/2022	JAM	Continued work on contempt motion (3.4); e-mails to J.. Seery, PSZJ team re: contempt motion (0.1).	3.50	1395.00	$4,882.50
02/07/2022	JAM	Work on reply papers (including HCMFA brief, non-HCMFA brief, JAM Declaration, Klos Declaration) (10.3): tel c. w/ H. Winograd re: reply papers (0.1); tel c. w/ G. Demo re: reply papers (0.1); tel c. w/ D. Klos re: Klos Declaration (0.2); tel c. w/ J. Pomerantz re: reply papers (0.3); tel c. w/ D. Klos re: Klos Declaration (0.2); tel c. w/ J. Seery re: reply papers (0.1); tel c. w/ J. Seery, D. Klos re: Klos Declaration (0.1); tel c. w/ H. Winograd re: reply papers (0.1); tel c. w/ L. Canty, H. Winograd, Z. Annable re: reply papers (0.4); tel c. w/ H. Winograd re: reply papers (0.1).	12.00	1395.00	$16,740.00
02/07/2022	LSC	Assist with preparation of contempt motion, including preparation of additional exhibits, preparation of declaration in support of same, and revisions to same.	3.60	495.00	$1,782.00
02/07/2022	LSC	Assist with preparation of reply in support of summary judgment (non-HCMFA parties), including research, revisions, and insertion of pincites in the same.	3.90	495.00	$1,930.50
02/07/2022	LSC	Assist with preparation of reply in support of summary judgment (HCMFA), including research, revisions, and insertion of pincites in the same.	4.60	495.00	$2,277.00
02/07/2022	GVD	Conference with J. Morris re status of notes litigation	0.10	1095.00	$109.50
02/07/2022	GVD	Review motion for contempt	0.30	1095.00	$328.50
02/07/2022	GVD	Review transcript re DC Sauter testimony	1.10	1095.00	$1,204.50
02/07/2022	HRW	Draft reply ISO summary judgment (10.0).	10.00	750.00	$7,500.00

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			Hours	Rate	Amount
02/07/2022	HRW	Draft motions for contempt and to strike summary judgment evidence (1.5).	1.50	750.00	$1,125.00
02/08/2022	JNP	Conference with John A. Morris regarding summary judgment papers and related issues.	0.20	1445.00	$289.00
02/08/2022	JMF	Review reply to summary judgment opposition.	0.40	1145.00	$458.00
02/10/2022	HRW	Review email from Z. Annable with Court re: scheduling for motion to strike and for contempt (0.1).	0.10	750.00	$75.00
02/11/2022	HRW	Review notice of hearing re: motion to strike and for contempt (0.1).	0.10	750.00	$75.00
02/11/2022	HRW	Email Z. Annable re: notice of hearing on motion to strike and for contempt (0.1).	0.10	750.00	$75.00
02/13/2022	HRW	Draft objection and response to HCMFA motion for reconsideration of order denying motion to amend (2.5).	2.50	750.00	$1,875.00
02/14/2022	JNP	Review reply regarding expert witness reconsideration motion.	0.10	1445.00	$144.50
02/14/2022	HRW	Draft objection and response to HCMFA motion for reconsideration (6.5).	6.50	750.00	$4,875.00
02/14/2022	HRW	Review email from J. Pomerantz re: NexPoint reply ISO motion for reconsideration (0.1).	0.10	750.00	$75.00
02/14/2022	HRW	Review NexPoint reply ISO motion for reconsideration (0.5).	0.50	750.00	$375.00
02/15/2022	JMF	Review reply to motion to extend expert discovery.	0.30	1145.00	$343.50
02/15/2022	HRW	Draft objection and response to HCMFA motion for reconsideration (7.5).	7.50	750.00	$5,625.00
02/15/2022	HRW	Email Z. Annable MSJ amended notice of hearing (0.1).	0.10	750.00	$75.00
02/15/2022	HRW	Review MSJ amended notice of hearing (0.1).	0.10	750.00	$75.00
02/15/2022	HRW	Call with L. Canty re: objection and response to HCMFA motion for reconsideration (0.1).	0.10	750.00	$75.00
02/16/2022	JAM	Tel c. w/ H. Winograd re: objection to appeal of order denying HCMFA leave to amend (0.1).	0.10	1395.00	$139.50
02/16/2022	LSC	Review and revise draft opposition to motion for reconsideration and continued preparation of appendix/exhibits.	5.30	495.00	$2,623.50
02/16/2022	HRW	Draft objection and response to HCMFA motion for reconsideration (11.0).	11.00	750.00	$8,250.00
02/17/2022	JNP	Review reply regarding motion for reconsideration	0.20	1445.00	$289.00

			Hours	Rate	Amount
		and email to and from Hayley R. Winograd regarding same.			
02/17/2022	JMF	Review oppo to motion to district court to amend answer re review of bankruptcy court order denying motion.	0.50	1145.00	$572.50
02/17/2022	JAM	Review/revise opposition to HCMFA appeal of denial of motion to amend answer (3.7); communications w/ H. Winograd, Z. Annable re: opposition to HCMFA appeal of denial of motion to amend answer (0.6).	4.30	1395.00	$5,998.50
02/17/2022	LSC	Assist with preparation of objection to HCMFA motion for reconsideration, including continued preparation of appendix and additional exhibits, review and revisions to objection, and confer and correspond regarding the same.	8.60	495.00	$4,257.00
02/17/2022	GVD	Review draft response to motion for reconsideration	0.40	1095.00	$438.00
02/17/2022	HRW	Draft objection and response to HCMFA motion for reconsideration and related tasks (9.5).	9.50	750.00	$7,125.00
02/18/2022	JAM	Tel c. w/ H. Winograd re: status of notes litigation/briefing (0.2); tel c. w/ H. Winograd re: correction to Appendix, appeals to district court (0.3); e-mail to H. Winograd, L. Canty re: supplementing the appendix for additional costs and expenses in notes litigation (0.2).	0.70	1395.00	$976.50
02/18/2022	LSC	Attention to amendment to brief in support of motion to strike, including preparation of amended exhibit and confer and correspond with attorneys regarding the same (.4); research and correspondence regarding issue with sealed exhibit (.3).	0.70	495.00	$346.50
02/18/2022	HRW	Review email from Z. Annable and J. Morris re: response to HCMFA motion for reconsideration and related tasks (0.2).	0.20	750.00	$150.00
02/18/2022	HRW	Email Z. Annable and J. Morris re: motion for contempt and to strike (0.2).	0.20	750.00	$150.00
02/18/2022	HRW	Draft errata re: motion for contempt and to strike (0.5).	0.50	750.00	$375.00
02/24/2022	JAM	E-mails w/ Z. Annable, H. Winograd re: propriety of filing an Appendix in support of the Reply (0.3); review cases concerning the same (0.2).	0.50	1395.00	$697.50
02/24/2022	LSC	Begin preparation of additional exhibits in connection with summary judgment hearing.	1.30	495.00	$643.50
02/24/2022	HRW	Review email from M. Aigen and J. Morris re:	0.10	750.00	$75.00

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Highland Capital Management LP
36027 - 00004

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			Hours	Rate	Amount
		motion to strike appendix in reply to MSJ pleading (0.1).			
02/24/2022	HRW	Review emails from J. Morris and Z. Annable re: motion to strike appendix in reply to MSJ pleading (0.2).	0.20	750.00	$150.00
02/24/2022	HRW	Email J. Morris and Z. Annable re: motion to strike appendix in reply to MSJ pleading (0.2).	0.20	750.00	$150.00
02/24/2022	HRW	Research re: motion to strike appendix in reply to MSJ pleading (1.0).	1.00	750.00	$750.00
02/25/2022	JNP	Review motion to strike.	0.20	1445.00	$289.00
02/25/2022	JMF	Review motion to strike appendix re notes litigation.	0.40	1145.00	$458.00
02/25/2022	JAM	E-mails w/ D. Rukavina, Z. Annable re: sealing of HCMFA 2018 audit report (0.2); preliminary review of motion to strike and communications w/ J. Pomerantz, G. Demo, H. Winograd concerning the same (0.2).	0.40	1395.00	$558.00
02/25/2022	HRW	Review defendants' motion to strike appendix in MSJ reply (0.3).	0.30	750.00	$225.00
02/25/2022	HRW	Review emails from J. Morris and D. Rukavina re: HCMFA motion for reconsideration materials and motion to seal document (0.1).	0.10	750.00	$75.00
02/28/2022	JAM	Preliminary work on response to motion to strike (0.3); preliminary review of opposition to motion to strike/sanctions/contempt (0.3).	0.60	1395.00	$837.00
02/28/2022	LSC	Preparation of additional exhibits in connection with summary judgment.	1.10	495.00	$544.50
			193.50		**$172,582.50**

TOTAL SERVICES FOR THIS MATTER: $172,582.50

Pachulski Stang Ziehl & Jones LLP
Highland Capital Management LP
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Invoice 129792
February 28, 2022

REMITTANCE ADVICE

Please inlcude this Remittance with your payment

For current services rendered through: 02/28/2022

Total Fees	**$172,582.50**
Total Due on Current Invoice	**$172,582.50**

Outstanding Balance from prior invoices as of 02/28/2022 (May not include recent payments)

A/R Bill Number	Invoice Date	Fees Billed	Expenses Billed	Balance Due

Total Amount Due on Current and Prior Invoices: $172,582.50

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Counsel for Highland Capital Management, L.P.

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

HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
Plaintiff,	§	
vs.	§	Adv. Proc. No. 21-03003-sgj
JAMES DONDERO, NANCY DONDERO, AND THE DUGABOY INVESTMENT TRUST,	§	Case No. 3:21-cv-00881-X
Defendants.	§	

HIGHLAND CAPITAL MANAGEMENT, L.P., Plaintiff, vs. HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, L.P., Defendant.	§ § § § § § § § § § § § § § §	Adv. Proc. No. 21-03004-sgj Case No. 3:21-cv-00881-X
HIGHLAND CAPITAL MANAGEMENT, L.P., Plaintiff, vs. NEXPOINT ADVISORS, L.P., JAMES DONDERO, NANCY DONDERO, AND THE DUGABOY INVESTMENT TRUST, Defendants.	§ § § § § § § § § § § § § § §	Adv. Proc. No. 21-03005-sgj Case No. 3:21-cv-00881-X
HIGHLAND CAPITAL MANAGEMENT, L.P., Plaintiff, vs. HIGHLAND CAPITAL MANAGEMENT SERVICES, INC., JAMES DONDERO, NANCY DONDERO, AND THE DUGABOY INVESTMENT TRUST, Defendants.	§ § § § § § § § § § § § § § §	Adv. Proc. No. 21-03006-sgj Case No. 3:21-cv-00881-X

HIGHLAND CAPITAL MANAGEMENT, L.P., Plaintiff, vs. HCRE PARTNERS, LLC (n/k/a NexPoint Real Estate Partners, LLC), JAMES DONDERO, NANCY DONDERO, AND THE DUGABOY INVESTMENT TRUST, Defendants.	§ § § § § § § § § § § § § §	Adv. Proc. No. 21-03007-sgj Case No. 3:21-cv-00881-X

HIGHLAND CAPITAL MANAGEMENT, L.P.'S RESPONSE TO DEFENDANTS' OBJECTIONS TO PLAINTIFF'S PROPOSED FORM OF JUDGMENT AWARDING ATTORNEY'S FEES AND COSTS

Highland Capital Management, L.P., the reorganized debtor and the plaintiff in the above-captioned adversary proceedings ("Highland" or "Plaintiff"), hereby files this response (the "Response") to *Defendants' Objections to Plaintiff's Proposed Form of Judgment Awarding Attorney's Fees and Costs* (the "Objection").[1] Highland fully incorporates by reference its contemporaneously filed brief (the "Brief") in response to the Objection and would show unto the Court as follows:

RELIEF REQUESTED[2]

1. By this Response, Highland respectfully requests that the Court enter an order overruling the Objection.

2. Pursuant to Rules 7.1(d) and (h) of the *Local Civil Rules of the United States*

[1] The defendants (collectively, the "Defendants") filed identical copies of their Objection in each of the Adversary Proceedings. *See* Adv. Pro. No. 21-03003-sgj, Docket No. 204; Adv. Pro. No. 21-03004-sgj, Docket No. 173; Adv. Pro. No. 21-03005-sgj, Docket No. 221; Adv. Pro. No. 21-03006-sgj, Docket No. 226; Adv. Pro. No. 21-03007-sgj, Docket No. 221.

[2] Capitalized terms shall have the meanings ascribed to them in the Brief.

District Court for the Northern District of Texas, Dallas Division (the "Local Rules"), the Brief is being filed contemporaneously with this Response and is incorporated by reference.

PRAYER

WHEREFORE, Highland respectfully requests that the Court (i) overrule the Objection, and (ii) grant such other and further relief as the Court deems just and proper.

Dated: September 27, 2022

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Counsel for Highland Capital Management, L.P.

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

HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
Plaintiff,	§	
vs.	§	Adv. Proc. No. 21-03003-sgj
JAMES DONDERO, NANCY DONDERO, AND THE DUGABOY INVESTMENT TRUST,	§	Case No. 3:21-cv-00881-X
Defendants.	§	

HIGHLAND CAPITAL MANAGEMENT, L.P., Plaintiff, vs. HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, L.P., Defendant.	§ § § § § § § § § § § § § §	Adv. Proc. No. 21-03004-sgj Case No. 3:21-cv-00881-X
HIGHLAND CAPITAL MANAGEMENT, L.P., Plaintiff, vs. NEXPOINT ADVISORS, L.P., JAMES DONDERO, NANCY DONDERO, AND THE DUGABOY INVESTMENT TRUST, Defendants.	§ § § § § § § § § § § § §	Adv. Proc. No. 21-03005-sgj Case No. 3:21-cv-00881-X
HIGHLAND CAPITAL MANAGEMENT, L.P., Plaintiff, vs. HIGHLAND CAPITAL MANAGEMENT SERVICES, INC., JAMES DONDERO, NANCY DONDERO, AND THE DUGABOY INVESTMENT TRUST, Defendants.	§ § § § § § § § § § § § §	Adv. Proc. No. 21-03006-sgj Case No. 3:21-cv-00881-X

HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	
	§	Adv. Proc. No. 21-03007-sgj
Plaintiff,	§	
	§	
vs.	§	
	§	Case No. 3:21-cv-00881-X
HCRE PARTNERS, LLC (n/k/a NexPoint Real Estate Partners, LLC), JAMES DONDERO, NANCY DONDERO, AND THE DUGABOY INVESTMENT TRUST,	§	
	§	
	§	
	§	
	§	
	§	
Defendants.	§	

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TABLE OF AUTHORITIES

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RESPONSE IN SUPPORT OF PLAINTIFF'S PROPOSED
FORM OF JUDGMENT AWARDING ATTORNEYS' FEES AND COSTS

Highland Capital Management, L.P. ("Highland" or "Plaintiff"), plaintiff in the above-referenced procedurally-consolidated adversary proceedings (the "Adversary Proceedings"), files this response (the "Response") to *Defendants' Objections to Plaintiff's Proposed Form of Judgment Awarding Attorney's Fees and Costs* (the "Objection")[1] in further support of its *Proposed Form of Judgment* and its *Notice of Attorneys' Fees Calculation and Backup Documentation* (the "Notice")[2] filed on August 5, 2022. The above-captioned Defendants raise seven concerns in their Objection regarding the reasonableness and collectability of fees detailed in the Notice as having been actually incurred by Plaintiff's lead counsel, Pachulski Stang Ziehl & Jones LLP ("PSZJ"). The first six of Defendant's objections lack merit. The seventh is not so much an objection as it is a request that does not concern Plaintiff.

Objection #1: Mathematical Error

1. Defendants allege that the Notice overstated PSZJ's fees by $395,996.50. Objection at 5-6. Defendants are mistaken. There are two reasons for the gap between the calculations set forth in the Notice and Defendants' calculations.

2. ***First***, Plaintiff inadvertently omitted from the Notice PSZJ's invoices for January and February 2022.[3] Those months were particularly active and PSZJ's fees and expenses totaled

[1] The defendants (collectively, the "Defendants" and together with Plaintiff, the "Parties") filed identical copies of their Objection in each of the Adversary Proceedings. *See* Adv. Pro. No. 21-03003-sgj, Docket No. 204; Adv. Pro. No. 21-03004-sgj, Docket No. 173; Adv. Pro. No. 21-03005-sgj, Docket No. 221; Adv. Pro. No. 21-03006-sgj, Docket No. 226; and Adv. Pro. No. 21-03007-sgj, Docket No. 221.

[2] *See* Adv. Pro. No. 21-03003 at Docket No. 197; Adv. Pro. No. 21-03004 at Docket No. 169; Adv. Pro. No. 21-03005 at Docket No. 214; Adv. Pro. No. 21-03006 at Docket No. 219; and Adv. Pro. No. 21-03007 at Docket No. 214.

[3] *See Declaration of John A. Morris in Support of Highland Capital Management, L.P.'s Motion for Leave to Supplement Backup Documentation in Support of Proposed Judgment* (*see, e.g.*, Adv. Pro. No. 21-03003-sgj, Docket No. 206) ("Morris 9/27 Dec."), **Exhibits B** and **C**.

$307,493.50 (almost 80% of the alleged "math error"). Plaintiff is simultaneously moving to supplement the record to add these two inadvertently omitted invoices.

3. ***Second***, during the period December 1, 2020 through August 10, 2021, timekeepers at PSZJ recorded time spent on the Notes Litigation under the general code "BL" (for "Bankruptcy Litigation") where time spent on litigation matters other than the Notes Litigation was also recorded.[4] In the documentation supporting the Notice, all unrelated work was redacted and no compensation is sought with respect to the redacted entries. However, Plaintiff *does* seek compensation for the unredacted entries that are part of the "cost of collection." Defendants identified the issue but asserted it was "unduly difficult to decipher." Objection at 6, n. 2. That's overstated. While perhaps a bit tedious, it is not at all difficult to calculate: for each partially-redacted entry for which compensation is sought, Plaintiff simply added the total unredacted time and multiplied it by the timekeeper's hourly rate.

4. The results are easy to see. Attached as **Exhibit 1** is a summary of each month's fees charged by PSZJ for the Notes Litigation that are part of Plaintiff's "cost of collection" (at least through July 31, 2022) (the "Summary"). Attached as **Exhibits 2** through **10**, respectively, is the "backup" to the Summary for each month from December 2020 through August 10, 2021 (the "Backup"). The Backup shows each entry for the applicable month for which compensation is sought as part of Plaintiff's "cost of collection," including all the unredacted portions of the invoices.[5]

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[4] This issue most commonly (but not exclusively) occurred between December 1, 2020 and August 10, 2021 when time spent on the Notes Litigation was recorded in PSZJ's broad "Bankruptcy Litigation" (or, "BL") code where other litigation matters were also recorded. *See Declaration of John A. Morris in Support of Highland Capital Management, L.P.'s Proposed Form of Judgment* (Adv. Pro. No. 21-03003-sgj, Docket No. 197) ("Morris 8/5 Dec.") ¶ 7.

[5] As an example, on January 21, 2021, Hayley Winograd recorded time under the "BL" code. Except for two entries totaling 0.5 hours, none of the entries concerned the Notes Litigation, so they were redacted and no compensation is sough for them. But because the two unredacted entries concerned the Notes Litigation, the "backup" for January

5. In sum, there was no error in the Notice. The Summary includes the value of the Additional Invoices, and the Backup specifically identifies every entry for which compensation is sought. The total fees and expenses for PSZJ were properly calculated in the aggregate amount of $2,663,585.30.[6]

Objection #2: Excessive Redaction

6. Defendants contend that fees should not be awarded for "overly redacted" time entries. Objection at 6. Plaintiff does not quarrel with this general principal but notes that it simply does not apply here.

7. As set forth above and in the declaration filed in support of the Notice,[7] Plaintiff does not seek compensation for any time entry (whether in whole or in part) that was redacted.

Objection #3: Fees Should Be Limited to Breach of Contract and Turnover Claims

8. Defendants argue that Plaintiff may only recover fees for the breach of contract and turnover claims in the complaints because those two counts were the "the only claims addressed by the R&R issued by the Court." *See* Objection at 6-13. This argument lacks merit, as the Defendants implicitly acknowledge by quoting the *Tony Cullo Motors* case: "Absent a **contract** or statute, trial courts do not have inherent authority to require a losing party to pay the prevailing party's fees."[8] The promissory notes at the heart of these Adversary Proceedings constitute

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2021, includes a line item for Ms. Winograd for January 21, 2021, showing the entries, the time billed, and the total compensation sought (*i.e.*, $695 hourly rate x 0.5 hours = $347.50). **Exhibit 3**.

[6] After receiving the Objection, Plaintiff provided copies of the Additional Invoices, the Summary, and the Backup to Defendants' counsel in an effort to resolve this portion of the Objection. Regrettably, Defendants' counsel never responded. *See* **Morris 9/27 Dec. Exhibit A**.

[7] *See* Morris 8/5 Dec. ¶ 10.

[8] *Tony Cullo Motors I, L.P. v. Chapa*, 212 S.W.3d 299, 311 (Tex. 2006) (emphasis added) does not help Defendants in the least. The court there held, unremarkably, that because Texas law does not permit recovery for attorneys' fees on a fraud claim, and because there was no contract between the parties allowing for such recovery, the trial court's inclusion of attorney fees in the judgment constituted error.

contracts under which Plaintiff is entitled to *all* costs of collection, not just those directly incurred on a subset of litigated issues.

9. Section 6 of each promissory note ("Section 6") provides:

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

10. Nothing in Section 6 limits Plaintiff's recovery of "all actual expenses of collection" on any basis. Prevailing on one count of a complaint versus another is irrelevant. The legal nature of one count of a complaint versus another is irrelevant. Whether Plaintiff was effectively forced to amend its complaints to add counts in direct response to Defendants' manufactured and ultimately unproven "condition subsequent" defense, and whether Plaintiff "prevailed" on those additional counts, is irrelevant. Texas decisional law[9] pertaining to circumstances where no contract exists between the litigants providing for an award of attorneys' fees to the prevailing party is irrelevant (and Defendants' own case citation says so).

11. All that matters is that Section 6 expressly provides for Plaintiff to recover "all actual expenses of collection," without limitation or qualification of any kind. Thus, "all" expenses

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[9] Defendants cite no case where a Texas state court or a federal court refused to enforce an unambiguous provision in a promissory note entitling the note's holder to "all" attorneys' fees; no case limiting fees falling within such a note provision to the noteholder prevailing or not prevailing on a particular count in a complaint; and no case even limiting fees incurred in the unsuccessful prosecution or defense of some motion along the way toward judgment. Notably, *Varner v. Cardenas*, 218 S.W.3d 68, 69 (Tex. 2007), which expressly followed *Tony Cullo Motors*, not only upheld the trial court's award of attorneys' fees to the prevailing plaintiff who successfully sued on a promissory note, but also allowed the judgment to include attorneys' fees the plaintiff incurred in defending against the defendant's counterclaim:

> But we disagree that fees defending against the [defendant's] counterclaim must be segregated too. By asserting a shortfall in acreage as a defense and counterclaim, [defendant] sought to reduce the amount collected on the note; to collect the full amount, [plaintiff] had to overcome this defense. As [plaintiff's] attorney's efforts to that effect were necessary to recover on their contract, they are recoverable.

includes, for example, "all" filing fees, court costs, witness fees and court reporter fees, as well as all expenses associated with discovery. And, as specifically concerns the Objection, "all" means *all* "reasonable attorneys' fees and expenses incurred by" Plaintiff.

12. That Plaintiff incurred significant attorneys' fees in amending the complaints following Defendants' announcement of their fanciful "condition subsequent" defense does not take those fees outside the purview of the word "all." This is especially true because all of the fees Defendants argue should be excluded from the judgments were incurred because of Defendants' own machinations. Rather than acknowledge that they had no meritorious defense to the payment of unambiguous demand notes, all in default, Defendants turned these straightforward collection actions into an orgy of litigation, fabricating meritless defenses, advancing unpersuasive arguments, requiring extensive discovery and numerous depositions, amending their answers, and forcing Plaintiff to amend the complaints to respond to the novel "condition subsequent" defense.

13. ***All*** of the fees Plaintiff incurred in playing Defendants' cynical game of Whack-a-Mole, in overcoming every obstacle Defendants attempted to place in Plaintiff's path toward judgment—even in responding to Defendants' ill-fated attempt to compel an arbitration of these simple collection matters and Defendants' immediate appeal of this Court's ruling denying their arbitration motion—all of it, for more than a year, is directly attributable to Defendants' own litigation strategies, choices, and impositions on Plaintiff and on this Court.[10] *Defendants*, not Plaintiff, caused the word "all" in the notes to encompass far more fees than might otherwise have been incurred had Defendants not cravenly attempted to defend the indefensible.

14. Defendants' attempt to artificially limit the fees Plaintiff actually incurred in connection with these Adversary Proceedings—which **only** involve the collection of promissory

[10] *See Varner v. Cardenas*, 218 S.W.3d at 69.

notes "not paid at maturity … collected through a bankruptcy court …"—ignores the plain meaning of the notes. There is nothing ambiguous about the phrase "all actual expenses of collection." The drafter of the notes should be commended for writing so clear and unambiguous a provision. That drafter, of course, was Mr. Dondero.

Objection #4: Exclude "Unsegregated" Fees

15. Defendants argue that Plaintiff should not recover fees because counsel's time records did not "segregate" fees among the several Defendants, citing the *Clearview Properties* case. *See* Objection at 13-16. *Clearview Properties* stands for the unremarkable proposition that a plaintiff seeking an award of fees bears the burden of demonstrating that segregation is not required, and asserting that all claims against all defendants arise from common facts can be insufficient to satisfy that burden. Defendants ignore, of course, a critical component of these Adversary Proceedings, a component absent from the *Clearview Properties* case: *these Adversary Proceedings were consolidated for all purposes*, something to which the Defendants readily agreed.

16. Indeed, before most of the fact depositions or any expert discovery was undertaken, the Parties entered into a court-approved Stipulation providing, among other things, that:

> The Parties agree that discovery taken in this case will be consolidated with discovery taken in the [] [A]dversary [P]roceedings and all discovery in each of the [A]dversary [P]roceedings will be treated as if it was taken in all of the [A]dversary [P]roceedings . . . so that each witness will only need to be deposed once and documents produced in any of the [Adversary P]roceedings are usable as if received in every other [P]roceeding.

See Order Approving Stipulation Governing Discovery and Other Pre-Trial Issues [Adv. Pro. No. 21-03003-sgj, Docket No. 86] ¶ 4.[11]

[11] *See also* Adv. Pro. No. 21-03004-sgj, Docket No. 68 (same); Adv. Pro. No. 21-03005-sgj, Docket No. 70 (same); Adv. Pro. No. 21-03006-sgj, Docket No. 75 (same); and Adv. Pro. No. 21-03007-sgj, Docket No. 70 (same).

17. It is disingenuous for Defendants to agree to the consolidation of discovery and then later complain about the consolidation of discovery. Defendants themselves consented to and participated in consolidated hearings on all matters, consolidated discovery in all respects—by agreement, all witnesses, common to the parties, sat for deposition once, not separately for each Defendant—and consolidated proceedings and hearings on summary judgment.

18. Indeed, ***all*** of the Defendants have now asserted the "conditions subsequent" defense,[12] and even HCMFA relied on the same witnesses as the other Defendants for its remaining defenses, all of whom testified once, and took consolidated discovery with all other Defendants. Defendants' suggestion that the proceedings in these completely consolidated cases remained separate is not credible. Counsel for all Defendants participated in all proceedings in this Court and all discovery because everything was consolidated, just as Defendants themselves wanted.

19. That consolidation only made sense. At all times, each of these Defendants was owned and controlled by Mr. Dondero. All Defendants were close affiliates of one another. The individual Defendants were brother and sister. All Defendants asserted the same fabricated "condition subsequent" defense.[13] All designated the same witnesses to be deposed—once, not several times. All were represented by the same law firms in these consolidated proceedings,

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[12] While HCMFA did not assert the "conditions subsequent" defense in the main notes litigation, it did so in the follow-up adversary proceeding where Plaintiff seeks to collect on two promissory notes issued by HCMFA that were the subject of a forbearance agreement and that were therefore not included in the main notes litigation. *See* Adv. Pro. No. 21-03082-sgj (the "Second HCMFA Action"). The District Court, *sua sponte*, consolidated the Second HCMFA Action with the main notes litigation (*see* Case No. 3:21-cv-00881-X, Docket No. 49), and Plaintiff moved for summary judgment in the Second HCMFA Action based in substantial part on the evidence adduced in the main notes litigation (*see, e.g.*, Adv. Pro. No. 21-03082-sgj, Docket No. 48 (Plaintiff's Appendix including all documents (including deposition transcripts) used to support its motion for summary judgment in the main notes litigation)). Thus, all Defendants agreed to, and benefitted from, the consolidation of the Adversary Proceedings and discovery for efficiency purposes.

[13] *See* Adv. Pro. No. 21-03082-sgj, Docket No. 48 (Plaintiff's Appendix, Ex. 215 (deposition transcript of James Dondero taken in the Second HCMFA Action), Appx. 4906-07) (agreement that transcripts from main notes litigation could be used in the Second HCMFA Action for efficiency purposes); (Plaintiff's Appendix, Ex. 210 (deposition transcript of Nancy Dondero taken in the Second HCMFA Action), Appx. 4842-43) (agreement that transcripts from main notes litigation could be used in the Second HCMFA Action for efficiency purposes).

appeared at all depositions and all hearings, and obviously collaborated in the defense of these actions. The promissory notes—they all contain Section 6, entitling Highland to "all expenses of collection"—are all functionally identical. To ignore all of this and persist in the pretense that each Defendant has litigated these matters separately from one another is to elevate form over substance and, worse, allow these Defendants to benefit from the consolidation while simultaneously punishing Plaintiff—the prevailing party—for that same consolidation.

20. The very consolidation that enabled all parties and this Court to enjoy at least some level of litigation efficiency, the very consolidation these Defendants wanted and moved this Court to impose, is now the consolidation Defendants would have this Court utterly ignore in favor of requiring Plaintiff to do the impossible—to segregate fees incurred in fully consolidated proceedings, Defendant by closely-affiliated Defendant, as though there were no consolidation either ordered by this Court or stipulated to by these Defendants.[14] The egg has been thoroughly scrambled for well over a year. Defendants willingly scrambled it, but would now have the prevailing Plaintiff separate yolk from white. This is ridiculous.

Objection #5: Plaintiff Should Not Get Fees for "Unsuccessful Litigation"

21. Defendants attempt to highlight three pieces of this lengthy litigation as the sole examples of instances in which Plaintiff did not prevail, then argue unpersuasively that the fees associated with those three pieces are not recoverable.

22. As a threshold matter, the entire argument ignores the simple, unavoidable fact of Section 6, which entitles Plaintiff to "all expenses of collection" without regard to whether Plaintiff

[14] None of the cases—even the oddly-included and non-binding case from Florida state court—Defendants cite in support of this particular objection included a consolidation of proceedings against closely-affiliated defendants. None featured consolidated actions on functionally identical, unambiguous promissory notes all made by defendants payable to a close affiliate of the defendants. None featured consolidated discovery using identical witnesses testifying once at deposition for all defendants. None addressed circumstances even remotely resembling these consolidated Adversary Proceedings.

prevailed or not on isolated motions along the way to a judgment in full on the merits. As stated above, no law—not Texas state law, not bankruptcy law—requires a successful plaintiff *entitled to **all** costs and fees of collection on a note* to prevail on every jot and tittle in a multi-faceted, multiple-defendant, multi-year litigation in order to have "all expenses of collection" awarded as part of the judgment on the note. None of Defendants' cases in this section of the Objection stands for such a proposition. The only cited case binding on this Court—the *Wal-Mart* case—says nothing of the sort and is otherwise inapplicable because it did not involve an action on a note, or a contract that entitled the prevailing party to all fees, or consolidated litigation against closely-affiliated defendants.[15]

23. Even if Plaintiff's uniform success at every small step on the way to complete victory mattered at all (and it does not), Defendants mischaracterize all three instances of so-called "unsuccessful" litigation:

a. Defendants moved to strike the Klos declaration attached to Plaintiff's reply appendix in support of summary judgment, (*see, e.g.*, Adv. Proc. 21-3003, Docket No. 169), and the Bankruptcy Court granted the motion to strike on the ground that Plaintiff did not seek leave of court to include the Klos declaration in a reply appendix, (*see id.* at Docket No. 187). Thus, this was a simple evidentiary ruling by the court and does not constitute an example of "unsuccessful litigation."

[15] Even the Objection demonstrates *Wal-Mart*'s inapplicability by quoting that case thus: "multiple claims against multiple parties … could have been **easily segregated** …." 647 F.3d 237, 244, 246–48 (5th Cir. 2021) (emphasis added). In that case, the plaintiff did *not* prevail against all the defendants, as Highland did here. The defendants were unaffiliated, and there was no mention of the type of deep consolidation of all proceedings in that litigation that typified these Adversary Proceedings.

b. Plaintiff did not "lose" its "motion for sanctions."[16] The motion Defendants refer to was not a stand-alone motion for sanctions. That motion[17] was a single motion seeking two forms of relief: (i) the striking of an argument in opposition to summary judgment that was precluded by a prior court order; and (ii) sanctions for that conduct. Plaintiff *prevailed* on that motion because this Court granted the motion to strike. Yes, the Court declined to award sanctions, but it granted the motion.[18] It would have been impossible to parse the work done with respect to the striking of the impermissible argument from the work done with respect to seeking sanctions for pursuing the same impermissible argument. Not surprisingly, Defendants cite no law that would award fees for prevailing on one form of relief in a motion while denying fees for not prevailing on another form of relief in the same motion based on the same conduct and advancing the same arguments. Such a rule, especially in the present circumstances, would be absurd. Plaintiff prevailed on that motion and, even ignoring that Plaintiff is entitled to *all* fees under the notes, Plaintiff's fees incurred in connection with that motion would be awardable even under Defendants' theory.

c. Plaintiff's efforts to consolidate these proceedings before a different district court judge than that ultimately received these cases were undeniably a part of the integrated tactics and actions taken in these collection cases. It is technically true that Plaintiff did not prevail in its effort to consolidate these cases before that other judge, but those were good-faith efforts to maximize Plaintiff's chances of success in nascent litigation against a highly-litigious set of foes. No one "wasted everyone's time …."[19] Compared with months and months of litigation caused by

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[16] Objection at 17.

[17] Adv. Proc. No. 21-3006, Docket No. 162.

[18] Adv. Proc. No. 21-3006, Docket No. 208.

[19] Objection at 18. Indeed, as the Bankruptcy Court explained, the Plaintiff followed the "typical procedure in consolidation actions" but the District Court consolidated the cases before a different judge for reasons of "judicial

Defendants' pulling the "condition subsequent" defense out of the ether, then litigating a meritless arbitration demand (and then appealing this Court's rejection of that demand), Plaintiff's initial consolidation motion, resolved over the course of a couple weeks, is hardly unreasonable. And, again, none of this matters because the notes entitle Plaintiff to "all expenses of collection."

Objection #6: PSZJ's Rates Are Too High

24. Defendants argue that PSZJ's rates are unreasonably high because they exceed the rates that some law firms located in Dallas charge for similar services. But this Court has already approved PSZJ's rates as reasonable under Bankruptcy Code § 330 after Defendant NexPoint opposed PSZJ's final fee application in the administrative case.[20] Moreover, this Court has already heard argument regarding PSZJ's billing rates and has already approved those rates as reasonable under the applicable standard originally announced by the Fifth Circuit in *Johnson.*[21]

25. Wholly aside from the reasonableness of PSZJ's rates in relation to the complexity of this Chapter 11 case, the notably high value of the estate's assets, and the unrestrained litigiousness Mr. Dondero and his entities foisted on these proceedings, it is worth emphasizing that Mr. Dondero, in his capacity as President of Highland, personally hired Plaintiff's counsel when he controlled Highland and agreed, in writing, to the very fee structure and rates (albeit with

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efficiency" and "due to certain other factors." *See Report and Recommendation to District Court: Court Should Grant Plaintiff's Motion for Partial Summary Judgment Against All Five Note Maker Defendants*, Adv. Pro. No. 21-03003-sgj, Docket No. 191 at 4, n.5.

[20] *See* Case No. 19-34054-sgj11 (the "Bankruptcy Docket"), Docket No. 2906, *Fifth and Final Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP* at 37–39 (describing how PSZJ's fees satisfied the so-called *Johnson* factors—*see Johnson v. Ga. Highway Express, Inc.*, 488 F.2d 714 (5th Cir. 1974)); Bankruptcy Docket No. 3055, *Order Granting Fifth and Final Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP* (the "Final Fee Order").

[21] Although it is true that Defendant NexPoint timely appealed this Court's Final Fee Order, the District Court dismissed that appeal without reaching the merits because NexPoint lacked appellate standing under the Fifth Circuit's "person aggrieved" standard. *See NexPoint Advisors, L.P. v. Pachulski Stang Ziehl & Jones LLP et al.*, case no. 3:21-cv-03086-K (N.D. Tex.), Docket No. 37, *Memorandum Opinion and Order*. Unsurprisingly, NexPoint has now appealed the District Court's dismissal order to the Fifth Circuit Court of Appeals and will undoubtedly ask the Fifth Circuit to overturn the "person aggrieved" standard adopted and re-adopted in decades of the Court of Appeals' own jurisprudence.

disclosed, annual increases customary in the industry) he now complains about. The irony of Defendants now objecting to PSZJ's rates is almost too much. Mr. Dondero and the other Defendants he owns and controls cannot now be heard to object to fee rates that he agreed to when he engaged PSZJ to act as Highland's primary Chapter 11 counsel.

26. PSZJ's fee rates have also been approved as reasonable in other Chapter 11 cases in this District in cases not as complex as this one and in cases that did not feature a vexatious litigant bent on making good on his threat to "burn the place down." *See, e.g.*, *In re Studio Movie Grill Holdings, LLC, et al.,* Case No. 20-32633-sgj11 (Bankr. N.D. Tex. July 9, 2021), Docket No. 989; *In re Tuesday Morning Corp., et al.,* Case No. 20-31476-hdh11 (Bankr. N.D. Tex. April 1, 2021), Docket No. 2214.

Objection #7: The Distribution of Fees and Costs Among Defendants Is Unreasonable

27. Finally, Defendants express dissatisfaction with Plaintiff's proposed equal distribution of awarded fees among all five Defendants. Plaintiff is indifferent and has no objection if Defendants would rather allocate Plaintiff's fees and costs *pro rata*, based on the ratio of the outstanding principal and interest owed by each Obligor to the total principal and interest owed by all Obligors.

CONCLUSION

28. The Objection lacks merit in all respects. Plaintiff is entitled to "all expenses of collection" of all notes, which includes all fees Plaintiff incurred in this consolidated set of Adversary Proceedings made endlessly complicated and litigious by the very Defendants now seeking to prevent Plaintiff from recovering fees under the unambiguous provision of promissory notes Mr. Dondero wrote. The Court should overrule the Objection and include in the final judgment in this matter all fees and costs submitted to this Court in the Notice and otherwise.

Dated: September 27, 2022

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EXHIBIT 1

Month	Invoice #	Total Invoice	Misapplied Fees (If any)	Adjusted Invoice
December 2020 (Matter 002)*	126769	$26,033.00	$0.00	$26,033.00
January 2021 (Matter 002)**	127125	$53,348.00	$0.00	$53,348.00
February 2021 (Matter 002)	127314	$1,307.50	$0.00	$1,307.50
March 2021 (Matter 002)	127522	$53,270.50	$0.00	$53,270.50
April 2021 (Matter 002)***	127680	$125,307.50	$0.00	$125,307.50
May 2021 (Matter 002)	127958	$260,971.50	$0.00	$260,971.50
June 2021 (Matter 002)	128195	$101,276.50	$0.00	$101,276.50
July 2021 (Matter 002)	128292	$65,093.00	$0.00	$65,093.00
August 1 - 10 2021 (Matter 002)****	128474	$135,289.00	$0.00	$135,289.00
August 11 - 31, 2021 (Matter 003)	128567	$31,635.50	$0.00	$31,635.50
September 2021(Matter 003)	128688	$235,361.50	$0.00	$235,361.50
Supplement through October 7, 2021 (Matter 002) (JAM)	128606	$3,237.00	$0.00	$3,237.00
October 2021	128950	$375,653.50	$0.00	$375,653.50
November 2021	129043	$325,888.50	($3,221.00)	$322,667.50
December 2021	129324	$345,649.00	($2,542.50)	$343,106.50
January 2022 (Matter 004)	129683	$140,045.50	($5,134.50)	$134,911.00
February 2022	129792	$172,582.50	$0.00	$172,582.50
March 2022	129886	$85,373.00	$0.00	$85,373.00
April 2022	130115	$109,294.80	$0.00	$109,294.80
May 2022	130359	$4,430.50	$0.00	$4,430.50
June 2022	130403	$1,674.00	$0.00	$1,674.00
July 2022	130494	$21,761.50	$0.00	$21,761.50
TOTAL DUE				**$2,663,585.30**

***Differs from Trial Exhibit 169 in that an entry from 12/20/21 was removed, as it does not apply to the Notes Litigation.**

****Differs from Trial Exhibit 170 in that a portion of an entry from 1/22/21 totaling 0.2 hours was inadvertently omtited from Trial Exhibit 170.**

*****Differs from Trial Exhibit 173 in that 2 entries from 4/29/21 totaling 0.7 hours were inadvertently omitted from Trial Exhibit 173.**

******Differs from Trial Exhibit 178 in that: (i) eleven entries from 06/04/21, 06/10/21, 07/01/21, 07/06/21, 07/09/21, 07/29/21, 07/30/21, 08/02/21 and 08/10/21 were removed, as they do not apply to the Notes Litigation; (ii) one entry from 8/10/22 totaling 0.1 hour was inadvertently omtited from Trial Exhibit 178.**

EXHIBIT 2

DECEMBER 2020:

DATE	TKPR	TASK	DESCRIPTION	HOURS	RATE	AMOUNT
12/5/2020	GIG	BL	Research re bankruptcy court jurisdiction over note	2.20	$895.00	$1,969.00
12/7/2020	IDK	BL	E-mails with G Glazer on status of Stern issues re demand note litigation vs Dondero related entities.	0.10	$1,145.00	$114.50
12/7/2020	GIG	BL	Research re bankruptcy court jurisdiction over note	5.50	$895.00	$4,922.50
12/7/2020	GIG	BL	Research re bankruptcy court jurisdiction over note	4.30	$895.00	$3,848.50
12/8/2020	GIG	BL	Research re bankruptcy court jurisdiction over note	1.20	$895.00	$1,074.00
12/8/2020	GIG	BL	Prepare memo re jurisdiction issue	6.90	$895.00	$6,175.50
12/8/2020	GIG	BL	Emails Ira D. Kharasch re jurisdiction memo	0.10	$895.00	$89.50
12/9/2020	IDK	BL	Attend conference call with J. Pomerantz, others, demand note upcoming litigation, (.8).	0.80	$1,145.00	$916.00
12/10/2020	GIG	BL	Emails Ira D. Kharasch re jurisdiction memo	0.10	$895.00	$89.50
12/11/2020	GIG	BL	Emails with Gregory V. Demo re jurisdiction	0.20	$895.00	$179.00
12/11/2020	GVD	BL	Review research re bankruptcy jurisdiction	0.30	$825.00	$247.50
12/15/2020	BEL	BL	Telephone conference with John A. Morris regarding complaint regarding demand notes.	0.20	$825.00	$165.00
12/15/2020	BEL	BL	Review demand notes.	0.50	$825.00	$412.50
12/15/2020	JAM	BL	telephone conference with B. Levine re: collection actions on demand notes (0.1);	0.10	$1,075.00	$107.50
12/16/2020	BEL	BL	Review notes and draft complaint.	3.70	$825.00	$3,052.50
12/20/2020	JAM	BL	review/revise complaint against Dondero for breach of demand notes (0.8); e-mail to J. Pomerantz, I. Kharasch, G. Demo, H. Winograd, B. Levine re: complaint against Dondero (0.1).	0.90	$1,075.00	$967.50
12/21/2020	JNP	BL	Review draft complaint against Dondero for demand notes.	0.10	$1,075.00	$107.50
12/21/2020	JAM	BL	Telephone conference with J. Pomerantz, I. Kharasch, G. Demo, H. Winograd re: HarbourVest settlement, demand notes, (1.0); e-mail to J. Seery, J. Pomerantz, I. Kharasch, G. Demo, H. Winograd re: complaint against Dondero (demand notes) (0.1).	1.10	$1,075.00	$1,182.50
12/27/2020	GVD	BL	Review and revise complaint re demand notes	0.50	$825.00	$412.50
			TOTAL			**$26,033.00**

EXHIBIT 3

JANUARY 2021

DATE	TKPR	TASK	DESCRIPTION	HOURS	RATE	AMOUNT
1/7/2021	JAM	BL	e-mail to M. Clemente, P. Montgomery, J. Pomerantz, G. Demo re: complaint against defaulting demand note parties (0.2);	0.20	$1,245.00	$249.00
1/9/2021	IDK	BL	Attend conference call with internal team on prep/status for prosecution of demand notes (2.0)	2.00	$1,325.00	$2,650.00
1/10/2021	IDK	BL	E-mails with K Brown re overseeing demand note	0.20	$1,325.00	$265.00
1/11/2021	IDK	BL	Telephone conference and e-mails with K Brown re prosecuting demand notes vs Dondero (.2).	0.20	$1,325.00	$265.00
1/11/2021	IDK	BL	E-mails with B Levine re demand notes and need to commence actions and prior draft of complaint (.2); E-mails with local counsel re same re writs of attachment for same (.3).	0.50	$1,325.00	$662.50
1/12/2021	IDK	BL	E-mails with K Brown, H Winograd re getting complaints filed on demand notes and logistics (.2).	0.20	$1,325.00	$265.00
1/12/2021	KHB	BL	Emails with I. Kharasch and Hayley R. Winograd re complaints on promissory notes and writs of attachment.	0.20	$1,225.00	$245.00
1/12/2021	GVD	BL	Correspondence with PSZJ litigation team re demand letters	0.20	$950.00	$190.00
1/12/2021	HRW	BL	Review Dondero demand note complaint (0.2); Review demand letters (0.3)	0.50	$695.00	$347.50
1/13/2021	IDK	BL	E-mails with K Brown, others re legal issues,	0.40	$1,325.00	$530.00
1/13/2021	KHB	BL	Review complaint and demand letters re promissory	1.90	$1,225.00	$2,327.50
1/13/2021	BEL	BL	Emails regarding draft Dondero complaint.	0.20	$950.00	$190.00
1/13/2021	GVD	BL	Conference with K. Brown and H. Winograd re	0.80	$950.00	$760.00
1/13/2021	HRW	BL	Call with G. Demo and K. Brown re: demand note complaints (0.6); Call with G. Demo re: demand note complaints (0.1); Review Demand Notes and related documents (0.8); Draft Demand Note Complaints against Dondero and related entities (4.5).	6.00	$695.00	$4,170.00
1/14/2021	IDK	BL	E-mails with H Winograd and J Morris re next steps	0.10	$1,325.00	$132.50
1/14/2021	JNP	BL	Review email regarding suits against noteholders	0.10	$1,295.00	$129.50
1/14/2021	KHB	BL	call with Greg Demo (GD), J. Morris (JM) and Hayley Winograd ("HG") re litigation strategy on promissory notes (.4); confer with HG re form of complaints (.2); review and revise complaint (1.6); emails with HG re revisions to complaints (.5).	2.70	$1,225.00	$3,307.50
1/14/2021	JAM	BL	telephone conference with G. Demo re: complaints against makers of notes (0.2); telephone conference with K. Brown, H. Winograd, G. Demo (partial participation) re: complaints against makers of notes (0.5)	0.70	$1,245.00	$871.50
1/14/2021	HRW	BL	Draft Demand Note Complaints against Dondero and related entities (5.5); PSZJ call re: Demand Note Complaints and litigation strategy (0.5); Review Demand Notes and related documents (1.0); Call with K. Brown re: Demand Note Complaints (0.1)	7.10	$695.00	$4,934.50
1/15/2021	KHB	BL	Work on complaints on promissory notes (4.4).	5.20	$1,225.00	$6,370.00
1/15/2021	GVD	BL	Review and revise demand note complaint	0.30	$950.00	$285.00
1/15/2021	HRW	BL	Draft Demand Note Complaints against Dondero and related entities (7.5).	7.50	$695.00	$5,212.50
1/16/2021	HRW	BL	Draft complaints against Dondero and related	4.80	$695.00	$3,336.00
1/17/2021	HRW	BL	Draft complaints against Dondero and related entities re: demand notes (4.5).	4.50	$695.00	$3,127.50

JANUARY 2021

DATE	TKPR	TASK	DESCRIPTION	HOURS	RATE	AMOUNT
1/18/2021	JNP	BL	Conference with Sidley, John A. Morris, Ira D.	0.70	$1,295.00	$906.50
1/18/2021	KHB	BL	review comments to complaints on promissory notes by J. Morris and email to J. Morris and H. Winograd re same (.2); work on complaints (.7); call with Committee counsel, J. Morris and J. Pomerantz re litigation strategy (.7).	1.60	$1,225.00	$1,960.00
1/18/2021	JAM	BL	review/revise draft Complaint against Dondero for recovery under demand notes (0.9); e-mail to K. Brown, H. Winograd, J. Pomerantz, I. Kharasch, G. Demo re: revisions to draft Complaint against Dondero for recovery under demand notes (0.2); e-mails to Sidley, J. Pomerantz, G. Demo, H. Winograd re: complaints for recovery under demand notes (0.3);	1.40	$1,245.00	$1,743.00
1/18/2021	HRW	BL	Draft complaints against Dondero and related entities re: demand notes (7.5); Call with Committee re: litigation strategy (0.8).	8.30	$695.00	$5,768.50
1/22/2021	KHB	BL	Emails with H. Winograd and J. Morris re complaints on promissory notes.	0.20	$1,225.00	$245.00
1/22/2021	JAM	BL	review complaints concerning demand notes and send e-mail to Z. Annable, J. Pomerantz, I. Kharasch, G. Demo, H. Winograd concerning the same (0.2); review Z. Annable comments to note complaints and cover sheets (0.2); e-mail to Z. Annable re: note complaints and cover sheets (0.1); telephone conference with J. Seery re: note complaints (0.1);	0.60	$1,245.00	$747.00
1/28/2021	JMF	BL	Review complaints and background re notes receivables re HCMS, HCRE, and HCMFA.	1.10	$1,050.00	$1,155.00
			TOTAL			**$53,348.00**

EXHIBIT 4

FEBRUARY 2021

DATE	TKPR	TASK	DESCRIPTION	HOURS	RATE	AMOUNT
2/2/2021	HRW	BL	Draft letters to HCRE and HCMS re: partial payments and demand letters (1.3).	1.30	$695.00	$903.50
2/6/2021	IDK	BL	E-mails with G Demo re correspondence with Gov	0.20	$1,325.00	$265.00
2/8/2021	HRW	BL	Draft follow-up to demand letters for HCRE and HCSM	0.20	$695.00	$139.00
			TOTAL			**$1,307.50**

EXHIBIT 5

MARCH 2021

DATE	TKPR	TASK	DESCRIPTION	HOURS	RATE	AMOUNT
3/2/2021	JAM	BL	review of status of adversary proceedings concerning promissory notes (0.4); e-mail to J. Pomerantz, I. Kharasch, G. Demo, H. Winograd re: status of adversary proceedings concerning promissory notes (0.2).	0.60	$1,245.00	$747.00
3/2/2021	HRW	BL	Prepare joint proposed scheduling order for demand note adversary proceedings involving HCMFA and NPA (1.2); Review adversary proceedings and critical dates (0.6); Review NPA and HCMFA answer to complaints (0.4);	2.20	$695.00	$1,529.00
3/3/2021	HRW	BL	Prepare joint proposed scheduling order for demand note adversary proceedings (0.8);	0.80	$695.00	$556.00
3/4/2021	JAM	BL	e-mails with H. Winograd re: model scheduling order for notes litigation (0.1); e-mail to. L. Hogewood, D. Rukavina re: proposed scheduling orders for HCMFA and Nexpoint notes litigation (0.2)	0.30	$1,245.00	$1,529.00
3/4/2021	HRW	BL	Prepare joint proposed scheduling order for demand note adversary proceedings (1.8);	1.80	$695.00	$1,251.00
3/5/2021	JAM	BL	e-mail to L. Drawhorn, H. Winograd re: proposed scheduling orders for HCRE and HCMS notes litigation (0.2); e-mail to D. Rukavina re: proposed scheduling orders for Nexpoint and HCMFA notes litigation (0.1).	0.30	$1,245.00	$373.50
3/7/2021	JAM	BL	Review/revise proposed scheduling orders for HCMFA and NexPoint notes litigation (0.4); e-mail to D. Rukavina, L. Hogewood, H. Winograd re: revised proposed scheduling orders for HCMFA and NexPoint notes litigation (0.2);	0.60	$1,245.00	$747.00
3/7/2021	GVD	BL	Correspondence with J. Morris re term note defaults	0.20	$950.00	$190.00
3/8/2021	JNP	BL	Conference with John A. Morris regarding	0.10	$1,295.00	$129.50
3/8/2021	JAM	BL	communications with J. Seery, J. Pomerantz, J. Bonds re: Dondero request for extension of time to respond to notes litigation (0.2);	0.20	$1,245.00	$249.00
3/8/2021	HRW	BL	Review and draft joint proposed scheduling orders for Demand Note adversary proceedings relating to HCRE, HCMFA, NPA, HCMS (1.5);	1.50	$695.00	$1,042.50
3/9/2021	JAM	BL	e-mails with H. Winograd, Z. Annable re: scheduling orders for the HCRE and HCMS adversary proceedings (0.2); e-mails with H. Winograd, Z. Annable re: scheduling orders for NexPoint and HCMFA adversary proceedings (0.1);	0.30	$1,245.00	$373.50
3/9/2021	HRW	BL	Review joint proposed scheduling orders for Demand Note adversary proceedings relating to HCRE, HCMFA, NPA, HCMS (0.8).	0.80	$695.00	$556.00
3/10/2021	JAM	BL	communications with Z. Annable, D. Rukavina, H. Winograd re: scheduling matters for notes litigation (0.2);	0.20	$1,245.00	$249.00
3/17/2021	JAM	BL	e-mail to J. Pomerantz, I. Kharasch, G. Demo, H. Winograd re: discovery of Dondero on notes litigation (0.7).	0.70	$1,245.00	$871.50
3/17/2021	HRW	BL	Review Dondero answer to demand note complaint	3.90	$695.00	$2,710.50
3/17/2021	JAM	BL	E-mail to J. Seery re: promissory notes' litigation (0.1); review/revise draft document request for Dondero (notes litigation) (0.2); e-mail to G. Demo, H. Winograd re: requests to admit for Dondero (notes litigation) (0.3);	0.60	$1,245.00	$747.00
3/18/2021	HRW	BL	Draft discovery demands directed to Dondero for demand note litigation (2.8);	2.80	$695.00	$1,946.00
3/19/2021	JAM	BL	review/revise discovery requests to Dondero re: notes litigation (0.3); e-mails to J. Seery, J. Pomernatz, I. Kharasch, G. Demo, H. Winograd re: discovery requests to Dondero re: notes litigation (0.2); review/revise and send e-mail to J. Seery, PSZJ team re: scheduling of notes litigation (0.2);	0.70	$1,245.00	$871.50
3/24/2021	HRW	BL	Draft response to Dondero's motion for a continuance of demand note proceeding (0.4).	0.40	$695.00	$278.00
3/25/2021	JAM	BL	E-mails to Bonds Ellis re: Debtor's discovery demands for Dondero notes litigation (0.3).	0.30	$1,245.00	$373.50
3/26/2021	JNP	BL	Review Dondero motion for continuance of note lawsuit.	0.10	$1,295.00	$129.50
3/26/2021	JNP	BL	Review emails regarding Dondero note litigation	0.10	$1,295.00	$129.50

MARCH 2021

DATE	TKPR	TASK	DESCRIPTION	HOURS	RATE	AMOUNT
3/26/2021	JAM	BL	Telephone conference with J. Seery re: Dondero	2.90	$1,245.00	$3,610.50
3/26/2021	GVD	BL	Conference with J. Morris re demand note issues	0.20	$950.00	$190.00
3/26/2021	HRW	BL	Call with J. Morris re: objection to Dondero	2.10	$695.00	$1,459.50
3/27/2021	JAM	BL	Review documents and draft objection to Dondero	4.90	$1,245.00	$6,100.50
3/27/2021	LSC	BL	Review documents and retrieve and prepare exhibits	4.40	$460.00	$2,024.00
3/27/2021	HRW	BL	Draft objection to Dondero's emergency motion to	5.00	$695.00	$3,475.00
3/28/2021	JAM	BL	E-mails with D. Klos, K. Hendricks, J. Pomerantz, I.	5.60	$1,245.00	$6,972.00
3/28/2021	LSC	BL	Continued preparation of exhibits in connection with	1.20	$460.00	$552.00
3/28/2021	HRW	BL	Draft objection to Dondero's emergency motion tocontinue demand note proceeding (4.5).	4.50	$695.00	$3,127.50
3/29/2021	JNP	BL	Review opposition to motion by Dondero to continue trial on note litigation.	0.10	$1,295.00	$129.50
3/29/2021	JAM	BL	Review and send RFAs for Dondero's notes litigation (0.2); revise objection to Dondero's motion to modify scheduling order (0.9); e-mails to J. Pomerantz, I. Kharasch, G. Demo, H. Winograd, L. Canty re: revised objection to Dondero's motion to modify scheduling order and exhibits in support thereof (0.2); review exhibits and e-mail to L. Canty re: redactions and related matters (0.5); e-mails to J. Seery, J. Pomerantz, I. Kharasch, G. Demo, H. Winograd re: draft objection to Dondero's motion to modify scheduling order and exhibits in support thereof (0.1); review/revise objection to Dondero motion to modify scheduling order (0.2); review/revise JAM declaration in support of objection to Dondero motion to modify scheduling order (0.3).	2.40	$1,245.00	$2,988.00
3/29/2021	LSC	BL	Prepare redacted exhibits for Objection to Dondero motion to modify scheduling order.	0.50	$460.00	$230.00
3/29/2021	HRW	BL	Edit and review objection to Dondero's emergency motion to continue demand note proceedings (2.5).	2.50	$695.00	$1,737.50
3/30/2021	JNP	BL	Emails regarding Court ruling on extending Dondero	0.10	$1,295.00	$129.50
3/30/2021	JAM	BL	Review/revise objection to Dondero motion to	1.10	$1,245.00	$1,369.50
3/30/2021	LSC	BL	Redact additional exhibits (.3); research and review	3.20	$460.00	$1,472.00
3/31/2021	JAM	BL	e-mails with B. Assink, H. Winograd re: modified scheduling order in Dondero's notes litigation (0.1).,	0.10	$1,245.00	$124.50
			TOTAL			**$53,270.50**

EXHIBIT 6

APRIL 2021

DATE	TKPR	TASK	DESCRIPTION	HOURS	RATE	AMOUNT
4/1/2021	IDK	BL	E-mails with J Pomerantz, G Demo, CEO re	0.20	$1,325.00	$265.00
4/1/2021	JNP	BL	Emails to and from Gregory V. Demo regarding D. Rukavina email regarding withdrawal of the reference.	0.10	$1,295.00	$129.50
4/1/2021	JNP	BL	Review and respond to email regarding withdrawal of reference for note lawsuits.	0.10	$1,295.00	$129.50
4/1/2021	JAM	BL	Telephone conference with H. Winograd re: discovery in AP against Advisors (notes litigation) (0.1); prepare discovery document requests and interrogatories for AP against Advisors (notes litigation) (0.9); review/revise requests for admission for AP against Advisors (notes litigation (0.3); e-mails with H. Winograd re: discovery requests for AP against Advisors (notes litigation (0.2); e-mail to D. Rukavina, H. Winograd re: discovery in AP against Advisors (notes litigation) (0.1).	1.60	$1,245.00	$1,992.00
4/1/2021	HRW	BL	Call with J. Morris re: discovery in NPA demand note litigation (0.1); Draft discovery demands in NPA demand note litigation (1.0); Review adversary proceeding critical dates (0.6).	1.70	$695.00	$1,181.50
4/2/2021	JNP	BL	Review witness list and reply brief regarding Committee's motion regarding Dondero discovery.	0.20	$1,295.00	$259.00
4/4/2021	JAM	BL	E-mail to H. Winograd re: notes litigation (0.1);	0.10	$1,245.00	$124.50
4/5/2021	HRW	BL	Review amended scheduling order for Dondero demand note proceeding (0.5).	0.50	$695.00	$347.50
4/6/2021	IDK	BL	E-mails with G Demo re Dondero withdrawal of reference motion and our prior research on jurisdiction issues re same	0.30	$1,325.00	$397.50
4/7/2021	JAM	BL	Review Dondero's amended answer in notes	1.70	$1,245.00	$2,116.50
4/7/2021	HRW	BL	Draft discovery demands for Dondero demand note	0.90	$695.00	$625.50
4/8/2021	HRW	BL	Review demand note adversary proceeding complaints (0.3).	0.30	$695.00	$208.50
4/9/2021	IDK	BL	E-mails with G Demo, others on Plan provisions re note collection/litigation issues	0.30	$1,325.00	$397.50
4/9/2021	JMF	BL	Review notes receivable litigation and amounts due from noteholders re plan implementation (2.1)	2.10	$1,050.00	$2,205.00
4/9/2021	JAM	BL	Review of rules re: withdrawal of the reference (0.4); telephone conference with Z. Annable re: rules for withdrawal of the reference (0.1);	0.50	$1,245.00	$622.50
4/9/2021	GVD	BL	Review issues re notes litigation	0.60	$950.00	$570.00
4/12/2021	GVD	BL	Review issues re repayment of notes	0.60	$950.00	$570.00
4/13/2021	JMF	BL	Review motion and brief for withdrawal of references re demand notes.	0.50	$1,050.00	$525.00
4/13/2021	JAM	BL	Review Answers to complaints filed by Advisors in	0.60	$1,245.00	$747.00
4/14/2021	JNP	BL	Email to D. Rukavina regarding scheduling for motion to withdraw reference.	0.10	$1,295.00	$129.50
4/14/2021	JNP	BL	Email to and from D. Rukavina regarding hearing on motion to withdraw reference.	0.10	$1,295.00	$129.50
4/14/2021	JNP	BL	Conference with John A. Morris regarding hearing on motion to withdraw reference.	0.10	$1,295.00	$129.50
4/14/2021	JNP	BL	Review motion to withdraw reference.	0.20	$1,295.00	$259.00
4/14/2021	JAM	BL	e-mails with D. Rukavina, J. Pomerantz re: scheduling issues concerning adversary proceeding against Advisors and Funds (0.5); e-mail to Court, D. Rukavina, L. Hogewood, J. Pomerantz re: scheduling issues concerning adversary proceeding against Advisors and Funds (0.3;)	0.80	$1,245.00	$996.00
4/14/2021	GVD	BL	Correspondence re note and discovery request	0.10	$950.00	$95.00
4/14/2021	HRW	BL	Draft Rule 26 disclosures for Dondero demand note adversary proceeding (2.0).	2.00	$695.00	$1,390.00

APRIL 2021 (3/4)

DATE	TKPR	TASK	DESCRIPTION	HOURS	RATE	AMOUNT
4/15/2021	IDK	BL	Review and consider G Demo's memo on	0.40	$1,325.00	$530.00
4/15/2021	HRW	BL	Prepare Rule 26 disclosures for Dondero demand note adversary proceeding (0.6).	0.60	$695.00	$417.00
4/16/2021	IDK	BL	E-mail and telephone conference with J Pomerantz re Dondero withdrawal of reference motions and logistics on response to same and J Kim (.2); E-mail and telephone conference with G Demo re same and relevant pleadings (.2); E-mails with J Kim re need for responses to Dondero withdrawal of reference motions (.2).	0.60	$1,325.00	$795.00
4/16/2021	JJK	BL	Research re: reference withdrawal, core matter, Stern, related issues.	3.70	$995.00	$3,681.50
4/16/2021	JNP	BL	Conference with Ira D. Kharasch regarding motion	0.20	$1,295.00	$259.00
4/16/2021	JNP	BL	Review Dondero motion to stay pending withdrawal	0.20	$1,295.00	$259.00
4/16/2021	GVD	BL	Review Dondero motion re withdrawal of the reference	0.20	$950.00	$190.00
4/16/2021	GVD	BL	Conference with I. Kharasch re motions to withdraw	0.20	$950.00	$190.00
4/16/2021	HRW	BL	Review Dondero withdrawal of reference filed in demand note adversary proceeding (0.5).	0.50	$695.00	$347.50
4/16/2021	HRW	BL	Review Dondero's motion to stay demand note	0.30	$695.00	$208.50
4/18/2021	JAM	BL	Review Dondero motion to expedite stay motion (0.3); e-mail to J. Pomerantz, I. Kharasch, G. Demo,	3.40	$1,245.00	$4,233.00
4/17/2021	HRW	BL	Draft demand note discovery requests (2.5).	2.50	$695.00	$1,737.50
4/18/2021	JNP	BL	Review and comment on opposition to motion for stay of discovery and emails regarding same.	0.20	$1,295.00	$259.00
4/18/2021	JAM	BL	Review and revise initial draft objection to Dondero's motion to expedite motion for stay (2.9); e-mail to J. Pomerantz, I. Kharasch, G. Demo, H. Winograd re: initial draft objection to Dondero's motion to expedite motion for stay (0.1); draft JAM declaration in support of objection to Dondero's motion to expedite motion for stay (0.5); e-mail to Z. Annable, G. Demo, H. Winograd re: declaration and objection concerning Dondero's motion to expedite (0.1).	3.60	$1,245.00	$4,482.00
4/18/2021	GVD	BL	Review objection to motion to expedite	0.30	$950.00	$285.00
4/18/2021	HRW	BL	Draft demand note discovery requests (3.5).	3.50	$695.00	$2,432.50
4/19/2021	JJK	BL	Research/analysis reference withdrawal, core	7.80	$995.00	$7,761.00
4/19/2021	JAM	BL	Review/revise objection to Dondero motion to	2.00	$1,245.00	$2,490.00
4/19/2021	HRW	BL	Draft discovery demands for HCMFA demand note proceeding (1.2).	1.20	$695.00	$834.00
4/20/2021	JJK	BL	Research/analysis of Stern, jurisdiction, reference, related issues.	3.10	$995.00	$3,084.50
4/20/2021	JJK	BL	Analysis/research jurisdiction, Stern, reference issues.	4.30	$995.00	$4,278.50
4/20/2021	JJK	BL	Research Stern, jurisdiction, reference, related issues.	3.10	$995.00	$3,084.50
4/20/2021	JNP	BL	Conference with John A. Morris regarding funds/ advisor adversary proceeding and related.	0.20	$1,295.00	$259.00
4/21/2021	JJK	BL	Research and prepare objection to NexPoint	2.10	$995.00	$2,089.50
4/21/2021	JJK	BL	Research and prepare objection to	5.40	$995.00	$5,373.00
4/21/2021	JJK	BL	Research/draft objection to HCMFA reference	3.00	$995.00	$2,985.00
4/21/2021	JNP	BL	Research regarding withdrawal reference and	0.40	$1,295.00	$518.00
4/22/2021	JJK	BL	Research re reference withdrawal issues.	0.80	$995.00	$796.00

APRIL 2021

DATE	TKPR	TASK	DESCRIPTION	HOURS	RATE	AMOUNT
4/22/2021	JNP	BL	Review of memo regarding withdrawal of the reference.	0.20	$1,295.00	$259.00
4/22/2021	LAF	BL	Legal research re: "Tax loan" & withdrawal of reference.	0.50	$475.00	$237.50
4/22/2021	JAM	BL	Review Dondero discovery requests (0.2); review	0.50	$1,245.00	$622.50
4/22/2021	GVD	BL	Review Dondero discovery requests	0.20	$950.00	$190.00
4/23/2021	LAF	BL	Citecheck & edit memos on withdrawal of reference.	5.80	$475.00	$2,755.00
4/25/2021	JAM	BL	E-mails to L. Drawhorn, J. Seery, J. Pomerantz re: HCRE's proposed amended of notes complaint (0.1).	0.10	$1,245.00	$124.50
4/26/2021	IDK	BL	E-mails with J Pomerantz re status on oppositions to motions to withdraw reference, (.2).	0.20	$1,325.00	$265.00
4/26/2021	JJK	BL	Prepare objections to reference withdrawal motions of Dondero, NexPoint, HCMFA (separate adversary proceedings).	4.60	$995.00	$4,577.00
4/26/2021	JNP	BL	Conference with PSZJ team regarding pending	0.80	$1,295.00	$1,036.00
4/26/2021	JNP	BL	Review memo regarding withdrawal of reference	0.10	$1,295.00	$129.50
4/26/2021	JNP	BL	Review emails regarding Dondero discovery in	0.10	$1,295.00	$129.50
4/26/2021	JAM	BL	Review Dondero's third set of discovery requests	0.60	$1,245.00	$747.00
4/26/2021	HRW	BL	Call with G. Demo, J. Morris, B. Sharp, and meta e-discovery reps regarding responding to various discovery requests in adversary proceedings.	0.20	$695.00	$139.00
4/26/2021	HRW	BL	Review discovery demands in Notes Litigation.	1.00	$695.00	$695.00
4/26/2021	HRW	BL	Research summary judgement standard for notes litigation.	2.20	$695.00	$1,529.00
4/27/2021	JJK	BL	Review docs and prepare objections to reference withdrawal motions of Dondero, NexPoint, HCMFA (separate adv. proceedings).	9.10	$995.00	$9,054.50
4/27/2021	JAM	BL	Review rules and documents and send e-mail to H. Winograd, J. Pomerantz, I. Kharasch, G Demo re: potential motion for summary judgment (Dondero, notes litigation) (0.5).	0.50	$1,245.00	$622.50
4/28/2021	JJK	BL	Research and further revisions to objection to Dondero reference motion.	4.20	$995.00	$4,179.00
4/28/2021	JJK	BL	Research/analysis re: Dondero claims and reference	4.00	$995.00	$3,980.00
4/28/2021	JJK	BL	Work on withdrawal of reference response	2.50	$995.00	$2,487.50
4/28/2021	JNP	BL	Review email from M. Clemente regarding pending	0.10	$1,295.00	$129.50
4/28/2021	RJF	BL	Review motion to amend, original complaint, related	1.30	$1,395.00	$1,813.50
4/28/2021	JMF	BL	Review HCMFA answer.	0.30	$1,050.00	$315.00
4/28/2021	GVD	BL	Review response to motion to withdrawal the	0.50	$950.00	$475.00
4/28/2021	HRW	BL	Review Dondero's responses to discovery requests in	0.10	$695.00	$69.50
4/28/2021	HRW	BL	Draft Responses and Objections for NPA discovery	0.30	$695.00	$208.50
4/29/2021	JAM	BL	Telephone conference with H. Winograd re: responses to Advisors' discovery requests in notes litigation (0.6).	0.60	$1,245.00	$747.00
4/29/2021	GVD	BL	Conference with DSI/HCMLP/H. Winograd re discovery	0.30	$950.00	$285.00
4/29/2021	GVD	BL	Conference with H. Winograd re discovery issues	0.40	$950.00	$380.00
4/29/2021	GVD	BL	Conference with J. Seery re notes enforcement issues	0.20	$950.00	$190.00
4/29/2021	HRW	BL	Call with G. Demo regarding NPA discovery requests in notes litigation.	0.40	$695.00	$278.00
4/29/2021	HRW	BL	Call with G. Demo, K. Hendrix, D. Klos, J. Donahue regarding NPA discovery requests in notes litigation.	0.30	$695.00	$208.50
4/29/2021	HRW	BL	Draft responses & objections to NPA's discovery requests in notes litigation.	8.00	$695.00	$5,560.00

APRIL 2021

DATE	TKPR	TASK	DESCRIPTION	HOURS	RATE	AMOUNT
4/29/2021	HRW	BL	Call with J. Morris regarding NPA discovery in notes litigation.	0.60	$695.00	$417.00
4/30/2021	IDK	BL	E-mails with J Kim re opposition to Advisors' and others motions to withdraw the reference (.6); Review of revised oppositions to same (.2).	0.80	$1,325.00	$1,060.00
4/30/2021	JJK	BL	Additional research for objections to withdrawal reference motions of NexPoint, HCMFA, Dondero, and revise same objections.	3.60	$995.00	$3,582.00
4/30/2021	JJK	BL	Revise objections to reference withdrawal motions and emails Kharasch on same.	2.10	$995.00	$2,089.50
4/30/2021	JMF	BL	Review motion to stay adversary proceedings.	0.40	$1,050.00	$420.00
4/30/2021	HRW	BL	Draft responses and objections to NPA's discovery requests in notes litigation.	3.50	$695.00	$2,432.50
4/30/2021	HRW	BL	Call with J. Morris regarding NPA discovery	0.10	$695.00	$69.50
4/30/2021	HRW	BL	Call with D. Klos regarding NPA discovery requests	0.60	$695.00	$417.00
			TOTAL			**$125,307.50**

EXHIBIT 7

MAY 2021

DATE	TKPR	TASK	DESCRIPTION	HOURS	RATE	AMOUNT
5/1/2021	GVD	BL	Further revise motion to enforce the reference	4.30	$950.00	$4,085.00
5/2/2021	IDK	BL	Review of J Pomerantz comments to draft	0.30	$1,325.00	$397.50
5/2/2021	JJK	BL	Analysis withdrawal issues; revise	4.30	$995.00	$4,278.50
5/2/2021	GVD	BL	Further revise and circulate motion to enforce the	4.80	$950.00	$4,560.00
5/2/2021	GVD	BL	Correspondence re extension of answer date	0.20	$950.00	$190.00
5/3/2021	IDK	BL	E-mails with J Kim re his latest revised opposition to	1.40	$1,325.00	$1,855.00
5/3/2021	JJK	BL	Emails Pomerantz, Demo re: opp to NexPoint/HCMFA withdrawal reference motions; research/analysis/revisions to same.	2.40	$995.00	$2,388.00
5/3/2021	JJK	BL	Prepare opp to HCMFA withdrawal reference motion and analysis for same.	2.70	$995.00	$2,686.50
5/3/2021	JJK	BL	Analysis/revise oppositions to NexPoint and HCMFA reference motions.	3.70	$995.00	$3,681.50
5/3/2021	JJK	BL	Research/analysis re: reference withdrawal matters.	1.00	$995.00	$995.00
5/3/2021	JNP	BL	Brief review of motion to enforce reference.	1.00	$1,295.00	$1,295.00
5/3/2021	JNP	BL	Conference with Robert J. Feinstein regarding motion to enforce reference and related litigation matters.	0.30	$1,295.00	$388.50
5/3/2021	JNP	BL	Conference with Robert J. Feinstein and Gregory V. Demo regarding motion to enforce reference.	0.20	$1,295.00	$259.00
5/3/2021	JNP	BL	Review revised motion to withdraw reference response.	0.30	$1,295.00	$388.50
5/3/2021	JNP	BL	Conference with Jonathan J. Kim, Ira D. Kharasch and Gregory V. Demo regarding motion to withdraw	0.60	$1,295.00	$777.00
5/3/2021	GVD	BL	Revise and serve demand letter re Dugaboy note	0.30	$950.00	$285.00
5/3/2021	GVD	BL	Revise and serve demand letter re Hunter Mountain	0.30	$950.00	$285.00
5/3/2021	GVD	BL	Conference with PSZJ team re response to	0.40	$950.00	$380.00
5/3/2021	GVD	BL	Review and revise response to motion to enforce the	1.20	$950.00	$1,140.00
5/3/2021	GVD	BL	Follow up conference with PSZJ re opposition to	0.30	$950.00	$285.00
5/3/2021	GVD	BL	Conference with J. Morris re status of notes	0.20	$950.00	$190.00
5/4/2021	IDK	BL	Review of J Kim's next version of opposition to	1.00	$1,325.00	$1,325.00
5/4/2021	JJK	BL	Emails Demo, Morris, Pomerantz on withdrawal reference pleadings issues; research/revise	2.20	$995.00	$2,189.00
5/4/2021	JJK	BL	Emails Demo on withdrawal reference pleadings	3.90	$995.00	$3,880.50
5/4/2021	JNP	BL	Review and comment on latest version on motion to	0.20	$1,295.00	$259.00
5/4/2021	RJF	BL	Review and revise motion to enforce the reference.	1.30	$1,395.00	$1,813.50
5/4/2021	JAM	BL	Review draft opposition to withdraw the reference	0.40	$1,245.00	$498.00
5/4/2021	HRW	BL	Call with DSI regarding NPA document production for demand note proceeding.	0.50	$695.00	$347.50
5/4/2021	HRW	BL	Call with R. Half and J. Morris regarding NPA document production in demand note litigation.	0.20	$695.00	$139.00
5/4/2021	HRW	BL	Prepare for call with R. Half and J. Morris regarding NPA document production in demand note litigation.	1.20	$695.00	$834.00
5/4/2021	HRW	BL	Review J. Seery comments to NPA R&O's in	0.30	$695.00	$208.50
5/5/2021	JJK	BL	Research/finalize objection to Dondero motion to withdraw reference.	3.70	$995.00	$3,681.50
5/5/2021	JAM	BL	E-mails with B. Assink re: Dondero document production (notes litigation (0.2); review Dondero document production (0.1).	0.30	$1,245.00	$373.50

MAY 2021

DATE	TKPR	TASK	DESCRIPTION	HOURS	RATE	AMOUNT
5/5/2021	HRW	BL	Prepare interrogatory verification for R&Os to NPA	0.50	$695.00	$347.50
5/6/2021	IDK	BL	Review of updated opposition to Dondero motion to	0.80	$1,325.00	$1,060.00
5/6/2021	IDK	BL	E-mails with J Kim re mistake made in filed	0.40	$1,325.00	$530.00
5/6/2021	JJK	BL	Emails Kharasch on withdrawal reference	4.20	$995.00	$4,179.00
5/6/2021	HRW	BL	Communicate with R. Half re: NPA production in demand note proceeding (0.9); Call with L. Canty re: NPA production in notes litigation (0.1); Review critical dates re: Dondero stay motion and motion to withdraw reference in notes litigation (0.2); Prepare search terms for NPA production in notes litigation (0.3).	1.50	$695.00	$1,042.50
5/7/2021	IDK	BL	Review of draft addendum to prior filed opposition to Dondero motion to withdraw ref and consider changes (.2); E-mails with J Kim and J Pomerantz re same, as well as feedback of local counsel (.3).	0.50	$1,325.00	$662.50
5/7/2021	JJK	BL	Two conf. calls (2x 0.3) with Pomerantz, Kharasch, Demo on reference withdrawal oppositions.	0.60	$995.00	$597.00
5/7/2021	JNP	BL	Review further filing regarding opposition to motion	0.10	$1,295.00	$129.50
5/7/2021	HRW	BL	Review discovery requests in notes litigation (2.0);	2.30	$695.00	$1,598.50
5/8/2021	RJF	BL	Review and revise motion to enforce.	0.80	$1,395.00	$1,116.00
5/8/2021	JAM	BL	Review/revise document requests, interrogatories,	1.30	$1,245.00	$1,618.50
5/8/2021	HRW	BL	Draft discovery demands for notes litigation (3.5);	4.70	$695.00	$3,266.50
5/9/2021	HRW	BL	Review discovery requests to Debtor in notes	3.50	$695.00	$2,432.50
5/10/2021	RJF	BL	Begin work on motion to dismiss.	1.00	$1,395.00	$1,395.00
5/10/2021	JAM	BL	E-mail to J. Rudd, L. Drawhorn re: discovery in	0.40	$1,245.00	$498.00
5/10/2021	HRW	BL	Draft and review discovery search criteria for NPA	5.00	$695.00	$3,475.00
5/11/2021	JAM	BL	E-mails with B. Assink re: discovery on Dondero	1.10	$1,245.00	$1,369.50
5/11/2021	LSC	BL	Assist with preparation of responses and objections	0.60	$460.00	$276.00
5/11/2021	GVD	BL	Conference with counsel to Hunter Mountain re note	0.30	$950.00	$285.00
5/11/2021	HRW	BL	Draft search terms for document production for NPA	1.90	$695.00	$1,320.50
5/12/2021	HRW	BL	Gather documents responsive to NPA discovery	0.40	$695.00	$278.00
5/13/2021	HRW	BL	Draft responses and objections to Dondero discovery in demand note litigation (2.0).	2.00	$695.00	$1,390.00
5/14/2021	JAM	BL	Meet and confer call with M Aigen re: Rule 30(b)(6) topics and depositions (0.3); e-mails with M. Aigen, Bonds Ellis, J. Pomerantz re: discovery (0.2); review/revise draft responses and objections to Dondero's discovery requests (notes litigation) (1.1).	1.60	$1,245.00	$1,992.00
5/14/2021	HRW	BL	Draft responses and objections to Dondero discovery	2.50	$695.00	$1,737.50
5/16/2021	JAM	BL	Draft objection to Dondero's motion to compel (4.2); e-mails with H. Winograd re: draft objection to Dondero's motion to compel (0.1).	4.30	$1,245.00	$5,353.50
5/17/2021	JAM	BL	Review/revise objection to Dondero motion to compel (2.0); e-mails with J. Pomerantz, G. Demo,H. Winograd, Z. Annable re: draft objection to Dondero motion to compel (0.2); draft JAM declaration in support of Debtor's objection to Dondero motion to compel (0.7); e-mails with G. Demo, H. Winograd, L. Canty, Z. Annable re: exhibits to JAM declaration (0.2).	3.10	$1,245.00	$3,859.50
5/17/2021	LSC	BL	Conduct research in connection with motion to withdraw the reference for G. Demo.	0.60	$460.00	$276.00
5/17/2021	LSC	BL	Assist with preparation of exhibits in connection with Debtor's Objection to Motion to Compel Deposition Testimony of James P. Seery, Jr.	0.40	$460.00	$184.00

Exhibit "A" MAY 2021

DATE	TKPR	TASK	DESCRIPTION	HOURS	RATE	AMOUNT
5/17/2021	GVD	BL	Review response to motion to compel	0.30	$950.00	$285.00
5/17/2021	GVD	BL	Review correspondence re Reid Collins engagement	0.20	$950.00	$190.00
5/17/2021	GVD	BL	Prepare for argument on motions to withdraw the reference	0.80	$950.00	$760.00
5/17/2021	HRW	BL	Oversee discovery searches and production for NPA notes litigation (0.3); Review opposition to Dondero motion to compel in notes litigation (0.2).	0.50	$695.00	$347.50
5/18/2021	JNP	BL	Review motion to withdraw the reference in	0.40	$1,295.00	$518.00
5/18/2021	JNP	BL	Review reply regarding motion to withdraw	0.10	$1,295.00	$129.50
5/18/2021	JMF	BL	Review response re discovery motion to compel testimony re demand notes.	0.30	$1,050.00	$315.00
5/18/2021	GVD	BL	Prepare for argument re motion to withdraw the	4.90	$950.00	$4,655.00
5/18/2021	HRW	BL	Gather general discovery in notes litigations (0.5);	1.20	$695.00	$834.00
5/19/2021	IDK	BL	Attend conference call with J Pomerantz, others on	1.20	$1,325.00	$1,590.00
5/19/2021	JNP	BL	Participate on zoom hearing prep for motions to withdraw the reference with Gregory V. Demo, John	1.20	$1,295.00	$1,554.00
5/19/2021	JAM	BL	Review documents and e-mails to H. Winograd, L.	1.30	$1,245.00	$1,618.50
5/19/2021	LSC	BL	Review documents and prepare supplemental	12.90	$460.00	$5,934.00
5/19/2021	GVD	BL	Attend conference with PSZJ working team re	1.20	$950.00	$1,140.00
5/19/2021	GVD	BL	Prepare for argument on motion to withdraw the	3.10	$950.00	$2,945.00
5/19/2021	HRW	BL	Send amended discovery R&Os to opposing counsel	0.50	$695.00	$347.50
5/19/2021	HRW	BL	Prepare and review document production to	2.20	$695.00	$1,529.00
5/20/2021	JNP	BL	Participate in hearing on motion to compel J. Seery testimony.	1.10	$1,295.00	$1,424.50
5/20/2021	JNP	BL	Emails to and from J. Seery and Gregory V. Demo regarding Latham communications with DSI.	0.10	$1,295.00	$129.50
5/20/2021	JNP	BL	Emails to and from John A. Morris regarding U. S. Trustee inquiry.	0.10	$1,295.00	$129.50
5/20/2021	JAM	BL	Preparing for hearing on Dondero's motion to compel (0.3); court conference on Dondero's motion to compel (1.1).	1.40	$1,245.00	$1,743.00
5/20/2021	GVD	BL	Attend hearing re motion to compel	1.10	$950.00	$1,045.00
5/20/2021	JE	BL	Work on reply brief (11.0); review motion to amend	13.10	$1,195.00	$15,654.50
5/21/2021	JMF	BL	Review replies re contempt and reference	0.40	$1,050.00	$420.00
5/21/2021	JAM	BL	Finalize responses and objections to Dondero's	0.20	$1,245.00	$249.00
5/21/2021	GVD	BL	Prepare witness and exhibit list re notes litigation	0.60	$950.00	$570.00
5/22/2021	JNP	BL	Review motion to compel testimony of former	0.20	$1,295.00	$259.00
5/22/2021	GVD	BL	Conference with J. Morris, J. Seery, and HCMLP	1.10	$950.00	$1,045.00
5/22/2021	GVD	BL	Review motions for leave to amend	0.20	$950.00	$190.00
5/22/2021	HRW	BL	Review HCMFA motion to amend answer (0.5).	0.50	$695.00	$347.50
5/23/2021	JNP	BL	Emails to and from D. Rukavina regarding Sauter	0.20	$1,295.00	$259.00
5/23/2021	JAM	BL	Prepare Subpoena for DC Sauter (notes litigation)	4.70	$1,245.00	$5,851.50
5/23/2021	LSC	BL	Preparation of amended exhibit lists (3) and exhibits	5.60	$460.00	$2,576.00
5/23/2021	GVD	BL	Conference with J. Morris re motion to withdraw	0.10	$950.00	$95.00
5/23/2021	GVD	BL	Conference with J. Seery and J. Morris re depo prep	1.20	$950.00	$1,140.00

DATE	TKPR	TASK	DESCRIPTION	HOURS	RATE	AMOUNT
5/23/2021	GVD	BL	Conference with J. Morris re evidentiary issues for	1.10	$950.00	$1,045.00
5/23/2021	GVD	BL	Prepare for hearing on motion to withdraw the	2.90	$950.00	$2,755.00
5/24/2021	IDK	BL	Attend conference call re notes collection issues (.3).	0.30	$1,325.00	$397.50
5/24/2021	JNP	BL	Review and comment on Gregory V. Demo outline	0.50	$1,295.00	$647.50
5/24/2021	JNP	BL	Conference with Gregory V. Demo, Ira D. Kharasch	0.60	$1,295.00	$777.00
5/24/2021	JNP	BL	Conference with PSZJ team regarding update on notes litigation.	0.30	$1,295.00	$388.50
5/24/2021	JNP	BL	Conference with John A. Morris regarding proposal	0.10	$1,295.00	$129.50
5/24/2021	RJF	BL	Internal call regarding notes litigation.	0.30	$1,395.00	$418.50
5/24/2021	JMF	BL	Review litigation summary (.3); status call re same	0.60	$1,050.00	$630.00
5/24/2021	JMF	BL	Status call re issues in notes payable litigation.	0.30	$1,050.00	$315.00
5/24/2021	JMF	BL	Review motion to amend answer re notes litigation.	0.30	$1,050.00	$315.00
5/24/2021	JAM	BL	Tel c. w/ J. Dubel re: motions to amend and	7.00	$1,245.00	$8,715.00
5/24/2021	GVD	BL	Prepare for hearing on motion to withdraw the reference	5.80	$950.00	$5,510.00
5/24/2021	GVD	BL	Attend deposition of J. Seery re Dondero note litigation	2.60	$950.00	$2,470.00
5/24/2021	GVD	BL	Conference with J. Seery and J. Morris re follow up to Seery deposition	0.30	$950.00	$285.00
5/24/2021	GVD	BL	Conference with PSZJ re status of note litigation and motion to withdraw the reference	0.60	$950.00	$570.00
5/24/2021	GVD	BL	Attend PSZJ status conference on notes litigation	0.30	$950.00	$285.00
5/25/2021	JNP	BL	Participate on hearing regarding motions to	2.80	$1,295.00	$3,626.00
5/25/2021	JNP	BL	Conference with J. Seery and John A. Morris after	0.40	$1,295.00	$518.00
5/25/2021	JNP	BL	Emails regarding answer date and response.	0.10	$1,295.00	$129.50
5/25/2021	JAM	BL	Prepare Notice of Service of Subpoena (NexBank)	1.00	$1,245.00	$1,245.00
5/25/2021	JAM	BL	Tel c. w/ G. Demo re: withdrawal of the reference	4.80	$1,245.00	$5,976.00
5/25/2021	LSC	BL	Prepare for and assist at hearing on motions to stay	2.30	$460.00	$1,058.00
5/25/2021	LSC	BL	Preparation of supplemental production to Dondero.	2.00	$460.00	$920.00
5/25/2021	GVD	BL	Prepare for evidentiary hearing on motion to withdraw reference	3.80	$950.00	$3,610.00
5/25/2021	GVD	BL	Attend hearing on motions to withdraw the reference	2.10	$950.00	$1,995.00
5/25/2021	GVD	BL	Conference with team re follow up to hearing on motion to withdraw the reference	0.50	$950.00	$475.00
5/25/2021	GVD	BL	Conference with J. Morris on evidentiary hearing on motion to withdraw	0.30	$950.00	$285.00
5/25/2021	GVD	BL	Conference with J. Romey re status of note litigation	0.20	$950.00	$190.00
5/26/2021	JAM	BL	Tel c. w/ D. Rukavina re: discovery concerning	7.20	$1,245.00	$8,964.00
5/26/2021	LSC	BL	Preparation of exhibits and materials in connection	3.20	$460.00	$1,472.00
5/26/2021	HRW	BL	Review production for NPA discovery requests in notes litigation (0.3)	0.30	$695.00	$208.50
5/27/2021	JNP	BL	Conference with John A. Morris regarding Dondero amended answer and discovery issues.	0.20	$1,295.00	$259.00
5/27/2021	JAM	BL	Review/revise written responses to Advisor's	2.70	$1,245.00	$3,361.50
5/28/2021	JNP	BL	Conference with John A. Morris regarding Dondero	0.10	$1,295.00	$129.50
5/28/2021	JAM	BL	Prepare for Dondero deposition (3.5); Dondero	8.80	$1,245.00	$10,956.00

Exhibit "A" MAY 2021

DATE	TKPR	TASK	DESCRIPTION	HOURS	RATE	AMOUNT
5/28/2021	LSC	BL	Preparation for and assist at deposition of Jim	5.50	$460.00	$2,530.00
5/28/2021	GVD	BL	Revise and circulate response to resignation letter	0.20	$950.00	$190.00
5/28/2021	GVD	BL	Attend Dondero Deposition (partial)	1.60	$950.00	$1,520.00
5/28/2021	HRW	BL	Prepare responses and objections to HCMFA	0.40	$695.00	$278.00
5/28/2021	HRW	BL	Deposition of Dondero in connection with notes	3.50	$695.00	$2,432.50
5/28/2021	HRW	BL	Review production for NPA discovery requests in	0.30	$695.00	$208.50
5/29/2021	JAM	BL	E-mails to Counsel re: Zoom instructions for	0.60	$1,245.00	$747.00
5/29/2021	JAM	BL	Review HCMFA's second request for discovery	4.40	$1,245.00	$5,478.00
5/29/2021	HRW	BL	Draft opposition to HCRE and HCMS motions for leave to amend answer in notes litigation (2.0)	2.00	$695.00	$1,390.00
5/29/2021	HRW	BL	Call with J. Morris re: opposition to HCRE and HCMS motions for leave to amend answer in notes litigation (0.3)	0.30	$695.00	$208.50
5/30/2021	JAM	BL	Review documents (1.9); tel c. w/ G. Demo re: document review/facts (1.1); e-mails w/ G. Demo re: facts (0.3); tel c. w/ G. Demo re: document review/facts (0.6); prepare for depositions (0.8)	4.70	$1,245.00	$5,851.50
5/30/2021	GVD	BL	Conference with J. Morris re deposition preparation	0.60	$950.00	$570.00
5/30/2021	HRW	BL	Draft opposition to HCRE and HCMS motions for leave to amend answer in notes litigation (3.5)	3.50	$695.00	$2,432.50
5/31/2021	JAM	BL	Analyze G. Scott prior deposition transcript (2.4); analysis of use of Scott transcript, and e-mail to J. Pomerantz, G. Demo, H. Winograd concerning the same (0.6); prepare for Dondero and Scott depositions (6.4); e-mails w/ L. Canty re: deposition exhibits (0.2); tel c. w/ G. Demo, C. Wilkins re: potential conflicts (0.2)	9.80	$1,245.00	$12,201.00
5/31/2021	JAM	BL	Review/revise discovery requests for HCRE (notes litigation (0.4); e-mail to L. Drawhorn, G. Demo, H. Winograd, J. Rudd re: discovery requests for HCRE (notes litigation) (0.1); tel c. w/ H. Winograd re: status of brief for opposition to motion to amend (0.2)	0.70	$1,245.00	$871.50
5/31/2021	HRW	BL	Draft opposition to HCRE and HCMS motions for leave to amend answer in notes litigation (9.5)	9.50	$695.00	$6,602.50
			TOTAL			**$260,971.50**

EXHIBIT 8

JUNE 2021

DATE	TKPR	TASK	DESCRIPTION	HOURS	RATE	AMOUNT
5/19/2021	CHM	BL	Review Dondero notes litigation document production and cross check for privilege filter; email production links to H. Winograd and J. Morris.	4.50	$750.00	$3,375.00
6/1/2021	JAM	BL	Review/revise objection to HCMS motion for leave to amend answer (2.2); e-mail to J. Pomerantz, G.	3.00	$1,245.00	$3,735.00
6/1/2021	LSC	BL	Draft declarations in support of oppositions to HCMS and HCRE motions to amend (1.1); assist with revising and finalizing of oppositions to HCMS and HCRE motions to amend (1.3); revise and finalize exhibits (.5).	2.90	$460.00	$1,334.00
6/1/2021	GVD	BL	Review and revise motion for leave to amend HCRE and HCMS answers	2.00	$950.00	$1,900.00
6/1/2021	HRW	BL	Draft opposition to HCRE and HCMS motions for leave to amend answer in notes litigation (12.5)	12.50	$695.00	$8,687.50
6/2/2021	JMF	BL	Review responses to motions for leave to amend answer.	0.40	$1,050.00	$420.00
6/2/2021	GVD	BL	Correspondence with J. Morris re HCRE/HCMS motion for leave to withdraw the reference	0.40	$950.00	$380.00
6/2/2021	GVD	BL	Draft demand letter re HCMFA notes and serve same	0.60	$950.00	$570.00
6/2/2021	HRW	BL	Review documents produced in Dondero notes litigation (0.1)	0.10	$695.00	$69.50
6/3/2021	JAM	BL	E-mail to L. Drawhorn, J. Rudd, J. Pomerantz, G. Demo re: motion to withdraw the reference and related matters (0.3); e-mails w/ M. Aigen, Dondero's other counsel, J. Pomerantz, G. Demo, H. Winograd re: scheduling of expert depositions (0.1); prepare notices of deposition for Nancy Dondero and Dondero's expert witnesses and send to Z. Annable, H. Winograd (0.2); review HCRE/HCMS motions (0.3)	0.90	$1,245.00	$1,120.50
6/3/2021	LSC	BL	Review documents, redact, and prepare NexPoint document production (and address numerous issues with).	8.20	$460.00	$3,772.00
6/3/2021	GVD	BL	Correspondence with J. Donohue re demand letters on notes	0.20	$950.00	$190.00
6/3/2021	GVD	BL	Correspondence with J. Morris re HCRE/HCMS motions for leave to amend	0.20	$950.00	$190.00
6/3/2021	GVD	BL	Correspondence with J. Morris and H. Winograd re status of notes litigation	0.20	$950.00	$190.00
6/3/2021	HRW	BL	Prepare document production for NexPoint discovery in connection with notes litigation (1.0)	1.00	$695.00	$695.00
6/3/2021	HRW	BL	Call with L. Canty re: document production for NexPoint discovery in connection with notes litigation (0.2)	0.20	$695.00	$139.00
6/3/2021	HRW	BL	Draft responses and objections to document requests in HCMS notes litigation (1.0)	1.00	$695.00	$695.00
6/3/2021	HRW	BL	Prepare search terms for document production in HCMS notes litigation (0.5)	0.50	$695.00	$347.50
6/4/2021	LSC	BL	Transmit HCRE document production to additional party.	0.20	$460.00	$92.00
6/4/2021	HRW	BL	Draft 30(b)(6) deposition notice directed to HCMS and HCRE (0.6)	0.60	$695.00	$417.00
6/4/2021	HRW	BL	Send production for NexPoint discovery demands re: notes litigation to opposing counsel (0.1)	0.10	$695.00	$69.50
6/6/2021	HRW	BL	Review HCMFA motion to amend (1.0)	1.00	$695.00	$695.00
6/7/2021	JAM	BL	Review/revise Rule 30(b)(6) deposition notice for HCRE (0.1); e-mail to H. Winograd re: Rule 30(b)(6) deposition notice for HCRE (0.1); review/revise Rule 30(b)(6) deposition notice for HCMS (0.1); e-mail to H. Winograd re: Rule 30(b)(6) deposition notice for HCMS (0.1).	0.40	$1,245.00	$498.00
6/7/2021	HRW	BL	Communications with DSI re: HCMS discovery (0.2)	0.20	$695.00	$139.00
6/7/2021	HRW	BL	Draft R&Os to HCMS discovery (2.6)	2.60	$695.00	$1,807.00
6/7/2021	HRW	BL	Draft search terms for HCMS document production (1.0)	1.00	$695.00	$695.00

JUNE 2021

DATE	TKPR	TASK	DESCRIPTION	HOURS	RATE	AMOUNT
6/7/2021	HRW	BL	Edit and review 30(b)(6) deposition notice directed to HCMS and HCRE (0.2)	0.20	$695.00	$139.00
6/8/2021	HRW	BL	Communications with DSI re: HCMS discovery (0.3)	0.30	$695.00	$208.50
6/8/2021	HRW	BL	Draft R&Os to HCMS discovery (1.5)	1.50	$695.00	$1,042.50
6/8/2021	HRW	BL	Draft search terms for HCMS document production (1.0)	1.00	$695.00	$695.00
6/9/2021	JNP	BL	Review of motion to amend answer.	0.10	$1,295.00	$129.50
6/9/2021	JNP	BL	Review motion to modify answer and emails regarding same.	0.20	$1,295.00	$259.00
6/9/2021	JMF	BL	Review motion for leave to amend answer.	0.30	$1,050.00	$315.00
6/9/2021	JAM	BL	Review/revise R&Os to HCMS's discovery requests	0.80	$1,245.00	$996.00
6/9/2021	LSC	BL	Preparation of document production to HCMS,	5.70	$460.00	$2,622.00
6/9/2021	HRW	BL	Draft R&Os for HCMS discovery demands (4.3)	4.30	$695.00	$2,988.50
6/9/2021	HRW	BL	Communicate with L. Canty re: HCMS document production (0.7)	0.70	$695.00	$486.50
6/9/2021	HRW	BL	Organize and review document production for HCMS (1.3)	1.30	$695.00	$903.50
6/9/2021	HRW	BL	Send HCMS productions in response to document	0.20	$695.00	$139.00
6/9/2021	HRW	BL	Communicate with client re: R&OS to HCMS discovery and verification (0.2)	0.20	$695.00	$139.00
6/10/2021	IDK	BL	Office conference with J Morris re upcoming	0.30	$1,325.00	$397.50
6/10/2021	JNP	BL	Participation in hearing on motion to amend answer.	1.50	$1,295.00	$1,942.50
6/10/2021	JAM	BL	Prepare for hearing on HCRE and HCMS motion for leave to amend (2.3); court hearing on HCRE and HCMS motion for leave to amend (0.8); telephone	3.30	$1,245.00	$4,108.50
6/10/2021	LSC	BL	Research in connection with subpoena and correspondence with H. Winograd regarding the same.	0.90	$460.00	$414.00
6/10/2021	LSC	BL	Prepare for and assist at hearing on motion to amend.	3.00	$460.00	$1,380.00
6/10/2021	GVD	BL	Attend hearing on motion to amend notes	2.50	$950.00	$2,375.00
6/10/2021	HRW	BL	Call with J. Morris re: PwC subpoenas (0.1)	0.10	$695.00	$69.50
6/10/2021	HRW	BL	Call with G. Demo re: HCMFA motion to amend (0.1)	0.10	$695.00	$69.50
6/10/2021	HRW	BL	Review HCMFA motion to amend (1.2)	1.20	$695.00	$834.00
6/10/2021	HRW	BL	Draft opposition to HMCFA motion to amend (0.6)	0.60	$695.00	$417.00
6/10/2021	HRW	BL	Draft document and deposition subpoenas for PwC (2.6)	2.60	$695.00	$1,807.00
6/10/2021	HRW	BL	Call with L. Canty re: PwC subpoenas (0.1)	0.10	$695.00	$69.50
6/10/2021	HRW	BL	Hearing on HCRE/HCMS motion to amend answer (1.0)	1.00	$695.00	$695.00
6/11/2021	JNP	BL	Review emails regarding consolidation of notes litigation.	0.10	$1,295.00	$129.50
6/11/2021	JNP	BL	Review of response to motion to quash.	0.10	$1,295.00	$129.50
6/11/2021	JNP	BL	Conference with J. Seery, Robert J. Feinstein and Gregory V. Demo regarding status of Sentinel matters and next steps.	0.50	$1,295.00	$647.50
6/11/2021	GVD	BL	Conference with J. Morris and H. Winograd re status of HCMFA amended answer	0.50	$950.00	$475.00
6/11/2021	GVD	BL	Correspondence with D. Rukavina re amendments to notes litigation	0.20	$950.00	$190.00

JUNE 2021

DATE	TKPR	TASK	DESCRIPTION	HOURS	RATE	AMOUNT
6/11/2021	HRW	BL	Draft subpoenas and ancillary documents for PwC in connection with HCMS notes litigation (1.6)	1.60	$695.00	$1,112.00
6/11/2021	HRW	BL	Send PwC subpoena to representative of PwC for HCMS notes litigation (0.2)	0.20	$695.00	$139.00
6/11/2021	HRW	BL	Communicate with local counsel and J. Morris re: subpoenas for PwC for HCMS notes litigation (0.6)	0.60	$695.00	$417.00
6/11/2021	HRW	BL	Meeting with client for notarization of ROG verification in connection with HCMS R&Os in notes litigation (0.1)	0.10	$695.00	$69.50
6/11/2021	HRW	BL	Communications with client and notary for ROG verification in connection with HCMS R&Os in notes litigation (0.1)	0.10	$695.00	$69.50
6/11/2021	HRW	BL	Send opposing counsel ROG verification for HCMS R&Os in notes litigation (0.1)	0.10	$695.00	$69.50
6/11/2021	HRW	BL	Call with J. Morris and G. Demo re: HCMFA motion to amend answer in notes litigation (0.5)	0.50	$695.00	$347.50
6/11/2021	HRW	BL	Draft 30(b)(6) deposition notices for HCMFA and NPA for notes litigations (0.4)	0.40	$695.00	$278.00
6/14/2021	JAM	BL	E-mails w/ D. Rukavina re: discovery in the notes litigation against the Advisors (0.3).	0.30	$1,245.00	$373.50
6/16/2021	JAM	BL	Draft e-mail to counsel for defendants in notes litigation re: discovery, proposed amendments (0.8).	0.80	$1,245.00	$996.00
6/16/2021	JAM	BL	Review/revise e-mail to counsel for defendants in	0.40	$1,245.00	$498.00
6/17/2021	HRW	BL	Draft search terms for HCMFA production in notes	1.50	$695.00	$1,042.50
6/18/2021	JAM	BL	Review PwC Subpoena from Dondero (0.1); tel c. w/ J. Seery re: PwC subpoena from Dondero (0.1); e-mails w/ M. Aigen, J. Pomerantz re: PwC subpoena and financial statements (0.1).	0.30	$1,245.00	$373.50
6/21/2021	JNP	BL	Email to and from Gregory V. Demo regarding concerns with note defendant disposing of assets.	0.10	$1,295.00	$129.50
6/21/2021	JAM	BL	Communications w/ M. Aigen, counsel for all defendants, J. Pomerantz, G. Demo, H. Winograd re: discovery and schedule for notes litigations (0.3).	0.30	$1,245.00	$373.50
6/21/2021	HRW	BL	Communicate with DSI re: HCMFA discovery in notes litigation (0.2); Review HCMFA motion to amend answer (0.2); Draft search terms for HCMFA discovery in notes litigation (0.3).	0.70	$695.00	$486.50
6/22/2021	JAM	BL	Analyze status of notes litigations and prepare	0.70	$1,245.00	$871.50
6/23/2021	JAM	BL	Tel c. w/ H. Winograd re: amending the complaint to	0.20	$1,245.00	$249.00
6/23/2021	HRW	BL	Communicate with R. Half re: privilege review in	0.30	$695.00	$208.50
6/24/2021	JAM	BL	Tel c. w/ counsel to PwC re: subpoena (0.1); tel c. w/ H. Winograd re: amended complaint (0.1).	0.20	$1,245.00	$249.00
6/24/2021	HRW	BL	Hearing on HCMFA motion to amend (0.3); Review	8.40	$695.00	$5,838.00
6/25/2021	IDK	BL	E-mails with G Demo re issues on Dondero conversion of HCMFA to holding company and impact on note litigation, and related background to same, including memo from Wilmer Hale on same.	0.40	$1,325.00	$530.00
6/25/2021	JAM	BL	Tel c. w/ H. Winograd re: amended complaints for notes litigation (0.3).	0.30	$1,245.00	$373.50
6/25/2021	GVD	BL	Correspondence with J. Morris and H. Winograd re preparation for amendment to the notes litigation	0.30	$950.00	$285.00

JUNE 2021

DATE	TKPR	TASK	DESCRIPTION	HOURS	RATE	AMOUNT
6/25/2021	HRW	BL	Draft amended complaint for notes litigation (3.8); Call with J. Morris re: amended complaints for notes litigation (0.2); Research re: additional claims in notes litigation (2.0); Review HCMFA discovery and production (0.2); Send counsel for HCMFA first production (0.1); Review outstanding litigation critical dates (0.4).	6.70	$695.00	$4,656.50
6/27/2021	JAM	BL	Review/revise draft Amended Complaint against Dondero (1.2); e-mails w/ H. Winograd, G. Demo re: revised Amended Complaint against Dondero (0.3).	1.50	$1,245.00	$1,867.50
6/27/2021	HRW	BL	Draft amended complaint for notes litigation (6.5); Research re: additional claims for amended claim in notes litigation (1.0).	7.50	$695.00	$5,212.50
6/28/2021	JNP	BL	Review amended complaint.	0.20	$1,295.00	$259.00
6/28/2021	JNP	BL	Conference with John A. Morris regarding amended complaint.	0.20	$1,295.00	$259.00
6/28/2021	JNP	BL	Email to and from Ira D. Kharasch and J. Elkin regarding research regarding withdrawal of the	0.20	$1,295.00	$259.00
6/28/2021	JAM	BL	Review/revise draft amended complaint against	1.60	$1,245.00	$1,992.00
6/28/2021	HRW	BL	Draft amended complaint for notes litigation (1.6);	3.80	$695.00	$2,641.00
6/29/2021	JNP	BL	Review opposition to motion to withdraw reference.	0.30	$1,295.00	$388.50
6/29/2021	GVD	BL	Correspondence with PSZJ working group re notes litigation	0.20	$950.00	$190.00
6/29/2021	GVD	BL	Review amended notes complaint	0.90	$950.00	$855.00
6/29/2021	HRW	BL	Research re: amended complaint for notes litigations (1.2); Review amended complaint re: notes litigations (0.5); Draft R&Os for HCRE discovery requests in notes litigation (1.4).	3.10	$695.00	$2,154.50
6/30/2021	JAM	BL	E-mails w/ G. Demo, H. Winograd re: potential	1.60	$1,245.00	$1,992.00
6/30/2021	GVD	BL	Correspondence with PSZJ team re revisions to	0.20	$950.00	$190.00
6/30/2021	HRW	BL	Draft and review R&Os to HCRE discovery in notes litigation (0.7); Draft search terms for HCRE production in notes litigation (1.2); Call with L. Canty re: HCRE production in notes litigation (0.1); Review and gather HCRE production in notes litigation (0.8); Send HCRE production and R&Os to opposing counsel (0.1); Edit amended complaint re: notes litigation (0.6); Research re: fraudulent transfer and fiduciary claims for amended complaint in notes litigation (1.6).	5.10	$695.00	$3,544.50
			TOTAL			**$101,276.50**

EXHIBIT 9

JULY 2021

DATE	TKPR	TASK	DESCRIPTION	HOURS	RATE	AMOUNT
7/1/2021	JAM	BL	Further revisions to draft Amended Complaint (0.4); e-mails w/ G. Demo, H. Winograd, J. Pomerantz re: revisions to draft Amended Complaint (0.2).	0.60	$1,245.00	$747.00
7/1/2021	GVD	BL	Review revisions to letter re conflicts of interest	0.40	$950.00	$380.00
7/1/2021	GVD	BL	Review amended complaint re notes litigation and correspondence re same	0.30	$950.00	$285.00
7/1/2021	HRW	BL	Edit and review amended complaint for notes litigation (0.6); Assist client re: verification for HCRE interrogatories in notes litigation (0.1); Review supplemental production for HCMFA and NPA notes litigations (0.1); Send verification for HCRE interrogatories to opposing counsel in notes litigation (0.1).	0.90	$695.00	$625.50
7/2/2021	HRW	BL	Review supplemental production for HCMFA and NPA notes litigations (0.2); Send supplemental production for HCMFA and NPA notes litigations to opposing counsel (0.1).	0.30	$695.00	$208.50
7/3/2021	GVD	BL	Correspondence with J. Elkin re fraudulent conveyance actions in notes litigation	0.20	$950.00	$190.00
7/3/2021	JE	BL	Review additional transcripts and pleadings on fraudulent transfers; correspondence with Mr. Morris and Mr. Demo.	5.30	$1,195.00	$6,333.50
7/4/2021	JE	BL	Prepare memo on implications of amending Note Suit Complaints to add fraudulent transfer cause of action.	10.00	$1,195.00	$11,950.00
7/6/2021	JAM	BL	E-mail to M. Aigen, other defense counsel on notes litigation, concerning proposed Amended Complaint and scheduling matters (0.3); review written responses and document production from HCRE in notes litigation (0.3).	0.60	$1,245.00	$747.00
7/7/2021	JNP	BL	Review Bankruptcy Court report and	0.10	$1,295.00	$129.50
7/7/2021	JMF	BL	Review report and recommendations re notes	0.60	$1,050.00	$630.00
7/7/2021	JAM	BL	E-mails w/ D. Rukavina re: proposed amended	0.20	$1,245.00	$249.00
7/8/2021	JNP	BL	Participate in hearing on motion to amend and motion to stay notes actions.	0.20	$1,295.00	$259.00
7/8/2021	JNP	BL	Conference with J. Dubel regarding hearing on notes litigation.	0.20	$1,295.00	$259.00
7/8/2021	JAM	BL	Court hearing on HCRE/HCMS motions to withdraw the reference and related matters (0.8); tel c. w/ J. Pomerantz re: court hearing (0.1).	0.90	$1,245.00	$1,120.50
7/8/2021	JE	BL	Review certain documents relating to note suits (.5); call with Mr. Pomerantz, Mr. Morris and Mr. Demo regarding reference issues, preference issues and jury trials (.4).	0.90	$1,195.00	$1,075.50
7/8/2021	HRW	BL	Send production to counsel for HCRE (0.1).	0.10	$695.00	$69.50
7/9/2021	JAM	BL	Review M. Aigen e-mail re: notes litigation and	0.10	$1,245.00	$124.50
7/11/2021	JAM	BL	Work on Amended Complaints in notes litigation (2.2); e-mails w/ D. Rukavina re: NexPoint amended	2.30	$1,245.00	$2,863.50
7/12/2021	JAM	BL	Analysis of status of each of the Notes Litigations.	1.20	$1,245.00	$1,494.00
7/13/2021	JNP	BL	Conference with John A. Morris regarding notes litigation and defenses.	0.20	$1,295.00	$259.00
7/13/2021	JAM	BL	E-mail to D. Rukavina re: NexPoint amended	5.50	$1,245.00	$6,847.50
7/15/2021	JNP	BL	Review and execute pro hac vice applications for District Court note litigation.	0.10	$1,295.00	$129.50
7/19/2021	JMF	BL	Review report and recommendations re notes	1.10	$1,050.00	$1,155.00
7/19/2021	JAM	BL	E-mails w/ D. Rukavina re: NexPoint's amended	0.30	$1,245.00	$373.50

JULY 2021

DATE	TKPR	TASK	DESCRIPTION	HOURS	RATE	AMOUNT
7/20/2021	JAM	BL	E-mails w/ J. Wander, L. Drawhorn re: PwC subpoena (0.2); e-mails w/ J. Vasek, D. Rukavina, J. Pomerantz re: HCMFA motion for protective order	0.40	$1,245.00	$498.00
7/21/2021	JNP	BL	Review brief regarding report and recommendation on withdrawal of reference and emails regarding same.	0.10	$1,295.00	$129.50
7/21/2021	JAM	BL	E-mail to J. Vasek, D. Rukavina, J. Pomerantz, H. Wingrad re: motion for protective order (0.3); e-mails w/ M. Aigen re: scheduling stipulation (0.1); e-mails w/ L. Drawhorn, J. Wander re: PwC subpoena (0.2); e-mail to D. Rukavina re: PwC subpoena (0.2).	0.80	$1,245.00	$996.00
7/23/2021	IDK	BL	E-mails with local counsel, J. Pomerantz re issues on	0.80	$1,325.00	$1,060.00
7/23/2021	JNP	BL	Review and respond to email regarding stipulation to	0.10	$1,295.00	$129.50
7/23/2021	JAM	BL	E-mails w/ J. Wander, L. Drawhorn, D. Rukavina re:	1.40	$1,245.00	$1,743.00
7/24/2021	IDK	BL	E-mails and telephone conference with J. Pomerantz	0.90	$1,325.00	$1,192.50
7/26/2021	IDK	BL	Review and consider J Kim draft motion to strike Dondero objection to report and rec, as well as his summary of caselaw (.5); E-mail J Pomerantz re timing on same (.1); E-mails with attorneys re problems on filing motion to strike same and issues on procedure re District Court for same (.3).	0.90	$1,325.00	$1,192.50
7/26/2021	IDK	BL	E-mail local counsel re District Court order adopting R&R of Judge Jurnigan re HCM Services and review of same.	0.20	$1,325.00	$265.00
7/26/2021	JNP	BL	Review and respond to email regarding motion to	0.10	$1,295.00	$129.50
7/26/2021	RJF	BL	Review draft motion to strike objection to reference	0.40	$1,395.00	$558.00
7/26/2021	JAM	BL	Review/analyze HCMLP's audited financials from	2.00	$1,245.00	$2,490.00
7/27/2021	IDK	BL	E-mails with J Kim re decision to file response to Dondero objection to R&R vs motion to strike.	0.20	$1,325.00	$265.00
7/27/2021	JAM	BL	E-mails w/ J. Seery, L. Canty, M. Aigen re: audited financial statements (0.3).	0.30	$1,245.00	$373.50
7/29/2021	JMF	BL	Review notes adversary proceedings district and bankruptcy dockets and draft memorandum re pending issues and status re same.	2.10	$1,050.00	$2,205.00
7/29/2021	JAM	BL	Review audited financial statements and prepare for PwC deposition (1.1); e-mails w/ M. Aigen, L. Canty re: PwC financial statements (0.2); e-mails w/ L. Drawhorn, J. Seery re: Wick Phillips proposed withdrawal from notes litigation (0.1).	1.40	$1,245.00	$1,743.00
7/29/2021	HRW	BL	Send production to opposing counsel for notes litigation (0.1).	0.10	$695.00	$69.50
7/29/2021	HRW	BL	Review objections to R&Rs issued in notes litigations (0.5).	0.50	$695.00	$347.50
7/29/2021	HRW	BL	Review and edit chart of District Court proceedings for notes litigations (0.6).	0.60	$695.00	$417.00
7/30/2021	JNP	BL	Email to and from Jonathan J. Kim regarding status of reports and recommendations in connection with motion to withdraw reference.	0.20	$1,295.00	$259.00
7/30/2021	JAM	BL	E-mail to L. Lambert, M. Clemente, J. Pomerantz re: Advisors' motion for protective order (0.2); prepare for PwC deposition (4.3); PwC deposition (2.0).	6.50	$1,245.00	$8,092.50
7/30/2021	HRW	BL	Review pleadings in District Court notes litigations (1.0).	1.00	$695.00	$695.00
7/30/2021	HRW	BL	Review deadlines for District Court notes litigations (0.5).	0.50	$695.00	$347.50
7/30/2021	HRW	BL	Deposition of Peet Burger for notes litigations (2.0).	2.00	$695.00	$1,390.00
			TOTAL			**$65,093.00**

EXHIBIT 10

AUGUST 10 2021

DATE	TKPR	TASK	DESCRIPTION	HOURS	RATE	AMOUNT
4/15/2021	JAM	BL	Review/revise Rule 26 disclosures for Dondero notes litigation (0.8); e-mails with H. Winograd, Z. Annable re: Rule 26 disclosures for Dondero notes litigation (0.2); telephone conference with B. Assink re: Dondero's withdrawal of the reference in notes litigation and related matters (0.1); review Dondero motion to withdraw the reference and stay the notes litigation (0.3).	0.50	$1,245.00	$622.50
4/23/2021	JAM	BL	telephone conference with B. Sharp re: e-discovery (0.1);	0.10	$1,245.00	$124.50
5/25/2021	CHM	BL	Email K. Kim re document production.	0.10	$750.00	$75.00
5/25/2021	CHM	BL	Exchange multiple emails with IDS re document	0.40	$750.00	$300.00
5/25/2021	CHM	BL	Emails with J. Morris and B. Sharp re document production.	0.30	$750.00	$225.00
5/26/2021	CHM	BL	Prepare Nexpoint document production and check document being produced; email H. Winograd re same.	3.20	$750.00	$2,400.00
5/26/2021	CHM	BL	Review email from H. Winograd re RFPs and reply.	0.10	$750.00	$75.00
5/27/2021	CHM	BL	Review requests for production and documents being produced and search terms run for completeness.	4.00	$750.00	$3,000.00
5/27/2021	CHM	BL	Review search terms and exchange emails with H. Winograd and IDS team re new production searches.	1.10	$750.00	$825.00
5/28/2021	CHM	BL	Review email from J. Vaughn and reply.	0.10	$750.00	$75.00
5/28/2021	CHM	BL	Run document production and review of documents being produced.	1.80	$750.00	$1,350.00
6/2/2021	CHM	BL	Review document production issues and coordinate with IDS team re same.	0.30	$750.00	$225.00
6/2/2021	CHM	BL	Email H. Winograd re document production issues.	0.10	$750.00	$75.00
6/3/2021	CHM	BL	Review RFPs and coordinate searches with IDS team; review document hits re same.	3.20	$750.00	$2,400.00
6/7/2021	CHM	BL	Review email from B. Sharp and reply.	0.10	$750.00	$75.00
6/7/2021	CHM	BL	Review RFPs and proposed search terms; email IDS team re same and review results.	2.50	$750.00	$1,875.00
6/9/2021	CHM	BL	Correspond with G. Crane and H. Winograd re privilege review and begin preparation of privilege assignments.	3.00	$750.00	$2,250.00
6/9/2021	CHM	BL	Review documents for responsiveness and run production.	3.70	$750.00	$2,775.00
6/9/2021	CHM	BL	Email IDS team re additional searches.	0.20	$750.00	$150.00
6/11/2021	CHM	BL	Review documents flagged by G. Crane and reply re same.	0.30	$750.00	$225.00
6/11/2021	JAM	BL	Telephone conference with G. Demo, H. Winograd re: HCMFA and NexPoint motions to amend (0.5); telephone conference with J. Seery re: HCMFA and NexPoint motion to amend (0.1); e-mail to D. Rukavina, J. Vasek, J. Pomerantz, G. Demo, H. Winograd re: proposed amended complaints for HCMFA and NexPoint in notes litigation (0.4); e-mail to D. Rukavina, J. Vasek, J. Pomerantz, G. Demo, H. Winograd re: Rule 30(b)(6) notices in notes litigation (0.2); review/revise subpoena for PwC for HCMFA and NexPoint notes litigation (0.3); communications w/ H. Winograd, Z. Annable re: substance of PwC subpoena and issues concerning service (0.3).	1.80	$1,245.00	$2,241.00
6/12/2021	CHM	BL	Review email from J. Morris re G. Crane privilege review and reply.	0.10	$750.00	$75.00
6/15/2021	CHM	BL	Review email from G. Crane re privilege review and reply.	0.10	$750.00	$75.00
6/15/2021	CHM	BL	Create and update privilege review assignments and email G. Crane re same.	1.00	$750.00	$750.00

AUGUST 10 2021

DATE	TKPR	TASK	DESCRIPTION	HOURS	RATE	AMOUNT
6/15/2021	CHM	BL	Review discovery and deadline tracker and update; coordinate with H. Winograd re next priority.	0.50	$750.00	$375.00
6/15/2021	CHM	BL	Emails with G. Crane re parameters of privilege review and RFPs for responsiveness review.	0.20	$750.00	$150.00
6/15/2021	CHM	BL	Review G. Crane privilege tagging re HCMS production; email H. Winograd re same.	0.80	$750.00	$600.00
6/16/2021	CHM	BL	Emails with J. Morris, G. Demo and IDS team re additional custodian collection.	0.20	$750.00	$150.00
6/21/2021	CHM	BL	Review RFP and proposed search terms and coordinate searches with IDS team.	0.50	$750.00	$375.00
6/22/2021	CHM	BL	Exchange emails with IDS team re requested searches.	0.10	$750.00	$75.00
6/23/2021	CHM	BL	Review email from H. Winograd re HCMFA document searches and reply.	0.10	$750.00	$75.00
6/23/2021	CHM	BL	Review RFP and coordinate additional searches with IDS team.	0.50	$750.00	$375.00
6/24/2021	CHM	BL	Review email from G. Crane re coding issues; review database and impacted documents.	0.60	$750.00	$450.00
6/24/2021	CHM	BL	Draft email to IDS team re pending documents.	0.40	$750.00	$300.00
6/24/2021	CHM	BL	Review documents for responsiveness and run production re first portion of HCMFA documents.	3.90	$750.00	$2,925.00
6/28/2021	CHM	BL	Review email from G. Crane re review status and reply.	0.10	$750.00	$75.00
6/28/2021	CHM	BL	Review documents for responsiveness and run production re 2nd set of HCMFA requests.	3.50	$750.00	$2,625.00
7/1/2021	CHM	BL	Review RFPs, run preliminary searches in existing database and email IDS re HCRE search terms.	0.60	$750.00	$450.00
7/1/2021	LSC	BL	Prepare supplemental HCMFA production.	0.30	$460.00	$138.00
7/1/2021	LSC	BL	Preparation of NPA supplemental production.	0.30	$460.00	$138.00
7/2/2021	CHM	BL	Draft email to IDS team re privilege filter issue.	0.30	$750.00	$225.00
7/2/2021	CHM	BL	Review prior productions re privilege filter issues.	3.30	$750.00	$2,475.00
7/6/2021	LSC	BL	Research and correspondence regarding privileged documents and supplemental document production.	0.90	$460.00	$414.00
7/7/2021	LAF	BL	Legal research re: Withdrawal of reference; update chart of rules/general orders in various districts.	3.30	$475.00	$1,567.50
7/8/2021	CHM	BL	Review HCRE search results and email IDS re same.	1.80	$750.00	$1,350.00
7/8/2021	CHM	BL	Run production re HCRE search results and review same; email link to H. Winograd.	2.00	$750.00	$1,500.00
7/8/2021	CHM	BL	Review email from K. Kim re privilege filter and reply.	0.10	$750.00	$75.00
7/8/2021	LSC	BL	Retrieve and review HCRE document production.	1.70	$460.00	$782.00
7/12/2021	LSC	BL	Circulate responses to Court's order requiring disclosures and correspondence regarding the same.	0.30	$460.00	$138.00
7/12/2021	LSC	BL	Review Dondero designation, related documents and correspondence with J. Morris regarding same.	0.50	$460.00	$230.00
7/15/2021	JEO	BL	Review court ordered disclosures	1.00	$1,050.00	$1,050.00
7/21/2021	LSC	BL	Retrieve PwC document production.	0.60	$460.00	$276.00

AUGUST 10 2021

DATE	TKPR	TASK	DESCRIPTION	HOURS	RATE	AMOUNT
7/24/2021	JJK	BL	Emails Kharasch on Debtor's motion to strike Dondero objection to R&R.	0.30	$995.00	$298.50
7/25/2021	JJK	BL	Research and review pleadings and prepare motion to strike Dondero objection to R&R.	3.40	$995.00	$3,383.00
7/25/2021	JJK	BL	Research, review documents, and prepare motion to strike Dondero objection.	5.90	$995.00	$5,870.50
7/27/2021	LSC	BL	Redact supplemental document production.	3.20	$460.00	$1,472.00
7/28/2021	IDK	BL	E-mails with local counsel and J Pomerantz re new motion for reconsideration filed in District Court to R&R by HCMSI, and next steps re same, and review of same (.5); E-mails with J Kim re same and need to respond to HCMSI pleadings (.2).	0.70	$1,325.00	$927.50
7/28/2021	IDK	BL	Review of District Court order adopting R&R of Judge Jurnigan re NexPoint Advisors and its objection to the R&R (.2); E-mails with J Kim re same (.2).	0.40	$1,325.00	$530.00
7/28/2021	JJK	BL	Emails Kharasch on multiple replies/objections re: reference withdrawal and consider same.	0.20	$995.00	$199.00
7/28/2021	JJK	BL	Research, analysis, pleading review to prepare	5.00	$995.00	$4,975.00
7/29/2021	IDK	BL	E-mails with J Kim, others on the status of the 5 objections/motions for reconsideration to bankruptcy court R&R to District Court and issues on our various responses to same (.4); E-mails with H Winograd and J Fried re same and re deadlines to same and updated chart (.2).	0.60	$1,325.00	$795.00
7/29/2021	JJK	BL	Research and prepare replies to Dondero, et al. re: bankruptcy court reports.	3.90	$995.00	$3,880.50
7/29/2021	JJK	BL	Review pleadings, research, and prepare replies to Dondero, et al., re: bankruptcy court reports.	4.50	$995.00	$4,477.50
7/29/2021	JEO	BL	Email follow up on critical dates issue regarding deposition scheduling	0.20	$1,050.00	$210.00
7/29/2021	LSC	BL	Preparation of Consolidated Notes Litigation Production.	2.40	$460.00	$1,104.00
7/30/2021	CHM	BL	Email correspondence re non-email document collection.	0.50	$750.00	$375.00
7/30/2021	CHM	BL	Email IDS team re Surgent screenshot.	0.10	$750.00	$75.00
7/30/2021	IDK	BL	E-mails with J Kim, others on status/issues on the 5 Dondero related motions to withdraw the reference and response status/drafts (.4); E-mails with local counsel, H Winograd on updates to timing on filing responses to same (.1).	0.50	$1,325.00	$662.50
7/30/2021	JJK	BL	Research and prepare replies/objections to Dondero, et al. re: bankruptcy court reports.	5.70	$995.00	$5,671.50
7/30/2021	LSC	BL	Prepare for and assist at deposition of Peet Burger.	3.00	$460.00	$1,380.00
7/31/2021	IDK	BL	Review of correspondence to Texas litigation specialists on various questions on motions to withdraw reference and related objections to R&R.	0.20	$1,325.00	$265.00

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DATE	TKPR	TASK	DESCRIPTION	HOURS	RATE	AMOUNT
7/31/2021	JJK	BL	Research, prepare replies/objections re: bankruptcy court's reports & recommendations.	5.50	$995.00	$5,472.50
8/1/2021	JJK	BL	Research, review documents, and prepare replies to objections to reports/recommendations and opposition to motion to reconsider.	5.20	$995.00	$5,174.00
8/1/2021	JJK	BL	Prepare replies to objections to reports/recommendations and motion to reconsider.	3.60	$995.00	$3,582.00
8/2/2021	IDK	BL	Review and consider correspondence between H Winograd and local counsel re deadlines to object to pleadings on 5 matters re report and rec to D Court as well as H Winograd of chart on all related actions (.5).	0.50	$1,325.00	$662.50
8/2/2021	IDK	BL	E-mails with J Kim re 5 outstanding motions to withdraw reference and objections to report and rec by defendants, and various issues on opponents bias of judge argument (.4); Telephone conference with J Kim re same (.3).	0.70	$1,325.00	$927.50
8/2/2021	IDK	BL	E-mails with special Texas litigation counsel on notes litigation and withdrawal of ref and coordination of call re same (.2).	0.20	$1,325.00	$265.00
8/2/2021	JJK	BL	Review objections to bankruptcy court reports and prepare additonal responses thereto.	1.20	$995.00	$1,194.00
8/2/2021	JJK	BL	Calls Kharasch re: replies to objections to reports/recommendations.	0.10	$995.00	$99.50
8/2/2021	JJK	BL	Call Kharasch on several replies re: withdrawal of reference.	0.20	$995.00	$199.00
8/2/2021	JJK	BL	Revise replies re: objections to withdrawal of reference, etc.	0.20	$995.00	$199.00
8/2/2021	JJK	BL	Prepare replies to objections to Reports, etc.	1.20	$995.00	$1,194.00
8/3/2021	IDK	BL	Review and consider J Kim's draft of response to Dondero objection in District Court to bankruptcy report and recommendation and need for changes (.3); Numerous E-mails with J Kim re need for extensive revisions to same and his responses and new draft re same (.5); E-mail H Winograd re materials to supplement same response (.1).	0.90	$1,325.00	$1,192.50
8/3/2021	JJK	BL	Review objections to reports/recommendations and prepare additional replies thereto for filing.	4.80	$995.00	$4,776.00
8/3/2021	JJK	BL	Emails local counsel, Winograd on Debtor replies re: reports and consider issues (0.6); emails Kharasch, Pomerantz on Dondero and HCMFA	2.90	$995.00	$2,885.50

AUGUST 10 2021

DATE	TKPR	TASK	DESCRIPTION	HOURS	RATE	AMOUNT
			replies (0.1); prepare replies re: Reports and related research/analysis (2.2).			
8/3/2021	JNP	BL	Conference with John A. Morris and D. Ashby regarding continued investigation.	0.50	$1,295.00	$647.50
8/3/2021	JNP	BL	Conference with Farralon, Holland & Knight, John A. Morris and Gregory V. Demo regarding Dondero discovery action.	0.50	$1,295.00	$647.50
8/3/2021	HRW	BL	Research and draft response to HCMFA objection to R&R in notes litigation (1.5)	1.50	$695.00	$1,042.50
8/3/2021	HRW	BL	Review notes litigations deadlines (0.6)	0.60	$695.00	$417.00
8/4/2021	IDK	BL	Telephone conferences with J Morris and J Pomerantz re result of hearing today as well as need for his comments to draft response to Dondero objection to Report and Recommendation to District Court (.4); Telephone conference with J Pomerantz re timing on filing given feedback of litigation	0.60	$1,325.00	$795.00
8/4/2021	IDK	BL	E-mails with J Kim and local counsel re status on our response to Dondero objection to R&R (.3); E-mails with J Morris re his revisions to such response, including quick review of same (.2); E-mails with J Kim re same and status on responding to HCMFA objection to R&R and similar changes for same (.2).	0.70	$1,325.00	$927.50
8/4/2021	IDK	BL	Numerous E-mails with Gruber, Texas litigation counsel, on their feedback on communications with D Court and timing for responses to Dondero entities objections to R&R (.4).	0.40	$1,325.00	$530.00
8/4/2021	JJK	BL	Continue work on replies for filing to objections to reports/recommendations.	4.70	$995.00	$4,676.50
8/4/2021	JJK	BL	Emails Kharasch on Reports replies, related research and review; emails local counsel re: same and certificates of interestedness for various suits.	4.20	$995.00	$4,179.00
8/4/2021	JNP	BL	Conference with Ira D. Kharasch regarding response regarding objections to reports and recommendation on withdrawal motions.	0.10	$1,295.00	$129.50
8/4/2021	JAM	BL	Review/revise draft response to Dondero objection to Report and Recommendations (1.1); e-mail to I. Kharasch, J. Kim, G. Demo re: revised draft response to Dondero objection to Report and Recommendations (0.1).	1.20	$1,245.00	$1,494.00
8/5/2021	IDK	BL	E-mail J Kim re his draft response to HCMFA objection to R&R, including review of same (.3); E-mails with J Morris re same and his changes, along with final response (.3).	0.60	$1,325.00	$795.00
8/5/2021	JJK	BL	Emails Morris on HCMFA reply matters.	0.10	$995.00	$99.50
8/5/2021	JJK	BL	Continue work on replies and filing thereof to	4.20	$995.00	$4,179.00

AUGUST 10 2021

DATE	TKPR	TASK	DESCRIPTION	HOURS	RATE	AMOUNT
			objections to reports/recommendations.			
8/5/2021	JJK	BL	Emails Morris on HCMFA reply and review comments.	0.10	$995.00	$99.50
8/5/2021	JJK	BL	Coordinate finalizing HCMFA reply and filing/service; prepare other replies re: Reports.	3.00	$995.00	$2,985.00
8/5/2021	JMF	BL	Review response to opposition to bankruptcy court recommendations to district court.	0.30	$1,050.00	$315.00
8/5/2021	JAM	BL	Review/revise objection to HCMFA motion for reconsideration of report and recommendations on notes litigation (0.9); e-mails w/ J. Kim, I. Kharasch re: revisions to objection to HCMFA motion for reconsideration of report and recommendations on notes litigation (0.1).	1.00	$1,245.00	$1,245.00
8/5/2021	GVD	BL	Correspondence with working group re status of notes litigation	0.20	$950.00	$190.00
8/6/2021	IDK	BL	Review of draft response to HCRE objection in D Court to R&R, along with J Kim commentary on same.	0.40	$1,325.00	$530.00
8/6/2021	JAM	BL	Review/revise scheduling stipulation for notes litigation (0.6); e-mail to H. Winograd re: revised scheduling stipulation (0.1); e-mail to M. Aigen re: revised scheduling stipulation (0.1).	0.80	$1,245.00	$996.00
8/6/2021	LSC	BL	Assist with preparation of discovery requests, including preparation of exhibits.	1.40	$460.00	$644.00
8/9/2021	HRW	BL	Call with J. Morris re: amended complaints re: notes	0.20	$695.00	$139.00
8/10/2021	IDK	BL	Review of J Kim's response to motion for reconsideration of R&R by HCRE Partners (.3); E-mails with J Morris re need for his feedback (.1); Review of revised response to HCRE objection (.2); E-mails with J Kim and Local counsel re same (.1).	0.70	$1,325.00	$927.50
8/10/2021	IDK	BL	Review of HCMS motion for reconsideration to D Court of R&R of bankruptcy court (.3); E-mails with J Kim re same and need for response to same and issues re same (.2).	0.50	$1,325.00	$662.50
			TOTAL			**$135,289.00**

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

In re: **HIGHLAND CAPITAL MANAGEMENT, L.P.** **Debtor.**	§ § § § §	**Case No. 19-34054** **Chapter 11**
HIGHLAND CAPITAL MANAGEMENT, L.P., **Plaintiff,** **vs.** **JAMES DONDERO, NANCY DONDERO, AND THE DUGABOY INVESTMENT TRUST,** **Defendants.**	§ § § § § § § § § § §	**Adv. Proc. No. 21-03003-sgj**
HIGHLAND CAPITAL MANAGEMENT, L.P., **Plaintiff,** **vs.** **HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, L.P.,** **Defendant.**	§ § § § § § § § § § §	**Adv. Proc. No. 21-03004-sgj**

HIGHLAND CAPITAL MANAGEMENT, L.P., **Plaintiff,** **vs.** **NEXPOINT ADVISORS, L.P., JAMES DONDERO, NANCY DONDERO, AND THE DUGABOY INVESTMENT TRUST,** **Defendants.**	§ § § § § § § § § § § § § §	**Adv. Proc. No. 21-03005-sgj**
HIGHLAND CAPITAL MANAGEMENT, L.P., **Plaintiff,** **vs.** **HIGHLAND CAPITAL MANAGEMENT SERVICES, INC., JAMES DONDERO, NANCY DONDERO, AND THE DUGABOY INVESTMENT TRUST,** **Defendants.**	§ § § § § § § § § § § § § §	**Adv. Proc. No. 21-03006-sgj**
HIGHLAND CAPITAL MANAGEMENT, L.P., **Plaintiff,** **vs.** **HCRE PARTNERS, LLC (n/k/a NexPoint Real Estate Partners, LLC), JAMES DONDERO, NANCY DONDERO, AND THE DUGABOY INVESTMENT TRUST,** **Defendants.**	§ § § § § § § § § § § § § §	**Adv. Proc. No. 21-03007-sgj**

DEFENDANTS' OPPOSITION TO HIGHLAND CAPITAL MANAGEMENT, L.P.'S MOTION FOR LEAVE TO SUPPLEMENT BACKUP DOCUMENTATION IN SUPPORT OF PROPOSED JUDGMENT

COMES NOW, Defendant James Dondero, NexPoint Advisors, L.P., Highland Capital Management Services, Inc., Highland Capital Management Fund Advisors, L.P., and HCRE

Partners, LLC, the Defendants in the above-captioned and related adversary proceedings, and hereby submit this *Opposition to Highland Capital Management, L.P.'s Motion for Leave to Supplement Backup Documentation in Support of Proposed Judgment* (Defendants' "Opposition" and Plaintiff's "Motion for Leave"). Defendants would show the Court as follows:

I. BACKGROUND

1. Defendants generally agree with the Opposition's first four paragraphs reciting the relevant background of this dispute.[1] However, Plaintiff's characterization of its almost $400,000.00 attorney's fees discrepancy as an "Alleged Math Error"[2] is inaccurate because Plaintiff admits to not providing Defendants with complete figures by which to accurately calculate the total attorney's fees Plaintiff claims it is owed.[3] Plaintiff's claim to defense counsel that "[t]here was no math error[,]" yet immediately "accounting" for the $400,000.00 difference by admitting that Plaintiff mistakenly did not include billing statements for January and February of 2022 makes Plaintiff's error an actual – not "alleged" – math error that prejudiced Defendants.

2. There is sparse authority regarding the usage of Northern District of Texas Local Rule 56.7 to supplement a prevailing party's attorney's fees after prevailing at summary judgment. However, the Northern District of Texas has analogously addressed parties supplementing legal authorities under Local Rule 56.7:

> Local Civil Rule 56.7 provides: "Except for the motions, responses, replies, briefs, and appendixes required by these rules, a party may not, without the permission of the presiding judge, file supplemental pleadings, briefs, authorities, or evidence." The court generally discourages attempts to file supplemental authorities if the

[1] *See* Motion for Leave, ¶¶ 1-4.

[2] *See Id.*, ¶ 5.

[3] *See* Declaration of John A. Morris in Support of Highland Capital Management, L.P.'s Motion for Leave to Supplement Backup Documentation in Support of Proposed Judgment, Ex. A. ("…we inadvertently omitted the invoices for January and February 2022 from HCMLP's initial submission").

> authorities were previously available when a party submitted its motion, response, or reply brief.[4]

While the additional billing records here are not legal authorities, they were certainly previously available to Plaintiff when Plaintiff submitted its Notice of Attorney's Fees. Plaintiff gives no explanation or other showing of good cause regarding why it did not include the additional bills other than simply claiming "we inadvertently omitted the invoices for January and February 2022[.]"[5] Thus, Plaintiff's Motion for Leave should be denied because it now seeks a second bite at the apple by including billing statements it had access to – and could have included – in its Notice of Attorney's fees.

3. Further, the same court noted that a non-supplementing party must not suffer prejudice before a court may grant supplementation under Local Rule 56.7.[6] Plaintiff does not once address the prejudice that Defendants will inevitably suffer if Plaintiff is allowed to supplement $400,000.00 in attorney's fees. Plaintiff's failure to include two entire months of its attorneys' billing statements has prejudiced Defendants by not allowing Defendants to timely examine the statements for accuracy, duplicity of work, redactions, and other factors relating to a reasonableness and necessity-of-attorney's-fees analysis.[7] To allow Plaintiff to supplement its billing invoices only *after* this Court has found in favor of Plaintiff effectually gives Plaintiff two

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[4] *Highland Capital Mgmt. L.P. v. Bank of Am., Nat. Ass'n*, No. 3:10-CV-1632-L, 2013 WL 4502789, at *28 (N.D. Tex. Aug. 23, 2013), aff'd sub nom. Highland Capital Mgmt., L.P. v. Bank of Am., N.A., 574 Fed. Appx. 486 (5th Cir. 2014).

[5] *See* Declaration of John A. Morris in Support of Highland Capital Management, L.P.'s Motion for Leave to Supplement Backup Documentation in Support of Proposed Judgment, Ex. A.

[6] *Highland Capital Mgmt. L.P. v. Bank of Am., Nat. Ass'n*, 2013 WL 4502789, at *28 (holding that, because the plaintiff did not suffer any "legal prejudice" by the court's consideration of supplemental authority, such authority would be admitted).

[7] *See Rohrmoos Venture v. UTSW DVA Healthcare, LLP*, 578 S.W.3d 469 (Tex. 2019) (affirming the Lodestar Method as the preferred method of determining what evidence is recommended to support the reasonableness and necessity of claimed attorney's fees).

bites at the apple to recover an additional $400,000.00 it never presented to Defendants for examination in the first place. If Plaintiff is allowed to supplement the record with $400,000.00 in previously unaccounted for attorney's fees, Defendant will be prejudiced and suffer undue surprise because it was not afforded an opportunity to examine those statements while it was briefing on Plaintiff's originally-provided billing statements.

II. REQUEST FOR RELIEF

4. Defendants respectfully request this Court deny Plaintiff's Motion for Leave as Defendants will suffer prejudice. In the event this Court decides to grant Plaintiff's Motion for Leave, Defendants respectfully request an opportunity for additional briefing to address Plaintiff's new billing invoices.

Dated: October 18, 2022

Respectfully Submitted,

/s/ Michael P. Aigen

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CERTIFICATE OF SERVICE

I certify that on October 18, 2022, a true and correct copy of the foregoing document was served via the Court's Electronic Case Filing system to the parties that are registered or otherwise entitled to receive electronic notices in this adversary proceeding.

/s/ Michael P. Aigen
Michael P. Aigen

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

In re: **HIGHLAND CAPITAL MANAGEMENT, L.P.** **Debtor.**	§ § § § §	**Case No. 19-34054** **Chapter 11**
HIGHLAND CAPITAL MANAGEMENT, L.P., **Plaintiff,** **vs.** **JAMES DONDERO, NANCY DONDERO, AND THE DUGABOY INVESTMENT TRUST,** **Defendants.**	§ § § § § § § § § § § §	**Adv. Proc. No. 21-03003-sgj**
HIGHLAND CAPITAL MANAGEMENT, L.P., **Plaintiff,** **vs.** **HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, L.P.,** **Defendant.**	§ § § § § § § § § § § §	**Adv. Proc. No. 21-03004-sgj**

HIGHLAND CAPITAL MANAGEMENT, L.P., **Plaintiff,** **vs.** **NEXPOINT ADVISORS, L.P., JAMES DONDERO, NANCY DONDERO, AND THE DUGABOY INVESTMENT TRUST,** **Defendants.**	§ § § § § § § § § § § § § §	**Adv. Proc. No. 21-03005-sgj**
HIGHLAND CAPITAL MANAGEMENT, L.P., **Plaintiff,** **vs.** **HIGHLAND CAPITAL MANAGEMENT SERVICES, INC., JAMES DONDERO, NANCY DONDERO, AND THE DUGABOY INVESTMENT TRUST,** **Defendants.**	§ § § § § § § § § § § § § §	**Adv. Proc. No. 21-03006-sgj**
HIGHLAND CAPITAL MANAGEMENT, L.P., **Plaintiff,** **vs.** **HCRE PARTNERS, LLC (n/k/a NexPoint Real Estate Partners, LLC), JAMES DONDERO, NANCY DONDERO, AND THE DUGABOY INVESTMENT TRUST,** **Defendants.**	§ § § § § § § § § § § § § §	**Adv. Proc. No. 21-03007-sgj**

ORDER DENYING HIGHLAND CAPITAL MANAGEMENT, L.P.'S MOTION FOR LEAVE TO SUPPLEMENT BACKUP DOCUMENTATION IN SUPPORT OF PROPOSED JUDGMENT

Upon consideration of *Defendants' Opposition to Highland Capital Management, L.P.'s Motion for Leave to Supplement Backup Documentation in Support of Proposed Judgment* (Defendants' "Opposition" and Plaintiff's "Motion for Leave"), and the arguments presented by the parties before this Court, the Court hereby finds that the Plaintiff's Motion for Leave should be DENIED as set forth below. Accordingly,

IT IS HEREBY ORDERED that:

1. The Motion for Leave is **DENIED** as set forth herein.

END OF ORDER

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John A. Morris (NY Bar No. 2405397) (*admitted pro hac vice*)
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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

HIGHLAND CAPITAL MANAGEMENT, L.P., Plaintiff, vs. JAMES DONDERO, NANCY DONDERO, AND THE DUGABOY INVESTMENT TRUST, Defendants.	§ § § § § § § § § § § §	Adv. Proc. No. 21-03003-sgj Case No. 3:21-cv-00881-X

HIGHLAND CAPITAL MANAGEMENT, L.P., Plaintiff, vs. HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, L.P., Defendant.	§ § § § § § § § § § § § § §	Adv. Proc. No. 21-03004-sgj Case No. 3:21-cv-00881-X
HIGHLAND CAPITAL MANAGEMENT, L.P., Plaintiff, vs. NEXPOINT ADVISORS, L.P., JAMES DONDERO, NANCY DONDERO, AND THE DUGABOY INVESTMENT TRUST, Defendants.	§ § § § § § § § § § § § § §	Adv. Proc. No. 21-03005-sgj Case No. 3:21-cv-00881-X
HIGHLAND CAPITAL MANAGEMENT, L.P., Plaintiff, vs. HIGHLAND CAPITAL MANAGEMENT SERVICES, INC., JAMES DONDERO, NANCY DONDERO, AND THE DUGABOY INVESTMENT TRUST, Defendants.	§ § § § § § § § § § § § § §	Adv. Proc. No. 21-03006-sgj Case No. 3:21-cv-00881-X

HIGHLAND CAPITAL MANAGEMENT, L.P., Plaintiff, vs. HCRE PARTNERS, LLC (n/k/a NexPoint Real Estate Partners, LLC), JAMES DONDERO, NANCY DONDERO, AND THE DUGABOY INVESTMENT TRUST, Defendants.	§ § § § § § § § § § § § § §	Adv. Proc. No. 21-03007-sgj Case No. 3:21-cv-00881-X

HIGHLAND CAPITAL MANAGEMENT, L.P.'S REPLY IN FURTHER SUPPORT OF ITS MOTION FOR LEAVE TO SUPPLEMENT BACKUP DOCUMENTATION IN SUPPORT OF PROPOSED JUDGMENT

Plaintiff files this reply in further support of its *Motion for Leave to Supplement Backup Documentation in Support of Proposed Judgment* (the "Motion")[1] and in response to *Defendants' Opposition to Highland Capital Management L.P.'s Motion for Leave to Supplement Backup Documentation in Support of Proposed Judgment* (the "Objection").[2]

REPLY

1. In its Motion, Plaintiff seeks leave to supplement its Backup Documentation with two invoices out of dozens filed on behalf of four different service providers that were inadvertently omitted from Plaintiff's initial submission. There can be no credible dispute that the Supplemental Invoices were inadvertently omitted because the value of the invoices—to the penny—was included in the total amount originally sought by Plaintiff. Defendants nevertheless

[1] *See* Adv. Pro. No. 21-03003 at Docket No. 205; Adv. Pro. No. 21-03004 at Docket No. 174; Adv. Pro. No. 21-03005 at Docket No. 222; Adv. Pro. No. 21-03006 at Docket No. 227; and Adv. Pro. No. 21-03007 at Docket No. 222. Capitalized terms not defined herein shall have the meanings ascribed to them in the Motion.

[2] *See* Adv. Pro. No. 21-03003 at Docket No. 210; Adv. Pro. No. 21-03004 at Docket No. 179; Adv. Pro. No. 21-03005 at Docket No. 227; Adv. Pro. No. 21-03006 at Docket No. 232; and Adv. Pro. No. 21-03007 at Docket No. 227.

object, contending that they will be prejudiced if the Motion is granted. Defendants' arguments are spurious and the Objection should be overruled.

2. Defendants' first contention is that they will be prejudiced because Plaintiff supposedly did not allow them "to timely examine the statements for accuracy, duplicity of work, redactions, and other factors relating to a reasonableness and necessity-of-attorney's-fees analysis." Objection ¶ 3. But Defendants' own conduct and applicable rules proves that this contention is absurd:

- In the original stipulation concerning this issue, ***Defendants and their counsel agreed that 18 days were sufficient to review a year-and-a-half's worth of invoices***;[3]
- In a stipulation concerning the same issue in the companion notes litigation concerning HCMFA, ***Defendants and their counsel agreed that 21 days were sufficient to review all invoices rendered in connection with that adversary proceeding***;[4]
- Here, under Local Bankruptcy Rule 7007-1(e), ***Defendants had 21 days to respond to the Motion***, a period equal to or greater than the periods Defendants voluntarily agreed to;[5] and
- Defendants had even more time because ***Plaintiff e-mailed copies of the Supplemental Invoices to Defendants' counsel seven (7) days before filing the Motion*** in an effort to avoid this unnecessary litigation (Defendants' counsel never responded to the e-mail).[6]

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[3] *Notice of Stipulation for Objection to Report and Recommendation in Notes Litigation*, Case No. 3:21-cv-00881-X, Docket No. 53 (Plaintiff required to file form of judgment (including backup for fees and expenses) by August 5, 2022, with Defendants' objections due on August 18, 2022, eighteen (18) days later).

[4] *Notice of Stipulation Regarding Report and Recommendation to the District Court Regarding Highland Capital Management, L.P.'s Motion for Summary Judgment Against Highland Capital Management Fund Advisors, L.P.*, Case No. 3:21-cv-00881-X, Docket No. 75 (Plaintiff required to file form of judgment (including backup for fees and expenses) by November 2, 2022, with Defendants' objections due on November 23, 2022, twenty-one (21) days later).

[5] Local Bankruptcy Rule of the United States Bankruptcy Court for the Northern District of Texas 7007-1.

[6] Morris Dec. Ex. A (September 20, 2022 email to Defendants' counsel including, among other things, the Supplement Invoices).

3. Thus, ***Defendants and their counsel had 28 days to review two invoices***. After having agreed to review many more invoices in less time, Defendants' claim of "prejudice" is devoid of credibility and should be rejected out of hand.[7]

4. Defendants' other contention is that they will be prejudiced because the "undue surprise" of the Motion is supposedly giving Plaintiff "two bites at the apple." Objection ¶¶ 2-3. This contention is also meritless for at least the following reasons:

- There was no "surprise" of any kind because Plaintiff seeks not one penny more than it sought in its original submission;[8]
- Because Plaintiff seeks nothing more than it originally sought, it is not getting a "second bite" of anything but is merely supplementing the documentation that Defendants also should have known about;[9] and
- Being required to pay amounts due under a written and enforceable agreement cannot ever be "prejudicial."

5. In short, Defendants will not be prejudiced by paying amounts due and owing under the Notes as a result of their default, particularly where the amounts never changed and they had more than sufficient time to raise substantive objections but failed to do so.

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[7] Notably, despite claiming that 28 days were insufficient to review two invoices, Defendants never asked Plaintiff or this Court for an extension of time. Indeed, in a transparent attempt to further delay the inevitable, Defendants audaciously "request an opportunity for additional briefing to address Plaintiff's new billing invoices" in the event the Court grants the Motion. Objection ¶ 4. Having passed on the opportunity to provide substantive objections to two Supplement Invoices despite having 28 days to do so, Defendants' disingenuous request for a "second bite at the apple" should be denied.

[8] *Compare Notice of Attorneys' Fees Calculation and Backup Documentation*, Adv. Pro. No. 21-03003, Docket No. 197, Ex. 1 (*Declaration of John A. Morris in Support of Highland Capital Management, L.P.'s Proposed Form of Judgment*), Ex. F (Summary) (showing Plaintiff originally sought $2,663,585.30 on account of Pachulski Stang Ziehl & Jones' fees) *with Response in Support of Plaintiff's Proposed Form of Judgment Awarding Attorneys' Fees and Costs*, Adv. Pro. No. 21-03003, Docket No. 208, Ex. 1 (showing Plaintiff still sought $2,663,585.30 on account of Pachulski Stang Ziehl & Jones' fees on the same day it filed the Motion).

[9] As the Court is aware, January and February 2022 were especially busy months in the Notes Litigation as the parties addressed HCMFA's motions and Plaintiff's summary judgment motion. Consequently, Defendants could not have believed that Plaintiff did no work and incurred no expenses during those months. Thus, either (a) Defendants also "inadvertently" failed to notice the omission of the Supplement Invoices, or (b) they were aware of it and are now misleading the Court with claims of prejudice.

CONCLUSION

WHEREFORE, Plaintiff respectfully requests that the Court overrule the Objection in its entirety, grant the Motion, and grant such other and further relief as the Court deems just and proper under the circumstances.

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Dated: October 21, 2022.

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Counsel for Highland Capital Management, L.P.

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

ENTERED

THE DATE OF ENTRY IS ON
THE COURT'S DOCKET

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

Signed October 24, 2022

United States Bankruptcy Judge

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

HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	
Plaintiff,	§	
	§	
vs.	§	Adv. Proc. No. 21-03003-sgj
	§	
JAMES DONDERO, NANCY DONDERO, AND THE DUGABOY INVESTMENT TRUST,	§	
	§	Case No. 3:21-cv-00881-X
Defendants.	§	
	§	
	§	

HIGHLAND CAPITAL MANAGEMENT, L.P., Plaintiff, vs. HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, L.P., Defendant.	§ § § § § § § § § § § § § §	Adv. Proc. No. 21-03004-sgj Case No. 3:21-cv-00881-X
HIGHLAND CAPITAL MANAGEMENT, L.P., Plaintiff, vs. NEXPOINT ADVISORS, L.P., JAMES DONDERO, NANCY DONDERO, AND THE DUGABOY INVESTMENT TRUST, Defendants.	§ § § § § § § § § § § § § §	Adv. Proc. No. 21-03005-sgj Case No. 3:21-cv-00881-X
HIGHLAND CAPITAL MANAGEMENT, L.P., Plaintiff, vs. HIGHLAND CAPITAL MANAGEMENT SERVICES, INC., JAMES DONDERO, NANCY DONDERO, AND THE DUGABOY INVESTMENT TRUST, Defendants.	§ § § § § § § § § § § § § §	Adv. Proc. No. 21-03006-sgj Case No. 3:21-cv-00881-X

HIGHLAND CAPITAL MANAGEMENT, L.P., Plaintiff, vs. HCRE PARTNERS, LLC (n/k/a NexPoint Real Estate Partners, LLC), JAMES DONDERO, NANCY DONDERO, AND THE DUGABOY INVESTMENT TRUST, Defendants.	§ § § § § § § § § § § § § §	Adv. Proc. No. 21-03007-sgj Case No. 3:21-cv-00881-X

ORDER GRANTING HIGHLAND CAPITAL MANAGEMENT, L.P.'S MOTION FOR LEAVE TO SUPPLEMENT BACKUP DOCUMENTATION IN SUPPORT OF PROPOSED JUDGMENT

Upon consideration of *Highland Capital Management, L.P.'s Motion for Leave to Supplement Backup Documentation in Support of Proposed Judgment* (the "Motion")[1] filed by Highland Capital Management, L.P. ("Highland" or "Plaintiff"), the plaintiff in the above-captioned Adversary Proceedings,[2] (a) the arguments and evidence set forth in the Motion; (b) the *Declaration of John A. Morris in Support of Highland Capital Management, L.P.'s Motion for Leave to Supplement Backup Documentation in Support of Proposed Judgment* and the exhibits annexed thereto;[3] (c) the arguments set forth in *Defendants' Opposition to Highland Capital Management, L.P.'s Motion for Leave to Supplement Backup Documentation in Support of Proposed Judgment*;[4] and (d) the arguments set forth in *Highland Capital Management L.P.'s*

[1] Adv. Proc. Nos. 21-03003-sgj, Docket No. 205; 21-03004-sgj, Docket No. 174; 21-03005-sgj, Docket No. 222; 21-03006-sgj, Docket No. 227; 21-03007-sgj, Docket No. 222.

[2] Capitalized terms not defined herein shall have the meanings ascribed thereto in the Motion.

[3] Adv. Proc. Nos. 21-3003, Docket No. 206; 21-3004, Docket No. 175; 21-3005, Docket No. 223; 21-3006, Docket No. 228; 21-3007, Docket No. 223.

[4] Adv. Proc. Nos. 21-3003, Docket No. 210; 21-3004, Docket No. 179; 21-3005, Docket No. 227; 21-3006, Docket No. 232; 21-3007, Docket No. 227.

Reply in Further Support of Its Motion for Leave to Supplement Backup Documentation in Support of Proposed Judgment;[5] and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and this Court having found that venue of this proceeding and the Motion in this District is proper pursuant to 28 U.S.C. § 1409; and this Court having found that Plaintiff's notice of the Motion was appropriate and that no other notice need be provided; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, the Court:

FINDS AND DETERMINES THAT:

1. Plaintiff's omission of the Supplemental Invoices appears to have been **inadvertent** (given that the amounts set forth therein were included in Highland's total fee request); and

2. The Court views there to be **no prejudice** to Defendants in granting the requested leave (given that Defendants apparently had 28 days to review the Supplemental Invoices and chose simply to oppose the Motion rather than comment on the invoices—in the alternative—as to their reasonableness or lack thereof); and based on the foregoing, it is

HEREBY ORDERED THAT:

1. The Motion is **GRANTED**.

2. The Backup Documentation to the Notice of Attorneys' Fees in support of the Proposed Judgment is hereby deemed supplemented with the Supplemental Invoices.

###End of Order###

[5] Adv. Proc. Nos. 21-03003-sgj, Docket No. 211; 21-03004-sgj, Docket No. 180; 21-03005-sgj, Docket No. 228; 21-03006-sgj, Docket No. 233; 21-03007-sgj, Docket No. 228.

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

In re:	§	**Case No. 19-34054**
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.	§	**Chapter 11**
	§	
Debtor.	§	
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	
Plaintiff,	§	
	§	**Adv. Proc. No. 21-03003-sgj**
vs.	§	
	§	
JAMES DONDERO, NANCY DONDERO, AND THE DUGABOY INVESTMENT TRUST,	§	
	§	
Defendants.	§	
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	
Plaintiff,	§	
	§	
vs.	§	**Adv. Proc. No. 21-03004-sgj**
	§	
HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, L.P.,	§	
	§	
Defendant.	§	
	§	

HIGHLAND CAPITAL MANAGEMENT, L.P., **Plaintiff,** **vs.** **NEXPOINT ADVISORS, L.P., JAMES DONDERO, NANCY DONDERO, AND THE DUGABOY INVESTMENT TRUST,** **Defendants.**	§ § § § § § § § § § § § §	**Adv. Proc. No. 21-03005-sgj**
HIGHLAND CAPITAL MANAGEMENT, L.P., **Plaintiff,** **vs.** **HIGHLAND CAPITAL MANAGEMENT SERVICES, INC., JAMES DONDERO, NANCY DONDERO, AND THE DUGABOY INVESTMENT TRUST,** **Defendants.**	§ § § § § § § § § § § § §	**Adv. Proc. No. 21-03006-sgj**
HIGHLAND CAPITAL MANAGEMENT, L.P., **Plaintiff,** **vs.** **HCRE PARTNERS, LLC (n/k/a NexPoint Real Estate Partners, LLC), JAMES DONDERO, NANCY DONDERO, AND THE DUGABOY INVESTMENT TRUST,** **Defendants.**	§ § § § § § § § § § § § §	**Adv. Proc. No. 21-03007-sgj**

DEFENDANTS' MOTION FOR LEAVE TO SUPPLEMENT THEIR ARGUMENT AGAINST PLAINTIFF'S SUPPLEMENTED NOTICE OF ATTORNEYS' FEES

COMES NOW, Defendants James Dondero, NexPoint Advisors, L.P., Highland Capital Management Services, Inc., Highland Capital Management Fund Advisors, L.P., and HCRE Partners, LLC, the Defendants in the above-captioned and related adversary proceedings, pursuant to Northern District of Texas Local Rule 56.7, and hereby submit this *Motion for Leave to*

Supplement its Argument Against Plaintiff's Supplemented Notice of Attorney's Fees (Defendants' "Motion", Plaintiff's "Motion for Leave", and the Court's "Order"). Defendants would show the Court as follows:

I. BACKGROUND

After obtaining a favorable ruling at summary judgment, Plaintiff filed its *Notice of Attorneys' Fees Calculation and Backup Documentation* on August 5, 2022, claiming almost $2,800,000 in attorneys' fees and costs incurred throughout this litigation.[1] Defendants pointed out what appeared to be a math error because the total of the invoices provided was roughly $400,000 less than the $2.8 million that Plaintiff sought. Plaintiff responded, contending that the $400,000 was not a math error, it was simply a mistake in the supporting documentation submitted (or rather, not originally submitted) (the "New Bills"). Faced with its error, Plaintiff filed a Motion for Leave to introduce the New Bills into the evidentiary record. Over Defendants' Objection, the Court granted Plaintiff's Motion for Leave (the Court's "Order"). However, the Court's Order precluded Defendants from challenging the New Bills, stating only that Defendants face "no prejudice[,]" and precluded Defendants' ability to comment on the New Bills because Defendants "chose simply to oppose the Motion rather than comment on the [New Bills][.]"[2] Defendants now file their own Motion requesting leave from the Court to allow Defendants to supplement their argument against the New Bills – which total roughly $400,000.00 – because Defendants could not formally comment on invoices ***which had not yet been admitted into evidence***.[3]

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[1] Adv. Pro. 21-03003-sgj [Dkt. 197]; Adv. Pro. 21-03004-sgj [Dkt. 169]; Adv. Pro. 21-03005-sgj [Dkt. 214]; Adv. Pro. 21-03006-sgj [Dkt. 219]; Adv. Pro. 21-03007-sgj [Dkt. 214].

[2] *Order Granting [Plaintiff's] Motion for Leave to Supplement Backup Documentation in Support of Proposed Judgment*, p. 4, Adv. Pro. 21-03003-sgj [Dkt. 212]; Adv. Pro. 21-03004-sgj [Dkt. 181]; Adv. Pro. 21-03005-sgj [Dkt. 229]; Adv. Pro. 21-03006-sgj [Dkt. 234]; Adv. Pro. 21-03007-sgj [Dkt. 229].

[3] Defendants also file this Objection to preserve the issue for appeal.

II. ARGUMENT

Defendants are victims of a procedural misstep committed by Plaintiff. Plaintiff's Motion for Leave was just that: a procedural mechanism under Northern District of Texas Local Rule 56.7 by which Plaintiff sought to include its additional invoices as ***supplemental evidence***. Until such supplemental materials are included in the record (i.e.: until this Court ruled on Plaintiff's Motion for Leave), those supplemental materials simply are ***not yet evidence***. Thus, Defendants' lack of "comment[s] on the invoices" should not come as any surprise, since, at the time Defendants responded to Plaintiff's Motion for Leave, the additional invoices were not evidence. Now, because the Court has granted Plaintiff's Motion for Leave, the supplemental invoices ***are*** evidence, and Defendants seek leave from the Court in order to provide comments regarding the supplemental invoices. The Court disproportionately chides Defendants for allegedly not strictly following procedural rules (while allowing Plaintiff wide latitude), causing Defendants to be cautious in taking the kind of shortcuts that the Court now says Defendants should have taken, such as commenting on documents not yet in evidence.

III. DEFENDANTS' COMMENTS TO PLAINTIFF'S SUPPLEMENTAL EVIDENCE

Defendants provide this Court with supplemental comments to Plaintiff's additional billing invoices for the sake of efficiency. Put plainly, Plaintiff's supplemental bills further reflect that Plaintiff's law firm of Pachulski, Stang, Ziehl & Jones ("PSZJ") charged rates far in excess of the customary rates in the Northern District of Texas, and are therefore unreasonable for the same reasons briefed in *Defendants' Objections to Plaintiff's Proposed Form of Judgment Awarding Attorney's Fees and Costs*, Section II.B.6 [Dkt. 204].

Again, the "relevant market for purposes of determining the prevailing rate to be paid in a fee award is the community in which the district court sits," and the relevant market here is Dallas,

Texas.[4] When compared to Plaintiff's local counsel, Hayward PLLC, PSZJ almost triples Hayward's fee rates. Hayward's Dallas, Texas office charged between $400 and $450 per hour on this case. PSZJ, on the other hand, having offices in Los Angeles, California, and New York, New York, charged rates ranging from $460 an hour (already more expensive than Hayward's highest rates) to **$1,265** per hour.

The decision to reduce an out-of-market attorney's fees to match those of the community in which the district court sits is soundly within the discretion of this Court. *See Hopwood v. State of Texas*, 236 F.3d 256, 281 (5th Cir. 2000) (trial court reducing fees of Washington, D.C. attorney to match those normally charged in the Dallas, Texas market was not an abuse of discretion). This Court should do the same as the trial court in *Hopwood* and reduce PSZJ's coastal rates to those consistent with the Dallas market.

Along with being well-above the customary hourly rates charged in the Dallas community, Plaintiff's New Bills are excessive.[5] "[P]laintiffs seeking attorney's fees are charged with the burden of showing the reasonableness of the hours bills, and therefore, are also charged with proving that the exercised billing judgment[,] . . .[which] requires documentation of the hours charged and of the hours written off as unproductive, excessive, or redundant. The proper remedy for omitting evidence of billing judgment does not include a denial of fees but, rather, a reduction of the award by a percentage intended to substitute for the exercise of billing judgment." *Saizan v. Delta Concrete Products Co., Inc.*, 448 F.3d 795, 799 (5th Cir. 2006) (internal citations omitted) (affirming the district court's decision to reduce a fee award based on plaintiff's failure to establish proper billing judgment).

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[4] *Tollett v. City of Kemah*, 285 F.3d 357, 369 (5th Cir. 2002).

[5] *See Defendants' Objections to Plaintiff's Proposed Form of Judgment Awarding Attorney's Fees and Costs*, Section II.A.2 for a discussion of the two-step lodestar method of determining fees.

Here, just ***one*** of Plaintiff's attorneys – associate Hayley Winograd – spent 44.8 hours drafting a response to Defendant NexPoint's *Notice and Objection . . .to Order Denying Motions to Extend Expert Disclosure and Discovery Deadlines*.[6] At that attorney's rate of $750 per hour (about 40% of her supervising partner John Morris' hourly rate of $1,265 per hour), Plaintiff incurred $33,600 for its attorney to draft a single response, not even considering Morris' fee to review Winograd's work. Ultimately, that brief was only 25 pages in length, with 12 of the 25 pages consisting of factual background.[7]

Furthermore, Winograd and paralegal La Asia Canty spent a combined 48.9 hours to draft an "objection and response to HCMFA motion for reconsideration[,]" with Winograd billing 35 hours at her coastal rate of $750 per hour, and Canty billing 13.9 hours at her coastal paralegal rate of $495.00 per hour.[8] Plaintiff incurred $33,130.50 for Winograd and Canty to draft that objection, again not considering Morris' fee to review their work. Based on the time entries alone, Defendants cannot directly identify what brief (if any was filed) is the product of Winograd's and Canty's 48.9 hours. Regardless, Plaintiff fails to provide any explanation for this excessive and duplicative billing for straightforward briefings, and only one brief was located based on Plaintiff's time entries.

It is not merely these entries that are at issue, in addition to the issues raised in Defendants original objection, Defendants were generous in their review, thinking that Plaintiff's total bill was $400,000 less than it is now claiming. If that had been known at the time, Defendants' scrutiny would have been greater.

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[6] *See* Motion for Leave, Ex. A-1, throughout; *see also* Adv. Pro. 21-03005-sgj [Dkt. 148].
[7] *See [Plaintiff's] Brief in Support of its Objection and Response to Objections to Order Denying Motions to Extend Expert Disclosure and Discovery Deadlines*, Case 3:21-cv-00881-X [Dkt. 38].
[8] *See* Motion for Leave, Ex. A-1, throughout.

IV. REQUEST FOR RELIEF

Defendants object to Plaintiff's proposed award of attorneys' fees and costs based on its New Bills. Defendants request that the Court grant their Motion for Leave, and reduce any award of attorneys' fees to correspond with hourly rates normally charged in Dallas, Texas, as evidenced by local counsel Hayward's rates. Additionally, or in the alternative, Defendants request that the Court reduce any award of attorneys' fees by an amount that excludes any excessive time billed.

Dated: November 2, 2022

Respectfully submitted,

/s/ Michael P. Aigen

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CERTIFICATE OF CONFERENCE

I hereby certify that on October 28, 2022, I conferred with counsel for Plaintiff, John Morris, regarding the substance of the foregoing Motion. Counsel for Plaintiff stated that Plaintiff opposes the relief requested in this Motion.

/s/ Michael P. Aigen
Michael P. Aigen

CERTIFICATE OF SERVICE

I certify that on November 2, 2022, a true and correct copy of the foregoing document was served via the Court's Electronic Case Filing system to the parties that are registered or otherwise entitled to receive electronic notices in this adversary proceeding.

/s/ Michael P. Aigen
Michael P. Aigen

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

In re: **HIGHLAND CAPITAL MANAGEMENT, L.P.** **Plaintiff.**	§ § § § §	**Case No. 19-34054** **Chapter 11**
HIGHLAND CAPITAL MANAGEMENT, L.P., **Plaintiff,** **vs.** **JAMES DONDERO, NANCY DONDERO, AND THE DUGABOY INVESTMENT TRUST,** **Defendants.**	§ § § § § § § § § §	**Adv. Proc. No. 21-03003-sgj**
HIGHLAND CAPITAL MANAGEMENT, L.P., **Plaintiff,** **vs.** **HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, L.P.,** **Defendant.**	§ § § § § § § § § § §	**Adv. Proc. No. 21-03004-sgj**

HIGHLAND CAPITAL MANAGEMENT, L.P., **Plaintiff,** **vs.** **NEXPOINT ADVISORS, L.P., JAMES DONDERO, NANCY DONDERO, AND THE DUGABOY INVESTMENT TRUST,** **Defendants.**	§ § § § § § § § § § §	**Adv. Proc. No. 21-03005-sgj**
HIGHLAND CAPITAL MANAGEMENT, L.P., **Plaintiff,** **vs.** **HIGHLAND CAPITAL MANAGEMENT SERVICES, INC., JAMES DONDERO, NANCY DONDERO, AND THE DUGABOY INVESTMENT TRUST,** **Defendants.**	§ § § § § § § § § § § §	**Adv. Proc. No. 21-03006-sgj**
HIGHLAND CAPITAL MANAGEMENT, L.P., **Plaintiff,** **vs.** **HCRE PARTNERS, LLC (n/k/a NexPoint Real Estate Partners, LLC), JAMES DONDERO, NANCY DONDERO, AND THE DUGABOY INVESTMENT TRUST,** **Defendants.**	§ § § § § § § § § § § § §	**Adv. Proc. No. 21-03007-sgj**

ORDER GRANTING DEFENDANTS' MOTION FOR LEAVE TO SUPPLEMENT THEIR ARGUMENT AGAINST PLAINTIFF'S NEWLY SUPPLEMENTED NOTICE OF ATTORNEYS' FEES

Upon consideration of *Defendants' Motion for Leave to Supplement Their Argument Against Plaintiff's Newly Supplemented Notice of Attorneys' Fees* (the "Motion"), any response thereto, the pleadings, the record of the above-captioned and related adversary proceedings, and the arguments presented by the parties before this Court, the Court hereby finds that the Motion should be GRANTED.

Accordingly,

IT IS HEREBY ORDERED that:

Defendants are allowed to supplement their pleadings to raise additional arguments related to the New Bills.

END OF ORDER

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

ENTERED

THE DATE OF ENTRY IS ON
THE COURT'S DOCKET

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

Signed November 10, 2022

United States Bankruptcy Judge

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

In re: HIGHLAND CAPITAL MANAGEMENT, L.P. Reorganized Debtor.	Case No. 19-34054-sgj11 Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P., Plaintiff. v. HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, L.P., Defendant.	Adversary No. 21-03004-sgj Civ. Act. No. 3:21-cv-00881
HIGHLAND CAPITAL MANAGEMENT, L.P., Plaintiff. v. NEXPOINT ADVISORS, L.P., JAMES DONDERO, NANCY DONDERO, AND THE DUGABOY INVESTMENT TRUST, Defendants.	Adversary No.: 21-03005-sgj Civ. Act. No. 3:21-cv-00880 **(Consolidated Under Civ. Act. No. 3:21-cv-00881)**

HIGHLAND CAPITAL MANAGEMENT, L.P., Plaintiff. v. JAMES D. DONDERO, NANCY DONDERO, AND THE DUGABOY INVESTMENT TRUST, Defendants.	Adversary No. 21-03003-sgj Civ. Act. No. 3:21-cv-01010 **(Consolidated Under Civ. Act. No. 3:21-cv-00881)**
HIGHLAND CAPITAL MANAGEMENT, L.P., Plaintiff. v. HIGHLAND CAPITAL MANAGEMENT SERVICES, INC., JAMES DONDERO, NANCY DONDERO, AND THE DUGABOY INVESTMENT TRUST, Defendants.	Adversary No.: 21-03006-sgj Civ. Act. No. 3:21-cv-01378 **(Consolidated Under Civ. Act. No. 3:21-cv-00881)**
HIGHLAND CAPITAL MANAGEMENT, L.P., Plaintiff. v. HCRE PARTNERS, LLC (n/k/a NEXPOINT REAL ESTATE PARTNERS, LLC), JAMES DONDERO, NANCY DONDERO AND THE DUGABOY INVESTMENT TRUST, Defendants.	Adversary No.: 21-03007-sgj Civ. Act. No. 3:21-cv-01379 **(Consolidated Under Civ. Act. No. 3:21-cv-00881)**

SUPPLEMENT TO REPORT AND RECOMMENDATION DATED JULY 19, 2022, TRANSMITTING PROPOSED FORMS OF JUDGMENT

I. Introduction and Background

On July 20, 2022, the bankruptcy clerk transmitted this court's *Report and Recommendation to District Court: Court Should Grant Plaintiff's Motion for Partial Summary Judgment Against All Five Note Maker Defendants*[1] *(With Respect to All Sixteen Promissory*

[1] The "Note Maker Defendants"—sometimes collectively referred to simply as the "Defendants"—are: James D. Dondero (Adv. Pro. 21-3003)(Civ. Action No. 3:21-cv-01010); Highland Capital Management Fund Advisors, L.P. (Adv. Pro. 21-3004)(Civ. Action No. 3:21-cv-00881); NexPoint Advisors, L.P. (Adv. Pro. 21-3005)(Civ. Action No.

Notes) in the Above-Referenced Consolidated Note Actions ("R&R MPSJ")[DE # 50][2] for filing in the above-referenced consolidated Civ. Act. No. 3:21-cv-881. In the R&R MPSJ, this court recommended that the District Court enter summary judgment "holding the Note Maker Defendants liable for (a) breach of contract and (b) turnover for all amounts due under the Notes, pursuant to Bankruptcy Code Section 542, including the costs of collection and reasonable attorneys' fees in an amount to be determined." In the last paragraph of the R&R MPSJ, this court directed Plaintiff (Highland) "**to promptly submit a form of Judgment applicable to each Note Maker Defendant that calculates proper amounts due pursuant to this Report and Recommendation, including interest accrued to date (and continuing to accrue per diem), as well as costs and attorneys' fees incurred.**" The court further set forth the procedures for the submission of the proposed forms of judgment and this court's transmittal of such to the District Court for its consideration in connection with the R&R MPSJ:

> **The costs and attorneys' fees calculation shall be separately filed as a Notice with backup documentation attached. The Note Maker Defendants shall have 21 days after the filing of such Notice to file an objection to the reasonableness of the attorneys' fees and costs. The bankruptcy court will thereafter determine the reasonableness in Chambers (unless the bankruptcy court determines that a hearing is necessary) and will promptly submit the form Judgments, along with appropriate attorneys' fees and costs amounts inserted into the form Judgments, to the District Court, to consider along with this Report and Recommendation.**

R&R MPSJ, last para.

3:21-cv-00880); Highland Capital Management Services, Inc. (Adv. Pro. 21-3006)(Civ. Action No. 3:21-cv-01378); and HCRE Partners, LLC, n/k/a NexPoint Real Estate Partners, LLC (Adv. Pro. 21-3007)(Civ. Action No. 3:21-cv-01379).

[2] The R&R MPSJ was entered separately in each of the five underlying adversary proceedings on July 19, 2022 prior to transmittal to the District Court. *See* Adv. Pro. 21-3003 [DE #191], Adv. Pro. 21-3004 [DE #163], Adv. Pro. 21-3005 [DE #207], Adv. Pro. 21-3006 [DE #213], and Adv. Pro. 21-3007 [DE #208].

II. Proposed Forms of Judgment and Notices of Attorneys' Fees and Costs

A. Highland Submits Proposed Forms of Judgment and Notices of Attorneys' Fees and Costs To Be Included Therein

The parties entered into a stipulation (the "Stipulation") regarding the procedures for objecting to the R&R MPSJ in the District Court and for the submission of the proposed forms of judgment and attorneys' fees and costs to the bankruptcy court pursuant to the directive in the R&R MPSJ, which was filed on July 25, 2022, in each of the adversary proceedings[3] and on July 26, 2022, in the District Court.[4] In the Stipulation, the parties agreed and stipulated to a briefing schedule as follows:[5]

1. Plaintiff will file a form of judgment (as described in the R&R) (the "Proposed Judgment") with Notice by August 5, 2022;

2. Defendants will file any objections to the R&R and/or the Proposed Judgment ("Defendants' Objections") by August 23, 2022; [and,]

3. Plaintiff will respond to Defendants' Objections on or before September 27, 2022.

On August 5, 2022, Highland filed its *Declaration of David Klos in Support of Highland Capital Management, L.P.'s Proposed Form of Judgment*,[6] *Notice of Attorneys' Fees Calculation and Backup Documentation* regarding the fees and costs of Pachulski, Stang, Ziehl & Jones, L.L.P. ("PSZ&J"),[7] and *Notice of Attorneys' Fees Calculation and Backup Documentation of Hayward*

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[3] *See* Adv. Pro. 21-3003 [DE #196], Adv. Pro. 21-3004 [DE #168], Adv. Pro. 21-3005 [DE #212], Adv. Pro. 21-3006 [DE #218], and Adv. Pro. 21-3007 [DE #213].

[4] *See* Notice of Stipulation for Objection to Report and Recommendation in Notes Litigation [DE #53].

[5] Stipulation at 4.

[6] *See* Adv. Pro. 21-3003 [DE #199], Adv. Pro. 21-3004 [DE #171], Adv. Pro. 21-3005 [DE #216], Adv. Pro. 21-3006 [DE #221], and Adv. Pro. 21-3007 [DE #216].

[7] *See* Adv. Pro. 21-3003 [DE #197], Adv. Pro. 21-3004 [DE #169], Adv. Pro. 21-3005 [DE #214], Adv. Pro. 21-3006 [DE #219], and Adv. Pro. 21-3007 [DE #214].

PLLC.[8] Highland did not file with the bankruptcy court its proposed forms of judgment (but did upload the proposed form of judgment ("Proposed Judgment(s)") to the bankruptcy court's order processing system in each of the five adversary proceedings).

B. Defendants Object to Proposed Form of Judgment Awarding Attorneys' Fees and Costs

On August 23, 2022, the Defendants filed in the bankruptcy court *Defendants' Objection to Plaintiff's Proposed Form of Judgment Awarding Attorney's Fees and Costs*[9] in which they objected to Highland's proposed form of judgment and to the reasonableness of the attorneys' fees proposed to be included therein ("Proposed Judgment Objection").[10] Defendants objections to the Proposed Judgment fall into one of seven categories:

(1) Mathematical error;

(2) Excessive redaction;

(3) Fees should be limited to breach of contract and turnover claims;

(4) "Unsegregated fees" should be excluded;

(5) Fees attributable to "unsuccessful litigation" should be excluded;

(6) PSZ&J's rates are too high;

(7) The distribution of fees and costs equally among the five Defendants is unreasonable.

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[8] *See* Adv. Pro. 21-3003 [DE #198], Adv. Pro. 21-3004 [DE #170], Adv. Pro. 21-3005 [DE #215], Adv. Pro. 21-3006 [DE #220], and Adv. Pro. 21-3007 [DE #215].

[9] *See* Adv. Pro. 21-3003 [DE #204], Adv. Pro. 21-3004 [DE #173], Adv. Pro. 21-3005 [DE #221], Adv. Pro. 21-3006 [DE #226], and Adv. Pro. 21-3007 [DE #221].

[10] On the same day, the Defendants filed in the District Court *Defendants' Objection to the Bankruptcy Court's Report and Recommendation to the District Court Proposing That It Grant Summary Judgment in Favor of the Plaintiff* ("Objection to R&R MPSJ") [DCT DE #62].

C. Highland Files Motion for Leave to Supplement Backup Documentation with Supplemental Invoices

Defendants allege in the Proposed Judgment Objection that there is a math error ("Alleged Math Error") of $395,996.50, *see* Proposed Judgment Objection at 5-6, and "[t]here may be a small portion of that amount attributable to partially redacted entries for which the total was redacted, making it unduly difficult to decipher," *id.* at 6 n.2. On September 20, 2022, Highland's counsel emailed Defendants' counsel to inform them that there is no Alleged Math Error because: (a) Highland inadvertently omitted from its Backup Documentation the fee invoices for January and February 2022, and (b) some entries were redacted because they referred to tasks unrelated to the Notes Litigation, but the unredacted time should be added up and multiplied by the hourly rate of the applicable timekeeper. Morris Dec. Ex. A.[11] Highland also attached to its email, *inter alia*, the invoices for January and February 2022 (the "Supplemental Invoices"), which total $307,493.50 (and which account for approximately 80% of the Alleged Math Error). Morris Dec. Ex. B and Ex. C, respectively. Highland's counsel offered to stipulate to this issue, advising Defendants' counsel that if they did not respond by noon on Friday, September 23, 2022, Highland would move for leave to supplement the Backup Documentation with the Supplemental Invoices. Morris Dec. Ex. A. Defendants' counsel had not responded as of September 27, 2022, when Highland filed its Motion for Leave, seeking leave of the bankruptcy court to supplement the Backup Documentation with the Supplemental Invoices. Motion for Leave, ¶ 9. On the same day, Highland filed its *Response to Defendants' Objection to Plaintiff's*

[11] References to "Morris Dec." are to the *Declaration of John A. Morris in Support of Highland Capital Management, L.P.'s Motion for Leave to Supplement Backup Documentation in Support of Proposed Judgment*, Adv. Pro. 21-3003 [DE #206], Adv. Pro. 21-3004 [DE #175], Adv. Pro. 21-3005 [DE #223], Adv. Pro. 21-3006 [DE #228], and Adv. Pro. 21-3007 [DE #223], filed in the adversary proceedings in connection with Highland's *Motion for Leave to Supplement Backup Documentation in Support of Proposed Judgment* ("Motion for Leave") filed on September 27, 2022. Adv. Pro. 21-3003 [DE #205], Adv. Pro. 21-3004 [DE #174], Adv. Pro. 21-3005 [DE #222], Adv. Pro. 21-3006 [DE #227], and Adv. Pro. 21-3007 [DE #222].

Proposed Form of Judgment Awarding Attorney's Fees and Costs[12] and its brief in support of its Proposed Form of Judgment Awarding Attorneys' Fees and Costs (together, the "Response").[13]

On October 18, 2022 – 28 days after Defendants' counsel had been provided with copies of the Supplemental Invoices – Defendants filed their *Opposition to Highland Capital Management, L.P.'s Motion for Leave to Supplement Backup Documentation in Support of Proposed Judgment* ("Opposition").[14] Defendants argued that Highland should not be allowed to supplement the Backup Documentation with the Supplemental Invoices because allowing such would cause Defendants to "suffer prejudice." Specifically, Defendants asserted that Highland's failure to include the Supplemental Invoices as part of the original Backup Documentation (a) "has prejudiced Defendants by not allowing Defendants to timely examine the statements for accuracy, duplicity of work, redactions, and other factors relating to a reasonableness and necessity-of-attorney's-fees analysis," (b) gives Highland "two bites at the apple to recover [fees and costs] it never presented to Defendants for examination in the first place," and (c) has caused Defendants to be prejudiced and to suffer "undue surprise because [they were] not afforded an opportunity to examine those statements while [they were] briefing on Plaintiff's originally-provided billing statements." Opposition, ¶ 3.

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[12] Adv. Pro. 21-3003 [DE #207], Adv. Pro. 21-3004 [DE #176], Adv. Pro. 21-3005 [DE #224], Adv. Pro. 21-3006 [DE #229], and Adv. Pro. 21-3007 [DE #224].

[13] Adv. Pro. 21-3003 [DE #208], Adv. Pro. 21-3004 [DE #177], Adv. Pro. 21-3005 [DE #225], Adv. Pro. 21-3006 [DE #230], and Adv. Pro. 21-3007 [DE #225].

[14] Adv. Pro. 21-3003 [DE #210], Adv. Pro. 21-3004 [DE #179], Adv. Pro. 21-3005 [DE #227], Adv. Pro. 21-3006 [DE #232], and Adv. Pro. 21-3007 [DE #227].

On October 21, 2022, Highland filed its *Reply in Further Support of Its Motion for Leave to Supplement Backup Documentation in Support of Proposed Judgment* ("Reply").[15] This court considered Highland's Motion for Leave, Defendants' Opposition, and Highland's Reply and, on October 24, 2022, entered orders in each of the adversary proceedings, granting Highland's Motion for Leave, allowing Highland to supplement the Backup Documentation with the Supplemental Invoices.[16]

D. This Court Recommends That the District Court Overrule Defendants' Objections to the Proposed Forms of Judgment Awarding Attorneys' Fees and Costs

This court then turned to its in-chambers review of the Defendants' Proposed Judgment Objection in accordance with the procedures set forth in the "Submission of Judgment" section of its R&R MPSJ. For the following reasons, this court recommends that the District Court overrule each of the objections set forth in Defendants' Proposed Judgment Objection:

1. Objection #1: Mathematical Error

As noted above, Defendants object to the proposed attorneys' fees and costs based on an Alleged Math Error. With leave of court, Highland supplemented the Backup Documentation with two invoices (for January 2022 and February 2022), which accounted for nearly 80% of the Alleged Math Error. The remaining approximately 20% of the Alleged Math Error was attributable to the "partially redacted entries for which the total was redacted" and which Defendants found to be "unduly difficult to decipher." Highland explained that multiplying the time identified in the unredacted portions of the partially redacted entries, only, by the hourly rate

[15] Adv. Pro. 21-3003 [DE #211], Adv. Pro. 21-3004 [DE #180], Adv. Pro. 21-3005 [DE #228], Adv. Pro. 21-3006 [DE #233], and Adv. Pro. 21-3007 [DE #228].

[16] Adv. Pro. 21-3003 [DE #212], Adv. Pro. 21-3004 [DE #181], Adv. Pro. 21-3005 [DE #229], Adv. Pro. 21-3006 [DE #234], and Adv. Pro. 21-3007 [DE #229].

of the identified timekeeper (and totaling the resultant amounts) accounts for the remaining Alleged Math Error, such that there is no math error in the proposed attorneys' fees and costs to be included in the Proposed Judgments. Thus, this court recommends that the District Court overrule this objection to the Proposed Judgments and reasonableness of attorneys' fees and costs to be included therein.

2. *Objection #2: Excessive Redaction*

Defendants contend that fees should not be awarded for "overly redacted" time entries. As set forth in the Morris Declaration (filed in support of the Proposed Judgment(s) and Notices of Attorneys' Fees and Costs), Highland does not seek compensation for any time entry that was redacted; therefore, the court recommends that the district court overrule this objection to the Proposed Judgments and reasonableness of attorneys' fees and costs to be included therein.

3. *Objection #3: Fees Should Be Limited to Breach of Contract and Turnover Claims*

Defendants argue that Plaintiff may only recover fees for the breach of contract and turnover claims in the complaints because those two counts were "the only claims addressed by the R&R issued by the Court," quoting the Texas Supreme Court case, *Tony Cullo Motors I, L.P. v. Chapa*, 212 S.W.3d 299, 311 (Tex. 2006), for the proposition that "Absent a contract or statute, trial courts do not have inherent authority to require a losing party to pay the prevailing party's fees." The *Chapa* case does not support Defendants' objection because the court there held, unremarkably, that because Texas law does not permit recovery for attorneys' fees on a fraud claim and because there was no contract between the parties allowing for such recovery, the trial court's inclusion of attorney fees in the judgment constituted error. Here, the Notes at issue ***do*** provide that Highland is entitled to ***all*** costs of collection, not just those directly incurred on a subset of litigated issues. Specifically, Section 6 of each Note provides:

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

Nothing in Section 6 limits Highland's recovery of "all actual expenses of collection" to only breach of contract and turnover claims, where all of the causes of action and claims asserted in the adversary proceeding were expenses of collecting on the Notes.

Moreover, the Texas Supreme Court in *Varner v. Cardenas*, 218 S.W.3d 68, 69 (Tex. 2007)(citations omitted), which expressly followed *Chapa*, upheld an award of attorneys' fees to the prevailing plaintiff who successfully sued on a promissory note that included fees incurred by the plaintiff in defending against the defendant's counterclaim:[17]

> But we disagree that fees defending against the [defendants'] counterclaim must be segregated too. By asserting a shortfall of acreage as a defense and counterclaim, [defendants] sought to reduce the amount collected on the note; to collect the full amount, [plaintiffs] had to overcome this defense. As their attorney's efforts to that effect were necessary to recover on their contract, they are recoverable.

Here, all of the counts in the amended complaint were included in connection with, and directly related to, Highland's pursuit of recovery on the Notes. All of the time spent by Highland's counsel responding to Defendants' various defenses and litigating the myriad issues that have arisen in these proceedings were incurred in pursuit of, and were necessary to, Highland's recovery on the Notes. Thus, because all of the attorneys' fees and costs submitted by Highland for

[17] *See also In re Arnette*, 2011 WL 3651294, *3 -*4 (Bankr. N.D. Tex. Aug. 18, 2011)(where the bankruptcy court found that fees incurred by plaintiff in plaintiff's successful suit on a note that were incurred to prove plaintiff's (a) fraud claims "contributed directly to the [plaintiff's] efforts to collect and enforce the notes against [the defendant such that] . . . [t]he terms of the notes themselves make these fees recoverable," and (b) § 523 claims "were part and parcel of its efforts to collect and enforce the breach of contract and suit on a note claims[, and, thus,] "fall within the ambit of the recoverable fees under the notes.").

inclusion in the Proposed Judgments were incurred as "actual expenses of collection" on the Notes, they are recoverable by Highland in the Proposed Judgments. For these reasons, this court recommends that the District Court overrule this objection to the Proposed Judgments and reasonableness of attorneys' fees and costs to be included therein.

4. Objection #4: "Unsegregated fees" Should Be Excluded

Defendants argue that Highland should not recover fees where counsels' time records did not "segregate" fees among the several Defendants, citing the *Clearview Properties*[18] case. *Clearview Properties* stands for the proposition that a plaintiff seeking an award of fees has the burden of demonstrating that segregation is not required and that a mere assertion that all claims against all defendants arise from common facts can be insufficient to satisfy that burden. Defendants ignore a critical distinction between these adversary proceedings and the *Clearview Properties* case: "*these Adversary Proceedings were consolidated for all purposes*, something to which the Defendants readily agreed." Response, ¶ 15. Early in the proceedings, this court approved a stipulation of the parties providing, among other things:[19]

> The Parties agree that discovery taken in this case will be consolidated with discovery taken in the [ ] [A]dversary [P]roceedings and all discovery in each of the [A]dversary [P]roceedings will be treated as if it was taken in all of the [A]dversary [P]roceedings . . . so that each witness will only need to be deposed once and documents produced in any of the [A]dversary [P]roceedings are usable as if received in every other [P]roceeding.

Highland points out the absurdity of Defendants' argument in its Response,[20]

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[18] *Clearview Properties, L.P. v. Property Texas SC One Corp.*, 287 S.W.3d 132, 144 (Tex.App. – Houston [14th Dist.] 2009).

[19] *See Order Approving Stipulation Governing Discovery and Other Pre-Trial Issues*, at ¶ 4, Adv. Pro. 21-3003 [DE #86], Adv. Pro. 21-3004 [DE #67], Adv. Pro. 21-3005 [DE #70], Adv. Pro. 21-3006 [DE #75], and Adv. Pro. 21-3007 [DE #70].

[20] Response, at ¶ 20.

> The very consolidation that enabled all parties and this Court to enjoy at least some level of litigation efficiency, the very consolidation these Defendants wanted and moved this Court to impose, is now the consolidation Defendants would have this Court utterly ignore in favor of requiring Plaintiff to do the impossible—to segregate fees incurred in fully consolidated proceedings, Defendant by closely-affiliated Defendant, as though there were no consolidation either ordered by this Court or stipulated to by these Defendants. The egg has been thoroughly scrambled for well over a year. Defendants willingly scrambled it, but would now have the prevailing Plaintiff separate yolk from white.

This court agrees that Defendants should not now be heard to complain about the consequences of the very consolidation of these Adversary Proceedings that was done at the behest of all parties, including the Defendants, for the purposes of creating litigation efficiencies (which necessarily benefited all of the Defendants in the end by limiting the total attorneys' fees incurred in connection with the litigation of the consolidated proceedings). Accordingly, this court recommends that the District Court overrule this objection to the Proposed Judgments and reasonableness of attorneys' fees and costs to be included therein.

5. *Objection #5: Fees Attributable to "Unsuccessful Litigation" Should Be Excluded*

In their Proposed Judgment Objection, Defendants argue that a plaintiff cannot recover attorneys' fees for work related to "***claims*** as to which he or she did not prevail," Proposed Judgment Objection, 16 (quoting a Massachusetts federal district court case—*Roggio v. Grasmuck*, 18 F.Supp.3d 49, 56 (D. Mass. 2014)(citing a First Circuit case, *Torres-Rivera v. O'Neill-Cancel*, 524 F.3d 331, 336 (1st Cir. 2008))(emphasis added)). Defendants follow with a "*see also*" citation to the only case cited by the Defendants that would be binding authority: to the Fifth Circuit's *Wal-Mart Stores, Inc. v. Qore, Inc.*, 647 F.3d 237, 246-48 (5th Cir. 2011), for the proposition that Highland must "present evidence by which to allocate its legal fees among successful and unsuccessful ***claims***." *Id.* (emphasis added). Finally, Defendants highlight three pieces of this complex and lengthy litigation as instances in which Highland "did not prevail" and

argue that, under their cited legal "authority," Highland cannot recover fees that are associated with those three pieces of litigation.

Neither the nonbinding authority nor the binding Fifth Circuit authority is applicable to Highland's ability to recover the full amount of the fees requested here. First, the authorities discuss the recoverability under certain circumstances of fees incurred in litigating successful ***claims***, in the sense of causes of action, versus unsuccessful ***claims***, again, in the sense of causes of action, in the same litigation. None of the three litigation instances identified by Defendants as "matters" in which Highland "did not prevail"[21] were separate ***claims*** (or causes of action) being pursued by Highland in the litigation. Rather, they were discrete issues that were litigated in the context of Highland's pursuit of collection on the Notes. And, as noted above, pursuant to the terms of the Notes, Highland is entitled to recover ***all*** expenses of collection, including attorneys' fees and costs. If attorneys' fees were incurred in the course of Highland's efforts to collect on the Notes, those fees are recoverable.

Defendants cite no law that requires a successful plaintiff entitled to ***all*** expenses (including costs and attorneys' fees) of collection on a note to prevail on every motion or issue that is litigated

[21] The three matters in which Defendants assert Highland "did not prevail" were (1) its opposition to Defendants' motion to strike a David Klos declaration; (2) its motion for sanctions that was filed as a part of a single motion seeking two forms of relief: (a) the striking of an argument in opposition to summary judgment that was precluded by a prior court order and (b) sanctions for that conduct; and (3) its efforts to consolidate these proceedings before a different district court judge than who ultimately received these cases. Highland argues that a plaintiff's "uniform success at every small step on the way to complete victory" is not required in order to recover ***all*** fees under the notes and that, even if such were a requirement, the Defendants "mischaracterize all three instances of so-called 'unsuccessful' litigation." Response, ¶ 23. With respect to Highland's opposition to the striking of the David Klos declaration, Highland notes that the Bankruptcy Court granted the motion on the ground that Highland had not sought leave to include the declaration in a reply appendix, and, thus, it "was a simple evidentiary ruling by the court and does not constitute an example of 'unsuccessful litigation.'" *Id.* at ¶ 23(a). With respect to the request for sanctions, Highland argues that it did not "lose" its "motion for sanctions"; rather, Highland prevailed on its motion seeking to strike one of Defendants' arguments in opposition to summary judgment that included a request for sanctions that the Bankruptcy Court did not grant when it granted the motion. *Id.* at ¶ 23(b). Lastly, Highland argues that its efforts to consolidate these proceedings before a different district judge "were good-faith efforts to maximize Plaintiff's chances of success in nascent litigation against a highly-litigious set of foes" that was resolved in a couple of weeks and was not "unreasonable." *Id.* at ¶ 23(c).

in a multi-faceted, multiple-defendant, multi-year, consolidated-for-all-purposes litigation to have "all expenses of collection" awarded as part of the judgment on the note. Defendants' citation to the Fifth Circuit's *Wal-Mart* case is misplaced. In the *Wal-Mart* case, the Fifth Circuit addressed the issue of whether, under Mississippi law, Wal-Mart was entitled to recover from one defendant the full amount of attorneys' fees incurred in its breach of contract and negligence suit against three firms that it had hired to assist with the design and construction of a new store after the jury had awarded damages to Wal-Mart on some, but not all, of its causes of action. After trial, the jury had found that the testing and inspection firm ("Qore") was liable for 10% of the damages to the building along with one of the other defendant firms, which the jury found to be liable for 90% of the damages to the building. *Wal-Mart*, 647 F.3d at 241. The jury also determined that Qore's liability on the damages to the building claim was entirely attributable to its work done under its testing and inspection contract and not under its geotechnical services contract. *Id.* By post-trial motion, Wal-mart sought to recover the entire amount of its fees incurred in the litigation—on all claims, successful and unsuccessful, and against all parties—from Qore. *Id.* The district court granted Wal-Mart's motion subject to a small reduction attributable to an adjustment to the lodestar rate and some excessive billing. *Id.* at 242. Qore appealed the district court's fee award, and asked the Fifth Circuit to vacate it. *Id.* at 242.

The Court first agreed with the district court's finding that a plain reading of an indemnity provision in the testing and inspection contract, which stated that "[Qore] . . . agrees to indemnify and hold Wal-Mart free and harmless from any claim, demand, loss, damage, or injury (including Attorney's fees) caused by any negligent act or omission by [Qore] . . . ," allowed for Wal-Mart's recovery of reasonable fees. *Id.* at 243. Qore contended, though, that "in light of Wal-Mart's multiple claims against multiple parties, only one of which was successful as to Qore, the district

court's fee award should be vacated because Wal-Mart failed to present competent evidence by which to allocate its legal fees among successful and unsuccessful claims as required by Mississippi law" and that "Wal-Mart's recovery is limited to those fees incurred in prosecuting the single claim upon which it prevailed against Qore, i.e., fees spent proving Qore's fractional share of liability on the building repair claim. . . ." *Id.* at 244. The Fifth Circuit agreed with Qore. But, importantly as to why *Wal-Mart* does not support Defendants' objection here, the Fifth Circuit found that "Wal-Mart's recovery should have been limited to those attorney's fees incurred in proving Qore's liability on the building repair claim," *id.* at 245-46, only because the sole basis for Wal-Mart's recovery of attorney's fees against Qore was the contractual indemnity provision, and a plain reading of that provision—that entitled Wal-Mart to reimbursement of attorney's fees "caused by any negligent act or omission" on the part of Qore—limited Qore's duty to reimburse Wal-Mart for its reasonable attorney's fees "to those fees proximately and legally 'caused by' Qore's negligence." *Id.* at 245.

Here, to repeat a theme throughout this supplemental report and recommendation, all of the Notes that were the subject of this litigation and the Proposed Judgments provide that Highland is entitled to recover "***all*** actual expenses of collection" on the Notes, including "all court costs and reasonable attorneys' fees incurred by the holder hereof." (emphasis added). There is no limitation to the phrase "all actual expenses of collection" that is similar to the language in the contract in the *Wal-Mart* case that limited Wal-Mart's recovery of fees to those fees "caused by" Qore's negligence. The attorneys' fees sought by Highland were all expenses incurred in the collection of the Notes in these consolidated proceedings in which Highland was successful against all of the Defendants identified in the Proposed Judgments and from whom Highland seeks recovery of reasonable attorneys' fees and costs. In the *Wal-Mart* case, the defendants were

unaffiliated, the plaintiff did *not* prevail against all the defendants, and there was no mention of the type of deep consolidation of all proceedings in that litigation that has occurred in these Adversary Proceedings (at the behest and agreement of all of the parties to this litigation, including the Defendants). For these reasons, this court recommends that the District Court overrule this objection to the Proposed Judgments and reasonableness of attorneys' fees and costs to be included therein.

6. Objection #6: PSZJ's's Rates Are Too High

Defendants argue that PSZJ's rates are unreasonably high because they exceed the rates charged by local firms for similar services. This court has already approved PSZJ's rates as reasonable under § 330 and under the applicable standard originally announced by the Fifth Circuit in *Johnson*.[22] In addition, Mr. Dondero, when he controlled Highland, personally hired PSZJ to be bankruptcy counsel for Highland and "agreed, in writing, to the very fee structure and rates (albeit with disclosed, annual increases customary in the industry) he now complains about." *See* Response, ¶ 25. This court recommends that the District Court overrule this objection to the Proposed Judgments and reasonableness of attorneys' fees and costs to be included therein.

7. Objection #7: The Distribution of Fees and Costs Among Defendants Is Unreasonable

Defendants assert that Highland's proposed distribution of awarded fees among the five Defendants "is unreasonable because it arbitrarily advocates for a distribution of the fees among the five Defendants equally (one-fifth each) regardless of the amount of the proposed judgment

[22] *See* Bankr. Case No. 19-34054-sgj11, *Fifth and Final Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP* [BC DE #2906], at 37–39 (describing how PSZJ's fees satisfied the *Johnson* factors—*see Johnson v. Ga. Highway Express, Inc.*, 488 F.2d 714 (5th Cir. 1974)); *Order Granting Fifth and Final Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP* [BC DE #3055].

against each Defendant and their involvement in the case." Proposed Judgment Objection, 21. In response, Highland indicates that it "is indifferent and has no objection if Defendants would rather allocate Plaintiff's fees and costs *pro rata*, based on the ratio of the outstanding principal and interest owed by each Obligor to the total principal and interest owed by all Obligors." Response, ¶ 27. Thus, without deciding whether an equal allocation among Defendants of attorneys' fees and costs is improper in these adversary proceedings, this court recommends to the District Court that the provision in each of the Proposed Judgments that allocates to each Defendant "one-fifth of the total allocable and actual expenses of collection, including attorneys' fees and costs, incurred by Highland," be replaced with an actual allocated amount of the fees and costs, which is a *pro rata* allocation based on the ratio of the outstanding principal and interest owed by each Note Maker Defendant to the total principal and interest owed by all Note Maker Defendants under the Proposed Judgments.

III. Submission of Proposed Forms of Judgment to District Court

Having considered the Proposed Judgment in each of the adversary proceedings and the Notices and Backup Documentation (as supplemented by Highland) regarding the attorneys' fees and costs to be inserted into each Proposed Judgment; Defendants' Proposed Judgment Objection; and Highland's Response; and for the reasons set forth herein, this court hereby supplements its R&R MPSJ and recommends to the District Court that it, after consideration of the R&R MPSJ and this supplemental report and recommendation, enter the applicable Proposed Judgment (as modified to reflect a *pro rata* allocation of attorneys' fees and costs based on the ratio of the outstanding principal and interest owed by each Note Maker Defendant to the total principal and interest owed by all Note Maker Defendants) in each of the five adversary proceedings that are hereby transmitted as exhibits hereto. The proposed forms of judgment in

Adv. Proc. No. 21-3003, Adv. Proc. No. 21-3004, Adv. Proc. No. 21-3005, Adv. Proc. No. 21-3006, and Adv. Proc. No. 21-3007 are attached hereto as **Exhibits A-E**, respectively.[23]

End of Supplement to Report and Recommendation

[23] A spreadsheet showing this court's calculation of the proposed allocation of attorneys' fees and costs to each Note Maker Defendant is attached hereto as **Exhibit F**.

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

IN RE HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	Bankr. Case No. 19-34054-sgj11
Reorganized Debtor.	§	
	§	
HIGLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	Adv. Pro. No. 21-3003-sgj
Plaintiff,	§	
	§	Civ. Act. No. 3:21-cv-1010-X
JAMES DONDERO, NANCY DONDERO, and THE DUGABOY INVESTMENT TRUST,	§	**(Consolidated under Civ. Act. No. 3:21-cv-881-X)**
Defendants.	§	
	§	

PROPOSED FORM OF JUDGMENT

This matter having come before the Court on the *Motion for Partial Summary Judgment in Notes Actions* (the "Motion") filed by Highland Capital Management, L.P. ("Highland" or "Plaintiff"), the reorganized debtor in the above-captioned chapter 11 case and plaintiff in the above-referenced adversary proceeding; and the Court having considered (a) Highland's Motion and all arguments and evidence admitted into the record in support of the Motion, (b) all responses and objections to the Motion and all arguments and evidence admitted into the record in support of such responses and objections, and the arguments presented by counsel during the hearing held on April 20, 2022, on the Motion (the

Exhibit A

"Hearing"); and for the reasons set forth in the *Report and Recommendation to District Court: Court Should Grant Plaintiff's Motion for Partial Summary Judgment Against All Five Note Maker Defendants (With Respect to All Sixteen Promissory Notes) in the Above-Referenced Consolidated Note Actions* ("R&R") filed by the Bankruptcy Court on July 19, 2022, and the *Supplement to Report and Recommendation Dated July 19, 2022, Transmitting Proposed Forms of Judgment*; the Court hereby enters the following final judgment (the "Final Judgment").

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that Plaintiff recover the following:

1. Mr. James Dondero ("Mr. Dondero") will owe Highland **$3,873,613.93** in accrued but unpaid principal and interest due under Dondero's First Note[1] (issued on February 2, 2018) as of August 8, 2022, after application of all payments to outstanding principal and interest. As of August 9, 2022, interest will continue to accrue on the First Dondero Note at the rate of **$278.50** per day and will increase to **$285.91** per day on **February 2, 2023**.

2. Mr. Dondero will owe Highland **$2,778,356.23** in accrued but unpaid principal and interest due under Dondero's Second Note (issued on August 1, 2018) as of August 8, 2022, after application of all payments to outstanding principal and interest. As of August 9, 2022, interest will continue to accrue on Dondero's Second Note at the rate of **$224.43** per day and will increase to **$231.05** per day on **August 1, 2023**.

3. Mr. Dondero will owe Highland **$2,778,339.88** in accrued but unpaid principal and interest due under Dondero's Third Note (issued on August 13, 2018) as of August 8, 2022, after application of all payments to outstanding principal and interest. As of August 9, 2022, interest will continue to accrue on Dondero's Third Note at the rate of **$218.20** per day and will increase to **$224.64** per day on **August 13, 2022**.

[1] Capitalized terms not defined herein shall have the meanings ascribed to them in the R&R.

4. In addition to the forgoing, and pursuant to the terms of each applicable Note, Mr. Dondero shall pay to Highland the amount of **$443,074.35**, which is his *pro rata* allocation (based on the ratio of the outstanding principal and interest owed by Mr. Dondero to Plaintiff as of August 8, 2022, to the total principal and interest owed by all Note Maker Defendants to Plaintiff as of August 8, 2022) of the total allocable and actual expenses of collection, including attorneys' fees and costs, incurred by Highland.

5. The amounts set forth to be paid in this Final Judgment shall bear interest, pursuant to 28 U.S.C. § 1961, from the date of the entry of this Final Judgment, at a rate of [ ]%. Interest shall be computed daily to the date of payment, except as provided in 28 U.S.C. § 2516(b) and 31 U.S.C. § 1304(b), and shall be compounded annually.

END OF ORDER # #

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

IN RE HIGHLAND CAPITAL MANAGEMENT, L.P., Reorganized Debtor.	§ § § § §	Bankr. Case No. 19-34054-sgj11
HIGLAND CAPITAL MANAGEMENT, L.P., Plaintiff, HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, L.P., Defendants.	§ § § § § § § § §	Adv. Pro. No. 21-3004-sgj Civ. Act. No. 3:21-cv-881-X

PROPOSED FORM OF JUDGMENT

This matter having come before the Court on the *Motion for Partial Summary Judgment in Notes Actions* (the "Motion") filed by Highland Capital Management, L.P. ("Highland" or "Plaintiff"), the reorganized debtor in the above-captioned chapter 11 case and plaintiff in the above-referenced adversary proceeding; and the Court having considered (a) Highland's Motion

Exhibit B

and all arguments and evidence admitted into the record in support of the Motion, (b) all responses and objections to the Motion and all arguments and evidence admitted into the record in support of such responses and objections, and the arguments presented by counsel during the hearing held on April 20, 2022, on the Motion; and for the reasons set forth in the *Report and Recommendation to District Court: Court Should Grant Plaintiff's Motion for Partial Summary Judgment Against All Five Note Maker Defendants (With Respect to All Sixteen Promissory Notes) in the Above-Referenced Consolidated Note Actions* ("R&R") filed by the Bankruptcy Court on July 19, 2022, and the *Supplement to Report and Recommendation Dated July 19, 2022, Transmitting Proposed Forms of Judgment*; the Court hereby enters the following final judgment (the "Final Judgment").

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that Plaintiff recover the following:

1. Highland Capital Management Fund Advisors, L.P. ("HCMFA") will owe Highland **$2,552,628.61** in accrued but unpaid principal and interest due under HCMFA's First Note[1] (issued on May 2, 2019), as of August 8, 2022, after application of all payments to outstanding principal and interest. As of August 9, 2022, interest will continue to accrue on HCMFA's First Note at the rate of **$166.08** per day and will increase to **$170.05** per day on **May 2, 2023.**

2. HCMFA will owe Highland **$5,317,989.86** in accrued but unpaid principal and interest due under HCMFA's Second Note (issued on May 3, 2019), as of August 8, 2022, after application of all payments to outstanding principal and interest. As of August 9, 2022, interest will continue to accrue on HCMFA's Second Note at the rate of **$346.02** per day and will increase to **$354.29** per day on **May 3, 2023.**

[1] Capitalized terms not defined herein shall have the meanings ascribed to them in the R&R.

3. In addition to the forgoing, and pursuant to the terms of each applicable Note, HCMFA shall pay to Highland the amount of **$369,793.69**, which is its *pro rata* allocation (based on the ratio of the outstanding principal and interest owed by HCMFA to Plaintiff as of August 8, 2022, to the total principal and interest owed by all Note Maker Defendants to Plaintiff as of August 8, 2022) of the total allocable and actual expenses of collection, including attorneys' fees and costs, incurred by Highland.

4. The amounts set forth to be paid in this Final Judgment shall bear interest, pursuant to 28 U.S.C. § 1961, from the date of the entry of this Final Judgment, at a rate of [ ]%. Interest shall be computed daily to the date of payment, except as provided in 28 U.S.C. § 2516(b) and 31 U.S.C. § 1304(b), and shall be compounded annually.

END OF ORDER # #

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

IN RE HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	Bankr. Case No. 19-34054-sgj11
Reorganized Debtor.	§	
	§	
HIGLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	Adv. Pro. No. 21-3005-sgj
Plaintiff,	§	
	§	Civ. Act. No. 3:21-cv-880-X
NEXPOINT ADVISORS, L.P., JAMES DONDERO, ADVISORS, L.P., NANCY DONDERO, and THE DUGABOY INVESTMENT TRUST	§	**(Consolidated under Civ. Act. No. 3:21-cv-881-X)**
	§	
Defendants.	§	
	§	

PROPOSED FORM OF JUDGMENT

This matter having come before the Court on the *Motion for Partial Summary Judgment in Notes Actions* (the "Motion") filed by Highland Capital Management, L.P. ("Highland" or "Plaintiff"), the reorganized debtor in the above-captioned chapter 11 case and plaintiff in the above-referenced adversary proceeding; and the Court having considered (a) Highland's Motion and all arguments and evidence admitted into the record in support of the Motion, (b) all responses and objections to the Motion and all arguments and evidence admitted into the record in support of such responses and objections, and the arguments presented by counsel during the hearing held on April 20, 2022, on the Motion; and for

Exhibit C

the reasons set forth in the *Report and Recommendation to District Court: Court Should Grant Plaintiff's Motion for Partial Summary Judgment Against All Five Note Maker Defendants (With Respect to All Sixteen Promissory Notes) in the Above-Referenced Consolidated Note Actions* (the "R&R") filed by the Bankruptcy Court on July 19, 2022, and the *Supplement to Report and Recommendation Dated July 19, 2022, Transmitting Proposed Forms of Judgment*; the Court hereby enters the following final judgment (the "Final Judgment").

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that Plaintiff recover the following:

1. NexPoint Advisors, L.P. ("NexPoint") will owe Highland **$23,389,882.79** in accrued but unpaid principal and interest due under the NexPoint Term Note[1] (issued on May 31, 2017), as of August 8, 2022, after application of all payments to outstanding principal and interest. As of August 9, 2022, interest will continue to accrue on the NexPoint Term Note at the rate of **$3,801.79** per day and will increase to **$4,029.90** per day on **May 31, 2023.**

2. In addition to the forgoing, and pursuant to the terms of each the Note, NexPoint shall pay to Highland the amount of **$1,098,951.89**, which is its *pro rata* allocation (based on the ratio of the outstanding principal and interest owed by NexPoint to Plaintiff as of August 8, 2022, to the total principal and interest owed by all Note Maker Defendants to Plaintiff as of August 8, 2022) of the total allocable and actual expenses of collection, including attorneys' fees and costs, incurred by Highland.

3. The amounts set forth to be paid in this Final Judgment shall bear interest, pursuant to 28 U.S.C. § 1961, from the date of the entry of this Final Judgment, at a rate of [ ]%. Interest shall be computed daily to the date of payment, except as provided in 28 U.S.C. § 2516(b) and 31 U.S.C. § 1304(b), and shall be compounded annually.

END OF ORDER # #

[1] Capitalized terms not defined herein shall have the meanings ascribed to them in the R&R.

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

IN RE HIGHLAND CAPITAL MANAGEMENT, L.P., Reorganized Debtor.	§ § § § §	Bankr. Case No. 19-34054-sgj11
HIGLAND CAPITAL MANAGEMENT, L.P., Plaintiff, HIGHLAND CAPITAL MANAGEMENT SERVICES, INC., JAMES DONDERO, NANCY DONDERO, and THE DUGABOY INVESTMENT TRUST Defendants.	§ § § § § § § § § § §	Adv. Pro. No. 21-3006-sgj Civ. Act. No. 3:21-cv-1378-X **(Consolidated under Civ. Act. No. 3:21-cv-881-X)**

PROPOSED FORM OF JUDGMENT

This matter having come before the Court on the *Motion for Partial Summary Judgment in Notes Actions* (the "Motion") filed by Highland Capital Management, L.P. ("Highland" or "Plaintiff"), the reorganized debtor in the above-captioned chapter 11 case and plaintiff in the above-referenced adversary proceeding; and the Court having considered (a) Highland's Motion and

Exhibit D

all arguments and evidence admitted into the record in support of the Motion, (b) all responses and objections to the Motion and all arguments and evidence admitted into the record in support of such responses and objections, and the arguments presented by counsel during the hearing held on April 20, 2022, on the Motion; and for the reasons set forth in the *Report and Recommendation to District Court: Court Should Grant Plaintiff's Motion for Partial Summary Judgment Against All Five Note Maker Defendants (With Respect to All Sixteen Promissory Notes) in the Above-Referenced Consolidated Note Actions* (the "R&R") filed by the Bankruptcy Court on July 19, 2022, and the *Supplement to Report and Recommendation Dated July 19, 2022, Transmitting Proposed Forms of Judgment*; the Court hereby enters the following final judgment (the "Final Judgment").

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that Plaintiff recover the following:

1. Highland Capital Management Services, Inc. ("HCMS") will owe Highland **$166,196.60** in accrued but unpaid principal and interest due under HCMS's First Demand Note[1] (issued on March 28, 2018), as of August 8, 2022, after application of all payments to outstanding principal and interest. As of August 9, 2022, interest will continue to accrue on HCMS's First Demand Note at the rate of **$12.98** per day and will increase to **$13.35** per day on **March 26, 2023.**

2. HCMS will owe Highland **$222,917.23** in accrued but unpaid principal and interest due under HCMS's Second Demand Note (issued on June 25, 2018), as of August 8, 2022, after application of all payments to outstanding principal and interest. As of August 9, 2022, interest will continue to accrue on HCMS's Second Demand Note at the rate of **$18.56** per day and will increase to **$19.13** per day on **June 25, 2023.**

3. HCMS will owe Highland **$425,435.63** in accrued but unpaid principal and interest due under HCMS's Third Demand Note (issued on May 29, 2019), as of August 8, 2022, after

[1] Capitalized terms not defined herein shall have the meanings ascribed to them in the R&R.

application of all payments to outstanding principal and interest. As of August 9, 2022, interest will continue to accrue under HCMS's Third Demand Note at the rate of **$27.73** per day and will increase to **$28.39** per day on **May 29, 2023**.

4. HCMS will owe Highland **$159,454.92** in accrued but unpaid principal and interest due under HCMS's Fourth Demand Note (issued on June 26, 2019), as of August 8, 2022, after application of all payments to outstanding principal and interest. As of August 9, 2022, interest will continue to accrue on HCMS's Fourth Demand Note at the rate of **$10.32** per day and will increase to **$10.57** per day on **June 26, 2023**.

5. HCMS will owe Highland **$6,071,718.32** in accrued but unpaid principal and interest due under the HCMS Term Note (issued on May 31, 2017), as of August 8, 2022, after application of all payments to outstanding principal and interest. As of August 9, 2022, interest will continue to accrue on the HCMS Term Note at the rate of **$455.09** per day and will increase to **$467.61** per day on **May 31, 2023**.

6. In addition to the forgoing, and pursuant to the terms of each applicable Note, HCMS shall pay to Highland the amount of **$331,036.73**, which is its *pro rata* allocation (based on the ratio of the outstanding principal and interest owed by HCMS to Plaintiff as of August 8, 2022, to the total principal and interest owed by all Note Maker Defendants to Plaintiff as of August 8, 2022) of the total allocable and actual expenses of collection, including attorneys' fees and costs, incurred by Highland.

7. The amounts set forth to be paid in this Final Judgment shall bear interest, pursuant to 28 U.S.C. § 1961, from the date of the entry of this Final Judgment, at a rate of [ ]%. Interest shall be computed daily to the date of payment, except as provided in 28 U.S.C. § 2516(b) and 31 U.S.C. § 1304(b), and shall be compounded annually.

END OF ORDER # #

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

IN RE HIGHLAND CAPITAL MANAGEMENT, L.P., Reorganized Debtor.	§ § § § §	Bankr. Case No. 19-34054-sgj11
HIGLAND CAPITAL MANAGEMENT, L.P., Plaintiff, HCRE PARTNERS, LLC (n/k/a NEXPOINT REAL REAL ESTATE PARTNERS, LLC)., JAMES DONDERO, NANCY DONDERO, and THE DUGABOY INVESTMENT TRUST Defendants.	§ § § § § § § § § § §	Adv. Pro. No. 21-3007-sgj Civ. Act. No. 3:21-cv-1379-X **(Consolidated under Civ. Act. No. 3:21-cv-881-X)**

PROPOSED FORM OF JUDGMENT

This matter having come before the Court on the *Motion for Partial Summary Judgment in Notes Actions* (the "Motion") filed by Highland Capital Management, L.P. ("Highland" or "Plaintiff"), the reorganized debtor in the above-captioned chapter 11 case and plaintiff in the above-referenced adversary proceeding; and the Court having considered (a) Highland's Motion and all arguments and evidence admitted into the record in support of the Motion, (b) all responses and objections to the Motion

Exhibit E

and all arguments and evidence admitted into the record in support of such responses and objections, and the arguments presented by counsel during the hearing held on April 20, 2022, on the Motion; and for the reasons set forth in the *Report and Recommendation to District Court: Court Should Grant Plaintiff's Motion for Partial Summary Judgment Against All Five Note Maker Defendants (With Respect to All Sixteen Promissory Notes) in the Above-Referenced Consolidated Note Actions* (the "R&R") filed by the Bankruptcy Court on July 19, 2022, and the *Supplement to Report and Recommendation Dated July 19, 2022, Transmitting Proposed Forms of Judgment*; the Court hereby enters the following final judgment (the "Final Judgment").

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that Plaintiff recover the following:

1. HCRE Partners, LLC (n/k/a NexPoint Real Estate Partners, LLC) ("HCRE") will owe Highland **$195,476.70** in accrued but unpaid principal and interest due under HCRE's First Demand Note[1] (issued on November 27, 2013), as of August 8, 2022, after application of all payments to outstanding principal and interest. As of August 9, 2022, interest will continue to accrue on HCRE's First Demand Note at the rate of **$40.58** per day and will increase to **$43.83** per day on **November 27, 2022**.

2. HCRE will owe Highland **$3,551,285.37** in accrued but unpaid principal and interest due under HCRE's Second Demand Note (issued on October 12, 2017), as of August 8, 2022, after application of all payments to outstanding principal and interest. As of August 9, 2022, interest will continue to accrue on HCRE's Second Demand Note at the rate of **$730.34** per day and will increase to **$788.77** per day on **October 12, 2022**.

3. HCRE will owe Highland **$986,472.32** in accrued but unpaid principal and interest due under HCRE's Third Demand Note (issued on October 15, 2018), as of August 8, 2022, after

[1] Capitalized terms not defined herein shall have the meanings ascribed to them in the R&R.

application of all payments to outstanding principal and interest. As of August 9, 2022, interest will continue to accrue on HCRE's Third Demand Note at the rate of **$203.00** per day and will increase to **$219.24** per day on **October 15, 2022**.

4. HCRE will owe Highland **$866,600.77** in accrued but unpaid principal and interest due under HCRE's Fourth Demand Note (issued on September 25, 2019), as of August 8, 2022, after application of all payments to outstanding principal and interest. As of August 9, 2022, interest will continue to accrue under HCRE's Fourth Demand Note at the rate of **$177.60** per day and will increase to **$191.81** per day on **September 25, 2022**.

5. HCRE will owe Highland **$6,196,688.51** in accrued but unpaid principal and interest due under the HCRE Term Note (issued on May 31, 2017), as of August 8, 2022, after application of all payments to outstanding principal and interest. As of August 9, 2022, interest will continue to accrue on the HCRE Term Note at the rate of **$1,337.94** per day and will increase to **$1,444.98** per day on **May 31, 2023**.

6. In addition to the forgoing, and pursuant to the terms of each applicable Note, HCRE shall pay to Highland the amount of **$554,248.69**, which is its *pro rata* allocation (based on the ratio of the outstanding principal and interest owed by HCRE to Plaintiff as of August 8, 2022, to the total principal and interest owed by all Note Maker Defendants to Plaintiff as of August 8, 2022) of the total allocable and actual expenses of collection, including attorneys' fees and costs, incurred by Highland.

7. The amounts set forth to be paid in this Final Judgment shall bear interest, pursuant to 28 U.S.C. § 1961, from the date of the entry of this Final Judgment, at a rate of [ ]%. Interest shall be computed daily to the date of payment, except as provided in 28 U.S.C. § 2516(b) and 31 U.S.C. § 1304(b), and shall be compounded annually.

END OF ORDER # #

PROPOSED ALLOCATION OF ATTORNEYS' FEES AND COSTS

Civ. Act. No.*	Bankr. Adv. #	Note Maker Defendant**	P&I by Note	P&I by Defendant	Attys' Fees Ratio (Def P&I/Tot P&I)	Pro Rata Amt Attys' Fees	Equal Allocation of Attys' Fees to each Def
3:21-cv-1010	21-3003	Dondero	$ 3,873,613.93				
			$ 2,778,356.23				
			$ 2,778,339.88	$ 9,430,310.04	0.158404598	$ 443,074.35	$ 559,421.07
3:21-cv-881	21-3004	HCMFA	$ 2,552,628.61				
			$ 5,317,989.86	$ 7,870,618.47	0.13220585	$ 369,793.69	$ 559,421.07
3:21-cv-880	21-3005	NexPoint	$ 23,389,882.79	$ 23,389,882.79	0.392888988	$ 1,098,951.89	$ 559,421.07
3:21-cv-1378	21-3006	HCMS	$ 166,196.60				
			$ 222,917.23				
			$ 425,435.63				
			$ 159,454.92				
			$ 6,071,718.32	$ 7,045,722.70	0.118349753	$ 331,036.73	$ 559,421.07
3:21-cv-1379	21-3007	HCRE	$ 195,476.70				
			$ 3,551,285.37				
			$ 986,472.32				
			$ 866,600.77				
			$ 6,196,688.51	$ 11,796,523.67	0.198150811	$ 554,248.69	$ 559,421.07
			$ 59,533,057.67	$ 59,533,057.67	1	$ 2,797,105.35	$ 2,797,105.35

*The 5 Proceedings were consolidated at the District Court level under Civ. Act. No. 3:21-cv-881.

**Each of the proceedings (with the exception of 3:21-cv-881, where HCMFA is the only defendant) have additional defendants, but the Proposed Judgments are proposed to be entered against only the identified Note Maker Defendant in each proceeding.

Exhibit F

BTXN 221 (rev. 09/22)

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS

In Re:	§	
Highland Capital Management, L.P.	§	
	§	Case No.: 19−34054−sgj11
Debtor(s)	§	Chapter No.: 11
Highland Capital Management, L.P.	§	
Plaintiff(s)	§	Adversary No.: 21−03007−sgj
vs.	§	
HCRE Partners, LLC (n/k/a NexPoint Real Estate	§	Civil Case No.: Civ. Act. No. 3:21−cv−01379
Partners, LLC) et al.	§	(Consolidated Under Civ. Act. No. 3:21−cv− 00881)
Defendant(s)	§	
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.	§	
Plaintiff(s)	§	
vs.	§	
HCRE PARTNERS, LLC (n/k/a NEXPOINT REAL	§	
ESTATE PARTNERS, LLC), JAMES DONDERO,	§	
NANCY DONDERO AND THE DUGABOY	§	
INVESTMENT TRUST		
Defendant(s)		

NOTICE OF TRANSMITTAL OF REPORT AND RECOMMENDATION

I am transmitting:

One copy of: Supplement to Report and Recommendation Dated July 19, 2022, Transmitting Proposed Forms of Judgment .

DATED: 11/14/22

FOR THE COURT:
Robert P. Colwell, Clerk of Court

by: /s/Sheniqua Whitaker, Deputy Clerk

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

ENTERED

THE DATE OF ENTRY IS ON
THE COURT'S DOCKET

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

Signed November 10, 2022

United States Bankruptcy Judge

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

In re: HIGHLAND CAPITAL MANAGEMENT, L.P. Reorganized Debtor.	Case No. 19-34054-sgj11 Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P., Plaintiff. v. HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, L.P., Defendant.	Adversary No. 21-03004-sgj Civ. Act. No. 3:21-cv-00881
HIGHLAND CAPITAL MANAGEMENT, L.P., Plaintiff. v. NEXPOINT ADVISORS, L.P., JAMES DONDERO, NANCY DONDERO, AND THE DUGABOY INVESTMENT TRUST, Defendants.	Adversary No.: 21-03005-sgj Civ. Act. No. 3:21-cv-00880 **(Consolidated Under Civ. Act. No. 3:21-cv-00881)**

HIGHLAND CAPITAL MANAGEMENT, L.P., Plaintiff. v. JAMES D. DONDERO, NANCY DONDERO, AND THE DUGABOY INVESTMENT TRUST, Defendants.	Adversary No. 21-03003-sgj Civ. Act. No. 3:21-cv-01010 **(Consolidated Under Civ. Act. No. 3:21-cv-00881)**
HIGHLAND CAPITAL MANAGEMENT, L.P., Plaintiff. v. HIGHLAND CAPITAL MANAGEMENT SERVICES, INC., JAMES DONDERO, NANCY DONDERO, AND THE DUGABOY INVESTMENT TRUST, Defendants.	Adversary No.: 21-03006-sgj Civ. Act. No. 3:21-cv-01378 **(Consolidated Under Civ. Act. No. 3:21-cv-00881)**
HIGHLAND CAPITAL MANAGEMENT, L.P., Plaintiff. v. HCRE PARTNERS, LLC (n/k/a NEXPOINT REAL ESTATE PARTNERS, LLC), JAMES DONDERO, NANCY DONDERO AND THE DUGABOY INVESTMENT TRUST, Defendants.	Adversary No.: 21-03007-sgj Civ. Act. No. 3:21-cv-01379 **(Consolidated Under Civ. Act. No. 3:21-cv-00881)**

SUPPLEMENT TO REPORT AND RECOMMENDATION DATED JULY 19, 2022, TRANSMITTING PROPOSED FORMS OF JUDGMENT

I. Introduction and Background

On July 20, 2022, the bankruptcy clerk transmitted this court's *Report and Recommendation to District Court: Court Should Grant Plaintiff's Motion for Partial Summary Judgment Against All Five Note Maker Defendants*[1] *(With Respect to All Sixteen Promissory*

[1] The "Note Maker Defendants"—sometimes collectively referred to simply as the "Defendants"—are: James D. Dondero (Adv. Pro. 21-3003)(Civ. Action No. 3:21-cv-01010); Highland Capital Management Fund Advisors, L.P. (Adv. Pro. 21-3004)(Civ. Action No. 3:21-cv-00881); NexPoint Advisors, L.P. (Adv. Pro. 21-3005)(Civ. Action No.

Notes) in the Above-Referenced Consolidated Note Actions ("R&R MPSJ")[DE # 50][2] for filing in the above-referenced consolidated Civ. Act. No. 3:21-cv-881. In the R&R MPSJ, this court recommended that the District Court enter summary judgment "holding the Note Maker Defendants liable for (a) breach of contract and (b) turnover for all amounts due under the Notes, pursuant to Bankruptcy Code Section 542, including the costs of collection and reasonable attorneys' fees in an amount to be determined." In the last paragraph of the R&R MPSJ, this court directed Plaintiff (Highland) "**to promptly submit a form of Judgment applicable to each Note Maker Defendant that calculates proper amounts due pursuant to this Report and Recommendation, including interest accrued to date (and continuing to accrue per diem), as well as costs and attorneys' fees incurred.**" The court further set forth the procedures for the submission of the proposed forms of judgment and this court's transmittal of such to the District Court for its consideration in connection with the R&R MPSJ:

> **The costs and attorneys' fees calculation shall be separately filed as a Notice with backup documentation attached. The Note Maker Defendants shall have 21 days after the filing of such Notice to file an objection to the reasonableness of the attorneys' fees and costs. The bankruptcy court will thereafter determine the reasonableness in Chambers (unless the bankruptcy court determines that a hearing is necessary) and will promptly submit the form Judgments, along with appropriate attorneys' fees and costs amounts inserted into the form Judgments, to the District Court, to consider along with this Report and Recommendation.**

R&R MPSJ, last para.

3:21-cv-00880); Highland Capital Management Services, Inc. (Adv. Pro. 21-3006)(Civ. Action No. 3:21-cv-01378); and HCRE Partners, LLC, n/k/a NexPoint Real Estate Partners, LLC (Adv. Pro. 21-3007)(Civ. Action No. 3:21-cv-01379).

[2] The R&R MPSJ was entered separately in each of the five underlying adversary proceedings on July 19, 2022 prior to transmittal to the District Court. *See* Adv. Pro. 21-3003 [DE #191], Adv. Pro. 21-3004 [DE #163], Adv. Pro. 21-3005 [DE #207], Adv. Pro. 21-3006 [DE #213], and Adv. Pro. 21-3007 [DE #208].

II. Proposed Forms of Judgment and Notices of Attorneys' Fees and Costs

A. Highland Submits Proposed Forms of Judgment and Notices of Attorneys' Fees and Costs To Be Included Therein

The parties entered into a stipulation (the "Stipulation") regarding the procedures for objecting to the R&R MPSJ in the District Court and for the submission of the proposed forms of judgment and attorneys' fees and costs to the bankruptcy court pursuant to the directive in the R&R MPSJ, which was filed on July 25, 2022, in each of the adversary proceedings[3] and on July 26, 2022, in the District Court.[4] In the Stipulation, the parties agreed and stipulated to a briefing schedule as follows:[5]

1. Plaintiff will file a form of judgment (as described in the R&R) (the "Proposed Judgment") with Notice by August 5, 2022;

2. Defendants will file any objections to the R&R and/or the Proposed Judgment ("Defendants' Objections") by August 23, 2022; [and,]

3. Plaintiff will respond to Defendants' Objections on or before September 27, 2022.

On August 5, 2022, Highland filed its *Declaration of David Klos in Support of Highland Capital Management, L.P.'s Proposed Form of Judgment*,[6] *Notice of Attorneys' Fees Calculation and Backup Documentation* regarding the fees and costs of Pachulski, Stang, Ziehl & Jones, L.L.P. ("PSZ&J"),[7] and *Notice of Attorneys' Fees Calculation and Backup Documentation of Hayward*

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[3] *See* Adv. Pro. 21-3003 [DE #196], Adv. Pro. 21-3004 [DE #168], Adv. Pro. 21-3005 [DE #212], Adv. Pro. 21-3006 [DE #218], and Adv. Pro. 21-3007 [DE #213].

[4] *See* Notice of Stipulation for Objection to Report and Recommendation in Notes Litigation [DE #53].

[5] Stipulation at 4.

[6] *See* Adv. Pro. 21-3003 [DE #199], Adv. Pro. 21-3004 [DE #171], Adv. Pro. 21-3005 [DE #216], Adv. Pro. 21-3006 [DE #221], and Adv. Pro. 21-3007 [DE #216].

[7] *See* Adv. Pro. 21-3003 [DE #197], Adv. Pro. 21-3004 [DE #169], Adv. Pro. 21-3005 [DE #214], Adv. Pro. 21-3006 [DE #219], and Adv. Pro. 21-3007 [DE #214].

PLLC.[8] Highland did not file with the bankruptcy court its proposed forms of judgment (but did upload the proposed form of judgment ("Proposed Judgment(s)") to the bankruptcy court's order processing system in each of the five adversary proceedings).

B. Defendants Object to Proposed Form of Judgment Awarding Attorneys' Fees and Costs

On August 23, 2022, the Defendants filed in the bankruptcy court *Defendants' Objection to Plaintiff's Proposed Form of Judgment Awarding Attorney's Fees and Costs*[9] in which they objected to Highland's proposed form of judgment and to the reasonableness of the attorneys' fees proposed to be included therein ("Proposed Judgment Objection").[10] Defendants objections to the Proposed Judgment fall into one of seven categories:

(1) Mathematical error;

(2) Excessive redaction;

(3) Fees should be limited to breach of contract and turnover claims;

(4) "Unsegregated fees" should be excluded;

(5) Fees attributable to "unsuccessful litigation" should be excluded;

(6) PSZ&J's rates are too high;

(7) The distribution of fees and costs equally among the five Defendants is unreasonable.

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[8] *See* Adv. Pro. 21-3003 [DE #198], Adv. Pro. 21-3004 [DE #170], Adv. Pro. 21-3005 [DE #215], Adv. Pro. 21-3006 [DE #220], and Adv. Pro. 21-3007 [DE #215].

[9] *See* Adv. Pro. 21-3003 [DE #204], Adv. Pro. 21-3004 [DE #173], Adv. Pro. 21-3005 [DE #221], Adv. Pro. 21-3006 [DE #226], and Adv. Pro. 21-3007 [DE #221].

[10] On the same day, the Defendants filed in the District Court *Defendants' Objection to the Bankruptcy Court's Report and Recommendation to the District Court Proposing That It Grant Summary Judgment in Favor of the Plaintiff* ("Objection to R&R MPSJ") [DCT DE #62].

C. Highland Files Motion for Leave to Supplement Backup Documentation with Supplemental Invoices

Defendants allege in the Proposed Judgment Objection that there is a math error ("Alleged Math Error") of $395,996.50, *see* Proposed Judgment Objection at 5-6, and "[t]here may be a small portion of that amount attributable to partially redacted entries for which the total was redacted, making it unduly difficult to decipher," *id.* at 6 n.2. On September 20, 2022, Highland's counsel emailed Defendants' counsel to inform them that there is no Alleged Math Error because: (a) Highland inadvertently omitted from its Backup Documentation the fee invoices for January and February 2022, and (b) some entries were redacted because they referred to tasks unrelated to the Notes Litigation, but the unredacted time should be added up and multiplied by the hourly rate of the applicable timekeeper. Morris Dec. Ex. A.[11] Highland also attached to its email, *inter alia*, the invoices for January and February 2022 (the "Supplemental Invoices"), which total $307,493.50 (and which account for approximately 80% of the Alleged Math Error). Morris Dec. Ex. B and Ex. C, respectively. Highland's counsel offered to stipulate to this issue, advising Defendants' counsel that if they did not respond by noon on Friday, September 23, 2022, Highland would move for leave to supplement the Backup Documentation with the Supplemental Invoices. Morris Dec. Ex. A. Defendants' counsel had not responded as of September 27, 2022, when Highland filed its Motion for Leave, seeking leave of the bankruptcy court to supplement the Backup Documentation with the Supplemental Invoices. Motion for Leave, ¶ 9. On the same day, Highland filed its *Response to Defendants' Objection to Plaintiff's*

[11] References to "Morris Dec." are to the *Declaration of John A. Morris in Support of Highland Capital Management, L.P.'s Motion for Leave to Supplement Backup Documentation in Support of Proposed Judgment*, Adv. Pro. 21-3003 [DE #206], Adv. Pro. 21-3004 [DE #175], Adv. Pro. 21-3005 [DE #223], Adv. Pro. 21-3006 [DE #228], and Adv. Pro. 21-3007 [DE #223], filed in the adversary proceedings in connection with Highland's *Motion for Leave to Supplement Backup Documentation in Support of Proposed Judgment* ("Motion for Leave") filed on September 27, 2022. Adv. Pro. 21-3003 [DE #205], Adv. Pro. 21-3004 [DE #174], Adv. Pro. 21-3005 [DE #222], Adv. Pro. 21-3006 [DE #227], and Adv. Pro. 21-3007 [DE #222].

Proposed Form of Judgment Awarding Attorney's Fees and Costs[12] and its brief in support of its Proposed Form of Judgment Awarding Attorneys' Fees and Costs (together, the "Response").[13]

On October 18, 2022 – 28 days after Defendants' counsel had been provided with copies of the Supplemental Invoices – Defendants filed their *Opposition to Highland Capital Management, L.P.'s Motion for Leave to Supplement Backup Documentation in Support of Proposed Judgment* ("Opposition").[14] Defendants argued that Highland should not be allowed to supplement the Backup Documentation with the Supplemental Invoices because allowing such would cause Defendants to "suffer prejudice." Specifically, Defendants asserted that Highland's failure to include the Supplemental Invoices as part of the original Backup Documentation (a) "has prejudiced Defendants by not allowing Defendants to timely examine the statements for accuracy, duplicity of work, redactions, and other factors relating to a reasonableness and necessity-of-attorney's-fees analysis," (b) gives Highland "two bites at the apple to recover [fees and costs] it never presented to Defendants for examination in the first place," and (c) has caused Defendants to be prejudiced and to suffer "undue surprise because [they were] not afforded an opportunity to examine those statements while [they were] briefing on Plaintiff's originally-provided billing statements." Opposition, ¶ 3.

[12] Adv. Pro. 21-3003 [DE #207], Adv. Pro. 21-3004 [DE #176], Adv. Pro. 21-3005 [DE #224], Adv. Pro. 21-3006 [DE #229], and Adv. Pro. 21-3007 [DE #224].

[13] Adv. Pro. 21-3003 [DE #208], Adv. Pro. 21-3004 [DE #177], Adv. Pro. 21-3005 [DE #225], Adv. Pro. 21-3006 [DE #230], and Adv. Pro. 21-3007 [DE #225].

[14] Adv. Pro. 21-3003 [DE #210], Adv. Pro. 21-3004 [DE #179], Adv. Pro. 21-3005 [DE #227], Adv. Pro. 21-3006 [DE #232], and Adv. Pro. 21-3007 [DE #227].

On October 21, 2022, Highland filed its *Reply in Further Support of Its Motion for Leave to Supplement Backup Documentation in Support of Proposed Judgment* ("Reply").[15] This court considered Highland's Motion for Leave, Defendants' Opposition, and Highland's Reply and, on October 24, 2022, entered orders in each of the adversary proceedings, granting Highland's Motion for Leave, allowing Highland to supplement the Backup Documentation with the Supplemental Invoices.[16]

D. This Court Recommends That the District Court Overrule Defendants' Objections to the Proposed Forms of Judgment Awarding Attorneys' Fees and Costs

This court then turned to its in-chambers review of the Defendants' Proposed Judgment Objection in accordance with the procedures set forth in the "Submission of Judgment" section of its R&R MPSJ. For the following reasons, this court recommends that the District Court overrule each of the objections set forth in Defendants' Proposed Judgment Objection:

1. Objection #1: Mathematical Error

As noted above, Defendants object to the proposed attorneys' fees and costs based on an Alleged Math Error. With leave of court, Highland supplemented the Backup Documentation with two invoices (for January 2022 and February 2022), which accounted for nearly 80% of the Alleged Math Error. The remaining approximately 20% of the Alleged Math Error was attributable to the "partially redacted entries for which the total was redacted" and which Defendants found to be "unduly difficult to decipher." Highland explained that multiplying the time identified in the unredacted portions of the partially redacted entries, only, by the hourly rate

[15] Adv. Pro. 21-3003 [DE #211], Adv. Pro. 21-3004 [DE #180], Adv. Pro. 21-3005 [DE #228], Adv. Pro. 21-3006 [DE #233], and Adv. Pro. 21-3007 [DE #228].

[16] Adv. Pro. 21-3003 [DE #212], Adv. Pro. 21-3004 [DE #181], Adv. Pro. 21-3005 [DE #229], Adv. Pro. 21-3006 [DE #234], and Adv. Pro. 21-3007 [DE #229].

of the identified timekeeper (and totaling the resultant amounts) accounts for the remaining Alleged Math Error, such that there is no math error in the proposed attorneys' fees and costs to be included in the Proposed Judgments. Thus, this court recommends that the District Court overrule this objection to the Proposed Judgments and reasonableness of attorneys' fees and costs to be included therein.

2. *Objection #2: Excessive Redaction*

Defendants contend that fees should not be awarded for "overly redacted" time entries. As set forth in the Morris Declaration (filed in support of the Proposed Judgment(s) and Notices of Attorneys' Fees and Costs), Highland does not seek compensation for any time entry that was redacted; therefore, the court recommends that the district court overrule this objection to the Proposed Judgments and reasonableness of attorneys' fees and costs to be included therein.

3. *Objection #3: Fees Should Be Limited to Breach of Contract and Turnover Claims*

Defendants argue that Plaintiff may only recover fees for the breach of contract and turnover claims in the complaints because those two counts were "the only claims addressed by the R&R issued by the Court," quoting the Texas Supreme Court case, *Tony Cullo Motors I, L.P. v. Chapa*, 212 S.W.3d 299, 311 (Tex. 2006), for the proposition that "Absent a contract or statute, trial courts do not have inherent authority to require a losing party to pay the prevailing party's fees." The *Chapa* case does not support Defendants' objection because the court there held, unremarkably, that because Texas law does not permit recovery for attorneys' fees on a fraud claim and because there was no contract between the parties allowing for such recovery, the trial court's inclusion of attorney fees in the judgment constituted error. Here, the Notes at issue ***do*** provide that Highland is entitled to ***all*** costs of collection, not just those directly incurred on a subset of litigated issues. Specifically, Section 6 of each Note provides:

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

Nothing in Section 6 limits Highland's recovery of "all actual expenses of collection" to only breach of contract and turnover claims, where all of the causes of action and claims asserted in the adversary proceeding were expenses of collecting on the Notes.

Moreover, the Texas Supreme Court in *Varner v. Cardenas*, 218 S.W.3d 68, 69 (Tex. 2007)(citations omitted), which expressly followed *Chapa*, upheld an award of attorneys' fees to the prevailing plaintiff who successfully sued on a promissory note that included fees incurred by the plaintiff in defending against the defendant's counterclaim:[17]

> But we disagree that fees defending against the [defendants'] counterclaim must be segregated too. By asserting a shortfall of acreage as a defense and counterclaim, [defendants] sought to reduce the amount collected on the note; to collect the full amount, [plaintiffs] had to overcome this defense. As their attorney's efforts to that effect were necessary to recover on their contract, they are recoverable.

Here, all of the counts in the amended complaint were included in connection with, and directly related to, Highland's pursuit of recovery on the Notes. All of the time spent by Highland's counsel responding to Defendants' various defenses and litigating the myriad issues that have arisen in these proceedings were incurred in pursuit of, and were necessary to, Highland's recovery on the Notes. Thus, because all of the attorneys' fees and costs submitted by Highland for

[17] *See also In re Arnette*, 2011 WL 3651294, *3 -*4 (Bankr. N.D. Tex. Aug. 18, 2011)(where the bankruptcy court found that fees incurred by plaintiff in plaintiff's successful suit on a note that were incurred to prove plaintiff's (a) fraud claims "contributed directly to the [plaintiff's] efforts to collect and enforce the notes against [the defendant such that] . . . [t]he terms of the notes themselves make these fees recoverable," and (b) § 523 claims "were part and parcel of its efforts to collect and enforce the breach of contract and suit on a note claims[, and, thus,] "fall within the ambit of the recoverable fees under the notes.").

inclusion in the Proposed Judgments were incurred as "actual expenses of collection" on the Notes, they are recoverable by Highland in the Proposed Judgments. For these reasons, this court recommends that the District Court overrule this objection to the Proposed Judgments and reasonableness of attorneys' fees and costs to be included therein.

4. *Objection #4: "Unsegregated fees" Should Be Excluded*

Defendants argue that Highland should not recover fees where counsels' time records did not "segregate" fees among the several Defendants, citing the *Clearview Properties*[18] case. *Clearview Properties* stands for the proposition that a plaintiff seeking an award of fees has the burden of demonstrating that segregation is not required and that a mere assertion that all claims against all defendants arise from common facts can be insufficient to satisfy that burden. Defendants ignore a critical distinction between these adversary proceedings and the *Clearview Properties* case: "*these Adversary Proceedings were consolidated for all purposes*, something to which the Defendants readily agreed." Response, ¶ 15. Early in the proceedings, this court approved a stipulation of the parties providing, among other things:[19]

> The Parties agree that discovery taken in this case will be consolidated with discovery taken in the [ ] [A]dversary [P]roceedings and all discovery in each of the [A]dversary [P]roceedings will be treated as if it was taken in all of the [A]dversary [P]roceedings . . . so that each witness will only need to be deposed once and documents produced in any of the [A]dversary [P]roceedings are usable as if received in every other [P]roceeding.

Highland points out the absurdity of Defendants' argument in its Response,[20]

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[18] *Clearview Properties, L.P. v. Property Texas SC One Corp.*, 287 S.W.3d 132, 144 (Tex.App. – Houston [14th Dist.] 2009).

[19] *See Order Approving Stipulation Governing Discovery and Other Pre-Trial Issues*, at ¶ 4, Adv. Pro. 21-3003 [DE #86], Adv. Pro. 21-3004 [DE #67], Adv. Pro. 21-3005 [DE #70], Adv. Pro. 21-3006 [DE #75], and Adv. Pro. 21-3007 [DE #70].

[20] Response, at ¶ 20.

> The very consolidation that enabled all parties and this Court to enjoy at least some level of litigation efficiency, the very consolidation these Defendants wanted and moved this Court to impose, is now the consolidation Defendants would have this Court utterly ignore in favor of requiring Plaintiff to do the impossible—to segregate fees incurred in fully consolidated proceedings, Defendant by closely-affiliated Defendant, as though there were no consolidation either ordered by this Court or stipulated to by these Defendants. The egg has been thoroughly scrambled for well over a year. Defendants willingly scrambled it, but would now have the prevailing Plaintiff separate yolk from white.

This court agrees that Defendants should not now be heard to complain about the consequences of the very consolidation of these Adversary Proceedings that was done at the behest of all parties, including the Defendants, for the purposes of creating litigation efficiencies (which necessarily benefited all of the Defendants in the end by limiting the total attorneys' fees incurred in connection with the litigation of the consolidated proceedings). Accordingly, this court recommends that the District Court overrule this objection to the Proposed Judgments and reasonableness of attorneys' fees and costs to be included therein.

5. *Objection #5: Fees Attributable to "Unsuccessful Litigation" Should Be Excluded*

In their Proposed Judgment Objection, Defendants argue that a plaintiff cannot recover attorneys' fees for work related to "***claims*** as to which he or she did not prevail," Proposed Judgment Objection, 16 (quoting a Massachusetts federal district court case—*Roggio v. Grasmuck*, 18 F.Supp.3d 49, 56 (D. Mass. 2014)(citing a First Circuit case, *Torres-Rivera v. O'Neill-Cancel*, 524 F.3d 331, 336 (1st Cir. 2008))(emphasis added)). Defendants follow with a "*see also*" citation to the only case cited by the Defendants that would be binding authority: to the Fifth Circuit's *Wal-Mart Stores, Inc. v. Qore, Inc.*, 647 F.3d 237, 246-48 (5th Cir. 2011), for the proposition that Highland must "present evidence by which to allocate its legal fees among successful and unsuccessful ***claims***." *Id.* (emphasis added). Finally, Defendants highlight three pieces of this complex and lengthy litigation as instances in which Highland "did not prevail" and

argue that, under their cited legal "authority," Highland cannot recover fees that are associated with those three pieces of litigation.

Neither the nonbinding authority nor the binding Fifth Circuit authority is applicable to Highland's ability to recover the full amount of the fees requested here. First, the authorities discuss the recoverability under certain circumstances of fees incurred in litigating successful ***claims***, in the sense of causes of action, versus unsuccessful ***claims***, again, in the sense of causes of action, in the same litigation. None of the three litigation instances identified by Defendants as "matters" in which Highland "did not prevail"[21] were separate ***claims*** (or causes of action) being pursued by Highland in the litigation. Rather, they were discrete issues that were litigated in the context of Highland's pursuit of collection on the Notes. And, as noted above, pursuant to the terms of the Notes, Highland is entitled to recover ***all*** expenses of collection, including attorneys' fees and costs. If attorneys' fees were incurred in the course of Highland's efforts to collect on the Notes, those fees are recoverable.

Defendants cite no law that requires a successful plaintiff entitled to ***all*** expenses (including costs and attorneys' fees) of collection on a note to prevail on every motion or issue that is litigated

[21] The three matters in which Defendants assert Highland "did not prevail" were (1) its opposition to Defendants' motion to strike a David Klos declaration; (2) its motion for sanctions that was filed as a part of a single motion seeking two forms of relief: (a) the striking of an argument in opposition to summary judgment that was precluded by a prior court order and (b) sanctions for that conduct; and (3) its efforts to consolidate these proceedings before a different district court judge than who ultimately received these cases. Highland argues that a plaintiff's "uniform success at every small step on the way to complete victory" is not required in order to recover ***all*** fees under the notes and that, even if such were a requirement, the Defendants "mischaracterize all three instances of so-called 'unsuccessful' litigation." Response, ¶ 23. With respect to Highland's opposition to the striking of the David Klos declaration, Highland notes that the Bankruptcy Court granted the motion on the ground that Highland had not sought leave to include the declaration in a reply appendix, and, thus, it "was a simple evidentiary ruling by the court and does not constitute an example of 'unsuccessful litigation.'" *Id.* at ¶ 23(a). With respect to the request for sanctions, Highland argues that it did not "lose" its "motion for sanctions"; rather, Highland prevailed on its motion seeking to strike one of Defendants' arguments in opposition to summary judgment that included a request for sanctions that the Bankruptcy Court did not grant when it granted the motion. *Id.* at ¶ 23(b). Lastly, Highland argues that its efforts to consolidate these proceedings before a different district judge "were good-faith efforts to maximize Plaintiff's chances of success in nascent litigation against a highly-litigious set of foes" that was resolved in a couple of weeks and was not "unreasonable." *Id.* at ¶ 23(c).

in a multi-faceted, multiple-defendant, multi-year, consolidated-for-all-purposes litigation to have "all expenses of collection" awarded as part of the judgment on the note. Defendants' citation to the Fifth Circuit's *Wal-Mart* case is misplaced. In the *Wal-Mart* case, the Fifth Circuit addressed the issue of whether, under Mississippi law, Wal-Mart was entitled to recover from one defendant the full amount of attorneys' fees incurred in its breach of contract and negligence suit against three firms that it had hired to assist with the design and construction of a new store after the jury had awarded damages to Wal-Mart on some, but not all, of its causes of action. After trial, the jury had found that the testing and inspection firm ("Qore") was liable for 10% of the damages to the building along with one of the other defendant firms, which the jury found to be liable for 90% of the damages to the building. *Wal-Mart*, 647 F.3d at 241. The jury also determined that Qore's liability on the damages to the building claim was entirely attributable to its work done under its testing and inspection contract and not under its geotechnical services contract. *Id.* By post-trial motion, Wal-mart sought to recover the entire amount of its fees incurred in the litigation—on all claims, successful and unsuccessful, and against all parties—from Qore. *Id.* The district court granted Wal-Mart's motion subject to a small reduction attributable to an adjustment to the lodestar rate and some excessive billing. *Id.* at 242. Qore appealed the district court's fee award, and asked the Fifth Circuit to vacate it. *Id.* at 242.

The Court first agreed with the district court's finding that a plain reading of an indemnity provision in the testing and inspection contract, which stated that "[Qore] . . . agrees to indemnify and hold Wal-Mart free and harmless from any claim, demand, loss, damage, or injury (including Attorney's fees) caused by any negligent act or omission by [Qore] . . . ," allowed for Wal-Mart's recovery of reasonable fees. *Id.* at 243. Qore contended, though, that "in light of Wal-Mart's multiple claims against multiple parties, only one of which was successful as to Qore, the district

court's fee award should be vacated because Wal-Mart failed to present competent evidence by which to allocate its legal fees among successful and unsuccessful claims as required by Mississippi law" and that "Wal-Mart's recovery is limited to those fees incurred in prosecuting the single claim upon which it prevailed against Qore, i.e., fees spent proving Qore's fractional share of liability on the building repair claim. . . ." *Id.* at 244. The Fifth Circuit agreed with Qore. But, importantly as to why *Wal-Mart* does not support Defendants' objection here, the Fifth Circuit found that "Wal-Mart's recovery should have been limited to those attorney's fees incurred in proving Qore's liability on the building repair claim," *id.* at 245-46, only because the sole basis for Wal-Mart's recovery of attorney's fees against Qore was the contractual indemnity provision, and a plain reading of that provision—that entitled Wal-Mart to reimbursement of attorney's fees "caused by any negligent act or omission" on the part of Qore—limited Qore's duty to reimburse Wal-Mart for its reasonable attorney's fees "to those fees proximately and legally 'caused by' Qore's negligence." *Id.* at 245.

Here, to repeat a theme throughout this supplemental report and recommendation, all of the Notes that were the subject of this litigation and the Proposed Judgments provide that Highland is entitled to recover "***all*** actual expenses of collection" on the Notes, including "all court costs and reasonable attorneys' fees incurred by the holder hereof." (emphasis added). There is no limitation to the phrase "all actual expenses of collection" that is similar to the language in the contract in the *Wal-Mart* case that limited Wal-Mart's recovery of fees to those fees "caused by" Qore's negligence. The attorneys' fees sought by Highland were all expenses incurred in the collection of the Notes in these consolidated proceedings in which Highland was successful against all of the Defendants identified in the Proposed Judgments and from whom Highland seeks recovery of reasonable attorneys' fees and costs. In the *Wal-Mart* case, the defendants were

unaffiliated, the plaintiff did *not* prevail against all the defendants, and there was no mention of the type of deep consolidation of all proceedings in that litigation that has occurred in these Adversary Proceedings (at the behest and agreement of all of the parties to this litigation, including the Defendants). For these reasons, this court recommends that the District Court overrule this objection to the Proposed Judgments and reasonableness of attorneys' fees and costs to be included therein.

6. Objection #6: PSZJ's's Rates Are Too High

Defendants argue that PSZJ's rates are unreasonably high because they exceed the rates charged by local firms for similar services. This court has already approved PSZJ's rates as reasonable under § 330 and under the applicable standard originally announced by the Fifth Circuit in *Johnson*.[22] In addition, Mr. Dondero, when he controlled Highland, personally hired PSZJ to be bankruptcy counsel for Highland and "agreed, in writing, to the very fee structure and rates (albeit with disclosed, annual increases customary in the industry) he now complains about." *See* Response, ¶ 25. This court recommends that the District Court overrule this objection to the Proposed Judgments and reasonableness of attorneys' fees and costs to be included therein.

7. Objection #7: The Distribution of Fees and Costs Among Defendants Is Unreasonable

Defendants assert that Highland's proposed distribution of awarded fees among the five Defendants "is unreasonable because it arbitrarily advocates for a distribution of the fees among the five Defendants equally (one-fifth each) regardless of the amount of the proposed judgment

[22] *See* Bankr. Case No. 19-34054-sgj11, *Fifth and Final Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP* [BC DE #2906], at 37–39 (describing how PSZJ's fees satisfied the *Johnson* factors—*see Johnson v. Ga. Highway Express, Inc.*, 488 F.2d 714 (5th Cir. 1974)); *Order Granting Fifth and Final Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP* [BC DE #3055].

against each Defendant and their involvement in the case." Proposed Judgment Objection, 21. In response, Highland indicates that it "is indifferent and has no objection if Defendants would rather allocate Plaintiff's fees and costs *pro rata*, based on the ratio of the outstanding principal and interest owed by each Obligor to the total principal and interest owed by all Obligors." Response, ¶ 27. Thus, without deciding whether an equal allocation among Defendants of attorneys' fees and costs is improper in these adversary proceedings, this court recommends to the District Court that the provision in each of the Proposed Judgments that allocates to each Defendant "one-fifth of the total allocable and actual expenses of collection, including attorneys' fees and costs, incurred by Highland," be replaced with an actual allocated amount of the fees and costs, which is a *pro rata* allocation based on the ratio of the outstanding principal and interest owed by each Note Maker Defendant to the total principal and interest owed by all Note Maker Defendants under the Proposed Judgments.

III. Submission of Proposed Forms of Judgment to District Court

Having considered the Proposed Judgment in each of the adversary proceedings and the Notices and Backup Documentation (as supplemented by Highland) regarding the attorneys' fees and costs to be inserted into each Proposed Judgment; Defendants' Proposed Judgment Objection; and Highland's Response; and for the reasons set forth herein, this court hereby supplements its R&R MPSJ and recommends to the District Court that it, after consideration of the R&R MPSJ and this supplemental report and recommendation, enter the applicable Proposed Judgment (as modified to reflect a *pro rata* allocation of attorneys' fees and costs based on the ratio of the outstanding principal and interest owed by each Note Maker Defendant to the total principal and interest owed by all Note Maker Defendants) in each of the five adversary proceedings that are hereby transmitted as exhibits hereto. The proposed forms of judgment in

Adv. Proc. No. 21-3003, Adv. Proc. No. 21-3004, Adv. Proc. No. 21-3005, Adv. Proc. No. 21-3006, and Adv. Proc. No. 21-3007 are attached hereto as **Exhibits A-E**, respectively.[23]

End of Supplement to Report and Recommendation

[23] A spreadsheet showing this court's calculation of the proposed allocation of attorneys' fees and costs to each Note Maker Defendant is attached hereto as **Exhibit F**.

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

IN RE HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	Bankr. Case No. 19-34054-sgj11
Reorganized Debtor.	§	
HIGLAND CAPITAL MANAGEMENT, L.P.,	§	Adv. Pro. No. 21-3003-sgj
Plaintiff,	§	Civ. Act. No. 3:21-cv-1010-X
JAMES DONDERO, NANCY DONDERO, and THE DUGABOY INVESTMENT TRUST,	§	**(Consolidated under Civ. Act. No. 3:21-cv-881-X)**
Defendants.	§	

PROPOSED FORM OF JUDGMENT

This matter having come before the Court on the *Motion for Partial Summary Judgment in Notes Actions* (the "Motion") filed by Highland Capital Management, L.P. ("Highland" or "Plaintiff"), the reorganized debtor in the above-captioned chapter 11 case and plaintiff in the above-referenced adversary proceeding; and the Court having considered (a) Highland's Motion and all arguments and evidence admitted into the record in support of the Motion, (b) all responses and objections to the Motion and all arguments and evidence admitted into the record in support of such responses and objections, and the arguments presented by counsel during the hearing held on April 20, 2022, on the Motion (the

Exhibit A

"Hearing"); and for the reasons set forth in the *Report and Recommendation to District Court: Court Should Grant Plaintiff's Motion for Partial Summary Judgment Against All Five Note Maker Defendants (With Respect to All Sixteen Promissory Notes) in the Above-Referenced Consolidated Note Actions* ("R&R") filed by the Bankruptcy Court on July 19, 2022, and the *Supplement to Report and Recommendation Dated July 19, 2022, Transmitting Proposed Forms of Judgment*; the Court hereby enters the following final judgment (the "Final Judgment").

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that Plaintiff recover the following:

1. Mr. James Dondero ("Mr. Dondero") will owe Highland **$3,873,613.93** in accrued but unpaid principal and interest due under Dondero's First Note[1] (issued on February 2, 2018) as of August 8, 2022, after application of all payments to outstanding principal and interest. As of August 9, 2022, interest will continue to accrue on the First Dondero Note at the rate of **$278.50** per day and will increase to **$285.91** per day on **February 2, 2023**.

2. Mr. Dondero will owe Highland **$2,778,356.23** in accrued but unpaid principal and interest due under Dondero's Second Note (issued on August 1, 2018) as of August 8, 2022, after application of all payments to outstanding principal and interest. As of August 9, 2022, interest will continue to accrue on Dondero's Second Note at the rate of **$224.43** per day and will increase to **$231.05** per day on **August 1, 2023**.

3. Mr. Dondero will owe Highland **$2,778,339.88** in accrued but unpaid principal and interest due under Dondero's Third Note (issued on August 13, 2018) as of August 8, 2022, after application of all payments to outstanding principal and interest. As of August 9, 2022, interest will continue to accrue on Dondero's Third Note at the rate of **$218.20** per day and will increase to **$224.64** per day on **August 13, 2022**.

[1] Capitalized terms not defined herein shall have the meanings ascribed to them in the R&R.

4. In addition to the forgoing, and pursuant to the terms of each applicable Note, Mr. Dondero shall pay to Highland the amount of **$443,074.35**, which is his *pro rata* allocation (based on the ratio of the outstanding principal and interest owed by Mr. Dondero to Plaintiff as of August 8, 2022, to the total principal and interest owed by all Note Maker Defendants to Plaintiff as of August 8, 2022) of the total allocable and actual expenses of collection, including attorneys' fees and costs, incurred by Highland.

5. The amounts set forth to be paid in this Final Judgment shall bear interest, pursuant to 28 U.S.C. § 1961, from the date of the entry of this Final Judgment, at a rate of [ ]%. Interest shall be computed daily to the date of payment, except as provided in 28 U.S.C. § 2516(b) and 31 U.S.C. § 1304(b), and shall be compounded annually.

END OF ORDER # #

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

IN RE HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	Bankr. Case No. 19-34054-sgj11
Reorganized Debtor.	§	
	§	
HIGLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	Adv. Pro. No. 21-3004-sgj
Plaintiff,	§	
	§	Civ. Act. No. 3:21-cv-881-X
HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, L.P.,	§	
	§	
Defendants.	§	
	§	

PROPOSED FORM OF JUDGMENT

This matter having come before the Court on the *Motion for Partial Summary Judgment in Notes Actions* (the "Motion") filed by Highland Capital Management, L.P. ("Highland" or "Plaintiff"), the reorganized debtor in the above-captioned chapter 11 case and plaintiff in the above-referenced adversary proceeding; and the Court having considered (a) Highland's Motion

Exhibit B

and all arguments and evidence admitted into the record in support of the Motion, (b) all responses and objections to the Motion and all arguments and evidence admitted into the record in support of such responses and objections, and the arguments presented by counsel during the hearing held on April 20, 2022, on the Motion; and for the reasons set forth in the *Report and Recommendation to District Court: Court Should Grant Plaintiff's Motion for Partial Summary Judgment Against All Five Note Maker Defendants (With Respect to All Sixteen Promissory Notes) in the Above-Referenced Consolidated Note Actions* ("R&R") filed by the Bankruptcy Court on July 19, 2022, and the *Supplement to Report and Recommendation Dated July 19, 2022, Transmitting Proposed Forms of Judgment*; the Court hereby enters the following final judgment (the "Final Judgment").

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that Plaintiff recover the following:

1. Highland Capital Management Fund Advisors, L.P. ("HCMFA") will owe Highland **$2,552,628.61** in accrued but unpaid principal and interest due under HCMFA's First Note[1] (issued on May 2, 2019), as of August 8, 2022, after application of all payments to outstanding principal and interest. As of August 9, 2022, interest will continue to accrue on HCMFA's First Note at the rate of **$166.08** per day and will increase to **$170.05** per day on **May 2, 2023.**

2. HCMFA will owe Highland **$5,317,989.86** in accrued but unpaid principal and interest due under HCMFA's Second Note (issued on May 3, 2019), as of August 8, 2022, after application of all payments to outstanding principal and interest. As of August 9, 2022, interest will continue to accrue on HCMFA's Second Note at the rate of **$346.02** per day and will increase to **$354.29** per day on **May 3, 2023.**

[1] Capitalized terms not defined herein shall have the meanings ascribed to them in the R&R.

3. In addition to the forgoing, and pursuant to the terms of each applicable Note, HCMFA shall pay to Highland the amount of **$369,793.69**, which is its *pro rata* allocation (based on the ratio of the outstanding principal and interest owed by HCMFA to Plaintiff as of August 8, 2022, to the total principal and interest owed by all Note Maker Defendants to Plaintiff as of August 8, 2022) of the total allocable and actual expenses of collection, including attorneys' fees and costs, incurred by Highland.

4. The amounts set forth to be paid in this Final Judgment shall bear interest, pursuant to 28 U.S.C. § 1961, from the date of the entry of this Final Judgment, at a rate of [ ]%. Interest shall be computed daily to the date of payment, except as provided in 28 U.S.C. § 2516(b) and 31 U.S.C. § 1304(b), and shall be compounded annually.

END OF ORDER # #

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

IN RE HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	Bankr. Case No. 19-34054-sgj11
Reorganized Debtor.	§	
HIGLAND CAPITAL MANAGEMENT, L.P.,	§	Adv. Pro. No. 21-3005-sgj
Plaintiff,	§	Civ. Act. No. 3:21-cv-880-X
NEXPOINT ADVISORS, L.P., JAMES DONDERO, ADVISORS, L.P., NANCY DONDERO, and THE DUGABOY INVESTMENT TRUST	§	**(Consolidated under Civ. Act. No. 3:21-cv-881-X)**
Defendants.	§	

PROPOSED FORM OF JUDGMENT

This matter having come before the Court on the *Motion for Partial Summary Judgment in Notes Actions* (the "Motion") filed by Highland Capital Management, L.P. ("Highland" or "Plaintiff"), the reorganized debtor in the above-captioned chapter 11 case and plaintiff in the above-referenced adversary proceeding; and the Court having considered (a) Highland's Motion and all arguments and evidence admitted into the record in support of the Motion, (b) all responses and objections to the Motion and all arguments and evidence admitted into the record in support of such responses and objections, and the arguments presented by counsel during the hearing held on April 20, 2022, on the Motion; and for

Exhibit C

the reasons set forth in the *Report and Recommendation to District Court: Court Should Grant Plaintiff's Motion for Partial Summary Judgment Against All Five Note Maker Defendants (With Respect to All Sixteen Promissory Notes) in the Above-Referenced Consolidated Note Actions* (the "R&R") filed by the Bankruptcy Court on July 19, 2022, and the *Supplement to Report and Recommendation Dated July 19, 2022, Transmitting Proposed Forms of Judgment*; the Court hereby enters the following final judgment (the "Final Judgment").

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that Plaintiff recover the following:

1. NexPoint Advisors, L.P. ("NexPoint") will owe Highland **$23,389,882.79** in accrued but unpaid principal and interest due under the NexPoint Term Note[1] (issued on May 31, 2017), as of August 8, 2022, after application of all payments to outstanding principal and interest. As of August 9, 2022, interest will continue to accrue on the NexPoint Term Note at the rate of **$3,801.79** per day and will increase to **$4,029.90** per day on **May 31, 2023.**

2. In addition to the forgoing, and pursuant to the terms of each the Note, NexPoint shall pay to Highland the amount of **$1,098,951.89**, which is its *pro rata* allocation (based on the ratio of the outstanding principal and interest owed by NexPoint to Plaintiff as of August 8, 2022, to the total principal and interest owed by all Note Maker Defendants to Plaintiff as of August 8, 2022) of the total allocable and actual expenses of collection, including attorneys' fees and costs, incurred by Highland.

3. The amounts set forth to be paid in this Final Judgment shall bear interest, pursuant to 28 U.S.C. § 1961, from the date of the entry of this Final Judgment, at a rate of [ ]%. Interest shall be computed daily to the date of payment, except as provided in 28 U.S.C. § 2516(b) and 31 U.S.C. § 1304(b), and shall be compounded annually.

END OF ORDER # #

[1] Capitalized terms not defined herein shall have the meanings ascribed to them in the R&R.

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

IN RE HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	Bankr. Case No. 19-34054-sgj11
Reorganized Debtor.	§	
	§	
HIGLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	Adv. Pro. No. 21-3006-sgj
Plaintiff,	§	
	§	Civ. Act. No. 3:21-cv-1378-X
HIGHLAND CAPITAL MANAGEMENT SERVICES, INC., JAMES DONDERO, NANCY DONDERO, and THE DUGABOY INVESTMENT TRUST	§	**(Consolidated under Civ. Act. No. 3:21-cv-881-X)**
	§	
Defendants.	§	
	§	

PROPOSED FORM OF JUDGMENT

This matter having come before the Court on the *Motion for Partial Summary Judgment in Notes Actions* (the "Motion") filed by Highland Capital Management, L.P. ("Highland" or "Plaintiff"), the reorganized debtor in the above-captioned chapter 11 case and plaintiff in the above-referenced adversary proceeding; and the Court having considered (a) Highland's Motion and

Exhibit D

all arguments and evidence admitted into the record in support of the Motion, (b) all responses and objections to the Motion and all arguments and evidence admitted into the record in support of such responses and objections, and the arguments presented by counsel during the hearing held on April 20, 2022, on the Motion; and for the reasons set forth in the *Report and Recommendation to District Court: Court Should Grant Plaintiff's Motion for Partial Summary Judgment Against All Five Note Maker Defendants (With Respect to All Sixteen Promissory Notes) in the Above-Referenced Consolidated Note Actions* (the "R&R") filed by the Bankruptcy Court on July 19, 2022, and the *Supplement to Report and Recommendation Dated July 19, 2022, Transmitting Proposed Forms of Judgment*; the Court hereby enters the following final judgment (the "Final Judgment").

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that Plaintiff recover the following:

1. Highland Capital Management Services, Inc. ("HCMS") will owe Highland **$166,196.60** in accrued but unpaid principal and interest due under HCMS's First Demand Note[1] (issued on March 28, 2018), as of August 8, 2022, after application of all payments to outstanding principal and interest. As of August 9, 2022, interest will continue to accrue on HCMS's First Demand Note at the rate of **$12.98** per day and will increase to **$13.35** per day on **March 26, 2023.**

2. HCMS will owe Highland **$222,917.23** in accrued but unpaid principal and interest due under HCMS's Second Demand Note (issued on June 25, 2018), as of August 8, 2022, after application of all payments to outstanding principal and interest. As of August 9, 2022, interest will continue to accrue on HCMS's Second Demand Note at the rate of **$18.56** per day and will increase to **$19.13** per day on **June 25, 2023.**

3. HCMS will owe Highland **$425,435.63** in accrued but unpaid principal and interest due under HCMS's Third Demand Note (issued on May 29, 2019), as of August 8, 2022, after

[1] Capitalized terms not defined herein shall have the meanings ascribed to them in the R&R.

application of all payments to outstanding principal and interest. As of August 9, 2022, interest will continue to accrue under HCMS's Third Demand Note at the rate of **$27.73** per day and will increase to **$28.39** per day on **May 29, 2023**.

4. HCMS will owe Highland **$159,454.92** in accrued but unpaid principal and interest due under HCMS's Fourth Demand Note (issued on June 26, 2019), as of August 8, 2022, after application of all payments to outstanding principal and interest. As of August 9, 2022, interest will continue to accrue on HCMS's Fourth Demand Note at the rate of **$10.32** per day and will increase to **$10.57** per day on **June 26, 2023**.

5. HCMS will owe Highland **$6,071,718.32** in accrued but unpaid principal and interest due under the HCMS Term Note (issued on May 31, 2017), as of August 8, 2022, after application of all payments to outstanding principal and interest. As of August 9, 2022, interest will continue to accrue on the HCMS Term Note at the rate of **$455.09** per day and will increase to **$467.61** per day on **May 31, 2023**.

6. In addition to the forgoing, and pursuant to the terms of each applicable Note, HCMS shall pay to Highland the amount of **$331,036.73**, which is its *pro rata* allocation (based on the ratio of the outstanding principal and interest owed by HCMS to Plaintiff as of August 8, 2022, to the total principal and interest owed by all Note Maker Defendants to Plaintiff as of August 8, 2022) of the total allocable and actual expenses of collection, including attorneys' fees and costs, incurred by Highland.

7. The amounts set forth to be paid in this Final Judgment shall bear interest, pursuant to 28 U.S.C. § 1961, from the date of the entry of this Final Judgment, at a rate of [ ]%. Interest shall be computed daily to the date of payment, except as provided in 28 U.S.C. § 2516(b) and 31 U.S.C. § 1304(b), and shall be compounded annually.

END OF ORDER # #

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

IN RE HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	Bankr. Case No. 19-34054-sgj11
Reorganized Debtor.	§	
HIGLAND CAPITAL MANAGEMENT, L.P.,	§	Adv. Pro. No. 21-3007-sgj
Plaintiff,	§	Civ. Act. No. 3:21-cv-1379-X
HCRE PARTNERS, LLC (n/k/a NEXPOINT REAL REAL ESTATE PARTNERS, LLC)., JAMES DONDERO, NANCY DONDERO, and THE DUGABOY INVESTMENT TRUST	§	**(Consolidated under Civ. Act. No. 3:21-cv-881-X)**
Defendants.	§	

PROPOSED FORM OF JUDGMENT

This matter having come before the Court on the *Motion for Partial Summary Judgment in Notes Actions* (the "Motion") filed by Highland Capital Management, L.P. ("Highland" or "Plaintiff"), the reorganized debtor in the above-captioned chapter 11 case and plaintiff in the above-referenced adversary proceeding; and the Court having considered (a) Highland's Motion and all arguments and evidence admitted into the record in support of the Motion, (b) all responses and objections to the Motion

Exhibit E

and all arguments and evidence admitted into the record in support of such responses and objections, and the arguments presented by counsel during the hearing held on April 20, 2022, on the Motion; and for the reasons set forth in the *Report and Recommendation to District Court: Court Should Grant Plaintiff's Motion for Partial Summary Judgment Against All Five Note Maker Defendants (With Respect to All Sixteen Promissory Notes) in the Above-Referenced Consolidated Note Actions* (the "R&R") filed by the Bankruptcy Court on July 19, 2022, and the *Supplement to Report and Recommendation Dated July 19, 2022, Transmitting Proposed Forms of Judgment*; the Court hereby enters the following final judgment (the "Final Judgment").

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that Plaintiff recover the following:

1. HCRE Partners, LLC (n/k/a NexPoint Real Estate Partners, LLC) ("HCRE") will owe Highland **$195,476.70** in accrued but unpaid principal and interest due under HCRE's First Demand Note[1] (issued on November 27, 2013), as of August 8, 2022, after application of all payments to outstanding principal and interest. As of August 9, 2022, interest will continue to accrue on HCRE's First Demand Note at the rate of **$40.58** per day and will increase to **$43.83** per day on **November 27, 2022**.

2. HCRE will owe Highland **$3,551,285.37** in accrued but unpaid principal and interest due under HCRE's Second Demand Note (issued on October 12, 2017), as of August 8, 2022, after application of all payments to outstanding principal and interest. As of August 9, 2022, interest will continue to accrue on HCRE's Second Demand Note at the rate of **$730.34** per day and will increase to **$788.77** per day on **October 12, 2022**.

3. HCRE will owe Highland **$986,472.32** in accrued but unpaid principal and interest due under HCRE's Third Demand Note (issued on October 15, 2018), as of August 8, 2022, after

[1] Capitalized terms not defined herein shall have the meanings ascribed to them in the R&R.

application of all payments to outstanding principal and interest. As of August 9, 2022, interest will continue to accrue on HCRE's Third Demand Note at the rate of **$203.00** per day and will increase to **$219.24** per day on **October 15, 2022**.

4. HCRE will owe Highland **$866,600.77** in accrued but unpaid principal and interest due under HCRE's Fourth Demand Note (issued on September 25, 2019), as of August 8, 2022, after application of all payments to outstanding principal and interest. As of August 9, 2022, interest will continue to accrue under HCRE's Fourth Demand Note at the rate of **$177.60** per day and will increase to **$191.81** per day on **September 25, 2022**.

5. HCRE will owe Highland **$6,196,688.51** in accrued but unpaid principal and interest due under the HCRE Term Note (issued on May 31, 2017), as of August 8, 2022, after application of all payments to outstanding principal and interest. As of August 9, 2022, interest will continue to accrue on the HCRE Term Note at the rate of **$1,337.94** per day and will increase to **$1,444.98** per day on **May 31, 2023**.

6. In addition to the forgoing, and pursuant to the terms of each applicable Note, HCRE shall pay to Highland the amount of **$554,248.69**, which is its *pro rata* allocation (based on the ratio of the outstanding principal and interest owed by HCRE to Plaintiff as of August 8, 2022, to the total principal and interest owed by all Note Maker Defendants to Plaintiff as of August 8, 2022) of the total allocable and actual expenses of collection, including attorneys' fees and costs, incurred by Highland.

7. The amounts set forth to be paid in this Final Judgment shall bear interest, pursuant to 28 U.S.C. § 1961, from the date of the entry of this Final Judgment, at a rate of [ ]%. Interest shall be computed daily to the date of payment, except as provided in 28 U.S.C. § 2516(b) and 31 U.S.C. § 1304(b), and shall be compounded annually.

END OF ORDER # #

PROPOSED ALLOCATION OF ATTORNEYS' FEES AND COSTS

Civ. Act. No.*	Bankr. Adv. #	Note Maker Defendant**	P&I by Note	P&I by Defendant	Attys' Fees Ratio (Def P&I/Tot P&I)	Pro Rata Amt Attys' Fees	Equal Allocation of Attys' Fees to each Def
3:21-cv-1010	21-3003	Dondero	$ 3,873,613.93				
			$ 2,778,356.23				
			$ 2,778,339.88	$ 9,430,310.04	0.158404598	$ 443,074.35	$ 559,421.07
3:21-cv-881	21-3004	HCMFA	$ 2,552,628.61				
			$ 5,317,989.86	$ 7,870,618.47	0.13220585	$ 369,793.69	$ 559,421.07
3:21-cv-880	21-3005	NexPoint	$ 23,389,882.79	$ 23,389,882.79	0.392888988	$ 1,098,951.89	$ 559,421.07
3:21-cv-1378	21-3006	HCMS	$ 166,196.60				
			$ 222,917.23				
			$ 425,435.63				
			$ 159,454.92				
			$ 6,071,718.32	$ 7,045,722.70	0.118349753	$ 331,036.73	$ 559,421.07
3:21-cv-1379	21-3007	HCRE	$ 195,476.70				
			$ 3,551,285.37				
			$ 986,472.32				
			$ 866,600.77				
			$ 6,196,688.51	$ 11,796,523.67	0.198150811	$ 554,248.69	$ 559,421.07
			$ 59,533,057.67	$ 59,533,057.67	1	$ 2,797,105.35	$ 2,797,105.35
	*The 5 Proceedings were consolidated at the District Court level under Civ. Act. No. 3:21-cv-881.						
	**Each of the proceedings (with the exception of 3:21-cv-881, where HCMFA is the only defendant) have additional defendants,						
	but the Proposed Judgments are proposed to be entered against only the identified Note Maker Defendant in each proceeding.						

Exhibit F

PACHULSKI STANG ZIEHL & JONES LLP
Jeffrey N. Pomerantz (CA Bar No. 143717) (*admitted pro hac vice*)
John A. Morris (NY Bar No. 2405397) (*admitted pro hac vice*)
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Counsel for Highland Capital Management, L.P.

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

HIGHLAND CAPITAL MANAGEMENT, L.P., Plaintiff, vs. JAMES DONDERO, NANCY DONDERO, AND THE DUGABOY INVESTMENT TRUST, Defendants.	§ § § § § § § § § § § § §	Adv. Proc. No. 21-03003-sgj Case No. 3:21-cv-00881-X

HIGHLAND CAPITAL MANAGEMENT, L.P., Plaintiff, vs. HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, L.P., Defendant.	§ § § § § § § § § § § § § §	Adv. Proc. No. 21-03004-sgj Case No. 3:21-cv-00881-X
HIGHLAND CAPITAL MANAGEMENT, L.P., Plaintiff, vs. NEXPOINT ADVISORS, L.P., JAMES DONDERO, NANCY DONDERO, AND THE DUGABOY INVESTMENT TRUST, Defendants.	§ § § § § § § § § § § § §	Adv. Proc. No. 21-03005-sgj Case No. 3:21-cv-00881-X
HIGHLAND CAPITAL MANAGEMENT, L.P., Plaintiff, vs. HIGHLAND CAPITAL MANAGEMENT SERVICES, INC., JAMES DONDERO, NANCY DONDERO, AND THE DUGABOY INVESTMENT TRUST, Defendants.	§ § § § § § § § § § § § §	Adv. Proc. No. 21-03006-sgj Case No. 3:21-cv-00881-X

HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	
	§	Adv. Proc. No. 21-03007-sgj
Plaintiff,	§	
	§	
vs.	§	
	§	Case No. 3:21-cv-00881-X
HCRE PARTNERS, LLC (n/k/a NexPoint Real Estate Partners, LLC), JAMES DONDERO, NANCY DONDERO, AND THE DUGABOY INVESTMENT TRUST,	§	
	§	
	§	
	§	
	§	
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Defendants.	§	

HIGHLAND CAPITAL MANAGEMENT, L.P.'S OBJECTION TO DEFENDANTS' MOTION FOR LEAVE TO SUPPLEMENT THEIR ARGUMENT AGAINST PLAINTIFFS' SUPPLEMENTED NOTICE OF ATTORNEYS' FEES

Highland Capital Management, L.P. ("Highland"), by and through its undersigned counsel, hereby files this objection (the "Objection") to *Defendants' Motion for Leave to Supplement Their Argument Against Plaintiffs' Supplemented Notice of Attorneys' Fees* (the "Motion").[1] In support of its Objection, Highland states as follows:

PRELIMINARY STATEMENT[2]

1. In light of the Supplemental Motion Order and the Supplemental R&R recently entered by this Court, Defendants' objections in their Motion are arguably moot. However, to avoid the inevitable appeal on procedural grounds, Highland respectfully requests that the Court grant the Motion and overrule the objections on the merits in order to conserve judicial resources and limit (to some modest degree) the expenses Highland is needlessly being forced to incur.

[1] *See* Adv. Pro. No. 21-03003 at Docket No. 216; Adv. Pro. No. 21-03004 at Docket No. 185; Adv. Pro. No. 21-03005 at Docket No. 233; Adv. Pro. No. 21-03006 at Docket No. 238; and Adv. Pro. No. 21-03007 at Docket No. 233.

[2] Capitalized terms not defined in this Preliminary Statement shall have the meanings ascribed to them below.

2. Defendants identify two primary grievances: (a) PSZJ's rates are allegedly too high and (b) a PSZJ associate (Hayley Winograd) and legal assistant (La Asia Canty) inefficiently analyzed two motions and drafted Highland's responsive briefs and appendices. These feigned grievances are as outrageous as they are meritless.

3. The reasonableness of PSZJ's rates has been litigated and decided twice already. As a reminder, Mr. Dondero controls all of the Defendants and personally hired PSZJ three years ago to represent Highland with full knowledge of its rates. Moreover, a review of the docket in this case and others also demonstrates that PSZJ's rates are comparable with its Dallas-based competitors and have been approved in other cases pending in this District. Defendants' complaint concerning PSZJ's rates should be rejected for the third time.

4. Defendants' criticisms of PSZJ's time entries are equally meritless. In two short paragraphs, Defendants impugn Ms. Winograd and Ms. Canty by criticizing the time it took them to review Defendants' lengthy (but procedurally improper) motions and prepare draft responses and appendices. As shown below, the scope of the services provided establishes that Ms. Winograd and Ms. Canty were extraordinarily efficient. Of course, Defendants fail to suggest how much time they believe it should have taken Ms. Winograd and Ms. Canty to complete their work, nor did they present their own lawyers' time records for comparison. Instead, Defendants crassly toss out brief and conclusory allegations and force Highland to respond.

5. In order to move this process forward, the Motion should be granted but Defendants' "objections" to the Supplemental Invoices should be overruled on the merits.

OBJECTION

A. Procedural Background

6. On September 20, 2022, Highland, through counsel, informed Defendants[3] of the inadvertent omission of two invoices (out of dozens) (the "Supplemental Invoices") supporting Highland's request for legal fees and expenses in the Notes litigation. After Defendants ignored Highland's e-mail, Highland filed a motion to supplement on September 27, 2022 (the "Supplemental Motion").[4]

7. On October 18, 2022, Defendants filed their opposition to the Supplemental Motion[5] arguing they were prejudiced by Highland's omission of the Supplemental Invoices but declining to challenge the Supplemental Invoices on the merits.[6]

8. On October 24, 2022, this Court overruled Defendants' objections and entered an order granting the Supplemental Motion (the "Supplemental Motion Order").[7]

9. On November 2, 2022, Defendants filed this Motion for the ostensible purpose of preserving their appellate rights and to lob a few needless of spurious objections.[8]

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[3] "Defendants" means, collectively, James Dondero, Highland Capital Management Fund Advisors, L.P. ("HCMFA"), NexPoint Advisors, L.P. ("NexPoint"), Highland Capital Management Services, Inc. ("HCMS"), and NexPoint Real Estate Partners, LLC, f/k/a HCRE Partners, LLC ("HCRE").

[4] *See Highland Capital Management, L.P.'s Motion for Leave to Supplement Backup Documentation in Support of Proposed Judgment* filed in Adv. Pro. No. 21-03003 at Docket No. 205; Adv. Pro. No. 21-03004 at Docket No. 174; Adv. Pro. No. 21-03005 at Docket No. 222; Adv. Pro. No. 21-03006 at Docket No. 227; and Adv. Pro. No. 21-03007 at Docket No. 222.

[5] *See* Adv. Pro. No. 21-03003 at Docket No. 210; Adv. Pro. No. 21-03004 at Docket No. 179; Adv. Pro. No. 21-03005 at Docket No. 227; Adv. Pro. No. 21-03006 at Docket No. 232; and Adv. Pro. No. 21-03007 at Docket No. 227.

[6] In their Motion, Defendants assert that they "could not formally comment on invoices ***which had not yet been admitted into evidence***." Motion at 3 (emphasis in original). But that's not what they said in their opposition to the Supplemental Motion where they simply (and implausibly) complained that 28 days was not enough time to review two invoices. *See, e.g.,* Adv. Pro. No. 21-03003 at Docket No. 210 at 4. Defendants' assertion is also contradicted by the Motion itself: Defendants did not wait for the Court to grant their motion for leave to supplement before addressing the merits. Defendants could have, and should have, presented their objections in opposition to the Supplemental Motion. But enough. The Court should grant the Motion and overrule the "objections" on the merits.

[7] *See* Adv. Pro. No. 21-03003 at Docket No. 212; Adv. Pro. No. 21-03004 at Docket No. 181; Adv. Pro. No. 21-03005 at Docket No. 229; Adv. Pro. No. 21-03006 at Docket No. 234; and Adv. Pro. No. 21-03007 at Docket No. 229.

[8] Motion at 3, n.3.

B. Defendants' Third Challenge to PSZJ's Rates is—like the others—Meritless

10. Defendants' first complaint is that Highland's primary counsel, Pachulski Stang Ziehl & Jones LLP ("PSZJ"), allegedly "charged rates far in excess of the customary rates in the Northern District of Texas, and are therefore unreasonable . . ." Motion at 4. This is Defendants' third challenge to PSZJ's rates and it fares no better than the earlier ones.[9]

11. Indeed, the issue of PSZJ's rates has already been determined by this Court. First, on November 11, 2021, this Court applied the so-called *Johnson* factors[10] and approved PSZJ's fees and rates as reasonable.[11] Then, on November 10, 2022, this Court recommended that the District Court overrule Defendants' objection to, among other things, PSZJ's rates.[12] These rulings should not have come as a surprise because courts in this District have recently approved PSZJ's fee applications (including PSZJ's rates) in other cases.[13]

12. Nevertheless, Defendants persist. As they did in their earlier objection, the ***only*** fact that Defendants rely on to support their contention that PSZJ's fees are "far in excess of the customary rates in the Northern District of Texas" is a comparison of the rates charged by Highland's local counsel, Hayward PLLC ("Hayward"). Motion at 4-5. But that does not hold

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[9] The prior challenges were lodged by some or all of the Defendants in connection with (a) the estate professionals' final fee applications ("Final Fee Applications"), and (b) Highland's request for fees and expenses in the Notes Litigation. *See Omnibus Objection and Response of NexPoint Advisors, L.P., Creditor and Party in Interest Under 11 U.S.C. § 1109(b), Pursuant to 11 U.S.C. § 330(a) and Federal Rule of Bankruptcy Procedure 2016 to Final Fee Applications Submitted by Various Estate Professionals* [Docket No. 2977 ¶ 30]; *Supplemental Omnibus Response of NexPoint Advisors, L.P., Creditor and Party in Interest Pursuant to 11 U.S.C. § 330(a) and Federal Rule of Bankruptcy Procedure 2016 to Final Fee Applications Submitted by Various Estate Professionals* [Docket No. 3015 ¶ 37]; *Defendants' Objections to Plaintiff's Proposed Form of Judgment Awarding Attorney's Fees and Costs* [Adv. Pro. No. 21-03003, Docket No. 204 at 20-21].

[10] *Johnson v. Georgia Highway Express, Inc.*, 488 F.3d 714 (5th Cir. 1974).

[11] *See Order Granting Fifth and Final Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP*, Case No. 19-34054-sgj11, Docket No. 3047 (Bankr. N.D. Tex. Nov. 22, 2021).

[12] *See Supplement to Report and Recommendation dated July 19, 2022, Transmitting Proposed Forms of Judgment* [Adv. Pro. No. 21-03003, Docket No. 217 at 16] (the "Supplemental R&R").

[13] *See, e.g., In re Tuesday Morning Corp., et al.*, Case No. 20-31476-hdh11, Docket No. 221, (Bankr. N.D. Tex. Apr. 1, 2021); *In re Studio Movie Grill Holdings, LLC, et al.*, Case No. 20-32633-sgj11, Docket No. 989 (Bankr. N.D. Tex. Jul. 9, 2021).

up, and Mr. Dondero—of all people—should know that since ***he personally hired both firms to represent Highland in this bankruptcy case***.

13. During the hearing on the Final Fee Applications, Highland and PSZJ lauded Hayward's work, but—most respectfully—the comparison is not "apples to apples." PSZJ is widely recognized as having one of the premiere bankruptcy practices in the country, with nearly 80 restructuring professionals located in offices in Los Angeles, New York, Wilmington, San Francisco, and (ironically) Houston. It is a matter of public record that PSZJ serves as lead counsel to debtors and creditors' committees in some of the largest and most complex bankruptcies anywhere and regularly competes against firms with Dallas offices such as Kirkland & Ellis, Akin Gump Strauss Hauer & Feld LLP, Weil Gotshal & Manges and DLA Piper LLP whose hourly rate structures exceed PSZJ's (often by significant amounts). In comparison, Hayward is a considerably smaller, regional firm that does not generally compete on the same level.

14. Instead, a more appropriate comparison would be to the Dallas-based attorneys at Sidley Austin LLP ("Sidley"), a firm with a national practice that represented the official committee of unsecured creditors in this case. A quick review of Sidley's fee applications shows hourly rates in excess of PSZJ's so-called "coastal" rates. Hayley Winograd graduated from law school in 2017 and joined PSZJ as an associate in 2020 following a judicial clerkship.[14] In 2021, PSZJ charged $695 per hour for Ms. Winograd's time. At the same time, Sidley charged $815 per hour for Juliana Hoffman (a 2017 restructuring associate); $715 per hour for Chandler Rognes (a 2019 litigation associate); and $885 for Elliot Bromagen (a 2017 restructuring associate in Sidley's

[14] Defendants suggest that Ms. Winograd's hourly rate is above some unidentified "market rate." Motion at 6. As shown, that is inaccurate.

"non-coastal" Chicago office).[15] Based on the foregoing, the hourly rate charged by PSZJ for its associate is actually less than the rates charged by one of its competitors.[16]

15. If Mr. Dondero believed that PSZJ's rates were too high, he could have hired any Dallas-based firm he wanted to serve as Highland's lead bankruptcy counsel. He did not and his current complaint lacks any factual basis or credibility and should be rejected for the third time.

C. Defendants' Gratuitous Attack on Ms. Winograd in Connection with the Expert Objection Is Meritless

16. In a single paragraph, Defendants complain that Ms. Winograd spent 44.8 hours preparing Highland's initial draft response to the *Objection of NexPoint Advisors, L.P. to Order Denying Motions to Extend Expert Disclosure and Discovery Deadlines* (the "NexPoint's Expert Objection")[17] which they derisively describe as being "only 25 pages in length, with 12 of the 25 pages consisting of factual background." Motion at 6. A cursory review of NexPoint's Expert Objection and Highland's response proves that, if anything, Ms. Winograd was incredibly efficient.

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[15] *See Twenty-First Monthly and Final Fee Application of Sidley Austin LLP, Attorneys for the Official Committee of Unsecured Creditors, for Compensation and Reimbursement of Expenses for the Monthly Fee Period from July 1, 2021 Through and Including August 11, 2021 and for the Final Fee Period from October 29, 2019 Through and Including August 11, 2021*, Case No. 19-34054-sgj11, Docket No. 2904 at iv (Bankr. N.D. Tex. Oct. 8, 2021). Defendants also challenge John Morris' 2021 billing rate of $1,245 per hour (which they misstate as $1,265). Mr. Morris is a senior litigation partner at PSZJ who graduated law from school in 1990. Mr. Morris' rate is lower than that of Penny Reid, a Dallas-based Sidley litigation partner. A 1989 graduate, Ms. Reid's 2021 billing rate was $1,400, more than 10% higher than Mr. Morris' rate. *See Id*.

[16] Reference to Sidley and the specific attorneys is for purposes of comparison only and is not intended as a challenge to their rates or skill. To the contrary, PSZJ was impressed by Sidley's advocacy and the results they helped obtain for their constituents in this case.

[17] Case No. 3:21-cv-00880-X, Docket No. 21. HCMS and HCRE joined in NexPoint's Expert Objection. *See, e.g.*, Case No. 3:21-cv-01378-X, Docket No. 26.

17. NexPoint filed its Expert Objection on January 5, 2022, along with a brief ("NexPoint's Brief")[18] and an appendix ("NexPoint's Appendix")[19] in support thereof. NexPoint's Brief was 17 pages long and cited to 10 different cases and multiple statutes and rules. NexPoint's Appendix included 12 items spanning nearly 900 pages.

18. As reflected in PSZJ's time records, Ms. Winograd reviewed and analyzed NexPoint's Objection, NexPoint's Brief, and NexPoint's Appendix and then prepared Highland's objection to NexPoint's Expert Motion,[20] including Highland's brief[21] and appendix[22] in support thereof. Highland's brief in opposition to NexPoint's Expert Objection was 25 pages long and cited to 45 cases and seven statutes and rules, and was supported by an appendix containing 18 items and spanning over 1,750 pages.

19. That Ms. Winograd—working on her own—was able to wade through NexPoint's Expert Objection and supporting documentation, complete the legal research, and prepare a lengthy objection in just 45 hours is a testament to her efficiency and skill. Not surprisingly, Defendants never state how many hours they believe it should have taken Ms. Winograd to complete this work, nor did they have the temerity to make their lawyers' time records available for comparison.

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[18] *Brief in Support of Objection of NexPoint Advisors, L.P. to Order Denying Motions to Extend Expert Disclosure and Discovery Deadlines* [Case No. 3:21-cv-00880-X, Docket No. 22].

[19] *Appendix in Support of Objection of NexPoint Advisors, L.P. to Order Denying Motions to Extend Expert Disclosure and Discovery Deadlines* [Case No. 3:21-cv-00880-X, Docket No. 23].

[20] *Highland Capital Management, L.P.'s Objection and Response to Objections to Order Denying Motions to Extend Expert Disclosure and Discovery Deadlines* [Case No. 3:21-cv-881-X, Docket No. 37] ("Highland's Response"). Highland's Response was filed in Case No. 3:21-cv-00881-X after the Notes Cases were consolidated (*see* Case No. 3:21-cv-00881-X, Docket No. 24) and in accordance with subsequent filings (*see* Case No. 3:21-cv-00881-X, Docket Nos. 25 and 27).

[21] *Brief in Support of Highland Capital Management, L.P.'s Objection and Response to Objections to Order Denying Motions to Extend Expert Disclosure and Discovery Deadlines* [Case No. 3:21-cv-00881-X, Docket No. 38].

[22] *Appendix in Support of Highland Capital Management, L.P.'s Objection and Response to Objections to Order Denying Motions to Extend Expert Disclosure and Discovery Deadlines* [Case No. 3:21-cv-00881-X, Docket No. 39].

20. Defendants' objection to Ms. Winograd's efforts in opposing NexPoint's Expert Objection should be overruled.

D. Defendants' Gratuitous Attack on Ms. Winograd and Ms. Canty in Connection with the Amendment Objection Is Also Meritless

21. In passing, Defendants also complain that Ms. Winograd spent 35 hours, and Ms. Canty spent 13.9 hours, preparing Highland's initial draft response to the *Objection of Highland Capital Management Fund Advisors, L.P. to Order Denying Motion to Amend Answer* (the "HCMFA's Amendment Objection"),[23] which they minimize as one "straightforward" brief. Motion at 6. Defendants do not identify the time entries they object to or explain how they came up with aggregate hours that are the subject of their grievance. Yet, again, a cursory review of relevant documents proves that, if anything, Ms. Winograd and Ms. Canty were incredibly efficient.

22. HCMFA filed its Amendment Objection on January 27, 2022, along with a brief ("HCMFA's Brief")[24] and an appendix ("HCMFA's Appendix")[25] in support thereof. HCMFA's Brief was 21 pages long and cited to 20 different cases and multiple statutes and rules. HCMFA's Appendix included 17 items exceeding over 2,700 pages in total.

23. As reflected in PSZJ's time records, Ms. Winograd reviewed and analyzed HCMFA's Objection, HCMFA's Brief, and HCMFA's Appendix and then prepared Highland's

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[23] Case No. 3:21-cv-00881-X, Docket No. 34. Defendants' suggestion that they were confused as to which of their motions Ms. Winograd and Ms. Canty worked to respond to (Motion at 6) is undermined by the facts that (a) they were able to aggregate the hours they complained of to the tenth of an hour, and (b) the HCMFA Amendment Objection was the only objection they filed besides NexPoint's Expert Objection. While Defendants failed to specify the time entries they are actually griping about, Highland believes they relate to the work required to respond to HCMFA's Amendment Motion.

[24] *Brief in Support of Objection of Highland Capital Management Advisors, L.P. to Order Denying Motion to Amend Answer* [Case No. 3:21-cv-00880-X, Docket No. 35].

[25] *Appendix in Support of Objection of Highland Capital Management Advisors, L.P. to Order Denying Motion to Amend Answer* [Case No. 3:21-cv-00880-X, Docket No. 36].

objection to the Amendment Motion,[26] including Highland's brief[27] and appendix[28] in support thereof. Highland's brief in opposition to HCMFA's Amendment Objection was 25 pages long and cited to 43 cases and eight different statutes and rules, and was supported by an appendix containing 26 items and spanning over 900 pages. As reflected in the Supplemental Invoices, Ms. Canty assisted in the preparation of the appendix and supporting the team as she always does.

24. That Ms. Winograd and Ms. Canty were able to wade through HCMFA's Amendment Objection and supporting documentation, complete the legal research, and prepare a lengthy objection in fewer than 50 hours is, again, a testament to their efficiency and skill. Notably, Defendants never state how many hours they believe it should have taken Ms. Winograd and Ms. Canty to complete this work, nor did they have the temerity to make their lawyers' time records available for comparison.

25. Defendants' crass objection to Ms. Winograd's and Ms. Canty's efforts in opposing HCMFA's Amendment Objection should be overruled.

CONCLUSION

For the foregoing reasons, Highland respectfully requests that this Court deny the Motion and grant such other relief the Court deems just and proper.

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[26] *Highland Capital Management, L.P.'s Objection and Response to Objection of Highland Capital Management Advisors, L.P. to Order Denying Motion to Amend Answer* [Case No. 3:21-cv-00881-X, Docket No. 44].

[27] *Brief in Support of Highland Capital Management, L.P.'s Objection and Response to Objection of Highland Capital Management Advisors, L.P. to Order Denying Motion to Amend Answer* [Case No. 3:21-cv-00881-X, Docket No. 45].

[28] *Appendix in Support of Highland Capital Management, L.P.'s Objection and Response to Objection of Highland Capital Management Advisors, L.P. to Order Denying Motion to Amend Answer* [Case No. 3:21-cv-00881-X, Docket No. 46].

Dated: November 17, 2022

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BTXN 221 (rev. 09/22)

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS

In Re:	§	
Highland Capital Management, L.P.	§	
	§	Case No.: 19−34054−sgj11
Debtor(s)	§	Chapter No.: 11
Highland Capital Management, L.P.	§	
Plaintiff(s)	§	Adversary No.: 21−03007−sgj
vs.	§	
HCRE Partners, LLC (n/k/a NexPoint Real Estate Partners, LLC) et al.	§	Civil Case No.: Civ. Act. No. 3:21cv01379
	§	(Consolidated Under Civ. Act. No. 3:21cv 00881)
Defendant(s)	§	
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.	§	
Plaintiff(s)	§	
vs.	§	
HCRE PARTNERS, LLC (n/k/a NEXPOINT REAL ESTATE PARTNERS, LLC), JAMES DONDERO, NANCY DONDERO AND THE DUGABOY INVESTMENT TRUST	§	
Defendant(s)		

NOTICE OF TRANSMITTAL OF REPORT AND RECOMMENDATION

I am transmitting:

One copy of: Report and Recommendation .

DATED: 12/6/22

FOR THE COURT:
Robert P. Colwell, Clerk of Court

by: /s/Sheniqua Whitaker, Deputy Clerk

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

ENTERED

THE DATE OF ENTRY IS ON
THE COURT'S DOCKET

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

Signed December 7, 2022

United States Bankruptcy Judge

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

In re: HIGHLAND CAPITAL MANAGEMENT, L.P. Reorganized Debtor.	Case No. 19-34054-sgj11 Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P., Plaintiff. v. HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, L.P., Defendant.	Adversary No. 21-03004-sgj Civ. Act. No. 3:21-cv-00881
HIGHLAND CAPITAL MANAGEMENT, L.P., Plaintiff. v. NEXPOINT ADVISORS, L.P., JAMES DONDERO, NANCY DONDERO, AND THE DUGABOY INVESTMENT TRUST, Defendants.	Adversary No.: 21-03005-sgj Civ. Act. No. 3:21-cv-00880 **(Consolidated Under Civ. Act. No. 3:21-cv-00881)**

HIGHLAND CAPITAL MANAGEMENT, L.P., Plaintiff. v. JAMES D. DONDERO, NANCY DONDERO, AND THE DUGABOY INVESTMENT TRUST, Defendants.	Adversary No. 21-03003-sgj Civ. Act. No. 3:21-cv-01010 **(Consolidated Under Civ. Act. No. 3:21-cv-00881)**
HIGHLAND CAPITAL MANAGEMENT, L.P., Plaintiff. v. HIGHLAND CAPITAL MANAGEMENT SERVICES, INC., JAMES DONDERO, NANCY DONDERO, AND THE DUGABOY INVESTMENT TRUST, Defendants.	Adversary No.: 21-03006-sgj Civ. Act. No. 3:21-cv-01378 **(Consolidated Under Civ. Act. No. 3:21-cv-00881)**
HIGHLAND CAPITAL MANAGEMENT, L.P., Plaintiff. v. HCRE PARTNERS, LLC (n/k/a NEXPOINT REAL ESTATE PARTNERS, LLC), JAMES DONDERO, NANCY DONDERO AND THE DUGABOY INVESTMENT TRUST, Defendants.	Adversary No.: 21-03007-sgj Civ. Act. No. 3:21-cv-01379 **(Consolidated Under Civ. Act. No. 3:21-cv-00881)**

ORDER: (A) GRANTING DEFENDANTS' MOTION FOR LEAVE TO SUPPLEMENT THEIR ARGUMENT AGAINST PLAINTIFF'S SUPPLEMENTED NOTICE OF ATTORNEYS' FEES; BUT (B) DENYING ANY FURTHER RELIEF

Came on for consideration the *Defendants' Motion for Leave to Supplement Their Argument Against Plaintiff's Supplemented Notice of Attorneys' Fees ("Defendants' Motion for Leave")*[1] filed on November 2, 2022. The *Defendants' Motion for Leave* relates to the

[1] See Adv. Pro. 21-3003 [DE #216], Adv. Pro. 21-3004 [DE #185], Adv. Pro. 21-3005 [DE #233], Adv. Pro. 21-3006 [DE #238], and Adv. Pro. 21-3007 [DE #233].

Notices and Backup Documentation for the attorneys' fees and costs that Plaintiff/Highland seeks to have awarded as part of its damages in connection with the above-referenced actions.

Plaintiff/Highland filed its Notice and Backup Documentation for its attorneys' fees and costs that Plaintiff/Highland seeks to have awarded as part of its damages in connection with the above-referenced actions. But then later, Plaintiff/Highland sought leave to supplement its Backup Documentation with invoices from January and February of 2022 that it had previously omitted ("*January/February Invoices*"), apparently due to inadvertence. Defendants objected to the bankruptcy court granting leave for this supplementation, but the bankruptcy court overruled and granted leave on October 24, 2022, to allow Plaintiff/Highland to supplement its attorneys' fee request with these *January/February Invoices*.[2] Then, in early November, the bankruptcy court—not having seen the *Defendants' Motion for Leave* on the dockets in these actions[3]—completed its review of the Notices and Backup Documentation; the Defendants' original objection thereto; Highland's Response thereto; and the *January/February Invoices*. On November 10, 2022, which was eight days after Defendants filed the *Defendants' Motion for Leave*, the bankruptcy court issued its *Supplement to Report and Recommendation Dated July 19, 2022, Transmitting Proposed Forms of Judgment* ("*November 10, 2022 Supplement to R&R*") in each of the above actions,[4] which was transmitted to the District Court on November 14, 2022.[5] The *November 10, 2022 Supplement to R&R* recommended specific attorneys' fees and

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[2] *See* Adv. Pro. 21-3003 [DE #212], Adv. Pro. 21-3004 [DE #181], Adv. Pro. 21-3005 [DE # 229], Adv. Pro. 21-3006 [DE #234], and Adv. Pro. 21-3007 [DE #229]. It is Defendants' specific objections to the reasonableness of the fees in the Supplemental Invoices that Defendants now seek leave to submit to the court for its consideration.

[3] This was an oversight in a bankruptcy case with multiple adversary proceedings that generate literally thousands of pages of filings on a regular basis.

[4] Adv. Pro. 21-3003 [DE #217], Adv. Pro. 21-3004 [DE #186], Adv. Pro. 21-3005 [DE #234], Adv. Pro. 21-3006 [DE #239], and Adv. Pro. 21-3007 [DE #234].

[5] *See* DCT DE ##80-83, with respect to Adv. Pro. 21-3003 (Civ. Act. No. 3:21-cv-1010), Adv. Pro. 21-3005 (Civ. Act. No. 21-880), Adv. Pro. 21-3006 (Civ. Act. No. 3:21-cv-1378), and Adv. Pro. 21-3007 (Civ. Act. No. 3:21-cv-

costs that the bankruptcy court determined were appropriate to award Plaintiff/Highland as part of its proposed Judgments. The recommended award included attorneys' fees and costs set forth in the *January/February Invoices*.

On November 17, 2022, Highland filed its *Objection to Defendants' Motion for Leave to Supplement Their Argument Against Plaintiff's Supplemented Notice of Attorneys' Fees* ("*Objection*").[6] It was at that point that the bankruptcy court realized its oversight in having missed on the docket the *Defendants' Motion for Leave*. The bankruptcy court then reviewed both *Defendants' Motion for Leave* and Highland's Objection thereto.

In *Defendants' Motion for Leave*, Defendants objected to the reasonableness of attorneys' fees set forth in the Plaintiff's/Highland's *January/February Invoices* on the bases that (a) the rates charged by Plaintiff's counsel, Pachulski Stang Ziehl & Jones, LLP ("PSZJ"), are too high, and (b) a PSZJ associate and legal assistant spent an unreasonable amount of time analyzing two motions and drafting Highland's responses thereto.

As to the billing rates, as previously noted in this court's *November 10, 2022 Supplement to R&R* recommending that the District Court overrule Defendants' objection to PSZJ's rates in the Backup Documentation as being too high to be reasonable, "This court has already approved PSZJ's rates as reasonable under § 330 and under the applicable standard originally announced by the Fifth Circuit in *Johnson*."[7] Moreover, Mr. Dondero (who controls the Defendants) personally hired PSZJ to be bankruptcy counsel for Highland when he controlled Highland, and agreed, in writing, to PSZJ's fee structure and rates. *November 10, 2022*

1379). The Supplement to R&R with respect to Adv. Pro. 21-3004 (Civ. Act. No. 3:21-cv-881) was transmitted on December 5, 2022, at DCT DE #89.

[6] Adv. Pro. 21-3003 [DE #221], Adv. Pro. 21-3004 [DE #188], Adv. Pro. 21-3005 [DE #237], Adv. Pro. 21-3006 [DE #244], and Adv. Pro. 21-3007 [DE #238].

[7] *See Johnson v. Ga. Highway Express, Inc.*, 488 F.2d 714 (5th Cir. 1974).

Supplement to R&R, p. 16. The rates charged by PSZJ are reasonable when evaluated under the applicable lodestar factors and other appropriate legal standards. Among other things, the billing rates are reasonable when evaluated in the relevant market of firms that provide legal services in complex chapter 11 cases (both in Texas and other major markets). Notably, this has been a bankruptcy case of a multibillion-dollar enterprise with well over a billion dollars of claims asserted. The above-referenced actions involve tens of millions of dollars.

As to the time spent by PSZJ's associate and legal assistant on two specific motions and Plaintiff's/Highland's responses thereto, the bankruptcy court has reviewed once again these time entries and does not consider the time spent on these tasks to have been excessive. Most of the pleadings filed in the above-referenced actions have been lengthy and dense with footnotes, legal authority, and record references, and often have attached appendices of hundreds or thousands of pages. The bankruptcy court itself has spent hundreds of hours on these matters, so the bankruptcy court does not view the time spent by PSZJ's associate and legal assistant on the two matters in the *January/February Invoices* identified by Defendants as excessive – by comparison. Accordingly,

IT IS ORDERED that the *Defendants' Motion for Leave* **be, and hereby is, granted**.

IT IS FURTHER ORDERED that the bankruptcy court has determined that there is no need to amend its recommendations to the District Court in the *November 10, 2022 Supplement to R&R*. To be clear, the bankruptcy court has considered the merits of Defendants' specific objections raised in the *Defendants' Motion for Leave* filed November 2, 2022 to the *January/February Invoices* and has decided that those objections should be overruled.

End of Order

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	
Plaintiff,	§	Civil Action No. 3:21-CV-0881-X
	§	
v.	§	Consolidated with:
	§	3:21-CV-0880-X
NEXPOINT ASSET MANAGEMENT, L.P., (F/K/A HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, L.P.), et al.,	§	3:21-CV-1010-X
	§	3:21-CV-1378-X
	§	3:21-CV-1379-X
	§	3:21-CV-3160-X
	§	3:21-CV-3162-X
Defendants.	§	3:21-CV-3179-X
	§	3:21-CV-3207-X
	§	3:22-CV-0789-X

ORDER ADOPTING REPORT AND RECOMMENDATION AND FINAL JUDGMENT

Before the Court is the Bankruptcy Court's Report and Recommendation on Plaintiff Highland Capital Management, L.P.'s ("Highland") motion for partial summary judgment. [Doc. 50]. Having carefully considered (1) Highland's motion and all arguments and evidence admitted into the record in support of the motion, (2) all responses and objections to the motion and all arguments and evidence admitted into the record in support of such responses and objections, and the arguments presented by counsel during the hearing held on April 20, 2022, on the motion, and for the reasons set forth in the Report and Recommendation (the "R&R") filed by the Bankruptcy Court on July 19, 2022, and the Supplement to the R&R filed December 5, 2022, the Court **ACCEPTS** the report and recommendation. The Court

OVERRULES the objections to the report and recommendation and **OVERRULES** the objection to the supplement to the report and recommendation. [Docs. 63, 87].

In accordance with the report and recommendation, the Court **GRANTS** partial summary judgment for Highland and **ENTERS FINAL JUDGMENT** as follows.

IT IS ORDERED, ADJUDGED, AND DECREED that Highland recover the following from James Dondero:

1. Dondero will owe Highland $3,873,613.93 in accrued but unpaid principal and interest due under Dondero's First Note[1] (issued on February 2, 2018) as of August 8, 2022, after application of all payments to outstanding principal and interest. As of August 9, 2022, interest will continue to accrue on the First Dondero Note at the rate of $278.50 per day and will increase to $285.91 per day on February 2, 2023.

2. Dondero will owe Highland $2,778,356.23 in accrued but unpaid principal and interest due under Dondero's Second Note (issued on August 1, 2018) as of August 8, 2022, after application of all payments to outstanding principal and interest. As of August 9, 2022, interest will continue to accrue on Dondero's Second Note at the rate of $224.43 per day and will increase to $231.05 per day on August 1, 2023.

3. Dondero will owe Highland $2,778,339.88 in accrued but unpaid principal and interest due under Dondero's Third Note (issued on August 13, 2018) as of August

[1] Capitalized terms not defined herein shall have the meanings ascribed to them in the R&R.

8, 2022, after application of all payments to outstanding principal and interest. As of August 9, 2022, interest will continue to accrue on Dondero's Third Note at the rate of $218.20 per day and will increase to $224.64 per day on August 13, 2022.

4. In addition to the forgoing, and pursuant to the terms of each applicable Note, Dondero shall pay to Highland the amount of $443,074.35, which is his pro rata allocation (based on the ratio of the outstanding principal and interest owed by Dondero to Highland as of August 8, 2022, to the total principal and interest owed by all Note Maker Defendants to Highland as of August 8, 2022) of the total allocable and actual expenses of collection, including attorneys' fees and costs, incurred by Highland.

IT IS ORDERED, ADJUDGED, AND DECREED that Highland recover the following from NexPoint Asset Management, L.P. (f/k/a Highland Capital Management Fund Advisors, L.P.) ("NexPoint Asset Management"):

1. NexPoint Asset Management will owe Highland $2,552,628.61 in accrued but unpaid principal and interest due under NexPoint's First Note (issued on May 2, 2019), as of August 8, 2022, after application of all payments to outstanding principal and interest. As of August 9, 2022, interest will continue to accrue on NexPoint's First Note at the rate of $166.08 per day and will increase to $170.05 per day on May 2, 2023.

2. NexPoint Asset Management will owe Highland $5,317,989.86 in accrued but unpaid principal and interest due under NexPoint's Second Note (issued on May 3, 2019), as of August 8, 2022, after application of all payments to outstanding

principal and interest. As of August 9, 2022, interest will continue to accrue on NexPoint's Second Note at the rate of $346.02 per day and will increase to $354.29 per day on May 3, 2023.

3. In addition to the forgoing, and pursuant to the terms of each applicable Note, NexPoint Asset Management shall pay to Highland the amount of $369,793.69, which is its pro rata allocation (based on the ratio of the outstanding principal and interest owed by NexPoint Asset Management to Highland as of August 8, 2022, to the total principal and interest owed by all Note Maker Defendants to Highland as of August 8, 2022) of the total allocable and actual expenses of collection, including attorneys' fees and costs, incurred by Highland.

IT IS ORDERED, ADJUDGED, AND DECREED that Highland recover the following from NexPoint Advisors, L.P. ("NexPoint Advisors"):

1. NexPoint Advisors will owe Highland $23,389,882.79 in accrued but unpaid principal and interest due under the NexPoint Term Note (issued on May 31, 2017), as of August 8, 2022, after application of all payments to outstanding principal and interest. As of August 9, 2022, interest will continue to accrue on the NexPoint Term Note at the rate of $3,801.79 per day and will increase to $4,029.90 per day on May 31, 2023.

2. In addition to the forgoing, and pursuant to the terms of each the Note, NexPoint Advisors shall pay to Highland the amount of $1,098,951.89, which is its pro rata allocation (based on the ratio of the outstanding principal and interest owed by NexPoint Advisors to Highland as of August 8, 2022, to the total principal and

interest owed by all Note Maker Defendants to Highland as of August 8, 2022) of the total allocable and actual expenses of collection, including attorneys' fees and costs, incurred by Highland.

IT IS ORDERED, ADJUDGED, AND DECREED that Highland recover the following from Highland Capital Management Services, Inc. ("HCMS"):

1. HCMS will owe Highland $166,196.60 in accrued but unpaid principal and interest due under HCMS's First Demand Note1 (issued on March 28, 2018), as of August 8, 2022, after application of all payments to outstanding principal and interest. As of August 9, 2022, interest will continue to accrue on HCMS's First Demand Note at the rate of $12.98 per day and will increase to $13.35 per day on March 26, 2023.

2. HCMS will owe Highland $222,917.23 in accrued but unpaid principal and interest due under HCMS's Second Demand Note (issued on June 25, 2018), as of August 8, 2022, after application of all payments to outstanding principal and interest. As of August 9, 2022, interest will continue to accrue on HCMS's Second Demand Note at the rate of $18.56 per day and will increase to $19.13 per day on June 25, 2023.

3. HCMS will owe Highland $425,435.63 in accrued but unpaid principal and interest due under HCMS's Third Demand Note (issued on May 29, 2019), as of August 8, 2022, after application of all payments to outstanding principal and interest. As of August 9, 2022, interest will continue to accrue under HCMS's Third

Demand Note at the rate of $27.73 per day and will increase to $28.39 per day on May 29, 2023.

4. HCMS will owe Highland $159,454.92 in accrued but unpaid principal and interest due under HCMS's Fourth Demand Note (issued on June 26, 2019), as of August 8, 2022, after application of all payments to outstanding principal and interest. As of August 9, 2022, interest will continue to accrue on HCMS's Fourth Demand Note at the rate of $10.32 per day and will increase to $10.57 per day on June 26, 2023.

5. HCMS will owe Highland $6,071,718.32 in accrued but unpaid principal and interest due under the HCMS Term Note (issued on May 31, 2017), as of August 8, 2022, after application of all payments to outstanding principal and interest. As of August 9, 2022, interest will continue to accrue on the HCMS Term Note at the rate of $455.09 per day and will increase to $467.61 per day on May 31, 2023.

6. In addition to the forgoing, and pursuant to the terms of each applicable Note, HCMS shall pay to Highland the amount of $331,036.73, which is its pro rata allocation (based on the ratio of the outstanding principal and interest owed by HCMS to Highland as of August 8, 2022, to the total principal and interest owed by all Note Maker Defendants to Highland as of August 8, 2022) of the total allocable and actual expenses of collection, including attorneys' fees and costs, incurred by Highland.

IT IS ORDERED, ADJUDGED, AND DECREED that Highland recover the following from NexPoint Real Estate Partners, LLC (f/k/a HCRE Partners, LLC) ("NexPoint Real Estate"):

1. NexPoint Real Estate will owe Highland $195,476.70 in accrued but unpaid principal and interest due under HCRE's First Demand Note (issued on November 27, 2013), as of August 8, 2022, after application of all payments to outstanding principal and interest. As of August 9, 2022, interest will continue to accrue on HCRE's First Demand Note at the rate of $40.58 per day and will increase to $43.83 per day on November 27, 2022.

2. NexPoint Real Estate will owe Highland $3,551,285.37 in accrued but unpaid principal and interest due under HCRE's Second Demand Note (issued on October 12, 2017), as of August 8, 2022, after application of all payments to outstanding principal and interest. As of August 9, 2022, interest will continue to accrue on HCRE's Second Demand Note at the rate of $730.34 per day and will increase to $788.77 per day on October 12, 2022.

3. NexPoint Real Estate will owe Highland $986,472.32 in accrued but unpaid principal and interest due under HCRE's Third Demand Note (issued on October 15, 2018), as of August 8, 2022, after application of all payments to outstanding principal and interest. As of August 9, 2022, interest will continue to accrue on HCRE's Third Demand Note at the rate of $203.00 per day and will increase to $219.24 per day on October 15, 2022.

4. NexPoint Real Estate will owe Highland $866,600.77 in accrued but unpaid principal and interest due under HCRE's Fourth Demand Note (issued on September 25, 2019), as of August 8, 2022, after application of all payments to outstanding principal and interest. As of August 9, 2022, interest will continue to accrue under

HCRE's Fourth Demand Note at the rate of $177.60 per day and will increase to $191.81 per day on September 25, 2022.

5. NexPoint Real Estate will owe Highland $6,196,688.51 in accrued but unpaid principal and interest due under the HCRE Term Note (issued on May 31, 2017), as of August 8, 2022, after application of all payments to outstanding principal and interest. As of August 9, 2022, interest will continue to accrue on the HCRE Term Note at the rate of $1,337.94 per day and will increase to $1,444.98 per day on May 31, 2023.

6. In addition to the forgoing, and pursuant to the terms of each applicable Note, NexPoint Real Estate shall pay to Highland the amount of $554,248.69, which is its pro rata allocation (based on the ratio of the outstanding principal and interest owed by NexPoint Real Estate to Highland as of August 8, 2022, to the total principal and interest owed by all Note Maker Defendants to Highland as of August 8, 2022) of the total allocable and actual expenses of collection, including attorneys' fees and costs, incurred by Highland.

* * * * *

The amounts set forth to be paid in this Final Judgment shall bear interest, pursuant to 28 U.S.C. § 1961, from the date of the entry of this Final Judgment, at a rate of 5.35%. Interest shall be computed daily to the date of payment, except as provided in 28 U.S.C. § 2516(b) and 31 U.S.C. § 1304(b), and shall be compounded annually.

IT IS SO ORDERED, this 6th day of July, 2023.

BRANTLEY STARR
UNITED STATES DISTRICT JUDGE

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

In re: HIGHLAND CAPITAL MANAGEMENT, L.P., Reorganized Debtor.	§ § § § § §	Chapter 11 Case No. 19-34054-sgj11
HIGHLAND CAPITAL MANAGEMENT, L.P., Plaintiff, vs. HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, L.P., Defendant.	§ § § § § § § § § §	Adversary Proceeding No. _____

COMPLAINT FOR (I) BREACH OF CONTRACT AND
(II) TURNOVER OF PROPERTY OF HIGHLAND'S ESTATE

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

PRELIMINARY STATEMENT[1]

1. Highland brings this action against HCMFA as a result of HCMFA's defaults under two promissory notes executed by HCMFA in favor of Highland in the aggregate original principal amount of $6,300,000 and payable upon Highland's demand. Despite demand having been made, HCMFA has failed to pay amounts due and owing under the Notes and the accrued but unpaid interest thereon.

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

JURISDICTION AND VENUE

3. This Adversary Proceeding arises under and relates to Highland's Bankruptcy Case pending before the United States Bankruptcy Court for the Northern District of Texas, Dallas Division (the "Court") under chapter 11 of the Bankruptcy Code.

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

[1] Capitalized terms shall take on the meanings ascribed to them below.

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

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

THE PARTIES

7. Highland is a limited liability partnership formed under the laws of Delaware with a business address at 100 Crescent Court, Suite 1850, Dallas, Texas 75201.

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

CASE BACKGROUND

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

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

11. On February 22, 2021, the Court entered the *Order (i) Confirming the Fifth Amended Plan of Reorganization (as Modified) and (ii) Granting Related Relief* [Docket No. 1943] (the "Confirmation Order") confirming the *Fifth Amended Plan of Reorganization of Highland Capital Management, L.P., as Modified* [Docket No. 1808] (the "Plan").

[2] All docket numbers refer to the main docket for the Highland Bankruptcy Case maintained by this Court.

12. The Plan went Effective (as defined in the Plan) on August 11, 2021, and Highland is the Reorganized Debtor (as defined in the Plan) since the Effective Date. *See Notice of Occurrence of Effective Date of Confirmed Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 2700].

STATEMENT OF FACTS

A. The HCMFA Notes

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

14. Specifically, on February 26, 2014, HCMFA executed a promissory note in favor of Highland, as payee, in the original principal amount of $4,000,000 ("HCMFA's First Note"). A true and correct copy of HCMFA's First Note is attached hereto as **Exhibit 1**.

15. HCMFA's First Note was executed in exchange for a contemporaneous transfer from Highland to HCMFA in the amount of $4,000,000 (the "First Payment").

16. On February 26, 2016, HCMFA executed a promissory note in favor of Highland, as payee, in the original principal amount of $2,300,000 ("HCMFA's Second Note", and together with HCMFA's First Note, the "Notes"). A true and correct copy of HCMFA's Second Note is attached hereto as **Exhibit 2.**

17. HCMFA's Second Note was executed in exchange for a contemporaneous transfer from Highland to HCMFA in the amount of $2,300,000 (the "Second Payment", and together with the First Payment, the "Payments").

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

19. Section 4 of each Note provides:

> **Acceleration Upon Default**. Failure to pay this Note or any installment hereunder as it becomes due shall, at the election of the holder hereof, without notice, demand, presentment, notice of intent to accelerate, notice of acceleration, or any other

> notice of any kind which are hereby waived, mature the principal of this Note and all interest then accrued, if any, and the same shall at once become due and payable and subject to those remedies of the holder hereof. No failure or delay on the part of the Payee in exercising any right, power, or privilege hereunder shall operate as a waiver hereof.

20. Section 6 of each Note provides:

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

B. Highland Agrees Not to Demand Payment under the Notes Prior to May 31, 2021

21. On April 15, 2019, James Dondero signed a letter on behalf of both Highland and HCMFA pursuant to which Highland agreed not to demand payment under the Notes prior to May 31, 2021 (the "Acknowledgement Letter") on the ground that "HCMFA expects that it may be unable to repay such amounts should they become due, for the period commencing today and continuing through May 31, 2021." A true and correct copy of the Acknowledgement Letter is attached hereto as **Exhibit 3**.[3]

C. HCMFA's Default under Each Note

22. By letter dated June 2, 2021, Highland made demand on HCMFA for payment under the Notes by June 4, 2021 (the "Demand Letter"). A true and correct copy of the Demand Letter is attached hereto as **Exhibit 4**. The Demand Letter provides:

> By this letter, Payee is demanding payment of the accrued interest and principal due and payable on the Notes in the aggregate amount of $3,143,181.93, which represents all accrued interest and principal through and including June 4, 2021.

[3] On January 22, 2021, Highland commenced a similar adversary proceeding against HCMFA for its default under two other promissory notes. [*See* Adv. Proc. 21-3004, *Complaint for (I) Breach of Contract and (II) Turnover of Property of the Debtor's Estate*, Docket No. 1] (the "First Complaint"). The Notes that are the subject of this Complaint were not included in the First Complaint because of the Acknowledgement Letter.

Payment is due on June 4, 2021, and failure to make payment in full on such date will constitute an event of default under the Notes.

23. Despite Highland's demand, HCMFA did not pay all or any portion of the amounts demanded by Highland on June 4, 2021, or at any time thereafter.

24. As of June 4, 2021, there was an outstanding principal amount of $2,134,166.53 on HCMFA's First Note and accrued but unpaid interest in the amount of $11,288.28, resulting in a total outstanding amount as of that date of $2,145,454.81.

25. As of June 4, 2021, there was an outstanding principal balance of $990,757.62 on HCMFA's Second Note and accrued but unpaid interest in the amount of $6,969.50, resulting in a total outstanding amount as of that date of $997,727.12.

26. Thus, as of June 4, 2021, the total outstanding principal and accrued but unpaid interest due under the Notes was $3,143,181.93

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

FIRST CLAIM FOR RELIEF
(For Breach of Contract)

28. Highland repeats and re-alleges the allegations in each of the foregoing paragraphs as though fully set forth herein.

29. Each Note is a binding and enforceable contract.

30. HCMFA breached each Note by failing to pay all amounts due to Highland upon Highland's demand.

31. Pursuant to each Note, Highland is entitled to damages from HCMFA in an amount equal to (i) the aggregate outstanding principal due under each Note, plus (ii) all accrued and unpaid interest thereon until the date of payment, plus (iii) an amount equal to Highland's costs of

collection (including all court costs and reasonable attorneys' fees and expenses) for HCMFA's breach of its obligations under each of the Notes.

32. As a direct and proximate cause of HCMFA's breach of each Note, Highland has suffered damages in the total amount of at least $3,143,181.93 as of June 4, 2021, plus an amount equal to all accrued but unpaid interest from that date, plus Highland's costs of collection.

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

33. Highland repeats and re-alleges the allegations in each of the foregoing paragraphs as though fully set forth herein.

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

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

36. HCMFA has not paid the amounts due under the Notes to Highland.

37. Highland has made demand for the turnover of the amounts due under each Note.

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

39. Highland is entitled to the turnover of all amounts due under the Notes.

WHEREFORE, Highland prays for judgment as follows:

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

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

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

Dated: November 9, 2021

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Counsel for Highland Capital Management, L.P.

EXHIBIT 1

PROMISSORY NOTE

$4,000,000.00 February 26, 2014

FOR VALUE RECEIVED, HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, LP. ("***Maker***") promises to pay to the order of HIGHLAND CAPITAL MANAGEMENT, LP ("***Payee***"), in legal and lawful tender of the United States of America, the principal sum of FOUR MILLION and 00/100 Dollars ($4,000,000.00), together with interest, on the terms set forth below (the "***Note***"). All sums hereunder are payable to Payee at 300 Crescent Court, Dallas, TX 75201, or such other address as Payee may specify to Maker in writing from time to time.

1. Interest Rate. The unpaid principal balance of this Note from time to time outstanding shall bear interest at a rate equal to the mid-term "***applicable federal rate***" (1.97%) in effect on the date hereof for loans of such maturity as determined by Section 1274(d) of the Internal Revenue Code, per annum from the date hereof until maturity, compounded annually on the anniversary of the date of this Note. Interest shall be calculated at a daily rate equal to 1/365th (1/366 in a leap year) of the rate per annum, shall be charged and collected on the actual number of days elapsed, and shall be payable on demand of the Payee.

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

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

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

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

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

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

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

MAKER:

JAMES DONDERO

EXHIBIT 2

PROMISSORY NOTE

$2,300,000.00

February 26, 2016

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

1. Interest Rate. The unpaid principal balance of this Note from time to time outstanding shall bear interest at a rate equal to the mid-term "***applicable federal rate***" (2.62%) in effect on the date hereof for loans of such maturity as determined by Section 1274(d) of the Internal Revenue Code, per annum from the date hereof until maturity, compounded annually on the anniversary of the date of this Note. Interest shall be calculated at a daily rate equal to 1/365th (1/366 in a leap year) of the rate per annum, shall be charged and collected on the actual number of days elapsed, and shall be payable on demand of the Payee.

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

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

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

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

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

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

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

MAKER:

JAMES DONDERO

EXHIBIT 3

Acknowledgement from HCMLP

April 15, 2019

Reference is hereby made to certain outstanding amounts loaned from HIGHLAND CAPITAL MANAGEMENT, L.P. ("HCMLP") to HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, L.P. ("HCMF") for funding of HCMF's ongoing operations, which are payable on demand and remained outstanding on December 31, 2018 and as of the date hereof.

HCMF expects that it may be unable to repay such amounts should they become due, for the period commencing today and continuing through May 31, 2021.

HCMLP hereby agrees to not demand payment on amounts owed by HCMF prior to May 31, 2021.

Highland Capital Management, L.P.
By: Strand Advisors, Inc., its general partner

By: _____

Acknowledged By:

Highland Capital Management Fund Advisors, L.P.
By: Strand XVI, Inc., its general partner

By: _____

EXHIBIT 4

HIGHLAND CAPITAL MANAGEMENT, L.P.

June 2, 2021

Highland Capital Management Fund Advisors, LP
2515 McKinney Avenue, Suite 1100
Dallas, Texas 75201
Attention: Frank Waterhouse

Re: Demand on Promissory Notes:

Dear Mr. Waterhouse,

Highland Capital Management Fund Advisors, LP ("Maker") entered into the following promissory notes (collectively, the "Notes"), among others,[1] in favor of Highland Capital Management, L.P. ("Payee"):

Date Issued	Original Principal Amount	Outstanding Principal Amount (6/4/21)	Accrued But Unpaid Interest (6/4/21)	Total Amount Outstanding (6/4/21)
2/26/2014	$4,000,000	$2,134,166.53	$11,288.28	$2,145,454.81
2/26/2016	$2,300,000	$990,757.62	$6,969.50	$997,727.12
TOTALS	**$6,300,000**	**$3,124,924.14**	**$18,257.78**	**$3,143,181.93**

Copies of the notes are attached hereto as **Appendix A**.

As set forth in Section 2 of each of the Notes, accrued interest and principal is due and payable upon the demand of Payee. By this letter, Payee is demanding payment of the accrued interest and principal due and payable on the Notes in the aggregate amount of $3,143,181.93, which represents all accrued and unpaid interest and principal through and including June 4, 2021.

Payment is due on June 4, 2021, and failure to make payment in full on such date will constitute an event of default under the Notes.

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

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

[1] Maker is also obligated to pay amounts due under promissory notes issued in favor of Payee on May 2, 2019, and May 3, 2019 (the "May Notes"). Payee sent a demand letter to Maker with respect to the May Notes on December 3, 2020. A copy of such letter is attached hereto as **Appendix C**. Payee reserves all rights with respect the May Notes.

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

Sincerely,

/s/ James P. Seery, Jr.

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

cc: Jeffrey Pomerantz
John Morris
Gregory Demo
DC Sauter
Davor Rukavina

Appendix A

PROMISSORY NOTE

$2,300,000.00

February 26, 2016

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

1. Interest Rate. The unpaid principal balance of this Note from time to time outstanding shall bear interest at a rate equal to the mid-term "***applicable federal rate***" (2.62%) in effect on the date hereof for loans of such maturity as determined by Section 1274(d) of the Internal Revenue Code, per annum from the date hereof until maturity, compounded annually on the anniversary of the date of this Note. Interest shall be calculated at a daily rate equal to 1/365th (1/366 in a leap year) of the rate per annum, shall be charged and collected on the actual number of days elapsed, and shall be payable on demand of the Payee.

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

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

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

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

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

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

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

MAKER:

JAMES DONDERO

PROMISSORY NOTE

$4,000,000.00 February 26, 2014

FOR VALUE RECEIVED, HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, LP. ("***Maker***") promises to pay to the order of HIGHLAND CAPITAL MANAGEMENT, LP ("***Payee***"), in legal and lawful tender of the United States of America, the principal sum of FOUR MILLION and 00/100 Dollars ($4,000,000.00), together with interest, on the terms set forth below (the "***Note***"). All sums hereunder are payable to Payee at 300 Crescent Court, Dallas, TX 75201, or such other address as Payee may specify to Maker in writing from time to time.

1. Interest Rate. The unpaid principal balance of this Note from time to time outstanding shall bear interest at a rate equal to the mid-term "***applicable federal rate***" (1.97%) in effect on the date hereof for loans of such maturity as determined by Section 1274(d) of the Internal Revenue Code, per annum from the date hereof until maturity, compounded annually on the anniversary of the date of this Note. Interest shall be calculated at a daily rate equal to 1/365th (1/366 in a leap year) of the rate per annum, shall be charged and collected on the actual number of days elapsed, and shall be payable on demand of the Payee.

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

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

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

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

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

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

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

MAKER:

JAMES DONDERO

Appendix B

Appendix B

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

Appendix C

HIGHLAND CAPITAL MANAGEMENT, L.P.

December 3, 2020

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

Re: Demand on Promissory Notes:

Dear Mr. Waterhouse,

Highland Capital Management Fund Advisors, LP ("Maker") entered into the following promissory notes (collectively, the "Notes"), among others,[1] in favor of Highland Capital Management, L.P. ("Payee"):

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

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

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

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

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

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

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

Sincerely,

/s/ James P. Seery, Jr.

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

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

Appendix A

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

B1040 (FORM 1040) (12/15)

ADVERSARY PROCEEDING COVER SHEET (Instructions on Reverse)	**ADVERSARY PROCEEDING NUMBER** (Court Use Only)
PLAINTIFFS Highland Capital Management, L.P.	**DEFENDANTS** Highland Capital Management Fund Advisors, L.P.
ATTORNEYS (Firm Name, Address, and Telephone No.) Hayward PLLC 10501 N. Central Expressway, Suite 106 Dallas, Texas 75231 Tel.: (972) 755-7100	**ATTORNEYS** (If Known) Munsch Hardt Kopf & Harr, P.C. 500 N. Akard Street, Suite 3800 Dallas, Texas 75201 Tel.: (214) 855-7500
PARTY (Check One Box Only) ☑ Debtor ☐ U.S. Trustee/Bankruptcy Admin ☐ Creditor ☐ Other ☐ Trustee	**PARTY** (Check One Box Only) ☐ Debtor ☐ U.S. Trustee/Bankruptcy Admin ☐ Creditor ☑ Other ☐ Trustee

CAUSE OF ACTION (WRITE A BRIEF STATEMENT OF CAUSE OF ACTION, INCLUDING ALL U.S. STATUTES INVOLVED)
Count 1: Breach of contract; Count 2: Turnover pursuant to 11 U.S.C. 542

NATURE OF SUIT

(Number up to five (5) boxes starting with lead cause of action as 1, first alternative cause as 2, second alternative cause as 3, etc.)

FRBP 7001(1) – Recovery of Money/Property
☒ 11-Recovery of money/property - §542 turnover of property
☐ 12-Recovery of money/property - §547 preference
☐ 13-Recovery of money/property - §548 fraudulent transfer
☐ 14-Recovery of money/property - other

FRBP 7001(2) – Validity, Priority or Extent of Lien
☐ 21-Validity, priority or extent of lien or other interest in property

FRBP 7001(3) – Approval of Sale of Property
☐ 31-Approval of sale of property of estate and of a co-owner - §363(h)

FRBP 7001(4) – Objection/Revocation of Discharge
☐ 41-Objection / revocation of discharge - §727(c),(d),(e)

FRBP 7001(5) – Revocation of Confirmation
☐ 51-Revocation of confirmation

FRBP 7001(6) – Dischargeability
☐ 66-Dischargeability - §523(a)(1),(14),(14A) priority tax claims
☐ 62-Dischargeability - §523(a)(2), false pretenses, false representation, actual fraud
☐ 67-Dischargeability - §523(a)(4), fraud as fiduciary, embezzlement, larceny

(continued next column)

FRBP 7001(6) – Dischargeability (continued)
☐ 61-Dischargeability - §523(a)(5), domestic support
☐ 68-Dischargeability - §523(a)(6), willful and malicious injury
☐ 63-Dischargeability - §523(a)(8), student loan
☐ 64-Dischargeability - §523(a)(15), divorce or separation obligation (other than domestic support)
☐ 65-Dischargeability - other

FRBP 7001(7) – Injunctive Relief
☐ 71-Injunctive relief – imposition of stay
☐ 72-Injunctive relief – other

FRBP 7001(8) Subordination of Claim or Interest
☐ 81-Subordination of claim or interest

FRBP 7001(9) Declaratory Judgment
☐ 91-Declaratory judgment

FRBP 7001(10) Determination of Removed Action
☐ 01-Determination of removed claim or cause

Other
☐ SS-SIPA Case – 15 U.S.C. §§78aaa *et.seq.*
☒ 02-Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case)

☑ Check if this case involves a substantive issue of state law	☐ Check if this is asserted to be a class action under FRCP 23
☐ Check if a jury trial is demanded in complaint	Demand $3,143,181.93 plus interest, fees, and expenses

Other Relief Sought

B1040 (FORM 1040) (12/15)

BANKRUPTCY CASE IN WHICH THIS ADVERSARY PROCEEDING ARISES		
NAME OF DEBTOR Highland Capital Management, L.P.	BANKRUPTCY CASE NO. 19-34054-sgj11	
DISTRICT IN WHICH CASE IS PENDING Northern District of Texas	DIVISION OFFICE Dallas	NAME OF JUDGE Stacey G. C. Jernigan

RELATED ADVERSARY PROCEEDING (IF ANY)		
PLAINTIFF	DEFENDANT	ADVERSARY PROCEEDING NO.
DISTRICT IN WHICH ADVERSARY IS PENDING	DIVISION OFFICE	NAME OF JUDGE
SIGNATURE OF ATTORNEY (OR PLAINTIFF)		
DATE November 9, 2021	PRINT NAME OF ATTORNEY (OR PLAINTIFF) Zachery Z. Annable	

INSTRUCTIONS

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

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

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

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

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

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

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

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

Deborah Deitsch-Perez
Michael P. Aigen
STINSON LLP
3102 Oak Lawn Avenue, Suite 777
Dallas, Texas 75219-4259
Telephone: (214) 560-2201
Facsimile: (214) 560-2203

Counsel for Defendant Highland Capital Management Fund Advisors, L.P.

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

In re	§	
	§	**Case No. 19-34054-sgj11**
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	**Chapter 11**
	§	
Debtor.	§	
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	
Plaintiff,	§	
	§	
v.	§	**Adversary No. 21-03082**
	§	
HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, L.P.	§	
	§	
Defendant.	§	

DEFENDANT'S ORIGINAL ANSWER

COMES NOW Highland Capital Management Fund Advisors, L.P. ("HCMFA" or "Defendant"), the defendant in the above-styled and numbered adversary proceeding (the "Adversary Proceeding") filed by Highland Capital Management, L.P. ("HCMLP" or "Plaintiff"), and files this its *Defendant's Original Answer* (the "Answer"), responding to the *Complaint for (I)*

Breach of Contract and (II) Turnover of Property of Highland's Estate (the "Complaint"). Where an allegation in the Complaint is not expressly admitted in this Answer, it is denied.

PRELIMINARY STATEMENT

1. The first sentence of ¶ 1 sets forth the Plaintiff's objective in bringing the Complaint and does not require a response. To the extent it contains factual allegations, they are denied. The second sentence contains a legal conclusion that does not require a response. To the extent it contains factual allegations, they are denied.

2. Paragraph 2 contains a summary of the relief the Plaintiff seeks and does not require a response. To the extent it contains factual allegations, they are denied.

JURISDICTION AND VENUE

3. The Defendant admits that this Adversary Proceeding relates to the Plaintiff's bankruptcy case but denies any implication that this fact confers Constitutional or statutory authority on the Bankruptcy Court to adjudicate this dispute. Any allegations in ¶ 3 not expressly admitted are denied.

4. The Defendant admits that the Court has jurisdiction of this Adversary Proceeding but not authority to enter final orders or judgment. Any allegations in ¶ 4 not expressly admitted are denied.

5. The Defendant denies that a breach of contract claim is core. The Defendant denies that a § 542(b) turnover proceeding is the appropriate mechanism to collect a contested debt. The Defendant admits that a § 542(b) turnover proceeding is statutorily core but denies that it is Constitutionally core under *Stern v. Marshall*. The Defendant does not consent to the Bankruptcy Court entering final orders or judgment in this Adversary Proceeding. Any allegations in ¶ 5 not expressly admitted are denied.

6. The Defendant admits ¶ 6 of the Complaint.

THE PARTIES

7. The Defendant admits ¶ 7 of the Complaint.

8. The Defendant admits ¶ 8 of the Complaint.

CASE BACKGROUND

9. The Defendant admits ¶ 9 of the Complaint.

10. The Defendant admits ¶ 10 of the Complaint.

11. The Defendant admits ¶ 11 of the Complaint, subject to the ongoing appeal of the Confirmation Order. In the event the Confirmation Order is reversed, ¶ 11 is denied.

12. The Defendant admits ¶ 12 of the Complaint, subject to the ongoing appeal of the Confirmation Order. In the event the Confirmation Order is reversed, ¶ 12 is denied.

STATEMENT OF FACTS

A. The HCMFA Notes

13. The Defendant admits that it has executed at least one promissory note under which the Debtor is the payee. Any allegations in ¶ 13 not expressly admitted are denied.

14. The Defendant admits the allegations in ¶ 14 of the Complaint. The Defendant admits that the attached document appears to be a copy of the referenced note.

15. The Defendant admits the allegations in ¶ 15 of the Complaint.

16. The Defendant admits the allegations in ¶ 16 of the Complaint. The Defendant admits that the attached document appears to be a copy of the referenced note.

17. The Defendant admits the allegations in ¶ 17 of the Complaint.

18. The Defendant admits ¶ 18 of the Complaint.

19. The Defendant denies ¶ 19 of the Complaint. The document speaks for itself and the quote set forth in ¶ 19 is not verbatim.

20. The Defendant admits ¶ 20 of the Complaint.

B. Highland Agrees Not to Demand Payment Under the Notes Prior to May 31, 2021

21. The Defendant admits that James Dondero executed the document attached to the Complaint as Exhibit 3 and the Exhibit 3 is a true and correct copy. The Defendant admits that the Plaintiff has accurately quoted the second sentence of the letter, which provides, "HCMF expects that it may be unable to repay such amounts should they become due, for the period commencing today and continuing through May 31, 2021." The Defendant admits that the letter also provides, "HCMLP hereby agrees to not demand payment on amounts owed by HCMF prior to May 31, 2021. To the extent not expressly admitted, ¶ 21 of the Complaint is denied.

C. HCMFA's Default under Each Note

22. The Defendant admits that Exhibit 4 to the Complaint (the "Demand Letter") is a true and correct copy of what it purports to be and that the document speaks for itself. To the extent ¶ 22 of the Complaint asserts a legal conclusion, no response is required, and it is denied. To the extent not expressly admitted, ¶ 22 of the Complaint is denied.

23. To the extent ¶ 23 of the Complaint asserts a legal conclusion, no response is necessary, and it is denied. The Defendant otherwise admits ¶ 23 of the Complaint.

24. The Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in ¶ 24 of the Complaint and therefore denies the same.

25. The Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in ¶ 25 of the Complaint and therefore denies the same.

26. The Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in ¶ 26 of the Complaint and therefore denies the same.

27. The Defendant denies ¶ 27 of the Complaint.

FIRST CLAIM FOR RELIEF
(For Breach of Contract)

28. Paragraph 28 of the Complaint is a sentence of incorporation that does not require a response. All prior denials are incorporated herein by reference.

29. Paragraph 29 of the Complaint states a legal conclusion that does not require a response. To the extent it alleges facts, the Defendant denies the allegations in ¶ 29 of the Complaint.

30. Paragraph 30 of the Complaint states a legal conclusion that does not require a response. To the extent it alleges facts, the Defendant denies the allegations in ¶ 30 of the Complaint.

31. Paragraph 31 of the Complaint states a legal conclusion that does not require a response. To the extent it alleges facts, the Defendant denies the allegations in ¶ 31 of the Complaint.

32. The Defendant denies ¶ 32 of the Complaint.

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

33. Paragraph 33 of the Complaint is a sentence of incorporation that does not require a response. All prior denials are incorporated herein by reference.

34. Paragraph 34 of the Complaint states a legal conclusion that does not require a response. To the extent it alleges facts, the Defendant denies the allegations in ¶ 34 of the Complaint.

35. Paragraph 35 of the Complaint states a legal conclusion that does not require a response. To the extent it alleges facts, the Defendant denies the allegations in ¶ 35 of the Complaint.

36. The Defendant denies ¶ 36 of the Complaint.

37. Paragraph 37 of the Complaint states a legal conclusion that does not require a response. The Defendant admits that the Plaintiff transmitted the Demand Letter. To the extent ¶ 37 alleges other facts, the Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in ¶ 37 of the Complaint and therefore denies the same.

38. The Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in ¶ 38 of the Complaint and therefore denies the same.

39. Paragraph 39 of the Complaint states a legal conclusion that does not require a response. To the extent it alleges facts, the Defendant denies the allegations in ¶ 39 of the Complaint.

40. The Defendant denies that the Plaintiff is entitled to the relief requested in the prayer, including parts (i), (ii), and (iii).

AFFIRMATIVE DEFENSES

41. Plaintiff's claims are barred in whole or in part because, prior to the demands for payment, Plaintiff agreed that it would not collect the Notes upon fulfilment of conditions subsequent. Specifically, sometime between December of the year in which each Note was made and February of the following year, Nancy Dondero, as representative for a majority of the Class A shareholders of Plaintiff agreed that Plaintiff would forgive the Notes if certain portfolio companies were sold for greater than cost or on a basis outside of Mr. Dondero's control. The purpose of this agreement was to provide compensation to Mr. Dondero, who was otherwise underpaid compared to reasonable compensation levels in the industry, through the use of forgivable loans, a practice that was standard at HCMLP and in the industry. This agreement setting forth the conditions subsequent to demands for payment on the Notes was an oral agreement; however, Defendant believes there may be testimony or email correspondence that

discusses the existence of this agreement that may be uncovered through discovery in this Adversary Proceeding.

42. Plaintiff pleads ambiguity with respect to the Notes.

43. Due to the fact that the Plaintiff is in control of documents and information relevant to the Notes, Defendant is unable to complete its investigation into potential affirmative defenses. Out of an abundance of caution, Defendant conditionally pleads the following affirmative defenses subject to Defendant's ability to obtain and review relevant documents and information from the Plaintiff: waiver, estoppel, failure of consideration, and prepayment.

JURY DEMAND

44. The Defendant demands a trial by jury of all issues so triable pursuant to Rule 38 of the Federal Rules of Civil Procedure and Rule 9015 of the Federal Rules of Bankruptcy Procedure.

45. The Defendant does not consent to the Bankruptcy Court conducting a jury trial and therefore demands a jury trial in the District Court.

PRAYER

WHEREFORE, PREMISES CONSIDERED, the Defendant respectfully requests that, following a trial on the merits, the Court enter a judgment that the Plaintiff take nothing on the Complaint and provide the Defendant such other relief to which it is entitled.

Dated: December 10, 2021

Respectfully submitted,

STINSON LLP

/s/ Deborah Deitsch-Perez

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ATTORNEYS FOR DEFENDANT HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, L.P.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that, on the 10th day of December, 2021, a true and correct copy of this document was served electronically via the Court's CM/ECF system on the following recipients:

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/s/Deborah Deitsch-Perez
Deborah Deitsch-Perez

BTXN 138 (rev. 03/15)

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS

In Re:	§	
Highland Capital Management, L.P.	§	
	§	Case No.: 19−34054−sgj11
Debtor(s)	§	Chapter No.: 11
Highland Capital Management, L.P.	§	
Plaintiff(s)	§	Adversary No.: 21−03082−sgj
vs.	§	
Highland Capital Management Fund Advisors, L.P.	§	Civil Case No.:
Defendant(s)	§	
	§	
Highland Capital Management, L.P.	§	
Plaintiff(s)	§	
vs.	§	
Highland Capital Management Fund Advisors, L.P.	§	
Defendant(s)	§	
	§	
	§	

NOTICE OF TRANSMITTAL REGARDING WITHDRAWAL OF REFERENCE

I am transmitting:

- ☐ One copy of the Motion to Withdraw Reference (USDC Civil Action No. − DNC Case) **NOTE**: A Status Conference has been set for at , in _ before U.S. Bankruptcy Judge _. The movant/plaintiff, respondent/defendant or other affected parties are required to attend the Status Conference.
- ☑ One copy of: Motion to Withdraw Reference .

TO ALL ATTORNEYS: Fed.R.Bankr.P. 5011(a) A motion for withdrawal of a case or proceeding shall be heard by a district judge, [*implied*] that any responses or related papers be filed likewise.

DATED: 4/6/22

FOR THE COURT:
Robert P. Colwell, Clerk of Court

by: /s/Sheniqua Whitaker, Deputy Clerk

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS

WITHDRAWAL OF REFERENCE SERVICE LIST

Transmission of the Record

BK Case No.: 19−34054−sgj11

Adversary No.: 21−03082−sgj

Received in District Court by: _____

Date: _____

Volume Number(s): _____

cc: Stacey G. Jernigan
Robert Schaaf
Nathan Elner
Attorney(s) for Appellant
US Trustee

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BTXN 150 (rev. 11/10)

In Re: Highland Capital Management, L.P.	§	Case No.: 19−34054−sgj11
Debtor(s)	§	Chapter No.: 11
Highland Capital Management, L.P.	§	
Plaintiff(s)	§	Adversary No.: 21−03082−sgj
vs.	§	
Highland Capital Management Fund Advisors, L.P.	§	
Defendant(s)	§	

CIVIL CASE COVER SHEET

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

I. (a) **PLAINTIFF**
Highland Capital Management, LP

(b) County of Residence of First Listed Party:
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)
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DEFENDANT
Highland Capital Management Fund Advisors, L.P.

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II. BASIS OF JURISDICTION

○ 1 U.S. Government Plaintiff ○ 2 U.S. Government Defendant ◉ 3 Federal Question (U.S. Government Not a Party) ○ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES

Citizen of This State	○ 1	○ 1	Incorporated *or* Principal Place of Business In This State	○ 4	○ 4
Citizen of Another State	○ 2	○ 2	Incorporated *and* Principal Place of Business In Another State	○ 5	○ 5
Citizen or Subject of a Foreign Country	○ 3	○ 3	Foreign Nation	○ 6	○ 6

IV. NATURE OF SUIT

○ 422 Appeal 28 USC 158 ◉ 423 Withdrawal 28 USC 157 ○ 890 Other Statutory Actions

V. ORIGIN

◉ 1 Original Proceeding ○ 2 Removed from State Court ○ 3 Remanded from Appellate Court ○ 4 Reinstated or Reopened

○ 5 Transferred from another district ○ 6 Multidistrict Litigation ○ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing **(Do not cite jurisdictional statutes unless diversity):**
423 Withdrawal 28 USC 157

Brief description of cause:
Motion to withdraw the reference

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A **CLASS ACTION** UNDER F.R.C.P. 23 DEMAND $

CHECK YES only if demanded in complaint:
JURY DEMAND: ☐ Yes ☐ No

VIII. RELATED CASE(S) IF ANY
Judge: Docket Number:

DATED: 4/6/22

FOR THE COURT:
Robert P. Colwell, Clerk of Court
by: /s/Sheniqua Whitaker, Deputy Clerk

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Counsel for Highland Capital Management Fund Advisors, L.P.

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

In re	§	
	§	**Case No. 19-34054-sgj11**
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	**Chapter 11**
	§	
Debtor.	§	
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	
Plaintiff,	§	
	§	
v.	§	**Adversary No. 21-03082**
	§	
HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, L.P.	§	
	§	
Defendant.	§	

AGREED MOTION FOR THE ISSUANCE OF A REPORT AND RECOMMENDATION WITHDRAWING THE REFERENCE

COMES NOW Highland Capital Management, L.P., as the reorganized debtor ("Highland" or "Plaintiff"), and Highland Capital Management Fund Advisors, L.P. ("HCMFA" or "Defendant", and together with Highland, the "Parties"), by and through their respective undersigned counsel, file this *Agreed Motion for the Issuance of a Report and Recommendation Withdrawing the Reference* (the "Motion") respectfully stating as follows:

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

On December 4, 2019, the Delaware Court entered an order transferring venue of Highland's bankruptcy case (the "Bankruptcy Case") to the United States Bankruptcy Court for the Northern District of Texas (the "Bankruptcy Court"). On January 22, 2021, Highland filed its *Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* (as Modified) [Bankr. Docket No. 1808] (the "Plan").

On February 22, 2021, the Bankruptcy Court entered the *Order Confirming the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified) and (ii) Granting Related Relief* [Docket No. 1943] (the "Confirmation Order") which confirmed Highland's Plan.

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

On January 22, 2021, Highland commenced a different adversary proceeding involving the same parties (the "First Adversary Proceeding") as this adversary proceeding, Adv. No. 21-03004, but involving different promissory notes. In the First Adversary Proceeding, HCMFA filed *Defendant's Motion to Withdraw the Reference* [Docket No. 20], asking the United States District Court for the Northern District of Texas (the "District Court") to enter an order withdrawing from the Bankruptcy Court the reference of the First Adversary Proceeding. On July 8, 2021, the Bankruptcy Court issued a *Report and Recommendation to District Court Proposing that it (A) Grant Defendant's Motion to Withdraw the Reference at Such Time as Bankruptcy Court Certifies that Action is Trial Ready, and (B) Defer Pretrial Matters to Bankruptcy Court*. [Docket No. 50] (the "First Report and Recommendation").

On September 14, 2021, the District Court, in Civil Action No. 3:21-CV-00881-X, issued an Order accepting the First Report and Recommendation referring the case for pretrial management to the Bankruptcy Court until that Court notifies the District Court that the case is ready for trial, at which time the reference would be withdrawn. [Docket No 14].

On November 9, 2021, Highland commenced this adversary proceeding, involving the same parties as the First Adversary Proceeding, but involving different promissory notes.

On November 10, 2021, the Bankruptcy Court issued its *Order Regarding Adversary Proceedings Trial Setting and Alternative Scheduling Order* [Docket No. 3] (the "Alternative Scheduling Order"). This Adversary Proceeding was automatically referred to the Bankruptcy Court pursuant to 28 U.S.C. § 157(a) and District Court Miscellaneous Order No. 33, *Order of Reference of Bankruptcy Cases and Proceedings Nunc Pro Tunc*.

In light of the foregoing, and to avoid unnecessary motion practice, the Parties jointly request that the Bankruptcy Court issue a report and recommendation substantively the same as

the First Report and Recommendation, including that (a) the District Court refer all pre-trial matters to the Bankruptcy Court and withdraw the reference upon certification by the Bankruptcy Court that the case is trial-ready, and (b) to the extent a dispositive motion is brought that the Bankruptcy Court determines should be granted and would finally dispose of claims in this Adversary Proceeding, the Bankruptcy Court should submit a report and recommendation to the District Court for the District Court to adopt or reject.

WHEREFORE, PREMISES CONSIDERED, the Parties respectfully request that the Bankruptcy Court: (i) enter an order granting the Motion; (ii) issue a report and recommendation substantively the same as the First Report and Recommendation issued in the First Adversary Proceeding; and (iii) grant such other and further relief the Court deems necessary and just.

RESPECTFULLY SUBMITTED this 18th day of January, 2022.

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Counsel for Highland Capital Management, L.P.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that, on January 18, 2022, a true and correct copy of this document was served electronically via the Court's CM/ECF system on all parties registered to receive electronic notices in this case, including on the Plaintiff through its counsel of record.

/s/Deborah Deitsch-Perez
Deborah Deitsch-Perez

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

ENTERED

THE DATE OF ENTRY IS ON
THE COURT'S DOCKET

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

Signed April 7, 2022

United States Bankruptcy Judge

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

IN RE:	§	
	§	
HIGHLAND CAPITAL MANAGEMENT L.P.,	§	**CASE NO. 19-34054-SGJ-11**
	§	**(CHAPTER 11)**
REORGANIZED DEBTOR.	§	
	§	
HIGHLAND CAPITAL MANAGEMENT L.P.,	§	
	§	**ADVERSARY NO. 21-03082**
PLAINTIFF,	§	**(CIV. ACTION NO. 3:22-cv-00789-K)**
	§	
VS.	§	
	§	
HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, L.P.,	§	
	§	
DEFENDANT.	§	

REPORT AND RECOMMENDATION TO DISTRICT COURT PROPOSING THAT IT: (A) GRANT DEFENDANT'S MOTION TO WITHDRAW THE REFERENCE AT SUCH TIME AS BANKRUPTCY COURT CERTIFIES THAT ACTION IS TRIAL READY; AND (B) DEFER PRETRIAL MATTERS TO BANKRUPTCY COURT

I. INTRODUCTION

The above-referenced adversary proceeding (the "Adversary Proceeding") is related to the bankruptcy case of Highland Capital Management, L.P. (the "Bankruptcy Case").[1] Highland Capital Management, L.P. (the "Debtor" or "Highland") filed a voluntary Chapter 11 petition on October 16, 2019 in the United States Bankruptcy Court of Delaware. That court subsequently entered an order transferring venue to the United States Bankruptcy Court for the Northern District of Texas, Dallas Division (the "Bankruptcy Court) on December 4, 2019. A Chapter 11 plan was confirmed by the Bankruptcy Court on February 22, 2021. The Chapter 11 plan has been appealed by the Defendant in this action, Highland Capital Management Fund Advisors ("HCMFA-Defendant"), and certain parties related to it. The appeal of the plan is now pending before the Fifth Circuit, but no stay pending appeal has been granted.

On November 9, 2021, the Debtor, as Plaintiff, brought this Adversary Proceeding against HCMFA-Defendant. The Adversary Proceeding pertains to two promissory notes (collectively, the "Notes") executed by HCMFA-Defendant in favor of the Debtor in 2014 and 2016. Each of the Notes were demand notes. On June 2, 2021, the Debtor sent HCMFA-Defendant a letter demanding payment June 4, 2021, as allowed under the terms of the notes, for the total aggregate outstanding amount of $3,143,181.93. Following HCMFA-Defendant's failure to pay on the Notes in response to the demand letter, the Debtor brought this action to collect on the Notes.

Under the United States District Court for the Northern District of Texas' standing order of reference[2], proceedings arising in, or related to, a case under Title 11 are automatically referred to the Bankruptcy Court. The Debtor and HCMFA-Defendant submitted an *Agreed Motion for the*

[1] Bankruptcy Case No. 19-34054.
[2] Misc. Order No. 33.

Issuance of a Report and Recommendation Withdrawing the Reference[3] (the "Agreed Motion") seeking to have the reference withdrawn, such that this Adversary Proceeding would be adjudicated in the District Court once the lawsuit is trial-ready.

The lawsuit contains the same causes of actions and substantially similar facts to an earlier filed adversary proceeding between the same parties that also involved recovery on two different promissory notes which were not paid by HCMFA-Defendant following a demand made by the Debtor (the "Previous Note Litigation").[4] There, HCMFA-Defendant moved to withdraw the reference, which faced opposition from the Debtor. Ultimately, in the Previous Note Litigation, the Bankruptcy Court issued a report and recommendation suggesting the District Court withdraw the reference, but only at such time as the Bankruptcy Court certified the lawsuit was trial-ready. The report and recommendation in the Previous Note Litigation was accepted by the District Court on September 14, 2021.[5] The parties have requested the Bankruptcy Court submit a report and recommendation that is substantively the same as the one submitted in connection with the Previous Note Litigation in the current Adversary Proceeding. The Bankruptcy Court believes this is an appropriate request.

Accordingly, the Bankruptcy Court submits the following report and recommendation to the District Court, ultimately recommending that the Motion be granted, ***but only at such time as the Bankruptcy Court certifies to the District Court that the lawsuit is trial ready***. The Bankruptcy Court further recommends that the District Court ***defer to the Bankruptcy Court the handling of all pretrial matters***.

II. NATURE OF THE ADVERSARY PROCEEDING

[3] Adversary Case No. 21-03082, Dkt. 12.
[4] Adversary Case No. 21-03004.
[5] Civil Action No. 3:21-CV-00881-X, Dkt. 14.

a. The Complaint and Procedural History

The Debtor commenced this Adversary Proceeding by filing its *Complaint for (I) Breach of Contract and (II) Turnover of Property of the Highland's Estate*[6] on November 9, 2021. The Debtor's Complaint asserts two causes of action: (1) a breach of contract claim ("Count 1") and (2) a turnover action under 11 U.S.C. § 542(b) for the amounts owed on the Notes ("Count 2"). The principal amounts and execution dates for each of the two Notes were: (i) $4,000,000, executed February 26, 2014, and (ii) $2,300,000, executed February 26, 2016. The Debtor now seeks monetary damages totaling $3,143,181.93, including accrued but unpaid interest as of June 4, 2021, plus further interest accrued up until payment and cost of collection. Because the Debtor alleges the amounts due on the Notes are property of its estate, it argues that turnover pursuant to 11 U.S.C. § 542(b) is appropriate.

HCMFA-Defendant filed two proofs of claim in the Bankruptcy Case, Proof of Claim Nos. 95 and 119. Proof of Claim No. 95 was based on alleged overpayments made by HCMFA-Defendant to the Debtor under a shared services agreement. Proof of Claim No. 119 was based on alleged overpayments made by HCMFA-Defendant to the Debtor under a payroll reimbursement agreement. On October 9, 2020, the Bankruptcy Court entered a *First Supplemental Order Sustaining First Omnibus Claims Objection*[7], which disallowed both of HCMFA-Defendant's proofs of claim. The HCMFA-Defendant filed an application for an administrative expense claim on January 24, 2021, relating to services it alleges the Debtor did not perform under a shared services agreement. The Debtor has since filed an objection to the application and the matter is set for trial on April 12, 2022. The administrative expense claim ***does***

[6] Adversary Case No. 21-03082, Dkt. 1.
[7] Bankruptcy Case No. 19-34054, Dkt. 1155.

not directly relate to the causes of action for collection under the Notes. Similarly, the disallowed ***proofs of claim did not relate to the Notes.***

III. THE BREACH OF CONTRACT CLAIMS AT THE CENTER OF THE ADVERSARY PROCEEDING ARE NONCORE CLAIMS, AND THE PENDING ADMINISTRATIVE EXPENSE CLAIM OF HCMFA-DEFENDANT IS UNRELATED TO THEM

Permissive withdrawal of the reference is described in 28 U.S.C. § 157(d) as follows: "The district court may withdraw, in whole or in part, any case or proceeding referred under this section, on its own motion or on timely motion of any party, for cause shown." The Bankruptcy Code does not define "cause shown," but the United States Court of Appeal for the Fifth Circuit, interpreting the Supreme Court case of *Northern Pipeline Const. Co. v. Marathon Pipe Line Co.*,[8] has identified a number of factors for courts to consider in determining whether permissive withdrawal of the reference is appropriate: (1) whether the matter is core or noncore; (2) whether the matter involves a jury demand; (3) whether withdrawal would further uniformity in bankruptcy administration; (4) whether withdrawal would reduce forum-shopping and confusion; (5) whether withdrawal would foster economical use of debtors' and creditors' resources; and (6) whether withdrawal would expedite the bankruptcy process.[9] Courts in this District have placed an emphasis on the first two factors.[10]

As explained by the Supreme Court in *Stern v. Marshall*, Congress has divided bankruptcy ***proceedings*** (*i.e.,* adversary proceedings or contested matter within a bankruptcy case)—over which there is bankruptcy subject matter jurisdiction—into three different categories: (a) those that "aris[e] under" Title 11; (b) those that "aris[e] in" a Title 11 case; and (c) those that are "related

[8] 458 U.S. 50 (1982).
[9] *Holland Am. Ins. Co. v. Succession of Roy*, 777 F.2d 992, 998-99 (5th Cir. 1985).
[10] See *Mirant Corp. v. The Southern Co.*, 337 B.R. 107, 115-23 (N.D. Tex. 2006).

to" a case under Title 11.[11] Further, those that arise under Title 11 or arise in a Title 11 case are defined as "core" matters[12] and those that are merely "related to" a Title 11 case are defined as "noncore" matters. The significance of the "core"/"noncore" distinction is that bankruptcy courts may statutorily enter final judgments in "core" proceedings in a bankruptcy case, while in "noncore" proceedings, the bankruptcy courts instead may only (absent consent from all of the parties) submit proposed findings of fact and conclusions of law to the district court, for that court's review and issuance of final judgment. This is the statutory framework collectively set forth in 28 U.S.C. § 1334 and 28 U.S.C. § 157. But while a proceeding may be "core" in nature, under 28 U.S.C. § 157(b)(2), and the bankruptcy court, therefore, has the ***statutory*** power to enter a final judgment on the claim under 28 U.S.C. § 157(b)(1), *Stern* instructs that any district court, in evaluating whether a bankruptcy court has the ability to issue final orders and judgments, must resolve not only: (a) whether the bankruptcy court has the statutory authority under 28 U.S.C. § 157(b) to issue a final judgment on a particular claim; but also (b) whether the conferring of that authority on an Article I bankruptcy court is ***constitutional*** (and this turns on whether "the action at issue stems from the bankruptcy itself or would necessarily be resolved in the claims allowance process").[13]

With respect to the claims asserted against HCMFA-Defendant, it might be argued that both counts asserted against it are ***statutorily*** core in nature.[14] While Count 1 is a breach of contract claim for collection of amounts due under promissory notes—one of the simplest forms of a state law lawsuit—it might be argued that Count 1 is statutorily core under the catchall provision of 28

[11] 28 U.S.C. § 1334(b); *Stern v. Marshall*, 564 U.S. 462, 473-474 (2011).
[12] *Stern*, 564 U.S. at 473-474. Core proceedings include, but are not limited to, 16 different types of matters, including "counterclaims by [a debtor's] estate against persons filing claims against the estate." 28 U.S.C. § 157(b)(2)(C).
[13] *Stern*, 564 U.S. at 499.
[14] 28 U.S.C. § 157(b)(2)(E), (O).

U.S.C. § 157(b)(2)(O), as the resolution of the claim would be "affecting the liquidation of the assets of the estate." However, this position would not pass constitutional muster. The cause of action does not stem from the bankruptcy itself (*i.e.,* it stems from alleged defaults on pre-petition notes) and would not be resolved through the claims allowance process (***since no pending proof of claim exists and the administrative expense claim is not directly related to the Notes***). In other words, the resolution of Count 1 is not so inextricably intertwined with the resolution of HCMFA-Defendant's still-remaining administrative expense claim so as to confer constitutional authority on the Bankruptcy Court to enter a final judgment on the breach of contract claims.

Count 2, the turnover cause of action, is brought pursuant to 11 U.S.C. § 542(b) and is listed as statutorily core under 28 U.S.C. § 157(b)(2)(E). If Count 2 were freestanding and the debts due under the Notes were undisputed, it is unrefuted that a turnover action under 11 U.S.C. § 542(b) would be both a statutory and constitutional core claim.

This court views the turnover claim as derivative of the breach of contract claims. The breach of contract claims are clearly non-core, and the Bankruptcy Court lacks constitutional authority to confer jurisdiction over them (absent consent—which does not exist here). A turnover action under 11 U.S.C. § 542(b) cannot be tacked onto a complaint so as to confer authority in the Bankruptcy Court to adjudicate an otherwise non-core claim. To hold otherwise would run counter to the dictates of the Supreme Court in *Marathon*.

In summary, this court believes that the turnover claim in the Complaint, to collect on a disputed indebtedness under the Notes, "do[es] not fall within the scope of turnover actions as contemplated by § 542 and § 157(b)(2)(E)," absent a judgment or stipulation resolving the dispute

as to the indebtedness.[15] Thus, the turnover claim, as brought, is not a core claim that the Bankruptcy Court can finally adjudicate, absent the consent of all parties.

IV. JURY TRIAL RIGHTS AND DEMAND

Pursuant to 28 U.S.C. § 157(e), if a litigant has the right to a jury trial under applicable non-bankruptcy law, a bankruptcy court may conduct the jury trial only if: (a) the matters to be finally adjudicated fall within the scope of bankruptcy subject matter jurisdiction; (b) the district court of which the bankruptcy court is a unit authorizes the bankruptcy court to do so; and (c) all of the parties consent.[16]

Starting first with whether a right to a jury trial even exists, the Seventh Amendment, of course, provides a jury trial right in cases in which the value in controversy exceeds twenty dollars and the cause of action is to enforce statutory rights that are at least analogous to rights that were tried at law in the late 18th century English courts.[17] Suits "at law" refers to "suits in which legal rights were to be ascertained and determined" as opposed to "those where equitable rights alone were recognized and equitable remedies were administered."[18] This analysis requires two steps: (1) a comparison of the "statutory action to 18th century actions brought in the courts of England prior to the merger of the courts of law and equity"; and (2) whether the remedy sought is "legal or equitable in nature . . . [t]he second stage of this analysis" being "more important than the first."[19]

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[15] *Satelco*, 58 B.R. at 789.
[16] "If the right to a jury trial applies in a proceeding that may be heard under this section by a bankruptcy judge, the bankruptcy judge may conduct the jury trial if specially designated to exercise such jurisdiction by the district court and with the express consent of all the parties." 28 U.S.C. § 157(e) (West 2019).
[17] *See City of Monterey v. Del Monte Dunes*, 526 U.S. 687, 708 (1999).
[18] *Granfinanciera, S.A. v. Nordberg*, 492 U.S. 33, 41 (1989).
[19] *See Levine v. M & A Custom Home Builder & Developer, LLC*, 400 B.R. 200, 205 (S.D. Tex. 2008) (quoting *Granfinanciera*, 492 U.S. at 42).

It is well established that the act of filing a proof of claim can operate to deprive a creditor of a jury trial right, by subjecting a claim, that would otherwise sound only in law, to the equitable claims allowance process.[20] Thus, if both of HCMFA-Defendant's proofs of claims were ***pending***, it would have consented to the Bankruptcy Court's equitable jurisdiction and waived its right to a jury trial as to the subject matter of the ***pending*** proofs of claim.[21] However, as earlier noted, prior to the commencement of this Adversary Proceeding on November 9, 2021, HCMFA-Defendant had both of its proofs of claim disallowed on October 9, 2020. The pending trial over the administrative expense claim sought by HCMFA-Defendant is separate from the collection under the Notes. Without a pending claim related to the Notes, the breach of contract claims is precisely the kind of action that would sound in law rather than in equity. By not having a filed proof of claim related to the Notes, HCMFA-Defendant never subjected the Notes to the claims allowance process of the Bankruptcy Court and preserved its right to a jury trial on the Notes.[22]

To reiterate, HCMFA-Defendant's remaining administrative expense claim is not directly related to the collection on the Notes, and it has not otherwise consented to the jurisdiction of the Bankruptcy Court for claims related to the Notes. HCMFA-Defendant has also not consented to the Bankruptcy Court conducting a jury trial pursuant to 11 U.S.C. § 157(e).

In summary, HCMFA-Defendant's lack of waiver of its jury trial rights, expressly or impliedly, is further reason why the Bankruptcy Court does not believe it can finally adjudicate the claims in the Adversary Proceeding.

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[20] *See Langenkamp v. Culp*, 498 U.S. 42, 44-45 (1990).
[21] *Id.*
[22] *Smith v. Dowden*, 47 F.3d 940, 943 (8th Cir. 1995) ("[T]he successful withdrawal of a claim pursuant to Fed. R. Bankr. P. 3006 prior to the trustee's initiation of an adversarial proceeding renders the withdrawn claim a legal nullity and leaves parties as if the claim had never been brought."); *In re Goldblatt's Bargain Stores, Inc.*, No. 05 C 03840, 2005 WL 8179250, at *5 (N.D. Ill. Dec. 6, 2005) (claims withdrawn before adversary proceeding are as if never filed); *see generally, In re Manchester, Inc.*, No. 08-30703-11-BJH, 2008 WL 5273289, at *3-6 (Bankr. N.D. Tex. Dec. 19, 2008) (permissible to withdraw a claim to preserve jury trial right).

V. RECOMMENDATION

In light of: (a) the noncore, related-to claims in the Complaint; (b) the lack of a proof of claim or any other claim related to the Notes asserted by HCMFA-Defendant; and (c) the lack of any other consent by HCMFA-Defendant to the equitable jurisdiction of the Bankruptcy Court related to the Notes, the Bankruptcy Court recommends the District Court: refer all pre-trial matters to the Bankruptcy Court, and grant the Motion upon certification by the Bankruptcy Court that the parties are trial-ready.

With regard to such pretrial matters, the Bankruptcy Court further recommends that, to the extent a dispositive motion is brought that the Bankruptcy Court determines should be granted and would finally dispose of claims in this Adversary Proceeding, the Bankruptcy Court should submit a report and recommendation to the District Court for the District Court to adopt or reject.

*****END OF REPORT AND RECOMMENDATION*****

BTXN 138 (rev. 03/15)

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS

In Re:		§	
Highland Capital Management, L.P.		§	
		§	Case No.: 19−34054−sgj11
	Debtor(s)	§	Chapter No.: 11
Marc Kirschner et al.		§	
	Plaintiff(s)	§	Adversary No.: 21−03076−sgj
vs.		§	
James D. Dondero et al.		§	Civil Case No.:
	Defendant(s)	§	
		§	
Marc Kirschner		§	
	Plaintiff(s)	§	
vs.		§	
Mark Okada, et al.		§	
	Defendant(s)	§	
		§	
		§	

NOTICE OF TRANSMITTAL REGARDING WITHDRAWAL OF REFERENCE

I am transmitting:

One copy of the Motion to Withdraw Reference (USDC Civil Action No. − DNC Case) **NOTE**: A Status Conference has been set for:

X One copy of: _Report and Recommendation.

☐

TO ALL ATTORNEYS: Fed.R.Bankr.P. 5011(a) A motion for withdrawal of a case or proceeding shall be heard by a district judge, [*implied*] that any responses or related papers be filed likewise.

DATED: 1/28/22

FOR THE COURT:
Robert P. Colwell, Clerk of Court

by: /s/Sheniqua Whitaker, Deputy Clerk

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

ENTERED

THE DATE OF ENTRY IS ON
THE COURT'S DOCKET

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

Signed April 7, 2022

United States Bankruptcy Judge

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

IN RE:	§	
	§	
HIGHLAND CAPITAL MANAGEMENT L.P.,	§	**CASE NO. 19-34054-SGJ-11**
	§	**(CHAPTER 11)**
REORGANIZED DEBTOR.	§	
	§	
HIGHLAND CAPITAL MANAGEMENT L.P.,	§	
	§	**ADVERSARY NO. 21-03082**
PLAINTIFF,	§	**(CIV. ACTION NO. 3:22-cv-00789-K)**
	§	
VS.	§	
	§	
HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, L.P.,	§	
	§	
DEFENDANT.	§	

REPORT AND RECOMMENDATION TO DISTRICT COURT PROPOSING THAT IT: (A) GRANT DEFENDANT'S MOTION TO WITHDRAW THE REFERENCE AT SUCH TIME AS BANKRUPTCY COURT CERTIFIES THAT ACTION IS TRIAL READY; AND (B) DEFER PRETRIAL MATTERS TO BANKRUPTCY COURT

I. INTRODUCTION

The above-referenced adversary proceeding (the "Adversary Proceeding") is related to the bankruptcy case of Highland Capital Management, L.P. (the "Bankruptcy Case").[1] Highland Capital Management, L.P. (the "Debtor" or "Highland") filed a voluntary Chapter 11 petition on October 16, 2019 in the United States Bankruptcy Court of Delaware. That court subsequently entered an order transferring venue to the United States Bankruptcy Court for the Northern District of Texas, Dallas Division (the "Bankruptcy Court) on December 4, 2019. A Chapter 11 plan was confirmed by the Bankruptcy Court on February 22, 2021. The Chapter 11 plan has been appealed by the Defendant in this action, Highland Capital Management Fund Advisors ("HCMFA-Defendant"), and certain parties related to it. The appeal of the plan is now pending before the Fifth Circuit, but no stay pending appeal has been granted.

On November 9, 2021, the Debtor, as Plaintiff, brought this Adversary Proceeding against HCMFA-Defendant. The Adversary Proceeding pertains to two promissory notes (collectively, the "Notes") executed by HCMFA-Defendant in favor of the Debtor in 2014 and 2016. Each of the Notes were demand notes. On June 2, 2021, the Debtor sent HCMFA-Defendant a letter demanding payment June 4, 2021, as allowed under the terms of the notes, for the total aggregate outstanding amount of $3,143,181.93. Following HCMFA-Defendant's failure to pay on the Notes in response to the demand letter, the Debtor brought this action to collect on the Notes.

Under the United States District Court for the Northern District of Texas' standing order of reference[2], proceedings arising in, or related to, a case under Title 11 are automatically referred to the Bankruptcy Court. The Debtor and HCMFA-Defendant submitted an *Agreed Motion for the*

[1] Bankruptcy Case No. 19-34054.
[2] Misc. Order No. 33.

Issuance of a Report and Recommendation Withdrawing the Reference[3] (the "Agreed Motion") seeking to have the reference withdrawn, such that this Adversary Proceeding would be adjudicated in the District Court once the lawsuit is trial-ready.

The lawsuit contains the same causes of actions and substantially similar facts to an earlier filed adversary proceeding between the same parties that also involved recovery on two different promissory notes which were not paid by HCMFA-Defendant following a demand made by the Debtor (the "Previous Note Litigation").[4] There, HCMFA-Defendant moved to withdraw the reference, which faced opposition from the Debtor. Ultimately, in the Previous Note Litigation, the Bankruptcy Court issued a report and recommendation suggesting the District Court withdraw the reference, but only at such time as the Bankruptcy Court certified the lawsuit was trial-ready. The report and recommendation in the Previous Note Litigation was accepted by the District Court on September 14, 2021.[5] The parties have requested the Bankruptcy Court submit a report and recommendation that is substantively the same as the one submitted in connection with the Previous Note Litigation in the current Adversary Proceeding. The Bankruptcy Court believes this is an appropriate request.

Accordingly, the Bankruptcy Court submits the following report and recommendation to the District Court, ultimately recommending that the Motion be granted, ***but only at such time as the Bankruptcy Court certifies to the District Court that the lawsuit is trial ready***. The Bankruptcy Court further recommends that the District Court ***defer to the Bankruptcy Court the handling of all pretrial matters***.

II. NATURE OF THE ADVERSARY PROCEEDING

[3] Adversary Case No. 21-03082, Dkt. 12.
[4] Adversary Case No. 21-03004.
[5] Civil Action No. 3:21-CV-00881-X, Dkt. 14.

a. The Complaint and Procedural History

The Debtor commenced this Adversary Proceeding by filing its *Complaint for (I) Breach of Contract and (II) Turnover of Property of the Highland's Estate*[6] on November 9, 2021. The Debtor's Complaint asserts two causes of action: (1) a breach of contract claim ("Count 1") and (2) a turnover action under 11 U.S.C. § 542(b) for the amounts owed on the Notes ("Count 2"). The principal amounts and execution dates for each of the two Notes were: (i) $4,000,000, executed February 26, 2014, and (ii) $2,300,000, executed February 26, 2016. The Debtor now seeks monetary damages totaling $3,143,181.93, including accrued but unpaid interest as of June 4, 2021, plus further interest accrued up until payment and cost of collection. Because the Debtor alleges the amounts due on the Notes are property of its estate, it argues that turnover pursuant to 11 U.S.C. § 542(b) is appropriate.

HCMFA-Defendant filed two proofs of claim in the Bankruptcy Case, Proof of Claim Nos. 95 and 119. Proof of Claim No. 95 was based on alleged overpayments made by HCMFA-Defendant to the Debtor under a shared services agreement. Proof of Claim No. 119 was based on alleged overpayments made by HCMFA-Defendant to the Debtor under a payroll reimbursement agreement. On October 9, 2020, the Bankruptcy Court entered a *First Supplemental Order Sustaining First Omnibus Claims Objection*[7], which disallowed both of HCMFA-Defendant's proofs of claim. The HCMFA-Defendant filed an application for an administrative expense claim on January 24, 2021, relating to services it alleges the Debtor did not perform under a shared services agreement. The Debtor has since filed an objection to the application and the matter is set for trial on April 12, 2022. The administrative expense claim ***does***

[6] Adversary Case No. 21-03082, Dkt. 1.
[7] Bankruptcy Case No. 19-34054, Dkt. 1155.

not directly relate to the causes of action for collection under the Notes. Similarly, the disallowed ***proofs of claim did not relate to the Notes.***

III. THE BREACH OF CONTRACT CLAIMS AT THE CENTER OF THE ADVERSARY PROCEEDING ARE NONCORE CLAIMS, AND THE PENDING ADMINISTRATIVE EXPENSE CLAIM OF HCMFA-DEFENDANT IS UNRELATED TO THEM

Permissive withdrawal of the reference is described in 28 U.S.C. § 157(d) as follows: "The district court may withdraw, in whole or in part, any case or proceeding referred under this section, on its own motion or on timely motion of any party, for cause shown." The Bankruptcy Code does not define "cause shown," but the United States Court of Appeal for the Fifth Circuit, interpreting the Supreme Court case of *Northern Pipeline Const. Co. v. Marathon Pipe Line Co.*,[8] has identified a number of factors for courts to consider in determining whether permissive withdrawal of the reference is appropriate: (1) whether the matter is core or noncore; (2) whether the matter involves a jury demand; (3) whether withdrawal would further uniformity in bankruptcy administration; (4) whether withdrawal would reduce forum-shopping and confusion; (5) whether withdrawal would foster economical use of debtors' and creditors' resources; and (6) whether withdrawal would expedite the bankruptcy process.[9] Courts in this District have placed an emphasis on the first two factors.[10]

As explained by the Supreme Court in *Stern v. Marshall*, Congress has divided bankruptcy ***proceedings*** (*i.e.,* adversary proceedings or contested matter within a bankruptcy case)—over which there is bankruptcy subject matter jurisdiction—into three different categories: (a) those that "aris[e] under" Title 11; (b) those that "aris[e] in" a Title 11 case; and (c) those that are "related

[8] 458 U.S. 50 (1982).
[9] *Holland Am. Ins. Co. v. Succession of Roy*, 777 F.2d 992, 998-99 (5th Cir. 1985).
[10] See *Mirant Corp. v. The Southern Co.*, 337 B.R. 107, 115-23 (N.D. Tex. 2006).

to" a case under Title 11.[11] Further, those that arise under Title 11 or arise in a Title 11 case are defined as "core" matters[12] and those that are merely "related to" a Title 11 case are defined as "noncore" matters. The significance of the "core"/"noncore" distinction is that bankruptcy courts may statutorily enter final judgments in "core" proceedings in a bankruptcy case, while in "noncore" proceedings, the bankruptcy courts instead may only (absent consent from all of the parties) submit proposed findings of fact and conclusions of law to the district court, for that court's review and issuance of final judgment. This is the statutory framework collectively set forth in 28 U.S.C. § 1334 and 28 U.S.C. § 157. But while a proceeding may be "core" in nature, under 28 U.S.C. § 157(b)(2), and the bankruptcy court, therefore, has the ***statutory*** power to enter a final judgment on the claim under 28 U.S.C. § 157(b)(1), *Stern* instructs that any district court, in evaluating whether a bankruptcy court has the ability to issue final orders and judgments, must resolve not only: (a) whether the bankruptcy court has the statutory authority under 28 U.S.C. § 157(b) to issue a final judgment on a particular claim; but also (b) whether the conferring of that authority on an Article I bankruptcy court is ***constitutional*** (and this turns on whether "the action at issue stems from the bankruptcy itself or would necessarily be resolved in the claims allowance process").[13]

With respect to the claims asserted against HCMFA-Defendant, it might be argued that both counts asserted against it are ***statutorily*** core in nature.[14] While Count 1 is a breach of contract claim for collection of amounts due under promissory notes—one of the simplest forms of a state law lawsuit—it might be argued that Count 1 is statutorily core under the catchall provision of 28

[11] 28 U.S.C. § 1334(b); *Stern v. Marshall*, 564 U.S. 462, 473-474 (2011).
[12] *Stern*, 564 U.S. at 473-474. Core proceedings include, but are not limited to, 16 different types of matters, including "counterclaims by [a debtor's] estate against persons filing claims against the estate." 28 U.S.C. § 157(b)(2)(C).
[13] *Stern*, 564 U.S. at 499.
[14] 28 U.S.C. § 157(b)(2)(E), (O).

U.S.C. § 157(b)(2)(O), as the resolution of the claim would be "affecting the liquidation of the assets of the estate." However, this position would not pass constitutional muster. The cause of action does not stem from the bankruptcy itself (*i.e.,* it stems from alleged defaults on pre-petition notes) and would not be resolved through the claims allowance process (***since no pending proof of claim exists and the administrative expense claim is not directly related to the Notes***). In other words, the resolution of Count 1 is not so inextricably intertwined with the resolution of HCMFA-Defendant's still-remaining administrative expense claim so as to confer constitutional authority on the Bankruptcy Court to enter a final judgment on the breach of contract claims.

Count 2, the turnover cause of action, is brought pursuant to 11 U.S.C. § 542(b) and is listed as statutorily core under 28 U.S.C. § 157(b)(2)(E). If Count 2 were freestanding and the debts due under the Notes were undisputed, it is unrefuted that a turnover action under 11 U.S.C. § 542(b) would be both a statutory and constitutional core claim.

This court views the turnover claim as derivative of the breach of contract claims. The breach of contract claims are clearly non-core, and the Bankruptcy Court lacks constitutional authority to confer jurisdiction over them (absent consent—which does not exist here). A turnover action under 11 U.S.C. § 542(b) cannot be tacked onto a complaint so as to confer authority in the Bankruptcy Court to adjudicate an otherwise non-core claim. To hold otherwise would run counter to the dictates of the Supreme Court in *Marathon*.

In summary, this court believes that the turnover claim in the Complaint, to collect on a disputed indebtedness under the Notes, "do[es] not fall within the scope of turnover actions as contemplated by § 542 and § 157(b)(2)(E)," absent a judgment or stipulation resolving the dispute

as to the indebtedness.[15] Thus, the turnover claim, as brought, is not a core claim that the Bankruptcy Court can finally adjudicate, absent the consent of all parties.

IV. JURY TRIAL RIGHTS AND DEMAND

Pursuant to 28 U.S.C. § 157(e), if a litigant has the right to a jury trial under applicable non-bankruptcy law, a bankruptcy court may conduct the jury trial only if: (a) the matters to be finally adjudicated fall within the scope of bankruptcy subject matter jurisdiction; (b) the district court of which the bankruptcy court is a unit authorizes the bankruptcy court to do so; and (c) all of the parties consent.[16]

Starting first with whether a right to a jury trial even exists, the Seventh Amendment, of course, provides a jury trial right in cases in which the value in controversy exceeds twenty dollars and the cause of action is to enforce statutory rights that are at least analogous to rights that were tried at law in the late 18th century English courts.[17] Suits "at law" refers to "suits in which legal rights were to be ascertained and determined" as opposed to "those where equitable rights alone were recognized and equitable remedies were administered."[18] This analysis requires two steps: (1) a comparison of the "statutory action to 18th century actions brought in the courts of England prior to the merger of the courts of law and equity"; and (2) whether the remedy sought is "legal or equitable in nature . . . [t]he second stage of this analysis" being "more important than the first."[19]

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[15] *Satelco*, 58 B.R. at 789.

[16] "If the right to a jury trial applies in a proceeding that may be heard under this section by a bankruptcy judge, the bankruptcy judge may conduct the jury trial if specially designated to exercise such jurisdiction by the district court and with the express consent of all the parties." 28 U.S.C. § 157(e) (West 2019).

[17] *See City of Monterey v. Del Monte Dunes*, 526 U.S. 687, 708 (1999).

[18] *Granfinanciera, S.A. v. Nordberg*, 492 U.S. 33, 41 (1989).

[19] *See Levine v. M & A Custom Home Builder & Developer, LLC*, 400 B.R. 200, 205 (S.D. Tex. 2008) (quoting *Granfinanciera*, 492 U.S. at 42).

It is well established that the act of filing a proof of claim can operate to deprive a creditor of a jury trial right, by subjecting a claim, that would otherwise sound only in law, to the equitable claims allowance process.[20] Thus, if both of HCMFA-Defendant's proofs of claims were ***pending***, it would have consented to the Bankruptcy Court's equitable jurisdiction and waived its right to a jury trial as to the subject matter of the ***pending*** proofs of claim.[21] However, as earlier noted, prior to the commencement of this Adversary Proceeding on November 9, 2021, HCMFA-Defendant had both of its proofs of claim disallowed on October 9, 2020. The pending trial over the administrative expense claim sought by HCMFA-Defendant is separate from the collection under the Notes. Without a pending claim related to the Notes, the breach of contract claims is precisely the kind of action that would sound in law rather than in equity. By not having a filed proof of claim related to the Notes, HCMFA-Defendant never subjected the Notes to the claims allowance process of the Bankruptcy Court and preserved its right to a jury trial on the Notes.[22]

To reiterate, HCMFA-Defendant's remaining administrative expense claim is not directly related to the collection on the Notes, and it has not otherwise consented to the jurisdiction of the Bankruptcy Court for claims related to the Notes. HCMFA-Defendant has also not consented to the Bankruptcy Court conducting a jury trial pursuant to 11 U.S.C. § 157(e).

In summary, HCMFA-Defendant's lack of waiver of its jury trial rights, expressly or impliedly, is further reason why the Bankruptcy Court does not believe it can finally adjudicate the claims in the Adversary Proceeding.

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[20] *See Langenkamp v. Culp*, 498 U.S. 42, 44-45 (1990).
[21] *Id.*
[22] *Smith v. Dowden*, 47 F.3d 940, 943 (8th Cir. 1995) ("[T]he successful withdrawal of a claim pursuant to Fed. R. Bankr. P. 3006 prior to the trustee's initiation of an adversarial proceeding renders the withdrawn claim a legal nullity and leaves parties as if the claim had never been brought."); *In re Goldblatt's Bargain Stores, Inc.*, No. 05 C 03840, 2005 WL 8179250, at *5 (N.D. Ill. Dec. 6, 2005) (claims withdrawn before adversary proceeding are as if never filed); *see generally, In re Manchester, Inc.*, No. 08-30703-11-BJH, 2008 WL 5273289, at *3-6 (Bankr. N.D. Tex. Dec. 19, 2008) (permissible to withdraw a claim to preserve jury trial right).

V. RECOMMENDATION

In light of: (a) the noncore, related-to claims in the Complaint; (b) the lack of a proof of claim or any other claim related to the Notes asserted by HCMFA-Defendant; and (c) the lack of any other consent by HCMFA-Defendant to the equitable jurisdiction of the Bankruptcy Court related to the Notes, the Bankruptcy Court recommends the District Court: refer all pre-trial matters to the Bankruptcy Court, and grant the Motion upon certification by the Bankruptcy Court that the parties are trial-ready.

With regard to such pretrial matters, the Bankruptcy Court further recommends that, to the extent a dispositive motion is brought that the Bankruptcy Court determines should be granted and would finally dispose of claims in this Adversary Proceeding, the Bankruptcy Court should submit a report and recommendation to the District Court for the District Court to adopt or reject.

*****END OF REPORT AND RECOMMENDATION*****

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

HIGHLAND CAPITAL MANAGEMENT, L.P., Plaintiff, vs. HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, L.P., Defendant.	§ § § § § § § § § § §	Adv. Proc. No. 21-03004-sgj Case No. 3:21-cv-881
HIGHLAND CAPITAL MANAGEMENT, L.P., Plaintiff, vs. HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS LP, Defendant.	§ § § § § § § § § § §	Adv. Proc. No. 21-03082-sgj Case No. 3:22-cv-789

ORDER CONSOLIDATING CASES

Pursuant to Federal Rule of Civil Procedure 42(a) and *Lester v. Exxon Mobil Corp.*, 879 F.3d 582, 592 (5th Cir. 2018), the Court *sua sponte* orders consolidation of *Highland Capital Management, L.P. v. Highland Capital Management Fund Advisors LP*, No. 3:22-cv-789 under lead case, *Highland Capital Management, L.P. v. Highland Capital Management Fund Advisors, L.P.*, No. 3:21-cv-881. Both cases are already assigned to the Court. The Court finds that the interests of judicial efficiency are best served by consolidation of all Note Cases under Case No. 3:21-cv-881, and 3:22-cv-789 is another (specifically, the tenth Note Case) in this district arising from the Highland bankruptcy proceedings. The other nine Note Cases have already been consolidated under 3:21-cv-881 by prior order of the Court.

IT IS HEREBY ORDERED THAT:

1. The Note Case, 3:22-cv-789, is consolidated under the lead Note Case, No. 3:21-cv-881 for all purposes other than that Case No. 3:21-cv-881-X may be tried separately (or that the determination of whether such case shall be tried separately is deferred until after all summary judgement motions are heard and decided), to be heard by the undersigned.

2. All future filings related to all Note Cases shall be filed on the docket for No. 3:21-cv-881.

IT IS SO ORDERED this 20th day of April, 2022.

BRANTLEY STARR
UNITED STATES DISTRICT JUDGE

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

HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
Plaintiff,	§	
vs.	§	Adv. Proc. No. 21-03082-sgj
HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, L.P.,	§	Case No. 3:21-cv-00881-X
Defendant.	§	

HIGHLAND CAPITAL MANAGEMENT, L.P.'S
MOTION FOR SUMMARY JUDGMENT

Highland Capital Management, L.P., the reorganized debtor and plaintiff in the above-captioned adversary proceeding ("Highland", "Plaintiff", or the "Debtor"), hereby files this motion (the "Motion") seeking entry of an order, in substantially the form attached hereto as **Exhibit A**, granting summary judgment in favor of Highland on its First and Second Claims for Relief for Breach of Contract and Turnover under the Pre-2019 Notes.[1]

The Motion is made pursuant to Rule 56 of the Federal Rules of Civil Procedure, Rules 7056 and 9014 of the Federal Rules of Bankruptcy Procedure, Rules 7056-1 and 9014-1 of the Local Bankruptcy Rules of the United States Bankruptcy Court for the Northern District of Texas (the "Local Bankruptcy Rules"), and Rules 56.1 through 56.7 of the Local Civil Rules for the United States District Court for the Northern District of Texas (the "Local Civil Rules"). The Motion is based on (i) the records in the (a) Bankruptcy Case, (b) the Second HCMFA Notes Action, and (c) the Main Notes Litigation; (ii) the Brief; (iii) the *Appendix of Exhibits in Support of Highland Capital Management, L.P.'s Motion for Summary Judgment* (the "Appendix"); (iv) the *Declaration of David Klos in Support of Highland Capital Management, L.P.'s Motion for Summary Judgment* (the "Second Klos Declaration"); and (v) such further evidence as may be presented at or prior to the hearing on the Motion. Each of the matters required under Rule 7056-1(c)(1) of the Local Bankruptcy Rules and Rule 56.3(a) of the Local Civil Rules is set forth in the Brief.

[1] Terms not defined herein shall take the meanings ascribed thereto in *Highland Capital Management, L.P.'s Memorandum of Law in Support of Motion for Summary Judgment* (the "Brief") filed contemporaneously with the Motion.

WHEREFORE, Highland prays for judgment as follows:

(i) On its First Claim for Relief, damages (a) under the 2014 Note in the amount of $2,151,130.84 in outstanding principal and accrued and unpaid interest due as of May 27, 2022, plus accrued and unpaid interest thereon since that date, (b) under the 2016 Note in the amount of $1,001,238.06 in outstanding principal and accrued and unpaid interest due as of May 27, 2022, plus accrued and unpaid interest thereon since that date, plus (c) an amount equal to Plaintiff's costs of collection (including all court costs and reasonable attorneys' fees and expenses);

(ii) On its Second Claim for Relief, ordering turnover by HCMFA to Plaintiff of an amount equal to (a) the aggregate outstanding principal due under each Pre-2019 Note, plus (b) all accrued and unpaid interest thereon until the date of payment, plus (c) an amount equal to Plaintiff's costs of collection (including all court costs and reasonable attorneys' fees and expenses); and

(ii) Ordering such further and additional relief as the Court deems just and appropriate.

Dated: May 27, 2022

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EXHIBIT A

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

HIGHLAND CAPITAL MANAGEMENT, L.P., Plaintiff, vs. HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, L.P., Defendant.	§ § § § § § § § § § § § §	Adv. Proc. No. 21-03082-sgj Case No. 3:21-cv-00881-X

ORDER GRANTING HIGHLAND CAPITAL MANAGEMENT, L.P.'S
MOTION FOR SUMMARY JUDGMENT

This matter having come before the Court on the *Motion for Summary Judgment* (the "Motion")[1] filed by Highland Capital Management, L.P. ("Highland", "Plaintiff", or the "Debtor"), the reorganized debtor in the above-captioned chapter 11 case (the "Bankruptcy Case") and plaintiff in the above-referenced adversary proceeding (the "Adversary Proceeding"); and the

[1] Capitalized terms not otherwise defined in this Order shall have the meanings ascribed to them in the Motion.

Court having considered (i) the Motion, (ii) the Brief, (iii) the Second Klos Declaration, (iv) the evidence submitted in support of the Motion in the Appendix, (v) the response to the Motion and any evidence submitted in support of such response, (vi) the reply and other materials filed in connection with the Motion, and (vii) the arguments presented by counsel at the hearing on the Motion; and the Court having jurisdiction over this matter; and venue of the Motion being proper; and adequate notice of the Motion having been given; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED AS FOLLOWS:

1. The Motion is **GRANTED** as set forth herein.

2. On its First Claim for Relief, Plaintiff is entitled to damages (a) under the 2014 Note in the amount of $2,151,130.84 in outstanding principal and accrued and unpaid interest due as of May 27, 2022, plus accrued and unpaid interest thereon since that date, (b) under the 2016 Note in the amount of $1,001,238.06 in outstanding principal and accrued and unpaid interest due as of May 27, 2022, plus accrued and unpaid interest thereon since that date, plus (c) an amount equal to Plaintiff's costs of collection (including all court costs and reasonable attorneys' fees and expenses);

3. On its Second Claim for Relief, Plaintiff is entitled to turnover by HCMFA of an amount equal to (a) the aggregate outstanding principal due under each Pre-2019 Note, plus (b) all accrued and unpaid interest thereon until the date of payment, plus (c) an amount equal to Plaintiff's costs of collection (including all court costs and reasonable attorneys' fees and expenses).

End of Order

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

HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	
Plaintiff,	§	
	§	
vs.	§	Adv. Proc. No. 21-03082-sgj
	§	
HIGHLAND CAPITAL MANAEMENT FUND ADVISORS, L.P.,	§	
	§	
	§	Case No. 3:21-cv-881-X
Defendant.	§	
	§	
	§	

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HIGHLAND CAPITAL MANAGEMENT, L.P.'S MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

Highland Capital Management, L.P., the reorganized debtor and the plaintiff in the above-captioned adversary proceeding ("Highland" or "Plaintiff"), hereby files this memorandum of law in support of its *Motion for Summary Judgment* (the "Motion").[1] In support of its Motion, Highland states as follows:

I. PRELIMINARY STATEMENT[2]

1. In accordance with its Plan and the clear and unambiguous terms of the Pre-2019 Notes, Plaintiff seeks to collect over $3 million of promissory notes that were issued by HCMFA in favor of Highland. The Pre-2019 Notes were tendered in exchange for hard dollars at a time when Mr. Dondero controlled both the borrower and the lender. Now, HCMFA refuses to make good on Mr. Dondero's promises to repay the money he caused HCMFA to borrow.

2. This collection action is based largely on the same factual record as the Main Notes Litigation; namely, HCMFA asserts as its primary affirmative defense that Alleged Agreements exist pursuant to which Plaintiff agreed not to collect on the Pre-2019 Notes upon the fulfillment of certain "conditions subsequent." The only substantive differences regarding HCMFA's Alleged Agreement Defense are that (a) Mr. Dondero and his sister were forced to contradict HCMFA's Answer with respect to the identity of the person who entered into the 2014 Alleged Agreement,[3] (b) despite the purported existence of the Alleged Agreements, HCMFA

[1] Concurrently herewith, Highland is filing the *Appendix of Exhibits in Support of Highland Capital Management, L.P.'s Motion for Summary Judgment* (the "Appendix"). Citations to the Appendix are notated as follows: Ex. #, Appx. #.

[2] Capitalized terms in this Preliminary Statement shall have the meanings ascribed to them below.

[3] As discussed further below, HCMFA apparently copied and pasted the allegations pertaining to the "Alleged Agreement" defense from the pleadings of Mr. Dondero and certain of his affiliates in the Main Notes Litigation. But as Ms. Dondero admitted during her recent deposition, those allegations could not have applied to the 2014 Alleged Agreement because she had not yet been appointed to serve as Dugaboy's trustee at the time the 2014 Alleged

actually paid Highland almost $4 million in principal and interest due under the Pre-2019 Notes, including payments pre-Petition and post-Petition; (c) HCMFA actually paid off all principal and interest due under three other notes without any explanation as to why those notes were not subject to Alleged Agreement Defense; and (d) HCMFA's expert, Alan Johnson, admitted that he has never advised a company to forgive a loan that had been extended to a corporate affiliate for the purpose of compensating an executive, nor is he aware of any company that has ever done so.

3. Plaintiff makes out its *prima facie* case for summary judgment for HCMFA's breach of the Pre-2019 Notes. The uncontroverted documentary evidence proves that (a) the Pre-2019 Notes are valid, (b) the Pre-2019 Notes were executed by HCMFA and in favor of Highland, and (c) there is a balance due and owing under the Pre-2019 Notes. HCMFA cannot rebut Plaintiff's *prima facie* case because HCMFA cannot to create a genuine issue of material fact regarding its breaches. Moreover, there is a complete absence of evidence to support HCMFA's conjured affirmative defenses.

4. Nevertheless, as it did in the Main Notes Litigation, HCMFA will likely contest every fact and contrive countless strawmen regardless of the record to color its own fabricated stories. But in the end, there will be no evidence to corroborate HCMFA's contentions other than its own self-serving, conclusory, and unsubstantiated assertions. There will be no documents or written communications that credibly support HCMFA's story. By contrast, Plaintiff's claims are both simple and buttressed by a mountain of undisputed evidence, including contemporaneous written communications, audited financial statements, statements to third parties, books and records, and the plain words of HCMFA and its officers.

Agreement was entered into. Consequently, Mr. Dondero was forced to contradict HCMFA's Answer and now asserts that he personally entered the 2014 Alleged Agreement on behalf of ***both*** Dugaboy and Highland.

5. Plaintiff's evidence is so overwhelming, and HCMFA's assertions are so weak, that the Court should grant the Motion.

II. STATEMENT OF UNDISPUTED MATERIAL FACTS

A. BACKGROUND[4]

1. The Bankruptcy Case

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

7. On December 4, 2019, the Delaware Court entered an order transferring venue of Highland's bankruptcy case to the United States Bankruptcy Court for the Northern District of Texas, Dallas Division (the "Bankruptcy Court") [Bankr. Docket No. 186].[5]

8. On January 22, 2021, Highland filed its *Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified)* [Bankr. Docket No. 1808] (the "Plan").

9. On February 22, 2021, the Bankruptcy Court entered the *Order Confirming the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified) and (ii) Granting Related Relief* [Bankr. Docket No. 1943] (the "Confirmation Order") which confirmed Highland's Plan.[6]

10. On August 11, 2021, the Plan became Effective (as defined in the Plan), and Highland became the Reorganized Debtor (as defined in the Plan). *See Notice of Occurrence of*

---

[4] Attached hereto as **Exhibit A** is a list of *Parties, Witnesses, and Definitions*.

[5] "Bankr. Docket No. __" refers to the docket maintained by the Bankruptcy Court in case no. 19-34054-sjg11.

[6] The confirmed Plan included certain amendments filed on February 1, 2021. *See Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified)*, Ex. B [Bankr. Docket No. 1875].

Effective Date of Confirmed Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. [Bankr. Docket No. 2700].

2. Procedural History

11. This is a companion case to the Main Notes Litigation (defined below). Plaintiff did not sue to recover on the Pre-2019 Notes as part of the First HCMFA Notes Action (defined below) because, prior to the Petition Date, Highland agreed not to demand payment under the Pre-2019 Notes before May 31, 2021 (the "Acknowledgment Letter"). Ex. 217, Appx. 4989-4990; *see also* Ex. 215 at 55:15-22, Appx. 4955. The Acknowledgment Letter is discussed further *infra*.

i. Plaintiff Commences the First HCMFA Notes Action as Part of the Main Notes Litigation in January 2021

12. On January 22, 2021, Plaintiff commenced an adversary proceeding against Highland Capital Management Fund Advisors, L.P. ("HCMFA") to recover on two different promissory notes that were (a) executed on behalf of HCMFA in May 2019, (b) not subject to the Acknowledgment Letter because they did not exist at the time that Letter was signed, and (c) breached by HCMFA when it failed to honor Highland's demand for payment. *See Complaint for (I) Breach of Contract and (II) Turnover of Property of the Debtor's Estate* filed in Adv. Proc. No. 21-03004-sgj at Docket No. 1 (the "First HCMFA Notes Action").

13. The First HCMFA Notes Action was one of five adversary proceedings commenced at that time against James Dondero ("Mr. Dondero") and certain entities owned and/or controlled by him (the "Corporate Obligors," and together with Mr. Dondero, the "Main Note Defendants") for breach of their respective obligations under certain notes. *See* Adv. Proc. Nos. 21-03003-sgj (the "Dondero Note Action"), 21-03005-sgj (the "NexPoint Note Action"), 21-

03006-sgj (the "HCMS Note Action"), 21-03007-sgj (the "HCRE Note Action") (each, a "Note Action," and collectively, the "Main Notes Litigation").

14. Each of the Note Actions in the Main Notes Litigation was subsequently referred to the Bankruptcy Court for pre-trial purposes, including for the consideration (but not determination) of any dispositive motions, and will be withdrawn to the District Court, under lead case No. 3:21-cv-00881-X (the "Lead District Court Note Action"), when they are trial-ready.

15. Each Note Action was also subsequently consolidated for discovery and pre-trial purposes in the Bankruptcy Court. *See Stipulation and Agreed Order Governing Discovery and Other Pre-Trial Issues* dated August 17, 2021, approved by the Bankruptcy Court on September 6, 2021, and entered in each respective Note Action.

16. On December 17, 2021, Plaintiff moved for summary judgment against HCMFA in the First HCMFA Notes Action, and for partial summary judgment against the remaining Main Note Defendants in the Main Notes Litigation. *See* Adv. Proc. No. 21-03004-sgj at Docket No. 83 (the "First Motion for Summary Judgment"). Oral argument was held on April 20, 2022 on the First Motion for Summary Judgment, and it is currently under advisement.

ii. Plaintiff Commences the Second HCMFA Note Action in November 2021

17. On November 9, 2021, Plaintiff commenced the Adversary Proceeding by filing the *Complaint for (I) Breach of Contract and (ii) Turnover of Property of the Debtor's Estate* [Docket No. 1][7] (the "Complaint"). In its Complaint, Plaintiff asserts claims against HCMFA for (a) breach of contract for HCMFA's breach of its obligations under the Pre-2019 Notes and (b) turnover by HCMFA for all accrued and unpaid principal and interest due under the Pre-2019

[7] Refers to the docket maintained in the Adversary Proceeding.

Notes until the date of payment, plus Plaintiff's cost of collection and reasonable attorneys' fees (as expressly provided for under each of the notes) (the "Second HCMFA Notes Action").

18. On January 18, 2022, Plaintiff and HCMFA (together, the "Parties") entered into the *Agreed Motion for the Issuance of a Report and Recommendation Withdrawing the Reference*, requesting that the Bankruptcy Court issue a report and recommendation that the District Court refer the Second HCMFA Notes Action to the Bankruptcy Court for all pre-trial matters and withdraw the reference to the District Court when the case is trial-ready. *See* Adv. Proc. No. 21-03082-sgj, Docket No. 12 (the "Agreed Motion").

19. On April 7, 2022, the Bankruptcy Court effectively granted the Agreed Motion by issuing its *Report and Recommendation*, Docket No. 27 (the "R&R"), recommending that the District Court refer all pre-trial matters to the Bankruptcy Court, including the consideration (but not determination) of any dispositive motions, and withdraw the case to the District Court when the case is trial-ready. The District Court adopted the R&R, and the Second HCMFA Notes Action was assigned to the District Court. *See* Case No. 3:22-cv-00789-K, Docket No. 2.

20. On April 20, 2022, the District Court, *sua sponte*, issued an Order consolidating the Second HCMFA Notes Action under the Lead District Court Note Action. *See* Case No. 3:21-cv-00881-X, at Docket No. 49.

B. HIGHLAND EXTENDS LOANS TO HCMFA IN EXCHANGE FOR THE PRE-2019 NOTES AND HCMFA DEFAULTS

21. As relevant here, HCMFA is the maker under two promissory notes tendered to Highland in exchange for contemporaneous loans and other consideration. The notes at issue were executed in 2014 and 2016, respectively, and are described below:

- A demand note dated February 26, 2014, executed by Mr. Dondero on behalf of HCMFA, as the maker, in the original principal amount of $4,000,000 in favor of Highland (the "2014 Note"). (Second Klos Dec.[8] ¶ 4, Exhibit A); *see also* Ex. 226, Appx. 5029-5031; Ex. 219, Appx. 5005-5007; Ex. 235, Appx. 5117-5120; Ex. 215 at 15:20-17:11, 17:18-22, Appx. 4915-4917, 39:7-14, Appx. 4939; Ex. 234 ¶¶ 14-15; Ex. 220 (Responses to RFAs 1-2), Appx. 5017.

- A demand note dated February 26, 2016, executed by Mr. Dondero on behalf of HCMFA, as the maker, in the original principal amount of $2,300,000 in favor of Highland (the "2016 Note" and together with the 2014 Note, the "Pre-2019 Notes"). (Second Klos Dec. ¶ 5, Exhibit B); *see also* Ex. 227, Appx. 5032-5034; Ex. 219, Appx. 5005-5007; Ex. 236, Appx. 5121-5127; Ex. 234 ¶¶ 16-17; Ex. 220 (Responses to RFAs 3-4), Appx. 5017; Ex. 215 at 21:6-22:8, 22:9-23:11, Appx. 4921-4923.

22. Except for the date and the amount, the maker, and the interest rate, each of the Pre-2019 Notes is identical and includes the following provisions, among others:

> 2. Payment of Principal and Interest. The accrued interest and principal of this Note shall be ***due and payable on demand of the Payee***.
>
> 5. Acceleration Upon Default. ***Failure to pay this Note or any installment hereunder as it becomes due shall***, at the election of the holder hereof, without notice, demand, presentment, notice of intent to accelerate notice of acceleration, or any other notice of any kind which are hereby waived, ***mature the principal of this Note and all interest then accrued, if any, and the same shall at once become due and payable and subject to those remedies of the holder hereof.*** No failure or delay on the part of Payee in exercising any right, power or privilege hereunder shall operate as a waiver thereof.
>
> 6. Waiver. Maker hereby ***waives*** grace, demand, presentment for payment, notice of nonpayment, protest, notice of protest, notice of intent to accelerate, notice of acceleration and all other notices of any kind hereunder.
>
> 7. Attorneys' Fees. If this Note is not paid at maturity (whether by acceleration or otherwise) and is placed in the hands of an

[8] Citations to "Second Klos Dec." refer to the *Declaration of David Klos in Support of Highland Capital Management, L.P.'s Motion for Summary Judgment*, being filed concurrently herewith and are intended to distinguish it from the *Declaration of David Klos in Support of Highland Capital Management, L.P.'s Motion for Partial Summary Judgment in Notes Actions* submitted in the Main Notes Litigation. *See, e.g.*, Dondero Note Action, Docket No. 133.

> attorney for collection, or if it is collected through a bankruptcy court or any other court after maturity, ***the Maker shall pay, in addition to all other amounts owing hereunder, all actual expenses of collection***, all court costs and reasonable attorneys' fees and expenses incurred by the holder hereof.

Ex. 226, Appx. 5029-5031; Ex. 227, Appx. 5032-5034 (emphases added).

23. On April 15, 2019, Mr. Dondero signed the Acknowledgment Letter on behalf of Highland in which he agreed that Highland would not demand payment on amounts owed by HCMFA prior to May 31, 2021. Ex. 217, Appx. 4989-4990;[9] *see also* Second Klos Dec. ¶ 16; Ex. 215 at 49:8-50:7, Appx. 4949-4950, 55:15-22, Appx. 4955. In the Acknowledgment Letter and during his recent deposition, Mr. Dondero also admitted that (i) HCMFA received value for the Pre-2019 Notes, (ii) the debt evidenced by the Pre-2019 Notes was outstanding and owed (without reference to the Alleged Agreements), and (iii) Highland received no consideration in exchange for agreeing not to demand payment from HCMFA until May 31, 2021. Ex. 215 at 50:8-22, Appx. 4950.

24. There is no dispute that Highland complied with the Acknowledgment Letter. *See* Second Klos Dec. ¶ 17; Ex. 215 at 53:22-54:12, Appx. 4953-4954. Specifically, Plaintiff did not demand payment of the outstanding obligations due under the Pre-2109 Notes until June 2, 2021. Ex. 218, Appx. 4991-5004 (the "Demand Letter").

25. In December 2021, HCMFA made an interest payment against each of the Pre-2019 Notes, but otherwise failed to satisfy its obligations or respond to the Demand Letter. *See* Ex. 215 at 58:4-6, Appx. 4958.

[9] In May 2019, HCMFA issued two other Notes to Highland in exchange for loans that are the subject of one of the adversary proceedings in the Main Notes Litigation. *See* Adv. Pro. No. 21-03004. Because those Notes were issued in May 2019, they were not subject to the Acknowledgment Letter.

26. Consequently, HCMFA breached Section 2 of each Pre-2019 Note, and is in default.

27. As of May 27, 2022, after giving effect to the payments made in December 2021 as well as other payments made against the Pre-2019 Notes prior to the Petition Date, the unpaid principal and accrued interest due under the February 2014 Note is $2,151,130.84, and the unpaid principal and accrued interest due under the February 2016 Note is $1,001,238.06. Second Klos Dec. ¶ 18.

C. THE EVIDENCE OF THE EXISTENCE, VALIDITY AND ENFORCEABILITY OF THE PRE-2019 NOTES IS OVERWHELMING

28. As described in more detail below, the existence, validity, and enforceability of the Pre-2019 Notes is corroborated by the following undisputed facts:

- Plaintiff's audited financial statements (prepared based on management representation letters signed by Mr. Dondero and Mr. Waterhouse) showed that each of the Pre-2019 Notes was (a) carried as an asset on Plaintiff's balance sheet, (b) had a value equal to the unpaid principal and interest then due, and (c) was disclosed without reference to the Alleged Agreements;

- HCMFA's audited financial statements showed that each of the Pre-2019 Notes was (a) carried as a liability on HCMFA's balance sheet, (b) had a value equal to the unpaid principal and interest then due, and (c) was disclosed without reference to the Alleged Agreements;

- HCMFA reported to the Retail Board in October 2020 that HCMFA was obligated to pay Highland the amounts due under the Pre-2019 Notes, without any setoff or reservation;

- Without exception, Plaintiff's contemporaneous books and records recorded the Pre-2019 Notes as debts due and owing by HCMFA to Plaintiff;

- Without exception, throughout Plaintiff's bankruptcy (including during the period from the Petition Date through January 9, 2020, when Mr. Dondero solely controlled Plaintiff and HCMFA), Plaintiff's bankruptcy filings (most of which were prepared or signed by Mr.

Waterhouse) reported the Pre-2019 Notes as being assets of the Debtor's estate, without any setoff or reservation;

- The Pre-2019 Notes were identified as assets and sources of recovery under Plaintiff's proposed Plan, yet HCMFA did not inform the Court, Plaintiff, or any creditors of its purported Alleged Agreement defense, even though HCMFA filed a Plan Objection; and

- Between 2016 and 2021, HCMFA paid nearly $4 million in principal and interest due under the Pre-2019 Notes.

- In the Acknowledgment Letter, HCMFA admits that value was received for the Pre-2019 Notes and that the debt evidenced by the Pre-2019 Notes was outstanding and owed as of April 15, 2019, all without reference to any Alleged Agreement.

1. Highland Disclosed the Pre-2019 Notes in Its Audited Financial Statements and Carried Them as Assets on Its Balance Sheet

29. The undisputed evidence cited below establishes, among other things, that (a) the Pre-2019 Notes were provided to PwC, Highland's long-time outside auditors, and were described in Highland's audited financial statements; (b) the Pre-2019 Notes were carried as assets on Highland's balance sheet and were valued in amounts equal to the accrued and unpaid principal and interest without any offset or reservation; and (c) neither Highland nor Mr. Dondero disclosed HCMFA's Alleged Agreement defense, or any other defense, to PwC despite having an affirmative obligation to do so under generally accepted accounting principles ("GAAP").

30. Copies of the Pre-2019 Notes were and are maintained in Highland's books and records in the ordinary course of business and were provided to PwC in connection with its annual audits. (*See* Second Klos Dec. ¶¶ 3-5); Ex. 215 at 25:22-26:13, Appx. 4925-4926.

31. PwC's audit process was extensive and took months to complete. Ex. 94 at 9:24-12:14, Appx. 1554-1555. As part of the process, Highland was responsible for drafting the financial statements and accompanying notes and "management" provided the information that PwC needed to conduct its audits. *Id*. at 14:8-15:14, Appx. 1556; *see also id*. at 49:11-50:22,

Appx. 1564-1565. All of Highland's employees who worked on the audit reported to Mr. Waterhouse, and Mr. Waterhouse was ultimately responsible for making sure the audit was accurate before it was finalized. Ex. 105 at 87:25-89:10, Appx. 2071.

32. Before signing off on its audit, PwC required Highland to deliver "management representation letters" that included specific representations that PwC relied upon. Ex. 94 at 16:18-17:20, Appx. 1556, 23:4-9, Appx. 1558; *see also* Ex. 105 at 96:24-98:6, Appx. 2073-2074 (according to Mr. Waterhouse, management representation letters are "required in an audit to help verify completeness.")

33. For at least the fiscal years 2014, 2016, 2017 and 2018, Mr. Dondero and Mr. Waterhouse signed Highland's management representation letters; their representations were applicable through the date of the audit's completion so that all "material" subsequent events could be included and disclosed. *See* Ex. 33, Appx. 729-740, Ex. 86, Appx. 1420-1431; Ex. 231, Appx. 5049-5062; Ex. 232, Appx. 5063-5073; Ex. 94 at 17:21-25, Appx. 1556, 19:2-22:6, Appx. 1557-1558; Ex. 105 at 92:4-8, Appx. 2072, 94:20-95:12, Appx. 2073.

34. On May 19, 2017, in connection with PwC's audit of Highland's financial statements for the period ending December 31, 2016, Mr. Dondero and Mr. Waterhouse made the following representations to PwC:

- The Affiliated Party Notes represented bona fide claims against the makers, and all Affiliated Party Notes were current as of May 19, 2017 (Ex. 232 ¶ 16, Appx. 5067);[10]
- There were no "material" transactions or agreements that were not recorded in the financial statements (Ex. 232 ¶ 5, Appx. 5065)];

[10] "Affiliated Party Notes" is the term used by PwC to refer to notes tendered to Highland by officers, employees, or affiliates of Highland. *See generally* Ex. 33, Appx. 729-740; Ex. 94, Appx. 1551-1585.

- All relationships and transactions with, and amounts receivable or payable to or from, related parties were properly reported and disclosed in the consolidated financial statements (Ex. 232 ¶ 13(b), Appx. 5066);
- All related party relationships and transactions known to Mr. Dondero and Mr. Waterhouse were disclosed (Ex. 232 ¶ 12, Appx. 5066); and
- All subsequent events were disclosed (Ex. 232 (signature page), Appx. 5071).[11]

35. Under GAAP, Highland was required to disclose to PwC (a) all "material" related party transactions and (b) any circumstances that would call into question the collectability of any notes. *See, e.g.*, Ex. 94 at 34:17-35:2, Appx. 1561, 51:17-52:5, Appx. 1565, 70:20-71:3, Appx. 1570.[12]

36. Neither Mr. Dondero nor Highland ever disclosed to PwC (a) the existence or terms of the Alleged Agreements; (b) the existence of any oral or written amendment to any of the Affiliate Notes listed in PwC's 2018 work papers; or (c) that any of the Pre-2019 Notes might be forgiven. Ex. 220 (Responses to RFAs 7-8), Appx. 5018; *see also* Ex. 94 at 67:16-70:19, Appx. 1569-1570, 71:4-74-8, Appx. 1570-1571, 92:19-93:12, Appx. 1575; Ex. 105 at 102:2-5, Appx. 2075.[13]

37. If PwC had learned before May 19, 2017, that the Pre-2019 Notes (a) might not be collectible, or (b) might be forgiven, or (c) were amended, or (d) would be extinguished

[11] *See also* Ex. 231, Appx. 5049-5062; Ex. 33, Appx. 729-740; Ex. 94 at 24:6-25:5, Appx. 1558; Ex. 94 at 25:6-26:13, Appx. 1558-1559; Ex. 94 at 26:14-27:11, Appx. 1559; Ex. 94 at 27:12-28:11, Appx. 1559; Ex. 94 at 28:12-29:5, Appx. 1559; Ex. 94 at 29:6-30:2, Appx. 1559-1560.

[12] For purposes of the 2016 audit, the "materiality" threshold was $2 million. Ex. 232 at 1, Appx. 5064. For purposes of the 2018 audit, the "materiality" threshold was $1.7 million or more. Ex. 33 at 1, Appx. 730; Ex. 94 at 22:11-23:3, Appx. 1558. *See also* Ex. 105 at 91:14-93:6, Appx. 2072.

[13] Testimony from Exhibits 94 and 105 refers to the Alleged Agreement from the Main Notes Litigation.

based on the fulfillment of certain conditions subsequent, it would have required that fact to be disclosed. *See, e.g.*, Ex. 94 at 74:19-76:12, Appx. 1571.[14]

38. For purposes of PwC's audit, "affiliate notes" were considered receivables of Highland and were carried as assets on Highland's balance sheet under "Notes and other amounts due from affiliates." Ex. 34 at 2, Appx. 745; Ex. 72 at 2, Appx. 1291; Ex. 94 at 23:10-22, Appx. 1558, 31:11-33:20, Appx. 1560; Ex. 105 at 106:20-109:12, Appx. 2076.

39. For the 2016 fiscal year, Highland valued "Notes and other amounts due from affiliates" in the aggregate amount of approximately $172.6 million, which then constituted more than 12% of Highland's total assets. Ex. 71 at 2, Appx. 1240. For the 2017 fiscal year, Highland valued "Notes and other amounts due from affiliates" in the aggregate amount of approximately $163.4 million, which then constituted more than 10% of Highland's total assets; for the 2018 fiscal year, Highland valued "Notes and other amounts due from affiliates" in the aggregate amount of approximately $173.4 million, which then constituted more than 15% of Highland's total assets. Ex. 72 at 2, Appx. 1291; Ex. 34 at 2, Appx. 745; Ex. 94 at 33:21-34:2, Appx. 1560-1561, 51:2-16, Appx. 1565.

40. The notes to the financial statements described the "Affiliate Notes" that were carried on Highland's balance sheet; management calculated the amounts due and owing to Highland from each affiliate. Ex. 72 at 30-31, Appx. 1319-1320; Ex. 34 at 28-29, Appx. 771-772; Ex. 94 at 34:17-36:25, Appx. 1561; 51:17-53:12, Appx. 1565; Ex. 105 at 110:22-112:21, Appx. 2077.

[14] Testimony refers to the June 3, 2019 management representation letter.

41. The "fair value" of the Affiliate Notes was "equal to the principal and interest due under the notes." Ex. 72 at 30-31, Appx. 1319-1320; Ex. 34 at 28-29, Appx. 771-772; Ex. 94 at 37:11-39:12, Appx. 1561-1562; 53:19-25, Appx. 1565.

42. At the time PwC completed its 2017 and 2018 audits, PwC had no reason to discount the value of any of the Affiliate Notes. Ex. 94 at 39:17-21, Appx. 1562, 54:2-8, Appx. 1566.

43. Moreover, as reflected in PwC's work papers, and based on the information provided by Highland and PwC's own independent analysis, PwC concluded that the obligors under each of the Affiliate Notes had the ability to pay all amounts outstanding. Ex. 92, Appx. 1514-1530; Ex. 93, Appx. 1531-1550; Ex. 94 at 41:2-45:6, Appx. 1562-1563, 55:17-60:22, Appx. 1566-1567, 68:20-25, Appx. 1569.

44. Note 17 to Highland's 2015 audited financial statements disclosed the issuance of the 2016 Note as a "subsequent event" (*i.e.*, an event occurring after the December 31, 2015 end of Highland's fiscal year):

> On February 26, 2016, HCMFA issued a promissory note [HCMLP] in the amount of $2.3 million. The note accrues interest at a rate of 2.62%.

Ex. 70 at 46, Appx. 1229; *see also* Ex. 94 at 54:9-55:7, Appx. 1566.[15]

2. <u>In October 2020, HCMFA Informed the Retail Board of Its Obligations under the Pre-2019 Notes</u>

45. HCMFA has contracts to manage certain funds (the "<u>Fund Agreements</u>"). The Fund Agreements are among the most important contracts HCMFA has; HCMFA's Rule

[15] Testimony from Ex. 94 refers to the June 3, 2019 management representation letter.

30(b)(6) witness acknowledged that its contracts with the Funds are largely the reason for HCMFA's existence. Ex. 192 at 66:3-67:6, Appx. 3031.

46. The Funds are purportedly managed by a board (the "Retail Board"). In the fall of each year, the Retail Board must determine whether to renew the Fund Agreements with the Advisors, a process referred to as a "15(c) Review." As part of the 15(c) Review process, the Retail Board requests information from the Advisors. Ex. 99 at 129:17-130:3, Appx. 1844-1845, Ex. 105 at 32:17-33:6, Appx. 2057, 168:9-12, Appx. 2091, 169:9-170:16, Appx. 2091-2092.

47. Mr. Waterhouse, HCMFA's Treasurer, and Mr. Norris, HCMFA's Executive Vice President, participated in the annual 15(c) Review process with the Retail Board. Ex. 192 at 67:7-68:19, Appx. 3031; Ex. 105 at 168:13-169:8, Appx. 2091.

48. In October 2020, as part of its 15(c) Review, the Retail Board asked HCMFA to provide certain information including the following:

> Are there any outstanding amounts currently payable or due in the future (e.g., notes) to HCMLP by HCMFA or … any other affiliate that provides services to the Funds?

Ex. 36 at 3, Appx. 793.

49. Lauren Thedford, then the Secretary of HCMFA and an employee of Highland, followed up on this particular question, and Mr. Waterhouse directed her to "the balance sheet that was provided to the [Retail Board] as part of the" 15(c) Review. *Id.* at 2, Appx. 792.

50. As directed by Mr. Waterhouse, Ms. Thedford (a) obtained the relevant information from HCMFA's June 30, 2020 financial statements and (b) drafted a response that she shared with, among others, Mr. Waterhouse, Dustin Norris (HCMFA's Executive Vice President), and Jason Post (HCMFA's Chief Compliance Officer). Ex. 35, Appx. 788-789; Ex. 37, Appx. 795-796.

51. The Pre-2019 Notes were recorded as liabilities in HCMFA's audited financial statements from the fiscal years 2014-2018. Ex. 221 at 2;[16] Ex. 224 at 2; Ex. 222 at 2; Ex. 225 at 2; Ex. 45 at 2; *see also* Ex. 215 at 26:14-17, Appx. 4926.

52. Note 6 to HCMFA's 2014 audited financial statement addressed "Related Party Transactions" and disclosed the issuance of the 2014 Note. Ex. 221 at 11-12.

53. HCMFA does not contend that its audited financial statements for the fiscal years 2014-18 were inaccurate in any way with respect to the Pre-2019 Notes. *See* Ex. 215 at 28:5-9, Appx. 4928.

54. Based on HCMFA's June 30, 2020 financial statements, Ms. Thedford sent her draft response to Mr. Waterhouse, Mr. Norris, Mr. Post, and others and reported that "$12,286,000 remains outstanding to HCMLP from HCMFA." Ex. 36 at 1, Appx. 791.

55. This amount necessarily included the amounts due under the Pre-2019 Notes because (a) as HCMFA has admitted, HCMFA carried the Pre-2019 Notes as liabilities on its audited financial statements, Ex. 215 at 26:14-17, Appx. 4926, (b) HCMFA's balance sheet reflecting the Pre-2019 Notes as liabilities was never amended, *id.* at 27:3-28:4, Appx. 4927-4928, and (c) HCMFA's balance sheet was Ms. Thedford's source of information. Ex. 192 at 54:6-9, 54:22-55:8, 55:23-56:3, 56:20-59:3, Appx. 3028-3029; Ex. 194 at 117:16-122:15, Appx. 3156-3157; Ex. 195 at 120:23-122:13, Appx. 3211-3212.

56. On October 23, 2020, HCMFA provided its final, formal responses to the questions posed by the Retail Board. As to the issue of outstanding amounts currently payable or due to Highland or its affiliates, HCMFA reported as follows:

[16] The HCMFA audited financial statements are not included in the Appendix because they are being filed under seal, and therefore, do not contain "Appx." numbers.

> As of June 30, 2020 . . . $12,286,000 remains outstanding to HCMLP from HCMFA . . . The earliest the Note between HCMLP and HCMFA could come due is in May 2021. All amounts owed by [ ] HCMFA pursuant to the shared services arrangement with HCMLP have been paid as of the date of this letter. The Advisor notes that both entities have the full faith and support of James Dondero.

Ex. 59 at 2, Appx. 885. The reference to May 2021 is a reference to the April 15, 2019 Acknowledgment Letter pursuant to which HCMLP agreed to defer demand on the Pre-2019 Notes.

57. Based on the foregoing, there is no dispute that HCMFA—with the full knowledge of its officers and based on HCMFA's own balance sheet—informed the Retail Board in October 2020 of its unmitigated obligations under the Pre-2019 Notes.

3. Without Exception, the Pre-2019 Notes were Disclosed in Highland's Books and Records and Were Consistently Carried as Assets without Discount

58. In addition to its audited financial statements, and without exception, Highland's contemporaneous books and records – before the Petition Date and after -- recorded the Pre-2019 Notes as valid debts due and owing by HCMFA to Plaintiff.

59. After the Petition Date, but while Mr. Dondero was still in control of Highland, the Debtor filed its *Schedules of Assets and Liabilities* [Bankr. Docket No. 247] (the "Debtor's Schedules"). The Debtor's Schedules included the Pre-2019 Notes among the Debtor's assets. Ex. 40, Appx. 812-815 (excerpts of the Debtor's Schedules showing that Highland (a) disclosed as assets of the estate "Notes Receivable" in the approximate amount of $150 million (Item 71), and (b) provided a description of the Pre-2019 Notes (Exhibit D)).

60. In every one of the Debtor's *Monthly Operating Reports* (the "MORs") filed with the Court (while Mr. Dondero was in control of Highland and after), the Debtor included as

assets of the estate amounts "Due from affiliates" that included the Pre-2019 Notes. *See, e.g.*, Ex. 41, Appx. 816-825; Ex. 42, Appx. 826-835; Ex. 88, Appx. 1475-1486; Ex. 89, Appx. 1487-1496.[17]

61. Highland's "back-up" to the amounts "Due from affiliates" set forth in the MORs identified HCMFA as an obligor under the Pre-2019 Notes and included all unpaid principal and accrued interest. *See, e.g.*, Exs. 196-198, Appx. 3239-3244 (the back-up to the "Due from Affiliates" amounts set forth in the MORs for December, September 2020, and January 2021).

62. Relatedly, Highland's accounting group has a regular practice of creating, maintaining and updating on a monthly basis "loan summaries" in the ordinary course of business (the "Loan Summaries"). Second Klos Dec. ¶ 6. The Loan Summaries identify amounts owed to Highland under affiliate notes and are created by updating underlying schedules for activity and reconciling with Highland's general ledger. *See id.* Exhibit 199, Appx. 3245-3246 is an example of a Loan Summary. The Loan Summaries identify each obligor under certain notes by reference to the "GL" number used in the general ledger. *See* Ex. 199 (HCMS ("GL 14530"), HCMFA ("GL 14531"), NexPoint ("GL 14532"), HCRE ("GL 14533"), and Mr. Dondero ("GL 14565")). *See* Second Klos Dec. ¶ 6.

63. The Loan Summaries were used in connection with PwC's audits and to support accounting entries and year-end balances in the ordinary course of Highland's business.

[17] *See also* Bankr. Docket No. 405 (October 2019); Bankr. Docket No. 289 (November 2019); Bankr. Docket No. 418 (December 2019); Bankr. Docket No. 497 (January 2020); Bankr. Docket No. 558 (February 2020); Bankr. Docket No. 634 (March 2020); Bankr. Docket No. 686 (April 2020); Bankr. Docket No. 800 (May 2020), as amended in Bankr. Docket No. 905; Bankr. Docket No. 913 (June 2020); Bankr. Docket No. 1014 (July 2020); Bankr. Docket No. 1115 (August 2020); Bankr. Docket No. 1329 (September 2020); Bankr. Docket No. 1493 (October 2020); Bankr. Docket No. 1710 (November 2020); Bankr. Docket No. 1949 (December 2020); and Bankr. Docket No. 2030 (January 2021).

For example, Exhibit 199, Appx. 3246 ties exactly into Exhibit 198, Appx. 3243-3244, the "back up" to the "Due from affiliates" entry in the January 2021 MOR. Bankr. Docket No. 2020. Second Klos Dec. ¶ 7.[18]

64. The 2014 Note is shown on the Loan Summary marked as Exhibit 199 as "HCMFA #2" and the 2016 Note is shown on the Loan Summary as "HCMFA #5." Ex. 199, Appx. at 3246. Second Klos Dec. ¶ 8.

4. Recovery on the Pre-2019 Notes Was A Significant Component of the Plan Yet HCMFA Remained Silent on the Point Despite Lodging Objections

65. On November 24, 2020, Highland filed its *Disclosure Statement for the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Bankr. Docket No. 1473]. Included therein were the Debtor's Liquidation Analysis/Financial Projections (the "Projections"). Ex. 90, Appx. 1497-1505. Among the assumptions supporting the Projections was that "[a]ll demand notes are collected in the year 2021." *Id.* at 173 of 178, Appx. 1500 (Assumption C).

66. Thus, even though Highland had not yet demanded payment under the Pre-2019 Notes, HCMFA was notified on November 24, 2020, that the Debtor's Projections assumed that all demand notes, including the Pre-2019 Notes, would be collected the following year. While HCMFA objected to Highland's proposed Plan, HCMFA did not disclose the existence Alleged Agreements or suggest that the Debtor's Projections were unreasonable in any way. *See* Bankr. Docket No. 1670.

[18] Colloquially, the Loan Summaries are the "back up" to the "back up." To illustrate, and working backwards, the January 2021 MOR reported that $152,538,000 was "Due from affiliates." Bankr. Docket No. 2030 (balance sheet). Ex. 198, Appx. 3243-3244 is the "back up" to the January 2021 MOR and it shows that $152,537,622 was the "Total Due from Affiliates" (the January 2021 MOR rounded up to the nearest thousand). Ex. 199, Appx. 3245-3246, the Loan Summary, is the "back up" to the "back up," and is reconciled with Highland's general ledger. As can be seen, the Loan Summary specifies the outstanding principal amounts due under each Note. Interest on these notes is accrued in a single account (general ledger account 14010). Second Klos Dec. ¶ 7 n. 2.

67. At the confirmation hearing, James P. Seery, Jr., Highland's Chief Executive Officer, testified as to (a) why the Debtor believed this assumption was reasonable, and (b) how the commencement of the Main Notes Litigations impacted the Projections. Mr. Dondero's counsel asked limited questions on cross-examination about the assumptions concerning demand notes. Ex. 206 at 123:23-124:23, Appx. 4305-4306, 128:23-129:21, Appx. 4310-4311, 185:8-15, Appx. 4367.

68. In his closing argument, Mr. Dondero's counsel (a) vaguely suggested that there may be "arguments" against the Debtor's assertion that certain demand notes are due and payable and (b) observed that the demand notes were not discounted for "collectability issues," but made no mention of HCMFA's Alleged Agreement Defense, or any other defense:

> First, there's the notes; and second, there's the assets. The notes are either long-term or demand notes. Those long-term notes, Mr. Seery will tell you some have been validly accelerated and therefore are now due and payable. I think there's arguments to the contrary. But those long-term notes probably have some both time value of money and collection costs. And then, of course, you have to discount them by collectability issues, too.
>
> I don't believe any analysis went into it, or at least the Court was not provided any data or analysis as to what discounts were applied to those notes. And, therefore, I don't think that this Court can make any determination that the best interests of the creditors have been met.

Ex. 207 at 223:22-224:14, Appx. 4701-4702.

5. <u>HCMFA Paid Millions of Dollars in Principal and Interest Due under the Pre-2019 Notes</u>

69. In the years prior to Bankruptcy, Mr. Dondero caused HCMFA to pay millions of dollars in principal and interest against the Pre-2019 Notes.

70. By their plain and unambiguous terms, the Pre-2019 Notes were payable on demand. However, HCMFA was permitted to make "prepayments" under each of the Pre-2019

Notes. Section 3 sets forth HCMFA's agreement concerning the treatment of "prepayments" and provides:

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

(Second Klos Dec. ¶ 10, Exhibit A ¶ 3; Exhibit B ¶ 3) (emphasis added).

71. Subsequent to the issuance of the Pre-2019 Notes, certain payments were made against the obligations due under the Pre-2019 Notes (collectively, the "Payments"). Second Klos. Dec. ¶ 11.

72. For instance, between May 2019 and December 2021, HCMFA made five separate Payments against the February 2014 Note, in the aggregate amount of approximately $2.4 million. (*See* Second Klos. Dec. Exhibits D through H). Between September 2016 and December 2021, HCMFA made three separate Payments against the February 2016 Note in the aggregate amount approximately $1.5 million. *See* Second Klos Dec., Exhibits H though J.

73. In accordance with section 3 of the Pre-2019 Notes, Highland's accounting group applied the Payments first to unpaid accrued interest thereon, and then to unpaid principal.[19] Second Klos Dec. ¶¶ 13-14, Exhibit C.

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[19] There were three *de minimus* exceptions to this treatment. In June 2019 and October 2019, two Payments were applied entirely to principal on the 2014 Note. In each instance, the Payment occurred shortly after a separate Payment had been made and applied first to all accrued and outstanding interest and second to principal. As a result, in these two instances, *de minimus* accrued interest remained outstanding when the June and October 2019 Payments were made and applied entirely to principal. A separate payment on the 2016 Note in April 2017 was applied to interest first, then principal at the time of the Payment. However, following the application of the Payment, it was identified that the accrued interest should have been capitalized on the anniversary of the 2016 Note, so the loan schedule was updated to reflect the capitalization of the interest. The application of the Payment was unchanged, leaving interest in a "pre-paid" position until further interest accrued and exhausted the Payment. The combined effect of these exceptions is *de minimus* (cumulatively less than $650.00) with respect to total current outstanding principal and interest. Moreover, regardless of the application of the Payments, Highland always had the unquestionable and unfettered right to demand payment for all remaining amounts due and owing under the Pre-2019 Notes, subject only to the Acknowledgement Letter.

74. HCMFA does not dispute the propriety of the application of the Payments to the obligations under each of the Pre-2019 Notes, as shown on **Exhibit C**. Exhibit 238, Appx. 5134-5147.

D. HCMFA'S AFFIRMATIVE DEFENSES

75. HCMFA has asserted various defenses to Plaintiff's breach of contract claim, and those are addressed below.

1. The Alleged Agreement Defense

76. HCMFA's Alleged Agreement defense is premised largely on the same spurious story asserted by the Main Note Defendants in the Main Notes Litigation (with the exception of HCMFA in the First HCMFA Note Action), namely, that there were alleged oral agreements pursuant to which the Pre-2019 Notes would be forgiven upon the occurrence of certain "conditions subsequent." *See* Ex. 234 ¶ 41 ("HCMFA's Answer"). Specifically, HCMFA asserted in its Answer:

> Plaintiff's claims are barred … because prior to the demands for payment, Plaintiff agreed that it would not collect the Notes upon fulfillment of conditions subsequent. Specifically, sometime between December of the year in which each note was made and February of the following year, Nancy Dondero, as representative for a majority of the Class A shareholders of Plaintiff agreed that Plaintiff would forgive the Notes if certain portfolio companies were sold for greater than cost or on a basis outside of James Dondero's control. The purpose of this agreement was to provide compensation to Mr. Dondero, who was otherwise underpaid compared to reasonable compensation levels in the industry, through the use of forgivable loans, a practice that was standard at HCMLP and in the industry. This agreement setting forth the conditions subsequent to demands for payment on the Notes was an oral agreement; however, Defendant believes there may be testimony or email correspondence that discusses the existence of this agreement that may be uncovered through discovery in this Adversary Proceeding.

Ex. 234 ¶ 41 (the "Alleged Agreement Defense").

77. As the Court may recall from the Main Notes Litigation, the Alleged Agreement Defense changed materially over time before the Main Note Defendants settled on one story. *See* First Motion for Summary Judgment ¶¶ 80-89 (citing evidence).

78. Incredibly, after a year-and-a-half of litigation concerning the Alleged Agreement Defense, HCMFA (a) was forced in discovery to change the nature of this defense, as applied to the 2014 Note, and (b) failed to produce any credible evidence in support the Alleged Agreement Defense. Indeed, the overwhelming testimonial and documentary evidence directly contradicts HCMFA's Alleged Agreement Defense.

i. <u>After More Than a Year of Litigation, HCMFA and Mr. Dondero Still Cannot Recite a Credible Defense Based on the Alleged Agreement</u>

79. In its Answer, HCMFA alleged that Nancy Dondero entered into the Alleged Agreement with respect to the Pre-2019 Notes "as representative for a majority of the Class A shareholders of Plaintiff." Ex. 234 ¶ 41. Under questioning, however, Mr. Dondero and his sister were forced to change their story yet again. Because Ms. Dondero did not become the Trustee of Dugaboy until October 2015, Mr. Dondero was forced to contend that ***he*** entered into the Alleged Agreement with respect to the 2014 Note on behalf of HCMFA ***and*** Highland (*i.e.*, he made the Alleged Agreement with respect to the 2014 Note with himself).

80. Mr. Dondero reviewed HCMFA's Answer before authorizing HCMFA's attorneys to file it. *See* Ex. 215 at 30:7-31:2, Appx. 4930-4931. Nevertheless, the Answer is false.

81. As Ms. Dondero admitted, she could not have entered into the Alleged Agreement with respect to the 2014 Note (the "<u>2014 Alleged Agreement</u>") between December of 2014 and February of 2015 (*see* HCMFA's Answer ¶ 41) because she did not become the trustee of Dugaboy until October of 2015. *See* Ex. 210 at 16:6-18:24, Appx. 4852-4854; *see also* Ex. 237, Appx. 5128-5133. Ms. Dondero allegedly caused Dugaboy to enter into the Alleged Agreement

only with respect to the 2016 Note (the "2016 Alleged Agreement," and together with the 2014 Alleged Agreement, the "Alleged Agreements"). *See* Ex. 210 at 17:23-18:24, Appx. 4853-4854; Ex. 215 at 32:19-22, Appx. 4932.

82. Faced with this uncontroverted fact, Mr. Dondero was subsequently forced to contend that he—not Ms. Dondero—caused Dugaboy to enter into the 2014 Alleged Agreement in his capacity as ***both*** the president of Highland and as the trustee of his own Dugaboy trust.[20] *See* Ex. 215 at 31:3-25, 32:19-36:6, Appx. 4931-4936.

83. Accordingly, the Answer is facially and materially inaccurate because it falsely states that Ms. Dondero caused Dugaboy to enter into the Alleged Agreement with respect to the 2014 Note.[21]

ii. No Reasonable Trier of Fact Can Find that the Alleged Agreements Existed

84. Regardless of who allegedly entered into the Alleged Agreements on behalf of Highland, for the reasons set forth below, no reasonable trier of fact can find that the Alleged Agreements ever existed.

85. Mr. Dondero personally caused MGM stock to be sold in November 2019 and failed to declare the Notes forgiven. According to Mr. Dondero and Ms. Dondero, the Pre-2019 Notes would be forgiven if Mr. Dondero sold one of three portfolio companies—Trussway, Cornerstone, or MGM—above cost. *See* Ex. 234 ¶ 41; Ex. 210 at 21:25-22:7, Appx. 4857-4858.[22]

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[20] The terms of the 2014 Alleged Agreement are allegedly the same as those of the Alleged Agreement covering the 2016 Note. *See* Ex. 210 at 31:24-33:15, Appx. 4867-4869; Ex. 215 at 36:19-37:8, Appx. 4936-4937.

[21] Even though Mr. Dondero and Ms. Dondero have admitted that HCMFA's Answer is inaccurate as it relates to the 2014 Agreement, HCMFA has not moved for leave to amend its Answer.

[22] The terms of the Alleged Agreements covering the Pre-2019 Notes are allegedly the same as the terms of the Alleged Agreement covering the notes in the Main Notes Litigation. *See* Ex. 210 at 20:5-21:23, Appx. 4856-4857.

86. In November 2019, Mr. Dondero caused the sale of a substantial interest in MGM for $123.25 million, a portion of which was for the Debtor's interest in a fund, but failed to declare the Pre-2019 Notes forgiven or even disclose the existence of the Alleged Agreements. *See* Ex. 201 ¶ 29-30, Appx. 3270-3271; Ex. 202 ¶ 14, Appx. 4135; Ex. 203 ¶ 1, Appx. 4143; Ex. 204 at 5 n. 5, Appx. 4156.

87. Ms. Dondero was not competent to enter into the 2016 Alleged Agreement. Under the circumstances, Ms. Dondero was not competent to enter into the 2016 Alleged Agreement, and she made no effort to educate herself before purportedly binding Highland. Ms. Dondero:

- Had no meaningful knowledge, experience, or understanding of (a) Highland or its business, (b) the financial industry, (c) executive compensation matters, or (d) Mr. Dondero's compensation or whether he was "underpaid compared to reasonable compensation levels in the industry" (Ex. 100 at 42:22-43:8,[23] Appx. 1885, 48:7-61:9, Appx. 1886-1889; 211:8-216:21, Appx. 1927-1928);[24]

- Never reviewed Highland's financial statements (including balance sheets, bank statements, profit and loss statements and statements of operations), never asked to see them, and knew nothing about Highland's financial condition prior to the Petition Date (*id*. at 61:25-63:13, Appx. 1889-1890);

- Did not know of Highland's "portfolio companies" except for those her brother identified, and as to those, Ms. Dondero did not know the nature of Highland's interests in the portfolio companies, the price Highland paid to acquire those interests, or the value of the portfolio companies

[23] Pursuant to a stipulation entered into between the Parties, the deposition transcripts for any witness that was deposed in the Main Notes Litigation can be used in this Adversary Proceeding. *See* Ex. 210 at 6:22-7:10, Appx. 4842-4843.

[24] The only information Ms. Dondero had concerning Mr. Dondero's compensation from Highland was that he "was not highly paid" and that in recent years, "his salary has been roughly less than a million, 500, 700,000 somewhere in that ballpark." Ex. 100 at 51:11-22, Appx. 1887. This information was false. Ex. 68, Appx. 1129-1130 (2016 base salary of $1,062,500 with total earnings and awards of $2,287,175); Ex. 50, Appx. 860-861 (2017 base salary of $2,500,024 with total earnings and awards of $4,075,324); Ex. 51, Appx. 862-863 (2018 base salary of $2,500,000 with total earnings and awards of $4,194,925); and Ex. 52, Appx. 864-865 (2019 base salary of $2,500,000 with total earnings and awards of $8,134,500).

(*id*. at 63:18-80-22, Appx. 1890-1894; 208:24-210:13, Appx. 1926-1927);

- Never saw a promissory note signed by Mr. Dondero, any other officer or employee of Highland, or any "affiliate" of Highland (*id*. at 83:14-84:8, Appx. 1895; 95:3-16, Appx. 1898; 99:20-100:10, Appx. 1899; 115:11-116:4, Appx. 1903; 127:13-128:4, Appx. 1906; 140:15-141:22, Appx. 1909, 180:18-23, Appx. 1919);

- Learned (falsely, as shown below) from her brother that Highland allegedly had a "common practice" of forgiving loans, but had no actual knowledge or information concerning any loan that Highland made to an officer, employee, or affiliate that was actually forgiven and made no effort to verify her brother's statement (*id*. 84:9-92:3, Appx. 1895-1897, 100:11-103:8, Appx. 1899-1900);

- Had no knowledge of NexPoint, HCMS, or HCRE (the Corporate Obligors whose notes are purportedly subject to the Alleged Agreement in the Main Notes Litigation), including (a) the nature of their businesses, (b) their relationships with Highland, including whether they provided any services to Highland, (c) their financial condition, or (d) the purpose of the loans made to them by Highland, and their use of the proceeds (*id*. at 103:19-115:10, Appx. 1900-1903, 119:5-127:7, Appx. 1904-1906, 129:5-140:14, Appx. 1906-1909).

88. Mr. Dondero retained Alan Johnson as an executive compensation expert. Mr. Johnson has experience advising boards, compensation committees, and other parties on issues concerning loan forgiveness transactions. Based on his expertise, Mr. Johnson would very likely concur that Ms. Dondero was not competent to enter into the Alleged Agreements on behalf of Highland. Ex. 101 at 12:3-73:17, Appx. 1961-1976.

89. <u>The Alleged Agreements were not authorized under the LP Agreement</u>. Dugaboy, the Limited Partner of HCMLP, was not authorized to negotiate and enter into binding agreements on behalf of HCMLP under the *Fourth Amended and Restated Agreement of Limited Partnership of Highland Capital Management, L.P.* (the "<u>LP Agreement</u>"). Ex. 2 (Exhibit 4), Appx. 57-93. Specifically, pursuant to the LP Agreement, the Limited Partners only have authority to approve agreements for compensation, not to execute them. *See id.* at Art. 3.10(a).

Moreover, (a) all notices to Limited Partners have to be in writing, *see id.* at Art. 6.2, and (b) any agreement between HCMLP and the General Partner or its Affiliates to render services for HCMLP must be fair, *see id.* at Art. 4.1(e)(ii). The execution of the Alleged Agreements violates the LP Agreement in several ways because (a) Dugaboy was not authorized to enter into it on behalf of HCMLP, (b) the Alleged Agreements were not in writing, and (c) the Alleged Agreements were not fair by any objective standard. *See infra* ¶¶ 91-94.

90. The Alleged Agreements were kept secret and were never disclosed. The Alleged Agreements were never disclosed:

- Other than Mr. and Ms. Dondero, no one participated in the discussions that led to the 2016 Alleged Agreement. Ex. 210 at 27:19-21 Appx. 4863;
- Ms. Dondero and Dugaboy have admitted that prior to January 1, 2021, neither ever disclosed the existence or terms of the 2016 Alleged Agreement to *anyone* other than Mr. Dondero, including PwC, Mr. Waterhouse, or Mark Okada. Ex. 210 at 25:6-22, Appx. 4861, 27:22-28:4, Appx. 4863-4864, and
- HCMFA has admitted that prior to February 1, 2021, it never disclosed the existence or terms of the Alleged Agreements to PwC, Mr. Okada, the Bankruptcy Court, or any creditor of Highland, including in connection with any objection to the Plan or Disclosure Statement. Ex. 220 (Responses to RFA Nos. 7-12, 15-21), Appx. 5018).

91. No Document Exists that Reflects the Existence or Terms of the Alleged Agreements. No document was created prior to the Adversary Proceeding that memorializes or reflects the existence or terms of the Alleged Agreements:

- Neither Dugaboy nor Ms. Dondero is aware of anything in writing that identifies the existence or terms of the Alleged Agreements. Ex. 210 at 25:23-27:18, Appx. 4861-4863.
- HCMFA has admitted that the terms or existence of the Alleged Agreements were never reduced to writing. Ex 220 (Responses to RFA Nos. 13-14), Appx. 5019.

92. Even if the Alleged Agreements existed, they are unenforceable for lack of consideration. Mr. Dondero is the founder of Highland and Highland was the platform he used to support his other businesses, including the HCMFA and the Corporate Obligors from the Main Notes Litigation. No reasonable trier of fact could conclude that Highland (a) needed to enter into the Alleged Agreements to retain or motivate Mr. Dondero or (b) that Highland received anything of value in exchange for agreeing to forgive over $6.3 million in valid promissory notes if either (i) Mr. Dondero sold one of the three portfolio companies at a dollar above cost or (ii) the portfolio companies were sold by a third party. Yet, according to Ms. Dondero, "motivating" Mr. Dondero is all Highland received. *See, e.g.*, Ex. 100 at 221:2-225:7, Appx. 1929-1930.

93. Indeed, Ms. Dondero admitted that she did not know, and had no reason to expect, that Highland would benefit from the sale of the portfolio companies by a third party. She also acknowledged that (a) Highland would not benefit from the Alleged Agreements if a third party sold the portfolio companies at less than cost and (b) the Notes would all be forgiven even if a third party sold the portfolio companies at a price "substantially below cost." Ex. 100 at 201:24-203:11, Appx. 1924-1925, 227:17-229:14, Appx. 1931.

94. Mr. Dondero fixed the terms of the Alleged Agreements without negotiation. No aspect of the Alleged Agreements was the subject of negotiation. Indeed, the undisputed facts show that Ms. Dondero never (i) made a counterproposal; (ii) negotiated any aspect of the 2016 Alleged Agreement; (iii) asked Mr. Dondero how he selected the portfolio companies; (iv) inquired as to whether Mr. Dondero already had a duty to maximize value; (v) rejected any aspect of Mr. Dondero's alleged proposal; or (vi) rejected or pushed back on Mr. Dondero's proposal that the Pre-2019 Notes would be forgiven if any of the portfolio companies

were sold by a third party. *See* Ex. 210 at 24:8-18, Appx. 4860; Ex. 100 at 194:16-19, Appx. 1923, 195:14-199:15, Appx. 1923-1924.

95. Highland did not have a "practice" of forgiving loans. HCMFA contends that the use of "forgivable loans" was a "practice that was standard at HCMLP and in the industry." Ex. 234 ¶ 41. This is demonstrably false.

96. Mr. Dondero has admitted that Highland disclosed to its auditors all loans of a material amount that Highland ever forgave. Ex. 98 at 426:8-427:15, Appx. 1777. During his deposition, Mr. Johnson, Mr. Dondero's executive compensation expert, reviewed Highland's audited financial statements for each year from 2008 through 2018 (Ex. 101 at 119:14-189:21, Appx. 1988-2005) and concluded that (a) Highland has not forgiven a loan to anyone in the world since 2009, (b) the largest loan Highland has forgiven since 2008 was $500,000, (c) Highland has not forgiven any loan to Mr. Dondero since at least 2008, and (d) since at least 2008, Highland has never forgiven in whole or in part any loan that it extended to any affiliate. *Id.* at 189:24-192:10, Appx. 2005-2006. *See also* Ex. 98 at 422:18-428:14, Appx. 1776-1778.

97. Mr. Dondero's contention that he entered into the 2014 Alleged Agreement contradicts HCMFA's Answer and was contrived at the last second. Despite (a) having litigated the circumstances concerning the Alleged Agreement Defense for over a year in the Main Notes Litigation, and (b) reviewing and authorizing HCMFA's Answer before it was filed, it was only under questioning that Mr. Dondero and his sister realized that Ms. Dondero had not yet been appointed the Dugaboy trustee at the time the 2014 Alleged Agreement was allegedly entered into so Mr. Dondero was forced to change his tale again and contend that he entered into that 2014 Alleged Agreement with himself.

98. HCMFA paid almost $4 million dollars against the obligations due under the Pre-2019 Notes. Between May 2019 and December 2021, HCMFA made five (5) separate payments in the aggregate amount of $2,410,477.45 that were applied first against accrued but unpaid interest, and then against principal, due under the 2014 Note.[25] Between September 2016 and December 2021, HCMFA made three (3) separate payments in the aggregate amount of $1,487,336.87 that were applied first against accrued but unpaid interest, and then against principal, due under the 2016 Note. Ex. 219, Appx. 5005-5007. Making interest and principal payments of almost $4 million against notes with an aggregate principal amount of $6.3 million is inconsistent with the entry of Alleged Agreements allegedly entered into for the purpose of compensating and incentivizing Mr. Dondero.

99. HCMFA paid off other notes in full but never explains why it did so or why those notes were not subject to an Alleged Agreement. In addition to the Pre-2019 Notes, and the Notes at issue in the First HCMFA Action, HCMFA issued at least three other notes to Highland in exchange for loans (collectively, the "Paid Off Notes"). Prior to the Petition Date, HCMFA paid all principal and interest due under the Paid Off Notes. Second Klos Dec. ¶ 9. HCMFA offers no explanation for why the Paid Off Notes were not subject to an Alleged Agreement or, if they were, why HCMFA voluntarily paid them off in full.

100. HCMFA's expert has never advised a company to forgive an affiliate loan for the purpose of compensating an executive. Mr. Johnson, HCMFA's compensation expert, admitted that (i) he has never advised a company to forgive an affiliate loan for the purpose of compensating an executive, (ii) nor is he aware of any company that has ever done so. *See* Ex. 240, at 20:6-18, Appx. 5236.

[25] There were three *de minimus* exceptions to this treatment. *See supra*, n. 16.

2. Other Defenses: Waiver, Estoppel, Failure of Consideration, Prepayment

101. HCMFA also pleads the defenses of (a) waiver, (b) estoppel, (c) lack of consideration, (d) prepayment, and (e) ambiguity. *See* Ex. 234 ¶¶ 42-43.

102. Mr. Dondero, HCMFA's 30(b)(6) witness, could not identify any relevant facts to support HCMFA's affirmative defenses of waiver (*see* Ex. 215 at 44:18-45:14, Appx. 4944-4945), estoppel (*id.* at 45:20-46:10, Appx. 4945-4946), lack of consideration (*id.* at 47:7-25, Appx. 4947), or prepayment (*id.* at 48:2-10, Appx. 4948). Mr. Dondero also could not identify a material provision of either of the Pre-2019 Notes that he believed was ambiguous. *Id.* at 20:9-23, Appx. 4920, 24:19-25:11, Appx. 4924-4925.[26] Indeed, there is undisputed evidence contradicting these purported defenses. *See, e.g.*, Ex. 217, Appx. 4989-4990 (Acknowledgement Letter where HCMFA admits that loans from Highland were outstanding and payable on demand); Ex. 220, Appx. 5017 (responses to RFAs 1 through 4 in which HCMFA admits to tendering the Pre-2019 Notes in exchange for loans from Highland equal to the principal amount of the Pre-2019 Notes).

III. ARGUMENT

A. Legal Standard

1. Summary Judgment Standard

103. "The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." FED. R. CIV. 56(c); *see also Warfield v. Byron*, 436 F.3d 551, 557 (5th Cir. 2006) ("[S]ummary judgment is proper when the pleadings, depositions, answers to

[26] Even if the Court determined that a material provision of the Pre-2019 Notes was ambiguous, HCMFA should be estopped from evading liability for the loans it received from Plaintiff on that basis because Mr. Dondero has admitted that (a) Highland's accounting group prepared the Pre-2019 Notes; (b) he controlled Highland at all relevant times, and (c) he did not read the Pre-2019 Notes before signing them so he could not have relied on any such ambiguity at the time he executed the Notes. Ex. 215 at 19:24-20:2, Appx. 4919-4920.

interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.") (quoting Fed. R. Civ. P. 56(c)). "A dispute about a material fact is 'genuine' if the evidence is such that a reasonable jury could return a verdict in favor of the nonmoving party." *Alton v. Tex. A&M Univ.*, 168 F.3d 196, 199 (5th Cir. 1999). The moving party meets its initial burden of showing there is no genuine issue for trial by "point[ing] out the absence of evidence supporting the nonmoving party's case." *Latimer v. Smithkline & French Laboratories,* 919 F.2d 301, 303 (5th Cir.1990); *see also In re Magna Cum Latte, Inc.*, 07-31814, 2007 WL 3231633, at *3 (Bankr. S.D. Tex. Oct. 30, 2007) ("A party seeking summary judgment may demonstrate: (i) an absence of evidence to support the non-moving party's claims or (ii) the absence of a genuine issue of material fact.").

104. "If the moving party carries [their] initial burden, the burden then falls upon the nonmoving party to demonstrate the existence of genuine issue of material fact." *Latimer*, 919 F.3d at 303; *see also Nat'l Ass'n of Gov't Emps. v. City Pub. Serv. Bd. of San Antonio, Tex.*, 40 F.3d 698, 712 (5th Cir. 1994) ("To withstand a properly supported motion for summary judgment, the nonmoving party must come forward with evidence to support the essential elements of its claim on which it bears the burden of proof at trial."). "This showing requires more than some metaphysical doubt as to the material facts." *Latimer*, 919 F.3d at 303 (internal quotations omitted); *see also Hall v. Branch Banking*, No. H-13-328, 2014 WL 12539728, at *1 (S.D.Tex. Apr. 30, 2014) ("[T]he nonmoving party's bare allegations, standing alone, are insufficient to create a material dispute of fact and defeat a motion for summary judgment."); *Turner v. Baylor Richardson Med. Ctr.*, 476 F.3d 337, 343 (5th Cir. 2007) (The nonmovant's burden cannot be

satisfied by "conclusory allegations, unsubstantiated assertions, or only a scintilla of evidence.") (internal quotations omitted).

105. Thus, "[w]here critical evidence is so weak or tenuous on an essential fact that it could not support a judgment in favor of the nonmovant, or where it is so overwhelming that it mandates judgment in favor of the movant, summary judgment is appropriate." *Alton*, 168 F.3d at 199; *see also Armstrong v. City of Dallas*, 997 F.2d 62, 66 n 12 (5th Cir.1993) ("We no longer ask whether literally little evidence, *i.e.,* a scintilla or less, exists but, whether the nonmovant could, on the strength of the record evidence, carry the burden of persuasion with a reasonable jury.").

2. <u>Summary Judgment Standard for Promissory Notes</u>

106. "Ordinarily, suits on promissory notes provide 'fit grist for the summary judgment mill.'" *Resol. Tr. Corp. v. Starkey*, 41 F.3d 1018, 1023 (5th Cir. 1995) (quoting *FDIC v. Cardinal Oil Well Servicing Co.*, 837 F.2d 1369, 1371 (5th Cir.1988)); *see also Looney v. Irvine Sensors Corp.*, CIV.A.309-CV-0840-G, 2010 WL 532431, at *2 (N.D. Tex. Feb. 15, 2010) ("Suits on promissory notes are typically well-suited for resolution via summary judgment.") To prevail on summary judgment for breach of a promissory note under Texas law, the movant need not prove all essential elements of a breach of contract, but only must establish (a) the note in question, (b) that the non-movant signed the note, (c) that the movant was the legal owner and holder thereof, and (d) that a certain balance was due and owing on the note. *See Resol. Tr. Corp.*, 41 F.3d at 1023; *Looney*, 2010 WL 532431, at *2-3; *Magna Cum Latte*, 2007 WL 3231633, at *15.

B. Highland Is Entitled to Summary Judgment for HCMFA's Breach of the Pre-2019 Notes

1. Highland Has Made a *Prima Facie* Case for Summary Judgment

107. Highland has made its *prima facie* case that it is entitled to summary judgment on HCMFA's breach of the Notes.

108. The Pre-2019 Notes are: (a) valid, (b) signed by HCMFA and in Highland's favor, (Second Klos Dec. ¶¶ 4-5, Exhibit A, Exhibit B), and (c) as of May 27, 2022, after giving effect to the Payments, the unpaid principal and accrued interest due under the 2014 Note is $2,151,130.84, and the unpaid principal and accrued interest due under the 2016 Note is $1,001,238.06, *id.* ¶ 18.

109. HCMFA breached its obligations under the Pre-2019 Notes by failing to pay Highland all amounts due and owing upon Highland's demand.

110. Highland has been damaged by HCMFA's breach in amounts that are set forth above but which (a) continue to increase daily, and (b) which do not include a calculation of collection costs and attorneys' fees.[27]

111. Accordingly, Highland has made out its *prima facie* case for summary judgment that HCMFA has breached the Pre-2019 Notes. *See Resol. Tr. Corp.*, 41 F.3d at 1023 (holding that where affidavit "describes the date of execution, maker, payee, principal amount, balance due, amount of accrued interest owed, and the date of default for each of the two promissory notes," movant "presented a prima facie case of default on the notes."); *Looney*, 2010 WL 532431, at *2-3 (where movant "has attached a copy of the note … to a sworn affidavit in which he states that the photocopy is a true and correct copy of the note, that he is the owner and

[27] Plaintiff seeks to add to its damages accrued and unpaid interest, and Plaintiff's costs of collection, including reasonable attorneys' fees. Plaintiff respectfully requests an opportunity to conduct a final damage calculation if the Court fully grants the Motion.

holder of the note, and that there is a balance due on the note … [movant] has made a prima facie case that he is entitled to summary judgment on the note.")

2. <u>HCMFA Fails to Rebut Highland's *Prima Facie* Case</u>

112. HCMFA cannot rebut Highland's *prima facie* case for breach of the Pre-2019 Notes because there is no credible evidence to support any of its affirmative defenses.

113. HCMFA fails to show there is any genuine issue of material fact to support its Alleged Agreement Defense because there is a complete absence of evidence in support of this defense.

114. First, the testimony of Mr. Dondero and his sister contradicts HCMFA's contentions in its Answer concerning who entered into the 2014 Alleged Agreement on behalf of Highland. (*See supra* ¶¶ 79-83).

115. Second, without exception, the admissible and overwhelming evidence proves that HCMFA and Mr. Dondero voluntarily acted in ways that contradict the existence of the Alleged Agreements: (a) Mr. Dondero sold MGM stock in November 2019—an alleged "condition subsequent" under the Alleged Agreements—but failed to declare either of the Pre-2019 Notes forgiven, and otherwise remained silent about the Alleged Agreements, (*see supra* ¶¶ 85-86); (b) Ms. Dondero, the alleged counter-party to the 2016 Alleged Agreement, never saw a note signed by Mr. Dondero or any affiliate of Highland and was not competent to enter into the 2016 Alleged Agreement (*see supra* ¶¶ 87-88); (c) the existence or terms of the Alleged Agreements were never disclosed by HCMFA, Dugaboy, or Ms. Dondero to anyone, including PwC, Mr. Waterhouse, Mr. Okada or the Bankruptcy Court, (*see supra* ¶ 90); (d) no document exists memorializing or otherwise reflecting the existence or the terms of the Alleged Agreements, (*see supra* ¶ 91); (e) HCMFA told the Retail Board of the obligations due under the Pre-2019 Notes (*see supra* ¶¶ 45-57); (f) the Pre-2019 Notes were carried as liabilities on HCMFA's balance

sheet and as assets on Plaintiff's balance sheet, without discount or disclosure of the Alleged Agreements (*see supra* ¶¶ 29-44, 51, 55, 58-64); (g) there is no history of loans being forgiven at Highland, (*see supra* ¶ 95-96, 100); (h) HCMFA needed two attempts before finally deciding on the person who entered into the 2014 Alleged Agreement on behalf of Plaintiff (*see supra* ¶¶ 79-83); (i) HCMFA paid almost $4 million to Plaintiff that was applied to accrued but unpaid principal and interest due under the Pre-2019 Notes (*see supra* ¶ 98); (j) HCMFA offers no explanation for why the Paid Off Notes were not subject to an Alleged Agreement or, if they were, why HCMFA paid off all interest and principal in full (*see supra* ¶ 99); and (k) Dugaboy was not authorized to enter into the Alleged Agreements under the LP Agreement, and the Alleged Agreements otherwise violated the LP Agreement because they were not in writing and were not objectively fair or reasonable (*see* supra ¶ 89).

116. Accordingly, there is a complete absence of ***any*** credible evidence supporting the existence of the Alleged Agreements, and a mountain of evidence to show the existence, validity, and enforceability of the Pre-2019 Notes.[28] Summary judgment is, therefore, warranted with respect to HCMFA's breach of the Pre-2019 Notes. *See Magna*, 2007 WL 3231633, at *16 (granting summary judgment with respect to breach of promissory note where the plaintiff submitted an affidavit setting forth the principal, past due interest, and other charges due under the notes, and rejecting defendants' assertion that they are discharged from debt obligations after certain terms were altered, finding "[t]here is no evidence that any agreement was altered."); *In re Heritage Org., L.L.C.*, 354 B.R. 407, 431–32 (Bankr. N.D. Tex. 2006) (finding subsequent

[28] Indeed, Mr. Johnson, HCMFA's compensation expert, testified that he has never advised a company to forgive a loan made to a corporate affiliate for purposes of compensating an executive, nor is he aware of any company that has ever done so. *See supra* ¶ 100.

oral agreement defense fails where "the summary judgment record does not support the existence of a subsequent agreement" to reduce amounts owed under a promissory note).

117. Even if the Alleged Agreements existed (which they do not), they would be unenforceable for lack of consideration. "A contract must also be based on valid consideration." *Scott v. Wollney*, No. 3:20-CV-2825-M-BH, 2021 WL 4202169, at * 7 (N.D. Tex Aug. 28, 2021). "Consideration is a bargained for exchange of promises that consists of benefits and detriments to the contracting parties." *Id.* "A contract that lacks consideration lacks mutuality of obligation and is unenforceable." *Id.* Highland received no benefit in exchange for agreeing to forgive over $6.3 million in valid promissory notes if either (a) Mr. Dondero sold one of the three portfolio companies at a dollar above cost or (b) the portfolio companies were sold by a third party.[29] *See supra* ¶¶ 92-94. Accordingly, no reasonable trier of fact could find that the Alleged Agreements were exchanged for consideration, and the Alleged Agreements would, therefore, be unenforceable. *See Wollney*, 2021 WL 4202169, at *9-10 (finding party "has not met his burden of identifying evidence of record sufficient to establish the existence of a valid contract" because he has "failed to demonstrate that there is a genuine issue of material fact as to whether the alleged contract is supported by consideration, which is an essential element of any valid contract.") (internal quotations omitted).

118. Accordingly, there is no genuine issue of material fact regarding the Alleged Agreement Defense or any other affirmative defense, and Plaintiff is, therefore, entitled to summary judgment on HCMFA's breach of its obligations under the Pre-2019 Notes.

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[29] The fiction of the Alleged Agreements and their complete lack of consideration is highlighted by the absurd claim that the Pre-2019 Notes would be forgiven if any of the portfolio companies were sold by a "third party" for any amount. A "third party" controlled sale could happen only after Mr. Dondero's defenestration, and that was not a possibility until the bankruptcy. Moreover, Mr. Dondero was defenestrated because of accusations of his wrong doing and alleged damage to Highland. Highland receives no consideration whatsoever for rewarding Mr. Dondero for his alleged bad acts.

CONCLUSION

WHEREFORE, Plaintiff respectfully requests that the Court (i) grant its Motion, (ii) hold HCMFA liable for (a) breach of contract and (b) turnover for all amounts due under the Pre-2019 Notes, including the costs of collection and reasonable attorneys' fees in an amount to be determined and (iii) grant such other and further relief as the Court deems just and proper.

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Dated: May 27, 2022

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EXHIBIT A

PARTIES, WITNESSES, AND DEFINITIONS

1. "Corporate Obligors" refers to HCMFA, NexPoint, HCMS, and HCRE in their capacities as makers under their respective Notes.

2. "HCMFA" refers to Highland Capital Management Advisors, L.P. HCMFA is an entity that provides investment advisory services to certain retail funds. Ex. 105 at 32:17-23. HCMFA is directly or indirectly owned and controlled by Mr. Dondero. Ex. 96 at 228:11-15.

3. "Lead District Court Note Action" refers to Case No. 21-881, the lead District Court case overseeing the Main Notes Litigation and the Second HCMFA Notes Action.

4. "NexPoint" refers to NexPoint Advisors, L.P. NexPoint is an entity that provides investment advisory services to certain retail funds. Ex. 105 at 32:17-23. HCMFA is directly or indirectly owned and controlled by Mr. Dondero. Ex. 96 at 228:16-19.

5. "HCRE" refers to HCRE Partners, LLC (n/k/a NexPoint Real Estate Partners, LLC), and is an entity that is directly or indirectly owned by Mr. Dondero. Ex. 96 at 228:20-23.

6. "HCMS" refers to Highland Capital Management Services, Inc., and is an entity that is directly or indirectly owned or controlled by Mr. Dondero. Ex. 96 at 228:24-229:4.

7. "Main Notes Defendants" refers to the five defendants in the Main Notes Litigation: (i) James Dondero, (ii) HCMFA, (iii) NexPoint, (iv) HCRE, and (v) HCMS.

8. "Main Notes Litigation" refers to the five adversary proceedings commenced against the Main Note Defendants for breach of their respective obligations under certain notes. *See* Adv. Proc. Nos. 21-03003-sgj, 21-03004-sgj, 21-03005-sgj, 21-03006-sgj, 21-03007-sgj.

9. "Mr. Dondero" refers to an individual named James Dondero. Mr. Dondero is the founder and former president and Chief Executive Officer of Highland. Ex. 96 at 248:3-6. Mr. Dondero served as Highland's president from 1994 until January 9, 2020. Ex. 98 at 291:6-292:16.

At all relevant times, Mr. Dondero also served as President of HCMFA and directly or indirectly owned or controlled each of the Corporate Obligors. Ex. 37; Ex. 96 at 228:6-229.

10. "Ms. Dondero" refers to an individual named Nancy Dondero. Ms. Dondero is Mr. Dondero's sister. At Mr. Dondero's request, Ms. Dondero became the sole Trustee of Dugaboy in October 2015 and has served in that capacity since that time. Ex. 96 at 174:21-25; Ex. 100 at 166:19-169:5.

11. "Mr. Norris" refers to an individual named Dustin Norris. Mr. Norris has been an officer of HCMFA since 2012, and currently serves as the Executive Vice President of HCMFA. Ex. 35; Ex. 192 at 18:11-25.

12. "Mr. Post" refers to an individual named Jason Post. Mr. Post was employed by Highland in 2018 and 2019, and then became an employee of HCMFA and served as the Chief Compliance Officer for each of the Advisors. Ex. 105 at 184:13-185:3; Ex. 192 at 32:6-33:25.

13. "Mr. Sauter" refers to an individual named Dennis C. Sauter. Mr. Sauter served as Highland's general counsel of real estate from approximately February 2020 until April 2021, and has served as the general counsel of NexPoint from April 2021 to the present. Ex. 193 at: 7:16-9:12.

14. "Ms. Thedford" refers to an individual named Lauren Thedford. Ms. Thedford is an attorney who was previously employed by Highland while simultaneously serving as an officer of HCMFA and NexPoint, holding the title of Secretary. Ms. Thedford also served as an officer of the retail funds managed by the Advisors until early 2021. Ex. 35; Ex. 37; Ex. 105 at 172:10-173:25.

15. "Mr. Waterhouse" refers to an individual named Frank Waterhouse. Mr. Waterhouse is a Certified Public Accountant who joined Highland Capital Management, L.P. in

2006 and served as Highland's Chief Financial Officer ("CFO") on a continuous basis from approximately 2011 or 2012 until early 2021. While serving as Highland's CFO, Mr. Waterhouse simultaneously served as (1) an officer of HCMFA, NexPoint, and HCMS, holding the title of Treasurer and (2) Principal Executive Officer of certain retail funds managed by the Advisors. As Treasurer and Principal Executive Officer of these entities, Mr. Waterhouse was responsible for managing the Advisor's accounting and finance functions. Ex. 35; Ex. 37; Ex. 105 at 18:6-15, 18:23-19:6, 21:15-17, 23:5-20, 25:17-26:8, 27:17-28:16, 29:2-10, 30:9-31:6, 34:12-35:19, 38:20-39:5.

16. "PwC" refers to Pricewaterhouse Coopers, firm that served as Highland's outside auditors from 2003 through at least June 3, 2019. Ex. 34; Exs. 63-66; Exs. 69-72; Ex. 87 at 9 (Item 26b.1).

17. "Second Klos Dec." refers to the *Declaration of David Klos in Support of Highland Capital Management, L.P.'s Motion for Summary Judgment*, filed simultaneously with the Motion.

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

HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
Plaintiff,	§	
vs.	§	Adv. Proc. No. 21-03082-sgj
HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, L.P.,	§	Case No. 3:21-cv-00881-X
Defendant.	§	

DECLARATION OF DAVID KLOS IN SUPPORT OF HIGHLAND CAPITAL MANAGEMENT L.P.'S MOTION FOR SUMMARY JUDGMENT

I, David Klos, pursuant to 28 U.S.C. § 1746, under penalty of perjury, declare as follows:

1. I am the Chief Financial Officer ("CFO") of the reorganized Highland Capital Management, L.P. ("Highland" or "HCMLP"), and I submit this Declaration in support of *Highland Capital Management, L.P.'s Motion for Summary Judgment* in the above-referenced action (the "Motion"). This Declaration is based on my personal knowledge. I could and would testify to the facts and statements set forth herein if asked or required to do so.

2. I joined Highland in 2009 and served as Controller from 2017 to 2020 and Chief Accounting Officer from 2020 to February 2021. At all relevant times, I reported to Frank Waterhouse until he left the company in February 2021. I was appointed CFO in March 2021 following confirmation of Highland's Plan.[1]

B. The Notes

3. In the ordinary course of business, Highland had (and continues to have) a regular practice of maintaining electronic copies of all promissory notes issued by any officer, employee, or corporate affiliate.

4. Attached as **Exhibit A** is a true and correct copy of a promissory note dated February 26, 2014, executed by Mr. James Dondero ("Mr. Dondero") on behalf of Highland Capital Management Fund Advisor, L.P. ("HCMFA"), as the maker, in the original principal amount of $4,000,000 in favor of Highland (the "2014 Note"). A copy of the 2014 Note was and is maintained in Highland's books and records in the ordinary course of business and was provided to PricewaterhouseCoopers ("PwC"), the long-standing outside auditors for HCMFA and HCMLP, in connection with its annual audits.

5. Attached as **Exhibit B** is a true and correct copy of a promissory note dated

[1] Capitalized terms not defined herein shall have the meanings ascribed in the Motion.

February 26, 2016, executed by Mr. James Dondero ("Mr. Dondero") on behalf of Highland Capital Management Fund Advisor, L.P. ("HCMFA"), as the maker, in the original principal amount of $2,300,000 in favor of Highland (the "2016 Note" and together with the 2016 Note, and "Pre-2019 Notes"). A copy of the 2016 Note was and is maintained in Highland's books and records in the ordinary course of business and was provided to PwC in connection with its annual audits.

C. Highland's Loan Summaries

6. Highland's accounting group has a regular practice of creating and maintaining "loan summaries" in the ordinary course of business (the "Loan Summaries"). The Loan Summaries identify amounts owed to Highland under affiliate notes and are created by updating underlying schedules for activity and reconciling with Highland's general ledger. Exhibit 199 is an example of a Loan Summary. The Loan Summaries identify each obligor by reference to the "GL" number used in Highland's general ledger. *See* Ex. 199 (HCMS ("GL 14530"), HCMFA ("GL 14531"), NexPoint ("GL 14532"), HCRE ("GL 14533"), and Mr. Dondero ("GL 14565")).

7. The Loan Summaries were used in connection with the PwC audits and to support accounting entries and year-end balances in the ordinary course of Highland's business. For example, Exhibit 199 ties exactly into Exhibit 198, the "back up" to the "Due from affiliates" entry in the January 2021 MOR. Docket No. 2020.[2]

8. The 2014 Note is shown on the Loan Summary marked as Exhibit 199 as "HCMFA

[2] Colloquially, the Loan Summaries are the "back up" to the "back up." To illustrate, and working backwards, the January 2021 MOR reported that $152,538,000 was "Due from affiliates." Docket No. 2030 (balance sheet). Exhibit 198 is the "back up" to the January 2021 MOR and it shows that $152,537,622 was the "Total Due from Affiliates" (the January 2021 MOR rounded up to the nearest thousand). Exhibit 199, the Loan Summary, is the "back up" to the "back up," and is reconciled with Highland's general ledger. As can be seen, the Loan Summary specifies the outstanding principal amounts due under each Note. Interest on these Notes is accrued in a single account (general ledger account 14010).

#2" and the 2016 Note is shown on the Loan Summary as "HCMFA #5." Ex. 199, Appx. at 3246.

9. The Pre-2019 Notes were identified on the Loan Summary as "HCMFA #2" and "HCMFA #5," respectively, because, in exchange for loans, HCMFA also issued (i) one note to Highland before issuing the 2014 Note, and (ii) two notes to Highland after issuing the 2014 but before issuing the 2016 Note (collectively, the "Paid Off Notes"). The Paid Off Notes were referred to on prior versions of Loan Summaries as "HCMFA #1," "HCMFA #3," and "HCMFA #4," respectively, but are not included on Exhibit 199 because HCMFA paid off all principal and interest due under the Paid Off Notes before the version of the Loan Summary marked as Exhibit 199 was created.

A. The Application of Payments to the Obligations Under the Pre-2019 Notes

10. By their plain and unambiguous terms, the Pre-2019 Notes were payable on demand. However, HCMFA was permitted to make "prepayments" under each of the Pre-2019 Notes; in other words, HCMFA had the right to pay down its obligations under the Pre-2019 Notes before Highland made a demand for payment. Section 3 sets forth HCMFA's agreement concerning the treatment of "prepayments" and provides:

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

Exhibit A ¶ 3; **Exhibit B** ¶ 3 (emphasis added).

11. After issuing the Pre-2019 Notes, HCMFA made certain payments against its obligations under the Pre-2019 Notes (collectively, the "Payments").

12. Bank statements showing the date and amount of each of the Payments are attached hereto as **Exhibits D through J**, respectively.

13. In accordance with section 3 of the Pre-2019 Notes, HCMLP's accounting group

applied the Payments first to unpaid accrued interest thereon, and then to unpaid principal[3].

14. Attached as **Exhibit C** is a document prepared by HCMLP's accounting group showing how each of the Payments made against the Pre-2019 Notes were applied.

15. I understand that HCMFA does not dispute the propriety of the application of the Payments to the obligations under each of the Pre-2019 Notes, as shown on **Exhibit C**. Exhibit 238, Appx. 5134-5147.

B. <u>The Amounts Due and Owing Under the Pre-2019 Notes</u>

16. On April 15, 2019, Mr. Dondero signed the Acknowledgment Letter in which he agreed on behalf of HCMLP not to demand payment on amounts then owed by HCMFA prior to May 31, 2021. Exhibit 217, Appx. at 4990.[4] Highland received no consideration in exchange for agreement contained in the Acknowledgment Letter.

17. HCMLP's complied with Acknowledgment Letter in this regard and did not demand payment of the outstanding obligations due under the Pre-2019 Notes until June 2, 2021. *See* Complaint, Exhibit 4.

18. As of May 27, 2022, after giving effect to the Payments, the unpaid principal and

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[3] There were three *de minimus* exceptions to this treatment. In June 2019 and October 2019, two Payments were applied entirely to principal on the 2014 Note. In each instance, the Payment occurred shortly after a separate Payment had been made and applied first to all accrued and outstanding interest and second to principal. As a result, in these two instances, *de minimus* accrued interest remained outstanding when the June and October 2019 Payments were made and applied entirely to principal. A separate payment on the 2016 Note in April 2017 was applied to interest first, then principal at the time of the Payment. However, following the application of the Payment, it was identified that the accrued interest should have been capitalized on the anniversary of the 2016 Note, so the loan schedule was updated to reflect the capitalization of the interest. The application of the Payment was unchanged, leaving interest in a "pre-paid" position until further interest accrued and exhausted the Prepayment. The combined effect of these exceptions is *de minimus* (cumulatively less than $650.00) with respect to total current outstanding principal and interest. Moreover, regardless of the application of the Payments, Highland always had the unquestionable and unfettered right to demand payment for all remaining amounts due and owing under the Pre-2019 Notes, subject only to the Acknowledgement Letter.

[4] In May 2019, HCMFA issued two other Notes to Highland in exchange for loans that are the subject of one of the adversary proceedings in the Main Notes Litigation. *See* Adv. Pro. No. 21-03004. Because those Notes were issued in May 2019, they were not subject to the Acknowledgment Letter.

accrued interest due under the 2014 Note is $2,151,130.84, and the unpaid principal and accrued interest due under the 2016 Note is $1,001,238.06.

19. I declare under penalty of perjury that the forgoing is true and correct.

Dated: May 27, 2022

/s/ David Klos
David Klos

EXHIBIT A

PROMISSORY NOTE

$4,000,000.00 February 26, 2014

FOR VALUE RECEIVED, HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, LP. ("***Maker***") promises to pay to the order of HIGHLAND CAPITAL MANAGEMENT, LP ("***Payee***"), in legal and lawful tender of the United States of America, the principal sum of FOUR MILLION and 00/100 Dollars ($4,000,000.00), together with interest, on the terms set forth below (the "***Note***"). All sums hereunder are payable to Payee at 300 Crescent Court, Dallas, TX 75201, or such other address as Payee may specify to Maker in writing from time to time.

1. Interest Rate. The unpaid principal balance of this Note from time to time outstanding shall bear interest at a rate equal to the mid-term "***applicable federal rate***" (1.97%) in effect on the date hereof for loans of such maturity as determined by Section 1274(d) of the Internal Revenue Code, per annum from the date hereof until maturity, compounded annually on the anniversary of the date of this Note. Interest shall be calculated at a daily rate equal to 1/365th (1/366 in a leap year) of the rate per annum, shall be charged and collected on the actual number of days elapsed, and shall be payable on demand of the Payee.

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

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

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

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

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

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

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

MAKER:

JAMES DONDERO

EXHIBIT B

PROMISSORY NOTE

$2,300,000.00

February 26, 2016

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

1. Interest Rate. The unpaid principal balance of this Note from time to time outstanding shall bear interest at a rate equal to the mid-term "***applicable federal rate***" (2.62%) in effect on the date hereof for loans of such maturity as determined by Section 1274(d) of the Internal Revenue Code, per annum from the date hereof until maturity, compounded annually on the anniversary of the date of this Note. Interest shall be calculated at a daily rate equal to 1/365th (1/366 in a leap year) of the rate per annum, shall be charged and collected on the actual number of days elapsed, and shall be payable on demand of the Payee.

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

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

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

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

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

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

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

MAKER:

JAMES DONDERO

EXHIBIT C

Summary of loans dated February 26, 2014 and February 26, 2016
Privileged and confidential - prepared at direction of counsel
Prepared February 28, 2022

Loan dated 2/26/14		$ 4,000,000.00							
						Application			
Description	Type	Cash amount	Bank statement date	Bank statement ref	Principal	Interest	Total	Total Applied to other loans	
Initial loan	Payment	$ (4,000,000.00)	2/26/2014	P. 2 of 3	$ (4,000,000.00)	$ -	$ (4,000,000.00)	$ -	
May 2019 receipt	Receipt	1,000,000.00	5/29/2019	P. 6 of 13	978,101.91	21,898.09	1,000,000.00	-	
June 2019 receipt	Receipt	500,000.00	6/4/2019	P. 2 of 9	500,000.00	-	500,000.00	-	
September 2019 receipt	Receipt	500,000.00	9/5/2019	P. 1 of 3	484,171.75	15,828.25	500,000.00	-	
October 2019 receipt	Receipt	375,000.00	10/3/2019	P. 2 of 10	375,000.00	-	375,000.00	-	
December 2021 receipt [1]	Receipt	180,472.81	12/28/2021	P. 1 of 4	-	35,477.45	35,477.45	144,995	See notes
Total cash receipts					$ 2,337,273.66	$ 73,203.79	$ 2,410,477.45		
Non-cash PIK interest (cumulative 2014-2021)					(471,440.19)	471,440.19			
Total principal outstanding 12/31/21					**$ 2,134,166.53**	Original principal less principal repayments plus PIK'd interest			
Total interest outstanding 12/31/21					-				

Loan dated 2/26/16		$ 2,300,000.00							
						Application			
Description	Type	Cash amount	Bank statement date	Bank statement ref	Principal	Interest	Total	Total Applied to other loans	
Initial loan	Payment	$ (2,300,000.00)	2/26/2016	P. 2 of 3	$ (2,300,000.00)	$ -	$ (2,300,000.00)	$ -	
September 2016 receipt [2]	Receipt	1,000,000.00	9/1/2016	P. 1 of 3	434,394.68	31,038.03	465,432.71	534,567	See notes
April 2017 receipt	Receipt	1,000,000.00	4/12/2017	P. 1 of 3	970,137.03	29,862.97	1,000,000.00	-	
December 2021 receipt [1]	Receipt	180,472.81	12/28/2021	P. 1 of 4	-	21,904.16	21,904.16	158,569	See notes
Total cash receipts					$ 1,404,531.71	$ 82,805.16	$ 1,487,336.87		
Non-cash PIK interest (cumulative 2016-2021)					(95,289.33)	95,289.33			
Total principal outstanding 12/31/21					**$ 990,757.62**	Original principal less principal repayments plus PIK'd interest			
Total interest outstanding 12/31/21					-				

Notes:
[1] Total receipt in December 2021 was $180,472.81. Application of payment was $35,477.45 to the loan dated 2/26/14; $21,904.16 to the loan dated 2/26/16; $123,091.20 to loans from May 2019 that are part of a separate litigat
[2] Total receipt in September 2016 was $1,000,000.00. Application of payment was $465,432.71 to the loan dated 2/26/16; $534,567.29 was applied to the loan dated 8/28/2015, which fully retired that loan.

Exhibit D Page 130 of 144

EXHIBIT D

BBVA Compass

21 HIGHLAND CAPITAL MANAGEMENT LP
MASTER OPERATING ACCOUNT
300 CRESCENT CT STE 700
DALLAS TX 75201-7849

Contacting Us

Available by phone 24/7

Phone	1-800-266-7277
Online	bbvacompass.com
Write	BBVA Compass Customer Service P.O. Box 10566 Birmingham, AL 35296

Summary of Accounts

Deposit Accounts/ Other Products

Account	Account number	Ending balance last statement	Ending balance this statement
TREASURY MANAGEMENT ANALYSIS CHECKING	[redacted]	[redacted]	[redacted]
[redacted]		[redacted]	[redacted]

BBVA Compass

TREASURY MANAGEMENT ANALYSIS CHECKING

Account Number: [redacted]

Activity Summary

[redacted]	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]

Deposits and Other Credits

Date *	Check/ Serial #	Description	Deposits/ Credits
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
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BBVA Compass

Date *	Check/ Serial #	Description	Deposits/ Credits
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BBVA Compass

Date *	Check/ Serial #	Description	Deposits/ Credits
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BBVA Compass

Date *	Check/ Serial #	Description	Deposits/ Credits
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BBVA Compass

Date *	Check/ Serial #	Description	Deposits/ Credits
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]

BBVA Compass

Date *	Check/ Serial #	Description	Deposits/ Credits
[redacted]		[redacted]	[redacted]

[redacted]

Withdrawals and Other Debits

Date *	Check/ Serial #	Description	Withdrawals/ Debits
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
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BBVA Compass

Date *	Check/ Serial #	Description	Withdrawals/ Debits
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
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[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]

Primary Account [redacted]
Beginning May 1, 2019 - Ending May 31, 2019 31

BBVA Compass

Date *	Check/ Serial #	Description	Withdrawals/ Debits
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]

Primary Account: [redacted]
Beginning May 1, 2019 - Ending May 31, 2019 31

BBVA Compass

Date *	Check/ Serial #	Description	Withdrawals/ Debits
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
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BBVA Compass

Date *	Check/ Serial #	Description	Withdrawals/ Debits
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
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BBVA Compass

Date *	Check/ Serial #	Description	Withdrawals/ Debits
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
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[redacted]				[redacted]	[redacted]				[redacted]	[redacted]				[redacted]	[redacted]
[redacted]				[redacted]	[redacted]				[redacted]	[redacted]				[redacted]	[redacted]
[redacted]				[redacted]	[redacted]				[redacted]	[redacted]				[redacted]	[redacted]
[redacted]				[redacted]	[redacted]				[redacted]	[redacted]				[redacted]	[redacted]
[redacted]				[redacted]	[redacted]				[redacted]	[redacted]				[redacted]	[redacted]
[redacted]				[redacted]	[redacted]				[redacted]	[redacted]				[redacted]	[redacted]

[redacted]

BBVA Compass

How to Balance Your Account

Step 1
- Enter all checks, deposits, and other automated teller card (ATM) transactions in your register.
- Record all automated deductions, debit card transactions and electronic bill payments.
- Record and deduct service charges, check printing charges, or other bank fees.
- If you have an interest bearing account, add any interest earned shown on this statement.

Step 2
- If applicable, sort checks in numerical order and mark in your register each check or other transaction that is listed on this statement.

Step 3
- List any deposits or credits your have made that do not appear on this statement (see space provided below).

Step 4
- List any checks you have written, debit card transactions, electronic payments and other deductions that do not appear on this statement (see space provided below).

Date/Description	Amount
Step 3 Total	$

Date/Description	Check #	Amount
	Step 4 Total	$

Balancing Your Register to this Statement

Step 5	• Enter the "current balance" shown on this statement	
	• Add total from Step 3	
	• Subtotal	
	• Subtract total from Step 4	
	• This balance should equal your register balance	
	If it does not agree, see steps below	$

If your account does not balance, review the following:
- Check all your addition and subtraction above in your register.
- Make sure you remembered to subtract service charges listed on this statement and add any interest earned to your register.
- Amounts of deposits and withdrawals on this statement should match your register entries.
- If you have questions or need assistance, please refer to the phone number on the front of this statement.

Change of Address
Please call us at the telephone number listed on the front of this statement to tell us about a change of address.

Electronic Transfers *(for consumer accounts only)*
In case of errors or questions about your Electronic Transfers, write to BBVA Compass Bank, Operations Compliance Support, P.O. Box 10566, Birmingham, AL 35296. Or simply call your local customer service number printed on he front of this statement. Call or write as soon as you can, if you think your statement or receipt is wrong or if you need more information about a transfer on the statement or receipt. We must hear from you no later than 60 days after we sent the first statement on which the error or problem appeared.

- Tell us your name and account number (if any).
- Describe the error or he transfer you are unsure about, and explain as clearly as you can why you believe it is an error or why you need more information.
- Tell us the dollar amount of the suspected error.

We will investigate your complaint and will correct any error promptly. If we take more than 10 business days (20 on claims on accounts opened less than 30 calendar days) to do this, we will credit your account for the amount you think is in error, so hat you will have the use of the money during the time it takes us to complete our inves igation.

*For Non-Consumer Account customers, please refer to your current Non-Consumer Account Agreement for details regarding Electronic Fund Transfers.

Overdraft Protection
Calculation of Interest Charge and Balance Subject to Interest Rate. The interest charge is computed using your annual percentage rate divided by 365 or, in he case of a leap year, 366, which gives you the "Applicable Rate." Although we calculate the interest charge by applying the Applicable Rate to each daily balance, the interest charge can also be calculated by multiplying the Applicable Rate by the "average daily balance"(Balance Subject to Interest Rate) shown on this statement, hen multiplying that sum by the number of days in the billing cycle. To get the "Balance Subject to Interest Rate" shown on this statement we take the beginning balance of your account less any unpaid finance charges each day, add any new advances or debits, and subtract any payments or credits. This gives us the daily balance. Then we add all the daily balances for the billing cycle and divide by the number of days in the billing cycle. This give us the "average daily balance" shown on the statement as "Balance Subject to Interest Rate". Payments. Payments to your overdraft protec ion loan account made through our tellers or deposited at our automated teller machines (ATM s) Monday through Friday before he posted cut-off time will be posted to your account on the date they are accepted. Otherwise, they will be posted on the next business day. Payments made through our ATM s via a funds transfer will be posted on the date they are received or on the next business day if made after 6pm CT (6pm MT for Arizona accounts and 6pm PT for California accounts) Monday through Friday or any ime Saturday, Sunday or bank holidays. BBVA Compass Bank business days are Monday through Friday, excluding holidays.

In Case of Errors or Questions About Your Statement (Overdraft Protection Only)
If you think your statement is wrong, or if you need more information about a transaction on your statement, write your issue on a separate document and send it to Bankcard Center, P.O. Box 2210, Decatur, AL 35699-0001. Telephone inquires may be made by calling your local BBVA Compass branch listed on the front of this statement to speak with a Customer Service Representative. Please note: a telephone inquiry will not preserve your rights under federal law. We must hear from you no later than sixty (60) days after we sent you the first statement on which the error or problem appeared.

- Tell us your name and account number (if any).
- Describe the error or he transfer you are unsure about, and explain as clearly as you can why you believe it is an error or what you need more information.
- Tell us the dollar amount of the suspected error.

You can stop the automatic deduction of the Minimum Payment from you checking account if you think your statement is wrong. To stop the payment, your letter must reach us three (3) business days before the automatic deduction is scheduled to occur.

Reporting Other Problems
Please review your statement carefully. It is essential that any account errors or any improper transactions on your account be reported to us as soon as reasonably possible. If you fail to notify us of any suspected problems, errors or unauthorized transactions within the time periods specified in the deposit account agreement, we are not liable to you for any loss related to the problem, error or unauthorized transaction.

BBVA Compass is a trade name of Compass Bank, a member of the BBVA Group.
Compass Bank, Member FDIC.

EXHIBIT E

BBVA

21 HIGHLAND CAPITAL MANAGEMENT LP
MASTER OPERATING ACCOUNT
300 CRESCENT CT STE 700
DALLAS TX 75201-7849

Your BBVA Account(s)

Please see important message regarding your TREASURY MANAGEMENT ANALYSIS CHECKING account

Contacting Us

Available by phone 24/7

Phone 1-800-266-7277

Online bbvausa.com

Write BBVA
Customer Service
P.O. Box 10566
Birmingham, AL 35296

Summary of Accounts

Deposit Accounts/ Other Products

Account	Account number	Ending balance last statement	Ending balance this statement
TREASURY MANAGEMENT ANALYSIS CHECKING	[redacted]	[redacted]	[redacted]
[redacted]		[redacted]	[redacted]

BBVA Compass is now BBVA. Transforming banking to put the world's opportunities in your hands.

BBVA

TREASURY MANAGEMENT ANALYSIS CHECKING

Account Number: [redacted]

Account Information

We have updated the Treasury Management Service Agreement. These terms and conditions will become effective as of August 1, 2019. You can find a current version of the agreement by going to:
http://www.bbvausa.com/commercial/treasury-management/resource-central/
The user ID is "treasury" and the password is "management."

Activity Summary

[redacted]	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]

Deposits and Other Credits

Date *	Check/ Serial #	Description	Deposits/ Credits
[redacted]		[redacted]	[redacted]
6/4		INCOMING WIRE W/ADVICE REF 20190604F2QCZ60C00344906041614FT03 ORG HIGHLAND CAPITAL M	$500,000.00
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]

BBVA

Date *	Check/ Serial #	Description	Deposits/ Credits
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
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[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]

Withdrawals and Other Debits

Date *	Check/ Serial #	Description	Withdrawals/ Debits
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]

Primary Account: [redacted]
Beginning June 1, 2019 - Ending June 30, 2019

BBVA

30

Date *	Check/ Serial #	Description	Withdrawals/ Debits
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]

Primary Account: [redacted]
Beginning June 1, 2019 - Ending June 30, 2019

BBVA

30

Date *	Check/ Serial #	Description	Withdrawals/ Debits
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
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Primary Account: [redacted]
Beginning June 1, 2019 - Ending June 30, 2019 30

BBVA

Date *	Check/ Serial #	Description	Withdrawals/ Debits
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]

Primary Account: [redacted]
Beginning June 1, 2019 - Ending June 30, 2019

BBVA

Date *	Check/ Serial #	Description	Withdrawals/ Debits
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]

BBVA

Date *	Check/ Serial #	Description	Withdrawals/ Debits
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
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[redacted]		[redacted]	[redacted]		[redacted]
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[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]

[redacted]

Primary Account: [redacted]
Beginning June 1, 2019 - Ending June 30, 2019 30

BBVA

How to Balance Your Account

Step 1
- Enter all checks, deposits, and other automated teller card (ATM) transactions in your register.
- Record all automated deductions, debit card transactions and electronic bill payments.
- Record and deduct service charges, check printing charges, or other bank fees.
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- List any deposits or credits your have made that do not appear on this statement (see space provided below).

Step 4
- List any checks you have written, debit card transactions, electronic payments and other deductions that do not appear on this statement (see space provided below).

Date/Description	Amount
Step 3 Total	$

Date/Description	Check #	Amount
	Step 4 Total	$

Balancing Your Register to this Statement

Step 5	• Enter the "current balance" shown on this statement	
	• Add total from Step 3	
	• Subtotal	
	• Subtract total from Step 4	
	• This balance should equal your register balance	
	If it does not agree, see steps below	$

If your account does not balance, review the following:
- Check all your addition and subtraction above in your register.
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*For Non-Consumer Account customers, please refer to your current Non-Consumer Account Agreement for details regarding Electronic Fund Transfers.

Overdraft Protection
Calculation of Interest Charge and Balance Subject to Interest Rate. The interest charge is computed using your annual percentage rate divided by 365 or, in he case of a leap year, 366, which gives you he "Applicable Rate." Although we calculate the interest charge by applying the Applicable Rate to each daily balance, the interest charge can also be calculated by multiplying the Applicable Rate by the "average daily balance"(Balance Subject to Interest Rate) shown on this statement, hen multiplying that sum by the number of days in the billing cycle. To get the "Balance Subject to Interest Rate" shown on this statement we take the beginning balance of your account less any unpaid finance charges each day, add any new advances or debits, and subtract any payments or credits. This gives us the daily balance. Then we add all the daily balances for the billing cycle and divide by the number of days in the billing cycle. This give us the "average daily balance" shown on the statement as "Balance Subject to Interest Rate". Payments. Payments to your overdraft protec ion loan account made hrough our tellers or deposited at our automated teller machines (ATM s) Monday through Friday before he posted cut-off time will be posted to your account on the date they are accepted. Otherwise, they will be posted on the next business day. Payments made through our ATM s via a funds transfer will be posted on the date they are received or on the next business day if made after 6pm CT (6pm MT for Arizona accounts and 6pm PT for California accounts) Monday through Friday or any ime Saturday, Sunday or bank holidays. BBVA business days are Monday hrough Friday, excluding holidays.

In Case of Errors or Questions About Your Statement (Overdraft Protection Only)
If you think your statement is wrong, or if you need more information about a transaction on your statement, write your issue on a separate document and send it to Bankcard Center, P.O. Box 2210, Decatur, AL 35699-0001. Telephone inquires may be made by calling your local BBVA branch listed on the front of this statement to speak with a Customer Service Representative. Please note: a telephone inquiry will not preserve your rights under federal law. We must hear from you no later than sixty (60) days after we sent you the first statement on which the error or problem appeared.

- Tell us your name and account number (if any).
- Describe the error or he transfer you are unsure about, and explain as clearly as you can why you believe it is an error or what you need more information.
- Tell us the dollar amount of the suspected error.

You can stop he automatic deduction of the Minimum Payment from you checking account if you think your statement is wrong. To stop the payment, your letter must reach us three (3) business days before he automatic deduction is scheduled to occur.

Reporting Other Problems
Please review your statement carefully. It is essential that any account errors or any improper transactions on your account be reported to us as soon as reasonably possible. If you fail to notify us of any suspected problems, errors or unauthorized transactions within the time periods specified in the deposit account agreement, we are not liable to you for any loss related to the problem, error or unauthorized transaction.

BBVA and BBVA Compass are trade names of BBVA USA, a member of the BBVA Group. BBVA USA, Member FDIC.

EXHIBIT F

NexBank™

Accounts

NexBank™
2515 McKinney Avenue, 11th Floor
Dallas, Texas 75201
972.934.4700
www.NexBank.com

FDIC

Date 9/30/19 Page 1
Primary Account [redacted]
Enclosures

Highland Capital Management LP
300 Crescent Court Suite 700
Dallas TX 75201

NexBank's Privacy Notice, which has not changed, is available on our website at www.NexBank.com/files/privacynotice.pdf. If you would like a copy of our Privacy Notice mailed to you, please call us at 972-934-4700.

Checking Account/s

Account Type: Highland Capital Management LP

Analysis Checking w/ Interest
Account Number [redacted] Statement Dates 9/03/19 thru 9/30/19

Deposits and Additions

Date	Description	Amount
[redacted]	[redacted]	[redacted]
9/05	IB Transfer from D ****415 to D ****130	500,000.00
[redacted]	[redacted]	[redacted]

MEMBER FDIC NOTICE: SEE LAST PAGE FOR IMPORTANT INFORMATION
Payments received at the address indicated on this statement by 3 00 pm. Central Standard Time each banking day will be credited as of that date.

NexBank™
2515 McKinney Avenue, 11th Floor
Dallas, Texas 75201
972.934.4700
www.NexBank.com

FDIC

Date 9/30/19 Page 2
Primary Account [redacted]
Enclosures

Analysis Checking - 7[redacted] Continued

Checks and Withdrawals

Date	Description	Amount
[redacted]	[redacted]	[redacted]

End of Statement

MEMBER FDIC

NOTICE: SEE LAST PAGE FOR IMPORTANT INFORMATION
Payments received at the address indicated on this statement by 3 00 pm. Central Standard Time each banking day will be credited as of that date.

OUTSTANDING CHECKS

Reconciliation of Account			
CHECKS WRITTEN BUT NOT PAID			
NUMBER	AMOUNT		
Total of Checks not paid			

RECONCILIATION INSTRUCTIONS

Date _____

Please examine this statement and items at once and refer any exceptions immediately.

Sort your checks numerically or by date issued.

Mark off in your checkbook each of your checks paid by the bank and list the numbers and amounts of those not paid in the space provided at the left. Include any checks still not paid from previous statements.

Subtract from your checkbook balance any SERVICE CHARGE (S.C.) or bank charge appearing on this statement.

Reconcile your statement in the space provided below.

Enter bank balance from statement			
Add deposits not credited by bank (if any)			
TOTAL			
Subtract total of checks not paid			
THIS AMOUNT SHOULD EQUAL YOUR CHECKBOOK BALANCE->			

Any Charge for Imprinted Checks Includes State Sales Tax Computed at the Current Rate, When Applicable
Notice: The Annual Percentage Rate and Daily Periodic Rate may vary.

EXPLANATION OF BALANCE ON WHICH THE INTEREST CHARGE IS COMPUTED

We figure the interest charge on your account by applying the periodic rate to the "daily balance" of your account for each day in the billing cycle. To get the "daily balance" we take the beginning balance of your account each day, add any new advances/fees, and subtract any unpaid interest or other finance charges and any payments or credits. This gives us the daily balance.

WHAT TO DO IF YOU THINK YOU FIND A MISTAKE ON YOUR STATEMENT

If you think there is an error on your statement, write to us at:
NexBank
2515 McKinney Avenue, 11th Floor
Dallas, Texas 75201
You may also contact us on the Web: www.nexbank.com
In your letter, give us the following information:

- Account Information: Your name and account number.
- Dollar Amount: The dollar amount of the suspected error.
- Description of Problem: If you think there is an error on your bill, describe what you believe is wrong and why you believe it is a mistake.

Contact us if you need more information about a transfer or payment that is shown on your statement or if you think there is a mistake on your statement.
You must contact us within 60 days after the error appeared on your statement.
You must notify us of any potential errors in writing or electronically. You may call us, but if you do we are not required to investigate any potential errors and you may have to pay the amount in question.
While we investigate whether or not there has been an error, the following are true:

- We cannot try to collect the amount in question, or report you as delinquent on that amount.
- The charge in question may remain on your statement, and we may continue to charge you interest on that amount. But, if we determine that we made a mistake, you will not have to pay the amount in question or any interest or other fees related to that amount.
- While you do not have to pay the amount in question, you are responsible for the remainder of your balance.
- We can apply any unpaid amount against your credit limit.

IN CASE OF ERRORS OR QUESTIONS ABOUT YOUR ELECTRONIC TRANSFERS

In Case of Errors or Questions About Your Electronic Transfers, Telephone us at 972.934.4700 or Write us at NexBank, 2515 McKinney Avenue, 11th Floor, Dallas, Texas 75201 as soon as you can, if you think your statement or receipt is wrong or if you need more information about a transfer on the statement or receipt. We must hear from you no later than 60 days after we sent you the FIRST statement on which the error or problem appeared.

(1) Tell us your name and account number (if any).
(2) Describe the error or transfer you are unsure about, and explain as clearly as you can why you believe it is an error or why you need more information.
(3) Tell us the dollar amount of the suspected error.

We will investigate your complaint and will correct any error promptly. If we take more than 10 business days to do this, we will credit your account for the amount you think is in error, so that you will have use of the money during the time it takes us to complete our investigation.

EXHIBIT G

Primary Account: [redacted]
Beginning October 1, 2019 - Ending October 31, 2019 31

BBVA

21 HIGHLAND CAPITAL MANAGEMENT LP
MASTER OPERATING ACCOUNT
300 CRESCENT CT STE 700
DALLAS TX 75201-7849

Contacting Us

Available by phone 24/7

Phone 1-800-266-7277

Online bbvausa.com

Write BBVA
Customer Service
P.O. Box 10566
Birmingham, AL 35296

Summary of Accounts

Deposit Accounts/ Other Products

Account	Account number	Ending balance last statement	Ending balance this statement
TREASURY MANAGEMENT ANALYSIS CHECKING	[redacted]	[redacted]	[redacted]
[redacted]		[redacted]	[redacted]

BBVA

TREASURY MANAGEMENT ANALYSIS CHECKING

Account Number: [redacted]

Activity Summary

[redacted]	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]

Deposits and Other Credits

Date *	Check/ Serial #	Description	Deposits/ Credits
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
10/3		INCOMING WIRE W/ADVICE REF 20191003F2QCZ60C00240510031400FT03 ORG HIGHLAND CAPITAL M	$375,000.00
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]

BBVA

Date *	Check/ Serial #	Description	Deposits/ Credits
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]

[redacted]

Withdrawals and Other Debits

Date *	Check/ Serial #	Description	Withdrawals/ Debits
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]

BBVA

Date *	Check/ Serial #	Description	Withdrawals/ Debits
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
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[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
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[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
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[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]

Primary Account: [redacted]
Beginning October 1, 2019 - Ending October 31, 2019 31

BBVA

Date *	Check/ Serial #	Description	Withdrawals/ Debits
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
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[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
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[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
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[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]

BBVA

Date *	Check/ Serial #	Description	Withdrawals/ Debits
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
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[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
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[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]

BBVA

Date *	Check/ Serial #	Description	Withdrawals/ Debits
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
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[redacted]		[redacted]	[redacted]
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[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]

BBVA

Date *	Check/ Serial #	Description	Withdrawals/ Debits
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]

BBVA

Date	Balance	Date	Balance	Date	Balance
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]				
[redacted]					
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]				
[redacted]					

BBVA

How to Balance Your Account

Step 1
- Enter all checks, deposits, and other automated teller card (ATM) transactions in your register.
- Record all automated deductions, debit card transactions and electronic bill payments.
- Record and deduct service charges, check printing charges, or other bank fees.
- If you have an interest bearing account, add any interest earned shown on this statement.

Step 2
- If applicable, sort checks in numerical order and mark in your register each check or other transaction that is listed on this statement.

Step 3
- List any deposits or credits your have made that do not appear on this statement (see space provided below).

Step 4
- List any checks you have written, debit card transactions, electronic payments and other deductions that do not appear on this statement (see space provided below).

Date/Description	Amount
Step 3 Total	$

Date/Description	Check #	Amount
	Step 4 Total	$

Balancing Your Register to this Statement

Step 5	• Enter the "current balance" shown on this statement	
	• Add total from Step 3	
	• Subtotal	
	• Subtract total from Step 4	
	• This balance should equal your register balance	
	If it does not agree, see steps below	$

If your account does not balance, review the following:
- Check all your addition and subtraction above in your register.
- Make sure you remembered to subtract service charges listed on this statement and add any interest earned to your register.
- Amounts of deposits and withdrawals on this statement should match your register entries.
- If you have questions or need assistance, please refer to the phone number on the front of this statement.

Change of Address
Please call us at the telephone number listed on the front of this statement to tell us about a change of address.

Electronic Transfers *(for consumer accounts only)*
In case of errors or questions about your Electronic Transfers, write to BBVA, Operations Compliance Support, P.O. Box 10566, Birmingham, AL 35296. Or simply call your local customer service number printed on he front of this statement. Call or write as soon as you can, if you think your statement or receipt is wrong or if you need more information about a transfer on the statement or receipt. We must hear from you no later than 60 days after we sent the first statement on which the error or problem appeared.

- Tell us your name and account number (if any).
- Describe the error or he transfer you are unsure about, and explain as clearly as you can why you believe it is an error or why you need more information.
- Tell us the dollar amount of the suspected error.

We will investigate your complaint and will correct any error promptly. If we take more than 10 business days (20 on claims on accounts opened less than 30 calendar days) to do this, we will credit your account for the amount you think is in error, so hat you will have the use of the money during the time it takes us to complete our inves igation.

*For Non-Consumer Account customers, please refer to your current Non-Consumer Account Agreement for details regarding Electronic Fund Transfers.

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Calculation of Interest Charge and Balance Subject to Interest Rate. The interest charge is computed using your annual percentage rate divided by 365 or, in he case of a leap year, 366, which gives you the "Applicable Rate." Although we calculate the interest charge by applying the Applicable Rate to each daily balance, the interest charge can also be calculated by multiplying the Applicable Rate by the "average daily balance"(Balance Subject to Interest Rate) shown on this statement, hen multiplying that sum by the number of days in the billing cycle. To get the "Balance Subject to Interest Rate" shown on this statement we take the beginning balance of your account less any unpaid finance charges each day, add any new advances or debits, and subtract any payments or credits. This gives us the daily balance. Then we add all the daily balances for the billing cycle and divide by the number of days in the billing cycle. This give us the "average daily balance" shown on the statement as "Balance Subject to Interest Rate". Payments. Payments to your overdraft protec ion loan account made through our tellers or deposited at our automated teller machines (ATM s) Monday through Friday before he posted cut-off time will be posted to your account on the date they are accepted. Otherwise, they will be posted on the next business day. Payments made through our ATM s via a funds transfer will be posted on the date they are received or on the next business day if made after 6pm CT (6pm MT for Arizona accounts and 6pm PT for California accounts) Monday through Friday or any ime Saturday, Sunday or bank holidays. BBVA business days are Monday hrough Friday, excluding holidays.

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- Tell us your name and account number (if any).
- Describe the error or he transfer you are unsure about, and explain as clearly as you can why you believe it is an error or what you need more information.
- Tell us the dollar amount of the suspected error.

You can stop the automatic deduction of the Minimum Payment from you checking account if you think your statement is wrong. To stop the payment, your letter must reach us three (3) business days before the automatic deduction is scheduled to occur.

Reporting Other Problems
Please review your statement carefully. It is essential that any account errors or any improper transactions on your account be reported to us as soon as reasonably possible. If you fail to notify us of any suspected problems, errors or unauthorized transactions within the time periods specified in the deposit account agreement, we are not liable to you for any loss related to the problem, error or unauthorized transaction.

BBVA and BBVA Compass are trade names of BBVA USA, a member of the BBVA Group. BBVA USA, Member FDIC.

EXHIBIT H

EAST WEST BANK your financial bridge

9300 Flair Dr., 1St FL
El Monte, CA. 91731

Direct inquiries to:
888 761-3967

ACCOUNT STATEMENT
Page 1 of 3
STARTING DATE: December 01, 2021
ENDING DATE: December 31, 2021
Total days in statement period: 31
[redacted]
(0)

HIGHLAND CAPITAL MANAGEMENT LP
CHAPTER 11 DEBTOR IN POSSESSION
CASE #19 12239
OPERATING ACCOUNT
300 CRESCENT CT SUITE 700
DALLAS TX 75201 0000

Protecting the security of your account and personal information is our top priority. Learn about online security practices and ways to protect yourself from cybercrime at eastwestbank.com in the "Privacy & Security" section.

Commercial Analysis Checking

Account number	[redacted]	Beginning balance		[redacted]
Low balance	[redacted]	Total additions	(9)	[redacted]
Average balance	[redacted]	Total subtractions	(75)	[redacted]
		Ending balance		[redacted]

CREDITS

Number	Date	Transaction Description		Additions
	[redacted]	[redacted]	[redacted]	[redacted]
	12 28	Wire Trans-IN	HIGHLAND CAPITAL M GMT FUND ADV	180,472.81
	[redacted]	[redacted]	[redacted]	[redacted]

DEBITS

Date	Transaction Description	Subtractions
[redacted]	[redacted]	[redacted]

3409 rev 05-16

EAST WEST BANK Your financial bridge

ACCOUNT STATEMENT
Page 2 of 3

9300 Flair Dr., 1St FL
El Monte, CA. 91731

STARTING DATE: December 01, 2021
ENDING DATE: December 31, 2021
[redacted]

HIGHLAND CAPITAL MANAGEMENT LP

Date	Transaction Description	Subtractions
[redacted]	[redacted]	[redacted]

EASTWEST BANK Your Financial Bridge

ACCOUNT STATEMENT
Page 3 of 3

9300 Flair Dr., 1St FL
El Monte, CA. 91731

STARTING DATE: December 01, 2021
ENDING DATE: December 31, 2021
[redacted]

HIGHLAND CAPITAL MANAGEMENT LP

Date	Transaction Description	Subtractions
[redacted]	[redacted]	[redacted]

DAILY BALANCES

Date	Amount	Date	Amount	Date	Amount
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]

OVERDRAFT/RETURN ITEM FEES

[redacted]		

STATEMENT BALANCING

Fill in the amounts below from the front of this statement and your checkbook.

ENTER
Ending Balance of this Statement……..... $_____

Add Deposits not shown on this Statement $_____
_____
_____

Sub Total……. $_____

Subtract Checks Issued but not on Statement

CHECK NUMBER OR DATE	AMOUNT	CHECK NUMBER OR DATE	AMOUNT
TOTAL		TOTAL	

Total amount of outstanding checks…… $_____

Balance…..….....** $_____

ENTER
Present Balance in your checkbook…… $_____

Subtract any service charges, finance or any other charges…… $_____

Sub Total …… $_____

Add Monthly Interest Earned …….. $_____

Add any deposits not yet entered in checkbook (Reverse Advances)…….. $_____
_____
_____
_____

Subtract any checks not yet entered in checkbook (Reverse Payments)…….. $_____
_____
_____
_____

Balance……..... $_____

IN CASE OF ERRORS OR QUESTIONS REGARDING YOUR CHECKING ACCOUNT

You must examine your statement carefully and promptly. You are in the best position to discover errors and unauthorized transactions on your account. If you fail to notify us in writing of suspected problems or unauthorized transactions within the time periods as specified in the Deposit Agreement (which periods are no more than 60 days after we make the statement available to you and in some cases 30 days or less), we are not liable to you for, and you agree not to make a claim against us for problems or unauthorized transactions.

IN CASE OF ERRORS OR QUESTIONS ABOUT YOUR ELECTRONIC FUNDS TRANSFERS

Telephone or write your local branch of account, listed on the statement front, as soon as you can if you think your statement or receipt is wrong or if you need more information about a transfer on the statement or receipt. We must hear from you no later than 60 days after we send you the FIRST statement on which the error or problem appeared.

1. Tell us your name and account number.
2. Describe the error or the transfer you are unsure about and explain as clearly as you can why you believe there is an error or why you need more information.
3. Tell us the dollar amount of the suspected error.

We will investigate your complaint and will correct any error promptly. If our investigation takes longer than 10 business days from the date we received your notification, we will provisionally credit your account for the disputed amount until our investigation has been completed. If the disputed amount involves an electronic funds transfer to or from an account within 30 days after the first deposit to the account was made, we will provisionally credit your account within 20 business days from the date we receive your notification.

ACCOUNTS WITH CHECK STORAGE

Upon your request, we will provide you, without charge, legible copies of two checks from each account statement. Additional copies of canceled checks are subject to our service charges. You can make a request for these copies by contacting the branch listed on the front of this statement.

CHANGE OF ADDRESS

Please notify us immediately for change of address by phoning or writing your local branch of account, listed on the front of this statement.

MEMBER FDIC

(REV 11/07)

EXHIBIT I

NexBank
2515 McKinney Avenue, 11th Floor
Dallas, Texas 75201
972.934.4700
www.NexBank.com

Date 9/30/16 Page 1
Primary Account [redacted]
Enclosures

Highland Capital Management LP
300 Crescent Court Suite 700
Dallas TX 75201

NexBank's Privacy Notice, which has not changed, is available on our website at www.NexBank.com/files/privacynotice.pdf. If you would like a copy of our Privacy Notice mailed to you, please call us at 972-934-4700.

Checking Account/s

Account Type: Highland Capital Management LP

Analysis Checking w/ Interest
Account Number [redacted] Statement Dates 9/01/16 thru 10/02/16

[redacted]

Deposits and Additions

Date	Description	Amount
9/01	IB Transfer from D ****415 to D ****130	1,000,000.00

[redacted]

NEXBANK
2515 McKinney Avenue, 11th Floor
Dallas, Texas 75201
972.934.4700
www.NexBank.com

EQUAL HOUSING LENDER
FDIC

Analysis Checking w/ Interest 1614130 (Continued)

Checks and Withdrawals

Date	Description	Amount
[redacted]		

Daily Balance Information

Date	Balance	Date	Balance	Date	Balance
[redacted]					

Interest Rate Summary

Date	Rate
[redacted]	

End of Statement

Exhibit I

OUTSTANDING CHECKS — RECONCILIATION INSTRUCTIONS

Reconciliation of Account

CHECKS WRITTEN BUT NOT PAID			
NUMBER	AMOUNT		

EXHIBIT J

NexBank
2515 McKinney Avenue, 11th Floor
Dallas, Texas 75201
972.934.4700
www.NexBank.com

Date 4/28/17 Page 1
Primary Account [redacted]
Enclosures

Highland Capital Management LP
300 Crescent Court Suite 700
Dallas TX 75201

NexBank's Privacy Notice, which has not changed, is available on our website at www.NexBank.com/files/privacynotice.pdf. If you would like a copy of our Privacy Notice mailed to you, please call us at 972-934-4700.

Checking Account/s

Account Type: Highland Capital Management LP

Analysis Checking w/ Interest
Account Number [redacted] Statement Dates 4/03/17 thru 4/30/17

[redacted]

Deposits and Additions

Date	Description	Amount
[redacted]		
4/12	IB Transfer from D ****415 to D ****130	1,000,000.00
[redacted]		

NEXBANK
2515 McKinney Avenue, 11th Floor
Dallas, Texas 75201
972.934.4700
www.NexBank.com

EQUAL HOUSING LENDER
FDIC

Date 4/28/17 Page 2
Primary Account [redacted]
Enclosures

Analysis Checking w/ Interest [redacted] (Continued)

Deposits and Additions

Date	Description	Amount
[redacted]		

Checks and Withdrawals

Date	Description	Amount
[redacted]		

Daily Balance Information

Date	Balance	Date	Balance	Date	Balance
[redacted]					

NEXBANK
2515 McKinney Avenue, 11th Floor
Dallas, Texas 75201
972.934.4700
www.NexBank.com

EQUAL HOUSING LENDER
FDIC

Date 4/28/17 Page 3
Primary Account [redacted]
Enclosures

Analysis Checking w/ Interest [redacted] (Continued)

Interest Rate Summary

Date	Rate
[redacted]	

End of Statement

OUTSTANDING CHECKS — RECONCILIATION INSTRUCTIONS

Reconciliation of Account

CHECKS WRITTEN BUT NOT PAID			
NUMBER	AMOUNT		

PACHULSKI STANG ZIEHL & JONES LLP
Jeffrey N. Pomerantz (CA Bar No. 143717)
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Dallas, Texas 75231
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Counsel for Highland Capital Management, L.P.

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

HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
Plaintiff,	§	
vs.	§	Adv. Proc. No. 21-03082-sgj
HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, L.P.,	§	Case No. 3:21-cv-00881-X
Defendant.	§	

APPENDIX OF EXHIBITS IN SUPPORT OF HIGHLAND CAPITAL MANAGEMENT, L.P.'S MOTION FOR SUMMARY JUDGMENT

Ex.	Description	Appx.#
1.	Complaint against HCMFA **(Adv. Pro. No. 21-3004)**	1-21
2.	Amended Complaint against NPA et al. **(Adv. Pro. No. 21-3005)**	22-95
3.	Amended Complaint against HCMS **(Adv. Pro. No. 21-3006)**	96-179
4.	Amended Complaint against HCRE et al **(Adv. Pro. No. 21-3007)**	180-263
5.	HCMFA's Original Answer **(Adv. Pro. No. 21-3004)**	264-271
6.	HCMS's Answer to Plaintiff's Complaint **(Adv. Pro. No. 21-3006)**	272-281
7.	HCRE's Answer to Plaintiff's Complaint **(Adv. Pro. No. 21-3007)**	282-291
8.	HCMS's Motion For Leave to File Amended Answer and Brief In Support **(Adv. Pro. No. 21-3006)**	292-312
9.	HCRE's Motion For Leave to File Amended Answer and Brief In Support **(Adv. Pro. No. 21-3007)**	313-333
10.	HCMFA's Motion For Leave to Amend Answer **(Adv. Pro. No. 21-3004)**	334-383
11.	NexPoint's Motion For Leave to Amend Answer **(Adv. Pro. No. 21-3005)**	384-393
12.	HCMS's First Amended Answer to Plaintiff's Complaint **(Adv. Pro. No. 21-3006)**	394-404
13.	HCMFA's Amended Answer **(Adv. Pro. No. 21-3004)**	405-414
14.	NexPoint's First Amended Answer **(Adv. Pro. No. 21-3005)**	415-423
15.	NexPoint's Answer to Amended Complaint **(Adv. Pro. No. 21-3005)**	424-437
16.	HCMS's Answer to Amended Complaint **(Adv. Pro. No. 21-3006)**	438-453
17.	HCRE's Answer to Amended Complaint **(Adv. Pro. No. 21-3007)**	454-470
18.	HCMFA's Objections and Responses to Plaintiff's Requests For Admissions, Interrogatories, and Requests For Production **(Adv. Pro. No. 21-3004)**	471-478
19.	NexPoint's Objections and Responses to Plaintiff's Requests For Admissions, Interrogatories, and Requests For Production **(Adv. Pro. No. 21-3005)**	479-487
20.	HCMS's Responses to Highland Capital Management, L.P.'s First Requests For Admissions **(Adv. Pro. No. 21-3006)**	488-492

Ex.	Description	Appx.#
21.	HCMS's Answers to Highland Capital Management, L.P.'s First Set of Interrogatories **(Adv. Pro. No. 21-3006)**	493-498
22.	HCRE's Responses to Debtor Highland Capital Management, L.P.'s Requests For Admissions **(Adv. Pro. No. 21-3007)**	499-505
23.	HCRE's Answers to Debtor Highland Capital Management, L.P.'s First Set of Interrogatories **(Adv. Pro. No. 21-3007)**	506-512
24.	James Dondero's Objections and Responses to Plaintiff's Requests For Admission, Interrogatories, and Requests For Production **(Adv. Pro. No. 21-3003)**	513-529
25.	Nancy Dondero's Objections and Responses to Plaintiff's Requests For Admission, Interrogatories, and Requests For Production **(Adv. Pro. No. 21-3003)**	530-546
26.	The Dugaboy Investment Trust's Objections and Responses to Plaintiff's Requests For Admission, Interrogatories, and Requests For Production **(Adv. Pro. No. 21-3003)**	547-562
27.	NexPoint's Objections and Responses to Plaintiff's Requests For Admission, Interrogatories, and Requests For Production **(Adv. Pro. No. 21-3005)**	563-576
28.	HCMS's Objections and Responses to Plaintiff's Requests For Admission, Interrogatories, and Requests For Production **(Adv. Pro. No. 21-3006)**	577-590
29.	HCRE's Objections and Responses to Plaintiff's Requests For Admission, Interrogatories, and Requests For Production **(Adv. Pro. No. 21-3007)**	591-604
30.	Fourth Amended and Restated Agreement of Limited Partnership of Highland Capital Management, L.P.	605-641
31.	James Dondero's Answer to Amended Complaint **(Adv. Pro. No. 21-3003)**	642-657
32.	Amended Complaint against James Dondero, et. al **(Adv. Pro. No. 21-3003)**	658-728
33.	June 3, 2019 Management Representation Letter **(J. Dondero 5/8/21 Depo., Ex. 16) (P. Burger 7/30/21 Depo., Ex. 1)**	729-740
34.	Highland's Consolidated Financial Statements, dated December 31, 2018 **(J. Dondero 5/8/21 Depo., Ex. 15) (P. Burger 7/30/21 Depo., Ex. 4)**	741-787
35.	HCMFA's Incumbency Certificate, April 2019	788-789
36.	Email string re 15(c) Follow up (10/2/21 – 10/6/21)	790-794
37.	NexPoint's Incumbency Certificate	795-796

Ex.	Description	Appx.#
38.	Schedule of HCMLP receipts from other Dondero-related notes	797-798
39.	HCMLP Operating Results (February 2018) **(Adv. Pro. No. 21-3003)**	799-811
40.	Summary of Assets and Liabilities for Non-Individuals **(Adv. Pro. No. 21-3003) (J. Dondero 5/8/21 Depo., Ex. 17)**	812-815
41.	December 2019 Monthly Operating Report **(Adv. Pro. No. 21-3003) (J. Dondero 5/8/21 Depo., Ex. 22)**	816-825
42.	September 2020 Monthly Operating Report **(Adv. Pro. No. 21-3003)**	826-835
43.	Dondero Promissory Note in the amount of $7.9m dated January 18, 2018	836-838
44.	**INTENTIONALLY OMITTED**	839
45.	HCMFA's Consolidated Financial Statements and Supplemental Information (December 31, 2018) **(Adv. Pro. No. 21-3004) (FILED UNDER SEAL)**	840
46.	NexPoint's 2019 Audited Financial Statements **(FILED UNDER SEAL)**	841
47.	Plaintiff's Amended Notice of Rule 30(b)(6) Deposition to NexPoint Advisors, L.P. **(Adv. Pro. No. 21-3005)**	842-847
48.	Plaintiff's Amended Notice of Rule 30(b)(6) Deposition to HCMS **(Adv. Pro. No. 21-3006)**	848-853
49.	Plaintiff's Amended Notice of Rule 30(b)(6) Deposition to HCRE **(Adv. Pro. No. 21-3007)**	854-859
50.	Jim Dondero 2017 PY Comp Statement	860-861
51.	Jim Dondero 2018 PY Comp Statement	862-863
52.	Jim Dondero 2019 PY Comp Statement	864-865
53.	5/2/19 e-mail and attachment (spreadsheet)	866-869
54.	5/2/19 e-mail and attachment (Promissory Note)	870-873
55.	List of Wire Transfers (5/2/19)	874-875
56.	5/3/19 e-mail	876-877
57.	5/3/19 Promissory Note	878-880
58.	13 Week Cash Flows 12.14.20	881-882

Ex.	Description	Appx.#
59.	Supplemental 15(c) Information Request 10.23.20	883-890
60.	7.31.20 HCMLP Requests	891-895
61.	**INTENTIONALLY OMITTED**	896
62.	**INTENTIONALLY OMITTED**	897
63.	HCMLP Audited Financial Statements for 2008	898-954
64.	HCMLP Audited Financial Statements for 2009	955-1002
65.	HCMLP Audited Financial Statements for 2010	1003-1050
66.	HCMLP Audited Financial Statements for 2011	1051-1100
67.	James Dondero 2019 Form W-2 (NexPoint Residential Trust Inc.) **(REDACTED)**	1101-1103
67-2.	James Dondero 2017 Form W-2 (NexPoint Residential Trust Inc.) **(REDACTED)**	1104-1107
67-3.	James Dondero 2013 Form 1040 (pdf page 279 of 335) **(REDACTED)**	1108-1110
67-4.	James Dondero 2014 Form 1040 (pdf page 235 of 290) **(REDACTED)**	1111-1113
67-5.	James Dondero 2015 Form 1040 (pdf page 200 of 254) **(REDACTED)**	1114-1116
67-6.	James Dondero 2016 Form 1040 (pdf page 182 of 235) **(REDACTED)**	1117-1119
67-7.	James Dondero 2017 Form 1040 (pdf page 170 of 225) **(REDACTED)**	1120-1122
67-8.	James Dondero 2018 Form 1040 (pdf page 248 of 300) **(REDACTED)**	1123-1125
67-9.	James Dondero 2019 Form 1040 (pdf page 242 of 301) **(REDACTED)**	1126-1128
68.	Jim Dondero 2016 PY Comp Statement	1129-1130
69.	HCMLP Audited Financial Statements for 2014	1131-1180
70.	HCMLP Audited Financial Statements for 2015	1181-1235
71.	HCMLP Audited Financial Statements for 2016	1236-1286
72.	Highland's Audited Financial Statements for 2017 **(J. Dondero 5/8/21 Depo., Ex. 13) (P. Burger 7/30/21 Depo., Ex. 2)**	1287-1335
73.	Schedule of HCMLP receipts from Dondero notes	1336-1337

Ex.	Description	Appx.#
74.	Dondero Promissory Note in the amount of $3.825m dated February 2, 2020 **(J. Dondero 5/8/21 Depo., Ex. 1)**	1338-1340
75.	HCMLP Operating Results (February 2018) **(J. Dondero 5/8/21 Depo., Ex. 2)**	1341-1353
76.	Dondero Promissory Note in the amount of $2.5m dated August 1, 2018 **(Adv. Pro. No. 21-3003) (J. Dondero 5/8/21 Depo., Ex. 3)**	1354-1356
77.	Dondero Promissory Note in the amount of $2.5m dated August 13, 2018 **(J. Dondero 5/8/21 Depo., Ex. 4)**	1357-1359
78.	HCMLP Operating Results (August 2018) **(J. Dondero 5/8/21 Depo., Ex. 5)**	1360-1369
79.	December 3, 2020 Demand Letter **(J. Dondero 5/8/21 Depo., Ex. 6)**	1370-1373
80.	James Dondero's Original Answer **(Adv. Pro. No. 21-3003) (J. Dondero 5/8/21 Depo., Ex. 7)**	1374-1382
81.	James Dondero's Objections and Responses to Highland Capital Management, L.P.'s First Rebquest For Admissions **(Adv. Pro. No. 21-3003) (J. Dondero 5/8/21 Depo., Ex. 8)**	1383-1389
82.	James Dondero's Objections and Responses to Highland Capital Management, L.P.'s First Set of Interrogatories **(Adv. Pro. No. 21-3003) (J. Dondero 5/8/21 Depo., Ex. 9)**	1390-1396
83.	James Dondero's Amended Answer **(Adv. Pro. No. 21-3003) (J. Dondero 5/8/21 Depo., Ex. 10)**	1397-1405
84.	James Dondero's Objections and Responses to Highland Capital Management, L.P.'s Second Request For Admissions **(Adv. Pro. No. 21-3003) (J. Dondero 5/8/21 Depo., Ex. 11)**	1406-1411
85.	James Dondero's Objections and Responses to Highland Capital Management, L.P.'s Second Set of Interrogatories **(Adv. Pro. No. 21-3003) (J. Dondero 5/8/21 Depo., Ex. 12)**	1412-1419
86.	May 18, 2018 Management Representation Letter **(J. Dondero 5/8/21 Depo., Ex. 14)**	1420-1431
87.	Statement of Financial Affairs For Nonindividuals Filing Bankruptcy **(Case No. 19-34054) (J. Dondero 5/8/21 Depo., Ex. 19)**	1432-1474
88.	October 2019 Monthly Operating Report **(Case No. 19-34054) (J. Dondero 5/8/21 Depo., Ex. 20)**	1475-1486
89.	November 2019 Monthly Operating Report **(Case No. 19-34054) (J. Dondero 5/8/21 Depo., Ex. 21)**	1487-1496
90.	Exhibit C, Liquidation Analysis/Financial Projections **(Case No. 19-34054) (J. Dondero 5/8/21 Depo., Ex. 23)**	1497-1505
91.	Highland Capital Management LP Financial Projections (1/28/21) **(J. Dondero 5/8/21 Depo., Ex. 24)**	1506-1514
92.	2017 Workpapers **(P. Burger 7/30/21 Depo., Ex. 3)**	1514-1530

Ex.	Description	Appx.#
93.	2018 Workpapers **(P. Burger 7/30/21 Depo., Ex. 5)**	1531-1550
94.	Peet Burger 7/30/21 Deposition Transcript	1551-1585
95.	James Dondero 1/5/21 Deposition Transcript	1586-1638
96.	James Dondero 5/28/21 Deposition Transcript	1639-1701
97.	James Dondero 6/1/21 Deposition Transcript	1702-1739
98.	James Dondero 10/29/21 Deposition Transcript	1740-1810
99.	James Dondero 11/4/21 Deposition Transcript	1811-1872
100.	Nancy Dondero 10/18/21 Deposition Transcript	1873-1956
101.	Alan Johnson (Expert)11_02_21 Deposition Transcript	1957-2044
102.	**INTENTIONALLY OMITTED**	2045
103.	**INTENTIONALLY OMITTED**	2046
104.	**INTENTIONALLY OMITTED**	2047
105.	Frank Waterhouse 10/19/21 Deposition Transcript	2048-2178
106.	Payment from James Dondero dated 12/08/17	2179-2183
107.	Payment from James Dondero dated 12/18/17	2184-2194
108.	Payment from James Dondero dated 02/14/19	2195-2206
109.	Payment from James Dondero dated 03/13/2019	2207-2217
110.	Payments from James Dondero dated 05/02/19, 05/03/19, 05/07/19, 05/23/19	2218-2231
111.	Payment from James Dondero dated 06/17/19	2232-2237
112.	Payment from James Dondero dated 12/23/19	2238-2245
113.	Payment from HCMFA dated 05/29/19	2246-2259
114.	Payment from HCMFA dated 09/05/19	2260-2263
115.	Payment from HCMFA dated 10/03/19	2264-2274

Ex.	Description	Appx.#
116.	Payment from HCRE dated 09/30/19	2275-2283
117.	Payment from NPA dated 04/16/2019	2284-2293
118.	Payment from NPA dated 06/19/19	2294-2299
119.	Payment from NPA dated 07/09/19	2300-2308
120.	Payments from HCMSI and NPA dated 03/05/19 and 03/29/19	2309-2319
121.	Payments from HCMSI and NPA dated 08/09/19, 08/13/19, 08/21/19	2320-2323
122.	Payments from HCRE, HCMSI, NPA dated 12/09/19, 12/30/19	2324-2331
123.	Payments from HCMFA and NPA dated 06/04/19	2332-2341
124.	Payment from NPA, HCMSI, HCRE dated 01/14/21 and 01/21/21	2342-2347
125.	Payment to James Dondero dated 02/02/18	2348-2363
126.	Payments to James Dondero dated 08/01/18 and 08/13/18	2364-2367
127.	Payment to HCMSI dated 05/29/15	2368-2371
128.	Payment to HCMSI dated 10/01/15, 10/02/15, and 10/30/15	2372-2379
129.	Payment to HCMSI dated 10/27/15	2380-2383
130.	Payment to HCMSI dated 10/28/15	2384-2387
131.	Payment to HCMSI dated 11/23/15	2388-2393
132.	Payment to HCMSI dated 11/24/15	2394-2397
133.	Payment to HCMSI dated 02/10/16	2398-2404
134.	Payment to HCMSI dated 02/11/16	2405-2421
135.	Payment to HCMSI dated 04/05/16	2422-2434
136.	Payment to HCMSI dated 05/04/16	2435-2438
137.	Payment to HCMSI dated 07/01/16	2439-2443
138.	Payment to HCMSI dated 08/05/16	2444-2458

Ex.	Description	Appx.#
139.	Payment to HCMSI dated 08/19/16	2459-2463
140.	Payment to HCMSI dated 09/22/16	2464-2476
141.	Payment to HCMSI dated 12/12/16	2477-2481
142.	Payment to HCMSI dated 03/31/17	2482-2486
143.	Payment to HCMSI dated 03/26/18	2487-2490
144.	Payment to HCMSI dated 06/25/18	2491-2494
145.	Payment to HCMSI dated 05/29/19	2495-2508
146.	Payment to HCMSI dated 06/26/19	2509-2518
147.	Payments to HCMFA dated 05/02/19 and 05/03/19	2519-2532
148.	Payment to HCRE dated 11/27/13	2533-2536
149.	Payment to HCRE dated 01/09/14	2537-2544
150.	Payment to HCRE dated 01/30/14	2545-2548
151.	Payment to HCRE dated 03/28/14	2549-2556
152.	Payment to HCRE dated 01/26/15	2557-2560
153.	Payment to HCRE dated 04/02/15	2561-2567
154.	Payment to HCRE dated 10/12/17	2568-2579
155.	Payment to HCRE dated 10/15/18	2580-2589
156.	Payment to HCRE dated 09/25/19	2590-2598
157.	Payment to NPA dated 08/21/14	2599-2603
158.	Payment to NPA dated 10/01/14	2604-2611
159.	Payment to NPA dated 11/14/14	2612-2615
160.	Payment to NPA dated 01/29/15	2616-2620
161.	Payment to NPA dated 07/22/15	2621-2636

Ex.	Description	Appx.#
162.	Robert Half Legal Invoices dated 05/06/21 and 5/20/21	2637-2640
163.	Robert Half Legal Invoice dated 06/17/21	2641-2643
164.	Robert Half Legal Invoice dated 07/01/21	2644-2646
165.	Robert Half Legal Invoice dated 07/15/21	2647-2649
166.	Robert Half Legal Invoice dated 08/19/21	2650-2652
167.	Robert Half Legal Invoice dated 09/16/21	2653-2655
168.	Robert Half Legal Invoices dated 09/02/21 and 09/30/21	2656-2659
169.	Highland December 2020 Billing Detail	2660-2671
170.	Highland January 2021 Billing Detail	2672-2694
171.	Highland February 2021 Billing Detail	2695-2700
172.	Highland March 2021 Billing Detail	2701-2727
173.	Highland April 2021 Billing Detail	2728-2764
174.	Highland May 2021 Billing Detail	2765-2813
175.	Highland June 2021 Billing Detail	2814-2852
176.	Highland July 2021 Billing Detail	2853-2878
177.	Highland August 2021 Billing Detail	2879-2883
178.	Highland Supplemental August 2021 Billing Detail	2884-2904
179.	Highland September 2021 Billing Detail	2905-2914
180.	Highland October 2021 Billing Detail	2915-2945
181.	Declaration of Dennis C. Sauter, Jr. **(Adv. Pro. No. 21-3004)**	2946-2977
182.	GAF Resolution Memo dated May 28, 2019	2978-2980
183.	**INTENTIONALLY OMITTED**	2981
184.	Defendant James Dondero's Rule 26 Initial Disclosures	2982-2990

Ex.	Description	Appx.#
185.	Plaintiff's Third Amended Notice of Rule 30(b)(6) Deposition to HCMFA **(Adv. Pro. No. 21-3004)**	2991-2998
186.	**INTENTIONALLY OMITTED**	2999
187.	**INTENTIONALLY OMITTED**	3000
188.	Email from David Klos to the Debtor's Corporate Accounting group, with a copy to Melissa Schroth, dated February 2, 2018 **(Adv. Pro. No. 21-3003)**	3001-3002
189.	Email dated February 2, 2018 confirming a wire transfer in the amount of $3,825,000 from the Debtor to James Dondero **(Adv. Pro. No. 21-3003)**	3003-3004
190.	(a) Email from Blair Hillis to David Klos and the Debtor's Corporate Accounting group, with a copy to Melissa Schroth, dated August 1, 2018 and (b) an email from David Klos to the Debtor's Corporate Accounting group, with a copy to Melissa Schroth, dated August 1, 2018 **(Adv. Pro. No. 21-3003)**	3005-3006
191.	Email chain re Objections to Rule 30(b)(6) Notices (October 7 – 15, 2021)	3007-3012
192.	Dustin Norris 12/1/21 Deposition Transcript	3013-3082
193.	Dennis C. Sauter 11/17/21 Deposition Transcript	3083-3125
194.	Kristin Hendrix 10/27/21 Deposition Transcript	3126-3180
195.	David Klos 10/27/21 Deposition Transcript	3181-3238
196.	Debtor's back-up for the December Monthly Operating Report, titled "December 2019 Due From Affiliates" **(Adv. Pro. No. 21-3003)**	3239-3240
197.	Debtor's back-up for the September Monthly Operating Report, titled "September 2020 Due From Affiliates" **(Adv. Pro. No. 21-3003)**	3241-3242
198.	Debtor's back-up for the January 2021 Monthly Operating Report, titled "January 2021 Due From Affiliates" **(Adv. Pro. No. 21-3003)**	3243-3244
199.	Debtor's January 2021 Affiliates Loan Receivables Summary **(Adv. Pro. No. 21-3003)**	3245-3246
200.	Amortization Schedule **(K. Hendrix 10/27/21 Depo., Ex. 14)**	3247-3258
201.	Debtor's Motion to Cause Distributions to Certain "Related Entities" **(Case No. 19-34054)**	3259-4125
202.	Committee's Objection to Debtor's Motion to Cause Distributions to Certain "Related Entities" **(Case No. 19-34054)**	4126-4140

Ex.	Description	Appx.#
203.	Joinder of Acis Capital Management, L.P. and Acis Capital Management GP, LLC to Committee's Objection to Debtor's Motion to Cause Distributions to Certain "Related Entities" **(Case No. 19-34054)**	4141-4150
204.	Debtor's Reply in Support of Motion to Cause Distributions to Certain "Related Entities" **(Case No. 19-34054)**	4151-4161
205.	NexPoint's Amended and Restated Shared Services Agreement as of January 1, 2018 **(Adv. Pro. No. 21-3005)**	4162-4181
206.	Transcript of February 2, 2021 Hearing	4182-4477
207.	Transcript of February 3, 2021 Hearing	4478-4735
208.	Declaration of David Klos in Support of Highland Capital Management, L.P.'s Motion for Partial Summary Judgment in Notes Actions	4736-4815
209.	Stipulation Governing the Admissibility of Evidence in Connection with Plaintiff's Motion for Partial Summary Judgment **(Adv. Pro. No. 21-3003, Docket No. 128)**	4816-4835
210.	Nancy Dondero 4/29/22 Deposition Transcript	4836-4874
211.	Highland Capital Management L.P.'s Notice of Second Amended Subpoena to the Dugaboy Investment Trust **(N. Dondero 4/29/22 Depo., Ex. 1)**	4875-4884
212.	HCMFA Promissory Note in the amount of $2.3m dated February 26, 2014 **(N. Dondero 4/29/22 Depo., Ex. 3; J. Dondero 5/5/22 Depo., Ex. 2)**	4885-4887
213.	HCMFA Promissory Note in the amount of $4m dated February 26, 2014 **(N. Dondero 4/29/22 Depo., Ex. 4; J. Dondero 5/5/22 Depo., Ex. 3)**	4888-4890
214.	Defendant's Original Answer **(Adv. Pro. No. 21-3082) (N. Dondero 4/29/22 Depo., Ex. 5; J. Dondero 5/5/22 Depo., Ex. 4)**	4891-4899
215.	James Dondero 5/5/22 Deposition Transcript	4900-4981
216.	Highland Capital Management L.P.'s Third Amended Notice of Rule 30(b)(6) Deposition to Highland Capital Management Fund Advisors, L.P. **(J. Dondero 5/5/22 Depo., Ex. 1)**	4982-4988
217.	Acknowledgment from HCMLP dated 4/15/19 **(J. Dondero 5/5/22 Depo., Ex. 5)**	4989-4990

Ex.	Description	Appx.#
218.	June 2, 2021 Demand Letter **(J. Dondero 5/5/22 Depo., Ex. 6)**	4991-5004
219.	2/26/14 & 2/26/16 Loan Summary **(J. Dondero 5/5/22 Depo., Ex. 7)**	5005-5007
220.	Highland Capital Management Fund Advisors, L.P.'s Objections and Responses to Plaintiff's Requests for Admission, Interrogatories and Requests for Production **(J. Dondero 5/5/22 Depo., Ex. 8)**	5008-5023
221.	HCMFA's Consolidated Financial Statements and Supplemental Information (December 31, 2014) (Adv. Pro. No. 21-3082) **(FILED UNDER SEAL)**	5024
222.	HCMFA's Consolidated Financial Statements and Supplemental Information (December 31, 2016) (Adv. Pro. No. 21-3082) **(FILED UNDER SEAL)**	5025
223.	HCMFA's Consolidated Financial Statements and Supplemental Information (December 31, 2013) (Adv. Pro. No. 21-3082) **(FILED UNDER SEAL)**	5026
224.	HCMFA's Consolidated Financial Statements and Supplemental Information (December 31, 2015) (Adv. Pro. No. 21-3082) **(FILED UNDER SEAL)**	5027
225.	HCMFA's Consolidated Financial Statements and Supplemental Information (December 31, 2017) (Adv. Pro. No. 21-3082) **(FILED UNDER SEAL)**	5028
226.	HCMFA Promissory Note in the amount of $4m dated February 26, 2014	5029-5031
227.	HCMFA Promissory Note in the amount of $2.3m dated February 26, 2016	5032-5034
228.	Payment from HCMFA dated 12/28/21	5035-5039
229.	Payment from HCMFA dated 09/01/16	5040-5043
230.	Payment from HCMFA dated 04/12/17	5044-5048
231.	May 21, 2015 Management Representation Letter	5049-5062
232.	May 19, 2017 Management Representation Letter	5063-5073
233.	Complaint against HCMFA **(Adv. Pro. No. 21-3082)**	5074-5107

Ex.	Description	Appx.#
234.	HCMFA's Original Answer **(Adv. Pro. No. 21-3082)**	5108-5116
235.	Payment to HCMFA dated 02/26/14 ($4 million)	5117-5120
236.	Payment to HCMFA dated 02/26/16 ($2.3 million)	5121-5127
237.	Nancy Dondero's acceptance of appointment of family trustee for the Dugaboy Family Trust effective October 14, 2015	5128-5133
238.	Stipulation Concerning the Application of Certain Payments to Principal and Interest Under the Pre-2019 Notes	5134-5147
239.	Declaration of David Klos in Support of Highland Capital Management L.P.'s Motion for Summary Judgment **("Second Klos Declaration")**	5148-5215
240.	Alan Johnson 5/27/22 Deposition Transcript	5216-5240

Dated: May 27, 2022.

PACHULSKI STANG ZIEHL & JONES LLP

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-and-

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Counsel for Highland Capital Management, L.P.

CERTIFICATE OF SERVICE

I hereby certify that, on May 27, 2022, a true and correct copy of the foregoing Appendix was served electronically upon all parties registered to receive electronic notice in this case via the Court's CM/ECF system.

/s/ Zachery Z. Annable
Zachery Z. Annable

EXHIBIT 1

PACHULSKI STANG ZIEHL & JONES LLP
Jeffrey N. Pomerantz (CA Bar No.143717) (*admitted pro hac vice*)
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Counsel for Highland Capital Management, L.P.

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

In re: HIGHLAND CAPITAL MANAGEMENT, L.P.,[1] Debtor.	§ § § § § §	Chapter 11 Case No. 19-34054-sgj11
HIGHLAND CAPITAL MANAGEMENT, L.P., Plaintiff, vs. HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, L.P., Defendant.	§ § § § § § § § §	Adversary Proceeding No. _____

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

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

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

PRELIMINARY STATEMENT

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

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

JURISDICTION AND VENUE

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

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

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

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

THE PARTIES

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

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

CASE BACKGROUND

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

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

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

12. The Debtor has continued in the possession of its property and has continued to operate and manage its business as a debtor-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in this chapter 11 case.

STATEMENT OF FACTS

A. The HCMFA Notes

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

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

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

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

17. Section 4 of each Note provides:

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

[2] All docket numbers refer to the main docket for the Highland Bankruptcy Case maintained by this Court.

18. Section 6 of each Note provides:

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

B. HCMFA's Default under Each Note

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

> By this letter, Payee is demanding payment of the accrued interest and principal due and payable on the Notes in the aggregate amount of $7,687,653.07, which represents all accrued interest and principal through and including December 11, 2020.
>
> **Payment is due on December 11, 2020, and failure to make payment in full on such date will constitute an event of default under the Notes.**

Demand Letter (emphasis in the original).

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

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

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

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

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

FIRST CLAIM FOR RELIEF
(For Breach of Contract)

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

26. Each Note is a binding and enforceable contract.

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

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

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

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

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

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

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

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

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

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

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

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

WHEREFORE, the Debtor prays for judgment as follows:

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

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

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

Dated: January 22, 2021.

PACHULSKI STANG ZIEHL & JONES LLP

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Counsel for Highland Capital Management, L.P.

EXHIBIT 1

EXHIBIT 1

PROMISSORY NOTE

$2,400,000.00 May 2, 2019

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

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

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

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

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

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

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

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

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

MAKER:

FRANK WATERHOUSE

EXHIBIT 2

EXHIBIT 2

EXHIBIT 1

PROMISSORY NOTE

$5,000,000.00 May 3, 2019

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

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

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

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

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

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

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

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

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

MAKER:

FRANK WATERHOUSE

EXHIBIT 3

EXHIBIT 3

HIGHLAND CAPITAL MANAGEMENT, L.P.

December 3, 2020

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

Re: Demand on Promissory Notes:

Dear Mr. Waterhouse,

Highland Capital Management Fund Advisors, LP ("Maker") entered into the following promissory notes (collectively, the "Notes"), among others,[1] in favor of Highland Capital Management, L.P. ("Payee"):

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

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

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

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

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

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

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

Sincerely,

/s/ James P. Seery, Jr.

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

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

Appendix A

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

B1040 (FORM 1040) (12/15)

ADVERSARY PROCEEDING COVER SHEET (Instructions on Reverse)	**ADVERSARY PROCEEDING NUMBER** (Court Use Only)

PLAINTIFFS	**DEFENDANTS**
Highland Capital Management, L.P.	Highland Capital Management Fund Advisors, L.P.
ATTORNEYS (Firm Name, Address, and Telephone No.) Hayward LLP 10501 N. Central Expressway, Suite 106 Dallas, Texas 75231 Tel.: (972) 755-7100	**ATTORNEYS** (If Known) Munsch Hardt Kopf & Harr, P.C. 500 N. Akard Street, Suite 3800 Dallas, Texas 75201 Tel.: (214) 855-7500
PARTY (Check One Box Only) ☑ Debtor ☐ U.S. Trustee/Bankruptcy Admin ☐ Creditor ☐ Other ☐ Trustee	**PARTY** (Check One Box Only) ☐ Debtor ☐ U.S. Trustee/Bankruptcy Admin ☐ Creditor ☑ Other ☐ Trustee

CAUSE OF ACTION (WRITE A BRIEF STATEMENT OF CAUSE OF ACTION, INCLUDING ALL U.S. STATUTES INVOLVED)

Count 1: Breach of contract; Count 2: Turnover pursuant to 11 U.S.C. 542

NATURE OF SUIT

(Number up to five (5) boxes starting with lead cause of action as 1, first alternative cause as 2, second alternative cause as 3, etc.)

FRBP 7001(1) – Recovery of Money/Property
[2] 11-Recovery of money/property - §542 turnover of property
☐ 12-Recovery of money/property - §547 preference
☐ 13-Recovery of money/property - §548 fraudulent transfer
☐ 14-Recovery of money/property - other

FRBP 7001(2) – Validity, Priority or Extent of Lien
☐ 21-Validity, priority or extent of lien or other interest in property

FRBP 7001(3) – Approval of Sale of Property
☐ 31-Approval of sale of property of estate and of a co-owner - §363(h)

FRBP 7001(4) – Objection/Revocation of Discharge
☐ 41-Objection / revocation of discharge - §727(c),(d),(e)

FRBP 7001(5) – Revocation of Confirmation
☐ 51-Revocation of confirmation

FRBP 7001(6) – Dischargeability
☐ 66-Dischargeability - §523(a)(1),(14),(14A) priority tax claims
☐ 62-Dischargeability - §523(a)(2), false pretenses, false representation, actual fraud
☐ 67-Dischargeability - §523(a)(4), fraud as fiduciary, embezzlement, larceny

(continued next column)

FRBP 7001(6) – Dischargeability (continued)
☐ 61-Dischargeability - §523(a)(5), domestic support
☐ 68-Dischargeability - §523(a)(6), willful and malicious injury
☐ 63-Dischargeability - §523(a)(8), student loan
☐ 64-Dischargeability - §523(a)(15), divorce or separation obligation (other than domestic support)
☐ 65-Dischargeability - other

FRBP 7001(7) – Injunctive Relief
☐ 71-Injunctive relief – imposition of stay
☐ 72-Injunctive relief – other

FRBP 7001(8) Subordination of Claim or Interest
☐ 81-Subordination of claim or interest

FRBP 7001(9) Declaratory Judgment
☐ 91-Declaratory judgment

FRBP 7001(10) Determination of Removed Action
☐ 01-Determination of removed claim or cause

Other
☐ SS-SIPA Case – 15 U.S.C. §§78aaa *et.seq.*
[1] 02-Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case)

☑ Check if this case involves a substantive issue of state law	☐ Check if this is asserted to be a class action under FRCP 23
☐ Check if a jury trial is demanded in complaint	Demand $7,687,653.07 plus interest, fees, and expenses

Other Relief Sought

B1040 (FORM 1040) (12/15)

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

INSTRUCTIONS

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

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

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

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

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

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

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

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

EXHIBIT 2

PACHULSKI STANG ZIEHL & JONES LLP
Jeffrey N. Pomerantz (CA Bar No.143717) (*admitted pro hac vice*)
Ira D. Kharasch (CA Bar No. 109084) (*admitted pro hac vice*)
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Counsel for Highland Capital Management, L.P.

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

In re: HIGHLAND CAPITAL MANAGEMENT, L.P.,[1] Debtor.	§ § § § § §	Chapter 11 Case No. 19-34054-sgj11
HIGHLAND CAPITAL MANAGEMENT, L.P., Plaintiff, vs. NEXPOINT ADVISORS, L.P., JAMES DONDERO, NANCY DONDERO, AND THE DUGABOY INVESTMENT TRUST, Defendants.	§ § § § § § § § §	Adversary Proceeding No. 21-03005

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

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

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

PRELIMINARY STATEMENT

1. The Debtor brings this action against Defendants in connection with NPA's default under a promissory note executed by NPA in favor of the Debtor in the original principal amount of $30,746,812.33, and payable in annual installments. NPA has failed to pay amounts when due under the Note (as defined below), the Note is in default, and the amounts due under the Note have been accelerated pursuant to the terms of the Note.

2. In paragraph 42 of NPA's *First Amended Answer* [Docket No. 34-3], NPA contends that the Debtor orally agreed to relieve it of the obligations under the notes upon fulfillment of "conditions subsequent" (the "Alleged Agreement"). NPA further contends that the Alleged Agreement was entered into between James Dondero, acting on behalf of NPA, and his sister, Nancy Dondero, as representative of a majority of the Class A shareholders of the Plaintiff, including Dugaboy (the "Representative"), acting on behalf of the Debtor. At the time Mr.

Dondero entered into the Alleged Agreement on behalf of NPA, he controlled both NPA and the Debtor and was the lifetime beneficiary of Dugaboy.

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

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

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

JURISDICTION AND VENUE

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

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

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

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

THE PARTIES

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

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

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

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

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

CASE BACKGROUND

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

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

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

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

19. The Debtor has continued in the possession of its property and has continued to operate and manage its business as a debtor-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in this chapter 11 case.

[2] All docket numbers refer to the main docket for the Debtor's Case maintained by this Court.

STATEMENT OF FACTS

A. The NPA Note

20. NPA is the maker under a promissory note in favor of the Debtor.

21. Specifically, on May 31, 2017, NPA executed a promissory note in favor of the Debtor, as payee, in the original principal amount of $30,746, 812.33 (the "Note"). A true and correct copy of the Note is attached hereto as **Exhibit 1**.

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

> **2.1 Annual Payment Dates.** During the term of this Note, Borrower shall pay the outstanding principal amount of the Note (and all unpaid accrued interest through the date of each such payment) in thirty (30) equal annual payments (the "**Annual Installment**") until the Note is paid in full. Borrower shall pay the Annual Installment on the 31st day of December of each calendar year during the term of this Note, commencing on the first such date to occur after the date of execution of this note.
>
> **2.2 Final Payment Date**. The final payment in the aggregate amount of the then outstanding and unpaid Note, together with all accrued and unpaid interest thereon, shall become immediately due and payable in full on December 31, 2047 (the "**Maturity Date**").

23. Section 3 of the Note provides:

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

24. Section 4 of the Note provides:

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

25. Section 6 of the Note provides:

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

B. NPA's Default Under the Note

26. NPA failed to make the payment due under the Note on December 31, 2020 in the amount of $1,406,111.92.

27. By letter dated January 7, 2021, the Debtor made demand on NPA for immediate payment under the Note (the "Demand Letter"). A true and correct copy of the Demand Letter is attached hereto as **Exhibit 2**. The Demand Letter provides:

> Because of Maker's failure to pay, the Note is in default. Pursuant to Section 4 of the Note, all principal, interest, and any other amounts due on the Note are immediately due and payable. The amount due and payable on the Note as of January 8, 2021 is $24,471,804.98; however, interest continues to accrue under the Note.
>
> **The Note is in default, and payment is due immediately.**

Demand Letter (emphasis in the original).

28. On January 14, 2021, in an apparent attempt to cure its default, NPA paid the Debtor the $1,406,111.92 that was due on December 31, 2020 (the "Partial Payment").

29. The Note does not contain a cure provision. Therefore, the Partial Payment did not cure NPA's default. Accordingly, on January 15, 2021, the Debtor sent NPA a follow-up letter to its Demand Letter (the "Second Demand Letter"), a true and correct copy of which is attached hereto as **Exhibit 3**, stating:

> [T]he Partial Payment will be applied as payment against the amounts due under the Note in accordance with Section 3 thereof. **The Note remains in default, and all amounts due thereunder are due immediately**.

> After adjusting for the Partial Payment and the continued accrual of interest, the amount due under the Note as of January 15, 2021, is $23,071,195.03 (which amount does not include expenses incurred to date in collecting the Note).

Second Demand Letter (emphasis in original).

30. Despite the Debtor's demands, NPA did not pay the amount demanded by the Debtor on January 7, 2021, or at any time thereafter.

31. As of January 15, 2021, the total outstanding principal and accrued but unpaid interest due under the Note was $23,071,195.03

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

C. <u>The Debtor Files the Original Complaint</u>

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

D. <u>NPA's Affirmative Defenses</u>

34. On March 1, 2021, NPA filed *Defendant's Original Answer* [Docket No. 6] (the "<u>Original Answer</u>"). In its Original Answer, NPA asserted three affirmative defenses: (i) the claims are barred because the Plaintiff caused NPA to default, (ii) the claims are barred because the Plaintiff caused NPA to delay in making payment, and (iii) waiver and estoppel. *See id.* ¶¶39-41.

35. On June 9, 2021, NPA filed *Defendant's First Amended Answer* [Docket No. 35-3] (the "<u>Amended Answer</u>"), that asserted a new affirmative defense; namely, that the

Debtor previously agreed that it would not collect on the Notes "upon fulfillment of conditions subsequent" (*i.e.*, the Alleged Agreement) *id.* ¶42.

36. According to NPA, the Alleged Agreement was orally entered into "sometime between December of the year each note was made and February of the following year."

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

38. Mr. Dondero controlled both NPA and the Debtor at the time he entered into the Alleged Agreement on behalf of NPA.

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

E. Dugaboy Lacked Authority to Act on Behalf of the Debtor

40. Under section 4.2 of the *Fourth Amended and Restated Agreement of Limited Partnership of Highland Capital Management, L.P.* (the "Limited Partnership Agreement"), and attached hereto as **Exhibit 4**, Dugaboy was not authorized to enter into the Alleged Agreement on behalf of the Partnership, or otherwise bind the Partnership (as "Partnership" is defined in the Limited Partnership Agreement).

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

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

Exhibit 4, § 4.2(b).

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

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

FIRST CLAIM FOR RELIEF
(Against NPA)

(For Breach of Contract)

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

45. The Note is a binding and enforceable contract.

46. NPA breached the Note by failing to pay all amounts due to the Debtor upon NPA's default and acceleration.

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

48. As a direct and proximate cause of NPA's breach of the Note, the Debtor has suffered damages in the amount of at least $23,071,195.03, as of January 15, 2021, plus an amount equal to all accrued buy unpaid interest from that date, plus the Debtor's cost of collection.

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

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

50. NPA owes the Debtor an amount equal to (i) the aggregate outstanding principal due under the Note, plus (ii) all accrued and unpaid interest thereon until the date of

payment, plus (iii) an amount equal to the Debtor's costs of collection (including all court costs and reasonable attorneys' fees and expenses), for NPA's breach of its obligations under the Note.

51. The Note is property of the Debtor's estate that is matured and payable upon default and acceleration.

52. NPA has not paid the amount due under the Note to the Debtor.

53. The Debtor has made demand for the turnover of the amount due under the Note.

54. As of the date of filing of this Complaint, NPA has not turned over the amount due under the Note.

55. The Debtor is entitled to the amount due under the Note.

THIRD CLAIM FOR RELIEF
(Against NPA)
(Avoidance and Recovery of Actual Fraudulent Transfer Under 11 U.S.C. §§ 548(a)(1)(A) and 550)

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

57. The Debtor made the transfer pursuant to the Alleged Agreement within two years of the Petition Date.

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

(a) The transfer was made to, or for the benefit of, NPA, an insider of the Debtor.

(b) Mr. Dondero entered into the Alleged Agreement on behalf of NPA with his sister, Nancy Dondero.

(c) Mr. Dondero did not inform the Debtor's CFO or outside auditors about the Alleged Agreement.

(d) The Debtor's books and record do not reflect the Alleged Agreement.

(e) The Alleged Agreement was not subject to negotiation.

(f) The value of the consideration received by the Debtor for the transfer was not reasonably equivalent in value.

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

60. Pursuant to 11 U.S.C. § 550, the Debtor is entitled to recover for the benefit of the Debtor's estates the transfer made pursuant to the Alleged Agreement from NPA.

61. Accordingly, the Debtor is entitled to a judgement: (i) avoiding the Alleged Agreement and the transfer made thereunder, and (ii) recovering from NPA an amount equal to all obligations remaining under the Note.

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

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

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

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

(g) The transfer was made to, or for the benefit of, NPA, an insider of the Debtor.

(h) Mr. Dondero entered into the Alleged Agreement on behalf of NPA with his sister, Nancy Dondero.

(i) Mr. Dondero did not inform the Debtor's CFO or outside auditor's about the Alleged Agreement.

(j) Upon information and belief, the Debtor's books and record do not reflect the Alleged Agreement.

(k) The Alleged Agreement was not subject to negotiation.

(l) The value of the consideration received by the Debtor for the transfer was not reasonably equivalent in value.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

WHEREFORE, the Debtor prays for judgment as follows:

(i) On its First Claim for Relief, damages in an amount to be determined at trial but includes (a) the outstanding principal due under the Note, plus (b) all accrued and unpaid interest thereon until the date of payment, plus (c) an amount equal to

the Debtor's costs of collection (including all court costs and reasonable attorneys' fees and expenses);

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

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

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

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

Agreement on behalf of the Partnership, and (d) the Alleged Agreement is null and void;

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

(vii) On its Seventh Claim for Relief, actual damages from the Donderos, jointly and severally, in an amount to be determined at trial, that Debtor suffered as a result of aiding and abetting Dugaboy's breaches of fiduciary duty, and for punitive and exemplary damages and

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

Dated: As of July 13, 2021

PACHULSKI STANG ZIEHL & JONES LLP
Jeffrey N. Pomerantz (CA Bar No.143717)
Ira D. Kharasch (CA Bar No. 109084)
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Counsel for Highland Capital Management, L.P.

EXHIBIT 1

PROMISSORY NOTE

$30,746,812.33 **May 31, 2017**

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

FOR VALUE RECEIVED, NEXPOINT ADVISORS, L.P. ("**Maker**") promises to pay to the order of HIGHLAND CAPITAL MANAGEMENT, L.P. ("**Payee**"), in legal and lawful tender of the United States of America, the principal sum of THIRTY MILLION, SEVEN HUNDRED FORTY SIX THOUSAND, EIGHT HUNDRED TWELVE AND 33/100 DOLLARS ($30,746,812.33), together with interest, on the terms set forth below. All sums hereunder are payable to Payee at 300 Crescent Court, Suite 700, Dallas, Texas 75201, or such other address as Payee may specify to Maker in writing from time to time.

1. Interest Rate. The unpaid principal balance of this Note from time to time outstanding shall bear interest at the rate of six percent (6.00%) per annum from the date hereof until Maturity Date (hereinafter defined), compounded annually on the anniversary of the date of this Note. Interest shall be calculated at a daily rate equal to 1/365th (1/366 in a leap year) of the rate per annum, shall be charged and collected on the actual number of days elapsed, and shall be payable annually.

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

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

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

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

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

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

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

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

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

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

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

MAKER:

NEXPOINT ADVISORS, L.P.
By: NexPoint Advisors GP, LLC, its general partner

By:_____
Name:
Title:

EXHIBIT A

PRIOR NOTES

Loan Date	Initial Note Amount	Interest Rate	Principal and Interest Outstanding as of May 31, 2017
8/21/14	$4,000,000	6.00%	$4,616,739.73
10/1/14	$6,000,000	6.00%	$6,959,671.23
11/14/14	$2,500,000	6.00%	$2,881,780.82
1/29/15	$3,100,000	6.00%	$3,534,679.45
7/22/15	$12,075,000	6.00%	$12,753,941.10
	$27,675,000		**$30,746,812.33**

EXHIBIT 2

HIGHLAND CAPITAL MANAGEMENT, L.P.

January 7, 2021

NexPoint Advisors, L.P.
300 Crescent Court, Suite 700
Dallas, Texas 75201
Attention: James Dondero

Re: Demand on Promissory Note

Dear Mr. Dondero,

On May 31, 2017, NexPoint Advisors, L.P, entered into that certain promissory note in the original principal amount of $30,746,812.33 (the "Note") in favor of Highland Capital Management, L.P. ("Payee").

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

Because of Maker's failure to pay, the Note is in default. Pursuant to Section 4 of the Note, all principal, interest, and any other amounts due on the Note are immediately due and payable. The amount due and payable on the Note as of January 8, 2021 is $24,471,804.98; however, interest continues to accrue under the Note.

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

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

Sincerely,

/s/ James P. Seery, Jr.

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

DOCS_NY:41916.2 36027/002

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

Appendix A

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

EXHIBIT 3

HIGHLAND CAPITAL MANAGEMENT, L.P.

January 15, 2021

NexPoint Advisors, L.P.
300 Crescent Court, Suite 700
Dallas, Texas 75201
Attention: James Dondero

Re: Partial Payment on Promissory Note

Dear Mr. Dondero,

On May 31, 2017, NexPoint Advisors, L.P, ("Maker"), entered into that certain promissory note in the original principal amount of $30,746,812.33 (the "Note") in favor of Highland Capital Management, L.P. ("Payee"). A copy of the Note is attached hereto as **Appendix A**.

On January 7, 2021, Payee notified you that because of Maker's failure to make the payment due on December 31, 2020 (the "Default"), the Note was in default and that all principal, interest, and any other amounts due on the Note were immediately due and payable. The amount due and payable on the Note as of January 8, 2021, was $24,471,804.98; however, interest continues to accrue under the Note.

On January 14, 2021, Payee received a wire from Maker in the amount of $1,406,111.92 (the "Partial Payment"). To reiterate, the amount due under the Note as of January 8, 2021, was $24,471,804.98. The Partial Payment will be applied as payment against the amounts due under the Note pursuant to Section 3 thereof. **The Note remains in default, and all amounts due thereunder are due immediately.**

After adjusting for the Partial Payment and the continued accrual of interest, the amount due under the Note as of January 15, 2021, is $23,071,195.03 (which amount does not include expenses incurred to date in collecting the Note). Payment of such amount is due immediately. Payments on the Note must be made in immediately available funds. Payee's wire information is attached hereto as **Appendix B**.

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

Sincerely,

/s/ James P. Seery, Jr.

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

DOCS_NY:41991.1 36027/002

cc: Fred Caruso
James Romey
Jeffrey Pomerantz
Ira Kharasch
Gregory Demo
DC Sauter
A. Lee Hogewood III

Appendix A

PROMISSORY NOTE

$30,746,812.33 **May 31, 2017**

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

FOR VALUE RECEIVED, NEXPOINT ADVISORS, L.P. ("**Maker**") promises to pay to the order of HIGHLAND CAPITAL MANAGEMENT, L.P. ("**Payee**"), in legal and lawful tender of the United States of America, the principal sum of THIRTY MILLION, SEVEN HUNDRED FORTY SIX THOUSAND, EIGHT HUNDRED TWELVE AND 33/100 DOLLARS ($30,746,812.33), together with interest, on the terms set forth below. All sums hereunder are payable to Payee at 300 Crescent Court, Suite 700, Dallas, Texas 75201, or such other address as Payee may specify to Maker in writing from time to time.

1. Interest Rate. The unpaid principal balance of this Note from time to time outstanding shall bear interest at the rate of six percent (6.00%) per annum from the date hereof until Maturity Date (hereinafter defined), compounded annually on the anniversary of the date of this Note. Interest shall be calculated at a daily rate equal to 1/365th (1/366 in a leap year) of the rate per annum, shall be charged and collected on the actual number of days elapsed, and shall be payable annually.

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

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

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

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

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

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

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

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

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

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

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

MAKER:

NEXPOINT ADVISORS, L.P.
By: NexPoint Advisors GP, LLC, its general partner

By:_____
Name:
Title:

EXHIBIT A

PRIOR NOTES

Loan Date	Initial Note Amount	Interest Rate	Principal and Interest Outstanding as of May 31, 2017
8/21/14	$4,000,000	6.00%	$4,616,739.73
10/1/14	$6,000,000	6.00%	$6,959,671.23
11/14/14	$2,500,000	6.00%	$2,881,780.82
1/29/15	$3,100,000	6.00%	$3,534,679.45
7/22/15	$12,075,000	6.00%	$12,753,941.10
	$27,675,000		**$30,746,812.33**

Appendix B

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

EXHIBIT 4

FOURTH AMENDED AND RESTATED

AGREEMENT OF LIMITED PARTNERSHIP

OF

HIGHLAND CAPITAL MANAGEMENT, L.P.

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

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

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

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

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

ARTICLE 1

GENERAL

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

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

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

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

1.5. Partnership Offices; Addresses of Partners.

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

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

ARTICLE 2

DEFINITIONS

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

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

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

"***Affiliate***" means any Person that directly or indirectly controls, is controlled by, or is under common control with the Person in question. As used in this definition, the term "***control***" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through ownership of voting Securities, by contract or otherwise.

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

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

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

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

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

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

"Class A Limited Partnership Interest" means a Partnership Interest held by a Partner in its capacity as a Class A Limited Partner."

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

"Class B Limited Partnership Interest" means a Partnership Interest held by a Partner in its capacity as a Class B Limited Partner."

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

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

"Class C Limited Partnership Interest" means a Partnership Interest held by a Partner in its capacity as a Class C Limited Partner."

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

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

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

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

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

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

"Effective Date" means the date first recited above.

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

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

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

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

"***Liquidator***" has the meaning set forth in Section 5.3.

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

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

"NAV Ratio Trigger Period" means a Class B NAV Ratio Trigger Period or a Class C NAV Ratio Trigger Period.

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

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

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

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

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

"***Partner***" means a General Partner or a Limited Partner.

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

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

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

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

"***Partnership Capital***" means, as of any relevant date, the net book value of the Partnership's assets.

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

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

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

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

"Priority Distributions" has the meaning set forth in Section 3.9(b).

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 3

FINANCIAL MATTERS

3.1. Capital Contributions.

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

(b) Additional Capital Contributions.

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

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

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

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

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

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

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

3.2. Allocations of Profits and Losses.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3.7. Capital Accounts.

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

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

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

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

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

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

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

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

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

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

3.9. Distributions.

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

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

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

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

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

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

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

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

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

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

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

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

3.10. Compensation and Reimbursement of General Partner.

(a) Compensation. The General Partner and any Affiliate of the General Partner shall receive no compensation from the Partnership for services rendered pursuant to this Agreement or any other agreements unless approved by a Majority Interest; provided, however, that no compensation above five million dollars per year may be approved, even by a Majority Interest, during a NAV Ratio Trigger Period.

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

3.11. Books, Records, Accounting, and Reports.

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

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

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

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

3.12. Tax Matters.

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

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

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

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

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

ARTICLE 4

RIGHTS AND OBLIGATIONS OF PARTNERS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) Liability of General Partner.

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

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

(j) Reliance by General Partner.

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

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

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

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

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

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

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

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

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

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

4.3. Transfer of Partnership Interests.

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

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

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

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

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

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

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

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

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

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

4.5. Withdrawal of General Partner

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

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

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

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

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

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

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

ARTICLE 5

DISSOLUTION AND WINDING UP

5.1. Dissolution. The Partnership shall be dissolved upon:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 6

GENERAL PROVISIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Remainder of Page intentionally Left Blank.
Signature Page Follows.

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

GENERAL PARTNER:

STRAND ADVISORS, INC.,
a Delaware corporation

By: _____
James D. Dondero,
President

LIMITED PARTNERS:

THE DUGABOY INVESTMENT TRUST

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

THE MARK AND PAMELA OKADA FAMILY TRUST – EXEMPT TRUST #1

By: _____
Name: Lawrence Tonomura
Its: Trustee

THE MARK AND PAMELA OKADA FAMILY TRUST – EXEMPT TRUST #2

By: _____
Name: Lawrence Tonomura
Its: Trustee

MARK K. OKADA

_____
Mark K. Okada

Signature Page to Fourth Amended and Restated Agreement of Limited Partnership

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

GENERAL PARTNER:

STRAND ADVISORS, INC.,
a Delaware corporation

By: _____
James D. Dondero,
President

LIMITED PARTNERS:

THE DUGABOY INVESTMENT TRUST

By: _____
Name: Nancy M. Dondero
Its: Trustee

THE MARK AND PAMELA OKADA FAMILY TRUST – EXEMPT TRUST #1

By: _____
Name: Lawrence Tonomura
Its: Trustee

THE MARK AND PAMELA OKADA FAMILY TRUST – EXEMPT TRUST #2

By: _____
Name: Lawrence Tonomura
Its: Trustee

MARK K. OKADA

_____
Mark K. Okada

Signature Page to Fourth Amended and Restated Agreement of Limited Partnership

HUNTER MOUNTAIN INVESTMENT TRUST
By: Beacon Mountain LLC, Administrator

By: _____
Name: John Honis
Its: President

Signature Page to Fourth Amended and Restated Agreement of Limited Partnership

EXHIBIT A

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

EXHIBIT B

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

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

RECITALS:

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

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

WHEREAS, _____desires to become a Class __ Limited Partner and be bound by the terms and conditions of the Agreement; and

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

AGREEMENT:

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

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

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

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

GENERAL PARTNER:

STRAND ADVISORS, INC.

By: _____
Name: _____
Title: _____

NEW LIMITED PARTNER:

[_____]

AGREED AND ACCEPTED:

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

SPOUSE OF NEW LIMITED PARTNER:

[_____]

B1040 (FORM 1040) (12/15)

ADVERSARY PROCEEDING COVER SHEET (Instructions on Reverse)	**ADVERSARY PROCEEDING NUMBER** (Court Use Only)
PLAINTIFFS Highland Capital Management, L.P.	**DEFENDANTS** NexPoint Advisors, L.P., James Dondero, Nancy Dondero, and The Dugaboy Investment Trust
ATTORNEYS (Firm Name, Address, and Telephone No.) Hayward PLLC 10501 N. Central Expressway, Suite 106 Dallas, Texas 75231 Tel.: (972) 755-7100	**ATTORNEYS** (If Known) Munsch Hardt Kopf & Harr, P.C. (for NexPoint); Stinson LLP (for Nancy Dondero); Heller, Draper, & Horn, L.L.C. (for The Dugaboy Investment Trust)
PARTY (Check One Box Only) ☑ Debtor ☐ U.S. Trustee/Bankruptcy Admin ☐ Creditor ☐ Other ☐ Trustee	**PARTY** (Check One Box Only) ☐ Debtor ☐ U.S. Trustee/Bankruptcy Admin ☐ Creditor ☑ Other ☐ Trustee

CAUSE OF ACTION (WRITE A BRIEF STATEMENT OF CAUSE OF ACTION, INCLUDING ALL U.S. STATUTES INVOLVED)
Breach of Contract; Turnover Pursuant to 11 USC 542(b); Avoidance and Recovery of Actual Fraudulent Transfer under 11 USC 548(a)(1)(A) and 550; Avoidance and Recovery of Actual Fraudulent Transfer under 11 USC 544(b) and 550 and Tex. Bus. & C. Code 24.005(a)(1); Declaratory Relief; Breach of Fiduciary Duty; Aiding & Abetting Breach of Fiduciary Duty

NATURE OF SUIT

(Number up to five (5) boxes starting with lead cause of action as 1, first alternative cause as 2, second alternative cause as 3, etc.)

FRBP 7001(1) – Recovery of Money/Property
2 ☐ 11-Recovery of money/property - §542 turnover of property
☐ 12-Recovery of money/property - §547 preference
3 ☐ 13-Recovery of money/property - §548 fraudulent transfer
4 ☐ 14-Recovery of money/property - other

FRBP 7001(2) – Validity, Priority or Extent of Lien
☐ 21-Validity, priority or extent of lien or other interest in property

FRBP 7001(3) – Approval of Sale of Property
☐ 31-Approval of sale of property of estate and of a co-owner - §363(h)

FRBP 7001(4) – Objection/Revocation of Discharge
☐ 41-Objection / revocation of discharge - §727(c),(d),(e)

FRBP 7001(5) – Revocation of Confirmation
☐ 51-Revocation of confirmation

FRBP 7001(6) – Dischargeability
☐ 66-Dischargeability - §523(a)(1),(14),(14A) priority tax claims
☐ 62-Dischargeability - §523(a)(2), false pretenses, false representation, actual fraud
☐ 67-Dischargeability - §523(a)(4), fraud as fiduciary, embezzlement, larceny

(continued next column)

FRBP 7001(6) – Dischargeability (continued)
☐ 61-Dischargeability - §523(a)(5), domestic support
☐ 68-Dischargeability - §523(a)(6), willful and malicious injury
☐ 63-Dischargeability - §523(a)(8), student loan
☐ 64-Dischargeability - §523(a)(15), divorce or separation obligation (other than domestic support)
☐ 65-Dischargeability - other

FRBP 7001(7) – Injunctive Relief
☐ 71-Injunctive relief – imposition of stay
☐ 72-Injunctive relief – other

FRBP 7001(8) Subordination of Claim or Interest
☐ 81-Subordination of claim or interest

FRBP 7001(9) Declaratory Judgment
5 ☐ 91-Declaratory judgment

FRBP 7001(10) Determination of Removed Action
☐ 01-Determination of removed claim or cause

Other
☐ SS-SIPA Case – 15 U.S.C. §§78aaa *et.seq.*
1 ☐ 02-Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case)

☑ Check if this case involves a substantive issue of state law	☐ Check if this is asserted to be a class action under FRCP 23
☐ Check if a jury trial is demanded in complaint	Demand $ Damages in an amount to be determined at trial

Other Relief Sought Turnover of amounts due under note, avoidance of transfers to defendants, declaratory relief, punitive and exemplary damages, costs, attorneys' fees

B1040 (FORM 1040) (12/15)

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

INSTRUCTIONS

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

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

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

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

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

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

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

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

EXHIBIT 3

PACHULSKI STANG ZIEHL & JONES LLP
Jeffrey N. Pomerantz (CA Bar No.143717) (*admitted pro hac vice*)
Ira D. Kharasch (CA Bar No. 109084) (*admitted pro hac vice*)
John A. Morris (NY Bar No. 2405397) (*admitted pro hac vice*)
Gregory V. Demo (NY Bar No. 5371992) (*admitted pro hac vice*)
Hayley R. Winograd (NY Bar No. 5612569) (*admitted pro hac vice*)
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067
Telephone: (310) 277-6910
Facsimile: (310) 201-0760

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

Counsel for Highland Capital Management, L.P.

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

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

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

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

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

PRELIMINARY STATEMENT

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

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

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

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

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

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

JURISDICTION AND VENUE

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

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

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

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

THE PARTIES

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

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

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

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

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

CASE BACKGROUND

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

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

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

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

19. The Debtor has continued in the possession of its property and has continued to operate and manage its business as a debtor-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in this chapter 11 case.

[2] All docket numbers refer to the main docket for the Highland Bankruptcy Case maintained by this Court.

STATEMENT OF FACTS

A. The HCMS Demand Notes

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

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

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

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

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

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

26. Section 4 of the Demand Notes provide:

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

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

27. Section 6 of the Demand Notes provide:

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

B. HCMS's Defaults Under Each Demand Note

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

> By this letter, Payee is demanding payment of the accrued interest and principal due and payable on the Notes in the aggregate amount of $947,519.43, which represents all accrued interest and principal through and including December 11, 2020.
>
> **Payment is due on December 11, 2020, and failure to make payment in full on such date will constitute an event of default under the Notes.**

Demand Letter (emphasis in the original).

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

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

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

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

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

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

C. The HCMS Term Note

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

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

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

> **2.1 Annual Payment Dates.** During the term of this Note, Borrower shall pay the outstanding principal amount of the Note (and all unpaid accrued interest through the date of each such payment) in thirty (30) equal annual payments (the "**Annual Installment**") until the Note is paid in full. Borrower shall pay the Annual Installment on the 31st day of December of each calendar year during the term of this Note, commencing on the first such date to occur after the date of execution of this note.
>
> **2.2 Final Payment Date**. The final payment in the aggregate amount of the then outstanding and unpaid Note, together with all accrued and unpaid interest thereon, shall become immediately due and payable in full on December 31, 2047 (the "**Maturity Date**").

38. Section 3 of the Note provides:

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

39. Section 4 of the Term Note provides:

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

40. Section 6 of the Term Note provides:

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

D. HCMS's Default Under the Term Note

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

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

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

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

Second Demand Letter (emphasis in the original).

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

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

E. The Debtor Files the Original Complaint

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

F. HCMS's Affirmative Defenses

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

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

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

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

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

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

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

G. <u>Dugaboy Lacked Authority to Act on Behalf of the Debtor</u>

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

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

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

<u>Exhibit 8</u>, § 4.2(b).

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

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

FIRST CLAIM FOR RELIEF

(Against HCMS)

(For Breach of Contract)

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

57. The Notes are binding and enforceable contracts.

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

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

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

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

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

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

SECOND CLAIM FOR RELIEF

(Against HCMS)

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

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

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

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

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

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

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

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

THIRD CLAIM FOR RELIEF
(Against HCMS)
(Avoidance and Recovery of Actual Fraudulent Transfer Under 11 U.S.C. §§ 548(a)(1)(A) and 550)

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

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

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

(a) The transfers were made to, or for the benefit of, HCMS, an insider of the Debtor.

(b) Mr. Dondero entered into the Alleged Agreement on behalf of HCMS with his sister, Nancy Dondero.

(c) Mr. Dondero did not inform the Debtor's CFO or outside auditors about the Alleged Agreement.

(d) The Debtor's books and record do not reflect the Alleged Agreement.

(e) The Alleged Agreement was not subject to negotiation.

(f) The value of the consideration received by the Debtor for the transfers was not reasonably equivalent in value.

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

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

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

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

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

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

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

(g) The transfers were made to, or for the benefit of, HCMS, an insider of the Debtor.

(h) Mr. Dondero entered into the Alleged Agreement on behalf of HCMS with his sister, Nancy Dondero.

(i) Mr. Dondero did not inform the Debtor's CFO or outside auditor's about the Alleged Agreement.

(j) Upon information and belief, the Debtor's books and record do not reflect the Alleged Agreement.

(k) The Alleged Agreement was not subject to negotiation.

(l) The value of the consideration received by the Debtor for the transfers was not reasonably equivalent in value.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

WHEREFORE, the Debtor prays for judgment as follows:

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

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

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

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

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

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

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

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

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

Dated: As of July 13, 2021.

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

EXHIBIT 1

PROMISSORY NOTE

$150,000.00 March 28, 2018

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

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

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

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

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

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

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

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

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

MAKER:

HIGHLAND CAPITAL MANAGEMENT SERVICES, INC.

EXHIBIT 2

PROMISSORY NOTE

$200,000.00 June 25, 2018

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

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

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

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

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

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

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

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

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

MAKER:

HIGHLAND CAPITAL MANAGEMENT SERVICES, INC.

EXHIBIT 3

PROMISSORY NOTE

$400,000 May 29, 2019

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

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

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

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

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

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

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

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

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

MAKER:

FRANK WATERHOUSE

EXHIBIT 4

PROMISSORY NOTE

$150,000 June 26, 2019

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

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

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

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

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

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

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

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

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

MAKER:

FRANK WATERHOUSE

EXHIBIT 5

HIGHLAND CAPITAL MANAGEMENT, L.P.

December 3, 2020

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

Re: Demand on Promissory Notes:

Dear Mr. Waterhouse,

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

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

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

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

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

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

Sincerely,

/s/ James P. Seery, Jr.

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

DOCS_NY:41635.1 36027/002

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

Appendix A

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

EXHIBIT 6

PROMISSORY NOTE

$20,247,628.02 **May 31, 2017**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

MAKER:

HIGHLAND CAPITAL MANAGEMENT SERVICES, INC.

By:_____
Name:
Title:

EXHIBIT A

PRIOR NOTES

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

EXHIBIT 7

HIGHLAND CAPITAL MANAGEMENT, L.P.

January 7, 2021

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

Re: Demand on Promissory Note

Dear Mr. Dondero,

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

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

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

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

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

Sincerely,

/s/ James P. Seery, Jr.

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

DOCS_NY:41914.2 36027/002

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

Appendix A

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

EXHIBIT 8

FOURTH AMENDED AND RESTATED

AGREEMENT OF LIMITED PARTNERSHIP

OF

HIGHLAND CAPITAL MANAGEMENT, L.P.

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

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

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

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

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

ARTICLE 1

GENERAL

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

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

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

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

1.5. Partnership Offices; Addresses of Partners.

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

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

ARTICLE 2

DEFINITIONS

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

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

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

"***Affiliate***" means any Person that directly or indirectly controls, is controlled by, or is under common control with the Person in question. As used in this definition, the term "***control***" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through ownership of voting Securities, by contract or otherwise.

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

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

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

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

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

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

"Class A Limited Partnership Interest" means a Partnership Interest held by a Partner in its capacity as a Class A Limited Partner."

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

"Class B Limited Partnership Interest" means a Partnership Interest held by a Partner in its capacity as a Class B Limited Partner."

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

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

"Class C Limited Partnership Interest" means a Partnership Interest held by a Partner in its capacity as a Class C Limited Partner."

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

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

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

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

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

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

"Effective Date" means the date first recited above.

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

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

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

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

"***Liquidator***" has the meaning set forth in Section 5.3.

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

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

"NAV Ratio Trigger Period" means a Class B NAV Ratio Trigger Period or a Class C NAV Ratio Trigger Period.

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

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

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

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

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

"***Partner***" means a General Partner or a Limited Partner.

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

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

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

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

"***Partnership Capital***" means, as of any relevant date, the net book value of the Partnership's assets.

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

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

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

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

"Priority Distributions" has the meaning set forth in Section 3.9(b).

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

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

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

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

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

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

"***Securities Act***" means the Securities Act of 1933, as amended, and any successor to such statute.

"***Substitute Limited Partner***" has the meaning set forth in Section 4.6(a).

"***Transfer***" or derivations thereof, of a Partnership Interest means, as a noun, the transfer, sale, assignment, exchange, pledge, hypothecation or other disposition of a Partnership Interest, or any part thereof, directly or indirectly, and as a verb, voluntarily or involuntarily to transfer, sell, assign, exchange, pledge, hypothecate or otherwise dispose of.

"***Treasury Regulations***" means the Department of Treasury Regulations promulgated under the Code, as amended and in effect (including corresponding provisions of succeeding regulations).

2.2. Other Definitions. All terms used in this Agreement that are not defined in this Article 2 have the meanings contained elsewhere in this Agreement.

ARTICLE 3

FINANCIAL MATTERS

3.1. Capital Contributions.

(a) Initial Capital Contributions. The initial Capital Contribution of each Partner shall be set forth in the books and records of the Partnership.

(b) Additional Capital Contributions.

(i) The General Partner, in its reasonable discretion and for a *bona fide* business purpose, may request in writing that the Founding Partner Group make additional Capital Contributions in proportion to their Percentage Interests (each, an "***Additional Capital Contribution***").

(ii) Any failure by a Partner to make an Additional Capital Contribution requested under Section 3.1(b)(i) on or before the date on which that Additional Capital Contribution was due shall result in the Partner being in default.

(c) Consequences to Defaulting Partners. In the event a Partner is in default under Section 3.1(b) (a "***Defaulting Partner***"), the Defaulting Partner, in its sole and unfettered discretion, may elect to take either one of the option set forth below.

(i) Default Loans. If the Defaulting Partner so elects, the General Partner shall make a loan to the Defaulting Partner in an amount equal to that Defaulting Partner's additional capital contribution (a "***Default Loan***"). A Default Loan shall be deemed advanced on the date actually advanced. Default Loans shall earn interest on the outstanding principal amount thereof at a rate equal to the Applicable Federal Mid-Term Rate (determined by the Internal Revenue Service for the month in which the loan is deemed made) from the date actually advanced until the same is repaid in full. The term of any Default Loan shall be six (6) months, unless otherwise extended by the General Partner in its sole and unfettered discretion. If the General Partner makes a Default Loan, the Defaulting Partner shall not receive any distributions pursuant to Section 3.9(a) or Section 5.3 or any proceeds from the Transfer of all or any part of its Partnership Interest while the Default Loan remains unpaid. Instead, the Defaulting Partner's share of distributions or such other proceeds shall (until all Default Loans and interest thereon shall have been repaid in full) first be paid to the General Partner. Such payments shall be applied first to the payment of interest on such Default Loans and then to the repayment of the principal amounts thereof, but shall be considered, for all other purposes of this Agreement, to have been distributed to the Defaulting Partner. The Defaulting Partner shall be liable for the reasonable fees and expenses incurred by the General Partner (including, without limitation, reasonable attorneys' fees and disbursements) in connection with any enforcement or foreclosure upon any Default Loan and such costs shall, to the extent enforceable under applicable law, be added to the principal amount of the applicable Default Loan. In addition, at any time during the term of such Default Loan, the Defaulting Partner shall have the right to repay, in full, the Default Loan (including interest and any other charges). If the General Partner makes a Default Loan, the Defaulting Partner shall be deemed to have pledged to the General Partner and granted to the General Partner a continuing first priority security interest in, all of the Defaulting Partner's Partnership Interest to secure the payment of the principal of, and interest on, such Default Loan in accordance with the provisions hereof, and for such purpose this Agreement shall constitute a security agreement. The Defaulting Partner shall promptly execute, acknowledge and deliver such financing statements, continuation statements or other documents and take such other actions as the General Partner shall request in writing in order to perfect or continue the perfection of such security interest; and, if the Defaulting Partner shall fail to do so within seven (7) days after the Defaulting Partner's receipt of a notice making demand therefor, the General Partner is hereby appointed the attorney-in-fact of, and is hereby authorized on behalf of, the Defaulting Partner, to execute, acknowledge and deliver all such documents and take all such other actions as may be required to perfect such security interest. Such appointment and authorization are coupled with an interest and shall be irrevocable. The General Partner shall, prior to exercising any right or remedy (whether at law, in equity or pursuant to the terms hereof) available to it in connection with such security interest, provide to the Defaulting Partner a notice, in reasonable detail, of the right or remedy to be exercised and the intended timing of such exercise which shall not be less than five (5) days following the date of such notice.

(ii) Reduction of Percentage Interest. If the Defaulting Partner does not elect to obtain a Default Loan pursuant to Section 3.1(c)(i), the General Partner shall reduce the Defaulting Partner's Percentage Interest in accordance with the following formula:

> The Defaulting Partner's new Percentage Interest shall equal the product of (1) the Defaulting Partner's current Percentage Interest, multiplied by (2) the quotient of (a) the current Capital Account of the Defaulting Partner (with such Capital Account determined after taking into account a revaluation of the Capital Accounts immediately prior to such determination), divided by (b) the sum of (i) the current Capital Account of the Defaulting Partner (with such Capital Account determined after taking into account a revaluation of the Capital Accounts immediately prior to such determination), plus (ii) the amount of the additional capital contribution that such Defaulting Partner failed to make when due.

To the extent any downward adjustment is made to the Percentage Interest of a Partner pursuant to this Section 3.1(c)(ii), any resulting benefit shall accrue to the Partners (other than the Defaulting Partner) in proportion to their respective Percentage Interests.

3.2. Allocations of Profits and Losses.

(a) Allocations of Profits. Except as provided in Sections 3.4, 3.5, and 3.6, Profits for any Fiscal Year will be allocated to the Partners as follows:

(i) First, to the Partners until cumulative Profits allocated under this Section 3.2(a)(i) for all prior periods equal the cumulative Losses allocated to the Partners under Section 3.2(b)(iii) for all prior periods in the inverse order in which such Losses were allocated; and

(ii) Next, to the Partners until cumulative Profits allocated under this Section 3.2(a)(ii) for all prior periods equal the cumulative Losses allocated to the Partners under Section 3.2(b)(ii) for all prior periods in the inverse order in which such Losses were allocated; and

(iii) Then, to all Partners in proportion to their respective Percentage Interests.

(b) Allocations of Losses. Except as provided in Sections 3.4, 3.5, and 3.6, Losses for any Fiscal Year will be will be allocated as follows:

(i) First, to the Partners until cumulative Losses allocated under this Section 3.2(b)(i) for all prior periods equal the cumulative Profits allocated to the Partners under Section 3.2(a)(iii) for all prior periods in the inverse order in which such Profits were allocated; and

(ii) Next, to the Partners in proportion to their respective positive Capital Account balances until the aggregate Capital Account balances of the Partners (excluding any negative Capital Account balances) equal zero; *provided, however,* losses shall first be allocated to reduce amounts that were last allocated to the Capital Accounts of the Partners; and

(iii) Then, to all Partners in proportion to their respective Percentage Interests.

(c) Limitation on Loss Allocations. If any allocation of Losses would cause a Limited Partner to have an Adjusted Capital Account Deficit, those Losses instead shall be allocated to the General Partner.

3.3. Allocations on Transfers. Taxable items of the Partnership attributable to a Partnership Interest that has been Transferred (including the simultaneous decrease in the Partnership Interest of existing Partners resulting from the admission of a new Partner) shall be allocated in accordance with Section 4.3(d).

3.4. Special Allocations. If the requisite stated conditions or facts are present, the following special allocations shall be made in the following order:

(a) Partnership Minimum Gain Chargeback**.** Notwithstanding any other provision of this Article 3, if there is a net decrease in Partnership Minimum Gain during any taxable year or other period for which allocations are made, prior to any other allocation under this Agreement, each Partner shall be specially allocated items of Partnership income and gain for that period (and, if necessary, subsequent periods) in proportion to, and to the extent of, an amount equal to that Partner's share of the net decrease in Partnership Minimum Gain during that year determined in accordance with Treasury Regulations Section 1.704-2(g)(2). The items to be allocated shall be determined in accordance with Treasury Regulations Section 1.704-2(g). This Section 3.4(a) is intended to comply with the partnership minimum gain chargeback requirements of the Treasury Regulations and shall be subject to all exceptions provided therein.

(b) Partner Nonrecourse Debt Minimum Gain Chargeback**.** Notwithstanding any other provision of this Article 3 (other than Section 3.4(a)), if there is a net decrease in Partner Nonrecourse Debt Minimum Gain with respect to a Partner Nonrecourse Debt during any taxable year or other period for which allocations are made, any Partner with a share of such Partner Nonrecourse Debt Minimum Gain as of the beginning of the year shall be specially allocated items of Partnership income and gain for that period (and, if necessary, subsequent periods in an amount equal to that Partner's share of the net decrease in the Partner Nonrecourse Debt Minimum Gain during that year determined in accordance with Treasury Regulations Section 1.704-2(g)(2). The items to be so allocated shall be determined in accordance with Treasury Regulations Section 1.704-2(g). This Section 3.4(b) is intended to comply with the partner nonrecourse debt minimum gain chargeback requirements of the Treasury Regulations, shall be interpreted consistently with the Treasury Regulations and shall be subject to all exceptions provided therein.

(c) Qualified Income Offset**.** If a Partner unexpectedly receives any adjustments, allocations or distributions described in Treasury Regulations Sections 1.704-1(b)(2)(ii)(d)(4), (d)(5) or (d)(6), then items of Partnership income and gain shall be specially allocated to each such Partner in an amount and manner sufficient to eliminate, to the extent required by the Treasury Regulations, the Adjusted Capital Account Deficit of the Partner as quickly as possible; *provided, however,* an allocation pursuant to this Section 3.4(c) shall be made if and only to the extent that the Partner would have an Adjusted Capital Account Deficit after all other allocations provided for in this Article 3 have been tentatively made without considering this Section 3.4(c).

(d) Gross Income Allocation**.** If a Partner has a deficit Capital Account at the end of any Fiscal Year of the Partnership that exceeds the sum of (i) the amount the Partner is obligated to restore, and (ii) the amount the Partner is deemed to be obligated to restore pursuant to the penultimate sentences of Treasury Regulations Sections 1.704-2(g)(1) and 1.704-2(i)(5), then each such Partner shall be specially allocated items of income and gain of the Partnership in the amount of the excess as quickly as possible; *provided, however,* an allocation pursuant to this Section 3.4(d) shall be made if and only to

the extent that the Partner would have a deficit Capital Account in excess of that sum after all other allocations provided for in this Article 3 have been tentatively made without considering Section 3.4(c) or 3.4(d).

(e) Nonrecourse Deductions. Nonrecourse Deductions for any taxable year or other period for which allocations are made shall he allocated among the Partners in accordance with their Percentage interests.

(f) Partner Nonrecourse Deductions. Notwithstanding anything to the contrary in this Agreement, any Partner Nonrecourse Deductions for any taxable year or other period for which allocations are made will be allocated to the Partner who bears the economic risk of loss with respect to the Partner Nonrecourse Debt to which the Partner Nonrecourse Deductions are attributable in accordance with Treasury Regulations Section 1.704-2(i).

(g) Section 754 Adjustments. To the extent an adjustment to the adjusted tax basis of any asset of the Partnership under Code Section 734(b) or Code Section 743(b) is required, pursuant to Treasury Regulations Section 1.704-1(b)(2)(iv)(m), to be taken into account in determining Capital Accounts, the amount of the adjustment to the Capital Accounts shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases the basis of the asset) and that gain or loss shall be specially allocated to the Partners in a manner consistent with the manner in which their Capital Accounts are required to be adjusted pursuant to that Section of the Treasury Regulations.

(h) Section 481 Adjustments. Any allocable items of income, gain, expense, deduction or credit required to be made by Section 481 of the Code as the result of the sale, transfer, exchange or issuance of a Partnership Interest will be specially allocated to the Partner receiving said Partnership Interest whether such items are positive or negative in amount.

3.5. Curative Allocations. The "***Basic Regulatory Allocations***" consist of (i) the allocations pursuant to Section 3.2(c), and (ii) the allocations pursuant to Sections 3.4. Notwithstanding any other provision of this Agreement, the Basic Regulatory Allocations shall be taken into account in allocating items of income, gain, loss and deduction among the Partners so that, to the extent possible, the net amount of the allocations of other items and the Basic Regulatory Allocations to each Partner shall be equal to the net amount that would have been allocated to each such Partner if the Basic Regulatory Allocations had not occurred. For purposes of applying the foregoing sentence, allocations pursuant to this Section 3.5 shall be made with respect to allocations pursuant to Section 3.4 (g) and (h) only to the extent that it is reasonably determined that those allocations will otherwise be inconsistent with the economic agreement among the Partners. To the extent that a special allocation under Section 3.4 is determined not to comply with applicable Treasury Regulations, then the Partners intend that the items shall be allocated in accordance with the Partners' varying Percentage Interests throughout each tax year during which such items are recognized for tax purposes.

3.6. Code Section 704(c) Allocations. In accordance with Code Section 704(c) and the Treasury Regulations thereunder, income, gain, loss and deduction with respect to property contributed to the capital of the Partnership shall, solely for tax purposes, be allocated among the Partners so as to take account of any variation at the time of the contribution between the tax basis of the property to the Partnership and the fair market value of that property. Except as otherwise provided herein, any elections or other decisions relating to those allocations shall be made by the General Partner in any manner that reasonably reflects the purpose and intent of this Agreement. Allocations of income, gain, loss and deduction pursuant to this Section 3.6 are solely for purposes of federal, state and local taxes and shall not affect, or in any way be taken into account in computing, the Capital Account of any Partner or the share

of Profits, Losses, other tax items or distributions of any Partner pursuant to any provision of this Agreement.

3.7. Capital Accounts.

(a) Maintenance of Capital Accounts. The Partnership shall establish and maintain a separate capital account (***"Capital Account"***) for each Partner in accordance with the rules of Treasury Regulations Section 1.704-1(b)(2)(iv), subject to and in accordance with the provisions set forth in this Section 3.7.

(i) The Capital Account balance of each Partner shall be credited (increased) by (A) the amount of cash contributed by that Partner to the capital of the Partnership, (B) the fair market value of property contributed by that Partner to the capital of the Partnership (net of liabilities secured by that contributed property that the Partnership assumes or takes subject to under Code Section 752), and (C) that Partner's allocable share of Profits and any items in the nature of income or gain which are specially allocated pursuant to Sections 3.4 and 3.5; and

(ii) The Capital Account balance of each Partner shall be debited (decreased) by (A) the amount of cash distributed to that Partner by the Partnership, (B) the fair market value of property distributed to that Partner by the Partnership (net of liabilities secured by that distributed property that such Partner assumes or takes subject to under Code Section 752), (C) that Partner's allocable share of expenditures of the Partnership described in Code Section 705(a)(2)(B), and (D) that Partner's allocable share of Losses and any items in the nature of expenses or losses which are specially allocated pursuant to Sections 3.2, 3.4 and 3.5.

The provisions of this Section 3.7 and the other provisions of this Agreement relating to the maintenance of Capital Accounts have been included in this Agreement to comply with Code Section 704(b) and the Treasury Regulations promulgated thereunder and will be interpreted and applied in a manner consistent with those provisions. The General Partner may modify the manner in which the Capital Accounts are maintained under this Section 3.7 in order to comply with those provisions, as well as upon the occurrence of events that might otherwise cause this Agreement not to comply with those provisions.

(b) Negative Capital Accounts. If any Partner has a deficit balance in its Capital Account, that Partner shall have no obligation to restore that negative balance or to make any Capital Contribution by reason thereof, and that negative balance shall not be considered an asset of the Partnership or of any Partner.

(c) Interest. No interest shall be paid by the Partnership on Capital Contributions or on balances in Capital Accounts.

(d) No Withdrawal. No Partner shall be entitled to withdraw any part of his/her/its Capital Contribution or his/her/its Capital Account or to receive any distribution from the Partnership, except as provided in Section 3.9 and Article 5.

(e) Loans From Partners. Loans by a Partner to the Partnership shall not be considered Capital Contributions.

(f) Revaluations. The Capital Accounts of the Partners shall not be "booked-up" or "booked-down" to their fair market values under Treasury Regulations Section 1.704(c)-1(b)(2)(iv)(f) or otherwise.

3.8. Distributive Share for Tax Purpose. All items of income, deduction, gain, loss or credit that are recognized for federal income tax purposes will be allocated among the Partners in accordance with the allocations of Profits and Losses hereunder as determined by the General Partner in its sole and unfettered discretion. Notwithstanding the foregoing, the General Partner may (i) as to each New Issue, specially allocate to the Partners who were allocated New Issue Profit from that New Issue any short-term capital gains realized during the Fiscal Year upon the disposition of such New Issue during that Fiscal Year, and (ii) specially allocate items of gain (or loss) to Partners who withdraw capital during any Fiscal Year in a manner designed to ensure that each withdrawing Partner is allocated gain (or loss) in an amount equal to the difference between that Partner's Capital Account balance (or portion thereof being withdrawn) at the time of the withdrawal and the tax basis for his/her/ its Partnership Interest at that time (or proportionate amount thereof); *provided, however,* that the General Partner may, without the consent of any other Partner, (a) alter the allocation of any item of taxable income, gain, loss, deduction or credit in any specific instance where the General Partner, in its sole and unfettered discretion, determines such alteration to be necessary or appropriate to avoid a materially inequitable result *(e.g.,* where the allocation would create an inappropriate tax liability); and/or (b) adopt whatever other method of allocating tax items as the General Partner determines is necessary or appropriate in order to be consistent with the spirit and intent of the Treasury Regulations under Code Sections 704(b) and 704(c).

3.9. Distributions.

(a) General. The General Partner may make such pro rata or non-pro rata distributions as it may determine in its sole and unfettered discretion, without being limited to current or accumulated income or gains, but no such distribution shall be made out of funds required to make current payments on Partnership indebtedness; provided, however, that the General Partner may not make non-pro rata distributions under this Section 3.9(a) during an NAV Ratio Trigger Period without the consent of the Class B Limited Partner (in the case of a Class B NAV Ratio Trigger Period) and/or the Class C Limited Partner (in the case of a Class C NAV Ratio Trigger Period); provided, further this provision should not be interpreted to limit in any way the General Partner's ability to make non-pro rata tax distributions under Section 3.9(c) and Section 3.9(f). The Partnership has entered into one or more credit facilities with financial institutions that may limit the amount and timing of distributions to the Partners. Thus, the Partners acknowledge that distributions from the Partnership may be limited. Any distributions made to the Class B Limited Partner or the Class C Limited Partner pursuant to Section 3.9(b) shall reduce distributions otherwise allocable to such Partners under this Section 3.9(a) until such aggregate reductions are equal to the aggregate distributions made to the Class B Partners and the Class C Partners under Section 3.9(b).

(b) Priority Distributions. Prior to the distribution of any amounts to Partners pursuant to Section 3.9(a), and notwithstanding any other provision in this Agreement to the contrary, the Partnership shall make the following distributions ("***Priority Distributions***") pro-rata among the Class B Limited Partner and the Class C Limited Partner in accordance with their relative Percentage Interests:

(i) No later than March 31st of each calendar year, commencing March 31, 2017, an amount equal to $1,600,000.00;

(ii) No later than March 31st of each year, commencing March 31, 2017, an amount equal to three percent (3%) of the Partnership's investment gain for the prior year, as reflected in the Partnership's books and records within ledger account number 90100 plus three percent (3%) of the gross realized investment gains for the prior year of Highland Select Equity Fund, as reflected in its books and records;

(iii) No later than March 31st of each year, commencing March 31, 2017, an amount equal to ten percent (10%) of the Partnership's Operating Cash Flow for the prior year; and

(iv) No later than December 24th of each year, commencing December 24, 2016, an amount equal to the aggregate annual principal and interest payments on the Purchase Notes for the then current year.

(c) Tax Distributions. The General Partner may, in its sole discretion, declare and make cash distributions pursuant hereto to the Partners to allow the federal and state income tax attributable to the Partnership's taxable income that is passed through the Partnership to the Partners to be paid by such Partners (a "***Tax Distribution***"). The General Partner may, in its discretion, make Tax Distributions to the Founding Partner Group without also making Tax Distributions to other Partners; provided, however, that if the General Partner makes Tax Distributions to the Founding Partner Group, Tax Distributions must also be made the Class B Limited Partner to the extent the Class B Limited Partner provides the Partnership with documentation showing it is subject to an entity-level federal income tax obligation. Notwithstanding anything else in this Agreement, the General Partner may declare and pay Tax Distributions even if such Tax Distributions cause the Partnership to be unable to make Priority Distributions under Section 3.9(b).

(d) Payments Not Deemed Distributions. Any amounts paid pursuant to Sections 4.1(e) or 4.1(h) shall not be deemed to be distributions for purposes of this Agreement.

(e) Withheld Amounts. Notwithstanding any other provision of this Section 3.9 to the contrary, each Partner hereby authorizes the Partnership to withhold and to pay over, or otherwise pay, any withholding or other taxes payable by the Partnership with respect to that Partner as a result of that Partner's participation in the Partnership. If and to the extent that the Partnership shall be required to withhold or pay any such taxes, that Partner shall be deemed for all purposes of this Agreement to have received a payment from the Partnership as of the time that withholding or tax is paid, which payment shall be deemed to be a distribution with respect to that Partner's Partnership Interest to the extent that the Partner (or any successor to that Partner's Partnership Interest) is then entitled to receive a distribution. To the extent that the aggregate of such payments to a Partner for any period exceeds the distributions to which that Partner is entitled for that period, the amount of such excess shall be considered a loan from the Partnership to that Partner. Such loan shall bear interest (which interest shall be treated as an item of income to the Partnership) at the "Applicable Federal Rate" (as defined in the Code), as determined hereunder from time to time, until discharged by that Partner by repayment, which may be made in the sole and unfettered discretion of the General Partner out of distributions to which that Partner would otherwise be subsequently entitled. Any withholdings authorized by this Section 3.9(d) shall be made at the maximum applicable statutory rate under the applicable tax law unless the General Partner shall have received an opinion of counsel or other evidence satisfactory to the General Partner to the effect that a lower rate is applicable, or that no withholding is applicable.

(f) Special Tax Distributions. The Partnership shall, upon request of such Founding Partner, make distributions to the Founding Partners (or loans, at the election of the General Partner) in an amount necessary for each of them to pay their respective federal income tax obligations incurred through the effective date of the Third Amended and Restated Agreement of Limited Partnership of Highland Capital Management, L.P., the predecessor to this Agreement.

(g) Tolling of Priority Distributions. In the event of a "Honis Trigger Event," as defined in the Second Amended Buy-Sell and Redemption Agreement, the Partnership shall not make any distributions, including priority distributions under Section 3.9(b), to the Class B Limited Partner or the Class C Limited Partner until such time as a replacement trust administrator, manager and general partner,

as applicable, acceptable to the Partnership in its sole discretion, as indicated by an affirmative vote of consent by a Majority Interest, shall be appointed to the Class B Limited Partner/Class C Limited Partner and any of its direct or indirect owners that have governing documents directly affected by a Honis Trigger Event.

3.10. Compensation and Reimbursement of General Partner.

(a) Compensation. The General Partner and any Affiliate of the General Partner shall receive no compensation from the Partnership for services rendered pursuant to this Agreement or any other agreements unless approved by a Majority Interest; provided, however, that no compensation above five million dollars per year may be approved, even by a Majority Interest, during a NAV Ratio Trigger Period.

(b) Reimbursement for Expenses. In addition to amounts paid under other Sections of this Agreement, the General Partner and its Affiliates shall be reimbursed for all expenses, disbursements, and advances incurred or made, and all fees, deposits, and other sums paid in connection with the organization and operation of the Partnership, the qualification of the Partnership to do business, and all related matters.

3.11. Books, Records, Accounting, and Reports.

(a) Records and Accounting. The General Partner shall keep or cause to be kept appropriate books and records with respect to the Partnership's business, which shall at all times be kept at the principal office of the Partnership or such other office as the General Partner may designate for such purpose. The books of the Partnership shall be maintained for financial reporting purposes on the accrual basis or on a cash basis, as the General Partner shall determine in its sole and unfettered discretion, in accordance with generally accepted accounting principles and applicable law. Upon reasonable request, the Class B Limited Partner or the Class C Limited Partner may inspect the books and records of the Partnership.

(b) Fiscal Year. The fiscal year of the Partnership shall be the calendar year unless otherwise determined by the General Partner in its sole and unfettered discretion.

(c) Other Information. The General Partner may release information concerning the operations of the Partnership to any financial institution or other Person that has loaned or may loan funds to the Partnership or the General Partner or any of its Affiliates, and may release such information to any other Person for reasons reasonably related to the business and operations of the Partnership or as required by law or regulation of any regulatory body.

(d) Distribution Reporting to Class B Limited Partner and Class C Limited Partner. Upon request, the Partnership shall provide the Class B Limited Partner and/or the Class C Limited Partner information on any non-pro rata distributions made under Section 3.9 to Partners other than the Partner requesting the information.

3.12. Tax Matters.

(a) Tax Returns. The General Partner shall arrange for the preparation and timely filing of all returns of Partnership income, gain, loss, deduction, credit and other items necessary for federal, state and local income tax purposes. The General Partner shall deliver to each Partner as copy of his/her/its IRS Form K-1 as soon as practicable after the end of the Fiscal Year, but in no event later than October 1. The classification, realization, and recognition of income, gain, loss, deduction, credit and

other items shall be on the cash or accrual method of accounting for federal income tax purposes, as the General Partner shall determine in its sole and unfettered discretion. The General Partner in its sole and unfettered discretion may pay state and local income taxes attributable to operations of the Partnership and treat such taxes as an expense of the Partnership.

(b) Tax Elections. Except as otherwise provided herein, the General Partner shall, in its sole and unfettered discretion, determine whether to make any available tax election.

(c) Tax Controversies. Subject to the provisions hereof, the General Partner is designated the Tax Matters Partner (as defined in Code Section 6231), and is authorized and required to represent the Partnership, at the Partnership's expense, in connection with all examinations of the Partnership's affairs by tax authorities, including resulting administrative and judicial proceedings, and to expend Partnership funds for professional services and costs associated therewith. Each Partner agrees to cooperate with the General Partner in connection with such proceedings.

(d) Taxation as a Partnership. No election shall be made by the Partnership or any Partner for the Partnership to be excluded from the application of any of the provisions of Subchapter K, Chapter 1 of Subtitle A of the Code or from any similar provisions of any state tax laws.

ARTICLE 4

RIGHTS AND OBLIGATIONS OF PARTNERS

4.1. Rights and Obligations of the General Partner. In addition to the rights and obligations set forth elsewhere in this Agreement, the General Partner shall have the following rights and obligations:

(a) Management. The General Partner shall conduct, direct, and exercise full control of over all activities of the Partnership. Except as otherwise expressly provided in this Agreement, all management powers over the business and affairs of the Partnership shall be exclusively vested in the General Partner, and Limited Partners shall have no right of control over the business and affairs of the Partnership. In addition to the powers now or hereafter granted to a general partner of a limited partnership under applicable law or that are granted to the General Partner under any provision of this Agreement, the General Partner shall have full power and authority to do all things deemed necessary or desirable by it to conduct the business of the Partnership, including, without limitation: (i) the determination of the activities in which the Partnership will participate; (ii) the performance of any and all acts necessary or appropriate to the operation of any business of the Partnership (including, without limitation, purchasing and selling any asset, any debt instruments, any equity interests, any commercial paper, any note receivables and any other obligations); (iii) the procuring and maintaining of such insurance as may be available in such amounts and covering such risks as are deemed appropriate by the General Partner; (iv) the acquisition, disposition, sale, mortgage, pledge, encumbrance, hyphothecation, of exchange of any or all of the assets of the Partnership; (v) the execution and delivery on behalf of, and in the name of the Partnership, deeds, deeds of trust, notes, leases, subleases, mortgages, bills of sale and any and all other contracts or instruments necessary or incidental to the conduct of the Partnership's business; (vi) the making of any expenditures, the borrowing of money, the guaranteeing of indebtedness and other liabilities, the issuance of evidences of indebtedness, and the incurrence of any obligations it deems necessary or advisable for the conduct of the activities of the Partnership, including, without limitation, the payment of compensation and reimbursement to the General Partner and its Affiliates pursuant to Section 3.10; (vii) the use of the assets of the Partnership (including, without limitation, cash on hand) for any Partnership purpose on any terms it sees fit, including, without limitation, the financing of operations of the Partnership, the lending of funds to other Persons, and the repayment of obligations

of the Partnership; (viii) the negotiation, execution, and performance of any contracts that it considers desirable, useful, or necessary to the conduct of the business or operations of the Partnership or the implementation of the General Partner's powers under this Agreement; (ix) the distribution of Partnership cash or other assets; (x) the selection, hiring and dismissal of employees, attorneys, accountants, consultants, contractors, agents and representatives and the determination of their compensation and other teens of employment or hiring; (xi) the formation of any further limited or general partnerships, joint ventures, or other relationships that it deems desirable and the contribution to such partnerships, ventures, or relationships of assets and properties of the Partnership; and (xii) the control of any matters affecting the rights and obligations of the Partnership, including, without limitation, the conduct of any litigation, the incurring of legal expenses, and the settlement of claims and suits.

(b) Certificate of Limited Partnership. The General Partner caused the Certificate of Limited Partnership of the Partnership to be filed with the Secretary of State of Delaware as required by the Delaware Act and shall cause to be filed such other certificates or documents (including, without limitation, copies, amendments, or restatements of this Agreement) as may be determined by the General Partner to be reasonable and necessary or appropriate for the formation, qualification, or registration and operation of a limited partnership (or a partnership in which Limited Partners have limited liability) in the State of Delaware and in any other state where the Partnership may elect to do business.

(c) Reliance by Third Parties. Notwithstanding any other provision of this Agreement to the contrary, no lender or purchaser or other Person, including any purchaser of property from the Partnership or any other Person dealing with the Partnership, shall be required to verify any representation by the General Partner as to its authority to encumber, sell, or otherwise use any assess or properties of the Partnership, and any such lender, purchaser, or other Person shall be entitled to rely exclusively on such representations and shall be entitled to deal with the General Partner as if it were the sole party in interest therein, both legally and beneficially. Each Limited Partner hereby waives any and all defenses or other remedies that may be available against any such lender, purchaser, or other Person to contest, negate, or disaffirm any action of the General Partner in connection with any such sale or financing. In no event shall any Person dealing with the General Partner or the General Partner's representative with respect to any business or property of the Partnership be obligated to ascertain that the terms of this Agreement have been complied with, and each such Person shall be entitled to rely on the assumptions that the Partnership has been duly formed and is validly in existence. In no event shall any such Person be obligated to inquire into the necessity or expedience of any act or action of the General Partner or the General Partner's representative, and every contract, agreement, deed, mortgage, security agreement, promissory note, or other instrument or document executed by the General Partner or the General Partner's representative with respect to any business or property of the Partnership shall be conclusive evidence in favor of any and every Person relying thereon or claiming thereunder that (i), at the time of the execution and delivery thereof, this Agreement was in full force and effect; (ii) such instrument or document was duly executed in accordance with the terms and provisions of this Agreement and is binding upon the Partnership; and (iii) the General Partner or the General Partner's representative was duly authorized and empowered to execute and deliver any and every such instrument or document for and on behalf of the Partnership.

(d) Partnership Funds. The funds of the Partnership shall be deposited in such account or accounts as are designated by the General Partner. The General Partner may, in its sole and unfettered discretion, deposit funds of the Partnership in a central disbursing account maintained by or in the name of the General Partner, the Partnership, or any other Person into which funds of the General Partner, the Partnership, on other Persons are also deposited; *provided, however,* at all times books of account are maintained that show the amount of funds of the Partnership on deposit in such account and interest accrued with respect to such funds as credited to the Partnership. The General Partner may use the funds of the Partnership as compensating balances for its benefit; *provided, however,* such funds do

not directly or indirectly secure, and are not otherwise at risk on account of, any indebtedness or other obligation of the General Partner or any director, officer, employee, agent, representative, or Affiliate thereof. Nothing in this Section 4.1(d) shall be deemed to prohibit or limit in any manner the right of the Partnership to lend funds to the General Partner or any Affiliate thereof pursuant to Section 4.1(e)(i). All withdrawals from or charges against such accounts shall be made by the General Partner or by its representatives. Funds of the Partnership may be invested as determined by the General Partner in accordance with the terms and provisions of this Agreement.

(e) Loans to or from General Partner; Contracts with Affiliates; Joint Ventures.

(i) The General Partner or any Affiliate of the General Partner may lend to the Partnership funds needed by the Partnership for such periods of time as the General Partner may determine; *provided, however,* the General Partner or its Affiliate may not charge the Partnership interest at a rate greater than the rate (including points or other financing charges or fees) that would be charged the Partnership (without reference to the General Partner's financial abilities or guaranties) by unrelated lenders on comparable loans. The Partnership shall reimburse the General Partner or its Affiliate, as the case may be, for any costs incurred by the General Partner or that Affiliate in connection with the borrowing of funds obtained by the General Partner or that Affiliate and loaned to the Partnership. The Partnership may loan funds to the General Partner and any member of the Founding Partner Group at the General Partner's sole and exclusive discretion.

(ii) The General Partner or any of its Affiliates may enter into an agreement with the Partnership to render services, including management services, for the Partnership. Any service rendered for the Partnership by the General Partner or any Affiliate thereof shall be on terms that are fair and reasonable to the Partnership.

(iii) The Partnership may Transfer any assets to joint ventures or other partnerships in which it is or thereby becomes a participant upon terms and subject to such conditions consistent with applicable law as the General Partner deems appropriate; provided, however, that the Partnership may not transfer any asset to the General Partner or one of its Affiliates during any NAV Ratio Trigger Period for consideration less than such asset's fair market value.

(f) Outside Activities' Conflicts of Interest. The General Partner or any Affiliate thereof and any director, officer, employee, agent, or representative of the General Partner or any Affiliate thereof shall be entitled to and may have business interests and engage in business activities in addition to those relating to the Partnership, including, without limitation, business interests and activities in direct competition with the Partnership. Neither the Partnership nor any of the Partners shall have any rights by virtue of this Agreement or the partnership relationship created hereby in any business ventures of the General Partner, any Affiliate thereof, or any director, officer, employee, agent, or representative of either the General Partner or any Affiliate thereof.

(g) Resolution of Conflicts of Interest. Unless otherwise expressly provided in this Agreement or any other agreement contemplated herein, whenever a conflict of interest exists or arises between the General Partner or any of its Affiliates, on the one hand, and the Partnership or any Limited Partner, on the other hand, any action taken by the General Partner, in the absence of bad faith by the General Partner, shall not constitute a breach of this Agreement or any other agreement contemplated herein or a breach of any standard of care or duty imposed herein or therein or under the Delaware Act or any other applicable law, rule, or regulation.

(h) Indemnification. The Partnership shall indemnify and hold harmless the General Partner and any director, officer, employee, agent, or representative of the General Partner (collectively,

the "***GP Party***"), against all liabilities, losses, and damages incurred by any of them by reason of any act performed or omitted to be performed in the name of or on behalf of the Partnership, or in connection with the Partnership's business, including, without limitation, attorneys' fees and any amounts expended in the settlement of any claims or liabilities, losses, or damages, to the fullest extent permitted by the Delaware Act; *provided, however,* the Partnership shall have no obligation to indemnify and hold harmless a GP Party for any action or inaction that constitutes gross negligence or willful or wanton misconduct. The Partnership, in the sole and unfettered discretion of the General Partner, may indemnify and hold harmless any Limited Partner, employee, agent, or representative of the Partnership, any Person who is or was serving at the request of the Partnership acting through the General Partner as a director, officer, partner, trustee, employee, agent, or representative of another corporation, partnership, joint venture, trust, or other enterprise, and any other Person to the extent determined by the General Partner in its sole and unfettered discretion, but in no event shall such indemnification exceed the indemnification permitted by the Delaware Act. Notwithstanding anything to the contrary in this Section 4.1(h) or elsewhere in this Agreement, no amendment to the Delaware Act after the date of this Agreement shall reduce or limit in any manner the indemnification provided for or permitted by this Section 4.1(h) unless such reduction or limitation is mandated by such amendment for limited partnerships formed prior to the enactment of such amendment. In no event shall Limited Partners be subject to personal liability by reason of the indemnification provisions of this Agreement.

(i) Liability of General Partner.

(i) Neither the General Partner nor its directors, officers, employees, agents, or representatives shall be liable to the Partnership or any Limited Partner for errors in judgment or for any acts or omissions that do not constitute gross negligence or willful or wanton misconduct.

(ii) The General Partner may exercise any of the powers granted to it by this Agreement and perform any of the duties imposed upon it hereunder either directly or by or through its directors, officers, employees, agents, or representatives, and the General Partner shall not be responsible for any misconduct or negligence on the part of any agent or representative appointed by the General Partner.

(j) Reliance by General Partner.

(i) The General Partner may rely and shall be protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, bond, debenture, or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties.

(ii) The General Partner may consult with legal counsel, accountants, appraisers, management consultants, investment bankers, and other consultants and advisers selected by it, and any opinion of any such Person as to matters which the General Partner believes to be within such Person's professional or expert competence shall be full and complete authorization and protection in respect of any action taken or suffered or omitted by the General Partner hereunder in good faith and in accordance with such opinion.

(k) The General Partner may, from time to time, designate one or more Persons to be officers of the Partnership. No officer need be a Partner. Any officers so designated shall have such authority and perform such duties as the General Partner may, from time to time, delegate to them. The General Partner may assign titles to particular officers, including, without limitation, president, vice president, secretary, assistant secretary, treasurer and assistant treasurer. Each officer shall hold office until such Person's successor shall be duly designated and shall qualify or until such Person's death or

until such Person shall resign or shall have been removed in the manner hereinafter provided. Any number of offices may be held by the same Person. The salaries or other compensation, if any, of the officers and agents of the Partnership shall be fixed from time to time by the General Partner. Any officer may be removed as such, either with or without cause, by the General Partner whenever in the General Partner's judgment the best interests of the Partnership will be served thereby. Any vacancy occurring in any office of the Partnership may be filled by the General Partner.

4.2. Rights and Obligations of Limited Partners. In addition to the rights and obligations of Limited Partners set forth elsewhere in this Agreement, Limited Partners shall have the following rights and obligations:

(a) Limitation of Liability. Limited Partners shall have no liability under this Agreement except as provided herein or under the Delaware Act.

(b) Management of Business. No Limited Partner shall take part in the control (within the meaning of the Delaware Act) of the Partnership's business, transact any business in the Partnership's name, or have the power to sign documents for or otherwise bind the Partnership other than as specifically set forth in this Agreement.

(c) Return of Capital. No Limited Partner shall be entitled to the withdrawal or return of its Capital Contribution except to the extent, if any, that distributions made pursuant to this Agreement or upon termination of the Partnership may be considered as such by law and then only to the extent provided for in this Agreement.

(d) Second Amended Buy-Sell and Redemption Agreement. Each Limited Partner shall comply with the terms and conditions of the Second Amended Buy-Sell and Redemption Agreement.

(e) Default on Priority Distributions. If the Partnership fails to timely pay Priority Distributions pursuant to Section 3.9(b), and the Partnership does not subsequently make such Priority Distribution within ninety days of its due date, the Class B Limited Partner or the Class C Limited Partner may require the Partnership to liquidate publicly traded securities held by the Partnership or Highland Select Equity Master Fund, L.P., a Delaware limited partnership controlled by the Partnership; provided, however, that the General Partner may in its sole discretion elect instead to liquidate other non-publicly traded securities owned by the Partnership in order to satisfy the Partnership's obligations under Section 3.9(b) and this Section 4.2(e). In either case, Affiliates of the General Partner shall have the right of first offer to purchase any securities liquidated under this Section 4.2(e).

4.3. Transfer of Partnership Interests.

(a) Transfer. No Partnership Interest shall be Transferred, in whole or in part, except in accordance with the terms and conditions set forth in this Section 4.3 and the Second Amended Buy-Sell and Redemption Agreement. Any Transfer or purported Transfer of any Partnership Interest not made in accordance with this Section 4.3 and the Second Amended Buy-Sell and Redemption Agreement shall be null and void. An alleged transferee shall have no right to require any information or account of the Partnership's transactions or to inspect the Partnership's books. The Partnership shall be entitled to treat the alleged transferor of a Partnership Interest as the absolute owner thereof in all respects, and shall incur no liability to any alleged transferee for distributions to the Partner owning that Partnership Interest of record or for allocations of Profits, Losses, deductions or credits or for transmittal of reports and notices required to be given to holders of Partnership Interests.

(b) Transfers by General Partner. The General Partner may Transfer all, but not less than all, of its Partnership Interest to any Person only with the approval of a Majority Interest; provided, however, that the General Partner may not Transfer its Partnership Interest during any NAV Ratio Trigger Period except to the extent such Transfers are for estate planning purposes or resulting from the death of the individual owner of the General Partner. Any Transfer by the General Partner of its Partnership Interest under this Section 4.3(b) to an Affiliate of the General Partner or any other Person shall not constitute a withdrawal of the General Partner under Section 4.5(a), Section 5.1(b), or any other provision of this Agreement. If any such Transfer is deemed to constitute a withdrawal under such provisions or otherwise and results in the dissolution of the Partnership under this Agreement or the laws of any jurisdiction to which the Partnership of this Agreement is subject, the Partners hereby unanimously consent to the reconstitution and continuation of the Partnership immediately following such dissolution, pursuant to Section 5.2.

(c) Transfers by Limited Partners. The Partnership Interest of a Limited Partner may not be Transferred without the consent of the General Partner (which consent may be withheld in the sole and unfettered discretion of the General Partner), and in accordance with the Second Amended Buy-Sell and Redemption Agreement.

(d) Distributions and Allocations in Respect of Transferred Partnership Interests. If any Partnership Interest is Transferred during any Fiscal Year in compliance with the provisions of Article 4 and the Second Amended Buy-Sell and Redemption Agreement, Profits, Losses, and all other items attributable to the transferred interest for that period shall be divided and allocated between the transferor and the transferee by taking into account their varying interests during the period in accordance with Code Section 706(d), using any conventions permitted by law and selected by the General Partner; provided that no allocations shall be made under this Section 4.3(d) that would affect any special allocations made under Section 3.4. All distributions declared on or before the date of that Transfer shall be made to the transferor. Solely for purposes of making such allocations and distributions, the Partnership shall recognize that Transfer not later than the end of the calendar month during which it is given notice of that Transfer; ***provided, however,*** if the Partnership does not receive a notice stating the date that Partnership Interest was Transferred and such other information as the General Partner may reasonably require within thirty (30) days after the end of the Fiscal Year during which the Transfer occurs, then all of such items shall be allocated, and all distributions shall be made, to the person who, according to the books and records of the Partnership, on the last day of the Fiscal Year during which the Transfer occurs, was the owner of the Partnership Interest. Neither the Partnership nor any Partner shall incur any liability for making allocations and distributions in accordance with the provisions of this Section 4.3(d), whether or not any Partner or the Partnership has knowledge of any Transfer of ownership of any Partnership Interest.

(e) Forfeiture of Partnership Interests Pursuant to the Contribution Note. In the event any Class B Limited Partnership Interests are forfeited in favor of the Partnership as a result of any default on the Contribution Note, the Capital Accounts and Percentage Interests associated with such Class B Limited Partnership Interests shall be allocated pro rata among the Class A Partners. The Priority Distributions in Section 3.9(b) made after the date of such forfeiture shall each be reduced by an amount equal to the ratio of the Percentage Interest associated with the Class B Limited Partnership Interest transferred pursuant to this Section 4.3(e) over the aggregate Percentage Interests of all Class B Limited Partnership Interests and Class C Limited Partnership Interests, calculated immediately prior to any forfeiture of such Class B Limited Partnership Interest.

(f) Transfers of Partnership Interests Pursuant to the Purchase Notes. Notwithstanding any other provision in this Agreement, the Partnership shall respect, and the General Partner hereby provides automatic consent for, any transfers (in whole or transfers of partial interests) of

the Class C Limited Partnership Interests, or a portion thereof, if such transfer occurs as a result of a default on the Purchase Notes. Upon the transfer of any Class C Limited Partnership Interest to any member of the Founding Partner Group (or their assigns), such Class C Limited Partnership Interest shall automatically convert to a Class A Partnership Interest. The Priority Distributions in Section 3.9(b) shall each be reduced by an amount equal to the ratio of the Percentage Interest associated with the transferred Class C Limited Partnership Interest over the aggregate Percentage Interests of all Class B Limited Partnership Interests and Class C Limited Partnership Interests, calculated immediately prior to any transfer of such Class C Limited Partnership Interest.

4.4. Issuances of Partnership Interests to New and Existing Partners.

(a) Issuance of Partnership Interests to New Limited Partners. The General Partner may admit one or more additional Persons as Limited Partners ("Additional Limited Partners") to the Partnership at such times and upon such terms as it deems appropriate in its sole and unfettered discretion; provided, however, that the General Partner may only admit additional Persons as Limited Partners in relation to the issuance of equity incentives to key employees of the Partnership; provided, further that the General Partner may not issue such equity incentives to the extent they entitle the holders, in the aggregate, to a Percentage Interest in excess of twenty percent without the consent of the Class B Limited Partner and the Class C Limited Partner. All Class A Limited Partners, the Class B Limited Partner and the Class C Limited Partner shall be diluted proportionately by the issuance of such limited partnership interests. No Person may be admitted to the Partnership as a Limited Partner until he/she/it executes an Addendum to this Agreement in the form attached as Exhibit B (which may be modified by the General Partner in its sole and unfettered discretion) and an addendum to the Second Amended Buy-Sell and Redemption Agreement.

(b) Issuance of an Additional Partnership Interest to an Existing Partner. The General Partner may issue an additional Partnership Interest to any existing Partner at such times and upon such terms as it deems appropriate in its sole and unfettered discretion. Upon the issuance of an additional Partnership Interest to an existing Partner, the Percentage Interests of the members of the Founding Partner Group shall be diluted proportionately. Any additional Partnership Interest shall be subject to all the terms and conditions of this Agreement and the Second Amended Buy-Sell and Redemption Agreement.

4.5. Withdrawal of General Partner

(a) Option. In the event of the withdrawal of the General Partner from the Partnership, the departing General Partner (the "***Departing Partner***") shall, at the option of its successor (if any) exercisable prior to the effective date of the departure of that Departing Partner, promptly receive from its successor in exchange for its Partnership Interest as the General Partner, an amount in cash equal to its Capital Account balance, determined as of the effective date of its departure.

(b) Conversion. If the successor to a Departing Partner does not exercise the option described in Section 4.5(a), the Partnership Interest of the Departing Partner as the General Partner of the Partnership shall be converted into a Partnership Interest as a Limited Partner.

4.6. Admission of Substitute Limited Partners and Successor General Partner.

(a) Admission of Substitute Limited Partners. A transferee (which may be the heir or legatee of a Limited Partner) or assignee of a Limited Partner's Partnership Interest shall be entitled to receive only the distributive share of the Partnership's Profits, Losses, deductions, and credits attributable to that Partnership Interest. To become a substitute Limited Partner (a "***Substitute Limited Partner***"),

that transferee or assignee shall (1) obtain the consent of the General Partner (which consent may be withheld in the sole and unfettered discretion of the General Partner), (ii) comply with all the requirements of this Agreement and the Second Amended Buy-Sell and Redemption Agreement with respect to the Transfer of the Partnership Interest at issue, and (iii) execute an Addendum to this Agreement in the form attached as Exhibit B (which may be modified by the General Partner in its sole and unfettered discretion) and an addendum to the Second Amended Buy-Sell and Redemption Agreement. Upon admission of a Substitute Limited Partner, that Limited Partner shall be subject to all of the restrictions applicable to, shall assume all of the obligations of, and shall attain the status of a Limited Partner under and pursuant to this Agreement with respect to the Partnership Interest held by that Limited Partner.

(b) Admission of Successor General Partner. A successor General Partner selected pursuant to Section 5.2 or the transferee of or successor to all of the Partnership Interest of the General Partner pursuant to Section 4.3(b) shall be admitted to the Partnership as the General Partner, effective as of the date of the withdrawal or removal of the predecessor General Partner or the date of Transfer of that predecessor's Partnership Interest.

(c) Action by General Partner. In connection with the admission of any substitute Limited Partner or successor General Partner or any additional Limited Partner, the General Partner shall have the authority to take all such actions as it deems necessary or advisable in connection therewith, including the amendment of Exhibit A and the execution and filing with appropriate authorities of any necessary documentation.

ARTICLE 5

DISSOLUTION AND WINDING UP

5.1. Dissolution. The Partnership shall be dissolved upon:

(a) The withdrawal, bankruptcy, or dissolution of the General Partner, or any other event that results in its ceasing to be the General Partner (other than by reason of a Transfer pursuant to Section 4.3(b));

(b) An election to dissolve the Partnership by the General Partner that is approved by the affirmative vote of a Majority Interest; *provided, however,* the General Partner may dissolve the Partnership without the approval of the Limited Partners in order to comply with Section 14 of the Second Amended Buy-Sell and Redemption Agreement; or

(c) Any other event that, under the Delaware Act, would cause its dissolution.

For purposes of this Section 5.1, the bankruptcy of the General Partner shall be deemed to have occurred when the General Partner: (i) makes a general assignment for the benefit of creditors; (ii) files a voluntary bankruptcy petition; (iii) becomes the subject of an order for relief or is declared insolvent in any federal or state bankruptcy or insolvency proceeding: (iv) files a petition or answer seeking a reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any law; (v) files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against the General Partner in a proceeding of the type described in clauses (i) through (iv) of this paragraph; (vi) seeks, consents to, or acquiesces in the appointment of a trustee, receiver, or liquidator of the General Partner or of all or any substantial part of the General Partner's properties; or (vii) one hundred twenty (120) days expire after the date of the commencement of a proceeding against the General Partner seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution, or

similar relief under any law if the proceeding has not been previously dismissed, or ninety (90) days expire after the date of the appointment, without the General Partner's consent or acquiescence, of a trustee, receiver, or liquidator of the General Partner or of all or any substantial part of the General Partner's properties if the appointment has not previously been vacated or stayed, or ninety (90) days expire after the date of expiration of a stay, if the appointment has not previously been vacated.

5.2. Continuation of the Partnership. Upon the occurrence of an event described in Section 5.1(a), the Partnership shall be deemed to be dissolved and reconstituted if a Majority Interest elect to continue the Partnership within ninety (90) days of that event. If no election to continue the Partnership is made within ninety (90) days of that event, the Partnership shall conduct only activities necessary to wind up its affairs. If an election to continue the Partnership is made upon the occurrence of an event described in Section 5.1(a), then:

(a) Within that ninety (90)-day period a successor General Partner shall be selected by a Majority Interest;

(b) The Partnership shall be deemed to be reconstituted and shall continue until the end of the term for which it is formed unless earlier dissolved in accordance with this Article 5;

(c) The interest of the former General Partner shall be converted to an interest as a Limited Partner; and

(d) All necessary steps shall be taken to amend or restate this Agreement and the Certificate of Limited Partnership, and the successor General Partner may for this purpose amend this Agreement and the Certificate of Limited Partnership, as appropriate, without the consent of any Partner.

5.3. Liquidation. Upon dissolution of the Partnership, unless the Partnership is continued under Section 5.2, the General Partner or, in the event the General Partner has been dissolved, becomes bankrupt (as defined in Section 5.1), or withdraws from the Partnership, a liquidator or liquidating committee selected by a Majority Interest, shall be the Liquidator. The Liquidator (if other than the General Partner) shall be entitled to receive such compensation for its services as may be approved by a Majority Interest. The Liquidator shall agree not to resign at any time without fifteen (15) days' prior written notice and (if other than the General Partner) may be removed at any time, with or without cause, by notice of removal approved by a Majority Interest. Upon dissolution, removal, or resignation of the Liquidator, a successor and substitute Liquidator (who shall have and succeed to all rights, powers, and duties of the original Liquidator) shall within thirty (30) days thereafter be selected by a Majority Interest. The right to appoint a successor or substitute Liquidator in the manner provided herein shall be recurring and continuing for so long as the functions and services of the Liquidator are authorized to continue under the provisions hereof, and every reference herein to the Liquidator shall be deemed to refer also to any such successor or substitute Liquidator appointed in the manner provided herein. Except as expressly provided in this Article 5, the Liquidator appointed in the manner provided herein shall have and may exercise, without further authorization or consent of any of the parties hereto, all of the powers conferred upon the General Partner under the terms of this Agreement (but subject to all of the applicable limitations, contractual and otherwise, upon the exercise of such powers) to the extent necessary or desirable in the good faith judgment of the Liquidator to carry out the duties and functions of the Liquidator hereunder for and during such period of time as shall be reasonably required in the good faith judgment of the Liquidator to complete the winding up and liquidation of the Partnership as provided herein. The Liquidator shall liquidate the assets of the Partnership and apply and distribute the proceeds of such liquidation in the following order of priority, unless otherwise required by mandatory provisions of applicable law:

(a) To the payment of the expenses of the terminating transactions including, without limitation, brokerage commission, legal fees, accounting fees and closing costs;

(b) To the payment of creditors of the Partnership, including Partners, in order of priority provided by law;

(c) To the Partners and assignees to the extent of, and in proportion to, the positive balances in their respective Capital Accounts as provided in Treasury Regulations Section 1.704-1(b)(2)(ii)(b)(2); *provided, however,* the Liquidator may place in escrow a reserve of cash or other assets of the Partnership for contingent liabilities in an amount determined by the Liquidator to be appropriate for such purposes; and

(d) To the Partners in proportion to their respective Percentage Interests.

5.4. Distribution in Kind. Notwithstanding the provisions of Section 5.3 that require the liquidation of the assets of the Partnership, but subject to the order of priorities set forth therein, if on dissolution of the Partnership the Liquidator determines that an immediate sale of part or all of the Partnership's assets would be impractical or would cause undue loss to the Partners and assignees, the Liquidator may defer for a reasonable time the liquidation of any assets except those necessary to satisfy liabilities of the Partnership (other than those to Partners) and/or may distribute to the Partners and assignees, in lieu of cash, as tenants in common and in accordance with the provisions of Section 5.3, undivided interests in such Partnership assets as the Liquidator deems not suitable for liquidation. Any such distributions in kind shall be subject to such conditions relating to the disposition and management of such properties as the Liquidator deems reasonable and equitable and to any joint operating agreements or other agreements governing the operation of such properties at such time. The Liquidator shall determine the fair market value of any property distributed in kind using such reasonable method of valuation as it may adopt.

5.5. Cancellation of Certificate of Limited Partnership. Upon the completion of the distribution of Partnership property as provided in Sections 5.3 and 5.4, the Partnership shall be terminated, and the Liquidator (or the General Partner and Limited Partners if necessary) shall cause the cancellation of the Certificate of Limited Partnership in the State of Delaware and of all qualifications and registrations of the Partnership as a foreign limited partnership in jurisdictions other **than** the State of Delaware and shall take such other actions as may be necessary to terminate the Partnership.

5.6. Return of Capital. The General Partner shall not be personally liable for the return of the Capital Contributions of Limited Partners, or any portion thereof, it being expressly understood that any such return shall be **made** solely from Partnership assets.

5.7. Waiver of Partition. Each Partner hereby waives any rights to partition of the Partnership property.

ARTICLE 6

GENERAL PROVISIONS

6.1. Amendments to Agreement. The General Partner may amend this Agreement without the consent of any Partner if the General Partner reasonably determines that such amendment is necessary and appropriate; *provided, however, any* action taken by the General Partner shall be subject to its fiduciary duties to the Limited Partners under the Delaware Act; provided further that any amendments

that adversely affect the Class B Limited Partner or the Class C Limited Partner may only be made with the consent of such Partner adversely affected.

6.2. Addresses and Notices. Any notice, demand, request, or report required or permitted to be given or made to a Partner under this Agreement shall be in writing and shall be deemed given or made when delivered in person or when sent by United States registered or certified mail to the Partner at his/her/its address as shown on the records of the Partnership, regardless of any claim of any Person who may have an interest in any Partnership Interest by reason of an assignment or otherwise.

6.3. Titles and Captions. All article and section titles and captions in the Agreement are for convenience only, shall not be deemed part of this Agreement, and in no way shall define, limit, extend, or describe the scope or intent of any provisions hereof. Except as specifically provided otherwise, references to "Articles," "Sections" and "Exhibits" are to "Articles," "Sections" and "Exhibits" of this Agreement. All Exhibits hereto are incorporated herein by reference.

6.4. Pronouns and Plurals. Whenever the context may require, any pronoun used in this Agreement shall include the corresponding masculine, feminine, or neuter forms, and the singular form of nouns, pronouns, and verbs shall include the plural and vice versa.

6.5. Further Action. The parties shall execute all documents, provide all information, and take or refrain from taking all actions as may be necessary or appropriate to achieve the purposes of this Agreement.

6.6. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their heirs, executors, administrators, successors, legal representatives, and permitted assigns.

6.7. Integration. This Agreement constitutes the entire agreement among the parties hereto pertaining to the subject matter hereof and supersedes all prior agreements and understandings pertaining thereto.

6.8. Creditors. None of the provisions of this Agreement shall be for the benefit of or enforceable by any creditors of the Partnership.

6.9. Waiver. No failure by any party to insist upon the strict performance of any covenant, duty, agreement, or condition of this Agreement or to exercise any right or remedy consequent upon a breach thereof shall constitute waiver of any such breach or any other covenant, duty, agreement, or condition.

6.10. Counterparts. This agreement may be executed in counterparts, all of which together shall constitute one agreement binding on all the parties hereto, notwithstanding that all such parties are not signatories to the original or the same counterpart.

6.11. Applicable Law. This Agreement shall be construed in accordance with and governed by the laws of the State of Delaware, without regard to the principles of conflicts of law.

6.12. Invalidity of Provisions. If any provision of this Agreement is declared or found to be illegal, unenforceable, or void, in whole or in part, then the parties shall be relieved of all obligations arising under that provision, but only to the extent that it is illegal, unenforceable, or void, it being the intent and agreement of the parties that this Agreement shall be deemed amended by modifying that provision to the extent necessary to make it legal and enforceable while preserving its intent or, if that is

not possible, by substituting therefor another provision that is legal and enforceable and achieves the same objectives.

6.13. General Partner Discretion. Whenever the General Partner may use its sole discretion, the General Partner may consider any items it deems relevant, including its own interest and that of its affiliates.

6.14. Mandatory Arbitration. In the event there is an unresolved legal dispute between the parties and/or any of their respective officers, directors, partners, employees, agents, affiliates or other representatives that involves legal rights or remedies arising from this Agreement, the parties agree to submit their dispute to binding arbitration under the authority of the Federal Arbitration Act; provided, however, that the Partnership or such applicable affiliate thereof may pursue a temporary restraining order and /or preliminary injunctive relief in connection with any confidentiality covenants or agreements binding on the other party, with related expedited discovery for the parties, in a court of law, and thereafter, require arbitration of all issues of final relief. The arbitration will be conducted by the American Arbitration Association, or another mutually agreeable arbitration service. A panel of three arbitrators will preside over the arbitration and will together deliberate, decide and issue the final award. The arbitrators shall be duly licensed to practice law in the state of Texas. The discovery process shall be limited to the following: Each side shall be permitted no more than (i) two party depositions of six hours each, each deposition to be taken pursuant to the Texas Rules of Civil Procedure; (ii) one non-party deposition of six hours; (iii) twenty-five interrogatories; (iv) twenty-five requests for admissions; (v) ten request for production (in response, the producing party shall not be obligated to produce in excess of 5,000 total pages of documents, including electronic documents); and (vi) one request for disclosure pursuant to the Texas Rules of Civil Procedure. Any discovery not specifically provided for in this paragraph, whether to parties or non-parties, shall not be permitted. The arbitrators shall be required to state in a written opinion all facts and conclusions of law relied upon to support any decision rendered. The arbitrators will not have the authority to render a decision that contains an outcome based on error of state or federal law or to fashion a cause of action or remedy not otherwise provided for under applicable state or federal law. Any dispute over whether the arbitrators have failed to comply with the foregoing will be resolved by summary judgment in a court of law. In all other respects, the arbitration process will be conducted in accordance with the American Arbitration Association's dispute resolution rules or other mutually agreeable arbitration services rules. All proceedings shall be conducted in Dallas, Texas or another mutually agreeable site. Each party shall bear its own attorneys fees, costs and expenses, including any costs of experts, witnesses and /or travel, subject to a final arbitration award on who should bear costs and fees. The duty to arbitrate described above shall survive the termination of this Agreement. Except as otherwise provided above, the parties hereby waive trial in a court of law or by jury. All other rights, remedies, statutes of limitation and defenses applicable to claims asserted in a court of law will apply in the arbitration.

Remainder of Page intentionally Left Blank.
Signature Page Follows.

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement as of the date and year first written above.

GENERAL PARTNER:

STRAND ADVISORS, INC.,
a Delaware corporation

By: _____
James D. Dondero,
President

LIMITED PARTNERS:

THE DUGABOY INVESTMENT TRUST

By: Nancy M. Dondero
Name: Nancy M. Dondero
Its: Trustee

THE MARK AND PAMELA OKADA FAMILY TRUST – EXEMPT TRUST #1

By: _____
Name: Lawrence Tonomura
Its: Trustee

THE MARK AND PAMELA OKADA FAMILY TRUST – EXEMPT TRUST #2

By: _____
Name: Lawrence Tonomura
Its: Trustee

MARK K. OKADA

_____
Mark K. Okada

Signature Page to Fourth Amended and Restated Agreement of Limited Partnership

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement as of the date and year first written above.

GENERAL PARTNER:

STRAND ADVISORS, INC.,
a Delaware corporation

By: _____
James D. Dondero,
President

LIMITED PARTNERS:

THE DUGABOY INVESTMENT TRUST

By: _____
Name: Nancy M. Dondero
Its: Trustee

THE MARK AND PAMELA OKADA FAMILY TRUST – EXEMPT TRUST #1

By: _____
Name: Lawrence Tonomura
Its: Trustee

THE MARK AND PAMELA OKADA FAMILY TRUST – EXEMPT TRUST #2

By: _____
Name: Lawrence Tonomura
Its: Trustee

MARK K. OKADA

_____
Mark K. Okada

Signature Page to Fourth Amended and Restated Agreement of Limited Partnership

HUNTER MOUNTAIN INVESTMENT TRUST
By: Beacon Mountain LLC, Administrator

By: _____
Name: John Honis
Its: President

Signature Page to Fourth Amended and Restated Agreement of Limited Partnership

EXHIBIT A

	Percentage Interest	
CLASS A PARTNERS	**By Class**	**Effective %**
GENERAL PARTNER:		
Strand Advisors	0.5573%	0.2508%
LIMITED PARTNERS:		
The Dugaboy Investment Trust	74.4426%	0.1866%
Mark K. Okada	19.4268%	0.0487%
The Mark and Pamela Okada Family Trust - Exempt Trust #1	3.9013%	0.0098%
The Mark and Pamela Okada Family Trust - Exempt Trust #2	1.6720%	0.0042%
Total Class A Percentage Interest	100.0000%	0.500%
CLASS B LIMITED PARTNERS		
Hunter Mountain Investment Trust	100.0000%	55.0000%
CLASS C LIMITED PARTNERS		
Hunter Mountain Investment Trust	100.0000%	44.500%
PROFIT AND LOSS AMONG CLASSES		
Class A Partners	0.5000%	
Class B Partners	55.0000%	
Class C Partners	44.5000%	

EXHIBIT B

ADDENDUM
TO THE
FOURTH AMENDED AND RESTATED AGREEMENT OF LIMITED PARTNERSHIP
OF
HIGHLAND CAPITAL MANAGEMENT, L.P.

THIS ADDENDUM (this "**Addendum**") to that certain Fourth Amended and Restated Agreement of Limited Partnership of Highland Capital Management, L.P., dated December 24, 2015, to be effective as of December 24, 2015, as amended from time to time (the "Agreement"), is made and entered into as of the ___ day of _____, 20_, by and between Strand Advisors, Inc., as the sole General Partner (the "**General Partner**") of Highland Capital Management, L.P. (the "**Partnership**") and _____ ("_____") (except as otherwise provided herein, all capitalized terms used herein shall have the meanings set forth in the Agreement).

RECITALS:

WHEREAS, the General Partner, in its sole and unfettered discretion, and without the consent of any Limited Partner, has the authority under (i) Section 4.4 of the Agreement to admit Additional Limited Partners, (ii) Section 4.6 of the Agreement to admit Substitute Limited Partners and (iii) Section 6.1 of the Agreement to amend the Agreement;

WHEREAS, the General Partner desires to admit _____ as a Class __ Limited Partner holding a __% Percentage Interest in the Partnership as of the date hereof;

WHEREAS, _____desires to become a Class __ Limited Partner and be bound by the terms and conditions of the Agreement; and

WHEREAS, the General Partner desires to amend the Agreement to add _____ as a party thereto.

AGREEMENT:

RESOLVED, as a condition to receiving a Partnership Interest in the Partnership, _____ acknowledges and agrees that he/she/it (i) has received and read a copy of the Agreement, (ii) shall be bound by the terms and conditions of the Agreement; and (iii) shall promptly execute an addendum to the Second Amended Buy-Sell and Redemption Agreement; and be it

FURTHER RESOLVED, the General Partner hereby amends the Agreement to add _____ as a Limited Partner, and the General Partner shall attach this Addendum to the Agreement and make it a part thereof; and be it

FURTHER RESOLVED, this Addendum may be executed in any number of counterparts, all of which together shall constitute one Addendum binding on all the parties hereto, notwithstanding that all such parties are not signatories to the original or the same counterpart.

IN WITNESS WHEREOF, the undersigned have executed this Addendum as of the day and year above written.

GENERAL PARTNER:

STRAND ADVISORS, INC.

By: _____
Name: _____
Title: _____

NEW LIMITED PARTNER:

[_____]

AGREED AND ACCEPTED:

In consideration of the terms of this Addendum and the Agreement, in consideration of the Partnership's allowing the above signed Person to become a Limited Partner of the Partnership, and for other good and valuable consideration receipt of which is hereby acknowledged, the undersigned shall be bound by the terms and conditions of the Agreement as though a party thereto.

SPOUSE OF NEW LIMITED PARTNER:

[_____]

B1040 (FORM 1040) (12/15)

ADVERSARY PROCEEDING COVER SHEET (Instructions on Reverse)	**ADVERSARY PROCEEDING NUMBER** (Court Use Only)

PLAINTIFFS	**DEFENDANTS**
Highland Capital Management, L.P.	Highland Capital Management Services, Inc., James Dondero, Nancy Dondero, and The Dugaboy Investment Trust
ATTORNEYS (Firm Name, Address, and Telephone No.) Hayward PLLC 10501 N. Central Expressway, Suite 106 Dallas, Texas 75231 Tel.: (972) 755-7100	**ATTORNEYS** (If Known) Stinson LLP (for Highland Capital Management Services, Inc. and Nancy Dondero); Heller, Draper & Horn, L.L.C. (for The Dugaboy Investment Trust)
PARTY (Check One Box Only) ☑ Debtor ☐ U.S. Trustee/Bankruptcy Admin ☐ Creditor ☐ Other ☐ Trustee	**PARTY** (Check One Box Only) ☐ Debtor ☐ U.S. Trustee/Bankruptcy Admin ☐ Creditor ☑ Other ☐ Trustee

CAUSE OF ACTION (WRITE A BRIEF STATEMENT OF CAUSE OF ACTION, INCLUDING ALL U.S. STATUTES INVOLVED)
Breach of Contract; Turnover Pursuant to 11 USC 542(b); Avoidance and Recovery of Actual Fraudulent Transfer under 11 USC 548(a)(1)(A) and 550; Avoidance and Recovery of Actual Fraudulent Transfer under 11 USC 544(b) and 550 and Tex. Bus. & C. Code 24.005(a)(1); Declaratory Relief; Breach of Fiduciary Duty; Aiding & Abetting Breach of Fiduciary Duty

NATURE OF SUIT

(Number up to five (5) boxes starting with lead cause of action as 1, first alternative cause as 2, second alternative cause as 3, etc.)

FRBP 7001(1) – Recovery of Money/Property
2 ☐ 11-Recovery of money/property - §542 turnover of property
☐ 12-Recovery of money/property - §547 preference
3 ☐ 13-Recovery of money/property - §548 fraudulent transfer
4 ☐ 14-Recovery of money/property - other

FRBP 7001(2) – Validity, Priority or Extent of Lien
☐ 21-Validity, priority or extent of lien or other interest in property

FRBP 7001(3) – Approval of Sale of Property
☐ 31-Approval of sale of property of estate and of a co-owner - §363(h)

FRBP 7001(4) – Objection/Revocation of Discharge
☐ 41-Objection / revocation of discharge - §727(c),(d),(e)

FRBP 7001(5) – Revocation of Confirmation
☐ 51-Revocation of confirmation

FRBP 7001(6) – Dischargeability
☐ 66-Dischargeability - §523(a)(1),(14),(14A) priority tax claims
☐ 62-Dischargeability - §523(a)(2), false pretenses, false representation, actual fraud
☐ 67-Dischargeability - §523(a)(4), fraud as fiduciary, embezzlement, larceny

(continued next column)

FRBP 7001(6) – Dischargeability (continued)
☐ 61-Dischargeability - §523(a)(5), domestic support
☐ 68-Dischargeability - §523(a)(6), willful and malicious injury
☐ 63-Dischargeability - §523(a)(8), student loan
☐ 64-Dischargeability - §523(a)(15), divorce or separation obligation (other than domestic support)
☐ 65-Dischargeability - other

FRBP 7001(7) – Injunctive Relief
☐ 71-Injunctive relief – imposition of stay
☐ 72-Injunctive relief – other

FRBP 7001(8) Subordination of Claim or Interest
☐ 81-Subordination of claim or interest

FRBP 7001(9) Declaratory Judgment
5 ☐ 91-Declaratory judgment

FRBP 7001(10) Determination of Removed Action
☐ 01-Determination of removed claim or cause

Other
☐ SS-SIPA Case – 15 U.S.C. §§78aaa *et.seq.*
1 ☐ 02-Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case)

☑ Check if this case involves a substantive issue of state law	☐ Check if this is asserted to be a class action under FRCP 23
☐ Check if a jury trial is demanded in complaint	Demand $ Damages in an amount to be determined at trial

Other Relief Sought Turnover of amounts due under note, avoidance of transfers to defendants, declaratory relief, punitive and exemplary damages, costs, attorneys' fees

B1040 (FORM 1040) (12/15)

BANKRUPTCY CASE IN WHICH THIS ADVERSARY PROCEEDING ARISES		
NAME OF DEBTOR Highland Capital Management, L.P.	BANKRUPTCY CASE NO. 19-34054-sgj11	
DISTRICT IN WHICH CASE IS PENDING Northern District of Texas	DIVISION OFFICE Dallas	NAME OF JUDGE Stacey G. C. Jernigan
RELATED ADVERSARY PROCEEDING (IF ANY)		
PLAINTIFF	DEFENDANT	ADVERSARY PROCEEDING NO.
DISTRICT IN WHICH ADVERSARY IS PENDING	DIVISION OFFICE	NAME OF JUDGE
SIGNATURE OF ATTORNEY (OR PLAINTIFF)		
DATE August 27, 2021	PRINT NAME OF ATTORNEY (OR PLAINTIFF) Zachery Z. Annable	

INSTRUCTIONS

The filing of a bankruptcy case creates an "estate" under the jurisdiction of the bankruptcy court which consists of all of the property of the debtor, wherever that property is located. Because the bankruptcy estate is so extensive and the jurisdiction of the court so broad, there may be lawsuits over the property or property rights of the estate. There also may be lawsuits concerning the debtor's discharge. If such a lawsuit is filed in a bankruptcy court, it is called an adversary proceeding.

A party filing an adversary proceeding must also must complete and file Form 1040, the Adversary Proceeding Cover Sheet, unless the party files the adversary proceeding electronically through the court's Case Management/Electronic Case Filing system (CM/ECF). (CM/ECF captures the information on Form 1040 as part of the filing process.) When completed, the cover sheet summarizes basic information on the adversary proceeding. The clerk of court needs the information to process the adversary proceeding and prepare required statistical reports on court activity.

The cover sheet and the information contained on it do not replace or supplement the filing and service of pleadings or other papers as required by law, the Bankruptcy Rules, or the local rules of court. The cover sheet, which is largely self-explanatory, must be completed by the plaintiff's attorney (or by the plaintiff if the plaintiff is not represented by an attorney). A separate cover sheet must be submitted to the clerk for each complaint filed.

Plaintiffs and **Defendants.** Give the names of the plaintiffs and defendants exactly as they appear on the complaint.

Attorneys. Give the names and addresses of the attorneys, if known.

Party. Check the most appropriate box in the first column for the plaintiffs and the second column for the defendants.

Demand. Enter the dollar amount being demanded in the complaint.

Signature. This cover sheet must be signed by the attorney of record in the box on the second page of the form. If the plaintiff is represented by a law firm, a member of the firm must sign. If the plaintiff is pro se, that is, not represented by an attorney, the plaintiff must sign.

EXHIBIT 4

PACHULSKI STANG ZIEHL & JONES LLP
Jeffrey N. Pomerantz (CA Bar No.143717) (*admitted pro hac vice*)
Ira D. Kharasch (CA Bar No. 109084) (*admitted pro hac vice*)
John A. Morris (NY Bar No. 2405397) (*admitted pro hac vice*)
Gregory V. Demo (NY Bar No. 5371992) (*admitted pro hac vice*)
Hayley R. Winograd (NY Bar No. 5612569) (*admitted pro hac vice*)
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067
Telephone: (310) 277-6910
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HAYWARD PLLC
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10501 N. Central Expy, Ste. 106
Dallas, Texas 75231
Tel: (972) 755-7100
Fax: (972) 755-7110

Counsel for Highland Capital Management, L.P.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re: HIGHLAND CAPITAL MANAGEMENT, L.P.,[1] Debtor.	§ § § § § §	Chapter 11 Case No. 19-34054-sgj11
HIGHLAND CAPITAL MANAGEMENT, L.P., Plaintiff, vs. HCRE PARTERS, LLC (N/K/A/ NEXPOINT REAL ESTATE PARTNERS, LLC), JAMES DONDERO, NANCY DONDERO, AND THE DUGABOY INVESTMENT TRUST Defendants.	§ § § § § § § § §	Adversary Proceeding No. 21-03007

[1] The Debtor's last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

DOCS_NY:42002.5 36027/002

AMENDED COMPLAINT FOR (I) BREACH OF CONTRACT, (II) TURNOVER OF PROPERTY, (III) FRAUDULENT TRANSFER, AND (IV) BREACH OF FIDUCIARY DUTY

Plaintiff, Highland Capital Management, L.P., the above-captioned debtor and debtor-in-possession (the "Debtor") in the above-captioned chapter 11 case (the "Bankruptcy Case"), and the plaintiff (the "Plaintiff") in the above-captioned adversary proceeding (the "Adversary Proceeding"), by its undersigned counsel, as and for its amended complaint (the "Complaint") against defendants HCRE Partners, LLC (n/k/a NexPoint Real Estate Partners, LLC) ("HCRE"), James Dondero ("Mr. Dondero"), Nancy Dondero ("Ms. Dondero"), and The Dugaboy Investment Trust ("Dugaboy" and together with HCRE, Mr. Dondero, and Ms. Dondero, the "Defendants"), alleges upon knowledge of its own actions and upon information and belief as to other matters as follows:

PRELIMINARY STATEMENT

1. The Debtor brings this action against Defendants in connection with HCRE's defaults under (i) four demand notes, in the aggregate principal amount of $4,250,000, and payable upon the Debtor's demand, and (ii) one term note, in the aggregate principal amount of $6,059,831.51, payable in the event of default, all executed by HCRE in favor of the Debtor. HCRE has failed to pay amounts due and owing under the notes and the accrued but unpaid interest thereon.

2. In paragraph 58 of HCRE's *First Amended Answer to Plaintiff's Complaint* [Docket No. 34], HCMS contends that the Debtor orally agreed to relieve it of the obligations under the Notes (as defined below) upon fulfillment of "conditions subsequent" (the "Alleged Agreement"). HCRE further contends that the Alleged Agreement was entered into between James Dondero and his sister, Nancy Dondero, as representative of a majority of the Class A

shareholders of the Plaintiff, including Dugaboy (the "Representative"), acting on behalf of the Debtor. At the time Mr. Dondero entered into the Alleged Agreement on behalf of HCRE, he controlled both HCRE and the Debtor and was the lifetime beneficiary of Dugaboy.

3. Based on its books and records, discovery to date, and other facts, the Debtor believes that the Alleged Agreement is a fiction created after the commencement of this Adversary Proceeding for the purpose of avoiding or at least delaying paying the obligations due under the Notes.

4. Nevertheless, the Debtor amends its Complaint to add certain claims and name additional parties who would be liable to the Debtor if the Alleged Agreement were determined to exist and be enforceable. Specifically, in addition to pursuing claims against HCMS for breach of its obligations under the Notes and for turnover, the Debtor adds alternative claims (a) against HCMS for actual fraudulent transfer and aiding and abetting Dugaboy in its breach of fiduciary duty, (b) against Dugaboy for declaratory relief and for breach of fiduciary duty, and (c) against Nancy Dondero for aiding and abetting Dugaboy in the breach of his fiduciary duties.

5. As remedies, the Debtor seeks (a) damages from HCRE in an amount equal to (i) the aggregate outstanding principal due under the Notes (as defined below), plus (ii) all accrued and unpaid interest thereon until the date of payment, plus (iii) an amount equal to the Debtor's costs of collection (including all court costs and reasonable attorneys' fees and expenses, as provided for in the notes), for HCRE's breach of its obligations under the Notes, and (b) turnover by HCRE to the Debtor of the foregoing amounts; (c) avoidance of the Alleged Agreement and the transfers thereunder and recovery of the funds transferred from the Plaintiff to, or for the benefit of, HCRE pursuant to the Notes; (d) declaratory relief, and (e) damages arising from the Defendants' breach of fiduciary duties or aiding and abetting thereof.

JURISDICTION AND VENUE

6. This adversary proceeding arises in and relates to the Debtor's case pending before the United States Bankruptcy Court for the Northern District of Texas, Dallas Division (the "Court") under chapter 11 of the Bankruptcy Code.

7. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334.

8. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b), and, pursuant to Rule 7008 of the Bankruptcy Rules, the Debtor consents to the entry of a final order by the Court in the event that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution.

9. Venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

THE PARTIES

10. The Debtor is a limited liability partnership formed under the laws of Delaware with a business address at 300 Crescent Court, Suite 700, Dallas, Texas 75201.

11. Upon information and belief, HCRE is a limited liability company with offices located in Dallas, Texas, and is organized under the laws of the state of Delaware.

12. Upon information and belief, Mr. Dondero is an individual residing in Dallas, Texas. He is the co-founder of the Debtor and was the Debtor's President and Chief Executive Officer until his resignation on January 9, 2020. At all relevant times, Mr. Dondero controlled HCRE; Mr. Dondero also controlled the Debtor until January 9, 2020.

13. Upon information and belief, Dugaboy is (a) a limited partner of the Debtor, and (b) one of Mr. Dondero's family investment trusts for which is he a lifetime beneficiary.

14. Upon information and belief, Nancy Dondero is an individual residing in the state of Florida and who is Mr. Dondero's sister, and a trustee of Dugaboy.

CASE BACKGROUND

15. On October 16, 2019, the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware (the "Delaware Court"), Case No. 19-12239 (CSS) (the "Highland Bankruptcy Case").

16. On October 29, 2019, the U.S. Trustee in the Delaware Court appointed an Official Committee of Unsecured Creditors (the "Committee") with the following members: (a) Redeemer Committee of Highland Crusader Fund ("Redeemer"), (b) Meta-e Discovery, (c) UBS Securities LLC and UBS AG London Branch, and (d) Acis Capital Management, L.P. and Acis Capital Management GP LLC (collectively, "Acis").

17. On June 25, 2021, the U.S. Trustee in this Court filed that certain *Notice of Amended Unsecured Creditors' Committee* [Docket No. 2485] notifying the Court that Acis and Redeemer had resigned from the Committee.

18. On December 4, 2019, the Delaware Court entered an order transferring venue of the Highland Bankruptcy Case to this Court [Docket No. 186].[2]

19. The Debtor has continued in the possession of its property and has continued to operate and manage its business as a debtor-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in this chapter 11 case.

[2] All docket numbers refer to the main docket for the Highland Bankruptcy Case maintained by this Court.

STATEMENT OF FACTS

A. The HCRE Demand Notes

20. HCRE is the maker under a series of demand notes in favor of the Debtor.

21. Specifically, on November 27, 2013, HCRE executed a demand note in favor of the Debtor, as payee, in the original principal amount of $100,000 ("HCRE's First Demand Note"). A true and correct copy of HCRE's First Demand Note is attached hereto as **Exhibit 1**.

22. On October 12, 2017, HCRE executed a demand note in favor of the Debtor, as payee, in the original principal amount of $2,500,000 ("HCRE's Second Demand Note"). A true and correct copy of HCRE's Second Demand Note is attached hereto as **Exhibit 2.**

23. On October 15, 2018, 2017, HCRE executed a demand note in favor of the Debtor, as payee, in the original principal amount of $750,000 ("HCRE's Third Demand Note"). A true and correct copy of HCRE's Third Demand Note is attached hereto as **Exhibit 3**

24. On September 25, 2019, HCRE executed a demand note in favor of the Debtor, as payee, in the original principal amount of $900,000 ("HCRE's Fourth Demand Note," and collectively, with HCRE's First Demand Note, HCRE's Second Demand Note, and HCRE's Third Demand Note, the "Demand Notes"). A true and correct copy of HCRE's Fourth Demand Note is attached hereto as **Exhibit 4.**

25. Section 2 of the Demand Notes provide: "**Payment of Principal and Interest**. The accrued interest and principal of this Note shall be due and payable on demand of the Payee."

26. Section 4 of the Demand Notes provide:

> **Acceleration Upon Default**. Failure to pay this Note or any installment hereunder as it becomes due shall, at the election of the holder hereof, without notice, demand, presentment, notice of intent to accelerate, notice

> of acceleration, or any other notice of any kind which are hereby waived, mature the principal of this Note and all interest then accrued, if any, and the same shall at once become due and payable and subject to those remedies of the holder hereof. No failure or delay on the part of the Payee in exercising any right, power, or privilege hereunder shall operate as a waiver hereof.

27. Section 6 of the Demand Notes provide:

> **Attorneys' Fees**. If this Note is not paid at maturity (whether by acceleration or otherwise) and is placed in the hands of an attorney for collection, or if it is collected through a bankruptcy court or any other court after maturity, the Maker shall pay, in addition to all other amounts owing hereunder, all actual expenses of collection, all court costs and reasonable attorneys' fees and expenses incurred by the holder hereof.

B. HCRE's Defaults Under Each Demand Note

28. By letter dated December 3, 2020, the Debtor made demand on HCRE for payment of the Demand Note Repayment Amount by December 11, 2020 (the "Demand Letter"). A true and correct copy of the Demand Letter is attached hereto as **Exhibit 5**. The Demand Letter provides:

> By this letter, Payee is demanding payment of the accrued interest and principal due and payable on the Notes in the aggregate amount of $5,012,260.96, which represents all accrued interest and principal through and including December 11, 2020.
>
> **Payment is due on December 11, 2020, and failure to make payment in full on such date will constitute an event of default under the Notes.**

Demand Letter (emphasis in the original).

29. Despite the Debtor's demand, HCRE did not pay all or any portion of the amount demanded by the Debtor on December 11, 2020, or at any time thereafter.

30. As of December 11, 2020, there was an outstanding principal amount of $171,542 on HCRE's First Demand Note and accrued but unpaid interest in the amount of $526.10, resulting in a total outstanding amount as of that date of $172,068.10.

31. As of December 11, 2020, there was an outstanding principal balance of $3,149,919.12 on HCRE's Second Demand Note and accrued but unpaid interest in the amount of $41,423.60, resulting in a total outstanding amount as of that date of $3,191,342.72.

32. As of December 11, 2020, there was an outstanding principal balance of $874,977.53 on HCRE's Third Demand Note and accrued but unpaid interest in the amount of $10,931.23, resulting in a total outstanding amount as of that date of $885,908.76.

33. As of December 11, 2020, there was an outstanding principal balance of $750,279.14 on HCRE's Fourth Demand Note and accrued but unpaid interest in the amount of $12,662.24, resulting in a total outstanding amount as of that date of $762,941.38.

34. Thus, as of December 11, 2020, the total outstanding principal and accrued but unpaid interest due under the Demand Notes was $5,012,260.96.

35. Pursuant to Section 4 of each Note, each Note is in default, and is currently due and payable.

C. The HCRE Term Note

36. HCRE is the maker under a term note in favor of the Debtor.

37. Specifically, on May 31, 2017, HCRE executed a term note in favor of the Debtor, as payee, in the original principal amount of $6,059,831 (the "Term Note," and together with the Demand Notes, the "Notes"). A true and correct copy of the Term Note is attached hereto as **Exhibit 6**.

38. Section 2 of the Term Note provides: "**Payment of Principal and Interest**. Principal and interest under this Note shall be due and payable as follows:

> **2.1 Annual Payment Dates.** During the term of this Note, Borrower shall pay the outstanding principal amount of the Note (and all unpaid accrued interest through the date of each such payment) in thirty (30) equal annual payments (the "**Annual Installment**") until the Note is paid in full. Borrower shall pay the Annual Installment on the 31st day of December of each calendar year during the term of

this Note, commencing on the first such date to occur after the date of execution of this note.

2.2 **Final Payment Date**. The final payment in the aggregate amount of the then outstanding and unpaid Note, together with all accrued and unpaid interest thereon, shall become immediately due and payable in full on December 31, 2047 (the "**Maturity Date**").

39. Section 3 of the Term Note provides:

Prepayment Allowed: Renegotiation Discretionary. Maker may prepay in whole or in part the unpaid principal or accrued interest of this Note. Any payments on this Note shall be applied first to unpaid accrued interest hereon, and then to unpaid principal hereof.

40. Section 4 of the Term Note provides:

Acceleration Upon Default. Failure to pay this Note or any installment hereunder as it becomes due shall, at the election of the holder hereof, without notice, demand, presentment, notice of intent to accelerate, notice of acceleration, or any other notice of any kind which are hereby waived, mature the principal of this Note and all interest then accrued, if any, and the same shall at once become due and payable and subject to those remedies of the holder hereof. No failure or delay on the part of the Payee in exercising any right, power, or privilege hereunder shall operate as a waiver hereof.

41. Section 6 of the Term Note provides:

Attorneys' Fees. If this Note is not paid at maturity (whether by acceleration or otherwise) and is placed in the hands of an attorney for collection, or if it is collected through a bankruptcy court or any other court after maturity, the Maker shall pay, in addition to all other amounts owing hereunder, all actual expenses of collection, all court costs and reasonable attorneys' fees and expenses incurred by the holder hereof.

D. HCRE's Default Under the Term Note

42. HCRE failed to make the payment due under the Term Note on December 31, 2020.

43. By letter dated January 7, 2021, the Debtor made demand on HCRE for immediate payment under the Term Note (the "Second Demand Letter"). A true and correct copy of the Second Demand Letter is attached hereto as **Exhibit 7**. The Demand Letter provides:

> Because of Maker's failure to pay, the Note is in default. Pursuant to Section 4 of the Note, all principal, interest, and any other amounts due on the Note are immediately due and payable. The amount due and payable on the Note as of January 8, 2021 is $6,145,466.84; however, interest continues to accrue under the Note.
>
> **The Term Note is in default, and payment is due immediately.**

Second Demand Letter (emphasis in the original).

44. Despite the Debtor's demands, HCRE did not pay the amount demanded by the debtor on January 7, 2021, or at any time thereafter.

45. As of January 8, 2021, the total outstanding principal and accrued but unpaid interest under the Term Note was 6,145,466.84.

46. Pursuant to Section 4 of the Term Note, the Note is in default, and is currently due and payable.

E. The Debtor Files the Original Complaint

47. On January 22, 2021, the Debtor filed the *Complaint for (I) Breach of Contract and (II) Turnover of Property of the Debtor's Estate* [Docket No. 1] (the "Original Complaint"). In the Original Complaint, the Debtor brought claims for (i) breach of contract for HCRE's breach of its obligations under the Notes and (ii) turnover by HCRE for the outstanding amounts under the Notes, plus all accrued and unpaid interest until the date of payment plus the Debtor's costs of collection and reasonable attorney's fees.

F. HCRE's Affirmative Defenses

48. On March 13, 2021, HCMS filed *Highland Capital Management Services, Inc.'s Answer to Plaintiff's Complaint* [Docket No. 6] (the "Original Answer"). In its Original Answer, HCMS asserted four affirmative defenses: (i) the claims are barred in whole or in part under the doctrines of justification or repudiation, (ii) waiver, (iii) estoppel, and (iv) offset and/or setoff (the "Setoff Defense"). *See id.* ¶¶ 55-58.

49. On June 11, 2021, HCRE filed its *First Amended Answer to Plaintiff's Complaint* [Docket No. 34] (the "Amended Answer"), that omitted the Setoff Defense but asserted two affirmative defenses: (i) the Debtor previously agreed that it would not collect on the Notes "upon fulfillment of conditions subsequent" (*i.e.*, the Alleged Agreement) *id.* ¶ 58, and (ii) the Notes are "ambiguous," *id.* ¶ 59.

50. According to HCRE, the Alleged Agreement was orally entered into "sometime between December of the year each note was made and February of the following year."

51. According to HCRE, Mr. Dondero, acting on its behalf, entered into the Alleged Agreement with his sister, Nancy Dondero, acting as the Representative.

52. Mr. Dondero controlled the Debtor at the time he entered into the Alleged Agreement on behalf of HCRE.

53. Upon information and belief, the Debtor's books and records do not reflect the Alleged Agreement.

G. Dugaboy Lacked Authority to Act on Behalf of the Debtor

54. Under section 4.2 of the *Fourth Amended and Restated Agreement of Limited Partnership of Highland Capital Management, L.P.* (the "Limited Partnership Agreement"), and attached hereto as **Exhibit 8**, Dugaboy was not authorized to enter into the Alleged Agreement on behalf of the Partnership, or otherwise bind the Partnership (as "Partnership" is defined in the Limited Partnership Agreement).

55. Section 4.2(b) of the Limited Partnership Agreement states:

> Management of Business. No Limited Partner shall take part in the control (within the meaning of the Delaware Act) of the Partnership's business, transact any business in the Partnership's name, or have the power to sign documents for or otherwise bind the Partnership other than as specifically set forth in this Agreement.

Exhibit 8, § 4.2(b).

56. No provision in the Limited Partnership Agreement authorizes any of the Partnership's limited partners to bind the Partnership.

57. Nancy Dondero also lacked authority to enter into the Alleged Agreement or to otherwise bind the Debtor.

FIRST CLAIM FOR RELIEF
(Against HCRE)

(For Breach of Contract)

58. The Debtor repeats and re-alleges the allegations in each of the foregoing paragraphs as though fully set forth herein.

59. Each Note is a binding and enforceable contract.

60. HCRE breached each Demand Note by failing to pay all amounts due to the Debtor upon the Debtor's demand.

61. HCRE breached the Term Note by failing to pay all amounts due to the Debtor upon HCRE's default and acceleration.

62. Pursuant to each Note, the Debtor is entitled to damages from HCRE in an amount equal to (i) the aggregate outstanding principal due under each Note, plus (ii) all accrued and unpaid interest thereon until the date of payment, plus (iii) an amount equal to the Debtor's costs of collection (including all court costs and reasonable attorneys' fees and expenses), for HCRE's breach of its obligations under each of the Notes.

63. As a direct and proximate cause of HCRE's breach of each Demand Note, the Debtor has suffered damages in the amount of at least $5,012,260.96, as of December 11, 2020, plus an amount equal to all accrued but unpaid interest from that date, plus the Debtor's cost of collection.

64. As a direct and proximate cause of HCRE's breach of the Term Note, the Debtor has suffered damages in the amount of at least $6,145,466.84, as of January 8, 2021, plus an amount equal to all accrued but unpaid interest from that date, plus the Debtor's cost of collection.

SECOND CLAIM FOR RELIEF
(Against HCRE)
(Turnover by HCRE Pursuant to 11 U.S.C. § 542(b))

65. The Debtor repeats and re-alleges the allegations in each of the foregoing paragraphs as though fully set forth herein.

66. HCRE owes the Debtor an amount equal to (i) the aggregate outstanding principal due under each of the Notes, plus (ii) all accrued and unpaid interest thereon until the date of payment, plus (iii) an amount equal to the Debtor's costs of collection (including all court costs and reasonable attorneys' fees and expenses), for HCRE's breach of its obligations under each of the Notes

67. Each Demand Note is property of the Debtor's estate and the amounts due under each Demand Note is matured and payable upon demand.

68. The Term Note is property of the Debtor's estate and the amounts due under the Term Note is matured and payable upon default and acceleration.

69. The Debtor has made demand for turnover of the amounts due under each of the Notes.

70. As of the date of filing this Complaint, HCRE has not turned over to the Debtor all or any of the amounts due under each of the Notes.

71. The Debtor is entitled to the turnover of all amounts due under each of the Notes.

THIRD CLAIM FOR RELIEF
(Against HCRE)
(Avoidance and Recovery of Actual Fraudulent Transfer Under 11 U.S.C. §§ 548(a)(1)(A) and 550)

72. The Debtor repeats and re-alleges the allegations in each of the foregoing paragraphs as though fully set forth herein.

73. The Debtor made the transfers pursuant to the Alleged Agreement within two years of the Petition Date.

74. Mr. Dondero entered into the Alleged Agreement on behalf of HCRE with actual intent to hinder, delay, or defraud a present or future creditor, demonstrated by, *inter alia*:

(a) The transfers were made to, or for the benefit of, HCRE, an insider of the Debtor.

(b) Mr. Dondero entered into the Alleged Agreement on behalf of HCRE with his sister, Nancy Dondero.

(c) Mr. Dondero did not inform the Debtor's CFO or outside auditors about the Alleged Agreement.

(d) The Debtor's books and record do not reflect the Alleged Agreement.

(e) The Alleged Agreement was not subject to negotiation.

(f) The value of the consideration received by the Debtor for the transfers was not reasonably equivalent in value.

75. The pattern of conduct, series of transactions, and general chronology of events under inquiry in connection with the debt HCRE incurred under the Notes demonstrates a scheme of fraud.

76. Pursuant to 11 U.S.C. § 550, the Debtor is entitled to recover for the benefit of the Debtor's estates the transfers made in exchange for the Alleged Agreement from HCRE.

77. Accordingly, the Debtor is entitled to a judgement: (i) avoiding the Alleged Agreement and the transfer thereunder, and (ii) recovering from HCRE an amount equal to all obligations remaining under the Notes.

FOURTH CLAIM FOR RELIEF
(Against HCRE)
(Avoidance and Recovery of Actual Fraudulent Transfer Under 11 U.S.C. §§ 544(b) and 550, and Tex. Bus. & C. Code § 24.005(a)(1))

78. The Debtor repeats and re-alleges the allegations in each of the foregoing paragraphs as though fully set forth herein.

79. The Debtor made the transfers pursuant to the Alleged Agreement after, or within a reasonable time before, creditors' claims arose.

80. Mr. Dondero entered into the Alleged Agreement on behalf of HCRE with actual intent to hinder, delay, or defraud a present or future creditor of the Debtor, demonstrated by, *inter alia*:

(g) The transfers were made to, or for the benefit of, HCRE, an insider of the Debtor.

(h) Mr. Dondero entered into the Alleged Agreement on behalf of HCRE with his sister, Nancy Dondero.

(i) Mr. Dondero did not inform the Debtor's CFO or outside auditor's about the Alleged Agreement.

(j) Upon information and belief, the Debtor's books and record do not reflect the Alleged Agreement.

(k) The Alleged Agreement was not subject to negotiation.

(l) The value of the consideration received by the Debtor for the transfers was not reasonably equivalent in value.

81. Pursuant to 11 U.S.C. § 550, the Debtor is entitled to recover for the benefit of the Debtor's estates the transfers made in exchange for the Alleged Agreement from HCRE.

82. Accordingly, the Debtor is entitled to a judgement: (i) avoiding the Alleged Agreement and the transfer thereunder, and (ii) recovering from HCRE an amount equal to all obligations remaining under the Notes.

FIFTH CLAIM FOR RELIEF
(Against Dugaboy and Ms. Dondero)
(For Declaratory Relief: -- 11 U.S.C. § 105(a) and Fed. R. Bankr. P. 7001)

83. The Debtor repeats and re-alleges the allegations in each of the foregoing paragraphs as though fully set forth herein.

84. A bona fide, actual, present dispute exists between the Debtor, on the one hand, and Dugaboy and Ms. Dondero on the other hand, concerning whether Dugaboy and/or Ms. Dondero, acting as the Representative, were authorized to enter into the Alleged Agreement on the Debtor's behalf.

85. A judgment declaring the parties' respective rights and obligations will resolve their dispute.

86. Pursuant to Bankruptcy Rule 7001, the Debtor specifically seeks declarations that:

- (a) limited partners, including but not limited to Dugaboy, have no right or authority to take part in the control (within the meaning of the Delaware Act) of the Partnership's business, transact any business in the Partnership's name, or have the power to sign documents for or otherwise bind the Partnership other than as specifically provided in the Limited Partnership Agreement,

- (b) neither Dugaboy nor Ms. Dondero (whether individually or as Representative) was authorized under the Limited Partnership Agreement to enter into the Alleged Agreement on behalf of the Partnership,
- (c) neither Dugaboy nor Ms. Dondero (whether individually or as Representative) otherwise had any right or authority to enter into the Alleged Agreement on behalf of the Partnership, and
- (d) the Alleged Agreement is null and void.

SIXTH CLAIM FOR RELIEF
(Against Dugaboy and Ms. Dondero)
(Breach of Fiduciary Duty)

87. The Debtor repeats and re-alleges the allegations in each of the foregoing paragraphs as though fully set forth herein.

88. If Dugaboy, as a limited partner, or Ms. Dondero, as Representative, had the authority to enter into the Alleged Agreement on behalf of the Debtor, then Dugaboy and/or Ms. Dondero would owe the Debtor a fiduciary duty.

89. If Dugaboy or Ms. Dondero (as Representative) had the authority to enter into the Alleged Agreement on behalf of the Debtor, then Dugaboy and/or Ms. Dondero breached their fiduciary duty of care to the Debtor by entering into and authorizing the purported Alleged Agreement on behalf of the Debtor.

90. Accordingly, the Debtor is entitled to recover from Dugaboy and Ms. Dondero (a) actual damages that the Debtor suffered as a result of their breach of fiduciary duty, and (b) for punitive and exemplary damages.

SEVENTH CLAIM FOR RELIEF
(Against James Dondero and Nancy Dondero)
(Aiding and Abetting a Breach of Fiduciary Duty)

91. The Debtor repeats and re-alleges the allegations in each of the foregoing paragraphs as though fully set forth herein.

92. James Dondero and Nancy Dondero (together, the "Donderos") were aware that Dugaboy would have fiduciary duties to the Debtor if it acted to bind the Debtor.

93. The Donderos aided and abetted Dugaboy's breach of its fiduciary duties to the Debtor by knowingly participating in the authorization of the purported Alleged Agreement.

94. The Donderos aided and abetted Dugaboy's breach of its fiduciary duty to the Debtor by knowingly participating in the authorization of the purported Alleged Agreement.

95. Accordingly, the Donderos are jointly and severally liable (a) for the actual damages that the Debtor suffered as a result of aiding and abetting Dondero's breaches of fiduciary duties, and (b) for punitive and exemplary damages.

WHEREFORE, the Debtor prays for judgment as follows:

(i) On its First Claim for Relief, damages in an amount to be determined at trial but includes (a) the aggregate outstanding principal due under each Note, plus (b) all accrued and unpaid interest thereon until the date of payment, plus (c) an amount equal to the Debtor's cost of collection (including all court costs and reasonable attorneys' fees and expenses);

(ii) On its Second Claim for Relief, ordering turnover by HCRE to the Debtor of an amount equal to (a) the aggregate principal due under each Note, plus (b) all accrued and unpaid interest thereon until the date of payment, plus (c) an amount equal to the Debtor's cost of collection (including all court costs and reasonable attorneys' fees and expenses);

(iii) On its Third Claim for Relief, avoidance of the Alleged Agreement and the transfers thereunder pursuant to the Alleged Agreement arising from actual fraudulent transfer under section 548 of the Bankruptcy Code;

(iv) On its Fourth Claim for Relief, avoidance of the Alleged Agreement and the transfers thereunder pursuant to the Alleged Agreement of funds arising from actual fraudulent transfer under Tex. Bus. & C. Code § 24.005(a)(1);

(v) On its Fifth Claim for Relief, a declaration that: (a) limited partners, including but not limited to Dugaboy, have no right or authority to take part in the control (within the meaning of the Delaware Act) of the Partnership's business, transact any business in the Partnership's name, or have the power to sign documents for or otherwise bind the Partnership other than as specifically provided in the Limited Partnership Agreement, (b) neither Dugaboy nor Ms. Dondero (whether individually or as Representative) was authorized under the Limited Partnership Agreement to enter into the Alleged Agreement on behalf of the Partnership, (c) neither Dugaboy nor Ms. Dondero (whether individually or as Representative) otherwise had any right or authority to enter into the Alleged Agreement on behalf of the Partnership, and (d) the Alleged Agreement is null and void;

(vi) On its Sixth Claim for Relief, actual damages from Dugaboy and Ms. Dondero, in an amount to be determined at trial, that Debtor suffered as a result of their breach of fiduciary duty, and for punitive and exemplary damages;

(vii) On its Seventh Claim for Relief, actual damages from the Donderos, jointly and severally, in an amount to be determined at trial, that Debtor suffered

as a result of aiding and abetting Dugaboy's breaches of fiduciary duty, and for punitive and exemplary damages; and

(iii) Such other and further relief as this Court deems just and proper.

Dated: As of July 13, 2021.

PACHULSKI STANG ZIEHL & JONES LLP
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Counsel for Highland Capital Management, L.P.

EXHIBIT 1

PROMISSORY NOTE

$100,000 November 27, 2013

FOR VALUE RECEIVED, HCRE PARTNERS, LLC ("***Maker***") promises to pay to the order of HIGHLAND CAPITAL MANAGEMENT, LP. ("***Payee***"), in legal and lawful tender of the United States of America, the principal sum of ONE HUNDRED THOUSAND and 00/100 Dollars ($100,000.00), together with interest, on the terms set forth below (the "***Note***"). All sums hereunder are payable to Payee at 300 Crescent Court, Dallas, TX 75201, or such other address as Payee may specify to Maker in writing from time to time.

1. Interest Rate. The unpaid principal balance of this Note from time to time outstanding shall bear interest at a rate equal to 8.00% per annum from the date hereof until maturity, compounded annually on the anniversary of the date of this Note. Interest shall be calculated at a daily rate equal to 1/365th (1/366 in a leap year) of the rate per annum, shall be charged and collected on the actual number of days elapsed, and shall be payable on demand of the Payee.

2. Payment of Principal and Interest. The accrued interest and principal of this Note shall be due and payable on demand of the Payee.

3. Prepayment Allowed; Renegotiation Discretionary. Maker may prepay in whole or in part the unpaid principal or accrued interest of this Note. Any payments on this Note shall be applied first to unpaid accrued interest hereon, and then to unpaid principal hereof.

4. Acceleration Upon Default. Failure to pay this Note or any installment hereunder as it becomes due shall, at the election of the holder hereof, without notice, demand, presentment, notice of intent to accelerate, notice of acceleration, or any other notice of any kind which are hereby waived, mature the principal of this Note and all interest then accrued, if any, and the same shall at once become due and payable and subject to those remedies of the holder hereof. No failure or delay on the part of Payee in exercising any right, power or privilege hereunder shall operate as a waiver thereof.

5. Waiver. Maker hereby waives grace, demand, presentment for payment, notice of nonpayment, protest, notice of protest, notice of intent to accelerate, notice of acceleration and all other notices of any kind hereunder.

6. Attorneys' Fees. If this Note is not paid at maturity (whether by acceleration or otherwise) and is placed in the hands of an attorney for collection, or if it is collected through a bankruptcy court or any other court after maturity, the Maker shall pay, in addition to all other amounts owing hereunder, all actual expenses of collection, all court costs and reasonable attorneys' fees and expenses incurred by the holder hereof.

7. Limitation on Agreements. All agreements between Maker and Payee, whether now existing or hereafter arising, are hereby limited so that in no event shall the amount paid, or agreed to be paid to Payee for the use, forbearance, or detention of money or for the payment or

performance of any covenant or obligation contained herein or in any other document evidencing, securing or pertaining to this Note, exceed the maximum interest rate allowed by law. The terms and provisions of this paragraph shall control and supersede every other provision of all agreements between Payee and Maker in conflict herewith.

8. Governing Law. This Note and the rights and obligations of the parties hereunder shall be governed by the laws of the United States of America and by the laws of the State of Texas, and is performable in Dallas County, Texas.

MAKER:

HCRE PARTNERS, LLC

EXHIBIT 2

PROMISSORY NOTE

$2,500,000 October 12, 2017

FOR VALUE RECEIVED, HCRE PARTNERS, LLC ("***Maker***") promises to pay to the order of HIGHLAND CAPITAL MANAGEMENT, LP. ("***Payee***"), in legal and lawful tender of the United States of America, the principal sum of TWO MILLION, FIVE HUNDRED THOUSAND and 00/100 Dollars ($2,500,000.00), together with interest, on the terms set forth below (the "***Note***"). All sums hereunder are payable to Payee at 300 Crescent Court, Dallas, TX 75201, or such other address as Payee may specify to Maker in writing from time to time.

1. Interest Rate. The unpaid principal balance of this Note from time to time outstanding shall bear interest at a rate equal to 8.00% per annum from the date hereof until maturity, compounded annually on the anniversary of the date of this Note. Interest shall be calculated at a daily rate equal to 1/365th (1/366 in a leap year) of the rate per annum, shall be charged and collected on the actual number of days elapsed, and shall be payable on demand of the Payee.

2. Payment of Principal and Interest. The accrued interest and principal of this Note shall be due and payable on demand of the Payee.

3. Prepayment Allowed; Renegotiation Discretionary. Maker may prepay in whole or in part the unpaid principal or accrued interest of this Note. Any payments on this Note shall be applied first to unpaid accrued interest hereon, and then to unpaid principal hereof.

4. Acceleration Upon Default. Failure to pay this Note or any installment hereunder as it becomes due shall, at the election of the holder hereof, without notice, demand, presentment, notice of intent to accelerate, notice of acceleration, or any other notice of any kind which are hereby waived, mature the principal of this Note and all interest then accrued, if any, and the same shall at once become due and payable and subject to those remedies of the holder hereof. No failure or delay on the part of Payee in exercising any right, power or privilege hereunder shall operate as a waiver thereof.

5. Waiver. Maker hereby waives grace, demand, presentment for payment, notice of nonpayment, protest, notice of protest, notice of intent to accelerate, notice of acceleration and all other notices of any kind hereunder.

6. Attorneys' Fees. If this Note is not paid at maturity (whether by acceleration or otherwise) and is placed in the hands of an attorney for collection, or if it is collected through a bankruptcy court or any other court after maturity, the Maker shall pay, in addition to all other amounts owing hereunder, all actual expenses of collection, all court costs and reasonable attorneys' fees and expenses incurred by the holder hereof.

7. Limitation on Agreements. All agreements between Maker and Payee, whether now existing or hereafter arising, are hereby limited so that in no event shall the amount paid, or agreed to be paid to Payee for the use, forbearance, or detention of money or for the payment or

performance of any covenant or obligation contained herein or in any other document evidencing, securing or pertaining to this Note, exceed the maximum interest rate allowed by law. The terms and provisions of this paragraph shall control and supersede every other provision of all agreements between Payee and Maker in conflict herewith.

8. Governing Law. This Note and the rights and obligations of the parties hereunder shall be governed by the laws of the United States of America and by the laws of the State of Texas, and is performable in Dallas County, Texas.

MAKER:

HCRE PARTNERS, LLC

EXHIBIT 3

PROMISSORY NOTE

$750,000 October 15, 2018

FOR VALUE RECEIVED, HCRE PARTNERS, LLC ("***Maker***") promises to pay to the order of HIGHLAND CAPITAL MANAGEMENT, LP. ("***Payee***"), in legal and lawful tender of the United States of America, the principal sum of SEVEN HUNDRED FIFTY THOUSAND and 00/100 Dollars ($750,000.00), together with interest, on the terms set forth below (the "***Note***"). All sums hereunder are payable to Payee at 300 Crescent Court, Dallas, TX 75201, or such other address as Payee may specify to Maker in writing from time to time.

1. Interest Rate. The unpaid principal balance of this Note from time to time outstanding shall bear interest at a rate equal to 8.00% per annum from the date hereof until maturity, compounded annually on the anniversary of the date of this Note. Interest shall be calculated at a daily rate equal to 1/365th (1/366 in a leap year) of the rate per annum, shall be charged and collected on the actual number of days elapsed, and shall be payable on demand of the Payee.

2. Payment of Principal and Interest. The accrued interest and principal of this Note shall be due and payable on demand of the Payee.

3. Prepayment Allowed; Renegotiation Discretionary. Maker may prepay in whole or in part the unpaid principal or accrued interest of this Note. Any payments on this Note shall be applied first to unpaid accrued interest hereon, and then to unpaid principal hereof.

4. Acceleration Upon Default. Failure to pay this Note or any installment hereunder as it becomes due shall, at the election of the holder hereof, without notice, demand, presentment, notice of intent to accelerate, notice of acceleration, or any other notice of any kind which are hereby waived, mature the principal of this Note and all interest then accrued, if any, and the same shall at once become due and payable and subject to those remedies of the holder hereof. No failure or delay on the part of Payee in exercising any right, power or privilege hereunder shall operate as a waiver thereof.

5. Waiver. Maker hereby waives grace, demand, presentment for payment, notice of nonpayment, protest, notice of protest, notice of intent to accelerate, notice of acceleration and all other notices of any kind hereunder.

6. Attorneys' Fees. If this Note is not paid at maturity (whether by acceleration or otherwise) and is placed in the hands of an attorney for collection, or if it is collected through a bankruptcy court or any other court after maturity, the Maker shall pay, in addition to all other amounts owing hereunder, all actual expenses of collection, all court costs and reasonable attorneys' fees and expenses incurred by the holder hereof.

7. Limitation on Agreements. All agreements between Maker and Payee, whether now existing or hereafter arising, are hereby limited so that in no event shall the amount paid, or agreed to be paid to Payee for the use, forbearance, or detention of money or for the payment or

performance of any covenant or obligation contained herein or in any other document evidencing, securing or pertaining to this Note, exceed the maximum interest rate allowed by law. The terms and provisions of this paragraph shall control and supersede every other provision of all agreements between Payee and Maker in conflict herewith.

8. Governing Law. This Note and the rights and obligations of the parties hereunder shall be governed by the laws of the United States of America and by the laws of the State of Texas, and is performable in Dallas County, Texas.

MAKER:

HCRE PARTNERS, LLC

EXHIBIT 4

PROMISSORY NOTE

$900,000 September 25, 2019

FOR VALUE RECEIVED, HCRE PARTNERS, LLC ("***Maker***") promises to pay to the order of HIGHLAND CAPITAL MANAGEMENT, LP. ("***Payee***"), in legal and lawful tender of the United States of America, the principal sum of NINE HUNDRED THOUSAND and 00/100 Dollars ($900,000.00), together with interest, on the terms set forth below (the "***Note***"). All sums hereunder are payable to Payee at 300 Crescent Court, Dallas, TX 75201, or such other address as Payee may specify to Maker in writing from time to time.

1. Interest Rate. The unpaid principal balance of this Note from time to time outstanding shall bear interest at a rate equal to 8.00% per annum from the date hereof until maturity, compounded annually on the anniversary of the date of this Note. Interest shall be calculated at a daily rate equal to 1/365th (1/366 in a leap year) of the rate per annum, shall be charged and collected on the actual number of days elapsed, and shall be payable on demand of the Payee.

2. Payment of Principal and Interest. The accrued interest and principal of this Note shall be due and payable on demand of the Payee.

3. Prepayment Allowed; Renegotiation Discretionary. Maker may prepay in whole or in part the unpaid principal or accrued interest of this Note. Any payments on this Note shall be applied first to unpaid accrued interest hereon, and then to unpaid principal hereof.

4. Acceleration Upon Default. Failure to pay this Note or any installment hereunder as it becomes due shall, at the election of the holder hereof, without notice, demand, presentment, notice of intent to accelerate, notice of acceleration, or any other notice of any kind which are hereby waived, mature the principal of this Note and all interest then accrued, if any, and the same shall at once become due and payable and subject to those remedies of the holder hereof. No failure or delay on the part of Payee in exercising any right, power or privilege hereunder shall operate as a waiver thereof.

5. Waiver. Maker hereby waives grace, demand, presentment for payment, notice of nonpayment, protest, notice of protest, notice of intent to accelerate, notice of acceleration and all other notices of any kind hereunder.

6. Attorneys' Fees. If this Note is not paid at maturity (whether by acceleration or otherwise) and is placed in the hands of an attorney for collection, or if it is collected through a bankruptcy court or any other court after maturity, the Maker shall pay, in addition to all other amounts owing hereunder, all actual expenses of collection, all court costs and reasonable attorneys' fees and expenses incurred by the holder hereof.

7. Limitation on Agreements. All agreements between Maker and Payee, whether now existing or hereafter arising, are hereby limited so that in no event shall the amount paid, or agreed to be paid to Payee for the use, forbearance, or detention of money or for the payment or

performance of any covenant or obligation contained herein or in any other document evidencing, securing or pertaining to this Note, exceed the maximum interest rate allowed by law. The terms and provisions of this paragraph shall control and supersede every other provision of all agreements between Payee and Maker in conflict herewith.

8. Governing Law. This Note and the rights and obligations of the parties hereunder shall be governed by the laws of the United States of America and by the laws of the State of Texas, and is performable in Dallas County, Texas.

MAKER:

HCRE PARTNERS, LLC

EXHIBIT 5

HIGHLAND CAPITAL MANAGEMENT, L.P.

December 3, 2020

HCRE Partners, LLC (n/k/a NexPoint Real Estate Partners, LLC)
c/o NexPoint Advisors, LP
300 Crescent Court, Suite 700
Dallas, Texas 75201
Attention: James Dondero

Re: Demand on Promissory Notes:

Dear Mr. Dondero,

HCRE Partners, LLC (n/k/a NexPoint Real Estate Partners, LLC) ("Maker") entered into the following promissory notes (collectively, the "Notes") in favor of Highland Capital Management, L.P. ("Payee"):

Date Issued	Original Principal Amount	Outstanding Principal Amount (12/11/20)	Accrued But Unpaid Interest (12/11/20)	Total Amount Outstanding (12/11/20)
11/27/13	$100,000	$171,542.00	$526.10	$172,068.10
10/12/17	$2,500,000	$3,149,919.12	$41,423.60	$3,191,342.72
10/15/18	$750,000	$874,977.53	$10,931.23	$885,908.76
9/25/19	$900,000	$750,279.14	$12,662.24	$762,941.38
TOTALS	**$4,250,000**	**$4,946,717.79**	**$65,543.17**	**$5,012,260.96**

As set forth in Section 2 of each of the Notes, accrued interest and principal is due and payable upon the demand of Payee. By this letter, Payee is demanding payment of the accrued interest and principal due and payable on the Notes in the aggregate amount of $5,012,260.96, which represents all accrued and unpaid interest and principal through and including December 11, 2020.

Payment is due on December 11, 2020, and failure to make payment in full on such date will constitute an event of default under the Notes.

Payments on the Notes must be made in immediately available funds. Payee's wire information is attached hereto as **Appendix A**.

Nothing contained herein constitutes a waiver of any rights or remedies of Payee under the Notes or otherwise and all such rights and remedies, whether at law, equity, contract, or otherwise, are expressly reserved. Interest, including default interest if applicable, on the Notes will continue to accrue until the Notes are paid in full. Any such interest will remain the obligation of Maker.

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Sincerely,

/s/ James P. Seery, Jr.

James P. Seery, Jr.
Highland Capital Management, L.P.
Chief Executive Officer/Chief Restructuring Officer

cc: Fred Caruso
James Romey
Jeffrey Pomerantz
Ira Kharasch
Gregory Demo
DC Sauter

Appendix A

ABA #:	322070381
Bank Name:	East West Bank
Account Name:	Highland Capital Management, LP
Account #:	5500014686

EXHIBIT 6

PROMISSORY NOTE

$6,059,831.51 **May 31, 2017**

THIS PROMISSORY NOTE (this "**Note**") is in substitution for and supersedes in their entirety each of those certain promissory notes described in Exhibit A hereto, from HCRE Partners, LLC, as Maker, and Highland Capital Management, L.P. as Payee (collectively, the "**Prior Notes**"), together with the aggregate outstanding principal and accrued and unpaid interested represented thereby.

FOR VALUE RECEIVED, HCREA PARTNERS, LLC ("**Maker**") promises to pay to the order of HIGHLAND CAPITAL MANAGEMENT, L.P. ("**Payee**"), in legal and lawful tender of the United States of America, the principal sum of SIX MILLION, FIFTY NINE THOUSAND, EIGHT HUNDRED THIRTY ONE AND 51/100 DOLLARS ($6,059,831.51), together with interest, on the terms set forth below. All sums hereunder are payable to Payee at 300 Crescent Court, Suite 700, Dallas, Texas 75201, or such other address as Payee may specify to Maker in writing from time to time.

1. Interest Rate. The unpaid principal balance of this Note from time to time outstanding shall bear interest at the rate of eight percent (8.00%) per annum from the date hereof until Maturity Date (hereinafter defined), compounded annually on the anniversary of the date of this Note. Interest shall be calculated at a daily rate equal to 1/365th (1/366 in a leap year) of the rate per annum, shall be charged and collected on the actual number of days elapsed, and shall be payable annually.

2. Payment of Principal and Interest. Principal and interest under this Note shall be payable as follows:

2.1 Annual Payment Dates. During the term of this Note, Borrower shall pay the outstanding principal amount of the Note (and all unpaid accrued interest through the date of each such payment) in thirty (30) equal annual payments (the "**Annual Installment**") until the Note is paid in full. Borrower shall pay the Annual Installment on the 31st day of December of each calendar year during the term of this Note, commencing on the first such date to occur after the date of execution of this Note.

2.2 Final Payment Date. The final payment in the aggregate amount of the then outstanding and unpaid Note, together with all accrued and unpaid interest thereon, shall become immediately due and payable in full on December 31, 2047 (the "**Maturity Date**").

3. Prepayment Allowed; Renegotiation Discretionary. Maker may prepay in whole or in part the unpaid principal or accrued interest of this Note. Any payments on this Note shall be applied first to unpaid accrued interest hereon, and then to unpaid principal hereof.

4. Acceleration Upon Default. Failure to pay this Note or any installment hereunder as it becomes due shall, at the election of the holder hereof, without notice, demand, presentment, notice of intent to accelerate, notice of acceleration, or any other notice of any kind which are hereby waived, mature the principal of this Note and all interest then accrued, if any, and the same

shall at once become due and payable and subject to those remedies of the holder hereof. No failure or delay on the part of Payee in exercising any right, power or privilege hereunder shall operate as a waiver thereof.

5. Waiver. Maker hereby waives grace, demand, presentment for payment, notice of nonpayment, protest, notice of protest, notice of intent to accelerate, notice of acceleration and all other notices of any kind hereunder.

6. Attorneys' Fees. If this Note is not paid at maturity (whether by acceleration or otherwise) and is placed in the hands of an attorney for collection, or if it is collected through a bankruptcy court or any other court after maturity, the Maker shall pay, in addition to all other amounts owing hereunder, all actual expenses of collection, all court costs and reasonable attorneys' fees and expenses incurred by the holder hereof.

7. Limitation on Agreements. All agreements between Maker and Payee, whether now existing or hereafter arising, are hereby limited so that in no event shall the amount paid, or agreed to be paid to Payee for the use, forbearance, or detention of money or for the payment or performance of any covenant or obligation contained herein or in any other document evidencing, securing or pertaining to this Note, exceed the maximum interest rate allowed by law. The terms and provisions of this paragraph shall control and supersede every other provision of all agreements between Payee and Maker in conflict herewith.

8. Governing Law. This Note and the rights and obligations of the parties hereunder shall be governed by the laws of the United States of America and by the laws of the State of Texas, and is performable in Dallas County, Texas.

9. Prior Notes. The original of each of the Prior Notes superseded hereby shall be marked "VOID" by Payee.

MAKER:

HCRE PARTNERS, LLC

By:_____
Name: James Dondero
Title:

EXHIBIT A

PRIOR NOTES

Loan Date	Initial Note Amount	Interest Rate	Principal and Interest Outstanding as of May 31, 2017
1/9/14	$100,000.00	8.00%	$108,000.00
1/29/14	$600,000.00	8.00%	$648,000.00
3/10/14	$2,000,000.00	8.00%	$2,009,643.84
3/28/14	$50,000.00	8.00%	$54,000.00
1/26/15	$1,500,000.00	8.00%	$1,545,356.16
4/2/15	$1,500,000.00	8.00%	$1,545,356
	$5,750,000.00		**$6,059,831.51**

EXHIBIT 7

HIGHLAND CAPITAL MANAGEMENT, L.P.

January 7, 2021

HCRE Partners, LLC (n/k/a NexPoint Real Estate Partners, LLC)
c/o NexPoint Advisors, LP
300 Crescent Court, Suite 700
Dallas, Texas 75201
Attention: James Dondero

Re: Demand on Promissory Note

Dear Mr. Dondero,

On May 31, 2017, HCRE Partners, LLC (n/k/a NexPoint Real Estate Partners, LLC) ("Maker") entered into that certain promissory note in the original principal amount of $6,059,831.51 (the "Note") in favor of Highland Capital Management, L.P. ("Payee").

As set forth in Section 2 of the Note, accrued interest and principal on the Note is due and payable in thirty equal annual payments with each payment due on December 31 of each calendar year. Maker failed to make the payment due on December 31, 2020.

Because of Maker's failure to pay, the Note is in default. Pursuant to Section 4 of the Note, all principal, interest, and any other amounts due on the Note are immediately due and payable. The amount due and payable on the Note as of January 8, 2021 is $6,145,466.84; however, interest continues to accrue under the Note.

The Note is in default, and payment is due immediately. Payments on the Note must be made in immediately available funds. Payee's wire information is attached hereto as **Appendix A**.

Nothing contained herein constitutes a waiver of any rights or remedies of Payee under the Note or otherwise and all such rights and remedies, whether at law, equity, contract, or otherwise, are expressly reserved. Interest, including default interest if applicable, on the Note will continue to accrue until the Note is paid in full. Any such interest will remain the obligation of Maker.

Sincerely,

/s/ James P. Seery, Jr.

James P. Seery, Jr.
Highland Capital Management, L.P.
Chief Executive Officer/Chief Restructuring Officer

DOCS_NY:41913.2 36027/002

cc: Fred Caruso
James Romey
Jeffrey Pomerantz
Ira Kharasch
Gregory Demo
DC Sauter

Appendix A

ABA #:	322070381
Bank Name:	East West Bank
Account Name:	Highland Capital Management, LP
Account #:	5500014686

EXHIBIT 8

FOURTH AMENDED AND RESTATED

AGREEMENT OF LIMITED PARTNERSHIP

OF

HIGHLAND CAPITAL MANAGEMENT, L.P.

THE PARTNERSHIP INTERESTS REPRESENTED BY THIS LIMITED PARTNERSHIP AGREEMENT HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OP 1933 OR UNDER ANY STATE SECURITIES ACTS IN RELIANCE UPON EXEMPTIONS UNDER THOSE ACTS. THE SALE OR OTHER DISPOSITION OF THE PARTNERSHIP INTERESTS IS PROHIBITED UNLESS THAT SALE OR DISPOSITION IS MADE IN COMPLIANCE WITH ALL SUCH APPLICABLE ACTS. ADDITIONAL RESTRICTIONS ON TRANSFER OF THE PARTNERSHIP INTERESTS ARE SET FORTH IN THIS AGREEMENT.

FOURTH AMENDED AND RESTATED
AGREEMENT OF LIMITED PARTNERSHIP
OF
HIGHLAND CAPITAL MANAGEMENT, L.P.

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FOURTH AMENDED AND RESTATED
AGREEMENT OF LIMITED PARTNERSHIP
OF
HIGHLAND CAPITAL MANAGEMENT, L.P.

THIS FOURTH AMENDED AND RESTATED AGREEMENT OF LIMITED PARTNERSHIP is entered into on this 24th day of December, 2015, to be effective as of December 24, 2015, by and among Strand Advisors, Inc., a Delaware corporation ***("Strand"),*** as General Partner, the Limited Partners party hereto, and any Person hereinafter admitted as a Limited Partner.

Certain terms used in this Agreement are defined in Article 2.

ARTICLE 1

GENERAL

1.1. Continuation. Subject to the provisions of this Agreement, the Partners hereby continue the Partnership as a limited partnership pursuant to the provisions of the Delaware Act. Except as expressly provided herein, the rights and obligations of the Partners and the administration and termination of the Partnership shall be governed by the Delaware Act.

1.2. Name. The name of the Partnership shall be, and the business of the Partnership shall be conducted under the name of Highland Capital Management, L.P. The General Partner, in its sole and unfettered discretion, may change the name of the Partnership at any time and from time to time and shall provide Limited Partners with written notice of such name change within twenty (20) days after such name change.

1.3. Purpose. The purpose and business of the Partnership shall be the conduct of any business or activity that may lawfully be conducted by a limited partnership organized pursuant to the Delaware Act. Any or all of the foregoing activities may be conducted directly by the Partnership or indirectly through another partnership, joint venture, or other arrangement.

1.4. Term. The Partnership was formed as a limited partnership on July 7, 1997, and shall continue until terminated pursuant to this Agreement.

1.5. Partnership Offices; Addresses of Partners.

(a) Partnership Offices. The registered office of the Partnership in the State of Delaware shall be 1013 Centre Road, Wilmington, Delaware 19805-1297, and its registered agent for service of process on the Partnership at that registered office shall be Corporation Service Company, or such other registered office or registered agent as the General Partner may from time to time designate. The principal office of the Partnership shall be 300 Crescent Court, Suite 700, Dallas, Texas 75201, or such other place as the General Partner may from time to time designate. The Partnership may maintain offices at such other place or places as the General Partner deems advisable.

(b) Addresses of Partners. The address of the General Partner is 300 Crescent Court, Suite 700, Dallas, Texas 75201. The address of each Limited Partner shall be the address of that Limited Partner appearing on the books and records of the Partnership. Each Limited Partner agrees to provide the General Partner with prompt written notice of any change in his/her/its address.

ARTICLE 2

DEFINITIONS

2.1. Definitions. The following definitions shall apply to the terms used in this Agreement, unless otherwise clearly indicated to the contrary in this Agreement:

"***Additional Capital Contribution***" has the meaning set forth in Section 3.1(b) of this Agreement.

"***Adjusted Capital Account Deficit***" means, with respect *to* any Partner, the deficit balance, if any, in the Capital Account of that Partner as of the end of the relevant Fiscal Year, or other relevant period, giving effect to all adjustments previously made thereto pursuant to Section 3.7 and further adjusted as follows: (i) credit to that Capital Account, any amounts which that Partner is obligated or deemed obligated to restore pursuant to any provision of this Agreement or pursuant to Treasury Regulations Section 1.704-1(b)(2)(ii)(c); (ii) debit to that Capital Account, the items described in Treasury Regulations Sections 1.704-1(b)(2)(ii)(d)(4), (5) and (6); and (iii) to the extent required under the Treasury Regulations, credit to that Capital Account (A) that Partner's share of "minimum gain" and (B) that Partner's share of "partner nonrecourse debt minimum gain." (Each Partner's share of the minimum gain and partner nonrecourse debt minimum gain shall be determined under Treasury Regulations Sections 1.704-2(g) and 1.704-2(i)(5), respectively.)

"***Affiliate***" means any Person that directly or indirectly controls, is controlled by, or is under common control with the Person in question. As used in this definition, the term "***control***" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through ownership of voting Securities, by contract or otherwise.

"***Agreement***" means this Fourth Amended and Restated Agreement of Limited Partnership, as it may be amended, supplemented, or restated from time to time.

"***Business Day***" means Monday through Friday of each week, except that a legal holiday recognized as such by the government of the United States or the State of Texas shall not be regarded as a Business Day.

"***Capital Account***" means the capital account maintained for a Partner pursuant to Section 3.7(a).

"***Capital Contribution***" means, with respect to any Partner, the amount of money or property contributed to the Partnership with respect to the interest in the Partnership held by that Person.

"***Certificate of Limited Partnership***" means the Certificate of Limited Partnership filed with the Secretary of State of Delaware by the General Partner, as that Certificate may be amended, supplemented or restated from time to time.

"Class A Limited Partners" means those Partners holding a Class A Limited Partnership Interest, as shown on Exhibit A.

"Class A Limited Partnership Interest" means a Partnership Interest held by a Partner in its capacity as a Class A Limited Partner."

"Class B Limited Partner" means those Partners holding a Class B Limited Partnership Interest, as shown on Exhibit A.

"Class B Limited Partnership Interest" means a Partnership Interest held by a Partner in its capacity as a Class B Limited Partner."

"Class B NAV Ratio Trigger Period" means any period during which the Class B Limited Partner's aggregate capital contributions, including the original principal balance of the Contribution Note, and reduced by the aggregate amount of distributions to the Class B Limited Partner, exceed 75 percent of the product of the Class B Limited Partner's Percentage Interest multiplied by the total book value of the Partnership; provided, however, that the General Partner shall only be required to test for a Class B NAV Ratio Trigger Period annually, as of the last day of each calendar year; provided further the General Partner must complete the testing within 180 days of the end of each calendar year; provided further that if the test results in a Class B NAV Ratio Trigger Period, the General Partner may, at its own election, retest at any time to determine the end date of the Class B NAV Ratio Trigger Period.

"Class C Limited Partner" means those Partners holding a Class C Limited Partnership Interest, as shown on Exhibit A.

"Class C Limited Partnership Interest" means a Partnership Interest held by a Partner in its capacity as a Class C Limited Partner."

"Class C NAV Ratio Trigger Period" means any period during which an amount equal to $93,000,000.00 reduced by the aggregate amount of distributions to the Class C Limited Partner after the Effective Date exceeds 75 percent of the product of the Class C Limited Partner's Percentage Interest multiplied by the total book value of the Partnership; provided, however, that the General Partner shall only be required to test for a Class C NAV Ratio Trigger Period annually, as of the last day of each calendar year; provided further the General Partner must complete the testing within 180 days of the end of each calendar year; provided further that if the test results in a Class C NAV Ratio Trigger Period, the General Partner may, at its own election, retest at any time to determine the end date of the Class C NAV Ratio Trigger Period.

"***Code***" means the Internal Revenue Code of 1986, as amended and in effect from time to time.

"Contribution Note" means that certain Secured Promissory Note dated December 21, 2015 by and among Hunter Mountain Investment Trust, as maker, and the Partnership as Payee.

"***Default Loan***" has the meaning set forth in Section 3.1(c)(i).

"***Defaulting Partner***" has the meaning set forth in Section 3.1(c).

"***Delaware Act***" means the Delaware Revised Uniform Limited Partnership Act, Part IV, Title C, Chapter 17 of the Delaware Corporation Law Annotated, as it may be amended, supplemented or restated from time to time, and any successor to that Act.

"Effective Date" means the date first recited above.

"***Fiscal Year***" has the meaning set forth in Section 3.11(b).

"***Founding Partner Group***" means, all partners holding partnership interests in the Partnership immediately before the Effective Date.

"***General Partner***" means any Person who (i) is referred to as such in the first paragraph of this Agreement, or has become a General Partner pursuant to the terms of this Agreement; and (ii) has not ceased to be a General Partner pursuant to the terms of this Agreement.

"***Limited Partner***" means any Person who (i) is referred to as such in the first paragraph of this Agreement, or has become a Limited Partner pursuant to the terms of this Agreement, and (ii) has not ceased to be a Limited Partner pursuant to the terms of this Agreement.

"***Liquidator***" has the meaning set forth in Section 5.3.

"***Losses***" means, for each Fiscal Year, the losses and deductions of the Partnership determined in accordance with accounting principles consistently applied from year to year employed under the Partnership's method of accounting and as reported, separately or in the aggregate, as appropriate, on the Partnership's information tax return filed for federal income tax purposes, plus any expenditures described in Code Section 705(a)(2)(B).

"***Majority Interest***" means the owners of more than fifty percent (50%) of the Percentage Interests of Class A Limited Partners.

"NAV Ratio Trigger Period" means a Class B NAV Ratio Trigger Period or a Class C NAV Ratio Trigger Period.

"Net Increase in Working Capital Accounts" means the excess of (i) Restricted Cash plus Management and Incentive Fees Receivable plus Other Assets plus Deferred Incentive Fees Receivable less Accounts Payable less Accrued and Other Liabilities as of the end of the period being measured over (ii) Restricted Cash plus Management and Incentive Fees Receivable plus Other Assets plus Deferred Incentive Fees Receivable less Accounts Payable less Accrued and Other Liabilities as of the beginning of the period being measured; provided, however, that amounts within each of the aforementioned categories shall be excluded from the calculation to the extent they are specifically identified as being derived from investing or financing activities. Each of the capitalized terms in this definition shall have the meaning given them in the books and records of the Partnership and appropriate adjustments may be made to the extent the Partnership adds new ledger accounts to its books and records that are current assets or current liabilities.

"***New Issues***" means Securities that are considered to be "new issues," as defined in the Conduct Rules of the National Association of Securities Dealers, Inc.

"***Nonrecourse Deduction***" has the meaning set forth in Treasury Regulations Section 1.704-2(b)(1), as computed under Treasury Regulations Section 1.704-2(c).

"***Nonrecourse* Liability**" has the meaning set forth in Treasury Regulations Section 1.704-2(b)(3).

"Operating Cash Flow" means Total Revenue less Total Operating Expenses plus Depreciation & Amortization less Net Increase in Working Capital Accounts year over year. Each of the capitalized terms in this definition shall have the meaning given them in the books and records of the Partnership.

"***Partner***" means a General Partner or a Limited Partner.

"***Partner Nonrecourse Debt***" has the meaning set forth in Treasury Regulations Section 1.704-2(b)(4).

"***Partner Nonrecourse Deductions***" has the meaning set forth in Treasury Regulations Section 1.704-2(i)(2).

"***Partner Nonrecourse Debt Minimum Gain***" has the meaning set forth in Treasury Regulations Section 1.704-2(i)(5).

"***Partnership***" means Highland Capital Management, L.P., the Delaware limited partnership established pursuant to this Agreement.

"***Partnership Capital***" means, as of any relevant date, the net book value of the Partnership's assets.

"***Partnership Interest***" means the interest acquired by a Partner in the Partnership including, without limitation, that Partner's right: (a) to an allocable share of the Profits, Losses, deductions, and credits of the Partnership; (b) to a distributive share of the assets of the Partnership; (c) if a Limited Partner, to vote on those matters described in this Agreement; and (d) if the General Partner, to manage and operate the Partnership.

"***Partnership Minimum Gain***" has the meaning set forth in Treasury Regulations Section 1.704-2(d).

"***Percentage Interest***" means the percentage set forth opposite each Partner's name on Exhibit A as such Exhibit may be amended from time to time in accordance with this Agreement.

"***Person***" means an individual or a corporation, partnership, trust, estate, unincorporated organization, association, or other entity.

"Priority Distributions" has the meaning set forth in Section 3.9(b).

"***Profits***" means, for each Fiscal Year, the income and gains of the Partnership determined in accordance with accounting principles consistently applied from year to year employed under the Partnership's method of accounting and as reported, separately or in the aggregate, as appropriate, on the Partnership's information tax return filed for federal income tax purposes, plus any income described in Code Section 705(a)(1)(B).

"***Profits Interest Partner***" means any Person who is issued a Partnership Interest that is treated as a "profits interest" for federal income tax purposes.

"Purchase Notes" means those certain Secured Promissory Notes of even date herewith by and among Hunter Mountain Investment Trust, as maker, and The Dugaboy Investment Trust, The Mark K. Okada, The Mark and Pamela Okada Family Trust – Exempt Trust #1, and The Mark K. Okada, The Mark and Pamela Okada Family Trust – Exempt Trust #2, each as Payees of the respective Secured Promissory Notes.

"***Record Date***" means the date established by the General Partner for determining the identity of Limited Partners entitled to vote or give consent to Partnership action or entitled to exercise rights in respect of any other lawful action of Limited Partners.

"***Second Amended Buy-Sell and Redemption Agreement***" means that certain Second Amended and Restated Buy-Sell and Redemption Agreement, dated December 21, 2015, to be effective as of December 21, 2015 by and between the Partnership and its Partners, as may be amended, supplemented, or restated from time to time.

"***Securities***" means the following: (i) securities of any kind (including, without limitation, "securities" as that term is defined in Section 2(a)(1) of the Securities Act; (ii) commodities of any kind (as that term is defined by the U.S. Securities Laws and the rules and regulations promulgated thereunder); (iii) any contracts for future or forward delivery of any security, commodity or currency; (iv) any contracts based on any securities or group of securities, commodities or currencies; (v) any options on any contracts referred to in clauses (iii) or (iv); or (vi) any evidences of indebtedness (including participations in or assignments of bank loans or trade credit claims). The items set forth in clauses (i) through (vi) herein include, but are not limited to, capital stock, common stock, preferred stock, convertible securities, reorganization certificates, subscriptions, warrants, rights, options, puts, calls, bonds, mutual fund interests, debentures, notes, certificates of deposit, letters of credit, bankers acceptances, trust receipts and other securities of any corporation or other entity, whether readily marketable or not, rights and options, whether granted or written by the Partnership or by others, treasury bills, bonds and notes, any securities or obligations issued or guaranteed by the United States or any foreign country or any state or possession of the United States or any foreign country or any political subdivision or agency or instrumentality of any of the foregoing, and derivatives of any of the foregoing.

"***Securities Act***" means the Securities Act of 1933, as amended, and any successor to such statute.

"***Substitute Limited Partner***" has the meaning set forth in Section 4.6(a).

"***Transfer***" or derivations thereof, of a Partnership Interest means, as a noun, the transfer, sale, assignment, exchange, pledge, hypothecation or other disposition of a Partnership Interest, or any part thereof, directly or indirectly, and as a verb, voluntarily or involuntarily to transfer, sell, assign, exchange, pledge, hypothecate or otherwise dispose of.

"***Treasury Regulations***" means the Department of Treasury Regulations promulgated under the Code, as amended and in effect (including corresponding provisions of succeeding regulations).

2.2. Other Definitions. All terms used in this Agreement that are not defined in this Article 2 have the meanings contained elsewhere in this Agreement.

ARTICLE 3

FINANCIAL MATTERS

3.1. Capital Contributions.

(a) Initial Capital Contributions. The initial Capital Contribution of each Partner shall be set forth in the books and records of the Partnership.

(b) Additional Capital Contributions.

(i) The General Partner, in its reasonable discretion and for a *bona fide* business purpose, may request in writing that the Founding Partner Group make additional Capital Contributions in proportion to their Percentage Interests (each, an "***Additional Capital Contribution***").

(ii) Any failure by a Partner to make an Additional Capital Contribution requested under Section 3.1(b)(i) on or before the date on which that Additional Capital Contribution was due shall result in the Partner being in default.

(c) Consequences to Defaulting Partners. In the event a Partner is in default under Section 3.1(b) (a "***Defaulting Partner***"), the Defaulting Partner, in its sole and unfettered discretion, may elect to take either one of the option set forth below.

(i) Default Loans. If the Defaulting Partner so elects, the General Partner shall make a loan to the Defaulting Partner in an amount equal to that Defaulting Partner's additional capital contribution (a "***Default Loan***"). A Default Loan shall be deemed advanced on the date actually advanced. Default Loans shall earn interest on the outstanding principal amount thereof at a rate equal to the Applicable Federal Mid-Term Rate (determined by the Internal Revenue Service for the month in which the loan is deemed made) from the date actually advanced until the same is repaid in full. The term of any Default Loan shall be six (6) months, unless otherwise extended by the General Partner in its sole and unfettered discretion. If the General Partner makes a Default Loan, the Defaulting Partner shall not receive any distributions pursuant to Section 3.9(a) or Section 5.3 or any proceeds from the Transfer of all or any part of its Partnership Interest while the Default Loan remains unpaid. Instead, the Defaulting Partner's share of distributions or such other proceeds shall (until all Default Loans and interest thereon shall have been repaid in full) first be paid to the General Partner. Such payments shall be applied first to the payment of interest on such Default Loans and then to the repayment of the principal amounts thereof, but shall be considered, for all other purposes of this Agreement, to have been distributed to the Defaulting Partner. The Defaulting Partner shall be liable for the reasonable fees and expenses incurred by the General Partner (including, without limitation, reasonable attorneys' fees and disbursements) in connection with any enforcement or foreclosure upon any Default Loan and such costs shall, to the extent enforceable under applicable law, be added to the principal amount of the applicable Default Loan. In addition, at any time during the term of such Default Loan, the Defaulting Partner shall have the right to repay, in full, the Default Loan (including interest and any other charges). If the General Partner makes a Default Loan, the Defaulting Partner shall be deemed to have pledged to the General Partner and granted to the General Partner a continuing first priority security interest in, all of the Defaulting Partner's Partnership Interest to secure the payment of the principal of, and interest on, such Default Loan in accordance with the provisions hereof, and for such purpose this Agreement shall constitute a security agreement. The Defaulting Partner shall promptly execute, acknowledge and deliver such financing statements, continuation statements or other documents and take such other actions as the General Partner shall request in writing in order to perfect or continue the perfection of such security interest; and, if the Defaulting Partner shall fail to do so within seven (7) days after the Defaulting Partner's receipt of a notice making demand therefor, the General Partner is hereby appointed the attorney-in-fact of, and is hereby authorized on behalf of, the Defaulting Partner, to execute, acknowledge and deliver all such documents and take all such other actions as may be required to perfect such security interest. Such appointment and authorization are coupled with an interest and shall be irrevocable. The General Partner shall, prior to exercising any right or remedy (whether at law, in equity or pursuant to the terms hereof) available to it in connection with such security interest, provide to the Defaulting Partner a notice, in reasonable detail, of the right or remedy to be exercised and the intended timing of such exercise which shall not be less than five (5) days following the date of such notice.

(ii) Reduction of Percentage Interest. If the Defaulting Partner does not elect to obtain a Default Loan pursuant to Section 3.1(c)(i), the General Partner shall reduce the Defaulting Partner's Percentage Interest in accordance with the following formula:

> The Defaulting Partner's new Percentage Interest shall equal the product of (1) the Defaulting Partner's current Percentage Interest, multiplied by (2) the quotient of (a) the current Capital Account of the Defaulting Partner (with such Capital Account determined after taking into account a revaluation of the Capital Accounts immediately prior to such determination), divided by (b) the sum of (i) the current Capital Account of the Defaulting Partner (with such Capital Account determined after taking into account a revaluation of the Capital Accounts immediately prior to such determination), plus (ii) the amount of the additional capital contribution that such Defaulting Partner failed to make when due.

To the extent any downward adjustment is made to the Percentage Interest of a Partner pursuant to this Section 3.1(c)(ii), any resulting benefit shall accrue to the Partners (other than the Defaulting Partner) in proportion to their respective Percentage Interests.

3.2. Allocations of Profits and Losses.

(a) Allocations of Profits. Except as provided in Sections 3.4, 3.5, and 3.6, Profits for any Fiscal Year will be allocated to the Partners as follows:

(i) First, to the Partners until cumulative Profits allocated under this Section 3.2(a)(i) for all prior periods equal the cumulative Losses allocated to the Partners under Section 3.2(b)(iii) for all prior periods in the inverse order in which such Losses were allocated; and

(ii) Next, to the Partners until cumulative Profits allocated under this Section 3.2(a)(ii) for all prior periods equal the cumulative Losses allocated to the Partners under Section 3.2(b)(ii) for all prior periods in the inverse order in which such Losses were allocated; and

(iii) Then, to all Partners in proportion to their respective Percentage Interests.

(b) Allocations of Losses. Except as provided in Sections 3.4, 3.5, and 3.6, Losses for any Fiscal Year will be will be allocated as follows:

(i) First, to the Partners until cumulative Losses allocated under this Section 3.2(b)(i) for all prior periods equal the cumulative Profits allocated to the Partners under Section 3.2(a)(iii) for all prior periods in the inverse order in which such Profits were allocated; and

(ii) Next, to the Partners in proportion to their respective positive Capital Account balances until the aggregate Capital Account balances of the Partners (excluding any negative Capital Account balances) equal zero; *provided, however,* losses shall first be allocated to reduce amounts that were last allocated to the Capital Accounts of the Partners; and

(iii) Then, to all Partners in proportion to their respective Percentage Interests.

(c) Limitation on Loss Allocations. If any allocation of Losses would cause a Limited Partner to have an Adjusted Capital Account Deficit, those Losses instead shall be allocated to the General Partner.

3.3. Allocations on Transfers. Taxable items of the Partnership attributable to a Partnership Interest that has been Transferred (including the simultaneous decrease in the Partnership Interest of existing Partners resulting from the admission of a new Partner) shall be allocated in accordance with Section 4.3(d).

3.4. Special Allocations. If the requisite stated conditions or facts are present, the following special allocations shall be made in the following order:

(a) Partnership Minimum Gain Chargeback**.** Notwithstanding any other provision of this Article 3, if there is a net decrease in Partnership Minimum Gain during any taxable year or other period for which allocations are made, prior to any other allocation under this Agreement, each Partner shall be specially allocated items of Partnership income and gain for that period (and, if necessary, subsequent periods) in proportion to, and to the extent of, an amount equal to that Partner's share of the net decrease in Partnership Minimum Gain during that year determined in accordance with Treasury Regulations Section 1.704-2(g)(2)**.** The items to be allocated shall be determined in accordance with Treasury Regulations Section 1.704-2(g)**.** This Section 3.4(a) is intended to comply with the partnership minimum gain chargeback requirements of the Treasury Regulations and shall be subject to all exceptions provided therein.

(b) Partner Nonrecourse Debt Minimum Gain Chargeback**.** Notwithstanding any other provision of this Article 3 (other than Section 3.4(a)), if there is a net decrease in Partner Nonrecourse Debt Minimum Gain with respect to a Partner Nonrecourse Debt during any taxable year or other period for which allocations are made, any Partner with a share of such Partner Nonrecourse Debt Minimum Gain as of the beginning of the year shall be specially allocated items of Partnership income and gain for that period (and, if necessary, subsequent periods in an amount equal to that Partner's share of the net decrease in the Partner Nonrecourse Debt Minimum Gain during that year determined in accordance with Treasury Regulations Section 1.704-2(g)(2)**.** The items to be so allocated shall be determined in accordance with Treasury Regulations Section 1.704-2(g)**.** This Section 3.4(b) is intended to comply with the partner nonrecourse debt minimum gain chargeback requirements of the Treasury Regulations, shall be interpreted consistently with the Treasury Regulations and shall be subject to all exceptions provided therein.

(c) Qualified Income Offset**.** If a Partner unexpectedly receives any adjustments, allocations or distributions described in Treasury Regulations Sections 1.704-1(b)(2)(ii)(d)(4), (d)(5) or (d)(6), then items of Partnership income and gain shall be specially allocated to each such Partner in an amount and manner sufficient to eliminate, to the extent required by the Treasury Regulations, the Adjusted Capital Account Deficit of the Partner as quickly as possible; *provided, however,* an allocation pursuant to this Section 3.4(c) shall be made if and only to the extent that the Partner would have an Adjusted Capital Account Deficit after all other allocations provided for in this Article 3 have been tentatively made without considering this Section 3.4(c).

(d) Gross Income Allocation**.** If a Partner has a deficit Capital Account at the end of any Fiscal Year of the Partnership that exceeds the sum of (i) the amount the Partner is obligated to restore, and (ii) the amount the Partner is deemed to be obligated to restore pursuant to the penultimate sentences of Treasury Regulations Sections 1.704-2(g)(1) and 1.704-2(i)(5), then each such Partner shall be specially allocated items of income and gain of the Partnership in the amount of the excess as quickly as possible; *provided, however,* an allocation pursuant to this Section 3.4(d) shall be made if and only to

the extent that the Partner would have a deficit Capital Account in excess of that sum after all other allocations provided for in this Article 3 have been tentatively made without considering Section 3.4(c) or 3.4(d).

(e) Nonrecourse Deductions. Nonrecourse Deductions for any taxable year or other period for which allocations are made shall he allocated among the Partners in accordance with their Percentage interests.

(f) Partner Nonrecourse Deductions. Notwithstanding anything to the contrary in this Agreement, any Partner Nonrecourse Deductions for any taxable year or other period for which allocations are made will be allocated to the Partner who bears the economic risk of loss with respect to the Partner Nonrecourse Debt to which the Partner Nonrecourse Deductions are attributable in accordance with Treasury Regulations Section 1.704-2(i).

(g) Section 754 Adjustments. To the extent an adjustment to the adjusted tax basis of any asset of the Partnership under Code Section 734(b) or Code Section 743(b) is required, pursuant to Treasury Regulations Section 1.704-1(b)(2)(iv)(m), to be taken into account in determining Capital Accounts, the amount of the adjustment to the Capital Accounts shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases the basis of the asset) and that gain or loss shall be specially allocated to the Partners in a manner consistent with the manner in which their Capital Accounts are required to be adjusted pursuant to that Section of the Treasury Regulations.

(h) Section 481 Adjustments. Any allocable items of income, gain, expense, deduction or credit required to be made by Section 481 of the Code as the result of the sale, transfer, exchange or issuance of a Partnership Interest will be specially allocated to the Partner receiving said Partnership Interest whether such items are positive or negative in amount.

3.5. Curative Allocations. The "***Basic Regulatory Allocations***" consist of (i) the allocations pursuant to Section 3.2(c), and (ii) the allocations pursuant to Sections 3.4. Notwithstanding any other provision of this Agreement, the Basic Regulatory Allocations shall be taken into account in allocating items of income, gain, loss and deduction among the Partners so that, to the extent possible, the net amount of the allocations of other items and the Basic Regulatory Allocations to each Partner shall be equal to the net amount that would have been allocated to each such Partner if the Basic Regulatory Allocations had not occurred. For purposes of applying the foregoing sentence, allocations pursuant to this Section 3.5 shall be made with respect to allocations pursuant to Section 3.4 (g) and (h) only to the extent that it is reasonably determined that those allocations will otherwise be inconsistent with the economic agreement among the Partners. To the extent that a special allocation under Section 3.4 is determined not to comply with applicable Treasury Regulations, then the Partners intend that the items shall be allocated in accordance with the Partners' varying Percentage Interests throughout each tax year during which such items are recognized for tax purposes.

3.6. Code Section 704(c) Allocations. In accordance with Code Section 704(c) and the Treasury Regulations thereunder, income, gain, loss and deduction with respect to property contributed to the capital of the Partnership shall, solely for tax purposes, be allocated among the Partners so as to take account of any variation at the time of the contribution between the tax basis of the property to the Partnership and the fair market value of that property. Except as otherwise provided herein, any elections or other decisions relating to those allocations shall be made by the General Partner in any manner that reasonably reflects the purpose and intent of this Agreement. Allocations of income, gain, loss and deduction pursuant to this Section 3.6 are solely for purposes of federal, state and local taxes and shall not affect, or in any way be taken into account in computing, the Capital Account of any Partner or the share

of Profits, Losses, other tax items or distributions of any Partner pursuant to any provision of this Agreement.

3.7. Capital Accounts.

(a) Maintenance of Capital Accounts. The Partnership shall establish and maintain a separate capital account (***"Capital Account"***) for each Partner in accordance with the rules of Treasury Regulations Section 1.704-1(b)(2)(iv), subject to and in accordance with the provisions set forth in this Section 3.7.

(i) The Capital Account balance of each Partner shall be credited (increased) by (A) the amount of cash contributed by that Partner to the capital of the Partnership, (B) the fair market value of property contributed by that Partner to the capital of the Partnership (net of liabilities secured by that contributed property that the Partnership assumes or takes subject to under Code Section 752), and (C) that Partner's allocable share of Profits and any items in the nature of income or gain which are specially allocated pursuant to Sections 3.4 and 3.5; and

(ii) The Capital Account balance of each Partner shall be debited (decreased) by (A) the amount of cash distributed to that Partner by the Partnership, (B) the fair market value of property distributed to that Partner by the Partnership (net of liabilities secured by that distributed property that such Partner assumes or takes subject to under Code Section 752), (C) that Partner's allocable share of expenditures of the Partnership described in Code Section 705(a)(2)(B), and (D) that Partner's allocable share of Losses and any items in the nature of expenses or losses which are specially allocated pursuant to Sections 3.2, 3.4 and 3.5.

The provisions of this Section 3.7 and the other provisions of this Agreement relating to the maintenance of Capital Accounts have been included in this Agreement to comply with Code Section 704(b) and the Treasury Regulations promulgated thereunder and will be interpreted and applied in a manner consistent with those provisions. The General Partner may modify the manner in which the Capital Accounts are maintained under this Section 3.7 in order to comply with those provisions, as well as upon the occurrence of events that might otherwise cause this Agreement not to comply with those provisions.

(b) Negative Capital Accounts. If any Partner has a deficit balance in its Capital Account, that Partner shall have no obligation to restore that negative balance or to make any Capital Contribution by reason thereof, and that negative balance shall not be considered an asset of the Partnership or of any Partner.

(c) Interest. No interest shall be paid by the Partnership on Capital Contributions or on balances in Capital Accounts.

(d) No Withdrawal. No Partner shall be entitled to withdraw any part of his/her/its Capital Contribution or his/her/its Capital Account or to receive any distribution from the Partnership, except as provided in Section 3.9 and Article 5.

(e) Loans From Partners. Loans by a Partner to the Partnership shall not be considered Capital Contributions.

(f) Revaluations. The Capital Accounts of the Partners shall not be "booked-up" or "booked-down" to their fair market values under Treasury Regulations Section 1.704(c)-1(b)(2)(iv)(f) or otherwise.

3.8. Distributive Share for Tax Purpose. All items of income, deduction, gain, loss or credit that are recognized for federal income tax purposes will be allocated among the Partners in accordance with the allocations of Profits and Losses hereunder as determined by the General Partner in its sole and unfettered discretion. Notwithstanding the foregoing, the General Partner may (i) as to each New Issue, specially allocate to the Partners who were allocated New Issue Profit from that New Issue any short-term capital gains realized during the Fiscal Year upon the disposition of such New Issue during that Fiscal Year, and (ii) specially allocate items of gain (or loss) to Partners who withdraw capital during any Fiscal Year in a manner designed to ensure that each withdrawing Partner is allocated gain (or loss) in an amount equal to the difference between that Partner's Capital Account balance (or portion thereof being withdrawn) at the time of the withdrawal and the tax basis for his/her/ its Partnership Interest at that time (or proportionate amount thereof); *provided, however,* that the General Partner may, without the consent of any other Partner, (a) alter the allocation of any item of taxable income, gain, loss, deduction or credit in any specific instance where the General Partner, in its sole and unfettered discretion, determines such alteration to be necessary or appropriate to avoid a materially inequitable result *(e.g.,* where the allocation would create an inappropriate tax liability); and/or (b) adopt whatever other method of allocating tax items as the General Partner determines is necessary or appropriate in order to be consistent with the spirit and intent of the Treasury Regulations under Code Sections 704(b) and 704(c).

3.9. Distributions.

(a) General. The General Partner may make such pro rata or non-pro rata distributions as it may determine in its sole and unfettered discretion, without being limited to current or accumulated income or gains, but no such distribution shall be made out of funds required to make current payments on Partnership indebtedness; provided, however, that the General Partner may not make non-pro rata distributions under this Section 3.9(a) during an NAV Ratio Trigger Period without the consent of the Class B Limited Partner (in the case of a Class B NAV Ratio Trigger Period) and/or the Class C Limited Partner (in the case of a Class C NAV Ratio Trigger Period); provided, further this provision should not be interpreted to limit in any way the General Partner's ability to make non-pro rata tax distributions under Section 3.9(c) and Section 3.9(f). The Partnership has entered into one or more credit facilities with financial institutions that may limit the amount and timing of distributions to the Partners. Thus, the Partners acknowledge that distributions from the Partnership may be limited. Any distributions made to the Class B Limited Partner or the Class C Limited Partner pursuant to Section 3.9(b) shall reduce distributions otherwise allocable to such Partners under this Section 3.9(a) until such aggregate reductions are equal to the aggregate distributions made to the Class B Partners and the Class C Partners under Section 3.9(b).

(b) Priority Distributions. Prior to the distribution of any amounts to Partners pursuant to Section 3.9(a), and notwithstanding any other provision in this Agreement to the contrary, the Partnership shall make the following distributions ("***Priority Distributions***") pro-rata among the Class B Limited Partner and the Class C Limited Partner in accordance with their relative Percentage Interests:

(i) No later than March 31st of each calendar year, commencing March 31, 2017, an amount equal to $1,600,000.00;

(ii) No later than March 31st of each year, commencing March 31, 2017, an amount equal to three percent (3%) of the Partnership's investment gain for the prior year, as reflected in the Partnership's books and records within ledger account number 90100 plus three percent (3%) of the gross realized investment gains for the prior year of Highland Select Equity Fund, as reflected in its books and records;

(iii) No later than March 31st of each year, commencing March 31, 2017, an amount equal to ten percent (10%) of the Partnership's Operating Cash Flow for the prior year; and

(iv) No later than December 24th of each year, commencing December 24, 2016, an amount equal to the aggregate annual principal and interest payments on the Purchase Notes for the then current year.

(c) Tax Distributions. The General Partner may, in its sole discretion, declare and make cash distributions pursuant hereto to the Partners to allow the federal and state income tax attributable to the Partnership's taxable income that is passed through the Partnership to the Partners to be paid by such Partners (a "***Tax Distribution***"). The General Partner may, in its discretion, make Tax Distributions to the Founding Partner Group without also making Tax Distributions to other Partners; provided, however, that if the General Partner makes Tax Distributions to the Founding Partner Group, Tax Distributions must also be made the Class B Limited Partner to the extent the Class B Limited Partner provides the Partnership with documentation showing it is subject to an entity-level federal income tax obligation. Notwithstanding anything else in this Agreement, the General Partner may declare and pay Tax Distributions even if such Tax Distributions cause the Partnership to be unable to make Priority Distributions under Section 3.9(b).

(d) Payments Not Deemed Distributions. Any amounts paid pursuant to Sections 4.1(e) or 4.1(h) shall not be deemed to be distributions for purposes of this Agreement.

(e) Withheld Amounts. Notwithstanding any other provision of this Section 3.9 to the contrary, each Partner hereby authorizes the Partnership to withhold and to pay over, or otherwise pay, any withholding or other taxes payable by the Partnership with respect to that Partner as a result of that Partner's participation in the Partnership. If and to the extent that the Partnership shall be required to withhold or pay any such taxes, that Partner shall be deemed for all purposes of this Agreement to have received a payment from the Partnership as of the time that withholding or tax is paid, which payment shall be deemed to be a distribution with respect to that Partner's Partnership Interest to the extent that the Partner (or any successor to that Partner's Partnership Interest) is then entitled to receive a distribution. To the extent that the aggregate of such payments to a Partner for any period exceeds the distributions to which that Partner is entitled for that period, the amount of such excess shall be considered a loan from the Partnership to that Partner. Such loan shall bear interest (which interest shall be treated as an item of income to the Partnership) at the "Applicable Federal Rate" (as defined in the Code), as determined hereunder from time to time, until discharged by that Partner by repayment, which may be made in the sole and unfettered discretion of the General Partner out of distributions to which that Partner would otherwise be subsequently entitled. Any withholdings authorized by this Section 3.9(d) shall be made at the maximum applicable statutory rate under the applicable tax law unless the General Partner shall have received an opinion of counsel or other evidence satisfactory to the General Partner to the effect that a lower rate is applicable, or that no withholding is applicable.

(f) Special Tax Distributions. The Partnership shall, upon request of such Founding Partner, make distributions to the Founding Partners (or loans, at the election of the General Partner) in an amount necessary for each of them to pay their respective federal income tax obligations incurred through the effective date of the Third Amended and Restated Agreement of Limited Partnership of Highland Capital Management, L.P., the predecessor to this Agreement.

(g) Tolling of Priority Distributions. In the event of a "Honis Trigger Event," as defined in the Second Amended Buy-Sell and Redemption Agreement, the Partnership shall not make any distributions, including priority distributions under Section 3.9(b), to the Class B Limited Partner or the Class C Limited Partner until such time as a replacement trust administrator, manager and general partner,

as applicable, acceptable to the Partnership in its sole discretion, as indicated by an affirmative vote of consent by a Majority Interest, shall be appointed to the Class B Limited Partner/Class C Limited Partner and any of its direct or indirect owners that have governing documents directly affected by a Honis Trigger Event.

3.10. Compensation and Reimbursement of General Partner.

(a) Compensation. The General Partner and any Affiliate of the General Partner shall receive no compensation from the Partnership for services rendered pursuant to this Agreement or any other agreements unless approved by a Majority Interest; provided, however, that no compensation above five million dollars per year may be approved, even by a Majority Interest, during a NAV Ratio Trigger Period.

(b) Reimbursement for Expenses. In addition to amounts paid under other Sections of this Agreement, the General Partner and its Affiliates shall be reimbursed for all expenses, disbursements, and advances incurred or made, and all fees, deposits, and other sums paid in connection with the organization and operation of the Partnership, the qualification of the Partnership to do business, and all related matters.

3.11. Books, Records, Accounting, and Reports.

(a) Records and Accounting. The General Partner shall keep or cause to be kept appropriate books and records with respect to the Partnership's business, which shall at all times be kept at the principal office of the Partnership or such other office as the General Partner may designate for such purpose. The books of the Partnership shall be maintained for financial reporting purposes on the accrual basis or on a cash basis, as the General Partner shall determine in its sole and unfettered discretion, in accordance with generally accepted accounting principles and applicable law. Upon reasonable request, the Class B Limited Partner or the Class C Limited Partner may inspect the books and records of the Partnership.

(b) Fiscal Year. The fiscal year of the Partnership shall be the calendar year unless otherwise determined by the General Partner in its sole and unfettered discretion.

(c) Other Information. The General Partner may release information concerning the operations of the Partnership to any financial institution or other Person that has loaned or may loan funds to the Partnership or the General Partner or any of its Affiliates, and may release such information to any other Person for reasons reasonably related to the business and operations of the Partnership or as required by law or regulation of any regulatory body.

(d) Distribution Reporting to Class B Limited Partner and Class C Limited Partner. Upon request, the Partnership shall provide the Class B Limited Partner and/or the Class C Limited Partner information on any non-pro rata distributions made under Section 3.9 to Partners other than the Partner requesting the information.

3.12. Tax Matters.

(a) Tax Returns. The General Partner shall arrange for the preparation and timely filing of all returns of Partnership income, gain, loss, deduction, credit and other items necessary for federal, state and local income tax purposes. The General Partner shall deliver to each Partner as copy of his/her/its IRS Form K-1 as soon as practicable after the end of the Fiscal Year, but in no event later than October 1. The classification, realization, and recognition of income, gain, loss, deduction, credit and

other items shall be on the cash or accrual method of accounting for federal income tax purposes, as the General Partner shall determine in its sole and unfettered discretion. The General Partner in its sole and unfettered discretion may pay state and local income taxes attributable to operations of the Partnership and treat such taxes as an expense of the Partnership.

(b) Tax Elections. Except as otherwise provided herein, the General Partner shall, in its sole and unfettered discretion, determine whether to make any available tax election.

(c) Tax Controversies. Subject to the provisions hereof, the General Partner is designated the Tax Matters Partner (as defined in Code Section 6231), and is authorized and required to represent the Partnership, at the Partnership's expense, in connection with all examinations of the Partnership's affairs by tax authorities, including resulting administrative and judicial proceedings, and to expend Partnership funds for professional services and costs associated therewith. Each Partner agrees to cooperate with the General Partner in connection with such proceedings.

(d) Taxation as a Partnership. No election shall be made by the Partnership or any Partner for the Partnership to be excluded from the application of any of the provisions of Subchapter K, Chapter 1 of Subtitle A of the Code or from any similar provisions of any state tax laws.

ARTICLE 4

RIGHTS AND OBLIGATIONS OF PARTNERS

4.1. Rights and Obligations of the General Partner. In addition to the rights and obligations set forth elsewhere in this Agreement, the General Partner shall have the following rights and obligations:

(a) Management. The General Partner shall conduct, direct, and exercise full control of over all activities of the Partnership. Except as otherwise expressly provided in this Agreement, all management powers over the business and affairs of the Partnership shall be exclusively vested in the General Partner, and Limited Partners shall have no right of control over the business and affairs of the Partnership. In addition to the powers now or hereafter granted to a general partner of a limited partnership under applicable law or that are granted to the General Partner under any provision of this Agreement, the General Partner shall have full power and authority to do all things deemed necessary or desirable by it to conduct the business of the Partnership, including, without limitation: (i) the determination of the activities in which the Partnership will participate; (ii) the performance of any and all acts necessary or appropriate to the operation of any business of the Partnership (including, without limitation, purchasing and selling any asset, any debt instruments, any equity interests, any commercial paper, any note receivables and any other obligations); (iii) the procuring and maintaining of such insurance as may be available in such amounts and covering such risks as are deemed appropriate by the General Partner; (iv) the acquisition, disposition, sale, mortgage, pledge, encumbrance, hyphothecation, of exchange of any or all of the assets of the Partnership; (v) the execution and delivery on behalf of, and in the name of the Partnership, deeds, deeds of trust, notes, leases, subleases, mortgages, bills of sale and any and all other contracts or instruments necessary or incidental to the conduct of the Partnership's business; (vi) the making of any expenditures, the borrowing of money, the guaranteeing of indebtedness and other liabilities, the issuance of evidences of indebtedness, and the incurrence of any obligations it deems necessary or advisable for the conduct of the activities of the Partnership, including, without limitation, the payment of compensation and reimbursement to the General Partner and its Affiliates pursuant to Section 3.10; (vii) the use of the assets of the Partnership (including, without limitation, cash on hand) for any Partnership purpose on any terms it sees fit, including, without limitation, the financing of operations of the Partnership, the lending of funds to other Persons, and the repayment of obligations

of the Partnership; (viii) the negotiation, execution, and performance of any contracts that it considers desirable, useful, or necessary to the conduct of the business or operations of the Partnership or the implementation of the General Partner's powers under this Agreement; (ix) the distribution of Partnership cash or other assets; (x) the selection, hiring and dismissal of employees, attorneys, accountants, consultants, contractors, agents and representatives and the determination of their compensation and other teens of employment or hiring; (xi) the formation of any further limited or general partnerships, joint ventures, or other relationships that it deems desirable and the contribution to such partnerships, ventures, or relationships of assets and properties of the Partnership; and (xii) the control of any matters affecting the rights and obligations of the Partnership, including, without limitation, the conduct of any litigation, the incurring of legal expenses, and the settlement of claims and suits.

(b) Certificate of Limited Partnership. The General Partner caused the Certificate of Limited Partnership of the Partnership to be filed with the Secretary of State of Delaware as required by the Delaware Act and shall cause to be filed such other certificates or documents (including, without limitation, copies, amendments, or restatements of this Agreement) as may be determined by the General Partner to be reasonable and necessary or appropriate for the formation, qualification, or registration and operation of a limited partnership (or a partnership in which Limited Partners have limited liability) in the State of Delaware and in any other state where the Partnership may elect to do business.

(c) Reliance by Third Parties. Notwithstanding any other provision of this Agreement to the contrary, no lender or purchaser or other Person, including any purchaser of property from the Partnership or any other Person dealing with the Partnership, shall be required to verify any representation by the General Partner as to its authority to encumber, sell, or otherwise use any assess or properties of the Partnership, and any such lender, purchaser, or other Person shall be entitled to rely exclusively on such representations and shall be entitled to deal with the General Partner as if it were the sole party in interest therein, both legally and beneficially. Each Limited Partner hereby waives any and all defenses or other remedies that may be available against any such lender, purchaser, or other Person to contest, negate, or disaffirm any action of the General Partner in connection with any such sale or financing. In no event shall any Person dealing with the General Partner or the General Partner's representative with respect to any business or property of the Partnership be obligated to ascertain that the terms of this Agreement have been complied with, and each such Person shall be entitled to rely on the assumptions that the Partnership has been duly formed and is validly in existence. In no event shall any such Person be obligated to inquire into the necessity or expedience of any act or action of the General Partner or the General Partner's representative, and every contract, agreement, deed, mortgage, security agreement, promissory note, or other instrument or document executed by the General Partner or the General Partner's representative with respect to any business or property of the Partnership shall be conclusive evidence in favor of any and every Person relying thereon or claiming thereunder that (i), at the time of the execution and delivery thereof, this Agreement was in full force and effect; (ii) such instrument or document was duly executed in accordance with the terms and provisions of this Agreement and is binding upon the Partnership; and (iii) the General Partner or the General Partner's representative was duly authorized and empowered to execute and deliver any and every such instrument or document for and on behalf of the Partnership.

(d) Partnership Funds. The funds of the Partnership shall be deposited in such account or accounts as are designated by the General Partner. The General Partner may, in its sole and unfettered discretion, deposit funds of the Partnership in a central disbursing account maintained by or in the name of the General Partner, the Partnership, or any other Person into which funds of the General Partner, the Partnership, on other Persons are also deposited; *provided, however,* at all times books of account are maintained that show the amount of funds of the Partnership on deposit in such account and interest accrued with respect to such funds as credited to the Partnership. The General Partner may use the funds of the Partnership as compensating balances for its benefit; *provided, however,* such funds do

not directly or indirectly secure, and are not otherwise at risk on account of, any indebtedness or other obligation of the General Partner or any director, officer, employee, agent, representative, or Affiliate thereof. Nothing in this Section 4.1(d) shall be deemed to prohibit or limit in any manner the right of the Partnership to lend funds to the General Partner or any Affiliate thereof pursuant to Section 4.1(e)(i). All withdrawals from or charges against such accounts shall be made by the General Partner or by its representatives. Funds of the Partnership may be invested as determined by the General Partner in accordance with the terms and provisions of this Agreement.

(e) Loans to or from General Partner; Contracts with Affiliates; Joint Ventures.

(i) The General Partner or any Affiliate of the General Partner may lend to the Partnership funds needed by the Partnership for such periods of time as the General Partner may determine; *provided, however,* the General Partner or its Affiliate may not charge the Partnership interest at a rate greater than the rate (including points or other financing charges or fees) that would be charged the Partnership (without reference to the General Partner's financial abilities or guaranties) by unrelated lenders on comparable loans. The Partnership shall reimburse the General Partner or its Affiliate, as the case may be, for any costs incurred by the General Partner or that Affiliate in connection with the borrowing of funds obtained by the General Partner or that Affiliate and loaned to the Partnership. The Partnership may loan funds to the General Partner and any member of the Founding Partner Group at the General Partner's sole and exclusive discretion.

(ii) The General Partner or any of its Affiliates may enter into an agreement with the Partnership to render services, including management services, for the Partnership. Any service rendered for the Partnership by the General Partner or any Affiliate thereof shall be on terms that are fair and reasonable to the Partnership.

(iii) The Partnership may Transfer any assets to joint ventures or other partnerships in which it is or thereby becomes a participant upon terms and subject to such conditions consistent with applicable law as the General Partner deems appropriate; provided, however, that the Partnership may not transfer any asset to the General Partner or one of its Affiliates during any NAV Ratio Trigger Period for consideration less than such asset's fair market value.

(f) Outside Activities' Conflicts of Interest. The General Partner or any Affiliate thereof and any director, officer, employee, agent, or representative of the General Partner or any Affiliate thereof shall be entitled to and may have business interests and engage in business activities in addition to those relating to the Partnership, including, without limitation, business interests and activities in direct competition with the Partnership. Neither the Partnership nor any of the Partners shall have any rights by virtue of this Agreement or the partnership relationship created hereby in any business ventures of the General Partner, any Affiliate thereof, or any director, officer, employee, agent, or representative of either the General Partner or any Affiliate thereof.

(g) Resolution of Conflicts of Interest. Unless otherwise expressly provided in this Agreement or any other agreement contemplated herein, whenever a conflict of interest exists or arises between the General Partner or any of its Affiliates, on the one hand, and the Partnership or any Limited Partner, on the other hand, any action taken by the General Partner, in the absence of bad faith by the General Partner, shall not constitute a breach of this Agreement or any other agreement contemplated herein or a breach of any standard of care or duty imposed herein or therein or under the Delaware Act or any other applicable law, rule, or regulation.

(h) Indemnification. The Partnership shall indemnify and hold harmless the General Partner and any director, officer, employee, agent, or representative of the General Partner (collectively,

the "***GP Party***"), against all liabilities, losses, and damages incurred by any of them by reason of any act performed or omitted to be performed in the name of or on behalf of the Partnership, or in connection with the Partnership's business, including, without limitation, attorneys' fees and any amounts expended in the settlement of any claims or liabilities, losses, or damages, to the fullest extent permitted by the Delaware Act; *provided, however,* the Partnership shall have no obligation to indemnify and hold harmless a GP Party for any action or inaction that constitutes gross negligence or willful or wanton misconduct. The Partnership, in the sole and unfettered discretion of the General Partner, may indemnify and hold harmless any Limited Partner, employee, agent, or representative of the Partnership, any Person who is or was serving at the request of the Partnership acting through the General Partner as a director, officer, partner, trustee, employee, agent, or representative of another corporation, partnership, joint venture, trust, or other enterprise, and any other Person to the extent determined by the General Partner in its sole and unfettered discretion, but in no event shall such indemnification exceed the indemnification permitted by the Delaware Act. Notwithstanding anything to the contrary in this Section 4.1(h) or elsewhere in this Agreement, no amendment to the Delaware Act after the date of this Agreement shall reduce or limit in any manner the indemnification provided for or permitted by this Section 4.1(h) unless such reduction or limitation is mandated by such amendment for limited partnerships formed prior to the enactment of such amendment. In no event shall Limited Partners be subject to personal liability by reason of the indemnification provisions of this Agreement.

(i) Liability of General Partner.

(i) Neither the General Partner nor its directors, officers, employees, agents, or representatives shall be liable to the Partnership or any Limited Partner for errors in judgment or for any acts or omissions that do not constitute gross negligence or willful or wanton misconduct.

(ii) The General Partner may exercise any of the powers granted to it by this Agreement and perform any of the duties imposed upon it hereunder either directly or by or through its directors, officers, employees, agents, or representatives, and the General Partner shall not be responsible for any misconduct or negligence on the part of any agent or representative appointed by the General Partner.

(j) Reliance by General Partner.

(i) The General Partner may rely and shall be protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, bond, debenture, or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties.

(ii) The General Partner may consult with legal counsel, accountants, appraisers, management consultants, investment bankers, and other consultants and advisers selected by it, and any opinion of any such Person as to matters which the General Partner believes to be within such Person's professional or expert competence shall be full and complete authorization and protection in respect of any action taken or suffered or omitted by the General Partner hereunder in good faith and in accordance with such opinion.

(k) The General Partner may, from time to time, designate one or more Persons to be officers of the Partnership. No officer need be a Partner. Any officers so designated shall have such authority and perform such duties as the General Partner may, from time to time, delegate to them. The General Partner may assign titles to particular officers, including, without limitation, president, vice president, secretary, assistant secretary, treasurer and assistant treasurer. Each officer shall hold office until such Person's successor shall be duly designated and shall qualify or until such Person's death or

until such Person shall resign or shall have been removed in the manner hereinafter provided. Any number of offices may be held by the same Person. The salaries or other compensation, if any, of the officers and agents of the Partnership shall be fixed from time to time by the General Partner. Any officer may be removed as such, either with or without cause, by the General Partner whenever in the General Partner's judgment the best interests of the Partnership will be served thereby. Any vacancy occurring in any office of the Partnership may be filled by the General Partner.

4.2. Rights and Obligations of Limited Partners. In addition to the rights and obligations of Limited Partners set forth elsewhere in this Agreement, Limited Partners shall have the following rights and obligations:

(a) Limitation of Liability. Limited Partners shall have no liability under this Agreement except as provided herein or under the Delaware Act.

(b) Management of Business. No Limited Partner shall take part in the control (within the meaning of the Delaware Act) of the Partnership's business, transact any business in the Partnership's name, or have the power to sign documents for or otherwise bind the Partnership other than as specifically set forth in this Agreement.

(c) Return of Capital. No Limited Partner shall be entitled to the withdrawal or return of its Capital Contribution except to the extent, if any, that distributions made pursuant to this Agreement or upon termination of the Partnership may be considered as such by law and then only to the extent provided for in this Agreement.

(d) Second Amended Buy-Sell and Redemption Agreement. Each Limited Partner shall comply with the terms and conditions of the Second Amended Buy-Sell and Redemption Agreement.

(e) Default on Priority Distributions. If the Partnership fails to timely pay Priority Distributions pursuant to Section 3.9(b), and the Partnership does not subsequently make such Priority Distribution within ninety days of its due date, the Class B Limited Partner or the Class C Limited Partner may require the Partnership to liquidate publicly traded securities held by the Partnership or Highland Select Equity Master Fund, L.P., a Delaware limited partnership controlled by the Partnership; provided, however, that the General Partner may in its sole discretion elect instead to liquidate other non-publicly traded securities owned by the Partnership in order to satisfy the Partnership's obligations under Section 3.9(b) and this Section 4.2(e). In either case, Affiliates of the General Partner shall have the right of first offer to purchase any securities liquidated under this Section 4.2(e).

4.3. Transfer of Partnership Interests.

(a) Transfer. No Partnership Interest shall be Transferred, in whole or in part, except in accordance with the terms and conditions set forth in this Section 4.3 and the Second Amended Buy-Sell and Redemption Agreement. Any Transfer or purported Transfer of any Partnership Interest not made in accordance with this Section 4.3 and the Second Amended Buy-Sell and Redemption Agreement shall be null and void. An alleged transferee shall have no right to require any information or account of the Partnership's transactions or to inspect the Partnership's books. The Partnership shall be entitled to treat the alleged transferor of a Partnership Interest as the absolute owner thereof in all respects, and shall incur no liability to any alleged transferee for distributions to the Partner owning that Partnership Interest of record or for allocations of Profits, Losses, deductions or credits or for transmittal of reports and notices required to be given to holders of Partnership Interests.

(b) Transfers by General Partner. The General Partner may Transfer all, but not less than all, of its Partnership Interest to any Person only with the approval of a Majority Interest; provided, however, that the General Partner may not Transfer its Partnership Interest during any NAV Ratio Trigger Period except to the extent such Transfers are for estate planning purposes or resulting from the death of the individual owner of the General Partner. Any Transfer by the General Partner of its Partnership Interest under this Section 4.3(b) to an Affiliate of the General Partner or any other Person shall not constitute a withdrawal of the General Partner under Section 4.5(a), Section 5.1(b), or any other provision of this Agreement. If any such Transfer is deemed to constitute a withdrawal under such provisions or otherwise and results in the dissolution of the Partnership under this Agreement or the laws of any jurisdiction to which the Partnership of this Agreement is subject, the Partners hereby unanimously consent to the reconstitution and continuation of the Partnership immediately following such dissolution, pursuant to Section 5.2.

(c) Transfers by Limited Partners. The Partnership Interest of a Limited Partner may not be Transferred without the consent of the General Partner (which consent may be withheld in the sole and unfettered discretion of the General Partner), and in accordance with the Second Amended Buy-Sell and Redemption Agreement.

(d) Distributions and Allocations in Respect of Transferred Partnership Interests. If any Partnership Interest is Transferred during any Fiscal Year in compliance with the provisions of Article 4 and the Second Amended Buy-Sell and Redemption Agreement, Profits, Losses, and all other items attributable to the transferred interest for that period shall be divided and allocated between the transferor and the transferee by taking into account their varying interests during the period in accordance with Code Section 706(d), using any conventions permitted by law and selected by the General Partner; provided that no allocations shall be made under this Section 4.3(d) that would affect any special allocations made under Section 3.4. All distributions declared on or before the date of that Transfer shall be made to the transferor. Solely for purposes of making such allocations and distributions, the Partnership shall recognize that Transfer not later than the end of the calendar month during which it is given notice of that Transfer; ***provided, however,*** if the Partnership does not receive a notice stating the date that Partnership Interest was Transferred and such other information as the General Partner may reasonably require within thirty (30) days after the end of the Fiscal Year during which the Transfer occurs, then all of such items shall be allocated, and all distributions shall be made, to the person who, according to the books and records of the Partnership, on the last day of the Fiscal Year during which the Transfer occurs, was the owner of the Partnership Interest. Neither the Partnership nor any Partner shall incur any liability for making allocations and distributions in accordance with the provisions of this Section 4.3(d), whether or not any Partner or the Partnership has knowledge of any Transfer of ownership of any Partnership Interest.

(e) Forfeiture of Partnership Interests Pursuant to the Contribution Note. In the event any Class B Limited Partnership Interests are forfeited in favor of the Partnership as a result of any default on the Contribution Note, the Capital Accounts and Percentage Interests associated with such Class B Limited Partnership Interests shall be allocated pro rata among the Class A Partners. The Priority Distributions in Section 3.9(b) made after the date of such forfeiture shall each be reduced by an amount equal to the ratio of the Percentage Interest associated with the Class B Limited Partnership Interest transferred pursuant to this Section 4.3(e) over the aggregate Percentage Interests of all Class B Limited Partnership Interests and Class C Limited Partnership Interests, calculated immediately prior to any forfeiture of such Class B Limited Partnership Interest.

(f) Transfers of Partnership Interests Pursuant to the Purchase Notes. Notwithstanding any other provision in this Agreement, the Partnership shall respect, and the General Partner hereby provides automatic consent for, any transfers (in whole or transfers of partial interests) of

the Class C Limited Partnership Interests, or a portion thereof, if such transfer occurs as a result of a default on the Purchase Notes. Upon the transfer of any Class C Limited Partnership Interest to any member of the Founding Partner Group (or their assigns), such Class C Limited Partnership Interest shall automatically convert to a Class A Partnership Interest. The Priority Distributions in Section 3.9(b) shall each be reduced by an amount equal to the ratio of the Percentage Interest associated with the transferred Class C Limited Partnership Interest over the aggregate Percentage Interests of all Class B Limited Partnership Interests and Class C Limited Partnership Interests, calculated immediately prior to any transfer of such Class C Limited Partnership Interest.

4.4. Issuances of Partnership Interests to New and Existing Partners.

(a) Issuance of Partnership Interests to New Limited Partners. The General Partner may admit one or more additional Persons as Limited Partners ("Additional Limited Partners") to the Partnership at such times and upon such terms as it deems appropriate in its sole and unfettered discretion; provided, however, that the General Partner may only admit additional Persons as Limited Partners in relation to the issuance of equity incentives to key employees of the Partnership; provided, further that the General Partner may not issue such equity incentives to the extent they entitle the holders, in the aggregate, to a Percentage Interest in excess of twenty percent without the consent of the Class B Limited Partner and the Class C Limited Partner. All Class A Limited Partners, the Class B Limited Partner and the Class C Limited Partner shall be diluted proportionately by the issuance of such limited partnership interests. No Person may be admitted to the Partnership as a Limited Partner until he/she/it executes an Addendum to this Agreement in the form attached as Exhibit B (which may be modified by the General Partner in its sole and unfettered discretion) and an addendum to the Second Amended Buy-Sell and Redemption Agreement.

(b) Issuance of an Additional Partnership Interest to an Existing Partner. The General Partner may issue an additional Partnership Interest to any existing Partner at such times and upon such terms as it deems appropriate in its sole and unfettered discretion. Upon the issuance of an additional Partnership Interest to an existing Partner, the Percentage Interests of the members of the Founding Partner Group shall be diluted proportionately. Any additional Partnership Interest shall be subject to all the terms and conditions of this Agreement and the Second Amended Buy-Sell and Redemption Agreement.

4.5. Withdrawal of General Partner

(a) Option. In the event of the withdrawal of the General Partner from the Partnership, the departing General Partner (the "***Departing Partner***") shall, at the option of its successor (if any) exercisable prior to the effective date of the departure of that Departing Partner, promptly receive from its successor in exchange for its Partnership Interest as the General Partner, an amount in cash equal to its Capital Account balance, determined as of the effective date of its departure.

(b) Conversion. If the successor to a Departing Partner does not exercise the option described in Section 4.5(a), the Partnership Interest of the Departing Partner as the General Partner of the Partnership shall be converted into a Partnership Interest as a Limited Partner.

4.6. Admission of Substitute Limited Partners and Successor General Partner.

(a) Admission of Substitute Limited Partners. A transferee (which may be the heir or legatee of a Limited Partner) or assignee of a Limited Partner's Partnership Interest shall be entitled to receive only the distributive share of the Partnership's Profits, Losses, deductions, and credits attributable to that Partnership Interest. To become a substitute Limited Partner (a "***Substitute Limited Partner***"),

that transferee or assignee shall (1) obtain the consent of the General Partner (which consent may be withheld in the sole and unfettered discretion of the General Partner), (ii) comply with all the requirements of this Agreement and the Second Amended Buy-Sell and Redemption Agreement with respect to the Transfer of the Partnership Interest at issue, and (iii) execute an Addendum to this Agreement in the form attached as Exhibit B (which may be modified by the General Partner in its sole and unfettered discretion) and an addendum to the Second Amended Buy-Sell and Redemption Agreement. Upon admission of a Substitute Limited Partner, that Limited Partner shall be subject to all of the restrictions applicable to, shall assume all of the obligations of, and shall attain the status of a Limited Partner under and pursuant to this Agreement with respect to the Partnership Interest held by that Limited Partner.

(b) Admission of Successor General Partner. A successor General Partner selected pursuant to Section 5.2 or the transferee of or successor to all of the Partnership Interest of the General Partner pursuant to Section 4.3(b) shall be admitted to the Partnership as the General Partner, effective as of the date of the withdrawal or removal of the predecessor General Partner or the date of Transfer of that predecessor's Partnership Interest.

(c) Action by General Partner. In connection with the admission of any substitute Limited Partner or successor General Partner or any additional Limited Partner, the General Partner shall have the authority to take all such actions as it deems necessary or advisable in connection therewith, including the amendment of Exhibit A and the execution and filing with appropriate authorities of any necessary documentation.

ARTICLE 5

DISSOLUTION AND WINDING UP

5.1. Dissolution. The Partnership shall be dissolved upon:

(a) The withdrawal, bankruptcy, or dissolution of the General Partner, or any other event that results in its ceasing to be the General Partner (other than by reason of a Transfer pursuant to Section 4.3(b));

(b) An election to dissolve the Partnership by the General Partner that is approved by the affirmative vote of a Majority Interest; *provided, however,* the General Partner may dissolve the Partnership without the approval of the Limited Partners in order to comply with Section 14 of the Second Amended Buy-Sell and Redemption Agreement; or

(c) Any other event that, under the Delaware Act, would cause its dissolution.

For purposes of this Section 5.1, the bankruptcy of the General Partner shall be deemed to have occurred when the General Partner: (i) makes a general assignment for the benefit of creditors; (ii) files a voluntary bankruptcy petition; (iii) becomes the subject of an order for relief or is declared insolvent in any federal or state bankruptcy or insolvency proceeding: (iv) files a petition or answer seeking a reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any law; (v) files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against the General Partner in a proceeding of the type described in clauses (i) through (iv) of this paragraph; (vi) seeks, consents to, or acquiesces in the appointment of a trustee, receiver, or liquidator of the General Partner or of all or any substantial part of the General Partner's properties; or (vii) one hundred twenty (120) days expire after the date of the commencement of a proceeding against the General Partner seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution, or

similar relief under any law if the proceeding has not been previously dismissed, or ninety (90) days expire after the date of the appointment, without the General Partner's consent or acquiescence, of a trustee, receiver, or liquidator of the General Partner or of all or any substantial part of the General Partner's properties if the appointment has not previously been vacated or stayed, or ninety (90) days expire after the date of expiration of a stay, if the appointment has not previously been vacated.

5.2. Continuation of the Partnership. Upon the occurrence of an event described in Section 5.1(a), the Partnership shall be deemed to be dissolved and reconstituted if a Majority Interest elect to continue the Partnership within ninety (90) days of that event. If no election to continue the Partnership is made within ninety (90) days of that event, the Partnership shall conduct only activities necessary to wind up its affairs. If an election to continue the Partnership is made upon the occurrence of an event described in Section 5.1(a), then:

(a) Within that ninety (90)-day period a successor General Partner shall be selected by a Majority Interest;

(b) The Partnership shall be deemed to be reconstituted and shall continue until the end of the term for which it is formed unless earlier dissolved in accordance with this Article 5;

(c) The interest of the former General Partner shall be converted to an interest as a Limited Partner; and

(d) All necessary steps shall be taken to amend or restate this Agreement and the Certificate of Limited Partnership, and the successor General Partner may for this purpose amend this Agreement and the Certificate of Limited Partnership, as appropriate, without the consent of any Partner.

5.3. Liquidation. Upon dissolution of the Partnership, unless the Partnership is continued under Section 5.2, the General Partner or, in the event the General Partner has been dissolved, becomes bankrupt (as defined in Section 5.1), or withdraws from the Partnership, a liquidator or liquidating committee selected by a Majority Interest, shall be the Liquidator. The Liquidator (if other than the General Partner) shall be entitled to receive such compensation for its services as may be approved by a Majority Interest. The Liquidator shall agree not to resign at any time without fifteen (15) days' prior written notice and (if other than the General Partner) may be removed at any time, with or without cause, by notice of removal approved by a Majority Interest. Upon dissolution, removal, or resignation of the Liquidator, a successor and substitute Liquidator (who shall have and succeed to all rights, powers, and duties of the original Liquidator) shall within thirty (30) days thereafter be selected by a Majority Interest. The right to appoint a successor or substitute Liquidator in the manner provided herein shall be recurring and continuing for so long as the functions and services of the Liquidator are authorized to continue under the provisions hereof, and every reference herein to the Liquidator shall be deemed to refer also to any such successor or substitute Liquidator appointed in the manner provided herein. Except as expressly provided in this Article 5, the Liquidator appointed in the manner provided herein shall have and may exercise, without further authorization or consent of any of the parties hereto, all of the powers conferred upon the General Partner under the terms of this Agreement (but subject to all of the applicable limitations, contractual and otherwise, upon the exercise of such powers) to the extent necessary or desirable in the good faith judgment of the Liquidator to carry out the duties and functions of the Liquidator hereunder for and during such period of time as shall be reasonably required in the good faith judgment of the Liquidator to complete the winding up and liquidation of the Partnership as provided herein. The Liquidator shall liquidate the assets of the Partnership and apply and distribute the proceeds of such liquidation in the following order of priority, unless otherwise required by mandatory provisions of applicable law:

(a) To the payment of the expenses of the terminating transactions including, without limitation, brokerage commission, legal fees, accounting fees and closing costs;

(b) To the payment of creditors of the Partnership, including Partners, in order of priority provided by law;

(c) To the Partners and assignees to the extent of, and in proportion to, the positive balances in their respective Capital Accounts as provided in Treasury Regulations Section 1.704-1(b)(2)(ii)(b)(2); *provided, however,* the Liquidator may place in escrow a reserve of cash or other assets of the Partnership for contingent liabilities in an amount determined by the Liquidator to be appropriate for such purposes; and

(d) To the Partners in proportion to their respective Percentage Interests.

5.4. Distribution in Kind. Notwithstanding the provisions of Section 5.3 that require the liquidation of the assets of the Partnership, but subject to the order of priorities set forth therein, if on dissolution of the Partnership the Liquidator determines that an immediate sale of part or all of the Partnership's assets would be impractical or would cause undue loss to the Partners and assignees, the Liquidator may defer for a reasonable time the liquidation of any assets except those necessary to satisfy liabilities of the Partnership (other than those to Partners) and/or may distribute to the Partners and assignees, in lieu of cash, as tenants in common and in accordance with the provisions of Section 5.3, undivided interests in such Partnership assets as the Liquidator deems not suitable for liquidation. Any such distributions in kind shall be subject to such conditions relating to the disposition and management of such properties as the Liquidator deems reasonable and equitable and to any joint operating agreements or other agreements governing the operation of such properties at such time. The Liquidator shall determine the fair market value of any property distributed in kind using such reasonable method of valuation as it may adopt.

5.5. Cancellation of Certificate of Limited Partnership. Upon the completion of the distribution of Partnership property as provided in Sections 5.3 and 5.4, the Partnership shall be terminated, and the Liquidator (or the General Partner and Limited Partners if necessary) shall cause the cancellation of the Certificate of Limited Partnership in the State of Delaware and of all qualifications and registrations of the Partnership as a foreign limited partnership in jurisdictions other **than** the State of Delaware and shall take such other actions as may be necessary to terminate the Partnership.

5.6. Return of Capital. The General Partner shall not be personally liable for the return of the Capital Contributions of Limited Partners, or any portion thereof, it being expressly understood that any such return shall be **made** solely from Partnership assets.

5.7. Waiver of Partition. Each Partner hereby waives any rights to partition of the Partnership property.

ARTICLE 6

GENERAL PROVISIONS

6.1. Amendments to Agreement. The General Partner may amend this Agreement without the consent of any Partner if the General Partner reasonably determines that such amendment is necessary and appropriate; *provided, however, any* action taken by the General Partner shall be subject to its fiduciary duties to the Limited Partners under the Delaware Act; provided further that any amendments

that adversely affect the Class B Limited Partner or the Class C Limited Partner may only be made with the consent of such Partner adversely affected.

6.2. Addresses and Notices. Any notice, demand, request, or report required or permitted to be given or made to a Partner under this Agreement shall be in writing and shall be deemed given or made when delivered in person or when sent by United States registered or certified mail to the Partner at his/her/its address as shown on the records of the Partnership, regardless of any claim of any Person who may have an interest in any Partnership Interest by reason of an assignment or otherwise.

6.3. Titles and Captions. All article and section titles and captions in the Agreement are for convenience only, shall not be deemed part of this Agreement, and in no way shall define, limit, extend, or describe the scope or intent of any provisions hereof. Except as specifically provided otherwise, references to "Articles," "Sections" and "Exhibits" are to "Articles," "Sections" and "Exhibits" of this Agreement. All Exhibits hereto are incorporated herein by reference.

6.4. Pronouns and Plurals. Whenever the context may require, any pronoun used in this Agreement shall include the corresponding masculine, feminine, or neuter forms, and the singular form of nouns, pronouns, and verbs shall include the plural and vice versa.

6.5. Further Action. The parties shall execute all documents, provide all information, and take or refrain from taking all actions as may be necessary or appropriate to achieve the purposes of this Agreement.

6.6. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their heirs, executors, administrators, successors, legal representatives, and permitted assigns.

6.7. Integration. This Agreement constitutes the entire agreement among the parties hereto pertaining to the subject matter hereof and supersedes all prior agreements and understandings pertaining thereto.

6.8. Creditors. None of the provisions of this Agreement shall be for the benefit of or enforceable by any creditors of the Partnership.

6.9. Waiver. No failure by any party to insist upon the strict performance of any covenant, duty, agreement, or condition of this Agreement or to exercise any right or remedy consequent upon a breach thereof shall constitute waiver of any such breach or any other covenant, duty, agreement, or condition.

6.10. Counterparts. This agreement may be executed in counterparts, all of which together shall constitute one agreement binding on all the parties hereto, notwithstanding that all such parties are not signatories to the original or the same counterpart.

6.11. Applicable Law. This Agreement shall be construed in accordance with and governed by the laws of the State of Delaware, without regard to the principles of conflicts of law.

6.12. Invalidity of Provisions. If any provision of this Agreement is declared or found to be illegal, unenforceable, or void, in whole or in part, then the parties shall be relieved of all obligations arising under that provision, but only to the extent that it is illegal, unenforceable, or void, it being the intent and agreement of the parties that this Agreement shall be deemed amended by modifying that provision to the extent necessary to make it legal and enforceable while preserving its intent or, if that is

not possible, by substituting therefor another provision that is legal and enforceable and achieves the same objectives.

6.13. General Partner Discretion. Whenever the General Partner may use its sole discretion, the General Partner may consider any items it deems relevant, including its own interest and that of its affiliates.

6.14. Mandatory Arbitration. In the event there is an unresolved legal dispute between the parties and/or any of their respective officers, directors, partners, employees, agents, affiliates or other representatives that involves legal rights or remedies arising from this Agreement, the parties agree to submit their dispute to binding arbitration under the authority of the Federal Arbitration Act; provided, however, that the Partnership or such applicable affiliate thereof may pursue a temporary restraining order and /or preliminary injunctive relief in connection with any confidentiality covenants or agreements binding on the other party, with related expedited discovery for the parties, in a court of law, and thereafter, require arbitration of all issues of final relief. The arbitration will be conducted by the American Arbitration Association, or another mutually agreeable arbitration service. A panel of three arbitrators will preside over the arbitration and will together deliberate, decide and issue the final award. The arbitrators shall be duly licensed to practice law in the state of Texas. The discovery process shall be limited to the following: Each side shall be permitted no more than (i) two party depositions of six hours each, each deposition to be taken pursuant to the Texas Rules of Civil Procedure; (ii) one non-party deposition of six hours; (iii) twenty-five interrogatories; (iv) twenty-five requests for admissions; (v) ten request for production (in response, the producing party shall not be obligated to produce in excess of 5,000 total pages of documents, including electronic documents); and (vi) one request for disclosure pursuant to the Texas Rules of Civil Procedure. Any discovery not specifically provided for in this paragraph, whether to parties or non-parties, shall not be permitted. The arbitrators shall be required to state in a written opinion all facts and conclusions of law relied upon to support any decision rendered. The arbitrators will not have the authority to render a decision that contains an outcome based on error of state or federal law or to fashion a cause of action or remedy not otherwise provided for under applicable state or federal law. Any dispute over whether the arbitrators have failed to comply with the foregoing will be resolved by summary judgment in a court of law. In all other respects, the arbitration process will be conducted in accordance with the American Arbitration Association's dispute resolution rules or other mutually agreeable arbitration services rules. All proceedings shall be conducted in Dallas, Texas or another mutually agreeable site. Each party shall bear its own attorneys fees, costs and expenses, including any costs of experts, witnesses and /or travel, subject to a final arbitration award on who should bear costs and fees. The duty to arbitrate described above shall survive the termination of this Agreement. Except as otherwise provided above, the parties hereby waive trial in a court of law or by jury. All other rights, remedies, statutes of limitation and defenses applicable to claims asserted in a court of law will apply in the arbitration.

Remainder of Page intentionally Left Blank.
Signature Page Follows.

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement as of the date and year first written above.

GENERAL PARTNER:

STRAND ADVISORS, INC.,
a Delaware corporation

By: _____
James D. Dondero,
President

LIMITED PARTNERS:

THE DUGABOY INVESTMENT TRUST

By: Nancy M. Dondero
Name: Nancy M. Dondero
Its: Trustee

THE MARK AND PAMELA OKADA FAMILY TRUST – EXEMPT TRUST #1

By: _____
Name: Lawrence Tonomura
Its: Trustee

THE MARK AND PAMELA OKADA FAMILY TRUST – EXEMPT TRUST #2

By: _____
Name: Lawrence Tonomura
Its: Trustee

MARK K. OKADA

_____
Mark K. Okada

Signature Page to Fourth Amended and Restated Agreement of Limited Partnership

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement as of the date and year first written above.

GENERAL PARTNER:

STRAND ADVISORS, INC.,
a Delaware corporation

By: _____
James D. Dondero,
President

LIMITED PARTNERS:

THE DUGABOY INVESTMENT TRUST

By: _____
Name: Nancy M. Dondero
Its: Trustee

THE MARK AND PAMELA OKADA FAMILY TRUST – EXEMPT TRUST #1

By: _____
Name: Lawrence Tonomura
Its: Trustee

THE MARK AND PAMELA OKADA FAMILY TRUST – EXEMPT TRUST #2

By: _____
Name: Lawrence Tonomura
Its: Trustee

MARK K. OKADA

_____
Mark K. Okada

Signature Page to Fourth Amended and Restated Agreement of Limited Partnership

HUNTER MOUNTAIN INVESTMENT TRUST
By: Beacon Mountain LLC, Administrator

By: _____
Name: John Honis
Its: President

Signature Page to Fourth Amended and Restated Agreement of Limited Partnership

EXHIBIT A

	Percentage Interest	
CLASS A PARTNERS	**By Class**	**Effective %**
GENERAL PARTNER:		
Strand Advisors	0.5573%	0.2508%
LIMITED PARTNERS:		
The Dugaboy Investment Trust	74.4426%	0.1866%
Mark K. Okada	19.4268%	0.0487%
The Mark and Pamela Okada Family Trust - Exempt Trust #1	3.9013%	0.0098%
The Mark and Pamela Okada Family Trust - Exempt Trust #2	1.6720%	0.0042%
Total Class A Percentage Interest	100.0000%	0.500%
CLASS B LIMITED PARTNERS		
Hunter Mountain Investment Trust	100.0000%	55.0000%
CLASS C LIMITED PARTNERS		
Hunter Mountain Investment Trust	100.0000%	44.500%
PROFIT AND LOSS AMONG CLASSES		
Class A Partners	0.5000%	
Class B Partners	55.0000%	
Class C Partners	44.5000%	

EXHIBIT B

ADDENDUM
TO THE
FOURTH AMENDED AND RESTATED AGREEMENT OF LIMITED PARTNERSHIP
OF
HIGHLAND CAPITAL MANAGEMENT, L.P.

THIS ADDENDUM (this "**Addendum**") to that certain Fourth Amended and Restated Agreement of Limited Partnership of Highland Capital Management, L.P., dated December 24, 2015, to be effective as of December 24, 2015, as amended from time to time (the "Agreement"), is made and entered into as of the ___ day of _____, 20_, by and between Strand Advisors, Inc., as the sole General Partner (the "**General Partner**") of Highland Capital Management, L.P. (the "**Partnership**") and _____ ("_____") (except as otherwise provided herein, all capitalized terms used herein shall have the meanings set forth in the Agreement).

RECITALS:

WHEREAS, the General Partner, in its sole and unfettered discretion, and without the consent of any Limited Partner, has the authority under (i) Section 4.4 of the Agreement to admit Additional Limited Partners, (ii) Section 4.6 of the Agreement to admit Substitute Limited Partners and (iii) Section 6.1 of the Agreement to amend the Agreement;

WHEREAS, the General Partner desires to admit _____ as a Class __ Limited Partner holding a __% Percentage Interest in the Partnership as of the date hereof;

WHEREAS, _____desires to become a Class __ Limited Partner and be bound by the terms and conditions of the Agreement; and

WHEREAS, the General Partner desires to amend the Agreement to add _____ as a party thereto.

AGREEMENT:

RESOLVED, as a condition to receiving a Partnership Interest in the Partnership, _____ acknowledges and agrees that he/she/it (i) has received and read a copy of the Agreement, (ii) shall be bound by the terms and conditions of the Agreement; and (iii) shall promptly execute an addendum to the Second Amended Buy-Sell and Redemption Agreement; and be it

FURTHER RESOLVED, the General Partner hereby amends the Agreement to add _____ as a Limited Partner, and the General Partner shall attach this Addendum to the Agreement and make it a part thereof; and be it

FURTHER RESOLVED, this Addendum may be executed in any number of counterparts, all of which together shall constitute one Addendum binding on all the parties hereto, notwithstanding that all such parties are not signatories to the original or the same counterpart.

IN WITNESS WHEREOF, the undersigned have executed this Addendum as of the day and year above written.

GENERAL PARTNER:

STRAND ADVISORS, INC.

By: _____
Name: _____
Title: _____

NEW LIMITED PARTNER:

[_____]

AGREED AND ACCEPTED:

In consideration of the terms of this Addendum and the Agreement, in consideration of the Partnership's allowing the above signed Person to become a Limited Partner of the Partnership, and for other good and valuable consideration receipt of which is hereby acknowledged, the undersigned shall be bound by the terms and conditions of the Agreement as though a party thereto.

SPOUSE OF NEW LIMITED PARTNER:

[_____]

B1040 (FORM 1040) (12/15)

ADVERSARY PROCEEDING COVER SHEET (Instructions on Reverse)	**ADVERSARY PROCEEDING NUMBER** (Court Use Only)
PLAINTIFFS Highland Capital Management, L.P.	**DEFENDANTS** HCRE Partners, LLC (n/k/a NexPoint Real Estate Partners, LLC), James Dondero, Nancy Dondero, and The Dugaboy Investment Trust
ATTORNEYS (Firm Name, Address, and Telephone No.) Hayward PLLC 10501 N. Central Expressway, Suite 106 Dallas, Texas 75231 Tel.: (972) 755-7100	**ATTORNEYS** (If Known) Stinson LLP (for NexPoint Real Estate Partners, LLC and Nancy Dondero); Heller, Draper & Horn, L.L.C. (for The Dugaboy Investment Trust)
PARTY (Check One Box Only) ☑ Debtor ☐ U.S. Trustee/Bankruptcy Admin ☐ Creditor ☐ Other ☐ Trustee	**PARTY** (Check One Box Only) ☐ Debtor ☐ U.S. Trustee/Bankruptcy Admin ☐ Creditor ☑ Other ☐ Trustee

CAUSE OF ACTION (WRITE A BRIEF STATEMENT OF CAUSE OF ACTION, INCLUDING ALL U.S. STATUTES INVOLVED)
Breach of Contract; Turnover Pursuant to 11 USC 542(b); Avoidance and Recovery of Actual Fraudulent Transfer under 11 USC 548(a)(1)(A) and 550; Avoidance and Recovery of Actual Fraudulent Transfer under 11 USC 544(b) and 550 and Tex. Bus. & C. Code 24.005(a)(1); Declaratory Relief; Breach of Fiduciary Duty; Aiding & Abetting Breach of Fiduciary Duty

NATURE OF SUIT

(Number up to five (5) boxes starting with lead cause of action as 1, first alternative cause as 2, second alternative cause as 3, etc.)

FRBP 7001(1) – Recovery of Money/Property
2 11-Recovery of money/property - §542 turnover of property
☐ 12-Recovery of money/property - §547 preference
3 13-Recovery of money/property - §548 fraudulent transfer
4 14-Recovery of money/property - other

FRBP 7001(2) – Validity, Priority or Extent of Lien
☐ 21-Validity, priority or extent of lien or other interest in property

FRBP 7001(3) – Approval of Sale of Property
☐ 31-Approval of sale of property of estate and of a co-owner - §363(h)

FRBP 7001(4) – Objection/Revocation of Discharge
☐ 41-Objection / revocation of discharge - §727(c),(d),(e)

FRBP 7001(5) – Revocation of Confirmation
☐ 51-Revocation of confirmation

FRBP 7001(6) – Dischargeability
☐ 66-Dischargeability - §523(a)(1),(14),(14A) priority tax claims
☐ 62-Dischargeability - §523(a)(2), false pretenses, false representation, actual fraud
☐ 67-Dischargeability - §523(a)(4), fraud as fiduciary, embezzlement, larceny

(continued next column)

FRBP 7001(6) – Dischargeability (continued)
☐ 61-Dischargeability - §523(a)(5), domestic support
☐ 68-Dischargeability - §523(a)(6), willful and malicious injury
☐ 63-Dischargeability - §523(a)(8), student loan
☐ 64-Dischargeability - §523(a)(15), divorce or separation obligation (other than domestic support)
☐ 65-Dischargeability - other

FRBP 7001(7) – Injunctive Relief
☐ 71-Injunctive relief – imposition of stay
☐ 72-Injunctive relief – other

FRBP 7001(8) Subordination of Claim or Interest
☐ 81-Subordination of claim or interest

FRBP 7001(9) Declaratory Judgment
5 91-Declaratory judgment

FRBP 7001(10) Determination of Removed Action
☐ 01-Determination of removed claim or cause

Other
☐ SS-SIPA Case – 15 U.S.C. §§78aaa *et.seq.*
1 02-Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case)

☑ Check if this case involves a substantive issue of state law	☐ Check if this is asserted to be a class action under FRCP 23
☐ Check if a jury trial is demanded in complaint	Demand $ Damages in an amount to be determined at trial

Other Relief Sought Turnover of amounts due under note, avoidance of transfers to defendants, declaratory relief, punitive and exemplary damages, costs, attorneys' fees

B1040 (FORM 1040) (12/15)

BANKRUPTCY CASE IN WHICH THIS ADVERSARY PROCEEDING ARISES		
NAME OF DEBTOR Highland Capital Management, L.P.	BANKRUPTCY CASE NO. 19-34054-sgj11	
DISTRICT IN WHICH CASE IS PENDING Northern District of Texas	DIVISION OFFICE Dallas	NAME OF JUDGE Stacey G. C. Jernigan
RELATED ADVERSARY PROCEEDING (IF ANY)		
PLAINTIFF	DEFENDANT	ADVERSARY PROCEEDING NO.
DISTRICT IN WHICH ADVERSARY IS PENDING	DIVISION OFFICE	NAME OF JUDGE
SIGNATURE OF ATTORNEY (OR PLAINTIFF)		
DATE August 27, 2021	PRINT NAME OF ATTORNEY (OR PLAINTIFF) Zachery Z. Annable	

INSTRUCTIONS

The filing of a bankruptcy case creates an "estate" under the jurisdiction of the bankruptcy court which consists of all of the property of the debtor, wherever that property is located. Because the bankruptcy estate is so extensive and the jurisdiction of the court so broad, there may be lawsuits over the property or property rights of the estate. There also may be lawsuits concerning the debtor's discharge. If such a lawsuit is filed in a bankruptcy court, it is called an adversary proceeding.

A party filing an adversary proceeding must also must complete and file Form 1040, the Adversary Proceeding Cover Sheet, unless the party files the adversary proceeding electronically through the court's Case Management/Electronic Case Filing system (CM/ECF). (CM/ECF captures the information on Form 1040 as part of the filing process.) When completed, the cover sheet summarizes basic information on the adversary proceeding. The clerk of court needs the information to process the adversary proceeding and prepare required statistical reports on court activity.

The cover sheet and the information contained on it do not replace or supplement the filing and service of pleadings or other papers as required by law, the Bankruptcy Rules, or the local rules of court. The cover sheet, which is largely self-explanatory, must be completed by the plaintiff's attorney (or by the plaintiff if the plaintiff is not represented by an attorney). A separate cover sheet must be submitted to the clerk for each complaint filed.

Plaintiffs and **Defendants.** Give the names of the plaintiffs and defendants exactly as they appear on the complaint.

Attorneys. Give the names and addresses of the attorneys, if known.

Party. Check the most appropriate box in the first column for the plaintiffs and the second column for the defendants.

Demand. Enter the dollar amount being demanded in the complaint.

Signature. This cover sheet must be signed by the attorney of record in the box on the second page of the form. If the plaintiff is represented by a law firm, a member of the firm must sign. If the plaintiff is pro se, that is, not represented by an attorney, the plaintiff must sign.

EXHIBIT 5

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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re HIGHLAND CAPITAL MANAGEMENT, L.P., Debtor.	§ § § § § §	Chapter 11 Case No. 19-34054-sgj11
HIGHLAND CAPITAL MANAGEMENT, L.P., Plaintiff, v. HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, L.P. Defendant.	§ § § § § § § § § § §	Adv. No. 21-03004

DEFENDANT'S ORIGINAL ANSWER

COMES NOW Highland Capital Management Fund Advisors, L.P. (the "Defendant"), the defendant in the above-styled and numbered adversary proceeding (the "Adversary Proceeding") filed by Highland Capital Management, L.P. (the "Plaintiff"), and files this its *Defendant's Original Answer* (the "Answer"), responding to the *Complaint for (I) Breach of Contract and (II)*

Turnover of Property of the Debtor's Estate (the "Complaint"). Where an allegation in the Complaint is not expressly admitted in this Answer, it is denied.

PRELIMINARY STATEMENT

1. The first sentence of ¶ 1 sets forth the Plaintiff's objective in bringing the Complaint and does not require a response. To the extent it contains factual allegations, they are denied. The second sentence contains a legal conclusion that does not require a response. To the extent it contains factual allegations, they are denied.

2. Paragraph 2 contains a summary of the relief the Plaintiff seeks and does not require a response. To the extent it contains factual allegations, they are denied.

JURISDICTION AND VENUE

3. The Defendant admits that this Adversary Proceeding relates to the Plaintiff's bankruptcy case but denies any implication that this fact confers Constitutional authority on the Bankruptcy Case to adjudicate this dispute. Any allegations in ¶ 3 not expressly admitted are denied.

4. The Defendant admits that the Court has statutory (but not Constitutional) jurisdiction to hear this Adversary Proceeding. Any allegations in ¶ 4 not expressly admitted are denied.

5. The Defendant denies that a breach of contract claim is core. The Defendant denies that a § 542(b) turnover proceeding is the appropriate mechanism to collect a contested debt. The Defendant admits that a § 542(b) turnover proceeding is statutorily core but denies that it is Constitutionally core under *Stern v. Marshall*. The Defendant does not consent to the Bankruptcy Court entering final orders or judgment in this Adversary Proceeding. Any allegations in ¶ 5 not expressly admitted are denied.

6. The Defendant admits ¶ 6 of the Complaint.

THE PARTIES

7. The Defendant admits ¶ 7 of the Complaint.

8. The Defendant admits ¶ 8 of the Complaint.

CASE BACKGROUND

9. The Defendant admits ¶ 9 of the Complaint.

10. The Defendant admits ¶ 10 of the Complaint.

11. The Defendant admits ¶ 11 of the Complaint.

12. The Defendant admits ¶ 12 of the Complaint.

STATEMENT OF FACTS

A. The HCMFA Notes

13. The Defendant admits that it has executed at least one promissory note under which the Debtor is the payee. Any allegations in ¶ 13 not expressly admitted are denied.

14. The Defendant admits ¶ 14 of the Complaint.

15. The Defendant admits ¶ 15 of the Complaint.

16. The Defendant denies ¶ 16 of the Complaint. The document speaks for itself and the quote set forth in ¶ 16 is not verbatim.

17. The Defendant denies ¶ 17 of the Complaint. The document speaks for itself and the quote set forth in ¶ 17 is not verbatim.

18. The Defendant admits ¶ 18 of the Complaint.

B. HCMFA's Default under Each Note

19. The Defendant admits that Exhibit 3 to the Complaint (the "Demand Letter") is a true and correct copy of what it purports to be and that the document speaks for itself. To the extent ¶ 19 of the Complaint asserts a legal conclusion, no response is required, and it is denied. To the extent not expressly admitted, ¶ 19 of the Complaint is denied.

20. To the extent ¶ 20 of the Complaint asserts a legal conclusion, no response is necessary, and it is denied. The Defendant otherwise admits ¶ 20 of the Complaint.

21. The Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in ¶ 21 of the Complaint and therefore denies the same.

22. The Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in ¶ 22 of the Complaint and therefore denies the same.

23. The Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in ¶ 23 of the Complaint and therefore denies the same.

24. The Defendant denies ¶ 24 of the Complaint.

FIRST CLAIM FOR RELIEF
(For Breach of Contract)

25. Paragraph 25 of the Complaint is a sentence of incorporation that does not require a response. All prior denials are incorporated herein by reference.

26. Paragraph 26 of the Complaint states a legal conclusion that does not require a response. To the extent it alleges facts, the Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in ¶ 26 of the Complaint and therefore denies the same.

27. Paragraph 27 of the Complaint states a legal conclusion that does not require a response. To the extent it alleges facts, the Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in ¶ 27 of the Complaint and therefore denies the same.

28. Paragraph 28 of the Complaint states a legal conclusion that does not require a response. To the extent it alleges facts, the Defendant lacks knowledge or information sufficient

to form a belief about the truth of the allegations in ¶ 28 of the Complaint and therefore denies the same.

29. The Defendant denies ¶ 29 of the Complaint.

SECOND CLAIM FOR RELIEF
(Turnover by HCMFA Pursuant to 11 U.S.C. § 542(b))

30. Paragraph 30 of the Complaint is a sentence of incorporation that does not require a response. All prior denials are incorporated herein by reference.

31. Paragraph 31 of the Complaint states a legal conclusion that does not require a response. To the extent it alleges facts, the Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in ¶ 31 of the Complaint and therefore denies the same.

32. Paragraph 32 of the Complaint states a legal conclusion that does not require a response. To the extent it alleges facts, the Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in ¶ 32 of the Complaint and therefore denies the same.

33. The Defendant denies ¶ 33 of the Complaint.

34. Paragraph 34 of the Complaint states a legal conclusion that does not require a response. The Defendant admits that the Plaintiff transmitted the Demand Letter. To the extent ¶ 34 alleges other facts, the Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in ¶ 34 of the Complaint and therefore denies the same.

35. The Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in ¶ 35 of the Complaint and therefore denies the same.

36. Paragraph 36 of the Complaint states a legal conclusion that does not require a response. To the extent it alleges facts, the Defendant lacks knowledge or information sufficient

to form a belief about the truth of the allegations in ¶ 36 of the Complaint and therefore denies the same.

37. The Defendant denies that the Plaintiff is entitled to the relief requested in the prayer, including parts (i), (ii), and (iii).

JURY DEMAND

38. The Defendant demands a trial by jury of all issues so triable pursuant to Rule 38 of the Federal Rules of Civil Procedure and Rule 9015 of the Federal Rules of Bankruptcy Procedure.

39. The Defendant does not consent to the Bankruptcy Court conducting a jury trial and therefore demands a jury trial in the District Court.

PRAYER

WHEREFORE, PREMISES CONSIDERED, the Defendant respectfully request that, following a trial on the merits, the Court enter a judgment that the Plaintiff take noting on the Complaint and provide the Defendant such other relief to which it is entitled.

RESPECTFULLY SUBMITTED this 1st day of March, 2021.

MUNSCH HARDT KOPF & HARR, P.C.

By: /s/ Davor Rukavina

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COUNSEL FOR HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, L.P.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that, on the 1st day of March, 2021, a true and correct copy of this document was electronically served by the Court's ECF system on parties entitled to notice thereof, including counsel for the Plaintiff.

/s/ Davor Rukavina
Davor Rukavina, Esq.

EXHIBIT 6

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COUNSEL FOR HIGHLAND MANAGEMENT SERVICES, INC.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.	§	**Chapter 11**
	§	
	§	**Case No.: 19-34054-sgj11**
Debtor.	§	
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.	§	
	§	
	§	
Plaintiff,	§	
	§	
vs.	§	**Adv. Pro. No. 21-03006-sgj**
	§	
HIGHLAND CAPITAL MANAGEMENT SERVICES, INC.,	§	
	§	
	§	
Defendant.	§	

HIGHLAND CAPITAL MANAGEMENT SERVICES, INC.'S
ANSWER TO PLAINTIFF'S COMPLAINT

Defendant Highland Capital Management Services, Inc. ("HCMS" or "Defendant") files this Answer in response to Highland Capital Management L.P.'s ("Plaintiff" or "Debtor") Complaint for (I) Breach of Contract and (II) Turnover of Property of the Debtor's Estate (the "Complaint") and respectfully states as follows:

PRELIMINARY STATEMENT[1]

1. The first sentence of Paragraph 1 sets forth Plaintiff's objective in bringing the Complaint and does not require a response. To the extent a response is required, Defendant denies the allegations in the first sentence of Paragraph 1. The second sentence contains a legal conclusion that does not require a response. To the extent a response is required, Defendant denies the allegations in the second sentence of Paragraph 1.

2. Paragraph 2 contains a summary of the relief Plaintiff seeks and does not require a response. To the extent a response is required, Defendant denies the allegations in Paragraph 2.

JURISDICTION AND VENUE

3. Defendant admits that this Adversary Proceeding relates to the Plaintiff's bankruptcy case but denies any implication that this fact confers constitutional authority on the Bankruptcy Court to adjudicate this dispute. Defendant denies any allegations in Paragraph 3 that are not expressly admitted.

4. Paragraph 4 states a legal conclusion that does not require a response. To the extent a response is required, Defendant admits the Bankruptcy Court has statutory jurisdiction over this Adversary Proceeding but denies that the Court has constitutional authority over this Adversary Proceeding. Defendant denies any allegations in Paragraph 4 that are not expressly admitted.

5. Defendant denies that Plaintiff's breach of contract claim is a core proceeding. Defendant further denies that a turnover proceeding under 11 U.S.C. § 542(b) is the appropriate mechanism to collect a contested debt. Defendant admits that a turnover proceeding under 11 U.S.C. § 542(b) is a statutorily core proceeding but denies that it is constitutionally core under *Stern v. Marshall*. Defendant does not consent to the Bankruptcy Court entering final orders or

[1] The headings herein are from Plaintiff's Complaint and are solely included for the Court's convenience.

judgment in this Adversary Proceeding. Defendant denies any allegations in Paragraph 5 that are not expressly admitted.

6. Paragraph 6 states a legal conclusion to which no response is required. To the extent a response is required, Defendant admits that venue is proper in this District.

THE PARTIES

7. Defendant admits the allegations in Paragraph 7 of the Complaint.

8. Defendant admits the allegations in Paragraph 8 of the Complaint.

CASE BACKGROUND

9. Defendant admits the allegations in Paragraph 9 of the Complaint.

10. Defendant admits the allegations in Paragraph 10 of the Complaint.

11. Defendant admits the allegations in Paragraph 11 of the Complaint.

12. Defendant admits the allegations in Paragraph 12 of the Complaint.

STATEMENT OF FACTS

A. The HCMS Demand Notes

13. Defendant admits it has executed at least one promissory note under which the Debtor is the payee. Defendant denies any allegations in Paragraph 13 that are not expressly admitted.

14. Defendant admits that it signed the document attached to the Complaint as Exhibit 1. Defendant denies any allegations in Paragraph 14 that are not expressly admitted.

15. Defendant admits that it signed the document attached to the Complaint as Exhibit 2. Defendant denies any allegations in Paragraph 15 that are not expressly admitted.

16. Defendant admits that it signed the document attached to the Complaint as Exhibit 3. Defendant denies any allegations in Paragraph 16 that are not expressly admitted.

17. Defendant admits that it signed the document attached to the Complaint as Exhibit 4. Defendant denies any allegations in Paragraph 17 that are not expressly admitted.

18. Defendant admits that Plaintiff correctly transcribed Section 2 of Exhibits 1-4 to the Complaint in Paragraph 18.

19. Defendant admits that Plaintiff correctly transcribed Section 4 of Exhibits 1-4 to the Complaint in Paragraph 19.

20. Defendant admits that Plaintiff correctly transcribed Section 6 of Exhibits 1-4 of the Complaint in Paragraph 20.

B. Allegations regarding the Demand Notes

21. Defendant admits that Plaintiff sent it a copy of Exhibit 5. Defendant admits that Plaintiff correctly transcribed an excerpt of Exhibit 5 in the third sentence of Paragraph 21. Defendant denies any allegations in Paragraph 21 that are not expressly admitted.

22. To the extent Paragraph 22 asserts a legal conclusion, no response is required, and it is denied. Defendant otherwise admits the allegations in Paragraph 22.

23. Defendant lacks sufficient information or knowledge to admit or deny the allegations in Paragraph 23 and, therefore, denies them.

24. Defendant lacks sufficient information or knowledge to admit or deny the allegations in Paragraph 24 and, therefore, denies them.

25. Defendant lacks sufficient information or knowledge to admit or deny the allegations in Paragraph 25 and, therefore, denies them.

26. Defendant lacks sufficient information or knowledge to admit or deny the allegations in Paragraph 26 and, therefore, denies them.

27. Defendant lacks sufficient information or knowledge to admit or deny the allegations in the first sentence of Paragraph 27 and, therefore, denies them. Defendant denies the allegations in the second sentence of Paragraph 27 of the Complaint.

C. The HCMS Term Note

28. Defendant admits that it has executed at least one promissory note under which Debtor is the payee. Defendant denies any allegations in Paragraph 28 that are not expressly admitted.

29. Defendant admits it signed the document attached to the Complaint as Exhibit 6. Defendant denies any allegations in Paragraph 29 that are not expressly admitted.

30. Defendant admits that Plaintiff correctly transcribed Section 2 of Exhibit 6 to the Complaint in Paragraph 30. Defendant denies any allegations in Paragraph 30 that are not expressly admitted.

31. Defendant admits that Plaintiff correctly transcribed Section 3 of Exhibit 6 to the Complaint in Paragraph 31. Defendant denies any allegations in Paragraph 31 that are not expressly admitted.

32. Defendant admits that Plaintiff correctly transcribed Section 4 of Exhibit 6 to the Complaint in Paragraph 32. Defendant denies any allegations in Paragraph 32 that are not expressly admitted.

33. Defendant admits that Plaintiff correctly transcribed Section 6 of Exhibit 6 to the Complaint in Paragraph 33. Defendant denies any allegations in Paragraph 33 that are not expressly admitted.

D. Allegations regarding the Term Note.

34. To the extent Paragraph 34 of the Complaint asserts a legal conclusion, no response is required, and it is denied. Defendant otherwise admits Paragraph 34 of the Complaint.

35. Defendant admits that Plaintiff sent it a copy of Exhibit 7. Defendant admits that Plaintiff correctly transcribed an excerpt of Exhibit 7 in the third sentence of Paragraph 35 of the Complaint. Defendant denies any allegations in Paragraph 35 that are not expressly admitted.

36. Defendant is without sufficient information or knowledge to admit or deny the allegations in Paragraph 36 of the Complaint and, therefore, denies them.

37. Defendant denies Paragraph 37 of the Complaint.

FIRST CLAIM FOR RELIEF
(For Breach of Contract)

38. Paragraph 38 of the Complaint seeks to incorporate the allegations in the preceding paragraphs and does not require a response. Defendant incorporates all prior denials herein by reference.

39. Paragraph 39 of the Complaint states a legal conclusion that does not require a response. To the extent it alleges facts, Defendant lacks sufficient information or knowledge to admit or deny the allegations and, therefore, denies them.

40. Paragraph 40 of the Complaint states a legal conclusion that does not require a response. To the extent it alleges facts, Defendant lacks sufficient information or knowledge to admit or deny the allegations and, therefore, denies them.

41. Paragraph 41 of the Complaint states a legal conclusion that does not require a response. To the extent it alleges facts, Defendant lacks sufficient information or knowledge to admit or deny the allegations and, therefore, denies them.

42. Paragraph 42 of the Complaint states a legal conclusion that does not require a response. To the extent it alleges facts, Defendant lacks sufficient information or knowledge to admit or deny the allegations and, therefore, denies them.

43. Defendant denies Paragraph 43 of the Complaint.

44. Defendant denies Paragraph 44 of the Complaint.

SECOND CLAIM FOR RELIEF
(Turnover by HCMS Pursuant to 11 U.S.C. § 549(b))

45. Paragraph 45 seeks to incorporate the allegations in the preceding paragraphs and does not require a response. Defendant incorporates all prior denials herein by reference.

46. Paragraph 46 of the Complaint states a legal conclusion that does not require a response. To the extent it alleges facts, Defendant lacks sufficient information or knowledge to admit or deny the allegations and, therefore, denies them.

47. Paragraph 47 of the Complaint states a legal conclusion that does not require a response. To the extent it alleges facts, Defendant lacks sufficient information or knowledge to admit or deny the allegations and, therefore, denies them.

48. Paragraph 48 of the Complaint states a legal conclusion that does not require a response. To the extent it alleges facts, Defendant lacks sufficient information or knowledge to admit or deny the allegations and, therefore, denies them.

49. Defendant admits that Plaintiff transmitted Exhibits 5 and 7 to the Complaint. Defendant lacks sufficient information or knowledge to admit or deny the remaining allegations in Paragraph 49 of the Complaint and, therefore, denies them.

50. Defendant lacks sufficient information or knowledge to admit or deny the remaining allegations in Paragraph 50 of the Complaint and, therefore, denies them.

51. Defendant denies Paragraph 51 of the Complaint.

52. Defendant denies that Plaintiff is entitled to the relief requested in the prayer of the Complaint, including parts (i), (ii), and (iii).

AFFIRMATIVE DEFENSES

53. Plaintiff's claims are barred in whole or in part by the doctrine of justification and/or repudiation.

54. Plaintiff's claims are barred in whole or in part by the doctrine of estoppel.

55. Plaintiff's claims are barred in whole or in part by the doctrine of waiver.

56. Plaintiff's claims are barred in whole or in part by the doctrines of offset and/or setoff.

JURY DEMAND

57. HCMS demands a trial by jury of all issues so triable under Federal Rule of Civil Procedure 38 and Federal Rule of Bankruptcy Procedure 9015.

58. HCMS does not consent to the Bankruptcy Court conducting a jury trial and therefore demands such jury trial in the District Court.

PRAYER

For these reasons, HCMS respectfully requests that, following a trial on the merits, the Court deny the relief Plaintiffs seeks through its Complaint, enter a judgment that the Plaintiff take nothing on the Complaint, and grant HCMS such other relief at law or in equity to which it may be entitled.

Respectfully submitted,

/s/ Lauren K. Drawhorn

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COUNSEL FOR HIGHLAND MANAGEMENT SERVICES, INC.

CERTIFICATE OF SERVICE

I hereby certify that on March 3, 2021, a true and correct copy of the foregoing pleading was served via the Court's CM/ECF system upon counsel for the Plaintiff and all other parties requesting or consenting to such service in this adversary case.

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/s/ Lauren K. Drawhorn
Lauren K. Drawhorn

EXHIBIT 7

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COUNSEL FOR HCRE PARTNERS, LLC (N/K/A NEXPOINT REAL ESTATE PARTNERS, LLC)

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	
	§	**Chapter 11**
HIGHLAND CAPITAL MANAGEMENT, L.P.	§	
	§	**Case No.: 19-34054-sgj11**
	§	
Debtor.	§	
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.	§	
	§	
Plaintiff,	§	
	§	**Adv. Pro. No. 21-03007-sgj**
vs.	§	
	§	
HCRE PARTNERS, LLC (n/k/a NEXPOINT REAL ESTATE PARTNERS, LLC),	§	
	§	
Defendant.	§	

HCRE PARTNERS, LLC'S ANSWER TO PLAINTIFF'S COMPLAINT

Defendant HCRE Partners, LLC (n/k/a NexPoint Real Estate Partners, LLC) ("HCRE" or "Defendant") files this Answer in response to Highland Capital Management L.P.'s ("Plaintiff" or "Debtor") Complaint for (I) Breach of Contract and (II) Turnover of Property of the Debtor's

Estate (the "Complaint") in the above-referend adversary proceeding (the "Adversary Proceeding") and respectfully states as follows:

PRELIMINARY STATEMENT[1]

1. The first sentence of Paragraph 1 sets forth Plaintiff's objective in bringing the Complaint and does not require a response. To the extent a response is required, Defendant denies the allegations in the first sentence of Paragraph 1. The second sentence contains a legal conclusion that does not require a response. To the extent a response is required, Defendant denies the allegations in the second sentence of Paragraph 1.

2. Paragraph 2 contains a summary of the relief Plaintiff seeks and does not require a response. To the extent a response is required, Defendant denies the allegations in Paragraph 2.

JURISDICTION AND VENUE

3. Defendant admits that this Adversary Proceeding relates to the Plaintiff's bankruptcy case but denies any implication that this fact confers constitutional authority on the Bankruptcy Court to adjudicate this dispute. Defendant denies any allegations in Paragraph 3 that are not expressly admitted.

4. Paragraph 4 states a legal conclusion that does not require a response. To the extent a response is required, Defendant admits the Bankruptcy Court has statutory jurisdiction over this Adversary Proceeding but denies that the Court has constitutional authority over this Adversary Proceeding. Defendant denies any allegations in Paragraph 4 that are not expressly admitted.

5. Defendant denies that Plaintiff's breach of contract claim is a core proceeding. Defendant further denies that a turnover proceeding under 11 U.S.C. § 542(b) is the appropriate mechanism to collect a contested debt. Defendant admits that a turnover proceeding under 11

[1] The headings herein are from Plaintiff's Complaint and are solely included for the Court's convenience.

U.S.C. § 542(b) is a statutorily core proceeding but denies that it is constitutionally core under *Stern v. Marshall*. Defendant does not consent to the Bankruptcy Court entering final orders or judgment in this Adversary Proceeding. Defendant denies any allegations in Paragraph 5 that are not expressly admitted.

6. Paragraph 6 states a legal conclusion to which no response is required. To the extent a response is required, Defendant admits that venue is proper in this District.

THE PARTIES

7. Defendant admits the allegations in Paragraph 7 of the Complaint.

8. Defendant admits the allegations in Paragraph 8 of the Complaint.

CASE BACKGROUND

9. Defendant admits the allegations in Paragraph 9 of the Complaint.

10. Defendant admits the allegations in Paragraph 10 of the Complaint.

11. Defendant admits the allegations in Paragraph 11 of the Complaint.

12. Defendant admits the allegations in Paragraph 12 of the Complaint.

STATEMENT OF FACTS

A. The HCRE Demand Notes

13. Defendant admits it has executed at least one promissory note under which the Debtor is the payee. Defendant denies any allegations in Paragraph 13 that are not expressly admitted.

14. Defendant admits that it signed the document attached to the Complaint as Exhibit 1. Defendant denies any allegations in Paragraph 14 that are not expressly admitted.

15. Defendant admits that it signed the document attached to the Complaint as Exhibit 2. Defendant denies any allegations in Paragraph 15 that are not expressly admitted.

16. Defendant admits that it signed the document attached to the Complaint as Exhibit 3. Defendant denies any allegations in Paragraph 16 that are not expressly admitted.

17. Defendant admits that it signed the document attached to the Complaint as Exhibit 4. Defendant denies any allegations in Paragraph 17 that are not expressly admitted.

18. Defendant admits that Plaintiff correctly transcribed Section 2 of Exhibits 1-4 to the Complaint in Paragraph 18.

19. Defendant admits that Plaintiff correctly transcribed Section 4 of Exhibits 1-4 to the Complaint in Paragraph 19.

20. Defendant admits that Plaintiff correctly transcribed Section 6 of Exhibits 1-4 of the Complaint in Paragraph 20.

B. Allegations regarding the Demand Notes

21. Defendant admits that Plaintiff sent it a copy of Exhibit 5. Defendant admits that Plaintiff correctly transcribed an excerpt of Exhibit 5 in the third sentence of Paragraph 21. Defendant denies any allegations in Paragraph 21 that are not expressly admitted.

22. To the extent Paragraph 22 asserts a legal conclusion, no response is required, and it is denied. Defendant otherwise admits the allegations in Paragraph 22.

23. Defendant lacks sufficient information or knowledge to admit or deny the allegations in Paragraph 23 and, therefore, denies them.

24. Defendant lacks sufficient information or knowledge to admit or deny the allegations in Paragraph 24 and, therefore, denies them.

25. Defendant lacks sufficient information or knowledge to admit or deny the allegations in Paragraph 25 and, therefore, denies them.

26. Defendant lacks sufficient information or knowledge to admit or deny the allegations in Paragraph 26 and, therefore, denies them.

27. Defendant lacks sufficient information or knowledge to admit or deny the allegations in Paragraph 27 and, therefore, denies them.

28. Defendant denies the allegations in Paragraph 28 of the Complaint.

C. The HCRE Term Note

29. Defendant admits that it has executed at least one promissory note under which Debtor is the payee. Defendant denies any allegations in Paragraph 29 that are not expressly admitted.

30. Defendant admits it signed the document attached to the Complaint as Exhibit 6. Defendant denies any allegations in Paragraph 30 that are not expressly admitted.

31. Defendant admits that Plaintiff correctly transcribed Section 2 of Exhibit 6 to the Complaint in Paragraph 31. Defendant denies any allegations in Paragraph 31 that are not expressly admitted.

32. Defendant admits that Plaintiff correctly transcribed Section 3 of Exhibit 6 to the Complaint in Paragraph 32. Defendant denies any allegations in Paragraph 32 that are not expressly admitted.

33. Defendant admits that Plaintiff correctly transcribed Section 4 of Exhibit 6 to the Complaint in Paragraph 33. Defendant denies any allegations in Paragraph 33 that are not expressly admitted.

34. Defendant admits that Plaintiff correctly transcribed Section 6 of Exhibit 6 to the Complaint in Paragraph 34. Defendant denies any allegations in Paragraph 34 that are not expressly admitted.

D. Allegations regarding the Term Note.

35. To the extent Paragraph 35 of the Complaint asserts a legal conclusion, no response is required, and it is denied. Defendant otherwise admits Paragraph 35 of the Complaint.

36. Defendant admits that Plaintiff sent it a copy of Exhibit 7. Defendant admits that Plaintiff correctly transcribed an excerpt of Exhibit 7 in the third sentence of Paragraph 36 of the Complaint. Defendant denies any allegations in Paragraph 36 that are not expressly admitted.

37. To the extent Paragraph 37 of the Complaint asserts a legal conclusion, no response is required, and it is denied. Defendant otherwise admits Paragraph 37 of the Complaint.

38. Defendant is without sufficient information or knowledge to admit or deny the allegations in Paragraph 38 of the Complaint and, therefore, denies them.

39. Defendant denies Paragraph 39 of the Complaint.

FIRST CLAIM FOR RELIEF
(For Breach of Contract)

40. Paragraph 40 of the Complaint seeks to incorporate the allegations in the preceding paragraphs and does not require a response. Defendant incorporates all prior denials herein by reference.

41. Paragraph 41 of the Complaint states a legal conclusion that does not require a response. To the extent it alleges facts, Defendant lacks sufficient information or knowledge to admit or deny the allegations and, therefore, denies them.

42. Paragraph 42 of the Complaint states a legal conclusion that does not require a response. To the extent it alleges facts, Defendant lacks sufficient information or knowledge to admit or deny the allegations and, therefore, denies them.

43. Paragraph 43 of the Complaint states a legal conclusion that does not require a response. To the extent it alleges facts, Defendant lacks sufficient information or knowledge to admit or deny the allegations and, therefore, denies them.

44. Paragraph 44 of the Complaint states a legal conclusion that does not require a response. To the extent it alleges facts, Defendant lacks sufficient information or knowledge to admit or deny the allegations and, therefore, denies them.

45. Defendant denies Paragraph 45 of the Complaint.

46. Defendant denies Paragraph 46 of the Complaint.

SECOND CLAIM FOR RELIEF
(Turnover by HCRE Pursuant to 11 U.S.C. § 549(b))

47. Paragraph 47 seeks to incorporate the allegations in the preceding paragraphs and does not require a response. Defendant incorporates all prior denials herein by reference.

48. Paragraph 48 of the Complaint states a legal conclusion that does not require a response. To the extent it alleges facts, Defendant lacks sufficient information or knowledge to admit or deny the allegations and, therefore, denies them.

49. Paragraph 49 of the Complaint states a legal conclusion that does not require a response. To the extent it alleges facts, Defendant lacks sufficient information or knowledge to admit or deny the allegations and, therefore, denies them.

50. Paragraph 50 of the Complaint states a legal conclusion that does not require a response. To the extent it alleges facts, Defendant lacks sufficient information or knowledge to admit or deny the allegations and, therefore, denies them.

51. Defendant admits that Plaintiff transmitted Exhibits 5 and 7 to the Complaint. Defendant lacks sufficient information or knowledge to admit or deny the remaining allegations in Paragraph 51 of the Complaint and, therefore, denies them.

52. Defendant lacks sufficient information or knowledge to admit or deny the remaining allegations in Paragraph 52 of the Complaint and, therefore, denies them.

53. Defendant denies Paragraph 53 of the Complaint.

54. Defendant denies that Plaintiff is entitled to the relief requested in the prayer of the Complaint, including parts (i), (ii), and (iii).

AFFIRMATIVE DEFENSES

55. Plaintiff's claims are barred in whole or in part by the doctrine of justification and/or repudiation.

56. Plaintiff's claims are barred in whole or in part by the doctrine of estoppel.

57. Plaintiff's claims are barred in whole or in part by the doctrine of waiver.

58. Plaintiff's claims are barred in whole or in part by the doctrines of offset and/or setoff.

JURY DEMAND

59. HCRE demands a trial by jury of all issues so triable under Federal Rule of Civil Procedure 38 and Federal Rule of Bankruptcy Procedure 9015.

60. HCRE does not consent to the Bankruptcy Court conducting a jury trial and therefore demands such jury trial in the District Court.

PRAYER

For these reasons, HCRE respectfully requests that, following a trial on the merits, the Court deny the relief Plaintiffs seeks through its Complaint, enter a judgment that the Plaintiff take nothing on the Complaint, and grant HCRE such other relief at law or in equity to which it may be entitled.

Respectfully submitted,

/s/ Lauren K. Drawhorn

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COUNSEL FOR HCRE PARTNERS, LLC (N/K/A NEXPOINT REAL ESTATE PARTNERS, LLC)

CERTIFICATE OF SERVICE

I hereby certify that on March 3, 2021, a true and correct copy of the foregoing pleading was served via the Court's CM/ECF system upon counsel for the Plaintiff and all other parties requesting or consenting to such service in this adversary case.

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EXHIBIT 8

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COUNSEL FOR HIGHLAND CAPITAL MANAGEMENT SERVICES, INC.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.	§	**Chapter 11**
	§	
	§	**Case No.: 19-34054-sgj11**
Debtor.	§	
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.	§	
	§	
Plaintiff,	§	
	§	
vs.	§	**Adv. Pro. No. 21-03006-sgj**
	§	
HIGHLAND CAPITAL MANAGEMENT SERVICES, INC.,	§	
	§	
Defendant.	§	

HIGHLAND CAPITAL MANAGEMENT SERVICES INC.'S MOTION FOR LEAVE TO FILE AMENDED ANSWER AND BRIEF IN SUPPORT

Defendant Highland Capital Management Services, Inc. ("HCMS" or "Defendant") files this Motion for Leave to File Amended Answer and Brief in Support ("Motion")[1] in response to

[1] Defendant files its brief in the same document as the motion pursuant to Local Bankruptcy Rule 7007-1(d).

Highland Capital Management L.P.'s ("Plaintiff" or "Debtor") Complaint in the above-referenced adversary proceeding (the "Adversary Proceeding") and respectfully states as follows:

I. RELEVANT BACKGROUND

1. On January 22, 2021, Plaintiff filed its Complaint for (I) Breach of Contract and (II) Turnover of Property of the Debtor's Estate (the "Complaint"), commencing this Adversary Proceeding. Defendant's counsel accepted service of the Complaint on February 1, 2021 and the parties agreed the Defendant's deadline to answer or otherwise respond to the Complaint was March 3, 2021. On March 3, 2021, Defendant filed its Answer to Plaintiff's Complaint ("Original Answer").

2. On March 11, 2021, Plaintiff and Defendant filed a Stipulation and Proposed Scheduling Order [ECF No. 7], setting forth a proposed joint scheduling order in lieu of the Alternative Scheduling Order issued by the Court. On March 16, 2021, the Court entered its Order Approving Stipulation Regarding Scheduling Order [ECF No. 9] (the "Scheduling Order").

3. Under the Scheduling Order, the deadline to serve discovery requests is May 10, 2021 and responses to discovery requests are due June 14, 2021. Fact discovery closes July 5, 2017, dispositive motions must be filed by August 16, 2021, and trial docket call is October 4, 2021 at 1:30 p.m.

4. Preparation of the defense of this adversary has been made extremely difficult by the constraints imposed by the Debtor with respect to access to witnesses and evidence. In connection with preparation of the defense, Defendant realized its affirmative defenses were not as clear as they could have been and that the additional defenses which it seeks to assert in this Adversary Proceeding should be more fully set out as follows: (i) the Debtor's ability to make demand on the Notes was subject to a condition subsequent that has not yet become unable to be met, and (ii) the Notes are ambiguous. The original listing of affirmative defenses was intended to

cover any such defenses, however, in an abundance of caution Defendant seeks leave to amend and more clearly set out its intended defenses. The Scheduling Order does not contain a deadline to amend pleadings; therefore, Defendant's Motion is governed by Federal Rule of Civil Procedure 15(a)(2), made applicable to this Adversary Proceeding by Federal Rule of Bankruptcy Procedure 7015, which favors liberal amendment of pleadings. *See* FED. R. CIV. P. 15(a)(2); FED. R. BANKR. P. 7015.

5. Given the deadlines for discovery and pre-trial matters under the Scheduling Order, Defendant's proposed amendment will not delay the proceedings or otherwise prejudice the Plaintiff. Moreover, the proposed amendment is not sought in bad faith, but in furtherance of meritorious defenses based on additional investigation.

6. Because Defendant's Motion is not sought in bad faith and will not result in undue delay or prejudice to Plaintiff, the Court should grant Defendant's Motion under the standard favoring liberal amendment of pleadings under Rule 15.

II. ARGUMENT AND AUTHORITY

7. Rule 15(a) governs amendments to pleadings and provides that a party may amend its pleading with the opposing party's written consent or the court's leave. FED. R. CIV P. 15(a). The court "should freely give leave when justice so requires." *Id*. Rule 15 "evinces a bias in favor of granting leave to amend." *Dussouy v. Gulf Coast Inv. Corp.*, 660 F.2d 594, 597 (5th Cir. 1981); *Marshall v. MarOpCo, Inc.*, 223 F.Supp.3d 562, 566 (N.D. Tex. 2017) ("Since *Dussouy*, the Fifth Circuit has repeatedly held that Rule 15(a) evinces a liberal amendment policy."). "The policy of the federal rules is to permit liberal amendment to facilitate determination of claims on the merits and to prevent litigation from becoming a technical exercise in the fine points of pleading." *Dussouy*, 660 F.2d at 598. While decisions to grant leave are within the discretion of the trial court, its discretion is not broad enough to permit denial if the court lacks a "substantial reason

to do so." *Dussouy*, 660 F.2d at 598. Instead, leave to amend should be granted unless there is a substantial reason for denying leave. *InternetAd Sys., LLC v. Opodo Ltd.*, 481 F.Supp.2d 596, 603 (N.D. Tex. 2007). Courts may consider the following factors in determining whether a substantial reason exists to deny leave: (i) delay or prejudice to the non-movant; (ii) bad faith or dilatory motives on the part of the movant; (iii) repeated failure to cure deficiencies; or (iv) futility of amendment. *InternetAd Sys*, 481 F.Supp.2d at 604. *Sabre, Inc. v. Lyn-Lea Travel Corp.*, No. Civ. A. 3:96-CV-2068R, 2003 WL 21339291, *4 (N.D. Tex. June 5, 2003).

8. Here, there is no substantial reason to deny Defendant's Motion and, as such, the Court should grant Defendant leave to amend its answer. First, there is no undue delay or prejudice to Plaintiff. This is not a situation where there is an "unexplained delay" following the original answer. *See, e.g., In re Southmark Corp.*, 88 F.3d 311, 316 (5th Cir. 1996) (denying motion for leave to amend where the plaintiff sought to add cause of action more than one year after the original complaint was filed and eleven months after the first amended complaint was filed with no reasonable explanation for such delay). Instead, Defendant was served with the Complaint less than three months ago and its answer was due less than two months ago. Defendant seeks to amend its answer to add two affirmative defenses based on its further investigation into the allegations of Plaintiff and in connection with its preparation for serving written discovery. Defendant discovered these new defenses in connection with its investigation and preparation for written discovery in connection with its defense of the case and within the expected timeline of this contested matter based on the Scheduling Order. Further, allowing Defendant to amend its answer will not result in prejudice to Plaintiff. Fact discovery does not close until July 5, 2021 and, although both parties will likely serve written discovery today, Plaintiff has not yet conducted any discovery. *See, e.g., Sabre, Inc.*, 2003 WL 21339291 at *4 (noting that undue prejudice arises

where a new theory requires a reiteration of discovery proceedings). Accordingly, there is no undue delay or prejudice to Plaintiff.

9. Nor does Defendant seek to amend in bad faith. In determining bad faith, Courts consider whether "the movant first presents a theory difficult to establish but favorable and, only after that fails, presents a less favorable theory." *Sabre*, 2003 WL 21339291 at *6. Here, Defendant is not seeking to add a new theory after the first theory failed – discovery has not yet begun, and the dispositive motion deadline is almost four months away – and the circumstances do not give rise to an inference that Defendant is engaging in tactical maneuvers. Defendant is seeking to amend its answer, less than two months after filing it, because it determined additional defenses were applicable as it continued to investigate its defense of the Plaintiff's allegations and prepare for discovery. Accordingly, Defendant's Motion is not brought in bad faith or for dilatory motives.

10. Third, this is not a situation where Defendant has repeatedly failed to cure deficiencies with prior amendments. This is Defendant's first request for leave to amend and, if granted, will be Defendant's first amendment to its answer. As such, repeated failure to cure deficiencies is not a reason to deny Defendant's Motion.

11. Last, Defendant's proposed amendments are not futile. Amendments to defenses are futile "where they would necessarily fail or are so lacking in merit on their face." *Southpoint Condo. Ass'n Inc. v. Lexington Ins. Co.*, Case No. 19-cv-61365, 2020 WL 639400, *6 (S.D. Fla. Feb. 11, 2020). Some courts refuse to address the issue of futility in a motion for leave to amend context and instead does so in the context of a Rule 12(b)(6) or Rule 56 motion, "where the procedural safeguards are surer." *Garcia v. Zale Corp.*, 2006 WL 298156, *1 (N.D. Tex. Feb. 1, 2006) (Fitzwater, J.) ("…the court's almost unvarying practice when futility is raised is to address the merits of the claim or defense in the context of a Rule 12(b)(6) or Rule 56 motion."). Here, the

proposed affirmative defenses are not futile,[2] and Defendant expects evidence supporting such defenses will be uncovered through discovery. *See, e.g., Don Stevenson Design, Inc. v. Randy Herrera Designer, LLC*, No. 5:16-CV-1130, 2017 WL 10581124, *1 (W.D. Tex. Sept. 8, 2017) ("Finally, Defendants' Motion for Leave is not futile because additional evidence substantiating the statute of limitations defense may come forward during the remainder of discovery.").

12. Further, "even if there is substantial reason to deny leave to amend, the court should consider prejudice to the movant, as well as judicial economy, in determining whether justice requires granting leave." *Allen v. Target Corporation*, 2007 WL 9735894, *1 (S.D. Tex. Nov 29, 2007). As a result, in considering a motion for leave to add additional affirmative defenses, Rule 8(c)'s requirement that affirmative defenses be pleaded or waived "must be applied in the context of the Federal Rules' liberal pleading and amendment policy, the goal of which is to do substantial justice." *Id.* At *1-2 (granting defendant's motion for leave to add affirmative defenses known previously because the delay did not constitute a substantial reason to deny leave and justice requires allowing the amendment).

13. Because there is no substantial reason to deny Defendant's request, Defendant's additional affirmative defenses could be waived if not allowed, and Plaintiff is free to challenge any of Defendant's affirmative defenses under Rule 56, made applicable to this Adversary Proceeding by Bankruptcy Rule 7056. Leave to amend should be freely granted and, as such, the Court should grant Defendant's Motion.

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[2] Plaintiff contemplated at least some of its loans to affiliates or related entities (such as the Notes at issue in this Adversary Proceeding) "may not result in allowed or enforceable claims" by the Plaintiff. *See* Global Notes and Statement of Limitations, Methods, and Disclaimers Regarding Debtor's Amended Schedules of Assets and Liabilities, p. 3 "Intercompany Claims" [Docket No. 1082-1], Global Notes and Statement of Limitations, methods, and Disclaimer Regarding Debtor's Schedules of Assets and Liabilities and Statement of Financial Affairs, p. 3 "Intercompany Claims" [Docket No. 247-1]. Defendant believes the reason some of these intercompany loans may not be allowed or enforceable is because collectability was dependent on a condition subsequent and/or they are ambiguous – the very defense Defendant now seeks to include in its Answer.

III. PROPOSED AMENDED ANSWER ATTACHED

14. Defendant's proposed First Amended Answer is attached hereto as **Exhibit A**.

IV. CONCLUSION

The Court should liberally grant leave to file amended pleadings absent a demonstration that such amendment would result in undue delay, prejudice, or is sought in bad faith. There is no such evidence of any of the foregoing here. For these reasons, Defendant respectfully requests the Court (i) grant this Motion; (ii) deem Defendant's First Amended Answer filed as of the date of the order granting this Motion; and grant Defendant such other relief at law or in equity to which it may be entitled.

Respectfully submitted,

/s/ Lauren K. Drawhorn

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lauren.drawhorn@wickphillips.com

COUNSEL FOR HIGHLAND CAPITAL MANAGEMENT SERVICES, INC.

CERTIFICATE OF CONFERENCE

Between April 21 and 25, 2021, I conferred with John Morris, counsel for the Plaintiff, regarding the relief requested herein and Mr. Morris indicated that the Plaintiff is opposed to the relief requested in Defendant's Motion.

/s/ Lauren K. Drawhorn
Lauren K. Drawhorn

CERTIFICATE OF SERVICE

I hereby certify that on May 10, 2021, a true and correct copy of the foregoing pleading was served via the Court's CM/ECF system upon counsel for the Plaintiff and all other parties requesting or consenting to such service in this adversary case.

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/s/ Lauren K. Drawhorn
Lauren K. Drawhorn

EXHIBIT A

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COUNSEL FOR HIGHLAND CAPITAL MANAGEMENT SERVICES, INC.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	
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HIGHLAND CAPITAL MANAGEMENT, L.P.	§	**Chapter 11**
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Debtor.	§	
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HIGHLAND CAPITAL MANAGEMENT, L.P.	§	
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Plaintiff,	§	
	§	
vs.	§	**Adv. Pro. No. 21-03006-sgj**
	§	
HIGHLAND CAPITAL MANAGEMENT SERVICES, INC.,	§	
	§	
	§	
Defendant.	§	

HIGHLAND CAPITAL MANAGEMENT SERVICES, INC.'S
FIRST AMENDED ANSWER TO PLAINTIFF'S COMPLAINT

Defendant Highland Capital Management Services, Inc. ("HCMS" or "Defendant") files this First Amended Answer in response to Highland Capital Management L.P.'s ("Plaintiff" or "Debtor") Complaint for (I) Breach of Contract and (II) Turnover of Property of the Debtor's Estate (the "Complaint") and respectfully states as follows:

PRELIMINARY STATEMENT[1]

1. The first sentence of Paragraph 1 sets forth Plaintiff's objective in bringing the Complaint and does not require a response. To the extent a response is required, Defendant denies the allegations in the first sentence of Paragraph 1. The second sentence contains a legal conclusion that does not require a response. To the extent a response is required, Defendant denies the allegations in the second sentence of Paragraph 1.

2. Paragraph 2 contains a summary of the relief Plaintiff seeks and does not require a response. To the extent a response is required, Defendant denies the allegations in Paragraph 2.

JURISDICTION AND VENUE

3. Defendant admits that this Adversary Proceeding relates to the Plaintiff's bankruptcy case but denies any implication that this fact confers constitutional authority on the Bankruptcy Court to adjudicate this dispute. Defendant denies any allegations in Paragraph 3 that are not expressly admitted.

4. Paragraph 4 states a legal conclusion that does not require a response. To the extent a response is required, Defendant admits the Bankruptcy Court has statutory jurisdiction over this Adversary Proceeding but denies that the Court has constitutional authority over this Adversary Proceeding. Defendant denies any allegations in Paragraph 4 that are not expressly admitted.

5. Defendant denies that Plaintiff's breach of contract claim is a core proceeding. Defendant further denies that a turnover proceeding under 11 U.S.C. § 542(b) is the appropriate mechanism to collect a contested debt. Defendant admits that a turnover proceeding under 11 U.S.C. § 542(b) is a statutorily core proceeding but denies that it is constitutionally core under *Stern v. Marshall*. Defendant does not consent to the Bankruptcy Court entering final orders or

[1] The headings herein are from Plaintiff's Complaint and are solely included for the Court's convenience.

judgment in this Adversary Proceeding. Defendant denies any allegations in Paragraph 5 that are not expressly admitted.

6. Paragraph 6 states a legal conclusion to which no response is required. To the extent a response is required, Defendant admits that venue is proper in this District.

THE PARTIES

7. Defendant admits the allegations in Paragraph 7 of the Complaint.

8. Defendant admits the allegations in Paragraph 8 of the Complaint.

CASE BACKGROUND

9. Defendant admits the allegations in Paragraph 9 of the Complaint.

10. Defendant admits the allegations in Paragraph 10 of the Complaint.

11. Defendant admits the allegations in Paragraph 11 of the Complaint.

12. Defendant admits the allegations in Paragraph 12 of the Complaint.

STATEMENT OF FACTS

A. The HCMS Demand Notes

13. Defendant admits it has executed at least one promissory note under which the Debtor is the payee. Defendant denies any allegations in Paragraph 13 that are not expressly admitted.

14. Defendant admits that it signed the document attached to the Complaint as Exhibit 1. Defendant denies any allegations in Paragraph 14 that are not expressly admitted.

15. Defendant admits that it signed the document attached to the Complaint as Exhibit 2. Defendant denies any allegations in Paragraph 15 that are not expressly admitted.

16. Defendant admits that it signed the document attached to the Complaint as Exhibit 3. Defendant denies any allegations in Paragraph 16 that are not expressly admitted.

17. Defendant admits that it signed the document attached to the Complaint as Exhibit 4. Defendant denies any allegations in Paragraph 17 that are not expressly admitted.

18. Defendant admits that Plaintiff correctly transcribed Section 2 of Exhibits 1-4 to the Complaint in Paragraph 18.

19. Defendant admits that Plaintiff correctly transcribed Section 4 of Exhibits 1-4 to the Complaint in Paragraph 19.

20. Defendant admits that Plaintiff correctly transcribed Section 6 of Exhibits 1-4 of the Complaint in Paragraph 20.

B. Allegations regarding the Demand Notes

21. Defendant admits that Plaintiff sent it a copy of Exhibit 5. Defendant admits that Plaintiff correctly transcribed an excerpt of Exhibit 5 in the third sentence of Paragraph 21. Defendant denies any allegations in Paragraph 21 that are not expressly admitted.

22. To the extent Paragraph 22 asserts a legal conclusion, no response is required, and it is denied. Defendant otherwise admits the allegations in Paragraph 22.

23. Defendant lacks sufficient information or knowledge to admit or deny the allegations in Paragraph 23 and, therefore, denies them.

24. Defendant lacks sufficient information or knowledge to admit or deny the allegations in Paragraph 24 and, therefore, denies them.

25. Defendant lacks sufficient information or knowledge to admit or deny the allegations in Paragraph 25 and, therefore, denies them.

26. Defendant lacks sufficient information or knowledge to admit or deny the allegations in Paragraph 26 and, therefore, denies them.

27. Defendant lacks sufficient information or knowledge to admit or deny the allegations in the first sentence of Paragraph 27 and, therefore, denies them. Defendant denies the allegations in the second sentence of Paragraph 27 of the Complaint.

C. The HCMS Term Note

28. Defendant admits that it has executed at least one promissory note under which Debtor is the payee. Defendant denies any allegations in Paragraph 28 that are not expressly admitted.

29. Defendant admits it signed the document attached to the Complaint as Exhibit 6. Defendant denies any allegations in Paragraph 29 that are not expressly admitted.

30. Defendant admits that Plaintiff correctly transcribed Section 2 of Exhibit 6 to the Complaint in Paragraph 30. Defendant denies any allegations in Paragraph 30 that are not expressly admitted.

31. Defendant admits that Plaintiff correctly transcribed Section 3 of Exhibit 6 to the Complaint in Paragraph 31. Defendant denies any allegations in Paragraph 31 that are not expressly admitted.

32. Defendant admits that Plaintiff correctly transcribed Section 4 of Exhibit 6 to the Complaint in Paragraph 32. Defendant denies any allegations in Paragraph 32 that are not expressly admitted.

33. Defendant admits that Plaintiff correctly transcribed Section 6 of Exhibit 6 to the Complaint in Paragraph 33. Defendant denies any allegations in Paragraph 33 that are not expressly admitted.

D. Allegations regarding the Term Note.

34. To the extent Paragraph 34 of the Complaint asserts a legal conclusion, no response is required, and it is denied. Defendant otherwise admits Paragraph 34 of the Complaint.

35. Defendant admits that Plaintiff sent it a copy of Exhibit 7. Defendant admits that Plaintiff correctly transcribed an excerpt of Exhibit 7 in the third sentence of Paragraph 35 of the Complaint. Defendant denies any allegations in Paragraph 35 that are not expressly admitted.

36. Defendant is without sufficient information or knowledge to admit or deny the allegations in Paragraph 36 of the Complaint and, therefore, denies them.

37. Defendant denies Paragraph 37 of the Complaint.

FIRST CLAIM FOR RELIEF
(For Breach of Contract)

38. Paragraph 38 of the Complaint seeks to incorporate the allegations in the preceding paragraphs and does not require a response. Defendant incorporates all prior denials herein by reference.

39. Paragraph 39 of the Complaint states a legal conclusion that does not require a response. To the extent it alleges facts, Defendant lacks sufficient information or knowledge to admit or deny the allegations and, therefore, denies them.

40. Paragraph 40 of the Complaint states a legal conclusion that does not require a response. To the extent it alleges facts, Defendant lacks sufficient information or knowledge to admit or deny the allegations and, therefore, denies them.

41. Paragraph 41 of the Complaint states a legal conclusion that does not require a response. To the extent it alleges facts, Defendant lacks sufficient information or knowledge to admit or deny the allegations and, therefore, denies them.

42. Paragraph 42 of the Complaint states a legal conclusion that does not require a response. To the extent it alleges facts, Defendant lacks sufficient information or knowledge to admit or deny the allegations and, therefore, denies them.

43. Defendant denies Paragraph 43 of the Complaint.

44. Defendant denies Paragraph 44 of the Complaint.

SECOND CLAIM FOR RELIEF
(Turnover by HCMS Pursuant to 11 U.S.C. § 549(b))

45. Paragraph 45 seeks to incorporate the allegations in the preceding paragraphs and does not require a response. Defendant incorporates all prior denials herein by reference.

46. Paragraph 46 of the Complaint states a legal conclusion that does not require a response. To the extent it alleges facts, Defendant lacks sufficient information or knowledge to admit or deny the allegations and, therefore, denies them.

47. Paragraph 47 of the Complaint states a legal conclusion that does not require a response. To the extent it alleges facts, Defendant lacks sufficient information or knowledge to admit or deny the allegations and, therefore, denies them.

48. Paragraph 48 of the Complaint states a legal conclusion that does not require a response. To the extent it alleges facts, Defendant lacks sufficient information or knowledge to admit or deny the allegations and, therefore, denies them.

49. Defendant admits that Plaintiff transmitted Exhibits 5 and 7 to the Complaint. Defendant lacks sufficient information or knowledge to admit or deny the remaining allegations in Paragraph 49 of the Complaint and, therefore, denies them.

50. Defendant lacks sufficient information or knowledge to admit or deny the remaining allegations in Paragraph 50 of the Complaint and, therefore, denies them.

51. Defendant denies Paragraph 51 of the Complaint.

52. Defendant denies that Plaintiff is entitled to the relief requested in the prayer of the Complaint, including parts (i), (ii), and (iii).

AFFIRMATIVE DEFENSES

53. Plaintiff's claims are barred in whole or in part by the doctrine of justification and/or repudiation.

54. Plaintiff's claims are barred in whole or in part by the doctrine of estoppel.

55. Plaintiff's claims are barred in whole or in part by the doctrine of waiver.

56. Plaintiff's claims are barred in whole or in part because prior to the demands for payment Plaintiff agreed that it would not collect the Notes upon fulfillment of conditions subsequent.

57. HCMS further asserts that each Note is ambiguous.

JURY DEMAND

58. HCMS demands a trial by jury of all issues so triable under Federal Rule of Civil Procedure 38 and Federal Rule of Bankruptcy Procedure 9015.

59. HCMS does not consent to the Bankruptcy Court conducting a jury trial and therefore demands such jury trial in the District Court.

PRAYER

For these reasons, HCMS respectfully requests that, following a trial on the merits, the Court deny the relief Plaintiffs seeks through its Complaint, enter a judgment that the Plaintiff take nothing on the Complaint, and grant HCMS such other relief at law or in equity to which it may be entitled.

Respectfully submitted,

/s/ Lauren K. Drawhorn
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COUNSEL FOR HIGHLAND MANAGEMENT SERVICES, INC.

CERTIFICATE OF SERVICE

I hereby certify that on May 10, 2021, a true and correct copy of the foregoing pleading was served via the Court's CM/ECF system upon counsel for the Plaintiff and all other parties requesting or consenting to such service in this adversary case.

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/s/ Lauren K. Drawhorn
Lauren K. Drawhorn

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.	§	**Chapter 11**
	§	
	§	**Case No.: 19-34054-sgj11**
Debtor.	§	
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.	§	
	§	
	§	
Plaintiff,	§	
	§	
vs.	§	**Adv. Pro. No. 21-03006-sgj**
	§	
HIGHLAND CAPITAL MANAGEMENT SERVICES, INC.,	§	
	§	
	§	
Defendant.	§	

ORDER GRANTING HIGHLAND CAPITAL MANAGEMENT SERVICES, INC.'S MOTION FOR LEAVE TO AMEND ANSWER TO PLAINTIFF'S COMPLAINT

On this day, the Court considered Defendant Highland Capital Management Services, Inc.'s ("Defendant") Motion for Leave to Amend its Answer to Plaintiff's Complaint (the

"Motion"). Having considered the Motion, and finding good cause exists, the Court hereby, **GRANTS** the Motion.

IT IS THEREFORE ORDERED that Defendant's First Amended Answer to Plaintiff's Complaint for (I) Breach of Contract and (II) Turnover of Property of the Debtor's Estate, is hereby **DEEMED FILED** as of the date of this Order.

END OF ORDER

EXHIBIT 9

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COUNSEL FOR NEXPOINT REAL ESTATE PARTNERS, LLC F/K/A HCRE PARTNERS, LLC

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	
	§	**Chapter 11**
HIGHLAND CAPITAL MANAGEMENT, L.P.	§	
	§	**Case No.: 19-34054-sgj11**
	§	
Debtor.	§	
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.	§	
	§	
	§	
Plaintiff,	§	
	§	**Adv. Pro. No. 21-03007-sgj**
vs.	§	
	§	
HCRE PARTNERS, LLC (n/k/a NEXPOINT REAL ESTATE PARTNERS, LLC),	§	
	§	
	§	
	§	
Defendant.	§	

NEXPOINT REAL ESTATE PARTNERS, LLC F/K/A HCRE PARTNERS, LLC'S MOTION FOR LEAVE TO FILE AMENDED ANSWER AND BRIEF IN SUPPORT

Defendant NexPoint Real Estate Partners, LLC f/k/a HCRE Partners, LLC ("NREP" or "Defendant") files this Motion for Leave to File Amended Answer and Brief in Support ("Motion")[1] in response to Highland Capital Management L.P.'s ("Plaintiff" or "Debtor")

[1] Defendant files its brief in the same document as the motion pursuant to Local Bankruptcy Rule 7007-1(d).

Complaint in the above-referenced adversary proceeding (the "Adversary Proceeding") and respectfully states as follows:

I. RELEVANT BACKGROUND

1. On January 22, 2021, Plaintiff filed its Complaint for (I) Breach of Contract and (II) Turnover of Property of the Debtor's Estate (the "Complaint"), commencing this Adversary Proceeding. Defendant's counsel accepted service of the Complaint on February 1, 2021 and the parties agreed the Defendant's deadline to answer or otherwise respond to the Complaint was March 3, 2021. On March 3, 2021, Defendant filed its Answer to Plaintiff's Complaint ("Original Answer").

2. On March 11, 2021, Plaintiff and Defendant filed a Stipulation and Proposed Scheduling Order [ECF No. 8], setting forth a proposed joint scheduling order in lieu of the Alternative Scheduling Order issued by the Court. On March 16, 2021, the Court entered its Order Approving Stipulation Regarding Scheduling Order [ECF No. 10] (the "Scheduling Order").

3. Under the Scheduling Order, the deadline to serve discovery requests is May 31, 2021 and responses to discovery requests are due July 5, 2021. Fact discovery closes July 26, 2017, dispositive motions must be filed by September 6, 2021, and trial docket call is November 8, 2021 at 1:30 p.m.

4. Preparation of the defense of this adversary has been made extremely difficult by the constraints imposed by the Debtor with respect to access to witnesses and evidence. In connection with preparation of the defense, Defendant realized its affirmative defenses were not as clear as they could have been and that the additional defenses which it seeks to assert in this Adversary Proceeding should have been more fully set out as follows: (i) the Debtor's ability to make demand on the Notes was subject to a condition subsequent that has not yet become unable to be met, and (ii) the Notes are ambiguous. The original listing of affirmative defenses was

intended to cover such defenses, however, in an abundance of caution, Defendant seeks leave to amend and more clearly set out its intended defenses. The Scheduling Order does not contain a deadline to amend pleadings; therefore, Defendant's Motion is governed by Federal Rule of Civil Procedure 15(a)(2), made applicable to this Adversary Proceeding by Federal Rule of Bankruptcy Procedure 7015, which favors liberal amendment of pleadings. *See* Fed. R. Civ. P. 15(a)(2); Fed. R. Bankr. P. 7015.

5. Given the deadlines for discovery and pre-trial matters under the Scheduling Order, Defendant's proposed amendment will not delay the proceedings or otherwise prejudice the Plaintiff. Moreover, the proposed amendment is not sought in bad faith, but in furtherance of meritorious defenses based on additional investigation.

6. Because Defendant's Motion is not sought in bad faith and will not result in undue delay or prejudice to Plaintiff, the Court should grant Defendant's Motion under the standard favoring liberal amendment of pleadings under Rule 15.

II. ARGUMENT AND AUTHORITY

7. Rule 15(a) governs amendments to pleadings and provides that a party may amend its pleading with the opposing party's written consent or the court's leave. Fed. R. Civ P. 15(a). The court "should freely give leave when justice so requires." *Id*. Rule 15 "evinces a bias in favor of granting leave to amend." *Dussouy v. Gulf Coast Inv. Corp.*, 660 F.2d 594, 597 (5th Cir. 1981); *Marshall v. MarOpCo, Inc.*, 223 F.Supp.3d 562, 566 (N.D. Tex. 2017) ("Since *Dussouy*, the Fifth Circuit has repeatedly held that Rule 15(a) evinces a liberal amendment policy."). "The policy of the federal rules is to permit liberal amendment to facilitate determination of claims on the merits and to prevent litigation from becoming a technical exercise in the fine points of pleading." *Dussouy*, 660 F.2d at 598. Leave to amend should be granted unless there is a substantial reason for denying leave. *InternetAd Sys., LLC v. Opodo Ltd.*, 481 F.Supp.2d 596, 603 (N.D. Tex. 2007).

Courts may consider the following factors in determining whether a substantial reason exists to deny leave: (i) delay or prejudice to the non-movant; (ii) bad faith or dilatory motives on the part of the movant; (iii) repeated failure to cure deficiencies; or (iv) futility of amendment. *InternetAd Sys*, 481 F.Supp.2d at 604; *Sabre, Inc. v. Lyn-Lea Travel Corp.*, No. Civ. A. 3:96-CV-2068R, 2003 WL 21339291, *4 (N.D. Tex. June 5, 2003).

8. Here, there is no substantial reason to deny Defendant's Motion and, as such, the Court should grant Defendant leave to amend its answer. First, there is no undue delay or prejudice to Plaintiff. This is not a situation where there is an "unexplained delay" following the original answer. *See, e.g., In re Southmark Corp.*, 88 F.3d 311, 316 (5th Cir. 1996) (denying motion for leave to amend where the plaintiff sought to add a cause of action more than one year after the original complaint was filed and eleven months after the first amended complaint was filed with no reasonable explanation for such delay). Instead, Defendant was served with the Complaint less than three months ago and its answer was due less than two months ago. Defendant seeks to amend its answer to clarify its defense by adding two affirmative defenses based on its further investigation into the allegations of Plaintiff and in connection with its preparation for serving written discovery. Defendant determined these affirmative defenses applied in connection with its investigation and preparation for written discovery in connection with its defense of the case and within the expected timeline of this contested matter based on the Scheduling Order. Further, allowing Defendant to amend its answer will not result in prejudice to Plaintiff. Fact discovery does not close until July 26, 2021 and Plaintiff has not yet conducted any discovery. *See, e.g., Sabre, Inc.*, 2003 WL 21339291 at *4 (noting that undue prejudice arises where a new theory requires a reiteration of discovery proceedings). Accordingly, there is no undue delay or prejudice to Plaintiff.

9. Nor does Defendant seek to amend in bad faith. In determining bad faith, Courts consider whether "the movant first presents a theory difficult to establish but favorable and, only after that fails, presents a less favorable theory." *Sabre*, 2003 WL 21339291 at *6. Here, Defendant is not seeking to add a new theory after the first theory failed – discovery has not yet begun, and the dispositive motion deadline is approximately four months away – and the circumstances do not give rise to an inference that Defendant is engaging in tactical maneuvers. Defendant is seeking to amend its answer, less than two months after filing it, because it determined additional defenses were applicable as it continued to investigate its defense of the Plaintiff's allegations and prepare for discovery. Accordingly, Defendant's Motion is not brought in bad faith or for dilatory motives.

10. Third, this is not a situation where Defendant has repeatedly failed to cure deficiencies with prior amendments. This is Defendant's first request for leave to amend and, if granted, will be Defendant's first amendment to its answer. As such, repeated failure to cure deficiencies is not a reason to deny Defendant's Motion.

11. Last, Defendant's proposed amendments are not futile. Amendments to defenses are futile "where they would necessarily fail or are so lacking in merit on their face." *Southpoint Condo. Ass'n Inc. v. Lexington Ins. Co.*, Case No. 19-cv-61365, 2020 WL 639400, *6 (S.D. Fla. Feb. 11, 2020). Some courts refuse to address the issue of futility in a motion for leave to amend context and instead does so in the context of a Rule 12(b)(6) or Rule 56 motion, "where the procedural safeguards are surer." *Garcia v. Zale Corp.*, 2006 WL 298156, *1 (N.D. Tex. Feb. 1, 2006) (Fitzwater, J.) ("…the court's almost unvarying practice when futility is raised is to address the merits of the claim or defense in the context of a Rule 12(b)(6) or Rule 56 motion."). Here, the

proposed affirmative defenses are not futile,[2] and Defendant expects evidence supporting such defenses will be uncovered through discovery. *See, e.g., Don Stevenson Design, Inc. v. Randy Herrera Designer, LLC*, No. 5:16-CV-1130, 2017 WL 10581124, *1 (W.D. Tex. Sept. 8, 2017) ("Finally, Defendants' Motion for Leave is not futile because additional evidence substantiating the statute of limitations defense may come forward during the remainder of discovery.").

12. Further, "even if there is substantial reason to deny leave to amend, the court should consider prejudice to the movant, as well as judicial economy, in determining whether justice requires granting leave." *Allen v. Target Corporation*, 2007 WL 9735894, *1 (S.D. Tex. Nov 29, 2007). As a result, in considering a motion for leave to add additional affirmative defenses, Rule 8(c)'s requirement that affirmative defenses be pleaded or waived "must be applied in the context of the Federal Rules' liberal pleading and amendment policy, the goal of which is to do substantial justice." *Id.* At *1-2 (granting defendant's motion for leave to add affirmative defenses known previously because the delay did not constitute a substantial reason to deny leave and justice requires allowing the amendment).

13. Because there is no substantial reason to deny Defendant's request, Defendant's additional affirmative defenses could be waived if not allowed, and Plaintiff is free to challenge any of Defendant's affirmative defenses under Rule 56, made applicable to this Adversary Proceeding by Bankruptcy Rule 7056. Leave to amend should be freely granted and, as such, the Court should grant Defendant's Motion.

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[2] Plaintiff contemplated at least some of its loans to affiliates or related entities (such as the Notes at issue in this Adversary Proceeding) "may not result in allowed or enforceable claims" by the Plaintiff. *See* Global Notes and Statement of Limitations, Methods, and Disclaimers Regarding Debtor's Amended Schedules of Assets and Liabilities, p. 3 "Intercompany Claims" [Docket No. 1082-1], Global Notes and Statement of Limitations, methods, and Disclaimer Regarding Debtor's Schedules of Assets and Liabilities and Statement of Financial Affairs, p. 3 "Intercompany Claims" [Docket No. 247-1]. Defendant believes the reason some of these intercompany loans may not be allowed or enforceable is because collectability was dependent on a condition subsequent and/or they are ambiguous – the very defense Defendant now seeks to include in its Answer.

III. PROPOSED AMENDED ANSWER ATTACHED

14. Defendant's proposed First Amended Answer is attached hereto as **Exhibit A**.

IV. CONCLUSION

The Court should liberally grant leave to file amended pleadings absent a demonstration that such amendment would result in undue delay, prejudice, or is sought in bad faith. There is no such evidence of any of the foregoing here. For these reasons, Defendant respectfully requests the Court (i) grant this Motion; (ii) deem Defendant's First Amended Answer filed as of the date of the order granting this Motion; and grant Defendant such other relief at law or in equity to which it may be entitled.

Respectfully submitted,

/s/ Lauren K. Drawhorn

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COUNSEL FOR HCRE PARTNERS, LLC (N/K/A NEXPOINT REAL ESTATE PARTNERS, LLC)

CERTIFICATE OF CONFERENCE

Between April 21 and 25, 2021, I conferred with John Morris, counsel for the Plaintiff, regarding the relief requested herein and Mr. Morris indicated that the Plaintiff is opposed to the relief requested in Defendant's Motion.

/s/ Lauren K. Drawhorn
Lauren K. Drawhorn

CERTIFICATE OF SERVICE

I hereby certify that on May 10, 2021, a true and correct copy of the foregoing pleading was served via the Court's CM/ECF system upon counsel for the Plaintiff and all other parties requesting or consenting to such service in this adversary case.

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/s/ Lauren K. Drawhorn
Lauren K. Drawhorn

EXHIBIT A

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COUNSEL FOR NEXPOINT REAL ESTATE PARTNERS, LLC F/K/A HCRE PARTNERS, LLC

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	
	§	**Chapter 11**
HIGHLAND CAPITAL MANAGEMENT, L.P.	§	
	§	**Case No.: 19-34054-sgj11**
	§	
Debtor.	§	
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.	§	
	§	
Plaintiff,	§	
	§	**Adv. Pro. No. 21-03007-sgj**
vs.	§	
	§	
HCRE PARTNERS, LLC (n/k/a NEXPOINT REAL ESTATE PARTNERS, LLC),	§	
	§	
Defendant.	§	

NEXPOINT REAL ESTATE PARTNERS, LLC F/K/A HCRE PARTNERS, LLC'S FIRST AMENDED ANSWER TO PLAINTIFF'S COMPLAINT

Defendant NexPoint Real Estate Partners, LLC f/k/a HCRE Partners, LLC ("NREP" or "Defendant") files this First Amended Answer in response to Highland Capital Management L.P.'s ("Plaintiff" or "Debtor") Complaint for (I) Breach of Contract and (II) Turnover of Property of the

Debtor's Estate (the "Complaint") in the above-referend adversary proceeding (the "Adversary Proceeding") and respectfully states as follows:

PRELIMINARY STATEMENT[1]

1. The first sentence of Paragraph 1 sets forth Plaintiff's objective in bringing the Complaint and does not require a response. To the extent a response is required, Defendant denies the allegations in the first sentence of Paragraph 1. The second sentence contains a legal conclusion that does not require a response. To the extent a response is required, Defendant denies the allegations in the second sentence of Paragraph 1.

2. Paragraph 2 contains a summary of the relief Plaintiff seeks and does not require a response. To the extent a response is required, Defendant denies the allegations in Paragraph 2.

JURISDICTION AND VENUE

3. Defendant admits that this Adversary Proceeding relates to the Plaintiff's bankruptcy case but denies any implication that this fact confers constitutional authority on the Bankruptcy Court to adjudicate this dispute. Defendant denies any allegations in Paragraph 3 that are not expressly admitted.

4. Paragraph 4 states a legal conclusion that does not require a response. To the extent a response is required, Defendant admits the Bankruptcy Court has statutory jurisdiction over this Adversary Proceeding but denies that the Court has constitutional authority over this Adversary Proceeding. Defendant denies any allegations in Paragraph 4 that are not expressly admitted.

5. Defendant denies that Plaintiff's breach of contract claim is a core proceeding. Defendant further denies that a turnover proceeding under 11 U.S.C. § 542(b) is the appropriate mechanism to collect a contested debt. Defendant admits that a turnover proceeding under 11

[1] The headings herein are from Plaintiff's Complaint and are solely included for the Court's convenience.

U.S.C. § 542(b) is a statutorily core proceeding but denies that it is constitutionally core under *Stern v. Marshall*. Defendant does not consent to the Bankruptcy Court entering final orders or judgment in this Adversary Proceeding. Defendant denies any allegations in Paragraph 5 that are not expressly admitted.

6. Paragraph 6 states a legal conclusion to which no response is required. To the extent a response is required, Defendant admits that venue is proper in this District.

THE PARTIES

7. Defendant admits the allegations in Paragraph 7 of the Complaint.

8. Defendant admits the allegations in Paragraph 8 of the Complaint.

CASE BACKGROUND

9. Defendant admits the allegations in Paragraph 9 of the Complaint.

10. Defendant admits the allegations in Paragraph 10 of the Complaint.

11. Defendant admits the allegations in Paragraph 11 of the Complaint.

12. Defendant admits the allegations in Paragraph 12 of the Complaint.

STATEMENT OF FACTS

A. The Demand Notes

13. Defendant admits it has executed at least one promissory note under which the Debtor is the payee. Defendant denies any allegations in Paragraph 13 that are not expressly admitted.

14. Defendant admits that it signed the document attached to the Complaint as Exhibit 1. Defendant denies any allegations in Paragraph 14 that are not expressly admitted.

15. Defendant admits that it signed the document attached to the Complaint as Exhibit 2. Defendant denies any allegations in Paragraph 15 that are not expressly admitted.

16. Defendant admits that it signed the document attached to the Complaint as Exhibit 3. Defendant denies any allegations in Paragraph 16 that are not expressly admitted.

17. Defendant admits that it signed the document attached to the Complaint as Exhibit 4. Defendant denies any allegations in Paragraph 17 that are not expressly admitted.

18. Defendant admits that Plaintiff correctly transcribed Section 2 of Exhibits 1-4 to the Complaint in Paragraph 18.

19. Defendant admits that Plaintiff correctly transcribed Section 4 of Exhibits 1-4 to the Complaint in Paragraph 19.

20. Defendant admits that Plaintiff correctly transcribed Section 6 of Exhibits 1-4 of the Complaint in Paragraph 20.

B. Allegations regarding the Demand Notes

21. Defendant admits that Plaintiff sent it a copy of Exhibit 5. Defendant admits that Plaintiff correctly transcribed an excerpt of Exhibit 5 in the third sentence of Paragraph 21. Defendant denies any allegations in Paragraph 21 that are not expressly admitted.

22. To the extent Paragraph 22 asserts a legal conclusion, no response is required, and it is denied. Defendant otherwise admits the allegations in Paragraph 22.

23. Defendant lacks sufficient information or knowledge to admit or deny the allegations in Paragraph 23 and, therefore, denies them.

24. Defendant lacks sufficient information or knowledge to admit or deny the allegations in Paragraph 24 and, therefore, denies them.

25. Defendant lacks sufficient information or knowledge to admit or deny the allegations in Paragraph 25 and, therefore, denies them.

26. Defendant lacks sufficient information or knowledge to admit or deny the allegations in Paragraph 26 and, therefore, denies them.

27. Defendant lacks sufficient information or knowledge to admit or deny the allegations in Paragraph 27 and, therefore, denies them.

28. Defendant denies the allegations in Paragraph 28 of the Complaint.

C. The Term Note

29. Defendant admits that it has executed at least one promissory note under which Debtor is the payee. Defendant denies any allegations in Paragraph 29 that are not expressly admitted.

30. Defendant admits it signed the document attached to the Complaint as Exhibit 6. Defendant denies any allegations in Paragraph 30 that are not expressly admitted.

31. Defendant admits that Plaintiff correctly transcribed Section 2 of Exhibit 6 to the Complaint in Paragraph 31. Defendant denies any allegations in Paragraph 31 that are not expressly admitted.

32. Defendant admits that Plaintiff correctly transcribed Section 3 of Exhibit 6 to the Complaint in Paragraph 32. Defendant denies any allegations in Paragraph 32 that are not expressly admitted.

33. Defendant admits that Plaintiff correctly transcribed Section 4 of Exhibit 6 to the Complaint in Paragraph 33. Defendant denies any allegations in Paragraph 33 that are not expressly admitted.

34. Defendant admits that Plaintiff correctly transcribed Section 6 of Exhibit 6 to the Complaint in Paragraph 34. Defendant denies any allegations in Paragraph 34 that are not expressly admitted.

D. Allegations regarding the Term Note.

35. To the extent Paragraph 35 of the Complaint asserts a legal conclusion, no response is required, and it is denied. Defendant otherwise admits Paragraph 35 of the Complaint.

36. Defendant admits that Plaintiff sent it a copy of Exhibit 7. Defendant admits that Plaintiff correctly transcribed an excerpt of Exhibit 7 in the third sentence of Paragraph 36 of the Complaint. Defendant denies any allegations in Paragraph 36 that are not expressly admitted.

37. To the extent Paragraph 37 of the Complaint asserts a legal conclusion, no response is required, and it is denied. Defendant otherwise admits Paragraph 37 of the Complaint.

38. Defendant is without sufficient information or knowledge to admit or deny the allegations in Paragraph 38 of the Complaint and, therefore, denies them.

39. Defendant denies Paragraph 39 of the Complaint.

FIRST CLAIM FOR RELIEF
(For Breach of Contract)

40. Paragraph 40 of the Complaint seeks to incorporate the allegations in the preceding paragraphs and does not require a response. Defendant incorporates all prior denials herein by reference.

41. Paragraph 41 of the Complaint states a legal conclusion that does not require a response. To the extent it alleges facts, Defendant lacks sufficient information or knowledge to admit or deny the allegations and, therefore, denies them.

42. Paragraph 42 of the Complaint states a legal conclusion that does not require a response. To the extent it alleges facts, Defendant lacks sufficient information or knowledge to admit or deny the allegations and, therefore, denies them.

43. Paragraph 43 of the Complaint states a legal conclusion that does not require a response. To the extent it alleges facts, Defendant lacks sufficient information or knowledge to admit or deny the allegations and, therefore, denies them.

44. Paragraph 44 of the Complaint states a legal conclusion that does not require a response. To the extent it alleges facts, Defendant lacks sufficient information or knowledge to admit or deny the allegations and, therefore, denies them.

45. Defendant denies Paragraph 45 of the Complaint.

46. Defendant denies Paragraph 46 of the Complaint.

SECOND CLAIM FOR RELIEF
(Turnover Pursuant to 11 U.S.C. § 549(b))

47. Paragraph 47 seeks to incorporate the allegations in the preceding paragraphs and does not require a response. Defendant incorporates all prior denials herein by reference.

48. Paragraph 48 of the Complaint states a legal conclusion that does not require a response. To the extent it alleges facts, Defendant lacks sufficient information or knowledge to admit or deny the allegations and, therefore, denies them.

49. Paragraph 49 of the Complaint states a legal conclusion that does not require a response. To the extent it alleges facts, Defendant lacks sufficient information or knowledge to admit or deny the allegations and, therefore, denies them.

50. Paragraph 50 of the Complaint states a legal conclusion that does not require a response. To the extent it alleges facts, Defendant lacks sufficient information or knowledge to admit or deny the allegations and, therefore, denies them.

51. Defendant admits that Plaintiff transmitted Exhibits 5 and 7 to the Complaint. Defendant lacks sufficient information or knowledge to admit or deny the remaining allegations in Paragraph 51 of the Complaint and, therefore, denies them.

52. Defendant lacks sufficient information or knowledge to admit or deny the remaining allegations in Paragraph 52 of the Complaint and, therefore, denies them.

53. Defendant denies Paragraph 53 of the Complaint.

54. Defendant denies that Plaintiff is entitled to the relief requested in the prayer of the Complaint, including parts (i), (ii), and (iii).

AFFIRMATIVE DEFENSES

55. Plaintiff's claims are barred in whole or in part by the doctrine of justification and/or repudiation.

56. Plaintiff's claims are barred in whole or in part by the doctrine of estoppel.

57. Plaintiff's claims are barred in whole or in part by the doctrine of waiver.

58. Plaintiff's claims are barred in whole or in part because prior to the demands for payment, Plaintiff agreed that it would not collect the Notes upon fulfillment of conditions subsequent.

59. Defendant further asserts that each Note is ambiguous.

JURY DEMAND

60. Defendant demands a trial by jury of all issues so triable under Federal Rule of Civil Procedure 38 and Federal Rule of Bankruptcy Procedure 9015.

61. Defendant does not consent to the Bankruptcy Court conducting a jury trial and therefore demands such jury trial in the District Court.

PRAYER

For these reasons, Defendant respectfully requests that, following a trial on the merits, the Court deny the relief Plaintiffs seeks through its Complaint, enter a judgment that the Plaintiff take nothing on the Complaint, and grant Defendant such other relief at law or in equity to which it may be entitled.

Respectfully submitted,

/s/ Lauren K. Drawhorn

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COUNSEL FOR NEXPOINT REAL ESTATE PARTNERS, LLC F/K/A HCRE PARTNERS, LLC

CERTIFICATE OF SERVICE

I hereby certify that on May 10, 2021, a true and correct copy of the foregoing pleading was served via the Court's CM/ECF system upon counsel for the Plaintiff and all other parties requesting or consenting to such service in this adversary case.

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/s/ Lauren K. Drawhorn
Lauren K. Drawhorn

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	
	§	**Chapter 11**
HIGHLAND CAPITAL MANAGEMENT, L.P.	§	
	§	**Case No.: 19-34054-sgj11**
	§	
Debtor.	§	
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.	§	
	§	
	§	
Plaintiff,	§	
	§	**Adv. Pro. No. 21-03007-sgj**
vs.	§	
	§	
HCRE PARTNERS, LLC (n/k/a NEXPOINT REAL ESTATE PARTNERS, LLC),	§	
	§	
	§	
	§	
Defendant.	§	

ORDER GRANTING NEXPOINT REAL ESTATE PARTNERS, LLC F/K/A HCRE PARTNERS, LLC'S MOTION FOR LEAVE TO AMEND ANSWER TO PLAINTIFF'S COMPLAINT

On this day, the Court considered Defendant NexPoint Real Estate Partners, LLC f/k/a HCRE Partners, LLC's ("Defendant") Motion for Leave to Amend its Answer to Plaintiff's Complaint (the "Motion"). Having considered the Motion, and finding good cause exists, the Court hereby, **GRANTS** the Motion.

IT IS THEREFORE ORDERED that Defendant's First Amended Answer to Plaintiff's Complaint for (I) Breach of Contract and (II) Turnover of Property of the Debtor's Estate, is hereby **DEEMED FILED** as of the date of this Order.

END OF ORDER

EXHIBIT 10

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COUNSEL FOR HIGHLAND CAPITAL
MANAGEMENT FUND ADVISORS, L.P.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re HIGHLAND CAPITAL MANAGEMENT, L.P., Debtor.	§ § § § § §	Chapter 11 Case No. 19-34054-sgj11
HIGHLAND CAPITAL MANAGEMENT, L.P., Plaintiff, v. HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, L.P. Defendant.	§ § § § § § § § § § §	Adv. No. 21-03004

DEFENDANT'S MOTION FOR LEAVE TO AMEND ANSWER

TO THE HONORABLE COURT:

COMES NOW Highland Capital Management Fund Advisors, L.P., the defendant (the "Defendant") in the above styled and numbered adversary proceeding (the "Adversary Proceeding"), and files this its *Defendant's Motion for Leave to Amend Answer* (the "Motion"), respectfully stating as follows:

I. SUMMARY

1. This Adversary Proceeding concerns two promissory notes allegedly payable by the Defendant to Highland Capital Management, L.P. (the "Plaintiff") in the combined amounts of $7.4 million (the "Notes"). Now that the Defendant has access to former employees of the Plaintiff and to various books and records, the Defendant has learned that the Notes were unauthorized, represent a mutual mistake, and were never intended as debt, but rather that the Plaintiff was compensating the Defendant for the Plaintiff's own liability to the Defendant for causing a serious valuation error. Accordingly, and not having learned of these facts until recently, the Defendant respectfully seeks leave to assert resulting affirmative defenses.

II. PROCEDRUAL BACKGROUND

2. On January 22, 2021, the Plaintiff filed its *Complaint for (i) Breach of Contract and (ii) Turnover of Property of the Debtor's Estate* (the "Complaint"), thereby initiating this Adversary Proceeding.

3. On March 1, 2021, the Defendant filed its *Defendant's Original Answer* (the "Answer"). The Answer does not contain any affirmative defenses.

4. The agreed scheduling order entered in this Adversary Proceeding does not contain a deadline to amend operative pleadings. *See* Docket No. 13.

5. This Adversary Proceeding is non-core and the Defendant has not consented to the Bankruptcy Court's entry of final orders or judgment. The Defendant has asserted a right to trial by jury.

6. The Defendant has filed a motion for withdrawal of the reference, which motion remains pending, and this Motion is subject to, and without prejudice to, any and all arguments raised in support of the withdrawal of the reference.

III. FACTUAL BACKGROUND

7. This Motion is supported by the Declaration of Dennis C. Sauter (the "Sauter Declaration"), attached hereto as Exhibit "A" and incorporated herein.

8. The Defendant is a registered advisor under the Investment Advisors Act of 1940. Sauter Declaration at ¶ 4. As such, the Defendant advises various independent funds which, in turn, are investment vehicles for a large number of investors. *See id*. One such fund was Highland Global Allocation Fund ("HGAF"). *Id.* at ¶ 24.

9. Prior to the end of February, 2021, and during all times relevant to the Notes, the Plaintiff and the Defendant were parties to that certain *Second Amended and Restated Shared Services Agreement* dated February 8, 2013 (the "Shared Services Agreement"). *Id.* at ¶ 6. This was standard business practices for the Plaintiff and various other affiliated companies, including other advisers, within the Plaintiff's "complex" of business: the Plaintiff would employ most of the employees and then share those employees with the Defendant and other "complex" entities, in exchange for payments by the Defendant and such other entities. *Id.* at ¶ 7. The Defendant otherwise had very few direct employees. *Id.* at ¶ 5. Thus, under the Shared Services Agreement, employees of the Plaintiff (many of whom were highly trained and specialized) provided many of the key services to the Defendant on an as-needed basis. *Id.* at ¶ 8. These services included legal, accounting, regulatory, compliance, IT, valuation, and tax services, among others. *Id.* at ¶ 8. Additionally, under the Shared Services Agreement the Debtor provided critical electronic infrastructure to HCMFA and other "complex" entities, such that the books and records, and e-mail communications, of HCMFA were actually stored. *Id.* at ¶ 8.

10. In March, 2018, HGAF sold equity interests it held in TerreStar. *Id.* at ¶ 24. As part of this, it was necessary to calculate the "net asset value" ("NAV") of these securities and of

HGAF assets. *Id.* at ¶ 24. The Defendant was responsible for advising on the NAV. In turn, pursuant to the Shared Services Agreement, the Plaintiff was responsible to the Defendant to calculate the NAV, and the Plaintiff had several employees charged with these and similar calculations as part of the Plaintiff's routine business services and as part of what the Plaintiff regularly provided to the Defendant and affiliated companies. *Id.* at ¶ 24.

11. The Plaintff made a mistake in calculating the NAV (the "NAV Error"). *Id.* at ¶ 25. The NAV Error was discovered in early 2019 as HGAF was being converted from an open-ended fund to a closed-ended fund. *Id.* at ¶ 25. The Securities and Exchange Commission opened an investigation, and various employees and representatives of the Plaintiff, the Defendant, and HGAF worked with the SEC to correct the error and to compensate HGAF and the various investors in HGAF harmed by the NAV Error. *Id.* at ¶ 25. Ultimately, and working with the SEC, the Plaintiff determined that the losses from the NAV Error to HGAF and its shareholders amounted to $7.5 million: (i) $6.1 million for the NAV Error itself, as well as rebating related advisor fees and processing costs; and (ii) $1.4 million of losses to the shareholders of HGAF. *Id.* at ¶ 26.

12. The Defendant accepted responsibility for the NAV Error and paid out $5,186,496 on February 15, 2019 and $2,398,842 on May 21, 2019. *Id.* at ¶ 27. In turn, the Plaintiff accepted responsibility to the Defendant for having caused the NAV Error, and the Plaintiff ultimately, whether through insurance or its own funds, compensated the Defendant for the above payments. *Id.* at ¶ 28. The Defendant is unsure as to the flow of funds; *i.e.* whether the Plaintiff paid HGAF directly or through the Defendant, and is awaiting discovery from the Plaintiff on that point. Either way, the Plaintiff accepted, and paid, approximately $7.5 million to compensate for the NAV Error that it caused.

13. Frank Waterhouse ("Waterhouse") was the Chief Financial Officer of both the Plaintiff and the Defendant. *Id.* at ¶ 29. Waterhouse prepared and signed the Notes. Interestingly, Waterhouse did not sign the Notes in a representative capacity for the Defendant, but rather as:

MAKER:

FRANK WATERHOUSE

This was highly unusual and indicates that the Plaintiff's legal department did not prepare the Notes. It is also highly unusual that the Notes were not signed by Jim Dondero or by the general partner of the Defendant.

14. Waterhouse was not authorized to execute the Notes on behalf of the Defendant, and he was not authorized to lend funds by the Plaintiff. *Id.* at ¶ 22. It appears that what happened is that Waterhouse, either for some internal accounting purpose or because funds were flowing from the Plaintiff to the Defendant, believed that some document was necessary or that what was being funded was a loan, so he unilaterally, and in mistake, prepared and signed the Notes. *Id.* at ¶ 30. In short, Waterhouse made a mistake, there was no loan, there was no return consideration for any loan, and the Notes, if anything, are a mutual mistake and are void. *Id.* at ¶ 30 & 32.

15. The Defendant only learned of these facts in April, 2021, and was therefore unable to assert defenses and affirmative defenses based on these facts at the time that it filed its Answer. *Id.* at ¶ 21. This is because the Defendant's own employees had no knowledge of the facts and circumstances surrounding the Notes; the Plaintiff, through its CEO Mr. Seery, had prohibited employees of the Plaintiff from discussing matters with the Defendant that may relate to controversies or litigation under penalty of termination; the Defendant did not have access to all

of its books and records, as they were in the possession of the Plaintiff pursuant to the Shared Services Agreement; and an injunction from the Bankruptcy Court prohibited Mr. Dondero from "indirectly" communicating with the Plaintiff's employees (Mr. Dondero controls the Defendant). *Id.* at ¶¶ 13-17.

16. By mid-April, 2021, the Plaintiff has terminated most of its employees, those employees formed their own company, and the Defendant retained that company to provide services to the Defendant basically in continuation of the services provided by the Plaintiff pursuant to the Shared Services Agreement. *Id*. at ¶¶ 19-20. Additionally, the Plaintiff provided many, but not all, of the Defendant's books and records to the Defendant. *See id*. Thus, it was not until then that the Defendant was meaningfully able to talk to persons with some knowledge regarding the facts and circumstances surrounding the Notes and to review its books and records to determine that the NAV Error had occurred and that the Plaintiff paying for the resulting damages was compensation by the Plaintiff for its own error, as opposed to a loan from the Plaintiff to the Defendant. *Id*. at ¶¶ 21-22.

17. The Defendant also notes that the Plaintiff, on its schedules, did not schedule the Notes even though it scheduled various other promissory notes owed by its affiliates. *See* Docket No. 247 at 13 of 74. Additionally, on April 15, 2019, the Plaintiff agreed to extend the date that certain demand notes payable by the Defendant to the Plaintiff could be demanded to May 31, 2021, as the Defendant expected to be unable to pay those notes. *See* Sauter Declaration at ¶ 31. It is illogical and highly improbable that, notwithstanding that admission and acknowledgement, the Plaintiff would nevertheless loan the Defendant $7.4 million some two weeks later. Rather, as the evidence suggests, Waterhouse made a mistake in not realizing that the funds being paid by the Plaintiff to the Defendant were in compensation for the NAV Error and not a loan.

IV. DISCUSSION

18. Attached hereto as Exhibit "B" is the Defendant's proposed Amended Answer, incorporating new defenses or affirmative defenses resulting from the knowledge of the facts above.

19. Federal Rule of Civil Procedure 15, as made applicable to this Adversary Proceeding by Federal Rule of Bankruptcy Procedure 7015, provides for leave to amend a pleading, which leave "[t]he court should freely give [] when justice so requires." FED. R. CIV. P. 15(a)(2).

20. The Court must "possess a 'substantial reason' to deny a request for leave to amend." *Smith v. EMC Corp.*, 393 F.3d 590, 595 (5th Cir. 2004). The Fifth Circuit has outlined five "consideration" guiding the Rule 15 inquiry: "1) undue delay, 2) bad faith or dilatory motive, 3) repeated failure to cure deficiencies by previous amendments, 4) undue prejudice to the opposing party, and 5) futility of the amendment." *Id*.

21. No Undue Delay. There has been no undue delay. The Defendant filed its Answer only some seventy (80) days ago. This Adversary Proceeding has been pending for four (4) months. The Defendant has not filed a prior motion for leave to amend. And, most importantly, as evidenced by the Sauter Declaration, the Defendant had no way of knowing of these defenses and affirmative defenses until the termination of the Shared Services Agreement and the ability of the Defendant to communicate with former employees of the Plaintiff who, prior to that time, were under instructions to not discuss matters of a potential litigation nature with the Defendant under penalty of termination, and to have access to its books and records. Thus, it was not until April, 2021, that the Defendant was even able to learn of these defenses to the Notes or the facts and circumstances surrounding the Notes.

22. No Bad Faith or Dilatory Motive. There is no bad faith or dilatory motive for the same reasons as above; the Defendant only recently learned of its defenses, the Defendant moved for leave promptly after learning of them; and leave to amend is not sought to avoid summary judgment or continue trial.

23. No Repeated Failures to Cure By Prior Amendments. This is the Defendant's first motion to amend.

24. No Undue Prejudice. There is no undue prejudice to the Plaintiff. Discovery is ongoing and depositions have not been scheduled. The Defendant is agreeable to further extending discovery. The Plaintiff will have every reasonable opportunity to test the new defenses, and all underlying witness and documents related to the same are available.

25. No Futility of the Amendment. The Defendant's defense is not futile:

(i) it is supported by *prima facie* evidence by the Sauter Declaration;

(ii) the amount of the Notes, one for $5 million and one for $2.4 million, is almost identical to the ultimate $5,186,496 payment by the Defendant on February 15, 2019 and the $2,398,842 May 21, 2019 payment by the Defendant;

(iii) the fact that the Plaintiff did not schedule the Notes, while scheduling many others, is evidence that the Plaintiff itself did not consider the Notes legitimate (or know of their existence);

(iv) the fact that Waterhouse signed the Notes, and not in a representative capacity for the Defendant, whereas all other notes are prepared by the Plaintiff's legal department and signed by other agents in representative capacities, is evidence that Waterhouse made a mistake or did not understand what was going on, and had no authority or clearance to bind the Defendant to the Notes, and that, perhaps, the

Notes were done for some draft, or accounting, or temporary purpose with no intention or expectation, even on the part of Waterhouse, that the Notes ever be legitimate.

26. The Defendant is not suggesting that the merits of its defenses be tried through this Motion; only that its defenses and the Motion are not "futile."

27. Accordingly, as no substantial reason exists to deny the amendment, the Court should "freely" grant leave to the Defendant to amend its Answer.

V. PRAYER

WHEREFORE, PREMISES CONSIDERED, the Defendant respectfully requests that the Court enter an order: (i) granting this Motion; (ii) granting the Defendant leave to file the Amended Answer attached hereto as Exhibit "B"; and (iii) granting the Defendant such other and further relief to which it may be justly entitled.

RESPECTFULLY SUBMITTED this 22d day of May, 2021.

MUNSCH HARDT KOPF & HARR, P.C.

By: /s/ Davor Rukavina

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COUNSEL FOR HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, L.P.

CERTIFICATE OF CONFERENCE

The undersigned hereby certifies that he discussed the relief requested herein with Jeff Pomerantz, Esq. and John Morris, Esq., on March 21, 2021, but that, as of the filing hereof, he has not heard back regarding whether the Plaintiff opposes said relief.

/s/ Davor Rukavina
Davor Rukavina

CERTIFICATE OF SERVICE

The undersigned hereby certifies that, on this the 22d day of May, 2021, true and correct copies of this document and the exhibits hereto were electronically served by the Court's ECF system on parties entitled to notice thereof, including on the Plaintiff through its counsel of record.

/s/ Davor Rukavina
Davor Rukavina

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re HIGHLAND CAPITAL MANAGEMENT, L.P., Debtor.	§ § § § § §	Chapter 11 Case No. 19-34054-sgj11
HIGHLAND CAPITAL MANAGEMENT, L.P., Plaintiff, v. HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, L.P. Defendant.	§ § § § § § § § § § §	Adv. No. 21-03004

DECLARATION OF DENNIS C. SAUTER, JR.

I, Dennis C. Sauter, Jr., hereby swear under oath and penalty of perjury pursuant to the laws of the United States of America that the following is true and correct to the best of my knowledge and belief:

1. My name is Dennis C. Sauter, Jr. I am over the age of 21, have never been convicted of a felony or crime of moral turpitude, and am otherwise qualified to give this Declaration. I have personal knowledge of the facts stated in this Declaration, or such facts are known to me from my review of the books and records of Highland Capital Management Fund Advisors, L.P. ("HCMFA").

2. I am an attorney licensed to practice law in the State of Texas and have been such since 2001.

EXHIBIT "A"

3. While I provided limited legal services to Highland Capital Management, L.P. (the "Debtor") and its affiliated entities as outside counsel before I became in-house counsel, those services were limited to real estate transactions having nothing to do with the facts discussed in this Declaration.

4. HCMFA is a registered advisor under the Investment Advisors Act of 1940. CITE. As such, HCMFA advises various independent funds, which, in turn, are investment vehicles for a large number of investors.

5. HCMFA has always had very few employees. During 2019, for example, HCMFA had only 7 to 9 employees.

6. Instead, most of the services needed by HCMFA to transact its business were provided by the Debtor pursuant to that certain *Second Amended and Restated Shared Services Agreement* dated February 8, 2013 (the "Shared Services Agreement"), a true and correct copy of which is attached hereto as Exhibit 1.

7. This was standard business practices for the Debtor and various other affiliated companies, including other advisers within the Debtor's and its affiliates "complex" of businesses: the Debtor would employ most of the employees and then share those employees with HCMFA and other "complex" entities in exchange for payments by HCMFA and such other entities.

8. Thus, under the Shared Services Agreement, employees of the Debtor (many of whom were highly trained and specialized) provided many of the key services to HCMFA on an as-needed basis. These services included legal, accounting, regulatory, compliance, IT, and tax services, among others. Additionally, under the Shared Services Agreement the Debtor provided critical electronic infrastructure to HCMFA and other "complex" entities, such that the books and records, and e-mail communications, of HCMFA were actually stored on the Debtor's server.

9. These facts are very important to the issues I will discuss below.

10. On January 22, 2021, the Debtor filed its *Complaint for (i) Breach of Contract and (ii) Turnover of Property of the Debtor's Estate* (the "Complaint") against HCMFA, thereby initiating this Adversary Proceeding.

11. The Complaint concerns two promissory notes each dated May 2, 2019 (the "Notes") that the Debtor seeks a judgment against HCMFA for: (i) a note for $5 million; and (ii) a note for $2.4 million.

12. On March 1, 2021, HCMFA filed its *Defendant's Original Answer* (the "Answer").

13. At the time that the Debtor filed the Complaint, I promptly undertook an internal review of the background facts concerning the Notes. I had no knowledge of them since I had not been employed by HCMFA, and the few employees of HCMFA had no knowledge of the Notes. I also discussed the Notes with James Dondero, formerly the CEO of the Debtor, and Mr. Dondero could not recall the genesis of the Notes. My review of the limited books and records of HCMFA that were not in the possession of the Debtor did not reveal any background facts regarding the Notes or the existence of the Notes.

14. Normally, I would have discussed the Notes with employees of the Debtor who also provided services to HCMFA pursuant to the Shared Services Agreement in order to assess what defenses or affirmative defenses to the Complaint existed. However, in this instance I was precluded from doing so.

15. First, attached hereto as Exhibit 2 is a true and correct copy of an e-mail exchange between me and Mr. James Seery dated September 17, 2020. Mr. Seery was and remains the Chief Executive Officer of the Debtor. As stated in Exhibit 2, Mr. Seery was informing me that Debtor employees had been instructed not to discuss with me anything that is "inimical" to the interests of the Debtor, and that they would be terminated if they did so. This e-mail communication comports with other communications between myself and Mr. Seery and/or Debtor's counsel,

where I was cautioned not to discuss with Debtor employees matters that may be adverse to the Debtor.

16. Second, by the time of the filing of the Complaint, the Court had entered a preliminary injunction against Mr. Dondero, a true and correct copy of which is attached hereto as Exhibit 3. That injunction prohibited Mr. Dondero from "directly or indirectly . . . communicating with any of the Debtor's employees, except as it specifically relates to shared services currently provided." As the information concerning the Notes was background information and not related to "services currently provided," I was concerned that, if I discussed the Notes with the Debtor's employees, the Debtor would argue that either Mr. Dondero or I violated the Court's injunction.

17. In sum, after the Complaint was filed, no one at HCMFA knew anything about the Notes, and I was precluded from contacting the people that would have known something about the notes, *i.e.* the Debtor's employees, to discuss what they may have known. I also had very limited access to HCMFA books and records and, even if I had had full access, I would not have known what relevant books and records to search for in the many millions of files without first obtaining a generalized background of the facts regarding the Notes from Debtor employees.

18. I then worked with outside counsel at Munsch Hardt Kopf & Harr, P.C. to review the Complaint and prepare and file the Answer. That original Answer did not contain any affirmative defenses because, as explained above, no one at HCMFA knew of any facts that might give rise to an affirmative defense.

19. The situation changed by mid-April, 2021. As of late February, 2021, the Debtor terminated the Shared Services Agreement and terminated most of its former employees. Many of those employees then formed their own company, Skyview Group, which then contracted with HCMFA (and others) to continue providing essentially the same services that they had previously provided under the Shared Services Agreement. Additionally, the Debtor provided access to

HCMFA of much of its books and records (although not all). Thus, as of March, 2021, I was able to communicate with most former Debtor employees and to access the books and records of HCMFA without fear of violating any court order.

20. March, 2021, was exceedingly busy, to say the least. With the termination of the Shared Services Agreement, HCMFA, other entities that I am general counsel to, and I were preoccupied with transitioning the services that the Debtor had been providing for more than a decade to a new entity, using new infrastructure, new offices, new networks, etc., all for the primary goal of ensuring a smooth and uninterrupted continuity of business and services provided by HCMFA and others to third parties.

21. By mid-April, 2021, the situation had calmed down to the point that I was able to discuss the Notes with former employees, most importantly Frank Waterhouse ("Waterhouse") and Will Mabry ("Mabry"). Mabry in particular was able to provide me internal documents and memorandums that I had not previously known about or had access to that helped with the factual background of the Notes.

22. From these discussions and documents, I have been able to understand the factual background concerning the Notes, ultimately concluding that the Notes were signed by mistake by Waterhouse without authority from HCMFA and have no consideration and were never intended to be debt instruments of HCMFA.

23. My investigation has revealed the following.

24. One of the funds that HCMFA advises is Highland Global Allocation Fund ("GAF"). In March, 2018, GAF sold equity interests it held in TerreStar. As part of this, it was necessary to calculate the "net asset value" ("NAV") of these securities and of GAF assets. HCMFA was responsible for advising on the NAV. In turn, pursuant to the Shared Services Agreement and in accordance with applicable compliance and operating procedures, the Debtor

was responsible to HCMFA to calculate the NAV, and the Debtor had several employees charged with these and similar calculations as part of the Debtor's routine business services and as part of what the Debtor regularly provided to HCMFA and affiliated companies.

25. The Debtor made a mistake in calculating the NAV (the "NAV Error"). The NAV Error was discovered in early 2019 as GAF was being converted from an open-ended fund to a closed-ended fund. The Securities and Exchange Commission opened an investigation, and various employees and representatives of the Debtor, HCMFA, and GAF worked with the SEC to correct the error and to compensate GAF and the various investors in GAF harmed by the NAV Error.

26. Ultimately, and working with the SEC, the Debtor determined that the losses from the NAV Error to GAF and its shareholders amounted to $7.5 million: (i) $6.1 million for the NAV Error itself, as well as rebating related advisor fees and processing costs; and (ii) $1.4 million of losses to the shareholders of GAF.

27. HCMFA accepted responsibility for the NAV Error and paid out $5,186,496 on February 15, 2019 and $2,398,842 on May 21, 2019. I am not sure of the flow of funds, whether the funds flowed through HCMFA or were paid by the Debtor on behalf of HCMFA, and discovery will likely clear that up. Either way, however, the payments were of HCMFA funds and on behalf of HCMFA.

28. In turn, the Debtor accepted responsibility to HCMFA for having caused the NAV Error, and the Debtor ultimately, whether through insurance or its own funds, compensated HCMFA for the above payments.

29. Returning to the Notes, Waterhouse was the Chief Financial Officer of both the Debtor and HCMFA during the above events and at the time he signed the Notes.

30. It appears clear that Waterhouse made a mistake in preparing and signing the Notes. First, , the Notes correspond very closely to the ultimate $5,186,496 and $2,398,842 payments. Second, it appears that Waterhouse assumed, incorrectly, that the funds being paid by the Debtor were a loan to HCMFA, instead of payments as compensation and restitution to HCMFA for the Debtor having caused the NAV Error. Third, it therefore appears that Waterhouse prepared the Notes for some internal accounting or other purpose, but without there being actual consideration for the Notes and without any intention on the part of the Debtor and HCMFA that there be Notes or that there be a loan transaction.

31. I also note that, as of May, 2019, HCMFA had executed other demand notes payable to the Debtor. On April 15, 2019, the Debtor executed that certain *Acknowledgement from HCMLP*, a true and correct copy of which is attached hereto as Exhibit 4. By the same, the Debtor agreed not to demand payment of these notes prior to May 31, 2021, because HCMFA believed that it would not be able to repay those notes prior to that time. It is illogical that, in light of the same, the Debtor would shortly thereafter lend an additional $7.4 million to HCMFA. Rather, as my investigation has shown, the Debtor did not lend the funds to HCMFA but instead paid the funds, directly or indirectly, to compensate HCMFA for the NAV Error, which was the Debtor's error and therefore its obligation to correct and compensate for.

32. Therefore, in light of having learned of these facts in mid to late-April, 2019, HCMFA now believes that it has affirmative defenses to the Notes in the nature of mutual mistake, void for lack of consideration, and no proper authority of Waterhouse to sign the Notes.

33. Neither I, nor HCMFA, nor any of HCMFA's agents, have been less than diligent in investigating the Notes and the Complaint.

34. HCMFA respectfully requests that it be granted leave to assert these affirmative defenses in the Adversary Proceeding.

Signed: May 21, 2021

DENNIS C. SAUTER, JR.

SECOND AMENDED AND RESTATED
SHARED SERVICES AGREEMENT

THIS SECOND AMENDED AND RESTATED SHARED SERVICES AGREEMENT (this "***Agreement***") is entered into to be effective as of 8th day of February, 2013 (the "***Effective Date***") by and among Highland Capital Management, L.P., a Delaware limited partnership ("***HCMLP***"), and Highland Capital Management Fund Advisors, L.P., formerly known as Pyxis Capital, L.P., a Delaware limited partnership ("***HCMFA***"), and any affiliate of HCMFA that becomes a party hereto. Each of the signatories hereto is individually a "***Party***" and collectively the "***Parties***".

RECITALS

A. During the Term, HCMLP will provide to HCMFA certain services as more fully described herein and the Parties desire to allocate the costs incurred for such services and assets among them in accordance with the terms and conditions in this Agreement.

AGREEMENT

In consideration of the foregoing recitals and the mutual covenants and conditions contained herein, the Parties agree, intending to be legally bound, as follows:

ARTICLE I
DEFINITIONS

"***Actual Cost***" means, with respect to any period hereunder, one hundred percent (100%) of the actual costs and expenses caused by, incurred or otherwise arising from or relating to (i) the Shared Services and (ii) the Shared Assets, in each case during such period.

"***Affiliate***" means a Person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, a specified Person. The term "***control***" (including, with correlative meanings, the terms "***controlled by***" and "***under common control with***") means the possession of the power to direct the management and policies of the referenced Person, whether through ownership interests, by contract or otherwise.

"***Agreement***" has the meaning set forth in the preamble.

"***Allocation Percentage***" has the meaning set forth in Section 4.01.

"***Applicable Margin***" shall mean an additional amount equal to 5% of all costs allocated by Service Provider to the other parties hereto under Article IV; provided that the parties may agree on a different margin percentage as to any item or items to the extent the above margin percentage, together with the allocated cost of such item or service, would not reflect an arm's length value of the particular service or item allocated.

"***Change***" has the meaning set forth in Section 2.02(a).

"***Change Request***" has the meaning set forth in Section 2.02(b).

"***Code***" means the Internal Revenue Code of 1986, as amended, and the related regulations and published interpretations.

EXHIBI 1

"***Effective Date***" has the meaning set forth in the preamble.

"***Governmental Entity***" means any government or any regulatory agency, bureau, board, commission, court, department, official, political subdivision, tribunal or other instrumentality of any government, whether federal, state or local, domestic or foreign.

"***Liabilities***" means any cost, liability, indebtedness, obligation, co-obligation, commitment, expense, claim, deficiency, guaranty or endorsement of or by any Person of any nature (whether direct or indirect, known or unknown, absolute or contingent, liquidated or unliquidated, due or to become due, accrued or unaccrued, matured or unmatured).

"***Loss***" means any cost, damage, disbursement, expense, liability, loss, obligation, penalty or settlement, including interest or other carrying costs, legal, accounting and other professional fees and expenses incurred in the investigation, collection, prosecution and defense of claims and amounts paid in settlement, that may be imposed on or otherwise incurred or suffered by the referenced Person; provided, however, that the term "***Loss***" will not be deemed to include any special, exemplary or punitive damages, except to the extent such damages are incurred as a result of third party claims.

"***New Shared Service***" has the meaning set forth in Section 2.03.

"***Party***" or "***Parties***" has the meaning set forth in the preamble.

"***Person***" means an association, a corporation, an individual, a partnership, a limited liability company, a trust or any other entity or organization, including a Governmental Entity.

"***Quarterly Report***" has the meaning set forth in Section 5.01.

"***Recipient***" means HCMFA and any of HCMFA's direct or indirect Subsidiaries or managed funds or accounts in their capacity as a recipient of the Shared Services and/or Shared Assets.

"***Service Provider***" means any of HCMLP and its direct or indirect Subsidiaries in its capacity as a provider of Shared Services or Shared Assets.

"***Service Standards***" has the meaning set forth in Section 6.01.

"***Shared Assets***" shall have the meaning set forth in Section 3.02.

"***Shared Services***" shall have the meaning set forth in Section 2.01.

"***Subsidiary***" means, with respect to any Person, any Person in which such Person has a direct or indirect equity ownership interest in excess of 50%.

"***Tax***" or "***Taxes***" means: (i) all state and local sales, use, value-added, gross receipts, foreign, privilege, utility, infrastructure maintenance, property, federal excise and similar levies, duties and other similar tax-like charges lawfully levied by a duly constituted taxing authority against or upon the Shared Services and the Shared Assets; and (ii) tax-related surcharges or fees that are related to the Shared Services and the Shared Assets identified and authorized by applicable tariffs.

"***Term***" has the meaning set forth in Section 7.01.

ARTICLE II
SHARED SERVICES

Section 2.01 Services. During the Term, Service Provider will provide Recipient with Shared Services, including without limitation, all of the (i) finance and accounting services, (ii) human resources services, (iii) marketing services, (iv) legal services, (v) corporate services, (vi) information technology services, and (vii) operations services; each as requested by HCMFA and as described more fully on **Annex A** attached hereto, the "***Shared Services***"), it being understood that personnel providing Shared Services may be deemed to be employees of HCMFA to the extent necessary for purposes of the Investment Advisers Act of 1940, as amended.

Section 2.02 Changes to the Shared Services.

(a) During the Term, the Parties may agree to modify the terms and conditions of a Service Provider's performance of any Shared Service in order to reflect new procedures, processes or other methods of providing such Shared Service, including modifying the applicable fees for such Shared Service to reflect the then current fair market value of such service (a "***Change***"). The Parties will negotiate in good faith the terms upon which a Service Provider would be willing to provide such New Shared Service to Recipient.

(b) The Party requesting a Change will deliver a description of the Change requested (a "***Change Request***") and no Party receiving a Change Request may unreasonably withhold, condition or delay its consent to the proposed Change.

(c) Notwithstanding any provision of this Agreement to the contrary, a Service Provider may make: (i) Changes to the process of performing a particular Shared Service that do not adversely affect the benefits to Recipient of Service Provider's provision or quality of such Shared Service in any material respect or increase Recipient's cost for such Shared Service; (ii) emergency Changes on a temporary and short-term basis; and/or (iii) Changes to a particular Shared Service in order to comply with applicable law or regulatory requirements, in each case without obtaining the prior consent of Recipient. A Service Provider will notify Recipient in writing of any such Change as follows: in the case of clauses (i) and (iii) above, prior to the implementation of such Change, and, in the case of clause (ii) above, as soon as reasonably practicable thereafter.

Section 2.03 New Shared Services. The Parties may, from time to time during the Term of this Agreement, negotiate in good faith for Shared Services not otherwise specifically listed in Section 2.01 (a "***New Shared Service***"). Any agreement between the Parties on the terms for a New Shared Service must be in accordance with the provisions of Article IV and Article V hereof, will be deemed to be an amendment to this Agreement and such New Shared Service will then be a "***Shared Service***" for all purposes of this Agreement.

Section 2.04 Subcontractors. Nothing in this Agreement will prevent Service Provider from, with the consent of Recipient, using subcontractors, hired with due care, to perform all or any part of a Shared Service hereunder. A Service Provider will remain fully responsible for the performance of its obligations under this Agreement in accordance with its terms, including any obligations it performs through subcontractors, and a Service Provider will be solely responsible for payments due to its subcontractors.

ARTICLE III
SHARED ASSETS

Section 3.01 Shared IP Rights. Each Service Provider hereby grants to Recipient a non-exclusive right and license to use the intellectual property and other rights granted or licensed, directly or indirectly, to such Service Provider (the "***Shared IP Rights***") pursuant to third party intellectual property Agreements ("***Third Party IP Agreements***"), provided that the rights granted to Recipient hereunder are subject to the terms and conditions of the applicable Third Party IP Agreement, and that such rights shall terminate, as applicable, upon the expiration or termination of the applicable Third Party IP Agreement. Recipient shall be licensed to use the Shared IP Rights only for so long as it remains an Affiliate of HCMLP. In consideration of the foregoing licenses, Recipient agrees to take such further reasonable actions as a Service Provider deems to be necessary or desirable to comply with its obligations under the Third Party IP Agreements.

Section 3.02 Other Shared Assets. Subject to Section 3.01, each Service Provider hereby grants Recipient the right, license or permission, as applicable, to use and access the benefits under the agreements, contracts and licenses that such Service Provider will purchase, acquire, become a party or beneficiary to or license on behalf of Recipient (the "***Future Shared Assets***" and collectively with the Shared IP Rights, the "***Shared Assets***").

ARTICLE IV
COST ALLOCATION

Section 4.01 Actual Cost Allocation Formula. The Actual Cost of any item relating to any Shared Services or Shared Assets shall be allocated based on the Allocation Percentage. For purposes of this Agreement, "***Allocation Percentage***" means:

(a) To the extent 100% of such item is demonstrably attributable to HCMFA, 100% of the Actual Cost of such item shall be allocated to HCMFA as agreed by HCMFA;

(b) To the extent a specific percentage of use of such item can be determined (e.g., 70% for HCMLP and 30% for HCMFA), that specific percentage of the Actual Cost of such item will be allocated to HCMLP or HCMFA, as applicable and as agreed by HCMFA; and

(c) All other portions of the Actual Cost of any item that cannot be allocated pursuant to clause (a) or (b) above shall be allocated between HCMLP and HCMFA in such proportion as is agreed in good faith between the parties.

Section 4.02 Non-Cash Cost Allocation. The actual, fully burdened cost of any item relating to any Shared Services or Shared Assets that does not result in a direct, out of pocket cash expense may be allocated to HCMLP and HCMFA for financial statement purposes only, as agreed by HCMFA, without any corresponding cash reimbursement required, in accordance with generally accepted accounting principles, based on the Allocation Percentage principles described in Section 4.01 hereof.

ARTICLE V
PAYMENT OF COST AND REVENUE SHARE; TAXES

Section 5.01 Quarterly Statements. Within thirty (30) days following the end of each calendar qaurter during the Term (or at such time as may be otherwise agreed by the parties), each Service Provider shall furnish the other Parties hereto with a written statement with respect to the Actual Cost paid by it in respect of Shared Services and Shared Assets provided by it, in each case, during such

period, setting forth (i) the cost allocation in accordance with Article IV hereof together with the Applicable Margin on such allocated amounts, and (ii) any amounts paid pursuant to Section 5.02 hereof, together with such other data and information necessary to complete the items described in Section 5.03 hereof (hereinafter referred to as the "***Quarterly Report***").

Section 5.02 Settlement Payments. At any time during the Term, any Party may make payment of the amounts that are allocable to such Party together with the Applicable Margin related thereto, regardless of whether an invoice pursuant to Section 5.03 hereof has been issued with respect to such amounts.

Section 5.03 Determination and Payment of Cost and Revenue Share.

(a) Within ten (10) days of the submission of the Quarterly Report described in Section 5.02 hereof (or at such other time as may be agreed by the parties), the Parties shall (i) agree on the cost share of each of the Parties and Applicable Margin as calculated pursuant to the provisions of this Agreement; and (ii) prepare and issue invoices for the cost share and Applicable Margin payments that are payable by any of the Parties.

(b) Within ten (10) days of preparation of the agreement and the issuance of the invoice described in Section 5.03(a) (or at such other time as may be agreed by the parties), the Parties shall promptly make payment of the amounts that are set forth on such cost allocation invoice. Notwithstanding anything in this Agreement to the contrary, provision of the Shared Services shall commence from the Effective Date, but no fees shall be payable from Recipient or otherwise accrue with respect to such services provided during the month of December 2011.

Section 5.04 Taxes.

(a) Recipient is responsible for and will pay all Taxes applicable to the Shared Services and the Shared Assets provided to Recipient, provided, that such payments by Recipient to Service Provider will be made in the most tax-efficient manner and provided further, that Service Provider will not be subject to any liability for Taxes applicable to the Shared Services and the Shared Assets as a result of such payment by Recipient. Service Provider will collect such Tax from Recipient in the same manner it collects such Taxes from other customers in the ordinary course of Service Provider's business, but in no event prior to the time it invoices Recipient for the Shared Services and Shared Assets, costs for which such Taxes are levied. Recipient may provide Service Provider with a certificate evidencing its exemption from payment of or liability for such Taxes.

(b) Service Provider will reimburse Recipient for any Taxes collected from Recipient and refunded to Service Provider. In the event a Tax is assessed against Service Provider that is solely the responsibility of Recipient and Recipient desires to protest such assessment, Recipient will submit to Service Provider a statement of the issues and arguments requesting that Service Provider grant Recipient the authority to prosecute the protest in Service Provider's name. Service Provider's authorization will not be unreasonably withheld. Recipient will finance, manage, control and determine the strategy for such protest while keeping Service Provider reasonably informed of the proceedings. However, the authorization will be periodically reviewed by Service Provider to determine any adverse impact on Service Provider, and Service Provider will have the right to reasonably withdraw such authority at any time. Upon notice by Service Provider that it is so withdrawing such authority, Recipient will expeditiously terminate all proceedings. Any adverse consequences suffered by Recipient as a result of the withdrawal will be submitted to arbitration pursuant to Section 9.14. Any contest for Taxes brought by Recipient may not result in any lien attaching to any property or rights of Service Provider or otherwise jeopardize Service Provider's interests or rights in any of its property. Recipient agrees to

indemnify Service Provider for all Losses that Service Provider incurs as a result of any such contest by Recipient.

(c) The provisions of this Section 5.04 will govern the treatment of all Taxes arising as a result of or in connection with this Agreement notwithstanding any other Article of this Agreement to the contrary.

ARTICLE VI
SERVICE PROVIDER RESPONSIBILITIES

Section 6.01 Service Provider General Obligations. Service Provider will provide the Shared Services and the Shared Assets to Recipient on a non-discriminatory basis and will provide the Shared Services and the Shared Assets in the same manner as if it were providing such services and assets on its own account (the "***Service Standards***"). Service Provider will conduct its duties hereunder in a lawful manner in compliance with applicable laws, statutes, rules and regulations and in accordance with the Service Standards, including, for avoidance of doubt, laws and regulations relating to privacy of customer information.

Section 6.02 Books and Records; Access to Information. Service Provider will keep and maintain books and records on behalf of Recipient in accordance with past practices and internal control procedures. Recipient will have the right, at any time and from time to time upon reasonable prior notice to Service Provider, to inspect and copy (at its expense) during normal business hours at the offices of Service Provider the books and records relating to the Shared Services and Shared Assets, with respect to Service Provider's performance of its obligations hereunder. This inspection right will include the ability of Recipient's financial auditors to review such books and records in the ordinary course of performing standard financial auditing services for Recipient (but subject to Service Provider imposing reasonable access restrictions to Service Provider's and its Affiliates' proprietary information and such financial auditors executing appropriate confidentiality agreements reasonably acceptable to Service Provider). Service Provider will promptly respond to any reasonable requests for information or access. For the avoidance of doubt, all books and records kept and maintained by Service Provider on behalf of Recipient shall be the property of Recipient, and Service Provider will surrender promptly to Recipient any of such books or records upon Recipient's request (provided that Service Provider may retain a copy of such books or records) and shall make all such books and records available for inspection and use by the Securities and Exchange Commission or any person retained by Recipient at all reasonable times. Such records shall be maintained by Service Provider for the periods and in the places required by laws and regulations applicable to Recipient.

Section 6.03 Return of Property and Equipment. Upon expiration or termination of this Agreement, Service Provider will be obligated to return to Recipient, as soon as is reasonably practicable, any equipment or other property or materials of Recipient that is in Service Provider's control or possession.

ARTICLE VII
TERM AND TERMINATION

Section 7.01 Term. The term of this Agreement will commence as of the Effective Date and will continue in full force and effect until the first anniversary of the Effective Date (the "***Term***"), unless terminated earlier in accordance with Section 9.02. The Term shall automatically renew for successive one year periods unless sooner terminated under Section 7.02.

Section 7.02 Termination. Either Party may terminate this Agreement, with or without cause, upon at least 60 days advance written notice at any time prior to the expiration of the Term.

ARTICLE VIII
LIMITED WARRANTY

Section 8.01 Limited Warranty. Service Provider will perform the Shared Services hereunder in accordance with the Service Standards. Except as specifically provided in this Agreement, Service Provider makes no express or implied representations, warranties or guarantees relating to its performance of the Shared Services and the granting of the Shared Assets under this Agreement, including any warranty of merchantability, fitness, quality, non-infringement of third party rights, suitability or adequacy of the Shared Services and the Shared Assets for any purpose or use or purpose. Service Provider will (to the extent possible and subject to Service Provider's contractual obligations) pass through the benefits of any express warranties received from third parties relating to any Shared Service and Shared Asset, and will (at Recipient's expense) assist Recipient with any warranty claims related thereto.

ARTICLE IX
MISCELLANEOUS

Section 9.01 No Partnership or Joint Venture; Independent Contractor. Nothing contained in this Agreement will constitute or be construed to be or create a partnership or joint venture between or among HCMLP or HCMFA or their respective successors or assigns. The Parties understand and agree that, with the exception of the procurement by Service Provider of licenses or other rights on behalf of Recipient pursuant to Section 3.01, this Agreement does not make any of them an agent or legal representative of the other for any purpose whatsoever. With the exception of the procurement by Service Provider of licenses or other rights on behalf of Recipient pursuant to Section 3.01, no Party is granted, by this Agreement or otherwise, any right or authority to assume or create any obligation or responsibilities, express or implied, on behalf of or in the name of any other Party, or to bind any other Party in any manner whatsoever. The Parties expressly acknowledge that Service Provider is an independent contractor with respect to Recipient in all respects, including with respect to the provision of the Shared Services.

Section 9.02 Amendments; Waivers. Except as expressly provided herein, this Agreement may be amended only by agreement in writing of all Parties. No waiver of any provision nor consent to any exception to the terms of this Agreement or any agreement contemplated hereby will be effective unless in writing and signed by all of the Parties affected and then only to the specific purpose, extent and instance so provided. No failure on the part of any Party to exercise or delay in exercising any right hereunder will be deemed a waiver thereof, nor will any single or partial exercise preclude any further or other exercise of such or any other right.

Section 9.03 Schedules and Exhibits; Integration. Each Schedule and Exhibit delivered pursuant to the terms of this Agreement must be in writing and will constitute a part of this Agreement, although schedules need not be attached to each copy of this Agreement. This Agreement, together with such Schedules and Exhibits constitutes the entire agreement among the Parties pertaining to the subject matter hereof and supersedes all prior agreements and understandings of the Parties in connection therewith.

Section 9.04 Further Assurances. Each Party will take such actions as any other Party may reasonably request or as may be necessary or appropriate to consummate or implement the transactions contemplated by this Agreement or to evidence such events or matters.

Section 9.05 Governing Law. This Agreement and the legal relations between the Parties will be governed by and construed in accordance with the laws of the State of Texas applicable to contracts made and performed in such State and without regard to conflicts of law doctrines unless certain matters are preempted by federal law.

Section 9.06 Assignment. Except as otherwise provided hereunder, neither this Agreement nor any rights or obligations hereunder are assignable by one Party without the express prior written consent of the other Parties.

Section 9.07 Headings. The descriptive headings of the Articles, Sections and subsections of this Agreement are for convenience only and do not constitute a part of this Agreement.

Section 9.08 Counterparts. This Agreement and any amendment hereto or any other agreement delivered pursuant hereto may be executed in one or more counterparts and by different Parties in separate counterparts. All counterparts will constitute one and the same agreement and will become effective when one or more counterparts have been signed by each Party and delivered to the other Parties.

Section 9.09 Successors and Assigns; No Third Party Beneficiaries. This Agreement is binding upon and will inure to the benefit of each Party and its successors or assigns, and nothing in this Agreement, express or implied, is intended to confer upon any other Person or Governmental Entity any rights or remedies of any nature whatsoever under or by reason of this Agreement.

Section 9.10 Notices. All notices, demands and other communications to be given or delivered under or by reason of the provisions of this Agreement will be in writing and will be deemed to have been given: (i)immediately when personally delivered; (ii) when received by first class mail, return receipt requested; (iii) one day after being sent for overnight delivery by Federal Express or other overnight delivery service; or (iv) when receipt is acknowledged, either electronically or otherwise, if sent by facsimile, telecopy or other electronic transmission device. Notices, demands and communications to the other Parties will, unless another address is specified by such Parties in writing, be sent to the addresses indicated below:

If to HCMLP, addressed to:

Highland Capital Management, L.P.
300 Crescent Court, Suite 700
Dallas, Texas 75201
Attention: General Counsel
Fax: (972) 628-4147

If to HCMFA, addressed to:

Highland Capital Management Fund Advisors, L.P.
300 Crescent Court, Suite 700
Dallas, Texas 75201
Attention: General Counsel
Fax: (972) 628-4147

Section 9.11 Expenses. Except as otherwise provided herein, the Parties will each pay their own expenses incident to the negotiation, preparation and performance of this Agreement, including the fees, expenses and disbursements of their respective investment bankers, accountants and counsel.

Section 9.12 Waiver. No failure on the part of any Party to exercise or delay in exercising any right hereunder will be deemed a waiver thereof, nor will any single or partial exercise preclude any further or other exercise of such or any other right.

Section 9.13 Severability. If any provision of this Agreement is held to be unenforceable for any reason, it will be adjusted rather than voided, if possible, to achieve the intent of the Parties. All other provisions of this Agreement will be deemed valid and enforceable to the extent possible.

Section 9.14 Arbitration; Jurisdiction. Notwithstanding anything contained in this Agreement or the Annexes hereto to the contrary, in the event there is an unresolved legal dispute between the parties and/or any of their respective officers, directors, partners, employees, agents, affiliates or other representatives that involves legal rights or remedies arising from this Agreement, the parties agree to submit their dispute to binding arbitration under the authority of the Federal Arbitration Act; provided, however, that either party or such applicable affiliate thereof may pursue a temporary restraining order and/or preliminary injunctive relief in connection with confidentiality covenants or agreements binding on the other party, with related expedited discovery for the parties, in a court of law, and, thereafter, require arbitration of all issues of final relief. The Arbitration will be conducted by the American Arbitration Association, or another, mutually agreeable arbitration service. The arbitrator(s) shall be duly licensed to practice law in the State of Texas. The discovery process shall be limited to the following: Each side shall be permitted no more than (i) two party depositions of six hours each. Each deposition is to be taken pursuant to the Texas Rules of Civil Procedure; (ii) one non-party deposition of six hours; (iii) twenty-five interrogatories; (iv) twenty-five requests for admission; (v) ten requests for production. In response, the producing party shall not be obligated to produce in excess of 5,000 total pages of documents. The total pages of documents shall include electronic documents; (vi) one request for disclosure pursuant to the Texas Rules of Civil Procedure. Any discovery not specifically provided for in this paragraph, whether to parties or non-parties, shall not be permitted. The arbitrator(s) shall be required to state in a written opinion all facts and conclusions of law relied upon to support any decision rendered. No arbitrator will have authority to render a decision that contains an outcome determinative error of state or federal law, or to fashion a cause of action or remedy not otherwise provided for under applicable state or federal law. Any dispute over whether the arbitrator(s) has failed to comply with the foregoing will be resolved by summary judgment in a court of law. In all other respects, the arbitration process will be conducted in accordance with the American Arbitration Association's dispute resolution rules or other mutually agreeable, arbitration service rules. The party initiating arbitration shall pay all arbitration costs and arbitrator's fees, subject to a final arbitration award on who should bear costs and fees. All proceedings shall be conducted in Dallas, Texas, or another mutually agreeable site. Each party shall bear its own attorneys fees, costs and expenses, including any costs of experts, witnesses and/or travel, subject to a final arbitration award on who should bear costs and fees. The duty to arbitrate described above shall survive the termination of this Agreement. Except as otherwise provided above, the parties hereby waive trial in a court of law or by jury. All other rights, remedies, statutes of limitation and defenses applicable to claims asserted in a court of law will apply in the arbitration.

Section 9.15 General Rules of Construction. For all purposes of this Agreement and the Exhibits and Schedules delivered pursuant to this Agreement: (i) the terms defined in Article I have the meanings assigned to them in Article I and include the plural as well as the singular; (ii) all accounting terms not otherwise defined herein have the meanings assigned under GAAP; (iii) all references in this Agreement to designated "Articles," "Sections" and other subdivisions are to the designated Articles, Sections and other subdivisions of the body of this Agreement; (iv) pronouns of either gender or neuter will include, as appropriate, the other pronoun forms; (v) the words "herein,""hereof" and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section or other subdivision; (vi) "or" is not exclusive; (vii) "including" and "includes" will be deemed to be followed by "but not limited to" and "but is not limited to, "respectively; (viii) any definition of or

reference to any law, agreement, instrument or other document herein will be construed as referring to such law, agreement, instrument or other document as from time to time amended, supplemented or otherwise modified; and (ix) any definition of or reference to any statute will be construed as referring also to any rules and regulations promulgated thereunder.

IN WITNESS HEREOF, each of the Parties has caused this Agreement to be executed by its duly authorized officers as of the day and year first above written.

HIGHLAND CAPITAL MANAGEMENT, L.P.

By: Strand Advisors, Inc., its general partner

By:_____
Name: James Dondero
Title: President

HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, L.P.

By: Strand Advisors XVI, Inc., its general partner

By:_____
Name: Brian Mitts
Title: Assistant Secretary

Annex A

Shared Services

Compliance
- General compliance
- Compliance systems

Facilities
- Equipment
- General Overhead
- Office Supplies
- Rent & Parking

Finance & Accounting
- Book keeping
- Cash management
- Cash forecasting
- Credit facility reporting
- Financial reporting
- Accounts payable
- Accounts receivable
- Expense reimbursement
- Vendor management

HR
- Drinks/snacks
- Lunches
- Recruiting

IT
- General support & maintenance (OMS, development, support)
- Telecom (cell, phones, broadband)
- WSO

Legal
- Corporate secretarial services
- Document review and preparation
- Litigation support
- Management of outside counsel

Marketing and PR
- Public relations

Tax
- Tax audit support
- Tax planning
- Tax prep and filing

Investments
- Investment research on an ad hoc basis as requested by HCMFA

Valuation Committee

Trading

Trading desk services

Operations

Trade settlement

Rukavina, Davor

From: James Seery <jpseeryjr@gmail.com>
Sent: Thursday, September 17, 2020 4:17 PM
To: DC Sauter
Cc: Gregory V. Demo
Subject: Re: Acis Settlement

DC

I believe your concerns regarding the release are misplaced as it does not bind entities that HCMLP does not control. Greg can walk you through the language, but I do not believe it requires adjustment nor does it create any liability. To the contrary, it reduces liability.

With regard to the HCMLP employee prohibitions, no employee whether legal or non-legal can work on any matter that is inimical to the interests of HCMLP. I ,as CEO, and the Independent Board will make the determination as to whether an action violates the prohibition, and a breach of the prohibition will lead to termination for cause. I believe that most of the employees have been informed of this requirement and are following the directive.

With regard to transactional matters, HCMLP employees will continue to work with you on those issues that do not run afoul of the prohibition above. If there is a particular matter where you are taking a potentially adversarial action vis a vis HCMLP, please let me know what it is. We can then consider whether a customized operating protocol for that issue is needed or whether you will simply be on your own. I will make the determination with the advice of counsel. We do not believe the Texas rules of professional responsibility apply in this situation.

Please let me know what matter you are considering with respect to the immediately preceding paragraph, and we will consider how to best address your concerns.

Best. Jim

Jim Seery
631-804-2049
jpseeryjr@gmail.com

From: DC Sauter <DSauter@NexPointadvisors.com>
Date: Thursday, September 17, 2020 at 4:56 PM
To: Jim Seery <jpseeryjr@gmail.com>
Cc: Greg Demo <GDemo@pszjlaw.com>
Subject: RE: Acis Settlement

Jim/Greg, follow up on my email below. I have a few items that have been placed on my plate, and I really need to understand who I can speak with and the extent to which they are permitted to share information with me.

D.C. SAUTER

NEXPOINT

EXHIBIT 2

O: 972.628.4117 | C: 469.877.6440

From: DC Sauter
Sent: Tuesday, September 15, 2020 8:55 AM
To: 'James Seery' <jpseeryjr@gmail.com>
Cc: Gregory V. Demo <GDemo@pszjlaw.com>
Subject: RE: Acis Settlement

My apologies for copying Isaac. I was under the mistaken impression that he would have assisted in the settlement.

In my view, the requested clarification is beneficial to Strand, HCMLP, and the other "HCMLP Entities." The documents purport to release ACIS from claims on behalf of, among others, any entity that is "managed" by HCMLP and "respective current advisors, trustees, directors, officers, managers, members, partners, current or former employees, beneficiaries, shareholders, agents, participants, subsidiaries, parents, affiliates, successors, designees, and assigns" of any "HCMLP Entity." Those "HCMLP Entities" lack the authority to bind a whole host of parties in that laundry list, which could result in claims against HCMLP, Strand, and the other "HCMLP Entities" by both the "ACIS Released Parties," who will claim they didn't receive the benefit of the bargain, and the parties on whose behalf the "HCMLP Parties" purported to release claims who didn't consent to the release.

Additionally, I'd like to visit with you all regarding the board's position that prohibits certain HCMLP personnel from working on certain matters.

First, I am unclear whether the prohibition applies to only HCMLP legal personnel or whether it applies to all HCMLP employees. Please clarify.

Second, as you may know, virtually all of these matters are falling into my lap, and in most cases I lack any knowledge about them. It would help me tremendously if current HCMLP employees, and particularly the legal personnel, could provide me with transactional background to assist in the transition of the matter. While I understand the board's concern with Judge Jernigan's order, I don't believe that the Texas Disciplinary Rules of Professional Conduct mandate or even permit an attorney licensed in the State of Texas to refuse to cooperate with a former client in the transfer of a matter to a new attorney. Rule 1.15(d) states that "[u]pon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payments of fee that has not been earned." The comments to that rule provide additional clarity: "In every instance of withdrawal and even if the lawyer has been unfairly discharged by the client, a lawyer must take all reasonable steps to mitigate the consequences to the client." T.D.R.P.C. Rule 1.15, comment 9. Proper steps may include providing information to new counsel or even continuing to represent the client for a limited time to meet impending deadlines. *Microsoft Corp. v. Commonwealth Sci. & Indus. Research Org.*, 2007 U.S. Dist. LEXIS 91550 *23-24 fn. 11 (E.D. Tex. Dec. 13, 2007). Even if the board insists that the HCMLP legal personnel cannot continue to represent others in non-HCMLP matters or matters adverse to HCMLP (irrespective of any conflict of interest analysis of whether those attorneys may continue to represent HCMLP in those matters), the ethical rules require that the attorneys provide assistance in transferring those matters to me or others.

Finally, I routinely handle, and am routinely asked to handle, legal matters that relate to real estate for entities owned or controlled by HCMLP (Park West, the Arizona assets, the Maple Ave. property, to name a few). I am not an HCMLP employee, and it's my understanding that NexPoint Advisors, L.P. is not compensated for the time I spend on HCMLP matters. I'm not suggesting that this arrangement should change, but it feels from my perspective that the board's position is only working in one direction. In other words, if I understand the board's position correctly, I can work on both NexPoint and HCMLP matters, but the HCMLP legal employees may only work on HCMLP-related matters. It has also put a significant amount of additional work on my plate. I would like to understand two things. First, what is the scope of my authority in these matters, and what is the proper protocol vis-à-vis you, DSI, and the board? I have tried to take the conservative approach in keeping you all informed and asking for consent or approval where I thoughts it

appropriate. I assume this is how you'd like to continue to handle things, but I would like confirmation of that. Second, I have heard that you all were working to transfer a couple of the legal personnel (perhaps Thedford and Post) to HCMFA so they could assist with the work load (particularly in the areas where I don't have a significant amount of experience). I'd like to know where that stands and when relief can be expected.

I'm available most of today and tomorrow to discuss.

D.C. SAUTER

NEXPOINT

O: 972.628.4117 | C: 469.877.6440

From: James Seery <jpseeryjr@gmail.com>
Sent: Tuesday, September 15, 2020 7:01 AM
To: DC Sauter <DSauter@NexPointadvisors.com>
Cc: Gregory V. Demo <GDemo@pszjlaw.com>; Isaac Leventon <ILeventon@HighlandCapital.com>
Subject: Re: Acis Settlement

DC. We will discuss and revert to you. Neither Isaac nor anyone else at HCMLP is permitted to work on any issues related to the settlement and release other than as directed by me.

Thanks

Sent from my iPad

> On Sep 14, 2020, at 7:08 PM, DC Sauter <DSauter@nexpointadvisors.com> wrote:
>
> Greg,
>
> I've been asked to review the attached release on behalf of HCMFA and the closed-end funds. I'm concerned that the language below creates an ambiguity as to whether the closed-end funds and HCMFA have released claims against the ACIS parties:
>
> 1. The release by Strand, which also serves as the general partner of HCMFA; and
> 2. The release by each "HCMLP Entity" of its "respective current advisors, trustees, directors, officers, managers, members, partners, current or former employees, beneficiaries, shareholders, agents, participants, subsidiaries, parents, affiliates, successors, designees, and assigns."
>
> We would like the final sentence in paragraph 1.a. of the Release to be revised to specifically identify HCMFA and the closed-end funds as parties not covered by the release. Please let me know if you'd like to discuss in more detail.
>
> **D.C. SAUTER | GENERAL COUNSEL, REAL ESTATE**
>
> <image001.jpg>
>
> 300 Crescent Court | Suite 700 | Dallas, Texas 75201
> O: 972.628.4117 | C: 469.877.6440 | F: 972.628.4147
> dsauter@nexpointadvisors.com | www.NexPointGroup.com

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PRIVILEGE WARNING: The sender or recipient of this message is a member of the legal department at Highland Capital Management. This message and any attachments hereto may constitute attorney work product or be protected by the attorney-client privilege. Do not disclose this message or any attachments hereto without prior consent of a member of the legal department at Highland Capital Management.

<Acis - Release (EXECUTION VERSION).pdf>

CLERK, U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS

ENTERED

THE DATE OF ENTRY IS ON
THE COURT'S DOCKET

The following constitutes the ruling of the court and has the force and effect therein described.

Signed January 11, 2021

United States Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re: HIGHLAND CAPITAL MANAGEMENT, L.P.,[1] Debtor.	§ § § § § §	Chapter 11 Case No. 19-34054-sgj11
HIGHLAND CAPITAL MANAGEMENT, L.P., Plaintiff, vs. JAMES D. DONDERO, Defendant.	§ § § § § § § § §	Adversary Proceeding No. No. 20-03190-sgj

ORDER GRANTING DEBTOR'S MOTION FOR A PRELIMINARY INJUNCTION AGAINST JAMES DONDERO

This matter having come before the Court on *Plaintiff Highland Capital Management,*

[1] The Debtor's last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

L.P.'s Emergency Motion for a Temporary Restraining Order and Preliminary Injunction against Mr. James Dondero [Adv. Pro. Docket No. 2] (the "Motion"), filed by Highland Capital Management, L.P., the debtor and debtor-in-possession (the "Debtor") in the above-captioned chapter 11 case (the "Bankruptcy Case"), and the plaintiff in the above-captioned adversary proceeding (the "Adversary Proceeding"); and this Court having considered (a) the Motion, (b) *Plaintiff Highland Capital Management, L.P.'s Verified Original Complaint for Injunctive Relief* [Adv. Pro. Docket No. 1] (the "Complaint"), (c) the arguments and law cited in the *Debtor's Amended Memorandum of Law in Support of its Motion for a Temporary Restraining Order and Preliminary Injunction against Mr. James Dondero* [Adv. Pro. Docket No. 3] (the "Memorandum of Law," and together with the Motion and Complaint, the "Debtor's Papers"), (d) *James Dondero's Response in Opposition to Debtor's Motion for a Preliminary Injunction* [Adv. Pro. Docket No. 52] (the "Opposition") filed by James Dondero, (e) the testimonial and documentary evidence admitted into evidence during the hearing held on January 8, 2021 (the "Hearing"), including assessing the credibility of Mr. James Dondero, (f) the arguments made during the Hearing, and (g) all prior proceedings relating to the Motion, including the December 10, 2020 hearing on the *Debtor's Motion for a Temporary Restraining Order and Preliminary Injunction against James Dondero* [Adv. Pro. Docket No. 6] (the "TRO Hearing"); and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and this Court having found that venue of this proceeding and the Motion in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that injunctive relief is warranted under sections 105(a) and 362(a) of the Bankruptcy Code and that the relief requested in the Motion is in the best interests of the Debtor's estate, its creditors, and other parties-in-interest;

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and this Court having found that the Debtor's notice of the Motion and opportunity for a hearing on the Motion were appropriate and that no other notice need be provided; and this Court having determined that the legal and factual bases set forth in the Debtor's Papers, and the evidence submitted in support thereof, establish good cause for the relief granted herein, and that (1) such relief is necessary to avoid immediate and irreparable harm to the Debtor's estate and reorganization process; (2) the Debtor is likely to succeed on the merits of its underlying claim for injunctive relief; (3) the balance of the equities tip in the Debtor's favor; and (4) such relief serves the public interest; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor and for the reasons set forth in the record on this Motion, it is **HEREBY ORDERED THAT**:

1. The Motion is **GRANTED** as set forth herein.

2. James Dondero is preliminarily enjoined and restrained from (a) communicating (whether orally, in writing, or otherwise), directly or indirectly, with any Board member unless Mr. Dondero's counsel and counsel for the Debtor are included in any such communication; (b) making any express or implied threats of any nature against the Debtor or any of its directors, officers, employees, professionals, or agents, in whatever capacity they are acting; (c) communicating with any of the Debtor's employees, except as it specifically relates to shared services currently provided to affiliates owned or controlled by Mr. Dondero; (d) interfering with or otherwise impeding, directly or indirectly, the Debtor's business, including but not limited to the Debtor's decisions concerning its operations, management, treatment of claims, disposition of assets owned, controlled or managed by the Debtor, and the pursuit of the Plan or any

alternative to the Plan; and (e) otherwise violating section 362(a) of the Bankruptcy Code (collectively, the "Prohibited Conduct").[2]

3. James Dondero is further preliminarily enjoined and restrained from causing, encouraging, or conspiring with (a) any entity owned or controlled by him, and/or (b) any person or entity acting with him or on his behalf, to, directly or indirectly, engage in any Prohibited Conduct.

4. James Dondero is further preliminarily enjoined and restrained from communicating (in person, telephonically, by e-mail, text message or otherwise) with Scott Ellington and/or Isaac Leventon, unless otherwise ordered by the Court.

5. James Dondero is further preliminarily enjoined and restrained from physically entering, or virtually entering through the Debtor's computer, email, or information systems, the Debtor's offices located at Crescent Court in Dallas, Texas, or any other offices or facilities owned or leased by the Debtor, regardless of any agreements, subleases, or otherwise, held by the Debtor's affiliates or entities owned or controlled by Mr. Dondero, without the prior written permission of Debtor's counsel made to Mr. Dondero's counsel. If Mr. Dondero enters the Debtor's office or other facilities or systems without such permission, such entrance will constitute trespass.

6. James Dondero is ordered to attend all future hearings in this Bankruptcy Case by Webex (or whatever other video platform is utilized by the Court), unless otherwise ordered by the Court.

7. This Order shall remain in effect until the date that any plan of reorganization or liquidation resolving the Debtor's case becomes effective, unless otherwise ordered by the Court.

---

[2] For the avoidance of doubt, this Order does not enjoin or restrain Mr. Dondero from (1) seeking judicial relief upon proper notice or from objecting to any motion filed in this Bankruptcy Case, or (2) communicating with the committee of unsecured creditors (the "UCC") and its professionals regarding a pot plan.

8. All objections to the Motion are overruled in their entirety.

9. The Court shall retain exclusive jurisdiction with respect to all matters arising from or relating to the implementation, interpretation, and enforcement of this Order.

END OF ORDER

Acknowledgement from HCMLP

April 15, 2019

Reference is hereby made to certain outstanding amounts loaned from HIGHLAND CAPITAL MANAGEMENT, L.P. ("HCMLP") to HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, L.P. ("HCMF") for funding of HCMF's ongoing operations, which are payable on demand and remained outstanding on December 31, 2018 and as of the date hereof.

HCMF expects that it may be unable to repay such amounts should they become due, for the period commencing today and continuing through May 31, 2021.

HCMLP hereby agrees to not demand payment on amounts owed by HCMF prior to May 31, 2021.

Highland Capital Management, L.P.
By: Strand Advisors, Inc., its general partner

By: _____

Acknowledged By:

Highland Capital Management Fund Advisors, L.P.
By: Strand XVI, Inc., its general partner

By: _____

EXHIBIT 4

Davor Rukavina, Esq.
Texas Bar No. 24030781
Julian P. Vasek, Esq.
Texas Bar No. 24070790
MUNSCH HARDT KOPF & HARR, P.C.
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Dallas, Texas 75202-2790
Telephone: (214) 855-7500
Facsimile: (214) 978-4375

COUNSEL FOR HIGHLAND CAPITAL
MANAGEMENT FUND ADVISORS, L.P.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re HIGHLAND CAPITAL MANAGEMENT, L.P., Debtor.	§ § § § § §	Chapter 11 Case No. 19-34054-sgj11
HIGHLAND CAPITAL MANAGEMENT, L.P., Plaintiff, v. HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, L.P. Defendant.	§ § § § § § § § § § §	Adv. No. 21-03004

DEFENDANT'S AMENDED ANSWER

COMES NOW Highland Capital Management Fund Advisors, L.P. (the "Defendant"), the defendant in the above-styled and numbered adversary proceeding (the "Adversary Proceeding") filed by Highland Capital Management, L.P. (the "Plaintiff"), and files this its *Defendant's Amended Answer* (the "Answer"), responding to the *Complaint for (I) Breach of Contract and (II) Turnover of Property of the Debtor's Estate* (the "Complaint"). Where an allegation in the Complaint is not expressly admitted in this Answer, it is denied.

EXHIBIT "B"

PRELIMINARY STATEMENT

1. The first sentence of ¶ 1 sets forth the Plaintiff's objective in bringing the Complaint and does not require a response. To the extent it contains factual allegations, they are denied. The second sentence contains a legal conclusion that does not require a response. To the extent it contains factual allegations, they are denied.

2. Paragraph 2 contains a summary of the relief the Plaintiff seeks and does not require a response. To the extent it contains factual allegations, they are denied.

JURISDICTION AND VENUE

3. The Defendant admits that this Adversary Proceeding relates to the Plaintiff's bankruptcy case but denies any implication that this fact confers Constitutional authority on the Bankruptcy Case to adjudicate this dispute. Any allegations in ¶ 3 not expressly admitted are denied.

4. The Defendant admits that the Court has statutory (but not Constitutional) jurisdiction to hear this Adversary Proceeding. Any allegations in ¶ 4 not expressly admitted are denied.

5. The Defendant denies that a breach of contract claim is core. The Defendant denies that a § 542(b) turnover proceeding is the appropriate mechanism to collect a contested debt. The Defendant admits that a § 542(b) turnover proceeding is statutorily core but denies that it is Constitutionally core under *Stern v. Marshall*. The Defendant does not consent to the Bankruptcy Court entering final orders or judgment in this Adversary Proceeding. Any allegations in ¶ 5 not expressly admitted are denied.

6. The Defendant admits ¶ 6 of the Complaint.

THE PARTIES

7. The Defendant admits ¶ 7 of the Complaint.

8. The Defendant admits ¶ 8 of the Complaint.

CASE BACKGROUND

9. The Defendant admits ¶ 9 of the Complaint.

10. The Defendant admits ¶ 10 of the Complaint.

11. The Defendant admits ¶ 11 of the Complaint.

12. The Defendant admits ¶ 12 of the Complaint.

STATEMENT OF FACTS

A. The HCMFA Notes

13. The Defendant admits that it has executed at least one promissory note under which the Debtor is the payee. Any allegations in ¶ 13 not expressly admitted are denied.

14. The Defendant denies ¶ 14 of the Complaint.

15. The Defendant denies ¶ 15 of the Complaint.

16. The Defendant denies ¶ 16 of the Complaint. The document speaks for itself and the quote set forth in ¶ 16 is not verbatim.

17. The Defendant denies ¶ 17 of the Complaint. The document speaks for itself and the quote set forth in ¶ 17 is not verbatim.

18. The Defendant admits ¶ 18 of the Complaint.

B. HCMFA's Default under Each Note

19. The Defendant admits that Exhibit 3 to the Complaint (the "Demand Letter") is a true and correct copy of what it purports to be and that the document speaks for itself. To the extent ¶ 19 of the Complaint asserts a legal conclusion, no response is required, and it is denied. To the extent not expressly admitted, ¶ 19 of the Complaint is denied.

20. To the extent ¶ 20 of the Complaint asserts a legal conclusion, no response is necessary, and it is denied. The Defendant otherwise admits ¶ 20 of the Complaint.

21. The Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in ¶ 21 of the Complaint and therefore denies the same.

22. The Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in ¶ 22 of the Complaint and therefore denies the same.

23. The Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in ¶ 23 of the Complaint and therefore denies the same.

24. The Defendant denies ¶ 24 of the Complaint.

FIRST CLAIM FOR RELIEF
(For Breach of Contract)

25. Paragraph 25 of the Complaint is a sentence of incorporation that does not require a response. All prior denials are incorporated herein by reference.

26. Paragraph 26 of the Complaint states a legal conclusion that does not require a response. To the extent it alleges facts, the Defendant denies the allegations in ¶ 26 of the Complaint.

27. Paragraph 27 of the Complaint states a legal conclusion that does not require a response. To the extent it alleges facts, the Defendant denies the allegations in ¶ 27 of the Complaint.

28. Paragraph 28 of the Complaint states a legal conclusion that does not require a response. To the extent it alleges facts, the Defendant denies the allegations in ¶ 28 of the Complaint.

29. The Defendant denies ¶ 29 of the Complaint.

SECOND CLAIM FOR RELIEF
(Turnover by HCMFA Pursuant to 11 U.S.C. § 542(b))

30. Paragraph 30 of the Complaint is a sentence of incorporation that does not require a response. All prior denials are incorporated herein by reference.

31. Paragraph 31 of the Complaint states a legal conclusion that does not require a response. To the extent it alleges facts, the Defendant denies the allegations in ¶ 31 of the Complaint.

32. Paragraph 32 of the Complaint states a legal conclusion that does not require a response. To the extent it alleges facts, the Defendant denies the allegations in ¶ 32 of the Complaint.

33. The Defendant denies ¶ 33 of the Complaint.

34. Paragraph 34 of the Complaint states a legal conclusion that does not require a response. The Defendant admits that the Plaintiff transmitted the Demand Letter. To the extent ¶ 34 alleges other facts, the Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in ¶ 34 of the Complaint and therefore denies the same.

35. The Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in ¶ 35 of the Complaint and therefore denies the same.

36. Paragraph 36 of the Complaint states a legal conclusion that does not require a response. To the extent it alleges facts, the Defendant denies the allegations in ¶ 36 of the Complaint.

37. The Defendant denies that the Plaintiff is entitled to the relief requested in the prayer, including parts (i), (ii), and (iii).

AFFIRMATIVE DEFENSES

38. At all material times to the Complaint, the Defendant, a registered advisor, advised various third-party funds as to their investments. One such fund was Highland Global Allocation Fund ("HGAF").

39. At all material times to the Complaint, the Defendant contracted with the Plaintiff whereby the Plaintiff, through its employees, would provide certain services to the Defendant, including with respect to the Defendant's advice to the third-party funds. These services so provided included accounting, legal, regulatory, valuation, and compliance services.

40. In March, 2018, HGAF sold equity interests it held in TerreStar. As part of this, it was necessary to calculate the "net asset value" ("NAV") of these securities and of HGAF assets. The Defendant was responsible for advising on the NAV. In turn, pursuant to the Shared Services Agreement in effect at that time between the Plaintiff and the Defendant, the Plaintiff was responsible to the Defendant to calculate the NAV, and the Plaintiff had several employees charged with these and similar calculations as part of the Plaintiff's routine business services and as part of what the Plaintiff regularly provided to the Defendant and affiliated companies.

41. The Plaintff made a mistake in calculating the NAV (the "NAV Error"). The NAV Error was discovered in early 2019 as HGAF was being converted from an open-ended fund to a closed-ended fund. The Securities and Exchange Commission opened an investigation, and various employees and representatives of the Plaintiff, the Defendant, and HGAF worked with the SEC to correct the error and to compensate HGAF and the various investors in HGAF harmed by the NAV Error. Ultimately, and working with the SEC, the Plantiff determined that the losses from the NAV Error to HGAF and its shareholders amounted to $7.5 million: (i) $6.1 million for the NAV Error itself, as well as rebating related advisor fees and processing costs; and (ii) $1.4 million of losses to the shareholders of HGAF.

42. The Defendant accepted responsibility for the NAV Error and paid out $5,186,496 on February 15, 2019 and $2,398,842 on May 21, 2019. In turn, the Plaintiff accepted responsibility to the Defendant for having caused the NAV Error, and the Plaintiff ultimately, whether through insurance or its own funds, compensated the Defendant for the above payments

by paying, or causing to be paid, approximately $7.5 million to the Defendant directly or indirectly to HGAF and its investors.

43. At this time, Frank Waterhouse ("Waterhouse") was the Chief Financial Officer to both the Plaintiff and the Defendant. Waterhouse signed the two promissory notes the subject of the Complaint (the "Notes"). He did not sign the Notes in any representative capacity for the Defendant. The Defendant did not authorize Waterhouse to sign the Notes or to bind the Defendant in any way to the Note.

44. Waterhouse made a mistake in preparing and signing the Notes for the Defendant. Upon information and belief, Waterhouse was not aware that payments from the Plaintiff to the Defendant were to compensate the Defendant for the NAV Error and resulting damages, instead assuming that the Notes were like prior notes between the Plaintiff and the Defendant. Waterhouse failed to properly inquire into the underlying transaction and, either for unknown accounting or other purposes, Waterhouse prepared and signed the Notes on his own, without proper knowledge of the underlying facts and without actual authority from either the Plaintiff or the Defendant.

45. In sum, neither the Plaintiff nor the Defendant intended that any funds paid by the Plaintiff to the Defendant be treated as debt but that they instead be treated as compensation by the Plaintiff to the Defendant for the NAV Error that the Plaintiff caused. The Notes are an unauthorized mistake and a nullity, and are void for a lack of consideration.

46. To the extent Waterhouse had apparent authority to bind the Defendant to the Notes, such apparently authority does not apply to the Notes because Waterhouse's lack of actual authority is imputed to the Plaintiff, as Waterhouse was the CFO for the Plaintiff.

47. Accordingly, the Notes are void or unenforceable for lack of consideration, for mutual mistake, and for the lack of authority from the Defendant to Waterhouse to execute the same for the Defendant.

JURY DEMAND

48. The Defendant demands a trial by jury of all issues so triable pursuant to Rule 38 of the Federal Rules of Civil Procedure and Rule 9015 of the Federal Rules of Bankruptcy Procedure.

49. The Defendant does not consent to the Bankruptcy Court conducting a jury trial and therefore demands a jury trial in the District Court.

PRAYER

WHEREFORE, PREMISES CONSIDERED, the Defendant respectfully request that, following a trial on the merits, the Court enter a judgment that the Plaintiff take noting on the Complaint and provide the Defendant such other relief to which it is entitled.

RESPECTFULLY SUBMITTED this _____ day of May, 2021.

MUNSCH HARDT KOPF & HARR, P.C.

By: /s/ Davor Rukavina

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EXHIBIT 11

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COUNSEL FOR NEXPOINT ADVISORS, L.P.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re HIGHLAND CAPITAL MANAGEMENT, L.P., Debtor.	§ § § § § §	Chapter 11 Case No. 19-34054-sgj11
HIGHLAND CAPITAL MANAGEMENT, L.P., Plaintiff, v. NEXPOINT ADVISORS, L.P. Defendant.	§ § § § § § § § § §	Adv. No. 21-03005

DEFENDANT'S MOTION FOR LEAVE TO AMEND ANSWER

TO THE HONORABLE COURT:

COMES NOW NexPoint Advisors, L.P., the defendant (the "Defendant") in the above styled and numbered adversary proceeding (the "Adversary Proceeding"), and files this its *Defendant's Motion for Leave to Amend Answer* (the "Motion"), respectfully stating as follows:

I. SUMMARY

1. This Adversary Proceeding concerns one promissory note allegedly payable by the Defendant to Highland Capital Management, L.P. (the "Plaintiff") in the amount of

$23,071,195.03 (the "Note"). While the Defendant was able to assert certain affirmative defenses to the Note in its original answer, now that the Defendant has access to former employees of the Plaintiff and to various books and records, and has had the time and ability to investigate potential additional affirmative defenses to the Note, the Defendant has learned that the Note is subject to a condition subsequent that discharged the Note. Accordingly, and not having learned of these facts until recently, the Defendant respectfully seeks leave to assert resulting affirmative defenses.

II. PROCEDRUAL BACKGROUND

2. On January 22, 2021, the Plaintiff filed its *Complaint for (i) Breach of Contract and (ii) Turnover of Property of the Debtor's Estate* (the "Complaint"), thereby initiating this Adversary Proceeding.

3. On March 1, 2021, the Defendant filed its *Defendant's Original Answer* (the "Answer").

4. The agreed scheduling order entered in this Adversary Proceeding does not contain a deadline to amend operative pleadings. *See* Docket No. 13.

5. This Adversary Proceeding is non-core and the Defendant has not consented to the Bankruptcy Court's entry of final orders or judgment. The Defendant has asserted a right to trial by jury. The Court has orally agreed that the Defendant has a right to a jury trial, and the Court has stated that it will recommend to the District Court that the reference of this Adversary Proceeding be withdrawn once the case is certified ready for trial.

III. FACTUAL BACKGROUND

6. This Motion is supported by: (i) the Declaration of Dennis C. Sauter (the "Sauter Declaration"), attached hereto as Exhibit "A" and incorporated herein; and (ii) the Declaration of James Dondero (the "Dondero Declaration"), attached hereto as Exhibit "B" and incorporated herein.

7. The Note is a term note, payable in annual installments of principal and interest. The Plaintiff alleges that the Defendant failed to make the annual payment due December 31, 2020, and that, accordingly, the Defendant breached the Note, the Plaintiff accelerated the Note, and the full unpaid amount of the Note remains outstanding. On January 14, 2021, however, and as admitted by the Plaintiff, the Defendant made the full December 31 payment, which payment was not rejected by the Plaintiff.

8. The Answer contains three affirmative defenses: two related to the Plaintiff having caused the alleged default in payment on the Note, as it was the Plaintiff, pursuant to the parties' then-existing shared services agreement, that was responsible for ensuring that the Defendant made the December 31 payment (as the Plaintiff had done in each prior year); and an affirmative defense of waiver, in that the Plaintiff accepted the Defendant's January 14 payment.

9. The Defendant had all the information it needed at that time to assert these affirmative defenses, as the Defendant knew of the shared services agreement, expected the Plaintiff to ensure the Defendant timely made all payments, and obviously knew that it had made the January 14 payment. However, at that time, and until recently, the Defendant was not able to investigate other potential affirmative defenses that it may have had.

10. Prior to the end of February, 2021, and during all times relevant to the Notes, the Plaintiff and the Defendant were parties to that certain *Amended and Restated Shared Services Agreement* dated January 1, 2018 (the "Shared Services Agreement"). Exhibit A at ¶ 6. This was standard business practices for the Plaintiff and various other affiliated companies, including other advisers, within the Plaintiff's "complex" of business: the Plaintiff would employ most of the employees and then share those employees with the Defendant and other "complex" entities, in exchange for payments by the Defendant and such other entities. *Id.* at ¶¶ 6-7. The Defendant otherwise had very few direct employees. *Id.* at ¶ 6. Thus, under the Shared Services Agreement, employees of the Plaintiff (many of whom were highly trained and specialized) provided many of

the key services to the Defendant on an as-needed basis. *Id.* at ¶¶ 7-8. These services included legal, accounting, regulatory, compliance, IT, valuation, and tax services, among others. *Id.* Additionally, under the Shared Services Agreement the Debtor provided critical electronic infrastructure to HCMFA and other "complex" entities, such that the books and records, and e-mail communications, of HCMFA were actually stored. *Id.* at ¶ 8.

11. The Defendants' own employees had very limited knowledge regarding the Note, although they knew about the circumstances of the alleged default, as noted above. *Id.* at ¶ 13. They did not otherwise know, however, of the facts and circumstances surrounding the execution of the Note, or any conditions subsequent or other agreements that may affect the Note, thereby providing additional affirmative defenses. *Id.* at ¶¶13-14. At the time that the Defendant filed its Answer, the Defendant was precluded from discussing the Note with those employees of the Plaintiff that may have had relevant knowledge, and of reviewing books and records regarding the Note. *Id.* at ¶¶ 14-16. Specifically, the Plaintiff, through its CEO Mr. Seery, had prohibited employees of the Plaintiff from discussing matters with the Defendant that may relate to controversies or litigation under penalty of termination; the Defendant did not have access to all of its books and records, as they were in the possession of the Plaintiff pursuant to the Shared Services Agreement; and an injunction from the Bankruptcy Court prohibited Mr. Dondero from "indirectly" communicating with the Plaintiff's employees (Mr. Dondero controls the Defendant). *Id.* at ¶¶ 14-17.

12. Around the time of the Answer, whether shortly before or after, Mr. James Dondero ("Dondero"), who is the president of the Defendant's general partner and the former Chief Executive of the Plaintiff, indicated that the Plaintiff frequently lent funds to Dondero or other entities affiliated with Dondero, which loans would be subject to promissory notes modified by conditions subsequent that may lead the notes to be discharged. *Id.* at ¶ 14. However, Dondero did not recall all details concerning the Note and whether this specific Note fell into the category

of dischargeable promissory notes. *Id*. The Defendant was not able to, at that time, undertake an investigation to determine whether this Note was in fact one of such dischargeable notes (for the reasons stated above), and the Defendant did not believe that it could assert an affirmative defense based on such discharge without undertaking such an investigation. *Id*. at ¶¶ 13-18.

13. This situation changed in mid-May, 2021. *Id*. at ¶¶ 21-23. By April, 2021, the Plaintiff had terminated the Shared Services Agreement (as of late February, 2021) and the Plaintiff's former employees formed a new company, Skyview Group, which then contracted with the Defendant and others to continue providing essentially the same services they had previously provided through the Plaintiff. *Id*. March and April, 2021, were exceedingly busy for the Defendant, having to convert the Plaintiff's former employees and infrastructure to the new ones, and engaging in various other adversary proceedings and hearings against the Plaintiff. *Id*.

14. By mid-May, 2021, however, the situation had calmed down enough, and the Defendant had access to the Plaintiff's former employees, including Frank Waterhouse, its former Chief Financial Officer, to mount a more thorough investigation of the Note. *Id*. at 23. Exhibit "B" at ¶ 10-12. Additionally, as additional lawyers began to work through the disclosures and issues in the cases, the Defendant learned of additional facts, including a February 2021 letter sent from D. Michael Lynn to the Plaintiff informing the Plaintiff of the dischargeable notes. *Id.* All of this triggered additional communications with Mr. Dondero and Mr. Waterhouse such that, by the end of May, 2021, the Defendant was able to confirm that the Note was subject to a condition subsequent of discharge. Exhibit "A" at ¶¶ 23-25; Exhibit "B" at ¶¶ 10-13.

15. That condition subsequent is essentially the same as has been raised by Mr. Dondero and other defendants to promissory note claims brought by the Plaintiff. Essentially, instead of taking a large salary or profits from the Plaintiff, Mr. Dondero would, on an as needed basis, ask the Plaintiff to lend funds to himself or to other entities affiliated with him, such as the Defendant. Those notes were legitimate notes. However, as had been the practice at the Plaintiff

and as is not unusual in the industry, the notes could be, and in this instance were, subject to a condition subsequent that might lead to the forgiveness and discharge of the notes, and therefore to potential income to Mr. Dondero or other payors. Exhibit "B" at ¶ 9. That would occur when when an appreciated asset was sold. *Id*.

16. Thus, here, Mr. Dondero, for the Plaintiff, entered into an agreement with Nancy Dondero, as the representative of a majority of the Class A holders of the Plaintiff, that the Note would be discharged upon the disposition at above cost of any of the portfolio company interests managed and/or owned, directly or indirectly, by the Plaintiff and/or its affiliates or managed funds. *Id*. Hence the affirmative defense the Defendant seeks to assert by this Motion.

IV. DISCUSSION

17. Attached hereto as Exhibit "C" is the Defendant's proposed Amended Answer, incorporating new defenses or affirmative defenses resulting from the knowledge of the facts above.

18. Federal Rule of Civil Procedure 15, as made applicable to this Adversary Proceeding by Federal Rule of Bankruptcy Procedure 7015, provides for leave to amend a pleading, which leave "[t]he court should freely give [] when justice so requires." FED. R. CIV. P. 15(a)(2).

19. The Court must "possess a 'substantial reason' to deny a request for leave to amend." *Smith v. EMC Corp.*, 393 F.3d 590, 595 (5th Cir. 2004). The Fifth Circuit has outlined five "consideration" guiding the Rule 15 inquiry: "1) undue delay, 2) bad faith or dilatory motive, 3) repeated failure to cure deficiencies by previous amendments, 4) undue prejudice to the opposing party, and 5) futility of the amendment." *Id*.

20. No Undue Delay. There has been no undue delay. The Defendant filed its Answer only some one hundred (100) days ago. This Adversary Proceeding has been pending for six (6) months. The Defendant has not filed a prior motion for leave to amend. And, most importantly,

as evidenced by the Sauter Declaration, the Defendant could not reasonably confirm the validity of the affirmative defense until recently, whereafter the Defendant acted promptly to file this Motion. Only as of mid-May was the Defendant able to satisfy itself, including through communications with former employees and others, that what Dondero remembered was accurate and that it applied to this Note specifically. The Defendant should not be penalized for having waited to confirm the validity of this defense, as opposed to rushing to assert it under Rule 11 before it could assure itself, and the Court, that the defense was valid.

21. The Defendant will add the following. On March 16, 2021, Dondero filed an answer to a separate promissory note suit commenced against him by the Plaintiff, Adversary Proceeding No. 21-03003, at docket no. 6. In his answer, Dondero asserted an affirmative defense of: "Defendant asserts that Plaintiff's claims should be barred because it was previously agreed by Plaintiff that Plaintiff would not collect on the Notes." On April 6, 2021, Dondero amended his answer to assert an affirmative defense of: "Defendant asserts that Plaintiff's claims should be barred because prior to the demands for payment Plaintiff agreed that it would not collect on the Notes upon fulfillment of conditions subsequent." In other words, since, as of March and April, 2021, it was generally known that there were dischargeable promissory notes out there, the Defendant had no reason to wait to assert the same defenses except because it honestly waited until it could complete its own independent investigation.

22. No Bad Faith or Dilatory Motive. There is no bad faith or dilatory motive for the same reasons as above; the Defendant only recently confirmed its defense, the Defendant moved for leave promptly after confirming the same; and leave to amend is not sought to avoid summary judgment or continue trial. Again, the reason for any delay is precisely to avoid a potential Rule 11 argument or issue in asserting an affirmative defense without a sufficient investigation having been mounted.

23. No Repeated Failures to Cure By Prior Amendments. This is the Defendant's first motion to amend.

24. No Undue Prejudice. There is no undue prejudice to the Plaintiff. Discovery is ongoing and depositions have not been scheduled. The Defendant is agreeable to further extending discovery. The Plaintiff will have every reasonable opportunity to test the new defenses, and all underlying witness and documents related to the same are available. Moreover, both from Mr. Lynn's February letter and from Dondero's prior answers, and other adversary proceedings pending, the Plaintiff is already facing this same affirmative defense, it does not come as a surprise to the Plaintiff, and the Plaintiff will have to take discovery, prepare briefing, and try the same issues anyway. Finally, given that the Court agrees that the reference will have to be withdrawn, it is highly unlikely that the District Court will be able to convene a jury trial any time soon, meaning that there is no true trial date that will be prejudiced by the amendment.

25. No Futility of the Amendment. The Defendant's defense is not futile. It is supported by *prima facie* evidence by the Dondero Declaration. Whether the trier of fact agrees or disagrees with the defense is for the trier of fact, but the defense itself is not futile on its face.

26. Accordingly, as no substantial reason exists to deny the amendment, the Court should "freely" grant leave to the Defendant to amend its Answer.

V. PRAYER

WHEREFORE, PREMISES CONSIDERED, the Defendant respectfully requests that the Court enter an order: (i) granting this Motion; (ii) granting the Defendant leave to file the Amended Answer attached hereto as Exhibit "C"; and (iii) granting the Defendant such other and further relief to which it may be justly entitled.

RESPECTFULLY SUBMITTED this 9th day of June, 2021.

MUNSCH HARDT KOPF & HARR, P.C.

By: /s/ Davor Rukavina

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COUNSEL FOR HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, L.P.

CERTIFICATE OF CONFERENCE

The undersigned hereby certifies that he discussed the relief requested herein with Jeff Pomerantz, Esq. and John Morris, Esq., on June 8, 2021, but that, as of the filing hereof, the Plaintiff has not consented to such relief and this Motion is therefore presented as opposed.

/s/ Davor Rukavina
Davor Rukavina

CERTIFICATE OF SERVICE

The undersigned hereby certifies that, on this the 9th day of June, 2021, true and correct copies of this document and the exhibits hereto were electronically served by the Court's ECF system on parties entitled to notice thereof, including on the Plaintiff through its counsel of record.

/s/ Davor Rukavina
Davor Rukavina

EXHIBIT 12

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COUNSEL FOR HIGHLAND CAPITAL MANAGEMENT SERVICES, INC.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.	§	**Chapter 11**
	§	
	§	**Case No.: 19-34054-sgj11**
Debtor.	§	
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.	§	
	§	
	§	
Plaintiff,	§	
	§	
vs.	§	**Adv. Pro. No. 21-03006-sgj**
	§	
HIGHLAND CAPITAL MANAGEMENT SERVICES, INC.,	§	
	§	
	§	
Defendant.	§	

HIGHLAND CAPITAL MANAGEMENT SERVICES, INC.'S
FIRST AMENDED ANSWER TO PLAINTIFF'S COMPLAINT

Defendant Highland Capital Management Services, Inc. ("HCMS" or "Defendant") files this First Amended Answer in response to Highland Capital Management L.P.'s ("Plaintiff" or "Debtor") Complaint for (I) Breach of Contract and (II) Turnover of Property of the Debtor's Estate (the "Complaint") and respectfully states as follows:

PRELIMINARY STATEMENT[1]

1. The first sentence of Paragraph 1 sets forth Plaintiff's objective in bringing the Complaint and does not require a response. To the extent a response is required, Defendant denies the allegations in the first sentence of Paragraph 1. The second sentence contains a legal conclusion that does not require a response. To the extent a response is required, Defendant denies the allegations in the second sentence of Paragraph 1.

2. Paragraph 2 contains a summary of the relief Plaintiff seeks and does not require a response. To the extent a response is required, Defendant denies the allegations in Paragraph 2.

JURISDICTION AND VENUE

3. Defendant admits that this Adversary Proceeding relates to the Plaintiff's bankruptcy case but denies any implication that this fact confers constitutional authority on the Bankruptcy Court to adjudicate this dispute. Defendant denies any allegations in Paragraph 3 that are not expressly admitted.

4. Paragraph 4 states a legal conclusion that does not require a response. To the extent a response is required, Defendant admits the Bankruptcy Court has statutory jurisdiction over this Adversary Proceeding but denies that the Court has constitutional authority over this Adversary Proceeding. Defendant denies any allegations in Paragraph 4 that are not expressly admitted.

5. Defendant denies that Plaintiff's breach of contract claim is a core proceeding. Defendant further denies that a turnover proceeding under 11 U.S.C. § 542(b) is the appropriate mechanism to collect a contested debt. Defendant admits that a turnover proceeding under 11 U.S.C. § 542(b) is a statutorily core proceeding but denies that it is constitutionally core under *Stern v. Marshall*. Defendant does not consent to the Bankruptcy Court entering final orders or

[1] The headings herein are from Plaintiff's Complaint and are solely included for the Court's convenience.

judgment in this Adversary Proceeding. Defendant denies any allegations in Paragraph 5 that are not expressly admitted.

6. Paragraph 6 states a legal conclusion to which no response is required. To the extent a response is required, Defendant admits that venue is proper in this District.

THE PARTIES

7. Defendant admits the allegations in Paragraph 7 of the Complaint.

8. Defendant admits the allegations in Paragraph 8 of the Complaint.

CASE BACKGROUND

9. Defendant admits the allegations in Paragraph 9 of the Complaint.

10. Defendant admits the allegations in Paragraph 10 of the Complaint.

11. Defendant admits the allegations in Paragraph 11 of the Complaint.

12. Defendant admits the allegations in Paragraph 12 of the Complaint.

STATEMENT OF FACTS

A. The HCMS Demand Notes

13. Defendant admits it has executed at least one promissory note under which the Debtor is the payee. Defendant denies any allegations in Paragraph 13 that are not expressly admitted.

14. Defendant admits that it signed the document attached to the Complaint as Exhibit 1. Defendant denies any allegations in Paragraph 14 that are not expressly admitted.

15. Defendant admits that it signed the document attached to the Complaint as Exhibit 2. Defendant denies any allegations in Paragraph 15 that are not expressly admitted.

16. Defendant denies that it signed the document attached to the Complaint as Exhibit 3. Defendant denies any allegations in Paragraph 16 that are not expressly admitted.

17. Defendant denies that it signed the document attached to the Complaint as Exhibit 4. Defendant denies any allegations in Paragraph 17 that are not expressly admitted.

18. Defendant admits that Plaintiff correctly transcribed Section 2 of Exhibits 1-4 to the Complaint in Paragraph 18.

19. Defendant admits that Plaintiff correctly transcribed Section 4 of Exhibits 1-4 to the Complaint in Paragraph 19.

20. Defendant admits that Plaintiff correctly transcribed Section 6 of Exhibits 1-4 of the Complaint in Paragraph 20.

B. Allegations regarding the Demand Notes

21. Defendant admits that Plaintiff sent it a copy of Exhibit 5. Defendant admits that Plaintiff correctly transcribed an excerpt of Exhibit 5 in the third sentence of Paragraph 21. Defendant denies any allegations in Paragraph 21 that are not expressly admitted.

22. To the extent Paragraph 22 asserts a legal conclusion, no response is required, and it is denied. Defendant otherwise admits the allegations in Paragraph 22.

23. Defendant lacks sufficient information or knowledge to admit or deny the allegations in Paragraph 23 and, therefore, denies them.

24. Defendant lacks sufficient information or knowledge to admit or deny the allegations in Paragraph 24 and, therefore, denies them.

25. Defendant lacks sufficient information or knowledge to admit or deny the allegations in Paragraph 25 and, therefore, denies them.

26. Defendant lacks sufficient information or knowledge to admit or deny the allegations in Paragraph 26 and, therefore, denies them.

27. Defendant lacks sufficient information or knowledge to admit or deny the allegations in the first sentence of Paragraph 27 and, therefore, denies them. Defendant denies the allegations in the second sentence of Paragraph 27 of the Complaint.

C. The HCMS Term Note

28. Defendant admits that it has executed at least one promissory note under which Debtor is the payee. Defendant denies any allegations in Paragraph 28 that are not expressly admitted.

29. Defendant admits it signed the document attached to the Complaint as Exhibit 6. Defendant denies any allegations in Paragraph 29 that are not expressly admitted.

30. Defendant admits that Plaintiff correctly transcribed Section 2 of Exhibit 6 to the Complaint in Paragraph 30. Defendant denies any allegations in Paragraph 30 that are not expressly admitted.

31. Defendant admits that Plaintiff correctly transcribed Section 3 of Exhibit 6 to the Complaint in Paragraph 31. Defendant denies any allegations in Paragraph 31 that are not expressly admitted.

32. Defendant admits that Plaintiff correctly transcribed Section 4 of Exhibit 6 to the Complaint in Paragraph 32. Defendant denies any allegations in Paragraph 32 that are not expressly admitted.

33. Defendant admits that Plaintiff correctly transcribed Section 6 of Exhibit 6 to the Complaint in Paragraph 33. Defendant denies any allegations in Paragraph 33 that are not expressly admitted.

D. Allegations regarding the Term Note.

34. To the extent Paragraph 34 of the Complaint asserts a legal conclusion, no response is required, and it is denied. Defendant otherwise denies Paragraph 34 of the Complaint.

35. Defendant admits that Plaintiff sent it a copy of Exhibit 7. Defendant admits that Plaintiff correctly transcribed an excerpt of Exhibit 7 in the third sentence of Paragraph 35 of the Complaint. Defendant denies any allegations in Paragraph 35 that are not expressly admitted.

36. Defendant is without sufficient information or knowledge to admit or deny the allegations in Paragraph 36 of the Complaint and, therefore, denies them.

37. Defendant denies Paragraph 37 of the Complaint.

FIRST CLAIM FOR RELIEF
(For Breach of Contract)

38. Paragraph 38 of the Complaint seeks to incorporate the allegations in the preceding paragraphs and does not require a response. Defendant incorporates all prior denials herein by reference.

39. Paragraph 39 of the Complaint states a legal conclusion that does not require a response. To the extent it alleges facts, Defendant lacks sufficient information or knowledge to admit or deny the allegations and, therefore, denies them.

40. Paragraph 40 of the Complaint states a legal conclusion that does not require a response. To the extent it alleges facts, Defendant lacks sufficient information or knowledge to admit or deny the allegations and, therefore, denies them.

41. Paragraph 41 of the Complaint states a legal conclusion that does not require a response. To the extent it alleges facts, Defendant lacks sufficient information or knowledge to admit or deny the allegations and, therefore, denies them.

42. Paragraph 42 of the Complaint states a legal conclusion that does not require a response. To the extent it alleges facts, Defendant lacks sufficient information or knowledge to admit or deny the allegations and, therefore, denies them.

43. Defendant denies Paragraph 43 of the Complaint.

44. Defendant denies Paragraph 44 of the Complaint.

SECOND CLAIM FOR RELIEF
(Turnover by HCMS Pursuant to 11 U.S.C. § 549(b))

45. Paragraph 45 seeks to incorporate the allegations in the preceding paragraphs and does not require a response. Defendant incorporates all prior denials herein by reference.

46. Paragraph 46 of the Complaint states a legal conclusion that does not require a response. To the extent it alleges facts, Defendant lacks sufficient information or knowledge to admit or deny the allegations and, therefore, denies them.

47. Paragraph 47 of the Complaint states a legal conclusion that does not require a response. To the extent it alleges facts, Defendant lacks sufficient information or knowledge to admit or deny the allegations and, therefore, denies them.

48. Paragraph 48 of the Complaint states a legal conclusion that does not require a response. To the extent it alleges facts, Defendant lacks sufficient information or knowledge to admit or deny the allegations and, therefore, denies them.

49. Defendant admits that Plaintiff transmitted Exhibits 5 and 7 to the Complaint. Defendant lacks sufficient information or knowledge to admit or deny the remaining allegations in Paragraph 49 of the Complaint and, therefore, denies them.

50. Defendant lacks sufficient information or knowledge to admit or deny the remaining allegations in Paragraph 50 of the Complaint and, therefore, denies them.

51. Defendant denies Paragraph 51 of the Complaint.

52. Defendant denies that Plaintiff is entitled to the relief requested in the prayer of the Complaint, including parts (i), (ii), and (iii).

AFFIRMATIVE DEFENSES

53. Plaintiff's claims are barred in whole or in part by the doctrine of justification and/or repudiation.

54. Plaintiff's claims are barred in whole or in part by the doctrine of estoppel.

55. Plaintiff's claims are barred in whole or in part by the doctrine of waiver.

56. Plaintiff's claims are barred in whole or in part because prior to the demands for payment Plaintiff agreed that it would not collect the Notes upon fulfillment of conditions subsequent. Specifically, sometime between December of the year in which each note was made and February of the following year, Nancy Dondero, as representative for a majority of the Class A shareholders of Plaintiff agreed with Mr. James Dondero, acting for Defendant, that Plaintiff would forgive the Notes if certain portfolio companies were sold for greater than cost or on a basis outside of Mr. Dondero's control. This agreement setting forth the conditions subsequent to demands for payment on the Notes was an oral agreement; however, Defendant believes there may be testimony or email correspondence that discusses the existence of this agreement that may be uncovered through discovery in this Adversary Proceeding.

57. HCMS further asserts that each Note is ambiguous as a whole based on the signatory and/or references to unspecified related agreements.

JURY DEMAND

58. HCMS demands a trial by jury of all issues so triable under Federal Rule of Civil Procedure 38 and Federal Rule of Bankruptcy Procedure 9015.

59. HCMS does not consent to the Bankruptcy Court conducting a jury trial and therefore demands such jury trial in the District Court.

PRAYER

For these reasons, HCMS respectfully requests that, following a trial on the merits, the Court deny the relief Plaintiffs seeks through its Complaint, enter a judgment that the Plaintiff take nothing on the Complaint, and grant HCMS such other relief at law or in equity to which it may be entitled.

Respectfully submitted,

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COUNSEL FOR HIGHLAND MANAGEMENT SERVICES, INC.

CERTIFICATE OF SERVICE

I hereby certify that on June 11, 2021, a true and correct copy of the foregoing pleading was served via the Court's CM/ECF system upon counsel for the Plaintiff and all other parties requesting or consenting to such service in this adversary case.

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EXHIBIT 13

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COUNSEL FOR HIGHLAND CAPITAL
MANAGEMENT FUND ADVISORS, L.P.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re HIGHLAND CAPITAL MANAGEMENT, L.P., Debtor.	§ § § § § §	Chapter 11 Case No. 19-34054-sgj11
HIGHLAND CAPITAL MANAGEMENT, L.P., Plaintiff, v. HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, L.P. Defendant.	§ § § § § § § § § § § §	Adv. No. 21-03004

DEFENDANT'S AMENDED ANSWER

COMES NOW Highland Capital Management Fund Advisors, L.P. (the "Defendant"), the defendant in the above-styled and numbered adversary proceeding (the "Adversary Proceeding") filed by Highland Capital Management, L.P. (the "Plaintiff"), and files this its *Defendant's Amended Answer* (the "Answer"), responding to the *Complaint for (I) Breach of Contract and (II) Turnover of Property of the Debtor's Estate* (the "Complaint"). Where an allegation in the Complaint is not expressly admitted in this Answer, it is denied.

PRELIMINARY STATEMENT

1. The first sentence of ¶ 1 sets forth the Plaintiff's objective in bringing the Complaint and does not require a response. To the extent it contains factual allegations, they are denied. The second sentence contains a legal conclusion that does not require a response. To the extent it contains factual allegations, they are denied.

2. Paragraph 2 contains a summary of the relief the Plaintiff seeks and does not require a response. To the extent it contains factual allegations, they are denied.

JURISDICTION AND VENUE

3. The Defendant admits that this Adversary Proceeding relates to the Plaintiff's bankruptcy case but denies any implication that this fact confers Constitutional authority on the Bankruptcy Case to adjudicate this dispute. Any allegations in ¶ 3 not expressly admitted are denied.

4. The Defendant admits that the Court has statutory (but not Constitutional) jurisdiction to hear this Adversary Proceeding. Any allegations in ¶ 4 not expressly admitted are denied.

5. The Defendant denies that a breach of contract claim is core. The Defendant denies that a § 542(b) turnover proceeding is the appropriate mechanism to collect a contested debt. The Defendant admits that a § 542(b) turnover proceeding is statutorily core but denies that it is Constitutionally core under *Stern v. Marshall*. The Defendant does not consent to the Bankruptcy Court entering final orders or judgment in this Adversary Proceeding. Any allegations in ¶ 5 not expressly admitted are denied.

6. The Defendant admits ¶ 6 of the Complaint.

THE PARTIES

7. The Defendant admits ¶ 7 of the Complaint.

8. The Defendant admits ¶ 8 of the Complaint.

CASE BACKGROUND

9. The Defendant admits ¶ 9 of the Complaint.

10. The Defendant admits ¶ 10 of the Complaint.

11. The Defendant admits ¶ 11 of the Complaint.

12. The Defendant admits ¶ 12 of the Complaint.

STATEMENT OF FACTS

A. The HCMFA Notes

13. The Defendant admits that it has executed at least one promissory note under which the Debtor is the payee. Any allegations in ¶ 13 not expressly admitted are denied.

14. The Defendant denies ¶ 14 of the Complaint.

15. The Defendant denies ¶ 15 of the Complaint.

16. The Defendant denies ¶ 16 of the Complaint. The document speaks for itself and the quote set forth in ¶ 16 is not verbatim.

17. The Defendant denies ¶ 17 of the Complaint. The document speaks for itself and the quote set forth in ¶ 17 is not verbatim.

18. The Defendant admits ¶ 18 of the Complaint.

B. HCMFA's Default under Each Note

19. The Defendant admits that Exhibit 3 to the Complaint (the "Demand Letter") is a true and correct copy of what it purports to be and that the document speaks for itself. To the extent ¶ 19 of the Complaint asserts a legal conclusion, no response is required, and it is denied. To the extent not expressly admitted, ¶ 19 of the Complaint is denied.

20. To the extent ¶ 20 of the Complaint asserts a legal conclusion, no response is necessary, and it is denied. The Defendant otherwise admits ¶ 20 of the Complaint.

21. The Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in ¶ 21 of the Complaint and therefore denies the same.

22. The Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in ¶ 22 of the Complaint and therefore denies the same.

23. The Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in ¶ 23 of the Complaint and therefore denies the same.

24. The Defendant denies ¶ 24 of the Complaint.

FIRST CLAIM FOR RELIEF
(For Breach of Contract)

25. Paragraph 25 of the Complaint is a sentence of incorporation that does not require a response. All prior denials are incorporated herein by reference.

26. Paragraph 26 of the Complaint states a legal conclusion that does not require a response. To the extent it alleges facts, the Defendant denies the allegations in ¶ 26 of the Complaint.

27. Paragraph 27 of the Complaint states a legal conclusion that does not require a response. To the extent it alleges facts, the Defendant denies the allegations in ¶ 27 of the Complaint.

28. Paragraph 28 of the Complaint states a legal conclusion that does not require a response. To the extent it alleges facts, the Defendant denies the allegations in ¶ 28 of the Complaint.

29. The Defendant denies ¶ 29 of the Complaint.

SECOND CLAIM FOR RELIEF
(Turnover by HCMFA Pursuant to 11 U.S.C. § 542(b))

30. Paragraph 30 of the Complaint is a sentence of incorporation that does not require a response. All prior denials are incorporated herein by reference.

31. Paragraph 31 of the Complaint states a legal conclusion that does not require a response. To the extent it alleges facts, the Defendant denies the allegations in ¶ 31 of the Complaint.

32. Paragraph 32 of the Complaint states a legal conclusion that does not require a response. To the extent it alleges facts, the Defendant denies the allegations in ¶ 32 of the Complaint.

33. The Defendant denies ¶ 33 of the Complaint.

34. Paragraph 34 of the Complaint states a legal conclusion that does not require a response. The Defendant admits that the Plaintiff transmitted the Demand Letter. To the extent ¶ 34 alleges other facts, the Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in ¶ 34 of the Complaint and therefore denies the same.

35. The Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in ¶ 35 of the Complaint and therefore denies the same.

36. Paragraph 36 of the Complaint states a legal conclusion that does not require a response. To the extent it alleges facts, the Defendant denies the allegations in ¶ 36 of the Complaint.

37. The Defendant denies that the Plaintiff is entitled to the relief requested in the prayer, including parts (i), (ii), and (iii).

AFFIRMATIVE DEFENSES

38. At all material times to the Complaint, the Defendant, a registered advisor, advised various third-party funds as to their investments. One such fund was Highland Global Allocation Fund ("HGAF").

39. At all material times to the Complaint, the Defendant contracted with the Plaintiff whereby the Plaintiff, through its employees, would provide certain services to the Defendant,

including with respect to the Defendant's advice to the third-party funds. These services so provided included accounting, legal, regulatory, valuation, and compliance services.

40. In March, 2018, HGAF sold equity interests it held in TerreStar. As part of this, it was necessary to calculate the "net asset value" ("NAV") of these securities and of HGAF assets. The Defendant was responsible for advising on the NAV. In turn, pursuant to the Shared Services Agreement in effect at that time between the Plaintiff and the Defendant, the Plaintiff was responsible to the Defendant to calculate the NAV, and the Plaintiff had several employees charged with these and similar calculations as part of the Plaintiff's routine business services and as part of what the Plaintiff regularly provided to the Defendant and affiliated companies.

41. The Plaintff made a mistake in calculating the NAV (the "NAV Error"). The NAV Error was discovered in early 2019 as HGAF was being converted from an open-ended fund to a closed-ended fund. The Securities and Exchange Commission opened an investigation, and various employees and representatives of the Plaintiff, the Defendant, and HGAF worked with the SEC to correct the error and to compensate HGAF and the various investors in HGAF harmed by the NAV Error. Ultimately, and working with the SEC, the Plantiff determined that the losses from the NAV Error to HGAF and its shareholders amounted to $7.5 million: (i) $6.1 million for the NAV Error itself, as well as rebating related advisor fees and processing costs; and (ii) $1.4 million of losses to the shareholders of HGAF.

42. The Defendant accepted responsibility for the NAV Error and paid out $5,186,496 on February 15, 2019 and $2,398,842 on May 21, 2019. In turn, the Plaintiff accepted responsibility to the Defendant for having caused the NAV Error, and the Plaintiff ultimately, whether through insurance or its own funds, compensated the Defendant for the above payments by paying, or causing to be paid, approximately $7.5 million to the Defendant directly or indirectly to HGAF and its investors.

43. At this time, Frank Waterhouse ("Waterhouse") was the Chief Financial Officer to both the Plaintiff and the Defendant. Waterhouse signed the two promissory notes the subject of the Complaint (the "Notes"). He did not sign the Notes in any representative capacity for the Defendant. The Defendant did not authorize Waterhouse to sign the Notes or to bind the Defendant in any way to the Note.

44. Waterhouse made a mistake in preparing and signing the Notes for the Defendant. Upon information and belief, Waterhouse was not aware that payments from the Plaintiff to the Defendant were to compensate the Defendant for the NAV Error and resulting damages, instead assuming that the Notes were like prior notes between the Plaintiff and the Defendant. Waterhouse failed to properly inquire into the underlying transaction and, either for unknown accounting or other purposes, Waterhouse prepared and signed the Notes on his own, without proper knowledge of the underlying facts and without actual authority from either the Plaintiff or the Defendant.

45. In sum, neither the Plaintiff nor the Defendant intended that any funds paid by the Plaintiff to the Defendant be treated as debt but that they instead be treated as compensation by the Plaintiff to the Defendant for the NAV Error that the Plaintiff caused. The Notes are an unauthorized mistake and a nullity, and are void for a lack of consideration.

46. To the extent Waterhouse had apparent authority to bind the Defendant to the Notes, such apparently authority does not apply to the Notes because Waterhouse's lack of actual authority is imputed to the Plaintiff, as Waterhouse was the CFO for the Plaintiff.

47. Accordingly, the Notes are void or unenforceable for lack of consideration, for mutual mistake, and for the lack of authority from the Defendant to Waterhouse to execute the same for the Defendant.

JURY DEMAND

48. The Defendant demands a trial by jury of all issues so triable pursuant to Rule 38 of the Federal Rules of Civil Procedure and Rule 9015 of the Federal Rules of Bankruptcy Procedure.

49. The Defendant does not consent to the Bankruptcy Court conducting a jury trial and therefore demands a jury trial in the District Court.

PRAYER

WHEREFORE, PREMISES CONSIDERED, the Defendant respectfully request that, following a trial on the merits, the Court enter a judgment that the Plaintiff take noting on the Complaint and provide the Defendant such other relief to which it is entitled.

RESPECTFULLY SUBMITTED this 6th day of July, 2021.

MUNSCH HARDT KOPF & HARR, P.C.

By: /s/ Davor Rukavina

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COUNSEL FOR HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, L.P.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that, on this the 6th day of July, 2021, true and correct copies of this document were electronically served by the Court's ECF system on parties entitled to notice thereof, including on counsel for the plaintiff.

By: /s/ Davor Rukavina
Davor Rukavina, Esq.

EXHIBIT 14

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COUNSEL FOR NEXPOINT ADVISORS, L.P.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re HIGHLAND CAPITAL MANAGEMENT, L.P., Debtor.	§ § § § § §	Chapter 11 Case No. 19-34054-sgj11
HIGHLAND CAPITAL MANAGEMENT, L.P., Plaintiff, v. NEXPOINT ADVISORS, L.P. Defendant.	§ § § § § § § § § § §	Adv. No. 21-03005

DEFENDANT'S FIRST AMENDED ANSWER

COMES NOW NexPoint Advisors, L.P. (the "Defendant"), the defendant in the above-styled and numbered adversary proceeding (the "Adversary Proceeding") filed by Highland Capital Management, L.P. (the "Plaintiff"), and files this its *Defendant's First Amended Answer* (the "Answer"), responding to the *Complaint for (I) Breach of Contract and (II) Turnover of Property of the Debtor's Estate* (the "Complaint"). Where an allegation in the Complaint is not expressly admitted in this Answer, it is denied.

PRELIMINARY STATEMENT

1. The first sentence of ¶ 1 sets forth the Plaintiff's objective in bringing the Complaint and does not require a response. To the extent it contains factual allegations, they are denied. The second sentence contains a legal conclusion that does not require a response. To the extent it contains factual allegations, they are denied.

2. Paragraph 2 contains a summary of the relief the Plaintiff seeks and does not require a response. To the extent it contains factual allegations, they are denied.

JURISDICTION AND VENUE

3. The Defendant admits that this Adversary Proceeding relates to the Plaintiff's bankruptcy case but denies any implication that this fact confers Constitutional authority on the Bankruptcy Case to adjudicate this dispute. Any allegations in ¶ 3 not expressly admitted are denied.

4. The Defendant admits that the Court has statutory (but not Constitutional) jurisdiction to hear this Adversary Proceeding. Any allegations in ¶ 4 not expressly admitted are denied.

5. The Defendant denies that a breach of contract claim is core. The Defendant denies that a § 542(b) turnover proceeding is the appropriate mechanism to collect a contested debt. The Defendant admits that a § 542(b) turnover proceeding is statutorily core but denies that it is Constitutionally core under *Stern v. Marshall*. The Defendant does not consent to the Bankruptcy Court entering final orders or judgment in this Adversary Proceeding. Any allegations in ¶ 5 not expressly admitted are denied.

6. The Defendant admits ¶ 6 of the Complaint.

THE PARTIES

7. The Defendant admits ¶ 7 of the Complaint.

8. The Defendant admits ¶ 8 of the Complaint.

CASE BACKGROUND

9. The Defendant admits ¶ 9 of the Complaint.

10. The Defendant admits ¶ 10 of the Complaint.

11. The Defendant admits ¶ 11 of the Complaint.

12. The Defendant admits ¶ 12 of the Complaint.

STATEMENT OF FACTS

A. The NPA Notes

13. The Defendant admits that it has executed at least one promissory note under which the Debtor is the payee. Any allegations in ¶ 13 not expressly admitted are denied.

14. The Defendant admits ¶ 14 of the Complaint.

15. The Defendant denies ¶ 15 of the Complaint. The document speaks for itself and the quote set forth in ¶ 15 is not verbatim.

16. The Defendant admits ¶ 16 of the Complaint.

17. The Defendant denies ¶ 17 of the Complaint. The document speaks for itself and the quote set forth in ¶ 17 is not verbatim.

18. The Defendant admits ¶ 18 of the Complaint.

B. NPA's Default under the Note

19. The Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in ¶ 19 of the Complaint and therefore denies the same.

20. The Defendant admits that Exhibit 2 to the Complaint (the "Demand Letter") is a true and correct copy of what it purports to be and that the document speaks for itself. To the extent ¶ 20 of the Complaint asserts a legal conclusion, no response is required, and it is denied. To the extent not expressly admitted, ¶ 20 of the Complaint is denied.

21. The Defendant admits that it paid the Debtor $1,406,111.92 on January 14, 2021. To the extent not expressly admitted, paragraph 21 of the Complaint is denied.

22. The Defendant admits that Exhibit 3 to the Complaint (the "Second Demand Letter") is a true and correct copy of what it purports to be and that the document speaks for itself. To the extent ¶ 22 of the Complaint asserts a legal conclusion, no response is required, and it is denied. To the extent not expressly admitted, ¶ 22 of the Complaint is denied.

23. To the extent ¶ 23 of the Complaint asserts a legal conclusion, no response is necessary, and it is denied. The Defendant otherwise admits ¶ 23 of the Complaint.

24. The Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in ¶ 24 of the Complaint and therefore denies the same.

25. The Defendant denies ¶ 25 of the Complaint.

FIRST CLAIM FOR RELIEF
(For Breach of Contract)

26. Paragraph 26 of the Complaint is a sentence of incorporation that does not require a response. All prior denials are incorporated herein by reference.

27. Paragraph 27 of the Complaint states a legal conclusion that does not require a response. To the extent it alleges facts, the Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in ¶ 27 of the Complaint and therefore denies the same.

28. Paragraph 28 of the Complaint states a legal conclusion that does not require a response. To the extent it alleges facts, the Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in ¶ 28 of the Complaint and therefore denies the same.

29. Paragraph 29 of the Complaint states a legal conclusion that does not require a response. To the extent it alleges facts, the Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in ¶ 29 of the Complaint and therefore denies the same.

30. The Defendant denies ¶ 30 of the Complaint.

SECOND CLAIM FOR RELIEF
(Turnover by HCMFA Pursuant to 11 U.S.C. § 542(b))

31. Paragraph 31 of the Complaint is a sentence of incorporation that does not require a response. All prior denials are incorporated herein by reference.

32. Paragraph 32 of the Complaint states a legal conclusion that does not require a response. To the extent it alleges facts, the Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in ¶ 32 of the Complaint and therefore denies the same.

33. Paragraph 33 of the Complaint states a legal conclusion that does not require a response. To the extent it alleges facts, the Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in ¶ 33 of the Complaint and therefore denies the same.

34. The Defendant denies ¶ 34 of the Complaint.

35. Paragraph 35 of the Complaint states a legal conclusion that does not require a response. The Defendant admits that the Plaintiff transmitted the Demand Letter and the Second Demand Letter, and those documents speak for themselves. To the extent ¶ 35 alleges other facts, the Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in ¶ 35 of the Complaint and therefore denies the same.

36. The Defendant denies ¶ 36 of the Complaint.

37. Paragraph 37 of the Complaint states a legal conclusion that does not require a response. To the extent it alleges facts, the Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in ¶ 37 of the Complaint and therefore denies the same.

38. The Defendant denies that the Plaintiff is entitled to the relief requested in the prayer, including parts (i), (ii), and (iii).

AFFIRMATIVE DEFENSES

39. Pursuant to that certain Shared Services Agreement, the Plaintiff was responsible for making payments on behalf of the Defendant under the note. Any alleged default under the note was the result of the Plaintiff's own negligence, misconduct, breach of contract, etc.

40. Delay in the performance of a contract is excused when the party who seeks to enforce the contract caused the delay. It was therefore inappropriate for the Plaintiff to accelerate the note when the brief delay in payment was the Plaintiff's own fault.

41. Furthermore, the Plaintiff was waived the right to accelerate the note and/or the Plaintiff is estopped to enforce the alleged acceleration by accepting payment after the same.

42. Furthermore, the Plaintiff's claims are barred in whole or in part because, prior to any alleged breach or acceleration, the Plaintiff agreed that it would not collect on the note upon fulfilment of certain conditions subsequent. Specifically, sometime between December of the year in which each Note was made and February of the following year, Nancy Dondero, as representative for a majority of the Class A shareholders of Plaintiff agreed with Mr. James Dondero, acting for Defendant, that Plaintiff would forgive the Notes if certain portfolio companies were sold for greater than cost or on a basis outside of Mr. Dondero's control. This agreement setting forth the conditions subsequent to demands for payment on the Notes was an oral agreement; however, Defendant believes there may be testimony or email correspondence that

discusses the existence of this agreement that may be uncovered through discovery in this Adversary Proceeding.

JURY DEMAND

43. The Defendant demands a trial by jury of all issues so triable pursuant to Rule 38 of the Federal Rules of Civil Procedure and Rule 9015 of the Federal Rules of Bankruptcy Procedure.

44. The Defendant does not consent to the Bankruptcy Court conducting a jury trial and therefore demands a jury trial in the District Court.

PRAYER

WHEREFORE, PREMISES CONSIDERED, the Defendant respectfully request that, following a trial on the merits, the Court enter a judgment that the Plaintiff take nothing on the Complaint and provide the Defendant such other relief to which it is entitled.

RESPECTFULLY SUBMITTED this 9th day of August, 2021.

MUNSCH HARDT KOPF & HARR, P.C.

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COUNSEL FOR NEXPOINT ADVISORS, L.P.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that, on the 9th day of August, 2021, a true and correct copy of this document was served electronically via the Court's CM/ECF system on the following recipients:

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EXHIBIT 15

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Counsel for Defendant NexPoint Advisors, L.P.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	Case No. 19-34054-SGJ-11
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	Chapter 11
	§	
Debtor.	§	
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	
Plaintiff.	§	
	§	
v.	§	
	§	Adversary No.: 21-03005-sgj
NEXPOINT ADVISORS, L.P., JAMES DONDERO, NANCY DONDERO, AND DUGABOY INVESTMENT TRUST,	§	
	§	
Defendants.	§	

DEFENDANT NEXPOINT ADVISORS, L.P.'S
ANSWER TO AMENDED COMPLAINT

Defendant NexPoint Advisors, L.P. ("NexPoint"), a defendant in the above-styled and numbered adversary proceeding (the "Adversary Proceeding") filed by Highland Capital Management, L.P. (the "Plaintiff"), hereby files this Answer (the "Answer") responding to the *Amended Complaint for (I) Breach of Contract and (II) Turnover of Property (III) Fraudulent Transfer, and (IV) Breach of Fiduciary Duty* [Adv. Dkt. 73] (the "Amended Complaint"). Where an allegation in the Amended Complaint is not expressly admitted in this Answer, it is denied.

PRELIMINARY STATEMENT

1. The first sentence of paragraph 1 of the Amended Complaint sets forth the Plaintiff's objective in bringing the Amended Complaint and does not require a response. To the extent it contains factual allegations, they are denied. The second sentence contains a legal conclusion that does not require a response. To the extent it contains factual allegations, they are denied.

2. Defendant NexPoint admits that NPA's First Amended Answer speaks for itself. To the extent paragraph 2 contradicts the First Amended Answer, it is denied.

3. Defendant NexPoint denies the allegations in paragraph 3 of the Amended Complaint.

4. Paragraph 4 of the Amended Complaint sets forth the Plaintiff's objective in bringing the Amended Complaint and does not require a response. To the extent it contains factual allegations, they are denied.

5. Paragraph 5 of the Amended Complaint contains a summary of the relief the Plaintiff seeks and does not require a response. To the extent it contains factual allegations, they are denied.

JURISDICTION AND VENUE

6. Defendant NexPoint admits that this Adversary Proceeding relates to the Plaintiff's bankruptcy case but denies any implication that this fact confers Constitutional authority on the Bankruptcy Court to adjudicate this dispute. Any allegations in paragraph 6 not expressly admitted are denied.

7. Defendant NexPoint admits that the Court has statutory (but not Constitutional) jurisdiction to hear this Adversary Proceeding. Any allegations in paragraph 7 not expressly admitted are denied.

8. Defendant NexPoint denies the allegations contained in paragraph 8 of the Amended Complaint. Defendant NexPoint does not consent to any trial before, or final order entered by, the Bankruptcy Court. Defendant NexPoint demands a trial by jury of all issues so triable.

9. Defendant NexPoint admits the allegations in paragraph 9 of the Amended Complaint.

THE PARTIES

10. Defendant NexPoint admits the allegations in paragraph 10 of the Amended Complaint.

11. Defendant NexPoint admits the allegations in paragraph 11 of the Amended Complaint.

12. Defendant NexPoint admits the allegations in paragraph 12 of the Amended Complaint.

13. Defendant NexPoint lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 13 of the Amended Complaint and therefore denies the same.

14. Defendant NexPoint lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 14 of the Amended Complaint and therefore denies the same.

CASE BACKGROUND

15. Defendant NexPoint admits the allegations in paragraph 15 of the Amended Complaint.

16. Defendant NexPoint admits the allegations in paragraph 16 of the Amended Complaint.

17. Defendant NexPoint admits the allegations in paragraph 17 of the Amended Complaint.

18. Defendant NexPoint admits the allegations in paragraph 18 of the Amended Complaint.

19. Defendant NexPoint admits the allegations in paragraph 19 of the Amended Complaint.

STATEMENT OF FACTS

20. Defendant NexPoint admits that it has executed at least one promissory note under which the Debtor is a payee. Any allegations in paragraph 20 note expressly admitted are denied.

21. Defendant NexPoint admits the allegations in paragraph 21 of the Amended Complaint.

22. Defendant NexPoint denies paragraph 22 of the Complaint. The document speaks for itself and the quote set forth in paragraph 22 is not verbatim.

23. Defendant NexPoint admits the allegations in paragraph 23 of the Amended Complaint.

24. Defendant NexPoint denies paragraph 24 of the Complaint. The document speaks for itself and the quote set forth in paragraph 24 is not verbatim.

25. Defendant NexPoint admits the allegations in paragraph 25 of the Amended Complaint.

26. Defendant NexPoint admits that it did not make a payment under the Note on December 31, 2020. Defendant NexPoint denies that any payment was due under the Note on December 31, 2020. To the extent not expressly admitted, paragraph 26 of the Amended Complaint is denied.

27. Defendant NexPoint admits that Exhibit 2 to the Amended Complaint (the "Demand Letter") is a true and correct copy of what it purports to be and that the document speaks for itself. To the extent paragraph 27 of the Amended Complaint asserts a legal conclusion, no response is required, and it is denied. To the extent not expressly admitted, paragraph 27 of the Amended Complaint is denied.

28. Defendant NexPoint admits that it paid the Debtor $1,406,111.92 on January 14, 2021, but denies that any payment was due on December 31, 2020 or that this was an attempt to cure a default. To the extent not expressly admitted, paragraph 28 of the Amended Complaint is denied.

29. Defendant NexPoint admits that Exhibit 3 to the Amended Complaint (the "Second Demand Letter") is a true and correct copy of what it purports to be and that the document speaks for itself. To the extent paragraph 29 of the Amended Complaint asserts a legal conclusion, no response is required, and it is denied. To the extent not expressly admitted, paragraph 29 of the Amended Complaint is denied.

30. To the extent paragraph 30 of the Amended Complaint asserts a legal conclusion, no response is necessary, and it is denied. The Defendant otherwise admits paragraph 30 of the Amended Complaint.

31. Defendant NexPoint lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 31 of the Amended Complaint and therefore denies the same.

32. Defendant NexPoint denies the allegations in paragraph 32 of the Amended Complaint.

33. Defendant NexPoint admits that the Debtor filed the Original Complaint in this action on January 22, 2021, as alleged in the first sentence of paragraph 33 of the Amended

Complaint. Defendant NexPoint denies it is liable for the relief requested in the Original Complaint. To the extent not expressly admitted, paragraph 33 of the Amended Complaint is denied.

34. Defendant NexPoint admits the allegations in paragraph 34 of the Amended Complaint.

35. Defendant NexPoint admits the allegations in paragraph 35 of the Amended Complaint.

36. Defendant NexPoint admits that NexPoint's First Amended Answer speaks for itself. To the extent paragraph 36 contradicts the First Amended Answer, it is denied.

37. Defendant NexPoint admits that NexPoint's First Amended Answer speaks for itself. To the extent paragraph 37 contradicts the First Amended Answer, it is denied.

38. Paragraph 38 of the Amended Complaint asserts a legal conclusion to which no answer is required. To the extent of any factual allegation, Defendant NexPoint admits that Mr. Dondero controlled NPA and denies that he controlled the Debtor at the time of the Alleged Agreement.

39. Defendant NexPoint lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 39 of the Amended Complaint and therefore denies the same.

40. Defendant NexPoint denies the allegations in paragraph 40 of the Amended Complaint.

41. Defendant NexPoint admits that Exhibit 4 to the Amended Complaint is a true and correct copy of what it purports to be and that the document speaks for itself. To the extent paragraph 41 of the Amended Complaint asserts a legal conclusion, no response is required, and

it is denied. To the extent not expressly admitted, paragraph 41 of the Amended Complaint is denied.

42. Paragraph 42 of the Amended Complaint states a legal conclusion that does not require a response and is therefore denied.

43. Paragraph 43 of the Amended Complaint states a legal conclusion that does not require a response and is therefore denied.

FIRST CLAIM FOR RELIEF
(against NexPoint)
(for Breach of Contract)

44. Paragraph 44 of the Amended Complaint is a sentence of incorporation that does not require a response. All prior responses are incorporated herein by reference.

45. Paragraph 45 of the Amended Complaint states a legal conclusion that does not require a response and is therefore denied. To the extent of any factual allegation, it is denied.

46. Paragraph 46 of the Amended Complaint states a legal conclusion that does not require a response and is therefore denied. To the extent of any factual allegation, it is denied.

47. Paragraph 47 of the Amended Complaint states a legal conclusion that does not require a response and is therefore denied. To the extent of any factual allegation, it is denied.

48. Paragraph 48 of the Amended Complaint states a legal conclusion that does not require a response and is therefore denied. To the extent of any factual allegation, it is denied.

SECOND CLAIM FOR RELIEF
(against NexPoint)
(Turnover by NexPoint Pursuant to 11 U.S.C. § 542(b))

49. Paragraph 49 of the Amended Complaint is a sentence of incorporation that does not require a response and is therefore denied. All prior responses are incorporated herein by reference.

50. Paragraph 50 of the Amended Complaint states a legal conclusion that does not require a response and is therefore denied. To the extent of any factual allegation, it is denied.

51. Paragraph 51 of the Amended Complaint states a legal conclusion that does not require a response and is therefore denied. To the extent of any factual allegation, it is denied.

52. Paragraph 52 of the Amended Complaint states a legal conclusion that does not require a response and is therefore denied. To the extent of any factual allegation, it is denied.

53. Paragraph 53 of the Amended Complaint states a legal conclusion that does not require a response and is therefore denied. Defendant NexPoint admits that the Plaintiff transmitted the Demand Letter and the Second Demand Letter, and those documents speak for themselves.

54. Paragraph 54 of the Amended Complaint states a legal conclusion that does not require a response and is therefore denied. To the extent of any factual allegation, it is denied.

55. Paragraph 55 of the Amended Complaint states a legal conclusion that does not require a response and is therefore denied. To the extent of any factual allegation, it is denied.

THIRD CLAIM FOR RELIEF
(Against NexPoint)
(Avoidance and Recovery of Actual Fraudulent Transfer under 11 U.S.C. §§ 548(a)(1)(A) and 550)

56. Paragraph 56 of the Amended Complaint is a sentence of incorporation that does not require a response. All prior responses are incorporated herein by reference.

57. Paragraph 57 of the Amended Complaint states a legal conclusion that does not require a response and is therefore denied.

58. Paragraph 58 of the Amended Complaint states a legal conclusion that does not require a response and is therefore denied. To the extent of any factual allegation, it is denied.

59. Paragraph 59 of the Amended Complaint states a legal conclusion that does not require a response and is therefore denied. To the extent of any factual allegation, it is denied.

60. Paragraph 60 of the Amended Complaint states a legal conclusion that does not require a response and is therefore denied. To the extent of any factual allegation, it is denied.

61. Paragraph 61 of the Amended Complaint states a legal conclusion that does not require a response and is therefore denied. To the extent of any factual allegation, it is denied.

FOURTH CLAIM FOR RELIEF
(Against NexPoint)
(Avoidance and Recovery of Actual Fraudulent Transfer Under 11 U.S.C. § 544(b) and 550, and Tex. Bus. & C. Code § 24.005(a)(1))

62. Paragraph 62 of the Amended Complaint is a sentence of incorporation that does not require a response. All prior responses are incorporated herein by reference.

63. Paragraph 63 of the Amended Complaint states a legal conclusion that does not require a response and is therefore denied.

64. Paragraph 64 of the Amended Complaint states a legal conclusion that does not require a response and is therefore denied. To the extent of any factual allegation, it is denied.

65. Paragraph 65 of the Amended Complaint states a legal conclusion that does not require a response and is therefore denied. To the extent of any factual allegation, it is denied.

66. Paragraph 66 of the Amended Complaint states a legal conclusion that does not require a response and is therefore denied. To the extent of any factual allegation, it is denied.

FIFTH CLAIM FOR RELIEF
(Against Dugaboy Investment Trust and Nancy Dondero)
(For Declaratory Relief: -- 11 U.S.C. § 105(a) and Fed. R. Bankr. P. 7001)

67. Paragraph 67 of the Amended Complaint is a sentence of incorporation that does not require a response. All prior responses are incorporated herein by reference.

68. This claim is only asserted against Defendants Dugaboy Investment Trust and Nancy Dondero. Therefore, Defendant NexPoint is not required to respond to this claim.

69. This claim is only asserted against Defendants Dugaboy Investment Trust and Nancy Dondero. Therefore, Defendant NexPoint is not required to respond to this claim.

70. Paragraph 70 of the Amended Complaint states a legal conclusion that does not require a response and is therefore denied.

SIXTH CLAIM FOR RELIEF
(Against Dugaboy Investment Trust and Nancy Dondero)
(Breach of Fiduciary Duty)

71. Paragraph 71 of the Amended Complaint is a sentence of incorporation that does not require a response. All prior responses are incorporated herein by reference.

72. This claim is only asserted against Defendants Dugaboy Investment Trust and Nancy Dondero. Therefore, Defendant NexPoint is not required to respond to this claim.

73. This claim is only asserted against Defendants Dugaboy Investment Trust and Nancy Dondero. Therefore, Defendant NexPoint is not required to respond to this claim.

74. This claim is only asserted against Defendants Dugaboy Investment Trust and Nancy Dondero. Therefore, Defendant NexPoint is not required to respond to this claim.

SEVENTH CLAIM FOR RELIEF
(Against James Dondero and Nancy Dondero)
(Aiding and Abetting a Breach of Fiduciary Duty)

75. Paragraph 75 of the Amended Complaint is a sentence of incorporation that does not require a response. All prior responses are incorporated herein by reference.

76. This claim is only asserted against Defendants James Dondero and Nancy Dondero. Therefore, Defendant NexPoint is not required to respond to this claim.

77. This claim is only asserted against Defendants James Dondero and Nancy Dondero. Therefore, Defendant NexPoint is not required to respond to this claim.

78. This claim is only asserted against Defendants James Dondero and Nancy Dondero. Therefore, Defendant NexPoint is not required to respond to this claim.

79. This claim is only asserted against Defendants James Dondero and Nancy Dondero. Therefore, Defendant NexPoint is not required to respond to this claim.

Defendant NexPoint denies that the Plaintiff is entitled to the relief requested in the prayer, including as to parts (i), (ii), (iii), (iv), (v), (vi), (vii) and (iii) [sic].

AFFIRMATIVE DEFENSES

80. Pursuant to that certain Shared Services Agreement, the Plaintiff was responsible for making payments on behalf of the Defendant under the note. Any alleged default under the note was the result of the Plaintiff's own negligence, misconduct, breach of contract, etc.

81. Delay in the performance of a contract is excused when the party who seeks to enforce the contract caused the delay. It was therefore inappropriate for the Plaintiff to accelerate the note when the brief delay in payment was the Plaintiff's own fault.

82. Furthermore, the Plaintiff has waived the right to accelerate the note and /or the Plaintiff is estopped to enforce the alleged acceleration by accepting payment after the same.

83. Furthermore, the Plaintiff's claims are barred in whole or in part because, prior to any alleged breach or acceleration, the Plaintiff agreed that it would not collect on the note upon fulfilment of certain conditions subsequent. Specifically, sometime between December of the year in which each Note was made and February of the following year, Defendant Nancy Dondero, as representative for a majority of the Class A shareholders of Plaintiff agreed that Plaintiff would forgive the Notes if certain portfolio companies were sold for greater than cost or on a basis outside of Defendant James Dondero's control. This agreement setting forth the conditions subsequent to demands for payment on the Notes was an oral agreement; however, Defendant NexPoint believes there may be testimony or email correspondence that discusses the

existence of this agreement that may be uncovered through discovery in this Adversary Proceeding.

84. Defendant NexPoint asserts that any fraudulent transfer claim is barred because NexPoint acted in good faith, without knowledge of any alleged avoidability, and because reasonably equivalent value was provided for any alleged transfer or obligation.

85. Defendant NexPoint asserts that any fraudulent transfer claim is barred because no transferor or transferee, or obligor or obligee, was insolvent.

86. To the extent of any avoidance, NexPoint asserts a lien under 11 U.S.C. § 548(c) to the extent that NexPoint gave value, and a similar preference lien under any applicable provision of the Texas Uniform Fraudulent Transfer Act.

JURY DEMAND

87. Defendant NexPoint demands a trial by jury of all issues so triable pursuant to Rule 38 of the Federal Rules of Civil Procedure and Rule 9015 of the Federal Rules of Bankruptcy Procedure.

88. Defendant NexPoint does not consent to the Bankruptcy Court conducting a jury trial and therefore demands a jury trial in the District Court.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Defendant NexPoint respectfully requests that, following a trial on the merits, the Court enter a judgment that the Plaintiff take nothing on the Amended Complaint and provide Defendant NexPoint such other relief to which it is entitled.

RESPECTFULLY SUBMITTED this 1st day of September, 2021.

MUNSCH HARDT KOPF & HARR, P.C.

By: /s/ Davor Rukavina

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that, on September 1, 2021, a true and correct copy of this document was served via the Court's CM/ECF system on counsel for the Plaintiff.

/s/ Davor Rukavina
Davor Rukavina

EXHIBIT 16

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Counsel for Defendant Highland Capital Management Services, Inc.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	**Case No. 19-34054-SGJ-11**
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	**Chapter 11**
	§	
Debtor.	§	
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	
Plaintiff.	§	
	§	
v.	§	
	§	**Adversary No.: 21-03006-sgj**
HIGHLAND CAPITAL MANAGEMENT SERVICES, INC., JAMES DONDERO, NANCY DONDERO, AND THE DUGABOY INVESTMENT TRUST,	§	
	§	
Defendants.	§	

DEFENDANT HIGHLAND CAPITAL MANAGEMENT SERVICES, INC.'S ANSWER TO AMENDED COMPLAINT

Defendant Highland Capital Management Services, Inc. ("HCMS"), defendant in the above-styled and numbered adversary proceeding (the "Adversary Proceeding") filed by Highland Capital Management, L.P. (the "Plaintiff"), hereby files this Answer (the "Answer") responding to the *Amended Complaint for (I) Breach of Contract and (II) Turnover of Property (III) Fraudulent Transfer, and (IV) Breach of Fiduciary Duty* [Adv. Dkt. 68] (the "Amended

Complaint"). Where an allegation in the Amended Complaint is not expressly admitted in this Amended Answer, it is denied.

In filing this Answer, Defendant HCMS does not waive any rights to compel arbitration, as set forth in Defendants' Motion to Compel Arbitration [Adv. Dkt. 70], filed on September 1, 2021.[1]

PRELIMINARY STATEMENT

1. The first sentence of paragraph 1 of the Amended Complaint sets forth the Plaintiff's objective in bringing the Amended Complaint and does not require a response. To the extent it contains factual allegations, they are denied. The second sentence contains a legal conclusion that does not require a response. To the extent it contains factual allegations, they are denied.

2. Defendant HCMS admits that HCMS' First Amended Answer speaks for itself. To the extent paragraph 2 contradicts the First Amended Answer, it is denied.

3. Defendant HCMS denies the allegations in paragraph 3 of the Amended Complaint.

4. Paragraph 4 of the Amended Complaint sets forth the Plaintiff's objective in bringing the Amended Complaint and does not require a response. To the extent it contains factual allegations, they are denied.

5. Paragraph 5 of the Amended Complaint contains a summary of the relief the Plaintiff seeks and does not require a response. To the extent it contains factual allegations, they are denied.

[1] *Williams v. Cigna Financial Advisors, Inc.*, 56 F.3d 656 (5th Cir. 1995) (Defendant did not substantially invoke the judicial process and waive its right to arbitration despite removal of action to federal court, filing motion to dismiss, filing motion to stay proceedings, answering plaintiff's complaint, asserting counterclaim, and exchanging discovery); *Keytrade USA, Inc. v. AIN Temouchent M/V*, 404 F.3d 891 (5th Cir. 2005) (Arbitration not waived when defendant filed a 100-plus page motion for summary judgment and a concurrent motion to arbitrate); *Gulf Guaranty Life Ins. Co. v. Conn. Gen. Life Ins. Co.*, 304 F.3d 476 (5th Cir. 2002) (no waiver of arbitration right when the party seeking arbitration did no more than defend itself against the claims made against it).

JURISDICTION AND VENUE

6. Defendant HCMS admits that this Adversary Proceeding relates to the Plaintiff's bankruptcy case but denies any implication that this fact confers Constitutional authority on the Bankruptcy Court to adjudicate this dispute. Any allegations in paragraph 6 not expressly admitted are denied.

7. Defendant HCMS admits that the Court has statutory (but not Constitutional) jurisdiction to hear this Adversary Proceeding. Any allegations in paragraph 7 not expressly admitted are denied.

8. Defendant HCMS denies that a breach of contract claim is core. Defendant HCMS denies that a § 542(b) turnover proceeding is the appropriate mechanism to collect a contested debt. Defendant HCMS admits that a § 542(b) turnover proceeding is statutorily core but denies that it is Constitutionally core under *Stern v. Marshall*. Defendant HCMS does not consent to the Bankruptcy Court entering final orders or judgment in this Adversary Proceeding. Any allegations in paragraph 8 not expressly admitted are denied.

9. Subject to the Defendants' Motion to Compel Arbitration, Defendant HCMS admits paragraph 9 of the Amended Complaint.

THE PARTIES

10. Defendant HCMS admits the allegations in paragraph 10 of the Amended Complaint.

11. Defendant HCMS admits the allegations in paragraph 11 of the Amended Complaint.

12. Defendant HCMS admits that Defendant James Dondero was the President of the Debtor's General Partner, Strand Advisors, Inc. and the Debtor's CEO until his resignation on

January 9, 2020. The third sentence of paragraph 12 asserts a legal conclusion to which no response is required. Defendant HCMS denies any remaining allegations contained in paragraph 12.

13. Defendant HCMS lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 13 of the Amended Complaint and therefore denies the same.

14. Defendant HCMS lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 14 of the Amended Complaint and therefore denies the same.

CASE BACKGROUND

15. Defendant HCMS admits the allegations in paragraph 15 of the Amended Complaint.

16. Defendant HCMS admits the allegations in paragraph 16 of the Amended Complaint.

17. Defendant HCMS admits the allegations in paragraph 17 of the Amended Complaint.

18. Defendant HCMS admits the allegations in paragraph 18 of the Amended Complaint.

19. Defendant HCMS admits the allegations in paragraph 19 of the Amended Complaint.

STATEMENT OF FACTS

20. Defendant HCMS admits that it has executed at least one promissory note under which the Debtor is a payee. Any allegations in paragraph 20 note expressly admitted are denied.

21. Defendant HCMS admits that it signed the document attached to the Complaint as Exhibit 1. Defendant HCMS denies any allegations in paragraph 21 that are not expressly admitted.

22. Defendant HCMS admits that it signed the document attached to the Complaint as Exhibit 2. Defendant HCMS denies any allegations in paragraph 22 that are not expressly admitted.

23. Defendant HCMS denies that it signed the document attached to the Complaint as Exhibit 3. Defendant HCMS denies any allegations in paragraph 23 that are not expressly admitted.

24. Defendant HCMS denies that it signed the document attached to the Complaint as Exhibit 4. Defendant HCMS denies any allegations in paragraph 21 that are not expressly admitted.

25. Defendant HCMS admits that Plaintiff correctly transcribed Section 2 of Exhibits 1-4 to the Complaint in paragraph 25.

26. Defendant HCMS admits that Plaintiff correctly transcribed Section 4 of Exhibits 1-4 to the Complaint in paragraph 26.

27. Defendant HCMS admits that Plaintiff correctly transcribed Section 6 of Exhibits 1-4 to the Complaint in paragraph 27.

28. Defendant HCMS admits that Plaintiff sent it a copy of Exhibit 5. Defendant HCMS admits that Plaintiff correctly transcribed an excerpt of Exhibit 5 in the third sentence of

paragraph 28. Defendant HCMS denies any allegations in paragraph 28 that are not expressly admitted.

29. To the extent paragraph 29 asserts a legal conclusion, no response is required, and it is denied. Defendant HCMS otherwise admits the allegations in paragraph 29.

30. Defendant HCMS lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 30 of the Amended Complaint and therefore denies the same.

31. Defendant HCMS lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 31 of the Amended Complaint and therefore denies the same.

32. Defendant HCMS lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 32 of the Amended Complaint and therefore denies the same.

33. Defendant HCMS lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 33 of the Amended Complaint and therefore denies the same.

34. Defendant HCMS lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 34 of the Amended Complaint and therefore denies the same. Defendant HCMS denies the allegations in the second sentence of paragraph 34 of the Amended Complaint.

35. Defendant HCMS admits that it has executed at least one promissory note under which Debtor is the payee. Defendant HCMS denies any allegations in paragraph 35 that are not expressly admitted.

36. Defendant HCMS admits that it signed the document attached to the Amended Complaint as Exhibit 6. Defendant HCMS denies any allegations in paragraph 29 that are not expressly admitted.

37. Defendant HCMS admits that Plaintiff correctly transcribed Section 2 of Exhibit 6 to the Amended Complaint in paragraph 37. Defendant HCMS denies any allegations in paragraph 37 that are not expressly admitted.

38. Defendant HCMS admits that Plaintiff correctly transcribed Section 3 of Exhibit 6 to the Amended Complaint in paragraph 38. Defendant HCMS denies any allegations in paragraph 37 that are not expressly admitted.

39. Defendant HCMS admits that Plaintiff correctly transcribed Section 4 of Exhibit 6 to the Amended Complaint in paragraph 39. Defendant HCMS denies any allegations in paragraph 37 that are not expressly admitted.

40. Defendant HCMS admits that Plaintiff correctly transcribed Section 6 of Exhibit 6 to the Amended Complaint in paragraph 40. Defendant HCMS denies any allegations in paragraph 37 that are not expressly admitted.

41. To the extent paragraph 41 of the Amended Complaint asserts a legal conclusion, no response is necessary, and it is denied. Defendant HCMS otherwise denies paragraph 41 of the Amended Complaint.

42. Defendant HCMS admits that Plaintiff sent it a copy of Exhibit 7. Defendant HCMS admits that Plaintiff correctly transcribed an excerpt of Exhibit 7 in the third sentence of paragraph 42 of the Amended Complaint. Defendant HCMS denies any allegations in paragraph 42 that are not expressly admitted.

43. Defendant HCMS lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 43 of the Amended Complaint and therefore denies the same.

44. Defendant HCMS denies the allegations in paragraph 44 of the Amended Complaint.

45. Defendant HCMS admits that the Debtor filed the Original Complaint in this action on January 22, 2021, as alleged in the first sentence of paragraph 45 of the Amended Complaint. Defendant HCMS denies it is liable for the relief requested in the Original Complaint. To the extent not expressly admitted, paragraph 45 of the Amended Complaint is denied.

46. Defendant HCMS admits the allegations in paragraph 46 of the Amended Complaint.

47. Defendant HCMS admits the allegations in paragraph 47 of the Amended Complaint.

48. In response to the allegations in paragraph 48 of the Amended Complaint, Defendant HCMS admits that HCMS' First Amended Answer speaks for itself. To the extent paragraph 48 contradicts the First Amended Answer, it is denied.

49. Defendant HCMS admits that HCMS' First Amended Answer speaks for itself. To the extent paragraph 49 contradicts the First Amended Answer, it is denied.

50. Paragraph 50 of the Amended Complaint states a legal conclusion that does not require a response and is therefore denied.

51. Defendant HCMS lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 51 of the Amended Complaint and therefore denies the same.

52. Defendant HCMS denies the allegations in paragraph 52 of the Amended Complaint.

53. Defendant HCMS admits that Exhibit 8 to the Amended Complaint is a true and correct copy of what it purports to be and that the document speaks for itself. To the extent paragraph 53 of the Amended Complaint asserts a legal conclusion, no response is required, and it is denied. To the extent not expressly admitted, paragraph 53 of the Amended Complaint is denied.

54. Paragraph 54 of the Amended Complaint states a legal conclusion that does not require a response and is therefore denied.

55. Paragraph 55 of the Amended Complaint states a legal conclusion that does not require a response and is therefore denied.

FIRST CLAIM FOR RELIEF
(against HCMS)
(for Breach of Contract)

56. Paragraph 56 of the Amended Complaint is a sentence of incorporation that does not require a response. All prior responses are incorporated herein by reference.

57. Paragraph 57 of the Amended Complaint states a legal conclusion that does not require a response and is therefore denied.

58. Paragraph 58 of the Amended Complaint states a legal conclusion that does not require a response and is therefore denied.

59. Paragraph 59 of the Amended Complaint states a legal conclusion that does not require a response and is therefore denied.

60. Paragraph 60 of the Amended Complaint states a legal conclusion that does not require a response and is therefore denied.

61. Defendant HCMS denies paragraph 61 of the Amended Complaint.

62. Defendant HCMS denies paragraph 62 of the Amended Complaint.

SECOND CLAIM FOR RELIEF
(against HCMS)
(Turnover by HCMS Pursuant to 11 U.S.C. § 542(b))

63. Paragraph 63 of the Amended Complaint is a sentence of incorporation that does not require a response and is therefore denied. All prior responses are incorporated herein by reference.

64. Paragraph 64 of the Amended Complaint states a legal conclusion that does not require a response and is therefore denied.

65. Paragraph 65 of the Amended Complaint states a legal conclusion that does not require a response and is therefore denied.

66. Paragraph 66 of the Amended Complaint states a legal conclusion that does not require a response and is therefore denied.

67. Defendant HCMS admits that Plaintiff transmitted Exhibits 5 and 7 to the Amended Complaint.

68. Paragraph 68 of the Amended Complaint states a legal conclusion that does not require a response and is therefore denied.

69. Defendant HCMS denies paragraph 69 of the Amended Complaint.

THIRD CLAIM FOR RELIEF
(Against HCMS)
(Avoidance and Recovery of Actual Fraudulent Transfer under 11 U.S.C. §§ 548(a)(1)(A) and 550)

70. Paragraph 70 of the Amended Complaint is a sentence of incorporation that does not require a response. All prior responses are incorporated herein by reference.

71. Paragraph 71 of the Amended Complaint states a legal conclusion that does not require a response and is therefore denied.

72. Paragraph 72 of the Amended Complaint states a legal conclusion that does not require a response and is therefore denied.

73. Paragraph 73 of the Amended Complaint states a legal conclusion that does not require a response and is therefore denied.

74. Paragraph 74 of the Amended Complaint states a legal conclusion that does not require a response and is therefore denied.

75. Paragraph 75 of the Amended Complaint states a legal conclusion that does not require a response and is therefore denied.

FOURTH CLAIM FOR RELIEF
(Against HCMS)
(Avoidance and Recovery of Actual Fraudulent Transfer Under 11 U.S.C. § 544(b) and 550, and Tex. Bus. & C. Code § 24.005(a)(1))

76. Paragraph 76 of the Amended Complaint is a sentence of incorporation that does not require a response. All prior responses are incorporated herein by reference.

77. Paragraph 77 of the Amended Complaint states a legal conclusion that does not require a response and is therefore denied.

78. Paragraph 78 of the Amended Complaint states a legal conclusion that does not require a response and is therefore denied.

79. Paragraph 79 of the Amended Complaint states a legal conclusion that does not require a response and is therefore denied.

80. Paragraph 80 of the Amended Complaint states a legal conclusion that does not require a response and is therefore denied.

FIFTH CLAIM FOR RELIEF
(Against Dugaboy Investment Trust and Nancy Dondero)
(For Declaratory Relief: -- 11 U.S.C. § 105(a) and Fed. R. Bankr. P. 7001)

81. Paragraph 81 of the Amended Complaint is a sentence of incorporation that does not require a response. All prior responses are incorporated herein by reference.

82. This claim is only asserted against Defendants Dugaboy Investment Trust and Nancy Dondero. Therefore, Defendant HCMS is not required to respond to this claim.

83. This claim is only asserted against Defendants Dugaboy Investment Trust and Nancy Dondero. Therefore, Defendant HCMS is not required to respond to this claim.

84. Paragraph 84 of the Amended Complaint states a legal conclusion that does not require a response and is therefore denied.

SIXTH CLAIM FOR RELIEF
(Against Dugaboy Investment Trust and Nancy Dondero)
(Breach of Fiduciary Duty)

85. Paragraph 85 of the Amended Complaint is a sentence of incorporation that does not require a response. All prior responses are incorporated herein by reference.

86. This claim is only asserted against Defendants Dugaboy Investment Trust and Nancy Dondero. Therefore, Defendant HCMS is not required to respond to this claim.

87. This claim is only asserted against Defendants Dugaboy Investment Trust and Nancy Dondero. Therefore, Defendant HCMS is not required to respond to this claim.

88. This claim is only asserted against Defendants Dugaboy Investment Trust and Nancy Dondero. Therefore, Defendant HCMS is not required to respond to this claim.

SEVENTH CLAIM FOR RELIEF
(Against James Dondero and Nancy Dondero)
(Aiding and Abetting a Breach of Fiduciary Duty)

89. Paragraph 89 of the Amended Complaint is a sentence of incorporation that does not require a response. All prior responses are incorporated herein by reference.

90. This claim is only asserted against Defendants James Dondero and Nancy Dondero. Therefore, Defendant HCMS is not required to respond to this claim.

91. This claim is only asserted against Defendants James Dondero and Nancy Dondero. Therefore, Defendant HCMS is not required to respond to this claim.

92. This claim is only asserted against Defendants James Dondero and Nancy Dondero. Therefore, Defendant HCMS is not required to respond to this claim.

93. This claim is only asserted against Defendants James Dondero and Nancy Dondero. Therefore, Defendant HCMS is not required to respond to this claim.

Defendant HCMS denies that the Plaintiff is entitled to the relief requested in the prayer, including as to parts (i), (ii), (iii), (iv), (v), (vi), (vii) and (iii) [sic].

AFFIRMATIVE DEFENSES

94. Plaintiff's claims are barred in whole or in part by the doctrine of justification and/or repudiation.

95. Plaintiff's claims are barred in whole or in part by the doctrine of estoppel.

96. Plaintiff's claims are barred in whole or in part by the doctrine of waiver.

97. Plaintiff's claims are barred in whole or in part because prior to the demands for payment Plaintiff agreed that it would not collect the Notes upon fulfillment of conditions subsequent. Specifically, sometime between December of the year in which each note was made and February of the following year, Defendant Nancy Dondero, as representative for a majority

of the Class A shareholders of Plaintiff agreed that Plaintiff would forgive the Notes if certain portfolio companies were sold for greater than cost or on a basis outside of Defendant James Dondero's control. This agreement setting forth the conditions subsequent to demands for payment on the Notes was an oral agreement; however, Defendant HCMS believes there may be testimony or email correspondence that discusses the existence of this agreement that may be uncovered through discovery in this Adversary Proceeding.

98. Defendant HCMS further asserts that Plaintiff's fraudulent transfer claims should be barred, in whole or in part, because at all relevant times Defendant HCMS acted in good faith.

99. Defendant HCMS further asserts that Plaintiff's fraudulent transfer claims should be barred, in whole or in part, because the alleged fraudulent transfer (*i.e.*, the "Alleged Agreement") was taken in good faith and for reasonably equivalent value.

100. Defendant HCMS further asserts that Plaintiff's fraudulent transfer claims should be barred, in whole or in part, because there was no intent to hinder, delay, or defraud any creditors of the Debtor by entering into the "Alleged Agreement."

101. Defendant HCMS further asserts that Plaintiff's fraudulent transfer claims should be barred, in whole or in part, because the Debtor was solvent at the time the "Alleged Agreement" was made.

102. Defendant HCMS further asserts that each Note is ambiguous as a whole based on the signatory and/or references to unspecified related agreements.

JURY DEMAND

103. Except to the extent compelled to arbitration, Defendant HCMS demands a trial by jury of all issues so triable pursuant to Rule 38 of the Federal Rules of Civil Procedure and Rule 9015 of the Federal Rules of Bankruptcy Procedure.

104. Defendant HCMS does not consent to the Bankruptcy Court conducting a jury trial and therefore demands a jury trial in the District Court.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Defendant HCMS respectfully requests that, following a trial on the merits, the Court enter a judgment that the Plaintiff take nothing on the Amended Complaint and provide Defendant HCMS such other relief to which it is entitled.

Dated: September 1, 2021

Respectfully submitted,

/s/ Deborah Deitsch-Perez

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ATTORNEYS FOR DEFENDANT HIGHLAND CAPITAL MANAGEMENT SERVICES, INC.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that, on September 1, 2021, a true and correct copy of this document was served via the Court's CM/ECF system on counsel for the Plaintiff.

/s/ Deborah Deitsch-Perez
Deborah Deitsch-Perez

EXHIBIT 17

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Counsel for Defendant HCRE Partners, LLC
(n/k/a NexPoint Real Estate Partners, LLC)

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	**Case No. 19-34054-SGJ-11**
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	**Chapter 11**
	§	
Debtor.	§	
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	
Plaintiff.	§	
	§	
v.	§	
	§	**Adversary No.: 21-03007-sgj**
HCRE PARTNERS, LLC (n/k/a NEXPOINT REAL ESTATE PARTNERS, LLC), JAMES DONDERO, NANCY DONDERO, AND THE DUGABOY INVESTMENT TRUST	§	
	§	
Defendants.	§	

DEFENDANT HCRE PARTNERS, LLC (n/k/a NEXPOINT REAL ESTATE PARTNERS, LLC)'S ANSWER TO AMENDED COMPLAINT

Defendant HCRE Partners, LLC (n/k/a NexPoint Real Estate Partners, LLC) ("NREP"), defendant in the above-styled and numbered adversary proceeding (the "Adversary Proceeding") filed by Highland Capital Management, L.P. (the "Plaintiff"), hereby files this Answer (the "Answer") responding to the *Amended Complaint for (I) Breach of Contract and (II) Turnover of Property (III) Fraudulent Transfer, and (IV) Breach of Fiduciary Duty* [Adv. Dkt. 63] (the

"Amended Complaint"). Where an allegation in the Amended Complaint is not expressly admitted in this Amended Answer, it is denied.

In filing this Answer, Defendant NREP does not waive any rights to compel arbitration, as set forth in Defendants' Motion to Compel Arbitration [Adv. Dkt. 65], filed on September 1, 2021.[1]

PRELIMINARY STATEMENT

1. The first sentence of paragraph 1 of the Amended Complaint sets forth the Plaintiff's objective in bringing the Amended Complaint and does not require a response. To the extent it contains factual allegations, they are denied. The second sentence contains a legal conclusion that does not require a response. To the extent it contains factual allegations, they are denied.

2. Defendant NREP admits that NREP's First Amended Answer speaks for itself. To the extent paragraph 2 contradicts the First Amended Answer, it is denied.

3. Defendant NREP denies the allegations in paragraph 3 of the Amended Complaint.

4. Paragraph 4 of the Amended Complaint sets forth the Plaintiff's objective in bringing the Amended Complaint and does not require a response. To the extent it contains factual allegations, they are denied.

[1] *Williams v. Cigna Financial Advisors, Inc.*, 56 F.3d 656 (5th Cir. 1995) (Defendant did not substantially invoke the judicial process and waive its right to arbitration despite removal of action to federal court, filing motion to dismiss, filing motion to stay proceedings, answering plaintiff's complaint, asserting counterclaim, and exchanging discovery); *Keytrade USA, Inc. v. AIN Temouchent M/V*, 404 F.3d 891 (5th Cir. 2005) (Arbitration not waived when defendant filed a 100-plus page motion for summary judgment and a concurrent motion to arbitrate); *Gulf Guaranty Life Ins. Co. v. Conn. Gen. Life Ins. Co.*, 304 F.3d 476 (5th Cir. 2002) (no waiver of arbitration right when the party seeking arbitration did no more than defend itself against the claims made against it).

5. Paragraph 5 of the Amended Complaint contains a summary of the relief the Plaintiff seeks and does not require a response. To the extent it contains factual allegations, they are denied.

JURISDICTION AND VENUE

6. Defendant NREP admits that this Adversary Proceeding relates to the Plaintiff's bankruptcy case but denies any implication that this fact confers Constitutional authority on the Bankruptcy Court to adjudicate this dispute. Any allegations in paragraph 6 not expressly admitted are denied.

7. Defendant NREP admits that the Court has statutory (but not Constitutional) jurisdiction to hear this Adversary Proceeding. Any allegations in paragraph 7 not expressly admitted are denied.

8. Defendant NREP denies that a breach of contract claim is core. Defendant NREP denies that a § 542(b) turnover proceeding is the appropriate mechanism to collect a contested debt. Defendant NREP admits that a § 542(b) turnover proceeding is statutorily core but denies that it is Constitutionally core under *Stern v. Marshall*. Defendant NREP does not consent to the Bankruptcy Court entering final orders or judgment in this Adversary Proceeding. Any allegations in paragraph 8 not expressly admitted are denied.

9. Subject to the Defendants' Motion to Compel Arbitration, Defendant NREP admits paragraph 9 of the Amended Complaint.

THE PARTIES

10. Defendant NREP admits the allegations in paragraph 10 of the Amended Complaint.

11. Defendant NREP admits the allegations in paragraph 11 of the Amended Complaint.

12. Defendant NREP admits that Defendant James Dondero was the President of the Debtor's General Partner, Strand Advisors, Inc. and the Debtor's CEO until his resignation on January 9, 2020. The third sentence of paragraph 12 asserts a legal conclusion to which no response is required. Defendant NREP denies any remaining allegations contained in paragraph 12.

13. Defendant NREP lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 13 of the Amended Complaint and therefore denies the same.

14. Defendant NREP lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 14 of the Amended Complaint and therefore denies the same.

CASE BACKGROUND

15. Defendant NREP admits the allegations in paragraph 15 of the Amended Complaint.

16. Defendant NREP admits the allegations in paragraph 16 of the Amended Complaint.

17. Defendant NREP admits the allegations in paragraph 17 of the Amended Complaint.

18. Defendant NREP admits the allegations in paragraph 18 of the Amended Complaint.

19. Defendant NREP admits the allegations in paragraph 19 of the Amended Complaint.

STATEMENT OF FACTS

20. Defendant NREP admits that it has executed at least one promissory note under which the Debtor is a payee. Any allegations in paragraph 20 note expressly admitted are denied.

21. Defendant NREP admits that it signed the document attached to the Amended Complaint as Exhibit 1. Defendant NREP denies any allegations in paragraph 21 that are not expressly admitted.

22. Defendant NREP admits that it signed the document attached to the Amended Complaint as Exhibit 2. Defendant NREP denies any allegations in paragraph 22 that are not expressly admitted.

23. Defendant NREP admits that it signed the document attached to the Amended Complaint as Exhibit 3. Defendant NREP denies any allegations in paragraph 23 that are not expressly admitted.

24. Defendant NREP admits that it signed the document attached to the Amended Complaint as Exhibit 4. Defendant NREP denies any allegations in paragraph 24 that are not expressly admitted.

25. Defendant NREP admits that Plaintiff correctly transcribed Section 2 of Exhibits 1-4 to the Amended Complaint in paragraph 25.

26. Defendant NREP admits that Plaintiff correctly transcribed Section 4 of Exhibits 1-4 to the Amended Complaint in paragraph 26.

27. Defendant NREP admits that Plaintiff correctly transcribed Section 6 of Exhibits 1-4 to the Amended Complaint in paragraph 27.

28. Defendant NREP admits that Plaintiff sent it a copy of Exhibit 5. Defendant NREP admits that Plaintiff correctly transcribed an excerpt of Exhibit 5 in the third sentence of paragraph 28. Defendant NREP denies any allegations in paragraph 28 that are not expressly admitted.

29. To the extent paragraph 29 asserts a legal conclusion, no response is required, and it is denied. Defendant otherwise admits the allegations in paragraph 29.

30. Defendant NREP lacks sufficient information or knowledge to admit or deny the allegations in paragraph 30 and, therefore, denies them.

31. Defendant NREP lacks sufficient information or knowledge to admit or deny the allegations in paragraph 31 and, therefore, denies them.

32. Defendant NREP lacks sufficient information or knowledge to admit or deny the allegations in paragraph 32 and, therefore, denies them.

33. Defendant NREP lacks sufficient information or knowledge to admit or deny the allegations in paragraph 33 and, therefore, denies them.

34. Defendant NREP lacks sufficient information or knowledge to admit or deny the allegations in paragraph 34 and, therefore, denies them.

35. Defendant NREP denies the allegations in paragraph 35 of the Amended Complaint.

36. Defendant NREP admits that it has executed at least one promissory note under which Debtor is the payee. Defendant NREP denies any allegations in paragraph 36 that are not expressly admitted.

37. Defendant NREP admits that it signed the document attached to the Complaint as Exhibit 6. Defendant NREP denies any allegations in paragraph 37 that are not expressly admitted.

38. Defendant NREP admits that Plaintiff correctly transcribed Section 2 of Exhibit 6 to the Amended Complaint in paragraph 38. Defendant NREP denies any allegations in paragraph 38 that are not expressly admitted.

39. Defendant NREP admits that Plaintiff correctly transcribed Section 3 of Exhibit 6 to the Amended Complaint in paragraph 39. Defendant NREP denies any allegations in paragraph 39 that are not expressly admitted.

40. Defendant NREP admits that Plaintiff correctly transcribed Section 4 of Exhibit 6 to the Amended Complaint in paragraph 40. Defendant NREP denies any allegations in paragraph 40 that are not expressly admitted.

41. Defendant NREP admits that Plaintiff correctly transcribed Section 6 of Exhibit 6 to the Amended Complaint in paragraph 41. Defendant NREP denies any allegations in paragraph 41 that are not expressly admitted.

42. To the extent paragraph 42 of the Amended Complaint asserts a legal conclusion, no response is required, and it is denied. Defendant NREP otherwise denies paragraph 42 of the Amended Complaint.

43. Defendant NREP admits that Plaintiff sent it a copy of Exhibit 7. Defendant NREP admits that Plaintiff correctly transcribed an excerpt of Exhibit 7 in the third sentence of paragraph 43 of the Amended Complaint. Defendant NREP denies any allegations in paragraph 43 that are note expressly admitted.

44. To the extent paragraph 44 of the Amended Complaint asserts a legal conclusion, no response is required, and it is denied. Defendant NREP otherwise admits paragraph 44 of the Amended Complaint.

45. Defendant NREP is without sufficient information or knowledge to admit or deny the allegations in paragraph 45 of the Amended Complaint and, therefore, denies them.

46. Defendant NREP denies paragraph 46 of the Amended Complaint.

47. Defendant NREP admits that the Debtor filed the Original Complaint in this action on January 22, 2021, as alleged in the first sentence of paragraph 47 of the Amended Complaint. Defendant NREP denies it is liable for the relief requested in the Original Complaint. To the extent not expressly admitted, paragraph 47 of the Amended Complaint is denied.

48. Defendant NREP admits the allegations in paragraph 48 of the Amended Complaint.

49. Defendant NREP admits that NREP's First Amended Answer speaks for itself. To the extent paragraph 49 contradicts the First Amended Answer, it is denied.

50. In response to the allegations in paragraph 48 of the Amended Complaint, Defendant NREP admits that NREP's First Amended Answer speaks for itself. To the extent paragraph 50 contradicts the First Amended Answer, it is denied.

51. Defendant NREP admits that NREP's First Amended Answer speaks for itself. To the extent paragraph 51 contradicts the First Amended Answer, it is denied.

52. Paragraph 52 of the Amended Complaint states a legal conclusion that does not require a response and is therefore denied.

53. Defendant NREP lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 53 of the Amended Complaint and therefore denies the same.

54. Defendant NREP admits that Exhibit 4 to the Amended Complaint is a true and correct copy of what it purports to be and that the document speaks for itself. To the extent

paragraph 41 of the Amended Complaint asserts a legal conclusion, no response is required, and it is denied. To the extent not expressly admitted, paragraph 54 of the Amended Complaint is denied.

55. Defendant NREP admits that Exhibit 4 to the Amended Complaint is a true and correct copy of what it purports to be and that the document speaks for itself. To the extent paragraph 41 of the Amended Complaint asserts a legal conclusion, no response is required, and it is denied. To the extent not expressly admitted, paragraph 54 of the Amended Complaint is denied.

56. Paragraph 56 of the Amended Complaint states a legal conclusion that does not require a response and is therefore denied.

57. Paragraph 57 of the Amended Complaint states a legal conclusion that does not require a response and is therefore denied.

FIRST CLAIM FOR RELIEF
(against NREP)
(for Breach of Contract)

58. Paragraph 58 of the Amended Complaint is a sentence of incorporation that does not require a response. All prior responses are incorporated herein by reference.

59. Paragraph 59 of the Amended Complaint states a legal conclusion that does not require a response and is therefore denied.

60. Paragraph 60 of the Amended Complaint states a legal conclusion that does not require a response and is therefore denied.

61. Paragraph 61 of the Amended Complaint states a legal conclusion that does not require a response and is therefore denied.

62. Paragraph 62 of the Amended Complaint states a legal conclusion that does not require a response and is therefore denied.

63. Defendant NREP denies paragraph 63 of the Amended Complaint.

64. Defendant NREP denies paragraph 64 of the Amended Complaint.

SECOND CLAIM FOR RELIEF
(against NREP)
(Turnover by NREP Pursuant to 11 U.S.C. § 542(b))

65. Paragraph 65 of the Amended Complaint is a sentence of incorporation that does not require a response and is therefore denied. All prior responses are incorporated herein by reference.

66. Paragraph 66 of the Amended Complaint states a legal conclusion that does not require a response and is therefore denied.

67. Paragraph 67 of the Amended Complaint states a legal conclusion that does not require a response and is therefore denied.

68. Paragraph 68 of the Amended Complaint states a legal conclusion that does not require a response and is therefore denied.

69. Defendant NREP admits that Plaintiff transmitted Exhibits 5 and 7 to the Amended Complaint. Defendant NREP lacks sufficient information or knowledge to admit or deny the remaining allegations in paragraph 69 of the Amended Complaint and, therefore, denies them.

70. Paragraph 70 of the Amended Complaint states a legal conclusion that does not require a response and is therefore denied Defendant

71. Defendant NREP denies paragraph 71 of the Amended Complaint.

THIRD CLAIM FOR RELIEF
(Against NREP)
(Avoidance and Recovery of Actual Fraudulent Transfer under 11 U.S.C. §§ 548(a)(1)(A) and 550)

72. Paragraph 72 of the Amended Complaint is a sentence of incorporation that does not require a response. All prior responses are incorporated herein by reference.

73. Paragraph 73 of the Amended Complaint states a legal conclusion that does not require a response and is therefore denied.

74. Paragraph 74 of the Amended Complaint states a legal conclusion that does not require a response and is therefore denied.

75. Paragraph 75 of the Amended Complaint states a legal conclusion that does not require a response and is therefore denied.

76. Paragraph 76 of the Amended Complaint states a legal conclusion that does not require a response and is therefore denied.

77. Paragraph 77 of the Amended Complaint states a legal conclusion that does not require a response and is therefore denied.

FOURTH CLAIM FOR RELIEF
(Against NREP)
(Avoidance and Recovery of Actual Fraudulent Transfer Under 11 U.S.C. § 544(b) and 550, and Tex. Bus. & C. Code § 24.005(a)(1))

78. Paragraph 78 of the Amended Complaint is a sentence of incorporation that does not require a response. All prior responses are incorporated herein by reference.

79. Paragraph 79 of the Amended Complaint states a legal conclusion that does not require a response and is therefore denied.

80. Paragraph 80 of the Amended Complaint states a legal conclusion that does not require a response and is therefore denied.

81. Paragraph 81 of the Amended Complaint states a legal conclusion that does not require a response and is therefore denied.

82. Paragraph 82 of the Amended Complaint states a legal conclusion that does not require a response and is therefore denied.

FIFTH CLAIM FOR RELIEF
(Against Dugaboy Investment Trust and Nancy Dondero)
(For Declaratory Relief: -- 11 U.S.C. § 105(a) and Fed. R. Bankr. P. 7001)

83. Paragraph 83 of the Amended Complaint is a sentence of incorporation that does not require a response. All prior responses are incorporated herein by reference.

84. This claim is only asserted against Defendants Dugaboy Investment Trust and Nancy Dondero. Therefore, Defendant NREP is not required to respond to this claim.

85. This claim is only asserted against Defendants Dugaboy Investment Trust and Nancy Dondero. Therefore, Defendant NREP is not required to respond to this claim.

86. Paragraph 70 of the Amended Complaint states a legal conclusion that does not require a response and is therefore denied.

SIXTH CLAIM FOR RELIEF
(Against Dugaboy Investment Trust and Nancy Dondero)
(Breach of Fiduciary Duty)

87. Paragraph 87 of the Amended Complaint is a sentence of incorporation that does not require a response. All prior responses are incorporated herein by reference.

88. This claim is only asserted against Defendants Dugaboy Investment Trust and Nancy Dondero. Therefore, Defendant NREP is not required to respond to this claim.

89. This claim is only asserted against Defendants Dugaboy Investment Trust and Nancy Dondero. Therefore, Defendant NREP is not required to respond to this claim.

90. This claim is only asserted against Defendants Dugaboy Investment Trust and Nancy Dondero. Therefore, Defendant NREP is not required to respond to this claim.

SEVENTH CLAIM FOR RELIEF
(Against James Dondero and Nancy Dondero)
(Aiding and Abetting a Breach of Fiduciary Duty)

91. Paragraph 91 of the Amended Complaint is a sentence of incorporation that does not require a response. All prior responses are incorporated herein by reference.

92. This claim is only asserted against Defendants James Dondero and Nancy Dondero. Therefore, Defendant NREP is not required to respond to this claim.

93. This claim is only asserted against Defendants James Dondero and Nancy Dondero. Therefore, Defendant NREP is not required to respond to this claim.

94. This claim is only asserted against Defendants James Dondero and Nancy Dondero. Therefore, Defendant NREP is not required to respond to this claim.

95. This claim is only asserted against Defendants James Dondero and Nancy Dondero. Therefore, Defendant NREP is not required to respond to this claim.

Defendant NREP denies that the Plaintiff is entitled to the relief requested in the prayer, including as to parts (i), (ii), (iii), (iv), (v), (vi), (vii) and (iii) [sic].

AFFIRMATIVE DEFENSES

96. Plaintiff's claims are barred in whole or in part by the doctrine of justification and/or repudiation.

97. Plaintiff's claims are barred in whole or in part by the doctrine of estoppel.

98. Plaintiff's claims are barred in whole or in part by the doctrine of waiver.

99. Plaintiff's claims are barred in whole or in part because prior to the demands for payment, Plaintiff agreed that it would not collect the Notes upon fulfillment of conditions subsequent. Specifically, sometime between December of the year in which each Note was made and February of the following year, Defendant Nancy Dondero, as representative for a majority of the Class A shareholders of Plaintiff agreed that Plaintiff would forgive the Notes if certain portfolio companies were sold for greater than cost or on a basis outside of Defendant James Dondero's control. This agreement setting forth the conditions subsequent to demands for payment on the Notes was an oral agreement; however, Defendant NREP believes there may be testimony or email correspondence that discusses the existence of this agreement that may be uncovered through discovery in this Adversary Proceeding.

100. Defendant NREP further asserts that Plaintiff's fraudulent transfer claims should be barred, in whole or in part, because at all relevant times Defendant NREP acted in good faith.

101. Defendant NREP further asserts that Plaintiff's fraudulent transfer claims should be barred, in whole or in part, because the alleged fraudulent transfer (*i.e.*, the "Alleged Agreement") was taken in good faith and for reasonably equivalent value.

102. Defendant NREP further asserts that Plaintiff's fraudulent transfer claims should be barred, in whole or in part, because there was no intent to hinder, delay, or defraud any creditors of the Debtor by entering into the "Alleged Agreement."

103. Defendant NREP further asserts that Plaintiff's fraudulent transfer claims should be barred, in whole or in part, because the Debtor was solvent at the time the "Alleged Agreement" was made.

104. Defendant NREP further asserts that each Note is ambiguous as a whole based on references to unspecified related agreements.

JURY DEMAND

105. Except to the extent compelled to arbitration, Defendant NREP demands a trial by jury of all issues so triable pursuant to Rule 38 of the Federal Rules of Civil Procedure and Rule 9015 of the Federal Rules of Bankruptcy Procedure.

106. Defendant NREP does not consent to the Bankruptcy Court conducting a jury trial and therefore demands a jury trial in the District Court.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Defendant NREP respectfully requests that, following a trial on the merits, the Court enter a judgment that the Plaintiff take nothing on the Amended Complaint and provide Defendant NREP such other relief to which it is entitled.

Dated: September 1, 2021

Respectfully submitted,

/s/ Deborah Deitsch-Perez

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ATTORNEYS FOR DEFENDANT HCRE PARTNERS, LLC (n/k/a NEXPOINT REAL ESTATE PARTNERS, LLC)

CERTIFICATE OF SERVICE

The undersigned hereby certifies that, on September 1, 2021, a true and correct copy of this document was served via the Court's CM/ECF system on counsel for the Plaintiff.

/s/ Deborah Deitsch-Perez
Deborah Deitsch-Perez

EXHIBIT 18

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Julian P. Vasek, Esq.
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Counsel for Highland Capital Management Fund Advisors, L.P.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re HIGHLAND CAPITAL MANAGEMENT, L.P., Debtor.	§ § § § § §	Chapter 11 Case No. 19-34054-sgj11
HIGHLAND CAPITAL MANAGEMENT, L.P., Plaintiff, v. HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, L.P. Defendant.	§ § § § § § § § § § §	Adv. No. 21-03004

DEFENDANT'S OBJECTIONS AND RESPONSES TO PLAINTIFF'S REQUESTS FOR ADMISSIONS, INTERROGATORIES, AND REQUESTS FOR PRODUCTION

TO: Highland Capital Management, L.P. through its counsel of record, Jeffrey Pomerantz and John Morris, Pachulski Stang Ziehl & Jones LLP, 10100 Santa Monica Blvd., 13th Floor, Los Angeles, CA 90067, jpomerantz@pszjlaw.com; jmorris@pszjlaw.com; Zachery Annable, Hayward PLLC, 10501 N. Central Expy., Ste. 106, Dallas, TX 75231, zannable@haywardfirm.com

Highland Capital Management Fund Advisors, L.P. ("HCMFA"), the defendant in the above-styled and numbered adversary proceeding, hereby makes the following objections and

gives the following responses to the *Debtor's First Requests for Admissions Directed to Highland Capital Management Fund Advisors, L.P.*, the *Debtor's First Request for Production of Documents Directed to Highland Capital Management Fund Advisors, L.P.*, and the *Debtor's First Set of Interrogatories Directed to Highland Capital Management Fund Advisors, L.P.*, pursuant to Rules 33, 34, and 36 of the Federal Rules of Civil Procedure and Rules 7033, 7034, and 7036 of the Federal Rules of Bankruptcy Procedure.

I. REQUESTS FOR ADMISSIONS

REQUEST FOR ADMISSION 1:

Admit that attached as Exhibit A is a true and correct copy of the Note (a) executed by HCMFA, as maker, in favor of the Debtor, as payee, (b) dated May 2, 2019, (c) in the original principal amount of $2,400,000.

RESPONSE: HCMFA admits only that the document attached as Exhibit A purports to be a note dated May 2, 2019 in the original principal amount of $2,400,000. HCMFA denies that the note represents a legitimate debt, and HCMFA denies that Frank Waterhouse had the authority to execute the note on its behalf. To the extent not expressly admitted, this request is denied.

REQUEST FOR ADMISSION 2:

Admit that attached as Exhibit B is a true and correct copy of the Note (a) executed by HCMFA, as maker, in favor of the Debtor, as payee, (b) dated May 3, 2019, (c) in the original principal amount of $5,000,000.

RESPONSE: HCMFA admits only that the document attached as Exhibit B purports to be a note dated May 3, 2019 in the original principal amount of $5,000,000. HCMFA denies that the note represents a legitimate debt, and HCMFA denies that Frank Waterhouse had the authority to execute the note on its behalf. To the extent not expressly admitted, this request is denied.

REQUEST FOR ADMISSION 3:

Admit that attached as Exhibit C is the Debtor's Demand Letter to HCMFA demanding payment of the accrued interest and principal due on the Notes in the aggregate amount of $7,687,653.07 (the "Outstanding Amount"), by December 11, 2020.

RESPONSE: HCMFA admits that Exhibit C is a true and correct copy of a letter the Debtor sent to HCMFA on or about December 11, 2020. HCMFA denies that the letter had any legal effect. To the extent not expressly admitted, this request is denied.

REQUEST FOR ADMISSION 4:

Admit that HCMFA has not paid the Debtor the Outstanding Amount.

RESPONSE: HCMFA denies that any amount is due and payable under the note. HCMFA admits that it has not paid the amount the Debtor demanded in its December 11, 2020 letter. To the extent not expressly admitted, this request is denied.

II. REQUESTS FOR PRODUCTION

REQUEST FOR PRODUCTION 1:

All Documents and Communications Concerning Your denial of any of the allegations set forth in paragraph 19 of the Complaint, including Your contention that "[t]o the extent not expressly admitted, ¶ 19 of the Complaint is denied," stated in paragraph 19 of the Answer.

RESPONSE: HCMFA will produce responsive, non-privileged documents from January 1, 2019 to present that are within its possession, custody, or control. HCMFA notes, however, that most responsive documents will likely be on the Debtor's servers, to which HCMFA does not have access. The Debtor therefore should encounter responsive documents in connection with responding to HCMFA's requests for production.

REQUEST FOR PRODUCTION 2:

All Documents and Communications Concerning Your denial of any of the allegations set forth in paragraph 20 of the Complaint. See paragraph 20 of the Answer.

RESPONSE: HCMFA will produce responsive, non-privileged documents from January 1, 2019 to present that are within its possession, custody, or control. HCMFA notes, however, that most responsive documents will likely be on the Debtor's servers, to which HCMFA does not have access. The Debtor therefore should encounter responsive documents in connection with responding to HCMFA's requests for production.

REQUEST FOR PRODUCTION 3:

All Documents and Communications Concerning Your denial of the allegation that "[p]ursuant to Section 4 of each Note, each Note is in default and is currently due and payable," as referenced in paragraph 24 of the Answer.

RESPONSE: HCMFA will produce responsive, non-privileged documents from January 1, 2019 to present that are within its possession, custody, or control. HCMFA notes, however, that most responsive documents will likely be on the Debtor's servers, to which HCMFA does not have access. The Debtor therefore should encounter responsive documents in connection with responding to HCMFA's requests for production.

REQUEST FOR PRODUCTION 4:

All Documents and Communications Concerning Your denial of the allegation that "[a]s a direct and proximate cause of HCMFA's breach of each Note, the Debtor has suffered damages in the total amount of at least $7,687,653.07 as of December 11, 2020, plus an amount equal to all accrued but unpaid interest from that date, plus the Debtor's cost of collection," as referenced in paragraph 29 of the Answer.

> **RESPONSE:** HCMFA will produce responsive, non-privileged documents from January 1, 2019 to present that are within its possession, custody, or control. HCMFA notes, however, that most responsive documents will likely be on the Debtor's servers, to which HCMFA does not have access. The Debtor therefore should encounter responsive documents in connection with responding to HCMFA's requests for production.

REQUEST FOR PRODUCTION 5:

All Documents and Communications Concerning Your denial of the allegation that "HCMFA has not paid the amounts due under each Note to the Debtor," as referenced in paragraph 33 of the Answer.

> **RESPONSE:** HCMFA will produce responsive, non-privileged documents from January 1, 2019 to present that are within its possession, custody, or control. HCMFA notes, however, that most responsive documents will likely be on the Debtor's servers, to which HCMFA does not have access. The Debtor therefore should encounter responsive documents in connection with responding to HCMFA's requests for production.

REQUEST FOR PRODUCTION 6:

All Documents and Communications Concerning Your denial that "[t]he Debtor has made demand for the turnover of the amounts due under each Note," as referenced in paragraph 34 of the Answer.

> **RESPONSE:** HCMFA will produce responsive, non-privileged documents from January 1, 2019 to present that are within its possession, custody, or control. HCMFA notes, however, that most responsive documents will likely be on the Debtor's servers, to which HCMFA does not have access. The Debtor therefore should encounter responsive documents in connection with responding to HCMFA's requests for production.

REQUEST FOR PRODUCTION 7:

All Documents and Communications Concerning any legal or equitable defense that You intend to assert in the above-referenced Adversary Proceeding.

> **RESPONSE:** HCMFA will produce responsive, non-privileged documents from January 1, 2019 to present that are within its possession, custody, or control. HCMFA notes, however, that most responsive documents will likely be on the Debtor's servers, to which HCMFA does not have access. The Debtor therefore should encounter responsive documents in connection with responding to HCMFA's requests for production.

REQUEST FOR PRODUCTION 8:

All Documents and Communications that You intend to offer into evidence in the above referenced Adversary Proceeding.

RESPONSE: HCMFA objects to this request to the extent it seeks to impose obligations that exceed those imposed by applicable law. HCMFA is still in the process of identifying documents and communications it will offer into evidence, and the parties have stipulated to a deadline for filing witness and exhibit lists (August 30, 2021). For the avoidance of doubt, documents responsive to this request will likely be responsive to other requests, in which case they will not be withheld elsewhere based on this objection.

III. INTERROGATORIES

INTERROGATORY NO. 1:

Identify every person that You believe has personal knowledge of any legal or equitable defense that You intend to assert in the above-referenced Adversary Proceeding.

RESPONSE: HCMFA objects to this request to the extent it asks HCMFA to identify attorneys whose knowledge would be privileged. Subject to such objection, HCMFA identifies James Dondero, Frank Waterhouse, Jason Post, Thomas Surgent, Lauren Thedford, and Will Mabry.

INTERROGATORY NO. 2:

Identify each witness that You intend to call at the Hearing in this Adversary Proceeding.

RESPONSE: HCMFA objects to this request to the extent it seeks to impose obligations that exceed those imposed by applicable law. HCMFA is still in the process of identifying witnesses it will call at trial, and the parties have stipulated to a deadline for filing witness and exhibit lists (August 30, 2021). For the avoidance of doubt, individuals responsive to this request will likely be responsive to other interrogatories, in which case their identities will not be withheld elsewhere based on this objection.

IV. RESERVATION OF RIGHTS

HCMFA reserves the right to amend or supplement these written objections and responses at any time, consistent with the applicable Federal Rules of Civil Procedure.

RESPECTFULLY SUBMITTED this 19th day of May, 2021.

MUNSCH HARDT KOPF & HARR, P.C.

By: /s/ *Julian P. Vasek*

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COUNSEL FOR HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, L.P.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that, on the 19th day of May, 2021, a true and correct copy of this document was electronically served via email on counsel for the Debtor (jpomerantz@pszjlaw.com; jmorriss@pszjlaw.com; zannable@haywardfirm.com).

/s/ *Julian P. Vasek*
Julian P. Vasek, Esq.

Verification

STATE OF TEXAS §
§
COUNTY OF DALLAS §

Before me, the undersigned notary, on this day personally appeared James Dondero, the affiant, whose identity is known to me. After I administered an oath, affiant testified as follows:

"My name is James Dondero. I am capable of making this Verification. I have read the foregoing document. The facts stated in the answers to the interrogatories are within my personal knowledge and/or are based on information I obtained from other persons, and are true and correct."

Highland Capital Management Fund Advisors, L.P.

By: Strand Advisors XVI, Inc., its General Partner

By:

Name: James Dondero

Title: Director

SUBSCRIBED AND SWORN TO BEFORE ME on this the 19th day of May, 2021.

LINDA LAUCHNER
Notary Public, State of Texas
Comm. Expires 06-19-2021
Notary ID 1049001

Notary Public, State of Texas Linda Lauchner
My Commission Expires: 6/19/21

EXHIBIT 19

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Counsel for NexPoint Advisors, L.P

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re HIGHLAND CAPITAL MANAGEMENT, L.P., Debtor.	§ § § § § §	Chapter 11 Case No. 19-34054-sgj11
HIGHLAND CAPITAL MANAGEMENT, L.P., Plaintiff, v. NEXPOINT ADVISORS, L.P. Defendant.	§ § § § § § § § § §	Adv. No. 21-03005

DEFENDANT'S OBJECTIONS AND RESPONSES TO PLAINTIFF'S REQUESTS FOR ADMISSIONS, INTERROGATORIES, AND REQUESTS FOR PRODUCTION

TO: Highland Capital Management, L.P. through its counsel of record, Jeffrey Pomerantz and John Morris, Pachulski Stang Ziehl & Jones LLP, 10100 Santa Monica Blvd., 13th Floor, Los Angeles, CA 90067, jpomerantz@pszjlaw.com; jmorris@pszjlaw.com; Zachery Annable, Hayward PLLC, 10501 N. Central Expy., Ste. 106, Dallas, TX 75231, zannable@haywardfirm.com

NexPoint Advisors, L.P. ("NexPoint"), the defendant in the above-styled and numbered adversary proceeding, hereby makes the following objections and gives the following responses

to the *Debtor's First Requests for Admissions Directed to NexPoint Advisors, L.P.*, the *Debtor's First Request for Production of Documents Directed to NexPoint Advisors, L.P.*, and the *Debtor's First Set of Interrogatories Directed to NexPoint Advisors, L.P.*, pursuant to Rules 33, 34, and 36 of the Federal Rules of Civil Procedure and Rules 7033, 7034, and 7036 of the Federal Rules of Bankruptcy Procedure.

I. REQUESTS FOR ADMISSIONS

REQUEST FOR ADMISSION 1:

Admit that attached as **Exhibit A** is a true and correct copy of the Note (a) executed by NPA, as maker, in favor of the Debtor, as payee, (b) dated May 31, 2017, (c) in the original face amount of $30,746,812.33.

RESPONSE: Admitted.

REQUEST FOR ADMISSION 2:

Admit that on or about May 31, 2017, the Debtor paid $30,746,812.33 to NPA (or for its benefit) in exchange for the Note (the "Consideration").

RESPONSE: Denied.

REQUEST FOR ADMISSION 3:

Admit that attached as **Exhibit B** is the Debtor's January 7, 2021 demand letter (the "Demand Letter") to NPA demanding payment of the accrued interest and principal due, and any other amounts due on the Note, in the aggregate amount of $24,471,804.98 as of January 8, 2021.

RESPONSE: NexPoint admits that Exhibit B is a true and correct copy of a letter the Debtor sent to NexPoint on or about January 7, 2021. NexPoint denies the letter had any legal effect given that the Debtor caused NexPoint's alleged default. To the extent not expressly admitted, this request is denied.

REQUEST FOR ADMISSION 4:

Admit that, after receiving the Demand Letter, NPA never asked, requested, or demanded that the Debtor make any payments on the Note on behalf of NPA.

RESPONSE: NexPoint admits that it made no such express request, but NexPoint denies it had any obligation to request that the Debtor do something it was already obligated to do. To the extent not expressly admitted, this request is denied.

REQUEST FOR ADMISSION 5:

Admit that (a) on January 14, 2021, NPA paid the Debtor $1,406,111.92 that was due under the Note on December 31, 2020 (the "January Payment"), and (b) the Debtor did nothing to assist or aid NPA in making the January Payment.

RESPONSE: NexPoint admits that it made the January Payment but denies that the January Payment was past due through any fault of NexPoint. NexPoint admits that the Debtor wrongfully failed to assist NexPoint with making payments when due under the Note, including the January Payment. To the extent not expressly admitted, this request is denied.

REQUEST FOR ADMISSION 6:

Admit that attached as **Exhibit C** is the Debtor's January 15, 2021 demand letter (the "Second Demand Letter") to NPA demanding payment of the accrued interest and principal due, and any other amounts due on the Note, in the aggregate amount of $23,071,195.03 as of January 15, 2021 (the "Outstanding Amount").

RESPONSE: NexPoint admits that Exhibit C is a true and correct copy of a letter the Debtor sent to NexPoint on or about January 15, 2021. NexPoint denies the letter had any legal effect given that the Debtor caused NexPoint's alleged default. To the extent not expressly admitted, this request is denied.

REQUEST FOR ADMISSION 7:

Admit that, as of January 22, 2021, NPA has not paid the Debtor the Outstanding Amount.

RESPONSE: NexPoint denies that any amount is due and payable under the note. NexPoint admits that it has not paid the balance owing under the note, as such balance is not due. To the extent not expressly admitted, this request is denied.

II. REQUESTS FOR PRODUCTION

REQUEST FOR PRODUCTION 1:

All Documents and Communications Concerning Your contention that "Plaintiff was responsible for making payments on behalf of the Defendant under the [N]ote," as alleged in paragraph 39 of the Answer.

RESPONSE: NexPoint will produce responsive, non-privileged documents from May 31, 2017 to present that are within its possession, custody, or control. NexPoint notes, however, that most responsive documents will likely be on the Debtor's servers, to which NexPoint does not have access. The Debtor therefore should encounter responsive documents in connection with responding to NexPoint's requests for production.

REQUEST FOR PRODUCTION 2:

All Documents and Communications Concerning Your contention that "[a]ny alleged default under the [N]ote was the result of Plaintiff's own negligence, misconduct, breach of contract, etc.," as alleged in paragraph 39 of the Answer.

RESPONSE: NexPoint will produce responsive, non-privileged documents from May 31, 2017 to present that are within its possession, custody, or control. NexPoint notes, however, that most responsive documents will likely be on the Debtor's servers, to which NexPoint does not have access. The Debtor therefore should encounter responsive documents in connection with responding to NexPoint's requests for production.

REQUEST FOR PRODUCTION 3:

All Documents and Communications Concerning Your contention that "the brief delay in payment was the Plaintiff's own fault," as alleged in paragraph 40 of the Answer.

RESPONSE: NexPoint will produce responsive, non-privileged documents from May 31, 2017 to present that are within its possession, custody, or control. NexPoint notes, however, that most responsive documents will likely be on the Debtor's servers, to which NexPoint does not have access. The Debtor therefore should encounter responsive documents in connection with responding to NexPoint's requests for production.

REQUEST FOR PRODUCTION 4:

All Documents and Communications Concerning the affirmative defenses of "waiver" or "estoppel." *See* Answer ¶ 41.

RESPONSE: NexPoint will produce responsive, non-privileged documents from May 31, 2017 to present that are within its possession, custody, or control. NexPoint notes, however, that most responsive documents will likely be on the Debtor's servers, to which NexPoint does not have access. The Debtor therefore should encounter responsive documents in connection with responding to NexPoint's requests for production.

REQUEST FOR PRODUCTION 5:

All Documents and Communications Concerning the Default Letter, including but not limited to any subsequent request or demand by NPA that the Debtor make the payment demanded under the Note on Your behalf.

RESPONSE: NexPoint will produce responsive, non-privileged documents from May 31, 2017 to present that are within its possession, custody, or control. NexPoint notes, however, that most responsive documents will likely be on the Debtor's servers, to which NexPoint does not have access. The Debtor therefore should encounter responsive documents in connection with responding to NexPoint's requests for production.

REQUEST FOR PRODUCTION 6:

All Documents and Communications that You intend to offer into evidence in this Adversary Proceeding.

RESPONSE: NexPoint objects to this request to the extent it seeks to impose obligations that exceed those imposed by applicable law. NexPoint is still in the process of identifying documents and communications it will offer into evidence, and the parties have stipulated to a deadline for filing witness and exhibit lists (July 26, 2021). For the avoidance of doubt, documents responsive to this request will likely be responsive to other requests, in which case they will not be withheld elsewhere based on this objection.

III. INTERROGATORIES

INTERROGATORY NO. 1:

Identify each person who You believe has personal knowledge of any facts Concerning Your contention that "Plaintiff was responsible for making payments on behalf of the Defendant under the [N]ote," as alleged in paragraph 39 of the Answer.

RESPONSE: Frank Waterhouse and James Dondero.

INTERROGATORY NO. 2:

Identify each person who You believe has personal knowledge of any facts to Concerning Your contention that "[a]ny alleged default under the [N]ote was the result of Plaintiff's own negligence, misconduct, breach of contract, etc.," as alleged in paragraph 39 of the Answer.

RESPONSE: Frank Waterhouse and James Dondero.

INTERROGATORY NO. 3:

Identify each person who You believe has personal knowledge of any facts Concerning Your contention that "the brief delay in payment was the Plaintiff's own fault," as alleged in paragraph 40 of the Answer.

RESPONSE: Frank Waterhouse and James Dondero.

INTERROGATORY NO. 4:

Identify each person who You believe has personal knowledge of any facts Concerning Your contention that "the brief delay in payment was the Plaintiff's own fault," as alleged in paragraph 40 of the Answer.

RESPONSE: Frank Waterhouse and James Dondero.

INTERROGATORY NO. 5:

Identify each person who You believe has personal knowledge of any facts Concerning Your response to the Demand Letter, including but not limited to any subsequent request or demand by NPA that the Debtor make the payment demanded under the Note on Your behalf, if any.

RESPONSE: Frank Waterhouse and James Dondero.

INTERROGATORY NO. 6:

Identify each witness that You intend to call at trial in this Adversary Proceeding.

RESPONSE: NexPoint objects to this request to the extent it seeks to impose obligations that exceed those imposed by applicable law. NexPoint is still in the process of identifying witnesses it will call at trial, and the parties have stipulated to a deadline for filing witness and exhibit lists (July 26, 2021). For the avoidance of doubt, names responsive to this request will likely be responsive to other requests, in which case they will not be withheld elsewhere based on this objection.

IV. RESERVATION OF RIGHTS

NexPoint reserves the right to amend or supplement these written objections and responses at any time, consistent with the applicable Federal Rules of Civil Procedure.

RESPECTFULLY SUBMITTED this 3rd day of May, 2021.

MUNSCH HARDT KOPF & HARR, P.C.

By: /s/ Davor Rukavina

Davor Rukavina, Esq.
Texas Bar No. 24030781
Julian P. Vasek, Esq.
Texas Bar No. 24070790
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drukavina@munsch.com
jvasek@munsch.com

COUNSEL FOR NEXPOINT ADVISORS, L.P.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that, on the 3rd day of May, 2021, a true and correct copy of this document was electronically served via email on counsel for the Debtor (jpomerantz@pszjlaw.com; jmorriss@pszjlaw.com; zannable@haywardfirm.com).

/s/ Davor Rukavina
Davor Rukavina, Esq.

Verification

STATE OF TEXAS §
§
COUNTY OF DALLAS___ §

Before me, the undersigned notary, on this day personally appeared _____, the affiant, whose identity is known to me. After I administered an oath, affiant testified as follows:

"My name is _____. I am capable of making this Verification. I have read the foregoing document. The facts stated in the answers to the interrogatories are within my personal knowledge and/or are based on information I obtained from other persons, and are true and correct."

NexPoint Advisors, L.P.

By:_____

Title: _____

SUBSCRIBED AND SWORN TO BEFORE ME on this the ____ day of May, 2021.

_____
Notary Public, State of Texas
My Commission Expires: _____

EXHIBIT 20

Jason M. Rudd
Texas State Bar No. 24028786
jason.rudd@wickphillips.com
Lauren K. Drawhorn
Texas State Bar No. 24074528
lauren.drawhorn@wickphillips.com
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Fax: (214) 692-6255

COUNSEL FOR HIGHLAND CAPITAL MANAGEMENT SERVICES, INC.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.	§	**Chapter 11**
	§	
	§	**Case No.: 19-34054-sgj11**
Debtor.	§	
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.	§	
	§	
Plaintiff,	§	
	§	
vs.	§	**Adv. Pro. No. 21-03006-sgj**
	§	
HIGHLAND CAPITAL MANAGEMENT SERVICES, INC.,	§	
	§	
Defendant.	§	

DEFENDANT HIGHLAND CAPITAL MANAGEMENT SERVICES, INC.'S RESPONSES TO HIGHLAND CAPITAL MANAGEMENT, L.P.'S FIRST REQUESTS FOR ADMISSION

Defendant Highland Capital Management Services, Inc.'s ("Defendant" or "HCMS") hereby responds to Highland Capital Management, L.P.'s (the "Debtor") First Requests for Admission as follows:

RESPONSES TO FIRST REQUESTS FOR ADMISSION

REQUEST FOR ADMISSION NO. 1: Admit that attached as **Exhibit A** is a true and correct copy of the Demand Note (a) executed by HCMS, as maker, in favor of the Debtor, as payee, (b) dated March 28, 2018, (c) in the original principal amount of $150,000.

RESPONSE: Admit.

REQUEST FOR ADMISSION NO. 2: Admit that attached as **Exhibit B** is a true and correct copy of the Demand Note (a) executed by HCMS, as maker, in favor of the Debtor, as payee, (b) dated June 25, 2018, (c) in the original principal amount of $200,000.

RESPONSE: Admit.

REQUEST FOR ADMISSION NO. 3: Admit that attached as **Exhibit C** is a true and correct copy of the Demand Note (a) executed by HCMS, as maker, in favor of the Debtor, as payee, (b) dated May 29, 2019, (c) in the original principal amount of $400,000.

RESPONSE: Deny.

REQUEST FOR ADMISSION NO. 4: Admit that attached as **Exhibit D** is a true and correct copy of the Demand Note (a) executed by HCMS, as maker, in favor of the Debtor, as payee, (b) dated June 26, 2019, (c) in the original principal amount of $150,000.

RESPONSE: Deny.

REQUEST FOR ADMISSION NO. 5: Admit that attached as **Exhibit E** is a true and correct copy of the Term Note (a) executed by HCMS, as maker, in favor of the Debtor, as payee, (b) dated May 31, 2017, (c) in the original principal amount of $20,247,628.02.

RESPONSE: Admit.

REQUEST FOR ADMISSION NO. 6: Admit that attached as **Exhibit F** is a true and correct copy of the Debtor's First Demand Letter to HCMS demanding payment of the accrued interest and principal due on the Demand Notes in the aggregate amount of $947,519.43 by December 11, 2020.

RESPONSE: HCMS admits that Exhibit F purports to be a letter from Debtor to HCMS dated December 3, 2020, demanding HCMS pay $947,519.43 by December 11, 2020, and the Debtor alleged such amount constituted accrued interest and payment on certain promissory notes issued 3/28/2018, 6/25/2018, 5/29/2019, and 6/26/2019.

REQUEST FOR ADMISSION NO. 7: Admit that attached as **Exhibit G** is a true and correct copy of the Debtor's Second Demand Letter to HCMS demanding immediate payment of the accrued interest, principal, and all other amounts due on the Term Note in the aggregate amount of $6,757,248.95.

RESPONSE: HCMS admits that Exhibit G purports to be a letter from Debtor to HCMS dated January 7, 2021, demanding HCMS immediately pay $6,757,248.95, and the Debtor alleged such amount constituted accrued principal, interest, and any other amounts due on a certain promissory note dated May 31, 2017.

REQUEST FOR ADMISSION NO. 8: Admit that the Debtor does not owe any debt or obligation to HCMS arising from, concerning, or otherwise relating to any of the Demand Notes.

RESPONSE: Deny.

Respectfully submitted,

/s/ Lauren K. Drawhorn

Jason M. Rudd
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Lauren K. Drawhorn
Texas Bar No. 24074528
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COUNSEL FOR HIGHLAND CAPITAL MANAGEMENT SERVICES, INC.

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that, on June 14, 2021, a true and correct copy of the foregoing document was served via email on counsel for the Debtor.

Jeffrey N. Pomerantz
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Gregory V. Demo
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Hayley R. Winograd
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Counsel for Highland Capital Management, L.P.

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Fax: (972) 755-7110

/s/ Lauren K. Drawhorn
Lauren K. Drawhorn

EXHIBIT 21

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COUNSEL FOR HIGHLAND CAPITAL MANAGEMENT SERVICES, INC.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.	§	**Chapter 11**
	§	
	§	**Case No.: 19-34054-sgj11**
Debtor.	§	
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.	§	
	§	
Plaintiff,	§	
	§	
vs.	§	**Adv. Pro. No. 21-03006-sgj**
	§	
HIGHLAND CAPITAL MANAGEMENT SERVICES, INC.,	§	
	§	
Defendant.	§	

DEFENDANT HIGHLAND CAPITAL MANAGEMENT SERVICES, INC.'S ANSWERS TO HIGHLAND CAPITAL MANAGEMENT, L.P.'S FIRST SET OF INTERROGATORIES

Defendant Highland Capital Management Services, Inc.'s ("Defendant" or "HCMS") hereby responds to Highland Capital Management, L.P.'s (the "Debtor") First Set of Interrogatories as follows:

ANSWERS TO FIRST SET OF INTERROGATORIES

INTERROGATORY NO. 1: Identify every person that You believe has personal knowledge of the facts and circumstances Concerning Your affirmative defense that the Debtor's claims are "barred in whole or in part by the doctrine of justification and/or repudiation," as alleged in paragraph 53 of the Answer.

ANSWER: HCMS believes the following persons have knowledge of the facts and circumstances surrounding HCMS' justification and/or repudiation defense:

Corporate representative of HCMS
c/o WICK PHILLIPS GOULD & MARTIN LLP,
Attn: Lauren K. Drawhorn
100 Throckmorton St., Suite 1500
Fort Worth, TX 76102

Corporate representative of Debtor
c/o PACHULSKI STANG ZIEHL & JONES, LLP, Attn: John Morris
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067

James Dondero
c/o BONDS ELLIS EPPIC SHAFER JONES LLP
Attn: Clay M. Taylor and Bryan C. Assink
420 Throckmorton St., Suite 1000
Fort Worth, Texas 76102

Frank Waterhouse
c/o Ross & Smith PC
Attn: Frances Smith
700 N. Pearl Street, Suite 1610
Dallas, TX 75201

Kristin Hendrix
c/o PACHULSKI STANG ZIEHL & JONES, LLP, Attn: John Morris
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067

David Klos
c/o PACHULSKI STANG ZIEHL & JONES, LLP, Attn: John Morris
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067

INTERROGATORY NO. 2: Identify every person that You believe has personal knowledge of the facts and circumstances Concerning Your affirmative defense that the Debtor's "claims are barred in whole or in part by the doctrine of estoppel," as alleged in paragraph 54 of the Answer.

ANSWER: HCMS believes the following persons have knowledge of the facts and circumstances surrounding HCMS' estoppel defense:

Corporate representative of HCMS
c/o WICK PHILLIPS GOULD & MARTIN LLP,
Attn: Lauren K. Drawhorn
100 Throckmorton St., Suite 1500
Fort Worth, TX 76102

Corporate representative of Debtor
c/o PACHULSKI STANG ZIEHL & JONES, LLP, Attn: John Morris
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067

James Dondero
c/o BONDS ELLIS EPPIC SHAFER JONES LLP
Attn: Clay M. Taylor and Bryan C. Assink
420 Throckmorton St., Suite 1000
Fort Worth, Texas 76102

Frank Waterhouse
c/o Ross & Smith PC
Attn: Frances Smith
700 N. Pearl Street, Suite 1610
Dallas, TX 75201

Kristin Hendrix
c/o PACHULSKI STANG ZIEHL & JONES, LLP, Attn: John Morris
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067

David Klos
c/o PACHULSKI STANG ZIEHL & JONES, LLP, Attn: John Morris
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067

INTERROGATORY NO. 3: Identify every person that You believe has personal knowledge of the facts and circumstances Concerning Your affirmative defense that the Debtor's "claims are barred in whole or in part by the doctrine of waiver," as alleged in paragraph 55 of the Answer.

ANSWER: HCMS believes the following persons have knowledge of the facts and circumstances surrounding HCMS' waiver defense:

Corporate representative of HCMS
c/o WICK PHILLIPS GOULD & MARTIN LLP,
Attn: Lauren K. Drawhorn
100 Throckmorton St., Suite 1500
Fort Worth, TX 76102

Corporate representative of Debtor
c/o PACHULSKI STANG ZIEHL & JONES, LLP, Attn: John Morris
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067

James Dondero
c/o BONDS ELLIS EPPIC SHAFER JONES LLP
Attn: Clay M. Taylor and Bryan C. Assink
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Fort Worth, Texas 76102

Frank Waterhouse
c/o Ross & Smith PC
Attn: Frances Smith
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Kristin Hendrix
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10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067

David Klos
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10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067

INTERROGATORY NO. 4: Identify every person that You believe has personal knowledge of the facts and circumstances Concerning Your affirmative defense that the Debtor's "claims are barred in whole or in part by the doctrines of offset and/or setoff," as alleged in paragraph 56 of the Answer.

ANSWER: HCMS withdraws its affirmative defense of offset and/or setoff.

INTERROGATORY NO. 5: Identify every debt and obligation that You contend the Debtor owes to You and is subject to "offset and/or setoff," as alleged in paragraph 56 of the Answer, including (a) the amount of the debt or obligation, (b) the date the debt or obligation was incurred, (c) the proof of claim in which You asserted a right to recover on the debt or obligation, if any, (d) the person who authorized the Debtor to incur the debt or obligation, and (e) the facts and circumstances concerning the Debtor's accrual of such debt or obligation.

ANSWER: HCMS withdraws its affirmative defense of offset and/or setoff.

INTERROGATORY NO. 6: Identify each witness that You intend to call at trial in this Adversary Proceeding.

ANSWER: HCMS will provide its list of witnesses within the time required under the Federal Rules of Civil Procedures, the agreed-upon Scheduling Order in this case, and the Local Rules for the United States Bankruptcy Court for the Northern District of Texas.

Respectfully submitted,

/s/ Lauren K. Drawhorn

Jason M. Rudd
Texas Bar No. 24028786
Lauren K. Drawhorn
Texas Bar No. 24074528
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COUNSEL FOR HIGHLAND CAPITAL MANAGEMENT SERVICES, INC.

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that, on June 14, 2021, a true and correct copy of the foregoing document was served via email on counsel for the Debtor.

Jeffrey N. Pomerantz
jpomerantz@pszjlaw.com
John A. Morris
jmorris@pszjlaw.com
Gregory V. Demo
gdemo@pszjlaw.com
Hayley R. Winograd
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10100 Santa Monica Blvd., 13th Floor
Los Angeles, California 90067
Facsimile: (310) 201-0760
Counsel for Highland Capital Management, L.P.

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/s/ Lauren K. Drawhorn
Lauren K. Drawhorn

EXHIBIT 22

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Lauren K. Drawhorn
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Telephone: (214) 692-6200
Fax: (214) 692-6255

COUNSEL FOR NEXPOINT REAL ESTATE PARTNERS, LLC F/K/A HCRE PARTNERS, LLC

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	
	§	**Chapter 11**
HIGHLAND CAPITAL MANAGEMENT, L.P.	§	
	§	**Case No.: 19-34054-sgj11**
	§	
Debtor.	§	
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.	§	
	§	
	§	
Plaintiff,	§	
	§	**Adv. Pro. No. 21-03007-sgj**
vs.	§	
	§	
HCRE PARTNERS, LLC (n/k/a NEXPOINT REAL ESTATE PARTNERS, LLC),	§	
	§	
	§	
	§	
Defendant.	§	

DEFENDANT NEXPOINT REAL ESTATE PARTNERS, LLC F/K/A HCRE PARTNERS, LLC'S RESPONSES TO DEBTOR HIGHLAND CAPITAL MANAGEMENT, L.P.'S REQUEST FOR ADMISSIONS

To: Highland Capital Management, L.P., by and through its attorneys of record, John Morris, Pachulski Stang Ziehl & Jones LLP, 10100 Santa Monica Blvd., 13th Floor, Los Angeles, California 90067

Defendant NexPoint Real Estate Partners, LLC f/k/a HCRE Partners, LLC's ("Defendant" or "NREP") responds as follows to Highland Capital Management, L.P.'s

("HCMLP") Request for Admissions. NREP specifically reserves the right to reasonably supplement and amend any and all of its responses, answers, and objections in accordance with the Federal Rules of Bankruptcy Procedure and Federal Rules of Civil Procedure.

RESPONSES TO REQUEST FOR ADMISSIONS

REQUEST FOR ADMISSION NO. 1: Admit that attached as **Exhibit 1** to the Complaint is a true and correct copy of a Demand Note (a) executed by James Dondero on Your behalf, as maker, in favor of the Debtor, as payee, (b) dated November 27, 2013, (c) in the original face amount of $100,000 (the "November 2013 Note").

RESPONSE: Admit.

REQUEST FOR ADMISSION NO. 2: Admit that on or about November 27, 2013, the Debtor paid $100,000 to You (or for Your benefit) in exchange for the November 2013 Note.

RESPONSE: Admit.

REQUEST FOR ADMISSION NO. 3: Admit that on or about November 27, 2013, the Debtor transferred $100,000 to an account for Your benefit.

RESPONSE: Admit.

REQUEST FOR ADMISSION NO. 4: Admit that attached as **Exhibit 2** to the Complaint is a true and correct copy of a Demand Note (a) executed by James Dondero on Your behalf, as maker, in favor of the Debtor, as payee, (b) dated October 12, 2017, (c) in the original face amount of $2,500,000 (the "October 2017 Note").

RESPONSE: Admit.

REQUEST FOR ADMISSION NO. 5: Admit that on or about October 12, 2017, the Debtor paid $2,500,000 to You (or for Your benefit) in exchange for the October 2017 Note.

RESPONSE: Admit.

REQUEST FOR ADMISSION NO. 6: Admit that on or about October 12, 2017, the Debtor transferred $2,500,000 to an account for Your benefit.

RESPONSE: Admit.

REQUEST FOR ADMISSION NO. 7: Admit that attached as **Exhibit 3** to the Complaint is a true and correct copy of a Demand Note (a) executed by James Dondero on Your behalf, as maker, in favor of the Debtor, as payee, (b) dated October 15, 2018, (c) in the original face amount of $750,000 (the "October 2018 Note").

RESPONSE: Admit.

REQUEST FOR ADMISSION NO. 8: Admit that on or about October 15, 2018, the Debtor paid $750,000 to You (or for Your benefit) in exchange for the October 2018 Note.

RESPONSE: Admit.

REQUEST FOR ADMISSION NO. 9: Admit that on or about October 15, 2018, the Debtor transferred $750,000 to an account for Your benefit.

RESPONSE: Admit.

REQUEST FOR ADMISSION NO. 10: Admit that attached as **Exhibit 4** to the Complaint is a true and correct copy of a Demand Note (a) executed by James Dondero on Your behalf, as maker, in favor of the Debtor, as payee, (b) dated September 25, 2019, (c) in the original face amount of $900,000 (the "September 2019 Note").

RESPONSE: Admit.

REQUEST FOR ADMISSION NO. 11: Admit that on or about September 25, 2019, the Debtor paid $900,000 to You (or for Your benefit) in exchange for the September 2019 Note.

RESPONSE: Admit.

REQUEST FOR ADMISSION NO. 12: Admit that on or about September 25, 2019, the Debtor transferred $900,000 to an account for Your benefit.

RESPONSE: Admit.

REQUEST FOR ADMISSION NO. 13: Admit that attached as Exhibit 6 to the Complaint is a true and correct copy of the Term Note (a) executed by James Dondero on Your behalf, as maker, in favor of the Debtor, as payee, (b) dated May 31, 2017, (c) in the original face amount of $6,059,831.

RESPONSE: Deny.

REQUEST FOR ADMISSION NO. 14: Admit that You gave the Term Note to the Debtor in consideration for the Debtor's agreement to cancel and extinguish each of the Prior Notes (as defined in the Term Note and as specifically identified in Exhibit A to the Term Note), including all obligations then due and owing under each of the Prior Notes.

RESPONSE: NREP admits the Term Note substituted for and superseded in their entirety certain promissory notes described in Exhibit A to the Term Note. NREP denies the remainder of this Request.

REQUEST FOR ADMISSION NO. 15: Admit that attached as **Exhibit 5** to the Complaint is the Debtor's December 3, 2020 demand letter (the "Demand Letter") to You demanding payment of the accrued interest and principal due and payable on the Demand Notes in the aggregate amount of $5,0012,260.96 (the "Outstanding Amount").

RESPONSE: Deny.

REQUEST FOR ADMISSION NO. 16: Admit that as of May 31, 2021, You have not paid the Debtor the Outstanding Amount.

RESPONSE: NREP admits only that NREP has not paid the Debtor the amount the Debtor asserts is due on the Demand Notes in the amount of $5,012,260.96. NREP denies the remainder of this Request.

REQUEST FOR ADMISSION NO. 17: Admit that You have not paid any amounts due under any of the Demands Notes since December 3, 2020.

RESPONSE: Deny.

REQUEST FOR ADMISSION NO. 18: Admit that attached as **Exhibit 7** to the Complaint is the Debtor's January 7, 2021 default letter (the "Default Letter") to You demanding payment of the accrued interest and principal due and payable on the Term Note in the amount of $6,145,466.84 (the "Unpaid Term Loan Amount").

RESPONSE: NREP admits that Exhibit 7 to the Complaint purports to be a letter from Debtor dated January 7, 2021 alleging NREP is in default under the Term Note and demanding NREP pay $6,145,466.84, and the Debtor alleged such amount constituted accrued interest and principal due and payable on the Term Note.

REQUEST FOR ADMISSION NO. 19: Admit that as of May 31, 2021, You have not paid the Debtor the Unpaid Term Loan Amount.

RESPONSE: NREP admits only that NREP has not paid the Debtor the amount the Debtor asserts is due on the Term Note in the amount of $5,012,260.96. NREP denies the remainder of this Request.

REQUEST FOR ADMISSION NO. 20: Admit that on or about December 31, 2017, You paid the Annual Installment then due under the Term Note.

RESPONSE: NREP admits that payment was made on the Term Note on or around December 31, 2017.

REQUEST FOR ADMISSION NO. 21: Admit that on or about December 31, 2018, You paid the Annual Installment then due under the Term Note.

RESPONSE: NREP admits that payment was made on the Term Note on or around December 19, 2018.

REQUEST FOR ADMISSION NO. 22: Admit that on or about December 31, 2019, You paid the Annual Installment then due under the Term Note.

RESPONSE: NREP admits that payment was made on the Term Note on or around December 30, 2019.

REQUEST FOR ADMISSION NO. 23: Admit that You failed to pay the Annual Installment due under the Term Note on December 31, 2020.

RESPONSE: Deny.

Respectfully submitted,

/s/ Lauren K. Drawhorn

Jason M. Rudd
Texas Bar No. 24028786
Lauren K. Drawhorn
Texas Bar No. 24074528
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COUNSEL FOR NEXPOINT REAL ESTATE PARTNERS, LLC'S F/K/A HCRE PARTNERS, LLC

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that, on July 6, 2021, a true and correct copy of the foregoing document was served via email on counsel for the Debtor.

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Counsel for Highland Capital Management, L.P.

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Dallas, Texas 75231
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/s/ Lauren K. Drawhorn
Lauren K. Drawhorn

EXHIBIT 23

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COUNSEL FOR NEXPOINT REAL ESTATE PARTNERS, LLC F/K/A HCRE PARTNERS, LLC

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	
	§	**Chapter 11**
HIGHLAND CAPITAL MANAGEMENT, L.P.	§	
	§	**Case No.: 19-34054-sgj11**
	§	
Debtor.	§	
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.	§	
	§	
	§	
Plaintiff,	§	
	§	**Adv. Pro. No. 21-03007-sgj**
vs.	§	
	§	
HCRE PARTNERS, LLC (n/k/a NEXPOINT REAL ESTATE PARTNERS, LLC),	§	
	§	
	§	
	§	
Defendant.	§	

DEFENDANT NEXPOINT REAL ESTATE PARTNERS, LLC F/K/A HCRE PARTNERS, LLC'S ANSWERS TO DEBTOR HIGHLAND CAPITAL MANAGEMENT, L.P.'S FIRST SET OF INTERROGATORIES

To: Highland Capital Management, L.P., by and through its attorneys of record, John Morris, Pachulski Stang Ziehl & Jones LLP, 10100 Santa Monica Blvd., 13th Floor, Los Angeles, California 90067

Defendant NexPoint Real Estate Partners, LLC f/k/a HCRE Partners, LLC's ("Defendant" or "NREP") responds as follows to Highland Capital Management, L.P.'s

("HCMLP") First Set of Interrogatories. NREP specifically reserves the right to reasonably supplement and amend any and all of its responses, answers, and objections in accordance with the Federal Rules of Bankruptcy Procedure and Federal Rules of Civil Procedure.

ANSWERS TO FIRST SET OF INTERROGATORIES

INTERROGATORY NO. 1: Identify each person who You believe has actual knowledge Concerning the (a) preparation, (b) purpose, and (c) execution of each of the Demand Notes, including any such person's last known contact information.

ANSWER: NREP believes the following persons may have knowledge of the facts and circumstances surrounding the Demand Notes:

Corporate representative of NREP
c/o WICK PHILLIPS GOULD & MARTIN LLP,
Attn: Lauren K. Drawhorn
100 Throckmorton St., Suite 1500
Fort Worth, TX 76102

Corporate representative of Debtor
c/o PACHULSKI STANG ZIEHL & JONES, LLP, Attn: John Morris
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067

James Dondero
c/o BONDS ELLIS EPPIC SHAFER JONES LLP
Attn: Clay M. Taylor and Bryan C. Assink
420 Throckmorton St., Suite 1000
Fort Worth, TX 76102

Frank Waterhouse
c/o Ross & Smith PC
Attn: Frances Smith
700 N. Pearl Street, Suite 1610
Dallas, TX 75201

Kristin Hendrix
c/o PACHULSKI STANG ZIEHL & JONES, LLP, Attn: John Morris
10100 Santa Monica Blvd., 13th Floor
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David Klos
c/o PACHULSKI STANG ZIEHL & JONES, LLP, Attn: John Morris
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Los Angeles, CA 90067

Scott Ellington
c/o ROSS & SMITH PC
Attn: Frances Smith
700 N. Pearl Street, Suite 1610
Dallas, TX 75201

John Honis
Tel: 214-335-7969

INTERROGATORY NO. 2: Identify each person who You believe has actual knowledge Concerning the (a) preparation, (b) purpose, and (c) execution of the Term Note, including any such person's last known contact information.

ANSWER: NREP believes the following persons may have knowledge of the facts and circumstances surrounding the Term Note:

Corporate representative of NREP
c/o WICK PHILLIPS GOULD & MARTIN LLP,
Attn: Lauren K. Drawhorn
100 Throckmorton St., Suite 1500
Fort Worth, TX 76102

Corporate representative of Debtor
c/o PACHULSKI STANG ZIEHL & JONES, LLP, Attn: John Morris
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067

James Dondero
c/o BONDS ELLIS EPPIC SHAFER JONES LLP
Attn: Clay M. Taylor and Bryan C. Assink
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Dallas, TX 75201

John Honis
Tel: 214-335-7969

INTERROGATORY NO. 3: Identify each person who You believe has actual knowledge of any facts Concerning any of the affirmative defenses set forth in Your answer, including any such person's last known contact information.

ANSWER: NREP believes the following persons may have knowledge of the facts concerning NREP's affirmative defenses:

Corporate representative of NREP
c/o WICK PHILLIPS GOULD & MARTIN LLP,
Attn: Lauren K. Drawhorn
100 Throckmorton St., Suite 1500
Fort Worth, TX 76102

Corporate representative of Debtor
c/o PACHULSKI STANG ZIEHL & JONES, LLP, Attn: John Morris
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067

James Dondero
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Attn: Clay M. Taylor and Bryan C. Assink
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Los Angeles, CA 90067

Nancy Dondero
Crescent Research Services Inc.
Vero Beach, FL
Tel: 772-234-6182

INTERROGATORY NO. 4: Identify (a) anything of value that You received in exchange for each Demand Note, and (b) the date You received anything of value in exchange for each Note.

ANSWER: NREP received the funds evidenced in each Demand Note on or about the date that each Demand Note was entered into by the parties to the Demand Notes.

INTERROGATORY NO. 5: Identify (a) anything of value that You received in exchange for the Term Note, and (b) the date You received anything of value in exchange for the Term Note.

ANSWER: NREP received the funds evidenced in the Term Note on or about the date the Term Note was entered into by the parties to the Term Note.

INTERROGATORY NO. 6: Identify every debt that You contend the Debtor owes to You and that is subject to "offset and/or setoff," as referenced in paragraph 58 of Your Answer, including (a) the amount of such debt, (b) the date that such debt was allegedly incurred, (c) the facts and circumstances Concerning the Debtor's incurrence of such debt, and the Demand Note or Term Note subject to any alleged "offset and/or setoff."

ANSWER: NREP withdraws its offset and/or setoff defense.

INTERROGATORY NO. 7: Identify each person who You believe has actual knowledge of any debt identified in response to Interrogatory No. 6.

ANSWER: NREP withdraws its offset and/or setoff defense.

INTERROGATORY NO. 8: Identify each witness You intend to call at trial in this Adversary Proceeding.

ANSWER: NREP will provide its list of witnesses within the time required under the Federal Rules of Civil Procedures, the agreed-upon Scheduling Order in this case, and the Local Rules for the United States Bankruptcy Court for the Northern District of Texas.

Respectfully submitted,

/s/ Lauren K. Drawhorn

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COUNSEL FOR NEXPOINT REAL ESTATE PARTNERS, LLC'S F/K/A HCRE PARTNERS, LLC

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that, on July 6, 2021, a true and correct copy of the foregoing document was served via email on counsel for the Debtor.

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/s/ Lauren K. Drawhorn
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ATTORNEYS FOR JAMES DONDERO

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re: HIGHLAND CAPITAL MANAGEMENT, L.P., Debtor.	§ § § § § §	Chapter 11 Case No. 19-34054-sgj11
HIGHLAND CAPITAL MANAGEMENT, L.P., Plaintiff, vs. JAMES DONDERO, NANCY DONDERO, AND THE DUGABOY INVESTMENT TRUST, Defendants.	§ § § § § § § § § § § §	Adversary Proceeding No. 21-03003-sgj

DEFENDANT JAMES DONDERO'S OBJECTIONS AND RESPONSES TO PLAINTIFF'S REQUESTS FOR ADMISSION, INTERROGATORIES, AND REQUESTS FOR PRODUCTION

TO: Highland Capital Management, L.P., by and through its attorneys of record, Zachery Z. Annable, Hayward PLLC, 10501 N. Central Expy., Ste. 106, Dallas, Texas 75231.

Defendant James Dondero ("Defendant" or "Dondero") serves his Objections and Responses to Plaintiff Highland Capital Management, L.P.'s ("Debtor" or "Highland") Requests for Admission, Interrogatories, and Requests for Production ("Requests"), as follows:

REQUESTS FOR PRODUCTION

Request for Production No. 1:

All Documents and Communications Concerning the existence of the Agreement.

RESPONSE:

Subject to any restrictions imposed by the Debtor and/or the Bankruptcy Court impeding the collection of responsive documents, Dondero will produce all responsive documents, if any, at a mutually agreeable place and time.

Request for Production No. 2:

All Documents and Communications Concerning the negotiation of the Agreement.

RESPONSE:

Subject to any restrictions imposed by the Debtor and/or the Bankruptcy Court impeding the collection of responsive documents, Dondero will produce all responsive documents, if any, at a mutually agreeable place and time.

Request for Production No. 3:

All Documents and Communications Concerning the terms of the Agreement.

RESPONSE:

Subject to any restrictions imposed by the Debtor and/or the Bankruptcy Court impeding the collection of responsive documents, Dondero will produce all responsive documents, if any, at a mutually agreeable place and time.

Request for Production No. 4:

All Communications Concerning the Agreement between You and (a) Nancy Dondero, or (b) Mark Okada, or (c) Frank Waterhouse, or (d) PricewaterhouseCoopers LLP or (d) any Class A shareholders of Highland (*see* paragraph 82 of the Amended Answer) for the period January 1, 2018 to the present. *See* paragraph 82 of the Amended Answer.

RESPONSE:

Subject to any restrictions imposed by the Debtor and/or the Bankruptcy Court impeding the collection of responsive documents, Dondero will produce all responsive documents, if any, at a mutually agreeable place and time.

Request for Production No. 5:

All Documents and Communications Concerning the cost of the "portfolio companies," as referred to in paragraph 82 of the Amended Answer, including Documents and Communications sufficient to identify the (a) portfolio company, (b) the date each portfolio company was acquired, (c) the consideration paid by Highland for its investment in the portfolio company.

RESPONSE:

Subject to any restrictions imposed by the Debtor and/or the Bankruptcy Court impeding the collection of responsive documents, Dondero will produce all responsive documents, if any, at a mutually agreeable place and time.

Request for Production No. 6:

All Documents and Communications Concerning the value of each of the "portfolio companies" at or around the time the Agreement was entered into.

RESPONSE:

Subject to any restrictions imposed by the Debtor and/or the Bankruptcy Court impeding the collection of responsive documents, Dondero will produce all responsive documents, if any, at a mutually agreeable place and time.

Request for Production No. 7:

All Documents and Communications Concerning Mr. Dondero's assertion that "Plaintiff's claims are barred, in whole or in part, due to waiver," as alleged in paragraph 83 of the Amended Answer.

RESPONSE:

Subject to any restrictions imposed by the Debtor and/or the Bankruptcy Court impeding the collection of responsive documents, Dondero will produce all responsive documents, if any, at a mutually agreeable place and time.

Request for Production No. 8:

All Documents and Communications Concerning Mr. Dondero's assertion that "Plaintiff's claims are barred, in whole or in part, due to estoppel," as alleged in paragraph 84 of the Amended Answer.

RESPONSE:

Subject to any restrictions imposed by the Debtor and/or the Bankruptcy Court impeding the collection of responsive documents, Dondero will produce all responsive documents, if any, at a mutually agreeable place and time.

Request for Production No. 9:

All Documents and Communications Concerning Mr. Dondero's assertion that "Plaintiff's claims are barred, in whole or in part, due to failure of consideration," as alleged in paragraph 86 of the Amended Answer.

RESPONSE:

Subject to any restrictions imposed by the Debtor and/or the Bankruptcy Court impeding the collection of responsive documents, Dondero will produce all responsive documents, if any, at a mutually agreeable place and time.

Request for Production No. 10:

All Documents and Communications Concerning Mr. Dondero's assertion that "Plaintiff's fraudulent transfer claims should be barred, in whole or in part, because at all relevant times Defendant James Dondero acted in good faith," as alleged in paragraph 87 of the Amended Answer.

RESPONSE:

Subject to any restrictions imposed by the Debtor and/or the Bankruptcy Court impeding the collection of responsive documents, Dondero will produce all responsive documents, if any, at a mutually agreeable place and time.

Request for Production No. 11:

All Documents and Communications Concerning Mr. Dondero's assertion that "Plaintiff's fraudulent transfer claims should be barred, in whole or in part, because the alleged transfer (*i.e.*,

the 'Alleged Agreement') was . . . for reasonably equivalent value," as alleged in paragraph 88 of the Amended Answer.

RESPONSE:

Subject to any restrictions imposed by the Debtor and/or the Bankruptcy Court impeding the collection of responsive documents, Dondero will produce all responsive documents, if any, at a mutually agreeable place and time.

Request for Production No. 12:

All Documents and Communications Concerning Mr. Dondero's assertion that "Plaintiff's fraudulent transfer claims should be barred, in whole or in part, because there was no intent to hinder, delay, or defraud any creditors of the Debtor by entering into the 'Alleged Agreement,'" as alleged in paragraph 89 of the Amended Answer.

RESPONSE:

Subject to any restrictions imposed by the Debtor and/or the Bankruptcy Court impeding the collection of responsive documents, Dondero will produce all responsive documents, if any, at a mutually agreeable place and time.

Request for Production No. 13:

All Documents and Communications Concerning Mr. Dondero's allegation that the use of "forgivable loans [was] a practice that was standard at [Highland]," as alleged in paragraph 83 of the Amended Answer.

RESPONSE:

Subject to any restrictions imposed by the Debtor and/or the Bankruptcy Court impeding the collection of responsive documents, Dondero will produce all responsive documents, if any, at a mutually agreeable place and time.

Request for Production No. 14:

All Documents and Communications Concerning any loan ever given by Highland that was actually forgiven, including any loan ever given by Highland to: (a) Mr. Dondero, (b) Highland Capital Management Fund Advisors, L.P., (c) NexPoint Advisors, L.P., (d) HCRE

Partners, LLC (n/k/a NexPoint Real Estate Partners, LLC), (e) Highland Capital Management Services, Inc., that was actually forgiven.

RESPONSE:

Subject to any restrictions imposed by the Debtor and/or the Bankruptcy Court impeding the collection of responsive documents, Dondero will produce all responsive documents, if any, at a mutually agreeable place and time.

Request for Production No. 15:

All Documents and Communications reflecting Your compensation for the years 2016, 2017, 2018, 2019, and 2020, including salary, deferred benefits, bonuses, expense reimbursements, and tax returns.

RESPONSE:

Dondero objects to this Request because the documents requested are in the possession of the Debtor and the Debtor has refused to produce these documents in this litigation. Subject to any restrictions imposed by the Debtor and/or the Bankruptcy Court impeding the collection of responsive documents, Dondero will produce all responsive documents, if any, at a mutually agreeable place and time.

Request for Production No. 16:

All Documents provided to each of Your two experts. *See James Dondero's Rule 26(a)(2) Expert Disclosures*, disclosed on May 28, 2021.

RESPONSE:

Dondero will produce all responsive documents, if any, at a mutually agreeable place and time.

Request for Production No. 17:

For each year during the period 2016 through the present, those portions of Your federal and state income tax returns Concerning Highland or any current or former affiliate of Highland.

RESPONSE:

Dondero objects to this Request because it seeks documents not reasonably calculated to lead to the discovery of relevant information. Subject to this objection, Dondero will produce responsive documents, if any, at a mutually agreeable place and time.

Request for Production No. 18:

To the extent not responsive to the prior Requests, all Documents and Communications Concerning each of Your responses to the Interrogatories.

RESPONSE:

Dondero objects to this Request because it is vague and not specifically tailored. Subject to any restrictions imposed by the Debtor and/or the Bankruptcy Court impeding the collection of responsive documents, Dondero will produce all responsive documents, if any, at a mutually agreeable place and time.

Request for Production No. 19:

All Documents You intend to introduce at trial in this Adversary Proceeding.

RESPONSE:

Subject to any scheduling order agreed to by the parties or entered by the Court, Dondero will produce all responsive documents, if any, at a mutually agreeable place and time.

REQUESTS FOR ADMISSION

Request for Admission No. 1:

Admit that You never disclosed the terms of the Agreement to PricewaterhouseCoopers LLP.

RESPONSE:

ADMIT.

Request for Admission No. 2:

Admit that You never disclosed the existence of the Agreement to PricewaterhouseCoopers LLP.

RESPONSE:

ADMIT.

Request for Admission No. 3:

Admit that, prior to the commencement of the Adversary Proceeding, You never disclosed the terms of the Agreement to Frank Waterhouse.

RESPONSE:

DENY.

Request for Admission No. 4:

Admit that, prior to the commencement of the Adversary Proceeding, You never disclosed the existence of the Agreement to Frank Waterhouse.

RESPONSE:

DENY.

Request for Admission No. 5:

Admit that, prior to the commencement of the Adversary Proceeding, You never disclosed the terms of the Agreement to Mark Okada.

RESPONSE:

ADMIT.

Request for Admission No. 6:

Admit that, prior to the commencement of the Adversary Proceeding, You never disclosed the existence of the Agreement to Mark Okada.

RESPONSE:

ADMIT.

Request for Admission No. 7:

Admit that no document was created prior to the commencement of the Adversary Proceeding that reflects or memorializes the terms of the Agreement.

RESPONSE:

ADMIT.

Request for Admission No. 8:

Admit that no document was created prior to the commencement of the Adversary Proceeding Concerning the existence of the Agreement.

RESPONSE:

DENY.

Request for Admission No. 9:

Admit that, prior to the commencement of the Adversary Proceeding, You never disclosed the terms of the Agreement to any creditor of Highland.

RESPONSE:

DENY.

Request for Admission No. 10:

Admit that, prior to the commencement of the Adversary Proceeding, You never disclosed the existence of the Agreement to any creditor of Highland.

RESPONSE:

DENY.

Request for Admission No. 11:

Admit that, prior to the commencement of the Adversary Proceeding, You never disclosed the terms of the Agreement to the Bankruptcy Court.

RESPONSE:

ADMIT.

Request for Admission No. 12:

Admit that, prior to the commencement of the Adversary Proceeding, You never disclosed the existence of the Agreement to the Bankruptcy Court.

RESPONSE:

ADMIT.

Request for Admission No. 13:

Admit that You never caused Highland to disclose the terms of the Agreement in connection with the Bankruptcy Case.

RESPONSE:

ADMIT.

Request for Admission No. 14:

Admit that You never caused Highland to disclose the existence of the Agreement in connection with the Bankruptcy Case.

RESPONSE:

ADMIT.

Request for Admission No. 15:

Admit that Highland never gave You a loan that was actually forgiven.

RESPONSE:

ADMIT.

Request for Admission No. 16:

Admit that Highland never gave Mark Okada a loan that was actually forgiven.

RESPONSE:

ADMIT.

Request for Admission No. 17:

Admit that Highland never gave a loan to any entity directly or indirectly owned or controlled by You that was actually forgiven.

RESPONSE:

ADMIT.

INTERROGATORIES

Interrogatory No. 1:

Identify the "testimony" that You believe "discusses the existence of [the Agreement] that may be uncovered through discovery in this Adversary Proceeding," including the (a) name of the witness, (b) the substance of the anticipated testimony, and (c) the basis for Your belief. *See* paragraph 82 of the Amended Answer.

RESPONSE:

James Dondero objects to this Interrogatory because discovery is ongoing and because the Interrogatory seeks privileged information.

Interrogatory No. 2:

Identify the "email correspondence" that You believe "discusses the existence of [the Agreement] that may be uncovered through discovery in this Adversary Proceeding," including the (a) name(s) of the sender(s) and recipient(s) of such email correspondence, (b) the date of any such email correspondence, and (c) the substance of any such e-mail correspondence. *See* paragraph 82 of the Amended Answer.

RESPONSE:

James Dondero objects to this Interrogatory because discovery is ongoing and because the Interrogatory seeks privileged information.

Interrogatory No. 3:

Identify the "portfolio companies" referred to in paragraph 82 of the Amended Answer.

RESPONSE:

MGM, Cornerstone, and Trussway.

Interrogatory No. 4:

Identify every loan made by Highland that was actually forgiven, including (a) the date of the loan, (b) the principal amount of the loan, (c) the obligor/debtor under the loan, (d) the reason

for the loan, (e) the date the loan was forgiven, (f) the amount of principal forgiven, and (g) the reason the loan was forgiven.

RESPONSE:

James Dondero objects to this Interrogatory because this information is in the possession of Plaintiff and Plaintiff has refused to provide this information to James Dondero in discovery. Therefore, James Dondero is unable to respond to this Interrogatory. Subject to these objections, James Dondero believes the following individuals may have received loans made by Highland that were forgiven, in whole or in part: Mike Hurley, Tim Lawler, Pat Daugherty, Jack Yang, Paul Adkins, Gibran Mahmud, Jean-Luc Eberlin, and Appu Mundassery.

Interrogatory No. 5:

Identify which part or parts of the Notes are "ambiguous," as alleged in paragraph 85 of the Amended Answer, and state the basis for Your belief.

RESPONSE:

James Dondero contends that each note as a whole is ambiguous because it refers to additional agreements without specifying them.

Interrogatory No. 6:

Identify all witnesses You intend to call at trial for the Adversary Proceeding.

RESPONSE:

James Dondero objects to this Interrogatory because it is premature. James Dondero will identify any witnesses in accordance with any scheduling order entered by the Court.

Dated: September 27, 2021

Respectfully submitted,

/s/Michael P. Aigen

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-and-

/s/Clay M. Taylor

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ATTORNEYS FOR JAMES DONDERO

VERIFICATION

STATE OF TEXAS)
)
COUNTY OF DALLAS)

On this day, James D. Dondero appeared before me, the undersigned notary public, and upon his oath, certified that he had read DEFENDANT JAMES DONDERO'S OBJECTIONS AND RESPONSES TO PLAINTIFF'S INTERROGATORIES and that the facts stated therein are within his personal knowledge and are true and correct to the best of his knowledge, information and belief.

JAMES D. DONDERO

SWORN TO and SUBSCRIBED before me by James D. Dondero on the 27th day of September, 2021.

Notary Public for the State of TX

TARA LOIBEN
Notary Public, State of Texas
Comm. Expires 04-15-2023
Notary ID 128585486

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that, on September 27, 2021, a true and correct copy of the foregoing document was served via email on counsel for the Debtor.

/s/ Michael P. Aigen
Michael P. Aigen

EXHIBIT 25

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- AND -

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ATTORNEYS FOR NANCY DONDERO

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re: HIGHLAND CAPITAL MANAGEMENT, L.P., Debtor.	§ § § § § § §	Chapter 11 Case No. 19-34054-sgjl 1
HIGHLAND CAPITAL MANAGEMENT, L.P., Plaintiff, vs. HIGHLAND CAPITAL MANAGEMENT SERVICES, INC., JAMES DONDERO, NANCY DONDERO, AND THE DUGABOY INVESTMENT TRUST, Defendants.	§ § § § § § § § § § § § §	Adversary Proceeding No. 21-03003-sgj

DEFENDANT NANCY DONDERO'S OBJECTIONS AND RESPONSES TO PLAINTIFF'S REQUESTS FOR ADMISSION, INTERROGATORIES, AND REQUESTS FOR PRODUCTION

TO: Highland Capital Management, L.P., by and through its attorneys of record, Zachery Z. Annable, Hayward PLLC, 10501 N. Central Expy., Ste. 106, Dallas, Texas 75231.

Defendant Nancy Dondero ("Defendant" or "Dondero") serves her Objections and Responses to Plaintiff Highland Capital Management, L.P.'s ("Debtor" or "Highland") Requests for Admission, Interrogatories, and Requests for Production ("Requests"), as follows:

REQUESTS FOR PRODUCTION

Request For Production No. 1:

All Documents and Communications Concerning the existence of the Agreement.

RESPONSE:

Subject to any restrictions imposed by the Debtor and/or the Bankruptcy Court impeding the collection of responsive documents, Dondero will produce all responsive documents, if any, at a mutually agreeable place and time.

Request For Production No. 2:

All Documents and Communications Concerning the negotiation of the Agreement.

RESPONSE:

Subject to any restrictions imposed by the Debtor and/or the Bankruptcy Court impeding the collection of responsive documents, Dondero will produce all responsive documents, if any, at a mutually agreeable place and time.

Request For Production No. 3:

All Documents and Communications Concerning the terms of the Agreement.

RESPONSE:

Subject to any restrictions imposed by the Debtor and/or the Bankruptcy Court impeding the collection of responsive documents, Dondero will produce all responsive documents, if any, at a mutually agreeable place and time.

Request For Production No. 4:

All Documents and Communications you actually reviewed in connection with Your decision to enter into the Agreement.

RESPONSE:

Subject to any restrictions imposed by the Debtor and/or the Bankruptcy Court impeding the collection of responsive documents, Dondero will produce all responsive documents, if any, at a mutually agreeable place and time.

Request For Production No. 5:

All Communications Concerning the Agreement between You and (a) James Dondero, or (b) Mark Okada, or (c) Frank Waterhouse, or (d) PricewaterhouseCoopers LLP, or (e) any Class A shareholders of Highland (see paragraph 82 of the Amended Answer) for the period January 1, 2018 to the present.

RESPONSE:

Subject to any restrictions imposed by the Debtor and/or the Bankruptcy Court impeding the collection of responsive documents, Dondero will produce all responsive documents, if any, at a mutually agreeable place and time.

Request For Production No. 6:

All Documents and Communications Concerning the "portfolio companies," as referred to in paragraph 82 of the Amended Answer.

RESPONSE:

Subject to any restrictions imposed by the Debtor and/or the Bankruptcy Court impeding the collection of responsive documents, Dondero will produce all responsive documents, if any, at a mutually agreeable place and time.

Request For Production No. 7:

All Documents and Communications Concerning James Dondero's assertion that "Plaintiff's claims are barred, in whole or in part, due to waiver," as alleged in paragraph 83 of the Amended Answer.

RESPONSE:

Subject to any restrictions imposed by the Debtor and/or the Bankruptcy Court impeding the collection of responsive documents, Dondero will produce all responsive documents, if any, at a mutually agreeable place and time.

Request For Production No. 8:

All Documents and Communications Concerning James Dondero's assertion that "Plaintiff's claims are barred, in whole or in part, due to estoppel," as alleged in paragraph 84 of the Amended Answer.

RESPONSE:

Subject to any restrictions imposed by the Debtor and/or the Bankruptcy Court impeding the collection of responsive documents, Dondero will produce all responsive documents, if any, at a mutually agreeable place and time.

Request For Production No. 9:

All Documents and Communications Concerning James Dondero's assertion that "Plaintiff's claims are barred, in whole or in part, due to failure of consideration," as alleged in paragraph 86 of the Amended Answer.

RESPONSE:

Subject to any restrictions imposed by the Debtor and/or the Bankruptcy Court impeding the collection of responsive documents, Dondero will produce all responsive documents, if any, at a mutually agreeable place and time.

Request For Production No. 10:

All Documents and Communications Concerning James Dondero's assertion that "Plaintiff's fraudulent transfer claims should be barred, in whole or in part, because at all relevant times Defendant James Dondero acted in good faith," as alleged in paragraph 87 of the Amended Answer.

RESPONSE:

Subject to any restrictions imposed by the Debtor and/or the Bankruptcy Court impeding the collection of responsive documents, Dondero will produce all responsive documents, if any, at a mutually agreeable place and time.

Request For Production No. 11:

All Documents and Communications Concerning James Dondero's assertion that "Plaintiff's fraudulent transfer claims should be barred, in whole or in part, because the alleged transfer (i.e., the 'Alleged Agreement') was . . . for reasonably equivalent value," as alleged in paragraph 88 of the Amended Answer.

RESPONSE:

Subject to any restrictions imposed by the Debtor and/or the Bankruptcy Court impeding the collection of responsive documents, Dondero will produce all responsive documents, if any, at a mutually agreeable place and time.

Request For Production No. 12:

All Documents and Communications Concerning James Dondero's assertion that "Plaintiff's fraudulent transfer claims should be barred, in whole or in part, because there was no

intent to hinder, delay, or defraud any creditors of the Debtor by entering into the 'Alleged Agreement,'" as alleged in paragraph 89 of the Amended Answer.

RESPONSE:

Subject to any restrictions imposed by the Debtor and/or the Bankruptcy Court impeding the collection of responsive documents, Dondero will produce all responsive documents, if any, at a mutually agreeable place and time.

Request For Production No. 13:

All Documents and Communications Concerning any agreement You ever entered into "as representative for a majority of the Class A shareholders of Plaintiff." See paragraph 82 of the Amended Answer.

RESPONSE:

Subject to any restrictions imposed by the Debtor and/or the Bankruptcy Court impeding the collection of responsive documents, Dondero will produce all responsive documents, if any, at a mutually agreeable place and time.

Request For Production No. 14:

To the extent not responsive to the prior Requests, all Documents and Communications Concerning each of Your responses to the Interrogatories.

RESPONSE:

Dondero objects to this Request because it is vague and not specifically tailored. Subject to any restrictions imposed by the Debtor and/or the Bankruptcy Court impeding the collection of responsive documents, Dondero will produce all responsive documents, if any, at a mutually agreeable place and time.

Request For Production No. 15:

All Documents You intend to introduce at trial in this Adversary Proceeding.

RESPONSE:

Subject to any scheduling order agreed to by the parties or entered by the Court, Dondero will produce all responsive documents, if any, at a mutually agreeable place and time.

REQUESTS FOR ADMISSION

Request For Admission No. 1:

Admit that You never disclosed the terms of the Agreement to PricewaterhouseCoopers LLP.

RESPONSE:

ADMIT.

Request For Admission No. 2:

Admit that You never disclosed the existence of the Agreement to PricewaterhouseCoopers LLP.

RESPONSE:

ADMIT.

Request For Admission No. 3:

Admit that, prior to the commencement of the Adversary Proceeding, You never disclosed the terms of the Agreement to Frank Waterhouse.

RESPONSE:

ADMIT.

Request For Admission No. 4:

Admit that, prior to the commencement of the Adversary Proceeding, You never disclosed the existence of the Agreement to Frank Waterhouse.

RESPONSE:

ADMIT.

Request For Admission No. 5:

Admit that, prior to the commencement of the Adversary Proceeding, You never disclosed the terms of the Agreement to Mark Okada.

RESPONSE:

ADMIT.

Request For Admission No. 6:

Admit that, prior to the commencement of the Adversary Proceeding, You never disclosed the existence of the Agreement to Mark Okada.

RESPONSE:

ADMIT.

Request For Admission No. 7:

Admit that no document was created prior to the commencement of the Adversary Proceeding that reflects or memorializes the terms of the Agreement.

RESPONSE:

Nancy Dondero lacks sufficient information to admit or deny this request.

Request For Admission No. 8:

Admit that no document was created prior to the commencement of the Adversary Proceeding Concerning the existence of the Agreement.

RESPONSE:

Nancy Dondero lacks sufficient information to admit or deny this request.

Request For Admission No. 9:

Admit that, prior to the commencement of the Adversary Proceeding, You never disclosed the terms of the Agreement to any creditor of Highland.

RESPONSE:

ADMIT.

Request For Admission No. 10:

Admit that, prior to the commencement of the Adversary Proceeding, You never disclosed the existence of the Agreement to any creditor of Highland.

RESPONSE:

ADMIT.

Request For Admission No. 11:

Admit that, prior to the commencement of the Adversary Proceeding, You never disclosed the terms of the Agreement to the Bankruptcy Court.

RESPONSE:

ADMIT.

Request For Admission No. 12:

Admit that, prior to the commencement of the Adversary Proceeding, You never disclosed the existence of the Agreement to the Bankruptcy Court.

RESPONSE:

ADMIT.

Request For Admission No. 13:

Admit that You never caused Highland to disclose the terms of the Agreement in connection with the Bankruptcy Case.

RESPONSE:

ADMIT.

Request For Admission No. 14:

Admit that You never caused Highland to disclose the existence of the Agreement in connection with the Bankruptcy Case.

RESPONSE:

ADMIT.

Request For Admission No. 15:

Admit that, prior to the Commencement of the Adversary Proceeding, You never disclosed the terms of the Agreement to anyone.

RESPONSE:

ADMIT (other than my brother).

Request For Admission No. 16:

Admit that, prior to the Commencement of the Adversary Proceeding, You never disclosed the existence of the Agreement to anyone.

RESPONSE:

ADMIT (other than my brother).

INTERROGATORIES

Interrogatory No. 1:

Identify each individual to whom You disclosed the terms of the Agreement prior to the commencement of the Action, including (a) the name of each person, (b) the date the disclosure was made, and (c) the substance of the disclosure.

RESPONSE:

None.

Interrogatory No. 2:

Identify each Person to whom You disclosed the existence of the Agreement prior to the commencement of the Adversary Proceeding, including (a) the name of each person, (b) the date the disclosure was made, and (c) the substance of the disclosure.

RESPONSE:

None.

Interrogatory No. 3:

Identify every Document and Communication Concerning the terms of the Agreement.

RESPONSE:

The Fourth Amended and Restated Agreement of Limited Partnership of Highland Capital Management, L.P.

Interrogatory No. 4:

Identify every Document and Communication Concerning the existence of the Agreement.

RESPONSE:

The Fourth Amended and Restated Agreement of Limited Partnership of Highland Capital Management, L.P.

Interrogatory No. 5:

Identify every Document and Communication you reviewed in connection with Your decision to enter into the Agreement.

RESPONSE:

In addition to conversations with James Dondero, Nancy Dondero either reviewed or discussed with James Dondero the Fourth Amended and Restated Agreement of Limited Partnership of Highland Capital Management, L.P. and The Dugaboy Trust documents.

Interrogatory No. 6:

Other than the Agreement (as set forth in paragraph 82 of the Amended Answer), identify every agreement You ever entered into "as a representative of a majority of Class A shareholders of Plaintiff," including (a) the parties with whom the agreement was made, (b) the date of the agreement, and (c) the terms of the agreement.

Response:

Other than generally approving compensation, including the Agreements at issue in the Notes proceedings, none.

Interrogatory No. 7:

Identify all witnesses You intend to call at trial for the Adversary Proceeding.

RESPONSE:

Nancy Dondero objects to this Interrogatory because it is premature. Nancy Dondero will identify any witnesses in accordance with any scheduling order entered by the Court.

Dated: September 27, 2021

Respectfully submitted,

/s/Michael P. Aigen

Deborah Deitsch-Perez
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Michael P. Aigen
State Bar No. 24012196
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-and-

/s/Daniel P. Elms

Daniel P. Elms
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(214) 665-3600 telephone
(214) 665-3601 facsimile
Email: elmsd@gtlaw.com

ATTORNEYS FOR NANCY DONDERO

VERIFICATION

STATE OF COLORADO)
)
COUNTY OF PITKIN)

On this day, Nancy Dondero appeared before me, the undersigned notary public, and upon her oath, certified that she had read DEFENDANT NANCY DONDERO'S OBJECTIONS AND RESPONSES TO PLAINTIFF'S INTERROGATORIES and that the facts stated therein are within her personal knowledge and are true and correct to the best of her knowledge, information and belief.

Nancy Dondero
NANCY DONDERO

SWORN TO and SUBSCRIBED before me by Nancy Dondero on the __ day of September, 2021.

_____
Notary Public in and for the State of Colorado

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that, on September 27, 2021, a true and correct copy of the foregoing document was served via email on counsel for the Debtor.

/s/ Michael P. Aigen
Michael P. Aigen

EXHIBIT 26

Douglas S. Draper (La. Bar No. 5073)
Leslie A. Collins (La. Bar No. 14891)
Greta M. Brouphy (La. Bar No. 26216)
HELLER, DRAPER & HORN, L.L.C.
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ATTORNEYS FOR THE DUGABOY INVESTMENT TRUST

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re: HIGHLAND CAPITAL MANAGEMENT, L.P., Debtor.	§ § § § § § §	Chapter 11 Case No. 19-34054-sgjl 1
HIGHLAND CAPITAL MANAGEMENT, L.P., Plaintiff, vs. JAMES DONDERO, NANCY DONDERO, AND THE DUGABOY INVESTMENT TRUST, Defendants.	§ § § § § § § § § § § § §	Adversary Proceeding No. 21-03003-sgj

DEFENDANT THE DUGABOY INVESTMENT TRUST'S OBJECTIONS AND RESPONSES TO PLAINTIFF'S REQUESTS FOR ADMISSION, INTERROGATORIES, AND REQUESTS FOR PRODUCTION

TO: Highland Capital Management, L.P., by and through its attorneys of record, Zachery Z. Annable, Hayward PLLC, 10501 N. Central Expy., Ste. 106, Dallas, Texas 75231.

Defendant The Dugaboy Investment Trust ("Defendant" or "Dugaboy") serves its Objections and Responses to Plaintiff Highland Capital Management, L.P.'s ("Debtor" or

"Highland") Requests for Admission, Interrogatories, and Requests for Production ("Requests"), as follows:

REQUESTS FOR PRODUCTION

Request For Production No. 1:

All Documents and Communications Concerning the existence of the Agreement.

RESPONSE:

Subject to any restrictions imposed by the Debtor and/or the Bankruptcy Court impeding the collection of responsive documents, Dugaboy will produce all responsive documents, if any, at a mutually agreeable place and time.

Request For Production No. 2:

All Documents and Communications Concerning the negotiation of the Agreement.

RESPONSE:

Subject to any restrictions imposed by the Debtor and/or the Bankruptcy Court impeding the collection of responsive documents, Dugaboy will produce all responsive documents, if any, at a mutually agreeable place and time.

Request For Production No. 3:

All Documents and Communications Concerning the terms of the Agreement.

RESPONSE:

Subject to any restrictions imposed by the Debtor and/or the Bankruptcy Court impeding the collection of responsive documents, Dugaboy will produce all responsive documents, if any, at a mutually agreeable place and time.

Request For Production No. 4:

All Documents and Communications you actually reviewed in connection with Your decision to enter into the Agreement.

RESPONSE:

Subject to any restrictions imposed by the Debtor and/or the Bankruptcy Court impeding the collection of responsive documents, Dugaboy will produce all responsive documents, if any, at a mutually agreeable place and time.

Request For Production No. 5:

All Communications Concerning the Agreement between You and (a) James Dondero, or (b) Mark Okada, or (c) Frank Waterhouse, or (d) Nancy Dondero, or (e) any Class A shareholders of Highland. *See* paragraph 82 of the Amended Answer.

RESPONSE:

Subject to any restrictions imposed by the Debtor and/or the Bankruptcy Court impeding the collection of responsive documents, Dugaboy will produce all responsive documents, if any, at a mutually agreeable place and time.

Request For Production No. 6:

All Documents and Communications Concerning the "portfolio companies," as referred to in paragraph 82 of the Amended Answer.

RESPONSE:

Subject to any restrictions imposed by the Debtor and/or the Bankruptcy Court impeding the collection of responsive documents, Dugaboy will produce all responsive documents, if any, at a mutually agreeable place and time.

Request For Production No. 7:

All Documents and Communications Concerning James Dondero's assertion that "Plaintiff's claims are barred, in whole or in part, due to waiver," as alleged in paragraph 83 of the Amended Answer.

RESPONSE:

Subject to any restrictions imposed by the Debtor and/or the Bankruptcy Court impeding the collection of responsive documents, Dugaboy will produce all responsive documents, if any, at a mutually agreeable place and time.

Request For Production No. 8:

All Documents and Communications Concerning James Dondero's assertion that "Plaintiff's claims are barred, in whole or in part, due to estoppel," as alleged in paragraph 84 of the Amended Answer.

RESPONSE:

Subject to any restrictions imposed by the Debtor and/or the Bankruptcy Court impeding the collection of responsive documents, Dugaboy will produce all responsive documents, if any, at a mutually agreeable place and time.

Request For Production No. 9:

All Documents and Communications Concerning James Dondero's assertion that "Plaintiff's claims are barred, in whole or in part, due to failure of consideration," as alleged in paragraph 86 of the Amended Answer.

RESPONSE:

Subject to any restrictions imposed by the Debtor and/or the Bankruptcy Court impeding the collection of responsive documents, Dugaboy will produce all responsive documents, if any, at a mutually agreeable place and time.

Request For Production No. 10:

All Documents and Communications Concerning James Dondero's assertion that "Plaintiff's fraudulent transfer claims should be barred, in whole or in part, because at all relevant times Defendant James Dondero acted in good faith," as alleged in paragraph 87 of the Amended Answer.

RESPONSE:

Subject to any restrictions imposed by the Debtor and/or the Bankruptcy Court impeding the collection of responsive documents, Dugaboy will produce all responsive documents, if any, at a mutually agreeable place and time.

Request For Production No. 11:

All Documents and Communications Concerning James Dondero's assertion that "Plaintiff's fraudulent transfer claims should be barred, in whole or in part, because the alleged transfer (*i.e.*, the 'Alleged Agreement') was . . . for reasonably equivalent value," as alleged in paragraph 88 of the Amended Answer.

RESPONSE:

Subject to any restrictions imposed by the Debtor and/or the Bankruptcy Court impeding the collection of responsive documents, Dugaboy will produce all responsive documents, if any, at a mutually agreeable place and time.

Request For Production No. 12:

All Documents and Communications Concerning James Dondero's assertion that "Plaintiff's fraudulent transfer claims should be barred, in whole or in part, because there was no intent to hinder, delay, or defraud any creditors of the Debtor by entering into the 'Alleged Agreement,'" as alleged in paragraph 89 of the Amended Answer.

RESPONSE:

Subject to any restrictions imposed by the Debtor and/or the Bankruptcy Court impeding the collection of responsive documents, Dugaboy will produce all responsive documents, if any, at a mutually agreeable place and time.

Request For Production No. 13:

All Documents and Communications Concerning any agreement Nancy Dondero ever entered into "as representative for a majority of the Class A shareholders of Plaintiff." *See* paragraph 82 of the Amended Answer.

RESPONSE:

Subject to any restrictions imposed by the Debtor and/or the Bankruptcy Court impeding the collection of responsive documents, Dugaboy will produce all responsive documents, if any, at a mutually agreeable place and time.

Request For Production No. 14:

To the extent not responsive to the prior Requests, all Documents and Communications Concerning each of Your responses to the Interrogatories.

RESPONSE:

Dugaboy objects to this Request because it is vague and not specifically tailored. Subject to any restrictions imposed by the Debtor and/or the Bankruptcy Court impeding the collection of responsive documents, Dugaboy will produce all responsive documents, if any, at a mutually agreeable place and time.

Request For Production No. 15:

All Documents You intend to introduce at trial in this Adversary Proceeding.

RESPONSE:

Subject to any scheduling order agreed to by the parties or entered by the Court, Dugaboy will produce all responsive documents, if any, at a mutually agreeable place and time.

REQUESTS FOR ADMISSION

Request For Admission No. 1:

Admit that You never disclosed the terms of the Agreement to PricewaterhouseCoopers LLP.

RESPONSE:

ADMIT.

Request For Admission No. 2:

Admit that You never disclosed the existence of the Agreement to PricewaterhouseCoopers LLP.

RESPONSE:

ADMIT.

Request For Admission No. 3:

Admit that, prior to the commencement of the Adversary Proceeding, You never disclosed the terms of the Agreement to Frank Waterhouse.

RESPONSE:

ADMIT.

Request For Admission No. 4:

Admit that, prior to the commencement of the Adversary Proceeding, You never disclosed the existence of the Agreement to Frank Waterhouse.

RESPONSE:

ADMIT.

Request For Admission No. 5:

Admit that, prior to the commencement of the Adversary Proceeding, You never disclosed the terms of the Agreement to Mark Okada.

RESPONSE:

ADMIT.

Request For Admission No. 6:

Admit that, prior to the commencement of the Adversary Proceeding, You never disclosed the existence of the Agreement to Mark Okada.

RESPONSE:

ADMIT.

Request For Admission No. 7:

Admit that no document was created prior to the commencement of the Adversary Proceeding that reflects or memorializes the terms of the Agreement.

RESPONSE:

Dugaboy lacks sufficient information to admit or deny this request.

Request For Admission No. 8:

Admit that no document was created prior to the commencement of the Adversary Proceeding Concerning the existence of the Agreement.

RESPONSE:

Dugaboy lacks sufficient information to admit or deny this request.

Request For Admission No. 9:

Admit that, prior to the commencement of the Adversary Proceeding, You never disclosed the terms of the Agreement to any creditor of Highland.

RESPONSE:

ADMIT.

Request For Admission No. 10:

Admit that, prior to the commencement of the Adversary Proceeding, You never disclosed the existence of the Agreement to any creditor of Highland.

RESPONSE:

ADMIT.

Request For Admission No. 11:

Admit that, prior to the commencement of the Adversary Proceeding, You never disclosed the terms of the Agreement to the Bankruptcy Court.

RESPONSE:

ADMIT.

Request For Admission No. 12:

Admit that, prior to the commencement of the Adversary Proceeding, You never disclosed the existence of the Agreement to the Bankruptcy Court.

RESPONSE:

ADMIT.

Request For Admission No. 13:

Admit that You never caused Highland to disclose the terms of the Agreement in connection with the Bankruptcy Case.

RESPONSE:

ADMIT.

Request For Admission No. 14:

Admit that You never caused Highland to disclose the existence of the Agreement in connection with the Bankruptcy Case.

RESPONSE:

ADMIT.

Request For Admission No. 15:

Admit that, prior to the Commencement of the Adversary Proceeding, You never disclosed the terms of the Agreement to anyone.

RESPONSE:

ADMIT.

Request For Admission No. 16:

Admit that, prior to the Commencement of the Adversary Proceeding, You never disclosed the existence of the Agreement to anyone.

RESPONSE:

ADMIT.

INTERROGATORIES

Interrogatory No. 1:

Identify each individual to whom You disclosed the terms of the Agreement prior to the commencement of the Adversary Proceeding, including (a) the name of each person, (b) the date the disclosure was made, and (c) the substance of the disclosure.

RESPONSE:

None.

Interrogatory No. 2:

Identify each Person to whom You disclosed the existence of the Agreement prior to the commencement of the Adversary Proceeding, including (a) the name of each person, (b) the date the disclosure was made, and (c) the substance of the disclosure.

RESPONSE:

None.

Interrogatory No. 3:

Identify every Document and Communication Concerning the terms of the Agreement.

RESPONSE:

The Fourth Amended and Restated Agreement of Limited Partnership of Highland Capital Management, L.P.

Interrogatory No. 4:

Identify every Document and Communication Concerning the existence of the Agreement.

RESPONSE:

The Fourth Amended and Restated Agreement of Limited Partnership of Highland Capital Management, L.P.

Interrogatory No. 5:

Identify every Document and Communication you reviewed in connection with Your decision to enter into the Agreement.

RESPONSE:

In addition to conversations with James Dondero, Nancy Dondero either reviewed or discussed with James Dondero the Fourth Amended and Restated Agreement of Limited Partnership of Highland Capital Management, L.P. and The Dugaboy Trust documents.

Interrogatory No. 6:

Other than the Agreement (as set forth in paragraph 82 of the Amended Answer), identify every agreement Nancy Dondero ever entered into "as a representative of a majority of Class A shareholders of Plaintiff," including (a) the parties with whom the agreement was made, (b) the date of the agreement, and (c) the terms of the agreement.

Response:

Other than generally approving compensation, including the Agreements at issue in the Notes proceedings, none.

Interrogatory No. 7:

Identify all witnesses You intend to call at trial for the Adversary Proceeding.

RESPONSE:

Dugaboy objects to this Interrogatory because it is premature. Dugaboy will identify any witnesses in accordance with any scheduling order entered by the Court.

Dated: September 27, 2021

Respectfully submitted,

/s/Douglas Draper

Douglas S. Draper (La. Bar No. 5073)
Leslie A. Collins (La. Bar No. 14891)
Greta M. Brouphy (La. Bar No. 26216)
HELLER, DRAPER & HORN, L.L.C.
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VERIFICATION

STATE OF COLORADO)
)
COUNTY OF PITKIN)

On this day, Nancy Dondero appeared before me, the undersigned notary public, and upon her oath, certified that she has read DEFENDANT THE DUGABOY INVESTMENT TRUST'S OBJECTIONS AND RESPONSES TO PLAINTIFF'S INTERROGATORIES and that the facts stated therein are within her personal knowledge and are true and correct to the best of her knowledge, information and belief.

Nancy Dondero
NANCY DONDERO

SWORN TO and SUBSCRIBED before me by Nancy Dondero on the ___ day of September, 2021.

_____
Notary Public in and for the State of Colorado

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that, on September 27, 2021, a true and correct copy of the foregoing document was served via email on counsel for the Debtor.

/s/Douglas S. Draper
Douglas S. Draper

EXHIBIT 27

Davor Rukavina
Thomas D. Berghman
Julian P. Vasek
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ATTORNEYS FOR NEXPOINT ADVISORS, L.P.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	
	§	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	Case No. 19-34054-sgj11
Debtor.	§	
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	
Plaintiff,	§	Adversary Proceeding No.
	§	
vs.	§	21-03005-sgj
	§	
NEXPOINT ADVISORS, L.P., JAMES DONDERO, NANCY DONDERO, AND THE DUGABOY INVESTMENT TRUST,	§	
	§	
Defendants.	§	

DEFENDANT NEXPOINT ADVISORS, L.P.'S OBJECTIONS AND RESPONSES TO PLAINTIFF'S REQUESTS FOR ADMISSION, INTERROGATORIES, AND REQUESTS FOR PRODUCTION

TO: Highland Capital Management, L.P., by and through its attorneys of record, Zachery Z. Annable, Hayward PLLC, 10501 N. Central Expy., Ste. 106, Dallas, Texas 75231.

Defendant NexPoint Advisors, L.P. ("Defendant" or "NexPoint") serves its Objections and Responses to Plaintiff Highland Capital Management, L.P.'s ("Debtor" or "Highland") Requests for Admission, Interrogatories, and Requests for Production ("Requests"), as follows:

REQUESTS FOR PRODUCTION

Request for Production No. 1:

All Documents and Communications Concerning the existence of the Agreement.

RESPONSE:

Subject to any restrictions imposed by the Debtor and/or the Bankruptcy Court impeding the collection of responsive documents, Defendant will produce all responsive documents, if any, at a mutually agreeable place and time.

Request for Production No. 2:

All Documents and Communications Concerning the negotiation of the Agreement.

RESPONSE:

Subject to any restrictions imposed by the Debtor and/or the Bankruptcy Court impeding the collection of responsive documents, Defendant will produce all responsive documents, if any, at a mutually agreeable place and time.

Request for Production No. 3:

All Documents and Communications Concerning the terms of the Agreement.

RESPONSE:

Subject to any restrictions imposed by the Debtor and/or the Bankruptcy Court impeding the collection of responsive documents, Defendant will produce all responsive documents, if any, at a mutually agreeable place and time.

Request for Production No. 4:

All Communications Concerning the Agreement between You and (a) James Dondero, or (b) Nancy Dondero, or (c) Frank Waterhouse, or (d) Your outside auditor(s), or (e) any Class A shareholders of Highland (*see* paragraph 83 of the Amended Answer) for the period January 1, 2018 to the present.

RESPONSE:

Subject to any restrictions imposed by the Debtor and/or the Bankruptcy Court impeding the collection of responsive documents, Defendant will produce all responsive documents, if any, at a mutually agreeable place and time.

Request for Production No. 5:

All Documents and Communications Concerning Your assertion that "Plaintiff was responsible for making payments on behalf of the Defendant under the note," as alleged in paragraph 80 of the Amended Answer.

RESPONSE:

Subject to any restrictions imposed by the Debtor and/or the Bankruptcy Court impeding the collection of responsive documents, Defendant will produce all responsive documents, if any, at a mutually agreeable place and time.

Request for Production No. 6:

All Documents and Communications Concerning Your assertion that "[a]ny alleged default under the note was the result of the Plaintiff's negligence, misconduct, breach of contract, etc.," as alleged in paragraph 80 of the Amended Answer.

RESPONSE:

Subject to any restrictions imposed by the Debtor and/or the Bankruptcy Court impeding the collection of responsive documents, Defendant will produce all responsive documents, if any, at a mutually agreeable place and time.

Request for Production No. 7:

All Documents and Communications Concerning Your assertion that Plaintiff "caused the delay" in the performance of the contract, as alleged in paragraph 81 of the Amended Answer.

RESPONSE:

Subject to any restrictions imposed by the Debtor and/or the Bankruptcy Court impeding the collection of responsive documents, Defendant will produce all responsive documents, if any, at a mutually agreeable place and time.

Request for Production No. 8:

All Documents and Communications Concerning Your assertion that "Plaintiff has waived the right to accelerate the note and/or the Plaintiff is estopped to enforce the alleged acceleration by accepting payment after the same," as alleged in paragraph 82 of the Amended Answer.

RESPONSE:

Subject to any restrictions imposed by the Debtor and/or the Bankruptcy Court impeding the collection of responsive documents, Defendant will produce all responsive documents, if any, at a mutually agreeable place and time.

Request for Production No. 9:

All Documents and Communications Concerning Your assertion that NexPoint acted in "good faith," as alleged in paragraph 84 of the Amended Answer.

RESPONSE:

Subject to any restrictions imposed by the Debtor and/or the Bankruptcy Court impeding the collection of responsive documents, Defendant will produce all responsive documents, if any, at a mutually agreeable place and time.

Request for Production No. 10:

All Documents and Communications Concerning Your assertion that "reasonably equivalent value was provided for any alleged transfer or obligation," as alleged in paragraph 84 of the Amended Answer.

RESPONSE:

Subject to any restrictions imposed by the Debtor and/or the Bankruptcy Court impeding the collection of responsive documents, Defendant will produce all responsive documents, if any, at a mutually agreeable place and time.

Request for Production No. 11:

Your audited financial statements for the period January 1, 2018 to the present.

RESPONSE:

Subject to any restrictions imposed by the Debtor and/or the Bankruptcy Court impeding the collection of responsive documents, Defendant will produce all responsive documents, if any, redacted as needed, at a mutually agreeable place and time.

Request for Production No. 12:

Your unaudited financial statements for the period January 1, 2018 to the present, to the extent any portion of that time period is not covered by the audited financial statements.

RESPONSE:

Subject to any restrictions imposed by the Debtor and/or the Bankruptcy Court impeding the collection of responsive documents, Defendant will produce all responsive documents, if any, redacted as needed, at a mutually agreeable place and time.

Request for Production No. 13:

For the period January 1, 2018 through the present, all Communications between You and Your outside auditor(s) concerning the Notes.

RESPONSE:

Subject to any restrictions imposed by the Debtor and/or the Bankruptcy Court impeding the collection of responsive documents, Defendant will produce all responsive documents, if any, at a mutually agreeable place and time.

Request for Production No. 14:

All Documents and Communications Concerning any compensation that You paid to James Dondero for each of Your fiscal years 2016, 2017, 2018, and 2019, and 2020.

RESPONSE:

Subject to any restrictions imposed by the Debtor and/or the Bankruptcy Court impeding the collection of responsive documents, Defendant will produce all responsive documents, if any, at a mutually agreeable place and time.

Request for Production No. 15:

All Documents and Communications Concerning any loan that You ever made to or for the benefit of James Dondero.

RESPONSE:

Subject to any restrictions imposed by the Debtor and/or the Bankruptcy Court impeding the collection of responsive documents, Defendant will produce all responsive documents, if any, at a mutually agreeable place and time.

Request for Production No. 16:

All Documents and Communications Concerning any Loan that You ever made to or for the benefit of James Dondero that You forgave.

RESPONSE:

Subject to any restrictions imposed by the Debtor and/or the Bankruptcy Court impeding the collection of responsive documents, Defendant will produce all responsive documents, if any, at a mutually agreeable place and time.

Request for Production No. 17:

To the extent not responsive to the prior requests, all Documents and Communications Concerning each of Your responses to the Interrogatories.

RESPONSE:

Defendant objects to this Request because it is vague and not specifically tailored. Subject to any restrictions imposed by the Debtor and/or the Bankruptcy Court impeding the collection of responsive documents, Defendant will produce all responsive documents, if any, at a mutually agreeable place and time.

Request for Production No. 18:

All Documents You intend to introduce at trial in this Adversary Proceeding.

RESPONSE:

Subject to any scheduling order agreed to by the parties or entered by the Court, Defendant will produce all responsive documents, if any, at a mutually agreeable place and time.

REQUESTS FOR ADMISSION

Request for Admission No. 1:

Admit that You never disclosed the terms of the Agreement to Your outside auditor(s).

RESPONSE:

ADMIT.

Request for Admission No. 2:

Admit that You never disclosed the existence of the Agreement to Your outside auditor(s).

RESPONSE:

ADMIT.

Request for Admission No. 3:

Admit that, prior to the commencement of the Adversary Proceeding, You never disclosed the terms of the Agreement to Frank Waterhouse.

RESPONSE:

DENY.

Request for Admission No. 4:

Admit that, prior to the commencement of the Adversary Proceeding, You never disclosed the existence of the Agreement to Frank Waterhouse.

RESPONSE:

DENY.

Request for Admission No. 5:

Admit that no document was created prior to the commencement of the Adversary Proceeding that reflects or memorializes the terms of the Agreement.

RESPONSE:

ADMIT.

Request for Admission No. 6:

Admit that no document was created prior to the commencement of the Adversary Proceeding Concerning the existence of the Agreement.

RESPONSE:

DENY.

Request for Admission No. 7:

Admit that You did not disclose the terms of the Agreement in connection with the Bankruptcy Case at any time prior to March 1, 2021, including in connection with any objection to the Plan or Disclosure Statement.

RESPONSE:

DENY.

Request for Admission No. 8:

Admit that You did not disclose the existence of the Agreement in connection with the Bankruptcy Case at any time prior to March 1, 2021, including in connection with any objection to the Plan or Disclosure Statement.

RESPONSE:

DENY.

INTERROGATORIES

Interrogatory No. 1:

Identify the "testimony" that You believe "discusses the existence of [the Agreement] that may be uncovered through discovery in this Adversary Proceeding," including the (a) name of the witness, (b) the substance of the anticipated testimony, and (c) the basis for Your belief. See paragraph 83 of the Amended Answer.

RESPONSE:

Defendant objects to this Interrogatory because discovery is ongoing and because the Interrogatory seeks privileged information.

Interrogatory No. 2:

Identify the "email correspondence" that You believe "discusses the existence of [the Agreement] that may be uncovered through discovery in this Adversary Proceeding," including the (a) name(s) of the sender(s) and recipient(s) of such email correspondence, (b) the date of any such email correspondence, and (c) the substance of any such e-mail correspondence.

RESPONSE:

Defendant objects to this Interrogatory because discovery is ongoing and because the Interrogatory seeks privileged information.

Interrogatory No. 3:

Identify each of Your employees, officers, representatives, and agents who knew of the terms and existence of the Agreement prior to March 1, 2021, and for each such person, identify (a) the name of the person, (b) the person's title or connection to You, (c) the date on which the person first learned of the terms and existence of the Agreement, and (d) how and from whom the person first learned of the terms and existence of the Agreement.

RESPONSE:

Defendant objects to this Interrogatory to the extent that it seeks privileged information. Subject to this objection, Defendant states that James Dondero and Frank Waterhouse knew of the terms and existence of the Agreement prior to March 1, 2021.

Interrogatory No. 4:

Identify all witnesses You intend to call at trial for the Adversary Proceeding.

RESPONSE:

Defendant objects to this Interrogatory because it is premature. Defendant will identify any witnesses in accordance with any scheduling order entered by the Court.

Dated: September 27, 2021

Respectfully submitted,

/s/Julian P. Vasek

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State Bar No. 24030781
Thomas D. Berghman
State Bar No. 24082683
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ATTORNEYS FOR NEXPOINT ADVISORS, L.P.

VERIFICATION

STATE OF TEXAS)
)
COUNTY OF DALLAS)

On this day, James D. Dondero appeared before me, the undersigned notary public, and upon his oath, certified that he had read DEFENDANT NEXPOINT ADVISORS, L.P.'S OBJECTIONS AND RESPONSES TO PLAINTIFF'S INTERROGATORIES and that the facts stated therein are within his personal knowledge and are true and correct to the best of his knowledge, information and belief.

JAMES D. DONDERO

SWORN TO and SUBSCRIBED before me by James D. Dondero on the 27th day of September, 2021.

Notary Public for the State of TX

TARA LOIBEN
Notary Public, State of Texas
Comm. Expires 04-15-2023
Notary ID 128585486

CORE/3522697.0002/169345087.1

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that, on September 27, 2021, a true and correct copy of the foregoing document was served via email on counsel for the Debtor.

/s/ Julian P. Vasek
Julian P. Vasek

EXHIBIT 28

Deborah Deitsch-Perez
Michael P. Aigen
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ATTORNEYS FOR HIGHLAND CAPITAL MANAGEMENT SERVICES, INC.

IN THE UNITED STATES BANKRUPTCY COURT FOR THE NORTHERN DISTRICT OF TEXAS DALLAS DIVISION

In re: HIGHLAND CAPITAL MANAGEMENT, L.P., Debtor.	§ § § § § § §	Chapter 11 Case No. 19-34054-sgjl 1
HIGHLAND CAPITAL MANAGEMENT, L.P., Plaintiff, vs. HIGHLAND CAPITAL MANAGEMENT SERVICES, INC., JAMES DONDERO, NANCY DONDERO, AND THE DUGABOY INVESTMENT TRUST, Defendants.	§ § § § § § § § § § § § §	Adversary Proceeding No. 21-03006-sgj

DEFENDANT HIGHLAND CAPITAL MANAGEMENT SERVICES, INC.'S OBJECTIONS AND RESPONSES TO PLAINTIFF'S REQUESTS FOR ADMISSION, INTERROGATORIES, AND REQUESTS FOR PRODUCTION

TO: Highland Capital Management, L.P., by and through its attorneys of record, Zachery Z. Annable, Hayward PLLC, 10501 N. Central Expy., Ste. 106, Dallas, Texas 75231.

Defendant Highland Capital Management Services, Inc. ("Defendant" or "HCMS") serves its Objections and Responses to Plaintiff Highland Capital Management, L.P.'s ("Debtor"

or "Highland") Requests for Admission, Interrogatories, and Requests for Production ("Requests"), as follows:

REQUESTS FOR PRODUCTION

Request For Production No. 1:

All Documents and Communications Concerning the existence of the Agreement.

RESPONSE:

Subject to any restrictions imposed by the Debtor and/or the Bankruptcy Court impeding the collection of responsive documents, Defendant will produce all responsive documents, if any, at a mutually agreeable place and time.

Request For Production No. 2:

All Documents and Communications Concerning the negotiation of the Agreement.

RESPONSE:

Subject to any restrictions imposed by the Debtor and/or the Bankruptcy Court impeding the collection of responsive documents, Defendant will produce all responsive documents, if any, at a mutually agreeable place and time.

Request For Production No. 3:

All Documents and Communications Concerning the terms of the Agreement.

RESPONSE:

Subject to any restrictions imposed by the Debtor and/or the Bankruptcy Court impeding the collection of responsive documents, Defendant will produce all responsive documents, if any, at a mutually agreeable place and time.

Request For Production No. 4:

All Communications Concerning the Agreement between You and (a) James Dondero, or (b) Nancy Dondero, or (c) Frank Waterhouse, or (d) any Class A shareholders of Highland (*see* paragraph 97 of the Amended Answer), or (e) Your outside auditor(s) for the period January 1, 2018 to the present.

RESPONSE:

Subject to any restrictions imposed by the Debtor and/or the Bankruptcy Court impeding the collection of responsive documents, Defendant will produce all responsive documents, if any, at a mutually agreeable place and time.

Request For Production No. 5:

All Documents and Communications Concerning Your assertion that "Plaintiff's claims are barred, in whole or in part, due to waiver," as alleged in paragraph 96 of the Amended Answer.

RESPONSE:

Subject to any restrictions imposed by the Debtor and/or the Bankruptcy Court impeding the collection of responsive documents, Defendant will produce all responsive documents, if any, at a mutually agreeable place and time.

Request For Production No. 6:

All Documents and Communications Concerning Your assertion that "Plaintiff's claims are barred, in whole or in part, due to estoppel," as alleged in paragraph 95 of the Amended Answer.

RESPONSE:

Subject to any restrictions imposed by the Debtor and/or the Bankruptcy Court impeding the collection of responsive documents, Defendant will produce all responsive documents, if any, at a mutually agreeable place and time.

Request For Production No. 7:

All Documents and Communications Concerning Your assertion that "Plaintiff's claims are barred in whole or in part by the doctrine of justification and/or repudiation," as alleged in paragraph 94 of the Amended Answer.

RESPONSE:

Subject to any restrictions imposed by the Debtor and/or the Bankruptcy Court impeding the collection of responsive documents, Defendant will produce all responsive documents, if any, at a mutually agreeable place and time.

Request For Production No. 8:

All Documents and Communications Concerning Your assertion that "Plaintiff's fraudulent transfer claims should be barred, in whole or in part, because at all relevant times Defendant HCMS acted in good faith," as alleged in paragraph 98 of the Amended Answer.

RESPONSE:

Subject to any restrictions imposed by the Debtor and/or the Bankruptcy Court impeding the collection of responsive documents, Defendant will produce all responsive documents, if any, at a mutually agreeable place and time.

Request For Production No. 9:

All Documents and Communications Concerning Your assertion that "Plaintiff's fraudulent transfer claims should be barred, in whole or in part, because the alleged transfer (i.e., the "Alleged Agreement") was . . . for reasonably equivalent value," as alleged in paragraph 99 of the Amended Answer.

RESPONSE:

Subject to any restrictions imposed by the Debtor and/or the Bankruptcy Court impeding the collection of responsive documents, Defendant will produce all responsive documents, if any, at a mutually agreeable place and time.

Request For Production No. 10:

All Documents and Communications Concerning Your assertion that "Plaintiff's fraudulent transfer claims should be barred, in whole or in part, because there was no intent to hinder, delay, or defraud any creditors of the Debtor by entering into the 'Alleged Agreement'," as alleged in paragraph 100 of the Amended Answer.

RESPONSE:

Subject to any restrictions imposed by the Debtor and/or the Bankruptcy Court impeding the collection of responsive documents, Defendant will produce all responsive documents, if any, at a mutually agreeable place and time.

Request For Production No. 11:

Your audited financial statements for the period January 1, 2018 to the present.

RESPONSE:

Subject to any restrictions imposed by the Debtor and/or the Bankruptcy Court impeding the collection of responsive documents, Defendant will produce all responsive documents, if any, redacted as needed, at a mutually agreeable place and time.

Request For Production No. 12:

Your unaudited financial statements for the period January 1, 2018 to the present, to the extent any portion of that time period is not covered by the audited financial statements.

RESPONSE:

Subject to any restrictions imposed by the Debtor and/or the Bankruptcy Court impeding the collection of responsive documents, Defendant will produce all responsive documents, if any, redacted as needed, at a mutually agreeable place and time.

Request For Production No. 13:

For the period January 1, 2018 through the present, all Communications between You and Your outside auditor(s) concerning the Notes.

RESPONSE:

Subject to any restrictions imposed by the Debtor and/or the Bankruptcy Court impeding the collection of responsive documents, Defendant will produce all responsive documents, if any, at a mutually agreeable place and time.

Request For Production No. 14:

All Documents and Communications Concerning any compensation that You paid to James Dondero for each of Your fiscal years 2016, 2017, 2018, and 2019, and 2020.

RESPONSE:

Subject to any restrictions imposed by the Debtor and/or the Bankruptcy Court impeding the collection of responsive documents, Defendant will produce all responsive documents, if any, at a mutually agreeable place and time.

Request For Production No. 15:

All Documents and Communications Concerning any loan that You ever made to or for the benefit of James Dondero.

RESPONSE:

Subject to any restrictions imposed by the Debtor and/or the Bankruptcy Court impeding the collection of responsive documents, Defendant will produce all responsive documents, if any, at a mutually agreeable place and time.

Request For Production No. 16:

All Documents and Communications Concerning any Loan that You ever made to or for the benefit of James Dondero that You forgave.

RESPONSE:

Subject to any restrictions imposed by the Debtor and/or the Bankruptcy Court impeding the collection of responsive documents, Defendant will produce all responsive documents, if any, at a mutually agreeable place and time.

Request For Production No. 17:

To the extent not responsive to the prior requests, all Documents and Communications Concerning each of Your responses to the Interrogatories.

RESPONSE:

Defendant objects to this Request because it is vague and not specifically tailored. Subject to any restrictions imposed by the Debtor and/or the Bankruptcy Court impeding the collection of responsive documents, Defendant will produce all responsive documents, if any, at a mutually agreeable place and time.

Request For Production No. 18:

All Documents You intend to introduce at trial in this Adversary Proceeding.

RESPONSE:

Subject to any scheduling order agreed to by the parties or entered by the Court, Defendant will produce all responsive documents, if any, at a mutually agreeable place and time.

REQUESTS FOR ADMISSION

Request For Admission No. 1:

Admit that You never disclosed the terms of the Agreement to Your outside auditor(s).

RESPONSE:

ADMIT.

Request For Admission No. 2:

Admit that You never disclosed the existence of the Agreement to Your outside auditor(s).

RESPONSE:

ADMIT.

Request For Admission No. 3:

Admit that, prior to the commencement of the Adversary Proceeding, You never disclosed the terms of the Agreement to Frank Waterhouse.

RESPONSE:

DENY.

Request For Admission No. 4:

Admit that, prior to the commencement of the Adversary Proceeding, You never disclosed the existence of the Agreement to Frank Waterhouse.

RESPONSE:

DENY.

Request For Admission No. 5:

Admit that no document was created prior to the commencement of the Adversary Proceeding that reflects or memorializes the terms of the Agreement.

RESPONSE:

ADMIT.

Request For Admission No. 6:

Admit that no document was created prior to the commencement of the Adversary Proceeding Concerning the existence of the Agreement.

RESPONSE:

DENY.

Request For Admission No. 7:

Admit that You did not disclose the terms of the Agreement in connection with the Bankruptcy Case at any time prior to March 1, 2021, including in connection with any objection to the Plan or Disclosure Statement.

RESPONSE:

DENY.

Request For Admission No. 8:

Admit that You did not disclose the existence of the Agreement in connection with the Bankruptcy Case at any time prior to March 1, 2021, including in connection with any objection to the Plan or Disclosure Statement.

RESPONSE:

DENY.

INTERROGATORIES

Interrogatory No. 1:

Identify the "testimony" that You believe "discusses the existence of [the Agreement] that may be uncovered through discovery in this Adversary Proceeding," including the (a) name of the witness, (b) the substance of the anticipated testimony, and (c) the basis for Your belief. *See* paragraph 97 of the Amended Answer.

RESPONSE:

Defendant objects to this Interrogatory because discovery is ongoing and because the Interrogatory seeks privileged information.

Interrogatory No. 2:

Identify the "email correspondence" that You believe "discusses the existence of [the Agreement] that may be uncovered through discovery in this Adversary Proceeding," including the (a) name(s) of the sender(s) and recipient(s) of such email correspondence, (b) the date of any such email correspondence, and (c) the substance of any such e-mail correspondence.

RESPONSE:

Defendant objects to this Interrogatory because discovery is ongoing and because the Interrogatory seeks privileged information.

Interrogatory No. 3:

Identify each of Your employees, officers, representatives, and agents who knew of the terms and existence of the Agreement prior to March 1, 2021, and for each such person, identify (a) the name of the person, (b) the person's title or connection to You, (c) the date on which the person first learned of the terms and existence of the Agreement, and (d) how and from whom the person first learned of the terms and existence of the Agreement.

RESPONSE:

Defendant objects to this Interrogatory to the extent that it seeks privileged information. Subject to this objection, Defendant states that James Dondero and Frank Waterhouse knew of the terms and existence of the Agreement prior to March 1, 2021.

Interrogatory No. 4:

Identify which part or parts of the Notes are "ambiguous," as alleged in paragraph 102 of the Amended Answer, and state the basis for Your belief.

RESPONSE:

Defendant contends that each note as a whole is ambiguous because it refers to additional agreements without specifying them.

Interrogatory No. 5:

Identify all witnesses You intend to call at trial for the Adversary Proceeding.

RESPONSE:

Defendant objects to this Interrogatory because it is premature. Defendant will identify any witnesses in accordance with any scheduling order entered by the Court.

Dated: September 27, 2021

Respectfully submitted,

/s/Deborah Deitsch-Perez

Deborah Deitsch-Perez
State Bar No. 24036072
Michael P. Aigen
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ATTORNEYS FOR DEFENDANT HIGHLAND CAPITAL MANAGEMENT SERVICES, INC.

VERIFICATION

STATE OF TEXAS)
)
COUNTY OF DALLAS)

On this day, James D. Dondero appeared before me, the undersigned notary public, and upon his oath, certified that he had read DEFENDANT HIGHLAND CAPITAL MANAGEMENT SERVICES, INC.'S OBJECTIONS AND RESPONSES TO PLAINTIFF'S INTERROGATORIES and that the facts stated therein are within his personal knowledge and are true and correct to the best of his knowledge, information and belief.

JAMES D. DONDERO

SWORN TO and SUBSCRIBED before me by James D. Dondero on the 27th day of September, 2021.

Notary Public in and for the State of Texas

TARA LOIBEN
Notary Public, State of Texas
Comm. Expires 04-15-2023
Notary ID 128585486

CORE/3522697.0002/169345241.2

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that, on September 27, 2021, a true and correct copy of the foregoing document was served via email on counsel for the Debtor.

/s/ Michael P. Aigen
Michael P. Aigen

EXHIBIT 29

Deborah Deitsch-Perez
Michael P. Aigen
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ATTORNEYS FOR NEXPOINT REAL ESTATE PARTNERS, LLC

IN THE UNITED STATE BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	
	§	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	Case No. 19-34054-sgj11
Debtor.	§	
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
Plaintiff,	§	Adversary Proceeding No.
	§	
vs.	§	21-03007-sgj
	§	
HCRE PARTNERS, LLC (N/K/A NEXPOINT REAL ESTATE PARTNERS, LLC), JAMES DONDERO, NANCY DONDERO, AND THE DUGABOY INVESTMENT TRUST,	§	
	§	
Defendants.	§	

DEFENDANT NEXPOINT REAL ESTATE PARTNERS, LLC'S OBJECTIONS AND RESPONSES TO PLAINTIFF'S REQUESTS FOR ADMISSION, INTERROGATORIES, AND REQUESTS FOR PRODUCTION

TO: Highland Capital Management, L.P., by and through its attorneys of record, Zachery Z. Annable, Hayward PLLC, 10501 N. Central Expy., Ste. 106, Dallas, Texas 75231.

Defendant HCRE Partners, LLC, n/k/a NexPoint Real Estate Partners, LLC ("Defendant" or "NREP"), serves its Objections and Responses to Plaintiff Highland Capital Management,

L.P.'s ("Debtor" or "Highland") Requests for Admission, Interrogatories, and Requests for Production ("Requests"), as follows:

REQUESTS FOR PRODUCTION

Request for Production No. 1:

All documents and communications Concerning the existence of the Agreement.

RESPONSE:

Subject to any restrictions imposed by the Debtor and/or the Bankruptcy Court impeding the collection of responsive documents, Defendant will produce all responsive documents, if any, at a mutually agreeable place and time.

Request for Production No. 2:

All Documents and Communications Concerning the negotiation of the Agreement.

RESPONSE:

Subject to any restrictions imposed by the Debtor and/or the Bankruptcy Court impeding the collection of responsive documents, Defendant will produce all responsive documents, if any, at a mutually agreeable place and time.

Request for Production No. 3:

All Documents and Communications Concerning the terms of the Agreement.

RESPONSE:

Subject to any restrictions imposed by the Debtor and/or the Bankruptcy Court impeding the collection of responsive documents, Defendant will produce all responsive documents, if any, at a mutually agreeable place and time.

Request for Production No. 4:

All Communications Concerning the Agreement between You and (a) James Dondero, or (b) Nancy Dondero, or (c) Frank Waterhouse, or (d) any Class A shareholders of Highland (see paragraph 99 of the Amended Answer), or (e) Your outside auditor(s) for the period January 1, 2018 to the present.

RESPONSE:

Subject to any restrictions imposed by the Debtor and/or the Bankruptcy Court impeding the collection of responsive documents, Defendant will produce all responsive documents, if any, at a mutually agreeable place and time.

Request for Production No. 5:

All Documents and Communications Concerning Your assertion that "Plaintiff's claims are barred, in whole or in part, due to waiver," as alleged in paragraph 98 of the Amended Answer.

RESPONSE:

Subject to any restrictions imposed by the Debtor and/or the Bankruptcy Court impeding the collection of responsive documents, Defendant will produce all responsive documents, if any, at a mutually agreeable place and time.

Request for Production No. 6:

All Documents and Communications Concerning Your assertion that "Plaintiff's claims are barred, in whole or in part, due to estoppel," as alleged in paragraph 97 of the Amended Answer.

RESPONSE:

Subject to any restrictions imposed by the Debtor and/or the Bankruptcy Court impeding the collection of responsive documents, Defendant will produce all responsive documents, if any, at a mutually agreeable place and time.

Request for Production No. 7:

All Documents and Communications Concerning Your assertion that "Plaintiff's claims are barred in whole or in part by the doctrine of justification and/or repudiation," as alleged in paragraph 96 of the Amended Answer.

RESPONSE:

Subject to any restrictions imposed by the Debtor and/or the Bankruptcy Court impeding the collection of responsive documents, Defendant will produce all responsive documents, if any, at a mutually agreeable place and time.

Request for Production No. 8:

All Documents and Communications Concerning Your assertion that "Plaintiff's fraudulent transfer claims should be barred, in whole or in part, because at all relevant times Defendant NREP acted in good faith," as alleged in paragraph 100 of the Amended Answer.

RESPONSE:

Subject to any restrictions imposed by the Debtor and/or the Bankruptcy Court impeding the collection of responsive documents, Defendant will produce all responsive documents, if any, at a mutually agreeable place and time.

Request for Production No. 9:

All Documents and Communications Concerning Your assertion that "Plaintiff's fraudulent transfer claims should be barred, in whole or in part, because the alleged transfer (i.e., the "Alleged Agreement") was . . . for reasonably equivalent value," as alleged in paragraph 101 of the Amended Answer.

RESPONSE:

Subject to any restrictions imposed by the Debtor and/or the Bankruptcy Court impeding the collection of responsive documents, Defendant will produce all responsive documents, if any, at a mutually agreeable place and time.

Request for Production No. 10:

All Documents and Communications Concerning Your assertion that "Plaintiff's fraudulent transfer claims should be barred, in whole or in part, because there was no intent to hinder, delay, or defraud any creditors of the Debtor by entering into the 'Alleged Agreement'," as alleged in paragraph 102 of the Amended Answer.

RESPONSE:

Subject to any restrictions imposed by the Debtor and/or the Bankruptcy Court impeding the collection of responsive documents, Defendant will produce all responsive documents, if any, at a mutually agreeable place and time.

Request for Production No. 11:

Your audited financial statements for the period January 1, 2018 to the present.

RESPONSE:

Subject to any restrictions imposed by the Debtor and/or the Bankruptcy Court impeding the collection of responsive documents, Defendant will produce all responsive documents, if any, redacted as needed, at a mutually agreeable place and time.

Request for Production No. 12:

Your unaudited financial statements for the period January 1, 2018 to the present, to the extent any portion of that time period is not covered by the audited financial statements.

RESPONSE:

Subject to any restrictions imposed by the Debtor and/or the Bankruptcy Court impeding the collection of responsive documents, Defendant will produce all responsive documents, if any, redacted as needed, at a mutually agreeable place and time.

Request for Production No. 13:

For the period January 1, 2018 through the present, all Communications between You and Your outside auditor(s) concerning the Notes.

RESPONSE:

Subject to any restrictions imposed by the Debtor and/or the Bankruptcy Court impeding the collection of responsive documents, Defendant will produce all responsive documents, if any, at a mutually agreeable place and time.

Request for Production No. 14:

All Documents and Communications Concerning any compensation that You paid to James Dondero for each of Your fiscal years 2016, 2017, 2018, and 2019, and 2020.

RESPONSE:

Subject to any restrictions imposed by the Debtor and/or the Bankruptcy Court impeding the collection of responsive documents, Defendant will produce all responsive documents, if any, at a mutually agreeable place and time.

Request for Production No. 15:

All Documents and Communications Concerning any loan that You ever made to or for the benefit of James Dondero.

RESPONSE:

Subject to any restrictions imposed by the Debtor and/or the Bankruptcy Court impeding the collection of responsive documents, Defendant will produce all responsive documents, if any, at a mutually agreeable place and time.

Request for Production No. 16:

All Documents and Communications Concerning any Loan that You ever made to or for the benefit of James Dondero that You forgave.

RESPONSE:

Subject to any restrictions imposed by the Debtor and/or the Bankruptcy Court impeding the collection of responsive documents, Defendant will produce all responsive documents, if any, at a mutually agreeable place and time.

Request for Production No. 17:

To the extent not responsive to the prior requests, all Documents and Communications Concerning each of Your responses to the Interrogatories.

RESPONSE:

Defendant objects to this Request because it is vague and not specifically tailored. Subject to any restrictions imposed by the Debtor and/or the Bankruptcy Court impeding the collection of responsive documents, Defendant will produce all responsive documents, if any, at a mutually agreeable place and time.

Request for Production No. 18:

All Documents You intend to introduce at trial in this Adversary Proceeding.

RESPONSE:

Subject to any scheduling order agreed to by the parties or entered by the Court, Defendant will produce all responsive documents, if any, at a mutually agreeable place and time.

REQUESTS FOR ADMISSION

Request for Admission No. 1:

Admit that You never disclosed the terms of the Agreement to Your outside auditor(s).

RESPONSE:

ADMIT.

Request for Admission No. 2:

Admit that You never disclosed the existence of the Agreement to Your outside auditor(s).

RESPONSE:

ADMIT.

Request for Admission No. 3:

Admit that, prior to the commencement of the Adversary Proceeding, You never disclosed the terms of the Agreement to Frank Waterhouse.

RESPONSE:

DENY.

Request for Admission No. 4:

Admit that, prior to the commencement of the Adversary Proceeding, You never disclosed the existence of the Agreement to Frank Waterhouse.

RESPONSE:

DENY.

Request for Admission No. 5:

Admit that no document was created prior to the commencement of the Adversary Proceeding that reflects or memorializes the terms of the Agreement.

RESPONSE:

ADMIT.

Request for Admission No. 6:

Admit that no document was created prior to the commencement of the Adversary Proceeding Concerning the existence of the Agreement.

RESPONSE:

DENY.

Request for Admission No. 7:

Admit that You did not disclose the terms of the Agreement in connection with the Bankruptcy Case at any time prior to March 1, 2021, including in connection with any objection to the Plan or Disclosure Statement.

RESPONSE:

DENY.

Request for Admission No. 8:

Admit that You did not disclose the existence of the Agreement in connection with the Bankruptcy Case at any time prior to March 1, 2021, including in connection with any objection to the Plan or Disclosure Statement.

RESPONSE:

DENY.

INTERROGATORIES

Interrogatory No. 1:

Identify the "testimony" that You believe "discusses the existence of [the Agreement] that may be uncovered through discovery in this Adversary Proceeding," including the (a) name of the witness, (b) the substance of the anticipated testimony, and (c) the basis for Your belief. See paragraph 99 of the Amended Answer.

RESPONSE:

Defendant objects to this Interrogatory because discovery is ongoing and because the Interrogatory seeks privileged information.

Interrogatory No. 2:

Identify the "email correspondence" that You believe "discusses the existence of [the Agreement] that may be uncovered through discovery in this Adversary Proceeding," including the (a) name(s) of the sender(s) and recipient(s) of such email correspondence, (b) the date of any such email correspondence, and (c) the substance of any such e-mail correspondence.

RESPONSE:

Defendant objects to this Interrogatory because discovery is ongoing and because the Interrogatory seeks privileged information.

Interrogatory No. 3:

Identify each of Your employees, officers, representatives, and agents who knew of the terms and existence of the Agreement prior to March 1, 2021, and for each such person, identify (a) the name of the person, (b) the person's title or connection to You, (c) the date on which the person first learned of the terms and existence of the Agreement, and (d) how and from whom the person first learned of the terms and existence of the Agreement.

RESPONSE:

Defendant objects to this Interrogatory to the extent that it seeks privileged information. Subject to this objection, Defendant states that James Dondero knew of the terms and existence of the Agreement prior to March 1, 2021.

Interrogatory No. 4:

Identify which part or parts of the Notes are "ambiguous," as alleged in paragraph 104 of the Amended Answer, and state the basis for Your belief.

RESPONSE:

Defendant contends that each note as a whole is ambiguous because it refers to additional agreements without specifying them.

Interrogatory No. 5:

Identify all witnesses You intend to call at trial for the Adversary Proceeding.

RESPONSE:

Defendant objects to this Interrogatory because it is premature. Defendant will identify any witnesses in accordance with any scheduling order entered by the Court.

Dated: September 27, 2021

Respectfully submitted,

/s/Michael P. Aigen

Deborah Deitsch-Perez
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ATTORNEYS FOR NEXPOINT REAL ESTATE PARTNERS, LLC

VERIFICATION

STATE OF TEXAS)
)
COUNTY OF DALLAS)

On this day, James D. Dondero appeared before me, the undersigned notary public, and upon his oath, certified that he had read DEFENDANT NEXPOINT REAL ESTATE PARTNERS, LLC'S JAMES DONDERO'S OBJECTIONS AND RESPONSES TO PLAINTIFF'S INTERROGATORIES and that the facts stated therein are within his personal knowledge and are true and correct to the best of his knowledge, information and belief.

JAMES D. DONDERO

SWORN TO and SUBSCRIBED before me by James D. Dondero on the 27th day of September, 2021.

Notary Public in and for the State of Texas

TARA LOIBEN
Notary Public, State of Texas
Comm. Expires 04-15-2023
Notary ID 128585486

CORE/3522697.0002/169345052.1

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that, on September 27, 2021, a true and correct copy of the foregoing document was served via email on counsel for the Debtor.

/s/ Michael P. Aigen
Michael P. Aigen

EXHIBIT 30

FOURTH AMENDED AND RESTATED

AGREEMENT OF LIMITED PARTNERSHIP

OF

HIGHLAND CAPITAL MANAGEMENT, L.P.

THE PARTNERSHIP INTERESTS REPRESENTED BY THIS LIMITED PARTNERSHIP AGREEMENT HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OP 1933 OR UNDER ANY STATE SECURITIES ACTS IN RELIANCE UPON EXEMPTIONS UNDER THOSE ACTS. THE SALE OR OTHER DISPOSITION OF THE PARTNERSHIP INTERESTS IS PROHIBITED UNLESS THAT SALE OR DISPOSITION IS MADE IN COMPLIANCE WITH ALL SUCH APPLICABLE ACTS. ADDITIONAL RESTRICTIONS ON TRANSFER OF THE PARTNERSHIP INTERESTS ARE SET FORTH IN THIS AGREEMENT.

FOURTH AMENDED AND RESTATED
AGREEMENT OF LIMITED PARTNERSHIP
OF
HIGHLAND CAPITAL MANAGEMENT, L.P.

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FOURTH AMENDED AND RESTATED
AGREEMENT OF LIMITED PARTNERSHIP
OF
HIGHLAND CAPITAL MANAGEMENT, L.P.

THIS FOURTH AMENDED AND RESTATED AGREEMENT OF LIMITED PARTNERSHIP is entered into on this 24th day of December, 2015, to be effective as of December 24, 2015, by and among Strand Advisors, Inc., a Delaware corporation (***"Strand"***), as General Partner, the Limited Partners party hereto, and any Person hereinafter admitted as a Limited Partner.

Certain terms used in this Agreement are defined in Article 2.

ARTICLE 1

GENERAL

1.1. Continuation. Subject to the provisions of this Agreement, the Partners hereby continue the Partnership as a limited partnership pursuant to the provisions of the Delaware Act. Except as expressly provided herein, the rights and obligations of the Partners and the administration and termination of the Partnership shall be governed by the Delaware Act.

1.2. Name. The name of the Partnership shall be, and the business of the Partnership shall be conducted under the name of Highland Capital Management, L.P. The General Partner, in its sole and unfettered discretion, may change the name of the Partnership at any time and from time to time and shall provide Limited Partners with written notice of such name change within twenty (20) days after such name change.

1.3. Purpose. The purpose and business of the Partnership shall be the conduct of any business or activity that may lawfully be conducted by a limited partnership organized pursuant to the Delaware Act. Any or all of the foregoing activities may be conducted directly by the Partnership or indirectly through another partnership, joint venture, or other arrangement.

1.4. Term. The Partnership was formed as a limited partnership on July 7, 1997, and shall continue until terminated pursuant to this Agreement.

1.5. Partnership Offices; Addresses of Partners.

(a) Partnership Offices. The registered office of the Partnership in the State of Delaware shall be 1013 Centre Road, Wilmington, Delaware 19805-1297, and its registered agent for service of process on the Partnership at that registered office shall be Corporation Service Company, or such other registered office or registered agent as the General Partner may from time to time designate. The principal office of the Partnership shall be 300 Crescent Court, Suite 700, Dallas, Texas 75201, or such other place as the General Partner may from time to time designate. The Partnership may maintain offices at such other place or places as the General Partner deems advisable.

(b) Addresses of Partners. The address of the General Partner is 300 Crescent Court, Suite 700, Dallas, Texas 75201. The address of each Limited Partner shall be the address of that Limited Partner appearing on the books and records of the Partnership. Each Limited Partner agrees to provide the General Partner with prompt written notice of any change in his/her/its address.

ARTICLE 2

DEFINITIONS

2.1. Definitions. The following definitions shall apply to the terms used in this Agreement, unless otherwise clearly indicated to the contrary in this Agreement:

"***Additional Capital Contribution***" has the meaning set forth in Section 3.1(b) of this Agreement.

"***Adjusted Capital Account Deficit***" means, with respect *to* any Partner, the deficit balance, if any, in the Capital Account of that Partner as of the end of the relevant Fiscal Year, or other relevant period, giving effect to all adjustments previously made thereto pursuant to Section 3.7 and further adjusted as follows: (i) credit to that Capital Account, any amounts which that Partner is obligated or deemed obligated to restore pursuant to any provision of this Agreement or pursuant to Treasury Regulations Section 1.704-1(b)(2)(ii)(c); (ii) debit to that Capital Account, the items described in Treasury Regulations Sections 1.704-1(b)(2)(ii)(d)(4), (5) and (6); and (iii) to the extent required under the Treasury Regulations, credit to that Capital Account (A) that Partner's share of "minimum gain" and (B) that Partner's share of "partner nonrecourse debt minimum gain." (Each Partner's share of the minimum gain and partner nonrecourse debt minimum gain shall be determined under Treasury Regulations Sections 1.704-2(g) and 1.704-2(i)(5), respectively.)

"***Affiliate***" means any Person that directly or indirectly controls, is controlled by, or is under common control with the Person in question. As used in this definition, the term "***control***" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through ownership of voting Securities, by contract or otherwise.

"***Agreement***" means this Fourth Amended and Restated Agreement of Limited Partnership, as it may be amended, supplemented, or restated from time to time.

"***Business Day***" means Monday through Friday of each week, except that a legal holiday recognized as such by the government of the United States or the State of Texas shall not be regarded as a Business Day.

"***Capital Account***" means the capital account maintained for a Partner pursuant to Section 3.7(a).

"***Capital Contribution***" means, with respect to any Partner, the amount of money or property contributed to the Partnership with respect to the interest in the Partnership held by that Person.

"***Certificate of Limited Partnership***" means the Certificate of Limited Partnership filed with the Secretary of State of Delaware by the General Partner, as that Certificate may be amended, supplemented or restated from time to time.

"Class A Limited Partners" means those Partners holding a Class A Limited Partnership Interest, as shown on Exhibit A.

"Class A Limited Partnership Interest" means a Partnership Interest held by a Partner in its capacity as a Class A Limited Partner."

"Class B Limited Partner" means those Partners holding a Class B Limited Partnership Interest, as shown on Exhibit A.

"Class B Limited Partnership Interest" means a Partnership Interest held by a Partner in its capacity as a Class B Limited Partner."

"Class B NAV Ratio Trigger Period" means any period during which the Class B Limited Partner's aggregate capital contributions, including the original principal balance of the Contribution Note, and reduced by the aggregate amount of distributions to the Class B Limited Partner, exceed 75 percent of the product of the Class B Limited Partner's Percentage Interest multiplied by the total book value of the Partnership; provided, however, that the General Partner shall only be required to test for a Class B NAV Ratio Trigger Period annually, as of the last day of each calendar year; provided further the General Partner must complete the testing within 180 days of the end of each calendar year; provided further that if the test results in a Class B NAV Ratio Trigger Period, the General Partner may, at its own election, retest at any time to determine the end date of the Class B NAV Ratio Trigger Period.

"Class C Limited Partner" means those Partners holding a Class C Limited Partnership Interest, as shown on Exhibit A.

"Class C Limited Partnership Interest" means a Partnership Interest held by a Partner in its capacity as a Class C Limited Partner."

"Class C NAV Ratio Trigger Period" means any period during which an amount equal to $93,000,000.00 reduced by the aggregate amount of distributions to the Class C Limited Partner after the Effective Date exceeds 75 percent of the product of the Class C Limited Partner's Percentage Interest multiplied by the total book value of the Partnership; provided, however, that the General Partner shall only be required to test for a Class C NAV Ratio Trigger Period annually, as of the last day of each calendar year; provided further the General Partner must complete the testing within 180 days of the end of each calendar year; provided further that if the test results in a Class C NAV Ratio Trigger Period, the General Partner may, at its own election, retest at any time to determine the end date of the Class C NAV Ratio Trigger Period.

"***Code***" means the Internal Revenue Code of 1986, as amended and in effect from time to time.

"Contribution Note" means that certain Secured Promissory Note dated December 21, 2015 by and among Hunter Mountain Investment Trust, as maker, and the Partnership as Payee.

"***Default Loan***" has the meaning set forth in Section 3.1(c)(i).

"***Defaulting Partner***" has the meaning set forth in Section 3.1(c).

"***Delaware Act***" means the Delaware Revised Uniform Limited Partnership Act, Part IV, Title C, Chapter 17 of the Delaware Corporation Law Annotated, as it may be amended, supplemented or restated from time to time, and any successor to that Act.

"Effective Date" means the date first recited above.

"***Fiscal Year***" has the meaning set forth in Section 3.11(b).

"***Founding Partner Group***" means, all partners holding partnership interests in the Partnership immediately before the Effective Date.

"***General Partner***" means any Person who (i) is referred to as such in the first paragraph of this Agreement, or has become a General Partner pursuant to the terms of this Agreement; and (ii) has not ceased to be a General Partner pursuant to the terms of this Agreement.

"***Limited Partner***" means any Person who (i) is referred to as such in the first paragraph of this Agreement, or has become a Limited Partner pursuant to the terms of this Agreement, and (ii) has not ceased to be a Limited Partner pursuant to the terms of this Agreement.

"***Liquidator***" has the meaning set forth in Section 5.3.

"***Losses***" means, for each Fiscal Year, the losses and deductions of the Partnership determined in accordance with accounting principles consistently applied from year to year employed under the Partnership's method of accounting and as reported, separately or in the aggregate, as appropriate, on the Partnership's information tax return filed for federal income tax purposes, plus any expenditures described in Code Section 705(a)(2)(B).

"***Majority Interest***" means the owners of more than fifty percent (50%) of the Percentage Interests of Class A Limited Partners.

"NAV Ratio Trigger Period" means a Class B NAV Ratio Trigger Period or a Class C NAV Ratio Trigger Period.

"Net Increase in Working Capital Accounts" means the excess of (i) Restricted Cash plus Management and Incentive Fees Receivable plus Other Assets plus Deferred Incentive Fees Receivable less Accounts Payable less Accrued and Other Liabilities as of the end of the period being measured over (ii) Restricted Cash plus Management and Incentive Fees Receivable plus Other Assets plus Deferred Incentive Fees Receivable less Accounts Payable less Accrued and Other Liabilities as of the beginning of the period being measured; provided, however, that amounts within each of the aforementioned categories shall be excluded from the calculation to the extent they are specifically identified as being derived from investing or financing activities. Each of the capitalized terms in this definition shall have the meaning given them in the books and records of the Partnership and appropriate adjustments may be made to the extent the Partnership adds new ledger accounts to its books and records that are current assets or current liabilities.

"***New Issues***" means Securities that are considered to be "new issues," as defined in the Conduct Rules of the National Association of Securities Dealers, Inc.

"***Nonrecourse Deduction***" has the meaning set forth in Treasury Regulations Section 1.704-2(b)(1), as computed under Treasury Regulations Section 1.704-2(c).

"***Nonrecourse* Liability**" has the meaning set forth in Treasury Regulations Section 1.704-2(b)(3).

"Operating Cash Flow" means Total Revenue less Total Operating Expenses plus Depreciation & Amortization less Net Increase in Working Capital Accounts year over year. Each of the capitalized terms in this definition shall have the meaning given them in the books and records of the Partnership.

"***Partner***" means a General Partner or a Limited Partner.

"***Partner Nonrecourse Debt***" has the meaning set forth in Treasury Regulations Section 1.704-2(b)(4).

"***Partner Nonrecourse Deductions***" has the meaning set forth in Treasury Regulations Section 1.704-2(i)(2).

"***Partner Nonrecourse Debt Minimum Gain***" has the meaning set forth in Treasury Regulations Section 1.704-2(i)(5).

"***Partnership***" means Highland Capital Management, L.P., the Delaware limited partnership established pursuant to this Agreement.

"***Partnership Capital***" means, as of any relevant date, the net book value of the Partnership's assets.

"***Partnership Interest***" means the interest acquired by a Partner in the Partnership including, without limitation, that Partner's right: (a) to an allocable share of the Profits, Losses, deductions, and credits of the Partnership; (b) to a distributive share of the assets of the Partnership; (c) if a Limited Partner, to vote on those matters described in this Agreement; and (d) if the General Partner, to manage and operate the Partnership.

"***Partnership Minimum Gain***" has the meaning set forth in Treasury Regulations Section 1.704-2(d).

"***Percentage Interest***" means the percentage set forth opposite each Partner's name on Exhibit A as such Exhibit may be amended from time to time in accordance with this Agreement.

"***Person***" means an individual or a corporation, partnership, trust, estate, unincorporated organization, association, or other entity.

"Priority Distributions" has the meaning set forth in Section 3.9(b).

"***Profits***" means, for each Fiscal Year, the income and gains of the Partnership determined in accordance with accounting principles consistently applied from year to year employed under the Partnership's method of accounting and as reported, separately or in the aggregate, as appropriate, on the Partnership's information tax return filed for federal income tax purposes, plus any income described in Code Section 705(a)(1)(B).

"***Profits Interest Partner***" means any Person who is issued a Partnership Interest that is treated as a "profits interest" for federal income tax purposes.

"Purchase Notes" means those certain Secured Promissory Notes of even date herewith by and among Hunter Mountain Investment Trust, as maker, and The Dugaboy Investment Trust, The Mark K. Okada, The Mark and Pamela Okada Family Trust – Exempt Trust #1, and The Mark K. Okada, The Mark and Pamela Okada Family Trust – Exempt Trust #2, each as Payees of the respective Secured Promissory Notes.

"***Record Date***" means the date established by the General Partner for determining the identity of Limited Partners entitled to vote or give consent to Partnership action or entitled to exercise rights in respect of any other lawful action of Limited Partners.

"***Second Amended Buy-Sell and Redemption Agreement***" means that certain Second Amended and Restated Buy-Sell and Redemption Agreement, dated December 21, 2015, to be effective as of December 21, 2015 by and between the Partnership and its Partners, as may be amended, supplemented, or restated from time to time.

"***Securities***" means the following: (i) securities of any kind (including, without limitation, "securities" as that term is defined in Section 2(a)(1) of the Securities Act; (ii) commodities of any kind (as that term is defined by the U.S. Securities Laws and the rules and regulations promulgated thereunder); (iii) any contracts for future or forward delivery of any security, commodity or currency; (iv) any contracts based on any securities or group of securities, commodities or currencies; (v) any options on any contracts referred to in clauses (iii) or (iv); or (vi) any evidences of indebtedness (including participations in or assignments of bank loans or trade credit claims). The items set forth in clauses (i) through (vi) herein include, but are not limited to, capital stock, common stock, preferred stock, convertible securities, reorganization certificates, subscriptions, warrants, rights, options, puts, calls, bonds, mutual fund interests, debentures, notes, certificates of deposit, letters of credit, bankers acceptances, trust receipts and other securities of any corporation or other entity, whether readily marketable or not, rights and options, whether granted or written by the Partnership or by others, treasury bills, bonds and notes, any securities or obligations issued or guaranteed by the United States or any foreign country or any state or possession of the United States or any foreign country or any political subdivision or agency or instrumentality of any of the foregoing, and derivatives of any of the foregoing.

"***Securities Act***" means the Securities Act of 1933, as amended, and any successor to such statute.

"***Substitute Limited Partner***" has the meaning set forth in Section 4.6(a).

"***Transfer***" or derivations thereof, of a Partnership Interest means, as a noun, the transfer, sale, assignment, exchange, pledge, hypothecation or other disposition of a Partnership Interest, or any part thereof, directly or indirectly, and as a verb, voluntarily or involuntarily to transfer, sell, assign, exchange, pledge, hypothecate or otherwise dispose of.

"***Treasury Regulations***" means the Department of Treasury Regulations promulgated under the Code, as amended and in effect (including corresponding provisions of succeeding regulations).

2.2. Other Definitions. All terms used in this Agreement that are not defined in this Article 2 have the meanings contained elsewhere in this Agreement.

ARTICLE 3

FINANCIAL MATTERS

3.1. Capital Contributions.

(a) Initial Capital Contributions. The initial Capital Contribution of each Partner shall be set forth in the books and records of the Partnership.

(b) Additional Capital Contributions.

(i) The General Partner, in its reasonable discretion and for a *bona fide* business purpose, may request in writing that the Founding Partner Group make additional Capital Contributions in proportion to their Percentage Interests (each, an "***Additional Capital Contribution***").

(ii) Any failure by a Partner to make an Additional Capital Contribution requested under Section 3.1(b)(i) on or before the date on which that Additional Capital Contribution was due shall result in the Partner being in default.

(c) Consequences to Defaulting Partners. In the event a Partner is in default under Section 3.1(b) (a "***Defaulting Partner***"), the Defaulting Partner, in its sole and unfettered discretion, may elect to take either one of the option set forth below.

(i) Default Loans. If the Defaulting Partner so elects, the General Partner shall make a loan to the Defaulting Partner in an amount equal to that Defaulting Partner's additional capital contribution (a "***Default Loan***"). A Default Loan shall be deemed advanced on the date actually advanced. Default Loans shall earn interest on the outstanding principal amount thereof at a rate equal to the Applicable Federal Mid-Term Rate (determined by the Internal Revenue Service for the month in which the loan is deemed made) from the date actually advanced until the same is repaid in full. The term of any Default Loan shall be six (6) months, unless otherwise extended by the General Partner in its sole and unfettered discretion. If the General Partner makes a Default Loan, the Defaulting Partner shall not receive any distributions pursuant to Section 3.9(a) or Section 5.3 or any proceeds from the Transfer of all or any part of its Partnership Interest while the Default Loan remains unpaid. Instead, the Defaulting Partner's share of distributions or such other proceeds shall (until all Default Loans and interest thereon shall have been repaid in full) first be paid to the General Partner. Such payments shall be applied first to the payment of interest on such Default Loans and then to the repayment of the principal amounts thereof, but shall be considered, for all other purposes of this Agreement, to have been distributed to the Defaulting Partner. The Defaulting Partner shall be liable for the reasonable fees and expenses incurred by the General Partner (including, without limitation, reasonable attorneys' fees and disbursements) in connection with any enforcement or foreclosure upon any Default Loan and such costs shall, to the extent enforceable under applicable law, be added to the principal amount of the applicable Default Loan. In addition, at any time during the term of such Default Loan, the Defaulting Partner shall have the right to repay, in full, the Default Loan (including interest and any other charges). If the General Partner makes a Default Loan, the Defaulting Partner shall be deemed to have pledged to the General Partner and granted to the General Partner a continuing first priority security interest in, all of the Defaulting Partner's Partnership Interest to secure the payment of the principal of, and interest on, such Default Loan in accordance with the provisions hereof, and for such purpose this Agreement shall constitute a security agreement. The Defaulting Partner shall promptly execute, acknowledge and deliver such financing statements, continuation statements or other documents and take such other actions as the General Partner shall request in writing in order to perfect or continue the perfection of such security interest; and, if the Defaulting Partner shall fail to do so within seven (7) days after the Defaulting Partner's receipt of a notice making demand therefor, the General Partner is hereby appointed the attorney-in-fact of, and is hereby authorized on behalf of, the Defaulting Partner, to execute, acknowledge and deliver all such documents and take all such other actions as may be required to perfect such security interest. Such appointment and authorization are coupled with an interest and shall be irrevocable. The General Partner shall, prior to exercising any right or remedy (whether at law, in equity or pursuant to the terms hereof) available to it in connection with such security interest, provide to the Defaulting Partner a notice, in reasonable detail, of the right or remedy to be exercised and the intended timing of such exercise which shall not be less than five (5) days following the date of such notice.

(ii) Reduction of Percentage Interest. If the Defaulting Partner does not elect to obtain a Default Loan pursuant to Section 3.1(c)(i), the General Partner shall reduce the Defaulting Partner's Percentage Interest in accordance with the following formula:

> The Defaulting Partner's new Percentage Interest shall equal the product of (1) the Defaulting Partner's current Percentage Interest, multiplied by (2) the quotient of (a) the current Capital Account of the Defaulting Partner (with such Capital Account determined after taking into account a revaluation of the Capital Accounts immediately prior to such determination), divided by (b) the sum of (i) the current Capital Account of the Defaulting Partner (with such Capital Account determined after taking into account a revaluation of the Capital Accounts immediately prior to such determination), plus (ii) the amount of the additional capital contribution that such Defaulting Partner failed to make when due.

To the extent any downward adjustment is made to the Percentage Interest of a Partner pursuant to this Section 3.1(c)(ii), any resulting benefit shall accrue to the Partners (other than the Defaulting Partner) in proportion to their respective Percentage Interests.

3.2. Allocations of Profits and Losses.

(a) Allocations of Profits. Except as provided in Sections 3.4, 3.5, and 3.6, Profits for any Fiscal Year will be allocated to the Partners as follows:

(i) First, to the Partners until cumulative Profits allocated under this Section 3.2(a)(i) for all prior periods equal the cumulative Losses allocated to the Partners under Section 3.2(b)(iii) for all prior periods in the inverse order in which such Losses were allocated; and

(ii) Next, to the Partners until cumulative Profits allocated under this Section 3.2(a)(ii) for all prior periods equal the cumulative Losses allocated to the Partners under Section 3.2(b)(ii) for all prior periods in the inverse order in which such Losses were allocated; and

(iii) Then, to all Partners in proportion to their respective Percentage Interests.

(b) Allocations of Losses. Except as provided in Sections 3.4, 3.5, and 3.6, Losses for any Fiscal Year will be will be allocated as follows:

(i) First, to the Partners until cumulative Losses allocated under this Section 3.2(b)(i) for all prior periods equal the cumulative Profits allocated to the Partners under Section 3.2(a)(iii) for all prior periods in the inverse order in which such Profits were allocated; and

(ii) Next, to the Partners in proportion to their respective positive Capital Account balances until the aggregate Capital Account balances of the Partners (excluding any negative Capital Account balances) equal zero; *provided, however,* losses shall first be allocated to reduce amounts that were last allocated to the Capital Accounts of the Partners; and

(iii) Then, to all Partners in proportion to their respective Percentage Interests.

(c) Limitation on Loss Allocations. If any allocation of Losses would cause a Limited Partner to have an Adjusted Capital Account Deficit, those Losses instead shall be allocated to the General Partner.

3.3. Allocations on Transfers. Taxable items of the Partnership attributable to a Partnership Interest that has been Transferred (including the simultaneous decrease in the Partnership Interest of existing Partners resulting from the admission of a new Partner) shall be allocated in accordance with Section 4.3(d).

3.4. Special Allocations. If the requisite stated conditions or facts are present, the following special allocations shall be made in the following order:

(a) Partnership Minimum Gain Chargeback**.** Notwithstanding any other provision of this Article 3, if there is a net decrease in Partnership Minimum Gain during any taxable year or other period for which allocations are made, prior to any other allocation under this Agreement, each Partner shall be specially allocated items of Partnership income and gain for that period (and, if necessary, subsequent periods) in proportion to, and to the extent of, an amount equal to that Partner's share of the net decrease in Partnership Minimum Gain during that year determined in accordance with Treasury Regulations Section 1.704-2(g)(2)**.** The items to be allocated shall be determined in accordance with Treasury Regulations Section 1.704-2(g)**.** This Section 3.4(a) is intended to comply with the partnership minimum gain chargeback requirements of the Treasury Regulations and shall be subject to all exceptions provided therein.

(b) Partner Nonrecourse Debt Minimum Gain Chargeback**.** Notwithstanding any other provision of this Article 3 (other than Section 3.4(a)), if there is a net decrease in Partner Nonrecourse Debt Minimum Gain with respect to a Partner Nonrecourse Debt during any taxable year or other period for which allocations are made, any Partner with a share of such Partner Nonrecourse Debt Minimum Gain as of the beginning of the year shall be specially allocated items of Partnership income and gain for that period (and, if necessary, subsequent periods in an amount equal to that Partner's share of the net decrease in the Partner Nonrecourse Debt Minimum Gain during that year determined in accordance with Treasury Regulations Section 1.704-2(g)(2)**.** The items to be so allocated shall be determined in accordance with Treasury Regulations Section 1.704-2(g)**.** This Section 3.4(b) is intended to comply with the partner nonrecourse debt minimum gain chargeback requirements of the Treasury Regulations, shall be interpreted consistently with the Treasury Regulations and shall be subject to all exceptions provided therein.

(c) Qualified Income Offset**.** If a Partner unexpectedly receives any adjustments, allocations or distributions described in Treasury Regulations Sections 1.704-1(b)(2)(ii)(d)(4), (d)(5) or (d)(6), then items of Partnership income and gain shall be specially allocated to each such Partner in an amount and manner sufficient to eliminate, to the extent required by the Treasury Regulations, the Adjusted Capital Account Deficit of the Partner as quickly as possible; *provided, however,* an allocation pursuant to this Section 3.4(c) shall be made if and only to the extent that the Partner would have an Adjusted Capital Account Deficit after all other allocations provided for in this Article 3 have been tentatively made without considering this Section 3.4(c).

(d) Gross Income Allocation**.** If a Partner has a deficit Capital Account at the end of any Fiscal Year of the Partnership that exceeds the sum of (i) the amount the Partner is obligated to restore, and (ii) the amount the Partner is deemed to be obligated to restore pursuant to the penultimate sentences of Treasury Regulations Sections 1.704-2(g)(1) and 1.704-2(i)(5), then each such Partner shall be specially allocated items of income and gain of the Partnership in the amount of the excess as quickly as possible; *provided, however,* an allocation pursuant to this Section 3.4(d) shall be made if and only to

the extent that the Partner would have a deficit Capital Account in excess of that sum after all other allocations provided for in this Article 3 have been tentatively made without considering Section 3.4(c) or 3.4(d).

(e) Nonrecourse Deductions. Nonrecourse Deductions for any taxable year or other period for which allocations are made shall he allocated among the Partners in accordance with their Percentage interests.

(f) Partner Nonrecourse Deductions. Notwithstanding anything to the contrary in this Agreement, any Partner Nonrecourse Deductions for any taxable year or other period for which allocations are made will be allocated to the Partner who bears the economic risk of loss with respect to the Partner Nonrecourse Debt to which the Partner Nonrecourse Deductions are attributable in accordance with Treasury Regulations Section 1.704-2(i).

(g) Section 754 Adjustments. To the extent an adjustment to the adjusted tax basis of any asset of the Partnership under Code Section 734(b) or Code Section 743(b) is required, pursuant to Treasury Regulations Section 1.704-1(b)(2)(iv)(m), to be taken into account in determining Capital Accounts, the amount of the adjustment to the Capital Accounts shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases the basis of the asset) and that gain or loss shall be specially allocated to the Partners in a manner consistent with the manner in which their Capital Accounts are required to be adjusted pursuant to that Section of the Treasury Regulations.

(h) Section 481 Adjustments. Any allocable items of income, gain, expense, deduction or credit required to be made by Section 481 of the Code as the result of the sale, transfer, exchange or issuance of a Partnership Interest will be specially allocated to the Partner receiving said Partnership Interest whether such items are positive or negative in amount.

3.5. Curative Allocations. The "***Basic Regulatory Allocations***" consist of (i) the allocations pursuant to Section 3.2(c), and (ii) the allocations pursuant to Sections 3.4. Notwithstanding any other provision of this Agreement, the Basic Regulatory Allocations shall be taken into account in allocating items of income, gain, loss and deduction among the Partners so that, to the extent possible, the net amount of the allocations of other items and the Basic Regulatory Allocations to each Partner shall be equal to the net amount that would have been allocated to each such Partner if the Basic Regulatory Allocations had not occurred. For purposes of applying the foregoing sentence, allocations pursuant to this Section 3.5 shall be made with respect to allocations pursuant to Section 3.4 (g) and (h) only to the extent that it is reasonably determined that those allocations will otherwise be inconsistent with the economic agreement among the Partners. To the extent that a special allocation under Section 3.4 is determined not to comply with applicable Treasury Regulations, then the Partners intend that the items shall be allocated in accordance with the Partners' varying Percentage Interests throughout each tax year during which such items are recognized for tax purposes.

3.6. Code Section 704(c) Allocations. In accordance with Code Section 704(c) and the Treasury Regulations thereunder, income, gain, loss and deduction with respect to property contributed to the capital of the Partnership shall, solely for tax purposes, be allocated among the Partners so as to take account of any variation at the time of the contribution between the tax basis of the property to the Partnership and the fair market value of that property. Except as otherwise provided herein, any elections or other decisions relating to those allocations shall be made by the General Partner in any manner that reasonably reflects the purpose and intent of this Agreement. Allocations of income, gain, loss and deduction pursuant to this Section 3.6 are solely for purposes of federal, state and local taxes and shall not affect, or in any way be taken into account in computing, the Capital Account of any Partner or the share

of Profits, Losses, other tax items or distributions of any Partner pursuant to any provision of this Agreement.

3.7. Capital Accounts.

(a) Maintenance of Capital Accounts. The Partnership shall establish and maintain a separate capital account (***"Capital Account"***) for each Partner in accordance with the rules of Treasury Regulations Section 1.704-1(b)(2)(iv), subject to and in accordance with the provisions set forth in this Section 3.7.

(i) The Capital Account balance of each Partner shall be credited (increased) by (A) the amount of cash contributed by that Partner to the capital of the Partnership, (B) the fair market value of property contributed by that Partner to the capital of the Partnership (net of liabilities secured by that contributed property that the Partnership assumes or takes subject to under Code Section 752), and (C) that Partner's allocable share of Profits and any items in the nature of income or gain which are specially allocated pursuant to Sections 3.4 and 3.5; and

(ii) The Capital Account balance of each Partner shall be debited (decreased) by (A) the amount of cash distributed to that Partner by the Partnership, (B) the fair market value of property distributed to that Partner by the Partnership (net of liabilities secured by that distributed property that such Partner assumes or takes subject to under Code Section 752), (C) that Partner's allocable share of expenditures of the Partnership described in Code Section 705(a)(2)(B), and (D) that Partner's allocable share of Losses and any items in the nature of expenses or losses which are specially allocated pursuant to Sections 3.2, 3.4 and 3.5.

The provisions of this Section 3.7 and the other provisions of this Agreement relating to the maintenance of Capital Accounts have been included in this Agreement to comply with Code Section 704(b) and the Treasury Regulations promulgated thereunder and will be interpreted and applied in a manner consistent with those provisions. The General Partner may modify the manner in which the Capital Accounts are maintained under this Section 3.7 in order to comply with those provisions, as well as upon the occurrence of events that might otherwise cause this Agreement not to comply with those provisions.

(b) Negative Capital Accounts. If any Partner has a deficit balance in its Capital Account, that Partner shall have no obligation to restore that negative balance or to make any Capital Contribution by reason thereof, and that negative balance shall not be considered an asset of the Partnership or of any Partner.

(c) Interest. No interest shall be paid by the Partnership on Capital Contributions or on balances in Capital Accounts.

(d) No Withdrawal. No Partner shall be entitled to withdraw any part of his/her/its Capital Contribution or his/her/its Capital Account or to receive any distribution from the Partnership, except as provided in Section 3.9 and Article 5.

(e) Loans From Partners. Loans by a Partner to the Partnership shall not be considered Capital Contributions.

(f) Revaluations. The Capital Accounts of the Partners shall not be "booked-up" or "booked-down" to their fair market values under Treasury Regulations Section 1.704(c)-1(b)(2)(iv)(f) or otherwise.

3.8. Distributive Share for Tax Purpose. All items of income, deduction, gain, loss or credit that are recognized for federal income tax purposes will be allocated among the Partners in accordance with the allocations of Profits and Losses hereunder as determined by the General Partner in its sole and unfettered discretion. Notwithstanding the foregoing, the General Partner may (i) as to each New Issue, specially allocate to the Partners who were allocated New Issue Profit from that New Issue any short-term capital gains realized during the Fiscal Year upon the disposition of such New Issue during that Fiscal Year, and (ii) specially allocate items of gain (or loss) to Partners who withdraw capital during any Fiscal Year in a manner designed to ensure that each withdrawing Partner is allocated gain (or loss) in an amount equal to the difference between that Partner's Capital Account balance (or portion thereof being withdrawn) at the time of the withdrawal and the tax basis for his/her/ its Partnership Interest at that time (or proportionate amount thereof); *provided, however,* that the General Partner may, without the consent of any other Partner, (a) alter the allocation of any item of taxable income, gain, loss, deduction or credit in any specific instance where the General Partner, in its sole and unfettered discretion, determines such alteration to be necessary or appropriate to avoid a materially inequitable result *(e.g.,* where the allocation would create an inappropriate tax liability); and/or (b) adopt whatever other method of allocating tax items as the General Partner determines is necessary or appropriate in order to be consistent with the spirit and intent of the Treasury Regulations under Code Sections 704(b) and 704(c).

3.9. Distributions.

(a) General. The General Partner may make such pro rata or non-pro rata distributions as it may determine in its sole and unfettered discretion, without being limited to current or accumulated income or gains, but no such distribution shall be made out of funds required to make current payments on Partnership indebtedness; provided, however, that the General Partner may not make non-pro rata distributions under this Section 3.9(a) during an NAV Ratio Trigger Period without the consent of the Class B Limited Partner (in the case of a Class B NAV Ratio Trigger Period) and/or the Class C Limited Partner (in the case of a Class C NAV Ratio Trigger Period); provided, further this provision should not be interpreted to limit in any way the General Partner's ability to make non-pro rata tax distributions under Section 3.9(c) and Section 3.9(f). The Partnership has entered into one or more credit facilities with financial institutions that may limit the amount and timing of distributions to the Partners. Thus, the Partners acknowledge that distributions from the Partnership may be limited. Any distributions made to the Class B Limited Partner or the Class C Limited Partner pursuant to Section 3.9(b) shall reduce distributions otherwise allocable to such Partners under this Section 3.9(a) until such aggregate reductions are equal to the aggregate distributions made to the Class B Partners and the Class C Partners under Section 3.9(b).

(b) Priority Distributions. Prior to the distribution of any amounts to Partners pursuant to Section 3.9(a), and notwithstanding any other provision in this Agreement to the contrary, the Partnership shall make the following distributions ("***Priority Distributions***") pro-rata among the Class B Limited Partner and the Class C Limited Partner in accordance with their relative Percentage Interests:

(i) No later than March 31st of each calendar year, commencing March 31, 2017, an amount equal to $1,600,000.00;

(ii) No later than March 31st of each year, commencing March 31, 2017, an amount equal to three percent (3%) of the Partnership's investment gain for the prior year, as reflected in the Partnership's books and records within ledger account number 90100 plus three percent (3%) of the gross realized investment gains for the prior year of Highland Select Equity Fund, as reflected in its books and records;

(iii) No later than March 31st of each year, commencing March 31, 2017, an amount equal to ten percent (10%) of the Partnership's Operating Cash Flow for the prior year; and

(iv) No later than December 24th of each year, commencing December 24, 2016, an amount equal to the aggregate annual principal and interest payments on the Purchase Notes for the then current year.

(c) Tax Distributions. The General Partner may, in its sole discretion, declare and make cash distributions pursuant hereto to the Partners to allow the federal and state income tax attributable to the Partnership's taxable income that is passed through the Partnership to the Partners to be paid by such Partners (a "***Tax Distribution***"). The General Partner may, in its discretion, make Tax Distributions to the Founding Partner Group without also making Tax Distributions to other Partners; provided, however, that if the General Partner makes Tax Distributions to the Founding Partner Group, Tax Distributions must also be made the Class B Limited Partner to the extent the Class B Limited Partner provides the Partnership with documentation showing it is subject to an entity-level federal income tax obligation. Notwithstanding anything else in this Agreement, the General Partner may declare and pay Tax Distributions even if such Tax Distributions cause the Partnership to be unable to make Priority Distributions under Section 3.9(b).

(d) Payments Not Deemed Distributions. Any amounts paid pursuant to Sections 4.1(e) or 4.1(h) shall not be deemed to be distributions for purposes of this Agreement.

(e) Withheld Amounts. Notwithstanding any other provision of this Section 3.9 to the contrary, each Partner hereby authorizes the Partnership to withhold and to pay over, or otherwise pay, any withholding or other taxes payable by the Partnership with respect to that Partner as a result of that Partner's participation in the Partnership. If and to the extent that the Partnership shall be required to withhold or pay any such taxes, that Partner shall be deemed for all purposes of this Agreement to have received a payment from the Partnership as of the time that withholding or tax is paid, which payment shall be deemed to be a distribution with respect to that Partner's Partnership Interest to the extent that the Partner (or any successor to that Partner's Partnership Interest) is then entitled to receive a distribution. To the extent that the aggregate of such payments to a Partner for any period exceeds the distributions to which that Partner is entitled for that period, the amount of such excess shall be considered a loan from the Partnership to that Partner. Such loan shall bear interest (which interest shall be treated as an item of income to the Partnership) at the "Applicable Federal Rate" (as defined in the Code), as determined hereunder from time to time, until discharged by that Partner by repayment, which may be made in the sole and unfettered discretion of the General Partner out of distributions to which that Partner would otherwise be subsequently entitled. Any withholdings authorized by this Section 3.9(d) shall be made at the maximum applicable statutory rate under the applicable tax law unless the General Partner shall have received an opinion of counsel or other evidence satisfactory to the General Partner to the effect that a lower rate is applicable, or that no withholding is applicable.

(f) Special Tax Distributions. The Partnership shall, upon request of such Founding Partner, make distributions to the Founding Partners (or loans, at the election of the General Partner) in an amount necessary for each of them to pay their respective federal income tax obligations incurred through the effective date of the Third Amended and Restated Agreement of Limited Partnership of Highland Capital Management, L.P., the predecessor to this Agreement.

(g) Tolling of Priority Distributions. In the event of a "Honis Trigger Event," as defined in the Second Amended Buy-Sell and Redemption Agreement, the Partnership shall not make any distributions, including priority distributions under Section 3.9(b), to the Class B Limited Partner or the Class C Limited Partner until such time as a replacement trust administrator, manager and general partner,

as applicable, acceptable to the Partnership in its sole discretion, as indicated by an affirmative vote of consent by a Majority Interest, shall be appointed to the Class B Limited Partner/Class C Limited Partner and any of its direct or indirect owners that have governing documents directly affected by a Honis Trigger Event.

3.10. Compensation and Reimbursement of General Partner.

(a) Compensation. The General Partner and any Affiliate of the General Partner shall receive no compensation from the Partnership for services rendered pursuant to this Agreement or any other agreements unless approved by a Majority Interest; provided, however, that no compensation above five million dollars per year may be approved, even by a Majority Interest, during a NAV Ratio Trigger Period.

(b) Reimbursement for Expenses. In addition to amounts paid under other Sections of this Agreement, the General Partner and its Affiliates shall be reimbursed for all expenses, disbursements, and advances incurred or made, and all fees, deposits, and other sums paid in connection with the organization and operation of the Partnership, the qualification of the Partnership to do business, and all related matters.

3.11. Books, Records, Accounting, and Reports.

(a) Records and Accounting. The General Partner shall keep or cause to be kept appropriate books and records with respect to the Partnership's business, which shall at all times be kept at the principal office of the Partnership or such other office as the General Partner may designate for such purpose. The books of the Partnership shall be maintained for financial reporting purposes on the accrual basis or on a cash basis, as the General Partner shall determine in its sole and unfettered discretion, in accordance with generally accepted accounting principles and applicable law. Upon reasonable request, the Class B Limited Partner or the Class C Limited Partner may inspect the books and records of the Partnership.

(b) Fiscal Year. The fiscal year of the Partnership shall be the calendar year unless otherwise determined by the General Partner in its sole and unfettered discretion.

(c) Other Information. The General Partner may release information concerning the operations of the Partnership to any financial institution or other Person that has loaned or may loan funds to the Partnership or the General Partner or any of its Affiliates, and may release such information to any other Person for reasons reasonably related to the business and operations of the Partnership or as required by law or regulation of any regulatory body.

(d) Distribution Reporting to Class B Limited Partner and Class C Limited Partner. Upon request, the Partnership shall provide the Class B Limited Partner and/or the Class C Limited Partner information on any non-pro rata distributions made under Section 3.9 to Partners other than the Partner requesting the information.

3.12. Tax Matters.

(a) Tax Returns. The General Partner shall arrange for the preparation and timely filing of all returns of Partnership income, gain, loss, deduction, credit and other items necessary for federal, state and local income tax purposes. The General Partner shall deliver to each Partner as copy of his/her/its IRS Form K-1 as soon as practicable after the end of the Fiscal Year, but in no event later than October 1. The classification, realization, and recognition of income, gain, loss, deduction, credit and

other items shall be on the cash or accrual method of accounting for federal income tax purposes, as the General Partner shall determine in its sole and unfettered discretion. The General Partner in its sole and unfettered discretion may pay state and local income taxes attributable to operations of the Partnership and treat such taxes as an expense of the Partnership.

(b) Tax Elections. Except as otherwise provided herein, the General Partner shall, in its sole and unfettered discretion, determine whether to make any available tax election.

(c) Tax Controversies. Subject to the provisions hereof, the General Partner is designated the Tax Matters Partner (as defined in Code Section 6231), and is authorized and required to represent the Partnership, at the Partnership's expense, in connection with all examinations of the Partnership's affairs by tax authorities, including resulting administrative and judicial proceedings, and to expend Partnership funds for professional services and costs associated therewith. Each Partner agrees to cooperate with the General Partner in connection with such proceedings.

(d) Taxation as a Partnership. No election shall be made by the Partnership or any Partner for the Partnership to be excluded from the application of any of the provisions of Subchapter K, Chapter 1 of Subtitle A of the Code or from any similar provisions of any state tax laws.

ARTICLE 4

RIGHTS AND OBLIGATIONS OF PARTNERS

4.1. Rights and Obligations of the General Partner. In addition to the rights and obligations set forth elsewhere in this Agreement, the General Partner shall have the following rights and obligations:

(a) Management. The General Partner shall conduct, direct, and exercise full control of over all activities of the Partnership. Except as otherwise expressly provided in this Agreement, all management powers over the business and affairs of the Partnership shall be exclusively vested in the General Partner, and Limited Partners shall have no right of control over the business and affairs of the Partnership. In addition to the powers now or hereafter granted to a general partner of a limited partnership under applicable law or that are granted to the General Partner under any provision of this Agreement, the General Partner shall have full power and authority to do all things deemed necessary or desirable by it to conduct the business of the Partnership, including, without limitation: (i) the determination of the activities in which the Partnership will participate; (ii) the performance of any and all acts necessary or appropriate to the operation of any business of the Partnership (including, without limitation, purchasing and selling any asset, any debt instruments, any equity interests, any commercial paper, any note receivables and any other obligations); (iii) the procuring and maintaining of such insurance as may be available in such amounts and covering such risks as are deemed appropriate by the General Partner; (iv) the acquisition, disposition, sale, mortgage, pledge, encumbrance, hyphothecation, of exchange of any or all of the assets of the Partnership; (v) the execution and delivery on behalf of, and in the name of the Partnership, deeds, deeds of trust, notes, leases, subleases, mortgages, bills of sale and any and all other contracts or instruments necessary or incidental to the conduct of the Partnership's business; (vi) the making of any expenditures, the borrowing of money, the guaranteeing of indebtedness and other liabilities, the issuance of evidences of indebtedness, and the incurrence of any obligations it deems necessary or advisable for the conduct of the activities of the Partnership, including, without limitation, the payment of compensation and reimbursement to the General Partner and its Affiliates pursuant to Section 3.10; (vii) the use of the assets of the Partnership (including, without limitation, cash on hand) for any Partnership purpose on any terms it sees fit, including, without limitation, the financing of operations of the Partnership, the lending of funds to other Persons, and the repayment of obligations

of the Partnership; (viii) the negotiation, execution, and performance of any contracts that it considers desirable, useful, or necessary to the conduct of the business or operations of the Partnership or the implementation of the General Partner's powers under this Agreement; (ix) the distribution of Partnership cash or other assets; (x) the selection, hiring and dismissal of employees, attorneys, accountants, consultants, contractors, agents and representatives and the determination of their compensation and other teens of employment or hiring; (xi) the formation of any further limited or general partnerships, joint ventures, or other relationships that it deems desirable and the contribution to such partnerships, ventures, or relationships of assets and properties of the Partnership; and (xii) the control of any matters affecting the rights and obligations of the Partnership, including, without limitation, the conduct of any litigation, the incurring of legal expenses, and the settlement of claims and suits.

(b) Certificate of Limited Partnership. The General Partner caused the Certificate of Limited Partnership of the Partnership to be filed with the Secretary of State of Delaware as required by the Delaware Act and shall cause to be filed such other certificates or documents (including, without limitation, copies, amendments, or restatements of this Agreement) as may be determined by the General Partner to be reasonable and necessary or appropriate for the formation, qualification, or registration and operation of a limited partnership (or a partnership in which Limited Partners have limited liability) in the State of Delaware and in any other state where the Partnership may elect to do business.

(c) Reliance by Third Parties. Notwithstanding any other provision of this Agreement to the contrary, no lender or purchaser or other Person, including any purchaser of property from the Partnership or any other Person dealing with the Partnership, shall be required to verify any representation by the General Partner as to its authority to encumber, sell, or otherwise use any assess or properties of the Partnership, and any such lender, purchaser, or other Person shall be entitled to rely exclusively on such representations and shall be entitled to deal with the General Partner as if it were the sole party in interest therein, both legally and beneficially. Each Limited Partner hereby waives any and all defenses or other remedies that may be available against any such lender, purchaser, or other Person to contest, negate, or disaffirm any action of the General Partner in connection with any such sale or financing. In no event shall any Person dealing with the General Partner or the General Partner's representative with respect to any business or property of the Partnership be obligated to ascertain that the terms of this Agreement have been complied with, and each such Person shall be entitled to rely on the assumptions that the Partnership has been duly formed and is validly in existence. In no event shall any such Person be obligated to inquire into the necessity or expedience of any act or action of the General Partner or the General Partner's representative, and every contract, agreement, deed, mortgage, security agreement, promissory note, or other instrument or document executed by the General Partner or the General Partner's representative with respect to any business or property of the Partnership shall be conclusive evidence in favor of any and every Person relying thereon or claiming thereunder that (i), at the time of the execution and delivery thereof, this Agreement was in full force and effect; (ii) such instrument or document was duly executed in accordance with the terms and provisions of this Agreement and is binding upon the Partnership; and (iii) the General Partner or the General Partner's representative was duly authorized and empowered to execute and deliver any and every such instrument or document for and on behalf of the Partnership.

(d) Partnership Funds. The funds of the Partnership shall be deposited in such account or accounts as are designated by the General Partner. The General Partner may, in its sole and unfettered discretion, deposit funds of the Partnership in a central disbursing account maintained by or in the name of the General Partner, the Partnership, or any other Person into which funds of the General Partner, the Partnership, on other Persons are also deposited; *provided, however,* at all times books of account are maintained that show the amount of funds of the Partnership on deposit in such account and interest accrued with respect to such funds as credited to the Partnership. The General Partner may use the funds of the Partnership as compensating balances for its benefit; *provided, however,* such funds do

not directly or indirectly secure, and are not otherwise at risk on account of, any indebtedness or other obligation of the General Partner or any director, officer, employee, agent, representative, or Affiliate thereof. Nothing in this Section 4.1(d) shall be deemed to prohibit or limit in any manner the right of the Partnership to lend funds to the General Partner or any Affiliate thereof pursuant to Section 4.1(e)(i). All withdrawals from or charges against such accounts shall be made by the General Partner or by its representatives. Funds of the Partnership may be invested as determined by the General Partner in accordance with the terms and provisions of this Agreement.

(e) Loans to or from General Partner; Contracts with Affiliates; Joint Ventures.

(i) The General Partner or any Affiliate of the General Partner may lend to the Partnership funds needed by the Partnership for such periods of time as the General Partner may determine; *provided, however,* the General Partner or its Affiliate may not charge the Partnership interest at a rate greater than the rate (including points or other financing charges or fees) that would be charged the Partnership (without reference to the General Partner's financial abilities or guaranties) by unrelated lenders on comparable loans. The Partnership shall reimburse the General Partner or its Affiliate, as the case may be, for any costs incurred by the General Partner or that Affiliate in connection with the borrowing of funds obtained by the General Partner or that Affiliate and loaned to the Partnership. The Partnership may loan funds to the General Partner and any member of the Founding Partner Group at the General Partner's sole and exclusive discretion.

(ii) The General Partner or any of its Affiliates may enter into an agreement with the Partnership to render services, including management services, for the Partnership. Any service rendered for the Partnership by the General Partner or any Affiliate thereof shall be on terms that are fair and reasonable to the Partnership.

(iii) The Partnership may Transfer any assets to joint ventures or other partnerships in which it is or thereby becomes a participant upon terms and subject to such conditions consistent with applicable law as the General Partner deems appropriate; provided, however, that the Partnership may not transfer any asset to the General Partner or one of its Affiliates during any NAV Ratio Trigger Period for consideration less than such asset's fair market value.

(f) Outside Activities' Conflicts of Interest. The General Partner or any Affiliate thereof and any director, officer, employee, agent, or representative of the General Partner or any Affiliate thereof shall be entitled to and may have business interests and engage in business activities in addition to those relating to the Partnership, including, without limitation, business interests and activities in direct competition with the Partnership. Neither the Partnership nor any of the Partners shall have any rights by virtue of this Agreement or the partnership relationship created hereby in any business ventures of the General Partner, any Affiliate thereof, or any director, officer, employee, agent, or representative of either the General Partner or any Affiliate thereof.

(g) Resolution of Conflicts of Interest. Unless otherwise expressly provided in this Agreement or any other agreement contemplated herein, whenever a conflict of interest exists or arises between the General Partner or any of its Affiliates, on the one hand, and the Partnership or any Limited Partner, on the other hand, any action taken by the General Partner, in the absence of bad faith by the General Partner, shall not constitute a breach of this Agreement or any other agreement contemplated herein or a breach of any standard of care or duty imposed herein or therein or under the Delaware Act or any other applicable law, rule, or regulation.

(h) Indemnification. The Partnership shall indemnify and hold harmless the General Partner and any director, officer, employee, agent, or representative of the General Partner (collectively,

the "***GP Party***"), against all liabilities, losses, and damages incurred by any of them by reason of any act performed or omitted to be performed in the name of or on behalf of the Partnership, or in connection with the Partnership's business, including, without limitation, attorneys' fees and any amounts expended in the settlement of any claims or liabilities, losses, or damages, to the fullest extent permitted by the Delaware Act; *provided, however,* the Partnership shall have no obligation to indemnify and hold harmless a GP Party for any action or inaction that constitutes gross negligence or willful or wanton misconduct. The Partnership, in the sole and unfettered discretion of the General Partner, may indemnify and hold harmless any Limited Partner, employee, agent, or representative of the Partnership, any Person who is or was serving at the request of the Partnership acting through the General Partner as a director, officer, partner, trustee, employee, agent, or representative of another corporation, partnership, joint venture, trust, or other enterprise, and any other Person to the extent determined by the General Partner in its sole and unfettered discretion, but in no event shall such indemnification exceed the indemnification permitted by the Delaware Act. Notwithstanding anything to the contrary in this Section 4.1(h) or elsewhere in this Agreement, no amendment to the Delaware Act after the date of this Agreement shall reduce or limit in any manner the indemnification provided for or permitted by this Section 4.1(h) unless such reduction or limitation is mandated by such amendment for limited partnerships formed prior to the enactment of such amendment. In no event shall Limited Partners be subject to personal liability by reason of the indemnification provisions of this Agreement.

(i) Liability of General Partner.

(i) Neither the General Partner nor its directors, officers, employees, agents, or representatives shall be liable to the Partnership or any Limited Partner for errors in judgment or for any acts or omissions that do not constitute gross negligence or willful or wanton misconduct.

(ii) The General Partner may exercise any of the powers granted to it by this Agreement and perform any of the duties imposed upon it hereunder either directly or by or through its directors, officers, employees, agents, or representatives, and the General Partner shall not be responsible for any misconduct or negligence on the part of any agent or representative appointed by the General Partner.

(j) Reliance by General Partner.

(i) The General Partner may rely and shall be protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, bond, debenture, or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties.

(ii) The General Partner may consult with legal counsel, accountants, appraisers, management consultants, investment bankers, and other consultants and advisers selected by it, and any opinion of any such Person as to matters which the General Partner believes to be within such Person's professional or expert competence shall be full and complete authorization and protection in respect of any action taken or suffered or omitted by the General Partner hereunder in good faith and in accordance with such opinion.

(k) The General Partner may, from time to time, designate one or more Persons to be officers of the Partnership. No officer need be a Partner. Any officers so designated shall have such authority and perform such duties as the General Partner may, from time to time, delegate to them. The General Partner may assign titles to particular officers, including, without limitation, president, vice president, secretary, assistant secretary, treasurer and assistant treasurer. Each officer shall hold office until such Person's successor shall be duly designated and shall qualify or until such Person's death or

until such Person shall resign or shall have been removed in the manner hereinafter provided. Any number of offices may be held by the same Person. The salaries or other compensation, if any, of the officers and agents of the Partnership shall be fixed from time to time by the General Partner. Any officer may be removed as such, either with or without cause, by the General Partner whenever in the General Partner's judgment the best interests of the Partnership will be served thereby. Any vacancy occurring in any office of the Partnership may be filled by the General Partner.

4.2. Rights and Obligations of Limited Partners. In addition to the rights and obligations of Limited Partners set forth elsewhere in this Agreement, Limited Partners shall have the following rights and obligations:

(a) Limitation of Liability. Limited Partners shall have no liability under this Agreement except as provided herein or under the Delaware Act.

(b) Management of Business. No Limited Partner shall take part in the control (within the meaning of the Delaware Act) of the Partnership's business, transact any business in the Partnership's name, or have the power to sign documents for or otherwise bind the Partnership other than as specifically set forth in this Agreement.

(c) Return of Capital. No Limited Partner shall be entitled to the withdrawal or return of its Capital Contribution except to the extent, if any, that distributions made pursuant to this Agreement or upon termination of the Partnership may be considered as such by law and then only to the extent provided for in this Agreement.

(d) Second Amended Buy-Sell and Redemption Agreement. Each Limited Partner shall comply with the terms and conditions of the Second Amended Buy-Sell and Redemption Agreement.

(e) Default on Priority Distributions. If the Partnership fails to timely pay Priority Distributions pursuant to Section 3.9(b), and the Partnership does not subsequently make such Priority Distribution within ninety days of its due date, the Class B Limited Partner or the Class C Limited Partner may require the Partnership to liquidate publicly traded securities held by the Partnership or Highland Select Equity Master Fund, L.P., a Delaware limited partnership controlled by the Partnership; provided, however, that the General Partner may in its sole discretion elect instead to liquidate other non-publicly traded securities owned by the Partnership in order to satisfy the Partnership's obligations under Section 3.9(b) and this Section 4.2(e). In either case, Affiliates of the General Partner shall have the right of first offer to purchase any securities liquidated under this Section 4.2(e).

4.3. Transfer of Partnership Interests.

(a) Transfer. No Partnership Interest shall be Transferred, in whole or in part, except in accordance with the terms and conditions set forth in this Section 4.3 and the Second Amended Buy-Sell and Redemption Agreement. Any Transfer or purported Transfer of any Partnership Interest not made in accordance with this Section 4.3 and the Second Amended Buy-Sell and Redemption Agreement shall be null and void. An alleged transferee shall have no right to require any information or account of the Partnership's transactions or to inspect the Partnership's books. The Partnership shall be entitled to treat the alleged transferor of a Partnership Interest as the absolute owner thereof in all respects, and shall incur no liability to any alleged transferee for distributions to the Partner owning that Partnership Interest of record or for allocations of Profits, Losses, deductions or credits or for transmittal of reports and notices required to be given to holders of Partnership Interests.

(b) Transfers by General Partner. The General Partner may Transfer all, but not less than all, of its Partnership Interest to any Person only with the approval of a Majority Interest; provided, however, that the General Partner may not Transfer its Partnership Interest during any NAV Ratio Trigger Period except to the extent such Transfers are for estate planning purposes or resulting from the death of the individual owner of the General Partner. Any Transfer by the General Partner of its Partnership Interest under this Section 4.3(b) to an Affiliate of the General Partner or any other Person shall not constitute a withdrawal of the General Partner under Section 4.5(a), Section 5.1(b), or any other provision of this Agreement. If any such Transfer is deemed to constitute a withdrawal under such provisions or otherwise and results in the dissolution of the Partnership under this Agreement or the laws of any jurisdiction to which the Partnership of this Agreement is subject, the Partners hereby unanimously consent to the reconstitution and continuation of the Partnership immediately following such dissolution, pursuant to Section 5.2.

(c) Transfers by Limited Partners. The Partnership Interest of a Limited Partner may not be Transferred without the consent of the General Partner (which consent may be withheld in the sole and unfettered discretion of the General Partner), and in accordance with the Second Amended Buy-Sell and Redemption Agreement.

(d) Distributions and Allocations in Respect of Transferred Partnership Interests. If any Partnership Interest is Transferred during any Fiscal Year in compliance with the provisions of Article 4 and the Second Amended Buy-Sell and Redemption Agreement, Profits, Losses, and all other items attributable to the transferred interest for that period shall be divided and allocated between the transferor and the transferee by taking into account their varying interests during the period in accordance with Code Section 706(d), using any conventions permitted by law and selected by the General Partner; provided that no allocations shall be made under this Section 4.3(d) that would affect any special allocations made under Section 3.4. All distributions declared on or before the date of that Transfer shall be made to the transferor. Solely for purposes of making such allocations and distributions, the Partnership shall recognize that Transfer not later than the end of the calendar month during which it is given notice of that Transfer; ***provided, however,*** if the Partnership does not receive a notice stating the date that Partnership Interest was Transferred and such other information as the General Partner may reasonably require within thirty (30) days after the end of the Fiscal Year during which the Transfer occurs, then all of such items shall be allocated, and all distributions shall be made, to the person who, according to the books and records of the Partnership, on the last day of the Fiscal Year during which the Transfer occurs, was the owner of the Partnership Interest. Neither the Partnership nor any Partner shall incur any liability for making allocations and distributions in accordance with the provisions of this Section 4.3(d), whether or not any Partner or the Partnership has knowledge of any Transfer of ownership of any Partnership Interest.

(e) Forfeiture of Partnership Interests Pursuant to the Contribution Note. In the event any Class B Limited Partnership Interests are forfeited in favor of the Partnership as a result of any default on the Contribution Note, the Capital Accounts and Percentage Interests associated with such Class B Limited Partnership Interests shall be allocated pro rata among the Class A Partners. The Priority Distributions in Section 3.9(b) made after the date of such forfeiture shall each be reduced by an amount equal to the ratio of the Percentage Interest associated with the Class B Limited Partnership Interest transferred pursuant to this Section 4.3(e) over the aggregate Percentage Interests of all Class B Limited Partnership Interests and Class C Limited Partnership Interests, calculated immediately prior to any forfeiture of such Class B Limited Partnership Interest.

(f) Transfers of Partnership Interests Pursuant to the Purchase Notes. Notwithstanding any other provision in this Agreement, the Partnership shall respect, and the General Partner hereby provides automatic consent for, any transfers (in whole or transfers of partial interests) of

the Class C Limited Partnership Interests, or a portion thereof, if such transfer occurs as a result of a default on the Purchase Notes. Upon the transfer of any Class C Limited Partnership Interest to any member of the Founding Partner Group (or their assigns), such Class C Limited Partnership Interest shall automatically convert to a Class A Partnership Interest. The Priority Distributions in Section 3.9(b) shall each be reduced by an amount equal to the ratio of the Percentage Interest associated with the transferred Class C Limited Partnership Interest over the aggregate Percentage Interests of all Class B Limited Partnership Interests and Class C Limited Partnership Interests, calculated immediately prior to any transfer of such Class C Limited Partnership Interest.

4.4. Issuances of Partnership Interests to New and Existing Partners.

(a) Issuance of Partnership Interests to New Limited Partners. The General Partner may admit one or more additional Persons as Limited Partners ("Additional Limited Partners") to the Partnership at such times and upon such terms as it deems appropriate in its sole and unfettered discretion; provided, however, that the General Partner may only admit additional Persons as Limited Partners in relation to the issuance of equity incentives to key employees of the Partnership; provided, further that the General Partner may not issue such equity incentives to the extent they entitle the holders, in the aggregate, to a Percentage Interest in excess of twenty percent without the consent of the Class B Limited Partner and the Class C Limited Partner. All Class A Limited Partners, the Class B Limited Partner and the Class C Limited Partner shall be diluted proportionately by the issuance of such limited partnership interests. No Person may be admitted to the Partnership as a Limited Partner until he/she/it executes an Addendum to this Agreement in the form attached as Exhibit B (which may be modified by the General Partner in its sole and unfettered discretion) and an addendum to the Second Amended Buy-Sell and Redemption Agreement.

(b) Issuance of an Additional Partnership Interest to an Existing Partner. The General Partner may issue an additional Partnership Interest to any existing Partner at such times and upon such terms as it deems appropriate in its sole and unfettered discretion. Upon the issuance of an additional Partnership Interest to an existing Partner, the Percentage Interests of the members of the Founding Partner Group shall be diluted proportionately. Any additional Partnership Interest shall be subject to all the terms and conditions of this Agreement and the Second Amended Buy-Sell and Redemption Agreement.

4.5. Withdrawal of General Partner

(a) Option. In the event of the withdrawal of the General Partner from the Partnership, the departing General Partner (the "***Departing Partner***") shall, at the option of its successor (if any) exercisable prior to the effective date of the departure of that Departing Partner, promptly receive from its successor in exchange for its Partnership Interest as the General Partner, an amount in cash equal to its Capital Account balance, determined as of the effective date of its departure.

(b) Conversion. If the successor to a Departing Partner does not exercise the option described in Section 4.5(a), the Partnership Interest of the Departing Partner as the General Partner of the Partnership shall be converted into a Partnership Interest as a Limited Partner.

4.6. Admission of Substitute Limited Partners and Successor General Partner.

(a) Admission of Substitute Limited Partners. A transferee (which may be the heir or legatee of a Limited Partner) or assignee of a Limited Partner's Partnership Interest shall be entitled to receive only the distributive share of the Partnership's Profits, Losses, deductions, and credits attributable to that Partnership Interest. To become a substitute Limited Partner (a "***Substitute Limited Partner***"),

that transferee or assignee shall (1) obtain the consent of the General Partner (which consent may be withheld in the sole and unfettered discretion of the General Partner), (ii) comply with all the requirements of this Agreement and the Second Amended Buy-Sell and Redemption Agreement with respect to the Transfer of the Partnership Interest at issue, and (iii) execute an Addendum to this Agreement in the form attached as Exhibit B (which may be modified by the General Partner in its sole and unfettered discretion) and an addendum to the Second Amended Buy-Sell and Redemption Agreement. Upon admission of a Substitute Limited Partner, that Limited Partner shall be subject to all of the restrictions applicable to, shall assume all of the obligations of, and shall attain the status of a Limited Partner under and pursuant to this Agreement with respect to the Partnership Interest held by that Limited Partner.

(b) Admission of Successor General Partner. A successor General Partner selected pursuant to Section 5.2 or the transferee of or successor to all of the Partnership Interest of the General Partner pursuant to Section 4.3(b) shall be admitted to the Partnership as the General Partner, effective as of the date of the withdrawal or removal of the predecessor General Partner or the date of Transfer of that predecessor's Partnership Interest.

(c) Action by General Partner. In connection with the admission of any substitute Limited Partner or successor General Partner or any additional Limited Partner, the General Partner shall have the authority to take all such actions as it deems necessary or advisable in connection therewith, including the amendment of Exhibit A and the execution and filing with appropriate authorities of any necessary documentation.

ARTICLE 5

DISSOLUTION AND WINDING UP

5.1. Dissolution. The Partnership shall be dissolved upon:

(a) The withdrawal, bankruptcy, or dissolution of the General Partner, or any other event that results in its ceasing to be the General Partner (other than by reason of a Transfer pursuant to Section 4.3(b));

(b) An election to dissolve the Partnership by the General Partner that is approved by the affirmative vote of a Majority Interest; *provided, however,* the General Partner may dissolve the Partnership without the approval of the Limited Partners in order to comply with Section 14 of the Second Amended Buy-Sell and Redemption Agreement; or

(c) Any other event that, under the Delaware Act, would cause its dissolution.

For purposes of this Section 5.1, the bankruptcy of the General Partner shall be deemed to have occurred when the General Partner: (i) makes a general assignment for the benefit of creditors; (ii) files a voluntary bankruptcy petition; (iii) becomes the subject of an order for relief or is declared insolvent in any federal or state bankruptcy or insolvency proceeding: (iv) files a petition or answer seeking a reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any law; (v) files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against the General Partner in a proceeding of the type described in clauses (i) through (iv) of this paragraph; (vi) seeks, consents to, or acquiesces in the appointment of a trustee, receiver, or liquidator of the General Partner or of all or any substantial part of the General Partner's properties; or (vii) one hundred twenty (120) days expire after the date of the commencement of a proceeding against the General Partner seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution, or

similar relief under any law if the proceeding has not been previously dismissed, or ninety (90) days expire after the date of the appointment, without the General Partner's consent or acquiescence, of a trustee, receiver, or liquidator of the General Partner or of all or any substantial part of the General Partner's properties if the appointment has not previously been vacated or stayed, or ninety (90) days expire after the date of expiration of a stay, if the appointment has not previously been vacated.

5.2. Continuation of the Partnership. Upon the occurrence of an event described in Section 5.1(a), the Partnership shall be deemed to be dissolved and reconstituted if a Majority Interest elect to continue the Partnership within ninety (90) days of that event. If no election to continue the Partnership is made within ninety (90) days of that event, the Partnership shall conduct only activities necessary to wind up its affairs. If an election to continue the Partnership is made upon the occurrence of an event described in Section 5.1(a), then:

(a) Within that ninety (90)-day period a successor General Partner shall be selected by a Majority Interest;

(b) The Partnership shall be deemed to be reconstituted and shall continue until the end of the term for which it is formed unless earlier dissolved in accordance with this Article 5;

(c) The interest of the former General Partner shall be converted to an interest as a Limited Partner; and

(d) All necessary steps shall be taken to amend or restate this Agreement and the Certificate of Limited Partnership, and the successor General Partner may for this purpose amend this Agreement and the Certificate of Limited Partnership, as appropriate, without the consent of any Partner.

5.3. Liquidation. Upon dissolution of the Partnership, unless the Partnership is continued under Section 5.2, the General Partner or, in the event the General Partner has been dissolved, becomes bankrupt (as defined in Section 5.1), or withdraws from the Partnership, a liquidator or liquidating committee selected by a Majority Interest, shall be the Liquidator. The Liquidator (if other than the General Partner) shall be entitled to receive such compensation for its services as may be approved by a Majority Interest. The Liquidator shall agree not to resign at any time without fifteen (15) days' prior written notice and (if other than the General Partner) may be removed at any time, with or without cause, by notice of removal approved by a Majority Interest. Upon dissolution, removal, or resignation of the Liquidator, a successor and substitute Liquidator (who shall have and succeed to all rights, powers, and duties of the original Liquidator) shall within thirty (30) days thereafter be selected by a Majority Interest. The right to appoint a successor or substitute Liquidator in the manner provided herein shall be recurring and continuing for so long as the functions and services of the Liquidator are authorized to continue under the provisions hereof, and every reference herein to the Liquidator shall be deemed to refer also to any such successor or substitute Liquidator appointed in the manner provided herein. Except as expressly provided in this Article 5, the Liquidator appointed in the manner provided herein shall have and may exercise, without further authorization or consent of any of the parties hereto, all of the powers conferred upon the General Partner under the terms of this Agreement (but subject to all of the applicable limitations, contractual and otherwise, upon the exercise of such powers) to the extent necessary or desirable in the good faith judgment of the Liquidator to carry out the duties and functions of the Liquidator hereunder for and during such period of time as shall be reasonably required in the good faith judgment of the Liquidator to complete the winding up and liquidation of the Partnership as provided herein. The Liquidator shall liquidate the assets of the Partnership and apply and distribute the proceeds of such liquidation in the following order of priority, unless otherwise required by mandatory provisions of applicable law:

(a) To the payment of the expenses of the terminating transactions including, without limitation, brokerage commission, legal fees, accounting fees and closing costs;

(b) To the payment of creditors of the Partnership, including Partners, in order of priority provided by law;

(c) To the Partners and assignees to the extent of, and in proportion to, the positive balances in their respective Capital Accounts as provided in Treasury Regulations Section 1.704-1(b)(2)(ii)(b)(2); *provided, however,* the Liquidator may place in escrow a reserve of cash or other assets of the Partnership for contingent liabilities in an amount determined by the Liquidator to be appropriate for such purposes; and

(d) To the Partners in proportion to their respective Percentage Interests.

5.4. Distribution in Kind. Notwithstanding the provisions of Section 5.3 that require the liquidation of the assets of the Partnership, but subject to the order of priorities set forth therein, if on dissolution of the Partnership the Liquidator determines that an immediate sale of part or all of the Partnership's assets would be impractical or would cause undue loss to the Partners and assignees, the Liquidator may defer for a reasonable time the liquidation of any assets except those necessary to satisfy liabilities of the Partnership (other than those to Partners) and/or may distribute to the Partners and assignees, in lieu of cash, as tenants in common and in accordance with the provisions of Section 5.3, undivided interests in such Partnership assets as the Liquidator deems not suitable for liquidation. Any such distributions in kind shall be subject to such conditions relating to the disposition and management of such properties as the Liquidator deems reasonable and equitable and to any joint operating agreements or other agreements governing the operation of such properties at such time. The Liquidator shall determine the fair market value of any property distributed in kind using such reasonable method of valuation as it may adopt.

5.5. Cancellation of Certificate of Limited Partnership. Upon the completion of the distribution of Partnership property as provided in Sections 5.3 and 5.4, the Partnership shall be terminated, and the Liquidator (or the General Partner and Limited Partners if necessary) shall cause the cancellation of the Certificate of Limited Partnership in the State of Delaware and of all qualifications and registrations of the Partnership as a foreign limited partnership in jurisdictions other **than** the State of Delaware and shall take such other actions as may be necessary to terminate the Partnership.

5.6. Return of Capital. The General Partner shall not be personally liable for the return of the Capital Contributions of Limited Partners, or any portion thereof, it being expressly understood that any such return shall be **made** solely from Partnership assets.

5.7. Waiver of Partition. Each Partner hereby waives any rights to partition of the Partnership property.

ARTICLE 6

GENERAL PROVISIONS

6.1. Amendments to Agreement. The General Partner may amend this Agreement without the consent of any Partner if the General Partner reasonably determines that such amendment is necessary and appropriate; *provided, however, any* action taken by the General Partner shall be subject to its fiduciary duties to the Limited Partners under the Delaware Act; provided further that any amendments

that adversely affect the Class B Limited Partner or the Class C Limited Partner may only be made with the consent of such Partner adversely affected.

6.2. Addresses and Notices. Any notice, demand, request, or report required or permitted to be given or made to a Partner under this Agreement shall be in writing and shall be deemed given or made when delivered in person or when sent by United States registered or certified mail to the Partner at his/her/its address as shown on the records of the Partnership, regardless of any claim of any Person who may have an interest in any Partnership Interest by reason of an assignment or otherwise.

6.3. Titles and Captions. All article and section titles and captions in the Agreement are for convenience only, shall not be deemed part of this Agreement, and in no way shall define, limit, extend, or describe the scope or intent of any provisions hereof. Except as specifically provided otherwise, references to "Articles," "Sections" and "Exhibits" are to "Articles," "Sections" and "Exhibits" of this Agreement. All Exhibits hereto are incorporated herein by reference.

6.4. Pronouns and Plurals. Whenever the context may require, any pronoun used in this Agreement shall include the corresponding masculine, feminine, or neuter forms, and the singular form of nouns, pronouns, and verbs shall include the plural and vice versa.

6.5. Further Action. The parties shall execute all documents, provide all information, and take or refrain from taking all actions as may be necessary or appropriate to achieve the purposes of this Agreement.

6.6. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their heirs, executors, administrators, successors, legal representatives, and permitted assigns.

6.7. Integration. This Agreement constitutes the entire agreement among the parties hereto pertaining to the subject matter hereof and supersedes all prior agreements and understandings pertaining thereto.

6.8. Creditors. None of the provisions of this Agreement shall be for the benefit of or enforceable by any creditors of the Partnership.

6.9. Waiver. No failure by any party to insist upon the strict performance of any covenant, duty, agreement, or condition of this Agreement or to exercise any right or remedy consequent upon a breach thereof shall constitute waiver of any such breach or any other covenant, duty, agreement, or condition.

6.10. Counterparts. This agreement may be executed in counterparts, all of which together shall constitute one agreement binding on all the parties hereto, notwithstanding that all such parties are not signatories to the original or the same counterpart.

6.11. Applicable Law. This Agreement shall be construed in accordance with and governed by the laws of the State of Delaware, without regard to the principles of conflicts of law.

6.12. Invalidity of Provisions. If any provision of this Agreement is declared or found to be illegal, unenforceable, or void, in whole or in part, then the parties shall be relieved of all obligations arising under that provision, but only to the extent that it is illegal, unenforceable, or void, it being the intent and agreement of the parties that this Agreement shall be deemed amended by modifying that provision to the extent necessary to make it legal and enforceable while preserving its intent or, if that is

not possible, by substituting therefor another provision that is legal and enforceable and achieves the same objectives.

6.13. General Partner Discretion. Whenever the General Partner may use its sole discretion, the General Partner may consider any items it deems relevant, including its own interest and that of its affiliates.

6.14. Mandatory Arbitration. In the event there is an unresolved legal dispute between the parties and/or any of their respective officers, directors, partners, employees, agents, affiliates or other representatives that involves legal rights or remedies arising from this Agreement, the parties agree to submit their dispute to binding arbitration under the authority of the Federal Arbitration Act; provided, however, that the Partnership or such applicable affiliate thereof may pursue a temporary restraining order and /or preliminary injunctive relief in connection with any confidentiality covenants or agreements binding on the other party, with related expedited discovery for the parties, in a court of law, and thereafter, require arbitration of all issues of final relief. The arbitration will be conducted by the American Arbitration Association, or another mutually agreeable arbitration service. A panel of three arbitrators will preside over the arbitration and will together deliberate, decide and issue the final award. The arbitrators shall be duly licensed to practice law in the state of Texas. The discovery process shall be limited to the following: Each side shall be permitted no more than (i) two party depositions of six hours each, each deposition to be taken pursuant to the Texas Rules of Civil Procedure; (ii) one non-party deposition of six hours; (iii) twenty-five interrogatories; (iv) twenty-five requests for admissions; (v) ten request for production (in response, the producing party shall not be obligated to produce in excess of 5,000 total pages of documents, including electronic documents); and (vi) one request for disclosure pursuant to the Texas Rules of Civil Procedure. Any discovery not specifically provided for in this paragraph, whether to parties or non-parties, shall not be permitted. The arbitrators shall be required to state in a written opinion all facts and conclusions of law relied upon to support any decision rendered. The arbitrators will not have the authority to render a decision that contains an outcome based on error of state or federal law or to fashion a cause of action or remedy not otherwise provided for under applicable state or federal law. Any dispute over whether the arbitrators have failed to comply with the foregoing will be resolved by summary judgment in a court of law. In all other respects, the arbitration process will be conducted in accordance with the American Arbitration Association's dispute resolution rules or other mutually agreeable arbitration services rules. All proceedings shall be conducted in Dallas, Texas or another mutually agreeable site. Each party shall bear its own attorneys fees, costs and expenses, including any costs of experts, witnesses and /or travel, subject to a final arbitration award on who should bear costs and fees. The duty to arbitrate described above shall survive the termination of this Agreement. Except as otherwise provided above, the parties hereby waive trial in a court of law or by jury. All other rights, remedies, statutes of limitation and defenses applicable to claims asserted in a court of law will apply in the arbitration.

Remainder of Page intentionally Left Blank.
Signature Page Follows.

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement as of the date and year first written above.

GENERAL PARTNER:

STRAND ADVISORS, INC.,
a Delaware corporation

By: _____
James D. Dondero,
President

LIMITED PARTNERS:

THE DUGABOY INVESTMENT TRUST

By: Nancy M. Dondero
Name: Nancy M. Dondero
Its: Trustee

THE MARK AND PAMELA OKADA FAMILY TRUST – EXEMPT TRUST #1

By: _____
Name: Lawrence Tonomura
Its: Trustee

THE MARK AND PAMELA OKADA FAMILY TRUST – EXEMPT TRUST #2

By: _____
Name: Lawrence Tonomura
Its: Trustee

MARK K. OKADA

_____
Mark K. Okada

Signature Page to Fourth Amended and Restated Agreement of Limited Partnership

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement as of the date and year first written above.

GENERAL PARTNER:

STRAND ADVISORS, INC.,
a Delaware corporation

By: _____
James D. Dondero,
President

LIMITED PARTNERS:

THE DUGABOY INVESTMENT TRUST

By: _____
Name: Nancy M. Dondero
Its: Trustee

THE MARK AND PAMELA OKADA FAMILY TRUST – EXEMPT TRUST #1

By: _____
Name: Lawrence Tonomura
Its: Trustee

THE MARK AND PAMELA OKADA FAMILY TRUST – EXEMPT TRUST #2

By: _____
Name: Lawrence Tonomura
Its: Trustee

MARK K. OKADA

_____
Mark K. Okada

Signature Page to Fourth Amended and Restated Agreement of Limited Partnership

HUNTER MOUNTAIN INVESTMENT TRUST
By: Beacon Mountain LLC, Administrator

By: _____
Name: John Honis
Its: President

Signature Page to Fourth Amended and Restated Agreement of Limited Partnership

EXHIBIT A

	Percentage Interest	
CLASS A PARTNERS	**By Class**	**Effective %**
GENERAL PARTNER:		
Strand Advisors	0.5573%	0.2508%
LIMITED PARTNERS:		
The Dugaboy Investment Trust	74.4426%	0.1866%
Mark K. Okada	19.4268%	0.0487%
The Mark and Pamela Okada Family Trust - Exempt Trust #1	3.9013%	0.0098%
The Mark and Pamela Okada Family Trust - Exempt Trust #2	1.6720%	0.0042%
Total Class A Percentage Interest	100.0000%	0.500%
CLASS B LIMITED PARTNERS		
Hunter Mountain Investment Trust	100.0000%	55.0000%
CLASS C LIMITED PARTNERS		
Hunter Mountain Investment Trust	100.0000%	44.500%
PROFIT AND LOSS AMONG CLASSES		
Class A Partners	0.5000%	
Class B Partners	55.0000%	
Class C Partners	44.5000%	

EXHIBIT B

ADDENDUM
TO THE
FOURTH AMENDED AND RESTATED AGREEMENT OF LIMITED PARTNERSHIP
OF
HIGHLAND CAPITAL MANAGEMENT, L.P.

THIS ADDENDUM (this "**Addendum**") to that certain Fourth Amended and Restated Agreement of Limited Partnership of Highland Capital Management, L.P., dated December 24, 2015, to be effective as of December 24, 2015, as amended from time to time (the "Agreement"), is made and entered into as of the ___ day of _____, 20_, by and between Strand Advisors, Inc., as the sole General Partner (the "**General Partner**") of Highland Capital Management, L.P. (the "**Partnership**") and _____ ("_____") (except as otherwise provided herein, all capitalized terms used herein shall have the meanings set forth in the Agreement).

RECITALS:

WHEREAS, the General Partner, in its sole and unfettered discretion, and without the consent of any Limited Partner, has the authority under (i) Section 4.4 of the Agreement to admit Additional Limited Partners, (ii) Section 4.6 of the Agreement to admit Substitute Limited Partners and (iii) Section 6.1 of the Agreement to amend the Agreement;

WHEREAS, the General Partner desires to admit _____ as a Class __ Limited Partner holding a __% Percentage Interest in the Partnership as of the date hereof;

WHEREAS, _____desires to become a Class __ Limited Partner and be bound by the terms and conditions of the Agreement; and

WHEREAS, the General Partner desires to amend the Agreement to add _____ as a party thereto.

AGREEMENT:

RESOLVED, as a condition to receiving a Partnership Interest in the Partnership, _____ acknowledges and agrees that he/she/it (i) has received and read a copy of the Agreement, (ii) shall be bound by the terms and conditions of the Agreement; and (iii) shall promptly execute an addendum to the Second Amended Buy-Sell and Redemption Agreement; and be it

FURTHER RESOLVED, the General Partner hereby amends the Agreement to add _____ as a Limited Partner, and the General Partner shall attach this Addendum to the Agreement and make it a part thereof; and be it

FURTHER RESOLVED, this Addendum may be executed in any number of counterparts, all of which together shall constitute one Addendum binding on all the parties hereto, notwithstanding that all such parties are not signatories to the original or the same counterpart.

IN WITNESS WHEREOF, the undersigned have executed this Addendum as of the day and year above written.

GENERAL PARTNER:

STRAND ADVISORS, INC.

By: _____
Name: _____
Title: _____

NEW LIMITED PARTNER:

[_____]

AGREED AND ACCEPTED:

In consideration of the terms of this Addendum and the Agreement, in consideration of the Partnership's allowing the above signed Person to become a Limited Partner of the Partnership, and for other good and valuable consideration receipt of which is hereby acknowledged, the undersigned shall be bound by the terms and conditions of the Agreement as though a party thereto.

SPOUSE OF NEW LIMITED PARTNER:

[_____]

EXHIBIT 31

Deborah Deitsch-Perez – State Bar ID 24036072
Michael P. Aigen – State Bar ID 24012196
STINSON LLP
3102 Oak Lawn Ave, Suite 777
Dallas, Texas 75219
(214) 560-2201 – Telephone
(214) 560-2203 – Facsimile

-AND-

Clay M. Taylor – State Bar ID 24033261
Bryan C. Assink – State Bar ID 24089009
BONDS ELLIS EPPICH SCHAFER JONES LLP
420 Throckmorton Street, Suite 1000
Fort Worth, Texas 76102
(817) 405-6900 – Telephone
(817) 405-6902 – Facsimile

ATTORNEYS FOR DEFENDANT JAMES DONDERO

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	**Case No. 19-34054-SGJ-11**
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	**Chapter 11**
	§	
Debtor.	§	
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	
Plaintiff.	§	
	§	
v.	§	
	§	**Adversary No.: 21-03003**
JAMES DONDERO, NANCY DONDERO,	§	
AND THE DUGABOY INVESTMENT TRUST	§	
	§	
Defendants.	§	

DEFENDANT JAMES DONDERO'S ANSWER TO AMENDED COMPLAINT

Defendant James Dondero ("James Dondero"), defendant in the above-styled and numbered adversary proceeding (the "Adversary Proceeding") filed by Highland Capital Management, L.P. (the "Plaintiff"), hereby files this Answer (the "Answer") responding to the

Amended Complaint for (I) Breach of Contract and (II) Turnover of Property (III) Fraudulent Transfer, and (IV) Breach of Fiduciary Duty [Adv. Dkt. 73] (the "Amended Complaint"). Where an allegation in the Amended Complaint is not expressly admitted in this Amended Answer, it is denied.

In filing this Answer, Defendant James Dondero does not waive any rights to compel arbitration, as set forth in Defendants' Motion to Compel Arbitration [Adv. Dkt. 80], filed on September 1, 2021.[1]

PRELIMINARY STATEMENT

1. The first sentence of paragraph 1 of the Amended Complaint sets forth the Plaintiff's objective in bringing the Amended Complaint and does not require a response. To the extent it contains factual allegations, they are denied. The second sentence contains a legal conclusion that does not require a response. To the extent it contains factual allegations, they are denied.

2. Defendant James Dondero admits that he amended his answer and served sworn responses to interrogatories and that these documents speak for themselves. To the extent paragraph 2 alleges other facts, Defendant James Dondero lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 2 of the Amended Complaint and therefore denies the same.

3. Defendant James Dondero denies the allegations in paragraph 3 of the Amended Complaint.

[1] *Williams v. Cigna Financial Advisors, Inc.*, 56 F.3d 656 (5th Cir. 1995) (Defendant did not substantially invoke the judicial process and waive its right to arbitration despite removal of action to federal court, filing motion to dismiss, filing motion to stay proceedings, answering plaintiff's complaint, asserting counterclaim, and exchanging discovery); *Keytrade USA, Inc. v. AIN Temouchent M/V*, 404 F.3d 891 (5th Cir. 2005) (Arbitration not waived when defendant filed a 100-plus page motion for summary judgment and a concurrent motion to arbitrate); *Gulf Guaranty Life Ins. Co. v. Conn. Gen. Life Ins. Co.*, 304 F.3d 476 (5th Cir. 2002) (no waiver of arbitration right when the party seeking arbitration did no more than defend itself against the claims made against it).

4. Paragraph 4 of the Amended Complaint contains a summary of the relief the Plaintiff seeks and does not require a response. To the extent it contains factual allegations, they are denied.

5. Paragraph 5 of the Amended Complaint contains a summary of the relief the Plaintiff seeks and does not require a response. To the extent it contains factual allegations, they are denied.

JURISDICTION AND VENUE

6. Defendant James Dondero admits that this Adversary Proceeding relates to the Plaintiff's bankruptcy case but denies any implication that this fact confers Constitutional authority on the Bankruptcy Court to adjudicate this dispute. Any allegations in paragraph 6 not expressly admitted are denied.

7. Defendant James Dondero admits that the Court has statutory (but not Constitutional) jurisdiction to hear this Adversary Proceeding. Any allegations in paragraph 7 not expressly admitted are denied.

8. Defendant James Dondero denies that a breach of contract claim is core. Defendant James Dondero denies that a § 542(b) turnover proceeding is the appropriate mechanism to collect a contested debt. Defendant James Dondero admits that a § 542(b) turnover proceeding is statutorily core but denies that it is Constitutionally core under *Stern v. Marshall*. Defendant James Dondero does not consent to the Bankruptcy Court entering final orders or judgment in this Adversary Proceeding. Any allegations in paragraph 8 not expressly admitted are denied.

9. Subject to the Defendants' Motion to Compel Arbitration, Defendant James Dondero admits paragraph 9 of the Amended Complaint.

THE PARTIES

10. Defendant James Dondero admits the allegations in paragraph 10 of the Amended Complaint.

11. Defendant James Dondero admits the first and second sentences of the allegations in paragraph 11 of the Amended Complaint. The third sentence of paragraph 11 asserts a legal conclusion to which no response is required. To the extent a response is required or appropriate, Defendant James Dondero admits that he was the President of the Debtor's General Partner, Strand Advisors, Inc. and the Debtor's CEO until his resignation on January 9, 2020. Defendant James Dondero denies any remaining allegations contained in paragraph 11.

12. Defendant James Dondero admits the allegations in paragraph 12 of the Amended Complaint.

13. Defendant James Dondero admits that Nancy Dondero is his sister and admits that she is a trustee of Dugaboy. Any allegations in paragraph 13 not expressly admitted are denied.

CASE BACKGROUND

14. Defendant James Dondero admits the allegations in paragraph 14 of the Amended Complaint.

15. Defendant James Dondero admits the allegations in paragraph 15 of the Amended Complaint.

16. Defendant James Dondero admits the allegations in paragraph 16 of the Amended Complaint.

17. Defendant James Dondero admits the allegations in paragraph 17 of the Amended Complaint.

18. Defendant James Dondero admits the allegations in paragraph 18 of the Amended Complaint.

STATEMENT OF FACTS

19. Defendant James Dondero admits that he has executed promissory notes under which the Debtor is the payee. Any allegations in paragraph 19 not expressly admitted are denied.

20. Defendant James Dondero admits that he executed a note as alleged in the first sentence of paragraph 20 of the Amended Complaint. Defendant James Dondero admits that the attached document appears to be a copy of the referenced note.

21. Defendant James Dondero admits that he executed a note as alleged in the first sentence of paragraph 21 of the Amended Complaint. Defendant James Dondero admits that the attached document appears to be a copy of the referenced note.

22. Defendant James Dondero admits that he executed a note as alleged in the first sentence of paragraph 22 of the Amended Complaint. Defendant James Dondero admits that the attached document appears to be a copy of the referenced note.

23. Defendant James Dondero admits that Section 2 of each note attached to the Amended Complaint contains the provision quoted in paragraph 23 of the Amended Complaint.

24. Defendant James Dondero denies the allegations in paragraph 24 of the Amended Complaint. It appears that the provisions of each Note differ. Accordingly, the allegations made in this paragraph are denied.

25. Defendant James Dondero denies the allegations in paragraph 25 of the Amended Complaint. It appears that the provisions of each Note differ. Accordingly, the allegations made in this paragraph are denied.

26. In response to paragraph 26 of the Amended Complaint, Defendant James Dondero admits that Exhibit 4 to the Amended Complaint (the "Demand Letter") is a true and correct copy of what it purports to be and that the document speaks for itself. To the extent paragraph 26 of the Amended Complaint asserts a legal conclusion, no response is required, and it is denied. To the extent not expressly admitted, paragraph 26 of the Amended Complaint is denied.

27. To the extent paragraph 27 of the Amended Complaint asserts a legal conclusion, no response is necessary, and it is denied. Defendant James Dondero otherwise admits paragraph 27 of the Complaint.

28. Defendant James Dondero lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 28 of the Amended Complaint and therefore denies same.

29. Defendant James Dondero lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 29 of the Amended Complaint and therefore denies same.

30. Defendant James Dondero lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 30 of the Amended Complaint and therefore denies same.

31. Defendant James Dondero lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 31 of the Amended Complaint and therefore denies same.

32. Defendant James Dondero denies the allegations in paragraph 32 of the Amended Complaint.

33. Defendant James Dondero admits that the Debtor filed the Original Complaint in this action on January 22, 2021 as alleged in the first sentence of paragraph 33 of the Amended Complaint. Defendant James Dondero denies he is liable for the relief requested in the Original Complaint. To the extent not expressly admitted, paragraph 33 of the Amended Complaint is denied.

34. Defendant James Dondero admits the allegations in paragraph 34 of the Amended Complaint.

35. Defendant James Dondero admits the allegations in paragraph 35 of the Amended Complaint.

36. In response to the allegations in paragraph 36 of the Amended Complaint, Defendant James Dondero admits that the Alleged Agreement was orally entered into in January or February 2019 or thereabouts. To the extent not expressly admitted, paragraph 36 of the Amended Complaint is denied.

37. Defendant James Dondero admits the allegations in paragraph 37 of the Amended Complaint.

38. Paragraph 38 of the Amended Complaint asserts a legal conclusion to which no response is required. To the extent a response is required or appropriate, Defendant James Dondero admits that he was the President of the Debtor's General Partner, Stand Advisors, Inc. and the Debtor's CEO until his resignation on January 9, 2020. To the extent not expressly admitted, paragraph 38 of the Amended Complaint is denied.

39. In response to paragraph 39 of the Amended Complaint, Defendant James Dondero informed the Debtor's CFO that the loans were potentially forgivable and testified that he doesn't remember if he told the Debtor's CFO about the Alleged Agreement. Subject to the

foregoing, Defendant James Dondero otherwise admits the allegations in paragraph 39 of the Amended Complaint.

40. In response to paragraph 40 of the Amended Complaint, Defendant James Dondero admits that he discussed the Alleged Agreement with Nancy Dondero and that no one else participated in the discussions surrounding the execution or authorization of the Alleged Agreement. To the extent not expressly admitted, paragraph 40 of the Amended Complaint is denied.

41. Defendant James Dondero lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 41 of the Amended Complaint and therefore denies same.

42. Defendant James Dondero denies the allegations in paragraph 42 of the Amended Complaint.

43. Defendant James Dondero admits the allegations in paragraph 43 of the Amended Complaint.

44. Paragraph 44 of the Amended Complaint states a legal conclusion that does not require a response and is therefore denied.

45. Paragraph 45 of the Amended Complaint states a legal conclusion that does not require a response and is therefore denied.

FIRST CLAIM FOR RELIEF
(Against James Dondero)
(Breach of Contract)

46. Paragraph 46 of the Amended Complaint is a sentence of incorporation that does not require a response. All prior responses are incorporated herein by reference.

47. Paragraph 47 of the Amended Complaint states a legal conclusion that does not require a response and is therefore denied.

48. Paragraph 48 of the Amended Complaint states a legal conclusion that does not require a response and is therefore denied.

49. Paragraph 49 of the Amended Complaint states a legal conclusion that does not require a response and is therefore denied.

50. Paragraph 50 of the Amended Complaint states a legal conclusion that does not require a response and is therefore denied.

SECOND CLAIM FOR RELIEF
(Against James Dondero)
(Turnover Pursuant to 11 U.S.C. § 542(b))

51. Paragraph 51 of the Complaint is a sentence of incorporation that does not require a response. All prior responses are incorporated herein by reference.

52. Paragraph 52 of the Amended Complaint states a legal conclusion that does not require a response and is therefore denied.

53. Paragraph 53 of the Amended Complaint states a legal conclusion that does not require a response and is therefore denied.

54. Paragraph 54 of the Amended Complaint states a legal conclusion that does not require a response and is therefore denied.

55. Paragraph 55 of the Amended Complaint states a legal conclusion that does not require a response and is therefore denied. Defendant James Dondero admits that the Plaintiff transmitted the Demand Letter, and that document speaks for itself. To the extent paragraph 55 alleges other facts, Defendant James Dondero lacks knowledge or information sufficient to form

a belief about the truth of the allegations in paragraph 55 of the Amended Complaint and therefore denies the same.

56. Paragraph 56 of the Amended Complaint states a legal conclusion that does not require a response and is therefore denied.

57. Paragraph 57 of the Amended Complaint states a legal conclusion that does not require a response and is therefore denied.

THIRD CLAIM FOR RELIEF
(Against James Dondero)
(Avoidance and Recovery of Actual Fraudulent Transfer Under 11 U.S.C. § 548(a)(1)(A) and 550)

58. Paragraph 58 of the Complaint is a sentence of incorporation that does not require a response. All prior responses are incorporated herein by reference.

59. Paragraph 59 of the Amended Complaint states a legal conclusion that does not require a response and is therefore denied.

60. Paragraph 60 of the Amended Complaint states a legal conclusion that does not require a response and is therefore denied.

61. Paragraph 61 of the Amended Complaint states a legal conclusion that does not require a response and therefore it is denied.

62. Paragraph 62 of the Amended Complaint states a legal conclusion that does not require a response and therefore it is denied.

63. Paragraph 63 of the Amended Complaint states a legal conclusion that does not require a response and therefore it is denied.

FOURTH CLAIM FOR RELIEF
(Against James Dondero)
(Avoidance and Recovery of Actual Fraudulent Transfer Under 11 U.S.C. § 544(b) and 550, and Tex. Bus. & C. Code § 24.005(a)(1))

64. Paragraph 64 of the Complaint is a sentence of incorporation that does not require a response. All prior responses are incorporated herein by reference.

65. Paragraph 65 of the Amended Complaint states a legal conclusion that does not require a response and is therefore denied.

66. Paragraph 66 of the Amended Complaint states a legal conclusion that does not require a response and is therefore denied.

67. Paragraph 67 of the Amended Complaint states a legal conclusion that does not require a response and is therefore denied.

68. Paragraph 68 of the Amended Complaint states a legal conclusion that does not require a response and is therefore denied.

FIFTH CLAIM FOR RELIEF
(Against Dugaboy)
(For Declaratory Relief: --11 U.S.C. § 105(a) and Fed. R. Bankr. P 7001)

69. This claim is only asserted against Defendant The Dugaboy Investment Trust. Therefore, Defendant James Dondero is not required to respond to this claim.

70. This claim is only asserted against Defendant The Dugaboy Investment Trust. Therefore, Defendant James Dondero is not required to respond to this claim.

71. This claim is only asserted against Defendant The Dugaboy Investment Trust. Therefore, Defendant James Dondero is not required to respond to this claim.

72. This claim is only asserted against Defendant The Dugaboy Investment Trust. Therefore, Defendant James Dondero is not required to respond to this claim.

SIXTH CLAIM FOR RELIEF
(Against Dugaboy)
(Breach of Fiduciary Duty)

73. This claim is only asserted against Defendant The Dugaboy Investment Trust. Therefore, Defendant James Dondero is not required to respond to this claim.

74. This claim is only asserted against Defendant The Dugaboy Investment Trust. Therefore, Defendant James Dondero is not required to respond to this claim.

75. This claim is only asserted against Defendant The Dugaboy Investment Trust. Therefore, Defendant James Dondero is not required to respond to this claim.

76. This claim is only asserted against Defendant The Dugaboy Investment Trust. Therefore, Defendant James Dondero is not required to respond to this claim.

SEVENTH CLAIM FOR RELIEF
(Against James Dondero and Nancy Dondero)
(Aiding and Abetting a Breach of Fiduciary Duty)

77. Defendant James Dondero is moving to dismiss this claim. Therefore, he is not required to respond to this claim at this time.

78. Defendant James Dondero is moving to dismiss this claim. Therefore, he is not required to respond to this claim at this time.

79. Defendant James Dondero is moving to dismiss this claim. Therefore, he is not required to respond to this claim at this time.

80. Defendant James Dondero is moving to dismiss this claim. Therefore, he is not required to respond to this claim at this time.

81. Defendant James Dondero is moving to dismiss this claim. Therefore, he is not required to respond to this claim at this time.

Defendant James Dondero denies that the Plaintiff is entitled to the relief requested in the prayer, including as to parts (i), (ii), (iii), (iv), (v), (vi), and (vii).

AFFIRMATIVE DEFENSES

82. Plaintiff's claims are barred in whole or in part because prior to the demands for payment Plaintiff agreed that it would not collect the Notes upon fulfillment of conditions subsequent. Specifically, sometime between December of the year in which each note was made and February of the following year, Defendant Nancy Dondero, as representative for a majority of the Class A shareholders of Plaintiff agreed that Plaintiff would forgive the Notes if certain portfolio companies were sold for greater than cost or on a basis outside of Defendant James Dondero's control. The purpose of this agreement was to provide compensation to Defendant James Dondero, who was otherwise underpaid compared to reasonable compensation levels in the industry, through the use of forgivable loans, a practice that was standard at HCMLP and in the industry. This agreement setting forth the conditions subsequent to demands for payment on the Notes was an oral agreement; however, Defendant James Dondero believes there may be testimony or email correspondence that discusses the existence of this agreement that may be uncovered through discovery in this Adversary Proceeding.

83. Defendant James Dondero further asserts that Plaintiff's claims are barred, in whole or in part, due to waiver.

84. Defendant James Dondero further asserts that Plaintiff's claims are barred, in whole or in part, due to estoppel.

85. Defendant James Dondero further asserts that Note is ambiguous.

86. Defendant James Dondero further asserts that Plaintiff's claims may be barred, in whole or in part, due to failure of consideration.

87. Defendant James Dondero further asserts that Plaintiff's fraudulent transfer claims should be barred, in whole or in part, because at all relevant times Defendant James Dondero acted in good faith.

88. Defendant James Dondero further asserts that Plaintiff's fraudulent transfer claims should be barred, in whole or in part, because the alleged fraudulent transfer (*i.e.*, the "Alleged Agreement") was taken in good faith and for reasonably equivalent value.

89. Defendant James Dondero further asserts that Plaintiff's fraudulent transfer claims should be barred, in whole or in part, because there was no intent to hinder, delay, or defraud any creditors of the Debtor by entering into the "Alleged Agreement."

90. Defendant James Dondero further asserts that Plaintiff's fraudulent transfer claims should be barred, in whole or in part, because the Debtor was solvent at the time the "Alleged Agreement" was made.

91. Defendant James Dondero further asserts that Plaintiff's claims must be resolved in arbitration.

JURY DEMAND

92. Except to the extent compelled to arbitration, Defendant James Dondero demands a trial by jury of all issues so triable pursuant to Rule 38 of the Federal Rules of Civil Procedure and Rule 9015 of the Federal Rules of Bankruptcy Procedure.

93. Defendant James Dondero does not consent to the Bankruptcy Court conducting a jury trial and therefore demands a jury trial in the District Court.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Defendant James Dondero respectfully requests that, following a trial on the merits, the Court enter a judgment that the Plaintiff take

nothing on the Amended Complaint and provide Defendant James Dondero such other relief to which he is entitled.

Dated: September 1, 2021

Respectfully submitted,

/s/ Deborah Deitsch-Perez

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ATTORNEYS FOR DEFENDANT JAMES DONDERO

CERTIFICATE OF SERVICE

The undersigned hereby certifies that, on September 1, 2021, a true and correct copy of this document was served via the Court's CM/ECF system on counsel for the Plaintiff.

/s/ Deborah Deitsch-Perez
Deborah Deitsch-Perez

EXHIBIT 32

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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re: HIGHLAND CAPITAL MANAGEMENT, L.P.,[1] Debtor.	§ § § § § §	Chapter 11 Case No. 19-34054-sgj11
HIGHLAND CAPITAL MANAGEMENT, L.P., Plaintiff, vs. JAMES DONDERO, NANCY DONDERO, AND THE DUGABOY INVESTMENT TRUST, Defendants.	§ § § § § § § § §	Adversary Proceeding No. 21-3003

[1] The Debtor's last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

AMENDED COMPLAINT FOR (I) BREACH OF CONTRACT, (II) TURNOVER OF PROPERTY, (III) FRAUDULENT TRANSFER, AND (IV) BREACH OF FIDUCIARY DUTY

Plaintiff, Highland Capital Management, L.P., the above-captioned debtor and debtor-in-possession (the "Debtor") in the above-captioned chapter 11 case (the "Bankruptcy Case"), and the plaintiff (the "Plaintiff") in the above-captioned adversary proceeding (the "Adversary Proceeding"), by its undersigned counsel, as and for its amended complaint (the "Complaint") against defendants James Dondero ("Mr. Dondero"), Nancy Dondero, and The Dugaboy Investment Trust ("Dugaboy," and together with Mr. Dondero and Nancy Dondero, "Defendants"), alleges upon knowledge of its own actions and upon information and belief as to other matters as follows:

PRELIMINARY STATEMENT

1. The Debtor brings this action against Defendants in connection with Mr. Dondero's defaults under three promissory notes executed by Mr. Dondero in favor of the Debtor in the aggregate original principal amount of $8,825,000, and payable upon the Debtor's demand. Despite due demand, Mr. Dondero has failed to pay amounts due and owing under the notes and the accrued but unpaid interest thereon.

2. After amending his answer and his sworn responses to interrogatories, Mr. Dondero now contends that the Debtor orally agreed to relieve him of his obligations under the notes upon fulfillment of "conditions subsequent" (the "Alleged Agreement"). Mr. Dondero further contends that he entered into the Alleged Agreement with his sister, Nancy Dondero, as trustee of Dugaboy, acting on behalf of the Debtor. At the time Mr. Dondero entered into the Alleged Agreement, he controlled the Debtor and was the lifetime beneficiary of Dugaboy.

3. Based on its books and records, discovery to date, and other facts, the Debtor believes that the Alleged Agreement is a fiction created after the commencement of this Adversary Proceeding for the purpose of avoiding or at least delaying paying the obligations due under the notes.

4. Nevertheless, the Debtor amends its Complaint for the purpose of adding certain claims and naming additional parties who would be liable to the Debtor if the Alleged Agreement were determined to exist and be enforceable. Specifically, in addition to pursuing claims against Mr. Dondero for breach of his obligations under the notes and for turnover, the Debtor adds alternative claims (a) against Mr. Dondero for actual fraudulent transfer and aiding and abetting Dugaboy in its breach of fiduciary duty, (b) against Dugaboy for declaratory relief and for breach of fiduciary duty, and (c) against Nancy Dondero for aiding and abetting Dugaboy in the breach of his fiduciary duties.

5. As remedies, the Debtor seeks (a) damages from Mr. Dondero in an amount equal to (i) the aggregate outstanding principal due under the Notes (as defined below), plus (ii) all accrued and unpaid interest thereon until the date of payment, plus (iii) an amount equal to the Debtor's costs of collection (including all court costs and reasonable attorneys' fees and expenses, as provided for in the notes), for Mr. Dondero's breach of his obligations under the Notes, (b) turnover by Mr. Dondero to the Debtor of the foregoing amounts; (c) avoidance of the Alleged Agreement and the transfers thereunder and recovery of the funds transferred from the Plaintiff to, or for the benefit of, Mr. Dondero pursuant to the Notes; (d) declaratory relief, and (e) damages arising from the Defendants' breach of fiduciary duties or aiding and abetting thereof.

JURISDICTION AND VENUE

6. This adversary proceeding arises in and relates to the Debtor's case pending before the United States Bankruptcy Court for the Northern District of Texas, Dallas Division (the "Court") under chapter 11 of the Bankruptcy Code.

7. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334.

8. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b), and, pursuant to Rule 7008 of the Bankruptcy Rules, the Debtor consents to the entry of a final order by the Court in the event that it is later determined that the Court, absent consent of the parties cannot enter final orders or judgments consistent with Article III of the United States Constitution.

9. Venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

THE PARTIES

10. The Debtor is a limited liability partnership formed under the laws of Delaware with a business address at 300 Crescent Court, Suite 700, Dallas, Texas 75201.

11. Upon information and belief, Mr. Dondero is an individual residing in Dallas, Texas. He is the co-founder of the Debtor and was the Debtor's President and Chief Executive Officer until his resignation on January 9, 2020. At all relevant times, Mr. Dondero controlled the Debtor.

12. Upon information and belief, Dugaboy is (a) a limited partner of the Debtor, and (b) one of Mr. Dondero's family investment trusts for which is he a lifetime beneficiary.

13. Upon information and belief, Nancy Dondero is Mr. Dondero's sister, and the trustee of Dugaboy.

CASE BACKGROUND

14. On October 16, 2019, the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware (the "Delaware Court"), Case No. 19-12239 (CSS) (the "Highland Bankruptcy Case").

15. On October 29, 2019, the U.S. Trustee in the Delaware Court appointed an Official Committee of Unsecured Creditors (the "Committee") with the following members: (a) Redeemer Committee of Highland Crusader Fund ("Redeemer"), (b) Meta-e Discovery, (c) UBS Securities LLC and UBS AG London Branch, and (d) Acis Capital Management, L.P. and Acis Capital Management GP LLC (collectively, "Acis").

16. On June 25, 2021, the U.S. Trustee in this Court filed that certain *Notice of Amended Unsecured Creditors' Committee* [Docket No. 2485] notifying the Court that Acis and Redeemer had resigned from the Committee.

17. On December 4, 2019, the Delaware Court entered an order transferring venue of the Highland Bankruptcy Case to this Court [Docket No. 186].[2]

18. The Debtor has continued in the possession of its property and has continued to operate and manage its business as a debtor-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in this chapter 11 case.

STATEMENT OF FACTS

A. The Dondero Notes

19. Mr. Dondero, in his personal capacity, is the maker under a series of promissory notes in favor of the Debtor.

[2] All docket numbers refer to the main docket for the Highland Bankruptcy Case maintained by this Court.

20. Specifically, on February 2, 2018, Mr. Dondero executed a promissory note in favor of the Debtor, as payee, in the original principal amount of $3,825,000 ("Dondero's First Note"). A true and correct copy of Dondero's First Note is attached hereto as **Exhibit 1**.

21. On August 1, 2018, Mr. Dondero executed a promissory note in favor of the Debtor, as payee, in the original principal amount of $2,500,000 ("Dondero's Second Note"). A true and correct copy of Dondero's Second Note is attached hereto as **Exhibit 2.**

22. On August 13, 2018, Mr. Dondero executed a promissory note in favor of the Debtor, as payee, in the original principal amount of $2,500,000 ("Dondero's Third Note" and collectively, with Dondero's First Note and Dondero's Second Note, the "Notes"). A true and correct copy of Dondero's Third Note is attached hereto as **Exhibit 3.**

23. Section 2 of each Note provides: "**Payment of Principal and Interest**. The accrued interest and principal of this Note shall be due and payable on demand of the Payee."

24. Section 4 of each Note provides:

> **Acceleration Upon Default**. Failure to pay this Note or any installment hereunder as it becomes due shall, at the election of the holder hereof, without notice, demand, presentment, notice of intent to accelerate, notice of acceleration, or any other notice of any kind which are hereby waived, mature the principal of this Note and all interest then accrued, if any, and the same shall at once become due and payable and subject to those remedies of the holder hereof. No failure or delay on the part of the Payee in exercising any right, power, or privilege hereunder shall operate as a waiver hereof.

25. Section 6 of each Note provides:

> **Attorneys' Fees**. If this Note is not paid at maturity (whether by acceleration or otherwise) and is placed in the hands of an attorney for collection, or if it is collected through a bankruptcy court or any other court after maturity, the Maker shall pay, in addition to all other amounts owing hereunder, all actual expenses of collection, all court costs and reasonable attorneys' fees and expenses incurred by the holder hereof.

B. Mr. Dondero Defaults Under Each Note

26. By letter dated December 3, 2020, the Debtor made demand on Mr. Dondero for payment under the Notes by December 11, 2020 (the "Demand Letter"). A true and correct copy of the Demand Letter is attached hereto as **Exhibit 4**. The Demand Letter provided:

> By this letter, Payee is demanding payment of the accrued interest and principal due and payable on the Notes in the aggregate amount of $9,004,013.07, which represents all accrued interest and principal through and including December 11, 2020.
>
> **Payment is due on December 11, 2020, and failure to make payment in full on such date will constitute an event of default under the Notes.**

Demand Letter (emphasis in the original).

27. Despite the Debtor's demand, Mr. Dondero did not pay all or any portion of the amounts demanded by the Debtor on December 11, 2020, or at any time thereafter.

28. As of December 11, 2020, there was an outstanding principal amount of $3,687,269.71 on Dondero's First Note and accrued but unpaid interest in the amount of $21,003.70, resulting in a total outstanding amount as of that date of $3,708,273.41.

29. As of December 11, 2020, there was an outstanding principal balance of $2,619,929.42 on Dondero's Second Note and accrued but unpaid interest in the amount of $27,950.70, resulting in a total outstanding amount as of that date of $2,647,880.12.

30. As of December 11, 2020, there was an outstanding principal balance of $2,622,425.61 on Dondero's Third Note and accrued but unpaid interest in the amount of $25,433.94, resulting in a total outstanding amount as of that date of $2,647,859.55.

31. Thus, as of December 11, 2020, the total outstanding principal and accrued but unpaid interest due under the Notes was $9,004,013.07.

32. Pursuant to Section 4 of each Note, each Note is in default, and is currently due and payable.

C. <u>The Debtor Files the Original Complaint</u>

33. On January 22, 2021, the Debtor filed the *Complaint for (I) Breach of Contract and (II) Turnover of Property of the Debtor's Estate* [Docket No. 1] (the "<u>Original Complaint</u>"). In the Original Complaint, the Debtor brought claims for (i) breach of contract for Mr. Dondero's breach of his obligations under the Notes and (ii) turnover by Mr. Dondero for the outstanding amounts under the Notes, plus all accrued and unpaid interest until the date of payment plus the Debtor's costs of collection and reasonable attorney's fees.

D. <u>Mr. Dondero's Affirmative Defenses</u>

34. On March 16, 2021, Mr. Dondero filed his *Original Answer* [Docket No. 6] (the "<u>Original Answer</u>"). In his Original Answer, Mr. Dondero asserted four affirmative defenses: (i) the Debtor's claims should be barred because it was previously agreed by the Debtor that the Debtor would not collect on the Notes, (ii) waiver, (iii) estoppel, and (iv) failure of consideration. *See id.* ¶¶ 40-43.

35. On April 6, 2021, Mr. Dondero filed his *Amended Answer* [Docket No. 16] (the "<u>Amended Answer</u>"), asserting three additional affirmative defenses: (i) the Debtor previously agreed that it would not collect on the Notes "upon fulfillment of conditions subsequent" (*i.e.*, the Alleged Agreement) *id.* ¶ 40, (ii) The Debtor's claims are barred, in whole or in part, due to setoff, *id.* ¶ 41, and (iii) the Notes are "ambiguous," *id.* ¶ 45.

36. According to Mr. Dondero, the Alleged Agreement was orally entered into in January or February 2019, and was not memorialized in any documentation.

37. According to Mr. Dondero, he entered into the Alleged Agreement with his sister, Nancy Dondero, acting in her capacity as the Trustee of Dugaboy, which purportedly held the majority of the Debtor's Class A limited partnership interests.

38. Mr. Dondero controlled the Debtor at the time he entered into the Alleged Agreement.

39. Mr. Dondero did not inform the Debtor's CFO or outside auditor's about the Alleged Agreement.

40. According to Mr. Dondero, he discussed the Alleged Agreement with Nancy Dondero, but (a) no one else participated in the discussions surrounding the execution or authorization of the Alleged Agreement, and (b) the Alleged Agreement was not subject to any negotiation.

41. Upon information and belief, the Debtor's books and records do not reflect the Alleged Agreement.

E. Dugaboy Lacked Authority to Act on Behalf of the Debtor

42. Under section 4.2 of the *Fourth Amended and Restated Agreement of Limited Partnership of Highland Capital Management, L.P.* (the "Limited Partnership Agreement"), and attached hereto as **Exhibit 5**, Dugaboy was not authorized to enter into the Alleged Agreement on behalf of the Partnership, or otherwise bind the Partnership (as "Partnership" is defined in the Limited Partnership Agreement).

43. Section 4.2(b) of the Limited Partnership Agreement states:

> Management of Business. No Limited Partner shall take part in the control (within the meaning of the Delaware Act) of the Partnership's business, transact any business in the Partnership's name, or have the power to sign documents for or otherwise bind the Partnership other than as specifically set forth in this Agreement.

Exhibit 5, § 4.2(b).

44. No provision in the Limited Partnership Agreement authorizes any of the Partnership's limited partners to bind the Partnership.

45. Nancy Dondero also lacked authority to enter into the Alleged Agreement or to otherwise bind the Debtor.

FIRST CLAIM FOR RELIEF
(Against Mr. Dondero)
(Breach of Contract)

46. The Debtor repeats and re-alleges the allegations in each of the foregoing paragraphs as though fully set forth herein.

47. Each Note is a binding and enforceable contract.

48. Mr. Dondero breached each Note by failing to pay all amounts due to the Debtor upon the Debtor's demand.

49. Pursuant to each Note, the Debtor is entitled to damages from Mr. Dondero in an amount equal to (i) the aggregate outstanding principal due under each Note, plus (ii) all accrued and unpaid interest thereon until the date of payment, plus (iii) an amount equal to the Debtor's costs of collection (including all court costs and reasonable attorneys' fees and expenses), for Mr. Dondero's breach of his obligations under each of the Notes.

50. As a direct and proximate cause of Mr. Dondero's breach of each Note, the Debtor has suffered damages in the total amount of at least $9,004,013.07, as of December 11, 2020, plus an amount equal to all accrued but unpaid interest from that date plus the Debtor's cost of collection.

SECOND CLAIM FOR RELIEF
(Against Mr. Dondero)
(Turnover Pursuant to 11 U.S.C. § 542(b))

51. The Debtor repeats and re-alleges the allegations in each of the foregoing paragraphs as though fully set forth herein.

52. Mr. Dondero owes the Debtor an amount equal to (i) the aggregate outstanding principal due under each Note, plus (ii) all accrued and unpaid interest thereon until

the date of payment, plus (iii) an amount equal to the Debtor's costs of collection (including all court costs and reasonable attorneys' fees and expenses), for Mr. Dondero's breach of his obligations under each of the Notes.

53. Each Note is property of the Debtor's estate and the amounts due under each Note is matured and payable upon demand.

54. Mr. Dondero has not paid the amounts dues under each Note to the Debtor.

55. The Debtor has made demand for the turnover of the amounts due under each Note.

56. As of the date of filing of this Complaint, Mr. Dondero has not turned over to the Debtor all or any of the amounts due under each of the Notes.

57. The Debtor is entitled to the turnover of all amounts due under each of the Notes.

THIRD CLAIM FOR RELIEF
(Against Mr. Dondero)
(Avoidance and Recovery of Actual Fraudulent Transfer Under 11 U.S.C. §§ 548(a)(1)(A) and 550)

58. The Debtor repeats and re-alleges the allegations in each of the foregoing paragraphs as though fully set forth herein.

59. The Debtor made the transfers in the aggregate amount of $8,825,000 in exchange for the Alleged Agreement within two years of the Petition Date.

60. Mr. Dondero entered into the Alleged Agreement with actual intent to hinder, delay, or defraud a present or future creditor, demonstrated by, *inter alia*:

(a) The transfers were made to, or for the benefit of, Mr. Dondero, an insider of the Debtor.

(b) Mr. Dondero entered into the Alleged Agreement with his sister, Nancy Dondero.

(c) Mr. Dondero did not inform the Debtor's CFO or outside auditors about the Alleged Agreement.

(d) The Debtor's books and record do not reflect the Alleged Agreement.

(e) The Alleged Agreement was not subject to negotiation.

(f) The value of the consideration received by the Debtor for the transfers was not reasonably equivalent in value.

61. The pattern of conduct, series of transactions, and general chronology of events under inquiry in connection with the debt Mr. Dondero incurred under the Notes demonstrates a scheme of fraud.

62. Pursuant to 11 U.S.C. § 550, the Debtor is entitled to recover for the benefit of the Debtor's estates the transfers made in exchange for the Alleged Agreement from Mr. Dondero.

63. Accordingly, the Debtor is entitled to a judgement: (i) avoiding Alleged Agreement and the transfers thereunder, and (ii) recovering from Mr. Dondero the amount of $8,825,000.

FOURTH CLAIM FOR RELIEF
(Against Mr. Dondero)
(Avoidance and Recovery of Actual Fraudulent Transfer Under 11 U.S.C. §§ 544(b) and 550, and Tex. Bus. & C. Code § 24.005(a)(1))

64. The Debtor repeats and re-alleges the allegations in each of the foregoing paragraphs as though fully set forth herein.

65. The Debtor made the transfers in the aggregate amount of $8,825,000 in exchange for the Alleged Agreement after, or within a reasonable time before, creditors' claims arose.

66. Mr. Dondero entered into the Alleged Agreement with actual intent to hinder, delay, or defraud a present or future creditor of the Debtor, demonstrated by, *inter alia*:

(g) The transfers were made to, or for the benefit of, Mr. Dondero, an insider of the Debtor.

(h) Mr. Dondero entered into the Alleged Agreement with his sister, Nancy Dondero.

(i) Mr. Dondero did not inform the Debtor's CFO or outside auditor's about the Alleged Agreement.

(j) Upon information and belief, the Debtor's books and record do not reflect the Alleged Agreement.

(k) The Alleged Agreement was not subject to negotiation.

(l) The value of the consideration received by the Debtor for the transfers was not reasonably equivalent in value.

67. Pursuant to 11 U.S.C. § 550, the Debtor is entitled to recover for the benefit of the Debtor's estates the transfers made in exchange for the Alleged Agreement from Mr. Dondero.

68. Accordingly, the Debtor is entitled to a judgement: (i) avoiding the Alleged Agreement and the transfers thereunder, and (ii) recovering from Mr. Dondero the amount of $8,825,000.

FIFTH CLAIM FOR RELIEF
(Against Dugaboy)
(For Declaratory Relief: -- 11 U.S.C. § 105(a) and Fed. R. Bankr. P. 7001)

69. The Debtor repeats and re-alleges the allegations in each of the foregoing paragraphs as though fully set forth herein.

70. A bona fide, actual, present dispute exists between the Debtor and Dugaboy concerning whether Dugaboy was authorized to entered into the Alleged Agreement on the Debtor's behalf.

71. A judgment declaring the parties' respective rights and obligations will resolve their dispute..

72. Pursuant to Bankruptcy Rule 7001, the Debtor specifically seeks declarations that:

- (a) limited partners, including but not limited to Dugaboy, have no right or authority to take part in the control (within the meaning of the Delaware Act) of the Partnership's business, transact any business in the Partnership's name, or have the power to sign documents for or otherwise bind the Partnership other than as specifically provided in the Limited Partnership Agreement,
- (b) Dugaboy was not authorized under the Limited Partnership Agreement to enter into the Alleged Agreement on behalf of the Partnership,
- (c) Dugaboy otherwise had no right or authority to enter into the Alleged Agreement on behalf of the Partnership, and
- (d) the Alleged Agreement is null and void.

SIXTH CLAIM FOR RELIEF
(Against Dugaboy)
(Breach of Fiduciary Duty)

73. The Debtor repeats and re-alleges the allegations in each of the foregoing paragraphs as though fully set forth herein.

74. If Dugaboy, as a limited partner, had the authority to enter into the Alleged Agreement on behalf of the Debtor, then Dugaboy would owe the Debtor a fiduciary duty.

75. If Dugaboy had the authority to enter into the Alleged Agreement on behalf of the Debtor, then Dugaboy breached its fiduciary duty of care to the Debtor by entering into and authorizing the purported Alleged Agreement on behalf of the Debtor.

76. Accordingly, the Debtor is entitled to recover from Dugaboy (a) actual damages that the Debtor suffered as a result of its breach of fiduciary duty, and (b) for punitive and exemplary damages.

SEVENTH CLAIM FOR RELIEF
(Against James Dondero and Nancy Dondero)
(Aiding and Abetting a Breach of Fiduciary Duty)

77. The Debtor repeats and re-alleges the allegations in each of the foregoing paragraphs as though fully set forth herein.

78. James Dondero and Nancy Dondero (together, the "Donderos") were aware that Dugaboy would have fiduciary duties to the Debtor if it acted to bind the Debtor.

79. The Donderos aided and abetted Dugaboy's breach of its fiduciary duties to the Debtor by knowingly participating in the authorization of the purported Alleged Agreement.

80. The Donderos aided and abetted Dugaboy's breach of its fiduciary duty to the Debtor by knowingly participating in the authorization of the purported Alleged Agreement.

81. Accordingly, the Donderos are jointly and severally liable (a) for the actual damages that the Debtor suffered as a result of aiding and abetting Dondero's breaches of fiduciary duties, and (b) for punitive and exemplary damages.

WHEREFORE, the Debtor prays for judgment as follows:

(i) On its First Claim for Relief, damages in an amount to be determined at trial but includes (a) the aggregate outstanding principal due under each Note, plus (b) all accrued and unpaid interest thereon until the date of payment, plus (c) an amount equal to the Debtor's costs of collection (including all court costs and reasonable attorneys' fees and expenses);

(ii) On its Second Claim for Relief, ordering turnover by Mr. Dondero to the Debtor of an amount equal to (a) the aggregate outstanding principal due under each Note, plus (b) all accrued and unpaid interest thereon until the date of payment, plus (c) an amount equal to the Debtor's costs of collection (including all court costs and reasonable attorneys' fees and expenses);

(iii) On its Third Claim for Relief, avoidance of the Alleged Agreement and the transfers thereunder and recovering from Mr. Dondero the amount of $8,825,000 pursuant to section 548 of the Bankruptcy Code;

(iv) On its Fourth Claim for Relief, avoidance of the Alleged Agreement and the transfers thereunder and recovering from Mr. Dondero the amount of $8,825,000 pursuant to section Tex. Bus. & C. Code § 24.005(a)(1);

(v) On its Fifth Claim for Relief, a declaration that: (a) limited partners, including but not limited to Dugaboy, have no right or authority to take part in the control (within the meaning of the Delaware Act) of the Partnership's business,

transact any business in the Partnership's name, or have the power to sign documents for or otherwise bind the Partnership other than as specifically provided in the Limited Partnership Agreement, (b) Dugaboy was not authorized under the Limited Partnership Agreement to enter into the Alleged Agreement on behalf of the Partnership, (c) Dugaboy otherwise had no right or authority to enter into the Alleged Agreement on behalf of the Partnership, and (d) the Alleged Agreement is null and void;

(vi) On its Sixth Claim for Relief, actual damages from Dugaboy, in an amount to be determined at trial, that Debtor suffered as a result of Dugaboy's breach of fiduciary duty, and for punitive and exemplary damages;

(vii) On its Seventh Claim for Relief, actual damages from the Donderos, jointly and severally, in an amount to be determined at trial, that Debtor suffered as a result of aiding and abetting Dugaboy's breaches of fiduciary duty, and for punitive and exemplary damages; and

Such other and further relief as this Court deems just and proper.

Dated: As of July 13, 2021

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Counsel for Highland Capital Management, L.P.

EXHIBIT 1

PROMISSORY NOTE

$3,825,000 February 2, 2018

FOR VALUE RECEIVED, JAMES DONDERO ("***Maker***") promises to pay to the order of HIGHLAND CAPITAL MANAGEMENT LP ("***Payee***"), in legal and lawful tender of the United States of America, the principal sum of THREE MILLION, EIGHT HUNDRED AND TWENTY-FIVE THOUSAND and 00/100 Dollars ($3,825,000.00), together with interest, on the terms set forth below (the "***Note***"). All sums hereunder are payable to Payee at 300 Crescent Court, Dallas, TX 75201, or such other address as Payee may specify to Maker in writing from time to time.

1. Interest Rate. The unpaid principal balance of this Note from time to time outstanding shall bear interest at a rate equal to the long-term "***applicable federal rate***" (2.66%) in effect on the date hereof for loans of such maturity as determined by Section 1274(d) of the Internal Revenue Code, per annum from the date hereof until maturity, compounded annually on the anniversary of the date of this Note. Interest shall be calculated at a daily rate equal to 1/365th (1/366 in a leap year) of the rate per annum, shall be charged and collected on the actual number of days elapsed, and shall be payable on demand of the Payee.

2. Payment of Principal and Interest. The accrued interest and principal of this Note shall be due and payable on demand of the Payee.

3. Prepayment Allowed; Renegotiation Discretionary. Maker may prepay in whole or in part the unpaid principal or accrued interest of this Note. Any payments on this Note shall be applied first to unpaid accrued interest hereon, and then to unpaid principal hereof.

4. Tax Loan. This Note is paid to the Maker to help satisfy any current tax obligations of a former partner or current partner.

5. Acceleration Upon Default. Failure to pay this Note or any installment hereunder as it becomes due shall, at the election of the holder hereof, without notice, demand, presentment, notice of intent to accelerate, notice of acceleration, or any other notice of any kind which are hereby waived, mature the principal of this Note and all interest then accrued, if any, and the same shall at once become due and payable and subject to those remedies of the holder hereof. No failure or delay on the part of Payee in exercising any right, power or privilege hereunder shall operate as a waiver thereof.

6. Waiver. Maker hereby waives grace, demand, presentment for payment, notice of nonpayment, protest, notice of protest, notice of intent to accelerate, notice of acceleration and all other notices of any kind hereunder.

7. Attorneys' Fees. If this Note is not paid at maturity (whether by acceleration or otherwise) and is placed in the hands of an attorney for collection, or if it is collected through a bankruptcy court or any other court after maturity, the Maker shall pay, in addition to all other

amounts owing hereunder, all actual expenses of collection, all court costs and reasonable attorneys' fees and expenses incurred by the holder hereof.

8. Limitation on Agreements. All agreements between Maker and Payee, whether now existing or hereafter arising, are hereby limited so that in no event shall the amount paid, or agreed to be paid to Payee for the use, forbearance, or detention of money or for the payment or performance of any covenant or obligation contained herein or in any other document evidencing, securing or pertaining to this Note, exceed the maximum interest rate allowed by law. The terms and provisions of this paragraph shall control and supersede every other provision of all agreements between Payee and Maker in conflict herewith.

9. Governing Law. This Note and the rights and obligations of the parties hereunder shall be governed by the laws of the United States of America and by the laws of the State of Texas, and is performable in Dallas County, Texas.

MAKER:

JAMES DONDERO

EXHIBIT 2

PROMISSORY NOTE

$2,500,000 August 1, 2018

FOR VALUE RECEIVED, JAMES DONDERO ("***Maker***") promises to pay to the order of HIGHLAND CAPITAL MANAGEMENT LP ("***Payee***"), in legal and lawful tender of the United States of America, the principal sum of TWO MILLION, FIVE HUNDRED THOUSAND and 00/100 Dollars ($2,500,000.00), together with interest, on the terms set forth below (the "***Note***"). All sums hereunder are payable to Payee at 300 Crescent Court, Dallas, TX 75201, or such other address as Payee may specify to Maker in writing from time to time.

1. Interest Rate. The unpaid principal balance of this Note from time to time outstanding shall bear interest at a rate equal to the long-term "***applicable federal rate***" (2.95%) in effect on the date hereof for loans of such maturity as determined by Section 1274(d) of the Internal Revenue Code, per annum from the date hereof until maturity, compounded annually on the anniversary of the date of this Note. Interest shall be calculated at a daily rate equal to 1/365th (1/366 in a leap year) of the rate per annum, shall be charged and collected on the actual number of days elapsed, and shall be payable on demand of the Payee.

2. Payment of Principal and Interest. The accrued interest and principal of this Note shall be due and payable on demand of the Payee.

3. Prepayment Allowed: Renegotiation Discretionary. Maker may prepay in whole or in part the unpaid principal or accrued interest of this Note. Any payments on this Note shall be applied first to unpaid accrued interest hereon, and then to unpaid principal hereof.

4. Acceleration Upon Default. Failure to pay this Note or any installment hereunder as it becomes due shall, at the election of the holder hereof, without notice, demand, presentment, notice of intent to accelerate, notice of acceleration, or any other notice of any kind which are hereby waived, mature the principal of this Note and all interest then accrued, if any, and the same shall at once become due and payable and subject to those remedies of the holder hereof. No failure or delay on the part of Payee in exercising any right, power or privilege hereunder shall operate as a waiver thereof.

5. Waiver. Maker hereby waives grace, demand, presentment for payment, notice of nonpayment, protest, notice of protest, notice of intent to accelerate, notice of acceleration and all other notices of any kind hereunder.

6. Attorneys' Fees. If this Note is not paid at maturity (whether by acceleration or otherwise) and is placed in the hands of an attorney for collection, or if it is collected through a bankruptcy court or any other court after maturity, the Maker shall pay, in addition to all other amounts owing hereunder, all actual expenses of collection, all court costs and reasonable attorneys' fees and expenses incurred by the holder hereof.

7. Limitation on Agreements. All agreements between Maker and Payee, whether now existing or hereafter arising, are hereby limited so that in no event shall the amount paid, or agreed to be paid to Payee for the use, forbearance, or detention of money or for the payment or performance of any covenant or obligation contained herein or in any other document evidencing, securing or pertaining to this Note, exceed the maximum interest rate allowed by law. The terms and provisions of this paragraph shall control and supersede every other provision of all agreements between Payee and Maker in conflict herewith.

8. Governing Law. This Note and the rights and obligations of the parties hereunder shall be governed by the laws of the United States of America and by the laws of the State of Texas, and is performable in Dallas County, Texas.

MAKER:

JAMES DONDERO

EXHIBIT 3

PROMISSORY NOTE

$2,500,000 August 13, 2018

FOR VALUE RECEIVED, JAMES DONDERO ("***Maker***") promises to pay to the order of HIGHLAND CAPITAL MANAGEMENT LP ("***Payee***"), in legal and lawful tender of the United States of America, the principal sum of TWO MILLION, FIVE HUNDRED THOUSAND and 00/100 Dollars ($2,500,000.00), together with interest, on the terms set forth below (the "***Note***"). All sums hereunder are payable to Payee at 300 Crescent Court, Dallas, TX 75201, or such other address as Payee may specify to Maker in writing from time to time.

1. Interest Rate. The unpaid principal balance of this Note from time to time outstanding shall bear interest at a rate equal to the long-term "***applicable federal rate***" (2.95%) in effect on the date hereof for loans of such maturity as determined by Section 1274(d) of the Internal Revenue Code, per annum from the date hereof until maturity, compounded annually on the anniversary of the date of this Note. Interest shall be calculated at a daily rate equal to 1/365th (1/366 in a leap year) of the rate per annum, shall be charged and collected on the actual number of days elapsed, and shall be payable on demand of the Payee.

2. Payment of Principal and Interest. The accrued interest and principal of this Note shall be due and payable on demand of the Payee.

3. Prepayment Allowed; Renegotiation Discretionary. Maker may prepay in whole or in part the unpaid principal or accrued interest of this Note. Any payments on this Note shall be applied first to unpaid accrued interest hereon, and then to unpaid principal hereof.

4. Acceleration Upon Default. Failure to pay this Note or any installment hereunder as it becomes due shall, at the election of the holder hereof, without notice, demand, presentment, notice of intent to accelerate, notice of acceleration, or any other notice of any kind which are hereby waived, mature the principal of this Note and all interest then accrued, if any, and the same shall at once become due and payable and subject to those remedies of the holder hereof. No failure or delay on the part of Payee in exercising any right, power or privilege hereunder shall operate as a waiver thereof.

5. Waiver. Maker hereby waives grace, demand, presentment for payment, notice of nonpayment, protest, notice of protest, notice of intent to accelerate, notice of acceleration and all other notices of any kind hereunder.

6. Attorneys' Fees. If this Note is not paid at maturity (whether by acceleration or otherwise) and is placed in the hands of an attorney for collection, or if it is collected through a bankruptcy court or any other court after maturity, the Maker shall pay, in addition to all other amounts owing hereunder, all actual expenses of collection, all court costs and reasonable attorneys' fees and expenses incurred by the holder hereof.

7. Limitation on Agreements. All agreements between Maker and Payee, whether now existing or hereafter arising, are hereby limited so that in no event shall the amount paid, or agreed to be paid to Payee for the use, forbearance, or detention of money or for the payment or performance of any covenant or obligation contained herein or in any other document evidencing, securing or pertaining to this Note, exceed the maximum interest rate allowed by law. The terms and provisions of this paragraph shall control and supersede every other provision of all agreements between Payee and Maker in conflict herewith.

8. Governing Law. This Note and the rights and obligations of the parties hereunder shall be governed by the laws of the United States of America and by the laws of the State of Texas, and is performable in Dallas County, Texas.

MAKER:

JAMES DONDERO

EXHIBIT 4

HIGHLAND CAPITAL MANAGEMENT, L.P.

December 3, 2020

James Dondero
c/o Highland Capital Management, L.P.
300 Crescent Court, Suite 700
Dallas, Texas 75201

Re: Demand on Promissory Notes:

Dear Mr. Dondero,

You entered into the following promissory notes (collectively, the "Notes") in favor of Highland Capital Management, L.P. ("Payee"):

Date Issued	Original Principal Amount	Outstanding Principal Amount (12/11/20)	Accrued But Unpaid Interest (12/11/20)	Total Amount Outstanding (12/11/20)
2/2/18	$3,825,000	$3,687,269.71	$21,003.70	$3,708,273.41
8/1/18	$2,500,000	$2,619,929.42	$27,950.70	$2,647,880.12
8/13/18	$2,500,000	$2,622,425.61	$25,433.94	$2,647,859.55
TOTALS	**$16,725,000**	**$8,929,624.74**	**$74,388.33**	**$9,004,013.07**

As set forth in Section 2 of each of the Notes, accrued interest and principal is due and payable upon the demand of Payee. By this letter, Payee is demanding payment of the accrued interest and principal due and payable on the Notes in the aggregate amount of $9,004,013.07, which represents all accrued and unpaid interest and principal through and including December 11, 2020.

Payment is due on December 11, 2020, and failure to make payment in full on such date will constitute an event of default under the Notes.

Payments on the Notes must be made in immediately available funds. Payee's wire information is attached hereto as **Appendix A**.

Nothing contained herein constitutes a waiver of any rights or remedies of Payee under the Notes or otherwise and all such rights and remedies, whether at law, equity, contract, or otherwise, are expressly reserved. Interest, including default interest if applicable, on the Notes will continue to accrue until the Notes are paid in full. Any such interest will remain your obligation.

Sincerely,

/s/ James P. Seery, Jr.

James P. Seery, Jr.
Highland Capital Management, L.P.
Chief Executive Officer/Chief Restructuring Officer

DOCS_NY:41660.1 36027/002

cc: Fred Caruso
James Romey
Jeffrey Pomerantz
Ira Kharasch
Gregory Demo
D. Michael Lynn

Appendix A

ABA #:	322070381
Bank Name:	East West Bank
Account Name:	Highland Capital Management, LP
Account #:	5500014686

EXHIBIT 5

FOURTH AMENDED AND RESTATED

AGREEMENT OF LIMITED PARTNERSHIP

OF

HIGHLAND CAPITAL MANAGEMENT, L.P.

THE PARTNERSHIP INTERESTS REPRESENTED BY THIS LIMITED PARTNERSHIP AGREEMENT HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OP 1933 OR UNDER ANY STATE SECURITIES ACTS IN RELIANCE UPON EXEMPTIONS UNDER THOSE ACTS. THE SALE OR OTHER DISPOSITION OF THE PARTNERSHIP INTERESTS IS PROHIBITED UNLESS THAT SALE OR DISPOSITION IS MADE IN COMPLIANCE WITH ALL SUCH APPLICABLE ACTS. ADDITIONAL RESTRICTIONS ON TRANSFER OF THE PARTNERSHIP INTERESTS ARE SET FORTH IN THIS AGREEMENT.

FOURTH AMENDED AND RESTATED
AGREEMENT OF LIMITED PARTNERSHIP
OF
HIGHLAND CAPITAL MANAGEMENT, L.P.

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FOURTH AMENDED AND RESTATED
AGREEMENT OF LIMITED PARTNERSHIP
OF
HIGHLAND CAPITAL MANAGEMENT, L.P.

THIS FOURTH AMENDED AND RESTATED AGREEMENT OF LIMITED PARTNERSHIP is entered into on this 24th day of December, 2015, to be effective as of December 24, 2015, by and among Strand Advisors, Inc., a Delaware corporation ***("Strand"),*** as General Partner, the Limited Partners party hereto, and any Person hereinafter admitted as a Limited Partner.

Certain terms used in this Agreement are defined in Article 2.

ARTICLE 1

GENERAL

1.1. Continuation. Subject to the provisions of this Agreement, the Partners hereby continue the Partnership as a limited partnership pursuant to the provisions of the Delaware Act. Except as expressly provided herein, the rights and obligations of the Partners and the administration and termination of the Partnership shall be governed by the Delaware Act.

1.2. Name. The name of the Partnership shall be, and the business of the Partnership shall be conducted under the name of Highland Capital Management, L.P. The General Partner, in its sole and unfettered discretion, may change the name of the Partnership at any time and from time to time and shall provide Limited Partners with written notice of such name change within twenty (20) days after such name change.

1.3. Purpose. The purpose and business of the Partnership shall be the conduct of any business or activity that may lawfully be conducted by a limited partnership organized pursuant to the Delaware Act. Any or all of the foregoing activities may be conducted directly by the Partnership or indirectly through another partnership, joint venture, or other arrangement.

1.4. Term. The Partnership was formed as a limited partnership on July 7, 1997, and shall continue until terminated pursuant to this Agreement.

1.5. Partnership Offices; Addresses of Partners.

(a) Partnership Offices. The registered office of the Partnership in the State of Delaware shall be 1013 Centre Road, Wilmington, Delaware 19805-1297, and its registered agent for service of process on the Partnership at that registered office shall be Corporation Service Company, or such other registered office or registered agent as the General Partner may from time to time designate. The principal office of the Partnership shall be 300 Crescent Court, Suite 700, Dallas, Texas 75201, or such other place as the General Partner may from time to time designate. The Partnership may maintain offices at such other place or places as the General Partner deems advisable.

(b) Addresses of Partners. The address of the General Partner is 300 Crescent Court, Suite 700, Dallas, Texas 75201. The address of each Limited Partner shall be the address of that Limited Partner appearing on the books and records of the Partnership. Each Limited Partner agrees to provide the General Partner with prompt written notice of any change in his/her/its address.

ARTICLE 2

DEFINITIONS

2.1. Definitions. The following definitions shall apply to the terms used in this Agreement, unless otherwise clearly indicated to the contrary in this Agreement:

"***Additional Capital Contribution***" has the meaning set forth in Section 3.1(b) of this Agreement.

"***Adjusted Capital Account Deficit***" means, with respect *to* any Partner, the deficit balance, if any, in the Capital Account of that Partner as of the end of the relevant Fiscal Year, or other relevant period, giving effect to all adjustments previously made thereto pursuant to Section 3.7 and further adjusted as follows: (i) credit to that Capital Account, any amounts which that Partner is obligated or deemed obligated to restore pursuant to any provision of this Agreement or pursuant to Treasury Regulations Section 1.704-1(b)(2)(ii)(c); (ii) debit to that Capital Account, the items described in Treasury Regulations Sections 1.704-1(b)(2)(ii)(d)(4), (5) and (6); and (iii) to the extent required under the Treasury Regulations, credit to that Capital Account (A) that Partner's share of "minimum gain" and (B) that Partner's share of "partner nonrecourse debt minimum gain." (Each Partner's share of the minimum gain and partner nonrecourse debt minimum gain shall be determined under Treasury Regulations Sections 1.704-2(g) and 1.704-2(i)(5), respectively.)

"***Affiliate***" means any Person that directly or indirectly controls, is controlled by, or is under common control with the Person in question. As used in this definition, the term "***control***" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through ownership of voting Securities, by contract or otherwise.

"***Agreement***" means this Fourth Amended and Restated Agreement of Limited Partnership, as it may be amended, supplemented, or restated from time to time.

"***Business Day***" means Monday through Friday of each week, except that a legal holiday recognized as such by the government of the United States or the State of Texas shall not be regarded as a Business Day.

"***Capital Account***" means the capital account maintained for a Partner pursuant to Section 3.7(a).

"***Capital Contribution***" means, with respect to any Partner, the amount of money or property contributed to the Partnership with respect to the interest in the Partnership held by that Person.

"***Certificate of Limited Partnership***" means the Certificate of Limited Partnership filed with the Secretary of State of Delaware by the General Partner, as that Certificate may be amended, supplemented or restated from time to time.

"Class A Limited Partners" means those Partners holding a Class A Limited Partnership Interest, as shown on Exhibit A.

"Class A Limited Partnership Interest" means a Partnership Interest held by a Partner in its capacity as a Class A Limited Partner."

"Class B Limited Partner" means those Partners holding a Class B Limited Partnership Interest, as shown on Exhibit A.

"Class B Limited Partnership Interest" means a Partnership Interest held by a Partner in its capacity as a Class B Limited Partner."

"Class B NAV Ratio Trigger Period" means any period during which the Class B Limited Partner's aggregate capital contributions, including the original principal balance of the Contribution Note, and reduced by the aggregate amount of distributions to the Class B Limited Partner, exceed 75 percent of the product of the Class B Limited Partner's Percentage Interest multiplied by the total book value of the Partnership; provided, however, that the General Partner shall only be required to test for a Class B NAV Ratio Trigger Period annually, as of the last day of each calendar year; provided further the General Partner must complete the testing within 180 days of the end of each calendar year; provided further that if the test results in a Class B NAV Ratio Trigger Period, the General Partner may, at its own election, retest at any time to determine the end date of the Class B NAV Ratio Trigger Period.

"Class C Limited Partner" means those Partners holding a Class C Limited Partnership Interest, as shown on Exhibit A.

"Class C Limited Partnership Interest" means a Partnership Interest held by a Partner in its capacity as a Class C Limited Partner."

"Class C NAV Ratio Trigger Period" means any period during which an amount equal to $93,000,000.00 reduced by the aggregate amount of distributions to the Class C Limited Partner after the Effective Date exceeds 75 percent of the product of the Class C Limited Partner's Percentage Interest multiplied by the total book value of the Partnership; provided, however, that the General Partner shall only be required to test for a Class C NAV Ratio Trigger Period annually, as of the last day of each calendar year; provided further the General Partner must complete the testing within 180 days of the end of each calendar year; provided further that if the test results in a Class C NAV Ratio Trigger Period, the General Partner may, at its own election, retest at any time to determine the end date of the Class C NAV Ratio Trigger Period.

"***Code***" means the Internal Revenue Code of 1986, as amended and in effect from time to time.

"Contribution Note" means that certain Secured Promissory Note dated December 21, 2015 by and among Hunter Mountain Investment Trust, as maker, and the Partnership as Payee.

"***Default Loan***" has the meaning set forth in Section 3.1(c)(i).

"***Defaulting Partner***" has the meaning set forth in Section 3.1(c).

"***Delaware Act***" means the Delaware Revised Uniform Limited Partnership Act, Part IV, Title C, Chapter 17 of the Delaware Corporation Law Annotated, as it may be amended, supplemented or restated from time to time, and any successor to that Act.

"Effective Date" means the date first recited above.

"***Fiscal Year***" has the meaning set forth in Section 3.11(b).

"***Founding Partner Group***" means, all partners holding partnership interests in the Partnership immediately before the Effective Date.

"***General Partner***" means any Person who (i) is referred to as such in the first paragraph of this Agreement, or has become a General Partner pursuant to the terms of this Agreement; and (ii) has not ceased to be a General Partner pursuant to the terms of this Agreement.

"***Limited Partner***" means any Person who (i) is referred to as such in the first paragraph of this Agreement, or has become a Limited Partner pursuant to the terms of this Agreement, and (ii) has not ceased to be a Limited Partner pursuant to the terms of this Agreement.

"***Liquidator***" has the meaning set forth in Section 5.3.

"***Losses***" means, for each Fiscal Year, the losses and deductions of the Partnership determined in accordance with accounting principles consistently applied from year to year employed under the Partnership's method of accounting and as reported, separately or in the aggregate, as appropriate, on the Partnership's information tax return filed for federal income tax purposes, plus any expenditures described in Code Section 705(a)(2)(B).

"***Majority Interest***" means the owners of more than fifty percent (50%) of the Percentage Interests of Class A Limited Partners.

"NAV Ratio Trigger Period" means a Class B NAV Ratio Trigger Period or a Class C NAV Ratio Trigger Period.

"Net Increase in Working Capital Accounts" means the excess of (i) Restricted Cash plus Management and Incentive Fees Receivable plus Other Assets plus Deferred Incentive Fees Receivable less Accounts Payable less Accrued and Other Liabilities as of the end of the period being measured over (ii) Restricted Cash plus Management and Incentive Fees Receivable plus Other Assets plus Deferred Incentive Fees Receivable less Accounts Payable less Accrued and Other Liabilities as of the beginning of the period being measured; provided, however, that amounts within each of the aforementioned categories shall be excluded from the calculation to the extent they are specifically identified as being derived from investing or financing activities. Each of the capitalized terms in this definition shall have the meaning given them in the books and records of the Partnership and appropriate adjustments may be made to the extent the Partnership adds new ledger accounts to its books and records that are current assets or current liabilities.

"***New Issues***" means Securities that are considered to be "new issues," as defined in the Conduct Rules of the National Association of Securities Dealers, Inc.

"***Nonrecourse Deduction***" has the meaning set forth in Treasury Regulations Section 1.704-2(b)(1), as computed under Treasury Regulations Section 1.704-2(c).

"***Nonrecourse* Liability**" has the meaning set forth in Treasury Regulations Section 1.704-2(b)(3).

"Operating Cash Flow" means Total Revenue less Total Operating Expenses plus Depreciation & Amortization less Net Increase in Working Capital Accounts year over year. Each of the capitalized terms in this definition shall have the meaning given them in the books and records of the Partnership.

"***Partner***" means a General Partner or a Limited Partner.

"***Partner Nonrecourse Debt***" has the meaning set forth in Treasury Regulations Section 1.704-2(b)(4).

"***Partner Nonrecourse Deductions***" has the meaning set forth in Treasury Regulations Section 1.704-2(i)(2).

"***Partner Nonrecourse Debt Minimum Gain***" has the meaning set forth in Treasury Regulations Section 1.704-2(i)(5).

"***Partnership***" means Highland Capital Management, L.P., the Delaware limited partnership established pursuant to this Agreement.

"***Partnership Capital***" means, as of any relevant date, the net book value of the Partnership's assets.

"***Partnership Interest***" means the interest acquired by a Partner in the Partnership including, without limitation, that Partner's right: (a) to an allocable share of the Profits, Losses, deductions, and credits of the Partnership; (b) to a distributive share of the assets of the Partnership; (c) if a Limited Partner, to vote on those matters described in this Agreement; and (d) if the General Partner, to manage and operate the Partnership.

"***Partnership Minimum Gain***" has the meaning set forth in Treasury Regulations Section 1.704-2(d).

"***Percentage Interest***" means the percentage set forth opposite each Partner's name on Exhibit A as such Exhibit may be amended from time to time in accordance with this Agreement.

"***Person***" means an individual or a corporation, partnership, trust, estate, unincorporated organization, association, or other entity.

"Priority Distributions" has the meaning set forth in Section 3.9(b).

"***Profits***" means, for each Fiscal Year, the income and gains of the Partnership determined in accordance with accounting principles consistently applied from year to year employed under the Partnership's method of accounting and as reported, separately or in the aggregate, as appropriate, on the Partnership's information tax return filed for federal income tax purposes, plus any income described in Code Section 705(a)(1)(B).

"***Profits Interest Partner***" means any Person who is issued a Partnership Interest that is treated as a "profits interest" for federal income tax purposes.

"Purchase Notes" means those certain Secured Promissory Notes of even date herewith by and among Hunter Mountain Investment Trust, as maker, and The Dugaboy Investment Trust, The Mark K. Okada, The Mark and Pamela Okada Family Trust – Exempt Trust #1, and The Mark K. Okada, The Mark and Pamela Okada Family Trust – Exempt Trust #2, each as Payees of the respective Secured Promissory Notes.

"***Record Date***" means the date established by the General Partner for determining the identity of Limited Partners entitled to vote or give consent to Partnership action or entitled to exercise rights in respect of any other lawful action of Limited Partners.

"***Second Amended Buy-Sell and Redemption Agreement***" means that certain Second Amended and Restated Buy-Sell and Redemption Agreement, dated December 21, 2015, to be effective as of December 21, 2015 by and between the Partnership and its Partners, as may be amended, supplemented, or restated from time to time.

"***Securities***" means the following: (i) securities of any kind (including, without limitation, "securities" as that term is defined in Section 2(a)(1) of the Securities Act; (ii) commodities of any kind (as that term is defined by the U.S. Securities Laws and the rules and regulations promulgated thereunder); (iii) any contracts for future or forward delivery of any security, commodity or currency; (iv) any contracts based on any securities or group of securities, commodities or currencies; (v) any options on any contracts referred to in clauses (iii) or (iv); or (vi) any evidences of indebtedness (including participations in or assignments of bank loans or trade credit claims). The items set forth in clauses (i) through (vi) herein include, but are not limited to, capital stock, common stock, preferred stock, convertible securities, reorganization certificates, subscriptions, warrants, rights, options, puts, calls, bonds, mutual fund interests, debentures, notes, certificates of deposit, letters of credit, bankers acceptances, trust receipts and other securities of any corporation or other entity, whether readily marketable or not, rights and options, whether granted or written by the Partnership or by others, treasury bills, bonds and notes, any securities or obligations issued or guaranteed by the United States or any foreign country or any state or possession of the United States or any foreign country or any political subdivision or agency or instrumentality of any of the foregoing, and derivatives of any of the foregoing.

"***Securities Act***" means the Securities Act of 1933, as amended, and any successor to such statute.

"***Substitute Limited Partner***" has the meaning set forth in Section 4.6(a).

"***Transfer***" or derivations thereof, of a Partnership Interest means, as a noun, the transfer, sale, assignment, exchange, pledge, hypothecation or other disposition of a Partnership Interest, or any part thereof, directly or indirectly, and as a verb, voluntarily or involuntarily to transfer, sell, assign, exchange, pledge, hypothecate or otherwise dispose of.

"***Treasury Regulations***" means the Department of Treasury Regulations promulgated under the Code, as amended and in effect (including corresponding provisions of succeeding regulations).

2.2. Other Definitions. All terms used in this Agreement that are not defined in this Article 2 have the meanings contained elsewhere in this Agreement.

ARTICLE 3

FINANCIAL MATTERS

3.1. Capital Contributions.

(a) Initial Capital Contributions. The initial Capital Contribution of each Partner shall be set forth in the books and records of the Partnership.

(b) Additional Capital Contributions.

(i) The General Partner, in its reasonable discretion and for a *bona fide* business purpose, may request in writing that the Founding Partner Group make additional Capital Contributions in proportion to their Percentage Interests (each, an "***Additional Capital Contribution***").

(ii) Any failure by a Partner to make an Additional Capital Contribution requested under Section 3.1(b)(i) on or before the date on which that Additional Capital Contribution was due shall result in the Partner being in default.

(c) Consequences to Defaulting Partners. In the event a Partner is in default under Section 3.1(b) (a "***Defaulting Partner***"), the Defaulting Partner, in its sole and unfettered discretion, may elect to take either one of the option set forth below.

(i) Default Loans. If the Defaulting Partner so elects, the General Partner shall make a loan to the Defaulting Partner in an amount equal to that Defaulting Partner's additional capital contribution (a "***Default Loan***"). A Default Loan shall be deemed advanced on the date actually advanced. Default Loans shall earn interest on the outstanding principal amount thereof at a rate equal to the Applicable Federal Mid-Term Rate (determined by the Internal Revenue Service for the month in which the loan is deemed made) from the date actually advanced until the same is repaid in full. The term of any Default Loan shall be six (6) months, unless otherwise extended by the General Partner in its sole and unfettered discretion. If the General Partner makes a Default Loan, the Defaulting Partner shall not receive any distributions pursuant to Section 3.9(a) or Section 5.3 or any proceeds from the Transfer of all or any part of its Partnership Interest while the Default Loan remains unpaid. Instead, the Defaulting Partner's share of distributions or such other proceeds shall (until all Default Loans and interest thereon shall have been repaid in full) first be paid to the General Partner. Such payments shall be applied first to the payment of interest on such Default Loans and then to the repayment of the principal amounts thereof, but shall be considered, for all other purposes of this Agreement, to have been distributed to the Defaulting Partner. The Defaulting Partner shall be liable for the reasonable fees and expenses incurred by the General Partner (including, without limitation, reasonable attorneys' fees and disbursements) in connection with any enforcement or foreclosure upon any Default Loan and such costs shall, to the extent enforceable under applicable law, be added to the principal amount of the applicable Default Loan. In addition, at any time during the term of such Default Loan, the Defaulting Partner shall have the right to repay, in full, the Default Loan (including interest and any other charges). If the General Partner makes a Default Loan, the Defaulting Partner shall be deemed to have pledged to the General Partner and granted to the General Partner a continuing first priority security interest in, all of the Defaulting Partner's Partnership Interest to secure the payment of the principal of, and interest on, such Default Loan in accordance with the provisions hereof, and for such purpose this Agreement shall constitute a security agreement. The Defaulting Partner shall promptly execute, acknowledge and deliver such financing statements, continuation statements or other documents and take such other actions as the General Partner shall request in writing in order to perfect or continue the perfection of such security interest; and, if the Defaulting Partner shall fail to do so within seven (7) days after the Defaulting Partner's receipt of a notice making demand therefor, the General Partner is hereby appointed the attorney-in-fact of, and is hereby authorized on behalf of, the Defaulting Partner, to execute, acknowledge and deliver all such documents and take all such other actions as may be required to perfect such security interest. Such appointment and authorization are coupled with an interest and shall be irrevocable. The General Partner shall, prior to exercising any right or remedy (whether at law, in equity or pursuant to the terms hereof) available to it in connection with such security interest, provide to the Defaulting Partner a notice, in reasonable detail, of the right or remedy to be exercised and the intended timing of such exercise which shall not be less than five (5) days following the date of such notice.

(ii) Reduction of Percentage Interest. If the Defaulting Partner does not elect to obtain a Default Loan pursuant to Section 3.1(c)(i), the General Partner shall reduce the Defaulting Partner's Percentage Interest in accordance with the following formula:

> The Defaulting Partner's new Percentage Interest shall equal the product of (1) the Defaulting Partner's current Percentage Interest, multiplied by (2) the quotient of (a) the current Capital Account of the Defaulting Partner (with such Capital Account determined after taking into account a revaluation of the Capital Accounts immediately prior to such determination), divided by (b) the sum of (i) the current Capital Account of the Defaulting Partner (with such Capital Account determined after taking into account a revaluation of the Capital Accounts immediately prior to such determination), plus (ii) the amount of the additional capital contribution that such Defaulting Partner failed to make when due.

To the extent any downward adjustment is made to the Percentage Interest of a Partner pursuant to this Section 3.1(c)(ii), any resulting benefit shall accrue to the Partners (other than the Defaulting Partner) in proportion to their respective Percentage Interests.

3.2. Allocations of Profits and Losses.

(a) Allocations of Profits. Except as provided in Sections 3.4, 3.5, and 3.6, Profits for any Fiscal Year will be allocated to the Partners as follows:

(i) First, to the Partners until cumulative Profits allocated under this Section 3.2(a)(i) for all prior periods equal the cumulative Losses allocated to the Partners under Section 3.2(b)(iii) for all prior periods in the inverse order in which such Losses were allocated; and

(ii) Next, to the Partners until cumulative Profits allocated under this Section 3.2(a)(ii) for all prior periods equal the cumulative Losses allocated to the Partners under Section 3.2(b)(ii) for all prior periods in the inverse order in which such Losses were allocated; and

(iii) Then, to all Partners in proportion to their respective Percentage Interests.

(b) Allocations of Losses. Except as provided in Sections 3.4, 3.5, and 3.6, Losses for any Fiscal Year will be will be allocated as follows:

(i) First, to the Partners until cumulative Losses allocated under this Section 3.2(b)(i) for all prior periods equal the cumulative Profits allocated to the Partners under Section 3.2(a)(iii) for all prior periods in the inverse order in which such Profits were allocated; and

(ii) Next, to the Partners in proportion to their respective positive Capital Account balances until the aggregate Capital Account balances of the Partners (excluding any negative Capital Account balances) equal zero; *provided, however,* losses shall first be allocated to reduce amounts that were last allocated to the Capital Accounts of the Partners; and

(iii) Then, to all Partners in proportion to their respective Percentage Interests.

(c) Limitation on Loss Allocations. If any allocation of Losses would cause a Limited Partner to have an Adjusted Capital Account Deficit, those Losses instead shall be allocated to the General Partner.

3.3. Allocations on Transfers. Taxable items of the Partnership attributable to a Partnership Interest that has been Transferred (including the simultaneous decrease in the Partnership Interest of existing Partners resulting from the admission of a new Partner) shall be allocated in accordance with Section 4.3(d).

3.4. Special Allocations. If the requisite stated conditions or facts are present, the following special allocations shall be made in the following order:

(a) Partnership Minimum Gain Chargeback**.** Notwithstanding any other provision of this Article 3, if there is a net decrease in Partnership Minimum Gain during any taxable year or other period for which allocations are made, prior to any other allocation under this Agreement, each Partner shall be specially allocated items of Partnership income and gain for that period (and, if necessary, subsequent periods) in proportion to, and to the extent of, an amount equal to that Partner's share of the net decrease in Partnership Minimum Gain during that year determined in accordance with Treasury Regulations Section 1.704-2(g)(2). The items to be allocated shall be determined in accordance with Treasury Regulations Section 1.704-2(g). This Section 3.4(a) is intended to comply with the partnership minimum gain chargeback requirements of the Treasury Regulations and shall be subject to all exceptions provided therein.

(b) Partner Nonrecourse Debt Minimum Gain Chargeback**.** Notwithstanding any other provision of this Article 3 (other than Section 3.4(a)), if there is a net decrease in Partner Nonrecourse Debt Minimum Gain with respect to a Partner Nonrecourse Debt during any taxable year or other period for which allocations are made, any Partner with a share of such Partner Nonrecourse Debt Minimum Gain as of the beginning of the year shall be specially allocated items of Partnership income and gain for that period (and, if necessary, subsequent periods in an amount equal to that Partner's share of the net decrease in the Partner Nonrecourse Debt Minimum Gain during that year determined in accordance with Treasury Regulations Section 1.704-2(g)(2). The items to be so allocated shall be determined in accordance with Treasury Regulations Section 1.704-2(g). This Section 3.4(b) is intended to comply with the partner nonrecourse debt minimum gain chargeback requirements of the Treasury Regulations, shall be interpreted consistently with the Treasury Regulations and shall be subject to all exceptions provided therein.

(c) Qualified Income Offset**.** If a Partner unexpectedly receives any adjustments, allocations or distributions described in Treasury Regulations Sections 1.704-1(b)(2)(ii)(d)(4), (d)(5) or (d)(6), then items of Partnership income and gain shall be specially allocated to each such Partner in an amount and manner sufficient to eliminate, to the extent required by the Treasury Regulations, the Adjusted Capital Account Deficit of the Partner as quickly as possible; *provided, however,* an allocation pursuant to this Section 3.4(c) shall be made if and only to the extent that the Partner would have an Adjusted Capital Account Deficit after all other allocations provided for in this Article 3 have been tentatively made without considering this Section 3.4(c).

(d) Gross Income Allocation**.** If a Partner has a deficit Capital Account at the end of any Fiscal Year of the Partnership that exceeds the sum of (i) the amount the Partner is obligated to restore, and (ii) the amount the Partner is deemed to be obligated to restore pursuant to the penultimate sentences of Treasury Regulations Sections 1.704-2(g)(1) and 1.704-2(i)(5), then each such Partner shall be specially allocated items of income and gain of the Partnership in the amount of the excess as quickly as possible; *provided, however,* an allocation pursuant to this Section 3.4(d) shall be made if and only to

the extent that the Partner would have a deficit Capital Account in excess of that sum after all other allocations provided for in this Article 3 have been tentatively made without considering Section 3.4(c) or 3.4(d).

(e) Nonrecourse Deductions. Nonrecourse Deductions for any taxable year or other period for which allocations are made shall he allocated among the Partners in accordance with their Percentage interests.

(f) Partner Nonrecourse Deductions. Notwithstanding anything to the contrary in this Agreement, any Partner Nonrecourse Deductions for any taxable year or other period for which allocations are made will be allocated to the Partner who bears the economic risk of loss with respect to the Partner Nonrecourse Debt to which the Partner Nonrecourse Deductions are attributable in accordance with Treasury Regulations Section 1.704-2(i).

(g) Section 754 Adjustments. To the extent an adjustment to the adjusted tax basis of any asset of the Partnership under Code Section 734(b) or Code Section 743(b) is required, pursuant to Treasury Regulations Section 1.704-1(b)(2)(iv)(m), to be taken into account in determining Capital Accounts, the amount of the adjustment to the Capital Accounts shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases the basis of the asset) and that gain or loss shall be specially allocated to the Partners in a manner consistent with the manner in which their Capital Accounts are required to be adjusted pursuant to that Section of the Treasury Regulations.

(h) Section 481 Adjustments. Any allocable items of income, gain, expense, deduction or credit required to be made by Section 481 of the Code as the result of the sale, transfer, exchange or issuance of a Partnership Interest will be specially allocated to the Partner receiving said Partnership Interest whether such items are positive or negative in amount.

3.5. Curative Allocations. The "***Basic Regulatory Allocations***" consist of (i) the allocations pursuant to Section 3.2(c), and (ii) the allocations pursuant to Sections 3.4. Notwithstanding any other provision of this Agreement, the Basic Regulatory Allocations shall be taken into account in allocating items of income, gain, loss and deduction among the Partners so that, to the extent possible, the net amount of the allocations of other items and the Basic Regulatory Allocations to each Partner shall be equal to the net amount that would have been allocated to each such Partner if the Basic Regulatory Allocations had not occurred. For purposes of applying the foregoing sentence, allocations pursuant to this Section 3.5 shall be made with respect to allocations pursuant to Section 3.4 (g) and (h) only to the extent that it is reasonably determined that those allocations will otherwise be inconsistent with the economic agreement among the Partners. To the extent that a special allocation under Section 3.4 is determined not to comply with applicable Treasury Regulations, then the Partners intend that the items shall be allocated in accordance with the Partners' varying Percentage Interests throughout each tax year during which such items are recognized for tax purposes.

3.6. Code Section 704(c) Allocations. In accordance with Code Section 704(c) and the Treasury Regulations thereunder, income, gain, loss and deduction with respect to property contributed to the capital of the Partnership shall, solely for tax purposes, be allocated among the Partners so as to take account of any variation at the time of the contribution between the tax basis of the property to the Partnership and the fair market value of that property. Except as otherwise provided herein, any elections or other decisions relating to those allocations shall be made by the General Partner in any manner that reasonably reflects the purpose and intent of this Agreement. Allocations of income, gain, loss and deduction pursuant to this Section 3.6 are solely for purposes of federal, state and local taxes and shall not affect, or in any way be taken into account in computing, the Capital Account of any Partner or the share

of Profits, Losses, other tax items or distributions of any Partner pursuant to any provision of this Agreement.

3.7. Capital Accounts.

(a) Maintenance of Capital Accounts. The Partnership shall establish and maintain a separate capital account (***"Capital Account"***) for each Partner in accordance with the rules of Treasury Regulations Section 1.704-1(b)(2)(iv), subject to and in accordance with the provisions set forth in this Section 3.7.

(i) The Capital Account balance of each Partner shall be credited (increased) by (A) the amount of cash contributed by that Partner to the capital of the Partnership, (B) the fair market value of property contributed by that Partner to the capital of the Partnership (net of liabilities secured by that contributed property that the Partnership assumes or takes subject to under Code Section 752), and (C) that Partner's allocable share of Profits and any items in the nature of income or gain which are specially allocated pursuant to Sections 3.4 and 3.5; and

(ii) The Capital Account balance of each Partner shall be debited (decreased) by (A) the amount of cash distributed to that Partner by the Partnership, (B) the fair market value of property distributed to that Partner by the Partnership (net of liabilities secured by that distributed property that such Partner assumes or takes subject to under Code Section 752), (C) that Partner's allocable share of expenditures of the Partnership described in Code Section 705(a)(2)(B), and (D) that Partner's allocable share of Losses and any items in the nature of expenses or losses which are specially allocated pursuant to Sections 3.2, 3.4 and 3.5.

The provisions of this Section 3.7 and the other provisions of this Agreement relating to the maintenance of Capital Accounts have been included in this Agreement to comply with Code Section 704(b) and the Treasury Regulations promulgated thereunder and will be interpreted and applied in a manner consistent with those provisions. The General Partner may modify the manner in which the Capital Accounts are maintained under this Section 3.7 in order to comply with those provisions, as well as upon the occurrence of events that might otherwise cause this Agreement not to comply with those provisions.

(b) Negative Capital Accounts. If any Partner has a deficit balance in its Capital Account, that Partner shall have no obligation to restore that negative balance or to make any Capital Contribution by reason thereof, and that negative balance shall not be considered an asset of the Partnership or of any Partner.

(c) Interest. No interest shall be paid by the Partnership on Capital Contributions or on balances in Capital Accounts.

(d) No Withdrawal. No Partner shall be entitled to withdraw any part of his/her/its Capital Contribution or his/her/its Capital Account or to receive any distribution from the Partnership, except as provided in Section 3.9 and Article 5.

(e) Loans From Partners. Loans by a Partner to the Partnership shall not be considered Capital Contributions.

(f) Revaluations. The Capital Accounts of the Partners shall not be "booked-up" or "booked-down" to their fair market values under Treasury Regulations Section 1.704(c)-1(b)(2)(iv)(f) or otherwise.

3.8. Distributive Share for Tax Purpose. All items of income, deduction, gain, loss or credit that are recognized for federal income tax purposes will be allocated among the Partners in accordance with the allocations of Profits and Losses hereunder as determined by the General Partner in its sole and unfettered discretion. Notwithstanding the foregoing, the General Partner may (i) as to each New Issue, specially allocate to the Partners who were allocated New Issue Profit from that New Issue any short-term capital gains realized during the Fiscal Year upon the disposition of such New Issue during that Fiscal Year, and (ii) specially allocate items of gain (or loss) to Partners who withdraw capital during any Fiscal Year in a manner designed to ensure that each withdrawing Partner is allocated gain (or loss) in an amount equal to the difference between that Partner's Capital Account balance (or portion thereof being withdrawn) at the time of the withdrawal and the tax basis for his/her/ its Partnership Interest at that time (or proportionate amount thereof); *provided, however,* that the General Partner may, without the consent of any other Partner, (a) alter the allocation of any item of taxable income, gain, loss, deduction or credit in any specific instance where the General Partner, in its sole and unfettered discretion, determines such alteration to be necessary or appropriate to avoid a materially inequitable result *(e.g.,* where the allocation would create an inappropriate tax liability); and/or (b) adopt whatever other method of allocating tax items as the General Partner determines is necessary or appropriate in order to be consistent with the spirit and intent of the Treasury Regulations under Code Sections 704(b) and 704(c).

3.9. Distributions.

(a) General. The General Partner may make such pro rata or non-pro rata distributions as it may determine in its sole and unfettered discretion, without being limited to current or accumulated income or gains, but no such distribution shall be made out of funds required to make current payments on Partnership indebtedness; provided, however, that the General Partner may not make non-pro rata distributions under this Section 3.9(a) during an NAV Ratio Trigger Period without the consent of the Class B Limited Partner (in the case of a Class B NAV Ratio Trigger Period) and/or the Class C Limited Partner (in the case of a Class C NAV Ratio Trigger Period); provided, further this provision should not be interpreted to limit in any way the General Partner's ability to make non-pro rata tax distributions under Section 3.9(c) and Section 3.9(f). The Partnership has entered into one or more credit facilities with financial institutions that may limit the amount and timing of distributions to the Partners. Thus, the Partners acknowledge that distributions from the Partnership may be limited. Any distributions made to the Class B Limited Partner or the Class C Limited Partner pursuant to Section 3.9(b) shall reduce distributions otherwise allocable to such Partners under this Section 3.9(a) until such aggregate reductions are equal to the aggregate distributions made to the Class B Partners and the Class C Partners under Section 3.9(b).

(b) Priority Distributions. Prior to the distribution of any amounts to Partners pursuant to Section 3.9(a), and notwithstanding any other provision in this Agreement to the contrary, the Partnership shall make the following distributions ("***Priority Distributions***") pro-rata among the Class B Limited Partner and the Class C Limited Partner in accordance with their relative Percentage Interests:

(i) No later than March 31st of each calendar year, commencing March 31, 2017, an amount equal to $1,600,000.00;

(ii) No later than March 31st of each year, commencing March 31, 2017, an amount equal to three percent (3%) of the Partnership's investment gain for the prior year, as reflected in the Partnership's books and records within ledger account number 90100 plus three percent (3%) of the gross realized investment gains for the prior year of Highland Select Equity Fund, as reflected in its books and records;

(iii) No later than March 31st of each year, commencing March 31, 2017, an amount equal to ten percent (10%) of the Partnership's Operating Cash Flow for the prior year; and

(iv) No later than December 24th of each year, commencing December 24, 2016, an amount equal to the aggregate annual principal and interest payments on the Purchase Notes for the then current year.

(c) Tax Distributions. The General Partner may, in its sole discretion, declare and make cash distributions pursuant hereto to the Partners to allow the federal and state income tax attributable to the Partnership's taxable income that is passed through the Partnership to the Partners to be paid by such Partners (a "***Tax Distribution***"). The General Partner may, in its discretion, make Tax Distributions to the Founding Partner Group without also making Tax Distributions to other Partners; provided, however, that if the General Partner makes Tax Distributions to the Founding Partner Group, Tax Distributions must also be made the Class B Limited Partner to the extent the Class B Limited Partner provides the Partnership with documentation showing it is subject to an entity-level federal income tax obligation. Notwithstanding anything else in this Agreement, the General Partner may declare and pay Tax Distributions even if such Tax Distributions cause the Partnership to be unable to make Priority Distributions under Section 3.9(b).

(d) Payments Not Deemed Distributions. Any amounts paid pursuant to Sections 4.1(e) or 4.1(h) shall not be deemed to be distributions for purposes of this Agreement.

(e) Withheld Amounts. Notwithstanding any other provision of this Section 3.9 to the contrary, each Partner hereby authorizes the Partnership to withhold and to pay over, or otherwise pay, any withholding or other taxes payable by the Partnership with respect to that Partner as a result of that Partner's participation in the Partnership. If and to the extent that the Partnership shall be required to withhold or pay any such taxes, that Partner shall be deemed for all purposes of this Agreement to have received a payment from the Partnership as of the time that withholding or tax is paid, which payment shall be deemed to be a distribution with respect to that Partner's Partnership Interest to the extent that the Partner (or any successor to that Partner's Partnership Interest) is then entitled to receive a distribution. To the extent that the aggregate of such payments to a Partner for any period exceeds the distributions to which that Partner is entitled for that period, the amount of such excess shall be considered a loan from the Partnership to that Partner. Such loan shall bear interest (which interest shall be treated as an item of income to the Partnership) at the "Applicable Federal Rate" (as defined in the Code), as determined hereunder from time to time, until discharged by that Partner by repayment, which may be made in the sole and unfettered discretion of the General Partner out of distributions to which that Partner would otherwise be subsequently entitled. Any withholdings authorized by this Section 3.9(d) shall be made at the maximum applicable statutory rate under the applicable tax law unless the General Partner shall have received an opinion of counsel or other evidence satisfactory to the General Partner to the effect that a lower rate is applicable, or that no withholding is applicable.

(f) Special Tax Distributions. The Partnership shall, upon request of such Founding Partner, make distributions to the Founding Partners (or loans, at the election of the General Partner) in an amount necessary for each of them to pay their respective federal income tax obligations incurred through the effective date of the Third Amended and Restated Agreement of Limited Partnership of Highland Capital Management, L.P., the predecessor to this Agreement.

(g) Tolling of Priority Distributions. In the event of a "Honis Trigger Event," as defined in the Second Amended Buy-Sell and Redemption Agreement, the Partnership shall not make any distributions, including priority distributions under Section 3.9(b), to the Class B Limited Partner or the Class C Limited Partner until such time as a replacement trust administrator, manager and general partner,

as applicable, acceptable to the Partnership in its sole discretion, as indicated by an affirmative vote of consent by a Majority Interest, shall be appointed to the Class B Limited Partner/Class C Limited Partner and any of its direct or indirect owners that have governing documents directly affected by a Honis Trigger Event.

3.10. Compensation and Reimbursement of General Partner.

(a) Compensation. The General Partner and any Affiliate of the General Partner shall receive no compensation from the Partnership for services rendered pursuant to this Agreement or any other agreements unless approved by a Majority Interest; provided, however, that no compensation above five million dollars per year may be approved, even by a Majority Interest, during a NAV Ratio Trigger Period.

(b) Reimbursement for Expenses. In addition to amounts paid under other Sections of this Agreement, the General Partner and its Affiliates shall be reimbursed for all expenses, disbursements, and advances incurred or made, and all fees, deposits, and other sums paid in connection with the organization and operation of the Partnership, the qualification of the Partnership to do business, and all related matters.

3.11. Books, Records, Accounting, and Reports.

(a) Records and Accounting. The General Partner shall keep or cause to be kept appropriate books and records with respect to the Partnership's business, which shall at all times be kept at the principal office of the Partnership or such other office as the General Partner may designate for such purpose. The books of the Partnership shall be maintained for financial reporting purposes on the accrual basis or on a cash basis, as the General Partner shall determine in its sole and unfettered discretion, in accordance with generally accepted accounting principles and applicable law. Upon reasonable request, the Class B Limited Partner or the Class C Limited Partner may inspect the books and records of the Partnership.

(b) Fiscal Year. The fiscal year of the Partnership shall be the calendar year unless otherwise determined by the General Partner in its sole and unfettered discretion.

(c) Other Information. The General Partner may release information concerning the operations of the Partnership to any financial institution or other Person that has loaned or may loan funds to the Partnership or the General Partner or any of its Affiliates, and may release such information to any other Person for reasons reasonably related to the business and operations of the Partnership or as required by law or regulation of any regulatory body.

(d) Distribution Reporting to Class B Limited Partner and Class C Limited Partner. Upon request, the Partnership shall provide the Class B Limited Partner and/or the Class C Limited Partner information on any non-pro rata distributions made under Section 3.9 to Partners other than the Partner requesting the information.

3.12. Tax Matters.

(a) Tax Returns. The General Partner shall arrange for the preparation and timely filing of all returns of Partnership income, gain, loss, deduction, credit and other items necessary for federal, state and local income tax purposes. The General Partner shall deliver to each Partner as copy of his/her/its IRS Form K-1 as soon as practicable after the end of the Fiscal Year, but in no event later than October 1. The classification, realization, and recognition of income, gain, loss, deduction, credit and

other items shall be on the cash or accrual method of accounting for federal income tax purposes, as the General Partner shall determine in its sole and unfettered discretion. The General Partner in its sole and unfettered discretion may pay state and local income taxes attributable to operations of the Partnership and treat such taxes as an expense of the Partnership.

(b) Tax Elections. Except as otherwise provided herein, the General Partner shall, in its sole and unfettered discretion, determine whether to make any available tax election.

(c) Tax Controversies. Subject to the provisions hereof, the General Partner is designated the Tax Matters Partner (as defined in Code Section 6231), and is authorized and required to represent the Partnership, at the Partnership's expense, in connection with all examinations of the Partnership's affairs by tax authorities, including resulting administrative and judicial proceedings, and to expend Partnership funds for professional services and costs associated therewith. Each Partner agrees to cooperate with the General Partner in connection with such proceedings.

(d) Taxation as a Partnership. No election shall be made by the Partnership or any Partner for the Partnership to be excluded from the application of any of the provisions of Subchapter K, Chapter 1 of Subtitle A of the Code or from any similar provisions of any state tax laws.

ARTICLE 4

RIGHTS AND OBLIGATIONS OF PARTNERS

4.1. Rights and Obligations of the General Partner. In addition to the rights and obligations set forth elsewhere in this Agreement, the General Partner shall have the following rights and obligations:

(a) Management. The General Partner shall conduct, direct, and exercise full control of over all activities of the Partnership. Except as otherwise expressly provided in this Agreement, all management powers over the business and affairs of the Partnership shall be exclusively vested in the General Partner, and Limited Partners shall have no right of control over the business and affairs of the Partnership. In addition to the powers now or hereafter granted to a general partner of a limited partnership under applicable law or that are granted to the General Partner under any provision of this Agreement, the General Partner shall have full power and authority to do all things deemed necessary or desirable by it to conduct the business of the Partnership, including, without limitation: (i) the determination of the activities in which the Partnership will participate; (ii) the performance of any and all acts necessary or appropriate to the operation of any business of the Partnership (including, without limitation, purchasing and selling any asset, any debt instruments, any equity interests, any commercial paper, any note receivables and any other obligations); (iii) the procuring and maintaining of such insurance as may be available in such amounts and covering such risks as are deemed appropriate by the General Partner; (iv) the acquisition, disposition, sale, mortgage, pledge, encumbrance, hyphothecation, of exchange of any or all of the assets of the Partnership; (v) the execution and delivery on behalf of, and in the name of the Partnership, deeds, deeds of trust, notes, leases, subleases, mortgages, bills of sale and any and all other contracts or instruments necessary or incidental to the conduct of the Partnership's business; (vi) the making of any expenditures, the borrowing of money, the guaranteeing of indebtedness and other liabilities, the issuance of evidences of indebtedness, and the incurrence of any obligations it deems necessary or advisable for the conduct of the activities of the Partnership, including, without limitation, the payment of compensation and reimbursement to the General Partner and its Affiliates pursuant to Section 3.10; (vii) the use of the assets of the Partnership (including, without limitation, cash on hand) for any Partnership purpose on any terms it sees fit, including, without limitation, the financing of operations of the Partnership, the lending of funds to other Persons, and the repayment of obligations

of the Partnership; (viii) the negotiation, execution, and performance of any contracts that it considers desirable, useful, or necessary to the conduct of the business or operations of the Partnership or the implementation of the General Partner's powers under this Agreement; (ix) the distribution of Partnership cash or other assets; (x) the selection, hiring and dismissal of employees, attorneys, accountants, consultants, contractors, agents and representatives and the determination of their compensation and other teens of employment or hiring; (xi) the formation of any further limited or general partnerships, joint ventures, or other relationships that it deems desirable and the contribution to such partnerships, ventures, or relationships of assets and properties of the Partnership; and (xii) the control of any matters affecting the rights and obligations of the Partnership, including, without limitation, the conduct of any litigation, the incurring of legal expenses, and the settlement of claims and suits.

(b) Certificate of Limited Partnership. The General Partner caused the Certificate of Limited Partnership of the Partnership to be filed with the Secretary of State of Delaware as required by the Delaware Act and shall cause to be filed such other certificates or documents (including, without limitation, copies, amendments, or restatements of this Agreement) as may be determined by the General Partner to be reasonable and necessary or appropriate for the formation, qualification, or registration and operation of a limited partnership (or a partnership in which Limited Partners have limited liability) in the State of Delaware and in any other state where the Partnership may elect to do business.

(c) Reliance by Third Parties. Notwithstanding any other provision of this Agreement to the contrary, no lender or purchaser or other Person, including any purchaser of property from the Partnership or any other Person dealing with the Partnership, shall be required to verify any representation by the General Partner as to its authority to encumber, sell, or otherwise use any assess or properties of the Partnership, and any such lender, purchaser, or other Person shall be entitled to rely exclusively on such representations and shall be entitled to deal with the General Partner as if it were the sole party in interest therein, both legally and beneficially. Each Limited Partner hereby waives any and all defenses or other remedies that may be available against any such lender, purchaser, or other Person to contest, negate, or disaffirm any action of the General Partner in connection with any such sale or financing. In no event shall any Person dealing with the General Partner or the General Partner's representative with respect to any business or property of the Partnership be obligated to ascertain that the terms of this Agreement have been complied with, and each such Person shall be entitled to rely on the assumptions that the Partnership has been duly formed and is validly in existence. In no event shall any such Person be obligated to inquire into the necessity or expedience of any act or action of the General Partner or the General Partner's representative, and every contract, agreement, deed, mortgage, security agreement, promissory note, or other instrument or document executed by the General Partner or the General Partner's representative with respect to any business or property of the Partnership shall be conclusive evidence in favor of any and every Person relying thereon or claiming thereunder that (i), at the time of the execution and delivery thereof, this Agreement was in full force and effect; (ii) such instrument or document was duly executed in accordance with the terms and provisions of this Agreement and is binding upon the Partnership; and (iii) the General Partner or the General Partner's representative was duly authorized and empowered to execute and deliver any and every such instrument or document for and on behalf of the Partnership.

(d) Partnership Funds. The funds of the Partnership shall be deposited in such account or accounts as are designated by the General Partner. The General Partner may, in its sole and unfettered discretion, deposit funds of the Partnership in a central disbursing account maintained by or in the name of the General Partner, the Partnership, or any other Person into which funds of the General Partner, the Partnership, on other Persons are also deposited; *provided, however,* at all times books of account are maintained that show the amount of funds of the Partnership on deposit in such account and interest accrued with respect to such funds as credited to the Partnership. The General Partner may use the funds of the Partnership as compensating balances for its benefit; *provided, however,* such funds do

not directly or indirectly secure, and are not otherwise at risk on account of, any indebtedness or other obligation of the General Partner or any director, officer, employee, agent, representative, or Affiliate thereof. Nothing in this Section 4.1(d) shall be deemed to prohibit or limit in any manner the right of the Partnership to lend funds to the General Partner or any Affiliate thereof pursuant to Section 4.1(e)(i). All withdrawals from or charges against such accounts shall be made by the General Partner or by its representatives. Funds of the Partnership may be invested as determined by the General Partner in accordance with the terms and provisions of this Agreement.

(e) Loans to or from General Partner; Contracts with Affiliates; Joint Ventures.

(i) The General Partner or any Affiliate of the General Partner may lend to the Partnership funds needed by the Partnership for such periods of time as the General Partner may determine; *provided, however,* the General Partner or its Affiliate may not charge the Partnership interest at a rate greater than the rate (including points or other financing charges or fees) that would be charged the Partnership (without reference to the General Partner's financial abilities or guaranties) by unrelated lenders on comparable loans. The Partnership shall reimburse the General Partner or its Affiliate, as the case may be, for any costs incurred by the General Partner or that Affiliate in connection with the borrowing of funds obtained by the General Partner or that Affiliate and loaned to the Partnership. The Partnership may loan funds to the General Partner and any member of the Founding Partner Group at the General Partner's sole and exclusive discretion.

(ii) The General Partner or any of its Affiliates may enter into an agreement with the Partnership to render services, including management services, for the Partnership. Any service rendered for the Partnership by the General Partner or any Affiliate thereof shall be on terms that are fair and reasonable to the Partnership.

(iii) The Partnership may Transfer any assets to joint ventures or other partnerships in which it is or thereby becomes a participant upon terms and subject to such conditions consistent with applicable law as the General Partner deems appropriate; provided, however, that the Partnership may not transfer any asset to the General Partner or one of its Affiliates during any NAV Ratio Trigger Period for consideration less than such asset's fair market value.

(f) Outside Activities' Conflicts of Interest. The General Partner or any Affiliate thereof and any director, officer, employee, agent, or representative of the General Partner or any Affiliate thereof shall be entitled to and may have business interests and engage in business activities in addition to those relating to the Partnership, including, without limitation, business interests and activities in direct competition with the Partnership. Neither the Partnership nor any of the Partners shall have any rights by virtue of this Agreement or the partnership relationship created hereby in any business ventures of the General Partner, any Affiliate thereof, or any director, officer, employee, agent, or representative of either the General Partner or any Affiliate thereof.

(g) Resolution of Conflicts of Interest. Unless otherwise expressly provided in this Agreement or any other agreement contemplated herein, whenever a conflict of interest exists or arises between the General Partner or any of its Affiliates, on the one hand, and the Partnership or any Limited Partner, on the other hand, any action taken by the General Partner, in the absence of bad faith by the General Partner, shall not constitute a breach of this Agreement or any other agreement contemplated herein or a breach of any standard of care or duty imposed herein or therein or under the Delaware Act or any other applicable law, rule, or regulation.

(h) Indemnification. The Partnership shall indemnify and hold harmless the General Partner and any director, officer, employee, agent, or representative of the General Partner (collectively,

the "***GP Party***"), against all liabilities, losses, and damages incurred by any of them by reason of any act performed or omitted to be performed in the name of or on behalf of the Partnership, or in connection with the Partnership's business, including, without limitation, attorneys' fees and any amounts expended in the settlement of any claims or liabilities, losses, or damages, to the fullest extent permitted by the Delaware Act; *provided, however,* the Partnership shall have no obligation to indemnify and hold harmless a GP Party for any action or inaction that constitutes gross negligence or willful or wanton misconduct. The Partnership, in the sole and unfettered discretion of the General Partner, may indemnify and hold harmless any Limited Partner, employee, agent, or representative of the Partnership, any Person who is or was serving at the request of the Partnership acting through the General Partner as a director, officer, partner, trustee, employee, agent, or representative of another corporation, partnership, joint venture, trust, or other enterprise, and any other Person to the extent determined by the General Partner in its sole and unfettered discretion, but in no event shall such indemnification exceed the indemnification permitted by the Delaware Act. Notwithstanding anything to the contrary in this Section 4.1(h) or elsewhere in this Agreement, no amendment to the Delaware Act after the date of this Agreement shall reduce or limit in any manner the indemnification provided for or permitted by this Section 4.1(h) unless such reduction or limitation is mandated by such amendment for limited partnerships formed prior to the enactment of such amendment. In no event shall Limited Partners be subject to personal liability by reason of the indemnification provisions of this Agreement.

(i) Liability of General Partner.

(i) Neither the General Partner nor its directors, officers, employees, agents, or representatives shall be liable to the Partnership or any Limited Partner for errors in judgment or for any acts or omissions that do not constitute gross negligence or willful or wanton misconduct.

(ii) The General Partner may exercise any of the powers granted to it by this Agreement and perform any of the duties imposed upon it hereunder either directly or by or through its directors, officers, employees, agents, or representatives, and the General Partner shall not be responsible for any misconduct or negligence on the part of any agent or representative appointed by the General Partner.

(j) Reliance by General Partner.

(i) The General Partner may rely and shall be protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, bond, debenture, or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties.

(ii) The General Partner may consult with legal counsel, accountants, appraisers, management consultants, investment bankers, and other consultants and advisers selected by it, and any opinion of any such Person as to matters which the General Partner believes to be within such Person's professional or expert competence shall be full and complete authorization and protection in respect of any action taken or suffered or omitted by the General Partner hereunder in good faith and in accordance with such opinion.

(k) The General Partner may, from time to time, designate one or more Persons to be officers of the Partnership. No officer need be a Partner. Any officers so designated shall have such authority and perform such duties as the General Partner may, from time to time, delegate to them. The General Partner may assign titles to particular officers, including, without limitation, president, vice president, secretary, assistant secretary, treasurer and assistant treasurer. Each officer shall hold office until such Person's successor shall be duly designated and shall qualify or until such Person's death or

until such Person shall resign or shall have been removed in the manner hereinafter provided. Any number of offices may be held by the same Person. The salaries or other compensation, if any, of the officers and agents of the Partnership shall be fixed from time to time by the General Partner. Any officer may be removed as such, either with or without cause, by the General Partner whenever in the General Partner's judgment the best interests of the Partnership will be served thereby. Any vacancy occurring in any office of the Partnership may be filled by the General Partner.

4.2. Rights and Obligations of Limited Partners. In addition to the rights and obligations of Limited Partners set forth elsewhere in this Agreement, Limited Partners shall have the following rights and obligations:

(a) Limitation of Liability. Limited Partners shall have no liability under this Agreement except as provided herein or under the Delaware Act.

(b) Management of Business. No Limited Partner shall take part in the control (within the meaning of the Delaware Act) of the Partnership's business, transact any business in the Partnership's name, or have the power to sign documents for or otherwise bind the Partnership other than as specifically set forth in this Agreement.

(c) Return of Capital. No Limited Partner shall be entitled to the withdrawal or return of its Capital Contribution except to the extent, if any, that distributions made pursuant to this Agreement or upon termination of the Partnership may be considered as such by law and then only to the extent provided for in this Agreement.

(d) Second Amended Buy-Sell and Redemption Agreement. Each Limited Partner shall comply with the terms and conditions of the Second Amended Buy-Sell and Redemption Agreement.

(e) Default on Priority Distributions. If the Partnership fails to timely pay Priority Distributions pursuant to Section 3.9(b), and the Partnership does not subsequently make such Priority Distribution within ninety days of its due date, the Class B Limited Partner or the Class C Limited Partner may require the Partnership to liquidate publicly traded securities held by the Partnership or Highland Select Equity Master Fund, L.P., a Delaware limited partnership controlled by the Partnership; provided, however, that the General Partner may in its sole discretion elect instead to liquidate other non-publicly traded securities owned by the Partnership in order to satisfy the Partnership's obligations under Section 3.9(b) and this Section 4.2(e). In either case, Affiliates of the General Partner shall have the right of first offer to purchase any securities liquidated under this Section 4.2(e).

4.3. Transfer of Partnership Interests.

(a) Transfer. No Partnership Interest shall be Transferred, in whole or in part, except in accordance with the terms and conditions set forth in this Section 4.3 and the Second Amended Buy-Sell and Redemption Agreement. Any Transfer or purported Transfer of any Partnership Interest not made in accordance with this Section 4.3 and the Second Amended Buy-Sell and Redemption Agreement shall be null and void. An alleged transferee shall have no right to require any information or account of the Partnership's transactions or to inspect the Partnership's books. The Partnership shall be entitled to treat the alleged transferor of a Partnership Interest as the absolute owner thereof in all respects, and shall incur no liability to any alleged transferee for distributions to the Partner owning that Partnership Interest of record or for allocations of Profits, Losses, deductions or credits or for transmittal of reports and notices required to be given to holders of Partnership Interests.

(b) Transfers by General Partner. The General Partner may Transfer all, but not less than all, of its Partnership Interest to any Person only with the approval of a Majority Interest; provided, however, that the General Partner may not Transfer its Partnership Interest during any NAV Ratio Trigger Period except to the extent such Transfers are for estate planning purposes or resulting from the death of the individual owner of the General Partner. Any Transfer by the General Partner of its Partnership Interest under this Section 4.3(b) to an Affiliate of the General Partner or any other Person shall not constitute a withdrawal of the General Partner under Section 4.5(a), Section 5.1(b), or any other provision of this Agreement. If any such Transfer is deemed to constitute a withdrawal under such provisions or otherwise and results in the dissolution of the Partnership under this Agreement or the laws of any jurisdiction to which the Partnership of this Agreement is subject, the Partners hereby unanimously consent to the reconstitution and continuation of the Partnership immediately following such dissolution, pursuant to Section 5.2.

(c) Transfers by Limited Partners. The Partnership Interest of a Limited Partner may not be Transferred without the consent of the General Partner (which consent may be withheld in the sole and unfettered discretion of the General Partner), and in accordance with the Second Amended Buy-Sell and Redemption Agreement.

(d) Distributions and Allocations in Respect of Transferred Partnership Interests. If any Partnership Interest is Transferred during any Fiscal Year in compliance with the provisions of Article 4 and the Second Amended Buy-Sell and Redemption Agreement, Profits, Losses, and all other items attributable to the transferred interest for that period shall be divided and allocated between the transferor and the transferee by taking into account their varying interests during the period in accordance with Code Section 706(d), using any conventions permitted by law and selected by the General Partner; provided that no allocations shall be made under this Section 4.3(d) that would affect any special allocations made under Section 3.4. All distributions declared on or before the date of that Transfer shall be made to the transferor. Solely for purposes of making such allocations and distributions, the Partnership shall recognize that Transfer not later than the end of the calendar month during which it is given notice of that Transfer; ***provided, however,*** if the Partnership does not receive a notice stating the date that Partnership Interest was Transferred and such other information as the General Partner may reasonably require within thirty (30) days after the end of the Fiscal Year during which the Transfer occurs, then all of such items shall be allocated, and all distributions shall be made, to the person who, according to the books and records of the Partnership, on the last day of the Fiscal Year during which the Transfer occurs, was the owner of the Partnership Interest. Neither the Partnership nor any Partner shall incur any liability for making allocations and distributions in accordance with the provisions of this Section 4.3(d), whether or not any Partner or the Partnership has knowledge of any Transfer of ownership of any Partnership Interest.

(e) Forfeiture of Partnership Interests Pursuant to the Contribution Note. In the event any Class B Limited Partnership Interests are forfeited in favor of the Partnership as a result of any default on the Contribution Note, the Capital Accounts and Percentage Interests associated with such Class B Limited Partnership Interests shall be allocated pro rata among the Class A Partners. The Priority Distributions in Section 3.9(b) made after the date of such forfeiture shall each be reduced by an amount equal to the ratio of the Percentage Interest associated with the Class B Limited Partnership Interest transferred pursuant to this Section 4.3(e) over the aggregate Percentage Interests of all Class B Limited Partnership Interests and Class C Limited Partnership Interests, calculated immediately prior to any forfeiture of such Class B Limited Partnership Interest.

(f) Transfers of Partnership Interests Pursuant to the Purchase Notes. Notwithstanding any other provision in this Agreement, the Partnership shall respect, and the General Partner hereby provides automatic consent for, any transfers (in whole or transfers of partial interests) of

the Class C Limited Partnership Interests, or a portion thereof, if such transfer occurs as a result of a default on the Purchase Notes. Upon the transfer of any Class C Limited Partnership Interest to any member of the Founding Partner Group (or their assigns), such Class C Limited Partnership Interest shall automatically convert to a Class A Partnership Interest. The Priority Distributions in Section 3.9(b) shall each be reduced by an amount equal to the ratio of the Percentage Interest associated with the transferred Class C Limited Partnership Interest over the aggregate Percentage Interests of all Class B Limited Partnership Interests and Class C Limited Partnership Interests, calculated immediately prior to any transfer of such Class C Limited Partnership Interest.

4.4. Issuances of Partnership Interests to New and Existing Partners.

(a) Issuance of Partnership Interests to New Limited Partners. The General Partner may admit one or more additional Persons as Limited Partners ("Additional Limited Partners") to the Partnership at such times and upon such terms as it deems appropriate in its sole and unfettered discretion; provided, however, that the General Partner may only admit additional Persons as Limited Partners in relation to the issuance of equity incentives to key employees of the Partnership; provided, further that the General Partner may not issue such equity incentives to the extent they entitle the holders, in the aggregate, to a Percentage Interest in excess of twenty percent without the consent of the Class B Limited Partner and the Class C Limited Partner. All Class A Limited Partners, the Class B Limited Partner and the Class C Limited Partner shall be diluted proportionately by the issuance of such limited partnership interests. No Person may be admitted to the Partnership as a Limited Partner until he/she/it executes an Addendum to this Agreement in the form attached as Exhibit B (which may be modified by the General Partner in its sole and unfettered discretion) and an addendum to the Second Amended Buy-Sell and Redemption Agreement.

(b) Issuance of an Additional Partnership Interest to an Existing Partner. The General Partner may issue an additional Partnership Interest to any existing Partner at such times and upon such terms as it deems appropriate in its sole and unfettered discretion. Upon the issuance of an additional Partnership Interest to an existing Partner, the Percentage Interests of the members of the Founding Partner Group shall be diluted proportionately. Any additional Partnership Interest shall be subject to all the terms and conditions of this Agreement and the Second Amended Buy-Sell and Redemption Agreement.

4.5. Withdrawal of General Partner

(a) Option. In the event of the withdrawal of the General Partner from the Partnership, the departing General Partner (the "***Departing Partner***") shall, at the option of its successor (if any) exercisable prior to the effective date of the departure of that Departing Partner, promptly receive from its successor in exchange for its Partnership Interest as the General Partner, an amount in cash equal to its Capital Account balance, determined as of the effective date of its departure.

(b) Conversion. If the successor to a Departing Partner does not exercise the option described in Section 4.5(a), the Partnership Interest of the Departing Partner as the General Partner of the Partnership shall be converted into a Partnership Interest as a Limited Partner.

4.6. Admission of Substitute Limited Partners and Successor General Partner.

(a) Admission of Substitute Limited Partners. A transferee (which may be the heir or legatee of a Limited Partner) or assignee of a Limited Partner's Partnership Interest shall be entitled to receive only the distributive share of the Partnership's Profits, Losses, deductions, and credits attributable to that Partnership Interest. To become a substitute Limited Partner (a "***Substitute Limited Partner***"),

that transferee or assignee shall (1) obtain the consent of the General Partner (which consent may be withheld in the sole and unfettered discretion of the General Partner), (ii) comply with all the requirements of this Agreement and the Second Amended Buy-Sell and Redemption Agreement with respect to the Transfer of the Partnership Interest at issue, and (iii) execute an Addendum to this Agreement in the form attached as Exhibit B (which may be modified by the General Partner in its sole and unfettered discretion) and an addendum to the Second Amended Buy-Sell and Redemption Agreement. Upon admission of a Substitute Limited Partner, that Limited Partner shall be subject to all of the restrictions applicable to, shall assume all of the obligations of, and shall attain the status of a Limited Partner under and pursuant to this Agreement with respect to the Partnership Interest held by that Limited Partner.

(b) Admission of Successor General Partner. A successor General Partner selected pursuant to Section 5.2 or the transferee of or successor to all of the Partnership Interest of the General Partner pursuant to Section 4.3(b) shall be admitted to the Partnership as the General Partner, effective as of the date of the withdrawal or removal of the predecessor General Partner or the date of Transfer of that predecessor's Partnership Interest.

(c) Action by General Partner. In connection with the admission of any substitute Limited Partner or successor General Partner or any additional Limited Partner, the General Partner shall have the authority to take all such actions as it deems necessary or advisable in connection therewith, including the amendment of Exhibit A and the execution and filing with appropriate authorities of any necessary documentation.

ARTICLE 5

DISSOLUTION AND WINDING UP

5.1. Dissolution. The Partnership shall be dissolved upon:

(a) The withdrawal, bankruptcy, or dissolution of the General Partner, or any other event that results in its ceasing to be the General Partner (other than by reason of a Transfer pursuant to Section 4.3(b));

(b) An election to dissolve the Partnership by the General Partner that is approved by the affirmative vote of a Majority Interest; *provided, however,* the General Partner may dissolve the Partnership without the approval of the Limited Partners in order to comply with Section 14 of the Second Amended Buy-Sell and Redemption Agreement; or

(c) Any other event that, under the Delaware Act, would cause its dissolution.

For purposes of this Section 5.1, the bankruptcy of the General Partner shall be deemed to have occurred when the General Partner: (i) makes a general assignment for the benefit of creditors; (ii) files a voluntary bankruptcy petition; (iii) becomes the subject of an order for relief or is declared insolvent in any federal or state bankruptcy or insolvency proceeding: (iv) files a petition or answer seeking a reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any law; (v) files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against the General Partner in a proceeding of the type described in clauses (i) through (iv) of this paragraph; (vi) seeks, consents to, or acquiesces in the appointment of a trustee, receiver, or liquidator of the General Partner or of all or any substantial part of the General Partner's properties; or (vii) one hundred twenty (120) days expire after the date of the commencement of a proceeding against the General Partner seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution, or

similar relief under any law if the proceeding has not been previously dismissed, or ninety (90) days expire after the date of the appointment, without the General Partner's consent or acquiescence, of a trustee, receiver, or liquidator of the General Partner or of all or any substantial part of the General Partner's properties if the appointment has not previously been vacated or stayed, or ninety (90) days expire after the date of expiration of a stay, if the appointment has not previously been vacated.

5.2. Continuation of the Partnership. Upon the occurrence of an event described in Section 5.1(a), the Partnership shall be deemed to be dissolved and reconstituted if a Majority Interest elect to continue the Partnership within ninety (90) days of that event. If no election to continue the Partnership is made within ninety (90) days of that event, the Partnership shall conduct only activities necessary to wind up its affairs. If an election to continue the Partnership is made upon the occurrence of an event described in Section 5.1(a), then:

(a) Within that ninety (90)-day period a successor General Partner shall be selected by a Majority Interest;

(b) The Partnership shall be deemed to be reconstituted and shall continue until the end of the term for which it is formed unless earlier dissolved in accordance with this Article 5;

(c) The interest of the former General Partner shall be converted to an interest as a Limited Partner; and

(d) All necessary steps shall be taken to amend or restate this Agreement and the Certificate of Limited Partnership, and the successor General Partner may for this purpose amend this Agreement and the Certificate of Limited Partnership, as appropriate, without the consent of any Partner.

5.3. Liquidation. Upon dissolution of the Partnership, unless the Partnership is continued under Section 5.2, the General Partner or, in the event the General Partner has been dissolved, becomes bankrupt (as defined in Section 5.1), or withdraws from the Partnership, a liquidator or liquidating committee selected by a Majority Interest, shall be the Liquidator. The Liquidator (if other than the General Partner) shall be entitled to receive such compensation for its services as may be approved by a Majority Interest. The Liquidator shall agree not to resign at any time without fifteen (15) days' prior written notice and (if other than the General Partner) may be removed at any time, with or without cause, by notice of removal approved by a Majority Interest. Upon dissolution, removal, or resignation of the Liquidator, a successor and substitute Liquidator (who shall have and succeed to all rights, powers, and duties of the original Liquidator) shall within thirty (30) days thereafter be selected by a Majority Interest. The right to appoint a successor or substitute Liquidator in the manner provided herein shall be recurring and continuing for so long as the functions and services of the Liquidator are authorized to continue under the provisions hereof, and every reference herein to the Liquidator shall be deemed to refer also to any such successor or substitute Liquidator appointed in the manner provided herein. Except as expressly provided in this Article 5, the Liquidator appointed in the manner provided herein shall have and may exercise, without further authorization or consent of any of the parties hereto, all of the powers conferred upon the General Partner under the terms of this Agreement (but subject to all of the applicable limitations, contractual and otherwise, upon the exercise of such powers) to the extent necessary or desirable in the good faith judgment of the Liquidator to carry out the duties and functions of the Liquidator hereunder for and during such period of time as shall be reasonably required in the good faith judgment of the Liquidator to complete the winding up and liquidation of the Partnership as provided herein. The Liquidator shall liquidate the assets of the Partnership and apply and distribute the proceeds of such liquidation in the following order of priority, unless otherwise required by mandatory provisions of applicable law:

(a) To the payment of the expenses of the terminating transactions including, without limitation, brokerage commission, legal fees, accounting fees and closing costs;

(b) To the payment of creditors of the Partnership, including Partners, in order of priority provided by law;

(c) To the Partners and assignees to the extent of, and in proportion to, the positive balances in their respective Capital Accounts as provided in Treasury Regulations Section 1.704-1(b)(2)(ii)(b)(2); *provided, however,* the Liquidator may place in escrow a reserve of cash or other assets of the Partnership for contingent liabilities in an amount determined by the Liquidator to be appropriate for such purposes; and

(d) To the Partners in proportion to their respective Percentage Interests.

5.4. Distribution in Kind. Notwithstanding the provisions of Section 5.3 that require the liquidation of the assets of the Partnership, but subject to the order of priorities set forth therein, if on dissolution of the Partnership the Liquidator determines that an immediate sale of part or all of the Partnership's assets would be impractical or would cause undue loss to the Partners and assignees, the Liquidator may defer for a reasonable time the liquidation of any assets except those necessary to satisfy liabilities of the Partnership (other than those to Partners) and/or may distribute to the Partners and assignees, in lieu of cash, as tenants in common and in accordance with the provisions of Section 5.3, undivided interests in such Partnership assets as the Liquidator deems not suitable for liquidation. Any such distributions in kind shall be subject to such conditions relating to the disposition and management of such properties as the Liquidator deems reasonable and equitable and to any joint operating agreements or other agreements governing the operation of such properties at such time. The Liquidator shall determine the fair market value of any property distributed in kind using such reasonable method of valuation as it may adopt.

5.5. Cancellation of Certificate of Limited Partnership. Upon the completion of the distribution of Partnership property as provided in Sections 5.3 and 5.4, the Partnership shall be terminated, and the Liquidator (or the General Partner and Limited Partners if necessary) shall cause the cancellation of the Certificate of Limited Partnership in the State of Delaware and of all qualifications and registrations of the Partnership as a foreign limited partnership in jurisdictions other **than** the State of Delaware and shall take such other actions as may be necessary to terminate the Partnership.

5.6. Return of Capital. The General Partner shall not be personally liable for the return of the Capital Contributions of Limited Partners, or any portion thereof, it being expressly understood that any such return shall be **made** solely from Partnership assets.

5.7. Waiver of Partition. Each Partner hereby waives any rights to partition of the Partnership property.

ARTICLE 6

GENERAL PROVISIONS

6.1. Amendments to Agreement. The General Partner may amend this Agreement without the consent of any Partner if the General Partner reasonably determines that such amendment is necessary and appropriate; *provided, however, any* action taken by the General Partner shall be subject to its fiduciary duties to the Limited Partners under the Delaware Act; provided further that any amendments

that adversely affect the Class B Limited Partner or the Class C Limited Partner may only be made with the consent of such Partner adversely affected.

6.2. Addresses and Notices. Any notice, demand, request, or report required or permitted to be given or made to a Partner under this Agreement shall be in writing and shall be deemed given or made when delivered in person or when sent by United States registered or certified mail to the Partner at his/her/its address as shown on the records of the Partnership, regardless of any claim of any Person who may have an interest in any Partnership Interest by reason of an assignment or otherwise.

6.3. Titles and Captions. All article and section titles and captions in the Agreement are for convenience only, shall not be deemed part of this Agreement, and in no way shall define, limit, extend, or describe the scope or intent of any provisions hereof. Except as specifically provided otherwise, references to "Articles," "Sections" and "Exhibits" are to "Articles," "Sections" and "Exhibits" of this Agreement. All Exhibits hereto are incorporated herein by reference.

6.4. Pronouns and Plurals. Whenever the context may require, any pronoun used in this Agreement shall include the corresponding masculine, feminine, or neuter forms, and the singular form of nouns, pronouns, and verbs shall include the plural and vice versa.

6.5. Further Action. The parties shall execute all documents, provide all information, and take or refrain from taking all actions as may be necessary or appropriate to achieve the purposes of this Agreement.

6.6. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their heirs, executors, administrators, successors, legal representatives, and permitted assigns.

6.7. Integration. This Agreement constitutes the entire agreement among the parties hereto pertaining to the subject matter hereof and supersedes all prior agreements and understandings pertaining thereto.

6.8. Creditors. None of the provisions of this Agreement shall be for the benefit of or enforceable by any creditors of the Partnership.

6.9. Waiver. No failure by any party to insist upon the strict performance of any covenant, duty, agreement, or condition of this Agreement or to exercise any right or remedy consequent upon a breach thereof shall constitute waiver of any such breach or any other covenant, duty, agreement, or condition.

6.10. Counterparts. This agreement may be executed in counterparts, all of which together shall constitute one agreement binding on all the parties hereto, notwithstanding that all such parties are not signatories to the original or the same counterpart.

6.11. Applicable Law. This Agreement shall be construed in accordance with and governed by the laws of the State of Delaware, without regard to the principles of conflicts of law.

6.12. Invalidity of Provisions. If any provision of this Agreement is declared or found to be illegal, unenforceable, or void, in whole or in part, then the parties shall be relieved of all obligations arising under that provision, but only to the extent that it is illegal, unenforceable, or void, it being the intent and agreement of the parties that this Agreement shall be deemed amended by modifying that provision to the extent necessary to make it legal and enforceable while preserving its intent or, if that is

not possible, by substituting therefor another provision that is legal and enforceable and achieves the same objectives.

6.13. General Partner Discretion. Whenever the General Partner may use its sole discretion, the General Partner may consider any items it deems relevant, including its own interest and that of its affiliates.

6.14. Mandatory Arbitration. In the event there is an unresolved legal dispute between the parties and/or any of their respective officers, directors, partners, employees, agents, affiliates or other representatives that involves legal rights or remedies arising from this Agreement, the parties agree to submit their dispute to binding arbitration under the authority of the Federal Arbitration Act; provided, however, that the Partnership or such applicable affiliate thereof may pursue a temporary restraining order and /or preliminary injunctive relief in connection with any confidentiality covenants or agreements binding on the other party, with related expedited discovery for the parties, in a court of law, and thereafter, require arbitration of all issues of final relief. The arbitration will be conducted by the American Arbitration Association, or another mutually agreeable arbitration service. A panel of three arbitrators will preside over the arbitration and will together deliberate, decide and issue the final award. The arbitrators shall be duly licensed to practice law in the state of Texas. The discovery process shall be limited to the following: Each side shall be permitted no more than (i) two party depositions of six hours each, each deposition to be taken pursuant to the Texas Rules of Civil Procedure; (ii) one non-party deposition of six hours; (iii) twenty-five interrogatories; (iv) twenty-five requests for admissions; (v) ten request for production (in response, the producing party shall not be obligated to produce in excess of 5,000 total pages of documents, including electronic documents); and (vi) one request for disclosure pursuant to the Texas Rules of Civil Procedure. Any discovery not specifically provided for in this paragraph, whether to parties or non-parties, shall not be permitted. The arbitrators shall be required to state in a written opinion all facts and conclusions of law relied upon to support any decision rendered. The arbitrators will not have the authority to render a decision that contains an outcome based on error of state or federal law or to fashion a cause of action or remedy not otherwise provided for under applicable state or federal law. Any dispute over whether the arbitrators have failed to comply with the foregoing will be resolved by summary judgment in a court of law. In all other respects, the arbitration process will be conducted in accordance with the American Arbitration Association's dispute resolution rules or other mutually agreeable arbitration services rules. All proceedings shall be conducted in Dallas, Texas or another mutually agreeable site. Each party shall bear its own attorneys fees, costs and expenses, including any costs of experts, witnesses and /or travel, subject to a final arbitration award on who should bear costs and fees. The duty to arbitrate described above shall survive the termination of this Agreement. Except as otherwise provided above, the parties hereby waive trial in a court of law or by jury. All other rights, remedies, statutes of limitation and defenses applicable to claims asserted in a court of law will apply in the arbitration.

Remainder of Page intentionally Left Blank.
Signature Page Follows.

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement as of the date and year first written above.

GENERAL PARTNER:

STRAND ADVISORS, INC.,
a Delaware corporation

By: _____
James D. Dondero,
President

LIMITED PARTNERS:

THE DUGABOY INVESTMENT TRUST

By: Nancy M. Dondero
Name: Nancy M. Dondero
Its: Trustee

THE MARK AND PAMELA OKADA FAMILY TRUST – EXEMPT TRUST #1

By: _____
Name: Lawrence Tonomura
Its: Trustee

THE MARK AND PAMELA OKADA FAMILY TRUST – EXEMPT TRUST #2

By: _____
Name: Lawrence Tonomura
Its: Trustee

MARK K. OKADA

_____
Mark K. Okada

Signature Page to Fourth Amended and Restated Agreement of Limited Partnership

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement as of the date and year first written above.

GENERAL PARTNER:

STRAND ADVISORS, INC.,
a Delaware corporation

By: _____
James D. Dondero,
President

LIMITED PARTNERS:

THE DUGABOY INVESTMENT TRUST

By: _____
Name: Nancy M. Dondero
Its: Trustee

THE MARK AND PAMELA OKADA FAMILY TRUST – EXEMPT TRUST #1

By: _____
Name: Lawrence Tonomura
Its: Trustee

THE MARK AND PAMELA OKADA FAMILY TRUST – EXEMPT TRUST #2

By: _____
Name: Lawrence Tonomura
Its: Trustee

MARK K. OKADA

_____
Mark K. Okada

Signature Page to Fourth Amended and Restated Agreement of Limited Partnership

HUNTER MOUNTAIN INVESTMENT TRUST
By: Beacon Mountain LLC, Administrator

By: _____
Name: John Honis
Its: President

Signature Page to Fourth Amended and Restated Agreement of Limited Partnership

EXHIBIT A

	Percentage Interest	
CLASS A PARTNERS	**By Class**	**Effective %**
GENERAL PARTNER:		
Strand Advisors	0.5573%	0.2508%
LIMITED PARTNERS:		
The Dugaboy Investment Trust	74.4426%	0.1866%
Mark K. Okada	19.4268%	0.0487%
The Mark and Pamela Okada Family Trust - Exempt Trust #1	3.9013%	0.0098%
The Mark and Pamela Okada Family Trust - Exempt Trust #2	1.6720%	0.0042%
Total Class A Percentage Interest	100.0000%	0.500%
CLASS B LIMITED PARTNERS		
Hunter Mountain Investment Trust	100.0000%	55.0000%
CLASS C LIMITED PARTNERS		
Hunter Mountain Investment Trust	100.0000%	44.500%
PROFIT AND LOSS AMONG CLASSES		
Class A Partners	0.5000%	
Class B Partners	55.0000%	
Class C Partners	44.5000%	

EXHIBIT B

ADDENDUM
TO THE
FOURTH AMENDED AND RESTATED AGREEMENT OF LIMITED PARTNERSHIP
OF
HIGHLAND CAPITAL MANAGEMENT, L.P.

THIS ADDENDUM (this "**Addendum**") to that certain Fourth Amended and Restated Agreement of Limited Partnership of Highland Capital Management, L.P., dated December 24, 2015, to be effective as of December 24, 2015, as amended from time to time (the "Agreement"), is made and entered into as of the ___ day of _____, 20_, by and between Strand Advisors, Inc., as the sole General Partner (the "**General Partner**") of Highland Capital Management, L.P. (the "**Partnership**") and _____ ("_____") (except as otherwise provided herein, all capitalized terms used herein shall have the meanings set forth in the Agreement).

RECITALS:

WHEREAS, the General Partner, in its sole and unfettered discretion, and without the consent of any Limited Partner, has the authority under (i) Section 4.4 of the Agreement to admit Additional Limited Partners, (ii) Section 4.6 of the Agreement to admit Substitute Limited Partners and (iii) Section 6.1 of the Agreement to amend the Agreement;

WHEREAS, the General Partner desires to admit _____ as a Class __ Limited Partner holding a __% Percentage Interest in the Partnership as of the date hereof;

WHEREAS, _____desires to become a Class __ Limited Partner and be bound by the terms and conditions of the Agreement; and

WHEREAS, the General Partner desires to amend the Agreement to add _____ as a party thereto.

AGREEMENT:

RESOLVED, as a condition to receiving a Partnership Interest in the Partnership, _____ acknowledges and agrees that he/she/it (i) has received and read a copy of the Agreement, (ii) shall be bound by the terms and conditions of the Agreement; and (iii) shall promptly execute an addendum to the Second Amended Buy-Sell and Redemption Agreement; and be it

FURTHER RESOLVED, the General Partner hereby amends the Agreement to add _____ as a Limited Partner, and the General Partner shall attach this Addendum to the Agreement and make it a part thereof; and be it

FURTHER RESOLVED, this Addendum may be executed in any number of counterparts, all of which together shall constitute one Addendum binding on all the parties hereto, notwithstanding that all such parties are not signatories to the original or the same counterpart.

IN WITNESS WHEREOF, the undersigned have executed this Addendum as of the day and year above written.

GENERAL PARTNER:

STRAND ADVISORS, INC.

By: _____
Name: _____
Title: _____

NEW LIMITED PARTNER:

[_____]

AGREED AND ACCEPTED:

In consideration of the terms of this Addendum and the Agreement, in consideration of the Partnership's allowing the above signed Person to become a Limited Partner of the Partnership, and for other good and valuable consideration receipt of which is hereby acknowledged, the undersigned shall be bound by the terms and conditions of the Agreement as though a party thereto.

SPOUSE OF NEW LIMITED PARTNER:

[_____]

B1040 (FORM 1040) (12/15)

ADVERSARY PROCEEDING COVER SHEET (Instructions on Reverse)	**ADVERSARY PROCEEDING NUMBER** (Court Use Only)

PLAINTIFFS	**DEFENDANTS**
Highland Capital Management, L.P.	James Dondero, Nancy Dondero, and The Dugaboy Investment Trust
ATTORNEYS (Firm Name, Address, and Telephone No.) Hayward PLLC 10501 N. Central Expressway, Suite 106 Dallas, Texas 75231 Tel.: (972) 755-7100	**ATTORNEYS** (If Known) Stinson LLP (for James Dondero and Nancy Dondero); Heller, Draper & Horn, L.L.C. (for The Dugaboy Investment Trust)
PARTY (Check One Box Only) ☑ Debtor ☐ U.S. Trustee/Bankruptcy Admin ☐ Creditor ☐ Other ☐ Trustee	**PARTY** (Check One Box Only) ☐ Debtor ☐ U.S. Trustee/Bankruptcy Admin ☐ Creditor ☑ Other ☐ Trustee

CAUSE OF ACTION (WRITE A BRIEF STATEMENT OF CAUSE OF ACTION, INCLUDING ALL U.S. STATUTES INVOLVED)
Breach of Contract; Turnover Pursuant to 11 USC 542(b); Avoidance and Recovery of Actual Fraudulent Transfer under 11 USC 548(a)(1)(A) and 550; Avoidance and Recovery of Actual Fraudulent Transfer under 11 USC 544(b) and 550 and Tex. Bus. & C. Code 24.005(a)(1); Declaratory Relief; Breach of Fiduciary Duty; Aiding & Abetting Breach of Fiduciary Duty

NATURE OF SUIT

(Number up to five (5) boxes starting with lead cause of action as 1, first alternative cause as 2, second alternative cause as 3, etc.)

FRBP 7001(1) – Recovery of Money/Property
- [2] 11-Recovery of money/property - §542 turnover of property
- ☐ 12-Recovery of money/property - §547 preference
- [3] 13-Recovery of money/property - §548 fraudulent transfer
- [4] 14-Recovery of money/property - other

FRBP 7001(2) – Validity, Priority or Extent of Lien
- ☐ 21-Validity, priority or extent of lien or other interest in property

FRBP 7001(3) – Approval of Sale of Property
- ☐ 31-Approval of sale of property of estate and of a co-owner - §363(h)

FRBP 7001(4) – Objection/Revocation of Discharge
- ☐ 41-Objection / revocation of discharge - §727(c),(d),(e)

FRBP 7001(5) – Revocation of Confirmation
- ☐ 51-Revocation of confirmation

FRBP 7001(6) – Dischargeability
- ☐ 66-Dischargeability - §523(a)(1),(14),(14A) priority tax claims
- ☐ 62-Dischargeability - §523(a)(2), false pretenses, false representation, actual fraud
- ☐ 67-Dischargeability - §523(a)(4), fraud as fiduciary, embezzlement, larceny

(continued next column)

FRBP 7001(6) – Dischargeability (continued)
- ☐ 61-Dischargeability - §523(a)(5), domestic support
- ☐ 68-Dischargeability - §523(a)(6), willful and malicious injury
- ☐ 63-Dischargeability - §523(a)(8), student loan
- ☐ 64-Dischargeability - §523(a)(15), divorce or separation obligation (other than domestic support)
- ☐ 65-Dischargeability - other

FRBP 7001(7) – Injunctive Relief
- ☐ 71-Injunctive relief – imposition of stay
- ☐ 72-Injunctive relief – other

FRBP 7001(8) Subordination of Claim or Interest
- ☐ 81-Subordination of claim or interest

FRBP 7001(9) Declaratory Judgment
- [5] 91-Declaratory judgment

FRBP 7001(10) Determination of Removed Action
- ☐ 01-Determination of removed claim or cause

Other
- ☐ SS-SIPA Case – 15 U.S.C. §§78aaa *et.seq.*
- [1] 02-Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case)

☑ Check if this case involves a substantive issue of state law	☐ Check if this is asserted to be a class action under FRCP 23
☐ Check if a jury trial is demanded in complaint	Demand $ Damages in an amount to be determined at trial

Other Relief Sought: Turnover of amounts due under note, avoidance of transfers to defendants, declaratory relief, punitive and exemplary damages, costs, attorneys' fees

B1040 (FORM 1040) (12/15)

BANKRUPTCY CASE IN WHICH THIS ADVERSARY PROCEEDING ARISES		
NAME OF DEBTOR Highland Capital Management, L.P.	BANKRUPTCY CASE NO. 19-34054-sgj11	
DISTRICT IN WHICH CASE IS PENDING Northern District of Texas	DIVISION OFFICE Dallas	NAME OF JUDGE Stacey G. C. Jernigan
RELATED ADVERSARY PROCEEDING (IF ANY)		
PLAINTIFF	DEFENDANT	ADVERSARY PROCEEDING NO.
DISTRICT IN WHICH ADVERSARY IS PENDING	DIVISION OFFICE	NAME OF JUDGE
SIGNATURE OF ATTORNEY (OR PLAINTIFF)		
DATE August 27, 2021	PRINT NAME OF ATTORNEY (OR PLAINTIFF) Zachery Z. Annable	

INSTRUCTIONS

The filing of a bankruptcy case creates an "estate" under the jurisdiction of the bankruptcy court which consists of all of the property of the debtor, wherever that property is located. Because the bankruptcy estate is so extensive and the jurisdiction of the court so broad, there may be lawsuits over the property or property rights of the estate. There also may be lawsuits concerning the debtor's discharge. If such a lawsuit is filed in a bankruptcy court, it is called an adversary proceeding.

A party filing an adversary proceeding must also must complete and file Form 1040, the Adversary Proceeding Cover Sheet, unless the party files the adversary proceeding electronically through the court's Case Management/Electronic Case Filing system (CM/ECF). (CM/ECF captures the information on Form 1040 as part of the filing process.) When completed, the cover sheet summarizes basic information on the adversary proceeding. The clerk of court needs the information to process the adversary proceeding and prepare required statistical reports on court activity.

The cover sheet and the information contained on it do not replace or supplement the filing and service of pleadings or other papers as required by law, the Bankruptcy Rules, or the local rules of court. The cover sheet, which is largely self-explanatory, must be completed by the plaintiff's attorney (or by the plaintiff if the plaintiff is not represented by an attorney). A separate cover sheet must be submitted to the clerk for each complaint filed.

Plaintiffs and **Defendants.** Give the names of the plaintiffs and defendants exactly as they appear on the complaint.

Attorneys. Give the names and addresses of the attorneys, if known.

Party. Check the most appropriate box in the first column for the plaintiffs and the second column for the defendants.

Demand. Enter the dollar amount being demanded in the complaint.

Signature. This cover sheet must be signed by the attorney of record in the box on the second page of the form. If the plaintiff is represented by a law firm, a member of the firm must sign. If the plaintiff is pro se, that is, not represented by an attorney, the plaintiff must sign.

EXHIBIT 33

HIGHLAND CAPITAL MANAGEMENT

June 3, 2019

PricewaterhouseCoopers LLP
2121 N Pearl, Suite 2000
Dallas, TX 75201

We are providing this letter in connection with your audit of the consolidated financial statements of Highland Capital Management, L.P. and its subsidiaries (Appendix 1), (hereinafter collectively referred to as the "Partnership") as of December 31, 2018 (hereinafter referred to as the "balance sheet date") and the related consolidated statements of income, of changes in partners' capital, and of cash flows for the year then ended (hereinafter referred to as the "period"), (hereinafter collectively referred to as the "consolidated financial statements"), for the purpose of expressing an opinion as to whether such consolidated financial statements present fairly, in all material respects, the financial position, results of operations, changes in partners' capital and cash flows of the Partnership in conformity with accounting principles generally accepted in the United States of America. We acknowledge and confirm that we have fulfilled our responsibility, as set out in our engagement letter of May 14, 2019, for the preparation and fair presentation in the consolidated financial statements of financial position, results of operations, changes in partners' capital and of cash flow in conformity with generally accepted accounting principles, including the appropriate selection of accounting policies.

Certain representations in this letter are described as being limited to those matters that are material. Items are considered material, regardless of size, if they involve an omission or misstatement of accounting information that, in the light of surrounding circumstances, makes it probable that the judgment of a reasonable person relying on the information would have been changed or influenced by the omission or misstatement. Materiality used for purposes of these representations is $1,700,000.

We confirm, to the best of our knowledge and belief, as of June 3, 2019, the date of your report, the following representations made to you during your audit:

General

1. The consolidated financial statements referred to above are fairly presented in conformity with accounting principles generally accepted in the United States of America (GAAP), and include all disclosures necessary for such fair presentation and disclosures otherwise required to be included therein by the laws and regulations to which the Partnership is subject. We have prepared the Partnership's consolidated financial statements on the basis that the Partnership is able to continue as a going concern. There are no conditions or events, considered in the aggregate, that raise substantial doubt about the Company's ability to continue as a going concern within one year after the date these consolidated financial statements are issued.

2. We have made available to you:

   a. All financial records and related data.

   b. Unconditional access to persons within the entity from whom you have requested audit evidence.

   c. All minutes of the meetings of committees or other governing bodies applicable to the Partnership, including but not limited to, investors, Partners and committees of Partners, including summaries

of actions of recent meetings for which minutes have not yet been prepared. The most recent meetings held were Pricing Committee, April 12, 2019.

d. Partnership agreements, Memoranda and Articles of Association, Confidential Offering Memoranda and amendments thereto (individually or collectively referred to hereinafter as the "Governing Documents"), and all other agreements to which the Partnership is subject.

e. Contracts or other agreements with the Partnership's service providers.

f. All official written reports, findings, recommendations and communications from specialists or professional advisors engaged to review investments, systems, processes, operations, or compliance programs of Partnership that are material to the Partnership, individually or in aggregate.

g. All side letter arrangements, whether written or oral, with any investors entered into or cancelled during the period for which noncompliance would have a material effect on the Partnership's consolidated financial statements. These side letters are allowed under the terms of the Governing Documents.

h. Withdrawal requests submitted or communicated by investors through the date of this letter.

3. We are responsible for all significant estimates and judgments affecting the consolidated financial statements. Significant estimates and judgments and their underlying assumptions, methods, procedures and the source and reliability of supporting data are reasonable and based on applicable guidance, are completely and appropriately disclosed in the consolidated financial statements, and appropriately reflect management's intent and ability to carry out specific courses of action, where relevant. The procedures and methods utilized in developing assumptions, estimates and judgments are appropriate and have been consistently applied in the periods presented. There have been no subsequent events which would require the adjustment of any significant estimate and related disclosures.

Legal and Regulatory Compliance

4. There have been no communications from regulatory agencies concerning the Partnership's noncompliance with or deficiencies in financial reporting practices.

5. There have been no violations or possible violations of laws or regulations whose effects should be considered for disclosure in the consolidated financial statements or as a basis for recording a loss contingency.

6. The Partnership has complied with all aspects of contractual agreements that would have a material effect on the consolidated financial statements in the event of noncompliance.

Fraud

7. We acknowledge our responsibility for the design and implementation of programs and controls to provide reasonable assurance that fraud is prevented and detected.

8. We have disclosed to you the results of our assessment of the risk that the consolidated financial statements may be materially misstated as a result of fraud and we have no knowledge of any fraud or suspected fraud affecting the Partnership involving:

a. Partnership management or its affiliates,

b. Employees who have significant roles in the Partnership's internal control over financial reporting, or

c. Others where the fraud could have a material effect on the consolidated financial statements.

9. Except for previously disclosed, we have no knowledge of any allegations of fraud or suspected fraud affecting the Partnership received in communications from employees, former employees, regulators, service providers, counterparties, current or former investors, or others.

(As to items 7, 8 and 9, we understand the term "fraud" to mean those matters described in AICPA AU-C 240.)

Assets, Liabilities and Capital

Assets:

10. The Partnership has satisfactory title to all owned assets, including investments, and there are no liens or encumbrances on such assets nor has any asset been pledged as collateral, including, but not limited to, assets pledged or assigned as security for liabilities and performance of contracts, except as disclosed in the consolidated financial statements. All deposit and brokerage accounts and all investments and other assets of the Partnership of which we are aware are included in the consolidated financial statements.

11. Receivables recorded in the consolidated financial statements represent bona fide claims against debtors for transactions arising on or before the balance sheet date. All receivables have been appropriately reduced to their estimated net realizable value. Receivables, if any, from shareholders/partners or their affiliates, have been collected before the date of this letter.

12. We have evaluated all transfers of financial assets during the period, including, but not limited to, transfers between the Partnership and other affiliates, to determine that control over the transferred assets has been surrendered and that all of the conditions in accordance with Accounting Standards Codification (ASC) 860, *Transfers and Servicing*, ASC 860-10-40-5 have been met.

Investments:

With respect to Partnership's investments:

13. Portfolio Investments included in the Partnership's consolidated financial statements have been stated at fair values as determined by Partnership management in accordance with the valuation methods set forth in the Governing Documents and related policies and procedures. Such policies are in accordance with GAAP (e.g., fair value of an investment is that price which would be received to sell or paid to transfer, respectively, those assets or liabilities in orderly transactions between market participants).

14. The valuation policies used for investments whose fair values have been estimated by Partnership management are appropriate and have been consistently applied and documented. The policies for fair value measurement are appropriately disclosed in the Partnership's consolidated financial statements. The methods, assumptions, and inputs used are appropriate and result in a fair value appropriate for financial statement measurement and disclosure purposes. As of the balance sheet

date, the investments for which fair value were determined by estimates made by Partnership are appropriately disclosed in the Partnership's consolidated financial statements.

15. We have informed you of any investments as of the balance sheet date that have restrictions on their sale or transferability. We have appropriately considered restrictions that are an attribute of the investment in our fair value determination.

16. The cost of portfolio securities was determined on the basis of FIFO method.

17. All Partnership investments made during the period were in accordance with the investment policies stated in the Governing Documents. All investments made during the period were authorized by appropriate personnel.

18. We have made available to you all information received from third party specialists engaged with respect to the valuation of investments. We believe that the data used in the work of the third-party specialists is accurate, complete, and relevant, and that our fair value determinations have been properly determined using such data and assumptions. We assume responsibility for, and are responsible for the evaluation of, the findings of third-party specialists in order to determine the fair value of the investments. We have adequately considered the qualifications of the third-party specialists in determining the amounts and disclosures used in the consolidated financial statements and underlying accounting records. We did not give nor cause any instructions to be given to third-party specialists with respect to the values or amounts derived in an attempt to bias their work, and we are not otherwise aware of any matters that have had an impact on the objectivity of the third-party specialists.

19. We evaluated all contracts and financial instruments to determine whether they meet the definition of a derivative under ASC 815, Derivatives and Hedging (ASC 815).

Liabilities:

20. All liabilities of the Partnership of which we are aware are included in the consolidated financial statements at the balance sheet date. There are no other liabilities or gain or loss contingencies that are required to be recognized or disclosed by ASC 450, *Contingencies*, and no unasserted claims or assessments that the Partnership's legal counsel has advised us are probable of assertion and required to be disclosed in accordance with that Topic.

21. The Partnership is not an "SEC registrant" as that term is used in ASC 480, *Distinguishing Liabilities from Equity*, 480-10-65-1. The Partnership has properly classified and disclosed as liabilities its mandatorily redeemable securities and other financial instruments (e.g., payable) that are within the scope of ASC 480-10-65, *Effective Date, Disclosures, and Transition for Mandatorily Redeemable Financial Instruments of Certain Nonpublic Entities and Certain Mandatorily Redeemable Noncontrolling Interests,* in the consolidated financial statements.

22. The actuarial valuation of pension benefit obligations was determined using an acceptable methodology applied on a consistent basis and taking into account the individual characteristics of the plan and reasonable assumptions, including those for the discount rate, rate of return on plan assets, mortality rate and other demographic assumptions.

23. We accurately described the processes used by management to make investment decisions, including the target allocation percentages or range of percentages for each major category of plan assets, and to determine the overall expected long-term rate of return on assets.

24. The amounts of expected employer contributions to the benefit plan during the next fiscal year represent our best estimate.

25. We do not intend to compensate for the reduction of postretirement benefits by granting an increase in pension or other benefits.

26. We applied the recognition, disclosure and measurement date provisions of ASC 715, Compensation-Retirement Benefits (ASC 715). The resulting benefit asset represents the overfunded status of the plan, and accumulated other comprehensive income includes all previously unrecognized prior service costs and credits, net gains/losses and transition assets and obligations, net of taxes.

27. We measured and recognized all plan assets as of the plan's measurement date at fair value in accordance with ASC 715, Compensation- Retirement Benefits (ASC 715).

Capital:

28. Partner capital balances, including the allocation of income, gains and losses, the calculation of management fees and incentive fees/allocations have been properly calculated throughout the period in accordance with the Governing Documents, after giving consideration to the terms identified in each investor's subscription document. The methodology was consistently applied throughout the period and was correctly applied in the computation of contribution and withdrawal transactions during the period.

Statement of Operations

29. All material expenses charged to the Partnership are permissible under the terms of the Governing Documents. All directed brokerage and other expense reimbursement agreements, if any, have been properly disclosed in the consolidated financial statements.

Tax Matters

30. There are no material tax liabilities incurred by the Partnership under the provisions of ASC 740, *Income Taxes*. We have made the necessary provisions and disclosures in the consolidated financial statements as required by ASC 740, *Income Taxes*. The resulting liabilities are supported by specifically identified income tax exposures.

31. We have provided you with all information and our assessment related to all significant uncertain income tax positions that we have taken, or expect to take, of which we are aware. We have also provided you with access to all opinions, rulings, memoranda and analyses that relate to positions we have taken in regard to significant income tax matters. We are responsible for the accuracy and completeness of information provided to external counsel and we believe that the facts are consistent with any stated assumptions made by external counsel for purposes of forming such tax opinions. We have made you aware of and have disclosed all significant tax positions for which it is reasonably possible the amount of unrecognized tax benefit will either increase or decrease in the next 12 months.

Disclosure and Presentation of Consolidated financial statements

32. The effects of the uncorrected financial statement misstatements are immaterial, both individually and in the aggregate, to the consolidated financial statements taken as a whole.

33. We have appropriately reconciled the Partnership's books and records (including, but not limited to, general ledger accounts, financial accounts maintained outside the general ledger and trial balances) underlying the consolidated financial statements to their related supporting information (e.g., sub ledger, or third-party data). All related reconciling items considered to be material were identified and included on the reconciliations and were appropriately adjusted in the consolidated financial statements, as necessary. There were no material un-reconciled differences or material general ledger suspense account items that should have been adjusted or reclassified to another account balance. There were no material general ledger suspense account items written off to a balance sheet account, which should have been written off to a statement of operations account and vice versa. All consolidating entries have been properly recorded. All intra-entity accounts have been eliminated or appropriately measured and considered for disclosure in the consolidated financial statements.

34. There are no material transactions, agreements or accounts that have not been properly recorded in the accounting records underlying the consolidated financial statements.

35. The following, if material, have been properly recorded or disclosed in the consolidated financial statements:

    a. Agreements to repurchase assets previously sold.

    b. All pertinent rights and privileges of both general partner and limited partner interests in the Partnership.

    c. Fee income and expenses associated with stock lending and borrowing arrangements.

    d. Relationships and transactions with related parties, as described in ASC 850, *Related Party Disclosures*, including revenue, subadvisory fees, purchases and sales of securities, transfers, guarantees, other fees and expenses charged to the Partnership, and amounts receivable from or payable to related parties.

    e. Significant estimates and material concentrations known to us that are required to be disclosed in accordance with ASC 275, *Risks and Uncertainties*. (Significant estimates are estimates at the balance sheet date that could change materially within the next year. Concentrations refer to matters such as volume of investment activity, available sources of financing, markets or geographic areas for which events could occur that would significantly disrupt investment performance within the next year.)

    f. All cash and deposit accounts and all other properties and assets of the Partnership are included in the consolidated financial statements.

    g. All financial instruments, including those with off-balance-sheet risk (including, but not limited to, swaps, forwards and futures), as required under US GAAP. This includes the following information with respect to the off-balance-sheet risks and the concentrations of credit risk:

        i. The extent, nature, and terms of financial instruments with off-balance-sheet risk.

ii. The amount of credit risk of financial instruments with off-balance-sheet risk and information about the collateral supporting such financial instruments.

h. Each significant concentration of credit risk arising from all financial instruments, and information about the collateral supporting such financial instruments, whether from an individual counterparty/prime broker or group of counterparties/prime brokers in accordance with ASC 825, *Financial Instruments,* and ASC 815, *Derivatives and Hedging* (ASC 815), 815-10-50.

i. Commitments to purchase or sell financial instruments, commitments on certain debt instruments such as revolving credit facilities and obligations to Partnership capital calls.

j. Fee income and expenses associated with stock lending and borrowing arrangements.

k. Guarantees, whether written or oral, under which the Partnership is contingently liable.

l. Transactions made in foreign currencies.

m. Transactions made on margin or selling short.

36. We have disclosed to you the identity of the Partnership's related parties and all the related party relationships and transactions of which we are aware.

37. The Partnership has classified and disclosed financial assets and liabilities in the consolidated financial statements as Level 1, Level 2 and Level 3 in accordance with ASC 820, *Fair Value Measurement,* including a description of inputs and information used to develop valuation techniques as well as facts that required a change to such techniques, where applicable. We have made appropriate disclosures in accordance with Accounting Standards Update (ASU) 2011-11, *Disclosures about Offsetting Assets and Liabilities,* when the Partnership has the right of setoff in accordance with a master netting or similar agreement. The netting of assets and liabilities has been performed in accordance with the specific requirements of ASC 210, *Balance Sheet,* 210-20-45-1 and ASC 815-10-45-5.

38. The Partnership has properly recorded, classified and disclosed the prime broker margin collateral requirements in the consolidated financial statements in accordance with ASC 860, *Transfers and Servicing*, as to the recognition and reclassification of collateral and disclosures relating to securitization transactions and collateral.

39. We consistently applied our policy regarding classification of cash and cash equivalents, which are short-term, highly liquid investments that are readily convertible to known amounts of cash and are so near their maturity that there is insignificant risk of changes in value due to interest rate or other credit risk changes.

40. All borrowings and financial obligations of the Partnership have been disclosed to you and are properly recorded in the consolidated financial statements.

41. The Partnership has not made any commitments during the year as underwriter, nor did it engage in joint trading or a joint investment account.

Other

42. No contracts were executed outside of Texas or the U.S. on behalf of the Partnership during 2017.

43. The Partnership has no plans or intentions that may materially affect the Partnership's carrying value or classification of assets and liabilities. Partnership management has no plans or intentions to liquidate the Partnership or to cease operations.

44. Other than the litigation described in the Current Litigation Memo dated May 24, 2019 and disclosed in the consolidated financial statements, there is no other litigation that would materially impact the Partnership and the consolidated funds.

45. We acknowledge and confirm that we have fulfilled our responsibility, as set out in our engagement letter of May 14, 2019, for the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of consolidated financial statements that are free from material misstatement, whether due to fraud or error and we have disclosed to you all deficiencies in the design or operation of internal control over financial reporting of which we are aware. We have also disclosed to you which of these deficiencies we believe are significant deficiencies or material weaknesses in internal control over financial reporting. In addition, we are not aware of any deficiencies in the design or operation of internal control over financial reporting at the service providers.

46. We have notified you of (i) any current or planned offerings of securities on a regulated market in a non-U.S. country or (ii) when we have provided or plan to provide audited consolidated financial statements to a non-U.S. regulator or government in connection with our access to its public capital markets, whether or not we include or refer to your report or include reference to your Firm.

47. We identified all variable interests, determined whether each variable interest in an entity was a variable interest entity (VIE), consolidated the VIEs for which the Partnership was the primary beneficiary, considered reconsideration events and complied with the consolidated financial statement disclosure requirements, including those VIEs that were not consolidated, in accordance with the guidance of ASC 810, Consolidation (ASC 810), which was applicable to the period presented.

48. The Partnership, as general partner of limited partnerships (which are not subject to the consolidation guidance under the variable interest entity model), has evaluated consolidation in accordance with ASC 810-20-25-4 through 25-7, Evaluating Presumption of General Partner Control and has determined that the entities listed in Note 3 of the consolidated financial statements have been properly consolidated. For entities that have not been consolidated by the Partnership, as general partner, the Partnership has adequately overcome the presumption of consolidation by the general partner based on the guidance noted above.

49. The consolidated financial statements disclose all matters of which we are aware that are relevant to the Partnership's ability to continue as a going concern, including all significant conditions and events and management's plans. We have the intent and ability to take actions necessary for the Partnership to continue as a going concern and accordingly the Partnership's consolidated financial statements are prepared on a going concern basis. We made available to you all relevant information on the Partnership's ability to continue as a going concern that could affect the consolidated financial statements. We derecognize liabilities if and only if it has been extinguished. A liability has been extinguished when the debtor pays the creditor and is relieved from its obligation or when the debtor has been legally released from being the primary obligor under the liability, either judicially or by the creditor.

50. We acknowledge responsibility for the presentation of the Supplemental Consolidating Balance Sheet, Supplemental Consolidating Statement of Income, Supplemental Unconsolidated Balance Sheet and Supplemental Unconsolidated Statement of Income in accordance with US GAAP and we believe such information, including its form and content, is fairly presented in accordance with US

GAAP. We have communicated to you all changes in measurement or presentation from those used in the prior period. We have informed you about any significant assumptions or interpretations underlying the measurement or presentation of the information.

To the best of our knowledge and belief, no events have occurred subsequent to the balance sheet date and through the date of this letter that would require adjustments to, or disclosure in, the aforementioned consolidated financial statements.

James Dondero, President
Highland Capital Management, L.P.
By: Strand Advisors, Inc., its general partner

Frank Waterhouse, Treasurer
Highland Capital Management, L.P.
By: Strand Advisors, Inc., its general partner

Appendix 1

List of subsidiaries

Highland Multi Strategy Credit Fund, L.P.

Highland Multi-Strategy Master Fund, L.P.

Highland Multi-Strategy Fund, L.P.

Highland Restoration Capital Partners Offshore, L.P.

Highland Restoration Capital Partners, L.P.

Highland Capital Special Allocation, LLC

Highland Receivables Finance 1, LLC

Highland Multi-Strategy Onshore Master SubFund, LLC

Highland Multi-Strategy Onshore Master Subfund II, LLC, LLC

Highland Brasil, LLC

Highland Capital Management (Singapore) Pte, Ltd.

Highland Capital Management Korea, Ltd.

Highland Capital Management Latin America, L.P.

HE Capital, LLC

De Kooning, Ltd.

Hirst, Ltd.

Hockney, Ltd.

Oldenburg, Ltd.

Eames, Ltd.

Penant Management, L.P.

Pollack, Ltd.

Warhol, Ltd.

HCREF- I Holding Corp.

HCREF-XI Holding Corp.

HCREF-XII Holding Corp.

Appendix 1 (continued)

Highland ERA Management, LLC

The Dondero Insurance Rabbi Trust

The Okada Insurance Rabbi Trust

Highland Employee Retention Assets, LLC

Highland Diversified Credit Fund, L.P.

Highland Select Equity Master Fund, L.P.

Highland Select Equity Fund, L.P.

Highland Fund Holdings, LLC

HCM Holdco, LLC

Maple Avenue Holdings, LLC

Highland HCF Advisor, Ltd.

Asury Holdings, LLC

Highland CLO Management, Ltd

EXHIBIT 34

Highland Capital Management, L.P.

(A Delaware Limited Partnership)

Consolidated Financial Statements and Supplemental Information

December 31, 2018

Highland Capital Management, L.P.

(A Delaware Limited Partnership)
Index
December 31, 2018

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Report of Independent Auditors

To the General Partner of Highland Capital Management, L.P.

We have audited the accompanying consolidated financial statements of Highland Capital Management, L.P. and its subsidiaries (collectively, the "Partnership"), which comprise the consolidated balance sheet as of December 31, 2018, and the related consolidated statements of income, of changes in partners' capital and of cash flows for the year then ended.

Management's Responsibility for the Consolidated Financial Statements

Management is responsible for the preparation and fair presentation of the consolidated financial statements in accordance with accounting principles generally accepted in the United States of America; this includes the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of consolidated financial statements that are free from material misstatement, whether due to fraud or error.

Auditors' Responsibility

Our responsibility is to express an opinion on the consolidated financial statements based on our audit. We conducted our audit in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the consolidated financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the consolidated financial statements. The procedures selected depend on our judgment, including the assessment of the risks of material misstatement of the consolidated financial statements, whether due to fraud or error. In making those risk assessments, we consider internal control relevant to the Partnership's preparation and fair presentation of the consolidated financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Partnership's internal control. Accordingly, we express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the consolidated financial statements. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

Opinion

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of Highland Capital Management, L.P. and its subsidiaries as of December 31. 2018, and the results of their operations, changes in their partners' capital and their cash flows for the year then ended, in accordance with accounting principles generally accepted in the United States of America.

Other Matter

Our audit was conducted for the purpose of forming an opinion on the consolidated financial statements taken as a whole. The Supplemental Consolidating Balance Sheet, the Supplemental Consolidating Statement of Income, the Supplemental Unconsolidated Balance Sheet and the Supplemental Unconsolidated Statement of Income are presented for purposes of additional analysis and are not a required part of the consolidated financial statements. The information is the responsibility of management and was derived from and relates directly to the underlying accounting and other records used to prepare the consolidated financial statements. The information has been subjected to the auditing procedures applied in the audit of the financial statements and certain additional procedures, including comparing and reconciling such information directly to the underlying accounting and other records used to prepare the consolidated financial statements or to the consolidated financial statements themselves and other additional procedures, in accordance with auditing standards generally accepted in the United States of America. In our opinion, the information is fairly stated, in all material respects, in relation to the consolidated financial statements taken as a whole.

PricewaterhouseCoopers LLP

June 3, 2019

PricewaterhouseCoopers LLP, 2121 N Pearl Street, Suite 2000, Dallas, Texas 75201
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Highland Capital Management, L.P.
(A Delaware Limited Partnership)
Consolidated Balance Sheet
December 31, 2018

(in thousands)

Assets		
Cash and cash equivalents	$	5,034
Investments at fair value (cost $922,027)		845,186
Management and incentive fees receivable		2,393
Due from broker for securities sold, not yet settled		598
Other assets		9,255
Notes and other amounts due from affiliates		173,398
Intangible assets		3,022
Fixed assets and leasehold improvements, net of accumulated depreciation of $11,197		4,581
Total assets	$	1,043,467
Liabilities and partners' capital		
Liabilities		
Accounts payable	$	4,983
Securities sold, not yet purchased (proceeds $26,135)		32,357
Withdrawals payable		57,009
Due to brokers		116,560
Due to brokers for securities purchased, not yet settled		1,640
Accrued and other liabilities		40,246
Notes payable		55,752
Investment liabilities		46,092
Total liabilities		354,639
Non-controlling interest		316,867
Partners' capital		371,961
Total liabilities and partners' capital	$	1,043,467

The accompanying notes are an integral part of these consolidated financial statements.

Highland Capital Management, L.P.

(A Delaware Limited Partnership)

Consolidated Statement of Income

Year Ended December 31, 2018

(in thousands)

Revenue:		
Management fees	$	36,600
Interest and investment income		15,831
Incentive fees		70
Shared services fees		9,187
Other income		2,622
Total revenue		64,310
Expenses:		
Compensation and benefits		34,475
Professional fees		17,679
Interest expense		5,670
Marketing and advertising expense		2,413
Depreciation and amortization		1,317
Investment and research consulting		1,082
Bad debt expense		7,862
Other operating expenses		10,027
Total expenses		80,525
Other Income/(Expense):		
Other income		9,826
Impairment on intangible assets		(2,830)
Total other income		6,996
Loss before investment and derivative activities		(9,219)
Realized and unrealized loss on investments and derivatives:		
Net realized loss on investments and derivatives		(31,517)
Net change in unrealized loss on investments and derivatives		(93,755)
Net realized and unrealized loss on investments and derivatives		(125,272)
Net loss		(134,491)
Net loss attributable to non-controlling interest		(61,313)
Net loss attributable to Highland Capital Management, L.P.	$	(73,178)

The accompanying notes are an integral part of these consolidated financial statements.

Highland Capital Management, L.P.

(A Delaware Limited Partnership)

Consolidated Statement of Changes in Partners' Capital

Year Ended December 31, 2018

(in thousands)

	General Partner	Limited Partners	Total
Partners' capital, December 31, 2017	$ 163	$ 450,014	$ 450,177
Net loss attributable to Highland Capital Management, L.P.	$ (183)	$ (72,995)	$ (73,178)
Partner distributions	$ (13)	$ (5,025)	$ (5,038)
Partners' capital, December 31, 2018	$ (33)	$ 371,994	$ 371,961

The accompanying notes are an integral part of these consolidated financial statements.

HIGHLY CONFIDENTIAL

Highland Capital Management, L.P.
(A Delaware Limited Partnership)
Consolidated Statement of Cash Flows
Year Ended December 31, 2018

(in thousands)

Cash flows from operating activities:		
Net loss	$	(134,491)
Adjustment to reconcile net loss to net cash provided from operating activities:		
Net realized loss on investments and derivative transactions		31,517
Net change in unrealized loss on investments and derivative transactions		93,755
Amortization and depreciation		1,317
Changes in assets and liabilities:		
Management and incentive fee receivable		9,468
Due from brokers		1,689
Due from affiliate		(10,989)
Other assets		4,272
Intangible assets		3,308
Accounts payable		546
Accrued and other liabilities		1,214
Due to brokers for securities purchased, not yet settled		1,886
Due to brokers		11,665
Net cash provided from operating activities		15,157
Cash flows from investing activities:		
Purchases of fixed assets and leasehold improvements, net		(67)
Purchases of investments		(195,263)
Proceeds from dispositions of investments		258,858
Proceeds from securities sold, not yet purchased		46,550
Issuance of notes receivable to affiliates		(2,400)
Proceeds from repayments of notes receivable from affiliates		3,395
Purchases of investments to cover securities sold, not yet purchased		(127,954)
Net cash used in investing activities		(16,881)
Cash flows from financing activities:		
Payments on notes payable & investment liabilities		(2,743)
Proceeds from long-term debt		38,501
Capital contributions from minority interest investors of consolidated entities		14,615
Capital withdrawals by minority interest investors of consolidated entities		(141,986)
Partner distributions		(5,060)
Net cash used in financing activities		(96,673)
Net decrease in cash and cash equivalents		(98,397)
Cash and cash equivalents		
Beginning of year		103,479
De-consolidating funds adjustment		(48)
End of year	$	5,034
Supplemental disclosure of cash flow information:		
Interest paid during the year	$	(5,629)
Taxes paid during the year		(510,961)
Investments acquired for non-cash consideration		26,018
Investments disposed for non-cash consideration		116

The accompanying notes are an integral part of these consolidated financial statements.

HIGHLY CONFIDENTIAL D-CNL000218

Highland Capital Management, L.P.
Notes to Consolidated Financial Statements
December 31, 2018

1. Description of Business

Highland Capital Management, L.P. (the "Partnership") was formed on July 7, 1997 as a limited partnership in the state of Delaware. The Partnership is a registered investment adviser under the Investment Advisers Act of 1940 that manages collateralized loan obligations ("CLOs"), hedge funds, private equity funds, and other leveraged loan transactions that are collateralized predominately by senior secured bank debt and high-yield bonds. The Partnership and its subsidiaries make direct investments in debt, equity, and other securities in the normal course of business. The Partnership's general partner is Strand Advisors, Inc. (the "General Partner"). The Partnership is owned by an unaffiliated (other than through its direct ownership) trust as well as affiliated trusts and personal holdings of the senior management of the Partnership.

As of December 31, 2018, the Partnership provided investment advisory services for eighteen CLOs, five separate accounts, one master limited partnership, and nine hedge funds or private equity structures, with total fee-earning assets under management of approximately $3.1 billion. The Partnership also provides investment services on behalf of affiliate advisors.

2. Summary of Significant Accounting Policies

The following is a summary of the significant accounting policies followed by the Partnership in preparation of its consolidated financial statements.

Basis of Accounting
The Partnership's consolidated financial statements have been prepared in accordance with U.S. generally accepted accounting principles in the United States of America ("U.S. GAAP") as set forth in the Financial Accounting Standards Board's Accounting Standards Codification and are stated in the United States Dollar.

Use of Estimates
The preparation of the consolidated financial statements in conformity with U.S. GAAP requires management to make estimates and assumptions that affect the amounts and disclosures in the consolidated financial statements. Actual results could differ from those estimates and those differences could be material.

Principles of Consolidation
The consolidated financial statements include the accounts of the Partnership and the Partnership's consolidated subsidiaries ("Consolidated Entities"), which are comprised of (i) those entities in which it has controlling investment and has control over significant operating, financial and investing decisions, (ii) those entities in which it, as the general partner, has control over significant operating, financial and investing decisions, and (iii) variable interest entities ("VIEs") in which it is the primary beneficiary as described below.

The Partnership determines whether an entity has equity investors who lack the characteristics of a controlling financial interest or does not have sufficient equity at risk to finance its expected activities without additional subordinated financial support from other parties. If an entity has either of these characteristics, it is considered a VIE and must be consolidated by its primary beneficiary, which is the party that, along with its affiliates and de facto agents, absorbs a majority of the VIEs' expected losses or receives a majority of the expected residual returns as a result of holding variable interests.

Highland Capital Management, L.P.
(A Delaware Limited Partnership)
Notes to Consolidated Financial Statements
December 31, 2018

The Partnership assesses consolidation requirements pursuant to ASU 2015-02: Consolidation, which was adopted using the modified retrospective method and resulted in an effective date of adoption of January 1, 2016.

The Partnership and its affiliate's involvement with unconsolidated VIEs is generally limited to that of an advisory services provider, and their investment, if any, represents an insignificant interest in the relevant investment entities' assets under management. The Partnership's affiliate's exposure to risk in these entities is generally limited to any capital contribution it has made or is required to make and any earned but uncollected asset based and performance fees. The Partnership has not issued any investment performance guarantees to these VIEs or their investors, except that the Partnership has agreed to subject the full value of its equity interest in Highland Prometheus Fund to dollar-for-dollar reduction to the extent the third party investor in such fund does not achieve an annual target return.

As of December 31, 2018, the net assets of the unconsolidated VIEs and the Partnership's maximum risk of loss were as follows:

(in thousands)

	Unconsolidated VIE Net Assets	Carrying Value and Maximum Risk of Loss
Sponsored investment funds	$ 206,329	$ 12,178

Consolidation of Variable Interest Entities
The Partnership consolidates the following VIEs (along with majority owned funds: Highland Diversified Credit Fund, L.P., and Highland Select Equity Fund, L.P., collectively the "Consolidated Investment Funds"), as the Partnership (or its wholly owned subsidiaries) controls the general partner of the respective entities and is responsible for the daily operations of the following entities:

- Highland Multi Strategy Credit Fund, L.P. ("Multi Strategy Master"), formerly Highland Credit Opportunities CDO, L.P., a Delaware limited partnership that commenced operations on December 15, 2005 and changed its name on August 26, 2014;
- Highland Multi-Strategy Master Fund, L.P. ("Multi-Strategy Master"), a Bermuda limited partnership that commenced operations on July 18, 2006;
- Highland Multi-Strategy Fund, L.P. ("Multi-Strat Domestic Feeder"), a Delaware limited partnership that commenced operations on July 6, 2006;
- Highland Restoration Capital Partners Offshore, L.P. ("Restoration Offshore"), a Cayman limited partnership that commenced operations on September 2, 2008;
- Highland Restoration Capital Partners, L.P. ("Restoration Onshore"), a Delaware limited partnership that commenced operations on September 2, 2008; and

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Consolidation of Majority Owned Entities
The Partnership consolidates the following entities as it has a controlling majority interest:

- 100% interest in Highland Capital Special Allocation, LLC ("HCSA"), a Delaware limited liability company that commenced operations on December 21, 2006;
- 100% interest in Highland Receivables Finance 1, LLC, a Delaware limited liability company that commenced operations on December 29, 2006;
- 100% interest in Highland Multi-Strategy Onshore Master SubFund, LLC, a Delaware limited liability company that commenced operations on July 19, 2006;
- 100% interest in Highland Multi-Strategy Onshore Master Subfund II, LLC, LLC, a Delaware limited liability company that commenced operations on February 22, 2007;
- 100% interest in Highland Brasil, LLC, a Delaware limited liability company that commenced operations on January 28, 2014;
- 100% interest in Highland Capital Management (Singapore) Pte, Ltd. ("HCM Singapore"), a company organized in the Republic of Singapore that commenced operations on April 2, 2008;
- 100% interest in Highland Capital Management Korea, Ltd. ("HCM Korea"), a company organized in the Republic of Korea that commenced operations on August 2, 2012;
- 100% interest in Highland Capital Management Latin America, L.P., ("HCM Latin America"), a Cayman company that was formed on April 13, 2017;
- 100% interest in HE Capital, LLC, a Delaware limited liability company that was formed on March 22, 2007;
- 100% interest in De Kooning, Ltd, a Cayman company that was formed on December 1, 2012;
- 100% interest in Hirst, Ltd., a Cayman company that was formed on December 1, 2012;
- 100% interest in Hockney, Ltd., a Cayman company that was formed on December 1, 2012;
- 100% interest in Oldenburg, Ltd., a Cayman company that was formed on December 1, 2012;
- 100% interest in Eames, Ltd, a Cayman company that was formed on December 12, 2012;
- 99.9% interest in Penant Management, L.P., a Delaware limited partnership that was formed on December 12, 2012;
- 100% interest in Pollack, Ltd., a Cayman company that was formed on December 1, 2012;
- 100% interest in Warhol, Ltd., a Cayman company that was formed on December 1, 2012;

- 100% interest in HCREF-I Holding Corp., a Delaware company that was formed on December 13, 2012;
- 100% interest in HCREF-XI Holding Corp., a Delaware company that was formed on December 13, 2012;
- 100% interest in HCREF-XII Holding Corp., a Delaware company that was formed on December 13, 2012;
- 100% interest in Highland ERA Management, LLC, a Delaware limited liability company that was formed on February 1, 2013;
- 100% interest in The Dondero Insurance Rabbi Trust., a trust that was formed on May 27, 2004;
- 100% interest in The Okada Insurance Rabbi Trust, a trust that was formed on May 27, 2004;
- 100% interest in Highland Employee Retention Assets ("HERA"), LLC, a Delaware limited liability company that was formed on October 26, 2009;
- 100% interest in Highland Diversified Credit Fund, L.P. ("Highland Offshore Partners"), a Delaware limited partnership which began operations on February 29, 2000 and was organized for the sole purpose of investing substantially all of its assets in Highland Offshore Partners, L.P.;
- 99.6% interest in Highland Select Equity Master Fund, LP, and Highland Select Equity Fund, LP Delaware limited partnerships which began operations on January 1, 2002 and was organized for the purpose of investing and trading in large and small cap stocks that trade for less than intrinsic value;
- 100% interest in Highland Fund Holdings, LLC, a Delaware limited liability company that was formed on May 24, 2016;
- 100% interest in Maple Avenue Holdings, LLC, a Texas limited liability company formed on August 17, 2016;
- 100% interest in Highland HCF Advisor, Ltd., a Cayman company that was formed on October 27, 2017;
- 100% interest in Asury Holdings, LLC, a Delaware limited liability company formed on February 14, 2017 and;
- 100% interest in Highland CLO Management, Ltd., a Cayman company that was formed on October 27, 2017.

All inter-partnership and intercompany accounts and transactions involving the above listed Consolidated Entities have been eliminated in all of the aforementioned consolidating schedules. All the Consolidated Investment Funds are, for U.S. GAAP purposes, investment companies under the American Institute of Certified Public Accountants (AICPA) Audit and Accounting Guide - Investment Companies. The Partnership has retained the specialized accounting of these funds required under U.S. GAAP.

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The following table includes a rollforward of non-controlling interests from December 31, 2017, to December 31, 2018.

(in thousands)

Noncontrolling interest, December 31, 2017	$ 424,844
Net loss attributable to noncontrolling interest	(61,313)
Noncontrolling partner contributions	14,615
Noncontrolling partner distributions	(58,061)
Noncontrolling interest of deconsolidated entities	(3,218)
Noncontrolling interest, December 31, 2018	$ 316,867

Investment Transactions
Investment transactions are recorded on a trade date basis. Investments in securities are valued at market or fair value at the date of the consolidated financial statements with the resulting net unrealized appreciation or depreciation reflected in the Consolidated Statement of Income. Realized gains and losses on the transactions are determined based on either the first-in, first-out or specific identification method.

See Note 5 for the Partnership's fair value process and hierarchy disclosures.

Management and Incentive Fee Revenue
The Partnership recognizes revenue as earned in connection with services provided under collateral and investment management agreements. Under these agreements, the Partnership earns management fees calculated as a percentage of assets under management or net asset value. The Partnership also has an opportunity to earn additional incentive fees and incentive allocations related to certain management agreements depending ultimately on the financial performance of the underlying assets the Partnership manages. During the year ended December 31, 2018, the Partnership and its Consolidated Entities recognized management fees and incentive fees of approximately $36.6 million and $0.1 million, respectively.

Shared Services Revenue
The Partnership recognizes revenue as earned in connection with services provided to related parties under various shared services agreements. Under these agreements, the Partnership earns fees for services including, but not limited to, back office support functions, marketing, and investment advisory services. During the year ended December 31, 2018, the Partnership and its Consolidated Entities recognized shared services revenue of approximately $9.2 million, which has been presented in *Shared services fees* in the Consolidated Statement of Income. See further discussion in Note 8.

Income and Expense Recognition
Interest on currently paying debt instruments is accrued as earned and dividend income and dividends on securities sold, not yet purchased are recorded on the ex-dividend date, net of withholding taxes. In certain instances where the asset has defaulted or some amount of the interest payment is deemed uncollectable, interest is recognized when received. Discounts and premiums associated with purchases of investments are accreted and amortized to interest income, except for deep-discounted debt where ultimate collection of interest and principal may be in doubt. Such accretion/amortization is calculated on an effective-yield basis over the life of the investment. Amendment fees are recognized when agreed to by the underlying company and all settlement contingencies are met. Operating expenses, including interest on securities sold short, not yet purchased, are recorded on the accrual basis as incurred.

Income Taxes
The Partnership is not subject to federal income taxes, and therefore, no provision has been made for such taxes in the accompanying consolidated financial statements. Income taxes are the responsibility of the partners. Certain consolidated subsidiaries are subject to federal income taxes.

Certain entities that are included in these consolidated financial statements are subject to federal and/or state income taxes. Deferred tax assets and liabilities are recognized for the future tax consequences attributable to differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax bases. Deferred tax assets and liabilities are measured using enacted tax rates expected to apply to taxable income in the years in which those temporary differences are expected to be recovered or settled. The effect on deferred tax assets and liabilities of a change in tax rates is recognized in the period that includes the enactment date. See further discussion in Note 13.

Cash and Cash Equivalents
Cash and cash equivalents consist of cash held at U.S. and foreign banks, deposits with original maturities of less than 90 days, and money market funds. Cash equivalents are carried at cost, which approximates market value. At December 31, 2018, the Partnership and Consolidated Entities held cash balances at certain financial institutions in excess of the federally insured limit of $0.3 million. The Partnership and Consolidated Entities regularly monitor the credit quality of these institutions.

Notes Receivable
Notes receivable consists of secured promissory notes with maturities greater than one year. When available, the Partnership uses observable market data, including pricing on recent closed transactions to value notes. When appropriate, these notes may be valued using collateral values. Adjustments to the value may be performed in circumstances where attributes specific to the collateral exist suggesting impairment.

Other Intangible Assets
Goodwill and other intangible assets are recorded on the Consolidated Balance Sheet at current carrying values. The Partnership and its Consolidated Entities perform an impairment test on an annual basis. Any impairment in the value of other intangible assets is accounted for in the year when it occurs.

Fixed Assets and Leasehold Improvements
Fixed assets and leasehold improvements are carried at cost, less accumulated depreciation. Depreciation is provided using the straight-line method over the shorter of the estimated useful life of the assets or the lease term.

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The Partnership and its Consolidated Entities are depreciating fixed assets as follows:

	Period
Leasehold improvements	Lease term
Buildings	29 - 40 years
Furniture and fixtures	7 years
Computer and equipment	3 - 5 years
Computer software	3 years

Securities Sold, Not Yet Purchased
Certain of the Partnership's Consolidated Investment Funds engage in "short sales" as part of their investment strategies. Short selling is the practice of selling securities that are borrowed from a third party. The Consolidated Investment Funds are required to return securities equivalent to those borrowed for the short sale at the lender's demand.

Pending the return of such securities, the Consolidated Investment Funds deposit with the lender as collateral the proceeds of the short sale plus additional cash. The amount of the required deposit, which earns interest, is adjusted periodically to reflect any change in the market price of the securities that the Consolidated Investment Funds are required to return to the lender. A gain (which cannot exceed the price at which the Consolidated Investment Funds sold the security short) or a loss (which theoretically could be unlimited in size) will be settled upon termination of a short sale.

Due to/from Brokers
Due to and from broker balances recorded on the Consolidated Balance Sheet include liquid assets maintained with brokers and counterparties for margin account balances and the amounts due for or due from the settlement of purchase and sales transactions. Certain due to and from broker balances have been reported on a net-by-counterparty basis where, in accordance with contractual rights and the Partnership's opinion, there is a right of offset in the event of bankruptcy or default by a counterparty.

Options Contracts
The Partnership and the Consolidated Entities may purchase and write call and put options to gain market exposure or to hedge investments. A call option gives the purchaser of the option the right (but not the obligation) to buy, and obligates the seller to sell (when the option is exercised), the underlying position at the exercise price at any time or at a specified time during the option period. A put option gives the holder the right to sell and obligates the writer to buy the underlying position at the exercise price at any time or at a specified time during the option period. When the Partnership or the Consolidated Entities purchase (write) an option, an amount equal to the premium paid (received) by the entity is reflected as an asset (liability). The amount of the asset (liability) is subsequently marked-to-market to reflect the current market value of the option purchased (written). When a security is purchased (or sold) through an exercise of an option, the related premium paid (or received) is added to (or deducted from) the basis of the security acquired or deducted from (or added to) the proceeds of the security sold. When an option expires (or the Partnership or the Consolidated Entities enter into a closing transaction), the entity realizes a gain or loss on the option to the extent of the premiums received or paid (or gain or loss to the extent the cost of the closing transaction exceeds the premium received or paid). Exercise of a written option could result in the Partnership or the Consolidated Entities purchasing a security at a price different from the current market value.

The Partnership and the Consolidated Entities are exposed to counterparty risk from the potential that a seller of an option contract does not sell or purchase the underlying asset as agreed under the terms of the option contract. The maximum risk of loss from counterparty risk to the Partnership and the Consolidated Entities is the greater of the fair value of its open option contracts or the premiums paid to purchase the open option contracts. The Partnership and the Consolidated Entities consider the credit risk of the intermediary counterparties to its option transactions in evaluating potential credit risk.

Margin Transactions
To obtain more investable cash, certain of the Consolidated Entities may use various forms of leverage including purchasing securities on margin. A margin transaction consists of purchasing an investment with money loaned by a broker and agreeing to repay the broker at a later date. Interest expense on the outstanding margin balance is based on market rates at the time of the borrowing.

Withdrawals Payable
Withdrawals are recognized as liabilities, net of incentive allocations, when the amount requested in the withdrawal notice becomes fixed and determinable. This generally may occur either at the time of receipt of the notice, or on the last day of a fiscal period, depending on the nature of the request. As a result, withdrawals paid after the end of the year, but based upon year-end capital balances are reflected as withdrawals payable at December 31, 2018. Withdrawal notices received for which the dollar amount is not fixed remains in capital until the amount is determined. At December 31, 2018, the Consolidated Investment Funds had withdrawals payable of $57.0 million.

Foreign Currency Transactions
The Partnership's subsidiaries HCM Singapore and HCM Korea use Singapore dollars and Korean won, respectively, as their functional currency. All foreign currency asset and liability balances are presented in U.S. dollars in the consolidated financial statements, translated using the exchange rate as of December 31, 2018. Revenues and expenses are recorded in U.S. dollars using an average exchange rate for the relative period. Foreign currency transaction gains and losses resulting from transactions outside of the functional currency of an entity are included in *Other income* on the Consolidated Statement of Income.

The Consolidated Entities do not isolate that portion of the results of operations resulting from changes in foreign exchange rates or investment or fluctuations from changes in market prices of securities held. Such fluctuations are included within the *Net realized and unrealized gains or loss from investments* on the Consolidated Statement of Income.

Life Settlement Contracts
One of the Consolidated Investment Funds, through a subsidiary, holds life settlement contracts and accounts for them using the fair value method. These contracts are recorded as a component of “Investments at fair value” on the Consolidated Balance Sheet. Realized and unrealized gains (losses) on the contracts are recorded in the Consolidated Income Statement. Cash flows relating to the purchase and sale of the contracts are recorded as a component of *Purchase of investments* and *Proceeds from dispositions of investments* on the Consolidated Statement of Cash Flows. At December 31, 2018, the Consolidated Investment Fund was invested in 13 policies, which had a total face value of approximately $145.3 million and a fair value of $35.7 million.

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Financing
The Partnership and its Consolidated Entities may finance the acquisition of its investments in securities and loans through financing arrangements which are classified in Notes payable and Investment liabilities on the Consolidated Balance Sheet. The Partnership and its Consolidated Entities recognize interest expense on all borrowings on the accrual basis in the Consolidated Statement of Income.

Financial Instruments
The Partnership and its Consolidated Entities determine fair value of financial instruments as required by U.S. GAAP. The carrying amounts for cash and cash equivalents, receivables, accounts payable, withdrawals payable, debt and notes payable, due to brokers, investment liabilities and accrued liabilities approximate their fair values. For fair value of investment, see Note 5.

Accounts Payable, Accrued and Other Liabilities
Expenses are recorded on an accrual basis, as incurred. Current liabilities are included in Accounts payable. Long-term liabilities are included in Accrued and other liabilities.

Partners' Capital
The Partnership agreement requires that income or loss of the Partnership be allocated to the partners in accordance with their respective partnership interests.

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3. Fixed Assets and Leasehold Improvements

Fixed assets and leasehold improvements are comprised of the following as of December 31, 2018:

(in thousands)

Leasehold improvements	$	7,193
Buildings		2,595
Furniture and fixtures		2,796
Computer and equipment		2,863
Computer software		331
Accumulated depreciation		(11,197)
	$	4,581

Depreciation expense in 2018 totaled approximately $1.3 million for the Partnership and its subsidiaries.

4. Investments

Detailed below is a summary of the Partnership and its Consolidated Entities' investments at December 31, 2018:

(in thousands)	Amortized Cost/Cost	Fair Value
Common equity securities	$ 423,306	$ 535,374
Closed-end mutual funds	100,788	94,845
Floating rate syndicated bank loans	142,586	72,622
Real Estate Investment Trusts	28,271	57,475
Life settlement contracts	65,276	35,744
Limited partnership interests	24,892	30,521
Rights & warrants	26,661	7,446
LLC interests	10,629	2,775
Preferred equity	258	8,282
Asset-backed securities	7,350	102
Participation interests	6,590	-
Corporate bonds	85,421	-
Total investments	$ 922,027	$ 845,186

	Proceeds	Fair Value
Securities sold, not yet purchased	$ (26,135)	$ (32,357)

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5. Fair Value of Financial Instruments

Fair Value Measurement
U.S. GAAP defines fair value as the price an entity would receive to sell an asset or pay to transfer a liability in an orderly transaction between market participants as of the measurement date. The standard requires fair value measurement techniques to reflect the assumptions market participants would use in pricing an asset or liability and, where possible, to maximize the use of observable inputs and minimize the use of unobservable inputs. It also establishes the following hierarchy that prioritizes the valuation inputs into three broad levels:

- Level 1 – Valuation based on unadjusted quoted prices in active markets for identical assets and liabilities that the Partnership and the Consolidated Entities have the ability to access as of the measurement date. Valuations utilizing Level 1 inputs do not require any degree of judgment.

- Level 2 – Valuations based on (a) quoted prices for similar instruments in active markets; (b) quoted prices for identical or similar instruments in markets that are not active that are reflective of recent market transactions; or (c) models in which all significant inputs are observable, either directly or indirectly.

- Level 3 – Valuations based on indicative quotes that do not reflect recent market transactions and models or other valuation techniques in which the inputs are unobservable and significant to the fair value measurement, which includes situations where there is little, if any, market activity for the asset or liability.

The availability of observable inputs varies among financial instruments and is affected by numerous factors, including the type of instruments, the period of time in which the instrument has been established in the marketplace, market liquidity for an asset class and other characteristics particular to a transaction. When the inputs used in a valuation model are unobservable, management is required to exercise a greater degree of judgment to determine fair value than it would for observable inputs. For certain instruments, the inputs used to measure fair value may fall into different levels of the hierarchy discussed above. In those cases, the instruments are categorized for disclosure purposes based on the lowest level of inputs that are significant to their fair value measurements.

The Partnership and Consolidated Entities use prices and inputs that are current as of the measurement dates. The Partnership also considers the counterparty's non-performance risk when measuring the fair value of its investments.

During periods of market dislocation, the ability to observe prices and inputs for certain instruments may change. These circumstances may result in the instruments being reclassified to different levels within the hierarchy over time. They also create an inherent risk in the estimation of fair value that could cause actual amounts to differ from management's estimates. Whenever possible, the Partnership and its Consolidated Entities use actual market prices or relevant observable inputs to establish the fair value of its assets and liabilities. In cases where observable inputs are not available, the Partnership and Consolidated Entities develop methodologies that provide appropriate fair value estimates. These methodologies are reviewed on a continuous basis to account for changing market conditions.

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The Partnership has established policies, as described above, processes and procedures to ensure that valuation methodologies for investments and financial instruments that are categorized within all levels of the fair value hierarchy are fair and consistent. A Pricing Committee has been established to provide oversight of the valuation policies, processes and procedures, and is comprised of various personnel from the Partnership. The Pricing Committee meets monthly to review the proposed valuations for investments and financial instruments. The Pricing Committee is responsible for establishing the valuation policies and evaluating the overall fairness and consistent application of those policies.

As of December 31, 2018, the Partnership and its Consolidated Entities' investments consisted primarily of common equity securities, closed-end mutual funds, floating rate syndicated bank loans, real estate investment trusts, life settlement contracts, limited partnership interests, rights and warrants, LLC interests, asset-backed securities, and preferred equity. In addition, certain of the Consolidated Entities engage in short sale transactions. The majority of these financial instruments are not listed on national securities exchanges and management is required to use significant judgment to estimate their values.

Public Equity Investments
Publicly traded equities, including closed-end mutual funds and publicly traded REITs are valued at the closing price at the date of the financial statements. The fair value of equity investments that are not traded on national exchanges or through real-time quotation services are derived from methodologies that provide appropriate fair value estimates. Equity investments with quotes that are based on actual trades with a sufficient level of activity on or near the valuation date are classified as Level 2 assets.

Private Equity Investments
The Partnership and Consolidated Entities hold private equity investments which often resulted from the restructuring of other instruments which are classified as common equity securities. These assets are valued using market data obtained from a third-party pricing service and/or quotes from other parties dealing in the specific assets when available. In the event both a reliable market quote and third-party pricing service data are not available for such assets, the Partnership and Consolidated Entities will fair value the assets using various methodologies, as appropriate for individual investments, including comparable transaction multiples, comparable trading multiples, and/or discounted cash flow analysis. When utilizing comparable trading multiples, the Investment Manager determines comparable public companies (peers) based on industry, size, developmental stage, strategy, etc., and then calculates a trading multiple for each comparable company identified by using either a price to book ratio based on publically available information about the underlying comparable company or by dividing the enterprise value of the comparable company by its earnings before interest, taxes, depreciation and amortization (EBITDA) or similar metrics. In certain instances, the inputs used in the calculation of the trading multiples may vary based on the industry or development stage of the company. A multiple determined by the Investment Manager to be within a reasonable range as calculated amongst its peers is then applied to the underlying company's price to book ratio or EBITDA (which may be normalized to adjust for certain nonrecurring events), to calculate the fair value of the underlying company. The fair value may be further adjusted for entity specific facts and circumstances. Private equity investments with quotes that are based on actual trades with a sufficient level of activity on or near the valuation date are classified as Level 2 assets. Private equity investments that are priced using quotes derived from implied values, bid/ask prices for trades that were never consummated, or a limited amount of actual trades are classified as Level 3 assets because the inputs used by the brokers and pricing services to derive the values are not readily observable.

The Consolidated Entities also invest in warrant securities of publicly–traded companies. The fair value of these investments is based on an option pricing model. The option model bases warrant value on a number of factors including underlying equity price as of the valuation date, strike price, exercise date, time to expiration and volatility. Warrant investments that have observable volatility are classified as Level 2 assets. Warrant investments where volatility inputs are not observable are valued using an estimated volatility input, and are classified as Level 3 assets.

Debt Securities
The Partnership and Consolidated Entities invest in various types of debt, including floating rate syndicated bank loans, which are almost exclusively valued using market data obtained from one or more third-party pricing services or brokers. In instances where a third-party pricing service does not provide pricing for a specific asset, the Partnership and Consolidated Entities first seek to obtain reliable market quotes from other parties dealing in the specific asset. Loans and bonds with quotes that are based on actual trades with a sufficient level of activity on or near the valuation date are classified as Level 2 assets. Loans and bonds that are priced using quotes derived from implied values, bid/ask prices for trades that were never consummated, or a limited amount of actual trades are classified as Level 3 assets because the inputs used by the brokers and pricing services to derive the values are not readily observable.

Absent both a reliable market quote and third-party pricing service date, the Partnership and Consolidated Entities may use various models to establish an estimated exit price. These investments are classified as Level 3 assets. Models used for debt securities are primarily based on identifying comparable assets for which market data is available and pricing the target asset consistent with the yields of the comparable assets. As circumstances require, other industry accepted techniques may be used in modeling debt assets.

Life Settlement Contracts
Life Settlement contracts are valued using mortality tables and interest rate assumptions that are deemed by management to be appropriate for the demographic characteristics of the parties insured under the policies. Management generally utilizes an independent third party firm to perform these calculations and provide the relevant inputs. Management evaluates the results based on visible market activity and market research. Since these inputs are not readily observable, these contracts are classified as Level 3 assets.

At December 31, 2018, the Consolidated Entities' investments in life settlement contracts consisted of the following:

(U.S. dollars in thousands, except number of policies)

Remaining Life Expectancy (in years)	Number of Policies	Face Value	Fair Value
1-2	-	$ -	$ -
2-3	3	33,785	16,940
3-4	-	-	-
4-5	-	-	-
Thereafter	10	111,500	18,804
Total	13	$ 145,285	$ 35,744

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Asset-Backed Securities
The Consolidated Entities invest in a variety of asset-backed securities. Asset-backed securities are generally valued based on complex cash flow models that analyze the cash flows generated by the investment's underlying assets after adjusting for expected default rates, prepayment rates, collateral quality, market liquidity among other factors. These models are then adjusted based on spreads available in the market place from various research firms, dealers, and trading activity. The Consolidated Entities generally utilize an independent third parties to provide the relevant inputs. The Consolidated Entities evaluate the results based on visible market activity and market research. When appropriate, the Consolidated Entities may apply other techniques based on a specific asset's characteristics. Asset-backed securities with quotes that are based on actual trades with a sufficient level of activity on or near the valuation date are classified as Level 2 assets. Asset-backed securities that are priced using quotes derived from implied values, bid/ask prices for trades that were never consummated, or a limited amount of actual trades are classified as Level 3 assets because the inputs used by the brokers and pricing services to derive the values are not readily observable.

Limited Partnership and LLC Interests
The Partnership and its Consolidated Entities hold limited partnership and LLC interests in various entities. These assets are valued as the net asset value of the limited partnership interests because the entities utilize fair value accounting for their own financial statements. These interests are classified as Level 3 assets.

The Partnership categorizes investments recorded at fair value in accordance with the hierarchy established under U.S. GAAP. The following table provides a summary of the financial instruments recorded at fair value on a recurring basis by level within the hierarchy as of December 31, 2018:

(in thousands)

Assets	**Level 1**	**Level 2**	**Level 3**	**Total Fair Value at 12/31/18**
Common equity securities	$ 139,236	$ 296,695	$ 99,443	$ 535,374
Closed-end mutual funds	94,845	-	-	94,845
Floating rate syndicated bank loans	-	21	72,601	72,622
Real Estate Investment Trusts	46,594	10,881	-	57,475
Life settlement contracts	-	-	35,744	35,744
Limited partnership interests	-	-	30,521	30,521
Rights & warrants	20	123	7,303	7,446
LLC interests	-	-	2,775	2,775
Preferred equity	8,282	-	-	8,282
Asset-backed securities	-	-	102	102
Total	$ 288,977	$ 307,720	$ 248,489	$ 845,186
Liabilities				
Common stock & Options sold short	$ 32,357	$ -	-	$ 32,357

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The classification of a financial instrument within Level 3 is based on the significance of the unobservable inputs to the overall fair value measurement. The following table provides a roll forward of the investments classified within Level 3 for the year ended December 31, 2018:

(in thousands)

	Fair Value at December 31, 2017	Purchases	Sales and Maturities	Restructures	Transfers Into Level 3	Net Realized Gains / (Losses)	Net Unrealized Gains / (Losses)	Fair Value at December 31, 2018
Common equity securities	$ 141,201	$ 1,058	$ (116)	$ -	$ -	$ -	$ (42,700)	$ 99,443
Floating rate syndicated bank loans	64,307	12,146	(1,952)	-	-	(2,799)	899	72,601
Life settlement contracts	28,959	7,353	-	-	-	-	(568)	35,744
Limited partnership interests	27,863	4,600	(4,766)	-	928	351	1,545	30,521
Rights & w arrants	8,013	-	-	-	-	-	(710)	7,303
LLC interests	3,352	165	(1,312)	-	-	985	(415)	2,775
Asset-backed securities	6,477	1	(3,051)	(2,171)	(928)	(39,580)	39,354	102
	$ 280,172	**$ 25,323**	**$ (11,197)**	**$ (2,171)**	**$ -**	**$ (41,043)**	**$ (2,595)**	**$ 248,489**

All net realized and unrealized gains and losses in the tables above are reflected in the accompanying Consolidated Income Statement. Approximately $41.8 million of the net unrealized losses presented in the table above relate to investments held as of December 31, 2018.

The following page includes a summary of significant unobservable inputs used in the fair valuations of assets and liabilities categorized within Level 3 of the fair value hierarchy.

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Category	Ending Balance at 12/31/2018	Valuation Technique	Unobservable Inputs	Input Value(s)
Common equity securities	$ 99,443	Multiples Analysis	Multiple of EBITDA	2.5x - 7.0x
			Cap Rate	8.0 - 10.0%
			Multiple of Revenue	0.20x - 0.30x
			Liquidity Discount	25%
		Discounted Cash Flow	Discount Rate	10.5 - 40.0%
			Terminal Multiple	1.25x - 6.50x
			Long-Term Growth Rate	2%
		Transaction Analysis	Multiple of EBITDA	4.0x - 7.75x
			Cap Rate	8 - 10%
		Bid Indications	Enterprise Value ($mm)	$720.0 - $765.0
		Impairment Analysis	Recoverable Value	0%
		Appraisal	N/A	N/A
Floating rate syndicated bank loans	72,601	Multiples Analysis	Multiple of EBITDA	2.0x - 5.0x
			Multiple of Revenue	0.35x - 0.50x
		Escrow Recovery Analysis	Risk Discount	40%
		Appraisal	N/A	N/A
		Bid Indications	Transaction Price	10%
		Sales Proceeds Analysis	Discount Rate	6.0%
		Discounted Cash Flow	Discount Rate	12.3% - 40.0%
			Terminal Multiple	1.25x
			Spread Adjustment	0.0% - 6.3%
Life settlement contracts	35,744	Discounted Cash Flow	Discount Rate	15.0 - 16.0%
Limited partnership interests	30,521	Net Asset Value	Various models including liquidation analysis, and third-party pricing vendor	N/A
Rights & warrants	7,303	Discounted Cash Flow	Discount Rate	11.0% - 17.0%
			Terminal Multiple	6.5x
		Multiples Analysis	Multiple of EBITDA	6.0x - 7.0x
		Transaction Analysis	Multiple of EBITDA	7.25x - 7.75x
		Bid Indication of Value	Enterprise Value (in millions)	$720.0 - $765.0
LLC interests	2,775	Discounted Cash Flow	Discount Rate	6%
		Adjusted Appraisal	Minority Discount	25%
		Bid Indication	Total Purchase Price (in millions)	$130.00
Asset-backed securities	102	Adjusted NAV	N/A	N/A
Total	$ 248,489			

In addition to the unobservable inputs utilized for various valuation methodologies, the Partnership often uses a combination of two or more valuation methodologies to determine fair value for a single holding. In such instances, the Partnership assesses the methodologies and ascribes weightings to each methodology. The selection of weightings is an inherently subjective process, dependent on professional judgement. These selections may have a material impact to the concluded fair value for such holdings.

The significant unobservable inputs used in the fair value measurement of the Partnership's assets could fluctuate significantly, resulting in a significantly higher or lower fair value measurement.

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6. Financial Instruments with Concentration of Credit and Other Risks

Financial Instruments
The Partnership and its Consolidated Entities' investments include, among other things, equity securities, debt securities (both investment and non-investment grade) and bank loans. The Consolidated Entities may also invest in derivative instruments, including total return and credit default swaps. Investments in these derivative instruments throughout the year subject the Consolidated Entities to off-balance sheet market risk, where changes in the market or fair value of the financial instruments underlying the derivative instruments may be in excess of the amounts recognized in the Consolidated Balance Sheet.

Market Risk
Market risk represents the potential loss that may be incurred by the Partnership and its Consolidated Entities due to a change in the market value of its investments or the value of the investments underlying swap agreements. The Partnership and its Consolidated Entities' exposure to market risk is affected by a number of macroeconomic factors, such as interest rates, availability of credit, inflation rates, economic uncertainty and changes in laws and regulations. These factors may affect the level and volatility of securities prices and the liquidity of the Partnership and its Consolidated Entities investments. Volatility or illiquidity could impair the Partnership and its Consolidated Entities performance or result in losses. The Partnership and its Consolidated Entities may maintain substantial trading positions that can be adversely affected by the level of volatility in the financial markets. The performance of life settlement contracts may be adversely impacted by the under estimation of mortality and other rates.

Credit Risk
Credit risk is the potential loss the Partnership and its Consolidated Entities may incur as a result of the failure of a counterparty or an issuer to make payments according to the terms of a contract. Because the Consolidated Entities enter into over-the-counter derivatives such as swaps, it is exposed to the credit risk of their counterparties. To limit the credit risk associated with such transactions, the Consolidated Entities execute transactions with financial institutions that the Investment Manager believes to be financially viable.

Liquidity Risk
The Consolidated Entities' limited partner interests have not been registered under the Securities Act of 1933 or any other applicable securities law. There is no public market for the interests, and neither the Consolidated Entities nor their manager expects such a market to develop.

Business Risk
The Partnership provides advisory services to the Consolidated Entities. Consolidated Entities could be materially affected by the liquidity, credit and other events of the Partnership.

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High Yield Bonds and Loans
The Partnership and its Consolidated Entities' investment portfolios consist of floating rate syndicated bank loans and fixed income securities that are not listed on a national securities exchange. These investments trade in a limited market and it may not be possible to immediately liquidate them if needed. In addition, certain of the Partnership and its Consolidated Entities' investments have resale or transfer restrictions that further reduce their liquidity. Because of the inherent uncertainty of these investments, the Investment Manager's best estimates may differ significantly from values that would have been used had a broader market for the investments existed.

When the Partnership and its Consolidated Entities purchase a senior secured syndicated bank loan, it enters into a contractual relationship directly with the corporate borrower, and as such, is exposed to certain degrees of risk, including interest rate risk, market risk and the potential non-payment of principal and interest, including default or bankruptcy of the corporate borrower or early payment by the corporate borrower. Typically, senior secured syndicated bank loans are secured by the assets of the corporate borrower and the Partnership and its Consolidated Entities have a policy of regularly reviewing the adequacy of each corporate borrower's collateral.

The Partnership and its Consolidated Entities may invest in high-yield bonds that have been assigned lower rating categories or are not rated by the various credit rating agencies. Bonds in the lower rating categories are generally considered to be speculative with respect to the issuer's ability to repay principal and pay interest. They are also subject to greater risks than bonds with higher ratings in the case of deterioration of general economic conditions. Due to these risks, the yields and prices of lower-rated bonds are generally volatile, and the market for them is limited, which may affect the ability to liquidate them if needed.

Debt Obligations
The Partnership and its Consolidated Entities' investment portfolio consists of collateralized loan obligations that are not listed on a national securities exchange. These investments trade in a limited market and it may not be possible to immediately liquidate them if needed. Because of the inherent uncertainty of these investments, the Partnership's best estimates may differ significantly from values that would have been used had broader market for the investments existed.

Distressed Investments
A portion of the high yield corporate bonds and senior secured syndicated bank loans in which the Partnership and its Consolidated Entities invest have been issued by distressed companies in an unstable financial condition that have experienced poor operating performance and may be involved in bankruptcy or other reorganization and liquidation proceedings. These investments have substantial inherent risks. Many of these distressed companies are likely to have significantly leveraged capital structures, which make them highly sensitive to declines in revenue and to increases in expenses and interest rates. The leveraged capital structure also exposes the companies to adverse economic factors, including macroeconomic conditions, which may affect their ability to repay borrowed amounts on schedule.

Corporate Bonds, Preferred Securities, and Loans
The Consolidated Entities may invest in corporate bonds, floating rate syndicated bank loans, and preferred securities which are rated in the lower rating categories by the various credit rating agencies (or in comparable non-rated securities). Securities in the lower rating categories are subject to greater risk of loss of principal and interest than higher-rated securities and are generally considered to be predominantly speculative with respect to the issuer's capacity to pay interest and repay principal. They are also subject to greater risks than securities with higher ratings in the case of deterioration of general economic conditions. Because of these greater risks associated with the lower-rated securities, the yields and prices of such securities may be more volatile than those for higher-rated securities. The market for lower-rated securities is thinner and less active than that for higher-rated securities, which could adversely affect the prices at which these securities may be sold by the Consolidated Entities.

Limited Diversification
The Investment Manager attempts to diversify the Consolidated Entities' investments. However, the Consolidated Entities' portfolios could become significantly concentrated in any one issuer, industry, sector strategy, country or geographic region, and such concentration of credit risk may increase the losses suffered by the Consolidated Entities. In addition, it is possible that the Investment Manager may select investments that are concentrated in certain classes of financial instruments. This limited diversity could expose the Consolidated Entities to losses that are disproportionate to market movements as a whole.

At December 31, 2018, the Consolidated Entities' investments were predominantly concentrated in the United States and Cayman Islands.

Exit Difficulties
The Partnership and its Consolidated Entities cannot assure investors that it will be able to exit its investments by sale or other disposition at attractive prices, if at all. The mergers and acquisitions and public securities markets are highly cyclical, which means that the Consolidated Entities' investments, even its best performing investments, may be illiquid for extended periods of time despite the Consolidated Entities' efforts to identify attractive exit opportunities. Additionally, a significant portion of the Consolidated Entities' assets at any time will likely consist of debt obligations and other securities that are thinly-traded, for which no market exists and/or are restricted as to their transferability under applicable law and/or documents governing particular transactions of the Consolidated Entities. In some cases, the Consolidated Entities may be unable to realize an investment prior to the date on which the Consolidated Entities are scheduled to terminate and/or have to sell or otherwise dispose of one or more investments on disadvantageous terms as a result of the Consolidated Entities' termination, or distribute such investments in kind.

Custody Risk
The clearing operations for the Partnership and its Consolidated Entities are provided by major financial institutions. In addition, all of the Partnership and its Consolidated Entities' cash and investments are held with banks or brokerage firms, which have worldwide custody facilities and are members of all major securities exchanges. The Partnership or its Consolidated Entities may lose all or a portion of the assets held by these banks or brokerage firms if they become insolvent or fail to perform pursuant to the terms of their obligations. While both the U.S. Bankruptcy Code and the Securities Investor Protection Act of 1970 seek to protect customer property in the event of a broker-dealer's failure, insolvency or liquidation, the Partnership and its Consolidated Entities might be unable to recover the full value of their assets or incur losses due to their assets being unavailable for a period of time.

Leverage Risk
The Consolidated Entities may borrow funds from brokers, banks and other lenders to finance its trading operations. The use of leverage can, in certain circumstances, magnify the losses to which the Consolidated Entities' investment portfolio may be subject. The use of margin and short-term borrowings creates several risks for the Consolidated Entities. If the value of the Consolidated Entities' securities fall below the margin level required by a counterparty, additional margin deposits would be required. If the Consolidated Entities are unable to satisfy a margin call, the counterparty could liquidate the Consolidated Entities' positions in some or all of the financial instruments that are in the account at the prime broker and cause the Consolidated Entities to incur significant losses. In addition, to the extent the Consolidated Entities have posted excess collateral for margin transactions, there is a risk that the counterparty will fail to fulfill its obligation to return the full value of that collateral.

The failure to satisfy a margin call, or the occurrence of other material defaults under margin or other financing agreements, may trigger cross-defaults under the Consolidated Entities' agreements with other brokers, lenders, clearing firms or other counterparties, multiplying the adverse impact to the Consolidated Entities. In addition, because the use of leverage allows the Consolidated Entities to control positions worth significantly more than its investment in those positions, the amount that the Consolidated Entities may lose in the event of adverse price movements is high in relation to the amount of their investment.

In the event of a sudden drop in the value of the Consolidated Entities' assets, the Consolidated Entities may not be able to liquidate assets quickly enough to satisfy their margin or collateral requirements. As a result, the Consolidated Entities may become subject to claims of financial intermediaries, and such claims could exceed the value of its assets. The banks and dealers that provide financing to the Consolidated Entities have the ability to apply discretionary margin, haircut, and financing and collateral valuation policies. Changes by banks and dealers in any of the foregoing may result in large margin calls, loss of financing and forced liquidations of positions and disadvantageous prices.

Foreign Currency Risk
The Partnership and its Consolidated Entities may invest in securities or maintain cash denominated in currencies other than the U.S. dollar. The Partnership and its Consolidated Entities are exposed to risk that the exchange rate of the U.S. dollar relative to other currencies may change in a manner that has an adverse effect on the reported value of the Partnership and its Consolidated Entities' assets and liabilities denominated in currencies other than the U.S. dollar.

Concentration of Investments
At December 31, 2018, the Consolidated Entities' investments and derivative contracts were predominantly concentrated in the United States and Cayman Islands and across several industries.

Litigation Risk
The Partnership and its Consolidated Entities are periodically subject to legal actions arising from the ordinary course of business. The ultimate outcome of these cases is inherently uncertain and could result in additional losses to the Partnership and/or its Consolidated Entities. Refer to Note 14 for a discussion of open litigation.

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7. Intangible Assets

On May 12, 2017, HCM Latin America, as manager, purchased all rights and obligations for management of a certain hedge fund. As of December 31, 2018, the current carrying value of these rights and obligations is $3.0 million, which consists of the original purchase price of $2.0 million and a deferred purchase price of $1.0 million and is reflected in the Consolidated Balance Sheet.

The Partnership and its Consolidated Entities perform an impairment test as required by U.S. GAAP on a yearly basis. The Partnership has determined that an impairment charge was necessary for the value obtained on December 19, 2017, for subadvisory and shared servicing rights from an affiliate. As of December 31, 2018, the asset was determined to be fully impaired and an impairment expense of $2.8 million is reflected in the Consolidated Statement of Income.

8. Related Party Transactions

Investments Under Common Control
Certain members of the Partnership's management serve as members on the Boards of Directors for some of the companies with which it invests. Because these individuals participate in the management of these companies, investments held by the Partnership and its subsidiaries in these companies may, from time to time, not be freely tradable. As of December 31, 2018, the Partnership and its Consolidated Entities held the following investments in these companies:

(in thousands)

Issuer	Type of Investment	Fair Value
Metro-Goldwyn-Mayer, Inc.	Common Stock	296,695
Cornerstone Healthcare Group Holding, Inc.	Common Equity	59,539
OmniMax International, Inc.	Term Loan	52,464
JHT Holdings Inc.	Common Stock	25,099
OmniMax International, Inc.	Common Equity	7,804
Carey International, Inc.	Term Loan	5,401
CCS Medical, Inc.	Loan	5,960
Trussway Holdings, LLC	Common Equity	4,582
JHT Holdings Inc.	Term Loan	4,160
OmniMax International, Inc.	Warrants	551

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Certain investments are issued and managed by affiliates of the Partnership. These investments are subject to the same valuation policies and procedures as similar investments within the same level of the fair value hierarchy. As of December 31, 2018, the Partnership and the Consolidated Entities held the following investments that were issued and managed by affiliates of the Partnership:

(in thousands)

Issuer	Type of Investment	Fair Value
Harko, LLC	LLC Units	$ 2,721
Highland CLO Funding	Partnership Interest	610
Highland Energy MLP Fund	Mutual Fund Shares	1,363
Highland Floating Rate Opportunities Fund	Closed-end mutual fund shares	832
Highland Global Allocation Fund	Mutual Fund Shares	2,173
Highland Long/Short Equity Fund	Mutual Fund Shares	267
Highland Long/Short Healthcare Fund	Mutual Fund Shares	2,963
Highland Master Loan Fund	Limited Partnership interest	106
Highland Merger Arbitrage Fund	Mutual Fund Shares	1,321
Highland Opportunistic Credit Fund	Mutual Fund Shares	5,477
Highland Premier Growth Equity Fund	Mutual Fund Shares	64
Highland Small Cap Equity Fund	Mutual Fund Shares	465
NexPoint Strategic Opportunities Fund	Mutual Fund Shares	36,563
NexPoint Multi Family Capital Trust	REIT	10,881
NexPoint Real Estate Strategies Fund	Closed-end mutual fund shares	1,454
NexPoint Residential Trust	REIT	85,223

Expenses Reimbursable by Funds Managed
In the normal course of business, the Partnership typically pays invoices it receives from vendors for various services provided to the investment funds the Partnership manages. A summary of these eligible reimbursable expenses are then submitted to the trustee/administrator for each respective fund, typically on a quarterly basis, and the Partnership receives payment as reimbursement for paying the invoices on behalf of the respective funds. As of December 31, 2018, approximately $6.4 million in reimbursable expenses were due from various affiliated funds and entities for these eligible expenses, and is included in *Other Assets* in the accompanying Consolidated Balance Sheet.

Accounts Held with Related Party
During the year the Partnership and its Consolidated Entities maintained bank accounts at NexBank, SSB ("NexBank"), a related party by way of common control. As of December 31, 2018, balances in these accounts were approximately $0.5 million, a portion of which exceeds Federal deposit insurance limits.

Investment in Affiliated Loans
During the year, certain subsidiaries of the Partnership were invested in several bank loans in which NexBank was the agent bank. Interest earned on the loans during the year was approximately $10.4 million and is included in interest and investment income in the Consolidated Statement of Income. At December 31, 2018, these subsidiaries were invested in NexBank agented loans with commitments and market values totaling approximately $83.3 million and $56.5 million, respectively.

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Notes and Other Amounts Due from Affiliates

During the year ended December 31, 2018, Highland Capital Management Fund Advisors, L.P. ("HCMFA") did not issue any new promissory notes to the Partnership. The outstanding promissory notes accrue interest at a rate ranging from of 1.97 - 2.62%, the mid-term applicable federal rate as promulgated by the Internal Revenue Service. As of December 31, 2018 total interest and principal due on outstanding promissory notes was approximately $5.3 million and is payable on demand. The Partnership will not demand payment on amounts owed that exceed HCMFA's excess cash availability prior to May 31, 2021. The fair value of the Partnership's outstanding notes receivable approximates the carrying value of the notes receivable.

During the year ended December 31, 2018, NexPoint Advisors, L.P. ("NPA") did not issue any new promissory notes to the Partnership. The outstanding promissory note accrues interest at a rate of 6.0%. As of December 31, 2018 total interest and principal due on the outstanding promissory note was approximately $28.6 million and is payable in annual installments throughout the term of the loan. The fair value of the Partnership's outstanding notes receivable approximates the carrying value of the notes receivable.

During the year ended December 31, 2018, HCRE Partners, LLC ("HCRE") issued a promissory note to the Partnership in the amount of $0.8 million. The note accrues interest at a rate of 8.0%. As of December 31, 2018 total interest and principal due on outstanding promissory notes was approximately $9.4 million and is generally payable in annual installments throughout the term of the note. The fair value of the Partnership's outstanding notes receivable approximates the carrying value of the notes receivable.

During the year ended December 31, 2018, Highland Capital Management Services, Inc. ("HCMSI") issued promissory notes to the Partnership in the aggregate amount of $0.4 million. All outstanding promissory notes accrue interest at a rate ranging from 2.75% – 3.05%, the long-term applicable federal rate as promulgated by the Internal Revenue Service. As of December 31, 2018 total interest and principal due on outstanding promissory notes was approximately $14.0 million and is generally payable in annual installments throughout the term of the notes. The fair value of the Partnership's outstanding notes receivable approximates the carrying value of the notes receivable.

During the year ended December 31, 2018, James Dondero ("Dondero") issued promissory notes to the Partnership in the aggregate amount of $14.9 million. The outstanding promissory notes accrue interest at a rate ranging from 2.03% – 2.95%, the average long-term applicable federal rate as promulgated by the Internal Revenue Service. As of December 31, 2018 total interest and principal due on outstanding promissory notes was approximately $29.2 million and is generally payable in annual installments throughout the term of the note. The fair value of the Partnership's outstanding notes receivable approximates the carrying value of the notes receivable.

During the year ended December 31, 2018, Mark Okada ("Okada") did not issue any new promissory notes to the Partnership. All outstanding promissory notes accrue interest at a rate of 2.25%, the average long-term applicable federal rate as promulgated by the Internal Revenue Service. As of December 31, 2018 total interest and principal due on outstanding promissory notes was approximately $1.3 million and is payable on demand. The fair value of the Partnership's outstanding notes receivable approximates the carrying value of the notes receivable.

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During the year ended December 31, 2018, The Dugaboy Investment Trust ("Dugaboy") did not issue any new promissory notes to the Partnership. All outstanding promissory notes accrue interest at a rate of 3.26%, the average long-term applicable federal rate as promulgated by the Internal Revenue Service. As of December 31, 2018 total interest and principal due on outstanding promissory notes was approximately $20.1 million and is payable in annual installments throughout the term of the note. The fair value of the Partnership's outstanding notes receivable approximates the carrying value of the notes receivable.

On December 21, 2015, the Partnership entered into a contribution agreement (the "Contribution Agreement") with an affiliated trust. Pursuant to the Contribution Agreement, a note (the "Note Receivable") in the amount of $63.0 million was due to the Partnership. The Note Receivable will mature on December 21, 2030. The Note Receivable accrues interest at a rate of 2.61% per annum. Accrued interest is paid-in-kind, with principal receipts occurring pursuant to a note amortization schedule, with such annual receipts commencing December 21, 2019. During the year, the trust pre-paid $2.1 million. As of December 31, 2018 total interest and principal due on the Note Receivable was approximately $60.2 million.

Services Performed by or on Behalf of an Affiliate
In March 2007, Highland Capital of New York, Inc. a New York corporation ("Highland New York"), was formed and has performed marketing services for the Partnership and its affiliates in connection with the Partnership's investment management and advising business, including, but not limited to, assisting Highland Capital in the marketing and sales of interests in investment pools for which Highland Capital serves as the investment manager. The Partnership is charged a marketing services fee for the services that Highland New York performs on the Partnership's behalf. Separately, the Partnership pays for, and seeks reimbursement for, various operating expenses on behalf of Highland New York. For the year ended December 31, 2018, total marketing fee expense charged to the Partnership by Highland New York was approximately $0.9 million. Because the Partnership funded Highland New York's operations, including amounts above the marketing fee, as of December 31, 2018, net amounts owed to the Partnership by Highland New York was approximately $4.9 million.

Effective December 15, 2011, the Partnership commenced performing services on behalf of HCMFA, a Delaware limited partnership and registered investment advisor. Services include, but are not limited to compliance, accounting, human resources, IT and other back office support functions. The Partnership charges a fee for the services performed. For the year ended December 31, 2018, the total fee charged by the Partnership to HCMFA was approximately $2.7 million and as of December 31, 2018, amount owed to the Partnership by HCMFA was approximately $0.2 million.

Effective July 29, 2010, the Partnership commenced performing services on behalf of Falcon E&P Opportunities GP, LLC. ("Falcon"), a Delaware limited liability company and registered investment advisor. Services include, but are not limited to compliance, accounting, human resources, IT and other back office support functions. The Partnership charges a fee for the services performed. For the year ended December 31, 2018, the total fee charged by the Partnership to Falcon was approximately $0.2 million and as of December 31, 2018, no amounts were owed to the Partnership by Falcon for services rendered.

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Effective March 17, 2017, pursuant to the Third Amended and Restated Sub-Advisory Agreement and the Fourth Amended and Restated Shared Services Agreement, the Partnership continued performing services on behalf of Acis Capital Management, L.P. ("Acis"), a Delaware limited partnership and registered investment advisor. Subadvisory services include investment advisory services and shared services include, but are not limited to compliance, accounting, human resources, IT and other back office support functions. The Partnership charges a fee for the services performed. For the year ended December 31, 2018, the total fees charged by the Partnership to Acis for shared services and subadvisory fees were approximately $2.6 million and $3.4 million, respectively. As of December 31, 2018, amount owed to the Partnership by Acis was approximately $6.0 million. Although such fees were earned in 2018, all related revenues and receivables recorded by the Partnership have been fully reserved against based on estimated collectability.

Effective January 1, 2018, pursuant to the Third Amended and Restated Shared Services Agreement, the Partnership commenced performing services on behalf of NPA. Services include, but are not limited to compliance, accounting, human resources, IT and other back office support functions. The Partnership charges a fee for the services performed. For the year ended December 31, 2018, the total fee charged by the Partnership to NexPoint was approximately $2.0 million and as of December 31, 2018, no amounts were owed to the Partnership by NexPoint for services rendered.

Effective September 1, 2017, pursuant to the Third Amended and Restated Shared Services Agreement dated September 26, 2017, the Partnership commenced performing services on behalf of NexBank Capital, Inc. ("NexBank Capital"), financial services company. Services include, but are not limited to compliance, accounting, human resources, IT and other back office support functions. The Partnership charges a fee for the services performed. For the year ended December 31, 2018, the total fee charged by the Partnership to NexBank Capital was approximately $0.2 million and as of December 31, 2018, $0.1 million was owed to the Partnership by NexBank Capital for services rendered.

Effective September 1, 2017, pursuant to the Third Amended and Restated Investment Advisory Agreement dated September 26, 2017, the Partnership commenced performing services on behalf of NexBank SSB, ("NexBank"), a Texas savings bank. Services include investment advisory services. The Partnership charges a fee for the services performed. For the year ended December 31, 2018, the total fee charged by the Partnership to NexBank was approximately $3.6 million and as of December 31, 2018, amounts owed by NexBank to the Partnership for services rendered were approximately $0.9 million.

Effective April 1, 2015, the Partnership commenced performing services on behalf of NexPoint Real Estate Advisors, L.P. ("NREA"). Services include, but are not limited to compliance, accounting, human resources, IT and other back office support functions. NREA is charged a fee for the services provided. For the year ended December 31, 2018, the total fee charged to NREA by the Partnership was approximately $1.0 million and as of December 31, 2018, no amounts were owed by NREA to the Partnership for services rendered.

Effective January 1, 2018, the Partnership entered in to a Payroll Reimbursement Agreement (the "Agreement") with HCMFA. Under the Agreement, HCMFA reimburses the Partnership for the cost of any dual employees of the Partnership and HCMFA and who provide advice to registered investment companies advised by HCMFA. For the year ended December 31, 2018, the total fees charged by the Partnership to HCMFA was approximately $6.2 million and as of December 31, 2018, no amounts were owed by HCMFA to the Partnership for services rendered.

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Effective January 1, 2018, the Partnership entered in to a Payroll Reimbursement Agreement (the "Agreement") with NPA. Under the Agreement, NPA reimburses the Partnership for the cost of any dual employees of the Partnership and NPA and who provide advice to registered investment companies advised by NPA. For the year ended December 31, 2018, the total fees charged by the Partnership to NPA was approximately $4.3 million and as of December 31, 2018, no amounts were owed by NPA to the Partnership for services rendered.

Investment liability
On December 28, 2016, the Partnership entered into a purchase and sale agreement with The Get Good Nonexempt Trust ("Get Good"). In consideration for a note receivable from an affiliate, the Partnership sold or participated certain investments that it already held, with the participated investments carrying an aggregate market value of $21.3 million as of the date of the transaction. The fair value of the Agreement will fluctuate with the fair value of the securities, throughout the term of the Agreement. As of December 31, 2018, the fair value of the participated investments was $12.1 million.

On December 5, 2016, Select entered in to Stock Purchase Agreements with two counterparties for shares of Trussway Industries ("Trussway"), in exchange for promissory notes in the aggregate amount of $15.4 million. The promissory notes accrue interest at a rate of 2.07%, the long-term Applicable Federal Rate, compounded annually. Select must pay one-twenty-fifth of the initial note amounts, plus any additional principal attributable to the sale of Trussway, along with accumulated interest on an annual basis. The promissory notes will mature on December 5, 2041. As of December 31, 2018 the remaining principal payable on the promissory notes was $14.8 million. The fair value of Select's outstanding notes payable approximates the carrying value of the notes payable.

During 2014 and 2015, Select received multiple master securities loan agreements (the "Securities Agreements") for securities borrowed from an affiliate. The Securities Agreements accrue interest at a rate ranging from 0.38 - 0.48%, the short term Applicable Federal Rate. The fair value of the securities loans will fluctuate with the fair value of the borrowed securities, throughout the term of the Securities Agreements. As of December 31, 2018, the fair value of the loans was $19.2 million. The fair value of Select's securities loans approximates the carrying value of the securities loans.

9. Notes Payable

Promissory Notes and Loan Agreements
On August 17, 2015, the Partnership entered in to a promissory note with Frontier State Bank ("Frontier") in the amount of $9.5 million. Pursuant to the First Amended and Restated Loan Agreement, dated March 29, 2018, Frontier made an additional loan to the Partnership in the amount of $1.0 million. The promissory note accrues interest at the 3 month LIBOR rate plus 4.75%, adjusted each date of change, per annum. Accrued interest shall be paid quarterly. The promissory note is collateralized by shares of voting common stock of MGM Holdings, Inc and will mature on August 17, 2021. As of December 31, 2018 the remaining principal payable on the promissory note was $7.2 million. The fair value of the Partnership's outstanding notes payable approximates the carrying value of the notes payable.

On August 25, 2015, Highland Select Equity Fund, L.P. ("Select") entered in to a promissory note with Dugaboy in the amount of $1.0 million. The promissory note accrues interest at a rate of 2.82%, the long-term Applicable Federal Rate, compounded annually. The accrued interest and principal of the promissory note is due and payable on demand. As of December 31, 2018 the remaining principal payable on the promissory note was $1.0 million. The fair value of Select's outstanding notes payable approximates the carrying value of the notes payable.

On October 7, 2016, the Partnership entered in to a promissory note with Acis in the amount of $12.7 million. The Partnership is required to make certain payments of the initial note amount, plus accumulated interest on May 31 of each year, until maturity. The promissory note is set to mature on May 31, 2020. The promissory note accrues interest at a rate of 3.00% per annum. Pursuant to an Assignment and Transfer Agreement dated November 3, 2017, between Acis and an affiliate of the Partnership, Acis transferred the promissory note to the affiliate. As of December 31, 2018 the remaining principal payable on the promissory note was $9.5 million.

On August 29, 2016, Maple Avenue Holdings, LLC ("Maple") entered in to a promissory note with Great Southern Bank in the amount of $3.9 million. Maple must pay principal and accrued interest installments on a monthly basis until maturity. The promissory note will mature on August 29, 2019. The promissory note accrues interest at a rate of 3.26% per annum. As of December 31, 2018 the remaining principal payable on the promissory note was $3.4 million. The fair value of Maple's outstanding notes payable approximates the carrying value of the notes payable.

On May 1, 2018, Multi Strategy Master executed a loan agreement (the "Loan Agreement") with NexBank SSB, an affiliate of the Partnership. The original principal borrowed under the Loan Agreement was $36.5 million. The loan bears interest at the 1-month LIBOR rate plus 3.25%. The maturity date is May 1, 2021. For the year ended December 31, 2018, the Multi Strategy Master incurred and paid approximately $1.3 million of interest expense, and made aggregate principal payments of approximately $1.9 million. Shares of Metro-Goldwyn Mayer, Inc. are pledged as collateral on the loan. The loan was used to purchase an outstanding redemption of $38.7 million at a discount resulting in a reallocation of partners' capital on the Statement of Changes in Partners' Capital. As of December 31, 2018 the remaining principal payable on the loan was $34.6 million. The fair value of Multi Strategy Master's outstanding loan approximates the carrying value of the loan.

10. Due to Broker

As of December 31, 2018 the due to broker balance of approximately $116.6 million is payable to financing counterparties for margin transactions.

11. Commitments and Contingencies

Contracts in the Normal Course of Business
In the normal course of business the Partnership and its subsidiaries may enter into contracts which provide general indemnifications and contain a variety of presentations and warranties that may expose the Partnership and its subsidiaries to some risk of loss. The Partnership regularly co-invests in vehicles it advises. The amounts committed are within the Partnerships capacity to fund when capital is called. In addition to the other financial commitments discussed in the consolidated financial statements, the amount of future losses arising from such undertakings, while not quantifiable, is not expected to be significant. Also refer to Note 8 for commitments of certain subsidiaries in affiliated loans.

Loans as Co-Borrower
The Partnership is a named co-borrower in a Bridge Loan Agreement ("Loan") dated September 26, 2018 with Key Bank for $556.3 million. The Loan accrues interest at the 3 month LIBOR rate plus 3.75%, per annum. Accrued interest shall be paid monthly by a borrower other than the Partnership ("Lead Borrower"). The Loan will mature on September 26, 2019. The carrying value of the Loan is reflected on the financial statements of the Lead Borrower.

Highland Capital Management, L.P.
(A Delaware Limited Partnership)
Notes to Consolidated Financial Statements
December 31, 2018

Legal Proceedings
The Partnership is a party to various legal proceedings arising in the ordinary course of business. While any proceeding or litigation has an element of uncertainty, management believes that the final outcome will not have a materially adverse effect on the Partnership's Consolidated Balance Sheet, Consolidated statement of Income, or its liquidity. See Note 14.

Operating Leases
The Partnership has an operating lease and associated commitments related to its main office space. Future minimum lease payments under operating lease commitments with initial or non-cancelable terms in excess of one year, at inception, are as follows:

(in thousands)

Years Ending December 31,	
2019	1,550
2020	1,566
2021	1,567
2022	522
Total	$ 5,205

Total rental expense of the Partnership and its Consolidated Entities for operating leases was approximately $1.5 million for the year ended December 31, 2018.

12. Post Retirement Benefits

In December 2006, the Partnership created a defined benefit plan to which all employees and certain affiliated persons could participate if they met the eligibility requirements. The Partnership uses a December 31 measurement date for its defined benefit plan.

Effective December 31, 2008, the Partnership amended the plan by freezing it to new participants and additional benefit accruals. A new amendment became effective on January 1, 2011 in which a named participant was admitted to the plan and is eligible to earn benefit accrual. 2018 expense reflects a service cost charge for the value of the new participant's benefit earned during 2018.

The Partnership's benefit plan obligation and plan assets for the year ended December 31, 2018 are reconciled in the tables below.

Highland Capital Management, L.P.
(A Delaware Limited Partnership)
Notes to Consolidated Financial Statements
December 31, 2018

(in thousands)

Change in projected benefit obligation		**2018**
Benefit obligation at beginning of year	$	2,578
Service cost		6
Interest cost		80
Plan participants' contributions		-
Amendments		-
Actuarial loss/(gain)		386
Acquisition/(divestiture)		-
Benefits paid		(121)
Benefit obligation at end of year	$	2,929

Change in plan assets		**2018**
Fair value of plan assets at beginning of year	$	2,924
Actual return on plan assets		449
Acquisition/(divestiture)		-
Employer contribution		-
Plan participants' contributions		-
Benefits paid		(121)
Other increase/(decrease)		-
Fair value of plan assets at year end	$	3,252

Reconciliation of Funded Status		**2018**
Accumulated benefit obligation at end of year	$	2,929
Projected benefit obligation at end of year		2,929
Fair value of assets at end of year		3,252
Funded status at end of year	$	323

The Partnership did not contribute to the plan during 2018.

Assumptions

Weighted-average assumptions used to determine benefit obligations at December 31, 2018:

Discount rate	3.19%
Rate of compensation increase	N/A

Weighted-average assumptions used to determine net periodic benefit cost at December 31, 2018:

Discount rate	3.19%
Expected long-term return on plan assets	3.19%
Rate of compensation increase	N/A

As of December 31, 2018, there were no plan assets categorized as Level 3.

13. Income Taxes

The Partnership
For U.S. income tax purposes, the Partnership is treated as a pass-through-entity, which means it is not subject to income taxes under current Internal Revenue Service or state and local guidelines. Each partner is individually liable for income taxes, if any, on their share of the Partnership's net taxable income.

The Partnership files tax returns as prescribed by the tax laws of the jurisdictions in which it operates. In the normal course of business, the Partnership is subject to examination by federal and foreign jurisdictions, where applicable. As of December 31, 2018, the tax years that remain subject to examination by the major tax jurisdictions under the statute of limitations is from the year 2015 forward (with limited exceptions).

Authoritative guidance on accounting for and disclosure of uncertainty in tax positions requires the General Partner to determine whether a tax position of the Partnership is more likely than not to be sustained upon examination, including resolution of any related appeals or litigation processes, based on the technical merits of the position. For tax positions meeting the more likely than not threshold, the tax amount recognized in the financial statements is the largest benefit that as a greater than fifty percent likelihood of being realized upon ultimate settlement with the relative taxing authority. The General Partner does not expect a significant change in uncertain tax positions during the twelve months subsequent to December 31, 2018.

Multi Strategy Master
For U.S. income tax purposes, Multi Strategy Master is treated as a pass-through entity, which means it is not subject to federal income taxes under current Internal Revenue Service guidelines. However, each investor may be individually liable for income taxes, if any, on its share of the partnership's net taxable income.

Multi Strategy Master trades in senior secured syndicated bank loans for its own account and, as such, non-U.S. Investment Vehicle investors are generally not subject to U.S. tax on such earnings (other than certain withholding taxes indicated below). The Partnership intends to conduct Multi Strategy Master business in such a manner that it does not constitute a U.S. trade or business, nor does it create a taxable presence in any of the jurisdictions in which the Partnership has offices.

Dividends as well as certain interest and other income received by Multi Strategy Master from sources within the United States may be subject to, and reflected net of, United States withholding tax at a rate of 30% for non-U.S. Investment Vehicles. Interest, dividend and other income realized by Multi Strategy Master from non-U.S. sources and capital gains realized on the sale of securities of non-U.S. issuers may be subject to withholding and other taxes levied by the jurisdiction in which the income is sourced. As of December 31, 2018, a minimal withholding tax liability of $0.9 million is classified within accrued and other liabilities on the Consolidated Balance Sheet.

Multi Strategy Master applies authoritative guidance which requires management to determine whether a tax position Multi Strategy Master is more likely than not to be sustained upon examination, including resolution of any related appeals or litigation processes, based on the technical merits of the position. For tax positions meeting the more likely than not threshold, the tax amount recognized in the consolidated financial statements is the largest benefit that has a greater than fifty percent likelihood of being realized upon ultimate settlement with the relative taxing authority. Management does not expect a significant change in uncertain tax positions during the twelve months subsequent to December 31, 2018.

Multi Strategy Master files tax returns as prescribed by the tax laws of the jurisdictions in which it operates. In the normal course of business, Multi Strategy Master is subject to examination by federal and foreign jurisdictions, where applicable. As of December 31, 2018, the tax years that remain subject to examination by the major tax jurisdictions under the statute of limitations is from the year 2015 forward (with limited exceptions).

Restoration Onshore
Restoration Onshore is treated as a pass-through entity for tax purposes, which means it is not subject to U.S. income taxes under current Internal Revenue Service or state and local guidelines. Each Partner is individually liable for income taxes, if any, on its share of the Restoration Onshore's net taxable income. Interest, dividends and other income realized by Restoration Onshore from non-U.S. sources and capital gains realized on the sale of securities of non-U.S. issuers may be subject to withholding and other taxes levied by the jurisdiction in which the income is sourced.

Restoration Onshore applies the authoritative guidance on accounting for and disclosure of uncertainty in tax positions, which requires the General Partner to determine whether a tax position of Restoration Onshore is more likely than not to be sustained upon examination, including resolution of any related appeals or litigation processes, based on the technical merits of the position. For tax positions meeting the more likely than not threshold, the tax amount recognized in the financial statements is the largest benefit that has a greater than fifty percent likelihood of being realized upon ultimate settlement with the relevant taxing authority.

The General Partner has determined that there was no effect on the financial statements from the Partnership's application of this authoritative guidance. The General Partner does not expect a significant change in uncertain tax positions during the twelve months subsequent to December 31, 2018. Restoration Onshore files tax returns as prescribed by the tax laws of the jurisdictions in which it operates. In the normal course of business, the Partnership is subject to examination by federal, state, local and foreign jurisdictions, where applicable. As of December 31, 2018, the tax years that remain subject to examination by the major tax jurisdictions under the statute of limitations is from the year 2015 forward (with limited exceptions).

Restoration Offshore
Restoration Offshore is a Cayman Islands exempted company. Under the current laws of the Cayman Islands, there is no income, estate, transfer, sales or other tax payable by Restoration Offshore. Restoration Offshore has elected to be treated as a corporation for U.S. tax purposes and files a protective 1120-F.

The General Partner intends to conduct the business of Restoration Offshore in such a way that Restoration Offshore's activities do not constitute a U.S. trade or business and any income or realized gains earned by Restoration Offshore do not become "effectively connected" with a trade or business carried on in the United States for U.S. federal income tax purposes.

Highland Capital Management, L.P.
(A Delaware Limited Partnership)
Notes to Consolidated Financial Statements
December 31, 2018

Dividends as well as certain interest and other income received by the master partnership of Restoration Offshore from sources within the United States may be subject to, and reflected net of, United States withholding tax at a rate of 30% for non-U.S. Investment Vehicles. Interest, dividend and other income realized by the master partnership of Restoration Offshore from non-U.S. sources and capital gains realized on the sale of securities of non-U.S. issuers may be subject to withholding and other taxes levied by the jurisdiction in which the income is sourced.

Restoration Offshore applies the authoritative guidance on accounting for and disclosure of uncertainty in tax positions, which requires the General Partner to determine whether a tax position of Restoration Offshore is more likely than not to be sustained upon examination, including resolution of any related appeals or litigation processes, based on the technical merits of the position. For tax positions meeting the more likely than not threshold, the tax amount recognized in the financial statements is the largest benefit that has a greater than fifty percent likelihood of being realized upon ultimate settlement with the relevant taxing authority. The General Partner has determined that there was no effect on the financial statements from the Partnership's application of this authoritative guidance. The General Partner does not expect a significant change in uncertain tax positions during the twelve months subsequent to December 31, 2018. As of December 31, 2018, the tax years that remain subject to examination by major tax jurisdictions under the statute of limitations is from the year 2015 forward (with limited exceptions).

The remaining entities consolidated by the Partnership had no uncertain tax positions which required accrual under U.S. GAAP.

Highland Capital Management, L.P.
(A Delaware Limited Partnership)
Notes to Consolidated Financial Statements
December 31, 2018

14. Legal Proceedings

The Partnership and certain affiliated investment vehicles are defendants in a complaint filed on February 24, 2009 New York state court by UBS Securities LLC and UBS AG, London Branch relating to a CLO warehouse facility with respect to which UBS is attempting to extend liability beyond the two entities that bore sole risk of loss under the governing documents. On February 19, 2010, the court dismissed all claims against the Partnership. UBS since has filed additional claims against the Partnership and certain additional investment vehicles. On July 21, 2011, the First Appellate Division again dismissed two of UBS's four claims against the Partnership, severely limiting the remaining two claims. Additional claims were dismissed in a further appellate ruling issued on October 31, 2017. Certain claims were tried in July 2018 against two Highland-affiliated defendants, but the trial court has neither ruled on those claims nor indicated when it will set UBS's remaining claims for trial. The second trial, if it occurs, will try all claims against the Partnership and certain affiliated investment vehicles.

From time to time the Partnership is party to disputes with disgruntled former employees. One such matter involves a former employee that improperly recorded internal conversations in violation of the Partnership's internal policies and procedures and potentially certain criminal and regulatory provisions. The former employee obtained a $7.9 million judgment against Highland affiliate Acis Capital Management, L.P. ("Acis"). The employee currently is attempting to collect this judgment through various proceedings in Texas state and federal court, including claims against Highland for receipt of assets from Acis.

In another matter, a Court ruled that a former employee breached his fiduciary duty to the Partnership, owed damages to the Partnership, and ordered the former employee to cease using or disclosing the Partnership's confidential information. Additionally, an award was entered in favor of the employee against a separate incentive compensation entity for an interest that was already escrowed in his name prior to trial and in which he was already vested. The dispute over the amount of his vested interest is on-going. Additionally, the Partnership from time to time must take action to enforce the permanent injunction against the former employee's continuing improper disclosures of the Partnership's confidential information.

The Partnership is engaged in litigation and arbitration with a group of investors relating to the post-financial crisis wind down and distribution of the remaining assets in the Crusader hedge fund vehicle.

The Partnership currently is and has been previously subject to various legal proceedings, many of which have been due to the nature of operating in the distressed loan business in the U.S. The legal process is often the route of last resort to recover amounts due from delinquent borrowers. We currently do not anticipate these proceedings will have a material negative impact to the Partnership.

15. Subsequent Events

On March 18, 2019, SSP Holdings, LLC issued a promissory note to the Partnership in the amount of $2.0 million. The note accrues interest at a rate of 18%.

On March 26, 2019, Trussway Holdings, LLC issued a promissory note to the Partnership in the amount of $1.0 million. The note accrues interest at a rate of 10%.

Highland Capital Management, L.P.
(A Delaware Limited Partnership)
Notes to Consolidated Financial Statements
December 31, 2018

On March 28, 2019, the Partnership distributed equity to its partners in the aggregate amount of $3.7 million.

On March 28, 2019, the Partnership received a $3.7 million pay down on the outstanding Contribution Agreement.

Over the course of 2019, through the report date, HCMFA issued promissory notes to the Partnership in the aggregate amount of $7.4 million. The notes accrue interest at a rate of 2.39%.

The Partnership has performed an evaluation of subsequent events through June 3, 2019, which is the date the consolidated financial statements were available to be issued, and has determined that there are no other material subsequent events that would require disclosure in the Partnership's consolidated financial statements.

Highland Capital Management, L.P.

(A Delaware Limited Partnership)

As of And Year Ended December 31, 2018

Supplemental Information

Highland Capital Management, L.P.
(A Delaware Limited Partnership)
Supplemental Consolidating Balance Sheet
December 31, 2018

(in thousands)	Highland Capital Management, L.P.	All Other Consolidated Entities	Eliminations	Total Consolidated
Assets				
Cash and cash equivalents	$ 2,567	$ 2,467	$ -	$ 5,034
Investments at fair value (cost $922,027)	161,939	683,247	-	845,186
Equity method investees	121,936	-	(121,936)	-
Management and incentive fees receivable	2,242	158	(7)	2,393
Due from brokers	-	598	-	598
Other assets	8,421	5,660	(4,826)	9,255
Notes and other amounts due from affiliates	176,963	-	(3,565)	173,398
Intangible assets	-	3,022	-	3,022
Fixed assets and leasehold improvements, net of accumulated depreciation of $11,197	4,538	43	-	4,581
Total assets	$ 478,606	$ 695,195	$ (130,334)	$ 1,043,467
Liabilities and partners' capital				
Liabilities				
Accounts payable	$ 4,838	$ 145	$ -	$ 4,983
Securities sold, not yet purchased (proceeds $26,135)	-	32,357	-	32,357
Withdrawals payable	-	57,009	-	57,009
Due to affiliates	4,542	-	(4,542)	-
Due to brokers	31,194	86,108	(742)	116,560
Due to brokers for securities purchased, not yet settled	1,640	-	-	1,640
Accrued and other liabilities	35,574	4,276	396	40,246
Notes payable	16,722	42,540	(3,510)	55,752
Investment liabilities	12,135	33,957	-	46,092
Total liabilities	106,645	256,392	(8,398)	354,639
Non-controlling interest	-	316,867	-	316,867
Commitments and contingencies				
Partners' capital	371,961	121,936	(121,936)	371,961
Total liabilities and partners' capital	$ 478,606	$ 695,195	$ (130,334)	$ 1,043,467

Highland Capital Management, L.P.
(A Delaware Limited Partnership)
Supplemental Consolidating Statement of Income
Year Ended December 31, 2018

(in thousands)	Highland Capital Management, L.P.	All Other Consolidated Entities	Eliminations	Total Consolidated
Revenue:				
Management fees	$ 35,264	$ 1,336	$ -	$ 36,600
Interest and investment income	4,857	10,974	-	15,831
Incentive fees	17	53	-	70
Shared services fees	9,187	-	-	9,187
Other income	1,038	1,584	-	2,622
Total revenue	50,363	13,947	-	64,310
Expenses:				
Compensation and benefits	33,670	805	-	34,475
Professional fees	14,624	3,055	-	17,679
Interest expense	1,695	3,975	-	5,670
Marketing and advertising expense	2,413	-	-	2,413
Depreciation and amortization	1,304	13	-	1,317
Investment and research consulting	1,082	-	-	1,082
Bad debt expense	7,862	-	-	7,862
Other operating expenses	6,786	3,241	-	10,027
Total expenses	69,436	11,089	-	80,525
Other Income/(Expense):				
Other income	9,816	10	-	9,826
Impairment on intangible assets	(2,830)	-	-	(2,830)
Total other income	6,986	10	-	6,996
Income/(loss) before investment and derivative activities	(12,087)	2,868	-	(9,219)
Realized and unrealized gain/(loss) on investments and derivatives:				
Net realized gain/(loss) on investments and derivatives	13,397	(44,914)	-	(31,517)
Net change in unrealized loss on investments and derivatives	(406)	(93,349)	-	(93,755)
Net realized and unrealized loss on investments and derivatives	12,991	(138,263)	-	(125,272)
Net unrealized losses from equity method investees	(74,082)	-	74,082	-
Net loss	(73,178)	(135,395)	74,082	(134,491)
Net loss attributable to non-controlling interest	-	(61,313)	-	(61,313)
Net loss attributable to Highland Capital Management, L.P.	$ (73,178)	$ (74,082)	$ 74,082	$ (73,178)

Highland Capital Management, L.P.

(A Delaware Limited Partnership)

Supplemental Unconsolidated Balance Sheet
December 31, 2018

(in thousands)

Assets		
Current assets:		
Cash and cash equivalents	$	2,567
Investments at fair value (cost $263,008*)		259,460
Equity method investees		24,415
Management and incentive fees receivable		2,242
Intangible assets		8,421
Notes and other amounts due from affiliates		176,963
Fixed assets and leasehold improvements, net of accumulated depreciation of $11,177		4,538
Total assets	$	478,606
Liabilities and partners' capital		
Liabilities		
Accounts payable	$	4,838
Due to affiliate		4,542
Due to brokers		31,194
Due to brokers for securities purchased not yet settled		1,640
Accrued and other liabilities		35,574
Notes payable		16,722
Investment liabilities		12,135
Total liabilities		106,645
Partners' capital		371,961
Total liabilities and partners' capital	$	478,606

*Investments, at fair value includes $97.5 million of limited partnership interest ownership of Consolidated Investment Funds, which are discussed in Footnote 2. These entities are consolidated because the Partnership controls the general partner of the respective entities and is responsible for the daily operations of the entities.

The above information was derived from the audited December 31, 2018 consolidated financial statements of Highland Capital Management, L.P. This information should be read in conjunction with such audited financial statements.

Highland Capital Management, L.P.

(A Delaware Limited Partnership)

Supplemental Unconsolidated Statement of Income

Year Ended December 31, 2018

(in thousands)

Revenue:		
Management fees	$	35,264
Incentive fees		17
Shared services fees		9,187
Interest and investment income		4,857
Miscellaneous income		1,038
Total revenue		50,363
Expenses:		
Compensation and benefits		33,670
Professional fees		14,624
Marketing and advertising expense		2,413
Interest expense		1,695
Depreciation and amortization		1,304
Investment and research consulting		1,082
Bad debt expense		7,862
Other operating expenses		6,786
Total expenses		69,436
Other Income/(Expense):		
Other income		9,816
Impairment on intangible assets		(2,830)
Total other income		6,986
Loss before investment activities		(12,087)
Realized and unrealized gains/losses on investments:		
Net realized gain on sale of investments		13,397
Net change in unrealized loss on investments*		(56,529)
Total realized and unrealized loss on investments		(43,132)
Loss from equity method investees:		(17,959)
Net loss	$	(73,178)

*Net change in unrealized gain on investments includes $56.1 million of unrealized loss from holdings of limited partnership interests of Consolidated Investment Funds, which are discussed in Footnote 2. These entities are consolidated because the Partnership controls the general partner of the respective entities and is responsible for the daily operations of the entities.

The above information was derived from the audited December 31, 2018 consolidated financial statements of Highland Capital Management, L.P. This information should be read in conjunction with such audited consolidated financial statements.

EXHIBIT 35

HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, L.P.

INCUMBENCY CERTIFICATE

I am the sole Director of STRAND ADVISORS XVI, INC., a Delaware corporation (the "***General Partner***"), the general partner of **HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, L.P.**, a Delaware limited partnership (the "***Partnership***"). In that capacity, I certify that the persons listed below have been duly appointed and qualified as, and currently are, officers of the General Partner of the Partnership. I also certify that each person listed below holds the position that is listed opposite his or her name in the General Partner, and that the signatures attached are the genuine signatures of the persons indicated. I also certify that in their capacity as officers of the General Partner, the persons listed below are authorized to execute any and all agreements on behalf of the General Partner in its capacity as the general partner of the Partnership. I further certify that in their capacity as officers of the General Partner, the persons listed below are authorized to give any party on behalf of the Partnership all notices, orders, directions, or instructions (including but not limited to written, facsimile, or oral funds transfer instructions) in connection with any transaction to which the Partnership is or in the future may be a party to in any capacity.

Name of Officer	**Title**	**Signature**
Dustin Norris	Executive Vice President	
Frank Waterhouse	Treasurer	
Lauren Thedford	Secretary	

WITNESS my hand to be effective as of the 11th day of April, 2019.

HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, L.P.

By: Strand Advisors XVI, Inc., its general partner

By: _____
James D. Dondero, Sole Director

EXHIBIT 36

From: Frank Waterhouse <FWaterhouse@HighlandCapital.com>
Sent: Tuesday, October 6, 2020 6:19 PM
To: Lauren Thedford <LThedford@HighlandCapital.com>; David Klos <DKlos@HighlandCapital.com>; Kristin Hendrix <KHendrix@HighlandCapital.com>
Cc: Thomas Surgent <TSurgent@HighlandCapital.com>; Jason Post <JPost@HighlandCapital.com>; Dustin Norris <DNorris@NexPointSecurities.com>; Will Mabry <WMabry@HighlandCapital.com>
Subject: RE: 15(c) Follow up (10_2_20).DOCX

No shared services outstanding. The HCMFA note is a demand note. The NexPoint note Kristin can give the end term. There was an agreement between HCMLP and HCMFA the earliest they could demand is May 2021. The attorneys think that BK doesn't change that but don't know for sure at the end of the day. The response should include as I covered in the Board meeting that both entities have the full faith and backing from Jim Dondero and to my knowledge that hasn't changed.

From: Lauren Thedford <LThedford@HighlandCapital.com>
Sent: Tuesday, October 6, 2020 6:14 PM
To: Frank Waterhouse <FWaterhouse@HighlandCapital.com>; David Klos <DKlos@HighlandCapital.com>; Kristin Hendrix <KHendrix@HighlandCapital.com>
Cc: Thomas Surgent <TSurgent@HighlandCapital.com>; Jason Post <JPost@HighlandCapital.com>; Dustin Norris <DNorris@NexPointSecurities.com>; Will Mabry <WMabry@HighlandCapital.com>
Subject: RE: 15(c) Follow up (10_2_20).DOCX

I see the below from the 6/30 financials –

NPA: Due to HCMLP and affiliates as of June 30, 2020 - 23,683,000
HCMFA: Due to HCMLP as of June 30, 2020 - 12,286

I expect the follow-up question will be regarding terms and structure of the notes and whether any of the shared services invoices are outstanding.

Draft answer below.

> Are there any material outstanding amounts currently payable or due in the future (*e.g.*, notes) to HCMLP by HCMFA or NexPoint Advisors or any other affiliate that provide services to the Funds?
>
> **Response**: As of June 30, 2020, $23,683,000 remains outstanding to HCMLP and its affiliates from NexPoint and $12,286,000 remains outstanding to HCMLP from HCMFA. The Notes between HCMLP and NexPoint come due on [DATE]. The Notes between HCMLP and HCMFA come due on [DATE]. All amounts owed by each of NexPoint and HCMFA pursuant to the shared services arrangement with HCMLP have been paid as of [DATE].

From: Frank Waterhouse <FWaterhouse@HighlandCapital.com>
Sent: Tuesday, October 6, 2020 6:05 PM
To: Lauren Thedford <LThedford@HighlandCapital.com>; David Klos <DKlos@HighlandCapital.com>; Kristin Hendrix <KHendrix@HighlandCapital.com>
Cc: Thomas Surgent <TSurgent@HighlandCapital.com>; Jason Post <JPost@HighlandCapital.com>; Dustin Norris

<DNorris@NexPointSecurities.com>; Will Mabry <WMabry@HighlandCapital.com>
Subject: RE: 15(c) Follow up (10_2_20).DOCX

It's on the balance sheet that was provided to the board as part of the 15c materials.

From: Lauren Thedford <LThedford@HighlandCapital.com>
Sent: Tuesday, October 6, 2020 6:04 PM
To: Frank Waterhouse <FWaterhouse@HighlandCapital.com>; David Klos <DKlos@HighlandCapital.com>; Kristin Hendrix <KHendrix@HighlandCapital.com>
Cc: Thomas Surgent <TSurgent@HighlandCapital.com>; Jason Post <JPost@HighlandCapital.com>; Dustin Norris <DNorris@NexPointSecurities.com>; Will Mabry <WMabry@HighlandCapital.com>
Subject: RE: 15(c) Follow up (10_2_20).DOCX

Could you provide the amounts?

Thanks

From: Frank Waterhouse <FWaterhouse@HighlandCapital.com>
Sent: Tuesday, October 6, 2020 5:53 PM
To: Lauren Thedford <LThedford@HighlandCapital.com>; David Klos <DKlos@HighlandCapital.com>; Kristin Hendrix <KHendrix@HighlandCapital.com>
Cc: Thomas Surgent <TSurgent@HighlandCapital.com>; Jason Post <JPost@HighlandCapital.com>; Dustin Norris <DNorris@NexPointSecurities.com>; Will Mabry <WMabry@HighlandCapital.com>
Subject: RE: 15(c) Follow up (10_2_20).DOCX

Yes

From: Lauren Thedford <LThedford@HighlandCapital.com>
Sent: Tuesday, October 6, 2020 5:52 PM
To: Frank Waterhouse <FWaterhouse@HighlandCapital.com>; David Klos <DKlos@HighlandCapital.com>; Kristin Hendrix <KHendrix@HighlandCapital.com>
Cc: Thomas Surgent <TSurgent@HighlandCapital.com>; Jason Post <JPost@HighlandCapital.com>; Dustin Norris <DNorris@NexPointSecurities.com>; Will Mabry <WMabry@HighlandCapital.com>
Subject: RE: 15(c) Follow up (10_2_20).DOCX

Good evening Frank, Klos, Kristin – please advise on the below in connection with the Board's follow-up request. Thanks!

> Are there any material outstanding amounts currently payable or due in the future (*e.g.*, notes) to HLCMLP by HCMFA or NexPoint Advisors or any other affiliate that provide services to the Funds?

From: Lauren Thedford
Sent: Friday, October 2, 2020 2:50 PM
To: Thomas Surgent <TSurgent@HighlandCapital.com>
Cc: Jason Post <JPost@HighlandCapital.com>; Dustin Norris <DNorris@Nexpointsecurities.com>; Will Mabry <WMabry@HighlandCapital.com>; David Klos <DKlos@HighlandCapital.com>
Subject: FW: 15(c) Follow up (10_2_20).DOCX

Thomas – please see attached (and reproduced below) additional 15c follow-up questions from the Board.

1. Please provide, to the extent practicable, the contingency plans with respect to the services provided under the Shared Services Agreements in the event that the outcome of the HCMLP bankruptcy proceedings were to impact the current servicing structure. For example, has the Advisers considered any outside service providers if necessary?

   Note prior question and response on related topic:

   With respect to the Estimated Adviser Profitability chart (Item A.2.a in the Board book), is the "Shared Services" line the only expenses attributable to HCMLP? Has any work been done or consideration been given to the solicitation of a third party bid on performing these services or bringing them in house to HCMFA?

   Response: Shared services, along with a portion of the investment professional compensation & benefits lines, are the only allocations attributable to HCMLP employees' support of the Advisers. HCMFA does not have the resources to bring these services in-house at this time, but given that HCMLP staffing levels for the provision of the shared services have remained fairly consistent and HCMLP remains capable of providing such shared services on economically reasonable terms, outsourced third-party bids have not been solicited at this time.

2. Are there any material outstanding amounts currently payable or due in the future (*e.g.*, notes) to HLCMLP by HCMFA or NexPoint Advisors or any other affiliate that provide services to the Funds?

3. The Board notes the provision of the updated list of current co-investments provided by HCMFA/NexPoint Advisors and the Advisers' discussion, including the senior-level team in place, to address any potential conflicts of interest matters. With respect to the compliance function, please confirm that the Funds' Chief Compliance Officer overall will continue in his usual role with respect to the Funds. Are there any other potential conflicts outside of the specific co-investment matters identified?

Please let me know if you would like me to set up a call on Monday to discuss.

From: Louizos, Stacy <SLouizos@BlankRome.com>
Sent: Friday, October 2, 2020 1:54 PM
To: Dustin Norris <DNorris@NexPointSecurities.com>; Lauren Thedford <LThedford@HighlandCapital.com>
Cc: Jason Post <JPost@HighlandCapital.com>; Zornada, George <George.Zornada@klgates.com>; Charles.Miller@klgates.com; Jon-Luc.Dupuy@klgates.com
Subject: 15(c) Follow up (10_2_20).DOCX

Hi Dustin and Lauren—Please see attached follow up questions from the Trustees after the latest Board call. Happy to have a call to discuss if helpful.

Best,
Stacy

Stacy H. Louizos | BLANKROME
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EXHIBIT 37

NEXPOINT ADVISORS, L.P.

INCUMBENCY CERTIFICATE

I am the President of NEXPOINT ADVISORS GP, LLC, a Delaware limited liability company (the "***General Partner***"), the general partner of **NEXPOINT ADVISORS, L.P.**, a Delaware limited partnership (the "***Partnership***"). In that capacity, I certify that the persons listed below have been duly appointed and qualified as, and currently are, officers of the General Partner of the Partnership. I also certify that each person listed below holds the position that is listed opposite his or her name in the General Partner, and that the signatures attached are the genuine signatures of the persons indicated. I also certify that in their capacity as officers of the General Partner, the persons listed below are authorized to execute any and all agreements on behalf of the General Partner in its capacity as the general partner of the Partnership. I also certify that in their capacity as officers of the General Partner, the persons listed below are authorized to give any party on behalf of the Partnership all notices, orders, directions, or instructions (including but not limited to written, facsimile, or oral funds transfer instructions) in connection with any transaction to which the Partnership is or in the future may be a party to in any capacity.

Name of Officer	**Title**	**Signature**
James Dondero	President	
Dustin Norris	Executive Vice President	
Frank Waterhouse	Treasurer	
Lauren Thedford	Secretary	

WITNESS my hand to be effective as of the 11th day of April, 2019.

NEXPOINT ADVISORS, L.P.

By: NexPoint Advisors GP, LLC, its general partner

By: _____
James Dondero, President

EXHIBIT 38

Cash payment history after 12/31/2018 - Other Notes subject to the Alleged Agreement

HCRE

		"HCRE Restructure note"		November 27, 2013 Note		October 12, 2017 Note		October 15, 2018 Note		September 25, 2019 Note		
Date	Cash receipt amount	Principal	Interest	Principal	Interest	Principal	Interest	Principal	Interest	Principal	Interest	Total Received in respect of notes
9/30/2019	$ 341,758	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ 204,733	$ 986	$ 205,719
12/30/2019	477,482	201,994	275,487	-	-	-	-	-	-	-	-	477,482
1/21/2021	665,811	30,542	$ 301,847	171,452	2,067	-	69,730	-	18,794	-	71,380	665,811
Total	**$ 1,485,051**	**$ 232,537**	**$ 577,334**	**$ 171,452**	**$ 2,067**	**$ -**	**$ 69,730**	**$ -**	**$ 18,794**	**$ 204,733**	**$ 72,366**	**$ 1,349,012**

* Difference between cash receipt and total received in respect of the notes of $136,039 was returned to HCRE on September 30, 2019.

HCMSI

		"Services Restructure note"										
Date	Cash receipt amount	Principal	Interest									Total Received in respect of notes
3/5/2019	$ 1,015,000	$ 977,095	$ 37,905									$ 1,015,000
8/9/2019	550,000	550,000	-									550,000
8/21/2019	5,600,000	5,595,862	4,138									5,600,000
12/30/2019	65,360	-	65,360									65,360
1/21/2021	181,227	-	181,227									181,227
Total	**$ 7,411,587**	**$ 7,122,957**	**$ 288,630**	**$ -**	**$ -**	**$ -**	**$ -**	**$ -**	**$ -**	**$ -**	**$ -**	**$ 7,411,587**

HCMFA

		February 26, 2014 Note										
Date	Cash receipt amount	Principal	Interest									Total Received in respect of notes
5/29/2019	$ 1,000,000	$ 978,102	$ 21,898									$ 1,000,000
6/4/2019	500,000	500,000	-									500,000
9/5/2019	500,000	484,172	15,828									500,000
10/3/2019	375,000	375,000	-									375,000
Total	**$ 2,375,000**	**$ 2,337,274**	**$ 37,726**	**$ -**	**$ -**	**$ -**	**$ -**	**$ -**	**$ -**	**$ -**	**$ -**	**$ 2,375,000**

NexPoint

		"NexPoint Restructure note"		September 19, 2019 Note		September 23, 2019 Note						
Date	Cash receipt amount	Principal	Interest	Principal	Interest	Principal	Interest					Total Received in respect of notes
3/29/2019	$ 725,000	$ 411,079	$ 313,921	-	-	-	-					$ 725,000
4/16/2019	1,300,000	1,216,918	83,082	-	-	-	-					1,300,000
6/4/2019	300,000	282,207	17,793	-	-	-	-					300,000
6/19/2019	2,100,000	2,033,972	66,028	-	-	-	-					2,100,000
7/9/2019	630,000	548,650	81,350	-	-	-	-					630,000
8/13/2019	1,300,000	1,160,793	139,207	-	-	-	-					1,300,000
12/9/2019	1,518,575	-	-	500,000	6,658	1,000,000	11,918					1,518,575
12/30/2019	530,112	-	530,112	-	-	-	-					530,112
1/14/2021	1,406,112	575,551	830,561	-	-	-	-					1,406,112
Total	**$ 9,809,800**	**$ 6,229,170**	**$ 2,062,054**	**$ 500,000**	**$ 6,658**	**$ 1,000,000**	**$ 11,918**	**$ -**	**$ -**	**$ -**	**$ -**	**$ 9,809,800**

Total of HCRE, HCMSI, HCMFA, NexPoint after December 31, 2018	**$ 20,945,399**

EXHIBIT 39

HIGHLAND CAPITAL
MANAGEMENT, LP

OPERATING RESULTS

February 2018

Highland Capital Management, L.P.
Significant Items Impacting HCMLP's Balance Sheet
February 2018

CLOs

[redacted]

Operating Activities

[redacted]

Investments

[redacted]

Other

- ($3.8M) partner loan

Highland Capital Management, L.P.
Financial/Operational Highlights
February 2018 Close Package
(in millions)

	11/30/2017	12/31/2017	1/31/2018	2/28/2018
Cash	$ 6.4	$ 10.2	$ 2.2	$ 9.6
Operating Revenue	$ 4.3	$ 13.9	$ 4.2	$ 4.4
Operating Expenses (1)	(4.2)	(19.7)	(3.7)	(4.5)
Operating Income	$ 0.1	$ (5.8)	$ 0.5	$ (0.1)
Add back: Non-Recurring Items	$ -	$ -	$ -	$ -
Adjusted Operating Income	$ 0.1	$ (5.8)	$ 0.5	$ (0.1)
Net Income/(Loss)	$ 20.4	$ 17.0	$ 7.2	$ (26.1)

	MTD	YTD	LTM
Operating Cash Flow (2)	$ (6.0)	$ (4.2)	$ (7.6)
Interest Expense	(0.1)	(0.2)	(1.6)
Adjusted Operating Cash Flow	$ (6.1)	$ (4.4)	$ (9.2)

Assets Under Management (billions)	11/30/2017	12/31/2017	1/31/2018
CLO 1.0	$ 2.1	$ 1.9	$ 1.8
Sep. Accounts	1.9	2.0	2.0
Hedge/PE	1.1	1.1	1.1
Total	$ 5.0	$ 5.0	$ 4.9

Headcount - including affiliates	11/30/2017	12/31/2017	1/31/2018	2/28/2018
Front Office	47	45	45	42
Institutional Marketing and Client Service	7	7	9	8
Legal	14	15	15	16
Admin	13	14	13	13
Retail Operations (HCMLP)	4	4	4	4
Back Office	41	38	39	39
HCFD/NSI	21	21	17	16
HCMF Strategy/Marketing	5	5	5	5
Total	152	149	147	143

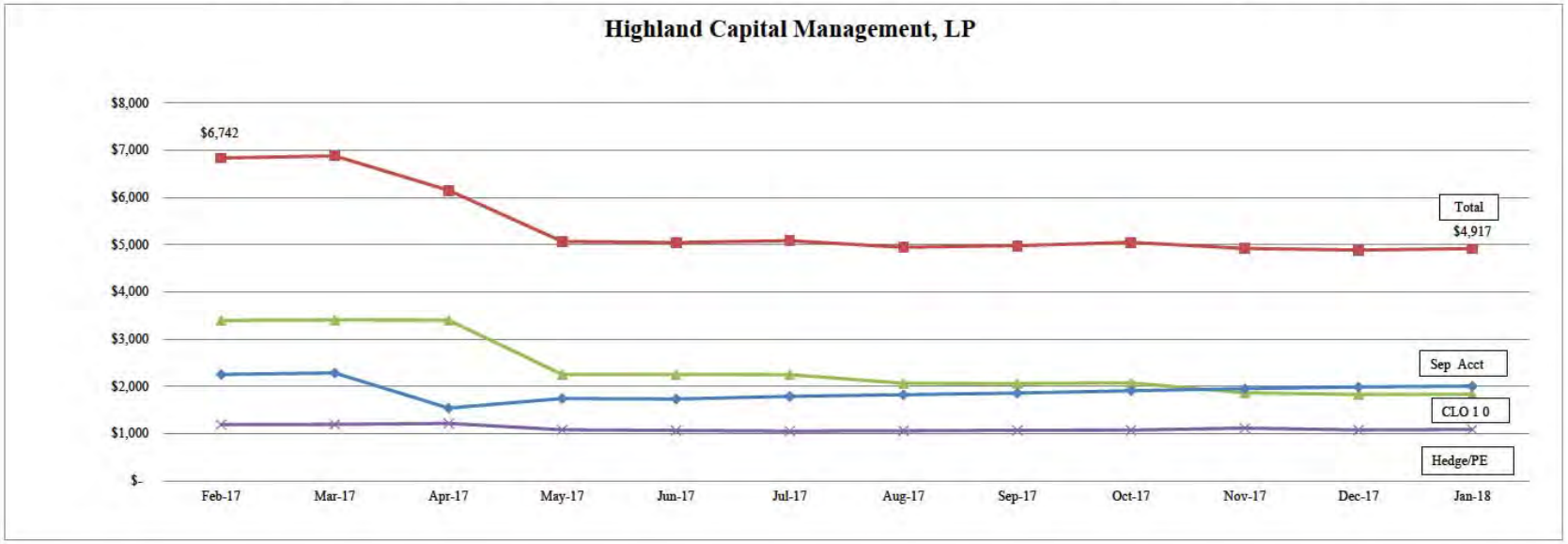
Notes:

(1) Excludes deferred compensation MTM

(2) Operating Cash Flow = Operating Income + Dep. + Deferred Comp + Non-Cash Bonus Expense

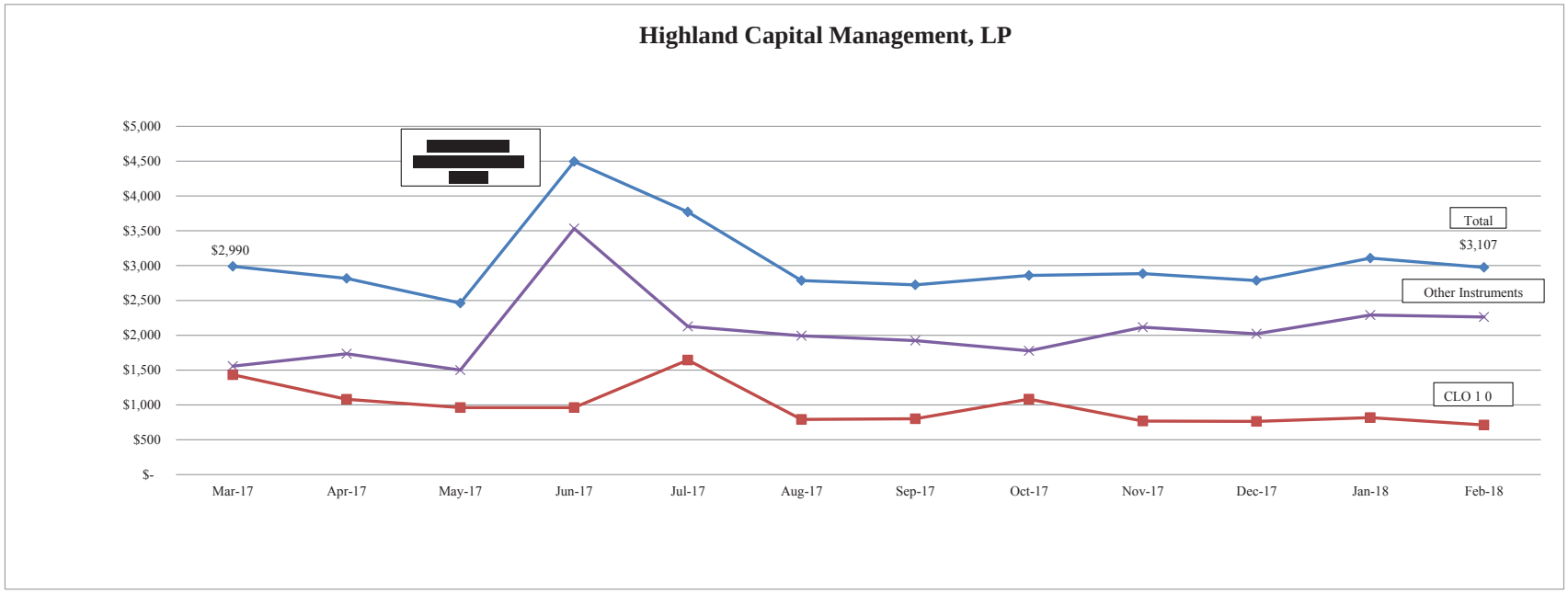
HCMLP Rolling Fee Earning AUM Schedule
(in millions)

	2/28/2017	3/31/2017	4/30/2017	5/31/2017	6/30/2017	7/31/2017	8/31/2017	9/30/2017	10/31/2017	11/30/2017	12/31/2017	1/31/2018
CLO 1 0	$ 3,396	$ 3,405	$ 3,402	$ 2,250	$ 2,250	$ 2,249	$ 2,063	$ 2,060	$ 2,072	$ 1,859	$ 1,827	$ 1,831
Sep Accounts	2,251	2,282	1,538	1,741	1,732	1,787	1,823	1,855	1,905	1,951	1,987	2,003
Hedge/PE	1,189	1,195	1,213	1,076	1,065	1,049	1,058	1,067	1,072	1,112	1,073	1,084
Total	$ 6,742	$ 6,882	$ 6,153	$ 5,067	$ 5,047	$ 5,085	$ 4,945	$ 4,981	$ 5,049	$ 4,922	$ 4,887	$ 4,917



HCMLP Monthly Management Fees
(in thousands)

	3/31/2017	4/30/2017	5/31/2017	6/30/2017	7/31/2017	8/31/2017	9/30/2017	10/31/2017	11/30/2017	12/31/2017	1/31/2018	2/28/2018
CLO 1 0	$ 1,433	$ 1,081	$ 961	$ 961	$ 1,644	$ 793	$ 802	$ 1,082	$ 768	$ 765	$ 817	$ 713
Sep Accounts	577	762	586	327	792	635	563	516	678	584	622	626
Subadvised Account	566	526	505	588	538	520	529	447	620	621	491	497
Hedge/PE Funds	414	446	409	2,617	797	837	831	814	818	817	1,177	1,138
Total	$ 2,990	$ 2,815	$ 2,462	$ 4,494	$ 3,771	$ 2,785	$ 2,725	$ 2,860	$ 2,885	$ 2,786	$ 3,107	$ 2,974



HIGHLAND CAPITAL MANAGEMENT, LP

Statement of Income
Twelve Months Ended February 2018
(in thousands)

	Mar-17	Apr-17	May-17	Jun-17	Jul-17	Aug-17	Sep-17	Oct-17	Nov-17	Dec-17	Jan-18	Feb-18	LTM	YTD
Revenue:														
Management fees	$ 2,990	$ 2,815	$ 2,462	$ 4,494	$ 3,771	$ 2,785	$ 2,725	$ 2,860	$ 2,885	$ 3,265	$ 3,129	$ 2,974	$ 37,154	$ 6,103
Shared services fees	817	871	794	620	779	803	757	732	871	873	930	866	9,713	1,796
Incentive fees	-	-	-	-	-	-	-	-	-	10,057	-	-	10,057	-
Other income	431	217	560	477	274	614	562	234	586	912	215	596	5,679	811
Total operating revenue	**4,237**	**3,904**	**3,816**	**5,591**	**4,824**	**4,202**	**4,043**	**3,827**	**4,342**	**15,107**	**4,274**	**4,436**	**62,603**	**8,710**
Operating expenses:														
Compensation and benefits	2,769	2,539	2,495	2,702	2,885	2,800	2,368	2,308	2,795	2,692	2,755	2,769	31,876	5,524
Deferred compensation	222	243	157	214	426	50	297	286	755	291	159	101	3,201	260
Professional services	629	307	1,168	511	616	1,531	472	1,031	649	16,650	181	314	24,060	495
Investment research and consulting	226	175	8	208	14	15	160	22	8	242	13	20	1,111	33
Depreciation	110	110	110	114	112	112	113	112	112	108	109	108	1,328	217
Other operating expenses	875	684	702	1,021	645	988	805	723	497	662	580	683	8,866	1,263
Total operating expenses	**4,831**	**4,057**	**4,640**	**4,770**	**4,697**	**5,495**	**4,216**	**4,482**	**4,816**	**20,646**	**3,798**	**3,995**	**70,442**	**7,793**
Operating income	**(594)**	**(153)**	**(824)**	**821**	**127**	**(1,292)**	**(172)**	**(655)**	**(474)**	**(5,539)**	**476**	**441**	**(7,839)**	**917**
Other income/expense:														
Interest and investment income, net	478	454	493	661	606	558	532	574	937	839	612	473	7,219	1,086
Interest expense	(143)	(141)	(149)	(146)	(142)	(148)	(136)	(141)	(134)	(147)	(141)	(65)	(1,632)	(206)
Other income/expense	59	170	4,060	947	39	13	63	77	64	19,147	81	64	24,784	145
Total other income/expense	**394**	**484**	**4,405**	**1,462**	**503**	**424**	**459**	**510**	**867**	**19,839**	**552**	**472**	**30,370**	**1,024**
Realized and unrealized gain/(loss) from investments:														
Net realized gain/(loss) on sale of investment transactions	1,547	(20)	2,560	272	496	2,811	-	22	-	(1,155)	-	-	6,533	-
Net change in unrealized gain/(loss) of investments	(189)	(460)	4,729	4,338	3,144	(9,361)	9,180	(1,004)	6,375	2,170	10,678	(10,201)	19,398	477
Total realized and unrealized gain/(loss) from investments	**1,358**	**(480)**	**7,290**	**4,610**	**3,640**	**(6,550)**	**9,180**	**(982)**	**6,375**	**1,015**	**10,678**	**(10,201)**	**25,931**	**477**
Earnings and losses from equity method investees														
[redacted]	225	235	(16)	258	44	(201)	333	12	200	329	926	(210)	2,135	716
[redacted]	(2,857)	(558)	(624)	818	(1,908)	1,709	(1,136)	(203)	4,333	529	(1,674)	(5,137)	(6,708)	(6,811)
[redacted]	(5,870)	(1,935)	(1,352)	1,692	(3,860)	3,454	(2,300)	(419)	8,353	1,019	(3,731)	(11,446)	(16,395)	(15,177)
[redacted]	-	-	-	-	-	9	0	15	-	18	-	-	42	-
[redacted]	-	(184)	-	(6)	(15)	-	(14)	(18)	11	102	-	-	(125)	-
[redacted]	-	-	-	-	-	-	-	-	768	-	-	-	768	-
[redacted]	-	-	(1,534)	-	-	-	-	-	-	-	-	-	(1,534)	-
[redacted]	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Total earnings/(loss) from equity method investees	**(8,502)**	**(2,441)**	**(3,525)**	**2,762**	**(5,740)**	**4,971**	**(3,118)**	**(613)**	**13,664**	**1,996**	**(4,479)**	**(16,794)**	**(21,817)**	**(21,273)**
Net income	**(7,345)**	**(2,591)**	**7,345**	**9,655**	**(1,470)**	**(2,447)**	**6,348**	**(1,739)**	**20,432**	**17,311**	**7,227**	**(26,081)**	**$ 26,645**	**$ (18,854)**
Profit margin	**-173%**	**-66%**	**192%**	**173%**	**-30%**	**-58%**	**157%**	**-45%**	**471%**	**115%**	**169%**	**-588%**	**43%**	**-216%**
Operating Cash Flow Calculation:														
Operating income	(594)	(153)	(824)	821	127	(1,292)	(172)	(655)	(474)	(5,539)	476	441	(7,839)	917
Add Depreciation expense	110	110	110	114	112	112	113	112	112	108	109	108	1,328	217
Adjustment Deferred compensation	(2,767)	243	157	214	426	50	297	286	755	291	159	(489)	(378)	(330)
Bonus awards	1,000	956	1,000	1,000	1,000	(5,190)	986	1,000	1,300	1,300	1,000	(6,049)	(696)	(5,049)
Operating Cash Flow	**(2,251)**	**1,155**	**442**	**2,149**	**1,664**	**(6,320)**	**1,224**	**743**	**1,693**	**(3,840)**	**1,744**	**(5,989)**	**$ (7,585)**	**$ (4,245)**
Less Interest expense	(143)	(141)	(149)	(146)	(142)	(148)	(136)	(141)	(134)	(147)	(141)	(65)	(1,632)	(206)
Adjusted Operating Cash Flow	**(2,395)**	**1,015**	**293**	**2,003**	**1,523**	**(6,468)**	**1,087**	**603**	**1,559**	**(3,987)**	**1,603**	**(6,054)**	**$ (9,217)**	**$ (4,451)**
Add cash bonus expense	1,063	1,001	1,000	1,100	1,032	1,025	1,000	1,008	1,304	1,300	1,000	1,000	12,832	2,000
Less cash bonuses paid	(63)	(45)	-	(100)	(32)	(6,215)	(14)	(8)	(4)	-	-	(7,049)	(13,528)	(7,049)
Non-cash bonus add-back	**1,000**	**956**	**1,000**	**1,000**	**1,000**	**(5,190)**	**986**	**1,000**	**1,300**	**1,300**	**1,000**	**(6,049)**	**(696)**	**(5,049)**
Add deferred compensation MTM	222	243	157	214	426	50	297	286	755	291	159	101	3,201	260
Less cash deferred awards paid	(2,989)	-	-	-	-	-	-	-	-	-	-	(590)	(3,579)	(590)
Non-cash deferred award add-back	**(2,767)**	**243**	**157**	**214**	**426**	**50**	**297**	**286**	**755**	**291**	**159**	**(489)**	**(378)**	**(330)**

HIGHLAND CAPITAL MANAGEMENT, LP

Balance Sheet
February 2018 vs. January 2018
(in thousands)

	February 28, 2018	January 31, 2018	Increase/ (Decrease) $	Increase/ (Decrease) %
Assets				
Cash and cash equivalents	$ 9,607	$ 2,161	$ 7,446	344.6%
Investments, at fair value	266,615	277,888	(11,273)	-4.1%
Equity method investees	59,692	82,690	(22,997)	-27.8%
Management and incentive fee receivable	1,918	4,988	(3,070)	-61.5%
Deferred incentive fees	-	6,944	(6,944)	0.0%
Fixed assets, net	5,557	5,665	(109)	-1.9%
Due from affiliates	181,222	175,605	5,617	3.2%
Other assets	9,408	10,353	(945)	-9.1%
Total assets	**$ 534,020**	**$ 566,295**	**$ (32,275)**	**(5.7%)**
Liabilities and Partners' Capital				
Accounts payable	$ 2,036	$ 2,667	$ (631)	-23.7%
Due to brokers	35,777	35,842	(64)	-0.2%
Accrued expenses and other liabilities	54,361	59,860	(5,498)	-9.2%
Partners' capital	441,846	467,927	(26,081)	-5.6%
Total liabilities and partners' capital	**$ 534,020**	**$ 566,295**	**$ (32,275)**	**(5.7%)**

Partners' Capital Walk

Partners' capital at 1/31	$ 467,927
Net subscriptions/(redemptions)	-
Net income/(loss)	(26,081)
Partners' capital at 2/28	$ 441,846

HIGHLAND CAPITAL MANAGEMENT, LP

Income Statement
February 2018 YTD vs. January 2017 YTD
(in thousands)

	2018 YTD	2017 YTD	Increase/ (Decrease) $	Increase/ (Decrease) %
Revenue:				
Management fees	$ 6,103	$ 6,106	$ (3)	0.0%
Shared services fees	1,796	1,574	221	14.1%
Other income	811	808	3	0.4%
Total operating revenue	**8,710**	**8,488**	**222**	**2.6%**
Operating expenses:				
Salaries and overtime	2,331	2,274	57	2.5%
Bonus	2,000	1,995	5	0.2%
Other compensation and benefits	1,193	1,125	68	6.1%
Deferred compensation	260	666	(406)	-61.0%
Professional services	495	740	(245)	-33.1%
Investment research and consulting	33	23	10	45.5%
Marketing and advertising expense	341	460	(119)	-25.8%
Depreciation expense	217	221	(4)	-2.0%
Other operating expenses	922	747	175	23.4%
Total operating expenses	**7,793**	**8,252**	**(460)**	**-5.6%**
Operating income/(loss)	**917**	**236**	**681**	**288.5%**
Other income/expense:				
Interest income	1,086	916	170	18.6%
Interest expense	(206)	(244)	39	-15.8%
Other income/expense	145	251	(106)	-42.3%
Total other income/expense	**1,024**	**922**	**103**	**11.1%**
Realized and unrealized gains from investments:				
Net realized losses on sales of investment transactions	-	-	-	0.0%
Net change in unrealized gains/(losses) of investments	477	10,093	(9,616)	95.3%
Total realized and unrealized gains from investments	**477**	**10,093**	**(9,616)**	**-95.3%**
Net earnings/(losses) from equity method investees	(21,273)	6,393	(27,666)	432.8%
Net income/(loss)	**$ (18,854)**	**$ 17,644**	**$ (36,498)**	**206.9%**
Profit margin	**-216%**	**208%**		
Other operating expenses detail				
Rent expense	258	196	61	31 2%
Fees and dues	44	55	(11)	-19 6%
Travel and entertainment	137	201	(63)	-31 6%
Insurance expense	128	50	78	155 8%
Bad debt expense	-	-	-	0 0%
Miscellaneous expenses	354	245	110	44 9%
Total other operating expenses	**922**	**747**	**175**	**23.4%**

HCMLP Analytics
(in thousands)
Accounts Payable Aging Analysis

Vendor Type	Current	30 Days	45 Days	90 Days	120 Days	Greater Than 120 Days	Grand Total	%
Overhead	$ 678	$ 45	$ 433	$ 86	$ -	$ -	$ 1,242	61%
Legal	-	-	-	-	-	794	794	39%
Grand Total	$ 678	$ 45	$ 433	$ 86	$ -	$ 794	$ 2,036	100%
% Outstanding	**33%**	**2%**	**21%**	**4%**	**0%**	**39%**		

Top 5 Legal Greater than 120 Days	February 2018
[redacted]	$ 292
[redacted]	200
[redacted]	180
[redacted]	112
[redacted]	10
Total	$ 794
% Total of AP Outstanding	39%

Top 5 Overhead Greater than 120 Days*	February 2018
N/A	-
Total	$ -
% Total of AP Outstanding	0%

Fund Reimbursements

Funds	2/28/2018	1/31/2018	2/28/2017	Year-Over-Year $ Change	Year-Over-Year % Change
US CLOs	$ 851	$ 1,893	$ 633	$ 217	34%
Hedge/Private Equity	611	622	497	114	23%
Separate Accounts	30	30	17	13	77%
Retail	194	194	557	(363)	-65%
International/Portfolio Co	3,413	3,668	3,954	(541)	-14%
Research Unallocated	759	311	888	(129)	-15%
Unallocated	1,345	1,297	1,350	-	0%
Total	$ 7,202	$ 8,015	$ 7,896	$ (688)	-9%

	1/31/2018	Net Additions	Receipts	2/28/2018
Month to Month Change	$ 8,015	$ 330	$ (1,143)	$ 7,202

	2/28/2017	2/28/2018	2017 YTD	2018 YTD
Fund Reimbursement Receipts	$ 1,620	$ 1,143	$ 2,225	$ 2,256

HCMLP Invoice Metrics	February 2018	January 2018
Invoices Processed:	162	120
$ Amount Processed:	$ 8,077	$ 11,918
# of Payments	166	152
$ Amount of Payments:	$ 8,558	$ 13,302

Self-Insurance Summary

Entity	Premium Balance
[redacted]	693
[redacted]	370
[redacted]	89
[redacted]	9
[redacted]	(156)
[redacted]	(154)
[redacted]	(197)
[redacted]	(392)
[redacted]	(258)
Total over/(under) funded	**$ 4**

Shared Services Receivables Summary

Entity	Balance
[redacted]	3,730
[redacted]	367
[redacted]	200
[redacted]	40
[redacted]	54
[redacted]	-
[redacted]	-
Total	**$ 4,391**

Highland Capital Management, LP
Schedule of Investments
As of February 2018

Fund	MV @ 1/31/2018	Monthly Change in Unrealized Gain/(Loss)	Contributions, (Distributions) & Realized Gain/(Loss)	MV @ 2/28/2018
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]

Historical Legal Summary through February 28, 2018
Includes only matters allocated to HCMLP
in thousands

HCMLP Legal by Matter

Sub-Total Top 25 Matters	3,469	3,513	8,039	512
Sub-Total Other Matters	31	1	-	-
Total Matters	3,500	3,514	8,039	512

Sorted largest to smallest Matter by 2018 dollars invoiced

HCMLP Legal by Vendor

Sub-Total Top 25 Vendors	2,865	3,045	7,450	450
Sub-Total Other Vendors	635	469	589	61
Total Vendors	3,500	3,514	8,039	512

Sorted largest to smallest Vendor by cumulative dollars invoiced ('12 - YTD '18)

Employee Expenses through February 28, 2018
Excludes all Dondero Reimbursements
HCMLP & Certain Affiliated Advisors
in thousands

Employee Expenses - Including Reimbursable

Company	2015	2016	2017	2018	2018 Annualized
[redacted]	$ 838	$ 707	$ 818	$ 93	$ 557
[redacted]	2,447	1,860	1,041	85	509
[redacted]	742	511	292	23	139
[redacted]	-	57	141	18	108
Total	$ 4,027	$ 3,135	$ 2,293	$ 219	$ 1,312

Employee Expenses - Non-Reimbursable Only

Company	2015	2016	2017	2018	2018 Annualized
HCMLP	$ 387	$ 174	$ 396	$ 61	$ 363
HCFD	2,219	933	543	39	231
HCMFA	450	380	256	18	110
NPA	-	16	61	9	55
Total	$ 3,056	$ 1,503	$ 1,257	$ 127	$ 759

EXHIBIT 40

Fill in this information to identify the case:

Debtor name **Highland Capital Management, L.P.**

United States Bankruptcy Court for the: NORTHERN DISTRICT OF TEXAS

Case number (if known) **19-34054-SGJ**

☐ Check if this is an amended filing

Official Form 206Sum

Summary of Assets and Liabilities for Non-Individuals

12/15

Part 1: Summary of Assets

1. ***Schedule A/B: Assets-Real and Personal Property*** (Official Form 206A/B)

1a. **Real property:**
Copy line 88 from *Schedule A/B*..... $ **523,970.00**

1b. **Total personal property:**
Copy line 91A from *Schedule A/B*..... $ **409,580,813.30**

1c. **Total of all property:**
Copy line 92 from *Schedule A/B*..... $ **410,104,783.30**

Part 2: Summary of Liabilities

2. ***Schedule D: Creditors Who Have Claims Secured by Property*** (Official Form 206D)
Copy the total dollar amount listed in Column A, *Amount of claim,* from line 3 of *Schedule D*..... $ **34,862,225.94**

3. ***Schedule E/F: Creditors Who Have Unsecured Claims*** (Official Form 206E/F)

3a. Total claim amounts of priority unsecured claims:
Copy the total claims from Part 1 from line 5a of *Schedule E/F*..... $ **Unknown**

3b. Total amount of claims of nonpriority amount of unsecured claims:
Copy the total of the amount of claims from Part 2 from line 5b of *Schedule E/F*..... +$ **244,455,350.78**

4. **Total liabilities** .....
Lines 2 + 3a + 3b $ **279,317,576.72**

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Debtor **Highland Capital Management, L.P.** Case number *(If known)* **19-34054-SGJ**
Name

	General description	Net book value of debtor's interest (Where available)	Valuation method used for current value	Current value of debtor's interest
60.	**Patents, copyrights, trademarks, and trade secrets**			
61.	**Internet domain names and websites** **139 Domain Names**	**$0.00**	**N/A**	**Unknown**
62.	**Licenses, franchises, and royalties** **3rd Party Private Equity Management Company**	**$0.00**	**N/A**	**Unknown**

63. **Customer lists, mailing lists, or other compilations**

64. **Other intangibles, or intellectual property**

65. **Goodwill**

66. **Total of Part 10.**
Add lines 60 through 65. Copy the total to line 89. **Unknown**

67. **Do your lists or records include personally identifiable information of customers** (as defined in 11 U.S.C.§§ 101(41A) and 107**?**
☐ No
☑ Yes

68. **Is there an amortization or other similar schedule available for any of the property listed in Part 10?**
☑ No
☐ Yes

69. **Has any of the property listed in Part 10 been appraised by a professional within the last year?**
☑ No
☐ Yes

Part 11: All other assets

70. **Does the debtor own any other assets that have not yet been reported on this form?**
Include all interests in executory contracts and unexpired leases not previously reported on this form.

☐ No. Go to Part 12.
☑ Yes Fill in the information below.

						Current value of debtor's interest
71.	**Notes receivable** Description (include name of obligor) **Notes Receivable (Exhibit D)**	**150,331,222.61** Total face amount	-	**Unknown** doubtful or uncollectible amount	=	**Unknown**

72. **Tax refunds and unused net operating losses (NOLs)**
Description (for example, federal, state, local)

73. **Interests in insurance policies or annuities**

74. **Causes of action against third parties (whether or not a lawsuit has been filed)**

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Highland Capital Management LP
Case # 19-34054-SGJ
Exhibit D - Schedule 71A

Notes Receivable	Total Face Amount [1]
Hunter Mountain Investment Trust	$ 56,873,209.22
Affiliate Note Receivable - A	24,534,644.03
The Dugaboy Investment Trust	18,286,268.16
Affiliate Note Receivable - B	10,413,539.53
Affiliate Note Receivable - C	10,394,680.47
James Dondero	9,334,012.00
Highland Capital Management Services, Inc.	7,482,480.88
Siepe	2,019,256.35
Highland Mult Strategy Credit Fund, LP	3,269,000.00
Highland Capital Management Korea Ltd. [2]	3,132,278.05
Private Portfolio Company - A	2,198,610.05
Mark Okada	1,336,287.84
Private Portfolio Company - B	1,056,956.03
Total	**$ 150,331,222.61**

[1]Doubtful or Uncollectible accounts are evaluated at year end.
[2] Includes $72,278.05 of intercompany receivable.

EXHIBIT 41

Monthly Operating Report
ACCRUAL BASIS

CASE NAME:	Highland Capital Management
CASE NUMBER:	19-34054
JUDGE:	Stacey Jernigan

UNITED STATES BANKRUPTCY COURT

NORTHERN & EASTERN DISTRICTS OF TEXAS

REGION 6

MONTHLY OPERATING REPORT

MONTH ENDING: December (MONTH) 2019 (YEAR)

IN ACCORDANCE WITH TITLE 28, SECTION 1746, OF THE UNITED STATES CODE, I DECLARE UNDER PENALTY OF PERJURY THAT I HAVE EXAMINED THE FOLLOWING MONTHLY OPERATING REPORT (ACCRUAL BASIS-1 THROUGH ACCRUAL BASIS-7) AND THE ACCOMPANYING ATTACHMENTS AND, TO THE BEST OF MY KNOWLEDGE, THESE DOCUMENTS ARE TRUE, CORRECT, AND COMPLETE. DECLARATION OF THE PREPARER (OTHER THAN RESPONSIBLE PARTY) IS BASED ON ALL INFORMATION OF WHICH PREPARER HAS ANY KNOWLEDGE.

RESPONSIBLE PARTY:

ORIGINAL SIGNATURE OF RESPONSIBLE PARTY	Chief Restructuring Officer TITLE
Bradley Sharp PRINTED NAME OF RESPONSIBLE PARTY	1/31/2020 DATE

PREPARER:

ORIGINAL SIGNATURE OF PREPARER	Chief Financial Officer TITLE
Frank Waterhouse PRINTED NAME OF PREPARER	DATE

Monthly Operating Report
ACCRUAL BASIS-1

CASE NAME:	Highland Capital Management, LP
CASE NUMBER:	19-12239-CSS

Comparative Balance Sheet
(in thousands)

	10/15/2019	10/31/2019	11/30/2019	12/31/2019 [6]
Assets				
Cash and cash equivalents	2,529	2,286	6,343	9,501
Investments, at fair value [3]	232,620	235,144	233,776	235,054
Equity method investees [3]	161,819	161,813	175,381	174,815
Management and incentive fee receivable	2,579	3,202	1,223	1,828
Fixed assets, net	3,754	3,672	3,601	3,521
Due from affiliates [1]	151,901	152,124	152,523	146,245
Reserve against notes recievable				(57,963)
Other assets	11,311	11,260	10,621	10,663
Total assets	**$ 566,513**	**$ 569,501**	**$ 583,468**	**$ 523,664**
Liabilities and Partners' Capital				
Pre-petition accounts payable [4]	1,176	1,135	1,250	1,068
Post-petition accounts payable [4]	-	102	236	624
Secured debt:				
Frontier	5,195	5,195	5,195	5,195
Jefferies	30,328	30,315	30,268	30,020
Accrued expenses and other liabilities [4]	59,203	59,184	60,848	66,423
Accrued re-organization related fees [5]	-	-	-	5,693
Claim accrual [2]	73,997	73,997	73,997	73,997
Partners' capital	396,614	399,573	411,674	340,644
Total liabilities and partners' capital	**$ 566,513**	**$ 569,501**	**$ 583,468**	**$ 523,664**

(1) Includes various notes receivable at carrying value, except note due from Hunter Mountain Investment Trust which is fully reserved against ($58M reserve). Fair value has not been determined with respect to any of the notes.

(2) Uncontested portion of Redeemer claim less appplicable offsets. Potential for additional liability based on future events. No interest has been accrued beyond petition date.

(3) Mark to market gains/(losses) on investments include pricing updates for publicly traded securities and other positions with readily available market price information. Limited partnership interests normally marked to a NAV statement have been updated based upon the most recent statement available, or marked to an estimate to the extent available.

(4) Note on accruals: expenses recorded in Accounts Payable and Accrued Expenses and Other Liabilities reflect invoices recorded through accounts payable, legal invoice accruals, and normal course operating accruals, but do not reflect estimates for other incurred, but not yet received invoices. For balance sheet dates other than the Petition Date, amounts include both pre-petition and post-petition liabilities.

(5) At December 31st, 2019, Debtor accrued for post-petition re-organization fees based upon an estimate of fees incurred to date.

(6) All balances are preliminary, unaudited, and subject to further year-end closing entries pursuant to the normal year-end closing process.

Monthly Operating Report

ACCRUAL BASIS-2

CASE NAME:	**Highland Capital Management, LP**
CASE NUMBER:	**19-12239-CSS**

Income Statement [1]

(in thousands)

	Date	Month ended	Month ended [4]	Filing to Date
	10/16/19 - 10/31/19	**11/30/2019**	**12/31/2019**	
Revenue:				
Management fees	975	1,638	1,804	4,417
Shared services fees	283	709	596	1,588
Other income	99	418	1,032	1,549
Total operating revenue	**1,357**	**2,765**	**3,433**	**7,555**
Operating expenses:				
Compensation and benefits	997	1,936	2,256	5,188
Professional services	256	90	354	700
Investment research and consulting	10	34	10	54
Marketing and advertising expense	-	35	(15)	20
Depreciation expense	82	82	80	244
Bad debt expense reserve	-	-	8,420	8,420
Other operating expenses	201	480	310	991
Total operating expenses	**1,545**	**2,657**	**11,415**	**15,617**
Operating income/(loss)	**(188)**	**108**	**(7,982)**	**(8,062)**
Other income/expense:				
Interest income	250	484	495	1,230
Interest expense	(107)	(103)	(135)	(346)
Reserve against notes receivable	-	-	(57,963)	(57,963)
Re-org related expenses[2]	-	-	(5,693)	(5,693)
Other income/expense	32	-	-	32
Total other income/expense	**175**	**381**	**(63,296)**	**(62,741)**
Net realized gains/(losses) on investments	339	279	-	618
Net change in unrealized gains/(losses) of investments[3]	2,654	(2,004)	988	1,638
	2,993	**(1,725)**	**988**	**2,256**
Net earnings/(losses) from equity method investees[3]	(20)	13,468	(692)	12,756
Net income/(loss)	**$ 2,959**	**$ 12,232**	**$ (70,982)**	**$ (55,791)**

(1) Note on accruals: expenses recorded in the Income Statement reflect invoices recorded through accounts payable, legal invoice accruals, and normal course operating accruals, but do not reflect estimates for other incurred, but not yet received invoices.

(2) Debtor funded various retainers totaling $790k prior to the petition date, which were entirely expensed as of the petition date. At December 31st, 2019, Debtor accrued for post-petition re-organization fees based upon an estimate of fees incurred to date.

(3) Mark to market gains/(losses) on investments include pricing updates for publicly traded securities and other positions with readily available market price information. Limited partnership interests normally marked to a NAV statement have been updated based upon the most recent statement available, or marked to an estimate to the extent available.

(4) All balances are preliminary, unaudited, and subject to further year-end closing entries pursuant to the normal year-end closing process.

Monthly Operating Report
ACCRUAL BASIS-3A

CASE NAME:	Highland Capital Management
CASE NUMBER:	19-34054

CASH RECEIPTS AND DISBURSEMENTS	OCTOBER	NOVEMBER	DECEMBER	QUARTER
1. CASH - BEGINNING OF MONTH [2]	$ 2,554,230	$ 2,286,160	$ 6,342,598	$ 2,554,230
RECEIPTS FROM OPERATIONS				
2. OTHER OPERATING RECEIPTS	$ 6,912	$ 972,733	$ 883,113	$ 1,862,757
3 MANAGEMENT FEES AND OTHER RELATED RECEIPTS	$ 15,000	$ 1,764,749	$ 1,376,993	$ 3,156,742
COLLECTION OF ACCOUNTS RECEIVABLE				
4 PREPETITION	$ 46,425	$ 2,962,108	$ 584,575	$ 3,593,108
5 POSTPETITION [1]	$ -	$ -	$ -	$ -
6 TOTAL OPERATING RECEIPTS	$ 68,337	$ 5,699,590	$ 2,844,680	$ 8,612,608
NON-OPERATING RECEIPTS				
7 THIRD PARTY FUND ACTUAL/EXPECTED DISTRIBUTIONS	$ 79,266	$ 320,836	$ 23,365	$ 423,468
8 DIVS, PAYDOWNS, MISC FROM INVESTMENT ASSETS	$ 410,189	$ 501,983	$ 425,897	$ 1,338,069
9 OTHER (ATTACH LIST)			$ 3,390,286	$ 3,390,286
10 TOTAL NON-OPERATING RECEIPTS	$ 489,456	$ 822,820	$ 3,839,547	$ 5,151,822
11 TOTAL RECEIPTS	$ 557,793	$ 6,522,410	$ 6,684,227	$ 13,764,430
12 TOTAL CASH AVAILABLE	$ 3,112,023	$ 8,808,570	$ 13,026,825	
OPERATING DISBURSEMENTS				
13 PAYROLL, BENEFITS, AND TAXES + EXP REIMB [(3)]	$ 737,588	$ 961,282	$ 2,077,577	$ 3,776,446
14 SINGAPORE SERVICE FEES	$ 34,633	$ 32,555	$ 27,930	$ 95,118
15 HCM LATIN AMERICA		$ 100,000	$ 100,000	$ 200,000
16 THIRD PARTY FUND CAPITAL CALL OBLIGATION		$ 967,555	$ 459,432	$ 1,426,987
17 UTILITIES				$ -
18 INSURANCE				$ -
19 INVENTORY PURCHASES				$ -
20 VEHICLE EXPENSES				$ -
21 TRAVEL				$ -
22 ENTERTAINMENT				$ -
23 REPAIRS & MAINTENANCE				$ -
24 SUPPLIES				$ -
25 ADVERTISING				$ -
26 OTHER (ATTACH LIST)	$ 53,642	$ 404,581	$ 860,477	$ 1,318,700
27 TOTAL OPERATING DISBURSEMENTS	$ 825,863	$ 2,465,973	$ 3,525,415	$ 6,817,251
REORGANIZATION EXPENSES				
28 PROFESSIONAL FEES				$ -
29 U.S. TRUSTEE FEES				$ -
30 OTHER (ATTACH LIST)				$ -
31 TOTAL REORGANIZATION EXPENSES	$ -	$ -	$ -	$ -
32 TOTAL DISBURSEMENTS	$ 825,863	$ 2,465,973	$ 3,525,415	$ 6,817,251
33 NET CASH FLOW	$ (268,070)	$ 4,056,437	$ 3,158,812	$ 6,947,179
34 CASH - END OF MONTH	$ 2,286,160	$ 6,342,598	$ 9,501,409	$ 9,501,409

1 All postpetition receipts are included in line 3, Management Fees and Other Related Recepits.
2 Beginning cash in October represents the bank balance as of the filing date, while the cash amount shown on the balance sheet includes any outstanding checks.
3 November 30th, 2019 payroll in the amount of $478,337 did not debit the account until December 2nd, 2019. For comparability purposes this $478,337 amount should be added to the November total and subtracted from the December total.

Monthly Operating Report
ACCRUAL BASIS-3B

CASE NAME:	**Highland Capital Management**
CASE NUMBER:	**19-34054**

NON-OPERATING RECEIPTS - OTHER

Date	Amount	Description
12/9/2019	1,518,575.34	Note principal or interest
12/9/2019	739.72	Note principal or interest
12/23/2019	783,011.86	Note principal or interest
12/30/2019	530,112.36	Note principal or interest
12/30/2019	65,360.49	Note principal or interest
12/30/2019	201,994.40	Note principal or interest
12/30/2019	275,487.21	Note principal or interest
12/31/2019	15,004.30	Voided Checks
	$3,390,285.68	

OPERATING DISBURSMENTS - OTHER

Date	Amount	Vendor
12/2/2019	155,084.39	Crescent TC Investors LP
12/3/2019	18,289.49	Platinum Parking
12/3/2019	672.72	ProStar Services, Inc
12/3/2019	1,191.25	Gold's Gym International
12/3/2019	1,021.44	Chick-fil-A
12/3/2019	5,052.88	Iron Mountain Records Management
12/3/2019	1,472.00	Platinum Parking
12/5/2019	110.00	FINRA
12/11/2019	5,780.50	Third Party Consultant
12/13/2019	110.00	FINRA
12/13/2019	163.35	Arkadin Inc
12/13/2019	356.00	Jordan Fraker Photography
12/13/2019	480.00	Action Shred of Texas
12/13/2019	1,023.67	UPS Small Package
12/13/2019	1,489.20	Canteen
12/13/2019	3,032.73	Greenwood Office Outfitters, Inc.
12/13/2019	3,659.07	Third Party Consultant
12/13/2019	2,887.50	Centroid Systems, Inc.
12/13/2019	2,394.28	Thomson Reuters West
12/13/2019	8,642.37	Concur Technologies Inc
12/13/2019	23,950.60	Flexential Colorado Corp
12/13/2019	3,234.81	ICE Data Pricing Ref Data LLC
12/13/2019	226.25	Third Party Consultant
12/13/2019	1,155.00	Centroid Systems, Inc.
12/13/2019	4,788.56	Thomson Reuters West
12/13/2019	4,090.46	Concur Technologies Inc
12/16/2019	155,452.35	Bloomberg Finance LP
12/16/2019	1,582.66	Compass Bank Oper
12/16/2019	32,508.98	Bloomberg Finance LP
12/17/2019	259.60	East West Bank
12/17/2019	13,516.50	ATT Mobility
12/17/2019	516.91	DIRECTV
12/19/2019	477.59	PITNEY BOWES
12/19/2019	400.00	PITNEY BOWES
12/19/2019	1,611.00	PITNEY BOWES
12/20/2019	348.00	Visix, Inc.
12/20/2019	1,000.00	Marco Quintana
12/20/2019	21.40	CHASE COURIERS, INC
12/20/2019	751.26	Four Seasons Plantscaping, LLC
12/20/2019	36,084.06	SIEPE SOFTWARE
12/20/2019	248,637.49	SIEPE SERVICES
12/20/2019	31,050.00	McLagan
12/20/2019	6,495.61	ATT Mobility
12/23/2019	27,891.43	Third Party Consultant
12/23/2019	6,942.54	TW Telecom
12/23/2019	6,934.01	TW Telecom
12/24/2019	398.22	Xerox
12/26/2019	548.83	Pitney Bowes
12/27/2019	5,076.50	Third Party Consultant
12/31/2019	17,147.40	Wolters Kluwer
12/31/2019	1,419.08	Oracle America, Inc.
12/31/2019	2,047.22	Zayo Group
12/31/2019	11,000.00	Third Party Consultant
	$ 860,477.16	

Monthly Operating Report
ACCRUAL BASIS-4

CASE NAME:	Highland Capital Management
CASE NUMBER:	19-34054

MGMT FEE RECEIVABLE AGING [2]	**SCHEDULE AMOUNT**	**October**	**November**	**December**
1. 0-30	$ 2,578,744	$ 3,201,548	$ 1,222,880	$1,828,180
2. 31-60				
3. 61-90				
4. 91+				
5. TOTAL MGMT FEE RECEIVABLE	$ 2,578,744	$ 3,201,548	$ 1,222,880	$1,828,180
6. AMOUNT CONSIDERED UNCOLLECTIBLE				
7. MGMT FEE RECEIVABLE (NET)	$ 2,578,744	$ 3,201,548	$ 1,222,880	$1,828,180

AGING OF POSTPETITION TAXES AND PAYABLES **MONTH:** December 2019

TAXES PAYABLE	**0-30 DAYS**	**31-60 DAYS**	**61-90 DAYS**	**91+ DAYS**	**TOTAL**
1. FEDERAL					$0
2. STATE					$0
3. LOCAL					$0
4. OTHER (ATTACH LIST)					$0
5. TOTAL TAXES PAYABLE	$0	$0	$0	$0	$0
6. ACCOUNTS PAYABLE	$413,201	$60,483	$150,355		$624,038

STATUS OF POSTPETITION TAXES [1] **MONTH:** December 2019

FEDERAL	**BEGINNING TAX LIABILITY**	**AMOUNT WITHHELD AND/ 0R ACCRUED**	**AMOUNT PAID**	**ENDING TAX LIABILITY**
1. WITHHOLDING				$0
2. FICA-EMPLOYEE				$0
3. FICA-EMPLOYER				$0
4. UNEMPLOYMENT				$0
5. INCOME				$0
6. OTHER (ATTACH LIST)				$0
7. TOTAL FEDERAL TAXES	$0	$0	$0	$0
STATE AND LOCAL				
8. WITHHOLDING				$0
9. SALES				$0
10. EXCISE				$0
11. UNEMPLOYMENT				$0
12. REAL PROPERTY	$0	$0	$0	$0
13. PERSONAL PROPERTY				$0
14. OTHER (ATTACH LIST)				$0
15. TOTAL STATE & LOCAL	$0	$0	$0	$0
16. TOTAL TAXES	$0	$0	$0	$0

1 The Debtor funds all state and federal employment taxes to Paylocity, who files all required federal and state related employment reports and withholdings.
2 Aging based on when management fee is due and payable.

Monthly Operating Report
ACCRUAL BASIS-5

CASE NAME:	Highland Capital Management
CASE NUMBER:	19-34054

MONTH: December 2019

BANK RECONCILIATIONS	Account #1	Account #2	Account #3	Account #4	Account #5	Account #6	
A. BANK:	BBVA Compass	East West Bank	East West Bank	Maxim Group	Jefferies LLC	Nexbank	TOTAL
B. ACCOUNT NUMBER:	x6342	x4686	x4693	x1885	x0932	x5891	
C. PURPOSE (TYPE):	Operating	Operating	Insurance	Brokerage	Brokerage	CD	
1. BALANCE PER BANK STATEMENT [1]	$ 15,004	$ 8,562,272	$ 132,822	$ 245,849	$ 410,108	$ 136,105	$ 9,502,160
2. ADD: TOTAL DEPOSITS NOT CREDITED							$ -
3. SUBTRACT: OUTSTANDING CHECKS		$ 751					$ 751
4. OTHER RECONCILING ITEMS							$ -
5. MONTH END BALANCE PER BOOKS	$ 15,004	$ 8,561,521	$ 132,822	$ 245,849	$ 410,108	$ 135,205	$ 9,501,409
6. NUMBER OF LAST CHECK WRITTEN	**18133**	**100009**	**n/a**	**n/a**	**n/a**	**n/a**	

INVESTMENT ACCOUNTS							
BANK, ACCOUNT NAME & NUMBER	DATE OF PURCHASE	TYPE OF INSTRUMENT	PURCHASE PRICE				CURRENT VALUE
7.							
8.							
9.							
10.							
11. TOTAL INVESTMENTS			$0				$0

CASH	
12. CURRENCY ON HAND	$0
13. **TOTAL CASH - END OF MONTH**	$9,501,409

1 For Compass account x6342, subsequent to year end balance was transferred to the East West operating account and the account was closed.

Monthly Operating Report
ACCRUAL BASIS-6

CASE NAME:	Highland Capital Management
CASE NUMBER:	19-34054

MONTH: December 2019

PAYMENTS TO INSIDERS AND PROFESSIONALS

INSIDERS				
	NAME	TYPE OF PAYMENT	AMOUNT PAID	TOTAL PAID POST PETITION
1	Frank Waterhouse	Salary	$29,167	$72,917
2	Frank Waterhouse	Expense Reimbursement	$1,003	$1,508
3	Scott Ellington	Salary	$37,500	$93,750
4	Scott Ellington	Expense Reimbursement	$24	$2,034
5	James Dondero	Salary	$46,875	$117,188
6	James Dondero	Expense Reimbursement [1]	$1,077	$16,346
7	Thomas Surgent	Salary	$33,333	$83,333
8	Thomas Surgent	Expense Reimbursement	$1,007	$1,254
9	Trey Parker	Salary	$29,167	$72,917
10	Trey Parker	Expense Reimbursement	$240	$665
	TOTAL PAYMENTS TO INSIDERS		$179,393	$461,911

1 The total amount of reimbursements during the reporting month also included $24,556 for use of the credit card by the Debtor for office related expenses such as subscriptions, employee lunches, vending supplies, IT equipment/software, employee gifts/awards, non-employee related travel, training and postage.

PROFESSIONALS [2]						
	NAME	DATE OF COURT ORDER AUTHORIZING PAYMENT	AMOUNT APPROVED	AMOUNT PAID	TOTAL PAID TO DATE	TOTAL INCURRED & UNPAID
1.						
2.						
3.						
4.						
5.						
6.	TOTAL PAYMENTS TO PROFESSIONALS			$0	$0	$0

2 Does not include payments to ordinary course professionals.

POSTPETITION STATUS OF SECURED NOTES, LEASES PAYABLE AND ADEQUATE PROTECTION PAYMENTS

	NAME OF CREDITOR	SCHEDULED MONTHLY PAYMENTS DUE	AMOUNTS PAID DURING MONTH	TOTAL UNPAID POSTPETITION
1.	Crescent TC Investors LP (rent portion only)	130,364	130,364	-
2.				
3.				
4.				
5.				
6.	TOTAL	130,364	$130,364	$0

Monthly Operating Report

ACCRUAL BASIS-7

CASE NAME:	Highland Capital Management
CASE NUMBER:	19-34054

MONTH: December 2019

QUESTIONNAIRE

	YES	NO
1. HAVE ANY ASSETS BEEN SOLD OR TRANSFERRED OUTSIDE THE NORMAL COURSE OF BUSINESS THIS REPORTING PERIOD?		x
2. HAVE ANY FUNDS BEEN DISBURSED FROM ANY ACCOUNT OTHER THAN A DEBTOR IN POSSESSION ACCOUNT?	x	
3. ARE ANY POSTPETITION RECEIVABLES (ACCOUNTS, NOTES, OR LOANS) DUE FROM RELATED PARTIES?	x	
4. HAVE ANY PAYMENTS BEEN MADE ON PREPETITION LIABILITIES THIS REPORTING PERIOD?	x	
5. HAVE ANY POSTPETITION LOANS BEEN RECEIVED BY THE DEBTOR FROM ANY PARTY?		x
6. ARE ANY POSTPETITION PAYROLL TAXES PAST DUE?		x
7. ARE ANY POSTPETITION STATE OR FEDERAL INCOME TAXES PAST DUE?		x
8. ARE ANY POSTPETITION REAL ESTATE TAXES PAST DUE?		x
9. ARE ANY OTHER POSTPETITION TAXES PAST DUE?		x
10. ARE ANY AMOUNTS OWED TO POSTPETITION CREDITORS DELINQUENT?		x
11. HAVE ANY PREPETITION TAXES BEEN PAID DURING THE REPORTING PERIOD?		x
12. ARE ANY WAGE PAYMENTS PAST DUE?		x

IF THE ANSWER TO ANY OF THE ABOVE QUESTIONS IS "YES," PROVIDE A DETAILED EXPLANATION OF EACH ITEM. ATTACH ADDITIONAL SHEETS IF NECESSARY.

2 $272,727 of funds transferred from non-debtor-in-possession accounts to debtor-in-possession account.

3 Debtor generates fee income and other receipts from various related parties in normal course, see cash management motion for further discussion.

4 Payments have been made on prepetition liabilities, as approved in the critical vendor motion.

INSURANCE

	YES	NO
1. ARE WORKER'S COMPENSATION, GENERAL LIABILITY AND OTHER NECESSARY INSURANCE COVERAGES IN EFFECT?	x	
2. ARE ALL PREMIUM PAYMENTS PAID CURRENT?	x	
3. PLEASE ITEMIZE POLICIES BELOW.		

IF THE ANSWER TO ANY OF THE ABOVE QUESTIONS IS "NO," OR IF ANY POLICIES HAVE BEEN CANCELLED OR NOT RENEWED DURING THIS REPORTING PERIOD, PROVIDE AN EXPLANATION BELOW. ATTACH ADDITIONAL SHEETS IF NECESSARY.

INSTALLMENT PAYMENTS

TYPE OF POLICY	CARRIER	PERIOD COVERED	PAYMENT AMOUNT & FREQUENCY

EXHIBIT 42

Monthly Operating Report
ACCRUAL BASIS

CASE NAME:	Highland Capital Management
CASE NUMBER:	19-34054
JUDGE: Stacey Jernigan	

UNITED STATES BANKRUPTCY COURT

NORTHERN & EASTERN DISTRICTS OF TEXAS

REGION 6

MONTHLY OPERATING REPORT

MONTH ENDING: September (MONTH) 2020 (YEAR)

IN ACCORDANCE WITH TITLE 28, SECTION 1746, OF THE UNITED STATES CODE, I DECLARE UNDER PENALTY OF PERJURY THAT I HAVE EXAMINED THE FOLLOWING MONTHLY OPERATING REPORT (ACCRUAL BASIS-1 THROUGH ACCRUAL BASIS-7) AND THE ACCOMPANYING ATTACHMENTS AND, TO THE BEST OF MY KNOWLEDGE, THESE DOCUMENTS ARE TRUE, CORRECT, AND COMPLETE. DECLARATION OF THE PREPARER (OTHER THAN RESPONSIBLE PARTY) IS BASED ON ALL INFORMATION OF WHICH PREPARER HAS ANY KNOWLEDGE.

RESPONSIBLE PARTY:

ORIGINAL SIGNATURE OF RESPONSIBLE PARTY — Chief Restructuring Officer/ Chief Executive Officer (TITLE)

James Seery
PRINTED NAME OF RESPONSIBLE PARTY — DATE

PREPARER:

ORIGINAL SIGNATURE OF PREPARER — Chief Financial Officer (TITLE)

Frank Waterhouse
PRINTED NAME OF PREPARER — DATE

Monthly Operating Report
ACCRUAL BASIS-1

CASE NAME:	Highland Capital Management, LP
CASE NUMBER:	19-12239-CSS

Comparative Balance Sheet
(in thousands)

	10/15/2019	12/31/2019 [6]	9/30/2020 [6]
Assets			
Cash and cash equivalents	2,529	9,501	5,888
Investments, at fair value [3]	232,620	232,820	109,479
Equity method investees [3]	161,819	183,529	101,213
Management and incentive fee receivable	2,579	1,929	3,350
Fixed assets, net	3,754	3,521	2,823
Due from affiliates [1]	151,901	146,276	152,585
Reserve against notes recievable		(57,963)	(59,140)
Other assets	11,311	11,463	12,105
Total assets	**$ 566,513**	**$ 531,076**	**$ 328,302**
Liabilities and Partners' Capital			
Pre-petition accounts payable [4]	1,176	1,141	1,051
Post-petition accounts payable [4]	-	2,042	583
Secured debt:			
Frontier	5,195	5,195	5,195
Jefferies	30,328	30,020	-
Accrued expenses and other liabilities [4]	59,203	63,275	58,733
Accrued re-organization related fees [5]	-	5,547	5,922
Claim accrual [2]	73,997	73,997	73,997
Partners' capital	396,614	349,857	182,821
Total liabilities and partners' capital	**$ 566,513**	**$ 531,076**	**$ 328,302**

(1) Includes various notes receivable at carrying value, except note due from Hunter Mountain Investment Trust which is fully reserved against ($59M reserve). Fair value has not been determined with respect to any of the notes.

(2) Uncontested portion of Redeemer claim less appplicable offsets. Potential for additional liability based on future events. No interest has been accrued beyond petition date. No additional accruals will be made on settlement claims until further approval by the court.

(3) Mark to market gains/(losses) on investments include pricing updates for publicly traded securities and other positions with readily available market price information. Certain limited partnership interests normally marked to a NAV statement have not been updated as of period end as statements are generally available on a one-month lag.

(4) Note on accruals: expenses recorded in Accounts Payable and Accrued Expenses and Other Liabilities reflect invoices recorded through accounts payable, legal invoice accruals, and normal course operating accruals, but do not reflect estimates for other incurred, but not yet received invoices. For balance sheet dates other than the Petition Date, amounts include both pre-petition and post-petition liabilities.

(5) Beginning December 31st, 2019, Debtor accrued for post-petition re-organization fees based upon an estimate of fees incurred to date.

(6) All balances at December 31st, 2019 are preliminary, unaudited, and subject to further year-end closing entries pursuant to the normal year-end closing process. As a result, balances for subsequent months have and will fluctuate.

Monthly Operating Report
ACCRUAL BASIS-2

CASE NAME:	**Highland Capital Management, LP**	
CASE NUMBER:	**19-12239-CSS**	

Income Statement[1]
(in thousands)

	Date	Filing to Year Ended [4]	Month ended [4]	Filing to date [4]
	10/16/19 - 10/31/19	**2019**	**9/30/2020**	
Revenue:				
Management fees	975	4,528	1,495	18,993
Shared services fees	283	1,588	645	7,248
Other income	99	1,582	401	5,058
Total operating revenue	**1,357**	**7,697**	**2,541**	**31,299**
Operating expenses:				
Compensation and benefits	997	1,498	1,668	15,778
Professional services	256	64	190	2,167
Investment research and consulting	10	266	241	960
Marketing and advertising expense	-	370	36	521
Depreciation expense	82	244	76	940
Bad debt expense reserve	-	8,410	124	9,586
Other operating expenses	201	1,265	463	4,665
Total operating expenses	**1,545**	**12,118**	**2,799**	**34,617**
Operating income/(loss)	**(188)**	**(4,421)**	**(258)**	**(3,318)**
Other income/expense:				
Interest income	250	1,230	488	5,616
Interest expense	(107)	(286)	(21)	(675)
Reserve against notes receivable	-	(57,963)	-	(57,963)
Re-org related expenses [2]	-	(5,547)	(3,816)	(28,800)
Independent director fees	-	-	(30)	(1,977)
Other income/expense	32	32	(6)	(144)
Total other income/expense	**175**	**(62,534)**	**(3,386)**	**(83,943)**
Net realized gains/(losses) on investments	339	618	1,133	(27,738)
Net change in unrealized gains/(losses) of investments [3]	2,654	(955)	1,480	(36,847)
	2,993	**(337)**	**2,613**	**(64,585)**
Net earnings/(losses) from equity method investees [3]	(20)	14,918	337	(67,564)
Net income/(loss)	**$ 2,959**	**$ (52,374)**	**$ (694)**	**$ (219,410)**

(1) Note on accruals: expenses recorded in the Income Statement reflect invoices recorded through accounts payable, legal invoice accruals, and normal course operating accruals, but do not reflect estimates for other incurred, but not yet received invoices.

(2) Debtor funded various retainers totaling $790k prior to the petition date, which were entirely expensed as of the petition date.

(3) Mark to market gains/(losses) on investments include pricing updates for publicly traded securities and other positions with readily available market price information. Certain limited partnership interests normally marked to a NAV statement have not been updated as of period end as statements are generally available on a one-month lag.

(4) All balances are preliminary, unaudited, and subject to further year-end closing entries pursuant to the normal year-end closing process. As a result, operating results will change as these entries are made.

Monthly Operating Report **Monthly Operating Report**
ACCRUAL BASIS-3A **ACCRUAL BASIS-3A**

CASE NAME:	Highland Capital Management
CASE NUMBER:	19-34054

CASH RECEIPTS AND DISBURSEMENTS	FILING TO YEAR END 2019	QUARTER 1	QUARTER 2	SEPTEMBER	QUARTER 3
1. CASH - BEGINNING OF MONTH	$ 2,554,230	$ 9,501,409	$ 12,532,467	$ 10,025,528	$ 14,993,872
RECEIPTS FROM OPERATIONS					
2. OTHER OPERATING RECEIPTS	$ 1,862,757	$ 1,379,338	$ 2,983,221	$ 716,191	$ 2,259,736
3 MANAGEMENT FEES AND OTHER RELATED RECEIPTS	$ 3,156,742	$ 7,555,297	$ 6,179,437	$ 1,515,102	$ 5,575,680
COLLECTION OF ACCOUNTS RECEIVABLE					
4 PREPETITION	$ 3,593,108	$ 76,569	$ 3,727	$ -	$ -
5 POSTPETITION [1]	$ -	$ -	$ -	$ -	$ -
6 TOTAL OPERATING RECEIPTS	$ 8,612,608	$ 9,011,204	$ 9,166,385	$ 2,231,293	$ 7,835,415
NON-OPERATING RECEIPTS					
7 THIRD PARTY FUND ACTUAL/EXPECTED DISTRIBUTIONS	$ 423,468	$ 18,992,786	$ 797,571	$ 389,357	$ 610,254
8 DIVS, PAYDOWNS, MISC FROM INVESTMENT ASSETS	$ 1,338,069	$ 477,479	$ 74,376	$ 1,769	$ 5,311
9 OTHER (ATTACH LIST)	$ 3,390,286	$ 1,407,103	$ 10,010,000	$ 67,099	$ 8,817,099
10 TOTAL NON-OPERATING RECEIPTS	$ 5,151,822	$ 20,877,369	$ 10,881,947	$ 458,225	$ 9,432,664
11 TOTAL RECEIPTS	$ 13,764,430	$ 29,888,573	$ 20,048,331	$ 2,689,517	$ 17,268,080
12 TOTAL CASH AVAILABLE				$ 12,715,045	$ 32,261,951
OPERATING DISBURSEMENTS					
13 PAYROLL, BENEFITS, AND TAXES + EXP REIMB	$ 3,776,446	$ 8,825,042	$ 4,886,314	$ 1,428,122	$ 8,806,880
14 SINGAPORE SERVICE FEES	$ 95,118	$ 58,129	$ 2,965	$ -	$ -
15 HCM LATIN AMERICA	$ 200,000	$ 100,000	$ -	$ -	$ -
16 THIRD PARTY FUND CAPITAL CALL OBLIGATION	$ 1,426,987	$ 7,812,469	$ 3,087,163	$ -	$ 979,631
17 UTILITIES	$ -	$ -	$ -	$ -	$ -
18 INSURANCE	$ -	$ 533,940	$ 376,376	$ -	$ 163,400
19 INVENTORY PURCHASES	$ -	$ -	$ -	$ -	$ -
20 VEHICLE EXPENSES	$ -	$ -	$ -	$ -	$ -
21 TRAVEL	$ -	$ -	$ -	$ -	$ -
22 ENTERTAINMENT	$ -	$ -	$ -	$ -	$ -
23 REPAIRS & MAINTENANCE	$ -	$ -	$ -	$ -	$ -
24 SUPPLIES	$ -	$ -	$ -	$ -	$ -
25 ADVERTISING	$ -	$ -	$ -	$ -	$ -
26 OTHER (ATTACH LIST)	$ 1,318,700	$ 3,283,898	$ 3,195,054	$ 1,286,630	$ 3,633,331
27 TOTAL OPERATING DISBURSEMENTS	$ 6,817,251	$ 20,613,478	$ 11,547,870	$ 2,714,752	$ 13,583,243
REORGANIZATION EXPENSES					
28 PROFESSIONAL FEES	$ -	$ 5,460,546	$ 5,572,032	$ 3,902,480	$ 11,551,682
29 U.S. TRUSTEE FEES	$ -	$ 68,173	$ 167,025	$ -	$ 277,924
30 OTHER (ATTACH LIST)	$ -	$ 715,317	$ 300,000	$ 210,000	$ 961,289
31 TOTAL REORGANIZATION EXPENSES	$ -	$ 6,244,037	$ 6,039,057	$ 4,112,480	$ 12,790,896
32 TOTAL DISBURSEMENTS	$ 6,817,251	$ 26,857,515	$ 17,586,927	$ 6,827,232	$ 26,374,138
33 NET CASH FLOW	$ 6,947,179	$ 3,031,058	$ 2,461,404	$ (4,137,715)	$ (9,106,059)
34 CASH - END OF MONTH	$ 9,501,409	$ 12,532,467	$ 14,993,872	$ 5,887,813	$ 5,887,813

1 All postpetition receipts are included in line 3, Management Fees and Other Related Recepits.

Monthly Operating Report
ACCRUAL BASIS-3B

CASE NAME:	Highland Capital Management
CASE NUMBER:	19-34054

OPERATING RECEIPTS - OTHER

Date	Amount	Type
	67,098.85	Nexpoint Real Estate Strategies Fund redemption

OPERATING DISBURSMENTS - INVESTMENT

Date	Amount	Type
	383,041.29	Carey term-loan purchase

OPERATING DISBURSMENTS - OTHER

Date	Amount	Vendor
9/1/2020	18,412.07	Ace Parking Management Inc.
9/1/2020	2,257.01	Bloomberg Finance LP
9/1/2020	3,009.00	Brighthouse Life Insurance Company
9/1/2020	10,611.00	Brighthouse Life Insurance Company
9/1/2020	1,889.22	Canteen Vending Services
9/1/2020	145.20	Chase Couriers, Inc
9/1/2020	950.00	Crescent Research
9/1/2020	144,048.21	Crescent TC Investors LP
9/1/2020	2,067.50	CT Corporation System
9/1/2020	37,583.75	Third Party Consultant
9/1/2020	1,548.97	GRUBHUB for Work
9/1/2020	47,654.00	Houlihan Lokey
9/1/2020	7,617.26	ICE Data Pricing & Reference Data, LLC
9/1/2020	9,500.00	Ipreo Data Inc.
9/1/2020	89.24	Iron Mountain Records Management
9/1/2020	495.86	Jordan Fraker Photography
9/1/2020	3,392.01	NYSE MARKET, INC
9/1/2020	3,051.14	Oak Cliff Office Products
9/1/2020	1,625.00	Paessler
9/1/2020	441.34	ProStar Services, Inc
9/1/2020	107.15	UPS Supply Chain Solutions
9/9/2020	5,884.76	ABM
9/9/2020	432.00	Ace Parking Management Inc.
9/9/2020	600.00	Action Shred of Texas
9/9/2020	1,492.38	Canteen Vending Services
9/9/2020	510.61	CDW Direct
9/9/2020	11,131.97	CT Corporation System
9/9/2020	1,617.81	GRUBHUB for Work
9/9/2020	47,470.00	Houlihan Lokey
9/9/2020	35,200.00	Intex Solutions, Inc.
9/9/2020	2,668.57	Iron Mountain Records Management
9/9/2020	7,500.00	MacroMavens, LLC
9/9/2020	1,570.00	MICRO-TEL
9/9/2020	507.47	ProStar Services, Inc
9/9/2020	16,355.06	S&P Global Market Intelligence
9/9/2020	151,448.26	Siepe Services, LLC
9/9/2020	18,042.03	Siepe Software, LLC
9/9/2020	535.34	Standard Insurance Company
9/9/2020	6,369.17	TW Telecom Holdings, llc
9/9/2020	6,866.42	Willis of Texas, Inc.
9/11/2020	263.81	Directv, LLC
9/11/2020	1,000.00	Pitney Bowes- Purchase Power
9/11/2020	4,335.10	Third Party Consultant
9/14/2020	500.00	Pitney Bowes
9/17/2020	2,082.70	Zayo Group, LLC
9/18/2020	253.94	Arkadin, Inc.
9/18/2020	4,192.71	Third Party Consultant
9/18/2020	2,955.06	AT&T
9/18/2020	137.50	AT&T
9/18/2020	768.58	Audio Visual Innovations, Inc.
9/18/2020	8,140.16	Bloomberg Finance LP
9/18/2020	1,636.20	Canteen Vending Services
9/18/2020	21,863.25	CDW Direct
9/18/2020	700.00	Centroid
9/18/2020	4,059.81	Concur Technologies, Inc.
9/18/2020	369.00	CT Corporation System
9/18/2020	3,031.00	Daltex Janitorial Services, LLC
9/18/2020	859.36	DTCC ITP LLC
9/18/2020	11,887.73	Flexential Colorado Corp.
9/18/2020	2,162.11	Grubhub for Work
9/18/2020	3,762.48	ICE Data Pricing & Reference Data, LLC
9/18/2020	112.21	Iron Mountain Records Management
9/18/2020	3,766.00	MacroView Business Technology
9/18/2020	2,128.81	NYSE Market, Inc
9/18/2020	548.83	Pitney Bowes Financial Services
9/18/2020	6,757.16	Proofpoint
9/18/2020	2,466.10	Thomson West
9/18/2020	301.48	UPS Supply Chain Solutions
9/18/2020	259.80	Venture Mechanical, Inc.
9/18/2020	273.47	Verity Group
9/18/2020	416.57	Analysis Charge
9/18/2020	23.00	Chase Couriers
9/25/2020	16,750.65	Ace Parking Management Inc.
9/25/2020	1,740.82	AT&T
9/25/2020	763.22	AT&T
9/25/2020	7,147.16	AT&T
9/25/2020	1,431.77	Canteen Vending Services
9/25/2020	2,491.11	CDW Direct
9/25/2020	15,000.00	Centroid
9/25/2020	58.62	Chase Couriers
9/25/2020	320.70	CT Corporation System
9/25/2020	7,752.34	Fitch Solutions, Inc.
9/25/2020	484.96	Four Seasons Plantscaping, LLC
9/25/2020	1,480.74	Grubhub for Work
9/25/2020	4,840.01	Liberty Life Assurance Company of Boston - Group Benefits
9/25/2020	562.50	Maples & Calder
9/25/2020	124,634.61	Siepe Services, LLC
9/28/2020	1,412.83	Southland Property Tax Consultants, Inc
9/29/2020	980.96	Xerox Corporation
9/30/2020	11,000.00	Third Party Consultant
9/30/2020	25.00	Bank fees returned Foley Wire
	903,589	

REORGANIZATION EXPENSES - OTHER

Date	Amount	Description
9/1/2020	30,000	Dubel & Associates, L.L.C.
9/1/2020	150,000	J.P. Seery & Co. LLC
9/1/2020	30,000	Nelms and Associates
	210,000	

Monthly Operating Report
ACCRUAL BASIS-4

CASE NAME:	Highland Capital Management
CASE NUMBER:	19-34054

MGMT FEE RECEIVABLE AGING [2]		**June** [3]	**July** [3]	**August** [3]	**September** [3]
1.	0-30	$ 1,813,292	$2,428,715	$1,768,818	$2,577,696
2.	31-60	$1,163,000	$1,285,718	$772,384	
3.	61-90				$772,384
4.	91+				
5.	TOTAL MGMT FEE RECEIVABLE	$ 2,976,292	$ 3,714,432	$ 2,541,202	$3,350,080
6.	AMOUNT CONSIDERED UNCOLLECTIBLE				
7.	MGMT FEE RECEIVABLE (NET)	$ 2,976,292	$ 3,714,432	$ 2,541,202	$3,350,080

AGING OF POSTPETITION TAXES AND PAYABLES — **MONTH:** September 2020

TAXES PAYABLE		**0-30 DAYS**	**31-60 DAYS**	**61-90 DAYS**	**91+ DAYS**	**TOTAL**
1.	FEDERAL					$0
2.	STATE					$0
3.	LOCAL					$0
4.	OTHER (ATTACH LIST)					$0
5.	TOTAL TAXES PAYABLE	$0	$0	$0	$0	$0
6.	ACCOUNTS PAYABLE	$418,457	$16,057	$0	$320,995	$755,509

STATUS OF POSTPETITION TAXES [1] — **MONTH:** September 2020

FEDERAL		**BEGINNING TAX LIABILITY**	**AMOUNT WITHHELD AND/ 0R ACCRUED**	**AMOUNT PAID**	**ENDING TAX LIABILITY**
1.	WITHHOLDING				$0
2.	FICA-EMPLOYEE				$0
3.	FICA-EMPLOYER				$0
4.	UNEMPLOYMENT				$0
5.	INCOME				$0
6.	OTHER (ATTACH LIST)				$0
7.	TOTAL FEDERAL TAXES	$0	$0	$0	$0
STATE AND LOCAL					
8.	WITHHOLDING				$0
9.	SALES				$0
10.	EXCISE				$0
11.	UNEMPLOYMENT				$0
12.	REAL PROPERTY	$0	$0	$0	$0
13.	PERSONAL PROPERTY				$0
14.	OTHER (ATTACH LIST)				$0
15.	TOTAL STATE & LOCAL	$0	$0	$0	$0
16.	TOTAL TAXES	$0	$0	$0	$0

1 The Debtor funds all state and federal employment taxes to Paylocity, who files all required federal and state related employment reports and withholdings.
2 Aging based on when management fee is due and payable.
3 All balances are preliminary, unaudited, and subject to further year-end closing entries pursuant to the normal year-end closing process.

Monthly Operating Report
ACCRUAL BASIS-5

CASE NAME:	Highland Capital Management
CASE NUMBER:	19-34054

MONTH: September 2020

BANK RECONCILIATIONS	Account #1	Account #2	Account #3	Account #4	Account #5	Account #6	TOTAL
A. BANK:	East West Bank	East West Bank	Maxim Group	Jefferies LLC	Nexbank	East West Bank	
B. ACCOUNT NUMBER:	x4686	x4693	x1885	x0932	x5891	x5848	
C. PURPOSE (TYPE):	Operating	Insurance	Brokerage	Brokerage	CD	Prepaid Card	
1. BALANCE PER BANK STATEMENT [1]	$ 5,617,167	$ 32,373	$ 30	$ -	$ 138,190	$ 100,052	$ 5,887,812
2. ADD: TOTAL DEPOSITS NOT CREDITED							$ -
3. SUBTRACT: OUTSTANDING CHECKS							$ -
4. OTHER RECONCILING ITEMS							$ -
5. MONTH END BALANCE PER BOOKS	$ 5,617,167	$ 32,373	$ 30	$ -	$ 138,190	$ 100,052	$ 5,887,812
6. NUMBER OF LAST CHECK WRITTEN	**100510**	**n/a**	**n/a**	**n/a**	**n/a**	**n/a**	

INVESTMENT ACCOUNTS							
BANK, ACCOUNT NAME & NUMBER	DATE OF PURCHASE	TYPE OF INSTRUMENT	PURCHASE PRICE				CURRENT VALUE
7.							
8.							
9.							
10.							
11. TOTAL INVESTMENTS			$0				$0

CASH	
12. CURRENCY ON HAND	$0
13. **TOTAL CASH - END OF MONTH**	$5,887,812

1 Account x6342 is now closed.

Monthly Operating Report
ACCRUAL BASIS-6

CASE NAME:	Highland Capital Management
CASE NUMBER:	19-34054

MONTH: September 2020

PAYMENTS TO INSIDERS AND PROFESSIONALS

INSIDERS

	NAME	TYPE OF PAYMENT	AMOUNT PAID	TOTAL PAID POST PETITION
1	Frank Waterhouse	Salary	$33,333	$360,417
2	Frank Waterhouse	Expense Reimbursement	$807	$5,918
3	Scott Ellington	Salary	$37,500	$431,250
4	Scott Ellington	Expense Reimbursement	$252	$6,095
5	James Dondero	Salary	$0	$129,972
6	James Dondero	Expense Reimbursement [1]	$0	$16,918
7	Thomas Surgent	Salary	$33,333	$383,333
8	Thomas Surgent	Expense Reimbursement	$456	$4,222
9	Trey Parker	Salary	$0	$131,250
10	Trey Parker	Expense Reimbursement	$0	$6,212
	TOTAL PAYMENTS TO INSIDERS		$105,681	$1,475,585

1 The total amount of reimbursements during the reporting month also included $5,675 for use of the credit card by the Debtor for office related expenses such as subscriptions, vending supplies, and IT equipment/software.

PROFESSIONALS [2]

	NAME	DATE OF MONTHLY FEE APPLICATION	AMOUNT APPROVED	AMOUNT PAID	TOTAL PAID TO DATE	TOTAL INCURRED & UNPAID
1.	Kurtzman Carson Consultants LLC		41,966	41,966	532,521	95,605
2.	Sidley Austin LLP		814,318	814,318	5,807,091	1,333,420
3.	Young Conaway Stargatt & Taylor LLP			-	281,156	-
4.	FTI Consulting, Inc.		626,333	626,333	3,607,292	559,823
5.	Pachulski Stang Ziehl & Jones LLP		1,283,329	1,283,329	8,435,219	1,512,143
6	Hayward & Associates PLLC		60,736	60,736	256,412	10,828
7	Development Specialists, Inc.		237,828	237,828	2,351,224	249,129
8	Foley & Lardner LLP		-		464,294	119,516
9	Mercer (US) Inc.		54,328	54,328	170,284	-
10	Wilmer Cutler Pickering Hale and Dorr LLP		618,643	618,643	618,643	
11	Meta-e Discovery LLC		165,000	165,000	165,000	
	TOTAL PAYMENTS TO PROFESSIONALS			3,902,480	22,689,136	3,880,463

2 Does not include payments to ordinary course professionals.

POSTPETITION STATUS OF SECURED NOTES, LEASES PAYABLE AND ADEQUATE PROTECTION PAYMENTS

	NAME OF CREDITOR	SCHEDULED MONTHLY PAYMENTS DUE	AMOUNTS PAID DURING MONTH	TOTAL UNPAID POSTPETITION
1.	Crescent TC Investors LP (rent portion only)	130,364	130,364	-
2.				
3.				
4.				
5.				
6.	TOTAL	130,364	$130,364	$0

Monthly Operating Report

ACCRUAL BASIS-7

CASE NAME:	Highland Capital Management
CASE NUMBER:	19-34054

MONTH: September 2020

QUESTIONNAIRE

	YES	NO
1. HAVE ANY ASSETS BEEN SOLD OR TRANSFERRED OUTSIDE THE NORMAL COURSE OF BUSINESS THIS REPORTING PERIOD?		x
2. HAVE ANY FUNDS BEEN DISBURSED FROM ANY ACCOUNT OTHER THAN A DEBTOR IN POSSESSION ACCOUNT?		x
3. ARE ANY POSTPETITION RECEIVABLES (ACCOUNTS, NOTES, OR LOANS) DUE FROM RELATED PARTIES?	x	
4. HAVE ANY PAYMENTS BEEN MADE ON PREPETITION LIABILITIES THIS REPORTING PERIOD?		x
5. HAVE ANY POSTPETITION LOANS BEEN RECEIVED BY THE DEBTOR FROM ANY PARTY?		x
6. ARE ANY POSTPETITION PAYROLL TAXES PAST DUE?		x
7. ARE ANY POSTPETITION STATE OR FEDERAL INCOME TAXES PAST DUE?		x
8. ARE ANY POSTPETITION REAL ESTATE TAXES PAST DUE?		x
9. ARE ANY OTHER POSTPETITION TAXES PAST DUE?		x
10. ARE ANY AMOUNTS OWED TO POSTPETITION CREDITORS DELINQUENT?		x
11. HAVE ANY PREPETITION TAXES BEEN PAID DURING THE REPORTING PERIOD?		x
12. ARE ANY WAGE PAYMENTS PAST DUE?		x

IF THE ANSWER TO ANY OF THE ABOVE QUESTIONS IS "YES," PROVIDE A DETAILED EXPLANATION OF EACH ITEM. ATTACH ADDITIONAL SHEETS IF NECESSARY.

3 Debtor generates fee income and other receipts from various related parties in normal course, see cash management motion for further discussion.

INSURANCE

	YES	NO
1. ARE WORKER'S COMPENSATION, GENERAL LIABILITY AND OTHER NECESSARY INSURANCE COVERAGES IN EFFECT?	x	
2. ARE ALL PREMIUM PAYMENTS PAID CURRENT?	x	
3. PLEASE ITEMIZE POLICIES BELOW.		

IF THE ANSWER TO ANY OF THE ABOVE QUESTIONS IS "NO," OR IF ANY POLICIES HAVE BEEN CANCELLED OR NOT RENEWED DURING THIS REPORTING PERIOD, PROVIDE AN EXPLANATION BELOW. ATTACH ADDITIONAL SHEETS IF NECESSARY.

INSTALLMENT PAYMENTS

TYPE OF POLICY	CARRIER	PERIOD COVERED	PAYMENT AMOUNT & FREQUENCY

EXHIBIT 43

PROMISSORY NOTE

$7,900,000 January 18, 2018

FOR VALUE RECEIVED, JAMES DONDERO ("***Maker***") promises to pay to the order of HIGHLAND CAPITAL MANAGEMENT LP ("***Payee***"), in legal and lawful tender of the United States of America, the principal sum of SEVEN MILLION, NINE HUNDRED THOUSAND and 00/100 Dollars ($7,900,000.00), together with interest, on the terms set forth below (the "***Note***"). All sums hereunder are payable to Payee at 300 Crescent Court, Dallas, TX 75201, or such other address as Payee may specify to Maker in writing from time to time.

1. Interest Rate. The unpaid principal balance of this Note from time to time outstanding shall bear interest at a rate equal to the long-term "***applicable federal rate***" (2.59%) in effect on the date hereof for loans of such maturity as determined by Section 1274(d) of the Internal Revenue Code, per annum from the date hereof until maturity, compounded annually on the anniversary of the date of this Note. Interest shall be calculated at a daily rate equal to 1/365th (1/366 in a leap year) of the rate per annum, shall be charged and collected on the actual number of days elapsed, and shall be payable on demand of the Payee.

2. Payment of Principal and Interest. The accrued interest and principal of this Note shall be due and payable on demand of the Payee.

3. Prepayment Allowed; Renegotiation Discretionary. Maker may prepay in whole or in part the unpaid principal or accrued interest of this Note. Any payments on this Note shall be applied first to unpaid accrued interest hereon, and then to unpaid principal hereof.

4. Tax Loan. This Note is paid to the Maker to help satisfy any current tax obligations of a former partner or current partner.

5. Acceleration Upon Default. Failure to pay this Note or any installment hereunder as it becomes due shall, at the election of the holder hereof, without notice, demand, presentment, notice of intent to accelerate, notice of acceleration, or any other notice of any kind which are hereby waived, mature the principal of this Note and all interest then accrued, if any, and the same shall at once become due and payable and subject to those remedies of the holder hereof. No failure or delay on the part of Payee in exercising any right, power or privilege hereunder shall operate as a waiver thereof.

6. Waiver. Maker hereby waives grace, demand, presentment for payment, notice of nonpayment, protest, notice of protest, notice of intent to accelerate, notice of acceleration and all other notices of any kind hereunder.

7. Attorneys' Fees. If this Note is not paid at maturity (whether by acceleration or otherwise) and is placed in the hands of an attorney for collection, or if it is collected through a bankruptcy court or any other court after maturity, the Maker shall pay, in addition to all other amounts owing hereunder, all actual expenses of collection, all court costs and reasonable attorneys' fees and expenses incurred by the holder hereof.

8. Limitation on Agreements. All agreements between Maker and Payee, whether now existing or hereafter arising, are hereby limited so that in no event shall the amount paid, or agreed to be paid to Payee for the use, forbearance, or detention of money or for the payment or performance of any covenant or obligation contained herein or in any other document evidencing, securing or pertaining to this Note, exceed the maximum interest rate allowed by law. The terms and provisions of this paragraph shall control and supersede every other provision of all agreements between Payee and Maker in conflict herewith.

9. Governing Law. This Note and the rights and obligations of the parties hereunder shall be governed by the laws of the United States of America and by the laws of the State of Texas, and is performable in Dallas County, Texas.

MAKER:

JAMES DONDERO

EXHIBIT 44

INTENTIONALLY

OMITTED

EXHIBIT 45

TO BE FILED

UNDER SEAL

EXHIBIT 46

TO BE FILED

UNDER SEAL

EXHIBIT 47

PACHULSKI STANG ZIEHL & JONES LLP
Jeffrey N. Pomerantz (CA Bar No.143717) (*admitted pro hac vice*)
Ira D. Kharasch (CA Bar No. 109084) (*admitted pro hac vice*)
John A. Morris (NY Bar No. 2405397) (*admitted pro hac vice*)
Gregory V. Demo (NY Bar No. 5371992) (*admitted pro hac vice*)
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Counsel for Highland Capital Management, L.P.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re: HIGHLAND CAPITAL MANAGEMENT, L.P.,[1] Reorganized Debtor.	§ § § § § §	Chapter 11 Case No. 19-34054-sgj11
HIGHLAND CAPITAL MANAGEMENT, L.P., Plaintiff, vs. NEXPOINT ADVISORS, L.P., JAMES DONDERO, NANCY DONDERO, AND THE DUGABOY INVESTMENT TRUST, Defendants.	§ § § § § § § § § § §	Adversary Proceeding No. 21-03005

[1] The Reorganized Debtor's last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Reorganized Debtor is 100 Crescent Court, Suite 1850, Dallas, TX 75201.

PLAINTIFF'S AMENDED NOTICE OF RULE 30(b)(6) DEPOSITION TO NEXPOINT ADVISORS, L.P.

PLEASE TAKE NOTICE that, pursuant to Rule 30(b)(6) of the Federal Rules of Civil Procedure, made applicable herein pursuant to Rules 7030 and 9014 of the Federal Rules of Bankruptcy Procedure, Highland Capital Management, L.P. ("Highland"), the plaintiff in the above-referenced adversary proceeding in the above-captioned chapter 11 case, shall take the deposition of NexPoint Advisors, L.P. ("NexPoint") by the person(s) most qualified to testify on NexPoint's behalf with respect to the topics described in **Exhibit A** attached hereto on **October 20, 2021**, commencing at 9:30 a.m. Central Time or at such other day and time as the Plaintiff may agree in writing. The deposition will be taken under oath before a notary public or other person authorized by law to administer oaths and will be visually recorded by video or otherwise.

The deposition will be taken remotely via an online platform due to the coronavirus pandemic such that no one will need to be in the same location as anyone else in order to participate in the deposition and by use of Interactive Realtime. Parties who wish to participate in the deposition should contact **John A. Morris**, Pachulski Stang Ziehl & Jones LLP, at jmorris@pszjlaw.com **no fewer than 72 hours before the start of the deposition** for more information regarding participating in this deposition remotely.

Dated: October 8, 2021.

PACHULSKI STANG ZIEHL & JONES LLP

/s/ John A. Morris

Jeffrey N. Pomerantz (CA Bar No.143717)
Ira D. Kharasch (CA Bar No. 109084)
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Counsel for Highland Capital Management, L.P.

EXHIBIT A

DEFINITIONS

1. "Answer" means *Defendant NexPoint Advisors, L.P.'s Answer to Amended Complaint*, lodged in Adv. Proc. 21-03005 at Docket No. 64.

2. "Communications" means the transmittal of information (in the form of facts, ideas, inquiries, or otherwise) and includes all oral and written communications of any nature, type or kind including, but not limited to, any ESI (and any attachments thereto), Documents, telephone conversations, text messages, discussions, meetings, facsimiles, e-mails, pagers, memoranda, and any other medium through which any information is conveyed or transmitted.

3. "Concerning" means and includes relating to, constituting, defining, evidencing, mentioning, containing, describing, discussing, embodying, reflecting, edifying, analyzing, stating, referring to, dealing with, or in any way pertaining to the subject matter.

4. "Discovery Requests" means *Plaintiff's Requests for Admission, Interrogatories, and Requests for Production Directed to NexPoint Advisors, L.P.* served on Your counsel by e-mail on September 7, 2021.

5. "Document" means and includes all written, recorded, transcribed or graphic matter of every nature, type and kind, however and by whoever produced, reproduced, disseminated or made. This includes, but is not limited to, Communications, ESI, "writings" as defined by Rule 1001 of the Federal Rules of Evidence, copies or drafts, and any tangible or intangible thing or item that contains any information. Any Document that contains any comment, notation, addition, insertion or marking of any type or kind which is not part of another Document, is to be considered a separate Document.

6. "Note" shall have the meaning ascribed to that term in paragraph 21 of the the *Amended Complaint for (I) Breach of Contract, (II) Turnover of Property, (III) Fraudulent Transfer, and (IV) Breach of Fiduciary Duty*, filed by Highland at Adv. Pro. 21-03005, Docket No. 63.

7. "You" or "Your" means NexPoint Advisors, L.P., and anyone authorized to act on its behalf.

Rule 30(b)6) Topics

Topic No. 1:

Your Answer.

Topic No. 2:

Each Affirmative Defense asserted in Your Answer, including but not limited to all facts and circumstances, Communications, and Documents Concerning each Affirmative Defense. *See* Answer ¶¶ 80-86.

Topic No. 3:

The Note, including but not limited to (a) the negotiation of the Note, (b) the terms of the Note, (c) Communications Concerning the Note, (d) any payments of principal or interest made by You or on Your behalf with respect to the Note; (e) the use of the proceeds of the Note, (f) Your communications with Your outside auditors Concerning the Note and the obligations thereunder, and (g) all agreements Concerning the Note.

Topic No. 4:

Your responses to the Discovery Requests.

EXHIBIT 48

PACHULSKI STANG ZIEHL & JONES LLP
Jeffrey N. Pomerantz (CA Bar No.143717) (*admitted pro hac vice*)
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Counsel for Highland Capital Management, L.P.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re: HIGHLAND CAPITAL MANAGEMENT, L.P.,[1] Reorganized Debtor.	§ § § § § §	Chapter 11 Case No. 19-34054-sgj11
HIGHLAND CAPITAL MANAGEMENT, L.P., Plaintiff, vs. HIGHLAND CAPITAL MANAGEMENT SERVICES, INC., JAMES DONDERO, NANCY DONDERO, AND DUGABOY INVESTMENT TRUST, Defendants.	§ § § § § § § § § § § §	Adversary Proceeding No. 21-03006

[1] The Reorganized Debtor's last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Reorganized Debtor is 100 Crescent Court, Suite 1850, Dallas, TX 75201.

PLAINTIFF'S AMENDED NOTICE OF RULE 30(b)(6) DEPOSITION TO HIGHLAND CAPITAL MANAGEMENT SERVICES, INC.

PLEASE TAKE NOTICE that, pursuant to Rule 30(b)(6) of the Federal Rules of Civil Procedure, made applicable herein pursuant to Rules 7030 and 9014 of the Federal Rules of Bankruptcy Procedure, Highland Capital Management, L.P. ("Highland"), the plaintiff in the above-referenced adversary proceeding in the above-captioned chapter 11 case, shall take the deposition of Highland Capital Management Services, Inc. ("HCMS") by the person(s) most qualified to testify on HCMS's behalf with respect to the topics described in **Exhibit A** attached hereto on **October 20, 2021**, commencing at 9:30 a.m. Central Time or at such other day and time as the Plaintiff may agree in writing. The deposition will be taken under oath before a notary public or other person authorized by law to administer oaths and will be visually recorded by video or otherwise.

The deposition will be taken remotely via an online platform due to the coronavirus pandemic such that no one will need to be in the same location as anyone else in order to participate in the deposition and by use of Interactive Realtime. Parties who wish to participate in the deposition should contact **John A. Morris**, Pachulski Stang Ziehl & Jones LLP, at jmorris@pszjlaw.com **no fewer than 72 hours before the start of the deposition** for more information regarding participating in this deposition remotely.

Dated: October 8, 2021.

PACHULSKI STANG ZIEHL & JONES LLP

/s/ John A. Morris

Jeffrey N. Pomerantz (CA Bar No.143717)
Ira D. Kharasch (CA Bar No. 109084)
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Counsel for Highland Capital Management, L.P.

EXHIBIT A

DEFINITIONS

1. "Answer" means *Defendant Defendant Highland Capital Management Services, Inc.'s Answer to Amended Complaint*, lodged in Adv. Proc. 21-03006 at Docket No. 73.

2. "Communications" means the transmittal of information (in the form of facts, ideas, inquiries, or otherwise) and includes all oral and written communications of any nature, type or kind including, but not limited to, any ESI (and any attachments thereto), Documents, telephone conversations, text messages, discussions, meetings, facsimiles, e-mails, pagers, memoranda, and any other medium through which any information is conveyed or transmitted.

3. "Concerning" means and includes relating to, constituting, defining, evidencing, mentioning, containing, describing, discussing, embodying, reflecting, edifying, analyzing, stating, referring to, dealing with, or in any way pertaining to the subject matter.

4. "Discovery Requests" means *Plaintiff's Requests for Admission, Interrogatories, and Requests for Production Directed to Highland Capital Management Services, Inc.* served on Your counsel by e-mail on September 7, 2021.

5. "Document" means and includes all written, recorded, transcribed or graphic matter of every nature, type and kind, however and by whoever produced, reproduced, disseminated or made. This includes, but is not limited to, Communications, ESI, "writings" as defined by Rule 1001 of the Federal Rules of Evidence, copies or drafts, and any tangible or intangible thing or item that contains any information. Any Document that contains any comment, notation, addition, insertion or marking of any type or kind which is not part of another Document, is to be considered a separate Document.

6. "Demand Notes" shall have the meaning ascribed to that term in paragraph 24 of the the *Amended Complaint for (I) Breach of Contract, (II) Turnover of Property, (III) Fraudulent Transfer, and (IV) Breach of Fiduciary Duty*, filed by Highland at Adv. Pro. 21-03006, Docket No. 68.

7. "You" or "Your" means Highland Capital Management Services, Inc., and anyone authorized to act on its behalf.

Rule 30(b)6) Topics

Topic No. 1:

Your Answer.

Topic No. 2:

Each Affirmative Defense asserted in Your Answer, including but not limited to all facts and circumstances, Communications, and Documents Concerning each Affirmative Defense. *See* Answer ¶¶ 94-102.

Topic No. 3:

The Demand Notes, including but not limited to (a) the negotiation of the Demand Notes, (b) the terms of the Demand Notes, (c) Communications Concerning the Demand Notes, (d) any payments of principal or interest made by You or on Your behalf with respect to the Demand Notes; (e) the use of the proceeds of the Demand Notes, (f) Your communications with Your outside auditors Concerning the Demand Notes and the obligations thereunder, and (g) all agreements Concerning the Demand Notes.

Topic No. 4:

Your responses to the Discovery Requests.

EXHIBIT 49

PACHULSKI STANG ZIEHL & JONES LLP
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Counsel for Highland Capital Management, L.P.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re: HIGHLAND CAPITAL MANAGEMENT, L.P.,[1] Reorganized Debtor.	§ § § § § §	Chapter 11 Case No. 19-34054-sgj11
HIGHLAND CAPITAL MANAGEMENT, L.P., Plaintiff, vs. HCRE PARTNERS LLC (N/K/A NEXPOINT REAL ESTATE PARTNERS LLC), JAMES DONDERO, NANCY DONDERO, AND THE DUGABOY INVESTMENT TRUST, Defendants.	§ § § § § § § § § § § § §	Adversary Proceeding No. 21-03007

[1] The Reorganized Debtor's last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Reorganized Debtor is 100 Crescent Court, Suite 1850, Dallas, TX 75201.

PLAINTIFF'S AMENDED NOTICE OF RULE 30(b)(6) DEPOSITION TO HCRE PARTNERS LLC (N/K/A NEXPOINT REAL ESTATE PARTNERS, LLC).

PLEASE TAKE NOTICE that, pursuant to Rule 30(b)(6) of the Federal Rules of Civil Procedure, made applicable herein pursuant to Rules 7030 and 9014 of the Federal Rules of Bankruptcy Procedure, Highland Capital Management, L.P. ("Highland"), the plaintiff in the above-referenced adversary proceeding in the above-captioned chapter 11 case, shall take the deposition of HCRE Partners, LLC (n/k/a NexPoint Real Estate Partners, LLC) ("HCRE") by the person(s) most qualified to testify on HCRE's behalf with respect to the topics described in **Exhibit A** attached hereto on **October 20, 2021**, commencing at 9:30 a.m. Central Time or at such other day and time as the Plaintiff may agree in writing. The deposition will be taken under oath before a notary public or other person authorized by law to administer oaths and will be visually recorded by video or otherwise.

The deposition will be taken remotely via an online platform due to the coronavirus pandemic such that no one will need to be in the same location as anyone else in order to participate in the deposition and by use of Interactive Realtime. Parties who wish to participate in the deposition should contact **John A. Morris**, Pachulski Stang Ziehl & Jones LLP, at jmorris@pszjlaw.com **no fewer than 72 hours before the start of the deposition** for more information regarding participating in this deposition remotely.

Dated: October 8, 2021.

PACHULSKI STANG ZIEHL & JONES LLP

/s/ John A. Morris

Jeffrey N. Pomerantz (CA Bar No.143717)
Ira D. Kharasch (CA Bar No. 109084)
John A. Morris (NY Bar No. 2405397)
Gregory V. Demo (NY Bar No. 5371992)
10100 Santa Monica Blvd., 13th Floor
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-and-

HAYWARD PLLC

Melissa S. Hayward
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10501 N. Central Expy, Ste. 106
Dallas, Texas 75231
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Fax: (972) 755-7110

Counsel for Highland Capital Management, L.P.

EXHIBIT A

DEFINITIONS

1. "Answer" means *Defendant HCRE Partners, LLC (n/k/a NexPoint Real Estate Partners, LLC)'s Answer to Amended Complaint*, lodged in Adv. Proc. 21-03007 at Docket No. 68.

2. "Communications" means the transmittal of information (in the form of facts, ideas, inquiries, or otherwise) and includes all oral and written communications of any nature, type or kind including, but not limited to, any ESI (and any attachments thereto), Documents, telephone conversations, text messages, discussions, meetings, facsimiles, e-mails, pagers, memoranda, and any other medium through which any information is conveyed or transmitted.

3. "Concerning" means and includes relating to, constituting, defining, evidencing, mentioning, containing, describing, discussing, embodying, reflecting, edifying, analyzing, stating, referring to, dealing with, or in any way pertaining to the subject matter.

4. "Discovery Requests" means *Plaintiff's Requests for Admission, Interrogatories, and Requests for Production Directed to HCRE Partners, LLC (n/k/a NexPoint Real Estate Partners LLC)* served on Your counsel by e-mail on September 7, 2021.

5. "Document" means and includes all written, recorded, transcribed or graphic matter of every nature, type and kind, however and by whoever produced, reproduced, disseminated or made. This includes, but is not limited to, Communications, ESI, "writings" as defined by Rule 1001 of the Federal Rules of Evidence, copies or drafts, and any tangible or intangible thing or item that contains any information. Any Document that contains any comment, notation, addition, insertion or marking of any type or kind which is not part of another Document, is to be considered a separate Document.

6. "Demand Notes" shall have the meaning ascribed to that term in paragraph 24 of the the *Amended Complaint for (I) Breach of Contract, (II) Turnover of Property, (III) Fraudulent Transfer, and (IV) Breach of Fiduciary Duty*, filed by Highland at Adv. Pro. 21-03006, Docket No. 63.

7. "You" or "Your" means HCRE Partners, LLC (n/k/a NexPoint Real Estate Partners, LLC), and anyone authorized to act on its behalf.

Rule 30(b)6) Topics

Topic No. 1:

Your Answer.

Topic No. 2:

Each Affirmative Defense asserted in Your Answer, including but not limited to all facts and circumstances, Communications, and Documents Concerning each Affirmative Defense. *See* Answer ¶¶ 96-104.

Topic No. 3:

The Demand Notes, including but not limited to (a) the negotiation of the Demand Notes, (b) the terms of the Demand Notes, (c) Communications Concerning the Demand Notes, (d) any payments of principal or interest made by You or on Your behalf with respect to the Demand Notes; (e) the use of the proceeds of the Demand Notes, (f) Your communications with Your outside auditors Concerning the Demand Notes and the obligations thereunder; and (g) any agreements Concerning the Demand Notes.

Topic No. 4:

Your responses to the Discovery Requests.

EXHIBIT 50

James Dondero
Compensation and Benefit Statement

Job Title: Partner
Department: Executive

EARNINGS AND AWARDS	
2017 Base Salary (as of 12/31/17)	$2,500,024
2017 Other Awards	
401(k) Match	$ 4,800
Estimated 2017 Profit Sharing (will be contributed in 2018)	$ 20,250
*Final profit sharing award subject to passing IRS mandated testing	
2018 NXRT RSU Award	$1,550,250
• You have been granted 65,772 restricted stock units of NXRT for the 2017 performance year	
2017 Total Earnings and Awards	**$4,075,324**

HIGHLAND PAID BENEFITS	
Medical & Dental Insurance	$ 14,134
Life, AD&D and Disability Insurance	$ 968
Executive Long Term Disability	$ 1,260
Daily Catered Lunches	$ 3,000
Parking	$ 2,160
Cell Phone	$ 1,680
2017 Estimated Total Value of Highland Paid Benefits	**$ 23,203**

TOTAL COMPENSATION PACKAGE	**$4,098,527**

EXHIBIT 51

James Dondero
Compensation and Benefit Statement

Job Title: Partner
Department: Executive

EARNINGS AND AWARDS	
2018 Base Salary (as of 12/31/18)	$2,500,000
2018 Other Awards	
401(k) Match	$ 4,800
Estimated 2018 Profit Sharing (will be contributed in 2019)	$ 20,625
*Final profit sharing award subject to passing IRS mandated testing	
2019 NXRT RSU Award	$1,669,500
• You have been granted 44,520 restricted stock units of NXRT for the 2018 performance year	
2018 Total Earnings and Awards	**$4,194,925**

HIGHLAND PAID BENEFITS	
Medical & Dental Insurance	$ 14,192
Life, AD&D and Disability Insurance	$ 1,044
Executive Long Term Disability	$ 1,260
Daily Catered Lunches	$ 3,000
Parking	$ 2,160
Cell Phone	$ 1,680
2018 Estimated Total Value of Highland Paid Benefits	**$ 23,336**

TOTAL COMPENSATION PACKAGE	$4,218,262

EXHIBIT 52

James Dondero
Compensation and Benefit Statement

Job Title: Partner
Department: Executive

EARNINGS AND AWARDS	
2019 Base Salary (as of 12/31/19)	$2,500,000
2019 Other Awards	
401(k) Match	$ 5,000
Estimated 2019 Profit Sharing (will be contributed in 2020)	$ 21,000
*Final profit sharing award subject to passing IRS mandated testing	
2019 Deferred Compensation Award	$5,608,500
• $2,465,000 grant amount in NXRT; 5-year vesting period	
• $850,500 grant amount in NREF; 4-year vesting period	
• $1,771,000 grant amount in VineBrook; 4-year vesting period	
2019 Total Earnings and Awards	**$8,134,500**

HIGHLAND PAID BENEFITS	
Medical & Dental Insurance	$ 14,417
Life, AD&D and Disability Insurance	$ 1,044
Executive Long Term Disability	$ 1,260
Daily Catered Lunches	$ 3,000
Parking	$ 2,160
Cell Phone	$ 1,680
2019 Estimated Total Value of Highland Paid Benefits	**$ 23,562**

TOTAL COMPENSATION PACKAGE	$8,158,062

EXHIBIT 53

From: David Klos
Sent: Thursday, May 02, 2019 3:54 PM
To: Blair Roeber <BRoeber@HighlandCapital.com>
Cc: Kristin Hendrix <KHendrix@HighlandCapital.com>
Subject: FW: Calc

$2,398,842 – Please send to GAF asap per Frank.

From: Frank Waterhouse
Sent: Thursday, May 2, 2019 2:23 PM
To: David Klos ; Kristin Hendrix
Subject: FW: Calc

Here is the support for the payment to GAF from HCMFA. As soon as I hear from Thomas I will let you know.

From: Will Mabry <WMabry@HighlandCapital.com>
Sent: Thursday, May 2, 2019 2:18 PM
To: Frank Waterhouse <FWaterhouse@HighlandCapital.com>
Cc: Clifford Stoops <CStoops@HighlandCapital.com>
Subject: RE: Calc

It's available now. The amount is per the response $2,398,842 calc. Support attached.

From: Frank Waterhouse <FWaterhouse@HighlandCapital.com>
Sent: Thursday, May 2, 2019 2:15 PM
To: Will Mabry <WMabry@HighlandCapital.com>
Cc: Clifford Stoops <CStoops@HighlandCapital.com>
Subject: Calc

Will-

Do you have an eta of when you will have?

Thanks
Frank

FRANK WATERHOUSE | PARTNER & CHIEF FINANCIAL OFFICER

HIGHLAND CAPITAL MANAGEMENT

300 Crescent Court | Suite 700 | Dallas, Texas 75201
O: 972.419.2538 | F: 972.628.4147
fwaterhouse@highlandcapital.com | www.highlandcapital.com

Numerical summary as set forth in the 4/7/19 amended memorandum of TerreStar Equity NAV Error

	Transaction Date(s)	Loss to Fund	Estimated Loss to Shareholders [3]	Totals
Estimated Net Loss	3/14/18 thru 1/7/19	(6,068,851)	(1,373,272)	(7,442,123)
Processing, Fees, Interest	3/14/18 thru 1/7/19	(375,000)	-	(375,000)
Insurance Proceeds	2/15/2019	3,566,248	1,373,272	4,939,520
Insurance deductible paid by Adviser	2/15/2019	246,976	-	246,976
Management fee offset	4/1/2019	47,000	-	47,000
Additional payment from Adviser	5/2/2019	2,339,627 [2]	-	2,339,627
Reimbursement of Processing costs from Adviser	Note 1	244,000	-	244,000
Total		-	-	-

Supplemental Numerical Update

Additional estimated loss to fund and shareholders	1/8/19 thru 1/28/19 [5]	(19,789)
Additional processing, management fees, and interest	Note 4	(39,426)
Additional payment from Adviser	5/2/2019	59,215
Total additional payment from Adviser	**5/2/2019**	**2,398,842**

Notes

1 - Expected to be incurred thru 12/31/19, and will be reimbursed by Adviser as incurred.

2 - Includes $2,255,628 of previously outstanding balance, and $84,000 of interest calculated through 1/7/19, which was the "as of date" used for the calculations in the OCA submission.

3 - Represents the estimated losses to shareholder subscribing into the fund during the NAV Restatement Period and estimated losses to be determined after reprocessing individual capital activity that was held in Omnibus accounts.

4 - Proposal from service provider was higher than original estimate, and includes interest thru date of final payment made by Adviser.

5 - This includes the calculations subsequent to 1/7/19 (which was the "as of date" used for the calculations in the OCA submission) "through date" 1/28/19, which the final date in which the revised mark was fully reflected in the NAV.

EXHIBIT 54

From: Kristin Hendrix
Sent: Thursday, May 02, 2019 12:33 PM
To: Hayley Eliason <HEliason@HighlandCapital.com>; Blair Roeber <BRoeber@HighlandCapital.com>
Subject: FW: HCMLP to HCMFA loan

Blair,

Here is a copy of the note for support.

Hayley – FYI for your loan tracker.

From: David Klos
Sent: Thursday, May 02, 2019 11:24 AM
To: Corporate Accounting
Subject: HCMLP to HCMFA loan

Blair,
Please send $2,400,000 from HCMLP to HCMFA. This is a new interco loan. Kristin, can you or Hayley please prep a note for execution. I'll have further instructions later today, but please process this payment as soon as possible.

DAVID KLOS | CONTROLLER

HIGHLAND CAPITAL MANAGEMENT

300 Crescent Court | Suite 700 | Dallas, Texas 75201
C: 214.674.2926 | O: 972.419.4478 | F: 972 628.4147
dklos@highlandcapital.com | www.highlandcapital.com

PROMISSORY NOTE

$2,400,000.00 May 2, 2019

FOR VALUE RECEIVED, HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, LP. ("***Maker***") promises to pay to the order of HIGHLAND CAPITAL MANAGEMENT, LP ("***Payee***"), in legal and lawful tender of the United States of America, the principal sum of TWO MILLION FOUR HUNDRED THOUSAND and 00/100 Dollars ($2,400,000.00), together with interest, on the terms set forth below (the "***Note***"). All sums hereunder are payable to Payee at 300 Crescent Court, Dallas, TX 75201, or such other address as Payee may specify to Maker in writing from time to time.

1. Interest Rate. The unpaid principal balance of this Note from time to time outstanding shall bear interest at a rate equal to the short-term "***applicable federal rate***" (2.39%) in effect on the date hereof for loans of such maturity as determined by Section 1274(d) of the Internal Revenue Code, per annum from the date hereof until maturity, compounded annually on the anniversary of the date of this Note. Interest shall be calculated at a daily rate equal to 1/365th (1/366 in a leap year) of the rate per annum, shall be charged and collected on the actual number of days elapsed, and shall be payable on demand of the Payee.

2. Payment of Principal and Interest. The accrued interest and principal of this Note shall be due and payable on demand.

3. Prepayment Allowed; Renegotiation Discretionary. Maker may prepay in whole or in part the unpaid principal or accrued interest of this Note. Any payments on this Note shall be applied first to unpaid accrued interest hereon, and then to unpaid principal hereof.

4. Acceleration Upon Default. Failure to pay this Note or any installment hereunder as it becomes due shall, at the election of the holder hereof, without notice, demand, presentment, notice of intent to accelerate, notice of acceleration, or any other notice of any kind which are hereby waived, mature the principal of this Note and all interest then accrued, if any, and the same shall at once become due and payable and subject to those remedies of the holder hereof. No failure or delay on the part of Payee in exercising any right, power or privilege hereunder shall operate as a waiver thereof.

5. Waiver. Maker hereby waives grace, demand, presentment for payment, notice of nonpayment, protest, notice of protest, notice of intent to accelerate, notice of acceleration and all other notices of any kind hereunder.

6. Attorneys' Fees. If this Note is not paid at maturity (whether by acceleration or otherwise) and is placed in the hands of an attorney for collection, or if it is collected through a bankruptcy court or any other court after maturity, the Maker shall pay, in addition to all other amounts owing hereunder, all actual expenses of collection, all court costs and reasonable attorneys' fees and expenses incurred by the holder hereof.

7. Limitation on Agreements. All agreements between Maker and Payee, whether now existing or hereafter arising, are hereby limited so that in no event shall the amount paid, or agreed to be paid to Payee for the use, forbearance, or detention of money or for the payment or performance of any covenant or obligation contained herein or in any other document evidencing, securing or pertaining to this Note, exceed the maximum interest rate allowed by law. The terms and provisions of this paragraph shall control and supersede every other provision of all agreements between Payee and Maker in conflict herewith.

8. Governing Law. This Note and the rights and obligations of the parties hereunder shall be governed by the laws of the United States of America and by the laws of the State of Texas, and is performable in Dallas County, Texas.

MAKER:

FRANK WATERHOUSE

EXHIBIT 55

5/2/2019 Wires

			Description	Notes
HCM				
HCMFA	USD	2,400,000.00	Loan	
Siepe Services	USD	187,856.26	March	
HCM *513	USD	123,842.97	May 2019 BCBS	
Select	USD	100,000.00	Margin Call	
CDW	USD	4,145.57		
CT Corp	USD	1,077.75		
HCMFA				
Highland Opp Credit Fund	USD	27,694.31		
HCM *513	USD	19,968.45	May 2019 BCBS	
Highland Merger Arb	USD	18,494.04	April 2019 Advisory Fees	
Highland Tax Exempt	USD	12,783.25		
Morgan Stanley	USD	11,107.39		
Highland MLP Fund	USD	10,354.06		
Wells Fargo	USD	7,814.20		
Pershing	USD	5,719.83		
Highland Commissions DDA	USD	5,000.00	DST Daily Commissions Debit Account Funding	
Financial Data Services	USD	277.66		

EXHIBIT 56

From: Kristin Hendrix
Sent: Friday, May 03, 2019 3:06 PM
To: Corporate Accounting <CorporateAccounting@hcmlp.com>
Subject: HCMLP Loan to HCMFA

Blair,

Please set up a wire from HCMLP to HCMFA for $5M as a new loan ($4.4M should be coming in from Jim soon).

Hayley, please add this to your loan tracker. I will paper the loan.

Thanks,

Kristin Hendrix, CPA | Manager, Corporate Accounting

HIGHLAND CAPITAL MANAGEMENT

300 Crescent Court | Suite 700 | Dallas, Texas 75201
O: 972.628.4127 | F: 972.628.4147
khendrix@highlandcapital.com | www.highlandcapital.com

Highland Capital Management, LP

Pensions&Investments 2014 Best Places to Work in Money Management

EXHIBIT 57

PROMISSORY NOTE

$5,000,000.00 May 3, 2019

FOR VALUE RECEIVED, HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, LP. ("***Maker***") promises to pay to the order of HIGHLAND CAPITAL MANAGEMENT, LP ("***Payee***"), in legal and lawful tender of the United States of America, the principal sum of FIVE MILLION and 00/100 Dollars ($5,000,000.00), together with interest, on the terms set forth below (the "***Note***"). All sums hereunder are payable to Payee at 300 Crescent Court, Dallas, TX 75201, or such other address as Payee may specify to Maker in writing from time to time.

1. Interest Rate. The unpaid principal balance of this Note from time to time outstanding shall bear interest at a rate equal to the short-term "***applicable federal rate***" (2.39%) in effect on the date hereof for loans of such maturity as determined by Section 1274(d) of the Internal Revenue Code, per annum from the date hereof until maturity, compounded annually on the anniversary of the date of this Note. Interest shall be calculated at a daily rate equal to 1/365th (1/366 in a leap year) of the rate per annum, shall be charged and collected on the actual number of days elapsed, and shall be payable on demand of the Payee.

2. Payment of Principal and Interest. The accrued interest and principal of this Note shall be due and payable on demand.

3. Prepayment Allowed; Renegotiation Discretionary. Maker may prepay in whole or in part the unpaid principal or accrued interest of this Note. Any payments on this Note shall be applied first to unpaid accrued interest hereon, and then to unpaid principal hereof.

4. Acceleration Upon Default. Failure to pay this Note or any installment hereunder as it becomes due shall, at the election of the holder hereof, without notice, demand, presentment, notice of intent to accelerate, notice of acceleration, or any other notice of any kind which are hereby waived, mature the principal of this Note and all interest then accrued, if any, and the same shall at once become due and payable and subject to those remedies of the holder hereof. No failure or delay on the part of Payee in exercising any right, power or privilege hereunder shall operate as a waiver thereof.

5. Waiver. Maker hereby waives grace, demand, presentment for payment, notice of nonpayment, protest, notice of protest, notice of intent to accelerate, notice of acceleration and all other notices of any kind hereunder.

6. Attorneys' Fees. If this Note is not paid at maturity (whether by acceleration or otherwise) and is placed in the hands of an attorney for collection, or if it is collected through a bankruptcy court or any other court after maturity, the Maker shall pay, in addition to all other amounts owing hereunder, all actual expenses of collection, all court costs and reasonable attorneys' fees and expenses incurred by the holder hereof.

7. Limitation on Agreements. All agreements between Maker and Payee, whether now existing or hereafter arising, are hereby limited so that in no event shall the amount paid, or agreed to be paid to Payee for the use, forbearance, or detention of money or for the payment or performance of any covenant or obligation contained herein or in any other document evidencing, securing or pertaining to this Note, exceed the maximum interest rate allowed by law. The terms and provisions of this paragraph shall control and supersede every other provision of all agreements between Payee and Maker in conflict herewith.

8. Governing Law. This Note and the rights and obligations of the parties hereunder shall be governed by the laws of the United States of America and by the laws of the State of Texas, and is performable in Dallas County, Texas.

MAKER:

FRANK WATERHOUSE

EXHIBIT 58

Highland Capital Management, L.P. - Cash
Next 13 Weeks Commencing December 14, 2020
(in thousands)
CONFIDENTIAL DRAFT FOR ILLUSTRATIVE PURPOSES ONLY - NOT FINAL OR APPROVED FOR FURTHER DISTRIBUTION

	Actual	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast
Week beginning	**12/7**	**12/14**	**12/21**	**12/28**	**1/4**	**1/11**	**1/18**	**1/25**	**2/1**	**2/8**	**2/15**	**2/22**	**3/1**	**3/8**
Beginning unrestricted operating cash	$ 12,537	$ 11,948	$ 10,684	$ 11,051	$ 11,771	$ 11,048	$ 11,188	$ 11,353	$ 10,486	$ 11,445	$ 10,860	$ 10,279	$ 8,145	$ 8,381
Operating Receipts														
Management fees														
CLOs	-	-	-	-	-	-	-	-	676	-	-	-	-	-
Hedge funds	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Private Equity, PetroCap, Port Co's	-	-	-	-	63	-	-	-	-	-	270	-	-	-
Separate accounts	-	-	776	-	-	-	-	750	165	-	579	-	-	-
Management fees - managed funds	$ -	$ -	$ 776	$ -	$ 63	$ -	$ -	$ 750	$ 841	$ -	$ 849	$ -	$ -	$ -
HCMFA / NPA investment support	-	-	668	-	-	668	-	-	668	-	-	-	668	-
Shared services receipts	39	-	168	385	-	168	290	135	-	290	60	15	-	-
Intercompany and shared services revenue	39	$ -	$ 836	$ 385	$ -	$ 836	$ 290	$ 135	$ 668	$ 290	$ 60	$ 15	$ 668	$ -
Fund reimbursements	-	-	60	-	-	-	100	-	-	-	100	-	-	-
Interest receipts on notes receivable	-	-	-	2,051	-	-	-	-	-	-	-	-	-	-
Dividend receipts (unencumbered)	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Other miscellaneous receipts	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Total other receipts	$ -	$ -	$ 60	$ 2,051	$ -	$ -	$ 100	$ -	$ -	$ -	$ 100	$ -	$ -	$ -
Total operating receipts	**$ 39**	**$ -**	**$ 1,672**	**$ 2,436**	**$ 63**	**$ 836**	**$ 390**	**$ 885**	**$ 1,509**	**$ 290**	**$ 1,009**	**$ 15**	**$ 668**	**$ -**
Compensation and benefits														
Payroll, benefits, and taxes + exp reimb	(408)	(31)	-	(556)	-	(471)	-	(561)	-	(535)	-	(625)	-	(460)
Cash bonuses	-	-	-	-	-	-	-	-	-	-	-	(3,394)	-	-
Total compensation and benefits	$ (408)	$ (31)	$ -	$ (556)	$ -	$ (471)	$ -	$ (561)	$ -	$ (535)	$ -	$ (4,019)	$ -	$ (460)
General overhead														
Outside legal (ordinary course)	(62)	-	(499)	-	(560)	-	-	(560)	-	-	-	(560)	-	-
Independent director fees	-	-	-	(210)	-	-	-	-	(210)	-	-	-	(210)	-
General overhead - critical vendors (pre-petition)	-	-	-	-	-	-	-	-	-	-	-	-	-	-
General overhead - post-petition vendors	(158)	(1,233)	(275)	(275)	(225)	(225)	(225)	(225)	(340)	(340)	(340)	(340)	(222)	(222)
Total general overhead	$ (220)	$ (1,233)	$ (774)	$ (485)	$ (785)	$ (225)	$ (225)	$ (785)	$ (550)	$ (340)	$ (340)	$ (900)	$ (432)	$ (222)
Net change in cash due to operating activity	**(589)**	**(1,264)**	**898**	**1,395**	**(723)**	**140**	**165**	**(461)**	**959**	**(585)**	**669**	**(4,904)**	**236**	**(682)**
Re-org related - payments direct to professionals														
Debtor bankruptcy counsel	-	-	-	(300)	-	-	-	(720)	-	-	-	(720)	-	-
Debtor FA/CRO	-	-	-	-	-	-	-	(300)	-	-	-	(300)	-	-
Compensation consultant	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Committee counsel	-	-	(359)	(339)	-	-	-	(600)	-	-	-	(600)	-	-
Committee FA	-	-	(172)	(138)	-	-	-	(480)	-	-	-	(480)	-	-
Claims / noticing agent	-	-	-	-	-	-	-	(30)	-	-	-	(30)	-	-
Regulatory & compliance counsel	-	-	-	(100)	-	-	-	(100)	-	-	-	(100)	-	-
Mediation	-	-	-	-	-	-	-	-	-	-	-	-	-	-
US Trustee	-	-	-	-	-	-	-	(175)	-	-	-	-	-	-
Total re-org related	$ -	$ -	$ (531)	$ (877)	$ -	$ -	$ -	$ (2,405)	$ -	$ -	$ -	$ (2,230)	$ -	$ -
Net change in cash from ops + reorg costs	**(589)**	**(1,264)**	**367**	**518**	**(723)**	**140**	**165**	**(2,866)**	**959**	**(585)**	**669**	**(7,134)**	**236**	**(682)**
Investing cash flows (principal only on notes)														
Jefferies prime brokerage, net or Select Equity Fund funding	-	-	-	-	-	-	-	2,000	-	-	-	5,000	-	-
Third party fund capital call obligations	-	-	-	-	-	-	-	-	-	-	(1,650)	-	-	-
Third party fund expected distributions	-	-	-	-	-	-	-	-	-	-	400	-	-	-
Highland Capital Management Korea (capital call funding)	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Multi Strategy Credit Fund	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Highland Capital Management Latin America	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Proceeds from outstanding notes	-	-	-	202	-	-	-	-	-	-	-	-	-	-
Divs, paydowns, misc from non-PB assets	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Purchases of other investments (non-PB)	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Proceeds from other investments (non-PB)	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Net change in cash due to investing activities	**-**	**-**	**-**	**202**	**-**	**-**	**-**	**2,000**	**-**	**-**	**(1,250)**	**5,000**	**-**	**-**
Financing cash flows														
Required equity distributions	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Equity contributions	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Existing debt paydowns	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Net change in cash due to financing activities	**-**	**-**	**-**	**-**	**-**	**-**	**-**	**-**	**-**	**-**	**-**	**-**	**-**	**-**
Ending unrestricted operating cash	**$ 11,948**	**$ 10,684**	**$ 11,051**	**$ 11,771**	**$ 11,048**	**$ 11,188**	**$ 11,353**	**$ 10,486**	**$ 11,445**	**$ 10,860**	**$ 10,279**	**$ 8,145**	**$ 8,381**	**$ 7,699**

EXHIBIT 59

HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS

NEXPOINT ADVISORS

TO: Board of Trustees or Board of Directors (as the case may be) (collectively, the "Board") of Highland Funds I, Highland Funds II, Highland Income Fund, Highland Global Allocation Fund, NexPoint Strategic Opportunities Fund, NexPoint Real Estate Strategies Fund and NexPoint Capital, Inc.

FROM: Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. and NexPoint Securities, Inc.

RE: Supplemental 15(c) Information Request

DATE: October 23, 2020

Pursuant to your supplemental request dated October 2, 2020, Highland Capital Management Fund Advisors, L.P. ("HCMFA"), NexPoint Advisors, L.P. ("NexPoint", and with HCMFA, each, an "Adviser", and together, the "Advisers") and NexPoint Securities, Inc. ("NSI" the "Distributor") submit the following supplemental information to the Board in order to assist the Board in fulfilling its obligations under Section 15(c) of the Investment Company Act of 1940, as amended (the "1940 Act"), and to assist in the Board's consideration of the investment advisory, and other contractual arrangements, for the funds listed on Appendix A (each, a "Fund" and, collectively, the "Funds"). References to the 2020 15(c) Response dated August 13, 2020 and the supplemental response dated September 17-18, 2020 are referred to as the "2020 15(c) Response" and "2020 Supplemental 15(c) Response", respectively.

Your requests have been noted below, each of which is followed by our response. Unless otherwise specified, reference documents are located on Director's Desk at the following location: Home > Documents > Corporate Documents > 15c Reference Documents.

A. *Nature, Extent and Quality of Services*

1. Please provide, to the extent practicable, the contingency plans with respect to the services provided under the Shared Services Agreements in the event that the outcome of the HCMLP bankruptcy proceedings were to impact the current servicing structure. For example, has the Advisers considered any outside service providers if necessary?

   Response: As a result of the Highland Capital Management, L.P. ("HCMLP") bankruptcy, NexPoint's senior management's plan as a backup/contingency plan is to extend employment offers to the vast majority of HCMLP's employees by December 31, 2020. This will help ensure that there is no disruption in services to the Funds. Once we have further details of this we will advise. In the interim, the plan is to continue with existing shared services.

   Representatives of HCMLP and NexPoint will be available to discuss the structure of these contingency plans, relevant employees, and communications

to current employees regarding these matters. Representatives of HCMLP and NexPoint are working to facilitate the shared use of and/or transfer of services such as the intranet, shared computer drives, and third-party contracts.

2. Are there any material outstanding amounts currently payable or due in the future (*e.g.*, notes) to HLCMLP by HCMFA or NexPoint Advisors or any other affiliate that provide services to the Funds?

   Response: As of June 30, 2020, $23,683,000 remains outstanding to HCMLP and its affiliates from NexPoint and $12,286,000 remains outstanding to HCMLP from HCMFA. The Note between HCMLP and NexPoint comes due on December 31, 2047. The earliest the Note between HCMLP and HCMFA could come due is in May 2021. All amounts owed by each of NexPoint and HCMFA pursuant to the shared services arrangement with HCMLP have been paid as of the date of this letter. The Adviser notes that both entities have the full faith and support of James Dondero.

3. The Board notes the provision of the updated list of current co-investments provided by HCMFA/NexPoint Advisors and the Advisers' discussion, including the senior-level team in place, to address any potential conflicts of interest matters. With respect to the compliance function, please confirm that the Funds' Chief Compliance Officer overall will continue in his usual role with respect to the Funds. Are there any other potential conflicts outside of the specific co-investment matters identified?

   Response: The Advisers confirm that the Funds' Chief Compliance Officer overall will continue in his usual role with respect to the Funds. As of October 14, 2020, the Funds' Chief Compliance Officer is an employee of NexPoint. Please see Exhibit A for a list of current co-investments and cross-held positions where a future conflict may arise together with Exhibit B for the list of non-HCMLP employees available to assist the Board in any future conflicts.

Exhibit A

Co-Investment Analysis

Highland Capital Management, LP ("HCMLP")
Condensed Co-Investment Analysis
As of 9/30/20

Condensed Co-Investments [1]

	Investment	HCMLP MV	Funds Managed by HCMLP MV	Retail Funds	Non-HCMLP Investment Coverage
1	Metro-Goldwyn-Mayer Inc. Class A Common Stock	$13,085,369	$418,019,027	$61,820,908	Dondero
2	CCS Medical, Inc. (Chronic Care) Loan 1st Lien @ PRIME 7% 7/31/2021	-	121,166,994	47,510,599	Dondero
3	TerreStar Corporation Term Loan A @ LIBOR 11% 2/28/2022	-	49,742,043	40,159,485	Dondero
4	VST US Equity	-	41,904,280	24,381,982	Sowin
5	NXRT	10,799,003	2,228,410	21,256,955	McGraner
6	Grayson CLO, Ltd. Class II Preference Shares	-	2,201,500	18,861,500	Sowin
7	NHT/U CN	2,028,793	-	18,524,594	McGraner
8	NHF	2,208,872	2,954,619	15,808,648	Dondero
9	Advantage Sales & Marketing Inc. Term Loan (Second Lien) @ LIBOR 6.5% 7/25/2022	-	1,940,140	13,784,695	Sowin
10	Procera Networks, Inc. (aka Sandvine Corp) Initial Term Loan (First Lien) @ LIBOR 4.5% 10/3	-	1,367,373	13,681,487	Sowin
11	Gruden Acquisition, Inc. (aka Quality Distribution) ITL (First Lien) @ LIBOR 5.5% 8/18/2022	-	2,568,463	11,124,738	Sowin
12	Westchester CLO, Ltd Class I Preference Shares 144A	-	3,373,333	10,888,813	Sowin
13	HRTX	-	81,510	10,686,168	Dondero
14	Vistra Energy Corp. (fka TCEH Corp.) TXU TRA rights	-	3,494,825	10,476,054	Sowin
15	American Banknote Common	693,467	-	1,843,371	Dondero
16	American Airlines Escrow	154,650	630,365	1,444,839	Dondero
17	Ginn LA Conduit Lender, Inc. 1st Lien A CL Deposit @ PRIME 4.5% 6/8/2011	68,860	812,716	846,955	Sowin
18	TerreStar Corporation TL C @ LIBOR 11% 2/28/2022	-	25,418	553,282	Dondero
19	CCS Medical, Inc. (Chronic Care) Common	-	6,008	5,797	Dondero
	Sub-Total	**$29,039,013**	**$652,517,024**	**$323,660,869**	

Additional HCMLP Ownership of Retail Funds (non-co-investments) [2]

Investment	HCMLP MV	Retail Fund MV	Funds Managed by HCMLP MV
Highland Opportunistic Credit Fund (HNRZX)	$2,911,923	-	-
NexPoint Real Estate Strategies Fund (NRSZX)	663,982	-	-
Sub-Total	**$3,575,905**	**$0**	**$0**

Footnote:
1 - Listing includes the following: 1) all investments held by both HCMLP and retail funds, regardless of materiality 2) investments for which retail funds hold $10 million or greater in the aggregate and are also held by funds advised by HCMLP 3) investments for which retail funds hold ownership less than $10 million in the aggregate, the position is private and fair valued, and are also held by funds advised by HCMLP.
2 - 'Additional HCMLP Ownership of Retail Funds' does not reflect other immaterial holdings of investments below $5,000.

Highland Capital Management, LP ("HCMLP")
Co-Investment Analysis
As of 9/30/20

Co-Investments, excluding holdings with zero market value

	Investment	HCMLP MV	Funds Managed by HCMLP MV	Retail Funds
1	Metro-Goldwyn-Mayer Inc. Class A Common Stock	$13,085,369	$418,019,027	$61,820,908
2	CCS Medical, Inc. (Chronic Care) Loan 1st Lien @ PRIME 7% 7/31/2021	-	121,166,994	47,510,599
3	TerreStar Corporation Term Loan A @ LIBOR 11% 2/28/2022	-	49,742,043	40,159,485
4	VST US Equity	-	41,904,280	24,381,982
5	NXRT	10,799,003	2,228,410	21,256,955
6	Grayson CLO, Ltd. Class II Preference Shares	-	2,201,500	18,861,500
7	NHT/U CN	2,028,793	-	18,524,594
8	NHF	2,208,872	2,954,619	15,808,648
9	Advantage Sales & Marketing Inc. Term Loan (Second Lien) @ LIBOR 6.5% 7/25/2022	-	1,940,140	13,784,695
10	Procera Networks, Inc. (aka Sandvine Corp) Initial Term Loan (First Lien) @ LIBOR 4.5% 10/31/2025	-	1,367,373	13,681,487
11	Gruden Acquisition, Inc. (aka Quality Distribution) ITL (First Lien) @ LIBOR 5.5% 8/18/2022	-	2,568,463	11,124,738
12	Westchester CLO, Ltd Class I Preference Shares 144A	-	3,373,333	10,888,813
13	HRTX	-	81,510	10,686,168
14	Vistra Energy Corp. (fka TCEH Corp.) TXU TRA rights	-	3,494,825	10,476,054
15	Traverse Midstream Partners LLC Advance @ LIBOR 5.5% 9/27/2024	-	25,916,705	9,945,051
16	VM Consolidated, Inc. (aka American Traffic Solutions) B-1 1st Lien Non-ext @ LIBOR 3.25% 2/28/2025	-	2,719,702	9,594,505
17	Edelman Financial Center, LLC, The (fka Flight Debt Merger Sub Inc.) Initial Term Loan (Second Lien) @ LIBOR 6.75% 7/20/2026	-	125,340	9,078,334
18	Forest City Enterprises, L.P. Replacement TL @ LIBOR 3.5% 12/8/2025	-	2,222,324	8,889,297
19	Avaya Inc. B TL @ LIBOR 4.25% 12/15/2024	-	1,357,685	8,802,760
20	MPMQ Appraisal Rights Claims	-	527,460	8,224,455
21	USS Ultimate Holdings, Inc. (aka United Site Services, Inc.) Initial Term Loan (First Lien) @ LIBOR 3.75% 8/25/2024	-	2,877,263	6,691,414
22	PSC Industrial Holdings Corp. Term Loan (First Lien) @ LIBOR 3.75% 10/11/2024	-	3,685,775	6,511,970
23	EnergySolutions, LLC (aka Envirocare of Utah, LLC) Initial Term Loan @ LIBOR 3.75% 5/9/2025	-	7,194,271	5,678,112
24	Truck Hero, Inc. Initial TL 2nd Lien @ LIBOR 8.25% 4/21/2025	-	645,557	5,561,471
25	Envision Healthcare Corporation Initial Term Loan @ LIBOR 3.75% 10/10/2025	-	2,854,870	5,502,657
26	AERI	-	35,310	5,211,756
27	MDPK 2014-15A Float - 01/2026 - DR - 55818WAG0 @ LIBOR 5.4400 1/27/2026	-	1,249,500	4,774,875
28	Brentwood CLO Ltd Class II Preference Shares	-	7,424,000	4,416,000
29	Jo-Ann Stores, LLC Initial Loan @ LIBOR 5% 10/20/2023	-	2,354,854	4,384,100
30	Advantage Sales & Marketing Inc. Initial Term Loan (First Lien) @ LIBOR 3.25% 7/23/2021	-	1,896,829	3,571,805
31	Radnet Management, Inc. T B-1 L @ LIBOR 3.75% 6/30/2023	-	1,601,339	3,479,728
32	Fort Dearborn Holding Company, Inc. Initial Term Loan (First Lien) @ LIBOR 4% 10/19/2023	-	1,394,305	3,406,180
33	Sound Inpatient Physicians, Inc. Initial Term Loan (Second Lien) @ LIBOR 6.75% 6/26/2026	-	326,460	3,264,600
34	Liberty CLO, Ltd. Preferred	-	8,339,310	2,989,000
35	UDFI	-	1,291,306	2,801,645
36	Auris Luxembourg III S.a r.l. Facility B2 @ LIBOR 3.75% 2/27/2026	-	1,891,886	2,364,858
37	BIO	-	171,133	2,319,570
38	Dayco Products LLC - (Mark IV Industries, Inc.) Term Loan @ LIBOR 4.25% 5/19/2023	-	1,587,518	2,121,554
39	Rockwall CDO, Ltd. Preferred Shares	-	5,211,000	2,026,500
40	AVYA	-	30,877,250	1,911,598
41	RWIC NOT LISTED	-	579,000	1,852,800
42	American Banknote Common	693,467	-	1,843,371
43	TCW 2019-2A D2A Float - 10/02032 - 87242BAS9 @ 4.89 10/20/2032	-	1,250,000	1,750,000
44	Red River CLO, Ltd. Red River CLO	-	3,797,722	1,744,900
45	American Airlines Escrow	154,650	630,365	1,444,839
46	Refinitiv US Holdings Inc. (fka Financial & Risk US Holdings, Inc.) Initial Dollar Term Loan @ LIBOR 3.25% 10/1/2025	-	1,950,070	1,231,425
47	Scientific Games International, Inc. Initial Term B-5 Loan @ LIBOR 2.75% 8/14/2024	-	3,715,025	1,213,050
48	ACIS 2015-6A Zero Coupon - 05/2027 - SUB - 004524AD6 @ Zero Coupon 0.0000 5/1/2027	-	8,296,000	1,200,000
49	CIFC 2015-5A DR Float - 10/02027 - 12550NAJ7 @ 5.55 10/25/2027	-	1,109,375	1,198,125
50	General Nutrition Centers, Inc. FILO Term Loan @ PRIME 8% 12/31/2022	-	487,190	1,148,178
51	Change Healthcare Holdings, LLC closing date TL @ LIBOR 2.5% 3/1/2024	-	2,709,671	991,845
52	CIFC 2016-1A D2R Float - 10/02031 - 17180TAW2 @ 4.43 10/21/2031	-	980,000	980,000
53	TMO	-	201,775	927,192
54	ACIS 2015-6A Float - 05/2027 - D - 00452PAR8 @ LIBOR 3.7700 5/1/2027	-	1,810,000	905,000
55	Edelman Financial Center, LLC, The (fka Flight Debt Merger Sub Inc.) Initial Term Loan (First Lien) @ LIBOR 3% 7/21/2025	-	3,329,415	903,218
56	AHT1 2018-KEYS E Float - 05/02035 - 04410CAN9 @ 4.15 05/15/2035	-	695,663	850,255
57	ABERD	-	905,975	847,525
58	Ginn LA Conduit Lender, Inc. 1st Lien A CL Deposit @ PRIME 4.5% 6/8/2011	68,860	812,716	846,955
59	Bausch Health Companies Inc. (fka Valeant Pharmaceuticals International, Inc.) Initial Term Loan @ LIBOR 3% 6/2/2025	-	3,010,042	825,922
60	CSC Holdings, LLC (fka CSC Holdings Inc. (Cablevision)) March 2017 Refinancing Term Loan @ LIBOR 2.25% 7/17/2025	-	1,142,030	824,572
61	Hub International Limited Initial Term Loan @ LIBOR 3% 4/25/2025	-	1,270,064	819,121
62	Nielsen Finance LLC (VNU, Inc.) Class B-4 Term Loan @ LIBOR 2% 10/4/2023	-	480,085	813,503
63	PRTK	-	100,626	757,508
64	MPH Acquisition Holdings LLC Initial Term Loan @ LIBOR 2.75% 6/7/2023	-	3,767,027	739,421
65	VICI Properties 1 LLC Term B Loan @ LIBOR 1.75% 12/20/2024	-	969,035	726,776
66	McAfee, LLC Term B USD Loan @ LIBOR 3.75% 9/30/2024	-	1,469,387	722,848
67	IRB Holding Corp. (aka Arby's / Buffalo Wild Wings) 2020 Replacement Term B Loan @ Libor 2.75% 2/5/2025	-	531,087	716,184
68	Global Medical Response, Inc. (aka Air Medical) 2018 Term Loan @ LIBOR 3.25% 4/28/2022	-	969,179	699,346
69	CityCenter Holdings, LLC Term B Loan @ LIBOR 2.25% 4/18/2024	-	344,250	694,346
70	Misys Limited (aka Almonde/Tahoe, Finastra USA) Dollar Term Loan (First Lien) @ LIBOR 3.5% 6/13/2024	-	920,265	693,200
71	Golden Nugget, Inc. (aka Landry's Inc.) TL @ LIBOR 2.5% 10/4/2023	-	383,374	671,846
72	H.B. Fuller Company Commitment @ LIBOR 2% 10/20/2024	-	250,488	638,664
73	Lightstone Holdco LLC Refinancing Term B Loan @ LIBOR 3.75% 1/30/2024	-	4,262,832	616,367
74	ACHC	-	73,700	589,600
75	Crown Finance US, Inc. (aka Cineworld Group plc) Initial Dollar Tranche Term Loan @ LIBOR 2.5% 2/28/2025	-	11,999,814	572,658
76	Calpine Corporation Term Loan (2015) @ LIBOR 2.25% 1/15/2024	-	375,085	567,158
77	TerreStar Corporation TL C @ LIBOR 11% 2/28/2022	-	25,418	553,282
78	TransDigm Inc. Tranche E Refinancing Term Loan @ LIBOR 2.25% 5/30/2025	-	6,149,465	542,437
79	Tronox Finance LLC Initial Dollar Term Loan (First Lien) @ LIBOR 3% 9/23/2024	-	3,327,701	493,305
80	Solera, LLC (Solera Finance, Inc.) Dollar TL @ LIBOR 2.75% 3/3/2023	-	446,555	490,314
81	AlixPartners, LLP 2017 Refinancing Term Loan @ LIBOR 2.5% 4/4/2024	-	3,254,084	483,887
82	iHeartCommunications, Inc. (fka Clear Channel Communications, Inc.) 6.375% - 05/2026 - 45174HBC0 FIX 6.375% 5/1/2026	-	1,446	482,002
83	Fieldwood Energy LLC Closing Date Loan (First Lien) @ LIBOR 5.25% 4/11/2022	-	10,941,771	479,396
84	HLF 1X Floating - 08/2014 - C1 - 43037QAE9 @ LIBOR 0.0000 8/2/2018	-	318,583	477,874
85	Ineos US Finance LLC New 2024 Dollar Term Loan @ LIBOR 2% 4/1/2024	-	2,131,748	474,805
86	CGMS 2019-4A D Float - 01/02033 - 14317WAA6 @ 7.65 01/15/2033	-	930,500	465,250
87	BJ's Wholesale Club, Inc. Tranche B Term Loan (First Lien) @ LIBOR 2% 2/3/2024	-	515,535	460,180
88	Titan Acquisition Limited (aka Husky IMS International Ltd.) Initial Term Loan @ LIBOR 3% 3/28/2025	-	923,108	459,071
89	Plantronics, Inc. Initial Term B Loan @ LIBOR 2.5% 7/2/2025	-	12,145,824	376,874
90	SS&C Technologies Holdings, Inc. Term B-5 Loan @ LIBOR 2.25% 4/16/2025	-	952,120	264,538
91	Berry Global, Inc. (fka Berry Plastics Corporation) Term W Loan @ LIBOR 2% 10/1/2022	-	339,055	248,184
92	Applied Systems, Inc. Closing Date Term Loan (First Lien) @ LIBOR 3.25% 9/19/2024	-	1,693,433	245,795
93	SolarWinds Holdings, Inc. 2018 Refinancing Term Loan (First Lien) @ LIBOR 2.75% 2/5/2024	-	956,532	243,383
94	VAHA 2004-1A Variable - 08/2012 - 91914QAA4 @ Variable 0.0000 8/1/2012	-	375,000	225,000
95	SRC	-	1,212	220,219
96	COLL	-	62,398	166,456
97	Texas Competitive Electric Holdings Company LLC (TXU) Escrow Loan Extended @ LIBOR 0%	-	2,079	151,087
98	AAMRQ escrow Common Stock	-	57,400	123,000
99	Tecton 9 PERP	-	467,201	114,573
100	ACRG/A/U CN	-	41,887	111,422
101	NRG	-	26,498	83,767
102	FGI Operating Company, LLC Common	-	51,252	68,922
103	Fieldwood Energy LLC Common1	-	15,420	56,288
104	ACRG/B/U CN	-	15,022	39,960
105	Lightstone Holdco LLC Refinancing Term C Loan @ LIBOR 3.75% 1/30/2024	-	240,430	34,764
106	SMTA (Delisted 01/02/2020)	-	93,852	7,880
107	CCS Medical, Inc. (Chronic Care) Common	-	6,008	5,797
	Total	**$29,039,013**	**$878,908,335**	**$495,707,848**

Additional HCMLP Ownership of Retail Funds (non-co-investments)[1]

Investment	HCMLP MV	Retail Fund MV	Funds Managed by HCMLP MV
Highland Opportunistic Credit Fund (HNRZX)	$2,911,923	-	-
NexPoint Real Estate Strategies Fund (NRSZX)	663,982	-	-
Total	**$3,575,905**	**0.00**	**$0**

Footnote:
1 - 'Additional HCMLP Ownership of Retail Funds' does not reflect other immaterial holdings of investments below $5,000.

Exhibit B

Non-HCMLP Employees

Name	Role	Current Title	Employed By
Jim Dondero	Senior Investment Team Member	Partner	NPA
Jason Post	Chief Compliance Officer	Chief Compliance Officer	NPA
Joe Sowin	Senior Investment Team Member	Co-CIO and Head of Global Equity Trading	HCMFA
Brad Heiss	Senior Investment Team Member	Managing Director	HCMFA
Matt McGraner	Senior Investment Team Member	Managing Director	NPA
Dustin Norris	Fund Officer/Liaison	Head of Distribution and Chief Product Strategist	NPA
DC Sauter	Legal	General Counsel	NPA
Eric Holt	Compliance	Chief Compliance Officer, Affiliated Broker Dealers	NSI
David Willmore	Accounting/Operations	Senior Manager, Real Estate Accounting	NXRT
Paul Richards	Valuation	Director, Real Estate	NPA
Jackie Graham	PR/Marketing	Investor Relations Manager	NPA

HCMFA	Highland Capital Management Fund Advisors, L.P.
NPA	NexPoint Advisors, L.P.
NSI	NexPoint Securities, Inc.
NXRT	NexPoint Residential Trust, Inc.

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Appendix A

Open-End Funds

Highland Funds I:

1. Highland Healthcare Opportunities Fund
2. Highland/iBoxx Senior Loan ETF
3. Highland Opportunistic Credit Fund (*in liquidation*)
4. Highland Merger Arbitrage Fund

Highland Funds II:

5. Highland Small-Cap Equity Fund
6. Highland Socially Responsible Equity Fund
7. Highland Fixed Income Fund *(sub-advised)*
8. Highland Total Return Fund *(sub-advised)*

Closed-End Funds

9. NexPoint Capital, Inc.
    a. BDC REIT Sub, LLC (*REIT Subsidiary*)
10. NexPoint Strategic Opportunities Fund
    a. NexPoint Real Estate Opportunities, LLC (*REIT Subsidiary*)
    b. NexPoint Real Estate Capital, LLC (*REIT Subsidiary*)
11. Highland Income Fund
    a. HFRO Sub, LLC (*Credit Subsidiary)*
    b. NFRO REIT Sub, LLC (*REIT Subsidiary*)
12. Highland Global Allocation Fund
    a. GAF REIT, LLC (*REIT Subsidiary*)

Interval Funds:

13. NexPoint Real Estate Strategies Fund
    a. NRESF REIT Sub, LLC (*REIT Subsidiary*)

EXHIBIT 60

From: Kristin Hendrix
Sent: Saturday, August 29, 2020 2:47 PM
To: Jim Dondero <JDondero@HighlandCapital.com>
Cc: Frank Waterhouse <FWaterhouse@HighlandCapital.com>
Subject: 7/31/2020 HCMLP Requests

Hi Jim,

Please see attached data you had requested for HCMLP.

- 7/31/2020 SOI
- 7/31/2020 affiliate notes
- Oct 2019 – July 2020 equity balances

Please let us know if you have any questions or need anything else.

Thanks,
Kristin

Kristin Hendrix, CPA | Assistant Controller

HIGHLAND CAPITAL MANAGEMENT

300 Crescent Court | Suite 700 | Dallas, Texas 75201
O: 972.628.4127 | F: 972.628.4147
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Highland Capital Management, LP
Schedule of Investments, net

Fund	Ticker	7/31/2020 FMV
INVESTMENTS, AT FAIR VALUE:		
HEDGE FUNDS:		
Multi-Strategy Credit Fund [4]		$ 7,026,019
Highland Dynamic Income Fund		-
Highland Select Equity Fund - Jefferies		$ -
SUBTOTAL		7,026,019
PRIVATE EQUITY FUNDS:		
Highland Select Equity Fund - PE [4]		$ 95,472,589
Restoration Capital Partners [4]		27,626,237
Petrocap Partners II [1]		10,142,249
Petrocap Partners III [1]		2,725,623
Highland CLO Funding [1]		269,275
SUBTOTAL		136,235,973
CORPORATE SECURITIES - PUBLIC:		
Public securities - Jefferies account, net of borrow [3]		20,949,643
NexPoint Hospitality Trust	NHT (TSX)	4,458,885
NexPoint Real Estate Strategies Fund (custodied at AST)	NRSZX	225,302
NexPoint Residental Trust (custodied at Maxim)	NXRT	-
NexPoint Strategic Opportunities Fund (custodied at Maxim)	NHF	-
Minerva Neuroscience Inc.	NERV	-
SUBTOTAL		25,633,830
CORPORATE SECURITIES - PRIVATE/OTC:		
MGM Common Stock [2]		8,085,367
JHT Holdings, Inc. Common		5,102,801
Cornerstone Common		2,967,377
NHT Holdco		2,069,886
HE Capital Asante, LLC Loan C		1,215,531
American Banknote Corp.		837,564
Goldfield Ranch Realty Holdings, LLC Loan		832,048
American Airlines Escrow		113,410
BEA CBO		100,000
Ginn LA Conduit Lender, Inc. 1st Lien		68,860
Goldfield Ranch Realty Holdings, LLC Incremental TL		66,516
Turtle Bay Units		56,934
Progenics Pharmaceuticals Contingent Rights		42,560
Carey International, Inc. Term Loan		268,095
Romacorp Common Stock		120,796
OmniMax International, Inc. Common		171
SUBTOTAL		21,947,915
OTHER:		
Little Terrell Land		398,450
SUBTOTAL		398,450
TOTAL INVESTMENTS, AT FAIR VALUE		**$ 191,242,187**
SUBSIDIARIES:		
Highland Capital Management Korea Limited		$ 968,322
Maple Avenue Holdings		586,989
Penant, Ltd.		417,366
SUBTOTAL		$ 1,972,678
TOTAL INVESTMENTS		**$ 193,214,865**

[1] 7/31/20 FMV carried forward from 3/31/20, as that is the most recent available information
[2] MVs represents a value, net of $5.2mm Frontier borrow
[3] MV represents value of Jefferies account
[4] 7/31/20 FMV is as of 6/30/20, as that is the most recent available information

HCMLP Equity
10/31/19 - 7/31/20
(all values in millions)

10/31/19	399,573
11/30/19	411,674
12/31/19	349,812
1/31/20	347,150
2/29/20	323,569
3/31/20	181,954
4/30/20	182,351
5/31/20	195,713
6/30/20	199,105
7/31/20	247,665

HCMLP Notes Receivable
As of 7/31/2020

NexPoint Advisors	$	23,846,944	30 yr Amort (issued 2017)
Dugaboy		17,788,532	30 yr Amort (issued 2017)
Highland Capital Management Services		6,677,529	30 yr Amort (issued 2017)
HCRE		5,938,670	30 yr Amort (issued 2017)
Trussway		1,004,993	Due upon maturity - 11/1/2021
SSP Holdings, LLC		2,037,898	Due upon maturity - 11/22/2022
Siepe		2,334,606	Equity conversion option
Highland Capital Management Fund Advisors		10,530,971	Demand
James Dondero		8,911,977	Demand
Multi-Strategy Credit Fund		1,269,000	Demand
HCRE		4,859,929	Demand
Highland Select Equity Fund		3,000,000	Demand
Highland Capital Management Korea		3,760,000	Due upon maturity - 4/21/2037
Highland Capital Management Services		934,331	Demand
Total Notes Receivable	**$**	**92,895,380**	

Demand		**29,506,208**

EXHIBIT 61

INTENTIONALLY

OMITTED

EXHIBIT 62

INTENTIONALLY

OMITTED

EXHIBIT 63

Highland Capital Management, L.P.

(A Delaware Limited Partnership)

Consolidated Financial Statements
With Report of Independent Auditors
December 31, 2008

Highland Capital Management, L.P.
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December 31, 2008

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Report of Independent Auditors

To the General and Limited Partners of
Highland Capital Management, L.P

In our opinion, the accompanying consolidated balance sheet and the related consolidated statements of income, of changes in partners' capital and of cash flows (hereinafter referred to as the "financial statements") present fairly, in all material respects, the consolidated financial position of Highland Capital Management, L.P. (the "Partnership") and its subsidiaries at December 31, 2008, and the consolidated results of their operations and their consolidated cash flows for the year then ended in conformity with accounting principles generally accepted in the United States of America. These financial statements are the responsibility of the Partnership's management. Our responsibility is to express an opinion on these financial statements based on our audits. We conducted our audits of these statements in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing the accounting principles used and significant estimates made by management, and evaluating the overall financial statement presentation. We believe that our audit provides a reasonable basis for our opinion.

Our audit was conducted for the purpose of forming an opinion on the consolidated financial statements taken as a whole. The supplemental unconsolidated balance sheet and unconsolidated statement of income are presented for purposes of additional information, and are not a required part of the consolidated financial statements. Such information has been subjected to the auditing procedures applied in the audits of the consolidated financial statements and, in our opinion, is fairly stated in all material respects in relation to the consolidated financial statements taken as a whole.

PricewaterhouseCoopers LLP

July 21, 2009

Highland Capital Management, L.P.
Consolidated Balance Sheet
December 31, 2008

(in thousands of dollars)

Assets		
Cash and cash equivalents	$	53,230
Restricted cash		358,877
Investments, at fair value (cost $5,457,411)		2,338,759
Unrealized gains on derivative contracts, at fair value (proceeds $3,887)		8,974
Equity method investees		4,977
Management and incentive fees receivable		20,120
Due from brokers		145,311
Other assets		86,708
Deferred incentive fees receivable		25,997
Purchased investment management contracts		24,000
Goodwill and other intangible assets, net		25,474
Fixed assets and leasehold improvements, net of accumulated depreciation of $11,578		131,555
Total assets	$	3,223,982
Liabilities and Partners' Capital		
Liabilities		
Accounts payable	$	18,498
Securities sold, not yet purchased, at fair value (proceeds $60,094)		71,831
Unrealized losses on derivative contracts at fair value (proceeds $3,319)		261,815
Obligations to return capital		161,882
Due to brokers		464,252
Due to brokers for securities purchased not yet settled		181,938
Accrued and other liabilities		191,880
Secured borrowing		127,868
Debt and notes payable		397,822
Long-term incentive plan		6,945
Total liabilities		1,884,731
Minority interest		1,338,461
Commitments (Note 13)		
Partners' capital		790
Total liabilities, minority interest and partners' capital	$	3,223,982

The accompanying notes are an integral part of these consolidated financial statements.

Highland Capital Management, L.P.
Consolidated Statement of Income
Year Ended December 31, 2008

(in thousands of dollars)

Revenue		
Management fees	$	204,917
Incentive fees/allocations		870
Interest and investment income		424,322
Other income		46,144
Total revenue		676,253
Expenses		
Compensation and benefits		4,029
Professional fees		40,475
Investment and research consulting		2,384
Amortization and depreciation		12,026
Interest expense		144,244
Net depreciation on deferred incentive fees		150,281
Other expenses		87,150
Total expenses		440,589
Net income before investment transactions		235,664
Realized and unrealized loss from investment transactions		
Net realized loss		(2,110,841)
Net change in unrealized loss		(3,070,895)
Total realized and unrealized loss from investment transactions		(5,181,736)
Realized and unrealized loss from equity method investees		
Net realized loss from equity method investees		(128,462)
Net unrealized loss from equity method investees		(1,778)
Total realized and unrealized loss from equity method investees		(130,240)
Net loss before minority interest in net income of consolidated entities		(5,076,312)
Minority interest in net loss of consolidated entities		4,469,051
Net loss	$	(607,261)

The accompanying notes are an integral part of these consolidated financial statements.

Highland Capital Management, L.P.
Consolidated Statement of Changes in Partners' Capital
Year Ended December 31, 2008

(in thousands of dollars)	General Partner	Limited Partners	Total
Partners' capital at December 31, 2007	$ 6,466	$ 666,958	$ 673,424
Net loss	(5,416)	(601,845)	(607,261)
Partner distributions	(533)	(59,232)	(59,765)
Other comprehensive income (loss)	(50)	(5,558)	(5,608)
Partners' capital at December 31, 2008	$ 467	$ 323	$ 790

The accompanying notes are an integral part of these consolidated financial statements.

Highland Capital Management, L.P.

Consolidated Statement of Cash Flows

Year Ended December 31, 2008

(in thousands of dollars)

Cash flows from operating activities	
Net loss	$ (607,261)
Adjustment to reconcile net loss to cash and cash equivalents provided by operating activities	
Cash provided by operating activities:	
Net realized loss on investments and derivative contracts	2,110,841
Net unrealized loss on investments and derivative contracts	3,070,895
Amortization of equity distributions on CLOs	54,586
Net realized loss from equity method investees	128,462
Net unrealized loss from equity method investees	1,778
Minority interest in net loss of consolidated entities	(4,469,051)
Depreciation and amortization	12,026
Changes in assets and liabilities	
Management and incentive fees receivable	210
Deferred incentive fees	150,281
Investment management contracts	5,662
Other assets	118,535
Due from brokers	1,970,423
Accounts payable	11,521
Accrued and other liabilities	(100,327)
Due to brokers for unsettled trades	(59,527)
Long-term incentive plan	(38,111)
Obligations to return collateral	161,882
Net cash provided by operating activities	2,522,825
Cash flows from investing activities	
Restricted cash	921,167
Purchase of fixed assets and leasehold improvements, net	5,498
Purchases of investments	(8,624,670)
Proceeds from dispositions of investments	11,044,838
Purchases of investments to cover securities sold, not yet purchased	(12,920,295)
Proceeds from securities sold, not yet purchased	10,748,348
Net cash provided by financing activities	1,174,886

The accompanying notes are an integral part of these consolidated financial statements.

Highland Capital Management, L.P.
Consolidated Statement of Cash Flows
Year Ended December 31, 2008

(in thousands of dollars)

Cash flows from financing activities	
Payments on long-term debt	(63,574)
Proceeds from revolving debt and promissory notes	115,649
Proceeds from affiliate loans	48,448
Net payments on secured borrowings	(3,306,382)
Change in due to brokers	(944,702)
Capital contributions from minority interest investors of consolidated entities	907,113
Capital withdrawals from minority interest investors of consolidated entities	(783,503)
Partner distributions	(52,265)
Net cash used in financing activities	(4,079,216)
Net decrease in cash and cash equivalents	(381,506)
Cash and cash equivalents	
Beginning of year	434,736
End of year	$ 53,230
Supplemental disclosure of cash flow information	
Interest paid during the year	$ 65,035
Non-cash distributions to partners	7,500

The accompanying notes are an integral part of these consolidated financial statements.

Highland Capital Management, L.P.

Notes to Consolidated Financial Statements
December 31, 2008

1. Description of Business

Highland Capital Management, L.P. (the "Partnership") was formed on July 7, 1997 as a limited partnership in the state of Delaware. The Partnership is a registered investment advisor under the Investment Advisors Act of 1940 that manages collateralized loan obligations ("CLOs"), registered investment companies ("RICs"), hedge funds, and other leveraged loan transactions that are collateralized predominately by senior secured bank debt and high-yield bonds. The Partnership and its subsidiaries make direct investments in debt, equity and other securities in the normal course of business. The Partnership's general partner is Strand Advisors, Inc. (the "General Partner"). The Partnership is 100% owned by senior management of the Partnership.

As of December 31, 2008, the Partnership provided investment advisory services in accordance with management agreements for thirty CLOs, sixteen RICs, one warehouse transaction, five separate accounts, one master limited partnership, and twelve hedge fund structures, with total assets under management of approximately $28.5 billion.

2. Summary of Significant Accounting Policies

The following is a summary of the significant accounting policies followed by the Partnership in the preparation of its financial statements.

Basis of Accounting

The Partnership's consolidated financial statements have been prepared in accordance with accounting principles generally accepted in the United States of America ("US GAAP") and are stated in United States dollars.

Principles of Consolidation

The consolidated financial statements include the accounts of the Partnership and the Partnership's consolidated subsidiaries, which are comprised of (i) those entities in which it has controlling investment of 50% or more and has control over significant operating, financial and investing decisions of the entity, (ii) those entities in which it, as the general partner, has control over significant operating, financial and investing decisions of the entity, and (iii) variable interest entities ("VIEs") in which it is the primary beneficiary as described below.

The Partnership consolidates all VIEs for which it is considered to be the primary beneficiary, pursuant to Financial Accounting Standards Board ("FASB") Interpretation No. 46 (revised December 2003), *Consolidation of Variable Interest Entities — an interpretation of ARB No. 51, as revised* ("FIN 46R"). FIN 46R clarifies the consolidation guidance for entities in which the equity investors do not have the characteristics of a controlling financial interest or do not have sufficient equity at risk for the entity to finance activities without additional subordinated financial support from other parties. These entities are defined as VIEs. In general, FIN 46R requires an enterprise to consolidate a VIE when the enterprise holds a variable interest in the VIE and is deemed to be the primary beneficiary of the VIE. An enterprise is the primary beneficiary if it absorbs a majority of the VIEs expected losses, receives a majority of the VIEs expected residual returns, or both.

The Partnership consolidates non-VIEs in which it as the general partner has control over significant operating, financial and investing decisions of the entity, pursuant to the Emerging Issues Task Force ("EITF") 04-5, *Whether a General Partner, or the General Partners as a Group, Controls a Limited Partnership or Similar Entity When the Limited Partners Have Certain Rights*.

Consolidation of Non-Variable Interest Entities
Under EITF 04-5, the Partnership consolidates the following non-VIEs (collectively referred to as the "Consolidated Investment Funds"). The Partnership (or its wholly owned subsidiaries) controls the general partner of the respective entities and is responsible for the daily operations. :

- Highland Crusader Offshore Partners, L.P. (“Crusader Master”), a Bermuda exempted limited partnership that commenced operations on July 10, 2000;
- Highland CDO Opportunity Master Fund, L.P. (“CDO Master Fund”), a Bermuda limited partnership that commenced operations on November 9, 2005;
- Highland Credit Strategies Master Fund, L.P. (“Credit Strategies Master”), a Bermuda exempted limited partnership that commenced operations on August 24, 2005;
- Highland Credit Opportunities CDO, L.P. (“Credit Opportunities Master”), a Delaware limited partnership that commenced operations on December 29, 2005;
- Highland Select Equity Fund, L.P. (“Select Equity Fund”), a Delaware limited partnership that commenced operations on January 1, 2002;
- Highland Equity Focus Fund, L.P. (“Equity Focus Fund”), a Delaware limited partnership that commenced operations on September 1, 2002;
- Highland Real Estate Fund 2002-A, L.P. (“Real Estate Fund”), a Delaware limited partnership that commenced operation on April 1, 2002;
- Highland Multi-Strategy Master Fund, L.P. (“Multi-Strat Master”), a Bermuda limited partnership that commenced operations on July 18, 2006;
- Highland Multi-Strategy Fund, L.P. (“Multi-Strat Domestic Feeder”), a Delaware limited partnership that commenced operations on July 6, 2006;
- Prospect Management Advisors, L.P. ("PMA"), a Delaware limited partnership that commenced operations on November 22, 2004 (not an investment fund);
- Canopy Timberlands, L.P., a Delaware limited partnership that commenced operations on April 29, 2008;
- Highland Restoration Capital Partners Offshore, L.P. (“Restoration Offshore”) a Cayman limited partnership that commenced operations on September 2, 2008;
- Highland Restoration Capital Partners, L.P. (“Restoration Onshore”) a Delaware limited partnership that commenced operations on September 2, 2008; and
- Highland Restoration Capital Partners Master, L.P. (“Restoration Master”) a Delaware limited partnership that began commenced on September 2, 2008.

Consolidation of Variable Interest Entities
Under FIN 46R the Partnership consolidated the following VIEs as it is the primary beneficiary:

- Highland Financial Corporation ("HFC"), a company incorporated on February 28, 2006 under the laws of the state of Delaware;
- Highland Financial Real Estate Corporation ("HFREC"), a company incorporated on March 15, 2006 under the laws of the state of Maryland; and
- HCM Trident (Delaware) Corporation ("HCM Trident"), a company incorporated on July 3, 2007 under the laws of the state of Delaware.

Consolidation of Majority Owned Entities
The Partnership consolidates the following entities as it has a controlling majority interest:

- 100% interest in Highland Capital Management Europe, Ltd. ("Highland Europe"), a company organized in the United Kingdom and purchased by the Partnership on April 6, 2005;
- 100% interest in Highland Capital Special Allocation, LLC ("HCSA"), a Delaware limited liability company that commenced operations on December 21, 2006;
- 100% interest in HFP GP, LLC, a Delaware limited liability company that commenced operations on January 20, 2006;
- 100% interest in Highland Receivables Finance 1, LLC, a Delaware limited liability company that commenced operations on December 29, 2006;
- 100% interest in Highland Capital Management (Singapore) Pte, Ltd, a company organized in the Republic of Singapore that commenced operations on April 2, 2008;
- 87.5% interest in HySky Communications, LLC, a Delaware limited liability company that commenced operations on December 22, 2006; and
- 84.5% interest in HE Capital, LLC, a Delaware limited liability company that commenced operations on March 22, 2007.

All significant interpartnership and intercompany accounts and transactions have been eliminated in consolidation of all of the aforementioned consolidated entities. All the Consolidated Investment Funds are, for US GAAP purposes, investment companies under the AICPA Audit and Accounting Guide - Investment Companies. The Partnership has retained the specialized accounting of these funds pursuant to EITF No. 85-12 *Retention of Specialized Accounting for Investments in Consolidation*.

The Partnership and its majority owned entities have a 29.3% interest in an affiliate, Highland Financial Partners, L.P. ("HFP"), which is considered a VIE. The Partnership and its consolidated entities have a 48.11% interest in HFP. The Partnership is not the primary beneficiary, and the financial results for HFP have not been consolidated, but have been accounted for using the equity method of accounting whereby it records its share of the underlying income or loss of HFP.

Investment Transactions
Investment transactions are recorded on a trade date basis. Realized gains and losses on the transactions are determined based on either the first-in, first-out or specific identification method.

Fair Value Measurement
Effective January 1, 2008, the Partnership and its consolidated entities adopted the provisions of Statement of Financial Accounting Standards ("SFAS") No. 157, *Fair Value Measurements*, for the financial assets and liabilities recorded at fair value on the Consolidated Statement of Assets, Liabilities and Partners' Capital.

SFAS No. 157 defines fair value as the price an entity would receive to sell an asset or pay to transfer a liability in an orderly transaction between market participants as of the measurement date. The standard requires fair value measurement techniques to reflect the assumptions market participants would use in pricing an asset or liability and, where possible, to maximize the use of observable inputs and minimize the use of unobservable inputs. It also establishes the following hierarchy that prioritizes the valuation inputs into three broad levels:

- Level 1 – Valuation based on quoted prices in active markets for identical assets and liabilities that the Partnership and the Consolidated Investment Funds have the ability to access as of the measurement date. Valuations utilizing Level 1 inputs do not require any degree of judgment.

- Level 2 – Valuations based on (a) quoted prices for similar instruments in active markets; (b) quoted prices for identical or similar instruments in markets that are not active; or (c) models in which all significant inputs are observable, either directly or indirectly.

- Level 3 – Valuations based on models in which the inputs are unobservable and significant to the fair value measurement, which includes situations where there is little, if any, market activity for the asset or liability.

The availability of observable inputs varies among financial instruments and is affected by numerous factors, including the type of instruments, the period of time in which the instrument has been established in the marketplace, market liquidity for an asset class and other characteristics particular to a transaction. When the inputs used in a valuation model are unobservable, management is required to exercise a greater degree of judgment to determine fair value than it would for observable inputs. For certain instruments, the inputs used to measure the fair value may fall into different levels of the hierarchy discussed above. In those cases, the instruments are categorized for disclosure purposes based on the lowest level of inputs that are significant to their fair value measurements.

The Partnership and Consolidated Investment Funds use prices and inputs that are current as of the measurement dates. The Partnership also considers the counterparty's non-performance risk when measuring the fair value of its investments.

During periods of market dislocation, the ability to observe prices and inputs for certain instruments may change. These circumstances may result in the instruments being re-classified to different levels within the hierarchy over time. They also create an inherent risk in the estimation of fair value that could cause actual amounts to differ from management's estimates.

Whenever possible, the Partnership and its Consolidated Investment Funds use actual market prices or relevant observable inputs to establish the fair value of its assets and liabilities. In cases where observable inputs are not available, the Partnership and Consolidated Investment Funds develop methodologies that provide appropriate fair value estimates. These methodologies are reviewed on a continuous basis to account for changing market conditions.

Highland Capital Management, L.P.
Notes to Consolidated Financial Statements
December 31, 2008

As of December 31, 2008, the Partnership and its consolidated entities investments consisted of floating rate syndicated bank loans, high yield corporate bonds, CLO securities, private placements, private placement real estate debt and equity, life settlement contracts and common and preferred equity securities. In addition, the consolidated entities are parties to various credit default swaps. The majority of these financial instruments are not listed on national securities exchanges, and management is required to use significant judgment to estimate their values.

The fair value of the loans, corporate bonds and CLO securities are generally based on quotes received from brokers or independent pricing services. Due to the recent disruption in the credit markets, an increasing number of these quotes are derived from implied values, bid/ask prices for trades that were never consummated, or a limited amount of actual trades. The policy of the Partnership and its consolidated subsidiaries is to classify loans and bonds that are prices in this manner as Level 3 assets because the markets in which they trade are not active and the inputs used by the brokers and pricing services are not readily observable. Loans and bonds with quotes that are based on actual trades with a sufficient level of activity on or near the valuation date are classified as Level 2 assets.

The consolidated entities private placement real estate investments include equity interests in limited liability companies and debt issued by entities that invest in commercial real estate. The fair value of these investments is based on internal models developed by the Partnership. The significant inputs to the models include cash flow projections for the underlying properties and appraisals performed by independent valuation firms. Since these inputs are no readily observable, the investments are classified as Level 3 assets.

Common and preferred equity securities traded on national exchanges are valued at their closing prices as of December 31, 2008. These securities are classified as Level 1 assets. The consolidated entities also hold certain equity securities for which no active market exists. The value of these securities, which are classified as Level 3 assets, is based on a combination of broker quotes and internal valuation models.

Life settlement contracts are valued using mortality tables and interest rate assumptions that are deemed appropriate for the demographic characteristics of the parties insured under the policies. Since these inputs are not readily observable, they are classified as Level 3 assets.

The fair value of credit default swaps is based on quotes received from an independent pricing service. The inputs used to derive the quotes are not readily observable and are therefore classified as Level 3.

Refer to Note 5 for the disclosures required by SFAS No. 157.

Management and Incentive Fee/Allocation Revenue
The Partnership recognizes revenue as earned in connection with services provided under collateral and investment management agreements. Under these agreements, the Partnership earns management fees calculated as a percentage of assets under management or net asset value. The Partnership also has an opportunity to earn additional incentive fees and incentive allocations related to certain management agreements depending ultimately on the financial performance of the underlying assets the Partnership manages. During the year ended December 31, 2008, the Partnership and its consolidated entities recognized management and incentive fees and incentive allocations of approximately $204.9 million, and $0.9 million, respectively. The Partnership recognized approximately $150.3 million of depreciation on incentive fees previously deferred under Sec. 409(A) of the Internal Revenue Code. This has been presented in *Net depreciation on deferred incentive fees* in the consolidated statement of income.

Dividends, Interest and Expense Recognition
Dividend income and dividends on securities sold, not yet purchased are recorded on the ex-dividend date, net of withholding taxes. Operating expenses, including interest on securities sold short, not yet purchased are recorded on the accrual basis as incurred.

Income Taxes
The Partnership is not subject to federal income taxes, and therefore, no provision has been made for such taxes in the accompanying consolidated financial statements. Income taxes are the responsibility of the partners. Certain consolidated subsidiaries are subject to federal income taxes, which have been recognized in accordance with SFAS No. 109, *Accounting for Income Taxes*.

Certain entities that are included in these financial statements are subject to federal and/or state income taxes. The stated objectives of SFAS No. 109 are to recognize (a) the amount of taxes payable or refundable for the current year and (b) deferred tax liabilities and assets for the future tax consequences of events that have been recognized in financial statements or filed tax returns. Deferred tax assets and liabilities are recognized for the future tax consequences attributable to differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax bases. Deferred tax assets and liabilities are measured using enacted tax rates expected to apply to taxable income in the years in which those temporary differences are expected to be recovered or settled. The effect on deferred tax assets and liabilities of a change in tax rates is recognized in the period that includes the enactment date. The following subsidiaries are subject to these provisions: Highland Europe, HFC and HFREC. Deferred tax assets of approximately $0.2 million are presented in *Other assets* in the consolidated balance sheet. Federal, state and city taxes for the Partnership and its consolidated corporate subsidiaries of approximately $20,000 are presented in *Other expense* in the consolidated statement of income.

The Consolidated Investments Funds are not subject to federal income taxes and therefore no provision has been made in the accompanying consolidated financial statements.

Cash and Cash Equivalents
Cash and cash equivalents consist of cash held at U.S. and foreign banks, deposits with original maturities of less than 90 days, and money market funds. Foreign cash of $1.8 million is included in the cash and cash equivalents on the consolidated balance sheet.

Restricted Cash
The Partnership and its subsidiaries are required to maintain cash balances as collateral for various financing and derivative transactions. These amounts are reported as restricted cash.

Fixed Assets and Leasehold Improvements
Fixed assets and leasehold improvements are carried at cost, less accumulated depreciation. Depreciation is provided using the straight-line method over the shorter of the estimated useful life of the assets or the lease term.

Total Return Swaps
A total return swap agreement is a two-party contract under which an agreement is made to exchange returns from predetermined investments or instruments. The gross returns to be exchanged or “swapped” between the parties are calculated based on a “notional amount,” which is valued monthly according to the valuation policy mentioned above to determine each party’s obligation under the contract.

Risks could arise from entering into swap agreements from the potential inability of counterparties to meet the terms of their contracts, and from the potential inability to enter into a closing contract. The Partnership's Consolidated Investment Funds recognize all cash flows received (paid) or receivable (payable) from swap transactions on a net basis as realized or unrealized gains or losses in the consolidated statement of income. The Partnership and the Consolidated Investment Funds are charged a finance cost by counterparties with respect to each agreement. The finance cost is reported as part of the realized or unrealized gains or losses.

Credit Default Swaps
As discussed in Note 7, under a credit default swap agreement two parties agree to transfer the credit exposure of an asset between one another. The seller of the swap guarantees the credit worthiness of a specific instrument by agreeing to pay the buying party a specific amount (generally par value) in the event that the instrument defaults.

At December 31, 2008, the Partnership's Consolidated Investment Funds were party to multiple credit default swaps in which it acts as the guaranteeing party. In the event that any of the underlying instruments default prior to the expiration of the agreements, the Consolidated Investment Funds are obligated to pay the swap counterparty the par value of the specific instrument. The Consolidated Investment Funds collect a fee based on the size of the underlying positions which are treated as realized gains once received. The difference between the current market value of the swaps and the original price of the swap is reported as an unrealized gain or loss.

At December 31, 2008, the Partnership's Consolidated Investment Funds were party to several credit default swaps in which it was the guaranteed party. In the event that any of the instruments underlying the various swap agreements default before the swap agreement expires, the Partnership and the Consolidated Investment Funds will be made whole by the swap counterparty. The Partnership and the Consolidated Investment Funds treat the fees paid as a realized loss once paid. The difference between the current market value of the swaps and the original price of the swap is reported as an unrealized gain or loss.

Securities Sold, Not Yet Purchased
The Partnership's Consolidated Investment Funds engage in "short sales" as part of their investment strategies. Short selling is the practice of selling securities that are borrowed from a third party. The Consolidated Investment Funds are required to return securities equivalent to those borrowed for the short sale at the lender's demand. Pending the return of such securities, the Consolidated Investment Funds deposit with the lender as collateral the proceeds of the short sale plus additional cash or securities. The amount of the required deposit, which earns interest, is adjusted periodically to reflect any change in the market price of the securities that the Consolidated Investment Funds are required to return to the lender.

Securities Loaned
The Partnership's Consolidated Investment Funds may lend securities to their financing counterparties for margin. The lending entity receives the interest associated with the securities loaned. The loans are secured by the fair value of the securities. Gains or losses in the fair value of the securities loaned that occur during the term of the loan will be for the account of the lender. The lender has the right under the lending agreement to recover the securities from the prime brokers on demand. The lender pays a fee to the broker for the cash collateral received. This is accounted for as interest expense. A credit risk exists to the lender under this type of transaction to the extent that the counterparty defaults on its obligation to return the securities loaned.

Options
The Partnership's Consolidated Investment Funds purchase and sell call and put options on equity securities and equity indices as part of its overall portfolio management strategies. Purchased call or put options may be used to obtain economic exposure equivalent to a long or short position, respectively, or to hedge existing or anticipates portfolio positions. Certain options contracts are index options, under which amounts due or payable upon exercise are settled entirely in cash based on the difference between the value of the index at maturity and its contract (or strike) value. The potential risk of loss for purchased options is limited to the premium paid.

The premium paid for the purchase of an option is included in the consolidated balance sheet as an investment and subsequently marked-to-market to reflect the current value of the option. If an option expires on the stipulated expiration date, the Consolidated Investment Funds realize a loss equal to the cost of the option. If the Consolidated Investment Funds enter into a closing sale transaction, the Consolidated Investment Funds realize a gain or loss, depending on whether the proceeds from the closing sale transaction are greater or less than the cost of the option. If the Consolidated Investment Funds exercise a call option, the cost of the securities acquired upon exercise is increased by the premium paid to buy the call. If the Consolidated Investment Funds exercise a put option, it realizes a gain or loss from the sale of the underlying security and the proceeds from such sale are decreased by the premium originally paid.

Margin Transactions
In order to obtain more investable cash, the Partnership and its subsidiaries may use various forms of leverage including purchasing securities on margin. Such leverage may allow the Partnership and its subsidiaries to increase net assets at a greater rate during increasing markets, but also may lead to a more rapid decrease in net assets in a declining market. A margin transaction consists of purchasing an investment with money loaned by a broker and agreeing to repay the broker at a later date. Interest expense on the outstanding margin balance is based on market rates at the time of the borrowing.

Withdrawals Payable
Withdrawals are recognized as liabilities, net of incentive allocations, when the amount requested in the withdrawal notice becomes fixed and determinable. This generally may occur either at the time of receipt of the notice, or on the last day of a fiscal period, depending on the nature of the request. As a result, withdrawals paid after the end of the year, but based upon year-end capital balances are reflected as withdrawals payable at December 31, 2008. Withdrawal notices received for which the dollar amount is not fixed remains in capital until the amount is determined. Withdrawals payable may be treated as capital for purposes of allocations of gains/losses pursuant to the partnerships' governing documents. At December 31, 2008, the Partnership and its consolidated entities had withdrawals payable of $16,825. Refer to Note 16.

Use of Estimates
The preparation of the consolidated financial statements in conformity with US GAAP requires management to make estimates and assumptions that affect the amounts and disclosures in the consolidated financial statements. Actual results could differ from those estimates.

Foreign Currency Transactions
The Partnership's subsidiary Highland Europe uses British Pounds as its functional currency and enters into transactions in multiple foreign currencies. All foreign currency asset and liability balances are presented in U.S. dollars in the consolidated financial statements, translated using the exchange rate as of December 31, 2008. Revenues and expenses are recorded in U.S. dollars using an average exchange rate for the relative period. Foreign currency transaction gains and losses resulting from transactions outside of the functional currency of an entity are included in *Other income* on the consolidated statement of income.

The Consolidated Investment Funds do not isolate that portion of the results of operations resulting from changes in foreign exchange rates or investment or fluctuations from changes in market prices of securities held. Such fluctuations are included within the Net realized and unrealized gains or loss from investments.

Financial Instruments
The Partnership and its consolidated entities determine fair value of financial instruments as required by SFAS No. 107, *Disclosures About Fair Values of Financial Instruments*. The carrying amounts for cash and cash equivalents, receivables, accounts payable and accrued liabilities approximate their fair values because of their short maturities.

Derivative Financial Instruments
During 2008, the Partnership was a party to a total return swap agreement. In addition, the Partnership engaged in purchases and sales (including "short sales") of exchange traded commodities and the short sale of subprime backed collateralized mortgage obligations through a purchase of a credit default swap. The Partnership has not designated any derivative transactions as accounting hedges, and, consequently, has not applied hedge accounting treatment under SFAS No. 133, *Accounting for Derivative Instruments and Hedging Activities*, as amended and interpreted.

As discussed in more detail in Note 6, all realized gains or losses related to the Partnership's total return swap, credit default swap and commodity purchases and sales are recorded in *Net realized loss on investment transactions*. The cash flows associated with derivative transactions are classified as investing in the consolidated statement of cash flows.

As of December 31, 2008, the Partnership was not a party to a derivative transaction.

Life Settlement Contracts
Two of the Partnership's Consolidated Investment Funds invest in life settlement contracts (the "Policies") and account for them using the fair value method in accordance with FASB Staff Position FTB85-4-1, *Accounting for Life Settlement Contracts by Third-Party Investors*. The Policies are reflected as a component of "Investments, at fair value" in the Consolidated Statement of Assets, Liabilities and Partners' capital. Realized and unrealized gains (losses) on the Policies are reflected in the Consolidated Statement of Income. Cash flows used to purchase the Policies are reflected as a component of "Purchases of Investments" in the Consolidated Statement of Cash Flows.

The Consolidated Investment Funds were invested in 138 Policies at December 31, 2008 with a total face value of approximately $1,216 million.

Partners' Capital
The Partnership agreement requires that income or loss of the Partnership be allocated to the partners in accordance with their respective partnership interests.

Goodwill and Other Intangible Assets
The Partnership purchased Highland Europe on April 6, 2005. Goodwill represents the amount paid in excess of the fair value of the assets of Highland Europe at the date of acquisition. No goodwill impairments existed as of December 31, 2008.

The Partnership has obtained the rights to the management contracts of certain RICs it manages by acquiring the underlying contracts from the predecessor investment manager. In accordance with SFAS No. 142, *Goodwill and Other Intangible Assets,* the Partnership performs an impairment test on the purchased investment contracts on an annual basis. Any depreciation in the value of the purchased investment management contracts are accounted for in the year when it occurs. The carrying values of the purchased investment contracts are not adjusted for appreciation. During 2008, two RICs were reorganized into a fund managed by the Partnership. As more fully described in Note 15, the carrying value of these purchased management contracts were written off at that time. For the remaining contracts, there was no impairment.

The goodwill and purchased investment management contracts are indefinite-lived assets and are not amortized.

During 2007, the underlying companies consolidated by HFREC purchased rental property (the "Project"). The Projects' purchase prices were allocated to the fair value of tangible and intangible assets and liabilities acquired with the purchases. Lease intangibles represent the measurement of certain intangibles associated with operating leases.

The lease intangible components are the estimated values of 1) leasing commissions (prepaid origination costs), 2) in-place leases, and 3) tenant/customer relationships. Leasing commissions and in-place leases represent the value associated with "cost avoidance" of acquiring in-place leases and are computed as the estimated loss of revenue, net of costs incurred for the period required to lease the "assumed vacant" property to the occupancy level when purchased. These amounts are amortized using the straight-line method over the remaining term of the lease of 2.5 years and are included in depreciation and amortization. Tenant relationships represent the present value of the anticipated renewals of in-place leases, adjusted for the probability of the renewals. The value of tenant relationships is amortized using the straight-line method over the average renewal term of the lease of 7 years and is included in depreciation and amortization. Refer to Note 15.

Recently Issued Accounting Standards & Interpretations
In September 2008, the Financial Accounting Standards Board ("FASB") issued FSP FAS 133-1 and FIN 45-4, *Disclosures about Credit Derivatives and Certain Guarantees: An Amendment of FASB Statement No. 133 and FASB Interpretation No. 45; and Clarification of the Effective Date of FASB Statement No. 161*. FSP FAS 133-1 and FIN 45-4 requires enhanced disclosures about credit derivatives and guarantees and amends FIN 45, *Guarantor's Accounting and Disclosure Requirements for Guarantees, Including Indirect Guarantees of Indebtedness of Others* to exclude derivatives instruments accounted for at fair value under SFAS 133. The Consolidated Investment Funds adopted FSP FAS 133-1 and FIN 45-4 as of December 31, 2008. Since FSP FAS 133-1 and FIN 45-4 only requires additional disclosures concerning credit derivatives and guarantees, it did not have any effect on the Consolidated Investment Fund's financial position, results of operations or cash flows. Refer to Note 7 for the disclosures required by FSP FAS 133-1 and FIN 45-4.

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In December 2008, the FASB issued FIN 48-3, Effective Date of FASB Interpretation No. 48 for Certain Nonpublic Enterprises ("FSP 48-3"), which deferred the effective date of FASB Interpretation No. 48, Accounting for Uncertainty in Income Taxes, an Interpretation of FASB Statement No. 109 ("FIN 48"). Under FSP 48-3, in the absence of early adoption, FIN 48 will become effective for the Partnership and its Consolidated Investment Funds at December 31, 2009. Management has elected to take advantage of the deferral and will continue to accrue for liabilities relating to uncertain tax positions only when such liabilities are probably and estimable. Based on its continued analysis, management has determined that adoption of FIN 48 will not have a material impact to the financial statements. However, management's conclusions regarding FIN 48 may be subject to review and adjustment at a later date based on ongoing analyses of tax laws, regulation and interpretations thereof and other factors.

FIN 48 requires management to determine whether a tax position is more likely than not to be sustained upon examination by the applicable taxing authority, including resolution of any related appeals or litigation processes, based on the technical merits of the position. The tax benefit to be recognized is measured as the largest amount of benefit that is greater than 50% likely of being realized upon ultimate settlement which could result in recording a tax liability that would reduce partners' capital. FIN 48 must be applied to all existing tax positions upon initial adoption and the cumulative effect, if any, is to be reported as an adjustment to the beginning balance of partners' capital upon adoption.

In February 2007, the FASB released SFAS No. 159, *The Fair Value Option for Financial Assets and Financial Liabilities — Including an amendment of FASB Statement No. 115*, or SFAS 159. This statement permits entities to choose to measure many financial instruments and certain other items at fair value. SFAS 159 may be adopted and the fair value option may be elected in the first quarter of 2008. The Partnership has elected to adopt this statement and evaluates securities on an instrument by instrument basis.

In December 2007, the FASB issued SFAS No. 160, *Accounting for Non-controlling Interests*, or SFAS 160. SFAS 160 clarifies the classification of minority interests in the consolidated balance sheet and statement of income. This Statement is effective for fiscal years beginning on or after December 15, 2008. Under SFAS 160, the ownership of consolidated subsidiaries by other consolidated subsidiaries will be presented separately in the equity section of the consolidated balance sheet. Also, upon the deconsolidation of any subsidiary, the retained equity investment will be measured at fair value. The Partnership has not yet determined the impact, if any, that the implementation of SFAS No. 157 would have on our consolidated results of operations or financial condition.

In December 2007, the Financial Accounting Standards Board ("FASB") issued Statement of Financial Accounting Standards ("SFAS") No. 141 (revised 2007), *Business Combinations* ("SFAS 141(R)"). SFAS 141(R) requires assets acquired, liabilities assumed, contractual contingencies and contingent consideration to be measured at their fair values at the acquisition date. In addition, SFAS 141(R) requires subsequent adjustments to any acquisition-related tax reserves to be recognized in net income rather than as an adjustment to the purchase price. SFAS 141(R) is effective for business combinations completed in periods beginning on or after December 15, 2008. The Partnership has not yet determined the impact, if any, that the implementation of SFAS No. 157 would have on our consolidated results of operations or financial condition.

In October 2008, the Financial Accounting Standards Board ("FASB") issued Staff Position 157-3, *Determining the Fair Value of a Financial Asset in a Market That Is Not Active,* ("FSP 157-3") which clarifies the application of SFAS No. 157, *Fair Value Measurements,* ("SFAS 157") in an inactive market and provides an illustrative example to demonstrate how the fair value of a financial asset is determined when the market for that financial asset is not active. The guidance provided by FSP 157-3 is consistent with the Partnership and its consolidated entities' approach to valuing financial assets for which there are no active markets.

3. Fixed Assets and Leasehold Improvements

Fixed assets and leasehold improvements are comprised of the following as of December 31, 2008:

(in thousands of dollars)

Buildings	$	100,536
Land		25,168
Leasehold improvements		4,907
Computer and equipment		3,917
Furniture and fixtures		2,911
Computer software		2,423
Tenant improvements		2,285
Site improvements		986
Accumulated depreciation		(11,578)
	$	131,555

The Partnership and its consolidated entities are depreciating fixed assets as follows:

	Period
Buildings	29 - 40 years
Leasehold improvements	Lease term
Computer and equipment	5 years
Furniture and fixtures	7 years
Computer software	3 years
Site improvements	10 years
Tenant improvements	Shorter of lease term or estimated life of tenant improvement

Depreciation expense in 2008 totaled approximately $6.1 million for the Partnership and its subsidiaries.

The Partnership and its consolidated entities had approximately $5.5 million of capital expenditures in 2008.

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4. Investments

Detailed below is a summary of the Partnership and its subsidiaries' investments at December 31, 2008:

(in thousands)	Amortized Cost/Cost	Value
Investments in floating rate syndicated bank loans	$ 489,400	$ 206,847
Investments in fixed rate syndicated bank loans	88,749	62,918
Investments in fixed income securities	1,432,684	435,497
Investments in floating income investments	315,363	84,335
Investments in equity securities	1,583,804	770,028
Investments in life settlement contracts	247,668	200,386
Investments in CLOs (mezz tranches)	254,453	84,214
Investments in CLOs (residual CLO equity tranches)	470,421	70,700
Investments in closed-end mutual funds	26,253	9,244
Investments in private placement real estate	439,095	282,428
Investments in limited partnerships	121,433	130,077
Investments in warrants	6,088	2,085
Total investments	$ 5,475,411	$ 2,338,759
Total return swaps	$ -	$ (96,228)
Credit default swaps	(7,206)	(156,613)
Net unrealized gain/loss on swaps	$ (7,206)	$ (252,841)

	Proceeds	Value
Securities sold short, not yet purchased	$ 60,094	$ 71,831

Affiliated Investments
Investments in Residual CLO Equity and Mezzanine Tranches
Investments in affiliated residual CLO equity tranches primarily represent tranches of CLOs for which the Partnership and Highland Europe provide investment advisory services. The CDO Master Fund receives quarterly distributions based on the excess interest after paying the stated interest distributions to the senior and mezzanine note holders, and paying the investment manager, trustee and other related fees. A portion of these distributions are amortized against the cost basis of the investment based of the actual cash distributions received during the year versus the total expected remaining cash distributions to the residual CLO equity tranche. The remainder of the distribution is recorded as interest income.

Investments in residual equity and mezzanine tranches of CLOs are not actively traded. The estimated fair value of the CLOs is derived from broker quotes and valuation models. The estimated fair value of these investments as presented in the consolidated balance sheet does not necessarily represent the amount that could be obtained from the sale of these investments. Changes in the credit quality or the performance of the underlying collateral, the availability and price of assets available for reinvestment, interest rates and/or the interest rate curve, or other market conditions could have a material impact on the estimated fair value of the investments.

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Investment in Highland Special Situations Fund
The Partnership invests in Highland Special Situations Fund ("HSSF"), a diversified, closed end RIC for which the Partnership provides investment advisory services. As of December 31, 2008, the market value of the Partnership's investment in HSSF was approximately $2.1 million. During the year ended December 31, 2008, the Partnership accrued approximately $0.3 million in dividends from HSSF.

Investment in Highland Equity Opportunities Fund
The Partnership invests in Highland Equity Opportunities Fund ("HEOF"), a diversified, open end RIC for which the Partnership provides investment advisory services. As of December 31, 2008, the market value of the Partnership's investment in HEOF was approximately $0.2 million. During the year ended December 31, 2008, the Partnership received approximately $152 in dividends from HEOF, which the Partnership reinvested in the fund.

Investment in Highland Distressed Opportunities, Inc.
The Partnership invests in Highland Distressed Opportunities, Inc. ("HCD"), a non-diversified, closed-end RIC for which the Partnership provides investment advisory services. As of December 31, 2008, the market value of the Partnership's investment in HCD was approximately $2.1 million. During the year ended December 31, 2008, the Partnership received approximately $0.1 million in dividends from HCD, which the Partnership reinvested in the fund.

Investment in Highland High Income Fund
The Partnership invests in Highland High Income Fund. ("HHIF"), a non-diversified, closed-end RIC for which the Partnership provides investment advisory services. As of December 31, 2008, the market value of the Partnership's investment in HHIF was approximately $0.2 million. During the year ended December 31, 2008, the Partnership received approximately $0.3 million in dividends from HHIF, which the Partnership reinvested in the fund.

Investment in Highland Income Fund
The Partnership invests in Highland Income Fund ("HIF"), a non-diversified, open-end RIC for which the Partnership provides investment advisory services. As of December 31, 2008, the market value of the Partnership's investment in HIF was approximately $0.3 million. During the year ended December 31, 2008, the Partnership received approximately $0.3 million in dividends from HIF, which the Partnership reinvested in the fund.

Prepaid Forward Contract
On July 28, 2006, Highland Multi-Strategy Onshore Master Subfund I, LLC and Barclays Bank PLC ("Barclays") entered into a prepaid forward contract. The Partnership and affiliates redeemed approximately $312.7 million of a reference portfolio, which was comprised of the following basket of funds advised by the Partnership: Highland Crusader Offshore Fund II, Ltd., Credit Strategies Domestic Feeder, Highland CDO Opportunity Fund, Ltd., Real Estate Fund, Equity Focus Fund and Select Equity Fund. Barclays simultaneously contributed approximately $312.7 million as a hedge to its obligation under the prepaid forward contract.

Barclays was prepaid approximately $156.3 million, or one-half of the reference portfolio value at initiation of the transaction. A notional amount, (the initial reference portfolio value less the amount prepaid), accretes interest to Barclays at monthly LIBOR plus 0.90% per annum. As of December 31, 2008, the notional amount was approximately $184.3 million.

A collateral account in the amount of approximately $53.2 million was established to further secure the transaction. Due to extreme market volatility, all of the underlying holdings in the collateral account were sold during 2008.

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The term of the prepaid forward contract is three years and allows for net settlement upon termination. At contract expiration, Barclays will remit in cash the greater of the difference between the reference portfolio value and the notional amount, as valued on the scheduled termination date, or zero. As of December 31, 2008, the contract did not have a positive net fair value.

Detailed below is a summary of the transaction as of December 31, 2008:

(in thousands of dollars)

Reference Portfolio		**Value**
Real Estate Fund	$	46,265
Highland Crusader Fund, L.P.		30,483
Select Equity Fund		15,337
Equity Focus Fund		8,451
Highland Credit Opportunities CDO, L.P.		295
Highland CDO Opportunity Fund, Ltd.		-
Highland Credit Strategies Fund, L.P.		-
Reference portfolio total		100,831
Notional amount		(184,272)
Fair value of prepaid forward contract	$	(83,441)

On October 7, 2008, Barclays submitted a notice of early termination for the prepaid forward contract. Refer to Note 17 for further discussion.

Accreting Strike Option
On February 28, 2007, Highland Multi-Strategy Onshore Master Subfund II, LLC entered into an Accreting Strike Option ("ASO") with Barclays. The ASO's value is based on the following basket of funds ("the reference portfolio") advised by the Partnership: Highland Crusader Offshore Fund II, Ltd., Credit Strategies Domestic Feeder, Highland CDO Opportunity Fund, Ltd., Real Estate Fund, Equity Focus Fund, Select Equity Fund and Credit Opportunities Domestic Feeder. The value of the reference portfolio at inception was approximately $250.2 million

Barclays was paid a $71.4 million premium on the option. The strike price, (the initial reference portfolio value less the premium paid), accretes interest to Barclays at monthly LIBOR plus 1.4% per annum. As of December 31, 2008, the strike price was approximately $176.4 million.

The term of the accreting strike option is five years and allows for net settlement upon termination. At contract expiration, Barclays will remit in cash the greater of the difference between the reference portfolio value and the strike price, as valued on the scheduled termination date, or zero. As of December 31, 2008, the ASO did not have a positive net fair value.

Detailed below is a summary of the transaction as of December 31, 2008:

(in thousands of dollars)

Reference Portfolio		Value
Select Equity Fund	$	93,228
Real Estate Fund		20,687
Highland Crusader Fund, L.P.		11,040
Equity Focus Fund		5,749
Highland Credit Opportunities CDO, L.P.		365
Highland CDO Opportunity Fund, Ltd.		-
Highland Credit Strategies Fund, L.P.		-
Reference portfolio total		131,069
Notional amount		(176,400)
Fair value of prepaid forward contract	$	(45,331)

On October 13, 2008, Barclays served notice of early termination for the accreting strike option. Refer to Note 17 for further discussion.

Investment in Highland Financial Partners, L.P. ("HFP")
The Partnership invests in HFP, a holding company organized to provide investors with the earnings of its leveraged credit subsidiaries. As of December 31, 2008, the Partnership's equity investment in HFP had no value and was permanently impaired. The Partnership recognized a $74.7 million realized loss in Net realized loss from equity method investees.

On October 20, 2008, the Partnership received an HFP senior secured note in the amount of $22.3 million from CDO Master Fund. The note was transferred to the Partnership to satisfy a prior obligation. The note accrues interest at a rate of 10% per annum, payable quarterly. As of December 31, 2008, the fair value of the note was approximately $7.4 million.

Investment in Highland Capital Special Allocation, LLC
The Partnership is the sole owner of HCSA, which was organized to receive management incentive allocations from HFP. During 2008, HCSA did not receive an incentive allocation. As of December 31, 2008, the Partnership's investment in HCSA had no value and was permanently impaired. The Partnership recognized a $53.8 million realized loss in Net realized loss from equity method investees.

5. Fair Value of Financial Instruments

As discussed in Note 2, the Partnership and its consolidated entities categorize investments recorded at fair value in accordance with the hierarchy established by SFAS No. 157.

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The following table provides a summary of the financial instruments recorded at fair value on a recurring basis by level within the hierarchy as of December 31, 2008:

(in thousands of dollars)	Level 1	Level 2	Level 3	Total Fair Value at December 31, 2008
Investments	$ 221,571	$ 43,837	$ 2,073,351	$ 2,338,759
Derivatives	-	-	(252,841)	(252,841)
Securities sold, not yet purchased	71,831	-	-	71,831

The following table provides a roll forward of the financial instruments classified within Level 3 for the year ended December 31, 2008. The classification of a financial instrument within Level 3 is based on the significance of the unobservable inputs to the overall fair value measurement.

Fair Value Measurements Using Significant Unobservable Inputs

(in thousands of dollars)	Investments	Derivatives
Estimated fair values as of January 1, 2008	$ 5,740,260	$ 78,060
Purchases, sales and maturities, net	(788,142)	51,512
Net transfers in/(out) of Level 3	10,959	-
Net realized (losses)/gains	(1,014,179)	(181,345)
Net unrealized losses	(1,875,546)	(201,068)
Estimated fair values as of December 31, 2008	$ 2,073,352	$ (252,841)

6. Derivative Transactions

In June 2008, the Partnership terminated a total return swap (“TRS”) and began the process of selling the underlying assets in the TRS. The Partnership recognized a $7.8 million loss on the sale of the underlying assets in the TRS. The loss and net settlement interest are recorded in Net realized loss on investment transactions in the Consolidated Statement of Income. As of December 31, 2008, all of the assets in the TRS had been sold; however, there were certain assets that remained unsettled. As of December 31, 2008, approximately $2.5 million in collateral posted was owed to the Partnership for these unsettled trades. This amount is recorded in Due from broker.

During the first quarter of 2008, the Partnership held short positions in exchange traded commodities and realized a loss of $16.7 million from these transactions. This activity is recorded in Net realized loss on investment transactions.

During the first quarter of 2008, the Partnership participated in a credit-default swap ("CDS") through one of the Partnership's Consolidated Investment Funds. The underlying assets in the CDS were subprime mortgage backed securities. In this transaction, the Partnership was a purchaser of protection against the lack of future cash flows from these securities. The Partnership realized a gain of $74.5 million from the sale of the CDS, which is recorded in Net realized loss on investment transactions. The Partnership's premium recognized for the transaction in 2008 was $0.9 million. The premiums are recorded in Net realized loss on investment transactions.

7. Total Return Swaps

Detailed below is an analysis of the total return swap balances of the Consolidated Investment Funds at December 31, 2008:

(in thousands of dollars)		**Value**
Collateral included in "Restricted cash"	$	196,409
Notional value of underlying investments	$	231,586
Fair value of underlying investments		101,588
Unrealized depreciation of underlying investments included in "Unrealized losses on derivatives contracts"	$	(117,046)

8. Credit Default Swaps

The Consolidated Investment Funds enter into credit default swaps to simulate long and short bond positions that are either unavailable or considered to be less attractively priced in the bond market. The Consolidated Investment Funds use these swaps to reduce risk where they have exposure to the issuer, or to take an active long or short position with respect to the likelihood of an event of default.

The buyer of a credit default swap is generally obligated to pay the seller a periodic stream of payments over the term of the contract in return for a contingent payment upon the occurrence of a credit event with respect to an underlying reference obligation. A credit event for corporate reference obligations includes bankruptcy, failure to pay, obligation acceleration, repudiation/moratorium or restructuring. If a credit event occurs, the seller must pay the contingent payment to the buyer, which is typically the par value (full notional value) of the reference obligation, though the actual payment may be mitigated by terms of the International Swaps and Derivative Agreement ("ISDA"), allowing for netting arrangements and collateral. In addition, the payment may be reduced by anticipated recovery rates, segregated collateral and netting arrangements that may incorporate multiple transactions with a given counterparty.

The seller of credit default swaps receives a fixed rate of income throughout the term of the contract, which typically is between one month and five years, provided that no credit event occurs. If a credit event occurs, the seller may be required to pay the buyer the full notional value of the reference obligation.

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As of December 31, 2008, the Consolidated Investment Funds were the buyers of credit default swaps ("receiving protection") on a total notional amount of $72.5 million and the sellers of credit default swaps ("providing protection") on a total notional amount of $387.1 million. The notional amount of the swaps is not recorded in the financial statements; however it approximates the maximum potential amount of future payments that the Consolidated Investment Funds could be required to make if they are the seller of protection and a credit event were to occur.

Those credit default swaps for which the Partnership provided protection at December 31, 2008 are summarized in the tables below. The reference obligations for all of these swaps are single issuers.

(in thousands of dollars)	Underlying Referenced Asset		
	Corporate Debt	Collateralized Loan Obligation Securities	Total
Fair value of credit default swaps	$ (109,184)	$ (48,875)	$ (158,059)
Maximum potential amount of future payme	328,110	59,000	387,110
Collateral posted with counterparties by the consolidated investment funds	152,787	18,563	171,350

(in thousands of dollars)	Maximum Potential Amount of Future Payments by Contract Term			
Current Credit Rating* on Underlying Bond	**1-5 Years**	**5-10 Years**	**Greater than 10 Years**	**Total**
BBB	$ (213,110)	$ -	$ (20,000)	$ (233,110)
BB	(40,000)	-	(24,000)	(64,000)
BB-	(10,000)	(15,000)	(5,000)	(30,000)
B+	(10,000)	-	-	(10,000)
B-	(20,000)	-	-	(20,000)
CCC+	(15,000)	-	-	(15,000)
CCC-	(15,000)	-	-	(15,000)
	$ (323,110)	$ (15,000)	$ (49,000)	$ (387,110)

The fair value of the credit default swaps for which the Consolidated Investment Funds purchased protection at December 31, 2008 was approximately $5.5 million.

9. Debt and Notes Payable

Consolidated debt and notes payable as of December 31, 2008 consists of:

(in thousands of dollars)		**December 31, 2008**
Partnership revolving credit facility	$	150,000
Credit Opportunities Master note payable		116,590
HFREC notes payable		98,482
Real Estate Fund revolving credit facility		20,000
HCM Trident		11,875
Partnership promissory note		875
	$	397,822

Revolving Credit Facilities
On January 26, 2007, the Partnership entered into a syndicated credit agreement with Bank of America as syndication agent and The Bank of Nova Scotia as administrative agent in the amount of $60 million (the "Credit Agreement"). The Credit Agreement provides for revolving loans which are scheduled to mature on June 30, 2009, or March 26, 2010 if certain derivative transactions are extended by the Partnership.

Interest is payable on the last day of each loan, or if the loan is greater than three months, then interest is payable in three month increments. The applicable spread for LIBOR loans under the Credit Agreement is LIBOR plus 1.75% per annum. For base rate loans, the spread is 0.50% per annum over the prevailing prime rate.

Under the terms of the Credit Agreement, the availability of credit was subject to financial covenants requiring the Partnership to maintain a minimum amount of fee earning assets under management, a minimum tangible net worth, and a maximum leverage ratio.

On March 20, 2007, the Credit Agreement was amended and restated, increasing the availability under the facility to $150 million and increasing the lender group to include five other banks. On November 2, 2007, the Credit Agreement was amended a second time to allow the Partnership to maintain certain insurance policies through an affiliate.

On December 19, 2008, the Partnership was notified by the Bank of Nova Scotia of an event of default under the terms of the Credit Agreement. The default was related to a failure to maintain a minimum tangible net worth. As a result, on December 24, 2008, the spread over LIBOR for LIBOR loans not maturing before December 31, 2008 increased to 3.75% per annum. On December 30, 2008, all LIBOR loans not maturing before December 31, 2008 were converted to base rate loans, with the applicable spread being 2.5% per annum. All other outstanding LIBOR borrowings with maturations prior to December 31, 2008 were financed at the applicable base rate. The note was subsequently refinanced in July 2009, see note 18.

The fair value of the facility as of December 31, 2008 was approximately $126.3 million.

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In 2005, the CDO Master Fund entered into a credit agreement in the amount of $150 million (the "CDO Credit Agreement") with Citibank, N.A. and Citigroup Financial Products Inc. The CDO Credit Agreement was restated on the original maturity date of August 27, 2008. The restated agreement stated that equity cash flows earned on the assets in the facility would be pledged against the debt principal until paydown with no further drawdowns available. Interest is charged at Federal Funds open rate plus 1.50%. As of December 31, 2008, the facility had been paid back in full.

In February 2006, the Real Estate Fund entered into a credit agreement in the amount of $31 million (the "REF Credit Agreement") with Wachovia Bank. Interest is charged at LIBOR plus 2%. Interest is payable on the first day of each quarter. On September 29, 2008, the REF credit agreement was amended and restated, decreasing the availability under the facility to $25 million. Interest is charged at LIBOR plus 2.25%. As of December 31, 2008, $20 million was outstanding under the REF Credit Agreement and approximately $116.5 million of investments were pledged as collateral. The Partnership considers the book value of the line of credit at December 31, 2008 to approximate its fair value. As of December 31, 2008, Real Estate Fund was in payment default for its failure to make a required $5 million principal reduction payment. Real Estate Fund has subsequently received a forbearance agreement. See Note 16.

Term Loan
On July 6, 2007, HCM Trident entered into a term loan facility agreement (the "Facility Agreement") with Nomura International PLC in the amount of $26.25 million. The Facility Agreement is scheduled to mature on the July 6, 2008, unless extended. The Facility Agreement interest is charged at LIBOR plus 0.75% and is payable quarterly on July 6, October 6, January 6, and April 6.

On July 14, 2008, the Facility Agreement was amended to reduce the availability to $25 million. The Facility Agreement rate of interest was increased to 2.25% in excess of LIBOR. Interest is payable quarterly on July 6, October 6, January 6, and April 6.

On November 2, 2008, the Facility Agreement was amended to allow for periodic payments of principal and interest. The amortization schedule of the facility is as follows:

(in thousands of dollars)		**Repayment Amount**
Payment Date		
October 28, 2008	$	1,000
November 3, 2008		5,000
December 15, 2008		4,000
February 16, 2009		3,000
March 16, 2009		2,000
April 15, 2009		2,000
May 15, 2009		2,000
June 15, 2009		2,800
	$	21,800

As of December 31, 2008, the estimated fair market value of the facility was approximately equal to the carrying value.

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Promissory Notes
On January 4, 2006, the Partnership received a promissory note (the "Promissory Note") from Compass Bank in the amount of $2 million. The Partnership must make monthly payments of principal and accumulated interest on the fifth day of each month. The Promissory Note will mature on February 1, 2011. On February 8, 2007, the Partnership and Compass Bank modified the Promissory Note, which reduced the interest rate from 2.0% to 1.7% in excess of LIBOR. The outstanding balance of the Promissory Note as of December 31, 2008 was $0.9 million. As of December 31, 2008, the estimated fair market value of the note was approximately equal to the carrying value.

Credit Opportunities Master Note Payable
On December 19, 2008, Highland Credit Opportunities CDO Financing, LLC ("CDO Financing"), a wholly owned subsidiary of Credit Opportunities Master, issued $122.4 million par value of senior secured convertible notes and received cash proceeds of $115.6 million and investment securities with an estimated fair value of $0.9 million. The notes are governed by a Note Purchase Agreement (the "Purchase Agreement") and guaranteed by Credit Opportunities Master and Highland Credit Opportunities, Ltd. (the "CDO"). At the note holders' option, the unpaid principal and accrued interest on the notes may be converted, in whole or in part, to limited partnership interests in the Feeder Fund or Credit Opportunities Master between January 1, 2010 and December 31, 2012. Subject to certain conditions, the Purchase Agreement also allows for CDO Financing to issue up to $106.7 million par value of additional notes to the existing note holders in exchange for proceeds of $101.4 million.

The proceeds from the notes were used primarily to fund an additional equity investment in the CDO. This investment was required under the terms of a forbearance agreement that Credit Opportunities Master executed with the Majority Controlling Class of the CDO's note holders.

The notes have a stated maturity date of December 31, 2012 and accrue interest on a quarterly basis at a rate of 25% per annum. In addition, the Purchase Agreement requires payment of a 2.5% fee on the unfunded portion of the note commitment.

Credit Opportunities Master may elect to prepay up to 50% of the outstanding principal balance from July 1, 2010 through December 31, 2010. After that period, Credit Opportunities Master may prepay all or a portion of the outstanding principal, provided that each partial payment made to the note holders is in an aggregate principal amount of at least $0.5 million.

The Agreement requires Credit Opportunities Master to pay the following fees, as a percentage of the principal balance, in the event of a prepayment:

Prepayment Period	Fees
July 1, 2010 - December 31, 2010	15.0%
July 1, 2011 - December 31, 2011	10.0%
July 1, 2012 - December 31, 2012	6.0%

The Purchase Agreement grants the note holders a lien on certain assets held by Credit Opportunities Master and the CDO. In addition, it requires Credit Opportunities Master and the CDO to comply with various financial covenants. Failure to meet these covenants may result in an event of default and give the note holders the right to accelerate repayment of the debt or initiate a liquidation of certain assets. Credit Opportunities Master was not in technical compliance with a liquidity calculation specified in the debt covenants as of December 31, 2008. However, the calculation was in compliance with covenants as of January 31, 2009.

As of December 31, 2008, the estimated fair market value of the notes was approximately equal to the par value.

HFREC Notes Payable

HE Sugar Land Project, LLC "HE Sugar Land" Note Payable

On August 27, 2007, HE Sugar Land assumed a mortgage loan from KeyBank Real Estate Capital secured by the underlying property in HE Sugar Land. The note had an original principal balance of $46 million and a balance of $43.4 million on the date of assumption. HE Sugar Land paid an assumption fee of $0.2 million and deposited $5.3 million into a reserve fund in connection with the assumption of the note. The note accrues interest at a fixed rate of 7.72% per annum. The note matures with all principal and accrued interest due on July 11, 2011. The monthly payment for principal and interest is $0.3 million and is due on the eleventh of each month. As of December 31, 2008, the estimated fair market value of the note was approximately equal to the carrying value.

HE 1001 West Loop Project, LLC "1001 West Loop" Note Payable

On December 13, 2007, 1001 West Loop entered into a $19.5 million loan with affiliates of the Partnership, which is secured by the underlying property in 1001 West Loop (the "Term Loan"). The Term Loan matures with all principal and accrued interest due on December 13, 2012. The Term Loan bears interest at a rate of 3.5% plus 90-day LIBOR, set on the 13th day of every third month (5.5% on December 31, 2008). Interest payments are due on the first day of the third month after the date of the Term Loan agreement, and on the first day of every third month thereafter.

In addition, 1001 West Loop entered into a $6.5 million loan with affiliates of the Partnership on December 13, 2007, which is secured by a pledge of 1001 West Loop's ownership interests in its subsidiaries and the Manager's Subordination of Property Management Agreement (the "Mezz Loan"). The Mezz Loan matures with all principal and accrued interest due on December 31, 2012. The Mezz Loan bears interest at a fixed rate of 12%. Interest payments are due on the first day of the third month after the date of the Mezz Loan agreement, and on the first day of every third month thereafter.

As of December 31, 2008, the estimated fair market values of the notes were approximately equal to their carrying values.

HE 2425 West Loop Project, LLC "2425 West Loop" Note Payable

On December 13, 2007, 2425 West Loop entered into a $22.9 million loan with affiliates of the Partnership, which is secured by the underlying property in 1001 West Loop (the "Term Loan"). The Term Loan matures with all principal and accrued interest due on December 13, 2012. The Term Loan bears interest at a rate of 3.5% plus 90-day LIBOR, set on the 13th day of every third month (5.5% on December 31, 2008). Interest payments are due on the first day of the third month after the date of the Term Loan agreement, and on the first day of every third month thereafter.

In addition, 2425 West Loop entered into a $7.6 million loan with affiliates of the Partnership on December 4, 2007, which is secured by a pledge of 1001 West Loop's ownership interests in its subsidiaries and the Manager's Subordination of Property Management Agreement (the "Mezz Loan"). The Mezz Loan matures with all principal and accrued interest due on December 31, 2012. The Mezz Loan bears interest at a fixed rate of 12%. Interest payments are due on the first day of the third month after the date of the Mezz Loan agreement, and on the first day of every third month thereafter.

As of December 31, 2008, the estimated fair market values of the notes were approximately equal to their carrying values.

HCREA Nolen Drive, L.P. ("Nolen Drive") Note Payable
On September 18, 2006, Nolen Drive entered into a $7.1 million note payable with Artesia Mortgage Capital Corporation, which is secured by the underlying property in Nolen Drive (the "Term Loan"). The Term Loan matures with all principal and accrued interest due on October 11, 2011. The Term Loan bears interest at a rate of 6.52% per annum. Payments are due on the 11th of every month. As of December 31, 2008, the estimated fair market value of the note was approximately equal to the carrying value.

10. Financial Instruments with Concentration of Credit and Other Risks

Financial Instruments
The Partnership and its consolidated entities' investments include, among other things, equity securities, debt securities (both investment and non-investment grade) and bank loans. The consolidated entities may also invest in derivative instruments, including total return and credit default swaps. Investments in these derivative instruments throughout the year subject the consolidated entities to off-balance sheet market risk, where changes in the market or fair value of the financial instruments underlying the derivative instruments may be in excess of the amounts recognized in the consolidated balance sheet.

Market Risk
Market risk represents the potential loss that may be incurred by the Master Partnership due to a change in the market value of its investments or the value of the investments underlying swap agreements. The Partnership and its Consolidated Investment Fund's exposure to market risk is affected by a number of factors, including the size, composition and diversification of its investments and swap agreements; interest rates; and market volatility. The Partnership and its Consolidated Investment Funds use various forms of leverage, including notes, which increase the effect of any investment value changes on partners' capital.

Credit Risk
Credit risk is the potential loss the Partnership and its consolidated entities may incur as a result of the failure of a counterparty or an issuer to make payments according to the terms of a contract. Because the consolidated entities enter into over-the-counter derivatives such as swaps, it is exposed to the credit risk of their counterparties. To limit the credit risk associated with such transactions, the consolidated entities execute transactions with financial institutions that the Investment Manager believes to be financially viable.

Liquidity Risk
The Consolidated Investment Fund's limited partner interests have not been registered under the Securities Act of 1933 or any other applicable securities law. There is no public market for the interests, and neither the Consolidated Investment Funds nor their manager expect such a market to develop.

Business Risk
The Partnership provides advisory services to the consolidated investment funds. The Consolidated Investment Funds could be materially affected by the actions and liquidity of the Partnership.

High Yield Bonds and Loans
The Partnership and its Consolidated Investment Funds may invest in high-yield bonds that have been assigned a lower rating categories or are not rated by various credit rating agencies. Bonds in the lower rating categories are generally considered to be speculative with respect to the issuer's ability to repay principal and pay interest. They are also subject to greater risks than bonds with higher ratings in the case of deterioration of general economic conditions. Due to these risks, the yields and prices of lower-rated bonds are generally volatile, and the market for them is limited, which may affect the ability to liquidate them if needed. In addition, certain of the Consolidated Investment Funds' investments have resale or transfer restrictions that further reduce their liquidity. The Consolidated Investment Funds also invest in senior secured syndicated bank loans and enter into direct contractual relationships with the corporate borrowers. As such, the Partnership and its Consolidated Investment Funds are exposed to certain degrees of risk, including interest rate risk, market risk and the potential non-payment of principal and interest, including default or bankruptcy of the corporate borrower.

The current economic recession has severely disrupted the market for most high-yield bonds and loans and may continue to have an adverse effect on the value of such instruments. It is also probable that the economic downturn could adversely affect the ability of the issuers of such securities to repay principal and interest thereon and increase the incidence of default for such securities.

CLO Equity Investments
The Partnership and its Consolidated Investment Funds may invest in CLO equity that are not rated by various credit rating agencies and are generally considered to be speculative with respect to the issuer's ability to repay principal and interest. The yields and prices of these non-rated CLO equity tranches are generally volatile, and the market for them is limited, which may affect the ability to liquidate them if needed. In addition, certain of the Consolidated Investment Funds' investments have resale or transfer restrictions that further limit their liquidity. Given a backdrop of deteriorating general economic conditions, the Partnership and its consolidated investment funds are exposed to the potential non-payment of principal and interest from their CLO equity investments. As of December 31, 2008, 25 of the 30 CLOs managed by the Partnership paid interest to the equity holders on their last payment date.

Distressed Investments
A portion of the high yield corporate bonds and senior secured syndicated bank loans in which the Partnership and its Consolidated Investment Funds invest have been issued by distressed companies in an unstable financial condition. These investments have substantial inherent risks. Many of these distressed companies are likely to have significantly leveraged capital structures, which make them highly sensitive to declines in revenue and to increases in expenses and interest rates. The leveraged capital structure also exposes the companies to adverse economic factors, including macroeconomic conditions.

Credit Default Swaps
Credit default swaps involve greater risks than if the Partnership or its Consolidated Investment Funds had shorted the reference obligations directly. In addition to the market risk discussed above, credit default swaps are subject to liquidity risk and credit risk. If a credit event occurs, the value of the reference obligation received by the Partnership or its Consolidated Investment Funds, couple with the periodic payments previously received, may be less than the full notional amount it pays to the buyer, resulting in loss of value.

Limited Diversification
The Investment Manager attempts to diversify the Consolidated Investment Funds' investments. However, the Consolidated Investment Funds' portfolio could become significantly concentrated in any one issuer, industry, sector strategy, country or geographic region, and such concentration of credit risk may increase the losses suffered by the Consolidated Investment Funds. In addition, it is possible that the Investment Manager may select investments that are concentrated in certain classes of financial instruments. This limited diversity could expose the Consolidated Investment Funds to losses that are disproportionate to market movements as a whole.

Custody Risk
The clearing operations for the Partnership and its Consolidated Investment Funds are provided by major financial institutions. In addition, all of the Partnership and its Consolidated Investment Funds' cash and investments are held with banks or brokerage firms, which have worldwide custody facilities and are members of all major securities exchanges. The Partnership or its Consolidated Investment Funds may lose all or a portion of the assets held by these banks or brokerage firms if they become insolvent or fail to perform pursuant to the terms of their obligations. While both the U.S. Bankruptcy Code and the Securities Investor Protection Act of 1970 seek to protect customer property in the event of a broker-dealer's failure, insolvency or liquidation, the Partnership and its Consolidated Investment Funds' might be unable to recover the full value of their assets or incur losses due to their assets being unavailable for a period of time.

Leverage Risk
The Consolidated Investment Funds may borrow funds from brokers, banks and other lenders to finance its trading operations. The use of leverage can, in certain circumstances, magnify the losses to which the Consolidated Investment Funds' investment portfolio may be subject. The use of margin and short-term borrowings creates several risks for the Consolidated Investment Funds. If the value of the Consolidated Investment Funds' securities fall below the margin level required by a counterparty, additional margin deposits are required. If the Consolidated Investment Funds are unable to satisfy a margin call, the counterparty could liquidate the position in some or all of the financial instruments that are in the account at the prime broker and cause the Consolidated Investment Funds to incur significant losses.

The failure to satisfy a margin call, or the occurrence of other material defaults under margin or other financing agreements, may trigger cross-defaults under the Consolidated Investment Funds' agreements with other brokers, lenders, clearing firms or other counterparties, multiplying the adverse impact to the Consolidated Investment Funds. In addition, because the use of leverage allows the Consolidated Investment Funds to control positions worth significantly more than its investment in those positions, the amount that the Consolidated Investment Funds may lose in the event of adverse price movements is high in relation to the amount of their investment.

In the event of a sudden drop in the value of the Consolidated Investment Funds' assets, the Consolidated Investment Funds may not be able to liquidate assets quickly enough to satisfy their margin or collateral requirements. As a result, the Consolidated Investment Funds may become subject to claims of financial intermediaries, and such claims could exceed the value of its assets. The banks and dealers that provide financing to the Consolidated Investment Funds have the ability to apply discretionary margin, haircut, financing and collateral valuation policies. Changes by banks and dealers in any of the foregoing may result in large margin calls, loss of financing and forced liquidations of positions and disadvantageous prices.

Foreign Currency Risk
The Partnership and its Consolidated Entities may invest in securities or maintain cash denominated in currencies other than the U.S. dollar. The Partnership and its Consolidated Entities are exposed to risk that the exchange rate of the U.S. dollar relative to other currencies may change in a manner that has an adverse effect on the reported value of the Partnership and its Consolidated Entities' assets and liabilities denominated in currencies other than the U.S. dollar.

Concentration of Investments
At December 31, 2008, the Partnership and Consolidated Investment Funds' investments and derivative contracts were predominantly concentrated in the United States and the Cayman Islands and across several industries.

Wind-Down Risk
The ultimate proceeds that the Consolidated Investment Funds' are able to realize on the sale of its investments will directly affect the amounts that the investors in the Feeder Funds are able to redeem in connection with the wind down process. These amounts may differ materially from the partners' capital balances as of December 31, 2008.

Litigation Risk
The Partnership and its Consolidated Investment Funds are periodically subject to legal actions arising from the ordinary course of business. In addition, certain of the Consolidated Investment Funds' Feeder Fund investors have filed lawsuits after receiving notification of the decision to wind-down certain Consolidated Investment Funds' investment portfolios (Note 16). Refer to Note 17 for a discussion of the open litigation.

11. Related Party Transactions

Expenses Reimbursable by Funds Managed
In the normal course of business, the Partnership typically pays invoices it receives from vendors for various services provided to the investment funds the Partnership manages. A summary of these eligible reimbursable expenses are then submitted to the trustee/administrator for each respective fund, typically on a quarterly basis, and the Partnership receives payment as reimbursement for paying the invoices on behalf of the respective funds. As of December 31, 2008, approximately $18.8 million in reimbursable expenses were due from various affiliated funds and entities for these eligible expenses, and is included in *Other current assets* in the accompanying consolidated balance sheet.

Long Term Incentive Plan and Intercompany Loan Payable to Highland Capital Management Services, Inc. ("HCMSI")
Effective January 1, 2001, all of the Partnership's employees were transferred to HCMSI, which provides personnel management and consulting services to the Partnership. The Partnership and HCMSI entered into a management agreement whereby the Partnership compensated HCMSI for its employee expenses plus a consulting services fee. As of January 1, 2005, there were no further transactions with HCMSI as all employees were transferred to the Partnership.

Effective January 1, 2001, HCMSI approved a long-term incentive plan ("the LTIP") for select employees who are eligible to receive Long-Term Incentive Units ("the Units") under the LTIP. The number of Units authorized under the LTIP is 30,000,000 and a majority of the Units granted vest 40% during the grant year and 30% for each of the two years thereafter, expiring 10 years after such grant date, unless different terms are agreed upon between the Plan Administrator and the employee. The fair value of the Units are based upon the fair value of the Partnership, as determined in good faith, by James Dondero, the Plan Administrator and the sole shareholder of the general partner and a limited partner of the Partnership. The LTIP was transferred to the Partnership from HCMSI on January 1, 2005.

The Units are exercisable at the discretion of the Plan Administrator, or upon a triggering event defined as the earlier of the following events:

- Change in control
- Initial public offering
- Participant's voluntary or involuntary termination due to death, disability, retirement, or hardship
- Participant's voluntary or involuntary termination other than due to death, disability, retirement, hardship, or cause is exercisable to the extent the Participant is entitled to only 80% of the vested shares.

A total of 3,425,074 Units are outstanding as of December 31, 2008 under the LTIP. During the year ended December 31, 2008, a total of 350,366 Units were exercised. These exercised Units reverted back to the LTIP. During the year ended December 31, 2008, the liability under the LTIP decreased by approximately $38.1 million, which is included in Compensation and benefits in the consolidated statement of income.

The total balance payable to HCMSI was approximately $3.8 million as of December 31, 2008, which is related to the LTIP accrual.

Effective December 31, 2004, all of the employees at HCMSI were transferred to the Partnership, and the management agreement between the Partnership and HCMSI was terminated as to the provision of future services. However, all of the outstanding and unfunded obligations of the Partnership to HCMSI as of December 31, 2004, as well as any additional obligations that may arise in relation to these amounts, will continue to be due and payable to HCMSI until satisfied in accordance with the provisions of the agreements in place.

Accounts Held with Related Party
During the year the Partnership and its subsidiaries maintained accounts at NexBank, SSB ("NexBank"), a related party by way of common control. As of December 31, 2008, balances in the accounts were approximately $15.8 million. Approximately $0.1 million of interest was earned on this account for the year ended December 31, 2008.

Controlling Positions
Various members of the Partnership's management serve as members on the Boards of Directors for some of the companies with which it invests. Because these individuals participate in the management of these companies, investments held by the Partnership and its subsidiaries in these companies may, from time to time, not be freely tradable. Any director's fees received by the Partnership for these services as directors are paid to and retained by the Partnership. As of December 31, 2008, the Partnership and its subsidiaries held the following investments in these companies:

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(in thousands of dollars)

Issuer	Type of Investment	Fair Value
American Banknote Corporation	Common Equity	$ 15,161
Complete Genomics	Common Equity	16,000
Cornerstone Healthcare Group Holding, Inc.	Common Equity	17,857
Highland Financial Corporation	Common Equity	2,871
Legacy Pharmaceuticals	Common Equity	385
Marcal paper Mills, LLC	Common Equity	55
Nex-Tech Aerospace Holdings, Inc.	Common Equity	5,533
Romacorp Restaurant Holdings, Inc.	Common Equity	767
Safety-Kleen Inc.	Common Equity	183,720
Trussway Industries, Inc.	Common Equity	11,519
Blackwell BMC, LLC	Common Equity	17,225
Epocal, Inc.	Preferred Equity	76,403
Solstice Neurosciences, Inc.	Preferred Equity	10,700
Terrestar Corporation	Preferred Equity	60,250
Highland Distressed Opportunities Fund	Closed-End Mutual Fund	2,140
Highland Credit Strategies Fund	Closed-End Mutual Fund	3,607
Highland Special Situations Fund	Mutual Fund	2,094
Highland Long/Short Equity Fund	Mutual Fund	193
Highland High Income Fund	Mutual Fund	177
Highland Income Fund	Mutual Fund	330
Highland Healthcare Fund	Mutual Fund	2,295
Broadstripe Holdings, LLC	Loan Revolver	1,986
Home Interiors & Gifts, Inc.	Loan Revolver	5,024
Legacy Pharmaceuticals	Loan Revolver	(871)
Home Interiors & Gifts, Inc.	Initial Term Loan	18,988
Consolidated Restaurant Companies, Inc.	Term Loan	9,366
Blackwell BMC, LLC	Term Loan	2,376
Decision One Corporation	Term Loan	1,000
Legacy Pharmaceuticals	Term Loan	13,121
Broadstripe Holdings, LLC	Term Loan - First Lien	7,806
Cornerstone Healthcare Group Holding, Inc.	Loan - Second Lien	24,014
Broadstripe Holdings, LLC	Term Loan - Second Lien	8,918
Decision One Corporation	Term Loan B	1,601
Highland Financial Partners, L.P.	Long-Term Debt	15,661
Home Interiors & Gifts, Inc.	Swap	(9,878)

During the year ended December 31, 2008, the Partnership earned approximately $0.3 million of income from those entities where members of management serve as members of the Board of Directors. The amount is included in Other income in the consolidated statement of income.

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Real Estate Partnerships

The Partnership and its principals serve as the general partner of the general partner of various partnership investments in the Real Estate Fund and Highland Financial Real Estate Corporation. Such investments are listed below:

(in thousands of dollars)

Limited Partnership		Value
HE Sugar Land Project, LLC	$	13,719
HCREA Prosper Crossing West, L.P.		13,632
HCREA Canyon Falls		10,175
HCREA Prosper Crossing East, L.P.		8,983
HCREA Canyon Falls Town Center, L.P.		8,511
HCREA Kings Wood		6,672
HCREA Indian Creek, L.P.		5,467
HCREA Terrell Land, L.P.		5,124
HE 2425 West Loop Project, LLC		4,415
HE 1001 West Loop Project, LLC		3,922
HCREA Wilcox 190, L.P.		3,629
HCREA Celina Springs, L.P.		3,504
HE Mezz KR, LLC		3,133
HCREA The Tribute, L.P.		2,986
HCREA Nolen Drive, L.P.		2,193
HCREA Wylie Partners I, L.P.		1,764
HCREA Princeton 380, L.P.		1,411
HCREA Highland Village, L.P.		1,202
HCREA Lockhill, Retail, L.P.		1,049
HCREA Pilot Point Land, L.P.		1,030
HCREA Grey Walls, L.P.		880
Highland Capital Terrell Investment Partners, L.P.		565
HCREA Embarcadero, L.P.		278
HCREA Hutchins Truck Service, L.P.		110
HCREA Trimarchi of North Dallas, L.P.		-
HCREA Court Glen, L.P.		-
HCREA Breckenridge, L.P.		-

Investment in Affiliated Loans

During the year, certain subsidiaries of the Partnership were invested in several bank loans in which NexBank, SSB, an affiliate of the Partnership, was the agent bank. Interest earned on the loans during the year was approximately $27.8 million. At December 31, 2008, these subsidiaries were invested in NexBank, SSB agented loans with commitments and market values totaling approximately $462.1 million and $175 million, respectively.

Notes to Affiliates

On July 31, 2006, the Partnership issued a promissory note in the amount of $400,000 to an employee of an affiliate. The note accrued interest at the mid-term applicable federal rate as promulgated by the Internal Revenue Service. The note is payable in one lump sum on the earlier of July 31, 2010 or an event of acceleration. In July 2008, the remaining balance of the promissory note was forgiven.

On August 1, 2008, the Partnership issued a promissory note in the amount of $500,000 to an employee of a subsidiary. The note accrues interest at a rate of LIBOR plus 1.75%, compounded quarterly. The note is payable in one lump sum on the earlier of August 1, 2011 or an event of acceleration. As of December 31, 2008, the principal amount on the promissory note was $500,000 with interest accrued of approximately $15,000.

On May 21, 2007, the Partnership issued two loans to employees of a subsidiary aggregating $2.0 million, each with a principal balance of $1.0 million. The note accrues interest at a rate of LIBOR plus 1.75%, compounded quarterly. The principal balance plus all accrued interest is due on the earlier of May 1, 2010 or an event of acceleration. During 2008, 30% of the outstanding principal of each loan was forgiven. As of December 31, 2008, each loan principal was $0.7 million, with interest accrued of approximately $65,000.

On August 20, 2008, the Partnership issued a promissory note in the amount of $330,000 to an employee of the Partnership. The note accrues interest at a rate of LIBOR plus 1.75%. The note is payable in one lump sum on the earlier of August 20, 2015 or an event of acceleration. As of December 31, 2008, the principal amount on the promissory note was $330,000 with interest accrued of approximately $5,000.

On August 1, 2008, the Partnership issued a promissory note in the amount of $500,000 to an employee of a subsidiary. The note accrues interest at a rate of LIBOR plus 1.75%, compounded quarterly. The note is payable in one lump sum on the earlier of August 1, 2011 or an event of acceleration. As of December 31, 2008, the principal amount on the promissory note was $500,000 with interest accrued of approximately $9,000.

On October 15, 2008, the Partnership issued a promissory note in the amount of $500,000 to an employee of a subsidiary. The note accrues interest at a rate of LIBOR plus 1.75%, compounded quarterly. The note is payable in one lump sum on the earlier of October 15, 2011 or an event of acceleration. As of December 31, 2008, the principal amount on the promissory note was $500,000 with interest accrued of approximately $4,000.

On December 19, 2007, the Partnership issued a promissory note in the amount of $30 million to a subsidiary of HFP. The note accrues interest quarterly on the principal balance on the last business day of each quarter ending March 31, June 30, September 30, and December 31 at a rate equal to the Fed Funds Rate as published by the Federal Reserve Bank of New York on the Business Day next succeeding each quarter end. The note is payable in $5 million quarterly installments commencing June 30, 2008 and is due and payable in full on June 30, 2009, subject however to acceleration. All payments are first applied to interest and then to principal. In July 2008, the Partnership received six million common units of HFP through a conversion of the promissory note at a conversion price of $5 per common unit.

On September 12, 2008, the Partnership issued a promissory note in the amount of $13.9 million to a subsidiary of HFP. The note accrues interest monthly on the principal balance on the last business day of each month at a rate equal to the Fed Funds Rate as published by the Federal Reserve Bank of New York on the Business Day next succeeding each month end. As of December 31, 2008, the principal amount on the promissory note was $0.9 million.

Investments in Affiliates
The Partnership and its subsidiaries are the investment/collateral manager for approximately $69.2 million of the CDO Master Fund's investments, consisting of United States and European Floating Rate CLO Mezzanine Tranches, Residual CLO Equity Tranches, common stock, Investment Funds, total return swaps, credit default swaps, long-term debt and claims. During the year, CDO Master Fund earned interest income of $74.9 million and net realized/unrealized losses on investment transactions of $386 million from related party investments.

In 2006, the Partnership was granted 124,468 restricted HFP units and 809,263 non-qualified HFP unit options. The options were granted with a strike price of $15.00 and $16.50 per unit. Both the restricted units and options vest in thirds on the anniversary of the grant date. In 2008, 41,489 and 273,087 of restricted units and options vested, respectively. Of the options that vested, 114,476 were exercised at a strike price of $15.

On June 25, 2008, HCSA received an in kind distribution of 3,049,732 units of HFP in lieu of their incentive allocation balance. The conversion of HCSA's incentive allocation balance to HFP units implied a conversion price of $5 per unit.

On September 26, 2008, HFP issued $316 million of senior secured notes to the Consolidated Investment Funds in exchange for an interest in certain assets which included collateralized loan obligation securities. Due to a lack of a transfer of control caused by certain restrictive covenants associated with the exchange, these assets continue to be recognized on the Consolidated Statement of Assets, Liabilities and Partners' Capital of the Consolidated Investment Funds. Upon full payment of the outstanding principal of the senior secured notes, the restrictive covenants of the assets will be satisfied and HFP will have unencumbered interests in the assets. The Consolidated Investment Funds have recorded a liability to account for the future release of the assets, which is classified on their balance sheets as Obligation to return collateral. The Consolidated Investments Funds elected to apply the fair value option prescribed by SFAS No. 159 when they first recognized the liability, which resulted in the liability being carried at the same value as the assets in aggregate. Accordingly, the change in the fair value of the liability between September 26 and December 31, 2008 has been recognized as an unrealized gain. As discussed in Note 18, the senior secured notes were terminated subsequent to December 31, 2008.

Charitable Contributions
One of the Partnership's limited partners serves on the board of directors of Grace Ministries, a not-for-profit organization. During the year, the Partnership made a charitable contribution of $0.1 million to Grace Ministries. This amount is presented in Other operating expenses.

Services Performed by an Affiliate
In March 2007, Highland Capital of New York, L.P., a New York limited partnership ("Highland New York"), was formed and has performed marketing services for the Partnership and its affiliates in connection with the Partnership's investment management and advising business, including, but not limited to, assisting Highland Capital in the marketing and sales of interests in investment pools for which Highland Capital serves as the investment manager. The Partnership is charged a marketing services fee for the services that Highland New York performs on the Partnership's behalf. For the year ended December 31, 2008, total marketing fee expense charged to the Partnership by Highland New York was approximately $4.8 million and as of December 31, 2008, amounts owed to Highland New York for services rendered was approximately $2.4 million.

Participation Agreement
The Partnership and its Consolidated Investment Funds purchased protection under credit default swaps referencing residential mortgage-backed collateralized debt obligations during the year. The Partnership and some of its Consolidated Investment Funds along with an affiliated entity under common control (collectively, the "Participants") entered into related participation agreements (collectively, the "Agreements") at the time the positions were established. During the year, the Participants traded credit default swaps with a notional value of approximately $294.8 million that were governed under the Agreements with the Participants. As of December 31, 2008, all Agreements between the Participants were closed.

Letter of Credit
In April 2007, the Partnership entered into a $4 million standby letter of credit ("LC") on behalf of one of its Consolidated Investment Funds with the Bank of Nova Scotia. Interest is charged at 1.95%. As of December 24, 2008, the rate of interest had increased to 3.95%. As of December 31, 2008, there were no amounts drawn against the LC. Any interest paid by the Partnership on behalf of the Consolidated Investment Fund is reimbursed through an investment in the fund. For the year ended December 31, 2008, $0.1 million of interest had been paid by the Partnership on the funds behalf.

Notes from Affiliates
On April 15, 2008, the Partnership entered into a $24.6 million promissory note with an employee of the Partnership. The note accrues interest at a rate of 6% per annum, compounded annually and is payable upon demand. As of December 31, 2008, the principal amount on the promissory note was $3.5 million with interest accrued of approximately $12,000.

On April 15, 2008, the Partnership entered into an $8.2 million promissory note with an employee of the Partnership. The note accrues interest at a rate of 6% per annum, compounded annually and is payable upon demand. As of December 31, 2008, the principal amount on the promissory note was $4 million with interest accrued of approximately $17,000.

On October 3, 2008, the Partnership entered into a $2 million promissory note with Governance RE, Ltd ("Gov Re"). The note accrues interest at a rate of LIBOR plus 1.75%, compounded annually and is payable on demand. As of December 31, 2008, the principal amount on the promissory note was $2 million with interest accrued of approximately $28,000.

Loans to Affiliates
During 2008 the Partnership entered into short-term, non-interest bearing loans to its Consolidated Investment Funds and affiliates. The total amount of borrowings made to the Consolidated Investment Funds and affiliates in 2008 was approximately $127.7 million. As of December 31, 2008, all amounts borrowed had been repaid to the Partnership.

Intercompany Balance
During 2008, the Partnership and an affiliate engaged in a series of short-term, non-interest bearing transactions. The affiliate's primary function is to provide personnel management and consulting services to the Partnership. As of December 31, 2008, the Partnership's intercompany liability to the affiliate was $20.7 million.

12. Rentals Under Operating Leases

The following is a schedule of future rental payments on noncancelable tenant operating leases for properties consolidated by HFREC at December 31, 2008. The schedule does not include any amounts due from tenants upon the exercise of renewal options under certain leases. The underlying companies consolidated by HFREC also received reimbursements from tenants for certain common area maintenance ("CAM") expenses, which may include CAM costs, insurance and real estate taxes. Reimbursements for insurance and real estate taxes are not included in the following schedule.

(in thousands of dollars)

Years Ending December 31,		
2009	$	15,224
2010		7,841
2011		4,666
2012		3,703
2013		2,827

13. Commitments

Contracts in the Normal Course of Business
In the normal course of business the Partnership and its subsidiaries may enter into contracts which provide general indemnifications and contain a variety of presentations and warranties that may expose the Partnership and its subsidiaries to some risk of loss. In addition to the other financial commitments discussed in the consolidated financial statements, the amount of future losses arising from such undertakings, while not quantifiable, is not expected to be significant.

Legal Proceedings
The Partnership is a party to various legal proceedings arising in the ordinary course of business. While any proceeding or litigation has an element of uncertainty, management believes that the final outcome will not have a materially adverse effect on the Partnership's consolidated balance sheet, consolidated statement of income, or its liquidity.

Warehouse Guarantee
On July 6, 2007, the Partnership was a party to a warehouse agreement as a first loss guarantor. HCM Trident entered into the warehouse agreement and is entitled to the positive net carry or is required to pay the negative net carry. The Partnership guaranteed the payment of the negative net carry owed by HCM Trident. This guarantee was capped at 25% of the initial purchase price of the warehouse assets of $25.7 million, or approximately $6.4 million plus accrued interest. The Partnership fronted $3.8 million to HCM Trident as a deposit for the first loss guarantee.

On July 14, 2008, the warehouse agreement was amended to reflect the Partnership guaranteeing 100% of the negative net carry. The Partnership posted an additional $1.5 million, for a total guarantee deposit on hand of $3.1 million, net of any prior loss amounts.

On November 2, 2008, the warehouse agreement was amended to reflect the Partnership guaranteeing any credit facility amortization payments of principal and interest on HCM Trident's behalf. As of December 31, 2008, the remaining balance on the facility with accrued interest was approximately $12.3 million.

Operating Leases
Future minimum lease payments under operating lease commitments of the Partnership and its consolidated entities with initial or noncancelable terms in excess of one year, at inception, are as follows:

(in thousands of dollars)

Years Ending December 31,		
2009	$	2,354
2010		2,230
2011		2,022
Thereafter		-
	$	6,606

Total rental expense of the Partnership and its consolidated entities for operating leases was approximately $4.9 million for the year ended December 31, 2008.

Loan Commitments
Loan and other participation interests purchased by the Consolidated Investment Funds such as bank debt and trade claims may include accompanying letters of credit, revolving credit arrangements or other financing commitments obligating the Consolidated Investment Funds to advance additional amounts on demand. At December 31, 2008, the Consolidated Investment Funds had outstanding loan commitments of approximately $70.8 million. The total amount of outstanding commitments does not necessarily reflect the actual future cash requirements, as commitments may expire unused.

14. Postretirement Benefits

In December 2006, the Partnership created a defined benefit plan to which all employees and certain affiliated persons could participate if they met the eligibility requirements. The Partnership uses a December 31 measurement date for its defined benefit plan.

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Effective December 31, 2008, the Partnership amended the plan by freezing it to new participants and additional benefit accruals. Therefore, no new participants shall enter the plan after 2008 and no new benefits shall accrue under the plan after 2008. The Partnership's benefit plan obligation and plan assets for the year ended December 31, 2008 are reconciled in the tables below.

(in thousands of dollars)

Change in projected benefit obligation		**2008**
Benefit obligation at commencement of plan	$	4,486
Service cost		2,608
Interest cost		254
Plan participants' contributions		-
Amendments		-
Actuarial loss/(gain)		(3,008)
Acquisition/(divestiture)		-
Benefits paid		(797)
Benefit obligation at end of year	$	3,543

Change in plan assets		**2008**
Fair value of plan assets at commencement of the plan	$	2,588
Actual return on plan assets		(2,783)
Acquisition/(divestiture)		-
Employer contribution		2,138
Plan participants' contributions		-
Benefits paid		(797)
Other increase/(decrease)		-
Fair value of plan assets at year end	$	1,146

Reconciliation of Funded Status		**2008**
Accumulated benefit obligation at end of year	$	3,543
Projected benefit obligation at end of year		3,543
Fair value of assets at end of year		1,146
Funded status at end of year	$	(2,397)

The Partnership expects to contribute $2.6 million to the plan during 2009.

Assumptions
Weighted-average assumptions used to determine benefit obligations at December 31, 2008:

Discount rate	6.30%
Rate of compensation increase	N/A

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Weighted-average assumptions used to determine net periodic benefit cost at December 31, 2008:

Discount rate	6.50%
Expected long-term return on plan assets	6.50%
Rate of compensation increase	N/A

15. Goodwill, Other Intangible Assets and Purchased Investment Management Contracts

Below is a summary of the Partnership's goodwill and other intangible assets as of December 31, 2008:

(in thousands of dollars)	Carrying Value
Lease intangibles, net	$ 14,425
Highland Floating Rate Fund	12,672
Highland Floating Rate Advantage Fund	11,328
Goodwill for Highland Europe	8,020
Licenses	2,021
Patents	1,008
	$ 49,474

On April 9, 2004, the Partnership purchased the management agreements Highland Floating Rate Fund (the "Floating Rate Fund") and Highland Floating Rate Advantage Fund (the "Advantage Fund"). The combined purchase price for the above agreements was $24.0 million. The purchase price was allocated among the Purchased Funds pro-rata based on the approximate combined total managed assets of the funds as of the date of purchase. As a result, $12.7 million of the purchase price was allocated to the Floating Rate Fund and $11.3 million was allocated to the Advantage Fund.

On January 21, 2000, the Partnership purchased the investment advisory agreement for Prospect Street High Income Shares, Inc. ("PHY"), a diversified, closed-end RIC. The purchase price was approximately $11.9 million.

On July 31, 2001, the Partnership purchased the investment advisory agreement for Prospect Street Income Shares, Inc. ("CNN"), a diversified, closed-end RIC. The purchase price was approximately $2.2 million.

On July 21, 2008, PHY and CNN were reorganized into Highland Credit Strategies Fund. The reorganization was based on the respective Funds' relative net asset values as of 4:00 p.m. on Friday July 18, 2008. As PHY and CNN ceased to exist after the reorganization, the prior capitalized costs of $5.7 million for the purchased investment advisory agreements were recognized into income.

For the remaining purchased investment advisory agreements, the Partnership performed an impairment test under SFAS No. 142. The Partnership's management analyzed market multiples on retail asset managers within the industry as of December 31, 2008 to determine fair value of these assets. The Partnership has determined no impairment charge is necessary for the current year.

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On December 17, 2007, HySky, LLC ("HySky") purchased all of the assets and liabilities of Equitas, LLC for approximately $3.8 million. Through this purchase, HySky obtained two patents with a purchase price value of $1.1 million and an FCC license with a value of $2.2 million. As of December 31, 2008, $0.3 million in amortization has been recognized on these assets.

During 2007, the companies consolidated by HFREC capitalized $20.6 million of lease intangibles related to their property acquisitions. As of December 31, 2008, lease intangibles are as follows:

Lease intangibles consist of the following at December 31, 2008:

(in thousands of dollars)

Leasing commissions	$	1,634
Value of in-place leases		8,495
Tenant relationships		10,426
Total lease intangibles		20,555
Less: Accumulated amortization		(6,130)
Lease intangibles, net	$	14,425

The amortization expense of lease intangibles is as follows for the five years ending December 31:

(in thousands of dollars)

2009	$	4,070
2010		2,535
2011		1,123
2012		1,121
2013		1,118

16. Consolidated Investment Fund Wind-Downs

Throughout 2008, Credit Strategies Master and Crusader Master were negatively affected by deteriorating conditions in the overall economy and credit markets. These conditions became more severe during the third and fourth quarters of 2008 and generated significant losses on various derivative transactions and repurchase agreements to which Credit Strategies Master and Crusader Master were a party. In addition, certain assets that Credit Strategies Master and Crusader Master purchased on margin through prime brokerage agreements experienced a significant decline in value. In certain cases, Credit Strategies Master and Crusader Master were unable to post the collateral required to secure these losses, and the counterparties provided notice of their intent to terminate the agreements. As a result, access to the credit that Credit Strategies Master and Crusader Master used to manage their investing and financing activities became highly constrained, and in some cases unavailable. In light of these circumstances, the General Partners (the general partner of Highland Credit Strategies Fund, L.P. and the general partner of Highland Crusader Fund, L.P.) and the Board of Directors of Highland Credit Strategies Fund, Ltd. and Highland Crusader Fund, Ltd. concluded, in consultation with the Investment Manager, that it would be in the best interests of their investors to wind down the investment portfolios of Credit Strategies Master and Crusader Master. On October 15, 2008, the Investment Manager notified investors that it would begin the wind-down process immediately. The Investment Manager also restricted subscriptions and the payment of withdrawals to the Feeder Funds effective immediately.

In connection with the wind down, the limited partner interests of the Feeder Funds were compulsorily withdrawn/redeemed as set forth in the terms of the governing documents. A formal plan of liquidation has not been finalized by management, and there are no assurances that investors will realize the remaining equity balance over the course of the wind down of Credit Strategies Master and Crusader Master. The General Partner has suspended payment of distributions, and any outstanding balances with respect to withdrawal and/or redemption requests that were made prior to October 15, 2008, will be made on a pro-rata basis with the amounts owed to investors that have been compulsorily withdrawn/redeemed, unless a plan of distribution dictates otherwise. The equity of the investors for Credit Strategies Master that were compulsorily redeemed was zero. The equity of the investors for Crusader Master that were compulsorily redeemed was $423.6 million. Future distributions will only be made as the value of Credit Strategies and Crusader Masters' investments are realized and all obligations due to counterparties and service providers of Credit Strategies and Crusader Master and their representative Feeder Funds have been satisfied.

As of December 31, 2008, the estimated value of the net assets available for distribution from Crusader Master and Credit Strategies Master to their Feeder Funds was approximately $1,092 million and $163.5 million, respectively. The actual amounts distributed upon completion of the wind down process are inherently uncertain and may differ materially from the partners' capital as of December 31, 2008. The Investment Manager estimates that the wind-down of Credit Strategies Master and Crusader Master could take up to four years to complete. Capital will be distributed as it becomes available in accordance with a plan of distribution, once implemented.

A summary of the significant events that were considered by the General Partners and the Board of Directors of Highland Credit Strategies Fund, Ltd. and Highland Crusader Fund, Ltd. in the decision to wind-down the investment portfolios of Credit Strategies Master and Crusader Master are provided below.

Credit Strategies Master Wind-Down

Total Return Swap

Since its inception, Credit Strategies Master was invested in a total return swap program that allowed it to gain exposure to bank loans and high yield corporate bonds. During September 2008, the leveraged loan market began to deteriorate, and Credit Strategies Master was required to post cash collateral based on the declining value of the loans held in the swap portfolio. As of September 30, 2008, Credit Strategies Master had met multiple collateral calls.

The fall in leveraged loan prices accelerated dramatically during the first week of October, which resulted in approximately $43.1 million of additional collateral calls. Credit Strategies Master did not have sufficient sources of liquidity to post all of the required collateral and could not sell assets at prices that reflected their long-term value. Therefore, the counterparty delivered notice of its intent to terminate the swap agreement effective October 15, 2008. The counterparty then offered to (1) sell the remaining assets in the swap portfolio, which would have required Credit Strategies Master to compensate the counterparty for any realized losses in excess of the $473.3 million of collateral that it had previously posted; or (2) allow Credit Strategies Master to forfeit any rights to the collateral in exchange for terminating all current and future exposures under the swap agreement. Credit Strategies Master elected to forfeit its rights to the collateral and executed a release and waiver with the counterparty. The release and waiver became effective on October 16, 2008.

Repurchase Agreement

Credit Strategies Master entered into a repurchase agreement with a counterparty, which allowed it to gain exposure to high yield corporate bonds and structured credit securities on a leveraged basis. In October 2008, the counterparty contended that Credit Strategies Master failed to meet margin calls that were required due to a decline in the fair value of the assets. The counterparty delivered a formal notice of default and their intent to exercise the rights and remedies available to it.

The repurchase agreement stipulated that the termination values for the underlying assets would be established through bids received from the market or recognized pricing sources. The counterparty contends that it offered the assets for sale through bids-wanted-in-competition. After netting the proceeds received from the sales, the counterparty requested payment from Credit Strategies Master of $14.3 million. Credit Strategies Master has disputed the liability, and the counterparty filed a lawsuit seeking recovery of the balance (Note 17).

Credit Default Swaps

Credit Strategies Master entered into various credit default swap transactions with a major financial institution for both hedging and speculative purposes. In October 2008, the counterparty provided a notice of termination due to a decline in the value of swaps. Credit Strategies Master disputed the notice on the basis that an event of default had not occurred; however, the counterparty proceeded to terminate the outstanding swap transactions, which resulted in realized losses of approximately $6.0 million. Credit Strategies Master has a net outstanding claim payable to the counterparty of $2.6 million.

Prime Brokerage Agreement
During the first two quarters of 2008, Credit Strategies Master actively purchased equity securities, treasury bonds, investment grade corporate bonds and other liquid assets on margin through a prime brokerage agreement with a major financial institution. The value of the investments declined during the third quarter, and in October 2008, the counterparty issued a notice of default based on a decline the net asset value of the account during the twelve month period ended September 30, 2008. As a result, Credit Strategies Master was required to liquidate the remaining investments in the account and by the end of the year had realized an aggregate net loss of approximately $68.2 million on the margin transactions.

Crusader Master Wind-Down
Lehman Exposure
Crusader Master provided protection under a credit default swap agreement that referenced debt issued by Lehman Brothers Holding, Inc. ("Lehman"). Following Lehman's bankruptcy filing on September 15, 2008, Crusader Master was required to post $39.1 million of cash to satisfy a margin call from the counterparty. In aggregate, Crusader Master realized net losses $54.6 million of losses under the agreement.

Repurchase Agreement
Crusader Master entered into a repurchase agreement with a counterparty, which allowed it to gain exposure to high yield corporate bonds and structured credit securities on a leveraged basis. In October 2008, the counterparty contended that Crusader Master failed to meet margin calls that were required due to a decline in the fair value of the assets. The counterparty delivered a formal notice of default and its intent to exercise the rights and remedies available to them.

The repurchase agreement stipulated that the termination values for the underlying assets would be established through bids received from the market or recognized pricing sources. The counterparty contends that it offered the assets for sale through bids-wanted-in-competition. After netting the proceeds received from the sales and certain balances to Crusader Master, the counterparty requested payment from Crusader Master of approximately $50.0 million. Crusader Master has disputed the amount of the liability, and the counterparty filed a lawsuit seeking recovery of the balance.

Prime Brokerage Agreement
During the first two quarters of 2008, Crusader Master actively purchased equity securities, treasury bonds, investment grade corporate bonds and other liquid assets on margin through a prime brokerage agreement with a major financial institution. The value of the investments declined during the third quarter, and in September 2008, the counterparty issued a notice of default based on Crusader Master's alleged failure to meet a margin call. Crusader Master was ultimately required to transfer or liquidate the remaining investments held in the account and by the end of the year had realized an aggregate net loss of approximately $21.6 million on the margin transactions.

Highland Capital Management, L.P.
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17. Legal Proceedings

In April 2007, CDO Master Fund entered into a risk sharing agreement structured as a derivative whereby it absorbed 51% of the gains and losses generated from a loan warehouse agreement. The remaining 49% of the warehouse gains and losses were absorbed by Highland Financial Partners, L.P. ("HFP"), which is an affiliated entity. The warehouse was financed by a reputable financial institution and held collateral consisting of investments in collateralized loan obligations and credit default swaps. Although the agreement expired on August 15, 2007, the counterparty agreed to extend it for one year on March 15, 2008. As a condition of the extension, CDO Master Fund posted $10.2 million of cash as collateral. In addition, HFC posted certain securities on behalf of CDO Master Fund and HFP. During October and November 2008, the counterparty requested additional collateral calls from CDO Master Fund and HFP totaling $20 million. Due to liquidity constraints, CDO Master Fund was unable to meet the November call, and the counterparty elected to terminate the agreement as of December 5, 2008. The collateral held in the warehouse was subsequently seized by the counterparty and sold on the open market through bids-wanted-in-competition. After offsetting the proceeds received from the sale and the income earned on the collateral prior to the sale, the counterparty notified CDO Master Fund that its pro-rate share of the losses incurred under the agreement was $350.2 million. CDO Master Fund has accrued a liability in its financial statements for this amount.

On February 24, 2009, the counterparty filed a lawsuit against CDO Master Fund and HFP in the New York State Supreme Court of Manhattan alleging that it had suffered no less than $745 million in aggregate losses due to the depreciation in value of the warehouse collateral. The Partnership was also named as a party to the lawsuit. The Partnership does not believe it has any liability in this case and has filed a motion to have its name removed from the lawsuit.

Certain consolidated investment funds (collectively, the "Plaintiffs") filed a claim against Deutsche Bank AG and Deutsche Bank Securities, Inc. (collectively, "Deutsche Bank") in Dallas County District Court alleging fraudulent inducement, fraud and breach of contract in connection with three repurchase agreements to which the Plaintiffs and Deutsche Bank were a party. Deutsche Bank subsequently filed a lawsuit against the Plaintiffs in the United Kingdom on November 7, 2008 alleging breach of contract and fraud. The court in the United Kingdom has granted Deutsche Bank an injunction, which compels the Plaintiffs to stay the action in Dallas County Court until the action in the United Kingdom is resolved. The Plaintiffs have filed a motion to appeal the injunction and are waiting for the court to rule. Based on the demand for payment that Deutsche Bank sent prior to the onset of the litigation, the consolidated investment funds have accrued liabilities of $64.3 million in the accompanying consolidated financial statements.

18. Subsequent Events

In January 2009, the Partnership, certain consolidated investment funds and other affiliated entities were named as parties to a lawsuit claiming breach of fiduciary duties for their alleged failure to comply with obligations owed under a credit agreement. The plaintiff is seeking an unspecified amount of actual damages as well as exemplary damages and attorney's fees. Management believes it is currently not possible to evaluate the likelihood of any particular outcome or estimate the amount or range of potential loss with any reasonable degree of certainty.

Highland Capital Management, L.P.
Notes to Consolidated Financial Statements
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On February 4, 2009, the Partnership informed investors of CDO Master that the fund was effectively insolvent and that it was in the best interest of the fund to liquidate the fund's remaining assets. The proceeds from the asset liquidations will be distributed to the remaining financing counterparties and other senior and trade creditors as the liabilities in the fund exceed the assets to such a degree that proceeds from the asset sales will not be able to satisfy any unpaid redemptions or to distribute amounts to any current investors.

On March 20, 2009, the Partnership and its Consolidated Investment Funds agreed to terminate the senior secured notes that were issued by HFP. As a result, the Consolidated Investment Funds have been relieved of their obligation to transfer the underlying assets to HFP. As of January 1, 2009, the fair value of the assets securitizing the note was $233.6 million.

In April 2009, a partner withdrew from the Partnership. The departing partner's Partnership interest is to be purchased by the Partnership or the remaining partners.

In April 2009, HYMF, Inc. filed a lawsuit in the New York State Court against the Partnership and certain consolidated investment funds (collectively "the Defendants"). The lawsuit alleges that the Defendants breached their contractual and fiduciary duties by failing to return HYMF's original investment in the consolidated investment funds. The Defendants believe they acted in accordance with the provisions of their partnership agreements and intend to vigorously defend against the lawsuit. At this time, discovery has not yet been initiated, and management believes it is currently not possible to evaluate the likelihood of any particular outcome or estimate the amount or range of potential loss with any reasonable degree of certainty.

In April 2009, the Partnership and certain consolidated investment funds (collectively "the Plaintiffs") filed a lawsuit in Texas District Court against HYMF, Inc. The lawsuit states that HYMF, Inc. failed to properly terminate the prepaid forward contract and accreting strike option. The Plaintiffs believe they acted in accordance with the provisions of the prepaid forward and accreting strike option contracts. At this time management believes it is currently not possible to evaluate the likelihood of any particular outcome or estimate the amount of range of potential loss with any reasonable degree of certainty.

In April 2009, Real Estate Fund received a forbearance agreement with respect to the REF credit agreement. The lender allowed for the forbearance of any prior obligations until October 15, 2009 where at such time, the facility is due in full.

During the first quarter of 2009, certain investors in Highland Credit Strategies Fund, Ltd. filed lawsuits in response to the decision to wind-down Credit Strategies Master's investment portfolio (Note 16). Each of these investors is seeking to recover the outstanding balances due under the redemption requests that they submitted prior to the announcement of the wind-down. They have also made various claims, including breach of fiduciary duties, committed negligence, tortuous interference with the payment of redemption amounts, and/or committed fraud. Both the Partnership and Highland Credit Strategies Fund, Ltd. have been named as parties to the lawsuits. Management believes it is currently not possible to evaluate the likelihood of any particular outcome or estimate the amount or range of potential loss with any reasonable degree of certainty.

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In July 2009, the Partnership amended and restated its Credit Agreement (the "2009 Credit Agreement"). All amounts borrowed under the 2009 Credit Agreement are due on July 21, 2011. For base rate loans, interest is charged at a rate of 4% plus the highest of (i) the prime rate, (ii) 2% plus the Federal Funds Rate, and (iii) 2% plus LIBOR. For LIBOR loans, interest is charged at a rate of 5% plus LIBOR. For base rate loans, interest is payable on the last business day of each calendar month, as well as the maturity date. For LIBOR loans, interest is payable on the last day of each calendar month, as well as the maturity date.

In July 2009, certain investors in Highland Credit Strategies Fund, L.P. and Highland Credit Strategies Fund, Ltd. filed a lawsuit seeking damages for alleged recission, fraud, negligent misrepresentation, breach of fiduciary duty, unjust enrichment, various violations of Massachusetts general law, and aiding and abetting fiduciary duty. The Partnership, Highland Credit Strategies Fund, L.P., Highland Credit Strategies Fund, Ltd., employees of the Partnership, J.P. Morgan Investor Services Co., and J.P. Morgan Hedge Fund Services (Bermuda), Ltd. have been named as parties to the lawsuit. Management believes it is currently not possible to evaluate the likelihood of any particular outcome or estimate the amount or range of potential loss with any reasonable degree or certainty.

Supplemental Information
Highland Capital Management, L.P.
Unconsolidated Balance Sheet and Income Statement (Unaudited)
December 31, 2008

Highland Capital Management, L.P.
Supplemental Unconsolidated Balance Sheet (unaudited)
December 31, 2008

(in thousands of dollars)

Assets		
Current assets		
Cash and cash equivalents	$	10,725
Restricted cash		1,400
Investments, at fair value (cost $141,819)		75,821
Equity method investees		36,149
Management and incentive fees receivable		19,715
Due from brokers		8,189
Other current assets		29,076
Deferred incentive fees receivable		25,997
Purchased investment management contracts		24,000
Goodwill and other intangible assets, net		388
Fixed assets and leasehold improvements, net of accumulated depreciation of $6,399		9,511
Total assets	$	240,971
Liabilities and Partners' Capital		
Liabilities		
Accounts payable	$	12,992
Accrued and other liabilities		69,369
Debt and notes payable		150,875
Long-term incentive plan		6,945
Total liabilities		240,181
Partners' capital		790
Total liabilities and partners' capital	$	240,971

Should be read in conjunction with audited financial statements.

Highland Capital Management, L.P.
Unconsolidated Statement of Income (unaudited)
Year Ended December 31, 2008

(in thousands of dollars)

Revenue		
Management fees	$	201,660
Incentive fees/allocations		870
Interest and investment income		4,009
Other income		11,278
Total revenue		217,817
Operating expenses		
Compensation and benefits		(1,970)
Professional fees		24,717
Investment and research consulting		2,281
Amortization and depreciation		2,191
Interest expense		9,568
Net depreciation on deferred incentive fees		150,281
Other operating expenses		32,614
Total expenses		219,682
Income/(loss) before investment and derivative activities		(1,865)
Realized and unrealized gain/(loss) from investments and derivative transactions:		
Net realized gain/(loss) on sale of investment transactions		20,156
Net change in unrealized gain/(loss) on investments		(490,052)
Total realized and unrealized gain/(loss) from investments and derivative transactions		(469,896)
Realized and unrealized earnings from equity method investees:		
Net realized earnings from equity method investees		(128,462)
Net unrealized earnings from equity method investees		(7,038)
Total realized and unrealized earnings from equity method investees		(135,500)
Net income	$	(607,261)

Should be read in conjunction with audited financial statements.

HIGHLY CONFIDENTIAL D-CNL000056

EXHIBIT 64

Highland Capital Management, L.P.

(A Delaware Limited Partnership)

Consolidated Financial Statements
And Supplemental Information
With Report of Independent Auditors
Year Ended December 31, 2009

Highland Capital Management, L.P.
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December 31, 2009

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Report of Independent Auditors

To the General and Limited Partners of
Highland Capital Management, L.P:

In our opinion, the accompanying consolidated balance sheet and the related consolidated statements of income, of changes in partners' capital and of cash flows (hereinafter referred to as the "financial statements") present fairly, in all material respects, the consolidated financial position of Highland Capital Management, L.P. (the "Partnership") and its subsidiaries at December 31, 2009, and the consolidated results of their operations, the changes in their partners' capital, and their cash flows for the year then ended in conformity with accounting principles generally accepted in the United States of America. These financial statements are the responsibility of the Partnership's management. Our responsibility is to express an opinion on these financial statements based on our audits. We conducted our audits of these statements in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing the accounting principles used and significant estimates made by management, and evaluating the overall financial statement presentation. We believe that our audit provides a reasonable basis for our opinion.

Our audit was conducted for the purpose of forming an opinion on the consolidated financial statements taken as a whole. The supplemental unconsolidated balance sheet and statement of income are presented for purposes of additional information, and are not a required part of the consolidated financial statements. Such information has been subjected to the auditing procedures applied in the audit of the consolidated financial statements and, in our opinion, is fairly stated in all material respects in relation to the consolidated financial statements taken as a whole.

May 21, 2010

Highland Capital Management, L.P.
Consolidated Balance Sheet
December 31, 2009

(in thousands)

Assets		
Cash and cash equivalents	$	50,246
Restricted cash		248,044
Investments, at fair value (cost $3,953,077)		2,013,858
Restricted investments, at fair value (cost $5,245)		5,508
Unrealized gains on derivative contracts		1,045
Management and incentive fees receivable		16,783
Due from brokers		8,784
Other assets		45,712
Deferred incentive fees receivable		28,891
Purchased investment management contracts		24,000
Goodwill and other intangible assets, net		8,020
Fixed assets and leasehold improvements, net of accumulated depreciation of $9,536		14,891
Total assets	$	2,465,782
Liabilities and Partners' Capital		
Liabilities		
Accounts payable	$	4,451
Securities sold, not yet purchased (proceeds $15,093)		21,406
Unrealized losses on derivative contracts (proceeds $2,563)		103,650
Withdrawals payable		54,631
Interest payable		3,737
Due to brokers		394,359
Due to brokers for securities purchased not yet settled		115,890
Accrued and other liabilities		57,221
Secured borrowing		61,842
Debt and notes payable		279,509
Long-term incentive plan		2,858
Total liabilities		1,099,554
Non-controlling interest		1,358,360
Commitments (Note 10)		
Partners' capital		7,868

The accompanying notes are an integral part of these consolidated financial statements.

Highland Capital Management, L.P.
Consolidated Statement of Income
Year Ended December 31, 2009

(in thousands)

Revenue:		
Management fees	$	91,920
Incentive fees/allocations		1,550
Interest and investment income		168,134
Other income		17,610
Total revenue		279,214
Expenses:		
Compensation and benefits		52,163
Professional fees		36,942
Investment and research consulting		838
Amortization and depreciation		5,064
Interest expense		52,607
Other expenses		31,134
Total expenses		178,748
Income before investment and derivative activities		100,466
Realized and unrealized gain/(loss) from investment transactions:		
Net realized loss on sale of investment transactions		(1,001,610)
Net change in unrealized gain on investment transactions		1,214,188
Total realized gain from investment transactions		212,578
Unrealized earnings from equity method investees:		
Net unrealized earnings from equity method investees		2,377
Total unrealized earnings from equity method investees		2,377
Net income		315,421
Net income attributable to the non-controlling interest		(315,498)
Net loss attributable to Highland Capital Management, L.P.	$	(77)

The accompanying notes are an integral part of these consolidated financial statements.

Highland Capital Management, L.P.
Consolidated Statement of Changes in Partners' Capital
Year Ended December 31, 2009

(in thousands)	General Partner	Limited Partners	Total
Partners' capital, December 31, 2008	$ 467	$ 323	$ 790
Net loss	-	(78)	(78)
Partner contributions	68	12,509	12,577
Partner distributions	(29)	(5,392)	(5,421)
Partners' capital, December 31, 2009	$ 506	$ 7,362	$ 7,868

The accompanying notes are an integral part of these consolidated financial statements.

Highland Capital Management, L.P.
Consolidated Statement of Cash Flows
Year Ended December 31, 2009

(in thousands)

Cash flows from operating activities:		
Net income	$	315,420
Adjustment to reconcile net income to cash and cash equivalents provided by operating activities:		
Cash provided by operating activities:		
Net realized loss on investments and derivative contracts		1,001,610
Net unrealized loss on investments and derivative contracts		(1,214,188)
Net unrealized gain from equity method investees		(2,377)
Depreciation and amortization		2,728
Changes in assets and liabilities:		
Restricted cash		103,696
Management and incentive fee receivable		4,677
Deferred incentive fees		(2,894)
Other assets		27,507
Due from brokers		31,439
Accounts payable		(9,318)
Accrued and other liabilties		(154,724)
Due to brokers for unsettled trades		145,957
Interest payable		3,737
Withdrawals payable		54,631
Long-term incentive plan		(4,087)
Obligations to retun collateral		(161,882)
Net cash provided by operating activities		141,932
Cash flows from investing activities:		
Purchase of fixed assets and leasehold improvements, net		16,431
Purchases of investments		(397,439)
Proceeds from dispositions of investments		392,040
Net cash provided by investing activities		11,032

The accompanying notes are an integral part of these consolidated financial statements.

Highland Capital Management, L.P.
Consolidated Statement of Cash Flows
Year Ended December 31, 2009

(in thousands)

Cash flows from financing activities:		
Payments on long-term debt		(8,381)
Net payments on secured borrowings		(66,026)
Due to brokers		(73,451)
Capital contributions from minority interest investors of consolidated entities		62,342
Capital withdrawals by minority interest investors of consolidated entities		(72,300)
Partner distributions		(1,421)
Net cash used in financing activities		(146,660)
Net decrease in cash and cash equivalents		(4,728)
Cash and cash equivalents		
Beginning of year		43,942
End of year	$	39,214
Supplemental disclosure of cash flow informaton:		
Interest paid during the year	$	42,124
Non-cash distributions to partners		4,000

The accompanying notes are an integral part of these consolidated financial statements.

HIGHLY CONFIDENTIAL D-CNL000265

Highland Capital Management, L.P.
Notes to Consolidated Financial Statements
December 31, 2009

1. Description of Business

Highland Capital Management, L.P. (the "Partnership") was formed on July 7, 1997 as a limited partnership in the state of Delaware. The Partnership is a registered investment advisor under the Investment Advisors Act of 1940 that manages collateralized loan obligations ("CLOs"), registered investment companies ("RICs"), hedge funds, and other leveraged loan transactions that are collateralized predominately by senior secured bank debt and high-yield bonds. The Partnership and its subsidiaries make direct investments in debt, equity, and other securities in the normal course of business. The Partnership's general partner is Strand Advisors, Inc. (the "General Partner"). The Partnership is 100% owned by senior management of the Partnership.

As of December 31, 2009, the Partnership provided investment advisory services in accordance with management agreements for twenty-nine CLOs, nine RICs, four separate accounts, one master limited partnership, and twelve hedge fund structures, with total fee-earning assets under management of approximately $24.5 billion.

2. Summary of Significant Accounting Policies

The following is a summary of the significant accounting policies followed by the Partnership in preparation of its financial statements.

Basis of Accounting
The Partnership's consolidated financial statements have been prepared in accordance with U.S. generally accepted accounting principles ("U.S. GAAP") as set forth in the Financial Accounting Standards Board's Accounting Standards Codification.

Principles of Consolidation
The consolidated financial statements include the accounts of the Partnership and the Partnership's consolidated subsidiaries, which are comprised of (i) those entities in which it has controlling investment of 50% or more and has control over significant operating, financial and investing decisions of the entity, (ii) those entities in which it, as the general partner, has control over significant operating, financial and investing decisions of the entity, and (iii) variable interest entities ("VIEs") in which it is the primary beneficiary as described below.

The Partnership determines whether, if by design, an entity has equity investors who lack the characteristics of a controlling financial interest or does not have sufficient equity at risk to finance its expected activities without additional subordinated financial support from other parties. If an entity has either of these characteristics, it is considered a VIE and must be consolidated by its primary beneficiary, which is the party that, along with its affiliates and de facto agents, absorbs a majority of the VIEs expected losses or receives a majority of the expected residual returns as a result of holding variable interests.

Highland Capital Management, L.P.
Notes to Consolidated Financial Statements
December 31, 2009

Consolidation of Non-Variable Interest Entities
The Partnership consolidates the following non-VIE's (collectively referred to as the "Consolidated Investment Funds"). The Partnership (or its wholly owned subsidiaries) controls the general partner of the respective entities and is responsible for the daily operations:

- Highland Crusader Offshore Partners, L.P. ("Crusader Master"), a Bermuda exempted limited partnership that commenced operations on July 10, 2000;
- Highland CDO Opportunity Master Fund, L.P. ("CDO Master Fund"), a Bermuda limited partnership that commenced operations on November 9, 2005;
- Highland Credit Strategies Master Fund, L.P. ("Credit Strategies Master"), a Bermuda exempted limited partnership that commenced operations on August 24, 2005;
- Highland Credit Opportunities CDO, L.P. ("Credit Opportunities Master"), a Delaware limited partnership that commenced operations on December 29, 2005;
- Highland Multi-Strategy Master Fund, L.P. ("Multi-Strat Master"), a Bermuda limited partnership that commenced operations on July 18, 2006;
- Highland Multi-Strategy Fund, L.P. ("Multi-Strat Domestic Feeder"), a Delaware limited partnership that commenced operations on July 6, 2006;
- Canopy Timberlands, L.P., a Delaware limited partnership that commenced operations on April 29, 2008;
- Highland Restoration Capital Partners Offshore, L.P. ("Restoration Offshore") a Cayman limited partnership that commenced operations on September 2, 2008;
- Highland Restoration Capital Partners, L.P. ("Restoration Onshore") a Delaware limited partnership that commenced operations on September 2, 2008; and
- Highland Restoration Capital Partners Master, L.P. ("Restoration Master") a Delaware limited partnership that began commenced on September 2, 2008.

Consolidation of Variable Interest Entities
The Partnership consolidated the following VIE's as it is the primary beneficiary:

- Highland Financial Corporation ("HFC"), a company incorporated on February 28, 2006 under the laws of the state of Delaware;
- Highland Financial Real Estate Corporation ("HFREC"), a company incorporated on March 15, 2006 under the laws of the state of Maryland; and
- HCM Trident (Delaware) Corporation ("HCM Trident"), a company incorporated on July 3, 2007 under the laws of the state of Delaware.

Highland Capital Management, L.P.
Notes to Consolidated Financial Statements
December 31, 2009

Consolidation of Majority Owned Entities
The Partnership consolidates the following entities as it has a controlling majority interest:

- 100% interest in Highland Capital Management Europe, Ltd. ("Highland Europe"), a company organized in the United Kingdom and purchased by the Partnership on April 6, 2005;
- 100% interest in Highland Capital Special Allocation, LLC ("HCSA"), a Delaware limited liability company that commenced operations on December 21, 2006;
- 100% interest in HFP GP, LLC, a Delaware limited liability company that commenced operations on January 20, 2006;
- 100% interest in Highland Receivables Finance 1, LLC, a Delaware limited liability company that commenced operations on December 29, 2006;
- 100% interest in Highland Capital Management (Singapore) Pte, Ltd, a company organized in the Republic of Singapore that commenced operations on April 2, 2008;
- 100% interest in Highland Employee Retention Assets, LLC, a Delaware limited liability company that commenced operations on October 26, 2009;
- 86.5% interest in HySky Communications, LLC, a Delaware limited liability company that commenced operations on December 22, 2006; and
- 84.5% interest in HE Capital, LLC, a Delaware limited liability company that commenced operations on March 22, 2007.

Deconsolidation of Hedge Funds
The following funds have been deconsolidated for 2009 as the limited partners have been granted substantive participating rights:

- Highland Select Equity Fund, L.P., a Delaware limited partnership that commenced operations on January 1, 2002;
- Highland Equity Focus Fund, L.P., a Delaware limited partnership that commenced operations on September 1, 2002; and
- Highland Capital Real Estate Fund, L.P., a Delaware limited partnership that commenced operation on April 1, 2002.

All significant interpartnership and intercompany accounts and transactions have been eliminated in consolidation of all of the aforementioned consolidated entities. All the Consolidated Investment Funds are, for U.S. GAAP purposes, investment companies under the AICPA Audit and Accounting Guide - Investment Companies. The Partnership has retained the specialized accounting of these funds required under U.S. GAAP.

Investment Transactions
Investment transactions are recorded on a trade date basis. Realized gains and losses on the transactions are determined based on either the first-in, first-out or specific identification method.

Fair Value Measurement
Fair value represents the price that would be received upon the sale of an asset or paid upon the transfer of a liability in an orderly transaction between market participants at the measurement date (exit price). Assets and liabilities measured at fair value are classified into one of the following categories:

- Level 1 – Valuation based on quoted prices in active markets for identical assets and liabilities that the Partnership and the Consolidated Investment Funds have the ability to access as of

Highland Capital Management, L.P.
Notes to Consolidated Financial Statements
December 31, 2009

the measurement date. Valuations utilizing Level 1 inputs do not require any degree of judgment.

- Level 2 – Valuations based on (a) quoted prices for similar instruments in active markets; (b) quoted prices for identical or similar instruments in markets that are not active; or (c) models in which all significant inputs are observable, either directly or indirectly.

- Level 3 – Valuations based on models in which the inputs are unobservable and significant to the fair value measurement, which includes situations where there is little, if any, market activity for the asset or liability.

The availability of observable inputs varies among financial instruments and is affected by numerous factors, including the type of instruments, the period of time in which the instrument has been established in the marketplace, market liquidity for an asset class and other characteristics particular to a transaction. When the inputs used in a valuation model are unobservable, management is required to exercise a greater degree of judgment to determine fair value than it would for observable inputs. For certain instruments, the inputs used to measure the fair value may fall into different levels of the hierarchy discussed above. In those cases, the instruments are categorized for disclosure purposes based on the lowest level of inputs that are significant to their fair value measurements.

The Partnership and Consolidated Investment Funds use prices and inputs that are current as of the measurement dates. The Partnership also considers the counterparty's non-performance risk when measuring the fair value of its investments.

During periods of market dislocation, the ability to observe prices and inputs for certain instruments may change. These circumstances may result in the instruments being re-classified to different levels within the hierarchy over time. They also create an inherent risk in the estimation of fair value that could cause actual amounts to differ from management's estimates.

Whenever possible, the Partnership and its Consolidated Investment Funds use actual market prices or relevant observable inputs to establish the fair value of its assets and liabilities. In cases where observable inputs are not available, the Partnership and Consolidated Investment Funds develop methodologies that provide appropriate fair value estimates. These methodologies are reviewed on a continuous basis to account for changing market conditions.

As of December 31, 2009, the Partnership and its consolidated entities investments consisted of floating rate syndicated bank loans, high yield corporate bonds, CLO securities, private placements, private placement real estate debt and equity, life settlement contracts and common and preferred equity securities. In addition, the consolidated entities are parties to various credit default swaps. The majority of these financial instruments are not listed on national securities exchanges, and management is required to use significant judgment to estimate their values.

The fair value of the loans, corporate bonds and CLO securities are generally based on quotes received from brokers or independent pricing services. Due to the recent disruption in the credit markets, an increasing number of these quotes are derived from implied values, bid/ask prices for trades that were never consummated, or a limited amount of actual trades. The policy of the Partnership and its consolidated subsidiaries is to classify loans and bonds that are prices in this manner as Level 3 assets because the markets in which they trade are not active and the inputs used by the brokers and pricing services are not readily observable. Loans and bonds with quotes that are based on actual trades with a sufficient level of activity on or near the valuation date are classified as Level 2 assets.

The consolidated entities private placement real estate investments include equity interests in limited liability companies and debt issued by entities that invest in commercial real estate. The fair value of these investments is based on internal models developed by the Partnership. The significant inputs to the models include cash flow projections for the underlying properties and appraisals performed by independent valuation firms. Since these inputs are no readily observable, the investments are classified as Level 3 assets.

Common and preferred equity securities traded on national exchanges are valued at their closing prices as of December 31, 2009. These securities are classified as Level 1 assets. The consolidated entities also hold certain equity securities for which no active market exists. The value of these securities, which are classified as Level 3 assets, is based on a combination of broker quotes and internal valuation models.

Life settlement contracts are valued using mortality tables and interest rate assumptions that are deemed appropriate for the demographic characteristics of the parties insured under the policies. Since these inputs are not readily observable, they are classified as Level 3 assets.

The fair value of credit default swaps is based on quotes received from an independent pricing service. The inputs used to derive the quotes are not readily observable and are therefore classified as Level 3.

Refer to Note 5 for the required fair value disclosures.

Management and Incentive Fee Revenue
The Partnership recognizes revenue as earned in connection with services provided under collateral and investment management agreements. Under these agreements, the Partnership earns management fees calculated as a percentage of assets under management or net asset value. The Partnership also has an opportunity to earn additional incentive fees and incentive allocations related to certain management agreements depending ultimately on the financial performance of the underlying assets the Partnership manages. During the year ended December 31, 2009, the Partnership and its consolidated entities recognized management and incentive fees of approximately $92 million, and $1.6 million, respectively. The Partnership recognized approximately $2.9 million of appreciation on incentive fees previously deferred under Sec. 409(A) of the Internal Revenue Code, which has been presented in *Other Income* in the consolidated statement of income.

Dividends, Interest and Expense Recognition
Dividend income and dividends on securities sold, not yet purchased are recorded on the ex-dividend date, net of withholding taxes. Operating expenses, including interest on securities sold short, not yet purchased are recorded on the accrual basis, if any incurred.

Income Taxes
The Partnership is not subject to federal income taxes, and therefore, no provision has been made for such taxes in the accompanying consolidated financial statements. Income taxes are the responsibility of the partners. Certain consolidated subsidiaries are subject to federal income taxes.

Certain entities that are included in these financial statements are subject to federal and/or state income taxes. Deferred tax assets and liabilities are recognized for the future tax consequences attributable to differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax bases. Deferred tax assets and liabilities are measured using enacted tax rates expected to apply to taxable income in the years in which those temporary differences are expected to be recovered or settled. The effect on deferred tax assets and liabilities of a change in tax rates is recognized in the period that includes the enactment date. The following subsidiaries are subject to these provisions: Highland Europe, HFC and HFREC.

The Consolidated Investments Funds are not subject to federal income taxes and therefore no provision has been made in the accompanying consolidated financial statements.

Cash and Cash Equivalents
Cash and cash equivalents consist of cash held at U.S. and foreign banks, deposits with original maturities of less than 90 days, and money market funds. Foreign cash of $4.1 million is included in the cash and cash equivalents on the consolidated balance sheet.

Restricted Cash
The Partnership and its subsidiaries are required to maintain cash balances as collateral for various financing and derivative transactions. These amounts are reported as restricted cash.

Fixed Assets and Leasehold Improvements
Fixed assets and leasehold improvements are carried at cost, less accumulated depreciation. Depreciation is provided using the straight-line method over the shorter of the estimated useful life of the assets or the lease term.

Total Return Swaps
A total return swap agreement is a two-party contract under which an agreement is made to exchange returns from predetermined investments or instruments. The gross returns to be exchanged or "swapped" between the parties are calculated based on a "notional amount," which is valued monthly according to the valuation policy mentioned above to determine each party's obligation under the contract.

Risks could arise from entering into swap agreements from the potential inability of counterparties to meet the terms of their contracts, and from the potential inability to enter into a closing contract. The Partnership's Consolidated Investment Funds recognize all cash flows received (paid) or receivable (payable) from swap transactions on a net basis as realized or unrealized gains or losses in the consolidated statement of income. The Partnership and the Consolidated Investment Funds are charged a finance cost by counterparties with respect to each agreement. The finance cost is reported as part of the realized or unrealized gains or losses.

Credit Default Swaps
As discussed in Note 6, under a credit default swap agreement two parties agree to transfer the credit exposure of an asset between one another. The seller of the swap guarantees the credit worthiness of a specific instrument by agreeing to pay the buying party a specific amount (generally par value) in the event that the instrument defaults.

At December 31, 2009, the Partnership's Consolidated Investment Funds were party to credit default swaps in which it acts as the guaranteeing party. In the event that any of the underlying instruments default prior to the expiration of the agreements, the Consolidated Investment Funds are obligated to pay the swap counterparty the par value of the specific instrument. The Consolidated Investment Funds collect a fee based on the size of the underlying positions which are treated as realized gains once received. The difference between the current market value of the swaps and the original price of the swap is reported as an unrealized gain or loss.

Securities Sold, Not Yet Purchased
The Partnership's Consolidated Investment Funds engage in "short sales" as part of their investment strategies. Short selling is the practice of selling securities that are borrowed from a third party. The Consolidated Investment Funds are required to return securities equivalent to those borrowed for the short sale at the lender's demand. Pending the return of such securities, the Consolidated Investment Funds deposit with the lender as collateral the proceeds of the short sale plus additional cash or securities. The amount of the required deposit, which earns interest, is

adjusted periodically to reflect any change in the market price of the securities that the Consolidated Investment Funds are required to return to the lender.

Securities Loaned
The Partnership's Consolidated Investment Funds may lend securities to their financing counterparties for margin. The lending entity receives the interest associated with the securities loaned. The loans are secured by the fair value of the securities. Gains or losses in the fair value of the securities loaned that occur during the term of the loan will be for the account of the lender. The lender has the right under the lending agreement to recover the securities from the prime brokers on demand. The lender pays a fee to the broker for the cash collateral received. This is accounted for as interest expense. A credit risk exists to the lender under this type of transaction to the extent that the counterparty defaults on its obligation to return the securities loaned.

Options
The Partnership's Consolidated Investment Funds purchase and sell call and put options on equity securities and equity indices as part of its overall portfolio management strategies. Purchased call or put options may be used to obtain economic exposure equivalent to a long or short position, respectively, or to hedge existing or anticipates portfolio positions. Certain options contracts are index options, under which amounts due or payable upon exercise are settled entirely in cash based on the difference between the value of the index at maturity and its contract (or strike) value. The potential risk of loss for purchased options is limited to the premium paid.

The premium paid for the purchase of an option is included in the consolidated balance sheet as an investment and subsequently marked-to-market to reflect the current value of the option. If an option expires on the stipulated expiration date, the Consolidated Investment Funds realize a loss equal to the cost of the option. If the Consolidated Investment Funds enter into a closing sale transaction, the Consolidated Investment Funds realize a gain or loss, depending on whether the proceeds from the closing sale transaction are greater or less than the cost of the option. If the Consolidated Investment Funds exercise a call option, the cost of the securities acquired upon exercise is increased by the premium paid to buy the call. If the Consolidated Investment Funds exercise a put option, it realizes a gain or loss from the sale of the underlying security and the proceeds from such sale are decreased by the premium originally paid.

Margin Transactions
In order to obtain more investable cash, the Partnership and its subsidiaries may use various forms of leverage including purchasing securities on margin. Such leverage may allow the Partnership and its subsidiaries to increase net assets at a greater rate during increasing markets, but also may lead to a more rapid decrease in net assets in a declining market. A margin transaction consists of purchasing an investment with money loaned by a broker and agreeing to repay the broker at a later date. Interest expense on the outstanding margin balance is based on market rates at the time of the borrowing.

Withdrawals Payable
Withdrawals are recognized as liabilities, net of incentive allocations, when the amount requested in the withdrawal notice becomes fixed and determinable. This generally may occur either at the time of receipt of the notice, or on the last day of a fiscal period, depending on the nature of the request. As a result, withdrawals paid after the end of the year, but based upon year-end capital balances are reflected as withdrawals payable at December 31, 2009. Withdrawal notices received for which the dollar amount is not fixed remains in capital until the amount is determined. Withdrawals payable may be treated as capital for purposes of allocations of gains/losses pursuant to the partnerships' governing documents. At December 31, 2009, the Consolidated Investment Funds had withdrawals payable of $36.2 million.

Use of Estimates

Highland Capital Management, L.P.
Notes to Consolidated Financial Statements
December 31, 2009

The preparation of the consolidated financial statements in conformity with U.S. GAAP requires management to make estimates and assumptions that affect the amounts and disclosures in the consolidated financial statements. Actual results could differ from those estimates.

Foreign Currency Transactions
The Partnership's subsidiary Highland Europe uses British Pounds as its functional currency and enters into transactions in multiple foreign currencies. All foreign currency asset and liability balances are presented in U.S. dollars in the consolidated financial statements, translated using the exchange rate as of December 31, 2009. Revenues and expenses are recorded in U.S. dollars using an average exchange rate for the relative period. Foreign currency transaction gains and losses resulting from transactions outside of the functional currency of an entity are included in *Other income* on the consolidated statement of income.

The Consolidated Investment Funds do not isolate that portion of the results of operations resulting from changes in foreign exchange rates or investment or fluctuations from changes in market prices of securities held. Such fluctuations are included within the *Net realized and unrealized gains or loss from investments*.

Financial Instruments
The Partnership and its consolidated entities determine fair value of financial instruments as required by U.S. GAAP. The carrying amounts for cash and cash equivalents, receivables, accounts payable and accrued liabilities approximate their fair values because of their short maturities.

Life Settlement Contracts
One of the Partnership's Consolidated Investment Funds invests in life settlement contracts (the "Policies"). The Policies are reflected as a component of "Investments, at fair value" in the Consolidated Statement of Assets, Liabilities and Partners' capital. Realized and unrealized gains/(losses) on the Policies are reflected in the Consolidated Statement of Income. Cash flows used to purchase the Policies are reflected as a component of "Purchases of Investments" in the Consolidated Statement of Cash Flows.

The Consolidated Investment Funds were invested in 119 policies at December 31, 2009 with a total face value of approximately $1 billion.

Partners' Capital
The Partnership agreement requires that income or loss of the Partnership be allocated to the partners in accordance with their respective partnership interests.

Goodwill and Other Intangible Assets
The Partnership purchased Highland Europe on April 6, 2005. Goodwill represents the amount paid in excess of the fair value of the assets of Highland Europe at the date of acquisition. No goodwill impairments existed as of December 31, 2009.

The Partnership has obtained the rights to the management contracts of certain RICs it manages by acquiring the underlying contracts from the predecessor investment manager. The Partnership performs an impairment test on the purchased investment contracts on an annual basis. Any depreciation in the value of the purchased investment management contracts are accounted for in the year when it occurs. The carrying values of the purchased investment contracts are not adjusted for appreciation. The goodwill and purchased investment management contracts are indefinite-lived assets and are not amortized.

Recently Issued Accounting Standards & Interpretations

Highland Capital Management, L.P.
Notes to Consolidated Financial Statements
December 31, 2009

In September 2009, the FASB issued ASU 2009-06, *Income Taxes (Topic 740)—Implementation Guidance on Accounting for Uncertainty in Income Taxes and Disclosure Amendments for Nonpublic Entities* (formerly proposed as FASB Staff Position No. 48-d, *Application Guidance for Pass-Through Entities and Tax-Exempt Not-for-Profit Entities and Disclosure Modifications for Nonpublic Entities*), which amended Accounting Standards Codification Subtopic 740-10, *Income Taxes – Overall*. ASU 2009-06 clarifies that an entity's assertion that it is a pass-through entity is a tax position and should be assessed in accordance with Subtopic 740-10. Additionally, the ASU provides implementation guidance on the attribution of income taxes to entities and owners. The revised guidance is effective for periods ending after September 15, 2009. The adoption of ASU 2009-06 did not have a material impact on the Partnership's financial position or results of operations at the date of adoption.

In June 2009, the FASB issued Statement of Financial Accounting Standards ("SFAS") No. 168, *The FASB Accounting Standards Codification and the Hierarchy of Generally Accepted Accounting Principles, a replacement of FASB Statement No. 162* (subsequently codified into FASB ASC Topic 105) which established the FASB Accounting Standards Codification ("ASC" or the "Codification") as the single source of authoritative accounting principles for U.S. GAAP issued by the FASB. The Codification supersedes all existing non-SEC accounting and reporting standards and subsequent to adoption, the FASB will issue new standards in the form of ASUs, and no longer as SFASs, FASB Staff Positions or Emerging Issues Task Force Abstracts. The Codification is effective for reporting periods ending on or after September 15, 2009. The adoption of the Codification did not have any impact on the Partnership's financial position or results of operations at the date of adoption.

In April 2009, the FASB issued guidance on determining fair value when the volume and level of activity for an asset or liability has significantly decreased and identifying transactions that are not orderly (originally issued as FASB Staff Position SFAS 157-4, *Determining Fair Value When the Volume and Level of Activity for the Asset or Liability Have Significantly Decreased and Identifying Transactions That Are Not Orderly,* and subsequently codified within FASB ASC Topic 820). The guidance provides additional guidance to expand on the factors that should be considered in estimating fair value when there has been a significant decrease in market activity for an asset or liability. The guidance is effective for interim and annual periods ending after June 15, 2009. The adoption did not have any impact on the Partnership's financial position or results of operations at the date of adoption.

In December 2007, the FASB issued guidance on noncontrolling interests in consolidated financial statements (originally issued as SFAS No. 160, *Noncontrolling Interests in Consolidated Financial Statements—an amendment of ARB No. 51,* and subsequently codified within FASB ASC Topic 810). The guidance requires a company to clearly identify and present ownership interests in subsidiaries held by parties other than the company within the equity section of the consolidated financial statements. Additionally, Topic 810 requires: (i) the amount of consolidated net income (loss) attributable to the controlling and the noncontrolling interests to be clearly identified and presented on the face of the consolidated statements of operations; (ii) acquisitions of noncontrolling interest to be accounted for as equity transactions with no step-up to fair value; (iii) when a subsidiary is deconsolidated, any retained noncontrolling interest and the gain or loss upon deconsolidation to be measured at fair value; and (iv) losses to be allocated to noncontrolling interest regardless of whether cumulative losses have exceeded the noncontrolling interest in the subsidiary's capital. The guidance is effective for reporting periods beginning on or after December 15, 2008. The adoption of the revised guidance did not have any impact on the Partnership's financial position or results of operations at the date of adoption.

In June 2009, the FASB issued amended guidance on accounting for transfers of financial assets (originally issued as SFAS No. 166, *Accounting for Transfers of Financial Assets, an amendment of FASB Statement No. 140,* and subsequently reissued as ASU 2009-16, *Accounting for Transfers of*

Financial Assets). The amendments were issued to improve the information that a reporting entity provides in its financial statements about a transfer of financial assets, the effects of a transfer on its financial statements, and a transferor's continuing involvement, if any, in transferred financial assets. The amendments eliminate the concept of qualifying special purpose entities from U.S. GAAP. These entities will now be evaluated for consolidation in accordance with the applicable consolidation criteria. The amendments are effective for reporting periods beginning on or after November 15, 2009. The adoption of ASU 2009-16 is not expected to have any impact on the Company's financial position or results of operations.

In June 2009, the FASB issued amended guidance on accounting for variable interest entities (originally issued as SFAS No. 167, *Amendments to FASB Interpretation No. 46(R),* and subsequently reissued as ASU 2009-17, *Improvements to Financial Reporting by Enterprises Involved with Variable Interest Entities*). The amendments were issued to address the effects of the removal of the concept of qualifying special purpose entities from U.S. GAAP and to address concerns regarding the consolidation of variable interest entities. ASU 2009-17 will require a qualitative approach rather than a quantitative approach when determining the primary beneficiary of a variable interest entity and will also change the criteria by which an enterprise determines whether it is the primary beneficiary of an entity. In addition, the amended interpretation will no longer consider removal rights when determining whether an entity is a variable interest entity and whether to consolidate a variable interest entity as the primary beneficiary unless those rights are held by a single party. ASU 2009-17 is effective for reporting periods beginning on or after November 15, 2009. The adoption of ASU 2009-17 is not expected to have any impact on the Partnership's financial position or results of operations, as substantially all of the entities in which it holds variable interests will qualify for the scope deferral included in ASU 2010-10, *Amendments to Statement 167 for Certain Investment Funds.*

In February 2010, the FASB issued ASU 2010-10, *Amendments to Statement 167 for Certain Investment Funds.* ASU 2010-10 defers the effective date of ASU 2009-17 for certain investment entities to allow the FASB to work with the International Accounting Standards Board ("IASB") in developing consistent consolidation guidance. The deferral will apply to a reporting entity's (i.e. investment manager's) interest in an entity (i) that has the attributes of an investment company or (ii) for which it is industry practice to apply measurement principles for financial reporting purposes that are consistent with those followed by investment companies. The deferral in ASU 2010-10 would not apply in situations in which a reporting entity has the explicit or implicit obligation to fund actual losses of an entity that could potentially be significant to the entity. ASU 2010-10 is effective for annual reporting periods beginning on or after November 15, 2009, and for interim periods within that first annual reporting period. The adoption of ASU 2010-10 is not expected to have any impact on the Company's financial position or results of operations, as adoption of the deferral results in the Company continuing to apply consolidation and disclosure requirements in effect during prior periods.

In September 2009, the FASB issued Accounting Standards Update ("ASU") 2009-12, *Fair Value Measurements and Disclosures (Topic 820)—Investments in Certain Entities That Calculate Net Asset Value Per Share (or Its Equivalent)* which amended Accounting Standards Codification Subtopic 820-10, *Fair Value Measurements and Disclosures—Overall*. The amended guidance offers investors a practical expedient for measuring the fair value of investments in certain entities that calculate net asset value per share (NAV). The ASU is effective for the first reporting period (including interim periods) ending after December 15, 2009. The Partnership has not yet determined the impact, if any, that the implementation of ASU 2009-12 would have on our consolidated results of operations or financial condition.

3. Fixed Assets and Leasehold Improvements

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Fixed assets and leasehold improvements are comprised of the following as of December 31, 2009:

(in thousands)

Buildings	$ 10,119
Leasehold improvements	4,060
Computer and equipment	3,448
Furniture and fixtures	3,185
Computer software	2,287
Land	1,328
Accumulated depreciation	(9,536)
	$ 14,891

The Partnership and its consolidated entities are depreciating fixed assets as follows:

	Period
Buildings	29 - 40 years
Leasehold improvements	Lease term
Computer and equipment	5 years
Furniture and fixtures	7 years
Computer software	3 years

Depreciation expense in 2009 totaled approximately $4.8 million for the Partnership and its subsidiaries.

The Partnership and its consolidated entities had approximately $16.4 million of capital expenditures in 2009.

4. Investments

Detailed below is a summary of the Partnership and its subsidiaries' investments at December 31, 2009:

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(in thousands)	Amortized Cost/Cost	Fair Value
Investments in floating rate syndicated bank loans	$ 937,360	$ 365,304
Investments in fixed rate syndicated bank loans	6,695	7,822
Investments in fixed income securites	948,995	528,096
Investments in equity securities	1,277,263	761,508
Investments in life settlement contracts	242,472	144,952
Investments in CLOs (mezz tranches)	83,369	37,254
Investments in CLOs (residual CLO equity tranches)	150,381	11,084
Investments in closed-end mutual funds	13,238	12,558
Investments in private placement real estate	132,373	22,372
Investments in limited partnerships	160,133	119,180
Investments in warrants	6,076	9,236
Total investments	$ 3,958,355	$ 2,019,366
Net unrealized gain/loss on credit default swaps	$ (2,563)	$ (102,605)

	Proceeds	Fair Value
Securities sold, not yet purchased	$ 15,093	$ 21,406

Affiliated Investments
Investments in Residual CLO Equity and Mezzanine Tranches
Investments in affiliated residual CLO equity tranches primarily represent tranches of CLOs for which the Partnership and Highland Europe provide investment advisory services. The Consolidated Investment Funds receive quarterly distributions based on the excess interest after paying the stated interest distributions to the senior and mezzanine note holders, and paying the investment manager, trustee and other related fees. A portion of these distributions are amortized against the cost basis of the investment based of the actual cash distributions received during the year versus the total expected remaining cash distributions to the residual CLO equity tranche. The remainder of the distribution is recorded as interest income.

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Investments in residual equity and mezzanine tranches of CLOs are not actively traded. The estimated fair value of the CLOs is derived from broker quotes and valuation models. The estimated fair value of these investments as presented in the consolidated balance sheet does not necessarily represent the amount that could be obtained from the sale of these investments. Changes in the credit quality or the performance of the underlying collateral, the availability and price of assets available for reinvestment, interest rates and/or the interest rate curve, or other market conditions could have a material impact on the estimated fair value of the investments.

Investment in Highland Special Situations Fund
The Partnership invests in Highland Special Situations Fund ("HSSF"), a diversified, closed end RIC for which the Partnership provides investment advisory services. As of December 31, 2009, the market value of the Partnership's investment in HSSF was approximately $3 million. During the year ended December 31, 2009, the Partnership accrued approximately $0.2 million in dividends from HSSF.

Investment in Highland Long/Short Equity Fund
The Partnership invests in Highland Long/Short Equity Fund ("HEOF"), a diversified, open-end RIC for which the Partnership provides investment advisory services. As of December 31, 2009, the market value of the Partnership's investment in HEOF was approximately $0.2 million.

Investment in Highland Healthcare Fund
The Partnership invests in Highland Healthcare Fund ("HHF"), a non-diversified, open-end RIC for which the Partnership provides investment advisory services. As of December 31, 2009, the market value of the Partnership's investment in HHF was approximately $3.6 million.

Investment in Highland Credit Strategies Fund
The Partnership invests in Highland Credit Strategies Fund ("HCF"), a diversified, closed-end RIC for which the Partnership provides investment advisory services. As of December 31, 2009, the market value of the Partnership's investment in HCF was approximately $4 million. During the year ended December 31, 2009, the Partnership received approximately $0.1 million in dividends from HCF.

Prepaid Forward Contract
On July 28, 2006, Highland Multi-Strategy Onshore Master Subfund I, LLC ("Subfund") and Barclays Bank PLC ("Barclays") entered into a prepaid forward contract. The Partnership and affiliates redeemed approximately $312.7 million of a reference portfolio, which was comprised of the following basket of funds advised by the Partnership: Highland Crusader Offshore Fund II, Ltd., Credit Strategies Domestic Feeder, Highland CDO Opportunity Fund, Ltd., Real Estate Fund, Equity Focus Fund and Select Equity Fund. Barclays simultaneously contributed approximately $312.7 million as a hedge to its obligation under the prepaid forward contract.

Barclays was prepaid approximately $156.3 million, or one-half of the reference portfolio value at initiation of the transaction. A notional amount, (the initial reference portfolio value less the amount prepaid), accretes interest to Barclays at monthly LIBOR plus 0.90% per annum.

A collateral account in the amount of approximately $53.2 million was established to further secure the transaction. Due to extreme market volatility, all of the underlying holdings in the collateral account were sold during 2008.

The term of the prepaid forward contract was three years and allowed for net settlement upon termination. The contract expired on July 31, 2009 whereby Barclays was to remit in cash the greater of the difference between the reference portfolio value and the notional amount, as valued on the scheduled termination date, or zero. Upon expiration, Barclays was not obligated to make a cash payment to the Subfund.

On October 7, 2008, Barclays submitted a notice of early termination for the prepaid forward contract. Refer to Note 17 for further discussion.

Accreting Strike Option
On February 28, 2007, Highland Multi-Strategy Onshore Master Subfund II, LLC entered into an Accreting Strike Option ("ASO") with Barclays. The ASO's value is based on the following basket of funds ("the reference portfolio") advised by the Partnership: Highland Crusader Offshore Fund II, Ltd., Credit Strategies Domestic Feeder, Highland CDO Opportunity Fund, Ltd., Real Estate Fund, Equity Focus Fund, Select Equity Fund and Credit Opportunities Domestic Feeder. The value of the reference portfolio at inception was approximately $250.2 million

Barclays was paid a $71.4 million premium on the option. The strike price, (the initial reference portfolio value less the premium paid), accretes interest to Barclays at monthly LIBOR plus 1.4% per annum. As of December 31, 2009, the strike price was approximately $179.6 million.

The term of the accreting strike option is five years and allows for net settlement upon termination. At contract expiration, Barclays will remit in cash the greater of the difference between the reference portfolio value and the strike price, as valued on the scheduled termination date, or zero. As of December 31, 2009, the ASO did not have a positive net fair value.

Detailed below is a summary of the transaction as of December 31, 2009:

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(in thousands)

Reference Portfolio	Fair Value
Select Equity Fund	$ 110,491
Crusader Domestic Feeder	12,156
Equity Focus Fund	6,974
Credit Opportunities Domestic Feeder	3,238
Real Estate Fund	-
Highland CDO Opportunity Fund, Ltd.	-
Credit Strategies Domestic Feeder	-
Reference portfolio total	132,859
Notional amount	(179,563)
Fair value of accreting strike option	(46,704)

On October 13, 2008, Barclays served notice of early termination for the accreting strike option. Refer to Note 16 for further discussion.

Investment in Highland Employee Retention Assets LLC ("HERA")
During 2009, the Partnership established HERA, an employee deferred compensation vehicle. On October 26, 2009, approximately $12.1 million of assets were transferred to HERA. As of December 31, 2009, the Partnership's equity investment in HERA was approximately $11 million.

5. Fair Value of Financial Instruments

As discussed in Note 2, the Partnership and its consolidated entities categorize investments recorded at fair value in accordance with the hierarchy established under U.S. GAAP. A majority of the Consolidated Investment Fund's investments and derivatives at December 31, 2009 are classified as Level 3 positions due to the absence of active markets with quoted prices for identical or similar investments. The following table provides a summary of the financial instruments recorded at fair value on a recurring basis by level within the hierarchy as of December 31, 2009:

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(in thousands)

	Level 1	Level 2	Level 3	Estimated Fair Value at 12/31/09
Loans	$ -	$ 16,048	$ 357,077	$ 373,125
Bonds & Asset Backed Securities	-	148,511	402,020	550,531
Collateralized loan obligations	-	-	16,001	16,001
Rights & Warrants	3,275	-	4,995	8,270
Private placement real estate	-	-	12,180	12,180
Limited partnership interest	11,552	-	129,372	140,924
Common equity securities	133,123	-	245,612	378,735
Mutual Funds	9,605	-	2,952	12,557
Privately held equity	-	-	246,090	246,090
Life Settlement Contracts	-	-	144,952	144,952
Preferred stock	-	-	136,000	136,000
Common stock sold short	(21,406)	-	-	(21,406)
Credit Default Swaps	-	-	(102,605)	(102,605)
Total	$ 136,149	$ 164,559	$ 1,594,646	$ 1,895,354

The following table provides a roll forward of the investments classified within Level 3 for the year ended December 31, 2009:

(in thousands)

	Estimated Fair Value as of December 31, 2008	Purchases, Sales and Maturities, Net Level 3	Net Transfers In/(Out) of Level 3	Net Realized Losses	Net Unrealized Gains / (Losses)	Total Fair Value at December 31, 2009
Loans	$ 337,962	$ 32,004	$ 22,878	$ (49,165)	$ 13,398	$ 357,077
Bonds & Asset Backed Securities	469,197	(122,399)	(6,469)	(241,960)	303,651	402,020
Collateralized loan obligations	123,730	(57,985)	-	(385,826)	336,082	16,001
Rights & Warrants	192	(871)	(140)	(5)	5,819	4,995
Private placement real estate	68,721	(12,461)	14,100	(9,337)	(48,843)	12,180
Limited partnership interest	137,544	(13,274)	120	6,002	(1,020)	129,372
Common equity securities	304,595	(10,149)	-	(14,434)	(34,400)	245,612
Mutual Funds	2,094	-	-	-	858	2,952
Privately held equity	109,543	(45,119)	-	(34,963)	216,629	246,090
Life Settlement Contracts	199,178	(6,123)	-	(7,595)	(40,508)	144,952
Preferred stock	175,778	3,085	-	-	(42,863)	136,000
	$ 1,928,534	$ (233,292)	$ 30,489	$ (737,283)	$ 708,803	$ 1,697,251

The following table provides a roll forward of the derivative contracts classified within Level 3 for the year ended December 31, 2009:

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(in thousands)

Estimated Fair Value as of December 31, 2008	$	(194,761)
Settlement of open contracts, net		123,096
Net transfers in/(out) of Level 3		-
Net realized losses		(126,158)
Net change in unrealized gain		95,218
Estimated Fair Value as of December 31, 2009	$	(102,605)

6. Derivative Financial Instruments

Effective January 1, 2009, the Consolidated Investment Funds adopted the amended authoritative guidance on disclosures about derivative instruments. The new requirement amends and expands the disclosure requirement related to derivative instruments, to provide users of the financial instruments with an enhanced understanding of the use of derivative instruments by the Consolidated Investment Funds and how these derivatives affect the financial condition, financial performance, and cash flows of the Consolidated Investment Funds. This guidance requires qualitative disclosures about the objectives and strategies for using derivative instruments, quantitative disclosures about their fair value of, and gains and losses on, derivative instruments, as well as disclosures about credit-risk-related contingent features in derivative agreements.

Credit Default Swaps

The Consolidated Investment Funds enter into credit default swaps to simulate long and short bond positions that are either unavailable or considered to be less attractively priced in the bond market. The Consolidated Investment Funds use these swaps to manage risk where they have exposure to the issuer, or to take an active long or short position with respect to the likelihood of an event of default.

The buyer of a credit default swap is generally obligated to pay the seller a periodic stream of payments over the term of the contract in return for a contingent payment upon the occurrence of a credit event with respect to an underlying reference obligation. A credit event for corporate reference obligations includes bankruptcy, failure to pay, obligation acceleration, repudiation/moratorium or restructuring. If a credit event occurs, the seller must pay the contingent payment to the buyer, which is typically the par value (full notional value) of the reference obligation, though the actual payment may be mitigated by terms of the International Swaps and Derivative Agreement ("ISDA"), allowing for netting arrangements and collateral. In addition, the payment may be reduced by anticipated recovery rates, segregated collateral and netting arrangements that may incorporate multiple transactions with a given counterparty.

The seller of credit default swaps receives a fixed rate of income throughout the term of the contract, which typically is between one month and five years, provided that no credit event occurs. If a credit event occurs, the seller may be required to pay the buyer the full notional value of the reference obligation.

As of December 31, 2009, the Consolidated Investment Funds sellers of credit default swaps ("providing protection") on a total notional amount of $248.6 million. The notional amount of the swaps is not recorded in the financial statements; however it approximates the maximum potential amount of future payments that the Consolidated Investment Funds could be required to make if they are the seller of protection and a credit event were to occur. The fair value of the swaps as of December 31, 2009 was approximately ($102.6 million), and the Consolidated Investment Funds have posted approximately $144.4 million of cash collateral with the counterparty to secure these unrealized losses.

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The Consolidated Investment Funds reduced their overall exposure to credit default swaps by closing several positions, which generated approximately $78.7 million of net realized losses that are recorded in the Consolidated Statement of Operations as a component of net realized losses from investment transactions. The Consolidated Investment Fund's average exposure to credit default swap contracts for which it provided protection during the year ended December 31, 2009 was approximately $247 million.

The following table provides a summary of the Consolidated Investment Fund's maximum exposure by maturity credit rating under the swaps for which it sold protection. All of the contracts mature within the next five years.

(in thousands)

Current issuer credit rating*	
BBB	$ 29,500
B+	7,500
B	7,500
B-	20,250
CC	135,410
	$ 200,160

* The credit rating on the underlying bond provides an indicator of the risk that the Consoliated Investment Funds will have to perform under the swap arrangement. Lower credit ratings with a shorter contract term indicate a higher likelihood of performance by the Consolidated Investment Funds.

Total Return Swaps
A total return swap is a two-party contract under which the parties agree to exchange returns from a predetermined portfolio of investments. The gross returns to be exchanged or swapped between the parties are calculated based on a notional amount, which is valued monthly to determine each party's obligation under the contract. All of the Consolidated Investment Fund's total return swap programs were terminated in 2009. As of December 31, 2009, approximately $45.2 million was owed to various counterparties, on a net basis. Approximately $54.1 million of cash and securities have been posted to secure the balance payable. During the year, the Consolidated Investment Funds realized $96.4 million in realized losses related to the contracts closed out during the year.

7. Debt and Notes Payable

Consolidated debt and notes payable as of December 31, 2009 consists of:

(in thousands)	**December 31, 2009**
Partnership revolving credit facility	$ 143,435
Credit Opportunities Master note payable	128,603
HCREA Nolen Drive note payable	7,005
Partnership promissory note	466
	$ 279,509

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Revolving Credit Facility
On July 21, 2009, the Partnership amended and restated its credit agreement with Bank of America as syndication agent and The Bank of Nova Scotia as administrative agent in the amount of $147.3 million (the "Credit Agreement"). The Credit Agreement provides for loans which are scheduled to mature on July 21, 2011.

Interest is payable on the last day of each month. The applicable spread for LIBOR loans under the Credit Agreement is LIBOR plus 5% per annum. For base rate loans, the spread is 4% per annum over the prevailing prime rate.

Under the terms of the Credit Agreement, the availability of credit was subject to financial covenants requiring the Partnership to maintain a minimum amount of fee earning assets under management, a minimum amount of management fees earned, a minimum collateral ratio and a maximum on compensation paid.

On September 15, 2009, the Credit Agreement was amended and restated to clarify some documentation items. On February 22, 2010, the Credit Agreement was amended a second time to clarify some of the reporting requirements.

The fair value of the facility as of December 31, 2009 was approximately $127 million.

Promissory Note
On January 4, 2006, the Partnership received a promissory note (the "Promissory Note") from Compass Bank in the amount of $2 million. The Partnership must make monthly payments of principal and accumulated interest on the fifth day of each month. The Promissory Note will mature on February 1, 2011. On February 8, 2007, the Partnership and Compass Bank modified the Promissory Note, which reduced the interest rate from 2.0% to 1.7% in excess of LIBOR. The outstanding balance of the Promissory Note as of December 31, 2009 was $0.5 million. As of December 31, 2009, the estimated fair market value of the note was approximately equal to the carrying value.

Credit Opportunities Master Note Payable
On December 19, 2008, Highland Credit Opportunities CDO Financing, LLC ("CDO Financing"), a wholly-owned subsidiary of Credit Opportunities Master, executed a Note Purchase Agreement (the "Purchase Agreement") with certain investors that provided for the issuance of up to $218 million of senior secured convertible notes guaranteed by Credit Opportunities Master. Pursuant to the terms of the Purchase Agreement and concurrent with the execution of the Purchase Agreement, CDO Financing issued $116.6 million of senior secured convertible notes for $115.6 million of cash and securities with a fair value of $0.9 million. The proceeds from the notes were used primarily to fund an additional equity investment in Highland Credit Opportunities, Ltd. (the "CDO"). This investment was required under the terms of a forbearance agreement that the Credit Opportunities Master executed with the Majority Controlling Class of the CDO's note holders.

The notes have a stated maturity date of December 31, 2012 and accrue interest on a quarterly basis at a rate of 25% per year. The terms of the Purchase Agreement allow for up to 75% of the accrued interest due at any payment date to be capitalized as additional principal owed to the holders of the notes. For the year ended December 31, 2009, approximately $12 million of interest payable was capitalized and issued to the note holders.

Subject to certain conditions, the Purchase Agreement allows for CDO Financing to issue up to $101.4 million of additional notes to the existing note holders. The Purchase Agreement requires payment of a fee of 2.5% per annum on the unfunded portion of the note commitment. For the year ended December 31, 2009, approximately $2.6 million of unfunded commitment fees is recorded in

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interest expense in the Credit Opportunities Master's consolidated statement of operations. As of December 31, 2009, a liability of approximately $2.7 million is included in interest payable in Credit Opportunities Master's consolidated statement of assets, liabilities, and partners' capital.

Under the terms of the Purchase Agreement, the Credit Opportunities Master may not make any prepayments until July 1, 2010. From July 1, 2010 through December 31, 2010, the Credit Opportunities Master may elect to prepay 50% of the outstanding principal balance. After that period, Credit Opportunities Master may prepay all or a portion of the outstanding principal, provided that each partial payment made to the note holders is in an aggregate principal amount of at least $0.5 million.

The Purchase Agreement stipulates a premium due to the note holders upon full or partial payment of the outstanding principal of the notes. The premium due is determined by the date the principal is repaid and is calculated as a percentage of that principal balance, with a minimum of 5% due on the stated maturity date of the notes. The following table presents the premium rates by payment period:

Prepayment Period	Fees
July 1, 2010 - Dec. 31, 2010	15.0%
July 1, 2011 - Dec. 31, 2011	10.0%
July 1, 2012 - Dec. 31, 2012	6.0%
Dec. 31 2012	5.0%

Credit Opportunities Master is accruing the minimum premium due, 5% of the outstanding balance, over the contractual life of the notes using the effective-yield method. For the year ended December 31, 2009, approximately $0.9 million of this premium due is recorded as a component of interest expense in Credit Opportunities Master's consolidated statement of operations. As of December 31, 2009 a liability of approximately $0.9 million for the total premium recognized over the life of the notes is included in interest payable in Credit Opportunities Master's consolidated statement of assets, liabilities, and partners' capital.

At the note holders' option, up to 50% of the unpaid principal and accrued interest on the notes may be converted, in whole or in part, to limited partnership interests in the Feeder Fund or Credit Opportunities Master between January 1, 2010 and June 30, 2010. From July 1, 2010 through December 31, 2012, up to 100% of the unpaid principal and accrued interest on the notes may be converted, in whole or in part, to limited partnership interests in the Feeder Fund or Credit Opportunities Master.

The Purchase Agreement grants the note holders a lien on certain assets held by Credit Opportunities Master. In addition, it requires Credit Opportunities Master and the CDO to comply with various financial covenants. Failure to meet these covenants may result in an event of default and give the note holders the right to accelerate repayment of the debt or initiate a liquidation of certain assets. Credit Opportunities Master was in compliance with the covenants as of December 31, 2009 and for the year then ended. As of December 31, 2009, the estimated fair value of the notes was approximately $167.4 million, which is based on value of the risk-adjusted yield from the expected future cash flows of the notes relative to comparable investments. Actual values may vary significantly from the estimates, particularly since the terms of the Company's debt are complex, and the market for the instruments is illiquid.

HCREA Nolen Drive Note Payable
On September 18, 2006, Nolen Drive entered into a $7 million note payable with Artesia Mortgage Capital Corporation, which is secured by the underlying property in Nolen Drive (the "Term Loan"). The Term Loan matures with all principal and accrued interest due on October 11, 2011. The Term

Loan bears interest at a rate of 6.52% per annum. Payments are due on the 11th of every month. As of December 31, 2009, the estimated fair market value of the note was approximately $7.2 million.

8. Financial Instruments with Concentration of Credit and Other Risks

Financial Instruments
The Partnership and its consolidated entities' investments include, among other things, equity securities, debt securities (both investment and non-investment grade) and bank loans. The consolidated entities may also invest in derivative instruments, including total return and credit default swaps. Investments in these derivative instruments throughout the year subject the consolidated entities to off-balance sheet market risk, where changes in the market or fair value of the financial instruments underlying the derivative instruments may be in excess of the amounts recognized in the Statement of Assets, Liabilities and Partners' Capital.

Market Risk
Market risk represents the potential loss that may be incurred by the Master Partnership due to a change in the market value of its investments or the value of the investments underlying swap agreements. The Partnership and its Consolidated Investment Fund's exposure to market risk is affected by a number of factors, including the size, composition and diversification of its investments and swap agreements; interest rates; and market volatility. The Partnership and its Consolidated Investment Funds use various forms of leverage, including notes, which increase the effect of any investment value changes on net assets.

Credit Risk
Credit risk is the potential loss the Partnership and its consolidated entities may incur as a result of the failure of a counterparty or an issuer to make payments according to the terms of a contract. Because the consolidated entities enter into over-the-counter derivatives such as swaps, it is exposed to the credit risk of their counterparties. To limit the credit risk associated with such transactions, the consolidated entities execute transactions with financial institutions that the Investment Manager believes to be financially viable.

Liquidity Risk
The Consolidated Investment Fund's limited partner interests have not been registered under the Securities Act of 1933 or any other applicable securities law. There is no public market for the interests, and neither the Consolidated Investment Funds nor their manager expect such a market to develop.

Business Risk
The Partnership provides advisory services to the consolidated investment funds. The Consolidated Investment Funds could be materially affected by the actions and liquidity of the Partnership.

High Yield Bonds and Loans
The Partnership and its Consolidated Investment Funds may invest in high-yield bonds that have been assigned a lower rating category or are not rated by various credit rating agencies. Bonds in the lower rating categories are generally considered to be speculative with respect to the issuer's ability to repay principal and pay interest. They are also subject to greater risks than bonds with higher ratings in the case of deterioration of general economic conditions. Due to these risks, the yields and prices of lower-rated bonds are generally volatile, and the market for them is limited, which may affect the ability to liquidate them if needed. In addition, certain of the Consolidated Investment Funds' investments have resale or transfer restrictions that further reduce their liquidity. The Consolidated Investment Funds also invest in senior secured syndicated bank loans and enter into direct contractual relationships with the corporate borrowers. As such, the Partnership and its

Consolidated Investment Funds are exposed to certain degrees of risk, including interest rate risk, market risk and the potential non-payment of principal and interest, including default or bankruptcy of the corporate borrower.

The current economic recession has severely disrupted the market for most high-yield bonds and loans and may continue to have an adverse effect on the value of such instruments. It is also probable that the economic downturn could adversely affect the ability of the issuers of such securities to repay principal and interest thereon and increase the incidence of default for such securities.

CLO Equity Investments
The Partnership and its Consolidated Investment Funds may invest in CLO equity that are not rated by various credit rating agencies and are generally considered to be speculative with respect to the issuer's ability to repay principal and interest. The yields and prices of these non-rated CLO equity tranches are generally volatile, and the market for them is limited, which may affect the ability to liquidate them if needed. In addition, certain of the Consolidated Investment Funds' investments have resale or transfer restrictions that further limit their liquidity. Given a backdrop of deteriorating general economic conditions, the Partnership and its consolidated investment funds are exposed to the potential non-payment of principal and interest from their CLO equity investments. As of December 31, 2009, 2 of the 29 CLO's managed by the Partnership paid interest to the equity holders on their last payment date.

Distressed Investments
A portion of the high yield corporate bonds and senior secured syndicated bank loans in which the Partnership and its Consolidated Investment Funds invest have been issued by distressed companies in an unstable financial condition. These investments have substantial inherent risks. Many of these distressed companies are likely to have significantly leveraged capital structures, which make them highly sensitive to declines in revenue and to increases in expenses and interest rates. The leveraged capital structure also exposes the companies to adverse economic factors, including macroeconomic conditions.

Credit Default Swaps
Credit default swaps involve greater risks than if the Partnership or its Consolidated Investment Funds had shorted the reference obligations directly. In addition to the market risk discussed above, credit default swaps are subject to liquidity risk and credit risk. If a credit event occurs, the value of the reference obligation received by the Partnership or its Consolidated Investment Funds, couple with the periodic payments previously received, may be less than the full notional amount it pays to the buyer, resulting in loss of value.

Limited Diversification
The Investment Manager attempts to diversify the Consolidated Investment Funds' investments. However, the Consolidated Investment Funds' portfolio could become significantly concentrated in any one issuer, industry, sector strategy, country or geographic region, and such concentration of credit risk may increase the losses suffered by the Consolidated Investment Funds. In addition, it is possible that the Investment Manager may select investments that are concentrated in certain classes of financial instruments. This limited diversity could expose the Consolidated Investment Funds to losses that are disproportionate to market movements as a whole.

Custody Risk
The clearing operations for the Partnership and its Consolidated Investment Funds are provided by major financial institutions. In addition, all of the Partnership and its Consolidated Investment Funds' cash and investments are held with banks or brokerage firms, which have worldwide custody facilities and are members of all major securities exchanges. The Partnership or its Consolidated Investment Funds may lose all or a portion of the assets held by these banks or

brokerage firms if they become insolvent or fail to perform pursuant to the terms of their obligations. While both the U.S. Bankruptcy Code and the Securities Investor Protection Act of 1970 seek to protect customer property in the event of a broker-dealer's failure, insolvency or liquidation, the Partnership and its Consolidated Investment Funds' might be unable to recover the full value of their assets or incur losses due to their assets being unavailable for a period of time.

Leverage Risk
The Consolidated Investment Funds may borrow funds from brokers, banks and other lenders to finance its trading operations. The use of leverage can, in certain circumstances, magnify the losses to which the Consolidated Investment Funds' investment portfolio may be subject. The use of margin and short-term borrowings creates several risks for the Consolidated Investment Funds. If the value of the Consolidated Investment Funds' securities fall below the margin level required by a counterparty, additional margin deposits are required. If the Consolidated Investment Funds are unable to satisfy a margin call, the counterparty could liquidate the position in some or all of the financial instruments that are in the account at the prime broker and cause the Consolidated Investment Funds to incur significant losses.

The failure to satisfy a margin call, or the occurrence of other material defaults under margin or other financing agreements, may trigger cross-defaults under the Consolidated Investment Funds' agreements with other brokers, lenders, clearing firms or other counterparties, multiplying the adverse impact to the Consolidated Investment Funds. In addition, because the use of leverage allows the Consolidated Investment Funds to control positions worth significantly more than its investment in those positions, the amount that the Consolidated Investment Funds may lose in the event of adverse price movements is high in relation to the amount of their investment.

In the event of a sudden drop in the value of the Consolidated Investment Funds' assets, the Consolidated Investment Funds may not be able to liquidate assets quickly enough to satisfy their margin or collateral requirements. As a result, the Consolidated Investment Funds may become subject to claims of financial intermediaries, and such claims could exceed the value of its assets. The banks and dealers that provide financing to the Consolidated Investment Funds have the ability to apply discretionary margin, haircut, financing and collateral valuation policies. Changes by banks and dealers in any of the foregoing may result in large margin calls, loss of financing and forced liquidations of positions and disadvantageous prices.

Foreign Currency Risk
The Partnership and its Consolidated Entities may invest in securities or maintain cash denominated in currencies other than the U.S. dollar. The Partnership and its Consolidated Entities are exposed to risk that the exchange rate of the U.S. dollar relative to other currencies may change in a manner that has an adverse effect on the reported value of the Partnership and its Consolidated Entities' assets and liabilities denominated in currencies other than the U.S. dollar.

Concentration of Investments
At December 31, 2009, the Consolidated Investment Funds' investments and derivative contracts were predominantly concentrated in the United States and Cayman Islands and across several industries.

Wind-Down Risk
The ultimate proceeds that the Consolidated Investment Funds' are able to realize on the sale of its investments will directly affect the amounts that the investors in the Feeder Funds are able to redeem in connection with the wind down process. These amounts may differ materially from the partners' capital balances as of December 31, 2009.

Litigation Risk

The Partnership and its Consolidated Investment Funds are periodically subject to legal actions arising from the ordinary course of business. In addition, certain of the Consolidated Investment Funds' Feeder Fund investors have filed lawsuits after receiving notification of the decision to wind-down certain Consolidated Investment Funds' investment portfolios. Refer to Note 16 for a discussion of the open litigation.

9. Related Party Transactions

Expenses Reimbursable by Funds Managed
In the normal course of business, the Partnership typically pays invoices it receives from vendors for various services provided to the investment funds the Partnership manages. A summary of these eligible reimbursable expenses are then submitted to the trustee/administrator for each respective fund, typically on a quarterly basis, and the Partnership receives payment as reimbursement for paying the invoices on behalf of the respective funds. As of December 31, 2009, approximately $9.3 million in reimbursable expenses were due from various affiliated funds and entities for these eligible expenses, and is included in *Other current assets* in the accompanying consolidated balance sheet.

Long Term Incentive Plan and Intercompany Loan Payable to Highland Capital Management Services, Inc. ("HCMSI")
Effective January 1, 2001, all of the Partnership's employees were transferred to HCMSI, which provides personnel management and consulting services to the Partnership. The Partnership and HCMSI entered into a management agreement whereby the Partnership compensated HCMSI for its employee expenses plus a consulting services fee. As of January 1, 2005, there were no further transactions with HCMSI as all employees were transferred to the Partnership.

Effective January 1, 2001, HCMSI approved a long-term incentive plan ("the LTIP") for select employees who are eligible to receive Long-Term Incentive Units ("the Units") under the LTIP. The number of Units authorized under the LTIP is 30,000,000 and a majority of the Units granted vest 40% during the grant year and 30% for each of the two years thereafter, expiring 10 years after such grant date, unless different terms are agreed upon between the Plan Administrator and the employee. The fair value of the Units are based upon the fair value of the Partnership, as determined in good faith, by James Dondero, the Plan Administrator and the sole shareholder of the general partner and a limited partner of the Partnership. The LTIP was transferred to the Partnership from HCMSI on January 1, 2005.

The Units are exercisable at the discretion of the Plan Administrator, or upon a triggering event defined as the earlier of the following events:

- Change in control
- Initial public offering
- Participant's voluntary or involuntary termination due to death, disability, retirement, or hardship
- Participant's voluntary or involuntary termination other than due to death, disability, retirement, hardship, or cause is exercisable to the extent the Participant is entitled to only 80% of the vested shares.

A total of 2,479,281 Units are outstanding as of December 31, 2009 under the LTIP. During the year ended December 31, 2009, the liability under the LTIP decreased by approximately $4.1 million, which is included in *Compensation and benefits* in the consolidated statement of income.

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The total balance payable to HCMSI was approximately $2.6 million as of December 31, 2009, which is related to the LTIP accrual.

Effective December 31, 2004, all of the employees at HCMSI were transferred to the Partnership, and the management agreement between the Partnership and HCMSI was terminated as to the provision of future services. However, all of the outstanding and unfunded obligations of the Partnership to HCMSI as of December 31, 2004, as well as any additional obligations that may arise in relation to these amounts, will continue to be due and payable to HCMSI until satisfied in accordance with the provisions of the agreements in place.

Accounts Held with Related Party
During the year the Partnership and its subsidiaries maintained accounts at NexBank, SSB ("NexBank"), a related party by way of common control. As of December 31, 2009, balances in the accounts were approximately $52.2 million.

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Controlling Positions
Various members of the Partnership's management serve as members on the Boards of Directors for some of the companies with which it invests. Because these individuals participate in the management of these companies, investments held by the Partnership and its subsidiaries in these companies may, from time to time, not be freely tradable. Any director's fees received by the Partnership for these services as directors are paid to and retained by the Partnership. As of December 31, 2009, the Partnership and its subsidiaries held the following investments in these companies:

(in thousands)

Issuer	Type of Investment	Fair Value
American Banknote Corporation	Common Equity	$ 25,564
Biosyntech	Bond	2,963
Biosyntech	Options	1,529
Biosyntech	Common Equity	434
Blackwell BMC, LLC	Term Loan	3,201
Broadstripe Holdings, LLC	Loan Revolver	2,363
Broadstripe Holdings, LLC	Term Loan - First Lien	8,857
Broadstripe Holdings, LLC	Term Loan - Second Lien	4,265
Complete Genomics	Preferred Equity	8,497
Consolidated Restaurant Companies, Inc.	Term Loan	20,263
Cornerstone Healthcare Group Holding, Inc.	Common Equity	48,205
Cornerstone Healthcare Group Holding, Inc.	Term Loan	17,031
Cornerstone Healthcare Group Holding, Inc.	Loan - Second Lien	4,537
Decision One Corporation	Term Loan	981
Decision One Corporation	Term Loan B	1,578
Epocal, Inc.	Preferred Equity	68,613
Ginn-LA Resorts Holdings, LLC	Term Loan	1,027
Highland Special Situations Fund	Mutual Fund	2,952
Highland Long/Short Equity Fund	Mutual Fund	225
Highland Healthcare Fund	Mutual Fund	3,571
Highland Credit Strategies Fund	Closed-End Mutual Fund	4,012
Home Interiors & Gifts, Inc.	Proof of Claims	210
Marcal Paper Mills, LLC	Common Equity	8
Nex-Tech Aerospace Holdings, Inc.	Common Equity	134
Romacorp Restaurant Holdings, Inc.	Common Equity	480
Safety-Kleen Inc.	Common Equity	115,471
Solstice Neurosciences, Inc.	Preferred Equity	14,686
Terrestar	Preferred Equity	1,772
Trussway Industries, Inc.	Common Equity	15,993

During the year ended December 31, 2009, the Partnership earned approximately $0.2 million of income from those entities where members of management serve as members of the Board of Directors. The amount is included in *Other income* in the consolidated statement of income.

Investment in Affiliated Loans
During the year, certain subsidiaries of the Partnership were invested in several bank loans in which NexBank, SSB, an affiliate of the Partnership, was the agent bank. Interest earned on the loans during the year was approximately $16.3 million. At December 31, 2009, these subsidiaries

were invested in NexBank, SSB agented loans with commitments and market values totaling approximately $323.6 million and $85.1 million, respectively.

Affiliated Transactions

On August 20, 2008, the Partnership issued a promissory note in the amount of $330,000 to an employee of the Partnership. The note accrues interest at a rate of LIBOR plus 1.75%. The note is payable in one lump sum on the earlier of August 20, 2015 or an event of acceleration. The note has specific forgiveness provisions of principal and interest prior to maturity if certain milestone dates are obtained. As of December 31, 2009, the principal amount on the promissory note was $259,286 with interest accrued of approximately $2,000.

On August 1, 2008, the Partnership issued a promissory note in the amount of $500,000 to an employee of a subsidiary. The note accrues interest at a rate of LIBOR plus 1.75%, compounded quarterly. The note is payable in one lump sum on the earlier of August 1, 2011 or an event of acceleration. As of December 31, 2009, the principal amount on the promissory note was $500,000 with interest accrued of approximately $20,000.

On October 20, 2008, the Partnership received a Highland Financial Partners, L.P. (“HFP”) senior secured note in the amount of $22.3 million from CDO Master Fund. The note was transferred to the Partnership to satisfy a prior obligation. The Partnership received assets from HFP of approximately $7.4 million on March, 26, 2009 for satisfaction of the note.

On September 26, 2008, HFP issued $316 million of senior secured notes to the Consolidated Investment Funds in exchange for an interest in certain assets which included collateralized loan obligation securities. Due to a lack of a transfer of control caused by certain restrictive covenants associated with the exchange, these assets continue to be recognized on the Consolidated Statement of Assets, Liabilities and Partners’ Capital of the Consolidated Investment Funds. Upon full payment of the outstanding principal of the senior secured notes, the restrictive covenants of the assets will be satisfied and HFP will have unencumbered interests in the assets. The Consolidated Investment Funds have recorded a liability to account for the future release of the assets, which is classified on their balance sheets as *Obligation to return collateral*. The Consolidated Investments Funds elected to apply the fair value option prescribed by current accounting guidance when they first recognized the liability, which resulted in the liability being carried at the same value as the assets in aggregate. Accordingly, the change in the fair value of the liability was recognized in the Consolidated Statement of Operations as an unrealized gain.

On March 20, 2009, the Partnership and its Consolidated Investment Funds agreed to terminate the senior secured notes that were issued by HFP. As a result, the Consolidated Investment Funds have been relieved of their obligation to transfer the underlying assets to HFP.

In accordance with the terms of a Master Indenture Agreement (the "Indenture") dated November 2, 2006, the Credit Opportunities Master acquired 250,000 Preferred Shares of Highland Credit Opportunities CDO, Ltd (the “CDO”). The Indenture requires Credit Opportunities Master to hold, directly or indirectly, more than 99% of the CDO's outstanding Preferred Shares at all times. As of December 31, 2009, the Credit Opportunities Master held 350,000 Preferred Shares and was the sole beneficial preferred shareholder.

The CDO invests primarily in floating rate syndicated bank loans, fixed income securities, and equity investments. These investments were purchased with funds the CDO received from the issuance of rated floating rate notes and Credit Opportunities Master's purchase of the Preferred Shares. Credit Opportunities Master is the sole beneficiary of all residual income from the CDO's portfolio. Although the Preferred Shares do not have a voting interest in the CDO, they carry certain rights. Specifically, they are entitled to receive quarterly preferential dividends, without requiring any declaration by the Directors, from the date they were issued until they are redeemed.

The Investment Manager serves as the Collateral Manager for the CDO but does not receive any fees for its services to the CDO.

During the fourth quarter of 2008, the CDO failed to meet certain over-collateralization tests set forth in the First Supplement to the Indenture dated November 2, 2006. This breach would have given the CDO's Majority of Controlling Debt Class the option to accelerate repayment of the CDO's outstanding debt or initiate a liquidation of its assets. To protect the value of its investment in the CDO, Credit Opportunities Master entered into a forbearance agreement whereby the Majority Controlling Class of the CDO's note holders waived the breach and agreed not to exercise the rights discussed above. The Majority Controlling Class also agreed to waive any future events of default resulting from the CDO's failure to meet the overcollateralization tests through December 31, 2011. In return, the CDO agreed not make any preferred dividend payments to Credit Opportunities Master until the over-collateralization tests exceed certain thresholds.

Credit Opportunities Master paid certain expenses related to the forbearance agreement, which have been recorded as an increase to the cost basis of its investment in the CDO's Preferred Shares. Credit Opportunities Master has also committed to pay certain expenses in 2010 and 2011.

The Consolidated Investment Funds periodically enter into transactions to buy or sell securities with affiliated entities. During the year ended December 31, 2009, the Consolidated Investment Funds purchased approximately $10.8 million of securities from affiliated entities and sold approximately $37.1 million of securities to affiliated entities, which generated net losses of approximately $8.7 million.

Services Performed by an Affiliate
In March 2007, Highland Capital of New York, L.P., a New York limited partnership ("Highland New York"), was formed and has performed marketing services for the Partnership and its affiliates in connection with the Partnership's investment management and advising business, including, but not limited to, assisting Highland Capital in the marketing and sales of interests in investment pools for which Highland Capital serves as the investment manager. The Partnership is charged a marketing services fee for the services that Highland New York performs on the Partnership's behalf. For the year ended December 31, 2009, total marketing fee expense charged to the Partnership by Highland New York was approximately $3.4 million and as of December 31, 2009, amounts owed to Highland New York for services rendered was approximately $1.2 million.

Intercompany and Affiliate Balances
During 2008, the Partnership and affiliates engaged in a series of short-term, non-interest bearing transactions. As part of the satisfaction of the outstanding affiliated balances, approximately $14.4 million of assets were transferred to the affiliates during 2009. Additionally, $12.6 million of the remaining balance was converted to equity in the Partnership during 2009.

10. Commitments

Contracts in the Normal Course of Business
In the normal course of business the Partnership and its subsidiaries may enter into contracts which provide general indemnifications and contain a variety of presentations and warranties that may expose the Partnership and its subsidiaries to some risk of loss. In addition to the other financial commitments discussed in the consolidated financial statements, the amount of future losses arising from such undertakings, while not quantifiable, is not expected to be significant.

Legal Proceedings
The Partnership is a party to various legal proceedings arising in the ordinary course of business. While any proceeding or litigation has an element of uncertainty, management believes that the

final outcome will not have a materially adverse effect on the Partnership's consolidated balance sheet, consolidated statement of income, or its liquidity. See Note 16.

Warehouse Guarantee
On July 6, 2007, the Partnership was a party to a warehouse agreement as a first loss guarantor. HCM Trident entered into the warehouse agreement and is entitled to the positive net carry or is required to pay the negative net carry. The Partnership guaranteed the payment of the negative net carry owed by HCM Trident. This guarantee was capped at 25% of the initial purchase price of the warehouse assets of $25.7 million, or approximately $6.4 million plus accrued interest. The Partnership paid $3.8 million to HCM Trident as a deposit for the first loss guarantee.

On July 14, 2008, the warehouse agreement was amended to reflect the Partnership guaranteeing 100% of the negative net carry. The Partnership posted an additional $1.5 million, for a total guarantee deposit on hand of $3.1 million, net of any prior loss amounts.

On November 2, 2008, the warehouse agreement was amended to reflect the Partnership guaranteeing any credit facility amortization payments of principal and interest on HCM Trident's behalf. On June 15, 2009, the warehouse agreement was paid in full and the asset in the warehouse was transferred to the Partnership.

Operating Leases
Future minimum lease payments under operating lease commitments of the Partnership and its consolidated entities with initial or noncancelable terms in excess of one year, at inception, are as follows:

(in thousands)

Years Ending December 31,		
2010	$	2,071
2011		1,804
Thereafter		-
	$	3,875

Total rental expense of the Partnership and its consolidated entities for operating leases was approximately $4.4 million for the year ended December 31, 2009.

Loan Commitments
Loan and other participation interests purchased by the Consolidated Investment Funds such as bank debt and trade claims may include accompanying letters of credit, revolving credit arrangements or other financing commitments obligating the Consolidated Investment Funds to advance additional amounts on demand. At December 31, 2009, the Consolidated Investment Funds had outstanding loan commitments of approximately $30.5 million. The total amount of outstanding commitments does not necessarily reflect the actual future cash requirements, as commitments may expire unused.

11. Postretirement Benefits

In December 2006, the Partnership created a defined benefit plan to which all employees and certain affiliated persons could participate if they met the eligibility requirements. The Partnership uses a December 31 measurement date for its defined benefit plan.

Effective December 31, 2008, the Partnership amended the plan by freezing it to new participants and additional benefit accruals. Therefore, no new participants shall enter the plan after 2008 and

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no new benefits shall accrue under the plan after 2008. The Partnership's benefit plan obligation and plan assets for the year ended December 31, 2009 are reconciled in the tables below.

(in thousands)

Change in projected benefit obligation		**2009**
Benefit obligation at beginning of year	$	3,543
Service cost		-
Interest cost		199
Plan participants' contributions		-
Amendments		-
Actuarial loss/(gain)		630
Acquisition/(divestiture)		-
Benefits paid		(956)
Benefit obligation at end of year	$	3,416

Change in plan assets		**2009**
Fair value of plan assets at beginning of year	$	1,146
Actual return on plan assets		457
Acquisition/(divestiture)		-
Employer contribution		2,966
Plan participants' contributions		-
Benefits paid		(956)
Other increase/(decrease)		-
Fair value of plan assets at year end	$	3,613

Reconciliation of Funded Status		**2009**
Accumulated benefit obligation at end of year	$	3,416
Projected benefit obligation at end of year		3,416
Fair value of assets at end of year		3,613
Funded status at end of year	$	197

The Partnership does not expect to contribute to the plan during 2010.

Assumptions

Weighted-average assumptions used to determine benefit obligations at December 31, 2009:

Discount rate	6.10%
Rate of compensation increase	N/A

Weighted-average assumptions used to determine net periodic benefit cost at December 31, 2009:

Discount rate	6.30%
Expected long-term return on plan assets	6.30%
Rate of compensation increase	N/A

As of December 31, 2009, approximately $0.6 million of the plan assets were categorized as Level 3.

12. Goodwill and Other Intangible Assets

Below is a summary of the Partnership's goodwill and other intangible assets as of December 31, 2009:

(in thousands)	Carrying Value
Highland Floating Rate Fund	$ 12,672
Highland Floating Rate Advantage Fund	11,328
Goodwill for Highland Europe	8,020
	$ 32,020

On April 9, 2004, the Partnership purchased the management agreements Highland Floating Rate Fund (the "Floating Rate Fund") and Highland Floating Rate Advantage Fund (the "Advantage Fund"). The combined purchase price for the above agreements was $24.0 million. The purchase price was allocated among the Purchased Funds pro-rata based on the approximate combined total managed assets of the funds as of the date of purchase. As a result, $12.7 million of the purchase price was allocated to the Floating Rate Fund and $11.3 million was allocated to the Advantage Fund.

The Partnership performs an impairment test as required by U.S. GAAP on a yearly basis. The Partnership's management analyzes market multiples on retail asset managers within the industry as of December 31, 2009 to determine fair value of these assets. The Partnership has determined that no impairment charge is necessary for the current year.

13. Lehman Claim

On October 3, 2008, Lehman Brothers Special Financing Inc. (U.A.) ("LBSF"), an entity underlying the Consolidated Investment Fund's North American OTC derivative relationship with Lehman Brothers, filed for Chapter 11 bankruptcy.

The Consolidated Investment Fund's legal right with respect to these assets and the probability of their return is currently unclear. The unwinding of LBSF is described as large and exceptionally complex and may take years to complete. The Consolidated Investment Fund's expected losses of approximately $4.7 million relating to LBSI's bankruptcy are recorded as a component of the net

change in unrealized depreciation on investments and swap contracts on the Consolidated Statement of Operations. The current value assigned to the Consolidated Investment Fund's claim on LBSF of $13 million has been determined by the Investment Manager in good faith based on the information currently available and does not necessarily represent the amount that may ultimately be realized. This value is included in the investments balance on the Consolidate Statement of Assets, Liabilities and Partners' Capital.

14. Reverse Repurchase Agreements

Crusader Master and Credit Strategies Master are parties to collateralized financing transactions consisting of securities sold under agreements to repurchase. As of December 31, 2009, Crusader Master and Credit Strategies Master held high yield corporate bonds and equities with a fair value of $77.2 million under reverse repurchase agreements. The gross amount payable to the counterparty (including accrued interest) was approximately $44.4 million and is recorded as a component of due to brokers in the Consolidated Statement of Assets, Liabilities and Partners' Capital.

15. Income Taxes

The Partnership

For U.S. income tax purposes, the Partnership is treated as a pass-through-entity, which means it is not subject to income taxes under current Internal Revenue Service or state and local guidelines. Each partner is individually liable for income taxes, if any, on their share of the Partnership's net taxable income.

The Partnership files tax returns as prescribed by the tax laws of the jurisdictions in which it operates. In the normal course of business, the Partnership is subject to examination by federal and foreign jurisdictions, where applicable. As of December 31, 2009, the tax years that remain subject to examination by the major tax jurisdictions under the statute of limitations is from the year 2005 forward (with limited exceptions).

The Partnership adopted the authoritative guidance on accounting for and disclosure of uncertainty in tax positions on January 1, 2009, which required the General Partner to determine whether a tax position of the Partnership is more likely than not to be sustained upon examination, including resolution of any related appeals or litigation processes, based on the technical merits of the position. For tax positions meeting the more likely than not threshold, the tax amount recognized in the financial statements is the largest benefit that as a greater than fifty percent likelihood of being realized upon ultimate settlement with the relative taxing authority. The General Partner does not expect a significant change in uncertain tax positions during the twelve months subsequent to December 31, 2009.

Crusader Master

Crusader Master is an exempted limited partnership organized in Bermuda. Under the current laws of Bermuda, there is no income, estate, transfer, sale or other taxes payable by Crusader Master. Crusader Master has received an undertaking from the government of Bermuda exempting it from all such taxes until March 28, 2016.

For U.S. income tax purposes, Crusader Master is treated as a pass-through entity, which means it is not subject to income taxes under current Internal Revenue Service or state and local guidelines. Each partner is individually liable for income taxes, if any, on its share of Crusader Master's net taxable income.

Since Crusader Master trades investments for its own account, non-U.S. Investment Vehicle investors are generally not subject to U.S. tax on such earnings (other than certain withholding taxes indicated below). The General Partner intends to conduct Crusader Master's business in

such a way that it does not constitute a U.S. trade or business or create a taxable presence in any of the jurisdictions in which the Investment Manager has offices, including the United Kingdom.

Dividends as well as certain interest and other income received by Crusader Master from sources within the United States may be subject to, and reflected net of, United States withholding tax at the rate of 30% for non-U.S. Investment Vehicles. Interest, dividend and other income realized by Crusader Master from non-U.S. sources and capital gains realized on the sale of securities of non-U.S. issuers may be subject to withholding and other taxes levied by the jurisdiction in which the income is sourced.

Crusader Master adopted the authoritative guidance on accounting for and disclosure of uncertainty in tax positions on January 1, 2009, which required management to determine whether a tax position of Crusader Master is more likely than not to be sustained upon examination, including resolution of any related appeals or litigation processes, based on the technical merits of the position. For tax positions meeting the more likely than not threshold, the tax amount recognized in the consolidated financial statements is the largest benefit that has a greater than fifty percent likelihood of being realized upon ultimate settlement with the relative taxing authority. As a result of adopting this guidance, management has established a reserve of approximately $9.8 million for uncertain tax positions, which includes approximately $0.5 million of interest and $2.3 million of penalties. Of this amount, approximately $1.3 million related to the current year and was recorded as a tax expense in Statement of Operations. The remaining $8.5 million related to prior years and was recorded as an adjustment to the beginning partners' capital available for distribution as of January 1, 2009. Management does not expect a significant change in uncertain tax positions during the twelve months subsequent to December 31, 2009.

Crusader Master files tax returns as prescribed the tax laws of the jurisdictions in which it operates. In the normal course of business, Crusader Master is subject to examination by federal and foreign jurisdictions, where applicable. As of December 31, 2009, the tax years that remain subject to examination by the major tax jurisdictions under the statute of limitations is from the year 2006 forward.

A wholly owned corporation of Crusader Master has incurred capital losses on the sale of investments that exceed the amount of capital gains it has earned. Management has concluded that the subsidiary is not likely to generate additional gains in future periods and has established a valuation allowance to reserve for the entire amount of the deferred tax asset associated with the unused capital losses.

Credit Opportunities Master

The Credit Opportunities Master adopted the authoritative guidance on accounting for and disclosure of uncertainty in tax positions on January 1, 2009, which required management to determine whether a tax position of Credit Opportunities Master is more likely than not to be sustained upon examination, including resolution of any related appeals or litigation processes, based on the technical merits of the position. For tax positions meeting the more likely than not threshold, the tax amount recognized in the consolidated financial statements is the largest benefit that has a greater than fifty percent likelihood of being realized upon ultimate settlement with the relative taxing authority. As a result of adopting this guidance, management has increased their tax liability by approximately $1.6 million to account for uncertain tax positions, which includes approximately $0.4 million of interest and penalties. This amount relates to prior years and was recorded as an adjustment to beginning partners' capital as of January 1, 2009. Management does not expect a significant change in uncertain tax positions during the twelve months subsequent to December 31, 2009.

Credit Opportunities Master files tax returns as prescribed by the tax laws of the jurisdictions in which it operates. In the normal course of business, Credit Opportunities Master is subject to

examination by federal and foreign jurisdictions, where applicable. As of December 31, 2009, the tax years that remain subject to examination by the major tax jurisdictions under the statute of limitations is from the year 2006 forward (with limited exceptions).

Credit Opportunities Master invests in equity securities. To the extent these securities pay dividends, the Credit Opportunities Master is required to withhold 30% of the gross dividends allocable to the Feeder Fund and remit the amounts to the Internal Revenue Service. As of December 31, 2009, a withholding tax liability of $2.2 million is included in other liabilities in the Consolidated Statement of Assets, Liabilities, and Partners' Capital of the Master Partnership.

Credit Strategies Master

Credit Strategies Master is an exempted limited partnership organized in Bermuda. Under the current laws of Bermuda, there is no income, estate, transfer, sale or other taxes payable by Credit Strategies Master. Credit Strategies Master has received an undertaking from the government of Bermuda exempting it from all such taxes until March 28, 2016.

For U.S. income tax purposes, Credit Strategies Master is treated as a pass-through entity, which means it is not subject to income taxes under current Internal Revenue Service or state and local guidelines. Each partner is individually liable for income taxes, if any, on its share of Credit Strategies Master's net taxable income.

The Credit Strategies Master files tax returns as prescribed by the tax laws of the jurisdictions in which it operates. In the normal course of business, Credit Strategies Master is subject to examination by federal and foreign jurisdictions, where applicable. As of December 31, 2009, the tax years that remain subject to examination by the major tax jurisdictions under the statute of limitations is from the year 2006 forward (with limited exceptions).

Credit Strategies Master adopted the authoritative guidance on accounting for and disclosure of uncertainty in tax positions on January 1, 2009, which required the General Partner to determine whether a tax position of Credit Strategies Master is more likely than not to be sustained upon examination, including resolution of any related appeals or litigation processes, based on the technical merits of the position. For tax positions meeting the more likely than not threshold, the tax amount recognized in the financial statements is the largest benefit that has a greater than fifty percent likelihood of being realized upon ultimate settlement with the relative taxing authority. The General Partner does not expect a significant change in uncertain tax positions during the twelve months subsequent to December 31, 2009.

Dividends as well as certain interest and other income received by Credit Strategies Master from sources within the United States may be subject to, and reflected net of, United States withholding tax at the rate of 30% for non-U.S. Investment Vehicles. Interest, dividend and other income realized by Credit Strategies Master from non-U.S. sources and capital gains realized on the sale of securities of non-U.S. issuers may be subject to withholding and other taxes levied by the jurisdiction in which the income is sourced.

The remaining entities consolidated by the Partnership did not accrue for uncertain tax positions as required by U.S. GAAP.

16. Legal Proceedings

In April 2007, CDO Master Fund entered into a risk sharing agreement structured as a derivative whereby it absorbed 51% of the gains and losses generated from a loan warehouse agreement. The remaining 49% of the warehouse gains and losses were absorbed by Highland Special Opportunities Holding Company. The warehouse was financed by a reputable financial institution and held collateral consisting of investments in collateralized loan obligations and credit default swaps. Although the agreement expired on August 15, 2007, the counterparty agreed to extend it

Highland Capital Management, L.P.
Notes to Consolidated Financial Statements
December 31, 2009

for one year on March 15, 2008. As a condition of the extension, CDO Master Fund posted $10.2 million of cash as collateral. In addition, HFC posted certain securities on behalf of CDO Master Fund and HFP. During October and November 2008, the counterparty requested additional collateral calls from CDO Master Fund and HFP totaling $20 million. Due to liquidity constraints, CDO Master Fund was unable to meet the November call, and the counterparty elected to terminate the agreement as of December 5, 2008. The collateral held in the warehouse was subsequently seized by the counterparty and sold on the open market through bids-wanted-in-competition. After offsetting the proceeds received from the sale and the income earned on the collateral prior to the sale, the counterparty notified CDO Master Fund that its pro-rata share of the losses incurred under the agreement was $350.2 million. CDO Master Fund has accrued a liability in its financial statements for this amount. On February 24, 2009, the counterparty (the "Plaintiffs") filed a lawsuit against CDO Master Fund. HFP and the Partnership in the New York State Supreme Court of Manhattan alleging that they suffered losses in excess of $745 million due to the depreciation in value of the warehouse collateral. The Plaintiffs are seeking leave to amend their complaint to add additional claims and defendants, including other hedge funds managed by the Partnership. On February 19, 2010 a New York Appeals Court sided with the Partnership and dismissed UBS' claims against the Partnership.

Certain consolidated investment funds (collectively, the "Plaintiffs") filed a claim against Deutsche Bank AG and Deutsche Bank Securities, Inc. (collectively, "Deutsche Bank") in Dallas County District Court alleging fraudulent inducement, fraud and breach of contract in connection with three repurchase agreements to which the Plaintiffs and Deutsche Bank were a party. Deutsche Bank subsequently filed a lawsuit against the Plaintiffs in the United Kingdom on November 7, 2008 alleging breach of contract and fraud. During 2009, the Plaintiffs settled all of the outstanding litigation with Deutsche Bank and recorded a gain of approximately $33.1 million on the settlement, which is included as a component of realized gains on investment transactions in the Consolidated Statement of Operations.

In April 2009, HYMF, Inc. filed a lawsuit in the New York State Court against the Partnership and certain consolidated investment funds (collectively "the Defendants"). The lawsuit alleges that the Defendants breached their contractual and fiduciary duties by failing to return HYMF's original investment in the consolidated investment funds. The Defendants intend to vigorously defend against the lawsuit. At this time, management believes it is currently not possible to evaluate the likelihood of any particular outcome or estimate the amount or range of potential loss with any reasonable degree of certainty.

In January 2009, Crusader Master, the Partnership and other affiliated entities were named as parties to a lawsuit claiming breach of fiduciary duties for their alleged failure to comply with obligations owed under a credit agreement. Crusader Master reached a settlement with the plaintiff in October 2009. Under the terms of the settlement agreement, the investments that Crusader Master held in a term loan and revolving credit facility issued by the plaintiff were transferred to a third party in exchange for other assets and cash of equivalent value.

On July 15, 2008, Crusader Master, certain affiliates, and numerous external parties (collectively, the "Defendants") were named as parties to an action filed with the Bankruptcy Court of the Southern District of Florida. The action related to a secured lending transaction and subsequent refinancing arrangement in which the Defendants participated. On October 13, 2009, the Bankruptcy Court ruled in favor of the plaintiffs and ordered the Defendants to disgorge the principal, interest, and fees they received in connection with the refinancing arrangement. In addition, the Court ordered the defendants to pay simple interest on the disgorged amount at an annual rate of 9%. Based on the ruling, Crusader Master recorded a reserve of approximately $34 million as of December 31, 2009, which represents its ratable share of the judgment. However, the Defendants believe they acted in good faith pursuant to the terms of the relevant agreements and have filed the appeal and final adjudication of the appeal is pending. The reserve is included as a

component of accrued expenses on the Consolidated Statement of Assets and Liabilities and a component of net realized losses from investment transactions on the Consolidated Statement of Operations.

During the first quarter of 2009, certain investors in Highland Credit Strategies Fund, Ltd. filed lawsuits in response to the decision to wind-down Credit Strategies Master's investment portfolio. Each of these investors is seeking to recover the outstanding balances due under the redemption requests that they submitted prior to the announcement of the wind-down. They have also made various claims, including breach of fiduciary duties, committed negligence, tortuous interference with the payment of redemption amounts, and/or committed fraud. Both the Partnership and Highland Credit Strategies Fund, Ltd. have been named as parties to the lawsuits. Management believes it is currently not possible to evaluate the likelihood of any particular outcome or estimate the amount or range of potential loss with any reasonable degree of certainty.

17. Fund Wind Down

On February 4, 2009, the Partnership informed investors of CDO Master that the fund was effectively insolvent and that it was in the best interest of the fund to liquidate the fund's remaining assets. The proceeds from the asset liquidations will be distributed to the remaining financing counterparties and other senior and trade creditors as the liabilities in the fund exceed the assets to such a degree that proceeds from the asset sales will not be able to satisfy any unpaid redemptions or to distribute amounts to any current investors.

18. Subsequent Events

In May 2009, the Financial Accounting Standards Board issued guidance regarding subsequent events, which detailed general standards for the accounting and disclosure of events that occur after the balance sheet date but before the financial statements are issued or available to be issued. This guidance did not have an impact on the Partnership or its consolidated entities' results of operations or financial position. In preparing the financial statements, management evaluated subsequent events though May 21, 2010, which is the date these financial statements were available to be issued.

Pursuant to the terms of the Purchase Agreement discussed in Note 7, approximately $36.2 million of withdrawals previously recorded by Credit Opportunities Master were paid to investors in the Master Partnership and the Feeder Fund.

CDO Financing received a waiver from the holders of the senior secured convertible notes allowing it to prepay principal, premium and accrued interest on the notes. Approximately $45 million of principal, $6.8 million of premium and $8.1 million of interest were paid to the note holders.

Highland Europe reduced its share premium account by £800,000 and remitted the funds to its parent company. Share premium was reduced as it was determined that the entity was overcapitalized.

The Partnership funded $7 million of capital calls to Restoration Onshore and Restoration Master, collectively.

Supplemental Information
Highland Capital Management, L.P.
Unconsolidated Balance Sheet and Income Statement (Unaudited)
December 31, 2009

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Highland Capital Management, L.P
Supplemental Unconsolidated Balance Sheet (unaudited)
December 31, 2009

(in thousands)

Assets		
Current assets:		
Cash and cash equivalents	$	90
Restricted cash		3,501
Investments at fair value (cost $103,533)		65,154
Equity method investees		25,655
Management and incentive fees receivable		15,292
Due from brokers		1,116
Other current assets		19,547
Deferred incentive fees receivable		28,891
Purchased investment management contracts		24,000
Goodwill and other intangible assets, net		388
Fixed assets and leasehold improvements, net of accumulated depreciation of $8,444		6,597
	$	190,231
Liabilities and Partners' Capital		
Liabilities		
Accounts payable	$	2,852
Accrued and other liabilities		32,752
Debt and notes payable		143,901
Long-term incentive plan		2,858
Total liabilities		182,363
Partners' capital		7,868
Total liabilities and partners' capital	$	190,231

The above information was derived from the audited December 31, 2009 consolidated financial statements of Highland Capital Management, L.P. This information should be read in conjunction with such audited financial statements and should not be used for tax purposes.

Highland Capital Management, L.P
Supplemental Unconsolidated Balance Sheet (unaudited)
December 31, 2009

(in thousands)

Revenue:		
Management fees	$	83,437
Incentive fees/allocations		1,550
Interest and investment income		1,483
Other income		7,463
Total revenue		93,933
Operating expenses:		
Compensation and benefits		47,440
Professional fees		4,192
Investment and research consulting		810
Amortization and depreciation		2,093
Interest expense		9,023
Other operating expenses		13,032
Total operating expenses		76,590
Income/(loss) before investment activities		17,343
Realized and unrealized gain/(loss) from investment transactions:		
Net realized loss on sale of investment transactions		(73,174)
Net change in unrealized gain/(loss) on investments		50,966
Total realized and unrealized loss from investment transactions		(22,208)
Realized and unrealized earnings from equity method investee:		
Net unrealized earnings from equity method investees		4,788
Total realized and unrealized earnings from equity method investees		4,788
Net income	$	(77)

The above information was derived from the audited December 31, 2009 consolidated financial statements of Highland Capital Management, L.P. This information should be read in conjunction with such audited financial statements and should not be used for tax purposes.

EXHIBIT 65

Highland Capital Management, L.P.

(A Delaware Limited Partnership)

Consolidated Financial Statements and Supplemental Information

December 31, 2010

Highland Capital Management, L.P.

(A Delaware Limited Partnership)

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Report of Independent Auditors

To the General and Limited Partners of
Highland Capital Management, L.P.:

In our opinion, the accompanying consolidated balance sheet and the related consolidated statements of income, of changes in partners' capital and of cash flows (hereinafter referred to as the "financial statements") present fairly, in all material respects, the. consolidated financial position of Highland Capital Management, L.P. and its subsidiaries (collectively, the "Partnership") at December 31, 2010, and the results of their operations, the changes in their partners' capital, and their cash flows for the year then ended in conformity with accounting principles generally accepted in the United States of America. These financial statements are the responsibility of the Partnership's management. Our responsibility is to express an opinion on these financial statements based on our audit. We conducted our audit of these statements in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing the accounting principles used and significant estimates made by management, and evaluating the overall financial statement presentation. We believe that our audit provides a reasonable basis for our opinion.

Our audit was conducted for the purpose of forming an opinion on the consolidated financial statements taken as a whole. The supplemental unconsolidated balance sheet and statement of income are presented for purposes of additional information, and are not a required part of the basic consolidated financial statements. Such information has been subjected to the auditing procedures applied in the audit of the consolidated financial statements and, in our opinion, is fairly stated in all material respects in relation to the consolidated financial statements taken as a whole.

PricewaterhouseCoopers LLP

May 20, 2011

PricewaterhouseCoopers LLP, 2001 Ross Avenue, Suite 1800, Dallas, Texas 75201
T: (214) 999-1400, F: (214) 754-7991, www.pwc.com/us

Highland Capital Management, L.P.

(A Delaware Limited Partnership)

Consolidated Balance Sheet

December 31, 2010

(in thousands)

Assets		
Cash and cash equivalents	$	96,115
Restricted cash		29,101
Investments at fair value (cost $3,622,415)		2,350,386
Unrealized gains on derivative contracts		953
Management and incentive fees receivable		17,611
Due from brokers		33,100
Other assets		37,805
Deferred incentive fees receivable		35,883
Purchased investment management contracts		24,000
Goodwill and other intangible assets		8,020
Fixed assets and leasehold improvements, net of accumulated depreciation of $11,057		11,267
Total assets	$	2,644,241
Liabilities and Partners' Capital		
Liabilities		
Accounts payable	$	2,198
Securities sold, not yet purchased (proceeds $14,366)		21,406
Withdrawals payable		15,736
Interest payable		7,061
Due to brokers		420,846
Due to brokers for securities purchased not yet settled		67,548
Accrued and other liabilities		84,084
Secured borrowing		3,803
Debt and notes payable		190,139
Long-term incentive plan		1,081
Total liabilities		813,902
Non-controlling interest		1,798,232
Commitments (Note 11)		
Partners' capital		32,107
Total liabilities and partners' capital	$	2,644,241

The accompanying notes are an integral part of these consolidated financial statements.

Highland Capital Management, L.P.

(A Delaware Limited Partnership)

Consolidated Statement of Income

Year Ended December 31, 2010

(in thousands)

Revenue:		
Management fees	$	85,927
Incentive fees/allocations		8,066
Interest and investment income		140,136
Other income		16,233
Total revenue		250,362
Expenses:		
Compensation and benefits		60,717
Professional fees		26,406
Investment and research consulting		785
Amortization and depreciation		2,086
Interest expense		48,056
Tax expense		6,907
Other expenses		22,359
Total expenses		167,316
Income before investment and derivative activities and extinguishment of debt		83,046
Realized and unrealized gain/(loss) from investment and derivative transactions:		
Net realized loss on investment and derivative transactions		(416,398)
Net change in unrealized gain on investment and derivative transactions		780,716
Total realized and unrealized gain from investment and derivative transactions		364,318
Net realized gain on extinguishment of debt		10,000
Net income		457,364
Net income attributable to the non-controlling interest		(431,023)
Net income attributable to Highland Capital Management, L.P.	$	26,341

The accompanying notes are an integral part of these consolidated financial statements.

Highland Capital Management, L.P.
(A Delaware Limited Partnership)
Consolidated Statement of Changes in Partners' Capital
Year Ended December 31, 2010

(in thousands)

	General Partner	Limited Partners	Total
Partners' capital, December 31, 2009	$ 506	$ 7,362	$ 7,868
Net gain attributable to Highland Capital Management, L.P.	-	26,341	26,341
Partner contributions	-		-
Partner distributions	(11)	(2,091)	(2,102)
Partners' capital, December 31, 2010	$ 495	$ 31,612	$ 32,107

The accompanying notes are an integral part of these consolidated financial statements.

Highland Capital Management, L.P.
(A Delaware Limited Partnership)
Consolidated Statement of Cash Flows
Year Ended December 31, 2010

(in thousands)

Cash flows from operating activities:		
Net income	$	457,364
Adjustment to reconcile net income to cash and cash equivalents provided by operating activities:		
Net realized loss on investments and derivative transactions		416,398
Net realized gain on extinguishment of debt		(10,000)
Net change in unrealized gain on investments and derivative transactions		(780,716)
Amortization and depreciation		2,086
Changes in assets and liabilities:		
Restricted cash		218,942
Management and incentive fee receivable		(828)
Deferred incentive fees		(6,992)
Other assets		7,908
Due from brokers		(24,316)
Accounts payable		(2,253)
Accrued and other liabilities		3,176
Due to brokers for unsettled trades		(48,342)
Interest payable		3,324
Withdrawals payable		(20,495)
Long-term incentive plan		(1,777)
Due to Affiliate		23,685
Net cash provided by operating activities		237,164
Cash flows from investing activities:		
Proceeds from fixed assets and leasehold improvements, net		1,539
Purchases of investments		(404,384)
Proceeds from dispositions of investments		331,663
Net cash required by investing activities		(71,182)
Cash flows from financing activities:		
Payments on long-term debt		(47,684)
Payments on revolving debt and promissory notes		(45,000)
Proceeds from affiliate loans		13,314
Net payments on secured borrowings		(58,039)
Due to brokers		27,552
Capital contributions from minority interest investors of consolidated entities		119,745
Capital withdrawals by minority interest investors of consolidated entities		(127,900)
Partner distributions		(2,101)
Net cash required by financing activities		(120,113)
Net increase in cash and cash equivalents		45,869
Cash and cash equivalents		
Beginning of year		50,246
End of year	$	96,115
Supplemental disclosure of cash flow information:		
Interest paid during the year	$	53,704

The accompanying notes are an integral part of these consolidated financial statements.

Highland Capital Management, L.P.
(A Delaware Limited Partnership)
Notes to Consolidated Financial Statements
December 31, 2010

1. Description of Business

Highland Capital Management, L.P. (the "Partnership") was formed on July 7, 1997 as a limited partnership in the state of Delaware. The Partnership is a registered investment advisor under the Investment Advisors Act of 1940 that manages collateralized loan obligations ("CLOs"), registered investment companies ("RICs"), hedge funds, and other leveraged loan transactions that are collateralized predominately by senior secured bank debt and high-yield bonds. The Partnership and its subsidiaries make direct investments in debt, equity, and other securities in the normal course of business. The Partnership's general partner is Strand Advisors, Inc. (the "General Partner"). The Partnership is 100% owned by senior management of the Partnership.

As of December 31, 2010, the Partnership provided investment advisory services for twenty-seven CLOs, seven RICs, two separate accounts, one master limited partnership, and twelve hedge fund structures, with total fee-earning assets under management of approximately $21.7 billion.

2. Liquidity Considerations

As further discussed in Note 8, the Partnership has a Revolving Credit Facility (the "Credit Agreement") scheduled to mature on July 21, 2011, including forbearance from the exercising of remedies for events of default from July 21, 2011 to November 18, 2011. Management is currently in negotiations to extend or refinance the Credit Agreement with the lenders. Management is also considering alternative sources of financing to repay in the event that an extension of the existing Credit Agreement cannot be obtained although to date, such alternative sources have not been secured. The Credit Agreement is collateralized by assets of the Partnerships with an estimated fair value of approximately $100 million at December 31, 2010. Although there can be no assurance that these assets could be sold at that value, management has the ability to sell these and certain other assets should it become necessary in order to pay off the remaining balance of the Credit Agreement in the event an extension cannot be obtained. There can be no assurance that management will be successful in their attempts to extend the Credit Agreement, to identify alternative sources of financing or to sell assets for proceeds sufficient to repay the balance of the Credit Agreement.

3. Summary of Significant Accounting Policies

The following is a summary of the significant accounting policies followed by the Partnership in preparation of its financial statements.

Basis of Accounting
The Partnership's consolidated financial statements have been prepared in accordance with U.S. generally accepted accounting principles ("U.S. GAAP") as set forth in the Financial Accounting Standards Board's Accounting Standards Codification.

Use of Estimates
The preparation of the consolidated financial statements in conformity with U.S. GAAP requires management to make estimates and assumptions that affect the amounts and disclosures in the consolidated financial statements. Actual results could differ from those estimates and those differences could be material.

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Highland Capital Management, L.P.
(A Delaware Limited Partnership)
Notes to Consolidated Financial Statements
December 31, 2010

Principles of Consolidation
The consolidated financial statements include the accounts of the Partnership and the Partnership's consolidated subsidiaries, which are comprised of (i) those entities in which it has controlling investment and has control over significant operating, financial and investing decisions of the entity, (ii) those entities in which it, as the general partner, has control over significant operating, financial and investing decisions of the entity, and (iii) variable interest entities ("VIEs") in which it is the primary beneficiary as described below.

The Partnership determines whether an entity has equity investors who lack the characteristics of a controlling financial interest or does not have sufficient equity at risk to finance its expected activities without additional subordinated financial support from other parties. If an entity has either of these characteristics, it is considered a VIE and must be consolidated by its primary beneficiary, which is the party that, along with its affiliates and de facto agents, absorbs a majority of the VIEs expected losses or receives a majority of the expected residual returns as a result of holding variable interests.

Consolidation of Non-Variable Interest Entities
The Partnership consolidates the following non-VIE's (collectively referred to as the "Consolidated Investment Funds"), as the Partnership (or its wholly owned subsidiaries) controls the general partner of the respective entities and is responsible for the daily operations of the following entities:

- Highland Crusader Offshore Partners, L.P. ("Crusader Master"), a Bermuda exempted limited partnership that commenced operations on July 10, 2000;
- Highland CDO Opportunity Master Fund, L.P. ("CDO Master Fund"), a Bermuda limited partnership that commenced operations on November 9, 2005;
- Highland Credit Strategies Master Fund, L.P. ("Credit Strategies Master"), a Bermuda exempted limited partnership that commenced operations on August 24, 2005
- Highland Credit Opportunities CDO, L.P. ("Credit Opportunities Master"), a Delaware limited partnership that commenced operations on December 29, 2005;
- Highland Multi-Strategy Master Fund, L.P. ("Multi-Strat Master"), a Bermuda limited partnership that commenced operations on July 18, 2006;
- Highland Multi-Strategy Fund, L.P. ("Multi-Strat Domestic Feeder"), a Delaware limited partnership that commenced operations on July 6, 2006;
- Canopy Timberlands, L.P., a Delaware limited partnership that commenced operations on April 29, 2008;
- Highland Restoration Capital Partners Offshore, L.P. ("Restoration Offshore") a Cayman limited partnership that commenced operations on September 2, 2008;
- Highland Restoration Capital Partners, L.P. ("Restoration Onshore") a Delaware limited partnership that commenced operations on September 2, 2008; and
- Highland Restoration Capital Partners Master, L.P. ("Restoration Master") a Delaware limited partnership that began commenced on September 2, 2008.

Highland Capital Management, L.P.
(A Delaware Limited Partnership)
Notes to Consolidated Financial Statements
December 31, 2010

Consolidation of Majority Owned Entities
The Partnership consolidates the following entities as it has a controlling majority interest:

- 100% interest in Highland Capital Management Europe, Ltd. ("Highland Europe"), a company organized in the United Kingdom and purchased by the Partnership on April 6, 2005;
- 100% interest in Highland Capital Special Allocation, LLC ("HCSA"), a Delaware limited liability company that commenced operations on December 21, 2006;
- 100% interest in HFP GP, LLC, a Delaware limited liability company that commenced operations on January 20, 2006;
- 100% interest in Highland Receivables Finance 1, LLC, a Delaware limited liability company that commenced operations on December 29, 2006;
- 100% interest in Highland Capital Management (Singapore) Pte, Ltd, a company organized in the Republic of Singapore that commenced operations on April 2, 2008; and
- 100% interest in Highland Employee Retention Assets, LLC, a Delaware limited liability company that commenced operations on October 26, 2009.
- 100% interest in Highland Special Situations Fund, a Delaware statutory trust that is registered with the Securities and Exchange Commission under the Investment Company Act of 1940, as amended, as a non-diversified, closed-end management investment company, and commenced operations on May 18, 2005.

All significant interpartnership and intercompany accounts and transactions have been eliminated in consolidation of all of the aforementioned consolidated entities. All the Consolidated Investment Funds are, for U.S. GAAP purposes, investment companies under the American Institute of Certified Public Accountants (AICPA) Audit and Accounting Guide - Investment Companies. The Partnership has retained the specialized accounting of these funds required under U.S. GAAP.

Investment Transactions
Investment transactions are recorded on a trade date basis. Investments in securities are valued at market or fair value at the date of the financial statements with the resulting net unrealized appreciation or depreciation reflected in the Consolidated Statement of Income. Realized gains and losses on the transactions are determined based on either the first-in, first-out or specific identification method.

Management and Incentive Fee Revenue
The Partnership recognizes revenue as earned in connection with services provided under collateral and investment management agreements. Under these agreements, the Partnership earns management fees calculated as a percentage of assets under management or net asset value. The Partnership also has an opportunity to earn additional incentive fees and incentive allocations related to certain management agreements depending ultimately on the financial performance of the underlying assets the Partnership manages. During the year ended December 31, 2010, the Partnership and its consolidated entities recognized management and incentive fees of approximately $85.9 million, and $8.1 million, respectively. The Partnership recognized approximately $7.0 million of appreciation on incentive fees earned prior to 2008, previously

deferred under Sec. 409(A) of the Internal Revenue Code, which has been presented in *Other Income* in the Consolidated Statement of Income.

Derivative Contracts
Credit Default Swaps are marked-to-market based upon values from third party vendors or broker quotations and the change in value is recorded as unrealized appreciation/depreciation. Swap contracts with cumulative unrealized gains as of a reporting date are recorded as assets on the Consolidated Balance Sheet, while swap contracts with cumulative unrealized losses as of the reporting date are recorded as liabilities. Upfront payments made/received by the Consolidated Funds are amortized or accreted for financial reporting purposes, with the unamortized or unaccreted portion included in the Consolidated Balance Sheet. A termination payment by the counterparty or the Consolidated Funds is recorded as a realized gain or loss, as well as the net periodic payments received or paid by the Consolidated Fund.

Dividends, Interest and Expense Recognition
Interest on currently paying debt instruments is accrued as earned and dividend income and dividends on securities sold, not yet purchased are recorded on the ex-dividend date, net of withholding taxes. In certain instances where the asset has defaulted or some amount of the interest payment is deemed uncollectable, interest is recognized when received. Discounts and premiums are accreted and amortized to interest income, except for deep-discounted debt where ultimate collection of interest and principal may be in doubt. Such accretion/amortization is calculated on an effective-yield basis. Amendment fees are recognized when agreed to by the underlying company and all settlement contingencies are met. Operating expenses, including interest on securities sold short, not yet purchased, are recorded on the accrual basis as incurred.

Income Taxes
The Partnership is not subject to federal income taxes, and therefore, no provision has been made for such taxes in the accompanying consolidated financial statements. Income taxes are the responsibility of the partners. Certain consolidated subsidiaries are subject to federal income taxes.

Certain entities that are included in these financial statements are subject to federal and/or state income taxes. Deferred tax assets and liabilities are recognized for the future tax consequences attributable to differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax bases. Deferred tax assets and liabilities are measured using enacted tax rates expected to apply to taxable income in the years in which those temporary differences are expected to be recovered or settled. The effect on deferred tax assets and liabilities of a change in tax rates is recognized in the period that includes the enactment date. Of the entities consolidated, only Highland Europe is subject to these provisions.

The Consolidated Investments Funds are not subject to federal income taxes and therefore no provision has been made in the accompanying consolidated financial statements.

Cash and Cash Equivalents
Cash and cash equivalents consist of cash held at U.S. and foreign banks, deposits with original maturities of less than 90 days, and money market funds. Foreign cash of $2.8 million is included in the cash and cash equivalents on the consolidated balance sheet, a portion of which exceeds Federal deposit insurance limits.

Restricted Cash
The Partnership and its subsidiaries are required to maintain cash balances as collateral for various financing and derivative transactions. These amounts are reported as restricted cash.

Fixed Assets and Leasehold Improvements
Fixed assets and leasehold improvements are carried at cost, less accumulated depreciation. Depreciation is provided using the straight-line method over the shorter of the estimated useful life of the assets or the lease term.

Debt Securities
The Consolidated Funds invest in various types of debt, which are almost exclusively valued using market data obtained from one or more third-party pricing services or brokers. In instances where a third-party pricing service does not provide pricing for a specific asset, the Consolidated Funds first seek to obtain reliable market quotes from other parties dealing in the specific asset. Absent both a reliable market quote and third-party pricing service date, the Consolidated Funds may use various models to establish an estimated exit price. Models used for debt securities are primarily based on identifying comparable assets for which market data is available and pricing the target asset consistent with the yields of the comparable assets. As circumstances require, other industry accepted techniques may be used in modeling debt assets.

Due to/from Brokers
Due to and from broker balances recorded on the Consolidated Balance Sheet include liquid assets maintained with brokers and counterparties for margin account balances and the amounts due for or due from the settlement of purchase and sales transactions. Certain due to and from broker balances have been reported on a net-by-counterparty basis where, in accordance with contractual rights and the Investment Manager's opinion, there is a right of offset in the event of bankruptcy or default by a counterparty.

Private Equity Investments
The Consolidated Funds hold private equity investments which resulted from the restructuring of other instruments. These assets are valued using market data obtained from a third-party pricing service and/or quotes from other parties dealing in the specific assets when available. In the event both a reliable market quote and third-party pricing service data are not available for such assets, the Consolidated Funds will fair value the assets using various methodologies, as appropriate for individual investments, including comparable transaction multiples, comparable trading multiples, and/or discounted cash flow analysis. When utilizing comparable trading multiples, the Investment Manager determines comparable public companies (peers) based on industry, size, developmental stage, strategy, etc., and then calculates a trading multiple for each comparable company identified by using either a price to book ratio based on publically available information about the underlying comparable company or by dividing the enterprise value of the comparable company by its earnings before interest, taxes, depreciation and amortization (EBITDA) or similar metrics. In certain instances, the inputs used in the calculation of the trading multiples may vary based on the industry or development stage of the company. A multiple determined by the Investment Manager to be within a reasonable range as calculated amongst its peers is then applied to the underlying company's price to book ratio or EBITDA (which may be normalized to adjust for certain nonrecurring events), to calculate the fair value of the underlying company. The fair value may be further adjusted for entity specific facts and circumstances.

Asset Backed Securities
The Consolidated Funds invest in a variety of asset backed securities. Asset backed securities are generally valued based on complex cash flow models that analyze the cash flows generated by the investment's underlying assets after adjusting for expected default rates, prepayment rates, collateral quality, market liquidity among other factors. These models are then adjusted based on spreads available in the market place from various research firms, dealers, and trading activity. The Consolidated Funds generally utilize an independent third party firm to perform these calculations and provide the relevant inputs. The Consolidated Funds evaluate the results based on visible market activity and market research. When appropriate, the Consolidated Funds may apply other techniques based on a specific asset's characteristics.

Total Return Swaps
A total return swap agreement is a two-party contract under which an agreement is made to exchange returns from predetermined investments or instruments. The gross returns to be exchanged or "swapped" between the parties are calculated based on a "notional amount," which is valued monthly according to the valuation policy mentioned above to determine each party's obligation under the contract.

Risks could arise from entering into swap agreements from the potential inability of counterparties to meet the terms of their contracts, and from the potential inability to enter into a closing contract. The Partnership's Consolidated Investment Funds recognize all cash flows received (paid) or receivable (payable) from swap transactions on a net basis as realized or unrealized gains or losses on investment transactions in the consolidated statement of income. The Partnership and the Consolidated Investment Funds are charged a finance cost by counterparties with respect to each agreement. The finance cost is reported as part of the realized or unrealized gains or losses.

Credit Default Swaps
As discussed in Note 7, under a credit default swap agreement two parties agree to transfer the credit exposure of an asset between one another. The seller of the swap guarantees the credit worthiness of a specific instrument by agreeing to pay the buying party a specific amount (generally par value) in the event that the instrument defaults.

At December 31, 2010, the Partnership's Consolidated Investment Funds were party to credit default swaps in which they act as the guaranteeing party. In the event that any of the underlying instruments default prior to the expiration of the agreements, the Consolidated Investment Funds are obligated to pay the swap counterparty the par value of the specific instrument. The Consolidated Investment Funds collect a fee based on the size of the underlying positions which are treated as realized gains once received. The difference between the current market value of the swaps and the original price of the swap is reported as an unrealized gain or loss.

Securities Sold, Not Yet Purchased
The Partnership's Consolidated Investment Funds engage in "short sales" as part of their investment strategies. Short selling is the practice of selling securities that are borrowed from a third party. The Consolidated Investment Funds are required to return securities equivalent to those borrowed for the short sale at the lender's demand. Pending the return of such securities, the Consolidated Investment Funds deposit with the lender as collateral the proceeds of the short sale plus additional cash or securities. The amount of the required deposit, which earns interest, is adjusted periodically to reflect any change in the market price of the securities that the Consolidated Investment Funds are required to return to the lender.

Securities Loaned
The Partnership's Consolidated Investment Funds may lend securities to their financing counterparties for margin. The lending entity receives the interest associated with the securities loaned. The loans are secured by the fair value of the securities. Gains or losses in the fair value of the securities loaned that occur during the term of the loan will be for the account of the lender. The lender has the right under the lending agreement to recover the securities from the prime brokers on demand. The lender pays a fee to the broker for the cash collateral received. This is accounted for as interest expense. A credit risk exists to the lender under this type of transaction to the extent that the counterparty defaults on its obligation to return the securities loaned.

Revolving Credit Agreements
The funded portion of revolving credit agreements is recorded at fair value on the Consolidated Balance Sheet as a component of investments, net of the fair value of unfunded commitments for which the Consolidated Funds may be liable in the future (Note 11).

Margin Transactions
In order to obtain more investable cash, the Partnership and its subsidiaries may use various forms of leverage including purchasing securities on margin. Such leverage may allow the Partnership and its subsidiaries to increase net assets at a greater rate during increasing markets, but also may lead to a more rapid decrease in net assets in a declining market. A margin transaction consists of purchasing an investment with money loaned by a broker and agreeing to repay the broker at a later date. Interest expense on the outstanding margin balance is based on market rates at the time of the borrowing.

Withdrawals Payable
Withdrawals are recognized as liabilities, net of incentive allocations, when the amount requested in the withdrawal notice becomes fixed and determinable. This generally may occur either at the time of receipt of the notice, or on the last day of a fiscal period, depending on the nature of the request. As a result, withdrawals paid after the end of the year, but based upon year-end capital balances are reflected as withdrawals payable at December 31, 2010. Withdrawal notices received for which the dollar amount is not fixed remains in capital until the amount is determined. Withdrawals payable may be treated as capital for purposes of allocations of gains/losses pursuant to the partnerships' governing documents. At December 31, 2010, the Consolidated Investment Funds had withdrawals payable of $15.7 million.

Foreign Currency Transactions
The Partnership's subsidiary Highland Europe uses British Pounds as its functional currency and enters into transactions in multiple foreign currencies. All foreign currency asset and liability balances are presented in U.S. dollars in the consolidated financial statements, translated using the exchange rate as of December 31, 2010. Revenues and expenses are recorded in U.S. dollars using an average exchange rate for the relative period. Foreign currency transaction gains and losses resulting from transactions outside of the functional currency of an entity are included in *Other income* on the consolidated statement of income.

The Consolidated Investment Funds do not isolate that portion of the results of operations resulting from changes in foreign exchange rates or investment or fluctuations from changes in market prices of securities held. Such fluctuations are included within the *Net realized and unrealized gains or loss from investments*.

Financial Instruments
The Partnership and its consolidated entities determine fair value of financial instruments as required by U.S. GAAP. The carrying amounts for cash and cash equivalents, receivables, accounts payable and accrued liabilities approximate their fair values because of their short maturities.

Life Settlement Contracts
One of the Partnership's Consolidated Investment Funds, through a subsidiary, holds life settlement contracts and accounts for them using the fair value method. These contracts are valued using mortality tables and interest rate assumptions that are deemed by management to be appropriate for the demographic characteristics of the parties insured under the policies. The contracts are recorded as a component of "Investments at fair value" on the Consolidated Balance Sheet. Realized and unrealized gains (losses) on the contracts are recorded in the Consolidated Income Statement. Cash flows relating to the purchase and sale of the contracts are recorded as a component of "Purchase of investments" and "Proceeds from the disposition of investments" on the Consolidated Statement of Cash Flows.

Partners' Capital
The Partnership agreement requires that income or loss of the Partnership be allocated to the partners in accordance with their respective partnership interests.

Goodwill and Other Intangible Assets
The Partnership purchased Highland Europe on April 6, 2005. Goodwill represents the amount paid in excess of the fair value of the assets of Highland Europe at the date of acquisition. No goodwill impairments existed as of December 31, 2010.

The Partnership has obtained the rights to the management contracts of certain RICs by acquiring the underlying contracts from the predecessor investment manager. The Partnership performs an impairment test on the purchased investment contracts on an annual basis. Any depreciation in the value of the purchased investment management contracts are accounted for in the year when it occurs. The carrying values of the purchased investment contracts are not adjusted for appreciation. The goodwill and purchased investment management contracts are indefinite-lived assets and are not amortized.

Recently Issued Accounting Standards and Interpretations
In June 2009, the FASB issued amended guidance on accounting for transfers of financial assets (originally issued as SFAS No. 166, *Accounting for Transfers of Financial Assets, an amendment of FASB Statement No. 140,* and subsequently reissued as ASU 2009-16, *Accounting for Transfers of Financial Assets*). The amendments were issued to improve the information that a reporting entity provides in its financial statements about a transfer of financial assets, the effects of a transfer on its financial statements, and a transferor's continuing involvement, if any, in transferred financial assets. The amendments eliminate the concept of qualifying special purpose entities from U.S. GAAP. These entities will now be evaluated for consolidation in accordance with the applicable consolidation criteria. The amendments are effective for reporting periods beginning on or after November 15, 2009. The adoption of ASU 2009-16 did not have a material impact on the Company's financial position or results of operations.

In June 2009, the FASB issued amended guidance on accounting for variable interest entities (originally issued as SFAS No. 167, *Amendments to FASB Interpretation No. 46(R),* and subsequently reissued as ASU 2009-17, *Improvements to Financial Reporting by Enterprises*

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Involved with Variable Interest Entities). The amendments were issued to address the effects of the removal of the concept of qualifying special purpose entities from U.S. GAAP and to address concerns regarding the consolidation of variable interest entities. ASU 2009-17 will require a qualitative approach rather than a quantitative approach when determining the primary beneficiary of a variable interest entity and will also change the criteria by which an enterprise determines whether it is the primary beneficiary of an entity. In addition, the amended interpretation will no longer consider removal rights when determining whether an entity is a variable interest entity and whether to consolidate a variable interest entity as the primary beneficiary unless those rights are held by a single party. ASU 2009-17 is effective for reporting periods beginning on or after November 15, 2009. The adoption of ASU 2009-17 did not have a material impact on the Partnership's financial position or results of operations, as substantially all of the entities in which it holds variable interests will qualify for the scope deferral included in ASU 2010-10, *Amendments to Statement 167 for Certain Investment Funds.*

In February 2010, the FASB issued ASU 2010-10, *Amendments to Statement 167 for Certain Investment Funds.* ASU 2010-10 defers the effective date of ASU 2009-17 for certain investment entities to allow the FASB to work with the International Accounting Standards Board ("IASB") in developing consistent consolidation guidance. The deferral will apply to a reporting entity's (i.e. investment manager's) interest in an entity (i) that has the attributes of an investment company or (ii) for which it is industry practice to apply measurement principles for financial reporting purposes that are consistent with those followed by investment companies. The deferral in ASU 2010-10 would not apply in situations in which a reporting entity has the explicit or implicit obligation to fund actual losses of an entity that could potentially be significant to the entity. ASU 2010-10 is effective for annual reporting periods beginning on or after November 15, 2009, and for interim periods within that first annual reporting period. The adoption of ASU 2010-10 did not have a material impact on the Company's financial position or results of operations, as adoption of the deferral results in the Company continuing to apply consolidation and disclosure requirements in effect during prior periods.

In January 2010, the FASB issued guidance on improving disclosures about fair value measurements. The guidance requires additional disclosure on transfers in and out of Levels I and II fair value measurements in the fair value hierarchy and the reasons for such transfers. In addition, for fair value measurements using significant unobservable inputs (Level III), the reconciliation of beginning and ending balances shall be presented on a gross basis, with separate disclosure of gross purchases, sales, issuances and settlements and transfers in and transfers out of Level III. The new guidance also requires enhanced disclosures on the fair value hierarchy to disaggregate disclosures by each class of assets and liabilities. In addition, an entity is required to provide further disclosures on valuation techniques and inputs used to measure fair value for fair value measurements that fall in either Level II or Level III. The guidance is effective for interim and annual periods beginning after December 15, 2009, except for the disclosures about purchases, sales, issuances, and settlements in the roll forward of activity in Level III fair value measurements, which are effective for fiscal years beginning after December 15, 2010. Adoption did not have a material impact on the Partnership's financial statements.

In December 2010, the FASB issued enhanced guidance on when to perform step two of the goodwill impairment test for reporting units with zero or negative carrying amounts. The updated guidance modifies existing requirements under step one of the goodwill impairment test for reporting units with zero or negative carrying amounts and requires step two to be performed if it is more likely than not that a goodwill impairment exists. The guidance is effective for interim and annual reporting periods beginning after December 15, 2010. As the Partnership and Consolidated

entities do not currently have zero or negative carrying values, adoption will not have a material impact on the Partnership's financial statements.

4. Fixed Assets and Leasehold Improvements

Fixed assets and leasehold improvements are comprised of the following as of December 31, 2010:

(in thousands)

Buildings	$ 8,250
Land	1,084
Leasehold improvements	4,064
Computer and equipment	3,488
Furniture and fixtures	3,141
Computer software	2,297
Accumulated depreciation	(11,057)
	$ 11,267

The Partnership and its consolidated entities are depreciating fixed assets as follows:

	Period
Buildings	29 - 40 years
Leasehold improvements	Lease term
Computer and equipment	5 years
Furniture and fixtures	7 years
Computer software	3 years

Depreciation expense in 2010 totaled approximately $2.1 million for the Partnership and its subsidiaries.

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5. Investments

Detailed below is a summary of the Partnership's investments at December 31, 2010:

(in thousands)	Amortized Cost/Cost	Value
Floating rate syndicated bank loans	$ 680,415	$ 222,695
Fixed rate syndicated bank loans	11,320	15,644
Fixed income securites	907,237	708,957
Equity securities	1,373,233	1,037,090
Life settlement contracts	270,802	165,223
CLOs (mezz tranches)	51,730	25,846
CLOs (residual CLO equity tranches)	31,077	5,436
Closed-end mutual funds	11,799	14,580
Private placement real estate	116,190	524
Limited partnerships	162,515	150,775
Warrants	6,097	3,616
Total investments	$ 3,622,415	$ 2,350,386
Credit default swaps	$ -	$ 953
Net unrealized gain/loss on swaps	$ -	$ 953

	Proceeds	Value
Securities sold, not yet purchased	$ 14,366	$ 21,406

Affiliated Investments
Investments in Residual CLO Equity and Mezzanine Tranches
Investments in affiliated residual CLO equity tranches primarily represent tranches of CLOs for which the Partnership and Highland Europe provide investment advisory services. The Consolidated Investment Funds receive quarterly distributions based on the excess interest after paying the stated interest distributions to the senior and mezzanine note holders, and paying the investment manager, trustee and other related fees. A portion of these distributions are amortized against the cost basis of the investment based on the actual cash distributions received during the year versus the total expected remaining cash distributions to the residual CLO equity tranche. The remainder of the distribution is recorded as interest income.

Investments in residual equity and mezzanine tranches of CLOs are not actively traded. The estimated fair value of the CLOs is derived from broker quotes and valuation models. The estimated fair value of these investments as presented in the consolidated balance sheet does not necessarily represent the amount that could be obtained from the sale of these investments. Changes in the credit quality or the performance of the underlying collateral, the availability and price of assets available for reinvestment, interest rates and/or the interest rate curve, or other market conditions could have a material impact on the estimated fair value of the investments.

Investment in Highland Long/Short Equity Fund
The Partnership invests in Highland Long/Short Equity Fund ("HEOF"), a diversified, open-end RIC for which the Partnership provides investment advisory services. As of December 31, 2010, the market value of the Partnership's investment in HEOF was approximately $0.2 million.

Investment in Highland Healthcare Fund
The Partnership invests in Highland Healthcare Fund ("HHF"), a non-diversified, open-end RIC for which the Partnership provides investment advisory services. As of December 31, 2010, the market value of the Partnership's investment in HHF was approximately $7.4 million.

Investment in Highland Credit Strategies Fund
The Partnership invests in Highland Credit Strategies Fund ("HCF"), a diversified, closed-end RIC for which the Partnership provides investment advisory services. As of December 31, 2010, the market value of the Partnership's investment in HCF was approximately $4.8 million. During the year ended December 31, 2010, the Partnership received approximately $0.4 million in dividends from HCF.

Investment in Highland Diversified Credit Fund
The Partnership invests in Highland Diversified Credit Fund ("DCF"), a hedge fund for which the Partnership provides investment advisory services. As of December 31, 2010, the market value of the Partnership's investment in DCF was approximately $2.0 million. During the year ended December 31, 2010, the Partnership did not receive any dividends from DCF.

Prepaid Forward Contract
On July 28, 2006, Highland Multi-Strategy Onshore Master Subfund I, LLC ("Subfund") and Barclays Bank PLC ("Barclays") entered into a prepaid forward contract. The Partnership and affiliates redeemed approximately $312.7 million of a reference portfolio, which was comprised of the following basket of funds advised by the Partnership: Highland Crusader Offshore Fund II, Ltd., Credit Strategies Domestic Feeder, Highland CDO Opportunity Fund, Ltd., Real Estate Fund, Equity Focus Fund and Select Equity Fund. Barclays simultaneously contributed approximately $312.7 million as a hedge to its obligation under the prepaid forward contract.

Barclays was prepaid approximately $156.3 million, or one-half of the reference portfolio value at initiation of the transaction. A notional amount, (the initial reference portfolio value less the amount prepaid), accretes interest to Barclays at monthly LIBOR plus 0.90% per annum.

A collateral account in the amount of approximately $53.2 million was established to further secure the transaction. Due to extreme market volatility, all of the underlying holdings in the collateral account were sold during 2008.

The term of the prepaid forward contract was three years and allowed for net settlement upon termination. The contract expired on July 31, 2009 whereby Barclays was to remit in cash the greater of the difference between the reference portfolio value and the notional amount, as valued on the scheduled termination date, or zero. Upon expiration, Barclays was not obligated to make a cash payment to the Subfund.

On October 7, 2008, Barclays submitted a notice of early termination for the prepaid forward contract.

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Accreting Strike Option
On February 28, 2007, Highland Multi-Strategy Onshore Master Subfund II, LLC entered into an Accreting Strike Option ("ASO") with Barclays. The ASO's value is based on the following basket of funds ("the reference portfolio") advised by the Partnership: Highland Crusader Offshore Fund II, Ltd., Credit Strategies Domestic Feeder, Highland CDO Opportunity Fund, Ltd., Real Estate Fund, Equity Focus Fund, Select Equity Fund and Credit Opportunities Domestic Feeder. The value of the reference portfolio at inception was approximately $250.2 million.

Barclays was paid a $71.4 million premium on the option. The strike price, (the initial reference portfolio value less the premium paid), accretes interest to Barclays at monthly LIBOR plus 1.4% per annum. As of December 31, 2010, the strike price was approximately $182.6 million.

The term of the accreting strike option is five years and allows for net settlement upon termination. At contract expiration, Barclays will remit in cash the greater of the difference between the reference portfolio value and the strike price, as valued on the scheduled termination date, or zero. As of December 31, 2010, the ASO did not have a positive net fair value. As such, no amount was recorded in the Partnership's financial statements.

Detailed below is a summary of the transaction as of December 31, 2010:

(in thousands)

Reference Portfolio	Value
Select Equity Fund	$ 113,506
Crusader Domestic Feeder	15,138
Equity Focus Fund	5,978
Credit Opportunities Domestic Feeder	4,828
Real Estate Fund	-
Highland CDO Opportunity Fund, Ltd.	-
Credit Strategies Domestic Feeder	-
Reference Portfolio Total	$ 139,450
Notional Amount	$ (182,631)
Deficit of Reference Portfolio Total to Notional Amount	$ (43,181)

On October 13, 2008, Barclays served notice of early termination for the accreting strike option.

Investment in Highland Employee Retention Assets LLC ("HERA")
During 2009, the Partnership established HERA, an employee deferred compensation vehicle. On October 26, 2009, approximately $12.1 million of assets were transferred to HERA. As of December 31, 2010, the Partnership's equity investment in HERA was approximately $3.5 million.

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6. Fair Value of Financial Instruments

Fair Value Measurement

In accordance with the authoritative guidance on fair value measurements and disclosures under U.S. GAAP, the Consolidated Investment Funds disclose the fair value of their investments in a hierarchy that prioritizes the inputs to valuation techniques used to measure the fair value. The hierarchy gives the highest priority to valuations based upon unadjusted quoted prices in active markets for identical assets or liabilities (level 1 measurements) and the lowest priority to valuation based upon unobservable inputs that are significant to the valuation (level 3 measurements). The guidance establishes three levels of the fair value hierarchy as follows:

- Level 1 – Valuation based on quoted prices in active markets for identical assets and liabilities that the Partnership and the Consolidated Investment Funds have the ability to access as of the measurement date. Valuations utilizing Level 1 inputs do not require any degree of judgment.

- Level 2 – Valuations based on (a) quoted prices for similar instruments in active markets; (b) quoted prices for identical or similar instruments in markets that are not active; or (c) models in which all significant inputs are observable, either directly or indirectly.

- Level 3 – Valuations based on indicative quotes that do not reflect recent market transactions and models or other valuation techniques in which the inputs are unobservable and significant to the fair value measurement, which includes situations where there is little, if any, market activity for the asset or liability.

The availability of observable inputs varies among financial instruments and is affected by numerous factors, including the type of instruments, the period of time in which the instrument has been established in the marketplace, market liquidity for an asset class and other characteristics particular to a transaction. When the inputs used in a valuation model are unobservable, management is required to exercise a greater degree of judgment to determine fair value than it would for observable inputs. For certain instruments, the inputs used to measure the fair value may fall into different levels of the hierarchy discussed above. In those cases, the instruments are categorized for disclosure purposes based on the lowest level of inputs that are significant to their fair value measurements.

The Partnership and Consolidated Investment Funds use prices and inputs that are current as of the measurement dates. The Partnership also considers the counterparty's non-performance risk when measuring the fair value of its investments. During periods of market dislocation, the ability to observe prices and inputs for certain instruments may change. These circumstances may result in the instruments being re-classified to different levels within the hierarchy over time. They also create an inherent risk in the estimation of fair value that could cause actual amounts to differ from management's estimates.

Whenever possible, the Partnership and its Consolidated Investment Funds use actual market prices or relevant observable inputs to establish the fair value of its assets and liabilities. In cases where observable inputs are not available, the Partnership and Consolidated Investment Funds develop methodologies that provide appropriate fair value estimates. These methodologies are reviewed on a continuous basis to account for changing market conditions.

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As of December 31, 2010, the Partnership and its consolidated entities' investments consisted of floating rate syndicated bank loans, high yield corporate bonds, CLO securities, private placements, private placement real estate debt and equity, life settlement contracts and common and preferred equity securities. In addition, the consolidated entities are parties to various credit default swaps. The majority of these financial instruments are not listed on national securities exchanges, and management is required to use significant judgment to estimate their values.

The fair value of the loans, corporate bonds and CLO securities are generally based on quotes received from brokers or independent pricing services. The policy of the Partnership and its consolidated subsidiaries is to classify loans and bonds that are prices in this manner as Level 3 assets because the markets in which they trade are not active and the inputs used by the brokers and pricing services are not readily observable. Loans and bonds with quotes that are based on actual trades with a sufficient level of activity on or near the valuation date are classified as Level 2 assets.

The consolidated entities' private placement real estate investments include equity interests in limited liability companies and debt issued by entities that invest in commercial real estate. The fair value of these investments is based on internal models developed by the Partnership. The significant inputs to the models include cash flow projections for the underlying properties and appraisals performed by independent valuation firms. Since these inputs are not readily observable, the investments are classified as Level 3 assets.

Common and preferred equity securities traded on national exchanges are valued at their closing prices as of December 31, 2010. These securities are classified as Level 1 assets. The consolidated entities also hold certain equity securities for which no active market exists. The value of these securities, which are classified as Level 3 assets, is based on a combination of broker quotes and internal valuation models.

Life settlement contracts are valued using mortality tables and interest rate assumptions that are deemed appropriate for the demographic characteristics of the parties insured in the underlying policies. Since these inputs are not readily observable, they are classified as Level 3 assets.

The Consolidated Funds engage in "short sales" as part of its investment strategies. Short selling is the practice of selling securities that are borrowed from a third party. The Consolidated Funds are required to return securities equivalent to those borrowed for the short sale at the lender's demand. Pending the return of such securities, the Consolidated Funds deposit with the lender as collateral the proceeds of the short sale plus additional cash or securities. The amount of the required deposit, which earns interest, is adjusted periodically to reflect any change in the market price of the securities that the Consolidated Funds are required to return to the lender.

The fair value of credit default swaps is based on quotes received from an independent pricing service. The inputs used to derive the quotes are not readily observable and are therefore classified as Level 3 liabilities.

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The Partnership categorizes investments recorded at fair value in accordance with the hierarchy established under U.S. GAAP. All of the Consolidated Investment Fund's investments and derivatives at December 31, 2010 are classified as Level 3 positions due to the absence of active markets with quoted prices for identical or similar investments. The following table provides a summary of the financial instruments recorded at fair value on a recurring basis by level within the hierarchy as of December 31, 2010:

(in thousands)

	Level 1	Level 2	Level 3	Total Fair Value at 12/31/10
Loans	$ -	$ 11,885	$ 226,453	$ 238,338
Bonds & Asset Backed Securities	-	409,448	313,814	723,262
Collateralized loan obligations	-	-	16,977	16,977
Rights & Warrants	573	1,799	1,244	3,616
Private placement real estate	-	-	524	524
Limited partnership interest	-	-	150,775	150,775
Common equity securities	211,944	73,774	316,209	601,927
Mutual Funds	14,580	-	-	14,580
Privately held equity	-	-	296,339	296,339
Life Settlement Contracts	-	-	165,223	165,223
Preferred stock	-	-	138,824	138,824
Common stock sold short	(21,406)	-	-	(21,406)
Total	$205,691	$496,906	$ 1,626,382	$ 2,328,979

The following table provides a roll forward of the investments classified within Level 3 for the year ended December 31, 2010:

(in thousands)

	Estimated Fair Value as of December 31, 2009	Purchases, Sales and Maturities, Net	Net Transfers In/(Out)	Net Realized Losses	Net Unrealized Gains / (Losses)	Total Fair Value at December 31, 2010
Loans	$ 360,828	$ (130,417)	$ (6,216)	$(116,820)	$ 119,078	$ 226,453
Bonds & Asset Backed Securities	414,356	(21,867)	(148,769)	(80,500)	150,594	313,814
Collateralized loan obligations	8,142	1,075	-	28	7,732	16,977
Rights & Warrants	5,003	(3,083)	(2,574)	6,020	(4,122)	1,244
Private placement real estate	12,180	(5,330)	-	(5,856)	(470)	524
Limited partnership interest	129,393	2,150	-	-	19,232	150,775
Common equity securities	249,553	38,842	1,097	(48,880)	75,597	316,209
Privately held equity	246,090	(52,811)	85	(754)	103,729	296,339
Life Settlement Contracts	144,952	28,323	-	-	(8,052)	165,223
Preferred stock	141,103	(14,526)	-	(18,808)	31,055	138,824
	$1,711,600	$ (157,644)	$(156,377)	$(265,570)	$ 494,373	$1,626,382

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Transfers from Level 2 to Level 3 or from Level 3 to Level 2 are due to a decline or an increase in market activity (e.g. frequency of trades), which resulted in a lack of or increase in available market inputs to determine price. No significant transfers between Level 1 or Level 2 fair value measurements occurred during the year ended December 31, 2010.

The following table provides a summary of the derivative contracts recorded at fair value on a recurring basis by level within the hierarchy as of December 31, 2010:

(in thousands)

	Level 1	Level 2	Level 3	Total
Derivative contracts, asset	$ -	$ -	$ 953	$ 953
Derivative contracts, liability	-	-	-	-
Derivative contracts, net	**$ -**	**$ -**	**$ 953**	**$ 953**

The following table provides a roll forward of the derivative contracts classified within Level 3 for the year ended December 31, 2010:

(in thousands)

Estimated Fair Value as of December 31, 2009	$ (102,605)
Settlement of open contracts, net	126,383
Net transfers in/(out) of Level 3	-
Net realized losses	(123,821)
Net change in unrealized gain	100,996
Estimated Fair Value as of December 31, 2010	$ 953

7. Derivative Financial Instruments

Credit Default Swaps

Credit default swap ("CDS") contracts are financial instruments that involve the payment of a fixed rate premium for protection against the loss in value of an underlying debt instrument, referenced entity or index, or the occurrence of a defined credit event. Under the terms of the swap, one party acts as a "guarantor" (the Seller), receiving the periodic stream of payments (from the Buyer) over the term of the contract and agreeing to the remedies that are specified within the credit default agreement. A credit event for corporate reference obligations includes bankruptcy, failure to pay, obligation acceleration, repudiation/moratorium or restructuring. If a credit event occurs, the seller must pay the contingent payment to the buyer, which is typically the par value (full notional amount) of the reference obligation, though the actual payment may be mitigated by terms of the International Swaps and Derivative Agreement ("ISDA"), allowing for netting arrangements and collateral. In addition, the payment may be reduced by anticipated recovery rates, segregated collateral and netting arrangements that may incorporate multiple transactions with a given counterparty.

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The following table summarizes the CDS contracts the Consolidated Investment Funds held as of December 31, 2010:

(in thousands)

Industry	Purchased / Sold	Maturity Date	Fixed Rate of Payment	Notional Amount / Exposure Purchased	Unamortized Upfront Payment	Market Value
Beverage, Food and Tobacco	Sold	9/20/2012	4.65%	$ 7,500	$ -	$ 402
Electronics	Sold	9/20/2012	2.65%	7,500	-	171
Diversified/Conglomerate Service	Sold	9/20/2012	3.55%	3,750	-	117
Broadcasting and Entertainment	Sold	9/20/2012	3.00%	6,000	-	92
Buildings and Real Estate	Sold	9/20/2012	4.05%	3,750	-	63
Electronics	Sold	9/20/2012	3.20%	7,500	-	62
Media/Telecom	Sold	9/20/2012	3.00%	3,000	-	46
Total				$ 39,000	$ -	$ 953

The following table provides a summary of the Consolidated Investment Fund's maximum exposure by maturity credit rating under the swaps for which it sold protection. All of the contracts mature within the next five years.

(in thousands)

Current issuer credit rating*	
BB-	$ 7,500
B	12,750
B-	18,750
	$ 39,000

* The credit rating on the underlying bond provides an indicator of the risk that the Consolidated Investment Funds will have to perform under the swap arrangement. Lower credit ratings with a shorter contract term indicate a higher likelihood of performance by the Consolidated Investment Funds.

Total Return Swaps

A total return swap is a two-party contract under which the parties agree to exchange returns from a predetermined portfolio of investments. The gross returns to be exchanged or swapped between the parties are calculated based on a notional amount, which is valued monthly to determine each party's obligation under the contract. The investments held in the swap portfolio consist primarily of corporate bank debt.

During the year ended December 31, 2010, the Consolidated Investment Funds' were invested in a total return swap program with a major international financial institution. The Consolidated Investment Funds realized approximately $2.2 million of net gains, which are included as a component of net realized loss from investments and derivative contracts in the Consolidated Statement of Income, and were netted against collateral previously posted with the counterparty upon termination of the program.

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8. Debt and Notes Payable

Consolidated debt and notes payable as of December 31, 2010 consists of:

(in thousands)	December 31, 2010
Partnership revolving credit facility	$ 86,296
Credit Opportunities Master note payable	83,603
Highland Capital Management Europe note payable	13,314
Nolen Drive note payable	6,926
	$ 190,139

Revolving Credit Facility
On July 21, 2009, the Partnership amended and restated the Credit Agreement with Bank of America as syndication agent and The Bank of Nova Scotia as administrative agent in the amount of $147.3 million. The Credit Agreement provides for loans which are scheduled to mature on July 21, 2011.

Interest is payable on the last day of each month. The applicable spread for LIBOR loans under the Credit Agreement is LIBOR plus 5% per annum. For base rate loans, the spread is 4% per annum over the prevailing prime rate.

Under the terms of the Credit Agreement, the availability of credit was subject to financial covenants requiring the Partnership to maintain a minimum amount of fee earning assets under management, a minimum amount of management fees earned, a minimum collateral ratio and a maximum on compensation paid.

On September 15, 2009 and February 22, 2010, the Credit Agreement was amended and restated to clarify some documentation items and reporting requirements.

On December 28, 2010, a waiver to the Credit Agreement was executed which allowed the Partnership to reduce its debt from $141.3 million to $86.3 million as of December 31, 2010. The waiver called for a cash payment of $45.0 million on or before December 30, 2010 which would result in the retirement of $55.0 million in face value of debt. The waiver allowed for the sources of the cash payment to be from cash on hand, sale of collateral or additional subordinated indebtedness. This cash payment resulted in a gain on the extinguishment of the debt of $10.0 million which is recorded in the Net Realized Gain on Extinguishment of Debt line item on the Consolidated Statement of Income. In addition to the cash payment made on December 30, 2010, the waiver also called for a cash payment of $12.8 million on or before March 31, 2011 which would result in the retirement of an additional $15.6 million in face value of debt. The sources of cash available for the March 31, 2011 payment was to consist of cash on hand, sale of collateral or additional subordinated indebtedness.

On March 31, 2011, the Partnership amended the Revolving Credit Agreement a third to extend a number of provisions from the December 28, 2010 waiver, including forbearance from the exercising of remedies for events of default from July 21, 2011 to November 18, 2011. As referred to above, cash of $12.8 million was paid, retiring $15.6 million in face value. In order to help fund a portion of the March 31, 2011 repayment, the Partnership obtained loans from its co-founders

totaling $6.7 million. The loans accrue interest at a rate of LIBOR plus five percent and mature on December 31, 2015 with all interest and principal due upon maturity.

The balance as of the date of this report is $66.7 million.

The fair value of the facility as of December 31, 2010 was approximately $83.6 million.

Credit Opportunities Master Note Payable

On December 19, 2008, Highland Credit Opportunities CDO Financing, LLC ("CDO Financing"), a wholly-owned subsidiary of Credit Opportunities Master, executed a Note Purchase Agreement (the "Purchase Agreement") with certain investors that provided for the issuance of up to $218 million of senior secured convertible notes guaranteed by Credit Opportunities Master. Pursuant to the terms of the Purchase Agreement and concurrent with the execution of the Purchase Agreement, CDO Financing issued $116.6 million of senior secured convertible notes for $115.6 million of cash and securities with a fair value of $0.9 million. The proceeds from the notes were used primarily to fund an additional equity investment in Highland Credit Opportunities, Ltd. (the "CDO"). This investment was required under the terms of a forbearance agreement that the Credit Opportunities Master executed with the Majority Controlling Class of the CDO's note holders.

The notes have a stated maturity date of December 31, 2012 and accrue interest on a quarterly basis at a rate of 25% per year. The terms of the Purchase Agreement allow for up to 75% of the accrued interest due at any payment date to be capitalized as additional principal owed to the holders of the notes. For the year ended December 31, 2010, no interest payable was capitalized and $45.0 million of senior secured convertible notes were repaid. As of December 31, 2010, there are $83.6 million of senior secured convertible notes outstanding.

Subject to certain conditions, the Purchase Agreement allows for CDO Financing to issue up to $101.4 million of additional notes to the existing note holders. The Purchase Agreement requires payment of a fee of 2.5% per annum on the unfunded portion of the note commitment. For the year ended December 31, 2010, approximately $2.6 million of unfunded commitment fees is recorded in interest expense in the Consolidated Statement of Income. As of December 31, 2010, a liability of approximately $5.3 million is included in interest payable in the Consolidated Balance Sheet. The fees will be paid on the stated maturity date, or on the full repayment of the notes.

Under the terms of the Purchase Agreement, the Credit Opportunities Master was not able to make any prepayments until July 1, 2010. From July 1, 2010 through December 31, 2010, the Credit Opportunities Master could elect to prepay 50% of the outstanding principal balance. After that period, Credit Opportunities Master may prepay all or a portion of the outstanding principal, provided that each partial payment made to the note holders is in an aggregate principal amount of at least $0.5 million.

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The Purchase Agreement stipulates a premium due to the note holders upon full or partial payment of the outstanding principal of the notes. The premium due is determined by the date the principal is repaid and is calculated as a percentage of that principal balance, with a minimum of 5% due on the stated maturity date of the notes. The following table presents the premium rates by payment period:

Prepayment Period	Fees
July 1, 2010 - Dec. 31, 2010	15.0%
July 1, 2011 - Dec. 31, 2011	10.0%
July 1, 2012 - Dec. 31, 2012	6.0%
Dec. 31 2012	5.0%

Credit Opportunities Master is accruing the minimum premium due, 5% of the outstanding balance, over the contractual life of the notes using the effective-yield method. For the year ended December 31, 2010, approximately $0.8 million of this premium due is recorded as a component of interest expense in Credit Opportunities Master's consolidated statement of operations. As of December 31, 2010 a liability of approximately $1.7 million for the total premium recognized over the life of the notes is included in interest payable in the Consolidated Balance Sheet. Premium of $6.8 million was paid upon the prepayment during the year and is recorded in interest expenses in the Consolidated Statement of Income.

At the note holders' option, up to 50% of the unpaid principal and accrued interest on the notes may be converted, in whole or in part, to limited partnership interests in the Feeder Fund or Credit Opportunities Master between January 1, 2010 and June 30, 2010. From July 1, 2010 through December 31, 2012, up to 100% of the unpaid principal and accrued interest on the notes may be converted, in whole or in part, to limited partnership interests in the Feeder Fund or Credit Opportunities Master. As of December 31, 2010, no unpaid principal or accrued interest on the notes was converted into limited partnership interests in the Feeder Fund or Credit Opportunities Master.

The Purchase Agreement grants the note holders a lien on certain assets held by Credit Opportunities Master. In addition, it requires Credit Opportunities Master and the CDO to comply with various financial covenants. Failure to meet these covenants may result in an event of default and give the note holders the right to accelerate repayment of the debt or initiate a liquidation of certain assets. Credit Opportunities Master was in compliance with the covenants as of December 31, 2010 and for the year then ended.

As of December 31, 2010, the estimated fair value of the notes was approximately $115.2 million, which is based on value of the risk-adjusted yield from the expected future cash flows of the notes relative to comparable investments. Actual values may vary significantly from the estimates, particularly since the terms of the Company's debt are complex, and the market for the instruments is illiquid.

Highland Capital Management Europe, Ltd. Credit Facility
On December 29, 2010, Highland Europe entered into a $13.3 million non-recourse credit facility with Natixis Financial Products, LLC. The facility is secured by the management fees of Highland Europe. Payments are made on the 15th day of February, May, August and November until the facility is fully paid down. The facility matures on December 31, 2015. The facility bears interest at a rate of 4.00% per annum. The rate shall be reduced to 3.50% per annum once the principal balance is reduced below $10.8 million. The rate shall again be reduced to 3.00% per annum once

the principal balance is reduced below $6.2 million. As of December 31, 2010, the estimated fair market value of the facility was approximately $13.3 million.

HCREA Nolen Drive Note Payable
On September 18, 2006, Nolen Drive entered into a $7.0 million note payable with Artesia Mortgage Capital Corporation, which is secured by the underlying property in Nolen Drive (the "Term Loan"). The Term Loan matures with all principal and accrued interest due on October 11, 2011. The Term Loan bears interest at a rate of 6.52% per annum. Payments are due on the 11th of every month. As of December 31, 2010, the estimated fair market value of the note was approximately $7.1 million.

9. Financial Instruments with Concentration of Credit and Other Risks

Financial Instruments
The Partnership and its consolidated entities' investments include, among other things, equity securities, debt securities (both investment and non-investment grade) and bank loans. The consolidated entities may also invest in derivative instruments, including total return and credit default swaps. Investments in these derivative instruments throughout the year subject the consolidated entities to off-balance sheet market risk, where changes in the market or fair value of the financial instruments underlying the derivative instruments may be in excess of the amounts recognized in the Consolidated Balance Sheet.

Market Risk
Market risk represents the potential loss that may be incurred by the Partnership and its Consolidated Investment Funds due to a change in the market value of its investments or the value of the investments underlying swap agreements. The Partnership and its Consolidated Investment Fund's exposure to market risk is affected by a number of factors, including the size, composition and diversification of its investments and swap agreements; interest rates; and market volatility. The Partnership and its Consolidated Investment Funds use various forms of leverage, including notes, which increase the effect of any investment value changes on net assets.

Credit Risk
Credit risk is the potential loss the Partnership and its consolidated entities may incur as a result of the failure of a counterparty or an issuer to make payments according to the terms of a contract. Because the consolidated entities enter into over-the-counter derivatives such as swaps, it is exposed to the credit risk of their counterparties. To limit the credit risk associated with such transactions, the consolidated entities execute transactions with financial institutions that the Investment Manager believes to be financially viable.

Liquidity Risk
The Consolidated Investment Fund's limited partner interests have not been registered under the Securities Act of 1933 or any other applicable securities law. There is no public market for the interests, and neither the Consolidated Investment Funds nor their manager expects such a market to develop.

Business Risk
The Partnership provides advisory services to the consolidated investment funds. The Consolidated Investment Funds could be materially affected by the liquidity, credit and other events of the Partnership.

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High Yield Bonds and Loans
The Partnership and its Consolidated Investment Funds' investment portfolios consist of floating rate syndicated bank loans and fixed income securities that are not listed on a national securities exchange. These investments trade in a limited market and it may not be possible to immediately liquidate them if needed. In addition, certain of the Partnership and its Consolidated Investment Funds' investments have resale or transfer restrictions that further reduce their liquidity. Because of the inherent uncertainty of these investments, the Investment Manager's best estimates may differ significantly from values that would have been used had a broader market for the investments existed.

When the Partnership and its Consolidated Investment Funds' purchase a senior secured syndicated bank loan, it enters into a contractual relationship directly with the corporate borrower, and as such, is exposed to certain degrees of risk, including interest rate risk, market risk and the potential non-payment of principal and interest, including default or bankruptcy of the corporate borrower or early payment by the corporate borrower. Typically, senior secured syndicated bank loans are secured by the assets of the corporate borrower and the Partnership and its Consolidated Investment Funds have a policy of regularly reviewing the adequacy of each corporate borrower's collateral.

The Partnership and its Consolidated Investment Funds may invest in high-yield bonds that have been assigned lower rating categories or are not rated by the various credit rating agencies. Bonds in the lower rating categories are generally considered to be speculative with respect to the issuer's ability to repay principal and pay interest. They are also subject to greater risks than bonds with higher ratings in the case of deterioration of general economic conditions. Due to these risks, the yields and prices of lower-rated bonds are generally volatile, and the market for them is limited, which may affect the ability to liquidate them if needed.

CLO Equity Investments
The Partnership and its Consolidated Investment Funds may invest in CLO equity that are not rated by various credit rating agencies and are generally considered to be speculative with respect to the issuer's ability to repay principal and interest. The yields and prices of these non-rated CLO equity tranches are generally volatile, and the market for them is limited, which may affect the ability to liquidate them if needed. In addition, certain of the Consolidated Investment Funds' investments have resale or transfer restrictions that further limit their liquidity. The Partnership and its consolidated investment funds are exposed to the potential non-payment of principal and interest from their CLO equity investments. As of December 31, 2010, 1 of the 29 CLO's managed by the Partnership paid interest to the equity holders on their last payment date.

Distressed Investments
A portion of the high yield corporate bonds and senior secured syndicated bank loans in which the Partnership and its Consolidated Investment Funds invest have been issued by distressed companies in an unstable financial condition that have experienced poor operating performance and may be involved in bankruptcy or other reorganization and liquidation proceedings. These investments have substantial inherent risks. Many of these distressed companies are likely to have significantly leveraged capital structures, which make them highly sensitive to declines in revenue and to increases in expenses and interest rates. The leveraged capital structure also exposes the companies to adverse economic factors, including macroeconomic conditions, which may affect their ability to repay borrowed amounts on schedule.

Credit Default Swaps
Credit default swaps involve greater risks than if the Partnership or its Consolidated Investment Funds had shorted the reference obligations directly. In addition to the market risk discussed above, credit default swaps are subject to liquidity risk and credit risk. If a credit event occurs, the value of the reference obligation received by the Partnership or its Consolidated Investment Funds, couple with the periodic payments previously received, may be less than the full notional amount it pays to the buyer, resulting in loss of value.

Limited Diversification
The Investment Manager attempts to diversify the Consolidated Investment Funds' investments. However, the Consolidated Investment Funds' portfolio could become significantly concentrated in any one issuer, industry, sector strategy, country or geographic region, and such concentration of credit risk may increase the losses suffered by the Consolidated Investment Funds. In addition, it is possible that the Investment Manager may select investments that are concentrated in certain classes of financial instruments. This limited diversity could expose the Consolidated Investment Funds to losses that are disproportionate to market movements as a whole.

Custody Risk
The clearing operations for the Partnership and its Consolidated Investment Funds are provided by major financial institutions. In addition, all of the Partnership and its Consolidated Investment Funds' cash and investments are held with banks or brokerage firms, which have worldwide custody facilities and are members of all major securities exchanges. The Partnership or its Consolidated Investment Funds may lose all or a portion of the assets held by these banks or brokerage firms if they become insolvent or fail to perform pursuant to the terms of their obligations. While both the U.S. Bankruptcy Code and the Securities Investor Protection Act of 1970 seek to protect customer property in the event of a broker-dealer's failure, insolvency or liquidation, the Partnership and its Consolidated Investment Funds' might be unable to recover the full value of their assets or incur losses due to their assets being unavailable for a period of time.

Leverage Risk
The Consolidated Investment Funds may borrow funds from brokers, banks and other lenders to finance its trading operations. The use of leverage can, in certain circumstances, magnify the losses to which the Consolidated Investment Funds' investment portfolio may be subject. The use of margin and short-term borrowings creates several risks for the Consolidated Investment Funds. If the value of the Consolidated Investment Funds' securities fall below the margin level required by a counterparty, additional margin deposits are required. If the Consolidated Investment Funds are unable to satisfy a margin call, the counterparty could liquidate the position in some or all of the financial instruments that are in the account at the prime broker and cause the Consolidated Investment Funds to incur significant losses. In addition, to the extent the Consolidated Investment Funds has posted excess collateral for margin transactions, there is a risk that the counterparty will fail to fulfill its obligation to return the full value of that collateral.

The failure to satisfy a margin call, or the occurrence of other material defaults under margin or other financing agreements, may trigger cross-defaults under the Consolidated Investment Funds' agreements with other brokers, lenders, clearing firms or other counterparties, multiplying the adverse impact to the Consolidated Investment Funds. In addition, because the use of leverage allows the Consolidated Investment Funds to control positions worth significantly more than its investment in those positions, the amount that the Consolidated Investment Funds may lose in the event of adverse price movements is high in relation to the amount of their investment.

In the event of a sudden drop in the value of the Consolidated Investment Funds' assets, the Consolidated Investment Funds may not be able to liquidate assets quickly enough to satisfy their margin or collateral requirements. As a result, the Consolidated Investment Funds may become subject to claims of financial intermediaries, and such claims could exceed the value of its assets. The banks and dealers that provide financing to the Consolidated Investment Funds have the ability to apply discretionary margin, haircut, financing and collateral valuation policies. Changes by banks and dealers in any of the foregoing may result in large margin calls, loss of financing and forced liquidations of positions and disadvantageous prices.

Foreign Currency Risk
The Partnership and its Consolidated Entities may invest in securities or maintain cash denominated in currencies other than the U.S. dollar. The Partnership and its Consolidated Entities are exposed to risk that the exchange rate of the U.S. dollar relative to other currencies may change in a manner that has an adverse effect on the reported value of the Partnership and its Consolidated Entities' assets and liabilities denominated in currencies other than the U.S. dollar.

Concentration of Investments
At December 31, 2010, the Consolidated Investment Funds' investments and derivative contracts were predominantly concentrated in the United States and Cayman Islands and across several industries.

Wind-Down Risk
The ultimate proceeds that the Consolidated Investment Funds' are able to realize on the sale of its investments will directly affect the amounts that the investors in the Feeder Funds are able to redeem in connection with the wind down process. These amounts may differ materially from the partners' capital balances as of December 31, 2010.

Litigation Risk
The Partnership and its Consolidated Investment Funds are periodically subject to legal actions arising from the ordinary course of business. In addition, certain of the Consolidated Investment Funds' Feeder Fund investors have filed lawsuits after receiving notification of the decision to wind-down certain Consolidated Investment Funds' investment portfolios. Refer to Note 17 for a discussion of the open litigation.

10. Related Party Transactions

Expenses Reimbursable by Funds Managed
In the normal course of business, the Partnership typically pays invoices it receives from vendors for various services provided to the investment funds the Partnership manages. A summary of these eligible reimbursable expenses are then submitted to the trustee/administrator for each respective fund, typically on a quarterly basis, and the Partnership receives payment as reimbursement for paying the invoices on behalf of the respective funds. As of December 31, 2010, approximately $8.1 million in reimbursable expenses were due from various affiliated funds and entities for these eligible expenses, and is included in Other Assets in the accompanying Consolidated Balance Sheet.

Long Term Incentive Plan and Intercompany Loan Payable to Highland Capital Management Services, Inc. ("HCMSI")
Effective January 1, 2001, all of the Partnership's employees were transferred to HCMSI, which provides personnel management and consulting services to the Partnership. The Partnership and

HCMSI entered into a management agreement whereby the Partnership compensated HCMSI for its employee expenses plus a consulting services fee. As of January 1, 2005, there were no further transactions with HCMSI as all employees were transferred to the Partnership.

Effective January 1, 2001, HCMSI approved a long-term incentive plan ("the LTIP") for select employees who are eligible to receive Long-Term Incentive Units ("the Units") under the LTIP. The number of Units authorized under the LTIP is 30,000,000 and a majority of the Units granted vest 40% during the grant year and 30% for each of the two years thereafter, expiring 10 years after such grant date, unless different terms are agreed upon between the Plan Administrator and the employee. The fair value of the Units are based upon the fair value of the Partnership, as determined in good faith, by James Dondero, the Plan Administrator and the sole shareholder of the general partner and a limited partner of the Partnership. The LTIP was transferred to the Partnership from HCMSI on January 1, 2005.

The Units are exercisable at the discretion of the Plan Administrator, or upon a triggering event defined as the earlier of the following events:

- Change in control
- Initial public offering
- Participant's voluntary or involuntary termination due to death, disability, retirement, or hardship
- Participant's voluntary or involuntary termination other than due to death, disability, retirement, hardship, or cause is exercisable to the extent the Participant is entitled to only 80% of the vested shares.

A total of 1,104,353 Units are outstanding as of December 31, 2010 under the LTIP. During the year ended December 31, 2010, the liability under the LTIP decreased by approximately $1.8 million, which is included in *Compensation and benefits* in the Consolidated Statement of Income.

The total balance payable to HCMSI was approximately $0.9 million as of December 31, 2010, which is related to the LTIP accrual.

Effective December 31, 2004, all of the employees at HCMSI were transferred to the Partnership, and the management agreement between the Partnership and HCMSI was terminated as to the provision of future services. However, all of the outstanding and unfunded obligations of the Partnership to HCMSI as of December 31, 2004, as well as any additional obligations that may arise in relation to these amounts, will continue to be due and payable to HCMSI until satisfied in accordance with the provisions of the agreements in place.

Accounts Held with Related Party
During the year the Partnership and its subsidiaries maintained accounts at NexBank, SSB ("NexBank"), a related party by way of common control. As of December 31, 2010, balances in the accounts were approximately $19.8 million, a portion of which exceeds Federal deposit insurance limits.

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Controlling Positions
Various members of the Partnership's management serve as members on the Boards of Directors for some of the companies with which it invests. Because these individuals participate in the management of these companies, investments held by the Partnership and its subsidiaries in these companies may, from time to time, not be freely tradable. Any director's fees received by the Partnership for these services as directors are paid to and retained by the Partnership. As of December 31, 2010, the Partnership and its subsidiaries held the following investments in these companies:

(in thousands)

Issuer	Type of Investment	Fair Value
American Banknote Corporation	Common Equity	$ 14,821
American Home Patient	Common Equity	5,653
Blackwell BMC, LLC	Term Loan	3,547
Blackwell BMC, LLC	Common Equity	28,769
Consolidated Restaurant Companies, Inc.	Term Loan	13,626
Cornerstone Healthcare Group Holding, Inc.	Common Equity	57,171
Cornerstone Healthcare Group Holding, Inc.	Term Loan	18,513
Cornerstone Healthcare Group Holding, Inc.	Loan - Second Lien	5,250
Epocal, Inc.	Preferred Equity	80,419
Ginn LA Resorts Holdings, LLC	Term Loan	1,194
Ginn LA Conduit Lender, Inc.	Loan - Second Lien	33
Highland Long/Short Equity Fund	Mutual Fund	231
Highland Healthcare Fund	Mutual Fund	7,371
Highland Credit Strategies Fund	Closed-End Mutual Fund	4,819
Home Interiors & Gifts, Inc.	Proof of Claims	2
Marcal Paper Mills, LLC	Common Equity	-
Nex-Tech Aerospace Holdings, Inc.	Common Equity	1,206
Romacorp Restaurant Holdings, Inc.	Common Equity	618
Safety-Kleen Inc.	Common Equity	178,486
Solstice Neurosciences, Inc.	Preferred Equity	263
Terrestar	Preferred Equity	1,022
Trussway Industries, Inc.	Common Equity	11,001

During the year ended December 31, 2010, the Partnership did not earn material income from those entities where members of management serve as members of the Board of Directors.

Investment in Affiliated Loans
During the year, certain subsidiaries of the Partnership were invested in several bank loans in which NexBank was the agent bank. Interest earned on the loans during the year was approximately $6.5 million. At December 31, 2010, these subsidiaries were invested in NexBank agented loans with commitments and market values totaling approximately $264.4 million and $63.9 million, respectively.

Affiliated Transactions

On August 20, 2008, the Partnership issued a promissory note in the amount of $330,000 to an employee of the Partnership. The note accrues interest at a rate of LIBOR plus 1.75%. The note is payable in one lump sum on the earlier of August 20, 2015 or an event of acceleration. The note has specific forgiveness provisions of principal and interest prior to maturity if certain milestone dates are obtained. As of December 31, 2010, the principal amount on the promissory note was $212,000 with interest accrued of approximately $3,000.

In accordance with the terms of a Master Indenture Agreement (the "Indenture") dated November 2, 2006, the Credit Opportunities Master acquired 250,000 Preferred Shares of Highland Credit Opportunities CDO, Ltd (the "CDO"). The Indenture requires Credit Opportunities Master to hold, directly or indirectly, more than 99% of the CDO's outstanding Preferred Shares at all times. As of December 31, 2010, the Credit Opportunities Master held 350,000 Preferred Shares and was the sole beneficial preferred shareholder.

The CDO invests primarily in floating rate syndicated bank loans, fixed income securities, and equity investments. These investments were purchased with funds the CDO received from the issuance of rated floating rate notes and Credit Opportunities Master's purchase of the Preferred Shares. Credit Opportunities Master is the sole beneficiary of all residual income from the CDO's portfolio. Although the Preferred Shares do not have a voting interest in the CDO, they carry certain rights. Specifically, they are entitled to receive quarterly preferential dividends, without requiring any declaration by the Directors, from the date they were issued until they are redeemed.

The Investment Manager serves as the Collateral Manager for the CDO but does not receive any fees for its services to the CDO.

During the fourth quarter of 2008, the CDO failed to meet certain over-collateralization tests set forth in the First Supplement to the Indenture dated November 2, 2006. This breach would have given the CDO's Majority of Controlling Debt Class the option to accelerate repayment of the CDO's outstanding debt or initiate a liquidation of its assets. To protect the value of its investment in the CDO, Credit Opportunities Master entered into a forbearance agreement whereby the Majority Controlling Class of the CDO's note holders waived the breach and agreed not to exercise the rights discussed above. The Majority Controlling Class also agreed to waive any future events of default resulting from the CDO's failure to meet the overcollateralization tests through December 31, 2011. In return, the CDO agreed not make any preferred dividend payments to Credit Opportunities Master until the over-collateralization tests exceed certain thresholds.

Credit Opportunities Master paid certain expenses related to the forbearance agreement, which have been recorded as an increase to the cost basis of its investment in the CDO's Preferred Shares.

The Consolidated Investment Funds periodically enter into transactions to buy or sell securities with affiliated entities. During the year ended December 31, 2010, the Consolidated Investment Funds did not purchase or sell a material amount of securities to affiliated entities.

Services Performed by an Affiliate

In March 2007, Highland Capital of New York, L.P., a New York limited partnership ("Highland New York"), was formed and has performed marketing services for the Partnership and its affiliates in connection with the Partnership's investment management and advising business, including, but not limited to, assisting Highland Capital in the marketing and sales of interests in investment pools

for which Highland Capital serves as the investment manager. The Partnership is charged a marketing services fee for the services that Highland New York performs on the Partnership's behalf. For the year ended December 31, 2010, total marketing fee expense charged to the Partnership by Highland New York was approximately $3.7 million and as of December 31, 2010, amounts owed to Highland New York for services rendered was approximately $1.4 million.

11. Commitments

Contracts in the Normal Course of Business
In the normal course of business the Partnership and its subsidiaries may enter into contracts which provide general indemnifications and contain a variety of presentations and warranties that may expose the Partnership and its subsidiaries to some risk of loss. In addition to the other financial commitments discussed in the consolidated financial statements, the amount of future losses arising from such undertakings, while not quantifiable, is not expected to be significant.

Legal Proceedings
The Partnership is a party to various legal proceedings arising in the ordinary course of business. While any proceeding or litigation has an element of uncertainty, management believes that the final outcome will not have a materially adverse effect on the Partnership's Consolidated Balance Sheet, consolidated statement of income, or its liquidity. See Note 16.

Operating Leases
Future minimum lease payments under operating lease commitments of the Partnership and its consolidated entities with initial or noncancelable terms in excess of one year, at inception, are as follows:

(in thousands)

Years Ending December 31,		
2011	$	1,757
Thereafter		-
	$	1,757

Total rental expense of the Partnership and its consolidated entities for operating leases was approximately $2.5 million for the year ended December 31, 2010.

Loan Commitments
At December 31, 2010, the Consolidated Investment Funds had unfunded loan commitments of approximately $1.1 million. Unfunded loan commitments are marked to market on the relevant day of valuation in accordance with the Partnership's valuation policies. Any applicable unrealized gain (loss) and unrealized appreciation (depreciation) on unfunded loan commitments are recorded on the Consolidated Balance Sheet and Consolidated Income Statement, respectively. The net change in unrealized appreciation on unfunded transactions is not material to the Income Statement.

Highland Capital Management, L.P.
(A Delaware Limited Partnership)
Notes to Consolidated Financial Statements
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12. Postretirement Benefits

In December 2006, the Partnership created a defined benefit plan to which all employees and certain affiliated persons could participate if they met the eligibility requirements. The Partnership uses a December 31 measurement date for its defined benefit plan.

Effective December 31, 2008, the Partnership amended the plan by freezing it to new participants and additional benefit accruals. Therefore, no new participants shall enter the plan after 2008 and no new benefits shall accrue under the plan after 2008. The Partnership's benefit plan obligation and plan assets for the year ended December 31, 2010 are reconciled in the tables below.

(in thousands)

Change in projected benefit obligation		**2010**
Benefit obligation at beginning of year	$	3,416
Service cost		-
Interest cost		195
Plan participants' contributions		-
Amendments		-
Actuarial loss/(gain)		184
Acquisition/(divestiture)		-
Benefits paid		(437)
Benefit obligation at end of year	$	3,358

Change in plan assets		**2010**
Fair value of plan assets at beginning of year	$	3,614
Actual return on plan assets		391
Acquisition/(divestiture)		-
Employer contribution		-
Plan participants' contributions		-
Benefits paid		(437)
Other increase/(decrease)		-
Fair value of plan assets at year end	$	3,568

Reconciliation of Funded Status		**2010**
Accumulated benefit obligation at end of year	$	3,358
Projected benefit obligation at end of year		3,358
Fair value of assets at end of year		3,568
Funded status at end of year	$	210

The Partnership does not expect to contribute to the plan during 2011.

Assumptions
Weighted-average assumptions used to determine benefit obligations at December 31, 2010:

Discount rate	5.70%
Rate of compensation increase	N/A

Weighted-average assumptions used to determine net periodic benefit cost at December 31, 2010:

Discount rate	6.10%
Expected long-term return on plan assets	6.10%
Rate of compensation increase	N/A

As of December 31, 2010, approximately $0.7 million of the plan assets were categorized as Level 3.

13. Goodwill and Other Intangible Assets

Below is a summary of the Partnership's goodwill and other intangible assets as of December 31, 2010:

(in thousands)	Carrying Value
Highland Floating Rate Fund	$ 12,672
Highland Floating Rate Advantage Fund	11,328
Goodwill for Highland Europe	8,020
	$ 32,020

On April 9, 2004, the Partnership purchased the management agreements of Highland Floating Rate Fund (the "Floating Rate Fund") and Highland Floating Rate Advantage Fund (the "Advantage Fund"), collectively the "Purchased Funds." The combined purchase price for the above agreements was $24.0 million. The purchase price was allocated among the Purchased Funds pro-rata based on the approximate combined total managed assets of the funds as of the date of purchase. As a result, $12.7 million of the purchase price was allocated to the Floating Rate Fund and $11.3 million was allocated to the Advantage Fund.

The Partnership performs an impairment test as required by U.S. GAAP on a yearly basis. The Partnership's management analyzes market multiples on retail asset managers within the industry as of December 31, 2010 to determine fair value of these assets. The Partnership has determined that no impairment charge is necessary for the current year.

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Notes to Consolidated Financial Statements
December 31, 2010

14. Reverse Repurchase Agreements

Credit Strategies Master is party to collateralized financing transactions consisting of securities sold under agreements to repurchase. As of December 31, 2010, Credit Strategies Master held high yield corporate bonds and equities with a fair value of $39.9 million under reverse repurchase agreements. The gross amount payable to the counterparty (including accrued interest) was approximately $20.6 million and is recorded as a component of due to brokers in the Consolidated Balance Sheet.

15. Income Taxes

The Partnership
For U.S. income tax purposes, the Partnership is treated as a pass-through-entity, which means it is not subject to income taxes under current Internal Revenue Service or state and local guidelines. Each partner is individually liable for income taxes, if any, on their share of the Partnership's net taxable income.

The Partnership files tax returns as prescribed by the tax laws of the jurisdictions in which it operates. In the normal course of business, the Partnership is subject to examination by federal and foreign jurisdictions, where applicable. As of December 31, 2010, the tax years that remain subject to examination by the major tax jurisdictions under the statute of limitations is from the year 2007 forward (with limited exceptions).

Authoritative guidance on accounting for and disclosure of uncertainty in tax positions requires the General Partner to determine whether a tax position of the Partnership is more likely than not to be sustained upon examination, including resolution of any related appeals or litigation processes, based on the technical merits of the position. For tax positions meeting the more likely than not threshold, the tax amount recognized in the financial statements is the largest benefit that as a greater than fifty percent likelihood of being realized upon ultimate settlement with the relative taxing authority. The General Partner does not expect a significant change in uncertain tax positions during the twelve months subsequent to December 31, 2010.

Crusader Master
Crusader Master is an exempted limited partnership organized in Bermuda. Under the current laws of Bermuda, there is no income, estate, transfer, sale or other taxes payable by Crusader Master. Crusader Master has received an undertaking from the government of Bermuda exempting it from all such taxes until March 28, 2016.

For U.S. income tax purposes, Crusader Master is treated as a pass-through entity, which means it is not subject to income taxes under current Internal Revenue Service or state and local guidelines. Each partner is individually liable for income taxes, if any, on its share of Crusader Master's net taxable income.

Since Crusader Master trades investments for its own account, non-U.S. Investment Vehicle investors are generally not subject to U.S. tax on such earnings (other than certain withholding taxes indicated below). The General Partner intends to conduct Crusader Master's business in such a way that it does not constitute a U.S. trade or business or create a taxable presence in any of the jurisdictions in which the Investment Manager has offices, including the United Kingdom.

Highland Capital Management, L.P.
(A Delaware Limited Partnership)
Notes to Consolidated Financial Statements
December 31, 2010

Dividends as well as certain interest and other income received by Crusader Master from sources within the United States may be subject to, and reflected net of, United States withholding tax at the rate of 30% for non-U.S. Investment Vehicles. Interest, dividend and other income realized by Crusader Master from non-U.S. sources and capital gains realized on the sale of securities of non-U.S. issuers may be subject to withholding and other taxes levied by the jurisdiction in which the income is sourced. As of December 31, 2010, a withholding tax liability of $0.3 million is included in the accrued expenses in the Consolidated Balance Sheet.

It is management's responsibility to determine whether a tax position of Crusader Master is more likely than not to be sustained upon examination, including resolution of any related appeals or litigation processes, based on the technical merits of the position. For tax positions meeting the more likely than not threshold, the tax amount recognized in the consolidated financial statements is the largest benefit that has a greater than fifty percent likelihood of being realized upon ultimate settlement with the relative taxing authority. As a result of adopting this guidance, management has established a reserve of approximately $12.5 million for uncertain tax positions, which includes approximately $1.2 million of interest and $4.0 million of penalties. Of this amount, approximately $2.7 million related to the current year and was recorded as a tax expense in Statement of Income. Management does not expect a significant change in uncertain tax positions during the twelve months subsequent to December 31, 2010.

Crusader Master files tax returns as prescribed the tax laws of the jurisdictions in which it operates. In the normal course of business, Crusader Master is subject to examination by federal and foreign jurisdictions, where applicable. As of December 31, 2010, the tax years that remain subject to examination by the major tax jurisdictions under the statute of limitations is from the year 2007 forward.

A wholly owned corporation of Crusader Master has incurred capital losses on the sale of investments that exceed the amount of capital gains it has earned. Management has concluded that the subsidiary is not likely to generate additional gains in future periods and has established a valuation allowance to reserve for the entire amount of the deferred tax asset associated with the unused capital losses.

Credit Opportunities Master
The Credit Opportunities Master has adopted authoritative guidance which requires management to determine whether a tax position of Credit Opportunities Master is more likely than not to be sustained upon examination, including resolution of any related appeals or litigation processes, based on the technical merits of the position. For tax positions meeting the more likely than not threshold, the tax amount recognized in the consolidated financial statements is the largest benefit that has a greater than fifty percent likelihood of being realized upon ultimate settlement with the relative taxing authority. Credit Opportunities Master has determined that there was no effect on the financial statements from the application of this guidance. As of December 31, 2010, a liability to account for uncertain tax positions of $0.2 million is classified within other liabilities within the Consolidated Balance Sheet. Management does not expect a significant change in uncertain tax positions during the twelve months subsequent to December 31, 2010.

Credit Opportunities Master files tax returns as prescribed by the tax laws of the jurisdictions in which it operates. In the normal course of business, Credit Opportunities Master is subject to examination by federal and foreign jurisdictions, where applicable. As of December 31, 2010, the tax years that remain subject to examination by the major tax jurisdictions under the statute of limitations is from the year 2007 forward (with limited exceptions).

Dividends as well as certain interest and other income received by Credit Opportunities Master from sources within the United States may be subject to, and reflected net of, United States withholding tax at a rate of 30% for non-U.S. Investment Vehicles. Interest, dividend and other income realized by Credit Opportunities Master from non-U.S. sources and capital gains realized on the sale of securities of non-U.S. issuers may be subject to withholding and other taxes levied by the jurisdiction in which the income is sourced.

Credit Strategies Master

Credit Strategies Master is an exempted limited partnership organized in Bermuda. Under the current laws of Bermuda, there is no income, estate, transfer, sale or other taxes payable by Credit Strategies Master. Credit Strategies Master has received an undertaking from the government of Bermuda exempting it from all such taxes until March 28, 2016.

For U.S. income tax purposes, Credit Strategies Master is treated as a pass-through entity, which means it is not subject to income taxes under current Internal Revenue Service or state and local guidelines. Each partner is individually liable for income taxes, if any, on its share of Credit Strategies Master's net taxable income.

The Credit Strategies Master files tax returns as prescribed by the tax laws of the jurisdictions in which it operates. In the normal course of business, Credit Strategies Master is subject to examination by federal and foreign jurisdictions, where applicable. As of December 31, 2010, the tax years that remain subject to examination by the major tax jurisdictions under the statute of limitations is from the year 2007 forward (with limited exceptions).

It is management's responsibility to determine whether a tax position of Credit Strategies Master is more likely than not to be sustained upon examination, including resolution of any related appeals or litigation processes, based on the technical merits of the position. For tax positions meeting the more likely than not threshold, the tax amount recognized in the financial statements is the largest benefit that has a greater than fifty percent likelihood of being realized upon ultimate settlement with the relative taxing authority. The General Partner has determined that there was no effect on the financial statements from the application of this guidance. The General Partner does not expect a significant change in uncertain tax positions during the twelve months subsequent to December 31, 2010.

Dividends as well as certain interest and other income received by Credit Strategies Master from sources within the United States may be subject to, and reflected net of, United States withholding tax at the rate of 30% for non-U.S. Investment Vehicles. Interest, dividend and other income realized by Credit Strategies Master from non-U.S. sources and capital gains realized on the sale of securities of non-U.S. issuers may be subject to withholding and other taxes levied by the jurisdiction in which the income is sourced.

A wholly-owned corporation of the Credit Strategies Master incurred approximately $0.9 million of tax expense on income earned by the entity. No portion of this amount was unpaid as of December 31, 2010.

The remaining entities consolidated by the Partnership had no uncertain tax positions which required accrual under U.S. GAAP.

Highland Capital Management, L.P.
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Notes to Consolidated Financial Statements
December 31, 2010

16. Legal Proceedings

In April 2007, CDO Master Fund entered into a risk sharing agreement structured as a derivative whereby it absorbed 51% of the gains and losses generated from a loan warehouse agreement. The remaining 49% of the warehouse gains and losses were absorbed by Highland Special Opportunities Holding Company ("SOHC"). The warehouse was financed by a reputable financial institution and held collateral consisting of investments in collateralized loan obligations and credit default swaps. Although the agreement expired on August 15, 2007, the counterparty agreed to extend it for one year on March 15, 2008. Due to liquidity constraints, CDO Master Fund was unable to meet a November call, and the counterparty elected to terminate the agreement as of December 5, 2008. The collateral held in the warehouse was subsequently seized by the counterparty and sold on the open market through bids-wanted-in competition. After offsetting the proceeds received from the sale and the income earned on the collateral prior to the sale, the counterparty notified CDO Master Fund that its pro-rata share of the losses incurred under the agreement was $350.2 million. CDO Master Fund has accrued a liability in its financial statements for this amount. On February 24, 2009, the counterparty (the "Plaintiffs") filed a lawsuit against CDO Master Fund, SOHC and the Partnership in the New York State Supreme Court of Manhattan alleging that they suffered losses in excess of $745 million due to the depreciation in value of the warehouse collateral. On February 19, 2010 a New York Appeals Court sided with the Partnership and dismissed UBS' claims against the Partnership. Thereafter on June 22, 2010, Plaintiffs filed an amended complaint with the Court against the Partnership and certain affiliated registered and unregistered investment vehicles alleging $687 million in damages. On March 15, 2011, the First Appellate Division heard the Partnership's appeal of the ruling regarding dismissal of the amended complaint. The First Appellate Division has not yet issued a ruling on this matter.

In April 2009, HYMF, Inc. filed a lawsuit in the New York State Court against the Partnership and certain consolidated investment funds (collectively "the Defendants"). The lawsuit alleges that the Defendants breached their contractual and fiduciary duties by failing to return HYMF's original investment in the consolidated investment funds. The Defendants intend to vigorously defend against the lawsuit. At this time, management believes it is currently not possible to evaluate the likelihood of any particular outcome or estimate the amount or range of potential loss with any reasonable degree of certainty.

On July 15, 2008, Crusader Master, certain affiliates, and numerous external parties (collectively, the "Defendants") were named as parties to an action filed with the Bankruptcy Court of the Southern District of Florida. The action related to a secured lending transaction and subsequent refinancing arrangement in which the Defendants participated. On October 13, 2009, the Bankruptcy Court ruled in favor of the plaintiffs and ordered the Defendants to disgorge the principal, interest, and fees they received in connection with the refinancing arrangement. In addition, the Court ordered the defendants to pay simple interest on the disgorged amount at an annual rate of 9%. Based on the ruling, Crusader Master recorded a reserve of approximately $5.3 million as of December 31, 2010, which represents its ratable share of the judgment. However, the Defendants believe they acted in good faith pursuant to the terms of the relevant agreements and intend to appeal the decision. The reserve is included as a component of accrued expenses on the Consolidated Balance Sheet and a component of net realized losses from investment transactions on the Consolidated Statement of Income.

During the first quarter of 2009, certain investors in Highland Credit Strategies Fund, Ltd. filed lawsuits in response to the decision to wind-down Credit Strategies Master's investment portfolio. They have made various claims, including breach of fiduciary duties, negligence, tortuous

interference with the payment of redemption amounts, and/or fraud. Both the Partnership and Highland Credit Strategies Fund, Ltd. have been named as parties to the lawsuits. Management believes it is currently not possible to evaluate the likelihood of any particular outcome or estimate the amount or range of potential loss with any reasonable degree of certainty. As of December 31, 2010, approximately $1.3 million of required cash payments made by Credit Strategies Master to retain legal firms to defend these matters are included in Other Assets in the Consolidated Balance Sheet.

17. Fund Wind Down

On February 4, 2009, the Partnership informed investors of CDO Master that the fund was effectively insolvent and that it was in the best interest of the fund to liquidate the fund's remaining assets. The proceeds from the asset liquidations will be distributed to the remaining financing counterparties and other senior and trade creditors as the liabilities in the fund exceed the assets to such a degree that proceeds from the asset sales will not be able to satisfy any unpaid redemptions or to distribute amounts to any current investors.

During 2008, Crusader Master and Credit Strategies Master were negatively affected by deteriorating conditions in the overall economy and credit markets. These conditions became more severe during the third and fourth quarters of 2008 and generated significant losses on various derivative transactions and repurchase agreements to which Crusader Master and Credit Strategies Master were parties. In addition, certain assets that Crusader Master and Credit Strategies Master purchased on margin through prime brokerage agreements experienced a significant decline in value. In certain cases, Crusader Master and Credit Strategies Master were unable to post the collateral required to secure these losses, and the counterparties provided notice of their intent to terminate the agreements. As a result, access to the credit that Crusader Master and Credit Strategies Master used to manage its investing and financing activities became highly constrained, and in some cases unavailable. In light of these circumstances, the General Partners (the general partner of Highland Crusader Fund, L.P. and the general partner of Highland Credit Strategies Fund, L.P.) and the Board of Directors of Highland Credit Strategies Fund, Ltd. and Highland Crusader Fund, Ltd. concluded, in consultation with the Investment Manager, that it would be in the best interests of their investors to wind down the investment portfolios of Credit Strategies Master and Crusader Master. On October 15, 2008, the Investment Manager notified investors that it would begin the wind-down process. The Investment Manager also restricted subscriptions and the payment of withdrawals to the Feeder Funds effective the same date.

In connection with the wind down, the limited partner interests of the Feeder Funds were compulsorily withdrawn/redeemed on November 15, 2008 in accordance with the terms of the governing documents. The General Partner has suspended payment of distributions, and any outstanding balances with respect to withdrawal and/or redemption amounts. A formal plan of liquidation has not been finalized by management, and there are no assurances that investors will realize the remaining equity balance over the course of the wind down. Distributions will ultimately be made on a pro-rata basis based on the respective redemption amounts as of November 15, 2008 unless a plan of distribution dictates otherwise. Future distributions will be made as the value of Crusader Master and Credit Strategies Master's investments are realized and all obligations due to counterparties and service providers of Crusader Master, Credit Strategies Master, and the Feeder Funds have been satisfied.

Subsequent to December 31, 2010 a Plan of Distribution was agreed to for Credit Strategies Master. See Note 18 for additional discussion.

As of December 31, 2010, the estimated value of the partners' capital available for distribution from Crusader Master to its Feeder funds was approximately $1,488.7 million. The actual amounts that will be distributed upon completion of the wind down process are inherently uncertain. The Investment Manager estimates that the wind down could take up to four years to complete. Capital will be distributed as it becomes available in accordance with a plan of distribution, once approved and implemented.

On October 14th 2010, certain investors in Highland Crusader Fund II,, Ltd. presented a Petition to Wind-Up the Fund to the Supreme Court of Bermuda Companies (Winding Up) Commercial Court ("the Court") for the purpose of appointing a liquidator. If a Winding-Up Order is issued, a liquidator will be appointed and the liquidator will take steps to collect in and realize the company's assets and will deal with creditors' claims. If a Winding-Up order is not issued by the Court, the Investment Manager will continue to work on finalizing a formal plan of distribution with all interested parties. Crusader Master and consequently the other Feeder Funds are not parties to this petition, but could be subject to subsequent actions taken by the creditors, shareholders, or the Court. The Investment Manager believes it is currently not possible to evaluate the likelihood of any particular outcome from the matter at this point. The matter is currently scheduled to be decided by the Court at a hearing commencing on May 30, 2011.

18. Subsequent Events

On January 4, 2011 and February 4, 2011 Credit Opportunities Master elected to prepay $10.0 million and $17.0 million of the outstanding principal balance of the notes, respectively, including interest and prepayment premium.

Crusader Master had previously recorded a reserve of approximately $5.3 million relating to an unfavorable decision in a legal case that involved Crusader Master. In February 2011, the District Court of Florida quashed the judgment against the Defendants and overturned the ruling that resulted in Crusader Master recording the reserve. Crusader Master does not believe an appeal of this decision will be successful and relieved the reserve, which will be reflected in the Consolidated Statement of Income for the year ending December 31, 2011.

On March 31, 2011, the Partnership amended the Revolving Credit Agreement a third time to extend a number of provisions from the December 29, 2010 waiver. A discussion of the amendment can be found in Note 8.

On March 31, 2011, the Partnership obtained loans from its co-founders totaling $6.7 million. A discussion of the loans can be found in Note 8.

In April 2011, the Bermuda Commercial Court approved a plan to distribute the assets of Credit Strategies Master. The Scheme of Arrangement for the offshore fund and Plan of Distribution for the onshore fund were implemented on May 1, 2011. As part of the arrangement, the Partnership paid $3.0 million to Credit Strategies Master.

In April 2011, the Partnership entered into a 10-year lease agreement with Crescent TC Investors, L.P.

Supplemental Information

Highland Capital Management, L.P.

(A Delaware Limited Partnership)

Supplemental Unconsolidated Balance Sheet
December 31, 2010

(in thousands)

The above information was derived from the audited December 31, 2010 consolidated financial Statements of Highland Capital Management, L.P. This information should be read in conjunction with such audited financial statements and should not be used for tax purposes.

Assets		
Current assets:		
Cash and cash equivalents	$	1,991
Restricted cash		1,656
Investments at fair value (cost $72,055)		65,749
Equity method investees		17,926
Management and incentive fees receivable		15,282
Due from brokers		137
Other current assets		13,317
Deferred incentive fees receivable		35,883
Purchased investment management contracts		24,000
Goodwill and other intangible assets, net		388
Fixed assets and leasehold improvements, net of accumulated depreciation of $10,237		4,830
	$	181,159
Liabilities and Partners' Capital		
Liabilities		
Accounts payable	$	2,187
Accrued and other liabilities		59,488
Debt and notes payable		86,296
Long-term incentive plan		1,081
Total liabilities		149,052
Partners' capital		32,107
Total liabilities and partners' capital	$	181,159

Highland Capital Management, L.P.

(A Delaware Limited Partnership)

Supplemental Unconsolidated Statement of Income

December 31, 2010

(in thousands)

The above information was derived from the audited December 31, 2010 consolidated financial statements of Highland Capital Management, L.P. This information should be read in conjunction with such audited financial statements and should not be used for tax purposes.

Revenue:	
Management fees	$ 78,353
Incentive fees/allocations	8,066
Interest and investment income	2,286
Other income	11,193
Total revenue	99,898
Operating expenses:	
Compensation and benefits	48,802
Professional fees	10,294
Investment and research consulting	785
Amortization and depreciation	1,820
Interest expense	8,353
Other operating expenses	19,275
Total operating expenses	89,329
Income/(loss) before investment activities	10,569
Realized and unrealized gain/(loss) from investments transactions:	
Net realized loss on sale of investment transactions	(7,866)
Net change in unrealized gain on investments	14,628
Total realized and unrealized loss from investments transactions	6,762
Realized and unrealized earnings from equity method investee:	
Net unrealized losses from equity method investees	(990)
Total realized and unrealized losses from equity method investees	(990)
Net realized gain on extinguishment of debt	10,000
Net income	$ 26,341

EXHIBIT 66

Highland Capital Management, L.P.

(A Delaware Limited Partnership)

Consolidated Financial Statements and Supplemental Information

December 31, 2011

Highland Capital Management, L.P.

(A Delaware Limited Partnership)

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Report of Independent Auditors

To the General and Limited Partners of
Highland Capital Management, L.P:

In our opinion, the accompanying consolidated balance sheet and the related consolidated statements of income, of changes in partners' capital and of cash flows (hereinafter referred to as the "financial statements") present fairly, in all material respects, the consolidated financial position of Highland Capital Management, L.P. and its subsidiaries (collectively, the "Partnership") at December 31, 2011, and the results of their operations, the changes in their partners' capital, and their cash flows for the year then ended in conformity with accounting principles generally accepted in the United States of America. These financial statements are the responsibility of the Partnership's management. Our responsibility is to express an opinion on these financial statements based on our audit. We conducted our audit of these statements in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing the accounting principles used and significant estimates made by management, and evaluating the overall financial statement presentation. We believe that our audit provides a reasonable basis for our opinion.

Our audit was conducted for the purpose of forming an opinion on the consolidated financial statements taken as a whole. The supplemental unconsolidated balance sheet and statement of income are presented for purposes of additional information, and are not a required part of the basic consolidated financial statements. Such information has been subjected to the auditing procedures applied in the audit of the consolidated financial statements and, in our opinion, is fairly stated in all material respects in relation to the consolidated financial statements taken as a whole.

PricewaterhouseCoopers LLP

May 21, 2012

PricewaterhouseCoopers LLP, 2001 Ross Avenue, Suite 1800, Dallas, TX 75201-2997
T: (214) 999 1400, F: (214) 754 7991, www.pwc.com/us

Highland Capital Management, L.P.
(A Delaware Limited Partnership)
Consolidated Balance Sheet
December 31, 2011

(in thousands)

Assets		
Cash and cash equivalents	$	74,668
Restricted cash		14,691
Investments at fair value (cost $2,901,075)		1,926,277
Unrealized gains on derivative contracts		162
Management and incentive fees receivable		29,402
Due from brokers		20,708
Other assets		26,800
Deferred incentive fees receivable		29,428
Goodwill and other intangible assets		8,020
Fixed assets and leasehold improvements, net of accumulated depreciation of $11,562		6,869
Total assets	$	2,137,025
Liabilities and Partners' Capital		
Liabilities		
Accounts payable	$	2,048
Securities sold, not yet purchased (proceeds $6,134)		8,390
Withdrawals payable		15,516
Obligations to return collateral		6,792
Interest payable		11,326
Due to brokers		370,711
Due to brokers for securities purchased not yet settled		66,882
Accrued and other liabilities		70,256
Secured borrowing		3,812
Debt and notes payable		114,813
Total liabilities		670,546
Non-controlling interest		1,427,281
Commitments (Note 11)		
Partners' capital		39,198
Total liabilities and partners' capital	$	2,137,025

The accompanying notes are an integral part of these consolidated statements.

Highland Capital Management, L.P.
(A Delaware Limited Partnership)
Consolidated Statement of Income
December 31, 2011

(in thousands)

Revenue:		
Management fees	$	154,218
Incentive fees/allocations		1,381
Interest and investment income		136,483
Other income		13,772
Total revenue		305,854
Expenses:		
Compensation and benefits		56,455
Professional fees		30,717
Investment and research consulting		708
Amortization and depreciation		1,346
Interest expense		26,416
Tax expense		4,999
Other expenses		21,155
Total expenses		141,796
Income before investment and derivative activities		164,058
Realized and unrealized gain/(loss) from investment and derivative transactions:		
Net realized loss on investment and derivative transactions		(373,502)
Net change in unrealized gain on investment and derivative transactions		335,343
Total realized and unrealized loss from investment and derivative transactions		(38,159)
Extraordinary Items		
Net realized gain on extinguishment of debt		2,823
Novation of purchased investment management contracts		(24,000)
Fund wind down costs (Note 17)		(23,292)
Net income		81,430
Net income attributable to the non-controlling interest		(55,183)
Net income attributable to Highland Capital Management, L.P.	$	26,247

The accompanying notes are an integral part of these consolidated statements.

Highland Capital Management, L.P.

(A Delaware Limited Partnership)

Consolidated Statement of Changes in Partners' Capital

Year Ended December 31, 2011

(in thousands)

	General Partner	Limited Partners	Total
Partners' capital, December 31, 2010	$ 495	$ 31,612	$ 32,107
Net income attributable to Highland Capital Management, L.P.	-	26,247	26,247
Partner distributions	(105)	(19,051)	(19,156)
Partners' capital, December 31, 2011	$ 390	$ 38,808	$ 39,198

The accompanying notes are an integral part of these consolidated statements.

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Highland Capital Management, L.P.
(A Delaware Limited Partnership)
Consolidated Statement of Cash Flows
Year Ended December 31, 2011

(in thousands)

Cash flows from operating activities:		
Net income	$	81,430
Adjustment to reconcile net income to cash and cash equivalents provided by operating activities:		
Net realized loss on investments and derivative transactions		373,502
Net realized gain on extinguishment of debt		(2,823)
Net change in unrealized gain on investments and derivative transactions		(335,343)
Net change in unrealized gain from securities sold, not yet purchased		(4,783)
Deferred tax expense on unrealized gains		1,068
Amortization and depreciation		1,346
Changes in assets and liabilities:		
Restricted cash		14,410
Management and incentive fee receivable		(11,791)
Deferred incentive fees		6,455
Investment management contracts		24,000
Other assets		11,005
Due from brokers		12,392
Accounts payable		(150)
Accrued and other liabilties		(19,948)
Due to brokers for unsettled trades		(666)
Interest payable		4,265
Withdrawals payable		(220)
Long-term incentive plan		(1,081)
Obligations to retun collateral		6,792
Net cash provided by operating activities		159,860
Cash flows from investing activities:		
Purchases of fixed assets and leasehold improvements, net		(3,381)
Purchases of investments		(169,981)
Proceeds from dispositions of investments		562,705
Purchases of investments to cover securities sold, not yet purchased		(15,650)
Net cash provided by investing activities		373,693
Cash flows from financing activities:		
Payments on long-term debt		(25,756)
Payments on revolving debt and promissory notes		(26,991)
Payments on affiliate loans, net		(6,614)
Due to brokers		(50,349)
Capital contributions from minority interest investors of consolidated entities		107,394
Capital withdrawals by minority interest investors of consolidated entities		(533,528)
Partner distributions		(19,156)
Net cash used in financing activities		(555,000)
Net decrease in cash and cash equivalents		(21,447)
Cash and cash equivalents		
Beginning of year		96,115
End of year	$	74,668
Supplemental disclosure of cash flow informaton:		
Interest paid during the year	$	26,768

The accompanying notes are an integral part of these consolidated statements.

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1. Description of Business

Highland Capital Management, L.P. (the "Partnership") was formed on July 7, 1997 as a limited partnership in the state of Delaware. The Partnership is a registered investment advisor under the Investment Advisors Act of 1940 that manages collateralized loan obligations ("CLOs"), hedge funds, and other leveraged loan transactions that are collateralized predominately by senior secured bank debt and high-yield bonds. The Partnership and its subsidiaries make direct investments in debt, equity, and other securities in the normal course of business. The Partnership's general partner is Strand Advisors, Inc. (the "General Partner"). The Partnership is 100% owned by senior management of the Partnership.

As of December 31, 2011, the Partnership provided investment advisory services for twenty-eight CLOs, five separate accounts, one registered investment company, one master limited partnership, and fourteen hedge fund structures, with total fee-earning assets under management of approximately $19.8 billion.

2. Liquidity Considerations

As further discussed in Note 8, the Partnership has a Revolving Credit Facility (the "Credit Agreement") originally scheduled to mature on July 21, 2011. Forbearance from the exercising of remedies for events of default was extended from July 21, 2011 through April 30, 2012 and subsequent to year-end, was further extended from April 30, 2012 to May 2, 2013. See further discussion in Note 8. The Credit Agreement is collateralized by assets of the Partnerships with an estimated fair value of approximately $115 million at December 31, 2011.

3. Summary of Significant Accounting Policies

The following is a summary of the significant accounting policies followed by the Partnership in preparation of its financial statements.

Basis of Accounting
The Partnership's consolidated financial statements have been prepared in accordance with U.S. generally accepted accounting principles ("U.S. GAAP") as set forth in the Financial Accounting Standards Board's Accounting Standards Codification.

Use of Estimates
The preparation of the consolidated financial statements in conformity with U.S. GAAP requires management to make estimates and assumptions that affect the amounts and disclosures in the consolidated financial statements. Actual results could differ from those estimates and those differences could be material.

Principles of Consolidation
The consolidated financial statements include the accounts of the Partnership and the Partnership's consolidated subsidiaries, which are comprised of (i) those entities in which it has controlling investment and has control over significant operating, financial and investing decisions of the entity, (ii) those entities in which it, as the general partner, has control over significant operating, financial and investing decisions of the entity, and (iii) variable interest entities ("VIEs") in which it is the primary beneficiary as described below.

The Partnership determines whether an entity has equity investors who lack the characteristics of a controlling financial interest or does not have sufficient equity at risk to finance its expected

activities without additional subordinated financial support from other parties. If an entity has either of these characteristics, it is considered a VIE and must be consolidated by its primary beneficiary, which is the party that, along with its affiliates and de facto agents, absorbs a majority of the VIEs expected losses or receives a majority of the expected residual returns as a result of holding variable interests.

Consolidation of Non-Variable Interest Entities
The Partnership consolidates the following non-VIE's (collectively referred to as the "Consolidated Investment Funds"), as the Partnership (or its wholly owned subsidiaries) controls the general partner of the respective entities and is responsible for the daily operations of the following entities:

- Highland Crusader Offshore Partners, L.P. ("Crusader Master"), a Bermuda exempted limited partnership that commenced operations on July 10, 2000;
- Highland CDO Opportunity Master Fund, L.P. ("CDO Master Fund"), a Bermuda limited partnership that commenced operations on November 9, 2005;
- Highland Credit Strategies Master Fund, L.P. ("Credit Strategies Master"), a Bermuda exempted limited partnership that commenced operations on August 24, 2005
- Highland Credit Opportunities CDO, L.P. ("Credit Opportunities Master"), a Delaware limited partnership that commenced operations on December 29, 2005;
- Highland Multi-Strategy Master Fund, L.P. ("Multi-Strat Master"), a Bermuda limited partnership that commenced operations on July 18, 2006;
- Highland Multi-Strategy Fund, L.P. ("Multi-Strat Domestic Feeder"), a Delaware limited partnership that commenced operations on July 6, 2006;
- Canopy Timberlands, L.P., a Delaware limited partnership that commenced operations on April 29, 2008;
- Highland Restoration Capital Partners Offshore, L.P. ("Restoration Offshore") a Cayman limited partnership that commenced operations on September 2, 2008;
- Highland Restoration Capital Partners, L.P. ("Restoration Onshore") a Delaware limited partnership that commenced operations on September 2, 2008; and

Consolidation of Majority Owned Entities
The Partnership consolidates the following entities as it has a controlling majority interest:

- 100% interest in Highland Capital Management Europe, Ltd. ("Highland Europe"), a company organized in the United Kingdom and purchased by the Partnership on April 6, 2005;
- 100% interest in Highland Capital Special Allocation, LLC ("HCSA"), a Delaware limited liability company that commenced operations on December 21, 2006;
- 100% interest in HFP GP, LLC, a Delaware limited liability company that commenced operations on January 20, 2006;

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- 100% interest in Highland Receivables Finance 1, LLC, a Delaware limited liability company that commenced operations on December 29, 2006;
- 100% interest in Highland Capital Management (Singapore) Pte, Ltd, a company organized in the Republic of Singapore that commenced operations on April 2, 2008;
- 59% interest in HCREA Nolen Drive, L.P, a Texas limited partnership that commenced operations on July 17, 2006;
- 100% interest in Highland Special Situations Fund, a Delaware statutory trust that is registered with the Securities and Exchange Commission under the Investment Company Act of 1940, as amended, as a non-diversified, closed-end management investment company, and commenced operations on May 18, 2005.
- 100% interest in Highland Energy and Materials Fund, a Delaware statutory trust that is registered with the Securities and Exchange Commission under the Investment Company Act of 1940, as amended, as a non-diversified, closed-end management investment company, and commenced operations on December 1, 2011.

All significant interpartnership and intercompany accounts and transactions have been eliminated in consolidation of all of the aforementioned consolidated entities. All the Consolidated Investment Funds are, for U.S. GAAP purposes, investment companies under the American Institute of Certified Public Accountants (AICPA) Audit and Accounting Guide - Investment Companies. The Partnership has retained the specialized accounting of these funds required under U.S. GAAP.

Reclassifications
Previously reported amounts for the prior year have in some instances been reclassified to conform to the current year presentation.

Investment Transactions
Investment transactions are recorded on a trade date basis. Investments in securities are valued at market or fair value at the date of the financial statements with the resulting net unrealized appreciation or depreciation reflected in the Consolidated Statement of Income. Realized gains and losses on the transactions are determined based on either the first-in, first-out or specific identification method.

Management and Incentive Fee Revenue
The Partnership recognizes revenue as earned in connection with services provided under collateral and investment management agreements. Under these agreements, the Partnership earns management fees calculated as a percentage of assets under management or net asset value. The Partnership also has an opportunity to earn additional incentive fees and incentive allocations related to certain management agreements depending ultimately on the financial performance of the underlying assets the Partnership manages. During the year ended December 31, 2011, the Partnership and its consolidated entities recognized management and incentive fees of approximately $154.0 million, and $1.4 million, respectively. The Partnership recognized approximately $1.8 million of appreciation on incentive fees earned prior to 2008, previously deferred under Sec. 409(A) of the Internal Revenue Code, which has been presented in *Other Income* in the Consolidated Statement of Income.

Derivative Contracts
Credit Default Swaps are marked-to-market based upon values from third party vendors or broker quotations and the change in value is recorded as unrealized appreciation/depreciation. Swap contracts with cumulative unrealized gains as of a reporting date are recorded as assets on the Consolidated Balance Sheet, while swap contracts with cumulative unrealized losses as of the reporting date are recorded as liabilities. Upfront payments made/received by the Consolidated Funds are amortized or accreted for financial reporting purposes, with the unamortized or unaccreted portion included in the Consolidated Balance Sheet. A termination payment by the counterparty or the Consolidated Funds is recorded as a realized gain or loss, as well as the net periodic payments received or paid by the Consolidated Fund.

Dividends, Interest and Expense Recognition
Interest on currently paying debt instruments is accrued as earned and dividend income and dividends on securities sold, not yet purchased are recorded on the ex-dividend date, net of withholding taxes. In certain instances where the asset has defaulted or some amount of the interest payment is deemed uncollectable, interest is recognized when received. Discounts and premiums are accreted and amortized to interest income, except for deep-discounted debt where ultimate collection of interest and principal may be in doubt. Such accretion/amortization is calculated on an effective-yield basis. Amendment fees are recognized when agreed to by the underlying company and all settlement contingencies are met. Operating expenses, including interest on securities sold short, not yet purchased, are recorded on the accrual basis as incurred.

Income Taxes
The Partnership is not subject to federal income taxes, and therefore, no provision has been made for such taxes in the accompanying consolidated financial statements. Income taxes are the responsibility of the partners. Certain consolidated subsidiaries are subject to federal income taxes.

Certain entities that are included in these financial statements are subject to federal and/or state income taxes. Deferred tax assets and liabilities are recognized for the future tax consequences attributable to differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax bases. Deferred tax assets and liabilities are measured using enacted tax rates expected to apply to taxable income in the years in which those temporary differences are expected to be recovered or settled. The effect on deferred tax assets and liabilities of a change in tax rates is recognized in the period that includes the enactment date. Of the entities consolidated, only Highland Europe is subject to these provisions. See further discussion in Note 15..

Extraordinary Items
Extraordinary items consist of events or transactions of a material nature that are both unusual in nature and infrequent in occurrence. An event or transaction is unusual in nature if it is abnormal and clearly unrelated to typical activities of the business. It is infrequent in occurrence if it is not reasonably expected to recur in the foreseeable future.

Cash and Cash Equivalents
Cash and cash equivalents consist of cash held at U.S. and foreign banks, deposits with original maturities of less than 90 days, and money market funds. Foreign cash of $1.4 million is included in the cash and cash equivalents on the consolidated balance sheet. A portion of cash and cash equivalents exceeds Federal deposit insurance limits.

Restricted Cash
The Partnership and its subsidiaries are required to maintain cash balances as collateral for various financing and derivative transactions. These amounts are reported as restricted cash on the Consolidated Balance Sheet.

Fixed Assets and Leasehold Improvements
Fixed assets and leasehold improvements are carried at cost, less accumulated depreciation. Depreciation is provided using the straight-line method over the shorter of the estimated useful life of the assets or the lease term.

Debt Securities
The Consolidated Funds invest in various types of debt, which are almost exclusively valued using market data obtained from one or more third-party pricing services or brokers. In instances where a third-party pricing service does not provide pricing for a specific asset, the Consolidated Funds first seek to obtain reliable market quotes from other parties dealing in the specific asset. Absent both a reliable market quote and third-party pricing service date, the Consolidated Funds may use various models to establish an estimated exit price. Models used for debt securities are primarily based on identifying comparable assets for which market data is available and pricing the target asset consistent with the yields of the comparable assets. As circumstances require, other industry accepted techniques may be used in modeling debt assets.

Private Equity Investments
The Consolidated Funds hold private equity investments which resulted from the restructuring of other instruments. These assets are valued using market data obtained from a third-party pricing service and/or quotes from other parties dealing in the specific assets when available. In the event both a reliable market quote and third-party pricing service data are not available for such assets, the Consolidated Funds will fair value the assets using various methodologies, as appropriate for individual investments, including comparable transaction multiples, comparable trading multiples, and/or discounted cash flow analysis. When utilizing comparable trading multiples, the Investment Manager determines comparable public companies (peers) based on industry, size, developmental stage, strategy, etc., and then calculates a trading multiple for each comparable company identified by using either a price to book ratio based on publically available information about the underlying comparable company or by dividing the enterprise value of the comparable company by its earnings before interest, taxes, depreciation and amortization (EBITDA) or similar metrics. In certain instances, the inputs used in the calculation of the trading multiples may vary based on the industry or development stage of the company. A multiple determined by the Investment Manager to be within a reasonable range as calculated amongst its peers is then applied to the underlying company's price to book ratio or EBITDA (which may be normalized to adjust for certain nonrecurring events), to calculate the fair value of the underlying company. The fair value may be further adjusted for entity specific facts and circumstances.

Asset Backed Securities
The Consolidated Funds invest in a variety of asset backed securities. Asset backed securities are generally valued based on complex cash flow models that analyze the cash flows generated by the investment's underlying assets after adjusting for expected default rates, prepayment rates, collateral quality, market liquidity among other factors. These models are then adjusted based on spreads available in the market place from various research firms, dealers, and trading activity. The Consolidated Funds generally utilize an independent third party firm to perform these calculations and provide the relevant inputs. The Consolidated Funds evaluate the results based on visible market activity and market research. When appropriate, the Consolidated Funds may apply other techniques based on a specific asset's characteristics.

Credit Default Swaps
As discussed in Note 7, under a credit default swap agreement two parties agree to transfer the credit exposure of an asset between one another. The seller of the swap guarantees the credit worthiness of a specific instrument by agreeing to pay the buying party a specific amount (generally par value) in the event that the instrument defaults.

At December 31, 2011, the Partnership's Consolidated Investment Funds were party to credit default swaps in which they act as the guaranteeing party. In the event that any of the underlying instruments default prior to the expiration of the agreements, the Consolidated Investment Funds are obligated to pay the swap counterparty the par value of the specific instrument. The Consolidated Investment Funds collect a fee based on the size of the underlying positions which are treated as realized gains once received. The difference between the current market value of the swaps and the original price of the swap is reported as an unrealized gain or loss.

Securities Sold, Not Yet Purchased
The Partnership's Consolidated Investment Funds engage in "short sales" as part of their investment strategies. Short selling is the practice of selling securities that are borrowed from a third party. The Consolidated Investment Funds are required to return securities equivalent to those borrowed for the short sale at the lender's demand. Pending the return of such securities, the Consolidated Investment Funds deposit with the lender as collateral the proceeds of the short sale plus additional cash or securities. The amount of the required deposit, which earns interest, is adjusted periodically to reflect any change in the market price of the securities that the Consolidated Investment Funds are required to return to the lender.

Due to/from Brokers
Due to and from broker balances recorded on the Consolidated Balance Sheet include liquid assets maintained with brokers and counterparties for margin account balances and the amounts due for or due from the settlement of purchase and sales transactions. Certain due to and from broker balances have been reported on a net-by-counterparty basis where, in accordance with contractual rights and the Investment Manager's opinion, there is a right of offset in the event of bankruptcy or default by a counterparty.

Securities Loaned
The Partnership's Consolidated Investment Funds may lend securities to their financing counterparties for margin. The lending entity receives the interest associated with the securities loaned. The loans are secured by the fair value of the securities. Gains or losses in the fair value of the securities loaned that occur during the term of the loan will be for the account of the lender. The lender has the right under the lending agreement to recover the securities from the prime brokers on demand. The lender pays a fee to the broker for the cash collateral received. This is accounted for as interest expense. A credit risk exists to the lender under this type of transaction to the extent that the counterparty defaults on its obligation to return the securities loaned.

Revolving Credit Agreements
The funded portion of revolving credit agreements is recorded at fair value on the Consolidated Balance Sheet as a component of investments, net of the fair value of unfunded commitments for which the Consolidated Funds may be liable in the future (Note 11).

Margin Transactions
In order to obtain more investable cash, the Consolidated Investment Funds may use various forms of leverage including purchasing securities on margin. A margin transaction consists of

purchasing an investment with money loaned by a broker and agreeing to repay the broker at a later date. Interest expense on the outstanding margin balance is based on market rates at the time of the borrowing. Such leverage may allow the Partnership and its subsidiaries to increase net assets at a greater rate during increasing markets, but also may lead to a more rapid decrease in net assets in a declining market.

Withdrawals Payable
Withdrawals are recognized as liabilities, net of incentive allocations, when the amount requested in the withdrawal notice becomes fixed and determinable. This generally may occur either at the time of receipt of the notice, or on the last day of a fiscal period, depending on the nature of the request. As a result, withdrawals paid after the end of the year, but based upon year-end capital balances are reflected as withdrawals payable at December 31, 2011. Withdrawal notices received for which the dollar amount is not fixed remains in capital until the amount is determined. Withdrawals payable may be treated as capital for purposes of allocations of gains/losses pursuant to the partnerships' governing documents. At December 31, 2011, the Consolidated Investment Funds had withdrawals payable of $15.5 million.

Foreign Currency Transactions
The Partnership's subsidiary Highland Europe uses British Pounds as its functional currency and enters into transactions in multiple foreign currencies. All foreign currency asset and liability balances are presented in U.S. dollars in the consolidated financial statements, translated using the exchange rate as of December 31, 2011. Revenues and expenses are recorded in U.S. dollars using an average exchange rate for the relative period. Foreign currency transaction gains and losses resulting from transactions outside of the functional currency of an entity are included in *Other income* on the consolidated statement of income.

The Consolidated Investment Funds do not isolate that portion of the results of operations resulting from changes in foreign exchange rates or investment or fluctuations from changes in market prices of securities held. Such fluctuations are included within the *Net realized and unrealized gains or loss from investments*.

Financial Instruments
The Partnership and its consolidated entities determine fair value of financial instruments as required by U.S. GAAP. The carrying amounts for cash and cash equivalents, receivables, accounts payable and accrued liabilities approximate their fair values because of their short maturities.

Life Settlement Contracts
One of the Partnership's Consolidated Investment Funds, through a subsidiary, holds life settlement contracts and accounts for them using the fair value method. These contracts are valued using mortality tables and interest rate assumptions that are deemed by management to be appropriate for the demographic characteristics of the parties insured under the policies. The contracts are recorded as a component of "Investments at fair value" on the Consolidated Balance Sheet. Realized and unrealized gains (losses) on the contracts are recorded in the Consolidated Income Statement. Cash flows relating to the purchase and sale of the contracts are recorded as a component of "Purchase of investments" and "Proceeds from the disposition of investments" on the Consolidated Statement of Cash Flows.

Partners' Capital
The Partnership agreement requires that income or loss of the Partnership be allocated to the partners in accordance with their respective partnership interests.

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Goodwill and Other Intangible Assets
The Partnership purchased Highland Europe on April 6, 2005. Goodwill represents the amount paid in excess of the fair value of the assets of Highland Europe at the date of acquisition. No goodwill impairments existed as of December 31, 2011.

Recently Issued Accounting Standards and Interpretations
In May 2011, the Financial Accounting Standards Board issued Accounting Standards Update 2011-04 "Amendments to Achieve Common Fair Value Measurement and Disclosure Requirements in U.S. GAAP and IFRS" ("ASU 2011-04"). ASU 2011-04 includes common requirements for measurement of and disclosure about fair value between U.S. GAAP and International Financial Reporting Standards ("IFRS"). ASU 2011-04 will require reporting entities to disclose quantitative information about the unobservable inputs used in the fair value measurements categorized within Level 3 of the fair value hierarchy. The new and revised disclosures are effective for interim and annual reporting periods beginning after December 15, 2011. At this time, management is evaluating the implications of ASU 2011-04 and its impact on the financial statements has not been determined.

In June 2011, the FASB amended existing standards to comprehensive income to require all non-owner changes in stockholders' equity be presented either in a single continuous statement of comprehensive income or in two separate but consecutive statements. Under Accounting Standards Update 2011-05, "Presentation of Comprehensive Income", the option to present the components of other comprehensive income as part of the statement of changes in stockholders' equity has been eliminated. In addition, it requires an entity to present reclassification adjustments on the face of the financial statements from other comprehensive income to net income. The guidance is effective for non-public filers during interim and annual periods beginning after December 15, 2012, and as such, the Partnership has not adopted this guidance for the year ending December 31, 2011.

In December 2011, the FASB amended existing standards to require an entity to disclose information about offsetting and related arrangements to enable users of its financial statements to evaluate the effect or potential effect of netting arrangements on an entity's financial position, including the effect or potential effect of rights of setoff associated with certain financial instruments and derivative instruments. The guidance, Accounting Standards Update No. 2011-11 "Balance Sheet – Disclosures about Offsetting Assets and Liabilities", is effective for annual reporting periods beginning on or after January 1, 2013, and interim periods within those annual periods, with retrospective disclosures required for all comparative periods presented. The Partnership is currently evaluating the impact of this accounting update on our financial disclosures but do not expect the update to have a material impact on financial position or results of operations.

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4. Fixed Assets and Leasehold Improvements

Fixed assets and leasehold improvements are comprised of the following as of December 31, 2011:

(in thousands)	
Buildings	$ 2,595
Leasehold improvements	4,242
Computer and equipment	3,758
Furniture and fixtures	2,474
Computer software	2,349
Construction-in-Progress	3,013
Accumulated depreciation	(11,562)
	$ 6,869

The Partnership and its consolidated entities are depreciating fixed assets as follows:

	Period
Buildings	29 - 40 years
Leasehold improvements	Lease term
Computer and equipment	5 years
Furniture and fixtures	7 years
Computer software	3 years

Depreciation expense in 2011 totaled approximately $1.3 million for the Partnership and its subsidiaries.

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5. Investments

Detailed below is a summary of the Partnership's investments at December 31, 2011:

(in thousands)	Amortized Cost/Cost	Fair Value
Syndicated bank loans	$ 358,557	$ 161,418
Fixed income securites	489,703	273,832
Equity securities	1,400,491	1,079,044
Life settlement contracts	307,677	175,700
CLOs (mezz tranches)	38,246	22,083
CLOs (residual CLO equity tranches)	31,077	8,163
Closed-end mutual funds	10,997	12,928
Private placement real estate	84,951	358
Limited partnerships	179,376	180,399
Rights and Warrants	-	12,352
Total investments	$ 2,901,075	$ 1,926,277
Credit default swaps	$ -	$ 162

	Proceeds	Fair Value
Securities sold, not yet purchased	$ 6,134	$ 8,390

Affiliated Investments

Investments in Residual CLO Equity and Mezzanine Tranches

Investments in affiliated residual CLO equity tranches primarily represent tranches of CLOs for which the Partnership and Highland Europe provide investment advisory services. The Consolidated Investment Funds receive quarterly distributions based on the excess interest after paying the stated interest distributions to the senior and mezzanine note holders, and paying the investment manager, trustee and other related fees. A portion of these distributions are amortized against the cost basis of the investment based on the actual cash distributions received during the year versus the total expected remaining cash distributions to the residual CLO equity tranche. The remainder of the distribution is recorded as interest income.

Investments in residual equity and mezzanine tranches of CLOs are not actively traded. The estimated fair value of the CLOs is derived from broker quotes and valuation models. The estimated fair value of these investments as presented in the consolidated balance sheet does not necessarily represent the amount that could be obtained from the sale of these investments. Changes in the credit quality or the performance of the underlying collateral, the availability and price of assets available for reinvestment, interest rates and/or the interest rate curve, or other market conditions could have a material impact on the estimated fair value of the investments.

Investment in Pyxis Long/Short Equity Fund

The Partnership invests in Pyxis Long/Short Equity Fund ("HEOF"), a diversified, open-end RIC for which the Partnership provides investment advisory services. As of December 31, 2011, the market value of the Partnership's investment in HEOF was approximately $0.2 million.

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Investment in Pyxis Healthcare Fund
The Partnership invests in Pyxis Healthcare Fund ("HHF"), a non-diversified, open-end RIC for which the Partnership provides investment advisory services. As of December 31, 2011, the market value of the Partnership's investment in HHF was approximately $7.0 million.

Investment in Pyxis Credit Strategies Fund
The Partnership invests in Pyxis Credit Strategies Fund ("HCF"), a diversified, closed-end RIC for which the Partnership provides investment advisory services. As of December 31, 2011, the market value of the Partnership's investment in HCF was approximately $3.9 million. During the year ended December 31, 2011, the Partnership received approximately $0.3 million in dividends from HCF.

Investment in Pyxis Energy and Materials Fund
The Partnership invests in Pyxis Energy and Materials Fund ("HEF"), a non-diversified, closed-end RIC for which the Partnership provides investment advisory services. As of December 31, 2011, the market value of the Partnership's investment in HEF was approximately $3.0 million.

Investment in Highland Diversified Credit Fund
The Partnership invests in Highland Diversified Credit Fund ("DCF"), a hedge fund for which the Partnership provides investment advisory services. As of December 31, 2011, the market value of the Partnership's investment in DCF was approximately $2.2 million.

Investment in Cummings Bay Healthcare Fund
The Partnership invests in Cummings Bay Healthcare Fund, L.P. ("Cummings Bay"), a hedge fund for which the Partnership provides investment advisory services. As of December 31, 2011, the market value of the Partnership's investment in Cummings Bay was approximately $3.0 million.

Prepaid Forward Contract
On July 28, 2006, Highland Multi-Strategy Onshore Master Subfund I, LLC ("Subfund") and Barclays Bank PLC ("Barclays") entered into a prepaid forward contract. The Partnership and affiliates redeemed approximately $312.7 million of a reference portfolio, which was comprised of the following basket of funds advised by the Partnership: Highland Crusader Offshore Fund II, Ltd., Credit Strategies Domestic Feeder, Highland CDO Opportunity Fund, Ltd., Real Estate Fund, Equity Focus Fund and Select Equity Fund. Barclays simultaneously contributed approximately $312.7 million as a hedge to its obligation under the prepaid forward contract.

Barclays was prepaid approximately $156.3 million, or one-half of the reference portfolio value at initiation of the transaction. A notional amount, (the initial reference portfolio value less the amount prepaid), accretes interest to Barclays at monthly LIBOR plus 0.90% per annum.

A collateral account in the amount of approximately $53.2 million was established to further secure the transaction. Due to extreme market volatility, all of the underlying holdings in the collateral account were sold during 2008.

The term of the prepaid forward contract was three years and allowed for net settlement upon termination. The contract expired on July 31, 2009 whereby Barclays was to remit in cash the greater of the difference between the reference portfolio value and the notional amount, as valued on the scheduled termination date, or zero. Upon expiration, Barclays was not obligated to make a cash payment to the Subfund.

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On October 7, 2008, Barclays submitted a notice of early termination for the prepaid forward contract.

Accreting Strike Option
On February 28, 2007, Highland Multi-Strategy Onshore Master Subfund II, LLC entered into an Accreting Strike Option ("ASO") with Barclays. The ASO's value is based on the following basket of funds ("the reference portfolio") advised by the Partnership: Highland Crusader Offshore Fund II, Ltd., Credit Strategies Domestic Feeder, Highland CDO Opportunity Fund, Ltd., Real Estate Fund, Equity Focus Fund, Select Equity Fund and Credit Opportunities Domestic Feeder. The value of the reference portfolio at inception was approximately $250.2 million.

Barclays was paid a $71.4 million premium on the option. The strike price, (the initial reference portfolio value less the premium paid), accretes interest to Barclays at monthly LIBOR plus 1.4% per annum. As of December 31, 2011, the strike price was approximately $185.6 million.

The term of the accreting strike option is five years and allows for net settlement upon termination. At contract expiration, Barclays will remit in cash the greater of the difference between the reference portfolio value and the strike price, as valued on the scheduled termination date, or zero. As of December 31, 2011, the ASO did not have a positive net fair value. As such, no amount was recorded in the Partnership's financial statements.

Detailed below is a summary of the transaction as of December 31, 2011:

(in thousands)

Reference Portfolio	Value
Select Equity Fund	$ 117,395
Crusader Domestic Feeder	16,295
Equity Focus Fund	5,436
Credit Opportunities Domestic Feeder	3,915
Real Estate Fund	-
Highland CDO Opportunity Fund, Ltd.	-
Credit Strategies Domestic Feeder	-
Reference Portfolio Total	$ 143,041
Notional Amount	$ (185,577)
Deficit of Reference Portfolio Total to Notional Amount	$ (42,536)

On October 13, 2008, Barclays served notice of early termination for the accreting strike option.

6. Fair Value of Financial Instruments

Fair Value Measurement
In accordance with the authoritative guidance on fair value measurements and disclosures under U.S. GAAP, the Consolidated Investment Funds disclose the fair value of their investments in a

hierarchy that prioritizes the inputs to valuation techniques used to measure the fair value. The hierarchy gives the highest priority to valuations based upon unadjusted quoted prices in active markets for identical assets or liabilities (level 1 measurements) and the lowest priority to valuation based upon unobservable inputs that are significant to the valuation (level 3 measurements). The guidance establishes three levels of the fair value hierarchy as follows:

- Level 1 – Valuation based on quoted prices in active markets for identical assets and liabilities that the Partnership and the Consolidated Investment Funds have the ability to access as of the measurement date. Valuations utilizing Level 1 inputs do not require any degree of judgment.

- Level 2 – Valuations based on (a) quoted prices for similar instruments in active markets; (b) quoted prices for identical or similar instruments in markets that are not active that are reflective of recent market transactions; or (c) models in which all significant inputs are observable, either directly or indirectly.

- Level 3 – Valuations based on indicative quotes that do not reflect recent market transactions and models or other valuation techniques in which the inputs are unobservable and significant to the fair value measurement, which includes situations where there is little, if any, market activity for the asset or liability.

The availability of observable inputs varies among financial instruments and is affected by numerous factors, including the type of instruments, the period of time in which the instrument has been established in the marketplace, market liquidity for an asset class and other characteristics particular to a transaction. When the inputs used in a valuation model are unobservable, management is required to exercise a greater degree of judgment to determine fair value than it would for observable inputs. For certain instruments, the inputs used to measure fair value may fall into different levels of the hierarchy discussed above. In those cases, the instruments are categorized for disclosure purposes based on the lowest level of inputs that are significant to their fair value measurements.

The Partnership and Consolidated Investment Funds use prices and inputs that are current as of the measurement dates. The Partnership also considers the counterparty's non-performance risk when measuring the fair value of its investments.

Whenever possible, the Partnership and its Consolidated Investment Funds use actual market prices or relevant observable inputs to establish the fair value of its assets and liabilities. In cases where observable inputs are not available, the Partnership and Consolidated Investment Funds develop methodologies that provide appropriate fair value estimates. These methodologies are reviewed on a continuous basis to account for changing market conditions.

As of December 31, 2011, the Partnership and its consolidated entities' investments consisted of floating rate syndicated bank loans, high yield corporate bonds, CLO securities, private placements, private placement real estate debt and equity, life settlement contracts and common and preferred equity securities. In addition, the consolidated entities engage in short sale transactions and are parties to various credit default swaps. The majority of these financial instruments are not listed on national securities exchanges, and management is required to use significant judgment to estimate their values.

The fair value of the loans, corporate bonds and CLO securities are generally based on quotes received from brokers or independent pricing services, which may or may not reflect actual trade

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activity. The policy of the Partnership and its consolidated subsidiaries is to classify loans and bonds that are prices in this manner as Level 3 assets because the markets in which they trade are not active and the inputs used by the brokers and pricing services are not readily observable. Loans and bonds with quotes that are based on actual trades with a sufficient level of activity on or near the valuation date are classified as Level 2 assets.

The consolidated entities' private placement real estate investments include equity interests in limited liability companies and debt issued by entities that invest in commercial real estate. The fair value of these investments is based on internal models developed by the Partnership. The significant inputs to the models include cash flow projections for the underlying properties and appraisals performed by independent valuation firms. These inputs are not readily observable, and the investments are classified as Level 3 assets.

Common and preferred equity securities traded on national exchanges are valued at their closing prices as of December 31, 2011. These securities are classified as Level 1 assets. The consolidated entities also hold certain equity securities for which no active market exists. The value of these securities, which are classified as Level 3 assets, is based on a combination of broker quotes and internal valuation models.

Life settlement contracts are valued using mortality tables and interest rate assumptions that are deemed by management to be appropriate for the demographic characteristics of the parties insured under the policies. Since these inputs are not readily observable, they are classified as Level 3 assets.

The fair value of credit default swaps is based on quotes received from an independent pricing service. The inputs used to derive the quotes are not readily observable and are therefore classified as Level 3 liabilities.

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The Partnership categorizes investments recorded at fair value in accordance with the hierarchy established under U.S. GAAP. A majority of the Consolidated Investment Fund's investments and derivatives at December 31, 2011 are classified as Level 3 positions due to the absence of active markets with quoted prices for identical or similar investments. The following table provides a summary of the financial instruments recorded at fair value on a recurring basis by level within the hierarchy as of December 31, 2011:

(in thousands)

Assets	**Level 1**	**Level 2**	**Level 3**	**Total Fair Value at 12/31/11**
Loans	$ -	$ 21,912	$ 139,506	$ 161,418
Bonds & Asset Backed Securities	-	177,207	96,625	273,832
Collateralized loan obligations	-	-	30,246	30,246
Rights & Warrants	463	253	11,636	12,352
Private placement real estate	-	-	358	358
Limited partnership interest	-	-	180,399	180,399
Common equity securities	204,344	56,832	365,293	626,469
Mutual Funds	12,928	-	-	12,928
Privately held equity	-	-	271,137	271,137
Life Settlement Contracts	-	-	175,700	175,700
Preferred stock	-	-	181,438	181,438
Total	$217,735	$256,204	$ 1,452,338	$ 1,926,277
Liabilities				
Securities sold, not yet purchased	$ 8,390	-	-	$ 8,390

The classification of a financial instrument within Level 3 is based on the significance of the unobservable inputs to the overall fair value measurement. The following table provides a roll forward of the investments classified within Level 3 for the year ended December 31, 2011:

(in thousands)

	Total Fair Value at December 31, 2010	Purchases	Sales and Maturities	Transfers Into Level 3	Transfers Out of Level 3	Net Realized Losses	Net Unrealized Gains / (Losses)	Total Fair Value at December 31, 2011
Loans	$ 226,453	$ 57,806	$ (150,996)	$ -	$ (356)	$(251,924)	$ 258,523	$ 139,506
Bonds & Asset Backed Securities	302,177	36,335	(253,458)	-	-	(46,110)	57,681	96,625
Collateralized loan obligations	28,614	73	(7,449)	-	-	1,875	7,133	30,246
Rights & Warrants	1,244	-	-	-	(309)	(6,097)	16,798	11,636
Private placement real estate	524	-	1,170	-	-	(32,410)	31,074	358
Limited partnership interest	150,775	2,974	22,000	-	-	(8,113)	12,763	180,399
Common equity securities	316,209	23	39,069	-	-	(26,160)	36,152	365,293
Mutual Funds	-	-	-	-	-	-	-	-
Privately held equity	289,864	16,362	(18,000)	-	-	-	(17,089)	271,137
Life Settlement Contracts	171,698	36,573	(20,000)	-	-	12,621	(25,192)	175,700
Preferred stock	138,824	1,573	49,477	-	-	2,239	(10,675)	181,438
	$1,626,382	$ 151,719	$ (338,187)	$ -	$ (665)	$(354,079)	$ 367,168	$1,452,338

Transfers from Level 2 to Level 3 or from Level 3 to Level 2 are due to a decline or an increase in market activity (e.g. frequency of trades), which resulted in a lack of or increase in available market inputs to determine price. No significant transfers between Level 1 or Level 2 fair value measurements occurred during the year ended December 31, 2011.

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All net realized and unrealized gains and losses in the tables above are reflected in the accompanying Consolidated Income Statement. Approximately $104.2 million of the net unrealized losses presented in the table above relate to investments held as of December 31, 2011.

The following table provides a summary of the derivative contracts recorded at fair value on a recurring basis by level within the hierarchy as of December 31, 2011:

(in thousands)

	Level 1	Level 2	Level 3	Total
Derivative contracts, asset	$ -	$ -	$ 162	$ 162

The following table provides a roll forward of the derivative contracts classified within Level 3 for the year ended December 31, 2011:

(in thousands)

Estimated Fair Value as of December 31, 2010	$ 953
Settlement of open contracts, net	(1,313)
Net transfers into Level 3	-
Net transfers out of Level 3	-
Net realized losses	1,314
Net change in unrealized gain	(792)
Estimated Fair Value as of December 31, 2011	$ 162

7. Derivative Financial Instruments

Credit Default Swaps
Credit default swap ("CDS") contracts are financial instruments that involve the payment of a fixed rate premium for protection against the loss in value of an underlying debt instrument, referenced entity or index, or the occurrence of a defined credit event. Under the terms of the swap, one party acts as a "guarantor" (the Seller), receiving the periodic stream of payments (from the Buyer) over the term of the contract and agreeing to the remedies that are specified within the credit default agreement. A credit event for corporate reference obligations includes bankruptcy, failure to pay, obligation acceleration, repudiation/moratorium or restructuring. If a credit event occurs, the seller must pay the contingent payment to the buyer, which is typically the par value (full notional amount) of the reference obligation, though the actual payment may be mitigated by terms of the International Swaps and Derivative Agreement ("ISDA"), allowing for netting arrangements and collateral. In addition, the payment may be reduced by anticipated recovery rates, segregated collateral and netting arrangements that may incorporate multiple transactions with a given counterparty.

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The following table summarizes the CDS contracts the Consolidated Investment Funds held as of December 31, 2011:

(in thousands)

Industry	Purchased / Sold	Maturity Date	Fixed Rate of Payment	Notional Amount / Exposure Purchased	Upfront Payment	Market Value
Beverage, Food and Tobacco	Sold	9/20/2012	4.65%	$ 7,500	$ -	$ 143
Electronics	Sold	9/20/2012	2.65%	7,500	-	51
Diversified/Conglomerate Service	Sold	9/20/2012	3.55%	3,750	-	(66)
Broadcasting and Entertainment	Sold	9/20/2012	3.00%	6,000	-	48
Buildings and Real Estate	Sold	9/20/2012	4.05%	3,750	-	(37)
Electronics	Sold	9/20/2012	3.20%	7,500	-	(1)
Media/Telecom	Sold	9/20/2012	3.00%	3,000	-	24
Total				$ 39,000	$ -	$ 162

The following table provides a summary of the Consolidated Investment Fund's maximum exposure by maturity credit rating under the swaps for which it sold protection. All of the contracts mature within the next five years.

(in thousands)

Current issuer credit rating*	
B+	$ 7,500
B	24,000
B-	3,750
CCC	3,750
	$ 39,000

* The credit rating on the underlying bond provides an indicator of the risk that the Consolidated Investment Funds will have to perform under the swap arrangement. Lower credit ratings with a shorter contract term indicate a higher likelihood of performance by the Consolidated Investment Funds.

Total Return Swaps
A total return swap is a two-party contract under which the parties agree to exchange returns from a predetermined portfolio of investments. The gross returns to be exchanged or swapped between the parties are calculated based on a notional amount, which is valued monthly to determine each party's obligation under the contract.

During the year ended December 31, 2011, the Consolidated Investment Funds' were invested in a total return swap program with a major international financial institution, consisting primarily of corporate bank debt. The Consolidated Investment Funds realized approximately $0.1 million of net gains, which are included as a component of net realized loss from investments and derivative contracts in the Consolidated Statement of Income, and were netted against collateral previously posted with the counterparty upon termination of the program.

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8. Debt and Notes Payable

Consolidated debt and notes payable as of December 31, 2011 consists of:

(in thousands)	December 31, 2011
Partnership revolving credit facility	$ 58,210
Credit Opportunities Master note payable	56,603
	$ 114,813

Revolving Credit Facility
On July 21, 2009, the Partnership amended and restated the Credit Agreement with Bank of America as syndication agent and The Bank of Nova Scotia as administrative agent in the amount of $147.3 million. The Credit Agreement provides for loans, which were scheduled to mature on July 21, 2011.

Interest is payable on the last day of each month. The applicable spread for LIBOR loans under the Credit Agreement is LIBOR plus 5% per annum. For base rate loans, the spread is 4% per annum over the prevailing prime rate.

Under the terms of the Credit Agreement, the availability of credit was subject to financial covenants requiring the Partnership to maintain a minimum amount of fee earning assets under management, a minimum amount of management fees earned, a minimum collateral ratio and a maximum on compensation paid.

On September 15, 2009 and February 22, 2010, the Credit Agreement was amended and restated to clarify some documentation items and reporting requirements.

On December 28, 2010, a waiver to the Credit Agreement was executed which allowed the Partnership to reduce its debt from $141.3 million to $86.3 million as of December 31, 2010. In addition to debt retired on December 30, 2010, the waiver also called for a cash payment of $12.8 million on or before March 31, 2011 which would result in the retirement of an additional $15.6 million in face value of debt.

On March 31, 2011, the Partnership amended the Revolving Credit Agreement to extend a number of provisions from the December 28, 2010 waiver, including forbearance from the exercising of remedies for events of default from July 21, 2011 to November 17, 2011. As referred to above, cash of $12.8 million was paid, retiring $15.6 million in face value.

On November 17, 2011, the Partnership amended the Revolving Credit Agreement to extend a number of provisions from the March 31, 2011 amendment, including forbearance from the exercising of remedies for events of default from November 17, 2011 to April 30, 2012. The amendment also called for two separate principal payments of $7.5 million on November 17, 2011 and on or before March 1, 2012.

On December 9, 2011, the Partnership amended the Revolving Credit Agreement for the resignation, consent and appointment of a new administrative agent. As amended, Bank of America, N.A. replaced The Bank of Nova Scotia as administrative agent.

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On March 14, 2012, the Partnership amended the Revolving Credit Agreement to extend a number of provisions from the November 17, 2011 amendment, including forbearance from the exercising of remedies for events of default from April 30, 2012 to May 2, 2013. The amendment also called for five quarterly principal payments, commencing May 2, 2012. The first four such payments are for $6.0 million each and the final payment is for the remaining balance outstanding. The first payment for $6.0 million has been made as of the date of this report. Any mandatory prepayments made reduce future scheduled payments pro rata. Financial covenants were also modified during the forbearance period.

The balance as of the date of this report is $24.0 million.

The fair value of the facility as of December 31, 2011 was approximately $58.2 million.

Credit Opportunities Master Note Payable
On December 19, 2008, Highland Credit Opportunities CDO Financing, LLC ("CDO Financing"), a wholly-owned subsidiary of Credit Opportunities Master, executed a Note Purchase Agreement (the "Purchase Agreement") with certain investors that provided for the issuance of up to $218 million of senior secured convertible notes guaranteed by Credit Opportunities Master. Pursuant to the terms of the Purchase Agreement and concurrent with the execution of the Purchase Agreement, CDO Financing issued $116.6 million of senior secured convertible notes for $115.6 million of cash and securities with a fair value of $0.9 million. The proceeds from the notes were used primarily to fund an additional equity investment in Highland Credit Opportunities, Ltd. (the "CDO"). This investment was required under the terms of a forbearance agreement that the Credit Opportunities Master executed with the majority controlling class of the CDO's note holders.

The notes have a stated maturity date of December 31, 2012 and accrue interest on a quarterly basis at a rate of 25% per year. The terms of the Purchase Agreement allow for up to 75% of the accrued interest due at any payment date to be capitalized as additional principal owed to the holders of the notes. For the year ended December 31, 2011, no interest payable was capitalized and $27.0 million of senior secured convertible notes were repaid. As of December 31, 2011, there are $56.6 million of senior secured convertible notes outstanding.

Subject to certain conditions, the Purchase Agreement allows for CDO Financing to issue up to $101.4 million of additional notes to the existing note holders. The Purchase Agreement requires payment of a fee of 2.5% per annum on the unfunded portion of the note commitment. For the year ended December 31, 2011, approximately $2.5 million of unfunded commitment fees is recorded in interest expense in the Consolidated Statement of Income. As of December 31, 2011, a liability of approximately $7.9 million is included in interest payable in the Consolidated Balance Sheet. The fees will be paid on the stated maturity date, or on the full repayment of the notes.

Under the terms of the Purchase Agreement, the Credit Opportunities Master was not able to make any prepayments until July 1, 2010. From July 1, 2010 through December 31, 2010, the Credit Opportunities Master could elect to prepay 50% of the outstanding principal balance. After that period, Credit Opportunities Master may prepay all or a portion of the outstanding principal, provided that each partial payment made to the note holders is in an aggregate principal amount of at least $0.5 million.

The Purchase Agreement stipulates a premium due to the note holders upon full or partial payment of the outstanding principal of the notes. The premium due is determined by the date the principal is repaid and is calculated as a percentage of that principal balance, with a minimum of

5% due on the stated maturity date of the notes. The following table presents the premium rates by payment period:

Prepayment Period	Fees
July 1, 2011 - Dec. 31, 2011	10.0%
July 1, 2012 - Dec. 31, 2012	6.0%
Dec. 31 2012	5.0%

Credit Opportunities Master is accruing the minimum premium due, 5% of the outstanding balance, over the contractual life of the notes using the effective-yield method. For the year ended December 31, 2011, approximately $0.3 million of this premium due is recorded as a component of interest expense in Credit Opportunities Master's consolidated statement of operations. As of December 31, 2011 a liability of approximately $2.0 million for the total premium recognized over the life of the notes is included in interest payable in the Consolidated Balance Sheet. Premium of $2.7 million was paid upon the prepayment during the year and is recorded in interest expenses in the Consolidated Statement of Income.

At the note holders' option, up to 50% of the unpaid principal and accrued interest on the notes may be converted, in whole or in part, to limited partnership interests in the Feeder Fund or Credit Opportunities Master between January 1, 2010 and June 30, 2010. From July 1, 2010 through December 31, 2012, up to 100% of the unpaid principal and accrued interest on the notes may be converted, in whole or in part, to limited partnership interests in the Feeder Fund or Credit Opportunities Master. As of December 31, 2011, no unpaid principal or accrued interest on the notes was converted into limited partnership interests in the Feeder Fund or Credit Opportunities Master.

The Purchase Agreement grants the note holders a lien on certain assets held by Credit Opportunities Master. In addition, it requires Credit Opportunities Master and the CDO to comply with various financial covenants. Failure to meet these covenants may result in an event of default and give the note holders the right to accelerate repayment of the debt or initiate a liquidation of certain assets. Credit Opportunities Master was in compliance with the covenants as of December 31, 2011 and for the year then ended.

As of December 31, 2011, the estimated fair value of the notes was approximately $74.5 million, which is based on value of the risk-adjusted yield from the expected future cash flows of the notes relative to comparable investments. Actual values may vary significantly from the estimates, particularly since the terms of the Company's debt are complex, and the market for the instruments is illiquid.

9. Financial Instruments with Concentration of Credit and Other Risks

Financial Instruments

The Partnership and its Consolidated Investment Funds' investments include, among other things, equity securities, debt securities (both investment and non-investment grade) and bank loans. The consolidated entities may also invest in derivative instruments, including total return and credit default swaps. Investments in these derivative instruments throughout the year subject the consolidated entities to off-balance sheet market risk, where changes in the market or fair value of the financial instruments underlying the derivative instruments may be in excess of the amounts recognized in the Consolidated Balance Sheet.

Market Risk
Market risk represents the potential loss that may be incurred by the Partnership and its Consolidated Investment Funds due to a change in the market value of its investments or the value of the investments underlying swap agreements. The Partnership and its Consolidated Investment Fund's exposure to market risk is affected by a number of macroeconomic factors, such as interest rates, availability of credit, inflation rates, economic uncertainty and changes in laws and regulations. These factors may affect the level and volatility of securities prices and the liquidity of the Partnership and its Consolidated Investment Funds investments. Volatility or illiquidity could impair the Partnership and its Consolidated Investment Funds performance or result in losses. The Partnership and its Consolidated Investment Funds may maintain substantial trading positions that can be adversely affected by the level of volatility in the financial markets. The performance of life settlement contracts may be adversely impacted by the under estimation of mortality and other rates.

Credit Risk
Credit risk is the potential loss the Partnership and its consolidated entities may incur as a result of the failure of a counterparty or an issuer to make payments according to the terms of a contract. Because the consolidated entities enter into over-the-counter derivatives such as swaps, it is exposed to the credit risk of their counterparties. To limit the credit risk associated with such transactions, the consolidated entities execute transactions with financial institutions that the Investment Manager believes to be financially viable.

Liquidity Risk
The Consolidated Investment Fund's limited partner interests have not been registered under the Securities Act of 1933 or any other applicable securities law. There is no public market for the interests, and neither the Consolidated Investment Funds nor their manager expects such a market to develop.

Business Risk
The Partnership provides advisory services to the consolidated investment funds. The Consolidated Investment Funds could be materially affected by the liquidity, credit and other events of the Partnership.

High Yield Bonds and Loans
The Partnership and its Consolidated Investment Funds' investment portfolios consist of floating rate syndicated bank loans and fixed income securities that are not listed on a national securities exchange. These investments trade in a limited market and it may not be possible to immediately liquidate them if needed. In addition, certain of the Partnership and its Consolidated Investment Funds' investments have resale or transfer restrictions that further reduce their liquidity. Because of the inherent uncertainty of these investments, the Investment Manager's best estimates may differ significantly from values that would have been used had a broader market for the investments existed.

When the Partnership and its Consolidated Investment Funds' purchase a senior secured syndicated bank loan, it enters into a contractual relationship directly with the corporate borrower, and as such, is exposed to certain degrees of risk, including interest rate risk, market risk and the potential non-payment of principal and interest, including default or bankruptcy of the corporate borrower or early payment by the corporate borrower. Typically, senior secured syndicated bank loans are secured by the assets of the corporate borrower and the Partnership and its Consolidated Investment Funds have a policy of regularly reviewing the adequacy of each corporate borrower's collateral.

The Partnership and its Consolidated Investment Funds may invest in high-yield bonds that have been assigned lower rating categories or are not rated by the various credit rating agencies. Bonds in the lower rating categories are generally considered to be speculative with respect to the issuer's ability to repay principal and pay interest. They are also subject to greater risks than bonds with higher ratings in the case of deterioration of general economic conditions. Due to these risks, the yields and prices of lower-rated bonds are generally volatile, and the market for them is limited, which may affect the ability to liquidate them if needed.

CLO Equity Investments
The Partnership and its Consolidated Investment Funds may invest in CLO equity that are not rated by various credit rating agencies and are generally considered to be speculative with respect to the issuer's ability to repay principal and interest. The yields and prices of these non-rated CLO equity tranches are generally volatile, and the market for them is limited, which may affect the ability to liquidate them if needed. In addition, certain of the Consolidated Investment Funds' investments have resale or transfer restrictions that further limit their liquidity. The Partnership and its consolidated investment funds are exposed to the potential non-payment of principal and interest from their CLO equity investments. As of December 31, 2011, 1 of the 29 CLO's managed by the Partnership paid interest to the equity holders on their last payment date.

Distressed Investments
A portion of the high yield corporate bonds and senior secured syndicated bank loans in which the Partnership and its Consolidated Investment Funds invest have been issued by distressed companies in an unstable financial condition that have experienced poor operating performance and may be involved in bankruptcy or other reorganization and liquidation proceedings. These investments have substantial inherent risks. Many of these distressed companies are likely to have significantly leveraged capital structures, which make them highly sensitive to declines in revenue and to increases in expenses and interest rates. The leveraged capital structure also exposes the companies to adverse economic factors, including macroeconomic conditions, which may affect their ability to repay borrowed amounts on schedule.

Credit Default Swaps
Credit default swaps involve greater risks than if the Partnership or its Consolidated Investment Funds had written the reference obligations directly. In addition to the market risk discussed above, credit default swaps are subject to liquidity risk and credit risk. If a credit event occurs, the value of the reference obligation received by the Partnership or its Consolidated Investment Funds, coupled with the periodic payments previously received, may be less than the full notional amount it pays to the buyer, resulting in loss of value.

Limited Diversification
The Investment Manager attempts to diversify the Consolidated Investment Funds' investments. However, the Consolidated Investment Funds' portfolios could become significantly concentrated in any one issuer, industry, sector strategy, country or geographic region, and such concentration of

credit risk may increase the losses suffered by the Consolidated Investment Funds. In addition, it is possible that the Investment Manager may select investments that are concentrated in certain classes of financial instruments. This limited diversity could expose the Consolidated Investment Funds to losses that are disproportionate to market movements as a whole.

Custody Risk
The clearing operations for the Partnership and its Consolidated Investment Funds are provided by major financial institutions. In addition, all of the Partnership and its Consolidated Investment Funds' cash and investments are held with banks or brokerage firms, which have worldwide custody facilities and are members of all major securities exchanges. The Partnership or its Consolidated Investment Funds may lose all or a portion of the assets held by these banks or brokerage firms if they become insolvent or fail to perform pursuant to the terms of their obligations. While both the U.S. Bankruptcy Code and the Securities Investor Protection Act of 1970 seek to protect customer property in the event of a broker-dealer's failure, insolvency or liquidation, the Partnership and its Consolidated Investment Funds' might be unable to recover the full value of their assets or incur losses due to their assets being unavailable for a period of time.

Leverage Risk
The Consolidated Investment Funds may borrow funds from brokers, banks and other lenders to finance its trading operations. The use of leverage can, in certain circumstances, magnify the losses to which the Consolidated Investment Funds' investment portfolio may be subject. The use of margin and short-term borrowings creates several risks for the Consolidated Investment Funds. If the value of the Consolidated Investment Funds' securities fall below the margin level required by a counterparty, additional margin deposits would be required. If the Consolidated Investment Funds are unable to satisfy a margin call, the counterparty could liquidate the Consolidated Investment Funds' positions in some or all of the financial instruments that are in the account at the prime broker and cause the Consolidated Investment Funds to incur significant losses. In addition, to the extent the Consolidated Investment Funds have posted excess collateral for margin transactions, there is a risk that the counterparty will fail to fulfill its obligation to return the full value of that collateral.

The failure to satisfy a margin call, or the occurrence of other material defaults under margin or other financing agreements, may trigger cross-defaults under the Consolidated Investment Funds' agreements with other brokers, lenders, clearing firms or other counterparties, multiplying the adverse impact to the Consolidated Investment Funds. In addition, because the use of leverage allows the Consolidated Investment Funds to control positions worth significantly more than its investment in those positions, the amount that the Consolidated Investment Funds may lose in the event of adverse price movements is high in relation to the amount of their investment.

In the event of a sudden drop in the value of the Consolidated Investment Funds' assets, the Consolidated Investment Funds may not be able to liquidate assets quickly enough to satisfy their margin or collateral requirements. As a result, the Consolidated Investment Funds may become subject to claims of financial intermediaries, and such claims could exceed the value of its assets. The banks and dealers that provide financing to the Consolidated Investment Funds have the ability to apply discretionary margin, haircut, and financing and collateral valuation policies. Changes by banks and dealers in any of the foregoing may result in large margin calls, loss of financing and forced liquidations of positions and disadvantageous prices.

Foreign Currency Risk
The Partnership and its Consolidated Entities may invest in securities or maintain cash denominated in currencies other than the U.S. dollar. The Partnership and its Consolidated

Entities are exposed to risk that the exchange rate of the U.S. dollar relative to other currencies may change in a manner that has an adverse effect on the reported value of the Partnership and its Consolidated Entities' assets and liabilities denominated in currencies other than the U.S. dollar.

Concentration of Investments
At December 31, 2011, the Consolidated Investment Funds' investments and derivative contracts were predominantly concentrated in the United States and Cayman Islands and across several industries.

Wind-Down Risk
The ultimate proceeds that the Consolidated Investment Funds' are able to realize on the sale of its investments will directly affect the amounts that the investors in the feeder funds are able to redeem in connection with the wind down process. These amounts may differ materially from the partners' capital balances as of December 31, 2011.

Litigation Risk
The Partnership and its Consolidated Investment Funds are periodically subject to legal actions arising from the ordinary course of business. The ultimate outcome of these cases is inherently uncertain and could result in additional losses to the Partnership and/or its Consolidated Investment Funds. Refer to Note 16 for a discussion of open litigation.

10. Related Party Transactions

Expenses Reimbursable by Funds Managed
In the normal course of business, the Partnership typically pays invoices it receives from vendors for various services provided to the investment funds the Partnership manages. A summary of these eligible reimbursable expenses are then submitted to the trustee/administrator for each respective fund, typically on a quarterly basis, and the Partnership receives payment as reimbursement for paying the invoices on behalf of the respective funds. As of December 31, 2011, approximately $7.2 million in reimbursable expenses were due from various affiliated funds and entities for these eligible expenses, and is included in Other Assets in the accompanying Consolidated Balance Sheet.

Long Term Incentive Plan and Intercompany Loan Payable to Highland Capital Management Services, Inc. ("HCMSI")
Effective January 1, 2001, all of the Partnership's employees were transferred to HCMSI, which provides personnel management and consulting services to the Partnership. The Partnership and HCMSI entered into a management agreement whereby the Partnership compensated HCMSI for its employee expenses plus a consulting services fee. As of January 1, 2005, there were no further transactions with HCMSI as all employees were transferred to the Partnership.

Effective January 1, 2001, HCMSI approved a long-term incentive plan ("the LTIP") for select employees who are eligible to receive Long-Term Incentive Units ("the Units") under the LTIP. The number of Units authorized under the LTIP is 30,000,000 and a majority of the Units granted vest 40% during the grant year and 30% for each of the two years thereafter, expiring 10 years after such grant date, unless different terms are agreed upon between the Plan Administrator and the employee. The fair value of the Units are based upon the fair value of the Partnership, as determined in good faith, by James Dondero, the Plan Administrator and the sole shareholder of the general partner and a limited partner of the Partnership. The LTIP was transferred to the Partnership from HCMSI on January 1, 2005.

The Units are exercisable at the discretion of the Plan Administrator, or upon a triggering event defined as the earlier of the following events:

- Change in control
- Initial public offering
- Participant's voluntary or involuntary termination due to death, disability, retirement, or hardship
- Participant's voluntary or involuntary termination other than due to death, disability, retirement, hardship, or cause is exercisable to the extent the Participant is entitled to only 80% of the vested shares.

A total of 562,299 Units are outstanding as of December 31, 2011 under the LTIP. During the year ended December 31, 2011, the liability under the LTIP decreased by approximately $0.4 million, which is included in *Compensation and benefits* in the Consolidated Statement of Income.

The total balance payable to HCMSI was approximately $0.5 million as of December 31, 2011, which is related to the LTIP accrual.

Effective December 31, 2004, all of the employees at HCMSI were transferred to the Partnership, and the management agreement between the Partnership and HCMSI was terminated as to the provision of future services. However, all of the outstanding and unfunded obligations of the Partnership to HCMSI as of December 31, 2004, as well as any additional obligations that may arise in relation to these amounts, will continue to be due and payable to HCMSI until satisfied in accordance with the provisions of the agreements in place.

Accounts Held with Related Party
During the year the Partnership and its subsidiaries maintained accounts at NexBank, SSB ("NexBank"), a related party by way of common control. As of December 31, 2011, balances in the accounts were approximately $1.4 million, a portion of which exceeds Federal deposit insurance limits.

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Controlling Positions

Various members of the Partnership's management serve as members on the Boards of Directors for some of the companies with which it invests. Because these individuals participate in the management of these companies, investments held by the Partnership and its subsidiaries in these companies may, from time to time, not be freely tradable. Any director's fees received by the Partnership for these services as directors are paid to and retained by the Partnership. During the year ended December 31, 2011, the Partnership did not earn material income from those entities where members of management serve as members of the Board of Directors. As of December 31, 2011, the Partnership and its subsidiaries held the following investments in these companies:

(in thousands)

Issuer	Type of Investment	Fair Value
American Banknote Corporation	Common Equity	$ 10,587
American Home Patient	Common Equity	7,340
American Home Patient	Term Loan	7,998
American Home Patient	Term Loan - Second Lien	3,376
Blackwell BMC, LLC	Common Equity	34,828
Broadstripe Holdings, LLC	Revolver	1,065
Broadstripe Holdings, LLC	Term Loan	4,467
Carey International, Inc	Term Loan	15,987
Carey Holdings, Inc.	Class A Common Stock	99
CCS Medical, Inc.	Term Loan	5,853
CCS Medical, Inc.	Term Loan - Second Lien	4,813
Consolidated Restaurant Companies, Inc.	Common Equity	6,364
Consolidated Restaurant Companies, Inc.	Term Loan	7,398
Cornerstone Healthcare Group Holding, Inc.	Common Equity	81,490
Cornerstone Healthcare Group Holding, Inc.	Term Loan	18,345
Cornerstone Healthcare Group Holding, Inc.	Loan - Second Lien	4,298
Epocal, Inc.	Preferred Equity	60,944
Euramax International Holdings B.V.	Common	1,684
Ginn LA Resorts Holdings, LLC	Term Loan	1,506
Highland Long/Short Equity Fund	Mutual Fund	222
Highland Long/Short Healthcare Fund	Mutual Fund	7,050
Highland Credit Strategies Fund	Closed-End Mutual Fund	3,929
Home Interiors & Gifts, Inc.	Proof of Claims	2
Marcal Paper Mills, LLC	Common Equity	-
Metro-Goldwyn-Mayer, Inc.	Common Stock	56,833
Molecular Insight Pharmaceuticals, Inc.	Preferred Stock	17,257
Molecular Insight Pharmaceuticals, Inc.	Warrants	9,742
Molecular Insight Pharmaceuticals, Inc.	Term Loan	19,198
Nex-Tech Aerospace Holdings, Inc.	Common Equity	141
Romacorp Restaurant Holdings, Inc.	Common Equity	774
Safety-Kleen Inc.	Common Equity	226,920
Solstice Neurosciences, Inc.	Preferred Equity	246
Terrestar	Preferred Equity	1,006
Trussway Industries, Inc.	Common Equity	3,256

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Investment in Affiliated Loans
During the year, certain subsidiaries of the Partnership were invested in several bank loans in which NexBank was the agent bank. Interest earned on the loans during the year was approximately $7.1 million. At December 31, 2011, these subsidiaries were invested in NexBank agented loans with commitments and market values totaling approximately $300.4 million and $77.0 million, respectively.

Affiliated Transactions
In accordance with the terms of a Master Indenture Agreement (the "Indenture") dated November 2, 2006, the Credit Opportunities Master acquired 250,000 Preferred Shares of Highland Credit Opportunities CDO, Ltd (the "CDO"). The Indenture requires Credit Opportunities Master to hold, directly or indirectly, more than 99% of the CDO's outstanding Preferred Shares at all times. As of December 31, 2011, the Credit Opportunities Master held 350,000 Preferred Shares and was the sole beneficial preferred shareholder.

The CDO invests primarily in floating rate syndicated bank loans, fixed income securities, and equity investments. These investments were purchased with funds the CDO received from the issuance of rated floating rate notes and Credit Opportunities Master's purchase of the Preferred Shares. Credit Opportunities Master is the sole beneficiary of all residual income from the CDO's portfolio. Although the Preferred Shares do not have a voting interest in the CDO, they carry certain rights. Specifically, they are entitled to receive quarterly preferential dividends, without requiring any declaration by the Directors, from the date they were issued until they are redeemed. The Investment Manager serves as the Collateral Manager for the CDO but does not receive any fees for its services to the CDO.

During the fourth quarter of 2008, the CDO failed to meet certain over-collateralization tests set forth in the First Supplement to the Indenture dated November 2, 2006. This breach would have given the CDO's Majority of Controlling Debt Class the option to accelerate repayment of the CDO's outstanding debt or initiate a liquidation of its assets. To protect the value of its investment in the CDO, Credit Opportunities Master entered into a forbearance agreement whereby the Majority Controlling Class of the CDO's note holders waived the breach and agreed not to exercise the rights discussed above. The Majority Controlling Class also agreed to waive any future events of default resulting from the CDO's failure to meet the overcollateralization tests through December 31, 2011. In return, the CDO agreed not make any preferred dividend payments to Credit Opportunities Master until the over-collateralization tests exceed certain thresholds.

Credit Opportunities Master paid certain expenses related to the forbearance agreement, which have been recorded as an increase to the cost basis of its investment in the CDO's preferred shares. The CDO was in compliance with all over-collateralization tests at expiration of the forbearance agreement on December 31, 2011.

Services Performed by an Affiliate
In March 2007, Highland Capital of New York, L.P., a New York limited partnership ("Highland New York"), was formed and has performed marketing services for the Partnership and its affiliates in connection with the Partnership's investment management and advising business, including, but not limited to, assisting Highland Capital in the marketing and sales of interests in investment pools for which Highland Capital serves as the investment manager. The Partnership is charged a marketing services fee for the services that Highland New York performs on the Partnership's behalf. For the year ended December 31, 2011, total marketing fee expense charged to the Partnership by Highland New York was approximately $3.7 million and as of December 31, 2011, amounts owed to Highland New York for services rendered was approximately $0.9 million.

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11. Commitments

Contracts in the Normal Course of Business
In the normal course of business the Partnership and its subsidiaries may enter into contracts which provide general indemnifications and contain a variety of presentations and warranties that may expose the Partnership and its subsidiaries to some risk of loss. In addition to the other financial commitments discussed in the consolidated financial statements, the amount of future losses arising from such undertakings, while not quantifiable, is not expected to be significant.

Legal Proceedings
The Partnership is a party to various legal proceedings arising in the ordinary course of business. While any proceeding or litigation has an element of uncertainty, management believes that the final outcome will not have a materially adverse effect on the Partnership's Consolidated Balance Sheet, consolidated statement of income, or its liquidity. See Note 16.

Operating Leases
Future minimum lease payments under operating lease commitments of the Partnership and its consolidated entities with initial or noncancelable terms in excess of one year, at inception, are as follows:

(in thousands)

Years Ending December 31,		
2012	$	-
2013		290
2014		1,377
2015		1,343
2016		1,333
Thereafter		6,639
Total	$	10,982

Total rental expense of the Partnership and its consolidated entities for operating leases was approximately $2.2 million for the year ended December 31, 2011.

Unfunded Loan Commitments
At December 31, 2011, the Consolidated Investment Funds had unfunded loan commitments of approximately $2.1 million. Unfunded loan commitments are marked to market on the relevant day of valuation in accordance with the Partnership's valuation policies. Any applicable unrealized gain/(loss) and unrealized appreciation/(depreciation) on unfunded loan commitments are recorded on the Consolidated Balance Sheet and Consolidated Income Statement, respectively. The net change in unrealized appreciation on unfunded transactions of approximately $0.2 million is recorded in the Consolidated Income Statement.

12. Postretirement Benefits

In December 2006, the Partnership created a defined benefit plan to which all employees and certain affiliated persons could participate if they met the eligibility requirements. The Partnership uses a December 31 measurement date for its defined benefit plan.

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Effective December 31, 2008, the Partnership amended the plan by freezing it to new participants and additional benefit accruals. A new amendment became effective on January 1, 2011 in which a named participant was admitted to the plan and is eligible to earn benefit accrual. 2011 expense reflects a service cost charge for the value of the new participant's benefit earned during 2011. The Partnership's benefit plan obligation and plan assets for the year ended December 31, 2011 are reconciled in the tables below

(in thousands)

Change in projected benefit obligation		**2011**
Benefit obligation at beginning of year	$	3,358
Service cost		4
Interest cost		174
Plan participants' contributions		-
Amendments		-
Actuarial loss/(gain)		(101)
Acquisition/(divestiture)		-
Benefits paid		(597)
Benefit obligation at end of year	$	2,838

Change in plan assets		**2011**
Fair value of plan assets at beginning of year	$	3,568
Actual return on plan assets		161
Acquisition/(divestiture)		-
Employer contribution		-
Plan participants' contributions		-
Benefits paid		(597)
Other increase/(decrease)		-
Fair value of plan assets at year end	$	3,132

Reconciliation of Funded Status		**2011**
Accumulated benefit obligation at end of year	$	2,838
Projected benefit obligation at end of year		2,838
Fair value of assets at end of year		3,132
Funded status at end of year	$	294

The Partnership does not expect to contribute to the plan during 2012.

Assumptions
Weighted-average assumptions used to determine benefit obligations at December 31, 2011:

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Discount rate	4.40%
Rate of compensation increase	N/A

Weighted-average assumptions used to determine net periodic benefit cost at December 31, 2011:

Discount rate	5.70%
Expected long-term return on plan assets	5.70%
Rate of compensation increase	N/A

As of December 31, 2011, approximately $0.5 million of the plan assets were categorized as Level 3.

13. Goodwill and Other Intangible Assets

Below is a summary of the Partnership's goodwill and other intangible assets as of December 31, 2011:

(in thousands)	Carrying Value
Goodwill for Highland Europe	$ 8,020
	$ 8,020

On April 9, 2004, the Partnership purchased the management agreements of Highland Floating Rate Fund (the "Floating Rate Fund") and Highland Floating Rate Advantage Fund (the "Advantage Fund"), collectively the "Purchased Funds." The combined purchase price for the above agreements was $24.0 million, which was included on the Partnership's Consolidated Balance Sheet. The Partnership performed yearly impairment tests subsequent to the purchase and recorded no impairments through the year ended December 31, 2010.

On December 15, 2011, the management agreements of the Floating Rate Fund, the Advantage Fund and three other registered investment companies were novated so that a replacement investment advisor would be substituted for the Partnership. Because the Partnership released its rights and obligations under the agreements, the Partnership fully amortized any intangible value related to these agreements. An expense of $24.0 million is recorded in the Partnership's Consolidated Income Statement.

The Partnership performs an impairment test on the Goodwill of Highland Europe as required by U.S. GAAP on a yearly basis. Due to the pending sale of the management agreements of the entity, goodwill was assessed for impairment based on the sale price. The Partnership has determined that no impairment charge is necessary for the current year. Please refer to Note 18 for further discussion of the sale of the Highland Europe management agreements.

14. Reverse Repurchase Agreements

Credit Strategies Master is party to collateralized financing transactions consisting of securities sold under agreements to repurchase. For the year ended December 31, 2011, approximately $22.7 million was paid to the counterparty to repurchase the securities sold under the repurchase agreements. Additionally $0.5 million of financing interest was paid to the counterparty. As of December 31, 2011, Credit Strategies Master was not a party to any reverse repurchase agreements.

15. Income Taxes

The Partnership
For U.S. income tax purposes, the Partnership is treated as a pass-through-entity, which means it is not subject to income taxes under current Internal Revenue Service or state and local guidelines. Each partner is individually liable for income taxes, if any, on their share of the Partnership's net taxable income.

The Partnership files tax returns as prescribed by the tax laws of the jurisdictions in which it operates. In the normal course of business, the Partnership is subject to examination by federal and foreign jurisdictions, where applicable. As of December 31, 2011, the tax years that remain subject to examination by the major tax jurisdictions under the statute of limitations is from the year 2008 forward (with limited exceptions).

Authoritative guidance on accounting for and disclosure of uncertainty in tax positions requires the General Partner to determine whether a tax position of the Partnership is more likely than not to be sustained upon examination, including resolution of any related appeals or litigation processes, based on the technical merits of the position. For tax positions meeting the more likely than not threshold, the tax amount recognized in the financial statements is the largest benefit that as a greater than fifty percent likelihood of being realized upon ultimate settlement with the relative taxing authority. The General Partner does not expect a significant change in uncertain tax positions during the twelve months subsequent to December 31, 2011.

Crusader Master
Crusader Master is an exempted limited partnership organized in Bermuda. Under the current laws of Bermuda, there is no income, estate, transfer, sale or other taxes payable by Crusader Master. Crusader Master has received an undertaking from the government of Bermuda exempting it from all such taxes until March 28, 2016.

For U.S. income tax purposes, Crusader Master is treated as a pass-through entity, which means it is not subject to income taxes under current Internal Revenue Service or state and local guidelines. Each partner is individually liable for income taxes, if any, on its share of Crusader Master's net taxable income.

Since Crusader Master trades investments for its own account, non-U.S. Investment Vehicle investors are generally not subject to U.S. tax on such earnings (other than certain withholding taxes indicated below). The General Partner intends to conduct Crusader Master's business in such a way that it does not constitute a U.S. trade or business or create a taxable presence in any of the jurisdictions in which the Investment Manager has offices, including the United Kingdom.

Dividends as well as certain interest and other income received by Crusader Master from sources within the United States may be subject to, and reflected net of, United States withholding tax at

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the rate of 30% for non-U.S. Investment Vehicles. Interest, dividend and other income realized by Crusader Master from non-U.S. sources and capital gains realized on the sale of securities of non-U.S. issuers may be subject to withholding and other taxes levied by the jurisdiction in which the income is sourced. As of December 31, 2011, a withholding tax liability of $0.9 million is included in the accrued expenses in the Consolidated Balance Sheet.

It is management's responsibility to determine whether a tax position of Crusader Master is more likely than not to be sustained upon examination, including resolution of any related appeals or litigation processes, based on the technical merits of the position. For tax positions meeting the more likely than not threshold, the tax amount recognized in the consolidated financial statements is the largest benefit that has a greater than fifty percent likelihood of being realized upon ultimate settlement with the relative taxing authority. As a result of adopting this guidance, management has established an immaterial reserve for uncertain tax positions, The full amount relates to the current year and was recorded with net realized loss from investments and derivative contracts in the Consolidated Income Statement. Management does not expect a significant change in uncertain tax positions during the twelve months subsequent to December 31, 2011.

Crusader Master files tax returns as prescribed the tax laws of the jurisdictions in which it operates. In the normal course of business, Crusader Master is subject to examination by federal and foreign jurisdictions, where applicable. As of December 31, 2011, the tax years that remain subject to examination by the major tax jurisdictions under the statute of limitations is from the year 2008 forward (with limited exceptions).

Credit Opportunities Master
For U.S. income tax purposes, Credit Opportunities Master is treated as a pass-through entity, which means it is not subject to federal income taxes under current Internal Revenue Service guidelines. However, each investor may be individually liable for income taxes, if any, on its share of the partnership's net taxable income.

Credit Opportunities Master trades in senior secured syndicated bank loans for its own account and, as such, non-U.S. Investment Vehicle investors are generally not subject to U.S. tax on such earnings (other than certain withholding taxes indicated below). The Partnership intends to conduct Credit Opportunities Master's business in such a manner that it does not constitute a U.S. trade or business, nor does it create a taxable presence in any of the jurisdictions in which the Partnership has offices, including the United Kingdom.

Dividends as well as certain interest and other income received by Credit Opportunities Master from sources within the United States may be subject to, and reflected net of, United States withholding tax at a rate of 30% for non-U.S. Investment Vehicles. Interest, dividend and other income realized by Credit Opportunites Master from non-U.S. sources and capital gains realized on the sale of securities of non-U.S. issuers may be subject to withholding and other taxes levied by the jurisdiction in which the income is sourced. Deferred tax liability is a result of a temporary difference related to the unrealized appreciation on Credit Opportunities Master's investments that will become taxable income in future years. The deferred tax liability will become payable upon realization of the gain when the investment is sold and it is measured using the applicable enacted tax rate and the provisions of the enacted tax law. As of December 31, 2011, a liability to account for such withholdings and other taxes of approximately $2.1 million is classified within accrued expenses and withholding tax payable on the Consolidated Balance Sheet.

The Credit Opportunities Master applies authoritative guidance which requires management to determine whether a tax position of Credit Opportunities Master is more likely than not to be

sustained upon examination, including resolution of any related appeals or litigation processes, based on the technical merits of the position. For tax positions meeting the more likely than not threshold, the tax amount recognized in the consolidated financial statements is the largest benefit that has a greater than fifty percent likelihood of being realized upon ultimate settlement with the relative taxing authority. As of December 31, 2011, a liability to account for uncertain tax positions of $0.1 million is classified within accrued expenses within the Consolidated Balance Sheet. Management does not expect a significant change in uncertain tax positions during the twelve months subsequent to December 31, 2011.

Credit Opportunities Master files tax returns as prescribed by the tax laws of the jurisdictions in which it operates. In the normal course of business, Credit Opportunities Master is subject to examination by federal and foreign jurisdictions, where applicable. As of December 31, 2011, the tax years that remain subject to examination by the major tax jurisdictions under the statute of limitations is from the year 2008 forward (with limited exceptions).

Credit Strategies Master

Credit Strategies Master is an exempted limited partnership organized in Bermuda. Under the current laws of Bermuda, there is no income, estate, transfer, sale or other taxes payable by Credit Strategies Master. Credit Strategies Master has received an undertaking from the government of Bermuda exempting it from all such taxes until March 28, 2016.

For U.S. income tax purposes, Credit Strategies Master is treated as a pass-through entity, which means it is not subject to income taxes under current Internal Revenue Service or state and local guidelines. Each partner is individually liable for income taxes, if any, on its share of Credit Strategies Master's net taxable income.

The Credit Strategies Master files tax returns as prescribed by the tax laws of the jurisdictions in which it operates. In the normal course of business, Credit Strategies Master is subject to examination by federal and foreign jurisdictions, where applicable. As of December 31, 2011, the tax years that remain subject to examination by the major tax jurisdictions under the statute of limitations is from the year 2008 forward (with limited exceptions).

It is management's responsibility to determine whether a tax position of Credit Strategies Master is more likely than not to be sustained upon examination, including resolution of any related appeals or litigation processes, based on the technical merits of the position. For tax positions meeting the more likely than not threshold, the tax amount recognized in the financial statements is the largest benefit that has a greater than fifty percent likelihood of being realized upon ultimate settlement with the relative taxing authority. The General Partner has determined that there was no effect on the financial statements from the application of this guidance. The General Partner does not expect a significant change in uncertain tax positions during the twelve months subsequent to December 31, 2011.

Dividends as well as certain interest and other income received by Credit Strategies Master from sources within the United States may be subject to, and reflected net of, United States withholding tax at the rate of 30% for non-U.S. Investment Vehicles. Interest, dividend and other income realized by Credit Strategies Master from non-U.S. sources and capital gains realized on the sale of securities of non-U.S. issuers may be subject to withholding and other taxes levied by the jurisdiction in which the income is sourced. Deferred tax liabilities may result from temporary differences related to the unrealized appreciation on Credit Strategies Master's investments that will become taxable income in future years. Deferred tax liabilities will become payable upon

realization of the gains when the investments are sold, and are measured using the applicable enacted tax rate and provisions of the enacted tax law.

Restoration Onshore
Restoration Onshore is treated as a pass-through entity for tax purposes, which means it is not subject to U.S. income taxes under current Internal Revenue Service or state and local guidelines. Each Partner is individually liable for income taxes, if any, on its share of the Restoration Onshore's net taxable income. Interest, dividends and other income realized by the Restoration Onshore from non-U.S. sources and capital gains realized on the sale of securities of non-U.S. issuers may be subject to withholding and other taxes levied by the jurisdiction in which the income is sourced.

Restoration Onshore applies the authoritative guidance on accounting for and disclosure of uncertainty in tax positions, which requires the General Partner to determine whether a tax position of Restoration Onshore is more likely than not to be sustained upon examination, including resolution of any related appeals or litigation processes, based on the technical merits of the position. For tax positions meeting the more likely than not threshold, the tax amount recognized in the financial statements is the largest benefit that has a greater than fifty percent likelihood of being realized upon ultimate settlement with the relevant taxing authority.

The General Partner has determined that there was no effect on the financial statements from the Partnership's application of this authoritative guidance. The General Partner does not expect a significant change in uncertain tax positions during the twelve months subsequent to December 31, 2011. Restoration Onshore files tax returns as prescribed by the tax laws of the jurisdictions in which it operates. In the normal course of business, the Partnership is subject to examination by federal, state, local and foreign jurisdictions, where applicable. As of December 31, 2011, the tax years that remain subject to examination by the major tax jurisdictions under the statute of limitations is from the year 2008 forward (with limited exceptions).

Restoration Offshore
Restoration Offshore is a Cayman Islands exempted company. Under the current laws of the Cayman Islands, there is no income, estate, transfer, sales or other tax payable by Restoration Offshore. Restoration Offshore has elected to be treated as a corporation for U.S. tax purposes and files a protective 1120-F.

The General Partner intends to conduct the business of Restoration Offshore in such a way that Restoration Offshore's activities do not constitute a U.S. trade or business and any income or realized gains earned by Restoration Offshore do not become "effectively connected" with a trade or business carried on in the United States for U.S. federal income tax purposes.

Restoration Offshore applies the authoritative guidance on accounting for and disclosure of uncertainty in tax positions, which requires the General Partner to determine whether a tax position of Restoration Offshore is more likely than not to be sustained upon examination, including resolution of any related appeals or litigation processes, based on the technical merits of the position. For tax positions meeting the more likely than not threshold, the tax amount recognized in the financial statements is the largest benefit that has a greater than fifty percent likelihood of being realized upon ultimate settlement with the relevant taxing authority. In accordance with this authoritative guidance, the General Partner has established a reserve of approximately $0.1 million for uncertain tax positions. The full amount relates to the current year and was recorded as a tax expense in the Consolidated Statement of Operations. The General Partner does not expect a significant change in uncertain tax positions during the twelve months subsequent to December 31,

2011. As of December 31, 2011, the tax years that remain subject to examination by major tax jurisdictions under the statute of limitations is from the year 2008 forward (with limited exceptions).

The remaining entities consolidated by the Partnership had no uncertain tax positions which required accrual under U.S. GAAP.

16. Legal Proceedings

In April 2007, CDO Master Fund entered into a risk sharing agreement structured as a derivative whereby it absorbed 51% of the gains and losses generated from a loan warehouse agreement. The remaining 49% of the warehouse gains and losses were absorbed by Highland Special Opportunities Holding Company ("SOHC"). The warehouse was financed by a recognized financial institution and held collateral consisting of investments in collateralized loan obligations and credit default swaps. Although the agreement expired on August 15, 2007, the counterparty agreed to extend it for one year on March 15, 2008. Due to liquidity constraints, CDO Master Fund was unable to meet a November call, and the counterparty elected to terminate the agreement as of December 5, 2008. The collateral held in the warehouse was subsequently seized by the counterparty and sold on the open market through bids-wanted-in competition. After offsetting the proceeds received from the sale and the income earned on the collateral prior to the sale, the counterparty notified CDO Master Fund that its pro-rata share of the losses incurred under the agreement was $350.2 million. CDO Master Fund has accrued a liability in its financial statements for this amount. On February 24, 2009, the counterparty (the "Plaintiffs") filed a lawsuit against CDO Master Fund, SOHC and the Partnership in the New York State Supreme Court of Manhattan alleging that they suffered losses in excess of $745 million due to the depreciation in value of the warehouse collateral. On February 19, 2010 a New York Appeals Court sided with the Partnership and dismissed UBS' claims against the Partnership. Thereafter on June 22, 2010, Plaintiffs filed an amended complaint with the Court against the Partnership and certain affiliated registered and unregistered investment vehicles alleging $687 million in damages. On March 13, 2012, the First Appellate Division dismissed two of the four claims against the Partnership, and severely limited the scope of the two remaining claims.

In April 2009, HYMF, Inc. filed a lawsuit in the New York State Court against the Partnership and certain consolidated investment funds (collectively "the Defendants"). The lawsuit alleges that the Defendants breached their contractual and fiduciary duties by failing to return HYMF's original investment in the consolidated investment funds. The Defendants believe they acted in accordance with the provisions of the partnership agreements and intend to vigorously defend against the lawsuit. Management believes it is currently not possible to evaluate the likelihood of any particular outcome or estimate the amount or range of potential loss with any reasonable degree of certainty.

On July 15, 2008, Crusader Master, certain affiliates, and numerous external parties (collectively, the "Defendants") were named as parties to an action filed with the Bankruptcy Court of the Southern District of Florida. The action related to a secured lending transaction and subsequent refinancing arrangement in which the Defendants participated. On October 13, 2009, the Bankruptcy Court ruled in favor of the plaintiffs and ordered the Defendants to disgorge the principal, interest, and fees they received in connection with the refinancing arrangement. In addition, the Court ordered the defendants to pay simple interest on the disgorged amount at an annual rate of 9%.

Based on the ruling, Crusader Master recorded a reserve of approximately $5.3 million as of December 31, 2009, which represented its ratable share of the judgment. The reserve was included as a component of accrued expenses on the Consolidated Balance Sheet.

The Defendants believe they acted in good faith pursuant to the terms of the relevant agreements and appealed the decision. In February 2011, the Disctrict Court of Florida reversed the judgment against the Defendants and overturned the ruling that resulted in Crusader Master recording the reserve. Crusader Master does not believe an appeal of this decision will be successful and relieved the reserve. This was included as a component of the net realized loss from investments and derivative contracts on the Consolidated Income Statement.

17. Fund Wind Down

On February 4, 2009, the Partnership informed investors of CDO Master that the fund was effectively insolvent and that it was in the best interest of the fund to liquidate the fund's remaining assets. The proceeds from the asset liquidations will be distributed to the remaining financing counterparties and other senior and trade creditors as the liabilities in the fund exceed the assets to such a degree that proceeds from the asset sales will not be able to satisfy any unpaid redemptions or to distribute amounts to any current investors.

During 2008, Crusader Master and Credit Strategies Master were negatively affected by deteriorating conditions in the overall economy and credit markets. These conditions became more severe during the third and fourth quarters of 2008 and generated significant losses on various derivative transactions and repurchase agreements to which Crusader Master and Credit Strategies Master were parties. In addition, certain assets that Crusader Master and Credit Strategies Master purchased on margin through prime brokerage agreements experienced a significant decline in value. In certain cases, Crusader Master and Credit Strategies Master were unable to post the collateral required to secure these losses, and the counterparties provided notice of their intent to terminate the agreements. As a result, access to the credit that Crusader Master and Credit Strategies Master used to manage its investing and financing activities became highly constrained, and in some cases unavailable. In light of these circumstances, the General Partners (the general partner of Highland Crusader Fund, L.P. and the general partner of Highland Credit Strategies Fund, L.P.) and the Board of Directors of Highland Credit Strategies Fund, Ltd. and Highland Crusader Fund, Ltd. concluded, in consultation with the Investment Manager, that it would be in the best interests of their investors to wind down the investment portfolios of Credit Strategies Master and Crusader Master. On October 15, 2008, the Investment Manager notified investors that it would begin the wind-down process. The Investment Manager also restricted subscriptions and the payment of withdrawals to its feeder funds effective the same date.

In connection with the wind down, the limited partner interests of the Feeder Funds were compulsorily withdrawn/redeemed on November 15, 2008 in accordance with the terms of the governing documents.

Crusader Master
On July 15, 2011, the Supreme Court of Bermuda Commercial Court sanctioned a Scheme of Arrangement (the "Scheme) that facilitates the winding-down of the investments of Crusader Master and the distribution of its assets. A substantial majority of the investors in its feeder funds consented to the plan of distribution as outlined in the Scheme. The Scheme became effective as of August 1, 2011.

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The Scheme establishes two classes of claims; those feeder fund investors who had timely submitted withdrawal/redemption requests for withdrawal/redemption dates that fell on or before June 30, 2008 and who had not received full payment ("Prior Redeemers"), and those feeder fund investors that had not timely submitted such withdrawal/redemption requests for redemption/withdrawal dates that fell on or before June 30, 2008 ("Compulsory Redeemers") (together "Redeemers"). The basis for ratable distribution amongst both classes of Redeemers was the November 15, 2008 balances of said Redeemers ("Redemption Amount"), adjusted to add back any redemption penalties assessed against Prior Redeemers during 2008. A realization schedule for distributions is set forth in Appendix A of the Scheme (the "Realization Schedule"). The terms of the Scheme are outlined as follows:

1. Prior Redeemers shall be entitled to 60% in aggregate of the total distributions made by the Master Partnership constituting excess cash (the "Crusader Fund Prior Redeemers' Distribution"). Each Prior Redeemer shall be entitled to their pro rata share of the Crusader Fund Prior Redeemers' Distribution based on the Prior Redeemer's Redemption Amount relative to the total of all Prior Redeemers' Redemption Amounts (inclusive of all feeders).

2. Compulsory Redeemers shall be entitled to 40% in aggregate of the total distributions made by the Master Partnership constituting excess cash (the "Crusader Fund Compulsory Redeemers' Distribution"). With the exception of the non-consenting Compulsory Redeemers discussed below, each Compulsory Redeemer shall be entitled to their pro rata share of the Crusader Fund Compulsory Redeemers' Distribution based on the Compulsory Redeemer's Redemption Amount relative to the total of all Compulsory Redeemers' Redemption Amounts (inclusive of all feeders). This method of distribution resulted in a shift of capital from the Prior Redeemers to the Compulsory Redeemers. Since the redistribution is indifferent with respect to the Feeder Funds, total capital within each of the Feeder Funds changed as a result. This capital transfer is reflected in the Consolidated Statement of Changes in Partners' Capital as a restructure. In the event the Investment Manager fails to make distributions in accordance with the Realization Schedule for two consecutive quarters without receiving a waiver from the committee of Redeemers appointed to help oversee the Scheme (the "Redeemer Committee"), the Investment Manager can be removed for cause as the Investment Manager of the Master Partnership by the Redeemer Committee.

In connection with the implementation of the Scheme, the Partnership made a settlement payment to be allocated to Crusader investors in the amount of $6.0 million. Additionally, the Partnership reserved $8.2 million of its interest in deferred incentive fees. Both of these amounts can be found within the *Fund wind down costs* line of the Consolidated Income Statement.

Credit Strategies Master
A Plan of Distribution (the "Plan") was also adopted by Credit Strategies Master and its feeder funds and was consented to by a substantial majority of the investors in its feeder funds. On April 14, 2011, the Supreme Court of Bermuda Commercial Court sanctioned a Scheme of Arrangement (the "Scheme") that incorporates the terms of the Plan so as to be binding upon Highland Credit Strategies Fund, Ltd. and its investors. The Scheme became effective on May 1, 2011. The Plan established two classes of claims; those investors of the Feeder Funds whose withdrawals/redemptions became effective on or before September 30, 2008 and who have not received full payment of their redemption amount ("Prior Redeemers") and those investors of the feeder funds who were compulsorily withdrawn/redeemed on October 15, 2008 ("Compulsory Redeemers").

Highland Capital Management, L.P.
(A Delaware Limited Partnership)
Notes to Consolidated Financial Statements
December 31, 2011

As investments in Credit Strategies Master are realized, distributions will be made in the following order, which summarizes the terms outlined in the Plan.

1. Payments for fund expenses
2. The first $30 million available for distribution ratably to Prior Redeemers
3. The next approximately $5.3 million available for distribution ratably to consenting Compulsory Redeemers and a trust account established for the benefit of non-consenting Compulsory Redeemers ("Redeemer Trust Account")
4. All remaining funds will be distributed as follows:
   a. 85% ratably to Prior Redeemers
   b. 15% to consenting Compulsory Redeemers and the Redeemer Trust Account

This method of distribution results in a shift of capital from the Prior Redeemers to the consenting Compulsory Redeemers and the Redeemer Trust Account. It also created a shift of capital from its offshore feeder to its onshore feeder, since there was a greater proportion of Compulsory Redeemers to Prior Redeemers in the onshore feeder than in the offshore feeder.

In connection with the implementation of the Scheme, the Partnership made a settlement payment to be allocated to Credit Strategies investors in the amount of $3.0 million. Additionally, the Partnership will make a second payment of $6.0 million on or before May 1, 2014. Both of these amounts can be found within the *Fund wind down costs* line of the Consolidated Income Statement.

18. Subsequent Events

In accordance with the Scheme of Arrangement, Crusader Master made distributions of approximately $102.8 million and $102.6 million effective January 31, 2012 and April 30, 2012, respectively.

In accordance with the Plan of Distribution, the $6.8 million distribution payable was distributed to the feeder funds by Credit Strategies Master.

In accordance with the Plan of Distribution, Credit Strategies Master made a distribution of approximately $5.0 million effective February 29, 2012.

On February 29, 2012, Credit Opportunities CDO, Ltd. paid $16.5 million, collectively, of preferred dividends to Credit Opportunities Master, which is restricted by the Purchase Agreement to pay interest, principal and any applicable premium.

On April 3, 2012, Credit Opportunities CDO, Ltd. paid $17.0 million, collectively, of preferred dividends to Credit Opportunities Master, which is restricted by the Purchase Agreement to pay interest, principal and any applicable premium.

On March 14, 2012, Credit Opportunities Master elected to prepay $12.3 million of the outstanding principal balance of the notes and approximately $1.4 million in interest and prepayment premium.

On April 2, 2012, Credit Opportunities Master elected to prepay $14.1 million of the outstanding principal balance of the notes and approximately $1.0 million in interest and prepayment premium.

On February 28, 2012, the Partnership completed the sale of the management contracts of four European CLOs. Gross consideration of €33.5 million was received upon completion of the sale. Beyond the closing date, the Partnership is further entitled to 65% of all future incentive fees paid

Highland Capital Management, L.P.
(A Delaware Limited Partnership)
Notes to Consolidated Financial Statements
December 31, 2011

under any of the four European CLOs as well as 80% of the subordinated fees accrued and unpaid as of December 31, 2011 with respect to Highlander Euro CDO B.V. After-tax net proceeds from the sale were used to reduce the Partnership's bank debt outstanding as well as to pay accrued interest and principal on affiliated notes payable.

On March 14, 2012, the Partnership amended the Revolving Credit Agreement. Further discussion of the amendment can be found in Note 8.

The Partnership has performed an evaluation of subsequent events through May 21, 2012, which is the date the consolidated financial statements were available to be issued, and has determined that there are no other material subsequent events that would require disclosure in the Partnership's consolidated financial statements.

Supplemental Information

Highland Capital Management, L.P.

(A Delaware Limited Partnership)

Supplemental Unconsolidated Balance Sheet

December 31, 2011

(in thousands)

The above information was derived from the audited December 31, 2011 consolidated financial Statements of Highland Capital Management, L.P. This information should be read in conjunction with such audited financial statements and should not be used for tax purposes.

Assets

Current assets:		
Cash and cash equivalents	$	6,443
Restricted cash		3,508
Investments at fair value (cost $24,599)		60,662
Equity method investees		24,118
Management and incentive fees receivable		28,962
Due from brokers		127
Other assets		12,935
Deferred incentive fees receivable		29,428
Goodwill and other intangible assets, net		388
Fixed assets and leasehold improvements, net of accumulated depreciation of $11,053		6,869
Total Assets	$	173,440

Liabilities and Partners' Capital

Liabilities

Accounts payable	$	2,061
Accrued and other liabilities		73,971
Debt and notes payable		58,210
Total liabilities		134,242
Partners' capital		39,198
Total liabilities and partners' capital	$	173,440

Highland Capital Management, L.P.

(A Delaware Limited Partnership)

Supplemental Unconsolidated Statement of Income

December 31, 2011

(in thousands)

The above information was derived from the audited December 31, 2011 consolidated financial statements of Highland Capital Management, L.P. This information should be read in conjunction with such audited financial statements and should not be used for tax purposes.

Revenue:	
Management fees	$ 141,146
Incentive fees/allocations	1,381
Interest and investment income	341
Other income	7,286
Total revenue	150,154
Operating expenses:	
Compensation and benefits	46,815
Professional fees	12,986
Investment and research consulting	707
Amortization and depreciation	1,342
Interest expense	5,587
Other operating expenses	16,999
Total operating expenses	84,436
Income before investment activities	65,718
Realized and unrealized gain/(loss) from investments transactions:	
Net realized loss on sale of investment transactions	(2,939)
Net change in unrealized gain on investments	1,779
Total realized and unrealized loss from investments transactions	(1,160)
Realized and unrealized earnings from equity method investee:	
Net unrealized gains from equity method investees	6,158
Total realized and unrealized gains from equity method investees	6,158
Extraordinary Items	
Net realized gain on extinguishment of debt	2,823
Novation of purchased investment contracts	(24,000)
Fund wind down costs (Note 17)	(23,292)
Net income	$ 26,247

EXHIBIT 67

Copy B - For Employee's Federal Income Tax Return **2019** OMB No. 1545-0008

a Employee's social security number [redacted]	1 Wages, tips, other comp. 1944956.01	2 Federal income tax withheld 569633.72
b Employer ID number 47-1881359	3 Social security wages 132900.00	4 Social security tax withheld 8239.80
	5 Medicare wages and tips 1944956.01	6 Medicare tax withheld 43906.46

c Employer's name, address, and ZIP code
Nexpoint Residential Trust Inc
300 Crescent Ct
Suite 700
Dallas, TX 75201

d Control number 12437 11

e Employee's name, address, and ZIP code
James Dondero
[redacted]

7 Social security tips	8 Allocated tips	9 Advance EIC payment
10 Dependent care benefits	11 Nonqualified plans	

12a		13 Statutory employee Retirement plan 3rd-party sick pay
12b		14 Other
12c		
12d		

N/A	N/A	N/A
15 State Employer's State ID#	16 State wages, tips, etc.	17 State income tax
18 Local wages, tips, etc. N/A	19 Local income tax N/A	20 Locality name N/A

Form W-2 Wage and Tax Statement Dept. of the Treasury - IRS
This information is being furnished to the Internal Revenue Service

Copy 2 - For Employee's State Income Tax Return [TX] **2019** OMB No. 1545-0008

a Employee's social security number [redacted]	1 Wages, tips, other comp. 1944956.01	2 Federal income tax withheld 569633.72
b Employer ID number 47-1881359	3 Social security wages 132900.00	4 Social security tax withheld 8239.80
	5 Medicare wages and tips 1944956.01	6 Medicare tax withheld 43906.46

c Employer's name, address, and ZIP code
Nexpoint Residential Trust Inc
300 Crescent Ct
Suite 700
Dallas, TX 75201

d Control number 12437 11

e Employee's name, address, and ZIP code
James Dondero
[redacted]

7 Social security tips	8 Allocated tips	9 Advance EIC payment
10 Dependent care benefits	11 Nonqualified plans	

12a		13 Statutory employee Retirement plan 3rd-party sick pay
12b		14 Other
12c		
12d		

TX NOT NEEDED	1944956.01	
15 State Employer's State ID#	16 State wages, tips, etc.	17 State income tax
18 Local wages, tips, etc. N/A	19 Local income tax N/A	20 Locality name N/A

Form W-2 Wage and Tax Statement Dept. of the Treasury - IRS

This information is being furnished to the IRS. If you are required to file a tax return, a negligence penalty/other sanction may be imposed on you if this income is taxable and you fail to report it.

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Page 1 of 2

Copy C - FOR EMPLOYEE'S RECORDS ONLY **2019** OMB No. 1545-0008

a Employee's social security number [redacted]	1 Wages, tips, other comp. 1944956.01	2 Federal income tax withheld 569633.72
	3 Social security wages 132900.00	4 Social security tax withheld 8239.80
b Employer ID number 47-1881359	5 Medicare wages and tips 1944956.01	6 Medicare tax withheld 43906.46

c Employer's name, address, and ZIP code
Nexpoint Residential Trust Inc
300 Crescent Ct
Suite 700
Dallas, TX 75201

d Control number
12437 11

e Employee's name, address, and ZIP code
James Dondero
[redacted]

7 Social security tips	8 Allocated tips	9 Advance EIC payment
10 Dependent care benefits	11 Nonqualified plans	

12a		13 Statutory employee Retirement plan 3rd-party sick pay	
12b		14 Other	
12c			
12d			

TX NOT NEEDED 15 State Employer's State ID#	1944956.01 16 State wages, tips, etc.	17 State income tax
18 Local wages, tips, etc. N/A	19 Local income tax N/A	20 Locality name N/A

Form W-2 Wage and Tax Statement Dept. of the Treasury - IRS

This information is being furnished to the IRS. If you are required to file a tax return, a negligence penalty/other sanction may be imposed on you if this income is taxable and you fail to report it.

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Page 2 of 2

EXHIBIT 67-2

44444 | For Official Use Only ▶ OMB No. 1545-0008 | Safe, accurate, FAST! Use e-file | Visit the IRS website at www.irs.gov.

a Employer's name, address, and ZIP code

Nexpoint Residential Trust Inc
300 Crescent Ct
Suite 700
Dallas, TX 75201

b Employer's Federal EIN
47-1881359

c Tax year/Form corrected
2017 / W-2

d Employee's correct SSN
[redacted]

e Corrected SSN and/or name (Check this box and complete boxes f and/or g if incorrect on form previously filed.) ☑

Complete boxes f and/or g only if incorrect on form **previously filed** ▶

f Employee's **previously reported** SSN
[redacted]

g Employee's **previously reported** name

h Employee's first name and initial: James
Last name: Dondero
Suff.:

[redacted]
i Employee's address and ZIP code

Note. Only complete money fields that are being corrected (exception: for corrections involving MQGE, see the General Instructions for Forms W-2 and W-3, under Specific Instructions for Form W-2c, boxes 5 and 6).

Previously reported	Correct information	Previously reported	Correct information
1 Wages, tips, other compensation 603,363.72	1 Wages, tips, other compensation 625,466.64	2 Federal income tax withheld 150,840.93	2 Federal income tax withheld 156,366.66
3 Social security wages	3 Social security wages	4 Social security tax withheld	4 Social security tax withheld
5 Medicare wages and tips 603,363.72	5 Medicare wages and tips 625,466.64	6 Medicare tax withheld 12,379.04	6 Medicare tax withheld 12,898.46
7 Social security tips	7 Social security tips	8 Allocated tips	8 Allocated tips
9	9	10 Dependent care benefits	10 Dependent care benefits
11 Nonqualified plans	11 Nonqualified plans	12a See instructions for box 12 Code	12a See instructions for box 12 Code
13 Statutory employee ☐ Retirement plan ☐ Third-party sick pay ☐	13 Statutory employee ☐ Retirement plan ☐ Third-party sick pay ☐	12b Code	12b Code
14 Other (see instructions)	14 Other (see instructions)	12c Code	12c Code
		12d Code	12d Code

State Correction Information

Previously reported	Correct information	Previously reported	Correct information
15 State TX	15 State TX	15 State	15 State
Employer's state ID number NOT NEEDED	Employer's state ID number NOT NEEDED	Employer's state ID number	Employer's state ID number
16 State wages, tips, etc. 603,363.72	16 State wages, tips, etc. 625,466.64	16 State wages, tips, etc.	16 State wages, tips, etc.
17 State income tax 0.00	17 State income tax 0.00	17 State income tax	17 State income tax

Locality Correction Information

Previously reported	Correct information	Previously reported	Correct information
18 Local wages, tips, etc.	18 Local wages, tips, etc.	18 Local wages, tips, etc.	18 Local wages, tips, etc.
19 Local income tax	19 Local income tax	19 Local income tax	19 Local income tax
20 Locality name	20 Locality name	20 Locality name	20 Locality name

Copy B—To Be Filed with Employee's FEDERAL Tax Return

Form **W-2c** (Rev. 8-2014) **Corrected Wage and Tax Statement** Department of the Treasury Internal Revenue Service

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a Employer's name, address, and ZIP code

Nexpoint Residential Trust Inc
300 Crescent Ct
Suite 700
Dallas, TX 75201

b Employer's Federal EIN
47-1881359

c Tax year/Form corrected
2017 / W-2

d Employee's correct SSN
[redacted]

e Corrected SSN and/or name (Check this box and complete boxes f and/or g if incorrect on form previously filed.) ☑

Complete boxes f and/or g only if incorrect on form **previously filed** ▶

f Employee's **previously reported** SSN
[redacted]

g Employee's **previously reported** name

h Employee's first name and initial: James
Last name: Dondero
Suff.:

[redacted]
i Employee's address and ZIP code

Note. Only complete money fields that are being corrected (exception: for corrections involving MQGE, see the General Instructions for Forms W-2 and W-3, under Specific Instructions for Form W-2c, boxes 5 and 6).

Previously reported	Correct information	Previously reported	Correct information
1 Wages, tips, other compensation 603,363.72	1 Wages, tips, other compensation 625,466.64	2 Federal income tax withheld 150,840.93	2 Federal income tax withheld 156,366.66
3 Social security wages	3 Social security wages	4 Social security tax withheld	4 Social security tax withheld
5 Medicare wages and tips 603,363.72	5 Medicare wages and tips 625,466.64	6 Medicare tax withheld 12,379.04	6 Medicare tax withheld 12,898.46
7 Social security tips	7 Social security tips	8 Allocated tips	8 Allocated tips
9	9	10 Dependent care benefits	10 Dependent care benefits
11 Nonqualified plans	11 Nonqualified plans	12a See instructions for box 12 Code	12a See instructions for box 12 Code
13 Statutory employee ☐ Retirement plan ☐ Third-party sick pay ☐	13 Statutory employee ☐ Retirement plan ☐ Third-party sick pay ☐	12b Code	12b Code
14 Other (see instructions)	14 Other (see instructions)	12c Code	12c Code
		12d Code	12d Code

State Correction Information

Previously reported	Correct information	Previously reported	Correct information
15 State TX	15 State TX	15 State	15 State
Employer's state ID number NOT NEEDED	Employer's state ID number NOT NEEDED	Employer's state ID number	Employer's state ID number
16 State wages, tips, etc. 603,363.72	16 State wages, tips, etc. 625,466.64	16 State wages, tips, etc.	16 State wages, tips, etc.
17 State income tax 0.00	17 State income tax 0.00	17 State income tax	17 State income tax

Locality Correction Information

Previously reported	Correct information	Previously reported	Correct information
18 Local wages, tips, etc.	18 Local wages, tips, etc.	18 Local wages, tips, etc.	18 Local wages, tips, etc.
19 Local income tax	19 Local income tax	19 Local income tax	19 Local income tax
20 Locality name	20 Locality name	20 Locality name	20 Locality name

Copy C—For EMPLOYEE's RECORDS

Form **W-2c** (Rev. 8-2014) **Corrected Wage and Tax Statement** Department of the Treasury Internal Revenue Service

44444 | For Official Use Only ▶ OMB No. 1545-0008

a Employer's name, address, and ZIP code
Nexpoint Residential Trust Inc
300 Crescent Ct
Suite 700
Dallas, TX 75201

b Employer's Federal EIN
47-1881359

c Tax year/Form corrected
2017 / W-2

d Employee's correct SSN
[redacted]

e Corrected SSN and/or name (Check this box and complete boxes f and/or g if incorrect on form previously filed.) ☑

Complete boxes f and/or g only if incorrect on form **previously filed** ▶

f Employee's **previously reported** SSN
[redacted]

g Employee's **previously reported** name

h Employee's first name and initial: James
Last name: Dondero
Suff.:

[redacted]
i Employee's address and ZIP code

Note. Only complete money fields that are being corrected (exception: for corrections involving MQGE, see the General Instructions for W-2 and W-3, under Specific Instructions for Form W-2c, boxes 5 and 6).

Previously reported	Correct information	Previously reported	Correct information
1 Wages, tips, other compensation 603,363.72	1 Wages, tips, other compensation 625,466.64	2 Federal income tax withheld 150,840.93	2 Federal income tax withheld 156,366.66
3 Social security wages	3 Social security wages	4 Social security tax withheld	4 Social security tax withheld
5 Medicare wages and tips 603,363.72	5 Medicare wages and tips 625,466.64	6 Medicare tax withheld 12,379.04	6 Medicare tax withheld 12,898.46
7 Social security tips	7 Social security tips	8 Allocated tips	8 Allocated tips
9	9	10 Dependent care benefits	10 Dependent care benefits
11 Nonqualified plans	11 Nonqualified plans	12a See instructions for box 12 Code	12a See instructions for box 12 Code
13 Statutory employee ☐ Retirement plan ☐ Third-party sick pay ☐	13 Statutory employee ☐ Retirement plan ☐ Third-party sick pay ☐	12b Code	12b Code
14 Other (see instructions)	14 Other (see instructions)	12c Code	12c Code
		12d Code	12d Code

State Correction Information

Previously reported	Correct information	Previously reported	Correct information
15 State TX	15 State TX	15 State	15 State
Employer's state ID number NOT NEEDED	Employer's state ID number NOT NEEDED	Employer's state ID number	Employer's state ID number
16 State wages, tips, etc. 603,363.72	16 State wages, tips, etc. 625,466.64	16 State wages, tips, etc.	16 State wages, tips, etc.
17 State income tax 0.00	17 State income tax 0.00	17 State income tax	17 State income tax

Locality Correction Information

Previously reported	Correct information	Previously reported	Correct information
18 Local wages, tips, etc.	18 Local wages, tips, etc.	18 Local wages, tips, etc.	18 Local wages, tips, etc.
19 Local income tax	19 Local income tax	19 Local income tax	19 Local income tax
20 Locality name	20 Locality name	20 Locality name	20 Locality name

Copy 2—To Be Filed with Employee's State, City, or Local Income Tax Return

Form **W-2c** (Rev. 8-2014) **Corrected Wage and Tax Statement** Department of the Treasury Internal Revenue Service

EXHIBIT 67-3

Form 1040 (2013) JAMES D. DONDERO [redacted] Page 2

Tax and Credits	38 Amount from line 37 (adjusted gross income)		38	48,945,921.
Standard Deduction for - • People who check any box on line 39a or 39b or who can be claimed as a dependent, see instructions.	39a Check if: ☐ You were born before January 2, 1949, ☐ Blind. ☐ Spouse was born before January 2, 1949, ☐ Blind. Total boxes checked ▶ 39a			
	b If your spouse itemizes on a separate return or you were a dual-status alien, check here ▶ 39b [X]			
	40 Itemized deductions (from Schedule A) or your standard deduction (see left margin)		40	2,342,092.
	41 Subtract line 40 from line 38		41	46,603,829.
	42 Exemptions. If line 38 is $150,000 or less, multiply $3,900 by the number on line 6d. Otherwise, see inst.		42	0.
	43 Taxable income. Subtract line 42 from line 41. If line 42 is more than line 41, enter -0-		43	46,603,829.
	44 Tax. Check if any from: a ☐ Form(s) 8814 b ☐ Form 4972 c ☐		44	13,035,847.
	45 Alternative minimum tax. Attach Form 6251		45	0.
• All others: Single or Married filing separately, $6,100	46 Add lines 44 and 45 ▶		46	13,035,847.
Married filing jointly or Qualifying widow(er), $12,200	47 Foreign tax credit. Attach Form 1116 if required	47 177.		
Head of household, $8,950	48 Credit for child and dependent care expenses. Attach Form 2441	48		
	49 Education credits from Form 8863, line 19	49		
	50 Retirement savings contributions credit. Attach Form 8880	50		
	51 Child tax credit. Attach Schedule 8812, if required	51		
	52 Residential energy credits. Attach Form 5695	52		
	53 Other credits from Form: a ☐ 3800 b ☐ 8801 c ☐	53		
	54 Add lines 47 through 53. These are your total credits		54	177.
	55 Subtract line 54 from line 46. If line 54 is more than line 46, enter -0- ▶		55	13,035,670.
Other Taxes	56 Self-employment tax. Attach Schedule SE		56	5,374.
	57 Unreported social security and Medicare tax from Form: a ☐ 4137 b ☐ 8919		57	
	58 Additional tax on IRAs, other qualified retirement plans, etc. Attach Form 5329 if required		58	
	59a Household employment taxes from Schedule H		59a	
	b First-time homebuyer credit repayment. Attach Form 5405 if required		59b	
	60 Taxes from: a [X] Form 8959 b [X] Form 8960 c [X] Inst.; enter code(s) STMT 15		60	2,070,082.
	61 Add lines 55 through 60. This is your total tax ▶		61	15,111,126.
Payments	62 Federal income tax withheld from Forms W-2 and 1099	62 393,106.		STATEMENT 14
	63 2013 estimated tax payments and amount applied from 2012 return	63 41,508.		
If you have a qualifying child, attach Schedule EIC.	64a Earned income credit (EIC)	64a		
	b Nontaxable combat pay election 64b			
	65 Additional child tax credit. Attach Schedule 8812	65		
	66 American opportunity credit from Form 8863, line 8	66		
	67 Reserved	67		
	68 Amount paid with request for extension to file	68 16,500,000.		
	69 Excess social security and tier 1 RRTA tax withheld	69		
	70 Credit for federal tax on fuels. Attach Form 4136	70		
	71 Credits from Form: a ☐ 2439 b ☐ Reserved c ☐ 8885 d ☐	71		
	72 Add lines 62, 63, 64a, and 65 through 71. These are your total payments ▶		72	16,934,614.
Refund	73 If line 72 is more than line 61, subtract line 61 from line 72. This is the amount you overpaid		73	1,823,488.
	74a Amount of line 73 you want refunded to you. If Form 8888 is attached, check here ▶ ☐		74a	1,561,228.
Direct deposit? See instructions. ▶	b Routing number [redacted] ▶ c Type: [X] Checking ☐ Savings ▶ d Account number [redacted]			
	75 Amount of line 73 you want applied to your 2014 estimated tax ▶	75		
Amount You Owe	76 Amount you owe. Subtract line 72 from line 61. For details on how to pay, see instructions ▶		76	
	77 Estimated tax penalty (see instructions)	77 262,260.		

Third Party Designee Do you want to allow another person to discuss this return with the IRS (see instructions)? [X] Yes. Complete below. ☐ No
Designee's name ▶ TODD CRAWFORD Phone no. ▶ 713-982-2000 Personal identification number (PIN) ▶ 28788

Sign Here Under penalties of perjury, I declare that I have examined this return and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.
Joint return? See instructions. Keep a copy for your records.
Your signature ▶ Date 10/15/14 Your occupation Exec Whole Daytime phone number 9[illegible] 4100
Spouse's signature. If a joint return, both must sign. Date Spouse's occupation If the IRS sent you an Identity Protection PIN, enter it here

Paid Preparer Use Only

Print/Type preparer's name	Preparer's signature	Date	Check ☐ if self-employed	PTIN
TODD CRAWFORD	TODD CRAWFORD	10/14/14		P00848788

Firm's name ▶ DELOITTE TAX LLP Firm's EIN ▶ 86 1065772
Firm's address ▶ 1111 BAGBY STREET, SUITE 4500 HOUSTON, TX 77002-2591 Phone no. 713-982-2000

310002 04-02-14

JAMES D. DONDERO [redacted]

FORM 1040 WAGES RECEIVED AND TAXES WITHHELD STATEMENT 12

T S -	EMPLOYER'S NAME	AMOUNT PAID	FEDERAL TAX WITHHELD	STATE TAX WITHHELD	CITY SDI TAX W/H	FICA TAX	MEDICARE TAX
T	HIGHLAND CAPITAL MANAGEMENT LP	1,911,538.	377,643.			7,049.	43,250.
T	HIGHLAND CAPITAL MGMT PTE LTD.	76,085.					
TOTALS		1,987,623.	377,643.			7,049.	43,250.

FORM 1040 QUALIFIED DIVIDENDS STATEMENT 13

NAME OF PAYER	ORDINARY DIVIDENDS	QUALIFIED DIVIDENDS
NEXPOINT	1,209,750.	63,077.
NEXPOINT - GET GOOD #2	67,084.	3,498.
NEXPOINT ADVISORS LP	19,065.	280.
FROM K-1 - HIGHLAND CAPITAL MANAGEMENT SERVICES, INC.	175,652.	9,217.
FROM K-1 - PCMG TRADING PARTNERS XXIII,	10,567.	724.
FROM K-1 - STRAND ADVISORS III, INC.	143.	10.
FROM K-1 - STRAND ADVISORS, INC.	11,447.	1,240.
FROM K-1 - SERENGETI PARTNERS, LP - GET GOOD #2	57,678.	30,335.
FROM K-1 - HAYMAN CAPITAL PARTNERS LP - GET GOOD #2	22,591.	11,341.
FROM K-1 - HIGHLAND CAPITAL MGMT, LP	1,360,353.	165,565.
FROM K-1 - SERENGETI OPPORTUNITIES PARTNERS LP - DUGABOY LLC	3,498.	1,841.
FROM K-1 - GRANITE BAY ADVISORS, LP	336.	2.
FROM K-1 - ACIS CAPITAL MANAGEMENT, LP - ACIS GP LLC	20.	11.
FROM K-1 - ACIS CAPITAL MANAGEMENT, LP - DUGABOY	12,199.	6,759.
FROM K-1 - NEXPOINT ADVISORS, GP LLC	58.	19.
FROM K-1 - NEXPOINT ADVISORS, L.P. - DUGABOY	57,549.	19,149.
TOTAL INCLUDED IN FORM 1040, LINE 9B		313,068.

EXHIBIT 67-4

Form 1040 (2014) JAMES D. DONDERO [redacted] Page 2

Tax and Credits	38	Amount from line 37 (adjusted gross income)	38	59,549,723.
Standard Deduction for - ● People who check any box on line 39a or 39b or who can be claimed as a dependent, see instructions. ● All others: Single or Married filing separately, $6,200 Married filing jointly or Qualifying widow(er), $12,400 Head of household, $9,100	39a	Check if: ☐ You were born before January 2, 1950, ☐ Blind. ☐ Spouse was born before January 2, 1950, ☐ Blind. Total boxes checked ▶ 39a		
	b	If your spouse itemizes on a separate return or you were a dual-status alien, check here ▶ 39b [X]		
	40	Itemized deductions (from Schedule A) or your standard deduction (see left margin)	40	3,242,658.
	41	Subtract line 40 from line 38	41	56,307,065.
	42	Exemptions. If line 38 is $152,525 or less, multiply $3,950 by the number on line 6d. Otherwise, see inst.	42	0.
	43	Taxable income. Subtract line 42 from line 41. If line 42 is more than line 41, enter -0-	43	56,307,065.
	44	Tax. Check if any from: a ☐ Form(s) 8814 b ☐ Form 4972 c ☐	44	13,190,542.
	45	Alternative minimum tax. Attach Form 6251	45	0.
	46	Excess advance premium tax credit repayment. Attach Form 8962	46	
	47	Add lines 44, 45, and 46 ▶	47	13,190,542.
	48	Foreign tax credit. Attach Form 1116 if required — 48: 98,016.		
	49	Credit for child and dependent care expenses. Attach Form 2441 — 49		
	50	Education credits from Form 8863, line 19 — 50		
	51	Retirement savings contributions credit. Attach Form 8880 — 51		
	52	Child tax credit. Attach Schedule 8812, if required — 52		
	53	Residential energy credits. Attach Form 5695 — 53		
	54	Other credits from Form: a ☐ 3800 b ☐ 8801 c ☐ — 54		
	55	Add lines 48 through 54. These are your total credits	55	98,016.
	56	Subtract line 55 from line 47. If line 55 is more than line 47, enter -0- ▶	56	13,092,526.
Other Taxes	57	Self-employment tax. Attach Schedule SE	57	15,692.
	58	Unreported social security and Medicare tax from Form: a ☐ 4137 b ☐ 8919	58	
	59	Additional tax on IRAs, other qualified retirement plans, etc. Attach Form 5329 if required	59	60,882.
	60a	Household employment taxes from Schedule H	60a	
	b	First-time homebuyer credit repayment. Attach Form 5405 if required	60b	
	61	Health care: individual responsibility (see instructions) Full-year coverage [X]	61	
	62	Taxes from: a [X] Form 8959 b [X] Form 8960 c ☐ Inst.; enter code(s) STATEMENT 23	62	2,080,425.
	63	Add lines 56 through 62. This is your total tax ▶	63	15,249,525.
Payments	64	Federal income tax withheld from Forms W-2 and 1099 — 64: 388,958.		STATEMENT 22
	65	2014 estimated tax payments and amount applied from 2013 return — 65		
If you have a qualifying child, attach Schedule EIC.	66a	Earned income credit (EIC) — 66a		
	b	Nontaxable combat pay election — 66b		
	67	Additional child tax credit. Attach Schedule 8812 — 67		
	68	American opportunity credit from Form 8863, line 8 — 68		
	69	Net premium tax credit. Attach Form 8962 — 69		
	70	Amount paid with request for extension to file — 70		
	71	Excess social security and tier 1 RRTA tax withheld — 71		
	72	Credit for federal tax on fuels. Attach Form 4136 — 72		
	73	Credits from Form: a ☐ 2439 b ☐ Reserved c ☐ Reserved d ☐ — 73		
	74	Add lines 64, 65, 66a, and 67 through 73. These are your total payments ▶	74	388,958.
Refund	75	If line 74 is more than line 63, subtract line 63 from line 74. This is the amount you overpaid	75	
	76a	Amount of line 75 you want refunded to you. If Form 8888 is attached, check here ▶ ☐	76a	
Direct deposit? See instructions.	b	Routing number ▶ c Type: ☐ Checking ☐ Savings ▶ d Account number		
	77	Amount of line 75 you want applied to your 2015 estimated tax ▶ — 77		
Amount You Owe	78	Amount you owe. Subtract line 74 from line 63. For details on how to pay, see instructions ▶	78	15,126,613.
	79	Estimated tax penalty (see instructions) — 79: 266,046.		

Third Party Designee Do you want to allow another person to discuss this return with the IRS (see instructions)? [X] Yes. Complete below. ☐ No
Designee's name ▶ TODD CRAWFORD Phone no. ▶ 713-982-2000 Personal identification number (PIN) ▶ 28788

Sign Here Under penalties of perjury, I declare that I have examined this return and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.
Joint return? See instructions. Keep a copy for your records.

Your signature	Date	Your occupation	Daytime phone number
	11/2/2015	Executive	972-628-4100
Spouse's signature. If a joint return, both must sign.	Date	Spouse's occupation	If the IRS sent you an Identity Protection PIN, enter it here

Paid Preparer Use Only

Print/Type preparer's name	Preparer's signature	Date	Check ☐ if self-employed	PTIN
TODD CRAWFORD	TODD CRAWFORD	11/02/15		P00848788

Firm's name ▶ DELOITTE TAX LLP Firm's EIN ▶ 86-1065772
Firm's address ▶ 1111 BAGBY STREET, SUITE 4500 HOUSTON, TX 77002-2591 Phone no. 713-982-2000

410002 12-31-14

JAMES D. DONDERO [redacted]

FORM 1040 WAGES RECEIVED AND TAXES WITHHELD STATEMENT 20

T S -	EMPLOYER'S NAME	AMOUNT PAID	FEDERAL TAX WITHHELD	STATE TAX WITHHELD	CITY SDI TAX W/H	FICA TAX	MEDICARE TAX
T	HIGHLAND CAPITAL MANAGEMENT LP	3,282,693.	361,201.			7,254.	75,343.
T	HIGHLAND CAPITAL MGMT PTE LTD.	73,227.					
TOTALS		3,355,920.	361,201.			7,254.	75,343.

FORM 1040 QUALIFIED DIVIDENDS STATEMENT 21

NAME OF PAYER	ORDINARY DIVIDENDS	QUALIFIED DIVIDENDS
NEXPOINT	2,292,312.	207,477.
NEXPOINT - GET GOOD #2	91,123.	8,247.
FROM K-1 - HIGHLAND CAPITAL MANAGEMENT SERVICES, INC.	170,404.	17,154.
FROM K-1 - PCMG TRADING PARTNERS XXIII, LP	18,241.	4,500.
FROM K-1 - STRAND ADVISORS III, INC.	247.	61.
FROM K-1 - STRAND ADVISORS, INC.	30,676.	22,761.
FROM K-1 - SERENGETI PARTNERS, LP - GET GOOD #2	80,697.	53,802.
FROM K-1 - HAYMAN CAPITAL PARTNERS LP - GET GOOD #2	265,627.	242,852.
FROM K-1 - HIGHLAND CAPITAL MGMT, LP	4,097,501.	3,040,190.
FROM K-1 - SERENGETI OPPORTUNITIES PARTNERS LP - DUGABOY LLC	4,945.	3,297.
FROM K-1 - GRANITE BAY ADVISORS, LP	1,778.	33.
FROM K-1 - ICONIQ STRATEGIC PARTNERS, L.P.	1.	1.
FROM K-1 - NEXPOINT ADVISORS, GP LLC	81.	4.
FROM K-1 - NEXPOINT ADVISORS, L.P. - DUGABOY	80,929.	3,738.
TOTAL INCLUDED IN FORM 1040, LINE 9B		3,604,117.

EXHIBIT 67-5

Form 1040 (2015) JAMES D. DONDERO [redacted] Page 2

Tax and Credits	38	Amount from line 37 (adjusted gross income)	38	106,251,803.
Standard Deduction for - ● People who check any box on line 39a or 39b or who can be claimed as a dependent, see instructions. ● All others: Single or Married filing separately, $6,300 Married filing jointly or Qualifying widow(er), $12,600 Head of household, $9,250	39a	Check if: ☐ You were born before January 2, 1951, ☐ Blind. ☐ Spouse was born before January 2, 1951, ☐ Blind. Total boxes checked ▶ 39a		
	b	If your spouse itemizes on a separate return or you were a dual-status alien, check here ▶ 39b ☐		
	40	**Itemized deductions** (from Schedule A) or your **standard deduction** (see left margin)	40	40,448,879.
	41	Subtract line 40 from line 38	41	65,802,924.
	42	**Exemptions.** If line 38 is $154,950 or less, multiply $4,000 by the number on line 6d. Otherwise, see inst.	42	0.
	43	**Taxable income.** Subtract line 42 from line 41. If line 42 is more than line 41, enter -0-	43	65,802,924.
	44	**Tax.** Check if any from: a ☐ Form(s) 8814 b ☐ Form 4972 c ☐	44	24,485,784.
	45	**Alternative minimum tax.** Attach Form 6251	45	0.
	46	Excess advance premium tax credit repayment. Attach Form 8962	46	
	47	Add lines 44, 45, and 46 ▶	47	24,485,784.
	48	Foreign tax credit. Attach Form 1116 if required — 48: 41,902.		
	49	Credit for child and dependent care expenses. Attach Form 2441 — 49		
	50	Education credits from Form 8863, line 19 — 50		
	51	Retirement savings contributions credit. Attach Form 8880 — 51		
	52	Child tax credit. Attach Schedule 8812, if required — 52		
	53	Residential energy credits. Attach Form 5695 — 53		
	54	Other credits from Form: a [X] 3800 b ☐ 8801 c ☐ — 54		
	55	Add lines 48 through 54. These are your **total credits**	55	41,902.
	56	Subtract line 55 from line 47. If line 55 is more than line 47, enter -0- ▶	56	24,443,882.
Other Taxes	57	Self-employment tax. Attach Schedule SE	57	27,478.
	58	Unreported social security and Medicare tax from Form: a ☐ 4137 b ☐ 8919	58	
	59	Additional tax on IRAs, other qualified retirement plans, etc. Attach Form 5329 if required	59	
	60a	Household employment taxes from Schedule H	60a	
	b	First-time homebuyer credit repayment. Attach Form 5405 if required	60b	
	61	Health care: individual responsibility (see instructions) Full-year coverage [X]	61	
	62	Taxes from: a [X] Form 8959 b [X] Form 8960 c ☐ Inst.; enter code(s) STATEMENT 26	62	1,176,409.
	63	Add lines 56 through 62. This is your **total tax** ▶	63	25,647,769.
Payments	64	Federal income tax withheld from Forms W-2 and 1099 — 64: 384,653.		STATEMENT 25
	65	2015 estimated tax payments and amount applied from 2014 return — 65		
If you have a qualifying child, attach Schedule EIC.	66a	**Earned income credit (EIC)** — 66a		
	b	Nontaxable combat pay election — 66b		
	67	Additional child tax credit. Attach Schedule 8812 — 67		
	68	American opportunity credit from Form 8863, line 8 — 68		
	69	Net premium tax credit. Attach Form 8962 — 69		
	70	Amount paid with request for extension to file — 70		
	71	Excess social security and tier 1 RRTA tax withheld — 71		
	72	Credit for federal tax on fuels. Attach Form 4136 — 72		
	73	Credits from Form: a ☐ 2439 b ☐ Reserved c ☐ 8885 d ☐ — 73		
	74	Add lines 64, 65, 66a, and 67 through 73. These are your **total payments** ▶	74	384,653.
Refund	75	If line 74 is more than line 63, subtract line 63 from line 74. This is the amount you **overpaid**	75	
	76a	Amount of line 75 you want **refunded to you.** If Form 8888 is attached, check here ▶ ☐	76a	
Direct deposit? See instructions. ▶	b	Routing number ▶ c Type: ☐ Checking ☐ Savings ▶ d Account number		
	77	Amount of line 75 you want **applied to your 2016 estimated tax** ▶ — 77		
Amount You Owe	78	**Amount you owe.** Subtract line 74 from line 63. For details on how to pay, see instructions ▶	78	25,263,116.
	79	Estimated tax penalty (see instructions) — 79: 0.		

Third Party Designee Do you want to allow another person to discuss this return with the IRS (see instructions)? [X] Yes. Complete below. ☐ No
Designee's name ▶ TODD CRAWFORD Phone no. ▶ 713-982-2000 Personal identification number (PIN) ▶ 28788

Sign Here Under penalties of perjury, I declare that I have examined this return and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.
Joint return? See instructions. Keep a copy for your records.
Your signature ▶ Date 10/17/2016 Your occupation Executive Daytime phone number 972-628-4100
Spouse's signature. If a joint return, **both** must sign. Date Spouse's occupation If the IRS sent you an Identity Protection PIN, enter it here

Paid Preparer Use Only
Print/Type preparer's name: TODD CRAWFORD Preparer's signature: TODD CRAWFORD Date: 10/17/16 Check ☐ if self-employed PTIN: P00848788
Firm's name ▶ DELOITTE TAX LLP Firm's EIN ▶ 86-1065772
Firm's address ▶ 1111 BAGBY STREET, SUITE 4500 HOUSTON, TX 77002-2591 Phone no. 713-982-2000

510002 12-30-15

JAMES D. DONDERO [redacted]

FORM 1040 WAGES RECEIVED AND TAXES WITHHELD STATEMENT 23

T S -	EMPLOYER'S NAME	AMOUNT PAID	FEDERAL TAX WITHHELD	STATE TAX WITHHELD	CITY SDI TAX W/H	FICA TAX	MEDICARE TAX
T	HIGHLAND CAPITAL MANAGEMENT LP	2,875,058.	360,577.			7,347.	65,764.
T	HIGHLAND CAPITAL MGMT PTE LTD.	61,880.					
TOTALS		2,936,938.	360,577.			7,347.	65,764.

FORM 1040 QUALIFIED DIVIDENDS STATEMENT 24

NAME OF PAYER	ORDINARY DIVIDENDS	QUALIFIED DIVIDENDS
NEXPOINT CREDIT #1061004 - GET GOOD NE2	424,450.	7,055.
NEXPOINT CREDIT #10671 - DUGABOY INVST,	5,075,869.	84,367.
NEXPOINT CREDIT #1061005 - OTHER	668.	11.
FROM K-1 - HIGHLAND CAPITAL MANAGEMENT SERVICES, INC.	1,121,758.	17,419.
FROM K-1 - PCMG TRADING PARTNERS XXIII, LP	81,701.	2,742.
FROM K-1 - STRAND ADVISORS III, INC.	1,104.	37.
FROM K-1 - STRAND ADVISORS, INC.	107,555.	10,350.
FROM K-1 - SERENGETI PARTNERS, LP - GET GOOD #2	122,685.	36,501.
FROM K-1 - HAYMAN CAPITAL PARTNERS LP - GET GOOD #2	5,733.	2,373.
FROM K-1 - HIGHLAND CAPITAL MGMT, LP	14,222,996.	1,368,700.
FROM K-1 - SERENGETI OPPORTUNITIES PARTNERS LP - DUGABOY LLC	7,513.	2,235.
FROM K-1 - GRANITE BAY ADVISORS, LP	586.	12.
FROM K-1 - NEXBANK CAPITAL, INC. - DUGABOY	2,126.	1,429.
FROM K-1 - ICONIQ STRATEGIC PARTNERS, L.P.	89.	89.
FROM K-1 - NEXPOINT ADVISORS, GP LLC	1,231.	3.
FROM K-1 - NEXPOINT ADVISORS, L.P. - DUGABOY	1,229,938.	3,483.
TOTAL INCLUDED IN FORM 1040, LINE 9B		1,536,806.

EXHIBIT 67-6

Form 1040 (2016) JAMES D. DONDERO [redacted] Page 2

Tax and Credits	38	Amount from line 37 (adjusted gross income)	38	67,070,747.
Standard Deduction for – People who check any box on line 39a or 39b or who can be claimed as a dependent, see instructions.	39a	Check if: ☐ You were born before January 2, 1952, ☐ Blind. ☐ Spouse was born before January 2, 1952, ☐ Blind. Total boxes checked ▶ 39a		
	b	If your spouse itemizes on a separate return or you were a dual-status alien, check here ▶ 39b ☐		
	40	**Itemized deductions** (from Schedule A) or your **standard deduction** (see left margin)	40	35,026,261.
	41	Subtract line 40 from line 38	41	32,044,486.
	42	**Exemptions.** If line 38 is $155,650 or less, multiply $4,050 by the number on line 6d. Otherwise, see inst.	42	0.
	43	**Taxable income.** Subtract line 42 from line 41. If line 42 is more than line 41, enter -0-	43	32,044,486.
	44	**Tax.** Check if any from: a ☐ Form(s) 8814 b ☐ Form 4972 c ☐	44	10,668,862.
	45	**Alternative minimum tax.** Attach Form 6251	45	0.
● All others: Single or Married filing separately, $5,300	46	Excess advance premium tax credit repayment. Attach Form 8962	46	
	47	Add lines 44, 45, and 46 ▶	47	10,668,862.
Married filing jointly or Qualifying widow(er), $12,600	48	Foreign tax credit. Attach Form 1116 if required — 48: 23,346.		
	49	Credit for child and dependent care expenses. Attach Form 2441 — 49		
	50	Education credits from Form 8863, line 19 — 50		
Head of household, $9,300	51	Retirement savings contributions credit. Attach Form 8880 — 51		
	52	Child tax credit. Attach Schedule 8812, if required — 52		
	53	Residential energy credits. Attach Form 5695 — 53		
	54	Other credits from Form: a [X] 3800 b ☐ 8801 c ☐ — 54		
	55	Add lines 48 through 54. These are your **total credits**	55	23,346.
	56	Subtract line 55 from line 47. If line 55 is more than line 47, enter -0- ▶	56	10,645,516.
Other Taxes	57	Self-employment tax. Attach Schedule SE	57	33,600.
	58	Unreported social security and Medicare tax from Form: a ☐ 4137 b ☐ 8919	58	
	59	Additional tax on IRAs, other qualified retirement plans, etc. Attach Form 5329 if required	59	
	60a	Household employment taxes from Schedule H	60a	
	b	First-time homebuyer credit repayment. Attach Form 5405 if required	60b	
	61	Health care: individual responsibility (see instructions) Full-year coverage [X]	61	
	62	Taxes from: a [X] Form 8959 b [X] Form 8960 c [X] Inst.; enter code(s) STATEMENT 17	62	1,128,115.
	63	Add lines 56 through 62. This is your **total tax** ▶	63	11,807,231.
Payments	64	Federal income tax withheld from Forms W-2 and 1099 — 64: 361,603.		STATEMENT 16
	65	2016 estimated tax payments and amount applied from 2015 return — 65: * 7,900,000.		
If you have a qualifying child, attach Schedule EIC.	66a	**Earned income credit (EIC)** — 66a		
	b	Nontaxable combat pay election — 66b		
	67	Additional child tax credit. Attach Schedule 8812 — 67		
	68	American opportunity credit from Form 8863, line 8 — 68		
	69	Net premium tax credit. Attach Form 8962 — 69		
	70	Amount paid with request for extension to file — 70		
	71	Excess social security and tier 1 RRTA tax withheld STMT 15 — 71: 7,347.		
	72	Credit for federal tax on fuels. Attach Form 4136 — 72		
	73	Credits from Form: a ☐ 2439 b ☐ Reserved c ☐ 8885 d ☐ — 73		
	74	Add lines 64, 65, 66a, and 67 through 73. These are your **total payments** ▶	74	8,268,950.
Refund	75	If line 74 is more than line 63, subtract line 63 from line 74. This is the amount you **overpaid**	75	
	76a	Amount of line 75 you want **refunded to you.** If Form 8888 is attached, check here ▶ ☐	76a	
Direct deposit? See instructions. ▶	b	Routing number ▶ c Type: ☐ Checking ☐ Savings ▶ d Account number		
	77	Amount of line 75 you want **applied to your 2017 estimated tax** ▶ — 77		
Amount You Owe	78	**Amount you owe.** Subtract line 74 from line 63. For details on how to pay, see instructions ▶	78	3,810,722.
	79	Estimated tax penalty (see instructions) — 79: 272,441.		

Third Party Designee Do you want to allow another person to discuss this return with the IRS (see instructions)? [X] Yes. Complete below. ☐ No
Designee's name ▶ TODD CRAWFORD Phone no. ▶ 713-982-2000 Personal identification number (PIN) ▶ 28788

Sign Here Under penalties of perjury, I declare that I have examined this return and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and accurately list all amounts and sources of income I received during the tax year. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.
Joint return? See instructions. Keep a copy for your records.
Your signature | Date 1/25/18 | Your occupation Executive | Daytime phone number
Spouse's signature. If a joint return, **both** must sign. | Date | Spouse's occupation | If the IRS sent you an Identity Protection PIN, enter it here

Paid Preparer Use Only
Print/Type preparer's name: TODD CRAWFORD | Preparer's signature: TODD CRAWFORD | Date: 01/18/18 | Check ☐ if self-employed | PTIN: P00848788
Firm's name ▶ DELOITTE TAX LLP | Firm's EIN ▶ 86-1065772
Firm's address ▶ 1111 BAGBY STREET, SUITE 4500 HOUSTON, TX 77002-2591 | Phone no. 713-982-2000

610902 11-30-16

* $7,900,000 PAYMENT MADE ON 1/18/2018. SEE CONFIRMATION ATTACHED.

JAMES D. DONDERO [redacted]

FORM 1040 WAGES RECEIVED AND TAXES WITHHELD STATEMENT 13

T S	EMPLOYER'S NAME	AMOUNT PAID	FEDERAL TAX WITHHELD	STATE TAX WITHHELD	CITY SDI TAX W/H	FICA TAX	MEDICARE TAX
T	HIGHLAND CAPITAL MANAGEMENT LP	772,904.	260,529.			7,347.	16,363.
T	NEXPOINT ADVISORS LP	1,628,736.	83,026.			7,347.	36,475.
T	HIGHLAND CAPITAL MGMT PTE LTD.	67,166.					
	TOTALS	2,468,806.	343,555.			14,694.	52,838.

FORM 1040 QUALIFIED DIVIDENDS STATEMENT 14

NAME OF PAYER	ORDINARY DIVIDENDS	QUALIFIED DIVIDENDS
NEXPOINT CREDIT #1061004 - GET GOOD NE2	114,812.	9,964.
NEXPOINT CREDIT #1061005 - OTHER	1,447.	126.
NEXPOINT CREDIT #10671 - DUGABOY INVST,	1,741,293.	151,116.
FROM K-1 - HIGHLAND CRUSADER FUND, LP - JIM	1.	1.
FROM K-1 - HIGHLAND CAPITAL MANAGEMENT SERVICES, INC.	301,224.	25,062.
FROM K-1 - PCMG TRADING PARTNERS XXIII, LP	23,745.	1,635.
FROM K-1 - STRAND ADVISORS III, INC.	321.	22.
FROM K-1 - STRAND ADVISORS, INC.	21,524.	1,432.
FROM K-1 - SERENGETI PARTNERS, LP - GET GOOD #2	140,229.	29,857.
FROM K-1 - HIGHLAND CAPITAL MGMT, LP	16,011.	1,065.
FROM K-1 - SERENGETI OPPORTUNITIES PARTNERS LP - DUGABOY LLC	8,818.	1,835.
FROM K-1 - GRANITE BAY ADVISORS, LP	837.	316.
FROM K-1 - HCM - MULTI-STRATEGY INSURANCE DEDICATED FUND, L.P.	153.	153.
FROM K-1 - NEXBANK CAPITAL, INC. - DUGABOY	60,393.	59,222.
FROM K-1 - ICONIQ STRATEGIC PARTNERS, L.P.	368.	368.
FROM K-1 - NEXPOINT ADVISORS, GP LLC	1,403.	57.
FROM K-1 - NEXPOINT ADVISORS, L.P. - DUGABOY	1,401,150.	56,892.
FROM K-1 - HCRE PARTNERS, LLC	17,215.	14,820.
FROM K-1 - NEXBANK CAPITAL, INC.	2,371.	2,325.
FROM K-1 - RAND PE FUND I LP	67,914.	4,633.
FROM K-1 - NEXBANK CAPITAL-GRANT SCOTT SLHC TRUST	836.	819.
		361,720.

EXHIBIT 67-7

Form 1040 (2017) JAMES D. DONDERO [redacted] Page 2

Tax and Credits	38	Amount from line 37 (adjusted gross income)	38	46,135,397.
	39a	Check if: ☐ You were born before January 2, 1953, ☐ Blind. ☐ Spouse was born before January 2, 1953, ☐ Blind. Total boxes checked ▶ 39a		
Standard Deduction for - ● People who check any box on line 39a or 39b or who can be claimed as a dependent, see instructions.	b	If your spouse itemizes on a separate return or you were a dual-status alien, check here ▶ 39b ☐		
	40	**Itemized deductions** (from Schedule A) **or your standard deduction** (see left margin)	40	25,717,217.
	41	Subtract line 40 from line 38	41	20,418,180.
	42	**Exemptions.** If line 38 is $156,900 or less, multiply $4,050 by the number on line 6d. Otherwise, see inst.	42	0.
	43	**Taxable income.** Subtract line 42 from line 41. If line 42 is more than line 41, enter -0-	43	20,418,180.
	44	**Tax.** Check if any from: a ☐ Form(s) 8814 b ☐ Form 4972 c ☐	44	7,995,763.
	45	**Alternative minimum tax.** Attach Form 6251	45	0.
● All others: Single or Married filing separately, $6,350	46	Excess advance premium tax credit repayment. Attach Form 8962	46	
	47	Add lines 44, 45, and 46 ▶	47	7,995,763.
Married filing jointly or Qualifying widow(er), $12,700	48	Foreign tax credit. Attach Form 1116 if required	48	
	49	Credit for child and dependent care expenses. Attach Form 2441	49	
	50	Education credits from Form 8863, line 19	50	
	51	Retirement savings contributions credit. Attach Form 8880	51	
Head of household, $9,350	52	Child tax credit. Attach Schedule 8812, if required	52	
	53	Residential energy credits. Attach Form 5695	53	
	54	Other credits from Form: a [X] 3800 b ☐ 8801 c ☐	54	
	55	Add lines 48 through 54. These are your **total credits**	55	
	56	Subtract line 55 from line 47. If line 55 is more than line 47, enter -0- ▶	56	7,995,763.
Other Taxes	57	Self-employment tax. Attach Schedule SE	57	116,052.
	58	Unreported social security and Medicare tax from Form: a ☐ 4137 b ☐ 8919	58	
	59	Additional tax on IRAs, other qualified retirement plans, etc. Attach Form 5329 if required	59	
	60a	Household employment taxes from Schedule H	60a	
	b	First-time homebuyer credit repayment. Attach Form 5405 if required	60b	
	61	Health care: Individual responsibility (see instructions) Full-year coverage [X]	61	
	62	Taxes from: a [X] Form 8959 b [X] Form 8960 c [X] Inst.; enter code(s) STATEMENT 12	62	496,784.
	63	Add lines 56 through 62. This is your **total tax** ▶	63	8,608,599.
Payments	64	Federal income tax withheld from Forms W-2 and 1099 — 64: 994,763.		STATEMENT 11
	65	2017 estimated tax payments and amount applied from 2016 return	65	
If you have a qualifying child, attach Schedule EIC.	66a	**Earned income credit (EIC)**	66a	
	b	Nontaxable combat pay election 66b		
	67	Additional child tax credit. Attach Schedule 8812	67	
	68	American opportunity credit from Form 8863, line 8	68	
	69	Net premium tax credit. Attach Form 8962	69	
	70	Amount paid with request for extension to file	70	
	71	Excess social security and tier 1 RRTA tax withheld STMT 10 — 71: 15,772.		
	72	Credit for federal tax on fuels. Attach Form 4136	72	
	73	Credits from Form: a ☐ 2439 b ☐ Reserved c ☐ 8885 d ☐	73	
	74	Add lines 64, 65, 66a, and 67 through 73. These are your **total payments** ▶	74	1,010,535.
Refund	75	If line 74 is more than line 63, subtract line 63 from line 74. This is the amount you **overpaid**	75	
	76a	Amount of line 75 you want **refunded to you.** If Form 8888 is attached, check here ▶ ☐	76a	
Direct deposit? See instructions.	b	Routing number ▶ c Type: ☐ Checking ☐ Savings ▶ d Account number		
	77	Amount of line 75 you want **applied to your 2018 estimated tax** ▶	77	
Amount You Owe	78	**Amount you owe.** Subtract line 74 from line 63. For details on how to pay, see instructions ▶	78	7,777,274.
	79	Estimated tax penalty (see instructions) — 79: 179,210.		

Third Party Designee Do you want to allow another person to discuss this return with the IRS (see instructions)? [X] **Yes.** Complete below. ☐ **No**
Designee's name ▶ TODD CRAWFORD Phone no. ▶ 713-982-2000 Personal identification number (PIN) ▶ 77002

Sign Here Under penalties of perjury, I declare that I have examined this return and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and accurately list all amounts and sources of income I received during the tax year. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.
Joint return? See instructions. Keep a copy for your records.
Your signature | Date | Your occupation | Daytime phone number
Spouse's signature. If a joint return, **both** must sign. | Date | Spouse's occupation | If the IRS sent you an Identity Protection PIN, enter it here

Paid Preparer Use Only

Print/Type preparer's name	Preparer's signature	Date	Check ☐ if self-employed	PTIN
TODD CRAWFORD	TODD CRAWFORD	10/15/18		P00848788

Firm's name ▶ DELOITTE TAX LLP Firm's EIN ▶ 86 1065772
Firm's address ▶ 1111 BAGBY STREET, SUITE 4500 HOUSTON, TX 77002-2591 Phone no. 713-982-2000

710002 02-22-18

SEE STMT FOR INT AND PEN NOT INCLUDED. TOTAL DUE $8198081

JAMES D. DONDERO [redacted]

FORM 1040	TAX-EXEMPT INTEREST	STATEMENT 7

NAME OF PAYER	AMOUNT
JP MORGAN #05641 - T/E	67.
FROM K-1 - SERENGETI OPPORTUNITIES PARTNERS LP - DUGABOY LLC	1.
FROM K-1 - ICONIQ STRATEGIC PARTNERS, L.P.	7.
FROM K-1 - NEXBANK CAPITAL, INC. & SUBS	216,400.
FROM K-1 - NEXBANK CAPITAL-GRANT SCOTT SLHC TRUST	4,208,755.
TOTAL TO FORM 1040, LINE 8B	4,425,230.

FORM 1040	WAGES RECEIVED AND TAXES WITHHELD	STATEMENT 8

T S	EMPLOYER'S NAME	AMOUNT PAID	FEDERAL TAX WITHHELD	STATE TAX WITHHELD	CITY SDI TAX W/H	FICA TAX	MEDICARE TAX
T	HIGHLAND CAPITAL MANAGEMENT LP	566,370.	177,722.			7,886.	11,510.
T	NEXPOINT ADVISORS LP	3,118,250.	627,283.			7,886.	71,479.
T	NEXPOINT RESIDENTIAL TRUST INC	625,467.	156,367.			7,886.	12,898.
T	HIGHLAND CAPITAL MGMT PTE LTD.	96,000.					
	TOTALS	4,406,087.	961,372.			23,658.	95,887.

STATEMENT(S) 7, 8

EXHIBIT 67-8

Form **1040** Department of the Treasury - Internal Revenue Service (99)

U.S. Individual Income Tax Return **2018**

EXTENSION GRANTED TO 10/15/19

OMB No. 1545-0074 IRS Use Only - Do not write or staple in this space.

Filing status: [ ] Single [ ] Married filing jointly [ ] Married filing separately [X] Head of household [ ] Qualifying widow(er)

Your first name and initial	Last name	
JAMES D.	DONDERO	[redacted]

Your standard deduction: [ ] Someone can claim you as a dependent [ ] You were born before January 2, 1954 [ ] You are blind

If joint return, spouse's first name and initial	Last name	Spouse's social security number

Spouse standard deduction: [ ] Someone can claim your spouse as a dependent [ ] Spouse was born before January 2, 1954 [X] Full-year health care coverage or exempt (see inst.)
[ ] Spouse is blind [ ] Spouse itemizes on a separate return or you were dual-status alien

Home address (number and street). If you have a P.O. box, see instructions. Apt. no. Presidential Election Campaign. (see inst.) [ ] You [ ] Spouse
[redacted]

City, town or post office, state, and ZIP code. If you have a foreign address, attach Schedule 6. If more than four dependents, see inst. and ✓ here ▶ [ ]
[redacted]

Dependents (see instructions): (1) First name Last name	(2) Social security number	(3) Relationship to you	(4) ✓ if qualifies for (see inst.): Child tax credit	Credit for other dependents
[redacted]			[X]	

Sign Here Joint return? See instructions. Keep a copy for your records.

Under penalties of perjury, I declare that I have examined this return and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

Your signature	Date	Your occupation	If the IRS sent you an Identity Protection PIN, enter it here
	10/12/19	Executive	
Spouse's signature. If a joint return, **both** must sign.	Date	Spouse's occupation	If the IRS sent you an Identity Protection PIN, enter it here

Paid Preparer Use Only

Preparer's name	Preparer's signature	PTIN	Firm's EIN	Check if:
TODD CRAWFORD		P00848788	86-1065772	[X] 3rd Party Designee [ ] Self-employed

Firm's name ▶DELOITTE TAX LLP Phone no. 713-982-2000

Firm's address ▶1111 BAGBY STREET, SUITE 4500 HOUSTON, TX 77002-2591

LHA For Disclosure, Privacy Act, and Paperwork Reduction Act Notice, see separate instructions. Form **1040** (2018)

813921 12-13-18

JAMES D. DONDERO [redacted]

FORM 1040 WAGES RECEIVED AND TAXES WITHHELD STATEMENT 9

T S	EMPLOYER'S NAME	AMOUNT PAID	FEDERAL TAX WITHHELD	STATE TAX WITHHELD	CITY SDI TAX W/H	FICA TAX	MEDICARE TAX
T	HIGHLAND CAPITAL MANAGEMENT LP	566,370.	172,663.			7,961.	11,510.
T	NEXPOINT ADVISORS LP	2,870,278.	682,902.			7,961.	65,651.
T	NEXPOINT RESIDENTIAL TRUST INC	893,262.	196,518.			7,961.	19,192.
T	HIGHLAND CAPITAL MGMT PTE LTD.	68,840.					
	TOTALS	4,398,750.	1,052,083.			23,883.	96,353.

FORM 1040 TAX-EXEMPT INTEREST STATEMENT 10

NAME OF PAYER	AMOUNT
JP MORGAN #05641	174.
FROM K-1 - SERENGETI OPPORTUNITIES PARTNERS - DUGABOY LLC	1.
TOTAL TO FORM 1040, LINE 2A	175.

STATEMENT(S) 9, 10

EXHIBIT 67-9

Form 1040 (2019) JAMES D. DONDERO [redacted] Page 2

12a	Tax (see inst.) Check if any from Form(s): 1 ☐ 8814 2 ☐ 4972 3 ☐	12a 448,223.		
b	Add Schedule 2, line 3, and line 12a and enter the total ▶		12b	497,662.
13a	Child tax credit or credit for other dependents	13a		
b	Add Schedule 3, line 7, and line 13a and enter the total ▶		13b	
14	Subtract line 13b from line 12b. If zero or less, enter -0-		14	497,662.
15	Other taxes, including self-employment tax, from Schedule 2, line 10		15	682,137.
16	Add lines 14 and 15. This is your **total tax** ▶		16	1,179,799.
17	Federal income tax withheld from Forms W-2 and 1099 SEE STATEMENT 4		17	1,461,134.
18	Other payments and refundable credits:			
a	Earned income credit (EIC)	18a		
b	Additional child tax credit. Attach Schedule 8812	18b		
c	American opportunity credit from Form 8863, line 8	18c		
d	Schedule 3, line 14	18d 16,480.		
e	Add lines 18a through 18d. These are your **total other payments and refundable credits** ▶		18e	16,480.
19	Add lines 17 and 18e. These are your **total payments** ▶		19	1,477,614.
Refund 20	If line 19 is more than line 16, subtract line 16 from line 19. This is the amount you **overpaid**		20	297,815.
21a	Amount of line 20 you want **refunded to you.** If Form 8888 is attached, check here ▶ ☐		21a	297,815.
▶ b	Routing number ▶ c Type: ☐ Checking ☐ Savings			
▶ d	Account number			
22	Amount of line 20 you want **applied to your 2020 estimated tax** ▶	22		
Amount You Owe 23	**Amount you owe.** Subtract line 19 from line 16. For details on how to pay, see instructions ▶		23	
24	Estimated tax penalty (see instructions) ▶	24		

● If you have a qualifying child, attach Sch. EIC.
● If you have nontaxable combat pay, see instructions

Direct deposit? See instructions.

Third Party Designee (Other than paid preparer)
Do you want to allow another person (other than your paid preparer) to discuss this return with the IRS? See instructions ☐ **Yes.** Complete below. ☐ **No**
Designee's name ▶ Phone no. ▶ Personal identification number (PIN) ▶

Sign Here
Under penalties of perjury, I declare that I have examined this return and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.
Your signature | Date 10/15/20 | Your occupation President | If the IRS sent you an Identity Protection PIN, enter it here (see inst.)

Joint return? See instructions. Keep a copy for your records.
Spouse's signature. If a joint return, **both** must sign. | Date | Spouse's occupation | If the IRS sent your spouse an Identity Protection PIN, enter it here (see inst.)
Phone no. | Email address

Paid Preparer Use Only
Preparer's name: TODD CRAWFORD | Preparer's signature | Date 10/13/20 | PTIN P00848788 | Check if: [X] 3rd Party Designee ☐ Self-employed
Firm's name ▶ DELOITTE TAX LLP | Phone no. 713-982-2000 | Firm's EIN 86-1065772
Firm's address ▶ 1111 BAGBY STREET, SUITE 4500 HOUSTON, TX 77002-2591

Go to *www.irs.gov/Form1040* for instructions and the latest information. Form **1040** (2019)

913922 12-02-19

JAMES D. DONDERO [redacted]

FORM 1040 WAGES RECEIVED AND TAXES WITHHELD STATEMENT 1

T S	EMPLOYER'S NAME	AMOUNT PAID	FEDERAL TAX WITHHELD	STATE TAX WITHHELD	CITY SDI TAX W/H	FICA TAX	MEDICARE TAX
T	HIGHLAND CAPITAL MANAGEMENT LP	568,542.	171,707.			8,240.	11,561.
T	NEXPOINT ADVISORS LP	1,953,455.	684,952.			8,240.	44,106.
T	NEXPOINT RESIDENTIAL TRUST INC	1,944,956.	569,634.			8,240.	43,906.
T	HIGHLAND CAPITAL MGMT PTE LTD.	29,352.					
	TOTALS	4,496,305.	1,426,293.			24,720.	99,573.

FORM 1040 TAX-EXEMPT INTEREST STATEMENT 2

NAME OF PAYER	AMOUNT
JP MORGAN #05641	169.
TOTAL TO FORM 1040, LINE 2A	169.

STATEMENT(S) 1, 2

EXHIBIT 68

James Dondero
Compensation and Benefit Statement

Job Title: Partner
Department: Executive

EARNINGS AND AWARDS	
2016 Base Salary (as of 12/31/16)	$1,062,500

Effective March 1, 2017, your new base salary will be: $2,500,000

2016 Other Awards	
401(k) Match	$ 4,800
Estimated 2016 Profit Sharing (will be contributed in 2017)	$ 19,875
*Final profit sharing award subject to passing IRS mandated testing	
2016 Deferred Compensation Award	$1,200,000

- It is expected that you will receive approximately 50,000 restricted stock units of NXRT relating to the 2016 performance year, which have a current market value of approximately $1,200,000

2016 Total Earnings and Awards	**$2,287,175**

HIGHLAND PAID BENEFITS	
Medical & Dental Insurance	$ 13,056
Life, AD&D and Disability Insurance	$ 968
Executive Long Term Disability	$ 1,260
Daily Catered Lunches	$ 3,000
Parking	$ 2,160
2016 Estimated Total Value of Highland Paid Benefits	**$ 20,444**

TOTAL COMPENSATION PACKAGE	$2,307,619

EXHIBIT 69

Highland Capital Management, L.P.

(A Delaware Limited Partnership)

Consolidated Financial Statements and Supplemental Information

December 31, 2014

Highland Capital Management, L.P.

(A Delaware Limited Partnership)
Index
December 31, 2014

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Consolidated Statement of Changes in Partners' Capital 4

Consolidated Statement of Cash Flows 5

Consolidated Notes to Financial Statements 6–42

Supplemental Information 43-47

Independent Auditor's Report

To the General Partner of Highland Capital Management, L.P.:

We have audited the accompanying consolidated financial statements of Highland Capital Management, L.P. and its subsidiaries (collectively, the "Partnership"), which comprise the consolidated balance sheet as of December 31, 2014, and the related consolidated statements of income, of changes in partners' capital and of cash flows for the year then ended.

Management's Responsibility for the Consolidated Financial Statements

Management is responsible for the preparation and fair presentation of the consolidated financial statements in accordance with accounting principles generally accepted in the United States of America; this includes the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of consolidated financial statements that are free from material misstatement, whether due to fraud or error.

Auditor's Responsibility

Our responsibility is to express an opinion on the consolidated financial statements based on our audit. We conducted our audit in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the consolidated financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the consolidated financial statements. The procedures selected depend on our judgment, including the assessment of the risks of material misstatement of the consolidated financial statements, whether due to fraud or error. In making those risk assessments, we consider internal control relevant to the Partnership's preparation and fair presentation of the consolidated financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Partnership's internal control. Accordingly, we express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the consolidated financial statements. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

Opinion

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of Highland Capital Management, L.P. and its subsidiaries at December 31, 2014, and the results of their operations, changes in their partners' capital and their cash flows for the year then ended in accordance with accounting principles generally accepted in the United States of America.

Other Matter

Our audit was conducted for the purpose of forming an opinion on the consolidated financial statements taken as a whole. The Supplemental Consolidating Balance Sheet, the Supplemental Consolidating Statement of Income, the Supplemental Unconsolidated Balance Sheet and the Supplemental Unconsolidated Statement of Income are presented for purposes of additional analysis and are not a required part of the consolidated financial statements. The information is the responsibility of management and was derived from and relates directly to the underlying accounting and other records used to prepare the financial statements. The information has been subjected to the auditing procedures applied in the audit of the financial statements and certain additional procedures, including comparing and reconciling such information directly to the underlying accounting and other records used to prepare the financial statements or to the financial statements themselves and other additional procedures, in accordance with auditing standards generally accepted in the United States of America. In our opinion, the information is fairly stated, in all material respects, in relation to the consolidated financial statements taken as a whole.

PricewaterhouseCoopers LLP

May 21, 2015

PricewaterhouseCoopers LLP, 2001 Ross Avenue, Suite 1800, Dallas, Texas 75201
T: (214) 999-1400, F: (214) 754-7991, www.pwc.com/us

Highland Capital Management, L.P.
(A Delaware Limited Partnership)
Consolidated Balance Sheet
December 31, 2014

(in thousands)

Assets		
Cash and cash equivalents	$	66,033
Restricted cash		137,855
Investments at fair value (cost $2,266,538)		1,877,339
Management and incentive fees receivable		8,570
Due from broker for securities sold, not yet settled		32,536
Other assets		64,443
Deferred incentive fees receivable		32,592
Fixed assets and leasehold improvements, net of accumulated depreciation of $5,768		8,067
Total assets	$	2,227,435
Liabilities and partners' capital		
Liabilities		
Accounts payable	$	5,167
Securities sold, not yet purchased (proceeds $43,015)		41,815
Withdrawals payable		82,833
Due to brokers		739,483
Due to brokers for securities purchased, not yet settled		67,541
Accrued and other liabilities		100,538
Debt and notes payable		41,639
Total liabilities		1,079,016
Non-controlling interest		621,306
Commitments (Note 10)		
Partners' capital		527,113
Total liabilities and partners' capital	$	2,227,435

The accompanying notes are an integral part of these consolidated statements.

Highland Capital Management, L.P.
Consolidated Statement of Income
Year Ended December 31, 2014

(in thousands)

Revenue:		
Management fees	$	67,570
Interest and investment income		57,451
Other income		10,490
Total revenue		135,511
Expenses:		
Compensation and benefits		37,693
Professional fees		23,935
Marketing and advertising expense		6,140
Investment and research consulting		507
Depreciation and amortization		1,358
Tax expense		1,892
Other operating expenses		17,265
Total expenses		88,790
Other income		1,655
Income before investment and derivative activities		48,376
Realized and unrealized gain/loss from investment and derivative transactions:		
Net realized loss on investment and derivative transactions		(172,002)
Net change in unrealized gain on investment and derivative transactions		260,351
Total realized and unrealized gain from investment and derivative transactions		88,349
Net income		136,725
Net loss attributable to the non-controlling interest		8,604
Net income attributable to Highland Capital Management, L.P.	$	145,329

The accompanying notes are an integral part of these consolidated statements.

Highland Capital Management, L.P.

(A Delaware Limited Partnership)

Consolidated Statement of Changes in Partners' Capital

Year Ended December 31, 2014

(in thousands)

	General Partner	Limited Partners	Total
Partners' capital, December 31, 2013	$ 131	$ 407,431	$ 407,562
Net income attributable to Highland Capital Management, L.P.	-	145,329	145,329
Partner distributions	(131)	(25,647)	(25,778)
Partners' capital, December 31, 2014	$ -	$ 527,113	$ 527,113

The accompanying notes are an integral part of these consolidated statements.

Highland Capital Management, L.P.
(A Delaware Limited Partnership)
Consolidated Statement of Cash Flows
Year Ended December 31, 2014

(in thousands)

Cash flows from operating activities:		
Net income	$	136,725
Adjustment to reconcile net income to cash and cash equivalents provided by operating activities:		
Cash provided by operating activities:		
Net realized loss on investments and derivative transactions		172,002
Net change in unrealized gain on investments and derivative transactions		(260,351)
Amortization and depreciation		1,358
Changes in assets and liabilities:		
Restricted cash		(135,154)
Management and incentive fee receivable		6,064
Deferred incentive fees		224
Other assets		1,053
Accounts payable		79
Accrued and other liabilties		22,000
Due from brokers		(1,294)
Due to brokers for securities purchased, not yet settled		11,193
Tax Payable		(8,232)
Due to Brokers		237,280
Net cash provided by operating activities		182,947
Cash flows from investing activities:		
Purchases of fixed assets and leasehold improvements, net		(356)
Purchases of investments		(805,656)
Proceeds from dispositions of investments		597,251
Proceeds from securities sold, not yet purchased		59,267
Issuance of notes receivable		(37,351)
Purchases of investments to cover securities sold, not yet purchased		(17,228)
Net cash used in investing activities		(204,073)
Cash flows from financing activities:		
Capital contributions from minority interest investors of consolidated entities		4,914
Capital withdrawals by minority interest investors of consolidated entities		(118,973)
Capital withdrawals by investors		58,145
Partner distributions		(25,778)
Net cash used in financing activities		(81,692)
Net decrease in cash and cash equivalents		(102,818)
Cash and cash equivalents		
Beginning of year		162,510
Additional cash from new consolidated funds		6,341
End of year	$	66,033
Supplemental disclosure of cash flow informaton:		
Interest paid during the year	$	(734)
Taxes paid during the year		(7,377)
Non-cash investing activities		
Investments purchased in-kind		41,639

The accompanying notes are an integral part of these consolidated statements.

Highland Capital Management, L.P.
Notes to Consolidated Financial Statements
December 31, 2014

1. Description of Business

Highland Capital Management, L.P. (the "Partnership") was formed on July 7, 1997 as a limited partnership in the state of Delaware. The Partnership is a registered investment adviser under the Investment Advisers Act of 1940 that manages collateralized loan obligations ("CLOs"), hedge funds, private equity funds, and other leveraged loan transactions that are collateralized predominately by senior secured bank debt and high-yield bonds. The Partnership and its subsidiaries make direct investments in debt, equity, and other securities in the normal course of business. The Partnership's general partner is Strand Advisors, Inc. (the "General Partner"). The Partnership is 100% owned by senior management of the Partnership.

As of December 31, 2014, the Partnership provided investment advisory services for twenty-seven CLOs, six separate accounts, one registered investment company, one master limited partnership, and sixteen hedge fund or private equity structures, with total fee-earning assets under management of approximately $11.4 billion.

2. Summary of Significant Accounting Policies

The following is a summary of the significant accounting policies followed by the Partnership in preparation of its financial statements.

Basis of Accounting
The Partnership's consolidated financial statements have been prepared in accordance with U.S. generally accepted accounting principles ("U.S. GAAP") as set forth in the Financial Accounting Standards Board's Accounting Standards Codification.

Use of Estimates
The preparation of the consolidated financial statements in conformity with U.S. GAAP requires management to make estimates and assumptions that affect the amounts and disclosures in the consolidated financial statements. Actual results could differ from those estimates and those differences could be material.

Principles of Consolidation
The consolidated financial statements include the accounts of the Partnership and the Partnership's consolidated subsidiaries, which are comprised of (i) those entities in which it has controlling investment and has control over significant operating, financial and investing decisions of the entity, (ii) those entities in which it, as the general partner, has control over significant operating, financial and investing decisions of the entity, and (iii) variable interest entities ("VIEs") in which it is the primary beneficiary as described below.

The Partnership determines whether an entity has equity investors who lack the characteristics of a controlling financial interest or does not have sufficient equity at risk to finance its expected activities without additional subordinated financial support from other parties. If an entity has either of these characteristics, it is considered a VIE and must be consolidated by its primary beneficiary, which is the party that, along with its affiliates and de facto agents, absorbs a majority of the VIEs' expected losses or receives a majority of the expected residual returns as a result of holding variable interests.

Highland Capital Management, L.P.
(A Delaware Limited Partnership)
Notes to Consolidated Financial Statements
December 31, 2014

Consolidation of Non-Variable Interest Entities
The Partnership consolidates the following non-VIEs (along with majority owned funds: Highland Diversified Credit Fund, L.P., Highland Select Equity Fund, L.P., Highland Equity Partners, L.P., Highland Merger Arbitrage Fund, L.P., and Highland Equity Focus Fund, L.P., collectively the "Consolidated Investment Funds"), as the Partnership (or its wholly owned subsidiaries) controls the general partner of the respective entities and is responsible for the daily operations of the following entities:

- Highland Crusader Offshore Partners, L.P. ("Crusader Master"), a Bermuda exempted limited partnership that commenced operations on July 10, 2000;
- Highland CDO Opportunity Master Fund, L.P. ("CDO Master Fund"), a Bermuda limited partnership that commenced operations on November 9, 2005;
- Highland Credit Strategies Master Fund, L.P. ("Credit Strategies Master"), a Bermuda exempted limited partnership that commenced operations on August 24, 2005;
- Highland Multi Strategy Credit Fund, L.P. ("Multi Strategy Master"), formerly Highland Credit Opportunities CDO, L.P., a Delaware limited partnership that commenced operations on December 29, 2005 and changed its name on August 26, 2014;
- Highland Multi-Strategy Master Fund, L.P. ("Multi-Strat Master"), a Bermuda limited partnership that commenced operations on July 18, 2006;
- Highland Multi-Strategy Fund, L.P. ("Multi-Strat Domestic Feeder"), a Delaware limited partnership that commenced operations on July 6, 2006;
- Canopy Timberlands, L.P., a Delaware limited partnership that commenced operations on April 29, 2008;
- Highland Restoration Capital Partners Offshore, L.P. ("Restoration Offshore") a Cayman limited partnership that commenced operations on September 2, 2008;
- Highland Restoration Capital Partners, L.P. ("Restoration Onshore") a Delaware limited partnership that commenced operations on September 2, 2008
- BB Votorantim, Highland Infrastructure LLC ("BB Votorantim"), a Delaware limited liability company which began operations on May 29, 2014; and

Consolidation of Majority Owned Entities
The Partnership consolidates the following entities as it has a controlling majority interest:

- 100% interest in HCM Europe, Ltd. ("HCM Europe") a company organized in the United Kingdom and formed by the Partnership on December 7, 2012;
- 100% interest in Highland Capital Special Allocation, LLC ("HCSA"), a Delaware limited liability company that commenced operations on December 21, 2006;
- 100% interest in HFP GP, LLC, a Delaware limited liability company that commenced operations on January 20, 2006;

Highland Capital Management, L.P.
(A Delaware Limited Partnership)
Notes to Consolidated Financial Statements
December 31, 2014

- 100% interest in Highland Receivables Finance 1, LLC, a Delaware limited liability company that commenced operations on December 29, 2006;
- 100% interest in Highland Capital Management (Singapore) Pte, Ltd, a company organized in the Republic of Singapore that commenced operations on April 2, 2008;
- 100% interest in Highland Capital Management Korea, Ltd. a company organized in the Republic of Korea that commenced operations on August 2, 2012;
- 100% interest in HE Capital, LLC., a Delaware limited liability company that was formed on March 22, 2007;
- 100% interest in De Kooning, Ltd, a Cayman company that was formed on December 1, 2012;
- 100% interest in Hirst, Ltd. a Cayman company that was formed on December 1, 2012;
- 100% interest in Hockney, Ltd. a Cayman company that was formed on December 1, 2012;
- 100% interest in Oldenburg, Ltd. a Cayman company that was formed on December 1, 2012;
- 99.9% interest in Penant Management, LP. a Delaware limited partnership that was formed on December 12, 2012;
- 100% interest in Semence, LLC a Delaware limited liability company that was formed on December 16, 2013;
- 100% interest in SK Shareholder Services, LLC a Delaware limited liability company that was formed on October 24, 2013;
- 100% interest in Pollack, Ltd. a Cayman company that was formed on December 1, 2012;
- 100% interest in Warhol, Ltd. a Cayman company that was formed on December 1, 2012;
- 100% interest in HCREF-I Holding Corp. a Delaware company that was formed on December 13, 2012;
- 100% interest in HCREF-X Holding Corp. a Delaware company that was formed on December 13, 2012;
- 100% interest in HCREF-XI Holding Corp. a Delaware company that was formed on December 13, 2012;
- 100% interest in HCREF-XII Holding Corp. a Delaware company that was formed on December 13, 2012;
- 80% interest in Highland Employee Retention Assets, LLC a Delaware limited liability company that was formed on October 26th, 2009;

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- 100% interest in Highland Diversified Credit Fund, LP, a Delaware limited partnership which began operations on February 29, 2000 and was organized for the sole purpose of investing substantially all of its assets in Highland Offshore Partners, L.P;

- 99.6% interest in Highland Select Equity Fund, LP, a Delaware limited partnership which began operations on January 1, 2002 and was organized for the purpose of investing and trading in large and small cap stocks that trade for less than intrinsic value

- 100% interest in Highland Equity Partners, LP, a Delaware limited partnership which began operations on August 1, 2013 and was organized for the purpose of investing with long-term perspective in a concentrated portfolio of stocks;

- 99.6% interest in Highland Equity Focus Fund, LP, a Delaware limited partnership which began operations on September 1, 2002 and was organized for the purpose of investing and trading in large and small cap stocks that trade for less than intrinsic value;

- 100% interest in Highland Merger Arbitrage Fund, LP, a Delaware limited partnership which began operations on October 16, 2014; and

All inter-partnership and intercompany accounts and transactions have been eliminated in consolidation of all of the aforementioned consolidated entities. All the Consolidated Investment Funds are, for U.S. GAAP purposes, investment companies under the American Institute of Certified Public Accountants (AICPA) Audit and Accounting Guide - Investment Companies. The Partnership has retained the specialized accounting of these funds required under U.S. GAAP.

Due to the deconsolidation of certain investment funds, some prior year balances referenced within the following notes to the consolidated financial statements may not tie to prior year issued financial statements.

The following table includes a rollforward of noncontrolling interests from December 31, 2013, to December 31, 2014.

(in thousands)

Noncontrolling interest, December 31, 2013	$748,463
Net loss attributable to noncontrolling interest	(8,604)
Noncontrolling partner contributions	4,914
Noncontrolling partner distributions	(118,973)
Noncontrolling interest of deconsolidated entities	(4,494)
Noncontrolling interest, December 31, 2014	$621,306

Investment Transactions
Investment transactions are recorded on a trade date basis. Investments in securities are valued at market or fair value at the date of the financial statements with the resulting net unrealized appreciation or depreciation reflected in the Consolidated Statement of Income. Realized gains and losses on the transactions are determined based on either the first-in, first-out or specific identification method.

See Note 5 for the Partnership's fair value process and hierarchy disclosures.

Management and Incentive Fee Revenue
The Partnership recognizes revenue as earned in connection with services provided under collateral and investment management agreements. Under these agreements, the Partnership earns management fees calculated as a percentage of assets under management or net asset value. The Partnership also has an opportunity to earn additional incentive fees and incentive allocations related to certain management agreements depending ultimately on the financial performance of the underlying assets the Partnership manages. During the year ended December 31, 2014, the Partnership and its consolidated entities recognized management fees of approximately $67.5 million. The Partnership recognized approximately $0.2 million of depreciation on incentive fees earned prior to 2008, previously deferred under Sec. 409(A) of the Internal Revenue Code, which has been presented in *Other Income* in the Consolidated Statement of Income.

Shared Services Revenue
The Partnership recognizes revenue as earned in connection with services provided to related parties under various shared services agreements. Under these agreements, the Partnership earns fees for services including, but not limited to, back office support functions, marketing, and investment advisory services. During the year ended December 31, 2014, the Partnership and its consolidated entities recognized shared services revenue of approximately $9.2 million, which has been presented in *Other Income* in the Consolidated Statement of Income. See further discussion in Note 8.

Income and Expense Recognition
Interest on currently paying debt instruments is accrued as earned and dividend income and dividends on securities sold, not yet purchased are recorded on the ex-dividend date, net of withholding taxes. In certain instances where the asset has defaulted or some amount of the interest payment is deemed uncollectable, interest is recognized when received. Discounts and premiums associated with purchases of investments are accreted and amortized to interest income, except for deep-discounted debt where ultimate collection of interest and principal may be in doubt. Such accretion/amortization is calculated on an effective-yield basis over the life of the investment. Amendment fees are recognized when agreed to by the underlying company and all settlement contingencies are met. Operating expenses, including interest on securities sold short, not yet purchased, are recorded on the accrual basis as incurred.

Income Taxes
The Partnership is not subject to federal income taxes, and therefore, no provision has been made for such taxes in the accompanying consolidated financial statements. Income taxes are the responsibility of the partners. Certain consolidated subsidiaries are subject to federal income taxes.

Certain entities that are included in these financial statements are subject to federal and/or state income taxes. Deferred tax assets and liabilities are recognized for the future tax consequences

attributable to differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax bases. Deferred tax assets and liabilities are measured using enacted tax rates expected to apply to taxable income in the years in which those temporary differences are expected to be recovered or settled. The effect on deferred tax assets and liabilities of a change in tax rates is recognized in the period that includes the enactment date. See further discussion in Note 12.

Cash and Cash Equivalents
Cash and cash equivalents consist of cash held at U.S. and foreign banks, deposits with original maturities of less than 90 days, and money market funds. Cash equivalents are carried at cost, which approximates market value. At December 31, 2014, the Partnership and Consolidated Funds held cash balances at certain financial institutions in excess of the federally insured limit of $0.3 million. The Partnership and Consolidated Funds regularly monitor the credit quality of these institutions.

Restricted Cash
The Partnership and its subsidiaries are required to maintain cash balances as collateral for various financing and derivative transactions. These amounts are reported as restricted cash on the Consolidated Balance Sheet.

Fixed Assets and Leasehold Improvements
Fixed assets and leasehold improvements are carried at cost, less accumulated depreciation. Depreciation is provided using the straight-line method over the shorter of the estimated useful life of the assets or the lease term.

Due to/from Brokers
Due to and from broker balances recorded on the Consolidated Balance Sheet include liquid assets maintained with brokers and counterparties for margin account balances and the amounts due for or due from the settlement of purchase and sales transactions. Certain due to and from broker balances have been reported on a net-by-counterparty basis where, in accordance with contractual rights and the Investment Manager's opinion, there is a right of offset in the event of bankruptcy or default by a counterparty.

Securities Sold, Not Yet Purchased
The Partnership's Consolidated Investment Funds engage in "short sales" as part of their investment strategies. Short selling is the practice of selling securities that are borrowed from a third party. The Consolidated Investment Funds are required to return securities equivalent to those borrowed for the short sale at the lender's demand.

Pending the return of such securities, the Consolidated Investment Funds deposit with the lender as collateral the proceeds of the short sale plus additional cash. The amount of the required deposit, which earns interest, is adjusted periodically to reflect any change in the market price of the securities that the Consolidated Investment Funds are required to return to the lender. A gain (which cannot exceed the price at which the Consolidated Investment Funds sold the security short) or a loss (which theoretically could be unlimited in size) will be settled upon termination of a short sale.

Options Contracts
The Partnership and the Consolidated Investment Funds may purchase and write call and put options to gain market exposure or to hedge investments. A call option gives the purchaser of the option the right (but not the obligation) to buy, and obligates the seller to sell (when the option is

exercised), the underlying position at the exercise price at any time or at a specified time during the option period. A put option gives the holder the right to sell and obligates the writer to buy the underlying position at the exercise price at any time or at a specified time during the option period. When the Partnership or the Consolidated Investment Funds purchase (write) an option, an amount equal to the premium paid (received) by the entity is reflected as an asset (liability). The amount of the asset (liability) is subsequently marked-to-market to reflect the current market value of the option purchased (written). When a security is purchased (or sold) through an exercise of an option, the related premium paid (or received) is added to (or deducted from) the basis of the security acquired or deducted from (or added to) the proceeds of the security sold. When an option expires (or the Partnership or the Consolidated Investment Funds enter into a closing transaction), the entity realizes a gain or loss on the option to the extent of the premiums received or paid (or gain or loss to the extent the cost of the closing transaction exceeds the premium received or paid). Exercise of a written option could result in the Partnership or the Consolidated Investment Funds purchasing a security at a price different from the current market value.

The Partnership and the Consolidated Investment Funds are exposed to counterparty risk from the potential that a seller of an option contract does not sell or purchase the underlying asset as agreed under the terms of the option contract. The maximum risk of loss from counterparty risk to the Partnership and the Consolidated Investment Funds is the greater of the fair value of its open option contracts or the premiums paid to purchase the open option contracts. The Partnership and the Consolidated Investment Funds consider the credit risk of the intermediary counterparties to its option transactions in evaluating potential credit risk.

Margin Transactions
To obtain more investable cash, the Consolidated Investment Funds may use various forms of leverage including purchasing securities on margin. A margin transaction consists of purchasing an investment with money loaned by a broker and agreeing to repay the broker at a later date. Interest expense on the outstanding margin balance is based on market rates at the time of the borrowing.

Withdrawals Payable
Withdrawals are recognized as liabilities, net of incentive allocations, when the amount requested in the withdrawal notice becomes fixed and determinable. This generally may occur either at the time of receipt of the notice, or on the last day of a fiscal period, depending on the nature of the request. As a result, withdrawals paid after the end of the year, but based upon year-end capital balances are reflected as withdrawals payable at December 31, 2014. Withdrawal notices received for which the dollar amount is not fixed remains in capital until the amount is determined. At December 31, 2014, the Consolidated Investment Funds had withdrawals payable of $82.8 million.

Foreign Currency Transactions
The Partnership's subsidiaries HCM Europe and HCM Singapore use British Pounds and Singapore dollars as their functional currency, respectively. All foreign currency asset and liability balances are presented in U.S. dollars in the consolidated financial statements, translated using the exchange rate as of December 31, 2014. Revenues and expenses are recorded in U.S. dollars using an average exchange rate for the relative period. Foreign currency transaction gains and losses resulting from transactions outside of the functional currency of an entity are included in *Other income* on the consolidated statement of income.

The Consolidated Investment Funds do not isolate that portion of the results of operations resulting from changes in foreign exchange rates or investment or fluctuations from changes in market prices

of securities held. Such fluctuations are included within the *Net realized and unrealized gains or loss from investments*.

Life Settlement Contracts

One of the Consolidated Investment Funds, through a subsidiary, holds life settlement contracts and accounts for them using the fair value method. These contracts are recorded as a component of "Investments at fair value" on the Consolidated Balance Sheet. Realized and unrealized gains (losses) on the contracts are recorded in the Consolidated Income Statement. Cash flows relating to the purchase and sale of the contracts are recorded as a component of *Purchase of investments* and *Proceeds from dispositions of investments* on the Consolidated Statement of Cash Flows.

Financial Instruments

The Partnership and its consolidated entities determine fair value of financial instruments as required by U.S. GAAP. The carrying amounts for cash and cash equivalents, receivables, accounts payable and accrued liabilities approximate their fair values because of their short maturities.

Partners' Capital

The Partnership agreement requires that income or loss of the Partnership be allocated to the partners in accordance with their respective partnership interests.

Recently Issued Accounting Standards and Interpretations

In August, 2014, the FASB issued Accounting Standards Update 2014-15 – "Presentation of Financial Statement – Going Concern" (Subtopic 205-40). The amendments in this Update apply to all reporting entities. The main provisions of this Update are in connection with preparing annual and interim financial statements. Management should evaluate whether there are conditions or events, considered in the aggregate, that raise substantial doubt about the entity's ability to continue as a going concern within one year after the date that the financial statement are issued. The amendments are effective for the annual period ending after December 15, 2016. This statement is not expected to have a material impact on the Partnership's financial statements.

In February 2015, the FASB issued ASU 2015-02 "ASC Topic 810, Consolidation." ASU 2015-02 modifies the evaluation of whether limited partnerships and similar legal entities are variable interest entities or voting interest entities, eliminates the presumption that a general partner should consolidate a limited partnership, affects the consolidation analysis of reporting entities that are involved with VIEs, and provides other updates on guidance regarding consolidation. ASU 2015-02 is effective for fiscal years beginning after December 15, 2016. Management is evaluating the impact of ASU 2015-02 on the Partnership's financial statements.

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3. Fixed Assets and Leasehold Improvements

Fixed assets and leasehold improvements are comprised of the following as of December 31, 2014:

(in thousands)

Leasehold improvements	$ 6,441
Buildings	2,595
Furniture and fixtures	2,596
Computer and equipment	1,932
Computer software	271
Accumulated depreciation	(5,768)
	$ 8,067

The Partnership and its consolidated entities are depreciating fixed assets as follows:

	Period
Leasehold improvements	Lease term
Buildings	29 - 40 years
Furniture and fixtures	7 years
Computer and equipment	5 years
Computer software	3 years

Depreciation expense in 2014 totaled approximately $1.4 million for the Partnership and its subsidiaries.

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4. Investments

Detailed below is a summary of the Partnership and its consolidated entities investments at December 31, 2014:

(in thousands)	Amortized Cost/Cost	Fair Value
Common equity securities	$ 875,293	$ 1,027,376
Limited partnership interests	134,080	205,900
Asset-backed securities	249,269	182,054
Preferred equity	59,994	121,500
Floating rate syndicated bank loans	201,845	116,952
Life settlement contracts	418,467	114,640
Closed-end mutual funds	58,443	68,433
LLC interests	72,985	31,378
Rights & warrants	50,732	6,477
Corporate bonds	144,712	2,546
Options contracts	718	83
Total investments	$ 2,266,538	$ 1,877,339

	Proceeds	Fair Value
Securities sold, not yet purchased	$ (43,015)	$ (41,815)

5. Fair Value of Financial Instruments

Fair Value Measurement
U.S. GAAP defines fair value as the price an entity would receive to sell an asset or pay to transfer a liability in an orderly transaction between market participants as of the measurement date. The standard requires fair value measurement techniques to reflect the assumptions market participants would use in pricing an asset or liability and, where possible, to maximize the use of observable inputs and minimize the use of unobservable inputs. It also establishes the following hierarchy that prioritizes the valuation inputs into three broad levels:

- Level 1 – Valuation based on unadjusted quoted prices in active markets for identical assets and liabilities that the Partnership and the Consolidated Investment Funds have the ability to access as of the measurement date. Valuations utilizing Level 1 inputs do not require any degree of judgment.

- Level 2 – Valuations based on (a) quoted prices for similar instruments in active markets; (b) quoted prices for identical or similar instruments in markets that are not active that are reflective of recent market transactions; or (c) models in which all significant inputs are observable, either directly or indirectly.

- Level 3 – Valuations based on indicative quotes that do not reflect recent market transactions and models or other valuation techniques in which the inputs are unobservable and significant to the fair value measurement, which includes situations where there is little, if any, market activity for the asset or liability.

The availability of observable inputs varies among financial instruments and is affected by numerous factors, including the type of instruments, the period of time in which the instrument has been established in the marketplace, market liquidity for an asset class and other characteristics particular to a transaction. When the inputs used in a valuation model are unobservable, management is required to exercise a greater degree of judgment to determine fair value than it would for observable inputs. For certain instruments, the inputs used to measure fair value may fall into different levels of the hierarchy discussed above. In those cases, the instruments are categorized for disclosure purposes based on the lowest level of inputs that are significant to their fair value measurements.

The Partnership and Consolidated Investment Funds use prices and inputs that are current as of the measurement dates. The Partnership also considers the counterparty's non-performance risk when measuring the fair value of its investments.

During periods of market dislocation, the ability to observe prices and inputs for certain instruments may change. These circumstances may result in the instruments being reclassified to different levels within the hierarchy over time. They also create an inherent risk in the estimation of fair value that could cause actual amounts to differ from management's estimates. Whenever possible, the Partnership and its Consolidated Investment Funds use actual market prices or relevant observable inputs to establish the fair value of its assets and liabilities. In cases where observable inputs are not available, the Partnership and Consolidated Investment Funds develop methodologies that provide appropriate fair value estimates. These methodologies are reviewed on a continuous basis to account for changing market conditions.

The Partnership has established policies, as described above, processes and procedures to ensure that valuation methodologies for investments and financial instruments that are categorized within all levels of the fair value hierarchy are fair and consistent. A Pricing Committee has been established to provide oversight of the valuation policies, processes and procedures, and is comprised of various personnel from the Partnership. The Pricing Committee meets monthly to review the proposed valuations for investments and financial instruments. The Pricing Committee is responsible for establishing the valuation policies and evaluating the overall fairness and consistent application of those policies.

As of December 31, 2014, the Partnership and its consolidated entities' investments consisted primarily of common equity securities, asset-backed securities, limited partnership interests, life settlement contracts, floating rate syndicated bank loans, preferred equity, LLC interests, right and warrants, closed-end mutual funds, options contracts, and corporate bonds. In addition, the consolidated entities engage in short sale transactions. The majority of these financial instruments are not listed on national securities exchanges, and management is required to use significant judgment to estimate their values.

Equity Investments
Publicly traded equities are valued at the closing price at the date of the financial statements. The fair value of equity investments that are not traded on national exchanges or through real-time quotation services are derived from methodologies that provide appropriate fair value estimates. Equity investments with quotes that are based on actual trades with a sufficient level of activity on or near the valuation date are classified as Level 2 assets. The Consolidated Investment Funds also holds a number of private equity investments. These assets are valued using market data obtained from a third-party pricing service and/or quotes from other parties dealing in the specific assets. In the event both a reliable market quote and third-party pricing service data are not available for such assets, the Consolidated Investment Funds will fair value the assets using

various methodologies, as appropriate for individual investments, including comparable transaction multiples, comparable trading multiples, and/or discounted cash flow analysis. When utilizing comparable trading multiples, the Consolidated Investment Funds determine comparable public companies (peers) based on industry, size, developmental stage, strategy, etc., and then calculates a trading multiple for each comparable company identified by using either a price to book ratio based on publicly available information about the underlying comparable company or by dividing the enterprise value of the comparable company by its earnings before interest, taxes, depreciation and amortization (EBITDA) or similar metrics. In certain instances, the inputs used in the calculation of the trading multiples may vary based on the industry or development stage of the company. A multiple determined by the Consolidated Investment Funds to be within a reasonable range as calculated amongst its peers is then applied to the underlying company's price to book ratio or EBITDA (which may be normalized to adjust for certain nonrecurring events), to calculate the fair value of the underlying company. The fair value may be further adjusted for entity specific facts and circumstances.

Debt Securities
The Consolidated Funds invest in various types of debt, which are almost exclusively valued using market data obtained from one or more third-party pricing services or brokers. In instances where a third-party pricing service does not provide pricing for a specific asset, the Consolidated Funds first seek to obtain reliable market quotes from other parties dealing in the specific asset. Loans and bonds with quotes that are based on actual trades with a sufficient level of activity on or near the valuation date are classified as Level 2 assets. Loans and bonds that are priced using quotes derived from implied values, bid/ask prices for trades that were never consummated, or a limited amount of actual trades are classified as Level 3 assets because the inputs used by the brokers and pricing services to derive the values are not readily observable.

Absent both a reliable market quote and third-party pricing service date, the Consolidated Funds may use various models to establish an estimated exit price. These investments are classified as Level 3 assets. Models used for debt securities are primarily based on identifying comparable assets for which market data is available and pricing the target asset consistent with the yields of the comparable assets. As circumstances require, other industry accepted techniques may be used in modeling debt assets.

Asset-Backed Securities
The Consolidated Funds invest in a variety of asset-backed securities. Asset-backed securities are generally valued based on complex cash flow models that analyze the cash flows generated by the investment's underlying assets after adjusting for expected default rates, prepayment rates, collateral quality, market liquidity among other factors. These models are then adjusted based on spreads available in the market place from various research firms, dealers, and trading activity. The Consolidated Funds generally utilize an independent third party firm to perform these calculations and provide the relevant inputs. The Consolidated Funds evaluate the results based on visible market activity and market research. When appropriate, the Consolidated Funds may apply other techniques based on a specific asset's characteristics. Asset-backed securities with quotes that are based on actual trades with a sufficient level of activity on or near the valuation date are classified as Level 2 assets. Asset-backed securities that are priced using quotes derived from implied values, bid/ask prices for trades that were never consummated, or a limited amount of actual trades are classified as Level 3 assets because the inputs used by the brokers and pricing services to derive the values are not readily observable.

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Private Equity Investments
The Consolidated Funds hold private equity investments which resulted from the restructuring of other instruments. These assets are valued using market data obtained from a third-party pricing service and/or quotes from other parties dealing in the specific assets when available. In the event both a reliable market quote and third-party pricing service data are not available for such assets, the Consolidated Funds will fair value the assets using various methodologies, as appropriate for individual investments, including comparable transaction multiples, comparable trading multiples, and/or discounted cash flow analysis. When utilizing comparable trading multiples, the Investment Manager determines comparable public companies (peers) based on industry, size, developmental stage, strategy, etc., and then calculates a trading multiple for each comparable company identified by using either a price to book ratio based on publically available information about the underlying comparable company or by dividing the enterprise value of the comparable company by its earnings before interest, taxes, depreciation and amortization (EBITDA) or similar metrics. In certain instances, the inputs used in the calculation of the trading multiples may vary based on the industry or development stage of the company. A multiple determined by the Investment Manager to be within a reasonable range as calculated amongst its peers is then applied to the underlying company's price to book ratio or EBITDA (which may be normalized to adjust for certain nonrecurring events), to calculate the fair value of the underlying company. The fair value may be further adjusted for entity specific facts and circumstances. Private equity investments with quotes that are based on actual trades with a sufficient level of activity on or near the valuation date are classified as Level 2 assets. Private equity investments that are priced using quotes derived from implied values, bid/ask prices for trades that were never consummated, or a limited amount of actual trades are classified as Level 3 assets because the inputs used by the brokers and pricing services to derive the values are not readily observable.

The Consolidated Investment Funds also invest in warrant securities of publicly–traded companies. The fair value of these investments is based on an option pricing model. The option model bases warrant value on a number of factors including underlying equity price as of the valuation date, strike price, exercise date, time to expiration and volatility. Warrant investments that have observable volatility are classified as Level 2 assets. Warrant investments where volatility inputs are not observable are valued using an estimated volatility input, and are classified as Level 3 assets.

Life Settlement Contracts
Life Settlement contracts are valued using mortality tables and interest rate assumptions that are deemed by management to be appropriate for the demographic characteristics of the parties insured under the policies. Management generally utilizes an independent third party firm to perform these calculations and provide the relevant inputs. Management evaluates the results based on visible market activity and market research. Since these inputs are not readily observable, these contracts are classified as Level 3 assets.

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At December 31, 2014, the Consolidated Investment Funds' investments in life settlement contracts consisted of the following:

(U.S. dollars in thousands, except number of policies)

Remaining Life Expectancy (in years)	Number of Policies	Face Value	Fair Value
1-2	1	$ 5,000	$ 2,956
2-3	3	13,250	4,426
3-4	11	68,500	14,452
4-5	9	51,250	15,024
Thereafter	96	971,998	77,782
Total	120	$ 1,109,998	$ 114,640

Limited Partnership Interests
The Partnership and its Consolidated Funds hold limited partnership interests in various entities. These assets are valued as the net asset value of the limited partnership interests because the entities utilize fair value accounting for their own financial statements. These interests are classified as Level 3 assets.

The Partnership categorizes investments recorded at fair value in accordance with the hierarchy established under U.S. GAAP. A majority of the Consolidated Investment Fund's investments and derivatives at December 31, 2014 are classified as Level 3 positions due to the absence of active markets with quoted prices for identical or similar investments. The following table provides a summary of the financial instruments recorded at fair value on a recurring basis by level within the hierarchy as of December 31, 2014:

(in thousands)

Assets	Level 1	Level 2	Level 3	Total Fair Value at 12/31/14
Common equity securities	$ 516,162	$ 290,748	$ 220,466	$ 1,027,376
Limited partnership interests	-	-	205,900	205,900
Asset-backed securities	-	172,757	9,297	182,054
Preferred equity	95,170	19,370	6,960	121,500
Floating rate syndicated bank loans	-	5,102	111,850	116,952
Life settlement contracts	-	-	114,640	114,640
Closed-end mutual funds	68,433	-	-	68,433
LLC interests	-	8,827	22,551	31,378
Rights & warrants	515	-	5,962	6,477
Corporate bonds	-	2,469	77	2,546
Options	83	-	-	83
Total	$ 680,363	$ 499,273	$ 697,703	$ 1,877,339
Liabilities				
Common stock & Options sold short	$ 41,815	$ -	-	$ 41,815

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The classification of a financial instrument within Level 3 is based on the significance of the unobservable inputs to the overall fair value measurement. The following table provides a roll forward of the investments classified within Level 3 for the year ended December 31, 2014:

(in thousands)

	Total Fair Value at December 31, 2013	Purchases	Sales and Maturities	Transfers Into Level 3	Transfers Out of Level 3	Net Realized Losses	Net Unrealized Gains / (Losses)	Total Fair Value at December 31, 2014
Common equity securities	$ 190,391	$ 7,883	$ (3,457)	$ 1,869	$ (82)	$ (3,378)	$ 27,240	$ 220,466
Limited partnership interests	169,797	1,609	(779)	-	-	(116)	35,389	205,900
Life settlement contracts	100,521	39,671	(10,000)	-	-	4,715	(20,267)	114,640
Floating rate syndicated bank loans	128,357	12,435	(10,800)	-	-	(143,080)	124,938	111,850
LLC interests	32,597	599	(1,487)	3,249	-	2,136	(14,543)	22,551
Asset-backed securities	19,903	6,462	(14,815)	-	(1)	(1,839)	(413)	9,297
Preferred equity	19,392	-	(14,837)	-	(100)	9,768	(7,263)	6,960
Rights & warrants	9,763	-	(1,476)	-	-	23	(2,348)	5,962
Corporate bonds	5,838	400	-	255	(5,837)	-	(579)	77
	$ 676,559	**$ 69,059**	**$ (57,651)**	**$ 5,373**	**$ (6,020)**	**$ (131,771)**	**$ 142,154**	**$ 697,703**

Transfers from Level 2 to Level 3 or from Level 3 to Level 2 are due to changes in observable pricing inputs as compared to the prior year. No significant transfers between Level 1 or Level 2 fair value measurements occurred during the year ended December 31, 2014.

All net realized and unrealized gains and losses in the tables above are reflected in the accompanying Consolidated Income Statement. Approximately $26.5 million of the net unrealized gains presented in the table above relate to investments held as of December 31, 2014.

Transfers out of Level 3 are recognized at the beginning of the period. The transfers out of Level 3 at December 31, 2014 were due to increases in market activity (e.g. frequency of trades) or the availability of a market clearing broker quote.

The following page includes a summary of significant unobservable inputs used in the fair valuations of assets and liabilities categorized within Level 3 of the fair value hierarchy.

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(Ending balance in thousands)

Category	Ending Balance at 12/31/2014	Valuation Technique	Unobservable Inputs	Input Value(s)
Asset-backed securities	$ 9,297	Third-party pricing vendor	N/A	N/A
		Net Asset Value of Underlying Assets and Liabilities	Various models including liquidation analysis, and third-party pricing vendor	N/A
		Debt-yield	Credit Specific Risk	5%
			Liquidity	1%
Common equity securities	220,466	Multiples analysis	Multiple of EBITDA	2.5x - 11.5x
			Multiple of Revenue	.45x - .55x
			Liquidity discount	15% - 30%
			Credit Specific Discount	30%
		Third-party pricing vendor	N/A	N/A
		DCF	Discount Rate	11.5% - 19%
			Terminal Multiple	3.0x - 9.0x
		Black-Scholes Option Model	Holding Period	.58 Yrs
			Volatility	30%
		Liquidation	N/A	N/A
		Previous Transaction	N/A	N/A
Floating rate syndicated bank loans	111,850	DCF	Discount rate	11.5% - 19.0%
			Terminal Multiple	3.0x - 9.0x
		Liquidation	Settlement discount	30%
		Multiples analysis	Multiple of EBITDA	2.5x - 11.5x
			Multiple of Revenue	.45x - .55x
		Previous Transaction	N/A	N/A
		Third-party pricing vendor	N/A	N/A
		Appraisal	N/A	N/A
Limited partnership investments	205,900	Third-party appraisal	N/A	N/A
		Net Asset Value of Underlying Assets and Liabilities	Various models including liquidation analysis, and third-party pricing vendor	N/A
Preferred equity	6,960	Recent Transaction	N/A	N/A
		Black Scholes	Holding Period	.58 Yrs
			Volatility	30%
		Probability Weighted Scenarios	Scenario Probabilities	Equal Weights
Life Settlement Contracts	114,640	Net Asset Value of Underlying Assets	Discount rate	18.0% -27.5%
LLC interests	22,551	DCF	Discount rate	50%
			PW Profile of Reserve Categories	PW-8 - PW-30
		Net Asset Value of Underlying Assets and Liabilities	Various models including liquidation analysis, and third-party pricing vendor	N/A
		Appraisal	N/A	N/A
		Third-party pricing vendor	N/A	N/A
Corporate bonds	77	Liquidation	Discount Rate	50%
		Adjusted Appraisal	Liquidity discount	30%
Rights & Warrants	5,962	DCF	Discount Rate	14%
		Liquidation	Discount Rate	14%
Total	$ 697,703			

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6. Derivative Financial Instruments

Total Return Swaps
A total return swap is a two-party contract under which the parties agree to exchange returns from a predetermined portfolio of investments. The gross returns to be exchanged or swapped between the parties are calculated based on a notional amount, which is reviewed periodically to determine each party's obligation under the contract.

The Partnership entered into an agreement during 2012 in which it sold its rights to five quarters of variable net senior and subordinated fee receipts from certain collateralized loan obligations managed by the Partnership for fixed monthly payments from a counter-party. In doing so, the Partnership monetized rights to potential future payments for the certainty and predictability of a fixed schedule of receipts. On December 20, 2013 the counter-party exercised its option to purchase an additional four quarters of variable net senior and subordinated fee receipts. For the year ended December 31, 2014, the Partnership recorded a realized loss of $3.2 million.

7. Financial Instruments with Concentration of Credit and Other Risks

Financial Instruments
The Partnership and its Consolidated Investment Funds' investments include, among other things, equity securities, debt securities (both investment and non-investment grade) and bank loans. The consolidated entities may also invest in derivative instruments, including total return and credit default swaps. Investments in these derivative instruments throughout the year subject the consolidated entities to off-balance sheet market risk, where changes in the market or fair value of the financial instruments underlying the derivative instruments may be in excess of the amounts recognized in the Consolidated Balance Sheet.

Market Risk
Market risk represents the potential loss that may be incurred by the Partnership and its Consolidated Investment Funds due to a change in the market value of its investments or the value of the investments underlying swap agreements. The Partnership and its Consolidated Investment Fund's exposure to market risk is affected by a number of macroeconomic factors, such as interest rates, availability of credit, inflation rates, economic uncertainty and changes in laws and regulations. These factors may affect the level and volatility of securities prices and the liquidity of the Partnership and its Consolidated Investment Funds investments. Volatility or illiquidity could impair the Partnership and its Consolidated Investment Funds performance or result in losses. The Partnership and its Consolidated Investment Funds may maintain substantial trading positions that can be adversely affected by the level of volatility in the financial markets. The performance of life settlement contracts may be adversely impacted by the under estimation of mortality and other rates.

Credit Risk
Credit risk is the potential loss the Partnership and its consolidated entities may incur as a result of the failure of a counterparty or an issuer to make payments according to the terms of a contract. Because the consolidated entities enter into over-the-counter derivatives such as swaps, it is exposed to the credit risk of their counterparties. To limit the credit risk associated with such transactions, the consolidated entities execute transactions with financial institutions that the Investment Manager believes to be financially viable.

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Liquidity Risk
The Consolidated Investment Fund's limited partner interests have not been registered under the Securities Act of 1933 or any other applicable securities law. There is no public market for the interests, and neither the Consolidated Investment Funds nor their manager expects such a market to develop.

Business Risk
The Partnership provides advisory services to the consolidated investment funds. The Consolidated Investment Funds could be materially affected by the liquidity, credit and other events of the Partnership.

High Yield Bonds and Loans
The Partnership and its Consolidated Investment Funds' investment portfolios consist of floating rate syndicated bank loans and fixed income securities that are not listed on a national securities exchange. These investments trade in a limited market and it may not be possible to immediately liquidate them if needed. In addition, certain of the Partnership and its Consolidated Investment Funds' investments have resale or transfer restrictions that further reduce their liquidity. Because of the inherent uncertainty of these investments, the Investment Manager's best estimates may differ significantly from values that would have been used had a broader market for the investments existed.

When the Partnership and its Consolidated Investment Funds' purchase a senior secured syndicated bank loan, it enters into a contractual relationship directly with the corporate borrower, and as such, is exposed to certain degrees of risk, including interest rate risk, market risk and the potential non-payment of principal and interest, including default or bankruptcy of the corporate borrower or early payment by the corporate borrower. Typically, senior secured syndicated bank loans are secured by the assets of the corporate borrower and the Partnership and its Consolidated Investment Funds have a policy of regularly reviewing the adequacy of each corporate borrower's collateral.

The Partnership and its Consolidated Investment Funds may invest in high-yield bonds that have been assigned lower rating categories or are not rated by the various credit rating agencies. Bonds in the lower rating categories are generally considered to be speculative with respect to the issuer's ability to repay principal and pay interest. They are also subject to greater risks than bonds with higher ratings in the case of deterioration of general economic conditions. Due to these risks, the yields and prices of lower-rated bonds are generally volatile, and the market for them is limited, which may affect the ability to liquidate them if needed.

Distressed Investments
A portion of the high yield corporate bonds and senior secured syndicated bank loans in which the Partnership and its Consolidated Investment Funds invest have been issued by distressed companies in an unstable financial condition that have experienced poor operating performance and may be involved in bankruptcy or other reorganization and liquidation proceedings. These investments have substantial inherent risks. Many of these distressed companies are likely to have significantly leveraged capital structures, which make them highly sensitive to declines in revenue and to increases in expenses and interest rates. The leveraged capital structure also exposes the companies to adverse economic factors, including macroeconomic conditions, which may affect their ability to repay borrowed amounts on schedule.

Limited Diversification
The Investment Manager attempts to diversify the Consolidated Investment Funds' investments. However, the Consolidated Investment Funds' portfolios could become significantly concentrated in any one issuer, industry, sector strategy, country or geographic region, and such concentration of credit risk may increase the losses suffered by the Consolidated Investment Funds. In addition, it is possible that the Investment Manager may select investments that are concentrated in certain classes of financial instruments. This limited diversity could expose the Consolidated Investment Funds to losses that are disproportionate to market movements as a whole.

At December 31, 2014, the Consolidated Investment Funds' investments were predominantly concentrated in the United States.

Custody Risk
The clearing operations for the Partnership and its Consolidated Investment Funds are provided by major financial institutions. In addition, all of the Partnership and its Consolidated Investment Funds' cash and investments are held with banks or brokerage firms, which have worldwide custody facilities and are members of all major securities exchanges. The Partnership or its Consolidated Investment Funds may lose all or a portion of the assets held by these banks or brokerage firms if they become insolvent or fail to perform pursuant to the terms of their obligations. While both the U.S. Bankruptcy Code and the Securities Investor Protection Act of 1970 seek to protect customer property in the event of a broker-dealer's failure, insolvency or liquidation, the Partnership and its Consolidated Investment Funds' might be unable to recover the full value of their assets or incur losses due to their assets being unavailable for a period of time.

Leverage Risk
The Consolidated Investment Funds may borrow funds from brokers, banks and other lenders to finance its trading operations. The use of leverage can, in certain circumstances, magnify the losses to which the Consolidated Investment Funds' investment portfolio may be subject. The use of margin and short-term borrowings creates several risks for the Consolidated Investment Funds. If the value of the Consolidated Investment Funds' securities fall below the margin level required by a counterparty, additional margin deposits would be required. If the Consolidated Investment Funds are unable to satisfy a margin call, the counterparty could liquidate the Consolidated Investment Funds' positions in some or all of the financial instruments that are in the account at the prime broker and cause the Consolidated Investment Funds to incur significant losses. In addition, to the extent the Consolidated Investment Funds have posted excess collateral for margin transactions, there is a risk that the counterparty will fail to fulfill its obligation to return the full value of that collateral.

The failure to satisfy a margin call, or the occurrence of other material defaults under margin or other financing agreements, may trigger cross-defaults under the Consolidated Investment Funds' agreements with other brokers, lenders, clearing firms or other counterparties, multiplying the adverse impact to the Consolidated Investment Funds. In addition, because the use of leverage allows the Consolidated Investment Funds to control positions worth significantly more than its investment in those positions, the amount that the Consolidated Investment Funds may lose in the event of adverse price movements is high in relation to the amount of their investment.

In the event of a sudden drop in the value of the Consolidated Investment Funds' assets, the Consolidated Investment Funds may not be able to liquidate assets quickly enough to satisfy their margin or collateral requirements. As a result, the Consolidated Investment Funds may become subject to claims of financial intermediaries, and such claims could exceed the value of its assets. The banks and dealers that provide financing to the Consolidated Investment Funds have the ability to apply discretionary margin, haircut, and financing and collateral valuation policies. Changes by banks and dealers in any of the foregoing may result in large margin calls, loss of financing and forced liquidations of positions and disadvantageous prices.

Foreign Currency Risk
The Partnership and its Consolidated Investment Funds may invest in securities or maintain cash denominated in currencies other than the U.S. dollar. The Partnership and its Consolidated Entities are exposed to risk that the exchange rate of the U.S. dollar relative to other currencies may change in a manner that has an adverse effect on the reported value of the Partnership and its Consolidated Entities' assets and liabilities denominated in currencies other than the U.S. dollar.

Concentration of Investments
At December 31, 2014, the Consolidated Investment Funds' investments and derivative contracts were predominantly concentrated in the United States and Cayman Islands and across several industries.

Wind-Down Risk
The ultimate proceeds that certain Consolidated Investment Funds' are able to realize on the sale of its investments will directly affect the amounts that the investors in the feeder funds are able to redeem in connection with the wind down process. These amounts may differ materially from the partners' capital balances as of December 31, 2014.

Litigation Risk
The Partnership and its Consolidated Investment Funds are periodically subject to legal actions arising from the ordinary course of business. The ultimate outcome of these cases is inherently uncertain and could result in additional losses to the Partnership and/or its Consolidated Investment Funds. Refer to Note 12 for a discussion of open litigation.

8. Related Party Transactions

In the normal course of business, the Partnership and the Consolidated Investment Funds may conduct trades with affiliates. Such trades are transacted at fair value as determined, in good faith, using third party information where available. During the period ended December 31, 2014, the Partnership and the Consolidated Investment Funds purchased various securities for approximately $11.2 million from various affiliated entities and a non-discretionary, advised account.

Expenses Reimbursable by Funds Managed
In the normal course of business, the Partnership typically pays invoices it receives from vendors for various services provided to the investment funds the Partnership manages. A summary of these eligible reimbursable expenses are then submitted to the trustee/administrator for each respective fund, typically on a quarterly basis, and the Partnership receives payment as reimbursement for paying the invoices on behalf of the respective funds. As of December 31, 2014, approximately $3.2 million in reimbursable expenses were due from various affiliated funds and entities for these eligible expenses, and is included in Other Assets in the accompanying Consolidated Balance Sheet.

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Accounts Held with Related Party
During the year the Partnership and its subsidiaries maintained accounts at NexBank, SSB ("NexBank"), a related party by way of common control. As of December 31, 2014, balances in the accounts were approximately $60.8 million, a portion of which exceeds Federal deposit insurance limits.

Investments Under Common Control
Certain members of the Partnership's management serve as members on the Boards of Directors for some of the companies with which it invests. Because these individuals participate in the management of these companies, investments held by the Partnership and its subsidiaries in these companies may, from time to time, not be freely tradable. As of December 31, 2014, the Partnership and its subsidiaries held the following investments in these companies:

(in thousands)

Issuer	Type of Investment	Fair Value
American Banknote Corporation	Common Equity	$ 9,856
American Home Patient	Common Equity	1,856
American Home Patient	Term Loan	13,172
Blackwell BMC, LLC	Common Equity	12,737
Canopy Timberlands, L.P.	Limited Partnership Interest	80,164
Canopy Timberlands Spout Springs, L.P.	Limited Partnership Interest	26,003
Carey International, Inc	Term Loan	26,169
Carey Holdings, Inc.	Class A Common Stock	235
CCS Medical, Inc.	Loan	5,055
CCS Medical, Inc.	Common Equity	18
Cornerstone Healthcare Group Holding, Inc.	Common Equity	97,407
Euramax International Holdings B.V.	Common	9,643
Euramax International Holdings B.V.	Term Loan	27,361
Ginn LA Resorts Holdings, LLC	Term Loan	410
Ginn LA Conduit Lender, Inc.	First Lien Tranche A Credit-Linked Deposit	142
Ginn LA Conduit Lender, Inc.	First Lien Tranche B Term Loan	354
Highland Capital Healthcare Partners, L.P.	Limited Partnership Interest	3,973
Highland Long/Short Equity Fund	Mutual Fund	268
Highland Long/Short Healthcare Fund	Mutual Fund	10,740
Highland Park CDO 2006-1A	Asset backed debt	1,394
JHT Holdings Inc.	Term Loan	19,879
JHT Holdings Inc.	Revolving Term Loan	3,174
JHT Holdings Inc.	Common Stock	6,372
Las Vegas Land Holding	LLC Units	48
Metro-Goldwyn-Mayer, Inc.	Common Stock	302,784
NexPoint Credit Strategies Fund	Closed-End Mutual Fund	37,899
Nex-Tech Aerospace Holdings, Inc.	Common Equity	2,183
Romacorp Restaurant Holdings, Inc.	Common Equity	200
Terrestar	Common Equity	59,585
Trussway Industries, Inc.	Common Equity	22,671
Turtle Bay Holdings, LLC	Equity Units	5,029

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Certain investments are issued and managed by affiliates of the Partnership. These investments are subject to the same valuation policies and procedures as similar investments within the same level of the fair value hierarchy. As of December 31, 2014, the Partnership and the Consolidated Investment Funds held the following investments that were issued and managed by affiliates of the Partnership:

(in thousands)

Issuer	Type of Investment	Fair Value
ACIS 2013-2A	Asset backed debt	$ 30,150
ACIS 2013-2A	Asset backed equity	51,800
ACIS 2014-5A	Asset backed debt	57,805
BB Highland Floating Rate Fund I	Floating rate equity	4,914
BB Votorantim Highland Infrastructure LLC	Common equity	1,539
Gleneagles CLO, Ltd.	Asset backed equity	4,800
Greenbriar CLO, Ltd.	Asset backed equity	18,238
Highland Capital Healthcare Fund	Limited Partnership interest	2,974
Highland Energy MLP Fund	Mutual fund shares	2,796
Highland Floating Rate Opportunities Fund	Mutual fund shares	708
Highland Global Allocation Fund	Closed-end mutual fund shares	2,165
Highland Opportunistic Credit Fund	Mutual fund shares	5,187
Highland Park CDO, Ltd.	Asset backed debt tranche	33
Highland Multi Strategy Fund	Limited Partnership interest	23,715
Highland Long/Short Equity Fund	Mutual fund shares	268
Highland Long/Short Healthcare Fund	Mutual fund shares	10,740
NexPoint Credit Strategies Fund	Closed-end mutual fund shares	15,269
Rockwall CDO, Ltd.	Asset backed debt	2,340
Southfork CLO, Ltd.	Asset backed equity	4,455
Valhalla CLO, Ltd.	Asset backed debt	1,760

Investment in Affiliated Loans
During the year, certain subsidiaries of the Partnership were invested in several bank loans in which NexBank was the agent bank. Interest earned on the loans during the year was approximately $10.8 million. At December 31, 2014, these subsidiaries were invested in NexBank agented loans with commitments and market values totaling approximately $105.0 million and $85.9 million, respectively.

Affiliated Transactions
Effective February 26, 2014, the Partnership issued a promissory note to HCMFA in the amount of $4.0 million. The note accrues interest at a rate of 1.97%, the mid-term applicable federal rate as promulgated by the Internal Revenue Service. As of December 31, 2014 total interest and principal due on the promissory note was approximately $4.1 million.

Effective August 27, 2014, the Partnership issued a promissory note to HCMFA in the amount of $2.1 million. The note accrues interest at a rate of 3.09%, the long-term applicable federal rate as promulgated by the Internal Revenue Service. As of December 31, 2014 total interest and principal due on the promissory note was approximately $2.1 million.

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During the year ended December 31, 2014, the Partnership issued promissory notes to NexPoint in the aggregate amount of $12.7 million. The notes accrue interest at a rate of 6.0%. As of December 31, 2014 total interest and principal due on the promissory notes was approximately $13.0 million.

During the year ended December 31, 2014, the Partnership issued promissory notes to HCRE Partners, LLC, ("HCRE") in the aggregate amount of $10.0 million. The notes accrue interest at a rate of 9.0%. As of December 31, 2014 total interest and principal due on the promissory notes was approximately $9.8 million.

During the year ended December 31, 2014, The Partnership issued promissory notes to Highland Capital Management Services, Inc. ("HCMSI") in the aggregate amount of $8.5 million. The notes accrue interest at an average rate of 3.12%, the average long-term applicable federal rate as promulgated by the Internal Revenue Service. As of December 31, 2014 total interest and principal due on the promissory notes was approximately $8.6 million.

Services Performed by or on Behalf of an Affiliate
In March 2007, Highland Capital of New York, Inc. a New York, corporation, ("Highland New York"), was formed and has performed marketing services for the Partnership and its affiliates in connection with the Partnership's investment management and advising business, including, but not limited to, assisting Highland Capital in the marketing and sales of interests in investment pools for which Highland Capital serves as the investment manager. The Partnership is charged a marketing services fee for the services that Highland New York performs on the Partnership's behalf. For the year ended December 31, 2014, total marketing fee expense charged to the Partnership by Highland New York was approximately $4.0 million and as of December 31, 2014, amounts owed to Highland New York for services rendered was approximately $2.5 million.

Effective December 15, 2011, the Partnership commenced performing services on behalf of Highland Capital Management Fund Advisors, L.P. ("HCMFA"), a Delaware limited partnership and registered investment advisor. Services include, but are not limited to compliance, accounting, human resources, IT and other back office support functions. The Partnership charges a fee for the services performed. For the year ended December 31, 2014, the total fee charged by the Partnership to HCMFA was approximately $2.0 million and as of December 31, 2014, amounts owed to the Partnership by HCMFA for services rendered were approximately $0.2 million.

Effective July 29, 2010, the Partnership commenced performing services on behalf of Falcon E&P Opportunities GP, LLC. ("Falcon"), a Delaware limited liability company and registered investment advisor. Services include, but are not limited to compliance, accounting, human resources, IT and other back office support functions. The Partnership charges a fee for the services performed. For the year ended December 31, 2014, the total fee charged by the Partnership to Falcon was approximately $0.6 million and as of December 31, 2014, amounts owed to the Partnership by Falcon for services rendered were approximately $0.4 million.

Effective January 1, 2011, the Partnership commenced performing services on behalf of Acis Capital Management, L.P. ("Acis"), a Delaware limited partnership and registered investment advisor. Services include, but are not limited to compliance, accounting, human resources, IT and other back office support functions. The Partnership charges a fee for the services performed. For the year ended December 31, 2014, the total fee charged by the Partnership to Acis was approximately $3.8 million and as of December 31, 2014, no amounts were owed to the Partnership by Acis for services rendered.

Effective January 1, 2013, the Partnership commenced performing services on behalf of NexPoint Advisors, L.P. ("NexPoint"), a Delaware limited partnership. Services include, but are not limited to compliance, accounting, human resources, IT and other back office support functions. The Partnership charges a fee for the services performed. For the year ended December 31, 2014, the total fee charged by the Partnership to NexPoint was approximately $1.4 million and as of December 31, 2014, amounts owed to the Partnership by NexPoint for services rendered were approximately $0.8 million.

Effective September 24, 2013, the Partnership commenced performing services on behalf of NexBank Capital, Inc. ("NexBank Capital"), financial services company. Services include, but are not limited to compliance, accounting, human resources, IT and other back office support functions. The Partnership charges a fee for the services performed. For the year ended December 31, 2014, the total fee charged by the Partnership to NexBank Capital was approximately $0.4 million and as of December 31, 2014, amounts owed to the Partnership by NexBank Capital for services rendered were approximately $0.1 million.

Effective September 24, 2013, the Partnership commenced performing services on behalf of NexBank SSB, ("NexBank"), a Texas savings bank. Services include investment advisory services. The Partnership charges a fee for the services performed. For the year ended December 31, 2014, the total fee charged by the Partnership to NexBank was approximately $0.7 million and as of December 31, 2014, no amounts were owed to the Partnership by NexBank for services rendered.

9. Debt and Notes Payable

Promissory Note

On December 31, 2014, the Partnership entered in to a promissory note (the "Promissory Note") with an investor in the amount of $18.6 million, in exchange for 100% of its LP interest in Highland Multi Strategy Credit Fund, L.P. The Partnership must pay one-third of the initial note amount, plus accumulated interest on each of the first three anniversaries of the note. The Promissory Note will mature on December 31, 2017. The Promissory Note accrues interest at a rate of 3% per annum.

Select Master Securities Loan Agreement

On October 14, 2014, Highland Select Equity Master Fund, L.P. received a master securities loan agreement (the "Securities Agreement") from The Dugaboy Investment Trust ("Dugaboy") in the amount of $23.0 million for securities borrowed. The Securities Agreement accrues a Loan Fee at a rate of 0.38%, the short term Applicable Federal Rate. The fair value of the loan will fluctuate with the fair value of the borrowed securities, throughout the term of the Securities Agreement.

10. Commitments

Contracts in the Normal Course of Business

In the normal course of business the Partnership and its subsidiaries may enter into contracts which provide general indemnifications and contain a variety of presentations and warranties that may expose the Partnership and its subsidiaries to some risk of loss. In addition to the other financial commitments discussed in the consolidated financial statements, the amount of future losses arising from such undertakings, while not quantifiable, is not expected to be significant.

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Legal Proceedings
The Partnership is a party to various legal proceedings arising in the ordinary course of business. While any proceeding or litigation has an element of uncertainty, management believes that the final outcome will not have a materially adverse effect on the Partnership's Consolidated Balance Sheet, consolidated statement of income, or its liquidity. See Note 13.

Operating Leases
The Partnership has an operating lease and associated commitments related to its main office space. Future minimum lease payments under operating lease commitments with initial or noncancelable terms in excess of one year, at inception, are as follows:

(in thousands)

Years Ending December 31,	
2015	1,477
2016	1,506
2017	1,521
2018	1,521
2019	1,550
Thereafter	3,655
Total	$ 11,230

Total rental expense of the Partnership and its consolidated entities for operating leases was approximately $1.4 million for the year ended December 31, 2014.

11. Postretirement Benefits

In December 2006, the Partnership created a defined benefit plan to which all employees and certain affiliated persons could participate if they met the eligibility requirements. The Partnership uses a December 31 measurement date for its defined benefit plan.

Effective December 31, 2008, the Partnership amended the plan by freezing it to new participants and additional benefit accruals. A new amendment became effective on January 1, 2011 in which a named participant was admitted to the plan and is eligible to earn benefit accrual. 2011 expense reflects a service cost charge for the value of the new participant's benefit earned during 2011.

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The Partnership's benefit plan obligation and plan assets for the year ended December 31, 2014 are reconciled in the tables below.

(in thousands)

Change in projected benefit obligation	**2014**
Benefit obligation at beginning of year	$ 2,339
Service cost	5
Interest cost	108
Plan participants' contributions	-
Amendments	-
Actuarial loss/(gain)	59
Acquisition/(divestiture)	-
Benefits paid	(261)
Benefit obligation at end of year	$ 2,250

Change in plan assets	**2014**
Fair value of plan assets at beginning of year	$ 2,635
Actual return on plan assets	72
Acquisition/(divestiture)	-
Employer contribution	-
Plan participants' contributions	-
Benefits paid	(261)
Other increase/(decrease)	-
Fair value of plan assets at year end	$ 2,446

Reconciliation of Funded Status	**2014**
Accumulated benefit obligation at end of year	$ 2,250
Projected benefit obligation at end of year	2,250
Fair value of assets at end of year	2,446
Funded status at end of year	$ 196

The Partnership does not expect to contribute to the plan during 2014.

Assumptions

Weighted-average assumptions used to determine benefit obligations at December 31, 2014:

Discount rate	3.70%
Rate of compensation increase	N/A

Weighted-average assumptions used to determine net periodic benefit cost at December 31, 2014:

Discount rate	4.90%
Expected long-term return on plan assets	4.90%
Rate of compensation increase	N/A

As of December 31, 2014, there were no plan assets categorized as Level 3.

12. Income Taxes

The Partnership
For U.S. income tax purposes, the Partnership is treated as a pass-through-entity, which means it is not subject to income taxes under current Internal Revenue Service or state and local guidelines. Each partner is individually liable for income taxes, if any, on their share of the Partnership's net taxable income.

The Partnership files tax returns as prescribed by the tax laws of the jurisdictions in which it operates. In the normal course of business, the Partnership is subject to examination by federal and foreign jurisdictions, where applicable. As of December 31, 2014, the tax years that remain subject to examination by the major tax jurisdictions under the statute of limitations is from the year 2011 forward (with limited exceptions).

Authoritative guidance on accounting for and disclosure of uncertainty in tax positions requires the General Partner to determine whether a tax position of the Partnership is more likely than not to be sustained upon examination, including resolution of any related appeals or litigation processes, based on the technical merits of the position. For tax positions meeting the more likely than not threshold, the tax amount recognized in the financial statements is the largest benefit that as a greater than fifty percent likelihood of being realized upon ultimate settlement with the relative taxing authority. The General Partner does not expect a significant change in uncertain tax positions during the twelve months subsequent to December 31, 2014.

Crusader Master
Crusader Master is an exempted limited partnership organized in Bermuda. Under the current laws of Bermuda, there is no income, estate, transfer, sale or other taxes payable by Crusader Master. Crusader Master has received an undertaking from the government of Bermuda exempting it from all such taxes until March 28, 2016.

For U.S. income tax purposes, Crusader Master is treated as a pass-through entity, which means it is not subject to income taxes under current Internal Revenue Service or state and local guidelines. Each partner is individually liable for income taxes, if any, on its share of Crusader Master's net taxable income.

Since Crusader Master trades investments for its own account, non-U.S. Investment Vehicle investors are generally not subject to U.S. tax on such earnings (other than certain withholding taxes indicated below). The General Partner intends to conduct Crusader Master's business in such a way that it does not constitute a U.S. trade or business or create a taxable presence in any of the jurisdictions in which the Investment Manager has offices, including the United Kingdom.

Dividends as well as certain interest and other income received by Crusader Master from sources within the United States may be subject to, and reflected net of, United States withholding tax at the rate of 30% for non-U.S. Investment Vehicles. Interest, dividend and other income realized by Crusader Master from non-U.S. sources and capital gains realized on the sale of securities of non-U.S. issuers may be subject to withholding and other taxes levied by the jurisdiction in which the income is sourced. As of December 31, 2014, a withholding tax liability of $0.2 million is included in the accrued expenses in the Consolidated Balance Sheet.

It is management's responsibility to determine whether a tax position of Crusader Master is more likely than not to be sustained upon examination, including resolution of any related appeals or litigation processes, based on the technical merits of the position. For tax positions meeting the more likely than not threshold, the tax amount recognized in the consolidated financial statements is the largest benefit that has a greater than fifty percent likelihood of being realized upon ultimate settlement with the relative taxing authority. In accordance with this authoritative guidance, management has established a reserve for federal income tax of approximately $7.8 million for uncertain tax positions. Management does not expect a significant change in uncertain tax positions during the twelve months subsequent to December 31, 2014.

Crusader Master files tax returns as prescribed the tax laws of the jurisdictions in which it operates. In the normal course of business, Crusader Master is subject to examination by federal and foreign jurisdictions, where applicable. As of December 31, 2014, the tax years that remain subject to examination by the major tax jurisdictions under the statute of limitations is from the year 2011 forward (with limited exceptions).

Multi Strategy Credit Master

For U.S. income tax purposes, Multi Strategy Credit Master is treated as a pass-through entity, which means it is not subject to federal income taxes under current Internal Revenue Service guidelines. However, each investor may be individually liable for income taxes, if any, on its share of the partnership's net taxable income.

Multi Strategy Credit Master trades in senior secured syndicated bank loans for its own account and, as such, non-U.S. Investment Vehicle investors are generally not subject to U.S. tax on such earnings (other than certain withholding taxes indicated below). The Partnership intends to conduct Multi Strategy Credit Master's business in such a manner that it does not constitute a U.S. trade or business, nor does it create a taxable presence in any of the jurisdictions in which the Partnership has offices, including the United Kingdom.

Dividends as well as certain interest and other income received by Multi Strategy Credit Master from sources within the United States may be subject to, and reflected net of, United States withholding tax at a rate of 30% for non-U.S. Investment Vehicles. Interest, dividend and other income realized by Multi Strategy Credit Master from non-U.S. sources and capital gains realized on the sale of securities of non-U.S. issuers may be subject to withholding and other taxes levied by the jurisdiction in which the income is sourced. As of December 31, 2014, a withholding tax liability of $1.0 million is classified within accrued expenses and withholding tax payable on the Consolidated Balance Sheet.

Multi Strategy Credit Master applies authoritative guidance which requires management to determine whether a tax position of Multi Strategy Credit Master is more likely than not to be sustained upon examination, including resolution of any related appeals or litigation processes, based on the technical merits of the position. For tax positions meeting the more likely than not threshold, the tax amount recognized in the consolidated financial statements is the largest benefit that has a greater than fifty percent likelihood of being realized upon ultimate settlement with the relative taxing authority. As of December 31, 2014, a liability to account for uncertain tax positions of $0.1 million is classified within accrued expenses within the Consolidated Balance Sheet. Management does not expect a significant change in uncertain tax positions during the twelve months subsequent to December 31, 2014.

Multi Strategy Credit Master files tax returns as prescribed by the tax laws of the jurisdictions in which it operates. In the normal course of business, Multi Strategy Credit Master is subject to examination by federal and foreign jurisdictions, where applicable. As of December 31, 2014, the tax years that remain subject to examination by the major tax jurisdictions under the statute of limitations is from the year 2011 forward (with limited exceptions).

Credit Strategies Master

Credit Strategies Master is an exempted limited partnership organized in Bermuda. Under the current laws of Bermuda, there is no income, estate, transfer, sale or other taxes payable by Credit Strategies Master. Credit Strategies Master has received an undertaking from the government of Bermuda exempting it from all such taxes until March 28, 2016.

For U.S. income tax purposes, Credit Strategies Master is treated as a pass-through entity, which means it is not subject to income taxes under current Internal Revenue Service or state and local guidelines. Each partner is individually liable for income taxes, if any, on its share of Credit Strategies Master's net taxable income.

It is management's responsibility to determine whether a tax position of Credit Strategies Master is more likely than not to be sustained upon examination, including resolution of any related appeals or litigation processes, based on the technical merits of the position. For tax positions meeting the more likely than not threshold, the tax amount recognized in the financial statements is the largest benefit that has a greater than fifty percent likelihood of being realized upon ultimate settlement with the relative taxing authority. The General Partner has determined that there was no effect on the financial statements from the application of this guidance. The General Partner does not expect a significant change in uncertain tax positions during the twelve months subsequent to December 31, 2014.

Dividends as well as certain interest and other income received by Credit Strategies Master from sources within the United States may be subject to, and reflected net of, United States withholding tax at the rate of 30% for non-U.S. Investment Vehicles. Interest, dividend and other income realized by Credit Strategies Master from non-U.S. sources and capital gains realized on the sale of securities of non-U.S. issuers may be subject to withholding and other taxes levied by the jurisdiction in which the income is sourced. As of December 31, 2014, a withholding tax liability of $0.7 million is included in tax payable in the Consolidated Balance Sheet. Deferred tax liabilities may result from temporary differences related to the unrealized appreciation on Credit Strategies Master's investments that will become taxable income in future years. Deferred tax liabilities will become payable upon realization of the gains when the investments are sold, and are measured using the applicable enacted tax rate and provisions of the enacted tax law.

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The Credit Strategies Master files tax returns as prescribed by the tax laws of the jurisdictions in which it operates. In the normal course of business, Credit Strategies Master is subject to examination by federal and foreign jurisdictions, where applicable. As of December 31, 2014, the tax years that remain subject to examination by the major tax jurisdictions under the statute of limitations is from the year 2011 forward (with limited exceptions).

A wholly owned corporation at Credit Strategies Master may be subject to Federal U.S. Income Tax based on the nature of income, expense, and capital gains/losses. As of December 31, 2014, the wholly owned corporation has a tax refund receivable of $1.7 million included in other assets in the Consolidated Balance Sheet.

Restoration Onshore
Restoration Onshore is treated as a pass-through entity for tax purposes, which means it is not subject to U.S. income taxes under current Internal Revenue Service or state and local guidelines. Each Partner is individually liable for income taxes, if any, on its share of the Restoration Onshore's net taxable income. Interest, dividends and other income realized by Restoration Onshore from non-U.S. sources and capital gains realized on the sale of securities of non-U.S. issuers may be subject to withholding and other taxes levied by the jurisdiction in which the income is sourced.

Restoration Onshore applies the authoritative guidance on accounting for and disclosure of uncertainty in tax positions, which requires the General Partner to determine whether a tax position of Restoration Onshore is more likely than not to be sustained upon examination, including resolution of any related appeals or litigation processes, based on the technical merits of the position. For tax positions meeting the more likely than not threshold, the tax amount recognized in the financial statements is the largest benefit that has a greater than fifty percent likelihood of being realized upon ultimate settlement with the relevant taxing authority.

The General Partner has determined that there was no effect on the financial statements from the Partnership's application of this authoritative guidance. The General Partner does not expect a significant change in uncertain tax positions during the twelve months subsequent to December 31, 2014. Restoration Onshore files tax returns as prescribed by the tax laws of the jurisdictions in which it operates. In the normal course of business, the Partnership is subject to examination by federal, state, local and foreign jurisdictions, where applicable. As of December 31, 2014, the tax years that remain subject to examination by the major tax jurisdictions under the statute of limitations is from the year 2011 forward (with limited exceptions).

Restoration Offshore
Restoration Offshore is a Cayman Islands exempted company. Under the current laws of the Cayman Islands, there is no income, estate, transfer, sales or other tax payable by Restoration Offshore. Restoration Offshore has elected to be treated as a corporation for U.S. tax purposes and files a protective 1120-F.

The General Partner intends to conduct the business of Restoration Offshore in such a way that Restoration Offshore's activities do not constitute a U.S. trade or business and any income or realized gains earned by Restoration Offshore do not become "effectively connected" with a trade or business carried on in the United States for U.S. federal income tax purposes.

Dividends as well as certain interest and other income received by the master partnership of Restoration Offshore from sources within the United States may be subject to, and reflected net of, United States withholding tax at a rate of 30% for non-U.S. Investment Vehicles. Interest, dividend and other income realized by the master partnership of Restoration Offshore from non-U.S. sources and capital gains realized on the sale of securities of non-U.S. issuers may be subject to withholding and other taxes levied by the jurisdiction in which the income is sourced.

Restoration Offshore applies the authoritative guidance on accounting for and disclosure of uncertainty in tax positions, which requires the General Partner to determine whether a tax position of Restoration Offshore is more likely than not to be sustained upon examination, including resolution of any related appeals or litigation processes, based on the technical merits of the position. For tax positions meeting the more likely than not threshold, the tax amount recognized in the financial statements is the largest benefit that has a greater than fifty percent likelihood of being realized upon ultimate settlement with the relevant taxing authority. The General Partner has determined that there was no effect on the financial statements from the Partnership's application of this authoritative guidance. The General Partner does not expect a significant change in uncertain tax positions during the twelve months subsequent to December 31, 2014. As of December 31, 2014, the tax years that remain subject to examination by major tax jurisdictions under the statute of limitations is from the year 2011 forward (with limited exceptions).

The remaining entities consolidated by the Partnership had no uncertain tax positions which required accrual under U.S. GAAP.

13. Legal Proceedings

On July 15, 2008, Crusader Master, Highland Offshore Partners, CDO Master Fund, Multi Strategy Credit Master, certain affiliates, and numerous external parties (collectively, the "Defendants") were named as parties to an action filed with the Bankruptcy Court of the Southern District of Florida ('the Tousa action"). The action related to a secured lending transaction and subsequent refinancing arrangement in which the Defendants participated. On October 13, 2009, the Bankruptcy Court ruled in favor of the plaintiffs and ordered the Defendants to disgorge the principal, interest, and fees they received in connection with the refinancing arrangement. In addition, the Court ordered the defendants to pay simple interest on the disgorged amount at an annual rate of 9%. The US Supreme Court case was heard on January 14, 2015, and the Parties are waiting the decision. Based on the ruling, Crusader Master and Highland Offshore Partners recorded a combined reserve of approximately $12.3 million as of December 31, 2014, which represents its ratable share of the judgment.

On July 8, 2009, one investor filed suit against Highland Credit Strategies Fund, LP, the Partnership, and other affiliated entities (collectively, the "Defendants"). The lawsuit alleges that the Defendants misrepresented the amount of redemptions in Credit Strategies Master. The Defendants intend to vigorously defend against the lawsuit. Accordingly, Highland Credit Strategies Fund, LP has recorded a reserve of approximately $11.3 million, which is recorded in the Consolidated Balance Sheet.

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On January 31, 2011, one investor filed suit against Highland Credit Strategies Fund, LP, the Partnership, and other affiliated entities (collectively, the "Defendants"). The lawsuit alleges that the Defendants made misrepresentations and omissions relating to the level of the amount of redemptions in Credit Strategies Master. Effective March 28, 2014, Credit Strategies settled the on-going litigation for $1.5 million. Cash was paid on April 11, 2014 and an Agreed Order of Dismissal was filed seven days later dismissing all claims asserted or that could have been asserted in the lawsuit against the Fund. The settlement resulted in a gain of $1.0 million for the year ended December 31, 2014, and is recognized as a reduction to legal expense on the Consolidated financial statements.

In April 2007, CDO Master Fund entered into a risk sharing agreement with UBS Securities LLC and UBS AG, London Branch (collectively, "UBS" or "UBS Plaintiffs") structured as a derivative whereby it absorbed 51% of the gains and losses generated from a loan warehouse agreement. The remaining 49% of the warehouse gains and losses were absorbed by Highland Special Opportunities Holding Company ("SOHC"). The warehouse was financed by UBS and held collateral consisting of investments in collateralized loan obligations and credit default swaps. Although the agreement expired on August 15, 2007, UBS agreed to extend it for one year on March 15, 2008. Due to liquidity constraints, CDO Master Fund was unable to meet a November margin call, and UBS elected to terminate the agreement as of December 5, 2008. The collateral held in the warehouse was subsequently seized by UBS and sold on the open market through bids-wanted-in competition. After offsetting the proceeds received from the sale and the income earned on the collateral prior to the sale, UBS notified CDO Master Fund that its pro-rata share of the losses incurred under the agreement was $350.2 million. CDO Master Fund has accrued a liability in its financial statements for this amount.

On February 24, 2009, the UBS Plaintiffs filed a lawsuit against CDO Master Fund, SOHC and the Partnership in the New York State Supreme Court of Manhattan alleging that they suffered losses in excess of $745 million due to the depreciation in value of the warehouse collateral. On February 19, 2010, the First Appellate Division sided with the Partnership and dismissed UBS' claims against the Partnership. Thereafter on June 22, 2010, the UBS Plaintiffs filed an amended complaint with the Court against the Partnership alleging $687 million in damages. On March 13, 2012, the First Appellate Division dismissed two of the four claims against the Partnership, and severely limited the scope of the two remaining claims.

In the June 22, 2010 amended complaint, the UBS Plaintiffs also asserted claims against Highland Credit Strategies Fund, LP, Highland Multi Strategy Credit Fund, LP, Crusader Master, and certain of their affiliates (collectively, the "Additional Fund Defendants"). The UBS Plaintiffs seek to unwind alleged fraudulent transfers involving the Additional Fund Defendants. Although the UBS Plaintiffs have not pled a specific damages amount against the Additional Fund Defendants, any eventual damages award would be subject to pre-judgment interest of 9% (accrued as of December 3, 2008) as well as post-judgment interest of 9% (accrued as of the date a judgment, if any, is entered against the Additional Fund Defendants). Each of the Additional Fund Defendants filed a separate motion to dismiss, each of which was denied. In addition, the Additional Fund Defendants filed a motion for summary judgment, which was heard by the Court on February 14, 2014. On March 11, 2014, the First Appellate Division heard each of the Additional Fund Defendants' respective appeals of the Court's denials of their respective motions to dismiss.

Discovery is completed, but the matter is stayed pending the outcome of the interlocutory appeals. A trial date has not yet been set. Though the Defendants continue to vigorously defend against the UBS Plaintiffs' claims, at this time, the General Partners are unable to provide a reasonably probable estimate of the expected outcome.

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On July 16, 2013, Credit Suisse Securities (USA), LLC ("Credit Suisse") filed suit against the Highland Credit Strategies Fund, LP, Highland Multi Strategy Credit Fund, LP, and other affiliates (the "Credit Suisse Defendants"). Credit Suisse's claims relate to several outstanding trades of debt tranches of Goldfield Ranch Reality Holdings, LLC and Westgate Investments, LLC. On May 5, 2014, Credit Suisse moved for summary judgment on both the principal amount and statutory pre-judgment interest. The Court granted the motion on August 6, 2014, and issued judgment on September 11, 2014 in the amount of $25.5 million in principal, plus $13.5 million in interest, for a total of $39.0 million. The Funds have previously reserved for the principal amount, and now has reserved for the interest amount. Interest continues to accrue based on the New York statutory rate. As of December 31, 2014, an additional $1.2 million in interest has been accrued, for a total of $14.7 million. The full amount of interest and principal is recognized on the consolidated financial statements. The Funds will appeal the application of a statutory pre-judgment interest rate as opposed to the contract rate of interest.

In April 2012, the Partnership filed suit against a former employee for breach of contract, defamation and theft of trade secrets. The former employee filed a counterclaim with numerous, unrelated allegations. The partnership refuted each allegation in detail. The former employee seeks unspecified damages against the Partnership and certain affiliates. On February 6, 2014, the jury found the former employee breached his fiduciary duty to the Partnership. The jury found that neither the Partnership nor any of its employees had breached any duty, and awarded $2.8 million to the Partnership. The jury also found that the Partnership's consolidated entity Highland Employee Retention Assets, LLC ("HERA") owed $2.6 million related to an employee retention plan. The court entered judgment on the verdict on July 11, 2014. The former employee has filed his appeal against the Partnership and HERA has filed its appeal against the judgment amount.

14. Fund Wind Down

On February 4, 2009, the Partnership informed investors of CDO Master that the fund was effectively insolvent and that it was in the best interest of the fund to liquidate the fund's remaining assets. The proceeds from the asset liquidations will be distributed to the remaining financing counterparties and other senior and trade creditors as the liabilities in the fund exceed the assets to such a degree that proceeds from the asset sales will not be able to satisfy any unpaid redemptions or to distribute amounts to any current investors.

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During 2008, Crusader Master and Credit Strategies Master were negatively affected by deteriorating conditions in the overall economy and credit markets. These conditions became more severe during the third and fourth quarters of 2008 and generated significant losses on various derivative transactions and repurchase agreements to which Crusader Master and Credit Strategies Master were parties. In addition, certain assets that Crusader Master and Credit Strategies Master purchased on margin through prime brokerage agreements experienced a significant decline in value. In certain cases, Crusader Master and Credit Strategies Master were unable to post the collateral required to secure these losses, and the counterparties provided notice of their intent to terminate the agreements. As a result, access to the credit that Crusader Master and Credit Strategies Master used to manage its investing and financing activities became highly constrained, and in some cases unavailable. In light of these circumstances, the General Partners (the general partner of Highland Crusader Fund, L.P. and the general partner of Highland Credit Strategies Fund, L.P.) and the Board of Directors of Highland Credit Strategies Fund, Ltd. and Highland Crusader Fund, Ltd. concluded, in consultation with the Investment Manager, that it would be in the best interests of their investors to wind down the investment portfolios of Credit Strategies Master and Crusader Master. On October 15, 2008, the Investment Manager notified investors that it would begin the wind-down process. The Investment Manager also restricted subscriptions and the payment of withdrawals to its feeder funds effective the same date.

In connection with the wind down, the limited partner interests of the Feeder Funds of Credit Strategies and Crusader were compulsorily withdrawn/redeemed on October 15, 2008 and November 15, 2008, respectively, in accordance with the terms of the governing documents.

Crusader Master
On July 15, 2011, the Supreme Court of Bermuda Commercial Court sanctioned a Scheme of Arrangement (the "Scheme") that facilitates the winding-down of the investments of Crusader Master and the distribution of its assets. A substantial majority of the investors in its feeder funds consented to the plan of distribution as outlined in the Scheme. The Scheme became effective as of August 1, 2011 (the "Effective Date").

The Scheme establishes two classes of claims; those feeder fund investors who had timely submitted withdrawal/redemption requests for withdrawal/redemption dates that fell on or before June 30, 2008 and who had not received full payment ("Prior Redeemers"), and those feeder fund investors that had not timely submitted such withdrawal/redemption requests for redemption/withdrawal dates that fell on or before June 30, 2008 ("Compulsory Redeemers") (together "Redeemers"). The basis for ratable distribution amongst both classes of Redeemers was the November 15, 2008 balances of said Redeemers ("Redemption Amount"), adjusted to add back any redemption penalties assessed against Prior Redeemers during 2008. A realization schedule for distributions is set forth in Appendix A of the Scheme (the "Realization Schedule"). The terms of the Scheme are outlined as follows:

1. Prior Redeemers shall be entitled to 60% in aggregate of the total distributions made by the Master Partnership constituting excess cash (the "Crusader Fund Prior Redeemers' Distribution"). Each Prior Redeemer shall be entitled to their pro rata share of the Crusader Fund Prior Redeemers' Distribution based on the Prior Redeemer's Redemption Amount relative to the total of all Prior Redeemers' Redemption Amounts (inclusive of all feeders).

2. Compulsory Redeemers shall be entitled to 40% in aggregate of the total distributions made by the Master Partnership constituting excess cash (the "Crusader Fund Compulsory Redeemers' Distribution"). With the exception of the non-consenting Compulsory Redeemers discussed below, each Compulsory Redeemer shall be entitled to their pro rata share of the Crusader Fund Compulsory Redeemers' Distribution based on the Compulsory Redeemer's Redemption Amount relative to the total of all Compulsory Redeemers' Redemption Amounts (inclusive of all feeders).

   In the event the Investment Manager fails to make distributions in accordance with the Realization Schedule for two consecutive quarters without receiving a waiver from the committee of Redeemers appointed to help oversee the Scheme (the "Redeemer Committee"), the Investment Manager can be removed for cause as the Investment Manager of the Master Partnership by the Redeemer Committee.

Crusader Redeemer Trust Account
Effective July 15, 2011, a trust account was set-up and funded for the benefit of Compulsory Redeemers who had consented to the Scheme and Prior Redeemers (the "Redeemer Trust Account"). The portion of amounts in excess of the Redemption Amounts otherwise attributable to non-consenting Compulsory Redeemers was contributed to the Redeemer Trust Account and not distributed to non-consenting Compulsory Redeemers. Amounts in the Redeemer Trust Account are reserved and used to pay all costs of Crusader Master to defend, respond to, settle and satisfy any claims by Redeemers other than for their Scheme claim.

The non-consenting Compulsory Redeemers do not receive any allocation of profit and loss; the portion of profit and loss that would otherwise be allocated to their accounts is instead allocated to the Redeemer Trust Account. The Redeemer Trust Account is accounted for as a component of equity in the Crusader Onshore Feeder Fund. Within the earlier of 30 days after all redeemer claims have been resolved or dismissed with prejudice or the sixth anniversary of the effective date, any amounts remaining in the Redeemer Trust Account shall be distributed 100% to consenting Compulsory Redeemers pro rata based on their relative Redemption Amounts.

Crusader Deferred Fee Account
In accordance with the Scheme, the "Deferred Fee Account" was established on the Effective Date by allocating the right for owners of existing deferred fees to potentially receive payment in respect of deferred fees equal to $10 million.

In the event that Crusader Master makes aggregate distributions of at least $1.7 billion prior to the forty-third month following the effective date, the Partnership shall be entitled to receive payment in respect of the Deferred Fee Account.

In the event that the Master Partnership does not make aggregate distributions of at least $1.7 billion prior to the forty-third month following the effective date, then the Partnership will cause the Feeder Funds to distribute the right to receive payment 100% to consenting Compulsory Redeemers (pro rata based on their relative Redemption Amounts). The Deferred Fee Account will continue to be allocated its pro rata portion of profit and loss.

Crusader Wind Down Progress
Crusader Master distributed approximately $205.3 million to the Feeder Funds in accordance with the Scheme for the year ended December 31, 2014. Since the Scheme's effective date, approximately $1,351.2 million has either been distributed to the Feeder Funds for purposes of disbursement, or withheld and specially allocated for tax payments.

As of December 31, 2014, the estimated value of the partners' capital of Crusader Master was approximately $457.3 million. The actual amounts that will be distributed upon completion of the wind down process are inherently uncertain and may differ materially from the partners' capital as of December 31, 2014. Capital will be distributed as it becomes available in accordance with the Scheme.

Credit Strategies Master

To facilitate the winding-down of the investments in Credit Strategies Master, a Plan of Distribution (the "Plan") was also adopted by Credit Strategies Master and its feeder funds and was consented to by a substantial majority of the investors in its feeder funds. On April 14, 2011, the Supreme Court of Bermuda Commercial Court sanctioned a Scheme of Arrangement (the "Scheme") that incorporates the terms of the Plan so as to be binding upon Highland Credit Strategies Fund, Ltd. and its investors. The Scheme became effective on May 1, 2011. The Plan established two classes of claims; those investors of the Feeder Funds whose withdrawals/redemptions became effective on or before September 30, 2008 and who have not received full payment of their redemption amount ("Prior Redeemers") and those investors of the feeder funds who were compulsorily withdrawn/redeemed on October 15, 2008 ("Compulsory Redeemers").

As investments in Credit Strategies Master are realized, distributions will be made in the following order, which summarizes the terms outlined in the Plan:

1. Payments for fund expenses
2. The first $30 million available for distribution ratably to Prior Redeemers
3. The next approximately $5.3 million available for distribution ratably to consenting Compulsory Redeemers and a trust account established for the benefit of non-consenting Compulsory Redeemers ("Redeemer Trust Account")
4. All remaining funds will be distributed as follows:
   a. 85% ratably to Prior Redeemers
   b. 15% to consenting Compulsory Redeemers and the Redeemer Trust Account

This method of distribution results in a shift of capital from the Prior Redeemers to the consenting Compulsory Redeemers and the Redeemer Trust Account. It also created a shift of capital from its offshore feeder to its onshore feeder, since there was a greater proportion of Compulsory Redeemers to Prior Redeemers in the onshore feeder than in the offshore feeder.

Credit Strategies Redeemer Trust Account

The Redeemer Trust Account is used to pay for litigation costs involving the non-consenting Compulsory Redeemers. The Plan outlines which expenses related to litigation ("Covered Claims") will be paid using funds from the Redeemer Trust Account, and any litigation will continue to be assessed under an ASC 450 (Contingencies) model. Any remaining funds in the Redeemer Trust Account that are not used for expenses related to Covered Claims by the "Trust Account Final Distribution Date" (defined as 30 days after all Covered Claims have been resolved, or the sixth anniversary of the effective date, whichever is earlier) will be distributed to consenting Compulsory Redeemers.

The Redeemer Trust Account is treated as a component of equity. It is allocated its share of profit and loss and existing capital as outlined above, and any expenses related to Covered Claims will decrease the account in the period in which the expenses are incurred.

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Credit Strategies Contribution Trust Account
In accordance with the Plan and in exchange for certain releases, a trust account (the "Contribution Trust Account") was established and initially funded on the effective date with $3.0 million contributed by the Partnership. The Partnership also paid an additional $6.0 million on April 25, 2014, approximately the third anniversary of the effective date of the Plan. This $6.0 million was recognized as a subscription into Credit Strategies Master during the year ended December 31, 2014.

The Contribution Trust Account will be used to pay for expenses related to Covered Claims to the extent that the Redeemer Trust Account is insufficient to pay such expenses. Within 30 days after all Covered Claims have been resolved or dismissed with prejudice, or the sixth anniversary of the effective date, provided that no suits asserting Covered Claims are then pending, whichever is earlier, any remaining balance in the Contribution Trust Account will be distributed 85% to consenting Compulsory Redeemers and 15% to consenting Prior Redeemers.

Similar to the Redeemer Trust Account, the Contribution Trust Account is treated as a separate component of equity. Additionally, the initial payment of the $3.0 million was treated as a contribution to the Master Partnership. However, the Contribution Trust Account does not receive an allocation of profit and loss. The only changes to the account will occur when contributions are made or expenses related to Covered Claims are paid.

15. Subsequent Events.

On January 26, 2015, the Partnership issued a promissory note to HCRE in the amount of $1.5 million. The note accrues interest at a rate of 9.0%.

On January 29, 2015, the Partnership issued a promissory note to NexPoint in the amount of $3.1 million. The note accrues interest at a rate of 6.0%.

The Partnership has performed an evaluation of subsequent events through May 21, 2015, which is the date the consolidated financial statements were available to be issued, and has determined that there are no other material subsequent events that would require disclosure in the Partnership's consolidated financial statements.

Supplemental Information

Highland Capital Management, L.P.
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Supplemental Consolidating Balance Sheet
December 31, 2014

(in thousands)	Highland Capital Management, L.P.	All Other Consolidated Entities	Eliminations	Total Consolidated
Assets				
Cash and cash equivalents	$ 1,813	$ 64,220	$ -	$ 66,033
Restricted cash	2,621	135,234	-	137,855
Investments at fair value	185,260	1,692,079	-	1,877,339
Equity method investees	338,778	-	(338,778)	-
Management and incentive fees receivable	8,662	-	(92)	8,570
Due from brokers	-	32,536	-	32,536
Other assets	55,435	10,459	(1,451)	64,443
Deferred incentive fees receivable	32,592	-	-	32,592
Fixed assets and leasehold improvements, net of accumulated depreciation of $5,768	8,067	-	-	8,067
Total assets	$ 633,228	$ 1,934,528	$ (340,321)	$ 2,227,435
Liabilities and partners' capital				
Liabilities				
Accounts payable	$ 5,144	$ 23	$ -	$ 5,167
Securities sold, not yet purchased (proceeds $43,015)	-	41,815	-	41,815
Withdrawals payable	-	82,833	-	82,833
Due to brokers	47,215	692,925	(657)	739,483
Due to brokers for securities purchased, not yet settled	-	67,541	-	67,541
Accrued and other liabilities	35,108	66,316	(886)	100,538
Debt and notes payable	18,648	22,991	-	41,639
Total liabilities	106,115	974,444	(1,543)	1,079,016
Non-controlling interest	-	621,306	-	621,306
Commitments (Note 10)				
Partners' capital	527,113	338,778	(338,778)	527,113
Total liabilities and partners' capital	$ 633,228	$ 1,934,528	$ (340,321)	$ 2,227,435

Highland Capital Management, L.P.
(A Delaware Limited Partnership)
Supplemental Consolidating Statement of Income
Year Ended December 31, 2014

(in thousands)	Highland Capital Management, L.P.	All Other Consolidated Entities	Eliminations	Total Consolidated
Revenue:				
Management fees	$ 67,570	$ -	$ -	$ 67,570
Interest and investment income	1,847	55,604	-	57,451
Other income	9,180	1,310		10,490
Total revenue	78,597	56,914	-	135,511
Expenses:				
Compensation and benefits	37,027	666	-	37,693
Professional fees	7,192	16,743	-	23,935
Marketing and advertising expense	6,140	-	-	6,140
Investment and research consulting	507	-	-	507
Depreciation and amortization	1,358	-	-	1,358
Tax expense	-	1,892	-	1,892
Bad debt expense	3,303	-	(3,303)	-
Other operating expenses	7,229	6,733	3,303	17,265
Total expenses	62,756	26,034	-	88,790
Other expense	1,655	-	-	1,655
Income before investment and derivative activities	17,496	30,880	-	48,376
Realized and unrealized gain from investment and derivative transactions:				
Net realized loss on investment and derivative transactions	(2,441)	(169,561)	-	(172,002)
Net change in unrealized gain on investment and derivative transactions	41,961	218,390	-	260,351
Total realized and unrealized gain from investment and derivative transactions	39,520	48,829	-	88,349
Net unrealized earnings from equity method investees	88,313	-	(88,313)	-
Net income	145,329	79,709	(88,313)	136,725
Net loss attributable to the non-controlling interest	-	8,604	-	8,604
Net income attributable to Highland Capital Management, L.P.	$ 145,329	$ 88,313	$ (88,313)	$ 145,329

Highland Capital Management, L.P.

(A Delaware Limited Partnership)

Supplemental Unconsolidated Balance Sheet
December 31, 2014

(in thousands)

Assets		
Current assets:		
Cash and cash equivalents	$	1,813
Restricted cash		2,621
Investments at fair value (cost $173,856)*		286,010
Equity method investees		238,028
Management and incentive fees receivable		8,662
Other assets		55,435
Deferred incentive fees receivable		32,592
Fixed assets and leasehold improvements, net of accumulated depreciation of $5,768		8,067
Total assets	$	633,228
Liabilities and partners' capital		
Liabilities		
Accounts payable	$	5,144
Due to brokers		47,215
Accrued and other liabilities		35,108
Notes payable		18,648
Total liabilities		106,115
Partners' capital		527,113
Total liabilities and partners' capital	$	633,228

*Investments, at fair value includes $100.8 million of limited partnership interest ownership of Consolidated Non-Variable Interest Entities, which are discussed in Footnote 2. These entities are consolidated because the Partnership controls the general partner of the respective entities and is responsible for the daily operations of the entities.

The above information was derived from the audited December 31, 2014 consolidated financial Statements of Highland Capital Management, L.P. This information should be read in conjunction with such audited financial statements.

Highland Capital Management, L.P.

(A Delaware Limited Partnership)

Supplemental Unconsolidated Statement of Income

Year Ended December 31, 2014

(in thousands)

Revenue:	
Management fees	$ 67,570
Interest and investment income	1,847
Shared services fees and miscellaneous income	9,180
Total revenue	78,597
Operating expenses:	
Compensation and benefits	37,027
Professional fees	7,192
Marketing and advertising expense	6,140
Investment and research consulting	507
Depreciation and amortization	1,358
Bad debt expense	3,303
Other operating expenses	7,229
Total operating expenses	62,756
Other income	1,655
Income before investment activities	17,496
Realized and unrealized gains/losses from investments:	
Net realized loss on sale of investments	(2,441)
Net change in unrealized gain on investments*	46,709
Total realized and unrealized gain from investments	44,268
Earnings from equity method investees:	83,565
Net income	$ 145,329

*Net change in unrealized gain on investments includes $4.8 million of unrealized gains from holdings of limited partnership interests of Consolidated Non-Variable Interest entities, which are discussed in Footnote 2. These entities are consolidated because the Partnership controls the general partner of the respective entities and is responsible for the daily operations of the entities.

The above information was derived from the audited December 31, 2014 consolidated financial statements of Highland Capital Management, L.P. This information should be read in conjunction with such audited financial statements.

EXHIBIT 70

Highland Capital Management, L.P.

(A Delaware Limited Partnership)

Consolidated Financial Statements and Supplemental Information

December 31, 2015

Highland Capital Management, L.P.

(A Delaware Limited Partnership)
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Independent Auditor's Report

To the General Partner of Highland Capital Management, L.P.

We have audited the accompanying consolidated financial statements of Highland Capital Management, L.P. and its subsidiaries (collectively, the "Partnership"), which comprise the consolidated balance sheet as of December 31, 2015, and the related consolidated statements of income, of changes in partners' capital and of cash flows for the year then ended.

Management's Responsibility for the Consolidated Financial Statements

Management is responsible for the preparation and fair presentation of the consolidated financial statements in accordance with accounting principles generally accepted in the United States of America; this includes the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of consolidated financial statements that are free from material misstatement, whether due to fraud or error.

Auditor's Responsibility

Our responsibility is to express an opinion on the consolidated financial statements based on our audits. We conducted our audits in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the consolidated financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the consolidated financial statements. The procedures selected depend on our judgment, including the assessment of the risks of material misstatement of the consolidated financial statements, whether due to fraud or error. In making those risk assessments, we consider internal control relevant to the Partnership's preparation and fair presentation of the consolidated financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Partnership's internal control. Accordingly, we express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the consolidated financial statements. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

Opinion

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of Highland Capital Management, L.P. and its subsidiaries as of December 31, 2015, and the results of their operations and their cash flows for the years then ended in accordance with accounting principles generally accepted in the United States of America.

Other Matter

Our audit was conducted for the purpose of forming an opinion on the consolidated financial statements taken as a whole. The Supplemental Consolidating Balance Sheet, the Supplemental Consolidating Statement of Income, the Supplemental Unconsolidated Balance Sheet and the Supplemental Unconsolidated Statement of Income are presented for purposes of additional analysis and are not a required part of the consolidated financial statements. The information is the responsibility of management and was derived from and relates directly to the underlying accounting and other records used to prepare the consolidated financial statements. The information has been subjected to the auditing procedures applied in the audit of the consolidated financial statements and certain additional procedures, including comparing and reconciling such information directly to the underlying accounting and other records used to prepare the consolidated financial statements or to the consolidated financial statements themselves and other additional procedures, in accordance with auditing standards generally accepted in the United States of America. In our opinion, the information is fairly stated, in all material respects, in relation to the consolidated financial statements taken as a whole.

PricewaterhouseCoopers LLP

May 19, 2016

PricewaterhouseCoopers LLP, 2001 Ross Avenue, Suite 1800, Dallas, Texas 75201
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Highland Capital Management, L.P.
(A Delaware Limited Partnership)
Consolidated Balance Sheet
December 31, 2015

(in thousands)

Assets		
Cash and cash equivalents	$	45,580
Restricted cash		74,935
Investments at fair value (cost $2,166,029)		1,562,553
Management and incentive fees receivable		7,542
Due from broker for securities sold, not yet settled		8,607
Other assets		16,363
Deferred incentive fees receivable		31,214
Due from affiliates		63,031
Note receivable		63,000
Fixed assets and leasehold improvements, net of accumulated depreciation of $7,683		47,710
Total assets	$	1,920,535
Liabilities and partners' capital		
Liabilities		
Accounts payable	$	4,667
Securities sold, not yet purchased (proceeds $195,298)		198,605
Withdrawals payable		78,733
Due to brokers		485,246
Due to brokers for securities purchased, not yet settled		55,934
Accrued and other liabilities		89,681
Debt and notes payable		104,659
Total liabilities		1,017,525
Non-controlling interest		517,353
Commitments		
Partners' capital		385,657
Total liabilities and partners' capital	$	1,920,535

The accompanying notes are an integral part of these consolidated statements.

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Highland Capital Management, L.P.
Consolidated Statement of Income
Year Ended December 31, 2015

(in thousands)

Revenue:		
Management fees	$	54,644
Interest and investment income		56,113
Other income		17,626
Total revenue		128,383
Expenses:		
Legal settlement		55,000
Compensation and benefits		36,936
Professional fees		35,779
Marketing and advertising expense		7,452
Investment and research consulting		967
Depreciation and amortization		2,744
Tax expense		875
Other operating expenses		23,254
Total expenses		163,007
Other income		4,869
Loss before investment and derivative activities		(29,755)
Realized and unrealized loss from investment and derivative transactions:		
Net realized loss on investment and derivative transactions		(52,005)
Net change in unrealized loss on investment and derivative transactions		(199,485)
Total realized and unrealized loss from investment and derivative transactions		(251,490)
Net loss		(281,245)
Net loss attributable to the non-controlling interest		104,780
Net loss attributable to Highland Capital Management, L.P.	$	(176,465)

The accompanying notes are an integral part of these consolidated statements.

Highland Capital Management, L.P.

(A Delaware Limited Partnership)

Consolidated Statement of Changes in Partners' Capital

Year Ended December 31, 2015

(in thousands)

	General Partner	Limited Partners	Total
Partners' capital, December 31, 2014	$ -	$ 527,113	$ 527,113
Net loss attributable to Highland Capital Management, L.P.	-	(176,465)	(176,465)
Partner contributions	-	70,000	70,000
Partner distributions	-	(34,991)	(34,991)
Partners' capital, December 31, 2015	$ -	$ 385,657	$ 385,657

The accompanying notes are an integral part of these consolidated statements.

Highland Capital Management, L.P.
(A Delaware Limited Partnership)
Consolidated Statement of Cash Flows
Year Ended December 31, 2015

(in thousands)

Cash flows from operating activities:		
Net loss	$	(281,245)
Adjustment to reconcile net loss to net cash used in operating activities:		
Net realized loss on investments and derivative transactions		52,005
Net change in unrealized loss on investments and derivative transactions		199,485
Amortization and depreciation		2,744
Changes in assets and liabilities:		
Restricted cash		62,920
Management and incentive fee receivable		1,028
Deferred incentive fees		1,378
Other assets		3,515
Accounts payable		(499)
Accrued and other liabilties		(10,975)
Due from brokers		33,145
Due from affiliate		7,037
Due to brokers for securities purchased, not yet settled		(13,057)
Due to brokers		(254,237)
Net cash used in operating activities		(196,756)
Cash flows from investing activities:		
Purchases of fixed assets and leasehold improvements, net		(42,387)
Purchases of investments		(281,350)
Proceeds from dispositions of investments		353,688
Proceeds from securities sold, not yet purchased		260,033
Issuance of notes receivable to affiliates		(25,500)
Purchases of investments to cover securities sold, not yet purchased		(99,737)
Net cash provided by investing activities		164,747
Cash flows from financing activities:		
Payments on long-term debt		(7,347)
Proceeds from long-term debt		58,419
Capital contributions from minority interest investors of consolidated entities		500
Capital withdrawals by minority interest investors of consolidated entities		(7,798)
Partner contributions		7,000
Capital withdrawals by investors		(4,227)
Partner distributions		(34,991)
Net cash provided by financing activities		11,556
Net decrease in cash and cash equivalents		(20,453)
Cash and cash equivalents		
Beginning of year		66,033
End of year	$	45,580

Supplemental disclosure of cash flow informaton:		
Interest paid during the year	$	(4,330)
Taxes paid during the year		(492)
Investments received in-kind		33,833
Investments distributed in-kind		(9,690)

The accompanying notes are an integral part of these consolidated statements.

Highland Capital Management, L.P.
(A Delaware Limited Partnership)
Notes to Consolidated Financial Statements
December 31, 2015

1. Description of Business

Highland Capital Management, L.P. (the "Partnership") was formed on July 7, 1997 as a limited partnership in the state of Delaware. The Partnership is a registered investment adviser under the Investment Advisers Act of 1940 that manages collateralized loan obligations ("CLOs"), hedge funds, private equity funds, and other leveraged loan transactions that are collateralized predominately by senior secured bank debt and high-yield bonds. The Partnership and its subsidiaries make direct investments in debt, equity, and other securities in the normal course of business. The Partnership's general partner is Strand Advisors, Inc. (the "General Partner"). The Partnership is owned by an unaffiliated trust as well as affiliated trusts and personal holdings of the senior management of the Partnership.

As of December 31, 2015, the Partnership provided investment advisory services for twenty-nine CLOs, seven separate accounts, one registered investment company, one master limited partnership, and sixteen hedge fund or private equity structures, with total fee-earning assets under management of approximately $9.5 billion.

2. Summary of Significant Accounting Policies

The following is a summary of the significant accounting policies followed by the Partnership in preparation of its financial statements.

Basis of Accounting
The Partnership's consolidated financial statements have been prepared in accordance with U.S. generally accepted accounting principles ("U.S. GAAP") as set forth in the Financial Accounting Standards Board's Accounting Standards Codification.

Use of Estimates
The preparation of the consolidated financial statements in conformity with U.S. GAAP requires management to make estimates and assumptions that affect the amounts and disclosures in the consolidated financial statements. Actual results could differ from those estimates and those differences could be material.

Principles of Consolidation
The consolidated financial statements include the accounts of the Partnership and the Partnership's consolidated subsidiaries, which are comprised of (i) those entities in which it has controlling investment and has control over significant operating, financial and investing decisions of the entity, (ii) those entities in which it, as the general partner, has control over significant operating, financial and investing decisions of the entity, and (iii) variable interest entities ("VIEs") in which it is the primary beneficiary as described below.

The Partnership determines whether an entity has equity investors who lack the characteristics of a controlling financial interest or does not have sufficient equity at risk to finance its expected activities without additional subordinated financial support from other parties. If an entity has either of these characteristics, it is considered a VIE and must be consolidated by its primary beneficiary, which is the party that, along with its affiliates and de facto agents, absorbs a majority of the VIEs' expected losses or receives a majority of the expected residual returns as a result of holding variable interests.

Highland Capital Management, L.P.
(A Delaware Limited Partnership)
Notes to Consolidated Financial Statements
December 31, 2015

Consolidation of Non-Variable Interest Entities
The Partnership consolidates the following non-VIEs (along with majority owned funds: Highland Diversified Credit Fund, L.P., Highland Capital Healthcare Partners Master, LP, Highland Select Equity Fund, L.P., Highland Equity Partners, L.P., Highland Merger Arbitrage Fund, L.P., and Highland Equity Focus Fund, L.P., collectively the "Consolidated Investment Funds"), as the Partnership (or its wholly owned subsidiaries) controls the general partner of the respective entities and is responsible for the daily operations of the following entities:

- Highland Crusader Offshore Partners, L.P. ("Crusader Master"), a Bermuda exempted limited partnership that commenced operations on July 10, 2000;
- Highland CDO Opportunity Master Fund, L.P. ("CDO Master Fund"), a Bermuda limited partnership that commenced operations on November 9, 2005;
- Highland Credit Strategies Master Fund, L.P. ("Credit Strategies Master"), a Bermuda exempted limited partnership that commenced operations on August 24, 2005;
- Highland Multi Strategy Credit Fund, L.P. ("Multi Strategy Master"), formerly Highland Credit Opportunities CDO, L.P., a Delaware limited partnership that commenced operations on December 29, 2005 and changed its name on August 26, 2014;
- Highland Multi-Strategy Master Fund, L.P. ("Multi-Strat Master"), a Bermuda limited partnership that commenced operations on July 18, 2006;
- Highland Multi-Strategy Fund, L.P. ("Multi-Strat Domestic Feeder"), a Delaware limited partnership that commenced operations on July 6, 2006;
- Canopy Timberlands, L.P., a Delaware limited partnership that commenced operations on April 29, 2008;
- Highland Restoration Capital Partners Offshore, L.P. ("Restoration Offshore"), a Cayman limited partnership that commenced operations on September 2, 2008;
- Highland Restoration Capital Partners, L.P. ("Restoration Onshore"), a Delaware limited partnership that commenced operations on September 2, 2008
- BB Votorantim, Highland Infrastructure LLC ("BB Votorantim"), a Delaware limited liability company which began operations on May 29, 2014; and

Consolidation of Majority Owned Entities
The Partnership consolidates the following entities as it has a controlling majority interest:

- 100% interest in Highland Capital Special Allocation, LLC ("HCSA"), a Delaware limited liability company that commenced operations on December 21, 2006;
- 100% interest in HFP GP, LLC, a Delaware limited liability company that commenced operations on January 20, 2006;
- 100% interest in Highland Receivables Finance 1, LLC, a Delaware limited liability company that commenced operations on December 29, 2006;

Highland Capital Management, L.P.
(A Delaware Limited Partnership)
Notes to Consolidated Financial Statements
December 31, 2015

- 100% interest in Highland Capital Management (Singapore) Pte, Ltd, a company organized in the Republic of Singapore that commenced operations on April 2, 2008;
- 100% interest in Highland Capital Management Korea, Ltd., a company organized in the Republic of Korea that commenced operations on August 2, 2012;
- 100% interest in HE Capital, LLC., a Delaware limited liability company that was formed on March 22, 2007;
- 100% interest in De Kooning, Ltd, a Cayman company that was formed on December 1, 2012;
- 100% interest in Hirst, Ltd., a Cayman company that was formed on December 1, 2012;
- 100% interest in Hockney, Ltd., a Cayman company that was formed on December 1, 2012;
- 100% interest in Oldenburg, Ltd., a Cayman company that was formed on December 1, 2012;
- 99.9% interest in Penant Management, LP., a Delaware limited partnership that was formed on December 12, 2012;
- 100% interest in Semence, LLC, a Delaware limited liability company that was formed on December 16, 2013;
- 100% interest in SK Shareholder Services, LLC, a Delaware limited liability company that was formed on October 24, 2013;
- 100% interest in Pollack, Ltd., a Cayman company that was formed on December 1, 2012;
- 100% interest in Warhol, Ltd., a Cayman company that was formed on December 1, 2012;
- 100% interest in HCREF-I Holding Corp., a Delaware company that was formed on December 13, 2012;
- 100% interest in HCREF-X Holding Corp., a Delaware company that was formed on December 13, 2012;
- 100% interest in HCREF-XI Holding Corp., a Delaware company that was formed on December 13, 2012;
- 100% interest in HCREF-XII Holding Corp., a Delaware company that was formed on December 13, 2012;
- 80% interest in Highland Employee Retention Assets ("HERA"), LLC, a Delaware limited liability company that was formed on October 26th, 2009;
- 100% interest in Highland Diversified Credit Fund, LP ("Highland Offshore Partners"), a Delaware limited partnership which began operations on February 29, 2000 and was organized for the sole purpose of investing substantially all of its assets in Highland Offshore Partners, L.P;

Highland Capital Management, L.P.
(A Delaware Limited Partnership)
Notes to Consolidated Financial Statements
December 31, 2015

- 99.6% interest in Highland Select Equity Fund, LP, a Delaware limited partnership which began operations on January 1, 2002 and was organized for the purpose of investing and trading in large and small cap stocks that trade for less than intrinsic value

- 100% interest in Highland Equity Partners, LP, a Delaware limited partnership which began operations on August 1, 2013 and was organized for the purpose of investing with long-term perspective in a concentrated portfolio of stocks;

- 99.6% interest in Highland Equity Focus Fund, LP, a Delaware limited partnership which began operations on September 1, 2002 and was organized for the purpose of investing and trading in large and small cap stocks that trade for less than intrinsic value;

- 50.87% interest in Highland Capital Healthcare Partners Master, LP ("Healthcare Master"), a Cayman limited partnership which began operations on February 1, 2011 and was organized for the purpose of achieving appreciation of its assets through the investment and trading of securities, primarily by investing with a long-term perspective in a concentrated portfolio of stocks primarily in the healthcare industry;

- 100% interest in HCM Holdco, LLC, a Delaware limited liability company formed on October 27th, 2015;

- 100% interest in Heimskringla, LLC, a Nevada limited liability company formed on November 9th, 2015;

- 100% interest in Highland Merger Arbitrage Fund, LP, a Delaware limited partnership which began operations on October 16, 2014; and

- 95% interest in Estates on Maryland Holdco, LLC ("Estates on Maryland"), a Delaware limited liability company which began operations on July 24, 2015 and was organized for the purpose of owning, operating and managing real estate

All inter-partnership and intercompany accounts and transactions involving the above listed consolidated entities ("Consolidated Entities") have been eliminated in all of the aforementioned consolidating schedules. All the Consolidated Investment Funds are, for U.S. GAAP purposes, investment companies under the American Institute of Certified Public Accountants (AICPA) Audit and Accounting Guide - Investment Companies. The Partnership has retained the specialized accounting of these funds required under U.S. GAAP.

Due to the deconsolidation of certain investment funds, some prior year balances referenced within the following notes to the consolidated financial statements may not tie to prior year issued financial statements.

The following table includes a rollforward of noncontrolling interests from December 31, 2014, to December 31, 2015.

(in thousands)

Noncontrolling interest, December 31, 2014	$ 621,306
Net loss attributable to noncontrolling interest	(104,780)
Noncontrolling partner contributions	500
Noncontrolling partner distributions	(7,798)
Noncontrolling interest of newly consolidated entities	8,125
Noncontrolling interest, December 31, 2015	$ 517,353

Investment Transactions
Investment transactions are recorded on a trade date basis. Investments in securities are valued at market or fair value at the date of the financial statements with the resulting net unrealized appreciation or depreciation reflected in the Consolidated Statement of Income. Realized gains and losses on the transactions are determined based on either the first-in, first-out or specific identification method.

See Note 5 for the Partnership's fair value process and hierarchy disclosures.

Management and Incentive Fee Revenue
The Partnership recognizes revenue as earned in connection with services provided under collateral and investment management agreements. Under these agreements, the Partnership earns management fees calculated as a percentage of assets under management or net asset value. The Partnership also has an opportunity to earn additional incentive fees and incentive allocations related to certain management agreements depending ultimately on the financial performance of the underlying assets the Partnership manages. During the year ended December 31, 2015, the Partnership and its Consolidated Entities recognized management fees of approximately $54.6 million. The Partnership recognized approximately $0.1 million of depreciation on incentive fees earned prior to 2008, previously deferred under Sec. 409(A) of the Internal Revenue Code, which has been presented in *Other Income* in the Consolidated Statement of Income.

Shared Services Revenue
The Partnership recognizes revenue as earned in connection with services provided to related parties under various shared services agreements. Under these agreements, the Partnership earns fees for services including, but not limited to, back office support functions, marketing, and investment advisory services. During the year ended December 31, 2015, the Partnership and its Consolidated Entities recognized shared services revenue of approximately $12.4 million, which has been presented in *Other Income* in the Consolidated Statement of Income. See further discussion in Note 8.

Highland Capital Management, L.P.
(A Delaware Limited Partnership)
Notes to Consolidated Financial Statements
December 31, 2015

Income and Expense Recognition
Interest on currently paying debt instruments is accrued as earned and dividend income and dividends on securities sold, not yet purchased are recorded on the ex-dividend date, net of withholding taxes. In certain instances where the asset has defaulted or some amount of the interest payment is deemed uncollectable, interest is recognized when received. Discounts and premiums associated with purchases of investments are accreted and amortized to interest income, except for deep-discounted debt where ultimate collection of interest and principal may be in doubt. Such accretion/amortization is calculated on an effective-yield basis over the life of the investment. Amendment fees are recognized when agreed to by the underlying company and all settlement contingencies are met. Operating expenses, including interest on securities sold short, not yet purchased, are recorded on the accrual basis as incurred.

Income Taxes
The Partnership is not subject to federal income taxes, and therefore, no provision has been made for such taxes in the accompanying consolidated financial statements. Income taxes are the responsibility of the partners. Certain consolidated subsidiaries are subject to federal income taxes.

Certain entities that are included in these financial statements are subject to federal and/or state income taxes. Deferred tax assets and liabilities are recognized for the future tax consequences attributable to differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax bases. Deferred tax assets and liabilities are measured using enacted tax rates expected to apply to taxable income in the years in which those temporary differences are expected to be recovered or settled. The effect on deferred tax assets and liabilities of a change in tax rates is recognized in the period that includes the enactment date. See further discussion in Note 14.

Cash and Cash Equivalents
Cash and cash equivalents consist of cash held at U.S. and foreign banks, deposits with original maturities of less than 90 days, and money market funds. Cash equivalents are carried at cost, which approximates market value. At December 31, 2015, the Partnership and Consolidated Entities held cash balances at certain financial institutions in excess of the federally insured limit of $0.3 million. The Partnership and Consolidated Entities regularly monitor the credit quality of these institutions.

Restricted Cash
The Partnership and its subsidiaries are required to maintain cash balances as collateral for various financing and derivative transactions. These amounts are reported as restricted cash on the Consolidated Balance Sheet.

Notes Receivable
Notes receivable consists of secured promissory notes with maturities greater than one year. When available, the Partnership uses observable market data, including pricing on recent closed transactions to value notes. When appropriate, these notes may be valued using collateral values. Adjustments to the value may be performed in circumstances where attributes specific to the collateral exist suggesting impairment.

Fixed Assets and Leasehold Improvements
Fixed assets and leasehold improvements are carried at cost, less accumulated depreciation. Depreciation is provided using the straight-line method over the shorter of the estimated useful life of the assets or the lease term.

Due to/from Brokers
Due to and from broker balances recorded on the Consolidated Balance Sheet include liquid assets maintained with brokers and counterparties for margin account balances and the amounts due for or due from the settlement of purchase and sales transactions. Certain due to and from broker balances have been reported on a net-by-counterparty basis where, in accordance with contractual rights and the Partnership's opinion, there is a right of offset in the event of bankruptcy or default by a counterparty.

Securities Sold, Not Yet Purchased
The Partnership's Consolidated Investment Funds engage in "short sales" as part of their investment strategies. Short selling is the practice of selling securities that are borrowed from a third party. The Consolidated Investment Funds are required to return securities equivalent to those borrowed for the short sale at the lender's demand.

Pending the return of such securities, the Consolidated Investment Funds deposit with the lender as collateral the proceeds of the short sale plus additional cash. The amount of the required deposit, which earns interest, is adjusted periodically to reflect any change in the market price of the securities that the Consolidated Investment Funds are required to return to the lender. A gain (which cannot exceed the price at which the Consolidated Investment Funds sold the security short) or a loss (which theoretically could be unlimited in size) will be settled upon termination of a short sale.

Options Contracts
The Partnership and the Consolidated Entities may purchase and write call and put options to gain market exposure or to hedge investments. A call option gives the purchaser of the option the right (but not the obligation) to buy, and obligates the seller to sell (when the option is exercised), the underlying position at the exercise price at any time or at a specified time during the option period. A put option gives the holder the right to sell and obligates the writer to buy the underlying position at the exercise price at any time or at a specified time during the option period. When the Partnership or the Consolidated Entities purchase (write) an option, an amount equal to the premium paid (received) by the entity is reflected as an asset (liability). The amount of the asset (liability) is subsequently marked-to-market to reflect the current market value of the option purchased (written). When a security is purchased (or sold) through an exercise of an option, the related premium paid (or received) is added to (or deducted from) the basis of the security acquired or deducted from (or added to) the proceeds of the security sold. When an option expires (or the Partnership or the Consolidated Entities enter into a closing transaction), the entity realizes a gain or loss on the option to the extent of the premiums received or paid (or gain or loss to the extent the cost of the closing transaction exceeds the premium received or paid). Exercise of a written option could result in the Partnership or the Consolidated Entities purchasing a security at a price different from the current market value.

The Partnership and the Consolidated Entities are exposed to counterparty risk from the potential that a seller of an option contract does not sell or purchase the underlying asset as agreed under the terms of the option contract. The maximum risk of loss from counterparty risk to the Partnership and the Consolidated Entities is the greater of the fair value of its open option contracts or the premiums paid to purchase the open option contracts. The Partnership and the Consolidated Entities consider the credit risk of the intermediary counterparties to its option transactions in evaluating potential credit risk.

Margin Transactions
To obtain more investable cash, the Consolidated Entities may use various forms of leverage including purchasing securities on margin. A margin transaction consists of purchasing an investment with money loaned by a broker and agreeing to repay the broker at a later date. Interest expense on the outstanding margin balance is based on market rates at the time of the borrowing.

Withdrawals Payable
Withdrawals are recognized as liabilities, net of incentive allocations, when the amount requested in the withdrawal notice becomes fixed and determinable. This generally may occur either at the time of receipt of the notice, or on the last day of a fiscal period, depending on the nature of the request. As a result, withdrawals paid after the end of the year, but based upon year-end capital balances are reflected as withdrawals payable at December 31, 2015. Withdrawal notices received for which the dollar amount is not fixed remains in capital until the amount is determined. At December 31, 2015, the Consolidated Investment Funds had withdrawals payable of $78.7 million.

Foreign Currency Transactions
The Partnership's subsidiary HCM Singapore uses Singapore dollars as their functional currency. All foreign currency asset and liability balances are presented in U.S. dollars in the consolidated financial statements, translated using the exchange rate as of December 31, 2015. Revenues and expenses are recorded in U.S. dollars using an average exchange rate for the relative period. Foreign currency transaction gains and losses resulting from transactions outside of the functional currency of an entity are included in *Other income* on the Consolidated Statement of Income.

The Consolidated Entities do not isolate that portion of the results of operations resulting from changes in foreign exchange rates or investment or fluctuations from changes in market prices of securities held. Such fluctuations are included within the *Net realized and unrealized gains or loss from investments* on the Consolidated Statement of Income.

Life Settlement Contracts
One of the Consolidated Investment Funds, through a subsidiary, holds life settlement contracts and accounts for them using the fair value method. These contracts are recorded as a component of "Investments at fair value" on the Consolidated Balance Sheet. Realized and unrealized gains (losses) on the contracts are recorded in the Consolidated Income Statement. Cash flows relating to the purchase and sale of the contracts are recorded as a component of *Purchase of investments* and *Proceeds from dispositions of investments* on the Consolidated Statement of Cash Flows.

Financing
The Partnership and its Consolidated Entities may finance the acquisition of its investments in securities and loans through financing arrangements. The Partnership and its Consolidated Entities recognize interest expense on all borrowings on the accrual basis in the Consolidated Statement of Income.

Financial Instruments
The Partnership and its Consolidated Entities determine fair value of financial instruments as required by U.S. GAAP. The carrying amounts for cash and cash equivalents, receivables, accounts payable and accrued liabilities approximate their fair values because of their short maturities.

Partners' Capital

The Partnership agreement requires that income or loss of the Partnership be allocated to the partners in accordance with their respective partnership interests.

Recently Issued Accounting Standards and Interpretations

In February 2015, the FASB issued ASU 2015-02 "ASC Topic 810, Consolidation." ASU 2015-02 modifies the evaluation of whether limited partnerships and similar legal entities are variable interest entities or voting interest entities, eliminates the presumption that a general partner should consolidate a limited partnership, affects the consolidation analysis of reporting entities that are involved with VIEs, and provides other updates on guidance regarding consolidation. ASU 2015-02 is effective for fiscal years beginning after December 15, 2016. Management is evaluating the impact of ASU 2015-02 on the Partnership's financial statements.

3. Fixed Assets and Leasehold Improvements

Fixed assets and leasehold improvements are comprised of the following as of December 31, 2015:

(in thousands)

Land	$	5,080
Leasehold improvements		7,192
Buildings		36,890
Building improvements		580
Furniture and fixtures		3,035
Computer and equipment		2,338
Computer software		278
Accumulated depreciation		(7,683)
	$	47,710

The Partnership and its Consolidated Entities are depreciating fixed assets as follows:

	Period
Land	Not depreciated
Leasehold improvements	Lease term
Buildings	29 - 40 years
Building improvements	15 years
Furniture and fixtures	7 years
Computer and equipment	3 - 5 years
Computer software	3 years

Depreciation expense in 2015 totaled approximately $1.9 million for the Partnership and its subsidiaries.

Highland Capital Management, L.P.
(A Delaware Limited Partnership)
Notes to Consolidated Financial Statements
December 31, 2015

4. Investments

Detailed below is a summary of the Partnership and its Consolidated Entities' investments at December 31, 2015:

(in thousands)	Amortized Cost/Cost	Fair Value
Common equity securities	$ 708,716	$ 762,119
Limited partnership interests	149,460	197,154
Asset-backed securities	231,177	151,777
Life settlement contracts	437,942	147,973
Floating rate syndicated bank loans	216,938	113,785
Preferred equity	17,278	84,843
LLC interests	132,257	33,739
Closed-end mutual funds	2,329	49,500
Options contracts	15,034	9,058
Rights & warrants	50,740	8,642
Corporate bonds	203,932	3,737
American depositary receipts	226	226
Total investments	$ 2,166,029	$ 1,562,553

	Proceeds	Fair Value
Securities sold, not yet purchased	$ (195,298)	$ (198,605)

5. Fair Value of Financial Instruments

Fair Value Measurement
U.S. GAAP defines fair value as the price an entity would receive to sell an asset or pay to transfer a liability in an orderly transaction between market participants as of the measurement date. The standard requires fair value measurement techniques to reflect the assumptions market participants would use in pricing an asset or liability and, where possible, to maximize the use of observable inputs and minimize the use of unobservable inputs. It also establishes the following hierarchy that prioritizes the valuation inputs into three broad levels:

- Level 1 – Valuation based on unadjusted quoted prices in active markets for identical assets and liabilities that the Partnership and the Consolidated Entities have the ability to access as of the measurement date. Valuations utilizing Level 1 inputs do not require any degree of judgment.

- Level 2 – Valuations based on (a) quoted prices for similar instruments in active markets; (b) quoted prices for identical or similar instruments in markets that are not active that are reflective of recent market transactions; or (c) models in which all significant inputs are observable, either directly or indirectly.

- Level 3 – Valuations based on indicative quotes that do not reflect recent market transactions and models or other valuation techniques in which the inputs are unobservable and significant to the fair value measurement, which includes situations where there is little, if any, market activity for the asset or liability.

The availability of observable inputs varies among financial instruments and is affected by numerous factors, including the type of instruments, the period of time in which the instrument has been established in the marketplace, market liquidity for an asset class and other characteristics particular to a transaction. When the inputs used in a valuation model are unobservable, management is required to exercise a greater degree of judgment to determine fair value than it would for observable inputs. For certain instruments, the inputs used to measure fair value may fall into different levels of the hierarchy discussed above. In those cases, the instruments are categorized for disclosure purposes based on the lowest level of inputs that are significant to their fair value measurements.

The Partnership and Consolidated Entities use prices and inputs that are current as of the measurement dates. The Partnership also considers the counterparty's non-performance risk when measuring the fair value of its investments.

During periods of market dislocation, the ability to observe prices and inputs for certain instruments may change. These circumstances may result in the instruments being reclassified to different levels within the hierarchy over time. They also create an inherent risk in the estimation of fair value that could cause actual amounts to differ from management's estimates. Whenever possible, the Partnership and its Consolidated Entities use actual market prices or relevant observable inputs to establish the fair value of its assets and liabilities. In cases where observable inputs are not available, the Partnership and Consolidated Entities develop methodologies that provide appropriate fair value estimates. These methodologies are reviewed on a continuous basis to account for changing market conditions.

The Partnership has established policies, as described above, processes and procedures to ensure that valuation methodologies for investments and financial instruments that are categorized within all levels of the fair value hierarchy are fair and consistent. A Pricing Committee has been established to provide oversight of the valuation policies, processes and procedures, and is comprised of various personnel from the Partnership. The Pricing Committee meets monthly to review the proposed valuations for investments and financial instruments. The Pricing Committee is responsible for establishing the valuation policies and evaluating the overall fairness and consistent application of those policies.

As of December 31, 2015, the Partnership and its Consolidated Entities' investments consisted primarily of common equity securities, limited partnership interests, asset-backed securities, life settlement contracts, floating rate syndicated bank loans, preferred equity, LLC interests, closed-end mutual funds, option contracts, rights and warrants, corporate bonds, and American depositary receipts. In addition, the Consolidated Entities engage in short sale transactions. The majority of these financial instruments are not listed on national securities exchanges and management is required to use significant judgment to estimate their values.

Equity Investments
Publicly traded equities are valued at the closing price at the date of the financial statements. The fair value of equity investments that are not traded on national exchanges or through real-time quotation services are derived from methodologies that provide appropriate fair value estimates. Equity investments with quotes that are based on actual trades with a sufficient level of activity on or near the valuation date are classified as Level 2 assets. The Consolidated Entities also holds a number of private equity investments. These assets are valued using market data obtained from a third-party pricing service and/or quotes from other parties dealing in the specific assets. In the event both a reliable market quote and third-party pricing service data are not available for such assets, the Consolidated Entities will fair value the assets using various methodologies, as appropriate for individual investments, including comparable transaction multiples, comparable trading multiples, and/or discounted cash flow analysis. When utilizing comparable trading multiples, the Consolidated Entities determine comparable public companies (peers) based on industry, size, developmental stage, strategy, etc., and then calculates a trading multiple for each comparable company identified by using either a price to book ratio based on publicly available information about the underlying comparable company or by dividing the enterprise value of the comparable company by its earnings before interest, taxes, depreciation and amortization (EBITDA) or similar metrics. In certain instances, the inputs used in the calculation of the trading multiples may vary based on the industry or development stage of the company. A multiple determined by the Consolidated Entities to be within a reasonable range as calculated amongst its peers is then applied to the underlying company's price to book ratio or EBITDA (which may be normalized to adjust for certain nonrecurring events), to calculate the fair value of the underlying company. The fair value may be further adjusted for entity specific facts and circumstances.

Debt Securities
The Partnership and Consolidated Entities invest in various types of debt, which are almost exclusively valued using market data obtained from one or more third-party pricing services or brokers. In instances where a third-party pricing service does not provide pricing for a specific asset, the Partnership and Consolidated Entities first seek to obtain reliable market quotes from other parties dealing in the specific asset. Loans and bonds with quotes that are based on actual trades with a sufficient level of activity on or near the valuation date are classified as Level 2 assets. Loans and bonds that are priced using quotes derived from implied values, bid/ask prices for trades that were never consummated, or a limited amount of actual trades are classified as Level 3 assets because the inputs used by the brokers and pricing services to derive the values are not readily observable.

Absent both a reliable market quote and third-party pricing service date, the Partnership and Consolidated Entities may use various models to establish an estimated exit price. These investments are classified as Level 3 assets. Models used for debt securities are primarily based on identifying comparable assets for which market data is available and pricing the target asset consistent with the yields of the comparable assets. As circumstances require, other industry accepted techniques may be used in modeling debt assets.

Asset-Backed Securities
The Consolidated Entities invest in a variety of asset-backed securities. Asset-backed securities are generally valued based on complex cash flow models that analyze the cash flows generated by the investment's underlying assets after adjusting for expected default rates, prepayment rates, collateral quality, market liquidity among other factors. These models are then adjusted based on spreads available in the market place from various research firms, dealers, and trading activity. The Consolidated Entities generally utilize an independent third party firm to perform these calculations and provide the relevant inputs. The Consolidated Entities evaluate the results based on visible

market activity and market research. When appropriate, the Consolidated Entities may apply other techniques based on a specific asset's characteristics. Asset-backed securities with quotes that are based on actual trades with a sufficient level of activity on or near the valuation date are classified as Level 2 assets. Asset-backed securities that are priced using quotes derived from implied values, bid/ask prices for trades that were never consummated, or a limited amount of actual trades are classified as Level 3 assets because the inputs used by the brokers and pricing services to derive the values are not readily observable.

Private Equity Investments
The Partnership and Consolidated Entities hold private equity investments which resulted from the restructuring of other instruments. These assets are valued using market data obtained from a third-party pricing service and/or quotes from other parties dealing in the specific assets when available. In the event both a reliable market quote and third-party pricing service data are not available for such assets, the Partnership and Consolidated Entities will fair value the assets using various methodologies, as appropriate for individual investments, including comparable transaction multiples, comparable trading multiples, and/or discounted cash flow analysis. When utilizing comparable trading multiples, the Investment Manager determines comparable public companies (peers) based on industry, size, developmental stage, strategy, etc., and then calculates a trading multiple for each comparable company identified by using either a price to book ratio based on publically available information about the underlying comparable company or by dividing the enterprise value of the comparable company by its earnings before interest, taxes, depreciation and amortization (EBITDA) or similar metrics. In certain instances, the inputs used in the calculation of the trading multiples may vary based on the industry or development stage of the company. A multiple determined by the Investment Manager to be within a reasonable range as calculated amongst its peers is then applied to the underlying company's price to book ratio or EBITDA (which may be normalized to adjust for certain nonrecurring events), to calculate the fair value of the underlying company. The fair value may be further adjusted for entity specific facts and circumstances. Private equity investments with quotes that are based on actual trades with a sufficient level of activity on or near the valuation date are classified as Level 2 assets. Private equity investments that are priced using quotes derived from implied values, bid/ask prices for trades that were never consummated, or a limited amount of actual trades are classified as Level 3 assets because the inputs used by the brokers and pricing services to derive the values are not readily observable.

The Consolidated Entities also invest in warrant securities of publicly–traded companies. The fair value of these investments is based on an option pricing model. The option model bases warrant value on a number of factors including underlying equity price as of the valuation date, strike price, exercise date, time to expiration and volatility. Warrant investments that have observable volatility are classified as Level 2 assets. Warrant investments where volatility inputs are not observable are valued using an estimated volatility input, and are classified as Level 3 assets.

Life Settlement Contracts
Life Settlement contracts are valued using mortality tables and interest rate assumptions that are deemed by management to be appropriate for the demographic characteristics of the parties insured under the policies. Management generally utilizes an independent third party firm to perform these calculations and provide the relevant inputs. Management evaluates the results based on visible market activity and market research. Since these inputs are not readily observable, these contracts are classified as Level 3 assets.

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At December 31, 2015, the Consolidated Entities' investments in life settlement contracts consisted of the following:

(U.S. dollars in thousands, except number of policies)

Remaining Life Expectancy (in years)	Number of Policies	Face Value	Fair Value
2-3	6	$ 30,000	$ 12,617
3-4	4	25,750	10,790
4-5	10	62,000	16,854
Thereafter	94	963,918	107,712
Total	114	$ 1,081,668	$ 147,973

Limited Partnership Interests
The Partnership and its Consolidated Entities hold limited partnership interests in various entities. These assets are valued as the net asset value of the limited partnership interests because the entities utilize fair value accounting for their own financial statements. These interests are classified as Level 3 assets.

Options Contracts
The Partnership and its Consolidated Entities may purchase and write call and put options to gain market exposure or to hedge investments. A call option gives the purchaser of the option the right (but not the obligation) to buy, and obligates the seller to sell (when the option is exercised), the underlying position at the exercise price at any time or at a specified time during the option period. A put option gives the holder the right to sell and obligates the writer to buy the underlying position at the exercise price at any time or at a specified time during the option period. When the Partnership and its Consolidated Entities purchase (writes) an option, an amount equal to the premium paid (received) by the purchaser is reflected as an asset (liability). The amount of the asset (liability) is subsequently marked-to-market to reflect the current market value of the option purchased (written). When a security is purchased (or sold) through an exercise of an option, the related premium paid (or received) is added to (or deducted from) the basis of the security acquired or deducted from (or added to) the proceeds of the security sold. When an option expires (or the purchaser enters into a closing transaction), the purchaser realizes a gain or loss on the option to the extent of the premiums received or paid (or gain or loss to the extent the cost of the closing transaction exceeds the premium received or paid). Exercise of a written option could result in the Partnership and its Consolidated Entities purchasing a security at a price different from the current market value.

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The Partnership categorizes investments recorded at fair value in accordance with the hierarchy established under U.S. GAAP. A majority of the Consolidated Entities investments and derivatives at December 31, 2015 are classified as Level 3 positions due to the absence of active markets with quoted prices for identical or similar investments. The following table provides a summary of the financial instruments recorded at fair value on a recurring basis by level within the hierarchy as of December 31, 2015:

(in thousands)

Assets	**Level 1**	**Level 2**	**Level 3**	**Total Fair Value at 12/31/15**
Common equity securities	$ 273,431	$ 292,688	$ 196,002	$ 762,121
Limited partnership interests	-	-	197,154	197,154
Asset-backed securities	-	144,167	7,610	151,777
Life settlement contracts	-	-	147,973	147,973
Floating rate syndicated bank loans	-	10,646	103,138	113,784
Preferred equity	60,433	20,004	4,405	84,842
LLC interests	-	5,794	27,945	33,739
Closed-end mutual funds	49,500	-	-	49,500
Options	9,058	-	-	9,058
Rights & warrants	198	579	7,865	8,642
Corporate bonds	363	3,374	-	3,737
American depository receipts	226	-	-	226
Total	$ 393,209	$ 477,252	$ 692,092	$ 1,562,553
Liabilities				
Common stock & Options sold short	$ 198,605	$ -	-	$ 198,605

The classification of a financial instrument within Level 3 is based on the significance of the unobservable inputs to the overall fair value measurement. The following table provides a roll forward of the investments classified within Level 3 for the year ended December 31, 2015:

(in thousands)

	Total Fair Value at December 31, 2014	Purchases	Sales and Maturities	Transfers Into Level 3	Transfers Out of Level 3	Net Realized Gains / (Losses)	Net Unrealized Gains / (Losses)	Total Fair Value at December 31, 2015
Common equity securities	$ 220,466	$ 2	$ (17,125)	$ 14,605	$ (13,041)	$ 7,161	$ (16,066)	$ 196,002
Limited partnership interests	205,900	1,043	(3,896)	-	(3,974)	129	(2,048)	197,154
Life settlement contracts	114,640	41,422	(32,149)	-	-	10,203	13,857	147,973
Floating rate syndicated bank loans	111,850	4,205	(7,381)	1,043	(7,256)	159	518	103,138
LLC interests	22,551	1,685	(80)	1,918	-	-	1,871	27,945
Rights & w arrants	5,962	-	-	-	-	-	1,903	7,865
Asset-backed securities	9,227	-	(502)	16	-	-	(1,131)	7,610
Preferred equity	7,030	-	-	-	-	-	(2,625)	4,405
Corporate bonds	77	-	-	-	-	-	(77)	-
	$ 697,703	**$ 48,357**	**$ (61,133)**	**$ 17,582**	**$ (24,271)**	**$ 17,652**	**$ (3,798)**	**$ 692,092**

Transfers from Level 2 to Level 3 or from Level 3 to Level 2 are due to changes in observable pricing inputs as compared to the prior year. No significant transfers between Level 1 or Level 2 fair value measurements occurred during the year ended December 31, 2015.

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All net realized and unrealized gains and losses in the tables above are reflected in the accompanying Consolidated Income Statement. Approximately $8.9 million of the net unrealized gains presented in the table above relate to investments held as of December 31, 2015.

Transfers out of Level 3 are recognized at the beginning of the period. The transfers out of Level 3 at December 31, 2015 were due to increases in market activity (e.g. frequency of trades) or the availability of a market clearing broker quote.

The following page includes a summary of significant unobservable inputs used in the fair valuations of assets and liabilities categorized within Level 3 of the fair value hierarchy.

(Ending balance in thousands)

Category	Ending Balance at 12/31/2015	Valuation Technique	Unobservable Inputs	Input Value(s)
Common equity securities	$ 196,002	Multiples analysis	Multiple of EBITDA	2.75x - 10.0x
			Price/MHz-PoP	$0.13 - $0.50
			Liquidity Discount	25 - 30%
			Discount for Lack of Marketability	15 - 25%
			Credit Specific Discount	20%
		Discounted Cash Flow	Discount Rate	8 - 16%
			Terminal Multiple	3.3x - 7.5x
		Black-Scholes Option Model	Holding Period	.75 - 2.67 Yrs
			Volatility	15 - 20%
		Transaction recovery analysis	N/A	N/A
Limited partnership investments	197,154	Appraisal	N/A	N/A
		Net Asset Value of Underlying Assets and Liabilities	Various models including liquidation analysis, and third-party pricing vendor	N/A
Life Settlement Contracts	147,973	Net Asset Value of Underlying Assets	Discount rate	17 - 24%
Bank loans	103,138	Multiples analysis	Multiple of EBITDA	3.5x - 7.25x
			Multiple of Revenue	.4x - .5x
		Discounted Cash Flow	Discount rate	15 - 15.5%
			Terminal Multiple	3.75x - 6.5x
			Spread Adjustment	1.7 - 2.3%
		Transaction recovery analysis	Discount rate	11%
		Adjusted appraisal	Minority Discount	25%
		Third-party pricing vendor	N/A	N/A
LLC interests	27,945	Discounted Cash Flow	PW Profile of Reserve Categories	PV-8 - PV-20
		Adjusted appraisal	Minority Discount	25%
		Third-party pricing vendor	N/A	N/A
		Appraisal	N/A	N/A
Rights & Warrants	7,865	Multiples analysis	Multiple of EBITDA	8.0x - 10.0x
		Discounted Cash Flow	Discount Rate	12 - 14%
			Terminal Multiple	7.5x
Asset-backed securities	7,610	Third-party pricing vendor	N/A	N/A
		Look-through analysis of underlying assets	Various models including liquidation analysis	N/A
		Debt-yield	Credit Specific Risk	5%
			Liquidity	1%
Preferred equity	4,405	Recovery analysis	Scenario Probabilities	Various
Total	$ 692,092			

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6. Securities Sold under Agreements to Repurchase

Transactions involving securities sold under agreements to repurchase are treated as collateralized financial transactions, and are recorded at their fair market values. In addition, interest earned on the securities is included in interest receivable, and interest accrued on amounts borrowed is included in interest payable. For the year ended December 31, 3015, Multi Strategy Master expensed approximately $0.7 million for interest charged on the amounts borrowed for repurchase agreements.

In connection with transactions in agreements to repurchase, it is Multi Strategy Master's policy that its counterparty take possession of the underlying collateral securities, the fair value of which exceeds the principal amount of the agreements to repurchase, including accrued interest, at all times. If the counterparty defaults under agreements to resell, and the fair value of the collateral declines, the realization of the collateral by Multi Strategy Master may be delayed or limited.

To reduce counterparty credit risk with respect to repurchase agreements, Multi Strategy Master has entered into a master repurchase agreement, which allows Multi Strategy Master to make (or to have an entitlement to receive) a single net payment in the event of default (close-out netting) for outstanding payables and receivables with respect to repurchase agreements with the counterparty.

The master repurchase agreement includes credit related contingent features which allow the counterparty to terminate the agreement prior to maturity in the event Multi Strategy Master's net assets decline by a stated percentage or Multi Strategy Master fails to meet the terms of the agreement, which would cause the Master Partnership to accelerate payment of any net liability owed to the counterparty.

For financial reporting purposes, Multi Strategy Master does not offset repurchase agreement assets and liabilities that are subject to netting arrangements in the Consolidated Balance Sheet. Bankruptcy or insolvency laws of a particular jurisdiction may impose restrictions on or prohibitions against the right of offset in bankruptcy, insolvency or other events.

Collateral terms are contract specific for repurchase agreements. For repurchase agreements traded under master repurchase agreements, the collateral requirements are typically calculated by netting the mark to market amount for each transaction under such agreement and comparing that to the value of any collateral currently pledged by Multi Strategy Master or the counterparty.

For financial reporting purposes, cash collateral that has been pledged to cover obligations of Multi Strategy Master, if any, is reported in due to/from brokers on the Consolidated Balance Sheet. Generally, the amount of collateral due from or to a party must exceed a minimum transfer amount threshold before a transfer has to be made. To the extent amounts due to Multi Strategy Master from its counterparties are not fully collateralized, contractually or otherwise, Multi Strategy Master bears the risk of loss from counterparty non-performance.

At December 31, 2015, securities with a fair value of approximately $61.2 million, which are included in investments in securities on the Consolidated Balance Sheet, were pledged to collateralize securities sold under agreements to repurchase.

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The following table presents, by counterparty, Multi Strategy Master's liabilities net of the related collateral pledged by Multi Strategy Master at December 31, 2015:

(U.S. dollars in thousands)

Counterparty	Decription	Class of Related Collateral	Gross Value of Liability	Net Amount Due to Counterparty	Financial Instruments	Cash Collateral Pledged	Net Exposure After Collateral	Interest Rate	Maturity
Mizuho	Repurchase agreement	Asset-backed securities	$ 10,147	$ 10,147	$ (10,147)	$ -	$ -	2.10%	10/14/2022
Mizuho	Repurchase agreement	Asset-backed securities	30,215	30,215	(30,215)	$ -	$ -	1.10%	11/1/2026
Mizuho	Repurchase agreement	Asset-backed securities	2,735	2,735	(2,735)	$ -	$ -	2.10%	5/1/2027
Mizuho	Repurchase agreement	Asset-backed securities	2,508	2,508	(2,508)	$ -	$ -	2.10%	11/1/2026
Jefferies LLC	Repurchase agreement	Asset-backed securities	2,148	2,148	(2,148)	$ -	$ -	2.74%	11/1/2026
			$ 47,753	$ 47,753	$ (47,753)				

7. Financial Instruments with Concentration of Credit and Other Risks

Financial Instruments

The Partnership and its Consolidated Entities' investments include, among other things, equity securities, debt securities (both investment and non-investment grade) and bank loans. The Consolidated Entities may also invest in derivative instruments, including total return and credit default swaps. Investments in these derivative instruments throughout the year subject the Consolidated Entities to off-balance sheet market risk, where changes in the market or fair value of the financial instruments underlying the derivative instruments may be in excess of the amounts recognized in the Consolidated Balance Sheet.

Market Risk

Market risk represents the potential loss that may be incurred by the Partnership and its Consolidated Entities due to a change in the market value of its investments or the value of the investments underlying swap agreements. The Partnership and its Consolidated Entities' exposure to market risk is affected by a number of macroeconomic factors, such as interest rates, availability of credit, inflation rates, economic uncertainty and changes in laws and regulations. These factors may affect the level and volatility of securities prices and the liquidity of the Partnership and its Consolidated Entities investments. Volatility or illiquidity could impair the Partnership and its Consolidated Entities performance or result in losses. The Partnership and its Consolidated Entities may maintain substantial trading positions that can be adversely affected by the level of volatility in the financial markets. The performance of life settlement contracts may be adversely impacted by the under estimation of mortality and other rates.

Credit Risk

Credit risk is the potential loss the Partnership and its Consolidated Entities may incur as a result of the failure of a counterparty or an issuer to make payments according to the terms of a contract. Because the Consolidated Entities enter into over-the-counter derivatives such as swaps, it is exposed to the credit risk of their counterparties. To limit the credit risk associated with such transactions, the Consolidated Entities execute transactions with financial institutions that the Investment Manager believes to be financially viable.

Liquidity Risk
The Consolidated Entities' limited partner interests have not been registered under the Securities Act of 1933 or any other applicable securities law. There is no public market for the interests, and neither the Consolidated Entities nor their manager expects such a market to develop.

Business Risk
The Partnership provides advisory services to the Consolidated Entities. Consolidated Entities could be materially affected by the liquidity, credit and other events of the Partnership.

High Yield Bonds and Loans
The Partnership and its Consolidated Entities' investment portfolios consist of floating rate syndicated bank loans and fixed income securities that are not listed on a national securities exchange. These investments trade in a limited market and it may not be possible to immediately liquidate them if needed. In addition, certain of the Partnership and its Consolidated Entities' investments have resale or transfer restrictions that further reduce their liquidity. Because of the inherent uncertainty of these investments, the Investment Manager's best estimates may differ significantly from values that would have been used had a broader market for the investments existed.

When the Partnership and its Consolidated Entities purchase a senior secured syndicated bank loan, it enters into a contractual relationship directly with the corporate borrower, and as such, is exposed to certain degrees of risk, including interest rate risk, market risk and the potential non-payment of principal and interest, including default or bankruptcy of the corporate borrower or early payment by the corporate borrower. Typically, senior secured syndicated bank loans are secured by the assets of the corporate borrower and the Partnership and its Consolidated Entities have a policy of regularly reviewing the adequacy of each corporate borrower's collateral.

The Partnership and its Consolidated Entities may invest in high-yield bonds that have been assigned lower rating categories or are not rated by the various credit rating agencies. Bonds in the lower rating categories are generally considered to be speculative with respect to the issuer's ability to repay principal and pay interest. They are also subject to greater risks than bonds with higher ratings in the case of deterioration of general economic conditions. Due to these risks, the yields and prices of lower-rated bonds are generally volatile, and the market for them is limited, which may affect the ability to liquidate them if needed.

Debt Obligations
The Partnership and its Consolidated Entities' investment portfolio consists of collateralized loan obligations that are not listed on a national securities exchange. These investments trade in a limited market and it may not be possible to immediately liquidate them if needed. Because of the inherent uncertainty of these investments, the Partnership's best estimates may differ significantly from values that would have been used had broader market for the investments existed.

Distressed Investments
A portion of the high yield corporate bonds and senior secured syndicated bank loans in which the Partnership and its Consolidated Entities invest have been issued by distressed companies in an unstable financial condition that have experienced poor operating performance and may be involved in bankruptcy or other reorganization and liquidation proceedings. These investments have substantial inherent risks. Many of these distressed companies are likely to have significantly leveraged capital structures, which make them highly sensitive to declines in revenue and to increases in expenses and interest rates. The leveraged capital structure also exposes the

companies to adverse economic factors, including macroeconomic conditions, which may affect their ability to repay borrowed amounts on schedule.

Limited Diversification
The Investment Manager attempts to diversify the Consolidated Entities' investments. However, the Consolidated Entities' portfolios could become significantly concentrated in any one issuer, industry, sector strategy, country or geographic region, and such concentration of credit risk may increase the losses suffered by the Consolidated Entities. In addition, it is possible that the Investment Manager may select investments that are concentrated in certain classes of financial instruments. This limited diversity could expose the Consolidated Entities to losses that are disproportionate to market movements as a whole.

At December 31, 2015, the Consolidated Entities' investments were predominantly concentrated in the United States and Cayman Islands.

Exit Difficulties
The Partnership and its Consolidated Entities cannot assure investors that it will be able to exit its investments by sale or other disposition at attractive prices, if at all. The mergers and acquisitions and public securities markets are highly cyclical, which means that the Consolidated Entities' investments, even its best performing investments, may be illiquid for extended periods of time despite the Consolidated Entities' efforts to identify attractive exit opportunities. Additionally, a significant portion of the Consolidated Entities' assets at any time will likely consist of debt obligations and other securities that are thinly-traded, for which no market exists and/or are restricted as to their transferability under applicable law and/or documents governing particular transactions of the Consolidated Entities. In some cases, the Consolidated Entities may be unable to realize an investment prior to the date on which the Consolidated Entities are scheduled to terminate and/or have to sell or otherwise dispose of one or more investments on disadvantageous terms as a result of the Consolidated Entities' termination, or distribute such investments in kind.

Custody Risk
The clearing operations for the Partnership and its Consolidated Entities are provided by major financial institutions. In addition, all of the Partnership and its Consolidated Entities' cash and investments are held with banks or brokerage firms, which have worldwide custody facilities and are members of all major securities exchanges. The Partnership or its Consolidated Entities may lose all or a portion of the assets held by these banks or brokerage firms if they become insolvent or fail to perform pursuant to the terms of their obligations. While both the U.S. Bankruptcy Code and the Securities Investor Protection Act of 1970 seek to protect customer property in the event of a broker-dealer's failure, insolvency or liquidation, the Partnership and its Consolidated Entities might be unable to recover the full value of their assets or incur losses due to their assets being unavailable for a period of time.

Leverage Risk
The Consolidated Entities may borrow funds from brokers, banks and other lenders to finance its trading operations. The use of leverage can, in certain circumstances, magnify the losses to which the Consolidated Entities' investment portfolio may be subject. The use of margin and short-term borrowings creates several risks for the Consolidated Entities. If the value of the Consolidated Entities' securities fall below the margin level required by a counterparty, additional margin deposits would be required. If the Consolidated Entities are unable to satisfy a margin call, the counterparty could liquidate the Consolidated Entities' positions in some or all of the financial instruments that are in the account at the prime broker and cause the Consolidated Entities to incur significant losses. In addition, to the extent the Consolidated Entities have posted excess collateral for margin

transactions, there is a risk that the counterparty will fail to fulfill its obligation to return the full value of that collateral.

The failure to satisfy a margin call, or the occurrence of other material defaults under margin or other financing agreements, may trigger cross-defaults under the Consolidated Entities' agreements with other brokers, lenders, clearing firms or other counterparties, multiplying the adverse impact to the Consolidated Entities. In addition, because the use of leverage allows the Consolidated Entities to control positions worth significantly more than its investment in those positions, the amount that the Consolidated Entities may lose in the event of adverse price movements is high in relation to the amount of their investment.

In the event of a sudden drop in the value of the Consolidated Entities' assets, the Consolidated Entities may not be able to liquidate assets quickly enough to satisfy their margin or collateral requirements. As a result, the Consolidated Entities may become subject to claims of financial intermediaries, and such claims could exceed the value of its assets. The banks and dealers that provide financing to the Consolidated Entities have the ability to apply discretionary margin, haircut, and financing and collateral valuation policies. Changes by banks and dealers in any of the foregoing may result in large margin calls, loss of financing and forced liquidations of positions and disadvantageous prices.

Foreign Currency Risk
The Partnership and its Consolidated Entities may invest in securities or maintain cash denominated in currencies other than the U.S. dollar. The Partnership and its Consolidated Entities are exposed to risk that the exchange rate of the U.S. dollar relative to other currencies may change in a manner that has an adverse effect on the reported value of the Partnership and its Consolidated Entities' assets and liabilities denominated in currencies other than the U.S. dollar.

Concentration of Investments
At December 31, 2015, the Consolidated Entities' investments and derivative contracts were predominantly concentrated in the United States and Cayman Islands and across several industries.

Wind-Down Risk
The ultimate proceeds that certain Consolidated Entities are able to realize on the sale of its investments will directly affect the amounts that the investors in the feeder funds are able to redeem in connection with the wind down process. These amounts may differ materially from the partners' capital balances as of December 31, 2015.

Litigation Risk
The Partnership and its Consolidated Entities are periodically subject to legal actions arising from the ordinary course of business. The ultimate outcome of these cases is inherently uncertain and could result in additional losses to the Partnership and/or its Consolidated Entities. Refer to Note 15 for a discussion of open litigation.

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8. Related Party Transactions

Investments Under Common Control
Certain members of the Partnership's management serve as members on the Boards of Directors for some of the companies with which it invests. Because these individuals participate in the management of these companies, investments held by the Partnership and its subsidiaries in these companies may, from time to time, not be freely tradable. As of December 31, 2015, the Partnership and its Consolidated Entities held the following investments in these companies:

(in thousands)

Issuer	Type of Investment	Fair Value
American Banknote Corporation	Common Equity	$ 6,928
American Home Patient	Common Equity	1,012
American Home Patient	Term Loan	13,463
Blackwell BMC, LLC	Common Equity	8,623
Canopy Timberlands, L.P.	Limited Partnership Interest	78,528
Canopy Timberlands Spout Springs, L.P.	Limited Partnership Interest	28,702
Carey International, Inc	Term Loan	10,160
Carey Holdings, Inc.	Common Stock	52
CCS Medical, Inc.	Loan	22,451
CCS Medical, Inc.	Common Equity	6
Cornerstone Healthcare Group Holding, Inc.	Common Equity	73,724
Euramax International Holdings B.V.	Warrants	887
Euramax International Holdings B.V.	Term Loan	31,768
Euramax International Holdings B.V.	Common Stock	2,803
Ginn LA Resorts Holdings, LLC	Term Loan	512
Ginn LA Conduit Lender, Inc.	First Lien Tranche A Credit-Linked Deposit	178
Ginn LA Conduit Lender, Inc.	First Lien Tranche B Term Loan	443
Highland Capital Healthcare Partners, L.P.	Limited Partnership Interest	3,680
Highland Long/Short Equity Fund	Mutual Fund	263
Highland Long/Short Healthcare Fund	Mutual Fund	2,843
Highland Park CDO 2006-1A	Asset Backed Debt	756
JHT Holdings Inc.	Term Loan	19,780
JHT Holdings Inc.	Revolving Term Loan	(25)
JHT Holdings Inc.	Common Stock	660
Las Vegas Land Holding	LLC Units	16
Metro-Goldwyn-Mayer, Inc.	Common Stock	312,691
NexPoint Credit Strategies Fund	Closed-End Mutual Fund	7,356
NexPoint Residential Trust, Inc.	Publicly-traded REIT	16,700
Nex-Tech Aerospace Holdings, Inc.	Common Equity	1,936
Romacorp Restaurant Holdings, Inc.	Common Equity	174
Terrestar	Common Equity	57,598
Trussway Industries, Inc.	Common Equity	16,425
Turtle Bay Holdings, LLC	Equity Units	8,655

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Certain investments are issued and managed by affiliates of the Partnership. These investments are subject to the same valuation policies and procedures as similar investments within the same level of the fair value hierarchy. As of December 31, 2015, the Partnership and the Consolidated Entities held the following investments that were issued and managed by affiliates of the Partnership: *(in thousands)*

Issuer	Type of Investment	Fair Value
ACIS 2013-2A	Asset backed debt	$ 28,100
ACIS 2013-2A	Asset backed equity	23,800
ACIS 2014-5A	Asset backed debt	41,342
ACIS 2015-6A	Asset backed equity	10,830
ACIS 2015-6A	Asset backed debt	4,180
BB Highland Floating Rate Fund I	Floating rate equity	4,596
BB Votorantim Highland Infrastructure LLC	Common equity	1,328
Greenbriar CLO, Ltd.	Asset backed equity	15,327
Highland Capital Healthcare Fund	Limited Partnership interest	3,680
Highland Energy MLP Fund	Mutual fund shares	1,871
Highland Floating Rate Opportunities Fund	Mutual fund shares	654
Highland Global Allocation Fund	Closed-end mutual fund shares	1,603
Highland Opportunistic Credit Fund	Mutual fund shares	3,802
Highland Park CDO, Ltd. - 1A	Asset backed debt tranche	33
Highland Park CDO, Ltd. - 1X	Asset backed equity	2,100
Highland Multi Strategy Fund	Limited Partnership interest	22,314
Highland Long/Short Equity Fund	Mutual fund shares	263
Highland Long/Short Healthcare Fund	Mutual fund shares	2,843
NexPoint Credit Strategies Fund	Closed-end mutual fund shares	7,356
PAMCO 1997 - 1A	Asset backed debt tranche	692
Rockwall Investors Corp.	Asset backed equity	1,880
Southfork CLO, Ltd.	Asset backed equity	7,496
Valhalla CLO, Ltd.	Asset backed debt	1,480
Westchester CLO, Ltd	Asset backed equity	4,125

Expenses Reimbursable by Funds Managed
In the normal course of business, the Partnership typically pays invoices it receives from vendors for various services provided to the investment funds the Partnership manages. A summary of these eligible reimbursable expenses are then submitted to the trustee/administrator for each respective fund, typically on a quarterly basis, and the Partnership receives payment as reimbursement for paying the invoices on behalf of the respective funds. As of December 31, 2015, approximately $8.6 million in reimbursable expenses were due from various affiliated funds and entities for these eligible expenses, and is included in *Other Assets* in the accompanying Consolidated Balance Sheet.

Accounts Held with Related Party
During the year the Partnership and its Consolidated Entities maintained accounts at NexBank, SSB ("NexBank"), a related party by way of common control. As of December 31, 2015, balances in the accounts were approximately $53.0 million, a portion of which exceeds Federal deposit insurance limits.

Investment in Affiliated Loans
During the year, certain subsidiaries of the Partnership were invested in several bank loans in which NexBank was the agent bank. Interest earned on the loans during the year was approximately $10.9 million. At December 31, 2015, these subsidiaries were invested in NexBank agented loans with commitments and market values totaling approximately $105.0 million and $82.1 million, respectively.

Affiliated Transactions
During the years ended December 31, 2014, and December 31, 2015, Highland Capital Management Fund Advisors, L.P. ("HCMFA") issued promissory notes to the Partnership in the amount of $6.0 million. The notes accrue interest at rates ranging from 1.97% - 2.82%, the mid-term applicable federal rate as promulgated by the Internal Revenue Service. As of December 31, 2015 total interest and principal due on the promissory notes was approximately $6.1 million and is payable on demand. The Partnership will not demand payment on amounts owed prior to May 31, 2017. The fair value of the Partnership's outstanding notes receivable approximates the carrying value of the notes receivable.

During the years ended December 31, 2014, and December 31, 2015, NexPoint Advisors, L.P. ("NexPoint") issued promissory notes to the Partnership in the aggregate amount of $15.8 million. A revolving note was established with NexPoint on July 22, 2015. This allowed for an initial advance on principal of $1.3 million. As of December 31, 2015, the total principal outstanding on the revolving note was approximately $4.0 million. Both the notes and revolving line of credit accrue interest at a rate of 6.0%. As of December 31, 2015 total interest and principal due on the promissory notes was approximately $21.1 million and is payable on demand. The Partnership will not demand payment on amounts owed prior to May 31, 2017. The fair value of the Partnership's outstanding notes receivable approximates the carrying value of the notes receivable.

During the years ended December 31, 2014, and December 31, 2015, HCRE Partners, LLC ("HCRE") issued promissory notes to the Partnership in the aggregate amount of $13.0 million. The notes accrue interest at a rate of 8.0%. As of December 31, 2015 total interest and principal due on the promissory notes was approximately $13.3 million and is payable on demand. The fair value of the Partnership's outstanding notes receivable approximates the carrying value of the notes receivable.

During the years ended December 31, 2014, and December 31, 2015, Highland Capital Management Services, Inc. ("HCMSI") issued promissory notes to the Partnership in the aggregate amount of $23.0 million. The notes accrue interest at rates ranging from 2.60% - 3.12%, the average long-term applicable federal rate as promulgated by the Internal Revenue Service. During the years ended December 31, 2014, and December 31, 2015, HCMSI repaid $8.1 million of principal. As of December 31, 2015 total interest and principal due on the promissory notes was approximately $14.9 million and is payable on demand. The fair value of the Partnership's outstanding notes receivable approximates the carrying value of the notes receivable.

Services Performed by or on Behalf of an Affiliate
In March 2007, Highland Capital of New York, Inc. a New York corporation ("Highland New York"), was formed and has performed marketing services for the Partnership and its affiliates in connection with the Partnership's investment management and advising business, including, but not limited to, assisting Highland Capital in the marketing and sales of interests in investment pools for which Highland Capital serves as the investment manager. The Partnership is charged a marketing services fee for the services that Highland New York performs on the Partnership's behalf. For the

year ended December 31, 2015, total marketing fee expense charged to the Partnership by Highland New York was approximately $5.8 million and as of December 31, 2015, amounts owed to Highland New York for services rendered was approximately $3.1 million.

Effective December 15, 2011, the Partnership commenced performing services on behalf of HCMFA, a Delaware limited partnership and registered investment advisor. Services include, but are not limited to compliance, accounting, human resources, IT and other back office support functions. The Partnership charges a fee for the services performed. For the year ended December 31, 2015, the total fee charged by the Partnership to HCMFA was approximately $2.2 million and as of December 31, 2015, amounts owed to the Partnership by HCMFA for services rendered were approximately $0.2 million.

Effective July 29, 2010, the Partnership commenced performing services on behalf of Falcon E&P Opportunities GP, LLC. ("Falcon"), a Delaware limited liability company and registered investment advisor. Services include, but are not limited to compliance, accounting, human resources, IT and other back office support functions. The Partnership charges a fee for the services performed. For the year ended December 31, 2015, the total fee charged by the Partnership to Falcon was approximately $0.4 million and as of December 31, 2015, no amounts were owed to the Partnership by Falcon for services rendered.

Effective January 1, 2011, the Partnership commenced performing services on behalf of Acis Capital Management, L.P. ("Acis"), a Delaware limited partnership and registered investment advisor. Services include, but are not limited to compliance, accounting, human resources, IT and other back office support functions. The Partnership charges a fee for the services performed. For the year ended December 31, 2015, the total fee charged by the Partnership to Acis was approximately $6.1 million and as of December 31, 2015, no amounts were owed to the Partnership by Acis for services rendered.

Effective January 1, 2013, the Partnership commenced performing services on behalf of NexPoint. Services include, but are not limited to compliance, accounting, human resources, IT and other back office support functions. The Partnership charges a fee for the services performed. For the year ended December 31, 2015, the total fee charged by the Partnership to NexPoint was approximately $1.0 million and as of December 31, 2015, no amounts were owed to the Partnership by NexPoint for services rendered.

Effective September 24, 2013, the Partnership commenced performing services on behalf of NexBank Capital, Inc. ("NexBank Capital"), financial services company. Services include, but are not limited to compliance, accounting, human resources, IT and other back office support functions. The Partnership charges a fee for the services performed. For the year ended December 31, 2015, the total fee charged by the Partnership to NexBank Capital was approximately $0.1 million and as of December 31, 2015, no amounts were owed to the Partnership by NexBank Capital for services rendered.

Effective September 24, 2013, the Partnership commenced performing services on behalf of NexBank SSB, ("NexBank"), a Texas savings bank. Services include investment advisory services. The Partnership charges a fee for the services performed. For the year ended December 31, 2015, the total fee charged by the Partnership to NexBank was approximately $0.8 million and as of December 31, 2015, amounts owed to the Partnership by NexBank for services rendered were approximately $0.2 million.

Effective April 1, 2015, the Partnership commenced performing services on behalf of NexPoint Real Estate Advisors, L.P. ("NREA"). Services include, but are not limited to compliance, accounting, human resources, IT and other back office support functions. NREA is charged a fee for the services provided. For the year ended December 31, 2015, the total fee charged to NREA by the Partnership was approximately $0.4 million and as of December 31, 2015, amounts owed by NREA to the Partnership for services rendered were approximately $0.4 million.

On April 20, 2016, to be effective as of January 1, 2008 the Partnership commenced performing services on behalf of Markham Fine Jewelers, L.P. ("Markham"). Services include, but are not limited to management oversight and planning services, and operational support, in each case, on an ad hoc/as needed basis. Markham is charged a fee for the services provided. For the year ended December 31, 2015, the total fee charged to Markham by the Partnership was approximately $1.9 million and as of December 31, 2015, amounts owed by Markham to the Partnership for services rendered were approximately $1.9 million.

Effective January 1, 2015, the Partnership commenced receiving services from Acis. Services include providing certain subadvisory services to the Partnership, to assist the Partnership with its services provided under the Investment Management Agreements with Bandera Strategic Credit Partners I, L.P. and Multi Strategy Master. For the year ended December 31, 2015, the total fee charged by Acis to the Partnership was $0.4 million and as of December 31, 2015, amounts owed by the Partnership to Acis for services received were approximately $0.1 million.

9. Note Receivable

On December 21, 2015, the Partnership entered into a contribution agreement (the "Contribution Agreement") with an unaffiliated trust. Pursuant to the Contribution Agreement a note (the "Note Receivable") in the amount of $63.0 million was due to the Partnership. The Note Receivable will mature on December 21, 2030. The Note Receivable accrues interest at a rate of 2.61% per annum. Accrued interest is paid-in-kind, with principal receipts occurring pursuant to a note amortization schedule, with such annual receipts commencing December 21, 2019.

10. Debt and Notes Payable

Promissory Note

On December 31, 2014, the Partnership entered in to a promissory note with an investor in the amount of $18.6 million, in exchange for 100% of its LP interest in Highland Multi Strategy Credit Fund, L.P. The Partnership must pay one-third of the initial note amount, plus accumulated interest on each of the first three anniversaries of the note. The promissory note will mature on December 31, 2017. The promissory note accrues interest at a rate of 3.00% per annum. The promissory note is collateralized by limited partnership interest in Multi Strategy Master. As of December 31, 2015 the remaining principal payable on the promissory note was $12.4 million. The fair value of the Partnership's outstanding notes payable approximates the carrying value of the notes payable.

On August 5, 2015, the Partnership entered in to a bridge credit agreement with KeyBank, National Association ("KeyBank") in the amount of $10.0 million. The term loan will mature on February 4, 2016. The term loan accrues interest at the Daily Libor plus 3.00%. Accrued interest shall be paid monthly. The term loan is collateralized by the real property owned by Estates on Maryland. Subsequent to year end, the maturity date was extended to April 7, 2017, as discussed in Note 17. The fair value of the Partnership's outstanding notes payable approximates the carrying value of the notes payable.

On August 17, 2015, the Partnership entered in to a promissory note with Frontier State Bank in the amount of $9.5 million. The promissory note will mature on August 17, 2018. The promissory note accrues interest at the 3 month LIBOR rate plus 4.75%, adjusted each date of change, per annum. Accrued interest shall be paid quarterly. The promissory note is collateralized by shares of voting common stock of MGM Holdings, Inc. As of December 31, 2015 the remaining principal payable on the promissory note was 9.4 million. The fair value of the Partnership's outstanding notes payable approximates the carrying value of the notes payable.

On August 28, 2015, Highland Select Equity Partnership, L.P. ("Select") entered in to a promissory note with Eagle Sky Foundation, Inc. in the amount of $12.0 million. The promissory note accrues interest at 12.00% for the first twelve months, 10.00% for the following twelve months, and 8.00% for the last twelve months. Select must pay one-twelfth of the initial note amount, plus accumulated interest on a quarterly basis. The promissory note will mature on August 28, 2018. The promissory note is collateralized by shares of voting common stock of MGM Holdings, Inc. As of December 31, 2015 the remaining principal payable on the promissory note was $11.0 million. The fair value of Select's outstanding notes payable approximates the carrying value of the notes payable.

On September 23, 2015, the Partnership received a master securities loan agreement (the "Securities Agreement") from The Get Good Non-Exempt Trust #2 ("Get Good") in the amount of $6.7 million for securities borrowed. The Securities Agreement accrues interest at a rate of 0.54%, the short term Applicable Federal Rate. The fair value of the loan will fluctuate with the fair value of the borrowed securities, throughout the term of the Securities Agreement. As of December 31, 2015 the fair value of the loan was $6.9 million. The fair value of the Partnership's securities loan approximates the carrying value of the securities loan.

On August 5, 2015, Estates on Maryland entered in to a loan and security agreement with KeyBank in the amount of $26.9 million. The loan will mature on September 1, 2020. The loan accrues interest at a rate of 4.00% above the 1 month LIBOR rate in effect from time to time, not to exceed the maximum interest rate allowed by applicable law. Accrued interest shall be paid monthly. The loan is collateralized by the mortgaged property. The fair value of Estates on Maryland's outstanding notes payable approximates the carrying value of the notes payable.

11. Due to Broker

As of December 31, 2015 the due to broker balance of approximately $485.2 million represents approximately $240.4 million payable to financing counterparties for margin transactions.

12. Commitments

Contracts in the Normal Course of Business
In the normal course of business the Partnership and its subsidiaries may enter into contracts which provide general indemnifications and contain a variety of presentations and warranties that may expose the Partnership and its subsidiaries to some risk of loss. In addition to the other financial commitments discussed in the consolidated financial statements, the amount of future losses arising from such undertakings, while not quantifiable, is not expected to be significant.

Unfunded Loan Commitments
As of December 31, 2015, Multi Strategy Master had unfunded loan commitments of approximately $4.9 million, which could be funded at the option of the borrower. The loan commitments carried no funded balance at December 31, 2015, but Multi Strategy Master will be contractually obligated to provide financial support up to the amount of the unfunded loan commitment upon the request of the borrower. Unfunded loan commitments are marked to market on the relevant day of valuation in accordance with Multi Strategy Master's valuation policies. Any applicable unrealized gain/(loss) and change in unrealized gain/(loss) on unfunded loan commitments are recorded on the Consolidated Balance Sheet and the Consolidated Statement of Income, respectively.

Legal Proceedings
The Partnership is a party to various legal proceedings arising in the ordinary course of business. While any proceeding or litigation has an element of uncertainty, management believes that the final outcome will not have a materially adverse effect on the Partnership's Consolidated Balance Sheet, Consolidated statement of Income, or its liquidity. See Note 15.

Operating Leases
The Partnership has an operating lease and associated commitments related to its main office space. Future minimum lease payments under operating lease commitments with initial or noncancelable terms in excess of one year, at inception, are as follows:

(in thousands)

Years Ending December 31,	
2016	1,506
2017	1,521
2018	1,521
2019	1,550
2020	1,566
Thereafter	2,089
Total	$ 9,752

Total rental expense of the Partnership and its Consolidated Entities for operating leases was approximately $1.4 million for the year ended December 31, 2015.

13. Postretirement Benefits

In December 2006, the Partnership created a defined benefit plan to which all employees and certain affiliated persons could participate if they met the eligibility requirements. The Partnership uses a December 31 measurement date for its defined benefit plan.

Effective December 31, 2008, the Partnership amended the plan by freezing it to new participants and additional benefit accruals. A new amendment became effective on January 1, 2011 in which a named participant was admitted to the plan and is eligible to earn benefit accrual. 2011 expense reflects a service cost charge for the value of the new participant's benefit earned during 2011.

The Partnership's benefit plan obligation and plan assets for the year ended December 31, 2015 are reconciled in the tables below.

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Change in projected benefit obligation	**2015**
Benefit obligation at beginning of year	$ 2,250
Service cost	5
Interest cost	77
Plan participants' contributions	-
Amendments	-
Actuarial loss/(gain)	(310)
Acquisition/(divestiture)	-
Benefits paid	(300)
Benefit obligation at end of year	$ 1,722

Change in plan assets	**2015**
Fair value of plan assets at beginning of year	$ 2,446
Actual return on plan assets	(310)
Acquisition/(divestiture)	-
Employer contribution	-
Plan participants' contributions	-
Benefits paid	(300)
Other increase/(decrease)	-
Fair value of plan assets at year end	$ 1,836

Reconciliation of Funded Status	**2015**
Accumulated benefit obligation at end of year	$ 1,722
Projected benefit obligation at end of year	1,722
Fair value of assets at end of year	1,836
Funded status at end of year	$ 114

The Partnership does not expect to contribute to the plan during 2015.

Assumptions

Weighted-average assumptions used to determine benefit obligations at December 31, 2015:

Discount rate	4.00%
Rate of compensation increase	N/A

Weighted-average assumptions used to determine net periodic benefit cost at December 31, 2015:

Discount rate	3.70%
Expected long-term return on plan assets	3.70%
Rate of compensation increase	N/A

As of December 31, 2015, there were no plan assets categorized as Level 3.

14. Income Taxes

The Partnership
For U.S. income tax purposes, the Partnership is treated as a pass-through-entity, which means it is not subject to income taxes under current Internal Revenue Service or state and local guidelines. Each partner is individually liable for income taxes, if any, on their share of the Partnership's net taxable income.

The Partnership files tax returns as prescribed by the tax laws of the jurisdictions in which it operates. In the normal course of business, the Partnership is subject to examination by federal and foreign jurisdictions, where applicable. As of December 31, 2015, the tax years that remain subject to examination by the major tax jurisdictions under the statute of limitations is from the year 2008 forward (with limited exceptions).

Authoritative guidance on accounting for and disclosure of uncertainty in tax positions requires the General Partner to determine whether a tax position of the Partnership is more likely than not to be sustained upon examination, including resolution of any related appeals or litigation processes, based on the technical merits of the position. For tax positions meeting the more likely than not threshold, the tax amount recognized in the financial statements is the largest benefit that as a greater than fifty percent likelihood of being realized upon ultimate settlement with the relative taxing authority. The General Partner does not expect a significant change in uncertain tax positions during the twelve months subsequent to December 31, 2015.

Crusader Master
Crusader Master is an exempted limited partnership organized in Bermuda. Under the current laws of Bermuda, there is no income, estate, transfer, sale or other taxes payable by Crusader Master. Crusader Master has received an undertaking from the government of Bermuda exempting it from all such taxes until March 31, 2035.

For U.S. income tax purposes, Crusader Master is treated as a pass-through entity, which means it is not subject to income taxes under current Internal Revenue Service or state and local guidelines. Each partner is individually liable for income taxes, if any, on its share of Crusader Master's net taxable income.

Since Crusader Master trades investments for its own account, non-U.S. Investment Vehicle investors are generally not subject to U.S. tax on such earnings (other than certain withholding taxes indicated below). The General Partner intends to conduct Crusader Master's business in such a way that it does not create a taxable presence in any of the jurisdictions in which the Investment Manager has offices.

Dividends as well as certain interest and other income received by Crusader Master from sources within the United States may be subject to, and reflected net of, United States withholding tax at the

rate of 30% for non-U.S. Investment Vehicles. Interest, dividend and other income realized by Crusader Master from non-U.S. sources and capital gains realized on the sale of securities of non-U.S. issuers may be subject to withholding and other taxes levied by the jurisdiction in which the income is sourced. As of December 31, 2015, a withholding tax liability of $0.2 million is included in the accrued expenses in the Consolidated Balance Sheet.

It is management's responsibility to determine whether a tax position of Crusader Master is more likely than not to be sustained upon examination, including resolution of any related appeals or litigation processes, based on the technical merits of the position. For tax positions meeting the more likely than not threshold, the tax amount recognized in the consolidated financial statements is the largest benefit that has a greater than fifty percent likelihood of being realized upon ultimate settlement with the relative taxing authority. In accordance with this authoritative guidance, management has established a reserve for federal income tax of approximately $10.6 million for uncertain tax positions. Management does not expect a significant change in uncertain tax positions during the twelve months subsequent to December 31, 2015.

Crusader Master files tax returns as prescribed the tax laws of the jurisdictions in which it operates. In the normal course of business, Crusader Master is subject to examination by federal and foreign jurisdictions, where applicable. As of December 31, 2015, the tax years that remain subject to examination by the major tax jurisdictions under the statute of limitations is from the year 2012 forward (with limited exceptions).

A wholly-owned corporation of Crusader Master is subject to federal income tax. For the year ended December 31, 2015, approximately $0.9 million of tax expense was included in the Consolidated Balance Sheet. Additionally, this wholly-owned corporation has incurred capital losses on the sale of investments that exceed the amount of capital gains it has earned. A deferred tax asset related to these excess capital losses of approximately $1.4 million is included in *Other Assets* on the Consolidated Balance Sheet.

Multi Strategy Master
For U.S. income tax purposes, Multi Strategy Master is treated as a pass-through entity, which means it is not subject to federal income taxes under current Internal Revenue Service guidelines. However, each investor may be individually liable for income taxes, if any, on its share of the partnership's net taxable income.

Multi Strategy Master trades in senior secured syndicated bank loans for its own account and, as such, non-U.S. Investment Vehicle investors are generally not subject to U.S. tax on such earnings (other than certain withholding taxes indicated below). The Partnership intends to conduct Multi Strategy Master business in such a manner that it does not constitute a U.S. trade or business, nor does it create a taxable presence in any of the jurisdictions in which the Partnership has offices.

Dividends as well as certain interest and other income received by Multi Strategy Master from sources within the United States may be subject to, and reflected net of, United States withholding tax at a rate of 30% for non-U.S. Investment Vehicles. Interest, dividend and other income realized by Multi Strategy Master from non-U.S. sources and capital gains realized on the sale of securities of non-U.S. issuers may be subject to withholding and other taxes levied by the jurisdiction in which the income is sourced. As of December 31, 2015, a minimal withholding tax liability of $1.0 million is classified within accrued expenses and withholding tax payable on the Consolidated Balance Sheet.

Multi Strategy Master applies authoritative guidance which requires management to determine whether a tax position Multi Strategy Master is more likely than not to be sustained upon examination, including resolution of any related appeals or litigation processes, based on the technical merits of the position. For tax positions meeting the more likely than not threshold, the tax amount recognized in the consolidated financial statements is the largest benefit that has a greater than fifty percent likelihood of being realized upon ultimate settlement with the relative taxing authority. As of December 31, 2015, a liability to account for uncertain tax positions of $0.1 million is classified within accrued expenses within the Consolidated Balance Sheet. Management does not expect a significant change in uncertain tax positions during the twelve months subsequent to December 31, 2015.

Multi Strategy Master files tax returns as prescribed by the tax laws of the jurisdictions in which it operates. In the normal course of business, Multi Strategy Master is subject to examination by federal and foreign jurisdictions, where applicable. As of December 31, 2015, the tax years that remain subject to examination by the major tax jurisdictions under the statute of limitations is from the year 2012 forward (with limited exceptions).

Credit Strategies Master

Credit Strategies Master is an exempted limited partnership organized in Bermuda. Under the current laws of Bermuda, there is no income, estate, transfer, sale or other taxes payable by Credit Strategies Master. Credit Strategies Master has received an undertaking from the government of Bermuda exempting it from all such taxes until March 31, 2035.

For U.S. income tax purposes, Credit Strategies Master is treated as a pass-through entity, which means it is not subject to income taxes under current Internal Revenue Service or state and local guidelines. Each partner is individually liable for income taxes, if any, on its share of Credit Strategies Master's net taxable income.

It is management's responsibility to determine whether a tax position of Credit Strategies Master is more likely than not to be sustained upon examination, including resolution of any related appeals or litigation processes, based on the technical merits of the position. For tax positions meeting the more likely than not threshold, the tax amount recognized in the consolidated financial statements is the largest benefit that has a greater than fifty percent likelihood of being realized upon ultimate settlement with the relative taxing authority. Management does not expect a significant change in uncertain tax positions during the twelve months subsequent to December 31, 2015.

Dividends as well as certain interest and other income received by Credit Strategies Master from sources within the United States may be subject to, and reflected net of, United States withholding tax at the rate of 30% for non-U.S. Investment Vehicles. Interest, dividend and other income realized by the Credit Strategies Master from non-U.S. sources and capital gains realized on the sale of securities of non-U.S. issuers may be subject to withholding and other taxes levied by the jurisdiction in which the income is sourced. Deferred tax liabilities may result from temporary differences related to the unrealized appreciation on the Credit Strategies Master's investments that will become taxable income in future years. Deferred tax liabilities will become payable upon realization of the gains when the investments are sold, and are measured using the applicable enacted tax rate and provisions of the enacted tax law. Credit Strategies Master files tax returns as prescribed by the tax laws of the jurisdictions in which it operates. In the normal course of business, Credit Strategies Master is subject to examination by federal and foreign jurisdictions, where applicable. As of December 31, 2015, the tax years that remain subject to examination by the major tax jurisdictions under the statute of limitations is from the year 2012 forward (with limited exceptions).

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A wholly owned corporation at Credit Strategies Master may be subject to Federal U.S. Income Tax based on the nature of income, expense, and capital gains/losses. As of December 31, 2015 the wholly owned corporation has a minimal tax expense accrual included in the consolidated financial statements.

Restoration Onshore
Restoration Onshore is treated as a pass-through entity for tax purposes, which means it is not subject to U.S. income taxes under current Internal Revenue Service or state and local guidelines. Each Partner is individually liable for income taxes, if any, on its share of the Restoration Onshore's net taxable income. Interest, dividends and other income realized by Restoration Onshore from non-U.S. sources and capital gains realized on the sale of securities of non-U.S. issuers may be subject to withholding and other taxes levied by the jurisdiction in which the income is sourced.

Restoration Onshore applies the authoritative guidance on accounting for and disclosure of uncertainty in tax positions, which requires the General Partner to determine whether a tax position of Restoration Onshore is more likely than not to be sustained upon examination, including resolution of any related appeals or litigation processes, based on the technical merits of the position. For tax positions meeting the more likely than not threshold, the tax amount recognized in the financial statements is the largest benefit that has a greater than fifty percent likelihood of being realized upon ultimate settlement with the relevant taxing authority.

The General Partner has determined that there was no effect on the financial statements from the Partnership's application of this authoritative guidance. The General Partner does not expect a significant change in uncertain tax positions during the twelve months subsequent to December 31, 2015. Restoration Onshore files tax returns as prescribed by the tax laws of the jurisdictions in which it operates. In the normal course of business, the Partnership is subject to examination by federal, state, local and foreign jurisdictions, where applicable. As of December 31, 2015, the tax years that remain subject to examination by the major tax jurisdictions under the statute of limitations is from the year 2012 forward (with limited exceptions).

Restoration Offshore
Restoration Offshore is a Cayman Islands exempted company. Under the current laws of the Cayman Islands, there is no income, estate, transfer, sales or other tax payable by Restoration Offshore. Restoration Offshore has elected to be treated as a corporation for U.S. tax purposes and files a protective 1120-F.

The General Partner intends to conduct the business of Restoration Offshore in such a way that Restoration Offshore's activities do not constitute a U.S. trade or business and any income or realized gains earned by Restoration Offshore do not become "effectively connected" with a trade or business carried on in the United States for U.S. federal income tax purposes.

Dividends as well as certain interest and other income received by the master partnership of Restoration Offshore from sources within the United States may be subject to, and reflected net of, United States withholding tax at a rate of 30% for non-U.S. Investment Vehicles. Interest, dividend and other income realized by the master partnership of Restoration Offshore from non-U.S. sources and capital gains realized on the sale of securities of non-U.S. issuers may be subject to withholding and other taxes levied by the jurisdiction in which the income is sourced.

Restoration Offshore applies the authoritative guidance on accounting for and disclosure of uncertainty in tax positions, which requires the General Partner to determine whether a tax position of Restoration Offshore is more likely than not to be sustained upon examination, including resolution

of any related appeals or litigation processes, based on the technical merits of the position. For tax positions meeting the more likely than not threshold, the tax amount recognized in the financial statements is the largest benefit that has a greater than fifty percent likelihood of being realized upon ultimate settlement with the relevant taxing authority. The General Partner has determined that there was no effect on the financial statements from the Partnership's application of this authoritative guidance. The General Partner does not expect a significant change in uncertain tax positions during the twelve months subsequent to December 31, 2015. As of December 31, 2015, the tax years that remain subject to examination by major tax jurisdictions under the statute of limitations is from the year 2012 forward (with limited exceptions).

Healthcare Master

Healthcare Master is treated as a pass-through entity for tax purposes, which means it is not subject to U.S. income taxes under current Internal Revenue Service or state and local guidelines. Each Partner is individually liable for income taxes, if any, on its share of Healthcare Master's net taxable income. Interest, dividends and other income realized by Healthcare Master from sources within the United States may be subject to, and reflected net of, United States withholding tax at the rate of 30% for nonU.S. Investment Vehicles. Interest, dividends and other income realized by Healthcare Master from non-U.S. sources and capital gains realized on the sale of securities of non-U.S. issuers may be subject to withholding and other taxes levied by the jurisdiction in which the income is sourced. Healthcare Master applies the authoritative guidance which requires Management to determine whether a tax position of Healthcare Master is more likely than not to be sustained upon examination, including resolution of any related appeals or litigation processes, based on the technical merits of the position. For tax positions meeting the more likely than not threshold, the tax amount recognized in the financial statements is the largest benefit that has a greater than fifty percent likelihood of being realized upon ultimate settlement with the relevant taxing authority. Management has determined that there was no effect on the financial statements from the application of this guidance. Management does not expect a significant change in uncertain tax positions during the twelve months subsequent to December 31, 2015. Healthcare Master files tax returns as prescribed by the tax laws of the jurisdictions in which it operates. In the normal course of business, Healthcare Master is subject to examination by federal, state, local and foreign jurisdictions, where applicable. As of December 31, 2015, the tax years that remain subject to examination by the major tax jurisdictions under the statute of limitations is from the year 2012 forward.

The remaining entities consolidated by the Partnership had no uncertain tax positions which required accrual under U.S. GAAP.

15. Legal Proceedings

On July 15, 2008, Crusader Master, Highland Offshore Partners, CDO Master Fund, Multi Strategy Master, certain affiliates, and numerous external parties (collectively, the "Defendants") were named as parties to an action filed with the Bankruptcy Court of the Southern District of Florida ('the Tousa action"). The action related to a secured lending transaction and subsequent refinancing arrangement in which the Defendants participated. On October 13, 2009, the Bankruptcy Court ruled in favor of the plaintiffs and ordered the Defendants to disgorge the principal, interest, and fees they received in connection with the refinancing arrangement. In addition, the Court ordered the defendants to pay simple interest on the disgorged amount at an annual rate of 9%. The Defendants believed they acted in good faith pursuant to the terms of the relevant agreements and appealed the decision. In February 2011, the District Court of Florida quashed the judgment against the Defendants and overturned the ruling that resulted in the Defendants recording the reserve. The plaintiffs appealed the ruling of the District Court, and the issue was sent to the Eleventh Circuit of Florida. On May 15, 2012, the Eleventh Circuit unexpectedly reversed the District Court's ruling, and

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remanded the case back to the District Court for review. The last such case was heard by the US Supreme Court case on January 14, 2015. On June 23, 2015, the District Court remanded the case back to the Bankruptcy Court for a report and recommendations regarding the effects of certain settlements on the Plaintiff's available damages. The Bankruptcy Court heard oral arguments on November 19, 2015, but has not yet issued a ruling. The additional liability and damages issues remain stayed at the District Court until the Bankruptcy Court issues its report. Based on the ruling, the Consolidated Entities recorded a combined reserve of approximately $12.3 million as of December 31, 2015. This reserve is included in *Accrued and other liabilities* on the Consolidated Balance Sheet.

On July 8, 2009, one investor filed suit against Credit Strategies Master, the Partnership, and other affiliated entities (collectively, the "Defendants"). The lawsuit alleges that the Defendants misrepresented the amount of redemptions in Credit Strategies Master. On August 28, 2015, the Dallas Court of Appeals affirmed a summary judgement against the Plaintiffs' claims. As such, the reserve of $11.3 million has been reversed and is included as a component of Professional fees on the Consolidated Income Statement.

In April 2007, CDO Master Fund entered into a risk sharing agreement with UBS Securities LLC and UBS AG, London Branch (collectively, "UBS" or "UBS Plaintiffs") structured as a derivative whereby it absorbed 51% of the gains and losses generated from a loan warehouse agreement. The remaining 49% of the warehouse gains and losses were absorbed by Highland Special Opportunities Holding Company ("SOHC"). The warehouse was financed by UBS and held collateral consisting of investments in collateralized loan obligations and credit default swaps. Although the agreement expired on August 15, 2007, UBS agreed to extend it for one year on March 15, 2008. Due to liquidity constraints, CDO Master Fund was unable to meet a November margin call, and UBS elected to terminate the agreement as of December 5, 2008. The collateral held in the warehouse was subsequently seized by UBS and sold on the open market through bids-wanted-in competition. After offsetting the proceeds received from the sale and the income earned on the collateral prior to the sale, UBS notified CDO Master Fund that its pro-rata share of the losses incurred under the agreement was $350.2 million. CDO Master Fund has accrued a liability in its financial statements for this amount.

On February 24, 2009, the UBS Plaintiffs filed a lawsuit against CDO Master Fund, SOHC and the Partnership in the New York State Supreme Court of Manhattan alleging that they suffered losses in excess of $745 million due to the depreciation in value of the warehouse collateral. On February 19, 2010, the First Appellate Division sided with the Partnership and dismissed UBS' claims against the Partnership. Thereafter on June 22, 2010, the UBS Plaintiffs filed an amended complaint with the Court against the Partnership alleging $687 million in damages. On March 13, 2012, the First Appellate Division dismissed two of the four claims against the Partnership, and severely limited the scope of the two remaining claims. The Court has yet to rule on motions for summary judgment pending for over two years, and has not set the matter for trial.

In the June 22, 2010 amended complaint, the UBS Plaintiffs also asserted claims against Credit Strategies Master, Multi Strategy Master, Crusader Master, and certain of their affiliates (collectively, the "Additional Fund Defendants"). The UBS Plaintiffs seek to unwind alleged fraudulent transfers involving the Additional Fund Defendants. Although the UBS Plaintiffs have not pled a specific damages amount against the Additional Fund Defendants, any eventual damages award would be subject to pre-judgment interest of 9% (accrued as of December 3, 2008) as well as post-judgment interest of 9% (accrued as of the date a judgment, if any, is entered against the Additional Fund Defendants). Each of the Additional Fund Defendants filed a separate motion to dismiss, each of which was denied. In addition, the Additional Fund Defendants filed a motion for summary judgment,

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which was heard by the Court on February 14, 2014. On March 11, 2014, the First Appellate Division heard each of the Additional Fund Defendants' respective appeals of the Court's denials of their respective motions to dismiss. On August 19, 2013, the Court restrained the Defendants from transferring or otherwise disposing of property received (or if property had already been transferred or disposed of, the cash equivalent) in March 2009 from Highland Financial Partners, L.P. in connection with the Termination, Settlement and Release Agreement dated March 20, 2009. Shortly thereafter, the UBS Plaintiffs and the UBS Additional Fund Defendants' mutually agreed that, notwithstanding the restraining order, the Additional Fund Defendants' could market and sell any restrained property provided that the proceeds of such sales were not transferred. On November 27, 2013, the Court removed the restraining order, but the UBS Plaintiffs immediately appealed On January 30, 2014, the Appellate Court reinstated the restraining order pending resolution of the UBS Plaintiffs' appeal on the original terms set forth by the Court on August 19, 2013, and without the modification agreed to with the UBS Plaintiffs. On June 12, 2015, the UBS Plaintiffs settled their claims against the Additional Fund Defendants' for scheduled cash payment totaling $72.5 million. That restraining order remained in place until January 21, 2016 when the Appellate Court dismissed the appeal as moot following the Defendant's settlement with the UBS Plaintiffs.

On July 17, 2013, Credit Suisse Securities (USA), LLC ("Credit Suisse") filed suit against Credit Strategies Master, Multi Strategy Master, and other affiliates (the "Credit Suisse Defendants"). Credit Suisse's claims relate to several outstanding trades of debt tranches of Goldfield Ranch Reality Holdings, LLC and Westgate Investments, LLC. On May 5, 2014, Credit Suisse moved for summary judgment on both the principal amount and statutory pre-judgment interest. The Court granted the motion on August 6, 2014, and issued judgment on September 11, 2014 in the amount of $25.5 million in principal, plus $13.5 million in interest, for a total of $39.0 million. On January 14, 2016, the Credit Suisse Defendants reached settlement with Credit Suisse for payment of approximately $77.4 million in satisfaction and release of Credit Suisse's claims. The difference between the settlement amount and total exposure accrued at November 30, 2015, was recognized as of December 31, 2015, bringing the total accrued liability down to the settlement amount. The December 31, 2015 accrual of $77.4 million is included in *Accrued and other liabilities* on the Consolidated Balance Sheet.

On or about April 10, 2012, CDO Master Fund filed suit against Citibank, N.A. ("CBNA"), Citigroup Global Markets Inc. ("CGMI"), Citigroup Global Markets Limited ("CGML"), and Citigroup Financial Products Inc. ("CFPI") (collectively "Citi" or "Defendants") seeking damages for breach of contract related to Defendants' improper valuation of collateral, improper margin calls, improper declaration of default and improper seizure of collateral. More specifically, Defendants' breaches have proximately caused CDO Master Fund to suffer damages resulting from Defendants' misappropriation of assets that rightfully belong to CDO Master Fund. CDO Master Fund seeks recovery in the form of a return of the assets improperly seized by Defendants. To the extent that a return of the improperly-seized assets to CDO Master Fund is not possible or feasible, CDO Master Fund seeks damages in an amount sufficient to put it in the same economic position it would have been in had Defendants properly performed under the contracts.

Over one year after CDO Master Fund filed its suit, and having failed in its efforts to dismiss the lawsuit, Citi filed two breach of contract counterclaims against CDO Master Fund and two other counter-defendants, Highland CDO Opportunity Fund GP, L.P. and the Partnership. CDO Master Fund believes this post-hoc claim is baseless and merely brought to try to create a bargaining position. On or about March 30, 2016, the Court granted certain of the parties' motions for summary judgment. As a result of this ruling, both CDO Master Fund and Citi's claims have been pared down. The Court also ordered additional limited discovery be conducted, and that the parties submit a final round of motions for summary judgment following the conclusion of that discovery. CDO Master

Fund has accrued a liability in its financial statements for this claim in the amount of $10.8 million and is included in *Due to brokers* on the Consolidated Balance Sheet. No trial has been set in this matter.

In April 2012, the Partnership filed suit against a former employee for breach of contract, defamation and theft of trade secrets. The former employee filed a counterclaim with numerous, unrelated allegations. The Partnership refuted each allegation in detail. The former employee seeks unspecified damages against the Partnership and certain affiliates. On February 6, 2014, the jury found the former employee breached his fiduciary duty to the Partnership. The jury found that neither the Partnership nor any of its employees had breached any duty, and awarded $2.8 million to the Partnership. The jury also found that HERA owed $2.6 million related to an employee retention plan. The court entered judgment on the verdict on July 11, 2014. The former employee has filed his appeal against the Partnership and HERA has filed its appeal against the judgment amount. The appellate court has yet to rule on the pending appeals.

In addition to the legal actions that are discussed above, the Partnership is subject to other legal actions arising from the ordinary course of its business. The ultimate outcome of these other cases is inherently uncertain and could result in additional losses to the Partnership.

16. Fund Wind Down

On February 2, 2009, the Partnership informed investors of CDO Master that the fund was effectively insolvent as the liabilities in the fund exceed the assets to such a degree that proceeds from the asset sales will not be able to satisfy any unpaid redemptions or to distribute amounts to any current investors.

During 2008, Crusader Master and Credit Strategies Master were negatively affected by deteriorating conditions in the overall economy and credit markets. These conditions became more severe during the third and fourth quarters of 2008 and generated significant losses on various derivative transactions and repurchase agreements to which Crusader Master and Credit Strategies Master were parties. In addition, certain assets that Crusader Master and Credit Strategies Master purchased on margin through prime brokerage agreements experienced a significant decline in value. In certain cases, Crusader Master and Credit Strategies Master were unable to post the collateral required to secure these losses, and the counterparties provided notice of their intent to terminate the agreements. As a result, access to the credit that Crusader Master and Credit Strategies Master used to manage its investing and financing activities became highly constrained, and in some cases unavailable. In light of these circumstances, the General Partners (the general partner of Crusader Master and the general partner of Credit Strategies Master) and the Board of Directors of Highland Credit Strategies Fund, Ltd. and Highland Crusader Fund, Ltd. concluded, in consultation with the Investment Manager, that it would be in the best interests of their investors to wind down the investment portfolios of Credit Strategies Master and Crusader Master. On October 15, 2008, the Investment Manager notified investors that it would begin the wind-down process. The Investment Manager also restricted subscriptions and the payment of withdrawals to its feeder funds effective the same date.

In connection with the wind down, the limited partner interests of the Feeder Funds of Credit Strategies and Crusader were compulsorily withdrawn/redeemed on October 15, 2008 and November 15, 2008, respectively, in accordance with the terms of the governing documents.

Crusader Master

On July 15, 2011, the Supreme Court of Bermuda Commercial Court sanctioned a Scheme of Arrangement (the "Scheme") that facilitates the winding-down of the investments of Crusader Master and the distribution of its assets. A substantial majority of the investors in its feeder funds consented to The Plan of Distribution ("The Plan") as outlined in the Scheme. The Scheme became effective as of August 1, 2011 (the "Effective Date").

The Scheme establishes two classes of claims; those feeder fund investors who had timely submitted withdrawal/redemption requests for withdrawal/redemption dates that fell on or before June 30, 2008 and who had not received full payment ("Prior Redeemers"), and those feeder fund investors that had not timely submitted such withdrawal/redemption requests for redemption/withdrawal dates that fell on or before June 30, 2008 ("Compulsory Redeemers") (together "Redeemers"). The basis for ratable distribution amongst both classes of Redeemers was the November 15, 2008 balances of said Redeemers ("Redemption Amount"), adjusted to add back any redemption penalties assessed against Prior Redeemers during 2008. A realization schedule for distributions is set forth in Appendix A of the Scheme (the "Realization Schedule"). The terms of the Scheme are outlined as follows:

1. Prior Redeemers shall be entitled to 60% in aggregate of the total distributions made by the Master Partnership constituting excess cash (the "Crusader Fund Prior Redeemers' Distribution"). Each Prior Redeemer shall be entitled to their pro rata share of the Crusader Fund Prior Redeemers' Distribution based on the Prior Redeemer's Redemption Amount relative to the total of all Prior Redeemers' Redemption Amounts (inclusive of all feeders).

2. Compulsory Redeemers shall be entitled to 40% in aggregate of the total distributions made by the Master Partnership constituting excess cash (the "Crusader Fund Compulsory Redeemers' Distribution"). With the exception of the non-consenting Compulsory Redeemers discussed below, each Compulsory Redeemer shall be entitled to their pro rata share of the Crusader Fund Compulsory Redeemers' Distribution based on the Compulsory Redeemer's Redemption Amount relative to the total of all Compulsory Redeemers' Redemption Amounts (inclusive of all feeders).

   In the event the Investment Manager fails to make distributions in accordance with the Realization Schedule for two consecutive quarters without receiving a waiver from the committee of Redeemers appointed to help oversee the Scheme (the "Redeemer Committee"), the Investment Manager can be removed for cause as the Investment Manager of the Master Partnership by the Redeemer Committee.

Crusader Redeemer Trust Account

Effective July 15, 2011, a trust account was set-up and funded for the benefit of Compulsory Redeemers who had consented to the Scheme and Prior Redeemers (the "Redeemer Trust Account"). The portion of amounts in excess of the Redemption Amounts otherwise attributable to non-consenting Compulsory Redeemers was contributed to the Redeemer Trust Account and not distributed to non-consenting Compulsory Redeemers. Amounts in the Redeemer Trust Account are reserved and used to pay all costs of Crusader Master to defend, respond to, settle and satisfy any claims by Redeemers other than for their Scheme claim.

The non-consenting Compulsory Redeemers do not receive any allocation of profit and loss; the portion of profit and loss that would otherwise be allocated to their accounts is instead allocated to the Redeemer Trust Account. The Redeemer Trust Account is accounted for as a component of equity in the Crusader Onshore Feeder Fund. Within the earlier of 30 days after all redeemer claims have been resolved or dismissed with prejudice or the sixth anniversary of the effective date, any

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amounts remaining in the Redeemer Trust Account shall be distributed 100% to consenting Compulsory Redeemers pro rata based on their relative Redemption Amounts.

Crusader Deferred Fee Account
In accordance with the Scheme and Plan, the "Deferred Fee Account" was established on the effective date by allocating the right for the Partnership to potentially receive payment in respect of deferred fees ("Deferred Fees") equal to $10.0 million.

The Plan and Scheme provide that in the event that the Crusader Master makes aggregate distributions of at least $1.7 billion prior to the forty-third month following the effective date ("Aggregate Distribution Date"), the Partnership shall be entitled to receive payment in respect of the Deferred Fee Account.

The Plan and Scheme further provide that in the event that the Crusader Master does not make aggregate distributions of at least $1.7 billion prior to the Aggregate Distribution Date, then the Partnership will cause the Feeder Funds to distribute the right to receive payment 100% to consenting Compulsory Redeemers (pro rata based on their relative Redemption Amounts). The Deferred Fee Account will continue to be allocated it's pro rata portion of profit and loss.

The Partnership believes that the restraining order imposed against the Crusader Master in connection with the UBS Litigation (as defined in Note 15) rendered performance of the stated Realization Schedule impossible as a matter of law. Accordingly, the Partnership believes that any non-performance attributable to such restraining order is excused as a matter of law and thus all periods of the Realization Schedule have been extended for the period of non-performance attributable to such restraining order as a matter of law ("Realization Schedule Extension").

Crusader Deferred Fee Distributions
The Partnership shall continue to be entitled to receive payment in respect of the Deferred Fees from the applicable Feeder Fund. However, the Partnership similarly believes that the restraining order prevented the full liquidation of the Crusader Master's portfolio prior to the forty-third month after the effective date. In this situation, the Partnership would have received the Deferred Fees prior to, or on, the forty-third month after the effective date, but-for the impact of the restraining order still was in place. Therefore, the Partnership believes it has the right to receive the ratable and nonforfeitable portion of such fees crystalized as of the date the restraining order was lifted.

Until the all of the Deferred Fees have been paid, the Crusader Master shall distribute to each applicable Feeder Fund amounts, and such Feeder Fund shall fully reserve for such distributions in cash. The cash held in reserve for such Deferred Fees shall be maintained in an interest bearing account, with all interest being retained by the applicable Feeder Fund for the benefit of its Redeemers.

Crusader Distribution Fee
Under the Plan and Scheme, provided that assets equal to or in excess of the amount scheduled in the Realization Schedule have been distributed to Redeemers during such applicable distribution period, the Partnership will receive fees in cash in the amount of 125 basis points calculated based on all amounts actually distributed to Redeemers during such period following the effective date. This fee will also be paid and expensed out of Highland Crusader Fund, Ltd., Highland Crusader Fund II, Ltd., and Highland Crusader Fund, L.P. ("Feeder Funds") and will be charged to each capital account in the Feeder Funds, regardless of affiliation.

The Partnership believes the Realization Schedule Extension has extended the applicable distribution periods.

Crusader Wind Down Progress
As a result of the litigation discussed in Note 15, Crusader Master did not make distributions as part of the wind down in accordance with the Scheme for the year ended December 31, 2015. Since the Scheme's effective date, approximately $1,351.2 million has either been distributed to the Feeder Funds for purposes of disbursement, or withheld and specially allocated for tax payments.

As of December 31, 2015, the estimated value of the partners' capital of Crusader Master was approximately $381.2 million. The actual amounts that will be distributed upon completion of the wind down process are inherently uncertain and may differ materially from the partners' capital as of December 31, 2015. Capital will be distributed as it becomes available in accordance with the Scheme.

Credit Strategies Master
To facilitate the winding-down of the investments in Credit Strategies Master, a Plan of Distribution (the "Credit Strategies Plan") was also adopted by Credit Strategies Master and its feeder funds and was consented to by a substantial majority of the investors in its feeder funds. On April 14, 2011, the Supreme Court of Bermuda Commercial Court sanctioned a Scheme of Arrangement the ("Credit Strategies Scheme") that incorporates the terms of the Credit Strategies Plan so as to be binding upon Highland Credit Strategies Fund, Ltd. and its investors. The Credit Strategies Scheme became effective on May 1, 2011. The Credit Strategies Plan established two classes of claims; those investors of the Feeder Funds whose withdrawals/redemptions became effective on or before September 30, 2008 and who have not received full payment of their redemption amount ("Prior Redeemers") and those investors of the feeder funds who were compulsorily withdrawn/redeemed on October 15, 2008 ("Compulsory Redeemers").

As investments in Credit Strategies Master are realized, distributions will be made in the following order, which summarizes the terms outlined in the Credit Strategies Plan:

1. Payments for fund expenses
2. The first $30 million available for distribution ratably to Prior Redeemers
3. The next approximately $5.3 million available for distribution ratably to consenting Compulsory Redeemers and a trust account established for the benefit of non-consenting Compulsory Redeemers ("Redeemer Trust Account")
4. All remaining funds will be distributed as follows:
   a. 85% ratably to Prior Redeemers
   b. 15% to consenting Compulsory Redeemers and the Redeemer Trust Account

This method of distribution results in a shift of capital from the Prior Redeemers to the consenting Compulsory Redeemers and the Redeemer Trust Account. It also created a shift of capital from its offshore feeder to its onshore feeder, since there was a greater proportion of Compulsory Redeemers to Prior Redeemers in the onshore feeder than in the offshore feeder.

Credit Strategies Redeemer Trust Account
The Redeemer Trust Account is used to pay for litigation costs involving the non-consenting Compulsory Redeemers. The Credit Strategies Plan outlines which expenses related to litigation ("Covered Claims") will be paid using funds from the Redeemer Trust Account, and any litigation will continue to be assessed under an ASC 450 (Contingencies) model.

Credit Strategies Contribution Trust Account

In accordance with the Credit Strategies Plan and in exchange for certain releases, a trust account (the "Contribution Trust Account") was established and initially funded on the effective date with $3.0 million contributed by the Partnership. The Partnership also paid an additional $6.0 million on May 1, 2014, approximately the third anniversary of the effective date of the Credit Strategies Plan. This $6.0 million was recognized as a subscription into Credit Strategies Master during the year ended December 31, 2013, and was received in cash during the year ended December 31, 2014.

The Contribution Trust Account will be used to pay for expenses related to Covered Claims to the extent that the Redeemer Trust Account is insufficient to pay such expenses. Within 30 days after all Covered Claims have been resolved or dismissed with prejudice, or the sixth anniversary of the effective date, provided that no suits asserting Covered Claims are then pending, whichever is earlier, any remaining balance in the Contribution Trust Account will be distributed 85% to consenting Compulsory Redeemers and 15% to consenting Prior Redeemers.

Similar to the Redeemer Trust Account, the Contribution Trust Account is treated as a separate component of equity. Additionally, the initial payment of the $3.0 million was treated as a contribution to the Master Partnership. However, the Contribution Trust Account does not receive an allocation of profit and loss. The only changes to the account will occur when contributions are made or expenses related to Covered Claims are paid.

As discussed in Note 15, a legal reserve of $11.3 million was reversed and included as a component of Legal Expense on the Consolidated Income Statement. This was partially allocated to the Contribution Trust and resulted in the $3.5 million equity balance at December 31, 2015.

17. Subsequent Events

Over the course of 2016 through the report date, HCMSI issued promissory notes to the Partnership in the amounts of $12.5 million. The notes accrue interest at a rate ranging from 2.24% - 2.65%.

On February 26, 2016, HCMFA issued a promissory note to the Partnership in the amount of $2.3 million. The note accrues interest at a rate of 2.62%.

Over the course of 2016 through the report date, NexPoint issued additional borrowings on its revolving line of credit to the Partnership in the amount of $2.2 million. The borrowings accrue interest at a rate of 6.0%.

As discussed in Note 10, on April 7, 2016 the Partnership extended the maturity date on the term loan with Key Bank to April 7, 2017. The amount of the Term Loan increased to $15.0 million.

On April 26, 2016, Highland Acquisition Corporation issued a promissory note to the Partnership in the amount of $0.2 million. No interest shall accrue on the note.

On January 14, 2016, the various Consolidated Entities settled the Credit Suisse lawsuit resulting in the payment of the $77.4 million. The amount paid had previously been accrued as a component of *Accrued and other liabilities* and *Due to broker for securities purchased not yet settled* on the Consolidated Balance Sheet. Additionally, the settlement resulted in a reduction of previously accrued expenses of approximately $1.5 million.

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Upon the lifting of the UBS restraining order, the Credit Strategies Master then was permitted to pay the amounts payable under the Credit Strategies Plan and Scheme from the Contribution Trust. As of December 31, 2015, the Contribution Trust had remaining net assets of approximately $3.5 million, a portion of which was held in cash and a portion of which is held in an unliquidated limited partnership capital balance. The cash portion of the Contribution Trust's net assets of approximately $2.1 million was distributed in accordance with the terms of the Credit Strategies Plan and Scheme on April 22, 2016.

On April 11, 2016, the Redeemer Committee for Credit Strategies Master filed a Petition to Confirm Arbitration Award against the Partnership in relation to the 2013 sale of an asset in Credit Strategies Master. The award includes $7.0 million in damages, pre- and post-judgment interest of $4.1 million as of May 19, 2016, plus legal fees. If confirmed, the award would require the Partnership to distribute to the investors of the Credit Strategies feeder funds the net proceeds received by Credit Strategies Master from the sale of the asset as well as the damages awarded, the pre- and post-judgment interest, and fees. The award has not yet been judicially confirmed and remains subject to dispute.

On April 4, 2016, a distribution was made to Crusader Master investors related to the sale of the life settlements portfolio. In total, approximately $196.7 million was either distributed to the Feeder Funds for purposes of disbursement, or withheld and specially allocated for tax payments. Since the Scheme and Plan effective date, and including this distribution, approximately $1.5 billion has been either distributed to the Crusader Master Feeder Funds for purposes of disbursement, or withheld and specially allocated for tax payments.

In accordance with the Partnership's position as set forth in Note 16, Highland Crusader Fund, Ltd. and Highland Crusader Fund II, Ltd. paid Deferred Fees to the Partnership of approximately $28.3 million on January 21, 2016 and $4.1 million on April 5, 2016. These amounts represent the Partnership's ratable and unforfeitable portion of such fees based upon distributions to Redeemers made through and including those respective dates. Cash for such fees had been reserved in conjunction with aggregate previous distributions to Redeemers from the remaining portion of the Deferred Fees (not including the Deferred Fee Account).

In accordance with the Partnership's position as set forth in Note 16, Highland Crusader Fund, Ltd., Highland Crusader Fund II, Ltd., and Highland Crusader Fund, L.P. paid approximately $1.5 million and $2.4 million of distribution fees to the Partnership related to the November 27, 2013 and April 4, 2016 distributions, respectively.

The Partnership has performed an evaluation of subsequent events through May 19, 2016, which is the date the consolidated financial statements were available to be issued, and has determined that there are no other material subsequent events that would require disclosure in the Partnership's consolidated financial statements.

Supplemental Information

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(in thousands)	Highland Capital Management, L.P.	All Other Consolidated Entities	Eliminations	Total Consolidated
Assets				
Cash and cash equivalents	$ 4,756	$ 40,824	$ -	$ 45,580
Restricted cash	2,621	72,314	-	74,935
Investments at fair value	143,245	1,419,308	-	1,562,553
Equity method investees	193,276	-	(193,276)	-
Management and incentive fees receivable	9,004	-	(1,462)	7,542
Due from brokers	-	8,607	-	8,607
Other assets	7,513	11,435	(2,585)	16,363
Deferred incentive fees receivable	31,214	-	-	31,214
Due from affiliates	63,031	-	-	63,031
Note receivable	63,000	11,000	(11,000)	63,000
Fixed assets and leasehold improvements, net of accumulated depreciation of $7,683	7,864	39,846	-	47,710
Total assets	$ 525,524	$ 1,603,334	$ (208,323)	$ 1,920,535
Liabilities and partners' capital				
Liabilities				
Accounts payable	$ 4,544	$ 123	$ -	$ 4,667
Securities sold, not yet purchased	-	198,605	-	198,605
Withdrawals payable	-	78,733	-	78,733
Due to brokers	51,292	434,740	(786)	485,246
Due to brokers for securities purchased, not yet settled	-	55,934	-	55,934
Accrued and other liabilities	34,285	58,657	(3,261)	89,681
Debt and notes payable	49,746	65,913	(11,000)	104,659
Total liabilities	139,867	892,705	(15,047)	1,017,525
Non-controlling interest	-	517,353	-	517,353
Commitments				
Partners' capital	385,657	193,276	(193,276)	385,657
Total liabilities and partners' capital	$ 525,524	$ 1,603,334	$ (208,323)	$ 1,920,535

Highland Capital Management, L.P.
(A Delaware Limited Partnership)
Supplemental Consolidating Statement of Income
Year Ended December 31, 2015

(in thousands)	Highland Capital Management, L.P.	All Other Consolidated Entities	Eliminations	Total Consolidated
Revenue:				
Management fees	$ 54,644	$ -	$ -	$ 54,644
Interest and investment income	2,649	53,464	-	56,113
Other income	14,121	3,505		17,626
Total revenue	71,414	56,969	-	128,383
Expenses:				
Legal settlement	-	55,000	-	55,000
Compensation and benefits	36,202	734	-	36,936
Professional fees	6,857	28,922	-	35,779
Marketing and advertising expense	7,452	-	-	7,452
Investment and research consulting	967	-	-	967
Depreciation and amortization	1,402	1,342	-	2,744
Tax expense	-	875	-	875
Bad debt expense	801	-	(801)	-
Other operating expenses	9,236	13,217	801	23,254
Total expenses	62,917	100,090	-	163,007
Other expense	4,869	-	-	4,869
Income/(loss) before investment and derivative activities	13,366	(43,121)	-	(29,755)
Realized and unrealized gain/(loss) from investment and derivative transactions:				
Net realized loss on investment and derivative transactions	3,969	(55,974)	-	(52,005)
Net change in unrealized loss on investment and derivative transactions	(38,859)	(160,626)	-	(199,485)
Total realized and unrealized loss from investment and derivative transactions	(34,890)	(216,600)	-	(251,490)
Net unrealized earnings from equity method investees	(154,941)	-	154,941	-
Net loss	(176,465)	(259,721)	154,941	(281,245)
Net loss attributable to the non-controlling interest	-	104,780	-	104,780
Net loss attributable to Highland Capital Management, L.P.	$ (176,465)	$ (154,941)	$ 154,941	$ (176,465)

Highland Capital Management, L.P.
(A Delaware Limited Partnership)
Supplemental Unconsolidated Balance Sheet
December 31, 2015

(in thousands)

Assets		
Current assets:		
Cash and cash equivalents	$	4,756
Restricted cash		2,621
Investments at fair value (cost $198,659)*		268,299
Equity method investees		68,222
Management and incentive fees receivable		9,004
Other assets		7,513
Deferred incentive fees receivable		31,214
Due from affiliates		63,031
Note receivable		63,000
Fixed assets and leasehold improvements, net of accumulated depreciation of $7,170		7,864
Total assets	$	525,524
Liabilities and partners' capital		
Liabilities		
Accounts payable	$	4,544
Due to brokers		51,292
Accrued and other liabilities		34,285
Notes payable		49,746
Total liabilities		139,867
Partners' capital		385,657
Total liabilities and partners' capital	$	525,524

*Investments, at fair value includes $112.0 million of limited partnership interest ownership of Consolidated Investment Funds, which are discussed in Footnote 2. These entities are consolidated because the Partnership controls the general partner of the respective entities and is responsible for the daily operations of the entities.

The above information was derived from the audited December 31, 2015 consolidated financial statements of Highland Capital Management, L.P. This information should be read in conjunction with such audited financial statements.

Highland Capital Management, L.P.
(A Delaware Limited Partnership)
Supplemental Unconsolidated Statement of Income
Year Ended December 31, 2015

(in thousands)

Revenue:	
Management fees	$ 54,644
Interest and investment income	2,649
Shared services fees and miscellaneous income	14,121
Total revenue	71,414
Operating expenses:	
Compensation and benefits	36,202
Professional fees	6,857
Marketing and advertising expense	7,452
Investment and research consulting	967
Depreciation and amortization	1,402
Bad debt expense	801
Other operating expenses	9,236
Total operating expenses	62,917
Other income	4,869
Income before investment activities	13,366
Realized and unrealized gains/losses from investments:	
Net realized gain on sale of investments	3,969
Net change in unrealized loss on investments*	(56,866)
Total realized and unrealized loss from investments	(52,897)
Losses from equity method investees:	(136,934)
Net loss	$ (176,465)

*Net change in unrealized gain on investments includes $ 17.3 million of unrealized losses from holdings of limited partnership interests of Consolidated Investment Funds, which are discussed in Footnote 2. These entities are consolidated because the Partnership controls the general partner of the respective entities and is responsible for the daily operations of the entities.

The above information was derived from the audited December 31, 2015 consolidated financial statements of Highland Capital Management, L.P. This information should be read in conjunction with such audited financial statements.

EXHIBIT 71

Highland Capital Management, L.P.

(A Delaware Limited Partnership)

Consolidated Financial Statements and Supplemental Information

December 31, 2016

Highland Capital Management, L.P.

(A Delaware Limited Partnership)
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December 31, 2016

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Report of Independent Auditors

To the General Partner of Highland Capital Management, L.P.

We have audited the accompanying consolidated financial statements of Highland Capital Management, L.P. and its subsidiaries (collectively, the "Partnership"), which comprise the consolidated balance sheet as of December 31, 2016, and the related consolidated statements of income, of changes in partners' capital and of cash flows for the year then ended.

Management's Responsibility for the Consolidated Financial Statements

Management is responsible for the preparation and fair presentation of the consolidated financial statements in accordance with accounting principles generally accepted in the United States of America; this includes the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of consolidated financial statements that are free from material misstatement, whether due to fraud or error.

Auditors' Responsibility

Our responsibility is to express an opinion on the consolidated financial statements based on our audits. We conducted our audits in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the consolidated financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the consolidated financial statements. The procedures selected depend on our judgment, including the assessment of the risks of material misstatement of the consolidated financial statements, whether due to fraud or error. In making those risk assessments, we consider internal control relevant to the Partnership's preparation and fair presentation of the consolidated financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Partnership's internal control. Accordingly, we express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the consolidated financial statements. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

Opinion

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of Highland Capital Management, L.P. and its subsidiaries as of December 31. 2016, and the results of their operations, changes in their partners' capital and their cash flows for the year then ended, in accordance with accounting principles generally accepted in the United States of America.

Other Matter

Our audit was conducted for the purpose of forming an opinion on the consolidated financial statements taken as a whole. The Supplemental Consolidating Balance Sheet, the Supplemental Consolidating Statement of Income, the Supplemental Unconsolidated Balance Sheet and the Supplemental Unconsolidated Statement of Income are presented for purposes of additional analysis and are not a required part of the consolidated financial statements. The information is the responsibility of management and was derived from and relates directly to the underlying accounting and other records used to prepare the financial statements. The information has been subjected to the auditing procedures applied in the audit of the financial statements and certain additional procedures, including comparing and reconciling such information directly to the underlying accounting and other records used to prepare the financial statements or to the financial statements themselves and other additional procedures, in accordance with auditing standards generally accepted in the United States of America. In our opinion, the information is fairly stated, in all material respects, in relation to the consolidated financial statements taken as a whole.

PricewaterhouseCoopers LLP

May 19, 2017

PricewaterhouseCoopers LLP, 2001 Ross Avenue, Suite 1800, Dallas, Texas 75201
T: (214) 999-1400, F: (214) 754-7991, www.pwc.com/us

Highland Capital Management, L.P.
(A Delaware Limited Partnership)
Consolidated Balance Sheet
December 31, 2016

(in thousands)

Assets		
Cash and cash equivalents	$	30,129
Investments at fair value (cost $1,203,426)		1,097,910
Management and incentive fees receivable		12,583
Due from broker for securities sold, not yet settled		892
Other assets		12,909
Notes and other amounts due from affiliates		172,671
Notes receivable		6,421
Fixed assets and leasehold improvements, net of accumulated depreciation of $8,533		6,747
Total assets	$	1,340,262
Liabilities and partners' capital		
Liabilities		
Accounts payable	$	4,443
Securities sold, not yet purchased (proceeds $138,589)		146,792
Withdrawals payable		68,199
Due to brokers		171,647
Due to brokers for securities purchased, not yet settled		1,614
Accrued and other liabilities		42,838
Debt and notes payable		45,953
Investment liabilities		27,318
Total liabilities		508,804
Non-controlling interest		412,847
Commitments		
Partners' capital		418,611
Total liabilities and partners' capital	$	1,340,262

The accompanying notes are an integral part of these consolidated financial statements.

Highland Capital Management, L.P.

(A Delaware Limited Partnership)

Consolidated Statement of Income

Year Ended December 31, 2016

(in thousands)

Revenue:		
Management fees	$	52,599
Interest and investment income		34,207
Shared services fees		9,563
Incentive fees		8,151
Other income		4,142
Total revenue		108,662
Expenses:		
Compensation and benefits		37,127
Professional fees		11,032
Interest expense		5,761
Marketing and advertising expenses		5,170
Bad debt expense		2,094
Depreciation and amortization		1,367
Investment and research consulting		829
Other operating expenses		11,160
Total expenses		74,540
Other income		10,779
Income before investment and derivative activities		44,901
Realized and unrealized gain from investments and derivatives:		
Net realized appreciation on investments and derivatives		125,732
Net change in unrealized loss on investments and derivatives		(77,649)
Total realized and unrealized gain from investments and derivatives		48,083
Net income		92,984
Net income attributable to the non-controlling interest		(53,628)
Net income attributable to Highland Capital Management, L.P.	$	39,356

The accompanying notes are an integral part of these consolidated financial statements.

Highland Capital Management, L.P.
(A Delaware Limited Partnership)
Consolidated Statement of Changes in Partners' Capital
Year Ended December 31, 2016

(in thousands)

	General Partner	Limited Partners	Total
Partners' capital, December 31, 2015	$ -	$ 385,657	$ 385,657
Net income attributable to Highland Capital Management, L.P.	99	39,257	39,356
Partner distributions	(16)	(6,386)	(6,402)
Partners' capital, December 31, 2016	$ 83	$ 418,528	$ 418,611

The accompanying notes are an integral part of these consolidated financial statements.

Highland Capital Management, L.P.
(A Delaware Limited Partnership)
Consolidated Statement of Cash Flows
Year Ended December 31, 2016

(in thousands)

Cash flows from operating activities:		
Net income	$	92,984
Adjustment to reconcile net income to net cash provided by operating activities:		
Net realized gain on investments and derivative transactions		(125,732)
Net change in unrealized loss on investments and derivative transactions		77,649
Amortization and depreciation		1,367
Changes in assets and liabilities:		
Restricted cash		2,621
Management and incentive fee receivable		(5,041)
Deferred incentive fees		31,214
Due from brokers		320
Due from affiliate		(3,846)
Other assets		(2,347)
Accounts payable		(140)
Accrued and other liabilities		(878)
Due to brokers for securities purchased, not yet settled		(5,441)
Due to brokers		47,931
Net cash provided by operating activities		110,661
Cash flows from investing activities:		
Purchases of fixed assets and leasehold improvements, net		(250)
Purchases of investments		(495,849)
Proceeds from dispositions of investments		606,617
Proceeds from securities sold, not yet purchased		118,744
Issuance of notes receivable to affiliates		(42,235)
Proceeds from repayments of notes receivable from affiliates		16,286
Purchases of investments to cover securities sold, not yet purchased		(223,490)
Net cash used in investing activities		(20,177)
Cash flows from financing activities:		
Payments on long-term debt		(19,705)
Capital withdrawals by minority interest investors of consolidated entities		(49,860)
Partner distributions		(6,402)
Net cash used in financing activities		(72,167)
Net increase in cash and cash equivalents		18,317
Cash and cash equivalents		
Beginning of year		45,580
Additional cash from new consolidated funds		(33,768)
End of year	$	30,129
Supplemental disclosure of cash flow information:		
Interest paid during the year	$	(4,947)
Taxes paid during the year		(1,541)
Investments acquired for non-cash consideration		13,333
Investments disposed for non-cash consideration		(23,368)

The accompanying notes are an integral part of these consolidated financial statements.

HIGHLY CONFIDENTIAL D-CNL000458

Highland Capital Management, L.P.
Notes to Consolidated Financial Statements
December 31, 2016

1. Description of Business

Highland Capital Management, L.P. (the "Partnership") was formed on July 7, 1997 as a limited partnership in the state of Delaware. The Partnership is a registered investment adviser under the Investment Advisers Act of 1940 that manages collateralized loan obligations ("CLOs"), hedge funds, private equity funds, and other leveraged loan transactions that are collateralized predominately by senior secured bank debt and high-yield bonds. The Partnership and its subsidiaries make direct investments in debt, equity, and other securities in the normal course of business. The Partnership's general partner is Strand Advisors, Inc. (the "General Partner"). The Partnership is owned by an unaffiliated trust as well as affiliated trusts and personal holdings of the senior management of the Partnership.

As of December 31, 2016, the Partnership provided investment advisory services for twenty-nine CLOs, seven separate accounts, one master limited partnership, and eleven hedge fund or private equity structures, with total fee-earning assets under management of approximately $6.7 billion.

2. Summary of Significant Accounting Policies

The following is a summary of the significant accounting policies followed by the Partnership in preparation of its consolidated financial statements.

Basis of Accounting
The Partnership's consolidated financial statements have been prepared in accordance with U.S. generally accepted accounting principles in the United States of America ("U.S. GAAP") as set forth in the Financial Accounting Standards Board's Accounting Standards Codification and are stated in the United States Dollar.

Use of Estimates
The preparation of the consolidated financial statements in conformity with U.S. GAAP requires management to make estimates and assumptions that affect the amounts and disclosures in the consolidated financial statements. Actual results could differ from those estimates and those differences could be material.

Principles of Consolidation
The consolidated financial statements include the accounts of the Partnership and the Partnership's consolidated subsidiaries, which are comprised of (i) those entities in which it has controlling investment and has control over significant operating, financial and investing decisions of the entity, (ii) those entities in which it, as the general partner, has control over significant operating, financial and investing decisions of the entity, and (iii) variable interest entities ("VIEs") in which it is the primary beneficiary as described below.

The Partnership determines whether an entity has equity investors who lack the characteristics of a controlling financial interest or does not have sufficient equity at risk to finance its expected activities without additional subordinated financial support from other parties. If an entity has either of these characteristics, it is considered a VIE and must be consolidated by its primary beneficiary, which is the party that, along with its affiliates and de facto agents, absorbs a majority of the VIEs' expected losses or receives a majority of the expected residual returns as a result of holding variable interests.

Highland Capital Management, L.P.
(A Delaware Limited Partnership)
Notes to Consolidated Financial Statements
December 31, 2016

The Partnership assesses consolidation requirements pursuant to ASU 2015-02: Consolidation, which was adopted using the modified retrospective method and resulted in an effective date of adoption of January 1, 2016. Early adoption of ASU 2015-02 resulted in deconsolidation of Highland Crusader Offshore Partners, L.P. ("Crusader"), Highland Credit Strategies Master Fund, L.P. (Credit Strategies), and Highland CDO Opportunity Master Fund, L.P.

The Partnership and its affiliate's involvement with unconsolidated VIEs is generally limited to that of an advisory services provider, and their investment, if any, represents an insignificant interest in the relevant investment entities' assets under management. The Partnership's affiliate's exposure to risk in these entities is generally limited to any capital contribution it has made or is required to make and any earned but uncollected asset based and performance fees. The Partnership has not issued any investment performance guarantees to these VIEs or their investors, except that the Partnership has agreed to subject the full value of its equity interest ($0.9M) in Highland Prometheus Fund to dollar-for-dollar reduction to the extent the third party investor in such fund does not achieve an annual target return.

As of December 31, 2016, the net assets of the unconsolidated VIEs and the Partnership's maximum risk of loss were as follows:

	Unconsolidated VIE Net Assets	Carrying Value and Maximum Risk of Loss
Sponsored investment funds	$ 560,665,698	$ 10,118,175

Consolidation of Non-Variable Interest Entities
The Partnership consolidates the following non-VIEs (along with majority owned funds: Highland Diversified Credit Fund, L.P., and Highland Select Equity Fund, L.P., collectively the "Consolidated Investment Funds"), as the Partnership (or its wholly owned subsidiaries) controls the general partner of the respective entities and is responsible for the daily operations of the following entities:

- Highland Multi Strategy Credit Fund, L.P. ("Multi Strategy Master"), formerly Highland Credit Opportunities CDO, L.P., a Delaware limited partnership that commenced operations on December 15, 2005 and changed its name on August 26, 2014;
- Highland Multi-Strategy Master Fund, L.P. ("Multi-Strat Master"), a Bermuda limited partnership that commenced operations on July 18, 2006;
- Highland Multi-Strategy Fund, L.P. ("Multi-Strat Domestic Feeder"), a Delaware limited partnership that commenced operations on July 6, 2006;
- Highland Restoration Capital Partners Offshore, L.P. ("Restoration Offshore"), a Cayman limited partnership that commenced operations on September 2, 2008;
- Highland Restoration Capital Partners, L.P. ("Restoration Onshore"), a Delaware limited partnership that commenced operations on September 2, 2008; and

- BB Votorantim, Highland Infrastructure LLC ("BB Votorantim"), a Delaware limited liability company which began operations on May 29, 2014.

Consolidation of Majority Owned Entities
The Partnership consolidates the following entities as it has a controlling majority interest:

- 100% interest in Highland Capital Special Allocation, LLC ("HCSA"), a Delaware limited liability company that commenced operations on December 21, 2006;
- 100% interest in Highland Receivables Finance 1, LLC, a Delaware limited liability company that commenced operations on December 29, 2006;
- 100% interest in Highland Brasil, LLC, a Delaware limited liability company that commenced operations on January 28, 2014;
- 100% interest in Highland Capital Management Partners Charitable Trust #1, a trust that commenced operations on September 19, 2006;
- 100% interest in Highland Capital Management (Singapore) Pte, Ltd., a company organized in the Republic of Singapore that commenced operations on April 2, 2008;
- 100% interest in Highland Capital Management Korea, Ltd., a company organized in the Republic of Korea that commenced operations on August 2, 2012;
- 100% interest in HE Capital, LLC, a Delaware limited liability company that was formed on March 22, 2007;
- 100% interest in De Kooning, Ltd, a Cayman company that was formed on December 1, 2012;
- 100% interest in Hirst, Ltd., a Cayman company that was formed on December 1, 2012;
- 100% interest in Hockney, Ltd., a Cayman company that was formed on December 1, 2012;
- 100% interest in Oldenburg, Ltd., a Cayman company that was formed on December 1, 2012;
- 100% interest in Eames, Ltd, a Cayman company that was formed on December 12, 2012;
- 100% interest in Neutra, Ltd., a Cayman company that was formed on December 1, 2012;
- 99.9% interest in Penant Management, L.P., a Delaware limited partnership that was formed on December 12, 2012;
- 100% interest in Pollack, Ltd., a Cayman company that was formed on December 1, 2012;
- 100% interest in Warhol, Ltd., a Cayman company that was formed on December 1, 2012;
- 100% interest in HCREF-I Holding Corp., a Delaware company that was formed on December 13, 2012;

Highland Capital Management, L.P.
(A Delaware Limited Partnership)
Notes to Consolidated Financial Statements
December 31, 2016

- 100% interest in HCREF-XI Holding Corp., a Delaware company that was formed on December 13, 2012;
- 100% interest in HCREF-XII Holding Corp., a Delaware company that was formed on December 13, 2012;
- 100% interest in Highland ERA Management, LLC, a Delaware limited liability company that was formed on February 1, 2013;
- 100% interest in The Dondero Insurance Rabbi Trust., a trust that was formed on May 27, 2004;
- 100% interest in The Okada Insurance Rabbi Trust, a trust that was formed on May 27, 2004;
- 100% interest in NexPoint Opportunistic Credit Fund *(fka NexPoint Distressed Strategies Fund)*, a closed-end management investment company that was formed on March 2, 2016;
- 80% interest in Highland Employee Retention Assets ("HERA"), LLC, a Delaware limited liability company that was formed on October 26, 2009;
- 100% interest in Highland Diversified Credit Fund, L.P. ("Highland Offshore Partners"), a Delaware limited partnership which began operations on February 29, 2000 and was organized for the sole purpose of investing substantially all of its assets in Highland Offshore Partners, L.P.;
- 99.6% interest in Highland Select Equity Master Fund, LP, and Highland Select Equity Fund, LP Delaware limited partnerships which began operations on January 1, 2002 and was organized for the purpose of investing and trading in large and small cap stocks that trade for less than intrinsic value;
- 100% interest in Bandera Strategic Credit Partners I SLP, L.P., a Delaware limited liability company formed on April 3, 2014;
- 100% interest in Highland Fund Holdings, LLC, a Delaware limited liability company that was formed on May 24, 2016;
- 100% interest in HCM Holdco, LLC, a Delaware limited liability company formed on October 27, 2015 and;
- 100% interest in Maple Avenue Holdings, LLC, a Texas limited liability company formed on August 17, 2016.
- 98.9% interest in Highland Acquisition Corporation, a Delaware Corporation formed on April 25, 2016.

All inter-partnership and intercompany accounts and transactions involving the above listed consolidated entities ("Consolidated Entities") have been eliminated in all of the aforementioned consolidating schedules. All the Consolidated Investment Funds are, for U.S. GAAP purposes, investment companies under the American Institute of Certified Public Accountants (AICPA) Audit and Accounting Guide - Investment Companies. The Partnership has retained the specialized accounting of these funds required under U.S. GAAP.

Highland Capital Management, L.P.
(A Delaware Limited Partnership)
Notes to Consolidated Financial Statements
December 31, 2016

Due to the deconsolidation of certain investment funds, some prior year balances referenced within the following notes to the consolidated financial statements may not tie to prior year issued financial statements.

The following table includes a rollforward of noncontrolling interests from December 31, 2015, to December 31, 2016.

(in thousands)

Noncontrolling interest, December 31, 2015	$ 517,353
Net income attributable to noncontrolling interest	53,628
Noncontrolling partner distributions	(39,397)
Noncontrolling interest of deconsolidated entities	(118,737)
Noncontrolling interest, December 31, 2016	$ 412,847

Investment Transactions
Investment transactions are recorded on a trade date basis. Investments in securities are valued at market or fair value at the date of the financial statements with the resulting net unrealized appreciation or depreciation reflected in the Consolidated Statement of Income. Realized gains and losses on the transactions are determined based on either the first-in, first-out or specific identification method.

See Note 5 for the Partnership's fair value process and hierarchy disclosures.

Management and Incentive Fee Revenue
The Partnership recognizes revenue as earned in connection with services provided under collateral and investment management agreements. Under these agreements, the Partnership earns management fees calculated as a percentage of assets under management or net asset value. The Partnership also has an opportunity to earn additional incentive fees and incentive allocations related to certain management agreements depending ultimately on the financial performance of the underlying assets the Partnership manages. During the year ended December 31, 2016, the Partnership and its Consolidated Entities recognized management fees and incentive fees of approximately $52.6 million and $8.1 million, respectively. The Partnership recognized approximately $0.9 million of appreciation on incentive fees earned prior to 2008, previously deferred under Sec. 409(A) of the Internal Revenue Code, which has been presented in *Other Income* in the Consolidated Statement of Income.

Shared Services Revenue
The Partnership recognizes revenue as earned in connection with services provided to related parties under various shared services agreements. Under these agreements, the Partnership earns fees for services including, but not limited to, back office support functions, marketing, and investment advisory services. During the year ended December 31, 2016, the Partnership and its Consolidated Entities recognized shared services revenue of approximately $9.6 million, which has been presented in *Shared services fees* in the Consolidated Statement of Income. See further discussion in Note 8.

Income and Expense Recognition
Interest on currently paying debt instruments is accrued as earned and dividend income and dividends on securities sold, not yet purchased are recorded on the ex-dividend date, net of withholding taxes. In certain instances where the asset has defaulted or some amount of the interest payment is deemed uncollectable, interest is recognized when received. Discounts and premiums associated with purchases of investments are accreted and amortized to interest income, except for deep-discounted debt where ultimate collection of interest and principal may be in doubt. Such accretion/amortization is calculated on an effective-yield basis over the life of the investment. Amendment fees are recognized when agreed to by the underlying company and all settlement contingencies are met. Operating expenses, including interest on securities sold short, not yet purchased, are recorded on the accrual basis as incurred.

Income Taxes
The Partnership is not subject to federal income taxes, and therefore, no provision has been made for such taxes in the accompanying consolidated financial statements. Income taxes are the responsibility of the partners. Certain consolidated subsidiaries are subject to federal income taxes.

Certain entities that are included in these consolidated financial statements are subject to federal and/or state income taxes. Deferred tax assets and liabilities are recognized for the future tax consequences attributable to differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax bases. Deferred tax assets and liabilities are measured using enacted tax rates expected to apply to taxable income in the years in which those temporary differences are expected to be recovered or settled. The effect on deferred tax assets and liabilities of a change in tax rates is recognized in the period that includes the enactment date. See further discussion in Note 14.

Cash and Cash Equivalents
Cash and cash equivalents consist of cash held at U.S. and foreign banks, deposits with original maturities of less than 90 days, and money market funds. Cash equivalents are carried at cost, which approximates market value. At December 31, 2016, the Partnership and Consolidated Entities held cash balances at certain financial institutions in excess of the federally insured limit of $0.3 million. The Partnership and Consolidated Entities regularly monitor the credit quality of these institutions.

Restricted Cash
The Partnership and its subsidiaries are required to maintain cash balances as collateral for various financing and derivative transactions. These amounts are reported as restricted cash on the Consolidated Balance Sheet.

Notes Receivable
Notes receivable consists of secured promissory notes with maturities greater than one year. When available, the Partnership uses observable market data, including pricing on recent closed transactions to value notes. When appropriate, these notes may be valued using collateral values. Adjustments to the value may be performed in circumstances where attributes specific to the collateral exist suggesting impairment.

Highland Capital Management, L.P.
(A Delaware Limited Partnership)
Notes to Consolidated Financial Statements
December 31, 2016

Fixed Assets and Leasehold Improvements
Fixed assets and leasehold improvements are carried at cost, less accumulated depreciation. Depreciation is provided using the straight-line method over the shorter of the estimated useful life of the assets or the lease term.

The Partnership and its Consolidated Entities are depreciating fixed assets as follows:

	Period
Leasehold improvements	Lease term
Buildings	29 - 40 years
Furniture and fixtures	7 years
Computer and equipment	3 - 5 years
Computer software	3 years

Due to/from Brokers
Due to and from broker balances recorded on the Consolidated Balance Sheet include liquid assets maintained with brokers and counterparties for margin account balances and the amounts due for or due from the settlement of purchase and sales transactions. Certain due to and from broker balances have been reported on a net-by-counterparty basis where, in accordance with contractual rights and the Partnership's opinion, there is a right of offset in the event of bankruptcy or default by a counterparty.

Securities Sold, Not Yet Purchased
The Partnership's Consolidated Investment Funds engage in "short sales" as part of their investment strategies. Short selling is the practice of selling securities that are borrowed from a third party. The Consolidated Investment Funds are required to return securities equivalent to those borrowed for the short sale at the lender's demand.

Pending the return of such securities, the Consolidated Investment Funds deposit with the lender as collateral the proceeds of the short sale plus additional cash. The amount of the required deposit, which earns interest, is adjusted periodically to reflect any change in the market price of the securities that the Consolidated Investment Funds are required to return to the lender. A gain (which cannot exceed the price at which the Consolidated Investment Funds sold the security short) or a loss (which theoretically could be unlimited in size) will be settled upon termination of a short sale.

Options Contracts
The Partnership and the Consolidated Entities may purchase and write call and put options to gain market exposure or to hedge investments. A call option gives the purchaser of the option the right (but not the obligation) to buy, and obligates the seller to sell (when the option is exercised), the underlying position at the exercise price at any time or at a specified time during the option period. A put option gives the holder the right to sell and obligates the writer to buy the underlying position at the exercise price at any time or at a specified time during the option period. When the Partnership or the Consolidated Entities purchase (write) an option, an amount equal to the premium paid (received) by the entity is reflected as an asset (liability). The amount of the asset (liability) is subsequently marked-to-market to reflect the current market value of the option purchased (written). When a security is purchased (or sold) through an exercise of an option, the related premium paid (or received) is added to (or deducted from) the basis of the security acquired or deducted from (or added to) the proceeds of the security sold. When an option expires (or the Partnership or the Consolidated Entities enter into a closing transaction), the entity realizes a gain or loss on the option to the extent of the premiums received or paid (or gain or loss to the extent the cost of the closing transaction exceeds the premium received or paid). Exercise of a written option could result in the Partnership or the Consolidated Entities purchasing a security at a price different from the current market value.

The Partnership and the Consolidated Entities are exposed to counterparty risk from the potential that a seller of an option contract does not sell or purchase the underlying asset as agreed under the terms of the option contract. The maximum risk of loss from counterparty risk to the Partnership and the Consolidated Entities is the greater of the fair value of its open option contracts or the premiums paid to purchase the open option contracts. The Partnership and the Consolidated Entities consider the credit risk of the intermediary counterparties to its option transactions in evaluating potential credit risk.

Margin Transactions
To obtain more investable cash, the Consolidated Entities may use various forms of leverage including purchasing securities on margin. A margin transaction consists of purchasing an investment with money loaned by a broker and agreeing to repay the broker at a later date. Interest expense on the outstanding margin balance is based on market rates at the time of the borrowing.

Withdrawals Payable
Withdrawals are recognized as liabilities, net of incentive allocations, when the amount requested in the withdrawal notice becomes fixed and determinable. This generally may occur either at the time of receipt of the notice, or on the last day of a fiscal period, depending on the nature of the request. As a result, withdrawals paid after the end of the year, but based upon year-end capital balances are reflected as withdrawals payable at December 31, 2016. Withdrawal notices received for which the dollar amount is not fixed remains in capital until the amount is determined. At December 31, 2016, the Consolidated Investment Funds had withdrawals payable of $68.2 million.

Foreign Currency Transactions
The Partnership's subsidiaries HCM Singapore and HCM Korea use Singapore dollars and Korean won, respectively, as their functional currency. All foreign currency asset and liability balances are presented in U.S. dollars in the consolidated financial statements, translated using the exchange rate as of December 31, 2016. Revenues and expenses are recorded in U.S. dollars using an average exchange rate for the relative period. Foreign currency transaction gains and losses resulting from transactions outside of the functional currency of an entity are included in *Other income* on the Consolidated Statement of Income.

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The Consolidated Entities do not isolate that portion of the results of operations resulting from changes in foreign exchange rates or investment or fluctuations from changes in market prices of securities held. Such fluctuations are included within the *Net realized and unrealized gains or loss from investments* on the Consolidated Statement of Income.

Life Settlement Contracts
One of the Consolidated Investment Funds, through a subsidiary, holds life settlement contracts and accounts for them using the fair value method. These contracts are recorded as a component of "Investments at fair value" on the Consolidated Balance Sheet. Realized and unrealized gains (losses) on the contracts are recorded in the Consolidated Income Statement. Cash flows relating to the purchase and sale of the contracts are recorded as a component of *Purchase of investments* and *Proceeds from dispositions of investments* on the Consolidated Statement of Cash Flows. At December 31, 2016, the Consolidated Investment Fund was invested in 14 policies, which had a total face value of approximately $155.1 million and a fair value of $23.8 million.

Financing
The Partnership and its Consolidated Entities may finance the acquisition of its investments in securities and loans through financing arrangements. The Partnership and its Consolidated Entities recognize interest expense on all borrowings on the accrual basis in the Consolidated Statement of Income.

Financial Instruments
The Partnership and its Consolidated Entities determine fair value of financial instruments as required by U.S. GAAP. The carrying amounts for cash and cash equivalents, receivables, accounts payable, withdrawals payable, debt and notes payable, due to brokers, investment liabilities and accrued liabilities approximate their fair values. For fair value of investment, see Note 5.

Partners' Capital
The Partnership agreement requires that income or loss of the Partnership be allocated to the partners in accordance with their respective partnership interests.

Recently Issued Accounting Standards and Interpretations
In August 2016, the FASB issued Accounting Standards Update 2016-15, Statement of cash flows – Classification of certain cash receipts and cash payments (Topic 230). The amendments in this Update apply to all reporting entities. This Accounting Standards Update addresses the following eight specific cash flow issues: Debt prepayment or debt extinguishment costs; settlement of zero-coupon debt instruments or other debt instruments with coupon interest rates that are insignificant in relation to the effective interest rate of the borrowing; contingent consideration payments made after a business combination; proceeds from the settlement of insurance claims; proceeds from the settlement of corporate-owned life insurance policies (COLIs) (including bank-owned life insurance policies (BOLIs)); distributions received from equity method investees; beneficial interests in securitization transactions; and separately identifiable cash flows and application of the predominance principle. ASU 2016-15 is effective for annual reporting periods in fiscal years that begin after December 15, 2016. This statement is not expected to have a material impact on the Parternship's consolidated financial statements.

In October 2016, the FASB issued Accounting Standards Update 2016-17 – Consolidation (Topic 810). The Board is issuing this Accounting Standards Update to amend the consolidation guidance on how a reporting entity that is the single decision maker of a variable interest entity (VIE) should treat indirect interests in the entity held through related parties that are under common control with the reporting entity when determining whether it is the primary beneficiary of that VIE. Under the amendments, a single decision maker is not required to consider indirect interests held through related parties that are under common control with the single decision maker to be the equivalent of direct interests in their entirety. Instead, a single decision maker is required to include those interests on a proportionate basis consistent with indirect interests held through other related parties. The amendments are effective for the annual period ending after December 15, 2016. This statement is not expected to have a material impact on the Partnership's consolidated financial statements.

In November 2016, the FASB issued Accounting Standards Update 2016-18, Statement of cash flows – Restricted cash (Topic 230). The amendments in this Update apply to all reporting entities that have restricted cash or restricted cash equivalents and are required to present a statement of cash flows under Topic 203. The amendments in this Update require that a statement of cash flows explain the change during the period in the total of cash, cash equivalents, and amounts generally described as restricted cash or restricted cash equivalents. Therefore, amounts generally described as restricted cash and restricted cash equivalents should be included with cash and cash equivalents when reconciling the beginning-of-period and end-of-period total amounts shown on the statement of cash flows. ASU 2016-18 is effective for annual reporting periods in fiscal years that begin after December 15, 2016. This statement is not expected to have a material impact on the Partnership's consolidated financial statements.

3. Fixed Assets and Leasehold Improvements

Fixed assets and leasehold improvements are comprised of the following as of December 31, 2016:

(in thousands)

Leasehold improvements	$	7,192
Buildings		2,595
Furniture and fixtures		2,793
Computer and equipment		2,403
Computer software		297
Accumulated depreciation		(8,533)
	$	6,747

Depreciation expense in 2016 totaled approximately $1.4 million for the Partnership and its subsidiaries.

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4. Investments

Detailed below is a summary of the Partnership and its Consolidated Entities' investments at December 31, 2016:

(in thousands)	Amortized Cost/Cost	Fair Value
Common equity securities	$ 552,694	$ 730,194
Asset-backed securities	178,094	120,678
Floating rate syndicated bank loans	142,041	54,745
Closed-end mutual funds	85,845	74,731
Participation interests	28,500	27,348
Limited partnership interests	18,806	24,630
Life settlement contracts	57,638	23,826
LLC interests	21,496	18,904
Rights & warrants	21,931	8,768
Options contracts	3,500	6,463
Real Estate Investment Trusts	4,793	5,080
Corporate bonds	88,007	1,943
Preferred equity	81	600
Total investments	$ 1,203,426	$ 1,097,910

	Proceeds	Fair Value
Securities sold, not yet purchased	$ (138,589)	$ (146,792)

5. Fair Value of Financial Instruments

Fair Value Measurement
U.S. GAAP defines fair value as the price an entity would receive to sell an asset or pay to transfer a liability in an orderly transaction between market participants as of the measurement date. The standard requires fair value measurement techniques to reflect the assumptions market participants would use in pricing an asset or liability and, where possible, to maximize the use of observable inputs and minimize the use of unobservable inputs. It also establishes the following hierarchy that prioritizes the valuation inputs into three broad levels:

- Level 1 – Valuation based on unadjusted quoted prices in active markets for identical assets and liabilities that the Partnership and the Consolidated Entities have the ability to access as of the measurement date. Valuations utilizing Level 1 inputs do not require any degree of judgment.

- Level 2 – Valuations based on (a) quoted prices for similar instruments in active markets; (b) quoted prices for identical or similar instruments in markets that are not active that are reflective of recent market transactions; or (c) models in which all significant inputs are observable, either directly or indirectly.

- Level 3 – Valuations based on indicative quotes that do not reflect recent market transactions and models or other valuation techniques in which the inputs are unobservable and significant to the fair value measurement, which includes situations where there is little, if any, market activity for the asset or liability.

The availability of observable inputs varies among financial instruments and is affected by numerous factors, including the type of instruments, the period of time in which the instrument has been established in the marketplace, market liquidity for an asset class and other characteristics particular to a transaction. When the inputs used in a valuation model are unobservable, management is required to exercise a greater degree of judgment to determine fair value than it would for observable inputs. For certain instruments, the inputs used to measure fair value may fall into different levels of the hierarchy discussed above. In those cases, the instruments are categorized for disclosure purposes based on the lowest level of inputs that are significant to their fair value measurements.

The Partnership and Consolidated Entities use prices and inputs that are current as of the measurement dates. The Partnership also considers the counterparty's non-performance risk when measuring the fair value of its investments.

During periods of market dislocation, the ability to observe prices and inputs for certain instruments may change. These circumstances may result in the instruments being reclassified to different levels within the hierarchy over time. They also create an inherent risk in the estimation of fair value that could cause actual amounts to differ from management's estimates. Whenever possible, the Partnership and its Consolidated Entities use actual market prices or relevant observable inputs to establish the fair value of its assets and liabilities. In cases where observable inputs are not available, the Partnership and Consolidated Entities develop methodologies that provide appropriate fair value estimates. These methodologies are reviewed on a continuous basis to account for changing market conditions.

The Partnership has established policies, as described above, processes and procedures to ensure that valuation methodologies for investments and financial instruments that are categorized within all levels of the fair value hierarchy are fair and consistent. A Pricing Committee has been established to provide oversight of the valuation policies, processes and procedures, and is comprised of various personnel from the Partnership. The Pricing Committee meets monthly to review the proposed valuations for investments and financial instruments. The Pricing Committee is responsible for establishing the valuation policies and evaluating the overall fairness and consistent application of those policies.

As of December 31, 2016, the Partnership and its Consolidated Entities' investments consisted primarily of common equity securities, asset-backed securities, floating rate syndicated bank loans, closed-end mutual funds, preferred equity, participation interests, limited partnership interests, life settlement contracts, LLC interests, rights and warrants, option contracts, and corporate bonds. In addition, the Consolidated Entities engage in short sale transactions. The majority of these financial instruments are not listed on national securities exchanges and management is required to use significant judgment to estimate their values.

Equity Investments
Publicly traded equities are valued at the closing price at the date of the financial statements. The fair value of equity investments that are not traded on national exchanges or through real-time quotation services are derived from methodologies that provide appropriate fair value estimates. Equity investments with quotes that are based on actual trades with a sufficient level of activity on or near the valuation date are classified as Level 2 assets.

Private Equity Investments
The Partnership and Consolidated Entities hold private equity investments which resulted from the restructuring of other instruments. These assets are valued using market data obtained from a third-party pricing service and/or quotes from other parties dealing in the specific assets when available. In the event both a reliable market quote and third-party pricing service data are not available for such assets, the Partnership and Consolidated Entities will fair value the assets using various methodologies, as appropriate for individual investments, including comparable transaction multiples, comparable trading multiples, and/or discounted cash flow analysis. When utilizing comparable trading multiples, the Investment Manager determines comparable public companies (peers) based on industry, size, developmental stage, strategy, etc., and then calculates a trading multiple for each comparable company identified by using either a price to book ratio based on publically available information about the underlying comparable company or by dividing the enterprise value of the comparable company by its earnings before interest, taxes, depreciation and amortization (EBITDA) or similar metrics. In certain instances, the inputs used in the calculation of the trading multiples may vary based on the industry or development stage of the company. A multiple determined by the Investment Manager to be within a reasonable range as calculated amongst its peers is then applied to the underlying company's price to book ratio or EBITDA (which may be normalized to adjust for certain nonrecurring events), to calculate the fair value of the underlying company. The fair value may be further adjusted for entity specific facts and circumstances. Private equity investments with quotes that are based on actual trades with a sufficient level of activity on or near the valuation date are classified as Level 2 assets. Private equity investments that are priced using quotes derived from implied values, bid/ask prices for trades that were never consummated, or a limited amount of actual trades are classified as Level 3 assets because the inputs used by the brokers and pricing services to derive the values are not readily observable.

The Consolidated Entities also invest in warrant securities of publicly–traded companies. The fair value of these investments is based on an option pricing model. The option model bases warrant value on a number of factors including underlying equity price as of the valuation date, strike price, exercise date, time to expiration and volatility. Warrant investments that have observable volatility are classified as Level 2 assets. Warrant investments where volatility inputs are not observable are valued using an estimated volatility input, and are classified as Level 3 assets.

Asset-Backed Securities

The Consolidated Entities invest in a variety of asset-backed securities. Asset-backed securities are generally valued based on complex cash flow models that analyze the cash flows generated by the investment's underlying assets after adjusting for expected default rates, prepayment rates, collateral quality, market liquidity among other factors. These models are then adjusted based on spreads available in the market place from various research firms, dealers, and trading activity. The Consolidated Entities generally utilize an independent third party firm to perform these calculations and provide the relevant inputs. The Consolidated Entities evaluate the results based on visible market activity and market research. When appropriate, the Consolidated Entities may apply other techniques based on a specific asset's characteristics. Asset-backed securities with quotes that are based on actual trades with a sufficient level of activity on or near the valuation date are classified as Level 2 assets. Asset-backed securities that are priced using quotes derived from implied values, bid/ask prices for trades that were never consummated, or a limited amount of actual trades are classified as Level 3 assets because the inputs used by the brokers and pricing services to derive the values are not readily observable.

Debt Securities

The Partnership and Consolidated Entities invest in various types of debt, which are almost exclusively valued using market data obtained from one or more third-party pricing services or brokers. In instances where a third-party pricing service does not provide pricing for a specific asset, the Partnership and Consolidated Entities first seek to obtain reliable market quotes from other parties dealing in the specific asset. Loans and bonds with quotes that are based on actual trades with a sufficient level of activity on or near the valuation date are classified as Level 2 assets. Loans and bonds that are priced using quotes derived from implied values, bid/ask prices for trades that were never consummated, or a limited amount of actual trades are classified as Level 3 assets because the inputs used by the brokers and pricing services to derive the values are not readily observable.

Absent both a reliable market quote and third-party pricing service date, the Partnership and Consolidated Entities may use various models to establish an estimated exit price. These investments are classified as Level 3 assets. Models used for debt securities are primarily based on identifying comparable assets for which market data is available and pricing the target asset consistent with the yields of the comparable assets. As circumstances require, other industry accepted techniques may be used in modeling debt assets.

Life Settlement Contracts

Life Settlement contracts are valued using mortality tables and interest rate assumptions that are deemed by management to be appropriate for the demographic characteristics of the parties insured under the policies. Management generally utilizes an independent third party firm to perform these calculations and provide the relevant inputs. Management evaluates the results based on visible market activity and market research. Since these inputs are not readily observable, these contracts are classified as Level 3 assets.

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At December 31, 2016, the Consolidated Entities' investments in life settlement contracts consisted of the following:

(U.S. dollars in thousands, except number of policies)

Remaining Life Expectancy (in years)	Number of Policies	Face Value	Fair Value
2-3	-	$ -	$ -
3-4	1	10,000	3,154
4-5	1	5,000	1,514
Thereafter	12	140,079	19,158
Total	14	$ 155,079	$ 23,826

Options Contracts
The Partnership and its Consolidated Entities may purchase and write call and put options to gain market exposure or to hedge investments. A call option gives the purchaser of the option the right (but not the obligation) to buy, and obligates the seller to sell (when the option is exercised), the underlying position at the exercise price at any time or at a specified time during the option period. A put option gives the holder the right to sell and obligates the writer to buy the underlying position at the exercise price at any time or at a specified time during the option period. When the Partnership and its Consolidated Entities purchase (writes) an option, an amount equal to the premium paid (received) by the purchaser is reflected as an asset (liability). The amount of the asset (liability) is subsequently marked-to-market to reflect the current market value of the option purchased (written). When a security is purchased (or sold) through an exercise of an option, the related premium paid (or received) is added to (or deducted from) the basis of the security acquired or deducted from (or added to) the proceeds of the security sold. When an option expires (or the purchaser enters into a closing transaction), the purchaser realizes a gain or loss on the option to the extent of the premiums received or paid (or gain or loss to the extent the cost of the closing transaction exceeds the premium received or paid). Exercise of a written option could result in the Partnership and its Consolidated Entities purchasing a security at a price different from the current market value.

Limited Partnership and LLC Interests
The Partnership and its Consolidated Entities hold limited partnership and LLC interests in various entities. These assets are valued as the net asset value of the limited partnership interests because the entities utilize fair value accounting for their own financial statements. These interests are classified as Level 3 assets.

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The Partnership categorizes investments recorded at fair value in accordance with the hierarchy established under U.S. GAAP. A majority of the Consolidated Entities investments and derivatives at December 31, 2016 are classified as Level 3 positions due to the absence of active markets with quoted prices for identical or similar investments. The following table provides a summary of the financial instruments recorded at fair value on a recurring basis by level within the hierarchy as of December 31, 2016:

(in thousands)

Assets	**Level 1**	**Level 2**	**Level 3**	**Total Fair Value at 12/31/16**
Common equity securities	$ 286,369	$ 326,665	$ 117,160	$ 730,194
Asset-backed securities	-	112,455	8,223	120,678
Floating rate syndicated bank loans	-	42	54,703	54,745
Closed-end mutual funds	74,731	-	-	74,731
Participation interests	15,368	-	11,980	27,348
Limited partnership interests	-	-	24,630	24,630
Life settlement contracts	-	-	23,826	23,826
LLC interests	-	676	18,228	18,904
Rights & warrants	702	652	7,414	8,768
Options	6,463	-	-	6,463
Real Estate Investment Trusts	1,039	4,041	-	5,080
Corporate bonds	-	1,943	-	1,943
Preferred equity	600	-	-	600
Total	$ 385,272	$ 446,474	$ 266,164	$ 1,097,910
Liabilities				
Common stock & Options sold short	$ 146,792	$ -	-	$ 146,792

The classification of a financial instrument within Level 3 is based on the significance of the unobservable inputs to the overall fair value measurement. The following table provides a roll forward of the investments classified within Level 3 for the year ended December 31, 2016:

(in thousands)

	Total Fair Value at December 31, 2015	**Purchases**	**Sales and Maturities**	**Restructures**	**Transfers Into Level 3**	**Net Realized Gains / (Losses)**	**Net Unrealized Gains / (Losses)**	**Total Fair Value at December 31, 2016**
Common equity securities	$ 94,654	$ 364	$ (50,925)	$ 49,361	$ -	$ 4,397	$ 19,309	$ 117,160
Floating rate syndicated bank loans	81,512	7,267	(21,984)	-	-	9,370	(21,462)	54,703
Limited partnership interests	5,731	6,921	(20,839)	-	31,563	1,714	(461)	24,630
Life settlement contracts	22,528	6,862	(5,000)	-	-	940	(1,504)	23,826
LLC interests	19,322	234	(84)	-	-	(95)	(1,149)	18,228
Participation interests	-	13,333	(1,353)	-	-	-	-	11,980
Asset-backed securities	3,885	5,250	(2,726)	-	693	313	808	8,223
Rights & warrants	6,513	-	-	-	-	-	901	7,414
Preferred equity	18	-	-	-	-	-	(18)	-
Corporate bonds	-	-	-	-	1,094	(19,837)	18,743	-
	$ 234,163	**$ 40,231**	**$ (102,910)**	**$ 49,361**	**$ 33,350**	**$ (3,198)**	**$ 15,167**	**$ 266,164**

Transfers from Level 2 to Level 3 or from Level 3 to Level 2 are due to changes in observable pricing inputs as compared to the prior year. No significant transfers between Level 1 or Level 2 fair value measurements occurred during the year ended December 31, 2016.

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All net realized and unrealized gains and losses in the tables above are reflected in the accompanying Consolidated Income Statement. Approximately $17.3 million of the net unrealized gains presented in the table above relate to investments held as of December 31, 2016.

Transfers out of Level 3 are recognized at the beginning of the period. The transfers out of Level 3 at December 31, 2016 were due to changes in observable pricing inputs as compared to the prior year.

The following page includes a summary of significant unobservable inputs used in the fair valuations of assets and liabilities categorized within Level 3 of the fair value hierarchy.

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(Ending balance in thousands)

Category	Ending Balance at 12/31/2016	Valuation Technique	Unobservable Inputs	Input Value(s)
Common equity securities	$ 117,160	Multiples Analysis	Multiple of EBITDA	2.5x - 8.25x
			Discount for Lack of Marketability	15 - 25%
			Multiple of Revenue	0.4x - 0.5x
		Discounted Cash Flow	Discount Rate	7.5 - 27.5%
			Terminal Multiple	2.2x - 7.5x
			Minority Discount	20%
		Bid Indications	N/A	N/A
		Appraisal	N/A	N/A
Bank loans	54,703	Multiples Analysis	Multiple of EBITDA	3.0x - 4.0x
			Multiple of Revenue	0.4x - 0.5x
		Escrow Recovery Analysis	Discount Rate	11%
		Adjusted Appraisal	Minority Discount	25%
		Bid Indications	N/A	N/A
		Discounted Cash Flow	Discount Rate	22%
			Terminal Multiple	2.5x
			Spread Adjustment	0.5 - 7.4%
Limited partnership interests	24,630	Net Asset Value of Underlying Assets and Liabilities	Various models including liquidation analysis, and third-party pricing vendor	N/A
Life settlement contracts	23,826	Net Asset Value of Underlying Assets, based on third-party pricing vendor	Discount Rate	16 - 18%
LLC interests	18,228	Third-Party Pricing Vendor	N/A	N/A
		Transaction Price	N/A	N/A
		Appraisal	N/A	N/A
Participation interests	11,980	Net Asset Value of Underlying Assets	N/A	N/A
Asset-backed securities	8,223	Third-Party Pricing Vendor	N/A	N/A
		Net Asset Value of Underlying Assets and Liabilities	N/A	N/A
		Discounted Cash Flow	Discount Rate	21%
Rights & w arrants	7,414	Discounted Cash Flow	Discount Rate	12 - 15%
			Terminal Multiple	7.5x
			Minority Discount	20%
		Multiples Analysis	Multiple of EBITDA	7.25x - 8.25x
			Discount for Lack of Marketability	25%
Total	$ 266,164			

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6. Securities Sold under Agreements to Repurchase

Transactions involving securities sold under agreements to repurchase are treated as collateralized financial transactions, and are recorded at their fair market values. In addition, interest earned on the securities is included in interest receivable, and interest accrued on amounts borrowed is included in interest payable. For the year ended December 31, 2016, Multi Strategy Master expensed approximately $0.8 million for interest charged on the amounts borrowed for repurchase agreements.

In connection with transactions in agreements to repurchase, it is Multi Strategy Master's policy that its counterparty take possession of the underlying collateral securities, the fair value of which exceeds the principal amount of the agreements to repurchase, including accrued interest, at all times. If the counterparty defaults under agreements to resell, and the fair value of the collateral declines, the realization of the collateral by Multi Strategy Master may be delayed or limited.

To reduce counterparty credit risk with respect to repurchase agreements, Multi Strategy Master has entered into a master repurchase agreement, which allows Multi Strategy Master to make (or to have an entitlement to receive) a single net payment in the event of default (close-out netting) for outstanding payables and receivables with respect to repurchase agreements with the counterparty.

The master repurchase agreement includes credit related contingent features which allow the counterparty to terminate the agreement prior to maturity in the event Multi Strategy Master's net assets decline by a stated percentage or Multi Strategy Master fails to meet the terms of the agreement, which would cause the Master Partnership to accelerate payment of any net liability owed to the counterparty.

For financial reporting purposes, Multi Strategy Master does not offset repurchase agreement assets and liabilities that are subject to netting arrangements in the Consolidated Balance Sheet. Bankruptcy or insolvency laws of a particular jurisdiction may impose restrictions on or prohibitions against the right of offset in bankruptcy, insolvency or other events.

Collateral terms are contract specific for repurchase agreements. For repurchase agreements traded under master repurchase agreements, the collateral requirements are typically calculated by netting the mark to market amount for each transaction under such agreement and comparing that to the value of any collateral currently pledged by Multi Strategy Master or the counterparty.

For financial reporting purposes, cash collateral that has been pledged to cover obligations of Multi Strategy Master, if any, is reported in due to/from brokers on the Consolidated Balance Sheet. Generally, the amount of collateral due from or to a party must exceed a minimum transfer amount threshold before a transfer has to be made. To the extent amounts due to Multi Strategy Master from its counterparties are not fully collateralized, contractually or otherwise, Multi Strategy Master bears the risk of loss from counterparty non-performance.

At December 31, 2016, securities with a fair value of approximately $64.9 million, which are included in investments in securities on the Consolidated Balance Sheet, were pledged to collateralize securities sold under agreements to repurchase.

The following table presents, by counterparty, Multi Strategy Master's liabilities net of the related collateral pledged by Multi Strategy Master at December 31, 2016:

(U.S. dollars in thousands)

Counterparty	Decription	Class of Related Collateral	Gross Value of Liability	Net Amount Due to Counterparty	Financial Instruments	Cash Collateral Pledged	Net Exposure After Collateral	Interest Rate	Maturity
Mizuho Securities USA Inc.	Repurchase Agreement	Asset-backed securities	$ 30,785	$ 30,785	$ (30,785)	$ -	$ -	1.45%	11/1/2026
Mizuho Securities USA Inc.	Repurchase Agreement	Asset-backed securities	11,329	11,329	(11,329)	-	-	2.45%	10/14/2022
Mizuho Securities USA Inc.	Repurchase Agreement	Asset-backed securities	3,039	3,039	(3,039)	-	-	2.45%	5/1/2027
Mizuho Securities USA Inc.	Repurchase Agreement	Asset-backed securities	2,901	2,901	(2,901)	-	-	2.45%	11/1/2026
Mizuho Securities USA Inc.	Repurchase Agreement	Asset-backed securities	2,660	2,660	(2,660)	-	-	2.00%	11/1/2026
			$ 50,714	$ 50,714	$ (50,714)				

7. Financial Instruments with Concentration of Credit and Other Risks

Financial Instruments

The Partnership and its Consolidated Entities' investments include, among other things, equity securities, debt securities (both investment and non-investment grade) and bank loans. The Consolidated Entities may also invest in derivative instruments, including total return and credit default swaps. Investments in these derivative instruments throughout the year subject the Consolidated Entities to off-balance sheet market risk, where changes in the market or fair value of the financial instruments underlying the derivative instruments may be in excess of the amounts recognized in the Consolidated Balance Sheet.

Market Risk

Market risk represents the potential loss that may be incurred by the Partnership and its Consolidated Entities due to a change in the market value of its investments or the value of the investments underlying swap agreements. The Partnership and its Consolidated Entities' exposure to market risk is affected by a number of macroeconomic factors, such as interest rates, availability of credit, inflation rates, economic uncertainty and changes in laws and regulations. These factors may affect the level and volatility of securities prices and the liquidity of the Partnership and its Consolidated Entities investments. Volatility or illiquidity could impair the Partnership and its Consolidated Entities performance or result in losses. The Partnership and its Consolidated Entities may maintain substantial trading positions that can be adversely affected by the level of volatility in the financial markets. The performance of life settlement contracts may be adversely impacted by the under estimation of mortality and other rates.

Credit Risk

Credit risk is the potential loss the Partnership and its Consolidated Entities may incur as a result of the failure of a counterparty or an issuer to make payments according to the terms of a contract. Because the Consolidated Entities enter into over-the-counter derivatives such as swaps, it is exposed to the credit risk of their counterparties. To limit the credit risk associated with such transactions, the Consolidated Entities execute transactions with financial institutions that the Investment Manager believes to be financially viable.

Liquidity Risk
The Consolidated Entities' limited partner interests have not been registered under the Securities Act of 1933 or any other applicable securities law. There is no public market for the interests, and neither the Consolidated Entities nor their manager expects such a market to develop.

Business Risk
The Partnership provides advisory services to the Consolidated Entities. Consolidated Entities could be materially affected by the liquidity, credit and other events of the Partnership.

High Yield Bonds and Loans
The Partnership and its Consolidated Entities' investment portfolios consist of floating rate syndicated bank loans and fixed income securities that are not listed on a national securities exchange. These investments trade in a limited market and it may not be possible to immediately liquidate them if needed. In addition, certain of the Partnership and its Consolidated Entities' investments have resale or transfer restrictions that further reduce their liquidity. Because of the inherent uncertainty of these investments, the Investment Manager's best estimates may differ significantly from values that would have been used had a broader market for the investments existed.

When the Partnership and its Consolidated Entities purchase a senior secured syndicated bank loan, it enters into a contractual relationship directly with the corporate borrower, and as such, is exposed to certain degrees of risk, including interest rate risk, market risk and the potential non-payment of principal and interest, including default or bankruptcy of the corporate borrower or early payment by the corporate borrower. Typically, senior secured syndicated bank loans are secured by the assets of the corporate borrower and the Partnership and its Consolidated Entities have a policy of regularly reviewing the adequacy of each corporate borrower's collateral.

The Partnership and its Consolidated Entities may invest in high-yield bonds that have been assigned lower rating categories or are not rated by the various credit rating agencies. Bonds in the lower rating categories are generally considered to be speculative with respect to the issuer's ability to repay principal and pay interest. They are also subject to greater risks than bonds with higher ratings in the case of deterioration of general economic conditions. Due to these risks, the yields and prices of lower-rated bonds are generally volatile, and the market for them is limited, which may affect the ability to liquidate them if needed.

Debt Obligations
The Partnership and its Consolidated Entities' investment portfolio consists of collateralized loan obligations that are not listed on a national securities exchange. These investments trade in a limited market and it may not be possible to immediately liquidate them if needed. Because of the inherent uncertainty of these investments, the Partnership's best estimates may differ significantly from values that would have been used had broader market for the investments existed.

Distressed Investments
A portion of the high yield corporate bonds and senior secured syndicated bank loans in which the Partnership and its Consolidated Entities invest have been issued by distressed companies in an unstable financial condition that have experienced poor operating performance and may be involved in bankruptcy or other reorganization and liquidation proceedings. These investments have substantial inherent risks. Many of these distressed companies are likely to have significantly leveraged capital structures, which make them highly sensitive to declines in revenue and to increases in expenses and interest rates. The leveraged capital structure also exposes the companies to adverse economic factors, including macroeconomic conditions, which may affect their ability to repay borrowed amounts on schedule.

Limited Diversification
The Investment Manager attempts to diversify the Consolidated Entities' investments. However, the Consolidated Entities' portfolios could become significantly concentrated in any one issuer, industry, sector strategy, country or geographic region, and such concentration of credit risk may increase the losses suffered by the Consolidated Entities. In addition, it is possible that the Investment Manager may select investments that are concentrated in certain classes of financial instruments. This limited diversity could expose the Consolidated Entities to losses that are disproportionate to market movements as a whole.

At December 31, 2016, the Consolidated Entities' investments were predominantly concentrated in the United States and Cayman Islands.

Exit Difficulties
The Partnership and its Consolidated Entities cannot assure investors that it will be able to exit its investments by sale or other disposition at attractive prices, if at all. The mergers and acquisitions and public securities markets are highly cyclical, which means that the Consolidated Entities' investments, even its best performing investments, may be illiquid for extended periods of time despite the Consolidated Entities' efforts to identify attractive exit opportunities. Additionally, a significant portion of the Consolidated Entities' assets at any time will likely consist of debt obligations and other securities that are thinly-traded, for which no market exists and/or are restricted as to their transferability under applicable law and/or documents governing particular transactions of the Consolidated Entities. In some cases, the Consolidated Entities may be unable to realize an investment prior to the date on which the Consolidated Entities are scheduled to terminate and/or have to sell or otherwise dispose of one or more investments on disadvantageous terms as a result of the Consolidated Entities' termination, or distribute such investments in kind.

Custody Risk
The clearing operations for the Partnership and its Consolidated Entities are provided by major financial institutions. In addition, all of the Partnership and its Consolidated Entities' cash and investments are held with banks or brokerage firms, which have worldwide custody facilities and are members of all major securities exchanges. The Partnership or its Consolidated Entities may lose all or a portion of the assets held by these banks or brokerage firms if they become insolvent or fail to perform pursuant to the terms of their obligations. While both the U.S. Bankruptcy Code and the Securities Investor Protection Act of 1970 seek to protect customer property in the event of a broker-dealer's failure, insolvency or liquidation, the Partnership and its Consolidated Entities might be unable to recover the full value of their assets or incur losses due to their assets being unavailable for a period of time.

Leverage Risk
The Consolidated Entities may borrow funds from brokers, banks and other lenders to finance its trading operations. The use of leverage can, in certain circumstances, magnify the losses to which the Consolidated Entities' investment portfolio may be subject. The use of margin and short-term borrowings creates several risks for the Consolidated Entities. If the value of the Consolidated Entities' securities fall below the margin level required by a counterparty, additional margin deposits would be required. If the Consolidated Entities are unable to satisfy a margin call, the counterparty could liquidate the Consolidated Entities' positions in some or all of the financial instruments that are in the account at the prime broker and cause the Consolidated Entities to incur significant losses. In addition, to the extent the Consolidated Entities have posted excess collateral for margin transactions, there is a risk that the counterparty will fail to fulfill its obligation to return the full value of that collateral.

The failure to satisfy a margin call, or the occurrence of other material defaults under margin or other financing agreements, may trigger cross-defaults under the Consolidated Entities' agreements with other brokers, lenders, clearing firms or other counterparties, multiplying the adverse impact to the Consolidated Entities. In addition, because the use of leverage allows the Consolidated Entities to control positions worth significantly more than its investment in those positions, the amount that the Consolidated Entities may lose in the event of adverse price movements is high in relation to the amount of their investment.

In the event of a sudden drop in the value of the Consolidated Entities' assets, the Consolidated Entities may not be able to liquidate assets quickly enough to satisfy their margin or collateral requirements. As a result, the Consolidated Entities may become subject to claims of financial intermediaries, and such claims could exceed the value of its assets. The banks and dealers that provide financing to the Consolidated Entities have the ability to apply discretionary margin, haircut, and financing and collateral valuation policies. Changes by banks and dealers in any of the foregoing may result in large margin calls, loss of financing and forced liquidations of positions and disadvantageous prices.

Foreign Currency Risk
The Partnership and its Consolidated Entities may invest in securities or maintain cash denominated in currencies other than the U.S. dollar. The Partnership and its Consolidated Entities are exposed to risk that the exchange rate of the U.S. dollar relative to other currencies may change in a manner that has an adverse effect on the reported value of the Partnership and its Consolidated Entities' assets and liabilities denominated in currencies other than the U.S. dollar.

Concentration of Investments
At December 31, 2016, the Consolidated Entities' investments and derivative contracts were predominantly concentrated in the United States and Cayman Islands and across several industries.

Litigation Risk
The Partnership and its Consolidated Entities are periodically subject to legal actions arising from the ordinary course of business. The ultimate outcome of these cases is inherently uncertain and could result in additional losses to the Partnership and/or its Consolidated Entities. Refer to Note 15 for a discussion of open litigation.

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8. Related Party Transactions

Investments Under Common Control
Certain members of the Partnership's management serve as members on the Boards of Directors for some of the companies with which it invests. Because these individuals participate in the management of these companies, investments held by the Partnership and its subsidiaries in these companies may, from time to time, not be freely tradable. As of December 31, 2016, the Partnership and its Consolidated Entities held the following investments in these companies:

(in thousands)

Issuer	Type of Investment	Fair Value
American Banknote Corporation	Common Equity	$ 582
Carey Holdings, Inc.	Common Stock	5,368
CCS Medical, Inc.	Loan	5,836
Cornerstone Healthcare Group Holding, Inc.	Common Equity	43,142
Euramax International Holdings B.V.	Warrants	1,108
Euramax International Holdings B.V.	Term Loan	39,124
Euramax International Holdings B.V.	Common Stock	13,454
Highland Energy MLP Fund	Mutual Fund	2,290
Highland Floating Rate Opportunities Fund	Mutual Fund	733
Highland Global Allocation Fund	Mutual Fund	2,150
Highland Long/Short Equity Fund	Mutual Fund	263
Highland Long/Short Healthcare Fund	Mutual Fund	2,423
Highland Merger Arbitrage Fund	Mutual Fund	1,177
Highland Opportunistic Credit Fund	Mutual Fund	4,857
JHT Holdings Inc.	Revolving Term Loan	1,923
JHT Holdings Inc.	Common Stock	3,349
Metro-Goldwyn-Mayer, Inc.	Common Stock	311,225
NexPoint Credit Strategies Fund	Mutual Fund	15,029
NexPoint Multifamily Capital Trust, Inc.	REIT	4,041
NexPoint Opportunistic Credit Fund	Mutual Fund	101
NexPoint Real Estate Strategies Fund	Mutual Fund	1,039
NexPoint Residential Trust, Inc.	REIT	54,029
Romacorp Restaurant Holdings, Inc.	Common Equity	336
Trussway Industries, Inc.	LLC Units	51,482
Turtle Bay Holdings, LLC	LLC Units	13,500

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Certain investments are issued and managed by affiliates of the Partnership. These investments are subject to the same valuation policies and procedures as similar investments within the same level of the fair value hierarchy. As of December 31, 2016, the Partnership and the Consolidated Entities held the following investments that were issued and managed by affiliates of the Partnership:

(in thousands)

Issuer	Type of Investment	Fair Value
ACIS 2013-2A	Asset backed debt	$ 31,162
ACIS 2013-2A	Asset backed equity	23,975
ACIS 2014-5A	Asset backed debt	42,792
ACIS 2015-6A	Asset backed equity	4,771
BB Votorantim Highland Infrastructure LLC	Common equity	1,534
Highland Energy MLP Fund	Mutual fund shares	2,290
Highland Floating Rate Opportunities Fund	Mutual fund shares	733
Highland Global Allocation Fund	Mutual fund shares	2,150
Highland Merger Arbitrage Fund	Mutual fund shares	1,177
Highland Opportunistic Credit Fund	Mutual fund shares	4,857
Highland Park CDO, Ltd. - 1A	Asset backed debt tranche	1,572
Highland Park CDO, Ltd. - 1X	Asset backed equity	1,048
Highland Prometheus Fund	Partnership Interest	912
Highland Long/Short Equity Fund	Mutual fund shares	263
Highland Long/Short Healthcare Fund	Mutual fund shares	2,423
NexPoint Credit Strategies Fund	Mutual fund shares	15,029
NexPoint Multi Family Capital Trust	REIT	4,041
NexPoint Opportunistic Credit Fund	Closed-end mutual fund shares	101
NexPoint Real Estate Strategies Fund	Closed-end mutual fund shares	1,039
Highland Acquisition Corp	Private shares	25
PAMCO 1997 - 1A	Asset backed debt tranche	230
Rockwall Investors Corp.	Asset backed equity	2,123
Westchester CLO, Ltd	Asset backed equity	4,127

Expenses Reimbursable by Funds Managed
In the normal course of business, the Partnership typically pays invoices it receives from vendors for various services provided to the investment funds the Partnership manages. A summary of these eligible reimbursable expenses are then submitted to the trustee/administrator for each respective fund, typically on a quarterly basis, and the Partnership receives payment as reimbursement for paying the invoices on behalf of the respective funds. As of December 31, 2016, approximately $7.8 million in reimbursable expenses were due from various affiliated funds and entities for these eligible expenses, and is included in *Other Assets* in the accompanying Consolidated Balance Sheet.

Accounts Held with Related Party
During the year the Partnership and its Consolidated Entities maintained accounts at NexBank, SSB ("NexBank"), a related party by way of common control. As of December 31, 2016, balances in the accounts were approximately $15.3 million, a portion of which exceeds Federal deposit insurance limits.

Investment in Affiliated Loans
During the year, certain subsidiaries of the Partnership were invested in several bank loans in which NexBank was the agent bank. Interest earned on the loans during the year was approximately $8.2 million. At December 31, 2016, these subsidiaries were invested in NexBank agented loans with commitments and market values totaling approximately $66.3 million and $45.2 million, respectively.

Notes and Other Amounts Due from Affiliates
During the year ended December 31, 2016, Highland Capital Management Fund Advisors, L.P. ("HCMFA") issued a promissory note to the Partnership in the amount of $2.3 million. The note accrues interest at a rate of 2.62%, the mid-term applicable federal rate as promulgated by the Internal Revenue Service. As of December 31, 2016 total interest and principal due on outstanding promissory notes was approximately $6.1 million and is payable on demand. The Partnership will not demand payment on amounts owed prior to May 31, 2018. The fair value of the Partnership's outstanding notes receivable approximates the carrying value of the notes receivable.

During the year ended December 31, 2016, NexPoint Advisors, L.P. ("NexPoint") received $3.9 million of principal advances on their outstanding revolving note with the Partnership. The revolving note accrues interest at a rate of 6.0%. As of December 31, 2016 total interest and principal due on outstanding promissory and revolving notes was approximately $25.9 million and is payable on demand. The Partnership will not demand payment on amounts owed prior to May 31, 2018. The fair value of the Partnership's outstanding notes receivable approximates the carrying value of the notes receivable.

During the year ended December 31, 2016, HCRE Partners, LLC ("HCRE") did not issue any new promissory notes to the Partnership. All outstanding promissory notes accrue interest at a rate of 8.0%. As of December 31, 2016 total interest and principal due on outstanding promissory notes was approximately $6.1 million and is payable on demand. The fair value of the Partnership's outstanding notes receivable approximates the carrying value of the notes receivable.

During the year ended December 31, 2016, Highland Capital Management Services, Inc. ("HCMSI") issued promissory notes to the Partnership in the aggregate amount of $21.6 million. The notes accrue interest at rates ranging from 2.18% - 2.65%, the average long-term applicable federal rate as promulgated by the Internal Revenue Service. As of December 31, 2016 total interest and principal due on outstanding promissory notes was approximately $22.8 million and is payable on demand. The fair value of the Partnership's outstanding notes receivable approximates the carrying value of the notes receivable.

During the year ended December 31, 2016, James Dondero ("Dondero") issued promissory notes to the Partnership in the aggregate amount of $14.8 million. The notes accrue interest at rates ranging from 1.95% - 2.25%, the average long-term applicable federal rate as promulgated by the Internal Revenue Service. As of December 31, 2016 total interest and principal due on the promissory notes was approximately $14.9 million and is payable on demand. The fair value of the Partnership's outstanding notes receivable approximates the carrying value of the notes receivable.

During the year ended December 31, 2016, Mark Okada ("Okada") issued a promissory note to the Partnership in the aggregate amount of $1.3 million. The note accrues interest at a rate of 2.25%, the average long-term applicable federal rate as promulgated by the Internal Revenue Service. As of December 31, 2016 total interest and principal due on the promissory note was approximately $1.3 million and is payable on demand. The fair value of the Partnership's outstanding notes receivable approximates the carrying value of the notes receivable.

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During the year ended December 31, 2016, the Partnership purchased a promissory note due from The Dugaboy Investment Trust ("Dugaboy") in the aggregate amount of $23.4 million. The note accrues interest at a rate of 2.75% per annum. As of December 31, 2016 total interest and principal due on the promissory note was approximately $23.4 million and is payable in full on October 30, 2036. The fair value of the Partnership's outstanding notes receivable approximates its carrying value of the notes receivable.

On December 21, 2015, the Partnership entered into a contribution agreement (the "Contribution Agreement") with an affiliated trust. Pursuant to the Contribution Agreement, a note (the "Note Receivable") in the amount of $63.0 million was due to the Partnership. The Note Receivable will mature on December 21, 2030. The Note Receivable accrues interest at a rate of 2.61% per annum. Accrued interest is paid-in-kind, with principal receipts occurring pursuant to a note amortization schedule, with such annual receipts commencing December 21, 2019. As of December 31, 2016 total interest and principal due on the Note Receivable was approximately $64.6 million.

Services Performed by or on Behalf of an Affiliate
In March 2007, Highland Capital of New York, Inc. a New York corporation ("Highland New York"), was formed and has performed marketing services for the Partnership and its affiliates in connection with the Partnership's investment management and advising business, including, but not limited to, assisting Highland Capital in the marketing and sales of interests in investment pools for which Highland Capital serves as the investment manager. The Partnership is charged a marketing services fee for the services that Highland New York performs on the Partnership's behalf. For the year ended December 31, 2016, total marketing fee expense charged to the Partnership by Highland New York was approximately $4.3 million and as of December 31, 2016, amounts owed to Highland New York for services rendered was approximately $0.4 million.

Effective December 15, 2011, the Partnership commenced performing services on behalf of HCMFA, a Delaware limited partnership and registered investment advisor. Services include, but are not limited to compliance, accounting, human resources, IT and other back office support functions. The Partnership charges a fee for the services performed. For the year ended December 31, 2016, the total fee charged by the Partnership to HCMFA was approximately $2.5 million and as of December 31, 2016, there were no amounts owed to the Partnership by HCMFA for services rendered.

Effective July 29, 2010, the Partnership commenced performing services on behalf of Falcon E&P Opportunities GP, LLC. ("Falcon"), a Delaware limited liability company and registered investment advisor. Services include, but are not limited to compliance, accounting, human resources, IT and other back office support functions. The Partnership charges a fee for the services performed. For the year ended December 31, 2016, the total fee charged by the Partnership to Falcon was approximately $0.2 million and as of December 31, 2016, no amounts were owed to the Partnership by Falcon for services rendered.

Effective January 1, 2016, pursuant to the Second Amended and Restated Sub-Advisory Agreement and the Third Amended and Restated Shared Services Agreement dated July 29, 2016, the Partnership continued performing services on behalf of Acis Capital Management, L.P. ("Acis"), a Delaware limited partnership and registered investment advisor. Subadvisory services include investment advisory services and shared services include, but are not limited to compliance, accounting, human resources, IT and other back office support functions. The Partnership charges a fee for the services performed. For the year ended December 31, 2016, the total fees charged by the Partnership to Acis for shared services and subadvisory fees were approximately $5.1 million and $6.8 million, respectively. As of December 31, 2016, amount owed to the Partnership by Acis was approximately $0.5 million.

Effective January 1, 2013, the Partnership commenced performing services on behalf of NexPoint. Services include, but are not limited to compliance, accounting, human resources, IT and other back office support functions. The Partnership charges a fee for the services performed. For the year ended December 31, 2016, the total fee charged by the Partnership to NexPoint was approximately $0.6 million and as of December 31, 2016, no amounts were owed to the Partnership by NexPoint for services rendered.

Effective September 24, 2013, the Partnership commenced performing services on behalf of NexBank Capital, Inc. ("NexBank Capital"), financial services company. Services include, but are not limited to compliance, accounting, human resources, IT and other back office support functions. The Partnership charges a fee for the services performed. For the year ended December 31, 2016, the total fee charged by the Partnership to NexBank Capital was approximately $0.2 million and as of December 31, 2016, $0.1 million was owed to the Partnership by NexBank Capital for services rendered.

Effective September 24, 2013, the Partnership commenced performing services on behalf of NexBank SSB, ("NexBank"), a Texas savings bank. Services include investment advisory services. The Partnership charges a fee for the services performed. For the year ended December 31, 2016, the total fee charged by the Partnership to NexBank was approximately $1.5 million and as of December 31, 2016, $0.5 million was owed to the Partnership by NexBank for services rendered.

Effective April 1, 2015, the Partnership commenced performing services on behalf of NexPoint Real Estate Advisors, L.P. ("NREA"). Services include, but are not limited to compliance, accounting, human resources, IT and other back office support functions. NREA is charged a fee for the services provided. For the year ended December 31, 2016, the total fee charged to NREA by the Partnership was approximately $0.6 million and as of December 31, 2016, amounts owed by NREA to the Partnership for services rendered were approximately $0.9 million.

Investment liability

On January 28, 2016, the Partnership entered into a participation agreement with Cornerstone Healthcare Group Holding, Inc. ("Cornerstone") for securities purchased and held on their behalf which had a value of $8.0 million as of the transaction date. The fair value of the Agreement will fluctuate with the fair value of the held securities, throughout the term of the Agreement. As of December 31, 2016 the fair value of the securities were $8.6 million.

On December 28, 2016, the Partnership entered into a purchase and sale agreement with The Get Good Nonexempt Trust ("Get Good"). In consideration for a note receivable from an affiliate, the Partnership sold or participated certain investments that it already held, with the participated investments carrying an aggregate market value of $21.3 million as of the date of the transaction. The fair value of the Agreement will fluctuate with the fair value of the securities, throughout the term of the Agreement. As of December 31, 2016 the fair value of the participated investments was $18.7 million.

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9. Notes Receivable

On October 12, 2016, the Partnership entered into a Purchase and Sale agreement (the "Agreement") with an unaffiliated registered fund. Pursuant to the Agreement, the Partnership sold, transferred and assigned to the fund, and the fund purchased and accepted from the Partnership, all of the Partnership's principal and accrued interest in various outstanding promissory notes (the "Notes") in the aggregate amount of $6.4 million. The Notes accrue interest at a rate of 7.85% per annum. As of December 31, 2016 total interest and principal due on the Notes was approximately $6.5 million.

10. Debt and Notes Payable

Promissory Note
On December 31, 2014, the Partnership entered in to a promissory note with an investor in the amount of $18.6 million, in exchange for 100% of its LP interest in Highland Multi Strategy Credit Fund, L.P. The Partnership must pay one-third of the initial note amount, plus accumulated interest on each of the first three anniversaries of the note. The promissory note will mature on December 31, 2017. The promissory note accrues interest at a rate of 3.00% per annum. The promissory note is collateralized by limited partnership interest in Multi Strategy Master. As of December 31, 2016 the remaining principal payable on the promissory note was $6.2 million. The fair value of the Partnership's outstanding notes payable approximates the carrying value of the notes payable.

On August 17, 2015, the Partnership entered in to a promissory note with Frontier State Bank in the amount of $9.5 million. The promissory note will mature on August 17, 2018. The promissory note accrues interest at the 3 month LIBOR rate plus 4.75%, adjusted each date of change, per annum. Accrued interest shall be paid quarterly. The promissory note is collateralized by shares of voting common stock of MGM Holdings, Inc. As of December 31, 2016 the remaining principal payable on the promissory note was $6.9 million. The fair value of the Partnership's outstanding notes payable approximates the carrying value of the notes payable.

On October 7, 2016, the Partnership entered in to a promissory note with Acis in the amount of $12.7 million. The Partnership must make certain payments of the initial note amount, plus accumulated interest on May 31 of each year, until maturity. The promissory note will mature on May 31, 2019. The promissory note accrues interest at a rate of 3.00% per annum. As of December 31, 2016 the remaining principal payable on the promissory note was $12.7 million. The fair value of the Partnership's outstanding notes payable approximates the carrying value of the notes payable.

On August 25, 2015, Highland Select Equity Fund, L.P. ("Select") entered in to a promissory note with Dugaboy in the amount of $1.0 million. The promissory note accrues interest at a rate of 2.82%, the long-term Applicable Federal Rate, compounded annually. The accrued interest and principal of the promissory note is due and payable on demand. As of December 31, 2016 the remaining principal payable on the promissory note was $1.0 million. The fair value of Select's outstanding notes payable approximates the carrying value of the notes payable.

On December 5, 2016, Select entered in to Stock Purchase Agreements with two counterparties for shares of Trussway Industries ("Trussway"), in exchange for promissory notes in the aggregate amount of $15.4 million, plus in the event of a sale of Trussway on or prior to June 1, 2017, 50% of the excess of the price per share over the closing date price per share. The promissory notes accrue interest at a rate of 2.07%, the long-term Applicable Federal Rate, compounded annually. Select must pay one-twenty-fifth of the initial note amounts, plus any additional principal attributable to the sale of Trussway, along with accumulated interest on an annual basis. The promissory notes will mature on December 5, 2041. As of December 31, 2016 the remaining principal payable on the promissory notes was $15.4 million. The fair value of Select's outstanding notes payable approximates the carrying value of the notes payable.

On August 29, 2016, Maple Avenue Holdings, LLC ("Maple") entered in to a promissory note with Great Southern Bank in the amount of $3.9 million. Maple must pay principal and accrued interest installments on a monthly basis until maturity. The promissory note will mature on September 10, 2041. The promissory note accrues interest at a rate of 3.26% per annum. As of December 31, 2016 the remaining principal payable on the promissory note was $3.8 million. The fair value of Maple's outstanding notes payable approximates the carrying value of the notes payable.

11. Due to Broker

As of December 31, 2016 the due to broker balance of approximately $171.6 million is payable to financing counterparties for margin transactions.

12. Commitments

Contracts in the Normal Course of Business
In the normal course of business the Partnership and its subsidiaries may enter into contracts which provide general indemnifications and contain a variety of presentations and warranties that may expose the Partnership and its subsidiaries to some risk of loss. The Partnership regularly co-invests in vehicles it advises. The amounts committed are within the Partnerships capacity to fund when capital is called. In addition to the other financial commitments discussed in the consolidated financial statements, the amount of future losses arising from such undertakings, while not quantifiable, is not expected to be significant.

Legal Proceedings
The Partnership is a party to various legal proceedings arising in the ordinary course of business. While any proceeding or litigation has an element of uncertainty, management believes that the final outcome will not have a materially adverse effect on the Partnership's Consolidated Balance Sheet, Consolidated statement of Income, or its liquidity. See Note 15.

Operating Leases

The Partnership has an operating lease and associated commitments related to its main office space. Future minimum lease payments under operating lease commitments with initial or noncancelable terms in excess of one year, at inception, are as follows:

(in thousands)

Years Ending December 31	
2017	1,521
2018	1,521
2019	1,550
2020	1,566
2021	1,567
Thereafter	522
Total	$ 8,246

Total rental expense of the Partnership and its Consolidated Entities for operating leases was approximately $1.5 million for the year ended December 31, 2016.

13. Post Retirement Benefits

In December 2006, the Partnership created a defined benefit plan to which all employees and certain affiliated persons could participate if they met the eligibility requirements. The Partnership uses a December 31 measurement date for its defined benefit plan.

Effective December 31, 2008, the Partnership amended the plan by freezing it to new participants and additional benefit accruals. A new amendment became effective on January 1, 2011 in which a named participant was admitted to the plan and is eligible to earn benefit accrual. 2011 expense reflects a service cost charge for the value of the new participant's benefit earned during 2011.

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The Partnership's benefit plan obligation and plan assets for the year ended December 31, 2016 are reconciled in the tables below.

(in thousands)

Change in projected benefit obligation	**2016**
Benefit obligation at beginning of year	$ 1,722
Service cost	5
Interest cost	67
Plan participants' contributions	-
Amendments	-
Actuarial loss/(gain)	657
Acquisition/(divestiture)	-
Benefits paid	(150)
Benefit obligation at end of year	$ 2,301

Change in plan assets	**2016**
Fair value of plan assets at beginning of year	$ 1,836
Actual return on plan assets	884
Acquisition/(divestiture)	-
Employer contribution	-
Plan participants' contributions	-
Benefits paid	(150)
Other increase/(decrease)	-
Fair value of plan assets at year end	$ 2,570

Reconciliation of Funded Status	**2016**
Accumulated benefit obligation at end of year	$ 2,301
Projected benefit obligation at end of year	2,301
Fair value of plan assets at end of year	2,570
Funded status at end of year	$ 269

The Partnership does not expect to contribute to the plan during 2016.

Assumptions

Weighted-average assumptions used to determine benefit obligations at December 31, 2016:

Discount rate	3.69%
Rate of compensation increase	N/A

Weighted-average assumptions used to determine net periodic benefit cost at December 31, 2016:

Discount rate	4.00%
Expected long-term return on plan assets	4.00%
Rate of compensation increase	N/A

As of December 31, 2016, there were no plan assets categorized as Level 3.

14. Income Taxes

The Partnership
For U.S. income tax purposes, the Partnership is treated as a pass-through-entity, which means it is not subject to income taxes under current Internal Revenue Service or state and local guidelines. Each partner is individually liable for income taxes, if any, on their share of the Partnership's net taxable income.

The Partnership files tax returns as prescribed by the tax laws of the jurisdictions in which it operates. In the normal course of business, the Partnership is subject to examination by federal and foreign jurisdictions, where applicable. As of December 31, 2016, the tax years that remain subject to examination by the major tax jurisdictions under the statute of limitations is from the year 2009 forward (with limited exceptions).

Authoritative guidance on accounting for and disclosure of uncertainty in tax positions requires the General Partner to determine whether a tax position of the Partnership is more likely than not to be sustained upon examination, including resolution of any related appeals or litigation processes, based on the technical merits of the position. For tax positions meeting the more likely than not threshold, the tax amount recognized in the financial statements is the largest benefit that as a greater than fifty percent likelihood of being realized upon ultimate settlement with the relative taxing authority. The General Partner does not expect a significant change in uncertain tax positions during the twelve months subsequent to December 31, 2016.

Multi Strategy Master
For U.S. income tax purposes, Multi Strategy Master is treated as a pass-through entity, which means it is not subject to federal income taxes under current Internal Revenue Service guidelines. However, each investor may be individually liable for income taxes, if any, on its share of the partnership's net taxable income.

Multi Strategy Master trades in senior secured syndicated bank loans for its own account and, as such, non-U.S. Investment Vehicle investors are generally not subject to U.S. tax on such earnings (other than certain withholding taxes indicated below). The Partnership intends to conduct Multi Strategy Master business in such a manner that it does not constitute a U.S. trade or business, nor does it create a taxable presence in any of the jurisdictions in which the Partnership has offices.

Dividends as well as certain interest and other income received by Multi Strategy Master from sources within the United States may be subject to, and reflected net of, United States withholding tax at a rate of 30% for non-U.S. Investment Vehicles. Interest, dividend and other income realized by Multi Strategy Master from non-U.S. sources and capital gains realized on the sale of securities of non-U.S. issuers may be subject to withholding and other taxes levied by the jurisdiction in which the income is sourced. As of December 31, 2016, a minimal withholding tax liability of $1.3 million is classified within accrued and other liabilities on the Consolidated Balance Sheet.

Multi Strategy Master applies authoritative guidance which requires management to determine whether a tax position Multi Strategy Master is more likely than not to be sustained upon examination, including resolution of any related appeals or litigation processes, based on the technical merits of the position. For tax positions meeting the more likely than not threshold, the tax amount recognized in the consolidated financial statements is the largest benefit that has a greater than fifty percent likelihood of being realized upon ultimate settlement with the relative taxing authority. As of December 31, 2016, a liability to account for uncertain tax positions of $0.1 million is classified within accrued expenses within the Consolidated Balance Sheet. Management does not expect a significant change in uncertain tax positions during the twelve months subsequent to December 31, 2016.

Multi Strategy Master files tax returns as prescribed by the tax laws of the jurisdictions in which it operates. In the normal course of business, Multi Strategy Master is subject to examination by federal and foreign jurisdictions, where applicable. As of December 31, 2016, the tax years that remain subject to examination by the major tax jurisdictions under the statute of limitations is from the year 2013 forward (with limited exceptions).

Restoration Onshore
Restoration Onshore is treated as a pass-through entity for tax purposes, which means it is not subject to U.S. income taxes under current Internal Revenue Service or state and local guidelines. Each Partner is individually liable for income taxes, if any, on its share of the Restoration Onshore's net taxable income. Interest, dividends and other income realized by Restoration Onshore from non-U.S. sources and capital gains realized on the sale of securities of non-U.S. issuers may be subject to withholding and other taxes levied by the jurisdiction in which the income is sourced.

Restoration Onshore applies the authoritative guidance on accounting for and disclosure of uncertainty in tax positions, which requires the General Partner to determine whether a tax position of Restoration Onshore is more likely than not to be sustained upon examination, including resolution of any related appeals or litigation processes, based on the technical merits of the position. For tax positions meeting the more likely than not threshold, the tax amount recognized in the financial statements is the largest benefit that has a greater than fifty percent likelihood of being realized upon ultimate settlement with the relevant taxing authority.

Highland Capital Management, L.P.
(A Delaware Limited Partnership)
Notes to Consolidated Financial Statements
December 31, 2016

The General Partner has determined that there was no effect on the financial statements from the Partnership's application of this authoritative guidance. The General Partner does not expect a significant change in uncertain tax positions during the twelve months subsequent to December 31, 2016. Restoration Onshore files tax returns as prescribed by the tax laws of the jurisdictions in which it operates. In the normal course of business, the Partnership is subject to examination by federal, state, local and foreign jurisdictions, where applicable. As of December 31, 2016, the tax years that remain subject to examination by the major tax jurisdictions under the statute of limitations is from the year 2013 forward (with limited exceptions).

Restoration Offshore
Restoration Offshore is a Cayman Islands exempted company. Under the current laws of the Cayman Islands, there is no income, estate, transfer, sales or other tax payable by Restoration Offshore. Restoration Offshore has elected to be treated as a corporation for U.S. tax purposes and files a protective 1120-F.

The General Partner intends to conduct the business of Restoration Offshore in such a way that Restoration Offshore's activities do not constitute a U.S. trade or business and any income or realized gains earned by Restoration Offshore do not become "effectively connected" with a trade or business carried on in the United States for U.S. federal income tax purposes.

Dividends as well as certain interest and other income received by the master partnership of Restoration Offshore from sources within the United States may be subject to, and reflected net of, United States withholding tax at a rate of 30% for non-U.S. Investment Vehicles. Interest, dividend and other income realized by the master partnership of Restoration Offshore from non-U.S. sources and capital gains realized on the sale of securities of non-U.S. issuers may be subject to withholding and other taxes levied by the jurisdiction in which the income is sourced.

Restoration Offshore applies the authoritative guidance on accounting for and disclosure of uncertainty in tax positions, which requires the General Partner to determine whether a tax position of Restoration Offshore is more likely than not to be sustained upon examination, including resolution of any related appeals or litigation processes, based on the technical merits of the position. For tax positions meeting the more likely than not threshold, the tax amount recognized in the financial statements is the largest benefit that has a greater than fifty percent likelihood of being realized upon ultimate settlement with the relevant taxing authority. The General Partner has determined that there was no effect on the financial statements from the Partnership's application of this authoritative guidance. The General Partner does not expect a significant change in uncertain tax positions during the twelve months subsequent to December 31, 2016. As of December 31, 2016, the tax years that remain subject to examination by major tax jurisdictions under the statute of limitations is from the year 2013 forward (with limited exceptions).

The remaining entities consolidated by the Partnership had no uncertain tax positions which required accrual under U.S. GAAP.

Highland Capital Management, L.P.
(A Delaware Limited Partnership)
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December 31, 2016

15. Legal Proceedings

On July 15, 2008, Crusader Master, Highland Offshore Partners, CDO Master Fund, Multi Strategy Master, certain affiliates, and numerous external parties (collectively, the "Defendants") were named as parties to an action filed with the Bankruptcy Court of the Southern District of Florida ('the Tousa action"). The action related to a secured lending transaction and subsequent refinancing arrangement in which the Defendants participated. On October 13, 2009, the Bankruptcy Court ruled in favor of the plaintiffs and ordered the Defendants to disgorge the principal, interest, and fees they received in connection with the refinancing arrangement. In addition, the Court ordered the defendants to pay simple interest on the disgorged amount at an annual rate of 9%. The Defendants believed they acted in good faith pursuant to the terms of the relevant agreements and appealed the decision. In February 2011, the District Court of Florida quashed the judgment against the Defendants and overturned the ruling that resulted in the Defendants recording the reserve. The plaintiffs appealed the ruling of the District Court, and the issue was sent to the Eleventh Circuit of Florida. On May 15, 2012, the Eleventh Circuit unexpectedly reversed the District Court's ruling, and remanded the case back to the District Court for review. The last such case was heard by the US Supreme Court case on January 14, 2015. On June 23, 2015, the District Court remanded the case back to the Bankruptcy Court for a report and recommendations regarding the effects of certain settlements on the Plaintiff's available damages. On April 1, 2016, the Bankruptcy Court issued its Report and Recommendations to the District Court. Briefing on the Report and Recommendations was completed in June 2016. On March 8, 2017, the District Court substantially adopted the Bankruptcy Court Report and Recommendations, which affirmed the Defendants' liability. The case has now been retuned to the Eleventh Circuit for additional appeals. Based on the ruling, the Consolidated Entities recorded a combined reserve of approximately $5.8 million as of December 31, 2016. This reserve is included in *Accrued and other liabilities* on the Consolidated Balance Sheet.

Multi Strategy Master and certain of its affiliates (collectively, the "UBS Defendants") have respectively been named as defendants in two separate lawsuits filed by UBS Securities LLC and UBS AG, London Branch (collectively, "UBS Plaintiffs") in the Supreme Court of the State of New York, New York County (the "Court"). In the lawsuits, the UBS Plaintiffs seek damages from the UBS Defendants and other entities relating to a warehouse facility formed for a proposed collateralized loan obligation, or CLO, transaction that was not completed. The UBS Plaintiffs seek monetary damages of approximately $0.7 million, plus certain costs, fees and expenses. The UBS Plaintiffs also seek to unwind alleged fraudulent transfers involving the UBS Defendants. Although the UBS Plaintiffs have not pled a specific damages amount against the UBS Defendants, any eventual damages award would be subject to pre-judgment interest of 9% (accrued as of December 3, 2008) as well as post-judgment interest of 9% (accrued as of the date a judgment, if any, is entered against the UBS Defendants). Each of the UBS Defendants filed a separate motion to dismiss, both of which were denied. In addition, Multi Strategy Master filed a motion for summary judgment, which was heard by the Court on February 14, 2014. On March 11, 2014, the Appellate Division of the Supreme Court of the State of New York (First Department) (the "Appellate Court") heard each of the UBS Defendants' respective appeals of the Court's denials of their respective motions to dismiss. The Court has not yet set a trial date. Though Multi Strategy Master continues to vigorously defend against the UBS Plaintiffs' claims, at this time, the General Partner is unable to provide a reasonably probable estimate of the expected outcome.

Highland Capital Management, L.P.
(A Delaware Limited Partnership)
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December 31, 2016

On July 16, 2013, Credit Suisse Securities (USA), LLC ("Credit Suisse") filed suit against Multi Strategy Master and other affiliates (the "Credit Suisse Defendants"). Credit Suisse's claims relate to several outstanding trades of debt tranches of Westgate Investments, On May 5, 2014, Credit Suisse moved for summary judgment on both the principal amount and statutory pre-judgment interest. The Court granted the motion on August 6, 2014, and issued judgment on September 11, 2014 in the amount of $6.4 million in principal, plus $3.4 million in interest, for a total of $9.8 million. Multi Strategy Master continued to accrue interest based on the New York statutory rate through November 30, 2015. As of November 30, 2015, an additional $0.7 million in interest had been accrued, for a total of $4.1 million in interest. At November 30, 2015 total interest and principal liability of $10.5 million had been accrued. On January 14, 2016, the Multi Strategy Master had reached settlement with Credit Suisse for payment of $9.9 million in satisfaction and release of Credit Suisse's claims. The difference between the settlement amount and what was accrued at November 30, 2015, approximately $0.5 million, was recognized as of December 31, 2015, bringing the total accrued liability down to the settlement amount. The Master Partnership made payments of approximately $1.5 million on January 20, 2016, $2.5 million on May 6, 2016, and $5.9 million on August 8, 2016, in full settlement of the outstanding liability. As of December 31, 2016, Partnership had no liability recorded on the Consolidated Balance Sheet related to Credit Suisse.

In April 2012, the Partnership filed suit against a former employee for breach of contract, defamation and theft of trade secrets. The former employee filed a counterclaim with numerous, unrelated allegations. The Partnership refuted each allegation in detail. The former employee sought unspecified damages against the Partnership and certain affiliates. On February 6, 2014, the jury found the former employee breached his fiduciary duty to the Partnership. The jury found that neither the Partnership nor any of its employees had breached any duty, and awarded $2.8 million to the Partnership. The jury also found that HERA owed $2.6 million related to an employee retention plan. The court entered judgment on the verdict on July 11, 2014. On August 22, 2016, the Court of Appeals for the Fifth District of Texas (Dallas) affirmed the judgment against the former employee in favor of the Partnership in the amount of $2.8 million plus post-judgment interest. The Partnership then sought to enforce the judgment. The former employee paid the Partnership $3.1 million on December 14, 2016 in complete satisfaction of the outstanding judgment.

From time to time the Partnership is party to disputes with disgruntled former employees. One such matter involves a former employee that improperly recorded internal conversations in violation of the Partnership's internal policies and procedures and potentially certain criminal and regulatory provisions. The former employee has asserted counterclaims related to his time employed by the Partnership. The matter has been referred to arbitration and at this time, the General Partner is unable to provide a reasonably probable estimate of the expected outcome.

The Partnership is engaged in litigation with two groups of investors relating to the wind down and distribution of the remaining assets in Crusader and Credit Strategies funds. With respect to the Crusader fund, at this time, the General Partner is unable to provide a reasonably probable estimate of the expected outcome. With respect to the Credit Strategies fund, subsequent to year end a settlement was reached. Refer to Note 16 for additional discussion of settlement terms.

In addition to the legal actions that are discussed above, the Partnership is subject to other legal actions arising from the ordinary course of its business. The ultimate outcome of these other cases is inherently uncertain and could result in additional losses to the Partnership.

Highland Capital Management, L.P.
(A Delaware Limited Partnership)
Notes to Consolidated Financial Statements
December 31, 2016

16. Subsequent Events

Over the course of 2017 through the report date, the Partnership has distributed equity to its partners in the aggregate amount of $18.3 million.

On January 5, 2017 the Partnership received a $5.5 million pay down on the outstanding Contribution Agreement.

On May 12, 2017, the Partnership entered into an agreement, approved by the independent Redeemer Committee of the Credit Strategies Fund, whereby the Partnership and Highland New York paid the Credit Strategies Fund $23.0 million in exchange for the remaining assets of the Credit Strategies Fund and releases from the on-going litigation between the Partnership and the Redeemer Committee. Related to this transaction and release of on-going litigation claims of the Partnership, Cornerstone Health Care Group, Inc., with the approval of a special committee of its independent directors, paid indemnification to the Partnership in the amount of $17.4 million.

The Partnership has performed an evaluation of subsequent events through May 19, 2017, which is the date the consolidated financial statements were available to be issued, and has determined that there are no other material subsequent events that would require disclosure in the Partnership's consolidated financial statements.

Supplemental Information

Highland Capital Management, L.P.
(A Delaware Limited Partnership)
Supplemental Consolidating Balance Sheet
December 31, 2016

(in thousands)	Highland Capital Management, L.P.	All Other Consolidated Entities	Eliminations	Total Consolidated
Assets				
Cash and cash equivalents	$ 16,716	$ 13,413	$ -	$ 30,129
Investments at fair value	148,034	949,876	-	1,097,910
Equity method investees	171,319	-	(171,319)	-
Management and incentive fees receivable	12,583	-	-	12,583
Due from brokers	-	892	-	892
Other assets	8,083	9,915	(5,089)	12,909
Notes and other amounts due from affiliates	172,671	-	-	172,671
Notes receivable	6,421	-	-	6,421
Fixed assets and leasehold improvements, net of accumulated depreciation of $8,533	6,747	-	-	6,747
Total assets	$ 542,574	$ 974,096	$ (176,408)	$ 1,340,262
Liabilities and partners' capital				
Liabilities				
Accounts payable	$ 4,417	$ 26	$ -	$ 4,443
Securities sold, not yet purchased	-	146,792	-	146,792
Withdrawals payable	-	68,199	-	68,199
Due to brokers	29,505	143,136	(994)	171,647
Due to brokers for securities purchased, not yet settled	-	1,614	-	1,614
Accrued and other liabilities	36,960	9,973	(4,095)	42,838
Debt and notes payable	25,763	20,190	-	45,953
Investment liabilities	27,318	-	-	27,318
Total liabilities	123,963	389,930	(5,089)	508,804
Non-controlling interest	-	412,847	-	412,847
Commitments				
Partners' capital	418,611	171,319	(171,319)	418,611
Total liabilities and partners' capital	$ 542,574	$ 974,096	$ (176,408)	$ 1,340,262

Highland Capital Management, L.P.
(A Delaware Limited Partnership)
Supplemental Consolidating Statement of Income
Year Ended December 31, 2016

(in thousands)	Highland Capital Management, L.P.	All Other Consolidated Entities	Eliminations	Total Consolidated
Revenue:				
Management fees	$ 52,599	$ -	$ -	$ 52,599
Interest and investment income	2,750	33,449	(1,992)	34,207
Shared services fees	9,563	-	-	9,563
Incentive fees	8,151	-	-	8,151
Other income	2,392	1,750	-	4,142
Total revenue	75,455	35,199	(1,992)	108,662
Expenses:				
Compensation and benefits	36,160	967	-	37,127
Professional fees	8,758	2,274	-	11,032
Interest expense	2,478	3,283	-	5,761
Marketing and advertising expense	5,170	-	-	5,170
Bad debt expense	2,094	-	-	2,094
Depreciation and amortization	1,367	-	-	1,367
Investment and research consulting	829	-	-	829
Other operating expenses	7,334	6,935	(3,109)	11,160
Total expenses	64,190	13,459	(3,109)	74,540
Other income	10,779	-	-	10,779
Income before investment and derivative activities	22,044	21,740	1,117	44,901
Realized and unrealized gain from investments and derivatives:				
Net realized gain on investments and derivatives	63,605	185,347	(123,220)	125,732
Net change in unrealized loss on investments and derivatives	122,444	(200,093)	-	(77,649)
Total realized and unrealized gain from investments and derivatives	186,049	(14,746)	(123,220)	48,083
Net unrealized earnings from equity method investees	(168,737)	-	168,737	-
Net income	39,356	6,994	46,634	92,984
Net income attributable to the non-controlling interest	-	(53,628)	-	(53,628)
Net income attributable to Highland Capital Management, L.P.	$ 39,356	$ (46,634)	$ 46,634	$ 39,356

Highland Capital Management, L.P.
(A Delaware Limited Partnership)
Supplemental Unconsolidated Balance Sheet
December 31, 2016

(in thousands)

Assets		
Current assets:		
Cash and cash equivalents	$	16,716
Investments at fair value (cost $258,209)*		282,863
Equity method investees		36,490
Management and incentive fees receivable		12,583
Other assets		8,083
Notes and other amounts due from affiliates		172,671
Notes receivable		6,421
Fixed assets and leasehold improvements, net of accumulated depreciation of $8,533		6,747
Total assets	$	542,574
Liabilities and partners' capital		
Liabilities		
Accounts payable	$	4,417
Due to brokers		29,505
Accrued and other liabilities		36,960
Notes payable		25,763
Investment liabilities		27,318
Total liabilities		123,963
Partners' capital		418,611
Total liabilities and partners' capital	$	542,574

*Investments, at fair value includes $123.0 million of limited partnership interest ownership of Consolidated Investment Funds, which are discussed in Footnote 2. These entities are consolidated because the Partnership controls the general partner of the respective entities and is responsible for the daily operations of the entities.

The above information was derived from the audited December 31, 2016 consolidated financial statements of Highland Capital Management, L.P. This information should be read in conjunction with such audited financial statements.

Highland Capital Management, L.P.

(A Delaware Limited Partnership)

Supplemental Unconsolidated Statement of Income

Year Ended December 31, 2016

(in thousands)

Revenue:		
Management fees	$	52,599
Shared services fees		9,563
Incentive fees		8,151
Interest and investment income		2,750
Miscellaneous income		2,392
Total revenue		75,455
Operating expenses:		
Compensation and benefits		36,160
Professional fees		8,758
Marketing and advertising expense		5,170
Interest expense		2,478
Bad debt expense		2,094
Depreciation and amortization		1,367
Investment and research consulting		829
Other operating expenses		7,334
Total operating expenses		64,190
Other income		10,779
Income before investment activities		22,044
Realized and unrealized gains/losses from investments:		
Net realized gain on sale of investments		63,605
Net change in unrealized loss on investments*		(29,562)
Total realized and unrealized gain from investments		34,043
Losses from equity method investees:		(16,731)
Net income	$	39,356

*Net change in unrealized gain on investments includes $ 0.9 million of unrealized gains from holdings of limited partnership interests of Consolidated Investment Funds, which are discussed in Footnote 2. These entities are consolidated because the Partnership controls the general partner of the respective entities and is responsible for the daily operations of the entities.

The above information was derived from the audited December 31, 2016 consolidated financial statements of Highland Capital Management, L.P. This information should be read in conjunction with such audited consolidated financial statements.

EXHIBIT 72

Highland Capital Management, L.P.

(A Delaware Limited Partnership)

Consolidated Financial Statements and Supplemental Information

December 31, 2017

Highland Capital Management, L.P.

(A Delaware Limited Partnership)
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December 31, 2017

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Report of Independent Auditors

To the General Partner of Highland Capital Management, L.P.

We have audited the accompanying consolidated financial statements of Highland Capital Management, L.P. and its subsidiaries (collectively, the "Partnership"), which comprise the consolidated balance sheet as of December 31, 2017, and the related consolidated statements of income, of changes in partners' capital and of cash flows for the year then ended.

Management's Responsibility for the Consolidated Financial Statements

Management is responsible for the preparation and fair presentation of the consolidated financial statements in accordance with accounting principles generally accepted in the United States of America; this includes the design, implementation and maintenance of internal control relevant to the preparation and fair presentation of consolidated financial statements that are free from material misstatement, whether due to fraud or error.

Auditors' Responsibility

Our responsibility is to express an opinion on the consolidated financial statements based on our audit. We conducted our audit in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the consolidated financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the consolidated financial statements. The procedures selected depend on our judgment, including the assessment of the risks of material misstatement of the consolidated financial statements, whether due to fraud or error. In making those risk assessments, we consider internal control relevant to the Partnership's preparation and fair presentation of the consolidated financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Partnership's internal control. Accordingly, we express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the consolidated financial statements. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

Opinion

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of Highland Capital Management, L.P. and its subsidiaries as of December 31, 2017, and the results of their operations, changes in their partners' capital and their cash flows for the year then ended, in accordance with accounting principles generally accepted in the United States of America.

Other Matter

Our audit was conducted for the purpose of forming an opinion on the consolidated financial statements taken as a whole. The Supplemental Consolidating Balance Sheet, the Supplemental Consolidating Statement of Income, the Supplemental Unconsolidated Balance Sheet and the Supplemental Unconsolidated Statement of Income are presented for purposes of additional analysis and are not a required part of the consolidated financial statements. The information is the responsibility of management and was derived from and relates directly to the underlying accounting and other records used to prepare the consolidated financial statements. The information has been subjected to the auditing procedures applied in the audit of the consolidated financial statements and certain additional procedures, including comparing and reconciling such information directly to the underlying accounting and other records used to prepare the consolidated financial statements or to the consolidated financial statements themselves and other additional procedures, in accordance with auditing standards generally accepted in the United States of America. In our opinion, the information is fairly stated, in all material respects, in relation to the consolidated financial statements taken as a whole.

PricewaterhouseCoopers LLP

May 18, 2018

PricewaterhouseCoopers LLP, 2001 Ross Avenue, Suite 1800, Dallas, Texas 75201
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Highland Capital Management, L.P.
(A Delaware Limited Partnership)
Consolidated Balance Sheet
December 31, 2017

(in thousands)

Assets		
Cash and cash equivalents	$	103,479
Investments at fair value (cost $1,027,878)		1,056,380
Management and incentive fees receivable		11,861
Due from broker for securities sold, not yet settled		2,287
Other assets		14,674
Notes and other amounts due from affiliates		163,403
Other intangible assets		6,330
Fixed assets and leasehold improvements, net of accumulated depreciation of $9,880		5,832
Total assets	$	1,364,246
Liabilities and partners' capital		
Liabilities		
Accounts payable	$	4,436
Securities sold, not yet purchased (proceeds $63,187)		95,403
Withdrawals payable		140,955
Due to brokers		104,896
Accrued and other liabilities		39,181
Notes payable		19,995
Investment liabilities		84,359
Total liabilities		489,225
Non-controlling interest		424,844
Commitments and contingencies		
Partners' capital		450,177
Total liabilities and partners' capital	$	1,364,246

The accompanying notes are an integral part of these consolidated financial statements.

Highland Capital Management, L.P.

(A Delaware Limited Partnership)

Consolidated Statement of Income

Year Ended December 31, 2017

(in thousands)

Revenue:		
Management fees	$	37,875
Interest and investment income		21,122
Incentive fees		11,795
Shared services fees		9,445
Other income		9,790
Total revenue		90,027
Expenses:		
Compensation and benefits		37,254
Professional fees		14,757
Interest expense		5,508
Marketing and advertising expense		2,374
Depreciation and amortization		1,340
Investment and research consulting		1,101
Bad debt expense		2,279
Other operating expenses		7,915
Total expenses		72,528
Other income		11,967
Income before investment and derivative activities		29,466
Realized and unrealized gain/(loss) on investments and derivatives:		
Net realized loss on investments and derivatives		(9,682)
Net change in unrealized gain on investments and derivatives		114,883
Net realized and unrealized gain on investments and derivatives		105,201
Net income		134,667
Net income attributable to non-controlling interest		82,060
Net income attributable to Highland Capital Management, L.P.	$	52,607

The accompanying notes are an integral part of these consolidated financial statements.

Highland Capital Management, L.P.
(A Delaware Limited Partnership)
Consolidated Statement of Changes in Partners' Capital
Year Ended December 31, 2017

(in thousands)

	General Partner	Limited Partners	Total
Partners' capital, December 31, 2016	$ 83	$ 418,528	$ 418,611
Net income attributable to Highland Capital Management, L.P.	133	52,474	52,607
Partner distributions	(53)	(20,988)	(21,041)
Partners' capital, December 31, 2017	$ 163	$ 450,014	$ 450,177

The accompanying notes are an integral part of these consolidated financial statements.

Highland Capital Management, L.P.
(A Delaware Limited Partnership)
Consolidated Statement of Cash Flows
Year Ended December 31, 2017

(in thousands)

Cash flows from operating activities:		
Net income	$	134,667
Adjustment to reconcile net income to net cash used in operating activities:		
Net realized loss on investments and derivative transactions		9,682
Net change in unrealized gain on investments and derivative transactions		(114,883)
Amortization and depreciation		1,340
Changes in assets and liabilities:		
Management and incentive fee receivable		722
Due from brokers		(1,395)
Due from affiliate		(2,246)
Other assets		(1,764)
Intangible assets		(6,330)
Accounts payable		(6)
Accrued and other liabilities		(3,658)
Due to brokers for securities purchased, not yet settled		(1,614)
Due to brokers		(66,753)
Net cash used in operating activities		(52,238)
Cash flows from investing activities:		
Purchases of fixed assets and leasehold improvements, net		(425)
Purchases of investments		(237,987)
Proceeds from dispositions of investments		418,686
Proceeds from securities sold, not yet purchased		16,456
Issuance of notes receivable to affiliates		(10,050)
Proceeds from repayments of notes receivable from affiliates		27,985
Purchases of investments to cover securities sold, not yet purchased		(61,160)
Net cash provided by investing activities		153,505
Cash flows from financing activities:		
Payments on notes payable & investment liabilities		(9,569)
Capital contributions from minority interest investors of consolidated entities		1,705
Capital withdrawals by minority interest investors of consolidated entities		1,242
Partner distributions		(21,295)
Net cash used in financing activities		(27,917)
Net increase in cash and cash equivalents		73,350
Cash and cash equivalents		
Beginning of year		30,129
End of year	$	103,479
Supplemental disclosure of cash flow information:		
Interest paid during the year	$	(4,900)
Interest receivable reclassified to promissory notes		4,390
Taxes paid during the year		(1,676)
Investments acquired for non-cash consideration		7,713
Investments disposed for non-cash consideration		3,452

The accompanying notes are an integral part of these consolidated financial statements.

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1. Description of Business

Highland Capital Management, L.P. (the "Partnership") was formed on July 7, 1997 as a limited partnership in the state of Delaware. The Partnership is a registered investment adviser under the Investment Advisers Act of 1940 that manages collateralized loan obligations ("CLOs"), hedge funds, private equity funds, and other leveraged loan transactions that are collateralized predominately by senior secured bank debt and high-yield bonds. The Partnership and its subsidiaries make direct investments in debt, equity, and other securities in the normal course of business. The Partnership's general partner is Strand Advisors, Inc. (the "General Partner"). The Partnership is owned by an unaffiliated trust as well as affiliated trusts and personal holdings of the senior management of the Partnership.

As of December 31, 2017, the Partnership provided investment advisory services for twenty-eight CLOs, six separate accounts, one master limited partnership, and eleven hedge fund or private equity structures, with total fee-earning assets under management of approximately $4.9 billion.

2. Summary of Significant Accounting Policies

The following is a summary of the significant accounting policies followed by the Partnership in preparation of its consolidated financial statements.

Basis of Accounting
The Partnership's consolidated financial statements have been prepared in accordance with U.S. generally accepted accounting principles in the United States of America ("U.S. GAAP") as set forth in the Financial Accounting Standards Board's Accounting Standards Codification and are stated in the United States Dollar.

Use of Estimates
The preparation of the consolidated financial statements in conformity with U.S. GAAP requires management to make estimates and assumptions that affect the amounts and disclosures in the consolidated financial statements. Actual results could differ from those estimates and those differences could be material.

Principles of Consolidation
The consolidated financial statements include the accounts of the Partnership and the Partnership's consolidated subsidiaries ("Consolidated Entities"), which are comprised of (i) those entities in which it has controlling investment and has control over significant operating, financial and investing decisions, (ii) those entities in which it, as the general partner, has control over significant operating, financial and investing decisions, and (iii) variable interest entities ("VIEs") in which it is the primary beneficiary as described below.

The Partnership determines whether an entity has equity investors who lack the characteristics of a controlling financial interest or does not have sufficient equity at risk to finance its expected activities without additional subordinated financial support from other parties. If an entity has either of these characteristics, it is considered a VIE and must be consolidated by its primary beneficiary, which is the party that, along with its affiliates and de facto agents, absorbs a majority of the VIEs' expected losses or receives a majority of the expected residual returns as a result of holding variable interests.

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The Partnership assesses consolidation requirements pursuant to ASU 2015-02: Consolidation, which was adopted using the modified retrospective method and resulted in an effective date of adoption of January 1, 2016.

The Partnership and its affiliate's involvement with unconsolidated VIEs is generally limited to that of an advisory services provider, and their investment, if any, represents an insignificant interest in the relevant investment entities' assets under management. The Partnership's affiliate's exposure to risk in these entities is generally limited to any capital contribution it has made or is required to make and any earned but uncollected asset based and performance fees. The Partnership has not issued any investment performance guarantees to these VIEs or their investors, except that the Partnership has agreed to subject the full value of its equity interest ($1.0M) in Highland Prometheus Fund to dollar-for-dollar reduction to the extent the third party investor in such fund does not achieve an annual target return.

As of December 31, 2017, the net assets of the unconsolidated VIEs and the Partnership's maximum risk of loss were as follows:

(in thousands)

	Unconsolidated VIE Net Assets	Carrying Value and Maximum Risk of Loss
Sponsored investment funds	$ 625,692,621	$ 13,979,151

Consolidation of Variable Interest Entities
The Partnership consolidates the following VIEs (along with majority owned funds: Highland Diversified Credit Fund, L.P., and Highland Select Equity Fund, L.P., collectively the "Consolidated Investment Funds"), as the Partnership (or its wholly owned subsidiaries) controls the general partner of the respective entities and is responsible for the daily operations of the following entities:

- Highland Multi Strategy Credit Fund, L.P. ("Multi Strategy Master"), formerly Highland Credit Opportunities CDO, L.P., a Delaware limited partnership that commenced operations on December 15, 2005 and changed its name on August 26, 2014;
- Highland Multi-Strategy Master Fund, L.P. ("Multi-Strat Master"), a Bermuda limited partnership that commenced operations on July 18, 2006;
- Highland Multi-Strategy Fund, L.P. ("Multi-Strat Domestic Feeder"), a Delaware limited partnership that commenced operations on July 6, 2006;
- Highland Restoration Capital Partners Offshore, L.P. ("Restoration Offshore"), a Cayman limited partnership that commenced operations on September 2, 2008;
- Highland Restoration Capital Partners, L.P. ("Restoration Onshore"), a Delaware limited partnership that commenced operations on September 2, 2008; and

- BB Votorantim, Highland Infrastructure LLC ("BB Votorantim"), a Delaware limited liability company which began operations on May 29, 2014.

Consolidation of Majority Owned Entities
The Partnership consolidates the following entities as it has a controlling majority interest:

- 100% interest in Highland Capital Special Allocation, LLC ("HCSA"), a Delaware limited liability company that commenced operations on December 21, 2006;
- 100% interest in Highland Receivables Finance 1, LLC, a Delaware limited liability company that commenced operations on December 29, 2006;
- 100% interest in Highland Multi-Strategy Onshore Master SubFund, LLC, a Delaware limited liability company that commenced operations on July 19, 2006;
- 100% interest in Highland Multi-Strategy Onshore Master Subfund II, LLC, LLC, a Delaware limited liability company that commenced operations on February 22, 2007;
- 100% interest in Highland Brasil, LLC, a Delaware limited liability company that commenced operations on January 28, 2014;
- 100% interest in Highland Capital Management Partners Charitable Trust #1, a trust that commenced operations on September 19, 2006;
- 100% interest in Highland Capital Management (Singapore) Pte, Ltd., a company organized in the Republic of Singapore that commenced operations on April 2, 2008;
- 100% interest in Highland Capital Management Korea, Ltd. ("HCM Korea"), a company organized in the Republic of Korea that commenced operations on August 2, 2012;
- 100% interest in Highland Capital Management Latin America, L.P., ("HCM Latin America"), a Cayman company that was formed on April 13, 2017;
- 100% interest in HE Capital, LLC, a Delaware limited liability company that was formed on March 22, 2007;
- 100% interest in De Kooning, Ltd, a Cayman company that was formed on December 1, 2012;
- 100% interest in Hirst, Ltd., a Cayman company that was formed on December 1, 2012;
- 100% interest in Hockney, Ltd., a Cayman company that was formed on December 1, 2012;
- 100% interest in Oldenburg, Ltd., a Cayman company that was formed on December 1, 2012;
- 100% interest in Eames, Ltd, a Cayman company that was formed on December 12, 2012;
- 99.9% interest in Penant Management, L.P., a Delaware limited partnership that was formed on December 12, 2012;
- 100% interest in Pollack, Ltd., a Cayman company that was formed on December 1, 2012;

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- 100% interest in Warhol, Ltd., a Cayman company that was formed on December 1, 2012;
- 100% interest in HCREF-I Holding Corp., a Delaware company that was formed on December 13, 2012;
- 100% interest in HCREF-XI Holding Corp., a Delaware company that was formed on December 13, 2012;
- 100% interest in HCREF-XII Holding Corp., a Delaware company that was formed on December 13, 2012;
- 100% interest in Highland ERA Management, LLC, a Delaware limited liability company that was formed on February 1, 2013;
- 100% interest in The Dondero Insurance Rabbi Trust., a trust that was formed on May 27, 2004;
- 100% interest in The Okada Insurance Rabbi Trust, a trust that was formed on May 27, 2004;
- 100% interest in Highland Employee Retention Assets ("HERA"), LLC, a Delaware limited liability company that was formed on October 26, 2009;
- 100% interest in Highland Diversified Credit Fund, L.P. ("Highland Offshore Partners"), a Delaware limited partnership which began operations on February 29, 2000 and was organized for the sole purpose of investing substantially all of its assets in Highland Offshore Partners, L.P.;
- 99.6% interest in Highland Select Equity Master Fund, LP, and Highland Select Equity Fund, LP Delaware limited partnerships which began operations on January 1, 2002 and was organized for the purpose of investing and trading in large and small cap stocks that trade for less than intrinsic value;
- 100% interest in Bandera Strategic Credit Partners I SLP, L.P., a Delaware limited liability company formed on April 3, 2014;
- 100% interest in Highland Fund Holdings, LLC, a Delaware limited liability company that was formed on May 24, 2016;
- 100% interest in HCM Holdco, LLC, a Delaware limited liability company formed on October 27, 2015 and;
- 100% interest in Maple Avenue Holdings, LLC, a Texas limited liability company formed on August 17, 2016.
- 100% interest in Highland HCF Advisor, Ltd., a Cayman company that was formed on October 27, 2017.

All inter-partnership and intercompany accounts and transactions involving the above listed Consolidated Entities have been eliminated in all of the aforementioned consolidating schedules. All the Consolidated Investment Funds are, for U.S. GAAP purposes, investment companies under the American Institute of Certified Public Accountants (AICPA) Audit and Accounting Guide -

Investment Companies. The Partnership has retained the specialized accounting of these funds required under U.S. GAAP.

The following table includes a rollforward of non-controlling interests from December 31, 2016, to December 31, 2017.

(in thousands)

Noncontrolling interest, December 31, 2016	$ 412,847
Net income attributable to noncontrolling interest	82,060
Noncontrolling partner distributions	(70,063)
Noncontrolling interest, December 31, 2017	$ 424,844

Investment Transactions
Investment transactions are recorded on a trade date basis. Investments in securities are valued at market or fair value at the date of the consolidated financial statements with the resulting net unrealized appreciation or depreciation reflected in the Consolidated Statement of Income. Realized gains and losses on the transactions are determined based on either the first-in, first-out or specific identification method.

See Note 5 for the Partnership's fair value process and hierarchy disclosures.

Management and Incentive Fee Revenue
The Partnership recognizes revenue as earned in connection with services provided under collateral and investment management agreements. Under these agreements, the Partnership earns management fees calculated as a percentage of assets under management or net asset value. The Partnership also has an opportunity to earn additional incentive fees and incentive allocations related to certain management agreements depending ultimately on the financial performance of the underlying assets the Partnership manages. During the year ended December 31, 2017, the Partnership and its Consolidated Entities recognized management fees and incentive fees of approximately $37.9 million and $11.8 million, respectively.

Shared Services Revenue
The Partnership recognizes revenue as earned in connection with services provided to related parties under various shared services agreements. Under these agreements, the Partnership earns fees for services including, but not limited to, back office support functions, marketing, and investment advisory services. During the year ended December 31, 2017, the Partnership and its Consolidated Entities recognized shared services revenue of approximately $9.4 million, which has been presented in *Shared services fees* in the Consolidated Statement of Income. See further discussion in Note 9.

Income and Expense Recognition
Interest on currently paying debt instruments is accrued as earned and dividend income and dividends on securities sold, not yet purchased are recorded on the ex-dividend date, net of withholding taxes. In certain instances where the asset has defaulted or some amount of the interest payment is deemed uncollectable, interest is recognized when received. Discounts and premiums associated with purchases of investments are accreted and amortized to interest income, except for deep-discounted debt where ultimate collection of interest and principal may be in doubt. Such accretion/amortization is calculated on an effective-yield basis over the life of the investment. Amendment fees are recognized when agreed to by the underlying company and all settlement contingencies are met. Operating expenses, including interest on securities sold short, not yet purchased, are recorded on the accrual basis as incurred.

Income Taxes
The Partnership is not subject to federal income taxes, and therefore, no provision has been made for such taxes in the accompanying consolidated financial statements. Income taxes are the responsibility of the partners. Certain consolidated subsidiaries are subject to federal income taxes.

Certain entities that are included in these consolidated financial statements are subject to federal and/or state income taxes. Deferred tax assets and liabilities are recognized for the future tax consequences attributable to differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax bases. Deferred tax assets and liabilities are measured using enacted tax rates expected to apply to taxable income in the years in which those temporary differences are expected to be recovered or settled. The effect on deferred tax assets and liabilities of a change in tax rates is recognized in the period that includes the enactment date. See further discussion in Note 14.

Cash and Cash Equivalents
Cash and cash equivalents consist of cash held at U.S. and foreign banks, deposits with original maturities of less than 90 days, and money market funds. Cash equivalents are carried at cost, which approximates market value. At December 31, 2017, the Partnership and Consolidated Entities held cash balances at certain financial institutions in excess of the federally insured limit of $0.3 million. The Partnership and Consolidated Entities regularly monitor the credit quality of these institutions.

Notes Receivable
Notes receivable consists of secured promissory notes with maturities greater than one year. When available, the Partnership uses observable market data, including pricing on recent closed transactions to value notes. When appropriate, these notes may be valued using collateral values. Adjustments to the value may be performed in circumstances where attributes specific to the collateral exist suggesting impairment.

Other Intangible Assets
Goodwill and other intangible assets are recorded on the Consolidated Balance Sheet at current carrying values. The Partnership and its Consolidated Entities perform an impairment test on an annual basis. Any impairment in the value of other intangible assets is accounted for in the year when it occurs.

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Fixed Assets and Leasehold Improvements
Fixed assets and leasehold improvements are carried at cost, less accumulated depreciation. Depreciation is provided using the straight-line method over the shorter of the estimated useful life of the assets or the lease term.

The Partnership and its Consolidated Entities are depreciating fixed assets as follows:

	Period
Leasehold improvements	Lease term
Buildings	29 - 40 years
Furniture and fixtures	7 years
Computer and equipment	3 - 5 years
Computer software	3 years

Securities Sold, Not Yet Purchased
The Partnership's Consolidated Investment Funds engage in "short sales" as part of their investment strategies. Short selling is the practice of selling securities that are borrowed from a third party. The Consolidated Investment Funds are required to return securities equivalent to those borrowed for the short sale at the lender's demand.

Pending the return of such securities, the Consolidated Investment Funds deposit with the lender as collateral the proceeds of the short sale plus additional cash. The amount of the required deposit, which earns interest, is adjusted periodically to reflect any change in the market price of the securities that the Consolidated Investment Funds are required to return to the lender. A gain (which cannot exceed the price at which the Consolidated Investment Funds sold the security short) or a loss (which theoretically could be unlimited in size) will be settled upon termination of a short sale.

Due to/from Brokers
Due to and from broker balances recorded on the Consolidated Balance Sheet include liquid assets maintained with brokers and counterparties for margin account balances and the amounts due for or due from the settlement of purchase and sales transactions. Certain due to and from broker balances have been reported on a net-by-counterparty basis where, in accordance with contractual rights and the Partnership's opinion, there is a right of offset in the event of bankruptcy or default by a counterparty.

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Options Contracts
The Partnership and the Consolidated Entities may purchase and write call and put options to gain market exposure or to hedge investments. A call option gives the purchaser of the option the right (but not the obligation) to buy, and obligates the seller to sell (when the option is exercised), the underlying position at the exercise price at any time or at a specified time during the option period. A put option gives the holder the right to sell and obligates the writer to buy the underlying position at the exercise price at any time or at a specified time during the option period. When the Partnership or the Consolidated Entities purchase (write) an option, an amount equal to the premium paid (received) by the entity is reflected as an asset (liability). The amount of the asset (liability) is subsequently marked-to-market to reflect the current market value of the option purchased (written). When a security is purchased (or sold) through an exercise of an option, the related premium paid (or received) is added to (or deducted from) the basis of the security acquired or deducted from (or added to) the proceeds of the security sold. When an option expires (or the Partnership or the Consolidated Entities enter into a closing transaction), the entity realizes a gain or loss on the option to the extent of the premiums received or paid (or gain or loss to the extent the cost of the closing transaction exceeds the premium received or paid). Exercise of a written option could result in the Partnership or the Consolidated Entities purchasing a security at a price different from the current market value.

The Partnership and the Consolidated Entities are exposed to counterparty risk from the potential that a seller of an option contract does not sell or purchase the underlying asset as agreed under the terms of the option contract. The maximum risk of loss from counterparty risk to the Partnership and the Consolidated Entities is the greater of the fair value of its open option contracts or the premiums paid to purchase the open option contracts. The Partnership and the Consolidated Entities consider the credit risk of the intermediary counterparties to its option transactions in evaluating potential credit risk.

Margin Transactions
To obtain more investable cash, the Consolidated Entities may use various forms of leverage including purchasing securities on margin. A margin transaction consists of purchasing an investment with money loaned by a broker and agreeing to repay the broker at a later date. Interest expense on the outstanding margin balance is based on market rates at the time of the borrowing.

Withdrawals Payable
Withdrawals are recognized as liabilities, net of incentive allocations, when the amount requested in the withdrawal notice becomes fixed and determinable. This generally may occur either at the time of receipt of the notice, or on the last day of a fiscal period, depending on the nature of the request. As a result, withdrawals paid after the end of the year, but based upon year-end capital balances are reflected as withdrawals payable at December 31, 2017. Withdrawal notices received for which the dollar amount is not fixed remains in capital until the amount is determined. At December 31, 2017, the Consolidated Investment Funds had withdrawals payable of $141.0 million.

Foreign Currency Transactions
The Partnership's subsidiaries HCM Singapore and HCM Korea use Singapore dollars and Korean won, respectively, as their functional currency. All foreign currency asset and liability balances are presented in U.S. dollars in the consolidated financial statements, translated using the exchange rate as of December 31, 2017. Revenues and expenses are recorded in U.S. dollars using an average exchange rate for the relative period. Foreign currency transaction gains and losses resulting from transactions outside of the functional currency of an entity are included in *Other income* on the Consolidated Statement of Income.

The Consolidated Entities do not isolate that portion of the results of operations resulting from changes in foreign exchange rates or investment or fluctuations from changes in market prices of securities held. Such fluctuations are included within the *Net realized and unrealized gains or loss from investments* on the Consolidated Statement of Income.

Life Settlement Contracts
One of the Consolidated Investment Funds, through a subsidiary, holds life settlement contracts and accounts for them using the fair value method. These contracts are recorded as a component of "Investments at fair value" on the Consolidated Balance Sheet. Realized and unrealized gains (losses) on the contracts are recorded in the Consolidated Income Statement. Cash flows relating to the purchase and sale of the contracts are recorded as a component of *Purchase of investments* and *Proceeds from dispositions of investments* on the Consolidated Statement of Cash Flows. At December 31, 2017, the Consolidated Investment Fund was invested in 13 policies, which had a total face value of approximately $145.3 million and a fair value of $29.0 million.

Financing
The Partnership and its Consolidated Entities may finance the acquisition of its investments in securities and loans through financing arrangements which are classified in Notes payable and Investment liabilities on the Consolidated Balance Sheet. The Partnership and its Consolidated Entities recognize interest expense on all borrowings on the accrual basis in the Consolidated Statement of Income.

Financial Instruments
The Partnership and its Consolidated Entities determine fair value of financial instruments as required by U.S. GAAP. The carrying amounts for cash and cash equivalents, receivables, accounts payable, withdrawals payable, debt and notes payable, due to brokers, investment liabilities and accrued liabilities approximate their fair values. For fair value of investment, see Note 5.

Accounts Payable, Accrued and Other Liabilities
Expenses are recorded on an accrual basis, as incurred. Current liabilities are included in Accounts payable. Long-term liabilities are included in Accrued and other liabilities.

Partners' Capital
The Partnership agreement requires that income or loss of the Partnership be allocated to the partners in accordance with their respective partnership interests.

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Recently Issued Accounting Standards and Interpretations

In January 2016, the FASB issued ASU 2016-01, Fair Value: Recognition and Measurement of Financial Assets and Liabilities. Under the new standard, all equity investments in unconsolidated entities (other than those accounted for using the equity method of accounting) will generally be measured at fair value through earnings. The standard is effective for fiscal periods beginning after December 15, 2018. The Partnership does not expect the adoption of this standard to have a significant impact on its Consolidated Financial Statements.

In February 2016, the FASB issued ASU 2016-02, Leases, which requires lessees to recognize assets and liabilities arising from most operating leases on the statement of financial position. The standard is effective for fiscal periods beginning after December 15, 2019. The Partnership is evaluating the impact of this standard on its Consolidated Financial Statements.

In August 2016, the FASB issued ASU 2016-15, Statement of Cash Flows - Classification of Certain Cash Receipts and Cash Payments, which clarifies how cash receipts and cash payments are classified in the statement of cash flows. The standard is effective for fiscal periods beginning after December 15, 2018. The Partnership does not expect the adoption of this standard to have a significant impact on its Consolidated Financial Statements.

In May, 2014, the FASB issued ASU 2014-09, Revenue from contracts with customers, and subsequently issued several related amendments. ASC 606 provides a comprehensive model for revenue recognition and is effective in fiscal periods beginning after December 15, 2018. ASC 606 supersedes Accounting Standards Codification ("ASC") 605 and all prior FASB guidance related to revenue recognition. ASC 606 provides accounting guidance for all revenue arising from contracts with customers and also specifies the accounting for costs incurred to obtain or fulfill a revenue generating contract. The Partnership does not expect the adoption of this standard to have a significant impact on its Consolidated Financial Statements.

3. Fixed Assets and Leasehold Improvements

Fixed assets and leasehold improvements are comprised of the following as of December 31, 2017:

(in thousands)

Leasehold improvements	$	7,192
Buildings		2,595
Furniture and fixtures		2,795
Computer and equipment		2,799
Computer software		331
Accumulated depreciation		(9,880)
	$	5,832

Depreciation expense in 2017 totaled approximately $1.3 million for the Partnership and its subsidiaries.

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4. Investments

Detailed below is a summary of the Partnership and its Consolidated Entities' investments at December 31, 2017:

(in thousands)	Amortized Cost/Cost	Fair Value
Common equity securities	$ 480,073	$ 758,007
Closed-end mutual funds	100,328	99,620
Floating rate syndicated bank loans	138,781	68,030
Real Estate Investment Trusts	28,950	39,406
Life settlement contracts	57,922	28,959
Limited partnership interests	24,103	27,863
Participation interests	19,449	14,199
Rights & warrants	21,899	9,691
Asset-backed securities	57,365	6,477
LLC interests	12,803	3,352
Corporate bonds	85,946	527
Preferred equity	258	249
Total investments	$ 1,027,878	$ 1,056,380

	Proceeds	Fair Value
Securities sold, not yet purchased	$ (63,187)	$ (95,403)

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5. Fair Value of Financial Instruments

Fair Value Measurement
U.S. GAAP defines fair value as the price an entity would receive to sell an asset or pay to transfer a liability in an orderly transaction between market participants as of the measurement date. The standard requires fair value measurement techniques to reflect the assumptions market participants would use in pricing an asset or liability and, where possible, to maximize the use of observable inputs and minimize the use of unobservable inputs. It also establishes the following hierarchy that prioritizes the valuation inputs into three broad levels:

- Level 1 – Valuation based on unadjusted quoted prices in active markets for identical assets and liabilities that the Partnership and the Consolidated Entities have the ability to access as of the measurement date. Valuations utilizing Level 1 inputs do not require any degree of judgment.

- Level 2 – Valuations based on (a) quoted prices for similar instruments in active markets; (b) quoted prices for identical or similar instruments in markets that are not active that are reflective of recent market transactions; or (c) models in which all significant inputs are observable, either directly or indirectly.

- Level 3 – Valuations based on indicative quotes that do not reflect recent market transactions and models or other valuation techniques in which the inputs are unobservable and significant to the fair value measurement, which includes situations where there is little, if any, market activity for the asset or liability.

The availability of observable inputs varies among financial instruments and is affected by numerous factors, including the type of instruments, the period of time in which the instrument has been established in the marketplace, market liquidity for an asset class and other characteristics particular to a transaction. When the inputs used in a valuation model are unobservable, management is required to exercise a greater degree of judgment to determine fair value than it would for observable inputs. For certain instruments, the inputs used to measure fair value may fall into different levels of the hierarchy discussed above. In those cases, the instruments are categorized for disclosure purposes based on the lowest level of inputs that are significant to their fair value measurements.

The Partnership and Consolidated Entities use prices and inputs that are current as of the measurement dates. The Partnership also considers the counterparty's non-performance risk when measuring the fair value of its investments.

During periods of market dislocation, the ability to observe prices and inputs for certain instruments may change. These circumstances may result in the instruments being reclassified to different levels within the hierarchy over time. They also create an inherent risk in the estimation of fair value that could cause actual amounts to differ from management's estimates. Whenever possible, the Partnership and its Consolidated Entities use actual market prices or relevant observable inputs to establish the fair value of its assets and liabilities. In cases where observable inputs are not available, the Partnership and Consolidated Entities develop methodologies that provide appropriate fair value estimates. These methodologies are reviewed on a continuous basis to account for changing market conditions.

The Partnership has established policies, as described above, processes and procedures to ensure that valuation methodologies for investments and financial instruments that are categorized within all levels of the fair value hierarchy are fair and consistent. A Pricing Committee has been established to provide oversight of the valuation policies, processes and procedures, and is comprised of various personnel from the Partnership. The Pricing Committee meets monthly to review the proposed valuations for investments and financial instruments. The Pricing Committee is responsible for establishing the valuation policies and evaluating the overall fairness and consistent application of those policies.

As of December 31, 2017, the Partnership and its Consolidated Entities' investments consisted primarily of common equity securities, closed-end mutual funds, floating rate syndicated bank loans, real estate investment trusts, life settlement contracts, limited partnership interests, participation interests, rights and warrants, option contracts, asset-backed securities, LLC interests, corporate bonds, and preferred equity. In addition, the Consolidated Entities engage in short sale transactions. The majority of these financial instruments are not listed on national securities exchanges and management is required to use significant judgment to estimate their values.

Equity Investments
Publicly traded equities are valued at the closing price at the date of the financial statements. The fair value of equity investments that are not traded on national exchanges or through real-time quotation services are derived from methodologies that provide appropriate fair value estimates. Equity investments with quotes that are based on actual trades with a sufficient level of activity on or near the valuation date are classified as Level 2 assets.

Private Equity Investments
The Partnership and Consolidated Entities hold private equity investments which resulted from the restructuring of other instruments. These assets are valued using market data obtained from a third-party pricing service and/or quotes from other parties dealing in the specific assets when available. In the event both a reliable market quote and third-party pricing service data are not available for such assets, the Partnership and Consolidated Entities will fair value the assets using various methodologies, as appropriate for individual investments, including comparable transaction multiples, comparable trading multiples, and/or discounted cash flow analysis. When utilizing comparable trading multiples, the Investment Manager determines comparable public companies (peers) based on industry, size, developmental stage, strategy, etc., and then calculates a trading multiple for each comparable company identified by using either a price to book ratio based on publically available information about the underlying comparable company or by dividing the enterprise value of the comparable company by its earnings before interest, taxes, depreciation and amortization (EBITDA) or similar metrics. In certain instances, the inputs used in the calculation of the trading multiples may vary based on the industry or development stage of the company. A multiple determined by the Investment Manager to be within a reasonable range as calculated amongst its peers is then applied to the underlying company's price to book ratio or EBITDA (which may be normalized to adjust for certain nonrecurring events), to calculate the fair value of the underlying company. The fair value may be further adjusted for entity specific facts and circumstances. Private equity investments with quotes that are based on actual trades with a sufficient level of activity on or near the valuation date are classified as Level 2 assets. Private equity investments that are priced using quotes derived from implied values, bid/ask prices for trades that were never consummated, or a limited amount of actual trades are classified as Level 3 assets because the inputs used by the brokers and pricing services to derive the values are not readily observable.

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The Consolidated Entities also invest in warrant securities of publicly–traded companies. The fair value of these investments is based on an option pricing model. The option model bases warrant value on a number of factors including underlying equity price as of the valuation date, strike price, exercise date, time to expiration and volatility. Warrant investments that have observable volatility are classified as Level 2 assets. Warrant investments where volatility inputs are not observable are valued using an estimated volatility input, and are classified as Level 3 assets.

Debt Securities
The Partnership and Consolidated Entities invest in various types of debt, which are almost exclusively valued using market data obtained from one or more third-party pricing services or brokers. In instances where a third-party pricing service does not provide pricing for a specific asset, the Partnership and Consolidated Entities first seek to obtain reliable market quotes from other parties dealing in the specific asset. Loans and bonds with quotes that are based on actual trades with a sufficient level of activity on or near the valuation date are classified as Level 2 assets. Loans and bonds that are priced using quotes derived from implied values, bid/ask prices for trades that were never consummated, or a limited amount of actual trades are classified as Level 3 assets because the inputs used by the brokers and pricing services to derive the values are not readily observable.

Absent both a reliable market quote and third-party pricing service date, the Partnership and Consolidated Entities may use various models to establish an estimated exit price. These investments are classified as Level 3 assets. Models used for debt securities are primarily based on identifying comparable assets for which market data is available and pricing the target asset consistent with the yields of the comparable assets. As circumstances require, other industry accepted techniques may be used in modeling debt assets.

Life Settlement Contracts
Life Settlement contracts are valued using mortality tables and interest rate assumptions that are deemed by management to be appropriate for the demographic characteristics of the parties insured under the policies. Management generally utilizes an independent third party firm to perform these calculations and provide the relevant inputs. Management evaluates the results based on visible market activity and market research. Since these inputs are not readily observable, these contracts are classified as Level 3 assets.

At December 31, 2017, the Consolidated Entities' investments in life settlement contracts consisted of the following:

(U.S. dollars in thousands, except number of policies)

Remaining Life Expectancy (in years)	Number of Policies	Face Value	Fair Value
2-3	1	$ 5,000	$ 2,566
4-5	2	28,785	8,882
Thereafter	10	111,500	17,511
Total	13	$ 145,285	$ 28,959

Options Contracts
The Partnership and its Consolidated Entities may purchase and write call and put options to gain market exposure or to hedge investments. A call option gives the purchaser of the option the right (but not the obligation) to buy, and obligates the seller to sell (when the option is exercised), the underlying position at the exercise price at any time or at a specified time during the option period. A put option gives the holder the right to sell and obligates the writer to buy the underlying position at the exercise price at any time or at a specified time during the option period. When the Partnership and its Consolidated Entities purchase (writes) an option, an amount equal to the premium paid (received) by the purchaser is reflected as an asset (liability). The amount of the asset (liability) is subsequently marked-to-market to reflect the current market value of the option purchased (written). When a security is purchased (or sold) through an exercise of an option, the related premium paid (or received) is added to (or deducted from) the basis of the security acquired or deducted from (or added to) the proceeds of the security sold. When an option expires (or the purchaser enters into a closing transaction), the purchaser realizes a gain or loss on the option to the extent of the premiums received or paid (or gain or loss to the extent the cost of the closing transaction exceeds the premium received or paid). Exercise of a written option could result in the Partnership and its Consolidated Entities purchasing a security at a price different from the current market value.

Asset-Backed Securities
The Consolidated Entities invest in a variety of asset-backed securities. Asset-backed securities are generally valued based on complex cash flow models that analyze the cash flows generated by the investment's underlying assets after adjusting for expected default rates, prepayment rates, collateral quality, market liquidity among other factors. These models are then adjusted based on spreads available in the market place from various research firms, dealers, and trading activity. The Consolidated Entities generally utilize an independent third party firm to perform these calculations and provide the relevant inputs. The Consolidated Entities evaluate the results based on visible market activity and market research. When appropriate, the Consolidated Entities may apply other techniques based on a specific asset's characteristics. Asset-backed securities with quotes that are based on actual trades with a sufficient level of activity on or near the valuation date are classified as Level 2 assets. Asset-backed securities that are priced using quotes derived from implied values, bid/ask prices for trades that were never consummated, or a limited amount of actual trades are classified as Level 3 assets because the inputs used by the brokers and pricing services to derive the values are not readily observable.

Limited Partnership and LLC Interests
The Partnership and its Consolidated Entities hold limited partnership and LLC interests in various entities. These assets are valued as the net asset value of the limited partnership interests because the entities utilize fair value accounting for their own financial statements. These interests are classified as Level 3 assets.

The Partnership categorizes investments recorded at fair value in accordance with the hierarchy established under U.S. GAAP. A majority of the Consolidated Entities investments and derivatives at December 31, 2017 are classified as Level 3 positions due to the absence of active markets with quoted prices for identical or similar investments. The following table provides a summary of the financial instruments recorded at fair value on a recurring basis by level within the hierarchy as of December 31, 2017:

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(in thousands)

Assets	**Level 1**	**Level 2**	**Level 3**	**Total Fair Value at 12/31/17**
Common equity securities	$ 239,176	$ 377,630	$ 141,201	$ 758,007
Closed-end mutual funds	99,620	-	-	99,620
Floating rate syndicated bank loans	-	3,723	64,307	68,030
Real Estate Investment Trusts	35,153	4,253	-	39,406
Life settlement contracts	-	-	28,959	28,959
Limited partnership interests	-	-	27,863	27,863
Participation interests	14,199	-	-	14,199
Rights & warrants	1,545	133	8,013	9,691
Asset-backed securities	-	-	6,477	6,477
LLC interests	-	-	3,352	3,352
Corporate bonds	-	527	-	527
Preferred equity	249	-	-	249
Total	$ 389,942	$ 386,266	$ 280,172	$ 1,056,380
Liabilities				
Common stock & Options sold short	$ 95,403	$ -	-	$ 95,403

The classification of a financial instrument within Level 3 is based on the significance of the unobservable inputs to the overall fair value measurement. The following table provides a roll forward of the investments classified within Level 3 for the year ended December 31, 2017:

(in thousands)

	Fair Value at December 31, 2016	Purchases	Sales and Maturities	Restructures	Transfers Into Level 3	Net Realized Gains / (Losses)	Net Unrealized Gains / (Losses)	Fair Value at December 31, 2017
Common equity securities	$ 117,160	$ 1,257	$ -	$ -	$ -	$ -	$ 22,784	$ 141,201
Floating rate syndicated bank loans	54,703	11,171	(14)	-	-	(8,254)	6,701	64,307
Life settlement contracts	23,826	6,962	(10,000)	-	-	3,322	4,849	28,959
Limited partnership interests	24,630	10,663	(8,594)	-	-	3,157	(1,993)	27,863
Rights & w arrants	7,414	36	-	-	-	-	563	8,013
Participation interests	11,980	-	(5,389)	-	-	-	(6,591)	-
Asset-backed securities	8,223	2,648	(35,715)	-	23,976	2,970	4,375	6,477
LLC interests	18,228	143	(16,015)	-	676	5,310	(4,990)	3,352
Corporate bonds	-	-	-	-	-	(400)	400	-
	$ 266,164	**$ 32,880**	**$ (75,727)**	**$ -**	**$ 24,652**	**$ 6,105**	**$ 26,098**	**$ 280,172**

Transfers from Level 2 to Level 3 or from Level 3 to Level 2 are due to changes in observable pricing inputs as compared to the prior year. No significant transfers between Level 1 or Level 2 fair value measurements occurred during the year ended December 31, 2017.

All net realized and unrealized gains and losses in the tables above are reflected in the accompanying Consolidated Income Statement. Approximately $17.3 million of the net unrealized gains presented in the table above relate to investments held as of December 31, 2017.

The following page includes a summary of significant unobservable inputs used in the fair valuations of assets and liabilities categorized within Level 3 of the fair value hierarchy.

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(Fair value in thousands)

Category	Ending Balance at 12/31/2017	Valuation Technique	Unobservable Inputs	Input Value(s)
Common equity securities	$ 141,201	Multiples Analysis	Multiple of EBITDA	3.0x - 8.25x
			Cap Rate	7.5 - 8.5%
			Minority Discount	20%
			Liquidity Discount	25%
		Discounted Cash Flow	Discount Rate	12 - 31.5%
			Terminal Multiple	2.0x - 7.0x
			Minority Discount	20%
			Discount for Lack of Marketability	15%
		Equity Valuation	Discount for Lack of Marketability	15%
		Bid Indications	N/A	N/A
		Enterprise Valuation	Weightings	0-60%
		Appraisal	N/A	N/A
Floating rate syndicated bank loans	64,307	Multiples Analysis	Multiple of EBITDA	3.0x - 5.0x
			Multiple of Revenue	0.4x - 0.5x
		Escrow Recovery Analysis	Discount Rate	11%
		Enterprise Valuation	Weightings	0-60%
		Appraisal	N/A	N/A
		Bid Indications	N/A	N/A
		Discounted Cash Flow	Discount Rate	12.3% - 31.5%
			Terminal Multiple	2.0x
			Spread Adjustment	0.2% - 6.3%
Life settlement contracts	28,959	Net Asset Value of Underlying Assets, based on third-party pricing vendor	Discount Rate	16 - 17%
Limited partnership interests	27,863	Net Asset Value	Various models including liquidation analysis, and third-party pricing vendor	N/A
Rights & warrants	8,013	Discounted Cash Flow	Discount Rate	12 - 17%
			Terminal Multiple	7.0x
			Minority Discount	20%
			Discount for Lack of Marketability	15%
		Multiples Analysis	Multiple of EBITDA	7.75x - 8.25x
Asset-backed securities	6,477	Third-Party Pricing Vendor	N/A	N/A
		Net Asset Value	N/A	N/A
		Adjusted NAV	N/A	N/A
		Blended Approach	Weightings	20-80%
LLC interests	3,352	Discounted Cash Flow	Discount Rate	6%
			Scenario Probabilities	15 - 70%
			Illiquidity Discount	10%
		Adjusted Appraisal	Minority Discount	25%
		Appraisal	N/A	N/A
Total	$ 280,172			

6. Securities Sold under Agreements to Repurchase

Transactions involving securities sold under agreements to repurchase are treated as collateralized financial transactions, and are recorded at their fair market values. In addition, interest earned on the securities is included in interest receivable, and interest accrued on amounts borrowed is included in interest payable. For the year ended December 31, 2017, Multi Strategy Master expensed approximately $1.1 million for interest charged on the amounts borrowed for repurchase agreements.

In connection with transactions in agreements to repurchase, it is Multi Strategy Master's policy that its counterparty take possession of the underlying collateral securities, the fair value of which exceeds the principal amount of the agreements to repurchase, including accrued interest, at all times. If the counterparty defaults under agreements to resell, and the fair value of the collateral declines, the realization of the collateral by Multi Strategy Master may be delayed or limited.

To reduce counterparty credit risk with respect to repurchase agreements, Multi Strategy Master has entered into a master repurchase agreement, which allows Multi Strategy Master to make (or to have an entitlement to receive) a single net payment in the event of default (close-out netting) for outstanding payables and receivables with respect to repurchase agreements with the counterparty.

The master repurchase agreement includes credit related contingent features which allow the counterparty to terminate the agreement prior to maturity in the event Multi Strategy Master's net assets decline by a stated percentage or Multi Strategy Master fails to meet the terms of the agreement, which would cause the Master Partnership to accelerate payment of any net liability owed to the counterparty.

For financial reporting purposes, Multi Strategy Master does not offset repurchase agreement assets and liabilities that are subject to netting arrangements in the Consolidated Balance Sheet. Bankruptcy or insolvency laws of a particular jurisdiction may impose restrictions on or prohibitions against the right of offset in bankruptcy, insolvency or other events.

Collateral terms are contract specific for repurchase agreements. For repurchase agreements traded under master repurchase agreements, the collateral requirements are typically calculated by netting the mark to market amount for each transaction under such agreement and comparing that to the value of any collateral currently pledged by Multi Strategy Master or the counterparty.

For financial reporting purposes, cash collateral that has been pledged to cover obligations of Multi Strategy Master, if any, is reported in due to/from brokers on the Consolidated Balance Sheet. Generally, the amount of collateral due from or to a party must exceed a minimum transfer amount threshold before a transfer has to be made. To the extent amounts due to Multi Strategy Master from its counterparties are not fully collateralized, contractually or otherwise, Multi Strategy Master bears the risk of loss from counterparty non-performance.

At December 31, 2017, there were no repurchase or reverse repurchase agreements.

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7. Financial Instruments with Concentration of Credit and Other Risks

Financial Instruments
The Partnership and its Consolidated Entities' investments include, among other things, equity securities, debt securities (both investment and non-investment grade) and bank loans. The Consolidated Entities may also invest in derivative instruments, including total return and credit default swaps. Investments in these derivative instruments throughout the year subject the Consolidated Entities to off-balance sheet market risk, where changes in the market or fair value of the financial instruments underlying the derivative instruments may be in excess of the amounts recognized in the Consolidated Balance Sheet.

Market Risk
Market risk represents the potential loss that may be incurred by the Partnership and its Consolidated Entities due to a change in the market value of its investments or the value of the investments underlying swap agreements. The Partnership and its Consolidated Entities' exposure to market risk is affected by a number of macroeconomic factors, such as interest rates, availability of credit, inflation rates, economic uncertainty and changes in laws and regulations. These factors may affect the level and volatility of securities prices and the liquidity of the Partnership and its Consolidated Entities investments. Volatility or illiquidity could impair the Partnership and its Consolidated Entities performance or result in losses. The Partnership and its Consolidated Entities may maintain substantial trading positions that can be adversely affected by the level of volatility in the financial markets. The performance of life settlement contracts may be adversely impacted by the under estimation of mortality and other rates.

Credit Risk
Credit risk is the potential loss the Partnership and its Consolidated Entities may incur as a result of the failure of a counterparty or an issuer to make payments according to the terms of a contract. Because the Consolidated Entities enter into over-the-counter derivatives such as swaps, it is exposed to the credit risk of their counterparties. To limit the credit risk associated with such transactions, the Consolidated Entities execute transactions with financial institutions that the Investment Manager believes to be financially viable.

Liquidity Risk
The Consolidated Entities' limited partner interests have not been registered under the Securities Act of 1933 or any other applicable securities law. There is no public market for the interests, and neither the Consolidated Entities nor their manager expects such a market to develop.

Business Risk
The Partnership provides advisory services to the Consolidated Entities. Consolidated Entities could be materially affected by the liquidity, credit and other events of the Partnership.

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High Yield Bonds and Loans
The Partnership and its Consolidated Entities' investment portfolios consist of floating rate syndicated bank loans and fixed income securities that are not listed on a national securities exchange. These investments trade in a limited market and it may not be possible to immediately liquidate them if needed. In addition, certain of the Partnership and its Consolidated Entities' investments have resale or transfer restrictions that further reduce their liquidity. Because of the inherent uncertainty of these investments, the Investment Manager's best estimates may differ significantly from values that would have been used had a broader market for the investments existed.

When the Partnership and its Consolidated Entities purchase a senior secured syndicated bank loan, it enters into a contractual relationship directly with the corporate borrower, and as such, is exposed to certain degrees of risk, including interest rate risk, market risk and the potential non-payment of principal and interest, including default or bankruptcy of the corporate borrower or early payment by the corporate borrower. Typically, senior secured syndicated bank loans are secured by the assets of the corporate borrower and the Partnership and its Consolidated Entities have a policy of regularly reviewing the adequacy of each corporate borrower's collateral.

The Partnership and its Consolidated Entities may invest in high-yield bonds that have been assigned lower rating categories or are not rated by the various credit rating agencies. Bonds in the lower rating categories are generally considered to be speculative with respect to the issuer's ability to repay principal and pay interest. They are also subject to greater risks than bonds with higher ratings in the case of deterioration of general economic conditions. Due to these risks, the yields and prices of lower-rated bonds are generally volatile, and the market for them is limited, which may affect the ability to liquidate them if needed.

Debt Obligations
The Partnership and its Consolidated Entities' investment portfolio consists of collateralized loan obligations that are not listed on a national securities exchange. These investments trade in a limited market and it may not be possible to immediately liquidate them if needed. Because of the inherent uncertainty of these investments, the Partnership's best estimates may differ significantly from values that would have been used had broader market for the investments existed.

Distressed Investments
A portion of the high yield corporate bonds and senior secured syndicated bank loans in which the Partnership and its Consolidated Entities invest have been issued by distressed companies in an unstable financial condition that have experienced poor operating performance and may be involved in bankruptcy or other reorganization and liquidation proceedings. These investments have substantial inherent risks. Many of these distressed companies are likely to have significantly leveraged capital structures, which make them highly sensitive to declines in revenue and to increases in expenses and interest rates. The leveraged capital structure also exposes the companies to adverse economic factors, including macroeconomic conditions, which may affect their ability to repay borrowed amounts on schedule.

Corporate Bonds, Preferred Securities, and Loans
The Consolidated Entities may invest in corporate bonds, floating rate syndicated bank loans, and preferred securities which are rated in the lower rating categories by the various credit rating agencies (or in comparable non-rated securities). Securities in the lower rating categories are subject to greater risk of loss of principal and interest than higher-rated securities and are generally considered to be predominantly speculative with respect to the issuer's capacity to pay interest and repay principal. They are also subject to greater risks than securities with higher ratings in the case of deterioration of general economic conditions. Because of these greater risks associated with the lower-rated securities, the yields and prices of such securities may be more volatile than those for higher-rated securities. The market for lower-rated securities is thinner and less active than that for higher-rated securities, which could adversely affect the prices at which these securities may be sold by the Consolidated Entities.

Limited Diversification
The Investment Manager attempts to diversify the Consolidated Entities' investments. However, the Consolidated Entities' portfolios could become significantly concentrated in any one issuer, industry, sector strategy, country or geographic region, and such concentration of credit risk may increase the losses suffered by the Consolidated Entities. In addition, it is possible that the Investment Manager may select investments that are concentrated in certain classes of financial instruments. This limited diversity could expose the Consolidated Entities to losses that are disproportionate to market movements as a whole.

At December 31, 2017, the Consolidated Entities' investments were predominantly concentrated in the United States and Cayman Islands.

Exit Difficulties
The Partnership and its Consolidated Entities cannot assure investors that it will be able to exit its investments by sale or other disposition at attractive prices, if at all. The mergers and acquisitions and public securities markets are highly cyclical, which means that the Consolidated Entities' investments, even its best performing investments, may be illiquid for extended periods of time despite the Consolidated Entities' efforts to identify attractive exit opportunities. Additionally, a significant portion of the Consolidated Entities' assets at any time will likely consist of debt obligations and other securities that are thinly-traded, for which no market exists and/or are restricted as to their transferability under applicable law and/or documents governing particular transactions of the Consolidated Entities. In some cases, the Consolidated Entities may be unable to realize an investment prior to the date on which the Consolidated Entities are scheduled to terminate and/or have to sell or otherwise dispose of one or more investments on disadvantageous terms as a result of the Consolidated Entities' termination, or distribute such investments in kind.

Custody Risk
The clearing operations for the Partnership and its Consolidated Entities are provided by major financial institutions. In addition, all of the Partnership and its Consolidated Entities' cash and investments are held with banks or brokerage firms, which have worldwide custody facilities and are members of all major securities exchanges. The Partnership or its Consolidated Entities may lose all or a portion of the assets held by these banks or brokerage firms if they become insolvent or fail to perform pursuant to the terms of their obligations. While both the U.S. Bankruptcy Code and the Securities Investor Protection Act of 1970 seek to protect customer property in the event of a broker-dealer's failure, insolvency or liquidation, the Partnership and its Consolidated Entities might be unable to recover the full value of their assets or incur losses due to their assets being unavailable for a period of time.

Leverage Risk
The Consolidated Entities may borrow funds from brokers, banks and other lenders to finance its trading operations. The use of leverage can, in certain circumstances, magnify the losses to which the Consolidated Entities' investment portfolio may be subject. The use of margin and short-term borrowings creates several risks for the Consolidated Entities. If the value of the Consolidated Entities' securities fall below the margin level required by a counterparty, additional margin deposits would be required. If the Consolidated Entities are unable to satisfy a margin call, the counterparty could liquidate the Consolidated Entities' positions in some or all of the financial instruments that are in the account at the prime broker and cause the Consolidated Entities to incur significant losses. In addition, to the extent the Consolidated Entities have posted excess collateral for margin transactions, there is a risk that the counterparty will fail to fulfill its obligation to return the full value of that collateral.

The failure to satisfy a margin call, or the occurrence of other material defaults under margin or other financing agreements, may trigger cross-defaults under the Consolidated Entities' agreements with other brokers, lenders, clearing firms or other counterparties, multiplying the adverse impact to the Consolidated Entities. In addition, because the use of leverage allows the Consolidated Entities to control positions worth significantly more than its investment in those positions, the amount that the Consolidated Entities may lose in the event of adverse price movements is high in relation to the amount of their investment.

In the event of a sudden drop in the value of the Consolidated Entities' assets, the Consolidated Entities may not be able to liquidate assets quickly enough to satisfy their margin or collateral requirements. As a result, the Consolidated Entities may become subject to claims of financial intermediaries, and such claims could exceed the value of its assets. The banks and dealers that provide financing to the Consolidated Entities have the ability to apply discretionary margin, haircut, and financing and collateral valuation policies. Changes by banks and dealers in any of the foregoing may result in large margin calls, loss of financing and forced liquidations of positions and disadvantageous prices.

Foreign Currency Risk
The Partnership and its Consolidated Entities may invest in securities or maintain cash denominated in currencies other than the U.S. dollar. The Partnership and its Consolidated Entities are exposed to risk that the exchange rate of the U.S. dollar relative to other currencies may change in a manner that has an adverse effect on the reported value of the Partnership and its Consolidated Entities' assets and liabilities denominated in currencies other than the U.S. dollar.

Concentration of Investments
At December 31, 2017, the Consolidated Entities' investments and derivative contracts were predominantly concentrated in the United States and Cayman Islands and across several industries.

Litigation Risk
The Partnership and its Consolidated Entities are periodically subject to legal actions arising from the ordinary course of business. The ultimate outcome of these cases is inherently uncertain and could result in additional losses to the Partnership and/or its Consolidated Entities. Refer to Note 15 for a discussion of open litigation.

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8. Other Intangible Assets

On May 12, 2017, HCM Latin America, as manager, purchased all rights and obligations of a certain fund. The current carrying value of these rights and obligations is $3.5 million, which consists of the original purchase price of $2.0 million and a deferred purchase price of $1.5 million.

On December 19, 2017, the Partnership obtained value for subadvisory and shared servicing rights from an affiliate. The current carrying value of this intangible asset is approximately $2.8 million.

The Partnership and its Consolidated Entities perform an impairment test as required by U.S. GAAP on a yearly basis. The Partnership has determined that no impairment charge is necessary for the current year.

9. Related Party Transactions

Investments Under Common Control
Certain members of the Partnership's management serve as members on the Boards of Directors for some of the companies with which it invests. Because these individuals participate in the management of these companies, investments held by the Partnership and its subsidiaries in these companies may, from time to time, not be freely tradable. As of December 31, 2017, the Partnership and its Consolidated Entities held the following investments in these companies:

(in thousands)

Issuer	Type of Investment	Fair Value
American Banknote Corporation	Common Equity	$ 747
American Home Patient	Common Equity	1,793
Carey International, Inc	Term Loan	5,392
CCS Medical, Inc.	Loan	6,246
Cornerstone Healthcare Group Holding, Inc.	Common Equity	62,931
JHT Holdings Inc.	Term Loan	3,127
JHT Holdings Inc.	Common Stock	9,654
Metro-Goldwyn-Mayer, Inc.	Common Stock	375,106
OmniMax International, Inc. (fka Euramax Holdings, Inc.)	Warrants	1,086
OmniMax International, Inc. (fka Euramax Holdings, Inc.)	Term Loan	45,445
OmniMax International, Inc. (fka Euramax Holdings, Inc.)	Common Stock	15,367
Trussway Industries, Inc.	LLC Units	51,707
Turtle Bay Holdings, LLC	LLC Units	628

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Certain investments are issued and managed by affiliates of the Partnership. These investments are subject to the same valuation policies and procedures as similar investments within the same level of the fair value hierarchy. As of December 31, 2017, the Partnership and the Consolidated Entities held the following investments that were issued and managed by affiliates of the Partnership:

(in thousands)

Issuer	Type of Investment	Fair Value
ACIS 2013-2A	Asset backed debt	$ 1,428
Bandera Strategic Credit Partners	Limited Partnership interest	3,628
Harko, LLC	LLC Units	2,466
Highland CLO Funding	Partnership Interest	928
Highland Energy MLP Fund	Mutual fund shares	1,893
Highland Floating Rate Opportunities Fund	Mutual fund shares	1,007
Highland Global Allocation Fund	Mutual fund shares	2,144
Highland Long/Short Equity Fund	Mutual fund shares	297
Highland Long/Short Healthcare Fund	Mutual fund shares	2,632
Highland Master Loan Fund	Limited Partnership interest	105
Highland Merger Arbitrage Fund	Mutual fund shares	1,241
Highland Opportunistic Credit Fund	Mutual fund shares	5,259
Highland Premier Growth Equity Fund	Mutual fund shares	72
Highland Prometheus Master Fund	Partnership Interest	930
Highland Small Cap Equity Fund	Mutual fund shares	498
NexPoint Credit Strategies Fund	Mutual fund shares	55,161
NexPoint Multi Family Capital Trust	REIT	4,253
NexPoint Real Estate Strategies Fund	Closed-end mutual fund shares	1,135
NexPoint Residential Trust	REIT	59,703

Expenses Reimbursable by Funds Managed
In the normal course of business, the Partnership typically pays invoices it receives from vendors for various services provided to the investment funds the Partnership manages. A summary of these eligible reimbursable expenses are then submitted to the trustee/administrator for each respective fund, typically on a quarterly basis, and the Partnership receives payment as reimbursement for paying the invoices on behalf of the respective funds. As of December 31, 2017, approximately $8.4 million in reimbursable expenses were due from various affiliated funds and entities for these eligible expenses, and is included in *Other Assets* in the accompanying Consolidated Balance Sheet.

Accounts Held with Related Party
During the year the Partnership and its Consolidated Entities maintained bank accounts at NexBank, SSB ("NexBank"), a related party by way of common control. As of December 31, 2017, balances in these accounts were approximately $1.1 million, a portion of which exceeds Federal deposit insurance limits.

Investment in Affiliated Loans
During the year, certain subsidiaries of the Partnership were invested in several bank loans in which NexBank was the agent bank. Interest earned on the loans during the year was approximately $9.2 million and is included in Interest and investment income in the Consolidated Statement of Income. At December 31, 2017, these subsidiaries were invested in NexBank agented loans with commitments and market values totaling approximately $74.4 million and $49.4 million, respectively.

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Notes and Other Amounts Due from Affiliates

During the year ended December 31, 2017, Highland Capital Management Fund Advisors, L.P. ("HCMFA") issued a promissory note to the Partnership in the amount of $0.2 million. The note accrues interest at a rate of 1.52%, the mid-term applicable federal rate as promulgated by the Internal Revenue Service. As of December 31, 2017 total interest and principal due on outstanding promissory notes was approximately $4.9 million and is payable on demand. The Partnership will not demand payment on amounts owed prior to May 31, 2019. The fair value of the Partnership's outstanding notes receivable approximates the carrying value of the notes receivable.

On May 31, 2017, the Partnership combined its outstanding promissory and revolving notes from NexPoint Advisors, L.P. ("NexPoint") into a single promissory note with principal outstanding of $30.7 million and accruing interest at a rate of 6.0% with straight-line amortization over 30 annual payments commencing in the year ended December 31, 2017. As of December 31, 2017, $29.7 million of principal was outstanding on this note. No interest is outstanding as of December 31, 2017. Total interest expense for the year ended December 31, 2017, was approximately $1,7 million. The fair value of the Partnership's outstanding note receivable approximates the carrying value of the note receivable.

During the year ended December 31, 2017, HCRE Partners, LLC ("HCRE") issued a promissory note to the Partnership in the amount of $2.5 million. The note accrues interest at a rate of 8.0%. As of December 31, 2017 total interest and principal due on outstanding promissory notes was approximately $8.5 million and is payable in annual installments throughout the term of the note. The fair value of the Partnership's outstanding notes receivable approximates the carrying value of the notes receivable.

During the year ended December 31, 2017, Highland Capital Management Services, Inc. ("HCMSI") issued promissory notes to the Partnership in the aggregate amount of $2.0 million. All outstanding promissory notes accrue interest at a rate ranging from 2.58 - 2.78%, the long-term applicable federal rate as promulgated by the Internal Revenue Service. As of December 31, 2017 total interest and principal due on outstanding promissory notes was approximately $14.1 million and is payable in annual installments throughout the term of the notes. The fair value of the Partnership's outstanding notes receivable approximates the carrying value of the notes receivable.

During the year ended December 31, 2017, James Dondero ("Dondero") did not issue any new promissory notes to the Partnership. The outstanding promissory note accrues interest at a rate of 2.03%, the average long-term applicable federal rate as promulgated by the Internal Revenue Service. As of December 31, 2017 total interest and principal due on outstanding promissory note was approximately $14.5 million and is payable in annual installments throughout the term of the note. The fair value of the Partnership's outstanding notes receivable approximates the carrying value of the notes receivable.

During the year ended December 31, 2017, Mark Okada ("Okada") did not issue any new promissory notes to the Partnership. All outstanding promissory notes accrue interest at a rate of 2.25%, the average long-term applicable federal rate as promulgated by the Internal Revenue Service. As of December 31, 2017 total interest and principal due on outstanding promissory notes was approximately $1.3 million and is payable on demand. The fair value of the Partnership's outstanding notes receivable approximates the carrying value of the notes receivable.

During the year ended December 31, 2017, The Dugaboy Investment Trust ("Dugaboy") did not issue any new promissory notes to the Partnership. All outstanding promissory notes accrue interest at a rate of 2.75%, the average long-term applicable federal rate as promulgated by the Internal Revenue Service. As of December 31, 2017 total interest and principal due on outstanding promissory notes was approximately $22.8 million and is payable on demand. The fair value of the Partnership's outstanding notes receivable approximates the carrying value of the notes receivable.

On December 21, 2015, the Partnership entered into a contribution agreement (the "Contribution Agreement") with an affiliated trust. Pursuant to the Contribution Agreement, a note (the "Note Receivable") in the amount of $63.0 million was due to the Partnership. The Note Receivable will mature on December 21, 2030. The Note Receivable accrues interest at a rate of 2.61% per annum. Accrued interest is paid-in-kind, with principal receipts occurring pursuant to a note amortization schedule, with such annual receipts commencing December 21, 2019. During the year, the trust pre-paid $5.7 million. As of December 31, 2017 total interest and principal due on the Note Receivable was approximately $60.7 million.

Services Performed by or on Behalf of an Affiliate
In March 2007, Highland Capital of New York, Inc. a New York corporation ("Highland New York"), was formed and has performed marketing services for the Partnership and its affiliates in connection with the Partnership's investment management and advising business, including, but not limited to, assisting Highland Capital in the marketing and sales of interests in investment pools for which Highland Capital serves as the investment manager. The Partnership is charged a marketing services fee for the services that Highland New York performs on the Partnership's behalf. Separately, the Partnership pays for, and seeks reimbursement for, various operating expenses on behalf of Highland New York. For the year ended December 31, 2017, total marketing fee expense charged to the Partnership by Highland New York was approximately $1.6 million. As of December 31, 2017, net amounts owed to the Partnership by Highland New York was approximately $4.5 million.

Effective December 15, 2011, the Partnership commenced performing services on behalf of HCMFA, a Delaware limited partnership and registered investment advisor. Services include, but are not limited to compliance, accounting, human resources, IT and other back office support functions. The Partnership charges a fee for the services performed. For the year ended December 31, 2017, the total fee charged by the Partnership to HCMFA was approximately $2.7 million and as of December 31, 2017, amount owed to the Partnership by HCMFA was approximately $0.2 million.

Effective July 29, 2010, the Partnership commenced performing services on behalf of Falcon E&P Opportunities GP, LLC. ("Falcon"), a Delaware limited liability company and registered investment advisor. Services include, but are not limited to compliance, accounting, human resources, IT and other back office support functions. The Partnership charges a fee for the services performed. For the year ended December 31, 2017, the total fee charged by the Partnership to Falcon was approximately $0.2 million and as of December 31, 2017, no amounts were owed to the Partnership by Falcon for services rendered.

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Effective March 17, 2017, pursuant to the Third Amended and Restated Sub-Advisory Agreement and the Fourth Amended and Restated Shared Services Agreement, the Partnership continued performing services on behalf of Acis Capital Management, L.P. ("Acis"), a Delaware limited partnership and registered investment advisor. Subadvisory services include investment advisory services and shared services include, but are not limited to compliance, accounting, human resources, IT and other back office support functions. The Partnership charges a fee for the services performed. For the year ended December 31, 2017, the total fees charged by the Partnership to Acis for shared services and subadvisory fees were approximately $4.8 million and $6.5 million, respectively. As of December 31, 2017, amount owed to the Partnership by Acis was approximately $1.9 million, against which the Partnership has recorded a $1.6 million reserve based on estimated collectability.

Effective January 1, 2013, the Partnership commenced performing services on behalf of NexPoint. Services include, but are not limited to compliance, accounting, human resources, IT and other back office support functions. The Partnership charges a fee for the services performed. For the year ended December 31, 2017, the total fee charged by the Partnership to NexPoint was approximately $0.6 million and as of December 31, 2017, $0.1 million was owed to the Partnership by NexPoint for services rendered.

Effective September 1, 2017, pursuant to the Third Amended and Restated Shared Services Agreement dated September 26, 2017, the Partnership commenced performing services on behalf of NexBank Capital, Inc. ("NexBank Capital"), financial services company. Services include, but are not limited to compliance, accounting, human resources, IT and other back office support functions. The Partnership charges a fee for the services performed. For the year ended December 31, 2017, the total fee charged by the Partnership to NexBank Capital was approximately $0.2 million and as of December 31, 2017, $0.1 million was owed to the Partnership by NexBank Capital for services rendered.

Effective September 1, 2017, pursuant to the Third Amended and Restated Investment Advisory Agreement dated September 26, 2017, the Partnership commenced performing services on behalf of NexBank SSB, ("NexBank"), a Texas savings bank. Services include investment advisory services. The Partnership charges a fee for the services performed. For the year ended December 31, 2017, the total fee charged by the Partnership to NexBank was approximately $3.1 million and as of December 31, 2017, amounts owed by NexBank to the Partnership for services rendered were approximately $0.9 million.

Effective April 1, 2015, the Partnership commenced performing services on behalf of NexPoint Real Estate Advisors, L.P. ("NREA"). Services include, but are not limited to compliance, accounting, human resources, IT and other back office support functions. NREA is charged a fee for the services provided. For the year ended December 31, 2017, the total fee charged to NREA by the Partnership was approximately $0.6 million and as of December 31, 2017, amounts owed by NREA to the Partnership for services rendered were approximately $0.6 million.

Investment liability
On January 28, 2016, the Partnership entered into a participation agreement with Cornerstone Healthcare Group Holding, Inc. ("Cornerstone") for securities purchased and held on their behalf which had a value of $8.0 million as of the transaction date. The fair value of the Agreement will fluctuate with the fair value of the held securities, throughout the term of the Agreement. As of December 31, 2017 the fair value of the securities were $14.2 million.

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On December 28, 2016, the Partnership entered into a purchase and sale agreement with The Get Good Nonexempt Trust ("Get Good"). In consideration for a note receivable from an affiliate, the Partnership sold or participated certain investments that it already held, with the participated investments carrying an aggregate market value of $21.3 million as of the date of the transaction. The fair value of the Agreement will fluctuate with the fair value of the securities, throughout the term of the Agreement. During the course of the year, certain of the participated investments were monetized and proceeds were delivered to the holder of the participated interest. As of December 31, 2017, the fair value of the participated investments was $10.9 million.

On August 25, 2015, Highland Select Equity Fund, L.P. ("Select") entered in to a promissory note with Dugaboy in the amount of $1.0 million. The promissory note accrues interest at a rate of 2.82%, the long-term Applicable Federal Rate, compounded annually. The accrued interest and principal of the promissory note is due and payable on demand. As of December 31, 2017 the remaining principal payable on the promissory note was $1.0 million. The fair value of Select's outstanding notes payable approximates the carrying value of the notes payable.

On December 5, 2016, Select entered in to Stock Purchase Agreements with two counterparties for shares of Trussway Industries ("Trussway"), in exchange for promissory notes in the aggregate amount of $15.4 million, plus in the event of a sale of Trussway on or prior to June 1, 2017, 50% of the excess of the price per share over the closing date price per share. The promissory notes accrue interest at a rate of 2.07%, the long-term Applicable Federal Rate, compounded annually. Select must pay one-twenty-fifth of the initial note amounts, plus any additional principal attributable to the sale of Trussway, along with accumulated interest on an annual basis. The promissory notes will mature on December 5, 2041. As of December 31, 2017 the remaining principal payable on the promissory notes was $15.4 million. The fair value of Select's outstanding notes payable approximates the carrying value of the notes payable.

During 2014 and 2015, Select received multiple master securities loan agreements (the "Securities Agreements") for securities borrowed from an affiliate. The Securities Agreements accrue interest at a rate ranging from 0.38 - 0.48%, the short term Applicable Federal Rate. The fair value of the securities loans will fluctuate with the fair value of the borrowed securities, throughout the term of the Securities Agreements. As of December 31, 2017, the fair value of the loans was $42.5 million. The fair value of Select's securities loans approximates the carrying value of the securities loans.

10. Notes Payable

Promissory Note

On August 17, 2015, the Partnership entered in to a promissory note with Frontier State Bank in the amount of $9.5 million. The promissory note will mature on August 17, 2018. The promissory note accrues interest at the 3 month LIBOR rate plus 4.75%, adjusted each date of change, per annum. Accrued interest shall be paid quarterly. The promissory note is collateralized by shares of voting common stock of MGM Holdings, Inc. As of December 31, 2017 the remaining principal payable on the promissory note was $6.9 million. The fair value of the Partnership's outstanding notes payable approximates the carrying value of the notes payable.

On October 7, 2016, the Partnership entered in to a promissory note with Acis in the amount of $12.7 million. The Partnership is required to make certain payments of the initial note amount, plus accumulated interest on May 31 of each year, until maturity. The promissory note is set to mature on May 31, 2019. The promissory note accrues interest at a rate of 3.00% per annum. Pursuant to an Assignment and Transfer Agreement dated November 3, 2017, between Acis and an affiliate of the Partnership, Acis transferred the promissory note to the affiliate. As of December 31, 2017 the remaining principal payable on the promissory note was $9.5 million.

On August 29, 2016, Maple Avenue Holdings, LLC ("Maple") entered in to a promissory note with Great Southern Bank in the amount of $3.9 million. Maple must pay principal and accrued interest installments on a monthly basis until maturity. The promissory note will mature on September 10, 2041. The promissory note accrues interest at a rate of 3.26% per annum. As of December 31, 2017 the remaining principal payable on the promissory note was $3.6 million. The fair value of Maple's outstanding notes payable approximates the carrying value of the notes payable.

11. Due to Broker

As of December 31, 2017 the due to broker balance of approximately $104.9 million is payable to financing counterparties for margin transactions.

12. Commitments and Contingencies

Contracts in the Normal Course of Business
In the normal course of business the Partnership and its subsidiaries may enter into contracts which provide general indemnifications and contain a variety of presentations and warranties that may expose the Partnership and its subsidiaries to some risk of loss. The Partnership regularly co-invests in vehicles it advises. The amounts committed are within the Partnerships capacity to fund when capital is called. In addition to the other financial commitments discussed in the consolidated financial statements, the amount of future losses arising from such undertakings, while not quantifiable, is not expected to be significant. Also refer to Note 9 for commitments of certain subsidiaries in affiliated loans.

Legal Proceedings
The Partnership is a party to various legal proceedings arising in the ordinary course of business. While any proceeding or litigation has an element of uncertainty, management believes that the final outcome will not have a materially adverse effect on the Partnership's Consolidated Balance Sheet, Consolidated statement of Income, or its liquidity. See Note 15.

Operating Leases
The Partnership has an operating lease and associated commitments related to its main office space. Future minimum lease payments under operating lease commitments with initial or non-cancelable terms in excess of one year, at inception, are as follows:

(in thousands)

Years Ending December 31,	
2018	1,521
2019	1,550
2020	1,566
2021	1,567
2022	522
Total	$ 6,725

Total rental expense of the Partnership and its Consolidated Entities for operating leases was approximately $1.5 million for the year ended December 31, 2017.

13. Post Retirement Benefits

In December 2006, the Partnership created a defined benefit plan to which all employees and certain affiliated persons could participate if they met the eligibility requirements. The Partnership uses a December 31 measurement date for its defined benefit plan.

Effective December 31, 2008, the Partnership amended the plan by freezing it to new participants and additional benefit accruals. A new amendment became effective on January 1, 2011 in which a named participant was admitted to the plan and is eligible to earn benefit accrual. 2017 expense reflects a service cost charge for the value of the new participant's benefit earned during 2017.

The Partnership's benefit plan obligation and plan assets for the year ended December 31, 2017 are reconciled in the tables below.

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(in thousands)

Change in projected benefit obligation		**2017**
Benefit obligation at beginning of year	$	2,301
Service cost		6
Interest cost		79
Plan participants' contributions		-
Amendments		-
Actuarial loss/(gain)		478
Acquisition/(divestiture)		-
Benefits paid		(286)
Benefit obligation at end of year	$	2,578

Change in plan assets		**2017**
Fair value of plan assets at beginning of year	$	2,570
Actual return on plan assets		640
Acquisition/(divestiture)		-
Employer contribution		-
Plan participants' contributions		-
Benefits paid		(286)
Other increase/(decrease)		-
Fair value of plan assets at year end	$	2,924

Reconciliation of Funded Status		**2017**
Accumulated benefit obligation at end of year	$	2,578
Projected benefit obligation at end of year		2,578
Fair value of assets at end of year		2,924
Funded status at end of year	$	346

The Partnership did not contribute to the plan during 2017.

Assumptions

Weighted-average assumptions used to determine benefit obligations at December 31, 2017:

Discount rate	3.19%
Rate of compensation increase	N/A

Weighted-average assumptions used to determine net periodic benefit cost at December 31, 2017:

Discount rate	3.69%
Expected long-term return on plan assets	3.69%
Rate of compensation increase	N/A

As of December 31, 2017, there were no plan assets categorized as Level 3.

14. Income Taxes

The Partnership
For U.S. income tax purposes, the Partnership is treated as a pass-through-entity, which means it is not subject to income taxes under current Internal Revenue Service or state and local guidelines. Each partner is individually liable for income taxes, if any, on their share of the Partnership's net taxable income.

The Partnership files tax returns as prescribed by the tax laws of the jurisdictions in which it operates. In the normal course of business, the Partnership is subject to examination by federal and foreign jurisdictions, where applicable. As of December 31, 2017, the tax years that remain subject to examination by the major tax jurisdictions under the statute of limitations is from the year 2014 forward (with limited exceptions).

Authoritative guidance on accounting for and disclosure of uncertainty in tax positions requires the General Partner to determine whether a tax position of the Partnership is more likely than not to be sustained upon examination, including resolution of any related appeals or litigation processes, based on the technical merits of the position. For tax positions meeting the more likely than not threshold, the tax amount recognized in the financial statements is the largest benefit that as a greater than fifty percent likelihood of being realized upon ultimate settlement with the relative taxing authority. The General Partner does not expect a significant change in uncertain tax positions during the twelve months subsequent to December 31, 2017.

Multi Strategy Master
For U.S. income tax purposes, Multi Strategy Master is treated as a pass-through entity, which means it is not subject to federal income taxes under current Internal Revenue Service guidelines. However, each investor may be individually liable for income taxes, if any, on its share of the partnership's net taxable income.

Multi Strategy Master trades in senior secured syndicated bank loans for its own account and, as such, non-U.S. Investment Vehicle investors are generally not subject to U.S. tax on such earnings (other than certain withholding taxes indicated below). The Partnership intends to conduct Multi Strategy Master business in such a manner that it does not constitute a U.S. trade or business, nor does it create a taxable presence in any of the jurisdictions in which the Partnership has offices.

Dividends as well as certain interest and other income received by Multi Strategy Master from sources within the United States may be subject to, and reflected net of, United States withholding tax at a rate of 30% for non-U.S. Investment Vehicles. Interest, dividend and other income realized by Multi Strategy Master from non-U.S. sources and capital gains realized on the sale of securities of non-U.S. issuers may be subject to withholding and other taxes levied by the jurisdiction in which the income is sourced. As of December 31, 2017, a minimal withholding tax liability of $0.1 million is classified within accrued and other liabilities on the Consolidated Balance Sheet.

Multi Strategy Master applies authoritative guidance which requires management to determine whether a tax position Multi Strategy Master is more likely than not to be sustained upon examination, including resolution of any related appeals or litigation processes, based on the technical merits of the position. For tax positions meeting the more likely than not threshold, the tax amount recognized in the consolidated financial statements is the largest benefit that has a greater than fifty percent likelihood of being realized upon ultimate settlement with the relative taxing authority. Management does not expect a significant change in uncertain tax positions during the twelve months subsequent to December 31, 2017.

Multi Strategy Master files tax returns as prescribed by the tax laws of the jurisdictions in which it operates. In the normal course of business, Multi Strategy Master is subject to examination by federal and foreign jurisdictions, where applicable. As of December 31, 2017, the tax years that remain subject to examination by the major tax jurisdictions under the statute of limitations is from the year 2014 forward (with limited exceptions).

Restoration Onshore
Restoration Onshore is treated as a pass-through entity for tax purposes, which means it is not subject to U.S. income taxes under current Internal Revenue Service or state and local guidelines. Each Partner is individually liable for income taxes, if any, on its share of the Restoration Onshore's net taxable income. Interest, dividends and other income realized by Restoration Onshore from non-U.S. sources and capital gains realized on the sale of securities of non-U.S. issuers may be subject to withholding and other taxes levied by the jurisdiction in which the income is sourced.

Restoration Onshore applies the authoritative guidance on accounting for and disclosure of uncertainty in tax positions, which requires the General Partner to determine whether a tax position of Restoration Onshore is more likely than not to be sustained upon examination, including resolution of any related appeals or litigation processes, based on the technical merits of the position. For tax positions meeting the more likely than not threshold, the tax amount recognized in the financial statements is the largest benefit that has a greater than fifty percent likelihood of being realized upon ultimate settlement with the relevant taxing authority.

The General Partner has determined that there was no effect on the financial statements from the Partnership's application of this authoritative guidance. The General Partner does not expect a significant change in uncertain tax positions during the twelve months subsequent to December 31, 2017. Restoration Onshore files tax returns as prescribed by the tax laws of the jurisdictions in which it operates. In the normal course of business, the Partnership is subject to examination by federal, state, local and foreign jurisdictions, where applicable. As of December 31, 2017, the tax years that remain subject to examination by the major tax jurisdictions under the statute of limitations is from the year 2014 forward (with limited exceptions).

Restoration Offshore
Restoration Offshore is a Cayman Islands exempted company. Under the current laws of the Cayman Islands, there is no income, estate, transfer, sales or other tax payable by Restoration Offshore. Restoration Offshore has elected to be treated as a corporation for U.S. tax purposes and files a protective 1120-F.

The General Partner intends to conduct the business of Restoration Offshore in such a way that Restoration Offshore's activities do not constitute a U.S. trade or business and any income or realized gains earned by Restoration Offshore do not become "effectively connected" with a trade or business carried on in the United States for U.S. federal income tax purposes.

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December 31, 2017

Dividends as well as certain interest and other income received by the master partnership of Restoration Offshore from sources within the United States may be subject to, and reflected net of, United States withholding tax at a rate of 30% for non-U.S. Investment Vehicles. Interest, dividend and other income realized by the master partnership of Restoration Offshore from non-U.S. sources and capital gains realized on the sale of securities of non-U.S. issuers may be subject to withholding and other taxes levied by the jurisdiction in which the income is sourced.

Restoration Offshore applies the authoritative guidance on accounting for and disclosure of uncertainty in tax positions, which requires the General Partner to determine whether a tax position of Restoration Offshore is more likely than not to be sustained upon examination, including resolution of any related appeals or litigation processes, based on the technical merits of the position. For tax positions meeting the more likely than not threshold, the tax amount recognized in the financial statements is the largest benefit that has a greater than fifty percent likelihood of being realized upon ultimate settlement with the relevant taxing authority. The General Partner has determined that there was no effect on the financial statements from the Partnership's application of this authoritative guidance. The General Partner does not expect a significant change in uncertain tax positions during the twelve months subsequent to December 31, 2017. As of December 31, 2017, the tax years that remain subject to examination by major tax jurisdictions under the statute of limitations is from the year 2014 forward (with limited exceptions). During the year, Restoration Offshore received approximately $0.7 million related to a tax refund. This amount is reflected in the Statement of Cash Flows as a component of changes in other assets.

The remaining entities consolidated by the Partnership had no uncertain tax positions which required accrual under U.S. GAAP.

Highland Capital Management, L.P.
(A Delaware Limited Partnership)
Notes to Consolidated Financial Statements
December 31, 2017

15. Legal Proceedings

On July 15, 2008, Highland Offshore Partners, Multi Strategy Master, certain affiliates, and numerous external parties (collectively, the "Defendants") were named as parties to an action filed with the Bankruptcy Court of the Southern District of Florida ('the Tousa action"). The action related to a secured lending transaction and subsequent refinancing arrangement in which the Defendants participated. On October 13, 2009, the Bankruptcy Court ruled in favor of the plaintiffs and ordered the Defendants to disgorge the principal, interest, and fees they received in connection with the refinancing arrangement. In addition, the Court ordered the defendants to pay simple interest on the disgorged amount at an annual rate of 9%. The Defendants believed they acted in good faith pursuant to the terms of the relevant agreements and appealed the decision. In February 2011, the District Court of Florida quashed the judgment against the Defendants and overturned the ruling that resulted in the Defendants recording the reserve. The plaintiffs appealed the ruling of the District Court, and the issue was sent to the Eleventh Circuit of Florida. On May 15, 2012, the Eleventh Circuit unexpectedly reversed the District Court's ruling, and remanded the case back to the District Court for review. The last such case was heard by the US Supreme Court case on January 14, 2015. On June 23, 2015, the District Court remanded the case back to the Bankruptcy Court for a report and recommendations regarding the effects of certain settlements on the Plaintiff's available damages. On April 1, 2016, the Bankruptcy Court issued its Report and Recommendations to the District Court. Briefing on the Report and Recommendations was completed in June 2016. On March 8, 2017, the District Court substantially adopted the Bankruptcy Court Report and Recommendations, which affirmed the Defendants' liability. The case has now been retuned to the Eleventh Circuit for additional appeals. Based on the ruling, the Consolidated Entities recorded a combined reserve of approximately $5.8 million as of December 31, 2016. During 2017, the Consolidated Entities settled the Tousa action for approximately $7.7 million. Final settlement and dismissal was approved by the court on January 12, 2018. The difference (approximately $2.0 million) between the amount accrued at December 31, 2016 and the amount paid was included in the Consolidate Income Statement as a realized loss.

The Partnership and certain affiliated investment vehicles are defendants in a complaint filed on February 24, 2009 New York state court by UBS Securities LLC and UBS AG, London Branch relating to a CLO warehouse facility with respect to which UBS is attempting to extend liability beyond the two entities that bore sole risk of loss under the governing documents. On February 19, 2010, the court dismissed all claims against the Partnership. UBS since has filed additional claims against the Partnership and certain additional investment vehicles. On July 21, 2011, the First Appellate Division again dismissed two of UBS's four claims against the Partnership, severely limiting the remaining two claims. Additional claims were dismissed in a further appellate ruling issued on October 31, 2017. The trial court has not indicated when UBS's remaining claims against the Partnership will go to trial.

From time to time the Partnership is party to disputes with disgruntled former employees. One such matter involves a former employee that improperly recorded internal conversations in violation of the Partnership's internal policies and procedures and potentially certain criminal and regulatory provisions. The former employee has asserted counterclaims related to his time employed by the Partnership. Arbitration on the matter has resolved and the matter is proceeding in Texas state and federal court.

In another matter, a Court ruled that a former employee breached his fiduciary duty to the Partnership, owed damages to the Partnership, and ordered the former employee to cease using or disclosing the Partnership's confidential information. Additionally, an award was entered in favor of the employee against a separate incentive compensation entity for an interest that was already escrowed in his name prior to trial and in which he was already vested. The dispute over the amount of his vested interest is on-going. Additionally, the Partnership from time to time must take action to enforce the permanent injunction against the former employee's continuing improper disclosures of the Partnership's confidential information.

The Partnership is engaged in litigation with a group of investors relating to the post-financial crisis wind down and distribution of the remaining assets in the Crusader hedge fund vehicle.

The Partnership was engaged in litigation with a group of investors relating to the post-financial crisis wind down and distribution of the remaining assets in the Credit Strategies Fund. On May 12, 2017, the Partnership entered into an agreement, approved by the independent Redeemer Committee of the Credit Strategies Fund, whereby the Partnership and Highland New York paid the Credit Strategies Fund $23.0 million in exchange for the remaining assets of the Credit Strategies Fund and releases from the on-going litigation between the Partnership and the Redeemer Committee. Related to this transaction and release of on-going litigation claims of the Partnership, Cornerstone Health Care Group, Inc., with the approval of a special committee of its independent directors, paid indemnification to the Partnership in the amount of $17.4 million, which is recorded in Other income on the Consolidated Statement of Income. Of the $23.0 million paid, $14.3 million is recorded as a settlement expense which is a reduction to Other income on the Consolidated Statement of Income.

The Partnership currently is and has been previously subject to various legal proceedings, many of which have been due to the nature of operating in the distressed loan business in the U.S. The legal process is often the route of last resort to recover amounts due from delinquent borrowers. We currently do not anticipate these proceedings will have a material negative impact to the Partnership.

16. Subsequent Events

Over the course of 2018, through the report date, James Dondero issued promissory notes to the Partnership in the amount of $11.7 million. The notes accrue interest at a rate ranging from 2.59%-2.66%.

The Partnership has performed an evaluation of subsequent events through May 18, 2018, which is the date the consolidated financial statements were available to be issued, and has determined that there are no other material subsequent events that would require disclosure in the Partnership's consolidated financial statements.

Highland Capital Management, L.P.

(A Delaware Limited Partnership)

As of And Year Ended December 31, 2017

Supplemental Information

Highland Capital Management, L.P.
(A Delaware Limited Partnership)
Supplemental Consolidating Balance Sheet
December 31, 2017

(in thousands)	Highland Capital Management, L.P.	All Other Consolidated Entities	Eliminations	Total Consolidated
Assets				
Cash and cash equivalents	$ 10,237	$ 93,242	$ -	$ 103,479
Investments at fair value	181,987	874,393	-	1,056,380
Equity method investees	180,938	-	(180,938)	-
Management and incentive fees receivable	10,916	945	-	11,861
Due from brokers	-	2,287	-	2,287
Other assets	12,368	7,113	(4,807)	14,674
Notes and other amounts due from affiliates	165,724	-	(2,321)	163,403
Other intangible assets	2,830	3,500	-	6,330
Fixed assets and leasehold improvements, net of accumulated depreciation of $9,880	5,775	57	-	5,832
Total assets	$ 570,775	$ 981,537	$ (188,066)	$ 1,364,246
Liabilities and partners' capital				
Liabilities				
Accounts payable	$ 4,296	$ 140	$ -	$ 4,436
Securities sold, not yet purchased	-	95,403	-	95,403
Withdrawals payable	-	140,955	-	140,955
Due to affiliates	4,509	-	(4,509)	-
Due to brokers	35,833	69,772	(709)	104,896
Accrued and other liabilities	34,468	4,313	400	39,181
Notes payable	16,420	5,885	(2,310)	19,995
Investment liabilities	25,072	59,287	-	84,359
Total liabilities	120,598	375,755	(7,128)	489,225
Non-controlling interest	-	424,844	-	424,844
Commitments and contingencies				
Partners' capital	450,177	180,938	(180,938)	450,177
Total liabilities and partners' capital	$ 570,775	$ 981,537	$ (188,066)	$ 1,364,246

Highland Capital Management, L.P.
(A Delaware Limited Partnership)
Supplemental Consolidating Statement of Income
Year Ended December 31, 2017

(in thousands)	Highland Capital Management, L.P.	All Other Consolidated Entities	Eliminations	Total Consolidated
Revenue:				
Management fees	$ 37,098	$ 777	$ -	$ 37,875
Interest and investment income	4,479	16,643	-	21,122
Incentive fees	10,042	1,753	-	11,795
Shared services fees	9,445	-	-	9,445
Other income	6,846	2,944	-	9,790
Total revenue	67,910	22,117	-	90,027
Expenses:				
Compensation and benefits	36,312	942	-	37,254
Professional fees	12,166	2,591	-	14,757
Interest expense	1,669	3,839	-	5,508
Marketing and advertising expense	2,374	-	-	2,374
Depreciation and amortization	1,333	7	-	1,340
Investment and research consulting	1,101	-	-	1,101
Bad debt expense	2,279	-	-	2,279
Other operating expenses	6,965	950	-	7,915
Total expenses	64,199	8,329	-	72,528
Other income	11,967	-	-	11,967
Income before investment and derivative activities	15,678	13,788	-	29,466
Realized and unrealized gain/(loss) on investments and derivatives:				
Net realized loss on investments and derivatives	6,495	(16,177)	-	(9,682)
Net change in unrealized gain on investments and derivatives	8,853	106,030	-	114,883
Net realized and unrealized gain on investments and derivatives	15,348	89,853	-	105,201
Net unrealized earnings from equity method investees	21,581	-	(21,581)	-
Net income	52,607	103,641	(21,581)	134,667
Net income attributable to non-controlling interest	-	82,060	-	82,060
Net income attributable to Highland Capital Management, L.P.	$ 52,607	$ 21,581	$ (21,581)	$ 52,607

Highland Capital Management, L.P.
(A Delaware Limited Partnership)
Supplemental Unconsolidated Balance Sheet
December 31, 2017

(in thousands)

Assets		
Current assets:		
Cash and cash equivalents	$	10,237
Investments at fair value (cost $267,265)*		321,211
Equity method investees		41,714
Management and incentive fees receivable		10,916
Other assets		12,368
Notes and other amounts due from affiliates		165,724
Other intangible assets		2,830
Fixed assets and leasehold improvements, net of accumulated depreciation of $9,873		5,775
Total assets	$	570,775
Liabilities and partners' capital		
Liabilities		
Accounts payable	$	4,296
Due to affiliate		4,509
Due to brokers		35,833
Accrued and other liabilities		34,468
Notes payable		16,420
Investment liabilities		25,072
Total liabilities		120,598
Partners' capital		450,177
Total liabilities and partners' capital	$	570,775

*Investments, at fair value includes $144.9 million of limited partnership interest ownership of Consolidated Investment Funds, which are discussed in Footnote 2. These entities are consolidated because the Partnership controls the general partner of the respective entities and is responsible for the daily operations of the entities.

The above information was derived from the audited December 31, 2017 consolidated financial statements of Highland Capital Management, L.P. This information should be read in conjunction with such audited financial statements.

Highland Capital Management, L.P.

(A Delaware Limited Partnership)

Supplemental Unconsolidated Statement of Income

Year Ended December 31, 2017

(in thousands)

Revenue:		
Management fees	$	37,098
Incentive fees		10,042
Shared services fees		9,445
Interest and investment income		4,479
Miscellaneous income		6,846
Total revenue		67,910
Expenses:		
Compensation and benefits		36,312
Professional fees		12,166
Marketing and advertising expense		2,374
Interest expense		1,669
Depreciation and amortization		1,333
Investment and research consulting		1,101
Bad debt expense		2,279
Other operating expenses		6,965
Total expenses		64,199
Other income		11,967
Income before investment activities		15,678
Realized and unrealized gains/losses on investments:		
Net realized gain on sale of investments		6,495
Net change in unrealized gain on investments*		27,323
Total realized and unrealized gain on investments		33,818
Income from equity method investees:		3,111
Net income	$	52,607

*Net change in unrealized gain on investments includes $ 18.5 million of unrealized gains from holdings of limited partnership interests of Consolidated Investment Funds, which are discussed in Footnote 2. These entities are consolidated because the Partnership controls the general partner of the respective entities and is responsible for the daily operations of the entities.

The above information was derived from the audited December 31, 2017 consolidated financial statements of Highland Capital Management, L.P. This information should be read in conjunction with such audited consolidated financial statements.

EXHIBIT 73

Payment history - Retired Dondero notes

		"Restructure note"		January 18, 2018 Note		
Date	**Total Dondero payment amount**	**Principal**	**Interest**	**Principal**	**Interest**	**Total Received in respect of retired notes**
12/8/2017	$ 677,501	$ 499,242	$ 178,258	$ -	$ -	$ 677,501
5/31/2018	-	(120,949)	120,949			-
12/18/2018	2,000,000	-	-	1,812,768	187,232	2,000,000
12/19/2018	782,623	499,242	283,381	-	-	782,623
1/18/2019	-	-	-	(13,390)	13,390	-
2/14/2019	3,000,000	2,955,463	44,537	-	-	3,000,000
3/13/2019	5,000,000	4,983,447	16,553	-	-	5,000,000
5/2/2019	2,400,000	2,383,204	16,796	-	-	2,400,000
5/3/2019	4,400,000	3,777,624	(118,479)	740,855	-	4,400,000
5/7/2019	600,000	-	-	600,000	-	600,000
5/23/2019	1,500,000	-	-	1,500,000	-	1,500,000
6/7/2019	3,000,000	-	-	3,000,000	-	3,000,000
12/23/2019	783,012	-	-	259,767	59,517	319,284 *
Total	**$ 24,143,136**	**$ 14,977,274**	**$ 541,995**	**$ 7,900,000**	**$ 260,139**	**$ 23,679,408**

* Difference between total payment of $783k and amount applied to January 18, 2018 note of $319k was applied to the still outstanding notes as follows:
2/2/18 Note: $239,475.29 principal, $166,840.32 interest or $406,315.61 total
8/1/18 Note: $29,954.22 interest
8/13/18 Note: $27,458.03 interest
Total of $463,727.86 applied

EXHIBIT 74

PROMISSORY NOTE

$3,825,000 February 2, 2018

FOR VALUE RECEIVED, JAMES DONDERO ("***Maker***") promises to pay to the order of HIGHLAND CAPITAL MANAGEMENT LP ("***Payee***"), in legal and lawful tender of the United States of America, the principal sum of THREE MILLION, EIGHT HUNDRED AND TWENTY-FIVE THOUSAND and 00/100 Dollars ($3,825,000.00), together with interest, on the terms set forth below (the "***Note***"). All sums hereunder are payable to Payee at 300 Crescent Court, Dallas, TX 75201, or such other address as Payee may specify to Maker in writing from time to time.

1. Interest Rate. The unpaid principal balance of this Note from time to time outstanding shall bear interest at a rate equal to the long-term "***applicable federal rate***" (2.66%) in effect on the date hereof for loans of such maturity as determined by Section 1274(d) of the Internal Revenue Code, per annum from the date hereof until maturity, compounded annually on the anniversary of the date of this Note. Interest shall be calculated at a daily rate equal to 1/365th (1/366 in a leap year) of the rate per annum, shall be charged and collected on the actual number of days elapsed, and shall be payable on demand of the Payee.

2. Payment of Principal and Interest. The accrued interest and principal of this Note shall be due and payable on demand of the Payee.

3. Prepayment Allowed; Renegotiation Discretionary. Maker may prepay in whole or in part the unpaid principal or accrued interest of this Note. Any payments on this Note shall be applied first to unpaid accrued interest hereon, and then to unpaid principal hereof.

4. Tax Loan. This Note is paid to the Maker to help satisfy any current tax obligations of a former partner or current partner.

5. Acceleration Upon Default. Failure to pay this Note or any installment hereunder as it becomes due shall, at the election of the holder hereof, without notice, demand, presentment, notice of intent to accelerate, notice of acceleration, or any other notice of any kind which are hereby waived, mature the principal of this Note and all interest then accrued, if any, and the same shall at once become due and payable and subject to those remedies of the holder hereof. No failure or delay on the part of Payee in exercising any right, power or privilege hereunder shall operate as a waiver thereof.

6. Waiver. Maker hereby waives grace, demand, presentment for payment, notice of nonpayment, protest, notice of protest, notice of intent to accelerate, notice of acceleration and all other notices of any kind hereunder.

7. Attorneys' Fees. If this Note is not paid at maturity (whether by acceleration or otherwise) and is placed in the hands of an attorney for collection, or if it is collected through a bankruptcy court or any other court after maturity, the Maker shall pay, in addition to all other

Exhibit 1

amounts owing hereunder, all actual expenses of collection, all court costs and reasonable attorneys' fees and expenses incurred by the holder hereof.

8. Limitation on Agreements. All agreements between Maker and Payee, whether now existing or hereafter arising, are hereby limited so that in no event shall the amount paid, or agreed to be paid to Payee for the use, forbearance, or detention of money or for the payment or performance of any covenant or obligation contained herein or in any other document evidencing, securing or pertaining to this Note, exceed the maximum interest rate allowed by law. The terms and provisions of this paragraph shall control and supersede every other provision of all agreements between Payee and Maker in conflict herewith.

9. Governing Law. This Note and the rights and obligations of the parties hereunder shall be governed by the laws of the United States of America and by the laws of the State of Texas, and is performable in Dallas County, Texas.

MAKER:

JAMES DONDERO

EXHIBIT 75

HIGHLAND CAPITAL MANAGEMENT, LP

OPERATING RESULTS

February 2018

Exhibit 2

Highland Capital Management, L.P.
Significant Items Impacting HCMLP's Balance Sheet
February 2018

CLOs

[redacted]

Operating Activities

[redacted]

Investments

[redacted]

Other

- ($3.8M) partner loan

Highland Capital Management, L.P.
Financial/Operational Highlights
February 2018 Close Package
(in millions)

	11/30/2017	12/31/2017	1/31/2018	2/28/2018
Cash	$ 6.4	$ 10.2	$ 2.2	$ 9.6
Operating Revenue	$ 4.3	$ 13.9	$ 4.2	$ 4.4
Operating Expenses [1]	(4.2)	(19.7)	(3.7)	(4.5)
Operating Income	$ 0.1	$ (5.8)	$ 0.5	$ (0.1)
Add back: Non-Recurring Items	$ -	$ -	$ -	$ -
Adjusted Operating Income	$ 0.1	$ (5.8)	$ 0.5	$ (0.1)
Net Income/(Loss)	$ 20.4	$ 17.0	$ 7.2	$ (26.1)

	MTD	YTD	LTM
Operating Cash Flow [2]	$ (6.0)	$ (4.2)	$ (7.6)
Interest Expense	(0.1)	(0.2)	(1.6)
Adjusted Operating Cash Flow	$ (6.1)	$ (4.4)	$ (9.2)

Assets Under Management (billions)	11/30/2017	12/31/2017	1/31/2018
CLO 1.0	$ 2.1	$ 1.9	$ 1.8
Sep. Accounts	1.9	2.0	2.0
Hedge/PE	1.1	1.1	1.1
Total	$ 5.0	$ 5.0	$ 4.9

Headcount - including affiliates	11/30/2017	12/31/2017	1/31/2018	2/28/2018
Front Office	47	45	45	42
Institutional Marketing and Client Service	7	7	9	8
Legal	14	15	15	16
Admin	13	14	13	13
Retail Operations (HCMLP)	4	4	4	4
Back Office	41	38	39	39
HCFD/NSI	21	21	17	16
HCMF Strategy/Marketing	5	5	5	5
Total	152	149	147	143

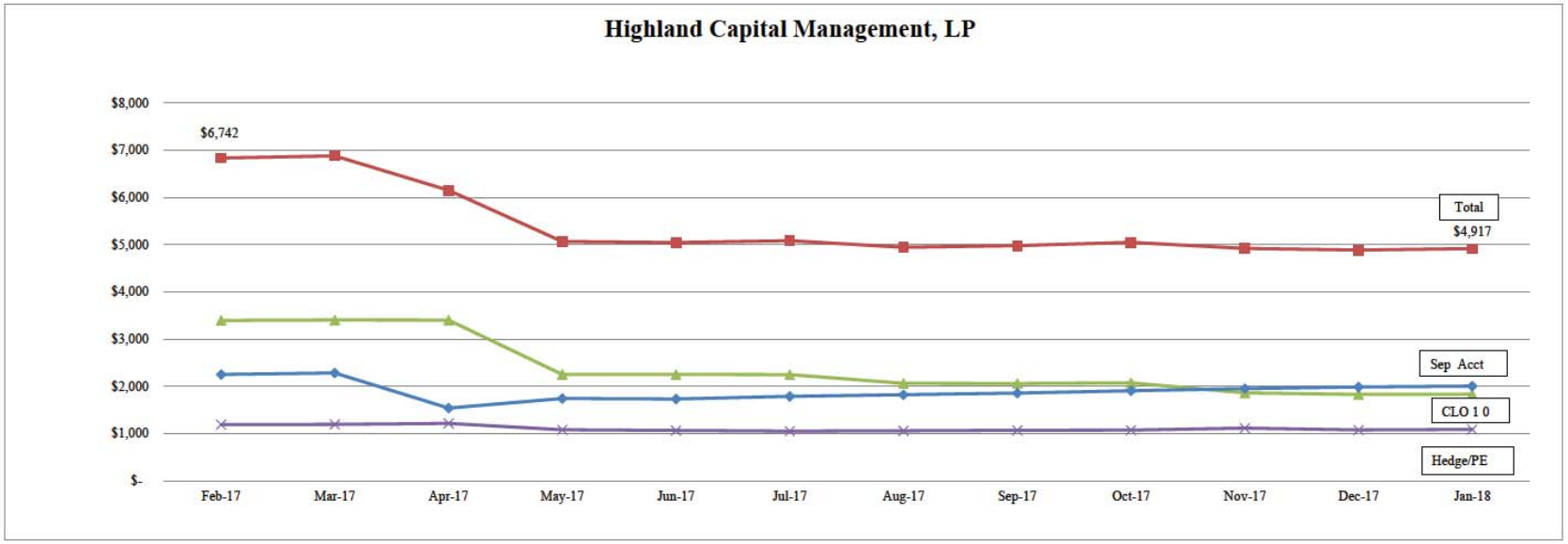
Notes:

(1) Excludes deferred compensation MTM

(2) Operating Cash Flow = Operating Income + Dep. + Deferred Comp + Non-Cash Bonus Expense

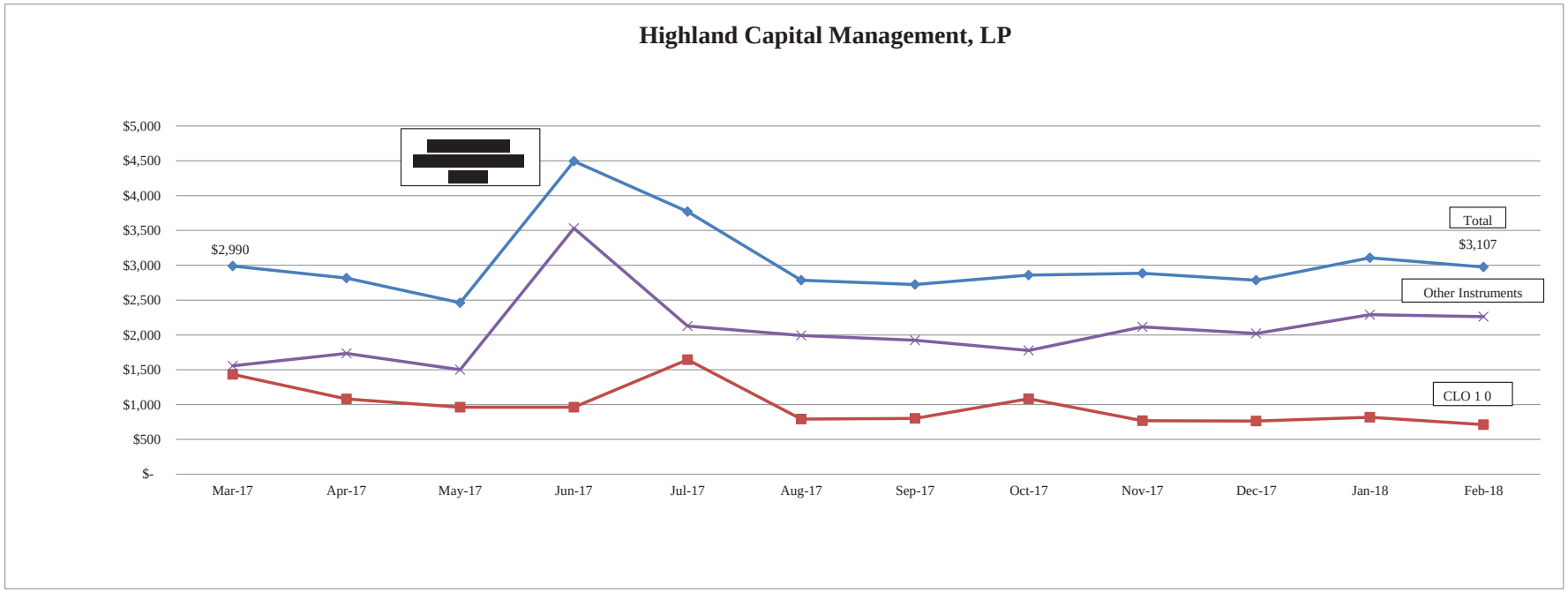
HCMLP Rolling Fee Earning AUM Schedule
(in millions)

	2/28/2017	3/31/2017	4/30/2017	5/31/2017	6/30/2017	7/31/2017	8/31/2017	9/30/2017	10/31/2017	11/30/2017	12/31/2017	1/31/2018
CLO 1 0	$ 3,396	$ 3,405	$ 3,402	$ 2,250	$ 2,250	$ 2,249	$ 2,063	$ 2,060	$ 2,072	$ 1,859	$ 1,827	$ 1,831
Sep Accounts	2,251	2,282	1,538	1,741	1,732	1,787	1,823	1,855	1,905	1,951	1,987	2,003
Hedge/PE	1,189	1,195	1,213	1,076	1,065	1,049	1,058	1,067	1,072	1,112	1,073	1,084
Total	$ 6,742	$ 6,882	$ 6,153	$ 5,067	$ 5,047	$ 5,085	$ 4,945	$ 4,981	$ 5,049	$ 4,922	$ 4,887	$ 4,917



HCMLP Monthly Management Fees
(in thousands)

	3/31/2017	4/30/2017	5/31/2017	6/30/2017	7/31/2017	8/31/2017	9/30/2017	10/31/2017	11/30/2017	12/31/2017	1/31/2018	2/28/2018
CLO 1 0	$ 1,433	$ 1,081	$ 961	$ 961	$ 1,644	$ 793	$ 802	$ 1,082	$ 768	$ 765	$ 817	$ 713
Sep Accounts	577	762	586	327	792	635	563	516	678	584	622	626
Subadvised Account	566	526	505	588	538	520	529	447	620	621	491	497
Hedge/PE Funds	414	446	409	2,617	797	837	831	814	818	817	1,177	1,138
Total	$ 2,990	$ 2,815	$ 2,462	$ 4,494	$ 3,771	$ 2,785	$ 2,725	$ 2,860	$ 2,885	$ 2,786	$ 3,107	$ 2,974



HIGHLAND CAPITAL MANAGEMENT, LP

Statement of Income
Twelve Months Ended February 2018
(in thousands)

	Mar-17	Apr-17	May-17	Jun-17	Jul-17	Aug-17	Sep-17	Oct-17	Nov-17	Dec-17	Jan-18	Feb-18	LTM	YTD
Revenue:														
Management fees	$ 2,990	$ 2,815	$ 2,462	$ 4,494	$ 3,771	$ 2,785	$ 2,725	$ 2,860	$ 2,885	$ 3,265	$ 3,129	$ 2,974	$ 37,154	$ 6,103
Shared services fees	817	871	794	620	779	803	757	732	871	873	930	866	9,713	1,796
Incentive fees	-	-	-	-	-	-	-	-	-	10,057	-	-	10,057	-
Other income	431	217	560	477	274	614	562	234	586	912	215	596	5,679	811
Total operating revenue	**4,237**	**3,904**	**3,816**	**5,591**	**4,824**	**4,202**	**4,043**	**3,827**	**4,342**	**15,107**	**4,274**	**4,436**	**62,603**	**8,710**
Operating expenses:														
Compensation and benefits	2,769	2,539	2,495	2,702	2,885	2,800	2,368	2,308	2,795	2,692	2,755	2,769	31,876	5,524
Deferred compensation	222	243	157	214	426	50	297	286	755	291	159	101	3,201	260
Professional services	629	307	1,168	511	616	1,531	472	1,031	649	16,650	181	314	24,060	495
Investment research and consulting	226	175	8	208	14	15	160	22	8	242	13	20	1,111	33
Depreciation	110	110	110	114	112	112	113	112	112	108	109	108	1,328	217
Other operating expenses	875	684	702	1,021	645	988	805	723	497	662	580	683	8,866	1,263
Total operating expenses	**4,831**	**4,057**	**4,640**	**4,770**	**4,697**	**5,495**	**4,216**	**4,482**	**4,816**	**20,646**	**3,798**	**3,995**	**70,442**	**7,793**
Operating income	**(594)**	**(153)**	**(824)**	**821**	**127**	**(1,292)**	**(172)**	**(655)**	**(474)**	**(5,539)**	**476**	**441**	**(7,839)**	**917**
Other income/expense:														
Interest and investment income, net	478	454	493	661	606	558	532	574	937	839	612	473	7,219	1,086
Interest expense	(143)	(141)	(149)	(146)	(142)	(148)	(136)	(141)	(134)	(147)	(141)	(65)	(1,632)	(206)
Other income/expense	59	170	4,060	947	39	13	63	77	64	19,147	81	64	24,784	145
Total other income/expense	**394**	**484**	**4,405**	**1,462**	**503**	**424**	**459**	**510**	**867**	**19,839**	**552**	**472**	**30,370**	**1,024**
Realized and unrealized gain/(loss) from investments:														
Net realized gain/(loss) on sale of investment transactions	1,547	(20)	2,560	272	496	2,811	-	22	-	(1,155)	-	-	6,533	-
Net change in unrealized gain/(loss) of investments	(189)	(460)	4,729	4,338	3,144	(9,361)	9,180	(1,004)	6,375	2,170	10,678	(10,201)	19,398	477
Total realized and unrealized gain/(loss) from investments	**1,358**	**(480)**	**7,290**	**4,610**	**3,640**	**(6,550)**	**9,180**	**(982)**	**6,375**	**1,015**	**10,678**	**(10,201)**	**25,931**	**477**
Earnings and losses from equity method investees														
[redacted]	225	235	(16)	258	44	(201)	333	12	200	329	926	(210)	2,135	716
[redacted]	(2,857)	(558)	(624)	818	(1,908)	1,709	(1,136)	(203)	4,333	529	(1,674)	(5,137)	(6,708)	(6,811)
[redacted]	(5,870)	(1,935)	(1,352)	1,692	(3,860)	3,454	(2,300)	(419)	8,353	1,019	(3,731)	(11,446)	(16,395)	(15,177)
[redacted]	-	-	-	-	-	9	0	15	-	18	-	-	42	-
[redacted]	-	(184)	-	(6)	(15)	-	(14)	(18)	11	102	-	-	(125)	-
[redacted]	-	-	-	-	-	-	-	-	768	-	-	-	768	-
[redacted]	-	-	(1,534)	-	-	-	-	-	-	-	-	-	(1,534)	-
[redacted]	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Total earnings/(loss) from equity method investees	**(8,502)**	**(2,441)**	**(3,525)**	**2,762**	**(5,740)**	**4,971**	**(3,118)**	**(613)**	**13,664**	**1,996**	**(4,479)**	**(16,794)**	**(21,817)**	**(21,273)**
Net income	**(7,345)**	**(2,591)**	**7,345**	**9,655**	**(1,470)**	**(2,447)**	**6,348**	**(1,739)**	**20,432**	**17,311**	**7,227**	**(26,081)**	**$ 26,645**	**$ (18,854)**
Profit margin	**-173%**	**-66%**	**192%**	**173%**	**-30%**	**-58%**	**157%**	**-45%**	**471%**	**115%**	**169%**	**-588%**	**43%**	**-216%**
Operating Cash Flow Calculation:														
Operating income	(594)	(153)	(824)	821	127	(1,292)	(172)	(655)	(474)	(5,539)	476	441	(7,839)	917
Add Depreciation expense	110	110	110	114	112	112	113	112	112	108	109	108	1,328	217
Adjustment Deferred compensation	(2,767)	243	157	214	426	50	297	286	755	291	159	(489)	(378)	(330)
Bonus awards	1,000	956	1,000	1,000	1,000	(5,190)	986	1,000	1,300	1,300	1,000	(6,049)	(696)	(5,049)
Operating Cash Flow	**(2,251)**	**1,155**	**442**	**2,149**	**1,664**	**(6,320)**	**1,224**	**743**	**1,693**	**(3,840)**	**1,744**	**(5,989)**	**$ (7,585)**	**$ (4,245)**
Less Interest expense	(143)	(141)	(149)	(146)	(142)	(148)	(136)	(141)	(134)	(147)	(141)	(65)	(1,632)	(206)
Adjusted Operating Cash Flow	**(2,395)**	**1,015**	**293**	**2,003**	**1,523**	**(6,468)**	**1,087**	**603**	**1,559**	**(3,987)**	**1,603**	**(6,054)**	**$ (9,217)**	**$ (4,451)**
Add cash bonus expense	1,063	1,001	1,000	1,100	1,032	1,025	1,000	1,008	1,304	1,300	1,000	1,000	12,832	2,000
Less cash bonuses paid	(63)	(45)	-	(100)	(32)	(6,215)	(14)	(8)	(4)	-	-	(7,049)	(13,528)	(7,049)
Non-cash bonus add-back	**1,000**	**956**	**1,000**	**1,000**	**1,000**	**(5,190)**	**986**	**1,000**	**1,300**	**1,300**	**1,000**	**(6,049)**	**(696)**	**(5,049)**
Add deferred compensation MTM	222	243	157	214	426	50	297	286	755	291	159	101	3,201	260
Less cash deferred awards paid	(2,989)	-	-	-	-	-	-	-	-	-	-	(590)	(3,579)	(590)
Non-cash deferred award add-back	**(2,767)**	**243**	**157**	**214**	**426**	**50**	**297**	**286**	**755**	**291**	**159**	**(489)**	**(378)**	**(330)**

HIGHLAND CAPITAL MANAGEMENT, LP

Balance Sheet
February 2018 vs. January 2018
(in thousands)

	February 28, 2018	January 31, 2018	Increase/ (Decrease) $	Increase/ (Decrease) %
Assets				
Cash and cash equivalents	$ 9,607	$ 2,161	$ 7,446	344.6%
Investments, at fair value	266,615	277,888	(11,273)	-4.1%
Equity method investees	59,692	82,690	(22,997)	-27.8%
Management and incentive fee receivable	1,918	4,988	(3,070)	-61.5%
Deferred incentive fees	-	6,944	(6,944)	0.0%
Fixed assets, net	5,557	5,665	(109)	-1.9%
Due from affiliates	181,222	175,605	5,617	3.2%
Other assets	9,408	10,353	(945)	-9.1%
Total assets	**$ 534,020**	**$ 566,295**	**$ (32,275)**	**(5.7%)**
Liabilities and Partners' Capital				
Accounts payable	$ 2,036	$ 2,667	$ (631)	-23.7%
Due to brokers	35,777	35,842	(64)	-0.2%
Accrued expenses and other liabilities	54,361	59,860	(5,498)	-9.2%
Partners' capital	441,846	467,927	(26,081)	-5.6%
Total liabilities and partners' capital	**$ 534,020**	**$ 566,295**	**$ (32,275)**	**(5.7%)**

Partners' Capital Walk

Partners' capital at 1/31	$ 467,927
Net subscriptions/(redemptions)	-
Net income/(loss)	(26,081)
Partners' capital at 2/28	$ 441,846

HIGHLAND CAPITAL MANAGEMENT, LP

Income Statement
February 2018 YTD vs. January 2017 YTD
(in thousands)

	2018 YTD	2017 YTD	Increase/ (Decrease) $	Increase/ (Decrease) %
Revenue:				
Management fees	$ 6,103	$ 6,106	$ (3)	0.0%
Shared services fees	1,796	1,574	221	14.1%
Other income	811	808	3	0.4%
Total operating revenue	**8,710**	**8,488**	**222**	**2.6%**
Operating expenses:				
Salaries and overtime	2,331	2,274	57	2.5%
Bonus	2,000	1,995	5	0.2%
Other compensation and benefits	1,193	1,125	68	6.1%
Deferred compensation	260	666	(406)	-61.0%
Professional services	495	740	(245)	-33.1%
Investment research and consulting	33	23	10	45.5%
Marketing and advertising expense	341	460	(119)	-25.8%
Depreciation expense	217	221	(4)	-2.0%
Other operating expenses	922	747	175	23.4%
Total operating expenses	**7,793**	**8,252**	**(460)**	**-5.6%**
Operating income/(loss)	**917**	**236**	**681**	**288.5%**
Other income/expense:				
Interest income	1,086	916	170	18.6%
Interest expense	(206)	(244)	39	-15.8%
Other income/expense	145	251	(106)	-42.3%
Total other income/expense	**1,024**	**922**	**103**	**11.1%**
Realized and unrealized gains from investments:				
Net realized losses on sales of investment transactions	-	-	-	0.0%
Net change in unrealized gains/(losses) of investments	477	10,093	(9,616)	95.3%
Total realized and unrealized gains from investments	**477**	**10,093**	**(9,616)**	**-95.3%**
Net earnings/(losses) from equity method investees	(21,273)	6,393	(27,666)	432.8%
Net income/(loss)	**$ (18,854)**	**$ 17,644**	**$ (36,498)**	**206.9%**
Profit margin	**-216%**	**208%**		
Other operating expenses detail				
Rent expense	258	196	61	31 2%
Fees and dues	44	55	(11)	-19 6%
Travel and entertainment	137	201	(63)	-31 6%
Insurance expense	128	50	78	155 8%
Bad debt expense	-	-	-	0 0%
Miscellaneous expenses	354	245	110	44 9%
Total other operating expenses	**922**	**747**	**175**	**23.4%**

HCMLP Analytics
(in thousands)
Accounts Payable Aging Analysis

Vendor Type	Current	30 Days	45 Days	90 Days	120 Days	Greater Than 120 Days	Grand Total	%
Overhead	$ 678	$ 45	$ 433	$ 86	$ -	$ -	$ 1,242	61%
Legal	-	-	-	-	-	794	794	39%
Grand Total	$ 678	$ 45	$ 433	$ 86	$ -	$ 794	$ 2,036	100%
% Outstanding	**33%**	**2%**	**21%**	**4%**	**0%**	**39%**		

Top 5 Legal Greater than 120 Days	February 2018
[redacted]	$ 292
[redacted]	200
[redacted]	180
[redacted]	112
[redacted]	10
Total	$ 794
% Total of AP Outstanding	39%

Top 5 Overhead Greater than 120 Days*	February 2018
N/A	-
Total	$ -
% Total of AP Outstanding	0%

Fund Reimbursements

Funds	2/28/2018	1/31/2018	2/28/2017	Year-Over-Year $ Change	Year-Over-Year % Change
US CLOs	$ 851	$ 1,893	$ 633	$ 217	34%
Hedge/Private Equity	611	622	497	114	23%
Separate Accounts	30	30	17	13	77%
Retail	194	194	557	(363)	-65%
International/Portfolio Co	3,413	3,668	3,954	(541)	-14%
Research Unallocated	759	311	888	(129)	-15%
Unallocated	1,345	1,297	1,350	-	0%
Total	$ 7,202	$ 8,015	$ 7,896	$ (688)	-9%

	1/31/2018	Net Additions	Receipts	2/28/2018
Month to Month Change	$ 8,015	$ 330	$ (1,143)	$ 7,202

	2/28/2017	2/28/2018	2017 YTD	2018 YTD
Fund Reimbursement Receipts	$ 1,620	$ 1,143	$ 2,225	$ 2,256

HCMLP Invoice Metrics	February 2018	January 2018
Invoices Processed:	162	120
$ Amount Processed:	$ 8,077	$ 11,918
# of Payments	166	152
$ Amount of Payments:	$ 8,558	$ 13,302

Self-Insurance Summary

Entity	Premium Balance
[redacted]	693
[redacted]	370
[redacted]	89
[redacted]	9
[redacted]	(156)
[redacted]	(154)
[redacted]	(197)
[redacted]	(392)
[redacted]	(258)
Total over/(under) funded	**$ 4**

Shared Services Receivables Summary

Entity	Balance
[redacted]	3,730
[redacted]	367
[redacted]	200
[redacted]	40
[redacted]	54
[redacted]	-
[redacted]	-
Total	**$ 4,391**

Highland Capital Management, LP
Schedule of Investments
As of February 2018

Fund	MV @ 1/31/2018	Monthly Change in Unrealized Gain/(Loss)	Contributions, (Distributions) & Realized Gain/(Loss)	MV @ 2/28/2018
[redacted]				
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]

Historical Legal Summary through February 28, 2018
Includes only matters allocated to HCMLP
in thousands

HCMLP Legal by Matter

Sub-Total Top 25 Matters	3,469	3,513	8,039	512
Sub-Total Other Matters	31	1	-	-
Total Matters	3,500	3,514	8,039	512

Sorted largest to smallest Matter by 2018 dollars invoiced

HCMLP Legal by Vendor

Sub-Total Top 25 Vendors	2,865	3,045	7,450	450
Sub-Total Other Vendors	635	469	589	61
Total Vendors	3,500	3,514	8,039	512

Sorted largest to smallest Vendor by cumulative dollars invoiced ('12 - YTD '18)

Employee Expenses through February 28, 2018
Excludes all Dondero Reimbursements
HCMLP & Certain Affiliated Advisors
in thousands

Employee Expenses - Including Reimbursable

Company	2015	2016	2017	2018	2018 Annualized
[redacted]	$ 838	$ 707	$ 818	$ 93	$ 557
[redacted]	2,447	1,860	1,041	85	509
[redacted]	742	511	292	23	139
[redacted]	-	57	141	18	108
Total	$ 4,027	$ 3,135	$ 2,293	$ 219	$ 1,312

Employee Expenses - Non-Reimbursable Only

Company	2015	2016	2017	2018	2018 Annualized
HCMLP	$ 387	$ 174	$ 396	$ 61	$ 363
HCFD	2,219	933	543	39	231
HCMFA	450	380	256	18	110
NPA	-	16	61	9	55
Total	$ 3,056	$ 1,503	$ 1,257	$ 127	$ 759

EXHIBIT 76

PROMISSORY NOTE

$2,500,000 August 1, 2018

FOR VALUE RECEIVED, JAMES DONDERO ("***Maker***") promises to pay to the order of HIGHLAND CAPITAL MANAGEMENT LP ("***Payee***"), in legal and lawful tender of the United States of America, the principal sum of TWO MILLION, FIVE HUNDRED THOUSAND and 00/100 Dollars ($2,500,000.00), together with interest, on the terms set forth below (the "***Note***"). All sums hereunder are payable to Payee at 300 Crescent Court, Dallas, TX 75201, or such other address as Payee may specify to Maker in writing from time to time.

1. Interest Rate. The unpaid principal balance of this Note from time to time outstanding shall bear interest at a rate equal to the long-term "***applicable federal rate***" (2.95%) in effect on the date hereof for loans of such maturity as determined by Section 1274(d) of the Internal Revenue Code, per annum from the date hereof until maturity, compounded annually on the anniversary of the date of this Note. Interest shall be calculated at a daily rate equal to 1/365th (1/366 in a leap year) of the rate per annum, shall be charged and collected on the actual number of days elapsed, and shall be payable on demand of the Payee.

2. Payment of Principal and Interest. The accrued interest and principal of this Note shall be due and payable on demand of the Payee.

3. Prepayment Allowed; Renegotiation Discretionary. Maker may prepay in whole or in part the unpaid principal or accrued interest of this Note. Any payments on this Note shall be applied first to unpaid accrued interest hereon, and then to unpaid principal hereof.

4. Acceleration Upon Default. Failure to pay this Note or any installment hereunder as it becomes due shall, at the election of the holder hereof, without notice, demand, presentment, notice of intent to accelerate, notice of acceleration, or any other notice of any kind which are hereby waived, mature the principal of this Note and all interest then accrued, if any, and the same shall at once become due and payable and subject to those remedies of the holder hereof. No failure or delay on the part of Payee in exercising any right, power or privilege hereunder shall operate as a waiver thereof.

5. Waiver. Maker hereby waives grace, demand, presentment for payment, notice of nonpayment, protest, notice of protest, notice of intent to accelerate, notice of acceleration and all other notices of any kind hereunder.

6. Attorneys' Fees. If this Note is not paid at maturity (whether by acceleration or otherwise) and is placed in the hands of an attorney for collection, or if it is collected through a bankruptcy court or any other court after maturity, the Maker shall pay, in addition to all other amounts owing hereunder, all actual expenses of collection, all court costs and reasonable attorneys' fees and expenses incurred by the holder hereof.

Exhibit 3

7. Limitation on Agreements. All agreements between Maker and Payee, whether now existing or hereafter arising, are hereby limited so that in no event shall the amount paid, or agreed to be paid to Payee for the use, forbearance, or detention of money or for the payment or performance of any covenant or obligation contained herein or in any other document evidencing, securing or pertaining to this Note, exceed the maximum interest rate allowed by law. The terms and provisions of this paragraph shall control and supersede every other provision of all agreements between Payee and Maker in conflict herewith.

8. Governing Law. This Note and the rights and obligations of the parties hereunder shall be governed by the laws of the United States of America and by the laws of the State of Texas, and is performable in Dallas County, Texas.

MAKER:

JAMES DONDERO

EXHIBIT 77

PROMISSORY NOTE

$2,500,000 August 13, 2018

FOR VALUE RECEIVED, JAMES DONDERO ("***Maker***") promises to pay to the order of HIGHLAND CAPITAL MANAGEMENT LP ("***Payee***"), in legal and lawful tender of the United States of America, the principal sum of TWO MILLION, FIVE HUNDRED THOUSAND and 00/100 Dollars ($2,500,000.00), together with interest, on the terms set forth below (the "***Note***"). All sums hereunder are payable to Payee at 300 Crescent Court, Dallas, TX 75201, or such other address as Payee may specify to Maker in writing from time to time.

1. Interest Rate. The unpaid principal balance of this Note from time to time outstanding shall bear interest at a rate equal to the long-term "***applicable federal rate***" (2.95%) in effect on the date hereof for loans of such maturity as determined by Section 1274(d) of the Internal Revenue Code, per annum from the date hereof until maturity, compounded annually on the anniversary of the date of this Note. Interest shall be calculated at a daily rate equal to 1/365th (1/366 in a leap year) of the rate per annum, shall be charged and collected on the actual number of days elapsed, and shall be payable on demand of the Payee.

2. Payment of Principal and Interest. The accrued interest and principal of this Note shall be due and payable on demand of the Payee.

3. Prepayment Allowed; Renegotiation Discretionary. Maker may prepay in whole or in part the unpaid principal or accrued interest of this Note. Any payments on this Note shall be applied first to unpaid accrued interest hereon, and then to unpaid principal hereof.

4. Acceleration Upon Default. Failure to pay this Note or any installment hereunder as it becomes due shall, at the election of the holder hereof, without notice, demand, presentment, notice of intent to accelerate, notice of acceleration, or any other notice of any kind which are hereby waived, mature the principal of this Note and all interest then accrued, if any, and the same shall at once become due and payable and subject to those remedies of the holder hereof. No failure or delay on the part of Payee in exercising any right, power or privilege hereunder shall operate as a waiver thereof.

5. Waiver. Maker hereby waives grace, demand, presentment for payment, notice of nonpayment, protest, notice of protest, notice of intent to accelerate, notice of acceleration and all other notices of any kind hereunder.

6. Attorneys' Fees. If this Note is not paid at maturity (whether by acceleration or otherwise) and is placed in the hands of an attorney for collection, or if it is collected through a bankruptcy court or any other court after maturity, the Maker shall pay, in addition to all other amounts owing hereunder, all actual expenses of collection, all court costs and reasonable attorneys' fees and expenses incurred by the holder hereof.

Exhibit 4

7. Limitation on Agreements. All agreements between Maker and Payee, whether now existing or hereafter arising, are hereby limited so that in no event shall the amount paid, or agreed to be paid to Payee for the use, forbearance, or detention of money or for the payment or performance of any covenant or obligation contained herein or in any other document evidencing, securing or pertaining to this Note, exceed the maximum interest rate allowed by law. The terms and provisions of this paragraph shall control and supersede every other provision of all agreements between Payee and Maker in conflict herewith.

8. Governing Law. This Note and the rights and obligations of the parties hereunder shall be governed by the laws of the United States of America and by the laws of the State of Texas, and is performable in Dallas County, Texas.

MAKER:

JAMES DONDERO

EXHIBIT 78

HIGHLAND CAPITAL MANAGEMENT, LP

OPERATING RESULTS

August 2018

Exhibit 5

Highland Capital Management, L.P.
Significant Items Impacting HCMLP's Balance Sheet
August 2018

Operating Activities

[redacted]

Investments

[redacted]

Other
- ($5.0M) partner loan

Highland Capital Management, L.P.
Financial/Operational Highlights
August 2018 Close Package
(in millions)

	5/31/2018	6/30/2018	7/31/2018	8/31/2018
Cash	$ 6.9	$ 7.8	$ 7.7	$ 3.4
Operating Revenue	$ 5.0	$ 4.4	$ 4.8	$ 3.2
Operating Expenses (1)	(4.8)	(4.9)	(4.4)	(3.9)
Operating Income	$ 0.2	$ (0.5)	$ 0.4	$ (0.7)
Add back: Non-Recurring Items (3)	$ 0.9	$ 0.9	$ 0.7	$ -
Adjusted Operating Income	$ 1.1	$ 0.4	$ 1.1	$ (0.7)
Net Income/(Loss)	$ (1.3)	$ (2.2)	$ 12.1	$ 11.9

	MTD	YTD	LTM
Operating Cash Flow (2)	$ (5.9)	$ 3.5	$ (8.2)
Interest Expense	(0.2)	(1.1)	(1.6)
Adjusted Operating Cash Flow	$ (6.1)	$ 2.4	$ (9.8)

Assets Under Management (billions)	5/31/2018	6/30/2018	7/31/2018
CLO 1.0	$ 1.4	$ 1.4	$ 1.4
Sep. Accounts	2.5	2.5	2.5
Hedge/PE	0.6	0.2	0.2
Sub-total	$ 4.5	$ 4.1	$ 4.1

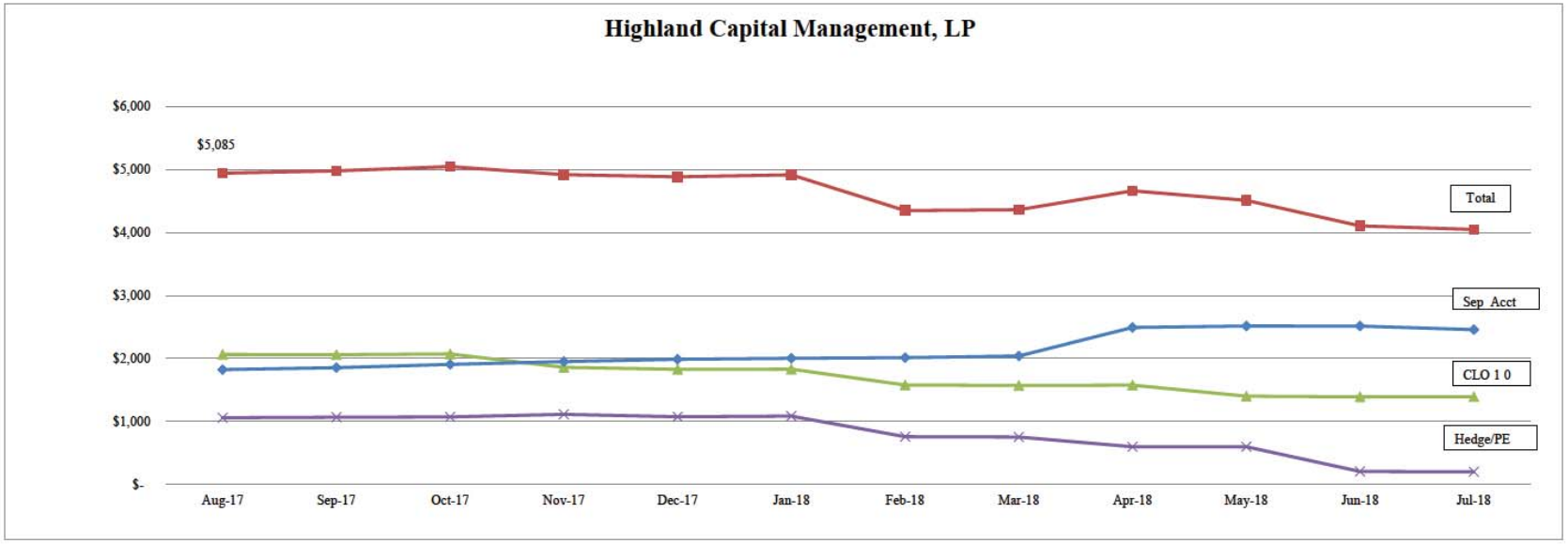
Headcount - including affiliates	5/31/2018	6/30/2018	7/31/2018	8/31/2018
Front Office	38	38	38	38
Institutional Marketing and Client Service	4	4	3	2
Legal	15	15	15	15
Admin	15	15	15	15
Retail Operations (HCMLP)	6	6	6	6
Back Office	34	35	35	35
HCFD/NSI	16	17	17	17
HCMF Strategy/Marketing	8	8	8	8
Total	136	138	137	136

Notes:

(1) Excludes deferred compensation MTM
(2) Operating Cash Flow = Operating Income + Dep. + Deferred Comp + Non-Cash Bonus Expense
(3) Receivables reserve

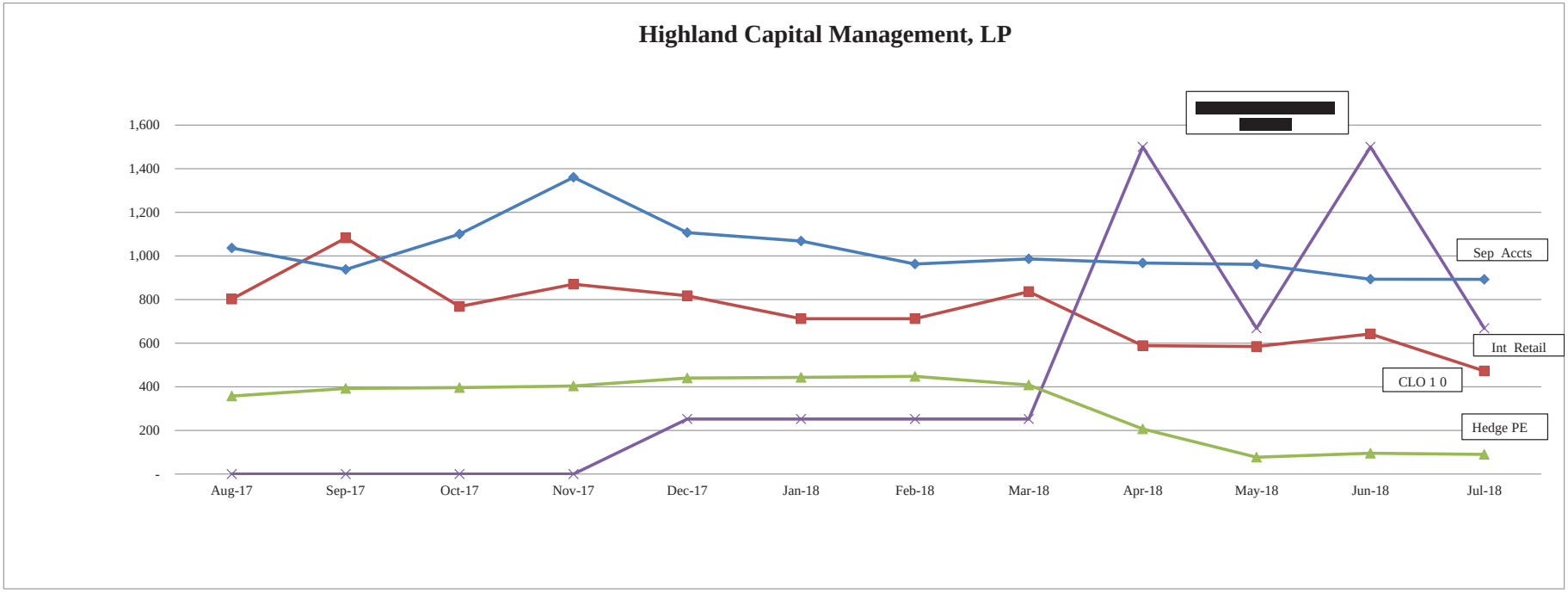
HCMLP Rolling Fee Earning AUM Schedule
(in millions)

	8/31/2017	9/30/2017	10/31/2017	11/30/2017	12/31/2017	1/31/2018	2/28/2018	3/31/2018	4/30/2018	5/31/2018	6/30/2018	7/31/2018
CLO 1 0	$ 2,063	$ 2,060	$ 2,072	$ 1,859	$ 1,827	$ 1,831	$ 1,579	$ 1,572	$ 1,575	$ 1,402	$ 1,390	$ 1,393
Sep Accounts	1,823	1,855	1,905	1,951	1,987	2,003	2,013	2,039	2,493	2,514	2,515	2,458
Hedge/PE	1,058	1,067	1,072	1,112	1,073	1,084	757	751	598	596	204	199
Sub-total	$ 4,945	$ 4,981	$ 5,049	$ 4,922	$ 4,887	$ 4,917	$ 4,349	$ 4,362	$ 4,665	$ 4,512	$ 4,108	$ 4,050
CLO 2 0	-	-	-	-	-	-	-	-	2,250	2,174	2,164	2,161
Grand Total	$ 4,945	$ 4,981	$ 5,049	$ 4,922	$ 4,887	$ 4,917	$ 4,349	$ 4,362	$ 6,915	$ 6,686	$ 6,272	$ 6,211



HCMLP Monthly Management Fees
(in thousands)

	8/31/2017	9/30/2017	10/31/2017	11/30/2017	12/31/2017	1/31/2018	2/28/2018	3/31/2018	4/30/2018	5/31/2018	6/30/2018	7/31/2018
Intercompany Retail Advisors	$ -	$ -	$ -	$ -	$ 252	$ 252	$ 252	$ 252	$ 1,500	$ 668	$ 1,500	$ 668
Sep Accounts	1,036	938	1,100	1,361	1,107	1,068	963	987	967	961	894	893
CLO 1 0	802	1,082	768	871	818	713	713	837	589	585	643	473
Hedge/PE Funds	358	393	396	404	440	443	448	408	206	77	95	90
Other	-	-	-	9	-	-	-	87	-	43	22	65
Sub-total	$ 2,196	$ 2,413	$ 2,265	$ 2,644	$ 2,617	$ 2,476	$ 2,375	$ 2,571	$ 3,262	$ 2,334	$ 3,154	$ 2,189
CLO 2 0*	529	447	620	561	491	497	497	500	497	497	407	-
Grand Total	2,725	2,860	2,885	3,205	3,108	2,974	2,873	3,071	3,760	2,832	3,561	2,189



*CLO 2 0 fees are reserved against

HIGHLAND CAPITAL MANAGEMENT, LP

Statement of Income
Twelve Months Ended August 2018
(in thousands)

	Sep-17	Oct-17	Nov-17	Dec-17	Jan-18	Feb-18	Mar-18	Apr-18	May-18	Jun-18	Jul-18	Aug-18	LTM	YTD
Revenue:														
Management fees	$ 2,725	$ 2,860	$ 2,885	$ 3,205	$ 3,108	$ 2,974	$ 2,873	$ 3,071	$ 3,760	$ 2,832	$ 3,561	$ 2,189	$ 36,041	$ 24,366
Shared services fees	757	732	871	826	915	866	866	890	1,038	937	827	657	10,182	6,995
Incentive fees	-	-	-	10,043	-	-	-	-	-	18	-	-	10,061	18
Other income	562	234	586	912	215	596	339	482	304	653	458	348	5,689	3,395
Total operating revenue	**4,043**	**3,827**	**4,342**	**14,987**	**4,237**	**4,436**	**4,079**	**4,442**	**5,102**	**4,440**	**4,846**	**3,193**	**61,973**	**34,774**
Operating expenses:														
Compensation and benefits	2,368	2,308	2,795	3,651	2,755	2,769	2,711	3,283	2,277	2,529	2,515	2,676	32,636	21,514
Deferred compensation	297	286	755	291	159	101	9	479	87	179	700	204	3,547	1,918
Professional services	472	1,031	649	18,821	(15,051)	314	606	344	814	608	408	342	9,358	1,819
Investment research and consulting	160	22	8	242	13	20	226	26	20	170	43	18	966	535
Depreciation	113	112	112	108	109	108	108	108	108	108	108	108	1,310	865
Bad debt	-	-	-	2,279	-	-	5	3,497	866	870	713	-	8,229	5,951
Other operating expenses	805	723	497	1,180	580	683	951	871	684	665	606	803	9,049	5,844
Total operating expenses	**4,216**	**4,482**	**4,816**	**26,571**	**(11,435)**	**3,995**	**4,616**	**8,608**	**4,857**	**5,130**	**5,092**	**4,151**	**65,097**	**38,446**
Operating income	**(172)**	**(655)**	**(474)**	**(11,585)**	**15,672**	**441**	**(537)**	**(4,166)**	**245**	**(690)**	**(246)**	**(957)**	**(3,124)**	**(3,672)**
Other income/expense:														
Interest and investment income, net	532	574	937	839	612	473	524	886	554	462	978	529	7,899	5,018
Interest expense	(136)	(141)	(134)	(145)	(143)	(65)	(131)	(140)	(151)	(141)	(152)	(156)	(1,634)	(1,078)
Other income/expense	63	77	64	19,134	(13,353)	64	96	124	96	584	127	108	7,184	1,280
Total other income/expense	**459**	**510**	**867**	**19,828**	**(12,883)**	**472**	**489**	**870**	**500**	**904**	**953**	**481**	**13,449**	**5,219**
Realized and unrealized gain/(loss) from investments:														
Net realized gain/(loss) on sale of investment transactions	-	22	-	(1,196)	-	-	3,961	-	-	351	89	48	3,276	4,450
Net change in unrealized gain/(loss) of investments	9,180	(1,004)	6,375	(2,125)	10,678	(10,201)	(16,002)	3,030	(1,476)	(1,170)	6,011	7,563	10,859	(1,567)
Total realized and unrealized gain/(loss) from investments	**9,180**	**(982)**	**6,375**	**(3,320)**	**10,678**	**(10,201)**	**(12,041)**	**3,030**	**(1,476)**	**(819)**	**6,100**	**7,611**	**14,135**	**2,882**
Earnings and losses from equity method investees														
[redacted]	333	12	200	329	926	(210)	(821)	726	(617)	(91)	223	122	1,130	257
[redacted]	(1,136)	(203)	4,333	529	(1,674)	(5,137)	(726)	(2,108)	57	(554)	1,482	1,362	(3,776)	(7,299)
[redacted]	(2,300)	(419)	8,353	1,019	(3,731)	(11,446)	(199)	(5,483)	138	(1,348)	3,601	3,311	(8,505)	(15,157)
[redacted]	0	15	-	22	-	-	-	-	-	-	-	-	38	-
[redacted]	(14)	(18)	11	(18)	-	-	(126)	-	-	88	-	-	(77)	(38)
[redacted]	-	-	768	(89)	-	-	-	-	(37)	-	-	-	641	(37)
[redacted]	-	-	-	-	-	-	-	-	-	-	-	-	-	-
[redacted]	-	-	-	75	-	-	-	-	-	-	-	-	75	-
Total earnings/(loss) from equity method investees	**(3,118)**	**(613)**	**13,664**	**1,866**	**(4,479)**	**(16,794)**	**(1,872)**	**(6,865)**	**(459)**	**(1,905)**	**5,305**	**4,795**	**(10,474)**	**(22,274)**
Net income	**6,348**	**(1,739)**	**20,432**	**6,790**	**8,988**	**(26,081)**	**(13,962)**	**(7,130)**	**(1,190)**	**(2,510)**	**12,112**	**11,929**	**$ 13,986**	**$ (17,844)**
Profit margin	**157%**	**-45%**	**471%**	**45%**	**212%**	**-588%**	**-342%**	**-161%**	**-23%**	**-57%**	**250%**	**374%**	**23%**	**-51%**
Operating Cash Flow Calculation:														
Operating income	(172)	(655)	(474)	(11,585)	15,672	441	(537)	(4,166)	245	(690)	(246)	(957)	(3,124)	9,762
Add Depreciation expense	113	112	112	108	109	108	108	108	108	108	108	108	1,310	865
Adjustment Deferred compensation	297	286	755	291	159	101	(581)	(2,381)	87	125	700	204	43	(1,586)
Bonus awards	(5,215)	994	1,296	1,984	1,000	1,000	(6,001)	964	889	900	945	(5,210)	(6,455)	(5,514)
Operating Cash Flow	**(4,977)**	**737**	**1,690**	**(9,201)**	**16,939**	**1,650**	**(7,012)**	**(5,475)**	**1,329**	**443**	**1,507**	**(5,855)**	**$ (8,225)**	**$ 3,527**
Less Interest expense	(136)	(141)	(134)	(145)	(143)	(65)	(131)	(140)	(151)	(141)	(152)	(156)	(1,634)	(1,078)
Adjusted Operating Cash Flow	**(5,114)**	**596**	**1,556**	**(9,346)**	**16,797**	**1,585**	**(7,143)**	**(5,614)**	**1,178**	**302**	**1,355**	**(6,011)**	**$ (9,859)**	**$ 2,449**
Add cash bonus expense	1,000	1,008	1,304	1,988	1,000	1,000	1,048	1,011	900	900	945	900	13,003	7,703
Less cash bonuses paid	(6,215)	(14)	(8)	(4)	-	-	(7,049)	(48)	(11)	-	-	(6,110)	(19,458)	(13,217)
Non-cash bonus add-back	**(5,215)**	**994**	**1,296**	**1,984**	**1,000**	**1,000**	**(6,001)**	**964**	**889**	**900**	**945**	**(5,210)**	**(6,455)**	**(5,514)**
Add deferred compensation MTM	297	286	755	291	159	101	9	479	87	179	700	204	3,547	1,918
Less cash deferred awards paid	-	-	-	-	-	-	(590)	(2 860)	-	(54)	-	-	(3 504)	(3 504)
Non-cash deferred award add-back	**297**	**286**	**755**	**291**	**159**	**101**	**(581)**	**(2,381)**	**87**	**125**	**700**	**204**	**43**	**(1,586)**

HIGHLAND CAPITAL MANAGEMENT, LP

Balance Sheet
August 2018 vs. July 2018
(in thousands)

	August 31, 2018	July 31, 2018	Increase/ (Decrease) $	Increase/ (Decrease) %
Assets				
Cash and cash equivalents	$ 3,396	$ 7,741	$ (4,344)	-56.1%
Investments, at fair value	265,622	257,648	7,974	3.1%
Equity method investees	60,752	60,958	(205)	-0.3%
Management and incentive fee receivable	1,626	3,577	(1,951)	-54.5%
Fixed assets, net	4,927	5,035	(108)	-2.2%
Due from affiliates	179,404	173,894	5,510	3.2%
Other assets	10,921	11,310	(389)	-3.4%
Total assets	**$ 526,648**	**$ 520,162**	**$ 6,487**	**1.25%**
Liabilities and Partners' Capital				
Accounts payable	$ 1,355	$ 2,688	$ (1,333)	-49.6%
Due to brokers	31,464	31,724	(260)	-0.8%
Accrued expenses and other liabilities	61,580	65,430	(3,850)	-5.9%
Partners' capital	432,249	420,320	11,929	2.8%
Total liabilities and partners' capital	**$ 526,648**	**$ 520,162**	**$ 6,487**	**1.25%**

Partners' Capital Walk

Partners' capital at 7/31	$ 420,320
Net subscriptions/(redemptions)	-
Net income/(loss)	11,929
Partners' capital at 8/31	$ 432,249

HIGHLAND CAPITAL MANAGEMENT, LP

Income Statement
August 2018 YTD vs. August 2017 YTD
(in thousands)

	2018 YTD	2017 YTD	Increase/ (Decrease) $	Increase/ (Decrease) %
Revenue:				
Management fees	$ 24,366	$ 25,288	$ (922)	-3.6%
Shared services fees	6,995	6,258	737	11.8%
Incentive fees	18	-	18	N/A
Other income	3,395	3,381	14	0.4%
Total operating revenue	**34,774**	**34,927**	**(153)**	**-0.4%**
Operating expenses:				
Salaries and overtime	9,189	9,427	(238)	-2.5%
Bonus	7,703	8,216	(513)	-6.2%
Other compensation and benefits	4,623	4,547	76	1.7%
Deferred compensation	1,918	1,372	546	39.8%
Professional services	1,819	5,502	(3,683)	-66.9%
Investment research and consulting	535	669	(134)	-20.1%
Marketing and advertising expense	1,478	1,774	(296)	-16.7%
Depreciation expense	865	887	(22)	-2.5%
Bad debt	5,951	-	5,951	100.0%
Other operating expenses	4,366	4,359	7	0.2%
Total operating expenses	**38,446**	**36,753**	**1,693**	**4.6%**
Operating income/(loss)	**(3,672)**	**(1,826)**	**(1,846)**	**101.1%**
Other income/expense:				
Interest income	5,018	4,167	851	20.4%
Interest expense	(1,078)	(1,113)	35	-3.1%
Other income/expense	1,280	5,539	(4,259)	-76.9%
Total other income/expense	**5,219**	**8,593**	**(3,374)**	**-39.3%**
Realized and unrealized gains from investments:				
Net realized gains on sales of investment transactions	4,450	7,666	(3,216)	-42.0%
Net change in unrealized gains/(losses) of investments	(1,567)	12,293	(13,860)	112.8%
Total realized and unrealized gains from investments	**2,882**	**19,959**	**(17,077)**	**-85.6%**
Net earnings/(losses) from equity method investees	(22,274)	(6,081)	(16,193)	-266.3%
Net income/(loss)	**$ (17,844)**	**$ 20,645**	**$ (38,489)**	**186.4%**
Profit margin	**-51%**	**59%**		

Other operating expenses detail				
Rent expense	1,041	979	61	6 3%
Fees and dues	166	211	(45)	-21 2%
Travel and entertainment	840	1,036	(196)	-18 9%
Insurance expense	496	431	64	15 0%
Miscellaneous expenses	1,823	1,701	122	7 1%
Total other operating expenses	**4,366**	**4,359**	**7**	**0.2%**

Highland Capital Management, LP
Schedule of Investments
As of August 2018

Fund	Ticker	MV @ 7/31/2018	Monthly Change in Unrealized Gain/(Loss)	Contributions, (Distributions) & Realized Gain/(Loss)	MV @ 8/31/2018
[redacted]					
[redacted]					
[redacted]					

EXHIBIT 79

HIGHLAND CAPITAL MANAGEMENT, L.P.

December 3, 2020

James Dondero
c/o Highland Capital Management, L.P.
300 Crescent Court, Suite 700
Dallas, Texas 75201

Re: Demand on Promissory Notes:

Dear Mr. Dondero,

You entered into the following promissory notes (collectively, the "Notes") in favor of Highland Capital Management, L.P. ("Payee"):

Date Issued	Original Principal Amount	Outstanding Principal Amount (12/11/20)	Accrued But Unpaid Interest (12/11/20)	Total Amount Outstanding (12/11/20)
2/2/18	$3,825,000	$3,687,269.71	$21,003.70	$3,708,273.41
8/1/18	$2,500,000	$2,619,929.42	$27,950.70	$2,647,880.12
8/13/18	$2,500,000	$2,622,425.61	$25,433.94	$2,647,859.55
TOTALS	**$16,725,000**	**$8,929,624.74**	**$74,388.33**	**$9,004,013.07**

As set forth in Section 2 of each of the Notes, accrued interest and principal is due and payable upon the demand of Payee. By this letter, Payee is demanding payment of the accrued interest and principal due and payable on the Notes in the aggregate amount of $9,004,013.07, which represents all accrued and unpaid interest and principal through and including December 11, 2020.

Payment is due on December 11, 2020, and failure to make payment in full on such date will constitute an event of default under the Notes.

Payments on the Notes must be made in immediately available funds. Payee's wire information is attached hereto as **Appendix A**.

Nothing contained herein constitutes a waiver of any rights or remedies of Payee under the Notes or otherwise and all such rights and remedies, whether at law, equity, contract, or otherwise, are expressly reserved. Interest, including default interest if applicable, on the Notes will continue to accrue until the Notes are paid in full. Any such interest will remain your obligation.

Sincerely,

/s/ James P. Seery, Jr.

James P. Seery, Jr.
Highland Capital Management, L.P.
Chief Executive Officer/Chief Restructuring Officer

DOCS_NY:41660.1 36027/002

Exhibit 6

cc: Fred Caruso
James Romey
Jeffrey Pomerantz
Ira Kharasch
Gregory Demo
D. Michael Lynn

Appendix A

ABA #:	322070381
Bank Name:	East West Bank
Account Name:	Highland Capital Management, LP
Account #:	5500014686

EXHIBIT 80

D. Michael Lynn – State Bar ID 12736500
John Y. Bonds, III – State Bar ID 02589100
John T. Wilson, IV – State Bar ID 24033344
Bryan C. Assink – State Bar ID 24089009
BONDS ELLIS EPPICH SCHAFER JONES LLP
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ATTORNEYS FOR DEFENDANT JAMES DONDERO

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	**Case No. 19-34054-SGJ-11**
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	**Chapter 11**
	§	
Debtor.	§	
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	
Plaintiff.	§	
	§	
v.	§	
	§	**Adversary No.: 21-03003**
JAMES D. DONDERO,	§	
	§	
Defendant.	§	

DEFENDANT JAMES DONDERO'S ORIGINAL ANSWER

Defendant James Dondero ("Dondero" or "Defendant"), the defendant in the above-styled and numbered adversary proceeding (the "Adversary Proceeding") filed by Highland Capital Management, L.P. (the "Plaintiff"), hereby files this Original Answer (the "Answer") responding to the *Complaint for (I) Breach of Contract and (II) Turnover of Property of the Debtor's Estate* [Adv. Dkt. 1] (the "Complaint"). Where an allegation in the Complaint is not expressly admitted in this Answer, it is denied.

Exhibit 7

PRELIMINARY STATEMENT

1. The first sentence of paragraph 1 of the Complaint sets forth the Plaintiff's objective in bringing the Complaint and does not require a response. To the extent it contains factual allegations, they are denied. The second sentence contains a legal conclusion that does not require a response. To the extent it contains factual allegations, they are denied.

2. Paragraph 2 contains a summary of the relief the Plaintiff seeks and does not require a response. To the extent it contains factual allegations, they are denied.

JURISDICTION AND VENUE

3. The Defendant admits that this Adversary Proceeding relates to the Plaintiff's bankruptcy case but denies any implication that this fact confers Constitutional authority on the Bankruptcy Court to adjudicate this dispute. Any allegations in paragraph 3 not expressly admitted are denied.

4. The Defendant admits that the Court has statutory (but not Constitutional) jurisdiction to hear this Adversary Proceeding. Any allegations in paragraph 4 not expressly admitted are denied.

5. The Defendant denies that a breach of contract claim is core. The Defendant denies that a § 542(b) turnover proceeding is the appropriate mechanism to collect a contested debt. The Defendant admits that a § 542(b) turnover proceeding is statutorily core but denies that it is Constitutionally core under *Stern v. Marshall*. The Defendant does not consent to the Bankruptcy Court entering final orders or judgment in this Adversary Proceeding. Any allegations in paragraph 5 not expressly admitted are denied.

6. The Defendant admits paragraph 6 of the Complaint.

THE PARTIES

7. The Defendant admits paragraph 7 of the Complaint.

8. The Defendant admits paragraph 8 of the Complaint.

CASE BACKGROUND

9. The Defendant admits paragraph 9 of the Complaint.

10. The Defendant admits paragraph 10 of the Complaint.

11. The Defendant admits paragraph 11 of the Complaint.

12. The Defendant admits paragraph 12 of the Complaint.

STATEMENT OF FACTS

13. The Defendant admits that he has executed promissory notes under which the Debtor is the payee. Any allegations in paragraph 13 not expressly admitted are denied.

14. The Defendant admits that he executed a note as alleged in the first sentence of paragraph 14 of the Complaint. Defendant admits that the attached document appears to be a copy of the referenced note.

15. The Defendant admits that he executed a note as alleged in the first sentence of paragraph 15 of the Complaint. The Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in the second sentence of paragraph 15 of the Complaint and therefore denies same.

16. The Defendant admits that he executed a note as alleged in the first sentence of paragraph 16 of the Complaint. Defendant admits that the attached document appears to be a copy of the referenced note.

17. The Defendant admits that section 2 of each note attached to the Complaint contains the provision quoted in paragraph 17 of the Complaint.

18. The Defendant denies the allegations in paragraph 18 of the Complaint. It appears that the provisions of each Note differ. Accordingly, the allegations made in this paragraph are denied.

19. The Defendant denies the allegations in paragraph 19 of the Complaint. It appears that the provisions of each Note differ. Accordingly, the allegations made in this paragraph are denied.

20. In response to paragraph 20 of the Complaint, the Defendant admits that Exhibit 4 to the Complaint (the "Demand Letter") is a true and correct copy of what it purports to be and that the document speaks for itself. To the extent paragraph 20 of the Complaint asserts a legal conclusion, no response is required, and it is denied. To the extent not expressly admitted, paragraph 20 of the Complaint is denied.

21. To the extent paragraph 21 of the Complaint asserts a legal conclusion, no response is necessary, and it is denied. The Defendant otherwise admits paragraph 21 of the Complaint.

22. The Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 22 of the Complaint and therefore denies same.

23. The Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 23 of the Complaint and therefore denies same.

24. The Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 24 of the Complaint and therefore denies same.

25. The Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 25 of the Complaint and therefore denies same.

26. The Defendant denies the allegations in paragraph 26 of the Complaint.

FIRST CLAIM FOR RELIEF
(For Breach of Contract)

27. Paragraph 27 of the Complaint is a sentence of incorporation that does not require a response. All prior denials are incorporated herein by reference.

28. Paragraph 28 of the Complaint states a legal conclusion that does not require a response. To the extent it alleges facts, the Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 28 of the Complaint and therefore denies same.

29. Paragraph 29 of the Complaint states a legal conclusion that does not require a response. To the extent it alleges facts, the Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 29 of the Complaint and therefore denies same.

30. Paragraph 30 of the Complaint states a legal conclusion that does not require a response. To the extent it alleges facts, the Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 30 of the Complaint and therefore denies same.

31. The Defendant denies paragraph 31 of the Complaint.

SECOND CLAIM FOR RELIEF
(Turnover by Mr. Dondero Pursuant to 11 U.S.C. § 542(b))

32. Paragraph 32 of the Complaint is a sentence of incorporation that does not require a response. All prior denials are incorporated herein by reference.

33. Paragraph 33 of the Complaint states a legal conclusion that does not require a response. To the extent it alleges facts, the Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 33 of the Complaint and therefore denies same.

34. Paragraph 34 of the Complaint states a legal conclusion that does not require a response. To the extent it alleges facts, the Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 34 of the Complaint and therefore denies the same.

35. The Defendant denies paragraph 35 of the Complaint.

36. Paragraph 36 of the Complaint states a legal conclusion that does not require a response. The Defendant admits that the Plaintiff transmitted the Demand Letter, and that document speaks for itself. To the extent paragraph 36 alleges other facts, the Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 36 of the Complaint and therefore denies the same.

37. The Defendant denies paragraph 37 of the Complaint.

38. Paragraph 38 of the Complaint states a legal conclusion that does not require a response. To the extent it alleges facts, the Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 38 of the Complaint and therefore denies the same.

39. The Defendant denies that the Plaintiff is entitled to the relief requested in the prayer, including as to parts (i), (ii), and (iii).

AFFIRMATIVE DEFENSES

40. Defendant asserts that Plaintiff's claims should be barred because it was previously agreed by Plaintiff that Plaintiff would not collect on the Notes.

41. Defendant further asserts that Plaintiff's claims are barred, in whole or in part, due to waiver.

42. Defendant further asserts that Plaintiff's claims are barred, in whole or in part, due

to estoppel.

43. Defendant further asserts that Plaintiff's claims may be barred, in whole or in part, due to failure of consideration.

JURY DEMAND

44. The Defendant demands a trial by jury of all issues so triable pursuant to Rule 38 of the Federal Rules of Civil Procedure and Rule 9015 of the Federal Rules of Bankruptcy Procedure.

45. The Defendant does not consent to the Bankruptcy Court conducting a jury trial and therefore demands a jury trial in the District Court.

PRAYER

WHEREFORE, PREMISES CONSIDERED, the Defendant respectfully request that, following a trial on the merits, the Court enter a judgment that the Plaintiff take nothing on the Complaint and provide the Defendant such other relief to which he is entitled.

Dated: March 16, 2021

Respectfully submitted,

/s/ Bryan C. Assink

D. Michael Lynn – State Bar ID 12736500
John Y. Bonds, III – State Bar ID 02589100
John T. Wilson, IV – State Bar ID 24033344
Bryan C. Assink – State Bar ID 24089009
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michael.lynn@bondsellis.com
john@bondsellis.com
john.wilson@bondsellis.com
bryan.assink@bondsellis.com

ATTORNEYS FOR DEFENDANT JAMES DONDERO

CERTIFICATE OF SERVICE

The undersigned hereby certifies that, on March 16, 2021, a true and correct copy of this document was served via the Court's CM/ECF system on counsel for the Plaintiff.

/s/ Bryan C. Assink
Bryan C. Assink

EXHIBIT 81

John Y. Bonds, III
State Bar I.D. No. 02589100
Clay Taylor
State Bar I.D. No. 24033261
Bryan C. Assink
State Bar I.D. No. 24089009
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Deborah Deitsch-Perez
State Bar No. 24036072
Michael P. Aigen
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(214) 560-2203 facsimile

ATTORNEYS FOR DEFENDANT JAMES DONDERO

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	**Case No. 19-34054**
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.	§	**Chapter 11**
	§	
Debtor.	§	

	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	
Plaintiff.	§	
v.	§	**Adversary No. 21-03003-sgj**
	§	
JAMES D. DONDERO,	§	
	§	
Defendant.	§	

DEFENDANT JAMES DONDERO'S OBJECTIONS AND RESPONSES
TO HIGHLAND CAPITAL MANAGEMENT, L.P.'S
FIRST REQUEST FOR ADMISSIONS

TO: Highland Capital Management, L.P., by and through its attorneys of record, Zachery Z. Annable, Hayward PLLC, 10501 N. Central Expy., Ste. 106, Dallas, Texas 75231.

Defendant James Dondero ("Defendant" or "Dondero") serves his Objections and Responses to Debtor Highland Capital Management, L.P.'s ("Debtor" or "Highland") First Request for Admissions ("Requests"), as follows:

Exhibit 8

Dated: April 28, 2021

Respectfully submitted,

/s/ Bryan C. Assink

John Y. Bonds, III
State Bar I.D. No. 02589100
Clay Taylor
State Bar I.D. No. 24033261
Bryan C. Assink
State Bar I.D. No. 24089009
BONDS ELLIS EPPICH SCHAFER JONES LLP
420 Throckmorton Street, Suite 1000
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Email: john@bondsellis.com
Email: clay.taylor@bondsellis.com
Email: bryan.assink@bondsellis.com

-and-

Deborah Deitsch-Perez
State Bar No. 24036072
Michael P. Aigen
State Bar No. 24012196
STINSON LLP
3102 Oak Lawn Avenue, Suite 777
Dallas, Texas 75219
(214) 560-2201 telephone
(214) 560-2203 facsimile
Email: deborah.deitschperez@stinson.com
Email: michael.aigen@stinson.com

ATTORNEYS FOR DEFENDANT JAMES DONDERO

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that, on April 28, 2021, a true and correct copy of the foregoing document was served via email on counsel for the Debtor.

/s/ Bryan C. Assink
Bryan C. Assink

OBJECTIONS AND RESPONSES

REQUEST FOR ADMISSION NO. 1: Admit that attached as Exhibit A is a true and correct copy of a Promissory Note (a) executed by James Dondero, as maker, in favor of the Debtor, as payee, (b) dated February 2, 2018, (c) in the original face amount of $3,825,000 (the "February 2 Note").

RESPONSE:

ADMIT.

REQUEST FOR ADMISSION NO. 2: Admit that on or about February 2, 2018, the Debtor paid $3,825,000 to James Dondero (or for his benefit) in exchange for the February 2 Note (the "February 2 Consideration").

RESPONSE:

ADMIT.

REQUEST FOR ADMISSION NO. 3: Admit that on or about February 2, 2018, the Debtor transferred $3,825,000 to an account for James Dondero's benefit.

RESPONSE:

ADMIT.

REQUEST FOR ADMISSION NO. 4: Admit that neither James Dondero nor any entity he owns and/or controls paid any federal or state income taxes on account of the February 2 Consideration.

RESPONSE:

ADMIT.

REQUEST FOR ADMISSION NO. 5: Admit that attached as Exhibit B is a true and correct copy of a Promissory Note (a) executed by James Dondero, as maker, in favor of the Debtor, as payee, (b) dated August 1, 2018, (c) in the original face amount of $2,500,000 (the "August 1 Note").

RESPONSE:

ADMIT.

REQUEST FOR ADMISSION NO. 6: Admit that on or about August 1, 2018, the Debtor paid $2,500,000 to James Dondero (or for his benefit) in exchange for the August 1 Note (the "August 1 Consideration").

RESPONSE:

ADMIT.

REQUEST FOR ADMISSION NO. 7: Admit that on or about August 1, 2018, the Debtor transferred $2,500,000 to an account for James Dondero's benefit.

RESPONSE:

ADMIT.

REQUEST FOR ADMISSION NO. 8: Admit that neither James Dondero nor any entity he owns and/or controls paid any federal state income taxes on account of the August 1 Consideration.

RESPONSE:

ADMIT.

REQUEST FOR ADMISSION NO. 9: Admit that attached as Exhibit C is a true and correct copy of a Promissory Note (a) executed by James Dondero, as maker, in favor of the Debtor, as payee, (b) dated August 13, 2018, (c) in the original face amount of $2,500,000 (the "August 13 Note").

RESPONSE:

ADMIT.

REQUEST FOR ADMISSION NO. 10: Admit that on or about August 13, 2018, the Debtor paid $2,500,000 to James Dondero (or for his benefit) in exchange for the August 13 Note (the "August 13 Consideration").

RESPONSE:

ADMIT.

REQUEST FOR ADMISSION NO. 11: Admit that on or about August 13, 2018, the Debtor transferred $2,500,000 to an account for James Dondero's benefit.

RESPONSE:

ADMIT.

REQUEST FOR ADMISSION NO. 12: Admit that neither James Dondero nor any entity he owns and/or controls paid any federal or state income taxes on account of the August 13 Consideration.

RESPONSE:

ADMIT.

REQUEST FOR ADMISSION NO. 13: Admit that attached as Exhibit D is the Debtor's December 3, 2020 demand letter (the "Demand Letter") to James Dondero demanding payment of the accrued interest and principal due and payable on the Promissory Notes in the aggregate amount of $9,004,013.07 (the "Outstanding Amount").

RESPONSE:

Admit only that the letter attached as Exhibit D is a letter sent from the Debtor to Dondero making demand on the notes. The remainder of the request is denied.

REQUEST FOR ADMISSION NO. 14: Admit that, as of January 22, 2021, James Dondero has not paid the Debtor the Outstanding Amount.

RESPONSE:

Admit only that Dondero has not paid the Debtor the amount the Debtor asserts is due on the notes in the amount of $9,004,013.07. The remainder of the request is denied.

EXHIBIT 82

John Y. Bonds, III
State Bar I.D. No. 02589100
Clay Taylor
State Bar I.D. No. 24033261
Bryan C. Assink
State Bar I.D. No. 24089009
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ATTORNEYS FOR DEFENDANT JAMES DONDERO

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	**Case No. 19-34054**
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.	§	**Chapter 11**
	§	
Debtor.	§	

	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	
Plaintiff.	§	
v.	§	**Adversary No. 21-03003-sgj**
	§	
JAMES D. DONDERO,	§	
	§	
Defendant.	§	

DEFENDANT JAMES DONDERO'S OBJECTIONS AND ANSWERS
TO HIGHLAND CAPITAL MANAGEMENT, L.P.'S
FIRST SET OF INTERROGATORIES

TO: Highland Capital Management, L.P., by and through its attorneys of record, Zachery Z. Annable, Hayward PLLC, 10501 N. Central Expy., Ste. 106, Dallas, Texas 75231.

Defendant James Dondero ("Defendant" or "Dondero") serves his Objections and Answers to Debtor Highland Capital Management, L.P.'s ("Debtor" or "Highland") First Set of Interrogatories ("Requests"), as follows:

Exhibit 9

Dated: 4/26/2021

Respectfully submitted,

/s/ Bryan C. Assink
John Y. Bonds, III
State Bar I.D. No. 02589100
Clay Taylor
State Bar I.D. No. 24033261
Bryan C. Assink
State Bar I.D. No. 24089009
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Email: bryan.assink@bondsellis.com

-and-

Deborah Deitsch-Perez
State Bar No. 24036072
Michael P. Aigen
State Bar No. 24012196
STINSON LLP
3102 Oak Lawn Avenue, Suite 777
Dallas, Texas 75219
(214) 560-2201 telephone
(214) 560-2203 facsimile
Email: deborah.deitschperez@stinson.com
Email: michael.aigen@stinson.com

ATTORNEYS FOR DEFENDANT JAMES DONDERO

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that, on 4/26/2021, a true and correct copy of the foregoing document was served via email on counsel for the Debtor.

/s/ Bryan C. Assink
Bryan C. Assink

OBJECTIONS AND ANSWERS

INTERROGATORY NO. 1: With respect to each Note, identify:

(a) the person who entered into each Purported Agreement on behalf of the Debtor;

(b) the date each Purported Agreement was entered into; and

(c) all documents that reflect or memorialize each Purported Agreement.

ANSWER:

The Agreements were entered into on behalf of the Debtor by James Dondero, subsequent to the time each Note was executed. Documents reflecting or memorializing the Agreements, if any, will be produced at a mutually agreeable time and location.

INTERROGATORY NO. 2: Identify every person who James Dondero believes has actual knowledge of each Purported Agreement.

ANSWER:

Dondero objects to this interrogatory (1) to the extent it seeks privileged information, (2) because it requires Dondero to speculate as to what other people know and believe, and (3) because the phrase "actual knowledge" is not defined. Subject to these objections, Dondero believes the following individuals may have actual knowledge of each Purported Agreement:

James Dondero

Frank Waterhouse

Mark Okada

John Honis

Scott Ellington

INTERROGATORY NO. 3: Identify (a) anything of value that was received by James Dondero (or for his benefit) in exchange for each Note, and (b) the date anything of value that was received by James Dondero (or for his benefit) in exchange for each Note.

ANSWER:

Dondero received the funds evidenced in each Note on or about the date that each Note was entered into by the parties to the Notes.

INTERROGATORY NO. 4: Identify each witness James Dondero intends to call at trial in this Adversary Proceeding.

ANSWER:

Dondero will identify witnesses in accordance with the scheduling order governing this proceeding.

VERIFICATION

STATE OF TEXAS)
)
COUNTY OF DALLAS)

On this day, James D. Dondero appeared before me, the undersigned notary public, and upon his oath, certified that he had read Defendant's Objections and Answers to Highland Capital Management, L.P.'s First Set of Interrogatories and that the facts stated therein are within his personal knowledge and are true and correct.

JAMES D. DONDERO

SWORN TO and SUBSCRIBED before me by James D. Dondero on the 26th day of April, 2021.

LINDA LAUCHNER
Notary Public, State of Texas
Comm. Expires 06-19-2021
Notary ID 1049001

Notary Public in and for the State of Texas

EXHIBIT 83

D. Michael Lynn – State Bar ID 12736500
John Y. Bonds, III – State Bar ID 02589100
John T. Wilson, IV – State Bar ID 24033344
Bryan C. Assink – State Bar ID 24089009
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ATTORNEYS FOR DEFENDANT JAMES DONDERO

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	**Case No. 19-34054-SGJ-11**
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	**Chapter 11**
	§	
Debtor.	§	
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	
Plaintiff.	§	
	§	
v.	§	
	§	**Adversary No.: 21-03003**
JAMES D. DONDERO,	§	
	§	
Defendant.	§	

DEFENDANT JAMES DONDERO'S AMENDED ANSWER

Defendant James Dondero ("Dondero" or "Defendant"), the defendant in the above-styled and numbered adversary proceeding (the "Adversary Proceeding") filed by Highland Capital Management, L.P. (the "Plaintiff"), hereby files this Amended Answer (the "Answer") responding to the *Complaint for (I) Breach of Contract and (II) Turnover of Property of the Debtor's Estate* [Adv. Dkt. 1] (the "Complaint"). Where an allegation in the Complaint is not expressly admitted in this Answer, it is denied.

Exhibit 10

PRELIMINARY STATEMENT

1. The first sentence of paragraph 1 of the Complaint sets forth the Plaintiff's objective in bringing the Complaint and does not require a response. To the extent it contains factual allegations, they are denied. The second sentence contains a legal conclusion that does not require a response. To the extent it contains factual allegations, they are denied.

2. Paragraph 2 contains a summary of the relief the Plaintiff seeks and does not require a response. To the extent it contains factual allegations, they are denied.

JURISDICTION AND VENUE

3. The Defendant admits that this Adversary Proceeding relates to the Plaintiff's bankruptcy case but denies any implication that this fact confers Constitutional authority on the Bankruptcy Court to adjudicate this dispute. Any allegations in paragraph 3 not expressly admitted are denied.

4. The Defendant admits that the Court has statutory (but not Constitutional) jurisdiction to hear this Adversary Proceeding. Any allegations in paragraph 4 not expressly admitted are denied.

5. The Defendant denies that a breach of contract claim is core. The Defendant denies that a § 542(b) turnover proceeding is the appropriate mechanism to collect a contested debt. The Defendant admits that a § 542(b) turnover proceeding is statutorily core but denies that it is Constitutionally core under *Stern v. Marshall*. The Defendant does not consent to the Bankruptcy Court entering final orders or judgment in this Adversary Proceeding. Any allegations in paragraph 5 not expressly admitted are denied.

6. The Defendant admits paragraph 6 of the Complaint.

THE PARTIES

7. The Defendant admits paragraph 7 of the Complaint.

8. The Defendant admits paragraph 8 of the Complaint.

CASE BACKGROUND

9. The Defendant admits paragraph 9 of the Complaint.

10. The Defendant admits paragraph 10 of the Complaint.

11. The Defendant admits paragraph 11 of the Complaint.

12. The Defendant admits paragraph 12 of the Complaint.

STATEMENT OF FACTS

13. The Defendant admits that he has executed promissory notes under which the Debtor is the payee. Any allegations in paragraph 13 not expressly admitted are denied.

14. The Defendant admits that he executed a note as alleged in the first sentence of paragraph 14 of the Complaint. Defendant admits that the attached document appears to be a copy of the referenced note.

15. The Defendant admits that he executed a note as alleged in the first sentence of paragraph 15 of the Complaint. The Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in the second sentence of paragraph 15 of the Complaint and therefore denies same.

16. The Defendant admits that he executed a note as alleged in the first sentence of paragraph 16 of the Complaint. Defendant admits that the attached document appears to be a copy of the referenced note.

17. The Defendant admits that section 2 of each note attached to the Complaint contains the provision quoted in paragraph 17 of the Complaint.

18. The Defendant denies the allegations in paragraph 18 of the Complaint. It appears that the provisions of each Note differ. Accordingly, the allegations made in this paragraph are denied.

19. The Defendant denies the allegations in paragraph 19 of the Complaint. It appears that the provisions of each Note differ. Accordingly, the allegations made in this paragraph are denied.

20. In response to paragraph 20 of the Complaint, the Defendant admits that Exhibit 4 to the Complaint (the "Demand Letter") is a true and correct copy of what it purports to be and that the document speaks for itself. To the extent paragraph 20 of the Complaint asserts a legal conclusion, no response is required, and it is denied. To the extent not expressly admitted, paragraph 20 of the Complaint is denied.

21. To the extent paragraph 21 of the Complaint asserts a legal conclusion, no response is necessary, and it is denied. The Defendant otherwise admits paragraph 21 of the Complaint.

22. The Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 22 of the Complaint and therefore denies same.

23. The Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 23 of the Complaint and therefore denies same.

24. The Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 24 of the Complaint and therefore denies same.

25. The Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 25 of the Complaint and therefore denies same.

26. The Defendant denies the allegations in paragraph 26 of the Complaint.

FIRST CLAIM FOR RELIEF
(For Breach of Contract)

27. Paragraph 27 of the Complaint is a sentence of incorporation that does not require a response. All prior denials are incorporated herein by reference.

28. Paragraph 28 of the Complaint states a legal conclusion that does not require a response. To the extent it alleges facts, the Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 28 of the Complaint and therefore denies same.

29. Paragraph 29 of the Complaint states a legal conclusion that does not require a response. To the extent it alleges facts, the Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 29 of the Complaint and therefore denies same.

30. Paragraph 30 of the Complaint states a legal conclusion that does not require a response. To the extent it alleges facts, the Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 30 of the Complaint and therefore denies same.

31. The Defendant denies paragraph 31 of the Complaint.

SECOND CLAIM FOR RELIEF
(Turnover by Mr. Dondero Pursuant to 11 U.S.C. § 542(b))

32. Paragraph 32 of the Complaint is a sentence of incorporation that does not require a response. All prior denials are incorporated herein by reference.

33. Paragraph 33 of the Complaint states a legal conclusion that does not require a response. To the extent it alleges facts, the Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 33 of the Complaint and therefore denies same.

34. Paragraph 34 of the Complaint states a legal conclusion that does not require a response. To the extent it alleges facts, the Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 34 of the Complaint and therefore denies the same.

35. The Defendant denies paragraph 35 of the Complaint.

36. Paragraph 36 of the Complaint states a legal conclusion that does not require a response. The Defendant admits that the Plaintiff transmitted the Demand Letter, and that document speaks for itself. To the extent paragraph 36 alleges other facts, the Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 36 of the Complaint and therefore denies the same.

37. The Defendant denies paragraph 37 of the Complaint.

38. Paragraph 38 of the Complaint states a legal conclusion that does not require a response. To the extent it alleges facts, the Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 38 of the Complaint and therefore denies the same.

39. The Defendant denies that the Plaintiff is entitled to the relief requested in the prayer, including as to parts (i), (ii), and (iii).

AFFIRMATIVE DEFENSES

40. Defendant asserts that Plaintiff's claims should be barred because prior to the demands for payment Plaintiff agreed that it would not collect on the Notes upon fulfillment of conditions subsequent.

41. Defendant further asserts that Plaintiff's claim should be barred, or reduced, in whole or in part, pursuant to Defendant's right to set off a mutual obligation owed to Defendant

by Plaintiff under state and/or federal law, including pursuant to 11 U.S.C. § 553. Plaintiff owes Defendant a debt that should set off or reduce any amounts that Defendant is found to owe Plaintiff on the Notes.

42. Defendant further asserts that Plaintiff's claims are barred, in whole or in part, due to waiver.

43. Defendant further asserts that Plaintiff's claims are barred, in whole or in part, due to estoppel.

44. Defendant further asserts that Plaintiff's claims are barred, in whole or in part, due to failure of consideration.

45. Defendant further asserts that each Note is ambiguous.

JURY DEMAND

46. The Defendant demands a trial by jury of all issues so triable pursuant to Rule 38 of the Federal Rules of Civil Procedure and Rule 9015 of the Federal Rules of Bankruptcy Procedure.

47. The Defendant does not consent to the Bankruptcy Court conducting a jury trial and therefore demands a jury trial in the District Court.

PRAYER

WHEREFORE, PREMISES CONSIDERED, the Defendant respectfully request that, following a trial on the merits, the Court enter a judgment that the Plaintiff take nothing on the Complaint and provide the Defendant such other relief to which he is entitled.

Dated: April 6, 2021

Respectfully submitted,

/s/ Bryan C. Assink

D. Michael Lynn – State Bar ID 12736500
John Y. Bonds, III – State Bar ID 02589100
John T. Wilson, IV – State Bar ID 24033344
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ATTORNEYS FOR DEFENDANT JAMES DONDERO

CERTIFICATE OF SERVICE

The undersigned hereby certifies that, on April 6, 2021, a true and correct copy of this document was served via the Court's CM/ECF system on counsel for the Plaintiff.

/s/ Bryan C. Assink
Bryan C. Assink

EXHIBIT 84

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ATTORNEYS FOR DEFENDANT JAMES DONDERO

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	**Case No. 19-34054**
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.	§	**Chapter 11**
	§	
Debtor.	§	
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	
Plaintiff.	§	
v.	§	**Adversary No. 21-03003-sgj**
	§	
JAMES D. DONDERO,	§	
	§	
Defendant.	§	

DEFENDANT JAMES DONDERO'S OBJECTIONS AND RESPONSES
TO HIGHLAND CAPITAL MANAGEMENT, L.P.'S
SECOND REQUEST FOR ADMISSIONS

TO: Highland Capital Management, L.P., by and through its attorneys of record, Zachery Z. Annable, Hayward PLLC, 10501 N. Central Expy., Ste. 106, Dallas, Texas 75231.

Defendant James Dondero ("Defendant" or "Dondero") serves his Objections and Responses to Debtor Highland Capital Management, L.P.'s ("Debtor" or "Highland") Second Request for Admissions ("Requests"), as follows:

Exhibit 11

Dated: May 7, 2021

Respectfully submitted,

/s/Deborah Deitsch-Perez

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Clay M. Taylor
State Bar I.D. No. 24033261
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-and-

Deborah Deitsch-Perez
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ATTORNEYS FOR DEFENDANT JAMES DONDERO

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that, on May 7, 2021, a true and correct copy of the foregoing document was served via email on counsel for the Debtor.

/s/ Michael P. Aigen
Michael P. Aigen

OBJECTIONS AND RESPONSES[1]

REQUEST FOR ADMISSION NO. 1: Admit that in December 2019, James Dondero made a payment to the Debtor, a portion of which was applied to reduce principal and/or interest due under one or more of the Notes.

RESPONSE:

ADMIT.

REQUEST FOR ADMISSION NO. 2: Admit that James Dondero did not file a proof of claim in the Bankruptcy Case concerning or relating to the "mutual obligation" referred to in paragraph 41 of the Amended Answer.

RESPONSE:

ADMIT.

REQUEST FOR ADMISSION NO. 3: Admit that James Dondero did not file a proof of claim in the Bankruptcy Case concerning or relating to the "debt" referred to in paragraph 41 of the Amended Answer.

RESPONSE:

ADMIT.

REQUEST FOR ADMISSION NO. 4: Admit that prior to serving his Amended Answer, James Dondero never informed the Debtor of his belief that any provision of any of the Notes was ambiguous, as alleged in paragraph 45 of the Amended Answer.

RESPONSE:

DENY.

REQUEST FOR ADMISSION NO. 5: Admit that as of the date of the service of these Requests for Admission, James Dondero has not (a) identified any particular provision or clause of any Note that he contends is ambiguous (any such provision or clause, the "Identified Provision"), and (b) informed the Debtor of the Identified Provision.

[1] Defendant makes these responses subject in all respects to his Motion for Withdrawal of the Reference [Adv. Dkt. No. 21] and the Motion to Stay Pending the Motion to Withdraw the Reference of Plaintiff's Complaint [Adv. Dkt. No. 22] filed on April 15, 2021. For the reasons stated in the motions, Defendant believes that the reference should be withdrawn and this proceeding stayed while the motion to withdraw the reference is considered. Defendant does not waive, but instead hereby preserves, his right to a jury trial and all rights and requests for relief asserted in the motions. Defendant does not consent to the Bankruptcy Court determining this proceeding or entering final orders or judgments in this proceeding. Defendant requests that the reference be withdrawn and that the District Court adjudicate this proceeding.

RESPONSE:

DENY.

EXHIBIT 85

EXHIBIT 20

Exhibit 12

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ATTORNEYS FOR DEFENDANT JAMES DONDERO

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	**Case No. 19-34054**
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.	§	**Chapter 11**
	§	
Debtor.	§	
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	
Plaintiff.	§	
v.	§	**Adversary No. 21-03003-sgj**
	§	
JAMES D. DONDERO,	§	
	§	
Defendant.	§	

DEFENDANT JAMES DONDERO'S OBJECTIONS AND ANSWERS
TO HIGHLAND CAPITAL MANAGEMENT, L.P.'S
SECOND SET OF INTERROGATORIES

TO: Highland Capital Management, L.P., by and through its attorneys of record, Zachery Z. Annable, Hayward PLLC, 10501 N. Central Expy., Ste. 106, Dallas, Texas 75231.

Defendant James Dondero ("Defendant" or "Dondero") serves his Objections and Answers to Debtor Highland Capital Management, L.P.'s ("Debtor" or "Highland") Second Set of Interrogatories ("Requests"), as follows:

Dated: May 7, 2021

Respectfully submitted,

/Deborah Deitsch-Perez

John Y. Bonds, III
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Clay M. Taylor
State Bar I.D. No. 24033261
Bryan C. Assink
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-and-

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ATTORNEYS FOR DEFENDANT JAMES DONDERO

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that, on May 7, 2021, a true and correct copy of the foregoing document was served via email on counsel for the Debtor.

/s/ Michael P. Aigen
Michael P. Aigen

OBJECTIONS AND ANSWERS[1]

INTERROGATORY NO. 1: Identify the "conditions subsequent" referred to in paragraph 40 of the Amended Answer.

ANSWER:

The conditions subsequent referred to in paragraph 40 of the Amended Answer refer to the disposition of the portfolio company interests managed and/or owned, directly or indirectly, by Highland and/or its affiliates or managed funds on a favorable basis or on a basis wholly outside Dondero's control.

INTERROGATORY NO. 2: With respect to each Note, identify:

(a) the person who provided legal advice to James Dondero in connection with the negotiation, drafting, and execution of each Note, if any;

(b) the person who provided legal advice to the Debtor in connection with the negotiation, drafting, and execution of each Note, if any; and

(c) the person who drafted each Note.

ANSWER:

Dondero objects to this interrogatory to the extent that it seeks privileged information. Subject to this objection, Dondero responds as follows:

Dondero does not know who specifically drafted the Notes, however, he believes they were drafted by an individual in either the Highland legal or finance department.

INTERROGATORY NO. 3: Identify the "mutual obligation" referred to in paragraph 41 of the Amended Answer, including (a) the date the mutual obligation was incurred, (b) any documents referring to or reflecting the mutual obligation, (c) the amount of the mutual obligation, (d) any demands made by James Dondero to the Debtor for payment on the mutual obligation.

[1] Defendant makes these responses subject in all respects to his Motion for Withdrawal of the Reference [Adv. Dkt. No. 21] and the Motion to Stay Pending the Motion to Withdraw the Reference of Plaintiff's Complaint [Adv. Dkt. No. 22] filed on April 15, 2021. For the reasons stated in the motions, Defendant believes that the reference should be withdrawn and this proceeding stayed while the motion to withdraw the reference is considered. Defendant does not waive, but instead hereby preserves, his right to a jury trial and all rights and requests for relief asserted in the motions. Defendant does not consent to the Bankruptcy Court determining this proceeding or entering final orders or judgments in this proceeding. Defendant requests that the reference be withdrawn and that the District Court adjudicate this proceeding.

ANSWER:

Defendant is not pursuing in this action the mutual obligation referred to in paragraph 41 of the Amended Answer, which refers to potential contribution and/or indemnity claims that are largely unliquidated and contingent, and which Dondero cannot identify until all potential claims are resolved.

INTERROGATORY NO. 4: Identify every person James Dondero believes has personal knowledge of the alleged mutual obligation referred to in paragraph 41 of the Amended Answer.

ANSWER:

James Dondero

Frank Waterhouse

Mark Okada

John Honis

Scott Ellington

INTERROGATORY NO. 5: Identify the "debt" referred to in paragraph 41 of the Amended Answer, including (a) the date the debt was incurred, (b) any documents referring to or reflecting the debt, (c) the amount of the mutual obligation, (d) any demands made by James Dondero to the Debtor for payment on the debt.

ANSWER:

See Response to Interrogatory No. 3.

INTERROGATORY NO. 6: Identify every person James Dondero believes has personal knowledge of the alleged debt referred to in paragraph 41 of the Amended Answer.

ANSWER:

See Response to Interrogatory No. 3.

INTERROGATORY NO. 7: Identify each provision of each Note that James Dondero contends is ambiguous.

ANSWER:

Dondero contends that each Note as a whole is ambiguous because it refers to additional agreements without specifying them.

VERIFICATION

STATE OF TEXAS)
)
COUNTY OF DALLAS)

On this day, James D. Dondero appeared before me, the undersigned notary public, and upon his oath, certified that he had read Defendant's Objections and Answers to Highland Capital Management, L.P.'s Second Set of Interrogatories and that the facts stated therein are within his personal knowledge and are true and correct.

JAMES D. DONDERO

SWORN TO and SUBSCRIBED before me by James D. Dondero on the 7th day of May, 2021.

Notary Public in and for the State of Texas

EXHIBIT 86

HIGHLAND CAPITAL MANAGEMENT

May 18, 2018

PricewaterhouseCoopers LLP
2001 Ross Avenue, Suite 1800
Dallas, TX 75201

We are providing this letter in connection with your audit of the consolidated financial statements of Highland Capital Management, L.P. and its subsidiaries (Appendix 1), (hereinafter collectively referred to as the "Partnership") as of December 31, 2017 (hereinafter referred to as the "balance sheet date") and the related consolidated statements of income, of changes in partners' capital, and of cash flows for the year then ended (hereinafter referred to as the "period"), (hereinafter collectively referred to as the "consolidated financial statements"), for the purpose of expressing an opinion as to whether such consolidated financial statements present fairly, in all material respects, the financial position, results of operations, changes in partners' capital and of cash flows of the Partnership in conformity with accounting principles generally accepted in the United States of America. We acknowledge and confirm that we have fulfilled our responsibility, as set out in our engagement letter of February 2, 2018, for the preparation and fair presentation in the consolidated financial statements of financial position, results of operations, changes in partners' capital and of cash flows in conformity with accounting principles generally accepted in the United States of America, including the appropriate selection of accounting policies.

Certain representations in this letter are described as being limited to those matters that are material. Items are considered material, regardless of size, if they involve an omission or misstatement of accounting information that, in the light of surrounding circumstances, makes it probable that the judgment of a reasonable person relying on the information would have been changed or influenced by the omission or misstatement. Materiality used for purposes of these representations is $2,000,000.

We confirm, to the best of our knowledge and belief, as of May 18, 2018, the date of your report, the following representations made to you during your audit:

General

1. The consolidated financial statements referred to above are fairly presented in conformity with accounting principles generally accepted in the United States of America (US GAAP), and include all disclosures necessary for such fair presentation and disclosures otherwise required to be included therein by the laws and regulations to which the Partnership is subject. We have prepared the Partnership's consolidated financial statements on the basis that the Partnership is able to continue as a going concern. There are no conditions or events, considered in the aggregate, that raise substantial doubt about the Partnership's ability to continue as a going concern within one year after the date these consolidated financial statements are issued.

2. We have made available to you:

   a. All financial records and related data.

   b. Unconditional access to persons within the entity from whom you have requested audit evidence.

Exhibit 14

c. All minutes of the meetings of committees or other governing bodies applicable to the Partnership, including but not limited to, investors, Partners and committees of Partners, including summaries of actions of recent meetings for which minutes have not yet been prepared. The most recent meetings held were Pricing Committee, May 11, 2018.

d. Partnership agreements, Memoranda and Articles of Association, Confidential Offering Memoranda and amendments thereto (individually or collectively referred to hereinafter as the "Governing Documents"), and all other agreements to which the Partnership is subject.

e. Contracts or other agreements with the Partnership's service providers.

f. All official written reports, findings, recommendations and communications from specialists or professional advisors engaged to review investments, systems, processes, operations, or compliance programs of the Partnership that are material to the Partnership, individually or in aggregate.

g. All side letter arrangements, whether written or oral, with any investors entered into or cancelled during the period for which noncompliance would have a material effect on the Partnership's consolidated financial statements. These side letters are allowed under the terms of the Governing Documents.

h. Withdrawal requests submitted or communicated by investors through the date of this letter.

3. We are responsible for all significant estimates and judgments affecting the consolidated financial statements. Significant estimates and judgments and their underlying assumptions, methods, procedures and the source and reliability of supporting data are reasonable and based on applicable guidance, are completely and appropriately disclosed in the consolidated financial statements, and appropriately reflect management's intent and ability to carry out specific courses of action, where relevant. The procedures and methods utilized in developing assumptions, estimates and judgments are appropriate and have been consistently applied in the periods presented. There have been no subsequent events which would require the adjustment of any significant estimate and related disclosures.

Legal and Regulatory Compliance

4. There have been no communications from regulatory agencies concerning the Partnership's noncompliance with or deficiencies in financial reporting practices.

5. There have been no violations or possible violations of laws or regulations whose effects should be considered for disclosure in the consolidated financial statements or as a basis for recording a loss contingency.

6. The Partnership has complied with all aspects of contractual agreements that would have a material effect on the consolidated financial statements in the event of noncompliance.

Fraud

7. We acknowledge our responsibility for the design and implementation of programs and controls to provide reasonable assurance that fraud is prevented and detected.

8. We have disclosed to you the results of our assessment of the risk that the consolidated financial statements may be materially misstated as a result of fraud and we have no knowledge of any fraud or suspected fraud affecting the Partnership involving:

   a. Partnership management or its affiliates,

   b. Employees who have significant roles in the Partnership's internal control over financial reporting, or

   c. Others where the fraud could have a material effect on the consolidated financial statements.

9. Except for previously disclosed, we have no knowledge of any allegations of fraud or suspected fraud affecting the Partnership received in communications from employees, former employees, regulators, service providers, counterparties, current or former investors, or others.

(As to items 7, 8, and 9, we understand the term "fraud" to mean those matters described in AICPA AU-C 240.)

Assets, Liabilities and Capital

Assets:

10. The Partnership has satisfactory title to all owned assets, including investments, and there are no liens or encumbrances on such assets nor has any asset been pledged as collateral, including, but not limited to, assets pledged or assigned as security for liabilities and performance of contracts, except as disclosed in the consolidated financial statements. All deposit and brokerage accounts and all investments and other assets of the Partnership of which we are aware are included in the consolidated financial statements.

11. Receivables recorded in the consolidated financial statements represent bona fide claims against debtors for transactions arising on or before the balance sheet date. All receivables have been appropriately reduced to their estimated net realizable value. Receivables, if any, from shareholders/partners or their affiliates, have been collected before the date of this letter.

12. We have evaluated all transfers of financial assets during the period, including, but not limited to, transfers between the Partnership and other affiliates, to determine that control over the transferred assets has been surrendered and that all of the conditions in accordance with Accounting Standards Codification (ASC) 860, *Transfers and Servicing*, ASC 860-10-40-5 have been met.

Investments:

With respect to Partnership's investments:

13. Portfolio investments included in the Partnership's consolidated financial statements have been stated at fair values as determined by management in accordance with the valuation methods set forth in the Governing Documents and related policies and procedures. Such policies are in accordance with US GAAP (e.g., fair value of an investment is that price which would be received to sell or paid to transfer, respectively, those assets or liabilities in orderly transactions between market participants).

14. The valuation policies used for securities or investments whose fair values have been estimated by management are appropriate and have been consistently applied and documented. The policies for fair value measurement are appropriately disclosed in the Partnership's consolidated financial statements. The methods, assumptions, and inputs used are appropriate and result in a fair value appropriate for consolidated financial statement measurement and disclosure purposes. As of the balance sheet date, the investments for which fair value were determined by estimates made by Partnership are appropriately disclosed in the Partnership's consolidated financial statements.

15. We have informed you of any investments as of the balance sheet date that have restrictions on their sale or transferability. We have appropriately considered restrictions that are an attribute of the investment in our fair value determination.

16. The cost of portfolio securities was determined on the basis of FIFO method.

17. All Partnership investments made during the period were in accordance with the investment policies stated in the Governing Documents. All investments made during the period were authorized by appropriate personnel.

18. We have made available to you all information received from third party specialists engaged with respect to the valuation of investments. We believe that the data used in the work of the third-party specialists is accurate, complete, and relevant, and that our fair value determinations have been properly determined using such data and assumptions. We assume responsibility for, and are responsible for the evaluation of, the findings of third-party specialists in order to determine the fair value of the investments. We have adequately considered the qualifications of the third-party specialists in determining the amounts and disclosures used in the consolidated financial statements and underlying accounting records. We did not give nor cause any instructions to be given to third-party specialists with respect to the values or amounts derived in an attempt to bias their work, and we are not otherwise aware of any matters that have had an impact on the objectivity of the third-party specialists.

19. We evaluated all contracts and financial instruments to determine whether they meet the definition of a derivative under ASC 815, Derivatives and Hedging (ASC 815).

Liabilities:

20. All liabilities of the Partnership of which we are aware are included in the consolidated financial statements at the balance sheet date. There are no other liabilities or gain or loss contingencies that are required to be recognized or disclosed by ASC 450, *Contingencies*, and no unasserted claims or assessments that our legal counsel has advised us are probable of assertion and required to be disclosed in accordance with that Topic.

21. The Partnership is not an "SEC registrant" as that term is used in ASC 480, *Distinguishing Liabilities from Equity*, 480-10-65-1. The Partnership has properly classified and disclosed as liabilities its mandatorily redeemable securities and other financial instruments (e.g., payable) that are within the scope of ASC 480-10-65, *Effective Date, Disclosures, and Transition for Mandatorily Redeemable Financial Instruments of Certain Nonpublic Entities and Certain Mandatorily Redeemable Noncontrolling Interests,* in the consolidated financial statements.

22. The actuarial valuation of pension benefit obligations was determined using an acceptable methodology applied on a consistent basis and taking into account the individual characteristics of

the plan and reasonable assumptions, including those for the discount rate, rate of return on plan assets, mortality rate and other demographic assumptions.

23. We accurately described the processes used by management to make investment decisions, including the target allocation percentages or range of percentages for each major category of plan assets, and to determine the overall expected long-term rate of return on assets.

24. The amounts of expected employer contributions to the benefit plan during the next fiscal year represent our best estimate.

25. We do not intend to compensate for the reduction of postretirement benefits by granting an increase in pension or other benefits.

26. We applied the recognition, disclosure and measurement date provisions of ASC 715, Compensation-Retirement Benefits (ASC 715). The resulting benefit asset represents the overfunded status of the plan, and accumulated other comprehensive income includes all previously unrecognized prior service costs and credits, net gains/losses and transition assets and obligations, net of taxes.

27. We measured and recognized all plan assets as of the plan's measurement date at fair value in accordance with ASC 715, Compensation- Retirement Benefits (ASC 715).

Capital:

28. Partner capital balances, including the allocation of income, gains and losses, and the calculation of management fees and incentive fees/allocation have been properly calculated throughout the period in accordance with the Governing Documents, after giving consideration to the terms identified in each investor's subscription document. The methodology was consistently applied throughout the period and was correctly applied in the computation of contribution and withdrawal transactions during the period.

Statement of Income

29. All material expenses charged to the Partnership are permissible under the terms of the Governing Documents. All directed brokerage and other expense reimbursement agreements, if any, have been properly disclosed in the consolidated financial statements.

Tax Matters

30. There are no material tax liabilities incurred by the Partnership under the provisions of ASC 740, *Income Taxes*. We have made the necessary provisions and disclosures in the consolidated financial statements as required by ASC 740, *Income Taxes*. The resulting liabilities are supported by specifically identified income tax exposures.

31. We have provided you with all information and our assessment related to all significant uncertain income tax positions that we have taken, or expect to take, of which we are aware. We have also provided you with access to all opinions, rulings, memoranda and analyses that relate to positions we have taken in regard to significant income tax matters. We are responsible for the accuracy and completeness of information provided to external counsel and we believe that the facts are consistent with any stated assumptions made by external counsel for purposes of forming such tax opinions. We have made you aware of and have disclosed all significant tax positions for which it is reasonably

possible the amount of unrecognized tax benefit will either increase or decrease in the next 12 months.

Disclosure and Presentation of Consolidated Financial Statements

32. The effects of the uncorrected consolidated financial statement misstatements are immaterial, both individually and in the aggregate, to the consolidated financial statements taken as a whole.

33. We have appropriately reconciled the Partnership books and records (including, but not limited to, general ledger accounts, financial accounts maintained outside the general ledger and trial balances) underlying the consolidated financial statements to their related supporting information (e.g., sub ledger, or third-party data). All related reconciling items considered to be material were identified and included on the reconciliations and were appropriately adjusted in the consolidated financial statements, as necessary. There were no material un-reconciled differences or material general ledger suspense account items that should have been adjusted or reclassified to another account balance. There were no material general ledger suspense account items written off to a balance sheet account, which should have been written off to a statement of operations account and vice versa. All consolidating entries have been properly recorded. All intra-entity accounts have been eliminated or appropriately measured and considered for disclosure in the consolidated financial statements.

34. There are no material transactions, agreements or accounts that have not been properly recorded in the accounting records underlying the consolidated financial statements.

35. The following, if material, have been properly recorded or disclosed in the consolidated financial statements:

    a. Agreements to repurchase assets previously sold.

    b. All pertinent rights and privileges of both general partner and limited partner interests in the Partnership.

    c. Fee income and expenses associated with stock lending and borrowing arrangements.

    d. Relationships and transactions with related parties, as described in ASC 850, *Related Party Disclosures*, including revenue, purchases and sales of securities, transfers, guarantees, other fees and expenses charged to the Partnership, and amounts receivable from or payable to related parties.

    e. Significant estimates and material concentrations known to us that are required to be disclosed in accordance with ASC 275, *Risks and Uncertainties*. (Significant estimates are estimates at the balance sheet date that could change materially within the next year. Concentrations refer to matters such as volume of investment activity, available sources of financing, markets or geographic areas for which events could occur that would significantly disrupt investment performance within the next year.)

    f. All cash and deposit accounts and all other properties and assets of the Partnership are included in the consolidated financial statements.

    g. All financial instruments, including those with off-balance-sheet risk (including, but not limited to, swaps, forwards and futures), as required under US GAAP. This includes the following information with respect to the off-balance-sheet risks and the concentrations of credit risk:

i. The extent, nature, and terms of financial instruments with off-balance-sheet risk.

ii. The amount of credit risk of financial instruments with off-balance-sheet risk and information about the collateral supporting such financial instruments.

h. Each significant concentration of credit risk arising from all financial instruments, and information about the collateral supporting such financial instruments, whether from an individual counterparty/prime broker or group of counterparties/prime brokers in accordance with ASC 825, *Financial Instruments,* and ASC 815, *Derivatives and Hedging* (ASC 815), 815-10-50.

i. Commitments to purchase or sell financial instruments, commitments on certain debt instruments such as revolving credit facilities and obligations to fund capital calls.

j. Guarantees, whether written or oral, under which the Partnership is contingently liable.

k. Transactions made in foreign currencies.

l. Transactions made on margin or selling short.

36. We have disclosed to you the identity of the Partnership's related parties and all the related party relationships and transactions of which we are aware.

37. The Partnership has classified and disclosed financial assets and liabilities in the consolidated financial statements as Level 1, Level 2 and Level 3 in accordance with ASC 820, *Fair Value Measurement*, including a description of inputs and information used to develop valuation techniques as well as facts that required a change to such techniques, where applicable. We have made appropriate disclosures in accordance with Accounting Standards Update (ASU) 2011-11, *Disclosures about Offsetting Assets and Liabilities,* when the Partnership has the right of setoff in accordance with a master netting or similar agreement. The netting of assets and liabilities has been performed in accordance with the specific requirements of ASC 210, *Balance Sheet,* 210-20-45-1 and ASC 815-10-45-5.

38. The Partnership has properly recorded, classified and disclosed the prime broker margin collateral requirements in the consolidated financial statements in accordance with ASC 860, *Transfers and Servicing*, as to the recognition and reclassification of collateral and disclosures relating to securitization transactions and collateral.

39. We consistently applied our policy regarding classification of cash and cash equivalents, which are short-term, highly liquid investments that are readily convertible to known amounts of cash and are so near their maturity that there is insignificant risk of changes in value due to interest rate or other credit risk changes.

40. All borrowings and financial obligations of the Partnership have been disclosed to you and are properly recorded in the consolidated financial statements.

41. The Partnership has not made any commitments during the year as underwriter, nor did it engage in joint trading or a joint investment account.

Other

i. The extent, nature, and terms of financial instruments with off-balance-sheet risk.

ii. The amount of credit risk of financial instruments with off-balance-sheet risk and information about the collateral supporting such financial instruments.

h. Each significant concentration of credit risk arising from all financial instruments, and information about the collateral supporting such financial instruments, whether from an individual counterparty/prime broker or group of counterparties/prime brokers in accordance with ASC 825, *Financial Instruments,* and ASC 815, *Derivatives and Hedging* (ASC 815), 815-10-50.

i. Commitments to purchase or sell financial instruments, commitments on certain debt instruments such as revolving credit facilities and obligations to fund capital calls.

j. Guarantees, whether written or oral, under which the Partnership is contingently liable.

k. Transactions made in foreign currencies.

l. Transactions made on margin or selling short.

36. We have disclosed to you the identity of the Partnership's related parties and all the related party relationships and transactions of which we are aware.

37. The Partnership has classified and disclosed financial assets and liabilities in the consolidated financial statements as Level 1, Level 2 and Level 3 in accordance with ASC 820, *Fair Value Measurement*, including a description of inputs and information used to develop valuation techniques as well as facts that required a change to such techniques, where applicable. We have made appropriate disclosures in accordance with Accounting Standards Update (ASU) 2011-11, *Disclosures about Offsetting Assets and Liabilities,* when the Partnership has the right of setoff in accordance with a master netting or similar agreement. The netting of assets and liabilities has been performed in accordance with the specific requirements of ASC 210, *Balance Sheet,* 210-20-45-1 and ASC 815-10-45-5.

38. The Partnership has properly recorded, classified and disclosed the prime broker margin collateral requirements in the consolidated financial statements in accordance with ASC 860, *Transfers and Servicing*, as to the recognition and reclassification of collateral and disclosures relating to securitization transactions and collateral.

39. We consistently applied our policy regarding classification of cash and cash equivalents, which are short-term, highly liquid investments that are readily convertible to known amounts of cash and are so near their maturity that there is insignificant risk of changes in value due to interest rate or other credit risk changes.

40. All borrowings and financial obligations of the Partnership have been disclosed to you and are properly recorded in the consolidated financial statements.

41. The Partnership has not made any commitments during the year as underwriter, nor did it engage in joint trading or a joint investment account.

Other

50. We acknowledge responsibility for the presentation of the Supplemental Consolidating Balance Sheet, Supplemental Consolidating Statement of Income, Supplemental Unconsolidated Balance Sheet and Supplemental Unconsolidated Statement of Income in accordance with US GAAP and we believe such information, including its form and content, is fairly presented in accordance with US GAAP. We have communicated to you all changes in measurement or presentation from those used in the prior period. We have informed you about any significant assumptions or interpretations underlying the measurement or presentation of the information.

To the best of our knowledge and belief, no events have occurred subsequent to the balance sheet date and through the date of this letter that would require adjustments to, or disclosure in, the aforementioned consolidated financial statements.

James Dondero, President
Highland Capital Management, L.P.
By: Strand Advisors, Inc., its general partner

Frank Waterhouse, Treasurer
Highland Capital Management, L.P.
By: Strand Advisors, Inc., its general partner

Appendix 1

Highland Multi Strategy Credit Fund, L.P.

Highland Multi-Strategy Master Fund, L.P.

Highland Multi-Strategy Fund, L.P.

Highland Restoration Capital Partners Offshore, L.P.

Highland Restoration Capital Partners, L.P.

BB Votorantim, Highland Infrastructure LLC

Highland Capital Special Allocation, LLC

Highland Receivables Finance 1, LLC

Highland Brasil, LLC

Highland Capital Management Partners Charitable Trust #1

Highland Capital Management (Singapore) Pte, Ltd.Highland Capital Management Korea, Ltd.

Highland Capital Management Latin America, L.P.

HE Capital, LLC

De Kooning, Ltd.

Hirst, Ltd.

Hockney, Ltd.

Oldenburg, Ltd.

Eames, Ltd.

Penant Management, L.P.

Pollack, Ltd.

Warhol, Ltd.

HCREF- I Holding Corp.

HCREF-XI Holding Corp.

HCREF-XII Holding Corp.

Highland ERA Management, LLC

The Dondero Insurance Rabbi Trust

Appendix 1 (continued)

The Okada Insurance Rabbi Trust

Highland Employee Retention Assets, LLC

Highland Diversified Credit Fund, L.P.

Highland Select Equity Master Fund, L.P.

Highland Select Equity Fund, L.P.

Bandera Strategic Credit Partners I SLP, L.P.

Highland Fund Holdings, LLC

HCM Holdco, LLC

Maple Avenue Holdings, LLC

Highland HCF Advisor, Ltd.

EXHIBIT 87

Fill in this information to identify the case:

Debtor name **Highland Capital Management, L.P.**

United States Bankruptcy Court for the: NORTHERN DISTRICT OF TEXAS

Case number (if known) **19-34054-SGJ**

☐ Check if this is an amended filing

Official Form 207
Statement of Financial Affairs for Non-Individuals Filing for Bankruptcy

04/19

The debtor must answer every question. If more space is needed, attach a separate sheet to this form. On the top of any additional pages, write the debtor's name and case number (if known).

Part 1: Income

1. **Gross revenue from business**

☐ None.

Identify the beginning and ending dates of the debtor's fiscal year, which may be a calendar year	Sources of revenue Check all that apply	Gross revenue (before deductions and exclusions)
From the beginning of the fiscal year to filing date: From **1/01/2019** to **Filing Date**	☑ Operating a business ☑ Other **Exhibit A**	**$28,431,156.97**
From the beginning of the fiscal year to filing date: From **1/01/2019** to **Filing Date**	☐ Operating a business ☑ Other **Exhibit A - Other Gain/(Loss)**	**$125,310,540.63**
For prior year: From **1/01/2018** to **12/31/2018**	☑ Operating a business ☑ Other **Exhibit A**	**$50,365,069.40**
For prior year: From **1/01/2018** to **12/31/2018**	☐ Operating a business ☑ Other **Exhibit A - Other Gain/(Loss)**	**$-52,929,268.33**
For year before that: From **1/01/2017** to **12/31/2017**	☑ Operating a business ☑ Other **Exhibit A**	**$67,911,079.00**
For year before that: From **1/01/2017** to **12/31/2017**	☐ Operating a business ☑ Other **Exhibit A - Other Gain/(Loss)**	**$47,701,590.21**

Exhibit 19

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Debtor **Highland Capital Management, L.P.** Case number *(if known)* **19-34054-SGJ**

2. **Non-business revenue**
Include revenue regardless of whether that revenue is taxable. *Non-business income* may include interest, dividends, money collected from lawsuits, and royalties. List each source and the gross revenue for each separately. Do not include revenue listed in line 1.

☑ None.

Description of sources of revenue	Gross revenue from each source (before deductions and exclusions)

Part 2: List Certain Transfers Made Before Filing for Bankruptcy

3. **Certain payments or transfers to creditors within 90 days before filing this case**
List payments or transfers--including expense reimbursements--to any creditor, other than regular employee compensation, within 90 days before filing this case unless the aggregate value of all property transferred to that creditor is less than $6,825. (This amount may be adjusted on 4/01/22 and every 3 years after that with respect to cases filed on or after the date of adjustment.)

☐ None.

Creditor's Name and Address	Dates	Total amount of value	Reasons for payment or transfer *Check all that apply*
3.1. **Exhibit B**		**$23,255,006.86**	☐ Secured debt ☐ Unsecured loan repayments ☐ Suppliers or vendors ☐ Services ☐ Other__

4. **Payments or other transfers of property made within 1 year before filing this case that benefited any insider**
List payments or transfers, including expense reimbursements, made within 1 year before filing this case on debts owed to an insider or guaranteed or cosigned by an insider unless the aggregate value of all property transferred to or for the benefit of the insider is less than $6,825. (This amount may be adjusted on 4/01/22 and every 3 years after that with respect to cases filed on or after the date of adjustment.) Do not include any payments listed in line 3. *Insiders* include officers, directors, and anyone in control of a corporate debtor and their relatives; general partners of a partnership debtor and their relatives; affiliates of the debtor and insiders of such affiliates; and any managing agent of the debtor. 11 U.S.C. § 101(31).

☐ None.

Insider's name and address Relationship to debtor	Dates	Total amount of value	Reasons for payment or transfer
4.1. **Exhibit C**		**$36,608,252.91**	

5. **Repossessions, foreclosures, and returns**
List all property of the debtor that was obtained by a creditor within 1 year before filing this case, including property repossessed by a creditor, sold at a foreclosure sale, transferred by a deed in lieu of foreclosure, or returned to the seller. Do not include property listed in line 6.

☑ None

Creditor's name and address	Describe of the Property	Date	Value of property

6. **Setoffs**
List any creditor, including a bank or financial institution, that within 90 days before filing this case set off or otherwise took anything from an account of the debtor without permission or refused to make a payment at the debtor's direction from an account of the debtor because the debtor owed a debt.

☑ None

Creditor's name and address	Description of the action creditor took	Date action was taken	Amount

Part 3: Legal Actions or Assignments

7. **Legal actions, administrative proceedings, court actions, executions, attachments, or governmental audits**
List the legal actions, proceedings, investigations, arbitrations, mediations, and audits by federal or state agencies in which the debtor was involved in any capacity—within 1 year before filing this case.

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Debtor **Highland Capital Management, L.P.** Case number *(if known)* **19-34054-SGJ**

☐ None.

	Case title Case number	Nature of case	Court or agency's name and address	Status of case
7.1.	**Exhibit D**			☐ Pending ☐ On appeal ☐ Concluded
7.2.	**Internal dispute resolution department within the IRS**	**IRS Appeal**	**Department of the Treasury 4050 Alpha Road Suite 517, MC: 8000NDAL Dallas, TX 75201-7849**	☐ Pending ☑ On appeal ☐ Concluded

8. Assignments and receivership
List any property in the hands of an assignee for the benefit of creditors during the 120 days before filing this case and any property in the hands of a receiver, custodian, or other court-appointed officer within 1 year before filing this case.

☑ None

Part 4: Certain Gifts and Charitable Contributions

9. **List all gifts or charitable contributions the debtor gave to a recipient within 2 years before filing this case unless the aggregate value of the gifts to that recipient is less than $1,000**

☐ None

	Recipient's name and address	Description of the gifts or contributions	Dates given	Value
9.1.	**Exhibit E** **Recipients relationship to debtor**	**Debtor does not track recipient of gift or contribution.**		**$445,725.61**

Part 5: Certain Losses

10. **All losses from fire, theft, or other casualty within 1 year before filing this case.**

☑ None

Description of the property lost and how the loss occurred	Amount of payments received for the loss If you have received payments to cover the loss, for example, from insurance, government compensation, or tort liability, list the total received. List unpaid claims on Official Form 106A/B *(Schedule A/B: Assets – Real and Personal Property)*.	Dates of loss	Value of property lost

Part 6: Certain Payments or Transfers

11. **Payments related to bankruptcy**
List any payments of money or other transfers of property made by the debtor or person acting on behalf of the debtor within 1 year before the filing of this case to another person or entity, including attorneys, that the debtor consulted about debt consolidation or restructuring, seeking bankruptcy relief, or filing a bankruptcy case.

☐ None.

Who was paid or who received the transfer? Address	If not money, describe any property transferred	Dates	Total amount or value

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Debtor **Highland Capital Management, L.P.** Case number *(if known)* **19-34054-SGJ**

	Who was paid or who received the transfer? Address	If not money, describe any property transferred	Dates	Total amount or value
11.1.	**Development Specialists, Inc.** **10 South LaSalle** **Suite 3300** **Chicago, IL 60603**		**10/07/2019**	**$250,000.00**
	Email or website address **dsiconsulting.com**			
	Who made the payment, if not debtor?			
11.2.	**Pachulski Stang Ziehl & Jones LLP** **10100 Santa Monica Blvd.** **13th Floor** **Los Angeles, CA 90067**		**10/02/2019**	**$500,000.00**
	Email or website address **http://www.pszjlaw.com/**			
	Who made the payment, if not debtor?			
11.3.	**Kurtzman Carson Consultants LLC** **Dept CH 16639** **Palatine, IL 60055**		**10/07/2019**	**$50,000.00**
	Email or website address **https://www.kccllc.com/**			
	Who made the payment, if not debtor?			

12. **Self-settled trusts of which the debtor is a beneficiary**
List any payments or transfers of property made by the debtor or a person acting on behalf of the debtor within 10 years before the filing of this case to a self-settled trust or similar device.
Do not include transfers already listed on this statement.

☑ None.

Name of trust or device	Describe any property transferred	Dates transfers were made	Total amount or value

13. **Transfers not already listed on this statement**
List any transfers of money or other property by sale, trade, or any other means made by the debtor or a person acting on behalf of the debtor within 2 years before the filing of this case to another person, other than property transferred in the ordinary course of business or financial affairs. Include both outright transfers and transfers made as security. Do not include gifts or transfers previously listed on this statement.

☐ None.

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Debtor **Highland Capital Management, L.P.** Case number *(if known)* **19-34054-SGJ**

	Who received transfer? Address	Description of property transferred or payments received or debts paid in exchange	Date transfer was made	Total amount or value
13.1.	**Highland Select Equity Fund, L.P.** **300 Crescent Ct.** **Dallas, TX 75201** Relationship to debtor **Fund managed by the debtor.**	**Transfer of 888,731 shares of public security in exchange for LP interest.**	**12/26/2018**	**$19,632,067.79**
13.2.	**Highland Select Equity Fund, L.P.** **300 Crescent Ct.** **Dallas, TX 75201** Relationship to debtor **Fund managed by the debtor**	**Transfer of 214,000 shares of public security in exchange for LP interest.**	**3/12/2018**	**$6,385,760.00**
13.3.	**Highland Select Equity Fund, L.P.** **300 Crescent Ct.** **Suite 700** **Dallas, TX 75201** Relationship to debtor **Fund managed by the debtor**	**Transfer of 250,000 shares of public security for LP interest**	**7/23/2019**	**$10,297,500.00**

Part 7: Previous Locations

14. **Previous addresses**
List all previous addresses used by the debtor within 3 years before filing this case and the dates the addresses were used.

☐ Does not apply

	Address	Dates of occupancy From-To
14.1.	**Parkway Bent Tree** **17130 Dallas Parkway** **Suite 230** **Dallas, TX 75248**	**10/16/2016 – 8/30/2018**
14.2.	**2200 Ross Avenue** **Suite 4700E** **Storage Site** **Dallas, TX 75201**	**10/16/2016 – 12/31/2018**

Part 8: Health Care Bankruptcies

15. **Health Care bankruptcies**
Is the debtor primarily engaged in offering services and facilities for:
- diagnosing or treating injury, deformity, or disease, or
- providing any surgical, psychiatric, drug treatment, or obstetric care?

☑ No. Go to Part 9.
☐ Yes. Fill in the information below.

Facility name and address	Nature of the business operation, including type of services the debtor provides	If debtor provides meals and housing, number of patients in debtor's care

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Debtor **Highland Capital Management, L.P.** Case number *(if known)* **19-34054-SGJ**

Part 9: Personally Identifiable Information

16. **Does the debtor collect and retain personally identifiable information of customers?**

☐ No.
☑ Yes. State the nature of the information collected and retained.

Debtor has information including SS#, tax ID, mailing address, email address, and limited KYC for fund investors.

Does the debtor have a privacy policy about that information?
☐ No
☑ Yes

17. **Within 6 years before filing this case, have any employees of the debtor been participants in any ERISA, 401(k), 403(b), or other pension or profit-sharing plan made available by the debtor as an employee benefit?**

☐ No. Go to Part 10.
☑ Yes. Does the debtor serve as plan administrator?

☐ No Go to Part 10.
☑ Yes. Fill in below:

Name of plan	Employer identification number of the plan
Highland 401(K) Plan	EIN: **75-2716725**

Has the plan been terminated?
☑ No
☐ Yes

☐ No Go to Part 10.
☑ Yes. Fill in below:

Name of plan	Employer identification number of the plan
Highland Capital Management, L.P. Retirement Plan and Trust (Defined Benefit Plan)	EIN: **75-2716725**

Has the plan been terminated?
☑ No
☐ Yes

Part 10: Certain Financial Accounts, Safe Deposit Boxes, and Storage Units

18. **Closed financial accounts**
Within 1 year before filing this case, were any financial accounts or instruments held in the debtor's name, or for the debtor's benefit, closed, sold, moved, or transferred?
Include checking, savings, money market, or other financial accounts; certificates of deposit; and shares in banks, credit unions, brokerage houses, cooperatives, associations, and other financial institutions.

☑ None

Financial Institution name and Address	Last 4 digits of account number	Type of account or instrument	Date account was closed, sold, moved, or transferred	Last balance before closing or transfer

19. **Safe deposit boxes**
List any safe deposit box or other depository for securities, cash, or other valuables the debtor now has or did have within 1 year before filing this case.

☑ None

Depository institution name and address	Names of anyone with access to it Address	Description of the contents	Do you still have it?

20. **Off-premises storage**
List any property kept in storage units or warehouses within 1 year before filing this case. Do not include facilities that are in a part of a building in which the debtor does business.

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Debtor **Highland Capital Management, L.P.** Case number *(if known)* **19-34054-SGJ**

☐ None

Facility name and address	Names of anyone with access to it	Description of the contents	Do you still have it?
Iron Mountain PO BOX 915004 Dallas, TX 75391	Employee has login access to request documents.	Firm-wide documents sent off-site to retain documents per the firm's retention policy.	☐ No ☑ Yes
Natural Disasters Site 900 Venture Dr. Allen, TX 75013	Highland Capital Management IT Department	Primary Data Center - Storage	☐ No ☑ Yes
Natural Disasters Site 3010 Waterview Parkway Richardson, TX 75080	Highland Capital Management IT Department	Natural Disasters Site - Storage	☐ No ☑ Yes

Part 11: Property the Debtor Holds or Controls That the Debtor Does Not Own

21. **Property held for another**
List any property that the debtor holds or controls that another entity owns. Include any property borrowed from, being stored for, or held in trust. Do not list leased or rented property.

☐ None

Owner's name and address	Location of the property	Describe the property	Value
James Dondero	300 Crescent Court Suite 700 Dallas, TX 75201	Artwork	Unknown

Part 12: Details About Environment Information

For the purpose of Part 12, the following definitions apply:

Environmental law means any statute or governmental regulation that concerns pollution, contamination, or hazardous material, regardless of the medium affected (air, land, water, or any other medium).

Site means any location, facility, or property, including disposal sites, that the debtor now owns, operates, or utilizes or that the debtor formerly owned, operated, or utilized.

Hazardous material means anything that an environmental law defines as hazardous or toxic, or describes as a pollutant, contaminant, or a similarly harmful substance.

Report all notices, releases, and proceedings known, regardless of when they occurred.

22. **Has the debtor been a party in any judicial or administrative proceeding under any environmental law? Include settlements and orders.**

☑ No.
☐ Yes. Provide details below.

Case title Case number	Court or agency name and address	Nature of the case	Status of case

23. **Has any governmental unit otherwise notified the debtor that the debtor may be liable or potentially liable under or in violation of an environmental law?**

☑ No.
☐ Yes. Provide details below.

Site name and address	Governmental unit name and address	Environmental law, if known	Date of notice

24. **Has the debtor notified any governmental unit of any release of hazardous material?**

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Debtor **Highland Capital Management, L.P.** Case number *(if known)* **19-34054-SGJ**

☑ No.
☐ Yes. Provide details below.

Site name and address	Governmental unit name and address	Environmental law, if known	Date of notice

Part 13: Details About the Debtor's Business or Connections to Any Business

25. **Other businesses in which the debtor has or has had an interest**
List any business for which the debtor was an owner, partner, member, or otherwise a person in control within 6 years before filing this case. Include this information even if already listed in the Schedules.

☐ None

	Business name address	Describe the nature of the business	Employer Identification number Do not include Social Security number or ITIN. Dates business existed
25.1.	**Exhibit F**		**EIN:** **From-To**

26. **Books, records, and financial statements**
26a. List all accountants and bookkeepers who maintained the debtor's books and records within 2 years before filing this case.
☐ None

	Name and address	Date of service From-To
26a.1.	**Frank Waterhouse** **300 Crescent Court** **Suite 700** **Dallas, TX 75201**	**10/23/06 - Current**
26a.2.	**David Klos** **300 Crescent Court** **Suite 700** **Dallas, TX 75201**	**03/30/09 - Current**
26a.3.	**Kristin Hendrix** **300 Crescent Court** **Suite 700** **Dallas, TX 75201**	**12/16/04 - Current**
26a.4.	**Sean Fox** **300 Crescent Court** **Suite 700** **Dallas, TX 75201**	**06/25/13 - Current**
26a.5.	**Drew Wilson** **300 Crescent Court** **Suite 700** **Dallas, TX 75201**	**02/06/12 - 09/14/18**
26a.6.	**Hayley Eliason** **300 Crescent Court** **Suite 700** **Dallas, TX 75201**	**11/26/18 - Current**
26a.7.	**Blair Roeber** **300 Crescent Court** **Suite 700** **Dallas, TX 75201**	**09/01/15 - Current**

26b. List all firms or individuals who have audited, compiled, or reviewed debtor's books of account and records or prepared a financial statement within 2 years before filing this case.

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Debtor **Highland Capital Management, L.P.** Case number *(if known)* **19-34054-SGJ**

☐ None

	Name and address	Date of service From-To
26b.1.	**PricewaterhouseCoopers LLP** **2121 N Pearl St** **Dallas, TX 75201**	**2003 - Current**

26c. List all firms or individuals who were in possession of the debtor's books of account and records when this case is filed.

☐ None

	Name and address	If any books of account and records are unavailable, explain why
26c.1.	**Boyd Gosserand** **300 Crescent Ct.** **St 700** **Dallas, TX 75201**	
26c.2.	**Deloitte - Tax** **PO Box 844736** **Dallas, TX 75284**	
26c.3.	**Centroid -Accounting Software Consultant** **6860 Dallas Pkwy Suite 560** **Dallas, TX 75204**	
26c.4.	**Oracle - Accounting Software** **PO Box 203448** **Dallas, TX 75320**	
26c.5.	**Wolters Kluwer - Tax** **PO Box 71882** **Chicago, IL 60694**	

26d. List all financial institutions, creditors, and other parties, including mercantile and trade agencies, to whom the debtor issued a financial statement within 2 years before filing this case.

☐ None

	Name and address
26d.1.	**AgeeFisherBarrett, LLC** **750 Hammond Dr BLDG 17** **Atlanta, GA 30328**
26d.2.	**Bowman Law LLC** **840 Tom Wheeler Lane** **Mc Ewen, TN 37101**
26d.3.	**CBIZ Valuation Group, Inc.** **3030 LBJ Freeway, Ste 1650** **Dallas, TX 75234**
26d.4.	**Cole Schotz** **Court Plaza North** **25 Main Street, PO Box 800** **Hackensack, NJ 07602**
26d.5.	**Colorado FSC** **188 Inverness Drive West** **Ste. 100** **Centennial, CO 80112**

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Debtor **Highland Capital Management, L.P.** Case number *(if known)* **19-34054-SGJ**

	Name and address
26d.6.	**Concordeis** **1120 East Long Lake Road** **Ste 207** **Troy, MI 48085**
26d.7.	**Courtland T Group** **PO Box 11929** **Newport Beach, CA 92658**
26d.8.	**Crown Capital Securities** **725 Town & Country Rd** **Ste 530** **Orange, CA 92868**
26d.9.	**Deloitte Tax LLP** **PO Box 844736** **Dallas, TX 75284**
26d.10.	**DFPG Investments, Inc.** **9017 S. Riverside Dr.** **Ste 210** **Sandy, UT 84070**
26d.11.	**Discipline Advisors** **14135 G-100 Midway Rd.** **Dallas, TX 75244**
26d.12.	**Development Specialists, Inc.** **10 S. LaSalle St.** **Chicago, IL 60603**
26d.13.	**Emerson Equity** **155 Bovet Rd. #725** **San Mateo, CA 94402**
26d.14.	**Frontier Bank** **5100 S I-35 Service Rd.** **Oklahoma City, OK 73129**
26d.15.	**Grant Thornton LLP** **33570 Treasury Center** **Chicago, IL 60694**
26d.16.	**Great Southern Bank** **8201 Preston Road** **Suite 305** **Dallas, TX 75225**
26d.17.	**Key Bank** **ATTN: KREC Loan Services** **4910 Tiedman Road** **3rd Floor** **Cleveland, OH 44144**
26d.18.	**KPMG** **3 Chesnut Ridge Rd** **Montvale, NJ 07645**
26d.19.	**Maples & Calder** **Ugland House PO Box 309** **S. Church Street George Town** **Grand Cayman, Cayman Island**

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Debtor **Highland Capital Management, L.P.** Case number *(if known)* **19-34054-SGJ**

	Name and address
26d.20.	**Payne and Smith** **5952 Royal Lane** **Suite 158** **Dallas, TX 75230**
26d.21.	**PWC** **PO Box 952282** **Dallas, TX 75395**
26d.22.	**Squire Patton Boggs** **PO Box 643051** **Cincinnati, OH 45264**
26d.23.	**WC Capital Partners**
26d.24.	**Western International Securities, Inc.** **70 S. Lake Ave** **Ste 700** **Pasadena, CA 91101**
26d.25.	**Jean Francois Lemay** **52 Harold Street** **Etobicoke M8Z 3R3**

27. **Inventories**
Have any inventories of the debtor's property been taken within 2 years before filing this case?

- [x] No
- [ ] Yes. Give the details about the two most recent inventories.

Name of the person who supervised the taking of the inventory	Date of inventory	The dollar amount and basis (cost, market, or other basis) of each inventory

28. **List the debtor's officers, directors, managing members, general partners, members in control, controlling shareholders, or other people in control of the debtor at the time of the filing of this case.**

Name	Address	Position and nature of any interest	% of interest, if any
Strand Advisors, Inc.	**300 Crescent Ct, Ste 700** **Dallas, TX 75201**	**General Partner**	**0.2508%**
The Dugaboy Investment Trust	**300 Crescent Ct, Ste 700** **Dallas, TX 75201**	**Voting Limited Partner**	**0.1866%**
Mark Okada	**300 Crescent Ct, Ste 700** **Dallas, TX 75201**	**Voting Limited Partner**	**0.0487%**
Mark and Pamela Okada Family Trust	**300 Crescent Ct, Ste 700** **Dallas, TX 75201**	**Voting Limited Partner**	**0.0098%**
Mark and Pamela Okada Family Trust - #2	**300 Crescent Ct, Ste 700** **Dallas, TX 75201**	**Voting Limited Partner**	**0.0042%**

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Debtor **Highland Capital Management, L.P.** Case number *(if known)* **19-34054-SGJ**

Name	Address	Position and nature of any interest	% of interest, if any
Hunter Mountain Investment Trust	1100 N Market St Wilmington, DE 19890	Non-voting Limited Partner	99.50%

Name	Address	Position and nature of any interest	% of interest, if any
James Dondero	300 Crescent Ct, Ste 700 Dallas, TX 75201	Sole Shareholder of General Partner	100%

Name	Address	Position and nature of any interest	% of interest, if any
James Dondero	300 Crescent Ct, Ste 700 Dallas, TX 75201	President of General Partner	100% of the General Partner

Name	Address	Position and nature of any interest	% of interest, if any
Scott Ellington	300 Crescent Ct, Ste 700 Dallas, TX 75201	Secretary of General Partner	0.00%

Name	Address	Position and nature of any interest	% of interest, if any
Frank Waterhouse	300 Crescent Ct, Ste 700 Dallas, TX 75201	Treasurer of General Partner	0.00%

29. **Within 1 year before the filing of this case, did the debtor have officers, directors, managing members, general partners, members in control of the debtor, or shareholders in control of the debtor who no longer hold these positions?**

- [ ] No
- [x] Yes. Identify below.

Name	Address	Position and nature of any interest	Period during which position or interest was held
Mark Okada	300 Crescent Ct, Ste 700 Dallas, TX 75201	Executive Vice President	Since inception to 9/30/2019

Name	Address	Position and nature of any interest	Period during which position or interest was held
Trey Parker	300 Crescent Ct, Ste 700 Dallas, TX 75201	Assistant Secretary	8/21/2015 - 4/15/2019

30. **Payments, distributions, or withdrawals credited or given to insiders**
Within 1 year before filing this case, did the debtor provide an insider with value in any form, including salary, other compensation, draws, bonuses, loans, credits on loans, stock redemptions, and options exercised?

- [ ] No
- [x] Yes. Identify below.

	Name and address of recipient	Amount of money or description and value of property	Dates	Reason for providing the value
30.1.	Exhibit G	8,722,414.86		

Relationship to debtor

31. **Within 6 years before filing this case, has the debtor been a member of any consolidated group for tax purposes?**

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Debtor **Highland Capital Management, L.P.** Case number *(if known)* **19-34054-SGJ**

☑ No
☐ Yes. Identify below.

Name of the parent corporation **Employer Identification number of the parent corporation**

32. **Within 6 years before filing this case, has the debtor as an employer been responsible for contributing to a pension fund?**

☑ No
☐ Yes. Identify below.

Name of the pension fund **Employer Identification number of the parent corporation**

Part 14: Signature and Declaration

WARNING -- Bankruptcy fraud is a serious crime. Making a false statement, concealing property, or obtaining money or property by fraud in connection with a bankruptcy case can result in fines up to $500,000 or imprisonment for up to 20 years, or both. 18 U.S.C. §§ 152, 1341, 1519, and 3571.

I have examined the information in this *Statement of Financial Affairs* and any attachments and have a reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on **December 13, 2019**

Signature of individual signing on behalf of the debtor

Bradley Sharp
Printed name

Position or relationship to debtor Chief Restructuring Officer

Are additional pages to *Statement of Financial Affairs for Non-Individuals Filing for Bankruptcy* (Official Form 207) attached?

☐ No
☑ Yes

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Highland Capital Management LP
Case # 19-34054-SGJ
Exhibit A - SOFA 1

Revenue Account	Year 2019 [1]	Year 2018	Year 2017
Operating Revenue			
Management fees	$ 18,776,701.38	$ 35,264,426.88	$ 37,098,010.50
Shared services fees	6,002,769.24	9,187,200.55	9,445,221.98
Incentive fees	150,925.36	18,465.92	10,042,499.76
Interest and Investment Income	2,625,221.26	4,857,157.03	4,478,946.34
Miscellaneous Income	875,539.73	1,037,819.02	6,846,400.42
Total Operating Revenue	**$ 28,431,156.97**	**$ 50,365,069.40**	**$ 67,911,079.00**
Other Gain/(Loss)			
Interest income	$ 5,765,215.32	$ 7,503,164.74	$ 7,049,038.53
Other income/expense	838,191.46	658,514.02	3,723,833.60
Net realized gains on sales of investment transactions	3,959,534.93	13,396,884.40	6,494,555.20
Net change in unrealized gains/(losses) of investments	(6,692,741.56)	(56,529,224.39)	27,322,977.50
Net earnings/(losses) from equity method investees	121,440,340.48	(17,958,607.10)	3,111,185.38
Total Other Gain/(Loss)	**$ 125,310,540.63**	**$ (52,929,268.33)**	**$ 47,701,590.21**

[1] Date ranges from 12/31/2018 to end of business 10/15/2019.

Highland Capital Management LP
Case # 19-34054-SGJ
Exhibit B - SOFA 3 [1]

Trading Partner Name	Trading Partner Address	Payment Date	Payment Amount	Reason for Transfer
Wilmer Cutler Pickering Hale and Dorr LLP	PO Box 7247-8760 Philadelphia PA 19170-8760	7/18/2019	$ 20,275.50	Professional Services
Canteen Vending Services	PO Box 417632 Boston MA 02241-7632	7/18/2019	1,285.16	Suppliers/Vendors
Platinum Parking	300 Crescent Court Level G1, LB#102 Dallas TX 75201	7/18/2019	990.00	Professional Services
AT&T MOBILITY	PO BOX 6463 CAROL STREAM IL 60197-6463	7/19/2019	8,789.14	Professional Services
Highland Capital Management Korea Limited	(Seoul Finance Center, Taepyeongro-1-ga) 21F, 136, Sejong-daero, Jung-gu, Seoul, Korea	7/19/2019	630,000.00	Intercompany Funding
American Airlines	4255 Amon Carter Blvd MD 4106 Fort Worth TX 76155	7/22/2019	30,000.00	Professional Services
TRICOR BUSINESS OUTSOURCING	80 Robinson Rd, Singapore 068898	7/22/2019	28,122.16	Intercompany Funding
Meister Seelig & Fein LLP	125 Park Avenue 7th Floor New York NY 10017	7/22/2019	24,228.30	Professional Services
Flagship Cruises & Events	PO Box 120751 San Diego CA 92112	7/22/2019	16,103.26	Suppliers/Vendors
Blue Cross Blue Shield of Texas	PO Box 731428 Dallas TX 75373-1428	7/23/2019	146,190.02	Employee Benefits
Abrams & Bayliss LLP	20 Montchanin Road, Suite 200 Wilmington DE 19807	7/24/2019	53,237.45	Professional Services
Pricewaterhouse Coopers, LLP	8 Cross St. #17-00 PWC Singapore Building Singapore 048424	7/24/2019	14,461.66	Professional Services
Siepe Software, LLC	5440 Harvest Hill Rd Suite 100, Dallas, TX 75230	7/25/2019	36,084.06	Professional Services
Consultant	2620 White Rock Rd. Dallas TX 75214	7/25/2019	6,754.00	Professional Services
Reid Collins & Tsai LLP	4301 Westbank Drive Building B Suite 230 Austin TX 78746	7/30/2019	82,831.45	Professional Services
Paxstone Capital LLP	483 Green Lanes, London, Greater London, N13 4BS	7/30/2019	46,063.81	Professional Services
Charles Schwab	PO Box 1270 Tulsa, OK 74101-1270	7/31/2019	41,053.47	Employee Benefits
HIGHLAND CREDIT OPPORTUNITIES FUND	300 Crescent Court, Suite 700 Dallas, TX 75201	7/31/2019	628,000.00	Intercompany Funding
Arris Western Corp.	718 N Buckner #316 Dallas TX 75218	7/31/2019	11,000.00	Professional Services
Professional Speaker	Koa Kai, LLC PO Box 232307 Leucadia CA 92023	7/31/2019	15,000.00	Suppliers/Vendors
Pershing LLC	One Pershing Plaza Attn: IBD - 15th Floor Jersey City NJ 07399	8/1/2019	500,000.00	Investing
Consultant	300 Crescent Court, Suite 700 Dallas, TX 75201	8/1/2019	39,586.07	Professional Services
Crescent TC Investors LP	200 Crescent Ct Suite 250 Dallas TX 75201	8/1/2019	155,361.38	Rent Payment
Brasilinvest Empreendimentos e Participac?es S/A	Brazil	8/1/2019	10,000.00	Intercompany Funding
Frontier State Bank	5100 S I-35 Service Rd, Oklahoma City, OK 73129	8/1/2019	68,002.70	Secured Loan Payment
Massand Capital, LLC	8140 Walnut Hill Lane, Suite 310 Dallas, TX 75231	8/1/2019	54,979.21	Professional Services
Pershing LLC	One Pershing Plaza Attn: IBD - 15th Floor Jersey City NJ 07399	8/2/2019	11,959.71	Investing
Bloomberg Finance LP	PO Box 416604 Boston MA 02241-6604	8/2/2019	252,041.98	Professional Services
AT&T	PO BOX 5019 CAROL STREAM IL 60197	8/2/2019	259.05	Professional Services
Blue Cross Blue Shield of Texas	PO Box 731428 Dallas TX 75373-1428	8/2/2019	86,126.71	Employee Benefits
Abrams & Bayliss LLP	20 Montchanin Road, Suite 200 Wilmington DE 19807	8/7/2019	17,133.03	Professional Services
HIGHLAND CREDIT OPPORTUNITIES FUND	300 Crescent Court, Suite 700 Dallas, TX 75201	8/7/2019	441,000.00	Intercompany Funding
Status Labs.com	151 South 1st Suite 100 Austin TX 78704	8/7/2019	9,500.00	Professional Services
PetroCap Partners III, L.P.	3333 Lee Parkway Suite 750 Dallas TX 75219	8/7/2019	510,350.41	Investing
HIGHLAND CAPITAL MANAGEMENT, LP	300 Crescent Court, Suite 700 Dallas, TX 75201	8/8/2019	115,843.80	Employee Benefits
AT&T	PO BOX 5019 CAROL STREAM IL 60197	8/8/2019	3,573.58	Professional Services
Flexential Colorado Corp.	PO Box 732368 Dallas TX 75373-2368	8/8/2019	12,056.49	Professional Services
Canteen Vending Services	PO Box 417632 Boston MA 02241-7632	8/8/2019	3,267.49	Suppliers/Vendors
Blue Cross Blue Shield of Texas	PO Box 731428 Dallas TX 75373-1428	8/9/2019	157,850.27	Employee Benefits
Liberty Life Assurance Company of Boston - Group Benefits	PO Box 2658 Carol Stream IL 60132-2658	8/9/2019	5,283.26	Employee Benefits
ICBI	London	8/13/2019	12,420.78	Professional Services
Eagle Equity Advisors, LLC	300 Crescent Court, Suite 700 Dallas, TX 75201	8/13/2019	155,000.00	Intercompany Funding
Connolly Gallagher LLP	1201 North Market Street 20th Floor Wilmington DE 19801	8/13/2019	18,295.70	Professional Services
Charles Schwab	PO Box 1270 Tulsa, OK 74101-1270	8/14/2019	41,300.58	Employee Benefits
CBIZ Valuation Group, Inc.	3030 LBJ Freeway, Ste 1650 Dallas TX 75234	8/14/2019	15,000.00	Professional Services
Consultant	2620 White Rock Rd. Dallas TX 75214	8/14/2019	5,357.00	Professional Services
Siepe Services, LLC	5440 Harvest Hill Road Suite 100 Dallas TX 75230	8/14/2019	174,256.34	Professional Services
Intex Solutions, Inc.	Accounts Receivable 110 A St Needham MA 02494-2807	8/15/2019	35,200.00	Professional Services
AT&T	PO Box 9005 Carol Stream IL 60197-9005	8/15/2019	927.16	Professional Services
ABM	PO Box 419860 Boston MA 02241-9860	8/15/2019	5,884.76	Suppliers/Vendors
LinkedIn Corporation	62228 Collections Center Drive Chicago IL 60693-0622	8/15/2019	19,719.93	Professional Services
PetroCap Partners II, LP	300 Crescent Court, Suite 700 Dallas, TX 75201	8/15/2019	1,244,586.77	Investing
Houlihan Lokey	10250 Constellation Blvd, 5th Floor Attn: Accounts Receivable Los Angeles CA 90067-6802	8/15/2019	55,601.49	Professional Services
Deloitte Tax LLP	PO Box 844736 Dallas TX 75284-4736	8/15/2019	137,396.00	Professional Services
MacroMavens, LLC	180 W. 20th Street Suite 1700 New York NY 10011	8/15/2019	18,816.84	Professional Services
GRUBHUB for Work	PO Box 748570 Los Angeles CA 90074-8570	8/15/2019	13,823.98	Suppliers/Vendors
Arris Western Corp.	718 N Buckner #316 Dallas TX 75218	8/15/2019	1,420.63	Professional Services
TRICOR BUSINESS OUTSOURCING	80 Robinson Rd, Singapore 068898	8/16/2019	36,135.64	Intercompany Funding
ROWLETT HILL, LLP	25 Highland Park Village, Suite 100-448 Dallas TX 75205	8/16/2019	30,187.50	Professional Services
CDW Direct	PO BOX 75723 CHICAGO IL 60675-5723	8/16/2019	634.00	Suppliers/Vendors
Bloomberg Finance LP	PO Box 416604 Boston MA 02241-6604	8/16/2019	6,750.00	Professional Services
BCA Research Inc	1002 Sherbrooke St. W Suite 1600 Montreal Quebec H3A 3L6	8/16/2019	19,996.94	Professional Services
Willis of Texas, Inc.	PO Box 731739 Dallas TX 75373-1739	8/16/2019	5,754.18	Insurance
Blue Cross Blue Shield of Texas	PO Box 731428 Dallas TX 75373-1428	8/16/2019	89,965.15	Employee Benefits
Thomson West	PO Box 6292 Carol Stream IL 60197-6292	8/22/2019	21,339.33	Suppliers/Vendors
Duff & Phelps, LLC	DUFF & PHELPS, LLC 12595 Collection Center Drive Chicago IL 60693	8/23/2019	100,000.00	Professional Services
TRICOR BUSINESS OUTSOURCING	80 Robinson Rd, Singapore 068898	8/23/2019	50,934.56	Intercompany Funding
CDW Direct	PO BOX 75723 CHICAGO IL 60675-5723	8/23/2019	97.96	Suppliers/Vendors
Concur Technologies, Inc.	62157 Collections Center Drive Chicago IL 60693	8/23/2019	4,104.85	Professional Services
Blue Cross Blue Shield of Texas	PO Box 731428 Dallas TX 75373-1428	8/23/2019	91,020.22	Employee Benefits
Thomson West	PO Box 6292 Carol Stream IL 60197-6292	8/23/2019	3,153.32	Suppliers/Vendors
GRUBHUB for Work	PO Box 748570 Los Angeles CA 90074-8570	8/23/2019	2,150.47	Suppliers/Vendors
Highland Capital Management New York	300 Crescent Court, Suite 700 Dallas, TX 75201	8/26/2019	150,000.00	Intercompany Funding
TW Telecom Holdings, llc	PO Box 910182 Denver CO 80291-0182	8/26/2019	8,657.28	Professional Services

Highland Capital Management LP
Case # 19-34054-SGJ
Exhibit B - SOFA 3 [1]

Trading Partner Name	Trading Partner Address	Payment Date	Payment Amount	Reason for Transfer
TW Telecom Holdings, llc	PO Box 910182 Denver CO 80291-0182	8/26/2019	9,065.13	Professional Services
HIGHLAND CREDIT OPPORTUNITIES FUND	300 Crescent Court, Suite 700 Dallas, TX 75201	8/27/2019	300,000.00	Intercompany Funding
Acis Capital Management	Attn: Rakhee V. Patel, Winstead PC 500 Winstead Building Dallas TX 75201	8/27/2019	12,249.65	Professional Services
Canteen Vending Services	PO Box 417632 Boston MA 02241-7632	8/27/2019	2,608.49	Suppliers/Vendors
Greenwood Office Outfitters	2951 Suffolk Drive Suite 640 Fort Worth TX 76133-1149	8/28/2019	12,877.82	Suppliers/Vendors
Charles Schwab	PO Box 1270 Tulsa, OK 74101-1270	8/29/2019	95,443.51	Employee Benefits
Blue Cross Blue Shield of Texas	PO Box 731428 Dallas TX 75373-1428	8/29/2019	118,192.57	Employee Benefits
Eagle Equity Advisors, LLC	300 Crescent Court, Suite 700 Dallas, TX 75201	8/29/2019	75,000.00	Intercompany Funding
Highland Latin America Consulting, LTD	300 Crescent Court, Suite 700 Dallas, TX 75201	8/29/2019	55,000.00	Intercompany Funding
Canteen Vending Services	PO Box 417632 Boston MA 02241-7632	8/29/2019	697.89	Suppliers/Vendors
Platinum Parking	300 Crescent Court Level G1, LB#102 Dallas TX 75201	8/29/2019	14,857.95	Professional Services
Consultant	300 Crescent Court, Suite 700 Dallas, TX 75201	8/30/2019	111,212.19	Professional Services
Arris Western Corp.	718 N Buckner #316 Dallas TX 75218	8/30/2019	11,000.00	Professional Services
Brasilinvest Empreendimentos e Participac?es S/A	Brazil	9/3/2019	10,000.00	Intercompany Funding
Crescent TC Investors LP	PO Box 841772 Dallas TX 75284-1772	9/3/2019	156,958.51	Rent Payment
AT&T	PO Box 9005 Carol Stream IL 60197-9005	9/3/2019	5,690.12	Professional Services
Frontier State Bank	5100 S I-35 Service Rd, Oklahoma City, OK 73129	9/3/2019	404,238.30	Secured Loan Payment
AT&T	PO BOX 5019 CAROL STREAM IL 60197	9/3/2019	259.77	Professional Services
AT&T	PO BOX 5019 CAROL STREAM IL 60197	9/3/2019	295.76	Professional Services
Willis of Texas, Inc.	Dallas/Ft. Worth Division PO Box 730310 Dallas TX 75373-0310	9/3/2019	21,133.38	Insurance
Pershing LLC	One Pershing Plaza Attn: IBD - 15th Floor Jersey City NJ 07399	9/4/2019	500,000.00	Investing
HIGHLAND CREDIT OPPORTUNITIES FUND	300 Crescent Court, Suite 700 Dallas, TX 75201	9/4/2019	500,000.00	Intercompany Funding
Consultant	2620 White Rock Rd. Dallas TX 75214	9/4/2019	6,451.50	Professional Services
Siepe Software, LLC	5440 Harvest Hill Rd Suite 100, Dallas, TX 75230	9/5/2019	18,042.03	Professional Services
HIGHLAND CAPITAL MANAGEMENT, LP	300 Crescent Court, Suite 700 Dallas, TX 75201	9/5/2019	113,788.36	Employee Benefits
Pershing LLC	One Pershing Plaza Attn: IBD - 15th Floor Jersey City NJ 07399	9/5/2019	11,286.83	Investing
Charles Schwab	PO Box 1270 Tulsa, OK 74101-1270	9/5/2019	858,220.29	Employee Benefits
Charles Schwab	PO Box 1270 Tulsa, OK 74101-1270	9/5/2019	854,278.60	Employee Benefits
Dow Jones & Company, Inc.	WALL ST JRNL OR BARRONS PO Box 4137 New York NY 10261-4137	9/5/2019	16,621.23	Professional Services
CDW Direct	PO BOX 75723 CHICAGO IL 60675-5723	9/5/2019	3,374.19	Suppliers/Vendors
Intex Solutions, Inc.	Accounts Receivable 110 A St Needham MA 02494-2807	9/5/2019	35,200.00	Professional Services
Las Vegas Flamingo Holdco, LLC	Collections Account TEXAS	9/5/2019	46,536.83	Intercompany Funding
GRUBHUB for Work	PO Box 748570 Los Angeles CA 90074-8570	9/5/2019	15,518.67	Suppliers/Vendors
AT&T	PO BOX 5019 CAROL STREAM IL 60197	9/6/2019	3,573.58	Professional Services
TW Telecom Holdings, llc	PO Box 910182 Denver CO 80291-0182	9/9/2019	9,138.32	Professional Services
Blue Cross Blue Shield of Texas	PO Box 731428 Dallas TX 75373-1428	9/9/2019	142,884.07	Employee Benefits
Eagle Equity Advisors, LLC	300 Crescent Court, Suite 700 Dallas, TX 75201	9/11/2019	40,000.00	Intercompany Funding
Charles Schwab	PO Box 1270 Tulsa, OK 74101-1270	9/12/2019	37,839.05	Employee Benefits
Blue Cross Blue Shield of Texas	PO Box 731428 Dallas TX 75373-1428	9/12/2019	59,111.49	Employee Benefits
Loews Coronado Bay Resort	4000 Coronado Bay Road Coronado CA 92118	9/12/2019	77,340.18	Suppliers/Vendors
Harbor Yacht Clubs, LLC	1880 Harbor Island Drive San Diego CA 92101	9/12/2019	6,440.00	Suppliers/Vendors
NYSE MARKET, INC	Box #223695 Pittsburgh PA 15251-2695	9/13/2019	8,857.74	Professional Services
TRICOR BUSINESS OUTSOURCING	80 Robinson Rd, Singapore 068898	9/13/2019	35,221.80	Intercompany Funding
Markit North America Inc.	620 8th Ave 35th floor New York NY 10018	9/13/2019	91,676.00	Professional Services
CDW Direct	PO BOX 75723 CHICAGO IL 60675-5723	9/13/2019	7,387.23	Suppliers/Vendors
BDO USA, LLP	700 North Pearl Suite 2000 Dallas TX 75201	9/13/2019	8,700.00	Professional Services
ABM	PO Box 419860 Boston MA 02241-9860	9/13/2019	5,884.76	Suppliers/Vendors
Concur Technologies, Inc.	62157 Collections Center Drive Chicago IL 60693	9/13/2019	8,187.05	Professional Services
Willis of Texas, Inc.	PO Box 731739 Dallas TX 75373-1739	9/13/2019	5,754.18	Insurance
Reorg Research, Inc.	1140 Broadway Ste 201 New York NY 10001	9/13/2019	93,123.35	Professional Services
Sage Search Partners	3811 Turtle Creek Blvd Suite 850 Dallas TX 75219	9/13/2019	20,000.00	Professional Services
AT&T	PO BOX 5019 CAROL STREAM IL 60197	9/16/2019	927.16	Professional Services
DLA Piper LLP US	6225 Smith Avenue Baltimore MD 21209	9/16/2019	200,000.00	Professional Services
Lynn Pinker Cox & Hurst, L.L.P.	2100 Ross Ave Suite 2700 Dallas TX 75201	9/17/2019	185,576.00	Professional Services
Flexential Colorado Corp.	PO Box 732368 Dallas TX 75373-2368	9/17/2019	12,056.49	Professional Services
Canteen Vending Services	PO Box 417632 Boston MA 02241-7632	9/17/2019	327.61	Suppliers/Vendors
Platinum Parking	300 Crescent Court, Suite 700 Dallas, TX 75201	9/17/2019	15,210.80	Professional Services
AT&T MOBILITY	PO BOX 6463 CAROL STREAM IL 60197-6463	9/19/2019	1,769.17	Professional Services
ROWLETT HILL, LLP	25 HIGHLAND PARK VILLAGE STE 100-448 DALLAS TX 75205	9/19/2019	23,718.75	Professional Services
Affiliate Loan	300 Crescent Court, Suite 700 Dallas, TX 75201	9/19/2019	500,000.00	Affiliate Loan
Siepe Services, LLC	5440 Harvest Hill Road Suite 100 Dallas TX 75230	9/19/2019	185,063.83	Professional Services
Greyline Partners, LLC	P.O. Box 733976 Dallas TX 75373-3976	9/19/2019	11,250.00	Professional Services
Blue Cross Blue Shield of Texas	PO Box 731428 Dallas TX 75373-1428	9/20/2019	77,274.56	Employee Benefits
Blue Cross Blue Shield of Texas	PO Box 731428 Dallas TX 75373-1428	9/20/2019	67,658.40	Employee Benefits
Affiliate Loan	300 Crescent Court, Suite 700 Dallas, TX 75201	9/23/2019	1,000,000.00	Affiliate Loan
Attia Medical, PC	5820 Oberlin Dr. Suite 205 San Diego CA 92121	9/23/2019	12,500.00	Professional Services
DLA Piper LLP US	6225 Smith Avenue Baltimore MD 21209	9/23/2019	200,000.00	Professional Services
CDW Direct	PO BOX 75723 CHICAGO IL 60675-5723	9/24/2019	3,059.50	Suppliers/Vendors
HIGHLAND CREDIT OPPORTUNITIES FUND	300 Crescent Court, Suite 700 Dallas, TX 75201	9/25/2019	300,000.00	Intercompany Funding
Consultant	2620 White Rock Rd. Dallas TX 75214	9/25/2019	8,109.75	Professional Services
Cole Schotz	Court Plaza North 25 Main Street Hackensack NJ 07602-0800	9/25/2019	100,000.00	Professional Services
Affiliate Loan	300 Crescent Court, Suite 700 Dallas, TX 75201	9/25/2019	900,000.00	Affiliate Loan
S&P Global Market Intelligence	33356 Collection Center Drive Chicago IL 60693-0333	9/25/2019	368,894.61	Professional Services

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Trading Partner Name	Trading Partner Address	Payment Date	Payment Amount	Reason for Transfer
Arris Western Corp.	718 N Buckner #316 Dallas TX 75218	9/25/2019	1,325.29	Professional Services
Harbor Yacht Clubs, LLC	1880 Harbor Island Drive San Diego CA 92101	9/25/2019	538.75	Suppliers/Vendors
ICE Data Pricing & Reference Data, LLC	PO Box 98616 Chicago IL 60693	9/25/2019	8,819.61	Professional Services
Charles Schwab	PO Box 1270 Tulsa, OK 74101-1270	9/26/2019	35,354.55	Employee Benefits
Duff & Phelps, LLC	2397 Paysphere Circle Chicago IL 60674	9/30/2019	100,000.00	Professional Services
HIGHLAND CREDIT OPPORTUNITIES FUND	300 Crescent Court, Suite 700 Dallas, TX 75201	9/30/2019	200,000.00	Intercompany Funding
Frontier State Bank	5100 S I-35 Service Rd, Oklahoma City, OK 73129	9/30/2019	98,707.96	Secured Loan Payment
Arris Western Corp.	718 N Buckner #316 Dallas TX 75218	9/30/2019	11,000.00	Professional Services
Professional Speaker	Koa Kai, LLC PO Box 232307 Leucadia CA 92023	9/30/2019	15,000.00	Suppliers/Vendors
Highland Latin America Consulting, LTD	300 Crescent Court, Suite 700 Dallas, TX 75201	9/30/2019	105,000.00	Intercompany Funding
Attia Medical, PC	5820 Oberlin Dr. Suite 205 San Diego CA 92121	9/30/2019	12,500.00	Professional Services
DLA Piper LLP US	6225 Smith Avenue Baltimore MD 21209	9/30/2019	200,000.00	Professional Services
AT&T MOBILITY	PO BOX 6463 CAROL STREAM IL 60197-6463	10/1/2019	-	Professional Services
Employee	300 Crescent Court, Suite 700 Dallas, TX 75201	10/1/2019	13,059.43	Bonus
Crescent TC Investors LP	200 Crescent Ct Suite 250 Dallas TX 75201	10/1/2019	192,588.09	Rent Payment
Frontier State Bank	5100 S I-35 Service Rd, Oklahoma City, OK 73129	10/1/2019	128,793.00	Secured Loan Payment
Bloomberg Finance LP	PO Box 416604 Boston MA 02241-6604	10/2/2019	113,095.54	Professional Services
Consultant	300 Crescent Court, Suite 700 Dallas, TX 75201	10/2/2019	28,821.81	Professional Services
Pachulski Stang Ziehl & Jones LLP	10100 Santa Monica Blvd. 13th Floor Los Angeles CA 90067	10/2/2019	500,000.00	Professional Services
HIGHLAND CAPITAL MANAGEMENT, LP	300 Crescent Court, Suite 700 Dallas, TX 75201	10/3/2019	114,381.18	Employee Benefits
OKADA INSURANCE RABBI TRUST	300 Crescent Court, Suite 700 Dallas, TX 75201	10/3/2019	14,875.00	Insurance
AT&T	PO BOX 5019 CAROL STREAM IL 60197	10/3/2019	309.51	Professional Services
Employee	300 Crescent Court, Suite 700 Dallas, TX 75201	10/4/2019	113,104.52	Employee Reimbursement
Siepe Software, LLC	5440 Harvest Hill Rd Suite 100, Dallas, TX 75230	10/4/2019	18,042.03	Professional Services
Siepe Software, LLC	5440 Harvest Hill Rd Suite 100, Dallas, TX 75230	10/4/2019	18,042.03	Professional Services
TW Telecom Holdings, llc	PO Box 910182 Denver CO 80291-0182	10/4/2019	7,710.33	Professional Services
CDW Direct	PO BOX 75723 CHICAGO IL 60675-5723	10/4/2019	23,277.86	Suppliers/Vendors
CDW Direct	PO BOX 75723 CHICAGO IL 60675-5723	10/4/2019	23,788.47	Suppliers/Vendors
HIGHLAND CREDIT OPPORTUNITIES FUND	300 Crescent Court, Suite 700 Dallas, TX 75201	10/4/2019	500,000.00	Intercompany Funding
AT&T	PO Box 9005 Carol Stream IL 60197-9005	10/4/2019	2,845.06	Professional Services
AT&T	PO BOX 5019 CAROL STREAM IL 60197	10/4/2019	3,573.58	Professional Services
AT&T	PO BOX 5019 CAROL STREAM IL 60197	10/4/2019	146.78	Professional Services
Willis of Texas, Inc.	Dallas/Ft. Worth Division PO Box 730310 Dallas TX 75373-0310	10/4/2019	5,754.18	Insurance
Blue Cross Blue Shield of Texas	PO Box 731428 Dallas TX 75373-1428	10/4/2019	109,241.27	Employee Benefits
Houlihan Lokey	10250 Constellation Blvd, 5th Floor Attn: Accounts Receivable Los Angeles CA 90067-6802	10/4/2019	55,667.91	Professional Services
Ipreo Data Inc.	421 Fayetteville Street Suite 900 Raleigh NC 27601	10/4/2019	9,500.00	Professional Services
Siepe Services, LLC	5440 Harvest Hill Road Suite 100 Dallas TX 75230	10/4/2019	182,790.68	Professional Services
Hedgeye Risk Mgmt, LLC	1 High Ridge Park 3rd Floor Stamford CT 06905	10/4/2019	25,265.10	Professional Services
Spin-Off Advisors, LLC	1327 W. Washington Blvd Ste 4-G Chicago IL 60607	10/4/2019	15,000.00	Professional Services
GRUBHUB for Work	PO Box 748570 Los Angeles CA 90074-8570	10/4/2019	14,343.81	Suppliers/Vendors
Flexential Colorado Corp.	PO Box 732368 Dallas TX 75373-2368	10/4/2019	24,031.79	Professional Services
Highland Latin America Consulting, LTD	300 Crescent Court, Suite 700 Dallas, TX 75201	10/4/2019	75,000.00	Intercompany Funding
DLA Piper LLP US	6225 Smith Avenue Baltimore MD 21209	10/4/2019	200,000.00	Professional Services
Siepe Software, LLC	5440 Harvest Hill Rd Suite 100, Dallas, TX 75230	10/7/2019	18,042.03	Professional Services
Pricewaterhouse Coopers, LLP	PO BOX 952282 DALLAS TX 75395-2282	10/7/2019	24,000.00	Professional Services
LAFFER ASSOCIATES	103 Murphy Court NASHVILLE TN 37203	10/7/2019	28,188.37	Professional Services
MARKIT WSO CORPORATION	Three Lincoln Centre 5430 LBJ Frwy; STe 800 DALLAS TX 75240	10/7/2019	27,213.92	Professional Services
Strategas Securities LLC	52 Vanderbilt Ave 8th Fl New York NY 10017	10/7/2019	27,195.87	Professional Services
Bloomberg Finance LP	PO Box 416604 Boston MA 02241-6604	10/7/2019	100,000.00	Professional Services
Intex Solutions, Inc.	Accounts Receivable 110 A St Needham MA 02494-2807	10/7/2019	35,200.00	Professional Services
BCA Research Inc	1002 Sherbrooke St. W Suite 1600 Montreal Quebec H3A 3L6	10/7/2019	18,294.21	Professional Services
Consultant	2620 White Rock Rd. Dallas TX 75214	10/7/2019	5,274.50	Professional Services
Employee	300 Crescent Court, Suite 700 Dallas, TX 75201	10/7/2019	43,910.97	Employee Reimbursement
Verity Group	PO Box 940361 Plano TX 75094-0361	10/7/2019	8,940.84	Suppliers/Vendors
Canteen Vending Services	PO Box 417632 Boston MA 02241-7632	10/7/2019	30,017.35	Suppliers/Vendors
ABM	PO Box 419860 Boston MA 02241-9860	10/7/2019	5,884.76	Suppliers/Vendors
Greenwood Office Outfitters	2951 Suffolk Drive Suite 640 Fort Worth TX 76133-1149	10/7/2019	4,628.62	Suppliers/Vendors
Houlihan Lokey	10250 Constellation Blvd, 5th Floor Attn: Accounts Receivable Los Angeles CA 90067-6802	10/7/2019	113,092.79	Professional Services
Houlihan Lokey	10250 Constellation Blvd, 5th Floor Attn: Accounts Receivable Los Angeles CA 90067-6802	10/7/2019	112,000.00	Professional Services
Deloitte Tax LLP	PO Box 844736 Dallas TX 75284-4736	10/7/2019	142,205.00	Professional Services
Deloitte Tax LLP	PO Box 844736 Dallas TX 75284-4736	10/7/2019	104,905.00	Professional Services
Siepe Services, LLC	5440 Harvest Hill Road Suite 100 Dallas TX 75230	10/7/2019	185,000.00	Professional Services
GRUBHUB for Work	PO Box 748570 Los Angeles CA 90074-8570	10/7/2019	5,556.50	Suppliers/Vendors
ValueScope, Inc.	1400 Thetford Ct. Southlake TX 76092	10/7/2019	25,000.00	Professional Services
Development Specialists, Inc.	333 South Grand Avenue Suite 4070 Los Angeles CA 90071-1544	10/7/2019	250,000.00	Professional Services
Bragalone Conroy PC	Chase Tower 2200 Ross Avenue Dallas TX 75201-7924	10/7/2019	10,000.00	Professional Services
Kurtzman Carson Consultants LLC	Dept CH 16639 Palatine IL 60055-6639	10/7/2019	50,000.00	Professional Services
Hunton Andrews Kurth, LLP	1445 Ross Avenue Suite 3700 Dallas TX 75202-2799	10/7/2019	156,996.86	Professional Services
Liberty Life Assurance Company of Boston - Group Benefits	PO Box 2658 Carol Stream IL 60132-2658	10/7/2019	15,928.25	Employee Benefits
ICE Data Pricing & Reference Data, LLC	PO Box 98616 Chicago IL 60693	10/7/2019	5,879.74	Professional Services
Refinitiv US LLC	3 Times Square New York NY 10036	10/7/2019	12,823.98	Professional Services
Deloitte Tax LLP	PO Box 844736 Dallas TX 75284-4736	10/8/2019	128,557.00	Professional Services
AT&T	PO BOX 5019 CAROL STREAM IL 60197	10/10/2019	3,573.58	Professional Services

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Trading Partner Name	Trading Partner Address	Payment Date	Payment Amount	Reason for Transfer
Blue Cross Blue Shield of Texas	PO Box 731428 Dallas TX 75373-1428	10/10/2019	161,497.04	Employee Benefits
Cole Schotz	Court Plaza North 25 Main Street Hackensack NJ 07602-0800	10/10/2019	34,894.42	Professional Services
Houlihan Lokey	10250 Constellation Blvd, 5th Floor Attn: Accounts Receivable Los Angeles CA 90067-6802	10/10/2019	1,092.79	Professional Services
Snell & Wilmer LLP	One Arizona Center 400 E. Van Buren, Suite 1900 Phoenix AZ 85004-2202	10/10/2019	19,119.65	Professional Services
DLA Piper LLP US	6225 Smith Avenue Baltimore MD 21209	10/10/2019	1,115,000.00	Professional Services
ASW Law Limited	Crawford House 50 Cedar Avenue Hamilton HM11	10/10/2019	10,845.00	Professional Services
Carey Olsen	PO Box 10008 Willow House Grand Cayman KY1-1001	10/10/2019	48,595.00	Professional Services
Canteen Vending Services	PO Box 417632 Boston MA 02241-7632	10/10/2019	8,656.51	Suppliers/Vendors
Platinum Parking	300 Crescent Court Level G1, LB#102 Dallas TX 75201	10/10/2019	33,007.19	Professional Services
Charles Schwab	PO Box 1270 Tulsa, OK 74101-1270	10/11/2019	34,454.43	Employee Benefits
Cole Schotz	Court Plaza North 25 Main Street, PO Box 800 Hackensack NJ 07602-0800	10/11/2019	25,000.00	Professional Services
Pershing LLC	One Pershing Plaza Attn: IBD - 15th Floor Jersey City NJ 07399	10/15/2019	17,745.66	Investing
CBIZ Valuation Group, Inc.	3030 LBJ Freeway, Ste 1650 Dallas TX 75234	10/15/2019	12,400.00	Professional Services
Status Labs.com	151 South 1st Suite 100 Austin TX 78704	10/15/2019	18,000.00	Professional Services
Discovery Benefits [2]	4321 20th Ave. S. Fargo, ND 58103	Various	36,473.83	FSA Transfers
Expense Reimbursements [3]	300 Crescent Court, Suite 700 Dallas, TX 75201	Various	557,471.14	Expense reimbursements
Total			**$ 23,255,006.86**	

[1] Does not include activity in Jefferies Prime Broker account.
[2] Discovery benefits are the daily FSA amounts paid for healthcare related charges.
[3] Expense reimbursements are not tracked in The Debtor's accounting software at detail requested

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Trading Partner	Trading Partner Address	Payment Date	Payment Amount
Acis Capital Management	Attn: Rakhee V. Patel, Winstead PC 500 Winstead Building Dallas TX 75201	8/27/2019	12,249.65
Brasilinvest Empreendimentos e Participaces S/A	300 Crescent Court, Suite 700 Dallas, TX 75201	10/26/2018	10,000.00
Brasilinvest Empreendimentos e Participaces S/A	300 Crescent Court, Suite 700 Dallas, TX 75201	11/1/2018	10,000.00
Brasilinvest Empreendimentos e Participaces S/A	300 Crescent Court, Suite 700 Dallas, TX 75201	12/3/2018	10,000.00
Brasilinvest Empreendimentos e Participaces S/A	300 Crescent Court, Suite 700 Dallas, TX 75201	1/2/2019	10,000.00
Brasilinvest Empreendimentos e Participaces S/A	300 Crescent Court, Suite 700 Dallas, TX 75201	1/25/2019	10,000.00
Brasilinvest Empreendimentos e Participaces S/A	300 Crescent Court, Suite 700 Dallas, TX 75201	2/1/2019	10,000.00
Brasilinvest Empreendimentos e Participaces S/A	300 Crescent Court, Suite 700 Dallas, TX 75201	3/1/2019	10,000.00
Brasilinvest Empreendimentos e Participaces S/A	300 Crescent Court, Suite 700 Dallas, TX 75201	4/3/2019	10,000.00
Brasilinvest Empreendimentos e Participaces S/A	300 Crescent Court, Suite 700 Dallas, TX 75201	5/1/2019	10,000.00
Brasilinvest Empreendimentos e Participaces S/A	300 Crescent Court, Suite 700 Dallas, TX 75201	6/3/2019	10,000.00
Brasilinvest Empreendimentos e Participaces S/A	300 Crescent Court, Suite 700 Dallas, TX 75201	7/1/2019	10,000.00
Brasilinvest Empreendimentos e Participaces S/A	300 Crescent Court, Suite 700 Dallas, TX 75201	8/1/2019	10,000.00
Brasilinvest Empreendimentos e Participaces S/A	300 Crescent Court, Suite 700 Dallas, TX 75201	9/3/2019	10,000.00
Dondero Insurance Rabbi Trust	300 Crescent Court, Suite 700 Dallas, TX 75201	1/2/2019	36,580.00
Dugaboy Investment Trust	300 Crescent Court, Suite 700 Dallas, TX 75201	12/19/2018	9,246.96
Dugaboy Investment Trust	300 Crescent Court, Suite 700 Dallas, TX 75201	3/28/2019	6,960.38
Eagle Equity Advisors, LLC	300 Crescent Court, Suite 700 Dallas, TX 75201	8/13/2019	155,000.00
Eagle Equity Advisors, LLC	300 Crescent Court, Suite 700 Dallas, TX 75201	8/29/2019	75,000.00
Eagle Equity Advisors, LLC	300 Crescent Court, Suite 700 Dallas, TX 75201	9/11/2019	40,000.00
Frank Waterhouse - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	10/31/2018	41.76
Frank Waterhouse - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	11/15/2018	70.73
Frank Waterhouse - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	11/30/2018	13.96
Frank Waterhouse - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	12/14/2018	50.74
Frank Waterhouse - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	12/31/2018	26.84
Frank Waterhouse - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	1/15/2019	56.68
Frank Waterhouse - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	1/31/2019	58.06
Frank Waterhouse - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	2/15/2019	183.46
Frank Waterhouse - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	2/28/2019	18.89
Frank Waterhouse - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	3/15/2019	28.88
Frank Waterhouse - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	3/29/2019	105.11
Frank Waterhouse - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	4/15/2019	23.70
Frank Waterhouse - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	4/30/2019	34.79
Frank Waterhouse - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	5/15/2019	110.76
Frank Waterhouse - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	5/31/2019	31.76
Frank Waterhouse - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	6/14/2019	43.23
Frank Waterhouse - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	6/28/2019	20.56
Frank Waterhouse - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	7/15/2019	87.13
Frank Waterhouse - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	7/31/2019	38.96
Frank Waterhouse - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	8/15/2019	19.48
Frank Waterhouse - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	8/30/2019	45.08
Frank Waterhouse - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	9/13/2019	66.22
Frank Waterhouse - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	9/30/2019	10.82
Frank Waterhouse - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	10/15/2019	115.75
Governance Re Ltd	Wellesley House; 2nd Floor 90 Pitts Bay Road Pembroke HM 08	6/14/2019	300,000.00
HCRE Partners, LLC	300 Crescent Court, Suite 700 Dallas, TX 75201	9/25/2019	900,000.00
Highland Capital Management Fund Advisors	300 Crescent Court, Suite 700 Dallas, TX 75201	5/2/2019	2,400,000.00
Highland Capital Management Fund Advisors	300 Crescent Court, Suite 700 Dallas, TX 75201	5/3/2019	5,000,000.00
Highland Capital Management Korea	300 Crescent Court, Suite 700 Dallas, TX 75201	12/6/2018	1,200,000.00
Highland Capital Management Korea	300 Crescent Court, Suite 700 Dallas, TX 75201	4/17/2019	1,100,000.00
Highland Capital Management Korea	300 Crescent Court, Suite 700 Dallas, TX 75201	7/8/2019	630,000.00
Highland Capital Management Korea	300 Crescent Court, Suite 700 Dallas, TX 75201	7/19/2019	630,000.00
Highland Capital Management Latin America	300 Crescent Court, Suite 700 Dallas, TX 75201	5/3/2019	1,350,000.00
Highland Capital Management Latin America	300 Crescent Court, Suite 700 Dallas, TX 75201	6/28/2019	10,000.00

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Trading Partner	Trading Partner Address	Payment Date	Payment Amount
Highland Capital Management Services	300 Crescent Court, Suite 700 Dallas, TX 75201	5/29/2019	400,000.00
Highland Capital Management Services	300 Crescent Court, Suite 700 Dallas, TX 75201	6/26/2019	150,000.00
Highland Capital Of New York	300 Crescent Court, Suite 700 Dallas, TX 75201	10/26/2018	65,000.00
Highland Capital Of New York	300 Crescent Court, Suite 700 Dallas, TX 75201	10/30/2018	5,864.10
Highland Capital Of New York	300 Crescent Court, Suite 700 Dallas, TX 75201	11/13/2018	3,942.72
Highland Capital Of New York	300 Crescent Court, Suite 700 Dallas, TX 75201	11/28/2018	3,848.70
Highland Capital Of New York	300 Crescent Court, Suite 700 Dallas, TX 75201	12/12/2018	3,744.31
Highland Capital Of New York	300 Crescent Court, Suite 700 Dallas, TX 75201	12/27/2018	4,176.47
Highland Capital Of New York	300 Crescent Court, Suite 700 Dallas, TX 75201	1/11/2019	3,954.93
Highland Capital Of New York	300 Crescent Court, Suite 700 Dallas, TX 75201	1/29/2019	4,703.71
Highland Capital Of New York	300 Crescent Court, Suite 700 Dallas, TX 75201	2/5/2019	50,000.00
Highland Capital Of New York	300 Crescent Court, Suite 700 Dallas, TX 75201	3/5/2019	150,000.00
Highland Capital Of New York	300 Crescent Court, Suite 700 Dallas, TX 75201	3/26/2019	50,000.00
Highland Capital Of New York	300 Crescent Court, Suite 700 Dallas, TX 75201	6/11/2019	55,000.00
Highland Capital Of New York	300 Crescent Court, Suite 700 Dallas, TX 75201	7/1/2019	25,000.00
Highland Capital Of New York	300 Crescent Court, Suite 700 Dallas, TX 75201	8/26/2019	150,000.00
Highland Latin America Consulting, LTD	300 Crescent Court, Suite 700 Dallas, TX 75201	2/27/2019	100,000.00
Highland Latin America Consulting, LTD	300 Crescent Court, Suite 700 Dallas, TX 75201	3/29/2019	25,000.00
Highland Latin America Consulting, LTD	300 Crescent Court, Suite 700 Dallas, TX 75201	4/3/2019	15,000.00
Highland Latin America Consulting, LTD	300 Crescent Court, Suite 700 Dallas, TX 75201	4/15/2019	50,000.00
Highland Latin America Consulting, LTD	300 Crescent Court, Suite 700 Dallas, TX 75201	6/28/2019	90,000.00
Highland Latin America Consulting, LTD	300 Crescent Court, Suite 700 Dallas, TX 75201	8/29/2019	55,000.00
Highland Latin America Consulting, LTD	300 Crescent Court, Suite 700 Dallas, TX 75201	9/30/2019	105,000.00
Highland Latin America Consulting, LTD	300 Crescent Court, Suite 700 Dallas, TX 75201	10/4/2019	75,000.00
Highland Select Equity Fund	300 Crescent Court, Suite 700 Dallas, TX 75201	12/5/2018	171,000.00
Highland Select Equity Fund	300 Crescent Court, Suite 700 Dallas, TX 75201	4/18/2019	3,000,000.00
Highland Select Equity Fund	300 Crescent Court, Suite 700 Dallas, TX 75201	5/2/2019	100,000.00
Highland Select Equity Fund	300 Crescent Court, Suite 700 Dallas, TX 75201	5/14/2019	255,000.00
Highland Select Equity Fund	300 Crescent Court, Suite 700 Dallas, TX 75201	5/22/2019	1,500,000.00
Highland Select Equity Fund	300 Crescent Court, Suite 700 Dallas, TX 75201	5/30/2019	350,000.00
Hunter Mountain Investment Trust	300 Crescent Court, Suite 700 Dallas, TX 75201	12/19/2018	4,930,722.50
Hunter Mountain Investment Trust	300 Crescent Court, Suite 700 Dallas, TX 75201	3/28/2019	3,711,456.47
James Dondero	300 Crescent Court, Suite 700 Dallas, TX 75201	3/28/2019	3,750,000.00
James Dondero - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	10/31/2018	8,986.25
James Dondero - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	11/15/2018	65,078.25
James Dondero - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	12/14/2018	115,481.36
James Dondero - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	12/31/2018	548.19
James Dondero - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	1/15/2019	96,786.37
James Dondero - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	1/31/2019	38,628.04
James Dondero - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	2/15/2019	42,434.77
James Dondero - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	2/28/2019	19,062.59
James Dondero - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	3/15/2019	50,771.13
James Dondero - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	3/29/2019	21,934.60
James Dondero - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	4/15/2019	60,190.72
James Dondero - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	4/30/2019	7,164.24
James Dondero - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	5/15/2019	89,256.54
James Dondero - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	5/31/2019	38,804.42
James Dondero - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	6/14/2019	82,710.42
James Dondero - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	6/28/2019	7,604.98
James Dondero - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	7/15/2019	47,005.97
James Dondero - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	7/31/2019	748.07
James Dondero - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	8/15/2019	85,058.51
James Dondero - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	8/30/2019	12,713.97
James Dondero - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	9/13/2019	56,762.57

Highland Capital Management LP
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Trading Partner	Trading Partner Address	Payment Date	Payment Amount
James Dondero - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	9/30/2019	24,497.96
James Dondero - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	10/15/2019	32,977.48
Lee Parker - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	10/31/2018	1,341.26
Lee Parker - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	11/15/2018	164.01
Lee Parker - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	11/30/2018	61.54
Lee Parker - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	12/31/2018	2,378.81
Lee Parker - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	1/31/2019	285.54
Lee Parker - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	2/28/2019	876.87
Lee Parker - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	3/15/2019	267.99
Lee Parker - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	3/29/2019	112.22
Lee Parker - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	4/30/2019	160.50
Lee Parker - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	5/15/2019	144.02
Lee Parker - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	6/14/2019	688.48
Lee Parker - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	6/28/2019	48.54
Lee Parker - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	7/15/2019	74.95
Lee Parker - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	7/31/2019	153.81
Lee Parker - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	8/30/2019	217.72
Lee Parker - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	9/30/2019	3,615.11
Lee Parker - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	10/15/2019	5,644.08
Maples & Calder	Ugland House Po Box 309Gt; S Church St George Town Grand Cayman	12/7/2018	6,780.65
Maples & Calder	Ugland House Po Box 309Gt; S Church St George Town Grand Cayman	12/12/2018	17,215.19
Maples & Calder	Ugland House Po Box 309Gt; S Church St George Town Grand Cayman	1/4/2019	95,798.38
Maples & Calder	Ugland House Po Box 309Gt; S Church St George Town Grand Cayman	1/10/2019	2,600.00
Maples & Calder	Ugland House Po Box 309Gt; S Church St George Town Grand Cayman	3/7/2019	2,453.66
Maples & Calder	Ugland House Po Box 309Gt; S Church St George Town Grand Cayman	9/16/2019	5,218.40
MaplesFS Service Company Limited	PO Box 1093 Boundary Hall Grand Cayman KY1-1102	2018/11	3,600.00
MaplesFS Service Company Limited	PO Box 1093 Boundary Hall Grand Cayman KY1-1102	2018/11	3,500.00
MaplesFS Service Company Limited	PO Box 1093 Boundary Hall Grand Cayman KY1-1102	2018/11	3,500.00
MaplesFS Service Company Limited	PO Box 1093 Boundary Hall Grand Cayman KY1-1102	2018/11	3,600.00
MaplesFS Service Company Limited	PO Box 1093 Boundary Hall Grand Cayman KY1-1102	2018/11	3,600.00
MaplesFS Service Company Limited	PO Box 1093 Boundary Hall Grand Cayman KY1-1102	2018/11	3,500.00
MaplesFS Service Company Limited	PO Box 1093 Boundary Hall Grand Cayman KY1-1102	2018/11	3,500.00
MaplesFS Service Company Limited	PO Box 1093 Boundary Hall Grand Cayman KY1-1102	2018/11	3,500.00
MaplesFS Service Company Limited	PO Box 1093 Boundary Hall Grand Cayman KY1-1102	2018/11	3,500.00
MaplesFS Service Company Limited	PO Box 1093 Boundary Hall Grand Cayman KY1-1102	2018/11	3,500.00
MaplesFS Service Company Limited	PO Box 1093 Boundary Hall Grand Cayman KY1-1102	2018/12	2,453.66
MaplesFS Service Company Limited	PO Box 1093 Boundary Hall Grand Cayman KY1-1102	2018/12	2,453.66
MaplesFS Service Company Limited	PO Box 1093 Boundary Hall Grand Cayman KY1-1102	2018/12	2,453.66
MaplesFS Service Company Limited	PO Box 1093 Boundary Hall Grand Cayman KY1-1102	2018/12	2,453.66
MaplesFS Service Company Limited	PO Box 1093 Boundary Hall Grand Cayman KY1-1102	2018/12	2,453.66
MaplesFS Service Company Limited	PO Box 1093 Boundary Hall Grand Cayman KY1-1102	2018/12	2,453.66
MaplesFS Service Company Limited	PO Box 1093 Boundary Hall Grand Cayman KY1-1102	2018/12	2,453.66
MaplesFS Service Company Limited	PO Box 1093 Boundary Hall Grand Cayman KY1-1102	2018/12	2,453.66
MaplesFS Service Company Limited	PO Box 1093 Boundary Hall Grand Cayman KY1-1102	2018/12	2,453.66
MaplesFS Service Company Limited	PO Box 1093 Boundary Hall Grand Cayman KY1-1102	2018/12	2,453.66
MaplesFS Service Company Limited	PO Box 1093 Boundary Hall Grand Cayman KY1-1102	2018/12	8,876.22

Highland Capital Management LP
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Trading Partner	Trading Partner Address	Payment Date	Payment Amount
MaplesFS Service Company Limited	PO Box 1093 Boundary Hall Grand Cayman KY1-1102	2018/12	2,453.66
MaplesFS Service Company Limited	PO Box 1093 Boundary Hall Grand Cayman KY1-1102	2018/12	8,876.22
MaplesFS Service Company Limited	PO Box 1093 Boundary Hall Grand Cayman KY1-1102	2018/12	2,453.66
MaplesFS Service Company Limited	PO Box 1093 Boundary Hall Grand Cayman KY1-1102	2018/12	2,453.66
MaplesFS Service Company Limited	PO Box 1093 Boundary Hall Grand Cayman KY1-1102	2019/01	1,300.00
MaplesFS Service Company Limited	PO Box 1093 Boundary Hall Grand Cayman KY1-1102	2019/04	3,450.68
MaplesFS Service Company Limited	PO Box 1093 Boundary Hall Grand Cayman KY1-1102	2019/04	3,450.68
MaplesFS Service Company Limited	PO Box 1093 Boundary Hall Grand Cayman KY1-1102	2019/05	1,777.77
MaplesFS Service Company Limited	PO Box 1093 Boundary Hall Grand Cayman KY1-1102	2019/05	1,777.77
MaplesFS Service Company Limited	PO Box 1093 Boundary Hall Grand Cayman KY1-1102	2019/05	1,777.77
MaplesFS Service Company Limited	PO Box 1093 Boundary Hall Grand Cayman KY1-1102	2019/05	1,777.77
MaplesFS Service Company Limited	PO Box 1093 Boundary Hall Grand Cayman KY1-1102	2019/05	1,777.77
MaplesFS Service Company Limited	PO Box 1093 Boundary Hall Grand Cayman KY1-1102	2019/05	1,777.77
Mark Okada - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	10/31/2018	68.12
Mark Okada - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	12/31/2018	2,793.63
Mark Okada - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	1/15/2019	28,862.62
Mark Okada - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	2/15/2019	1,174.32
Mark Okada - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	3/15/2019	740.40
Mark Okada - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	3/29/2019	10,809.37
Mark Okada - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	4/15/2019	4,485.01
Mark Okada - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	5/15/2019	3,584.31
Mark Okada - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	6/14/2019	6,121.00
Mark Okada - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	7/15/2019	2,008.15
Mark Okada - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	8/15/2019	139.27
Mark Okada - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	8/30/2019	675.80
Mark Okada - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	9/13/2019	10,961.53
Mark Okada - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	10/15/2019	7,312.69
NexPoint Advisors, LP	300 Crescent Court, Suite 700 Dallas, TX 75201	9/19/2019	500,000.00
NexPoint Advisors, LP	300 Crescent Court, Suite 700 Dallas, TX 75201	9/23/2019	1,000,000.00
Okada Insurance Rabbi Trust	300 Crescent Court, Suite 700 Dallas, TX 75201	10/3/2019	14,875.00
Scott Ellington - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	11/15/2018	1,295.64
Scott Ellington - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	12/31/2018	5,149.90
Scott Ellington - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	1/15/2019	59.95
Scott Ellington - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	2/15/2019	102.32
Scott Ellington - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	3/29/2019	59.95
Scott Ellington - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	4/30/2019	59.95
Scott Ellington - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	5/15/2019	364.95
Scott Ellington - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	6/28/2019	59.95
Scott Ellington - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	7/15/2019	59.95
Scott Ellington - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	8/30/2019	205,787.95
Scott Ellington - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	9/30/2019	59.95
Scott Ellington - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	10/15/2019	59.95
Scott Ellington - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	10/15/2019	113,104.52
Strand Advisors	300 Crescent Court, Suite 700 Dallas, TX 75201	12/19/2018	12,423.44
Strand Advisors	300 Crescent Court, Suite 700 Dallas, TX 75201	3/28/2019	9,351.38
Thomas Surgent - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	10/31/2018	419.21
Thomas Surgent - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	12/14/2018	5,024.00
Thomas Surgent - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	1/31/2019	355.30
Thomas Surgent - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	4/15/2019	529.77
Thomas Surgent - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	4/30/2019	4,185.33
Thomas Surgent - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	5/15/2019	589.52
Thomas Surgent - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	5/31/2019	480.00
Thomas Surgent - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	6/28/2019	1,591.54

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Exhibit C - SOFA #4

Trading Partner	Trading Partner Address	Payment Date	Payment Amount
Thomas Surgent - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	7/15/2019	125.00
Thomas Surgent - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	9/30/2019	28.00
Thomas Surgent - Expense Reimbursement	300 Crescent Court, Suite 700 Dallas, TX 75201	10/15/2019	2,232.89
Total			**36,608,252.91**

Refer to SOFA 30 and Exhibit G for other transfers.

Highland Capital Management LP
Case # 19-34054-SGJ
Exhibit D - SOFA 7

Case Title	Case Number	Nature of Case	Court Name	Court Address	Status of case
Duff & Phelps, LLC v. Highland Capital Management, L.P.	Index No. 653813/2019	Claim for breach of contract and unjust enrichment for failure to pay pursuant to a Letter of Engagement and accompanying Term and Conditions.	Supreme Court of the State of New York, County of New York	60 Centre St, New York, NY 10007	Concluded
Hamilton Partners, L.P. v. Highland Capital Management, L.P. and Joseph Furlong	Cause No. 6547	Allegedly improper restructuring of American Home Patient	Court of Chancery of the State of Delaware	34 The Circle Georgetown, DE 19947	Concluded
In re: Acis Capital Management, L.P. (Case No. 18-30264-SGJ-11), Acis Capital Management GP, LLC (Case No. 18-30265-SGJ-11) as Debtors. Robin Phelan, Chapter 11 Trustee v. Highland Capital Management, L.P., Highland CLO Funding, Ltd. f/k/a Acis Loan Funding, Ltd., CLO Holdco, Ltd., Neutra, Ltd., Acis CLO 2014-3 Ltd., Acis CLO 2014-4 Ltd., Acis CLO 2014-5 Ltd., Acis CLO 2015-6 Ltd., Acis CLO 2014-3 LLC, Acis CLO 2014-4 LLC, Acis CLO 2014-5 LLC, and Acis CLO 2015-6 LLC	Case No. 18-03212-SGJ	Chapter 11 Trustee, on behalf of Debtors, claimed violation of TRO, preliminary injunction, and fraudulent conveyance.	United State Bankruptcy Court for the Northern District of Texas, Dallas Division	George Mahon Federal Building 1205 Texas Ave., Rm 306 Lubbock, TX 79401-4002	Pending
McKool Smith P.C. vs. Highland Capital Management, L.P.	JAMS No.: 1310024517	Claim for breach of contract pursuant to Crusader Retention Agreement, Terry Retention Agreement, UBS Retention Agreement, and payment plan.	N/A	N/A	Pending
NWCC, LLC v. Highland CLO Management, LLC; Highland Capital Management, L.P.; Acis CLO 2014-3 Ltd.; Highland CLO 2014-3R Ltd.; Highland CLO 2014-3R LLC; Highland HCF Advisor, Ltd., as Trustee for Highland CLO Trust; Highland CLO Management Holdings, L.P.; Highland CLO Management GP, LLC; and Highland HCF Advisor, Ltd.	Case No. 654195/2018	Claim for breach of contract for failure to pay pursuant to Master Repurchase Agreement.	Supreme Court of the State of New York, County of New York	60 Centre St, New York, NY 10007	Pending
Patrick Daugherty v. Highland Capital Management, L.P., Highland Employee Retention Assets, LLC, Highland ERA Management, LLC, and James Dondero	No. 2017-0488-SG	Claim for collection of judgment against Highland Employee Retention Assets, LLC ("HERA")and allegation of improper transfer of assets from HERA to other Defendants	Court of Chancery of the State of Delaware	34 The Circle Georgetown, DE 19947	Pending
Redeemer Committee of the Highland Crusader Fund (acting through its members, (1) Grosvenor Capital Management, L.P., (2) FRM Investment Management Limited, (3) Concord Management, LLC, (4) Baylor University, (5) FIX Asset Management, (6) The United States Army Air Force Exchange Services) vs. Highland Capital Management, L.P.	Cause 2019 No. 332	Motion to enforce Crusader Arbitration Award	Supreme Court of Bermuda	2nd floor, Government Administration Building 30 Parliament Street Hamilton HM12 Bermuda	Pending
Redeemer Committee of the Highland Crusader Fund (acting through its members, (1) Grosvenor Capital Management, L.P., (2) FRM Investment Management Limited, (3) Concord Management, LLC, (4) Baylor University, (5) FIX Asset Management, (6) The United States Army Air Force Exchange Services) vs. Highland Capital Management, L.P.	Cause 153 of 2019	Motion to enforce Crusader Arbitration Award	Grant Court of the Cayman Islands Financial Services Division	P.O. Box 495 Grand Cayman KY1-1106 Cayman Islands	Pending
Redeemer Committee of the Highland Crusader Fund v. Highland Capital Management, L.P.	No. 01-16-002-6927	Injunctive relief and damages sought related to wind down of legacy hedge fund from the 2008 financial crisis.	N/A	N/A	Concluded
Redeemer Committee of the Highland Crusader Fund v. Highland Capital Management, L.P.	No. 12533-VCG	Injunctive relief and declaratory judgment related to wind down c legacy hedge fund from the 2008 financial crisis.	Court of Chancery of the State of Delaware	34 The Circle Georgetown, DE 19947	Pending
UBS Securities LLC and UBS AG, London Branch v. Highland Capital Management, L.P., Highland Special Opportunities Holding Company, Highland CDO Opportunity Master Fund, L.P. Highland Financial Partners, L.P., Highland Credit Strategies Fund, Highland Crusader Offshore Partners, L.P., Highland Credit Opportunities CDO, L.P. and Strand Advisors, Inc.	Case No. 650097/2009	Plaintiff alleges that HCMLP engaged in fraudulent transfers and breached its duty of good faith in fair dealing in managing the obligations of its funds.	Supreme Court of the State of New York, County of New York	60 Centre St, New York, NY 10007	Pending
Highland Capital Management, L.P. v. Joshua Terry	Case No. DC-16-11396	Employee Terry was terminated for cause. Highland filed suit for return of Highland's confidential information and other counterclaims. Terry has filed counterclaims for conversion and defamation.	162nd District Court of Dallas County, Texas	00 Commerce Street, 7th Floor New Tower, Dallas, TX 75202	Pending

Highland Capital Management LP
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Exhibit E - SOFA #9

Vendor	Amount	Expense Type	Date
B&H Photo	$ 7,000.00	Business Gifts	Feb 22, 2019
Competitive Cyclist	5,000.00	Business Gifts	Feb 22, 2019
REI	3,009.95	Business Gifts	Feb 22, 2019
The Family Place	4,500.00	Business Gifts	Jan 11, 2019
Neiman Marcus	10,000.00	Business Gifts	Jan 29, 2019
Nordstrom	9,000.00	Business Gifts	Jan 29, 2019
Neiman Marcus	2,800.00	Business Gifts	Aug 10, 2018
Barney's New York	3,015.00	Business Gifts	Dec 27, 2017
Etro Store	1,710.35	Business Gifts	Dec 27, 2017
Sutterfly	1,627.64	Business Gifts	Jun 26, 2019
B&H Video	5,015.00	Business Gifts	Oct 25, 2017
Competitive Cyclist	5,000.00	Business Gifts	Oct 25, 2017
Nordstrom	5,000.00	Business Gifts	Oct 25, 2017
REI	5,000.00	Business Gifts	Oct 25, 2017
JD	5,000.00	Business Gifts	Jan 29, 2019
AMEXGIFTCARD.COM-BOLATLANTA GA XXXXXXXX XXX-XXX-86	7,508.95	Business Gifts	Dec 12, 2018
Dallas Childrens Advocacy	17,500.00	Charitable Contributions	Jan 11, 2019
Political Contribution	20,000.00	Charitable Contributions	May 13, 2019
Political Contribution	30,000.00	Charitable Contributions	May 29, 2019
NORTHPARK CENTER	1,230.00	Gift/Awards	Apr 26, 2019
Kroger	1,483.30	Gift/Awards	Apr 26, 2018
Total Wine	1,125.76	Gift/Awards	Feb 13, 2018
Costco	2,168.86	Gift/Awards	Feb 13, 2019
Apple	4,000.00	Gift/Awards	Feb 26, 2018
B&H Photo	3,000.00	Gift/Awards	Feb 26, 2018
Competetive Cyclist	5,000.00	Gift/Awards	Feb 26, 2018
Nordstrom	1,350.00	Gift/Awards	Feb 26, 2018
Nordstrom	4,650.00	Gift/Awards	Feb 26, 2018
Nordstrom	1,250.00	Gift/Awards	Feb 26, 2018
Nordstrom	3,750.00	Gift/Awards	Mar 13, 2019
Nordstrom	7,010.00	Gift/Awards	Mar 13, 2019
REI	4,009.95	Gift/Awards	Mar 13, 2019
Neiman Marcus	2,075.00	Gift/Awards	Mar 27, 2018
AMAZON.COM*MB5OG1ZC1AMZN.COM/BI 1T5SDTP0V6I MERCHA	1,000.00	Gift/Awards	Feb 13, 2019
AMERICAN AIRLINES XXXXX-XXX-XXX XXXX0103 AA.COM	1,000.00	Gift/Awards	Feb 13, 2019
BABY.COM EGIFT CRD XXX-XXX-1977 9XXX9375PRC GIFT C	1,000.00	Gift/Awards	Feb 13, 2019
WALMART.COM XXX-XXX-6546 AR WMZVYLNO0YU RETAIL	1,000.00	Gift/Awards	Feb 13, 2019
AMAZON.COM*M01N33JX2AMZN.COM/BI 43WY9S9CUK8 MERCHA	1,000.00	Gift/Awards	Dec 12, 2018
AMAZON.COM*MX1474TL1AMZN.COM/BI 594WNOFOQ54 MERCHA	1,000.00	Gift/Awards	Dec 12, 2018
AMEXGIFTCARD.COM-BOLATLANTA GA XXXXXXXX XXX-XXX-86	68,280.95	Gift/Awards	Dec 12, 2018
WLLMS-SONMA CSTR GFTXXX-XXX-197 9XXX3699QOK GIFT C	1,000.00	Gift/Awards	Dec 12, 2018
AAA INNOVATIONS AAA NORWOOD NJ XXXXXXX8353 NON-DUR	4,558.75	Gift/Awards	Jan 11, 2019
AMEXGIFTCARD.COM-BOLATLANTA GA XXXXXXXX XXX-XXX-86	3,508.95	Gift/Awards	Jan 11, 2019
HOTELS.COM GIFT CARDXXX-XXX-197 9XXX8780BOK GIFT C	1,000.00	Gift/Awards	Jan 11, 2019
WLLMS-SONMA CSTR GFTXXX-XXX-197 9XXX6040GOK GIFT C	1,000.00	Gift/Awards	Jan 11, 2019
AMEX HILTON GIFT CARXXX-XXX-058 XXXX4162 BOL X0285	5,008.95	Gift/Awards	Feb 13, 2018
WLLMS-SONMA CSTR GFTXXX-XXX-197 4XXX2954P90 GIFT C	1,000.00	Gift/Awards	Nov 10, 2017
CS_*BABIESRUSGIFTCARXXX-XXX-197 4XXX6083G9J GIFT C	1,000.00	Gift/Awards	Dec 13, 2017
Four Seasons 8XX7828WILMINGTON XXXXXXXXXXX XXXXXX3	5,014.19	Gift/Awards	Dec 13, 2017
RITZ CARLTON GIFT CAMIDVALE UT XXXXXXXXX XXX-XXX-8	1,001.00	Gift/Awards	Dec 13, 2017
AMAZON.COM AMZN.COM/BILL WA 4HQ4J0AKNMQ MERCHANDIS	1,000.00	Gift/Awards	Jan 10, 2018
AMEX GIFT CARDS XXX-XXX-0582 NY OPWBXXX0386BOL XX2	7,008.95	Gift/Awards	Mar 13, 2018
Four Seasons 8XX7828WILMINGTON XXXXXXXXXXX XXXXXX3	1,014.93	Gift/Awards	Mar 13, 2018

Highland Capital Management LP
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Exhibit E - SOFA #9

Vendor	Amount	Expense Type	Date
AMEX GIFT CARDS XXX-XXX-0582 NY OPWBXXX3116BOL XX2	3,520.80	Gift/Awards	Apr 11, 2018
Four Seasons 8XX7828WILMINGTON XXXXXXXXXXX XXXXXX3	1,014.93	Gift/Awards	Apr 11, 2018
MARRIOTT GIFT CARDS MIDVALE UT XXXXXXXXX XXX-XXX-4	5,010.95	Gift/Awards	May 10, 2018
AMAZON.COM AMZN.COM/BILL WA 16B3JYYTOHX MERCHANDIS	1,000.00	Gift/Awards	Jun 12, 2018
Four Seasons 8XX7828WILMINGTON XXXXXXXXXXX XXXXXX3	1,014.93	Gift/Awards	Jun 12, 2018
Four Seasons 8XX7828WILMINGTON XXXXXXXXXXX XXXXXX3	5,014.93	Gift/Awards	Jun 12, 2018
Four Seasons 8XX7828WILMINGTON XXXXXXXXXXX XXXXXX3	1,000.00	Gift/Awards	Jun 12, 2018
HOTELS.COM GIFT CARDXXX-XXX-197 4XXX5955KHG GIFT C	1,000.00	Gift/Awards	Jun 12, 2018
AMAZON.COM AMZN.COM/BILL WA 4C5DKHDW6TK MERCHANDIS	1,000.00	Gift/Awards	Jul 11, 2018
AMAZON.COM AMZN.COM/BILL WA 5AK74J5T9LC MERCHANDIS	1,000.00	Gift/Awards	Jul 11, 2018
HOTELS.COM GIFT CARDXXX-XXX-197 4XXX5284CIM GIFT C	1,000.00	Gift/Awards	Jul 11, 2018
MARRIOTT GIFT CARDS MIDVALE UT XXXXXXXXX XXX-XXX-4	1,001.00	Gift/Awards	Jul 11, 2018
WLLMS-SONMA CSTR GFTXXX-XXX-197 4XXX6255NHS GIFT C	1,000.00	Gift/Awards	Jul 11, 2018
AMAZON.COM AMZN.COM/BILL WA 3NRIPESL5H2 MERCHANDIS	1,000.00	Gift/Awards	Aug 10, 2018
AMEXGIFTCARD.COM-BOLATLANTA GA XXXXXXXX XXX-XXX-86	3,522.85	Gift/Awards	Aug 10, 2018
HOTELS.COM GIFT CARDXXX-XXX-197 4XXXX8611J4 GIFT C	1,000.00	Gift/Awards	Aug 10, 2018
HOTELS.COM GIFT CARDXXX-XXX-197 8XXX5959YIW GIFT C	1,000.00	Gift/Awards	Aug 10, 2018
MARRIOTT GIFT CARDS MIDVALE UT XXXXXXXXX XXX-XXX-4	5,001.00	Gift/Awards	Aug 10, 2018
AMAZON.COM*MT7OW87B1AMZN.COM/BI 1XJ571A2WYA MERCHA	1,000.00	Gift/Awards	Nov 13, 2018
WLLMS-SONMA CSTR GFTXXX-XXX-197 9XXX5657XMX GIFT C	1,000.00	Gift/Awards	Nov 13, 2018
CS *HOTELS.COM GC XXX-XXX-1977 4XXX3604JRQ GIFT CA	1,000.00	Gift/Awards	Mar 13, 2019
HILTON GC XXX XXX-XXXXX-XXX-XXX XX0847 GIFTCARDS F	1,008.95	Gift/Awards	Mar 13, 2019
HOTELS.COM GIFT CARDXXX-XXX-197 4XXX1517JRH GIFT C	1,000.00	Gift/Awards	Mar 13, 2019
AMAZON.COM*MW2NP75Y2AMZN.COM/BI 1ZRLAH1KV0Q MERCHA	1,000.00	Gift/Awards	May 13, 2019
AMEXGIFTCARD.COM-BOLATLANTA GA XXXXXXXX XXX-XXX-86	3,515.95	Gift/Awards	May 13, 2019
AMEXGIFTCARD.COM-BOLATLANTA GA XXXXXXXX XXX-XXX-86	3,520.85	Gift/Awards	Jun 12, 2019
AMEXGIFTCARD.COM-BOLATLANTA GA XXXXXXXX XXX-XXX-86	3,515.95	Gift/Awards	Jul 11, 2019
ANSE CHASTANET - RESSOUFRIERE LC XXXXXXXXXX XXX-XX	5,000.00	Gift/Awards	Sep 11, 2018
Four Seasons 8XX7828WILMINGTON XXXXXXXXXXX XXXXXX3	5,014.93	Gift/Awards	Sep 11, 2018
MARRIOTT GIFT CARDS MIDVALE UT XXXXXXXXX XXX-XXX-4	1,010.95	Gift/Awards	Sep 11, 2018
RITZ CARLTON GIFT CAMIDVALE UT XXXXXXXXX XXX-XXX-8	1,010.95	Gift/Awards	Sep 11, 2018
WLLMS-SONMA CSTR GFTXXX-XXX-197 4XXXX6218KG GIFT C	1,000.00	Gift/Awards	Sep 11, 2018
AMAZON.COM*MT5FG6LG0AMZN.COM/BI 2CWA16B0JP6 MERCHA	2,000.00	Gift/Awards	Oct 11, 2018
AMEXGIFTCARD.COM-BOLATLANTA GA XXXXXXXX XXX-XXX-86	7,529.80	Gift/Awards	Oct 11, 2018
MARRIOTT GIFT CARDS MIDVALE UT XXXXXXXXX XXX-XXX-4	5,000.00	Gift/Awards	Oct 4, 2019
Hotels.com	1,000.00	Gift/Awards	Jul 11, 2019
Buy Buy Baby	1,000.00	Gift/Awards	Aug 13, 2019
William Sonoma	1,000.00	Gift/Awards	Aug 13, 2019
Amazon.com	1,000.00	Gift/Awards	Sep 10, 2019
AMAZON.COM*MA02T1UW2AMZN.COM/BI 59I475TIIR3 MERCHA	1,000.00	Gift/Awards	Sep 10, 2019
CS *BUYBUYBABY EGTFCXXX-XXX-197 4XXX9435NZ1 GIFT C	1,000.00	Gift/Awards	Sep 10, 2019
CS *HOTELS.COM GC XXX-XXX-1977 4XXX4055UYZ GIFT CA	1,000.00	Gift/Awards	Sep 10, 2019
MARRIOTT GIFT CARDS MIDVALE UT XXXXXXXXX XXX-XXX-4	1,000.00	Gift/Awards	Sep 10, 2019
MARRIOTT GIFT CARDS MIDVALE UT XXXXXXXXX XXX-XXX-4	1,000.00	Gift/Awards	Sep 10, 2019
CS *HOTELS.COM GC XXX-XXX-1977 9XXX0073VU5 GIFT CA	2,000.00	Gift/Awards	May 13, 2019
CS *HOTELS.COM GC XXX-XXX-1977 9XXX9190AU5 GIFT CA	1,000.00	Gift/Awards	May 13, 2019
CS *HOTELS.COM GC XXX-XXX-1977 9XXXX7723U5 GIFT CA	2,000.00	Gift/Awards	May 13, 2019
CS *HOTELS.COM GC XXX-XXX-1977 4XXXX2756TI GIFT CA	1,000.00	Gift/Awards	Apr 11, 2019
Beard Supply	1,623.75	Gift/Awards	Jan 10, 2018
Patagonia	2,685.71	Gift/Awards	Jan 26, 2018
Political Contribution	25,000.00	Gift/Charity	Jun 30, 2018
Political Contribution	25,000.00	Gift/Charity	Jun 30, 2019
Total	**$ 445,725.61**		

Highland Capital Management LP
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Exhibit F - SOFA 25

Name	Relationship	Address	EIN	Description of Business	Date of Creation	Date of Termination (if applicable)
Aberdeen Loan Funding, Ltd.	IMA	Intertrust Corporate Services (Cayman) Limited , 190 Elgin Ave, George Town, Grand Cayman KY1-9005, Cayman Islands	N/A	CLO Fund	12/14/2006	
Brentwood CLO, Ltd.	IMA	MaplesFS - PO Box 1093, Grand Cayman, KY1-1102, Cayman Islands	98-0524481	CLO Fund	5/21/2006	
Bristol Bay Funding Ltd.	IMA	Intertrust Corporate Services (Cayman) Limited , 190 Elgin Ave, George Town, Grand Cayman KY1-9005, Cayman Islands	98-0418113	CLO Fund	11/18/2003	
Eastland CLO, Ltd.	IMA	Elian Fiduciary Services (Cayman) Limted - 190 Elgin Ave, George Town, Grand Cayman KY1-9005, Cayman Islands	98-0550088	CLO Fund	3/31/2006	
Gleneagles CLO, Ltd.	IMA	MaplesFS Limted, PO Box 1093, George Town, Grand Cayman KY1-1102, Cayman islands	N/A	CLO Fund	2/25/2005	
Grayson CLO, Ltd.	IMA	Elian Fiduciary Services (Cayman) Limted - 190 Elgin Ave, George Town, Grand Cayman KY1-9005, Cayman Islands	98-0522566	CLO Fund	2/7/2006	
Greenbriar CLO, Ltd.	IMA	MaplesFS Limted, PO Box 1093, George Town, Grand Cayman KY1-1102, Cayman islands	N/A	CLO Fund	10/24/2007	
Highland CDO Holding Company	IMA	Intertrust Corporate Services (Cayman) Limited , 190 Elgin Ave, George Town, Grand Cayman KY1-9005, Cayman Islands	98-0527935	HFP sub	1/24/2006	
Highland CDO Opportunity Fund, L.P.	IMA	The Corporation Trust Company, 1209 Orange St, Wilmington, DE 19801	20-3899941	Hedge fund	11/3/2005	Terminated
Highland CDO Opportunity Fund, Ltd.	IMA	MQ Services Ltd, Victoria House, 31 Victoria Street, Hamilton HM10, Bermuda	N/A	Hedge fund	5/8/2002	Terminated
Highland CDO Opportunity Master Fund, L.P.	IMA	MQ Services Ltd, Victoria House, 31 Victoria Street, Hamilton HM10, Bermuda	98-0520689	Hedge fund	10/31/2005	Terminated
Highland Credit Opportunities CDO, Ltd.	IMA	Intertrust Corporate Services (Cayman) Limited , 190 Elgin Ave, George Town, Grand Cayman KY1-9005, Cayman Islands	98-0512429	Hedge fund	11/1/2005	
Highland Credit Opportunities Japanese Feeder Sub-Trust	IMA	Intertrust Corporate Services (Cayman) Limited , 190 Elgin Ave, George Town, Grand Cayman KY1-9005, Cayman Islands	N/A	Hedge fund	8/22/2007	
Highland Credit Strategies Fund, L.P.	IMA	The Corporation Trust Company, 1209 Orange St, Wilmington, DE 19801	86-1147211	Hedge fund	8/2/2005	
Highland Credit Strategies Fund, Ltd.	IMA	MQ Services Ltd, Victoria House, 31 Victoria Street, Hamilton HM10, Bermuda	98-0466202	Hedge fund	8/8/2005	
Highland Credit Strategies Master Fund, L.P.	IMA	MQ Services Ltd, Victoria House, 31 Victoria Street, Hamilton HM10, Bermuda	98-0466203	Hedge fund	8/19/2005	
Highland Dynamic Income Fund, L.P. (fka Highland Capital Loan Fund, L.P.)	IMA	The Corporation Trust Company, 1209 Orange St, Wilmington, DE 19801	46-2123634	Hedge fund	2/25/2013	
Highland Dynamic Income Fund, Ltd. (fka Highland Loan Fund, Ltd.)	IMA	Maples Corporate Services Limited PO Box 309, Ugland House Grand Cayman KY1-1104, Cayman Islands	N/A	Hedge fund	2/26/2013	
Highland Dynamic Income Master Fund, L.P. (fka Highland Loan Master Fund, L.P.)	IMA	Maples Corporate Services Limited PO Box 309, Ugland House Grand Cayman KY1-1104, Cayman Islands	98-1169838	Hedge fund	2/26/2013	
Highland Financial Corp.	IMA - terminated	The Corporation Trust Company, 1209 Orange St, Wilmington, DE 19801	20-4392555	HFP sub	2/28/2006	
Highland Flexible Income UCITS Fund	IMA	23 St. Stephen's Green, Dblin 2, Ireland	N/A	Separate account	6/7/2018	
Highland Legacy Limited	IMA	MaplesFS Limted, PO Box 1093, George Town, Grand Cayman KY1-1102, Cayman islands	N/A	CLO Fund	7/6/1999	
Highland Loan Funding V, Ltd.	IMA	MaplesFS Limted, PO Box 1093, George Town, Grand Cayman KY1-1102, Cayman islands	N/A	CLO Fund	2/5/2001	
Highland Multi Strategy Credit Fund, L.P. (fka Highland Credit Opportunities Fund, L.P., fka Highland Credit Opportunities CDO, L.P.)	IMA	The Corporation Trust Company, 1209 Orange St, Wilmington, DE 19801	20-3874256	Hedge fund	12/1/2005	
Highland Multi Strategy Credit Fund, Ltd. (fka Highland Credit Opportunities Fund, Ltd.)	IMA	Maples Corporate Services Limited PO Box 309, Ugland House Grand Cayman KY1-1104, Cayman Islands	98-0587370	Hedge fund	12/29/2005	
Highland Park CDO 1, Ltd.	IMA	MaplesFS Limted, PO Box 1093, George Town, Grand Cayman KY1-1102, Cayman islands	98-0515982	CLO Fund	7/12/2006	
Highland Prometheus Feeder Fund I, L.P.	IMA	Maples Corporate Services Limited PO Box 309, Ugland House Grand Cayman KY1-1104, Cayman Islands	98-1334547	Hedge fund	11/7/2016	
Highland Prometheus Feeder Fund II, L.P.	IMA	Maples Corporate Services Limited PO Box 309, Ugland House Grand Cayman KY1-1104, Cayman Islands	98-1353013	Hedge fund	2/17/2017	
Highland Prometheus Master Fund, L.P.	IMA	Maples Corporate Services Limited PO Box 309, Ugland House Grand Cayman KY1-1104, Cayman Islands	98-1334763	Hedge fund	11/7/2016	
Highland Restoration Capital Partners Master, L.P.	IMA	The Corporation Trust Company, 1209 Orange St, Wilmington, DE 19801	26-1458205	Private equity fund	11/14/2007	
Highland Restoration Capital Partners Offshore, L.P.	IMA	Maples Corporate Services Limited PO Box 309, Ugland House Grand Cayman KY1-1104, Cayman Islands	98-0558962	Private equity fund	11/13/2007	
Highland Restoration Capital Partners, L.P.	IMA	The Corporation Trust Company, 1209 Orange St, Wilmington, DE 19801	26-1456033	Private equity fund	11/14/2007	
Highland Select Equity Fund, L.P.	IMA	The Corporation Trust Company, 1209 Orange St, Wilmington, DE 19801	75-2970177	Hedge fund	12/5/2001	
Highland Select Equity Master Fund, L.P.	IMA	MQ Services Ltd, Victoria House, 31 Victoria Street, Hamilton HM10, Bermuda	98-0520466	Hedge fund	4/12/2007	
Highland Special Opportunities Holding Company	IMA	Intertrust Corporate Services (Cayman) Limited , 190 Elgin Ave, George Town, Grand Cayman KY1-9005, Cayman Islands	98-0532735	HFP sub	1/24/2006	Terminated
Jasper CLO, Ltd.	IMA	Elian Fiduciary Services (Cayman) Limted - 190 Elgin Ave, George Town, Grand Cayman KY1-9005, Cayman Islands	98-0595492	CLO Fund	3/9/2005	
Liberty CLO, Ltd.	IMA	Intertrust Corporate Services (Cayman) Limited , 190 Elgin Ave, George Town, Grand Cayman KY1-9005, Cayman Islands	98-0595490	CLO Fund	6/30/2005	
Longhorn Credit Funding, LLC	IMA	United Corporate Services, Inc., 874 Walker Rd, Ste C, Dover, DE 19904	N/A	Separate account	10/15/2007	
ML CLO XIX Sterling (Cayman), Ltd.	IMA	MaplesFS Limted, PO Box 1093, George Town, Grand Cayman KY1-1102, Cayman islands	N/A	CLO Fund	4/27/1998	
Pam Capital Funding, L.P.	IMA	MaplesFS Limted, PO Box 1093, George Town, Grand Cayman KY1-1102, Cayman islands	20-3010953	CLO Fund	5/8/1998	
PamCo Cayman Ltd.	IMA	MaplesFS Limted, PO Box 1093, George Town, Grand Cayman KY1-1102, Cayman islands	N/A	CLO Fund	1/18/1997	
PensionDanmark Pensionsforsikringsaktieselskab	IMA	Langelinie Allé 43, DK-2100 Copenhagen Ø	N/A	Separate account	6/24/1992	
Red River CLO, Ltd.	IMA	Elian Fiduciary Services (Cayman) Limted - 190 Elgin Ave, George Town, Grand Cayman KY1-9005, Cayman Islands	98-0527219	CLO Fund	1/24/2006	
Rockwall CDO II Ltd.	IMA	MaplesFS Limted, PO Box 1093, George Town, Grand Cayman KY1-1102, Cayman islands	N/A	CLO Fund	4/12/2006	
Rockwall CDO, Ltd.	IMA	MaplesFS Limted, PO Box 1093, George Town, Grand Cayman KY1-1102, Cayman islands	98-0461407	CLO Fund	6/7/2005	
Southfork CLO, Ltd.	IMA	MaplesFS Limted, PO Box 1093, George Town, Grand Cayman KY1-1102, Cayman islands	N/A	CLO Fund	10/21/2004	
Stratford CLO, Ltd.	IMA	MaplesFS Limted, PO Box 1093, George Town, Grand Cayman KY1-1102, Cayman islands	98-0540945	CLO Fund	10/17/2006	
Valhalla CLO, Ltd.	IMA	Intertrust Corporate Services (Cayman) Limited , 190 Elgin Ave, George Town, Grand Cayman KY1-9005, Cayman Islands	98-0595491	CLO Fund	6/9/2004	
Westchester CLO, Ltd.	IMA	MaplesFS Limted, PO Box 1093, George Town, Grand Cayman KY1-1102, Cayman islands	98-0546784	CLO Fund	11/10/2006	
Highland Latin America GP, Ltd.	Highland Capital Management, L.P., as trustee of Highland Latin America Trust and nominiee for and on behalf of Highland Latin America LP, Ltd.	Maples Corporate Services Limited PO Box 309, Ugland House Grand Cayman KY1-1104, Cayman Islands	98-1362190	GP of the relying advisor to the Argentina fund	3/6/2017	

Highland Capital Management LP
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Exhibit F - SOFA 25

Name	Relationship	Address	EIN	Description of Business	Date of Creation	Date of Termination (if applicable)
Highland Capital Management Latin America, L.P.	Highland Capital Management, L.P., as trustee of Highland Latin America Trust and nominee for and on behalf of Highland Latin America LP, Ltd.	Maples Corporate Services Limited PO Box 309, Ugland House Grand Cayman KY1-1104, Cayman Islands	98-1362202	Relying advisor to the Argentina fund	4/13/2017	
Neutra, Ltd.	Highland Capital Management, L.P., as trustee of Acis CMOA Trust and nominiee for and on behalf of Highland CLO Assets Holdings Limited	Maples Corporate Services Limited PO Box 309, Ugland House Grand Cayman KY1-1104, Cayman Islands	98-1090422		12/12/2012	
Asbury Holdings, LLC (fka HCSLR Camelback Investors (Delaware), LLC)	Highland Capital Management, L.P.	The Corporation Trust Company, 1209 Orange St, Wilmington, DE 19801	N/A	Holds HCMLP's Haygood interest	2/14/2017	
De Kooning, Ltd.	Highland Capital Management, L.P.	Maples Corporate Services Limited PO Box 309, Ugland House Grand Cayman KY1-1104, Cayman Islands	98-1090348	Formed to hold Select's interest in Barclays' assignment	12/12/2012	
HCREF-I Holding Corp.	Highland Capital Management, L.P.	The Corporation Trust Company, 1209 Orange St, Wilmington, DE 19801	46-1998057	Holds HCMLP interest in HCREF	12/13/2012	
HCREF-XI Holding Corp.	Highland Capital Management, L.P.	The Corporation Trust Company, 1209 Orange St, Wilmington, DE 19801	46-2030348	Holds HCMLP's interest in HE Mezz KR, LLC	12/13/2012	
HCREF-XII Holding Corp.	Highland Capital Management, L.P.	The Corporation Trust Company, 1209 Orange St, Wilmington, DE 19801	46-2032401	Holds HCMLP's interest in 2006 Milam East Partners LP	12/13/2012	
HFP GP, LLC	Highland Capital Management, L.P.	The Corporation Trust Company, 1209 Orange St, Wilmington, DE 19801	16-1746972	HFP GP	1/20/2006	
Highland Brasil, LLC	Highland Capital Management, L.P.	The Corporation Trust Company, 1209 Orange St, Wilmington, DE 19801	46-4691319	Managing member of BB Votorantim Highland In	1/28/2014	
Highland Capital Management (Singapore) Pte Ltd	Highland Capital Management, L.P.	Tricor, 80 Robinson Road #02-00, Singapore 068898	98-0580590	HCMLP's wholly owned sub in Singapore	4/2/2008	
Highland Capital Management Korea Limited	Highland Capital Management, L.P.	(Seoul Finance Center, Taepyeongro-1-ga) 21F, 136, Sejong-daero, Jung-gu, Seoul, Korea	98-1120007	Relying advisor to the Korea PEF	8/2/2012	
Highland Capital Multi-Strategy Fund, LP	Highland Capital Management, L.P.	The Corporation Trust Company, 1209 Orange St, Wilmington, DE 19801	20-5237025	Private fund	7/6/2006	
Highland Capital Special Allocation, LLC	Highland Capital Management, L.P.	The Corporation Trust Company, 1209 Orange St, Wilmington, DE 19801	26-1175318	Entity received the incentive allocation from HFP.	12/21/2006	
Highland CDO Opportunity Fund GP, L.P.	Highland Capital Management, L.P.	The Corporation Trust Company, 1209 Orange St, Wilmington, DE 19801	20-3899907	Hedge fund	10/20/2005	
Highland CDO Opportunity GP, LLC	Highland Capital Management, L.P.	The Corporation Trust Company, 1209 Orange St, Wilmington, DE 19801	20-3899870	Hedge fund GP	10/20/2005	
Highland CLO Assets Holdings Limited	Highland Capital Management, L.P.	Maples Corporate Services (BVI) Limited Kingston Chambers, PO Box 173, Road Town Tortola, British Virgin Islands	98-1417806		12/19/2017	
Highland CLO Management Ltd.	Highland Capital Management, L.P.	Maples Corporate Services Limited PO Box 309, Ugland House Grand Cayman KY1-1104, Cayman Islands	98-1432973		10/27/2017	
Highland Dynamic Income Fund GP, LLC (fka Highland Capital Loan GP, LLC)	Highland Capital Management, L.P.	The Corporation Trust Company, 1209 Orange St, Wilmington, DE 19801	80-0898281	Hedge fund GP	2/25/2013	
Highland Employee Retention Assets LLC	Highland Capital Management, L.P.	The Corporation Trust Company, 1209 Orange St, Wilmington, DE 19801	27-1596366	HERA	6/23/2009	
Highland ERA Management, LLC	Highland Capital Management, L.P.	The Corporation Trust Company, 1209 Orange St, Wilmington, DE 19801	N/A	HERA manager	2/1/2013	
Highland Financial Partners, L.P.	Highland Capital Management, L.P.	The Corporation Trust Company, 1209 Orange St, Wilmington, DE 19801	83-0446391	HFP	1/20/2006	Terminated
Highland Fund Holdings, LLC	Highland Capital Management, L.P.	The Corporation Trust Company, 1209 Orange St, Wilmington, DE 19801	N/A		5/24/2016	
Highland General Partner, LP	Highland Capital Management, L.P.	The Corporation Trust Company, 1209 Orange St, Wilmington, DE 19801	86-1147210	Hedge fund GP	7/26/2005	
Highland GP Holdings, LLC	Highland Capital Management, L.P.	The Corporation Trust Company, 1209 Orange St, Wilmington, DE 19801	86-1147208	Hedge fund GP	7/26/2005	
Highland HCF Advisor Ltd.	Highland Capital Management, L.P.	Maples Corporate Services Limited PO Box 309, Ugland House Grand Cayman KY1-1104, Cayman Islands	98-1401127	Advisor to Highland CLO Funding, Ltd.	10/27/2017	
Highland Latin America LP, Ltd.	Highland Capital Management, L.P.	Maples Corporate Services Limited PO Box 309, Ugland House Grand Cayman KY1-1104, Cayman Islands	98-1362186	Argentina fund structure	3/6/2017	
Highland Multi Strategy Credit Fund GP, L.P. (fka Highland Credit Opportunities CDO GP, L.P.)	Highland Capital Management, L.P.	The Corporation Trust Company, 1209 Orange St, Wilmington, DE 19801	N/A	Hedge fund GP	12/29/2005	
Highland Multi Strategy Credit GP, LLC (fka Highland Credit Opportunities CDO GP, LLC)	Highland Capital Management, L.P.	The Corporation Trust Company, 1209 Orange St, Wilmington, DE 19801	N/A	Hedge fund GP	12/29/2005	
Highland Multi-Strategy Fund GP, LLC	Highland Capital Management, L.P.	The Corporation Trust Company, 1209 Orange St, Wilmington, DE 19801	20-5236824	Private fund GP	7/6/2006	
Highland Multi-Strategy Fund GP, LP	Highland Capital Management, L.P.	The Corporation Trust Company, 1209 Orange St, Wilmington, DE 19801	20-5236931	Private fund GP	7/6/2006	
Highland Receivables Finance I, LLC	Highland Capital Management, L.P.	The Corporation Trust Company, 1209 Orange St, Wilmington, DE 19801	20-8123634	Entity created in 2006 that purchased all of HCMLP's receivables 100% owned by HCMLP.	12/28/2006	
Highland Restoration Capital Partners GP, LLC	Highland Capital Management, L.P.	The Corporation Trust Company, 1209 Orange St, Wilmington, DE 19801	26-1455912	Private equity fund GP	11/6/2007	
Highland Select Equity Fund GP, L.P.	Highland Capital Management, L.P.	The Corporation Trust Company, 1209 Orange St, Wilmington, DE 19801	20-3899917	Hedge fund GP	10/20/2005	
Highland Select Equity GP, LLC	Highland Capital Management, L.P.	The Corporation Trust Company, 1209 Orange St, Wilmington, DE 19801	20-3899886	Hedge fund GP	10/20/2005	
Highland SunBridge GP, LLC	Highland Capital Management, L.P.	The Corporation Trust Company, 1209 Orange St, Wilmington, DE 19801	N/A	Hedge fund GP	12/15/2015	
Hirst, Ltd.	Highland Capital Management, L.P.	Maples Corporate Services Limited PO Box 309, Ugland House Grand Cayman KY1-1104, Cayman Islands	98-1090361	Formed to hold CDO Ltd's interest in Barclays assignment	12/12/2012	
Hockney, Ltd.	Highland Capital Management, L.P.	Maples Corporate Services Limited PO Box 309, Ugland House Grand Cayman KY1-1104, Cayman Islands	98-1090388	Formed to hold Crusader's interest in Barclays assignment	12/12/2012	
Maple Avenue Holdings, LLC	Highland Capital Management, L.P.	The Corporation Trust Company, 1209 Orange St, Wilmington, DE 19801	81-3600687	Holds Uchi loan	8/17/2016	
NexPoint Hospitality Trust	Highland Capital Management, L.P.	333 Bay Street, Suite 3400, Toronto, Ontario M5H 2S7, Canada	83-6637675	Hospitality REIT	12/12/2018	
NexPoint Insurance Distributors, LLC	Highland Capital Management, L.P.	The Corporation Trust Company, 1209 Orange St, Wilmington, DE 19801	84-2921534	Insurance broker	7/25/2019	
NexPoint Insurance Solutions GP, LLC (fka Highland Capital Insurance Solutions GP, LLC)	Highland Capital Management, L.P.	The Corporation Trust Company, 1209 Orange St, Wilmington, DE 19801	84-2571487	Insurance advisor GP	4/4/2019	
NexPoint Insurance Solutions, L.P. (fka Highland Capital Insurance Solutions, L.P.)	Highland Capital Management, L.P.	The Corporation Trust Company, 1209 Orange St, Wilmington, DE 19801	84-2584142	Insurance advisor	4/4/2019	
NexPoint Multifamily Capital Trust, Inc.	Highland Capital Management, L.P.	The Corporation Trust, 2405 York Rd, Ste 201, Lutherville Timonium, MD 21093	46-4106316	NMCT REIT	11/12/2013	
NexPoint Real Estate Strategies Fund	Highland Capital Management, L.P.	The Corporation Trust Company, 1209 Orange St, Wilmington, DE 19801	81-1061590	Retail fund	3/10/2006	
NexPoint Residential Trust Inc.	Highland Capital Management, L.P.	The Corporation Trust, 2405 York Rd, Ste 201, Lutherville Timonium, MD 21093	47-1881359	NXRT REIT	9/19/2014	
NexPoint Strategic Opportunities Fund (fka NexPoint Credit Strategies Fund)	Highland Capital Management, L.P.	The Corporation Trust Company, 1209 Orange St, Wilmington, DE 19801	80-0139099	Retail fund	3/10/2006	
NHT Holdco, LLC	Highland Capital Management, L.P.	The Corporation Trust Company, 1209 Orange St, Wilmington, DE 19801	83-3011801	Hospitality REIT structure	1/2/2019	
Oldenburg, Ltd.	Highland Capital Management, L.P.	Maples Corporate Services Limited PO Box 309, Ugland House Grand Cayman KY1-1104, Cayman Islands	98-1090453	Formed to hold CDO LP's interest in Barclays assignment	12/12/2012	
Penant Management LP	Highland Capital Management, L.P.	The Corporation Trust Company, 1209 Orange St, Wilmington, DE 19801	46-1614710	Holds HCREF's interest in Barclays assignment	12/12/2012	
PetroCap Incentive Partners III, LP	Highland Capital Management, L.P.	The Corporation Trust Company, 1209 Orange St, Wilmington, DE 19801	?	Petrocap fund	11/16/2017	
PetroCap Partners II, L.P.	Highland Capital Management, L.P.	The Corporation Trust Company, 1209 Orange St, Wilmington, DE 19801	46-4691213	Petrocap fund	10/7/2013	
PetroCap Partners III, L.P.	Highland Capital Management, L.P.	The Corporation Trust Company, 1209 Orange St, Wilmington, DE 19801	?	Petrocap fund	11/16/2017	
Pollack, Ltd.	Highland Capital Management, L.P.	Maples Corporate Services Limited PO Box 309, Ugland House Grand Cayman KY1-1104, Cayman Islands	98-1090519		12/12/2012	
SE Multifamily Holdings LLC	Highland Capital Management, L.P.	The Corporation Trust Company, 1209 Orange St, Wilmington, DE 19801	32-0576655	RE investment holding	8/23/2018	

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Name	Relationship	Address	EIN	Description of Business	Date of Creation	Date of Termination (if applicable)
The Dondero Insurance Rabbi Trust	Highland Capital Management, L.P.	300 Crescent Ct, Ste 700, Dallas, TX 75201	75-2716725	Holds Dondero's life insurance policies and the proceeds to be used to fund HCM's obligation to purchase Dondero Interests from the Trust Beneficiearies per Buy-Sell Agreement	5/27/2004	
The Okada Insurance Rabbi Trust	Highland Capital Management, L.P.	300 Crescent Ct, Ste 700, Dallas, TX 75201	75-2716725	Holds Okada's life insurance policies and the proceeds to be used to fund HCM's obligation to purchase Okada Interests from the Trust Beneficiaries per Buy-Sell Agreement	5/27/2004	
US Gaming SPV, LLC	Highland Capital Management, L.P.	The Corporation Trust Company, 1209 Orange St, Wilmington, DE 19801	84-1769285	SPV of eSports investment in Korea	5/14/2019	
Warhol, Ltd.	Highland Capital Management, L.P.	Maples Corporate Services Limited PO Box 309, Ugland House Grand Cayman KY1-1104, Cayman Islands	98-1090362	Formed to hold Ops' interest in Barclays assignment	12/12/2012	
HE Capital 232 Phase I, LLC	HCMLP-Manager	The Corporation Trust Company, 1209 Orange St, Wilmington, DE 19801	26-1616599	Underlying property is a 71.73 acre site consisting of 232 finished single family lots in the NW Phoenix development of Asante.	12/20/2007	
HE Capital Asante, LLC	HCMLP-Manager	The Corporation Trust Company, 1209 Orange St, Wilmington, DE 19801	26-0525645	Underlying project is a 843 acre multi-phase residential development in NW Phoenix, AZ	7/5/2007	
HE Capital Fox Trails, LLC	HCMLP-Manager	The Corporation Trust Company, 1209 Orange St, Wilmington, DE 19801	N/A	Underlying project is a 889.58 acre vacant parcel in NW Phoenix with PAD approval for 2,320 single family units.	3/10/2008	
HE Capital KR, LLC	HCMLP-Manager	The Corporation Trust Company, 1209 Orange St, Wilmington, DE 19801	N/A	Underlying project is a 1,829.67 acre vacant parcel in SW Phoenix proposed for 4,250 single family lots of which 1,431 have final plat approval (Phase I) and 50.94 acres of commercial land.	7/5/2007	
HE Capital, LLC	HCMLP-Manager	The Corporation Trust Company, 1209 Orange St, Wilmington, DE 19801	20-8711786	Parent entity for joint venture between Ellman and Highland.	3/22/2007	
HE CLO Holdco, LLC	HCMLP-Manager	The Corporation Trust Company, 1209 Orange St, Wilmington, DE 19801	37-1666849	Blockers that used to hold Ellman interest	2/3/2011	
HE Mezz Fox Trails, LLC	HCMLP-Manager	The Corporation Trust Company, 1209 Orange St, Wilmington, DE 19801	26-2151278	Underlying project is a 889.58 acre vacant parcel in NW Phoenix with PAD approval for 2,320 single family units.	3/10/2008	
HE Mezz KR, LLC	HCMLP-Manager	The Corporation Trust Company, 1209 Orange St, Wilmington, DE 19801	26-0611280	Underlying project is a 1,829.67 acre vacant parcel in SW Phoenix proposed for 4,250 single family lots of which 1,431 have final plat approval (Phase I) and 50.94 acres of commercial land.	7/27/2007	
HE Peoria Place Property, LLC	HCMLP-Manager	The Corporation Trust Company, 1209 Orange St, Wilmington, DE 19801	26-1600012	Underlying project is a 127.39 acre vacant parcel in NW Phoenix being improved with interior roadways for ultimate development or sale under the PAD approving 11 acres of office, 23 acres of retail, 50 acres of single family an d43 acres of multi family.	12/10/2007	
HE Peoria Place, LLC	HCMLP-Manager	The Corporation Trust Company, 1209 Orange St, Wilmington, DE 19801	26-1599959	Underlying project is a 127.39 acre vacant parcel in NW Phoenix being improved with interior roadways for ultimate development or sale under the PAD approving 11 acres of office, 23 acres of retail, 50 acres of single family an d43 acres of multi family.	11/14/2007	
Hibiscus HoldCo, LLC	HCMLP-Manager	The Corporation Trust Company, 1209 Orange St, Wilmington, DE 19801	27-1824370	Blocker to hold Turtle Bay assets	2/2/2010	
Highland CLO Gaming Holdings, LLC	HCMLP-Manager	The Corporation Trust Company, 1209 Orange St, Wilmington, DE 19801	27-3995018	CLO blocker that used to hold Affility Gaming inte	11/18/2010	
Highland TCI Holding Company, LLC	HCMLP-Manager	CT Corporation, 1999 Bryan St, Ste 900, Dallas, TX 75201	45-2620554	CLO blocker to hold TCI/Park West assets	6/21/2011	
Highland's Roads Land Holding Company, LLC	HCMLP-Manager	The Corporation Trust Company, 1209 Orange St, Wilmington, DE 19801	26-4572095	CLO blocker to hold LLV reorg equity	3/30/2009	
Kuilima Montalban Holdings, LLC	HCMLP-Manager	The Corporation Trust Company, 1209 Orange St, Wilmington, DE 19801	27-1942638	CLO blocker to hold Turtle Bay equity	2/19/2010	
Kuilima Resort Holdco, LLC	HCMLP-Manager	The Corporation Trust Company, 1209 Orange St, Wilmington, DE 19801	26-4572180	CLO blocker to hold Turtle Bay equity	3/18/2009	
Park West Holdco, LLC	HCMLP-Manager	CT Corporation, 1999 Bryan St, Ste 900, Dallas, TX 75201	37-1641409	Holds TCI assets	4/4/2011	
Park West Portfolio Holdco, LLC	HCMLP-Manager	CT Corporation, 1999 Bryan St, Ste 900, Dallas, TX 75201	90-0737248	Holds TCI assets	4/14/2011	
PDK Toys Holdco, LLC	HCMLP-Manager	The Corporation Trust Company, 1209 Orange St, Wilmington, DE 19801	83-3591646	PDK blocker to hold Toys R'Us loan	2/14/2019	
Acis CMOA Trust	HCMLP - Trustee	Maples Corporate Services Limited PO Box 309, Ugland House Grand Cayman KY1-1104, Cayman Islands	N/A		3/30/2018	
Highland Latin America Trust	HCMLP - Trustee	Maples Corporate Services Limited PO Box 309, Ugland House Grand Cayman KY1-1104, Cayman Islands	N/A		3/30/2018	

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Dondero, James	161.25	01/15/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Dondero, James	23,437.51	01/15/2019	Regular Base Pay
Dondero, James	161.25	01/31/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Dondero, James	23,437.51	01/31/2019	Regular Base Pay
Dondero, James	161.25	02/15/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Dondero, James	23,437.51	02/15/2019	Regular Base Pay
Dondero, James	161.25	02/28/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Dondero, James	23,437.51	02/28/2019	Regular Base Pay
Dondero, James	161.25	03/15/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Dondero, James	23,437.51	03/15/2019	Regular Base Pay
Dondero, James	161.25	03/29/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Dondero, James	23,437.51	03/29/2019	Regular Base Pay
Dondero, James	161.25	04/15/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Dondero, James	23,437.51	04/15/2019	Regular Base Pay
Dondero, James	161.25	04/30/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Dondero, James	23,437.51	04/30/2019	Regular Base Pay
Dondero, James	161.25	05/15/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Dondero, James	23,437.51	05/15/2019	Regular Base Pay
Dondero, James	161.25	05/31/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Dondero, James	23,437.51	05/31/2019	Regular Base Pay
Dondero, James	161.25	06/14/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Dondero, James	23,437.51	06/14/2019	Regular Base Pay
Dondero, James	161.25	06/28/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Dondero, James	23,437.51	06/28/2019	Regular Base Pay
Dondero, James	161.25	07/15/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Dondero, James	23,437.51	07/15/2019	Regular Base Pay
Dondero, James	161.25	07/31/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Dondero, James	23,437.51	07/31/2019	Regular Base Pay
Dondero, James	161.25	08/15/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Dondero, James	23,437.51	08/15/2019	Regular Base Pay
Dondero, James	161.25	08/30/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Dondero, James	23,437.51	08/30/2019	Regular Base Pay
Dondero, James	161.25	09/13/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Dondero, James	23,437.51	09/13/2019	Regular Base Pay
Dondero, James	161.25	09/30/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Dondero, James	23,437.51	09/30/2019	Regular Base Pay
Dondero, James	161.25	10/15/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Dondero, James	23,437.51	10/15/2019	Regular Base Pay
Dondero, James	161.25	10/31/2018	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Dondero, James	23,437.51	10/31/2018	Regular Base Pay
Dondero, James	161.25	11/15/2018	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Dondero, James	23,437.51	11/15/2018	Regular Base Pay
Dondero, James	161.25	11/30/2018	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Dondero, James	23,437.51	11/30/2018	Regular Base Pay
Dondero, James	161.25	12/14/2018	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Dondero, James	23,437.51	12/14/2018	Regular Base Pay
Dondero, James	161.25	12/31/2018	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Dondero, James	23,437.51	12/31/2018	Regular Base Pay
Ellington, Scott	71.25	01/15/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Ellington, Scott	18,750.00	01/15/2019	Regular Base Pay
Ellington, Scott	71.25	01/31/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Ellington, Scott	18,750.00	01/31/2019	Regular Base Pay
Ellington, Scott	71.25	02/15/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Ellington, Scott	18,750.00	02/15/2019	Regular Base Pay
Ellington, Scott	300,000.00	02/28/2019	Bonus
Ellington, Scott	71.25	02/28/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Ellington, Scott	18,750.00	02/28/2019	Regular Base Pay
Ellington, Scott	350,000.00	03/15/2019	Bonus
Ellington, Scott	71.25	03/15/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Ellington, Scott	18,750.00	03/15/2019	Regular Base Pay
Ellington, Scott	71.25	03/29/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Ellington, Scott	18,750.00	03/29/2019	Regular Base Pay

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Name	Amounts	Date	Reason
Ellington, Scott	71.25	04/15/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Ellington, Scott	18,750.00	04/15/2019	Regular Base Pay
Ellington, Scott	71.25	04/30/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Ellington, Scott	18,750.00	04/30/2019	Regular Base Pay
Ellington, Scott	71.25	05/15/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Ellington, Scott	18,750.00	05/15/2019	Regular Base Pay
Ellington, Scott	71.25	05/31/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Ellington, Scott	18,750.00	05/31/2019	Regular Base Pay
Ellington, Scott	71.25	06/14/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Ellington, Scott	18,750.00	06/14/2019	Regular Base Pay
Ellington, Scott	350,629.00	06/28/2019	Bonus and/or Deferred Compensation
Ellington, Scott	71.25	06/28/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Ellington, Scott	18,750.00	06/28/2019	Regular Base Pay
Ellington, Scott	71.25	07/15/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Ellington, Scott	18,750.00	07/15/2019	Regular Base Pay
Ellington, Scott	71.25	07/31/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Ellington, Scott	18,750.00	07/31/2019	Regular Base Pay
Ellington, Scott	71.25	08/15/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Ellington, Scott	18,750.00	08/15/2019	Regular Base Pay
Ellington, Scott	650,000.00	08/30/2019	Bonus
Ellington, Scott	71.25	08/30/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Ellington, Scott	18,750.00	08/30/2019	Regular Base Pay
Ellington, Scott	71.25	09/13/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Ellington, Scott	18,750.00	09/13/2019	Regular Base Pay
Ellington, Scott	71.25	09/30/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Ellington, Scott	18,750.00	09/30/2019	Regular Base Pay
Ellington, Scott	71.25	10/15/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Ellington, Scott	18,750.00	10/15/2019	Regular Base Pay
Ellington, Scott	71.25	10/31/2018	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Ellington, Scott	18,750.00	10/31/2018	Regular Base Pay
Ellington, Scott	71.25	11/15/2018	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Ellington, Scott	18,750.00	11/15/2018	Regular Base Pay
Ellington, Scott	71.25	11/30/2018	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Ellington, Scott	18,750.00	11/30/2018	Regular Base Pay
Ellington, Scott	71.25	12/14/2018	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Ellington, Scott	18,750.00	12/14/2018	Regular Base Pay
Ellington, Scott	604.78	12/31/2018	Gross up value from Dividend Reinvestment Plan
Ellington, Scott	71.25	12/31/2018	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Ellington, Scott	18,750.00	12/31/2018	Regular Base Pay
Okada, Mark	204.25	01/15/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Okada, Mark	32,552.09	01/15/2019	Regular Base Pay
Okada, Mark	204.25	01/31/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Okada, Mark	32,552.09	01/31/2019	Regular Base Pay
Okada, Mark	204.25	02/15/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Okada, Mark	32,552.09	02/15/2019	Regular Base Pay
Okada, Mark	204.25	02/28/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Okada, Mark	32,552.09	02/28/2019	Regular Base Pay
Okada, Mark	204.25	03/15/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Okada, Mark	32,552.09	03/15/2019	Regular Base Pay
Okada, Mark	204.25	03/29/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Okada, Mark	32,552.09	03/29/2019	Regular Base Pay
Okada, Mark	204.25	04/15/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Okada, Mark	32,552.09	04/15/2019	Regular Base Pay
Okada, Mark	204.25	04/30/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Okada, Mark	32,552.09	04/30/2019	Regular Base Pay
Okada, Mark	204.25	05/15/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Okada, Mark	32,552.09	05/15/2019	Regular Base Pay
Okada, Mark	204.25	05/31/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Okada, Mark	32,552.09	05/31/2019	Regular Base Pay
Okada, Mark	204.25	06/14/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Okada, Mark	32,552.09	06/14/2019	Regular Base Pay
Okada, Mark	204.25	06/28/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)

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Name	Amounts	Date	Reason
Okada, Mark	32,552.09	06/28/2019	Regular Base Pay
Okada, Mark	204.25	07/15/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Okada, Mark	32,552.09	07/15/2019	Regular Base Pay
Okada, Mark	204.25	07/31/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Okada, Mark	32,552.09	07/31/2019	Regular Base Pay
Okada, Mark	204.25	08/15/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Okada, Mark	32,552.09	08/15/2019	Regular Base Pay
Okada, Mark	204.25	08/30/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Okada, Mark	32,552.09	08/30/2019	Regular Base Pay
Okada, Mark	204.25	09/13/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Okada, Mark	32,552.09	09/13/2019	Regular Base Pay
Okada, Mark	204.25	09/30/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Okada, Mark	32,552.09	09/30/2019	Regular Base Pay
Okada, Mark	204.25	10/31/2018	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Okada, Mark	32,552.09	10/31/2018	Regular Base Pay
Okada, Mark	204.25	11/15/2018	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Okada, Mark	32,552.09	11/15/2018	Regular Base Pay
Okada, Mark	204.25	11/30/2018	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Okada, Mark	32,552.09	11/30/2018	Regular Base Pay
Okada, Mark	204.25	12/14/2018	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Okada, Mark	32,552.09	12/14/2018	Regular Base Pay
Okada, Mark	272.64	12/31/2018	Gross up value from Dividend Reinvestment Plan
Okada, Mark	204.25	12/31/2018	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Okada, Mark	32,552.09	12/31/2018	Regular Base Pay
Parker, Lee	47.50	01/15/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Parker, Lee	14,583.33	01/15/2019	Regular Base Pay
Parker, Lee	47.50	01/31/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Parker, Lee	14,583.33	01/31/2019	Regular Base Pay
Parker, Lee	47.50	02/15/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Parker, Lee	14,583.33	02/15/2019	Regular Base Pay
Parker, Lee	231,250.00	02/28/2019	Bonus
Parker, Lee	47.50	02/28/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Parker, Lee	14,583.33	02/28/2019	Regular Base Pay
Parker, Lee	47.50	03/15/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Parker, Lee	14,583.33	03/15/2019	Regular Base Pay
Parker, Lee	150,000.00	03/29/2019	Bonus
Parker, Lee	47.50	03/29/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Parker, Lee	14,583.33	03/29/2019	Regular Base Pay
Parker, Lee	47.50	04/15/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Parker, Lee	14,583.33	04/15/2019	Regular Base Pay
Parker, Lee	47.50	04/30/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Parker, Lee	14,583.33	04/30/2019	Regular Base Pay
Parker, Lee	47.50	05/15/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Parker, Lee	14,583.33	05/15/2019	Regular Base Pay
Parker, Lee	47.50	05/31/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Parker, Lee	14,583.33	05/31/2019	Regular Base Pay
Parker, Lee	47.50	06/14/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Parker, Lee	14,583.33	06/14/2019	Regular Base Pay
Parker, Lee	362,935.00	06/28/2019	Bonus and/or Deferred Compensation
Parker, Lee	47.50	06/28/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Parker, Lee	14,583.33	06/28/2019	Regular Base Pay
Parker, Lee	47.50	07/15/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Parker, Lee	14,583.33	07/15/2019	Regular Base Pay
Parker, Lee	47.50	07/31/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Parker, Lee	14,583.33	07/31/2019	Regular Base Pay
Parker, Lee	47.50	08/15/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Parker, Lee	14,583.33	08/15/2019	Regular Base Pay
Parker, Lee	381,250.00	08/30/2019	Bonus
Parker, Lee	47.50	08/30/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Parker, Lee	14,583.33	08/30/2019	Regular Base Pay
Parker, Lee	47.50	09/13/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Parker, Lee	14,583.33	09/13/2019	Regular Base Pay

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Name	Amounts	Date	Reason
Parker, Lee	47.50	09/30/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Parker, Lee	14,583.33	09/30/2019	Regular Base Pay
Parker, Lee	47.50	10/15/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Parker, Lee	14,583.33	10/15/2019	Regular Base Pay
Parker, Lee	47.50	10/31/2018	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Parker, Lee	14,583.33	10/31/2018	Regular Base Pay
Parker, Lee	47.50	11/15/2018	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Parker, Lee	14,583.33	11/15/2018	Regular Base Pay
Parker, Lee	47.50	11/30/2018	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Parker, Lee	14,583.33	11/30/2018	Regular Base Pay
Parker, Lee	47.50	12/14/2018	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Parker, Lee	14,583.33	12/14/2018	Regular Base Pay
Parker, Lee	483.56	12/31/2018	Gross up value from Dividend Reinvestment Plan
Parker, Lee	47.50	12/31/2018	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Parker, Lee	14,583.33	12/31/2018	Regular Base Pay
Surgent, Thomas	56.25	01/15/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Surgent, Thomas	15,625.00	01/15/2019	Regular Base Pay
Surgent, Thomas	56.25	01/31/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Surgent, Thomas	15,625.00	01/31/2019	Regular Base Pay
Surgent, Thomas	56.25	02/15/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Surgent, Thomas	15,625.00	02/15/2019	Regular Base Pay
Surgent, Thomas	300,000.00	02/28/2019	Bonus
Surgent, Thomas	56.25	02/28/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Surgent, Thomas	15,625.00	02/28/2019	Regular Base Pay
Surgent, Thomas	325,000.00	03/15/2019	Bonus
Surgent, Thomas	56.25	03/15/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Surgent, Thomas	16,666.67	03/15/2019	Regular Base Pay
Surgent, Thomas	56.25	03/29/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Surgent, Thomas	16,666.67	03/29/2019	Regular Base Pay
Surgent, Thomas	56.25	04/15/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Surgent, Thomas	16,666.67	04/15/2019	Regular Base Pay
Surgent, Thomas	56.25	04/30/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Surgent, Thomas	16,666.67	04/30/2019	Regular Base Pay
Surgent, Thomas	56.25	05/15/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Surgent, Thomas	16,666.67	05/15/2019	Regular Base Pay
Surgent, Thomas	100,000.00	05/31/2019	Bonus and/or Deferred Compensation
Surgent, Thomas	56.25	05/31/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Surgent, Thomas	16,666.67	05/31/2019	Regular Base Pay
Surgent, Thomas	56.25	06/14/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Surgent, Thomas	16,666.67	06/14/2019	Regular Base Pay
Surgent, Thomas	482,115.00	06/28/2019	Bonus and/or Deferred Compensation
Surgent, Thomas	56.25	06/28/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Surgent, Thomas	16,666.67	06/28/2019	Regular Base Pay
Surgent, Thomas	56.25	07/15/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Surgent, Thomas	16,666.67	07/15/2019	Regular Base Pay
Surgent, Thomas	56.25	07/31/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Surgent, Thomas	16,666.67	07/31/2019	Regular Base Pay
Surgent, Thomas	56.25	08/15/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Surgent, Thomas	16,666.67	08/15/2019	Regular Base Pay
Surgent, Thomas	625,000.00	08/30/2019	Bonus
Surgent, Thomas	56.25	08/30/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Surgent, Thomas	16,666.67	08/30/2019	Regular Base Pay
Surgent, Thomas	56.25	09/13/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Surgent, Thomas	16,666.67	09/13/2019	Regular Base Pay
Surgent, Thomas	56.25	09/30/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Surgent, Thomas	16,666.67	09/30/2019	Regular Base Pay
Surgent, Thomas	56.25	10/15/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Surgent, Thomas	16,666.67	10/15/2019	Regular Base Pay
Surgent, Thomas	56.25	10/31/2018	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Surgent, Thomas	15,625.00	10/31/2018	Regular Base Pay
Surgent, Thomas	56.25	11/15/2018	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Surgent, Thomas	15,625.00	11/15/2018	Regular Base Pay

Highland Capital Management LP
Case # 19-34054-SGJ
Exhibit G - SOFA 30

Name	Amounts	Date	Reason
Surgent, Thomas	56.25	11/30/2018	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Surgent, Thomas	15,625.00	11/30/2018	Regular Base Pay
Surgent, Thomas	56.25	12/14/2018	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Surgent, Thomas	15,625.00	12/14/2018	Regular Base Pay
Surgent, Thomas	2,344.18	12/31/2018	Gross up value from Dividend Reinvestment Plan
Surgent, Thomas	56.25	12/31/2018	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Surgent, Thomas	15,625.00	12/31/2018	Regular Base Pay
Waterhouse, Frank	71.25	01/15/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Waterhouse, Frank	14,583.33	01/15/2019	Regular Base Pay
Waterhouse, Frank	71.25	01/31/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Waterhouse, Frank	14,583.33	01/31/2019	Regular Base Pay
Waterhouse, Frank	71.25	02/15/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Waterhouse, Frank	14,583.33	02/15/2019	Regular Base Pay
Waterhouse, Frank	206,250.00	02/28/2019	Bonus
Waterhouse, Frank	71.25	02/28/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Waterhouse, Frank	14,583.33	02/28/2019	Regular Base Pay
Waterhouse, Frank	71.25	03/15/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Waterhouse, Frank	14,583.33	03/15/2019	Regular Base Pay
Waterhouse, Frank	71.25	03/29/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Waterhouse, Frank	14,583.33	03/29/2019	Regular Base Pay
Waterhouse, Frank	212,500.00	04/15/2019	Bonus
Waterhouse, Frank	71.25	04/15/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Waterhouse, Frank	14,583.33	04/15/2019	Regular Base Pay
Waterhouse, Frank	71.25	04/30/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Waterhouse, Frank	14,583.33	04/30/2019	Regular Base Pay
Waterhouse, Frank	71.25	05/15/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Waterhouse, Frank	14,583.33	05/15/2019	Regular Base Pay
Waterhouse, Frank	100,000.00	05/31/2019	Bonus and/or Deferred Compensation
Waterhouse, Frank	71.25	05/31/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Waterhouse, Frank	14,583.33	05/31/2019	Regular Base Pay
Waterhouse, Frank	71.25	06/14/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Waterhouse, Frank	14,583.33	06/14/2019	Regular Base Pay
Waterhouse, Frank	306,801.00	06/28/2019	Bonus and/or Deferred Compensation
Waterhouse, Frank	71.25	06/28/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Waterhouse, Frank	14,583.33	06/28/2019	Regular Base Pay
Waterhouse, Frank	71.25	07/15/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Waterhouse, Frank	14,583.33	07/15/2019	Regular Base Pay
Waterhouse, Frank	71.25	07/31/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Waterhouse, Frank	14,583.33	07/31/2019	Regular Base Pay
Waterhouse, Frank	71.25	08/15/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Waterhouse, Frank	14,583.33	08/15/2019	Regular Base Pay
Waterhouse, Frank	418,750.00	08/30/2019	Bonus
Waterhouse, Frank	14,583.33	08/30/2019	Regular Base Pay
Waterhouse, Frank	71.25	09/13/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Waterhouse, Frank	14,583.33	09/13/2019	Regular Base Pay
Waterhouse, Frank	71.25	09/30/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Waterhouse, Frank	14,583.33	09/30/2019	Regular Base Pay
Waterhouse, Frank	71.25	10/15/2019	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Waterhouse, Frank	14,583.33	10/15/2019	Regular Base Pay
Waterhouse, Frank	71.25	10/31/2018	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Waterhouse, Frank	14,583.33	10/31/2018	Regular Base Pay
Waterhouse, Frank	71.25	11/15/2018	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Waterhouse, Frank	14,583.33	11/15/2018	Regular Base Pay
Waterhouse, Frank	71.25	11/30/2018	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Waterhouse, Frank	14,583.33	11/30/2018	Regular Base Pay
Waterhouse, Frank	71.25	12/14/2018	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Waterhouse, Frank	14,583.33	12/14/2018	Regular Base Pay
Waterhouse, Frank	71.25	12/31/2018	Group Term Life Insurance (value of premium for coverage in excess of $50 K)
Waterhouse, Frank	14,583.33	12/31/2018	Regular Base Pay

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	Chapter 11
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,[1]	§	Case No. 19-34054-sgj11
	§	
Debtor.	§	
	§	

GLOBAL NOTES AND STATEMENT OF LIMITATIONS, METHODS, AND DISCLAIMER REGARDING DEBTOR'S SCHEDULES OF ASSETS AND LIABILITIES AND STATEMENT OF FINANCIAL AFFAIRS

Highland Capital Management, L.P. (the "Debtor") submits its Schedules of Assets and Liabilities (the "Schedules") and Statement of Financial Affairs (the "SoFA") in the United States Bankruptcy Court for the Northern District of Texas, Dallas Division (the "Bankruptcy Court"). The Debtor, with the assistance of its advisors and management, prepared the Schedules and SoFA in accordance with section 521 title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the "Bankruptcy Code") and Rule 1007 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules").

These Global Notes and Statement of Limitations, Methods, and Disclaimer Regarding the Debtor's Schedules and SoFA (collectively, the "Global Notes") pertain to, are incorporated by reference in, and comprise an integral part of the Schedules and SoFA. These Global Notes should be referred to, and reviewed in connection with any review of the Schedules and SoFA.[2]

The Schedules and SoFA have been prepared by the Debtor with the assistance and under the direction of the Debtor's proposed Chief Restructuring Officer and additional personnel at Development Specialists, Inc. (collectively, the "CRO") and are unaudited and subject to further review and potential adjustment and amendment. In preparing the Schedules and SoFA, the CRO relied on financial data derived from the Debtor's books and records that was available at the time of preparation. The CRO has made reasonable efforts to ensure the accuracy and completeness of such financial information, however, subsequent information or discovery of other relevant facts may result in material changes to the Schedules and SoFA and inadvertent errors, omissions, or inaccuracies may exist. The Debtor reserves all rights to amend or supplement its Schedules and SoFA.

[1] The Debtor's last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.
[2] These Global Notes are in addition to any specific notes contained in the Debtor's Schedules or SoFA. The fact that the Debtor has prepared a "general note" with respect to any of the Schedules and SoFA and not to others should not be interpreted as a decision by the Debtor to exclude the applicability of such general note to any of the Debtor's remaining Schedules and SoFA, as appropriate.

Reservation of Rights. The Debtor reserves all rights to amend the SoFA and Schedules in all respects, as may be necessary or appropriate, including, but not limited to, the right to dispute or to assert offsets or defenses to any claim reflected on the SoFA and Schedules as to amount, liability or classification of the claim, or to otherwise subsequently designate any claim as "disputed," "contingent" or "unliquidated." Furthermore, nothing contained in the SoFA and Schedules shall constitute a waiver of rights by the Debtor involving any present or future causes of action, contested matters or other issues under the provisions of the Bankruptcy Code or other applicable non-bankruptcy laws.

Description of the Case and "As Is" Information Date. On October 16, 2019 (the "Petition Date"), the Debtor filed a voluntary petition for relief with the United States Bankruptcy Court for the District of Delaware (the "Delaware Bankruptcy Court") under Chapter 11 of the Bankruptcy Code. The Debtor is managing its assets as a debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. On December 4, 2019, the Delaware Bankruptcy Court entered an Order transferring this case to the Bankruptcy Court [Docket No. 1].

Asset information in the Schedules reflects the Debtor's best estimate of asset values as of the Petition Date, unless otherwise noted. No independent valuation has been obtained.

Basis of Presentation. The Schedules and SoFA do not purport to represent financial statements prepared in accordance with Generally Accepted Accounting Principles ("GAAP"), nor are they intended to fully reconcile to any financial statements otherwise prepared and/or distributed by the Debtor.

Although these Schedules and SoFA may, at times, incorporate information prepared in accordance with GAAP, the Schedules and SoFA neither purport to represent nor reconcile to financial statements prepared and/or distributed by the Debtor in accordance with GAAP or otherwise. Moreover, given, among other things, the valuation and nature of certain liabilities, to the extent that the Debtor shows more assets than liabilities, this is not a conclusion that the Debtor was solvent at the Petition Date. Likewise, to the extent that the Debtor shows more liabilities than assets, this is not a conclusion that the Debtor was insolvent at the Petition Date or any time prior to the Petition Date.

Estimates. To timely close the books and records of the Debtor, the CRO must make certain estimates and assumptions that affect the reported amounts of assets and liabilities and reported revenue and expenses. The Debtor reserves all rights to amend the reported amounts of assets, liabilities, revenue, and expenses to reflect changes in those estimates and assumptions.

Confidentiality. There may be instances within the Schedules and SoFA where names, addresses, or amounts have been left blank. Due to the nature of an agreement between the Debtor and the third party, concerns of confidentiality, or concerns for the privacy of an individual, the Debtor may have deemed it appropriate and necessary to avoid listing such names, addresses, and amounts.

Intercompany Claims. Any receivables and payables between the Debtor and affiliated or related entities in this case (each an "Intercompany Receivable" or "Intercompany Payable" and, collectively, the "Intercompany Claims") are reported as assets on Schedule B or liabilities on Schedule E and Schedule F. These Intercompany Claims include the following components, among others: 1) loans to affiliates or related entities, 2) accounts payable and payroll disbursements made out of an affiliate's or related entity's bank accounts on behalf of the Debtor, 3) centrally billed expenses, 4) corporate expense allocations, and 5) accounting for trade and other intercompany transactions. These Intercompany Claims may or may not result in allowed or enforceable claims by or against the Debtor, and by listing these claims the Debtor is not indicating a conclusion that the Intercompany Claims are enforceable. Intercompany Claims may also be subject to set off, recoupment, and netting not reflected in the Schedules. In situations where there is not an enforceable claim, the assets and/or liabilities of the Debtor may be greater or lesser than the amounts stated herein. All rights to amend intercompany Claims in the Schedules and SoFA are reserved.

The Debtor has listed the intercompany payables as unsecured claims on Schedule F. The Debtor reserves its rights to later change the characterization, classification, categorization, or designation of such items.

Insiders. For purposes of the Schedules and SoFA, the Debtor defines "insider" pursuant to section 101(31) of the Bankruptcy Code. Payments to insiders are set forth on Question 3.c. of the SoFA.

Persons listed as "insiders" have been included for informational purposes only. The Debtor did not take any position with respect to whether such individual could successfully argue that he or she is not an "insider" under applicable law, including without limitation, the federal securities laws, or with respect to any theories of liability or for any other purpose. Inclusion of any party in the Schedules and SoFA as an insider does not constitute an admission that such party is an insider or a waiver of such party's right to dispute insider status.

Excluded Accruals and GAAP Entries. The Debtor's balance sheet reflects liabilities recognized in accordance with GAAP; however, not all such liabilities would result in a claim against the Debtor. Certain liabilities (including but not limited to certain reserves, deferred charges, and future contractual obligations) have not been included in the Debtor's Schedules. Other immaterial assets and liabilities may also have been excluded.

Classification and Claim Descriptions. Any failure to designate a claim on the Schedules as "disputed," "contingent" or "unliquidated" does not constitute an admission by the Debtor that such amount is not "disputed," "contingent" or "unliquidated." The Debtor reserves the right to dispute, or to assert offsets or defenses to, any claim reflected on its Schedules as to amount, liability or classification or to otherwise subsequently designate any claim as "disputed," "contingent" or "unliquidated."

Listing a claim (i) in Schedule D as "secured," (ii) in Schedule E as "priority" or (iii) in Schedule F as "unsecured nonpriority," or listing a contract in Schedule G as "executory" or "unexpired," does not constitute an admission by the Debtor of the legal rights of the claimant or a waiver of the Debtor's right to recharacterize or reclassify such claim or contract.

Moreover, the Debtor reserves all rights to amend the SoFA and Schedules, in all respects, as may be necessary or appropriate, including, but not limited to, the right to dispute or to assert offsets or defenses to any claim reflected on the SoFA and Schedules as to amount, liability or classification of the claim, or to otherwise subsequently designate any claim as "disputed," "contingent" or "unliquidated." Furthermore, nothing contained in the SoFA and Schedules shall constitute a waiver of rights by the Debtor involving any present or future causes of action, contested matters or other issues under the provisions of the Bankruptcy Code or other relevant non-bankruptcy laws.

Credits and Adjustments. The claims of individual creditors for, among other things, goods, products, services or taxes are listed as the amounts entered on the Debtor's books and records and may not reflect credits, allowances or other adjustments due from such creditors to the Debtor. The Debtor reserves all of its rights respecting such credits, allowances or other adjustments.

Setoffs. The Debtor may incur setoffs from third parties in its business. Setoffs in the ordinary course can result from various routine transactions, including intercompany transactions, pricing discrepancies, warranty claims and other disputes between the Debtor and third parties. Certain of these constitute normal setoffs consistent with the ordinary course of business in the Debtor's industry. In such instances, such ordinary course setoffs are excluded from the Debtor's responses to Question 13 of the SoFA. The Debtor reserves all rights to enforce or challenge, as the case may be, any setoffs that have been or may be asserted.

Specific Notes. These general notes are in addition to the specific notes set forth below or in the related Statement and Schedules hereinafter.

General Disclaimer

The Debtor has prepared the Schedules and the SoFA based on the information reflected in the Debtor's books and records. However, inasmuch as the Debtor's books and records have not been audited or formally closed and evaluated for proper cut-off on the Petition Date, the Debtor cannot warrant the absolute accuracy of these documents. The Debtor has made a diligent effort to complete these documents accurately and completely. To the extent additional information becomes available, the Debtor will amend and supplement the Schedules and SoFA.

Specific Schedules Disclosures

a. **Schedule A/B, Part 4 - Investments; Non-Publicly Traded Stock and Interests in Incorporated and Unincorporated Businesses, including any Interest in an LLC, Partnership, or Joint Venture.** Certain ownership interests in subsidiaries have been listed in Schedule A/B, Part 4, at their book value on account of the fact that the fair market value of such ownership is dependent on numerous variables and factors. Fair value of such interests may differ significantly from their net book value. Further, for investments listed at fair value, many of the Debtor's assets are not exchange traded and are fair valued utilizing unobservable

inputs, historical information, and significant and/or subjective estimates. As a result the liquidity and ultimately realized value of such investments may differ materially from the fair value listed on the schedule.

b. **Schedule A/B, Part 7 - Office Furniture, Fixtures, and Equipment; and Collectibles**. Dollar amounts are presented net of accumulated depreciation and other adjustments.

c. **Schedule A/B, Part 11 - All Other Assets**. Dollar amounts are presented net of impairments and other adjustments. Debtor has reflected "unknown" for value of its interests in various other assets. While the face value of the notes receivable is included, the current value of these as well as the other assets has not been determined and may differ materially.

Additionally, the Debtor may receive refunds, income tax refunds or other sales tax refunds at various times throughout its fiscal year. As of the Petition Date, however, certain of these amounts are unknown to the Debtor, and accordingly, may not be listed in Schedule A/B.

Other Contingent and Unliquidated Claims or Causes of Action of Every Nature, including Counterclaims of the Debtor and Rights to Setoff Claims. In the ordinary course of its business, the Debtor may have accrued, or may subsequently accrue, certain rights to counter-claims, cross-claims, setoffs, or refunds with its customers and suppliers. Additionally, the Debtor may be party to pending litigation in which the Debtor has asserted, or may assert, claims as a plaintiff or counter-claims and/or cross-claims as a defendant. Because certain of these claims are unknown to the Debtor and not quantifiable as of the Petition Date, they may not be listed on Schedule A/B, Part 11.

d. **Schedule D - Creditors Who Have Claims Secured by Property**. The Debtor reserves its rights to dispute or challenge the validity, perfection, or immunity from avoidance of any lien purported to be granted or perfected in any specific asset to a secured creditor listed on Schedule D. Moreover, although the Debtor has scheduled claims of various creditors as secured claims, the Debtor reserves all rights to dispute or challenge the secured nature of any such creditor's claim or the characterization of the structure of any such transaction or any document or instrument related to such creditor's claim.

The descriptions provided in Schedule D are intended only to be a summary. Reference to the applicable agreements and other related relevant documents is necessary for a complete description of the collateral and the nature, extent, and priority of any liens.

The Debtor has not included on Schedule D parties that may believe their claims are secured through setoff rights or inchoate statutory lien rights. Although there are multiple parties that hold a portion of the debt included in the secured

Appendix Part 2 Page 59 of 136

facilities, only the administrative agents have been listed for purposes of Schedule D.

e. **Schedule E/F - Creditors Who Have Unsecured Claims.**

Part 1 - Creditors with Priority Unsecured Claims. Pursuant to the *Order (I) Authorizing the Debtor to (A) Pay and Honor Prepetition Compensation, Reimbursable Business Expenses, and Employee Benefit Obligations, and (B) Maintain and Continue Certain Compensation and Benefit Programs Postpetition; and (11) Granting Related Relief* [Docket No. 39] (the "Wage Order"), the Debtor received authority to pay certain prepetition obligations, including to pay employee wages and other employee benefits, in the ordinary course of business. The Debtor believes that any non-insider employee claims for prepetition amounts related to ongoing payroll and benefits, whether allowable as a priority or nonpriority claim, which were due and payable at the time of the Petition Date have been or will be satisfied as permitted pursuant to the Wage Order. The Debtor filed the *Motion of the Debtor for Entry of an Order Authorizing the Debtor to Pay and Honor Ordinary Course Obligations under Employee Bonus Plans and Granting Related Relief* [Docket No. 177] pursuant to which the Debtor seeks authority to pay and honor certain prepetition bonus programs. Employee claims related to these programs are shown in the aggregate amounts in Schedule E/F for privacy reasons. Additional information is available by appropriate request to the Debtor. The listing of a claim on Schedule E/F, Part 1, does not constitute an admission by the Debtor that such claim or any portion thereof is entitled to priority status.

Part 2 - Creditors with Nonpriority Unsecured Claims. The liabilities identified in Schedule E/F, Part 2, are derived from the Debtor's books and records. The Debtor made a reasonable attempt to set forth its unsecured obligations, although the actual amount of claims against the Debtor may vary from those liabilities represented on Schedule E/F, Part 2. The listed liabilities may not reflect the correct amount of any unsecured creditor's allowed claims or the correct amount of all unsecured claims.

Schedule E/F, Part 2 reflects liabilities based on the Debtor's books and records.

Schedule E/F, Part 2, contains information regarding threatened or pending litigation involving the Debtor. The amounts for these potential claims are listed as "unknown" and are marked as contingent, unliquidated, and disputed in the Schedules and Statements. Additionally, the amounts of certain litigation claims may be estimates based on the allegations asserted by the litigation counterparty, and do not constitute an admission by the Debtor with respect to either liability for, or the amount of, such claims.

Schedule E/F, Part 2, reflects certain prepetition amounts owing to counterparties to executory contracts and unexpired leases. Such prepetition amounts, however,

may be paid in connection with the assumption or assumption and assignment of an executory contract or unexpired lease. In addition, Schedule E/F, Part 2, does not include claims that may arise in connection with the rejection of any executory contracts and unexpired leases, if any, that may be or have been rejected.

As of the time of filing of the Schedules and Statements, the Debtor had not received all invoices for payables, expenses, and other liabilities that may have accrued prior to the Petition Date. Accordingly, the information contained in Schedules D and E/F may be incomplete. The Debtor reserves its rights to amend Schedules D and E/F if and as it receive such invoices.

f. **Schedule G - Executory Contracts and Unexpired Leases**. While reasonable efforts have been made to ensure the accuracy of Schedule G, inadvertent errors or omissions may have occurred.

Listing a contract or agreement on Schedule G does not constitute an admission that such contract or agreement is an executory contract or unexpired lease or that such contract or agreement was in effect on the Petition Date or is valid or enforceable. The Debtor hereby reserves all of its rights to dispute the validity, status, or enforceability of any contracts, agreements, or leases set forth in Schedule G and to amend or supplement such Schedule as necessary. Certain of the leases and contracts listed on Schedule G may contain renewal options, guarantees of payment, indemnifications, options to purchase, rights of first refusal and other miscellaneous rights. Such rights, powers, duties and obligations are not set forth separately on Schedule G. In addition, the Debtor may have entered into various other types of agreements in the ordinary course of its business, such as supplemental agreements, amendments, and letter agreement, which documents may not be set forth in Schedule G.

Certain of the agreements listed on Schedule G may have expired or terminated pursuant to their terms, but are listed on Schedule G in an abundance of caution.

The Debtor reserves all rights to dispute or challenge the characterization of any transaction or any document or instrument related to a creditor's claim.

In some cases, the same supplier or provider may appear multiple times in Schedule G. Multiple listings, if any, reflect distinct agreements between the Debtor and such supplier or provider.

The listing of any contract on Schedule G does not constitute an admission by the Debtor as to the validity of any such contract. The Debtor reserves the right to dispute the effectiveness of any such contract listed on Schedule G or to amend Schedule G at any time to remove any contract.

Omission of a contract or agreement from Schedule G does not constitute an admission that such omitted contract or agreement is not an executory contract or

unexpired lease. The Debtor's rights under the Bankruptcy Code with respect to any such omitted contracts or agreements are not impaired by the omission.

EXHIBIT 88

Docket #0405 Date Filed: 01/27/2020

In re: Highland Capital Management, L.P.

Case No. 19-12239-CSS
Reporting Period: 10/16/2019 - 10/31/2019

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

In re:

HIGHLAND CAPITAL MANGEMENT, LP

Debtors.

Chapter 11

Case No. 19-12239-CSS

Reporting Period: 10/31/2019

MONTHLY OPERATING REPORT
File with Court and submit copy to United States Trustee within 20 days after end of month.

Required Documents	Form No.	Document Attached	Explanation Attached	Affidavit/ Supplement Attached
Schedule of Cash Receipts and Disbursements	MOR-1	x		
Attestation of Bank Reconciliation by the CRO	MOR-1a	x		
Schedule of Professional Fees and Expenses Paid		n/a		
Cash Disbursements Journals	MOR-1b			
Statement of Operations	MOR-2	x		
Balance Sheet	MOR-3	x		
Status of Postpetition Taxes				
Copies of IRS Form 6123 or Payment Receipt	MOR-4a	x		
Copies of Tax Returns Filed During Reporting Period		n/a		
Summary of Unpaid Postpetition Debts				
Listing of Aged Accounts Payable	MOR-4b	x		
Accounts Receivable Reconciliation and Aging	MOR-5a	x		
Debtor Questionnaire	MOR-5b	x		
Budget	MOR-6			

I declare under penalty of perjury (28 U.S.C. Section 1746) that this report and the attached documents are true and correct to the best of my knowledge and belief.

Signature of Debtor — Date

Signature of Joint Debtor — Date

Signature of Authorized Individual — Date: 12-2-19

Bradley Sharp
Printed Name of Authorized Individual

Chief Restructuring Officer
Title of Authorized Individual

/s/ Frank Waterhouse
Signature of Authorized Individual

12-2-19

Frank Waterhouse
Printed Name of Authorized Individual

Chief Financial Officer
Title of Authorized Individual

Exhibit 20

1934054200127000000000007

In re: Highland Capital Management, L.P.

Case No. 19-12239-CSS
Reporting Period: 10/16/2019 - 10/31/2019

Cash Disbursements and Receipts from 10/16/2019 - 10/31/2019
(in thousands)

Week beginning	Compass Operating x6342	Jefferies x0932	Nexbank CD x5891	Nexbank Insurance x7513	Nexbank Operating x4138	Maxim Group x4885	Nexbank Operating x6735	Total
Beginning cash	$ 2,126	-	$ 135	$ 291	$ -	$ -	$ 1	$ 2,554
Operating Receipts								
Other	4	-	-	3	-	-	-	7
Management fees and other related receipts	62	-	-	-	-	-	-	62
Compensation and benefits								
Payroll, benefits, and taxes + exp reimb	(526)	-	-	(212)	-	-	-	(738)
Severance payments	-	-	-	-	-	-	-	-
Total compensation and benefits	(526)	-	-	(212)	-	-	-	(738)
General overhead								
General overhead - critical vendors (pre-petition)	(2)	-	-	-	-	-	-	(2)
General overhead - post-petition vendors	(35)	-	-	-	-	-	-	(35)
Singapore service fees	(35)	-	-	-	-	-	-	(35)
Total general overhead	(72)	-	-	-	-	-	-	(72)
Investing cash flows (principal only on notes)								
Third party fund actual/expected distributions	79	-	-	-	-	-	-	79
Divs, paydowns, misc from investment assets	-	410	-	-	-	-	-	410
Ending cash	1,673	410	135	82	-	-	1	2,302

In re: Highland Capital Management, L.P.

Case No. 19-12239-CSS
Reporting Period: 10/16/2019 - 10/31/2019

Attestation of Bank Reconciliation by the CRO

Entity	Case No.	Bank	Account Type	Account # (last 4 digits)	Ending Bank Balance
Highland Capital Management, LP	19-12239-CSS	BBVA Compass	Operating	x6342	1,672,176.25
Highland Capital Management, LP	19-12239-CSS	Nexbank	Operating	x4130	250.70
Highland Capital Management, LP	19-12239-CSS	Nexbank	Insurance	x7513	82,272.52
Highland Capital Management, LP	19-12239-CSS	Jefferies LLC	Brokerage	x0932	410,107.71
Highland Capital Management, LP	19-12239-CSS	Maxim Group	Brokerage	x1885	163.61
Highland Capital Management, LP	19-12239-CSS	Nexbank	CD	x5891	135,205.21
Highland Capital Management, LP	19-12239-CSS	Nexbank	Operating	x668	-
Highland Capital Management, LP	19-12239-CSS	Nexbank	Operating	x0735	1,453.59
				Total:	**2,301,630**

No bank statements are being provided with this report. I attest that the bank statements for the above-listed accounts have been reconciled to the Debtor's books and records.

Following month end, The Debtor opened three bank accounts at East West Bank. On November 21, 2019, the Debtor closed accounts ending in x735, x668 x130 and x513.

Signature of Authorized Individual

Date

Frank Waterhouse
Printed Name of Authorized Individual

Chief Financial Officer
Title of Authorized Individual

Signature of Authorized Individual

12-2-19
Date

Bradley Sharp
Printed Name of Authorized Individual

Chief Restructuring Officer
Title of Authorized Individual

In re: Highland Capital Management, L.P.

Case No. 19-12239-CSS
Reporting Period: 10/16/2019 - 10/31/2019

RECEIPTS LISTING

Date	Amount	Sender	Bank
10/16/2019	2,777.24	Discovery Benefits	x6342
10/16/2019	592.81	Discovery Benefits	x6342
10/21/2019	46.00	Co-op	x4130
10/22/2019	79,266.46	Third party fund distribution	x6342
10/22/2019	93.83	Paylocity	x6342
10/24/2019	14,128.70	Fund Reimbursement	x6342
10/25/2019	438.00	Discovery Benefits	x6342
10/28/2019	15,000.00	Shared Services	x6342
10/31/2019	17,763.15	Fund Reimbursement	x6342
10/31/2019	14,533.49	Fund Reimbursement	x6342
10/31/2019	13.88	Interest	x4130
10/30/2019	592.82	Insurance Premiums	x7513
10/31/2019	2,371.27	Insurance Premiums	x7513
10/31/2019	0.19	Interest	x0735
10/25/2019	369,973.45	Investment receipts	x0932
10/28/2019	12,766.83	Investment receipts	x0932
10/28/2019	27,367.43	Investment receipts	x0932
10/31/2019	67.44	Dividend	x1885
	557,792.99		

DISBURSEMENT LISTING

Date	Amount	Vendor	Bank
10/16/2019	2,047.22	Zayo	x6342
10/16/2019	836.22	Discovery Benefits	x6342
10/16/2019	52.79	Discovery Benefits	x6342
10/16/2019	20.00	Discovery Benefits	x6342
10/22/2019	11,813.33	Singapore Service Fee Funding	x6342
10/22/2019	12,600.88	Singapore Service Fee Funding	x6342
10/22/2019	40.00	Discovery Benefits	x6342
10/22/2019	20.00	Discovery Benefits	x6342
10/23/2019	10,335.00	Delta Risk	x6342
10/23/2019	4,944.58	Discovery Benefits	x6342
10/23/2019	550.60	Discovery Benefits	x6342
10/23/2019	25.00	Discovery Benefits	x6342
10/23/2019	15.00	Discovery Benefits	x6342
10/24/2019	9.73	Discovery Benefits	x6342
10/25/2019	75.00	Discovery Benefits	x6342
10/25/2019	215.00	Discovery Benefits	x6342
10/25/2019	305.46	Discovery Benefits	x6342
10/25/2019	1,303.80	Discovery Benefits	x6342
10/28/2019	(26.00)	Discovery Benefits	x6342
10/28/2019	20.00	Discovery Benefits	x6342
10/28/2019	1,350.04	Discovery Benefits	x6342
10/28/2019	20.00	Discovery Benefits	x6342
10/29/2019	245.00	Discovery Benefits	x6342
10/29/2019	5.00	Discovery Benefits	x6342
10/29/2019	370.00	Discovery Benefits	x6342
10/29/2019	5.00	Discovery Benefits	x6342
10/29/2019	9,770.39	CDW	x6342
10/29/2019	1,876.88	Third Party Consultant	x6342
10/30/2019	518.51	Discovery Benefits	x6342
10/31/2019	11,000.00	Third Party Consultant	x6342
10/31/2019	100.00	Discovery Benefits	x6342
10/29/2019	1,475.38	Third Party Consultant	x6342
10/31/2019	1,667.78	Third Party Consultant	x6342
10/31/2019	10,219.19	Singapore Service Fee Funding	x6342
10/30/2019	50,233.99	Paylocity	x6342
10/30/2019	311,831.36	Paylocity	x6342
10/31/2019	1,974.64	Paylocity	x6342
10/30/2019	110,396.48	Paylocity	x6342
10/29/2019	771.24	Standard Insurance	x6342
10/29/2019	4,459.96	Standard Insurance	x6342
10/30/2019	33,670.47	Charles Schwab	x6342
10/30/2019	1,227.80	Paylocity	x6342
10/21/2019	59,268.63	Blue Cross Blue Shield of Texas	x7513
10/25/2019	152,732.21	Blue Cross Blue Shield of Texas	x7513
	810,393.55		

* Payments to Discovery Benefits are for employee Flexible Spending Account (FSA) reimbursement

In re: Highland Capital Management, L.P.

Case No. 19-12239-CSS
Reporting Period: 10/16/2019 - 10/31/2019

Income Statement [1]
(in thousands)

	Date 10/16/19 - 10/31/19
Revenue:	
Management fees	975
Shared services fees	283
Other income	99
Total operating revenue	**1,357**
Operating expenses:	
Compensation and Benefits	997
Professional services	256
Investment research and consulting	10
Depreciation expense [3]	82
Other operating expenses	201
Total operating expenses	**1,545**
Operating income/(loss)	**(188)**
Other income/expense:	
Interest income	250
Interest expense	(107)
Re-org related expenses [2]	-
Other income/expense	32
Total other income/expense	**175**
Net realized gains on investments	339
Net change in unrealized gains/(losses) of investments [4]	2,654
	2,993
Net earnings/(losses) from equity method investees [4]	(20)
Net income/(loss)	**$ 2,959**

(1) Note on accruals: expenses recorded in the Income Statement reflect invoices recorded through accounts payable, legal invoice accruals, and normal course operating accruals, but do not reflect estimates for other incurred, but not yet received invoices.

(2) Debtor funded various retainers totaling $790k prior to the petition date, which were entirely expensed as of the petition date. No additional amounts were accrued between October 16, 2019 and October 31, 2019

(3) Includes full month of depreciation as depreciation is run monthly at month end. Estimated pro-rated depreciation October 16, 2019 to October 31, 2019 is $42k.

(4) Mark to market gains/(losses) on investments include normal course pricing updates for publicly traded securities and other positions with readily available market price information. Limited partnership interests normally marked to a NAV statement have not been updated as of period end as statements are generally available on a one-month lag.

In re: Highland Capital Management, L.P.

Case No. 19-12239-CSS
Reporting Period: 10/16/2019 - 10/31/2019

Balance Sheet
(in thousands)

		Date
		10/31/2019
Assets		
Cash and cash equivalents	$	2,286
Investments, at fair value [3]		359,448
Equity method investees [3]		37,508
Management and incentive fee receivable		3,202
Fixed assets, net		3,672
Due from affiliates [1]		152,124
Other assets		11,261
Total assets	**$**	**569,501**
Liabilities and Partners' Capital		
Pre-petition accounts payable [4]	$	1,135
Post-petition accounts payable [4]		102
Secured debt		35,510
Accrued expenses and other liabilities [4]		59,184
Accrued re-organization related fees [5]		-
Claim accrual [2]		73,997
Partners' capital		399,573
Total liabilities and partners' capital	**$**	**569,501**

[1] Includes various notes receivable at carrying value (fv undetermined).

[2] Uncontested portion of claim less appplicable offsets. Potential for additional liability based on future events.

[3] Mark to market gains/(losses) on investments include normal course pricing updates for publicly traded securities and other positions with readily available market price information. Limited partnership interests normally marked to a NAV statement have not been updated as of period end as statements are generally available on a one-month lag.

[4] Note on accruals: expenses recorded in Accounts Payable and Accrued Expenses and Other Liabilities reflect invoices recorded through accounts payable, legal invoice accruals, and normal course operating accruals, but do not reflect estimates for other incurred, but not yet received invoices.

[5] Debtor funded various retainers totaling $790k prior to the petition date, which were entirely expensed prior to the petition date. No additional amounts were accrued between October 16, 2019 and October 31, 2019

In re: Highland Capital Management, L.P.

Case No. 19-12239-CSS
Reporting Period: 10/16/2019 - 10/31/2019

Form 6123 (Rev. 06-97)	Department of the Treasury-Internal Revenue Service **Verification of Fiduciary's Federal Tax Deposit**	
	Do not attach this Notice to your Return	
TO	District Director, Internal revenue Service Attn: Chief, Special Procedures Function	
FROM:	Name of Taxpayer Highland Capital Management, L.P.	
	Taxpayer Address 300 Crescent Ct. Ste. 700, Dallas, TX 75201	
The following information is to notify you of Federal tax deposit(s)(FTD) as required by the United States Bankruptcy Court (complete sections 1 and/or 2 as appropriate):		
Section 1 Taxes Reported on Form 941, Employer=s Quarterly Federal Tax Return	**Form 941 Federal Tax Deposit (FTD) Information** For the payroll period from 10/16/2019 to 10/31/2019 Payroll date 10/31/2019 Gross wages paid to employees$ 557,425.72 Income tax withheld$ 105,313.71 Social Security (Employer's plus Employee's share of Social Security Tax) $ 36,603.10 Tax Deposited $ 141,916.84 Date Deposited 10/31/2019	
Section 2 Taxes Reported on Form 940, Employer=s Annual Federal Unemployment Tax Return	**Form 940 Federal Tax Deposit (FTD) Information** For the payroll period from 10/16/2019 to 10/31/2019 Gross wages paid to employees $ 557,425.72 Tax Deposited $ 574.93 Date Deposited 10/31/2019	
Certification **(Certification is limited to receipt or electronic transmittal of deposit only)** This certifies receipt or electronic transmittal of deposits described below for Federal taxes as defined in Circular E, Employer=s Tax Guide (Publication 15)		
Deposit Method (check box)	9 Form 8109/8109B Federal Tax Deposit (FTD) coupon X 9 Electronic Federal Tax Payment System (EFTPS) Deposit	
Amount (Form 941 141,916.84	Date of Deposit 10/31/2019	EFTPS acknowledgment number or Form 8109 FTD received by: EFT_COMM01_1034607
Amount (Form 940 574.93	Date of Deposit 10/31/2019	EFTPS acknowledgment number or Form 8109 FTD received by: EFT_COMM01_1051577-1-2944938
Depositor=s Employer Identification Number: 75-2716725		Name and Address of Bank Compass Bank
Under penalties of perjury, I certify that the above federal tax deposit information is true and correct		
Signed:	Date:	
Name and Title (print or type)		

Cat. #43099Z Form 6123 (rev. 06-97)

In re: Highland Capital Management, L.P.

Case No. 19-12239-CSS
Reporting Period: 10/16/2019 - 10/31/2019

Post-Petition Accounts Payable Aging as of 10/31/2019

	0-30 days	31 - 60 days old	61 - 90 days old	91 + days old	Grand Total
Remaining Amount	$ 102,132	$ -	$ -	$ -	$ 102,132

In re: Highland Capital Management, L.P.

Case No. 19-12239-CSS
Reporting Period: 10/16/2019 - 10/31/2019

Accounts Receivable Reconciliation

	0 - 30 days old [1]	31 - 60 days old	61 - 90 days old	91 + days old net of uncollectable balances [2]	Accounts Receivable (Net)
Management Fees	$ 3,201,548	$ -	$ -	$ -	$ 3,201,548
Shared Services Fees [3]	516,469	-	-	-	516,469
Expense Reimbursements [3]	537,514	84,081	155,514	3,440,751	4,217,859
Total Receivable	**$ 4,255,531**	**$ 84,081**	**$ 155,514**	**$ 3,440,751**	**$ 7,935,877**

[1] All management fees and shared services fees are considered to be 0-30 days old as all such receivables are paid current per their investment management contracts.

[2] Receivables shown above are net of certain potentially uncollectible amounts. The net balances also do not include amounts that have been reserved against in prior years relating to management fees, shared services, and fund reimbursements, including but not limited to amounts paid on other entities' behalf with respect to legal related expenses as well as receivable escrowed distributions from fund holdings.

[3] Accounts Receivable from Shared Services Fees and Expense Reimbursements is included in the Other Assets line item on the Balance Sheet (see MOR-3).

In re: Highland Capital Management, L.P.

Case No. 19-12239-CSS
Reporting Period: 10/16/2019 - 10/31/2019

DEBTOR QUESTIONNAIRE

Must be completed each month		Yes	No
1	Have any assets been sold or transferred outside the normal course of business this reporting period? If yes, provide an explanation below.		x
2	Have any funds been disbursed from any account other than a debtor in possession account this reporting period? If yes, provide an explanation below. $598,419 of funds transferred from non-debtor in possession accounts, while those accounts were in process of being opened. These debtor in possession accounts were opened following month end and are being used for operating activities as of the date of this submission.	x	
3	Have all postpetition tax returns been timely filed? If no, provide an explanation below.	x	
4	Are workers compensation, general liability and other necessary insurance coverages in effect? If no, provide an explanation below.	x	
5	Has any bank account been opened during the reporting period? If yes, provide documentation identifying the opened account(s). If an investment account has been opened provide the required documentation pursuant to the Delaware Local Rule 4001-3. Following month end, The Debtor opened three bank accounts at East West Bank. On November 21, 2019, the Debtor closed accounts ending in x735, x668 x130 and x513.		x

Highland Capital Management, L.P.

Case No. 19-12239-CSS
Reporting Period: 10/26/2019 - 10/31/2019

Next 13 Weeks Commencing October 16, 2019
(in thousands)

	Actual[1]	Actual	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	
Week beginning	**10/16**	**10/23**	**10/28**	**11/4**	**11/11**	**11/18**	**11/25**	**12/2**	**12/9**	**12/16**	**12/23**	**12/30**	**1/6**	**13 Weeks**
Beginning unrestricted operating cash	$ 2,126	$ 2,126	$ 2,178	$ 2,775	$ 4,182	$ 2,815	$ 2,317	$ 1,030	$ 2,841	$ 1,060	$ 1,693	$ 476	$ 709	$ 2,126
Management fees	$ -	$ -	$ 1,600	$ 1,028	$ -	$ 1,849	$ 27	$ 672	$ -	$ -	$ -	$ -	$ -	$ 5,176
Shared services receipts	-	-	105	633	-	-	-	815	-	-	-	-	633	2,186
Fund reimbursements	-	14	-	306	-	-	-	-	-	-	-	-	-	320
Interest receipts on notes receivable	-	-	-	-	-	-	-	-	-	-	-	1,155	-	1,155
Other	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Management fees and other related receipts	$ -	$ 14	$ 1,705	$ 1,967	$ -	$ 1,849	$ 27	$ 1,487	$ -	$ -	$ -	$ 1,155	$ 633	$ 8,836
Compensation and benefits														
Payroll, benefits, and taxes - employees[2]	-	(7)	(633)	-	(633)	-	(633)	-	(631)	-	-	(631)	-	(3,198)
Total compensation and benefits	$ -	$ (7)	$ (633)	$ -	$ (633)	$ -	$ (633)	$ -	$ (631)	$ -	$ -	$ (631)	$ -	$ (3,198)
General overhead														
Outside legal[3] (theory cases)	-	-	-	(75)	-	-	(75)	-	-	-	(75)	-	-	(225)
General overhead - general vendors (pre-petition)	-	-	(5)	(25)	(25)	(25)	(25)	(20)	(20)	(20)	(20)	(20)	(25)	(230)
General overhead - post petition vendors	-	(16)	(454)	(359)	(209)	(202)	(209)	(250)	(250)	(250)	(250)	(250)	(234)	(2,913)
Bogopolsky service fees	-	(24)	(11)	-	-	(35)	-	-	-	(35)	-	-	-	(106)
Total general overhead	$ -	$ (34)	$ (448)	$ (459)	$ (234)	$ (262)	$ (309)	$ (270)	$ (270)	$ (305)	$ (345)	$ (270)	$ (259)	$ (3,473)
Net change in cash due to operating activity	-	(27)	597	1,508	(868)	1,579	(916)	1,217	(901)	(305)	(345)	254	374	1,165
Re-org related[4] - accounts to professional fee reserve acct														
DeNor bankruptcy counsel	-	-	-	-	-	(1,615)	(265)	(265)	(265)	(265)	(265)	(265)	(265)	(3,500)
Debtor FA/CRO	-	-	-	-	-	(300)	(50)	(50)	(50)	(50)	(50)	(50)	(50)	(650)
Compensation consultant	-	-	-	-	-	(16)	(16)	(16)	(16)	(16)	(16)	(16)	(16)	(128)
Committee counsel	-	-	-	-	-	(73)	(18)	(18)	(18)	(18)	(18)	(18)	(18)	(260)
Committee FA	-	-	-	-	-	(73)	(18)	(18)	(18)	(18)	(18)	(18)	(18)	(260)
US Trustee	-	-	-	-	-	-	-	-	-	-	-	(250)	-	(250)
Total re-org related	$ -	$ -	$ -	$ -	$ -	$ (2,077)	$ (372)	$ (372)	$ (372)	$ (372)	$ (372)	$ (622)	$ (372)	$ (4,928)
Net change in cash from ops + reorg costs	-	(27)	597	1,508	(868)	(498)	(1,287)	845	(1,273)	(677)	(717)	(368)	2	(3,763)
Investing cash flows (principal only on notes)														
Select Equity Fund equity redemptions	-	-	-	-	-	1,250	-	1,067	-	1,301	-	-	-	3,618
Third party fund capital call obligations	-	-	-	-	-	(1,650)	-	-	-	-	-	-	-	(1,650)
Third party fund actual/expected distributions	-	79	-	-	-	400	-	-	-	-	-	-	-	479
Multi Strategy Credit Fund	-	-	-	-	(500)	-	-	-	(500)	-	(500)	-	(500)	(2,000)
Highland Capital Management Latin America	-	-	-	(100)	-	-	-	(100)	-	-	-	(100)	-	(300)
Proceeds from outstanding notes	-	-	-	-	-	-	-	-	-	-	-	701	-	701
Proceeds from other investments	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Net change in cash due to investing activities	-	79	-	(100)	(500)	-	-	967	(500)	1,301	(500)	601	(500)	848
Ending unrestricted operating cash	$ 2,126	$ 2,178	$ 2,775	$ 4,182	$ 2,815	$ 2,317	$ 1,030	$ 2,841	$ 1,060	$ 1,693	$ 476	$ 709	$ 211	$ 211
Professional fees escrow account[5]														
Re-org related professional fees escrow beginning balance	$ -	$ -	$ -	$ -	$ -	$ -	$ 2,077	$ 2,449	$ 2,820	$ 3,192	$ 1,528	$ 1,900	$ 2,271	$ -
Inflows from operating account	-	-	-	-	-	2,077	372	372	372	372	372	622	372	4,928
Payments to professionals														
DeNor bankruptcy counsel	-	-	-	-	-	-	-	-	-	(1,508)	-	-	-	(1,508)
Debtor FA/CRO	-	-	-	-	-	-	-	-	-	(350)	-	-	-	(350)
Compensation consultant	-	-	-	-	-	-	-	-	-	(32)	-	-	-	(32)
Committee counsel	-	-	-	-	-	-	-	-	-	(73)	-	-	-	(73)
Committee FA	-	-	-	-	-	-	-	-	-	(73)	-	-	-	(73)
US Trustee	-	-	-	-	-	-	-	-	-	-	-	(250)	-	(250)
Total outflows to professionals	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ (2,035)	$ -	$ (250)	$ -	$ (2,285)
Re-org related professional fees escrow ending balance	$ -	$ -	$ -	$ -	$ -	$ 2,077	$ 2,449	$ 2,820	$ 3,192	$ 1,528	$ 1,900	$ 2,271	$ 2,643	$ 2,643

(1) Beginning unrestricted operating cash represents the bank cash balance of the DeNor's operating account as of the Petition Date.
(2) Benefits activity includes monthly health insurance premiums sent from the operating account to the insurance account. Within the insurance account monthly premiums are received and are used to pay claims and administrative expenses of the self-insured plan.
(3) Forecast assumes that amounts are funded from the operating account to the professional fees escrow account weekly, then the professional fees escrow account is used to pay re-org related vendors 80% of excess of fees beginning in December 2019, except for the Debtor FA/CRO, which is paid 100%.

EXHIBIT 89

Monthly Operating Report
ACCRUAL BASIS

CASE NAME:	Highland Capital Management
CASE NUMBER:	19-34054
JUDGE:	Stacey Jernigan

UNITED STATES BANKRUPTCY COURT

NORTHERN & EASTERN DISTRICTS OF TEXAS

REGION 6

MONTHLY OPERATING REPORT

MONTH ENDING: November (MONTH) 2019 (YEAR)

IN ACCORDANCE WITH TITLE 28, SECTION 1746, OF THE UNITED STATES CODE, I DECLARE UNDER PENALTY OF PERJURY THAT I HAVE EXAMINED THE FOLLOWING MONTHLY OPERATING REPORT (ACCRUAL BASIS-1 THROUGH ACCRUAL BASIS-7) AND THE ACCOMPANYING ATTACHMENTS AND, TO THE BEST OF MY KNOWLEDGE, THESE DOCUMENTS ARE TRUE, CORRECT, AND COMPLETE. DECLARATION OF THE PREPARER (OTHER THAN RESPONSIBLE PARTY) IS BASED ON ALL INFORMATION OF WHICH PREPARER HAS ANY KNOWLEDGE.

RESPONSIBLE PARTY:

ORIGINAL SIGNATURE OF RESPONSIBLE PARTY — TITLE: Chief Restructuring Officer

PRINTED NAME OF RESPONSIBLE PARTY: Bradley Sharp — DATE: 12-31-19

PREPARER:

ORIGINAL SIGNATURE OF PREPARER — TITLE: Chief Financial Officer

PRINTED NAME OF PREPARER: Frank Waterhouse — DATE: 12.31.19

Exhibit 21

1934054191231000000000002

Monthly Operating Report
ACCRUAL BASIS-1

CASE NAME:	Highland Capital Management, LP
CASE NUMBER:	19-12239-CSS

Comparative Balance Sheet
(in thousands)

	10/15/2019	10/31/2019	11/30/2019
Assets			
Cash and cash equivalents	2,529	2,286	6,343
Investments, at fair value[3]	232,620	235,144	233,776
Equity method investees[3]	161,819	161,813	175,381
Management and incentive fee receivable	2,579	3,202	1,223
Fixed assets, net	3,754	3,672	3,601
Due from affiliates[1]	151,901	152,124	152,523
Other assets	11,311	11,260	10,621
Total assets	**$ 566,513**	**$ 569,501**	**$ 583,468**
Liabilities and Partners' Capital			
Pre-petition accounts payable[4]	1,176	1,135	1,250
Post-petition accounts payable[4]	-	102	236
Secured debt:			
Frontier	5,195	5,195	5,195
Jefferies	30,328	30,315	30,268
Accrued expenses and other liabilities[4]	59,203	59,184	60,848
Accrued re-organization related fees[5]	-	-	-
Claim accrual[2]	73,997	73,997	73,997
Partners' capital	396,614	399,573	411,674
Total liabilities and partners' capita	**$ 566,513**	**$ 569,501**	**$ 583,468**

(1) Includes various notes receivable at carrying value (fv undetermined).

(2) Uncontested portion of claim less appplicable offsets. Potential for additional liability based on future events. No interest has been accrued beyond petition date.

(3) Mark to market gains/(losses) on investments include pricing updates for publicly traded securities and other positions with readily available market price information. Limited partnership interests normally marked to a NAV statement have not been updated as of period end as statements are generally available on a one-month lag.

(4) Note on accruals: expenses recorded in Accounts Payable and Accrued Expenses and Other Liabilities reflect invoices recorded through accounts payable, legal invoice accruals, and normal course operating accruals, but do not reflect estimates for other incurred, but not yet received invoices. For balance sheet dates other than the Petition Date, amounts include both pre-petition and post-petition liabilities.

(5) Debtor funded various retainers totaling $790k prior to the petition date, which were entirely expensed prior to the petition date. No additional amounts were accrued between October 16, 2019 and November 30, 2019

Monthly Operating Report
ACCRUAL BASIS-2

CASE NAME:	**Highland Capital Management, LP**
CASE NUMBER:	**19-12239-CSS**

Income Statement [1]
(in thousands)

	Date	Month ended	Filing to Date
	10/16/19 - 10/31/19	**11/30/2019**	
Revenue:			
Management fees	975	1,638	2,613
Shared services fees	283	709	992
Other income	99	418	517
Total operating revenue	**1,357**	**2,765**	**4,122**
Operating expenses:			
Compensation and Benefits	997	1,936	2,932
Professional services	256	90	346
Investment research and consulting	10	34	44
Marketing and advertising expense	-	35	35
Depreciation expense	82	82	164
Other operating expenses	201	480	681
Total operating expenses	**1,545**	**2,657**	**4,202**
Operating income/(loss)	**(188)**	**108**	**(80)**
Other income/expense:			
Interest income	250	484	735
Interest expense	(107)	(103)	(211)
Re-org related expenses[2]	-	-	-
Other income/expense	32	-	32
Total other income/expense	**175**	**381**	**555**
Net realized gains/(losses) on investments	339	279	618
Net change in unrealized gains/(losses) of investments[3]	2,654	(2,004)	650
	2,993	**(1,725)**	**1,268**
Net earnings/(losses) from equity method investees [3]	(20)	13,468	13,448
Net income/(loss)	**$ 2,959**	**$ 12,232**	**$ 15,192**

(1) Note on accruals: expenses recorded in the Income Statement reflect invoices recorded through accounts payable, legal invoice accruals, and normal course operating accruals, but do not reflect estimates for other incurred, but not yet received invoices.

(2) Debtor funded various retainers totaling $790k prior to the petition date, which were entirely expensed as of the petition date. No additional amounts were accrued between October 16, 2019 and November 30, 2019

(3) Mark to market gains/(losses) on investments include pricing updates for publicly traded securities and other positions with readily available market price information. Limited partnership interests normally marked to a NAV statement have not been updated as of period end as statements are generally available on a one-month lag.

Monthly Operating Report
ACCRUAL BASIS-3A

CASE NAME:	Highland Capital Management
CASE NUMBER:	19-34054

CASH RECEIPTS AND DISBURSEMENTS	OCTOBER	NOVEMBER	DECEMBER	QUARTER
1. CASH - BEGINNING OF MONTH [2]	$2,554,230	$2,286,160		$2,554,230
RECEIPTS FROM OPERATIONS				
2. OTHER OPERATING RECEIPTS	$6,911.97	$972,733		$979,644
3 MANAGEMENT FEES AND OTHER RELATED RECEIPTS	$15,000.00	$1,764,749		$1,779,749
COLLECTION OF ACCOUNTS RECEIVABLE				
4 PREPETITION	$46,425	$2,962,108		$3,008,534
5 POSTPETITION [1]	-	-		-
6 TOTAL OPERATING RECEIPTS	$68,337	$5,699,590		$5,767,928
NON-OPERATING RECEIPTS				
7 THIRD PARTY FUND ACTUAL/EXPECTED DISTRIBUTIONS	$79,266	$320,836		$400,103
8 DIVS, PAYDOWNS, MISC FROM INVESTMENT ASSETS	$410,189	$501,983		$912,172
9 OTHER (ATTACH LIST)				$0
10 TOTAL NON-OPERATING RECEIPTS	$489,456	$822,820		$1,312,275
11 TOTAL RECEIPTS	$557,793	$6,522,410		$7,080,203
12 TOTAL CASH AVAILABLE	$3,112,023	$8,808,570		
OPERATING DISBURSEMENTS				
13 PAYROLL, BENEFITS, AND TAXES + EXP REIMB	$737,588	$961,282		$1,698,869
14 SINGAPORE SERVICE FEES	$34,633	$32,555		$67,189
15 HCM LATIN AMERICA		$100,000		$100,000
16 THIRD PARTY FUND CAPITAL CALL OBLIGATION		$967,555		$967,555
17 UTILITIES				$0
18 INSURANCE				$0
19 INVENTORY PURCHASES				$0
20 VEHICLE EXPENSES				$0
21 TRAVEL				$0
22 ENTERTAINMENT				$0
23 REPAIRS & MAINTENANCE				$0
24 SUPPLIES				$0
25 ADVERTISING				$0
26 OTHER (ATTACH LIST)	$53,642	$404,581		$458,223
27 TOTAL OPERATING DISBURSEMENTS	$825,863	$2,465,973		$3,291,836
REORGANIZATION EXPENSES				
28 PROFESSIONAL FEES				$0
29 U.S. TRUSTEE FEES				$0
30 OTHER (ATTACH LIST)				$0
31 TOTAL REORGANIZATION EXPENSES	$0	$0		$0
32 TOTAL DISBURSEMENTS	$825,863	$2,465,973		$3,291,836
33 NET CASH FLOW	($268,070)	$4,056,437		$3,788,367
34 CASH - END OF MONTH	$2,286,160	$6,342,598		$6,342,598

1 All postpetition receipts are included in line 3, Management Fees and Other Related Recepits.
2 Beginning cash in October represents the bank balance as of the filing date, while the cash amount shown on the balance sheet includes any outstanding checks.

Monthly Operating Report
ACCRUAL BASIS-3B

CASE NAME:	**Highland Capital Management**
CASE NUMBER:	**19-34054**

OPERATING DISBURSMENTS - OTHER

Date	Amount	Vendor
11/1/2019	$ 155,983	Crescent TC Invest
11/1/2019	26,667	Third Party Consultant
11/1/2019	13,636	Third Party Consultant
11/8/2019	33,007	Platinum Parking
11/8/2019	1,053	Gold's Gym International
11/12/2019	1,525	MicroTel
11/15/2019	1,951	Compass Bank Operating
11/18/2019	2,047	Zayo
11/20/2019	2,894	Third Party Consultant
11/25/2019	24,232	Coleman Research Group, Inc.
11/26/2019	3,092	Canteen Vending
11/26/2019	925	UPS Small Package
11/26/2019	671	SolarWinds
11/26/2019	7,995	Intralinks Inc
11/26/2019	56,522	Houlihan Lokey Financial Advisors
11/26/2019	9,259	Willis of Texas, Inc.
11/26/2019	8,846	GrubHub for Work
11/29/2019	31,894	Third Party Consultant
11/29/2019	11,000	Third Party Consultant
11/29/2019	11,382	Verity Group
	$ 404,581	

-

Monthly Operating Report
ACCRUAL BASIS-4

CASE NAME:	Highland Capital Management
CASE NUMBER:	19-34054

MGMT FEE RECEIVABLE AGING [2]	**SCHEDULE AMOUNT**	**October**	**November**	**December**
1. 0-30	$ 2,578,744	$ 3,201,548	$ 1,222,880	
2. 31-60		$0		
3. 61-90		$0		
4. 91+		-		
5. TOTAL MGMT FEE RECEIVABLE	$ 2,578,744	$ 3,201,548	$ 1,222,880	$0
6. AMOUNT CONSIDERED UNCOLLECTIBLE				
7. MGMT FEE RECEIVABLE (NET)	$ 2,578,744	$ 3,201,548	$ 1,222,880	$0

AGING OF POSTPETITION TAXES AND PAYABLES **MONTH:** November 2019

TAXES PAYABLE	**0-30 DAYS**	**31-60 DAYS**	**61-90 DAYS**	**91+ DAYS**	**TOTAL**
1. FEDERAL					$0
2. STATE					$0
3. LOCAL					$0
4. OTHER (ATTACH LIST)					$0
5. TOTAL TAXES PAYABLE	$0	$0	$0	$0	$0
6. ACCOUNTS PAYABLE	$215,777	$20,059			$235,836

STATUS OF POSTPETITION TAXES [1] **MONTH:** November 2019

FEDERAL	**BEGINNING TAX LIABILITY**	**AMOUNT WITHHELD AND/ 0R ACCRUED**	**AMOUNT PAID**	**ENDING TAX LIABILITY**
1. WITHHOLDING				$0
2. FICA-EMPLOYEE				$0
3. FICA-EMPLOYER				$0
4. UNEMPLOYMENT				$0
5. INCOME				$0
6. OTHER (ATTACH LIST)				$0
7. TOTAL FEDERAL TAXES	$0	$0	$0	$0
STATE AND LOCAL				
8. WITHHOLDING				$0
9. SALES				$0
10. EXCISE				$0
11. UNEMPLOYMENT				$0
12. REAL PROPERTY	$ 16,472	$0	$0	$16,472
13. PERSONAL PROPERTY				$0
14. OTHER (ATTACH LIST)				$0
15. TOTAL STATE & LOCAL	$16,472	$0	$0	$16,472
16. TOTAL TAXES	$16,472	$0	$0	$16,472

1 The Debtor funds all state and federal employment taxes to Paylocity, who files all required federal and state related employment reports and withholdings.
2 Aging based on when management fee is due and payable.

Monthly Operating Report
ACCRUAL BASIS-5

CASE NAME:	Highland Capital Management
CASE NUMBER:	19-34054

MONTH: November 2019

BANK RECONCILIATIONS	Account #1	Account #2	Account #3	Account #4	Account #5	Account #6	
A. BANK:	BBVA Compass	East West Bank	East West Bank	Maxim Group	Jefferies LLC	Nexbank	TOTAL
B. ACCOUNT NUMBER:	x6342	x4686	x4693	x1885	x0932	x5891	
C. PURPOSE (TYPE):	Operating	Operating	Insurance	Brokerage	Brokerage	CD	
1. BALANCE PER BANK STATEMENT [1]	$229,247	$5,477,826	$105,067	$164	$410,108	$135,205	$6,357,616
2. ADD: TOTAL DEPOSITS NOT CREDITED							$0
3. SUBTRACT: OUTSTANDING CHECKS	$15,019						$15,019
4. OTHER RECONCILING ITEMS							$0
5. MONTH END BALANCE PER BOOKS	$214,228	$5,477,826	$105,067	$164	$410,108	$135,205	$6,342,598
6. NUMBER OF LAST CHECK WRITTEN	**18133**	**100001**	**n/a**	**n/a**	**n/a**	**n/a**	

INVESTMENT ACCOUNTS							
BANK, ACCOUNT NAME & NUMBER	DATE OF PURCHASE	TYPE OF INSTRUMENT	PURCHASE PRICE				CURRENT VALUE
7.							
8.							
9.							
10.							
11. TOTAL INVESTMENTS			$0				$0

CASH	
12. CURRENCY ON HAND	$0
13. **TOTAL CASH - END OF MONTH**	$6,342,598

1 For Compass account x6342, funds transferred in December such that only sufficient cash to cover outstanding checks remains

Monthly Operating Report
ACCRUAL BASIS-6

CASE NAME:	Highland Capital Management
CASE NUMBER:	19-34054

MONTH: November 2019

PAYMENTS TO INSIDERS AND PROFESSIONALS

	INSIDERS			
	NAME	TYPE OF PAYMENT	AMOUNT PAID	TOTAL PAID TO DATE
1	Frank Waterhouse	Salary	$29,167	$43,750
2	Frank Waterhouse	Expense Reimbursement	$339	$506
3	Scott Ellington	Salary	$37,500	$56,250
4	Scott Ellington	Expense Reimbursement	$84	$2,010
5	James Dondero	Salary	$46,875	$70,313
6	James Dondero	Expense Reimbursement [1]	$11,255	$15,269
7	Thomas Surgent	Salary	$33,333	$50,000
8	Thomas Surgent	Expense Reimbursement	$224	$248
9	Trey Parker	Salary	$29,167	$43,750
10	Trey Parker	Expense Reimbursement	$207	$425
	TOTAL PAYMENTS TO INSIDERS		$188,151	$282,519

1 The total amount of reimbursements also included $83,358 for use of the credit card by the Debtor for office related expenses such as subscriptions, employee lunches, vending supplies, IT equipment/software, employee gifts/awards, training, postage and charitable donations.

	PROFESSIONALS [2]					
	NAME	DATE OF COURT ORDER AUTHORIZING PAYMENT	AMOUNT APPROVED	AMOUNT PAID	TOTAL PAID TO DATE	TOTAL INCURRED & UNPAID
1.						
2.						
3.						
4.						
5.						
6.	TOTAL PAYMENTS TO PROFESSIONALS			$0	$0	$0

2 Does not include payments to ordinary course professionals.

POSTPETITION STATUS OF SECURED NOTES, LEASES PAYABLE AND ADEQUATE PROTECTION PAYMENTS

	NAME OF CREDITOR	SCHEDULED MONTHLY PAYMENTS DUE	AMOUNTS PAID DURING MONTH	TOTAL UNPAID POSTPETITION
1.	Crescent TC Investors LP (rent portion only)	130,364	130,364	-
2.				
3.				
4.				
5.				
6.	TOTAL	130,364	$130,364	$0

Monthly Operating Report
ACCRUAL BASIS-7

CASE NAME:	Highland Capital Management
CASE NUMBER:	19-34054

MONTH: November 2019

QUESTIONNAIRE

	YES	NO
1. HAVE ANY ASSETS BEEN SOLD OR TRANSFERRED OUTSIDE THE NORMAL COURSE OF BUSINESS THIS REPORTING PERIOD?		x
2. HAVE ANY FUNDS BEEN DISBURSED FROM ANY ACCOUNT OTHER THAN A DEBTOR IN POSSESSION ACCOUNT?	x	
3. ARE ANY POSTPETITION RECEIVABLES (ACCOUNTS, NOTES, OR LOANS) DUE FROM RELATED PARTIES?	x	
4. HAVE ANY PAYMENTS BEEN MADE ON PREPETITION LIABILITIES THIS REPORTING PERIOD?	x	
5. HAVE ANY POSTPETITION LOANS BEEN RECEIVED BY THE DEBTOR FROM ANY PARTY?		x
6. ARE ANY POSTPETITION PAYROLL TAXES PAST DUE?		x
7. ARE ANY POSTPETITION STATE OR FEDERAL INCOME TAXES PAST DUE?		x
8. ARE ANY POSTPETITION REAL ESTATE TAXES PAST DUE?		x
9. ARE ANY OTHER POSTPETITION TAXES PAST DUE?		x
10. ARE ANY AMOUNTS OWED TO POSTPETITION CREDITORS DELINQUENT?		x
11. HAVE ANY PREPETITION TAXES BEEN PAID DURING THE REPORTING PERIOD?		x
12. ARE ANY WAGE PAYMENTS PAST DUE?		x

IF THE ANSWER TO ANY OF THE ABOVE QUESTIONS IS "YES," PROVIDE A DETAILED EXPLANATION OF EACH ITEM. ATTACH ADDITIONAL SHEETS IF NECESSARY.

2 $1,206,592 of funds paid from non-debtor in possession accounts, while those accounts were in the process of being opened.
3 Debtor generates fee income and other receipts from various related parties in normal course, see cash management motion for further discussion.
4 Payments have been made on prepetition liabilities, as approved in the critical vendor motion.

INSURANCE

	YES	NO
1. ARE WORKER'S COMPENSATION, GENERAL LIABILITY AND OTHER NECESSARY INSURANCE COVERAGES IN EFFECT?	x	
2. ARE ALL PREMIUM PAYMENTS PAID CURRENT?	x	
3. PLEASE ITEMIZE POLICIES BELOW.		

IF THE ANSWER TO ANY OF THE ABOVE QUESTIONS IS "NO," OR IF ANY POLICIES HAVE BEEN CANCELLED OR NOT RENEWED DURING THIS REPORTING PERIOD, PROVIDE AN EXPLANATION BELOW. ATTACH ADDITIONAL SHEETS IF NECESSARY.

INSTALLMENT PAYMENTS

TYPE OF POLICY	CARRIER	PERIOD COVERED	PAYMENT AMOUNT & FREQUENCY

EXHIBIT 90

EXHIBIT C

LIQUIDATION ANALYSIS/FINANCIAL PROJECTIONS

Highland Capital Management, L.P.
Disclaimer For Financial Projections

This document includes financial projections for July 2020 through December 2022 (the "Projections") for Highland Capital Management, L.P. "Company"). These Projections have been prepared by DSI with input from management at the Company. The historical information utilized in these Projections has not been audited or reviewed for accuracy by DSI.

This Memorandum includes certain statements, estimates and forecasts provided by the Company with respect to the Company's anticipated future performance. These estimates and forecasts contain significant elements of subjective judgment and analysis that may or may not prove to be accurate or correct. There can be no assurance that these statements, estimates and forecasts will be attained and actual outcomes and results may differ materially from what is estimated or forecast herein.

These Projections should not be regarded as a representation of DSI that the projected results will be achieved.

Management may update or supplement these Projections in the future, however, DSI expressly disclaims any obligation to update its report.

These Projections were not prepared with a view toward compliance with published guidelines of the Securities and Exchange Commission or the American Institute of Certified Public Accountants regarding historical financial statements, projections or forecasts.

Highland Capital Management, L.P.
Statement of Assumptions

A. Plan effective date is January 31 ,2021.
B. All investment assets are sold by December 31, 2022.
C. All demand notes are collected in the year 2021.
D. All notes receivable with maturity dates beyond 12/31/2022 are sold in Q4 2022; in the interim interest income and principal payments are collected as they become due.
E. Fixed assets used in daily business operations are sold in February 2021.
F. Accrual for employee bonuses as of January 2021 are reversed and not paid.
G. All Management advisory or shared service contracts are terminated on their terms by the effective date or shortly thereafter
H. Post-effective date, the reorganized Debtor would retain three HCMLP employees as contractors to help monetize the remaining assets.
I. Litigation Trustee budget is $6,500,000.
J. Unrealized gains or losses are not recorded on a monthly basis; all gains or losses are recorded as realized gains or losses upon sale of asset.
K. Plan does not provide for payment of interest to Class 8 holders of general unsecured claims, as set forth in the Plan. If holders of general unsecured claims receive 100% of their allowed claims, they would then be entitled to receive interest at the federal judgement rate, prior to any funds being available for claims or interest of junior priority.
L. Plan assumes zero allowed claims for UBS, IFA, the HarbourVest entities (collectively "HV") and Hunter Mountain Investment Trust ("HM").
M. Claim amounts listed in Plan vs. Liquidation schedule are subject to change; claim amounts in Class 8 assume $0 for UBS, IFA, HM and HV. Assumes RCP claims will offset against HCMLP's interest in fund and will not be paid from Debtor assets
N. With the exception of Class 2 - Frontier, Classes 1-7 will be paid in full within 30 days of effective date.
O. Class 7 payout limited to 85% of each individual creditor claim or in the aggregate $13.15 million. Plan currently projects Class 7 payout of $9.96 million.
P. See below for Class 8 estimated payout schedule; payout is subject to certain assets being monetized by payout date:
    - By September 30, 2021 - $50,000,000
    - By March 31, 2022 – additional $50,000,000
    - By June 30, 2022 – additional $25,000,000
    - All remaining proceeds are assumed to be paid out on or soon after all remaining assets are monetized.

Highland Capital Management, L.P.
Plan Analysis Vs. Liquidation Analysis
(US $000's)

	Plan Analysis	Liquidation Analysis
Estimated cash on hand at 1/31/2020	$ 25,076	$ 25,076
Estimated proceeds from monetization of assets [1][2]	190,445	149,197
Estimated expenses through final distribution[1][3]	(33,642)	(36,232)
Total estimated $ available for distribution	181,879	138,042
Less: Claims paid in full		
Unclassified [4]	(1,078)	(1,078)
Administrative claims [5]	(10,574)	(10,574)
Class 1 - Jefferies Secured Claim	-	-
Class 2 - Frontier Secured Claim [6]	(5,463)	(5,463)
Class 3 - Other Secured Claims	(551)	(551)
Class 4 – Priority Non-Tax Claims	(16)	(16)
Class 5 - Retained Employee Claims	-	-
Class 6 - PTO Claims	-	-
Class 7 – Convenience Claims [7][8][9]	(10,255)	-
Subtotal	(27,937)	(17,682)
Estimated amount remaining for distribution to general unsecured claims	153,942	120,359
Class 8 – General Unsecured Claims [8][10]	176,049	192,258
Subtotal	176,049	192,258
% Distribution to general unsecured claims	87.44%	62.60%
Estimated amount remaining for distribution	-	-
Class 9 – Subordinated Claims	*no distribution*	*no distribution*
Class 10 – Class B/C Limited Partnership Interests	*no distribution*	*no distribution*
Class 11 – Class A Limited Partnership Interest	*no distribution*	*no distribution*

Footnotes:
[1] Assumes chapter 7 Trustee will not be able to achieve same sales proceeds as Claimant Trustee
Assumes Chapter 7 Trustee engages new professionals to help liquidate assets
[2] Sale of investment assets, sale of fixed assets, collection of accounts receivable and interest receivable
[3] Estimated expenses through final distribution exclude non-cash expenses:
Depreciation of $462 thousand in 2021
[4] Unclassified claims include payments for priority tax claims and settlements with previously approved by the Bankruptcy Court
[5] Represents $4.7 million in unpaid professional fees and $4.5 million in timing of payments to vendors
[6] Debtor will pay all unpaid interest estimated at $253 thousand of Frontier on effective date and continue to pay interest quarterly at 5.25% until Frontier's collateral is sold
[7] Claims payout limited to 85% of each individual creditor claim or limited to a total class payout of $13.15 million
[8] Class 7 includes $1.1 million estimate for aggregate contract rejections damage and Class 8 includes $1.4 million for contract rejection damages
[9] Assumes 3 claimants with allowed claims less than $2.5 million opt into Class 7 along with claims of Senior Employees
[10] Class estimates $0 allowed claim for the following creditors: IFA, HV, HM and UBS; assumes RCP claims offset against HCMLP interest in RCP fund

Notes:
All claim amounts are estimated as of November 20, 2020 and subject to change

Highland Capital Management, L.P.
Balance Sheet
(US $000's)

	Actual	Actual	Forecast --->								
	Jun-20	**Sep-20**	**Dec-20**	**Mar-21**	**Jun-21**	**Sep-21**	**Dec-21**	**Mar-22**	**Jun-22**	**Sep-22**	**Dec-22**
Assets											
Cash and Cash Equivalents	$ 14,994	$ 5,888	$ 28,342	$ 4,934	$ 96,913	$ 90,428	$ 106,803	$ 52,322	$ 23,641	$ 21,344	$ -
Other Current Assets	13,182	13,651	10,559	9,629	7,746	7,329	5,396	6,054	6,723	7,406	-
Investment Assets	320,912	305,961	261,333	258,042	133,026	81,793	54,159	54,159	54,159	54,159	-
Net Fixed Assets	3,055	2,823	2,592	1,348	-	-	-	-	-	-	-
TOTAL ASSETS	**$ 352,142**	**$ 328,323**	**$ 302,826**	**$ 273,952**	**$ 237,684**	**$ 179,550**	**$ 166,358**	**$ 112,535**	**$ 84,523**	**$ 82,910**	**$ -**
Liabilities											
Post-petition Liabilities	$ 26,226	$ 19,138	$ 19,280	$ 2,891	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Pre-petition Liabilities	126,365	126,343	121,950	-	-	-	-	-	-	-	-
Claims											
Unclassified	-	-	-	-	-	-	-	-	-	-	-
Class 1 – Jefferies Secured Claim	-	-	-	-	-	-	-	-	-	-	-
Class 2 - Frontier Secured Claim	-	-	-	5,210	-	-	-	-	-	-	-
Class 3 - Other Secured Claims	-	-	-	-	-	-	-	-	-	-	-
Class 4 – Priority Non-Tax Claims	-	-	-	-	-	-	-	-	-	-	-
Class 5 – Retained Employee Claims	-	-	-	-	-	-	-	-	-	-	-
Class 6 - PTO Claims	-	-	-	-	-	-	-	-	-	-	-
Class 7 – Convenience Claims	-	-	-	-	-	-	-	-	-	-	-
Class 8 – General Unsecured Claims	-	-	-	176,049	176,049	126,049	126,049	76,049	51,049	51,049	22,107
Class 9 – Subordinated Claims	-	-	-	-	-	-	-	-	-	-	-
Class 10 – Class B/C Limited Partnership Interests	-	-	-	-	-	-	-	-	-	-	-
Class 11 – Class A Limited Partnership Interests	-	-	-	-	-	-	-	-	-	-	-
Claim Payable	126,365	126,343	121,950	181,259	176,049	126,049	126,049	76,049	51,049	51,049	22,107
TOTAL LIABILITIES	**$ 152,591**	**145,481**	**141,230**	**184,150**	**176,049**	**126,049**	**126,049**	**76,049**	**51,049**	**51,049**	**22,107**
Partners' Capital	199,551	182,842	161,596	89,802	61,635	53,501	40,309	36,486	33,473	31,860	(22,107)
TOTAL LIABILITIES AND PARTNERS' CAPITAL	**$ 352,142**	**$ 328,323**	**$ 302,826**	**$ 273,952**	**$ 237,684**	**$ 179,550**	**$ 166,358**	**$ 112,535**	**$ 84,523**	**$ 82,910**	**$ -**

Highland Capital Management, L.P.
Profit/Loss
(US $000's)

	Actual	Actual	Forecast --->						
	Jan 2020 to June 2020 Total	**3 month ended Sept 2020**	**3 month ended Dec 2020**	**Total 2020**	**3 month ended Mar 2021**	**3 month ended Jun 2021**	**3 month ended Sept 2021**	**3 month ended Dec 2021**	**Total 2021**
Revenue									
Management Fees	$ 6,572	$ 1,949	$ 2,651	$ 11,173	$ 779	$ -	$ -	$ -	$ 779
Shared Service Fees	7,672	3,765	3,788	15,225	1,263	-	-	-	1,263
Other Income	3,126	538	340	4,004	113	-	-	-	113
Total revenue	$ 17,370	$ 6,252	$ 6,779	$ 30,401	$ 2,154	$ -	$ -	$ -	$ 2,154
Operating Expenses [1]	13,328	9,171	9,079	31,579	8,428	1,646	1,807	2,655	14,536
Income/(loss) From Operations	$ 4,042	$ (2,918)	$ (2,301)	$ (1,177)	$ (6,274)	$ (1,646)	$ (1,807)	$ (2,655)	$ (12,381)
Professional Fees	17,522	7,707	7,741	32,971	5,450	5,058	2,048	1,605	14,160
Other Income/(Expenses) [2]	2,302	1,518	1,057	4,878	(59,016)	573	423	423	(57,598)
Operating Gain/(Loss)	$ (11,178)	$ (9,107)	$ (8,985)	$ (29,270)	$ (70,741)	$ (6,130)	$ (3,432)	$ (3,837)	$ (84,139)
Realized and Unrealized Gain/(Loss)									
Other Realized Gains/(Loss)	-	-	-	-	(763)	522	-	-	(241)
Net Realized Gain/(Loss) on Sale of Investment	(28,418)	1,549	(12,167)	(39,036)	(290)	19	(4,702)	(8,006)	(12,979)
Net Change in Unrealized Gain/(Loss) of Investments	(29,929)	(7,450)	-	(37,380)	-	-	-	-	-
Net Realized Gain /(Loss) from Equity Method Investees	-	-	(94)	(94)	-	(22,578)	-	(1,349)	(23,927)
Net Change in Unrealized Gain /(Loss) from Equity Method Investees	(80,782)	(1,700)	-	(82,482)	-	-	-	-	-
Total Realized and Unrealized Gain/(Loss)	$ (139,129)	$ (7,601)	$ (12,262)	$ (158,992)	$ (1,053)	$ (22,037)	$ (4,702)	$ (9,355)	$ (37,147)
Net Income	$ (150,307)	$ (16,708)	$ (21,247)	$ (188,262)	$ (71,794)	$ (28,167)	$ (8,134)	$ (13,192)	$ (121,287)

Footnotes:
[1] Operating expenses include an adjustment in January 2021 to account for expenses that have not been accrued or paid prior to effective date.
[2] Other income and expenses of $61.2 million in January 2021 includes:
[a] $77.7 million was expensed to record for the increase of allowed claims.
[b] Income of $15.8 million for the accrued, but unpaid payroll liability related to the Debtor's deferred bonus programs amount written-off.

Highland Capital Management, L.P.
Profit/Loss
(US $000's)

	Forecast ---> 3 month ended Mar 2022	3 month ended Jun 2022	3 month ended Sept 2022	3 month ended Dec 2022	Total 2022	Plan
Revenue						
Management Fees	$ -	$ -	$ -	$ -	$ -	$ 779
Shared Service Fees	-	-	-	-	-	1,263
Other Income	-	-	-	-	-	113
Total revenue	$ -	$ -	$ -	$ -	$ -	$ 2,154
Operating Expenses	1,443	643	758	1,088	3,932	18,468
Income/(loss) From Operations	$ (1,443)	$ (643)	$ (758)	$ (1,088)	$ (3,932)	$ (16,314)
Professional Fees	2,788	2,788	1,288	1,288	8,153	22,313
Other Income/(Expenses)	408	419	434	184	1,444	(56,154)
Operating Gain/(Loss)	$ (3,823)	$ (3,013)	$ (1,613)	$ (2,193)	$ (10,641)	$ (94,780)
Realized and Unrealized Gain/(Loss)						
Other Realized Gains/(Loss)	-	-	-	(51,775)	(51,775)	(52,016)
Net Realized Gain/(Loss) on Sale of Investment	-	-	-	-	-	(12,979)
Net Change in Unrealized Gain/(Loss) of Investments	-	-	-	-	-	-
Net Realized Gain /(Loss) from Equity Method Investees	-	-	-	-	-	(23,927)
Net Change in Unrealized Gain /(Loss) from Equity Method Investees	-	-	-	-	-	-
Total Realized and Unrealized Gain/(Loss)	$ -	$ -	$ -	$ (51,775)	$ (51,775)	$ (88,922)
Net Income	$ (3,823)	$ (3,013)	$ (1,613)	$ (53,967)	$ (62,415)	$ (183,702)

Highland Capital Management, L.P.
Cash Flow Indirect
(US $000's)

	Forecast ---->									
	Sep-20	**Dec-20**	**Mar-21**	**Jun-21**	**Sep-21**	**Dec-21**	**Mar-22**	**Jun-22**	**Sep-22**	**Dec-22**
Net (Loss) Income	$ (16,708)	$ (21,247)	$ (71,794)	$ (28,167)	$ (8,134)	$ (13,192)	$ (3,823)	$ (3,013)	$ (1,613)	$ (53,967)
Cash Flow from Operating Activity										
(Increase) / Decrease in Cash										
Depreciation and amortization	231	231	231	231	-	-	-	-	-	-
Other realized (gain)/ loss	-	-	763	(522)	-	-	-	-	-	51,775
Investment realized (gain)/ loss	(1,549)	12,262	290	22,559	4,702	9,355	-	-	-	-
Unrealized (gain) / loss	(9,150)	-	-	-	-	-	-	-	-	-
(Increase) Decrease in Current Assets	(470)	3,092	930	1,884	417	1,933	(658)	(669)	(684)	2,010
Increase (Decrease) in Current Liabilities	(7,110)	(4,251)	(54,172)	(2,891)	-	-	-	-	-	-
Net Cash Increase / (Decrease) - Operating Activities	(34,757)	(9,913)	(123,752)	(6,907)	(3,015)	(1,904)	(4,481)	(3,681)	(2,297)	(182)
Cash Flow From Investing Activities										
Proceeds from Sale of Fixed Assets	-	-	250	1,639	-	-	-	-	-	-
Proceeds from Investment Assets	25,650	32,366	3,002	102,457	46,531	18,278	-	-	-	7,780
Net Cash Increase / (Decrease) - Investing Activities	25,650	32,366	3,252	104,096	46,531	18,278	-	-	-	7,780
Cash Flow from Financing Activities										
Claims payable	-	-	(73,997)	-	-	-	-	-	-	-
Claim reclasses/(paid)	-	-	181,259	(5,210)	(50,000)	-	(50,000)	(25,000)	-	(28,942)
Maple Avenue Holdings	-	-	(4,975)	-	-	-	-	-	-	-
Frontier Note	-	-	(5,195)	-	-	-	-	-	-	-
Net Cash Increase / (Decrease) - Financing Activities	-	-	97,092	(5,210)	(50,000)	-	(50,000)	(25,000)	-	(28,942)
Net Change in Cash	$ (9,107)	$ 22,454	$ (23,408)	$ 91,979	$ (6,484)	$ 16,374	$ (54,481)	$ (28,681)	$ (2,297)	$ (21,344)
Beginning Cash	14,994	5,888	28,342	4,934	96,913	90,428	106,803	52,322	23,641	21,344
Ending Cash	$ 5,887	$ 28,342	$ 4,934	$ 96,913	$ 90,428	$ 106,803	$ 52,322	$ 23,641	$ 21,344	$ -

EXHIBIT 91

Highland Capital Management, L.P.
Disclaimer For Financial Projections

This document includes financial projections for July 2020 through December 2022 (the "Projections") for Highland Capital Management, L.P. "Company"). These Projections have been prepared by DSI with input from management at the Company. The historical information utilized in these Projections has not been audited or reviewed for accuracy by DSI.

This document includes certain statements, estimates and forecasts provided by the Company with respect to the Company's anticipated future performance. These estimates and forecasts contain significant elements of subjective judgment and analysis that may or may not prove to be accurate or correct. There can be no assurance that these statements, estimates and forecasts will be attained and actual outcomes and results may differ materially from what is estimated or forecast herein.

These Projections should not be regarded as a representation of DSI that the projected results will be achieved.

Management may update or supplement these Projections in the future, however, DSI expressly disclaims any obligation to update its report.

These Projections were not prepared with a view toward compliance with published guidelines of the Securities and Exchange Commission or the American Institute of Certified Public Accountants regarding historical financial statements, projections or forecasts.

Exhibit 24

Highland Capital Management, L.P.
Statement of Assumptions

A. Plan effective date is March 1, 2021
B. All investment assets are sold by December 31, 2022.
C. All demand notes are collected in the year 2021; 3 term notes defaulted and have been demanded based on default provisions; payment estimated in 2021
D. Dugaboy term note with maturity date beyond 12/31/2022 are sold in Q1 2022; in the interim interest income and principal payments are not collected due to prepayment on note
E. Fixed assets currently used in daily operations are sold in June 2021 for $0
F. Highland bonus plan has been terminated in accordance with its terms. Accrual for employee bonuses as of January 2021 are reversed and not paid.
G. All Management advisory or shared service contracts are terminated on their terms by the effective date or shortly thereafter
H. Post-effective date, the reorganized Debtor would retain up to ten HCMLP employees (or hire similar employees) to help monetize the remaining assets.
I. Litigation Trustee budget is $6,500,000.
J. Unrealized gains or losses are not recorded on a monthly basis; all gains or losses are recorded as realized gains or losses upon sale of asset.
K. Plan does not provide for payment of interest to Class 8 holders of general unsecured claims, as set forth in the Plan. If holders of general unsecured claims receive 100% of their allowed claims, they would then be entitled to receive interest at the federal judgement rate, prior to any funds being available for claims or interest of junior priority.
L. Plan assumes zero allowed claims for IFA and Hunter Mountain Investment Trust ("HM"); UBS claim based on voting amount of $94.8 million, but Debtor and UBS have agreed in principal regarding UBS's allowed claim
M. Claim amounts listed in Plan vs. Liquidation schedule are subject to change; claim amounts in Class 8 assume $0 for IFA and HM, $94.8 million for UBS and $45 million HV. Assumes RCP claims will offset against HCMLP's interest in fund and will not be paid from Debtor assets
N. With the exception of Class 2 - Frontier, Classes 1-7 will be paid in full within 30 days of effective date.
O. Class 7 payout limited to 85% of each individual creditor claim or in the aggregate $13.15 million. Plan currently projects Class 7 payout of $10.3 million.
P. See below for Class 8 estimated payout schedule; payout is subject to certain assets being monetized by payout date (no Plan requirement to do so):
    - By September 30, 2021 - $50,000,000
    - By March 31, 2022 – additional $50,000,000
    - By June 30, 2022 – additional $25,000,000
    - All remaining proceeds are assumed to be paid out on or soon after all remaining assets are monetized.
Q. Assumptions subject to revision based on business decision and performance of the business

Highland Capital Management, L.P.
Plan Analysis Vs. Liquidation Analysis
(US $000's)

	Plan Analysis	Liquidation Analysis
Estimated cash on hand at 1/31/2020	$ 24,290	$ 24,290
Estimated proceeds from monetization of assets [1][2]	257,941	191,946
Estimated expenses through final distribution[1][3]	(59,573)	(41,488)
Total estimated $ available for distribution	222,658	174,748
Less: Claims paid in full		
Unclassified [4]	(1,080)	(1,080)
Administrative claims [5]	(10,574)	(10,574)
Class 1 - Jefferies Secured Claim	-	-
Class 2 - Frontier Secured Claim [6]	(5,781)	(5,781)
Class 3 - Other Secured Claims	(62)	(62)
Class 4 – Priority Non-Tax Claims	(16)	(16)
Class 5 - Retained Employee Claims	-	-
Class 6 - PTO Claims [5]	-	-
Class 7 – Convenience Claims [7][8]	(10,280)	-
Subtotal	(27,793)	(17,514)
Estimated amount remaining for distribution to general unsecured claims	194,865	157,235
% Distribution to Class 7 (Class 7 claims included in Class 8 in Liquidation scenario)	85.00%	0.00%
Class 8 – General Unsecured Claims [8][10]	313,588	326,468
Subtotal	313,588	326,468
% Distribution to general unsecured claims	62.14%	48.16%
Estimated amount remaining for distribution	-	-
Class 9 – Subordinated Claims	*no distribution*	*no distribution*
Class 10 – Class B/C Limited Partnership Interests	*no distribution*	*no distribution*
Class 11 – Class A Limited Partnership Interest	*no distribution*	*no distribution*

Footnotes:
[1] Assumes chapter 7 Trustee will not be able to achieve same sales proceeds as Claimant Trustee
Assumes Chapter 7 Trustee engages new professionals to help liquidate assets and terminates any management agreements with funds or CLOS
[2] Sale of investment assets, sale of fixed assets, collection of accounts receivable and interest receivable; Plan includes revenue from managing CLOs
[3] Estimated expenses through final distribution exclude non-cash expenses:
Depreciation of $462 thousand in 2021; Bad debt of $124K in 2021
[4] Unclassified claims include payments for priority tax claims and settlements with previously approved by the Bankruptcy Court
[5] Represents $4.7 million in unpaid professional fees, $4.5 million in timing of payments to vendors and $1.2 million to pay PTO
[6] Debtor will pay all unpaid interest estimated at $253 thousand of Frontier on effective date and continue to pay interest quarterly at 5.25% until Frontier's collateral is sola
[7] Claims payout limited to 85% of each individual creditor claim or limited to a total class payout of $13.15 million
[8] Plan: Class 7 includes $1.2 million estimate for aggregate contract rejections damage; Liquidation Class 8 includes $2.0 million for estimated rejection damages
[10] Class estimates $0 allowed claim for the following creditors: IFA and HM; assumes RCP claims offset against HCMLP interest in RCP fund
UBS claim included at voting amount of $94.8 million. Debtor and UBS have agreed in principal regarding UBS's allowed claim

Notes:
All claim amounts are estimated as of January 26, 2020 and subject to change

1/28/2021

Highland Capital Management, L.P.
Balance Sheet
(US $000's)

	Actual	Actual	Forecast --->								
	Jun-20	**Sep-20**	**Dec-20**	**Mar-21**	**Jun-21**	**Sep-21**	**Dec-21**	**Mar-22**	**Jun-22**	**Sep-22**	**Dec-22**
Assets											
Cash and Cash Equivalents	$ 14,994	$ 5,888	$ 31,047	$ 10,328	$ 40,063	$ 42,833	$ 135,137	$ 80,733	$ 72,238	$ 69,368	$ -
Other Current Assets	13,182	13,651	13,784	15,172	14,671	14,220	9,943	8,268	8,417	8,567	-
Investment Assets	320,912	305,961	283,812	280,946	233,234	171,174	47,503	47,503	25,888	25,888	-
Net Fixed Assets	3,055	2,823	2,592	1,348	-	-	-	-	-	-	-
TOTAL ASSETS	**$ 352,142**	**$ 328,323**	**$ 331,235**	**$ 307,793**	**$ 287,968**	**$ 228,227**	**$ 192,583**	**$ 136,504**	**$ 106,542**	**$ 103,823**	**$ -**
Liabilities											
Post-petition Liabilities	$ 142,730	$ 135,597	$ 131,230	$ 12,891	$ 10,249	$ 10,503	$ -	$ -	$ -	$ -	$ -
Pre-petition Liabilities	9,861	9,884	10,000	-	-	-	-	-	-	-	-
Claims											
Unclassified	-	-	-	-	-	-	-	-	-	-	-
Class 1 – Jefferies Secured Claim	-	-	-	-	-	-	-	-	-	-	-
Class 2 - Frontier Secured Claim	-	-	-	5,528	-	-	-	-	-	-	-
Class 3 - Other Secured Claims	-	-	-	-	-	-	-	-	-	-	-
Class 4 – Priority Non-Tax Claims	-	-	-	-	-	-	-	-	-	-	-
Class 5 – Retained Employee Claims	-	-	-	-	-	-	-	-	-	-	-
Class 6 - PTO Claims	-	-	-	-	-	-	-	-	-	-	-
Class 7 – Convenience Claims	-	-	-	-	-	-	-	-	-	-	-
Class 8 – General Unsecured Claims	-	-	-	313,588	313,588	263,588	263,588	213,588	188,588	188,588	118,723
Class 9 – Subordinated Claims	-	-	-	-	-	-	-	-	-	-	-
Class 10 – Class B/C Limited Partnership Interests	-	-	-	-	-	-	-	-	-	-	-
Class 11 – Class A Limited Partnership Interests	-	-	-	-	-	-	-	-	-	-	-
Claim Payable	9,861	9,884	10,000	319,115	313,588	263,588	263,588	213,588	188,588	188,588	118,723
TOTAL LIABILITIES	**$ 152,591**	**145,481**	**141,230**	**332,007**	**323,836**	**274,091**	**263,588**	**213,588**	**188,588**	**188,588**	**118,723**
Partners' Capital	199,551	182,842	190,005	(24,214)	(35,868)	(45,863)	(71,004)	(77,083)	(82,045)	(84,764)	(118,722)
TOTAL LIABILITIES AND PARTNERS' CAPITAL	**$ 352,142**	**$ 328,323**	**$ 331,235**	**$ 307,793**	**$ 287,968**	**$ 228,227**	**$ 192,583**	**$ 136,504**	**$ 106,543**	**$ 103,823**	**$ -**

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Highland Capital Management, L.P.
Profit/Loss
(US $000's)

	Actual **Jan 2020 to June 2020 Total**	Actual **3 month ended Sept 2020**	Forecast --->**3 month ended Dec 2020**	**Total 2020**	**3 month ended Mar 2021**	**3 month ended Jun 2021**	**3 month ended Sept 2021**	**3 month ended Dec 2021**	**Total 2021**
Revenue									
Management Fees	$ 6,572	$ 1,949	$ 2,804	$ 11,325	$ 1,329	$ 856	$ 856	$ 856	$ 3,897
Shared Service Fees	7,672	3,765	3,788	15,225	1,373	45	45	-	1,463
Other Income	3,126	538	340	4,004	316	274	-	-	591
Total revenue	$ 17,370	$ 6,252	$ 6,931	$ 30,554	$ 3,018	$ 1,176	$ 901	$ 856	$ 5,951
Operating Expenses [1]	13,328	9,171	9,399	31,899	12,168	4,897	3,973	3,333	24,371
Income/(loss) From Operations	$ 4,042	$ (2,918)	$ (2,468)	$ (1,345)	$ (9,149)	$ (3,722)	$ (3,072)	$ (2,477)	$ (18,420)
Professional Fees	17,522	7,707	8,351	33,581	7,478	6,583	2,268	1,810	18,138
Other Income/(Expenses) [2]	2,302	1,518	1,059	4,879	(196,410)	326	(93)	29	(196,149)
Operating Gain/(Loss)	$ (11,178)	$ (9,107)	$ (9,761)	$ (30,046)	$ (213,037)	$ (9,978)	$ (5,433)	$ (4,259)	$ (232,707)
Realized and Unrealized Gain/(Loss)									
Other Realized Gains/(Loss)	-	-	-	-	(1,013)	522	-	-	(491)
Net Realized Gain/(Loss) on Sale of Investment	(28,418)	1,549	(8,850)	(35,719)	(168)	(2,198)	(4,563)	(7,581)	(14,510)
Net Change in Unrealized Gain/(Loss) of Investments	(29,929)	(7,450)	4,523	(32,857)	-	-	-	-	-
Net Realized Gain /(Loss) from Equity Method Investees	-	-	(364)	(364)	-	-	-	(13,301)	(13,301)
Net Change in Unrealized Gain /(Loss) from Equity Method Investees	(80,782)	(1,700)	-	(82,482)	-	-	-	-	-
Total Realized and Unrealized Gain/(Loss)	$ (139,129)	$ (7,601)	$ (4,692)	$ (151,422)	$ (1,182)	$ (1,675)	$ (4,563)	$ (20,882)	$ (28,302)
Net Income	$ (150,307)	$ (16,708)	$ (14,453)	$ (181,468)	$ (214,219)	$ (11,654)	$ (9,996)	$ (25,141)	$ (261,009)

Footnotes:
[1] Operating expenses include an adjustment in January 2021 to account for expenses that have not been accrued or paid prior to effective date.
[2] Other income and expenses of $197.3 million in Q1 2021 includes:
[a] $209.7 million was expensed to record for the increase of allowed claims.
[b] Income of $11.7 million for the accrued, but unpaid payroll liability related to the Debtor's deferred bonus programs amount written-off.

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Highland Capital Management, L.P.
Profit/Loss
(US $000's)

	Forecast ---> 3 month ended Mar 2022	3 month ended Jun 2022	3 month ended Sept 2022	3 month ended Dec 2022	Total 2022	Plan
Revenue						
Management Fees	$ 580	$ 580	$ 580	$ 580	$ 2,318	$ 6,215
Shared Service Fees	-	-	-	-	-	1,463
Other Income	-	-	-	-	-	591
Total revenue	$ 580	$ 580	$ 580	$ 580	$ 2,318	$ 8,269
Operating Expenses	3,635	2,679	1,739	6,425	14,478	38,849
Income/(loss) From Operations	$ (3,056)	$ (2,099)	$ (1,159)	$ (5,846)	$ (12,160)	$ (30,580)
Professional Fees	2,921	2,761	1,461	2,176	9,318	27,455
Other Income/(Expenses)	(103)	(101)	(100)	(350)	(654)	(196,803)
Operating Gain/(Loss)	$ (6,079)	$ (4,961)	$ (2,719)	$ (8,371)	$ (22,131)	$ (254,838)
Realized and Unrealized Gain/(Loss)						
Other Realized Gains/(Loss)	-	-	-	(25,587)	(25,587)	(26,078)
Net Realized Gain/(Loss) on Sale of Investment	-	-	-	-	-	(14,510)
Net Change in Unrealized Gain/(Loss) of Investments	-	-	-	-	-	-
Net Realized Gain /(Loss) from Equity Method Investees	-	-	-	-	-	(13,301)
Net Change in Unrealized Gain /(Loss) from Equity Method Investees	-	-	-	-	-	-
Total Realized and Unrealized Gain/(Loss)	$ -	$ -	$ -	$ (25,587)	$ (25,587)	$ (53,889)
Net Income	$ (6,079)	$ (4,961)	$ (2,719)	$ (33,958)	$ (47,718)	$ (308,727)

Highland Capital Management, L.P.
Cash Flow Indirect
(US $000's)

	Forecast ---->									
	Sep-20	**Dec-20**	**Mar-21**	**Jun-21**	**Sep-21**	**Dec-21**	**Mar-22**	**Jun-22**	**Sep-22**	**Dec-22**
Net (Loss) Income	$ (16,708)	$ (14,453)	$ (214,219)	$ (11,654)	$ (9,996)	$ (25,141)	$ (6,079)	$ (4,961)	$ (2,719)	$ (33,958)
Cash Flow from Operating Activity										
(Increase) / Decrease in Cash										
Depreciation and amortization	231	231	231	231	-	-	-	-	-	-
Other realized (gain)/ loss	-	-	1,013	(522)	-	-	-	-	-	25,587
Investment realized (gain)/ loss	(1,549)	9,214	168	2,198	4,563	20,882	-	-	-	-
Unrealized (gain) / loss	(9,150)	4,523	-	-	-	-	-	-	-	-
(Increase) Decrease in Current Assets	(470)	(133)	(1,388)	501	450	4,277	1,675	(149)	(150)	908
Increase (Decrease) in Current Liabilities	(7,110)	(4,251)	(44,172)	(2,643)	255	(10,503)	-	-	-	-
Net Cash Increase / (Decrease) - Operating Activities	(34,757)	(4,868)	(258,366)	(11,889)	(4,727)	(10,485)	(4,404)	(5,110)	(2,870)	(7,463)
Cash Flow From Investing Activities										
Proceeds from Sale of Fixed Assets	-	-	-	-	-	-	-	-	-	-
Proceeds from Investment Assets	25,650	30,027	2,698	47,152	57,498	102,788	-	21,616	-	7,960
Net Cash Increase / (Decrease) - Investing Activities	25,650	30,027	2,698	47,152	57,498	102,788	-	21,616	-	7,960
Cash Flow from Financing Activities										
Claims payable	-	-	(73,997)	-	-	-	-	-	-	-
Claim reclasses/(paid)	-	-	319,115	(5,528)	(50,000)	-	(50,000)	(25,000)	-	(69,865)
Maple Avenue Holdings	-	-	(4,975)	-	-	-	-	-	-	-
Frontier Note	-	-	(5,195)	-	-	-	-	-	-	-
Net Cash Increase / (Decrease) - Financing Activities	-	-	234,948	(5,528)	(50,000)	-	(50,000)	(25,000)	-	(69,865)
Net Change in Cash	$ (9,107)	$ 25,159	$ (20,719)	$ 29,735	$ 2,770	$ 92,303	$ (54,404)	$ (8,495)	$ (2,870)	$ (69,368)
Beginning Cash	14,994	5,888	31,047	10,328	40,063	42,833	135,137	80,733	72,238	69,368
Ending Cash	$ 5,888	$ 31,047	$ 10,328	$ 40,063	$ 42,833	$ 135,137	$ 80,733	$ 72,238	$ 69,368	$ -

EXHIBIT 92

Engagement:	Highland Capital Management LP - 2017 Audit
Period end date:	12/31/2017
Audit unit:	Highland Capital Management LP - 2017 Audit-HQ
Associated Risks:	Risk of material misstatement in Other Assets
FSLI:	Other Assets
EGA title:	Test due from and notes receivable
Ref. no.:	3025-1510

Rollforward - Notes receivable

When more than one preparer was involved in the completion of this EGA, document the names of the team members involved and the procedures performed.	***[Document the initials or names of team members and procedures performed (e.g., Jane Doe performed step a) below)]*** **Prepared by Hilda Garcia, PwC**

Procedures	Results	Links
a) Obtain a rollforward schedule of notes receivable balances, agree balances and test mathematical accuracy.	☑ Obtained a rollforward schedule of notes receivable balances. Attached in tab *'Results Template'* or provided link. **Note that the team obtained the closing balances of notes and accounts receivable by account type/entity. Attached schedule in the <Detail> tab. Additionally, note that the due from receivables listing was target tested for accounts greater than $10M and the remaining population was non-stat tested. Refer to selections made and testing performed in the < Results Template>** **AND** ☑ Agreed balances to prior period workpapers and closing balances to the general ledger, and ☑ No reconciling items noted, or ☐ Reconciling items are not significant or unusual (when considered both individually and in the aggregate); therefore no further testing performed, or ***[Document reconciling items noted and rationale for determination]*** ☐ Significant or unusual reconciling items noted; therefore performed further testing as follows: ***[Document reconciling items noted and testing performed or provide link]*** **AND** ☑ Tested mathematical accuracy of the rollforward schedule, as follows: ***[Document schedule name(s), details of testing performed or provide link to tickmarked schedule]*** **Refer to the <Detail> tab for procedures performed.** ☑ Verified spreadsheet formula. ☐ Manually added or recalculated. ☐ Application controls over related report tested. ☐ Other [Specify below]. ***[Document details of testing, if not included in the linked schedule]***	

Rollforward - Notes receivable		
b) Agree activity within the rollforward to testing performed.	☐ Not applicable. There was no current period activity, or ☑ Agreed activity within the rollforward to testing performed in the following EGAs (check those that apply): ☑ Total additions to testing performed in the EGA *Test additions - Notes receivable.* ☑ Total payments to testing performed in the EGA *Test payments - Notes receivable.* **The team tested additions and payments within this EGA. Refer to the subsequent tabs for procedures performed.** **AND** ☑ Obtained appropriate supporting documentation for any other adjustments within the rollforward, and: ☐ Tested a selection of adjustments (test(s) added from Aura Tests of Details template), or ***[Document other items tested and the details of work performed or provide link]*** ☑ Tested all adjustments. ***[Document other items tested and the details of work performed or provide link]*** **The audit team tested all adjustments for notes selected for testing. Refer to the <Results Template> tab for testing performed.**	Results Template

Rollforward - Notes receivable		
c) Obtain detailed listing(s) of the ending balance of notes receivable by asset, agree balances and test mathematical accuracy. *Service Delivery Center activities:* Tests of Details	☐ Not applicable. The rollforward in procedure a) was performed at the individual asset level, or ☑ Obtained detailed listing(s) of the ending balance of notes receivable. ***[Document details of accounts selected or provide link to detailed listing(s) obtained]*** **Refer to the <Results Template> tab for procedures performed. Additionally, note that the due from receivables listing was target tested for accounts greater than $10M and the remaining population was non-stat tested. Refer to testing performed in the < Results Template>** **AND** ☑ Agreed the total per the detailed listing to the ending balance per the rollforward, and: ☑ No reconciling items noted, or ☐ Reconciling items are not significant or unusual (when considered both individually and in the aggregate); therefore no further testing performed, or ***[Document reconciling items noted and rationale for determination]*** ☐ Significant or unusual reconciling items noted; therefore performed further testing as follows: ***[Document reconciling items noted and testing performed or provide link]*** **AND** ☑ Tested mathematical accuracy of the detailed listing, as follows: ***[Document schedule name(s), details of testing performed or provide link to tickmarked schedule]*** ☑ Verified spreadsheet formula. ☐ Manually added or recalculated. ☐ Application controls over related report tested. ☐ Other [Specify below]. ***[Document details of testing, if not included in the linked schedule]***	Results Template
d) Define what constitutes an unexpected or unusual balance and scan the subledgers or detailed listing of ending balances of notes receivable by asset for unexpected (e.g. credit balances, large balances not confirmed, etc.) or unusual items.	☑ Defined what constitutes an unexpected or unusual balance, as follows: ***[Define and document what constitutes an unexpected or unusual balance]*** **An unexpected or unusual balance is defined as anything that is not considered in Due from Affiliate, within the details. The engagement team performed a Credit Risk Analysis over the material balances within the <Detail> tab to ensure that there were no unexpected or unusual loans. Refer to the <Credit Risk Analysis> tab for the engagement team analysis over the related balances.**	

Rollforward - Notes receivable		
	AND ☑ Scanned the subledgers or detailed listings noting the following: ☑ No unexpected or unusual balances, or ☐ Unusual or unexpected balances identified: *[Document details of unexpected or unusual balances identified and resolution]*	

Additional engagement specific procedures, if necessary	
Procedures	**Results**
[Document engagement specific additional procedures, if necessary] N/A	[Document results of additional procedures] N/A

HCMLP
Various Assets - Detail
12/31/2017
Prepared by Hilda Garcia, PwC

Note: The below detail is for the Due From and Notes Receivable FSLI's. The team tested 100% ofthe Notes Receivable balance and performed a target test in addition non-stat sample over the Due from Affiliate balance to ensure adequate coverage. Refer below for testing references.

LS

Due from affiliates

14010	CASH INTEREST RECEIVABLE	935,693	
14110	DIVIDENDS RECEIVABLE	23,760	
14030	INVESTMENT INTEREST RECEIVABLE	216,138	
14140	SHARED SVCS FEE RECVBL - PYXIS	207,501	
14142	SHARED SVCS FEE RECVBL - HCLOH	6,020	
14145	SHARED SVCS FEE RECVBL - ACIS	337,643	
14146	SHARED SVCS FEE RECVBL - NEXPOINT	55,187	
14148	SHARED SVCS FEE RECVBL - RAND ADVISORS	2	
14149	SHARED SVCS FEE RECVBL - NREA	592,251	NS
14530	DUE FROM HIGHLAND CAPITAL MANAGEMENT SERVICES	14,122,352	TT
14531	DUE FROM HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS	4,895,468	NS
14532	DUE FROM NEXPOINT ADVISORS	29,721,919	TT
14533	DUE FROM HCRE PARTNERS	8,457,837	NS
14565	DUE FROM OTHER - TAX LOANS	15,728,031	TT
14575	DUE FROM HIGHLAND CAPITAL OF NEW YORK	4,519,542	
14580	DUE FROM NEXBANK	60,000	
14585	DUE FROM HUNTER MOUNTAIN INVESTMENT TRUST	60,663,612	TT
14595	DUE FROM HIGHLAND CAPITAL KOREA	2,320,798	
14750	LONG TERM NOTES RECEIVABLE	22,860,559	TT
	Total	165,724,312	Rc
		^	

SUMMARY	
	Rc
Total Due From	**165,724,312**
Target Test Count	5
Total Targeted	143,096,473
Total Non Stat	13,945,556
# of selections	3
Total Tested	157,042,029

TOD Form: Test Due from Affiliates

Interest Income Tested	
HCMSI	501,807
Dondero Tax Loan	266,997
Dugaboy	712,821
HCRE	284,231
Hunter Mountain	1,547,673
NexPoint	1705711
Total Tested	3,313,529
	^

Tickmark Legend
^ Footed without exception.
Rc Recalculated amount. Refer to the respective cell's formula for further details.
LS Amount agrees to the lead schedule linked below.
Lead schedule - Assets
NS Amount was selected for Non-Statistical Sampling Testing. Refer to the Non-Stat template linked below for further information and to the <Results Template> tab for testing performed.
TOD Form: Test Due from Affiliates
TT Due from affiliate amount was selected for Target Testing. Refer to the Target Testing template linked below for further information and to the <Results Template> tab for testing performed.
TOD Form: Test Due from Affiliates
<PM Remaining balance is below performance materiality, waive further review.

Tickmark Legend
Rc Recalculated amount. Refer to the respective cell's formula for further details.
LS Agrees to the lead schedule linked below without exception.
Lead schedule - Assets
NS The

TOD Form: Test notes receivables, due from, and other assets
TT The

Highland Capital Management, L.P.
Credit Risk Analysis
12/31/2017
Prepared by Hilda Garcia, PwC

Note: The audit team performed a credit analysis for all material (above performance materiality) notes receivable in order to determine the nature and intent of each note as well as assess the ability of the payee to pay the note. Refer to the team's analysis below.

<Detail>			A	A		
Account #	**Counter Party**	**Amount**	**Interest Rate**	**Maturity Date**	**Nature**	**Recoverability**
14530	Highland Capital Management Services (James Dondero majority owner)	14,122,352	2.75%	12/31/2047	Highland Capital Management Services is an S Corp that acts as a platform investment company for one-off investments. Loans are provided to this entity primarily in order to provide seed capital for new investments.	Based on our testing performed over this loan, the engagement team notes that all the previous loans issued to HCMSI have been restructured and consolidated into one loan with a maturity date of 12/31/2047 and a yearly installment payment plan. The audit team also vouched interest payments being made by the fund, which also signifies that they have the ability to continue to make their payments. As such, the team is comfortable that the fund will be able to pay the loan when it becomes due. Further note that HCM Services has also paid back $6.1 M to HCMLP in principal payments for 2017 (vouched by engagement team) and paid off all the interest owed to the fund as of 12/31/2017. As the fund is showing an ability by continuing to make payments subsequent to year end and an installment payment plan has been implemented , the audit team is comfortable that the entity has the ability to pay down this loan when it becomes due. Furthermore, Jim Dondero owns more than 70% of this entity.
14531	Highland Capital Fund Advisors	4,895,468	2.62%	On demand but not before 5/31/2019	Loans are made to HCMF for the fund's operational purposes.	Per review of the audited HCMF financial statements, the engagement team notes that the fund is realizing profits and has a positive cash flow. Based on the team's going concern considerations for this fund, the expectation is that the fund will be in positive partners capital by the next fiscal year. Based on the profit and improving performance of the fund, the team is comfortable that they will be able to pay the loan when it becomes due.
14532	Nexpoint Advisors	29,721,919	6%	12/31/2047	Loans are made to Nexpoint for the fund's operational purposes.	Per review of the audited Nexpoint financial statements, the engagement team notes that the fund is realizing profits and has a positive cash flow. Based on the team's going concern considerations for this fund, the expectation is that the fund continue to recover from it's negative partners' capital balance in the coming years as it continues to improve performance and does not over distribute partners' capital. The engagement team additionally notes that NPA has stopped waiving management fees in the current year to the BDC (Nexpoint Capital Strategies) which is expected to significantly increase their revenue for future period. Based on the profit and improving performance of the fund, the team is comfortable that they will be able to pay the loan installments as they become due.
14533	HCRE Partners (James Dondero)	8,457,837	Varies	On demand and 12/31/2047	HCRE Partners is a real estate investment entity that investments in opportunistic real estate investments and historically has realized substantial gains. Loans are provided to this entity primarily in order to provide seed capital for new investments. Note that 31% of this balance is due on demand. The remaining 69% is made up of a restructured loan that has a maturity date of 12/31/2047.	Per discussion with Dave Klos, HCMLP, the audit team notes that these loans are made at a high interest rate in order to encourage the fund to pay off the loan quickly. Based on our testing performed over this loan, the engagement team notes that the loans issues to HCRE went through a restructure in the current year. As such, 31% of the HCRE balance is due on demand and the remaining 69% is made up of a restructured loan that has a maturity date of 12/31/2047 and implements an installment plan over 30 years. The audit team also vouched interest and principal payments being made by the fund, which also signifies that they have the ability to continue to make their payments. As such, the team is comfortable that the fund will be able to pay the loan when it becomes due. Furthermore, Jim Dondero owns more than 70% of this entity.
14565	James Dondero	15,728,031	2.03%-2.25%	On demand and 12/31/2047	Related to Loans given to Limited Partners within the fund including James Dondero and Mark Okada in order to satisfy tax liability. Both have little basis in the fund, therefore a tax loan was given instead of an equity distribution. Note that James Dondero's portion was 92% of this balance and has a maturity date of 12/31/2047.	Per review of the Nexpoint Credit Strategy Fund form 13D filed with the SEC on 5/8/18, the engagement team notes that James Dondero owns 17.8% of this fund. Per review of the audited 12/31/17 financial statements for NHF, we note a total Net Asset Value of $592,308,994, which leaves Dondero's ownership value in the fund at $105,431,000. Additionally, the team notes that per NexPoint Residential Trust, Inc. form DEF 14A filed with the SEC on 4/11/2018, James Dondero also owns 19.98% of NexPoint Residential Trust. Per review of the audited 12/31/17 financial statements for NXRT, we note a total Net Asset Value of $239,444,000 which leaves Dondero's ownership value in the fund at $47,840,911. Based solely on these two investment values ($153,271,912 value), not considering his extensive ownership of other assets, the team notes that Mr. Dondero has significant net worth in excess of the amount that is payable to HCMLP and therefore he has the ability to pay the loan. We note that because NHF is a publicly traded fund, he has the ability to sell his shares or transfer them back to HCMLP to satisfy the debt.
14750	Dugaboy (James Dondero)	22,860,559	3.26%	12/31/2047	The audit team notes that this note was primarily made in order to donate assets held by the fund to charity. Therefore, the fund sold assets in exchange for a Note Payable ultimately from Dugaboy, of which the primary beneficiary is James Dondero.	See above.
14585	Hunter Mountain Investment Trust (James Dondero)	60,663,612	2.61%	On demand	Note that Hunter Mountain purchased 99.5% of HCMLP. This loan was originally made for seller financing of the purchase of HCMLP as a part of the purchase price was paid in cash and a portion was financed as a note payable to HCMLP.	As Hunter Mountain owns 99.5% of HCMLP (verified through capital testing), the audit team notes that if Hunter Mountain did not have the ability to pay when the note became due, HCMLP could simply recover the receivable by netting off Hunter Mountain's capital balance. As such, the team is comfortable with the recoverability of this note. Additionally, the team notes that James Dondero is a significant owner of Hunter Mountain through the Crown Global Life Insurance. Therefore, the team notes that Mr. Dondero has significant net worth in excess of the amount that is payable to HCMLP and therefore he has the ability to pay the loan.

Tickmark Legend
A Agrees to the note agreements obtained within the <Results Template> tab for testing.

Rollforward schedule of notes receivable

G/L Account	Account Description	Amount per Client		Balance per Testing Performed	TM	Rc, imm Differences	
Target Tested							
14532	DUE FROM NEXPOINT ADVISORS	29,721,919	<Detail>	29,721,919	B	-	
14565	DUE FROM OTHER - TAX LOANS	15,728,031	<Detail>	15,728,031	C	0	
14585	DUE FROM HUNTER MOUNTAIN INVESTMENT TRUST	60,663,612	<Detail>	60,663,612	<Due from Hunter Mountain>	(0)	
14750	LONG TERM NOTES RECEIVABLE	22,860,559	<Detail>	22,860,559	<Dugaboy>	0	
14530	DUE FROM HIGHLAND CAPITAL MANAGEMENT SERVICES	14,122,352	<Detail>	14,122,352	<Due from HCMSI>	0	
	Total Amount Targeted	143,096,473		143,096,473		(0)	
Non-Stat							
14149	SHARED SVCS FEE RECVBL - NREA	592,251	<Detail>	555,203	A	37,047.68	imm
14531	DUE FROM HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS	4,895,468	<Detail>	4,895,468	B	0	
14533	DUE FROM HCRE PARTNERS	8,457,837	<Detail>	8,457,837	D	0	
	Total Amount Non-Stat	13,945,556		13,908,508	Rc	37,047.73	
		^		^		^	
	Total Amount Tested	**157,042,029.10**		**157,004,981.46**	Rc	**37,047.64**	imm
		^		^		^	

Tickmark Legend

Rc Amount recalculated. Refer to respective cell for formula detail.
imm Amount is immaterial, below SUM. Further testing is waived.
^ Amount footed. Refer to respective cell for formula detail.
PY Agrees to the prior year Asset lead schedule tested by the audit team without exception.
A The engagement team obtained comfort over the Shared Svcs Fee Receivable - NREA amount by performing procedures as documented in the EGA linked below. Per review of the procedures performed, the amount deemed reasonable. Waived further procedures.
Test shared services expenses
B The engagement team notes that the receivables above relate to amounts due from other audited HCM entities for loans provided by Highland Capital Management, L.P. ("HCMLP") to Highland Capital Management Fund Advisors ("HCMFA") or NexPoint Advisors ("NPA"). Further note the engagement team prepared and tested the Due to HCMLP rollforwards for both HCMFA and NPA, which correspond to the receivables amount above in conjunction with testing over those entities, without exception. Note that the following procedures were performed within the EGAs linked below.

	Amount	
Due from HCMFA	4,895,468	HCMFA - Understand debt agreements and test compliance
Due from Nexpoint	29,721,919	Nexpoint Advisor - Understand debt agreements and test compliance

C The engagement team notes that this amount is made up of 2 separate loans issued for tax purposes to two owners, James Dondero and Mark Okada, in 2016. We note that the James Dondero loans have been restructured and consolidated in the current year. Refer to the <Dondero Tax Loan> tab for testing and support obtained. The note receivable due from Mark Okada has not had any paydowns in the current year. As such Okada's note receivable balance as of 12/31/2017 is consistent with prior year.

Date	Lender	Interest Rate	Amount	
5/31/2017	HCM Dondero - Restructured	2.03%	14,478,031	<Dondero Tax Loan>
4/15/2016	HCM Okada	2.25%	1,250,000	04152016 HCM Okada $1.25M
			15,728,031	Rc
			^	

D The engagement team notes that this amount is made up of 3 separate loans issued to HCRE. We not that one of the notes was restructured in the current year and an additional note has been issued. Refer below for support reconciliation and support obtained from Drew Wilson, HCM.

Date	Lender	Interest Rate	Amount	
11/27/2013	HCRE #9	2.03%	100,000	PY
5/31/2017	HCRE Restructured	8.00%	5,857,837	<HCRE Restructure>
10/12/2017	HCRE #10	8.00%	2,500,000	10122017 HCRE $2.5M
			8,457,837	Rc
			^	

Due from Highland Capital Management Services
Account Detail - Year end Balances
12/31/2017
PBC, tickmarked by Hilda Garcia, PwC

Note: The engagement team notes that the individual notes issued to HCM Services in the prior years were restructured and consolidated on 5/31/2017. The audit team obtained the original restructured agreement and the debt rollforward from Drew Wilson, HCMLP. Refer below for the new restructured receivable rollforward tied out by the audit team. As the ending balance of the note agrees to the Notes Receivable balance on the lead schedule without exception, further analysis is waived.

Closing Date	5/31/2017	A
Beginning Principle Balance	$ 20,247,628.02	
Interest Rate	2.75%	

	Rc	B	Rc	Rc	B		Rc
Date	Interest Income	Interest Paid	Accrued Interest	Beg Prin Bal	Principal Paid		Ending Prin Bal
5/31/2017	-	-	-	20,247,628	-		20,247,628
6/23/2017	35,087	(35,087)	-	20,247,628	(950,130)	1	19,297,498
6/30/2017	10,177	-	10,177	19,297,498	-		19,297,498
7/6/2017	8,724	(18,901)	-	19,297,498	(888,395)	2	18,409,103
7/18/2017	16,644	(16,644)	-	18,409,103	(1,014,820)	3	17,394,283
7/31/2017	17,037	-	17,037	17,394,283	-		17,394,283
8/25/2017	32,763	(199,329)	(149,529)	17,394,283	(1,771,931)	4	15,622,352
8/31/2017	7,062	-	(142,467)	15,622,352	-		15,622,352
9/30/2017	35,311	-	(107,156)	15,622,352	-		15,622,352
10/31/2017	36,488	-	(70,668)	15,622,352	-		15,622,352
11/30/2017	35,311	-	(35,358)	15,622,352	-		15,622,352
12/21/2017	24,718	-	(10,640)	15,622,352	(1,500,000)	5	14,122,352
12/31/2017	10,640	-	(0)	14,122,352	-		14,122,352
Totals	269,961	(269,961)	(0)		(6,125,276)		**14,122,352**

A

Interest Income - 2017			
Date	**Principle**	**Interest Rate**	**Interest Income**
12/31/2016	21,650,000	2.26%	
1/31/2017	21,650,000	2.26%	41,556
2/28/2017	21,650,000	2.26%	37,535
3/31/2017	21,800,000	2.78%	51,472
4/30/2017	21,800,000	2.78%	49,812
5/31/2017	21,800,000	2.78%	51,472
remaining			269,961
Total Interest			501,807
			^

SUMMARY		
Ending Principal Bal	**14,122,352**	above
Interest Income Bal	**269,961**	<PM

Tickmark Legend

^ Footed without exception.
Rc Recalculated amount. Refer to the respective cell's formula for further details.
imm Amount is immaterial (below SUM). Therefore, further analysis is waived.
PYWP Agreed to the prior year workpaper, without exception. Refer to the Test due from and notes receivable EGA in prior years database.
<PM Amount is below performance materiality, further testing waived.
A Agreed to the restructure Loan Agreement obtained from Drew Wilson, HCM, without exception. Refer to agreement linked below.
06212017 HCMSI Loan Restructure

B Agreed to cash deposit in the Nexbank bank statement (account #: 1614130) for each respective month noted, without exception. Further testing waived. Refer below for breakdown of payment.

1) June

Cash Paid to HCM	1,508,389.34	B
Amount applicable to final payment of HCMSI #45	(523,172.90)	C
Applicable to Restructured Loan	985,216	Rc
	^	
Principle Payment	950,130	above
Interest Payment	35,087	above

2) July

Principle Payment	888,395	above
Interest Payment	18,901	above
	907,296	B
	^	

3) July

Principle Payment	1,014,820	above
Interest Payment	16,644	above
	1,031,464	B
	^	

4) August

Principle Payment	1,771,931	above
Interest Payment	199,329	above
	1,971,260	B
	^	

5) December

Principle Payment	1,500,000	B

C The engagement team notes that the following note receivable due from HCMSI was not included in the restructure and was completely paid off on 6/23/2017. No exceptions noted.

D The engagement team notes that the following notes were issued to HCMI during 2017. Note that the engagement team vouched the cash withdrawal to the March, June, and August 2017 Nexbank bank statement (account #: 1614130). Additionally, not that HCMSI #44 was included in the restructure of the HCMSI loans and HCMSI #45 was completely paid on the current year. No exception noted.

	Amount issued	**Date issued**	**Date paid off**	
HCMSI #44	150,000	3/31/2017	Restructured	Refer to Exhibit A in Restructured Loan Agreement in TM A
HCMSI #45	1,300,000	6/7/2017	6/23/2017	
HCMSI #46	500,000	8/31/2017	10/16/2017	

Due from James Dondero - Tax Loan
Account Detail - Year end Balances
12/31/2017
PBC, tickmarked by Hilda Garcia, PwC

Note: The engagement team notes that in prior year there were two loans given to James Dondero, HCM Owner, for tax purposes. The original loan balances were agreed to their note agreements in the prior year, without exception. Note that on 5/31/2017, the loans to James Dondero were restructured and consolidated into one note receivable balance. The audit team obtained the original restructured agreement and the debt rollforward from Drew Wilson, HCMLP. Refer below for the new restructured receivable rollforward tied out by the audit team. As the ending balance of the note agrees to the Notes Receivable balance on the lead schedule without exception, further analysis is waived.

Restructured Closing Date	5/31/2017	A
Total Commitment Restructured	$ 14,977,274	
Rate	2.03%	

	Rc	B	Rc	Rc		B	Rc
Date	Interest Income	Interest Paid	Accrued Interest	Beg Prin Bal		Principal Paid	Ending Prin Bal
5/31/2017	-	-	-	14,977,273.63	above	-	14,977,273.63
6/23/2017	19,158.60		19,158.60	14,977,273.63			14,977,273.63
6/30/2017	5,830.88		24,989.48	14,977,273.63			14,977,273.63
7/31/2017	25,822.46	-	50,811.94	14,977,273.63			14,977,273.63
8/31/2017	25,822.46	-	76,634.40	14,977,273.63			14,977,273.63
9/30/2017	24,989.48	-	101,623.88	14,977,273.63			14,977,273.63
10/31/2017	25,822.46	-	127,446.34	14,977,273.63			14,977,273.63
11/30/2017	24,989.48	-	152,435.82	14,977,273.63			14,977,273.63
12/31/2017	25,822.46	(178,258.28)	-	14,977,273.63		(499,242.47)	14,478,031.16
Totals	178,258.28	(178,258.28)	-			(499,242.47)	**14,478,031.16**
	^	^				^	^

A

Interest Income - 2017			
Date	**Principle**	**Interest Rate**	**Interest Income**
12/31/2016	11,000,000	1.95%	
1/31/2017	11,000,000	1.95%	18,218
2/28/2017	11,000,000	1.95%	16,455
3/31/2017	11,000,000	1.95%	18,218
4/30/2017	11,000,000	1.95%	17,630
5/31/2017	11,000,000	1.95%	18,218
remaining			178,258
Total Interest			266,997
			^

SUMMARY		
Ending Principal Bal	**14,478,031**	above
Interest Income Bal	**178,258**	<PM

Tickmark Legend

^ Footed without exception.
Rc Recalculated amount. Refer to the respective cell's formula for further details.
imm Amount is immaterial (below SUM). Therefore, further analysis is waived.
PYWP Agreed to the prior year workpaper, without exception. Refer to the Test due from and notes receivable EGA in prior years database.
<PM Amount is below performance materiality, further testing waived.
A Agreed to the restructure Loan Agreement obtained from Drew Wilson, HCM, without exception. Refer to agreement linked below.
06212017 Dondero Loan Restructure

B Agreed to cash deposit in the December Nexbank bank statement (account #: 1614130), without exception. Further testing waived. Note that the Interest and principle payment were made in one lump sum payment of $677,500.75. Refer below for breakdown of payment.

Principle Payment	499,242	above
Interest Payment	178,258	above
	677,501	B
	^	

Due from Get Good
Account Detail - Year end Balances
12/31/2017
PBC, tickmarked by Hilda Garcia, PwC

Note: The engagement team notes that this amount is a related to a Note Receivable from Get Good original sold on 12/28/2016. Per review of the original purchase agreement, linked below, the audit team notes that HCMLP exchanged assets (held as a liability) for the right to receive 97.6835% of Get Good's Note receivable. We note that the original note receivable issued to Get Good Trust from the Dugaboy Trust was for $24,268,621.69 on 5/31/2017. The audit team obtained the original restructured agreement and the debt rollforward from Drew Wilson, HCMLP. Refer below for the new restructured receivable rollforward tied out by the audit team. As the ending balance of the note agrees to the Notes Receivable balance on the lead schedule without exception, further analysis is waived.

GG and HCM PSA Crusader - Loan Fund - AAL_63370369_2 (2)
06212017 Dugaboy Interest Amendment

		HCM	PYWP
Original Note Date	12/28/2016	97.6835%	
Original Note Amount	$ 23,817,640	$ 23,265,904	
Restructured Closing Date	5/31/2017	97.6835%	A
Total Restructured Amount	$ 24,268,622	$ 23,706,439	
Rate	3.260%		

	Rc	B	Rc	Rc	B	Rc
Date	Interest Income	Interest Paid	Accrued Interest	Beg Prin Bal	Principal Paid	Ending Prin Bal
5/31/2017	-	-	-	23,706,439.07	-	23,706,439.07
6/23/2017	48,698.87		48,698.87	23,706,439.07		23,706,439.07
6/30/2017	14,821.40		63,520.27	23,706,439.07		23,706,439.07
7/31/2017	65,637.61	-	129,157.88	23,706,439.07		23,706,439.07
8/4/2017	8,469.37	(441,854.32)	(304,227.07)	23,706,439.07	(845,879.76)	22,860,559.31
8/31/2017	55,128.40	-	(249,098.68)	22,860,559.31		22,860,559.31
9/30/2017	61,253.77	-	(187,844.90)	22,860,559.31		22,860,559.31
10/31/2017	63,295.57	-	(124,549.34)	22,860,559.31		22,860,559.31
11/30/2017	61,253.77	-	(63,295.57)	22,860,559.31		22,860,559.31
12/31/2017	63,295.57		-	22,860,559.31		22,860,559.31
Totals	441,854.32	(441,854.32)	-		(845,879.76)	**22,860,559.31**
	^	^			^	^

PYWP

Interest Income - 2017			
Date	**Principle**	**Interest Rate**	**Interest Income**
12/31/2016	23,817,640	2.75%	
1/31/2017	23,817,640	2.75%	55,629
2/28/2017	23,817,640	2.75%	50,245
3/31/2017	23,817,640	2.75%	55,629
4/30/2017	23,817,640	2.75%	53,834
5/31/2017	23,817,640	2.75%	55,629
remaining			441,854
Total Interest			712,821
			^

SUMMARY		
Ending Principal Bal	**22,860,559**	above
Interest Income Bal	**441,854**	<PM

Tickmark Legend

^ Footed without exception.
Rc Recalculated amount. Refer to the respective cell's formula for further details.
imm Amount is immaterial (below SUM). Therefore, further analysis is waived.
PYWP Agreed to the prior year workpaper, without exception. Refer to the Test due from and notes receivable EGA in prior years database.
<PM Amount is below performance materiality, further testing waived.
A Agreed to the restructure Get Good Note Receivable Loan Agreement obtained from Drew Wilson, HCM, without exception. Refer to agreement linked below
06212017 Dugaboy Interest Amendment

B Agreed to cash deposit in the August Compass Bank statement (account #: 0025876342), without exception. Further testing waived. Note that the Interest and principle payment were made in one lump sum payment of $1,287,734.08. Refer below for breakdown of payment.

Principle Payment	845,880	above
Interest Payment	441,854	above
	1,287,734	B
	^	

HCRE Restructure
Account Detail - Year end Balances
12/31/2017
PBC, tickmarked by Hilda Garcia, PwC

Note: The engagement team notes that some of HCRE's previous notes receivables were restructured and consolidated on 5/31/2017. The audit team obtained the original restructured agreement and the debt rollforward from Drew Wilson, HCMLP. Refer below for the new restructured receivable rollforward tied out by the audit team. As the ending balance of the note agrees to the Notes Receivable balance on the lead schedule without exception, further analysis is waived.

Restructured Closing Date	5/31/2017	A
Total Commitment Restructured	$ 6,059,832	
Rate	8.00%	

	Rc	B	Rc	Rc		B	Rc
Date	Interest Income	Interest Paid	Accrued Interest	Beg Prin Bal		Principal Paid	Ending Prin Bal
5/31/2017	-	-	-	6,059,831.51	above	-	6,059,831.51
6/23/2017	30,548.19		30,548.19	6,059,831.51			6,059,831.51
6/30/2017	9,297.28		39,845.47	6,059,831.51			6,059,831.51
7/31/2017	41,173.65	-	81,019.12	6,059,831.51			6,059,831.51
8/31/2017	41,173.65	-	122,192.77	6,059,831.51			6,059,831.51
9/30/2017	39,845.47	-	162,038.23	6,059,831.51			6,059,831.51
10/31/2017	41,173.65	-	203,211.88	6,059,831.51			6,059,831.51
11/30/2017	39,845.47	-	243,057.35	6,059,831.51			6,059,831.51
12/31/2017	41,173.65	(284,231.00)	-	6,059,831.51		(201,994.42)	5,857,837.09
Totals	284,231.00	(284,231.00)	-			(201,994.42)	**5,857,837.09**
	^	^				^	^

PYWP

Interest Income - 2017			
Date	**Principle**	**Interest Rate**	**Interest Income**
12/31/2016	5,750,000	7.85%	
1/31/2017	5,750,000	7.85%	38,336
2/28/2017	5,750,000	7.85%	34,626
3/31/2017	5,750,000	7.85%	38,336
4/30/2017	5,750,000	7.85%	37,099
5/31/2017	5,750,000	7.85%	38,336
remaining			284,231
Total Interest			470,964
			^

SUMMARY		
Ending Principal Bal	**5,857,837**	above
Interest Income Bal	**284,231**	<PM

Tickmark Legend

^ Footed without exception.
Rc Recalculated amount. Refer to the respective cell's formula for further details.
imm Amount is immaterial (below SUM). Therefore, further analysis is waived.
PYWP Agreed to the prior year workpaper, without exception. Refer to the Test due from and notes receivable EGA in prior years database.
<PM Amount is below performance materiality, further testing waived.
A Agreed to the restructure Loan Agreement obtained from Drew Wilson, HCM, without exception. Refer to agreement linked below.
06212017 HCRE Partners Loan Restructure

B Agreed to cash deposit in the December Nexbank bank statement (account #: 1614130), without exception. Further testing waived. Note that the Interest and principle payment were made in one lump sum payment of $486,225.42. Refer below for breakdown of payment.

Principle Payment	201,994	above
Interest Payment	284,231	above
	486,225	B
	^	

HCMLP
Notes Receivable
12/31/2017
PBC, tickmarked by Hilda Garcia, PwC

Note: The audit team notes that this Note Receivable balance is made up of a Hunter Mountain Investment Trust note. The audit team obtained the original contribution agreement in prior year, and also obtained the debt rollforward from Sean Fox, HCMLP. Refer below for the rollforward tied out by the audit team. As the ending balance of the note agrees to the Notes Receivable balance on the lead schedule without exception, further analysis is waived.

Beginning Principal	63,000,000	A
Interest Rate	2.61%	
Effective Date	12/21/2015	

	Rc			Rc	Rc		D	B	Rc	
Date	Interest Income		Interest Paid	Accrued Interest	Beg Prin Bal		Principal Paid	PIK	Ending Prin Bal	
12/31/16	46,099		-	46,099	64,644,423	PYWP	-	-	64,644,423	PYWP
01/05/17	23,113		(69,211)	D -	64,644,423		(5,461,994)	-	59,182,430	
01/31/17	110,031			110,031	59,182,430		-	-	59,182,430	
02/28/17	118,495			228,525	59,182,430		-	-	59,182,430	
03/31/17	131,190		-	359,716	59,182,430		-	-	59,182,430	
04/30/17	126,958			486,674	59,182,430		-	-	59,182,430	
05/31/17	131,190			617,865	59,182,430		-	-	59,182,430	
06/30/17	126,958		-	744,823	59,182,430		-	-	59,182,430	
07/31/17	131,190		-	876,013	59,182,430		-	-	59,182,430	
08/31/17	131,190			1,007,204	59,182,430		-	-	59,182,430	
09/30/17	126,958		-	1,134,162	59,182,430		-	-	59,182,430	
10/31/17	131,190			1,265,353	59,182,430		-	-	59,182,430	
11/30/17	126,958			1,392,311	59,182,430		-	-	59,182,430	
12/21/17	88,871		(1,481,182)	B -	59,182,430		-	1,481,182	60,663,612	
12/31/17	43,379		-	43,379	60,663,612		-	-	60,663,612	
Totals	**1,547,673**	C	**(1,550,394)**	**43,379**			**(5,461,994)**	**1,481,182**	**60,663,612**	
	^		^				^	^		

SUMMARY		
Ending Principal Bal	**60,663,612**	above
Interest Income Bal	**1,547,673**	above

Tickmark Legend

^ Footed without exception.

Rc Recalculated amount. Refer to the respective cell's formula for further details.

PYWP Agreed to the prior year workpaper, without exception. Refer to the Test due from and notes receivable EGA in prior years database.

A Agrees to the signed Hunter Mountain contribution agreement linked below without exception. Refer to pg. 49 of the agreement for further details around these amounts.

Hunter Mountain Contribution Agreement

B Per discussion with Sean Fox, HCMLP, and review of the amortization schedule within the promissory note linked below (p. 7/7), the audit team notes that the interest accrued PIKs at it's anniversary date each year. Therefore, the team deems it reasonable that the full value of accrued interest was capitalized into the principal balance on the notes one year anniversary. Refer to the note below for further details.

HM Secured Promissory Note

C Agree to the Interest Income for Hunter Mountain Trust per the <80100> detail tab within an immaterial difference. Refer to the reconciliation within the aforementioned tab linked below for further details.

<80100>

D Agreed to cash deposit in the January Compass Bank statement (account #: 0025876342), without exception. Further testing waived. Note that the Interest and principle payment were made in one lump sum payment of $5,531,205. Refer below for breakdown of payment.

Principal Payment	5,461,994	above
Interest Payment	69,211	above
	5,531,205	D
	^	

Page **1** of **1**

HCM Account Analysis Report

Parameters given:

	From	To
Entity	0010	0010
Dept	000	999
Account	80100	80100
Business	00	99
Future	0000	0000
GI Date Range	01-JAN-17	31-DEC-17

Note: Note that Interest Income makes up a portion of the Other Income balance. As a majority of interest income was calculated within this EGA, the team performed a reconciliation to the detail

JOURNAL ENTRIES										PAYABLES				RECEIVABLES				FIXED ASSETS				
Source	Category	Journal Batch Name	Journal Name	GL Date	Journal Line Number	Journal Line Description	Account code combination	Amount DR	Amount CR	Supplier name	AP Check #	AP Invoice #	AP Invoice Description	Customer Name	AR Receipt Number	AR Transaction Number	AR Transaction Description	Asset Number	Asset vendor	Asset Description	Date placed in service	Asset Category
Receivables	Misc Receipts	Receivables A 1863659 2313167	JAN-17 Misc Receipts USD	31-Jan-17	5	Journal Import Created	0010.000.80100.00.0000	-	23,113						01052017ADW							
Receivables	Misc Receipts	Receivables A 1899658 2344091	JAN-17 Misc Receipts USD	31-Jan-17	6	Journal Import Created	0010.000.80100.00.0000	-	1,651						01262017ADW							
Receivables	Misc Receipts	Receivables A 1922659 2366196 2	FEB-17 Misc Receipts USD	28-Feb-17	3	Journal Import Created	0010.000.80100.00.0000	-	1,925						02132017ADW							
Receivables	Misc Receipts	Receivables A 1990658 2426146	MAR-17 Misc Receipts USD	31-Mar-17	3	Journal Import Created	0010.000.80100.00.0000	-	597						03272017ADW							
Receivables	Misc Receipts	Receivables A 2026660 2461091	APR-17 Misc Receipts USD	30-Apr-17	4	Journal Import Created	0010.000.80100.00.0000	-	1,607						04122017ADW							
Receivables	Misc Receipts	Receivables A 2076655 2506411	MAY-17 Misc Receipts USD	31-May-17	2	Journal Import Created	0010.000.80100.00.0000	-	19,333						05092017ADW							
Receivables	Misc Receipts	Receivables A 2077659 2507104	MAY-17 Misc Receipts USD	31-May-17	6	Journal Import Created	0010.000.80100.00.0000	-	519						05152017ADW							
Receivables	Misc Receipts	Receivables A 2106675 2535026	MAY-17 Misc Receipts USD	31-May-17	2	Journal Import Created	0010.000.80100.00.0000	-	9,518						05312017ADW							
Receivables	Misc Receipts	Receivables A 2151677 2568629	JUN-17 Misc Receipts USD	30-Jun-17	5	Journal Import Created	0010.000.80100.00.0000	-	882						06162017ADW							
Receivables	Misc Receipts	Receivables A 2163676 2578612	JUN-17 Misc Receipts USD	30-Jun-17	4	Journal Import Created	0010.000.80100.00.0000	-	35,362						06232017ADW							
Receivables	Misc Receipts	Receivables A 2171694 2581566	JUN-17 Misc Receipts USD	30-Jun-17	4	Journal Import Created	0010.000.80100.00.0000	-	168,255						06282017ADW							
Receivables	Misc Receipts	Receivables A 2186697 2602193	JUL-17 Misc Receipts USD	31-Jul-17	5	Journal Import Created	0010.000.80100.00.0000	-	8,724						07062017ADW							
Receivables	Misc Receipts	Receivables A 2214695 2629550	JUL-17 Misc Receipts USD	31-Jul-17	5	Journal Import Created	0010.000.80100.00.0000	-	16,644						07182017ADW							
Receivables	Misc Receipts	Receivables A 2236699 2650232 2	AUG-17 Misc Receipts USD	31-Aug-17	4	Journal Import Created	0010.000.80100.00.0000	-	7,124						08042017ADW							
Receivables	Misc Receipts	Receivables A 2271697 2675803	AUG-17 Misc Receipts USD	31-Aug-17	3	Journal Import Created	0010.000.80100.00.0000	-	17,037						08252017ADW							
Receivables	Misc Receipts	Receivables A 2346698 2747212 2	OCT-17 Misc Receipts USD	31-Oct-17	2	Journal Import Created	0010.000.80100.00.0000	-	21						10022017ADW							
Receivables	Misc Receipts	Receivables A 2371699 2771151	OCT-17 Misc Receipts USD	31-Oct-17	5	Journal Import Created	0010.000.80100.00.0000	-	565						10162017ADW							
Receivables	Misc Receipts	Receivables A 2382699 2784571	OCT-17 Misc Receipts USD	31-Oct-17	2	Journal Import Created	0010.000.80100.00.0000	-	101,085						10202017ADW							
Receivables	Misc Receipts	Receivables A 2385695 2785572	OCT-17 Misc Receipts USD	31-Oct-17	3	Journal Import Created	0010.000.80100.00.0000	-	1,979						10242017ADW							
Receivables	Misc Receipts	Receivables A 2402698 2798571 2	NOV-17 Misc Receipts USD	30-Nov-17	2	Journal Import Created	0010.000.80100.00.0000	-	14						11012017ADW							
Receivables	Misc Receipts	Receivables A 2495699 2923167 2	DEC-17 Misc Receipts USD	31-Dec-17	2	Journal Import Created	0010.000.80100.00.0000	-	8						12012017ADW							
Receivables	Misc Receipts	Receivables A 2501697 2926035	DEC-17 Misc Receipts USD	31-Dec-17	6	Journal Import Created	0010.000.80100.00.0000	25,822	-						12082017ADW							
Receivables	Misc Receipts	Receivables A 2501697 2926035	DEC-17 Misc Receipts USD	31-Dec-17	7	Journal Import Created	0010.000.80100.00.0000	-	51,645						12082017ADW							
Receivables	Misc Receipts	Receivables A 2507697 2934193	DEC-17 Misc Receipts USD	31-Dec-17	2	Journal Import Created	0010.000.80100.00.0000	-	25,204						12052017ADW							
Receivables	Misc Receipts	Receivables A 2527697 2948397	DEC-17 Misc Receipts USD	31-Dec-17	2	Journal Import Created	0010.000.80100.00.0000	-	27,620						12202017ADW							
Receivables	Misc Receipts	Receivables A 2538700 2961491	DEC-17 Misc Receipts USD	31-Dec-17	4	Journal Import Created	0010.000.80100.00.0000	-	41,174						12272017ADW							
Spreadsheet	Adjustment	Reverses "20170531 Interest Receivable JE - NPA 6 True-up Ad"13-JUN-17 12:28:33 - 2559064	Reverses "20170531 Interest Receivable JE - NPA 6 True-up Adjustment USD"13-JUN-17	31-May-17	2	5/31/2017 Interest Receivable - NPA #6 True-up	0010.000.80100.00.0000	43,669	-													
Spreadsheet	Adjustment	Spreadsheet A 2354621	20170131 NexBank MM Interest Adjustment USD	31-Jan-17	4	Interest (Account *891)	0010.210.80100.10.0000	-	-													
Spreadsheet	Adjustment	Spreadsheet A 2354621	20170131 NexBank MM Interest Adjustment USD	31-Jan-17	5	Interest (Account *735)	0010.210.80100.10.0000	-	0													

JOURNAL ENTRIES										PAYABLES				RECEIVABLES				FIXED ASSETS				
Source	Category	Journal Batch Name	Journal Name	GL Date	Journal Line Number	Journal Line Description	Account code combination	Amount DR	Amount CR	Supplier name	AP Check #	AP Invoice #	AP Invoice Description	Customer Name	AR Receipt Number	AR Transaction Number	AR Transaction Description	Asset Number	Asset vendor	Asset Description	Date placed in service	Asset Category
Spreadsheet	Adjustment	Spreadsheet A 2354621	20170131 NexBank MM Interest Adjustment USD	31-Jan-17	6	Interest (Account *130)	0010.210.80100.10.0000	-	2,697													
Spreadsheet	Adjustment	Spreadsheet A 2355499	20170131 Hunter Mountain Note Receivable Update Adjustment	31-Jan-17	2	Hunter Mountain Interest Receivable True-up	0010.210.80100.10.0000	-	110,031													
Spreadsheet	Adjustment	Spreadsheet A 2357551	20170131 Interest Receivable JE Adjustment USD	31-Jan-17	2	12/31/2016 Interest Receivable	0010.000.80100.00.0000	-	343,993													
Spreadsheet	Adjustment	Spreadsheet A 2397428	20170228 NexBank MM Interest Adjustment USD	28-Feb-17	4	Interest (Account *891)	0010.210.80100.10.0000	-	-													
Spreadsheet	Adjustment	Spreadsheet A 2397428	20170228 NexBank MM Interest Adjustment USD	28-Feb-17	5	Interest (Account *735)	0010.210.80100.10.0000	-	0													
Spreadsheet	Adjustment	Spreadsheet A 2397428	20170228 NexBank MM Interest Adjustment USD	28-Feb-17	6	Interest (Account *130)	0010.210.80100.10.0000	-	5,131													
Spreadsheet	Adjustment	Spreadsheet A 2397438	20170228 Hunter Mountain Note Receivable Update Adjustment	28-Feb-17	2	Hunter Mountain Interest Receivable True-up	0010.210.80100.10.0000	-	118,495													
Spreadsheet	Adjustment	Spreadsheet A 2407378	20170228 Interest Receivable JE Adjustment USD	28-Feb-17	2	1/31/2017 Interest Receivable	0010.000.80100.00.0000	-	308,550													
Spreadsheet	Adjustment	Spreadsheet A 2438206	20170331 Hunter Mountain Note Receivable Update Adjustment	31-Mar-17	2	Hunter Mountain Interest Receivable True-up	0010.210.80100.10.0000	-	131,190													
Spreadsheet	Adjustment	Spreadsheet A 2438837	20170331 NexBank MM Interest Adjustment USD	31-Mar-17	4	Interest (Account *735)	0010.210.80100.10.0000	-	0													
Spreadsheet	Adjustment	Spreadsheet A 2438837	20170331 NexBank MM Interest Adjustment USD	31-Mar-17	5	Interest (Account *891)	0010.210.80100.10.0000	-	395													
Spreadsheet	Adjustment	Spreadsheet A 2438837	20170331 NexBank MM Interest Adjustment USD	31-Mar-17	6	Interest (Account *130)	0010.210.80100.10.0000	-	2,595													
Spreadsheet	Adjustment	Spreadsheet A 2439400	20170316 Cash Transfer Operating to MM Adjustment USD	16-Mar-17	4	HCMSI 34 Loan Paydown - Int Income	0010.000.80100.00.0000	-	2,012													
Spreadsheet	Adjustment	Spreadsheet A 2439592	20170331 Interest Receivable JE Adjustment USD	31-Mar-17	2	3/31/2017 Interest Receivable	0010.000.80100.00.0000	-	339,658													
Spreadsheet	Adjustment	Spreadsheet A 2463466	20170331 Jefferies Reconciliation Adjustment USD	31-Mar-17	39	Services Loan Repayment	0010.000.80100.00.0000	-	2,012													
Spreadsheet	Adjustment	Spreadsheet A 2485997	20170430 Hunter Mountain Note Receivable Update Adjustment	30-Apr-17	2	Hunter Mountain Interest Receivable True-up	0010.210.80100.10.0000	-	126,958													
Spreadsheet	Adjustment	Spreadsheet A 2509281	20170430 Interest Receivable JE Adjustment USD	30-Apr-17	5	4/30/2017 Interest Receivable Double Booked Mar JE	0010.000.80100.00.0000	2,012	-													
Spreadsheet	Adjustment	Spreadsheet A 2509281	20170430 Interest Receivable JE Adjustment USD	30-Apr-17	6	4/30/2017 Interest Receivable	0010.000.80100.00.0000	-	327,087													
Spreadsheet	Adjustment	Spreadsheet A 2523355	20170430 NexBank MM Interest Adjustment USD	30-Apr-17	4	Interest (Account *891)	0010.210.80100.10.0000	-	-													
Spreadsheet	Adjustment	Spreadsheet A 2523355	20170430 NexBank MM Interest Adjustment USD	30-Apr-17	5	Interest (Account *735)	0010.210.80100.10.0000	-	0													
Spreadsheet	Adjustment	Spreadsheet A 2523355	20170430 NexBank MM Interest Adjustment USD	30-Apr-17	6	Interest (Account *130)	0010.210.80100.10.0000	-	784													
Spreadsheet	Adjustment	Spreadsheet A 2536972	20170531 Hunter Mountain Note Receivable Update Adjustment	31-May-17	2	Hunter Mountain Interest Receivable True-up	0010.210.80100.10.0000	-	131,190													
Spreadsheet	Adjustment	Spreadsheet A 2536980	20170531 Interest Receivable JE Adjustment USD	31-May-17	2	5/31/2017 Interest Receivable	0010.000.80100.00.0000	-	289,998													
Spreadsheet	Adjustment	Spreadsheet A 2537119	20170531 NexBank MM Interest Adjustment USD	31-May-17	4	Interest (Account *891)	0010.210.80100.10.0000	-	-													
Spreadsheet	Adjustment	Spreadsheet A 2537119	20170531 NexBank MM Interest Adjustment USD	31-May-17	5	Interest (Account *735)	0010.210.80100.10.0000	-	0													
Spreadsheet	Adjustment	Spreadsheet A 2537119	20170531 NexBank MM Interest Adjustment USD	31-May-17	6	Interest (Account *130)	0010.210.80100.10.0000	-	645													
Spreadsheet	Adjustment	Spreadsheet A 2558459	20170531 Interest Receivable JE - NPA 6 True-up Adjustment USD	31-May-17	2	5/31/2017 Interest Receivable - NPA #6 True-up	0010.000.80100.00.0000	-	43,669													
Spreadsheet	Adjustment	Spreadsheet A 2559065	20170531 Interest Receivable JE - NPA 6 True-up Adjustment USD	31-May-17	2	5/31/2017 Interest Receivable - NPA #6 True-up	0010.000.80100.00.0000	-	42,288													
Spreadsheet	Adjustment	Spreadsheet A 2580825	20170630 Hunter Mountain Note Receivable Update Adjustment	30-Jun-17	2	Hunter Mountain Interest Receivable True-up	0010.210.80100.10.0000	-	126,958													
Spreadsheet	Adjustment	Spreadsheet A 2591843	20170630 NexBank MM Interest Adjustment USD	30-Jun-17	4	Interest (Account *735)	0010.210.80100.10.0000	-	0													
Spreadsheet	Adjustment	Spreadsheet A 2591843	20170630 NexBank MM Interest Adjustment USD	30-Jun-17	5	Interest (Account *891)	0010.210.80100.10.0000	-	405													
Spreadsheet	Adjustment	Spreadsheet A 2591843	20170630 NexBank MM Interest Adjustment USD	30-Jun-17	6	Interest (Account *130)	0010.210.80100.10.0000	-	933													
Spreadsheet	Adjustment	Spreadsheet A 2611838	20170630 Interest Receivable JE Adjustment USD	30-Jun-17	3	6/30/2017 Interest Receivable	0010.000.80100.00.0000	1,381	-													
Spreadsheet	Adjustment	Spreadsheet A 2611838	20170630 Interest Receivable JE Adjustment USD	30-Jun-17	4	6/30/2017 Interest Receivable	0010.000.80100.00.0000	-	329,757													
Spreadsheet	Adjustment	Spreadsheet A 2649966	20170731 NexBank MM Interest Adjustment USD	31-Jul-17	4	Interest (Account *891)	0010.210.80100.10.0000	-	-													
Spreadsheet	Adjustment	Spreadsheet A 2649966	20170731 NexBank MM Interest Adjustment USD	31-Jul-17	5	Interest (Account *735)	0010.210.80100.10.0000	-	0													

JOURNAL ENTRIES										PAYABLES				RECEIVABLES				FIXED ASSETS				
Source	Category	Journal Batch Name	Journal Name	GL Date	Journal Line Number	Journal Line Description	Account code combination	Amount DR	Amount CR	Supplier name	AP Check #	AP Invoice #	AP Invoice Description	Customer Name	AR Receipt Number	AR Transaction Number	AR Transaction Description	Asset Number	Asset vendor	Asset Description	Date placed in service	Asset Category
Spreadsheet	Adjustment	Spreadsheet A 2649966	20170731 NexBank MM Interest Adjustment USD	31-Jul-17	6	Interest (Account *130)	0010.210.80100.10.0000	-	1,306													
Spreadsheet	Adjustment	Spreadsheet A 2650532	20170731 Hunter Mountain Note Receivable Update Adjustment	31-Jul-17	2	Hunter Mountain Interest Receivable True-up	0010.210.80100.10.0000	-	131,190													
Spreadsheet	Adjustment	Spreadsheet A 2650573	20170731 Interest Receivable JE Adjustment USD	31-Jul-17	4	7/31/2017 Interest Receivable	0010.000.80100.00.0000	24,909	-													
Spreadsheet	Adjustment	Spreadsheet A 2650573	20170731 Interest Receivable JE Adjustment USD	31-Jul-17	5	7/31/2017 Interest Receivable	0010.000.80100.00.0000	-	2,762													
Spreadsheet	Adjustment	Spreadsheet A 2650573	20170731 Interest Receivable JE Adjustment USD	31-Jul-17	6	7/31/2017 Interest Receivable	0010.000.80100.00.0000	-	141,895													
Spreadsheet	Adjustment	Spreadsheet A 2673397	20170731 Jefferies Reconciliation Adjustment USD	31-Jul-17	42	Carey Interest Payment	0010.000.80100.00.0000	-	49,805													
Spreadsheet	Adjustment	Spreadsheet A 2673495	20170731 Interest Receivable JE True-up Adjustment USD	31-Jul-17	2	7/31 Interest Receivable JE True-up	0010.000.80100.00.0000	-	278,887													
Spreadsheet	Adjustment	Spreadsheet A 2685126	20170831 Hunter Mountain Note Receivable Update Adjustment	31-Aug-17	2	Hunter Mountain Interest Receivable True-up	0010.210.80100.10.0000	-	131,190													
Spreadsheet	Adjustment	Spreadsheet A 2695370	20170831 NexBank MM Interest Adjustment USD	31-Aug-17	4	Interest (Account *891)	0010.210.80100.10.0000	-	-													
Spreadsheet	Adjustment	Spreadsheet A 2695370	20170831 NexBank MM Interest Adjustment USD	31-Aug-17	5	Interest (Account *735)	0010.210.80100.10.0000	-	0													
Spreadsheet	Adjustment	Spreadsheet A 2695370	20170831 NexBank MM Interest Adjustment USD	31-Aug-17	6	Interest (Account *130)	0010.210.80100.10.0000	-	2,045													
Spreadsheet	Adjustment	Spreadsheet A 2696075	20170831 Interest Receivable JE Adjustment USD	31-Aug-17	2	8/31 Interest Receivable JE	0010.000.80100.00.0000	-	338,436													
Spreadsheet	Adjustment	Spreadsheet A 2712153	20170831 Jefferies Reconciliation Adjustment USD	31-Aug-17	15	Carey Interest Payment	0010.000.80100.00.0000	-	-													
Spreadsheet	Adjustment	Spreadsheet A 2712153	20170831 Jefferies Reconciliation Adjustment USD	31-Aug-17	16	MT Statutory Trust Interest Income	0010.000.80100.00.0000	-	61,996													
Spreadsheet	Adjustment	Spreadsheet A 2734904	20170930 Hunter Mountain Note Receivable Update Adjustment	30-Sep-17	2	Hunter Mountain Interest Receivable True-up	0010.210.80100.10.0000	-	126,958													
Spreadsheet	Adjustment	Spreadsheet A 2746843	20170930 Interest Receivable JE Adjustment USD	30-Sep-17	3	9/30 Interest Receivable JE True-up	0010.000.80100.00.0000	-	15,726													
Spreadsheet	Adjustment	Spreadsheet A 2746843	20170930 Interest Receivable JE Adjustment USD	30-Sep-17	4	9/30 Interest Receivable JE	0010.000.80100.00.0000	-	363,494													
Spreadsheet	Adjustment	Spreadsheet A 2747543	20170930 NexBank MM Interest Adjustment USD	30-Sep-17	4	Interest (Account *735)	0010.210.80100.10.0000	-	0													
Spreadsheet	Adjustment	Spreadsheet A 2747543	20170930 NexBank MM Interest Adjustment USD	30-Sep-17	5	Interest (Account *130)	0010.210.80100.10.0000	-	386													
Spreadsheet	Adjustment	Spreadsheet A 2747543	20170930 NexBank MM Interest Adjustment USD	30-Sep-17	6	Interest (Account *891)	0010.210.80100.10.0000	-	406													
Spreadsheet	Adjustment	Spreadsheet A 2749161	20170930 Jefferies Reconciliation Adjustment USD	30-Sep-17	13	Carey Interest Payment	0010.000.80100.00.0000	-	-													
Spreadsheet	Adjustment	Spreadsheet A 2749161	20170930 Jefferies Reconciliation Adjustment USD	30-Sep-17	14	Carey PIK	0010.000.80100.00.0000	-	24,821													
Spreadsheet	Adjustment	Spreadsheet A 2797447	20171031 Hunter Mountain Note Receivable Update Adjustment	31-Oct-17	2	Hunter Mountain Interest Receivable True-up	0010.210.80100.10.0000	-	131,190													
Spreadsheet	Adjustment	Spreadsheet A 2797677	20171031 Interest Receivable JE Adjustment USD	31-Oct-17	2	10/31 Interest Receivable JE	0010.000.80100.00.0000	-	283,722													
Spreadsheet	Adjustment	Spreadsheet A 2798308	20171031 NexBank MM Interest Adjustment USD	31-Oct-17	4	Interest (Account *891)	0010.210.80100.10.0000	-	-													
Spreadsheet	Adjustment	Spreadsheet A 2798308	20171031 NexBank MM Interest Adjustment USD	31-Oct-17	5	Interest (Account *735)	0010.210.80100.10.0000	-	0													
Spreadsheet	Adjustment	Spreadsheet A 2798308	20171031 NexBank MM Interest Adjustment USD	31-Oct-17	6	Interest (Account *130)	0010.210.80100.10.0000	-	454													
Spreadsheet	Adjustment	Spreadsheet A 2811284	20171031 Jefferies Reconciliation Adjustment USD	31-Oct-17	13	Carey Interest Payment	0010.000.80100.00.0000	-	55,268													
Spreadsheet	Adjustment	Spreadsheet A 2874566	20171130 Hunter Mountain Note Receivable Update Adjustment	30-Nov-17	2	Hunter Mountain Interest Receivable True-up	0010.210.80100.10.0000	-	126,958													
Spreadsheet	Adjustment	Spreadsheet A 2923523	20171130 Interest Receivable JE Adjustment USD	30-Nov-17	3	11/30 Interest Receivable JE	0010.000.80100.00.0000	-	28,337													
Spreadsheet	Adjustment	Spreadsheet A 2923523	20171130 Interest Receivable JE Adjustment USD	30-Nov-17	4	11/30 Interest Receivable JE	0010.000.80100.00.0000	-	387,984													
Spreadsheet	Adjustment	Spreadsheet A 2924233	20171130 NexBank MM Interest Adjustment USD	30-Nov-17	4	Interest (Account *891)	0010.210.80100.10.0000	-	-													
Spreadsheet	Adjustment	Spreadsheet A 2924233	20171130 NexBank MM Interest Adjustment USD	30-Nov-17	5	Interest (Account *735)	0010.210.80100.10.0000	-	0													
Spreadsheet	Adjustment	Spreadsheet A 2924233	20171130 NexBank MM Interest Adjustment USD	30-Nov-17	6	Interest (Account *130)	0010.210.80100.10.0000	-	1,720													
Spreadsheet	Adjustment	Spreadsheet A 2924986	20171130 Jefferies Reconciliation Adjustment USD	30-Nov-17	12	Goldfield & Carey PIK	0010.000.80100.00.0000	-	391,743													
Spreadsheet	Adjustment	Spreadsheet A 2971371	20171231 Hunter Mountain Note Receivable Update Adjustment	31-Dec-17	2	Hunter Mountain Interest Receivable True-up	0010.210.80100.10.0000	-	132,128													

JOURNAL ENTRIES										PAYABLES				RECEIVABLES				FIXED ASSETS				
Source	Category	Journal Batch Name	Journal Name	GL Date	Journal Line Number	Journal Line Description	Account code combination	Amount DR	Amount CR	Supplier name	AP Check #	AP Invoice #	AP Invoice Description	Customer Name	AR Receipt Number	AR Transaction Number	AR Transaction Description	Asset Number	Asset vendor	Asset Description	Date placed in service	Asset Category
Spreadsheet	Adjustment	Spreadsheet A 2971390	20171231 NexBank MM Interest Adjustment USD	31-Dec-17	4	Interest (Account *735)	0010.210.80100.10.0000	-	0													
Spreadsheet	Adjustment	Spreadsheet A 2971390	20171231 NexBank MM Interest Adjustment USD	31-Dec-17	5	Interest (Account *891)	0010.210.80100.10.0000	-	403													
Spreadsheet	Adjustment	Spreadsheet A 2971390	20171231 NexBank MM Interest Adjustment USD	31-Dec-17	6	Interest (Account *130)	0010.210.80100.10.0000	-	1,695													
Spreadsheet	Adjustment	Spreadsheet A 2985407	20171231 Interest Receivable JE Adjustment USD	31-Dec-17	9	12/31 Interest Receivable JE - HCMSI Interest True-up	0010.000.80100.00.0000	-	1,093													
Spreadsheet	Adjustment	Spreadsheet A 2985407	20171231 Interest Receivable JE Adjustment USD	31-Dec-17	10	12/31 Interest Receivable JE - Dugaboy Interest True-up	0010.000.80100.00.0000	-	3,206													
Spreadsheet	Adjustment	Spreadsheet A 2985407	20171231 Interest Receivable JE Adjustment USD	31-Dec-17	11	12/31 Interest Receivable JE	0010.000.80100.00.0000	-	261,921													
Spreadsheet	Adjustment	Spreadsheet A 2985407	20171231 Interest Receivable JE Adjustment USD	31-Dec-17	12	12/31 Interest Receivable JE - Dugaboy Principal True-up	0010.000.80100.00.0000	-	395,013													
Spreadsheet	Adjustment	Spreadsheet A 2985427	20171231 Jefferies Reconciliation Adjustment USD	31-Dec-17	20	Goldfield PIK	0010.000.80100.00.0000	-	11,742													
Spreadsheet	Adjustment	Spreadsheet A 3040434	20171231 Interest Receivable JE - Dugaboy Interest True-up	31-Dec-17	2	12/31 Interest Receivable JE - Dugaboy Interest True-up	0010.000.80100.00.0000	304,227	-													
Spreadsheet	Adjustment	Spreadsheet A 3056868	20171231 Carey PIK Adjustment	31-Dec-17	2	Carey PIK	0010.000.80100.00.0000	-	216,138													
								402,020	7,451,059													

Amount per detail above	7,049,039	Rc
Amount per TB	7,049,039	LS
Difference (not in thousands)	-	Rc, imm
	^	

Hunter Mountain Interest Income Reconciliation

Hunter Mountain Interest Income per above	1,524,439	Rc
Interest Income per <Due from Hunter Mountain> tab	1,547,673	<Due from Hunter Mountain>
Difference	(23,234)	Rc, imm
	^	

Tickmark Legend

^ Footed without exception.

imm Amount is immaterial. Therefore, further review is waived.

Rc Recalculated amount. Refer to the respective cell's formula for further details.

LS Amount agrees to 12/31/17 lead schedule linked below without exception.

Lead schedule - Revenue

Total of highlighted amounts have been recalculated and agree to the interest income per the <Note Receivable> tab within an immaterial difference.

EXHIBIT 93

Engagement:	Highland Capital Management LP - 2018 Audit
Period end date:	12/31/2018
Audit unit:	Highland Capital Management LP - 2018 Audit-HQ
Associated Risks:	Risk of material misstatement in Other Assets
FSLI:	Other Assets
EGA title:	Test due from and notes receivable
Ref. no.:	3025-1510

Rollforward - Notes receivable

When more than one preparer was involved in the completion of this EGA, document the names of the team members involved and the procedures performed.	*[Document the initials or names of team members and procedures performed (e.g., Jane Doe performed step a) below)]* **Prepared by Madeline Pacocha, PwC**

Procedures	Results	Links
a) Obtain a rollforward schedule of notes receivable balances, agree balances and test mathematical accuracy.	☑ Obtained a rollforward schedule of notes receivable balances. Attached in tab *'Results Template'* or provided link. **Note that the team obtained the closing balances of notes and accounts receivable by account type/entity. Attached schedule in the <Detail> tab. Additionally, note that the due from receivables listing was target tested for accounts greater than $10M and the remaining population was non-stat tested. Refer to selections made and testing performed in the < Results Template>** **AND** ☑ Agreed balances to prior period workpapers and closing balances to the general ledger, and ☑ No reconciling items noted, or ☐ Reconciling items are not significant or unusual (when considered both individually and in the aggregate); therefore no further testing performed, or *[Document reconciling items noted and rationale for determination]* ☐ Significant or unusual reconciling items noted; therefore performed further testing as follows: *[Document reconciling items noted and testing performed or provide link]* **AND** ☑ Tested mathematical accuracy of the rollforward schedule, as follows: *[Document schedule name(s), details of testing performed or provide link to tickmarked schedule]* **Refer to the <Detail> tab for procedures performed.** ☑ Verified spreadsheet formula. ☐ Manually added or recalculated. ☐ Application controls over related report tested. ☐ Other [Specify below]. *[Document details of testing, if not included in the linked schedule]*	
b) Agree activity within the rollforward to testing performed.	☐ Not applicable. There was no current period activity, or ☑ Agreed activity within the rollforward to testing performed in the following EGAs (check those that apply): ☑ Total additions to testing performed in the EGA *Test additions - Notes receivable.* ☑ Total payments to testing performed in the EGA *Test payments - Notes receivable.* **The team tested additions and payments within this EGA. Refer to the subsequent tabs for procedures performed.**	Results Template

Rollforward - Notes receivable

	AND ☑ Obtained appropriate supporting documentation for any other adjustments within the rollforward, and: ☐ Tested a selection of adjustments (test(s) added from Aura Tests of Details template), or *[Document other items tested and the details of work performed or provide link]* ☑ Tested all adjustments. *[Document other items tested and the details of work performed or provide link]* **The audit team tested all adjustments for notes selected for testing. Refer to the <Results Template> tab for testing performed.**	

Rollforward - Notes receivable

c) Obtain detailed listing(s) of the ending balance of notes receivable by asset, agree balances and test mathematical accuracy. *Service Delivery Center activities:* Tests of Details	☐ Not applicable. The rollforward in procedure a) was performed at the individual asset level, or ☑ Obtained detailed listing(s) of the ending balance of notes receivable. ***[Document details of accounts selected or provide link to detailed listing(s) obtained]*** **Refer to the <Results Template> tab for procedures performed. Additionally, note that the due from receivables listing was target tested for accounts greater than $10M and the remaining population was non-stat tested. Refer to testing performed in the < Results Template>** **AND** ☑ Agreed the total per the detailed listing to the ending balance per the rollforward, and: ☑ No reconciling items noted, or ☐ Reconciling items are not significant or unusual (when considered both individually and in the aggregate); therefore no further testing performed, or ***[Document reconciling items noted and rationale for determination]*** ☐ Significant or unusual reconciling items noted; therefore performed further testing as follows: ***[Document reconciling items noted and testing performed or provide link]*** **AND** ☑ Tested mathematical accuracy of the detailed listing, as follows: ***[Document schedule name(s), details of testing performed or provide link to tickmarked schedule]*** ☑ Verified spreadsheet formula. ☐ Manually added or recalculated. ☐ Application controls over related report tested. ☐ Other [Specify below]. ***[Document details of testing, if not included in the linked schedule]***	Results Template
d) Define what constitutes an unexpected or unusual balance and scan the subledgers or detailed listing of ending balances of notes receivable by asset for unexpected (e.g. credit balances, large balances not confirmed, etc.) or unusual items.	☑ Defined what constitutes an unexpected or unusual balance, as follows: ***[Define and document what constitutes an unexpected or unusual balance]*** **An unexpected or unusual balance is defined as anything that is not considered in Due from Affiliate, within the details. The engagement team performed a Credit Risk Analysis over the material balances within the <Detail> tab to ensure that there were no unexpected or unusual loans. Refer to the <Credit Risk Analysis> tab for the engagement team analysis over the related balances.** **AND** ☑ Scanned the subledgers or detailed listings noting the following: ☑ No unexpected or unusual balances, or ☐ Unusual or unexpected balances identified: ***[Document details of unexpected or unusual balances identified and resolution]***	

Rollforward - Notes receivable

Additional engagement specific procedures, if necessary	
Procedures	**Results**
[Document engagement specific additional procedures, if necessary] N/A	[Document results of additional procedures] N/A

HCMLP
Various Assets - Detail
12/31/2018
Prepared by Madeline Pacocha, PwC

Note: The below detail is for the Due From and Notes Receivable FSLI's. The team tested 100% ofthe Notes Receivable balance and performed a target test in addition non-stat sample over the Due from Affiliate balance to ensure adequate coverage. Refer below for testing references.

LS

Due from affiliates

14010	CASH INTEREST RECEIVABLE	53,104	
14140	SHARED SVCS FEE RECVBL - PYXIS	235,476	
14142	SHARED SVCS FEE RECVBL - HCLOH	30,036	
14148	SHARED SVCS FEE RECVBL - RAND ADVISORS	2	
14530	DUE FROM HIGHLAND CAPITAL MANAGEMENT SERVICES	13,884,352	TT
14531	DUE FROM HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS	4,895,352	NS
14532	DUE FROM NEXPOINT ADVISORS	28,417,403	TT
14533	DUE FROM HCRE PARTNERS	9,005,843	NS
14565	DUE FROM OTHER - TAX LOANS	30,141,021	TT
14575	DUE FROM HIGHLAND CAPITAL OF NEW YORK	4,951,652	NS
14580	DUE FROM NEXBANK	60,000	
14585	DUE FROM HUNTER MOUNTAIN INVESTMENT TRUST	60,167,335	TT
14595	DUE FROM HIGHLAND CAPITAL KOREA	3,564,966	
14750	LONG TERM NOTES RECEIVABLE	21,556,268	TT
	Total	176,962,810	Rc
		^	

SUMMARY	
	Rc
Total Due From	**176,962,810**
Target Test Count	5
Total Targeted	154,166,379
Total Non Stat	18,852,847
# of selections	3
Total Tested	173,019,226
	3,943,584

TOD Form: Test Due from Affiliates

Interest Income Tested	
HCMSI	265,120
Dondero Tax Loan	293,571
HCRE	468,096
Hunter Mountain	1,582,893
Total Tested	2,609,679
	^

Tickmark Legend

^ Footed without exception.
Rc Recalculated amount. Refer to the respective cell's formula for further details.
LS Amount agrees to the lead schedule linked below.
Lead schedule - Assets
NS Amount was selected for Non-Statistical Sampling Testing. Refer to the Non-Stat template linked below for further information and to the
TOD Form: Test Due from Affiliates
TT Due from
TOD Form: Test Due from Affiliates
<PM Remaining balance is below performance materiality, waive further review.

Highland Capital Management, L.P.
Credit Risk Analysis
12/31/2018
Prepared by Madeline Pacocha, PwC

Note: The audit team performed a credit analysis for all material (above performance materiality) notes receivable in order to determine the nature and intent of each note as well as assess the ability of the payee to pay the note. Refer to the team's analysis below.

<Detail>

Account #	Counter Party	Amount	Interest Rate A	Maturity Date A	Nature	Recoverability
14530	Highland Capital Management Services (James Dondero majority owner)	13,884,352	2.75%	12/31/2047	Highland Capital Management Services is an S Corp that acts as a platform investment company for one-off investments. Loans are provided to this entity primarily in order to provide seed capital for new investments.	Based on our testing performed over this loan, the engagement team notes that all the previous loans issued to HCMSI have been restructured and consolidated into one loan with a maturity date of 12/31/2047 and a yearly installment payment plan. The audit team also vouched interest payments being made by the fund, which also signifies that they have the ability to continue to make their payments. As such, the team is comfortable that the fund will be able to pay the loan when it becomes due. Further note that HCM Services has also paid back $588K to HCMLP in principal payments for 2018 (vouched by engagement team) and paid off all the interest owed to the fund as of 12/31/2018. As the fund is showing an ability by continuing to make payments subsequent to year end and an installment payment plan has been implemented , the audit team is comfortable that the entity has the ability to pay down this loan when it becomes due. Furthermore,Jim Dondero owns more than 70% of this entity.
14531	Highland Capital Fund Advisors	4,895,352	2.62%	On demand but not before 5/31/2019	Loans are made to HCMF for the fund's operational purposes.	Per review of the audited HCMF financial statements, the engagement team notes that the fund is realizing profits and has a positive cash flow. Based on the team's going concern considerations for this fund, the expectation is that the fund will be in positive partners capital by the next fiscal year. Based on the profit and improving performance of the fund, the team is comfortable that they will be able to pay the loan when it becomes due.
14532	Nexpoint Advisors	28,417,403	6%	12/31/2047	Loans are made to Nexpoint for the fund's operational purposes.	Per review of the audited Nexpoint financial statements, the engagement team notes that the fund is realizing profits and has a positive cash flow. Based on the team's going concern considerations for this fund, the expectation is that the fund continue to recover from it's negative partners' capital balance in the coming years as it continues to improve performance and does not over distribute partners' capital. The engagement team additionally notes that NPA has stopped waiving management fees to the BDC (Nexpoint Capital Strategies) which is expected to significantly increase their revenue for future period. Based on the profit and improving performance of the fund, the team is comfortable that they will be able to pay the loan installments as they become due.
14533	HCRE Partners (James Dondero)	9,005,843	Varies	On demand and 12/31/2047	HCRE Partners is a real estate investment entity that investments in opportunistic real estate investments and historically has realized substantial gains. Loans are provided to this entity primarily in order to provide seed capital for new investments. Note that 31% of this balance is due on demand. The remaining 69% is made up of a restructured loan that has a maturity date of 12/31/2047.	Per discussion with Dave Klos, HCMLP, the audit team notes that these loans are made at a high interest rate in order to encourage the fund to pay off the loan quickly. The audit team also vouched interest and principal payments being made by the fund, which also signifies that they have the ability to continue to make their payments. As such, the team is comfortable that the fund will be able to pay the loan when it becomes due. Furthermore, Jim Dondero owns more than 70% of this entity.
14565	James Dondero	30,141,021	2.03%-2.25%	On demand and 12/31/2047	Related to Loans given to Limited Partners within the fund including James Dondero and Mark Okada in order to satisfy tax liability. Both have little basis in the fund, therefore a tax loan was given instead of an equity distribution. Note that James Dondero's portion was 92% of this balance and has a maturity date of 12/31/2047.	Per review of the Nexpoint Strategy Opportunities Fund form 13D filed with the SEC on 10/25/18, the engagement team notes that James Dondero owns 16.8% of this fund. Per review of the audited 12/31/18 financial statements for NHF, we note a total Net Asset Value of $767.7 million, which leaves Dondero's ownership value in the fund at $128.9 million. Additionally, the team notes that per NexPoint Residential Trust, Inc. form DEF 13D filed with the SEC on 11/20/2018, James Dondero also owns 19.65% of NexPoint Residential Trust. Per review of the audited 12/31/18 financial statements for NXRT, we note a total Net Asset Value of $296,028,000 which leaves Dondero's ownership value in the fund at $58,169,502. Based solely on these two investment values ($188,069,502 value), not considering his extensive ownership of other assets, the team notes that Mr. Dondero has significant net worth in excess of the amount that is payable to HCMLP and therefore he has the ability to pay the loan. We note that because NHF is a publicly traded fund, he has the ability to sell his shares or transfer them back to HCMLP to satisfy the debt.
14750	Dugaboy (James Dondero)	21,556,268	3.26%	12/31/2047	The audit team notes that this note was primarily made in order to donate assets held by the fund to charity. Therefore, the fund sold assets in exchange for a Note Payable ultimately from Dugaboy, of which the primary beneficiary is James Dondero.	See above.
14585	Hunter Mountain Investment Trust (James Dondero)	60,167,335	2.61%	On demand	Note that Hunter Mountain purchased 99.5% of HCMLP. This loan was originally made for seller financing of the purchase of HCMLP as a part of the purchase price was paid in cash and a portion was financed as a note payable to HCMLP.	As Hunter Mountain owns 99.5% of HCMLP (verified through capital testing), the audit team notes that if Hunter Mountain did not have the ability to pay when the note became due, HCMLP could simply recover the receivable by netting off Hunter Mountain's capital balance. As such, the team is comfortable with the recoverability of this note. Additionally, the team notes that James Dondero is a significant owner of Hunter Mountain through the Crown Global Life Insurance. Therefore, the team notes that Mr. Dondero has significant net worth in excess of the amount that is payable to HCMLP and therefore he has the ability to pay the loan.

Tickmark Legend
A Agrees to the note agreements obtained within the <Results Template> tab for testing.

Rollforward schedule of notes receivable

G/L Account	Account Description	Amount per Client		Balance per Testing Performed	TM	Rc, imm Differences	
Target Tested							
14530	DUE FROM HIGHLAND CAPITAL MANAGEMENT SERVICES	13,884,352	<Detail>	13,884,352	<Due from HCMSI>	-	imm
14532	DUE FROM NEXPOINT ADVISORS	28,417,403	<Detail>	28,417,403	A	-	
14565	DUE FROM OTHER - TAX LOANS	30,141,021	<Detail>	30,141,021	B	0	
14585	DUE FROM HUNTER MOUNTAIN INVESTMENT TRUST	60,167,335	<Detail>	60,167,336	<Due from Hunter Mountain>	(1)	
14750	LONG TERM NOTES RECEIVABLE	21,556,268	<Detail>	21,556,268	<Dugaboy>	-	
	Total Amount Targeted	154,166,379		154,166,379		(0)	
Non-Stat							
14531	DUE FROM HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS	4,895,352	<Detail>	4,895,468	A	-116.00	
14533	DUE FROM HCRE PARTNERS	9,005,843	<Detail>	9,005,843	C	0	
14575	DUE FROM HIGHLAND CAPITAL OF NEW YORK	4,951,652	<Detail>	4,951,652	<New York>	(0)	
	Total Amount Non-Stat	18,852,847		18,852,963	Rc	(115.89)	
		^		^		^	
	Total Amount Tested	**173,019,226.00**		**173,019,342.30**	Rc	**-116.30**	Rc, imm
		^		^		^	

Tickmark Legend

Rc Amount recalculated. Refer to respective cell for formula detail.
imm Amount is immaterial, below SUM. Further testing is waived.
^ Amount footed. Refer to respective cell for formula detail.
PY Agrees to the prior year Asset lead schedule tested by the audit team without exception.
A The engagement team notes that the receivables above relate to amounts due from other audited HCM entities for loans provided by Highland Capital Management, L.P. ("HCMLP") to Highland Capital Management Fund Advisors ("HCMFA") or NexPoint Advisors ("NPA"). Further note the engagement team prepared and tested the Due to HCMLP rollforwards for both HCMFA and NPA, which correspond to the receivables amount above in conjunction with testing over those entities, without exception. Note that the following procedures were performed within the EGAs linked below.

	Amount	
Due from HCMFA	4,895,468	Understand debt agreements and test compliance
Due from Nexpoint	28,417,403	Understand debt agreements and test compliance

B The engagement team notes that this amount is made up of 2 separate loans issued for tax purposes to two owners, James Dondero and Mark Okada. Refer to the <Dondero Tax Loan> tab for testing and support obtained. The note receivable due from Mark Okada has not had any paydowns in the current year. As such Okada's note receivable balance as of 12/31/2018 is consistent with prior year.

Date	Lender	Interest Rate	Amount	
Various	HCM Dondero	Various	28,891,021	<Dondero Tax Loan>
4/15/2016	HCM Okada	2.25%	1,250,000	04152016 HCM Okada $1.25M
			30,141,021	Rc
			^	

C The engagement team notes that this amount is made up of 4 separate loans issued to HCRE. We not that one of the notes was restructured in the current year and an additional note has been issued. Refer below for support reconciliation and support obtained from Kristin Hendrix, HCM.

Date	Lender	Interest Rate	Amount	
11/27/2013	HCRE #9	2.03%	100,000	PY
5/31/2017	HCRE Restructured	8.00%	5,655,843	<HCRE Restructure>
10/12/2017	HCRE #10	8.00%	2,500,000	10122017 HCRE $2.5M
10/15/2018	HCRE #11		750,000	<HCRE Restructure>
			9,005,843	Rc
			^	

Due from Highland Capital Management Services
Account Detail - Year end Balances
12/31/2018
PBC, tickmarked by Madeline Pacocha, PwC

Note: The engagement team notes that the individual notes issued to HCM Services in the prior years were restructured and consolidated on 5/31/2017. The audit team obtained the original restructured agreement and the debt rollforward from Drew Wilson, HCMLP. Refer below for the new restructured receivable rollforward tied out by the audit team. As the ending balance of the note agrees to the Notes Receivable balance on the lead schedule without exception, further analysis is waived.

Closing Date	5/31/2017	A
Beginning Principle Balance $	20,247,628.02	
Interest Rate	2.75%	

	Rc	B	Rc	Rc	B		Rc
Date	Interest Income	Interest Paid	Accrued Interest	Beg Prin Bal	Principal Paid		Ending Prin Bal
12/31/2017				14,122,352	PYWP		14,122,352
1/31/2018	32,984	0	32,984	14,122,352			14,122,352
2/28/2018	29,792	-	62,777	14,122,352			14,122,352
3/31/2018	32,984	-	95,761	14,122,352			14,122,352
4/30/2018	31,920	-	127,682	14,122,352			14,122,352
5/31/2018	32,984	-	160,666	14,122,352	-		14,122,352
6/30/2018	31,920	-	192,586	14,122,352	-		14,122,352
7/31/2018	32,984	-	225,571	14,122,352	-		14,122,352
8/31/2018	32,984	-	258,555	14,122,352	-		14,122,352
9/30/2018	31,920	-	290,476	14,122,352	-		14,122,352
10/8/2018	8,512	(412,000)	(113,012)	14,122,352	(588,000)	1	13,534,352
10/31/2018	31,611	-	(81,401)	13,534,352	-		13,534,352
11/30/2018	30,591	-	(50,810)	13,534,352	-		13,534,352
12/31/2018	31,611	-	(19,199)	13,534,352	-		13,534,352
Totals	265,120	(412,000)	(19,199)		(588,000)		**13,534,352**

-

SUMMARY		
Ending Principal Bal	**13,534,352**	above
Accrued Interest	**(19,199)**	<PM

Closing Date	6/25/2018	C
Beginning Principal	200,000	
Interest Rate	3.050%	

	Rc	Rc		Rc
Date	Interest Paid	Accrued Interest	Beg. Prin Balance	Principal Paid	Ending Prin Bal
6/25/2018			200,000		200,000
6/30/2018		83.56	200,000		200,000
7/31/2018		518.08	200,000		200,000
8/31/2018		518.08	200,000		200,000
9/30/2018		501.37	200,000		200,000
10/31/2018		518.08	200,000		200,000
11/30/2018		501.37	200,000		200,000
12/31/2018		518.08	200,000		200,000

Summary	
Ending Principal	200,000
Accrued Interst	518.08

Closing Date	3/26/2018	D
Beginning Principal	150,000	
Interest Rate	2.880%	

	Rc	Rc		Rc
Date	Interest Paid	Accrued Interest	Beg. Prin Balance	Principal Paid	Ending Prin Bal
3/26/2018			150,000		150,000
3/31/2018		62.67	150,000		150,000
4/30/2018		376.03	150,000		150,000
5/31/2018		388.56	150,000		150,000
6/30/2018		376.03	150,000		150,000
7/31/2018		388.56	150,000		150,000
8/31/2018		388.56	150,000		150,000
9/30/2018		376.03	150,000		150,000
10/31/2018		388.56	150,000		150,000
11/30/2018		376.03	150,000		150,000
12/31/2018		388.56	150,000		150,000

Summary	
Ending Principal	150,000
Accrued Interest	388.56

Tickmark Legend

^ Footed without exception.
Rc Recalculated amount. Refer to the respective cell's formula for further details.
imm Amount is immaterial (below SUM). Therefore, further analysis is waived.
PYWP Agreed to the prior year workpaper, without exception. Refer to the Test due from and notes receivable EGA in prior years database.
<PM Amount is below performance materiality, further testing waived.
A Agreed to the restructure Loan Agreement obtained from Kristen Hendrix, HCM, without exception. Refer to agreement linked below.
06212017 HCMSI Loan Restructure

B Agreed to cash deposit in the Nexbank bank statement (account #: 1614130) for each respective month noted, without exception. Further testing waived. Refer below for breakdown of payment.

1) **October**

Principle Payment	(588,000)	above
Interest Payment	(412,000)	above
	(1,000,000)	B
	^	

C Agreed to theLoan Agreement obtained from Kristen Hendrix, HCM, without exception. Refer to agreement linked below
06252018 HCMSI Loan $200k

D Agreed to theLoan Agreement obtained from Kristen Hendrix, HCM, without exception. Refer to agreement linked below.
03282018 HCMSI $150K

E See the reconciliation below for total due from HCMSI
Ending Principal

5/31/2017	13,534,352	Above
6/25/2018	200,000	
3/26/2018	150,000	
	13,884,352	Rc
	13,884,352	LS
Difference	-	Rc, imm

Due from James Dondero - Tax Loan
Account Detail - Year end Balances
12/31/2018
PBC, tickmarked by Madeline Pacocha, PwC

Note: The engagement team notes that in prior year there were six loans given to James Dondero, HCM Owner, for tax purposes. The original loan balances were agreed to their note agreements in the prior year, without exception. Note that there were four new note receiveables during 2018. The audit team obtained the original agreement and the debt rollforward from Kristin Hendrix, HCMLP. Refer below for the new restructured receivable rollforward tied out by the audit team. As the sum of the ending balance of the notes agrees to the Notes Receivable balance on the lead schedule without exception, further analysis is waived.

Note 1

Restructured Closing Date	5/31/2017	A 06212017 Dondero Loan Restructure
Total Commitment Restructured	$ 14,977,274	
Rate	2.03%	

	Rc	B	Rc	Rc		B	Rc
Date	Interest Income	Interest Paid	Accrued Interest	Beg Prin Bal		Principal Paid	Ending Prin Bal
12/31/2017	-	-	-	14,478,031.16	PYWP	-	14,478,031.16
1/31/2018	24,961.71		24,961.71	14,478,031.16			14,478,031.16
2/28/2018	22,546.06		47,507.78	14,478,031.16			14,478,031.16
3/31/2018	24,961.71		72,469.49	14,478,031.16			14,478,031.16
4/30/2018	24,156.50		96,625.98	14,478,031.16			14,478,031.16
5/31/2018	24,961.71		121,587.70	14,478,031.16			14,478,031.16
6/30/2018	24,156.50		145,744.19	14,478,031.16			14,478,031.16
7/31/2018	24,961.71		170,705.90	14,478,031.16			14,478,031.16
8/31/2018	24,961.71	-	195,667.62	14,478,031.16			14,478,031.16
9/30/2018	24,156.50	-	219,824.11	14,478,031.16			14,478,031.16
10/31/2018	24,961.71	-	244,785.82	14,478,031.16			14,478,031.16
11/30/2018	24,156.50	-	268,942.32	14,478,031.16			14,478,031.16
12/19/2018	15,299.11	(283,380.69)	860.74	14,478,031.16		(499,242.45)	13,978,788.71
12/31/2018	9,329.41	-	10,190.15	13,978,788.71		-	13,978,788.71
Totals	293,570.84	(283,380.69)	10,190.15			(499,242.45)	**13,978,788.71**
	^	^				^	^

SUMMARY		
Ending Principal Bal	**13,978,789**	above
Accured Interest	**10,190**	<PM

Note 2

Closing Date	2/2/2018	A 02022018 HCM JD $3.825M
Total Commitment Restructured	3,825,000	
Rate	2.66%	

	Rc	B	Rc	Rc	B	Rc
Date	Interest Income	Interest Paid	Accrued Interest	Beg Prin Bal	Principal Paid	Ending Prin Bal
2/2/2018				3,825,000		3,825,000
2/28/2018	7,247.59		7,247.59	3,825,000		3,825,000
3/31/2018	8,641.36		15,888.95	3,825,000		3,825,000
4/30/2018	8,362.60		24,251.55	3,825,000		3,825,000
5/31/2018	8,641.36		32,892.90	3,825,000		3,825,000
6/30/2018	8,362.60		41,255.51	3,825,000		3,825,000
7/31/2018	8,641.36		49,896.86	3,825,000		3,825,000
8/31/2018	8,641.36		58,538.22	3,825,000		3,825,000
9/30/2018	8,362.60		66,900.82	3,825,000		3,825,000
10/31/2018	8,641.36		75,542.18	3,825,000		3,825,000
11/30/2018	8,362.60		83,904.78	3,825,000		3,825,000
12/31/2018	8,641.36		92,546.14	3,825,000		3,825,000
Totals	92,546.14		92,546.14			**3,825,000**
	^		^			^

Summary		
Ending Principal Bal	3,825,000	above
Accured Interest	**92,546**	<PM

Note 3

Closing Date	8/1/2018	A 08012018 HCM to JD $2.5M
Total Commitment Restructured	2,500,000	
Rate	2.95%	

	Rc	B	Rc	Rc	B	Rc
Date	Interest Income	Interest Paid	Accrued Interest	Beg Prin Bal	Principal Paid	Ending Prin Bal
8/1/2018				2,500,000		2,500,000
8/31/2018	6,061.64		6,061.64	2,500,000		2,500,000
9/30/2018	6,061.64		12,123.29	2,500,000		2,500,000
10/31/2018	6,263.70		18,386.99	2,500,000		2,500,000
11/30/2018	6,061.64		24,448.63	2,500,000		2,500,000
12/31/2018	6,263.70		30,712.33	2,500,000		2,500,000
Totals	30,712.33		30,712.33			2,500,000

Summary		
Ending Principal Bal	2,500,000	above
Accured Interest	**30,712**	<PM

Note 4

Closing Date	1/18/2018	A 01182018 HCM JD $7.9M Loan
Total Commitment Restructured	7,900,000	
Rate	2.59%	

	Rc	B	Rc	Rc	B	Rc
Date	Interest Income	Interest Paid	Accrued Interest	Beg Prin Bal	Principal Paid	Ending Prin Bal
1/18/2018				7,900,000		7,900,000
1/31/2018	7,287.48		7,287.48	7,900,000		7,900,000
2/28/2018	15,696.11		22,983.59	7,900,000		7,900,000
3/31/2018	17,377.84		40,361.42	7,900,000		7,900,000
4/30/2018	16,817.26		57,178.68	7,900,000		7,900,000
5/31/2018	17,377.84		74,556.52	7,900,000		7,900,000
6/30/2018	16,817.26		91,373.78	7,900,000		7,900,000
7/31/2018	17,377.84		108,751.62	7,900,000		7,900,000
8/31/2018	17,377.84		126,129.45	7,900,000		7,900,000
9/30/2018	16,817.26		142,946.71	7,900,000		7,900,000
10/31/2018	17,377.84		160,324.55	7,900,000		7,900,000
11/30/2018	16,817.26		177,141.81	7,900,000		7,900,000
12/18/2018	10,090.36	(187,232)	0.00	7,900,000	(1,812,768)	6,087,232
12/31/2018	7,287.48		7,287.48	6,087,232		6,087,232
Totals	7,287.48		7,287.48			6,087,232

Summary		
Ending Principal Bal	6,087,232	above
Accrued Interest	7,287	<PM

Note 5

Closing Date	8/13/2018	A 08132018 HCM to JD $2.5M
Total Commitment Restructured	2,500,000	
Rate	2.95%	

	Rc	B	Rc	Rc	B	Rc
Date	Interest Income	Interest Paid	Accrued Interest	Beg Prin Bal	Principal Paid	Ending Prin Bal
8/13/2018				2,500,000		2,500,000
8/31/2018	3,636.99		3,636.99	2,500,000		2,500,000
9/30/2018	6,061.64		9,698.63	2,500,000		2,500,000
10/31/2018	6,263.70		15,962.33	2,500,000		2,500,000
11/30/2018	6,061.64		22,023.97	2,500,000		2,500,000
12/31/2018	6,263.70		28,287.67	2,500,000		2,500,000
Totals	28,287.67		28,287.67			2,500,000

Summary		
Ending Principal Bal	2,500,000	above
Accrued Interest	28,288	<PM

Summary of Dondero Tax Loans		
Total Ending Principal Balances	28,891,021	Above

Tickmark Legend

^ Footed without exception.
Rc Recalculated amount. Refer to the respective cell's formula for further details.
imm Amount is immaterial (below SUM). Therefore, further analysis is waived.
PYWP Agreed to the prior year workpaper, without exception. Refer to the Test due from and notes receivable EGA in prior years database.
<PM Amount is below performance materiality, further testing waived.
A Agreed to the restructure Loan Agreement obtained from Drew Wilson, HCM, without exception. Refer to agreement linked below.

Note 1	06212017 Dondero Loan Restructure
Note 2	02022018 HCM JD $3.825M
Note 3	08012018 HCM to JD $2.5M
Note 4	01182018 HCM JD $7.9M Loan
Note 5	08132018 HCM to JD $2.5M

B Agreed to cash deposit in the December Compass bank statement (account #: 0025876342), without exception. Further testing waived. Note that the Interest and principle payment were made in two lump sum payment of $782,623 and $2,000,000. Refer below for breakdown of payment.

Note 1

Principle Payment	499,242	above
Interest Payment	283,381	above
	782,623	B
	^	

Note 4

Principle Payment	1,812,768	above
Interest Payment	187,232	above
	2,000,000	B
	^	

Due from Get Good
Account Detail - Year end Balances
12/31/2018
PBC, tickmarked by Madeline Pacocha, PwC

Note: The engagement team notes that this amount is a related to a Note Receivable from Get Good original sold on 12/28/2016. Per review of the original purchase agreement, linked below, the audit team notes that HCMLP exchanged assets (held as a liability) for the right to receive 97.6835% of Get Good's Note receivable. We note that the original note receivable issued to Get Good Trust from the Dugaboy Trust was for $24,268,621.69 on 5/31/2017. The audit team obtained the original restructured agreement and the debt rollforward from Drew Wilson, HCMLP. Refer below for the new restructured receivable rollforward tied out by the audit team. As the ending balance of the note agrees to the Notes Receivable balance on the lead schedule without exception, further analysis is waived.

06212017 Dugaboy Interest Amendment
GG and HCM PSA Crusader - Loan Fund - AAL_63370369_2

			HCM	PYWP
Original Note Date		12/28/2016	97.6835%	
Original Note Amount	$	23,817,640	$ 23,265,904	
Restructured Closing Date		5/31/2017	97.6835%	A
Total Restructured Amount	$	24,268,622	$ 22,860,559	
Rate		3.260%		

	B	Rc	Rc	B	Rc
Date	Interest Paid	Accrued Interest	Beg Prin Bal	Principal Paid	Ending Prin Bal
12/31/2017			22,860,559.00	PYWP	22,860,559.00
1/31/2018		63,295.56	22,860,559.00		22,860,559.00
2/28/2018		57,170.19	22,860,559.00		22,860,559.00
3/31/2018		63,295.56	22,860,559.00		22,860,559.00
4/30/2018		61,253.77	22,860,559.00		22,860,559.00
5/23/2018	(2,195,709)	46,961.23	22,860,559.00	(1,304,291.00)	21,556,268.00
5/31/2018	-	15,402.40	21,556,268.00		21,556,268.00
6/30/2018	-	57,758.99	21,556,268.00		21,556,268.00
7/31/2018	-	59,684.29	21,556,268.00		21,556,268.00
8/4/2018	-	7,701.20	21,556,268.00		21,556,268.00
8/31/2018	-	51,983.09	21,556,268.00		21,556,268.00
9/30/2018		57,758.99	21,556,268.00		21,556,268.00
10/31/2018	-	59,684.29	21,556,268.00		21,556,268.00
11/30/2018	-	57,758.99	21,556,268.00		21,556,268.00
12/31/2018		59,684.29	21,556,268.00		21,556,268.00
Totals	-	59,684.29		(1,304,291.00)	**21,556,268.00**
	^			^	^

SUMMARY		
Ending Principal Bal	**21,556,268**	above
Accrued Interest	**59,684**	<PM

Tickmark Legend

^ Footed without exception.
Rc Recalculated amount. Refer to the respective cell's formula for further details.
imm Amount is immaterial (below SUM). Therefore, further analysis is waived.
PYWP Agreed to the prior year workpaper, without exception. Refer to the Test due from and notes receivable EGA in prior years database.
<PM Amount is below performance materiality, further testing waived.
A Agreed to the restructure Get Good Note Receivable Loan Agreement obtained from Kristin Hendrix, HCM, without exception. Refer to agreement linked below.
06212017 Dugaboy Interest Amendment

B Agreed to cash deposit in the May Nex Bank statement (account #: 1614130), without exception. Further testing waived. Note that the Interest and principle payment were made in one lump sum payment of $3,500,000. Refer below for breakdown of payment.

Principle Payment	(1,304,291)	above
Interest Payment	(2,195,709)	above
	(3,500,000)	B
	^	

HCRE Restructure
Account Detail - Year end Balances
12/31/2018
PBC, tickmarked by Madeline Pacocha, PwC

Note: The engagement team notes that some of HCRE's previous notes receivables were restructured and consolidated on 5/31/2017. The audit team obtained the original restructured agreement and the debt rollforward from Kristen Hendrix, HCMLP. Refer below for the new restructured receivable rollforward tied out by the audit team. As the ending balance of the note agrees to the Notes Receivable balance on the lead schedule without exception, further analysis is waived.

Restructured Closing Date	5/31/2017	A
Total Commitment Restructured	$ 6,059,832	
Rate	8.00%	

	Rc	B	Rc	Rc		B	Rc
Date	Interest Income	Interest Paid	Accrued Interest	Beg Prin Bal		Principal Paid	Ending Prin Bal
12/31/2017	-	-	-	5,857,837.09	PYWP	-	5,857,837.09
1/31/2018	39,801.19		39,801.19	5,857,837.09			5,857,837.09
2/28/2018	35,949.47		75,750.66	5,857,837.09			5,857,837.09
3/31/2018	39,801.19	-	115,551.85	5,857,837.09			5,857,837.09
4/30/2018	38,517.28	-	154,069.14	5,857,837.09			5,857,837.09
5/31/2018	39,801.19	-	193,870.33	5,857,837.09			5,857,837.09
6/30/2018	38,517.28	-	232,387.62	5,857,837.09			5,857,837.09
7/31/2018	39,801.19	-	272,188.81	5,857,837.09			5,857,837.09
8/31/2018	39,801.19		311,990.01	5,857,837.09			5,857,837.09
9/30/2018	38,517.28		350,507.29	5,857,837.09			5,857,837.09
10/31/2018	39,801.19		390,308.49	5,857,837.09			5,857,837.09
11/30/2018	38,517.28		428,825.77	5,857,837.09			5,857,837.09
12/19/2018	24,394.28	(453,220.06)	(0.01)	5,857,837.09		(201,994.38)	5,655,842.71
12/31/2018	14,875.64		14,875.63	5,655,842.71			5,655,842.71
Totals	468,095.69	(453,220.06)	14,875.63	5,655,842.71		(201,994.38)	**5,655,842.71**
	^	^				^	^

SUMMARY		
Ending Principal Bal	**5,655,843**	above
Accrued Interest	**14,876**	<PM

Restructured Closing Date	10/15/2018	C
Total Commitment Restructured	$ 750,000	
Rate	8.00%	

	Rc	B	Rc	Rc	B	Rc
Date	Interest Income	Interest Paid	Accrued Interest	Beg Prin Bal	Principal Paid	Ending Prin Bal
10/15/2018	-		-	750,000.00		750,000.00
10/31/2018	2,630.14		2,630.14	750,000.00		750,000.00
11/30/2018	4,931.51		7,561.64	750,000.00		750,000.00
12/19/2018	3,123.29	-	10,684.93	750,000.00	-	750,000.00
12/31/2018	1,972.60		12,657.53	750,000.00		750,000.00
Totals	12,657.53	793,388.08	12,657.53	750,000.00	-	**750,000.00**

SUMMARY	
Ending Principal Bal	**750,000**
Accrued Interest	**12,658**

Tickmark Legend

^ Footed without exception.
Rc Recalculated amount. Refer to the respective cell's formula for further details.
imm Amount is immaterial (below SUM). Therefore, further analysis is waived.
PYWP Agreed to the prior year workpaper, without exception. Refer to the Test due from and notes receivable EGA in prior years database.
<PM Amount is below performance materiality, further testing waived.
A Agreed to the restructure Loan Agreement obtained from Kristen Hendrix, HCM, without exception. Refer to agreement linked below.
06212017 HCRE Partners Loan Restructure

B Agreed to cash deposit in the December Compass bank statement (account #: 0025876342), without exception. Further testing waived. Note that the Interest and principle payment were made in one lump sum payment of $655,214. Refer below for breakdown of payment.

Principle Payment	201,994	above
Interest Payment	453,220	above
	655,214	B
	^	

C Agreed to the restructure Loan Agreement obtained from Kristen Hendrix, HCM, without exception. Refer to agreement linked below.
HCMLP to HCRE 750K 10.15.18

Note: The engagement team notes the receivable based on an agreement with Highland Capital of New York, L.P. Based on the agreement, linked below, Highland Capital of New York, L.P. performs marketing and other services to Highland Capital, for a management fee. Purchases incurred are tracked, as detailed below, and then are netted again the management fee for the period. Further details related to the agreement are described in the transfer pricing agreement linked below. The engagement team performed a reconciliation of the transactions that occured through the year to arrive at the amount described on the trial balance ending 12/31/2018.

HC of NY Mgmt Service Agreement

PBC

Page **1** of **1**

HCM Account

Parameters given:

	From	To
Entity	0010	0010
Dept	000	000
Account	14575	14575
Business	00	00
Future	0000	0000
GI Date	01-JAN-	31-DEC-18

JOURNAL ENTRIES										PAYABLES				RECEIVABLES				FIXED ASSETS				
Source	Category	Journal Batch Name	Journal Name	GL Date	Journal Line Number	Journal Line Description	Account code combination	Amount DR	Amount CR	Supplier name	AP Check #	AP Invoice #	AP Invoice Description	Customer Name	AR Receipt Number	AR Transaction Number	Transaction Description	Asset Number	Asset vendor	Asset Description	placed in service	Asset Category
Payables	Purchase Invoices	Payables A 2560696 2986308 2	JAN-18 Purchase Invoices USD	31-Jan-18	9	Journal Import Created	0010.000.14575 .00.0000	1290.88	0	Charles Schwab		01152018 CS	1/15/2018 401k Debits									
Payables	Purchase Invoices	Payables A 2560696 2986308 2	JAN-18 Purchase Invoices USD	31-Jan-18	9	Journal Import Created	0010.000.14575 .00.0000	23385.69	0	HIGHLAND CAPITAL OF NEW YORK		1/15/2018 Payroll Funding	1/15/2018 Payroll Funding									
Payables	Purchase Invoices	Payables A 2586696 3013544 2	JAN-18 Purchase Invoices USD	31-Jan-18	5	Journal Import Created	0010.000.14575 .00.0000	65000	0	HIGHLAND CAPITAL OF NEW YORK		1/16/2018 Account Funding	1/16/2018 HCNY Account Funding									
Receivables	Misc Receipts	Receivables A 3012696 3492090	AUG-18 Misc Receipts USD	31-Aug-18	5	Journal Import Created	0010.000.14575 .00.0000	0	370.97						08132018ADW							
Receivables	Misc Receipts	Receivables A 3121698 3678139	NOV-18 Misc Receipts USD	30-Nov-18	6	Journal Import Created	0010.000.14575 .00.0000	0	1000						KH11022018							
Receivables	Misc Receipts	Receivables A 3185728 3774954	DEC-18 Misc Receipts USD	31-Dec-18	7	Journal Import Created	0010.000.14575 .00.0000	0	1693.25						HE12262018							
Spreadsheet	Adjustment	Spreadsheet A 4017472	20181231 Intercompany reclass Adjustment USD	31-Dec-18	2	Intercompany Reclass	0010.000.14575 .00.0000	0	924808.57													
								1,360,487 ^	928,377 ^	Rc												

PY Ending Balance	4,519,542	PYWP
Net Change in CY	432,110	Above
Total Due From	4,951,652	Rc
	4,951,652	<Detail>
Difference	0	Rc, imm

PwC Tickmark Legend

Rc Recalculated amount. Refer to the respective cell's formula for further details.
^ Footed without exception
<Detail> Refer to the <Detail> tab.
PYWP Agreed to prior year workpaper without exception.

HCMLP
Notes Receivable
12/31/2018
PBC, tickmarked by Madeline Pacocha, PwC

Note: The audit team notes that this Note Receivable balance is made up of a Hunter Mountain Investment Trust note. The audit team obtained the original contribution agreement in prior year, and also obtained the debt rollforward from Sean Fox, HCMLP. Refer below for the rollforward tied out by the audit team. As the ending balance of the note agrees to the Notes Receivable balance on the lead schedule without exception, further analysis is waived.

Beginning Principal	63,000,000	A
Interest Rate	2.61%	
Effective Date	12/21/2015	

	Rc			Rc	Rc		D	B	Rc	
Date	Interest Income		Interest Paid	Accrued Interest	Beg Prin Bal		Principal Paid	PIK	Ending Prin Bal	
12/31/17	46,099		-	46,099	60,663,612	PYWP	-	-	60,663,612	PYWP
01/31/18	134,474		-	180,573	60,663,612		-	-	60,663,612	
02/28/18	121,460			302,033	60,663,612		-	-	60,663,612	
03/31/18	134,474			436,507	60,663,612		-	-	60,663,612	
04/30/18	130,136		-	566,643	60,663,612		-	-	60,663,612	
05/31/18	134,474			701,116	60,663,612		-	-	60,663,612	
06/30/18	130,136			831,252	60,663,612		-	-	60,663,612	
07/31/18	134,474		-	965,726	60,663,612		-	-	60,663,612	
08/31/18	134,474		-	1,100,200	60,663,612		-	-	60,663,612	
09/30/18	130,136			1,230,336	60,663,612		-	-	60,663,612	
10/31/18	134,474		-	1,364,809	60,663,612		-	-	60,663,612	
11/30/18	130,136			1,494,945	60,663,612		-	-	60,663,612	
12/19/18	82,419		(1,574,526)	2,839	60,663,612		(504,880)	-	60,158,732	
12/21/18	8,604		(8,604)	B 2,839	60,158,732		-	8,604	60,167,336	
12/31/18	43,024		-	45,863	60,167,336		-	-	60,167,336	
Totals	**1,582,893**	C	**(1,583,130)**	**45,863**			**(504,880)**	**8,604**	**60,167,336**	
	^		^				^	^		

SUMMARY		
Ending Principal Bal	**60,167,336**	**above**
Accured Interest	**45,863**	**above**

Tickmark Legend

^ Footed without exception.

Rc Recalculated amount. Refer to the respective cell's formula for further details.

PYWP Agreed to the prior year workpaper, without exception. Refer to the Test due from and notes receivable EGA in prior years database.

A Agrees to the signed Hunter Mountain contribution agreement linked below without exception. Refer to pg. 49 of the agreement for further details around these amounts.

Hunter Mountain Contribution Agreement

B Per review of the amortization schedule within the promissory note linked below (p. 7/7), the audit team notes that the interest accrued PIKs at it's anniversary date each year. Therefore, the team deems it reasonable that the full value of accrued interest was capitalized into the principal balance on the notes one year anniversary. Refer to the note below for further details.

HM Secured Promissory Note

C Agree to the Interest Income for Hunter Mountain Trust per the <80100> detail tab within an immaterial difference. Refer to the reconciliation within the aforementioned tab linked below for further details.

<80100>

D Agreed to cash deposit in the December Compass Bank statement (account #: 0025876342), without exception. Further testing waived. Note that the Interest and principle payment were made in one lump sum payment of $2,079,406. Refer below for breakdown of payment.

Principal Payment	504,880	**above**
Interest Payment	1,583,130	**above**
PIK	(8,604)	
	2,079,406	D

HCM Account Analysis Report

Parameters given:

	From	To
Entity	0010	0010
Dept	000	999
Account	80100	80100
Business Unit	00	99
Future	0000	9999
GI Date	01-JAN-18	31-DEC-18

Note: Note that Interest Income receivable makes up a portion of the Other Income balance. As a majority of interest income was calculated within this EGA, the

JOURNAL ENTRIES										PAYABLES				RECEIVABLES				FIXED ASSETS				
Source	Category	Journal Batch Name	Journal Name	GL Date	Journal Line Number	Journal Line Description	Account code combination	Amount DR	Amount CR	Supplier name	AP Check #	AP Invoice #	AP Invoice Description	Customer Name	AR Receipt Number	AR Transaction Number	AR Transaction Description	Asset Number	Asset vendor	Asset Description	placed in service	Asset Category
Receivables	Misc Receipts	Receivables A 2720699 3148337 2	APR-18 Misc Receipts USD	30-Apr-18	2	Journal Import Created	0010.000.80100.00.0000	0	153.05						04032018ADW							
Receivables	Misc Receipts	Receivables A 2927697 3379091	JUL-18 Misc Receipts USD	31-Jul-18	2	Journal Import Created	0010.000.80100.00.0000	0	115.4						07032018ADW							
Receivables	Misc Receipts	Receivables A 2955693 3396569	JUL-18 Misc Receipts USD	31-Jul-18	2	Journal Import Created	0010.000.80100.00.0000	0	337.38						07172018ADW							
Receivables	Misc Receipts	Receivables A 3177740 3762252 2	DEC-18 Misc Receipts USD	31-Dec-18	3	Journal Import Created	0010.000.80100.00.0000	0	10090.36						HE12192018							
Spreadsheet	Adjustment	Reverses "20180630 Interest Receivable JE Adjustment USD"01-AUG-18 09:05:08 - 3458829	Reverses "20180630 Interest Receivable JE Adjustment USD"01-AUG-18 09:05:08	30-Jun-18	2	6/30 Interest Receivable JE	0010.000.80100.00.0000	317670.24	0													
Spreadsheet	Adjustment	Reverses "20180831 Interest Receivable JE Adjustment USD"10-SEP-18 15:36:26 - 3554954	Reverses "20180831 Interest Receivable JE Adjustment USD"10-SEP-18 15:36:26	31-Aug-18	2	8/31 Interest Receivable JE	0010.000.80100.00.0000	371485.53	0													
Spreadsheet	Adjustment	Spreadsheet A 3030498	20180131 Hunter Mountain Note Receivable Update Adjustment USD	31-Jan-18	2	Hunter Mountain Note Receivable Update - PIK	0010.210.80100.10.0000	0	134464.4													
Spreadsheet	Adjustment	Spreadsheet A 3031144	20180131 NexBank MM Interest Adjustment USD	31-Jan-18	4	Interest (Account *891)	0010.210.80100.10.0000	0	0													
Spreadsheet	Adjustment	Spreadsheet A 3031144	20180131 NexBank MM Interest Adjustment USD	31-Jan-18	5	Interest (Account *735)	0010.210.80100.10.0000	0	0.18													
Spreadsheet	Adjustment	Spreadsheet A 3031144	20180131 NexBank MM Interest Adjustment USD	31-Jan-18	6	Interest (Account *130)	0010.210.80100.10.0000	0	1097.25													
Spreadsheet	Adjustment	Spreadsheet A 3041181	20180131 Interest Receivable JE Adjustment USD	31-Jan-18	2	1/31 Interest Receivable JE	0010.000.80100.00.0000	0	356027.21													
Spreadsheet	Adjustment	Spreadsheet A 3055700	20180131 Jefferies Reconciliation Adjustment USD	31-Jan-18	12	Goldfield PIK	0010.000.80100.00.0000	0	12601.94													
Spreadsheet	Adjustment	Spreadsheet A 3055700	20180131 Jefferies Reconciliation Adjustment USD	31-Jan-18	13	Carey PIK	0010.000.80100.00.0000	0	324206.82													
Spreadsheet	Adjustment	Spreadsheet A 3056870	20180101 Carey PIK Adjustment USD	1-Jan-18	2	Carey PIK	0010.000.80100.00.0000	216137.88	0													
Spreadsheet	Adjustment	Spreadsheet A 3093661	20180228 Hunter Mountain Note Receivable Update Adjustment USD	28-Feb-18	2	Hunter Mountain Note Receivable Update - PIK	0010.210.80100.10.0000	0	121451.71													
Spreadsheet	Adjustment	Spreadsheet A 3093710	20180228 NexBank MM Interest Adjustment USD	28-Feb-18	4	Interest (Account *891)	0010.210.80100.10.0000	0	0													
Spreadsheet	Adjustment	Spreadsheet A 3093710	20180228 NexBank MM Interest Adjustment USD	28-Feb-18	5	Interest (Account *735)	0010.210.80100.10.0000	0	0.17													

JOURNAL ENTRIES										PAYABLES				RECEIVABLES				FIXED ASSETS				
Source	Category	Journal Batch Name	Journal Name	GL Date	Journal Line Number	Journal Line Description	Account code combination	Amount DR	Amount CR	Supplier name	AP Check #	AP Invoice #	AP Invoice Description	Customer Name	AR Receipt Number	AR Transaction Number	AR Transaction Description	Asset Number	Asset vendor	Asset Description	placed in service	Asset Category
Spreadsheet	Adjustment	Spreadsheet A 3093710	20180228 NexBank MM Interest Adjustment USD	28-Feb-18	6	Interest (Account *130)	0010.210.80100.10.0000	0	2058.13													
Spreadsheet	Adjustment	Spreadsheet A 3094101	20180228 Interest Receivable JE Adjustment USD	28-Feb-18	2	2/28 Interest Receivable JE	0010.000.80100.00.0000	0	337934.42													
Spreadsheet	Adjustment	Spreadsheet A 3097972	20180228 Jefferies Reconciliation Adjustment USD	28-Feb-18	10	Carey PIK	0010.000.80100.00.0000	0	0													
Spreadsheet	Adjustment	Spreadsheet A 3097972	20180228 Jefferies Reconciliation Adjustment USD	28-Feb-18	11	Goldfield PIK	0010.000.80100.00.0000	0	11892													
Spreadsheet	Adjustment	Spreadsheet A 3147202	20180331 NexBank MM Interest Adjustment USD	31-Mar-18	4	Interest (Account *735)	0010.210.80100.10.0000	0	0.19													
Spreadsheet	Adjustment	Spreadsheet A 3147202	20180331 NexBank MM Interest Adjustment USD	31-Mar-18	5	Interest (Account *891)	0010.210.80100.10.0000	0	399.92													
Spreadsheet	Adjustment	Spreadsheet A 3147202	20180331 NexBank MM Interest Adjustment USD	31-Mar-18	6	Interest (Account *130)	0010.210.80100.10.0000	0	840.21													
Spreadsheet	Adjustment	Spreadsheet A 3147221	20180331 Hunter Mountain Note Receivable Update Adjustment USD	31-Mar-18	2	Hunter Mountain Note Receivable Update - PIK	0010.210.80100.10.0000	0	134464.4													
Spreadsheet	Adjustment	Spreadsheet A 3147305	20180331 Interest Receivable JE Adjustment USD	31-Mar-18	3	3/31 Interest Receivable JE - Okada True-up	0010.000.80100.00.0000	0	770.55													
Spreadsheet	Adjustment	Spreadsheet A 3147305	20180331 Interest Receivable JE Adjustment USD	31-Mar-18	4	3/31 Interest Receivable JE	0010.000.80100.00.0000	0	376399.52													
Spreadsheet	Adjustment	Spreadsheet A 3161933	20180331 Jefferies Reconciliation Adjustment USD	31-Mar-18	17	Carey PIK	0010.000.80100.00.0000	0	0													
Spreadsheet	Adjustment	Spreadsheet A 3161933	20180331 Jefferies Reconciliation Adjustment USD	31-Mar-18	18	Goldfield PIK	0010.000.80100.00.0000	0	11167.62													
Spreadsheet	Adjustment	Spreadsheet A 3236844	20180430 Hunter Mountain Note Receivable Update Adjustment USD	30-Apr-18	2	Hunter Mountain Note Receivable Update - PIK	0010.210.80100.10.0000	0	130126.83													
Spreadsheet	Adjustment	Spreadsheet A 3236875	20180430 NexBank MM Interest Adjustment USD	30-Apr-18	4	Interest (Account *891)	0010.210.80100.10.0000	0	0													
Spreadsheet	Adjustment	Spreadsheet A 3236875	20180430 NexBank MM Interest Adjustment USD	30-Apr-18	5	Interest (Account *735)	0010.210.80100.10.0000	0	0.17													
Spreadsheet	Adjustment	Spreadsheet A 3236875	20180430 NexBank MM Interest Adjustment USD	30-Apr-18	6	Interest (Account *130)	0010.210.80100.10.0000	0	498.3													
Spreadsheet	Adjustment	Spreadsheet A 3245730	20180430 Interest Receivable JE Adjustment USD	30-Apr-18	2	4/30 Interest Receivable JE	0010.000.80100.00.0000	0	363024.99													
Spreadsheet	Adjustment	Spreadsheet A 3263927	20180430 Jefferies Reconciliation Adjustment USD	30-Apr-18	8	Goldfield PIK	0010.000.80100.00.0000	0	12836.42													
Spreadsheet	Adjustment	Spreadsheet A 3263927	20180430 Jefferies Reconciliation Adjustment USD	30-Apr-18	9	Carey Interest Receipt	0010.000.80100.00.0000	0	75674.11													
Spreadsheet	Adjustment	Spreadsheet A 3263927	20180430 Jefferies Reconciliation Adjustment USD	30-Apr-18	10	Carey PIK	0010.000.80100.00.0000	0	303377.61													

JOURNAL ENTRIES										PAYABLES				RECEIVABLES				FIXED ASSETS				
Source	Category	Journal Batch Name	Journal Name	GL Date	Journal Line Number	Journal Line Description	Account code combination	Amount DR	Amount CR	Supplier name	AP Check #	AP Invoice #	AP Invoice Description	Customer Name	AR Receipt Number	AR Transaction Number	AR Transaction Description	Asset Number	Asset vendor	Asset Description	placed in service	Asset Category
Spreadsheet	Adjustment	Spreadsheet A 3292395	20180531 Hunter Mountain Note Receivable Update Adjustment USD	31-May-18	2	Hunter Mountain Note Receivable Update - PIK	0010.210.80100.10.0000	0	134464.4													
Spreadsheet	Adjustment	Spreadsheet A 3295979	20180531 NexBank MM Interest Adjustment USD	31-May-18	4	Interest (Account *891)	0010.210.80100.10.0000	0	0													
Spreadsheet	Adjustment	Spreadsheet A 3295979	20180531 NexBank MM Interest Adjustment USD	31-May-18	5	Interest (Account *735)	0010.210.80100.10.0000	0	0.19													
Spreadsheet	Adjustment	Spreadsheet A 3295979	20180531 NexBank MM Interest Adjustment USD	31-May-18	6	Interest (Account *130)	0010.210.80100.10.0000	0	492.44													
Spreadsheet	Adjustment	Spreadsheet A 3296208	20180531 Interest Receivable JE Adjustment USD	31-May-18	2	5/31 Interest Receivable JE	0010.000.80100.00.0000	0	358791.49													
Spreadsheet	Adjustment	Spreadsheet A 3335308	20180531 Jefferies Reconciliation Adjustment USD	31-May-18	19	Reimer Interest Income Reversal	0010.000.80100.00.0000	4099.73	0													
Spreadsheet	Adjustment	Spreadsheet A 3335308	20180531 Jefferies Reconciliation Adjustment USD	31-May-18	20	Carey PIK	0010.000.80100.00.0000	0	0													
Spreadsheet	Adjustment	Spreadsheet A 3335308	20180531 Jefferies Reconciliation Adjustment USD	31-May-18	21	Goldfield PIK	0010.000.80100.00.0000	0	11709.5													
Spreadsheet	Adjustment	Spreadsheet A 3335308	20180531 Jefferies Reconciliation Adjustment USD	31-May-18	22	JHT PIK	0010.000.80100.00.0000	0	52717.18													
Spreadsheet	Adjustment	Spreadsheet A 3335535	20180630 Hunter Mountain Note Receivable Update Adjustment USD	30-Jun-18	2	Hunter Mountain Note Receivable Update - PIK	0010.210.80100.10.0000	0	130126.83													
Spreadsheet	Adjustment	Spreadsheet A 3354201	20180630 NexBank MM Interest Adjustment USD	30-Jun-18	4	Interest (Account *735)	0010.210.80100.10.0000	0	0.18													
Spreadsheet	Adjustment	Spreadsheet A 3354201	20180630 NexBank MM Interest Adjustment USD	30-Jun-18	5	Interest (Account *891)	0010.210.80100.10.0000	0	410.06													
Spreadsheet	Adjustment	Spreadsheet A 3354201	20180630 NexBank MM Interest Adjustment USD	30-Jun-18	6	Interest (Account *130)	0010.210.80100.10.0000	0	910.97													
Spreadsheet	Adjustment	Spreadsheet A 3363051	20180630 Interest Receivable JE Adjustment USD	30-Jun-18	2	6/30 Interest Receivable JE	0010.000.80100.00.0000	0	317670.24													
Spreadsheet	Adjustment	Spreadsheet A 3378836	20180630 Jefferies Reconciliation Adjustment USD	30-Jun-18	9	Carey PIK	0010.000.80100.00.0000	0	0													
Spreadsheet	Adjustment	Spreadsheet A 3378836	20180630 Jefferies Reconciliation Adjustment USD	30-Jun-18	10	Goldfield PIK	0010.000.80100.00.0000	0	12591.64													
Spreadsheet	Adjustment	Spreadsheet A 3378940	20180630 Interest Receivable JE Adjustment USD	30-Jun-18	2	6/30 Interest Receivable JE	0010.000.80100.00.0000	0	317670.24													
Spreadsheet	Adjustment	Spreadsheet A 3408762	20180731 Hunter Mountain Note Receivable Update Adjustment USD	31-Jul-18	2	Hunter Mountain Note Receivable Update - PIK	0010.210.80100.10.0000	0	134464.4													
Spreadsheet	Adjustment	Spreadsheet A 3458821	20180731 NexBank MM Interest Adjustment USD	31-Jul-18	4	Interest (Account *891)	0010.210.80100.10.0000	0	0													
Spreadsheet	Adjustment	Spreadsheet A 3458821	20180731 NexBank MM Interest Adjustment USD	31-Jul-18	5	Interest (Account *735)	0010.210.80100.10.0000	0	0.18													

JOURNAL ENTRIES										PAYABLES				RECEIVABLES				FIXED ASSETS				
Source	Category	Journal Batch Name	Journal Name	GL Date	Journal Line Number	Journal Line Description	Account code combination	Amount DR	Amount CR	Supplier name	AP Check #	AP Invoice #	AP Invoice Description	Customer Name	AR Receipt Number	AR Transaction Number	AR Transaction Description	Asset Number	Asset vendor	Asset Description	placed in service	Asset Category
Spreadsheet	Adjustment	Spreadsheet A 3458821	20180731 NexBank MM Interest Adjustment USD	31-Jul-18	6	Interest (Account *130)	0010.210.80100.10.0000	0	1744.89													
Spreadsheet	Adjustment	Spreadsheet A 3458905	20180731 Interest Receivable JE Adjustment USD	31-Jul-18	3	7/31 Interest Receivable JE	0010.000.80100.00.0000	0	57758.99													
Spreadsheet	Adjustment	Spreadsheet A 3458905	20180731 Interest Receivable JE Adjustment USD	31-Jul-18	4	7/31 Interest Receivable JE	0010.000.80100.00.0000	0	371473.69													
Spreadsheet	Adjustment	Spreadsheet A 3504909	20180731 Jefferies Reconciliation Adjustment USD	31-Jul-18	16	Goldfield PIK	0010.000.80100.00.0000	0	12591.64													
Spreadsheet	Adjustment	Spreadsheet A 3504909	20180731 Jefferies Reconciliation Adjustment USD	31-Jul-18	17	Carey Interest Receipt	0010.000.80100.00.0000	0	106164.18													
Spreadsheet	Adjustment	Spreadsheet A 3504909	20180731 Jefferies Reconciliation Adjustment USD	31-Jul-18	18	Carey PIK	0010.000.80100.00.0000	0	293160.35													
Spreadsheet	Adjustment	Spreadsheet A 3506570	20180831 Hunter Mountain Note Receivable Update Adjustment USD	31-Aug-18	2	Hunter Mountain Note Receivable Update - PIK	0010.210.80100.10.0000	0	134464.4													
Spreadsheet	Adjustment	Spreadsheet A 3538289	20180831 NexBank MM Interest Adjustment USD	31-Aug-18	4	Interest (Account *891)	0010.210.80100.10.0000	0	0													
Spreadsheet	Adjustment	Spreadsheet A 3538289	20180831 NexBank MM Interest Adjustment USD	31-Aug-18	5	Interest (Account *735)	0010.210.80100.10.0000	0	0.19													
Spreadsheet	Adjustment	Spreadsheet A 3538289	20180831 NexBank MM Interest Adjustment USD	31-Aug-18	6	Interest (Account *130)	0010.210.80100.10.0000	0	603.26													
Spreadsheet	Adjustment	Spreadsheet A 3538465	20180831 Interest Receivable JE Adjustment USD	31-Aug-18	2	8/31 Interest Receivable JE	0010.000.80100.00.0000	0	371485.53													
Spreadsheet	Adjustment	Spreadsheet A 3554799	20180831 Interest Receivable JE Adjustment USD	31-Aug-18	2	8/31 Interest Receivable JE	0010.000.80100.00.0000	0	381184.16													
Spreadsheet	Adjustment	Spreadsheet A 3558805	20180831 Jefferies Reconciliation Adjustment USD	31-Aug-18	14	Carey Interest Receipt	0010.000.80100.00.0000	0	0													
Spreadsheet	Adjustment	Spreadsheet A 3558805	20180831 Jefferies Reconciliation Adjustment USD	31-Aug-18	15	Carey PIK	0010.000.80100.00.0000	0	0													
Spreadsheet	Adjustment	Spreadsheet A 3558805	20180831 Jefferies Reconciliation Adjustment USD	31-Aug-18	16	Goldfield PIK	0010.000.80100.00.0000	0	12421.39													
Spreadsheet	Adjustment	Spreadsheet A 3583897	20180930 Hunter Mountain Note Receivable Update Adjustment USD	30-Sep-18	2	Hunter Mountain Note Receivable Update - PIK	0010.210.80100.10.0000	0	130126.83													
Spreadsheet	Adjustment	Spreadsheet A 3598822	20180930 NexBank MM Interest Adjustment USD	30-Sep-18	4	Interest (Account *735)	0010.210.80100.10.0000	0	0.18													
Spreadsheet	Adjustment	Spreadsheet A 3598822	20180930 NexBank MM Interest Adjustment USD	30-Sep-18	5	Interest (Account *130)	0010.210.80100.10.0000	0	252.31													
Spreadsheet	Adjustment	Spreadsheet A 3598822	20180930 NexBank MM Interest Adjustment USD	30-Sep-18	6	Interest (Account *891)	0010.210.80100.10.0000	0	673.41													
Spreadsheet	Adjustment	Spreadsheet A 3598861	20180930 Interest Receivable JE Adjustment USD	30-Sep-18	2	9/30 Interest Receivable JE	0010.000.80100.00.0000	0	368956.99													

JOURNAL ENTRIES										PAYABLES				RECEIVABLES				FIXED ASSETS				
Source	Category	Journal Batch Name	Journal Name	GL Date	Journal Line Number	Journal Line Description	Account code combination	Amount DR	Amount CR	Supplier name	AP Check #	AP Invoice #	AP Invoice Description	Customer Name	AR Receipt Number	AR Transaction Number	AR Transaction Description	Asset Number	Asset vendor	Asset Description	placed in service	Asset Category
Spreadsheet	Adjustment	Spreadsheet A 3611323	20180930 Jefferies Reconciliation Adjustment USD	30-Sep-18	10	Carey PIK	0010.000.80100.00.0000	0	0													
Spreadsheet	Adjustment	Spreadsheet A 3611323	20180930 Jefferies Reconciliation Adjustment USD	30-Sep-18	11	Carey Interest Receipt	0010.000.80100.00.0000	0	0													
Spreadsheet	Adjustment	Spreadsheet A 3611323	20180930 Jefferies Reconciliation Adjustment USD	30-Sep-18	12	Goldfield PIK	0010.000.80100.00.0000	0	14072.91													
Spreadsheet	Adjustment	Spreadsheet A 3677868	20181031 NexBank MM Interest Adjustment USD	31-Oct-18	4	Interest (Account *891)	0010.210.80100.10.0000	0	0													
Spreadsheet	Adjustment	Spreadsheet A 3677868	20181031 NexBank MM Interest Adjustment USD	31-Oct-18	5	Interest (Account *735)	0010.210.80100.10.0000	0	0.18													
Spreadsheet	Adjustment	Spreadsheet A 3677868	20181031 NexBank MM Interest Adjustment USD	31-Oct-18	6	Interest (Account *130)	0010.210.80100.10.0000	0	141.15													
Spreadsheet	Adjustment	Spreadsheet A 3677870	20181031 Hunter Mountain Note Receivable Update Adjustment USD	31-Oct-18	2	Hunter Mountain Note Receivable Update - PIK	0010.210.80100.10.0000	0	134464.4													
Spreadsheet	Adjustment	Spreadsheet A 3678489	20181031 Interest Receivable JE Adjustment USD	31-Oct-18	2	Interest Receivable JE	0010.000.80100.00.0000	0	378976.46													
Spreadsheet	Adjustment	Spreadsheet A 3690820	20181031 Jefferies Reconciliation Adjustment USD	31-Oct-18	10	Goldfield PIK	0010.000.80100.00.0000	0	11254													
Spreadsheet	Adjustment	Spreadsheet A 3690820	20181031 Jefferies Reconciliation Adjustment USD	31-Oct-18	11	Carey Interest Receipt	0010.000.80100.00.0000	0	107050.7													
Spreadsheet	Adjustment	Spreadsheet A 3690820	20181031 Jefferies Reconciliation Adjustment USD	31-Oct-18	12	Carey PIK	0010.000.80100.00.0000	0	299032.86													
Spreadsheet	Adjustment	Spreadsheet A 3719838	20181130 Hunter Mountain Note Receivable Update Adjustment USD	30-Nov-18	2	Hunter Mountain Note Receivable Update - PIK	0010.210.80100.10.0000	0	130126.83													
Spreadsheet	Adjustment	Spreadsheet A 3720781	20181130 Interest Receivable JE Adjustment USD	30-Nov-18	2	Interest Receivable JE	0010.000.80100.00.0000	0	392259.84													
Spreadsheet	Adjustment	Spreadsheet A 3731221	20181130 NexBank MM Interest Adjustment USD	30-Nov-18	4	Interest (Account *891)	0010.210.80100.10.0000	0	0													
Spreadsheet	Adjustment	Spreadsheet A 3731221	20181130 NexBank MM Interest Adjustment USD	30-Nov-18	5	Interest (Account *735)	0010.210.80100.10.0000	0	0.18													
Spreadsheet	Adjustment	Spreadsheet A 3731221	20181130 NexBank MM Interest Adjustment USD	30-Nov-18	6	Interest (Account *130)	0010.210.80100.10.0000	0	254.18													
Spreadsheet	Adjustment	Spreadsheet A 3761305	20181130 Jefferies Reconciliation Adjustment USD	30-Nov-18	11	Carey PIK	0010.000.80100.00.0000	0	0													
Spreadsheet	Adjustment	Spreadsheet A 3761305	20181130 Jefferies Reconciliation Adjustment USD	30-Nov-18	12	Goldfield PIK	0010.000.80100.00.0000	0	26489.55													
Spreadsheet	Adjustment	Spreadsheet A 3774850	20181231 Hunter Mountain Note Receivable Update Adjustment USD	31-Dec-18	4	Hunter Mountain Note Receivable - Interest	0010.210.80100.10.0000	0	134046.7													
Spreadsheet	Adjustment	Spreadsheet A 3786797	20181231 HM Note True Up Adjustment USD	31-Dec-18	2	Hunter Mountain Note Receivable - Interest True UP	0010.210.80100.10.0000	0	4438.63													

JOURNAL ENTRIES										PAYABLES				RECEIVABLES				FIXED ASSETS				
Source	Category	Journal Batch Name	Journal Name	GL Date	Journal Line Number	Journal Line Description	Account code combination	Amount DR	Amount CR	Supplier name	AP Check #	AP Invoice #	AP Invoice Description	Customer Name	AR Receipt Number	AR Transaction Number	AR Transaction Description	Asset Number	Asset vendor	Asset Description	placed in service	Asset Category
Spreadsheet	Adjustment	Spreadsheet A 3801275	20181231 NexBank MM Interest Adjustment USD	31-Dec-18	4	Interest (Account *735)	0010.210.80100.10.0000	0	0.18													
Spreadsheet	Adjustment	Spreadsheet A 3801275	20181231 NexBank MM Interest Adjustment USD	31-Dec-18	5	Interest (Account *130)	0010.210.80100.10.0000	0	56.27													
Spreadsheet	Adjustment	Spreadsheet A 3801275	20181231 NexBank MM Interest Adjustment USD	31-Dec-18	6	Interest (Account *891)	0010.210.80100.10.0000	0	669.49													
Spreadsheet	Adjustment	Spreadsheet A 3801965	20181231nterest Receivable JE Adjustment USD	31-Dec-18	2	Interest Receivable JE	0010.000.80100.00.0000	0	368743.85													
Spreadsheet	Adjustment	Spreadsheet A 3827317	20181130 Jefferies Reconciliation Adjustment USD	31-Dec-18	11	Goldfield PIK	0010.000.80100.00.0000	0	0													
Spreadsheet	Adjustment	Spreadsheet A 3827317	20181130 Jefferies Reconciliation Adjustment USD	31-Dec-18	12	Carey PIK	0010.000.80100.00.0000	0	0													
Spreadsheet	Adjustment	Spreadsheet A 3864462	20191231 Interest Receivable JE True up Adjustment USD	31-Dec-18	2	Interest Receivable JE True Up	0010.000.80100.00.0000	23453.36	0													
Spreadsheet	Adjustment	Spreadsheet A 3878401	20181231 HM Note Correction Adjustment USD	31-Dec-18	2	Hunter Mountain Note Receivable - Interest True UP	0010.210.80100.10.0000	4337.57	0													
Spreadsheet	Adjustment	Spreadsheet A 3878742	20181231 Jefferies Reconciliation - Turtle Bay Adjustment USD	31-Dec-18	11	Carey PIK	0010.000.80100.00.0000	0	0													
Spreadsheet	Adjustment	Spreadsheet A 3878742	20181231 Jefferies Reconciliation - Turtle Bay Adjustment USD	31-Dec-18	12	Goldfield PIK	0010.000.80100.00.0000	0	0													
Spreadsheet	Adjustment	Spreadsheet A 3879365	20181130 Jefferies Reconciliation - Carey and American Adjustment USD	31-Dec-18	12	Goldfield PIK	0010.000.80100.00.0000	0	0													
Spreadsheet	Adjustment	Spreadsheet A 4030971	20181130 Jefferies Reconciliation - Pendrell Adjust Adjustment USD	31-Dec-18	4	MTM	0010.000.80100.00.0000	0	1177.1													
								937184.31	8440349.05													

Amount per detail above	7,503,165	Rc
Amount per TB	7,503,165	LS
Difference (not in thousands)	(0)	Rc, imm
	^	

Hunter Mountain Interest Income Reconciliation

Hunter Mountain Interest Income per above	1,582,893	Rc
Interest Income per <Due from Hunter Mountain> tab	45,863	<Due from Hunter Mountain>
Difference	1,537,031	Rc, imm
	^	

Tickmark Legend

^ Footed without exception.
imm Amount is immaterial. Therefore, further review is waived.
Rc Recalculated amount. Refer to the respective cell's formula for further details.
LS Amount agrees to 12/31/18 lead schedule linked below without exception.
Lead schedule - Revenue
Total of highlighted amounts have been recalculated and agree to the interest income per the <Note Receivable> tab within an immaterial difference.

EXHIBIT 94

1 BURGER

2 IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
3 DALLAS DIVISION
---
4 IN RE:

5 Chapter 11
HIGHLAND CAPITAL
6 MANAGEMENT, L.P., CASE NO.
19-34054-SGI11
7
Debtor.
8 ---
HIGHLAND CAPITAL MANAGEMENT, L.P.,
9
Plaintiff,
10 vs. Adversary
Proceeding No.
11 HIGHLAND CAPITAL MANAGEMENT 21-03000-sgj
FUND ADVISORS, L.P.; NEXPOINT
12 ADVISORS, L.P.; HIGHLAND
INCOME FUND; NEXPOINT
13 STRATEGIC OPPORTUNITIES FUND;
NEXPOINT CAPITAL, INC.; and
14 CLO HOLDCO, LTD.,

15 Defendants.

16

17 REMOTE DEPOSITION OF

18 PEET BURGER

19 July 30, 2021

20

21

22

23

24 Reported by: Susan S. Klinger, RMR-CRR, CSR

25 Job No. 197393

BURGER

July 30, 2021

10:01 a.m.

Remote Deposition of PEET BURGER, held before Susan S. Klinger, a Registered Merit Reporter and Certified Realtime Reporter of the State of Texas.

BURGER

A P P E A R A N C E S:

(All appearances via Zoom.)

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Also Present:
Ms. La Asia Canty

BURGER

I N D E X

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BURGER

P R O C E E D I N G S

PEET BURGER,
having been first duly sworn testified as follows:

EXAMINATION

BY MR. MORRIS:

Q. Good morning. Can you state your name for the record, please?
A. I can. Peet Burger.
Q. Are you currently employed, Mr. Burger?
A. Yes.
Q. By whom?
A. PricewaterhouseCoopers.
Q. And what is your title at PricewaterhouseCoopers?
A. I'm an audit partner.
Q. When did you become an audit partner at PricewaterhouseCoopers?
A. January 1st of 2014.
Q. Have you been an audit partner at PricewaterhouseCoopers on a consistent basis since January 1st, 2014?
A. Yes, I have.

1 BURGER
2 Q. In that capacity, have you overseen
3 the audits for Highland Capital Management,
4 L.P.?
5 A. Yes, I did.
6 Q. Just briefly, were you employed by
7 PricewaterhouseCoopers prior to the time you
8 became an audit partner at the beginning of
9 2014?
10 A. Yes, I have. Do I need to give the
11 dates?
12 Q. Can you just tell me when you first
13 joined PwC?
14 A. I joined in January of 1997 in our
15 South African firm. Yes, that's correct.
16 Q. When did you join the audit group?
17 A. In January of 1997.
18 Q. So you have been with
19 PricewaterhouseCoopers' audit unit on a
20 consistent basis for more than 20 years; is
21 that fair?
22 A. Correct.
23 Q. Okay. When did you personally begin
24 working on the Highland Capital Management,
25 L.P. audits, do you recall?

1 BURGER
2 A. Somewhere in 2013. I would say
3 April, 2013.
4 Q. And were you the audit partner in
5 charge of the Highland engagement from 2013
6 until the time the 2018 financial statements
7 were completed?
8 A. This is specific to Highland Capital
9 Management, L.P., yes.
10 Q. I'm just going to refer to Highland
11 Capital Management, L.P. as Highland going
12 forward; is that okay?
13 A. Yes.
14 Q. Have you ever been deposed before?
15 A. No.
16 Q. Okay.
17 A. No.
18 Q. I apologize, I should have started
19 with some ground rules, but I'm trying to be
20 mindful of the time. It is important that you
21 allow me to finish my questions before you
22 begin your answers; is that okay?
23 A. Sure.
24 Q. And if I begin my next question
25 before you begin – before you finish your

1 BURGER
2 answer, will you let me know that?
3 A. Sure.
4 Q. Do you understand that the court
5 reporter is taking down every word that we say?
6 A. Yes.
7 Q. If you want to break at any time,
8 will you let me know?
9 A. Sure.
10 Q. If there is anything that you don't
11 understand, if there is a question that I ask
12 that you either don't understand or you think
13 is ambiguous in some way, will you let me know
14 that?
15 A. Yes.
16 Q. Okay. From PricewaterhouseCoopers'
17 perspective, what is the purpose of an audit?
18 A. To provide reasonable assurance in
19 in terms of the auditing and accounting
20 standards.
21 Q. What standards are you referring to?
22 A. In this case Generally Accepted
23 Auditing Standards.
24 Q. What are Generally Accepted Auditing
25 Standards, if you know?

1 BURGER
2 A. It is a set of rules basically
3 governed by the AICPA of what – considered
4 what is the sort of conglomerate of rules on
5 your professional standards of engagement to
6 sign an audit opinion.
7 Q. And do I have this correctly, that
8 the purpose of the audit is to provide
9 reasonable assurance that the financial
10 statements are in compliance with Generally
11 Accepted Auditing Standards?
12 MR. WANDER: Did you say assurance
13 or insurance?
14 Q. Assurance?
15 A. Yes, assurance, yes. The procedures
16 performed by us in terms of Generally Accepted
17 Auditing Standards and the financials itself is
18 presented in terms of Generally Accepted
19 Accounting Practice.
20 Q. Okay. And are those standards or
21 practices familiar to you in the course of your
22 duties?
23 A. Yes, it is.
24 Q. Okay. Can you describe for me
25 generally the process that PwC undertook in

Page 10

1 BURGER
2 connection with its auditing of the Highland
3 financial statements? Is there, you know, a
4 process that you follow?
5 A. Yes, there is. I mean, it is a
6 pretty long process which starts all the way
7 from the planning to completion and you know,
8 through the execution which audit approach
9 outlines all the relevant standards of the
10 procedures that we're supposed perform from the
11 planning, execution and completion stage.
12 Q. And is that something that you share
13 with Highland so that they understand the
14 process?
15 A. We don't share our workpapers and
16 absolutely every single part of that, but they
17 – I mean, they know what we are looking for in
18 the sense of obviously for – we make requests
19 for information. And if the information is not
20 clear, we need to explain to them why we are
21 asking them for it.
22 Q. And how soon after the completion of
23 the fiscal year does PwC begin the process that
24 leads to the final audit?
25 A. We start this engagement in its

Page 11

1 BURGER
2 fieldwork stage in around about April after –
3 April after the unit.
4 Q. And what do you mean when you use
5 the phrase fieldwork?
6 A. Our execution phase.
7 Q. Is that the time when you begin to
8 send informational requests to Highland?
9 A. No, we send it through the planning
10 phase as well, which the planning phase is the
11 phase where you get engaged to go through all
12 the planning and setting up the procedures that
13 you are supposed to perform for the – for the
14 execution phase. And you can also do some of
15 the execution transaction work during that
16 period to save yourself from having to spend
17 that time in April and May.
18 Q. And when does the planning stage
19 begin?
20 A. Each year can be slightly different,
21 but in this case, this was around about the
22 October – September, October.
23 Q. So the planning would begin in the
24 fall of each fiscal year and –
25 A. Correct.

Page 12

1 BURGER
2 Q. Is that fair?
3 A. That's fair.
4 Q. And then during the planning stage,
5 PwC would make information requests to
6 Highland. Do I have that right?
7 A. You have got that correct.
8 Q. And then in response to that,
9 Highland would feed information to PwC for
10 PwC's review. Do I have that right?
11 A. Correct.
12 Q. And then the fieldwork is – is the
13 next step the fieldwork?
14 A. Yes.
15 Q. Okay. Do you recall during the time
16 that you were the audit partner did you have a
17 primary contact at Highland for purposes of the
18 planning and the execution phases of the audit?
19 A. There were more than one individual
20 we dealt with, but I recall there was a primary
21 contact which facilitated sort of – you know,
22 the – which facilitated all of our
23 communication.
24 Q. And who was that?
25 A. That was David Klos.

Page 13

1 BURGER
2 Q. And who besides Mr. Klos were the
3 primary points of contact?
4 A. Frank Waterhouse is the CFO and
5 Kristin Hendrix who, for the lack of a better
6 word was the – the sort of chief – the
7 accountant.
8 Q. The accountant?
9 A. Yes.
10 Q. Yes. And how many people typically
11 were on the Price Waterhouse team for purposes
12 of the Highland audits?
13 A. It depends on the phase of the
14 audit, but at the biggest part of the audit the
15 execution phase we were, including me I would
16 say six or seven people.
17 Q. Okay. And how would
18 PricewaterhouseCoopers obtain the information
19 that it needed to prepare the audited financial
20 statements?
21 A. Sorry. Just to make sure, say
22 obtain the information. We – we have a – I
23 mean, I did this over seven years. It morphed
24 over time, but we have a – a site, a secure
25 site called Connect. And I think towards the

1 BURGER
2 end we used that for them to upload
3 information.
4 Previously Highland had its own
5 secure site where we would raise a request and
6 they would upload the information on the secure
7 site.
8 Q. Okay. Did PricewaterhouseCoopers
9 rely on management to provide the information
10 that would enable PwC to prepare the audited
11 financial statements?
12 A. We did.
13 Q. Did PwC ever make any site visits to
14 Highland in connection with the audits?
15 A. We did.
16 Q. And during those visits, was it
17 typical that PricewaterhouseCoopers might have
18 follow-up requests for information?
19 MR. AIGEN: Objection, form.
20 A. Yes.
21 Q. Did PwC ever provide drafts of the
22 audit reports to Highland for their review
23 prior to the time they were finalized?
24 A. If you mean audit reports, do you
25 mean the one- or two-page opinion that I signed

1 BURGER
2 or do you mean the financial statements?
3 Q. I apologize, thank you for the
4 clarification.
5 I mean, the financial statements and
6 the notes accompanying the financial
7 statements?
8 A. They compile that and that is their
9 responsibility, so they provide us with that
10 document.
11 Q. Okay. So the five or six pages of
12 financial statements and all of the notes are
13 compiled by Highland, not by PwC?
14 A. Correct, yeah, correct.
15 Q. And did PwC have an opportunity to
16 review and comment on the drafts of the
17 financial statements on the accompanying notes?
18 A. Yes, we do.
19 Q. And did PwC in the course of its
20 engagement ask the questions that PwC thought
21 was relevant in order to give reasonable
22 assurance that the financial statements were in
23 accordance with Generally Accepted Auditing
24 Standards?
25 MR. AIGEN: Objection, form.

1 BURGER
2 MR. WANDER: You mean, GAAP, not
3 GAAS?
4 Q. I mean, it is auditing not
5 accounting; right? So it is Generally Accepted
6 Accounting Standards, do I have that right?
7 MR. WANDER: The audited – the
8 financials are in accordance with GAAP.
9 The audit is done in accordance with GAAS.
10 Q. Thank you for the clarification, so
11 let me rephrase the question.
12 Did PwC ask the questions that it
13 believed were necessary in order to provide
14 reasonable assurance that the financial
15 statements were in conformance with GAAP?
16 MR. AIGEN: Objection, form.
17 A. We did.
18 Q. Did PwC receive representation
19 letters from Highland in connection with each
20 audit?
21 A. Yeah, we did.
22 Q. And are you personally familiar with
23 the form of management representation letter
24 that Highland provided to PwC each year?
25 A. Yes, I am.

1 BURGER
2 Q. Was it part of your personal
3 responsibilities to review the management
4 representation letters?
5 A. It was.
6 Q. From PwC's perspective, what was the
7 purpose of the management representation
8 letters?
9 A. It is an opportunity for us to get
10 management to make certain representations of
11 us – in terms of scope of what is expected of
12 us in an audit.
13 Q. And was that representation letter
14 required by PwC in order for PwC to sign-off on
15 the audit?
16 A. It is, it was.
17 Q. And is it fair to say that PwC
18 relied on the management representation letters
19 when it decided to sign-off on the audit?
20 A. We did.
21 Q. I would like to put up on the screen
22 a document that I have marked as Exhibit 1,
23 which is the June 3rd, 2019 management
24 representation letter.
25 (Exhibit 1 marked.)

BURGER

Q. Mr. Burger, so –

MR. AIGEN: Sorry was this produced? I just want to make sure, is there a Bates label on this for the record?

MR. MORRIS: I don't know but it was used in Mr. Dondero's deposition.

MR. AIGEN: There is a Bates label.

Q. So Mr. Burger, this is a little awkward. Usually in a deposition I would be in the room with you and you would have the document in front of you and it would be easy for you to review the document. Since we can't do that, and I don't know that you have this particular document in front of you, we've put it up on the screen.

I'm going to ask you a few questions about it, but I strongly encourage you, I really request that you let me know if you believe that there are other portions of the document that you need to review in order to either refresh your recollection or to put my question into context, okay?

We're just going to have to make due with the technology, but with that background,

BURGER

you know, let's – let's go to the – to the page ending in 419?

Do you see there that there are two signatures?

A. Correct.

Q. And do you understand that those are the signatures of James Dondero and Frank Waterhouse?

A. Yes, correct.

Q. Okay. If we could go back to the top of the document, do you understand that this is the management representation letter that was provided to PwC by Mr. Dondero and Mr. Waterhouse on June 3rd, 2019?

A. Yes.

Q. Do you know why Mr. Waterhouse and Mr. Dondero were the people who signed this letter?

A. Starting with Mr. Waterhouse, he is the responsible party from management in the sense of being the CFO and Mr. Dondero as the general partner because the entity is a limited partner and we expect the general partner to sign the rep letter.

BURGER

Q. Do you know who drafted this letter?

A. We did.

Q. Is this a form of management representation that PwC typically prepares in the ordinary course of its audits?

A. Yes, it is derived from a standard template.

Q. And you see in the first paragraph there is a reference to the balance sheet date. Do I have that right?

A. Correct.

Q. And for this particular management representation letter, the balance sheet is for the fiscal year ending December 31st, 2018; correct?

A. Correct.

Q. We can scroll down to the bottom, but there is – stop right there.

There is a series of representations that are made in this letter. Do you understand that?

A. I do.

Q. And if we scroll down to, I guess, the page ending in 18, you will see that there

BURGER

is 50 separate representations that are made by Mr. Waterhouse and Mr. Dondero, not including the subparts. Do you see that?

A. I do.

MR. MORRIS: And thank you, La Asia, if we can go back to the top.

Q. So even though the audit letter was for the fiscal year ending December 31st, 2018, do you see in the sentence just before general that Mr. Dondero and Mr. Waterhouse confirmed based on their then current knowledge that each of the 50 representations were still correct as of June 3rd, 2019?

A. I do.

Q. Okay. And is that a standard practice of PwC to require management to confirm the accuracy of the representations not just as of the end of the fiscal year, but carrying through to the date of the completion of the audit?

A. It is.

Q. And why does PwC require that the representations be carried forward to the date of the completion of the audit?

BURGER

A. Because per Generally Accepted Auditing Standards we have to consider material events occurring after year-end but prior to our opinion date or prior to on our opinion date.

Q. Okay. And do you see in the middle of the first page there there is a paragraph that begins "certain representations"?

A. Yes.

Q. And you see that there is a definition of items that are considered material?

A. Yes.

Q. Do you know why the management representation letter included a definition for items considered material?

A. Because we cannot reasonably -- we, the basis of an audit is our reasonable assurance with deals with our definition -- which deals with materiality. So if we expect management to represent to us, we give them a sense of what we consider to be material.

Q. Okay. And did Highland ever express any concerns about PwC's definition of

BURGER

materiality?

A. Not that I can recall.

Q. Did PwC rely on Mr. Dondero and Mr. Waterhouse to provide all information concerning items considered material as defined in this letter?

MR. AIGEN: Objection, form.

A. We did.

Q. Are you generally aware that from time-to-time Highland loaned money to Mr. Dondero and certain affiliated entities in exchange for promissory notes?

A. I am.

Q. Can we call those promissory notes the affiliated party notes?

A. That is fine.

Q. For purposes of the audits, were the makers obligations under the affiliated party notes considered receivables of Highland?

A. Yes, receivables of Highland Capital Management, L.P.

Q. Okay. Can we go to the page that is ending in 413?

I'm just going to ask you a few

BURGER

questions about some of the representations here. Do you see, Mr. Burger, representation number 11?

A. I do.

Q. Does representation number 11 apply to the affiliated party notes?

A. It does.

Q. Was it PwC's understanding that Mr. Dondero and Mr. Waterhouse represented that the affiliate party notes represented bona fide claims against the makers for transactions arising on or before the balance sheet date?

MR. WANDER: Objection, form.

A. Correct.

Q. This is one of the 50 representations that Mr. Dondero and Mr. Waterhouse confirmed as of June 30th, 2019; correct?

A. June 3rd, yes, correct.

Q. Thank you for the clarification. Does the last sentence of representation number 11 mean that all affiliated party notes were current as of June 3rd, 2019?

A. It does.

BURGER

Q. Stated another way, none of the affiliated notes were in default as of June 30th, 2019; correct?

A. That's correct.

Q. All right. If we can go to page 416, please.

Take a look at representation number 32 at the top of the page. Do you have an understanding of what representation number 32 means?

A. Yeah, that is a representation where if we were to find any misstatements which does not meet the level of materiality, we would put that on what we call a summary of uncorrected misstatements. And management would -- management would defer to the fact that they do not consider those adjustments necessary in terms of neutrality.

Q. Did PwC understand that in representation number 32 Mr. Dondero and Mr. Waterhouse represented that basically if they got anything wrong it was not material?

MR. AIGEN: Objection, form.

A. That is correct.

BURGER

Q. And why did PwC request this particular representation?

A. Because if anything gets sort of found out to be a potential let's call it error to the financial statements, part of the standards require us to assert from management their view that it is not material.

Q. Okay. Did PwC rely on representation number 32 when signing off on the audit?

MR. AIGEN: Objection, form.

A. We did.

Q. Let's look at representation number 34. Can you tell me what that means from PwC's perspective?

A. It is a assessment of completeness. So in other words, management asserting or, sorry, representing to us that they are not aware of any material transactions or agreements or -- agreements being out there that wasn't recorded in the financial statements.

Q. And why did PwC want this material representation?

BURGER

A. Under as -- under standards it is not our duty to go out and look for necessarily fraud. And you know, it is on the completeness of transactions we do rely on management to let us know if they were material transactions.

Q. Did PwC rely on representing -- withdrawn.

Did PwC rely on representation number 34 when signing off on the audit?

A. We did.

Q. Let's take a look at representation 35D. If you can just read that to yourself for a moment?

A. Excuse me, did you say B or D?

Q. D as in dog?

A. D, okay, okay.

Q. Is it fair to say that in representation number 35D, as in dog, Mr. Dondero and Mr. Waterhouse represented that all material transactions with related parties have been properly reported and disclosed in the consolidated financial statements?

A. That's correct.

Q. Did PwC request this particular

BURGER

representation?

A. We did.

Q. Why?

A. Again, because it is important under alleged party disclosures specifically all disclosures but related party specific that if you have material transactions or events that those be disclosed. And again, we -- we do rely on management to also take ownership for that.

Q. Okay. Can we go to the next page, please, page ending in 417? Okay, right there. And take a look at representation number 36, please.

A. Okay, okay.

Q. Can you tell me from PwC's perspective what representation 36 means?

A. Again, for management to let us know or assert to us who the related parties are.

Q. Is it fair to say that in management representation number 36 Mr. Dondero and Mr. Waterhouse represented that they had disclosed, among other things, all related party transactions of which they were aware?

BURGER

A. Correct.

Q. And did PwC rely on that representation when it signed off on the audit?

A. We did.

Q. Go to page 419, please. Okay. Just before the signature line there is a sentence that begins, "to the best of our knowledge." Do you see that?

A. Correct.

Q. Can you just read that to yourself?

A. Okay.

Q. Can you tell me from PWC's perspective what that sentence means?

A. It means if there were events that occurred after the balance sheet date, before the opinion date that required disclosure, that such disclosures had been made.

Q. And why did -- is that representation one that is required by GAAP?

A. It is -- it is a GAAS principle, not a GAAP.

Q. And did PwC rely on that representation in the last sentence when it signed off on the audits?

Page 30

1 BURGER
2 A. We did.
3 Q. Let's move to the 2017 financial
4 statements. Can we please put up the next
5 exhibit.
6 (Exhibit 2 marked.)
7 Q. Again, Mr. Burger, I will just
8 remind you that if at any time you believe you
9 need to see any other portion of the document
10 in order to capably and fully answer the
11 question that I ask, just let me know, okay?
12 MR. WANDER: John, he has a hard
13 copy of this one in front of him.
14 Q. Beautiful. Maybe it would be easier
15 for you to just take it out and the rest of us
16 will just look on the screen.
17 MR. MORRIS: Thank you, John.
18 Q. Do you have the 2017 audited
19 financial statements in front of you, sir?
20 A. I do.
21 Q. And did you personally lead PwC's
22 efforts in completing the audit for the debtors
23 for Highland's 2017 financial statements?
24 A. Would you mind repeating the
25 question?

Page 31

1 BURGER
2 Q. Did you personally lead PwC's
3 efforts in auditing Highland's 2017 financial
4 statements?
5 A. I did.
6 Q. Do you recall any deviations from
7 the process that you described earlier in
8 connection with the preparation of Highland's
9 2017 financial statements?
10 A. I do not.
11 Q. Can we go to page 2, please, right
12 there. Do you see in the top half of the
13 screen there is a list of assets?
14 A. I do.
15 Q. And one of those – one of those
16 assets is identified as notes and other amounts
17 due from affiliates. Do you see that?
18 A. I do.
19 Q. And do you know what that relates
20 to?
21 A. So that is the consolidated amount
22 of Highland Capital Management, L.P. with all
23 its affiliates of notes and other amounts that
24 are due from affiliates as defined.
25 Q. Do you know why the notes and other

Page 32

1 BURGER
2 amounts due from affiliates are carried as
3 assets on Highland's balance sheets?
4 A. Because it meets the definition of
5 an asset.
6 Q. And what is the definition of the
7 asset – withdrawn.
8 What is the definition of an asset
9 that causes the notes and other amounts due
10 from affiliates to appear on the asset portion
11 of the balance sheet?
12 A. This is amounts in the forms of
13 notes or receivables that the entity has title
14 to in the form of an asset, or the classic
15 definition of an asset is you are entitled to
16 the asset and there is reasonable assurance of
17 the recoverability of the asset.
18 Q. Did anybody from Highland ever
19 dispute that the notes and other amounts due
20 from affiliates should be carried on Highland's
21 balance sheet as assets?
22 MR. AIGEN: Objection, form.
23 A. Sorry?
24 MR. WANDER: If you understand, you
25 can answer.

Page 33

1 BURGER
2 A. No, no, they did not.
3 Q. And that is because these are
4 Highland's balance sheets; correct?
5 A. Correct.
6 Q. Highland, in fact, prepared the
7 document that we're looking at right now;
8 correct?
9 A. Correct, we did not.
10 Q. And Highland made the decision to
11 record the notes and other amounts due from
12 other affiliates as assets on its own balance
13 sheet; right?
14 MR. AIGEN: Objection, form.
15 A. Right.
16 Q. Did PwC ever have any reason to
17 question the carrying of the notes and other
18 amounts due from affiliates as assets on
19 Highland's balance sheets?
20 A. We did not.
21 Q. Is my math right here that the
22 balance sheet shows that as of the end of 2017
23 notes and other amounts due from affiliates
24 constituted more than 10 percent of Highland's
25 assets?

1 BURGER
2 A. That's correct.
3 Q. Okay. If we could just scroll down
4 to the bottom of the page. Little further,
5 yeah, right there.
6 Do you see there is a reference that
7 says, quote, the accompanying notes are an
8 integral part of these consolidated financial
9 statements, closed quote?
10 A. I do.
11 Q. What does that mean?
12 A. That is to draw the attention for
13 the reader of not reading this page in a
14 stand-alone basis, because there are further
15 explanations required to the amounts in the
16 footnotes.
17 Q. Okay. Let's go to page 28 of the
18 document. Okay. Do you see that there is a
19 Section 9 entitled related party transactions?
20 A. I do.
21 Q. And can you describe for me your
22 understanding of why there is a note dedicated
23 to related party transactions?
24 A. It is a GAAP requirement for
25 financial statements to disclose material

1 BURGER
2 related-party relationships and transactions.
3 Q. If we can go to page 30, please, and
4 just scroll straight down so Mr. Burger can see
5 what he's got front of him, if we can go to
6 page 30.
7 Page 30 has a subheading to note 9
8 called notes and other amounts due from
9 affiliates. Do you see that?
10 A. Correct.
11 Q. Okay. And do I have it --
12 withdrawn.
13 Highland prepared all of the
14 information that is set forth in this section
15 of note 9; is that correct?
16 MR. AIGEN: Objection, form.
17 A. I did.
18 Q. Is it fair to say that this portion
19 of note 9 is intended to describe obligations
20 due to the debtor by affiliates?
21 MR. AIGEN: Objection, form.
22 A. That's correct.
23 Q. Let me ask a different question to
24 deal with Michael's objection.
25 Can you tell me, Mr. Burger, what

1 BURGER
2 information is conveyed in the section called
3 notes and other amounts due from affiliates?
4 MR. AIGEN: Objection, form.
5 MR. WANDER: You can answer.
6 A. I can answer, sorry.
7 The purpose of this footnote is to
8 strike out out -- because if you look at the
9 balance sheet you just see notes and you have
10 no idea who that is from, which amounts and
11 what the basic terms are.
12 Q. Is it your understanding that this
13 section of note 9 sets forth the amounts due
14 and owing by each affiliate as of December
15 31st, 2017?
16 A. That's correct.
17 Q. And are the amounts included -- are
18 those amounts included in the line item that we
19 just looked at in the balance sheet called
20 notes and other amounts due from affiliates?
21 A. Correct.
22 Q. Do you know who calculated the
23 amounts due and owing by each affiliate as of
24 December 31st, 2017?
25 A. It was management.

1 BURGER
2 Q. Okay. Did management ever tell PwC
3 at any time prior to June -- withdrawn.
4 Did management ever tell PwC at any
5 time prior to PwC's signing off on the audited
6 financial statements for 2017 that there was
7 anything inaccurate about this section of the
8 notes?
9 MR. AIGEN: Objection, form.
10 A. They did not.
11 Q. Each of the paragraph ends with a
12 sentence that may differ only in as to whether
13 it is singular or plural, but it says quote,
14 the fair value of the partnership's outstanding
15 notes receivable approximates the carrying
16 value of the notes receivable. Do you see
17 that?
18 A. Correct.
19 Q. And we can scroll down a little bit
20 just so you can -- you have got the document in
21 front of you. I would just ask you to confirm
22 that each paragraph ends with the same sentence
23 except for the last paragraph. And does it,
24 sir?
25 A. Yes, it is on each paragraph for

1 BURGER
2 that section of the notes except the paragraph
3 starting on December 21st, 2015.
4 Q. Do you have an understanding of what
5 that sentence means?
6 A. That sentence means that these notes
7 are per GAAP, the notes are supposed to be
8 recorded at fair value and the assertion is
9 that the carrying value is considered a
10 reasonable proxy for fair value.
11 Q. I'm sorry, what is fair value in
12 this context?
13 A. Fair value of all assets would be
14 what you consider to be the reasonable value
15 for exchange of the asset.
16 Q. And then what is the carrying value?
17 How does that differ from the carrying value?
18 A. Carrying value is the -- is a
19 contractual, is the term of the contractual
20 amount. In other words, whatever their loan
21 plus accrued interest minus payments. And fair
22 value is -- is basically the concept of this
23 sentence is stating that the fair value of the
24 approximate or reasonable proxy for carrying
25 value in its (inaudible).

1 BURGER
2 Q. So is it fair to say that based on
3 this portion of note 9, the debtors' financial
4 statements -- withdrawn.
5 Is it fair to say that based on this
6 portion of note 9, Highland is saying that the
7 fair value of the promissory notes from the
8 affiliates was approximately equal to the
9 principal and interest then due under the
10 notes?
11 MR. AIGEN: Objection, form.
12 A. That's correct.
13 Q. Is it fair to say that when the
14 audit -- withdrawn.
15 Is it fair to say that -- no,
16 withdrawn.
17 At the time the audit was completed
18 for 2017, did PwC have any reason to discount
19 the value of any of the notes described on page
20 30 or 31?
21 A. We did not.
22 Q. Okay. Can we go to page 41, please.
23 If you scroll down a little bit you will see
24 there is a section entitled subsequent events
25 which is note 16. Do you see that?

1 BURGER
2 A. Correct.
3 Q. Okay. What is this section intended
4 to capture?
5 A. This is supposed to capture any
6 significant material events that occurred after
7 the balance sheet that requires disclosure.
8 Q. And is the information described
9 here information that was provided by Highland
10 Capital?
11 A. Yeah, correct, by management.
12 Q. This section notes that Mr. Dondero
13 issued promissory notes to the partnership in
14 the amount of $11.7 million in 2018. Do you
15 see that?
16 A. I do.
17 Q. Those obligations are not included
18 in the balance sheet that we looked at earlier
19 for the period ending December 31st, 2017;
20 correct?
21 A. That's correct.
22 Q. The notes issued by Mr. Dondero are
23 the only material subsequent event that PwC was
24 informed about; is that correct?
25 A. Correct.

1 BURGER
2 Q. Let's go to the 2017 workpapers, if
3 we can call it the next exhibit, please.
4 (Exhibit 3 marked.)
5 Q. All right. I've put up on the
6 screen what I believe are PwC's workpapers in
7 connection with the 2017 audit as it pertains
8 to notes and other amounts due from affiliates.
9 Is that an accurate way to describe this
10 particular document?
11 A. Yes, it would be a workpaper that we
12 retain in our file.
13 Q. Was it prepared in connection with
14 the 2017 audit?
15 A. Yes, this one was.
16 Q. And when I use the phrase "2017
17 audit," I'm specifically talking about the
18 audit that was prepared for the financial
19 statements for the fiscal year ending December
20 31st, 2017. Do you understand that?
21 A. Correct.
22 Q. Okay. Who prepared this particular
23 document?
24 A. Who prepared it?
25 Q. I apologize, who prepared it?

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1 BURGER
2 A. Sorry, Hilda Garcia.
3 Q. Hilda Garcia, is she employed by
4 PwC?
5 A. She is.
6 Q. And what is her title?
7 A. She is a senior associate now. She
8 would have been a senior associate back then as
9 well.
10 Q. Does she report to you or to
11 somebody else?
12 A. She reports to me.
13 Q. And are you responsible for
14 overseeing Ms. Garcia's work?
15 A. I am.
16 Q. And what is the purpose of this
17 document?
18 A. The purpose of this document is to
19 layout what are the amounts that makes up the
20 line item that is on the balance sheet of
21 HCMLP. And then the audit procedure is
22 performed to gain comfort over those – the
23 existence of those amounts based on
24 materiality.
25 Q. And did PwC prepare workpapers of

Page 43

1 BURGER
2 this type in the ordinary course of its
3 business?
4 A. We do.
5 Q. And did PwC prepare this particular
6 workpaper in the ordinary course of its
7 preparation of Highland's 2017 audit?
8 A. We did.
9 Q. Okay. Can we go to the tab that is
10 marked as detailed, if you look at the bottom?
11 Do you have that, sir?
12 A. Yes, I have.
13 Q. Is that tab intended to list all of
14 the – of the notes and other amounts due from
15 affiliates that were outstanding at the end of
16 the fiscal year?
17 A. Correct.
18 Q. And is this information – where did
19 PwC get the information that is set forth on
20 the detail tab?
21 A. It is from management from the trial
22 balance.
23 Q. For the record, can you just tell me
24 what a trial balance is?
25 A. So that is a summary document

Page 44

1 BURGER
2 listing out the balances of all accounts from
3 the general ledger that is used to produce the
4 set of financial statements.
5 Q. And was the trial balance made
6 available to PwC by Highland in connection with
7 its audit work?
8 A. It was.
9 Q. The next tab is marked credit risk
10 analysis. Do you see that?
11 A. Yes.
12 Q. What is the purpose of the credit
13 risk analysis?
14 A. The purpose of this is that if you
15 think about a receivable or any amount due it
16 is about intent and ability. And this is where
17 we deal with ability to ask ourself the
18 question is the counterparty reasonably able to
19 repay the amounts.
20 Q. And did PwC conclude in 2000 – in
21 connection with the 2017 audit that the makers
22 of the notes set forth on this particular slide
23 had the ability to pay?
24 A. In our opinion, yes.
25 Q. Okay. And did PwC base that opinion

Page 45

1 BURGER
2 on the information that was provided by
3 management?
4 MR. AIGEN: Objection, form.
5 A. Partly management and partly our own
6 due diligence.
7 Q. Okay. The next tab is results
8 template. Do you see that?
9 A. Yes.
10 Q. Can you just explain to me what that
11 page is, if we could scroll to the top, please?
12 A. This – there are a number of notes
13 that are being dealt with. This – so if you
14 go back to the detail tab, those are the
15 individual notes that makes up the amount that
16 ties to the back of the financial statement.
17 And there are relevant tabs here that deal with
18 a number of these loans. In preparation for
19 this, we focused on due from HCMSI as that is
20 under question.
21 Q. Why is due from HCMSI under
22 question?
23 A. That is my understanding of what the
24 deposition relates to.
25 MR. WANDER: When he says in

1 BURGER
2 preparation for this, he means in
3 preparation for the deposition he reviewed
4 this piece of it, the HCMSI. Not the rest
5 of the notes, just HCMSI.
6 Q. Okay. So, so but with respect to
7 this particular page, is there an analysis that
8 PwC is undertaking? Does this reflect an --
9 withdrawn.
10 Does this page reflect an analysis
11 that PwC did?
12 MR. AIGEN: Objection, form.
13 A. If you add the other relevant tabs
14 to it, yes. So in other words, some of them
15 link to other tabs. Some of them have
16 individual documentation as referenced in the
17 marked legends.
18 Q. And then there are tabs for the
19 individual maker of each set of notes. Do I
20 have that right?
21 A. Correct.
22 Q. All right. Let's go to the 2018
23 financial statements, please. Are you familiar
24 with Highland's audited financial statements
25 for the period ending December 31st, 2018?

1 BURGER
2 A. I am.
3 MR. AIGEN: Sorry to interrupt. Are
4 you marking this? I'm trying to keep
5 track, is this --
6 MR. MORRIS: Yes, I apologize, this
7 will be Exhibit 4.
8 (Exhibit 4 marked.)
9 MR. AIGEN: 4, okay.
10 Q. And did you oversee the preparation
11 of the audited financial statements on behalf
12 of PwC for the period ending December 31st,
13 2018?
14 A. Correction, not preparation, we
15 don't prepare any of these documents.
16 Q. Let -- I apologize, let me restate
17 the question.
18 Did you oversee PwC's audit of
19 Highland's financial statements for the period
20 ending December 31st, 2018?
21 A. Yeah, I did.
22 Q. Okay. Do you recall any deviations
23 from the process you described earlier in
24 connection with the preparation of the 2018
25 audited financials?

1 BURGER
2 A. No, I do not.
3 Q. Can we go to the third page of the
4 document right there. This document is dated,
5 if you look at the bottom, June 3rd, 2019. Do
6 you see that?
7 A. I do.
8 Q. And that was the same date as the
9 management representation letter that we looked
10 at earlier, do you recall that? We can pull it
11 up.
12 A. No, I do.
13 Q. Is it a coincidence that they both
14 have the same date?
15 A. No, it is not. We require that to
16 be the same.
17 Q. And why do you require that the
18 management representation letter and the report
19 of independent auditors be issued on the same
20 day?
21 A. This is -- this is the date that we
22 effectively consider these financials available
23 to be issued. And under standards, we are
24 required to consider all subsequent events and
25 representations up to this date. So therefore,

1 BURGER
2 we cannot accept a date of, let's call it June
3 2nd or 1st or earlier from management's
4 representation.
5 Q. Is -- is the report that is set out
6 here required by either GAAS or GAAP?
7 A. This is -- GAAS requires the audit
8 opinion to be -- to be the document whereby we
9 report to the general partner on our -- on our
10 audit.
11 Q. And does PwC have an internal
12 process by which it determines whether or not
13 to sign-off on -- on any particular client's
14 audit?
15 A. We do.
16 Q. Can you describe that process for me
17 generally?
18 A. From an acceptance phase of the
19 client or do you mean the content of their
20 opinion?
21 Q. The content of the opinion, thank
22 you.
23 A. Yes. So there is a framework that
24 we follow on going back to whether there --
25 whether we consider two things. Whether there

BURGER
are material uncorrected misstatements to the financials or material deviations from required disclosures. So in other words, are the financials reasonable and accurate in terms of GAAP, and were we able to perform all the procedures. So in other words there weren't any undue scope limitations which -- which got us to a point we weren't able to perform the audit and fulfill our professional duty.
If the answer to those are that we fulfill both then we would give what we call an unqualified or a clean opinion.
Q. And is there an opinion committee that is -- that is dedicated to this process?
A. No, it is -- if it is a clean opinion then it is the partner and if applicable the second partner on the engagement is called. If there is anything which goes away from an unqualified opinion, in any deviation, then there is a whole consultation process with our national office.
Q. And did you personally approve this opinion letter?
A. I did, that is my signature.

BURGER
Q. Okay. Let's go to page 2, please, consolidated balance sheet.
Do you see, again, there is the notes and other amounts due from affiliates?
A. I do.
Q. And does this just carry over from the prior years subject to any payments or additional notes subject to any changes since the end of the prior fiscal year?
A. It does.
Q. As of the end of 2018, is it fair to say that the notes and other amounts due from affiliates now exceeded more than 15 percent of Highland's assets?
A. That is correct.
Q. Now, let's go to page 26, please. And you will see number -- note number 8 relates to related-party transactions. Do you see that?
A. I do.
Q. So again, do I have this right that this section of the notes is intended to provide the detail about transactions between Highland and related parties?

BURGER
A. It is.
Q. And that is required by GAAP, do I have that right?
A. You have got it correct.
Q. Okay. Let's go to page 28, please.
Do you see on page 28 and continuing on page 29 there is again a section of note 9 entitled notes and other amounts due from affiliates?
A. I do.
Q. And this information was provided by management; correct?
A. Correct.
Q. And this portion of note 8 is intended to describe the obligations that were owed to the debtor by affiliates; correct?
A. Correct.
Q. Does this section of note 8 set forth the amounts that were due and owing by each affiliate as of the end of fiscal year 2018?
A. It does.
Q. And are those amounts included in the line item that we just looked at on the

BURGER
balance sheet called notes and other amounts due from affiliates?
A. It is.
Q. And can you confirm for me that management is the one who decided -- withdrawn.
Can you confirm for me that management is the one who calculated the amounts due and owing by each affiliate as of December 31st, 2018?
MR. AIGEN: Objection, form.
A. That is correct.
Q. To the best of your knowledge, did anybody from Highland ever tell anybody from PwC that any of the amounts due and owing as set forth in the notes and other amounts due from affiliates was wrong or incorrect?
A. Not to my knowledge.
Q. And can you confirm for me that in connection with the 2018 financial statements Highland again stated in general that the fair value of the notes and other amounts due from affiliates approximates the carrying value of the notes receivable?
A. That's correct.

BURGER

Q. Is it fair to say that when PwC issued its audit opinion on June 3rd, 2019 that they had no reason to discount the fair value of any of the notes described in this portion of note 8?

MR. AIGEN: Objection, form.

A. Yeah, that is correct.

Q. Let's go to page 38, please, note 15. Do you see note 15 beginning on page 38?

A. I do.

Q. And is this the section of the notes that are intended to describe material subsequent events that would require disclosure?

A. It is.

Q. And is the information set forth in section 15 or note 15 information that was provided by Highland?

A. Correct.

Q. To the best of PwC's knowledge, as of June 3rd, 2019, did note 15 in fact include a description of all material subsequent events that required disclosure?

A. That's correct.

BURGER

Q. Did anyone -- withdrawn.

Do you know whether anyone from Highland ever informed anyone at PwC that there were material subsequent events that were omitted from note 15?

A. I'm not.

Q. Let's go to the 2018 workpapers.

(Exhibit 5 marked.)

Q. We will mark this as Exhibit 5.

MR. MORRIS: I am trying to go as quickly as I can, Michael, to leave you a little time.

MR. AIGEN: Thanks.

Q. Do you have that, Mr. Burger?

A. Yeah, I do.

MR. AIGEN: This is Exhibit 5, John?

MR. MORRIS: Yes.

Q. Is there anything that you need to look at, Mr. Burger, to confirm that these are PwC's workpapers for the 2018 audit as it relates to notes and other amounts due from affiliates?

A. I can confirm.

Q. Okay. And was this also prepared in

BURGER

the first instance by Ms. Garcia?

A. No, this was prepared by Madeline Pacocha.

Q. How do you spell her last name?

A. P-a-c-o-c-h-a.

Q. And did she report directly to you?

A. She did. She was part of the team.

Q. Okay. And do you know whether the same process that was followed in 2018 was followed in 2000 -- withdrawn.

Did PwC follow the same process in creating this document that it did when it created the workpapers in 2017?

A. We did.

Q. Can you confirm that this document was prepared in the ordinary course of PwC's business?

A. It was.

Q. Can you confirm that this document was prepared in the ordinary course of PwC's audit of Highland's 2018 financial statements?

A. That's correct.

Q. Okay. I'm going to ask a few more detailed questions than we did last time. Can

BURGER

we go to the section called credit risk analysis, the tab.

I think earlier you testified that there was kind of two aspects that PwC looked at when analyzing the notes and they were the intent and the ability to pay. Do I have that right?

MR. AIGEN: Objection, form.

A. That's correct.

Q. Okay. And this particular tab, credit risk analysis, related to the ability to pay part of that analysis; correct?

A. That's correct.

Q. Do you see there is a column called recoverability?

A. I do.

Q. What is that?

A. That is a qualitative assessment to give us reasonable assurance that these notes are, A, not in default or -- and B, that the -- at least materially the maker has enough assets that we are aware of to -- to be able to repay.

Q. And did Highland provide the data and information related to each maker's ability

1 BURGER
2 to pay?
3 A. This is a combination but most of
4 this is our own due diligence.
5 Q. And – and can you describe for me
6 what steps in the due diligence process PwC
7 undertook to ascertain whether the makers have
8 the ability to pay?
9 A. Mostly – mostly relates to evidence
10 that there are payments on notes and that none
11 of the notes are contractually in default. And
12 then also very much specifically to
13 Mr. Dondero's ability from known assets that
14 can be found on public filings.
15 Q. And did PwC analyze public filings
16 and conclude that Mr. Dondero had the ability
17 to repay the notes that had -- that he had
18 issued to the debtor?
19 A. Through public filings which we
20 could obtain, we could at least assess that
21 there are assets in those, sort of let's call
22 it public filings that would be adequate to
23 repay the amounts.
24 Q. Is it fair to say that this section
25 of the workpapers is an assessment of each

1 BURGER
2 affiliate's creditworthiness?
3 A. Not each individual, but on a more
4 look-through basis to specifically Mr. Dondero.
5 The purpose of this is not to sign-off on an
6 absolute creditworthiness of each party, but to
7 provide enough evidence to give us reasonable
8 assurance that these notes are recoverable.
9 Q. And based on the due diligence that
10 PwC did and the information provided by
11 Highland, did PwC conclude that the makers of
12 the notes had the ability to repay the
13 obligations set forth therein?
14 A. We did.
15 Q. Did PwC rely on the analysis set
16 forth on this document in deciding to issue the
17 opinion in connection – the clean opinion in
18 connection with the 2018 audit?
19 A. Yeah, this is part of our workpapers
20 which forms the collective base of our opinion,
21 yes.
22 Q. If PwC had any concerns that any
23 maker was unable to repay the obligations under
24 any of the notes made to Highland, is there a
25 process or what would happen under that

1 BURGER
2 circumstance?
3 MR. AIGEN: Objection, form.
4 A. Do I answer that?
5 MR. WANDER: Yes.
6 A. If we become aware of any data or
7 anything which shows us that a counterparty
8 cannot repay the note, the question stems to
9 management as to why they consider the note
10 fully recoverable. Because the fact that there
11 is a note with a legal agreement to it doesn't
12 mean -- there may be adverse data that show
13 that the counterparty is not able to pay and
14 that then results in additional work to assess
15 whether that loan can be recorded at its full
16 value.
17 Q. But in connection with the 2018
18 audit, management represented that each of the
19 notes was fully recoverable. Do I have that
20 right?
21 MR. AIGEN: Objection, form.
22 A. They did.
23 Q. Let's go to the results template,
24 please.
25 Now, do you see that there is

1 BURGER
2 approximately 116 or 117 -- withdrawn.
3 Do you see that there is
4 approximately $116 difference between the
5 amount per client and the balance per testing?
6 A. Yes, I do.
7 Q. Okay. What -- what does --
8 withdrawn.
9 Is the amount per client the total
10 principal and interest due as of the balance
11 sheet date for each of the makers listed under
12 the account description column?
13 A. That is the amount that is obtained
14 from the trial balance that is used for the
15 financial statements --
16 Q. Okay.
17 A. -- in Column D.
18 Q. And did PwC then test those amounts
19 for accuracy or reasonableness?
20 A. For reasonableness we went back if
21 material to the appropriate legal agreements.
22 MR. AIGEN: I didn't want to
23 interrupt, but I was objecting to form with
24 that one.
25 Q. And based on the testing that PwC

1 BURGER
2 did, did it reach any conclusions as to the
3 reliability of the debtors' of Highland's
4 assessment as to the amount owed by each
5 client?
6 A. Do you mind repeating that question?
7 Q. Yeah, that wasn't very good.
8 What is the purpose of the testing
9 that -- that was undertaken that is reflected
10 on this page?
11 A. So the purpose is, again, the 173 is
12 the amount that goes to the line item in
13 question that we are or that part of feeds into
14 another tab called detail, which goes back into
15 the detail.
16 So from there if we have a balance
17 as recorded in the financial statements we need
18 to obtain the detail behind that, what makes up
19 those amounts. And for each one individually
20 or collective material, we need to test the, A,
21 the existence of the amount and, B, the
22 evaluation of the amount.
23 Q. Let's go to the next tab, due from
24 HCMSI. Do you see that?
25 A. I do.

1 BURGER
2 Q. So does this show that an entity
3 known as HCMSI had principal and interest due
4 on one or more promissory notes totaling
5 approximately 13 and a half million dollars?
6 A. It is three promissory notes, which
7 adds up to approximately 13.9 million dollars.
8 Q. Okay. So promissory note one is on
9 the left where it says closing date May 31,
10 2017. Do I have that right?
11 A. Correct.
12 Q. And if we scroll down promissory --
13 where is the second promissory note?
14 A. Just go over to column R and then
15 AB, I can read.
16 Q. Okay. So then -- so that is the
17 second promissory note is the one that was
18 issued on June 25th, 2018 in the amount of
19 $200,000, and then the third one is issued on
20 March 26th, 2018 in the amount of $150,000. Do
21 I have that right?
22 A. That's correct.
23 Q. And this shows that under the first
24 note, if we could go to the left a bit, that
25 HCMSI paid Highland exactly $1 million on

1 BURGER
2 October 8th, 2018 that was allocated -- a
3 portion of which was allocated to principal and
4 a portion of which was allocated to interest?
5 A. That's correct.
6 Q. Okay. Let's go to the next tab,
7 Dondero tax loans. Do you know why the loans
8 to Mr. Dondero are described as tax loans?
9 A. It is -- it is described as tax loan
10 to facilitate tax payments based on earnings is
11 my understanding.
12 Q. Did PwC ever make any inquiry as to
13 whether the amounts loaned to Mr. Dondero
14 approximated the amount of tax liability that
15 he faced?
16 MR. AIGEN: Objection, form.
17 A. We did not.
18 Q. Does PwC have any information as to
19 whether or not the loans made to Mr. Dondero
20 were related in any way to his actual tax
21 obligations?
22 MR. AIGEN: Objection, form.
23 A. We did not. We didn't consider it
24 necessary.
25 Q. Did PwC make any inquiry as to the

1 BURGER
2 purpose of the loans to Mr. Dondero?
3 MR. AIGEN: Objection, form.
4 A. In general.
5 Q. In general you made an inquiry?
6 A. Yeah, as to the -- the -- as to
7 whether these loans are considered reasonable
8 and arm's length.
9 Q. What information do you recall that
10 you have whether the loans were reasonable and
11 arm's length?
12 A. Related to the notes being at an
13 interest rate which is considered a reasonable
14 interest rate considering all the parties
15 involved. And then more on, you know, again,
16 the testing that were done and the existence of
17 the notes.
18 Q. Did PwC make any inquiry as to the
19 purpose of any of the loans to any of the
20 affiliates including Mr. Dondero?
21 A. We did.
22 Q. Okay. With respect to Mr. Dondero,
23 do you have any information that you haven't
24 already provided as to PwC's understanding of
25 the purpose of the loans?

1 BURGER
2 MR. AIGEN: Objection.
3 A. No.
4 Q. No. And who -- who told PwC, if you
5 know, that the loans were being made to
6 Mr. Dondero to pay tax payments based on
7 earnings?
8 A. Management. I cannot recall a
9 specific name.
10 Q. Okay. But it is your understanding
11 that the loans were made to Mr. Dondero in
12 order to enable him to pay the taxes due on his
13 earnings. Do I have that right?
14 A. That's correct.
15 Q. And who decided the amount of the
16 loans, to the best of your knowledge?
17 MR. AIGEN: Objection, form.
18 A. It is an agreement between
19 management and Mr. -- management.
20 Q. Do you have anybody -- do you have
21 any knowledge as to who on behalf of Highland
22 made the agreement with Mr. Dondero about the
23 amount of the loans?
24 A. I cannot recall the specific name.
25 Q. If you look at loan number 1 there,

1 BURGER
2 the $14 million loan that was first made in
3 December 2017, do I have this right that
4 Mr. Dondero made a payment of over $750,000
5 that was applied to principal and interest on
6 December 19th, 2018?
7 A. That's correct.
8 Q. Okay. And if we scroll down a
9 little bit more, keep going, note number 4.
10 Did Mr. Dondero make a $2 million payment to
11 Highland on December 18th, 2018, a portion of
12 which was used to pay principal and a portion
13 of which was used to pay interest on note
14 number 4?
15 A. That's correct.
16 Q. Did anybody ever tell you that in
17 January or February 2019 that Mr. Dondero had
18 entered into an oral agreement with his sister
19 acting on behalf of Highland whereby
20 Mr. Dondero and certain of his affiliates would
21 be relieved of the obligation to pay amounts
22 due under the promissory notes if certain
23 conditions subsequent were met?
24 MR. AIGEN: Objection, form.
25 A. No, they did not.

1 BURGER
2 Q. Do you know whether anybody at PwC
3 was ever informed by Mr. Dondero -- withdrawn.
4 Do you know if anybody at PwC was
5 ever informed by anybody at Highland that in
6 January or February 2019 Mr. Dondero entered
7 into an oral agreement with his sister acting
8 on behalf of Highland whereby Mr. Dondero and
9 certain of his affiliates would be relieved of
10 all obligations to pay all amounts otherwise
11 due and owing under the promissory notes if
12 certain conditions subsequent were met?
13 MR. AIGEN: Objection, form.
14 A. I do not.
15 Q. Okay. Can we go -- I apologize, but
16 can we go back to tab number -- the detail tab
17 in the -- in the workpapers?
18 MR. WANDER: In Exhibit 5 or Exhibit
19 3?
20 Q. Exhibit 5, thank you for the
21 clarification. Okay, so the detail tab and the
22 workpapers for 2018 lists all of the notes
23 receivable that were made by affiliates of
24 Highland; correct?
25 A. Correct.

1 BURGER
2 Q. Are you aware of any oral or written
3 amendment to any of the promissory notes that
4 are described on the detail page of Exhibit 5?
5 MR. AIGEN: Objection, form.
6 MR. MORRIS: What -- what is the
7 objection? Hold on before you answer, what
8 is the objection?
9 MR. AIGEN: I think it is vague. I
10 don't know which stuff you are talking
11 about here. Are you asking for a legal
12 conclusion, and there is no foundation.
13 Q. Yeah, okay. Certainly not asking
14 for a legal conclusion and I will -- let me ask
15 the question again, sir.
16 This page lists the amounts that
17 each of the affiliates owes to Highland under
18 various promissory notes; correct?
19 A. Correct.
20 Q. Are you aware of any oral or written
21 amendment to any of those promissory notes?
22 A. No, up to June 3rd, 2019.
23 Q. And do you know whether anyone at
24 PwC was aware of any oral or written amendment
25 to any of the promissory notes as of June 3rd,

1 BURGER
2 2019?
3 MR. AIGEN: Objection, form.
4 A. No, I'm not.
5 Q. Were you ever informed of any
6 amendment, written or oral, to any promissory
7 note at any time?
8 A. I was not.
9 Q. Did anyone ever tell you that any of
10 the notes in -- referred to in the detail tab
11 of Exhibit 5 might be forgiven under certain
12 circumstances?
13 A. No.
14 Q. Do you know whether anybody at PwC
15 was ever informed by anybody at Highland that
16 any of the notes in the detail tab in Exhibit 5
17 might be forgiven?
18 MR. AIGEN: Objection, form.
19 A. I do not.
20 Q. Under your understanding of the GAAP
21 rules, did Mr. Dondero and Mr. Waterhouse have
22 a continuing obligation to inform PwC of any
23 circumstances that would call into question the
24 collectability of any of the notes due from
25 affiliates?

1 BURGER
2 MR. AIGEN: Objection, form.
3 A. Yes, they had the responsibility.
4 Q. To the best of your knowledge, did
5 Mr. Dondero ever inform anybody at PwC prior to
6 June 3rd, 2019 that any of the notes might not
7 be collectable?
8 MR. AIGEN: Objection, form.
9 A. He did not.
10 Q. To the best of your knowledge, did
11 Mr. Dondero ever inform anybody at PwC prior to
12 June 3rd, 2019 that any of the notes might be
13 forgiven under certain circumstances?
14 MR. AIGEN: Objection, form.
15 A. He did not.
16 Q. To the best of your knowledge, did
17 Mr. Dondero ever inform anyone at PwC prior to
18 June 3rd, 2019 that any of the notes were
19 amended?
20 MR. AIGEN: Objection, form.
21 A. He did not.
22 Q. To the best of your knowledge, did
23 Mr. Dondero ever inform anyone at PwC prior to
24 June 3rd, 2019 that the obligations under any
25 of the notes would be extinguished based on the

1 BURGER
2 fulfillment of certain conditions subsequent?
3 MR. AIGEN: Objection, form.
4 A. Again, he did not.
5 Q. I'm going to ask the same questions
6 now with respect to Mr. Waterhouse.
7 To the best of your knowledge, did
8 Mr. Waterhouse ever inform anyone at PwC prior
9 to June 3rd, 2019 that any of the notes might
10 not be collectable?
11 MR. AIGEN: Objection, form.
12 A. He did not.
13 Q. To the best of your knowledge, did
14 Mr. Waterhouse ever inform anyone at PwC prior
15 to June 3rd, 2019 that any of the notes might
16 be forgiven under certain circumstances?
17 A. No, he did not.
18 Q. To the best of your knowledge, did
19 Mr. Waterhouse ever inform anyone at PwC prior
20 to June 3rd, 2019 that any of the notes were
21 amended?
22 A. He did not.
23 Q. To the best of your knowledge, did
24 Mr. Waterhouse ever inform anybody at PwC prior
25 to June 3rd, 2019 that the obligations under

1 BURGER
2 any of the notes would be extinguished upon the
3 fulfillment of certain conditions subsequent?
4 MR. AIGEN: Objection, form.
5 A. He did not.
6 Q. Now, just going to finish up the
7 last set of questions to make it broader for
8 anybody at Highland.
9 To the best of your knowledge, did
10 anyone from Highland ever inform anyone at PwC
11 prior to June 3rd, 2019 that any of the notes
12 might not be collectable?
13 MR. AIGEN: Objection, form.
14 A. Not to my knowledge.
15 Q. To the best of your knowledge, did
16 anyone from Highland ever inform anyone at PwC
17 prior to June 3rd, 2019 that any of the notes
18 might be forgiven under certain circumstances?
19 A. Not to my knowledge.
20 Q. To the best of your knowledge, did
21 anyone from Highland ever inform anyone at PwC
22 prior to June 3rd, 2019 that any of the notes
23 were amended?
24 MR. AIGEN: Objection, form.
25 A. Not to my knowledge.

BURGER
Q. To the best of your knowledge, did anyone from Highland ever inform anyone at PwC prior to June 3rd, 2019 that the obligations under any of the notes would be extinguished upon the fulfillment of certain conditions subsequent?
A. Not to my knowledge.
Q. If PwC had learned before June 3rd, 2019 that any of the notes might not be collectable, would PwC have required that information to be disclosed?
MR. AIGEN: Objection, form.
A. Disclosed or potentially based on materiality financials adjusted.
Q. I'm going to ask that question again.
A. Okay.
Q. If PwC had learned before June 3rd, 2019 that any of the notes that had an outstanding principal amount of at least $1.7 million might not be collectable, would PwC have required that to be disclosed?
A. Correct.
MR. AIGEN: Objection, form.

BURGER
Q. And why is that?
A. If you have a material – if you have material adverse effects of the balance sheet which gives a material adjustment to the financial statements, depending on the type of event you require either disclosure or actual adjustment to the balance sheet.
Q. If PwC had learned before June 3rd, 2019 that any of the notes that had a outstanding principal amount due of at least $1.7 million might be forgiven, would PwC have required that to be disclosed?
A. Yes.
MR. AIGEN: Objection, form.
Q. Is that for the same reasons that you just articulated with respect to the lack of collectability?
A. Correct.
Q. Just two more questions. If PwC learned before June 3rd, 2019 that any of the notes that had an outstanding principal amount of $1.7 million or more, if those notes had been amended, would PwC have required that to be disclosed?

BURGER
MR. AIGEN: Objection, form.
A. We would have.
Q. And finally, if PwC learned before June 3rd, 2019 that any of the notes that had a then outstanding principal amount due of at least $1.7 million would be extinguished based on the fulfillment of certain conditions subsequent, would PwC have required that to be disclosed?
MR. AIGEN: Objection, form.
A. We would have.
Q. Okay.
MR. MORRIS: I have no further questions. Thank you very much, sir.
EXAMINATION
BY MR. AIGEN:
Q. All right. I guess my first question is, how much of a hard stop time is 11:45? I don't mean that for you that can be for counsel.
A. I can go to noon.
Q. I will try – I do not think I'm going to be able to be done by then. I guess at that point we can stop and it is possible

BURGER
John and I can work out stuff on the side. But just for the record, I understand this isn't your problem I just want to note that we were never told there would be this sort of time limit today. Again, not your problem and I just want to reserve all rights if we can't finish today we may have to come back another time. Hopefully not, I will do my best to ask questions.
Let's start with some of the questions you were asked at the end about -- Mr. Morris asked you if you had learned certain things. And he asked you several questions about it, that PwC would have required that information to be disclosed. Do you remember that?
A. Okay.
Q. Yes, you remember that?
A. Yes, I do.
Q. When you say or he said required to be disclosed, what are you talking about, disclosed where and to whom?
A. Typically that would be disclosed in your subsequent events footnotes, but you can

1 BURGER
2 also disclose it in note 9 or 8 in this
3 instance, the relevant note.
4 Q. And those questions were, for
5 instance, one of the questions were do you
6 remember being asked if PwC had learned that
7 the notes might be forgiven PwC would have
8 required that to have been disclosed. Do you
9 remember answering that question?
10 A. Yeah, I do.
11 Q. And I want to focus on this. I know
12 these are Mr. Morris' questions, so it may not
13 have been your language, but you were asked if
14 it might be forgiven.
15 What does that mean to you? Are we
16 talking about is there a difference for you if
17 there was a 1 percent chance that something
18 would be forgiven or a 90 percent change of it
19 being forgiven?
20 A. If we learned about something, let's
21 say, we learned might be forgiven, that would
22 have resulted in additional audit work. The
23 question I understood to be and the answer I
24 gave was if something happened where there was
25 an event that actually occurred before or on

1 BURGER
2 June 3rd, we would have required disclosure.
3 Q. Got it. So is it fair to say that
4 in response to all of Mr. Morris' questions
5 about what would have been required to be
6 disclosed, in your mind he was referring to
7 those events or items having actually occurred
8 and the notes being actually forgiven at that
9 point in time; is that correct?
10 MR. MORRIS: Objection to the form
11 of the question.
12 Q. I didn't hear your answer.
13 A. Correct.
14 Q. So you haven't provided any
15 testimony today about what PwC might have
16 required to be disclosed or disclosed if
17 certain events took place in the future; is
18 that fair to say?
19 MR. MORRIS: Objection to the form
20 of the question.
21 A. That is fair to say, but any events
22 that we learn of may have -- will be assessed
23 for what the impact on the valuation of the
24 loan is.
25 Q. And is it fair to say, then, that

1 BURGER
2 PwC would have to analyze and assess a
3 condition to determine whether it is something
4 this needs to be disclosed?
5 A. Yeah, we will have to analyze it.
6 Q. And how would PwC go about analyzing
7 a potential event that might forgive or
8 discharge the notes?
9 A. It depends on what the event is. It
10 comes down to a function of materiality and
11 probability and understanding the potential
12 event through discussions with management.
13 Again, it depends on the event.
14 Q. Okay. And without knowing the
15 specific event, would you agree that you can't
16 testify today on whether that would need to be
17 disclosed in the financials?
18 MR. MORRIS: Objection to the form
19 of the question.
20 A. Again, the purpose of subsequent
21 event disclosure is to disclose to the reader
22 of the financial statements any events that
23 actually occurred. And if we are aware of
24 something that -- that did not occur but that
25 may have a material adverse effect on the

1 BURGER
2 financial statements, that is something that we
3 would consider for disclosure.
4 Q. And when you say you'd consider it,
5 is it fair that you would analyze the
6 probability that the event would occur?
7 MR. MORRIS: Objection to the form
8 of the question.
9 A. Correct.
10 Q. And would you also --
11 A. Correct.
12 Q. Would you also look at the potential
13 materiality of that event?
14 A. Yes.
15 Q. And with respect to the promissory
16 notes at issue in this litigation, is it fair
17 to say that no one at PwC made any sort of
18 analysis about whether those notes would be
19 potentially discharged due to events that might
20 occur in the future?
21 MR. MORRIS: Objection to the form
22 of the question.
23 A. That is not part of our professional
24 work responsibility to consider potential
25 events that might occur.

BURGER

Q. And the audits that we were talking about were in 2017 and 2018; is that correct?

A. Yeah, conducted in '18 for '17 and conducted in '19 for '18.

Q. Okay. And I just want to ask some general questions about the audits that were done. And to speed things up, I'm going to ask you the questions combining those two years. If you need to break it down per year we can do that, too, but these are pretty general questions.

Can you tell me approximately how many people worked on the audits of Highland at PwC in 2017 and 2018?

A. Again, earlier I said six or seven.

Q. And out of those six or seven, how many people had communications with anyone at Highland?

A. I would argue all of them, all of us.

Q. Okay. And who at Highland did these six or seven people have communications with with respect to the work on the audits?

A. It depends. It depends on the

BURGER

nature of the question. So again, Kristin Hendrix, and actually earlier there is another name Drew Wilson would have been a person that we dealt with on a day-to-day basis. Above them would be Dave Klos and above them would be Frank Waterhouse, the CFO.

So again, if it is a routine matter, our more junior people probably dealt with Kristin and Drew. And if it is not a routine matter and on periodic status meetings, my communication would have probably been more with Dave Klos and my managers.

Q. I apologize. Other than those four, Ms. Hendrix, Mr. Wilson, Mr. Klos and Mr. Waterhouse, is there anyone else at Highland that PwC communicated with as part of the audit that you are aware of?

A. Not that I'm aware of. I mean, there is a chance that they might have had somebody else involved, but not that I can recall.

Q. Have you ever had any conversations with Mr. Dondero?

A. Not specifically relating to any –

BURGER

related to the audit directly.

Q. Do you know whether any of the other people at PwC that worked on the audit had any conversations with Mr. Dondero?

A. Not that I'm aware of.

Q. At the end of Mr. Morris' questions if you remember you were asked several questions about whether you or anyone at PwC had different conversations with anyone at Highland about the notes and them being potentially forgivable or discharged or amended. Do you remember testifying to that?

A. Yeah, I do.

Q. You were asked about conversations you had and you said you had no such conversations; is that correct?

A. Correct.

Q. You also testified that you are not aware of any conversations of anyone else that PwC had with anyone at Highland about this subject; is that correct?

A. That's correct.

Q. Did you – I know you said you're not aware and I guess my question is how do you

BURGER

know that? Did you have any conversations with anyone else at PwC about whether they had any such conversations with anyone at Highland about potential dischargeability of the notes?

A. I would have had discussions with my manager directly through a review of the engagement as we go through all of this. And in this instance depending on the person involved whether it was Hilda or Madeline, we analyze, review as we try to get towards sign-off.

And on this line item, we would have gone through the work done on this note, you know, and the discussion of whether there is any adverse event that anybody is aware of.

Q. These are all the conversations you are aware of during the audit not in the last couple of years; is that correct?

A. Yeah, during the audit.

MR. MORRIS: Objection to the form of the question.

Q. Are you aware of any specific discussions that you had with anyone else at PwC about whether they had any communications

1 BURGER
2 with anyone at Highland about whether the notes
3 were potentially dischargeable or amended?
4 MR. MORRIS: Objection.
5 A. No, I'm not aware.
6 Q. As part of the audit process, is one
7 of the things that PwC looks at who would be
8 reviewing or relying on the financial
9 statements that you are auditing?
10 A. Yes, we consider that.
11 Q. And why is that considered?
12 A. It is important -- well, A, the --
13 the format of our report and obviously just
14 governed by who relies on it. So in other
15 words, if you have a public client with the
16 PCAOB standards where everybody in the public
17 relied on there are additional procedures and
18 additional scope than we have to perform. In a
19 certain sense you can deal with two sets of
20 rules. And the other part of that is
21 considered in who we address our opinion to.
22 Q. And in the case of the Highland
23 audits, did PwC make an effort to determine who
24 would be reviewing and relying on the audits,
25 audited financial statements?

1 BURGER
2 A. Yes. As this is a partnership, it
3 is generally available to the general partner
4 and the partners. And there wasn't any
5 specific need that we were aware of with
6 third-party lenders or banks or anything that
7 we are relying on financials.
8 Q. Is who is going to end up reviewing
9 and relying on a financial statement relevant
10 to what PwC considers to be material and thus
11 need to be disclosed?
12 MR. MORRIS: Objection to the form
13 of the question, asked and answered.
14 A. No, sorry.
15 Q. Then what is the relevance -- sorry.
16 If it is -- if who is going to
17 review a financial statement is not relevant to
18 what is going to be disclosed, why is it
19 relevant to the work that PwC is doing?
20 A. We perform audits either in terms of
21 GAAS as promulgated by AICPA or PCAOB, and
22 there are differences in those standards.
23 And a correction to your previous
24 question, on materiality the basis for forming
25 a point of view on what is material is not

1 BURGER
2 different, but there are certain nuances in our
3 obligation of neutrality as to whether I'm in a
4 PCAOB engagement or a AICPA engagement.
5 Q. What do you mean by that?
6 A. So when we decide -- you get to an
7 overall materiality. So if you for example,
8 are in a fund engagement you can use different
9 metrics as to whether you are in, let's say, a
10 hedge fund or a mutual fund, which is driven by
11 the users of the financials.
12 MR. WANDER: It is a difference
13 between public and private, Michael.
14 Q. And this would be a private
15 transaction we're calling it; is that correct?
16 A. Yes, governed -- sorry, not
17 governed, performed. Performed under the
18 standards of the AICPA and not the PCAOB.
19 Q. And would those standards make a
20 difference on what is considered material as
21 part of PwC's work?
22 A. Depending on the industry, it may.
23 Q. And would those differences
24 potentially make a difference on what needed to
25 be disclosed in the financial statements?

1 BURGER
2 A. Yeah. The standards from a PCAOB
3 the asset and disclosure requirements under the
4 PCAOB rules, which would not be there under
5 AICPA.
6 Q. Changing topics a little bit here.
7 We talked about related-party transactions a
8 little earlier. Do you remember?
9 A. Sure, I do.
10 Q. Not we, you and Mr. Morris. Can you
11 just generally at a high level explain what a
12 related-party transaction is?
13 A. So related-party I cannot -- I
14 cannot quote the verbatim GAAP or GAAS
15 definition right now, but in effect the
16 related-party is any party that up or down the
17 stream can have material influence or control
18 of the entity. So it would be key management,
19 anybody in an ownership structure upstream
20 which has significant interest or control as
21 well as even -- it can be in certain
22 circumstances, certain service providers.
23 Q. Let's concentrate on notes for a
24 second. There can be --
25 A. Okay.

BURGER
Q. – related-party notes and then what would you call them non-related-party notes if they're not related-party notes? Is there a term for that?
MR. MORRIS: Objection to form of the question.
A. Third party, unaffiliated.
Q. When analyzing the collectability of notes, is there any differences in what PwC was doing looking at affiliated – non-affiliated transaction notes versus related-party notes?
MR. MORRIS: Objection to the form of the question.
A. Not really.
Q. You say "not really," that can –
A. Yeah, not – no, there isn't, because at the end of the day whether a note is collectable or not is something that you have to get evidence of, and the existence of the note is something you have to get evidence of.
Q. I think I can finish up with a couple more questions here. I just want to sort of go back to what we talked about in the beginning. PwC did not do any sort of analysis

BURGER
as to whether the notes in question would be potentially forgiven or discharged; is that correct?
MR. MORRIS: Objection to the form of the question.
MR. AIGEN: What is your basis for the objection?
MR. MORRIS: It is not their responsibility to do that. There is no foundation.
Q. That is fine, you can answer the question.
A. No, we did not as we did not have to.
Q. If PwC had learned that there was some condition down the road that could potentially discharge or forgive the notes, would PwC have had to do some sort of analysis to determine if that condition would need to be disclosed?
A. Yes, if you become aware of any adverse event which may impact the valuation of any asset you have to consider that.
Q. And in order to consider that, you

BURGER
would look at the probability that that event would occur; is that correct?
A. Correct, probability and potential impact.
Q. And materiality?
A. Materiality.
Q. And that is nothing that you or anyone at PwC did with respect to any potential conditions that might forgive these notes; is that correct?
A. Yeah, we did not. Yeah, we did not.
MR. AIGEN: That is all the questions I have.
FURTHER EXAMINATION.
BY MR. MORRIS:
Q. I just have a few more, sir, few follow-ups.
PwC made no assessment as to whether or not any of the notes might not be forgiven because they were never given any information that indicated that that was even possible; correct?
MR. AIGEN: Objection, form.
A. That's correct.

BURGER
Q. PwC was never given any information about the possibility that any of the affiliated promissory notes might be forgiven; correct?
A. Correct.
Q. PwC was never informed that Mr. Dondero had entered into an agreement that could impact the collectability of any of the promissory notes; correct?
MR. AIGEN: Objection, form.
A. Correct.
MR. MORRIS: I have no further questions.
MR. AIGEN: I don't have anything.
MR. MORRIS: Mr. Burger, I greatly appreciate your time and your patience.
Thank you very much, John, same to you. Thank you for the accommodations and I hope –
MR. WANDER: Certainly, thank you.
(Deposition adjourned at 11:41 a.m.)

1 BURGER
2 _____
3 PEET BURGER
4
5 Subscribed and sworn to before me
6 this day of 2021.
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1 BURGER
2 C E R T I F I C A T E
3
4 I, SUSAN S. KLINGER, a certified
5 shorthand reporter within and for the State
6 of Texas, do hereby certify:
7 That PEET BURGER, the witness whose
8 deposition is hereinbefore set forth, was
9 duly sworn by me and that such deposition
10 is a true record of the testimony given by
11 such witness.
12 I further certify that I am not
13 related to any of the parties to this
14 action by blood or marriage; and that I am
15 in no way interested in the outcome of this
16 matter.
17 IN WITNESS WHEREOF, I have hereunto
18 set my hand this 30th of July, 2021.
19
20 _____
21 Susan S. Klinger, RMR-CRR, CSR
22 Texas CSR# 6531
23
24
25

1 ERRATA SHEET
2 Case Name:
3 Deposition Date:
4 Deponent:
5 Pg. No. Now Reads Should Read Reason
6 ___ ___ _____ _____ _____
7 ___ ___ _____ _____ _____
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19 ___ ___ _____ _____ _____
20
_____
21 Signature of Deponent
22 SUBSCRIBED AND SWORN BEFORE ME
23 THIS ____ DAY OF _____, 2021.
24 _____
25 (Notary Public) MY COMMISSION EXPIRES:_____

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EXHIBIT 95

1

2 IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
3 DALLAS DIVISION

IN RE:)
4) CHAPTER 11
HIGHLAND CAPITAL)
5 MANAGEMENT, L.P.,) CASE NO.
) 19-34054-sgj11
6 Debtor.)
_____)
7
HIGHLAND CAPITAL)
8 MANAGEMENT, L.P.,)
) Adversary Proceeding
9 Plaintiff,) No. 20-3190-sgj11
)
10 v.)
)
11 JAMES D. DONDERO,)
)
12 Defendant.)
_____)
13

14 REMOTE VIDEO-RECORDED DEPOSITION OF

15 JAMES D. DONDERO

16 TUESDAY, JANUARY 5, 2021

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23 REPORTED BY:

24 MICHAEL E. MILLER, FAPR, RDR, CRR

25 JOB NO. 188154

Tuesday, January 5, 2021
9:50 a.m. CST

REMOTE ORAL VIDEO-RECORDED DEPOSITION OF JAMES D. DONDERO, held via Zoom conference pursuant to the Federal Rules of Civil Procedure before Michael E. Miller, Fellow of the Academy of Professional Reporters, Registered Diplomate Reporter, Certified Realtime Reporter and Notary Public in and for the State of Texas.

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ALSO PRESENT:
La Asia Canty, Paralegal
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VIDEOGRAPHER:
Rick Richey, TSG Reporting Inc.

1
2 ———
3 PROCEEDINGS
4 January 5, 2021, 9:50 a.m. CST
5 ———
6 THE VIDEOGRAPHER: Good morning,
7 ladies and gentlemen. My name is Rick Richey.
8 I'm a legal videographer in association with
9 TSG Reporting Inc.
10 Due to the severity of the COVID-19
11 and following the practice of social distancing,
12 I will not be in the same room with the witness.
13 Instead, I will record this videotaped deposition
14 remotely.
15 The court reporter, Mike Miller, also
16 will not be in the same room and will swear the
17 witness remotely.
18 Do all parties stipulate to the
19 validity of this video recording and remote
20 swearing and that it will be admissible in the
21 courtroom as if it had been taken following Rule
22 30 of the Federal Rules of Civil Procedure and
23 the state rules where the case is pending?
24 Do all agree?
25 MR. MORRIS: Yes.

1
2 MR. BONDS: Yes.
3 MR. MORRIS: Does anyone not agree?
4 (Pause.)
5 MR. MORRIS: Having heard nothing,
6 let's proceed. Thank you.
7 THE VIDEOGRAPHER: This will be the
8 start of Media No. 1 in the video-recorded
9 deposition of James Dondero. Today's date is
10 January 5th, 2021. It's 9:52 a.m. Central
11 Standard Time.
12 The case is In re Highland Capital
13 Management LP, Debtor, Chapter 11, Case
14 No. 19-34054-sgj11 in the United States
15 Bankruptcy Court for the Northern District of
16 Texas, Dallas Division.
17 The attorneys' appearances have
18 already been noted on the steno record, so would
19 the court reporter please swear the witness.
20 MR. BONDS: Wait just one second.
21 There's an adversary proceeding that this case is
22 actually -- or this deposition is actually being
23 taken in. It's 20-03190-sgj. Thank you.
24 ///
25 ///

1 J. DONDERO
2 ———
3 JAMES D. DONDERO,
4 having been duly sworn,
5 testified as follows:
6 ———
7 EXAMINATION
8 ———
9 BY MR. MORRIS:
10 Q. Good morning, Mr. Dondero. Can you
11 hear me okay?
12 A. Yes.
13 Q. Okay. My name is John Morris from
14 Pachulski Stang Ziehl & Jones, counsel for the
15 debtor.
16 Where are you located this morning,
17 sir?
18 A. Highland Capital Management's
19 conference room, same as last time.
20 Q. Is there anybody in the room with you
21 right now?
22 A. No.
23 Q. Do you have a telephone with you?
24 A. Yes.
25 Q. Is the phone off?

1 J. DONDERO
2 A. Yes.
3 Q. Are you aware that the debtor sent a
4 letter to your lawyers instructing you not to be
5 on the premises after December 31st, 2020?
6 A. Yes.
7 Q. Did you get the debtor's permission
8 to enter the premises this morning?
9 A. Implicitly for this depo, I believe.
10 Q. Okay. Did you get any explicit
11 consent or approval for you to be in the offices
12 this morning?
13 A. Not that I'm aware of.
14 Q. Did you ask or did anybody on your
15 behalf ask the debtors if you could participate
16 in today's deposition at the Highland offices?
17 A. I don't know.
18 Q. You're not aware of that, right?
19 A. Correct.
20 Q. Okay. John Bonds is defending you
21 today; is that right?
22 A. Yes.
23 Q. And he's at the Bonds Ellis firm,
24 right?
25 A. Yes.

J. DONDERO

Q. And the Bonds Ellis firms represents you in your individual capacity, correct?
A. Yes.
Q. Is there any other law firm that represents you in your individual capacity in the Highland bankruptcy or in the adversary proceeding?
A. I don't believe so.
Q. Okay. Does the Bonds Ellis firm represent any entity in which you have an ownership or control interest, or do they just represent you in your individual capacity?
A. I don't know for sure.
Q. Okay. But as you sit here right now, do you have any reason to believe that the Bonds Ellis firm represents anybody other than you in your individual capacity in connection with the bankruptcy case?
A. I don't know.
Q. Okay. You understand that we're here today for your deposition, right?
A. Yes.
Q. And do you understand that today's deposition is being taken in connection with the

J. DONDERO

debtor's motion for -- (audio malfunction) --
(Clarification requested by the stenographer.)
MR. MORRIS: I'll ask it again.
BY MR. MORRIS:
Q. Mr. Dondero, do you understand that today's deposition is being taken in connection with the debtor's motion for preliminary injunction against you?
A. Yes.
Q. Do you intend to participate in the hearing on the debtor's motion for preliminary injunction?
MR. BONDS: Objection, form.
MR. MORRIS: You can answer.
A. I don't know.
BY MR. MORRIS:
Q. Do you intend to make -- do you intend to testify at the debtor's hearing for preliminary injunction?
MR. BONDS: Objection, form.
A. I don't know.
BY MR. MORRIS:
Q. You may or you may not; is that

J. DONDERO

right?
A. Yes.
Q. Okay. Are you on any drugs or any medication right now?
A. No.
Q. Is there anything that you're aware of that might affect your memory today?
A. No.
Q. Are you aware of anything that would prevent you from testifying competently today to the best of your ability?
A. No.
Q. You understand that you're under oath right now?
A. Yes.
Q. Are you aware that on December 10th the debtor obtained a temporary restraining order against you?
A. Roughly.
Q. Okay. Did you ever personally read a copy of the temporary restraining order?
A. No.
Q. So you've never seen the order itself; is that right?

J. DONDERO

MR. BONDS: Objection, form.
A. Correct.
BY MR. MORRIS:
Q. Do you have an understanding of what the order restrains you from doing?
A. Just in the most general sense.
Q. Tell me your understanding of what the temporary order restrains you from doing.
A. Talking to the independent board directly or talking directly to Highland employees.
Q. Is there any other aspect of the temporary restraining order that you're aware of that would otherwise constrain or restrain your conduct?
A. Those are the points I remember.
Q. Do you recall that before the Court entered the temporary restraining order, it held a hearing to consider the debtor's request?
A. I -- I don't know.
Q. Did you listen to the hearing?
A. No.
Q. Did you read a transcript of the hearing?

J. DONDERO

A. No.

Q. Do you respect the Court's authority in this case?

MR. BONDS: Objection, form.

A. Yes.

BY MR. MORRIS:

Q. Is there any particular reason why you didn't take the time to read the Court's temporary restraining order that was entered against you?

A. No.

Q. James Seery is a member of the board of Strand Advisors, the debtor's general partner, right?

A. Yes.

Q. And you've been aware of that since at least last January, correct?

A. Yes.

Q. And you're also aware that Mr. Seery is the debtor's CEO and CRO, right?

A. Yes.

Q. And you've been aware of that since last July, correct?

A. Yes.

J. DONDERO

Q. Did you ever review the declaration that Mr. Seery submitted in connection with the debtor's motion for a temporary restraining order against you?

MR. BONDS: Objection, form.

A. No.

BY MR. MORRIS:

Q. Do you know what Mr. Seery alleged in his declaration -- withdrawn.

Do you know the substance of what Mr. Seery alleged in his declaration in support of the debtor's motion for the TRO?

A. No.

Q. Did you care that the debtor was seeking a TRO against you?

A. I didn't think about it.

Q. Have you thought about it since the order was entered?

A. Not really.

Q. Okay. You didn't submit a declaration of your own in opposition of the motion for TRO, right?

A. I don't know.

Q. You don't recall signing anything, do

J. DONDERO

you?

A. I've signed a lot of things, but I'm -- I don't recall an opposition.

Q. Let's talk about some of the events that led to the entry of the TRO.

The debtor serves -- (audio malfunction) --

(Clarification requested by the stenographer.)

THE WITNESS: I didn't touch the microphone at this end and it's six inches or eight inches from my mouth.

MR. MORRIS: Yeah, let's try again, Mr. Dondero. Thank you.

BY MR. MORRIS:

Q. The debtor serves as the portfolio manager for certain collateralized loan obligation vehicles; isn't that right?

A. I don't want to testify to that.

Q. Does the -- does the debtor manage CLOs?

MR. BONDS: Objection, form.

MR. MORRIS: Withdrawn.

///

J. DONDERO

BY MR. MORRIS:

Q. Can we agree that CLO stands for collateralized loaning obligations?

A. Yes.

Q. Okay. And does the debtor -- is the debtor party to certain contracts that gives it the right and responsibility to manage certain CLO vehicles?

MR. BONDS: Objection, form.

MR. MORRIS: You can answer.

A. Yes.

BY MR. MORRIS:

Q. And you're aware of that because you personally signed some of those contracts and agreements, right?

A. I don't know.

Q. Okay. NexPoint Advisors LP, are you familiar with that firm?

A. Yes.

Q. That's an advisory firm; is that right?

A. Yes.

Q. And we'll just refer to that as NexPoint; is that okay?

J. DONDERO

A. Yes.

Q. You have a direct or indirect economic or ownership interest in NexPoint, correct?

MR. BONDS: Objection, form.

MR. MORRIS: You can answer.

A. Yes.

BY MR. MORRIS:

Q. You're the president of NexPoint, correct?

A. I believe so.

Q. And you own NexPoint's general partner; is that right?

A. I don't know.

Q. Do you know who owns NexPoint's general partner?

A. No.

Q. As the president of NexPoint, is it fair to say that you control that entity?

A. Generally.

Q. Highland Capital Management Fund Advisors LP, are you familiar with that firm?

A. Yes.

Q. And that's also an advisory firm,

J. DONDERO

correct?

A. Yes.

Q. And we'll refer to that firm as Fund Advisors; is that fair?

A. Sure.

Q. And we'll refer to Fund Advisors and NexPoint together just as "the advisors"; is that fair?

A. I think you should be more specific than that, but --

Q. Okay. I apologize. Are you finished?

If at any time I ask a question and you don't understand, will you let me know that?

A. Yes.

Q. Okay. You have a direct or indirect economic or ownership interest in Fund Advisors, correct?

A. Yes.

Q. You're the president of Fund Advisors; is that true?

A. I believe so.

Q. And you own Fund Advisors' general partner; is that right?

J. DONDERO

A. I don't believe I own as much of it as I own of NexPoint, but I don't know the numbers.

Q. Okay. As one of the two beneficial owners of Fund Advisors and as the president of Fund Advisors, is it fair to say that you control that entity?

A. Yes.

Q. Okay. And Fund Advisors and NexPoint manage certain investment funds; is that right?

A. I'm sorry, I missed the point of that question.

Q. Didn't hear? Okay.

Fund Advisors, which we've talked about, and NexPoint, which we've talked about, those two entities manage certain investment funds; is that right?

A. Yes.

Q. And one of the investment funds that the advisors manage is Highland Income Fund. Do I have that right?

A. Yes. I'm not sure which fund that is, but yes, that's -- that's one of them.

Q. Are you the portfolio manager of the

J. DONDERO

Highland Income Fund?

A. I believe so.

Q. Do you hold any titles at the Highland Income Fund other than portfolio manager?

MR. BONDS: To the extent you know. Don't speculate.

A. I don't -- I don't know. I know I'm portfolio manager on virtually all of the funds.

BY MR. MORRIS:

Q. Is there any fund that you're not the portfolio manager for that you're aware of?

A. I don't know.

Q. Are you the portfolio manager of NexPoint Capital Inc.?

A. If that name refers to a fund, I believe so.

Q. Okay. You're not sure if that refers to a fund?

A. There's a fund with the symbol NHF. If that's the name -- which I don't think you have the exact name. If that's the name of it, then I believe -- I believe I'm the portfolio manager. The name that you just gave sounded

J. DONDERO

more like a holding company name or a subsidiary name for NexPoint. If it's not a fund, I'm not the portfolio manager. If it is a fund, I believe I am.

Q. Okay. Do you hold -- are you familiar with an entity called NexPoint Capital Inc.?

A. No.

Q. Okay. How about NexPoint Strategic Opportunities Fund, is that a fund that is managed by one of the advisors?

A. I believe that's the name for NHF. That's what I thought you were referring to. That's the one that's a fund, and that's the one that I'm portfolio manager on.

Q. Okay. Do you hold any titles at NexPoint Strategic Opportunity Fund other than portfolio manager?

A. I don't know.

Q. The advisors caused each of the funds to invest in certain CLOs that are managed by the debtor, right?

MR. BONDS: To the extent you know. Don't speculate.

J. DONDERO

MR. MORRIS: John, if there's an objection, I welcome it. If there's a direction not to answer, I welcome it. But what I don't welcome is guiding the witness. If he doesn't remember, he's done this so many times, he knows what he's doing.

You want me to ask the question again, Mr. Dondero?

THE WITNESS: Please.

BY MR. MORRIS:

Q. The two advisors that we talked about, they manage funds, right?

A. Yes.

Q. And those funds have invested in certain CLOs that are managed by the debtor, correct?

A. The problem I have with that question and the part that I don't want to testify as agreeing to or acknowledging is that the debtor manages those CLOs, because I won't testify to the debtor being in good standing, and I won't testify to the debtor not being in default, and I won't testify to the debtor having the capability to manage those CLOs --

J. DONDERO

Q. Will you -- I'm sorry to interrupt. Go ahead.

A. No, I mean, that's -- so I won't -- I won't testify affirmatively to the second half of that question.

Q. Okay. But you will admit, won't you, that the debtor has -- is party to contracts that give it the right to manage CLOs in which the advisors caused the funds to invest, right?

MR. BONDS: Objection, form.

MR. MORRIS: You can answer.

A. The beginning and end of what I want to testify to is that the advisor is parties -- party to contracts. The contracts have -- provide the ability to manage assets in the CLO subject to a bunch of different things, subject to not being in default, subject to the ability, subject to the capability and being registered advisor, et cetera, et cetera.

I don't want to have any testimony that implies that the advisor is in good standing or able or capable of managing those CLOs or that Jim Seery is even an investment professional.

///

J. DONDERO

BY MR. MORRIS:

Q. Okay. I think I understand.

When you used the word "advisor" in your last answer, you were referring to the debtor; is that right?

MR. BONDS: Objection, form.

BY MR. MORRIS:

Q. It's the debtor that has -- let me try again.

It's the debtor that has the contracts with the CLO, right?

A. Yes.

Q. But it's your contention that the debtor is in default and that Mr. Seery and the debtor otherwise don't have the capability to manage the CLOs. That's what you're saying, right?

A. I don't want to argue, and it's for the lawyers and the Court to decide, but I don't want to be affirmatively acknowledging that Seery's an investment professional. I don't want to be affirmatively acknowledging that he has any employees and staff when he's told them all they're being terminated in the next few weeks.

J. DONDERO

I don't want to acknowledge that he is in compliance and can operate those contracts if I believe those contracts are in default because, A, the advisor's in bankruptcy, and B, none of the key man provisions are being adhered to by the advisor.

I don't want to in any form or fashion acknowledge or represent or somehow be twisted into testifying that he is in good standing or has the ability to manage those CLOs. It may be found by somebody that he is, but I don't want to be in any way inferred to be sanctioning it.

Q. Okay. Are you aware – have any of the contracts pursuant to which the CLOs and the debtor are the parties, have any of those contracts been terminated, to the best of your knowledge, since the petition date?

A. I believe they're subject to stays, among other things, but I'm not – I'm not a lawyer.

Q. Has anybody sought to lift the stay in order to terminate the contracts, to the best of your knowledge?

J. DONDERO

A. I don't know where – I don't know.

Q. Has any of the CLOs ever contended that the debtor was in breach in their agreement?

A. I believe the beneficial holders have.

Q. I understand that --

A. But I don't know -- I don't know if the CLOs have.

Q. Okay. I'm asking you a different question, and just answer my question.

To the best of your knowledge, has any CLO contended that the debtor is in breach of any of the agreements that they have between them?

MR. BONDS: Objection, form.

A. I don't know.

BY MR. MORRIS:

Q. You're not aware of any such contention, right?

A. I don't know.

Q. You're not aware of any contention by the CLOs that the debtor is in default under any CLO contract, correct?

MR. BONDS: Objection, form.

J. DONDERO

A. I don't know regarding the CLOs.

BY MR. MORRIS:

Q. Did you ever ask them? Withdrawn.

Did you ever ask anybody on behalf of the CLOs whether they were going to declare a default under the CLO management agreements?

MR. BONDS: Objection, form.

A. I don't know.

BY MR. MORRIS:

Q. You don't know if you asked? I'm just asking you if you ever asked the question.

A. Not of the CLOs. Those questions were asked regarding the beneficial owners, and I think the beneficial owners did that, but I didn't have direct knowledge or contact with the CLOs.

Q. Okay. And the beneficial owners are not parties to the CLO management agreements between the CLOs and the debtor, correct?

MR. BONDS: Objection, form.

A. I don't want to draw a legal conclusion of the rights of the beneficial owners and the people who have the risk and the people who have the ultimate decision authority whether

J. DONDERO

or not they can be circumvented or ignored by an intermediate nonfinancial – nonfinancially interested party. I don't want to – I don't want to speculate on that.

MR. MORRIS: Okay. I move to strike.

And I'm not asking for a legal conclusion; I'm asking for your understanding.

BY MR. MORRIS:

Q. Is it your understanding that beneficial owners are parties to the CLO management agreements between the debtor and the CLOs?

MR. BONDS: Objection to form.

MR. MORRIS: You can answer.

A. I think that asks for a legal conclusion.

BY MR. MORRIS:

Q. It does not. I'm asking you as a factual matter based on your understanding as the portfolio manager of the funds and the president of the advisors who made these investments. I'm asking you –

MR. BONDS: Objection, form.

///

J. DONDERO
BY MR. MORRIS:
Q. – in that capacity.
In that capacity, do you have any understanding that the beneficial owners are parties to the CLO management agreements between the debtor and the CLOs?
MR. BONDS: Objection, form.
A. My understanding is that the beneficial owner should always be considered.
MR. MORRIS: Okay. I move to strike. I'm not asking you whether they should be considered.
BY MR. MORRIS:
Q. I'm asking you very specifically whether you believe that they are parties to the contract.
MR. BONDS: Objection, form, asked and answered.
A. Yeah, I believe you're asking me for a legal conclusion, and I won't give one.
BY MR. MORRIS:
Q. Okay.
MR. MORRIS: La Asia, can we please put up Exhibit 1. Let's share the screen and put

J. DONDERO
up Exhibit 1.
(Dondero Deposition Exhibit 1 marked.)
BY MR. MORRIS:
Q. Mr. Dondero, I appreciate that it's difficult to do this remotely, and as we discussed last time, the one thing that I'm certainly not doing today is playing gotcha with documents.
So I'm going to put documents up on the screen from time to time, and to the extent that you think you need to read more of the document in order to have full context, will you let me know that?
A. Sure.
Q. Okay. This is a letter dated October 16th from NexPoint to Mr. Seery.
Do you see that?
A. Yep.
Q. Okay. Are you familiar with this document? Have you ever seen it before?
A. Generally. I'm generally familiar with it, but I haven't seen it before.
Q. Okay. Do you recall when you first

J. DONDERO
learned that this document was sent? Was it at or around the time the document was sent?
A. It was at or around the time, yes.
Q. Did you discuss with NexPoint any of the substance that is in this letter? And again, I'm happy to scroll through it if that would be helpful.
MR. BONDS: Objection, form.
A. Just generally.
BY MR. MORRIS:
Q. Did you – I don't want to know about any conversations, but did you speak with anybody at K&L Gates about this particular letter, just yes or no?
A. My primary conversation was with internal counsel. K&L Gates might have been on some phone call or two.
Q. Okay. Whose idea was it to send this out?
MR. BONDS: Objection, form.
A. Whose idea? I – I don't think anybody viewed it as an idea as much as a regulatory necessity.
///

J. DONDERO
BY MR. MORRIS:
Q. And did you authorize the sending of this particular letter?
A. Not specifically.
Q. Did you generally support the sending of the letter?
A. Yes.
Q. And you knew the letter was being sent; is that fair?
A. Yes.
Q. And you didn't object to the sending of this letter, right?
A. I did not object.
Q. Okay. And since learning that the letter was sent, have you ever directed NexPoint to withdraw the letter?
A. No.
Q. You have the power to do that, don't you, sir?
A. I – I don't believe so. When the chief compliance officer believes it's a breach of regulatory compliance, the chief compliance officer in financial institutions has personal liability, and I don't believe that other C-suite

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executives can overrule the chief compliance officer.

Q. Who is the chief compliance officer?

A. Jason Post.

Q. Did Mr. Post ever say that he would not withdraw the letter because of regulatory compliance?

MR. BONDS: Objection, form.

A. I – not that I know of.

BY MR. MORRIS:

Q. Did you ever discuss with Mr. Post whether or not this letter should be withdrawn?

A. Again, I didn't believe I had the authority to.

Q. Okay. And he never told you that he couldn't; that's just the implicit conclusion that you drew because he was the chief compliance officer; is that fair?

A. Implicit conclusion? It's more the understanding I have of compliance from having lived it the last 20 years.

MR. MORRIS: Okay. Let's put up Exhibit 2, please.

(Dondero Deposition Exhibit 2

J. DONDERO

marked.)

MS. CANTY: Do you see it, John?

MR. MORRIS: I think we still have Exhibit 1.

MS. CANTY: Okay. Give me a second.

BY MR. MORRIS:

Q. Okay. This is another letter that was sent by NexPoint to Mr. Seery, this one dated November 24, 2020.

Do you see that, sir?

A. Yes.

Q. And you saw this letter at or around the time it was sent, right?

A. I didn't see the letter specifically, but I'm aware of it.

Q. And you knew it was going to be sent; is that fair?

A. Yes.

Q. And did you authorize this letter to be sent on behalf of the advisors and the funds that are listed there?

MR. BONDS: Objection, form.

A. Let me give the consistent testimony I gave last time. It wasn't an authorization. I

J. DONDERO

was aware of it. It was, I believe, a continued regulatory breach from the standpoint of the – of compliance that drove the letter.

BY MR. MORRIS:

Q. When there's a regulatory breach, is there an obligation to alert anybody other than the portfolio manager?

A. I know that's being investigated. I don't know the answer regarding a breach like this.

Q. Are you aware of any notification that NexPoint made to anybody in the world, other than Mr. Seery, with respect to the matters set forth in Exhibit 1 and Exhibit 2?

MR. BONDS: Objection, form.

A. I don't know, and I'm not in a position to comment at this point.

BY MR. MORRIS:

Q. I'm just asking you if you know whether – I'm asking for your knowledge.

Do you know whether NexPoint ever advised anybody, other than Mr. Seery, of the allegations that are set forth in Exhibit 1 and Exhibit 2?

J. DONDERO

MR. BONDS: Objection, form.

A. I don't know, nor would I necessarily be informed if compliance self-reports this to the SEC or other regulatory bodies. But I do not know.

BY MR. MORRIS:

Q. And nobody told you that, right?

A. I don't know.

Q. Is there – did you see any written analysis or memorandum that was prepared by your – by the chief compliance officer with respect to the matters set forth in Exhibit 1 and Exhibit 2?

A. I know there was a multipage analysis that was done, but I've never seen it.

Q. And was it written by the chief compliance officer or was it written by legal staff?

A. I was told he did it in conjunction with external counsel.

Q. But you've never seen it?

A. I've never seen it.

Q. Did you support the sending of this letter?

J. DONDERO

A. Yes.

Q. Since learning that this letter was sent, have you directed NexPoint to withdraw this letter?

A. No, I have not.

Q. Okay. Around Thanksgiving you learned that Mr. Seery was seeking to sell certain securities that were owned by certain CLOs managed by the debtor, right?

A. I believe I was informed after the fact.

Q. You were informed that certain sales of securities owned by the CLOs were being sold at Mr. Seery's direction, right?

A. Yes.

MR. BONDS: Objection, form.

BY MR. MORRIS:

Q. Okay. And at around that time, once you learned that, you personally intervened to stop those trades, right?

MR. BONDS: Objection, form.

A. Yes.

MR. MORRIS: Can we put up Exhibit 3, please.

J. DONDERO

(Dondero Deposition Exhibit 3 marked.)

BY MR. MORRIS:

Q. This is an e-mail string. We're going to start at the bottom and work up, just so we can get it in order. And you'll see the bottom begins with an e-mail from Hunter Covitz.

Do you see that?

A. Yes.

Q. Who is Mr. Covitz?

A. Covitz, Hunter Covitz manages our CLO asset -- or our CLO assets, primarily.

Q. Is he a High- -- is he a debtor employee or is he employed by any other entity?

A. I believe he's a debtor employee.

Q. Okay. Do you see there's a reference there to gatekeeper@hcmlp.com?

A. Yes.

Q. Are you -- withdrawn.

Is that -- withdrawn.

Is it your understanding that that's kind of a basket of different e-mail addresses that are held together by the Gatekeeper address?

A. I wouldn't describe it that way, but

J. DONDERO

it is a bucket of e-mails.

Q. Okay. And is your e-mail address or was your e-mail address included within Gatekeeper?

A. Historically, it was.

Q. And do you know when that stopped being the case?

A. I do not know.

Q. Was it after the time that you resigned from your position at the debtor?

A. I do not know.

Q. Okay. Matt Pearson is below Gatekeeper. Do you know who Mr. Pearson is?

A. He is a -- generally an equity trader that works for Joe Sowin.

Q. And are Mr. Pearson and Mr. Sowin employees of the debtor?

A. I don't believe so. I don't believe Joe is. I don't know if Matt is. I don't know.

Q. Okay. But is it fair to say that pursuant to this e-mail, Mr. Covitz is giving direction to sell certain securities held by the CLOs?

A. Yes.

J. DONDERO

Q. Can we scroll to the e-mail above that, please. And then Mr. Pearson acknowledged that e-mail a little bit later in the day, right?

A. Yes.

Q. Okay. And if we can --

(Interruption by the videographer.)

MR. MORRIS: It's okay. Let's proceed and we'll do the best we can.

BY MR. MORRIS:

Q. Mr. Covitz's e-mail was the -- do you see the subject matter is Sky Equity?

A. Yes.

Q. And do you have an understanding of what Sky Equity refers to?

A. It's a -- it's a post-restructured equity that the funds have held for years.

Q. Okay. So if we could scroll up to your e-mail that's right there, did you receive a copy of Mr. Covitz's original e-mail?

A. It appears so.

Q. Okay. And did you give the instruction to the recipients of Mr. Hunter Covitz's e-mail not to sell the Sky Equity as had been instructed by Mr. Seery?

1 J. DONDERO
2 A. Yes.
3 Q. And you understood at the time that
4 you gave the instruction to the people on this
5 e-mail that they were trying to execute trades
6 that Mr. Seery had authorized, right?
7 MR. BONDS: Objection, form.
8 THE WITNESS: Can you repeat the
9 question, please.
10 MR. MORRIS: Sure.
11 BY MR. MORRIS:
12 Q. At the time that you gave the
13 instruction, no, do not, you knew that you were
14 stopping trades that had been authorized and
15 directed by Mr. Seery, correct?
16 A. Yes.
17 Q. Did you speak with Mr. Seery before
18 instructing the recipients of your e-mail not to
19 execute the SKY transactions?
20 A. No, I did not.
21 Q. Did you take any steps to seek the
22 debtor's consent before instructing the
23 recipients of this e-mail not to execute the SKY
24 transactions?
25 A. I'm sorry, please repeat that again.

1 J. DONDERO
2 The -- I missed the first part of the sentence.
3 Q. No problem.
4 Did you take any steps to seek the
5 debtor's consent before instructing the
6 recipients of your e-mail --
7 MR. BONDS: Objection, form.
8 BY MR. MORRIS:
9 Q. -- to stop the SKY transactions, to
10 stop executing the SKY transactions?
11 A. No.
12 Q. Thank you.
13 Can we scroll up to the response.
14 Okay. Stop there.
15 Mr. Pearson responded later that
16 afternoon. Do you see that?
17 A. Yes.
18 Q. And in response, he canceled all of
19 the SKY and AVYA sales that the debtor had
20 directed but which had not yet been executed,
21 right?
22 A. Yes.
23 Q. And if we can scroll up to the e-mail
24 above that, you responded to that as well, didn't
25 you?

1 J. DONDERO
2 A. Yep.
3 Q. Can you please read your response out
4 loud.
5 A. HFAM and DAF -- or HFAM and DAF has
6 instructed Highland in writing not to sell any
7 CLO underlying assets. There is potential
8 liability. Don't do it again, please.
9 Q. All right. The written instructions,
10 is that a reference to the first two exhibits
11 that we looked at? And if you want to go back
12 and check them out, we can, but I'm trying to --
13 I want to know what writings you're referring to.
14 Withdrawn.
15 Are the writings that you're
16 referring to the two exhibits that we just looked
17 at, Exhibit 1 and Exhibit 2?
18 MR. BONDS: Objection, form.
19 A. Generally, yes.
20 BY MR. MORRIS:
21 Q. Are you --
22 A. I don't know if -- I don't know if
23 there were more than those two, but generally,
24 letters of those substances -- well, generally,
25 letters of those substance -- of that substance

1 J. DONDERO
2 is what I'm referring to.
3 Q. I appreciate that, Mr. Dondero.
4 Do you recall any other writings that
5 you were referring to at the time you sent this
6 e-mail?
7 A. I'm just saying I don't know if there
8 were others or if there were other e-mails. I
9 don't know. But there were -- they would have
10 been similar in terms of substance as those two.
11 Q. Okay. Do you see the reference there
12 in the latter portion of your e-mail, quote,
13 there is potential liability, don't do it again?
14 A. Yes.
15 Q. Who was the intended recipient of
16 that message?
17 A. At this juncture, it's to Matt
18 Pearson, I believe.
19 Q. And why would Matt Pearson have
20 personal liability -- withdrawn.
21 Why did you decide to tell
22 Mr. Pearson that he had potential liability for
23 executing the transactions that Mr. Seery had
24 directed?
25 MR. BONDS: Objection, form.

J. DONDERO

A. Yeah, to be clear, it doesn't say personal liability. I said potential liability. I believe this is -- I believe what was done here is bona fide typical class action activity that we've suffered from historically, when the interests of beneficial holders are ignored when assets are sold for no business purpose. No business purpose. No definable, discernible, articulated business purpose.

There's -- I think there's potential liability for the manager, the fund complex, you know, and sometimes for the individuals involved. But my potential liability was a general statement.

THE WITNESS: You know what, guys, listen. I've got a couple of calls I've got to make that I'm ten minutes late for, so we're going to need to take a break for a few minutes here, ideally now, or after the next question, please.

MR. MORRIS: I'm happy to take a break now. How long are you thinking, though?

THE WITNESS: Ten or 15 minutes.

MR. MORRIS: Yeah, that's perfectly

J. DONDERO

fine, Mr. Dondero. Can you just state on the record that you will not talk to any Highland employee, including Mr. Ellington or Mr. Leventon, you will not communicate with them or their counsel in any way with respect to this deposition?

THE WITNESS: Yeah, I promise. I haven't -- yeah. I will not talk to them. The only Highland employee I might talk to is Jerome, who's handling the systems for this call, and that's it.

MR. MORRIS: I'm fine with that, but really, I'm requesting not only Highland employees but not to talk to anybody about the testimony today. I'm going to accommodate you and --

THE WITNESS: I won't. Nobody cares about this deposition. I won't talk to anybody.

MR. MORRIS: Okay.

THE WITNESS: I'll be back in ten or 15 minutes, okay?

MR. MORRIS: Okay.

THE VIDEOGRAPHER: 10:41 a.m. Central Standard Time, we're off the record.

J. DONDERO

(Recess taken, 10:41 a.m. to 11:16 a.m. CST)

THE VIDEOGRAPHER: 11:16 a.m., we're back on the record.

BY MR. MORRIS:

Q. Mr. Dondero, can you hear me?

A. Yes.

Q. Okay. Are you aware that the deposition taking place today is pursuant to Court order?

A. Yes.

Q. Did you schedule meetings and telephone calls during the day today, notwithstanding the Court's order?

A. I didn't formally schedule anything.

Q. Okay. So you have nothing scheduled for the rest of the day; is that right? You're here to answer questions?

A. Correct.

MR. MORRIS: Okay. Can we get the last exhibit back up on the screen, please. Okay. Can we scroll --

BY MR. MORRIS:

Q. We were last looking at your e-mail.

J. DONDERO

Can we see the response above that, please? Okay. And that's Mr. Sowin responding. Do you see that?

A. Yes.

Q. And Mr. Sowin was following your instructions; is that right?

A. His response is what it is. I'm not -- what do you mean by following my instructions?

Q. Well, he issued an order -- it says, quote: Please block all orders from hitting the trading desk for the -- I assume he meant funds -- Jim mentioned. Do you see that?

A. Yes.

MR. BONDS: Objection, form.

BY MR. MORRIS:

Q. And that's exactly what you wanted to happen, right?

A. I'm sorry, could you unhighlight that? It's hard for me to read with the highlight. Okay. Thank you. Yeah, they -- I think he tried to figure out a way to prevent it from inadvertently

J. DONDERO

happening.

Q. Okay. And Mr. Sowin's -- the substance of Mr. Sowin's e-mail is consistent with your intent to prevent any further trades from the CLOs, right?

MR. BONDS: Objection, form.

A. My intent was to prevent trades that weren't in the best interests of investors, that investors -- the beneficial holders had articulated they didn't want sold while these funds were in transition, and that the -- there was no business purpose or benefit to the debtor to sell these assets.

BY MR. MORRIS:

Q. That --

A. So that's -- that was the rationale I was trying to capture.

THE WITNESS: Hold on for me one second. Jerome just stepped in. What does the systems guy want Jerome to do?

MR. MORRIS: Figure out a way to turn the lights on.

(Technical comments off the stenographic record.)

J. DONDERO

MR. MORRIS: Let's go forward.

THE WITNESS: So we're okay with Jerome? That's it for now?

MR. MORRIS: Yeah.

THE WITNESS: All right. Thank you.

BY MR. MORRIS:

Q. You didn't correct anything that Mr. Sowin did -- said in this e-mail, did you?

A. No.

Q. You didn't tell --

MR. BONDS: Can you repeat the question? I didn't understand it.

MR. MORRIS: That's okay.

BY MR. MORRIS:

Q. Mr. Dondero, you didn't correct anything that Mr. Sowin wrote in this e-mail, did you?

A. No.

Q. You didn't tell Mr. Sowin that he misunderstood your intent, did you?

A. I don't believe so.

Q. And you didn't give any explanation to him as to why you did not want to sell any CLO underlying assets except for what you wrote in

J. DONDERO

that e-mail below, right?

MR. BONDS: Objection, form.

A. I -- I believe I -- well, the e-mails stand on their own. I think the reasons below are sufficient. I think I had a conversation with Joe besides that, and there was an unawareness on the trading desk and with Hunter that the interest of investors had been expressed and ignored by Seery, you know, so -- they weren't aware of that. They thought that was unusual and inappropriate.

BY MR. MORRIS:

Q. In your role as portfolio manager, is it -- do you believe it's your responsibility to always defer to the desires of your investors? Do you cede -- do you cede -- withdrawn.

Do you cede responsibility and your business judgment for making transactions to your investors?

MR. BONDS: Objection, form.

A. In this case, it would be appropriate. In general, it would depend.

BY MR. MORRIS:

Q. Okay. A few days later, you learned

J. DONDERO

that Mr. Seery was trying a work-around to effectuate the trades anyway, right?

A. Yes.

Q. And you wrote to Thomas Surgent to let him know that you were aware that Seery was trying a work-around to effectuate the trades, right?

A. I believe there was such an e-mail.

Q. Okay. Can you just scroll up and see that e-mail, please. All right. Stop right there.

Who is Mr. Surgent?

A. He's the chief compliance officer of Highland Capital.

Q. The debtor?

A. Yes.

Q. Okay. And how long has he held that position to the best of your recollection?

A. A long time. More than five years.

Q. What does it mean to -- when you wrote that Mr. Seery was, quote, working on a work-around to trade these securities? What does that mean?

A. As a noninvestment professional and

J. DONDERO
as a nontrader and as a nonportfolio manager, he set up an account for himself, I believe, directly with Jefferies to trade the securities in the CLOs.
Q. How did you learn that?
A. I think we still get trade reports from Jefferies, or Jefferies – the Jefferies trades get reported back into the system and have to be input by Joe, and so Joe sees the trades come back from Jefferies at the end of the day.
Q. And Joe is Joe Sowin?
A. Yes.
Q. And he works for you; is that right?
MR. BONDS: Objection, form.
MR. MORRIS: Withdrawn.
BY MR. MORRIS:
Q. He works for one of the advisors; is that right?
A. I believe he works for HFAM, but I'm not a hundred percent certain.
Q. And the work-around was – is that another way of saying that Mr. Seery tried to do the trades that he thought were appropriate without your interference?

J. DONDERO
MR. BONDS: Objection, form.
A. I'm not going to agree with that speculation. If you want me to speculate, I think Seery had no business purpose and he was doing it to tweak myself and everybody else.
BY MR. MORRIS:
Q. Did he tell you that?
A. No. I'm speculating.
Q. Okay. Do you have any idea why he made the trades?
A. He – he had no –
Q. Withdrawn. I'm sorry.
Do you have any idea why he wanted to make the trades?
A. I didn't speak to him directly.
Q. Okay.
A. Indirectly – I didn't speak to him. I didn't speak to him directly. It was –
Q. Do you have any personal knowledge as you sit here right now as to why Mr. Seery wanted to effectuate the trades that you were blocking?
MR. BONDS: Objection, form.
A. I've thought about it at length. I can't come up with a business purpose that would

J. DONDERO
supersede an account that's in transition and the beneficial owners have made it clear that the manager's not in compliance, they're moving the accounts, and knowing the individual assets that were sold, I can't – I couldn't think of a business purpose that Seery would be operating under.
MR. MORRIS: Okay. I move to strike. I'm not asking you for what you think. I'm asking you for facts.
BY MR. MORRIS:
Q. Do you have any knowledge of any facts as to the business justification or rationale for why Mr. Seery wanted to make these trades?
MR. BONDS: Objection, form.
A. No, I don't believe there are any.
BY MR. MORRIS:
Q. And you never asked him; is that right?
A. Correct.
Q. And you never instructed anybody on your behalf or on behalf of the advisors or on behalf of the funds to ask Mr. Seery why he

J. DONDERO
wanted to make these trades, right?
A. That's not correct.
Q. Nobody ever told you that they'd had a conversation with Mr. Seery in which Mr. Seery – (audio malfunction) –
(Clarification requested by the stenographer.)
BY MR. MORRIS:
Q. Did anybody ever tell you that they had spoken with Mr. Seery and Mr. Seery had provided an explanation, a business rationale for the transactions that he wanted to effectuate?
MR. BONDS: Objection, form.
A. Yes. Yes.
BY MR. MORRIS:
Q. Who was that?
A. Joe Sowin.
Q. When did he tell you about this conversation?
A. It was at or about this time in...
Q. And what did Mr. Sowin tell you?
A. Seery told him it was for risk minimization or risk reduction.
Q. Did he tell him anything else?

J. DONDERO

A. No. He said risk reduction was why he was selling the securities.

Q. That's the only rationale that Mr. Seery gave to Mr. Sowin; is that your testimony?

A. Yes.

Q. Okay. Did Mr. Sowin tell you that he asked any questions of Mr. Seery?

A. He asked him why he was selling them.

Q. And you've given me the entirety of the answer as conveyed by Mr. Sowin to you; is that right?

A. Yes.

Q. Is Mr. Sowin's conversation with Mr. Seery about the justification for these trades reflected in any document or any e-mail anywhere that you can recall?

A. Not that I recall.

Q. Did K&L Gates explain their understanding of the business rationale of these trades in any of the letters that they sent on behalf of the funds or any of the advisors?

A. Not that I'm aware of. I'm not aware.

J. DONDERO

Q. Do you know Dustin Norris?

A. Yes.

Q. Do you know that he testified in December in connection with this bankruptcy matter?

A. Yes.

Q. Did you ever tell Dustin Norris about the conversation Mr. Sowin had with Mr. Seery that you've described here?

A. I believe he was aware of it.

Q. Do you know – did you talk to him in advance of his testimony?

A. I talk to Dustin most every day.

Q. And did you tell Dustin that he should make sure to alert the Court about this conversation with Mr. Sowin and Mr. Seery?

A. No.

Q. Did you think it was important that the Court know Mr. Seery's business rationale?

A. I thought it was a nonsensical answer on Seery's part. I didn't have an opinion on whether or not the Court should know.

Q. Now, you – at the time, you were speaking to Mr. Seery directly; isn't that right?

J. DONDERO

A. Rarely. I didn't – since the injunction or since – rarely. I can't remember the last time I've spoken to him. Scott Ellington has been the appropriate go-between as far as I understand it.

Q. Okay. Was there anything that prevented you in November 2020 from picking up the phone to talk to Mr. Seery about his desire to effectuate these transactions?

A. No. The last time I – yeah, I'm remembering, the last time I talked to Seery was the day after Thanksgiving.

Q. Okay. Is there anything that you're aware of that prevented you from picking up the phone and asking Mr. Seery for his business justification for these trades prior to December 10, 2020?

MR. BONDS: Objection, form.

A. No. I expressed my disapproval via e-mail.

BY MR. MORRIS:

Q. Okay. Why did you decide to write to Mr. Surgent on November 27th?

A. I wasn't sure he was aware of Seery's

J. DONDERO

work-around, and I know Thomas has an acute awareness of his personal liability for regulatory breaches or doing things that aren't in the best interests of investors, and I don't believe he has the extra insurance and indemnities that Seery has.

Q. If he was acutely aware of it, why did you feel the need to remind him of that in your e-mail to him?

A. Because I don't think he was aware that Seery was doing a work-around on behalf of the debtor that he was compliance officer of. I wasn't convinced he was aware, so I included him on the e-mail.

Q. Did you intend to suggest that by following Mr. Seery's orders to execute the trades, that Mr. Surgent faced personal liability?

A. That's the way it works.

Q. Okay. And you wanted him to know that, right?

A. I wanted him to know that Seery was doing inappropriate trades and doing inappropriate work-around, in my opinion. I

J. DONDERO

didn't think Thomas was aware. I thought Seery was operating independently.

Thomas might have been aware, but I didn't think so. I don't talk to – I haven't talked to Thomas in I don't know when, so I thought it was important for him to know.

Q. Okay. You have communicated with Mr. Seery from time to time via text message, right?

A. Yes.

MR. MORRIS: Can we put up Exhibit 4, please.

(Dondero Deposition Exhibit 4 marked.)

MR. MORRIS: And if we can scroll down a little bit. Okay.

BY MR. MORRIS:

Q. This is a text that you sent at the bottom there at 5:26 p.m. to Mr. Seery; is that right?

A. Yes.

Q. Can you just read that text, that 5:26 out loud?

A. Be careful what you do, last warning.

J. DONDERO

Q. Why did you write that?

A. Because all the reasons we just went over. And I think he's violating the Advisers Act. He's putting the funds and the debtor at risk, in jeopardy of class action lawsuits, and he's going against the interests of investors that are in transition, and expressed a desire to not have their assets sold, especially when there's no business reason.

And for all the reasons articulated below – I mean, for all the reasons we just went over, and there are a few others I probably haven't remembered off the top of my head, but it's – I think it's – I think his activities regarding the CLOs is incredibly inappropriate, unfounded and malicious, and he hadn't sold that many securities at that point in time, somewhat de minimis amounts, but it was a warning to tell him to stop; otherwise, rightfully, the beneficial owners would take more significant actions, which I think they should and they will.

Q. What significant action are the beneficial owners going to take?

A. I don't know. But there's a lot more

J. DONDERO

things that they can push on, like you were suggesting earlier, asking earlier in terms of self-reporting to the SEC.

Q. But you haven't done that yet, to the best of your knowledge; is that right?

A. I'm not aware.

Q. You wrote there that it's the last warning.

Do you see that?

A. Yes.

Q. How many other warnings have you given Mr. Seery?

A. All the e-mails we just went over.

Q. Anything else?

A. No.

Q. Okay. You got document requests in this – in connection with this matter; isn't that right?

A. Yes.

MR. MORRIS: Okay. Can we put up Exhibit 5, please.

BY MR. MORRIS:

Q. You know, before we look at that, earlier this morning you mentioned – you made a

J. DONDERO

reference to internal counsel.

Do you recall that?

A. Yes.

Q. Okay. Who were you referring to?

A. D.C. Sauter.

Q. And D.C. Sauter is internal counsel for who?

A. I'm sorry, was there a question there?

Q. Yes. I apologize.

D.C. Sauter is internal counsel for who, for which entity?

A. NexPoint.

Q. Okay. Were you referring to anybody else?

A. No.

Q. Okay. You mentioned Scott Ellington earlier, right?

A. Yes.

Q. And who is Mr. Ellington?

A. He's general counsel at Highland historically. I think his role has been redefined as settlement counsel, that's how it was described to me, I guess, six, nine months

J. DONDERO

ago, six months ago.

Q. Mr. Ellington is employed by the debtor, right?

A. Yes.

Q. And do you know when he first became employed by the debtor?

A. Over a decade ago.

Q. Do you know whether Mr. Ellington has any employer other than the debtor?

A. I don't know.

Q. He never told you that he had an employer other than the debtor, did he?

A. I don't know.

Q. You know if he told you or not, right? Did he ever tell you that?

A. He never told me he did, no.

Q. And you have no facts or reason to believe, as you sit here right now, that the debtor is -- withdrawn.

You have no facts or reason to believe right now that Mr. Ellington has any employer other than the debtor, correct?

MR. BONDS: Objection, form.

A. I'd like to stick with: I don't

J. DONDERO

know.

BY MR. MORRIS:

Q. You have no reason to believe that; is that fair?

A. Correct, I don't know.

Q. Okay. He's not -- Mr. Ellington is not your personal lawyer, right?

A. No.

Q. He's never represented Jim Dondero personally; is that right?

A. No.

MR. MORRIS: Let's look at the document request, please, Exhibit 5.

(Dondero Deposition Exhibit 5 marked.)

BY MR. MORRIS:

Q. If we could go -- let me just ask you generally, Mr. Dondero.

Have you ever seen this document before?

A. No.

Q. Are you aware that the debtor served document requests on the Bonds Ellis firm for documents in connection with its motion for a

J. DONDERO

preliminary injunction?

A. Yes.

Q. How did you learn that?

A. I heard about it from my lawyers.

Q. Okay. Did you oversee the search for responsive documents?

A. Response -- I know we were responsive and compliant, but I delegated it to my assistants and the employees at Bonds Ellis.

Q. Which assistants did you delegate this to?

A. Tara Loiben. I think primarily Tara Loiben.

Q. And who is Ms. Loiben?

A. She's my assistant.

Q. And who is she --

A. I'm sorry?

Q. Who is she employed by?

A. I -- I don't know for sure. I think Highland, but I don't know. I don't want to speculate.

Q. What instructions -- (audio malfunction) --

(Clarification requested by the

J. DONDERO

stenographer.)

BY MR. MORRIS:

Q. What instructions did you give her in order to search for documents?

A. I didn't -- I didn't give her any. She worked with that and she had -- she has full access to my e-mail, and I gave her my phone for the better part of a couple days in the office.

Q. You -- until the end of 2020, you had an e-mail address with an HCMLP or a Highland e-mail address, right?

A. Yes.

Q. Have you stopped -- has that e-mail address ceased to be in use?

A. I've switched to an e-mail at the bank as of -- whatever it was, last week or...

Q. In the year 2020, did you use any e-mail address other than the Highland e-mail address?

A. No.

Q. You don't have a Gmail address or any other personal e-mail address?

A. I have an old Gmail address, but it's dormant. I haven't logged on to it in years.

J. DONDERO

Q. Okay. And you understood that the debtor's document request called for the production of all text messages that were responsive to the requests, right?

A. Yes.

Q. Can we just scroll down to the requests themselves? Right there.

Do you see Request No. 3 is for all communications between you and any person employed by the debtor?

A. Yes.

Q. And did you understand that the request was limited to the time period of, I think, December 10th, 2020 to the end of the month?

A. I didn't read the details of this. I didn't get into it. I didn't do the document production that I believe was completed and responsive. I delegated that.

Q. Did you review the documents before they were produced? Do you know what was produced? Withdrawn. Two different questions.

Did you review the documents for completeness before your lawyers delivered them

J. DONDERO

to my firm?

A. Only in the most general – when she'd print out a stack of them, I'd just thumb through the stack of them, and that was it. But other than that, no.

Q. Did you do anything to satisfy yourself that you had produced all responsive documents?

A. I trust Tara's work ethic and capabilities, and I trust the lawyers at Bonds Ellis, so I didn't – I didn't intervene or supersede or supervise.

Q. So you didn't do anything to make sure – you didn't do anything personally – withdrawn.

You didn't take any steps personally to make sure that all responsive documents had been produced, right?

MR. BONDS: Objection, form.

A. I wasn't involved personally, but I do believe it was responsive and complete.

BY MR. MORRIS:

Q. Until early December, you had a phone that was bought and paid for by the debtor,

J. DONDERO

right?

A. Yes.

Q. What happened to that phone?

A. It was disposed of as part of getting a replacement phone in anticipation of potentially a transition.

Q. Who decided to dispose of it?

A. That's historically what we've done with all of our historic phones, when we've gotten new phones. I've gotten a new phone, I guess, every four or five years, and the old ones have always been destroyed.

Q. Who decided to destroy this – withdrawn.

When you say it was disposed of, what does that mean?

A. As far as I know, it was disposed of in the garbage, but I don't know if it was recycled or whatever.

Q. And who decided to throw it in the garbage?

A. We've always – we've always done that when we've gotten new phones, versus trading them in, for the senior executives.

J. DONDERO

Q. I appreciate that, but I'm just talking about the very specific phone that the debtor bought and paid for for your benefit. Who made the decision to dispose and throw that phone away?

MR. BONDS: Objection, form.

A. I – like I said, I understood it to be our standard process and protocol. I don't know. I can't label anybody with the decision.

BY MR. MORRIS:

Q. Well, who threw it away?

A. I don't know.

Q. You don't know if you threw the phone away?

A. No, I – I don't know. No, I don't remember throwing it away, but I don't know who did.

Q. Did you have conversations with anybody about the decision to throw away the phone?

A. Like I said, it wasn't a decision or a new decision. It's been the process, as far as I understand it, every time we've upgraded phones over the last 30 years.

J. DONDERO

Q. You just throw it in the garbage? You don't try to get a credit for it by returning it?

A. No.

Q. Okay. Did you ever speak with Mr. Ellington about your phone that was bought and paid for by the debtor?

A. I think Ellington's phone and my phone and I think – I think right around the same time, in anticipation, in case there was a transition or in case there was a liquidation plan, it was time to move the phone ownership away from the estate. The estate wasn't going to pay for it anymore anyway in another couple of weeks so, I –

Q. Were you aware –

A. I'm sorry, what's your question?

Q. Are you aware that the UCC had asked for your text messages before the time that you disposed of your phone?

A. No.

Q. Nobody ever told you that the UCC wanted your phone?

A. No.

J. DONDERO

Q. When exactly did you dispose of your phone?

A. On or about when I got my new phone.

Q. Who at the debtor did you tell that you disposed of your phone?

A. I don't – I don't remember who. Was it Jason Rothstein was involved in getting my new phone and knew that I was disposing of my old phone? I don't know who else knew. But again, it was standard procedure.

Q. Did it ever occur to you to get the debtor's consent before doing this?

MR. BONDS: Objection, form.

A. No.

BY MR. MORRIS:

Q. Did you have the phone number transferred to your personal account?

A. Yes.

Q. Did you ever ask the debtor for its permission to do that?

A. No.

Q. Did you ever give the debtor notice that you were doing that?

A. I didn't believe it was necessary or

J. DONDERO

appropriate.

Q. So you wanted it to be a secret?

MR. BONDS: Objection, form.

A. No. No, I wouldn't describe it as a secret. I would say I didn't think it was necessary or appropriate.

Every executive that's ever left Highland has always kept their phone number, period. Highland's never said, no, we're keeping the phone number, ever, out of the two or 300 people that have come through Highland. And I don't believe most businesses try and retain the phone number of employees when they leave. It's ludicrous on its surface.

BY MR. MORRIS:

Q. Okay. So let me just make sure that I understand this.

You threw the phone – withdrawn.

Somebody threw the phone that the debtor bought and paid for in the garbage without the debtor's knowledge or consent; is that right?

MR. BONDS: Objection, form.

A. I'd just repeat my testimony, that it's always been our process to destroy old

J. DONDERO

phones when we get new phones.

BY MR. MORRIS:

Q. You were no longer an employee of the debtor at the time, correct?

A. At the time? I believe I was an employee of the debtor since January.

Q. Well, you stayed on as an unpaid employee until mid October; isn't that right?

A. Right, but I – but I don't even think my phone was paid for by the debtor. I think my phone was paid for by shared services by NexPoint. I – I don't know what you're – I don't know what you're getting at or what you're – you're asking me.

Q. It's not complicated.

Did you tell the debtor that you threw away your phone at any time until this deposition?

A. Did I tell the debtor? Like I said, I didn't think it was the debtor's phone. No, I did not tell the debtor or get permission. No, I did not.

Q. And did you tell the debtor that you were changing the phone number?

J. DONDERO

A. No.

Q. And did Mr. Ellington help you change the phone number?

MR. BONDS: Objection, form.

A. I didn't change the phone number.

BY MR. MORRIS:

Q. Withdrawn.

Did Mr. Ellington help you have the phone number transitioned to your personal account?

MR. BONDS: Objection, form.

A. No. No. It was Jason – Jason Rothstein handles the technology stuff and the phone stuff.

BY MR. MORRIS:

Q. Did Mr. Ellington also change his phone number to his own personal account?

A. My understanding was there was numerous senior executives that changed their phone in anticipation of being terminated by the debtor shortly.

Q. Who else did it?

A. I don't know. I thought it was – I didn't think it was just Ellington and I. I

J. DONDERO

thought it was a bunch of senior execs. But –

Q. What's the basis –

A. – who cares? Who cares? I didn't care. I don't know. I mean –

Q. I don't care if you care or not. I'm asking you questions.

What is the basis for your statement that other people besides you and Mr. Ellington changed the phone numbers?

MR. BONDS: Objection, form.

A. That was my understanding. That was my understanding. But I don't – I don't recall specifics. I didn't pay attention.

BY MR. MORRIS:

Q. What is the basis for the understanding? Did somebody tell you that?

MR. BONDS: Can you repeat the question?

BY MR. MORRIS:

Q. What is the basis for your understanding? Did somebody tell you that employees of Highland other than Mr. Ellington had changed the phone numbers?

A. Yes. My understanding was everybody

J. DONDERO

had to move their phones in the next 30 days or next 25 days, based on Seery's termination notice.

Q. Did Jim Seery – withdrawn. I'm perfectly fine.

MR. MORRIS: Can we put up Exhibit 6, please.

(Dondero Deposition Exhibit 6 marked.)

BY MR. MORRIS:

Q. That's Jason Rothstein.

Do you see that?

A. Yes.

Q. He didn't throw the phone in the garbage, did he?

A. I don't know.

Q. Well, according to the text that he sent you on December 10th, he left your own – old phone in the drawer of Tara's desk.

Do you see that?

A. Yes.

Q. So he didn't think that it was his responsibility as of December 10th to throw it in the garbage, did he?

J. DONDERO

A. I don't know.

Q. He left it in Tara's desk, didn't he?

A. On December 10th. But I don't know what he did on December 11th.

Q. Did you tell him to do anything?

A. I don't – all I know is the phone's been disposed of. That's all I know.

Q. Okay. Did you tell Mr. Rothstein to take the phone out of Tara's desk and throw it in the garbage?

A. I did not.

Q. Did you tell Tara to take the phone out of her desk and throw it in the garbage?

A. I did not.

MR. MORRIS: Okay. Can we put up Exhibit 7, please.

(Dondero Deposition Exhibit 7 marked.)

MR. MORRIS: Can we just scroll down a little bit.

BY MR. MORRIS:

Q. Is this a text message from you to Tara?

A. Yep.

J. DONDERO

Q. If we could scroll up just a little bit so we can see the date.

Well, it doesn't have a date, but do you recall when you asked Tara to come in to work -- (audio malfunction) --

(Clarification requested by the stenographer.)

BY MR. MORRIS:

Q. -- to come in to work on discovery. Do you recall when you sent this text message, Mr. Dondero?

A. No.

Q. Do you know how Tara -- withdrawn.

Did Tara come in to work on discovery at any time?

A. Yes.

Q. And did you give her any instructions on what to do?

A. Again, just generally.

Q. What were the general instructions that you gave her?

A. Work with the Bonds Ellis guys. Here's the access to my computer and my phone. Be complete and be responsive.

J. DONDERO

Q. Did you ever speak with Mr. Ellington about your document production?

A. No.

Q. Did Mr. Ellington play any role in searching for, reviewing or producing responsive documents?

A. Nope.

Q. Did you ever speak with Mr. Leventon about your document production?

A. Nope.

Q. Did Mr. Leventon play any role in searching for, reviewing or producing responsive documents?

A. Nope.

Q. Did you ever speak with anybody employed by the debtor, other than Tara, about your document production?

A. Tara's got an assistant, or my other assistant that works with Tara, Kelly, would have been the only other person.

She might have been -- Tara had to go back and see her girls during lunch, so I think she used Kelly to do some of the legwork.

Q. Let's talk about the TRO for a

J. DONDERO

second.

MR. MORRIS: Can we put up Exhibit 9, please.

(Dondero Deposition Exhibit 9 marked.)

BY MR. MORRIS:

Q. This is the temporary restraining order that was signed on December 10th.

Do you see that?

If we could scroll down just a little bit. Yeah.

A. Okay.

Q. You've never seen this document before, right?

A. Yes, I haven't read it.

Q. And I know I asked you earlier today what your understanding was of how this order restrained you.

Do you remember those questions?

A. Yes.

Q. Okay. Is there anything, upon reflection, that you need to add in order to make the record complete as to your understanding of the scope of the injunction?

J. DONDERO

A. Not at this moment.

MR. MORRIS: Can you put up Exhibit 10, please.

(Dondero Deposition Exhibit 10 marked.)

BY MR. MORRIS:

Q. All right. Have you seen this letter before, sir?

A. No. I mean, not specifically. I probably received it, but I haven't read it.

Q. All right. I just want to go back to the phone for a second to see if I can nail this down.

Did you dispose of the phone somewhere around December 10th, 2020?

A. I -- I don't know. Probably.

Q. Well, we just looked at that e-mail, right, that was from Mr. Rothstein.

MR. MORRIS: Can we get that back?

A. Yes.

MR. MORRIS: I just want to see what the date of that was. Yes. Okay.

BY MR. MORRIS:

Q. So that's December 10th at 6:25 p.m.,

J. DONDERO

right?

A. Yes.

Q. Okay. So according to Mr. Rothstein, as of that date at that time, your phone was in Tara's desk, right?

A. Yes.

Q. You have no reason to disbelieve that, do you?

MR. BONDS: Can you repeat the question? I'm sorry.

MR. MORRIS: Withdrawn.

BY MR. MORRIS:

Q. So is it fair to say, then, that the phone was disposed of and thrown in the garbage sometime after December 10th?

A. I don't know.

Q. Well, as of December 10th, Mr. Rothstein told you that it was in Tara's desk, right?

A. Yes.

Q. Okay. So if he -- Jason's not a liar, is he?

A. No.

Q. Do you have any reason to believe

J. DONDERO

that the phone was anywhere other than Tara's desk at 6:25 p.m. on December 10th?

A. I don't know.

Q. You have no reason to believe that that statement by Mr. Rothstein is untrue, correct?

A. Correct.

Q. Do you know how it came to be that the phone was disposed of in the manner that you've described?

A. Nope.

Q. You can't tell me who did it; is that right?

A. Correct.

Q. And you can't tell me when, after December 10th, that happened, right?

A. Correct.

Q. Okay. Thank you. Let's go back to, I guess, Exhibit 10. If we can just scroll down a little bit.

I understand that you haven't seen this document before. Go to the next page, please -- no. Yeah, next page.

Do you see the first full paragraph

J. DONDERO

there beginning "On December 22nd"?

A. I'm going to have to get up and read that. Just hold on a sec.

Q. Okay. Take your time.

A. Yes, I see that.

Q. Okay. Having read that paragraph, do you have any basis to dispute any of the statements in that paragraph?

MR. BONDS: I'm sorry. Can you read it again or can you ask your question again?

MR. MORRIS: Sure. I'd like to know if Mr. Dondero has any basis to dispute any assertion made in that paragraph.

A. I disagree with every sentence in that paragraph based on my 30 years of experience and understanding how to operate a registered investment advisor and how to do it in the interest of performance, investors and a registered investment advisor.

BY MR. MORRIS:

Q. All right. Let's try this differently. I shouldn't have done that.

The first sentence, do you have any basis to disagree with any aspect of the first

J. DONDERO

sentence of that paragraph? And let me just read it aloud, if I may.

A. That -- all right. What's your question?

Q. Is there anything inaccurate about the first sentence?

A. I believe my instructions in the e-mails we went over were to not do the trades. You know, that sentence implies not settle the trade, which means to not do the trades once they were already bona fide. I -- I don't recall that ever being my contention.

I would have preferred they be reversed, but my instructions, I believe, in everything we went over were to not do the trades, stop doing trades that are adverse to the interests of investors, but it wasn't regarding settling outstanding trades. So I think that sentence on its face is in error.

Q. Okay. So but it's true, then, that you instructed employees of NPA and HCMFA on or around December 22nd to stop doing the trades of Avaya and Sky, correct?

A. Yes.

J. DONDERO

Q. Near the closing bell on – we're going to go back in time just a couple of days – on Friday the 18th, Mr. Sowin informed you that Seery wanted to sell these securities, right?

A. I don't recall that specifically.

MR. MORRIS: Okay. Can we put up Exhibit 11, please.

(Dondero Deposition Exhibit 11 marked.)

MR. MORRIS: Okay. And if we can just go down to the bottom of it. Yeah.

BY MR. MORRIS:

Q. So that e-mail at the bottom, that's Mr. Seery's direction to sell Avaya securities from the CLOs, right?

A. I don't know what's happening here. I don't know if this is fuzzy or my eyes are getting worse, but can we enlarge these a little bit, or I'm going to have to get up each time.

Yeah. This is nutty and vindictive. I think everybody realizes that there's no liquidity in the markets the three days before Thanksgiving and Christmas. There's no urgency or reason to sell any of these securities that

J. DONDERO

couldn't have waited until January or February.

There's no business purpose in selling any of those securities, yet he's pushing them through for self-serving or vindictive reasons. I – or maybe trying to get more issues in front of the judge. I have no idea, but this – this stuff makes absolutely no sense and no business purpose.

But I'm sorry, what's your question?

MR. MORRIS: Okay. I move to strike and I'd ask you to listen to my question.

BY MR. MORRIS:

Q. It's simply that you learned, just before the closing bell on Friday, December 18th, that Mr. Seery wanted to sell Avaya securities out of the CLOs?

MR. BONDS: Objection, form.

THE WITNESS: Yeah, hold on. I need to interrupt for a second. When you strike something, does that mean it doesn't end up in the record?

MR. MORRIS: The judge will decide whether or not it does. It's my request that the judge strike it from the record. She'll make the

J. DONDERO

ruling.

THE WITNESS: Okay. But then my lawyer can ask to put it in as my understanding of something at the end or something of the deposition or...

MR. MORRIS: I don't want to give you legal advice, Mr. Dondero, but yes, that's generally how it works.

THE WITNESS: Okay. Thank you.

BY MR. MORRIS:

Q. So again, the question is simply whether you learned near the closing bell on Friday, December 18th, that Mr. Seery wanted to sell Avaya shares out of the CLOs?

MR. BONDS: Objection, form.

A. It appears so.

BY MR. MORRIS:

Q. Okay. And can you just scroll up above that, please. And – okay.

Do you see that Mr. Sowin, in fact, forwards this right to you?

A. Yes.

Q. And it was on the basis of this that you instructed the NPA and HCMFA employees not to

J. DONDERO

execute these sales?

A. Yes.

Q. After the TRO was issued, did you ever instruct any employees of NPA or HCMFA not to interfere or impede with the debtor's management of the CLOs?

A. No.

Q. To the best of your knowledge, did anyone ever instruct the employees of NPA and HCMFA not to interfere or impede with the debtor's management of the CLOs?

A. No.

Q. Did you ever provide a copy of the TRO to any employees of NPA and HCMFA?

A. I did not.

Q. Do you know if anybody ever provided a copy of the TRO to any of the employees of NPA and HCMFA?

A. I do not know.

MR. MORRIS: Okay. Can we put up Exhibit 12, please.

(Dondero Deposition Exhibit 12 marked.)

///

J. DONDERO
BY MR. MORRIS:
Q. Okay. This is a letter that was sent to K&L Gates.
Do you know who K&L Gates represents in connection with this matter?
A. Some of the retail funds.
Q. And do they also represent the two advisors?
A. Yes. I believe they're one of -- yes.
Q. Attached to this letter, there's an Exhibit A, if we can go down, and we'll find a letter from K&L Gates there. Okay.
This is another letter from K&L Gates dated December 22nd, 2020. Are you able to see that, sir? Can we scroll down a little bit?
A. Yes. Yes, I can see the letter.
Q. Okay. Were you aware that this letter was sent at the time that it was?
A. I was aware, yes.
Q. And these are the same entities, except for CLO Holdco, that had filed the prior motion that was denied by the Court, right?
A. I'm sorry, ask that question again.

J. DONDERO
These were --
Q. Yeah, let me just do a little background.
A couple of -- about a week before this letter was sent, the entities represented by K&L Gates, except for CLO Holdco, had made a motion in the bankruptcy court, right?
A. Yes.
Q. They had asked the Court to pause, to impose a pause on the debtor from selling any CLO assets; is that right?
A. I don't -- I don't know what exactly -- I don't know the details of what they requested.
Q. Okay. Did you authorize the filing of that motion?
A. Authorize the filing? I championed -- I pushed and encouraged the chief compliance officer and the general counsel to do what they believed was right as rigorously as possible, and it manifested itself in the letters that you're speaking of.
Q. And you -- and you approved of these letters, right?

J. DONDERO
A. I -- not directly and not specifically, but I encouraged them to do what they thought was right.
Q. Okay. And you were aware that letters with the substance contained in them were going to be sent -- (audio malfunction) --
(Clarification requested by the stenographer.)
BY MR. MORRIS:
Q. -- to the debtor?
THE STENOGRAPHER: And the answer again, please?
MR. BONDS: And I objected as to form.
THE STENOGRAPHER: And the answer again, please?
A. I was aware that letters were being sent, and I was aware that motions -- or a motion was being filed.
BY MR. MORRIS:
Q. This letter was also sent on behalf of CLO Holdco, Ltd.
Do you see that?
A. Yes.

J. DONDERO
Q. Are you the direct or indirect economic or beneficial owner of CLO Holdco, Ltd.?
A. No.
Q. Who is?
A. I believe the DAF and HarbourVest.
Q. And who controls the DAF?
A. Grant Scott.
Q. Who is the beneficial owner of the DAF?
A. Three char- -- three or four charitable organizations.
Q. And who controls CLO Holdco?
A. I don't know exactly.
Q. Do you?
A. No.
Q. And who are the possibilities?
A. CLO Holdco, my understanding is it was a -- it was an investment amalgamation between HarbourVest and the DAF, so with the DAF having the primary -- or the largest ownership interest.
Q. And with that largest ownership interest, is the DAF able to control CLO Holdco?
A. I don't know. Maybe.

J. DONDERO

Q. You've never asked that question?

A. Nope.

Q. Did you ever instruct any of the advisors or funds to withdraw this letter?

MR. BONDS: Objection, form.

A. No.

BY MR. MORRIS:

Q. To the best of your knowledge, has anyone on behalf of the advisors, the funds or CLO Holdco ever instructed K&L Gates to withdraw this letter?

A. Not that I'm aware of.

Q. Okay. I want to just see if I can refresh your recollection a bit.

When you talked about the DAF and HarbourVest, is it possible that you're confusing that with HCLOF?

A. You know, you're right. It could be. Maybe it is CLO Holdco -- you know what, let me just -- let me not speculate. But the CLO Holdco might just be the DAF, and the combined entity might be the level above that. I -- I don't know exactly. Let me leave it at that.

Q. Okay. That's fair.

J. DONDERO

This is the -- I think you've testified -- I'm trying to speed this up a little bit, believe it or not -- that you supported the sending of this particular letter, right? And if you need to read more of it, let me know.

A. No, I -- again, the thrust of it, the theme of it, the -- when you think bad or illegal or regulatorily inappropriate stuff has happened, what did you do, when you knew it, et cetera. And I think the responsibilities of that transcend a lot of things, you know.

Q. But you are aware that these very same entities, except for CLO Holdco, had advanced the very same arguments to the bankruptcy court just six days earlier and their motion is denied, right?

MR. BONDS: Objection, form.

A. Yes. And with all due respect to the Court, it doesn't mean that it was wrong or inappropriate to advance the argument.

BY MR. MORRIS:

Q. Okay. But having advanced the argument on December 16th and having had it rejected, you support these entities pressing the

J. DONDERO

same arguments again against the debtor, right?

A. We try and do what's right.

MR. MORRIS: Okay. Can we put up Exhibit 13, please.

(Dondero Deposition Exhibit 13 marked.)

MR. MORRIS: And if we can go to Exhibit A on the back. Thanks.

BY MR. MORRIS:

Q. This is another letter sent the next day, right, on December 23rd, from K&L Gates? And we can scroll down further, again.

Do you recall that there was yet another letter sent on the 23rd?

A. Yeah, I don't recall specifically, but...

Q. Can we scroll down a little bit further in this document.

Do you recall that there came a time when K&L Gates, on behalf of the advisors and the funds, told the debtor and its counsel that it was considering initiating the process for removing the debtor as portfolio manager of the CLOs?

J. DONDERO

MR. BONDS: Objection, form.

A. I believe they -- I don't know if you're asking me a reservation of rights or whatever, but I think they should do everything as rigorously as possible to try and protect the investors.

BY MR. MORRIS:

Q. Are you aware of any prohibition of doing what you're -- withdrawn.

Are you aware that the debtor made an offer to assign the CLO management agreements to NexPoint back in the beginning of December?

A. I -- I do remember that, and I did get a summary of that, and it was untenable in terms of what it was wrapped in.

Q. What was untenable about it?

A. Off the top of my head, it would give Seery releases for bad acts or inappropriate trades. It required a reimbursement for, I think, a million dollars of Pachulski fees relative to this subject, and I think it also wanted an up-front payment for the present value of the future management fees to be paid to the estate.

J. DONDERO

Q. And who made the decision to reject the debtor's offer?

A. Made a decision to reject the -- reject the -- it wasn't a rejection of the offer as much as a disagreement that that is the way CLO contracts transfer, that the manager doesn't have the right to extort from the next manager when the investors want to transfer.

So there's a facilitation that Highland could provide, but Highland is not in a position, based on our understanding of the market, to demand consideration.

Q. Okay. Who made the decision to reject the offer?

A. I was involved in that. It wasn't a formal rejection, but it was a view that it was an inappropriate offer.

Q. Did anybody decide or suggest that maybe we should make an appropriate offer?

A. Not yet.

Q. Was there any reason why, for the past month, when the debtor has provided an opportunity to transfer these CLO management contracts, that none of the advisors or anybody

J. DONDERO

representing them has sought fit to make an appropriate counteroffer?

A. We can get an appropriate counteroffer out tomorrow.

Q. Okay. Is there anything that's prevented that over the last month instead of writing letters and engaging in this litigation?

A. The fundamental prerequisites were so inappropriate that it dissuaded us from putting a normal, commercial, reasonable thing forward. But we'll put something commercial, reasonable and appropriate through tomorrow, and we'll see how far it goes.

Q. Did you support the sending of this particular letter at the time it was sent?

A. I -- generally, yes.

Q. Okay. Have you authorized any of the entities on this letter to initiate the process to remove the debtor as the fund manager of any CLO?

MR. BONDS: Objection, form.

A. That's not my position, and it's not without legal considerations regarding what's subject to a stay and what's appropriate at this

J. DONDERO

juncture.

But -- but I believe, subject to whatever is legally appropriate, they should and they will be moving to replace the manager as quickly as possible and holding the manager responsible for bad acts prior to transfer.

BY MR. MORRIS:

Q. Have you authorized any of the parties that are signatory to this letter to initiate the process to remove the debtor as the fund manager for the CLOs?

A. I am not that involved. I haven't authorized it per se. Again, I'm encouraging the executives in charge to do the right thing, given the circumstances and what's best for investors, especially their retail investors and their obligations under the '40 Act.

Q. You're the president of the two advisors, right?

A. Yes.

Q. And you're the portfolio manager of the funds, right?

A. Yes.

Q. Couldn't you give the direction to

J. DONDERO

take steps to initiate the process to remove the debtor?

MR. BONDS: I'm sorry, can you repeat the question?

BY MR. MORRIS:

Q. Don't you have the power to do that?

MR. BONDS: I'm sorry. I couldn't hear your question.

MR. MORRIS: Withdrawn.

BY MR. MORRIS:

Q. Did you ever discuss with any -- with anybody about whether to initiate the process to remove the debtor as the portfolio manager of the CLOs?

A. I think it's a logical remedy, and I believe the executives, and particularly like the executives -- the chief compliance officer always has personal liability, and I think Jason Post knows that, and I think he's pushing as hard as he can for the benefit of investors in a situation where people are moving against the best interests of investors.

And I encourage him to move as aggressively as possible subject to whatever the

J. DONDERO

limits of bankruptcy court is, but I can't be -- I've got too many other things to do to be directly involved in the details, so I'm not involved in the details.

Q. I see.

Did you ever instruct the parties that are signatory -- withdrawn.

Did you ever instruct K&L Gates to withdraw this letter?

A. No.

Q. To the best of your knowledge, has anybody on behalf of the advisors, the funds or CLO Holdco ever instructed K&L Gates to withdraw this letter?

A. No.

Q. Will you commit that each of the entities on whose behalf this letter was sent will cease and desist from taking any steps to initiate the process to remove the debtor as the CLO manager?

MR. BONDS: Objection, form.

A. Say that again.

BY MR. MORRIS:

Q. Will you commit on behalf of each of

J. DONDERO

the funds and the advisors to cease and desist from taking any steps to replace the debtor as the portfolio manager of the CLOs?

A. That would be inappropriate. I'm not sure it would be illegal, but I think it would be a regulatory breach, and I think it would not be in the best interest of investors if we were to agree to anything like that. I think that's nuts and it's nutty to ask that.

Q. People say that about me all the time.

Did you ever exchange any e-mails or texts with any employee of the parties on this document, on the issue of whether or how to remove the debtor as the CLO's fund manager?

A. Not that I recall.

Q. Did you ever discuss with any employee of the debtor the topic of removing the debtor as the portfolio manager of the CLOs?

A. Not that I recall.

MR. MORRIS: Okay. It's 1:35. Can we just take a ten-minute break and resume -- is it 12:35 where you are, Mr. Dondero? We'll resume at 1:45 Eastern, 12:45 Central.

J. DONDERO

THE WITNESS: I'm sorry, I can't hear you. We return at what time?

MR. MORRIS: In ten minutes, at 12:45.

MR. BONDS: And I want to say too, John, that your notice showed that there was a 1:30 deposition Central Time of somebody else, and we intend -- I mean, we planned on that, so we're going to need to be through at 1:30.

MR. MORRIS: Yeah, you can do that if you want. You can do that if you want, but the record will also reflect that we started at least 20 minutes late and we took at least a 35-minute break for Mr. Dondero. So you leave whenever you want, but be guided by that.

Let's take a break.

MR. BONDS: Well, I'm telling you that if you want to go forward, you can.

MR. MORRIS: I will. Thank you. I appreciate that.

THE WITNESS: All right. See you guys in 10 minutes.

THE VIDEOGRAPHER: 12:36 p.m., Central Standard Time. We're off the record.

J. DONDERO

(Recess taken, 12:36 p.m. to 12:49 p.m. CST)

THE VIDEOGRAPHER: 12:49 p.m., Central Standard Time. We're back on the record.

BY MR. MORRIS:

Q. All right. Can you hear me, Mr. Dondero?

A. Yes.

Q. Is it fair -- do you think it's fair to say that your personal interests are adverse to the debtor's?

A. No.

Q. They asked for your resignation back in October, right?

A. Yes.

Q. And you opposed the debtor's plan on file, right?

A. Yes.

Q. And you objected to the debtor's settlement with ACIS; is that right?

A. Yes.

Q. And you're going to object to the debtor's settlement with HarbourVest; is that right?

1 J. DONDERO
2 MR. BONDS: Objection, form.
3 A. I don't know for sure. I believe so.
4 I don't know.
5 BY MR. MORRIS:
6 Q. And the debtor commenced an adversary
7 proceeding against you; is that right?
8 MR. BONDS: Objection, form.
9 A. I'm not aware of that in particular.
10 BY MR. MORRIS:
11 Q. The debtor sought and obtained a TRO
12 against you; isn't that right?
13 A. Oh. Okay, yes.
14 Q. And they also started a lawsuit?
15 They filed a complaint against you -- is that
16 right -- for preliminary and permanent injunctive
17 relief?
18 A. I'm aware of it, yes.
19 Q. And the debtor has removed you from
20 its offices, right?
21 A. Yes.
22 Q. And based on all of that, would you
23 agree that your personal interests are adverse to
24 the debtor?
25 A. No.

1 J. DONDERO
2 Q. Okay. Since the TRO was entered,
3 have you ever discussed your litigation strategy
4 with Mr. Ellington?
5 A. Not -- no. Not that I'm aware of.
6 That's not the subject of our conversations.
7 He's more of a go-between, and he's more of an
8 overall strategist.
9 Q. And he's a strategist for your -- you
10 know, for the defense and prosecution of your
11 personal interests, right?
12 A. No.
13 Q. No?
14 Do you remember that there were
15 actually two motions on the calendar on
16 December 16th? There was the motion that you
17 brought that was called, I guess, the active
18 ordinary course transactions motion, and then
19 there was the motion brought by the K&L Gates
20 firm on behalf of -- (audio malfunction) --
21 (Clarification requested by the
22 stenographer.)
23 BY MR. MORRIS:
24 Q. -- the advisors and the funds, where
25 they sought the pause of the sale of CLO assets.

1 J. DONDERO
2 Do you remember that those two
3 motions were on the calendar a couple of weeks
4 ago?
5 A. I remember that K&L Gates one. The
6 first one, I don't remember.
7 Q. Do you remember discussing with
8 Mr. Ellington the need for a witness for one of
9 those motions?
10 A. No. I don't remember the motion.
11 Q. Do you remember that Mr. Ellington
12 suggested that J.P. Sevilla serve as a witness
13 for one of those motions?
14 A. I don't remember that.
15 MR. MORRIS: Put up Exhibit 15,
16 please.
17 (Dondero Deposition Exhibit 15
18 marked.)
19 BY MR. MORRIS:
20 Q. If we can go down here, do you see
21 that on Saturday, December 12th, Mr. Lynn wrote
22 to you and said: It looks like a trial?
23 A. Yes.
24 Q. Can you scroll up above that, please.
25 Keep going. And then Mr. Lynn -- I'm sorry, not

1 J. DONDERO
2 so much.
3 And then Mr. Lynn wrote: That said,
4 we must have a witness now.
5 Do you see that?
6 A. Yes.
7 Q. Now, go up to the top, and
8 Mr. Ellington writes to you and to others: It
9 will be J.P. Sevilla. I will tell him that he
10 needs to contact you first thing in the morning.
11 Have I read that correctly?
12 A. Yes.
13 Q. Now, this is after the TRO is
14 entered, right?
15 A. Like I said, I'm not -- I see my name
16 on the cc list. I don't have an awareness of
17 what this is about, so...
18 Q. Okay. Do you know what trial
19 Mr. Sevilla was going to testify at?
20 A. No.
21 Q. You didn't produce --
22 A. You can refresh my memory, but I
23 don't have a recollection from this.
24 Q. To be fair, Mr. Dondero, I don't
25 know. This is discovery, and I'm just asking a

1 J. DONDERO
2 question, if you know.
3 A. Okay.
4 Q. Do you recall if you produced this
5 e-mail in discovery?
6 A. I have no idea.
7 Q. Do you recall looking to
8 Mr. Ellington for leadership in helping to
9 coordinate all the lawyers acting on your behalf
10 and on behalf of the entities owned and
11 controlled by you?
12 A. I know I needed some coordination,
13 but I think I went in a different direction, and
14 that's why I brought on Douglas Draper, and he's
15 been functioning in that role of joint defense
16 and coordination.
17 Q. But you did tell Mr. Ellington, after
18 the TRO was entered, that you needed him to
19 provide leadership with respect to the
20 coordination of your litigation interests, right?
21 A. I – I don't – I don't remember.
22 Like I said, I ended up going in a different
23 direction, but I – I don't – I don't know as
24 far as your question is concerned.
25 MR. MORRIS: Okay. Can we put up

1 J. DONDERO
2 Exhibit 16, please.
3 (Dondero Deposition Exhibit 16
4 marked.)
5 MR. MORRIS: Scroll down to the
6 bottom. Not that far. Right there.
7 BY MR. MORRIS:
8 Q. So this is an e-mail from Mr. Draper
9 to you on December 16th.
10 Do you see that?
11 A. Yes.
12 MR. BONDS: I'm going to object.
13 Mr. Draper is a lawyer.
14 MR. MORRIS: He is. I understand
15 that.
16 MR. BONDS: Anything that was
17 produced that relates to Douglas Draper and Mike
18 Lynn and Jim Dondero is attorney-client
19 privileged.
20 MR. MORRIS: You're entitled to make
21 that assertion, but if we just look at the top so
22 we can clear this up. All the way to the top.
23 Mr. Dondero forwards this to Mr. Ellington.
24 Mr. Ellington is not Mr. Dondero's personal
25 lawyer. He is the lawyer for the debtor, and

1 J. DONDERO
2 your firm doesn't represent any business
3 interest, so there's no claim that this is
4 somehow provided pursuant to a shared services
5 agreement. Unless you can tell me that there's a
6 common – (audio malfunction) –
7 (Clarification requested by the
8 stenographer.)
9 MR. MORRIS: – a common interest
10 between Mr. Ellington and Mr. Dondero,
11 Mr. Dondero has waived the privilege. State your
12 position, and I'm happy to state mine, but I need
13 to ask questions.
14 Can we go back down to the bottom,
15 please. All right.
16 BY MR. MORRIS:
17 Q. So on December 16th, Mr. Draper is
18 looking to get a joint meeting together, right?
19 Do you remember that?
20 A. I'm sorry, what's the question?
21 Q. Do you recall that on or around
22 December 16th, Mr. Draper was looking to get a
23 joint meeting among all the lawyers representing
24 you and your business interests as well as the
25 employees for Highland?

1 J. DONDERO
2 A. What I do know is Douglas Draper has
3 put together a mutual defense agreement, and I
4 think the 16th is right about when he came on
5 board. He had to reach out and get people's
6 e-mails and contact information and be able to
7 coordinate it.
8 But he's now fully engaged and fully
9 functional in that role. Ellington is not
10 involved in that role at all. Can you – but I
11 don't know exact time frames or exactly who said
12 what to who when, but go ahead, ask me whatever
13 you want.
14 Q. You mentioned a mutual defense
15 agreement. Do I have that right?
16 MR. BONDS: Objection –
17 A. I don't know what – I don't know
18 what the legal term is.
19 BY MR. MORRIS:
20 Q. Okay. But there's a joint –
21 MR. BONDS: Don't talk about that,
22 Jim.
23 MR. MORRIS: Okay.
24 BY MR. MORRIS:
25 Q. Let me ask you this: Did Scott

J. DONDERO

Ellington participate in the drafting of the joint interest or mutual defense agreement?

A. No.

Q. Did Isaac Leventon participate in the drafting of a joint defense or mutual defense agreement?

A. No.

Q. Did you ever discuss with either of them the topic of a joint defense or a mutual defense agreement?

A. That was entirely with Draper.

Q. Okay. Let's scroll up the page a little bit. There's a response from Mr. Lynn. Do you see that?

A. Yes.

Q. And then if we scroll up a little further, you forward it to Mr. Ellington, right? If we can go to the --

A. Yes.

Q. And you said: I'm going to need you to provide leadership here. Have I read that correctly?

A. Yes.

Q. Why did you send this e-mail string

J. DONDERO

to Mr. Ellington on December 16th?

A. I don't remember.

Q. What leadership were you looking for?

A. I can't piece it together from here. I don't remember. I can't piece it together from the e-mail, and I don't remember.

Q. Why did you need Mr. Ellington to provide leadership?

A. I don't know.

Q. Does --

A. I don't remember.

Q. Okay. Does looking at the topic, a list for a joint meeting, refresh your recollection that you wanted Mr. Ellington to coordinate all of the lawyers working on your behalf and on behalf of the entities in which you own an interest?

A. No. I mean, because that was the beginning of the string, but the middle of the string starts going in different directions. I can't say -- I can't say what I wanted him to have leadership with.

Q. Can you think of any -- any issue at all, looking at this e-mail string, as to what he

J. DONDERO

would be providing leadership for if it's not to coordinate your defense counsel?

A. I don't want to speculate, but again -- I don't want to speculate, but again, the middle of the string looks like it goes in different directions than just forming the mutual defense thing.

Q. Okay. So you have no recollection why you forwarded this e-mail to Mr. Ellington on December 16th and why you told him that you need him to provide leadership here; is that your testimony?

A. Correct.

Q. Is Mr. Ellington a party to any joint defense or mutual defense agreement that you're a party to?

A. I believe the employees' counsel is part of the working group, although I've been on calls when the employees' counsel has been on and when it hasn't. But I don't even -- I think the employee group is divided into a couple different groups, and I don't know if Ellington is part of both groups. But I -- Ellington individually is

J. DONDERO

not part of the working group, and I'm not sure which, if one or both, of the employee groups he's in.

Q. So there's two employee groups; is that right?

A. I'm beyond my involvement and expertise, but I thought there were two employee groups, but I don't even know that for sure.

Q. And has your counsel conferred with counsel for either or both of the employee groups?

MR. BONDS: I'm sorry, can you repeat the question?

MR. MORRIS: Yes.

BY MR. MORRIS:

Q. Has your counsel at Bonds Ellis conferred with counsel for either or both of the employee groups?

A. I don't know.

MR. MORRIS: John, I would call for the immediate production of any --

MR. BONDS: I don't think we have it, but I can check on that.

MR. MORRIS: I would call for the

1 J. DONDERO
2 immediate production of any joint defense or
3 mutual defense agreement to which any debtor
4 employee is a party –
5 MR. BONDS: I don't think that there
6 are any.
7 MR. MORRIS: And I would call for any
8 drafts, okay?
9 MR. BONDS: Again, I don't think
10 there are any.
11 MR. MORRIS: Okay. You can give me
12 that representation.
13 BY MR. MORRIS:
14 Q. Let's look at the top, at
15 Mr. Ellington's response. And what did he tell
16 you in response to your statement that you need
17 him to provide leadership?
18 A. You mean the two words there?
19 Q. Yep.
20 A. It looks like he typed back: On it.
21 Q. Yeah.
22 Did Mr. Ellington subsequently
23 provide leadership, as you had asked?
24 A. I don't remember. Nothing I can
25 recall.

1 J. DONDERO
2 Q. Did Mr. Ellington ever participate in
3 any conference calls with your counsel at Bonds
4 Ellis?
5 A. Not that – not that I recall.
6 Ellington's time has been spent primarily, the
7 vast majority, representing and working with the
8 employee group. I know that. It's been
9 difficult to get his attention on anything else
10 so –
11 Q. Listen carefully to my question. I'm
12 not asking you to tell me what Mr. Ellington
13 does. I'm simply asking whether you know that
14 Mr. Ellington has participated in conference
15 calls with your counsel at Bonds Ellis at any
16 time after December 10th.
17 A. I don't know.
18 Q. Did you ever participate in any calls
19 with Mr. Ellington and any lawyer at Bonds Ellis?
20 A. Over the year, for sure. There have
21 been – earlier in the year there were several
22 times, but I can't recall one recently.
23 Q. So you have no recollection of ever
24 participating in a phone call with Mr. Ellington
25 and any lawyer at Bonds Ellis at any time since

1 J. DONDERO
2 December 10th; is that your testimony?
3 A. I – I can't recall. I'm willing to
4 be refreshed. I can't recall. There were –
5 there were – some of the calls that stick out in
6 my mind I believe occurred prior to that date, so
7 I can't – I can't recall any post that date.
8 Q. Okay. You didn't produce this e-mail
9 in response to the Court's order, did you?
10 A. I don't know.
11 Q. And that's because you didn't take
12 the time to look at the production before it was
13 delivered to my firm, right?
14 A. I – I believe the – yeah, I mean,
15 it's a process I don't – I don't get directly
16 involved in. Counsel has to decide what's
17 responsive, what's privileged, what's complete,
18 what's appropriate. That's not my job.
19 Q. Are you aware that any documents for
20 which a privilege was asserted were supposed to
21 be delivered to the Court last December 31st?
22 A. I'm not saying that's what – I have
23 no idea whether we produced this or didn't
24 produce it. And if we didn't, I don't know why.
25 Q. Do you know that the UCC has asked

1 J. DONDERO
2 for the financial statements for Dugaboy and Get
3 Good?
4 MR. BONDS: Objection, you're going
5 far afield from where we're – this TRO.
6 MR. MORRIS: You can take that
7 position if you want, but I assure you, when I'm
8 done, you'll understand.
9 MR. BONDS: I'm going to instruct the
10 witness not to answer the question.
11 MR. MORRIS: You're not going to let
12 him answer as to whether or not the UCC wanted
13 the Dugaboy and Get Good financial statements?
14 MR. BONDS: I can't hear you.
15 MR. MORRIS: Yeah, I apologize.
16 It's – it's not me, John. Let me just ask
17 again. Are you – you're going to instruct your
18 witness not to answer the question of whether he
19 knew that the UCC wanted the Dugaboy and Get Good
20 financial statements?
21 MR. BONDS: I'll let you go one –
22 you can ask that one question. But anything
23 further into Dugaboy is not something that is for
24 the Court to determine at this point in this
25 case.

J. DONDERO
MR. MORRIS: Okay.
So you can answer that question, sir.
A. I think there have been several times over the last year that Dugaboy financials have been requested by a variety of entities. I don't know when or recently or if the UCC requested it recently.
BY MR. MORRIS:
Q. You know a number of different parties have asked for the Dugaboy and Get Good financial statements; is that right?
MR. BONDS: I'm going to object to any answer that you may give following up on Dugaboy. Dugaboy is not subject to the TRO and you're stuck with your adversary proceeding.
MR. MORRIS: John, there is a text message that we're going to get to in a moment, so I'll end the suspense. Mr. Dondero specifically says: Don't produce the Dugaboy financial statements without a subpoena. Those documents were in the debtor's possession. I will tell you that I personally made at least a half a dozen requests of Mr. Ellington and Mr. Leventon for those documents.

J. DONDERO
I will tell you that Jim Seery instructed them to provide those documents because they're in the debtor's possession, custody and control.
I will tell you that there's no shared services agreement between Dugaboy or Get Good and the debtor, and there is no basis for those -- for Mr. Ellington and Mr. Leventon to have obstructed the debtor's obligation to provide those documents except in Mr. Dondero's hands.
MR. BONDS: I'm going to instruct the witness not to answer the question.
MR. MORRIS: I think that might be a good idea. On what basis?
MR. BONDS: I don't need to give a basis. I think that you've gone far, far from what we're here on today, which is --
MR. MORRIS: I believe that it's --
MR. BONDS: -- specifically --
MR. MORRIS: I'm sorry to interrupt. Go ahead, John.
MR. BONDS: Specifically, it's the TRO and the injunction.

J. DONDERO
MR. MORRIS: Correct. And the TRO specifically -- I know Mr. Dondero doesn't know this because he hasn't read the document, but in addition to the things that he mentioned, it also prevents him from interfering with the debtor's business.
The debtor is a litigant here. The debtor has an obligation to provide these documents. And he interfered with that obligation.
Let me ask my questions and you can direct him not to answer every single time if you want, okay?
MR. BONDS: Okay.
BY MR. MORRIS:
Q. Do you know a woman named Melissa, Mr. Dondero?
A. Yes.
Q. And who is that?
A. She's my personal accountant.
Q. Does she work at the Highland offices?
A. Yes.
Q. Is she employed by the debtor?

J. DONDERO
A. I believe so.
Q. Do you know what her title is?
A. No.
Q. Do you directly or indirectly control -- withdrawn.
Do you directly or indirectly own Dugaboy?
A. No.
Q. Who owns Dugaboy?
MR. BONDS: I'm going to instruct the witness not to answer that question.
MR. MORRIS: Are you going to follow your counselor's advice?
THE WITNESS: Yes.
BY MR. MORRIS:
Q. Who controls Dugaboy?
MR. BONDS: I'm going to instruct the witness not to answer that question, for the second time.
MR. MORRIS: Are you going to follow -- yeah, we'll do this every time, John, just for the record.
MR. BONDS: That's fine.
MR. MORRIS: So I apologize. I

1 J. DONDERO
2 appreciate, you know, you do your job, I'll do
3 mine.
4 Mr. Dondero, are you going to follow
5 your counsel's advice?
6 THE WITNESS: Yes.
7 BY MR. MORRIS:
8 Q. To the best of your knowledge,
9 Dugaboy does not have a shared services agreement
10 with the debtor, correct?
11 You can answer, sir.
12 THE WITNESS: I'm not answering,
13 right? I'm not answering any questions on this
14 subject.
15 MR. MORRIS: Only if your lawyer
16 instructs you to do that, and he hasn't done that
17 for this question.
18 MR. BONDS: I'm going to instruct the
19 witness not to answer the question.
20 MR. MORRIS: You're not going to let
21 him answer whether Dugaboy has a shared services
22 agreement with the debtor?
23 MR. BONDS: I think that you're
24 entitled to that, so Jim, you can answer that
25 question.

1 J. DONDERO
2 A. I – I don't know.
3 BY MR. MORRIS:
4 Q. Okay. Are you familiar with an
5 entity called Get Good?
6 A. Yes.
7 Q. Do you directly or indirectly own Get
8 Good?
9 A. No.
10 Q. Do you control, directly or
11 indirectly, Get Good?
12 A. I don't believe so.
13 Q. Who owns Get Good?
14 MR. BONDS: I'm going to instruct the
15 witness not to answer the question.
16 MR. MORRIS: Are you going to follow
17 your counselor's advice?
18 THE WITNESS: Yes.
19 BY MR. MORRIS:
20 Q. Who controls Get Good?
21 MR. BONDS: Instruct the witness not
22 to answer the question.
23 MR. MORRIS: Are you going to follow
24 your counselor's advice, Mr. Dondero?
25 THE WITNESS: I'm going to follow his

1 J. DONDERO
2 advice, yes.
3 BY MR. MORRIS:
4 Q. To the best of your knowledge, Get
5 Good does not have a shared services agreement
6 with the debtor, does it?
7 THE WITNESS: Can I answer that or
8 not answer that one?
9 MR. BONDS: Yes, you can.
10 A. I don't know.
11 BY MR. MORRIS:
12 Q. Did you ever discuss the request by
13 any party to produce the financial statements of
14 Get Good and Dugaboy with Scott Ellington?
15 MR. BONDS: I'm going to tell you –
16 advise you not to answer the question.
17 MR. MORRIS: Are you going to follow
18 your counselor's advice?
19 THE WITNESS: Yes.
20 BY MR. MORRIS:
21 Q. Did you ever communicate with
22 Mr. Leventon on the subject matter of whether or
23 not the financial statements for Get Good and
24 Dugaboy needed to be produced by the debtor?
25 MR. BONDS: I'm going to advise the

1 J. DONDERO
2 witness not to answer the question.
3 MR. MORRIS: Are you going to follow
4 your counselor's advice?
5 THE WITNESS: Yes.
6 BY MR. MORRIS:
7 Q. Did you ever communicate with anybody
8 at any time who was employed by the debtor
9 regarding the production of the Dugaboy and Get
10 Good financial statements?
11 MR. BONDS: I'm going to instruct the
12 witness not to answer the question.
13 MR. MORRIS: Are you going to follow
14 your counselor's advice?
15 THE WITNESS: Yes.
16 BY MR. MORRIS:
17 Q. Melissa is Melissa Schroth, right?
18 A. Yes.
19 Q. She's an executive accountant
20 employed by the debtor, right?
21 A. Yes.
22 Q. And after December 10th, 2020
23 Ms. Schroth told you that a request had been made
24 for the production of the Dugaboy financial
25 statements, correct?

J. DONDERO

MR. BONDS: You can answer the question.

A. I don't remember.

MR. MORRIS: Okay. Can we put up Exhibit 17, please.

(Dondero Deposition Exhibit 17 marked.)

MR. MORRIS: Can you scroll down a little bit? I'm sorry. Scroll up so we can see who this text was sent to.

BY MR. MORRIS:

Q. Is that Melissa Schroth?

A. Yes.

Q. And if we scroll back down, do you see that you tell Ms. Schroth on December 16th: No Dugaboy details without a subpoena?

A. Yes.

Q. That's a text that you sent to her on December 16th, correct?

A. I believe so.

Q. What prompted you to send this text?

A. I don't know.

Q. You don't have any recollection as to why you would tell Melissa, quote, no Dugaboy

J. DONDERO

details without a subpoena?

A. No, but that would – I mean, I stand behind that response, but I don't remember why.

Q. Do you remember who was asking for the documents?

A. Nope.

Q. Do you remember any discussion with any person at any time concerning the production of the Dugaboy or Get Good financial statements?

A. Nope.

Q. Do you have any objection to the debtor producing the Dugaboy and Get Good financial statements?

A. I'm sorry, say that again?

Q. Would you consent to the debtor's production of the Get Good and Dugaboy financial statements?

A. With a subpoena. I stand by that statement, yeah.

Q. Okay. Do you know of any reason why Mr. Ellington and Mr. Leventon would have failed to respond to Mr. Seery's instruction to produce the Dugaboy and Get Good financial statements that were requested by the – (audio

J. DONDERO

malfunction) –

(Clarification requested by the stenographer.)

BY MR. MORRIS:

Q. – UCC?

A. I don't want to speculate.

Q. Have you heard of the law firm Baker & McKenzie?

A. Yes.

Q. Does that firm or any lawyer at that firm represent you in your individual capacity?

A. No.

Q. Does that firm or any lawyer at that firm represent any entity in which you have a direct or indirect ownership interest?

A. No. Not that I'm aware of, no.

Q. I'm sorry, one second.

Does that firm or any lawyer at that firm represent any entity that you directly or indirectly control?

A. Not that I'm aware of.

Q. Do you recall asking Isaac Leventon for the contact information for the – for the lawyers at Baker & McKenzie?

J. DONDERO

A. I – I don't – I don't – it might have been for part of the shared defense, mutual defense, whatever, agreement, but that's – that's the only reason why I would have asked for it.

Q. Okay. What's your understanding as to – (audio malfunction) –

(Clarification requested by the stenographer.)

BY MR. MORRIS:

Q. – the parties to that mutual defense agreement that you just referred to, or shared defense?

A. I – it's what I've testified already, Douglas Draper is coordinating it. I'm – I'm not sure whether the employees are on it or not, and I'm not sure if there's one employee group or two employee groups, and I'm not sure if one or both of them are part of that agreement or not.

But the – in recent history, my only awareness of Baker McKenzie is with regard to representing the employees. That's my only awareness of that firm.

J. DONDERO

Q. Have you ever spoken with an attorney at Baker McKenzie?

A. No, I have not.

MR. MORRIS: Okay. Can you put up Exhibit 18, please.

(Dondero Deposition Exhibit 18 marked.)

BY MR. MORRIS:

Q. That's Mr. Leventon. Do I have that right?

A. Yes.

Q. And you're communicating with him on or around – after December 10th, right?

A. Yes.

Q. Okay. And if you could scroll down a little bit, right there, on December 22nd, you asked Mr. Leventon to send you the Baker & McKenzie contact person, right?

A. Yes.

Q. And if you scroll down a little bit. Did he ever send that to you?

A. I'm sorry?

Q. Did he ever send that to you?

A. I don't know. I don't remember.

J. DONDERO

Q. Why did you want the Baker & McKenzie contact information?

A. I was trying to help Draper coordinate the mutual shared defense agreement.

Q. And it was your intent and desire to have the Baker McKenzie firm participate in that agreement, right?

A. No. I'm not a lawyer. The appropriateness of who's in that group under what circumstances representing who was a legal decision made by Draper.

Q. So why didn't you just have Draper deal with this? Why did you deal with it?

A. He was scurrying around, moving quickly, trying to get contact information for potential various different parties. I was just helping him get the contact information.

Q. And you –

MR. BONDS: I'm going to instruct you not to say anything relating to this as far as what he and Draper discussed.

BY MR. MORRIS:

Q. You were aware at the time that you asked for the Baker & McKenzie contact

J. DONDERO

information that Baker & McKenzie was a law firm that – that employees were considering retaining for their personal interests, right?

A. I knew they were involved with the employees. Whether – whether or when they were engaged and by which employee group and – I don't have details like that. I never did.

Q. But the one thing that you did know, when you asked for the Baker & McKenzie contact information, is that Baker & McKenzie would be representing some group of Highland employees, correct?

A. Or they might be. Or they were being interviewed at the time. I think they weren't formally engaged until later. I don't know these details and never did.

MR. BONDS: I'm going to instruct the witness –

THE WITNESS: I'm sorry, what?

MR. BONDS: You need to stop.

THE WITNESS: Okay.

MR. MORRIS: Why is that? Please don't interrupt the witness. Assert the privilege if you want, direct him not to answer,

J. DONDERO

but don't interrupt his answers.

BY MR. MORRIS:

Q. Baker McKenzie was ultimately retained by some group of the debtor's employees, correct?

A. I believe so.

Q. Do you know how Baker McKenzie got their retainer, their retainer money?

A. No idea.

Q. Do you know – are you familiar with an entity called Gov Re?

A. Yes.

Q. What's Gov Re?

A. It's a Bermuda-based reinsurance company.

Q. Do you have an ownership interest in Gov Re?

A. I don't know.

Q. Do any -- do any entities in which you have an interest have an ownership interest in Gov Re?

A. I don't know.

Q. Do you know who controls Gov Re?

A. I don't know.

1 J. DONDERO
2 Q. Do you make any decisions on behalf
3 of Gov Re?
4 A. Not recently. Not in the last year.
5 In prior years, I think I've helped them with
6 investments and some strategy, but not recently.
7 Q. Do you know whether Gov Re has made
8 any payment to Baker & McKenzie in the last
9 30 days?
10 A. I have no idea.
11 Q. Did you ever have a communication
12 with anybody at any time in the last 30 days as
13 to -- (audio malfunction) --
14 (Clarification requested by the
15 stenographer.)
16 BY MR. MORRIS:
17 Q. -- as to whether Gov Re would pay
18 money to Baker & McKenzie on behalf of some of
19 the debtor's employees?
20 A. Nope. No, I have no idea. I've
21 never heard the daisy chain you're connecting.
22 I've never heard it before.
23 MR. MORRIS: Let's take a break. I
24 might be finished. The time now is 2:32, or 1:32
25 Central. Let's just come back sharply at 1:45,

1 J. DONDERO
2 or 2:45.
3 THE VIDEOGRAPHER: 1:32 p.m. Central
4 Standard Time. We're off the record.
5 (Recess taken, 1:32 p.m. to
6 1:50 p.m. CST)
7 THE VIDEOGRAPHER: 1:50 p.m. Central
8 Standard Time. We're back on the record.
9 BY MR. MORRIS:
10 Q. I just have a few more minutes here.
11 Going back to Gov Re, Mr. Dondero,
12 are you on the board of that entity?
13 A. I don't know.
14 Q. Can you identify any person who sits
15 on that board?
16 A. No.
17 Q. Do you know how many people sit on
18 that board?
19 A. No.
20 Q. Do you have an understanding as to
21 who makes decisions as to whether or not Gov Re
22 should make -- (audio malfunction) --
23 (Clarification requested by the
24 stenographer.)
25 MR. MORRIS: Withdrawn.

1 J. DONDERO
2 BY MR. MORRIS:
3 Q. Mr. Dondero, do you know who makes
4 decisions on behalf of Gov Re as to whether or
5 not to make payments on claims?
6 A. No.
7 Q. Did you ever participate in any
8 decisions concerning the payment of claims made
9 under a Gov Re policy?
10 A. Not in five years. I think I was
11 more involved five years ago, but I don't
12 remember.
13 Q. So you don't know if you sit on the
14 board of directors, you don't know who makes
15 decisions to pay claims, and you can't identify
16 any members of the board; is that right?
17 A. Correct.
18 Q. Okay. And you don't know if you have
19 an indirect or direct ownership interest in
20 Gov Re; is that right?
21 A. Correct.
22 Q. Okay. You've spent some time over
23 the last months trying to put together a
24 so-called pot plan; is that right?
25 A. Yes.

1 J. DONDERO
2 Q. Since December 10th, 2020, have you
3 had any communications with any employee of the
4 debtor concerning the pot plan?
5 A. It's been a struggle to put together
6 a pot plan. There's been an intentional block of
7 any information, even assets, at Highland, so any
8 pot plan is a stab in the dark for me when I put
9 it forward, relative to current assets and likely
10 outcome.
11 But developing the pot plan has been
12 something I think that's been applauded by the
13 judge; at different times it's been encouraged by
14 creditors, you know. But the only people -- Dave
15 Klos has helped with creating the model so that
16 the model makes sense and adds up and is
17 distributable. Dave Klos has been the person
18 that I've accessed throughout the year regarding
19 the pot plan.
20 Q. And is it fair to say that you've
21 communicated with Mr. Klos about the pot plan
22 since December 10th, 2020?
23 A. Probably. You know, to the extent
24 that the pot plan has come up, been considered or
25 distributed, yes.

J. DONDERO

Q. Okay. Can you identify any other employees of the debtor with whom you've discussed the pot plan with since December 10th, 2020?

A. No.

Q. Did you discuss it with Mr. Waterhouse?

A. Mr. Waterhouse is Klos' direct supervisor. He probably had an awareness of it from those conversations. I don't recall. I mean, I don't -- maybe -- I mean, there have been, maybe, peripherally, not significant, I don't think, since the 16th, but I don't recall.

Q. Did you ever get any balance sheets or financial information about MultiStrat from Scott Ellington?

A. No.

Q. Did you ever get any financial information, including balance sheets, concerning MultiStrat, from Isaac Leventon?

A. No. They -- I wouldn't believe that those guys would have it. I wouldn't even think to ask them for it. It wouldn't be -- I don't think it's natural for them to have it. But no,

J. DONDERO

I never did, no.

MR. MORRIS: Okay. I have no further questions, just two points that I'd like to make.

John, will you agree on behalf of Mr. Dondero to have him appear at Friday's hearing when the preliminary injunction takes place or do I need to serve a subpoena?

MR. BONDS: No, we haven't made that decision yet.

MR. MORRIS: Okay. Will you accept a subpoena on behalf of Mr. Dondero?

MR. BONDS: Sure.

MR. MORRIS: Okay. We'll get that over to you tomorrow.

And then lastly, the deposition of Andrew Clubok has been adjourned to a date to be determined.

MR. BONDS: Okay.

MR. MORRIS: Thank you very much, all.

MR. BONDS: Thanks.

THE VIDEOGRAPHER: 1:56 p.m. -- 1:57 p.m. Central Standard Time. We're off the record. This concludes the deposition.

J. DONDERO

(Time noted: 1:57 p.m. CST)

_____

JAMES D. DONDERO

Subscribed and sworn to before me this _____ day of _____, 20____.

C E R T I F I C A T E

I, MICHAEL E. MILLER, FAPR, RDR, CRR, Notary Public in and for the State of Texas, do hereby certify:

That JAMES D. DONDERO, the witness whose deposition is hereinbefore set forth, was duly sworn by me and that such deposition is a true record of the testimony given by such witness;

That pursuant to FRCP Rule 30, signature of the witness was not requested by the witness or other party before the conclusion of the deposition;

I further certify that I am not related to any of the parties to this action by blood or marriage; and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand on January 5, 2021.

_____

MICHAEL E. MILLER, FAPR, RDR, CRR
NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS

---------- I N D E X ----------

WITNESS: JAMES D. DONDERO

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ERRATA SHEET FOR THE TRANSCRIPT OF:

Case Name: IN RE HIGHLAND/HIGHLAND v. DONDERO

Dep. Date: January 5, 2021

Deponent: JAMES D. DONDERO

Pg.	Ln.	Now Reads	Should Read	Reason
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Signature of Deponent

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THIS _____ DAY OF _____, 20____.

_____

(Notary Public) MY COMMISSION EXPIRES: _____

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EXHIBIT 96

1 Dondero - 5-28-2021

2 IN THE UNITED STATES BANKRUPTCY COURT

3 FOR THE NORTHERN DISTRICT OF TEXAS

4 DALLAS DIVISION

5 In re:)
)
6 HIGHLAND CAPITAL) Case No.
MANAGEMENT, LP,) 19-34054 L.P.
7) Chapter 11
Debtor,)
8 ----------)
HIGHLAND CAPITAL MANAGEMENT,)
9 LP,)
)
10 Plaintiff,) Adversary No.
) 21-03003-sgi
11 vs.)
)
12 JAMES D. DONDERO,)
)
13 Defendant.)

14

15 REMOTE DEPOSITION OF

16 JAMES DONDERO

17

18 Pages 103 - 282

19 Dallas, Texas

20 Friday, 28th day of May, 2021

21

22

23 Job No. 194690

24 Reported by:

25 Daniel J. Skur, Notary Public and CSR

1 Dondero - 5-28-2021
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7
8 28th day of May, 2021
9 9:33 a.m. - 1:59 p.m.
10
11
12 Remote Deposition of JAMES DONDERO,
13 located in Dallas, Texas, before Daniel J.
14 Skur, Notary Public and Certified Shorthand
15 Reporter in and for the State of Texas
16 located in Waxahachie, Texas.
17
18
19
20
21
22
23
24
25

1 Dondero - 5-28-2021
2 A P P E A R A N C E S:
3 Pachulski Stang Ziehl & Jones
Attorney(s) for Debtor
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5 New York, New York 10017
6 BY: John Morris, Esq.
7 Gregory Demo, Esq.
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Sidley Austin
16 Attorney(s) for The Committee
2021 McKinney Avenue
17
Dallas, Texas 75201
18
BY: Paige Montgomery, Esq.
19
20
21 ALSO PRESENT:
22 Davor Rukavina, NexPoint
23 La Asia Canty
24
25

1 Dondero - 5-28-2021
2
3 IT IS HEREBY STIPULATED AND AGREED
4 by and between the attorneys for the respective
5 parties herein, that filing and sealing be and
6 the same are hereby waived.
7 IT IS FURTHER STIPULATED AND AGREED
8 that all objections, except as to the form of
9 the question, shall be reserved to the
10 time of the trial.
11 IT IS FURTHER STIPULATED AND AGREED
12 that the within deposition may be sworn to and
13 signed before any officer authorized to
14 administer an oath, with the same force and
15 effect as if signed and sworn to before the
16 Court.
17 - oOo -
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1 Dondero - 5-28-2021
2 P R O C E E D I N G S
3 REMOTE ORAL DEPOSITION OF
4 JAMES DONDERO
5 (REPORTER NOTE: This deposition is
6 being conducted remotely in accordance with
7 the Current Emergency Order regarding the
8 COVID-19 State of Disaster.
9 Today's date is the 28th day of
10 May, 2021. The time is 9:33 a.m. Daylight
11 Savings Time. The witness is located in
12 Dallas, Texas.)
13 JAMES DONDERO,
14 having been duly cautioned and sworn to tell
15 the truth, the whole truth and nothing but the
16 truth, testified as follows:
17 (9:33 A.M.)
18 EXAMINATION
19 BY MR. MORRIS:
20 Q. Good morning, Mr. Dondero.
21 A. Morning.
22 Q. It's John Morris, again, from
23 Pachulski on behalf of the debtor. We're here
24 for your deposition today.
25 Do you understand that?

1 Dondero - 5-28-2021
2 A. Yes.
3 Q. Okay. We've done this a few times,
4 so I'm going to kind of cut to the chase; but I
5 do want to remind you that we're going to be
6 looking at a number of documents today.
7 And because of the difficulty
8 sometimes of doing this on a Zoom or by video,
9 if, at any time, you believe you need to see
10 other portions of the document, please let me
11 know that. Okay?
12 A. Sure.
13 Q. Okay.
14 MR. MORRIS: Can we put up the first
15 exhibit, please?
16 (Exhibit 1 introduced.)
17 BY MR. MORRIS:
18 Q. Okay. This is a document that's got
19 a title, "Promissory Note." It's dated
20 February 2, 2018, and the amount of the note is
21 $3,825,000.
22 Do you see that?
23 A. Yes.
24 MR. MORRIS: Can we just go to the
25 signature line, please?

1 Dondero - 5-28-2021
2 BY MR. MORRIS:
3 Q. Is that your signature, sir?
4 A. I believe that's my assistant on my
5 behalf.
6 Q. Did you authorize --
7 (Audio distortion.)
8 A. I'm sorry?
9 BY MR. MORRIS:
10 Q. I don't want to step on your words.
11 Were you finished with your answer?
12 MS. DEITSCH-PEREZ: Yeah. Can
13 you -- yeah, can you ask it again?
14 MR. MORRIS: Sure.
15 BY MR. MORRIS:
16 Q. Is that your signature, sir?
17 A. Yes, for -- yes.
18 MR. MORRIS: Can we go back to the
19 top of the document?
20 BY MR. MORRIS:
21 Q. And was this document signed on or
22 around February 2, 2018?
23 A. Yes.
24 Q. Did you receive $3,825,000 from the
25 debtor on or around February 2nd, 2018?

1 Dondero - 5-28-2021
2 A. I -- I believe so. I don't have
3 direct awareness, but I believe so.
4 Q. Okay. And did you sign this
5 promissory note in exchange for that cash that
6 you believe you received?
7 A. Yes.
8 Q. Okay. Are you familiar with the
9 term "demand note"?
10 A. Yes.
11 Q. Can you describe for me your
12 understanding of what a demand note is?
13 A. It's a note that's -- maturity is
14 defined by the term "demand" versus a -- a
15 stipulated date.
16 Q. And if we look down to paragraph 2,
17 at the time that you signed this document on
18 February 2, 2018, did you understand, based on
19 paragraph 2, that you were signing a demand
20 note, as you've characterized it?
21 A. Yes.
22 Q. Okay.
23 MR. MORRIS: Can we go back to the
24 top of the document?
25 BY MR. MORRIS:

1 Dondero - 5-28-2021
2 Q. Is it fair to say that under this
3 demand note, you promised to pay Highland
4 Capital Management, L.P., the sum of
5 $3,825,000?
6 A. Yes.
7 Q. Okay. And at the time that you
8 signed this document on February 2nd, 2018, did
9 you intend to repay to Highland Capital
10 Management, L.P., $3,825,000 plus interest?
11 A. Yes.
12 Q. And at the time you signed this
13 document, did you intend to repay the principal
14 amount plus interest upon demand by HCMLP?
15 A. Whatever was appropriate to pay,
16 what hadn't been paid if it -- if it had --
17 yeah, if it had -- whatever the terms are, the
18 terms are.
19 Q. Okay. Did you read the promissory
20 note before you signed it?
21 A. No.
22 Q. Is there anything about the
23 promissory note today that you don't
24 understand?
25 A. I haven't looked at it closely. I'm

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aware of it but -- you know, but I'm not aware. I haven't looked at it closely.

Q. Well, but you do know that the debtor has sued you to collect on this note, right?

A. Yes.

Q. Okay. And can you identify anything in this note today that you don't understand?

MS. DEITSCH-PEREZ: Object to the form.

A. Again, I don't want to make any legal interpretation or analysis of the contract.

BY MR. MORRIS:

Q. And I appreciate that.

And to be clear, I'm not asking you for any legal opinion or any legal analysis. I'm asking for facts.

As a factual matter, as a layperson, is there anything about this note today that you do not understand?

MS. DEITSCH-PEREZ: Object, no foundation.

A. And I can't say.

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BY MR. MORRIS:

Q. Okay. You're not aware of anything; is that fair?

MS. DEITSCH-PEREZ: Object, no foundation.

A. No. I'm saying I can't give an opinion.

BY MR. MORRIS:

Q. All right. I'll try one more time a slightly different way.

Can you identify any language in this promissory note that you, as the maker of the note and as a layperson, as a matter of fact, do not understand?

MS. DEITSCH-PEREZ: Objection, no foundation.

A. I -- I don't have -- I haven't reviewed it. I don't have a comment.

BY MR. MORRIS:

Q. At the time that you signed this, did you believe that this note reflected all of the terms and conditions with respect to the subject matter of the note?

MS. DEITSCH-PEREZ: Object, no

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foundation.

A. Yeah, I believe largely at the time, yes.

BY MR. MORRIS:

Q. In fact, if we go to paragraph 8, there's -- the last sentence is what's commonly referred to as an integration clause.

Do you see that last sentence of paragraph 8?

A. Yes.

Q. And did you agree with the debtor that the terms and provisions of the paragraph control and supersede every other provision of all other agreements between the payee and the maker in conflict herewith?

A. I see it. I mean, I read it. But what's -- what's the question?

Q. Withdrawn. It's okay. It speaks for itself.

You were the CEO of Highland at the time that you signed the note, correct?

A. Yes.

Q. And you controlled Highland at that time; is that fair?

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A. Yes.

Q. And at the time that you signed the note, the Redeemer Committee had not yet obtained a judgment against Highland Capital Management or anybody else; is that -- any other Highland entity; is that right?

A. I -- and I don't recall the -- the timing --

Q. Okay.

A. -- of their arbitration award or...

Q. Let me ask you to just go back in time, February of 2018. Do you recall having any concern in February 2018 that you might lose control of Highland?

A. No, I don't recall.

Q. While you were the CEO, did Highland -- withdrawn.

I'm going to refer to Highland Capital Management, L.P., variously today as either the debtor, Highland, or HCMLP; is that fair?

MS. DEITSCH-PEREZ: John, I think it's a little confusing if you do that. I mean, if you could refer to the

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post-bankruptcy entity as "the debtor" and, when you're talking about prebankruptcy, call it "Highland" or "HCM"?

MR. MORRIS: Okay.

MS. DEITSCH-PEREZ: I – I think that would probably be clearer.

MR. MORRIS: That's fair. I'll try and do just that. Thank you very much.

BY MR. MORRIS:

Q. While you were the CEO of HCMLP, did HCMLP, prepare, in the ordinary course of business, a document called a "Monthly Reporting Package"?

A. I don't know – I don't know the name – I don't know that name in particular, but we did do monthly financials, I believe.

Q. Okay. And did you personally review the monthly financials each month that they were prepared?

A. No.

Q. Do you know who was responsible for preparing the monthly financials?

A. It would have been in accounting. I don't know who in accounting.

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Q. Was Frank Waterhouse responsible for preparing the Monthly Operating Reports?

A. He was our CFO. So everything, ultimately, in accounting reported up through him, but I don't know his involvement in that report.

Q. Can you identify any person who was responsible for preparing the Monthly Operating Reports for HCMLP, while you were the CEO?

A. No.

Q. Do you know what the Monthly Operating Reports were used for?

Withdrawn.

What was the purpose of preparing Monthly Operating Reports, if you know?

A. I don't know.

Q. Were they delivered to you each month, even if you didn't read them?

A. I don't believe so. Not physically, that I can remember. If there was an email, I don't remember.

Q. Did you ever discuss any of the Monthly Operating Reports with Mr. Waterhouse?

A. I can't – I can't recall.

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MS. DEITSCH-PEREZ: I mean, do you mean the report specifically or Highland's financials generally?

MR. MORRIS: The Monthly Operating Reports that we're talking about.

And I would appreciate it, Deborah, if you have an objection, just say "Object to the form of the question"; and I'll do the best I can to – to try to understand what you're saying, but I'd prefer no speaking objections.

BY MR. MORRIS:

Q. Do you recall ever speaking with anybody in accounting with respect to any Monthly Operating Report that they prepared?

A. I don't recall.

Q. Okay.

MR. MORRIS: Can we put up Exhibit Number 2, please?

(Exhibit 2 introduced.)

BY MR. MORRIS:

Q. Looking at the first page, sir, does this appear to be what we've been describing as a Monthly Operating Report for Highland Capital

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Management?

A. It says "Operating Results." I – I have no recollection of seeing this cover sheet before.

Q. Okay.

MR. MORRIS: Can we go to the second page, please?

Stop right there.

BY MR. MORRIS:

Q. This is the second page of the Operating Results for February 2018, and it's headed "Significant Items Impacting HCMLP's Balance Sheet."

Do you see that?

A. Yes.

Q. Do you know whether the accounting department was charged with the responsibility of identifying on a monthly basis significant items that would impact Highland's balance sheet?

A. I have no particular awareness.

Q. Okay. Do you see at the bottom under the title "Other," it's $3.8 million and it's referred to as "Partner Loan"?

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A. Yes.

Q. Do you have an understanding that that 3.8 million-dollar partner loan refers to what we just looked at as Exhibit 1, the promissory note?

MS. DEITSCH-PEREZ: Object, no foundation.

A. I have -- I have no particular awareness other than the amounts are similar.

BY MR. MORRIS:

Q. And -- and do you know whether Highland recorded the promissory note as an asset on its balance sheet as of February 2018?

A. I -- I don't know.

Q. So, you signed a promissory note for $3.8 million in February 2018; and as the CEO, you don't know if Highland carried that promissory note on its balance sheet. Do I have that right?

A. I'm saying I don't have particular knowledge. I -- I am a CPA and GAAP accounting would suggest that it was, but I don't have -- I don't have particular knowledge on how it was accounted for.

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Q. Okay. Later in the year, you signed two more promissory notes in favor of Highland; is that right?

A. I -- I believe so. Yeah.

MR. MORRIS: Can you put up Exhibit 3, please?

(Exhibit 3 introduced.)

BY MR. MORRIS:

Q. And can we go to the signature line?

(Scrolling.)

BY MR. MORRIS:

Q. Is that your signature, sir?

A. Yes.

MR. MORRIS: Go to the top of the page.

BY MR. MORRIS:

Q. Did you sign a promissory note on or about August 1st, 2018, in the amount of $2.5 million in favor of Highland?

A. Yes.

Q. Did you receive from Highland Capital Management, L.P., $2.5 million on or about August 1st, 2018?

A. I believe so.

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Q. And did you, in fact, sign this promissory note in exchange for that $2.5 million?

A. Yes.

MR. MORRIS: Can we go down to paragraph 2, please?

(Scrolling.)

BY MR. MORRIS:

Q. Looking at paragraph 2, would you characterize this as a demand note, using the understanding that you described earlier today?

A. Yes.

Q. And -- and this note, like the other, because they're demand notes, there's no conditions for -- for the demand, is that right, at least as drafted.

Withdrawn. That wasn't a great question.

Were these unconditional demand notes, these two documents that we've looked at?

A. I -- I don't want to make a legal interpretation.

Q. I'm just asking for your

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understanding as the person who signed the note. At the time you signed it, at that time, did you understand that there were any conditions placed on Highland's ability to make a demand?

A. I don't know.

Q. Okay. Did you understand that under these demand notes, that if you defaulted, all amounts that were due and payable would accelerate?

MS. DEITSCH-PEREZ: Object to the form.

A. I don't know.

BY MR. MORRIS:

Q. Did you read this -- did you read this promissory note before you signed it?

A. No.

Q. Do you know whose idea it was to give you the principal amount of these notes and for you to execute the promissory notes in exchange?

A. I -- again, I think it's proper accounting consistent with what we've done with -- we've done historically -- or Highland

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did historically and what Highland did historically for other employees.

Q. Okay. I'm not asking about that. I'm asking just about you and the two notes that we've looked at so far: Who made the decision at the respective moments in time to transfer to you the principal amount of the notes and for you to execute the notes?

A. I believe it would have come from accounting.

Q. Who decided – who decided the principal amount of the note?

A. I don't know. It would – I don't know.

Q. Did you ask to borrow money?

Did you ask the folks in accounting for a loan from Highland in the principal amount of the notes and request that they document it accordingly?

A. No.

Q. Who was your assistant at this time?

A. My accounting assistant at this time was Melissa Schroth.

Q. And was she authorized to sign these

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notes on your behalf?

A. I – that – sometimes she signs stuff. I don't know on this. I'm – I'm not denying that it's a bona fide – signed by me. Or if it wasn't signed by me, it was – somebody who was authorized signed it on my behalf.

Q. Okay. I appreciate that. Thank you.

Is there anything about – withdrawn.

Was there anything about this promissory note that you didn't understand at the time that either you signed it or it was signed on your behalf?

MS. DEITSCH-PEREZ: Object, no foundation.

A. Again, I didn't evaluate it carefully, and I didn't actually even read it.

BY MR. MORRIS:

Q. Okay. As you sit here today, can you identify anything in this document that you do not understand?

MS. DEITSCH-PEREZ: Object, no

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foundation.

A. I – I don't want to make a legal interpretation on a legal document.

BY MR. MORRIS:

Q. I appreciate that, but I have no ability to ask any follow-up questions. So let me ask it just a different way: Is there anything about this document that you don't understand today?

MS. DEITSCH-PEREZ: Object, no foundation.

BY MR. MORRIS:

Q. You can answer.

A. I don't know.

Q. Okay. Do you understand that if there was something that – that you did not understand, you have an obligation to tell me that right now?

MS. DEITSCH-PEREZ: Object, no foundation.

A. I – I – the answer is the same. I don't know.

MR. MORRIS: Can we go to Exhibit Number 4, please?

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(Exhibit 4 introduced.)

MR. MORRIS: Can we go to the signature line when you get there?

BY MR. MORRIS:

Q. Is that your signature, sir?

A. Yes.

Q. And did you sign this document or – or – let me ask two questions first. Did you personally sign this document?

A. And again, it was either me or someone with my approval, but that doesn't look like my typical signature, but it's close.

Q. Okay. And whoever signed it had the authority from you to sign on your behalf; is that fair?

A. Yes.

Q. Okay.

MR. MORRIS: Can we go to the top of the page, please?

BY MR. MORRIS:

Q. And did you or somebody acting on your behalf sign this promissory note on August 13, 2018, in the amount of $2.5 million?

A. Yes.

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MR. MORRIS: Can we go to paragraph 2, please?

BY MR. MORRIS:

Q. Looking at paragraph 2 and the term contained therein, would you agree that this is a demand note, using the definition that you supplied earlier today?

A. Yes.

Q. At the time that this note was signed on your behalf, did you intend to comply with the terms of this note?

A. Yes.

Q. At the time that this note was signed on your behalf, did you intend to pay all unpaid principal and accrued, but unpaid, interest upon demand of the payee?

A. Let me say I -- I expected to honor the agreement. I don't know if I can answer that with regard to that one term.

Q. Well, I do just want to make sure that -- withdrawn.

You understood at the time you signed this document, or it was signed on your behalf, that it was a demand note, correct?

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A. That it was structured -- no. I think what I've testified or tried to testify to is that they are demand notes or they're written as demand notes. I didn't read them or pay attention at the time to the structure of the note.

Q. Okay. And as demand notes, you understood that any unpaid principal and interest would be due upon demand, correct?

A. Again, I don't want to make -- I don't want to make -- I don't want to affirm that statement. I would say I don't know because I don't want to -- I don't know the rest of the context of the rest of the note and how it all interplays.

Q. All right. Well, I'm happy to -- to -- it's a very short document, so we can look at it for as long as you want, but I really need to know what -- what you, as the maker, understood when you signed the note. So I'm going to ask a very simple question, and I encourage you to -- to ask to see whatever portions of the document you want, okay?

When these three notes were signed

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by you or signed by someone you authorized to sign, what did you understand the payment terms to be?

A. I -- I didn't. I didn't have an understanding at the time.

Q. So -- but -- but you would agree that your intention was to comply with the terms of the note; is that fair?

A. In aggregate, yes.

Q. Okay.

MR. MORRIS: Go to Exhibit 5, please.

(Exhibit 5 introduced.)

BY MR. MORRIS:

Q. Is it your practice to sign documents or to have people sign documents on your behalf that you haven't read?

A. Yes.

Q. This is a document that's entitled "Operating Results" for August 2018. Do you see that?

A. Yes.

MR. MORRIS: And if we could just go to the second page.

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BY MR. MORRIS:

Q. Do you see under Significant Items Impacting Highland's bank -- balance sheet for August 2018 at the bottom, there's a reference to $5 million in "partner loan." Do you see that?

A. Yes.

Q. Do you have an understanding as to whether or not that refers to the two 2.5 million-dollar notes that we just looked at that were signed in August 2018?

A. I don't know.

Q. Do you have any recollection at all or -- withdrawn.

Were you personally referred to as a partner of Highland in August 2018?

A. I believe so.

Q. Are you aware of any partner loans that were made by Highland in August 2018 other than the two loans that we just looked at?

A. I don't know.

Q. You're not aware of any; is that fair?

MS. DEITSCH-PEREZ: Object, no

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foundation.

A. I don't know.

BY MR. MORRIS:

Q. There came a time when the debtor made demand on these three notes, right?

A. I don't know. I believe -- I don't know specifically, but I believe so.

MR. MORRIS: Can we put up Exhibit 6, please?

(Exhibit 6 introduced.)

BY MR. MORRIS:

Q. Do you see this is a -- it's a letter dated December 3rd, and it's addressed to you.

And if we scroll down a little bit, it's signed by Mr. Seery as the CEO and CRO of Highland Capital Management.

Do you see that?

A. Yes.

Q. Do you recall on or around December 3rd, 2020, the debtor made a demand for all outstanding principal and interest due under the three notes that we just looked at?

A. I -- I see the letter. I don't have

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a recollection.

Q. All right. Do you understand that in December 2020, the debtor made a demand for payment of all unpaid principal and interest under the three notes that we just looked at, even if you don't remember this particular letter?

A. I'm sorry. What was -- yeah, I accept the letter, and I'll accept that it was delivered.

What -- what's your question, please?

Q. I'm trying to just get -- get your understanding.

And I think you testified that you don't recall seeing this letter. Do I have that right?

A. That's correct.

Q. Okay. So, putting the letter to the side, did you become aware in December 2020 that the debtor had demanded that you pay all unpaid principal and interest due under the three promissory notes that we just looked at?

A. Again, just generally.

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Q. Did you make any payment to the debtor in response to that demand?

A. No.

Q. Did you or anybody acting on your behalf respond to the debtor's demand in any way?

MS. DEITSCH-PEREZ: Object to the form.

BY MR. MORRIS:

Q. Withdrawn. That's fair.

Let me ask a different question.

Did you or anybody acting on your behalf respond to the debtor's demand at any time prior to the commencement of this adversary proceeding?

MS. DEITSCH-PEREZ: Object to the form.

A. Can you repeat it one more time?

BY MR. MORRIS:

Q. Sure. Did you or anybody acting on your behalf respond to the debtor's demand for payment of all unpaid principal and interest at any time prior to the commencement of this lawsuit?

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MS. DEITSCH-PEREZ: Object to the form.

A. I want -- I want to answer that question as -- as follows: I'm not saying on my behalf, but I know there was a lot of conversations with lawyers and business people around the notes and their shared services and the split and the overpayments to Highland and -- trying to reach some amicable resolution of shared services -- in fact, the entire estate -- but I don't -- I don't -- I don't recall specifically or -- what lawyers or what business people were saying what to the debtor, but I -- I know there were a lot of conversations that were going on.

BY MR. MORRIS:

Q. Can you identify any aspect of any of the conversations you just described that pertained to the debtor's demand for payment of all unpaid principal and interest on the three notes?

A. Not -- not specifically.

Q. Okay. There came a time when an answer to the debtor's complaint was filed on

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your behalf.

Do you remember that?

A. No, but I'm willing to be refreshed.

Q. Okay.

MR. MORRIS: Can we please put up Exhibit 7?

(Exhibit 7 introduced.)

MR. MORRIS: And if we could just scroll down to the title.

BY MR. MORRIS:

Q. Do you see that this document is called "Defendant James Dondero's Original Answer"?

A. Yes.

Q. And if we scroll back to the top of the document, do you see that it was filed on the docket on March 16, 2021?

A. Yes.

Q. Did you personally read this document before it was filed?

A. No.

Q. Did you have an understanding as to the contents of the document before it was filed?

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A. No.

Q. Did you authorize Bonds Ellis to file this document on your behalf?

A. Not specifically that I remember.

Q. Did you know on or around March 16, 2021, that Bonds Ellis had filed "Defendant James Dondero's Original Answer" in this adversary proceeding?

A. Not specifically. There's a lot going on.

Q. As you sit here right now--and, again, happy to page through the document--can you tell me whether you have ever read Defendant James Dondero's Original Answer?

A. Not that I recall.

Q. So, as of -- and that's true as of today; is that fair?

A. Can we scroll through this, please?

Q. Yes. Just let us know if you want us to slow down or speed up.

MS. DEITSCH-PEREZ: Yeah, just go slow enough so he could sort of eyeball each page.

MR. MORRIS: You bet.

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THE WITNESS: Yep, keep going.

(Scrolling.)

THE WITNESS: Hold on. Could you go back a little bit, please? It just goes -- stop right there.

A. I do remember paragraph 5. I think that was recently tried last week or so, but I think that was always the -- always the way it was described to me by lawyers, was that these notes shouldn't be in her Court.

MS. DEITSCH-PEREZ: Okay. And I'll just -- I'll just caution the witness to not disclose communications with counsel, but it's okay if something catches your eye and you, at least, remember that part, say, "Oh, yeah, I remember that one," but without going into details as to any communications with your lawyers.

MR. MORRIS: And -- and that's fine. That's fine. I'm certainly not looking for that.

BY MR. MORRIS:

Q. The question is really simple: Have you ever seen this document before and --

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MS. DEITSCH-PEREZ: John, I think he said he needs to scroll through it to see if anything --

MR. MORRIS: I understand.

MS. DEITSCH-PEREZ: -- triggers a recollection. He just said he's looking at 5, yeah, that looks familiar. If you want to keep going, we could find out if there are any others that -- that look familiar to him.

THE WITNESS: Let's keep going.

(Scrolling.)

MS. DEITSCH-PEREZ: You'll agree that most answers are not particularly memorable when they say things like --

(Simultaneous conversation.)

MR. MORRIS: Please stop. Please stop. Please stop talking. Please stop talking. It's inappropriate.

MS. DEITSCH-PEREZ: I -- I know. It's your deposition, and you could do all this stuff, but --

(Simultaneous conversation.)

MR. MORRIS: Please stop talking.

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Please stop talking.

MS. DEITSCH-PEREZ: I hear you.

THE WITNESS: Keep -- keep going.

(Scrolling.)

THE WITNESS: Okay. Keep going.

(Scrolling.)

THE WITNESS: It looks to me like --

MS. DEITSCH-PEREZ: Keep -- let -- let him go through the whole thing.

THE WITNESS: Sure. Keep going.

(Scrolling.)

THE WITNESS: Okay. Is that it?

MR. MORRIS: Yes.

THE WITNESS: Okay.

BY MR. MORRIS:

Q. Do you recall ever seeing this document before, sir?

A. The -- the substance of it, again, some of it I -- I remember, and the -- there -- it strikes me as a legal argument and defenses regarding the payment of the notes, and I do remember a lot of conversation regarding it being -- it should be outside -- it should be in a different court, and it should be a jury

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trial. And those are two main points in here, but it seems like there are a bunch of other defenses listed.

Q. Okay.

A. And I have -- and I have an awareness of it, but I'm not a lawyer.

Q. I appreciate that you're not a lawyer; but looking at the document, does that refresh your recollection that you read and reviewed this document before it was filed on your behalf?

A. I have -- I have an awareness of it, but I wouldn't -- I wouldn't have been deeply involved in its drafting or detailed approval.

MR. MORRIS: Can we go to page 6 of 8, please?

BY MR. MORRIS:

Q. And directing your attention to paragraph 40, do you see it says, as the first affirmative defense, quote, "Defendant asserts that plaintiff's claims should be barred because it was previously agreed by plaintiff that plaintiff would not collect on the notes."

Do you see that?

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A. Yes.

Q. Okay. Have I read that accurately?

A. Yes.

Q. Did the plaintiff ever agree that plaintiff would not collect on the notes?

A. Yes.

Q. You subsequently amended this defense; isn't that right?

A. I believe so.

Q. And do you understand that you amended it to add a few words relating to conditions subsequent?

A. I -- I -- other than for clarification and completeness, the -- it was amended. I don't have specific knowledge of what was amended.

Q. Okay. When did the plaintiff agree that the plaintiff would not collect on the notes?

A. Boy, that was early on in the case. Every proposal, every POT plan, every settlement discussion never included value for notes.

Q. All right. I'm going to ask the

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question again: When did the plaintiff agree that it would not collect on the notes?

MS. DEITSCH-PEREZ: Are you talking about the subsequent agreements in the next pleading?

MR. MORRIS: I'm asking for an answer as to when the agreement referred to in paragraph 40 was entered into.

A. First quarter of -- first quarter of 2020.

BY MR. MORRIS:

Q. So it was after the petition date?

MS. DEITSCH-PEREZ: Are you asking about the 2018 notes?

MR. MORRIS: Yes, those are defined to be "the notes."

BY MR. MORRIS:

Q. So -- so did -- this is your defense.

Is it your position, Mr. Dondero, that in the first quarter of 2020, the plaintiff agreed that it would not collect on the notes?

A. I -- I -- I don't -- I want to leave

1 Dondero - 5-28-2021
2 my testimony as what I just said a minute ago.
3 The notes were never part of any POT plan or
4 suggested POT plan or suggested grand bargain
5 or suggested as having any value starting in
6 the first quarter of '20 -- or most of the
7 year, I believe, until the -- towards the end
8 of the year.
9 Q. All right. Was there ever an
10 agreement between you and the plaintiff that
11 the plaintiff would not collect on the notes if
12 there was no grand bargain or no POT plan?
13 A. Yeah, the -- I'm sorry. Repeat
14 again.
15 Q. Who entered the agreement on behalf
16 of the debtor that the plaintiff would not
17 collect on the notes?
18 A. (Indiscernible speech.)
19 Agreement on -- you know, the --
20 the -- you know the -- I think I'm looking at
21 this question from a perspective of the
22 negotiation, you know, at that time and not
23 including the subsequent conditions that were
24 overlaid on the notes, I guess. So I guess
25 it's a combination of both.

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2 Q. I'm asking you to identify the
3 person who acted on behalf of the debtor in
4 reaching the agreement with you that the
5 plaintiff would not collect on the notes. Who
6 did that?
7 MS. DEITSCH-PEREZ: John, I think
8 the problem is you're referring to the
9 debtor, so he's looking at post-bankruptcy.
10 You might ask it two questions, one --
11 MR. MORRIS: No. Please stop.
12 Please stop. Please stop.
13 (Simultaneous conversation.)
14 MS. DEITSCH-PEREZ: You agreed to
15 that condition. You agreed to distinguish
16 between the debtor --
17 (Simultaneous conversation.)
18 MR. MORRIS: Deborah --
19 MS. DEITSCH-PEREZ. -- bankruptcy --
20 MR. MORRIS: Deborah --
21 (Simultaneous conversation.)
22 THE REPORTER: I can't -- I can't
23 write two people at the same time.
24 MR. MORRIS: This is so improper.
25 He has --

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2 MS. DEITSCH-PEREZ: It is not. You
3 agreed --
4 MR. MORRIS: Please let me finish.
5 Please let me finish.
6 He has described the conversations
7 as taking place in 2020. I should be
8 referring to the debtor. He is
9 describing --
10 MS. DEITSCH-PEREZ: Right.
11 MR. MORRIS: -- the context --
12 MS. DEITSCH-PEREZ: But if you want
13 to know about something that happened
14 before bankruptcy, ask about Highland.
15 MR. MORRIS: But I'm not. I
16 don't -- please stop interrupting.
17 MS. DEITSCH-PEREZ: It's your
18 deposition. If you want a muddy record, be
19 my guest.
20 MR. MORRIS: I would really
21 appreciate it. I think I know what I'm
22 doing.
23 BY MR. MORRIS:
24 Q. Mr. Dondero, who, on behalf of the
25 debtor, during these conversations about a

1 Dondero - 5-28-2021
2 grand bargain and a POT plan told you or
3 entered into the agreement that the plaintiff
4 would not collect on the notes?
5 A. I -- I -- during the bankruptcy,
6 we're talking about, right?
7 Q. I'm just following up on your
8 statement that the conversation -- that the
9 agreement was entered into in the first quarter
10 of 2020.
11 Do I have that right, or is that
12 wrong?
13 A. Well --
14 Q. Let's start again. Let's start
15 again.
16 This affirmative defense refers to
17 an agreement. Do you see that?
18 A. Yes.
19 Q. This is your affirmative defense;
20 isn't that correct?
21 A. Yes.
22 Q. And according to this affirmative
23 defense, the agreement was that the plaintiff
24 would not collect on the notes. Do I have that
25 right?

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2 A. Yes.
3 Q. Let's start with: When was that
4 agreement entered into?
5 A. Okay. I'm going to have to parse,
6 and I'm going to have to answer your question
7 as accurately as I can.
8 The subsequent conditions for
9 forgiveness of the notes were established
10 during a comp period in early 2019 for these
11 notes that were drafted in '18.
12 And the agreement was reached
13 with -- I believe it's a majority of, whatever,
14 the Class A holders in the fourth amended
15 Highland Capital partnership -- partnership
16 agreement. And that's what set up the
17 subsequent conditions and the ability for the
18 loans to be forgiven.
19 When you get into bankruptcy,
20 whether it was Seery, the independent board, or
21 whoever, no one ever put any value nor was it
22 ever included in any -- were the notes included
23 in any settlement discussions, period.
24 Q. All right. So, it's your testimony
25 that the debtor in settlement negotiations

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2 never, ever, ever asked for or demanded the
3 repayment of any unpaid principal or interest
4 under these three notes?
5 That's your sworn testimony?
6 A. No.
7 Q. So how did I get that wrong, then?
8 A. Well, a few minutes ago we went over
9 a letter from the debtor making a demand, but
10 that was, I believe, this year or -- yeah, I
11 believe that was this year or the end of '20.
12 What I'm saying is through '20, the
13 full year of '20 when we were trying to work on
14 a POT plan or global settlement before Seery
15 betrayed the estate, we were -- we never --
16 there was never value assigned to the notes.
17 Q. And you never offered to make any
18 payment of any kind, principal or interest, on
19 any of the notes in connection with any
20 proposal you ever made as part of the grand
21 bargain or POT plan; is that right?
22 A. I think -- I believe on the -- not
23 through 2020. I'll say that.
24 By the time 2021 came along, on the
25 eve of trial when I sent over a capitulation

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2 offer -- I think it was even titled that -- I
3 think I threw more money than everybody
4 deserved or was entitled to, to try and resolve
5 it. And implicitly, there was -- because it
6 was more than everybody was entitled to, I
7 think implicitly it included value for the
8 notes.
9 Q. And is it your testimony that at no
10 time prior to the delivery of the demand letter
11 did the debtor ever make an offer to you or --
12 of any kind that included any repayment of any
13 principal or interest due under the three
14 notes?
15 A. I'm willing to be refreshed, but not
16 that I recall.
17 Q. Okay. And is it your testimony that
18 anybody acting on behalf of the debtor ever
19 agreed not to collect on the notes?
20 A. I'm sorry. Repeat that one more
21 time, just --
22 Q. Is it your testimony -- withdrawn.
23 Did anybody acting on behalf of the
24 debtor ever agree with you that it would not
25 collect on the notes, irrespective of whether

1 Dondero - 5-28-2021
2 there was a settlement?
3 MS. DEITSCH-PEREZ: Object to form.
4 A. Yeah. Again, that was my
5 understanding through 2020.
6 BY MR. MORRIS:
7 Q. Do you have --
8 THE WITNESS: Let's -- let's --
9 before the next question, let's take a
10 ten-minute break, ten-minute bathroom
11 break, please.
12 MR. MORRIS: No problem.
13 MS. DEITSCH-PEREZ: Okay. We've
14 been going an hour, so we'll come back
15 at -- 10:30, come back at 10:40?
16 MR. MORRIS: That's fine. Thank
17 you.
18 (Recess held.)
19 BY MR. MORRIS:
20 Q. Is the agreement that you're
21 referring to and that's referred to in
22 paragraph 40, is that reflected in any document
23 that you're aware of?
24 A. Not that I'm aware of.
25 Q. And I believe you mentioned -- and

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we'll talk about this more later, but the part about the subsequent conditions or the conditions subsequent, that was the agreement that was entered into, did you say the -- in part -- as part of a compensation committee meeting?

A. As part of our compensation process in -- early in 2019.

Q. Okay. And when you say "early 2019," can you -- do you recall what month?

A. In January/February.

Q. So, it's your testimony that in January or February 2019, you and the debtor reached the agreement that's referred to in paragraph 40 as subsequently amended by your amended answer; is that right?

MS. DEITSCH-PEREZ: Object to the form.

John, I thought you were going to agree to call Highland Highland --

MR. MORRIS: That's fine. That's fine.

(Simultaneous conversation.)

MS. DEITSCH-PEREZ: -- thereafter.

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MR. MORRIS: That's fine. So, let me rephrase the question.

BY MR. MORRIS:

Q. I just want to make sure that I have this right, Mr. Dondero. It's your recollection that in January or February of 2019, you reached an agreement with Highland that's reflected in paragraph 40 as subsequently amended to include the phrase "conditions subsequent." Do I have that right?

A. I gave my testimony. I don't know if -- I don't want to opine on the legal document and whether the legal document captures it there or somewhere else, but my -- my recollection regarding pre-bankruptcy and post-bankruptcy is as I -- as I stated already.

Q. Let me -- let me try this a different way.

We looked at the three promissory notes. Were those promissory notes ever amended, to the best of your knowledge?

A. No, not that -- I mean, not -- not in writing.

Q. Okay.

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A. They were amended -- they were amended -- they were amended verbally.

Q. Okay. And did that verbal agreement take place in January or February 2019?

A. Yes.

Q. Was there any verbal agreement related to the notes that occurred other than the one you're referring to in January or February 2019?

A. Well, I gave my testimony during bankruptcy in 2020, the substance of all negotiations never assigned value to the -- the notes.

Q. But you never reached an agreement with the debtor on -- on any settlement that would include either payment for or forgiveness of the notes; is that fair?

You never reached an agreement?

A. Not in writing, but I believe we were operating with an understanding that the -- weren't likely to have value to the estate.

MR. MORRIS: Okay. I move to strike, and I'll ask the question again.

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BY MR. MORRIS:

Q. Do you have any agreement with the debtor -- agreement with the debtor with respect to any of the three notes?

MS. DEITSCH-PEREZ: Object to the form.

A. I believe the debtor in bankruptcy inherits that subsequent condition agreements from the first quarter of 2019; and I believe in 2020, the debtor operated and participated and acted in a way all negotiations that suggested the notes had -- were unlikely to have any value to the estate.

MR. MORRIS: Okay. I move to strike.

BY MR. MORRIS:

Q. And I'd ask you to please listen carefully to my question and only answer the question that's asked.

Is there any agreement that pertains to the notes other than --

MS. DEITSCH-PEREZ: Objection, asked --

BY MR. MORRIS:

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Q. – with –

A. Yeah, I'm going to stick with my same answer that I've given twice.

Q. I'm actually – I'm actually asking a different question; and if you would let me finish, this would go a lot more smoothly.

Is there any agreement, written or verbal, between you and the debtor concerning the notes other than the verbal agreement that you contend was entered into in January and February 2019?

I don't want to know about operations or offers or settlement discussions. I want to know about agreements: Is there any agreement pertaining to the notes other than the verbal agreement entered into in January or February 2019?

MS. DEITSCH-PEREZ: Object to the form.

A. Yes.

BY MR. MORRIS:

Q. What other agreement exists?

A. The agreement between, I guess, me and to the extent other related parties that

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had notes with the debtor, beginning in the first quarter after the bankruptcy, that the notes were unlikely to have any value to the estate or have any value in settlement.

Q. Okay. I don't want to know about value. I want to know if there is an agreement not to collect.

So let me try and answer – ask the question differently.

Other than the agreement that you assert was entered into in January or February 2019, did anybody acting on behalf of Highland or the debtor enter into any other agreement pursuant to which the debtor agreed not to collect on the notes?

A. I'm – I'm going – same answer: Implicitly, yes.

Q. Okay. Is that – is that implicit agreement written down anywhere?

You know what? I'm going to move on, Mr. Dondero, and I look forward to the jury trial.

MR. MORRIS: Can we put up the next exhibit, Number 8?

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(Exhibit 8 introduced.)

BY MR. MORRIS:

Q. Did you –

MR. MORRIS: If we could scroll down a little bit.

BY MR. MORRIS:

Q. Are you aware that the debtor served discovery in connection with this action?

A. Not specifically.

Q. Do you see that these are your objections and responses to the debtor's requests for admission?

A. Yes.

Q. Have you ever seen this document before?

And we can scroll down, if you'd like.

MS. DEITSCH-PEREZ: Scroll through it, please.

THE WITNESS: Yeah, let's scroll through it.

(Scrolling.)

THE WITNESS: Can you keep going, please?

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MR. MORRIS: That's the end.

THE WITNESS: Okay.

BY MR. MORRIS:

Q. Have you ever seen this document before, sir?

A. I'm aware of it – I mean, yes, but I don't remember – ask whatever questions you want about it, and we'll go from there.

Q. Did you see this document before – before it was sent to my firm on April 28th, 2021?

A. I mean, I'm sure I did and – or I'm sure I did if I was supposed to approve it, but I don't specifically remember.

Q. And did you, in fact, authorize your attorneys to serve this particular document?

A. I – I believe so.

MR. MORRIS: Can we just go to the very last request for admission, number 14?

(Scrolling.)

BY MR. MORRIS:

Q. You'll see that Request For Admission Number 14 asks you to admit that as of January 22nd, 2021, you hadn't paid the

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debtor the outstanding amount.

Do you see that?

A. Yes.

Q. And the definition of an "outstanding amount" is the number that's just above that.

And in response, you admitted only that you hadn't paid the debtor the amount the debtor asserts is due on the notes in the amount of approximately $9 million. Do you see that?

A. Yes.

Q. Okay. I just want to ask a slightly different question: Have you paid any amounts to the debtor on account of the notes since December 1st, 2020?

A. I – I don't – I don't know for sure, but I don't believe so.

Q. Okay.

MR. MORRIS: Can we go to the next exhibit, please, Number 9?

(Exhibit 9 introduced.)

MR. MORRIS: Okay. And if we can scroll down just a little bit.

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BY MR. MORRIS:

Q. You'll see that these are the "Objections and Answers" that were tendered on your behalf in response to the debtor's first set of interrogatories.

Do you see that?

A. Yes.

MR. MORRIS: And if we can go to the last page.

MS. DEITSCH-PEREZ: Could you also scroll through it so he could --

MR. MORRIS: Well, I'm happy to do it. I'd like to do it my way, please. Thank you.

Can we go to the last page, please?

(Scrolling.)

BY MR. MORRIS:

Q. Is that your signature there, sir?

A. Yes.

Q. And did you sign this document in front of a notary public?

A. Yes.

Q. And did you certify that you had read the document and the objections to the

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interrogatories?

A. Yes.

Q. And did you swear that the answers were true and correct?

A. Yes.

Q. Okay.

MR. MORRIS: Now let's go back to the top of the document.

BY MR. MORRIS:

Q. Did you, in fact, read this document before you signed the Verification in front of a notary?

A. Yes.

Q. Okay.

MR. MORRIS: Go to page 4 of 6, please.

BY MR. MORRIS:

Q. Just to help you out, do you see there's a reference to "Purported Agreement" in the first interrogatory, 1(a)?

A. Uh-huh.

Q. That's a "yes," sir; is that right?

A. Yes.

Q. Okay. The Purported Agreement

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refers back to the agreement that we were looking at in paragraph 40 of the answer -- and I can just read it again -- that says -- the agreement says, quote, "Plaintiff would not collect on the Notes."

And I asked you three questions in the interrogatory. Did this interrogatory accurately state, to the best of your knowledge, that you, personally, entered into the Purported Agreement on behalf of the debtor?

A. Which -- which one are you -- which agreement are you talking about?

Q. Just the one that we were talking about earlier -- and I'll just read it again for you. We can call it back on the screen, if it's helpful -- but the agreement that you referred to in your answer that, quote, "plaintiff would not collect on the notes." That's the Purported Agreement.

And so, I just want you to confirm that in your answer to Interrogatory No. 1, you stated that it was true and accurate that you entered into that agreement on behalf of the

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2 debtor.
3 Do I have that right?
4 A. I'm -- I'm going to say no because I
5 think you're using the wrong description of the
6 debtor versus Highland prebankruptcy.
7 Q. I appreciate that. I apologize.
8 Let me rephrase the question. That's a fair
9 point.
10 Did you enter into the agreement
11 referred to in your answer on behalf of
12 Highland?
13 A. The -- the agreement on behalf of
14 Highland prebankruptcy was agreed to by
15 majority of the Class A members, which I
16 believe at the time was Dugaboy.
17 Q. All right. That doesn't say that in
18 your answer here, does it?
19 A. Again, there was an original, I
20 think, answers; and then there were amended
21 answers. I think the lawyers did the best they
22 could to capture -- but, evidently, the parsing
23 between pre-bankruptcy agreements and
24 post-bankruptcy agreements was done the best it
25 could be by the lawyers but I -- I -- I don't

1 Dondero - 5-28-2021
2 want to comment on the legal.
3 Q. I don't want to comment on legal
4 stuff, either; but you signed this document,
5 you verified this document, and you verified
6 that it was true and accurate. Correct?
7 A. Yes.
8 Q. Okay. And in the first sentence to
9 your answer in Interrogatory 1, you wrote, or
10 somebody wrote on your behalf, quote: "The
11 agreements were entered into on behalf of the
12 debtor by James Dondero, subsequent to the time
13 each note was executed."
14 Is that an accurate statement, or is
15 it an inaccurate statement?
16 A. Again, it was between me and the
17 Class A, the majority of the Class A members.
18 It was a Class A -- the Class A members were
19 representing Highland, never the debtor,
20 because the debtor didn't exist yet.
21 But then, again, I don't know if
22 this paragraph refers to, again, how we
23 operated in bankruptcy, which was the
24 assumption that the notes had -- were likely --
25 were not likely to have any value for the

1 Dondero - 5-28-2021
2 estate. I don't -- I don't know which this is
3 referring to.
4 Q. You understand that the definition
5 of the "debtor" includes Highland Capital
6 Management, L.P.?
7 A. I think we started off the depo by
8 saying that there was a Highland prior to
9 bankruptcy and then there was a Highland in
10 bankruptcy and the debtor is Highland in
11 bankruptcy.
12 Q. Let me just ask you this question,
13 sir: Is that first sentence accurate, or is it
14 wrong?
15 I didn't write it, so -- and you
16 swore to it. You're the one who said it was
17 true and accurate. So now I'm asking you: Is
18 it actually true and accurate?
19 A. I'm going to stick with my testimony
20 so far. I don't want to opine on that. I
21 think it depends -- it's not -- maybe it's not
22 perfectly written, but...
23 Q. Sir, with all due respect, please
24 answer my question: Is the first sentence true
25 and correct, as you verified?

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2 MS. DEITSCH-PEREZ: He already
3 answered your question, John.
4 MR. MORRIS: That's fine. You can
5 have the objection, asked and answered.
6 I'm asking him to answer again.
7 BY MR. MORRIS:
8 Q. Is that first sentence true and
9 correct as you verified it?
10 A. "Behalf" probably isn't, like I
11 said, the right word. It should be "between"
12 the debtor and James Dondero. So that's how I
13 would wordsmith that.
14 Q. Okay. So this -- this first
15 sentence is not true and correct, to the best
16 of your knowledge; is that fair?
17 A. I -- I don't want to say that other
18 than I think it could be stated better.
19 Q. Okay. But as stated right now, it
20 says that the agreement was entered into on
21 behalf of the debtor by James Dondero. Have I
22 read that correctly?
23 A. Yeah. I mean, that is what it says.
24 Again, I feel like I'm interpreting legal
25 phraseology here, like "on behalf of the

1 Dondero - 5-28-2021
2 debtor." If it was an agreement between the
3 debtor and the Class A entered into –
4 MS. DEITSCH-PEREZ: Mr. Morris knows
5 very well there's another – that there's
6 an amendment to this. I don't know why
7 he's doing this.
8 Mr. Morris –
9 (Simultaneous conversation.)
10 MR. MORRIS: Please stop. Please
11 stop.
12 I'm allowed to go through his sworn
13 statements. Give me a break. Please stop.
14 Don't coach –
15 MS. DEITSCH-PEREZ: You've been
16 asking the same question over and over and
17 over.
18 MR. MORRIS: You know, I'm going to
19 shut this down if you do it one more time.
20 I will, and I'm happy to make the motion to
21 the Judge. I'm begging you, please stop
22 interfering.
23 My apologies, Mr. Dondero. Never
24 directed at you personally.
25 BY MR. MORRIS:

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2 Q. The second sentence of the answer,
3 have you been able to identify any documents
4 that reflect or memorialize the agreements?
5 A. I mean, I – I – I don't – I don't
6 know, but I don't think so.
7 Q. Thank you very much.
8 MR. MORRIS: Go to the next
9 document, please.
10 (Exhibit 10 introduced.)
11 BY MR. MORRIS:
12 Q. Do you see that this is the "Amended
13 Answer" that was filed on your behalf?
14 MS. DEITSCH-PEREZ: Let's please –
15 THE WITNESS: Yes.
16 MS. DEITSCH-PEREZ: – scroll
17 through.
18 THE WITNESS: Yeah, please scroll
19 through.
20 (Scrolling.)
21 BY MR. MORRIS:
22 Q. All right. Have you seen this
23 document before, sir?
24 A. Yes, generally.
25 Q. Did you – do you recall if you saw

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2 it prior to the time it was served and filed on
3 your behalf?
4 A. Probably.
5 Q. Did you authorize it to be filed on
6 your behalf?
7 A. Yes.
8 MR. MORRIS: Can we please go to
9 page 6 of 8?
10 (Scrolling.)
11 MR. MORRIS: And if we can scroll
12 just down to the "Affirmative Defenses."
13 BY MR. MORRIS:
14 Q. All right. Do you see
15 paragraph 40 –
16 A. Yeah.
17 Q. – as compared to the prior version
18 of your answer, has added the words, quote,
19 "upon fulfillment of conditions subsequent."
20 Do you see that?
21 A. Yes.
22 Q. Why were those words added?
23 MS. DEITSCH-PEREZ: Object to the
24 form.
25 A. I think to make this document more

1 Dondero - 5-28-2021
2 complete and more clarified as things were
3 learned and investigated.
4 BY MR. MORRIS:
5 Q. And were things "learned and
6 investigated" after the time that you submitted
7 the – withdrawn.
8 Were things "learned and
9 investigated" after the time the original
10 answer was served and filed on your behalf?
11 MS. DEITSCH-PEREZ: Object to the
12 form.
13 And I would also just caution the
14 witness before he speaks to think – to
15 make sure he doesn't disclose
16 attorney-client communications.
17 A. I'm sorry, could you please repeat
18 the question?
19 BY MR. MORRIS:
20 Q. Sure. Did you, personally, learn or
21 discover anything related to this amended
22 paragraph 40 after the time that the original
23 answer was filed on your behalf?
24 MS. DEITSCH-PEREZ: Same objection.
25 A. We went through the – the –

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2 MS. DEITSCH-PEREZ: When you say
3 "we," are you talking about you and
4 lawyers?
5 THE WITNESS: Yes.
6 MS. DEITSCH-PEREZ: Don't disclose
7 your communications with lawyers.
8 BY MR. MORRIS:
9 Q. All right. I don't want to know
10 anything about your communications with
11 lawyers, but I'm going to ask you for facts.
12 What facts, if any, did you learn
13 after the original answer was filed that relate
14 to the words, quote, "upon fulfillment of
15 conditions subsequent."
16 A. The "conditions subsequent" involved
17 in the first quarter of 2019 were always an
18 event, but it wasn't captured properly or
19 needed to be clarified in the amendment.
20 Q. Well, you mentioned that "things
21 were learned and investigated" after the answer
22 was filed, and I'm just trying to pin down what
23 that was?
24 A. I – I took it more seriously with
25 the lawyers as it – as the notes became more

1 Dondero - 5-28-2021
2 of an issue, and it's – I'm very busy over
3 here and then spent more time going through the
4 details, and this needed to be clarified or
5 stated differently.
6 Q. Okay. With respect to the agreement
7 referred to in paragraph 40, whose idea was it
8 to enter into that agreement?
9 A. It was – it was mine.
10 Q. Okay. And who were – who were the
11 majority of Class A holders that you referred
12 to earlier?
13 A. That was the counterparty
14 decision-maker for Highland prior to
15 bankruptcy, and like I said, I believe it was
16 Dugaboy.
17 Q. Can you think of any other member of
18 Class A who entered into this agreement on
19 behalf of the debtor in the early part of 2019
20 other than Dugaboy?
21 MS. DEITSCH-PEREZ: Object to the
22 form.
23 A. I do believe it was necessary.
24 Dugaboy alone was the requisite majority. I
25 didn't – I don't remember or remember even

1 Dondero - 5-28-2021
2 thinking about including anybody else.
3 BY MR. MORRIS:
4 Q. Okay. And to be clear, Mr. Dondero,
5 I'm not – I don't have a view one way or the
6 other as to whether you should or shouldn't –
7 who you should have contacted.
8 I just want to know who – if you
9 can identify for me the Class A members who
10 acted to approve the agreement that's referred
11 to in paragraph 40.
12 Is there anybody other than Dugaboy?
13 A. Not – not – not – not
14 specifically regarding that comp cycle.
15 Q. Okay. And who acted on behalf of
16 Dugaboy to enter into the agreement that's
17 referred to in paragraph 40?
18 A. The trustee.
19 Q. The trustee of Dugaboy?
20 A. Yes.
21 Q. And who was the trustee of Dugaboy
22 in the January/February 2019 time period that
23 entered into this agreement on behalf of the
24 debtor?
25 A. My sister Nancy.

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2 Q. Did you and Nancy discuss this
3 agreement at all?
4 A. This agreement? No.
5 Q. Can you describe –
6 MS. DEITSCH-PEREZ: What do you mean
7 by "this agreement"?
8 (Simultaneous conversation.)
9 A. Not the one that's on the screen.
10 BY MR. MORRIS:
11 Q. Yes. That's the only one that I'm
12 talking about, so –
13 MS. DEITSCH-PEREZ: So you mean –
14 MR. MORRIS: Please, please, Deb –
15 MS. DEITSCH-PEREZ: John, can you
16 please clarify: Are you asking if he
17 discussed the answer with Nancy or the –
18 MR. MORRIS: I didn't use the word
19 "answer." I used the word "agreement," so
20 let me –
21 MS. DEITSCH-PEREZ: I know, but he
22 pointed to the screen.
23 (Simultaneous conversation.)
24 MR. MORRIS: Are you done?
25 MS. DEITSCH-PEREZ: Yes.

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BY MR. MORRIS:

Q. Mr. Dondero, can you describe for me – withdrawn.

Did you discuss with your sister Nancy, the agreement that's referred to in paragraph 40?

A. The agreement to subsequent conditions, yes, absolutely. But this agreement that's on the screen, I've never – I've never – I've never shown her this document or talked to her about it.

Q. I'm not asking about the document. I'm not asking about the document. I'm asking about the agreement that's referred to in paragraph 40.

Do you understand that?

A. Yes. And, yes, we had several conversations about it.

Q. Okay. Can you describe for me everything you remember about your discussions with Nancy concerning the agreement that's referred to in paragraph 40?

A. That the loans that were in place would be forgiven upon a monetization – the

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favorable monetization of certain large or liquid assets on the Highland balance sheet; and the three that were focused on was MGM, Trussway, and Cornerstone.

Q. Did she say anything in response?

A. Just, "How much are we talking about?" And I told her it was about 9 million in aggregate, and – and I told her that it was – that the forgiveness or the compensation was compliant regarding any credit covenants or Hunter Mountain covenants –

Q. Do you recall any –

A. – that – that if it were to be forgiven, that additional compensation would be compliant or permitted and really not material relative to any outstanding credit agreements that Highland had or agreements with Hunter Mountain.

Q. Is this something that you discussed with her, or is this just information that you're giving me?

A. This is what I discussed – that's almost the entirety of the conversation. It happened over a couple different conversations,

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but...

Q. Did anybody participate in any of the conversations you're describing other than you and your sister?

A. I don't believe it was necessary, it didn't include anybody else.

Q. Okay. Again, I'm not here to question. I'm just looking for facts, Mr. Dondero.

So nobody participated in any of these conversations that you can recall other than you and Nancy; is that correct?

A. Correct, that I – yes, there was never a third party involved in our conversations. I don't know – I don't think she discussed it with anybody else, but I don't know.

Q. Did – was the agreement subject to any negotiation? Did she make any counterproposal of any kind?

A. No. No, I – again, I believe both of our views at the time was that it was immaterial to Highland overall or any other agreements.

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Q. Do you know if she sought any independent advice before entering into the agreement that you've described?

A. I don't know.

Q. Do you recall whether you provided her with any documents of any kind in connection with the discussions that led to the agreement that's referred to in paragraph 40?

A. I – I have no – I don't – I don't believe – no, I don't believe I gave her copies of the relevant Hunter Mountain limitations, or whatever. I just spoke to her about it.

Q. Okay. I'm just asking – I'm asking a broader question: Do you recall giving her any documents of any kind in connection with the discussions that led to the agreement in paragraph 40?

A. Not – not that I recall. She – she may – she may have some, but I don't remember.

Q. Do you know if there were any resolutions that were adopted by Highland to reflect the agreement that's referred to in

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paragraph 40?

A. Resolutions that -- no, not that I'm aware of.

Q. Did you give -- did you give Nancy a copy of the three promissory notes that were the subject of the agreement referred to in paragraph 40?

A. No.

Q. Did she ask to see any documents before entering into the agreement that's referred to in paragraph 40?

A. I -- I don't remember.

Q. Did you suggest that she speak with anybody prior to the time that she entered into the agreement that's referred to in paragraph 40?

MS. DEITSCH-PEREZ: Asked and answered.

A. Yeah. No.

BY MR. MORRIS:

Q. Do you know whether she actually spoke with anybody concerning the subject matter of the agreement that's referred to in paragraph 40 prior to the time it was entered

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into?

A. I don't know.

Q. Is there any time period by which the subsequent -- the conditions subsequent have to be fulfilled, or are they open-ended?

A. I believe it was open-ended.

Q. Under the agreement that's referred to in paragraph 40, did the debtor surrender its right to make a demand under the promissory notes?

MS. DEITSCH-PEREZ: And, again, are you talking about the debtor as in post-bankruptcy or --

MR. MORRIS: I apologize. Thank you. Thank you. Thank you. Thank you. Withdrawn.

BY MR. MORRIS:

Q. Under the agreement that you reached with Nancy that's referred to in paragraph 40, was it your understanding that Highland surrendered its right to make a demand for payment of unpaid principal and interest under the notes?

A. I think essentially, yes.

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Q. Okay. What did Highland receive in return for its agreement to surrender its right to make a demand for unpaid principal and interest, if anything?

A. I think with all forgiveness of notes, what it gets is it gets focus in terms of the monetization and it reduces additional compensation that I could have/would have taken otherwise, or could have/would have been entitled to otherwise.

So, it's -- yeah, I mean, I think it's, again, heightened focused for something that would be great for the debtor or great for Highland at the time and reduces -- that form of forgiveness becomes compensation when and if it occurs, and then it -- it theoretically reduces other compensation.

Q. So why not just forgive it at that moment?

Why tie it to "conditions subsequent"?

A. I thought it was more appropriate.

Q. Did you and Nancy discuss at all what the benefit would be to Highland from this

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arrangement?

A. The focus -- the focus parts for sure.

Q. And without -- without the agreement that's referred to in paragraph 40, you wouldn't have been focused on maximizing the enterprises; is that right?

A. No.

Q. So -- I'm sorry, maybe I missed it.

When you used the word "focus" -- let me -- when you use the word "focus," what do you mean?

What is the benefit to the debtor?

MS. DEITSCH-PEREZ: Object to the form.

He said "heightened focus."

A. Yeah, heightened focused was my words, which --

BY MR. MORRIS:

Q. Okay.

A. -- you know, means beyond normal focus. It means additional effort just like in any company or what we do here with other employees, for things you really want to get

1 Dondero - 5-28-2021
2 done or focus on, you provide that extra
3 incentive.
4 Q. Okay. So -- so that's the benefit
5 to Highland, was that you were going to have a
6 heightened focus on maximizing value; is that
7 fair?
8 MS. DEITSCH-PEREZ: Object to the
9 form.
10 A. And then also the part 2 of my
11 answer, right, which, you know, that
12 forgiveness would be compensation which
13 would -- in any given year, additional
14 compensation coming from forgiveness reduces
15 other compensation.
16 BY MR. MORRIS:
17 Q. Was that part of the agreement that
18 you reached with Nancy? Was that -- was that
19 when these notes were forgiven, you would forgo
20 an amount equivalent to the outstanding
21 principal and unpaid interest?
22 MS. DEITSCH-PEREZ: Object to the
23 form, misstates his prior testimony.
24 A. Yeah. I remember discussing the
25 focus part with her. The -- I was giving that

1 Dondero - 5-28-2021
2 answer when you were asking me what would be
3 the benefit or consideration to Highland and
4 then ultimately to debtor. I was giving you
5 compensation answer.
6 BY MR. MORRIS:
7 Q. Okay. So I just -- but I do want to
8 try to understand from your perspective the
9 benefit to the debtor.
10 And, one, you told me about the
11 heightened focus, and the second --
12 A. Right.
13 Q. -- I think you said, and correct me
14 if I'm wrong, that it would relieve the debtor
15 of paying some compensation in the future.
16 Am I mistaken about that?
17 A. Yeah, I mean -- I'm sorry. Repeat
18 that one more time, please.
19 Q. I believe you said that the second
20 benefit to Highland from entering into the
21 agreement referred to in paragraph 40 is that
22 it would relieve them of a future obligation to
23 pay compensation in the same amount.
24 Do I have that right?
25 MS. DEITSCH-PEREZ: Object to the

1 Dondero - 5-28-2021
2 form.
3 A. Maybe not exactly "the same amount,"
4 but it would -- it would -- it would reduce
5 comp -- yes, it would -- it would, like, in the
6 next cycle, reduce -- or when it was realized,
7 would likely reduce comp then.
8 BY MR. MORRIS:
9 Q. Okay. And by what amount would it
10 likely reduce comp, then?
11 A. I don't know. By significant --
12 by -- by a significant amount, by something
13 similar to the 9 million bucks.
14 Q. Okay. So, is there any -- I'm just
15 trying to understand your perspective.
16 One of the benefits from entering
17 into the agreement referred to in paragraph 40
18 is that upon the realization of the forgiveness
19 of the debt, Highland or the debtor, whatever
20 the case may be, in the future would be
21 relieved from paying you an amount similar to
22 the principal amount of the notes?
23 Do I have that right?
24 A. Yeah, or -- or -- yeah. I guess the
25 reason why I keep going back and forth on the

1 Dondero - 5-28-2021
2 exactness of the answer is that if --
3 there's -- depending on what the compensation
4 target is and whether or not you wanted to grow
5 something up or you're looking for a net
6 amount, but forgiveness of debt becomes a
7 taxable event with no -- no additional ability
8 to pay taxes. So it's usually not an exact
9 offset to future compensation, the way we've
10 done it here historically.
11 Q. In the agreement that you reached
12 with Nancy that's referred to in paragraph 40,
13 were there any other -- withdrawn.
14 In the agreement that you reached
15 with Nancy that's referred to in paragraph 40,
16 were there any circumstances under which you
17 would have been obligated to pay all unpaid
18 principal and interest under the notes?
19 A. If the illiquid assets weren't -- or
20 if -- if none of the illiquid assets were
21 monetized.
22 Q. But you were -- you were, at the
23 time you entered into this oral agreement, in
24 control of whether or not to monetize those
25 illiquid assets, right?

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A. And I expected they would be over time, yes.

Q. Okay. So, based on your control of the enterprise at the time that you entered into the agreement, is there any -- did you have any -- any scenario under which you believed you might actually have to pay back the unpaid principal and interest due under the notes?

A. If they weren't monetized.

Q. Okay. Anything else?

A. Assets weren't monetized, yeah.

Q. Anything else?

A. That's -- that's my recollection.

Q. If -- if you -- have the "conditions subsequent" been met yet?

A. I believe the announcement of the MGM sale will meet the conditions precedent when it closes four or five months from now.

Q. Okay. But none of them have been met -- have the conditions subsequent been met as of today?

A. Have the conditions subsequent been met today. I don't have awareness of --

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despite objecting vehemently, we don't have awareness of what the debtor is doing with Trussway or Cornerstone. So there's a potential that those could have triggered, but I don't -- I don't have -- I don't have awareness.

Q. Okay. Do you know -- and forgive the question, sir, honestly. But do you know --

A. Sure.

Q. -- whether your estate would be liable to pay all of the undue principal -- unpaid principal and interest if you passed before the conditions subsequent were satisfied?

MS. DEITSCH-PEREZ: Object to the form.

A. I -- I don't know that answer.

BY MR. MORRIS:

Q. That wasn't something that you and your sister discussed in January or February of 2019; is that fair?

A. I wasn't contemplating that event at that point in time.

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Q. That's why I say "forgive the question," sir.

Did you ever ask anybody to write the agreement in paragraph 40 down on paper so that it was memorialized somewhere?

A. No.

Q. Did you and Nancy --

(Simultaneous conversation.)

A. I'm sorry, go ahead.

BY MR. MORRIS:

Q. Do you and Nancy communicate by email from time to time?

A. Almost entirely phone. I -- from time to time, but it's almost entirely phone.

Q. All right. Let's -- let's move on.

A. Can I clarify something from before?

Q. Of course.

A. If the assets were never monetized or the -- the notes would stay in place and not be forgiven.

If the assets were all monetized below cost or what was considered a less favorable scenario, then it would be -- to forgive it, something would have to be

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monetized above cost, you know; but if they were all monetized below cost, that would make the note payable.

Q. I appreciate that.

MR. MORRIS: Let's go to the next document, document Number 11.

(Exhibit 11 introduced.)

MR. MORRIS: If we could just scroll down, please.

(Scrolling.)

BY MR. MORRIS:

Q. All right. Now, these are your objections and responses to the debtor's second request for admissions. Do you see that?

A. Yes.

MR. MORRIS: And let's scroll down to page 4, please.

(Scrolling.)

BY MR. MORRIS:

Q. Okay. Do you recall whether you saw this document before it was served and filed on your behalf?

A. Yes. Can we go all the way through, just go all the way down?

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Was this notarized, also?

Q. No, because these are responses to requests to admit. You only --

A. Okay.

Q. You only notarize responses to interrogatories, for whatever reason. So these were not. Yeah.

But I'm just asking you if you have a memory of reviewing the requests for admission before they were served and filed on your behalf?

A. Yes.

Q. Okay. And did you authorize your lawyers to serve and file this document on your behalf?

A. Yes.

Q. Okay. Looking at Request For Admission Number 1, it asks you to admit that in December 2019, you made a payment to the debtor, a portion of which was applied to reduce principal and/or interest due under one or more of the notes.

Have I read that correctly?

A. Yes.

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Q. And you've admitted that that statement is true and accurate as written, right?

A. Yeah, I believe so. The -- yeah, I believe so. Let me let you ask the questions.

Q. Okay. Do you have any reason to believe, as you sit here right now -- let me ask you a different question.

Do you want to amend your response in any way right now?

A. I -- I'm not aware of small amounts in terms of, like, interest or principal; and then sometimes the tax guys will say periodic interest payments are important to -- for the character of the notes, so sometimes periodic interest payments are made. Sometimes I think they peck on some of the notes.

I don't -- I don't know or remember, but I hope that something like this is correct. Sometimes, if there was a need for cash into Highland, the easiest way to -- for me or a different entity to put cash into Highland was to reduce a principal amount of a note with the thought that we could create new notes or

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increase another note later.

So how many times or how often interest payments were made or if there was some small principal payment made at some point, I don't know the details; but I'm hoping that's accurate.

Q. Okay. We looked at three notes that were signed by you in 2018, correct?

A. Yes.

Q. You signed other notes in favor of Highland prior to that time, correct?

A. I believe -- yeah. I mean, I believe there were numerous notes beyond these.

Q. Were -- were -- did you ever sign a note in favor of Highland that was forgiven?

A. I don't -- I don't know.

Q. Do you have any recollection of ever paying taxes in connection with a note that was subsequently forgiven by Highland?

A. If there was -- if there was a forgiveness and it was taxable, I would have paid the taxes. We were compliant in that regard. I'm a hundred percent comfortable we're compliant, but I don't know.

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Q. Okay. And I appreciate -- I didn't mean to suggest that you weren't compliant, sir. I'm just asking you if you can identify any note that you made in favor of Highland that was ever forgiven.

MS. DEITSCH-PEREZ: And I'm just going to object because, while he's not 30(b)(6) witness, this is a deposition taken in a particular case and he may have not looked at the records going back to 2000, or whatever, that's -- since when Highland was started.

MR. MORRIS: I just can't tell you how inappropriate that is.

BY MR. MORRIS:

Q. Go ahead, Mr. Dondero.

A. The same answer, I don't know.

Q. Okay. You did, in fact, pay in full all principal and interest due on notes that you made in favor of Highland other than the three notes at issue in this case, correct?

MS. DEITSCH-PEREZ: Object to the form.

A. I -- I don't know. I would repeat

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the answer I gave a few minutes ago when I kind of rambled about cash management.

BY MR. MORRIS:

Q. Do you know how many notes you made in favor of Highland beyond the three that are the subject of this litigation?

MS. DEITSCH-PEREZ: Object to the form.

A. I – I do not, regarding myself personally.

I am aware that the aggregate amount of affiliated notes is approximately 70 or $80 million, including my notes; but that's it. I mean, that's all I know.

BY MR. MORRIS:

Q. All right. I'm just asking you about you, in your individual capacity.

A. I don't know.

Q. You don't know –

(Audio distortion.)

THE REPORTER: You broke up, sir.

BY MR. MORRIS:

Q. You don't know the number of notes – (audio distortion) – Highland beyond

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these three, correct?

A. Correct.

Q. And you can't recall whether any – any notes that you made in favor of Highland were ever forgiven, correct?

A. I – I don't know.

Q. Okay. So, did you ever object to the application of the payment referred to in Request For Admission Number 1 to principal and/or interest due under one or more of the notes?

Did you ever object to the application of the payment in that way?

MS. DEITSCH-PEREZ: Object to the form.

A. I think the decision on how to handle cash needed at Highland was entirely made and the application to note principal or interest was – was entirely decided by the accounting group.

BY MR. MORRIS:

Q. But did you know that decision was made in or around December 2019?

A. Not really, no. Not specifically.

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Q. Well, you've admitted to the fact. So, when did you learn that in December 2019 a payment made on your behalf, at least a portion of which was applied to reduce principal and/or interest due under one or more of the notes? When did you learn that?

A. I don't know. It would have been as part of the process in preparing this document.

Q. So it's your testimony that somebody used your money in December 2019 to reduce principal and/or interest due under one or more of the notes without your knowledge?

A. Yeah, without my specific knowledge. There was a reason to put money in at that point in time, and then how they applied it was not my decision –

Q. Making –

A. – not –

Q. Making a payment – you would agree that making a payment of principle or interest under one or more of the notes conflicts with the agreement that you reached with Nancy, right?

MS. DEITSCH-PEREZ: Object to the

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form.

A. No, that's not true.

BY MR. MORRIS:

Q. Well, the conditions subsequent hadn't arisen yet; is that fair?

A. The notes were in '18, correct?

Q. Yes, sir.

A. And then, yeah, the subsequent condition was in the first quarter of '19.

Q. Right. And then, in December of '19, a payment of principal and/or interest was made against one or more of the notes, right?

A. Yes.

Q. And I'm just asking you, sir, if that's inconsistent with the agreement that you reached with Nancy.

MS. DEITSCH-PEREZ: Object to the form.

A. And I'm saying – I'm saying no. I mean, it's –

BY MR. MORRIS:

Q. Okay. Since learning of the payment, have you tried to identify the person who was responsible for applying your money in

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the way that's described in Request For Admission Number 1?
A. No.
MR. MORRIS: Can we go down to number 4, please?
BY MR. MORRIS:
Q. In your amended answer, I think you asserted that the – "each note is ambiguous." Do I have that right?
We can go back, if you would like to look?
A. Is this admission number 4? Is that where you're pointing to?
Q. It is, and I'll just read it. It refers to paragraph 45 of the amended answer, and I'll read it. But I'm happy to go back and put it on the screen, if you'd would like.
But it says simply: "Defendant further asserts that each note is ambiguous."
So request for number 4 asks you to admit that before you served that amended answer, you had never informed the debtor of your belief that any provision of the notes was ambiguous.

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Do you see that?
A. Yes.
Q. And you've denied that request for admission.
Do you see that?
A. Yes.
Q. So, who did you inform at the debtor of your belief that a provision of the notes was ambiguous?
Who did you –
MS. DEITSCH-PEREZ: Object.
BY MR. MORRIS:
Q. Who did you communicate that to?
MS. DEITSCH-PEREZ: Object to the form, no foundation.
A. I – I – I don't – "I don't know" is my answer to pretty much any question you could ask there.
BY MR. MORRIS:
Q. This is – you're denying the request for admission, and that's your right.
Did you ever inform the debtor of your belief that a provision of the notes was ambiguous?

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MS. DEITSCH-PEREZ: Object, no foundation.
A. As – ask the question again, please.
BY MR. MORRIS:
Q. Did you ever inform the debtor of your belief that any provision of the notes was ambiguous?
MS. DEITSCH-PEREZ: Object, no foundation.
A. You know, I don't know what conversations were had between lawyers. I – I don't know.
BY MR. MORRIS:
Q. Okay. So I'm going to ask a slightly different question because of your answer: Can you tell me whether you or anybody acting on your behalf ever informed the debtor of your belief that any provision of any of the notes was ambiguous?
MS. DEITSCH-PEREZ: Object, no foundation.
A. I'm going to have to say, yes, I believe that statement is true; but I don't

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have specific knowledge.
BY MR. MORRIS:
Q. Do you have any knowledge, can you identify any person who informed the debtor of your belief?
A. I don't have specific knowledge. I don't – I don't – I don't know.
Q. Can you tell me when the debtor was informed of your belief that any provision of the notes was ambiguous?
MS. DEITSCH-PEREZ: Object, no foundation.
A. I don't know.
BY MR. MORRIS:
Q. Can you identify the person who was acting on behalf of the debtor who was informed by you or anyone acting on your behalf of your belief that any provision of the notes was ambiguous?
MS. DEITSCH-PEREZ: Object, no foundation.
A. I don't know.
BY MR. MORRIS:
Q. Okay.

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2 MR. MORRIS: Let's go to the next
3 exhibit, please.
4 THE WITNESS: Is this a good time
5 for a lunch break?
6 MR. MORRIS: Yeah. I'm happy to do
7 it. I'm trying to move as quickly as I
8 can, Mr. Dondero. This is a little bit
9 longer than you and I usually sit for, and
10 I apologize for that, but I'm happy to take
11 as long a break as you -- as you need.
12 MS. DEITSCH-PEREZ: How long do you
13 think you have for the rest of the
14 deposition? What's your guess?
15 MR. MORRIS: I would say more than
16 an hour, less than two.
17 MS. DEITSCH-PEREZ: Do you want to
18 take a really short --
19 THE WITNESS: Can we take a half
20 hour, like 12:30 our time, 1:30 East Coast
21 time?
22 MR. MORRIS: Of course.
23 THE WITNESS: Yeah. So, we'll take
24 35 minutes, and then we'll get back to it.
25 You know --

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2 THE REPORTER: Are we still on the
3 record, please?
4 MR. MORRIS: Yes.
5 COURT REPORTER: Okay.
6 MS. DEITSCH-PEREZ: We'll --
7 MR. MORRIS: If you have time
8 constraints -- if you have time
9 constraints, Mr. Dondero, I'm prepared to
10 keep going. I'll take a shorter break. I
11 don't want -- you know, I apologize for the
12 burden, but these are relevant questions.
13 THE WITNESS: Yeah, let's -- let's
14 do 35 minutes, and we will try and wrap it
15 up in -- like you're saying, like an hour
16 or less than two.
17 MR. MORRIS: Yeah.
18 THE WITNESS: Yeah. I do need to be
19 someplace in the early afternoon.
20 MR. MORRIS: I assure you, I'll do
21 my best to keep to that time frame.
22 THE WITNESS: Okay. Thank you.
23 THE REPORTER: And we're off the
24 record.
25 (Lunch recess held.)

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2 MR. MORRIS: Can we put up the next
3 exhibit, which I believe is Number 12?
4 (Exhibit 12 introduced.)
5 BY MR. MORRIS:
6 Q. Okay. So, Mr. Dondero, these are
7 interrogatories, and so I direct you first to
8 the last page of the document, the Verification
9 page.
10 And is that your signature, sir?
11 A. Yes.
12 Q. Now, this wasn't notarized. Is
13 there a reason why you didn't get this
14 notarized?
15 A. No.
16 Q. Okay.
17 MR. MORRIS: If we could just scroll
18 back up.
19 BY MR. MORRIS:
20 Q. But is the Verification true --
21 MR. MORRIS: If we just go back to
22 it.
23 BY MR. MORRIS:
24 Q. At the time you signed this
25 document, had you read the Defendant's

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2 Objections and Answers to Highland Capital
3 Management, L.P.'s Second Set of
4 Interrogatories?
5 A. Yes.
6 Q. And did you believe that the facts
7 stated therein were both within your personal
8 knowledge and were true and correct?
9 A. Yes.
10 Q. Okay.
11 MR. MORRIS: Can we go to the
12 substance of the document on page 4 of 6?
13 BY MR. MORRIS:
14 Q. Okay. So, in the answer to
15 Interrogatory No. 1, you identify the
16 conditions subsequent that were the subject of
17 the agreement that we've been talking about
18 that you and Nancy entered into.
19 Do I have that right?
20 A. Yes.
21 Q. And to the best of your knowledge,
22 does the answer that's set forth in response to
23 Interrogatory No. 1 fully and accurately set
24 forth the conditions subsequent that were the
25 subject of the agreement?

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MS. DEITSCH-PEREZ: Object to the form.

A. Repeat the question, please.

BY MR. MORRIS:

Q. Does this answer to Interrogatory No. 1 set forth, to the best of your knowledge and understanding, the conditions subsequent that were part of the agreement that you and Nancy entered into in January or February 2019?

MS. DEITSCH-PEREZ: Object to the form.

A. Yes, large -- yes, largely --

BY MR. MORRIS:

Q. Okay.

A. -- or yes.

Q. Is there any aspect of this that you believe right now is incorrect?

A. No.

Q. Is there any aspect of your agreement with Nancy on the conditions subsequent that's not described in this answer?

MS. DEITSCH-PEREZ: Object to the form.

A. My recollection is that that largely

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captures it.

BY MR. MORRIS:

Q. Okay. There's a reference there to, quote, "the disposition of the portfolio company interests managed and/or owned directly or indirectly by Highland and/or its affiliates or managed funds."

Do you see that?

A. Yes.

Q. What does that refer to?

A. Just, you know, MGM is owned in a variety of places, Cornerstone is owned in a variety of places, and then Trussway is owned in a subsidiary of Highland.

So there -- I believe it's to capture the fact of the different ownerships or controls of those three different investments.

Q. Are those the only portfolio company interests managed and/or directly or indirectly by Highland or its affiliates -- withdrawn. That was bad.

This answer doesn't refer specifically to any particular assets, correct?

A. It does not.

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Q. Okay.

A. Well, yeah. I think what the intent was -- those three companies I just mentioned were always considered portfolio companies. There have been a few others over the years, but those are -- those -- I think they're trying to capture them that way, but I only remember talking to her about those three.

Q. Are there any other portfolio company interests that are managed and/or owned directly or indirectly by Highland and/or its affiliates or managed funds? Are there any other assets?

MS. DEITSCH-PEREZ: Object to the form.

A. There were some lesser private equity investments or companies, yes.

BY MR. MORRIS:

Q. Can you identify them?

A. CCS Medical. I think OmniMax was one. Kerri International. Yeah, those -- those are ones that come to mind.

Q. Okay. But notwithstanding the answer here, to the best of your recollection,

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the agreement that you had with Nancy pertained only to MGM, Cornerstone, and Trussway. Do I have that right?

MS. DEITSCH-PEREZ: 0bject to the form.

A. The monetization of those three were the -- were the conditions subsequent, yes.

BY MR. MORRIS:

Q. Okay. And there's a reference there to being disposed of, quote, on a favorable basis.

Do you see that?

A. Yes.

Q. What does that mean?

A. Above cost or book value.

Q. How much above cost or book value would you have to dispose of MGM, Cornerstone, and Trussway in order to trigger the conditions subsequent?

A. There wasn't -- there was just monetization on a favorable basis. There wasn't a specific amount on each individual one. It only took one to trigger it.

Q. Oh. So the sale of any of those

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three assets would trigger the conditions subsequent?

A. Correct.

Q. Okay. And who decided whether the asset was sold on a favorable basis?

Who made that decision, under your agreement with Nancy?

A. It was just defined relative to cost, so it was just -- it was just a factual -- there's nothing to decide. It would just be a factual answer.

Q. So, I just want to make sure I understand.

Your agreement with Nancy was that --

A. Yes.

Q. -- that -- all right. Withdrawn.

Your agreement with Nancy in January or February 2019, was that if any of MGM, Cornerstone, or Trussway was sold at cost, the debtor would forgive your obligations under the three notes.

Do I have that right?

MS. DEITSCH-PEREZ: Object to the

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form.

A. If any of them were sold above cost, it would -- monetization would trigger the -- the three notes -- forgiveness of the three notes, yes.

BY MR. MORRIS:

Q. Okay. And I just want to see if I can understand: Did you and Nancy discuss in January or February 2019 how much above cost the sale would have to be in order for the debtor to forgive your obligations under the three notes?

MS. DEITSCH-PEREZ: Object to the form.

A. No. It just had to be above cost, not a amount above cost.

BY MR. MORRIS:

Q. Okay.

A. Because just monetizing it -- just monetizing it and getting liquidity for an illiquid investment, even if it was at cost, is good. So something above cost is great. And those are all big assets, and the notes were small.

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Q. Okay. So, again, I just want to really understand your agreement with Nancy.

Did you and her specifically agree in January or February 2019 that if you sold either MGM or Cornerstone or Trussway for at least $1 more than cost, then your obligations under the three notes would be forgiven?

MS. DEITSCH-PEREZ: Object to the form.

A. Before I answer that, I just -- can you repeat so I can get all the subjects and participants straight in my head from the beginning of that question?

BY MR. MORRIS:

Q. Sure. Did you and Nancy agree in January or February 2019 that if Highland sold either MGM or Cornerstone or Trussway for an amount that was equal to at least $1 more than cost, that -- that Highland would forgive your obligations under the three notes?

MS. DEITSCH-PEREZ: Object to the form.

A. I believe that is correct.

BY MR. MORRIS:

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Q. Thank you very much.

Was Grant Scott the trustee of the Dugaboy trust in January or February 2019?

A. He was at one point. I don't know if he was -- I don't know when he was the trustee, but he got replaced at a -- some point in time.

Q. Do you know if it was before or after the petition date?

A. Before or after the petition date.

It was before the petition date.

MR. MORRIS: Okay. I'd ask for the production of any documents that show that Nancy Dondero was the trustee of the Dugaboy trust in January or February 2019.

MS. DEITSCH-PEREZ: I'll take your request under advisement.

BY MR. MORRIS:

Q. Now, the last portion of Interrogatory No. 1, the answer to it, refers to a, quote, "basis wholly outside Dondero's control."

Do you see that?

A. Uh-huh.

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Q. Was that part of the agreement that you entered into with Nancy in January or February 2019?

A. Yeah. It was probably unnecessary complexity, but yes.

Q. Was there anything that you envisioned in January or February 2019 that would have caused you to lose control of Highland?

MS. DEITSCH-PEREZ: Object to the form.

A. No, and I wasn't – that wasn't the thought process.

BY MR. MORRIS:

Q. So what was the thought process? Why was that phrase part of – why – withdrawn.

Did you include that – that aspect of the conditions subsequent – withdrawn.

Who decided that one of the conditions subsequent would be the disposition of the assets that you've described, quote, "wholly outside of Dondero's control."

Whose idea was it to put that into

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the agreement?

A. It was – it was mine. And, again, it was probably unnecessary complexity, but...

Q. And why did you want that piece of it into the agreement?

A. MGM ended up being a success story, but the value of MGM and the prospects of MGM have bounced around considerably over the last decade. And we never owned more than 17 or 18 percent and there was a 32 percent holder, and Carl Icahn was involved at different points in time. There was definitely a chance that, over our objections, it could have been sold at a lower price without our support.

And as far as Cornerstone was concerned, there was a half or a majority that was in the Restoration Fund that had a whole bunch of outside investors in it; and, theoretically, that could have been sold without our – or against our recommendations.

So it was really meant to capture those two possibilities.

Q. Did you tell Frank Waterhouse at any time about your agreement with Nancy that's

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subject to the conditions subsequent referred to here in Interrogatory No. 1?

A. I don't know if Frank knew the specifics. I think Frank really was aware that the loans could and would likely be forgiven and – yes. That's all to that answer.

Q. Did you tell him that?

A. Yes, and – I mean, partly he knew it from the history of Highland, and the structure of the notes are structured in a way that facilitates forgiveness.

MR. MORRIS: I move to strike.

BY MR. MORRIS:

Q. Did you ever tell Frank Waterhouse about the agreement that you reached with Nancy?

MS. DEITSCH-PEREZ: Object to the form.

A. Not – not the specifics.

BY MR. MORRIS:

Q. Did you ever mention anything about any aspect of your agreement to Nancy – with Nancy to Frank Waterhouse?

MS. DEITSCH-PEREZ: Object to the

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form.

A. I – listen, I don't – I don't remember talking to him about the specifics, but, in general, I – he – he – he was deeply involved in the thought process and the conclusion that the notes were forgiven or going to be for- –

MR. MORRIS: I'm going to move to strike.

BY MR. MORRIS:

Q. And I'm not asking you to get into his head to tell me what you think he knew. I'm asking you about what you told him.

Did you ever tell Mr. Waterhouse that you reached an agreement with Nancy pursuant to which the debtor had agreed not to collect on the notes subject to the conditions subsequent set forth in your answer to Interrogatory No. 1?

MS. DEITSCH-PEREZ: Object to the form.

A. I don't remember. I – I don't remember enough to say conclusively one way or the other.

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2 BY MR. MORRIS:
3 Q. Do you have any recollection of
4 telling any employee at Highland at any time of
5 your agreement with Nancy?
6 MS. DEITSCH-PEREZ: Object to the
7 form.
8 A. I -- I don't know.
9 BY MR. MORRIS:
10 Q. Okay. Did you tell anybody employed
11 or representing the debtor at any time of your
12 agreement with Nancy?
13 MS. DEITSCH-PEREZ: Object to the
14 form.
15 A. Not that I -- not that I recall.
16 Again, I didn't think there was a reason to,
17 initially.
18 MR. MORRIS: Can we go to
19 Exhibit 13, please?
20 (Exhibit 13 introduced.)
21 BY MR. MORRIS:
22 Q. All right. When you were the CEO,
23 did PricewaterhouseCoopers serve as Highland's
24 auditors?
25 MS. DEITSCH-PEREZ: Object to the

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2 form.
3 A. At different times they were, and
4 then KPMG was. I don't remember who it was in
5 '17.
6 BY MR. MORRIS:
7 Q. Okay. And it's a fact, is it not,
8 that until at least year-end 2018, Highland had
9 audited the financial statements prepared for
10 itself, right?
11 A. I don't know. I wasn't aware they
12 stopped.
13 Q. Okay. Okay.
14 So, I'm putting up on the screen the
15 "Consolidated Financial Statements and
16 Supplemental Information" for the period
17 December 31st, 2017.
18 Do you see that?
19 A. Uh-huh.
20 MR. MORRIS: And if we can go first
21 to the page marked 33470, which is, I
22 think, the --
23 And is this -- does this refresh
24 your recollection that PWC served as
25 Highland's independent auditors for the

1 Dondero - 5-28-2021
2 financial statements prepared for the year
3 ending December 31st, 2017?
4 MR. MORRIS: If you could scroll
5 down to the bottom of the page so
6 Mr. Dondero can see the date.
7 A. Okay.
8 BY MR. MORRIS:
9 Q. Do you see that?
10 A. If you're asking me to agree that it
11 was Pricewaterhouse, yes, I agree.
12 Q. And do you see that they signed
13 their letter on May 18th, 2018? Do you see
14 that?
15 A. Yeah.
16 Q. And do you see, towards the top of
17 the page, there's a statement about
18 "Management's Responsibility for the
19 Consolidated Financial Statements"?
20 A. Yes.
21 Q. And that's a pretty standard clause
22 that auditors include in audited financial
23 statements, in your experience; isn't that
24 right?
25 A. Yes.

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2 MR. MORRIS: Can we go to the
3 page -- the next page, 3471?
4 BY MR. MORRIS:
5 Q. This is the Consolidated Balance
6 Sheet for the period December 31, 2017, and
7 it's been redacted except to show "Notes and
8 other amounts due from affiliates." Do you see
9 that?
10 A. Uh-huh.
11 Q. When you were the CEO, did Highland
12 carry the Notes and Other Amounts Due from
13 Affiliates as assets on its balance sheet?
14 A. Yes.
15 Q. Okay. And that's what's reflected
16 on this page; is that correct?
17 A. I mean, that's what the heading
18 says, yes.
19 Q. Okay.
20 MR. MORRIS: Can we go to Bates
21 number 33499.
22 (Scrolling.)
23 BY MR. MORRIS:
24 Q. And you're aware, are you not, that
25 in the Notes to the financial statements, PWC

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described all of the notes and other amounts that were due to affiliates -- due from affiliates?

MS. DEITSCH-PEREZ: Object to the form.

A. Yes.

BY MR. MORRIS:

Q. And were you aware that in the financial statements prepared for Highland for the period ending December 31st, 2017, that PWC included in its notes amounts due from Highland Capital Management Fund Advisors, L.P.?

A. The 0.2 million in the first sentence, is that your question?

Q. Yes. You know, the whole -- who at Highland was responsible for providing information to PWC relating to Notes and Other Amounts Due from Affiliates?

A. The accounting department.

Q. And who was the head of the accounting department as of the end of 2017?

A. Frank Waterhouse.

Q. And did Frank Waterhouse remain the head of the accounting department until at

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least the end of 2020, to the best of your knowledge?

A. Yes.

Q. And when did Frank Waterhouse become the head of the accounting department?

A. A few years earlier.

Q. So, to the best of your recollection, Frank Waterhouse has been the head of the accounting department on a continuous basis from the period approximately 2015 until the end of 2020; is that right?

A. If not earlier, but yes. But I don't know the dates.

Q. Okay.

MR. MORRIS: Can we scroll down to the next to the last paragraph there, the one that refers to Mr. Dondero? There you go.

BY MR. MORRIS:

Q. Do you see that, according to this financial report, you "did not issue any new promissory notes to the Partnership" during the year 2017?

A. Yeah.

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Q. And to the best of your recollection, was that accurate?

A. Yes.

Q. Okay. And to the best of your recollection, was it also accurate that as of the end of 2017, the total interest and principal due on an -- on outstanding promissory notes was approximately 14 and a half million dollars and was payable in annual installments throughout the term of the note?

A. Yes.

Q. And prior to your execution of the demand notes, do you recall that you had made, in favor of Highland, certain term notes?

A. I don't -- I don't recall.

Q. Do you remember having to make payments to Highland to satisfy the terms of any notes prior to 2018?

A. I can't recall. I didn't refresh -- I didn't refresh myself on anything else, on any other notes for this deposition.

Q. Okay. But looking at this paragraph, is there anything about it that you currently believe is inaccurate or incorrect?

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MS. DEITSCH-PEREZ: Object to the form.

A. I -- I don't know. I don't know.

BY MR. MORRIS:

Q. Okay. We can scroll through the entire page, if you would like, but I just -- I'll ask the question first, and then you tell me what you need to read.

Do you recall whether PricewaterhouseCoopers' audited financial statements ever disclosed the forgiveness of any loan ever made by Highland to you or any of its employees?

MS. DEITSCH-PEREZ: Object to the form.

A. I don't -- I don't know.

BY MR. MORRIS:

Q. Do you have a recollection of any?

A. I don't have a recollection -- recollection of any. As a CPA, I'm not sure it's required until it's forgiven, but I'm not the expert. I can't remember seeing it or not seeing it.

Q. Did the debtor make --

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MR. MORRIS: You know what? Let's look -- let's look at each of these. We can start with the bottom of the page.

BY MR. MORRIS:

Q. Can you identify any of the makers of the notes that are referred to in this section that are not directly or indirectly owned or controlled by you, other than Mr. Okada?

So, if we start at the top, is Highland Capital Management Fund Advisors, L.P., an entity that is either directly or indirectly owned or controlled by you?

A. Yes.

Q. NexPoint Advisors, L.P., the next paragraph, is that an entity that is directly or indirectly owned or controlled by you?

A. Yes.

Q. HCRE Partners, LLC, is that an entity that is directly or indirectly owned or controlled by you?

A. Yes.

Q. Highland Capital Management Services, Inc., is that an entity that is

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directly or indirectly owned or controlled by you?

A. Yes.

Q. All right. And you're the subject of the next paragraph, right?

The next paragraph relates to Mark Okada. Are you aware of any loan that was ever made by Highland to Mr. Okada that was forgiven?

A. I don't know.

Q. Okay.

MR. MORRIS: Can we go to the next paragraph, please?

BY MR. MORRIS:

Q. There's a reference to The Dugaboy Investment Trust. Do you see that?

A. Yes.

Q. Either your sister or Mr. Scott have served as the sole trustee of Dugaboy since the time it was created; is that correct?

MS. DEITSCH-PEREZ: Object to the form.

A. I -- I don't know.

BY MR. MORRIS:

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Q. Do you recall anybody at any time serving as the trustee of The Dugaboy Investment Trust other than Nancy or Mr. Scott?

MS. DEITSCH-PEREZ: Object to the form.

A. I -- I don't remember.

BY MR. MORRIS:

Q. Are you the lifetime beneficiary of The Dugaboy Investment Trust?

A. Yes.

Q. And have you been -- withdrawn.

Are you the sole lifetime beneficiary of The Dugaboy Investment Trust?

MS. DEITSCH-PEREZ: Object to the form.

A. I believe so.

BY MR. MORRIS:

Q. Okay. And has that been true since the time The Dugaboy Investment Trust was created?

MS. DEITSCH-PEREZ: Object to the form.

A. I don't know for sure.

BY MR. MORRIS:

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Q. Okay. The next paragraph refers to a Contribution Agreement. Do you see that?

A. Yes.

Q. Are you familiar who the affiliated trust is that entered into the Contribution Agreement?

A. No. I'm willing to be refreshed, but I don't remember.

Q. Is it the Hunter Mountain Investment Trust?

A. It could be.

Q. Can you think of any other affiliated trust other than Hunter Mountain who carried a note receivable in the amount of $63 million due to the partnership?

A. No.

Q. Do you directly or indirectly own or control the Hunter Mountain Trust?

A. No.

Q. Let's go -- do you have any interest in the Hunter Mountain Trust?

A. No.

Q. Directly or indirectly?

A. No.

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2 MR. MORRIS: Can we go to 33510,
3 please?
4 (Scrolling.)
5 BY MR. MORRIS:
6 Q. Just to refresh your recollection,
7 PricewaterhouseCoopers's letter is dated
8 May 18th, 2018.
9 And you see there, note 16 refers to
10 "Subsequent Events." Do you see that?
11 A. Yep.
12 Q. So, sometime between January 1st and
13 May 18, 2018, which is the report date,
14 PricewaterhouseCoopers is disclosing that you
15 issued promissory notes in the amount of
16 $11.7 million. Do you see that?
17 A. Yes.
18 Q. Do you believe that was true and
19 accurate at the time? Is that your
20 recollection?
21 A. Yes.
22 Q. Now, of the three notes that we
23 looked at, only one of them was issued before
24 May 18, 2018. That was the 2 and a half
25 million-dollar note.

1 Dondero - 5-28-2021
2 Do you remember that?
3 I apologize. Withdrawn.
4 That was the 3.825 million-dollar
5 note.
6 Do you remember that?
7 A. Okay. Yes.
8 Q. Okay. So, if that note was 3. –
9 let's just call it roughly $3.9 million, does
10 that mean that there were $7.8 million of other
11 notes that you made in favor of Highland during
12 the first five months of 2018?
13 MS. DEITSCH-PEREZ: Object to the
14 form.
15 A. Yeah, I think you got the wrong –
16 well, you're – I'm not the accounting
17 department. I'm not the auditor. My comment
18 would be our financial statements have always
19 been – our audited financial statements have
20 always been extremely accurate and
21 Pricewaterhouse and KPMG literally do a hundred
22 percent sampling of all transactions.
23 Everything is reflected accurately in the
24 financials, and there's no missing note or
25 misstated note or unequal amount, or whatever.

1 Dondero - 5-28-2021
2 And I refuse to go in that direction just
3 because I don't know the details.
4 BY MR. MORRIS:
5 Q. I appreciate that, sir, and I didn't
6 mean to take you into that direction. I'm just
7 asking you if you know what accounts for the
8 difference between the $11.7 million stated and
9 the 3.825 million-dollar note that we looked at
10 as Exhibit Number 1 that was tendered by you on
11 February 2nd, 2018. That's all.
12 A. I – I don't know. I have no – I
13 have no idea.
14 Q. Okay. In the course of the audit,
15 you personally sign management representation
16 letters, right?
17 A. Usually at the end.
18 Q. Yeah.
19 MR. MORRIS: So can we call the next
20 exhibit up, please?
21 (Exhibit 14 introduced.)
22 BY MR. MORRIS:
23 Q. And happy to take a look at it. I'm
24 going to point you to a couple of things.
25 MR. MORRIS: But if we could go to

1 Dondero - 5-28-2021
2 the document, it's page 9 of the document,
3 Bates number 33408. All right.
4 And scroll up to the prior page,
5 please. Just looking for the signatures.
6 BY MR. MORRIS:
7 Q. All right. Is that your signature
8 there, sir?
9 A. Yeah.
10 Q. And did you sign this management
11 representation letter on behalf of Highland in
12 your capacity as the Strand Advisors, Inc.,
13 general partner on or about May 18th, 2018?
14 A. Yeah.
15 Q. And Frank Waterhouse, is that – do
16 you know that to be his signature below?
17 A. It resembles it, yes.
18 Q. Okay. Do you have an understanding
19 of why you signed this document?
20 A. Despite all their auditing and
21 double-checking of all source information,
22 they – they want a validation from management,
23 also.
24 Q. And is that standard and customary,
25 to the best of your experience?

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A. Yes.
Q. Okay.
MR. MORRIS: Can we go back to the first page, please?
(Scrolling.)
BY MR. MORRIS:
Q. Do you see in the second paragraph, the last sentence, there's a reference to "materiality"?
MR. MORRIS: If you can just scroll down a bit.
BY MR. MORRIS:
Q. And it says, quote, "Materiality used for purposes of these representations is $2,000,000."
Am I reading that correctly?
A. Yes.
Q. And did you understand that Highland was to provide to PWC, so that it could prepare the audited financial statements with information relating to issues and transactions that were material, using that definition?
A. Yes.
MR. MORRIS: Let's go to the next

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document.
(Exhibit 15 introduced.)
BY MR. MORRIS:
Q. These are the audited financials for the period ending December 31st, 2018.
MR. MORRIS: And if you could go to the third page, the one ending in 33424.
No, above. Yeah, right there.
Do you see PricewaterhouseCoopers signed the audit letter on June 3rd, 2019?
A. Yep.
MR. MORRIS: And if we can scroll up to the top of the page, it has the same statement concerning "Management's Responsibility for the Consolidated Financial Statements" that we looked at earlier in the 2017 audit, correct?
A. Yes.
BY MR. MORRIS:
Q. Okay. And that's -- looking at it, that's customary language that auditors include in audited financial statements, correct?
A. Yep.
MR. MORRIS: Can we go to the next

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page, please?
BY MR. MORRIS:
Q. Again, you'll see that this is the Consolidated Balance Sheet for the period ending December 31st, 2018. Do you see that?
A. Yes.
Q. And is it accurate that Highland continued to carry on its balance sheet as an asset all "Notes and Other Amounts Due from Affiliates"?
A. Yes.
MS. DEITSCH-PEREZ: Object to the form.
BY MR. MORRIS:
Q. And you knew -- you knew at the time that the audited financials were finalized that Highland was carrying on its balance sheet "Notes and Other Amounts Due from Affiliates," correct?
A. Yup.
Q. Did you personally tell anybody at PWC in connection with the preparation of the audited financial statements for 2018 that you had entered into the agreement with your sister

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Nancy in January or February of 2019?
MS. DEITSCH-PEREZ: Object to the form.
A. Not that I recall.
BY MR. MORRIS:
Q. Do you know if anybody told PWC, prior to the completion of the audited financial statements for the period ending December 31st, 2018, of your agreement with Nancy?
MS. DEITSCH-PEREZ: Object to the form.
A. Not that I know of.
BY MR. MORRIS:
Q. Did you ever instruct anybody to inform PWC about the agreement you reached with Nancy in --
MS. DEITSCH-PEREZ: Object to the form.
BY MR. MORRIS:
Q. -- January --
MR. MORRIS: Please let me finish the question.
MS. DEITSCH-PEREZ: You took a

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breath. Sorry.
MR. MORRIS: Are you finished?
MS. DEITSCH-PEREZ: Yes. As I explained, you took a breath, and I thought you were done. Sorry.
BY MR. MORRIS:
Q. Did you ever instruct anybody to inform PWC of your agreement that you reached with Nancy in January or February 2019?
MS. DEITSCH-PEREZ: Object to the form.
A. No.
MR. MORRIS: Can you please go to page 33451?
(Scrolling.)
BY MR. MORRIS:
Q. And we've got the "Notes and Other Amounts Due from Affiliates." We had gone through all of this before and I'm not going to do it again, but I do want to ask you, sir: Did you personally approve and authorize each of the notes that are reflected in the PWC disclosure concerning Notes and Other Amounts Due from Affiliates?

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MS. DEITSCH-PEREZ: Object to the form.
A. Repeat the question.
Did I personally approve? Was that the question or --
BY MR. MORRIS:
Q. Yes. Withdrawn.
I'll ask a different question.
And I'm happy to give you the time needed to look at the full disclosure, but are you aware of any note or other amount due from affiliate that you didn't approve and authorize?
A. I'm not aware.
MR. MORRIS: Okay. If we could just focus in on that bottom paragraph relating to Mr. Dondero.
BY MR. MORRIS:
Q. So there's a reference there to your having "issued promissory notes to the Partnership in the aggregate amount of $14.9 million" during 2018.
Do you see that?
A. Yes.

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Q. That would include the three notes at issue in this lawsuit; is that right?
MS. DEITSCH-PEREZ: Object to the form.
A. (No response.)
BY MR. MORRIS:
Q. Let me ask a different question.
The three -- the three notes at issue in this lawsuit were all issued in 2018, correct?
A. Yes.
Q. Okay. Do you have a recollection as to what notes account for the difference between the $8.8 million or so that's at issue in this lawsuit and the $14.9 million referenced in this disclosure?
A. I don't, other than that -- I believe the audit is accurate and, you know, there could have been principle or interest paydowns. I don't know the reason for the difference.
Q. This disclosure, as it pertains to you, doesn't mention any oral agreement, does it?

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A. No.
Q. And it doesn't mention any amendment to any of the notes, correct?
A. No.
Q. It doesn't describe any conditions that have been placed on the collectability of the notes from you, correct?
A. No.
Q. It doesn't state that the notes might be forgiven upon some conditions subsequent, correct?
A. No, it does not.
MR. MORRIS: Can we turn to page 33461, please?
(Scrolling.)
BY MR. MORRIS:
Q. And these are "Subsequent Events," and I just want to look through them -- withdrawn.
You understand that these financial statements are for the period ending December 31st, 2018, correct?
A. Yes.
Q. And the agreement that you reached

1 Dondero - 5-28-2021
2 with Nancy, to the best of your recollection,
3 occurred in January or February 2019, correct?
4 (Simultaneous conversation.)
5 A. Yes –
6 MS. DEITSCH-PEREZ: Object to the
7 form.
8 THE REPORTER: I didn't hear an
9 answer.
10 A. Repeat the question again, just in
11 case.
12 BY MR. MORRIS:
13 Q. Sure. The agreement that you – the
14 agreement that you reached with Nancy on behalf
15 of Highland was an agreement that was reached
16 in January or February 2019, correct?
17 A. Was in – the last was in January or
18 February of '19, yes. Yes.
19 Q. Okay. So I just want to show you
20 the entirety of the "Subsequent Events" because
21 they cover the period from December 31st, 2018,
22 until the report date of June 3, 2019.
23 MR. MORRIS: If we could just look
24 at that.
25 BY MR. MORRIS:

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2 Q. Is there any reference made to the
3 agreement that you reached with Nancy in
4 January or February 2019?
5 A. No.
6 MS. DEITSCH-PEREZ: And I just want
7 to object for the record that we asked the
8 debtor for all of the Highland financial –
9 audited financial statements. We got
10 highly redacted ones where the debtor has
11 clearly left unredacted only those things
12 it wanted to use while denying Mr. Dondero
13 the unredacted copies. So we do not have
14 here, for him to look at, the unredacted
15 Highland audited financial statements.
16 MR. MORRIS: But this is the only
17 portion of the document – well, I'm not
18 going to argue.
19 MS. DEITSCH-PEREZ: Yes. You showed
20 us what you wanted to show him in an
21 unredacted (audio distortion) gave him
22 fully redacted copies. I understand that.
23 MR. MORRIS: Yeah, and I'll be happy
24 to submit a unredacted copy to the Judge
25 under seal so that she can see whether or

1 Dondero - 5-28-2021
2 not there's any other aspect of the
3 financial statements that –
4 MS. DEITSCH-PEREZ: That's fine.
5 MR. MORRIS: – pertain to the
6 notes.
7 Give me a break. Stop.
8 MS. DEITSCH-PEREZ: I know.
9 Litigation isn't a one-way – one-way
10 disco.
11 MR. MORRIS: Okay. All right.
12 The next document, please.
13 THE WITNESS: How are we doing on
14 time?
15 MR. MORRIS: We're doing pretty
16 well. I think we're going to fit within –
17 we're not quite an hour back on, but I'm
18 confident that we'll fit within the one- to
19 two-hour – we'll be done within an hour.
20 That's my point.
21 THE WITNESS: Okay. I'm going to
22 give a hard stop at 2:00. Okay?
23 MR. MORRIS: You can do whatever you
24 want. If we're not finished, we'll just
25 have to figure out a time to come back. So

1 Dondero - 5-28-2021
2 let's get through as much as we can, and
3 we'll see where we are.
4 BY MR. MORRIS:
5 Q. The next document is the management
6 representation letter.
7 (Exhibit 16 introduced.)
8 BY MR. MORRIS:
9 Q. And I would just ask you to look at,
10 I guess, page 33419 and just confirm for me
11 that that's your signature.
12 A. Yes.
13 Q. Okay. And this contains the same
14 representations that you made to PWC that we
15 looked at in the earlier management rep letter,
16 right?
17 A. Yes.
18 Q. Okay. Let's look at the next
19 document, please.
20 (Exhibit 17 introduced.)
21 BY MR. MORRIS:
22 Q. So PWC issues the audited financials
23 in June of 2019, and then Highland files for
24 bankruptcy in October.
25 Do I have that right?

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A. Yes.
Q. And at the time Highland filed for bankruptcy, you were the president and CEO of Highland, correct?
A. Yes.
Q. And you personally authorized Highland's bankruptcy filing, correct?
A. On Pachulski's recommendation.
Q. But you're the only person who authorized the filing; is that correct?
A. Yes.
Q. And did you understand -- you have familiarity with bankruptcy proceedings, right?
MS. DEITSCH-PEREZ: Object to the form.
A. Not this kind of bankruptcy, but, yes, we have experience in bankruptcies.
BY MR. MORRIS:
Q. And you had experience in the Acis bankruptcy, for example, correct?
A. Yes.
MS. DEITSCH-PEREZ: Object to the form.
BY MR. MORRIS:

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Q. And you understand that debtors in bankruptcy have to make certain disclosures; is that right?
MS. DEITSCH-PEREZ: Object to the form.
BY MR. MORRIS:
Q. You can answer.
A. Yes.
Q. And you understand that the purpose of the disclosures is to give interested parties an opportunity to review the financial information relating to the debtors, right?
MS. DEITSCH-PEREZ: Object to the form.
A. Generally.
BY MR. MORRIS:
Q. The debtor is supposed to be transparent. Is that a statement you would agree with?
A. I'd agree the debtor is supposed to be.
Q. So, are you aware that the debtor filed certain schedules in connection with the bankruptcy case?

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A. I'm sure they filed many schedules.
Q. And did you -- did you review the debtor's schedules before they were filed?
A. No.
Q. All right. So, here is a summary of the debtor's assets and liabilities that was filed in December -- on December 12th, 2019.
Do you see the timeline at the top?
A. Yes.
Q. And you were still in control of the debtor at that time, correct?
A. Yep.
Q. And was Mr. Waterhouse responsible for preparing the debtor's Summary of Assets and Liabilities on behalf of Highland at that time?
A. I -- I don't know whether DSI was in control at that point. I don't know.
Q. Did DSI rely on Mr. Waterhouse and the accounting team for the information that was used to create the debtor's disclosures?
MS. DEITSCH-PEREZ: Object to the form.
BY MR. MORRIS:

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Q. Withdrawn.
To the best of your knowledge, did DSI rely on Mr. Waterhouse and the accounting team at Highland in order to prepare the debtor's schedules and financial disclosures?
MS. DEITSCH-PEREZ: Object to the form.
A. I don't know.
BY MR. MORRIS:
Q. Did you ever discuss with Mr. Waterhouse the debtor's financial disclosures during the bankruptcy case?
A. Nope.
Q. Did you ever look at the Summary of Assets and Liabilities that was filed with the Court in December 2019?
A. Nope.
MR. MORRIS: Turn to the second page, please. Let's just go down right -- right there.
BY MR. MORRIS:
Q. Do you see in part 11 -- part 11 pertains to all other assets and in Item Number 71, there's a reference to "Notes

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Receivable."

A. Yep.

Q. And do you see that the Notes Receivable are for an aggregate amount of approximately $150 million?

A. Yep.

Q. And it refers to Exhibit D. Do you see that?

A. Yes.

Q. All right.

MR. MORRIS: Can we turn – go to the next page?

BY MR. MORRIS:

Q. And exhibit – this page is Exhibit D.

Do you see that?

A. Yes.

Q. And this shows an aggregate amount of – the face amount of notes to be the same $150.3 million that we just saw, correct?

MS. DEITSCH-PEREZ: Object to the form.

BY MR. MORRIS:

Q. We can go back and look, if you

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want.

A. It seems to tie.

Q. Okay. And it was disclosed on the docket in the bankruptcy case that you personally had made Notes Receivable outstanding in the approximate amount of $9.3 million. Do you see that?

A. Yes.

Q. Okay.

MR. MORRIS: Can we just go to the top? I want to just show the date.

BY MR. MORRIS:

Q. It's December 13. That's the date that this disclosure is made. Do you see that?

A. Yes.

Q. And there's a footnote there, number [1], that says "Doubtful or Uncollectible accounts are evaluated at year end." Do you see that?

A. Yes.

Q. Now, nothing on this document shows any of the notes as being doubtful or uncollectible, correct?

A. Correct.

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Q. Do you know if the debtor's schedules were ever amended after December 13th, 2019, to reflect "Doubtful or Uncollectible" Notes Receivable?

MS. DEITSCH-PEREZ: Object to the form.

A. Yeah. I believe the Hunter Mountain 56 was written off.

BY MR. MORRIS:

Q. Okay. Anything else?

MS. DEITSCH-PEREZ: Object to the form.

A. I – I don't know.

BY MR. MORRIS:

Q. Okay. Did you ever ask anyone to amend the debtor's schedules to reflect any Doubtful or Uncollectible receivable that's set forth on this page?

A. I did not.

Q. Okay.

MR. MORRIS: La Asia, I'm actually going to just skip the next exhibit. And if we could go to the one that you and I had marked as 19. We'll just mark it as 18

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for purposes of the deposition.

MS. DEITSCH-PEREZ: I think that's confusing. I don't mind if you just mark 18 as "omitted." I would want a sheet with "18 omitted." That way, your numbering can stay the same.

MR. MORRIS: Okay. That's fine. Thank you. So we'll mark 18 as "omitted", and this will be 19.

(Exhibit 19 introduced.)

BY MR. MORRIS:

Q. Are you aware of – that the debtor filed disclosures called Statements of Financial Affairs, often referred to as SoFAs?

A. I've heard of the form before, yes.

Q. Did you ever review the debtor's SoFAs?

A. No.

Q. So, do you know who was responsible at Highland for preparing the debtor's SoFAs?

A. No.

Q. Would it have been – would – whoever it was, would that person have either been or reported to Frank Waterhouse, as the

1 Dondero - 5-28-2021
2 CFO?
3 A. I'm sorry. Can you repeat that one
4 more time?
5 Q. I appreciate the fact that you
6 don't – you can't identify the person who
7 prepared the SoFAs; but within the
8 organizational structure of Highland during the
9 time that you were the CEO, would the person
10 have been either Frank Waterhouse or somebody
11 who reported to Frank Waterhouse?
12 A. Or DSI.
13 Q. Okay.
14 MR. MORRIS: Can we go to page 2,
15 please.
16 (Scrolling.)
17 BY MR. MORRIS:
18 Q. Do you see at number 4 here, there's
19 a reference to payments made to insiders within
20 a year of the bankruptcy case?
21 A. Yup.
22 Q. Are you aware – withdrawn.
23 Were you aware in December 2019 that
24 Highland was going to disclose all payments
25 made to insiders within a year of the

1 Dondero - 5-28-2021
2 bankruptcy case?
3 A. No.
4 MR. MORRIS: Let's go to page 19 of
5 34, please.
6 (Scrolling.)
7 MR. MORRIS: If we could, scroll
8 down near the bottom.
9 BY MR. MORRIS:
10 Q. You'll see that there's two entries
11 for Highland Capital Management Fund Advisors.
12 Do you see that?
13 A. Yup.
14 Q. And in May 2019, the debtor paid
15 Highland Capital Management Fund Advisors the
16 aggregate amount of $7.4 million. Am I reading
17 that correctly?
18 A. Yes.
19 Q. Okay. And those payments were – in
20 exchange for those payments, Highland received
21 two promissory notes, correct?
22 MS. DEITSCH-PEREZ: John, I'm going
23 to object. You're straying from the
24 subject of this adversary and going into
25 another, and I'm really not comfortable

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2 with that since he's only prepared for
3 his – his – for this proceeding and has
4 not refreshed himself on anything else.
5 So, this is outside of what the scope of
6 this deposition ought to be.
7 MR. MORRIS: Okay. So you have two
8 choices, Deborah: You can either state
9 your objection, "beyond the scope," or you
10 can direct the witness not to answer.
11 Which would you like to do?
12 MS. DEITSCH-PEREZ: I am going to
13 state my objection that it's beyond the
14 scope, but I'm asking you because – as a
15 matter of fairness, that you restrain
16 yourself and limit your deposition to this
17 adversary proceeding –
18 MR. MORRIS: Okay. I appreciate –
19 MS. DEITSCH-PEREZ: – and not –
20 (Simultaneous conversation.)
21 MS. DEITSCH-PEREZ: And if the
22 witness isn't prepared to answer these
23 questions, it's not fair that you proceed
24 on them.
25 MR. MORRIS: Okay. So I'll just say

1 Dondero - 5-28-2021
2 that for a couple of questions to ask the
3 former CEO about a 7.4 million-dollar
4 payment made to an affiliate that he owns
5 or controls, I'm going to ask you to give
6 me a little latitude.
7 BY MR. MORRIS:
8 Q. Mr. Dondero, were those two payments
9 backed up by promissory notes in favor of the
10 debtor, to the best of your knowledge?
11 A. I don't know.
12 Q. Okay.
13 MR. MORRIS: Let's go to the next
14 page, please.
15 Can we go towards the middle of the
16 page. Right there. That's fine.
17 BY MR. MORRIS:
18 Q. Do you see your name, James Dondero,
19 there?
20 A. Yes.
21 Q. And you were paid $3.75 million
22 within a year of the bankruptcy, correct?
23 A. Yes.
24 Q. Who determined that you should –
25 who made the decision for Highland to pay you

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that amount?

A. Me? I don't know.

Q. Is there anybody else who had the authority to determine your compensation prior to the petition date, other than yourself?

A. Especially -- besides myself -- okay. Let me answer that question first.

The Class A -- majority Class A holders can, and then I can.

Q. Anybody else?

A. Not that -- not that I know.

Q. In practice, did anybody other than you set your compensation?

A. In practice, yes, sometimes majority Class A did.

Q. And at any time prior to the petition date, can you think of an instance where the majority of the Class A refused to compensate you in the manner in which you wanted?

A. There was -- no, because there was no reason to because there was plenty of head room in all the agreements and compared to market levels.

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MR. MORRIS: Let's go to the next document, please.

(Exhibit 20 introduced.)

BY MR. MORRIS:

Q. Are you aware that, during the course of the bankruptcy proceeding, the debtor, in addition to the schedules and SoFAs, also filed every month a document called the "Monthly Operating Report"?

A. I'm not aware, specifically.

Q. Did you ever review any of the debtor's Monthly Operating Reports?

A. Not that I can recall.

Q. Okay.

MR. MORRIS: We can scroll down a bit.

BY MR. MORRIS:

Q. You see there's -- there's two signatures here: One electronic, one handwritten, both dated December 2nd. Do you see that Brad Sharp has signed as an authorized individual as the Chief Restructuring Officer?

A. Yup.

Q. Okay. And then below that, there's

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the electronic signature of Mr. Waterhouse. Do you see?

A. Yes.

Q. Okay. Were -- to the best of your knowledge as the CEO at the time, were Mr. Sharp and Mr. Waterhouse authorized to sign and file Monthly Operating Reports with the Court?

A. Again, it's not my sphere of knowledge. It looks like -- individually or jointly, I -- I don't have a comment.

Q. I'm just asking you, as the CEO, did you expect Mr. Waterhouse and Mr. Sharp to take care of all financial disclosures required under the bankruptcy code?

A. Yes.

Q. And did you expect them to do that completely, transparently and accurately?

A. Yes.

Q. Do you have any reason to believe that they failed to do so?

A. Not that I'm aware.

MR. MORRIS: Can we go to page 6 of 11?

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(Scrolling.)

BY MR. MORRIS:

Q. You haven't seen this document before; is that right?

A. I do not believe so.

Q. Okay. But you see that it was filed in late January 2020, but it was signed in December, right?

A. Yeah.

Q. Okay. And do you see that among the assets listed are amounts "Due from affiliates"?

A. Yep.

Q. And do you have any reason to believe that the amounts due from affiliates are anything other than the same notes and amounts due that we saw in the audited financial statements?

MS. DEITSCH-PEREZ: Object to the form.

A. I don't know.

BY MR. MORRIS:

Q. Okay.

THE WITNESS: I do look at this and

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get wistful. You guys should be ashamed of yourselves, what you've done to this company.

MR. MORRIS: I move to strike.

Can we take a look at footnote (1), please?

BY MR. MORRIS:

Q. Do you see that it "Includes various notes receivable at carrying value"?

Do you have any understanding of what that --

MS. DEITSCH-PEREZ: You didn't state the whole sentence, John. Please, if you're going to point him to things, read him the whole sentence.

BY MR. MORRIS:

Q. Sir, do you have any understanding as to what footnote (1) refers to or means?

A. It says what it says.

Q. Okay.

MR. MORRIS: Let's look at the next document, please.

(Exhibit 21 introduced.)

MR. MORRIS: All right. So if you

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could just stop right there.

BY MR. MORRIS:

Q. This is the Monthly Operating Report for the period ending November 2019. Do you see that?

A. Yes.

MR. MORRIS: Can we scroll down a bit?

BY MR. MORRIS:

Q. And that's Mr. Sharp's and Mr. Waterhouse's signatures, correct?

A. Yes.

Q. Do you see on this version, Mr. Sharp is identified as the "Responsible Party," but Mr. Waterhouse is identified as the "Preparer"?

A. Yes.

Q. Do you recall ever telling Mr. Waterhouse, in his capacity as the preparer of Monthly Operating Reports, that there was anything inaccurate in any Monthly Operating Report filed by the debtor?

A. No.

Q. Do you recall ever telling

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Mr. Sharp, as the responsible party, that there was anything inaccurate in any monthly -- Monthly Operating Report filed by the debtor?

A. No.

MR. MORRIS: Can we go to the next page, please?

(Scrolling.)

THE WITNESS: I'm going to give the 12-minute warning here. I can be back at 4:00, but I'm going to need a couple hours.

MR. MORRIS: I'm trying to finish up, okay?

THE WITNESS: Okay.

MR. MORRIS: I'd rather not come back, to be honest with you.

Can we go to the next page, please?

BY MR. MORRIS:

Q. Again, the debtor reported that the amounts due from affiliates were assets of the debtor's estate, correct?

A. Yep.

Q. Do you -- do you have any issue with the fact that the debtor reported the notes, including your own notes, as assets of the

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estate?

MS. DEITSCH-PEREZ: Object to the form.

A. Until they're forgiven, they're bona fide notes.

BY MR. MORRIS:

Q. And you don't think the "conditions subsequent" agreement that you entered into with Nancy calls into question whether the debtor would ever recover on their notes that you issued to them?

MS. DEITSCH-PEREZ: Object to the form.

A. Again, I don't believe it's material or GAAP, is my understanding.

BY MR. MORRIS:

Q. Well, almost a third of the debtor's assets are notes "Due from affiliates," right?

A. You have to back out Hunter Mountain, and you have to back out -- you have to back out about 80 million to get to the 70 million of affiliated notes; and then, from there, you have to back out 60 of them to get to the 9 million.

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MS. DEITSCH-PEREZ: Mr. Morris, please don't make faces at Mr. Dondero.

BY MR. MORRIS:

Q. Why – why are we backing out Hunter Mountain?

A. I think the Hunter Mountain -- there were notes going both ways, but I think the Hunter Mountain is out of the estate, I believe.

Q. But Hunter Mountain – the debtor held notes that were made by Hunter Mountain in the approximate amount of $60 million, right?

A. But subsequent to these dates, I think -- I think they realized it was just a cross-transaction. There were dues and payables that were essentially equal from Hunter Mountain, so I think Hunter Mountain came out of that.

Q. Isn't it -- isn't it a fact that they wrote them off because they didn't believe they were collectible?

A. Yeah, because the payment on those notes depended upon Highland honoring its agreements to Hunter Mountain, which Highland

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had no intention of doing. So, there's no ability for Hunter Mountain to pay Highland.

Q. Does Highland – does Hunter Mountain today have the ability to pay back any of the $60 million that it – that was reflected in the notes?

MS. DEITSCH-PEREZ: Object.

A. No, not that I know of but –

BY MR. MORRIS:

Q. Okay.

MS. DEITSCH-PEREZ: And, Mr. Morris, once again, I think we're straying from this adversary.

MR. MORRIS: Can we go to page 5 of 9, please?

(Scrolling.)

MR. MORRIS: Above that, I think. Next page, 5 of 9. We must be looking at the wrong exhibit.

Is the one that was marked 22? No, it's the next – I believe it's the next document.

Let's pull up the next document, please.

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(Exhibit 22 introduced.)

MR. MORRIS: Yeah, that's it. Go to page 5, please. Thank you.

BY MR. MORRIS:

Q. Do you see that box there? It says "Non-Operating Receipts - Other."

A. Yes.

Q. Okay. And do you understand that that shows that, in December 2019, while you were still personally in control of the debtor, that certain payments of "principle or interest" were made with respect to notes made in favor of the debtor?

A. Yes.

Q. Okay. And do you understand that the one dated December 23rd in the approximate amount of $783,000, that was a payment that was made by you?

MS. DEITSCH-PEREZ: Object to the form.

A. If you say so. I don't have a basis for denying it or confirming it.

BY MR. MORRIS:

Q. Okay. But it's true, you do recall

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that in December 2019, after the petition date, while you were still in control of the debtor, that certain payments of principal and interest were made on notes that were made in favor of the debtor, correct?

MS. DEITSCH-PEREZ: Asked -- asked and answered about an hour ago.

BY MR. MORRIS:

Q. You can answer, sir.

A. I believe – I believe so.

Q. Thank you. Do you recall that in connection with its Plan and Disclosure Statement, that the debtor prepared a Liquidation Analysis?

A. Yes.

MR. MORRIS: Can we call the next document up on the screen, please?

(Exhibit 23 introduced.)

MR. MORRIS: And if we can go to the next page.

BY MR. MORRIS:

Q. Your lawyers and lawyers acting on behalf of entities you own and control or otherwise have an interest spent considerable

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2 time on the debtor's Liquidation Analysis and
3 confirmation.
4 Do you remember that?
5 A. I can't – I can't agree or disagree
6 with that.
7 BY MR. MORRIS:
8 Q. Okay. Did you personally review the
9 debtor's Liquidation Analysis?
10 A. Briefly.
11 Q. Okay.
12 MR. MORRIS: Can we go to the next
13 page, please?
14 BY MR. MORRIS:
15 Q. Do you see that this page contains a
16 list of "Assumptions"?
17 A. Yes.
18 MR. MORRIS: And can we scroll up a
19 little further so we can see the date?
20 BY MR. MORRIS:
21 Q. You'll see that on November 24th,
22 2020, the debtor filed a Liquidation Analysis
23 that contained, as among the Assumptions,
24 quote, "All demand notes are collected in the
25 year 2021." Do you see that?

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2 A. Yes.
3 Q. Did you or anybody acting on your
4 behalf ever inform the Court that you believed
5 that assumption was unreasonable?
6 A. I – I don't know, but I know we've
7 been fighting the notes consistently through
8 various mechanisms.
9 Q. Okay. Did you or anybody acting on
10 your behalf ever inform the Court of your
11 agreement with Nancy?
12 MS. DEITSCH-PEREZ: Object to the
13 form.
14 A. Not – not that I know of.
15 BY MR. MORRIS:
16 Q. Did you ever instruct anybody to
17 inform the Court that you had an agreement with
18 Nancy that rendered Assumption C unreasonable?
19 MS. DEITSCH-PEREZ: Object to the
20 form.
21 A. I did not.
22 MR. MORRIS: Let's look at the last
23 document, please.
24 (Exhibit 24 introduced.)
25 BY MR. MORRIS:

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2 Q. Do you recall that there came a time
3 just prior to the confirmation hearing that the
4 debtor amended its Liquidation Analysis?
5 A. No. Okay. Yes.
6 MR. MORRIS: Okay. And if we could
7 go to the next page.
8 BY MR. MORRIS:
9 Q. You'll see at the bottom right-hand
10 corner it's dated January 28th, 2021.
11 MR. MORRIS: We wanted page up but
12 just – yeah, page up, the assumptions.
13 Yeah, right there.
14 BY MR. MORRIS:
15 Q. You see it's dated January 28, 2021?
16 A. Yes.
17 Q. Okay. And let's look at Assumption
18 C. It's been amended somewhat.
19 And it now says, quote: "All demand
20 notes are collected in the year 2021; 3 term
21 notes defaulted and have been demanded based on
22 default provisions; payment estimated in 2021."
23 Do you see that?
24 A. Yes.
25 Q. Did you or anybody on your behalf

1 Dondero - 5-28-2021
2 ever inform the Court that this assumption was
3 unreasonable?
4 MS. DEITSCH-PEREZ: Object to the
5 form.
6 A. Yes. Well, Lynn wrote a letter to
7 all the counsels, which I think ended up being
8 put in the Court record, that the notes were
9 all subject to defenses and could not be
10 considered unencumbered, I think, if they're
11 sold, or whatever. He was – he was – he –
12 he realized the attitude towards the notes had
13 shifted, and he penned something to everybody
14 and to make the notes so that they couldn't be
15 sold without notifying people that there were
16 good defenses to them.
17 BY MR. MORRIS:
18 Q. Did you or anybody acting on your
19 behalf ever challenge this assumption in
20 connection with the debtor's confirmation
21 hearing?
22 MS. DEITSCH-PEREZ: Object to the
23 form, asked and answered.
24 A. Yeah. I think Lynn's letter
25 objected to that vehemently. It was just

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ignored.

BY MR. MORRIS:

Q. Do you know anything else – anything else you're aware of?

A. I think that's powerful enough.

Q. That's not my question, sir. My question is: Are you aware of any other facts that you're relying upon to answer my question as to whether or not you or anybody acting on your behalf informed the Court that Assumption C is unreasonable?

MS. DEITSCH-PEREZ: Object to the form.

A. Just the Lynn letter. I have no other specific awareness.

MR. MORRIS: Thank you very much. I have no further questions. Thank you so much, folks. Been a pleasure.

MS. DEITSCH-PEREZ: Reserve until trial.

(Time Noted: 1:59 p.m.)

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CERTIFICATE

STATE OF TEXAS)
)
COUNTY OF ELLIS)

I, Daniel J. Skur, a Notary Public within and for the State of Texas, do hereby certify:

That JAMES DONDERO, the witness whose deposition is hereinbefore set forth, was duly sworn by me and that such deposition is a true record of the testimony given by such witness.

That pursuant to Rule 30 of the Federal Rules of Civil Procedure, signature of the witness was not reserved by the witness or other party before the conclusion of the deposition;

I further certify that I am not related to any of the parties to this action by blood or marriage; and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 28th day of May, 2021.

_____
Daniel J. Skur
Notary Public, State of Texas.
My Commission Expires 7/7/2022
TSG Reporting, Inc.
228 East 45th Street, Suite 810
New York, New York
(877) 702-9580

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ERRATA SHEET FOR THE TRANSCRIPT OF:
Case Name:
IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:)
HIGHLAND CAPITAL) Case No.
MANAGEMENT, LP,) 19-34054 L.P.
Debtor,) Chapter 11
_____)
HIGHLAND CAPITAL MANAGEMENT,)
LP,)
)
Plaintiff,) Adversary No.
vs.) 21-03003-sgi
JAMES D. DONDERO,)
Defendant.)
Dep. Date: 05/28/2021
Deponent: JAMES DONDERO

Reason codes:
1. To clarify the record.
2. To conform to the facts.
3. To correct transcription errors.

CORRECTIONS:

Pg.	LN.	Now Reads	Should Read	Reason

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_____
JAMES DONDERO

SUBSCRIBED AND SWORN BEFORE ME THIS _____ DAY OF _____, 2021.

_____
(Notary Public) MY COMMISSION EXPIRES:_____

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——I N D E X——

WITNESS:	EXAMINATION BY	PAGE:
JAMES DONDERO		
	Mr. Morris	107

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Exhibit 2	February 2020 Highland Capital Management, L.P. Operating Results 12 pages	118/21
Exhibit 3	8/1/2020 Promissory Note 2 pages	121/8
Exhibit 4	8/13/2018 Promissory Note 2 pages	127/2
Exhibit 5	August 2018 Highland Capital Management, L.P. Operating Results 9 pages	130/14
Exhibit 6	12/3/2020 Demand Letter 3 pages	132/11
Exhibit 7	Defendant James Dondero's Original Answer 8 pages	136/8
Exhibit 8	Defendant James Dondero's Objections and Responses to Highland Capital Management, L.P.'s First Request For Admissions 6 pages	158/2

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——————EXHIBITS——————

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Exhibit 9	Defendant James Dondero's Objections and Answers to Highland Capital Management, L.P.'s First Set of Interrogatories 6 pages	160/23
Exhibit 10	Defendant James Dondero's Amended Answer 8 pages	169/10
Exhibit 11	Defendant James Dondero's Objections and Responses to Highland Capital Management, L.P.'s Second Request For Admissions 5 pages	191/8
Exhibit 12	Exhibit 20, Defendant James Dondero's Objections and Answers to Highland Capital Management, L.P.'s Second Set of Interrogatories 7 pages	206/4
Exhibit 13	Highland Capital Management, L.P.'s Consolidated Financial Statements and Supplemental Information 12/31/2020 48 pages	220/20
Exhibit 14	5/18/2020 Management Representation Letter 11 pages	234/21
Exhibit 15	Highland Capital Management, L.P.'s Consolidated Financial Statements and Supplemental Information 12/31/2018 46 pages	237/3

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Exhibit 17	12/13/2019 Summary of Assets and Liabilities For Nonindividuals 3 pages	247/20
Exhibit 18	(Skipped by Agreement)	
Exhibit 19	12/13/2019 Statement of Financial Affairs For Nonindividuals Filing Bankruptcy 42 pages	255/11
Exhibit 20	10/31/2019 Monthly Operating Report 11 pages	261/4
Exhibit 21	10/31/2019 Monthly Operating Report 11 pages	264/24
Exhibit 22	December 2019 Monthly Operating Report 9 pages	270/2
Exhibit 23	Exhibit C, Liquidation Analysis/Financial Projections 8 pages	271/19
Exhibit 24	1/28/2021 Highland Capital Management LP Disclaimer For Financial Projections 7 pages	273/24

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EXHIBIT 97

1 Dondero - 6-1-2021

2 IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
3 DALLAS DIVISION

4 In Re:)
)
5 HIGHLAND CAPITAL) Case No.
MANAGEMENT, LP,) 19-34054 L.P.
6) Chapter 11
Debtor,)
7 ----------)
HIGHLAND CAPITAL MANAGEMENT,)
8 LP,)
)
9 Plaintiff,) Adversary No.
) 21-03003-sgi
10 vs.)
)
11 JAMES D. DONDERO,)
)
12 Defendant.)

13

14
REMOTE DEPOSITION OF
15
JAMES DONDERO
16
Volume 3
17
Pages 283 - 385
18
Dallas, Texas
19
Tuesday, 1st day of June, 2021
20

21

22

23 Reported by:

24 Daniel J. Skur, Notary Public and CSR

25 Job No. 194691

1 Dondero - 6-1-2021
2
3
4
5
6
7 1st day of June, 2021
8 9:34 a.m. - 12:01 p.m.
9
10
11 Remote Deposition of JAMES DONDERO,
12 located in Dallas, Texas before Daniel J.
13 Skur, Notary Public and Certified Shorthand
14 Reporter in and for the State of Texas
15 located in Waxahachie, Texas.
16
17
18
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1 Dondero - 6-1-2021
2 IT IS HEREBY STIPULATED AND AGREED
3 by and between the attorneys for the respective
4 parties herein, that filing and sealing be and
5 the same are hereby waived.
6 IT IS FURTHER STIPULATED AND AGREED
7 that all objections, except as to the form of
8 the question, shall be reserved to the
9 time of the trial.
10 IT IS FURTHER STIPULATED AND AGREED
11 that the within deposition may be sworn to and
12 signed before any officer authorized to
13 administer an oath, with the same force and
14 effect as if signed and sworn to before the
15 Court.
16 - oOo -
17
18
19
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1 Dondero - 6-1-2021
2 P R O C E E D I N G S
3 REMOTE ORAL DEPOSITION OF
4 JAMES DONDERO
5 (REPORTER NOTE: This deposition is
6 being conducted remotely in accordance with
7 the Current Emergency Order regarding the
8 COVID-19 State of Disaster.
9 Today's date is the 1st day of
10 June, 2021. The time is 9:34 a.m. Daylight
11 Savings Time. The witness is located in
12 Dallas, Texas.)
13 JAMES DONDERO,
14 having been duly cautioned and sworn to tell
15 the truth, the whole truth and nothing but the
16 truth, testified as follows:
17 (9:33 A.M.)
18 EXAMINATION
19 BY MR. MORRIS:
20 Q. Good morning, Mr. Dondero. Can you
21 hear me?
22 A. Yes.
23 Q. Your microphone is a little soft as
24 well.
25 Can you tell me where you're located

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2 right now?
3 A. 4940 Chase Tower.
4 (Interruption by reporter.)
5 (Pause.)
6 BY MR. MORRIS:
7 Q. Good morning, Mr. Dondero.
8 (Audio distortion.)
9 (Interruption by reporter.) 00:-01
10 BY MR. MORRIS: 00:-01
11 Q. Good morning, Mr. Dondero.
12 Can you hear me now?
13 A. Yes.
14 Q. You understand we're here today for
15 your deposition in connection with next week's
16 contempt proceeding; is that right?
17 A. Yes.
18 Q. Okay. We have a few documents to
19 put up on the screen today; and as usual, if
20 there's anything that you need to see, will you
21 let me know that?
22 A. Yes.
23 Q. All right. I want to start with
24 some background.
25 MR. MORRIS: Can we please put up

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2 the first exhibit, the organizational
3 chart?
4 MR. TAYLOR: John, before we start,
5 I just wanted to note that this is going to
6 be limited to two hours.
7 MR. MORRIS: I'm not sure where you
8 get that from, but let's just proceed.
9 MR. TAYLOR: You specifically asked
10 for two hours of time, and I told you we'd
11 give two hours of time, and so we're
12 limiting it to two hours.
13 MR. MORRIS: You do whatever you
14 need to do, Clay.
15 (Exhibit 1 introduced.)
16 BY MR. MORRIS:
17 Q. Mr. Dondero, have you seen this
18 document before, sir?
19 A. Yes.
20 Q. Do you know what it is?
21 A. It's the org chart of the DAF and
22 CLO HoldCo.
23 Q. Do you know why this structure was
24 set up the way it was?
25 MR. TAYLOR: Objection, form.

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2 A. Only generally.
3 BY MR. MORRIS:
4 Q. Can you tell me your general
5 understanding of why this structure was set up
6 the way it was?
7 A. To be compliant for tax purposes.
8 Q. Was this structure set up at your
9 request?
10 MR. TAYLOR: Objection, form.
11 A. Set up at my request. No.
12 BY MR. MORRIS:
13 Q. Who decided to set up this
14 structure; do you know?
15 A. Mark Patrick.
16 Q. And do you know if anybody asked
17 Mark Patrick to set up this structure?
18 A. The -- he was tasked with setting up
19 a charitable entity for Highland at that time,
20 for Highland and my -- for Highland and the
21 partners to -- to foster charitable giving and
22 provide the appropriate tax deductions for
23 such.
24 Q. And who gave him that task, if you
25 know?

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A. I believe I did.
Q. Okay. So, you tasked Mr. Patrick with setting up an organizational structure to carry out the charitable giving on behalf of Highland Capital Management, L.P., and its partners?
Do I have that right?
A. Yes.
Q. Okay. Looking at the top line, do you see that there's four foundations that are identified as third parties?
A. Yes.
Q. Are you familiar with those foundations?
A. Yes.
Q. And do you serve as an officer or director of any of those foundations?
A. I – I believe I have or I could be with regard to Dallas Foundation, but I'm not certain.
Q. Okay. Do you know if you have any role with any of the other three foundations that are on there?
A. I do not believe so.

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Q. Okay. Looking at the next row, there's four incorporated or there's four entities that are identified as supporting organizations.
Do you see that?
A. Yes.
Q. Do you have an understanding of what a "supporting organization" is?
A. No, and I don't know the difference between that first line and the second line, and I don't know if my involvement with Dallas Foundation was at the first line or the second line.
Q. Do you know when Mr. Patrick set up this structure?
A. Many years ago at the beginning of the -- I don't think it's changed over the years. As far as I know, the general -- or this -- this structure was put in place at the beginning, I believe, sometime in the late 2000s.
Q. Do you know what the Donor Advised Funds are, the DAF funds?
MR. SBAITI: I'm going to object to

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the form of the question.
John, if you could be clear as to which line -- are you talking about charitable DAF HoldCo, or are you talking about charitable DAF Fund, L.P.?
MR. TAYLOR: If you could be as specific as possible, and he'll try to answer as specifically as possible. I'm not sure which box you're talking about.
MR. MORRIS: All right, Clay. Thank you.
BY MR. MORRIS:
Q. Mr. Dondero, are you familiar with the phrase "DAF"?
A. Yes.
Q. Have you used that phrase before?
A. Yes.
Q. When you refer to -- when you use the phrase "DAF," what are you referring to?
A. It would depend.
Q. On what?
A. What the question is.
Q. What's -- do you have an understanding of what the Charitable DAF GP,

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LLC, is?
A. The exact structural differences, I – I – I – I don't know.
Q. So when you use the phrase "DAF," what are you referring to?
A. In general, when I use the expression, it's the -- the overall entity, the overall pool of capital and/or the overall entity that makes the donations from the pool of capital.
Q. And which entity -- withdrawn.
Do you have an understanding as to which entity holds the pool of capital?
A. No. It's -- no, I don't know for sure.
Q. Do you know if it's CLO HoldCo, Ltd.?
MR. SBAITI: Objection, asked and answered.
A. I don't know.
BY MR. MORRIS:
Q. Do you know if Charitable DAF Fund, L.P., holds any assets?
MR. SBAITI: Objection, relevance,

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no foundation.

A. I -- I don't know which entities hold which of the assets.

BY MR. MORRIS:

Q. Did you -- did you approve of the organizational structure that Mr. Patrick created at your request?

A. Yes.

MR. TAYLOR: Objection, vague.

BY MR. MORRIS:

Q. I'm sorry. Did -- did you answer, sir?

A. Yes.

Q. Okay. Who is Grant Scott?

A. I understand he was the trustee of the DAF for a number of years.

Q. When you say "he was the trustee of the DAF," what are you referring to?

A. I always refer to him as "trustee," but I see it's labeled here as "managing member."

Q. Do you know how he came to be appointed the trustee of the DAF?

A. I believe it was on my

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recommendation.

Q. Who did you make the recommendation to?

A. It would have been Mark Patrick.

Q. Did Mark Patrick have the authority to appoint Mr. Scott as the trustee of the DAF?

MR. SBAITI: Objection, vague. Object to the extent it calls for a legal conclusion.

A. Yeah, I don't know.

BY MR. MORRIS:

Q. Well, you've known Mr. Scott since high school; isn't that right?

A. Yes.

Q. You went to UVA together; isn't that right?

A. Yes.

Q. You were housemates together in college; isn't that right?

A. Yes.

Q. He was the best man at your wedding; isn't that right?

A. Yes.

Q. You picked Mr. Scott to serve as the

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trustee of the DAF; isn't that right?

MR. TAYLOR: Objection. That's not what he stated.

A. I -- on the original formation, I recommended Grant Scott.

BY MR. MORRIS:

Q. And you recommended Mr. Scott to Mr. Patrick?

A. That's my recollection, I believe, but I don't remember specifically.

Q. Do you remember if Mr. Patrick held any role in any entity on the chart that stands before you?

Withdrawn.

Do you know if Mr. Patrick held any role with any entity prior to January 1st, 2021?

MR. SBAITI: Objection, vague.

A. I don't know.

BY MR. MORRIS:

Q. Why did you make the recommendation to Mr. Patrick?

A. Initially? You're saying the initial recommendation when it was set up?

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Q. Correct.

A. 13, 14, 15 years ago.

The -- it -- we thought -- I thought at the time he would be suitable.

Q. But why did you select Mr. Patrick as the person to whom to make your recommendation?

A. Because he was responsible for setting up the overall structure.

Q. Did he -- were you seeking his approval when you made the recommendation to him?

A. I -- I don't know the roles he was playing at the -- at that moment, so I -- I don't know.

Q. At the time that you recommended Mr. Scott to serve as the trustee of the DAF, did you have any understanding as to who had the authority to actually appoint Mr. Scott?

A. I did not specifically.

Q. Did you ever learn who had the power to appoint the trustee of the DAF?

A. I did not.

Q. As you sit here today, do you have

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any understanding as to who has the power to appoint the trustee of the DAF?

MR. TAYLOR: I'll instruct the witness not to answer to the extent it would require him to reveal privileged communications with counsel.

MR. MORRIS: I'm not asking him for any communications, to be clear.

MR. TAYLOR: Or anything he heard from counsel.

(Audio distortion.)

MR. MORRIS: Please don't -- Clay, you're a very good lawyer, please don't coach the witness. He's a very sophisticated witness.

BY MR. MORRIS:

Q. Do you have any understanding, as you sit here today, sir, as to who has the authority to appoint the trustee of the DAF?

A. I know it's complicated. I know it has to do with shares. I know it's -- I know it's multiple levels, but I don't have specific knowledge.

Q. Do you know if Mr. Patrick ever

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considered appointing -- withdrawn.

MR. MORRIS: Could we please put up the next exhibit, Patrick File 6, Document 1?

(Exhibit 2 introduced.)

MR. SBAITI: John, is that document you put up a labeled exhibit for the, like Exhibit 1 or something, the one you have up right here.

MR. MORRIS: Yeah, that will be marked as Exhibit 1, thank you.

So, now we're going to put up Exhibit 2.

BY MR. MORRIS:

Q. Do you see that that's the Amended and Restated Limited Liability Company Agreement of the Charitable DAF GP, LLC?

A. Yes.

Q. And do you see that it's dated effective as of January 1st, 2012?

A. Yes.

Q. So, that's approximately nine plus years ago.

Do I have that right?

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A. Yes.

Q. Okay.

MR. MORRIS: Can we go to the last page, please?

BY MR. MORRIS:

Q. Is that your signature on that page, sir?

A. Yes.

Q. And do you understand that, pursuant to this agreement, Mr. Scott replaced you as the managing member of the DAF GP, LLC?

A. I -- I don't have a recollection of that.

Q. Do you remember that you served as the managing member of the DAF GP, LLC?

A. I don't -- I don't recall that.

Q. Now, Mr. Scott is a lawyer, correct?

A. Yes.

Q. He's a patent lawyer. Do I have that right?

A. Yes.

Q. He has no experience or expertise in finance, does he, to the best of your knowledge?

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A. I would not say he has expertise. I wouldn't say he's an expert in it, but I -- I'd say he's more sophisticated than the average layperson.

Q. Well, at the time that you recommended him to Mr. Patrick, did you do so because you thought he had valuable experience and expertise in finance or investment?

MR. SBAITI: Objection, assumes facts not in evidence before the witness.

BY MR. MORRIS:

Q. That wasn't one of the reasons you recommended Mr. Scott, is it?

A. He wasn't going to be the investment advisor. DAF had a separate investment advisor.

Q. And who was going to be the investment advisor?

A. Highland.

Q. And you owned and controlled Highland at the time, correct?

MR. TAYLOR: Objection.

BY MR. MORRIS:

Q. Withdrawn.

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2 You controlled Highland at the time,
3 correct?
4 A. Yes.
5 Q. Did Mr. Scott have any experience or
6 expertise running charitable organizations, to
7 the best of your knowledge?
8 A. No.
9 Q. Had he ever, to the best of your
10 knowledge, made any decisions concerning
11 collateralized loan obligations?
12 A. No.
13 Q. Can you tell me why you recommended
14 to Mr. Patrick that Mr. Scott serve as the
15 trustee of DAF?
16 MR. TAYLOR: Objection, asked and
17 answered.
18 A. I – I thought he would be a good
19 fit for the position.
20 BY MR. MORRIS:
21 Q. Why?
22 A. It required – I don't – in my
23 mind – or I believed it would require a lawyer
24 and someone with legal skills, and I thought he
25 would be good at the position.

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2 Q. And you trusted him; is that right?
3 A. I – yes.
4 Q. And you had a life-long relationship
5 with him; isn't that right? Isn't that one of
6 the reasons why you recommended him for this
7 position?
8 A. Yes.
9 Q. Do you know whether Mr. Patrick –
10 withdrawn.
11 Is Mr. – do you believe that
12 Mr. Patrick is the person who appointed
13 Mr. Scott as your successor as managing member
14 in 2012?
15 MR. SBAITI: Objection, asked and
16 answered, calls for speculation; and object
17 to the extent it calls for a legal
18 conclusion.
19 A. I could – I could repeat the answer
20 again.
21 I don't know the formal process, but
22 I do remember recommending to Mark Patrick that
23 Grant would be a good candidate. Now, how –
24 what mechanism and how the process works and
25 who actually approved that, I – I don't know.

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2 BY MR. MORRIS:
3 Q. Did you recommend anybody else, or
4 was Mr. Scott the only person that you
5 recommended?
6 A. I don't – I don't remember. I
7 don't remember. I don't remember recommending
8 anybody else or if the process required it. I
9 don't remember the process.
10 Q. Was anybody involved in the process
11 other than you and Mr. Patrick?
12 MR. TAYLOR: Objection to the extent
13 it calls for speculation.
14 BY MR. MORRIS:
15 Q. Withdrawn.
16 Do you know – do you know if
17 anybody was in the process – involved in the
18 process other than you and Mr. Patrick?
19 A. Again, I don't know the process and
20 the mechanism, if there were offshore boards
21 involved or if the four underlying charities
22 were involved. It was – it was complicated,
23 and I delegated the process to Mark Patrick.
24 Q. Okay. I'm not asking you to
25 speculate. I'm just asking for your knowledge.

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2 Can you identify any person or
3 entity who was involved in the appointment of
4 Mr. Scott as your successor as managing member
5 of the DAF GP, LLC, other than yourself and
6 Mr. Patrick?
7 MR. SBAITI: Objection, assumes
8 facts.
9 A. Yeah, I don't – I don't have
10 specific knowledge.
11 BY MR. MORRIS:
12 Q. Okay. Do you understand that in
13 addition to becoming the managing member of the
14 Charitable DAF GP, LLC, that Mr. Scott also
15 became the sole director of the Charitable DAF
16 HoldCo, Ltd., Charitable DAF Fund, L.P., and
17 CLO HoldCo, Ltd.?
18 MR. TAYLOR: Objection, assumes
19 facts not before the witness.
20 A. No.
21 BY MR. MORRIS:
22 Q. Do you know if he ever held the
23 directorship of any of those entities?
24 MR. SBAITI: Objection, vague.
25 A. I – I don't know what his exact

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2 role is now, but I -- I thought I was informed
3 that that's -- his role now has something to do
4 with directorship.
5 BY MR. MORRIS:
6 Q. Can we put the chart back up,
7 Exhibit 1, please?
8 (Exhibit 1 on screen.)
9 BY MR. MORRIS:
10 Q. Do you know whether Mr. Scott held
11 any position at all with Charitable DAF HoldCo,
12 Ltd., at any time?
13 A. I don't know.
14 Q. Can you identify any person who's
15 ever -- who you believe had the authority to
16 act on behalf of the Charitable DAF HoldCo,
17 Ltd., prior to March 1st, 2021?
18 MR. SBAITI: Objection, assumes
19 facts not in evidence.
20 A. I don't know.
21 BY MR. MORRIS:
22 Q. You can't name anybody in the world
23 who was authorized on behalf of -- who was
24 authorized to act on behalf of the Charitable
25 DAF HoldCo, Ltd., prior to March 1st, 2021?

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2 MR. TAYLOR: Objection, asked and
3 answered.
4 MR. SBAITI: Objection, calls for a
5 legal opinion.
6 A. I don't know.
7 BY MR. MORRIS:
8 Q. How about the Charitable DAF Fund,
9 L.P.; can you identify anybody in the world who
10 was authorized to act on behalf of that entity
11 prior to March 1st, 2021?
12 MR. SBAITI: Objection, calls for a
13 legal opinion.
14 A. I mean, other than Grant Scott, the
15 org chart seems to roll up back up to him.
16 BY MR. MORRIS:
17 Q. Okay. So, you're willing to say
18 that Grant Scott acted on behalf of that
19 entity?
20 Do I have that right?
21 MR. TAYLOR: That's not --
22 mischaracterizes his statements. He's
23 giving you his general --
24 MR. MORRIS: Just object to the form
25 of the question. Please, no speaking

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2 objections. It's very simple.
3 MR. TAYLOR: So, John, I'm going to
4 make my record. If you don't like it, then
5 bring it up with the Judge.
6 BY MR. MORRIS:
7 Q. Mr. Dondero, do you understand that
8 Mr. Scott was authorized to act on behalf of
9 the Charitable DAF Fund, L.P., prior to
10 March 1st, 2021?
11 MR. TAYLOR: Objection, calls for a
12 legal conclusion.
13 A. I -- I don't know.
14 BY MR. MORRIS:
15 Q. Okay. Do you know if anybody was
16 authorized to act on behalf of CLO HoldCo,
17 Ltd., prior to March 1st, 2021?
18 MR. TAYLOR: Objection, calls for a
19 legal conclusion.
20 A. I -- I don't know the specifics on
21 how this operated.
22 BY MR. MORRIS:
23 Q. But you can't identify any person,
24 do I have that right, you don't know the
25 identity of any person who was ever authorized

1 Dondero - 6-1-2021
2 to act on behalf of CLO HoldCo, Ltd., prior to
3 March 1st, 2021; is that right?
4 MR. TAYLOR: Objection, calls for a
5 legal conclusion.
6 MR. MORRIS: I'm not asking for a
7 legal conclusion. I'm asking for
8 Mr. Dondero's knowledge of the facts or his
9 understanding of the facts.
10 MR. TAYLOR: With all due respect,
11 it calls for a legal conclusion.
12 MR. MORRIS: I cannot wait -- I
13 cannot wait until next Tuesday. This is
14 going to be brilliant.
15 BY MR. MORRIS:
16 Q. Mr. Dondero, let me try one last
17 time.
18 Can you identify any person who you
19 believed was authorized to act on behalf of CLO
20 HoldCo, Ltd., prior to March 1st, 2021?
21 A. I need to answer the question this
22 way: My knowledge begins and ends with Grant
23 as the trustee, or on this org chart, managing
24 member; and his control, it looks like it flows
25 down through all those entities. Now -- or --

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2 or ownership, at least, or maybe control or
3 agreement.
4 Now, what other people or boards or
5 trustees or -- or entity he had to go through,
6 whether US Cayman Guernsey, et cetera, to get
7 things done and where the assets were held, I
8 do not have specific knowledge and I don't know
9 the names of the people or the entities that
10 were on those boards or -- supervisory or
11 holders of shares, or whatever. I wasn't
12 specifically involved in the operation of this
13 structure.
14 Q. Did the Charitable DAF Fund, L.P.,
15 and Highland Capital Management, L.P., enter
16 into an Amended and Restated Investment
17 Advisory Agreement, to the best of your
18 knowledge?
19 A. There was an Investment Advisory
20 Agreement, as far as I knew.
21 Q. And what is your understanding of
22 the purpose of the Investment Advisory
23 Agreement?
24 A. Excuse me.
25 To provide portfolio management to

1 Dondero - 6-1-2021
2 achieve adequate returns on the portfolio to
3 support the charitable giving of the DAF.
4 Q. Did Mr. Scott lack the capability to
5 provide portfolio management services to the
6 Charitable DAF Fund, L.P., to the best of your
7 knowledge?
8 A. I would not say that.
9 Q. So why -- why did -- withdrawn.
10 Was the -- did you participate in
11 the negotiation -- withdrawn.
12 Can we please put up the next
13 exhibit? We'll call it Exhibit 3.
14 (Exhibit 3 introduced.)
15 BY MR. MORRIS:
16 Q. Do you see this is an Amended and
17 Restated Investment Advisory Agreement between
18 the Charitable DAF Fund, L.P.; the Charitable
19 DAF, GP, LLC; and Highland Capital Management,
20 L.P.?
21 A. Yes.
22 Q. Is this the agreement you were just
23 referring to?
24 A. Unless there was another amended
25 one. I believe there was always one -- best

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2 practice is to have an investment advisory
3 group.
4 Q. And do you know who prepared this
5 document?
6 A. No.
7 Q. Do you know if it was the subject of
8 any negotiation?
9 A. I don't know.
10 Q. Do you know if the Charitable DAF
11 Fund, L.P., or the Charitable DAF GP, LLC, had
12 independent counsel in connection with the
13 negotiation and execution of this Amended and
14 Restated Investment Advisory Agreement?
15 A. I don't know.
16 Q. Do you know if the Charitable DAF
17 Fund, L.P., or the Charitable DAF GP, LLC, ever
18 hired independent counsel prior to the
19 commencement of Highland's bankruptcy in
20 October 2019?
21 A. I don't know.
22 Q. Did those entities also enter into a
23 Shared Services Agreement with Highland Capital
24 Management?
25 A. I believe there was a Shared

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2 Services Agreement. I don't know which DAF
3 entities entered it.
4 Q. Before we get to that, pursuant to
5 the Investment and Advisory Agreement, did
6 Highland Capital Management, L.P., manage the
7 assets of the DAF and CLO HoldCo?
8 MR. TAYLOR: Objection, vague.
9 A. Can you repeat the question again?
10 BY MR. MORRIS:
11 Q. Sure. Is it your understanding that
12 pursuant to this agreement, HCMLP managed the
13 assets of the DAF and CLO HoldCo?
14 A. This agreement discusses the DAF,
15 right?
16 This disagreement doesn't discuss
17 CLO HoldCo, right?
18 Q. Do you know whether HCMLP ever had
19 any agreement of any kind with CLO HoldCo
20 pursuant to which it managed CLO HoldCo's
21 assets?
22 A. I don't know for certain.
23 Q. Do you have any understanding at all
24 as to whether such an agreement existed?
25 A. I -- I don't know for certain. I'm

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2 willing to be refreshed.
3 Q. Do you know who provides --
4 withdrawn.
5 Do you know whether anybody provides
6 independent -- withdrawn.
7 Do you know whether anybody has an
8 agreement with the Charitable DAF Fund, L.P.,
9 or the Charitable DAF GP, LLC, today similar to
10 the type that had been previously entered into
11 with HCMLP?
12 MR. TAYLOR: Objection, vague.
13 A. I believe Skygate has a similar --
14 similar agreements in place.
15 BY MR. MORRIS:
16 Q. Is it your understanding that
17 Skygate effectively replaced HCMLP as the
18 investment advisor to the DAF?
19 A. Let me clarify that for a second.
20 I believe Skygate has the Shared
21 Services Agreement. I don't know whether it's
22 Skygate or NexPoint has the Investment Advisory
23 Agreement or if it was another entity. I
24 don't -- I don't know. I -- I don't know the
25 specifics.

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2 Q. Okay. While Mr. Scott served -- I
3 think you said as the trustee of the DAF, can
4 you identify any investment decision that HCMLP
5 had recommended that Mr. Scott rejected?
6 A. No.
7 Q. Can you think of any investment that
8 Mr. Scott made on behalf of the DAF that didn't
9 originate with HCMLP?
10 A. He wasn't the investment advisor,
11 but, no, I don't -- I don't recall.
12 Q. Let's just speed this up a bit.
13 Do you recall that in October 2019,
14 the debtor filed for bankruptcy?
15 A. Yes.
16 Q. And do you recall that after the
17 debtor filed for bankruptcy, CLO HoldCo, Ltd.,
18 retained John Kane to act as counsel on its
19 behalf?
20 A. I -- I know he was retained. I
21 don't know which entities in particular.
22 Q. Do you have any understanding as to
23 who Mr. Kane represented?
24 A. My understanding was that he
25 represented the DAF. Now, whether it included

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2 all entities, CLO HoldCo, the offshore
3 entities, which entities, I -- I don't know.
4 Q. Do you know if -- do you know how
5 Mr. Kane came to be retained by the DAF?
6 MR. SBAITI: Objection to the extent
7 it calls for the DAF's confidential
8 privileged information (inaudible.)
9 A. I -- I don't remember. I know the
10 lawyers -- I let the legal department or
11 lawyers find and identify good -- I let them go
12 through the process of identifying and vetting
13 law firms.
14 BY MR. MORRIS:
15 Q. And are the lawyers that you're
16 referring to in-house counsel at HCMLP?
17 A. I -- I don't know which lawyers were
18 involved.
19 Q. Well, you just said that you let the
20 lawyers do the vetting. Which lawyers were you
21 referring to?
22 A. It could have been the HCMLP
23 lawyers, it could have been NexPoint lawyers.
24 I don't know.
25 Q. Could it have been any other lawyers

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2 besides the HCMLP lawyers and the NexPoint
3 lawyers?
4 A. I mean -- yes. I mean, sometimes we
5 get recommendations from outside counsel
6 regarding other outside counsel. The
7 recommendation could have come from one of the
8 other bankruptcy attorneys involved in the
9 case. I don't know.
10 Q. Do you recall that in October 2020,
11 Mr. Scott caused CLO HoldCo to amend its proof
12 of claim?
13 MR. TAYLOR: Objection, assumes
14 facts not before the witness.
15 A. Yeah, I don't -- I don't know.
16 BY MR. MORRIS:
17 Q. Let me take it out of the --
18 (Simultaneous conversation.)
19 BY MR. MORRIS:
20 Q. Okay. Let me take it out of the
21 time frame.
22 Do you recall that there came a
23 moment in time when Mr. Scott caused CLO HoldCo
24 to amend its proof of claim by reducing the
25 value of the claim to zero dollars?

1 Dondero - 6-1-2021
2 A. I -- I know there was ultimately a
3 settlement agreement. I don't know how that
4 manifested itself.
5 Q. Okay. So, just to be clear, you
6 don't have any memory of CLO HoldCo --
7 withdrawn.
8 Do you have a memory of CLO HoldCo
9 filing its original proof of claim in the
10 amount of approximately $11 million?
11 A. I -- I don't recall the amount. I
12 do remember that the DAF was overbilled by
13 Highland and there was a claim. Whether it was
14 a POC or an administrative claim or -- I don't
15 know how that manifested itself in the
16 bankruptcy. It's -- yeah.
17 Q. Okay. And regardless of the form of
18 the claim, do you remember that there came a
19 point in time when Mr. Scott amended the claim
20 to reduce the value to zero?
21 A. I -- I heard a hundred thousand
22 dollars, but it's essentially zero, I guess.
23 Q. And did you know that Mr. Scott was
24 going to amend the proof of claim in that
25 manner prior to the time that he actually did

1 Dondero - 6-1-2021
2 so?
3 MR. TAYLOR: Objection to the extent
4 it calls for him to invade the
5 attorney-client privilege.
6 A. I don't -- I don't have knowledge of
7 what you just said. I -- my recollection is
8 there was a legitimate overbilling that
9 Highland did to multiple parties who have
10 pursued multiple -- those multiple claims
11 against the estate, but I don't have -- I don't
12 have specific knowledge of why the 11 was
13 reduced to zero, but --
14 BY MR. MORRIS:
15 Q. Did you ever discuss with Mr. Scott
16 his decision to reduce the claim to zero?
17 A. Not -- not before he did it.
18 Q. At any time, did you ever discuss
19 with Mr. Scott his decision to reduce the claim
20 to zero?
21 A. I believe afterwards.
22 Q. And what do you recall about your
23 discussions with Mr. Scott afterwards?
24 A. That he had given up bona fide
25 claims against the debtor, and I didn't

1 Dondero - 6-1-2021
2 understand why.
3 Q. Did he explain to you why he thought
4 he was not giving up bona fide claims --
5 withdrawn.
6 What did he say in response?
7 MR. SBAITI: Objection, calls
8 for legal --
9 (Audio distortion.)
10 BY MR. MORRIS:
11 Q. If anything?
12 A. I don't remember him having an
13 explanation.
14 Q. Was anybody else -- did anybody else
15 participate in this discussion?
16 A. No.
17 Q. Did this discussion occur in a
18 singular phone call, or was it in multiple --
19 during multiple conversations?
20 A. A couple, one or two.
21 Q. Do you remember anything about your
22 discussions with Mr. Scott concerning his
23 decision to amend CLO HoldCo's proof of claim
24 by reducing it to zero, other than what you've
25 testified to so far?

1 Dondero - 6-1-2021
2 MR. TAYLOR: Objection, vague.
3 A. No, but I'm willing -- I'm willing
4 to be refreshed or answer more questions, but
5 those are the only things that come to mind.
6 BY MR. MORRIS:
7 Q. Okay. So, I think what you've told
8 me--and I just want to make sure that I have
9 this right--that after the amendment was filed,
10 you had several conversations with Mr. Scott in
11 which you told him that you believed he had
12 given up bona fide claims against the debtor,
13 but that you don't recall what, if anything, he
14 said in response.
15 Have I missed anything?
16 A. You used "several." It's -- I said
17 "a couple."
18 Q. Okay.
19 A. But otherwise, that's -- that's my
20 testimony.
21 Q. Do you recall that sometime after
22 that, CLO HoldCo had filed an objection to the
23 proposed HarbourVest Settlement?
24 A. Yes.
25 Q. And did you subsequently learn that

1 Dondero - 6-1-2021
2 CLO HoldCo withdrew its objection to the
3 HarbourVest Settlement?
4 A. Yes.
5 Q. Do you recall if you learned that
6 before or after CLO HoldCo withdrew its
7 objection -- withdrawn.
8 That wasn't a good question.
9 Did you know, prior to the time that
10 CLO HoldCo announced that it was withdrawing
11 its objection, that it intended to do so; or
12 did you learn about that after -- you know, as
13 the announcement was being made?
14 MR. SBAITI: Objection, compound.
15 MR. TAYLOR: Objection, compound.
16 BY MR. MORRIS:
17 Q. You can answer.
18 A. I learned about it at the hearing.
19 BY MR. MORRIS:
20 Q. Were you surprised?
21 A. Yes.
22 Q. And why were you surprised?
23 A. It was inappropriate.
24 Q. Why did you believe it was
25 inappropriate?

1 Dondero - 6-1-2021
2 A. The night before, Counsel had
3 confirmed with other counsel.
4 MR. TAYLOR: Instruct the witness
5 not to reveal any privileged information.
6 THE WITNESS: Okay.
7 BY MR. MORRIS:
8 Q. Mr. Dondero, you and I have done
9 this many, many times. I hope that you
10 understand that I'm never, ever asking or
11 hoping that you'll mistakenly divulge
12 attorney-client communications.
13 A. Yeah. Let me rephrase.
14 Q. Yeah. So, having said that, you
15 said that you believed it was inappropriate;
16 and the question is really simple: Why did you
17 believe it was inappropriate?
18 A. There was legal basis or legal
19 interpretation, I believed, in the governing
20 partnership agreement justifying the objection;
21 and I also believed there were duties under the
22 Advisors Act to -- for the DAF to continue with
23 its -- or to argue its objections.
24 Q. And after you learned that Mr. Scott
25 instructed his attorneys to withdraw CLO

1 Dondero - 6-1-2021
2 HoldCo's objection to the HarbourVest
3 Settlement, did you have a conversation with
4 Mr. Scott about his decision?
5 MR. TAYLOR: Objection, assumes
6 facts not in evidence.
7 A. Yeah, I don't agree with the first
8 part of that question, so I need you to
9 rephrase it, please.
10 BY MR. MORRIS:
11 Q. After you -- after you learned that
12 CLO HoldCo withdrew the objection, did you
13 speak with Mr. Scott about that?
14 A. Yes.
15 Q. Okay. Did you have one conversation
16 or more than one conversation with Mr. Scott
17 concerning CLO HoldCo's withdrawal of its
18 objection to the HarbourVest Settlement?
19 A. I -- I only recall one.
20 Q. Did anybody participate in that
21 conversation besides the two of you?
22 A. No.
23 Q. Did that conversation take place on
24 the telephone or in some other form?
25 A. I -- I don't know.

1 Dondero - 6-1-2021
2 Q. Do you know how long after the
3 conclusion of the hearing the conversation took
4 place? Was it the same day? Was it
5 afterwards?
6 A. I believe it was the same day or
7 shortly thereafter.
8 Q. And what do you recall -- please
9 tell me everything you recall about the
10 conversation, everything that you said and
11 everything that he said.
12 A. The only two points I remember was
13 that it was inappropriate for the DAF to change
14 direction an hour before the hearing without
15 informing anybody else when it was -- yeah,
16 when it was a reversal of the direction he had
17 been going in for weeks and that it was also
18 inappropriate to -- well, no, that's -- that
19 was -- that was really -- that was really it, I
20 guess.
21 Q. Do you recall what, if anything,
22 Mr. Scott said in response?
23 MR. SBAITI: Objection calls --
24 (inaudible.)
25 MR. MORRIS: What's the basis for

1 Dondero - 6-1-2021
2 the objection?
3 MR. TAYLOR: Objection, calls for
4 hearsay.
5 MR. SBAITI: Calls for hearsay.
6 BY MR. MORRIS:
7 Q. You can answer.
8 A. That he had done it based on advice
9 of counsel.
10 Q. Did you have any reason to doubt
11 that?
12 A. It -- it didn't -- it didn't make
13 sense that counsel would change their opinion
14 between the night before and the morning of the
15 hearing, but I guess that -- that is a reason
16 to doubt it.
17 Q. Do you think -- do you think
18 Mr. Scott acted in good faith when he made the
19 decision to withdraw CLO HoldCo's objection to
20 the HarbourVest Settlement?
21 A. Can you ask that question -- ask
22 that question again, please?
23 Q. Sure. Do you believe that Mr. Scott
24 acted in good faith when he made the decision
25 to withdraw the CLO HoldCo objection to the

1 Dondero - 6-1-2021
2 HarbourVest Settlement?
3 A. I don't believe he operated in the
4 best interest of the DAF or CLO HoldCo by
5 withdrawing the claims or withdrawing the
6 objectives -- objections.
7 Q. Did you -- did the subject of the
8 Advisors Act come up during this conversation?
9 A. I don't -- I don't remember if it
10 specifically came up.
11 Q. Do you recall if the subject of
12 "fiduciary duties" came up in this
13 conversation?
14 A. Not using those words, but reminding
15 him he needed to do what was in the best
16 interest of the DAF was definitely part of the
17 conversation.
18 Q. Earlier you said -- and I -- if I
19 miss -- if I don't get this right, please feel
20 free to correct me; but I believe you said that
21 it was inappropriate for the DAF to change
22 direction without informing anybody else.
23 Do I have that right?
24 A. Yes.
25 Q. And who do you believe Mr. Scott

1 Dondero - 6-1-2021
2 needed to inform of his decision?
3 A. There was some coordination and
4 cooperation among lawyers representing
5 different parties and I believe there was some
6 obligation -- some professional obligation as
7 part of that to inform and keep people abreast
8 of it.
9 Q. And would the lawyers at Bonds
10 Ellis, your personal counsel, be among those
11 lawyers that you believed he had the
12 professional obligation to inform?
13 MR. SBAITI: Objection --
14 A. I don't know.
15 MR. SBAITI: -- lacks foundation.
16 A. I don't know who was in the
17 coordination group.
18 BY MR. MORRIS:
19 Q. Do you believe that he had an
20 obligation to inform you in advance?
21 MR. SBAITI: Objection, vague.
22 A. I don't know if I would use the word
23 "obligation," but, again, as the founder or the
24 primary donor and continued donor to the DAF
25 and as the investment advisor fighting for

1 Dondero - 6-1-2021
2 above-average returns on a daily basis for the
3 fund, significant decisions that affect the
4 finances of the fund would be something I would
5 expect typically a trustee to discuss with a
6 primary donor.
7 BY MR. MORRIS:
8 Q. And which primary donor are you
9 referring to?
10 A. Highland, prior to bankruptcy, and
11 myself or NexPoint post-bankruptcy.
12 Q. Is Dugaboy -- The Dugaboy Investment
13 Trust a donor to the DAF?
14 MR. SBAITI: Objection, relevance.
15 A. I -- I believe it's been a donor
16 over the years. It wasn't the initial donor, I
17 don't believe.
18 BY MR. MORRIS:
19 Q. How about the Get Good Trust? Is
20 the Get Good Trust a donor to the DAF?
21 MR. SBAITI: Objection, relevance.
22 A. I don't know.
23 BY MR. MORRIS:
24 Q. Do you know if either the Get Good
25 Trust or the Dugaboy Trust has any beneficial

Dondero - 6-1-2021

interest in any of the DAF entities?
A. It does not -- or they do not.
Q. Do you know if either of the Get Good or Dugaboy trusts have an interest in the CLO HoldCo, Ltd., entity?
A. They -- they do not. They do not.
Q. Do you recall that a short while later or -- or maybe even within the same month, the debtor commenced a lawsuit against the entities that we've referred to previously as the Advisors, the Funds, and CLO HoldCo, Ltd.?
A. Which litigation is that?
Q. That was the one where the debtor is seeking injunctive relief; and there was a hearing in late January on the debtor's motion for preliminary injunction against the Funds, the Advisors, and CLO HoldCo?
A. There's -- there's -- which specifically?
Q. Do you remember that there came a point in time when -- when Mr. Scott, on behalf of CLO HoldCo, reached a settlement with the debtor that resolved the debtor's claim against

Dondero - 6-1-2021

CLO HoldCo, Ltd.?
A. I'm aware there was a settlement that resolved most of his -- the -- most of the issues with the debtor.
Q. Okay. And do you recall how you learned about that settlement?
MR. TAYLOR: Objection to the extent it invades any attorney-client privilege.
A. I learned about it after it was done.
BY MR. MORRIS:
Q. Okay. And do you have an understanding of the basic terms of the settlement?
A. I think that was the hundred thousand I spoke of earlier that the -- as the 11 or $12 million of overbilling that every other entity has pursued, you know, for -- the overbilling was traded for a hundred thousand dollars, and the -- I think Grant agreed to not pursue some historic actions and not pursue replacement of HCMLP as manager, regardless of whether it was in the best interest of the DAF or not.

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Q. And did you ever have a conversation with Mr. Scott about his decision to enter into that settlement on behalf of CLO HoldCo, Ltd.?
A. Yes.
Q. And did that -- did the communications take place in one conversation, more than one conversation, or in some other form?
A. It was a couple times.
Q. Do you recall if anybody --
(Simultaneous conversation.)
BY MR. MORRIS:
Q. I'm sorry, were you finished?
A. It might have been just once, but either one or two times.
Q. Okay. And did anybody participate in that conversation other than the two of you?
A. No.
Q. Can you recall everything that was discussed during that conversation, everything that you recall saying in sum or substance and everything that you can recall Mr. Scott saying?
A. My message was what I just

Dondero - 6-1-2021

articulated, that -- that the compromise or the settlement wasn't in the best interest of the DAF, it wasn't in the best interest of the investments in the DAF.
Q. Do you recall how long the conversation lasted?
A. No. It wasn't that long.
Q. Do you recall that shortly after Mr. Scott reached the settlement on behalf of CLO HoldCo, that he gave notice of his intent to resign from his positions with the DAF entities and CLO HoldCo, Ltd.?
A. Yes.
Q. And do you recall that there was a telephone conversation between and among you and Mr. Scott and certain lawyers at around the same time?
A. I don't -- I don't remember that specifically with the lawyers.
MR. MORRIS: Can we please put up the next exhibit, which I think we're marking as Exhibit 4, which is Scott Bates No. 11?
(Exhibit 4 introduced.)

1 Dondero - 6-1-2021
2 BY MR. MORRIS:
3 Q. So, I'll represent to you,
4 Mr. Dondero, that the hearing at which the CLO
5 HoldCo, Ltd., settlement was presented took
6 place on January 26th. And so, this is the
7 following Sunday.
8 And do you see there's a list of
9 people who were going to participate in a
10 conference call on Sunday, January 31st?
11 A. Yes.
12 Q. And you and Mr. Scott are among
13 those people?
14 A. Yes.
15 Q. Do you recall if this phone call
16 took place?
17 A. Yes.
18 Q. Do you recall the purpose of the
19 phone call?
20 A. Yes. It didn't have anything to do
21 with his resignation, this phone call.
22 Q. So, what was the purpose of this
23 call?
24 A. Earlier, I stated that to make -- to
25 pivot the plans or what he was -- or to

1 Dondero - 6-1-2021
2 withdraw without telling anybody, to reach
3 settlements without telling anybody that had a
4 material negative impact on the DAF was
5 inappropriate. And I believe the purpose of
6 this call was his representation that John Kane
7 had, in fact, told everybody, so -- but when I
8 spoke with everybody else, everybody said he
9 hadn't talked to them, and so to figure out --
10 to try and figure out what the truth was, we
11 had a conference call with everybody.
12 Q. Did you figure out what the truth
13 was during that conference call?
14 MR. TAYLOR: Objection. I'm going
15 to have to instruct the client not to
16 answer. This was a conversation with
17 attorneys that were acting in concert under
18 joint-defense agreement, or at least had a
19 common interest in litigation at that point
20 in time.
21 MR. MORRIS: I think it's a little
22 late for that.
23 BY MR. MORRIS:
24 Q. And there's no lawyer for you on
25 this call, at least that's identified on this

1 Dondero - 6-1-2021
2 email string, correct?
3 MR. TAYLOR: That's incorrect.
4 You'll see -- note that Judge Lynn's -- why
5 it was his email, I don't know, but Judge
6 Lynn's email address is on there.
7 MR. MORRIS: Okay. I think having
8 told me the purpose of the call, I think he
9 ought to be able to disclose what the
10 result of the call was. So I'm going to
11 ask my question again.
12 BY MR. MORRIS:
13 Q. And that is, did you learn the truth
14 as to whether or not Mr. Kane had given advance
15 notice to any of the lawyers on this email
16 string about any of the decisions you're
17 referring to?
18 MR. TAYLOR: I'm going to renew my
19 objection. You can answer the question,
20 but I do want to state for the record we
21 believe it's inappropriate and if brought
22 up in later proceedings, we'll move to
23 strike.
24 A. None of the lawyers on this email or
25 that participated in the call acknowledged any

1 Dondero - 6-1-2021
2 advanced conversations with Kane.
3 BY MR. MORRIS:
4 Q. Do you remember anything else about
5 the phone call that's referred to on this
6 exhibit?
7 MR. TAYLOR: I'm just going to renew
8 my objection.
9 A. No.
10 BY MR. MORRIS:
11 Q. And do you recall that Mr. Scott
12 gave notice of his intent to resign on the same
13 day?
14 A. I -- I didn't know it was exactly
15 the same day, but I knew it was on or around
16 that time.
17 Q. Okay.
18 MR. MORRIS: Can we pull up the next
19 exhibit, please, Exhibit Number 5, which is
20 Bates stamped Scott 18 and start at the
21 bottom.
22 (Exhibit 5 introduced.)
23 BY MR. MORRIS:
24 Q. Do you recall receiving this email
25 from Mr. Scott on January 31st, in the

1 Dondero - 6-1-2021
2 afternoon?
3 A. Yes.
4 Q. Do you know why Mr. Scott gave
5 notice of his resignation at that time?
6 MR. TAYLOR: Objection, calls for
7 speculation.
8 A. No. It – you would have to
9 answer – I have my own speculation, but you
10 would have to ask him.
11 BY MR. MORRIS:
12 Q. Did you ever have a conversation
13 with Mr. Scott where he informed you of the
14 reasons for his decision to give notice of his
15 resignation?
16 MR. TAYLOR: Objection, calls for
17 hearsay.
18 A. I knew he was suffering from anxiety
19 and health issues regarding the challenges and
20 the confrontation.
21 MR. MORRIS: I move to strike.
22 I just want you to listen carefully
23 to my question, sir.
24 BY MR. MORRIS:
25 Q. Did Mr. Scott tell you why he had

1 Dondero - 6-1-2021
2 decided to give notice of his intent to resign?
3 MR. TAYLOR: Objection, calls for
4 hearsay.
5 A. He told me he was suffering from
6 health and anxiety issues regarding the
7 confrontation and the challenges of
8 administering the DAF, given the bankruptcy.
9 BY MR. MORRIS:
10 Q. I'm sorry, did you use the word
11 "confrontation"?
12 A. Yes.
13 Q. Do you have an understanding as to
14 what confrontation he was referring to?
15 MR. TAYLOR: Objection, calls for
16 speculation.
17 A. I believe it was the interaction,
18 challenges of dealing with your firm.
19 BY MR. MORRIS:
20 Q. Did you have any advanced notice
21 that Mr. Scott would be sending this email to
22 you?
23 A. Not exactly. But a couple days
24 beforehand, he did propose it, that he was
25 considering resigning.

1 Dondero - 6-1-2021
2 Q. Did you ever ask him to reconsider?
3 A. No.
4 Q. You'll see in the third paragraph,
5 he states, quote: My resignation will not be
6 effective until I approve of the
7 indemnification provisions and obtain any and
8 all necessary releases.
9 Do you see that?
10 A. Yes.
11 Q. Did he ever explain to you why his
12 release wouldn't become -- his resignation
13 wouldn't become effective until those things
14 happened?
15 MR. TAYLOR: Objection, calls for
16 hearsay.
17 A. No.
18 BY MR. MORRIS:
19 Q. Did he ever tell you who he wanted a
20 release from?
21 MR. TAYLOR: Objection, calls for
22 hearsay.
23 A. No.
24 BY MR. MORRIS:
25 Q. Do you know if there is any

1 Dondero - 6-1-2021
2 agreement today that relates to the
3 indemnification and release provisions cited in
4 Mr. Scott's email?
5 MR. SBAITI: Objection, calls for a
6 legal conclusion, lacks foundation, lacks
7 relevance.
8 A. There's no new agreement that I'm
9 aware of. There's an existing agreement from
10 when he was originally put in place.
11 BY MR. MORRIS:
12 Q. Did you ask for Mr. Scott's
13 resignation?
14 A. No.
15 Q. Did Mr. Scott or anybody acting on
16 his behalf ever explain to you or anybody
17 acting on your behalf why he wanted the
18 indemnification and release provisions?
19 MR. TAYLOR: Objection, hearsay.
20 A. No.
21 BY MR. MORRIS:
22 Q. Did you ever say or suggest to
23 Mr. Scott that he had breached his fiduciary
24 duties to anybody at any time?
25 A. I -- I don't -- I don't remember if

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I spoke to anybody else about it.

Q. I'm just asking if you ever – if you or anybody on your behalf ever told that to Mr. Scott or anybody acting on Mr. Scott's behalf, like Mr. Kane.

MR. SBAITI: Objection, compound.

A. I – I believe I testified already that I told him he didn't do what was in the best interest of the fund.

BY MR. MORRIS:

Q. And did you ever tell him, in sum or substance, that you believed he had breached his fiduciary duties to anybody in the world by not acting in the best interest of the fund?

MR. SBAITI: Objection, vague.

A. I don't recall if I had those discussions with somebody else. I mean – no, that's – I don't – I don't recall if I've had those conversations with anybody else.

BY MR. MORRIS:

Q. Did you ever threaten to sue Mr. Scott?

A. Did I – no.

Q. Did you ever tell Mr. Scott that you

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were considering suing him?

A. I remember telling him he needed to do what was in the best interest of the funds. That's – that's as far as I remember.

Q. Did you ever tell Mr. Scott that you believed that the fund had claims against him?

A. I believe anytime you're a trustee and you don't do what's in the best interest of the funds, you leave yourself open for that, potentially.

Q. I appreciate that that's your perspective, but I'm asking you whether you ever told Mr. Scott that you believed that the fund could assert claims against him.

A. I don't recall that.

Q. Do you recall if you ever told Mr. Scott that you believed the fund should assert claims against him?

A. No, I don't recall that.

Q. Okay. Did you ever tell Mr. Scott that you believed anybody in the world had potential causes of action against him for actions or inactions taken on behalf of the DAF or CLO HoldCo?

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MR. SBAITI: Objection, vague.

A. I don't recall that.

BY MR. MORRIS:

Q. What did you do after you received this email?

Withdrawn.

Did you do anything in response to receiving this email?

MR. TAYLOR: For the record, we're talking about Exhibit 5?

MR. MORRIS: Yes, I believe so. Is that right, La Asia?

MR. TAYLOR: For that – sorry, 4.

MS. CANTY: I'm sorry, John. Repeat that.

MR. MORRIS: Is this document on the screen Exhibit 5?

MS. CANTY: It's going to be Exhibit 5, but what we had – we had premarked them. So, we skipped one in sequence. So, when I upload it, it will be 5.

MR. MORRIS: Okay. Thank you.

MS. CANTY: You're welcome.

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MR. MORRIS: Yes, Clay, we're going to – ultimately, this will be marked as Exhibit 5.

MR. TAYLOR: Thank you.

MR. MORRIS: Yeah.

BY MR. MORRIS:

Q. So, the question, Mr. Dondero, is: Do you recall doing anything after receiving this email?

MR. TAYLOR: Objection, vague.

A. I don't remember doing anything with it. I – I didn't know what to do with it. I didn't know how the DAF structure worked when there was a resignation.

BY MR. MORRIS:

Q. Did you ask Mr. Scott why he chose to send it to you?

A. No.

Q. Did you forward it to anybody?

A. I don't recall.

Q. Did you notify anybody that you had received this?

A. I – I don't remember.

MR. MORRIS: Can we scroll up to

1 Dondero - 6-1-2021
2 Mr. Dondero's response?
3 (Scrolling.)
4 BY MR. MORRIS:
5 Q. You can see --
6 MR. MORRIS: That's perfect right
7 there.
8 BY MR. MORRIS:
9 Q. You can see in the first sentence of
10 Mr. Scott's email there's a reference to
11 resigning and divesting. Do you see that? I'm
12 summarizing.
13 A. Yes.
14 Q. And you responded, and you requested
15 clarification that -- the next morning; is that
16 fair?
17 That's the first question.
18 A. Yes.
19 Q. And then you tried to explain to
20 Mr. Scott what your view was of the phrase
21 "divestment" or "divest."
22 Do I have that right?
23 A. Yes. Divest has a different meaning
24 in investments than it does, I guess, in legal
25 structuring; and I just wanted to make sure

1 Dondero - 6-1-2021
2 you -- you didn't mean liquidation of the
3 assets.
4 Q. Okay. That's what I'm getting to.
5 MR. MORRIS: So can we scroll up to
6 Mr. Scott's response?
7 (Scrolling.)
8 BY MR. MORRIS:
9 Q. And Mr. Scott tried to clarify why
10 he -- he used the word "divest." Do you see
11 that?
12 A. Yes.
13 Q. Okay.
14 MR. MORRIS: And then if we can
15 scroll up to your response.
16 (Scrolling.)
17 BY MR. MORRIS:
18 Q. Do you see your response says: What
19 does that mean? Quote, you need to tell me
20 ASAP that you have no intent to divest assets.
21 Do you see that?
22 A. Yes.
23 Q. Why did you write that?
24 A. It was unpredictable -- some of his
25 behavior was unpredictable at this point. I

1 Dondero - 6-1-2021
2 just wanted to make sure he wasn't liquidating
3 or intending to liquidate the portfolio.
4 Q. What interest did you have in making
5 sure that Mr. Scott didn't liquidate the
6 portfolio?
7 A. It could materially damage the value
8 of the DAF and its ability to continue its
9 mission as a charitable entity.
10 Q. Had Mr. Scott ever divested assets
11 before?
12 MR. TAYLOR: Objection, vague.
13 A. Well, by giving up the
14 11 million-dollar disclaim against the debtor,
15 he divested an 11 million-dollar asset.
16 BY MR. MORRIS:
17 Q. Anything else?
18 A. Not that I can recall.
19 Q. When was the last time you
20 communicated with Mr. Scott?
21 A. I sent him a Happy Birthday text a
22 couple days ago.
23 Q. And when was the last time you spoke
24 with him?
25 A. It's been a couple months.

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2 Q. Is the last time you spoke to him at
3 around the time that he gave notice of his
4 intent to resign?
5 A. No. It was about a month after
6 that.
7 Q. Mr. Patrick replaced Mr. Scott as
8 the managing member of the DAF GP and as the
9 director of the affiliated DAF entities and CLO
10 HoldCo, correct?
11 MR. SBAITI: Objection --
12 (Audio distortion.)
13 A. Ultimately, yes.
14 BY MR. MORRIS:
15 Q. Do you know how Mr. Patrick came to
16 replace Mr. Scott?
17 MR. TAYLOR: Objection to the extent
18 it calls for a legal conclusion.
19 A. I -- I found out about it after it
20 happened, you know, only from things that Mark
21 Patrick told me.
22 BY MR. MORRIS:
23 Q. Did you know that it was going to
24 happen before the event occurred, before the
25 actual replacement occurred?

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MR. TAYLOR: Objection, relevance.

A. No.

BY MR. MORRIS:

Q. Do you know who – who gave Mr. Patrick – withdrawn.

Do you know anything about the circumstances by which Mr. Patrick replaced Mr. Scott?

A. I – only from conversations with Mark Patrick after the fact.

Q. What did Mr. Patrick tell you?

MR. TAYLOR: Objection, hearsay.

A. He had struggled to – he had struggled to find other candidates or entities. He had struggled with D&O insurance around some of the alternative candidates.

And one day, when he was talking to Grant Scott, they came to some – I don't know who said what to who, but that – why doesn't Mark Patrick do it and he has knowledge of the structure, he enjoys the charitable giving part.

And unbeknownst to me, they agreed, and he sent over the appropriate documentation

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or transfer of shares of voting–again, I don't know how it works specifically–and Grant signed it, and Mark Patrick became the trustee.

BY MR. MORRIS:

Q. So, it's your testimony that, prior to the time they signed the documentation pursuant to which Patrick replaced Scott, you had no knowledge that there were discussions underway pursuant to which that would occur?

A. Correct.

Q. You mentioned that Mr. Patrick told you that they had trouble getting D&O insurance.

Do I have that right?

A. That was – yeah, that was one of the factors with a couple of the candidates.

Q. And did he tell you who those candidates were?

MR. TAYLOR: Objection, hearsay.

A. He did at the time. I can't remember who they were. One was – one was a former Dean Foods executive, I believe; and the other was an offshore sole practitioner.

BY MR. MORRIS:

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Q. Did he tell you what the difficulties were in obtaining D&O insurance?

A. No.

Q. Did you ask?

A. No.

Q. Do you know where Mr. Patrick got the authority to – withdrawn.

Do you know who determined to replace Mr. Scott with Mr. Patrick?

MR. TAYLOR: Objection to the extent it calls for a legal conclusion.

A. As I testified, I believe it was the two of them together.

BY MR. MORRIS:

Q. And do you have any understanding as to what authority they had to designate Mr. Scott's successor?

MR. TAYLOR: Objection, calls for a legal conclusion.

A. I – I believed, between the two of them, they knew how the structure worked, and I believed between the two of them, they had authority – believed they had authority, and that's why they effectuated it.

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BY MR. MORRIS:

Q. Okay. Was Mr. Patrick ever employed by HCMLP?

A. Yes.

Q. Do you know what period of time he was employed by HCMLP?

A. He's been there for quite a while. I mean, he was there for quite a while. I believe over a decade.

Q. And what positions did he hold, if you recall?

A. He headed up our tax department. I don't remember him having any position other than that or before that.

Q. Is he a lawyer, to the best of your knowledge?

A. He's – he's a tax lawyer, yeah.

Q. And do you know if he's employed today?

A. I – yes.

Q. Do you know where he's employed?

A. Yes.

Q. Where do you understand Mr. Patrick is employed?

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A. At SkyBridge.
Q. Do you know where SkyBridge's offices are located?
A. Yes.
Q. Where are they located?
A. On McKinney Avenue. I believe it's 2515.
Q. Is that the same suite of offices where your office is located?
MR. SBAITI: Objection, vague.
A. It's not the same floor. We -- we left, as you know, the Highland offices suddenly, and so until we establish permanent office locations, they're located there, but I expect they will be relocating in the not-too-distant future.
BY MR. MORRIS:
Q. Did you have any discussions with Mr. Patrick concerning the positions he was inheriting from Mr. Scott before he agreed to accept them?
A. No.
Q. Do you have any written or oral agreements with Mr. Patrick of any kind?

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MR. SBAITI: Objection --
MR. TAYLOR: Objection, vague.
A. Yeah, not that I know of, but I'm not sure what you're asking.
BY MR. MORRIS:
Q. All right. Do you have any written oral agreements of any kind with Mr. Patrick pertaining to his role as an authorized representative of any of the DAF entities or CLO HoldCo, Ltd.?
MR. TAYLOR: Objection, vague.
A. I do not, no.
BY MR. MORRIS:
Q. Do you know if Mr. Patrick has any agreement with any of the DAF entities or CLO HoldCo, Ltd., other than those set forth in the limited partnership agreement and the Amended and Restated Limited Liability Company Agreement for the general partnership?
A. I don't know of any.
Q. Okay. So, there was almost a two-year period between the date that Mr. Scott sent his notice to you of his intent to resign and Mr. Patrick's replacement of Mr. Scott at

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the end of March. Do I have that right?
MR. TAYLOR: Objection. I think you said two-year period.
MR. MORRIS: If I did, let me restate it.
BY MR. MORRIS:
Q. There was approximately a two-month period between the time that Mr. Scott sent his notice to you of his intention to resign and Mr. Patrick's replacement at the end of March 2021. Do I have that right?
A. Yes.
Q. Okay. Are you aware that during that interim period, Mr. Patrick gave certain instructions to Mr. Scott?
MR. TAYLOR: Objection, calls for hearsay.
MR. SBAITI: Lacks foundation.
A. I -- I don't know specifically.
BY MR. MORRIS:
Q. Do you know generally? Are you aware of any instructions that Mr. -- withdrawn.
Can I call that period between

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January 31st and the time that Mr. Patrick formally replaced Mr. Scott as "the interim period"? Is that okay?
A. Sure.
Q. Okay. Did you ever learn at any time during the interim period that Mr. Patrick was giving Mr. Scott instructions with respect to the duties and responsibilities concerning the DAF and CLO HoldCo?
MR. SBAITI: Objection, assumes facts not in evidence.
A. Not that I recall.
BY MR. MORRIS:
Q. Okay. Did you communicate with Mr. Scott at all during the interim period other than the birthday text that you mentioned?
MR. SBAITI: Objection, misstates testimony.
A. I don't -- I don't recall. I mean, I know I've had some conversations with him, yeah, about that -- I have a house in Aspen but -- and we had some conversations about Aspen and skiing and stuff like that, but I

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2 don't remember – I don't remember
3 specifically –
4 BY MR. MORRIS:
5 Q. Did – did –
6 A. – anything else.
7 Q. – Mr. Patrick –
8 I apologize, Mr. Dondero. Were you
9 finished?
10 A. Yeah, I'm done.
11 Q. Okay. Did Mr. Patrick inform you of
12 any issues that were being raised that needed
13 to be addressed with Mr. Scott during the
14 interim period?
15 A. Not that I recall.
16 Q. Did you ever instruct Mr. Patrick on
17 what to tell Mr. Scott with respect to any
18 matter concerning any of the DAF entities or
19 CLO HoldCo during the interim period?
20 A. Not that I recall.
21 Q. Are you familiar with the phrase
22 "adherence agreement"?
23 A. No.
24 MR. MORRIS: Can we please put up
25 the next exhibit, which we'll mark as

1 Dondero - 6-1-2021
2 Exhibit 6, Grant Scott, beginning at Bates
3 No. 85.
4 (Exhibit 6 introduced.)
5 MR. MORRIS: And if we could –
6 BY MR. MORRIS:
7 Q. Did you ever learn that there was a
8 point in time when the debtor was requesting
9 that CLO HoldCo, Ltd., enter into an adherence
10 agreement?
11 A. No.
12 MR. MORRIS: Can we scroll up a
13 little bit, please?
14 (Scrolling.)
15 MR. MORRIS: And just a little
16 further.
17 (Scrolling.)
18 BY MR. MORRIS:
19 Q. And do you see that Grant Scott
20 forwards it to Mark Patrick and says, "This
21 relates to the second issue from the debtor"?
22 A. Yes.
23 MR. MORRIS: And can you scroll up a
24 little more?
25 (Scrolling.)

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2 BY MR. MORRIS:
3 Q. And you see Mr. Patrick's
4 instruction, "Do not sign the adherence
5 agreement from the debtor. The successor will
6 address this"?
7 A. Yes.
8 Q. Do you have any knowledge that
9 Mr. Patrick instructed Mr. Scott on March 2nd,
10 2001, not to sign an adherence agreement from
11 the debtor?
12 A. I have no knowledge prior to this.
13 Q. Okay.
14 MR. MORRIS: Can you scroll to the
15 top?
16 (Scrolling.)
17 BY MR. MORRIS:
18 Q. Do you see Mr. Patrick further
19 instructed Mr. Scott on March 2nd to, quote,
20 "Stand down on any communication," close quote?
21 A. Yes.
22 Q. Were you aware that Mr. Patrick had
23 instructed Mr. Scott to stand down?
24 A. No.
25 Q. Did you ever tell Mr. Patrick to

1 Dondero - 6-1-2021
2 instruct Mr. Scott to stand down?
3 A. No.
4 Q. Do you have any understanding as to
5 where Mr. Patrick obtained the authority to
6 instruct Mr. Scott to stand down?
7 MR. SBAITI: Objection, vague,
8 assumes facts not in evidence.
9 A. I – I wouldn't view it as an
10 authority issue. I think they had a long-term
11 relationship, friendship, working relationship
12 with regard to the DAF; and I think Mark was
13 giving him advice.
14 MR. MORRIS: Okay. It's 12:20 New
15 York time. I'd like to just take a short
16 break until 12:30, and I shouldn't have too
17 much more left.
18 MR. TAYLOR: Okay.
19 (Recess held 11:19a-11:31a.)
20 MR. MORRIS: Okay. Hopefully just
21 15 or 20 minutes more. A half hour at
22 most, I promise.
23 BY MR. MORRIS:
24 Q. Are you ready to proceed,
25 Mr. Dondero?

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A. Yes.
Q. You've told me that you expressed to Mr. Scott--and I'm, you know, paraphrasing--that you expressed to Mr. Scott your concerns with respect to his -- certain of the decisions that he made during the course of the bankruptcy.
Do I have that right? Is that fair?
A. Yes.
Q. Do you know whether anybody else besides yourself expressed any concerns to Mr. Scott concerning any of the decisions that he made during the post-petition period?
MR. SBAITI: Objection, vague.
A. I -- I don't recall.
BY MR. MORRIS:
Q. Are you aware of anybody other than yourself telling Mr. Scott, in sum or substance, that any of the decisions he made post-petition were inappropriate or not in the best interests of the DAF or CLO HoldCo, Ltd.?
A. I don't know.
Q. Okay. You're not aware of anybody; is that fair?

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A. Not as I sit here today.
Q. Okay. We talked earlier about the suggestion -- and again, if I get this wrong, just correct me.
But I think you testified that implicit in your conversations with Mr. Scott was your belief that he wasn't acting in the best interests of the DAF and CLO HoldCo, Ltd., and had breached his fiduciary duties; is that fair?
A. I think I testified that I didn't use the word "fiduciary duties" but -- I don't recall using those words, but I do recall stating that he was making decisions that weren't in the best interest of the fund.
Q. Okay. And I appreciate the clarification and -- I appreciate the clarification.
Do you have your own personal belief as to whom Mr. Scott owed fiduciary duties to?
MR. SBAITI: Objection, vague.
MR. MORRIS: Withdrawn.
I'm going to try and do this a different way.

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Ms. Canty, can we please put back up on the screen Exhibit 1?
(Exhibit 1 on the screen.)
BY MR. MORRIS:
Q. Can you see that, sir?
A. Yes.
Q. Is there any entity on this Exhibit 1 that you do not believe Mr. Scott owed a fiduciary duty to prior to the time of his resignation in late March 2021?
MR. SBAITI: Object to the extent it calls for a legal conclusion.
A. Yeah. I -- I can't answer that question.
BY MR. MORRIS:
Q. Well, do you believe that Mr. Scott owed a fiduciary duty to the three entities that have in their name "Charitable DAF"?
MR. SBAITI: Same objection.
A. Again, regardless of where the assets are held, he has a responsibility, in my mind, as the trustee or the managing member, to optimize those assets and protect those assets and to efficiently, effectively administer

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expenses.
BY MR. MORRIS:
Q. I appreciate that. I'm just asking you to whom he owes the duty to do those things, if you have an understanding. I'm just -- I'm not asking for a legal conclusion. I'm asking you if you have an understanding as to whom he owes those duties.
A. Not specifically.
Q. Okay. Did you ever discuss at any time with Mr. Patrick your views concerning Mr. Scott's decision to withdraw the objection to the HarbourVest Settlement?
MR. SBAITI: Objection, vague, lacks foundation.
A. I don't -- I don't specifically recall. It's -- I'm willing to be refreshed, but I -- I don't specifically recall, but that's -- yeah, I don't specifically recall. It's not -- I don't want to speculate.
BY MR. MORRIS:
Q. I don't want you to speculate, either.
Do you have any recollection of --

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at all of ever discussing with Mr. Patrick your views as to Mr. Scott's decision to withdraw the objection to the HarbourVest Settlement?

MR. TAYLOR: Objection, asked and answered.

A. Yeah, I don't recall.

BY MR. MORRIS:

Q. Did you -- do you have any recollection at all of ever discussing with Mr. Patrick your views concerning Mr. Scott's decision to enter into the settlement agreement on behalf of CLO HoldCo?

A. I don't recall.

Q. I'm sorry. Are you -- yeah, are you aware that CLO HoldCo and the DAF, Ltd., commenced the lawsuit against the debtor and others in the United States District Court for the Northern District of Texas?

A. Yes.

Q. Okay.

MR. MORRIS: Can we put that complaint up on the screen and mark it as Exhibit 7, I believe?

(Exhibit 7 introduced.)

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BY MR. MORRIS:

Q. I'll just represent to you that this is the first page of the complaint. If you need to refer to it for any purpose, just let me know.

But I'm going to start with the question of, have you ever seen a copy of the complaint that was filed by the Charitable DAF Fund, L.P., and CLO HoldCo, Ltd., against the debtor and certain other entities?

A. Yes.

Q. When did you see the complaint for the first time, that you recall?

MR. TAYLOR: Objection, vague.

A. Near final versions before it was filed.

BY MR. MORRIS:

Q. So you saw -- you saw versions of the complaint before it was filed. Do I have that right?

A. Yes.

Q. Okay. Did you participate in any discussions concerning the substance of the complaint before it was filed?

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MR. TAYLOR: I'm just going to caution the witness: You can tell him if you participated in any conversations; but to the extent that you had conversations with any attorneys who were acting as lawyers, please do not go into the substance of those conversations.

A. Yeah. I mean, yes, I had conversations with attorneys.

BY MR. MORRIS:

Q. Which attorneys did you speak with about this complaint before it was filed?

A. Mazin. I can't remember -- I can't remember -- I talked to a lot of attorneys. I can't remember -- I can't remember besides Mazin.

Q. Okay. Now, Mazin doesn't represent you personally, does he?

A. No.

Q. Can you please tell me everything you discussed with Mazin concerning this complaint?

MR. TAYLOR: Objection, attorney-client privilege.

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MR. SBAITI: Well, I'm also -- DAF is asserting work-product privilege and joint-interest privilege regarding communication through DAF with us.

MR. MORRIS: I'm sorry. I'm sorry. I'm having a little trouble hearing you. I think I heard attorney work product. What over privileges are being asserted here?

MR. SBAITI: Joint interest. As advisor to the DAF, he provided us some information that we used and helped us identify information that we were using. So, helping his advisee's counsel perform their duties falls under the work-product privilege. We're claiming work-product privilege over the content of his conversation.

MR. MORRIS: Okay. Did I hear somebody say attorney-client privilege, too?

MR. TAYLOR: I had said that, but I was just making sure that Mazin jumped in with his objections --

(Whereupon, the court reporter's

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computer crashed, calls were made, and an iPad was engaged to finish the deposition.)

MR. MORRIS: All right. Mr. Dondero, can you hear me?

THE WITNESS: Yes.

MR. MORRIS: Mr. Court Reporter, can you hear me?

THE REPORTER: Yes, sir.

BY MR. MORRIS:

Q. Mr. Dondero, did you provide any comments to the Sbaiti firm on any draft of the complaint before it was filed?

MR. SBAITI: You can answer that question yes or no. I'll just instruct the witness not to answer with any content of any kind on the basis -- and we're instructing him not to answer on the basis of work-product privilege and joint-interest privilege.

A. Some.

BY MR. MORRIS:

Q. Can you disclose for me all of the information and comments you provided that -- to the draft complaints?

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MR. SBAITI: Instruct the witness not to answer on the basis of work-product privilege and joint-interest privilege.

BY MR. MORRIS:

Q. Are you going to follow Counsel's advice, Mr. Dondero?

A. Yes.

Q. Did you provide any conceptual or strategic ideas about what claims to pursue to the Sbaiti firm prior to the time the complaint was filed?

MR. SBAITI: Can you repeat the question?

BY MR. MORRIS:

Q. Did you provide any thoughts or ideas as to what claims should be pursued in this complaint prior to the time it was filed?

MR. TAYLOR: I'm going to first lodge an objection as to vague, and I believe Mazin has some other objection.

MR. SBAITI: Yeah. I would -- I will say the same objection, and we will object to any content of the -- within the attorney-client work-product and

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joint-interest privilege.

A. Not that I recall.

BY MR. MORRIS:

Q. Did you provide any facts that are set forth in the complaint?

Withdrawn.

Did you -- did you provide to the Sbaiti firm any facts that are reflected in the final version of the complaint?

MR. SBAITI: Mr. Dondero, you can answer that question yes or no; otherwise, we instruct you not to answer on the basis of -- the content on the basis of attorney-client, work-product and joint-interest privilege.

A. Not that I recall.

BY MR. MORRIS:

Q. You don't recall providing any facts at all?

A. Not specifically.

Q. Did you provide any general facts or ideas to the Sbaiti firm in connection with your review of the drafts of the complaint?

MR. SBAITI: Same instruction, same

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objections.

A. Maybe some.

BY MR. MORRIS:

Q. Okay. Can you describe those for me, please?

MR. SBAITI: I'll instruct you not to answer that on the basis of attorney-client work-product privilege and joint-interest privilege.

BY MR. MORRIS:

Q. Are you going to follow Counsel's advice, Mr. Dondero?

A. Yes.

Q. Did you have any discussions with the Sbaiti firm concerning whether or not to name James Seery as a defendant in the original complaint?

MR. SBAITI: I'll instruct the witness not to answer on the basis of attorney-client, work-product and joint-interest privilege as doing so would reveal the contents of such communication.

BY MR. MORRIS:

Q. Can you just answer yes or no?

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A. No.

Q. You didn't have -- that wasn't part of any of the discussions you had prior to the time the complaint was filed?

MR. SBAITI: Same instruction. Just don't answer.

THE WITNESS: So please don't answer, right, or don't answer --

MR. SBAITI: Don't answer.

THE WITNESS: Okay.

BY MR. MORRIS:

Q. Are you going to follow Counsel's advice?

A. Yes.

Q. Did you -- did you suggest that Mr. Seery should be named as a defendant in this lawsuit to the Sbaiti firm prior to the time it was filed?

MR. SBAITI: Instruct the witness not to answer on the basis of attorney-client work product and joint-interest privilege, as doing so would reveal the contents of those communications.

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BY MR. MORRIS:

Q. Are you going to follow Counsel's advice?

A. Yes.

Q. Did you know, prior to the time the complaint was filed, that the Sbaiti firm intended to file a motion for leave to amend their complaint to add Mr. Seery as a defendant?

MR. SBAITI: You can answer that question yes or no, but, otherwise, it will reveal the content of any underlying communication on the basis of attorney-client work product, or joint-interest privilege.

A. No.

BY MR. MORRIS:

Q. When did you learn that the Sbaiti firm filed a motion for leave to amend their complaint to add Mr. Seery as a defendant?

A. I don't -- I don't recall.

Q. Do you recall whether you had any conversations with anybody in the world at any time prior to the time that motion was filed

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regarding the possibility of filing a motion for leave to amend the pleading to add Mr. Seery as a defendant?

MR. SBAITI: Objection, vague, lacks foundation; and instruct the witness not to reveal the content of any communications on the basis protected under the attorney-client, work-product, common-interest privilege.

A. I don't recall.

BY MR. MORRIS:

Q. Okay. Did you ever discuss with Mr. Patrick the topic of whether or not Mr. Seery should be sued?

A. No.

Q. Did you ever discuss with the Sbaiti firm the topic of whether Mr. Seery should be sued?

MR. SBAITI: Instruct the witness not to answer on the basis of attorney work product -- attorney-client, and common-interest privilege as answering would reveal the contents of such communications, if they occurred.

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BY MR. MORRIS:

Q. Are you going to follow Counsel's advise?

A. Yes.

MR. MORRIS: I think I may be done. Can we just take a three-minute break and let me just check my notes?

MR. SBAITI: Sure.

(Recess held.)

MR. MORRIS: All right. I have no further questions. I would request the production of a privilege log reflecting the communications, if any, between Mr. Dondero and the Sbaiti firm; but, otherwise, I have nothing further at this time.

MR. SBAITI: Okay.

MR. MORRIS: Again, I appreciate your time, Mr. Dondero.

MR. SBAITI: We'll reserve our questions.

MR. MORRIS: Okay. Thank you, everybody.

MR. SBAITI: Thank you. Take care.

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THE REPORTER: Mr. Sbaiti, do you guys need a copy of this deposition?

MR. SBAITI: Yeah, we would just need a PTX of the deposition transcript and soft copies of the exhibits. Are you going to send something to the witness to read and sign? I think you could send it to him either directly or to Mr. Taylor on his behalf.

(Time Noted: 12:01 p.m.)

JAMES DONDERO

Subscribed and sworn to before me this _____ day of _____, 2021.

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CERTIFICATE

STATE OF TEXAS)
)
COUNTY OF ELLIS)

I, Daniel J. Skur, a Notary Public within and for the State of Texas, do hereby certify:

That JAMES DONDERO, the witness whose deposition is hereinbefore set forth, was duly sworn by me and that such deposition is a true record of the testimony given by such witness.

That pursuant to Rule 30 of the Federal Rules of Civil Procedure, signature of the witness was reserved by the witness or other party before the conclusion of the deposition;

I further certify that I am not related to any of the parties to this action by blood or marriage; and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 1st day of June, 2021.

_____
Daniel J. Skur
Notary Public, State of Texas.
My Commission Expires 7/7/2022
TSG Reporting, Inc.
228 East 45th Street, Suite 810
New York, New York
(877) 702-9580

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ERRATA SHEET FOR THE TRANSCRIPT OF:
Case Name:
IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:)
HIGHLAND CAPITAL) Case No.
MANAGEMENT, LP,) 19-34054 L.P.
Debtor,) Chapter 11
----------)
HIGHLAND CAPITAL MANAGEMENT,)
LP,)
)
Plaintiff,) Adversary No.
vs.) 21-03003-sgi
JAMES D. DONDERO,)
Defendant.)

Dep. Date: 06/01/2021
Deponent: JAMES DONDERO

Reason codes:
1. To clarify the record.
2. To conform to the facts.
3. To correct transcription errors.

CORRECTIONS:

Pg.	LN.	Now Reads	Should Read	Reason

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_____
JAMES DONDERO

SUBSCRIBED AND SWORN BEFORE ME THIS _____ DAY OF _____, 2021.

_____
(Notary Public) MY COMMISSION EXPIRES:_____

1 Dondero - 6-1-2021
2 -------I N D E X-------
3 WITNESS: EXAMINATION BY PAGE:
4 JAMES DONDERO
5 Mr. Morris 288
6
7 *****
8 ----------EXHIBITS----------
9 Deposition Exhibits PAGE/LINE
10 Exhibit 1 DAF/CLO Holder Structure 290/15
Chart
11 Bates No. GScott000007
12 Exhibit 2 Amended and Restated 301/6
Limited Liability Company
13 Agreement of Charitable
DAF GP, LLC
14 Bates No. PATRICK_000031
through 000035
15
Exhibit 3 Amended and Restated 313/14
16 Investment Advisory
Agreement
17 Bates No. GScott000325
through 000340
18
Exhibit 4 Phone Conference 335/25
19 Invitation For 1/31/2021
Bates No. GScott000011
20
Exhibit 5 January/February 2021 339/22
21 Email String Regarding
Notice of Intent to Resign
22 and Divest From CLO
HoldCo, Ltd., and Related
23 Entities
Bates No. GScott000018
24 through 000019
25

1 Dondero - 6-1-2021
2 ----------EXHIBITS----------
3 Deposition Exhibits PAGE/LINE
4 Exhibit 6 March 2021 Email String 361/4
Regarding Highland
5 Adherence Agreement
(Highland CLO Funding) in
6 Connection With Transfer
of HarbourVest Shares
7 Bates No. GScott000085
through 000088
8
Exhibit 7 Original Complaint in Re: 368/25
9 Charitable DAF Fund, L.P.
and CLO HoldCo, Ltd., V
10 Highland Capital
Management, L.P. and
11 Others
Bates No. GScott000389
12 through 000414
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EXHIBIT 98

1 DONDERO - 10/29/21

2 IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
3 DALLAS DIVISION
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4 IN RE:

5 Chapter 11
HIGHLAND CAPITAL
6 MANAGEMENT, L.P., CASE NO.
19-34054-SGI11
7
Debtor.
8 ---
HIGHLAND CAPITAL MANAGEMENT, L.P.,
9
Plaintiff,
10 vs. Adversary
Proceeding No.
11 JAMES D. DONDERO, 21-03003-sgi

12 Defendant.

13

14 REMOTE VIDEOTAPED DEPOSITION OF

15 JAMES DONDERO - VOLUME 2

16 October 29, 2021

17

18

19

20

21

22

23

24 Reported by: Susan S. Klinger, RMR-CRR, CSR

25 Job No. 201874

DONDERO - 10/29/21

October 29, 2021
10:21 a.m.

Remote Deposition of JAMES DONDERO, held before Susan S. Klinger, a Registered Merit Reporter and Certified Realtime Reporter of the State of Texas.

DONDERO - 10/29/21

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2 P R O C E E D I N G S
3 VIDEOGRAPHER: This marks the
4 beginning of Video 1 in Volume 2 of the
5 deposition of James Dondero in the matter
6 In Re: Highland Capital Management, L.P.
7 Today's date is October 29, 2021. The time
8 on the video monitor is 10:21 a.m.
9 Will the court reporter please swear
10 in the witness.
11 JAMES DONDERO,
12 having been first duly sworn, testified as
13 follows:
14 MR. MORRIS: Deborah, would you like
15 to make a statement?
16 MS. DEITSCH-PEREZ: I didn't know if
17 you wanted appearances first. Sure. This
18 is Deborah Deitsch-Perez from Stinson. I'm
19 counsel for Mr. Dondero, Nancy Dondero,
20 HCRE and HCMS in this deposition.
21 I want to apologize for everybody
22 that we're starting late. Mr. Dondero was
23 under the weather. It is -- he has taken
24 something, so he should not have to leave
25 the deposition, but if at any point he

1 DONDERO - 10/29/21
2 looks green to me, I will ask that we stop
3 and reconvene when he is not feeling
4 nauseous.
5 MR. MORRIS: All right. I would
6 like to just begin here. We have counsel
7 on the line for all of the defendants, we
8 have counsel for the plaintiff, and we have
9 counsel for the Highland Litigation Trust,
10 and I think that that is everybody who
11 is -- is supposed to be here, so I would
12 like to just begin.
13 EXAMINATION
14 BY MR. MORRIS:
15 Q. Mr. Dondero, can you hear me okay?
16 A. Yes.
17 Q. Okay. And are you feeling well
18 enough to begin today's deposition?
19 A. Yes.
20 Q. Okay. I understand that you are not
21 feeling well. And I want you to know that I do
22 not want to proceed with this deposition unless
23 you believe that you are physically and
24 mentally able to participate to the best of
25 your ability. Okay? Do you understand that?

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2 A. Yes.
3 Q. So if at any time you don't feel
4 like you can continue, I would rather adjourn
5 to one day next week to complete the deposition
6 rather than forcing you to do something that
7 you don't believe you're capable of doing.
8 Okay?
9 A. Yes. Yes. I did throw up twice
10 last night.
11 Q. Okay.
12 A. I imagine we could go for -- let's
13 shoot for four hours today, you know, maybe --
14 maybe five, I don't know, but if we don't
15 finish --
16 Q. I don't want to --
17 A. -- we will do the rest next week.
18 Q. Okay. I don't want to put an
19 arbitrary time on it. You tell me if you are
20 unable to continue. Okay? Is that fair?
21 A. Yes. That is my estimate at this
22 point.
23 Q. Okay. You founded Highland Capital
24 Management, L.P.; correct?
25 A. Yes.

1 DONDERO - 10/29/21
2 Q. And we are going to refer to that
3 entity and that entity only today as Highland;
4 is that okay?
5 A. Yes.
6 Q. When did you found -- when did you
7 create Highland?
8 A. '94.
9 Q. And did you serve as Highland's
10 president from 1994 until on or around January
11 9th, 2020?
12 A. Yes.
13 Q. Did -- can you describe in your own
14 words what the business of Highland was while
15 you were president?
16 A. We were largely below investment
17 grade, credit strap, and we diversified over
18 the years to become more of an alternative
19 asset manager in a variety of formats.
20 Q. And --
21 MS. DEITSCH-PEREZ: I'm sorry, John,
22 one sec. This was set up by someone a lot
23 shorter than Mr. Dondero. Let me just take
24 one minute to adjust it.
25 MR. MORRIS: May I proceed, Deborah?

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MS. DEITSCH-PEREZ: (Nods head.)

Q. Okay. Mr. Dondero, at its peak, what is the -- the largest value of assets that Highland had under management while you were president?

A. 35 billion.

Q. And do you recall what year that was?

A. Not exactly.

Q. Was it before the 2008 financial crisis?

A. Yes.

Q. Okay. So you were the president of Highland for about 25 years; is that right?

A. Yes, 25, 26, whatever.

Q. And do you consider yourself to be expert in the area of money management?

A. Yeah, on the things that we focus on.

Q. You are a sophisticated investor; right?

A. Yes. I would believe I'm categorized as such.

Q. And you are a sophisticated money

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manager; is that fair?

A. Yes.

Q. And you manage money on behalf of thousands of people; isn't that right?

A. Yes.

Q. And as a general matter, you know how to read and understand balance sheets, don't you?

A. Yes.

Q. You have signed promissory -- promissory notes before, haven't you?

A. Yes.

Q. Is it fair to say you have signed hundreds of promissory notes during the 25-year period that you were the president of Highland?

A. No.

Q. Is it fair to say that you signed dozens of promissory notes during the time that you were president of Highland?

A. Yeah, dozens is probably fair.

Q. Okay. And is it fair to say that the aggregate principal amount of the promissory notes that you signed while you were president of Highland likely exceeded

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$200 million?

MS. DEITSCH-PEREZ: Objection to the form.

A. I don't have a basis for knowing that.

Q. You do know that it is more than $100 million, don't you?

A. No.

Q. Do you owe today Highland Capital Management Services more than $75 million?

A. I don't know what the amount is. I don't believe it is that much.

Q. Are the obligations to Highland Capital --

MS. DEITSCH-PEREZ: Hold on. Hold on. My connection just disappeared.

MR. MORRIS: Okay.

MS. DEITSCH-PEREZ: Okay, I'm back.

Q. Okay. Did the -- did the obligations that you have to Highland Capital Management Services, are they reflected in promissory notes?

MS. DEITSCH-PEREZ: Could you repeat that question?

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MR. MORRIS: Sure.

Q. Mr. Dondero, you borrowed money from Highland Capital Management Services; correct?

A. I'm sorry, it sounds like at first you were asking me, did Highland Capital Services borrow money from Highland. Now you're asking me if I borrowed money from Services?

Q. Yeah, let me -- let me rephrase the question, sir, because if it is not clear, that is my fault, and I apologize.

Did you -- have you borrowed money from Highland Capital Management Services?

A. I believe so.

Q. Okay. Do you know the aggregate principal amount that is outstanding today, ballpark?

A. No.

Q. Are the obligations that you have to Highland Capital Management Services reflected in promissory notes where you're the maker and Highland Capital Management Services is the payee?

A. Please repeat that question.

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Q. Are you the maker on promissory notes in favor of Highland Capital Management Services, Inc.?

A. I don't know. I believe -- I believe so, or I believe I have in the past, but I don't know.

Q. Do you have any -- any estimate as to how much money you owe Highland Capital Management Services, Inc. today?

MS. DEITSCH-PEREZ: Asked and answered.

A. No.

Q. Can you say if it is more or less than $50 million?

A. I don't know.

Q. Can you say if it is more or less than $25 million?

A. I don't know.

Q. As a general matter, is it fair to say that you know how to read and understand promissory notes?

MS. DEITSCH-PEREZ: Object to the form.

A. In general, yes.

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Q. Okay. When you were in control of Highland, you personally decided who was hired at that company; is that fair?

A. Sometimes, in senior positions.

Q. Okay. Did your duties as president of Highland include being familiar with the debts and obligations that were owed to Highland?

MS. DEITSCH-PEREZ: Object to the form.

A. I mean, generally.

Q. Okay. Did you ever do anything to familiarize yourself with the debts and obligations that were owed to Highland?

A. Are you referring to the affiliated notes or --

Q. Sure.

A. -- or what -- what are --

Q. I was -- I was asking -- I apologize. I don't mean to step on your words.

A. No, you just -- because I don't think Highland had a lot of other obligations due from other parties, and the affiliated notes in aggregate were always de minimis to

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Highland than now, at any time.

Q. It is your -- it is your position that the affiliate notes to Highland were de minimis in amount?

A. Yes.

Q. And how do you define de minimus for that purpose?

A. I believe the balance sheet of Highland today for the last three years, four years, five years has been between 5 and $600 million. I believe the notes have never been more than 8 or 10 or 12 percent of that number.

Q. And you believe that 8 or 10 or 12 percent of Highland's asset base you would -- you would define as de minimis?

A. Yes.

Q. Okay. As -- as president of Highland, did you ever do anything to familiarize yourself with the number and amount of affiliate loans that Highland carried on its books and records?

A. Not that I can recall.

Q. Was there anybody at Highland who

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was charged with the responsibility of knowing the number and amount of affiliate loans that Highland carried on its balance sheet?

A. Sure.

Q. Can you identify the people who were responsible for that?

A. The people in accounting responsible for tracking assets and liabilities in preparing all the audited financial statements every year and the quarterly unaudited financial statements that were prepared and the monthly operating reports.

Q. Can you -- can you name any names of the people who had the responsibilities that you just described?

A. I think it changed regularly, but it would have been people in Frank's group in accounting.

Q. Did Frank have any responsibility for knowing and understanding the affiliate loans that Highland carried on its balance sheet?

A. Sure. I -- as CFO he had to sign off on the audited financials and rep letters

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and – yes.

Q. And can you – can you identify the name of any person in the accounting group in, let's say, the three years prior to the bankruptcy who had responsibility for knowing and understanding the scope of affiliate loans that Highland carried on its balance sheet?

A. No, I would just be speculating but it would be – the senior people in Frank's group would be responsible for the financial statements.

Q. Are you able to name the people, the senior people in Frank's group in the couple of years prior to the bankruptcy?

A. Yes, but I don't know – like David Klos was a senior person, Cliff Stoops was a senior person. There were a couple up-and-comers below them, but who did the financials – how Frank assigned the work in his group, I have no idea.

Q. Did you ever ask?

A. No.

Q. Do you have any knowledge as you sit here today who within Frank's group had

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responsibility for knowing and understanding the affiliate loans that Highland carried on its balance sheets?

A. No.

Q. And to the best of your knowledge as you sit here today, you never personally did anything to know and understand the extent and scope of the affiliate loans that Highland carried on its balance sheet; is that right?

A. Correct.

Q. Okay. You appointed Mr. Waterhouse as Highland's CFO; is that right?

A. I think it was appointed and recommended by Patrick Boyce, but I agreed with the selection.

Q. And you –

A. That – (speaking simultaneously.)

Q. I apologize, are you done?

A. I'm just saying that was a long time ago, but I don't remember the details exactly.

Q. But you had the authority and you used that authority to appoint Frank as CFO; correct?

MS. DEITSCH-PEREZ: There's a lag in

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the video. I don't know if it matters, but for a while Jim was frozen. And I know because – since there was voice and no – his mouth wasn't moving. So let's just – if the videographer sees there is a problem, please let us know.

Q. I –

A. Yes. I'm sorry, could you just repeat the question regarding Frank, please?

Q. Sure.

As the president of Highland, did you have the authority and did you exercise that authority to appoint him as Highland's CFO?

A. Yes.

Q. Okay. Do you recall when you appointed Mr. Waterhouse CFO of Highland?

A. No.

Q. Was it more than five years prior to the bankruptcy?

A. Yes.

Q. As the president – during the time that you served as president of Highland, did you believe that Mr. Waterhouse fulfilled his

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duties as chief financial officer?

A. Yes.

Q. Can you recall anything that Mr. Waterhouse did in his capacity as Highland's CFO that did not comport with your expectations?

A. I think we will talk about some of those today.

Q. Okay. Do you have any reason to believe that Mr. Waterhouse ever breached his duties to Highland during the time that you served as president?

COURT REPORTER: We can't hear you speaking.

Q. We haven't heard any portion of your answer, Mr. Dondero.

MR. MORRIS: I don't know if people can – can hear, but I cannot hear Mr. Dondero.

COURT REPORTER: I can't either.

MR. MORRIS: Yeah, Deborah, can you speak, please.

COURT REPORTER: They're on the same speaker.

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2 VIDEOGRAPHER: Do we want to go off
3 the record?
4 MR. MORRIS: Yes, please.
5 VIDEOGRAPHER: Off the record,
6 10:41.
7 (Recess taken 10:41 a.m. to 10:47 a.m.)
8 VIDEOGRAPHER: Back on the record,
9 10:47.
10 Q. Okay. Let me just ask the question
11 again so the record is clean, Mr. Dondero.
12 Do you have any reason to believe as
13 you sit here right now that Mr. Waterhouse ever
14 breached his duties to Highland during the time
15 that you served as president?
16 MS. DEITSCH-PEREZ: Asked and
17 answered.
18 A. Yeah, I think I did ask and answer
19 that. Again, not intentionally, not
20 maliciously. I am -- I guess things we're
21 going to talk about today are for periods of
22 time after I was president, so...
23 Q. Right. That is going to be the next
24 question that I ask. But to be clear -- I just
25 want to have a clear record -- during the time

1 DONDERO - 10/29/21
2 that you were president, do you have any reason
3 to believe that Mr. Waterhouse breached his
4 duties to Highland?
5 MS. DEITSCH-PEREZ: Asked and
6 answered. This is the third time.
7 A. No.
8 MR. MORRIS: It is actually not.
9 Q. But thank you, Mr. Dondero. I
10 appreciate that.
11 After you ceased to be president of
12 Highland, do you have any reason to believe
13 that Mr. Waterhouse breached his duties to
14 Highland?
15 A. Breached his duties to -- I don't --
16 I don't know if it is -- I don't want to -- I
17 don't want to make a judgment overall. When we
18 talk about the notes we can make conclusions
19 then.
20 Q. All right. But you're not able to
21 tell me in response to my question whether you
22 believe today that Mr. Waterhouse breached his
23 duties to Highland after the time that you
24 served as president?
25 MS. DEITSCH-PEREZ: Object to the

1 DONDERO - 10/29/21
2 form of the question.
3 A. I don't want to comment off the top
4 of my head, but I've highlighted that we will
5 discuss it around the note issue.
6 Q. Okay. You are familiar with an
7 entity called Highland Capital Management Fund
8 Advisors, L.P.; is that correct?
9 A. Yes.
10 Q. And we're going to refer to that
11 entity as HCMFA. Is that okay?
12 A. Yes.
13 Q. Do you know who owns HCMFA?
14 A. I believe it is myself and
15 Mark Okada.
16 Q. Okay. And do you have an
17 understanding as to -- as to the percentage of
18 each of your interests, ownership interests in
19 HCMFA?
20 A. No, and I don't know the entities.
21 I don't know if I own it directly or through
22 Dugaboy. And I do believe Okada tends to use
23 his trusts, but I don't know the percentages
24 either.
25 Q. Do you own a -- do you own a

1 DONDERO - 10/29/21
2 major- -- withdrawn.
3 Do you directly or indirectly own a
4 majority of the ownership interests in HCMFA?
5 A. I believe so.
6 Q. Okay. And do you control HCMFA?
7 A. Yes.
8 Q. And do you know when HCMFA was
9 created?
10 A. No, I do not.
11 Q. Do you know if it was before or
12 after 2010?
13 A. I don't know.
14 Q. Have you controlled HCMFA since the
15 time it was created?
16 A. I believe so, but I don't know for
17 sure.
18 Q. Can you think of any period of time
19 when you didn't control HCMFA?
20 A. I don't know. I don't remember the
21 ownership structure prior and I don't remember
22 when it started, so I don't know.
23 Q. Okay. I'm asking about control and
24 not ownership.
25 Can you think of any period of time

1 DONDERO - 10/29/21
2 when you did not control HCMFA?
3 A. I don't know.
4 Q. Okay. Can you tell me what the
5 nature of HCMFA's business is?
6 A. It largely housed our mutual funds.
7 Q. What does it mean to house mutual
8 funds?
9 A. It managed -- it managed the mutual
10 funds from a portfolio asset side and captured
11 the management fees as the advisor or sub
12 advisor -- I can't remember the structure. I
13 can't remember if it was the advisor and
14 Highland was the sub advisor or vice versa, but
15 in general, a good portion, or most of the
16 portfolio team that managed the mutual funds
17 was employed at HCMFA.
18 Q. Do you have a title with HCMFA
19 today?
20 A. I don't know.
21 Q. Do you know who the president of
22 HCMFA is?
23 A. I would believe -- I would -- I
24 would think I am, but I don't know.
25 Q. Do you know of any title that you

1 DONDERO - 10/29/21
2 have at HCMFA today?
3 A. I know I'm the portfolio manager on
4 a bunch of the funds, one of usually two or
5 three portfolio managers, and I believe I'm the
6 president, but I don't know beyond that.
7 Q. Okay. Did Frank Waterhouse serve as
8 treasurer of HCMFA at any point in time?
9 A. I don't know. I don't know. I
10 just -- I don't know. I don't remember.
11 MR. MORRIS: Can I ask my -- my
12 colleague to please put up a document that
13 was premarked as Exhibit 35 to see if I can
14 refresh your recollection.
15 MS. DEITSCH-PEREZ: Is that in the
16 book that you sent over?
17 MR. MORRIS: No. She will post it
18 and she will put it in the chat room.
19 Q. Are you able to see that,
20 Mr. Dondero?
21 A. Yes.
22 Q. Can you see that this is an
23 incumbency certificate?
24 A. Yes.
25 Q. Do you know what an incumbency

1 DONDERO - 10/29/21
2 certificate is?
3 A. I'm reading it here for a second. I
4 guess it is an officer statement or signature
5 authority, or some combination thereof.
6 Q. Is that your signature at the bottom
7 of this document?
8 A. Yes.
9 Q. And do you see that this is an
10 incumbency certificate for HCMFA that you
11 signed effective as of April 11th, 2019?
12 A. Yes.
13 Q. Do you see that Frank Waterhouse is
14 identified as the treasurer of HCMFA as of that
15 date?
16 A. Yes.
17 Q. Does that refresh your recollection
18 that Mr. Waterhouse served as the treasurer of
19 HCMFA?
20 A. It seems to be an authoritative
21 document, but I didn't have a recollection.
22 Q. Do you know of anybody else who has
23 ever served as the treasurer of HCMFA other
24 than Mr. Waterhouse?
25 A. I don't recall.

1 DONDERO - 10/29/21
2 Q. Did you, in your capacity as the
3 person who was in control of HCMFA, appoint
4 Mr. Waterhouse as the treasurer of that entity?
5 MS. DEITSCH-PEREZ: Object to the
6 form.
7 A. It appears to me that that's what
8 this incumbency certificate does, but...
9 Q. Is it fair to say that you knew for
10 at least a few years prior to the petition date
11 that Mr. Waterhouse was simultaneously serving
12 as Highland's CFO and HCMFA's treasurer?
13 A. No. I mean, like I said, I don't
14 remember, and a lot of the officers had
15 multiple roles and multiple entities. I mean,
16 it is not surprising, but I didn't have any
17 recollection.
18 Q. Are you aware that Mr. Waterhouse
19 served in any capacity in the Highland universe
20 of companies other than as CFO of Highland
21 Capital Management, L.P.?
22 A. I would -- I would assume he would
23 have a position like this in multiple other
24 entities, but I don't know which ones or what
25 titles he would have off the top of my head.

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Q. Is it fair to say, though, that he wouldn't have obtained any of those titles without your knowledge and approval?

A. It is -- it is fair to say he was -- he had -- the lawyers or whoever worked on general corporate structuring, Frank was a senior officer in good standing, so they would have used him as appropriate in different things.

So to that extent, I guess I approve it, but I sign hundreds of things like this. Would -- you know, would I have been specifically aware or remember -- remember it is a very low likelihood.

Q. Is there any position that Mr. Waterhouse has ever held that you learned about and you objected to on the grounds that you hadn't approved it?

A. No, not that I recall.

Q. Okay. Do you know if Mr. Waterhouse held any positions with any of the retail funds?

A. I don't know.

Q. He may have, you just don't recall;

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is that right?

A. That is correct.

Q. And you can't identify any title that Mr. Waterhouse held during the time that you served as Highland's president other than CFO of Highland. Do I have that right?

A. No, I don't think that is fair.

Q. Okay.

A. I mean -- I mean, he was CFO, but he was other things before he was CFO. And as we were just saying, he's -- he's treasurer on this incumbency certificate, but I think he might have been on other incumbency certificates, so I think your -- your summary was too narrow.

Q. Okay. Can you identify any position that Mr. Waterhouse held at the same time that he is CFO of Highland other than treasurer of HCMFA as reflected on this document?

A. I can't recall, but I imagine there to be others.

Q. And to the extent there are others, is it fair to say that you knew at the time that Mr. Waterhouse was serving in more than

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one role?

A. Yes.

Q. Okay. And in his capacity as CFO of Highland, did he report directly to you?

A. Yes.

Q. In his capacity as treasurer of HCMFA, did he report directly to you?

A. Yeah, it appears that, yes, that is how it was structured.

Q. Can you think of any position that Mr. Waterhouse ever held in the Highland family of companies where he didn't report directly to you?

A. I can't -- I can't think of any.

Q. Is Mr. Waterhouse the treasurer of HCMFA today?

A. I don't know. I'm not aware of any changes, nor did I orchestrate any changes, but I don't know for sure.

Q. Can you identify any position that Mr. Waterhouse holds with any former affiliated company of Highland today?

A. Again, I'm not aware of any changes, nor did I orchestrate or precipitate any

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changes. With the formation of Skyview, I don't know if there was changes. I'm not aware.

Q. Have you considered firing Mr. Waterhouse from any of the positions that he holds with any of the companies that were formerly affiliated with Highland?

A. No.

Q. As the president of HCMFA -- withdrawn.

As the person who was in control of HCMFA, did you have any responsibility for being familiar with HCMFA's debts and obligations?

MS. DEITSCH-PEREZ: Object to the form.

A. I don't know.

Q. Did you ever do anything in your capacity as the person in control of HCMFA to familiarize yourself with HCMFA's debts and obligations?

A. Not during -- I mean, not prior to bankruptcy.

Q. So before the bankruptcy, you didn't

1 DONDERO - 10/29/21
2 take any steps to familiarize yourself with
3 HCMFA's debts and obligations. Do I have that
4 right?
5 A. Correct, not specifically.
6 Q. Okay. Who was responsible for
7 knowing and understanding the scope and extent
8 of HCMFA's debts and obligations?
9 A. That would have fallen on Frank and
10 his group.
11 Q. Okay. Do you have an understanding
12 as to who was authorized to incur obligations
13 on behalf of HCMFA?
14 A. I mean, beyond -- beyond due course,
15 I struggle to see why it would be anybody other
16 than me, but I don't know.
17 Q. Do you know if Mr. Waterhouse was
18 authorized as the treasurer of HCMFA to incur
19 obligations on its behalf?
20 A. He wasn't the senior operating or
21 executive positions there. So the answer is
22 no, beyond, you know -- beyond the normal
23 course of operating expenses or whatever, but
24 it would -- he would never be the person on
25 anything of significance.

1 DONDERO - 10/29/21
2 Q. How do you define "significance"?
3 A. Like waiving fees on a mutual fund,
4 purchasing another mutual fund, yeah, things
5 like that.
6 Q. Was there any document or policy
7 that you are aware of that specifically
8 identifies the scope of Mr. Waterhouse's
9 authority as the treasurer of HCMFA?
10 A. No.
11 Q. Is there anything that you are aware
12 of that specifically limits Mr. Waterhouse's
13 authority other than what might be in your
14 head?
15 A. No, I would -- I would say what is
16 in my head is -- would be typical industry
17 practice. You wouldn't -- you wouldn't have
18 executive vice presidents or ownership defined
19 if you were going to delegate everything to an
20 employee three levels down, you know.
21 MS. DEITSCH-PEREZ: Okay. John,
22 I've had a request from Davor to take a
23 quick restroom break, so --
24 MR. MORRIS: You know, I really --
25 Davor, I'm happy to accommodate, but at

1 DONDERO - 10/29/21
2 some point we have got to be able to get
3 more than 10 minutes of testimony in a row.
4 So let's take a short break.
5 MS. DEITSCH-PEREZ: Thank you.
6 VIDEOGRAPHER: Going off the record.
7 The time is 11:08.
8 (Recess taken 11:08 a.m. to 11:16 a.m.)
9 VIDEOGRAPHER: Back on the record,
10 11:16.
11 Q. Mr. Dondero, did you communicate
12 with anybody on the break about the substance
13 of your testimony?
14 A. No.
15 Q. As treasurer of HCMFA, did
16 Mr. Waterhouse's responsibilities include being
17 familiar with HCMFA's debts and obligations?
18 A. Yes.
19 Q. Do you have any reason to believe as
20 you sit here today that Mr. Waterhouse failed
21 to fulfill his responsibilities as treasurer of
22 HCMFA and familiarize himself with their debts
23 and responsibilities?
24 MS. DEITSCH-PEREZ: Object to the
25 form.

1 DONDERO - 10/29/21
2 A. I don't know.
3 Q. I appreciate that you don't know,
4 but do you have any reason as you sit here
5 today to believe that he failed to fulfill that
6 particular responsibility?
7 A. I don't know.
8 Q. Okay. Are you an authorized
9 signatory on HCMFA's bank accounts?
10 A. I don't know.
11 Q. Do you know who the authorized
12 signatories are on HCMFA's bank accounts?
13 A. No.
14 Q. Do you know whether anybody now
15 employed or previously employed by Highland was
16 an authorized signatory with respect to any of
17 HCMFA's bank accounts?
18 A. I don't know.
19 Q. Do you know whether Mr. Waterhouse
20 was an authorized signatory on any of HCMFA's
21 bank accounts?
22 A. I don't know how he had -- had it
23 set up. There would have been, I imagine,
24 checks and balances. We run, as far as I know,
25 a compliant accounting group, you know, with

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the right audit controls, et cetera. So I would imagine there would have been somebody preparing it and multiple signatures or multiple sign-offs on wires, but I have no awareness of this. I mean, I would believe that it was done compliantly and correctly, but I don't have any specific awareness.

Q. Okay. Do you know Lauren Thedford?

A. Yes.

Q. And was Ms. Thedford an employee of Highland at one time?

A. Yes.

Q. Do you recall what position she held at any particular point in time?

A. I believe she held several different positions over the years, but I remember most as a corporate attorney working on document -- documents when we -- we do new funds or amend old funds.

Q. Okay. Do you recall whether she served as an officer of HCMFA?

A. Wasn't her name on the incumbency certificate we had up earlier?

Q. It was. We can put it back up if

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you want to look at that.

A. No, but I think that is -- that is the answer, but that is my only awareness.

Q. Okay. Do you have -- do you have -- do you know whether she was ever appointed to any position within the Highland corporate family other than as an attorney with Highland and as the secretary of HCMFA?

A. I don't know.

Q. Other than Ms. Waterhouse -- withdrawn.

Other than Mr. Waterhouse and Ms. Thedford, can you identify any current or former employee of Highland that ever served as an officer of HCMFA?

A. I don't know.

Q. Okay. Can you identify any current or former employee of Highland who was simultaneously also an employee of HCMFA?

MS. DEITSCH-PEREZ: Object to the form.

A. You mean somebody who was a dual employee?

Q. Yeah, who was actually -- yeah, to

DONDERO - 10/29/21

be clear, who was actually employed by both, who received, you know, income from both.

A. I don't know regarding income, but some of that historic portfolio managers like Michael Gregory or Jonathan Lamensdorf, they did work for HCMFA primarily, but they also did other things for Highland. I don't know how their compensation or their bonuses were split. I just -- I wouldn't have awareness of that.

Q. Let's move on to NexPoint. You're familiar with an entity called NexPoint Advisors, L.P.; correct?

A. Yes.

Q. We will refer to that as NexPoint, okay?

A. Sure.

Q. Do you know who owns NexPoint?

A. Directly or indirectly, I believe I do.

Q. Okay. And do you control NexPoint?

A. Yes.

Q. And do you know when NexPoint was created?

A. More than five years ago, but I

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don't remember when.

Q. Can you tell me generally the nature of NexPoint's business?

A. It is generally real estate related.

Q. Have you controlled NexPoint throughout its corporate existence, to the best of your knowledge?

A. Yes.

Q. Do you have a title with NexPoint today?

A. I believe I'm president, but I don't know for sure.

Q. Did you appoint Mr. Waterhouse to serve as treasurer of NexPoint?

A. I don't know.

MR. MORRIS: Please put up Exhibit 37.

Q. This is another incumbency certificate, sir?

A. Yes.

Q. And do you see, is that your signature at the bottom?

A. Looks like it, yes.

Q. And does that refresh your

1 DONDERO - 10/29/21
2 recollection that you personally identified
3 Mr. Waterhouse as the treasurer of NexPoint
4 Advisors, L.P. effective as of April 11th,
5 2019?
6 A. No, I mean, not -- no.
7 Q. Do you have any reason to doubt that
8 Mr. Waterhouse served as the treasurer of
9 NexPoint Advisors prior to the petition date?
10 A. No, I don't have a reason to
11 disagree with it. I just didn't have an
12 awareness. And when you asked me earlier, the
13 thing that was running through my mind is that
14 it could have been, you know, Brian Mitts who
15 has a strong accounting background at NexPoint.
16 I just wasn't -- I didn't know, based on
17 recollection, who was treasurer.
18 Q. Okay. Were you aware that -- but
19 you were aware, were you not, that
20 Mr. Waterhouse wore multiple hats?
21 MS. DEITSCH-PEREZ: Objection to
22 form.
23 Q. Withdrawn.
24 You were aware, were you not, sir,
25 that during the time that you served as

1 DONDERO - 10/29/21
2 president of Highland, that Mr. Waterhouse
3 served in capacities with respect to affiliated
4 companies?
5 A. I was aware that multiple senior
6 executives had multiple titles at multiple
7 different entities, but I didn't have specific
8 awareness whatsoever on entities that Frank was
9 or was not involved in.
10 Q. Okay. But to the extent that he
11 held a title with one of the affiliated
12 companies, those affiliated companies would
13 have been managed or controlled by you;
14 correct?
15 A. Generally.
16 Q. You can't think of any title that he
17 held with an affiliated company that wasn't
18 managed by you, can you?
19 A. No, not off the top of my head.
20 Q. And you knew and intended prior to
21 the petition date to have Mr. Waterhouse serve
22 in multiple roles; is that fair?
23 A. Yes.
24 Q. Have you ever considered firing
25 Mr. Waterhouse from his position as treasurer

1 DONDERO - 10/29/21
2 of NexPoint Advisors?
3 A. No.
4 Q. Okay. As the president of NexPoint
5 Advisors, do you believe that you had a
6 responsibility to familiarize yourself with
7 NexPoint's debts and obligations?
8 MS. DEITSCH-PEREZ: Object to the
9 form.
10 A. Just generally.
11 Q. Okay. Did you do anything to
12 generally inform yourself of NexPoint's debts
13 and obligations?
14 A. Not -- not specifically that I can
15 recall.
16 Q. Can you recall doing anything to
17 familiarize yourself with NexPoint's debts and
18 obligations at any time?
19 MS. DEITSCH-PEREZ: Object to the
20 form.
21 A. Not that I recall.
22 Q. Did you ever look at NexPoint's
23 balance sheet?
24 A. Not -- not that I -- not that I
25 recall.

1 DONDERO - 10/29/21
2 Q. Do you know whether NexPoint's
3 balance sheet reflected obligations that it
4 carried as liabilities that were due and owing
5 to Highland?
6 A. I was aware generally of the notes,
7 but I didn't study the NexPoint balance sheet.
8 Q. Do you believe that Mr. Waterhouse
9 had any responsibility as NexPoint's treasurer
10 to familiarize himself with NexPoint's debts
11 and obligations?
12 A. Yeah. I mean, the role is different
13 and the burden is different, and Frank and his
14 team orchestrated all the audits and compliance
15 statements and regulatory stuff for all of the
16 funds managed by NexPoint.
17 Q. Well, you personally were
18 responsible for Highland's audited financial
19 statements, weren't you?
20 MS. DEITSCH-PEREZ: Objection, form.
21 A. No. I mean, "responsible" is not
22 the right word. I mean, we -- I have to -- as
23 the senior most executive, I have to -- to
24 sign -- sign statements regarding completeness
25 and no known frauds and those kinds of things,

1 DONDERO - 10/29/21
2 but I am in no way involved in the preparation.
3 Q. We will talk about that in a bit.
4 Do you have any reason to believe
5 today that Mr. Waterhouse failed to fulfill his
6 responsibilities as treasurer of NexPoint to
7 familiarize himself with NexPoint's debts and
8 obligations?
9 A. I don't know.
10 Q. You can't identify any particular
11 reason that you might have for concluding that
12 Mr. Waterhouse failed to fulfill his duties as
13 treasurer of NexPoint to familiarize himself
14 with NexPoint's duties and respons -- duties
15 and obligations; correct?
16 A. Yes, I don't know.
17 Q. Okay. Do you know who the
18 authorized signatories are on NexPoint's bank
19 accounts?
20 A. No.
21 Q. Do you know if you're an authorized
22 signatory on NexPoint's bank accounts?
23 A. I don't know.
24 Q. Do you know if Mr. Waterhouse is an
25 authorized signatory on NexPoint's bank

1 DONDERO - 10/29/21
2 accounts?
3 A. I don't know.
4 Q. Do you know whether there is any
5 current or former employee of Highland who did
6 not hold an officer position at NexPoint who
7 would have been an authorized signatory on
8 NexPoint's bank accounts?
9 MS. DEITSCH-PEREZ: Object to the
10 form.
11 A. I don't know.
12 Q. Can you identify any current or
13 former employee of Highland who served as an
14 officer of NexPoint at any time other than
15 Ms. Thedford and Mr. Waterhouse?
16 A. I don't know.
17 Q. Okay. Let's go to HCMS. Are you
18 familiar with an entity called Highland Capital
19 Management Services, Inc.?
20 A. Generally, yes.
21 Q. And can we refer to that as HCMS?
22 A. Yes.
23 Q. Do you have a direct or indirect
24 ownership interest in HCMS?
25 A. I believe so.

1 DONDERO - 10/29/21
2 Q. And do you own a majority of the
3 interest directly or indirectly in HCMS?
4 A. I believe so.
5 Q. Do you control HCMS?
6 A. I believe so.
7 Q. Have you -- has there ever been a
8 period of time in HCMS's corporate existence
9 where you did not control that entity?
10 A. Not that I'm aware of.
11 Q. Do you recall when HCMS was created?
12 A. More than five years ago, but I
13 don't remember when.
14 Q. Do you have an understanding of the
15 nature of HCMS's business?
16 A. It manages some assets, and it was
17 trying to create track records that then could
18 be marketed.
19 Q. What does it mean to create a track
20 record that could be marketed?
21 A. You execute investments and
22 investment strategy that you can refine and
23 articulate and show good results to potential
24 third-party investors as -- as evidence that
25 you can do it. And then that track record is

1 DONDERO - 10/29/21
2 something the investors are willing to take a
3 chance on and then give you separate account
4 money along those lines.
5 Q. Do you have a title with HCMS today?
6 A. I don't know.
7 Q. But you do control the entity; is
8 that fair?
9 MS. DEITSCH-PEREZ: Object to the
10 form, asked and answered.
11 A. I believe so.
12 Q. Okay. Do you know whether
13 Mr. Waterhouse has ever served as an officer of
14 HCMS?
15 A. I have no idea.
16 Q. Can you identify any person in the
17 world who has ever served as an officer of
18 HCMS?
19 A. I don't know what the incumbency
20 certificate would look like for services, but
21 I'm willing to be refreshed.
22 Q. Do you know if anybody ever served
23 as the chief -- withdrawn.
24 Did HCMF ever have anybody serve in
25 the capacity of chief financial officer?

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A. The subject of that question was HCMF. Is that what you meant to say, or did you mean Services?

Q. No, I apologize. Thank you for the clarification. I did mean HCMS, so let me try again.

Has anybody ever served in the capacity of chief financial officer of HCMS?

A. HCMF.

MS. DEITSCH-PEREZ: S.

A. Not --

Q. S.

A. Not of Services -- not that -- again, I don't know. I'm willing to be refreshed, but I -- I have no awareness.

Q. Okay. As president -- as the person in control of HCMS, do you believe you had any responsibility to familiarize yourself with that entity's debts and obligations?

A. Again, just generally, to the extent that they were material or an issue or whatever, but no more than generally.

Q. Can you describe anything you ever did to generally familiarize yourself with

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HCMS's debts and obligations?

A. I guess my answer, which would apply to all of these entities, is awareness to know that the amounts were de minimis relative to the value of the entity, and the debt service costs or issues were very de minimis relative to the entities, but beyond that, I didn't study them.

Q. Well, did -- did HCMFA have obligations to HCMLP that you would characterize as di minimis from HCMFA's perspective?

A. Yeah, or just -- it never had obligations that were more than de minimis.

Q. As -- as the person in control of HCMFA, did you ever have any concern that HCMFA would not be able to satisfy its obligations to HCMLP if -- if a demand was made?

A. No.

Q. Okay. Was anybody charged with the responsibility of familiarizing themselves with HCMS's debts and obligations?

A. Again, to differentiate or separate myself from the treasury function or from what

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Frank and his group were doing.

From my perspective, I had to be aware about it -- aware of any obligations or notes or debt service costs, et cetera, but to the extent that I was aware and knew that it was de minimis, I didn't spend any time focusing on it, studying it, calculating it exactly, or anything like that.

Having said that, we are highly compliant. We do -- we did audits every year with reputable accounting firms that were complete and in depth. And any obligations and/or assets, de minimis or not, in my view, would nonetheless have to be reflected or captured accurately and prepared for the auditors in supplying, you know, detail or source documents or whatever, whatever they do in accounting as part of the audit function.

And all that would have done -- been done exactly and expertly, as far as I know, and it would have been done by Frank and his group.

Q. Okay.

A. That is -- I'm trying to give a

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complete answer regarding a myriad of ways you've asked me kind of the same structural questions.

Q. I am, and just to be clear, I'm asking kind of the same structural questions with respect to each of the entities at issue. I think you picked up on that. I hope you don't think I'm being repetitive.

You mentioned Frank and his group in the context of HCMS. Did I hear that correctly?

A. Yes.

Q. Okay. HCMS did not have a shared services agreement with Highland; correct?

MS. DEITSCH-PEREZ: You mean a written shared services agreement, John?

Q. Do you understand the question, sir?

A. Yeah. My answer would be the advisors like NexPoint and HFAM that had to have by law and regulatory statute have to have formal sub advisors and shared services agreements had formal shared services agreement.

Entities that didn't need to have

1 DONDERO - 10/29/21
2 formal written shared services agreements were
3 often serviced similarly or -- or exactly the
4 same as those entities, but without a written
5 agreement, but with a verbal shared services
6 agreement providing, again, all the same
7 similar services.
8 And the entities that didn't have a
9 written shared services agreement weren't
10 getting shared services or support from any
11 other entities other than Highland doing the
12 same thing for them that it did for the mutual
13 funds.
14 Q. Okay. Can you tell me who entered
15 into an oral shared services agreement between
16 Highland and HCMS?
17 A. Boy, I can imagine way back in the
18 day it would have been myself and Frank, but he
19 and his group understood and knew that they
20 were doing it for all the new entities that
21 came along, and I can't imagine it was even
22 talked about much over the years.
23 Q. Did -- did HCMFA and NexPoint pay
24 money to Highland under the shared services
25 agreement until let's just say late 2020?

1 DONDERO - 10/29/21
2 A. Yeah, yes, and early into '21, I
3 believe also.
4 Q. Okay. As -- as part of the oral
5 agreement that you referenced, was there -- was
6 there ever an agreement that HCMS would pay any
7 money to Highland in exchange for the services
8 that Highland provided to it?
9 A. I do not believe there was a
10 financial remuneration aspect of it.
11 Q. Okay. And do you recall during your
12 time as president of Highland whether Highland
13 ever received payment from HCMS for services
14 rendered?
15 MS. DEITSCH-PEREZ: And are we just
16 talking about money?
17 MR. MORRIS: Correct.
18 A. Yeah, I don't -- I don't recall
19 moneys being -- well, you know what, let me --
20 let me clarify that a little bit.
21 If there were any direct costs that
22 Highland would have incurred like getting the
23 audits done, you know, like if Price Waterhouse
24 said, okay, give us the details on, you know,
25 all the different entities that roll up into

1 DONDERO - 10/29/21
2 the Highland entity.
3 And then -- and they prepared
4 statements or did work for services, Frank and
5 his group would have passed through those costs
6 and expected services and/or Dugaboy or any of
7 the other entities to pay for direct
8 out-of-pocket costs. But it wouldn't have paid
9 a supplemental fee or profit or anything to
10 Highland.
11 Q. Okay. To the best of your
12 recollection, during the time that you were
13 president of Highland, did Highland ever
14 receive anything of value from HCMS on account
15 of services other than the reimbursement of
16 out-of-pocket expenses?
17 A. Yeah, I'm going to go back to my
18 comment in terms of building track record. And
19 I would use -- yeah, we had done it several
20 times in the past and it had worked
21 effectively. And that is -- you know, yeah, I
22 mean, the -- the track record in CLO paper was
23 what was used to track -- (inaudible) -- as an
24 investor.
25 And so, you know, to the extent that

1 DONDERO - 10/29/21
2 the DAF wasn't paying a fee, along the way, to
3 Highland for shared services, Highland got the
4 benefit of the track record that was being
5 built at the DAF to then market to third
6 parties, which then created a revenue stream
7 for Highland down the road.
8 And I would say that was the same
9 intent on Services.
10 Q. Is there anything -- anything else
11 of value that you believe HCMS provided to
12 Highland in exchange for the services that
13 Highland rendered?
14 A. That would be primarily it. I would
15 say there is probably times where Services
16 provided liquidity for Highland or helped on
17 investments that Highland was involved in, but
18 I would have to refresh myself on exactly what.
19 Q. Is it fair to say that HCMF -- HCMS
20 never provided a revenue stream to Highland
21 similar to the revenue stream that was provided
22 by HCMFA and NexPoint under the shared services
23 agreements?
24 A. That is correct.
25 Q. Okay. Did anybody at HCMF --

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withdrawn.

Did anybody at HCMS ever have the responsibility for familiarizing themselves with HCMS' debts and obligations?

MS. DEITSCH-PEREZ: Object to the form.

A. Frank and his team, as part of preparing the audited financials for all the entities, would have definitively been aware of all of them. Who else on the services incumbency certificate or -- would be aware or have knowledge, I don't know.

Q. Okay. And when you refer to "Frank and his team," are any of them acting as an officer or employee of HCMS in what you are thinking about?

A. I -- I don't know. I don't know. Did -- we haven't -- have we looked at the incumbency certificate for services?

Q. No.

A. I don't know. I don't know off the top of my head.

Q. Okay. Let's just finish this up. Can you identify any current or

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former Highland employee who served as an officer of HCMS at any time?

A. No, I would need to be refreshed.

Q. Okay. Can you identify -- withdrawn. Let's go to the last one, HCRE. Are you familiar with an entity called HCRE Partners, LLC?

A. Yes.

Q. And is that entity now known as NexPoint Real Estate Partners, LLC?

A. You know what, I do believe it had a name change. I don't know if that is the name change, but that would make sense.

Q. Okay. Can we just refer to that entity as HCRE?

A. That is fine.

Q. Okay. Do you have any direct or indirect ownership interest in HCRE?

A. Yes.

Q. And is it a majority interest to the best of your knowledge?

A. Yes.

Q. Do you control HCRE?

A. Yes.

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Q. Have you controlled HCRE throughout its corporate existence?

A. Yes.

Q. Can you tell me what the nature of HCRE's business is?

A. It makes real estate investments.

Q. Do you have a title with that entity?

A. I don't know, but I'm willing to be refreshed. And I assume its incumbency certificate looks similar to the ones that you have put up.

Q. Can you identify for me today anybody who has ever served as an officer of HCRE at any time?

A. I would rather be refreshed. I would imagine myself and Matt McGraner are two of those people, but I don't know for sure.

Q. Okay. Without the incumbency certificates or other documentation, you are not able to give me any names other than Mr. -- other than you and Mr. McGraner; is that fair?

A. That's correct.

Q. Okay. Do you know whether anybody

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has ever been given the responsibility -- withdrawn.

Do you know whether anybody has ever had the responsibility for familiarizing themselves with the debts and obligations of HCRE?

A. It would be the same answer as given on the other entities. It would be the treasurer, which is probably Frank. And if not the treasurer it would be Frank in his role and his team of putting together the complete and accurate financials of HCRE.

Q. Other than putting together the complete and accurate financials of HCRE, did Frank and his team have any other responsibility with respect to understanding the debts and obligations of HCRE?

MS. DEITSCH-PEREZ: Objection, form.

A. Again, just the general overlay being that they were de minimis and -- de minimus, and the service obligations were de minimus relative to the value or operating income of the enterprise.

In other words, had they been more

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material or material, they would have had more focus. But they didn't deserve more focus.

Q. And so is it fair to say that you didn't do anything to familiarize yourself with HCRE's debts and obligations?

MS. DEITSCH-PEREZ: Object to the form.

A. Not on a regular detailed basis, you know, just a general awareness.

Q. Did you ever take any steps to review the affiliate loans and obligations that were due between and among Highland and its affiliated companies?

A. Again, just generally.

Q. What did you do?

A. Like I said, I had a general awareness of them.

Q. And did you receive from time to time lists or information that specifically described the amounts that were due and owing from the affiliates to Highland?

A. Yeah, from time to time the amounts, yes.

Q. Let's just quickly go to the

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30(b)(6) notices if we can.

MR. MORRIS: Can we put up a document that has been marked as Exhibit 47.

(Exhibit 47 marked.)

Q. Do you understand, Mr. Dondero, that you are here today in your individual capacity and in your capacity as what is called a 30(b)(6) witness for certain entities?

A. Yes, a little bit to my chagrin. And I don't think you will see me again as a 30(b)(6) witness, but yes.

Q. All right. Well, it wasn't my choice, so let's just go through it quickly. Have you seen this document before, sir?

A. Yes.

Q. And do you understand that you are here today in your capacity as NexPoint's corporate representative?

A. Yes.

Q. And do you understand that your answers today in your capacity as NexPoint's corporate representative will be binding on

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NexPoint?

MS. DEITSCH-PEREZ: As qualified by the objections that we made.

MR. MORRIS: Sure.

A. I will do the best I can.

Q. Thank you so much.

MR. MORRIS: Can we go to the next page, please. The last page. The topics.

Q. Okay. Have you seen these topics before, sir?

A. Yes.

Q. Okay. Do you see that we asked for somebody to testify as to NexPoint's answer?

A. Yes.

Q. Okay. Are you aware that NexPoint – are you aware that NexPoint filed an answer to Highland's amended complaint?

A. Yes.

Q. And did you review NexPoint's answer at any time before today's deposition?

A. It was in the binder, I believe, that you guys sent over.

Q. I think that's right. Are you prepared to answer questions today about

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NexPoint's answer?

MS. DEITSCH-PEREZ: Again, subject to our objection, but...

A. Yeah, to the best I can.

Q. Okay. The next topic concerns affirmative defenses. Do you see that?

A. Yes.

Q. Do you have an understanding of what an affirmative defense is?

A. Yes.

Q. What is your understanding of an affirmative defense?

A. I think it is those – phrase that you see in most of our answers, the justification, estoppel, waiver, and then – and then there is some specific answers beyond that, I guess.

Q. Okay. Are you prepared –

MS. DEITSCH-PEREZ: John, I take it you will show him. He doesn't have to have them memorized.

MR. MORRIS: No, of course not.

MS. DEITSCH-PEREZ: So if you are

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going to ask him, you will put it in front of him?

MR. MORRIS: Of course.

MS. DEITSCH-PEREZ: Thank you.

Q. Are you prepared to testify today to the circumstances, communications, documents, and facts concerning NexPoint's affirmative defenses?

A. Yeah, to the best that I can.

Q. Okay. Do you see Topic 3 concerns the demand notes?

A. Yes.

Q. Okay. Are you prepared to testify about the demand notes, including with respect to the specific issues identified in that topic?

MS. DEITSCH-PEREZ: Again, subject to the objections, particularly I think with respect to use of the proceeds.

Q. We will get to that. Are you prepared to testify?

A. I hope so.

Q. And – and I know that there is an objection there, but just a simple yes or no,

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are you – do you have knowledge of the – of NexPoint's use of the proceeds of the note?

A. Not specifically.

Q. All right. Maybe I will refresh your recollection later. And then the last topic is discovery requests. Do you see that?

A. Yes.

Q. Are you prepared to testify today on NexPoint's behalf concerning Highland's discovery requests?

A. To the best of my knowledge.

Q. Okay. Did you do anything to prepare for today's deposition?

A. I met with Deborah.

Q. When did you do that?

A. A couple of days ago for a couple of hours, and a few days before that for a couple of hours.

Q. How many times –

MS. DEITSCH-PEREZ: Are you also asking about calls?

MR. MORRIS: I appreciate that.

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A. Yeah. There were a couple of phone calls too.

Q. How many times did you communicate with Deborah in preparation for today's deposition?

A. A half dozen, maybe, you know.

Q. How many times –

A. You know, in-person and phone calls, but...

Q. How many times did you meet with her in-person?

A. Two, maybe three.

Q. And can you just tell me an estimate of the total time spent preparing for this deposition, inclusive of both the meetings and the phone calls?

A. I don't know. Does it matter? I mean, I don't know. I don't know, four hours, four hours.

Q. Okay. Did anybody participate in these meetings or phone calls other than your lawyers?

A. No.

Q. Did any lawyers participate in any

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of these meetings or phone calls who didn't represent you in your individual capacity?

A. No. It was just – it was just Deborah and I.

Q. Okay. Have you had a chance to review the transcript of Mr. Waterhouse's deposition?

A. No. I haven't seen it yet.

Q. You haven't seen any portion of that deposition?

A. No.

Q. Are you aware of anything that Mr. Waterhouse testified to in his deposition?

A. No.

Q. You have no knowledge of anything that Mr. Waterhouse said last week in his deposition; do I have that right?

A. That's correct.

Q. Okay. Do you have any knowledge as to anything your sister said in her deposition?

A. No, other than she is glad it is over.

Q. I hope – I hope – I hope she thinks at least I was respectful.

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Did – did you ever see her transcript – the transcript from her deposition?

A. No.

Q. How about Mr. Seery, did you see the transcript from Mr. Seery's deposition?

A. I didn't even know that Seery was deposed, so the answer is no.

Q. Okay. Are you aware that Dave Klos was deposed?

A. You know what, I think I had awareness of that, but I haven't seen that deposition.

Q. Do you know anything about anything that he testified to the other day?

A. Nope.

Q. How about Kristin – Kristin Hendrix, are you aware that she was deposed?

A. I think I heard that she was also.

Q. Do you know anything about anything that she testified to?

A. No.

Q. Did you look at any documents to refresh your recollection in advance of this

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deposition other than the stack that I provided and the deposition notices?

A. I mean just – no, just a listing of the notes, but that is it.

Q. Did you see any emails at all in connection with your preparation for today's deposition?

A. No, not a single email.

MR. MORRIS: Okay. Let's put up Exhibit 48, please.

(Exhibit 48 marked.)

Q. And I think you will see that this is the 30(b)(6) notice for HCMS. If we can go to the next page. And it is really the same – I will represent to you that the topics for HCMS are the same as the topics for NexPoint.

Have you seen HCMS's 30(b)(6) notice that is up on the screen right now?

A. Yes.

Q. And if we took the time – if I took the time to ask you the same questions about your ability to answer on behalf of HCMS – HCMS with respect to the topics identified there and subject to your counsel's objections,

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would you be able to do so?

A. Yes.

MR. MORRIS: Let's put up Exhibit 49, please.

(Exhibit 49 marked.)

Q. And this is the 30(b)(6) notice for HCRE. You're here today to testify on behalf of HCRE as its corporate representative. Do you understand that?

A. Yes.

Q. And did you review the list of topics that we included in our 30(b)(6) notice for HCRE?

A. Yes.

Q. And subject to your counsel's objections, are you prepared to testify to the topics that are listed on the page that is up on the screen?

A. Yes.

MR. MORRIS: Okay. Can we please put up Exhibit 31.

(Exhibit 31 marked.)

Q. Mr. Dondero, we're putting up on the screen now your answer to the – to Highland's

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amended complaint.

MS. DEITSCH-PEREZ: Is that in the notebook?

MR. MORRIS: No, no. This is one that we had – we had –

MS. DEITSCH-PEREZ: All right. Hang on.

MR. MORRIS: That's okay. That is why we're putting it up on the screen, and we will put it in the chat room. It is already in there, actually.

MS. DEITSCH-PEREZ: Yeah, I think we have it here. Hold on. I think Nancy walked off with the duplicate of this, so if you need it, I will hand it to you.

Q. Mr. Dondero, while we wait to see if your counsel has a hard copy, do you recall reviewing your answer to the plaintiff's amended complaint before it was filed?

A. I don't know if I was involved at that juncture.

Q. All right. So just to refresh your recollection, this is a document that was filed with the Court at the beginning of September.

1 DONDERO - 10/29/21
2 If you recall, Highland filed an original
3 complaint, and after you amended your answer
4 late in August pursuant to an agreement,
5 Highland filed amended complaints against
6 certain of the obligors in the notes
7 litigation.
8 Does that refresh your recollection
9 that this document was prepared in early
10 September?
11 A. Okay.
12 Q. Okay.
13 A. I don't have specific memory.
14 Q. Okay. So as always, Mr. Dondero, we
15 have done this many times before, if there is
16 anything in the document that you think that
17 you need to see because it is a little bit of a
18 lengthy document, will you let me know that?
19 A. Sure.
20 MS. DEITSCH-PEREZ: Yeah. And we
21 have a copy if you need to stop and take a
22 look. We did get a hard copy. We have a
23 hard copy here.
24 Q. Okay.
25 A. All right.

1 DONDERO - 10/29/21
2 Q. So – so let me ask the question
3 again then: Do you recall, with that
4 background, having reviewed and approved the
5 filing of this document at the beginning of
6 September 2021?
7 A. Generally.
8 Q. Okay. As you sit here today, are
9 you aware of anything in this document that is
10 inaccurate?
11 A. Not that I'm aware of.
12 Q. Okay. Are you aware of anything in
13 the document that you believe should be
14 modified or amended to make it more complete or
15 more accurate?
16 A. Not as of this moment.
17 Q. Okay. Can we please go to Paragraph
18 83. Okay. Right there.
19 So do you see that on – on page 13
20 of the exhibit, we have in Paragraphs 82
21 through 91 what are called your affirmative
22 defenses?
23 A. Yes.
24 Q. All right. I'm going to skip the
25 one in 82 for the moment, but focusing on 83.

1 DONDERO - 10/29/21
2 Can you just read that to yourself and tell me
3 when you have done that?
4 A. Yes.
5 Q. Are you aware of any facts that
6 concern this particular affirmative defense?
7 A. Which notes are these again?
8 Q. These would be your personal notes.
9 A. The – personal notes. I'm trying
10 to remember. No, I – well, if you read the
11 question one more time.
12 Q. Sure. Just so – so to make sure
13 that you understand, because I'm not here to
14 trick you, this is your answer to Highland's
15 complaint against you where Highland is trying
16 to recover on the notes that you signed.
17 Do you understand that?
18 A. Right.
19 Q. Okay. So in Paragraph 83 you have
20 asserted an affirmative defense that the
21 plaintiff's claims are barred in whole or in
22 part due to waiver.
23 Do you see that?
24 A. Yes.
25 Q. Do you have any facts that you can

1 DONDERO - 10/29/21
2 share with me that concern that particular
3 affirmative defense?
4 MS. DEITSCH-PEREZ: And, again, just
5 in this particular answer.
6 MR. MORRIS: That is all I'm asking
7 about.
8 Q. We're going to go through the answer
9 for each one of them. So just one at a time.
10 We're only talking about your – your notes.
11 A. No, not the moment.
12 Q. Let's go to Paragraph 84.
13 Do you see Paragraph 84 states,
14 among other things, that plaintiff's claims are
15 barred, in whole or in part, due to estoppel?
16 A. Yes.
17 Q. Can you share with me any facts that
18 you are aware of that concern that particular
19 affirmative defense?
20 A. No.
21 Q. Okay. I'm going to skip over 85
22 because I've gotten that answer elsewhere. If
23 we can go to 86, do you see that Paragraph 86
24 asserts as an affirmative defense, among other
25 things, that, quote: Plaintiff's claims may be

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barred, in whole or in part, due to failure of consideration, closed quote?

A. Right, I see that.

Q. Do you -- do you -- do you acknowledge that Highland transferred to you an amount of money equal to the principal amount on each of the notes that are at issue?

A. I believe -- yes.

Q. Okay. I appreciate that.

Do you have any facts that would support the affirmative defense that is set forth in Paragraph 86?

A. No.

Q. Okay. And then, finally, Paragraph 88 asserts, among other things, that the fraudulent transfer claim should be barred, in whole or in part, because the alleged fraudulent transfer -- and I'm summarizing here -- was taken in good faith and for reasonably equivalent value.

Do you see that?

A. Yes.

Q. Okay. Do you have any facts that concern that particular affirmative defense?

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A. Let me read that one more time.

Q. Take your time.

A. I think that one is -- I'm trying -- I'm trying to remember if that one -- if the partner defense is on alternative comp that could have been taken or forgiveness that was in lieu of other comp -- I'm trying to remember if that falls under this category. I think it does.

Q. Okay. Is there anything else that you can -- any other facts that you can think of that concern the affirmative defense in Paragraph 88?

A. I mean, the -- yes. Okay. To the extent that the -- in lieu of additional comp falls under there, so does the incentives to -- the incentive to me to help monetize illiquid investments better faster.

Q. And does that relate to the three portfolio companies that are the subject of the oral agreement between you and your sister or to something else?

A. It is --

MS. DEITSCH-PEREZ: Objection, form.

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A. -- regarding that, yeah.

Q. It is the same thing. Do I have that right?

A. Yes.

Q. Okay. Thank you very much.

Is there anything else you can share with me about the facts that concern the affirmative defense in Paragraph 88?

A. I think that is -- that is -- that is it.

Q. Okay. Can we change now to Exhibit 16, which you should have in your pile, which is the answer that was filed by the HCMS to Highland's amended complaint.

(Exhibit 16 marked.)

A. Which number is this?

Q. It is number 16.

A. 16 in the binder?

Q. It should be, yeah.

A. Yes. Okay. I got it.

Q. Okay. And is the first page titled Defendant, Highland Capital Management Services, Inc.'s Answer to Amended Complaint?

A. Yes.

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Q. Okay. So these questions I'm asking in your capacity as HCMS' 30(b)(6) witness. Okay?

A. Okay.

Q. And you recall that one of the topics under the deposition notice was HCMS' answer; right?

Are you prepared to answer questions about this document?

A. Yep, to the best I can.

Q. Okay. Have you seen it before?

A. Yes.

Q. And do you know whether HCMS authorized this Stinson firm to file this document on its behalf at the beginning of 2021?

A. Yes.

Q. Did you personally have any role in reviewing and preparing this document?

A. I mean, just generally that the transition of former Judge Lynn passing and Bonds Ellis not being able to handle complexity -- maybe I shouldn't say it like that -- or handle this aspect of the case

1 DONDERO - 10/29/21
2 and/or -- I think it was -- yeah, just
3 whatever. He moved to Stinson from -- I think
4 maybe it started at Bonds Ellis and then maybe
5 it went to Wick Phillips and then it went to
6 Stinson, but, you know, there was a migration
7 of these notes in general.
8 Q. Was there a particular person who
9 was charged with the responsibility of
10 approving and authorizing the filing of this
11 document on behalf of HCMS?
12 A. Like I said, I think generally that
13 was myself.
14 Q. Okay. Are you aware of anything in
15 this document today that is inaccurate in any
16 way?
17 A. Not specifically.
18 Q. Are you aware of anything generally
19 in this document that is inaccurate in any way?
20 A. Not at the moment.
21 Q. Are you aware of anything in this
22 document that you believe should be modified or
23 amended to make it more complete or more
24 accurate?
25 A. Not yet.

1 DONDERO - 10/29/21
2 Q. Let's go to Paragraph 40 -- 94,
3 please.
4 MS. DEITSCH-PEREZ: We may be
5 imperfect creatures as lawyers.
6 A. Yes.
7 Q. Okay.
8 A. Yes.
9 Q. Okay. I was just going to say, do
10 you see from Paragraphs 94 through 102 HCMS has
11 set forth its affirmative defenses?
12 A. Yes.
13 Q. Okay. Let's -- let's start with the
14 first one.
15 Do you see in Paragraph 94 HCMS
16 asserts that, quote: Plaintiff's claims are
17 barred, in whole or in part, by the doctrine of
18 justification and/or repudiation?
19 A. Yes.
20 Q. Are you aware of any facts that
21 concern that particular defense?
22 A. I believe this -- they were material
23 prepayments of the loan. I believe that is --
24 those are the -- they were material and
25 numerous prepayments of the loan, which I think

1 DONDERO - 10/29/21
2 was -- that is incorporated into that defense.
3 Q. Okay. We will talk about the -- the
4 details of that in a moment, but are there any
5 other kind of broad statements that you can
6 give me that identify facts related to this
7 particular affirmative defense?
8 MS. DEITSCH-PEREZ: Object to the
9 form.
10 A. That is all I have at the moment.
11 Q. Okay. Do you know whether any
12 document that HCMS ever filed with the
13 bankruptcy court ever asserted, as in a
14 defense, that they didn't have to pay because
15 they had prepaid any obligations that were due
16 and owing?
17 MS. DEITSCH-PEREZ: Object to the
18 form.
19 A. I don't have awareness.
20 Q. And this document doesn't -- doesn't
21 use the word "prepayment" anywhere, does it?
22 MS. DEITSCH-PEREZ: Object to the
23 form.
24 A. I don't know.
25 Q. Do you know of anything that HCMS

1 DONDERO - 10/29/21
2 ever did before this week to put Highland on
3 notice that it contended that it didn't have to
4 pay its obligations under the notes because of
5 a prepayment defense?
6 MS. DEITSCH-PEREZ: Object to the
7 form.
8 A. We have no records. I'm not sure we
9 would have ever been in a position to -- to do
10 that. The -- you know, we were relying on
11 shared services from Highland, and Highland had
12 all the records regarding the amounts and
13 prepayments, et cetera.
14 Q. When did you learn that HCMS had
15 made a prepayment to Highland?
16 A. I don't know, but I -- I imagine --
17 I imagine it was -- if you are asking why it
18 wasn't mentioned earlier but then mentioned
19 later, it is because somewhere in that time
20 period we became aware.
21 Q. So you didn't -- you didn't have
22 knowledge of the prepayment until the debtor
23 produced documents. Do I have that right?
24 Withdrawn.
25 How did you learn that HCMS made a

1 DONDERO - 10/29/21
2 prepayment?
3 A. I don't know. I just know that we
4 became aware of that being a material fact
5 somewhere along the line.
6 Q. Do you remember when you learned
7 that material fact?
8 A. No.
9 Q. Do you have any facts that you can
10 share with me concerning the prepayment?
11 A. Eventually there was a spreadsheet
12 that summarized it, but I don't – I don't
13 know – I don't know when that occurred.
14 Q. Does – does this defense of
15 prepayment apply to demand notes or a term
16 note?
17 A. I would – I would – I would say,
18 you know, primarily a term note, but – yeah, I
19 think primarily the term note because I think
20 that was the one that was declared to be in
21 default of share, you know, whatever, so I
22 think it was regarding the term note.
23 Q. Do you recall – do you have any
24 knowledge as to when the prepayment was made?
25 A. I believe there were numerous and

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2 material prepayments, but I don't know exactly
3 when they were made.
4 Q. Do you know what year they were
5 made?
6 A. No, but – no, but – no, I don't.
7 MS. DEITSCH-PEREZ: If you want,
8 John, if you would like for him to give you
9 dates, he could probably dig up the
10 spreadsheet and give you dates, but you
11 have it also.
12 MR. MORRIS: Thank you. Okay. I
13 think we're doing just fine here.
14 Q. Do you know if there were any
15 prepayments made by HCMS in 2018?
16 A. I don't know the specifics off the
17 top of my head.
18 Q. Do you know if HCMS made any
19 prepayments in 2019?
20 A. I don't know the specifics off the
21 top of my head.
22 Q. Are you aware that under the term
23 note, HCMS was required to pay annual
24 installment payments at the end of each year?
25 MS. DEITSCH-PEREZ: Object to the

1 DONDERO - 10/29/21
2 form.
3 A. I wouldn't say it like that.
4 Q. We will look – we will look at the
5 documents in a few minutes.
6 Are you aware of any facts that
7 support the justification or repudiation
8 defense in Paragraph 94 other than what you
9 have testified to so far?
10 A. I think it is largely the prepayment
11 aspect of it that is captured there.
12 Q. Okay. And – and – all right. I
13 will leave it at that.
14 Let's go to Paragraph 95. Do you
15 see the affirmative defense in 95 is that,
16 quote, plaintiff's claims are barred in whole
17 or in part by the doctrine of estoppel.
18 Do you see that?
19 A. Yes.
20 Q. Do you have any facts as the
21 30(b)(6) witness of HCMS that concern that
22 particular affirmative defense?
23 A. You know, I think for both 95 and
24 96, the way I understand it is that was
25 reliance on Highland's and Highland's screw-up,

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2 to the extent that there was a screw-up, on the
3 term loans.
4 Q. What screw-up are you referring to?
5 A. Well, we didn't have accountants or
6 employees at Services, you know, and Services
7 was relying on Highland and shared services to
8 stay in compliance or to – on the various
9 loans.
10 Q. Did you ever personally instruct
11 anybody in December of 2020 to make a payment
12 on behalf of HCMS under the term note?
13 A. To make – I'm sorry, is this –
14 what was the timeframe again?
15 Q. December 2020 – let's just say
16 anytime in 2020. Did you, in your capacity as
17 the person in control of HCMS, ever direct or
18 authorize any person in the world to make a
19 payment from HCMS to Highland in satisfaction
20 of the obligation that was due under the term
21 note at the end of the year?
22 A. Not that – not that I recall.
23 Q. Okay. Do you know whether anybody
24 acting on behalf of HCMS ever instructed or
25 authorized Highland to make a payment on

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account of HCMS's term note to Highland?

A. Well, again, and maybe I didn't say it clearly enough. I think there was a reliance in the due course aspect, especially on small amounts, and it would have been done by Highland personnel on behalf of Services.

MR. MORRIS: Okay. Move to strike.

Q. And I'm going to ask you, Mr. Dondero, to be patient with me and to listen carefully to my question.

Are you aware of anybody acting on behalf of HCMS, whoever instructed Highland to make a payment in satisfaction of any payment that was due at the year-end of 2020 under the term note?

A. Not specifically, but I'm saying I don't think it needed to be made specifically.

Q. Okay. So you are not aware of any instruction that was ever given to Highland by HCMS to make the payment; is that fair? You relied on the course of dealing?

A. Right. I relied on ordinary course. I don't believe there was a specific – I'm not aware of a specific request.

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Q. Okay. And you were aware that the payment was due at the end of the year; isn't that right?

MS. DEITSCH-PEREZ: Object to the form.

A. Not – not specifically. There is – to be bona fide notes, there is – I know there is – there is tax structuring and things that the auditors want to see in terms of – of regular payment that everything just doesn't accrue indefinitely, but what those roles are and when and if it needs to be paid and whether it was by the end of the year or not.

I'm generally not specifically knowledgeable of or involved in, and nor do I have an awareness that was it or could it have been satisfied by other payments throughout the year. I'm not – I'm not the person for that knowledge.

Q. Now, do you recall in December of 2020 there was some tension between you and Mr. Seery?

A. Tension between me and Mr. Seery. I would say there was tension between Mr. Seery

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and everybody. He was trying to steal the estate, you know, so yes.

MR. MORRIS: I move to strike.

Q. You were asked to resign from Highland in late September of 2020; correct?

A. Yes.

Q. And you did resign as of October 9th, 2020; correct?

A. Yes.

Q. And do you recall that in early December, Highland sought a temporary restraining order against you?

A. Yes.

Q. And do you recall that Highland obtained a temporary restraining order against you in early December?

A. Yes.

Q. Okay. Do you recall that the advisors that you controlled filed a motion against the debtor in mid December 2020?

A. Yes.

Q. Okay. And do you recall that that motion was curved by the Court in the middle of December?

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A. Yes, roughly.

Q. And do you recall that at the end of November, Highland had given notice of termination of the shared services agreements with the advisors?

A. I believe they did that multiple times or extended it multiple times. I can't remember if that was – if it was done then or not.

Q. Okay. And it is your testimony that notwithstanding those facts and circumstances, you relied on Highland to make the payment that HCMS owed at the end of the year?

A. Yes, absolutely. We were still deluded in terms of thinking that Seery was working to resolve the estate, not to steal the estate.

MR. MORRIS: I move to strike.

Q. Do you have any other facts and circumstances that relate to the affirmative defenses in Paragraphs 95 and 96?

A. I mean, not at the moment, not that I want to volunteer. When you ask more questions about the specifics, I guess we will

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get to some of it.

Q. Well, I'm asking you questions now. You are the 30(b)(6) witness. This is one of the topics that you were supposed to be prepared to answer questions about, and I would just like to know everything that you have in your head as to facts that relate to these two affirmative defenses.

MS. DEITSCH-PEREZ: Object to the form.

Q. Because if I don't ask the right question later, you know, we can't do that; right?

So do you have any other facts that you are aware of that relate to these two particular affirmative defenses?

MS. DEITSCH-PEREZ: John, the fact that it's a 30(b)(6) deposition doesn't absolve you of the necessity to ask questions.

MR. MORRIS: I asked the question.

Q. Can I please have an answer?

A. Again, the notes in general are de minimis relative to asset values of Highland or

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the counterparties. So the annual obligations are even more de minimis or a million bucks or less than a million bucks.

There was never an intent, nor would there be a logical intent to -- from my perspective or any of the entities that had notice to Highland to be in default. And it is not logical that they would do that for any purpose.

And the facts around the curing quickly of the notes and getting the curing amounts from Highland and making the payments and Highland accepting them as they're defining what it took to cure it, I think, are all, you know, the key facts that make any, you know, acceleration argument, you know, ridiculous.

Q. Okay. Anything else?

A. That's it at this point.

MR. MORRIS: Okay. Let's go to Exhibit 17, please.

(Exhibit 17 marked.)

Q. This is HCRE's answer. Do you see that, sir?

A. Yes.

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Q. And I'm going to ask these questions in your capacity as the 30(b)(6) representative of HCRE. Do you understand that?

A. Yes.

Q. Have you seen this document before?

A. Yes.

Q. Are you aware of anything in this document that is inaccurate today?

A. I mean, I think 96 we put in there similar to the other affirmative defenses in case there was a prepayment. But, again, we have been so blocked from getting information and detail we didn't know it at the time regarding, you know, prepayments.

So I don't think the prepayment defense works for 96. So that would be my clarification of an inaccuracy.

Q. Why do you believe that the prepayment defense doesn't work in Paragraph 96 for HCRE?

A. Because I don't think there were any prepayments.

Q. All right. I appreciate that.

A. We didn't -- we didn't know it at

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the time --

Q. Okay.

A. -- we put this together.

Q. Is there any other aspect of this document that you believe is inaccurate today?

A. Not as far as I know.

Q. Is there anything in this document that you believe should be modified or amended to make it more accurate or more complete?

MS. DEITSCH-PEREZ: Object to the form.

A. Not yet.

Q. Okay. Looking at Paragraph 96, I believe you just testified that, notwithstanding the assertion of the defense therein, you are not aware of any facts concerning the prepayment defense that you described earlier for HCMS.

Do I have that right?

A. Yes.

Q. Okay. Do you have any facts at all that relate to the affirmative defense in Paragraph 96?

A. I don't believe so at this moment.

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Q. Okay. How about Paragraphs 97 and 98? Do you have any facts that relate to those affirmative defenses?

A. It would be the same answer as on the last one.

Q. Okay. I appreciate that. And so -- but we don't have to go over it again. I will just leave it at that.

Let's go to Exhibit 15, please.

(Exhibit 15 marked.)

MR. MORRIS: This is the next --

MS. DEITSCH-PEREZ: Hey, John. John, can we take a -- like a very quick restroom break?

MR. MORRIS: You know, if we could just get through this document, which shouldn't take long, then perhaps we can take a short half-hour lunch break.

MS. DEITSCH-PEREZ: Well, we can take a short half-hour lunch break after we get through this, but I just need to run to the restroom.

MR. MORRIS: Okay.

MS. DEITSCH-PEREZ: So you can leave

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the screen on if you want so that we can get back fast.

MR. MORRIS: My pleasure, Deborah. No problem.

MS. DEITSCH-PEREZ: Thank you.

VIDEOGRAPHER: Off the record, 12:40.

(Recess taken 12:40 p.m. to 12:51 p.m.)

Q. Before we go on to this document, sir, did HCRE have a shared services agreement with Highland?

VIDEOGRAPHER: We're back on the record.

MR. MORRIS: Oh, do I need to read the question again?

COURT REPORTER: No, I've got it.

A. I -- I don't believe it is a formal written one. I think it is just a verbal one.

Q. And who is the verbal agreement between?

A. It was between Highland and HCRE. Now it is between NexPoint and HCRE.

Q. And who entered into the agreement between Highland and HCRE?

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A. I would give the same answer I gave before where it was just -- it was just understood that we supported all the related entities or entrepreneurial efforts and it was, you know, modest amounts of work.

There wasn't specific financial remuneration, but -- and NexPoint is a good example, too. There was a significant track record gulf that was able to be used to raise other money.

Q. I'm just asking you who entered into the agreement between Highland and -- and HCRE for the provision of services by Highland?

MS. DEITSCH-PEREZ: Asked and answered.

A. Yeah, again, same answer as before. I don't think anybody specifically, formally did it.

Q. Okay. Is it -- are the terms of the agreement written down anywhere?

A. No, like I said, it is just understood the accounting department and tax department would handle the accounting and tax for all entities.

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Q. Did the legal department also provide services to HCRE?

A. It would depend on the specific entity. In the case of HCRE I think they used the -- the two lawyers that worked at NexPoint.

I don't think they used the legal staff per se. I think they -- the shared services that they relied on were accounting and tax primarily.

Q. Did Mark Patrick do work for HCRE while he was employed by Highland?

A. Boy, I don't know. I imagine probably tax-related stuff.

Q. Did HCRE ever pay Highland anything for the services that it received?

MS. DEITSCH-PEREZ: Are you talking about cash or --

MR. MORRIS: Please, please, please. -- I'm trying to be really patient, Deborah, but please no speaking objections. Mr. Dondero is a very sophisticated man.

We have done this many times together. He will ask me if he doesn't understand the question. And if you would

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like to object, by all means. I don't have a problem with that. I don't.

MS. DEITSCH-PEREZ: But I asked – (speaking simultaneously.)

Q. Mr. Dondero – Mr. Dondero – Mr. Dondero, did HCRE ever pay anything to Highland for services rendered?

MS. DEITSCH-PEREZ: Asked and answered.

A. Yeah, that is what I was going to say. Same answer. You know, not – not a formal cash remuneration, but, you know, a – which wouldn't have been much anyway. But – but more in terms of track record and presence in the market that then Highland or NexPoint could use to further its business.

Q. Are you saying that – that all of the entities were working kind of as a unified unit and got synergistic benefits from the work that it did?

MS. DEITSCH-PEREZ: Object to the form.

A. I don't want to over generalize and say yes to that, but – but there were

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definitely – you know, when I use the DAF example, you know, we would have never got the Harvard vest as an investor if it wasn't for the track record that the DAF had in CLO equity.

I think there is business that NexPoint got in the real estate space benefiting from the HCRE performance. So I do believe there was specific definable benefit gained for the modest amount of cost of services provided.

Q. And you –

A. There wasn't specific remuneration.

Q. And you controlled all of these entities; right?

MS. DEITSCH-PEREZ: Object to the form.

A. Well, the DAF is independent and separate, but the – the HCRE-type entity, yes.

Q. And did you decide that HCRE and HCMS and the DAF wouldn't be required to pay for services rendered to Highland?

MS. DEITSCH-PEREZ: Object to the form.

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A. My recollection on the services and the HCRE is that the dollar value of the services provided was – was small and nominal.

With regard to the DAF, it was more complicated. There is rules – there is charging rules in terms of fees and then there is also – I wasn't the one that decided that. And there are other issues there other than just the value for services argument.

And so I don't – the short answer is, I don't know and I'm not involved in that, and I don't understand why sometimes there is one and sometimes there isn't one. Even to this day I don't know the answer to that.

Q. Did – did – did you decide on behalf of Highland that Highland would provide services to DAF without receiving a stream of income in return?

MS. DEITSCH-PEREZ: John, I think we're really far outside of either any of the 30(b)(6)s or the permissible topics for Mr. Dondero's personal deposition.

So could you move on?

MR. MORRIS: Okay. I will after I

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get an answer to this question.

A. Can you repeat the question?

Q. Sure.

Did you make the decision on behalf of Highland to provide services to the DAF without receiving a stream of income in return?

MS. DEITSCH-PEREZ: Same objection.

A. Yeah, I think I answered it with my rambling a few minutes ago, but the short answer is no.

Q. Who made that decision? Who made that decision?

MS. DEITSCH-PEREZ: Was that Mike's dog or yours?

MR. MORRIS: That was my dog. I apologize.

MS. DEITSCH-PEREZ: Okay.

Q. Who made that decision, sir?

A. I wasn't sure –

MS. DEITSCH-PEREZ: Again – again, John, this is well beyond the scope of the 30(b)(6)s or even anything permissible for Mr. Dondero's personal. And, in fact, you said last time that is it, that was my last

1 DONDERO - 10/29/21
2 question. So...
3 MR. MORRIS: That is -- that is
4 because I thought that he would say as the
5 control person at the enterprise that he
6 made the decision, but he said that he
7 didn't.
8 So I'm just asking one follow-up
9 question. I just want to know -- Deborah,
10 please.
11 Q. I just want to know who made the
12 decision on behalf of Highland to render
13 services to the DAF without receiving a stream
14 of income in return.
15 MS. DEITSCH-PEREZ: Object to the
16 form of the question for all of the reasons
17 I stated before.
18 A. And I don't know the answer.
19 Q. Okay. So looking back at the
20 document on the screen, we're going to ask --
21 I'm going to ask these questions in your
22 capacity as NexPoint's 30(b)(6) representative,
23 okay?
24 A. Sure.
25 Q. And do you understand that the

1 DONDERO - 10/29/21
2 document on the screen is NexPoint's answer to
3 Highland's amended complaint?
4 A. Yes.
5 Q. Did you review this document before?
6 A. Just generally.
7 Q. And did you authorize the filing of
8 this document on behalf of NexPoint?
9 A. Yes, yes.
10 Q. Are you aware of anything in this
11 document today that you believe to be
12 inaccurate?
13 A. I think the -- on the affirmative
14 defenses on the -- do you remember on the prior
15 one we had the -- I think it was called
16 justification as the first one, but there
17 wasn't a prepay in that one?
18 Q. Correct.
19 A. I think this one there were prepays,
20 but the justification defense is missing from
21 the front here. And I think that is -- I think
22 if that were to continue -- I think that is
23 partly due to different law firms and what was
24 known at the time, et cetera, but I would say
25 that is -- that is the -- that is the one thing

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2 that jumps out at me between the two.
3 MR. MORRIS: Okay. Can we go to
4 Paragraph 80, and let's see if we can see
5 what Mr. Dondero is talking about.
6 Q. Okay. So I'm just going to focus on
7 the first three paragraphs, 80, 81, and 82, and
8 ask you whether -- whether you are aware of any
9 facts that concern the affirmative defenses set
10 forth in those paragraphs. And I think they're
11 related, and that is why I'm asking you to do
12 it all together, but we can do it one at a
13 time, whatever you are comfortable with.
14 MS. DEITSCH-PEREZ: Object to the
15 form. I mean, other than the facts in
16 those paragraphs?
17 MR. MORRIS: You are doing it again,
18 Deborah.
19 MS. DEITSCH-PEREZ: It --
20 MR. MORRIS: Please, please.
21 MS. DEITSCH-PEREZ: John, when you
22 ask questions -- I understand Mr. Dondero
23 is sophisticated, but he's also not a
24 lawyer, and when you ask questions that are
25 misleading, I'm going to interject

1 DONDERO - 10/29/21
2 something.
3 MR. MORRIS: It is completely
4 improper. He doesn't need to be a lawyer.
5 He's a 30(b)(6) witness, and I'm asking
6 such a simple question, what facts do you
7 have that support the affirmative defense.
8 A. Okay. Is it okay if I repeat some
9 of them from the prior one?
10 Q. Sure. Whatever you are comfortable
11 with.
12 A. The -- to the extent that -- to the
13 extent that the notes were prepaid -- prepaid
14 significantly, it is a real question on whether
15 or not there could have been a breach at the
16 end of the year, even if there wasn't a payment
17 at the end of the year.
18 There is no logical reason, nor
19 would I have ever authorized or suggested no
20 payment to put us on -- in default due to a de
21 minimis amount of money, like a few hundred
22 thousand dollars, even if I was highly annoyed
23 with Seery, even if we knew that Seery and
24 Highland had overcharged NexPoint by whatever
25 it was, 14, 16 million bucks, I would not have

1 DONDERO - 10/29/21
2 let a small amount cause a -- cause a breach.
3 You know, the -- how would I -- how
4 would I add to that now. The overpayment on
5 the $14 million, holding back additional shared
6 services amount, made an inordinate amount of
7 sense.
8 There was supposed to be at that
9 time -- there was another netting from Seery in
10 terms of wanting to be fair and reasonable, you
11 know, with employees and with the transition of
12 the estate, et cetera, and everything was going
13 to get trued up.
14 So I do believe there was an
15 expectation of a netting, et cetera, but
16 overall, Highland should have paid it. It
17 shouldn't have let it breach the cause, but at
18 least when I found out about it and they knew I
19 was annoyed. And I told them I didn't want it
20 to be in default, they gave me the numbers and
21 the amounts to cure it in their mind, and they
22 accepted it.
23 Now, I think they should have gone
24 back and incorporated prepays and said that no
25 amounts were due because of the prepays, et

1 DONDERO - 10/29/21
2 cetera, but the calculation that they came up
3 to get it in compliance in good standing was a
4 million 4. And just like we relied on them to
5 pay it and keep us out of default, we relied on
6 them to set the amount to cure.
7 But I guess I would make the
8 argument that it shouldn't have been, but
9 again, I didn't want to mince -- I didn't want
10 to on small dollars make an argument that could
11 get us in bigger trouble -- bigger trouble. So
12 it was easier to -- to pay the million bucks
13 than it was to argue that it wasn't due.
14 Q. Did you at any time in your capacity
15 as the person in control of NexPoint instruct
16 anybody at Highland to make the payment that
17 was due at the end of 2020?
18 A. Not specifically to pay it or not
19 specifically not to pay it. It was something,
20 again, small and de minimis that I expected to
21 be done in due course.
22 MR. MORRIS: I move to strike.
23 Q. It's a very simple question.
24 Did you personally take any steps to
25 ensure that NexPoint made the payment that was

1 DONDERO - 10/29/21
2 due at the end of 2020?
3 MS. DEITSCH-PEREZ: Asked and
4 answered.
5 A. Yes, I would like to repeat my same
6 answer.
7 Q. Did you tell anybody to make the
8 payment on behalf of NexPoint at the end of
9 2020?
10 MS. DEITSCH-PEREZ: Asked and
11 answered.
12 A. I would like to give the same answer
13 that you -- you -- you struck.
14 Q. Can you just say yes or no, sir, did
15 you tell anybody to make the payment at the end
16 of 2020 on behalf of NexPoint?
17 MS. DEITSCH-PEREZ: Asked and
18 answered.
19 A. I don't want to give anything beyond
20 the answer that I gave.
21 Q. Okay.
22 A. I get myself in trouble because I
23 paraphrase. I don't want to answer yes -- I
24 don't think yes or no would be an appropriate
25 answer. I want to stay with the answer that I

1 DONDERO - 10/29/21
2 gave.
3 Q. Okay. I'm going to say the word
4 "Yankees," and every time I say the word
5 "Yankees" today, everybody should know that
6 that is the question that I'm going to bring to
7 the Court on a motion to compel, okay?
8 It's a very simple question. It's a
9 very simple question. I will ask one more
10 time, and if you don't want to answer, that is
11 fine.
12 MS. DEITSCH-PEREZ: What --
13 Q. Mr. Dondero -- Mr. Dondero, in
14 December of 2020, did you give anybody any
15 instructions at Highland to make sure that
16 NexPoint made the payment that was due at the
17 end of the year?
18 MS. DEITSCH-PEREZ: Asked and
19 answered.
20 A. I think that means I'm supposed to
21 stick with the answer that I gave.
22 MS. DEITSCH-PEREZ: You're on mute,
23 John. John, you're on mute. John, you're
24 on mute. John, we can't hear you.
25 THE WITNESS: I do like it better

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when he yells at me on mute.

MS. DEITSCH-PEREZ: John, we can't hear you.

COURT REPORTER: We can't hear you, John.

MR. MORRIS: You can't hear me?

COURT REPORTER: Now we can.

MS. DEITSCH-PEREZ: Now we can hear you, but we couldn't hear you. It looks like you were yelling, but we couldn't hear you.

A. I do like it better when you yell at me on mute.

Q. I try not to yell at you, and I hope that you haven't perceived this -- we do have a videotape this time. So to the extent that anybody perceives your comment as suggesting that I have yelled at you, I would invite them to look at the video.

MS. DEITSCH-PEREZ: Well, we said we couldn't hear you, but your animation looked like that.

Q. Sir, can you identify any person in the world acting on behalf of NexPoint who

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instructed Highland to make the payment that was due on the NexPoint term note in December of 2020?

MS. DEITSCH-PEREZ: John, that is the fifth or sixth time.

MR. MORRIS: It is a completely different question. Please.

MS. DEITSCH-PEREZ: Could you read it back, if I was mistaken. So read it back.

(Record read.)

A. NexPoint did not have the accounting staff or the systems or the records or the knowledge to have any person in the world at NexPoint to give that instruction.

So the long answer -- the short answer is no, but the long answer is we had been kept away from our books and records. I think we largely still don't have them, and there would -- I am not aware of anybody who -- anybody in the world at NexPoint who made that request.

Q. Frank Waterhouse was the treasurer of NexPoint in December of 2020; is that

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correct?

A. I think he was very much viewing his responsibilities as Highland related and as an employee of Highland. But yes, based on that incumbency certificate, but that is your -- your question to ask Frank if he was taking that seriously, but NexPoint was relying on Highland.

Q. Do you have any other facts that you are aware of that relate to the affirmative defenses set forth in Paragraphs 81 through 82?

A. I think I -- I think I've said them all.

MR. MORRIS: Okay. It is 2:13 Eastern time. Let's just take a short half-hour lunch break, and let's return at 2:45, or 1:45 Central.

VIDEOGRAPHER: Off the record, 1:13.

(Recess taken 1:13 p.m. to 1:48 p.m.)

VIDEOGRAPHER: Back on the record, 1:48.

Q. Mr. Dondero, are you comfortable?

A. Yes.

Q. And are you able to proceed?

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A. Yes.

Q. Okay. Did you speak with anybody during the break about the substance of this deposition?

A. No.

Q. You entered into certain oral agreements with your sister concerning some of the notes at issue in these lawsuits.

Do I have that right?

MS. DEITSCH-PEREZ: Object to the form.

A. Can you rephrase or repeat, please?

Q. Sure.

You entered into certain oral agreements with your sister concerning certain of the notes at issue in these lawsuits.

Do I have that right?

MS. DEITSCH-PEREZ: Object --

A. Yes.

MS. DEITSCH-PEREZ: Object to the form. And I'm going to object -- object every time because it just -- just so it is on the record because you are saying "your sister" without giving her -- her capacity.

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2 A. Okay.
3 MS. DEITSCH-PEREZ: But I don't want
4 to disrupt the deposition, so I'm just
5 telling you why I'm doing it and he can
6 continue to answer thereafter. That is why
7 I'm doing it.
8 Q. Okay. Can we – can we agree,
9 Mr. Dondero, when I refer to your sister in the
10 context of oral agreements that she was
11 entering into those agreements with you as a
12 representative of Dugaboy – as Dugaboy
13 trustee, as representative for a majority of
14 the class A interest holders of Highland?
15 A. Yeah. How about just to make it
16 simple let's just call it the Dugaboy trustee,
17 and everybody will know that it is my sister
18 and everybody will know that it is the majority
19 of the class A unit holders.
20 Q. Okay. Okay. I appreciate that and
21 I will do just that.
22 You entered into certain oral
23 agreements with the Dugaboy trustee concerning
24 certain of the notes at issue in these
25 lawsuits; is that right?

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2 A. Yes.
3 Q. Okay. Let's discuss the purpose of
4 those oral agreements.
5 MR. MORRIS: Can we put back up on
6 the screen Mr. Dondero's answer.
7 Q. And while we're doing that,
8 Mr. Dondero, can you confirm that your sister
9 is the only trustee of the Dugaboy Investment
10 Trust?
11 MS. DEITSCH-PEREZ: Object to the
12 form.
13 A. For what period of time are we
14 talking about?
15 Q. During the period of time at which
16 you entered into the oral agreements with the
17 Dugaboy trustee.
18 MS. DEITSCH-PEREZ: Object to the
19 form.
20 A. Yeah, I believe she has been the
21 trustee since 2015 and remains so today. I
22 don't have an awareness of – I don't have an
23 awareness of another functional trustee.
24 So some of these – sometimes
25 complex trusts have other layers that are

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2 called trustees but they're not trustees per
3 se. But I think I'm over thinking it. But I'm
4 not aware of anybody I've interacted with,
5 other than her, as trustee with regard to the
6 notes.
7 Q. Okay. So up on the screen we
8 have – no, that is the wrong document.
9 MR. MORRIS: We need Exhibit 31,
10 please.
11 Yeah, there you go. That one.
12 Perfect. Okay.
13 MS. DEITSCH-PEREZ: 31 is not – oh,
14 is that the '03 answer?
15 MR. MORRIS: Correct, that is
16 Mr. Dondero's answer.
17 Q. Do you see that, sir, on the screen?
18 MS. DEITSCH-PEREZ: Hang on. I'm
19 going to get it again.
20 Okay. If you want a hard copy, I
21 have one here but he's got it up.
22 Q. Do you see on the screen,
23 Mr. Dondero, marked as Exhibit 31 is your
24 answer to Highland's amended complaint?
25 A. Yes.

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2 Q. Okay.
3 MR. MORRIS: Can we go to
4 Paragraph 82, please.
5 Q. Is it your understanding that
6 Paragraph 82 describes, among other things, in
7 general terms your oral agreements with –
8 between you and the Dugaboy trustee?
9 A. Yes.
10 Q. Is it your position that the oral
11 agreements that you entered into with your
12 sister – withdrawn.
13 Is it your contention that the oral
14 agreements you entered into with the Dugaboy
15 trustee applied to each of the notes that were
16 executed by NexPoint and that are the subject
17 of Highland's lawsuit against NexPoint?
18 A. Yes.
19 Q. Is it your contention that the oral
20 agreements that were entered into with the
21 Dugaboy trustee apply to the notes executed by
22 HCMS that are the subject of Highland's lawsuit
23 against HCMS?
24 A. Yes.
25 Q. Is it your contention that the oral

1 DONDERO - 10/29/21
2 agreements between you and the Dugaboy trustee
3 apply to the notes that were executed by HCRE
4 that are the subject of the lawsuit that
5 Highland has commenced against HCRE?
6 A. Yes.
7 Q. Okay. Do I understand correctly
8 that your oral agreements with your sister do
9 not apply to the notes that were executed on
10 behalf of HCMFA that are the subject of the
11 lawsuit that Highland commenced against HCMFA?
12 A. Correct.
13 Q. Okay. I appreciate that.
14 Do you see in this paragraph towards
15 the middle it says, quote: The purpose of this
16 agreement was to provide compensation to
17 defendant, James Dondero, who was otherwise
18 underpaid, compared to reasonable compensation
19 levels in the industry through the use of
20 forgivable loans, a practice that was standard
21 at HCMLP in the industry.
22 Have I read that correctly?
23 A. Yes.
24 Q. Is that the purpose of the agreement
25 that you entered into with your sister --

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2 withdrawn.
3 Is that the purpose of the agreement
4 that you entered into with the Dugaboy trustee
5 concerning the notes at issue in the lawsuits
6 that were commenced against you personally?
7 Withdrawn. That was a bad question.
8 Does that purpose apply only to the
9 notes that you executed or does it apply to the
10 corporate notes as well?
11 MS. DEITSCH-PEREZ: Object to the
12 form.
13 Other than HCMFA?
14 MR. MORRIS: Correct. I think we've
15 established the scope of the agreements.
16 A. To give a complete answer, from my
17 perspective it is about 50 million of notes
18 between -- current balance between NexPoint,
19 Services, myself, and HCRE.
20 Q. And HCMS; right?
21 A. Yes, Services, Highland Capital
22 Management, yes.
23 Q. Okay. So I just want to know, that
24 sentence there concerning the purpose was
25 omitted from the answers of NexPoint, HCMS,

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2 HCRE.
3 And I'm happy to walk you through to
4 show you. And I just want to know in your
5 capacity as a 30(b)(6) witness for those
6 entities, if you know why that statement of
7 purpose was omitted.
8 A. Well, we talked about it earlier. I
9 think there is some cleanup. There has been
10 multiple lawyers involved. We didn't know
11 which loans were prepaid, which loans weren't.
12 But, you know, I don't know why it was omitted
13 but it applies to all of them.
14 MS. DEITSCH-PEREZ: I think that is
15 the first time that I've noticed that. So,
16 John, I'm going to take a mea culpa. I
17 think that is a cut-and-paste error.
18 MR. MORRIS: All right. Well, I
19 will -- I will just point out that the
20 affirmative defense concerning the oral
21 agreements is the exact same in all four
22 answers, except for the omission of the
23 statement of purpose for the three
24 corporate entities.
25 Q. And so, Mr. Dondero, is it fair to

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2 say that you don't know why that statement of
3 purpose was omitted from the corporate
4 entities' answers?
5 A. Yeah, I don't know why it is omitted
6 or why the complaints aren't consistent with
7 that regard.
8 Q. Okay. But it is your -- it is your
9 position as the purpose -- as one of the people
10 who entered into this oral agreement that the
11 purpose for the -- for the condition subsequent
12 agreement is the same as for the corporate
13 entities as it is for you, as stated in this
14 paragraph; is that right?
15 A. Yes.
16 Q. Okay. We talked a little bit about
17 the NexPoint term note.
18 Do you remember that?
19 A. Yes.
20 Q. And do you recall that in its
21 original form the NexPoint term note was for a
22 principal amount of approximately $30 million?
23 A. Yes.
24 Q. And do you recall that the NexPoint
25 term note was a rollup of the outstanding

1 DONDERO - 10/29/21
2 principal and interest then due on certain
3 promissory notes that had previously been given
4 by NexPoint to Highland?
5 A. Yes.
6 Q. Okay.
7 MR. MORRIS: Can we put up, please,
8 Exhibit Number 2, which I believe is the
9 complaint against NexPoint.
10 (Exhibit 2 marked.)
11 MR. MORRIS: And if we can go to
12 Exhibit Number 1 of Deposition Exhibit
13 Number 2.
14 Q. Okay. And do you see -- I'm sorry,
15 sir, do you see that Exhibit Number 1 to the
16 complaint is a promissory note dated May 31st,
17 2017 in the approximate amount of
18 $30.75 million?
19 A. Yes.
20 Q. Okay. And is that your signature on
21 page 2?
22 A. Looks like it.
23 Q. Okay. And did you sign this note on
24 behalf of NexPoint on or around May 31st, 2017?
25 A. I assume so.

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2 Q. Do you know if you read the note
3 before you signed it?
4 A. Not likely.
5 Q. Do you recall whether there was
6 anything about the note that you didn't
7 understand before you signed it on behalf of
8 NexPoint?
9 MS. DEITSCH-PEREZ: Object to the
10 form.
11 A. Yeah, I'm not -- I doubt I read it,
12 so I don't remember objecting to anything.
13 Q. Okay. Looking at Paragraph 2.1, am
14 I characterizing that section fairly when I say
15 that the borrower was required to make an
16 annual installment payment at the end of each
17 calendar year?
18 MS. DEITSCH-PEREZ: Object to the
19 form.
20 A. I see that paragraph, yes.
21 Q. Okay. And did you understand when
22 you signed it that an annual installment
23 payment would be due at the end of each year by
24 NexPoint?
25 MS. DEITSCH-PEREZ: Object to the

1 DONDERO - 10/29/21
2 form.
3 A. I never read it that closely.
4 Q. So as the control person of
5 NexPoint, is it fair to say then that you don't
6 recall having an understanding when you signed
7 this note that NexPoint would be required to
8 make annual payments at the end of each year?
9 MS. DEITSCH-PEREZ: Object to the
10 form.
11 A. I didn't have knowledge of the
12 specifics, and again, I would describe those
13 specifics as de minimis.
14 Q. Okay. Do you see -- do you have any
15 idea who drafted this note?
16 A. It would have come from accounting.
17 I think they have boilerplate -- I don't know
18 if they work with legal at all. I have no
19 idea, but it would have come through
20 accounting.
21 Q. Do you recall that all three of the
22 term notes at issue were signed on the same
23 day, May 31st, 2017?
24 A. That doesn't surprise me. I think
25 there was an accounting reason, if I remember

1 DONDERO - 10/29/21
2 correctly. I think it had something to do with
3 either the audit or the financials or if we had
4 a credit facility at the time. I think that is
5 probably why, but I don't remember exactly.
6 Q. Do you have any other recollection
7 as to why all three notes were executed at the
8 end of May 2017?
9 A. Again, I believe they're -- the --
10 aggregating or solidifying them into one
11 defined note I think was required by the
12 auditors or the -- the accounting department as
13 best practices. I don't think -- it wasn't a
14 regulatory reason and it wasn't a compliance
15 reason. I believe it was just an accounting or
16 an audit reason.
17 Q. Did you ever make sure on behalf of
18 NexPoint that the terms of the promissory note
19 were fair and reasonable?
20 MS. DEITSCH-PEREZ: Object to the
21 form.
22 A. Yeah, I don't remember ever
23 negotiating or reading it that closely. And
24 again, I think the view from all concerned is
25 that it was relatively de minimis from the

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balance sheet at Highland then or now and/or de minimis relevant to NexPoint's value.

Q. It is a $30 million note. Do I have that right?

A. Yes.

Q. Okay. And it was material enough to be included in Highland's financial statements; is that correct?

A. Anything material or not as part of doing proper audited financials needs to be properly included.

Q. Okay. And you know, because you signed the management representation letter, that this note was specifically disclosed to PwC and included in both Highland's and NexPoint's audited financial statements; correct?

A. I would – I would have been shocked if it wasn't, if it is an asset and a liability respectively of the companies.

Q. Okay. Do you see the section on acceleration upon default, Paragraph 4?

A. Yes.

Q. Have you ever seen that section

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before?

A. No.

Q. Do you think a prudent executive signing a $30 million note should take the time to read the terms and conditions of the note?

A. Not necessarily.

Q. Under what circumstances do you think that an executive shouldn't take the time to read the terms and conditions of a $30 million promissory note?

A. When it is between affiliates, between friendly affiliates with no even inkling that bankruptcy or the parties could be at odds create a note, when it is a soft note with limited collateral and limited other protections. And then the servicing or value of the note is de minimis relative to the balance sheets of each entity I think is a good reason or logical reason for the executives on both sides not to spend much time focusing on it.

Q. All right. So you thought it was reasonable not to read this particular note for the reasons you just gave.

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Do I have that right?

A. Right.

MR. MORRIS: Okay. Can we go to the next page, please.

Q. Do you see Paragraph 5? There is a paragraph entitled Waiver.

A. Yes.

Q. And I will read it out loud: Maker hereby waives grace, demand, presentment for payment, notice of non-payment, protest, notice of protest, notice of intent to accelerate, notice of acceleration, and all other notices of any kind hereunder.

Have I read that correctly?

A. Yes.

Q. Do you know that that paragraph is included in every single note that you signed that is part of the litigation that we're here to talk about today?

A. You have to – you have to define when. You know, like today I know that it is – it is in those notes.

At the end of '20, Seery and DSI were withholding all notes, all information,

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anything regarding the company from any of the other subsidiaries, and Frank was administering the notes on behalf of both the related parties and Highland.

So at the time – at the time I would have – I would have never known that at the end of 2020. And it is crazy to think I would have remembered a clause in a soft note from three years earlier.

Q. Okay. Is it fair to say that – do you understand today that that provision is included in every note that you signed?

MS. DEITSCH-PEREZ: Object to the form.

A. You're saying it, so I believe you. I'm not asking you to go show me all the other notes, but –

Q. Thank you.

A. – I'm assuming it is in all the other notes. I will take your word for it.

Q. And is it fair to say that at the time you signed these notes you didn't take the time to read that particular provision?

MS. DEITSCH-PEREZ: Object to the

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form.

A. That is correct. A lot of it is boilerplate. And, again, treasury or accounting would have put in what was necessary for regulatory, tax, audit purposes. Maybe the auditors put that in. I have no idea.

But the content and the bullet points here, the nine paragraphs on a soft note would have been put in by other people and administered by other people other than me.

Q. What is a soft note?

A. You know, like a secured -- I mean, a note that isn't a hard note, like a note that isn't secured, deed in lieu, UCC filed, guaranteed, you know, performance and bad boy clauses and all of that other stuff.

A soft note is an unsecured loan that has basic terms to it, but it is likely subject to renegotiation over time.

Q. Were any of the notes that you signed subject to negotiation?

A. Well, I'm saying by definition that is what a soft note is.

Q. One that -- that is not subject to

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the negotiation -- to negotiations?

A. No, one that is over time subject to negotiation or modification.

Q. Okay.

A. Because there is -- there is limited -- there is limited, team collateral, guarantee, bad boy features in -- in a soft note.

Q. Okay. Perhaps my question wasn't clear.

Did the notes that you signed -- did you negotiate them with anybody, the terms of each note?

A. No.

Q. Okay. Did you personally decide on the terms of each note?

A. No. Again, they were two highly solvent, highly well-capitalized subsidiaries, and the amount of the notes was de minimis and friendly, and they were soft notes administered by a centralized treasury shared services department.

They were the ones deciding what it

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took to be compliant from an accounting regulatory-wise standpoint, but wasn't -- they were trying to come up with a balance note, which I think this is, such that it wouldn't have to be negotiated or haggled by any of the parties.

And there is no evidence of any of the notes ever being haggled or ever being negotiated.

Q. Okay. I appreciate that.

At the time you signed each of the notes on behalf of the obligors, did the obligors have an intention at the time you put your signature on the page of repaying the notes in accordance with their terms?

A. Yes. They're all -- soft note doesn't mean it's not a bona fide note. They were all intended to be bona fide notes, and they all are bona fide notes that were intended to be paid and for the -- virtually most part, were always paid or prepaid and, you know, paid in accordance.

Q. Do you see to the right there is a list of prior notes?

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A. Yes.

Q. And is it your understanding that this note substituted and superseded the promissory notes that are listed on Exhibit A on the page there?

A. Yeah. I mean, effectively pay those off and reestablish an aggregate note.

Q. Right. And Exhibit A actually set forth the outstanding principal and interest that NexPoint owed Highland under the prior notes as defined there as of May 31st, 2017; right?

A. Yeah, that is what it looks like.

Q. Okay. And -- and so the initial principal amount of the prior notes was what is stated there, approximately $27.675 million?

A. Right.

Q. Okay. You wouldn't have signed this note on behalf of NexPoint if you didn't believe at the time you signed it that NexPoint owed Highland that amount of money; correct?

A. Yeah, it is a bona fide note, consistent with my testimony.

Q. Okay. Do you know why NexPoint

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2 borrowed the money from Highland at the times
3 and in the amounts listed on Exhibit A?
4 A. No.
5 Q. Did you authorize NexPoint to borrow
6 the money that is reflected in the prior note
7 set forth on Exhibit A?
8 A. I don't know. Probably some of
9 them, yes.
10 Q. Okay. And you have no recollection
11 at all as to why NexPoint borrowed over
12 $27 million from Highland in the 12-month
13 period from August 2014 to July 2015?
14 A. Not without being refreshed.
15 Q. Okay. Do you have any knowledge as
16 to what NexPoint did with the proceeds from
17 these loans?
18 A. Not without being refreshed.
19 Q. Okay. And you contend that this
20 note is subject to -- subject to one of your
21 oral agreements with the Dugaboy trustee;
22 correct?
23 A. Yes.
24 Q. Who decided to include this
25 particular note in your agreement with the

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2 Dugaboy trustee?
3 A. Me, myself.
4 Q. Okay. What was the purpose of
5 including this note in your agreement with the
6 Dugaboy trustee?
7 Was it to provide you with a
8 compensation?
9 A. Yeah. I mean, in fact, I think it
10 was articulated in that big paragraph
11 reasonably well that my cash compensation, I
12 believe through any lens, people would look at
13 it as de minimis from the standpoint of
14 Highland as asset manager.
15 I don't think it was more than a
16 couple million bucks in a year and it went
17 down, I think, in the '15 through '20 period.
18 So I think it is common in private
19 companies to loan money that is bona fide debt
20 and then forgive it at different times to
21 manage compensation and incentives to managers
22 of private companies.
23 This is a -- we're in -- we each
24 have experts talking about it, but I think this
25 is, you know, typical.

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2 Q. Can you identify any moment in the
3 25 or 26 year history that you were president
4 of Highland where Highland forgave an
5 intercompany loan for the purpose of providing
6 compensation to you or any other employee
7 except for the agreements that are described in
8 Paragraph 82 of your answer?
9 A. Boy, I know we have masked it. I
10 don't know if we -- it sounds like we may not
11 have sent it to you, but we have done it for a
12 dozen employees over the years in -- in fairly
13 significant amount --
14 Q. I'm going to interrupt you, sir,
15 because it's not responsive to my question. I
16 apologize for that. I'm just focusing on
17 intercompany loans.
18 Can you identify any loan in the 25
19 or 26 years that you were president, an
20 intercompany loan where -- where Highland was
21 the payee that was forgiven for purposes of
22 giving you or any employee compensation, other
23 than -- other than the agreements that you
24 struck with the Dugaboy trustee?
25 A. It is an odd question because I'm

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2 the only one at the compensation level with the
3 interrelated entities who could possibly get
4 intercompany loans forgiven as part of the
5 comp, but it --
6 Q. Okay. So let me ask a cleaner --
7 let me ask a cleaner question. I appreciate
8 that clarification.
9 Other than the agreements described
10 in Paragraph 82, can you think of any other
11 intercompany loan that was ever forgiven while
12 you were president of Highland for the purpose
13 of giving you compensation?
14 A. I don't -- I don't know.
15 Q. This is an important issue; right?
16 The notion of a prior practice. It is your
17 contention that there was a prior practice at
18 Highland -- hold on one second. I apologize.
19 Sorry about that. Somebody almost
20 dropped an air conditioner out the window.
21 MS. DEITSCH-PEREZ: That would not
22 be good.
23 MR. MORRIS: No.
24 Q. All right. Apologies.
25 MR. MORRIS: May I have the last

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question read back?

(Record read.)

Q. I'm going to start all over here.

Mr. Dondero, do you contend that there was a practice at Highland of forgiving loans; is that correct?

A. Yes.

Q. And do you recall that we talked about that issue back in May?

A. Yes.

Q. Okay. And since -- since that time have you made any effort to gather any information that would demonstrate that there was a prior practice at Highland of forgiving loans?

A. Yes.

Q. And what efforts have you made?

A. Like I said, we amassed a list, and not insignificant list and not insignificant amounts, proportionate to the people's compensation where it was a practice.

You know, for some people for relocation, for some people for bonuses, for house purposes, for senior executives, senior

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executives at the bank and board members at the bank in the seven-figure kind of numbers that were then subsequently forgiven.

It is -- I know we amassed more than a dozen examples that were significant and material.

MR. MORRIS: Deborah, I apologize. It is certainly possible I missed it, but I don't recall seeing any list or any documents of any kind that Mr. Dondero has described.

Have they been produced?

MS. DEITSCH-PEREZ: I think so. I will double-check, but I believe that they're listed --

MR. MORRIS: I know there is a list of -- I apologize. I know there is a list of names in one of the discovery responses. But other than the list of names in the discovery response, I don't recall receiving any documents at all.

MS. DEITSCH-PEREZ: No. And I think we asked you for the documents because we don't have access to the documents on

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Highland's server. The only thing I can think of that we might owe you is there might be a few additional names to list in the interrogatory, and I will check whether that has been done.

MR. MORRIS: Okay.

Q. Mr. Dondero, you sign management representation letters in connection with Highland's audit each year; is that right?

A. Yes.

Q. Do you understand that you have an obligation when you sign the management representation to disclose to the auditor all agreements with affiliated entities and people that are deemed to be material?

MS. DEITSCH-PEREZ: Object to the form.

A. Generally, yes.

Q. Okay. And is it your understanding that at least since 2008 Highland has disclosed to its auditors all agreements with affiliates that are material, as defined in the management representation letter?

A. Yes.

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Q. And would that include any agreements to forgive loans that were deemed to be material amounts?

A. No, because it is contingent in long term and speculative.

Q. But at some point if it is forgiven would that be -- would that be an event that would be disclosed to the auditor?

A. Sure.

Q. Okay. So is it fair to say that all loans that were deemed to be material to the extent they were forgiven were disclosed to the auditors?

A. Yes.

Q. Okay.

A. But, yeah, the only caveat I would put on it is we have such limited information regarding Cornerstone and Trust Life, which is part of my agreement with the Dugaboy trustee or with the majority of class A holders.

They could have been sold in secrecy, without disclosure to us, such that the notes are all forgiven at this point, but we -- we -- we may never know.

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Q. So you can't rely on anything that you don't know; is that fair?
A. Yeah.
MS. DEITSCH-PEREZ: Objection to form.
A. Yeah, we can't rely on things we don't know and we can't rely on the debtor to be honorable.
Q. Well, the debtor has produced to you, sir, every single audited financial statement without redaction since 2008. Are you aware of that?
A. That is actually news to me because we were asking for them a couple of months ago. That must be -- that must be a new production.
Q. No. Actually, it was produced to you way back in July. You are not aware of that?
A. No, I'm looking --
MS. DEITSCH-PEREZ: Hang on.
A. I'm looking at Deborah. She'll --
MS. DEITSCH-PEREZ: I will get the date.
A. Yeah. I would love to see them.

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Q. So then -- so then it -- so is it fair to say, sir, that when you are describing this practice of forgiveness of loans, you are doing so without having reviewed any of the audited financial statements that Highland provided to your attorneys going back to 2008?
MS. DEITSCH-PEREZ: Object to the form.
A. What I'm saying, I guess, is that we haven't treated the loans as forgiven yet because if the condition precedent has been satisfied, we're not aware of it yet.
Now, if there is something in those financial statements that will show that the condition precedent is satisfied, then we have a decision to make about the -- or figure out what the mechanism is for forgiving the loans.
Q. Are you saying that there are loans out there subject to forgiveness where the maker is somebody other than you or an entity that you control?
A. No, I'm just -- I'm talking about the 50 million of loans that we've been talking about.

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Q. Okay. So -- so I just want to go back and focus on your assertion that there was this practice of loan forgiveness. I think you have agreed with me that any loan that was forgiven in a material amount would be contained within the Highland audited financial statements; right?
A. I believe they -- material or not, they were all included in the Highland financials. Now, they might not have been specifically footnoted, you know.
Like in other words, if we gave somebody half a million bucks to relocate and then forgave the loan, it might just be mixed with all other compensation in the line item. It might not have been listed separately because it would have been small relative to the overall financial statement.
Q. But you're just speculating right now because, in fact, you haven't read the audited financial statements for the purpose of seeing whether or not there were loan -- loans that were forgiven and disclosed; right?
MS. DEITSCH-PEREZ: Object to the

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form.
A. Well, what I'm saying, just to be clear, is I haven't looked at the presentation of forgiven loans in the historic financials because I was unaware that we had gotten historic financials, but I am testifying that we had amassed at least a dozen, 15 material examples of material loan forgiveness amounts to different executives.
Q. All right. Do you have any documentation to support your assertion of the practice of forgiving loans at Highland?
A. Again, we have very, very little access to anything, and we didn't take anything with us that we weren't supposed to take, so we don't have any of that documentation.
At NexBank, one of the sister companies that we still have full control over our records, we could show seven-figure-plus loans to senior management and the entire board of directors and forgiveness thereof as an example, but that -- that is the only documentation that we would be able to present without having access to the records that you

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guys are keeping from us.

MR. MORRIS: I move to strike the last comment, and I take offense to it, sir. We're not withholding anything, okay.

Q. Would the NexBank audited financial statements include a disclosure of the loans that you are describing?

A. Yes.

Q. Okay. So is it fair to say that if Highland forgave loans, it would be disclosed in its audited financial statements?

MS. DEITSCH-PEREZ: Object, asked and answered.

A. Well, just to be clear, these loans like the one up on the sheet, those were included in Highland's financials, those loans, just like the NexBank loans, when they were made to senior executives were included. But there wasn't a – at NexBank there wasn't any kind of disclosure that said, these might be forgiven, or these are the terms that they would be forgiven under, just like there was no disclosure in the Highland financials that these are the terms that it might be forgiven

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under, et cetera, et cetera.

Q. It's certainly disclosed in the financials when it was forgiven. Will you -- will you concede that point?

A. Yes, sure.

Q. Okay. Let's move on.

Let's go to HCMS. Are you familiar with the notes at issue in the lawsuit that was commenced by Highland against HCMS?

MS. DEITSCH-PEREZ: S or –

A. S as in Services. Yes.

MR. MORRIS: Okay. Can we please put up Exhibit 3.

(Exhibit 3 marked.)

MS. DEITSCH-PEREZ: Is that in the binder that you sent?

MR. MORRIS: Yes, as Exhibit 3.

MS. DEITSCH-PEREZ: Okay.

MR. MORRIS: And if we could go to the Exhibits 1 through 4, okay.

Q. Sir, we've put up on the screen Exhibit 1 to Exhibit 3, which is the complaint against HCMS. Do you see Exhibit 1 up on your screen?

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A. Yeah. This is the $150,000 promissory note; is that what that is?

Q. Yes, sir.

A. Okay. As long as I can see it on the screen, I don't need to find it in hard copy, do I?

MS. DEITSCH-PEREZ: Yeah.

MR. MORRIS: Can you scroll to the second page, PJ.

Q. Is that your signature, sir?

A. Close.

Q. Are you aware that your signature is affixed to a $150,000 promissory note that was made by HCMS to Highland Capital Management?

A. Like I said –

MS. DEITSCH-PEREZ: Objection, form.

A. Like I said, it's close. I don't know if that is mine, but it's close.

Q. Do you have any reason to believe that either you or somebody you authorized didn't sign this particular promissory note?

A. Not specifically.

MR. MORRIS: Okay. Can we go to the first page, please.

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Q. Did HCMS receive a loan from Highland in the amount of $150,000 on March 28th, 2018?

A. I assume so.

Q. Okay. You wouldn't have either signed or allowed your signature to be affixed to this document if you didn't understand that HCMS had received from Highland $150,000; correct?

A. This is one of the many things I would have signed on a given day.

Q. Okay. And – and are you aware that this note was given to Highland's auditors?

A. It could. I'm not aware specifically, but it should be.

Q. Okay. Do you have any recollection as to why HCMS obtained this loan from Highland?

A. Unless it says it on these two pages, I have no idea.

Q. Okay. Do you have any recollection as to what HCMS did with the proceeds of this loan?

A. No.

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Q. Okay. Let's just flip through the Exhibits 2, 3, and 4, if we could.

Looking at Exhibit 2, is that your signature on Exhibit 2, sir?

A. Again, it is close.

Q. Okay. And do you have any reason to believe that that is either not your signature or that you did not authorize somebody to sign this on behalf of HCMS in June of 2018?

A. No.

Q. Okay.

MR. MORRIS: Can we go to Exhibit 3, please, and if we can go to the signature line.

Q. Do you see that that is Frank Waterhouse?

A. Yes.

MR. MORRIS: Okay. And can we go to the page before that, the first page.

Q. Frank Waterhouse was the treasurer of HCMS in May 2019; correct?

A. That is what it said right on that thing we saw earlier; right?

Q. Incumbency certificate.

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A. Yes.

Q. Do you recall that HCMS borrowed $400,000 from Highland in or around May 2019?

A. Not specifically.

Q. Do you have any reason to believe that it didn't?

A. I have no knowledge -- I have no knowledge of what it was used for and whether it did or didn't.

MR. MORRIS: Okay. Let's go to the next exhibit, please.

Q. Do you see Frank Waterhouse signed here on behalf of the maker, HCMS Services?

A. Yes.

Q. Okay. Are you aware that HCMS borrowed $150,000 from Highland in June 2019?

A. No.

Q. Okay. Do you have --

A. I'm not aware and --

Q. Do you have --

A. I didn't -- I'm sorry, go ahead. I was just saying, looking at Frank's signature, you know, we're switching from me signing to Frank signing. And I guess we're saying Frank

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is an authorized signatory, although if you look at Frank's, it looks like an automated signature versus, you know, an actual signature, but I assume you went over this with him, but I don't have specific knowledge of these at all.

Q. And do you know that Mr. Waterhouse from time to time used an electronic signature?

MS. DEITSCH-PEREZ: Object to the form.

A. I believe he did.

Q. And you saw -- you have seen his electronic signature on other documents; is that right?

A. Yes.

Q. So it doesn't surprise you to see his electronic signature on a note; correct?

A. Yeah. Yeah, okay. Yeah, I don't know. But whether or not he did it or somebody else did it or -- we're just getting a little far afoot from me signing it; right? That is all.

Q. Right.

A. To -- Frank -- Frank may have signed

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it. He may have done it electronically or somebody may have done it electronically for him. Those are just different answers than me signing it; right?

Q. Okay. And -- and that is fair.

Are you aware that on December 3rd, 2020, Highland made a demand upon HCMS for payment under these four notes that we have just looked at?

A. I knew there was a demand on the NexPoint one. Can you refresh me on this one?

Q. Sure.

MR. MORRIS: Can we go to the next exhibit in Exhibit 3. Exhibit 5.

Q. You will see that there is a letter dated December 3rd, 2020, from Mr. Seery to HCMS?

A. Yep.

Q. And do you see that it was sent to the attention of Mr. Waterhouse?

Do you see that, sir?

A. Yes, yep.

Q. And, again, Mr. Waterhouse at that time was the treasurer of HCMS to the best of

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your recollection; correct?

A. He primarily was the CFO of Highland. But, yes, I mean, I do see that.

Q. Okay. And did you learn on or around December 3rd that Highland had made demand upon HCMS for payment of all outstanding principal and interest due under the four demand notes that are listed on the page there?

A. Yes, yep.

Q. So you knew that at the time; right?

A. Well, more importantly I knew they were all subject to the same forgiveness provisions as the other note.

Q. Okay. So I move to strike.

You knew in December 3rd, 2020, that Highland made demand; correct?

A. Yes.

Q. Okay. And do you see that Highland gave HCMS an eight-day grace period or until December 11th, 2020, to make payment?

A. Yes.

Q. Under the demand note do you have any understanding that Highland was required to give any grace period at all?

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A. I don't know.

MS. DEITSCH-PEREZ: Object to the form.

Q. Do you know whether HCMS ever responded to this demand letter prior to the commencement of litigation?

A. I don't know.

Q. Prior to the commencement of litigation, did you discuss with anyone whether HCMS should respond to Highland's demand letter?

A. Did I discuss with anyone? No, I don't remember -- I don't remember talking about this with Frank at all where --

MS. DEITSCH-PEREZ: And I'm just going to stop you to make sure you don't blurt out any privileged communications, if there are any.

We object to the disclosure. But with that caveat, go ahead.

A. I'm sorry, repeat the question again. Let me try and keep it simple here.

Q. Sure. It may be my fault.

Mr. Dondero, you testified that you

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were aware that Highland made a demand for payment on these four notes; correct?

A. Yes.

Q. Okay. Did you have any non-privileged communications at any time after Highland sent this letter about whether and how HCMS should respond?

A. You know, let me just -- let me adjust the prior answer for a second.

I'm aware that this letter was sent. I'm not sure I knew contemporaneously or when I knew the letter was sent. I can't -- I have no recollection of receiving it at the time.

And to answer your question, I can't recollect talking to Frank or anybody else about it at the time. I'm not sure I knew about it at the time. But I have -- I don't have any recollection of discussing it with anybody at or around the time.

Q. Did you ever instruct anybody at any time to respond to this letter, whenever it is you learned about it?

A. No.

Q. Do you know if anyone acting on

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behalf of HCMS ever informed Highland of HCMS' defenses to the -- to the demand letter prior to the commencement of litigation?

A. Yeah, Frank would be the person to ask there. I don't know.

Q. I'm just asking you. Prior to the commencement of litigation, did you ever instruct anyone to inform Highland that the HCMS notes were subject to oral agreements with the Dugaboy trustee?

A. I believe former Judge Lynn sent a letter in that regard. But other than that, I don't remember talking to anybody -- I don't remember talking to the debtor about it per se.

Q. It is your recollection that Judge Lynn sent a letter to Highland before the commencement of litigation, putting Highland on notice that the HCMS notes were the subject of oral agreements between you and the Dugaboy trust.

Do I have that right?

A. Yeah, that they were part of forgiveness or compensation or something. He sent a letter in that regard.

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Q. And was this part of a settlement discussion or was this in response to this demand letter?

A. I don't know.

Q. Have you produced that letter in discovery?

MS. DEITSCH-PEREZ: I'm aware that you have the letter. I don't know if it was attached to something, but I know you have it.

MR. MORRIS: Because you produced it in discovery or because Mr. Dondero is testifying that his recollection was that Mr. Dondero sent this letter to the debtor?

MS. DEITSCH-PEREZ: The -- the letter has either been produced or was attached to something or was used in a deposition, but I am aware that you have it. If you need it to be Bates stamped, we could do that.

MR. MORRIS: I definitely need it to be Bates stamped, I do, because I'm not aware of this particular letter. But I appreciate that.

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MR. RUKAVINA: This is Davor. Couple things, John -- and I apologize for interjecting. I have not made an appearance yet today. Deborah has been objecting for everyone.

Thomas Berghman will take over around 3:00 o'clock. Is that okay with you, John?

He is probably just going to sit here and not object.

MR. MORRIS: I will miss you and I hope you have safe travels.

MR. RUKAVINA: Okay. Thank you very much.

And, second, I think that the letter that is being referred to is the email letter, so I have produced it to you.

With that, thank you everyone.

MR. MORRIS: Okay. Take care.

Q. Did anyone -- did you ever instruct anyone in December 2020 to make the payments that Highland demanded under the HCMS notes?

MS. DEITSCH-PEREZ: The demand notes that are listed here on the Exhibit 5?

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MR. MORRIS: Yes.

A. Yes, not that I recall.

Q. Did you ever instruct anyone in December 2020 not to make the payments that Highland demanded that are listed in this exhibit?

A. No.

Q. Do you know why HCMS did not make the payments that Highland demanded under the notes?

A. Again, beyond compensation forgiveness argument, no.

MR. MORRIS: Okay. Let's go to the next exhibit, 6.

(Exhibit 6 marked.)

Q. And this is another one of the term notes; right?

A. Yes.

MR. MORRIS: And can we just go to the signature line, please.

Q. Is that your signature, sir?

A. That looks more like it.

Q. And do you -- are you willing to agree that you signed this promissory note in

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favor of Highland on May 31st, 2017?

A. Yes.

Q. And is it fair to say you didn't read this note before you signed it?

A. Correct. No reason to, really.

Q. Okay. So it is fair to say that there is not a provision of this note that you didn't understand before you signed it; correct?

MS. DEITSCH-PEREZ: Object to the form.

A. That I didn't review it, so therefore I didn't have a opinion one way or the other.

Q. Okay. This note substituted and superseded for the promissory notes that are set forth on Exhibit A to this document; correct?

A. Yes.

Q. So just like NexPoint and HCMS, HCRE also consolidated their outstanding demand notes into one term notes at the end of May 2017; right?

A. Yep.

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2 Q. Okay. Let's go to HCRE, if we can
3 take this down and put up Exhibit 4.
4 Actually, before we go to that, do
5 you have any recollection as to why HCRE
6 borrowed money from Highland in the amounts
7 equal to the prior notes as set forth to the
8 exhibit to the term note?
9 A. Nope.
10 Q. Do you have any recollection at all
11 as to what HCRE did with the proceeds of the
12 loans that it obtained from Highland?
13 A. No.
14 Q. This is Exhibit 4, so this is the
15 complaint -- this is actually the complaint
16 against HCRE.
17 MR. MORRIS: Can we go to Exhibit 6,
18 please.
19 MS. DEITSCH-PEREZ: Exhibit 6 of
20 Exhibit 4?
21 MR. MORRIS: No, I apologize. That
22 was my mistake. Yes, Exhibit 6 to Exhibit
23 4.
24 MS. DEITSCH-PEREZ: Okay. If you
25 want the hard copy, it is in a booklet.

1 DONDERO - 10/29/21
2 Otherwise, she is pulling it up.
3 Q. So this is the last of the three
4 term notes. Do you see that?
5 A. Yes.
6 Q. Also signed on May 31st, 2017;
7 correct?
8 A. Yes.
9 Q. And if we could look at the
10 signature line, is that your signature, sir?
11 A. Yes.
12 Q. And did you sign this note on behalf
13 of HCRE on or about May 31st, 2017?
14 A. Yes.
15 Q. Did you read this note before you
16 signed it?
17 A. No.
18 Q. And since you didn't read it, is it
19 fair to say that there wasn't a provision of
20 this agreement that you didn't understand at
21 the time that you signed it?
22 MS. DEITSCH-PEREZ: Object to the
23 form.
24 A. There is -- there wasn't a
25 provisions I did or didn't understand because I

1 DONDERO - 10/29/21
2 didn't review it.
3 Q. Okay. This note substituted and
4 superseded for the promissory notes that are
5 listed on Exhibit A on the right side of the
6 page; correct?
7 A. Yes.
8 Q. And Exhibit A set forth the
9 outstanding principal and interest that HCRE
10 owed to Highland under the prior notes as of
11 May 31st, 2017; correct?
12 A. Uh-huh.
13 Q. That is a yes, sir; correct?
14 A. Yes.
15 Q. Okay. Do you know why HCRE borrowed
16 the money from Highland at the times and -- and
17 in the amounts set forth on Exhibit A to the
18 promissory note?
19 A. No.
20 Q. Do you have any recollection as to
21 what HCRE did with the proceeds of the loans
22 that they had obtained from Highland between
23 January 2014 and April 2015?
24 A. No.
25 Q. Can we call the three term notes

1 DONDERO - 10/29/21
2 that were signed by NexPoint, HCRE, and HCMS on
3 May 31st, 2017 collectively as the term notes?
4 A. Yes.
5 Q. Okay. You had the authority to sign
6 each of the term notes on behalf of each of the
7 respective makers; correct?
8 A. Yes.
9 Q. Each of the term notes was for a
10 30-year term; correct?
11 A. I believe so.
12 Q. Okay. Who decided to give each note
13 a 30-year term, if you know?
14 A. The auditors, the accountants, not
15 me.
16 Q. But you knew that each of the notes
17 was for a 30-year term; is that fair?
18 A. Yes, I guess, yes.
19 Q. Notes were unsecured; right?
20 A. Yes.
21 Q. And the notes were not the product
22 of any negotiations; correct?
23 A. Correct.
24 Q. Is it fair to say that none of the
25 makers of the term notes ever sought financing

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from a third party as an alternative to the Highland notes?

A. That's correct.

Q. Okay. You don't have any reason to believe that an unrelated third party would have loaned money to NexPoint, HCRE, and HCMS on the terms set forth in each of the term notes, do you?

MS. DEITSCH-PEREZ: Object to the form.

A. I – it is not fair to draw that conclusion. You know, particularly NexPoint has borrowed a lot of money at much lower rates at or around 2017 and later, and to this day.

Q. So then why –

A. The same thing with HCRE.

Q. So then why would HCRE and NexPoint enter into these loans rather than obtaining loans at lower interest rates if they were available?

A. These are soft loans, again, so they're – especially affiliate soft loans to other creditors are viewed almost as equity or subordinated to senior secured mortgages or

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other financings that NexPoint and HCRE did. So I would say that is – that is the reason.

Q. Are you saying that Highland today really has equity interests in NexPoint, HCRE, and HCMS?

MS. DEITSCH-PEREZ: Object to the form.

A. Yeah, no, I didn't say that. I'm saying it has subordinated debt interest, but they are soft notes, so they're viewed as deeply subordinated equity-ish, so to speak, as far as the senior secured debtholders are concerned.

Q. Well, that would be true of any senior secured debt relative to unsecured debt; isn't that right?

A. Yes, but again, these are particularly soft notes, you know.

Q. Okay. At the time you signed these notes, were you aware that each of the term notes required payment of an annual installment on December 31st of each year?

MS. DEITSCH-PEREZ: Object to the form.

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A. I knew there was more required periodic payments than historically, and that was part of – partly driven by the – the auditors, I believe.

THE WITNESS: You know what, can we – can we take a break for like five or 10 minutes, and then, you know, at most – at most I've got another hour in me today, and then so we could just work on when it fits on everybody else's calendar if we can't wrap up in an hour; okay?

MR. MORRIS: No problem, Mr. Dondero. So the time now is what – what time do we have?

VIDEOGRAPHER: Off the record, 2:56.

(Recess taken 2:56 p.m. to 3:19 p.m.)

VIDEOGRAPHER: Back on the record, 3:19.

Q. Are you ready to proceed, sir?

A. Yes.

Q. Okay. Did you speak with anybody during the break about the substance of this deposition?

A. No.

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Q. So we were just looking at the third in the series of term notes, and if we can go to the – I apologize, the first page of this one, just to refresh your recollection after the break that this is the term note that was executed by you on behalf of HCRE Partners on May 31st, 2017.

Do you see that?

A. Yes.

Q. Okay. And I looked at Paragraph 5 before, but I just want to make sure, you're telling me that you didn't read this before you signed it, do I have that right, Paragraph 5?

A. Yes.

Q. And so you are unaware – when did you first – when did you first become aware of the provision that is set forth in Paragraph 5?

MS. DEITSCH-PEREZ: Object to the form.

A. I don't know.

Q. Okay. Was it before or after the commencement of the litigation?

A. I don't know.

Q. Okay. NexPoint didn't make the

1 DONDERO - 10/29/21
2 installment payment that was due at the end of
3 2020; correct?
4 MS. DEITSCH-PEREZ: Object to -- are
5 you still talking -- have you left HCRE?
6 MR. MORRIS: No. I said what I
7 meant to. So we can take down the exhibit
8 if that's the part that is confusing you.
9 I appreciate that.
10 MS. DEITSCH-PEREZ: Okay.
11 Q. Okay. NexPoint didn't make the
12 installment payment that was due at the end of
13 2020; correct?
14 MS. DEITSCH-PEREZ: Object to the
15 form.
16 A. Yeah. I mean, I think maybe the
17 right way to describe it is Highland or --
18 yeah, Highland or Frank Waterhouse on behalf of
19 NexPoint didn't make the payment.
20 Q. Okay. And HCRE didn't make the
21 installment payment that was due at the end of
22 2020; correct?
23 A. I don't -- I guess -- okay, if they
24 missed it too, I -- I did not have specific
25 awareness to that, I guess, but if you are

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2 suing under it, I guess they did.
3 Q. Right. And HCMS didn't make the
4 payment that was due at the end of the year, to
5 the best of your knowledge; correct?
6 MS. DEITSCH-PEREZ: Object to the
7 form.
8 A. Yeah. I mean, what I'd just
9 separate in my notes here is the HCMFA was just
10 not -- it wasn't a bona fide note, I guess,
11 is -- that is -- which I guess is a
12 different -- a different conversation.
13 Q. Yeah. Do you understand that the
14 question was about HCMS? Let me restate the
15 question.
16 MS. DEITSCH-PEREZ: Yes.
17 Q. HCMS --
18 A. Oh, I'm sorry.
19 MS. DEITSCH-PEREZ: John, I'm sorry,
20 it is really hard on the video to
21 distinguish between HCMF and HCMS, so if
22 you could just --
23 A. How about just say Services for
24 Highland Capital Management Services, just
25 say -- instead of S, just say Services.

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2 Q. Sure. All right. So from now on, I
3 will try and use the word "Services" and you
4 will know that that means Highland Management
5 Services, Inc.; is that fair?
6 A. Yes, okay.
7 Q. Okay. So Services didn't make the
8 installment payment that was due at year-end;
9 correct?
10 A. Yes.
11 Q. Okay. And I just want to make sure
12 that I have this right. Is it -- is it the
13 corporate obligors' -- those three corporate
14 obligors' contention that one of the reasons
15 they didn't make the payments at the end of the
16 year is that they were relying on Highland to
17 make the payment for them?
18 A. Absolutely.
19 Q. Okay.
20 A. It was due course de minimis, and
21 those entities didn't have a single employee or
22 capable financial person other than the people
23 at Highland that were doing the shared services
24 for them.
25 Q. NexPoint didn't have any employees

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2 in December 2020. Is that your testimony?
3 A. I was thinking about HCRE and
4 Services had zero employees. NexPoint had
5 employees but none that were involved in basic
6 accounting functions.
7 Q. Okay. And -- and there are people,
8 including yourself, who were officers or
9 employees of NexPoint in December 2020;
10 correct?
11 A. Yes.
12 Q. And HCRE had officers in December
13 2020, including you; correct?
14 A. Yes. Officers, yes.
15 Q. And Services had officers in
16 December 2020, including you; correct?
17 A. Yes.
18 Q. Okay. I think in summary form, to
19 be fair, I think we have identified one of the
20 defenses for these three corporate obligors.
21 Two of them have the defense of
22 prepayment; right?
23 A. Yes.
24 Q. And one of them is NexPoint,
25 NexPoint has the defense of prepayment.

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Do you have that -- do I have that right?

A. Yes.

Q. Which of the other two, remind me?

A. Services.

Q. Okay. So NexPoint and Services have the defense of prepayment. Are there any other reasons that you know of that these three corporate obligors didn't make the annual installment payment that was due at the end of the year?

MS. DEITSCH-PEREZ: Object to the form.

A. Again, they -- they should have been in regular course. Those payments -- using the word "payment" is almost like an overstatement of the significance or the amount. If the amounts were small in all cases, they should have been made or they should have been paid, even in the context of contention and even in the context of the larger amounts of money that Highland owed us.

Q. I'm just -- I'm just asking a pretty simple question, sir. I don't mean to be

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contentious with you. We have identified one defense that these corporate obligors contends exists; and that is, Highland was supposed to make the payment. Fair?

A. Yes.

Q. And then we have identified a second defense for NexPoint and HCMS, and that is their defense that they prepaid.

Do I have that generally right?

A. Yes.

Q. Can you describe for me any other defenses that these three corporate obligors have for not making the payment that was due at the end of the year?

MS. DEITSCH-PEREZ: Object to the form.

A. I'm thinking. Not at the moment.

Q. Okay. Did you instruct anyone in December of 2020 to make the installment payments that were due on December 31st under these three term notes?

MS. DEITSCH-PEREZ: Object to the form, asked and answered.

A. No.

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Q. Okay. Did you take any steps to confirm that Highland would make the payments that were due under these three term notes at the end of the year?

MS. DEITSCH-PEREZ: Object to the form.

A. No. I testified already the first I heard about it was a week or two later. And I called up Frank and confirmed with him to make sure they got paid and make sure they were back in compliance.

Q. Okay.

MR. MORRIS: I move to strike everything after the word "no."

Q. Do you know whether anybody on behalf of any of the three corporate obligors under the term notes ever directed Highland to make the payments under them at the end of the year?

MS. DEITSCH-PEREZ: Object to the form.

A. Not before the end of the year, no.

Q. Okay. And do you know whether anybody acting on behalf of any of the three

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corporate obligors under the term notes ever took any steps in December 2020 to make sure that Highland would, in fact, make the payments that were due at year-end?

MS. DEITSCH-PEREZ: Object to the form.

A. No, there was a reliance on Highland.

Q. Okay. Is it your testimony that Highland was authorized to make the payments under the notes at year-end without being directed by a representative of the three corporate obligors?

A. Yes. It is my contention that that is how it worked in prior years also.

Q. And so you believe that nobody on behalf of any of the corporate obligors ever authorized or directed Highland to make the payments but that Highland did it without -- without direction?

MS. DEITSCH-PEREZ: Object to the form.

A. Yes, typically. And in 2017 or 2018, 2019, for sure.

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Q. Okay. We have looked at one -- at one December 3rd letter. I mean, do you remember that you also received a number of letters on December 3rd demanding payment on certain promissory notes?

A. No.

Q. All right.

MR. MORRIS: Can we call up Exhibit 2, please. No, I apologize. Not Exhibit 2, Exhibit 4.

(Exhibit 4 marked.)

MS. DEITSCH-PEREZ: Exhibit 4 in the notebook?

MR. MORRIS: Yes, ma'am.

Okay. And now let's -- let's go to the exhibits. Exhibit 2, Exhibit 3, Exhibit 4, Exhibit 5.

Q. Do you see, sir, that this is a letter addressed to you on behalf of HCRE Partners that is also dated December 3rd, 2020?

A. Yes.

Q. Does that refresh your recollection that you also received notices, demand notices on or around December 3rd, 2020, with respect

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to notes that were held by Highland?

A. No.

Q. Do you recall this letter at all?

A. No, if I -- if I had, I would have made the forgiveness argument or I would have told someone to make the forgiveness argument, but I don't remember this at all.

Q. Okay. Is it fair to say that neither you nor anyone acting on behalf of yourself, HCMS, or HCRE ever responded to any of the demand letters at the beginning of December 2020?

MS. DEITSCH-PEREZ: Object to the form.

A. Yes, I don't -- I don't know.

Q. You don't have any knowledge of that; is that fair?

MS. DEITSCH-PEREZ: Object to the form.

A. I don't know.

Q. And you don't have any knowledge of anybody responding to any demand letter that was sent to HCMFA; correct?

MS. DEITSCH-PEREZ: Object to the

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form.

A. HCMFA or Services?

Q. HCMFA?

A. I -- I don't know. I don't have any knowledge.

MR. MORRIS: Can we put up Exhibit 1, please.

(Exhibit 1 marked.)

MR. MORRIS: We probably want to go to Exhibit 3 of that document.

Q. This one was sent to Mr. Waterhouse. Do you see that?

A. Yes.

Q. Okay. And did you become aware on or around December 3rd, 2020, that Highland made demand under the two notes listed in this letter?

A. Yes. Why would this one go to Frank Waterhouse?

Q. Was he the treasurer -- was he the treasurer of Highland Capital Management Fund Advisors at the time?

A. Right.

Q. So does it make sense that the payee

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on a note might send a demand letter to the treasurer of the maker of the note?

MS. DEITSCH-PEREZ: Object to form.

A. I'm just saying they could have sent the NexPoint letter or the Services letter to him also; right?

Q. I don't -- I think the NexPoint is only a term note; right? So there is no demand letter.

A. No, I know that. But whatever -- whatever the other one we were just looking at, the Services one could have gone to him, too.

Anyway, whatever. It doesn't matter. But, no, I don't have a specific recollection of this, if that was your question.

Q. You don't have -- you don't have any recollection of Highland making demand under promissory notes that were issued by you and certain of your affiliates in early December 2020. You don't remember that at all?

A. There was a lot going on then. And, again, it wasn't something that we either thought was legitimate based on forgiveness or

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2 other issues or it wasn't things that we
3 thought were legitimate as part of the overall
4 settlement.
5 You've got to remember we didn't
6 realize Seery betrayed the estate at this
7 point. We thought we were moving towards, you
8 know, resolution or a pot plan.
9 Q. Okay.
10 MR. MORRIS: I move to strike.
11 Q. And please listen carefully to my
12 question.
13 Did you have any knowledge in early
14 December 2020 that Highland made demand for
15 payment under demand notes that were issued by
16 you and certain of your affiliates?
17 A. Same answer.
18 Q. Were you aware or you were not
19 aware?
20 A. Well, no specific knowledge for the
21 reasons articulated in the answer that you –
22 you moved to strike.
23 Q. Okay. So – so you had – you had
24 no particularized knowledge of the demands in
25 December 2020; correct?

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2 A. Right.
3 Q. Okay. And so it is fair to say that
4 you never directed anybody to respond to these
5 demands because you didn't have knowledge of
6 them; correct?
7 A. Right.
8 Q. Okay. Do you know whether anybody
9 responded on behalf – on your behalf or any of
10 the corporate obligors' behalf to any of the
11 demand letters that were – that you now know
12 were sent in early December 2020?
13 A. Well, yes. I mean, I know
14 eventually. I don't know when, but I don't
15 think anybody believes these – these HVIN
16 notes are legitimate notes.
17 I know the response was more around
18 it being payments for the TerreStar regulatory
19 obligations for all the things that Highland
20 had mucked up in the TerreStar situation.
21 Q. While you were president of that
22 entity; right?
23 A. Yes.
24 Q. Okay. And – and
25 PricewaterhouseCoopers certainly doesn't think

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2 these are frivolous obligations, does it?
3 MS. DEITSCH-PEREZ: Object to the
4 form.
5 A. PricewaterhouseCoopers doesn't –
6 Q. PricewaterhouseCoopers specifically
7 included a disclosure of all of these
8 promissory notes in the audited financial
9 statements; correct?
10 MS. DEITSCH-PEREZ: Object to the
11 form.
12 A. I mean, as they should have with the
13 information they had at the time, but I think
14 what has come out since then is that they – it
15 was moneys that moved from Highland to HFAM for
16 things that were caused by Highland and people,
17 not me, not even Frank, I think, but other
18 people assumed it was a note and made notes out
19 of it. And that is what PricewaterhouseCoopers
20 put into the financials, but I think what
21 everybody acknowledges is that they were
22 never – they were never notes.
23 Q. Is there a document that you have
24 ever seen in your life that supports what you
25 just said?

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2 MS. DEITSCH-PEREZ: Object to the
3 form.
4 A. Yes.
5 Q. Can you identify that document for
6 me?
7 A. Yeah. It is a – it is a settlement
8 with the SEC in terms of what they said the
9 breaches were, and why they were finding HFAM,
10 the rationale that they had in the regulatory
11 breaches and in the settlement, and all of the
12 breaches in the settlement were things that
13 Highland did, not that HFAM did.
14 It was all valuation, it was all –
15 it was all services that HFAM had contracted
16 with Highland that were performed deficiently
17 in the eyes of the SEC.
18 Q. Okay. We will – we will get to
19 that in more detail, but I just would like to
20 know if you believe that any correspondence to
21 the SEC specifically stated that Highland
22 Capital Management, L.P. and not Highland
23 Capital Management Fund Advisors, L.P. was
24 responsible for the TerreStar valuation error.
25 A. The SEC would not have parsed

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between the different players in the entities. They would have said what they thought the breaches were overall in their letter, and what would govern the split is the shared services agreement and where were the employees that performed the activities that they cited.

Q. Okay. We will get to that at a later time.

All right. Let's go back to the oral agreements that you entered into with the Dugaboy trustee.

MR. MORRIS: And let's start by putting back up Exhibit 31, Paragraph 82.

MS. JEFFRIES: I'm sorry, can you repeat that?

MR. MORRIS: Yes. Exhibit 31, Paragraph 82, yes.

Q. And, again, Mr. Dondero, I think you have testified already that you believe Paragraph 82 generally describes the oral agreement that you entered into with the Dugaboy trustee with respect to the promissory notes that we've described; right?

A. Yes.

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Q. And – and it is – and that includes the promissory notes that you signed that Highland is suing on as well as the promissory notes that HCRE, HCMS, and NexPoint signed that Highland is suing on; correct?

A. Yes.

Q. Okay. Do you contend that the oral agreements that you entered into with the Dugaboy trustee modified the parties' rights under the original promissory notes?

MS. DEITSCH-PEREZ: Object to the form.

A. Modify, boy, sounds like a legal term. It said conditions by which they could be forgiven.

Q. And there were no such conditions in the original notes; right?

A. That is correct.

Q. Okay. So I'm just asking you from your perspective whether the oral agreements that you entered into with the Dugaboy trustee were intended to modify the parties' rights and obligations under the original promissory notes.

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MS. DEITSCH-PEREZ: Object to the form.

A. It was meant to condition the forgiveness.

Q. Did it change –

A. I would like to use those words versus modified the agreement.

Q. Did it – did it alter the parties' rights and obligations?

MS. DEITSCH-PEREZ: Object to the form.

Q. I'm not trying to play a game with you. I just –

MS. DEITSCH-PEREZ: That is exactly what you are doing. Why don't you just ask him –

MR. MORRIS: Please stop talking. Please stop talking.

Q. Mr. Dondero, is it fair to say that the promissory notes that are the subject of your oral agreements with the Dugaboy – Dugaboy trustee set forth the parties' rights and obligations thereunder, both the maker and the payee?

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MS. DEITSCH-PEREZ: Can you read that back again.

Q. Is it fair to say that the original promissory notes that are the subject of the oral agreements between you and the Dugaboy – withdrawn.

Is it fair to say that the original promissory notes that Highland is suing under set forth the maker and the payees' rights and obligations under those notes?

MS. DEITSCH-PEREZ: Object to the form. Object to the form.

A. Yeah, I – again, I want to – I want to avoid using the term "modification" or implying modification because, again, the notes are soft, and they really just talk about a rate and/or payment or amortizations, but they're soft notes. Something in the agreement that lays out the conditions for forgiveness aren't necessarily a modification of the note, and I'd like that to be –

Q. Let me –

A. – my testimony.

Q. Let me ask it this way: Under each

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of the demand notes, Highland as the payee had the unfetterred right to demand payment at any time; correct? Did you understand that?

MS. DEITSCH-PEREZ: At the time that the notes were first signed?

MR. MORRIS: Yes, ma'am.

A. Yeah. I mean, at the -- at the time that they were first put in place, but by the time the demand was made, they had already been subject to the conditions present or the conditions for forgiveness.

Q. Okay. So this is exactly what I'm trying to get at. At the time the notes were signed, Highland had the right to make demand for payment at any time; correct?

A. Yes.

Q. And when you entered into the oral agreements with the Dugaboy trustee, Highland's right to make a demand -- pick your word, modified, altered, amended, changed -- it was -- your oral agreement had an impact on Highland's rights under the promissory notes; correct?

MS. DEITSCH-PEREZ: Object to form

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of the question.

Q. You can answer.

A. The conditions subsequent -- the condition precedent -- precedence for forgiveness changed the ability for the demand notes to be demanded.

Q. Okay. And -- and each of the oral agreements that you entered into with the Dugaboy trustee was related to the loans that were reflected in the promissory notes; correct?

A. Well, it was related to the promissory notes themselves.

Q. Correct. And the promissory notes reflect notes that were made from the payee to the maker; correct?

A. Yeah. Most of them were roll-ups from prior.

Q. No. Those are the term notes. I'm only talking about the demand notes.

A. Okay.

Q. Okay. So with respect to the demand notes, the oral agreements that you entered into with the Dugaboy trustee related to the

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loans that were the subject of the promissory notes; correct?

A. Yeah, I -- I -- I am just not understanding the nuance enough to answer that question.

Q. Did the oral agreements relate to the loans that were the subject of the promissory notes?

A. The oral agreements affected the term loans and the demand notes.

Q. Okay.

A. Does that answer your question?

Q. And so -- and so is it fair to say that the oral agreements related to -- to the -- to the -- to the loans that were the subject of the notes?

A. I don't know.

Q. Okay.

A. I'm not -- I'm not sure what you are asking, but I don't know the answer.

Q. Okay. It is your --

MS. DEITSCH-PEREZ: John, just how -- I just think the witness is lagging a little. So how much longer do you think

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you have?

MR. MORRIS: Oh, I've got probably four hours, so I don't expect to finish today. If Mr. Dondero -- if Mr. Dondero wants to stop --

Q. Are you unable to continue right now, Mr. Dondero?

A. Well, if we have four more hours, I would rather do it a day next -- next week, one afternoon.

MR. MORRIS: Okay. Can we check our calendars before we go off the record?

We have a deposition on Tuesday. I'm not available on Monday. I can make myself free on Wednesday, Thursday, or Friday. And I think that we should expect, you know, a substantial period of time, perhaps as long as a full day.

I mean, with all due respect --

MS. DEITSCH-PEREZ: How do you have a full day? You have already gone -- you have already gone more than half a day.

MR. MORRIS: Yeah. And just -- just to be clear -- and I'm happy, you know,

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to -- to discuss this with you offline, but I didn't decide that Mr. Dondero would appear in his personal capacity and on behalf of three separate 30(b)(6) witnesses.

If you had given me a different witness for each, I would have a total of 28 hours. I don't expect to use anything remotely close to that time, but I am examining four witnesses here and I would -- I would appreciate --

MS. DEITSCH-PEREZ: But we also --

MR. MORRIS: I would appreciate it. And, look, you can stop me at any time. If I haven't finished asking the questions that I believe I'm entitled to, I will, you know, take it to the judge. I'm just putting you on notice. I have -- I'm on page 27 of a 57-page outline, so...

MS. DEITSCH-PEREZ: Oh, geez.

MR. MORRIS: Yeah, so I do have a fair amount more to cover. Okay?

MS. DEITSCH-PEREZ: All right.

MR. MORRIS: So Wednesday, Thursday,

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or Friday, Mr. Dondero, I will make myself available at your convenience.

THE WITNESS: I have all day board meetings on Wednesday.

MR. MORRIS: Okay.

THE WITNESS: I could do Thursday afternoon or I can do Friday afternoon. Hold on.

MS. DEITSCH-PEREZ: Let me put this on mute and we will look at our calendars.

MR. MORRIS: Thank you.

VIDEOGRAPHER: Do you want to stay on the record?

MR. MORRIS: Yes, please.

THE WITNESS: Hello. All right. I can do Thursday afternoon for four hours. And if we need more time than that we can either do Friday afternoon or sometime the -- the week after that, but I have -- I have got --

MR. MORRIS: Thank you very much. What time on Thursday works for you, sir?

THE WITNESS: How about 1:00 o'clock

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my time?

MR. MORRIS: Okay. I appreciate it. Thank you very much. 1:00 o'clock Central, it is, next Thursday for the continuation of this.

And hopefully I will finish that day, you know, if we can go without a lot of breaks and the rest of it. Hopefully I can finish that day. My intention is to do that. Okay?

THE WITNESS: Perfect. Thank you.

MS. DEITSCH-PEREZ: Can -- can I get the rough?

COURT REPORTER: Yes. Yes.

MR. MORRIS: All right. We can go off the record.

MS. DEITSCH-PEREZ: Thank you.

COURT REPORTER: Thank you.

VIDEOGRAPHER: Off the record, 3:53.

(Deposition adjourned at 3:53 p.m.)

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_____

JAMES DONDERO

Subscribed and sworn to before me this day of 2021.

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C E R T I F I C A T E

I, SUSAN S. KLINGER, a certified shorthand reporter within and for the State of Texas, do hereby certify:

That JAMES DONDERO, the witness whose deposition is hereinbefore set forth, was duly sworn by me and that such deposition is a true record of the testimony given by such witness.

I further certify that I am not related to any of the parties to this action by blood or marriage; and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 29th of October, 2021.

_____

Susan S. Klinger, RMR-CRR, CSR

Texas CSR# 6531

DONDERO - 10/29/21

NAME OF CASE: In re: Highland Capital

DATE OF DEPOSITION: October 29, 2021

NAME OF WITNESS: James Dondero

Reason Codes:

1. To clarify the record.
2. To conform to the facts.
3. To correct transcription errors.

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EXHIBIT 99

1 IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
2 DALLAS DIVISION

3
In re: :
4 : Chapter 11
: Case No.
5 HIGHLAND CAPITAL MANAGEMENT, : 19-34054-sgj11
L.P. :
6 Debtor. :
---
7 :
HIGHLAND CAPITAL MANAGEMENT, :
8 L.P. :
:
9 Plaintiff, :
:
10 vs. : Adversary
: Proceeding No.
11 NEXPOINT ADVISORS, L.P., : 21-03005-sgj
JAMES DONDERO, NANCY DONDERO,:
12 AND THE DUGABOY INVESTMENT :
TRUST, :
13 :
Defendants. :
14 ---

15

16

17

18 REMOTE VIDEO DEPOSITION OF JAMES DONDERO

19 VOLUME III

20 Thursday, November 4, 2021

21

22

23

24

25 JOB NO. 202288

November 4, 2021
1:17 p.m. CDT

Remote video deposition of JAMES DONDERO taken in the above-entitled matter before Suzanne J. Stotz, a Certified Shorthand Reporter, Certified Realtime Reporter, Registered Professional Reporter, and Notary Public of the State of Texas, on Thursday, November 4, 2021, commencing at 1:17 p.m. CDT.

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(Via Videoconference)
LA ASIA CANTY, Legal Assistant
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(Via Videoconference)
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Exhibit 53	E-mail correspondence, Bates stamped D-CNL003768 through D-CNL003770	95
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E X H I B I T S (Continued)

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Exhibit 34	Highland Capital Management, L.P., Consolidated Financial Statements and Supplemental Information, dated December 31, 2018, Bates stamped D-CNL000212 through D-CNL000257	123
Exhibit 59	Memorandum, dated October 23, 2020, Bates stamped HCMFAS 000025 through HCMFAS 000031	130
Exhibit 24	Defendant James Dondero's Objections and Responses to Plaintiff's Requests for Admission, Interrogatories, and Requests for Production	163
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(Exhibits attached to transcript.)

JAMES DONDERO

THE VIDEOGRAPHER: Good afternoon. My name is Jacob Arvold. I'm a certified legal videographer in association with TSG Reporting, Inc.

Due to the severity of COVID-19 and following the practice of social distancing, I will not be in the same room with the witness; instead, I will record this video deposition remotely.

The reporter, Suzanne Stotz, also will not be in the same room and will swear the witness remotely.

Do all parties stipulate to the validity of video recording and remote swearing and that it will be admissible in the courtroom as if it had been taken following Rule 30 of the Federal Rules of Civil Procedures and the state's rules where this case is pending?

MR. MORRIS: Yes.

If anybody objects to that, please speak up.

Nobody has spoken up. So everybody is deemed to have accepted that.

JAMES DONDERO

THE VIDEOGRAPHER: Thank you.

This is the start of Media Number 1, Volume II [sic] of the video-recorded deposition of James Dondero in the matter of In Re: Highland Capital Management, L.P., in the United States Bankruptcy Court for the Northern District of Texas.

This deposition is being held remotely on November 4, 2021, at approximately 1:17 p.m.

Counsel, please introduce yourselves.

MR. MORRIS: Everybody is -- is on here. I don't -- we can't take the time to do that. I'm familiar with everybody on here. Everybody's appeared in this action before, and I'd like to proceed.

THE VIDEOGRAPHER: All right. The appearances will be on the stenographic record.

Will the court reporter please reswear the witness.

THE COURT REPORTER: Could you raise your hand.

JAMES DONDERO

THE WITNESS: (Complies with request.)

J A M E S D O N D E R O,

having first been duly sworn, was examined and testified as follows:

MS. DEITSCH-PEREZ: I only have one questions. Who's Robert Loigman?

MR. LOIGMAN: I already stated for the record. I'm with Quinn Emanuel. I'm Debbie Newman's partner.

MS. DEITSCH-PEREZ: Okay. Thank you.

MR. MORRIS: Can we please put up on the screen the document that's been marked Exhibit 31.

MS. CANTY: (Complies with request.)

EXAMINATION

BY MR. MORRIS:

Q. Mr. Dondero, do you understand that this is a continuation of your deposition from Friday?

A. Yes.

Q. Have you spoken with anybody about your testimony since we concluded the

JAMES DONDERO

deposition on Friday?

A. No.

Q. Nobody in the world?

A. Just my attorney.

Q. And did you speak with your attorney about the substance of the deposition on Friday? Just --

MS. DEITSCH-PEREZ: I'm going to direct -- I'm going to direct him not to answer.

BY MR. MORRIS:

Q. Okay. I'm just asking you a yes-or-no question. I'm not asking for the substance of any communications.

MS. DEITSCH-PEREZ: Well, you're -- one, I'd have to talk to him to see what he thinks "substance" means.

And to the extent that's substantive, you're actually getting at the content potentially of a discussion. So I'm going to direct him not to answer.

BY MR. MORRIS:

Q. Are you going to follow your counsel's advice?

JAMES DONDERO

A. Yes.

Q. How much time did you spend speaking with your attorney since the conclusion of the last deposition?

A. 30 minutes, 40 minutes.

Q. Are you aware that Alan Johnson testified in this case the other day?

A. I don't know who Alan Johnson is. Uh, no.

Q. Okay. Is it fair to say that you have no knowledge of Mr. Johnson's testimony?

A. I have no knowledge of Mr. Johnson's testimony.

Q. Are you aware that an expert was examined by me earlier in the week in connection with this case?

A. I'm aware there's an expert. I'm not -- I'm not aware that you've examined, deposed, or whatever you did with him.

Q. Okay. When did you speak with your counsel for 30 minutes about -- following last Friday's examination?

A. About 40 minutes ago.

Q. Okay.

JAMES DONDERO

MR. MORRIS: Can we go to paragraph 82 of this document --

Q. -- Mr. Dondero, do you see that this is your answer to the Plaintiff's Amended Complaint.

A. Yes.

Q. And we looked at this the other day; do you remember that?

A. Yes.

MR. MORRIS: Can we can go to page-- paragraph 82, please.

MS. CANTY: (Complies with request.)

BY MR. MORRIS:

Q. And I just want to table set to make sure we're on the same page.

Paragraph 82 describes the agreements that you entered into with Dugaboy consuming the forgiveness of certain Promissory Notes subject to conditions subsequent.

Is that a fair overarching overview of the nature of the agreements?

A. Yes.

Q. Okay. And for the rest of the deposition today, when I use the phrase

JAMES DONDERO

"agreements," I'm going to mean the agreements that are referred to in paragraph 82; is that fair?

A. Yes, generally. If I have any questions, I'll -- I'll ask.

Q. Thank you very much.

The agreements covered each of the notes that are the subject of the lawsuits that Highland commenced against you, HCRE Services, and NexPoint; is that right?

A. The -- yes.

Q. What are you looking at?

A. Just this note sheet that covers all the notes.

Q. Oh.

MR. MORRIS: Deborah, I would demand that that sheet be produced immediately.

MS. DEITSCH-PEREZ: Okay.

MR. MORRIS: Okay. And I would ask him to put it away.

MS. DEITSCH-PEREZ: No. He's a 30(b)(6) witness. He's entitled to have a list of the notes. He sure he is.

MR. MORRIS: I'm telling you now --

JAMES DONDERO

MS. DEITSCH-PEREZ: I'm sorry to say to you.

MR. MORRIS: I object. That is -- I have never in my life seen a witness --

MS. DEITSCH-PEREZ: I have had 30(b)(6) witnesses with whole notebooks of information.

MR. MORRIS: Okay. So let's just make sure the record is clear.

BY MR. MORRIS:

Q. Please describe for me what's on that page.

A. It's a listing of the Notes payable to Highland, what their original term and amount was, what the term is, and what the loan date was.

Q. Okay. I'm going to ask the --

MS. DEITSCH-PEREZ: No. I'm going to take a picture, and I'm going to send it to you, okay?

MR. MORRIS: Okay. And what we're going to do right now is ask him to put it away, and I'm going to ask him questions solely in his capacity as an individual,

JAMES DONDERO

okay?

Please put it away.

THE WITNESS: Isn't that what this deposition is, right? This deposition --

MS. DEITSCH-PEREZ: Well, this deposition is both.

We're going to take a break for a second. Let me think about that, but I'll --

MR. MORRIS: I object. I really object. I really object. I'm glad that this is all on the record. I object.

My request is that he put it away and answer questions in his capacity as an individual.

I don't know why we need to take a break.

MS. DEITSCH-PEREZ: Well, because I'm going to go take a picture of it and send it to you.

MR. MORRIS: I don't want you to do that, though.

MS. DEITSCH-PEREZ: Why don't you want -- okay.

JAMES DONDERO

MR. MORRIS: We can do that -- we can do that when I ask him questions as a 30(b)(6) witness.

By the way, it's still inappropriate, but --

MS. DEITSCH-PEREZ: No, it's not John.

MR. MORRIS: Okay.

MS. DEITSCH-PEREZ: It's just not. You can say it as much as you want. It doesn't make it inappropriate.

And I am going to -- I want to think for a minute about whether or not your request to have him not have it in front of him in his individual capacity is appropriate. And I'm not going to make a snap decision. I'm going to talk to my colleagues, and we'll be back on the record in a couple of minutes.

MR. MORRIS: I object, but I can't stop you.

MS. DEITSCH-PEREZ: Okay.

THE VIDEOGRAPHER: Would you like to go off the video record, Counsel?

JAMES DONDERO
MR. MORRIS: No, no, not at all.
THE VIDEOGRAPHER: Okay.
MR. MORRIS: And just keep the --
keep the record going.
THE VIDEOGRAPHER: Yep, will do.
MR. MORRIS: And we're not off the
record?
THE VIDEOGRAPHER: Correct.
THE COURT REPORTER: Correct.
MS. DEITSCH-PEREZ: Okay. We're
back on the record.
THE VIDEOGRAPHER: We remained on
the record.
MS. DEITSCH-PEREZ: Okay. And this
part -- this -- at this point Mr. Morris
only taking Mr. Dondero's deposition in his
personal capacity, not as a 30(b)(6)
witness.
If you want to resume taking his
deposition as a 30(b)(6) witness, let me
know; and I will tell him to get his list
of notes.
MR. MORRIS: So he doesn't have it
in front of him right now?

JAMES DONDERO
THE WITNESS: Correct.
MS. DEITSCH-PEREZ: Correct, he does
not.
MR. MORRIS: Okay. I'm going to
proceed; and I would ask, Deborah, that
somebody from your office send that to me
as soon as possible. I'm sure it's on an
e-mail somewhere and all they have to do is
hit send.
BY MR. MORRIS:
Q. Mr. Dondero, let's continue.
So you don't have that document in
front of you right now?
A. Correct.
Q. Okay. How many agreements did you
enter into with Dugaboy?
MS. DEITSCH-PEREZ: You mean with
the Dugaboy trustee?
We had an agreement that you were
going to refer to these as the agreements
with the Dugaboy trustee. So let's stay
consistent.
BY MR. MORRIS:
Q. Mr. Dondero, how many agreements did

JAMES DONDERO
you enter into with Dugaboy trustee concerning
Promissory Notes?
A. Is your question -- is your
questions how many Notes were entered into?
Q. No. How many separate agreements
did you enter into?
A. The 2017, '18, and '19 agreements.
Q. Okay. I didn't ask you what
agreements. I asked how many agreements you
entered into with the Dugaboy trustee.
MS. DEITSCH-PEREZ: Asked and
answered.
THE WITNESS: Three major ones.
BY MR. MORRIS:
Q. Are there any minor ones?
A. Not that I can recall right now.
Q. Okay. When did you enter into your
first major agreement with the Dugaboy trustee?
A. At the end of '17.
Q. Meaning December 2017 or early 2018?
A. Yes.
Q. What Promissory Notes are the
subject of the first major agreement that you
entered into with the Dugaboy trust- -- with

JAMES DONDERO
the Dugaboy trustee?
A. I don't remember which ones
specifically. I remember the amount was more
substantial than subsequent years.
Q. Do you know how many Promissory
Notes were the subject of your first major
agreement with the Dugaboy trustee?
A. No.
Q. Can you identify the maker of any
Note that's subject to the first major
agreement with the Dugaboy trustee?
A. Not without my list or details.
Q. Can you identify the principal
amount of any Promissory Note that was subject
to the first agreement that you entered into
with the Dugaboy trustee?
A. I know they were -- I know the gross
amount. I know they were some of the term
loans, but I don't know the specifics.
Q. Can you tell me the aggregate
amount -- withdrawn.
Can you tell me the aggregate
principal amount of the Notes that are the
subject of your first agreement with the

JAMES DONDERO

Dugaboy trustee?

A. I – I believe it was 30 – 30 some odd million, 30 – I can't remember the principal and interest, but it's only 30 – 34, 35, 36. It was in that range.

Q. Did your first agreement with the – withdrawn.

Can you identify the date of any of the Promissory Notes that are the subject of your first agreement with the Dugaboy trustee?

A. No.

Q. Can you tell me the year that any of the Promissory Notes that are the subject of the – withdrawn.

Can you tell me the year that any of the Promissory Notes were entered into that are the subject of your first agreement with the Dugaboy trustee?

MS. DEITSCH-PEREZ: Asked and answered.

THE WITNESS: No, not off the top of my head.

BY MR. MORRIS:

Q. When did you – did – when did you

JAMES DONDERO

enter into the second agreement with the Dugaboy trustee?

Was that in December of 2018 or early 2019?

A. Yes.

Q. How many Notes are subject to your second agreement with the Dugaboy trustee?

A. Less than the first, but I don't know how many.

Q. You don't know the number of Notes that are the subject of your second agreement with the Dugaboy trustee; is that right?

A. Correct.

Q. Can you identify the maker of any Notes that are the subject of your second agreement with the Dugaboy trustee?

A. No, I – I – no, I don't remember.

Q. Okay. So as you sit here right now, you can't identify the maker of any of the Notes that are the subject of the second agreement with the Dugaboy trustee; is that right?

A. Well, it would be one of the three parties or four parties here, me or NexPoint or

JAMES DONDERO

whatever; but I don't remember –

Q. Okay.

A. – off the top of my head.

Q. Off the top of your head, can you tell me the original principal amount of any Note that's subject to your second agreement with the Dugaboy trustee?

A. No. I just – no.

Q. Can you identify the date on which any of the Promissory Notes were executed that were the subject of your second agreement with the Dugaboy trustee?

A. No.

Q. Can you tell me the aggregate principal amount of the Notes that are the subject of your second agreement with the Dugaboy trustee?

A. Yes. A fraction of the prior year. Less than ten million.

Q. Can you be anymore precise than that?

A. Approximately ten million, I think. Just under.

Q. Okay. Did you enter into your third

JAMES DONDERO

agreement with the Dugaboy trustee in December 2019 or early 2020?

A. Yes.

Q. That's after the petition date; do I have that right?

A. I – yes.

Q. Did you do it before or after January 9, 2020?

A. Before, I believe.

Q. So while you were still in control of Highland but after the petition date, you entered into your third agreement with the Dugaboy trustee concerning Promissory Notes.

Do I have that right?

A. Yes.

Q. Did you ever inform the bankruptcy court of this agreement?

A. No.

Q. Did you ever inform the independent directors of this agreement that you entered into after the petition date?

A. No.

Q. Can you tell me which notes are the subject of your third agreement with the

JAMES DONDERO

Dugaboy trustee?

A. No.

Q. Can you identify the maker on any Note that's the subject of your agreement that you entered into after the petition date with the Dugaboy trustee?

A. Not off the top of my head.

MS. DEITSCH-PEREZ: I mean, John, if you would let him look at his list, he could tell you.

But if you insist on making this a memory test of 18 or so different things or however many there are, 13, 14, then this is – it's your deposition. But if you want more specific details, he could look at the list.

MR. MORRIS: Okay. That's not even an objection let alone a speaking objection.

It is my deposition –

MS. DEITSCH-PEREZ: No.

MR. MORRIS: It is my deposition, and I would appreciate your not making gratuitous comments.

JAMES DONDERO

BY MR. MORRIS:

Q. Mr. Dondero, can you tell me the aggregate value of the Notes that are the subject of the third agreement that you entered into with the Dugaboy trustee after the petition date?

A. I believe it was about a million bucks.

Q. And who were the makers of the Notes that are the subject of the agreement with the Dugaboy trustee that you entered into after the petition date?

A. I don't know.

Q. Without the sheet that you looked at earlier, you have no ability to tell me which notes were the subject of which agreement that you entered into with the Dugaboy trustee, correct?

MS. DEITSCH-PEREZ: Object to the form.

THE WITNESS: If I'm not certain off the top of my head I can remember accurately, I don't want to speculate.

JAMES DONDERO

BY MR. MORRIS:

Q. All right. I don't want you to speculate either. So I'm going to ask you just broad follow-up questions.

Can you identify any Promissory Note that is the subject of any specific agreement that you ever entered into with the Dugaboy trustee without looking at the list?

MS. DEITSCH-PEREZ: Object to the form. He's already done that to some degree.

THE WITNESS: I believe it covered virtually all of them. So I don't remember which ones specifically in each year.

Generally, it was, I believe, the ones incurred in that year; but I don't remember which entities. But again, the ultimate result being that the term loans, the demand notes, the things incurred, the things outstanding were part of the agreement.

BY MR. MORRIS:

Q. Sir, you never wrote down a list of the notes that are the subject of the

JAMES DONDERO

agreements, correct?

A. Correct.

Q. You never asked anybody to make a list of the notes that were the subject of each of the agreements, correct?

A. Correct.

Q. You're not aware of any document that was created prior to the commencement of these lawsuits that identifies the Notes that are the subject of the agreements, correct?

A. Correct.

Q. Other than the Promissory Notes that are the subject of this lawsuit – withdrawn.

Other than the Promissory Notes that are the subject of these lawsuits, are you aware of any other doc- – Promissory Notes that are the subject of an agreement with the Dugaboy trustee?

A. I believe there are from time to time, yes. But I – I don't know off the top of my head.

Q. Can you identify the maker of any Promissory Note that is the subject of any agreement with the Dugaboy trustee other than

JAMES DONDERO

the Promissory Notes that are the subject of the pending lawsuits?

A. Not specifically, but I believe there are.

Q. Okay. Can you identify the principal amount of any Promissory Note that is the subject of an agreement with the Dugaboy trustee that is not part of the pending lawsuits?

A. Not specifically.

Q. Can you tell me the year in which any Promissory Note was ever executed that is the subject of any agreement with the Dugaboy trustee other than the Promissory Notes that are the subject of the pending lawsuits?

A. I believe there were several, and I believe there were numerous ones over the years.

Q. Okay. And -- and are those Promissory Notes subject to one of the three agreements that we've identified or subject to some other agreement with the Dugaboy trustee?

A. Well, they weren't to these related entities. I -- I don't know what the

JAMES DONDERO

agreements were specifically subject to.

Q. Are you the person who entered into the agreement with the Dugaboy trustee concerning the notes that you are describing right now?

A. Yes, I guess.

Q. As the person who entered into the agreement with the Dugaboy trustee concerning Notes that are not the subject of the pending litigation, can you identify anything about those Notes, whether it's the maker, the date, the principal amount, anything at all?

A. Not off the top of my head.

Q. Okay. What would -- what would you have to look at to know? The chart or something else?

A. No, not this -- not this chart. This only has to do with what we thought this deposition was going to be about.

It would be the financials of Dugaboy; and then from there, the detail regarding any Notes that it has.

Q. Did you enter into an agreement with the Dugaboy trustee to forgive a Promissory

JAMES DONDERO

Note where Dugaboy is the maker and Highland is the payee?

A. Dugaboy -- can you repeat that question one more time?

Q. Sure. Did you enter into an agreement with the Dugaboy trustee relating to any Promissory Note where Dugaboy is the maker?

A. No, I don't believe so.

Q. Okay. So you don't have any recollection of ever entering into an agreement with the Dugaboy trustee concerning the potential forgiveness of any Note that was made by Dugaboy, correct?

A. I -- I do not believe so.

Q. Okay. And is there a -- is there a document that we could look at that would refresh your recollection?

A. Not beyond the financials of Dugaboy and any relevant Note detail.

Q. And would -- is it -- is it your testimony that an agreement with Dugaboy would be reflected in the Dugaboy financial statements?

A. No, but the Notes would be.

JAMES DONDERO

Q. Well, the Dugaboy Notes are reflected in Highland's financial statements.

Do you want me to get that?

A. No. I didn't think that was -- I didn't think that was the question you were asking me.

Q. I apologize. Maybe it was my fault.

What would we have to look at in order to refresh your recollection as to whether or not you entered into an agreement with the Dugaboy trustee concerning the potential forgiveness of any Note made by Dugaboy?

A. Other than the ones we're talking about today, right?

Q. We're not talking about -- there's no Promissory Note where Dugaboy is the maker that is the subject of any of the pending lawsuits, correct?

A. Correct.

Q. So I'm asking you to identify if you can any Promissory Note that is the subject of any agreement you have ever entered into with the Dugaboy trustee that is not the subject of

JAMES DONDERO
one of the pending lawsuits.
Do you understand that that's what I'm trying to get at?
MS. DEITSCH-PEREZ: Asked and answered.
THE WITNESS: Yes.
BY MR. MORRIS:
Q. Okay. Can you identify any such Promissory Note?
A. No, not specifically as I sit here today.
Q. Okay. Other than the promissory -- withdrawn.
Are you familiar with the term "majority interest" as used in the Highland Limited Partnership Agreement?
A. Yes.
Q. Okay. Other than the Promissory Notes that are the subject of the pending lawsuits, are you aware of any other Promissory Notes that are the subject of any agreement with the majority interest?
MS. DEITSCH-PEREZ: Object to the form. Asked and answered.

JAMES DONDERO
THE WITNESS: The majority interest is controlled by the 75 percent. It's controlled by Dugaboy. But the majority interest isn't an entity in and of itself, right?
BY MR. MORRIS:
Q. Okay. Has Dugaboy held the majority interest since the time that Highland was created?
A. No.
Q. Okay. So -- so then I'm going to ask my question again.
Are you aware of any agreement concerning any Promissory Note that is the subject -- withdrawn.
Are you aware of any agreement with the majority interest that concerns any Promissory Note where Highland is the payee other than the Notes that are the subject of the pending lawsuit?
MS. DEITSCH-PEREZ: Asked and answered.
THE WITNESS: Not specifically as I sit here today, but I do believe there have

JAMES DONDERO
been numerous notes other than to these entities today where Dugaboy was the maker or recipient or whatever.
BY MR. MORRIS:
Q. So you do believe that Dugaboy was the maker of a Promissory Note that's subject to an agreement with the majority interest?
MS. DEITSCH-PEREZ: Object to the form.
THE WITNESS: What I'm saying is I believe Dugaboy had other -- made other Notes and received other Notes from other entities other than Highland.
BY MR. MORRIS:
Q. Does that have anything to do with Highland?
Maybe I wasn't clear. I'm using the phrase "majority interest" as that phrase -- I thought we had -- I thought we had an understanding -- as that phrase is used in the Highland Limited Partnership Agreement, right?
A. I thought it was a definition term in the Highland, L.P.
Q. It is, and I just -- I'd like to

JAMES DONDERO
move on if I can, but I just want some clarity here.
Is there any agreement between Dugaboy and the majority interest concerning any Promissory Note where Dugaboy is the maker?
MS. DEITSCH-PEREZ: Object to the form.
THE WITNESS: I -- I don't know what you're getting at. I have a tried to answer it the best I can several different ways.
But try it one more time, and I'll try and answer it just specifically yes or no.
BY MR. MORRIS:
Q. Okay. Is Dugaboy the maker on any Promissory Note where Highland is the payee?
A. I don't believe so at this point.
Q. Was Dugaboy ever the maker on a Note where Highland was the payee to the best of your knowledge?
A. I don't -- I just don't know what the actual accounting was or could have or should have been. But if it prepays a Note,

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instead of prepaying a Note, it could have left it in an existing Note outstanding and then issued a separate Note, right, instead of prepaying, right?

So I don't know in the -- in the pas past or how exactly they handled prepays consistently over time. But at the moment, I don't believe there's a loan going from Dugaboy to Highland.

But I do believe over the years, there were numerous loans from Dugaboy to other entities other than the ones we're talking about today.

MS. DEITSCH-PEREZ: Okay. John, we've gone way far afield of the topics for this deposition or anything that you ought to be even asking this individual witness about given what these litigations are. Could we move on, please?

MR. MORRIS: No. Other than --

MS. DEITSCH-PEREZ: You're spending time on things other than the --

MR. MORRIS: Please stop talking.

MS. DEITSCH-PEREZ: -- action.

JAMES DONDERO

MR. MORRIS: Please stop talking.

BY MR. MORRIS:

Q. Other than the Promissory Notes that are the subject of the lawsuits, are you aware of any other Promissory Notes that are the subject of any agreement that the Dugaboy trustee ever entered into as a representative of the majority of Class A shareholders?

MS. DEITSCH-PEREZ: Asked and answered. I think we've answered after the sixth time.

THE WITNESS: Not as I sit here today.

BY MR. MORRIS:

Q. In paragraph 82 in about the fifth line down, there's a statement that, quote, "Nancy Dondero is representative for a majority of the Class A holders of plaintiff, agree that plaintiff would forgive the Notes."

Do you see that?

A. Yes.

Q. The word "plaintiff" as used in your answer refers to Highland Capital Management, L.P., correct?

JAMES DONDERO

A. I -- no -- or wait. Hold on a second.

Yes. I guess, yes.

Q. Okay. At the time you entered into the agreements, did you understand that Dugaboy, as a majority -- as a representative of a majority of the Class A shareholders of the plaintiff was the entity that entered into the agreement on behalf of Highland?

A. Yes.

Q. And your sister Nancy is the trustee of Dugaboy today, correct?

A. Yes.

Q. And Nancy was the trustee of Dugaboy at the time you entered into each of the agreements, correct?

A. Yes.

Q. And you knew that at the time you entered each of the agreements, correct?

A. Yes.

Q. You knew she was acting on behalf of Dugaboy, correct?

A. Yes.

Q. Your understanding at that time that

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you entered into each of the agreements with the Dugaboy trustee was that Dugaboy held the majority of Highland's Class A interest, correct?

A. Yes.

Q. And that's exactly why you contacted Nancy to discuss the topics that ultimately led to the agreements, correct?

A. Yes.

Q. You specifically called Nancy because you wanted her to cause Dugaboy to enter into the agreements with you on behalf of Highland, correct?

A. Yes.

Q. And just as you wanted, Nancy, in fact, caused Dugaboy, as a representative of a majority of the Class A shareholders of plaintiff, to enter into each of the agreements, correct?

A. Yes.

Q. Would you agree with me that the Promissory Notes that are the subject of the agreements were the debtor's property?

A. I think I've stated numerous times

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due to them as that they would ultimately be compensation; but to be a bona fide Note and to have bona fide deferral at the time that they were issued, they were the debtor's property. And I guess they remained such until satisfied or until the condition as present -- the condition subsequent is either triggered or impossible to be triggered.

Q. Okay. Is it fair to say that the Promissory Notes that are the subject of the agreements were assets of the debtor at the time you entered into the agreements?

A. Yes.

Q. At the time you entered into the agreements, you understood that Dugaboy was exercising control over the debtor's property, correct?

MS. DEITSCH-PEREZ: Object to the form.

MR. MORRIS: Withdrawn.

BY MR. MORRIS:

Q. At the time you entered into the agreements, you understood that the Dugaboy trustee was going to exercise control over the

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debtor's property, correct?

MS. DEITSCH-PEREZ: Object. Object to the form.

THE WITNESS: Exercise control? I understood the trustee had the ability to grant the, whatever you want to call them, conditions subsequent.

BY MR. MORRIS:

Q. On that --

A. Yes.

Q. And that was -- by entering into the agreement, would you agree with me, that the Dugaboy trustee exercised control over the Promissory Notes?

MS. DEITSCH-PEREZ: Object to the form.

THE WITNESS: They -- The trustee exercised the rights given to it as a majority of Class A holders.

BY MR. MORRIS:

Q. Okay. And is it your understanding that as part of the right, it altered the characteristics of the Promissory Notes?

MS. DEITSCH-PEREZ: Object to the

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form.

THE WITNESS: I just want to -- I believe my testimony, I granted the conditions subsequent is my interpretation.

BY MR. MORRIS:

Q. Right. And so that's fine. But that's -- that's the thing that happened, but I'm just asking you what the impact of that was.

When the Dugaboy trustee entered into the agreement, the result was that the terms and conditions of the Promissory Note were altered, correct?

MS. DEITSCH-PEREZ: Object to the form.

THE WITNESS: I don't want to -- I want to say I don't know to that next week.

BY MR. MORRIS:

Q. You can't -- okay. You can't tell me if your agreement with the Dugaboy trustee altered the terms and conditions of the Promissory Notes that were subject to the agreement; you can't tell me that?

MS. DEITSCH-PEREZ: Object to the

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form.

THE WITNESS: Yeah. I -- again, it sounds like you're trying to take me towards legal terms of changing terms or modification in a Note or whatever; and I -- I'm not -- I don't have an opinion or the expert to comment on that.

I can just say I knew she had the ability to create conditions subsequent.

BY MR. MORRIS:

Q. Okay. So let's take, for example, the Notes that you signed.

Those were demand notes, right?

A. Yes.

Q. Okay. And after you entered into the agreement with the Dugaboy trustee, instead of it being a demand note, it was now a demand note subject to conditions subsequent, correct?

MS. DEITSCH-PEREZ: Object to the form.

THE WITNESS: Yeah, that ultimately they couldn't be demanded until conditions subsequent were met or unable to be met.

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BY MR. MORRIS:
Q. Okay. So can you agree with me that that -- that that was a change in the term of the Note?
MS. DEITSCH-PEREZ: Object to the form.
THE WITNESS: Yeah. See, that's the part I don't want to comment on. I just want to say I don't know.
BY MR. MORRIS:
Q. Okay. Wasn't that the purpose of entering into the agreements was to change the terms of the each of the Promissory Notes? Wasn't that your intent?
MS. DEITSCH-PEREZ: Object to the form.
THE WITNESS: I'd say the intent was to find and make compensation appropriate for industry standards and Highland in particular.
BY MR. MORRIS:
Q. And did you believe that the Notes as originally drafted and signed by you or the representatives of the makers didn't take that

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into account?
A. I went through this already last time, but the Notes were intentionally loose and, I think, anticipated the ability to adjust the subsequent conditions or other things.
Q. Now, you told me that each of the agreements was entered into between December of one year or -- actually, withdrawn.
If we look at paragraph 82, it says that each of the agreements was made, quote, "sometime between the December of the year in which each note was made and February of the following year."
Do I have that right?
A. Yes.
Q. Can you identify with any greater specificity when you entered into the first agreement with the Dugaboy trustee referenced in paragraph 82?
A. No.
Q. It's sometime within that 90-day period; does that sound right to you?
A. I believe it was closer to the holidays around the turn of the year, but I

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don't have specific recollection.
Q. Is that answer the same for all three agreements or only for the first agreement?
A. That would be the same for all three.
Q. So then why -- why does paragraph 82 refer to sometime between December of the year in which each note was made and February of the following year if your best recollection is that it happened around the holidays?
A. I don't know.
Q. All right. But as you sit here right now, is it your testimony that you believe each of the agreements was signed -- was more likely signed in December rather than January or February?
MS. DEITSCH-PEREZ: Object to the form.
THE WITNESS: I think signed is a -- I'm not -- I'm not testifying that signed, I guess.
BY MR. MORRIS:
Q. I apologize. Maybe that was my

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mistake.
Is it your testimony that each -- that you entered each of the agreements with the Dugaboy trustee in December rather than January or February of the years indicated?
A. That's the best of my recollection, but there may have been one year that was towards the wider end of the interval. I can't remember with more specificity.
Q. Okay. Do you know of anything that memorialized the date on which you entered into any of the agreements?
A. No, other than -- no, other than -- no, other than, you know, other than travel schedule or phone logs or whatever.
Q. All right. During the discussion that led to the agreements, did you ever provide any information to Nancy or to Dugaboy concerning your compensation?
A. Just -- just verbal. I mean, she knew it was low, and she knew we had reinvested most everything we made back in the company over the years. And that was the -- that was, I think, understanding by all involved; and it

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should be obvious to anybody who's looked at the numbers even in hindsight.
MR. MORRIS: Okay. I move to strike.
BY MR. MORRIS:
Q. And please listen carefully to my question.
During the discussions that led to each of the agreements, did you ever provide any information to your sister or Dugaboy concerning your compensation?
MS. DEITSCH-PEREZ: Asked and answered.
THE WITNESS: Not specifically.
BY MR. MORRIS:
Q. Did you provide any general information to your sister or to Dugaboy prior to the entry of any of the three agreements that you entered into with the Dugaboy trustee?
A. I would repeat the answer that was struck two questions ago.
Q. That's the information that you gave to her?
A. Yeah. It was – again, it was

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verbal, and it was -- but an understanding but a clear and obvious understanding.
Q. I want to know exactly what information you gave to your sister and to Dugaboy before entering into any of the three agreements with the Dugaboy trustee?
A. Most of what I had made over the years was rolled back into the business to propel growth and initiatives. And that my actual compensation was very modest based on industry standards and relevant responsibilities at Highland.
Q. Did you tell her anything else? Withdrawn.
Did you tell your – Nancy or Dugaboy anything else beyond what you've now testified to?
A. You know, I think some of what I testified to earlier, that forgiveness of the Notes would be a modest increase in that compensation but still not be in the ZIP code of fair and appropriate compensation and that the value of the Notes in aggregate were de minimus relative to Highland and de minimis

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relative to Dugaboy.
Q. Did you tell her anything else?
A. Anything else would have fallen into the buckets I just described, but I can't remember specifically as I sit here today.
Q. Did you ever tell your sister or Dugaboy that your salary was less than a million dollars?
A. I –
MS. DEITSCH-PEREZ: I mean, just from Highland?
THE WITNESS: Repeat the question again for me, please.
BY MR. MORRIS:
Q. Did you ever tell your sister that your salary was less than a million dollars a year?
A. I know my sister was aware that it was very low, and it kind of decreased over time, and I think it was paid by different entities.
Whether it was a million or 2 million, I can't remember exactly what I would have told her; but it would have been in

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that ZIP code to paint the proper picture that the cash compensation for somebody in my role was well below industry standards.
Q. Do you recall anything else that you shared with your sister concerning your compensation that you haven't testified to?
A. Like I said, it would generally fall into those buckets as I sit here today.
Q. Did your sister or Dugaboy ask you any questions about your compensation before entering into the three agreements that you entered into with the Dugaboy trustee?
A. And, again, it would fall into the buckets I just described.
Q. Can you – can you recall any question that your sister or Dugaboy asked of you concerning your compensation before entering into the agreements?
MS. DEITSCH-PEREZ: Asked answered.
THE WITNESS: Again, I – it would fall into the buckets I just described.
BY MR. MORRIS:
Q. Did you provide any documents to your sister or to Dugaboy concerning your

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compensation before entering into the agreements?

A. No, not that I can recall.

Q. Did your sister or Dugaboy ask you for any documents before entering into -- into any of the agreements?

A. I do not -- I do not believe so.

Q. Do you recall that in the ordinary course of business, Highland prepared a document called a Compensation and Benefits Statement for each of its employees?

A. Yes.

Q. And was that prepared by the Human Resources Group?

A. Yes.

Q. And was Mark Collins the head of the Human Resources Group?

A. No.

Q. Who was the head of the Human Resources Group?

A. Brian Collins.

Q. I apologize to Mr. Collins. Thank you for the correction.

And Mr. Collins and his team were

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responsible for preparing the annual Compensation and Benefits Statements for Highland's employees, correct?

A. Yes.

Q. And did you instruct them to do that?

A. Not specifically.

Q. Okay.

A. They do it every year. They do it every year as a matter of course, so I guess no is the answer.

Q. Okay. So in the ordinary course of business, Mr. Collins and his team would prepare Compensation and Benefits Statements for each of Highland's employees on an annual basis, right?

A. Yes.

Q. Okay.

MR. MORRIS: Can we please put up Exhibit 68.

MS. CANTY: (Complies with request.)

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(Whereupon, Exhibit 68, James Dondero Compensation and Benefits Statement, Bates stamped D-CNL003585, marked for identification, as of this date.)

BY MR. MORRIS:

Q. Do you see the document that's been premarked as Exhibit 68 that's up on the screen, sir?

A. Yup.

Q. And does this appear to be the form of annual Compensation and Benefits Statement that Mr. Collins and his team prepared on an annual basis for Highland's employees?

A. This looks like the format, yes.

Q. Okay. And the Compensation and Benefits Statement was intended to set forth the types and the amounts of compensation each employee received each year, correct?

A. Yes, generally.

Q. Okay. Did you ever disclose any information on this page to Nancy or to Dugaboy?

A. Honestly, I don't think I've ever

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seen my award letters before.

Q. Okay. So you never -- so then it's a fair to say you never showed this letter to your sister or to Dugaboy, correct?

A. Correct.

Q. Okay. Did you ever disclose to Nancy or to Dugaboy the salary that's reflected on this document?

A. I can't remember specifically beyond what I've already testified.

Q. Did you ever describe for Nancy or for Dugaboy the 2016 deferred compensation award that's reflected on this document?

A. No. I -- by the way, I think that's only 20 percent vested a year. I think that's a gross amount. But no, I never -- I never discussed that with her.

Q. Okay. Do you see in the compensation award refers to 50,000 restricted stock units of NXRT relating to your 2016 performance?

A. Yes.

Q. What is NXRT?

A. That's the REIT that Highland used

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to own million shares of that series hold at 20 that now trade at 70.

Q. And is NexPoint REIT affiliated with NexPoint Advisors, L.P.?

A. Yes.

Q. And do you have an understanding of the nature of the relationship?

A. Yes.

Q. And what's -- what's your understanding of the nature of the relationship between NexPoint REIT and NexPoint Advisors, L.P.?

A. It's the external manager of the REIT.

Q. Okay. Did you ever tell Nancy or Dugaboy that you had received these restricted stock units in 2016?

A. No. But again, the vested amount would have probably been about $250,000 worth at that moment.

Q. And did it vest over a couple of years?

A. The first couple of years is vested over five years. I think now it vests over six

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or seven years. I don't remember whether the 2016 award was five years, six years, or seven years.

Q. Okay. We talked earlier about an expert that's been retained on your behalf. Do you remember that?

A. Yes.

Q. Do you recall if you or anybody acting on your behalf ever disclosed to that expert the restricted stock units reflected on this document?

MS. DEITSCH-PEREZ: Object to the form.

THE WITNESS: I don't know.

MR. MORRIS: Let's put up Exhibit 50, please.

MS. CANTY: (Complies with request.)

(Whereupon, Exhibit 50, James Dondero Compensation and Benefits Statement, Bates stamped D-CNL003587, marked for identification, as of this date.)

BY MR. MORRIS:

Q. Do you see this is your benefits

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statement for 2017?

A. Yes.

Q. Did you ever disclose any of the information on this page to Nancy or to Dugaboy?

A. No.

Q. Did you ever disclose to Nancy or to Dugaboy that your base salary in 2017 was. 2,500,024?

MS. DEITSCH-PEREZ: Object to the form.

THE WITNESS: Not specifically, no, other than the buckets we talked about earlier.

Like I said earlier, I'm not sure if I have ever seen these before. But I also -- until it's verified, I don't want to -- everybody to assume that the base salary came a hundred percent from Highland or if it was also from some other entity. Because for the purposes of this letter, Brian Collins wouldn't have -- we have numerous or several employees that are dual employees. And whether their base salary

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came from one or multiple entities, he wouldn't have differentiated in that line.

So I don't know whether that amount, that 2.5 million came from Highland or a combination of Highland/NexPoint or some other entities. I don't know.

BY MR. MORRIS:

Q. And who made the decision as to how to allocate the base salary?

A. I don't know. I -- I mean, I don't know how it was split. But my recollection of my Highland base salary is that it was diminishing over time.

Q. And -- and as the president of Highland and as the president of NexPoint, did you have any say as to how your salary was allocated between those two entities?

A. Not that I recall.

Q. Do you have any idea the basis on which your salary was allocated between those two entities?

A. No.

Q. Do you think -- do -- do you have any understanding that it was allocated based

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on the amount of time you spent working for each of those entities?
A. I have no idea.
Q. If your salary was $500,000 from Highland in 2017 and $2 million to NexPoint, can you -- can you think of any reason why it would be allocated in that way?
MS. DEITSCH-PEREZ: Object to the form.
THE WITNESS: Cash, cash availability. I -- I don't know.
BY MR. MORRIS:
Q. Okay. Did you devote your full time and attention to Highland Capital Management, L.P.?
A. I spread my time as appropriate across a variety of entities.
Q. Can you identify for me the entities that you spread your time across?
A. Highland, NexPoint, HCMFA, HCRE.
Q. How about Highland Management Services, Inc.?
A. Yes.
Q. Are there any others?

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A. Yes.
Q. Can you identify any other companies to which you devoted your time and attention?
A. Not off the top of my head. I'm willing to be refreshed. But over the years there's been multiple initiatives at Highland that have come and gone and private equity companies that have come and gone and other initiatives that have come and gone.
Q. Do you see the reference to the 65,772 restricted stock units of the NexPoint REIT there on this document?
A. Yes.
Q. And was that, to the best of your recollection, the award that you were granted in connection with your 2017 performance?
A. It would have been for -- it would have been the prior awards at -- it would have been for the prior years' awards at NFLP. And it would have been -- it would have been the same five- or seven-year vesting schedule.
MR. MORRIS: Now I'm looking at my phone, and I don't see, Deborah, any e-mail from your firm.

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MS. DEITSCH-PEREZ: Yeah. On a break, I'll take a picture of it and send it to you.
Do you want a break now?
MR. MORRIS: I really -- I really don't. And I don't know why I can't get an e-mail copy rather than a photograph. It's not going to be -- it's not going to be easy to read, and you know that?
MS. DEITSCH-PEREZ: It'll be perfectly fine. If you can't, let me know; and then I'll take the time to try and find it. But the fastest way to get it to you is to take a picture of it.
BY MR. MORRIS:
Q. Mr. Dondero, did you ever tell Nancy or Dugaboy that you had received the restricted stock units from the NexPoint REIT as reflected on this page?
A. You're -- you're saying the $1.55-million number that was really 200,000 vested or 300,000 vested?
Q. No. I'm not talking about the value. I'm just talking about the restricted

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units.
Did you ever tell them -- let's keep it -- let's keep it simple, and let's make it really broad.
Did you ever tell Nancy or Dugaboy that you received restricted stock units as part of your compensation?
A. I -- I don't remember.
Q. Okay. Did you ever -- because this will speed it up.
Did you ever tell your expert that you received restricted stock units as part of your compensation?
MS. DEITSCH-PEREZ: Object to the form.
THE WITNESS: I don't -- I don't remember.
BY MR. MORRIS:
Q. Did you ever direct anyone acting on your behalf to share with your expert that you had received restricted stock units as a form of compensation?
MS. DEITSCH-PEREZ: Object to the form.

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THE WITNESS: I not – I wasn't involved.

MR. MORRIS: All right. You know, what, Deborah, let's take a break; and why don't you send me that document.

It is now 3:28. Let's come back at 3:40 Eastern, and let's please be on time because I'd like to try to finish this today. Thank you.

THE VIDEOGRAPHER: Off the record at 2:28.

(Whereupon, a break was taken.)

THE VIDEOGRAPHER: We are back on the record. The time is 2:43.

MR. MORRIS: I received from counsel a photograph in text message form of the document that Mr. Dondero was referring to at the beginning of the deposition.

I'm going to ask for that production – for the production of that document with a Bates number by the end of the day, and I hope that could be accommodated.

MS. DEITSCH-PEREZ: I'm not sure – John, I'm not sure it will be by the end of

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the day because I don't know when the people who do the Bates stamping leave. But if it's not today, it will be tomorrow.

MR. MORRIS: All right. It's 2:44 in the afternoon your time. I hope that your firm has the capability of Bates stamping and producing one page before the close of business.

MS. DEITSCH-PEREZ: Okay. But I'm not going to get – John, what difference does it make whether it's tonight or tomorrow?

MR. MORRIS: You know what, I really want to use it in the deposition now, but I can't do that because – because you're not able – because you – because apparently, you can't even promise to do it by the end of the day.

BY MR. MORRIS:

Q. Mr. Dondero –

MS. DEITSCH-PEREZ: Could you – could you use it –

MR. MORRIS: I'd like to –

MS. DEITSCH-PEREZ: – if I sent it

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to you by e-mail instead.

MR. MORRIS: I'd like to proceed. You can e-mail it to me. I mean, I asked you to do that an hour ago.

MS. DEITSCH-PEREZ: Well, the easiest way to do it is to send a picture is to text it; but if you give me a minute, I'll figure out how to send it by e-mail. Give me a second. Let's see. It just takes a second because it goes into my personal e-mail first if it's from my iPhone. Okay.

MR. MORRIS: Can we proceed?

MS. DEITSCH-PEREZ: Yeah. Give me a minute and you'll have it. Okay. You should have it in your e-mail now, John.

MR. MORRIS: Thank you. All right. I'll let you know when it arrives.

BY MR. MORRIS:

Q. Mr. Dondero, the questions now are going to be both in your individual capacity and in your capacity as the 30(b)(6) witness. Do you understand that?

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A. Okay.

Q. Okay.

A. It's either – it's either/or; it's not one?

Q. No.

A. Okay.

Q. You contend that the Notes are subject to the – withdrawn. You contend that the Notes that are the subject of the agreements would be forgiven upon the fulfillment of certain conditions present, right?

A. Right.

MS. DEITSCH-PEREZ: Object to the form. He said "subsequent."

MR. MORRIS: I apologize. Let me restate the question.

BY MR. MORRIS:

Q. You contend that the Notes subject to the agreement should be forgiven or would be forgiven upon the fulfillment of certain conditions subsequent, correct?

A. Yes.

Q. And to the best of your knowledge,

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none of those conditions have occurred as of today, correct?

A. To the best of my knowledge, yes.

Q. Okay. You're not aware of any facts showing that any of the conditions subsequent have been satisfied, fair?

A. I – yeah. I wouldn't know. You would probably know. I don't know.

Q. I'm only asking for your knowledge.

One of the conditions subsequent was that the Notes would be forgiven if you caused Highland to sell its interest in one of three portfolio companies above cost, right?

MS. DEITSCH-PEREZ: Object to the form.

THE WITNESS: I – yeah. I don't know if the noun is me or Highland, but yeah.

BY MR. MORRIS:

Q. Okay. The portfolio companies at issue were MGM, Cornerstone, and Trustway, correct?

A. Yes.

Q. And prior to the petition date, you

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had the authority to sell any of those portfolio companies at any time without having to obtain approval from anyone, correct?

MS. DEITSCH-PEREZ: Object to the form.

THE WITNESS: Yeah. No, I can't agree with that statement.

BY MR. MORRIS:

Q. Why not?

Who's approval did you have to get before you could sell any of those portfolio companies?

A. MGM, I was one board member and I think an aggregate. When I was running Highland, we spoke for 18 percent of the equity. So I couldn't force the overall sale of the company unilaterally.

There was also a shareholder's agreement in place that restricted myself and Anchorage and a couple of the large holders from selling their shares without a disclosure and approval process. That is one example.

With regard to Trustway, I believe I was largely unfettered.

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With regard to Cornerstone, a majority of it – or not a majority, but a significant minority, I think, was owned by both Restoration and the Old Redeemer Fund.

Q. All right. Well, let me ask you this: The conditions subsequent that are embedded in the agreements, did that relate to just Highland's interests in the portfolio companies, or did it relate to interests held by anybody else?

A. It referred to a monetization in creating liquidity around Highland's interests that were large and illiquid portions of Highland's balance sheet.

Q. Okay. So let me ask the question again.

Prior to the petition date, did you have the authority to sell Highland's interests in any of the portfolio companies without having to obtain the authority of anybody else?

MS. DEITSCH-PEREZ: Object to the form. Asked and answered.

THE WITNESS: Sub- – subject to my prior answer, I could speak for Highland

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prior to the bankruptcy.

BY MR. MORRIS:

Q. Okay. Before entering into the agreements, did you or anybody acting on your behalf analyze the likelihood that any of the conditions subsequent would occur?

A. Likelihood? Analyze? My description of them, which was my understanding of them, but my description of the assets to my sister was – to the trustee of Dugaboy was that we held them for a long time. We were working towards monetization, but there wasn't anything imminent regarding any of them in 2017 or '18.

Q. Well, but the actual sale is just one part of the condition subsequent, correct?

The other part is that it's got to be sold above cost; is that correct?

A. That is right.

Q. Okay. So at the time you entered into each of your – each of the three agreements, had you done any analysis to determine whether or not any – whether Highland's interests in any of the portfolio

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companies exceeded its cost?

A. No, but I -- yes. No, I did not.

Q. Did you have any understanding at all as to how the value of Highland's interests in MGM compared to its costs at the time you entered into each of these three agreements?

A. No. I mean, my understanding was I knew they were substantially higher, but I didn't know how much higher.

Q. Okay. So is it fair to say that the time -- at the time you entered into each of these agreements, you knew and understood that the value of Highland's interests in MGM was substantially higher than its costs?

A. For MGM, yes.

Q. Okay. Did you have an understanding of the relationship between value and costs concerning Cornerstone at the time you entered into these agreements?

A. My understanding it was moderately higher, and Trustway was between substantially and moderately and higher, I believe.

Q. Okay. So is it fair to say that at the time you entered into each of these

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agreements, you believed that the value of Highland's interests in each of the portfolio companies exceeded its costs in varying degrees?

A. Varying degrees. As a matter of fact, I would adjust. Cornerstone and Trustway, I believe, were moderately higher than their embedded costs or implied costs. That was my understanding.

MGM was somewhat substantially. But all of them with a fair amount of volatility and a fair amount of illiquidity.

Q. Did you ever give your sister or Dugaboy any information concerning how the value of Highland's interests in any of the portfolio companies compared to Highland's costs before entering into the agreements?

A. Not that I recall.

Q. Do you have any reason to believe that your sister or Dugaboy had any understanding as to the likelihood that the conditions subsequent would be satisfied at the time the Dugaboy trustee entered into the three agreements with you?

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MS. DEITSCH-PEREZ: Object to the form.

THE WITNESS: I -- I remember saying it would take a few years at minimum; but other than expressing time, I don't believe I expressed value versus cost or the questions you were asking me previously.

BY MR. MORRIS:

Q. Okay. You never showed Nancy or Dugaboy any of the Promissory Notes prior to entering into any of the agreements, correct?

A. Not that I recall.

Q. And you never sent copies of the Promissory Notes to Nancy or Dugaboy before entering into any of these agreements, correct?

A. Not that I recall.

MS. DEITSCH-PEREZ: Object to the form.

John, you've asked these at the last deposition and actually also at the first day of the deposition.

MR. MORRIS: Thank you. He's here now in his 30(b)(6) capacity. So please just stop.

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You can object to the form of the question. I really don't appreciate it. You should follow the very professional job that your colleague, Michael Aigen, did the other day.

BY MR. MORRIS:

Q. Neither Nancy or Dugaboy has ever asked to see copies of any of the Promissory Notes before entering into any of the agreements, correct?

MS. DEITSCH-PEREZ: Object to the form.

THE WITNESS: I don't know.

BY MR. MORRIS:

Q. Do you have any reason to believe that Nancy or Dugaboy ever saw a copy of any of the Promissory Notes at issue before entering into the agreements?

A. I don't know.

Q. During your discussions with Nancy and Dugaboy, did you identify the Promissory Notes that were going to be the subject of each agreement?

MS. DEITSCH-PEREZ: Object to the

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form.
You know, we made an agreement that you were going to refer to Nancy as the Dugaboy trustee. Please stick to it. Otherwise, I'm going to have to object each time, and I'd rather not.
MR. MORRIS: I have no problem with your objecting to the form of the question. It's the speaking that I really do object to. And I don't know why you can't control yourself.
MS. DEITSCH-PEREZ: Because I hope that --
MR. MORRIS: Please stop. Please stop.
MS. DEITSCH-PEREZ: -- by telling you this, you will listen.
MR. MORRIS: Okay. Your discussion and your inability to control yourself is going to cause this deposition to go longer than it needs to, okay?
MS. DEITSCH-PEREZ: No. It's your repeating questions that's going to do that.

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MR. MORRIS: You let me know when you're done.
MS. DEITSCH-PEREZ: I'm done.
BY MR. MORRIS:
Q. Mr. Dondero, during your discussions with the Dugaboy trustee, did you identify the Promissory Notes that were going to be the subject of each agreement?
MS. DEITSCH-PEREZ: Object to the form.
THE WITNESS: No, not that I recall.
BY MR. MORRIS:
Q. Do you recall -- during your discussions with the Dugaboy trustee, did you identify the maker of any of the Notes that were the subject of any of the agreements?
A. You mean Highland as the maker; is that what you're saying?
Q. No. I'm just asking if during your discussions with the Dugaboy trustee, you ever disclosed the name of the maker of any of the Notes that were subject to the agreements?
A. She -- she knew they were Notes due to Highland from various entities. So I don't

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know what your question is. Did I identify specifically that they were Notes due to Highland? I guess the answer to that is yes, but I don't know what you're asking me.
Q. I'm sorry, sir. I'll take the responsibility for that.
I'm asking you if you identified who the maker of the Notes were, not who the payee was.
MS. DEITSCH-PEREZ: You mean the borrowers, John?
THE WITNESS: See, I don't want to get stuck in my underwear on maker/borrower nomenclature.
She was aware that they were notes due to Highland from a variety of entities.
BY MR. MORRIS:
Q. Okay. Did you identify any of those entities?
A. I -- yeah. She knew that some were Dugaboy, some were NexPoint for sure, and some were other entities.
Q. So -- so there were notes where Dugaboy owed the money or was the obligor or

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was the borrower or was the maker that are subject to agreements that you entered into with the Dugaboy trustee?
A. No. Wait. The Dugaboy -- the Dugaboy Notes weren't subject to the forgiveness. It was the other notes that were subject to forgiveness.
Q. So it's really kind of a simple question, and I'm not trying to trick you.
If you think back to the conversations that you had with the Dugaboy trustee, did you identify the entity of -- did you identify who the borrowers were under the Notes that were going to be subject to the agreements?
A. She knew they were entities -- she knew there were other related entities. She knew NexPoint for sure. She knew Services.
I can't sit here as I remember -- as I sit here today and remember whether or not I specifically identified HCRE or not, you know; but she knew they were related entities.
Q. All of the revisions of the agreement are set forth in paragraph 82; is

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that right?

We could put it back up on the screen if you'd like.

MR. MORRIS: In fact, why don't we do that.

MS. CANTY: I'm sorry, John. 51 -- I mean, 50?

MR. MORRIS: I think it's Exhibit 31, paragraph 82.

MS. CANTY: Oh, okay, 82. I've got you.

MR. MORRIS: Thank you.

BY MR. MORRIS:

Q. Does – Mr. Dondero, other than specifying who the portfolio companies were, does paragraph 82 set forth all of the material terms of each of the agreements?

A. I think it sets forth the conditions subsequent.

Q. Is there any aspect of your agreement -- withdrawn.

Is there any aspect of your agreements with the Dugaboy trustees that's not described in this paragraph?

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A. I don't know if it's captured in there, but there was definitely a conversation, discussion that if something like MGM was sold – Anchorage is the largest holder almost a majority in and of themselves. And if it was bought or taken out at a price that we couldn't control or couldn't agree with and it was lower than cost or -- you know, Cornerstone, again, had multiple funds between our ownership and control that if -- if things were sold beyond -- without my support but sold below cost – and I'm not sure that's captured in that paragraph, but I think that was part of the understanding, also.

Q. Is there any other part of the understanding that's not set forth in paragraph 82, Mr. Dondero?

A. Not that I can think of at this -- let me read it one more time, please.

Q. Take your time.

A. I believe that generally covers it.

Q. Was any provision of the agreements the subject of negotiation?

MS. DEITSCH-PEREZ: Object to the

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form.

THE WITNESS: I don't believe it was materially adjusted by any negotiation. It was just clarified based on discussion is how I would describe it.

BY MR. MORRIS:

Q. Is there any provision in the agreements that was included at your sis- -- at the Dugaboy trustee's request?

A. Like I said, there was discussion and clarification. Not specifically that I recall.

Q. Okay. Did the Dugaboy trustee refuse to include any provision in the agreement that you had proposed?

A. Not that I recall.

Q. Can you identify any provision of the agreements that were the subject of a counterproposal that the Dugaboy trustee made?

A. I remember clarification discussion around, you know, three companies versus two or one. I remember clarification of monetization being turned to cash versus illiquid.

Yeah. I mean, I remember

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discussion – I remember clarification discussions like that, but I don't remember – it was a long time ago. I don't remember the details of anything specific like that.

It wasn't – it wasn't a contentious, nor should it have been a contentious negotiation.

Q. How long did – do you recall how long each of the conversations lasted that led to the entry of each of the three agreements?

A. I remember the first one being longer than the second two, and then I remember it being spread out periods of time. So I can't – I can't – I can't put an exact estimate on it.

Q. Okay. I'm going to shift gears.

MR. MORRIS: We can take that down now, please.

MS. CANTY: (Complies with request.)

BY MR. MORRIS:

Q. Do you know of any written agreement pursuant to which HCRE provided services to Highland at any time?

MS. DEITSCH-PEREZ: Object to the

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form. Asked and answered.
THE WITNESS: HCRE provided preferred services to. Well, the participants there in HCRE are, my – myself and McGraner. And, you know, we both provided significant other services to Highland.
BY MR. MORRIS:
Q. Okay. Is that in writing? Is there a written agreement?
That was my question.
Is there a written agreement pursuant to which HCRE ever provided services to Highland?
A. I don't believe so.
Q. Did HCRE ever provide services to Highland?
A. I would incorporate my last two answers. Not under a written agreement, but I believe myself and McGraner provided a lot of services.
Q. And what services did you and Mr. McGraner provide to Highland?
A. I'd say anything real estate related

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on the Highland platform McGraner would have input into.
And then I think my – my portfolio management, leadership role in Highland over time is well documented.
Q. And how did you know if you were providing services in your capacity as the president of Highland or in your capacity as an officer or owner of the HCRE at the time you provided the services?
A. Never – never really thought about parsing it that way.
Q. I appreciate that.
Do you know whether Highland Capital Management Services ever provided services to Highland?
A. Yeah.
MS. DEITSCH-PEREZ: Object to the form. Asked and answered.
THE WITNESS: Yeah. I would – not in writing. I believe the services owners isn't myself and McGraner. I think it was myself and Okada.
And I would say our portfolio and

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leadership contributions to Highland are well documented.
BY MR. MORRIS:
Q. And my question didn't have anything to do with any particular person. It's just simply whether Highland Capital Management Services ever provided any services to Highland Capital Management, L.P.
MS. DEITSCH-PEREZ: Object to the form.
THE WITNESS: The entities that you're describing or you're asking questions about don't have employees' services in HCRE. They have ownership individuals that I've described.
So I've tried the best I can to answer your question and what the ownership may have done for Highland.
But since there's no employee base at either of those two companies, those companies could not have directly provided service to Highland other than, the last thing I would bring up is the track-record concept, you know, in terms of the

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performance of whatever assets are in some of those start-up entities ends up being a useful track record that then Highland can market.
BY MR. MORRIS:
Q. Okay. How about NexPoint, did NexPoint ever provide services to Highland Capital Management, L.P.?
A. Yes. The real estate – yes. I mean, can I just say yes or –
Q. You could. That would be really helpful.
A. Okay. There we go.
Q. Can you describe the circumstances for me?
MS. DEITSCH-PEREZ: Finally, some accord between the witness and the questioner.
BY MR. MORRIS:
Q. Can you describe the services for me?
A. NexPoint has a couple of attorneys that are real estate experts. We have a lot of different attorneys, or we did at Highland.

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But prior to the bankruptcy, none of the Highland attorneys were experienced in real estate.

So anything that required transaction help on the Highland platform regarding real estate, the NexPoint real estate attorneys would help with.

Q. Okay. Anything else?

A. I'm sure there are others. That's all I can think of off the top of my head. I just wanted to give you an example.

Q. I appreciate that.

You're aware that Highland has sued HCMFA to collect on two notes that were signed by Frank Waterhouse in 2019 in the aggregate amount of $7.4 million; is that right?

A. Yes.

Q. Okay. And we actually went through this the other day, so I don't want to belabor it if I don't have.

But do you recall that we saw the incumbency certificate which identified Mr. Waterhouse as the treasurer of HCMFA as of April 2019?

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A. Yes.

Q. Okay. And do you recall that you signed that incumbency certify in your capacity as president of HCMFA?

MS. DEITSCH-PEREZ: Object to the form.

THE WITNESS: Yes.

BY MR. MORRIS:

Q. I want to talk about the first of the two Notes, the $2.4 million Note.

Do you recall that in early May 2019, Highland transferred $2.4 million to HCMFA?

A. I don't remember a lot of specifics, but I know there were two Notes as you're describing.

Q. Okay. And there was -- and one of them -- did you authorize the $2.4-million payment?

A. Yes.

Q. And why did you authorize Highland to transfer $2.4 million to HCMFA in early May 2019?

A. My answer's the same for both --

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both Notes. Essentially, it's regarding the terrace start issue that we had with the Fort Worth SEC.

Q. Did you give anyone instructions concerning the transfer of the $2.4 million?

A. I instructed them to make the transfer, or I was involved in the -- involved in approving the transfer.

Q. And who did you instruct to make the transfer of $2.4 million?

A. Yeah. It would have been Frank.

Q. Do you have a recollection of instructing Frank to transfer $2.4 million?

A. Yeah. Generally, yes.

Q. Do you have a recollection of what instructions you gave him?

A. It was well-known. It was a very disruptive -- the whole thing was very disruptive at Highland and HCMFA. Everybody was aware of it. The settlement, the negotiations around the settlement, the give-and-take, the amounts changed over time.

Everybody was aware of it in senior management, including myself. And putting the

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money into HCMFA to settle it was something I was aware of and authorized and a critical piece of putting that issue to bed.

Q. Okay. I'm just asking you if you recall what instructions you gave to Mr. Waterhouse concerning the transfer if you recall?

A. No. I mean, like I said, I authorized the movement of the money.

Q. Okay. Were you aware at that time that the transfer of the $2.4 million from Highland to HCMFA was booked as a loan on both Highland and HCMFA's books and records?

A. I was not aware at the time.

Q. Okay.

MR. MORRIS: Can we put up Exhibit 53 please.

THE VIDEOGRAPHER: Counsel, I will need a media break in about five minutes.

MR. MORRIS: Thank you very much. Why don't we take that right now before I begin my examination on this document. How long do you need?

THE VIDEOGRAPHER: It will just be a

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minute, but this is the end of Media Number 1.
MR. MORRIS: Okay.
THE VIDEOGRAPHER: We are off the record at 3:21.
MR. MORRIS: We are off the record, but don't go anywhere.
MS. DEITSCH-PEREZ: What?
MR. MORRIS: We're not taking a break.
THE VIDEOGRAPHER: Yep. This will just take a minute. Please stand by.
MR. MORRIS: Thank you.
THE VIDEOGRAPHER: All right. Suzanne, are you good to go?
THE COURT REPORTER: I'm good.
THE VIDEOGRAPHER: This is the beginning of Media Number 2, Volume II [sic] in the deposition of James Dondero. We are back on the record at 3:22.
MR. MORRIS: All right. Can we please put up Exhibit 53.
MS. CANTY: Yeah. Just one second. My computer went haywire. Give me one

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minute.
(Whereupon, Exhibit 53, E-mail correspondence, Bates stamped D-CNL003768 through D-CNL003770, marked for identification, as of this date.)
BY MR. MORRIS:
Q. Okay. So Mr. Dondero, do you see what's on the screen here?
Mr. Dondero?
MR. MORRIS: Deborah?
Apparently Mr. Dondero has left the seat.
THE VIDEOGRAPHER: Would you like to go off record?
MR. MORRIS: No.
THE VIDEOGRAPHER: Okay. We'll stay on the record.
MR. MORRIS: The video is still rolling, right, sir?
THE VIDEOGRAPHER: Yes, it is.
MR. MORRIS: Thank you.
Hi, Michael. If you're – if you're able, can you reach out to your partner?
MR. AIGEN: I had texted her. I

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will try to call her, too; but I did text her a couple of minutes ago. I will try to reach out again. Hold on.
MS. DEITSCH-PEREZ: I'm back. I'm lucky in that the ladies room is directly across from the conference room.
Mr. Dondero's down at the other end of the floor, so he will be back shortly.
And I just saw your note, John. The – the videographer said he needed a break; and you said, okay, then let's take our break now. So we took a restroom break.
MR. MORRIS: I think everybody on the phone – and there's a transcript of it – knows that I specifically said, how long do you need. He said one minute, and I said don't go anywhere.
This is your time, not mine.
MS. DEITSCH-PEREZ: Prior to that, you said, let's take the break now.
MR. MORRIS: Yeah, to allow him to change the tape. I'm not going to question anybody on the call, but I'm 100 percent certain that they would all tell you – and

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the record will reflect, I specifically said do not leave.
MS. DEITSCH-PEREZ: Okay.
Mr. Dondero is back.
You have to turn – turn the video on.
THE WITNESS: I'm back.
BY MR. MORRIS:
Q. All right. Do you see on the screen there's a document that's been marked as Exhibit 53?
A. Yup.
Q. Do you see there's an e-mail string dated May 2, 2019?
A. Yes.
Q. And do you see that Mr. Waterhouse has – if you look at the second to the top, Mr. Waterhouse's e-mail is forwarding a spreadsheet to David Klos and Kristin Hendrix that he described as, quote, "The support for the payment to GAF by HCMFA?
A. Yes.
Q. What's GAF?
A. That's the fund itself that owned

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the TerreStar investment. The SEC wanted, I believe, some payment to go to them; but they all, meaning the SEC, and the SEC wanted some payment to go to the fund itself for the benefit of the investors.

Q. Okay.

MR. MORRIS: Can we can to the chart that's attached.

MS. CANTY: (Complies with request.)

BY MR. MORRIS:

Q. Have you ever seen this chart before, sir?

A. I don't believe so specifically, but I understand what it is.

Q. And is it your understanding, based on this chart, that the loss to the fund was $6,068,851?

MS. DEITSCH-PEREZ: Object to the form.

THE WITNESS: Yes.

BY MR. MORRIS:

Q. And there's -- there's a column there that's lost to fund.

Do you see that?

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A. Yes.

Q. And is it -- is it consistent with your recollection that the estimated loss of the fund or to the fund was approximately $6 million?

A. Yes. There is approximately -- there's some other small numbers moving around, but yes.

Q. Okay. And do you recall that HCMFA informed the SEC that HCMFA would make the fund whole by paying it an amount of money equal to the loss?

A. Yes.

Q. And, in fact, HCMFA paid the fund approximately $6 million in connection with the losses sustained as a result of the NAV error, correct?

A. I don't know details like that.

Q. So you're not -- you're not aware of the fact that HCMFA paid to the fund approximately $6 million in May of 2019?

A. Approximately six or approximately seven. I -- I don't know. Whatever the agreement was with the SEC to be paid to them

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or to the fund or whatever, I -- I have all faith and confidence we complied with; but I don't -- I don't know the exact numbers. I'm not aware of the exact numbers.

Q. Do you understand that this analysis shows how HCMFA was going to finance the payment to the fund as a result of the NAV error?

MS. DEITSCH-PEREZ: Object to the form.

THE WITNESS: I'm sorry. Could you repeat that question again?

BY MR. MORRIS:

Q. Sure. Do you understand that this -- that this chart here sets forth the manner in which HCMFA is going to fund the payment that it was making to GAF on account of the NAV error?

A. I would call it more of a calculation on where the amounts are coming from. It doesn't appear to me that this is a funding statement.

Q. Okay. I appreciate that.

So -- so your interpretation of this

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is that this shows the sources of money that were going to be used to make the payment; is that fair?

MS. DEITSCH-PEREZ: Objection to the form.

THE WITNESS: Yeah. I think it's a reconciliation between the insurance, some forgiveness of fees, and then additional monies that are necessary.

BY MR. MORRIS:

Q. Okay. And --

A. Yeah. Go ahead.

Q. Did HCMFA file an insurance claim in connection with the NAV error?

A. I believe they did get -- I believe they did, and I believe they did get paid some insurance.

Q. And -- and if we look at the totals column in the right, did HCMFA receive, to the best of your recollection, approximately $5 million from insurance?

A. Yes. I think we should work -- I think we should work from that column --

Q. Okay. So let's --

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A. -- versus the other column, yeah.

Q. I apologize, Mr. Dondero.

So if we look at the last column, the total, does that comport with your recollection that HCMFA paid GAF approximately $7.44 million in May of 2019 on account of the NAV error?

A. I think it's more than that, and I think it's also the 375 below that.

Q. Okay.

A. And then I -- yeah, definitely those two numbers in aggregate. I don't know if it's any others.

Q. Okay. And did, to the best of your recollection, HCMFA make an insurance claim on which it received almost $5 million as a source of funding for the payment that was due to GAF?

A. Yes.

Q. Are you familiar with that insurance claim?

A. No.

Q. Do you know if the insurance claim made any mention of Highland?

A. I have no idea. I have no idea.

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Q. Okay. So as a -- as a matter of rough math, would you agree with me that the insurance procedures funded approximately 5 million of the $7.8 million that was the total loss?

MS. DEITSCH-PEREZ: Object to the form.

THE WITNESS: This was the amount due to the investors. I -- I -- my rough recollection is there was another amount that was due the SEC, but I don't remember specifically.

BY MR. MORRIS:

Q. Okay. And do you see in the middle of the page, there's a total additional payment from advisor of approximately $2.4 million?

A. Yes.

Q. And is it your understanding that that is the amount that HCMFA had to come out of pocket in order to fully fund the GAF payment?

A. Yes, but it's clear to me also that there's a forgiveness of management fees, also.

Q. Okay. But is two point -- but is

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$2.4 million the amount of money that HCMFA needed in order to fully fund the payment to GAF?

A. And I don't want to mince small numbers; but to the extent that they gave up their management fees also, like that 1939 or the 39 above that -- and I don't know what that 47 is above that -- those are management fees that would have paid salaries and expenses at HCMFA also.

So to the extent they gave up those items as part of the settlement, then HCMFA would have needed more money than even the 2.4 that came from Highland.

Q. Do you know if HCMFA ever informed the SEC that Highland was responsible for the NAV error?

A. I -- I don't know. We wouldn't have hidden it if they would have asked. My experience with the SEC is they identify the advisor; and who the advisor picks for vendors the advisor's responsible for.

MR. MORRIS: I move to strike everything after "I don't know."

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BY MR. MORRIS:

Q. Did you ever direct anyone to inform the SEC that Highland was responsible for the NAV error?

A. No, not that I recall.

Q. Do you know if anybody acting on behalf of HCMFA ever informed the SEC that Highland was responsible for the NAV error?

A. I don't know.

Q. Do you know if HCMFA ever informed GAF that Highland was responsible for the NAV error?

A. Yes.

Q. And is that reflected in writing anywhere?

A. Yes. Numerous places.

Q. And what writing would that be reflected in?

A. The board minutes. There were conversations every board meeting for over a year. The retail board represents GAF. They were well aware of the subadvisory agreements, and they were well aware that all the staff regarding valuation were housed at Highland;

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all the valuation activities were performed by Highland. And GAF and HCMFA relied on Highland, and it was a material part of board conversations for over a year.
MR. MORRIS: Okay. I move to strike.
BY MR. MORRIS:
Q. I'm asking you just about writings, sir.
Can you identify --
A. No, no, no. I'm not -- I'm not going to -- I'm not going to allow that strike, or I'm not answering anymore questions.
Q. Well, the judge will be the determiner of that. So I'd like you to answer my question.
Is there any -- I don't want to know about board meetings.
Is there anything in writing that HCMFA provided to GAF that specifically stated that Highland and not HCMFA was responsible for the NAV error?
MS. DEITSCH-PEREZ: Asked and answered.

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THE WITNESS: Yes. Numerous board minutes.
BY MR. MORRIS:
Q. Okay. And have those board minutes been produced in this litigation?
A. I don't know.
Q. Okay.
MR. MORRIS: Let's go to the next exhibit, 54.
MS. CANTY: (Complies with request.)
(Whereupon, Exhibit 54, E-mail correspondence, Bates stamped D-CNL003777 through D-CNL003779, marked for identification, as of this date.)
BY MR. MORRIS:
Q. Do you see that on the same day, at the bottom, Mr. Klos sent an e-mail to the Corporate Accounting Group?
A. Yes.
Q. And do you see that he instructed the Corporate Accounting Group to transfer $2.4 million from HCMLT to HCMFA?
A. Yes.
Q. And do you see that he specifically

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informed the Corporate Accounting Group that this transaction was a, quote, "New inter co-loan?
A. Yes.
Q. Do you see that he asked Christian -- Kristin or Hayley to prepare a Promissory Note for discussion?
A. Yes.
Q. Okay. Are you aware in May 2019, Frank Waterhouse was included in the e-mail string identified as Corporate Accounting?
A. I do not have that awareness.
Q. Okay. Do you see at the top Ms. Hendrix -- Ms. Hendrix's response to Mr. Klos's e-mail and attaches a copy of a Promissory Note?
A. Yes.
Q. Okay.
MR. MORRIS: Can we just go to the attachment, please.
MS. CANTY: (Complies with request.)
BY MR. MORRIS:
Q. Do you see that that is a Promissory Note dated May 2, 2019, in the amount of

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$2.4 million that where the maker is Highland Capital Management Fund Advisors, L.P.?
A. Yeah.
Q. Have you ever seen this before?
A. I think in our last deposition.
Q. Okay. Do you recall when you saw it for the first time?
A. Our last deposition.
Q. Do you recall when you learned about the existence of this document for the first time?
A. I believe somehow regarding the litigation.
Q. Okay. So you have no knowledge of this Promissory Note until after the litigation was commenced; do I have that right?
A. Correct.
Q. So you're not aware of Highland having made a demand for payment on this Promissory Note in December of 2020?
A. Not that I recall.
Q. Okay. Putting aside the question of the Promissory Note, do you recall when you first learned that the $2.4 million that you

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instructed to be paid to HCMFA by Highland in May of 2019, do you recall when you first learned that that was booked as a loan?

A. I believe just generally as part of this litigation, not before then.

Q. Are you aware that the Corporate Accounting Group created a daily list of wire transfers that were being made on behalf of Highland and its affiliates?

A. Not – no, not specifically.

Q. Okay. So since you did not know that the $2.4 million transfer had been booked as a loan, is it fair to say that you never told anybody prior to the commencement of this litigation that the transaction should not have been booked as a loan?

A. I had no conversations either way prior to this litigation regarding the booking of the 2.4 million.

Q. Did you ever take any steps to try to determine how Highland and HCMFA accounted for the $2.4 million that you instructed to be transferred from Highland to HCMFA in early May 2019?

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A. No.

Q. Did you rely on Mr. Waterhouse to oversee that?

A. Yes.

Q. Okay. And you did so because he held not only the CFO title at Highland, but he also held the treasurer title at HCMFA, correct?

MS. DEITSCH-PEREZ: Object to the form.

THE WITNESS: I relied on him because generally the accounting function across the organization reported up through him.

BY MR. MORRIS:

Q. Let's talk about the $5 million Note.

Do you recall that in early May 2019, in fact, the next day, May 3rd, Highland transferred $5 million to HCMFA?

A. I – I don't recall specifically.

Q. Do you recall authorizing the transfer of $5 million from Highland to HCMFA in early May 2019?

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A. Yes, generally.

Q. Okay. Why did you authorize Highland to transfer $5 million to HCMFA in early 2019?

A. It was part of the overall resolution of the TerreStar situation.

Q. Do you recall that HCMFA paid something called a consent fee equal to $5 million in early May 2019?

A. Well, like I said, I don't recall the exact amounts or the exact amounts net of insurance; but my recollection it was to resolve that.

Q. Do you know – do you know – did – let's real simple.

Did – did HCMFA pay a consent fee in May of 2019?

A. I – I don't recall.

Q. Do you know what a consent fee is?

A. Yes.

Q. What's a consent fee?

A. It's a – a fee to encourage shareholder vote on something or shareholder restitution on something, typically.

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Q. And did – do you recall if HCMFA ever paid a consent fee in the year 2019?

A. I don't recall.

Q. Would Highland be responsible at all if HCMFA paid a consent fee?

MS. DEITSCH-PEREZ: Object to the form.

THE WITNESS: It could be. I don't – I don't know or remember the circumstances.

BY MR. MORRIS:

Q. Is the payment of a consent fee a voluntary decision by – by HCMFA? Is that something that –

MS. DEITSCH-PEREZ: Object to the form.

MR. MORRIS: Is that – withdrawn. That's fair.

BY MR. MORRIS:

Q. Is the payment of a consent fee required, or is that something that one can exercise discretion in whether or not to make?

MS. DEITSCH-PEREZ: Object to the form.

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THE WITNESS: My answer would be it depends.

BY MR. MORRIS:

Q. Do you recall whether Highland -- withdrawn.

Do you recall whether HCMFA was required to make -- to make a -- to pay a consent fee at any time in 2019?

A. I don't recall.

Q. Do you recall ever believing that HCMFA paid a consent fee because of something that -- because of a mistake that Highland made?

A. It could be. I don't know.

Q. I'm just asking if you had a recollection?

A. I don't have a recollection.

Q. Okay.

MR. MORRIS: To the videographer, I think Mr. Dondero's screen has frozen.

MS. DEITSCH-PEREZ: John, your screen is frozen, too.

MR. MORRIS: I'm --

MS. DEITSCH-PEREZ: I'm also -- hang

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on. I've lost contact. Give me a minute.

THE VIDEOGRAPHER: Okay. I'd like us to go off record. Do you agree?

MR. MORRIS: Yeah, but please don't leave.

MS. DEITSCH-PEREZ: Yes, we agree.

THE VIDEOGRAPHER: All right. Off the record at 3:53.

(Discussion held off the record.)

THE VIDEOGRAPHER: We are back on the record at 3:54.

BY MR. MORRIS:

Q. Okay. Can we put up -- no. Before we do that, Mr. Dondero, can you hear me?

We can't hear you. Are you on mute?

Are you on mute? Can you speak?

You're yelling at me now. Stop yelling at me.

THE VIDEOGRAPHER: I'm seeing is that Mr. Dondero is on mute.

(Interruption.)

THE VIDEOGRAPHER: We've got -- do you want to go off video record?

MR. MORRIS: No.

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Can somebody help Mr. Dondero and get his audio feed fixed?

Thank you, sir.

MS. DEITSCH-PEREZ: Does this make a difference?

MR. MORRIS: It sure does.

THE WITNESS: Hello, hello.

THE MORRIS: Thank you. All right. Let's try and -- let's try and finish this up.

BY MR. MORRIS:

Q. Are you ready, sir?

A. Yes.

Q. Were you aware in May 2019 that the $5-million transfer from Highland to HCMFA was booked as a loan?

A. No.

MR. MORRIS: Can we put up Exhibit 56, please.

MS. CANTY: (Complies with request.)

(Whereupon, Exhibit 56, E-mail correspondence, Bates stamped D-CNL003763, marked for identification, as of this date.)

JAMES DONDERO

BY MR. MORRIS:

Q. All right. Do you see that this is an e-mail from Ms. Hendrix to the Corporate Accounting Group on May 3, 2019?

Do you see that, sir?

A. Yes.

Q. And do you see that Ms. Hendrix told corporate accounting to transfer $5 million as a, quote, "new loan," close quote?

A. Yes.

Q. And did you see Ms. Hendrix also said that she would, quote, "paper the loan," close quote?

A. Yes.

Q. Okay. You're aware that from time to time, members of the Corporate Accounting Group used a template for a Promissory Note that had been previously prepared by counsel, correct?

MS. DEITSCH-PEREZ: Object to the form.

THE WITNESS: I -- yeah. I'm aware they have a loan template, yes.

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BY MR. MORRIS:

Q. Okay. Do you see there's a parenthetical in the first sentence that says, "(4.4M should be coming in from Jim soon)"?

A. Yes.

Q. Do you know what that refers to?

A. My -- my educated -- boy. My educted speculation is that Highland didn't have enough cash, so I probably put four into Highland for Highland to send to HCMFA. That's my educated guess; but otherwise, I don't know specifically.

Q. And do you recall that you had taken out a loan from Highland earlier in the year, and this payment was credited against the principal and interest then due on that Note?

A. I don't have specific awareness. That would make sense.

Q. Okay.

A. Versus -- versus creating a new loan or something.

Q. Okay.

MR. MORRIS: Let's go to Exhibit 57, please.

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MS. CANTY: (Complies with request.)

(Whereupon, Exhibit 57, Promissory Note, Bates stamped D-CNL003764 through D-CNL003765, marked for identification, as of this date.)

BY MR. MORRIS:

Q. In fact, were you aware, sir, that in May 2019, you paid Highland exactly $7.5 million?

A. Not specifically, but it makes sense given the context we're discussing.

Q. Okay. So the context that we're discussing was HCMFA needed $7.5 million. Highland didn't have it. So that seven -- you paid $7.5 million to Highland, which was applied against your outstanding note. And then Highland transferred that money to HCMFA.

Does that sound right to you?

A. Generally, yes.

Q. Okay. So now if we look at this note that's on the screen, do you see this is a Promissory Note for $5 million dated May 3, 2019?

A. Yes.

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Q. And did you see this for the first time when I showed it to you late last week?

A. Yes.

Q. And did you learn about the loan from Highland to HCMFA for the first time after the litigation was commenced?

A. That's the first time I remember.

Q. And did you learn that Highland and HCMFA had booked the $5-million transfer in May of 2019 as a loan for the first time after the litigation was commenced?

A. That is my recollection.

Q. Okay. We talked at your first deposition in May about Highland's audited financial statements.

I don't know if you have a recollection of that. Do you?

A. Just generally, yes.

Q. Okay. I just want to focus on these two notes.

For this portion of the deposition, we are questioning you in your individual capacity, and you're only focused on these two notes from HCMFA to Highland, okay?

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A. Okay.

Q. Okay. When did you first learn that these notes were carried as assets on Highland's balance sheet?

A. Like I said, I -- my recollection is that as part of the bankruptcy and part of the litigation.

Q. And so did you learn of it as part of the bankruptcy before the litigation was commenced, or did you learn that these notes were carried as assets after -- only after the litigation was commenced?

A. I believe only after. Especially, the specificity with regard to the notes, only after the litigation was commenced.

Q. Okay. When did you learn for the first time that these notes were carried as liabilities on HCMFA's balance sheet?

Withdrawn. No foundation.

Are you aware that these notes have been carried as liabilities on HCMFA's balance sheet?

A. I wasn't -- I wasn't -- I wasn't aware prior to the litigation.

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Q. Okay. Did you learn after the litigation that these notes had been carried as liabilities on HCMFA's balance sheets?

A. Yes.

Q. Okay. Did you ever review Highland's audited financial statements?

A. Not with any specificity.

Q. Are you aware that Highland gave these Promissory Notes to PWC as part of the audit process?

A. I would assume they did, but I don't have specific awareness.

Q. Okay. And why do you assume that they did?

A. As part of complete financials to the extent that they were made by Kristin or whoever, properly or improperly. Once they existed, they would have been part of a complete audit.

Q. Are you aware that these two Promissory Notes were disclosed in Highland's audited financial statements for the period ending December 31, 2018, as subsequent events?

A. No.

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Q. Okay.

MR. MORRIS: Can we put up Exhibit 34, please.

MS. CANTY: (Complies with request.)

(Whereupon, Exhibit 34, Highland Capital Management, L.P., Consolidated Financial Statements and Supplemental Information, dated December 31, 2018, Bates stamped D-CNL000212 through D-CNL000257, marked for identification, as of this date.)

BY MR. MORRIS:

Q. And turn to – just if you can see, sir, the first page of this is the December 31, 2018, financials.

MR. MORRIS: And if we could go to the second or third page to see PricewaterhouseCoopers' signature.

MS. CANTY: (Complies with request.)

BY MR. MORRIS:

Q. And do you see that PricewaterhouseCoopers signed off on the audit on June 3, 2019?

A. Yes.

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Q. Okay.

MR. MORRIS: Can we go to page 252 of the document? It's got to be – let's see the Bates.

MS. CANTY: (Complies with request.)

MR. MORRIS: Yeah. Right there. Okay. Scroll just to the page before so we can see the heading.

MS. CANTY: (Complies with request.)

BY MR. MORRIS:

Q. Okay. Do you see that this is the section of the audited financials entitled "Subsequent Events"?

A. Yes.

Q. And is it your understanding that the auditors include in subsequent events material transactions THAT occur between the end of the fiscal period in which had audit has been conducted and the date that the auditors sign off?

A. Yes.

Q. Okay. So if you look at page 39, the next to the last paragraph, do you see, it says, quote, "Over the course of 2019 through

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the report date, HCMFA issued Promissory Notes to the partnership in the aggregate amount of $7.4 million?

A. Yes.

Q. Okay. And are you surprised to see that in the audit report?

MS. DEITSCH-PEREZ: Object to the form.

MR. MORRIS: Withdrawn.

BY MR. MORRIS:

Q. Have you seen -- have you seen this entry in the audit report before this moment?

A. No.

Q. Okay. Are you aware that Highland employees were responsible for drafting the audit report?

A. Responsible for drafting the audit report? I don't know if that's a fair statement.

I think they provide the detail; but my understanding, the audit report is a work product of the accounting firm. That's my understanding.

Q. Was there a group within Highland

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that was responsible for working with the auditors in the preparation of the audit reports?
A. Yeah, yes.
Q. Do you know what group that was?
A. I believe there's a financial reporting group that reports to Frank that handles this interaction.
Q. Are you familiar – are you aware of what role Mr. Waterhouse plays, if any, in connection with Highland's annual audit, at least during the time that you were serving as president?
A. I think he – he coordinates – I think he has to sign off on many aspects of it, you know, as a C suite executive. So he's responsible for, you know, completeness, integrity, et cetera.
And there's a certain amount of reliance that PWC puts on it; but my understanding is audits for the last bunch of years has been pretty much a hundred percent sampling and verification.
Q. High- –

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A. – PWC.
Q. I apologize, sir.
Highland was the sole source of information that's contained in its audit reports, right, to the best of your knowledge?
A. No. No. When I – the last thing I said a minute ago about I believe it was a hundred percent sampling and verification, I think the audit firm ties back to vendors, credit agreements, source documents, et cetera.
Highland is not the only source of this information.
Q. You were also responsible for the audit report; is that fair?
A. Yes.
Q. And that's because you signed a management representation letter, correct?
A. Yes.
Q. And do you have an understanding of what management a representation letter is?
MS. DEITSCH-PEREZ: Object to the form. I think you've asked this in each day of the deposition.
MR. MORRIS: Okay. Just trying to

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get some background here.
THE WITNESS: Yes, I have a general understanding. They very from accounting firm to accounting firm, and they very depending upon the type of audit. But I have a general understanding of them, yes.
BY MR. MORRIS:
Q. Okay. And you're – are you aware that HCMFA had its financial statements audited by PWC as well?
A. Yes.
Q. Are you aware that HCMFA disclosed the May 2019 Notes in its own audited financial statements?
A. I assume so.
Q. Have you ever –
A. I don't have specific – I don't have specific awareness, but it's not reported here but not on HCMFA; so I assume they are, yes.
Q. Okay. And do you sign Management Representation Letters for HCMFA's audit as you do for Highland?
A. I believe so.

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Q. Have you ever told anyone that HCMFA's audited financial statements for the period ending December 31, 2018, inaccurately described the $7.4 million transferred from Highland to HCMFA as loans?
MS. DEITSCH-PEREZ: Object to the form.
THE WITNESS: No, I have not; but I haven't been involved in any of the audit functions for quite some time.
I don't think I was involved or signed Management Representation Letters for any period covered by this.
BY MR. MORRIS:
Q. Okay. Let's switch gears.
The advisors have annual contracts to manage certain retail funds, correct?
A. Yes.
Q. And the retail funds have a board that decides whether to renew the contracts with the advisors, correct?
A. Yes.
Q. And in connection with the annual renewal, the advisors provide information to

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the retail board, correct?

A. Yes.

Q. And you've participated in meetings with the retail board concerning the renewal process, correct?

A. Sometimes.

Q. Okay. Do you recall that in late 2020, the advisors provided a written memo to the retail board in connection with the annual 15-C review process?

A. No.

Q. Okay.

MR. MORRIS: Can we put up Exhibit 59, please.

MS. CANTY: (Complies with request.)

(Whereupon, Exhibit 59, Memorandum, dated October 23, 2020, Bates stamped HCMFAS 000025 through HCMFAS 000031, marked for identification, as of this date.)

BY MR. MORRIS:

Q. Do you see that this is a memo dated October 23, 2020?

A. Yes.

Q. Is it fair to describe this memo as

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a memo from the advisors to the retail boards concerning a supplemental 15-C information request?

A. Yes.

Q. Okay. As always, Mr. Dondero, you can view any portion of this document. But if we could just scroll down a little bit, I just want to know --

MS. DEITSCH-PEREZ: Do we have a copy of this document? Is it in your book?

MR. MORRIS: No.

MS. DEITSCH-PEREZ: Okay. Well, then he can't actually look at it. He's looking at what's on the screen.

MR. MORRIS: Please.

BY MR. MORRIS:

Q. Mr. Dondero, do you understand what I meant?

Will you let me know if there's any portion of the document you want to see?

A. Sure. Can you -- can you just keep scrolling and let me see the next page?

Q. Thank you, sir.

MS. CANTY: (Complies with request.)

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THE WITNESS: Just stop there for a second.

MS. CANTY: (Complies with request.)

THE WITNESS: Okay. Keep going.

MS. CANTY: (Complies with request.)

BY MR. MORRIS:

Q. Just -- I'm going to ask you questions about Section 2 just so you know, but you're welcome to view any portion of this document as you believe necessary.

MS. CANTY: I also put it in the chat, John.

MR. MORRIS: Thank you.

THE WITNESS: I see it.

BY MR. MORRIS:

Q. Okay. So --

A. Can you go -- let's keep going. Just I'll quickly read the whole thing.

Q. No problem.

A. That's it. Okay. Got it. All right.

Q. Okay. So now that you've seen the substance of the memo, do you recall if you saw it before today?

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A. I've never seen it before today.

Q. Okay. So do you know who's responsible for preparing a memo of this type on behalf of the advisors?

A. Let's go back to the front and see who it's from.

Q. Sure.

MS. CANTY: (Complies with request.)

BY MR. MORRIS:

Q. Is that --

A. Yeah. Now, I -- given what it is, it's something that, I'm sure, comes out of legal and compliance.

Q. And does -- do the advisors have -- withdrawn.

Did the advisors have their own legal and compliance officers as of October 23, 2020?

A. No.

Q. Did they have any -- did anybody serve as the advisors' general counsel as of October 23, 2020?

A. My belief and recollection is the Shared Services Agreements provided the legal

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and accounting support for all the funds listed in the "to" section here.

As I said earlier, NexPoint has a couple accountants -- I mean -- I'm sorry -- a couple lawyers who do real estate transactions stuff. Their -- their title -- their title meaning DC's counsel, DC Sauter, who's the most senior attorney there, it might be general counsel; but he only does real estate transactions.

The legal dependents of NexPoint and HCMFA was on the Shared Services Agreement and the Highland attorneys that performed those Shared Services Agreements.

Q. Okay. Did anybody acting on behalf of the advisors review and approve this memo before it was sent to the retail funds?

A. I don't know.

Q. Is it your practice as the president of the advisors to have memos sent to the retail board without anybody reviewing and approving the memos on behalf of the advisors?

MS. DEITSCH-PEREZ: Object to the form.

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THE WITNESS: I'm not aware of what standard practice was or wasn't; but again, the infrastructure for something like this would have been only at Highland.

HCMFA only had portfolio managers and analysts as employees, and NexPoint pretty much only had portfolio managers and analysts as employees.

The staff functions were at Highland, and Highland serviced the funds via a Shared Services Agreement that was still in place as of the date of this memo.

MR. MORRIS: Okay. Can we go down to Section 2, please.

MS. CANTY: (Complies with request.)

BY MR. MORRIS:

Q. Looking at Section 2, do you see that there's a question as to whether there are any material amounts currently payable or due in the future EG notes to --

A. Yes.

Q. -- the Highland by HCMFA or NexPoint?

A. Yes.

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Q. Okay. In the 53 or 54 weeks since this memo as was sent, do you know if it has been amended or modified in any way?

A. I believe there was similar memos like this for this year's annual -- for the 2021 renewal, but I do not have -- I've not seen those either; and I don't know how this answer would have changed.

Q. Okay. But at least as of October 23, 2020, this is the response that the advisors gave to the retail board in response to Question Number 2, right?

MS. DEITSCH-PEREZ: Object to the form.

THE WITNESS: As far -- as far as I know, having seen it here for the first time and not knowing whether this was the final or if there were subsequent letters and not knowing what the 2021 letter looks like, on its surface that appears so; but I have no awareness.

BY MR. MORRIS:

Q. Okay. And just I'll represent to you, Mr. Dondero, that I obtained this letter

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from counsel to the advisors in response to my specific request for the October 2020, 15-C response. So that's how -- that's how I got it just so you know.

A. Okay.

Q. So -- so were you aware in October of 2020 that NexPoint informed the retail board that as of June 30, 2020, it owed Highland and its affiliates approximately $23.7 million?

MS. DEITSCH-PEREZ: Object to the form.

THE WITNESS: I was not aware.

BY MR. MORRIS:

Q. Does that amount comport with your recollection as to what was outstanding on the May 31, 2017, note that NexPoint gave to Highland?

A. I don't have awareness.

Q. Okay. Did NexPoint -- do you know if NexPoint ever informed the retail board that any -- any portion of that $23.7 million was subject to any of the agreements that you entered into with the Dugaboy trustee?

A. I -- I don't know.

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Q. Did you ever instruct anybody on behalf of NexPoint to advise the retail board of the existence of the agreements?

A. No, I do not believe so.

Q. Do you know if anybody acting on behalf of NexPoint has ever informed the retail board that NexPoint's outstanding obligation was subject to the agreements that you entered into with the Dugaboy trustee?

A. No.

Q. Did you ever inform the retail boards that any portion of this $23 million was subject to offset?

A. You know what, I -- let me answer that and let me also adjust the last five no answers I just rattled off.

I'm thinking in the context of the time period of the date of this letter, which is October of 2020.

Again, there would have been similar letters and disclosures like this and additional questions, initial requests for renewal, and then subsequent questions, probably multiple subsequent questions, given

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everything that's going on with the Highland bankruptcy in 2021.

And I'm not aware of what those letters contain. I haven't seen those letters either, but those letters may include quite a bit of disclosure regarding the questions that you're asking me; but I don't know. But I didn't specifically instruct anybody to tell the board. I also didn't instruct anybody specifically to not tell the board.

So I don't know what was told to the board for the period after October 2020.

Q. Okay. I appreciate that, and I can only ask you what you know, right?

And so what may or may not be in any other report is kind of irrelevant here because you haven't seen those reports, right?

A. Correct.

Q. Okay. And so you have no basis of knowing one way or the other whether any report delivered to the retail board after October 2020 -- 2020 contains anything about the agreements that you entered into with the Dugaboy trustee, correct?

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A. Right. I just want to be clear that my answer's saying I did not specifically instruct somebody to tell them. It doesn't mean they don't know or someone else didn't tell them.

Q. Okay.

A. So that's -- that's a clarification I want to make.

Q. Okay. No problem.

And then -- and then do you see that there's a report to the retail board that HCMFA had approximately $12.3 million outstanding to Highland as of June 30, 2020?

A. Yes.

Q. Okay. So just the same type of questions.

Do you have any knowledge as to how that number was calculated?

A. No.

Q. Do you know if it includes the $7.4 million, which is the aggregate principal amount of the two notes that HCMFA issued to Highland in May of 2019?

A. I don't specifically, but given

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everything we have gone over in the last -- I don't know. Probably.

Q. Okay. Do you know whether anybody has informed the retail board on behalf of HCMFA that that $12.3 million was overstated by $7.4 million?

A. I -- I don't know.

Q. Okay. Do you know whether -- do you know whether anybody acting behalf of HCMFA ever told the retail boards that the $12.3 million was subject to offset of any kind?

A. I don't know, but I can't imagine the October 21 letter didn't address some of those issues because those issues I'm not sure were known at this point in time.

Q. Okay. If -- and we can look at paragraph 1 if it helps.

But my question is whether you're aware of anybody on behalf of HCMFA ever informing the retail board in 2020 that HCMFA had claims against Highland?

MS. DEITSCH-PEREZ: Object to the form.

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THE WITNESS: I don't know.

BY MR. MORRIS:

Q. Do you know whether anybody acting on behalf of either the advisors informed the retail board at any time in the year 2020 that either advisor had claims against Highland?

MS. DEITSCH-PEREZ: Object to the form.

THE WITNESS: I don't know.

MR. MORRIS: Okay. We can take that down, please.

MS. CANTY: (Complies with request.)

BY MR. MORRIS:

Q. Are you aware that the Court confirmed the Debtor's Fifth Amended Complaint of Reorganization in February of 2021?

A. Generally.

Q. And do you recall that objections to the confirmation of the plan were filed by you and each of the advisors, among others?

A. Yes.

Q. And do you recall that these actions, these lawsuits to collect on the notes, they were commenced before the

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confirmation hearing, right?

A. I – I don't – I don't know.

Q. All right. I'll represent to you that the lawsuits were commenced on or about January 22, and the confirmation hearing took place, I think, on February 2 and February 3, 2021.

Does that refresh your recollection at all that the lawsuits were known to you at the time of confirmation?

MS. DEITSCH-PEREZ: Object to the form.

THE WITNESS: Not specifically. I mean, given the details you just explained, I guess generally.

BY MR. MORRIS:

Q. Okay. I'd like to refer to you NexPoint and HCMFA and HCRE and Services collectively as the defendants for the next set of questions, okay?

A. Okay.

Q. And these questions are in your capacity as an individual and in your 30(b)(6) capacity, okay?

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Is that okay, sir?

A. I'll do the best I can. If I – if I need clarity or caveats, I'll throw them out there.

Q. Okay. Now, I do understand you're not a 30(b)(6) witness for HCMFA today. So let's make that clear.

MS. DEITSCH-PEREZ: Thank you.

BY MR. MORRIS:

Q. As to HCMFA, you're just here in your individual capacity as the control person, okay?

Prior to confirmation, do you know whether anyone acting on behalf of any of the defendants ever disclosed to the bankruptcy court the terms or the existence of your agreement – agreements with the Dugaboy trustee?

A. I guess generally, I've testified to this already. There were numerous conversations with Seery, and I know Lynn had conversations.

Q. Sir, I apologize, but I'm going to interrupt because I know you're tired; and I

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want to get this done. But my question had to do with the disclosure to the bankruptcy court, okay? Let me just try again.

Are you aware, sir, whether any of the defendants disclosed to the bankruptcy court prior to confirmation the existence of the agreements that you entered into with the Dugaboy trustee?

MS. DEITSCH-PEREZ: Object to the form and to interrupting the witness.

THE WITNESS: I'll say yes.

BY MR. MORRIS:

Q. Okay. Did you do that?

A. Yes.

Q. And did you do that as part of your testimony in the hearing, or did you do it through the filing of a pleading?

MS. DEITSCH-PEREZ: Object to the form.

THE WITNESS: I don't – I don't know about pleadings or filings. I – I don't know.

BY MR. MORRIS:

Q. Do you recall what you told the

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bankruptcy court about the agreements that you entered into with the Dugaboy trustee?

A. No. I'm not – yes. No. I'm not – no, I don't. I don't want to – I don't want to start talking and have you strike it or object. So I'll just answer specifically until you get to the question.

Q. Yeah. So – so again, I'm not trying to trick you.

Can you recall when you told the bankruptcy court that you had entered into will the agreements with the Dugaboy trustee?

A. No.

Q. Can you remember the subject matter of any hearing at which you informed the bankruptcy court about the existence of the agreements that you entered into with the Dugaboy trustee?

A. I don't know where or how this works legally. But every written proposal we put forward as a solution and as a plot plan, always had a zero on all the affiliated notes as being a zero in something that was ultimately likely to be compensation.

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All of those settlement proposals, some were done formally through Seery; some were done indirectly; some of it were – some of them were done to the independent board; some of them were done directly to Clemente. But all of those documented the expectation that the notes were compensation.

Q. Do you believe that any of the documents that you just described were ever presented to the bankruptcy court?

A. Yes.

Q. Okay. When and in what context were those documents delivered to the bankruptcy court?

A. I believed that the independent board and Seery were representatives of the bankruptcy court in that regard.

So I think within a month, two months of the filing, there were proposals made to creditors directly and the independent board; and then subsequently, once Seery became president, to him.

And then when Seery proved ineffective regarding settlements, there were

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reach outs – reaches out to creditors directly again and – to Clemente and the committee; but I think the committee already sold all their stuff by that point.

I mean, I – listen, I – but I consider those reach-outs and characterizations of the notes as not part of settlement under the estate and that is likely to be compensation notifying the Court generally.

Q. Okay. Are you aware of any notice that was ever given to Judge Jernigan about the existence of any of the agreements that you entered into with the Dugaboy trustee?

A. I - I don't know.

Q. Okay. You're not aware of any as you sit here right now; is that fair?

A. Yes. I'm not aware if any of my reach-outs to the people that I described ever made it to Jernigan. I don't know.

Q. Okay.

A. I know she asked for updates on the plot plan. I know she asked for whatever, but I don't know what specificity any of the people I described presented them to her. So I don't

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know.

Q. And I appreciate what you've said about the proposals that you've made. But my next question's very specific.

Prior to the commencement of litigation, did you or anybody acting on your behalf ever tell Jim Seery or Matt Clemente of your agreements with the Dugaboy trustee?

A. I – I don't know specifically.

Q. Thank you very much.

THE COURT REPORTER: I'm sorry. When you get to a good point, could we just take a quick break?

MR. MORRIS: Yeah. Why don't we do that, and I hope to try to wrap up. So it's 5:37. I mean, I'm going to need probably, you know, another half hour or an hour; but I want to try to finish. It's 5:38.

I'm fine with if we just come back at 4:45 Central Time, seven minutes.

THE VIDEOGRAPHER: All right. We're off record at 4:38.

(Whereupon, a break was taken.)

JAMES DONDERO

THE VIDEOGRAPHER: This is the beginning of Media Number 3 in the deposition of James Dondero. We are back on the record. The time is 4:45.

BY MR. MORRIS:

Q. Just to finish up on the topic we were on when we took the break, Mr. Dondero.

Prior to confirmation, do you know which of the defendants ever informed the bankruptcy court that any of the Promissory Notes that are the subject of the lawsuits were unenforceable for any reason?

And when I use the phrase "bankruptcy court" here -- you know what, let me ask a different question.

Prior to confirmation, do you know if anybody acting on behalf of the defendants ever disclosed to Judge Jernigan that any of the Promissory Notes subject to the lawsuits were unenforceable for any reason?

MS. DEITSCH-PEREZ: Object to the form.

THE WITNESS: I don't know.

JAMES DONDERO

BY MR. MORRIS:

Q. Prior to confirmation, did you direct anybody to inform Judge Jernigan that any of the Promissory Notes were unenforceable for any reason?

A. I don't know.

Q. Okay. I want to direct your attention to December 2020.

Do you recall if you had a conversation with Frank Waterhouse concerning payments that were due to Highland by any of the companies that you directly or indirectly own or control?

A. I'm trying to think. Generally, we overpaid on shared services, so -- by a significant amount, I believe 14, 15 million bucks. And then there was a supposed to be an overall transition settlement true-up regarding the employees, the office space, you know, whatever.

So the -- yeah, that's -- that's the -- that's my general recollection.

Q. But did you give Mr. Waterhouse any instructions as to whether to pay or not pay

JAMES DONDERO

any amounts that were due and owing to Highland under any agreement between Highland and any affiliate?

MS. DEITSCH-PEREZ: Object to the form.

Are you asking about the Notes or the Shared Services Agreements?

MR. MORRIS: I'm asking about -- I'm asking very broadly any payments.

THE WITNESS: I do remember having conversations not to pay any more shared services.

And I hope there weren't anymore payments on shared services. There -- There was never a specific to not pay the notes.

BY MR. MORRIS:

Q. So your recollection is that you instructed Mr. Waterhouse not to make any further payments under the shared services, and that's the instruction you gave?

A. Yes.

Q. Did you ever tell anybody in December of 2020 about your conversation with

JAMES DONDERO

Mr. Waterhouse?

A. Not that I recall.

Q. Do you recall telling anybody other than Mr. Waterhouse in December 2020 that no payment should be made to Highland under the Shared Services Agreement?

A. I do believe there was a team -- I can't remember -- I know Dustin Norris is on that team. He was aware. He was aware. And as a matter of fact, I think -- yeah. He -- I know he was aware for sure.

Q. Anybody else?

A. There were other people on that team, but I can't remember who was on that team or who was in the room at any time.

Q. Is there anything in writing that you recall that reflects the instruction that you gave to Mr. Waterhouse in December 2020 that we're talking about?

A. I believe the back-and-forth and the true-up with Seery on the multiple of things that I was just discussing, you know, right to transition of people, it included no more shared services being paid and a credit for

JAMES DONDERO

overpayment on shared services. And those -- those spreadsheets went back and forth, and Seery has copies of them also.

Q. Are you aware of any payments being made by the advisors to Highland after November 30, 2020?

A. Hopefully not on shared services. I believe there were payments on principal and interest on notes.

Q. Were any of those payments that you have in mind made before the end of calendar year 2020 -- withdrawn.

Were any of those payments that you have in mind made in December 2020?

A. I don't know. I don't know which ones were paid and kept current. I don't know which ones were cured. I don't -- I don't remember which ones were which.

Q. Are you aware of any note that was tendered by one of Highland's affiliates on which payment was made in December 2020?

A. I don't know. I don't know when -- I don't know which ones were kept current. I don't know which ones were cured in December.

JAMES DONDERO

I don't know which ones were cured in January or February. I don't know.

Q. Is it your testimony that you believe that one or more of Highland affiliates made a payment in December 2020 to cure -- as a cure payment?

MS. DEITSCH-PEREZ: Object to the form.

BY MR. MORRIS:

Q. I just -- I'm sorry. I --

A. I -- I -- okay.

Q. Yeah. I just want to try to get this as cleanly as I can. Did you --

A. I believe --

Q. Go ahead, sir.

A. No. I'll let you go. It's better if you ask me.

Q. Okay. Did you direct anybody to make any payment in December 2020 to Highland on behalf of any affiliate that you owned or controlled?

A. I believe all notes are outstanding and current and in good standing. I don't know when they were cured.

JAMES DONDERO

Q. Are you just talking about the term notes here or the demand notes as well?

A. All of the above. All of the notes as far as I know.

Q. Are you aware that in December 2020, Highland made a demand for payment under all of the demand notes?

A. And I believe they're all current as far as interest and principal amortization. I believe they've all been cured.

Q. Okay. Can you identify any payment that was made in December 2020 to Highland on behalf of yourself or any entity that you directly or indirectly own or control?

A. I wouldn't have been involved in -- I wouldn't have been involved in normal course payments. I know there were -- I know for sure there were cure payments in January. I don't know if there were in December.

Q. Okay. And that's -- we'll get to January. I'm just trying to finish up December.

Are you aware of any payments made in December 2020 --

JAMES DONDERO

MS. DEITSCH-PEREZ: Object to the form.

BY MR. MORRIS:

Q. -- by you -- by you or any entity directly or indirectly owned or control by you to Highland?

A. I don't have awareness.

Q. Do you recall that early in 2021, Highland gave notice of default on the three term notes?

A. I'm aware in -- that January -- yes, I guess I am aware that Highland declared them in default in January, yes.

Q. And you're aware that in addition to declaring them in default, they gave notice of acceleration?

A. I'm not aware of acceleration. I'm aware of, I guess, default I had heard.

Q. Did you ever see the notice-of-default letters that Highland sent to NexPoint HCRE and services?

A. I don't believe I've seen all of them. I think I've seen one on demand notes. I don't think I've -- I don't remember seeing

JAMES DONDERO

any on term loans.

Q. All right. So as you sit here right now, you don't have a recollection of having seen the default notices that were sent by Highland in January 2021 with respect to the term notes, right?

MS. DEITSCH-PEREZ: Why don't you show him one.

THE WITNESS: I don't recall. Yeah. I mean, I don't – I don't recall seeing any of them.

BY MR. MORRIS:

Q. Okay. How did you learn that Highland had sent the default notices?

A. I believe it was at a hearing I attended in person from which I called Frank, and I was surprised and annoyed that the relative de minimis amounts hadn't been paid; and I asked him what does it take to cure them or make them current.

And then he told me the numbers, and they were small and de minimis; and I told him make sure they get paid and make sure the notes are cured.

JAMES DONDERO

Q. Did you do anything or say anything else with respect to your – your learning about the declaration of default?

A. No. It – no. I don't remember anything else.

Q. Did you ask your – do you know whether anyone acting on behalf of ever reached out to Highland with respect to the payments that were made in January of 2021 as cure payments as you described them?

A. Frank was Highland.

Q. I'm asking –

A. Frank – Frank – Frank was the person I reached out to at Highland. Who else would I reach out to at Highland?

Q. Did you – did you reach out to anybody else?

A. No. Just Frank.

Q. Okay. Did anybody acting on your behalf reach out to anybody else?

A. Not that I know of or not that I thought was necessary.

Q. In January of 2021, did it occur to you to either communicate with or through your

JAMES DONDERO

lawyer, with Mr. Seery, about this?

MS. DEITSCH-PEREZ: Object to the form.

THE WITNESS: No. I thought Frank was fully empowered.

BY MR. MORRIS:

Q. Okay. Did you ever confirm your understanding about the cure with Mr. Waterhouse in writing?

A. In writing? No. I believe it was all in that phone conversation from the Court. I don't – I don't recall anything in writing, but I'll check.

Q. Do you recall sending him an e-mail in which you confirmed with Mr. Waterhouse your understanding that the debtor had agreed that the payments that were being paid would constitute a cure?

A. No, I didn't – no. At the time I didn't think it was necessary. It was – the cure amount was calculated by Frank. It was paid immediately. It was accepted. I never – I never thought to memorialize it beyond that.

Q. Okay. Did you – did you ever ask

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your attorneys to confirm with Pachulski Stang Ziehl & Jones or anybody acting on behalf of the debtor that the payments that were made would be deemed to be cure payments?

MS. DEITSCH-PEREZ: I'm going to not to disclose communications with counsel.

BY MR. MORRIS:

Q. Okay. Do you know whether your lawyers or anybody acting on your behalf ever sought to confirm your understanding that the payments would be deemed to have cured the default under the three term notes?

A. Not that I'm aware of.

Q. Okay. Is there any written record of your call with Mr. Waterhouse?

A. If it was from my cell phone, I'm sure there's a written record taking place of the call taking place.

Q. Right. But did you take any notes, or is there anything in writing that memorialized or reflected your conversation with Mr. Waterhouse in January of 2021 about the cure?

A. Not that I'm aware of and not that I

JAMES DONDERO
thought was necessary.
Q. Okay. Did – did you ever tell Judge Jernigan that you had made cure payments?
A. I didn't know I'm allowed to have ex parte conversations with her, but there's a lot of things I'd like to tell her about this case; but no I did not.
Q. All right. I'm not talking about ex parte conversations, sir. Let's take confirmation, for example.
Did you or anybody acting on any of the defendants' behalf ever inform Judge Jernigan that Frank Waterhouse had told you that the payments in January 2021 would be deemed to be cure payments?
A. Not that I'm aware of.
Q. Thank you.
MR. MORRIS: Give me one more moment. In fact, I'm going to ask for just three minutes. I'm going to check and see how much more I have here. It won't be long if I have anything. So let's go off the record.
THE VIDEOGRAPHER: Would you like to

JAMES DONDERO
go off the record?
All right. We're off record at 5:03.
(Whereupon, a break was taken.)
THE VIDEOGRAPHER: We are back on the record. The time is 5:06.
MR. MORRIS: Okay. Asia, can you please put on the screen Exhibit 24, which are Mr. Dondero's written responses to discovery?
MS. CANTY: (Complies with request.)
(Whereupon, Exhibit 24, Defendant James Dondero's Objections and Responses to Plaintiff's Requests for Admission, Interrogatories, and Requests for Production, marked for identification, as of this date.)
BY MR. MORRIS:
Q. And Mr. Dondero, I don't know if you have that binder in front of you, but this is one of the documents that will be in there, Number 24.
A. Number 24?
Q. Yes, sir.

JAMES DONDERO
MS. DEITSCH-PEREZ: Do you got it?
THE WITNESS: Yes.
BY MR. MORRIS:
Q. Have you seen this document before, sir?
A. No.
Q. Let's go to page 15 and see if that refreshes your recollection.
Is that your signature?
A. Yes.
MS. DEITSCH-PEREZ: Yeah. It's late in the day, John.
THE WITNESS: Yes.
MR. MORRIS: That's why I showed him the signature.
BY MR. MORRIS:
Q. Does that refresh your recollection that you've seen this before?
A. No. It refreshes my recollection that I signed it.
Q. Okay. And –
A. Not that I recall – not that I looked at it in detail in any way.
Q. Okay. Did you review it before you

JAMES DONDERO
signed it?
A. I – as I sit here today, I don't remember. So let's go through whatever questions you have.
Q. Okay.
MR. MORRIS: Go to page 8, please.
MS. CANTY: (Complies with request.)
BY MR. MORRIS:
Q. You will see that Interrogatories 3 and 4 ask in substance for you to admit that you never disclosed the terms or existence of the agreement to Frank Waterhouse prior to the commencement of the adversary proceeding.
Do you see that?
MS. DEITSCH-PEREZ: Wait. Object to the form. Those are two different requests.
MR. MORRIS: Okay. Okay. I was trying to do this quickly. We'll do it – we'll do it – we'll do it your way?
MS. DEITSCH-PEREZ: No. I think you – okay.
BY MR. MORRIS:
Q. So let's look at Request for

JAMES DONDERO

Admission Number 3.

Do you see that Highland asked you to admit, quote, "that prior to the commencement of the adversary proceeding, you never disclosed the terms of the agreement to Frank Waterhouse," close quote?

A. That's on page 8, Number 3, right?

Q. Correct. And you denied that, correct?

A. Yes.

Q. Okay. Did you disclose the terms of the agreement as we've defined that term to Frank Waterhouse prior to the commencement of the adversary proceeding?

A. You know, what I've answered was a long answer earlier that the notes were compensation. The notes were to be -- would be forgiven as part of compensation, shouldn't be included in any settlement.

Frank and his group were deeply involved in all the plot plan and settlement, things that went back and forth. He knew.

Now, whether he knew the specifics of the agreement in terms of, whether I ever

JAMES DONDERO

discussed the MGM Cornerstone, Trustway, and the specifics of the agreement with him before, I don't -- I don't know. So...

Q. Do you --

A. I think denying is appropriate, but I'm at not saying Frank knew the specifics of the agreement prior to the commencement of litigation.

Q. Did you tell him that you had an agreement with the Dugaboy trustee?

A. I told him there were mechanisms for forgiving the -- or there were -- there were mechanisms for the notes being compensation and not being part of any kind of cement or asset to the estate.

Q. Okay. Do you recall telling him anything else during these conversations?

A. No, I didn't -- no. I didn't feel it necessary to talk to him about the specifics.

Q. Okay. And do you recall having this discussion in any context other than in connection with the preparation of a settlement proposal?

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A. There wasn't another reason -- there -- no, I don't remember any other context.

Q. Okay.

A. But the settlements were regular and ongoing --

Q. Okay.

A. -- in our mind, not in the Stonehill's mind.

Q. Okay. Can you go -- can we go to page 9, Request for Admission Number 8?

A. Yes.

Q. Number 8 we asked you to "admit that no document was created prior to the commencement of the adversary proceeding concerning the existence of the agreement."

Have I read that right --

A. I'm just reading what's on page 9, admit that prior to the agreement he never disclosed any other creditor.

Q. No, no, no. I'm sorry. We're on Number 8.

Can you read Number 8 out loud?

A. Number 8, I'm sorry. Admit that no document was created prior to the commencement

JAMES DONDERO

of the adversary proceeding concerning the existence of the agreement.

Q. All right. So you've read that. And so my question to you is: Did you deny that because there are settlement proposals that you created that show zero value for the Promissory Notes at issue?

A. Yes, partly.

Q. Okay. What other documents were created prior to the commencement of the adversary proceeding that you contend concerned the existence of the agreement?

A. I'm trying to think if the LPA does.

Q. Okay. Anything else?

A. No. That would be -- that would be it.

Q. Okay. Request for Admission Number 9, can you identify the creditor that caused you to deny the Request for Admission Number 9?

A. I believe all the creditors via the settlement agreements; but, you know, specifically Clubock, you know, and to the extent Frank is a creditor, Frank.

JAMES DONDERO

Q. But you just testified a few minutes ago, I thought, that you didn't specifically tell Mr. Waterhouse of the terms of the agreements to him, right? Did I miss --

A. That's right. I mean, not the specific terms, correct.

Q. Okay. So is there any creditor to whom you -- is there any creditor of Highland's to whom you disclosed the existence of the agreements that you entered into with the Dugaboy trustee prior to the commencement of the adversary proceeding?

MS. DEITSCH-PEREZ: Asked and answered.

THE WITNESS: Yeah. I mean, generally, all the creditors via the settlement. And then we have lots of one-off conversations with Clubock representing UBS where the notes were described as going to be forgiven compensation, never part of the estate.

BY MR. MORRIS:

Q. All right. I don't -- I don't want to wrestle with you.

JAMES DONDERO

A. Sure.

Q. I'm going to remind you that when I use the word "agreements," I'm referring specifically to the agreements that were set forth in paragraph 82 of your answer.

Do you understand that?

A. Yes. And so I guess my answer is generally but not specifically.

Q. Okay. And when you say "generally," you don't mean that you disclosed the existence or terms of the agreement to any creditor. What you mean is that you told all of the creditors that you believed that the notes should be forgiven as part of compensation.

Do I have that right?

A. Well, that they would be forgiven as part of compensation.

Q. Okay. Subject to that correction, are we on the same page now?

A. Yes.

Q. Okay. Can we go to page 12, Interrogatory Number 2?

A. This is still in Section 24?

Q. Yes, sir.

JAMES DONDERO

MS. DEITSCH-PEREZ: Object to the form.

THE WITNESS: 24, I'm sorry. Page 2?

BY MR. MORRIS:

Q. Page 12.

A. Page 12. Yes. Which one?

Q. Number 2.

A. All right.

Q. You didn't identify any email correspondence in response to Interrogatory Number 2; is that correct?

A. I don't have my e-mails. So we have painfully little from the Highland estate.

Q. Okay.

A. I think at the time we responded, we thought we might get access to things; but we haven't been able to come up with anything. We have -- we have no access to anything.

Q. Okay. So as you sit here today, you cannot identify any e-mail correspondence that discusses the existence of the agreement, correct?

A. Not yet, no.

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(Whereupon, Exhibit 27, Defendant NexPoint Advisors, L.P.'s Objections and Responses to Plaintiff's Requests for Admission, Interrogatories, and Requests for Production, marked for identification, as of this date.)

BY MR. MORRIS:

Q. Let's go to Exhibit Number 27.

A. Yes.

Q. And if we can go to page 7.

MR. MORRIS: I think -- I don't know who's shuffling paper.

BY MR. MORRIS:

Q. But if we're at page 7, we're looking at Interrogatory Number 3.

Is the reason for the denial -- and I apologize. I may be going too quickly because I know we're all anxious to finish, but I do want to represent to you that we're looking at the discovery responses of NexPoint Advisors.

A. Right.

Q. And if we went to page 12, we'd find your signature on that one, okay? So looking

JAMES DONDERO

at –

A. Yes.

Q. – Request for Admission Number 3, is your answer the same on behalf of NexPoint Advisors as it was for yourself as to why you denied Request for Admission Number 3?

A. Yes.

Q. Okay. If we can go to Request for Admission Number 6, that is the same Request for Admission that we talked about with respect to yourself in your individual capacity a moment ago.

Is your reason for denying Request for Admission Number 6 the same reason that you gave for yourself?

A. Yes.

Q. And looking at Request for Admissions Number 7 and 8, is the reason that you denied those Requests for Admissions because you told Seery and the committee and Clubock that you wouldn't pay anything for the notes because they were supposed to be forgiven as part of your compensation?

A. And the independent board, yes.

JAMES DONDERO

Q. Okay. Is there any other reason that you denied Request for Admissions Number 7 and 8?

A. Not that I can think of at this point in time.

I don't think the LPA applies much here, but I may be –

MR. MORRIS: All right. I have no further questions.

THE WITNESS: Wonderful. Thank you. Have a good evening.

MR. MORRIS: Thank you. Take care.

MS. DEITSCH-PEREZ: Thank you.

MR. MORRIS: Bye now.

THE VIDEOGRAPHER: All right. If there are no further questions, this concludes today's deposition. Volume II [sic] consists of three media. We are off the record at 5:21 p.m.

THE COURT REPORTER: Everybody is leaving, and I wanted to get everybody's order on the record.

MS. DEITSCH-PEREZ: I'd like the rough. And then the regular can be

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whenever you get the regular done. No special rush.

THE COURT REPORTER: Okay. Thank you.

MS. DEITSCH-PEREZ: You're welcome.

THE COURT REPORTER: Ms. Canty, I think there's a standing order for a daily delivery – or an immediate delivery for your firm?

MS. CANTY: Yes.

THE COURT REPORTER: Okay. I just wanted to confirm that. I'll get that out tonight, then.

MS. CANTY: Okay, thank you.

(The witness is excused.)

(Deposition of James Dondero concluded at 5:21 p.m. CDT.)

C E R T I F I C A T E

I, SUZANNE J. STOTZ, a Certified Shorthand Reporter, Registered Professional Reporter, Certified Realtime Reporter, and Notary Public in and for the State of Texas, do hereby certify that the foregoing is a true and accurate transcript of the stenographic above-captioned matter.

_____

SUZANNE J. STOTZ, CSR, RPR, CRR
Texas Certification No. 11942

DATED: November 4, 2021

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EXHIBIT 100

1

2 IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
3 DALLAS DIVISION

4
IN RE:
5 CHAPTER 11
HIGHLAND CAPITAL
6 MANAGEMENT, L.P., CASE NO. 19-34054-SGI11
Debtor.
7 _____/
HIGHLAND CAPITAL
8 MANAGEMENT, L.P.,
Plaintiff, ADVERSARY PROCEEDING
9 v. NO: 21-03000-SGI

10 HIGHLAND CAPITAL
MANAGEMENT FUND ADVISORS,
11 L.P.; NEXPOINT ADVISORS,
L.P.; HIGHLAND INCOME
12 FUND; NEXPOINT STRATEGIC
OPPORTUNITIES FUND;
13 NEXPOINT CAPITAL, INC.;
AND CLO HOLDCO, LTD.,
14 Defendants.
_____/
15

16
REMOTE VIDEOTAPED DEPOSITION
17
OF
18
NANCY DONDERO
19
Monday, October 18, 2021
20

21

22

23

24 Reported by:
ANNETTE ARLEQUIN, CCR, RPR, CRR, CLR
25 JOB NO. 201194

October 18, 2021
10:30 a.m. (Central)

Remote videotaped deposition of NANCY DONDERO, pursuant to Notice Rule 30(b)(6) and individually, before Annette Arlequin, a Certified Court Reporter, a Registered Professional Reporter, a Certified Realtime Reporter, and a Realtime Systems Administrator and a Notary Public of the State of New York, New Jersey and Florida.

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PAIGE MONTGOMERY, Litigation Trust Attorney
PATRICK DAUGHERTY (as noted)
DEBORAH NEWMAN
MANUEL GARCIA, Legal Videographer

IT IS HEREBY STIPULATED AND AGREED by and between the attorneys for the respective parties herein, that filing and sealing be and the same are hereby waived;

IT IS FURTHER STIPULATED AND AGREED that all objections, except as to the form of the question, shall be reserved to the time of the trial;

IT IS FURTHER STIPULATED AND AGREED that the within deposition may be sworn to and signed before any officer authorized to administer an oath, with the same force and effect as if signed and sworn to before the Court.

- o0o -

N. Dondero

THE VIDEOGRAPHER: Good morning. My name is Manuel Garcia. I'm a certified legal videographer in association with TSG Reporting, Inc.

Due to the severity of COVID-19, and following the practice of social distancing, I will not be in the same room with the witness, but will record the deposition remotely.

The reporter, Annette Arlequin, also will not be in the same room and will swear the witness remotely.

Do all parties stipulate to the validity of this video recording and remote swearing, and that it will be admissible in the courtroom as if it had been taken following Rule 30 of the Federal Rules of Civil Procedures and the State's rules where this case is pending?

MR. MORRIS: Yes.

I would ask if anybody objects, to speak up. If you don't object, then we're going to go on negative notice

N. Dondero

here.

(No response.)

MR. MORRIS: Thank you very much.

And just to be clear, as I communicated with Debra last evening, the court reporter is not currently in the State of Texas.

And I understand that counsel for all defendants in the notes litigation have waived any objection to the fact that the oath is being administered outside of the state.

If anybody disagrees or objects to that, please speak up now.

Thank you very much.

Okay. You can swear the witness.

* * *

N A N C Y D O N D E R O, called as a witness, having been duly sworn by a Notary Public, was examined and testified as follows:

THE WITNESS: Yes.

EXAMINATION BY MR. MORRIS:

N. Dondero

Q. Okay. Can you please state your name for the record?

A. Nancy Dondero.

Q. And where are you located right now, Ms. Dondero?

A. In the law office of Deborah Deitsch-Perez.

Q. Are you in Dallas?

A. I am.

Q. Is there anybody in the room with you right now?

A. Yes.

Q. Who is in the room with you?

A. Deborah Deitsch-Perez and Dan Elms.

Q. Is there anybody else in the room with you right now?

A. Electronically is Douglas Draper.

Q. Okay. Thank you very much.

Do you have a telephone with you right now?

A. My cellphone?

Q. Yes.

A. Yes. It's in my purse.

N. Dondero
Q. Is it turned off?
A. It is -- well, yes, um-hmm. It's on silent.
Q. Okay. Thank you very much.
My name is John Morris. I'm an attorney at Patchulski Stang Ziehl & Jones. We represent the reorganized Highland Capital Management LP, and we're here for your deposition today.
Do you understand that?
A. I do.
Q. Okay. Do you understand that this deposition is being videotaped?
A. Yes.
Q. And do you understand that I may seek to use that videotape in a court of law?
A. Yes.
Q. Do you understand that you're not allowed to communicate with anybody concerning the substance of your testimony until the deposition is completed?
A. Yes.
Q. Is there anything that would

N. Dondero
prevent you from answering my questions today?
A. No.
Q. Do you have any problems with your memory?
A. No.
Q. Are you on any drugs or medications that might impair your ability to answer questions today?
A. No.
Q. Have you ever been deposed before?
A. Once, a number of years ago.
Q. Do you recall the subject matter of the testimony or the circumstances in which you gave a deposition?
A. Personal injury.
Q. And were you a witness or were you the plaintiff in that matter?
A. Plaintiff.
Q. Okay. So let me just give you the general ground rules so that there's -- so that this can be efficient.
This is a very difficult process

N. Dondero
in normal times. It's particularly difficult because we're doing this remotely.
So it is very important that you allow me to finish my question before you begin your answer.
Is that fair?
A. Yes.
Q. And it's very important that I allow you to finish your answers before I begin the next question.
And if I fail to do that, will you let me know?
A. I will.
Q. Okay. If there is anything that I ask you that you don't understand, will you let me know that?
A. Yes.
Q. Okay. From time to time, we're going to put some documents on the screen. It's not a -- you know, it's not intended to be a test.
If you see a document on the screen and you think that you need to see a

N. Dondero
different portion of the document to put what I'm asking you about in context, will you let me know that?
A. Yes.
Q. Okay. I sent down to your lawyer last week 29 hard copies of certain documents.
Do you have those handy?
A. The big binder?
Q. Yes.
A. Yes.
Q. Okay. All right. We may refer to those --
MR. RUKAVINA: John, hold up for a second. This is the Davor Rukavina. I'm one of the attorneys defending two of the defendants. I just -- we haven't taken appearances, John. I just want to make sure that the record is clear that Deborah will be objecting, Ms. Deitsch-Perez will be objecting for me so that I don't have you to object. In other words, when she objects, consider it an objection

N. Dondero
on behalf of my clients NexPoint and HCM Financial Advisors.
Is that acceptable, John?
MR. MORRIS: Yes.
MR. RUKAVINA: Thank you. Then there is no need for me to speak.
MR. MORRIS: Okay. We'll miss you.
BY MR. MORRIS:
Q. If you need a break at any time, will you let me know that?
A. Yes.
Q. Okay. It's very important that all of your responses to my questions be verbal so that the court reporter can take it down, okay?
A. Okay.
Q. And you do understand that the court reporter is going to record and transcribe every word that you and I say today, okay?
A. Yes.
Q. Okay. From time to time, a lawyer might object to one of my questions.

N. Dondero
That gives me the opportunity to think about whether or not the answer to the question would be admissible if I didn't correct it.
I may ask you to just answer the question because I don't think the objection is going to be sustained. Just let the lawyers do their thing. And unless your lawyer directs you not to answer a question, I would ask that you answer every question that I ask, okay?
A. Yes.
Q. Thank you.
That's where you need to give the verbal answer.
Just to go through a couple of definitions so that I don't have to say full names on certain things throughout the day.
If I use the word "Dugaboy," will you understand that I'm referring to The Dugaboy Investment Trust?
A. Yes.
Q. If I use the word "Highland,"

N. Dondero
will you understand that I'm referring only to the entity that was known as Highland Capital Management LP, both before the bankruptcy filing and after the bankruptcy filing?
A. Okay.
Q. If I use the phrase "LP agreement" -- withdrawn.
Are you familiar with the fourth amended and restated limited partnership agreement of Highland Capital Management LP?
A. Yes.
Q. Okay. And if I refer to that document as the "LP agreement," will you understand what I'm referring to?
A. Yes.
Q. Do you understand that you're here today both in your individual capacity and in your capacity as the trustee or the 30 -- what's called the 30(b)(6) representative for Dugaboy?
A. Yes.
Q. And have you done anything to

N. Dondero
prepare for today's deposition?
A. Yes.
Q. Can you tell me what you did to prepare for today's deposition?
A. I met with my attorney. And I reviewed your big binder.
Q. When did you meet with your attorneys?
A. Yesterday.
Q. Is that the only time that you conferred with your attorneys in preparation for today's deposition?
A. In person, yes.
Q. Okay. And how long did you meet in person yesterday?
A. Four hours, four and a half hours.
Q. And where did you meet?
A. At Deborah's office.
Q. And was anybody present there other than your attorneys?
A. No.
Q. Was anybody on speakerphone or otherwise communicating during the meeting

N. Dondero
that was not one of your attorneys?
A. No.
Q. I think you mentioned, or you may have implied, that you communicated with your attorneys in preparation for today's deposition but it wasn't in person.
Do I have that right?
A. Correct.
Q. Okay. Did you speak with them on the phone?
A. Zoom meeting.
Q. And how many Zoom meetings did you have in preparation for today's deposition?
A. Three.
Q. Okay. And can you tell me when those three Zoom meetings occurred?
A. Wednesday, Thursday, and Friday.
Q. And can you tell me how long each of those meetings took place, each of those Zoom meetings took place?
A. Approximately an hour.
Q. Did anybody other than your attorneys participate in any of those three

N. Dondero
Zoom meetings?
A. No.
Q. Did you review any documents in preparation for today's deposition other than the documents that I provided?
A. No.
MS. DEITSCH-PEREZ: To be fair, I think we did give her the Dugaboy notice. I don't remember if it's in your binder.
MR. MORRIS: Deborah, are you referring to the 30(b)(6) notice?
MS. DEITSCH-PEREZ: Yes.
MR. MORRIS: I appreciate that. It was not in the binder.
BY MR. MORRIS:
Q. Other than the 30(b)(6) notice that was in the binder and the 29 documents that I provided to you, did you review anything else, Ms. Dondero, in preparation for today's deposition?
A. Not that I'm aware of.
Q. Was your brother present or did your brother participate in any of the four

N. Dondero
preparation meetings that you described?
A. No.
Q. Since the beginning of the year, since January 1st, 2021, have you communicated with your brother at any time about the promissory notes that are the subject of this litigation?
A. Not that I recall.
Q. You don't recall ever speaking to your brother in 2021 about the promissory notes that are the subject of the litigation.
Do I have that right?
A. That's correct. I do not recall.
Q. Do you recall if you had any conversations with your brother at any time in 2021 about any of the defenses that he is asserting in the litigation?
A. What do you -- can you be more specific?
Q. Are you aware that your brother is a defendant in the lawsuits in which -- withdrawn.
Are you aware that you are a

N. Dondero
defendant in certain lawsuits?
A. Yes.
Q. Are you aware that your brother is also a defendant in certain lawsuits?
A. Yes.
Q. Are you aware that your brother has asserted certain defenses to the claims that are being asserted against him in those lawsuits?
A. Yes.
Q. Did you ever discuss with your brother at any time in 2021 any aspect of the defenses that he is asserting in the lawsuits?
A. No.
Q. Did you discuss with your brother at any time in 2021 who would represent you in connection with the lawsuits?
A. No, I don't believe so.
Q. Did you communicate with your -- and when I use the word "communication," I want to be clear, I mean any form of communication; either a meeting in public, on the telephone, by email or text.

N. Dondero
Do you understand that?
A. Yes.
Q. Okay. Did you -- and did you understand that when I asked the last few questions about your communications with your brother?
A. Yes, sir.
Q. Okay. In 2021, had you communicated with your brother at any time about who would represent Dugaboy?
A. Not that I remember.
Q. You're the trustee of Dugaboy. Do I have that right?
A. Yes.
Q. Okay. And Mr. Draper represents Dugaboy in Highland's bankruptcy case; is that right?
A. Yes, sir.
Q. Your brother and people working for him identified and selected Mr. Draper to serve as Dugaboy's counsel, correct?
MS. DEITSCH-PEREZ: Object to the form.
A. I'm sorry. Can you ask that

N. Dondero
again?
Q. Sure. Your brother -- you didn't select Mr. Draper to represent Dugaboy; is that right?
MS. DEITSCH-PEREZ: Object to the form.
A. I believe he was referred.
Q. And who was he referred to?
A. Me.
Q. Who referred Mr. Draper to you?
A. I do not remember.
Q. It's your testimony that Mr. Draper was referred to you, and you decided to retain Mr. Draper?
A. I don't -- I don't know.
Q. Do you know who decided to retain Mr. Draper?
A. I do not.
Q. Do you know who identified Mr. Draper as a possible attorney for Dugaboy?
A. I do not know.
Q. Do you know when Mr. Draper was

N. Dondero
retained?
A. No.
Q. Do you recall when you first spoke to Mr. Draper -- withdrawn. Do you recall when you first communicated with Mr. Draper?
A. A couple of months ago.
Q. Would it have been before or after July 1st, 2021?
A. I don't know.
Q. It might have been before; it might have been after. Do I have that right?
A. Correct.
Q. Can you identify any matter that Mr. Draper has handled in the Highland bankruptcy other than his representation of Dugaboy in these notes litigations?
A. I would have to look. I don't know offhand.
MS. DEITSCH-PEREZ: Yeah, John, I don't -- this isn't a topic on the Dugaboy 30(b)(6). If you need her to go back and check the engagement -- I

N. Dondero
mean, it's not something that I believe she's been prepared on. And so I don't think it's fair to have a memory test on the dates of these things.
MR. MORRIS: Okay. I appreciate that, Deborah. I'm asking -- so let's clarify and say this was not a 30(b)(6) topic. It's not something that she should have prepared for. But I -- she is here in her individual capacity, and I'll stipulate that these particular questions are in her individual capacity.
MS. DEITSCH-PEREZ: Well, but in her individual capacity, it's not the subject of the notes litigation. And then I would object that it's really beyond the scope.
MR. MORRIS: Okay. There is no scope because she's here in her individual capacity. But the objection is noted. Thank you very much.
MS. DEITSCH-PEREZ: Thank you.
BY MR. MORRIS:

N. Dondero

Q. Did you ever consider hiring an attorney for Dugaboy other than Mr. Draper?
A. No.
Q. Did you ever spend any time trying to identify an attorney who would represent Dugaboy?
A. No.
Q. The Stinson firm represents you personally in this litigation; is that right?
A. That's incorrect.
Q. Who -- do you know the name of Ms. Deitsch-Perez's law firm?
A. Her law firm is Stinson.
Q. And does that law firm represent you in your individual capacity?
A. Okay.
Q. That's okay.
A. She represents -- okay. Dan is here representing me personally.
Q. Okay. And Dan is with the Stinson firm, correct?
A. That's incorrect.
Q. What firm --

N. Dondero

A. Dan is with Greenberg Traurig.
Q. Ah. And I appreciate that.
A. Sure.
Q. Is that Dan Elms?
A. Correct.
Q. When did you retain Mr. Elms?
A. Mid to late summer.
Q. How did you identify Mr. Elms as your counsel?
A. He was referred by Deborah.
Q. And Deborah is Deborah Deitsch-Perez, counsel for certain other defendants in this lawsuit; is that right?
A. Correct.
Q. Okay. Did you consider hiring anybody to represent you in this litigation other than Mr. Elms?
A. No. I trusted Deborah's referral.
Q. Had you worked with Deborah before she referred Mr. Elms to you?
A. On this matter? Yes.
Q. On any other matters?
A. No.

N. Dondero

Q. When did you first communicate with Ms. Deitsch-Perez?
A. Prior to this deposition being scheduled in June.
Q. Was she your counsel at the time?
A. Yes.
Q. When did you retain her?
A. To the best of my recollection, it had to be late April or May of this year.
Q. So Ms. Deitsch-Perez was representing you and your brother at the same time? Do I have that right?
A. Yes.
Q. Do you have any agreements of any kind with your brother concerning these lawsuits?
Withdrawn. That wasn't a good question.
Do you have any agreements or understandings with your brother concerning the defense of these lawsuits?
A. I'm sorry. I don't understand the question.

N. Dondero

Q. Have you heard the word "indemnification" before or "indemnity"?
A. Yes.
Q. Okay. Do you have an understanding of what that means?
A. Generally.
Q. What's your general understanding of the term "indemnity"?
A. That one forgives another person's error.
Q. Okay. I'm going to try and give you a little bit of a different definition and see if you understand it.
Did your brother ever offer to satisfy and pay any judgment that might be entered against you in connection with these litigations?
A. No.
Q. Do you have any agreement of any kind or any understanding that he would be responsible for the outcome of these lawsuits?
A. Only what is written in the trust agreement.

N. Dondero

Q. Do you know whether the trust agreement protects you in your individual capacity as opposed to your capacity as the trustee of the Dugaboy trust?

MS. DEITSCH-PEREZ: Object to the form.

A. I'm sorry. Can you reask that question, Mr. Morris?

Q. Sure.

Do you know whether the trust agreement indemnifies you in your individual capacity, or is it only in your capacity as the trustee of the Dugaboy trust?

MS. DEITSCH-PEREZ: Object to the form.

A. That's a legal question I don't feel comfortable answering.

Q. All right. I appreciate that it may have legal implications, but I just want to know what is in your head as a factual matter.

Is it your personal understanding, whether it's right or wrong,

N. Dondero

that you are indemnified in your personal capacity under the trust, under the Dugaboy trust?

MS. DEITSCH-PEREZ: Object to the form.

A. I would have to think about that.

Q. Okay. Did your brother ever offer to pay any costs and expenses that you incur in your personal capacity in connection with this lawsuit?

A. I don't understand.

Q. Okay. So you're a defendant in your individual capacity in four different lawsuits.

Do you understand that?

A. Yes.

Q. And Dugaboy is also a defendant in the same lawsuits, right?

A. Yes.

Q. Okay. So I'm asking you whether your brother ever offered to pay any costs or expenses that you incur in your individual capacity in connection with these lawsuits?

N. Dondero

A. No.

Q. Okay. Greenberg Traurig only represents you in your individual capacity.

Do I have that right?

A. Yes.

Q. Okay. Do you have any agreement with anybody as to who would pay the invoices rendered by Greenberg Traurig?

A. Yes.

Q. And what agreement is that?

A. That Dugaboy will pay Greenberg Traurig's expenses, bills.

Q. Okay. So pursuant to that agreement, you won't have to pay any legal expenses associated with the defense of these lawsuits in your individual capacity.

Do I have that right?

A. Yes, sir.

Q. Okay. Let's just get some background here.

Are you currently employed, ma'am?

A. I am.

Q. By whom?

N. Dondero

A. Crescent Research Services.

Q. Do you have a direct or indirect ownership in that entity?

A. I do.

Q. And what is the nature of your interest?

A. I own the company.

Q. 100 percent; is that fair?

A. Yes.

Q. Okay. And what is the nature of the business of Crescent Research?

A. It's an investigative firm.

Q. And do you oversee the day-to-day operations of Crescent Research?

A. I do.

Q. And how many employees does Crescent Research have?

A. I have an outside contractor at certain times when the workload demands it. Otherwise, it is just me.

Q. Okay. And how long have you owned and operated Crescent Research?

A. Since 1997.

Q. Have you owned and operated

N. Dondero
Crescent Research on a continuous basis since 1997 until today?
A. Correct.
Q. Have you had any other employment since 1997 other than the work that you do for Crescent Research?
A. No.
Q. Did you obtain a college degree?
A. I did.
Q. Where did you attend college?
A. Penn State.
Q. And you graduated from Penn State?
A. Correct.
Q. And when was that?
A. 1987.
Q. What was your degree in?
A. Hotel restaurant management.
Q. Was it a BA or BS?
A. I believe it's a BS.
Q. Okay. Do you have any postgraduate degrees?
A. No.
Q. Do you hold any licenses of any

N. Dondero
kind other than your driver's license?
A. I do.
Q. Can you describe for me every license that you hold other than your driver's license?
A. I'm a real estate agent. I am notary. I have several professional licenses. Asset recovery specialist. Those are off the top of my head that I remember.
Q. What is an asset recovery specialist license?
A. It's licensed through -- I don't remember the organization. You have to -- I'm not sure how to answer that, Mr. Morris.
Q. Can you tell me what asset recovery is generally in the context of your license?
A. Certainly.
It's finding assets for companies that have gone bankrupt.
Q. So do you typically get hired by an estate fiduciary, a bankruptcy estate

N. Dondero
fiduciary?
A. I haven't done asset recovery in a number of years.
Q. Okay. As opposed to licenses, do you have any certifications of any kind?
A. Not that I recall.
Q. Can you tell me generally what you did professionally between the time you graduated from Penn State in 1987 and the time you formed and began working for Crescent Research?
A. Immediately out of college, I worked for a company called Royal Schutt. Is an investigative firm. I built up their background division. The company closed. I took the background division and opened up a company called Info-Back Services. I ran that for a number of years in New Jersey.
When I moved to Florida, I transferred that company and it became Crescent Research Services.
We predominately do preemployment background screening, tenant research, and

N. Dondero
I do a lot of trial prep for various attorneys.
Q. All right. I think you mentioned three things. The first was preemployment background.
Do I have that right?
A. Yes.
Q. And can you just describe generally what preemployment background pertains to?
A. When people are applying for a job, I do the screening on their application prior to them being hired.
Q. Okay. And what was the second piece?
A. I do tenant screening as well, which is the equivalent for people renting properties.
And the third component would be trial prep.
Q. And what about trial prep? What does that mean? Can you help me to understand what investigative services you provide in the area of trial prep?

N. Dondero
A. Certainly.
I work for private attorneys. I worked for the public defender's office. I've worked to capital murder cases on down. I look for discrepancies in statements. I find witnesses, take statements and so forth. I help the lawyer prepare for trial.
Q. Okay. You're familiar with a company, the company that we identified earlier, called Highland Capital Management LP?
Do I have that right?
A. Yes.
Q. Oh, by the way, did you ever hear of a person named James P. Seery, Jr.?
A. In regards to this case, yes.
Q. Did you ever investigate Mr. Seery?
A. No.
Q. Did you ever investigate any of the independent directors who were appointed at Strand Advisors?
A. Can you tell me who they are?

N. Dondero
Q. Russell Nelms or John Dubel?
A. No.
Q. Have you undertaken any investigation of any current or former employee of Highland since October 19th, 2019?
A. No.
Q. Are you aware that Highland is the company that your brother founded with Mark Okada in the 1990s?
A. Yes.
Q. And you're aware that Highland filed for bankruptcy, correct?
A. Yes.
Q. Do you know when that occurred?
A. October of '19, I believe.
Q. Okay. I'll tell you it is October 19th, 2019. And if it's okay with you, I'd like to refer to October 19th, 2019, as the petition date.
Is that okay?
A. Certainly.
Q. Okay. When did you find out that Highland filed for bankruptcy?

N. Dondero
A. It was either the day after -- when it appeared in the Dallas Morning News.
Q. So you didn't have any advanced notice that your brother was going to file Highland for bankruptcy; is that right?
A. I did not.
Q. Did you speak to your brother after learning that Highland filed for bankruptcy?
A. I would imagine I called him, sure.
Q. Do you have any recollection of what was said in the phone call that you imagine occurred?
A. No.
Q. Okay. Do you directly or indirectly own any economic interest in Highland today?
A. No.
Q. Do you understand that if I use the phrase "directly or indirectly," I'm asking whether you own it in your personal name or through a company that you might

N. Dondero
own, such as Crescent Research?
A. Okay.
Q. Do you understand the phrase "directly or indirectly"?
A. No.
Can you elaborate, please?
Q. Sure.
A direct interest would be an interest that you hold in your own name, in the name of Nancy Dondero.
Do you understand that?
A. Okay.
Q. And an indirect interest is an interest that you own through some other vehicle, through some other entity in which you also have an ownership interest.
Do you understand that?
A. Okay.
Q. Okay. So --
A. Yes. But are you referring to --
Q. Go ahead.
A. I'm just not clear.
Do you mean like Highland funds or stock?

N. Dondero
Q. I'm only talking about Highland Capital Management LP.
A. No, I have no interest.
Q. Have you ever directly or indirectly owned any limited partnership interests in Highland?
A. No.
Q. Have you ever directly or indirectly owned any interest of any kind in Highland?
A. No.
Q. Do you directly or indirectly have any claims against Highland that you know of?
MS. DEITSCH-PEREZ: And, again, you are still talking about Nancy Dondero?
MR. MORRIS: Yes, I am. Thank you.
A. No, sir.
Q. Did you have an understanding of the nature of Highland's business as of the petition date?
A. Generally.

N. Dondero
Q. And what did you understand the nature of Highland's business to be as of the petition date?
A. A hedge fund.
Q. Do you have any understanding of what a hedge fund is?
A. Not really.
Q. I appreciate that.
By the way, do you know if Crescent Research has any claims against Highland?
A. That's a very good question. There may be -- I think I am creditor for a very little bit of money, but I'm not positive on that, if that was settled.
Q. Do you recall filing any claim against Highland on behalf of Crescent Research?
A. I can't say definitely one way or the other, but...
Q. Okay. It's a matter of record. I don't mean to test your memory. It's okay.
So other than your understanding

N. Dondero
that Highland was a hedge fund, do you have any understanding or did you have any understanding as of the petition date regarding the nature of Highland's business?
A. Since the petition date?
Q. As of the petition date.
A. No.
Q. Do you have any -- I apologize.
A. I know obviously it's a financial company, and it has funds and so forth.
Q. Have you learned anything about the nature of Highland's business since the petition date? Anything additional?
A. No.
Q. Okay. Do you have an understanding of the industry that Highland operates in or that Highland operated in prior to the petition date?
A. Sure. Yes.
Q. What industry did you understand Highland to be operating in prior to the petition date?
A. The financial industry.

N. Dondero
Q. Were you ever employed by Highland at any time?
A. No.
Q. Did you ever serve as an officer or director of Highland at any time?
A. No.
Q. Have you ever heard of an entity called Strand Advisors Inc.?
A. Yes.
Q. Can we refer to that entity as "Strand"?
A. Yes, sir.
Q. Do you know if Strand has any relationship to Highland?
A. General partner.
Q. Do you recall when you learned that Strand was Highland's general partner?
A. A number of years ago, I believe.
Q. Do you recall how you learned that Strand was Highland's general partner?
A. I do not.
Q. Do you recall if you read it or if somebody told that to you?
A. I do not recall.

N. Dondero

Q. Do you recall the circumstances under which you learned that Strand was Highland's general partner?

A. No, sir.

Q. Have you done anything to try to verify whether Strand was in fact Highland's general partner?

A. No.

Q. Have you ever been employed by Strand?

MS. DEITSCH-PEREZ: Object to the form.

BY MR. MORRIS:

Q. You can answer. That's one of those situations your lawyer can object to preserve the question. I think the question is fine, so you can answer the question.

MS. DEITSCH-PEREZ: Do you mean technically like hired and worked as a W-2 employee?

MR. MORRIS: Yes.

A. Okay. And that's a no, a W-2 employee.

N. Dondero

Q. Okay. Have you ever served as an officer or director of Strand?

A. No, sir.

Q. Have you ever been employed by any entity in which you believed your brother had a direct or indirect ownership interest?

A. No, sir.

Q. Have you ever served as an officer or director for any entity in which you believed your brother had a direct or indirect ownership interest?

A. No, sir.

Q. Has Crescent Research ever provided services to Highland?

A. Yes.

Q. When did Crescent Research first provide services to Highland?

A. It's been a number of years. The actual beginning, I don't know.

Q. And did you, in your capacity as the owner of Crescent Research, run individualized background checks on prospective employees of Highland?

N. Dondero

A. Yes.

Q. Okay. Did Crescent Research provide any services for Highland other than that?

A. No, not that I'm aware of.

Q. Okay. Have you ever been employed in the financial services industry?

A. No, sir.

Q. Other than as it may relate to this case, do you have any experience making decisions in the area of executive compensation?

A. No.

Q. Do you hold yourself out as an expert in the area of executive compensation?

A. No.

Q. Have you ever taken any classes or courses concerning executive compensation?

A. No.

Q. Have you ever been compensated for services rendered by you in the area of

N. Dondero

executive compensation?

A. No.

Q. Have you ever conferred with anybody who you believed to be an expert in the area of executive compensation?

A. No, sir.

Q. Have you ever prepared any analysis of any kind concerning executive compensation?

A. No, sir.

Q. Have you ever asked anyone to prepare any analysis of any kind in the area of executive compensation?

A. No.

Q. Has anyone ever prepared an analysis for you in the area of executive compensation?

A. I'm sorry, sir. Can you repeat that question?

Q. Sure.

Did anybody ever prepare any analysis for you that covered the topic – any topic concerning executive compensation?

N. Dondero
A. No.
Q. Do you have any knowledge as to how executives are compensated in the financial industry?
A. Just a general awareness.
Q. And what is the basis, what is the foundation of your general awareness?
A. Obviously the better a company does, probably the more the CEO is paid.
Q. Do you have any understanding of how executives are compensated in the financial industry other than that?
A. No, sir.
Q. All right. So now I'm going to ask you the same questions in your capacity as the trustee of Dugaboy.
Did Dugaboy ever prepare any written analysis concerning executive compensation?
A. No, sir.
Q. Has Dugaboy ever asked anybody to prepare any analysis on any issue concerning executive compensation?
A. No.

N. Dondero
Q. Have you in your capacity as the trustee of Dugaboy ever prepared any analysis on the issue of executive compensation?
A. No.
Q. Have you ever done any analysis of the compensation that your brother received from Highland over time?
A. Not that I am aware of.
Q. Do you have any information that you can share with me concerning the compensation that you your brother received from Highland at any moment in time?
A. In general terms, sure.
Q. What can you share with me in general terms?
A. I know Jim was not highly paid. I know for the last couple of years, his salary has been roughly less than a million, 500, 700,000, somewhere in that ballpark.
Q. Did you play any role in the setting of his salary?
A. I'm sorry?

N. Dondero
Q. Did you personally ever play any role in the setting of Mr. Dondero's salary?
A. In the salary that we are talking about, no, I did not.
Q. Thank you.
Did Dugaboy play any role in the setting of Mr. Dondero's salary?
MS. DEITSCH-PEREZ: Do you mean setting or approving, John?
BY MR. MORRIS:
Q. Let's go with setting first.
A. Okay. No.
Q. Did Dugaboy play any role in approving Mr. Dondero's salary?
A. It has that right, but I don't believe it did in the salary that he had at the time.
Q. Okay. I just want to nail this down.
To the best of your recollection, Dugaboy never played a role in approving Mr. Dondero's salary.
Do I have that right?

N. Dondero
A. Can you rephrase that so I understand?
Q. Sure.
Can you think of any year in which Dugaboy approved of Mr. Dondero's salary from Highland?
A. His actual salary?
Q. Correct.
A. Not – we are not talking about the notes now; you are talking about salary?
Q. Yes.
A. No – yes, okay, not to my recollection.
Q. Do you know what Mr. Dondero's total compensation was in the year 2017?
A. His total compensation, no.
Q. Did you ever ask anybody what his compensation was in the year 2017?
A. Not that I recall.
Q. Do you know what Mr. Dondero's total compensation was in 2018?
A. When you're saying "total," you mean just from Highland or from any entity?

N. Dondero
Q. I'm just talking about Highland.
A. Okay. Didn't we talk about those numbers?
Q. We talked about salary before.
A. Right.
Q. And now I'm asking you about total compensation.
Do you understand that.
A. No, I don't.
Q. Let me try again. Thank you for letting me know that. And I encourage you to let me know if you don't understand a question.
Do you know what Mr. Dondero's total compensation was from Highland in 2017?
A. No, I do not.
Q. Did you ever ask anybody what Mr. Dondero's total compensation from Highland was in 2017?
A. No. Other than the figures that we are talking about. Because I'm still not understanding, John. I'm sorry.
Q. Well, do you understand that

N. Dondero
salary is just one component of Mr. Dondero's compensation?
A. That's correct.
Q. Okay.
A. Um-hmm. That, I understand.
Q. Okay. And so do you understand that I'm moving from salary to total compensation, and I'm asking for the value of any benefits he received from Highland when I use the word "compensation"?
A. Okay. And --
Q. So with that understanding, I'm going to start again.
Do you know what Mr. Dondero's total compensation was in 2017?
A. I do not know.
Q. Did you ever ask anybody what Mr. Dondero's total compensation was in 2017?
A. No.
Q. Did Dugaboy know what Mr. Dondero's compensation was in 2017?
A. I do not believe so.
Q. To the best of your knowledge,

N. Dondero
did anybody on behalf of Dugaboy ever try to ascertain what Mr. Dondero's total compensation was in 2017?
A. To the best of my knowledge, no.
Q. Do you know what Mr. Dondero's total compensation from Highland was in 2018?
A. No.
Q. Did you ever ask anybody what Mr. Dondero's total compensation was in 2018?
A. I don't believe so.
Q. Did Dugaboy know what Mr. Dondero's total compensation was for 2018?
A. I don't think so.
Q. To the best of your knowledge, did anybody ever ask on behalf of Dugaboy what Mr. Dondero's total compensation from Highland was in 2018?
A. I don't recall. I don't know.
Q. Do you know what Mr. Dondero's total compensation was in 2019?
A. No.

N. Dondero
Q. Did you ever ask anybody what Mr. Dondero's total compensation was in 2019?
A. Not that I remember.
Q. Did Dugaboy know what Mr. Dondero's total compensation from Highland was in 2019?
A. I don't believe so.
Q. Do you know whether Dugaboy ever asked anybody what Mr. Dondero's total compensation was from Highland in 2019?
A. I don't think so.
THE WITNESS: Would it be okay if we take a break?
MR. MORRIS: Just a couple more questions, Deborah.
You know what, I apologize. Of course, of course we can take a break.
MR. DRAPER: John, this is Douglas. Let me raise an issue with you.
MR. MORRIS: Do you want to do this on the record?
MR. DRAPER: Well, we can do it

N. Dondero
off the record. But I just noticed on the participants you have Page Montgomery and Deborah Newman, who are not parties to this litigation, and I would request that you ask them to get off the line.
MR. MORRIS: Okay. I'll take it under advisement, Douglas, but I will point out that there have always been people who have – they actually have an interest in this litigation, so I'm not even going to address that. They have an interest in the litigation, okay?
MR. DRAPER: John –
MR. MORRIS: Let's go off the record, please.
THE VIDEOGRAPHER: The time is 10:30. We are going off the record.
(Recess is taken.)
THE VIDEOGRAPHER: The time is 10:51. Back on the record.
BY MR. MORRIS:
Q. Ms. Dondero, can you hear me?

N. Dondero
A. I can.
Q. Okay. Did you communicate with anybody during the break about any of the questions that I asked?
A. No.
Q. Did you communicate with anybody on the break regarding any answers you gave to any of the questions that I asked?
A. No.
Q. Did you communicate with anybody on the break about any questions that I might ask in the future?
A. No.
Q. Did you communicate with anybody on the break about any answers you might give in the future?
A. No.
Q. I believe you testified earlier that you learned that your brother received less than a million dollars in salary.
Do I have that right?
A. Yes.
Q. Can you tell me when you learned that?

N. Dondero
A. I don't remember.
Q. Do you remember how you learned it?
A. No.
Q. Did you ever know that your brother received a salary of a million dollars from Highland?
A. A million dollars even?
Q. Yes.
A. No.
Q. Did you ever learn that your brother had his salary increased to two-and-a-half million dollars from Highland?
A. When?
Q. I'm just asking if you ever learned it.
A. Oh, no.
Q. Did you ever learn that somebody made a decision to allocate the two-and-a-half million dollars between and among different entities that your brother owned and controlled?
A. I have no idea.

N. Dondero
Q. Did you have any conversation at any time with your brother about why he was receiving less than a million dollars from Highland?
A. Why he was?
Q. Yes.
A. No.
Q. Did you ever learn at any time how your brother's salary was established?
A. Not that I recall.
Q. Did you ever learn at any time as to who made the decision to set your brother's salary?
A. Set his salary? No.
Q. Are you aware your brother has retained experts in this case?
A. I was not aware.
Q. So is it fair to say that you've never spoken with any expert retained by your brother?
A. Not that I'm aware of.
Q. Let's talk about access to financial information.
Do you have an understanding of

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1 N. Dondero
2 the term "financial statements"?
3 A. Yes.
4 Q. And what's your understanding of
5 the term "financial statements"?
6 A. Balance sheets, bank statements.
7 Q. Would it include profit and loss
8 statements?
9 A. Certainly.
10 Q. Would it include statements of
11 operations?
12 A. I would imagine, yes.
13 Q. Using a definition of the term
14 financial statements that incorporates each
15 of the items that we just discussed, did
16 you ever review Highland's financial
17 statements prior to the petition date?
18 A. No, I haven't reviewed Highland's
19 financials.
20 Q. Is it fair to say that you never
21 reviewed Highland's balance sheet prior to
22 the petition date?
23 A. That's fair. Correct.
24 Q. Did you ever see Highland's
25 audited financial statements prior to the

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1 N. Dondero
2 petition date?
3 A. Not that I remember, no.
4 Q. Did you ever ask anybody to see
5 Highland's financial statements?
6 A. Not that I recall.
7 Q. Did you ever have access to
8 Highland's financial statements?
9 A. No.
10 Q. Did you know anything about
11 Highland's financial condition prior to the
12 petition date?
13 A. No, I was not aware.
14 Q. Have you ever heard of the term
15 "portfolio company" in relation to
16 Highland?
17 A. I have.
18 Q. Do you have an understanding of
19 the term "portfolio company" as it relates
20 to Highland?
21 A. Yes, generally.
22 Q. What is your general
23 understanding of the term "portfolio
24 company" as it relates to Highland?
25 A. As I understand it, they're

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1 N. Dondero
2 companies owned by Highland under their
3 umbrella.
4 Q. And how did you form that
5 understanding?
6 A. I don't know.
7 Q. Do you recall when you first came
8 to the understanding that you have
9 concerning the term "portfolio company" as
10 it relates to Highland?
11 A. No.
12 Q. Based on your understanding of
13 the term "portfolio company," do you know
14 how many portfolio companies Highland had
15 prior to the petition date?
16 A. Several.
17 Q. Can you give me an approximate
18 number, to the best of your understanding?
19 A. More than -- I would imagine more
20 than three.
21 Q. And why do you imagine it's more
22 than three?
23 A. Because I'm aware of three.
24 Q. Are you aware of any others,
25 other than the three that you have in your

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1 N. Dondero
2 head?
3 A. Not off the top of my head, no.
4 Q. Can you identify any of the three
5 portfolio companies that you have in your
6 head?
7 A. Certainly.
8 Q. Okay. Can you please identify
9 them?
10 A. Trussway, Cornerstone, MGM.
11 Q. And you believe that Highland had
12 a -- withdrawn.
13 And your understanding was that
14 Highland directly or indirectly owned each
15 of those three companies?
16 A. That was my understanding.
17 Q. And what was the basis for that
18 understanding?
19 A. The basis of that understanding
20 has to do with the forgiveness of the note.
21 Q. So how did you learn that
22 Highland had a direct or indirect economic
23 interest in each of the three portfolio
24 companies that you identified?
25 A. I believe it was from Jim.

N. Dondero

Q. Do you recall any source of information other than Jim?
A. Not that I recall.
Q. Prior to the petition date, were you aware of the price that Highland paid to acquire its interest in each of the three portfolio companies that you identified?
A. Not that I am aware of.
Q. Did you ever ask for any information concerning the price that Highland paid to acquire its interest in each of the three portfolio companies that you identified?
A. No.
Q. Prior to the petition date, did you have access to any information concerning the value of any of the three portfolio companies that you identified?
A. Not that I am aware of.
Q. Prior to the petition date -- well, let's talk about them individually.
You referred to MGM.
Do I have that right?

N. Dondero

A. Yes, sir.
Q. And your understanding is that MGM was a Highland portfolio company; is that right?
A. Yes.
Q. Do you have any knowledge about the nature of Highland's interest in MGM?
A. No.
Q. Do you know if Highland owns debt or equity in MGM?
A. I couldn't be sure.
Q. Do you know when Highland acquired its interest in MGM?
A. A number of years ago.
MR. MORRIS: I just want the record to be clear and I want counsel to be clear, these questions that I'm asking now are going to be in Ms. Dondero's capacity as a 30(b)(6) witness for Dugaboy.
BY MR. MORRIS:
Q. So I'm going to ask a couple of questions.
Again, at any time prior to the

N. Dondero

petition date, did Dugaboy have an understanding of the nature of Highland's interest in MGM?
A. Not that I'm aware of. Well, wait, I'm sorry. Can you -- wait. Ask that again, John. Say that again.
Q. Sure.
At any time prior to the petition date --
A. Right.
Q. -- did Dugaboy have an understanding as to the nature of Highland's interest in MGM?
A. I knew that they had an interest in MGM prior to the petition date.
Q. Okay. Did you or Dugaboy know the nature of that interest, in what form it held?
A. Not specifically, John.
Q. Did you or Dugaboy make any effort prior to the petition date to learn about the nature and extent of Highland's interest in MGM?
A. Not that I recall.

N. Dondero

Q. Did you or Dugaboy know what Highland's cost was to acquire its interest in MGM?
A. No.
Q. Did you or Dugaboy ever make any effort to try to determine what Highland's cost was to acquire its interest in MGM?
A. No.
Q. Did you ever ask for any information -- withdrawn.
Did you or Dugaboy ever ask anybody for any information concerning Highland's cost to acquire its interest in MGM?
A. No.
Q. Did you or Dugaboy ever obtain any information concerning the value of Highland's interest in MGM?
A. Not that I recall.
Q. Do you recall the value of Highland's interest in MGM as you sit here today?
MS. DEITSCH-PEREZ: Object to the form.

N. Dondero
A. I'm sorry, John, the question?
Q. Sure.
I'm going to ask a different question. It was a fine objection.
Do you recall the value of Highland's interest in MGM at any time prior to the petition date?
A. I do not recall.
Q. Did you or Dugaboy ever know the value of Highland's interest in MGM at any time prior to the petition date?
A. No.
Q. Did you or Dugaboy ever ask for any information concerning the value of Highland's interest in MGM at any time prior to the petition date?
A. Not that I remember.
Q. Prior to the petition date, did you or Dugaboy ever make any determination as to whether the value of Highland's interest in MGM exceeded its cost?
A. I'm sorry. Can you repeat that, John?
Q. Sure.

N. Dondero
At any time prior to the petition date, did you or Dugaboy ever know whether the value of Highland's interest in MGM exceeded the cost that it paid to acquire that interest?
A. We didn't know.
Q. Did you or Dugaboy ever ask anybody prior to the petition date whether Highland's cost to acquire its interest in MGM was more or less than the value?
A. No, we never made that inquiry.
Q. Now do you know the nature of the MGM business?
A. The movie theater and video library, that type.
Q. Do you know anything else about the nature of MGM's business other than that?
A. No.
Q. At any time prior to the petition date, did you or Dugaboy do any due diligence to try to ascertain the value of MGM?
A. Prior to the petition date?

N. Dondero
Q. Yes.
A. No.
Q. All right. I'm going to ask similar questions with respect to Cornerstone.
Cornerstone is one of the portfolio companies that you identified earlier, correct?
A. Yes.
Q. And did you learn from Jim that Cornerstone was one of Highland's portfolio companies prior to the petition date?
A. I believe that is correct.
Q. Do you have any other source of information for that other than your brother?
A. Not that I remember.
Q. At any time prior to the petition date, did you or Dugaboy have an understanding as to the nature of Highland's interest in Cornerstone?
A. No.
Q. At any time prior to the petition date, did you or Dugaboy ask anybody what

N. Dondero
the nature of Highland's interest was in Cornerstone?
A. Not that I recall.
Q. Prior to the petition date, did you or Dugaboy make any effort to try to ascertain the nature of Highland's interest in Cornerstone?
A. Not that I remember.
Q. Prior to the petition date, did you or Dugaboy know how much Highland paid to acquire its interest in Cornerstone?
A. No.
Q. Prior to the petition date, did you or Dugaboy ever ask anybody what Highland's cost was to acquire its interest in Cornerstone?
A. Not that I remember.
Q. Prior to the petition date, did you or Dugaboy ever make any effort to try to ascertain how much Highland paid to acquire its interest in Cornerstone?
A. No.
Q. Do you know what Cornerstone -- do you know the nature of Cornerstone's

N. Dondero

business?
A. I do not.
Q. Did you ever ask anybody what the nature of Cornerstone's business was?
A. No.
Q. Did you ever make any effort – withdrawn.
Did you or Dugaboy ever make any effort to try to determine the nature of Cornerstone's business?
A. Not that I recall.
Q. Did you or Dugaboy know the value of Highland's interest in Cornerstone prior to the petition date?
A. We did not.
Q. Did you or Dugaboy ever ask anybody prior to the petition date what the value of Highland's interest in Cornerstone was?
A. Not that I remember.
Q. Do you remember whether you or Dugaboy made any effort prior to the petition date to try to ascertain the value of Highland's interest in Cornerstone?

N. Dondero

A. I don't believe so.
Q. Have you heard of a company called Trussway?
A. Yes.
Q. Do you know the nature of Trussway's business?
A. I do not.
Q. Did you ever ask anybody what the nature of Trussway's business was?
A. No, sir.
Q. Did you or Dugaboy make any effort at any time prior to the petition date to try to understand the nature of Trussway's business?
A. I don't believe so.
Q. Did you or Dugaboy make any effort prior to the petition date to understand the financial condition of MGM?
A. Of MGM? I'm sorry. I thought we were talking about Trussway. We're going back to MGM?
Q. We were. I'm sorry. It's a new question. I'm just going to tick the box.
A. Oh, okay. I'm sorry. I was a

N. Dondero

little slow on the switch.
Q. That's okay.
A. Can you repeat the question?
Q. Sure.
Did you or Dugaboy make any effort prior to the petition date to assess MGM's financial condition?
A. Not that I recall.
Q. Did you or Dugaboy make any effort prior to the petition date to try to understand the financial condition of Cornerstone?
A. Not that I recall.
Q. Did you or Dugaboy prior to the petition date make any effort to try to understand the financial condition of Trussway?
A. No, not that I recall.
Q. Is it your understanding that Trussway was one of the portfolio companies, as you defined it earlier?
A. Yes.
Q. And is that understanding based solely on information that you received

N. Dondero

from your brother?
A. Yes. Yes.
Q. Okay. At any time prior to the petition date, did you or Dugaboy have an understanding as to the nature of Highland's interest in Trussway?
A. I don't know.
Q. Do you recall whether you or Dugaboy ever had an understanding prior to the petition date concerning the nature of Highland's interest in Trussway?
A. I don't know.
Q. Do you recall that either you or Dugaboy ever asked anybody what the nature of Highland's interest in Trussway was prior to the petition date?
A. I don't believe so.
Q. Prior to the petition date, did you or Dugaboy make any effort to try to determine the nature of Highland's interest in Trussway?
A. I don't believe so.
Q. Prior to the petition date, did you or Dugaboy know Highland's cost to

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acquire its interest in Trussway?
A. We did not.
Q. Prior to the petition date, did you or Dugaboy ever ask anybody what Highland's cost was to acquire its interest in Trussway?
A. Not that I recall.
Q. Prior to the petition date, did you or Dugaboy make any effort to try to ascertain what Highland's cost was to acquire its interest in Trussway?
A. Not that I remember.
Q. Did you or Dugaboy know the value of Highland's interest in Trussway prior to the petition date?
A. Not that I am aware of.
Q. Prior to the petition date, did you or Dugaboy ever ask anybody what the value of Highland's interest was in Trussway?
A. I don't think so.
Q. Do you know whether you or Dugaboy prior to the petition date made any effort to try to ascertain the value of

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Highland's interest in Trussway?
A. I don't believe so.
Q. Did you or Dugaboy know prior to the petition date whether the value of Highland's interest in Trussway was more or less than its cost?
A. I do not know.
Q. Did you ever ask anybody -- withdrawn.
Did you or Dugaboy ever ask anybody prior to the petition date whether the value of Highland's interest in Trussway was more or less than its cost?
A. I don't think so.
Q. Did you or Dugaboy make any attempt prior to the petition date to determine whether the value of Highland's interest in Trussway was more or less than its cost?
A. I don't think so.
Q. Okay. I apologize if I asked these questions already. I think I may have forgotten them, but I'm just going to ask just those last couple of questions --

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MS. DEITSCH-PEREZ: All of them.
BY MR. MORRIS:
Q. -- related to Cornerstone.
A. Okay.
Q. Did you or Dugaboy know prior to the petition date whether the value of Highland's interest in Cornerstone was more or less than its cost?
A. I don't know if we knew.
Q. Did you or Dugaboy ask anybody prior to the petition date whether the value of Highland's interest in Cornerstone was more or less than its cost?
A. I don't recall.
Q. Do you know whether you or Dugaboy made any effort prior to the petition date to determine whether Highland's -- whether the value of Highland's interest in Cornerstone was more or less than its cost?
A. I don't remember.
Q. Okay. I'm going to shift gears now to talk about loans.
A. Okay.

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Q. All right. You're aware that from time to time, Highland provided loans to certain of its officers and employees, right?
A. I am.
Q. And you're aware that in exchange for the loans from Highland, the officers and employees gave Highland promissory notes?
A. Correct.
Q. Are you aware of any loan that Highland ever gave to an officer or employee where the officer or employee failed to give a promissory note in return?
MS. DEITSCH-PEREZ: Object to the form.
A. John, I'm sorry. Can you repeat the question, please?
Q. Yeah.
I just want to know if you are aware of any instance where Highland gave a loan to an officer or an employee where the officer or employee failed to give Highland a promissory note in exchange?

N. Dondero
MS. DEITSCH-PEREZ: Object to the form.
BY MR. MORRIS:
Q. You can answer.
A. I am not aware of any.
Q. Okay. Do you have a general understanding of what a promissory note is?
A. A promise to pay.
Q. Okay. Is it a promise to pay a sum certain?
MS. DEITSCH-PEREZ: Object to the form.
MR. MORRIS: Withdrawn.
BY MR. MORRIS:
Q. Do you understand that a promissory note is a promise to pay a specified amount at some point in the future?
MS. DEITSCH-PEREZ: Object to the form.
BY MR. MORRIS:
Q. You can answer.
A. That was my understanding, John.
Q. Okay. Prior to the petition

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date, did you ever see any promissory note that was signed by an officer or employee of Highland?
A. I'm not sure.
Q. Do you have any recollection -- do you have any recollection, as you sit here right now, of having seen a promissory note that was signed by an officer or employee of Highland prior to the petition date?
Withdrawn. That is not a good question?
Prior to the petition date, did you see any promissory note that was signed by any officer or employee of Highland?
A. I don't remember.
Q. You don't have any recollection of that; is that fair?
A. That's fair.
Q. Do you know whether Dugaboy ever saw any promissory note prior to the petition date that had been signed by an officer or employee of Highland?
A. I don't know.

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Q. Prior to the petition date, did you or Dugaboy ever ask to see any promissory note that was executed by an officer or employee of Highland?
MS. DEITSCH-PEREZ: Object to the form.
A. I don't remember, John.
Q. Okay. Do you know if Highland ever forgave any obligations under any promissory note that was issued by any Highland employee or officer?
MS. DEITSCH-PEREZ: Objection. No foundation.
A. I am not aware.
Q. You're not aware of Highland ever forgiving any loan that it made to any officer or employee.
Do I have that right?
MS. DEITSCH-PEREZ: Object. No foundation.
A. I'm not sure, John. I'm not sure.
Q. Does Dugaboy have any knowledge concerning any loan that was given by

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Highland to any of its officers or employees that was forgiven in whole or in part?
A. I don't know.
Q. Did you or Dugaboy ever ask anybody prior to the petition date whether Highland had ever forgiven any loan that it made to any officer or employee?
A. I don't think so.
Q. Did you or Dugaboy make any effort at any time prior to the petition date to determine whether Highland had ever forgiven in whole or in part any loan that it made to any of its officers or employees?
A. Did I make any inquiries? Is that what you're asking?
Q. Did you make any effort to try to answer -- to try to figure that out?
A. To determine one way or the other?
Q. Correct.
A. Not that I recall, no.
Q. Did anybody ever tell you --

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withdrawn.
Did anybody ever give you or Dugaboy any information concerning any loan that Highland ever made to any of its employees or officers that was forgiven in whole or in part?
A. I was aware that that was a common practice at Highland.
Q. Okay. And how did you become aware of that common practice?
A. In conversations with Jim.
Q. Was there any other source of information concerning that common practice that he described for you -- withdrawn.
Did you have any other source of information concerning the common practice that you just mentioned?
A. Did I have any --
Q. Any other source -- yeah.
Did you have any other source of information other than your brother concerning the common practice that you just described?
A. I'm not sure if I spoke to other

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people in addition to Jim. I don't know.
Q. Can you identify anybody that you recall speaking to concerning the practice that your brother told you that Highland had of forgiving loans to employees and officers?
A. I don't remember who it was at Highland that I have spoken to about that or overheard a conversation.
Q. Do you recall when the conversation took place?
A. No, I don't.
Q. Do you recall where the conversation took place?
A. No, no, I don't. I believe it was a phone conversation.
Q. Can you identify any person who participated in the phone conversation?
A. Jim was one of the parties.
Q. Do you recall anybody else?
A. I do not.
Q. Do you recall if the conversation took place before or after the petition date?

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A. I don't know.
Q. So it might have happened before; it might have happened after.
Is that fair?
A. Correct.
Q. Do you remember the substance of the conversation at all?
A. Not in detail.
Q. Can you describe for me everything you recall about the conversation you have in your mind concerning the practice that Highland had of forgiving loans to officers and employees?
A. I am aware that it was common practice, or at least I believed it was common practice at Highland.
Q. Do you have any other information that you can share with me that you learned concerning the practice other than the fact that it existed?
A. Not at this time.
Q. Can you identify a single officer or employee who had a loan forgiven?

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A. Not off the top of my head, no.
Q. Did you or Dugaboy ever know the identity of any officer or employee of Highland who had a loan forgiven?
MS. DEITSCH-PEREZ: Object to the form.
A. Again, John, not off the top of my head.
Q. Did you ever see anything in writing that concerned or related to the practice that your brother described for you?
A. Not that I remember, no.
Q. Did you ever ask to see any documents that concerned or related to the practice that your brother described for you?
A. Again, I don't recall, John.
Q. Did Dugaboy ever ask for information concerning Highland's practice of forgiving loans?
A. No, I don't believe so.
Q. Did you or Highland ever know about the number of loans that Highland

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made to employees or officers that Highland forgave?
A. I'm sorry, did me or Highland know?
Q. I apologize. If that's what I said, I'm mistaken. Thank you.
Did you or Dugaboy -- did you or Dugaboy ever know how many loans were forgiven?
A. A specific number, no.
Q. Did you or Dugaboy know -- ever know the amount, the face amount of the loans that were forgiven?
A. No, not that I recall.
Q. Did you or Dugaboy ever know the year in which Highland ever forgave any loan to any officer or employee?
A. Not that I recall.
Q. Okay. Do you know Mark Okada?
A. I do.
Q. Have you ever met him?
A. I have.
Q. Okay. Do you know whether Highland ever gave a loan to Mr. Okada that

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was the subject of a promissory note?
A. Specifically, no.
Q. Did you ever ask anybody whether Highland had ever made a loan to Mr. Okada that was backed by a promissory note?
A. I never asked.
Q. Do you or Dugaboy know whether Highland ever forgave any loan that was ever made to Mr. Okada?
A. I am not aware.
Q. Did you or Dugaboy ever ask anybody whether Highland had ever made a loan to Mr. Okada that Highland forgave?
A. No.
Q. Did you or Dugaboy ever make any effort to ascertain whether Highland had ever forgiven any loan that it had made to Mr. Okada?
A. I'm sorry. The beginning part of that, John? Did I --
Q. Sure.
Did you or Dugaboy ever make any effort to figure out if Highland had ever forgiven any loan that it had made to

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Mr. Okada?
A. No, sir.
Q. You're aware that Highland loaned money to your brother, correct?
A. Correct.
Q. Do you know how many loans Highland made to your brother?
A. Over what period of time, John?
Q. From the time the company was formed.
A. Okay. There's more -- I'm not sure how to answer that, John.
Q. Okay. That's fair.
A. Can you be more specific with the time frame, please?
Q. You bet.
Let's take it for the ten years prior to the petition date. So let's go back to 2009.
From 2009 to 2019 --
A. Okay.
Q. -- do you know how many loans Highland made to your brother?
A. To just Jim or to Jim and his

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entities?
Q. Just to Jim.
A. I don't know a specific number, no.
Q. Did you or Dugaboy ever ask anybody how many loans Highland made to Jim in the ten-year period prior to the petition date?
A. No. We never asked.
Q. Did you or Dugaboy ever ask anybody how many loans Highland made to Jim during any time period?
A. No, I don't believe so.
Q. Did you or Dugaboy ever make any effort to try to ascertain the number of loans that Highland made to your brother during any particular time period?
A. Not that I recall.
Q. Do you know if your brother ever paid Highland back the principal amount due, plus interest under any loan that he had obtained from Highland?
A. In its entirety?
Q. Yes.

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A. Or a portion?
What are you speaking of?
Q. Let's start with the entirety, and I'll ask the question again.
Are you and Dugaboy aware of any loan that your brother obtained from Highland that he paid back in full, plus interest?
A. I am not sure.
Q. Did you or Dugaboy ever ask anybody whether your brother had ever obtained a loan from Highland that he paid back in full, plus interest?
A. I don't think so.
Q. Did you or Dugaboy ever make any effort prior to the petition date to determine whether or not Highland had -- withdrawn.
Did you and Dugaboy make any effort prior to the petition date to determine whether your brother had ever paid back all principal and interest due on any loan that he had obtained from Highland?

N. Dondero
A. Not that I recall, John.
Q. Prior to the petition date, did you or Dugaboy ever see any promissory note that your brother signed?
A. I'm not sure. I don't know.
Q. Prior to the petition date, did you or Dugaboy ever ask anybody to see any promissory note that your brother had signed in favor of Highland?
A. I don't believe we asked.
Q. Prior to the petition date, did you or Dugaboy ever make any effort to try to obtain any promissory note that your brother signed in favor of Highland?
A. No, I don't think so.
Q. Do you know how many promissory notes your brother signed in favor of Highland?
A. Totally? No.
Q. Okay. I am going to ask similar questions now regarding the corporate entities.
Do you understand that Highland has what are referred to as affiliates?

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A. Yes.
Q. Okay. And do you have an understanding of the term "affiliates" as it relates to Highland?
A. Yes.
Q. What's your understanding of the term "affiliates" as it relates to Highland?
A. Companies that are associated with Highland.
Q. And what does it mean to be associated with Highland?
MS. DEITSCH-PEREZ: Object to the form.
MR. MORRIS: Withdrawn.
BY MR. MORRIS:
Q. What do you mean when you say that affiliated companies are those that are associated with Highland?
A. They're under the Highland umbrella.
Q. Is it your understanding that affiliated companies are controlled by your brother?

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MS. DEITSCH-PEREZ: Object to the form.
A. I'm sorry, John?
MS. DEITSCH-PEREZ: There's some noise. We can hear somebody talking. Someone probably needs to mute.
MR. MORRIS: Give me one second. It might be me. We'll see.
I apologize for that if it was me anyway.
Can I have last question read back please.
THE REPORTER: Sure.
(Question was read back as follows:
"QUESTION: Is it your understanding that affiliated companies are controlled by your brother?")
A. Yes.
Q. Okay. And are you aware -- with that understanding of the term if "affiliates," are you aware that from time to time, Highland provided loans to certain of its affiliates?

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A. I'm not sure. Of Highland loans?
Okay. I'm not sure, John.
Q. Prior to the petition date, did you or Dugaboy know whether Highland ever made a loan to an affiliate, as you've defined it?
A. Yes, there were loans made.
Q. Okay. And how did you learn that there were loans made by Highland to its affiliates?
A. Jim and I had discussed the loans that were made.
Are we talking about certain ones, John?
Q. I'm just talking generally at the moment.
How did you learn whatever information you have, and we'll get into the details, but how did you learn that Highland made loans to affiliates?
A. From Jim.
Q. Okay. Did you have any source of information other than your brother on the question of whether Highland made loans to

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affiliates?
A. Not that I'm aware of.
Q. Were you and Dugaboy generally aware that when Highland made loans to its affiliates, the affiliates gave Highland promissory notes in return?
A. Yes.
Q. Okay. And how did you learn that?
A. In conversation.
Q. And would those be conversations that you had with Jim?
A. Correct.
Q. Did you have conversations with anybody else on the topic of whether or not the affiliates gave Highland promissory notes in exchange for loans?
A. Not that I recall.
Q. Prior to the petition date, did you or Dugaboy ever see a promissory note that was signed on behalf of any affiliate?
A. I don't recall.
Q. Prior to the petition date, did you or Dugaboy ever ask anybody to see any

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promissory note that was signed in favor of Highland by one of its affiliates?
A. Not that I recall, John.
Q. Prior to the petition date, did you or Dugaboy make any effort to try to obtain any promissory note that was executed by a Highland affiliate in favor of Highland?
A. I don't believe so.
Q. Do you know if Highland ever forgave any obligations under any promissory note that was signed on behalf of any affiliate?
A. I have no idea.
Q. Did you or Dugaboy ever ask anybody whether Highland had ever forgiven any loan that was given to an affiliate?
A. Did we – I'm sorry, John, can you repeat the question, please?
Q. Yes.
Did you or Dugaboy ever ask anybody prior to the petition date whether Highland had ever forgiven in whole or in part any loan that it made to an affiliate?

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A. No, because it was my assumption that that was common practice.
Q. Okay. And what was that assumption based on?
A. Conversations that I either had with Jim or overheard.
Q. Okay. Do you have anything to add about the practice that you haven't already testified to?
Withdrawn.
Does the practice that you're referring to, is that the same practice that you have identified earlier with respect to loans that were made to officers and employees?
A. That's correct, John.
Q. Okay. So did you have any source of information other than your brother that you can identify right now concerning the practice of forgiving loans to affiliates?
A. Not at this time.
Q. Can you identify any loan that Highland ever made to an affiliate that was forgiven?

N. Dondero
A. Not that I recall.
Q. Did you or Dugaboy ever ask anybody to identify any loan that it ever made to an affiliate that was forgiven in whole or in part?
A. Can you restate that, John?
Q. Sure.
Did you or Dugaboy ever ask anybody to identify a loan that was made by Highland to an affiliate that was forgiven in whole or in part?
A. Not that I remember.
Q. Can you or Dugaboy identify today any affiliate that obtained a loan from Highland that Highland forgave?
A. Not that I know of.
Q. Did you or Dugaboy ever take any steps to confirm what your brother told you about the practice of forgiving loans?
A. Did we take any steps?
Q. Did you do anything?
A. Not that I am aware of, no.
Q. Did you ever see any document that concerned or related to the practice

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your brother described for you whereby Highland forgave loans to affiliates?
A. I do not recall, John, no.
Q. Did you ever ask to see any documents that reflected the practice your brother described?
A. I never asked.
Q. Give me one second.
Have you ever heard of an entity called Highland Capital Management Services Inc.?
A. Yes.
Q. Can we refer to that entity as HCMS?
A. Okay.
Q. Is HCMS an affiliate -- withdrawn.
Did you and Dugaboy understand that HCMS was an affiliate of Highland's prior to the petition date?
A. Yes.
Q. And how did you come to understand that HCMS was an affiliate of Highland prior to the petition date?

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A. Because it's another one of Jim's companies.
Q. And how did you learn that that was another one of Jim's companies?
A. I don't remember how I learned it. It's under the Highland umbrella.
Q. And when you say that it's one of "Jim's companies," what do you mean by that?
A. The beneficial owner.
Q. And how did you learn that your brother was the beneficial owner of HCMS?
MS. DEITSCH-PEREZ: Object to the form. That's not what she said. She said he is a beneficiary owner --
MR. MORRIS: You can object to the question. I appreciate it.
BY MR. MORRIS:
Q. And you can answer it.
MS. DEITSCH-PEREZ: Don't misstate what she said, please.
MR. MORRIS: All you do is get to object to the question, please. Don't coach the witness.

N. Dondero
MS. DEITSCH-PEREZ: I'm not coaching the witness.
You want to have the court reporter read it back.
BY MR. MORRIS:
Q. Can you please answer my question, please?
A. How did I learn that Jim was a beneficial owner --
Q. Sure.
A. -- of the company?
I would assume from Jim.
Q. Okay. Do you have any reason to believe your source of information was anybody other than Jim?
A. I don't know, John.
Q. Okay. Do you know the nature of HCMS's business?
A. No.
Q. Did you or Dugaboy ever ask anybody what the nature of HCMS's business was?
A. No, not that I recall.
Q. Did you or Dugaboy ever make any

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effort to determine what HCMS's business was?
A. Not that I recall.
Q. Did you or Dugaboy ever know -- withdrawn.
Did you or Dugaboy ever have any information concerning HCMS's financial condition?
A. No, not that I'm aware of.
Q. Did you or Dugaboy ever ask anybody for information concerning HCMS's financial condition?
A. No.
Q. Did you or Dugaboy ever make any independent effort to try to determine what HCMS's financial condition was?
A. Not that I recall.
Q. Do you or Dugaboy know whether any agreements exist between HCMS and Highland other than any promissory notes?
A. I don't know.
Q. Did you or Dugaboy ever ask anybody whether any agreements existed between Highland and HCMS other than

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promissory notes?
A. I don't know. No, I don't believe so.
Q. I appreciate your patience. I do.
A. That's okay.
Q. Did you or Dugaboy ever make any effort to try to learn whether any agreements existed between Highland and HCMS other than promissory notes?
A. I don't believe so.
Q. Did you or Dugaboy know prior to the petition date whether Highland ever provided any services to HCMS?
A. I don't know.
Q. Did you or Dugaboy ever ask anybody prior to the petition date whether Highland ever provided any services to HCMS?
A. I don't believe it was asked.
Q. Did you or Dugaboy ever made any effort prior to the petition date to learn whether Highland provided any services to HCMS?

N. Dondero
A. Not that I am aware of, John.
Q. Do you know if HCMS -- withdrawn.
Did you or Dug -- withdrawn.
Did you or Dugaboy know prior to the petition date whether HCMS ever rendered any services to Highland?
A. I wouldn't --
MS. DEITSCH-PEREZ: Object to the form.
A. I wouldn't know.
MR. MORRIS: Can I have the question read back?
THE REPORTER: Sure.
(Question was read back as follows:
"QUESTION: Did you or Dugaboy know prior to the petition date whether HCMS ever rendered any services to Highland?"
"ANSWER: I wouldn't know.")
BY MR. MORRIS:
Q. Did you or Dugaboy ever ask anybody prior to the petition date whether HCMS ever rendered any services to

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Highland?
A. I don't believe so, John.
Q. Did you or Dugaboy make any effort prior to the petition date to determine whether HCMS ever rendered any services to Highland?
A. I don't think so.
Q. Do you know if Highland ever loaned any money to HCMS?
MS. DEITSCH-PEREZ: Asked and answered.
MR. MORRIS: You can answer.
A. Oh, answer it again?
Q. If I asked it, I apologize, but go ahead, yeah.
MS. DEITSCH-PEREZ: I thought you asked about promissory notes. If I'm wrong, I apologize.
MR. MORRIS: That's okay.
A. Yeah, I'm sorry. Okay. So not including any notes?
Q. Yeah, let me ask a different question. I'm not asking about promissory notes.

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A. Okay.
Q. I'm asking whether prior to the petition date, you or Dugaboy were aware of any loans that Highland made to HCMS?
A. Okay. I'm aware of the ones that are in question.
Are you speaking of others?
Q. I am asking broadly at this time.
Are you generally aware that Highland loaned --
A. Yes.
Q. -- money to HCMS prior to the petition date?
A. Yes, I am generally aware.
Q. Okay. Did you and Dugaboy know how many loans Highland made to HCMS prior to the petition date?
A. Yes, I believe.
Q. And how many loans did Highland make to HCMS prior to the petition date, to the best of your knowledge?
A. At least five.
Q. And are those the loans that are reflected in the five promissory notes that

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are the subject of the lawsuit against HCMS?
A. Correct.
Q. Okay. Are you aware of any loans that Highland ever made to HCMS that are not subject to the lawsuit?
A. I'm not -- I'm not aware, John.
Q. Did you ever ask -- withdrawn.
Did you or Dugaboy ask at any time whether Highland had ever made any loans to HCMS that weren't reflected in the promissory notes that are the subject of the lawsuits?
A. I don't believe we ever asked.
Q. Do you know who authorized Highland to make the loans to HCMS that you're aware of?
A. Okay. I'm sorry, once again, John, the question?
Q. Did you or Dugaboy know prior to the petition date who authorized Highland to make the loans to HCMS that are the subject of the promissory notes that you referred to?

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A. Who authorized?
Q. Yes.
A. I don't know.
Q. Do you recall if you or Dugaboy asked anybody at any time prior to the petition date who authorized Highland to make the loans to HCMS?
A. I don't believe that was asked.
Q. Okay. Do you have any information as to whether HCMS intended to pay back each of the loans that are the subject of the promissory notes at the time the loans were given to them by Highland?
MS. DEITSCH-PEREZ: Objection. No foundation.
A. John, can you just say the question again, please?
Q. Sure.
Did you or Dugaboy have any information prior to the petition date as to whether HCMS intended to repay the loans that are the subject of the promissory notes that you identified?
A. No.

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Q. Okay. Did you or Dugaboy ever ask anybody prior to the petition date whether HCMS had intended to repay the loans at the time and times that it obtained them from Highland?
A. Okay, John, can you ask that again?
Q. Sure.
Did you or Dugaboy ever ask anybody whether HCMS intended to repay the loans at the time HCMS obtained them from Highland?
A. I don't believe we asked their intent.
Q. Okay.
MS. DEITSCH-PEREZ: Whenever -- we've been going about another hour. So whenever is good for you, John.
MR. MORRIS: Okay. I'm going to finish up this section here.
BY MR. MORRIS:
Q. Do you or Dugaboy have any knowledge as to why Highland made the loans to HCMS?

N. Dondero
A. Only assumptions.
Q. Okay. I don't want assumptions. I want information.
A. Then I don't -- then I don't know.
Q. Okay. Do you or Dugaboy ever ask anybody why Highland made the loans to HCMS that are the subject of the promissory notes you referred to?
A. No.
Q. Did you or Dugaboy ever make any effort to try to determine why Highland made the loans to HCMS?
A. No, not that I remember.
Q. Did you or Dugaboy know prior to the petition date what HCMS did with the proceeds of the loans that it obtained from Highland?
A. I don't know, John.
Q. Did you or Dugaboy ever ask anybody at any time prior to the petition date what HCMS did with the proceeds of the loans that it obtained from Highland?
A. No.

N. Dondero
Q. Did you or Dugaboy ever make any effort to determine what HCMS did with the proceeds of the loans that it obtained from Highland?
A. No.
Q. You're aware that HCMS issued promissory notes in favor of Highland in exchange for the loans, correct?
A. Correct.
Q. Prior to the petition date, did you ever see any promissory note that was issued by HCMS in favor of Highland?
A. Prior to October of '19?
Q. Correct.
A. I don't recall.
Q. Do you recall whether you or Dugaboy asked at any time prior to the petition date to see promissory notes that were executed on behalf of HCMS in favor of Highland?
A. I don't know.
Q. Do you recall whether you or Dugaboy made any effort at any time prior to the petition date to obtain copies of

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promissory notes that were issued by HCMS in favor of Highland?
A. I don't believe so.
Q. Prior to the petition date, were you and Dugaboy aware of the terms of the promissory notes that HCMS issued in favor of Highland?
MS. DEITSCH-PEREZ: Object to the form.
A. Can you be more specific? Just the terms of the loan, John?
Q. Yes.
Did you and Dugaboy know the terms of the loans that were reflected in the promissory notes?
A. I believe so, yes.
Q. Okay. And who gave you the information regarding the terms of the loans that HCMS obtained from Highland?
A. Jim.
Q. Do you remember anything about the terms of the loans that HCMS obtained from Highland?
A. Regarding -- you mean the term?

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There's 30-year. There's demand.
Q. You tell me.
You described five promissory notes, I think, that were executed by HCMS in favor of Highland, right?
A. That's correct.
Q. Okay. And I believe you testified that you didn't see those notes prior to the petition date, correct?
A. Right. Well, yeah, I'm a little vague on the date; but, yes, I don't believe I saw them prior to -- so right, prior to the petition date, correct. Um-hmm.
Q. But did you or Dugaboy -- withdrawn.
Did you and Dugaboy have an understanding of the terms of the notes prior to the petition date?
A. Yes. From what I understand, my recollection is several of them were demand, and one was 30-year.
Q. And do you have an understanding of what it means -- of what a demand notice

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is?
MS. DEITSCH-PEREZ: Object to the form.
A. Payable upon demand.
Q. Okay. So you knew prior to the petition date that certain of the notes issued by HCMS to Highland were demand notes; is that right?
A. Yes.
Q. Okay.
MR. MORRIS: All right. I'm happy to take a break now. Hopefully it won't be as long as the last one. But we can go off the record.
THE VIDEOGRAPHER: The time is 12:00 p.m. We are going off the record.
(Recess is taken.)
(Patrick Daugherty not in attendance at this time.)
THE VIDEOGRAPHER: The time is 12:16. Back on the record.
BY MR. MORRIS:
Q. Ms. Dondero, did you communicate

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with anybody during your break regarding any aspect of your testimony?
A. No, sir.
Q. Okay. Have you ever heard of an entity called HCRE Partners LLC?
A. Yes, sir.
Q. Do you understand that HCRE is an affiliate of Highland?
A. I do.
Q. Okay. And what was the -- what is the basis of your understanding that HCRE -- withdrawn. I should have put a time frame on this.
Is it your understanding that HCRE was an affiliate of Highland prior to the petition date?
A. Yes, sir.
Q. And what is the basis for your understanding?
A. They were under the Highland umbrella prior to October of '19.
Q. And to the best of your knowledge, does HCRE fit the definition of affiliate that you provided earlier today?

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MS. DEITSCH-PEREZ: Objection.
A. Yes.
Q. Do you know the nature of HCRE's business?
A. I believe it's real estate.
Q. Do you or Dugaboy have any information about the nature of HCRE's business other than it's real estate?
A. No.
Q. Did you or Dugaboy ever ask anybody what the nature of HCRE's business was?
A. No.
Q. Did you or Dugaboy ever make any effort to ascertain the nature of HCRE's business?
A. Not that I recall.
Q. Did you or Dugaboy know whether HCRE had any agreements with Highland prior to the petition date?
MS. DEITSCH-PEREZ: Object to the form.
MR. MORRIS: Withdrawn.
BY MR. MORRIS:

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Q. Do you or Dugaboy know whether HCRE had any agreements with Highland prior to the petition date other than the promissory notes?
A. Other than the promissory notes, no.
Q. Did you or Dugaboy ever ask anybody at any time prior to the petition date whether HCRE had any agreements with Highland other than the promissory notes?
A. No.
Q. Did you or Dugaboy make any effort prior to the petition date to ascertain whether any agreements existed between Highland and HCRE other than the promissory notes?
A. Not that I recall.
Q. Do you know -- withdrawn.
Did you or Dugaboy know prior to the petition date whether HCRE had ever rendered any services to Highland?
MS. DEITSCH-PEREZ: Object to the form.
A. I don't know.

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Q. Did you or Dugaboy ever ask anybody prior to the petition date whether HCRE ever rendered any services to Highland?
A. I don't believe so.
Q. Did you or Dugaboy make any effort to ascertain prior to the petition date whether HCRE ever rendered any services to Highland?
MS. DEITSCH-PEREZ: Object to the form.
A. I'm sorry, John, can you repeat that, please, the question?
Q. Did you or Dugaboy make any effort prior to the petition date to determine whether or not HCRE had ever provided any services to Highland?
MS. DEITSCH-PEREZ: Object to the form.
A. I don't believe so.
Q. Are you aware -- withdrawn.
Did you or Dugaboy know prior to the petition date whether Highland had ever loaned any money to HCRE?

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A. Yes.
Q. And were the loans that you're aware of reflected in promissory notes?
A. Correct.
Q. And are those the promissory notes that are the subject of one of the litigations?
A. Yes, sir.
Q. Are you aware of any loans that Highland ever made to HCRE that are not the subject of one of the promissory notes in the lawsuits?
A. I'm not aware of any.
Q. Did you ever ask anybody whether Highland had ever made any loans to HCRE that were not reflected in the promissory notes that are the subject of the lawsuit?
A. Not that I recall.
Q. Did you or Dugaboy know prior to the petition date who authorized Highland to make the loans to HCRE?
MS. DEITSCH-PEREZ: Object to the form.
A. Sorry, John, could you say the

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question again, please?
Q. Sure.
Did you or Dugaboy know prior to the petition date who authorized Highland to make the loans to HCRE?
MS. DEITSCH-PEREZ: Object to the form.
A. I don't know.
Q. Did you or Dugaboy ever ask anybody prior to the petition date who authorized Highland to make the loans to HCRE that are reflected in the promissory notes you referred to?
MS. DEITSCH-PEREZ: Object to the form.
A. No.
Q. Did you or Dugaboy ever make any effort to ascertain who had authorized Highland to make the loans to HCRE that are reflected in the promissory notes you referred to?
A. Not that I recall.
Q. Did you or Dugaboy have any information prior to the petition date as

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to whether HCRE intended to repay the loans that are reflected in the promissory notes at the time the loans were made?
MS. DEITSCH-PEREZ: Object to the form.
A. John, I'm sorry, did I have any information if they intended to pay their loans?
Q. At the time that they obtained the loans, yes.
A. I have no reason to think they wouldn't pay their loans --
Q. Okay.
A. -- at the time they were made, correct.
Q. You're not aware of any facts that suggest that HCRE didn't intend to repay the loans at the time they obtained them, right?
A. Correct.
Q. Prior to the petition date, did you or Dugaboy have any information in regard to the purpose of the loans that Highland gave to HCRE that were reflected

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in the promissory notes?
A. No, no idea.
Q. Did you or Dugaboy attempt to obtain prior to the petition date any information concerning the purpose of the loans that were made by Highland to HCRE that were reflected in the promissory notes?
A. I don't believe so.
Q. Did you or Dugaboy make any effort to ascertain the purpose of the loans that Highland made to HCRE?
A. I don't believe so.
Q. Did you or Dugaboy know prior to the petition date what HCRE did with the proceeds of the loans that it obtained from Highland in exchange for the promissory notes?
A. We don't know.
Q. Did you or Dugaboy ever ask anybody what HCRE did with the proceeds of the loans that it obtained from Highland in exchanged from the promissory notes?
A. I don't believe we did.

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Q. Did you or Dugaboy ever make any effort prior to the petition date to ascertain what HCRE did with the proceeds of the loans that it obtained from Highland that are reflected in the promissory notes?
A. No.
Q. Did you ever see -- withdrawn.
Did you or Dugaboy ever see prior to the petition -- withdrawn. Not good. Too many questions.
Did you or Dugaboy -- withdrawn.
Prior to the petition date, did you or Dugaboy ever see any promissory note that was executed by HCRE in favor of Highland?
A. Not that I recall.
Q. Prior to the petition date, did you or Dugaboy ever ask anybody to see any promissory note that was issued by HCRE in favor of Highland?
A. Not that I recall.
Q. Prior to the petition date, did you or Dugaboy make any effort to try to obtain any promissory note that was ever

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executed on behalf of HCRE in favor of Highland?
A. No.
Q. Prior to the petition date, did you and Dugaboy know the terms of any of the promissory notes that were issued by HCRE to Highland?
A. Yes.
Q. And how did you learn of the terms of the notes?
A. From Jim.
Q. And what did Jim tell you about the terms of the notes that were issued by HCRE to Highland?
A. He mentioned the 30-year demand, the dates, the amounts.
Q. Okay. Did you do -- withdrawn.
Did you or Dugaboy take any steps to try to corroborate what your brother told you concerning the terms of the notes that were issued by HCRE to Highland?
A. Not that I recall.
Q. Okay. Did you have any source of information for the terms of the notes

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other than what your brother gave to you?
A. I don't believe so.
Q. Okay. Last one. NexPoint.
Are you familiar with an entity called NexPoint Advisors LP?
A. Yes.
Q. Can we refer to that entity as NexPoint?
A. Yes.
Q. Is it your understanding that NexPoint was an affiliate of Highland's prior to the petition date, as you've used the term "affiliate"?
A. Um-hmm. Yes.
Q. And what's the basis for your understanding that prior to the petition date, NexPoint was an affiliate of Highland?
A. Because Jim is a beneficial owner.
Q. Is it your understanding that Jim is a beneficial owner of all of the defendants in each of the promissory note lawsuits?

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MS. DEITSCH-PEREZ: Object to the form.
THE WITNESS: Can I answer?
BY MR. MORRIS:
Q. Yes.
A. Yes, that is my belief, John.
Q. Do you have any reason to believe Jim is not a beneficial owner of any corporate defendant in any of the lawsuits?
A. No, I have no reason to believe that.
Q. Prior to the petition date, did you or Dugaboy know the nature of NexPoint's business?
A. I'm not really sure.
Q. Do you know the nature of NexPoint's business today?
A. I'm not sure.
Q. Did you or Dugaboy ever ask anybody at any time what the nature of NexPoint's business was?
A. I don't believe we did.
Q. Did you or Dugaboy make any effort at any time to try to learn what the

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nature of NexPoint's business was?
A. Not that I recall.
Q. Did you or Dugaboy know prior to the petition date whether NexPoint had any agreements with Highland?
MS. DEITSCH-PEREZ: Object to the form.
MR. MORRIS: I apologize. I'll make the same qualification.
BY MR. MORRIS:
Q. Did you and Dugaboy know prior to the petition date whether NexPoint and Highland had any agreements together other than the promissory notes?
A. I'm not aware of any.
Q. Okay. Did you or Dugaboy ask anybody at any time prior to the petition date whether any agreements existed between NexPoint and Highland other than the promissory notes?
A. No, not that I'm aware of.
Q. Did you or Dugaboy ever make any effort prior to the petition date to determine whether any agreements existed

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between Highland and NexPoint other than the promissory notes?
A. Not that I'm aware of.
Q. Did you or Dugaboy know prior to the petition date whether NexPoint ever rendered any services to Highland?
MS. DEITSCH-PEREZ: Object to the form.
A. I don't know.
Q. Did you or Dugaboy ever ask anybody at any time prior to the petition date whether NexPoint had ever rendered any services to Highland?
MS. DEITSCH-PEREZ: Object to the form.
A. I'm sorry, John. Can you repeat the question, please?
Q. Sure.
Did you and Dugaboy ask anybody at any time prior to the petition date whether NexPoint had ever rendered any services to Highland?
A. Not that I'm aware of.
Q. Did you and Dugaboy make any

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effort prior to the petition date to determine whether or not NexPoint had ever rendered any services to Highland?
A. Not that I'm aware of.
Q. Are you aware that Highland made loans to NexPoint from time to time?
A. I don't know.
Q. Did you ever see any -- do you know whether -- withdrawn.
Prior to the petition date, were you and Dugaboy aware of any promissory notes that NexPoint had issued in favor of Highland?
MS. DEITSCH-PEREZ: You mean other than what's at issue here? Just generally?
MR. MORRIS: I'm starting with the general, yeah.
A. I'm not aware of.
Q. Are you aware of any promissory notes that NexPoint ever issued in favor of Highland?
A. I'm not aware of any.
Q. Do you know whether there are any

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promissory notes that NexPoint issued that are the subject of this lawsuit?
A. Yeah. John, can we back up a question?
Q. Absolutely.
A. Are you talking about the notes -- yeah, please.
Are you talking about the notes, part of this proceeding or are you not?
Q. I'm starting -- that's okay. Let me --
A. Because obviously there is the NexPoint promissory note that we are talking about. When I answered the way I did, it was regarding others that I'm not aware of. I'm aware of the one obviously in this proceeding.
Q. Okay. Thank you for the --
A. Does that clarify?
Q. It does. It is helpful. Thank you very much.
Other than the one -- how many NexPoint notes do you understand are the subject of these litigations?

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A. One.
Q. Okay. Other than that one note, are you aware of any other promissory notes that NexPoint ever issued in favor of Highland?
MS. DEITSCH-PEREZ: Object to the form.
A. No, I'm not aware of any other.
Q. Did you ask anybody -- withdrawn.
Did you or Dugaboy ask anybody prior to the petition date whether NexPoint had issued any other promissory notes in favor of Highland other than the one that's the subject of the lawsuit?
A. I don't believe so.
Q. Did you or Dugaboy know prior to the petition date whether Highland had made any loan to NexPoint other than the loan that's reflected in the promissory note?
MS. DEITSCH-PEREZ: Object to the form.
A. I'm not aware of any.
Q. Do you know how much the promissory -- do you know the principal

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amount of -- withdrawn.
Do you know the -- withdrawn.
Did you and Dugaboy know the principal amount of NexPoint's promissory note prior to the petition date?
A. Yes.
Q. And how did you learn that?
A. From Jim.
Q. And what did Jim tell you that you can recall?
A. 30 million thereabouts, in that neighborhood.
Q. Do you know how many principal was owed as of the petition date?
A. It's paid down by, oh, about a third, so it's somewhere 22, 23 million, I believe, in that ballpark.
Q. Okay. And how did you learn that NexPoint had paid down the principal to that ballpark?
A. I'm not sure.
Q. Do you recall when you learned that NexPoint had paid down the principal to that ballpark?

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A. Not exactly.
Q. Okay. But you are aware that NexPoint paid approximately 7 to 8 million dollars in principal on the note that's the subject of the lawsuit, correct?
MS. DEITSCH-PEREZ: Object to the form.
A. Yes, it was somewhere in that ballpark. Sure.
Q. Okay. Did you and Dugaboy know prior to the petition date who authorized Highland to make the loan to NexPoint?
MS. DEITSCH-PEREZ: Object to the form.
A. No, I don't know.
Q. Did you or Dugaboy prior to the petition date ask anybody who had authorized Highland to make the $30 million loan to NexPoint?
A. Not that I recall.
Q. Did you or Dugaboy make any effort prior to the petition date to determine who had authorized Highland to make the $30 million loan to NexPoint?

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A. Not that I recall.

Q. Do you have any reason to believe that NexPoint did not intend to pay all principal and interest due under the promissory note at the time that it obtained the loan from Highland?

A. I have no reason to believe they weren't intending to pay.

Q. Did you have any reason to believe -- withdrawn.

Do you or Dugaboy have any reason to believe that Highland wasn't not expecting to get repaid all principal and interest due under the loan at the time it made the loan?

MS. DEITSCH-PEREZ: Object to the form. Actually, can somebody -- Annette, could you read that back? There were a double negative or two.

MR. MORRIS: Okay. Let me rephrase the question. That's fine. That's fine.

BY MR. MORRIS:

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Q. Do you have any reason to believe that Highland didn't intend to get repaid all principal and interest due under the NexPoint note at the time it made the loan?

A. I have no reason to believe that I didn't think that they weren't to get repaid at the time the notes were initiated.

Q. Okay. Did you or Dugaboy know prior to the petition date what the purpose of the $30 million loan was?

A. I don't know.

Q. Did you or Dugaboy ever ask anybody prior to the petition date what the purpose of the $30 million loan was?

A. I don't believe so.

Q. Did you or Dugaboy make any effort prior to the petition date to ascertain what the purpose of the $30 million loan was?

A. I don't believe so.

Q. Do you or Dugaboy -- withdrawn. Did you or Dugaboy know prior to the petition date what NexPoint did with

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the proceeds of the loan?

A. No, I don't know.

Q. Did you or Dugaboy ever ask anybody prior to the petition date what NexPoint did with the proceeds of the loan?

A. We did not.

Q. Did you or Dugaboy know prior to the petition date that the $30 million loan was a rollup of previously existing loans that Highland had made to NexPoint?

MS. DEITSCH-PEREZ: Object to the form.

A. I was not aware of that.

Q. Are you aware today that the $30 million loan was a roll up of previously existing notes?

A. I didn't, no.

Q. Did you ever see the promissory note that was issued by NexPoint in favor of Highland that's the subject of one of these notes -- litigations?

A. I don't remember. That was in '17, correct, John?

Q. I'm just asking if -- let me ask

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a different question.

A. Yeah, I don't --

Q. Okay. Did you or Dugaboy see the promissory note prior to the commencement -- no. Did you or Dugaboy prior to the petition date ever see the promissory note that NexPoint issued in favor of Highland in the principal amount of approximately $30 million?

A. I don't recall.

Q. Do you recall if you or Dugaboy ever asked anybody prior to the petition date to see the $30 million promissory note that NexPoint issued in favor of Highland?

A. I don't believe so.

Q. Did you or Dugaboy make any effort prior to the petition date to obtain a copy of the $30 million promissory note that NexPoint issued in favor of Highland?

A. I don't recall.

Q. Were you and Dugaboy aware at any time prior to the petition date of the terms of the promissory note that NexPoint

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issued in favor of Highland?
A. 30-year.
Q. It was a 30-year note?
A. Um-hmm.
Q. Do you recall anything else about that note?
A. I believe it was 2017.
Q. Okay.
A. And the amounts we already discussed.
Q. Do you know who determined that the promissory note would be a 30-year term?
A. I do not.
Q. Do you know who on behalf of Highland agreed to accept a 30-year note from NexPoint?
MS. DEITSCH-PEREZ: Object to the form.
A. I don't know, John.
Q. Did you or Dugaboy make an effort at any time prior to the petition date to determine whether or not a 30-year term was appropriate?

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MS. DEITSCH-PEREZ: Object to the form.
A. No.
Q. Did you or Dugaboy ask anybody at any time prior to the petition date whether a 30-year term was appropriate?
MS. DEITSCH-PEREZ: Object to the form.
A. Not that I recall.
Q. Did you or Dugaboy know prior to the petition date whether the $30 million note was the subject of any negotiation between NexPoint and Highland?
MS. DEITSCH-PEREZ: Object to the form.
A. I didn't know.
Q. Did you or Dugaboy ask anybody at any time prior to the petition date whether the $30 million note was subject to negotiation?
A. Subject to negotiation? Can you elaborate? What negotiation?
Q. Are you aware of anybody on behalf of Highland suggesting that the term

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of the note should be something other than 30 years?
A. No. Changing that term, no, I'm not familiar.
Q. Okay. Let's switch topics and I'll cover this topic and then we can take a lunch break.
I'd like to turn now to the limited partnership agreement, the LP agreement as I think we've defined it. And I'm going to ask my colleague to put up on the screen -- I don't think it's in the binder that I gave you.
MS. DEITSCH-PEREZ: Yes, it is.
MR. MORRIS: Oh, is it?
MS. DEITSCH-PEREZ: It is?
MR. MORRIS: What number is it?
MS. DEITSCH-PEREZ: It is number 2, it looks like.
MR. MORRIS: So we'll put it up on the screen and then you can look at the hard copy.
MS. DEITSCH-PEREZ: Okay. Is there a particular page you want to

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turn to?
MR. MORRIS: Let's just start with this.
BY MR. MORRIS:
Q. Do you understand --
MS. DEITSCH-PEREZ: Hang on a minute. One second.
Okay. We're good. We've got it.
BY MR. MORRIS:
Q. Okay. Are you looking at the document that is Exhibit 4 that's attached to the document that's been denoted as number 2?
MS. DEITSCH-PEREZ: Yes.
Turn to the page before the one that says --
THE WITNESS: Oh, okay.
A. So page 4 of 37?
Q. Yes.
(Document review.)
A. Okay.
Q. All right.
A. Okay. Go ahead.
Q. At the top, do you see it says

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Document 63-4 in the middle?
A. Yes, I do.
Q. And you're at page 2 of 37, correct?
A. Correct.
Q. Okay. Do you understand that this is the document we defined earlier as the LP agreement?
A. Yes, sir.
Q. Have you seen this document before now?
A. Yes.
Q. Do you recall when you saw this document for the first time?
A. Shortly after it was made, when I was trustee.
Q. Okay. Do you recall the circumstances under which you saw the LP agreement for the first time?
A. No, I don't remember the circumstance.
Q. Do you have a copy of the LP agreement in your personal possession? Like other than right now, did you have it

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before today or before I sent it?
A. Yes.
Q. Okay. Do you recall when you first obtained a copy of the LP agreement?
A. The very first time?
Q. Yeah.
A. I don't know specifically, John.
Q. Can we go to the document -- the page that's marked 32 of 37?
MS. DEITSCH-PEREZ: 2 of 37?
THE WITNESS: 32 of 7 -- 32 of 37.
MS. DEITSCH-PEREZ: Thank you.
(Document review.)
BY MR. MORRIS:
Q. And is that your signature there?
MR. MORRIS: If we can get page 32 of 37 up on the screen.
(Document review.)
BY MR. MORRIS:
Q. And is that your signature there, ma'am?
A. Well, on the paper copy, it is. Oh, there it is. Yes.

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Q. Okay.
MR. MORRIS: And I apologize La Asia, but can we go now to Section 3.10?
We're going to mark it. This one is Exhibit 2. Don't worry that we are going out of order. They're premarked. So this document we're going to mark as Exhibit 2.
(N. Dondero Exhibit 2, Amended Complaint for (1) Breach of Contract, (II) Turnover of Property, (III) Fraudulent Transfer, and (IV) Breach of Fiduciary Duty, marked for identification, as of this date.)
MS. DEITSCH-PEREZ: Did I miss Exhibit 1?
MR. MORRIS: No.
MS. DEITSCH-PEREZ: Okay.
BY MR. MORRIS:
Q. Do you see Section 3.10? Do you have that in front of you?
A. Yes.
Q. Have you seen that provision of

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the LP agreement before?
A. Yes.
Q. Do you recall when you first read or you first saw Section 3.10?
A. On the day I probably signed it.
Q. All right. I don't want you to speculate. I want you to search your memory.
A. Okay.
Q. Do you recall when you saw Section 3.10 for the first time?
A. The first time I saw the document.
Q. Okay. Do you recall the circumstances under which you reviewed Section 3.10?
A. Prior to signing the document.
Q. Do you see there is a reference in the document in Section 3.10 to majority interest?
A. Yes, sir.
Q. Do you have an understanding of what that term means?
A. Class A shareholders -- limited

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partners. I apologize.
Q. And what is the basis for that understanding?
A. Because the class A limited partners is the majority interest. Holds – I'm sorry, holds the majority interest.
Q. And did you ever discuss that with anybody at any time?
MS. DEITSCH-PEREZ: And I'm going to direct her to ask exclude any discussions with lawyers. So other –
MR. MORRIS: Let me rephrase the question. Let me rephrase the question.
BY MR. MORRIS:
Q. Did you ever discuss the definition of majority interest with anybody at any time prior to the petition date?
A. I don't recall.
Q. Do you believe that Dugaboy holds a majority interest, as that term is used in Section 3.10?
A. Yes, I do believe that.

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Q. And did you believe that prior to the petition date?
A. Yes.
Q. What was the basis for your belief prior to the petition date that Dugaboy held a majority interest?
A. I was told that Dugaboy held the majority interest.
Q. And who told you that Dugaboy held the majority interest?
A. Melissa Schroth.
Q. Do you recall when Ms. Schroth told you that?
A. Shortly after I became trustee.
Q. And can you tell me who Melissa Schroth is?
A. Melissa is a financial assistant with Jim.
Q. And you communicated with Ms. Schroth on a regular basis prior to the petition date; is that fair?
A. Correct.
Q. Do you know, is Ms. Schroth a lawyer?

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A. I don't believe so.
Q. Do you know anything about her background or expertise?
A. Accounting, I believe.
Q. Did you ever do anything to corroborate what Ms. Schroth told you about Dugaboy being a majority interest?
A. I had no reason to disbelieve her.
Q. But you didn't do anything to corroborate that; is that right?
A. I did not, sir.
Q. Did you seek any advice from anybody to ascertain whether what Ms. Schroth told you was accurate?
A. I don't recall.
Q. Okay. Do you see at the end of Section 3.10, there is a reference to NAV trigger period?
A. Yes.
Q. Do you have an understanding – withdrawn.
Did you have an understanding prior to the petition date of what a NAV

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trigger period was?
A. No.
Q. Did you ever ask anybody prior to the petition date what a NAV trigger period was?
A. I don't believe so.
Q. Did you or Dugaboy make any effort prior to the petition date to ascertain whether a NAV trigger period had occurred?
A. I don't believe so.
Q. Did you or Dugaboy ever know prior to the petition date whether in fact a NAV trigger period had ever occurred?
A. I don't think so.
Q. All right.
MR. MORRIS: I think if it's okay with you guys, now might be a nice time to take a lunch break.
I prefer that it not be too extended. Would it be okay if we came back at the bottom of the hour?
THE WITNESS: 1:30, would that be okay?

N. Dondero
MR. MORRIS: Yeah, 1:30 Central. Is that good?
THE WITNESS: That would be great. Thank you.
MR. MORRIS: Thanks so much.
THE VIDEOGRAPHER: The time is 12:54. We're going off the record.
(Recess is taken.)

N. Dondero
AFTERNOON SESSION
(Time noted: 1:35 p.m.)
THE VIDEOGRAPHER: The time is 1:35. We are back on the record.
* * *
NANCY DONDERO, resumed and testified as follows:
EXAMINATION BY (Cont'd.)
MR. MORRIS:
Q. Ms. Dondero, are you ready to proceed?
A. I am.
MR. MORRIS: Are you Deborah?
MS. DEITSCH-PEREZ: (Nodding.)
MR. MORRIS: Okay. Thank you.
BY MR. MORRIS:
Q. Can you hear me okay?
A. Yes, sir.
Q. Okay. I've switched from my phone to my computer. Somehow it worked. Now I wanted to make sure you can hear me.
Ms. Dondero, did you speak to anybody during the break about the substance of your testimony?

N. Dondero
A. No, sir.
Q. Did you speak to anybody during the break regarding the substance of this deposition in any way?
A. No, sir.
Q. Okay. When we left, we had just looked at Section 3.10 of the LP agreement. Do you remember that?
A. Yes.
Q. Is there anything about the LP agreement that you -- withdrawn.
Is there anything that you or Dugaboy don't understand about Section 3.10 of the LP agreement?
MS. DEITSCH-PEREZ: Object to the form.
BY MR. MORRIS:
Q. You can answer.
A. No.
Q. Is there any aspect of Section 3.10 that you and Dugaboy thinks is ambiguous?
MS. DEITSCH-PEREZ: Object to the form.

N. Dondero
A. No.
Q. Let's switch gears now and let's talk about the oral agreement that's been referred to in this litigation.
I'd like to put up on the screen a document that you don't have a hard copy of, or at least I didn't give it to you, and that would be the Amended Complaint that was served by Highland against you and your brother and Dugaboy.
MR. MORRIS: And that document we're marking for purposes of the deposition as Exhibit No. 31.
(N. Dondero Exhibit 31, Defendant James Donder's Answer to Amended Complaint, marked for identification, as of this date.)
MR. MORRIS: Can we put that on the screen, please, and turn to paragraph 82?
Actually, stop right there.
BY MR. MORRIS:
Q. Ms. Dondero, have you ever seen, if we can scroll up -- and, again, this is

N. Dondero
consistent with what I explained to you at
the beginning of the deposition.
I don't mean to rush you. I
think you should take all the time you need
to look at this document if you want to,
but my first question is simply whether you
have ever seen this document before. And
if you need to see more of it, just let me
know.
(Document review.)
A. Can you scroll to the next page,
John, please?
Q. Sure.
(Document review.)
MS. DEITSCH-PEREZ: I have a hard
copy here I could give the witness.
Do you want me to do that?
MR. MORRIS: Sure.
BY MR. MORRIS:
Q. And just for clarity,
Ms. Dondero, this is the Amended Complaint
that Highland served to collect on the
notes that were issued by your brother.
A. Okay.

N. Dondero
MS. CANTY: John, I'm sorry. 31
is actually the answer to the Amended
Complaint.
MR. MORRIS: I'm sorry. I
apologize that. Let me restate that.
Exhibit 31 is the answer,
Mr. Dondero's answer to the Amended
Complaint.
MS. DEITSCH-PEREZ: All right.
So what are you asking if she has seen?
I was going to hand her the complaint.
MR. MORRIS: It's my mistake,
Deborah. If we can go back to -- if we
can go back to the top.
Let me start this over.
BY MR. MORRIS:
Q. Do you see, Ms. Dondero, that
this is defendant James Dondero's answer to
Amended Complaint?
A. Yes, I see that.
Q. Have you ever seen your brother's
answer to the Amended Complaint?
A. I don't remember if I've seen
this or not. Deborah just gave me a hard

N. Dondero
copy. Can I have a quick minute to glance
over it?
Q. Sure. Take your time. And let
me know at the top of it, what the docket
number is.
A. Certainly.
Docket No. DOC 83 --
Q. Okay. Perfect.
A. -- filed on December 3rd.
Is that it?
Q. Yes. So we are looking at the
same thing.
MR. MORRIS: And this document is
going to be marked as Exhibit 31.
A. Okay.
Q. All right. Have you seen this
document before?
A. I think so.
Q. Okay.
MR. MORRIS: I'm going to ask, La
Asia go to paragraph 82.
A. Okay.
Q. Do you seep paragraph 82 is up on
the screen?

N. Dondero
A. Yes, sir.
Q. So I'm going to read a portion of
it to you beginning at the very top, okay?
I just want you to follow along
with me.
Paragraph 82 says in part,
"Plaintiff's claims are barred in whole or
in part because prior to the demands for
payment, plaintiff agreed that it would not
collect the notes upon fulfillment of
condition subsequent. Specifically,
sometime between December of the year in
which each note was made and February the
following year, Defendant Nancy Dondero, as
representative for a majority of the Class
A shareholders of plaintiff agreed that
plaintiff would forgive the notes if
certain portfolio companies were sold for
greater than cost or on a basis outside of
defendant James Dondero's control. The
purpose of this agreement was to provide
compensation to defendant James Dondero,
who was otherwise underpaid compared to
reasonable compensation levels in the

N. Dondero
industry through the use of forgivable loans, a practice that was standard at HCMLP and in the industry."
Have I read that correctly?
A. Um-hmm, yes.
Q. Okay. To the best of your knowledge, is the portion of paragraph 82 that I just read true and accurate?
A. Yes. Correct.
Q. Are you aware, as Dugaboy's 30(b)(6) witness, that HCRE, HCMS, and NexPoint all make the same allegation in defense?
A. Yes.
Q. So is it your testimony that the statement that I just read from paragraph 82 applies to the promissory notes issued by HCRE, HCMS, and NexPoint, and that are the subject of the lawsuits?
A. Yes.
Q. So it's your testimony that you entered into oral agreements with your brother between December and the year each note was made, and February of the

N. Dondero
following year, pursuant to which plaintiff agreed that plaintiff would forgive the notes if certain portfolio companies were sold for greater than cost or on a basis outside of James Dondero's control, correct?
A. That is correct.
Q. Can we refer to each of the oral agreements that you entered into with your brother concerning the promissory notes that are described in paragraph 82 as an agreement and collectively as the agreements?
A. Certainly.
MS. DEITSCH-PEREZ: Okay. And just, John, just so I don't have to object each time, when you say "you," you're talking about Dugaboy?
MR. MORRIS: I'm talking about both unless I say otherwise. But thank you for pointing that out.
MS. DEITSCH-PEREZ: Okay.
MR. DRAPER: John, just so you know, to the extent that -- hold on.

N. Dondero
I'm muted.
To the extent Deborah raises an objection for the "you," Nancy, as a trustee, I'm not going to say anything, but my objection is a follow-on for the same thing, for the same reasons.
MR. MORRIS: Okay. I appreciate that, Douglas.
So I'm going to ask the question again.
BY MR. MORRIS:
Q. Is it your testimony that you, as the trustee of The Dugaboy Investment Trust, entered into oral agreements with your brother between December and the year each note was made and February of the following year, pursuant to which plaintiff agreed that plaintiff would forgive the notes if certain portfolio companies were sold for greater than cost or on a basis outside of James Dondero's control?
A. That is correct.
Q. Okay. And can we refer to each of the oral agreements that are the subject

N. Dondero
of paragraph 82 individually as an agreement and collectively as the agreements?
A. Um-hmm. Yes.
Q. Is that a yes?
A. Yes. That is a yes. Sorry.
Q. And do you and Dugaboy understand that the phrase "plaintiff" in paragraph 82 refers to Highland?
A. Yes.
Q. And do you and Dugaboy understand that Dugaboy, as the representative of a majority of the Class A shareholders of Highland is the actual entity that entered into the agreements on behalf of Highland?
A. Yes.
Q. And you are the trustee of Dugaboy today, correct?
A. Correct.
Q. And you were the trustee of Dugaboy at the time each of the agreements referred to in paragraph 82 was entered into, correct?
A. Correct.

N. Dondero
Q. And you personally caused Dugaboy to enter into each agreement that is referred to in paragraph 82, correct?
MS. DEITSCH-PEREZ: Object to the form.
BY MR. MORRIS:
Q. You can answer.
MS. DEITSCH-PEREZ: I'm sorry, John, can you repeat the question, please?
BY MR. MORRIS:
Q. You personally caused Dugaboy to enter into each of the agreements that's referred to in paragraph 82, correct?
MS. DEITSCH-PEREZ: Object to the form.
A. Correct.
Q. What is Dugaboy?
A. The trust, the living maintenance, education, and health trust.
Q. Do you know when it was formed?
A. 2010.
Q. Have you been the trustee of the Dugaboy Trust since the time it was

N. Dondero
created?
A. No.
Q. Who preceded you as trustee, to the best of your knowledge?
A. I don't know.
Q. Did you ever ask anybody who preceded you as trustee of The Dugaboy Investment Trust?
A. Did I ever ask who was the trustee prior to --
Q. Yes.
A. I did not.
Q. Okay. Do you recall when you became the trustee of the Dugaboy Trust?
A. October 2015.
Q. Did somebody appoint you to be trustee of the Dugaboy Trust?
A. By "appoint," do you mean asked me to be?
Q. Okay. Let me restate the question.
A. Sorry.
Q. Do you know how you became the trustee of the Dugaboy Trust?

N. Dondero
A. Jim had asked me to.
Q. Did Jim ask you to be the Dugaboy trustee at around the same time that you became the trustee?
A. That's correct.
Q. Prior to accepting Jim's -- withdrawn.
Did you agree to become the trustee at the Dugaboy Trust in response to Jim's request?
A. Yes, sir.
Q. Okay. Before you accepted the appointment as trustee of the Dugaboy Trust, did you obtain any information about the purpose of the Dugaboy Trust?
A. Yes.
Q. What information do you recall obtaining before you agreed to serve as the trustee at the Dugaboy Trust?
A. The purpose of the trust is to provide health, education, maintenance, lifestyle for the beneficiaries, who is my brother, for as long as he lives and then his children and subsequent generations.

N. Dondero
Q. Is your brother the sole beneficiary of the Dugaboy Trust during his lifetime?
A. Yes.
Q. Did you make any independent decisions with respect to the Dugaboy Trust?
A. Of course.
Q. Do you know if the Dugaboy Trust owned an interest in Highland at the time Dugaboy entered into each of the agreements referred to in paragraph 82?
A. Okay. I'm sorry. Say that again, John.
Q. Do you know whether Dugaboy owned an interest in Highland at the time each agreement was entered into?
MS. DEITSCH-PEREZ: Other than what she's already testified to?
A. Other than it being a major Class A shareholder, John? A limited partner.
Q. I'm sorry, it's a little bit of a different question.
A. Okay.

N. Dondero

Q. You entered into more than one agreement with your brother; is that right?

A. That's correct.

Q. How many agreements did you enter into with him?

A. Okay. How many notes or how many agreements -- you mean, per -- one per year for three years covering 13 notes.

Q. So there's three annual agreements that you recall? Do I have that right?

A. Correct.

Q. And was Dugaboy's interest in Highland the same at each moment that you entered into each of the three agreements?

A. I'm sorry?

Q. Do you know whether -- do you know whether Dugaboy's interest in Highland changed at all between the time that you entered into each of the three agreements that you just referred to?

A. I don't know. I don't think so.

Q. Did you ever ask anybody at any time prior to the petition date if

N. Dondero

Dugaboy's interest in Highland changed at any time during the period in which you were entering into these agreements on behalf of Dugaboy?

A. No.

And, John, can I back up for a second?

Q. Sure.

A. Just in answer to one of my questions when I said that I had three conversations with Jim. That pertained to this procedure. That's my answer for this scope.

Q. Right.

A. Okay. Just so we're on the same page. Okay. Okay.

Q. And do you recall -- we'll get to it.

All right. So you entered into three agreements.

Do I have that right?

A. Correct.

Q. And do you recall when you entered into each one of the three

N. Dondero

agreements?

A. To the best of my recollection, it was around the holidays.

Q. Do you remember the year you entered into the first agreement?

A. It would have been either been the tail end of '17, beginning of '18.

Q. And would the second agreement be the tail of '18, the beginning of '19?

A. Correct, sir.

Q. And would the third one be the tail of '19 and the beginning of '20?

A. Either/or. Correct. Um-hmm.

Q. Okay. And when we say late in each year, is paragraph 82 correct, to the best of your knowledge, that it was either December of the year or the following January or February?

A. Correct.

Q. So it's your recollection that as the trustee of The Dugaboy Investment Trust, you entered into an agreement pursuant to 3.10 of the LP agreement in either December 2019 or January or February

N. Dondero

of 2020?

A. Yes.

Q. Okay. So you entered into that third agreement after the petition date.

Do I have that right?

A. That's correct.

Q. Do you recall that there came a time in January of 2020 when your brother relinquished control of Highland in favor of an independent board?

A. January of '20, yes. Um-hmm.

Q. Do you recall if the agreement that you entered into in late 2019 or early 2020 occurred before or after your brother surrendered control of Highland?

A. I believe it was before.

Q. So sometime in December of 2019 or prior to the date in January when your brother surrendered control, you and your brother entered into the third in the series of three oral agreements that are referred to in paragraph 82, correct?

A. Correct.

Q. Okay. Do you recall what the

N. Dondero
terms of each of the oral agreements was?
A. They were all the same, the agreements. Obviously for different notes. But the terms were that the notes would be forgiven if any of the three portfolio companies that we discussed earlier, Trussway, Cornerstone, MGM, would monetize at a higher value, and then the notes would be forgiven and considered deferred compensation.
Q. And when you say a higher value, did you understand at the time you entered into the agreements what higher value meant?
A. Yes.
Q. Okay. What does higher value mean in the context of the agreements that you entered into with your brother?
A. Higher than the purchase price.
Q. So do I have this correct that if one of the three portfolio companies was sold for a value that exceeded the cost by at least one dollar, then all of the notes that were subject to the agreements would

N. Dondero
be forgiven?
A. That's correct.
Q. Okay. Can you identify the promissory notes that were the subject of each of the three agreements?
A. I don't understand by identified, John. In your book or --
Q. Are you able to list for me the promissory notes --
A. Sure --
Q. Let me finish the question, please.
Are you able to list for me the promissory notes that were the subject of each of the three agreements?
A. In 2017, there were four notes: One to NexPoint, two to HCRE, I believe, and one to HCMS. I don't have specifics, but I believe the four of them originally totaled somewhere near 60 million, in that ballpark, when they were originally set up. That was 2017.
MS. DEITSCH-PEREZ: John, we have a list.

N. Dondero
Do you want her to do this from memory or do you want her to look --
MR. MORRIS: I don't. I'm going to try it a different way, Deborah.
MS. DEITSCH-PEREZ: Okay.
BY MR. MORRIS:
Q. Is there -- did the three oral agreements with your brother --
A. Yes?
Q. -- cover all of the promissory notes that are subject of the lawsuits in which are a defendant?
A. Yes.
Q. Do you know if any of the three agreements you entered into with your brother cover any promissory notes that are not the subject of the lawsuits in which you are a defendant?
MS. DEITSCH-PEREZ: Object to the form.
A. I don't believe they do.
Q. Okay. So to the best of your knowledge, as the person who caused Dugaboy to enter into these agreements on behalf of

N. Dondero
Highland, you do not believe that your agreements covered any promissory note that is the subject of the lawsuits that have been commenced against you, correct?
MS. DEITSCH-PEREZ: Wait. Can you -- I think you -- can you have the court reporter read it back so you can hear it? Because either I heard it wrong or you misspoke, I think.
THE REPORTER: I can read it back, if you'd like.
MR. MORRIS: Sure.
MS. DEITSCH-PEREZ: Yeah, Annette, can you read it back?
THE REPORTER: Sure.
(Question was read back as follows:
"QUESTION: Okay. So to the best of your knowledge, as the person who caused Dugaboy to enter into these agreements on behalf of Highland, you do not believe that your agreements covered any promissory note that is the subject of the lawsuits that have been

N. Dondero
commenced against you, correct?")
MR. MORRIS: All right. Let me ask the question again. Let me ask the question again.
MS. DEITSCH-PEREZ: Okay.
BY MR. MORRIS:
Q. Ms. Dondero, as the person who caused Dugaboy to enter into the agreements described in paragraph 82 on behalf of Highland, do you have any reason to believe that those agreements related to any promissory notes that are not the subject of the lawsuits that have been commenced against you and Dugaboy?
A. No.
Q. Okay.
A. I believe they include the notes that we've been referring to, that we've been talking to about all day, John.
Q. Okay. Did you or Dugaboy ever make a list of the promissory notes that were the subject of each agreement -- withdrawn.
Prior to the petition date, did

N. Dondero
you or Dugaboy ever make a list of the promissory notes that were the subject of each agreement?
MS. DEITSCH-PEREZ: Object to the form.
A. I don't recall.
Q. You have no recollection of you or Dugaboy ever writing down the promissory notes that were the subject of any of the three oral agreements that Dugaboy entered into with your brother, correct?
A. I don't believe I did.
Q. And you don't believe Dugaboy did either, right?
MS. DEITSCH-PEREZ: Object to the form.
A. Correct.
Q. Are you or Dugaboy aware of anything in writing that identifies -- withdrawn.
Are you and Dugaboy aware of anything that was written prior to the petition date that identified the promissory notes that were the subject of

N. Dondero
each agreement that was entered into?
A. Am I aware of anything that was written down not by me?
Q. Right.
A. Nothing that I can recall at this time.
Q. How do you know that the promissory notes that are the subject of the lawsuits against you were all subject to the oral agreements that you entered into on behalf of Dugaboy with your brother?
A. Of the 13 notes in total, we discussed 4 and 17; 6 and 18; and 3 in 19, and that's total, if I'm not mistaken, the 13 notes in question.
Q. Okay. Now neither you nor Dugaboy ever saw any of the notes prior to the petition date, correct?
MS. DEITSCH-PEREZ: Object to the form.
A. That's correct.
Q. And neither you nor Dugaboy are aware of any writing that was created prior

N. Dondero
to the petition date that identified the promissory notes that were the subject of the agreements between Dugaboy and your brother, correct?
A. That is correct.
Q. So are you basing your belief that the agreements covered only the promissory notes that are the subject of the lawsuits on your memory or on anything else?
MS. DEITSCH-PEREZ: Object to the form.
MR. MORRIS: Withdrawn.
BY MR. MORRIS:
Q. What is the basis for your belief that the agreements covered the promissory notes that are the subject of each -- of the lawsuits against you and Dugaboy?
A. Because I remember what we discussed.
Q. So you have a memory. You remember that three to four years ago, you can remember the promissory notes that were the subject of your first agreement even

N. Dondero
though you never saw the notes? Do I have that right?
A. I remember the amount. I don't remember all the specifics from that many years ago, John, but I do remember the amount per each year, and I knew that there were 13 in total.
Q. Who identified the notes that would be the subject of the agreements? Do you recall?
A. In what context who identified them?
Q. Well, the agreement was entered into twin in your capacity as the trustee of Dugaboy and your brother, correct?
A. Correct.
Q. As between you and your brother, did one of you identify the notes that would be the subject of the agreements?
A. Yes, that would be --
Q. And who identified -- okay. And who was that?
A. Jim.
Q. And during these three

N. Dondero
conversations, did he describe for you the notes that were going to be the subject of the conversation?
A. Yes.
Q. I apologize. I withdraw the question.
Did your brother describe for you the notes that were going to be the subject of each agreement?
A. Yes.
Q. Do you have any basis for knowing which agreements -- no. Withdrawn.
Do you have any basis for knowing which notes are the subject of the agreements other than what your brother told you in the three -- in the conversations that led to the three agreements?
A. No, I don't believe so.
Q. Did your brother explain to you why he selected these notes that are the subject of the lawsuits for inclusion in the agreements?
A. Not that I recall.

N. Dondero
MR. MORRIS: I'd like to put up on the screen a document that's been marked as Exhibit 43.
(N. Dondero Exhibit 43, Promissory Note, Bates-stamped D-CNL000550 through 551, marked for identification, as of this date.)
BY MR. MORRIS:
Q. And do you see, Ms. Dondero, that this is a promissory note dated January 18, 2018, in the amount of $7,900,000?
MR. MORRIS: And if we can scroll to the bottom so we could see the signature.
BY MR. MORRIS:
Q. Do you see that that's been signed by your brother?
A. I see that.
Q. Have you ever seen this particular promissory note before?
MR. MORRIS: And we can go back to the top.
(Document review.)
A. It doesn't look familiar, John.

N. Dondero
Q. This note is not a note that's subject to your agreement with your brother, correct?
A. Correct.
Q. Do you know why?
A. I do not.
Q. And Highland has not sued anybody to collect under this note, to the best of your knowledge, correct?
MS. DEITSCH-PEREZ: Object to the form.
A. I --
BY MR. MORRIS:
Q. Withdrawn.
Are you aware of any lawsuit that has been commenced by Highland to collect under this note?
A. I am not aware of any.
Q. When you entered into these agreements, did you have any understanding that the agreement would cover all of the notes that were executed by your brother or by other entities under the Highland umbrella?

N. Dondero
MS. DEITSCH-PEREZ: Object to the form.
A. John, can you repeat the question, please?
Q. Sure.
At the time that you entered into the agreements, did you have any understanding that the agreements would cover all notes executed by your brother, NexPoint, HCRE and HCMS?
A. Yes.
Q. Okay. Was it your understanding that all promissory notes would be covered?
MS. DEITSCH-PEREZ: Do you mean all of the ones at issue here or all, like, including --
MR. MORRIS: No.
MS. DEITSCH-PEREZ: Object to the form.
MR. MORRIS: I thought I was clear, but I'll try it one more time.
MS. DEITSCH-PEREZ: Please.
BY MR. MORRIS:
Q. Was it your understanding that

N. Dondero
when you entered into each of these agreements, that the agreements would cover every promissory note that was executed by your brother, by NexPoint, by HCMS, and by HCRE, irrespective of whether it wound up being part of the lawsuit?
A. My understanding for the agreement I had with Jim is just for these 13 notes.
Q. Okay. So there may be other notes that Jim or NexPoint or HCRE or HCMS, there may be other notes that they executed, but if there are, they were not the subject of any of your agreements with your brother, correct?
MS. DEITSCH-PEREZ: Object to the form.
You mean any of the agreements that she's been testifying here today?
MR. MORRIS: Yes. We've defined agreements, so unless there is a question, unless somebody wants to revisit the definition, we've defined it.

N. Dondero
MS. DEITSCH-PEREZ: Okay. Got it. No.
A. Um-hmm.
Q. When you say "um-hmm," what could you mean?
A. I'm sorry, John. The conversation got me away from the question. I'm sorry. I'm sorry.
MS. DEITSCH-PEREZ: It's my fault.
THE WITNESS: I'm sorry.
A. Go ahead, John.
MR. MORRIS: Can I have the last question read back, please.
THE REPORTER: Sure.
(Question was read back as follows:
"QUESTION: Okay. So there may be other notes that Jim or NexPoint or HCRE or HCMS, there may be other notes that they executed, but if there are, they were not the subject of any of your agreements with your brother, correct?")

N. Dondero
A. Correct.
Q. Okay.
A. I'm only speaking for these 13.
Q. Okay. Do you recall whose idea it was to enter into each of the agreements?
A. It was Jim's suggestion.
Q. Okay. And did he call you to make the suggestion?
A. Yes. At least one, if not two of the agreements were verbal or at least started verbally. And one I remember was in person.
Q. Okay. Did you ever have any concerns that your brother might have a conflict of interest since he controlled both the borrower and the lender under each of these transactions?
MS. DEITSCH-PEREZ: Object to the form.
A. No.
Q. Did it ever occur to you that your brother might have a conflict of interest since he controlled both the

N. Dondero
borrower and the lender in each of these transactions?
MS. DEITSCH-PEREZ: Object to the form.
A. I'm sorry, I thought I answered. No.
Q. Yeah, the first question was whether you had any concerns. And the second question was did it ever occur to you.
Did you understand that?
A. I did.
It didn't occur to me, and I didn't have any concern.
Q. Okay. And I think you just mentioned that your recollection is that two of the agreements were reached on the telephone, and one was reached in person; is that right?
A. That's correct.
Q. Okay. The agreement that was reached in person, where were you?
A. Florida.
Q. Where at?

N. Dondero
A. My house in Vero Beach.
Q. Was anybody else present during this discussion?
A. Jim's kids, underage. My father, who's elderly. Family.
Q. Do you have any reason to believe that anybody was aware of the substance of the discussion that you had with your brother concerning the agreement?
A. No.
Q. The two other conversations that you had on the phone, do you recall whether any person participated in those discussions other than your brother and yourself?
A. No one else participated.
Q. Out of the three agreements that you entered into, do you recall whether it was the first, second, or third that was entered into during a face-to-face meeting?
A. To the best of my recollection, it would have been the end of '18, beginning of '19.
Q. Were there any conversations --

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withdrawn.
So there were three agreements; is that correct?
A. Through this discussion?
Q. Yes.
A. There are three agreements, yes.
Q. And all three agreements are oral agreements, correct?
A. They're all oral. One in person and two on the phone, yes.
Q. Okay. Were there any communications concerning the scope or term or terms of the proposed agreement that took place before the day on which the agreements were entered into?
MS. DEITSCH-PEREZ: Object to the form.
BY MR. MORRIS:
Q. I just want to know if there were any conversations or communications that occurred prior to the entry of the three agreements.
A. There could have been, John.
Q. I know there could have been.

N. Dondero
I'm asking what you remember.
A. I don't -- at this time, I don't know.
Q. Okay. Do you have any reason to believe, as you sit here right now, that there were any communications that occurred prior to the three days in which you entered into the three oral agreements?
A. There could have been.
Q. I appreciate that. I'm asking if you have any recollection of any such communications.
A. I'm not sure at this time, John.
Q. Were any of the oral agreements ever the subject of negotiation?
A. I don't understand what you're asking.
Q. Why don't you tell me what the conversations were that led to each of the agreements to the best that you can recall.
A. The conversations with my brother that took place towards the end of each of the years that we're discussing, they started as general conversations about

N. Dondero
business, about work. And Jim would bring up the loans that were done earlier in the year.
He had stated in the conversation that he thought he was undercompensated for the work that he does and the time that he puts in. And he wanted those loans to be forgiven if any of the three portfolio companies that we talked about monetized at a higher value.
Q. And you agreed with that?
A. Well, it was -- yes, I did agree with that proposal. I thought it was a win-win for everybody.
Q. Did you ever propose any alternative to the proposal that your brother made that you just described?
A. I did not.
Q. Can you identify any provision of any of the agreements that you negotiated with your brother?
A. I didn't negotiate, but Jim had concern, and rightfully so, that he would put in the work and the time and the effort

N. Dondero
to increase the value of any of those portfolio companies and that factors that you mention you beyond his control might cause them to be sold at a value under the price that was paid for them and this deal would not happen.
So hence, that part of the deal came up, but I don't know if I'd consider it a negotiation.
MR. MORRIS: Okay. I'm going to move to strike.
BY MR. MORRIS:
Q. And I'm just going to ask you if you can identify any provision of any of the agreements that you recall being the subject of negotiation?
A. I don't recall any part being a negotiation.
Q. Who identified the portfolio companies that were the subject of each agreement?
A. Jim.
Q. Did you ask your brother why he selected those companies?

N. Dondero
A. No.
Q. Do you know why your brother selected those companies?
A. I do not.
Q. Did you ever suggest that different portfolio companies should be used?
A. I did not.
Q. Did you ask him if Highland had any other portfolio companies?
A. I don't know.
Q. And your brother is the person who proposed that all of the notes would be forgiven if one of the three portfolio companies was sold for greater than cost; is that right?
A. That's correct.
Q. Do you know whether your brother had a duty to maximize value at the time that you entered into the agreements with him?
A. I don't know.
Q. Did you ever ask anybody prior to entering into any of the agreements whether

N. Dondero
your brother already had a duty to maximize value?
A. I did not.
Q. Did you ever make a counterproposal to the term of the agreement that said all of the notes would be forgiven if one of the portfolio companies was sold for greater than cost?
A. I'm sorry, John. Once again, the question, please?
Q. Sure.
Did you or Dugaboy ever make a counterproposal to the provision in the agreements that all of the notes would be forgiven if one of the portfolio companies was sold above cost?
A. Wasn't that his proposal? Jim's proposal?
Q. It was his proposal. I think you've testified to that. And I'm asking you if you or Dugaboy ever made a counterproposal with respect to that particular provision?
A. No.

N. Dondero

Q. Did you ever consider requiring a higher threshold other than having a sale above cost for the triggering of the condition subsequent?

A. No.

Q. Was there any part of your brother's proposal that you rejected?

A. No.

Q. Was there any part of your brother's proposal that Dugaboy rejected?

A. No.

Q. Is there any aspect of any of the agreements that incorporates a proposal or idea that you or Dugaboy made?

MS. DEITSCH-PEREZ: Object to the form.

A. No.

Q. Now do you recall that paragraph 82 also provides that all of the notes would be forgiven if any of the portfolio companies was sold on a basis out of Jim Dondero's control?

A. Yes.

Q. Whose idea was it to include that

N. Dondero

provision in the agreement?

A. I thought I already stated that. That Jim had concerns. That was Jim's proposal.

Q. Okay. Did you or Dugaboy reject that proposal?

A. We did not.

Q. Did you push back on that proposal at all?

A. No.

Q. Did either you or Dugaboy make any counterproposal to that aspect of the agreement?

A. No.

Q. Do you understand that James Seery is in control of the portfolio companies subject to the agreement?

MS. DEITSCH-PEREZ: Object to the form.

A. I didn't know that.

Q. Are you aware that your brother no longer controls the portfolio companies that were the subject of the agreement?

A. Yes.

N. Dondero

Q. So you're aware that somebody other than your brother may sell Highland's interest in the portfolio companies; is that right?

A. Correct.

Q. So under the agreements that you caused Dugaboy to enter into on behalf of Highland, all of the notes that were subject to the agreements will be forgiven at the moment somebody other than your brother sells one of the portfolio companies.

Do I have that right?

A. I'm sorry, John. Once again?

Q. Okay. I just want to understand, you know, the import of the agreements that you've described. So let me try again.

Under the agreements that you caused Dugaboy to enter into on behalf of Highland, all of the notes that are subject to the agreements will be forgiven the moment that any of those three portfolio companies are sold.

Do I have that right?

N. Dondero

A. Correct, you have that right.

Q. Why did you agree, as the trustee of Dugaboy, that all of the notes subject to the agreements would be forgiven if any of the subject portfolio companies was sold on a basis outside of your brother's control?

A. I agreed to that provision of the agreement because – and I believe I stated this – Jim had concerns about doing the work and the effort and putting the time in to build up any one of those three portfolio companies and then having somebody outside of his control sell it for less than a monetized value that would allow the notes to be forgiven.

Q. But there's no component of the agreement that will avoid the forgiveness of the notes depending on the price at which the assets were sold, correct?

A. John, there's no provision of the agreement what?

Q. If somebody were to sell the portfolio assets for a substantial price

1 N. Dondero
2 above cost --
3 A. Above cost?
4 Q. Above cost.
5 -- would the notes still be
6 forgiven?
7 A. Yes, of course.
8 Q. And if the portfolio companies
9 are sold at a price substantially below
10 cost, will the notes still be forgiven?
11 A. They will if they're sold by
12 somebody that's not my brother, that's not
13 Jim.
14 Q. Okay.
15 A. If somebody comes in or -- who
16 did you say, that gentleman that now has
17 control of them, if he decides to sell them
18 below cost, the notes are still forgiven.
19 Q. And if he decides to sell them
20 above cost, the notes are forgiven, right?
21 A. That is correct, but Highland
22 would benefit.
23 Q. How does Highland benefit because
24 some third party sells the assets?
25 A. Okay. That's not what I said.

1 N. Dondero
2 But to answer your question, they
3 wouldn't -- if it got sold for less than
4 the value of them, then Highland wouldn't
5 benefit. But that wouldn't be in Jim's
6 control.
7 Q. Did you expect Highland to
8 benefit if the portfolio companies were
9 sold on a basis outside of Mr. Dondero's
10 control?
11 A. I have no idea, John.
12 Q. Did you have any idea -- did you
13 or Dugaboy have any idea when you entered
14 into the agreement if Highland would
15 benefit from the sale of the portfolio
16 companies on a basis outside of
17 Mr. Dondero's control?
18 A. I wouldn't know that.
19 Q. Okay. Now if Jim sold one of
20 those portfolio companies for a dollar
21 above cost, all of the notes would have
22 been forgiven, correct?
23 A. Correct.
24 Q. And did he have the ability to
25 sell any of the portfolio companies at the

1 N. Dondero
2 time you entered into the agreements?
3 MS. DEITSCH-PEREZ: Object to the
4 form.
5 MR. MORRIS: Withdrawn.
6 BY MR. MORRIS:
7 Q. Did you and Dugaboy understand
8 that Mr. Dondero had the ability to sell
9 any of the portfolio companies at the time
10 you entered into the agreements?
11 A. Yes.
12 Q. Okay. If your brother --
13 A. That was my understanding.
14 Q. Okay. And if your brother sold
15 one of those portfolio companies for a
16 dollar above cost, what benefit would
17 Highland receive if the consequence of that
18 was the forgiveness of more than $60
19 million in principal amount of promissory
20 notes?
21 MS. DEITSCH-PEREZ: Object to the
22 form.
23 A. John?
24 Q. Yes?
25 A. Oh.

1 N. Dondero
2 Q. You can answer.
3 A. That hasn't happened in a
4 hypothetical. I don't have an opinion on
5 that.
6 Q. Well, you entered into the
7 agreements, did you not?
8 A. I did.
9 Q. And you agreed on behalf of
10 Dugaboy on behalf of the plaintiff that if
11 Jim sold one of the portfolio companies at
12 a dollar above cost, all of the notes would
13 be forgiven, correct?
14 A. I entered into the agreement for
15 Dugaboy that if, you're right, any of the
16 portfolio companies monetized higher,
17 right, the notes would be forgiven. But --
18 and I thought about your scenario, but I
19 also thought about it could be $100
20 million. We don't know. This is all
21 hypothetical.
22 Q. It's actually not hypothetical
23 because the term of your agreement was that
24 he could have sold any of the three
25 portfolio companies at a dollar above cost

N. Dondero
and received in return the forgiveness of
all of these notes, right?
A. Correct.
Q. Okay. As the trustee of Dugaboy
who entered into the agreement on behalf of
Highland, what benefit would there be to
Highland if the portfolio companies were
sold at any price less than the aggregate
principal amount of the notes?
A. Less than?
Q. Let's say it was sold for $50
million above cost, then Highland would
have had to forgiven more than $60 million
of notes, correct?
A. Correct.
Q. How would Highland benefit by
having an asset sold $50 million above cost
where the consequence was that they would
forgive more than $50 million of money that
was owed to it?
A. Well, I looked at it differently,
John. And I thought it benefitted Highland
at the time because money didn't come out
of Highland's balance sheets to increase

N. Dondero
Jim's salary. They received interest in
payment on the loans. We don't know when
and if the trigger is going to come into
play that the loans would be forgiven.
Even as we sit here today, 20-plus million
has been paid on the loan.
Q. Can you explain why your brother
is making payments on demand notes after
entering into the agreements with you?
A. It's my limited understanding
that he's made payments when whatever
entity needs money.
Q. And what is the basis for that
understanding?
A. Common sense. I don't know,
John.
THE WITNESS: And I hate to do
this, but I know when you – can you
come to a place of a break in the near
future whenever is convenient in your
questions there, please?
MR. MORRIS: Sure.
BY MR. MORRIS:
Q. What is the basis for saying that

N. Dondero
your brother paid back loans at times that
Highland needed the money – withdrawn.
Is it your testimony that your
brother made payments against the loans
after entering into the agreements with you
because Highland needed the money?
A. That's my belief, John.
Q. Okay. And what is the basis for
that belief?
A. I don't have one except I know
how my brother works.
Q. Do you know that your brother
caused the borrowers under the promissory
notes to make payments against those notes
after entering into the agreements with
you?
A. I do not.
Q. Did you ever ask anybody?
A. I did not.
Q. And I think we covered this
earlier, but I just want to try and cover
it quickly before we take the break.
At the time you entered into each
of the agreements, neither you nor Dugaboy

N. Dondero
had any understanding of the nature of
Highland's interest in each of the
portfolio companies, correct?
A. That would be correct, yes.
Q. And at the time the three
agreements were entered into, neither you
nor Dugaboy had any understanding as to
Highland's cost for acquiring its interest
in each of the three portfolio companies,
correct?
A. Yes, that is correct.
Q. And at the time each of these
three agreements were entered into, neither
you nor Dugaboy had any information as to
the value of Highland's interest in any of
the portfolio companies, correct?
MS. DEITSCH-PEREZ: Object to the
form.
MR. MORRIS: You can answer.
A. I'm sorry, John, can you repeat
the question, please?
Q. At the time that you entered into
each of these three agreements, neither you
nor Dugaboy had any information concerning

N. Dondero
the value of Highland's interest in the three portfolio companies, correct?
MS. DEITSCH-PEREZ: Object to the form.
A. That's correct, John.
Q. And at the time that you entered into these three agreements, neither you nor Dugaboy knew whether the value of Highland's interest in the three portfolio companies was more or less than the cost of acquisition, correct?
A. That's correct.
MR. MORRIS: We can take that break now if you'd like.
MR. DRAPER: John, this is Douglas.
How much more do you think you have?
THE VIDEOGRAPHER: The time is 2:41. We are going off the record.
(Recess is taken.)
THE VIDEOGRAPHER: The time is 2:57. We are back on the record.
MR. MORRIS: Can we put back up

N. Dondero
paragraph 82 from Mr. Dondero's answer to the Amended Complaint?
(Document review.)
BY MR. MORRIS:
Q. Ms. Dondero, can you hear me?
A. Yes.
Q. Okay. Do you see in the middle of paragraph 82 it talks about the purpose of the agreement?
A. Um-hmm.
Q. And do you see where it says that Jim Dondero, quote, "was otherwise underpaid compared to reasonable compensation levels in the industry"?
A. I see that.
Q. At the time that you caused Dugaboy to enter into the three agreements on behalf of Highland, did you believe that James Dondero was underpaid compared to reasonable compensation levels in the industry?
A. Yes, I believed what he told me.
Q. Okay. Did you have any basis for believing that he was underpaid compared to

N. Dondero
reasonable compensation levels in the industry other than what your brother told you?
A. No.
Q. Okay. Did Dugaboy have any basis for believing that your brother was underpaid compared to reasonable compensation levels in the industry other than what your brother said?
A. Not that I'm aware of.
Q. Prior to entering into each of these three agreements, did you or Dugaboy make any effort to ascertain whether your brother was underpaid compared to reasonable compensation levels in the industry?
A. Not that I remember.
Q. At the time that you entered into these agreements, neither you nor Dugaboy knew the total compensation package that Mr. Dondero received from Highland in any calendar year, correct?
A. John, can you ask that question again, please?

N. Dondero
Q. Yes. I'd be happy to.
At the time that you caused Dugaboy to enter into each of the three agreements that you've described, neither you nor Dugaboy made any effort to determine your brother was underpaid compared to reasonable compensation levels in the industry, correct?
A. That's correct.
Q. And at the time that you caused Dugaboy to enter into the agreements, neither you nor Dugaboy knew how much compensation your brother received from Highland in any particular year, correct?
MS. DEITSCH-PEREZ: You mean the exact number?
MR. MORRIS: I mean general number. Any number.
A. Okay. I think we spoke about this earlier. I had a general number on salary.
Q. Correct.
And now I'm asking about total compensation, including deferred

N. Dondero
compensation, including any profit sharing,
including any distributions, total
compensation, right?
Do you see that this is referring
not to salary but to compensation?
A. I do.
Q. Okay.
A. And I would not have known that.
Q. Okay. So let me ask the question
again just to make sure it's clear.
At the time that you caused
Dugaboy to enter into each of these three
agreements, neither you nor Dugaboy knew
what Mr. Dondero's compensation was from
Highland for any particular year, correct?
A. Correct.
Q. And at the time that you caused
Dugaboy to enter into the three agreements,
neither you nor Dugaboy ever asked anybody
what Mr. Dondero's compensation was from
Highland for any particular year, correct?
A. Correct.
Q. And at the time you caused
Dugaboy to enter into these three

N. Dondero
agreements, neither you nor Dugaboy made
any effort to try to ascertain what
Mr. Dondero's compensation from Highland
was in any particular year, correct?
A. That's correct.
Q. Okay. Did you or Dugaboy ever
conduct any analysis of what reasonable
compensation levels in the industry were?
A. Not that I recall.
Q. Did Mr. Dondero ever tell you
what he thought reasonable compensation
levels were in the industry?
A. John, I vaguely remember him
throwing out examples of other people in
his position and the astronomical money
that they make. I just don't remember
their names or the companies.
Q. Okay. Did you or Dugaboy make
any effort at any time prior to entering
into the three agreements to determine what
reasonable compensation levels were in the
industry?
A. No.
Q. Did you or Dugaboy reach any

N. Dondero
conclusions prior to entering into the
agreements as to whether Mr. Dondero was
underpaid compared to reasonable
compensation levels in the industry?
A. The first part of that, John?
The first part of your question?
Q. Did you or Dugaboy reach any
conclusions prior to entering into the
three agreements as to whether your brother
in fact was underpaid compared to
reasonable compensation levels in the
industry?
A. Yes, I came to the conclusion
that he was based on what he told me.
Q. Okay. And you had no other
information upon which you relied to reach
your conclusion that he was underpaid
except for the information that your
brother provided to you, correct?
A. That's correct.
Q. Okay. And other than -- okay.
MR. MORRIS: We can take that
down. Thank you.
BY MR. MORRIS:

N. Dondero
Q. Ms. Dondero, do you know if the
terms of any of the agreements were ever
reduced to writing?
A. I didn't put them in writing.
That's all I can speak to.
Q. Have you ever seen the terms of
any of the agreements in writing?
A. I have not.
Q. Did anyone ever tell you that the
terms of the agreements were written down
anywhere?
A. Not that I recall.
Q. Did you or Dugaboy ever ask
anyone if the terms of the agreements were
written down anywhere?
A. Not that I remember.
Q. Did you believe that these
agreements were important at the time that
you caused Dugaboy to enter into them?
A. Yes.
Q. Why did you think that these
agreements were important?
A. I think I thought they were
important because they gave Highland the

N. Dondero
chance to motivate and get Jim -- or give Jim an extra incentive to make the portfolio companies into something really magnanimous, which would have been great for Highland and Jim.
Q. When you entered into the agreements, did you intend that they would be binding on Highland?
A. That was my belief, yes.
Q. Did it ever occur to you that you might want to write down the terms of these important agreements?
A. Honestly, it didn't come to mind, no.
Q. Did you ever tell anybody in the world prior to the petition date that you had entered into these three agreements with your brother?
A. Besides Melissa, who knew, I don't remember anyone else offhand that I would have discussed them with.
Q. How did Melissa know?
A. Pardon?
Q. Are you referring to Melissa

N. Dondero
Schroth?
A. Correct.
Q. Why do you think that she knew?
A. I have a vague memory of discussing it with her.
Q. What do you remember about that vague memory?
A. It was in regards to Dugaboy. She is one of my main contact people, and I think it was more a recap conversation.
Q. And what did she say?
A. She just listened, made a note, I assume, made a mental note.
Q. Do you recall, did this occur in a telephone conversation?
A. Yes, I believe it did.
Q. Okay. Do you recall when that conversation took place?
A. I do not.
Q. Do you recall if it was before or after the petition date?
A. I do not.
Q. Did she ask any questions?
A. Not that I recall.

N. Dondero
Q. Did you tell her which notes were the subject of the agreements?
A. The conversation was not that detailed.
Q. Well, if she didn't ask any questions and she didn't say anything that you recall in response, can you recall everything you said to Ms. Schroth during this conversation?
A. I don't remember, John, the specifics.
Q. Do you remember anything about the conversation at all?
A. I just remember them coming up in conversation.
Q. You remember what coming up?
A. The forgiveness of the loan.
Q. Did she indicate to you that she knew about it already?
A. I don't remember.
Q. Did she express any surprise at what you told her?
A. No, but I do remember her saying it was the great motivator.

N. Dondero
Q. And you don't think your brother was otherwise motivated to sell one of three assets at a dollar above cost, correct?
A. I never said --
MS. DEITSCH-PEREZ: Object to the form.
A. I didn't say that.
Q. Well, but that's what the agreement permitted, correct, that the notes would be forgiven if he sold an asset at a dollar above cost, right?
MS. DEITSCH-PEREZ: Object to the form.
A. John, at the time I entered into the agreement, I believe that they would be a motivator, an increased motivator.
You met my brother, right? You know he's motivated.
Q. It never would have occurred to me that he needed more motivation, but maybe that's just my view.
A. It's increased motivation when there's money on the line.

N. Dondero

Q. But how does it motivate him when he can recover the benefits of the agreement regardless of how much above cost the asset is sold?

A. Okay. I'm sorry, John, one more time, please, the question?

Q. How does it motivate him when he will reap the benefits of the agreement if he sells -- withdrawn.

How does he get motivated under an agreement whereby he will get the benefit of the forgiveness of over $60 million of notes without regard to how much above cost he sells one of three assets?

A. Okay. John, when I entered into these, he was still at the helm of Highland.

Q. Correct.

A. So if he would have monetized them at a really high value, he would have benefitted from his interest, beneficial interest in Highland.

Q. Under the terms of the agreement, are you able to identify how Mr. Dondero

N. Dondero

would have been motivated whether -- withdrawn.

It doesn't matter under the agreements that you entered into on behalf of Dugaboy how much above cost the assets are sold before Mr. Dondero could reap the benefits of the agreement, correct?

A. Correct.

Q. And you could have, but you didn't, demand that the notes would be forgiven only if he sold the assets at -- I'm just going to pick a number -- 50 percent more than cost, right?

A. Anything is possible.

Q. But you didn't -- anything is possible, but the fact is that neither you nor Dugaboy made any proposal that would tie the benefits that Mr. Dondero wanted to the amount of gain that was to be recovered on behalf of Highland, correct?

A. Correct. I didn't look at it the way you are, correct.

Q. And so when you speak of motivation under the terms of the agreement

N. Dondero

that you entered into on behalf of Highland, Mr. Dondero would be indifferent whether the asset was sold at 1 percent above cost, at 10 percent above cost, more than the face amount of the promissory note, right? There's no relationship between the gain to Highland and the benefit to Mr. Dondero, correct?

A. You mean now when he's not at the helm of Highland, John?

Q. No, I mean -- no. Let me try again.

At the moment you entered into the agreement --

A. Right.

Q. -- if a subsequent event occurred, you and your brother knew that he would receive more than $6 million in value through the forgiveness of the notes, correct?

A. Correct.

Q. But at the time that you entered into the agreements, neither you nor your brother knew what the economic benefit to

N. Dondero

Highland would be because the asset hadn't been sold yet, correct?

A. Correct.

Q. And it wasn't in the hands of a third party, correct?

A. Correct.

Q. Okay. And I think you may have testified to this earlier. If you did, I apologize. But do you know the aggregate amount that's due under each of the notes that are subject to the agreements that you entered into on behalf of Dugaboy?

A. As of today's value or --

Q. Let's start with today's value.

A. Okay. The amount owed I believe per the lawsuit for all of them is just north of 50 million.

Q. And were you aware at the time you entered into the agreements, the aggregate principal amount that was still due on the notes that were subject to the agreement?

A. When I entered into the three agreements?

N. Dondero
Q. Yes.
A. The total for '17, '18, and '19 combined was in the ballpark of 72 million, I believe.
Q. And the difference between the principal amount that was due at the time that you entered into the agreements and the principal amount that's due today is the payments that were made in the intervening period.
Do I have that right?
A. I'm assuming payments and interest, sir, yes.
Q. Okay. If the assets are sold now, what benefit will Highland receive relative to the forgiveness of the notes?
MS. DEITSCH-PEREZ: Object to the form.
BY MR. MORRIS:
Q. The assets are now in the hands of a third party, right?
A. Um-hmm. Correct.
Q. Okay. And is it your understanding that if a third party sells

N. Dondero
the assets that irrespective of the price at which it sold, the moment it's sold, the notes will be forgiven?
A. That is my understanding.
Q. So that if a third party were to sell the asset -- withdrawn.
So at the time that you entered into the agreements on behalf of Dugaboy, neither you nor Dugaboy had any understanding of what Highland's economic recovery would be if a third party sold any of the portfolio companies, correct?
A. I wouldn't have known the future. That is correct.
Q. Did you and Dugaboy -- withdrawn.
Did you and Dugaboy believe at the time that you entered into the agreements that Highland received reasonably equivalent value in exchange for the agreements?
MS. DEITSCH-PEREZ: Object to the form.
A. John, I repeat, I thought at the time I entered into the agreement, there

N. Dondero
was a -- that it was a good deal for both Jim and Highland, a win-win situation. I think we discussed this already.
Q. Okay. But you didn't know the price at which Mr. Dondero would sell the asset that was subject to the condition subsequent, correct?
A. John, correct, but I know my brother, and he's a financial guru, and I trusted in the fact that he would make them into something great.
Q. Okay. But neither you nor Dugaboy could predict whether Highland would receive from the sale of the assets more or less than the principal and interest due under the notes, correct?
A. You are correct; I could not predict what would happen.
Q. Okay. Did Mr. Dondero express any reason to you why he thought the notes should be forgiven if the assets were sold by somebody other than himself?
A. Okay. I'm sorry, John. Again?
Q. Did Mr. Dondero give you any

N. Dondero
reason as to why he believed he was entitled to the forgiveness of the notes simply because the assets were sold by somebody other than himself?
A. I believe we touched on this already, but I will repeat it.
His concern was that he put the time and effort and energy into the three portfolio companies and then some element beyond his control could come in and sell them at a loss after he had done all the work. And if we didn't have that provision in, his notes wouldn't be forgiven.
Q. Did you ask him why he was concerned that some element beyond his control were to intervene to prevent him from selling the assets?
A. I did not.
Q. Did you ask him why that was even a possibility at the time that you entered into these three agreements?
A. I did not. But knowing my brother, he looks at all sides of every situation.

N. Dondero

Q. Okay. The notes that were issued by HCMS, HCRE, and NexPoint, can we refer to those for the next set of questions as the corporate notes?

A. Okay.

MS. DEITSCH-PEREZ: Can you read that back?

MR. MORRIS: Sure.

BY MR. MORRIS:

Q. Can we call the notes that were executed on behalf of HCMS, HCRE, and NexPoint as the corporate notes?

MS. DEITSCH-PEREZ: You're including HCMFA in this?

MR. MORRIS: No, I never said that.

MS. DEITSCH-PEREZ: I thought you did. That's why I said -- I think you misspoke, but can you ask the question again.

MR. MORRIS: I don't think so. I don't think so, but I'll say it for a third time.

BY MR. MORRIS:

N. Dondero

Q. Can we call the notes executed on behalf of HCMS, HCRE, and NexPoint as the corporate notes?

MS. DEITSCH-PEREZ: Okay. Thank you. I think I was hearing S as F. Sorry.

BY MR. MORRIS:

Q. Is that okay, Ms. Dondero?

A. Yes, that's fine. Thank you.

Q. Okay. And under the agreements, were the corporate notes to be forgiven as compensation to your brother or as compensation to the corporate obligors, the corporate borrowers?

A. Deferred compensation for Jim.

Q. So let me get this right.

HCMS, HCRE, and NexPoint each borrow money from Highland and give Highland promissory notes in return.

Do I have that right?

A. I'm sorry, John. Just one more time, the question, please?

Q. Each of HCMS, HCRE, and NexPoint borrowed money from Highland and gave

N. Dondero

promissory notes in return, correct?

A. Yes. That's my understanding.

Q. And under the agreement that you entered into on behalf of Dugaboy, those corporate notes would be forgiven as compensation to your brother upon the condition -- upon the fulfillment of conditions subsequent, correct?

A. That is correct.

Q. So that the forgiveness of the corporate notes was, in your mind, the same thing as giving compensation to your brother, correct?

MS. DEITSCH-PEREZ: Object to the form.

A. They would be considered deferred compensation.

Q. And they would be considered compensation to your brother, not compensation to the borrowers under each of the corporate notes, correct?

A. That's how I understood it, yes.

Q. Okay. So in your mind, when you entered into these agreements, it didn't

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matter whether the notes were executed by your brother or any of these three corporate obligors; the cancellation of the notes would be a direct benefit for compensation purposes only to your brother, correct?

MS. DEITSCH-PEREZ: Object to the form.

THE WITNESS: Do I still answer?

BY MR. MORRIS:

Q. Yes.

A. Yes, John, that's how I understood it.

Q. Thank you.

A. Certainly.

Q. Now the compensation that was the subject of these agreements, that wasn't to compensate him for past services, was it?

MS. DEITSCH-PEREZ: Object to the form.

MR. MORRIS: Withdrawn.

BY MR. MORRIS:

Q. The compensation that was subject to the agreement was for services that

N. Dondero
would be rendered in the future, correct?
MS. DEITSCH-PEREZ: Object to the form.
BY MR. MORRIS:
Q. You can answer.
A. Well, in the future from what date?
Q. From the date that the agreements were entered into.
A. Correct. Yes. From the date, yes.
Q. The agreement was that the notes would be forgiven based on a condition subsequent, right?
A. Yes. So a future date from when we entered them, um-hmm.
Q. So something had to happen in the future in order for your brother to get the benefit of the bargain, right?
A. Correct.
Q. Because if it was compensation for services rendered in the past, you just give him the money, right?
A. So true.

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MS. DEITSCH-PEREZ: Object to the form.
BY MR. MORRIS:
Q. Let me ask another question, a different question, Ms. Dondero, and just try to finish this up.
Pursuant to the agreement that you entered into on behalf of Dugaboy, the notes would only be forgiven if some future event occurred, correct?
A. Right, the monetization of one of the three portfolio companies, correct.
Um-hmm.
Q. The forgiveness of the notes was not for services rendered in the past, correct?
MS. DEITSCH-PEREZ: Object to the form.
A. That is correct.
Q. Okay. Do you know if Dugaboy ever issued any promissory notes in favor of Highland?
A. I know there are loans between Dugaboy and Highland.

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Q. And do you know who made the loan and who received the loan or loans?
A. I believe Dugaboy was the borrower. The loan with Highland, it was in 2017. And if my memory serves me right, it was 23, 24 million.
Again, going by memory, John, because I really wasn't prepared for this line of questioning, but I believe there is an earlier loan between the two of them.
Q. And did you – I apologize. I didn't mean to step on your words.
Are you finished?
A. Oh, no. I am. Thank you.
Q. Okay. Were you the trustee of the Dugaboy Trust at the time the loans you just described were obtained from Highland?
A. The one that I mentioned that I remembered the – I believe it's close to or around 24 million, in May of '17, I was obviously. I became trustee in October of '15.
The other one, I'm not positive on, John, the date and the amount. I just

N. Dondero
know of another one.
Q. Now the Dugaboy trust is, I think as you've described it, a trust for education and health and lifestyle purposes, right?
A. And maintenance, correct.
Q. Do you know why Dugaboy needed to borrow 23 to 24 million dollars from Highland in 2017?
A. I'd be speculating. I don't know for sure, but I believe it was for real estate.
Q. And did you – do you recall executing any documents on behalf of Dugaboy in connection with the loan that it obtained from Highland?
A. Not that I recall, John, right now.
Q. Do you know who authorized Highland – withdrawn.
Did you ever have any conversations with anybody at any time concerning Dugaboy's 23 to 24 million dollar loan that it obtained from Highland

N. Dondero
in around 2017?
MS. DEITSCH-PEREZ: I'm going to object. This is neither one of the Dugaboy topics and it's beyond the -- it doesn't pertain to the four adversary proceedings. So it's not fair to ask the witness about things she's not had the occasion to refresh herself on.
MR. MORRIS: Okay.
MR. DRAPER: John, I let this go on behalf of Dugaboy a little bit just for background information, but now we're sort of bordering on specifics of a transaction that is --
MR. MORRIS: I am -- go ahead, Douglas. I'm sorry.
MR. DRAPER: -- that is not in dispute in this litigation. It is not within your 30(b)(6) designation. And so it's fundamentally unfair to put this witness through a memory test for no purpose whatsoever that servers nothing to do with this litigation.

N. Dondero
MR. MORRIS: Okay. Number one, I agree that it's not a 30(b)(6) topic.
Number two, I agree that I'm not asking her these questions in her capacity as the Dugaboy trustee. I'm asking them in her individual capacity. So I don't think you have any grounds to object any longer, Mr. Draper.
And number three, I think all of this goes to credibility. And it goes to everything we've been talking about today.
And so I'm going to continue to ask my questions. And if at any time you want to direct the witness not to answer, you know, we'll deal with it. Okay?
MR. DRAPER: Okay. So if I understand what you just said, just so the record is clear, this is not 30(b)(6) questions to the witness. In fact, these are questions to the witness in her individual capacity and will not serve as a 30(b)(6) answer on

N. Dondero
batch of Dugaboy, correct?
MR. MORRIS: I thought I was quite clear, but, yes, Douglas, that is correct.
MR. DRAPER: Great. Thank you.
MR. MORRIS: Yep.
BY MR. MORRIS:
Q. Okay. So Ms. Dondero, do you recall any conversations you ever had at any time concerning the 23 or 24 million dollars that Dugaboy borrowed from Highland?
A. Not at this time.
Q. Okay. You mentioned that you believed that the money was used for the acquisition of real estate.
Do I have that right?
MS. DEITSCH-PEREZ: Object to the form.
A. Yes.
Q. And was that for the acquisition of Jim's house in Colorado?
A. I don't know.
Q. Do you know if your brother

N. Dondero
acquired a house in Colorado in or around 2017?
A. I know he acquired a house in Colorado. The time frame, I'm not certain of.
Q. Do you know that he paid more than $20 million for a house in Colorado?
A. No.
Q. Was the loan that Dugaboy obtained from Highland subject to any of the three agreements that you entered into as the trustee of Dugaboy?
A. Any of the three agreements we've been discussing?
Q. Yes.
A. No.
Q. Did you ever ask Jim why the Dugaboy note wasn't included in the agreements?
A. I did not.
Q. But you knew Dugaboy note existed at the time you entered into the agreements, correct?
MS. DEITSCH-PEREZ: Object to the

N. Dondero
form.
A. At the time I entered into the agreements, I don't know, John.
Q. So at the time you entered into these three agreements, you don't recall whether you knew that Dugaboy had obtained a 23 to 24 million dollar loan from Highland.
Do I have that right?
A. I don't know as I sit here now. What I knew then, I don't remember.
Q. But you do remember the specific identity of each promissory note that was the subject of each of these three agreements, correct?
A. When I refreshed my memory, sure.
Q. Do you know if Dugaboy ever entered into any agreement on behalf of Highland other than the three oral agreements that you described today?
A. Dugaboy has entered into a lot of agreements with Highland.
Q. All right. Let me restate the question.

N. Dondero
Did Dugaboy ever, ever -- ever, ever. Let me try again.
Did Dugaboy ever enter into any agreements pursuant to Section 3.10 of the LP agreement other than the three agreements that you've mentioned today?
A. Oh --
MS. DEITSCH-PEREZ: Were there any before these, John? Before?
MR. MORRIS: I don't care if it's before or after. So let me ask again.
BY MR. MORRIS:
Q. As the trustee of Dugaboy, are you aware of any agreement Dugaboy has ever entered into pursuant to Section 3.10 of the LP agreement other than the three agreements that you have described today?
A. Not that I'm aware of, compensation.
Q. Can we put up your discovery responses, which I think is document No. 25 in your pile.
MS. DEITSCH-PEREZ: The notebook.
MR. ELMS: 25.

N. Dondero
THE WITNESS: What is it?
MR. ELMS: Tab 25.
THE WITNESS: Tab 25. Okay.
(Document review.)
BY MR. MORRIS:
Q. Have you seen this document before, ma'am?
A. Just one second. I'm getting there.
Q. Sure. Take your time.
A. Okay.
(Document review.)
A. Yes. Yes, I believe I have.
Q. Can you turn to page 15?
(Witness complies.)
Q. Is that your signature?
A. It is.
Q. And did you review this document before you signed it?
A. I did.
Q. Did you have an opportunity to consult with counsel before you signed it?
A. I did.
Q. Did you in fact consult with

N. Dondero
counsel before signing it?
A. I did.
Q. And you reviewed this document in connection with your preparation for today's deposition, correct?
A. Correct.
Q. As you sit here now, do you know of anything in the objections and responses that is wrong or inaccurate?
(Document review.)
A. I don't see anything, John. I don't believe so.
Q. As you sit here right now, do you have any reason to amend these objections and responses to make them more complete or more precise?
A. Not at this time.
Q. Can you turn to page 9, please?
(Witness complies.)
Q. Do you see in request for admissions No. 7 and 8, you were asked to admit, and I'm going to summarize, that no document was created prior to the commencement of the adversary proceeding

N. Dondero
that reflects -- let's just take them one at a time. Let me withdraw that.
Looking at No. 7, do you see that you denied having sufficient knowledge or information to admit or deny the request?
A. Yes.
Q. Okay. Would you agree that as you sit here right now, you are not aware of any document that was created prior to the commencement of the adversary proceeding that reflects or memorializes the terms of the agreement?
A. Yes.
Q. Okay. And turning to No. 8, do you see for that one, you also responded by saying you lack sufficient information to admit or deny the request?
A. Yes, I do.
Q. Would you agree with me that it would be fair to say that as you sit here today, you are not aware of any document that was created prior to the commencement of the adversary proceeding concerning the existence of the agreement?

N. Dondero
A. That's correct; I'm not aware of any.
Q. Okay. Can we go to Interrogatory No. 5?
MS. DEITSCH-PEREZ: So page 12 to 13. No, no, where you were. We were in Tab 25.
THE WITNESS: Tab 25. What page now?
MR. ELMS: Page 13.
MS. DEITSCH-PEREZ: Page 13. The number is on page 12, but then --
MR. ELMS: He's asking you at the very top there.
THE WITNESS: Oh.
(Document review.)
BY MR. MORRIS:
Q. And do you see that Interrogatory No. 5 asked you to identify every document and communication you reviewed in connection with your decision to enter into the agreement?
A. Yes.
Q. Okay. And you said that you

N. Dondero
either reviewed or discussed with your brother the LP agreement and the Dugaboy Trust documents.
Do you see that?
A. Yes.
Q. Do you have any recollection of actually reviewing the LP agreement before entering into any of the agreements that you've described?
A. I don't recall.
Q. You may or you may not, but do you have a recollection of discussing it with your brother?
A. I don't recall, John.
Q. Do you recall reviewing Section 3.1 before you entered into any of the three agreements?
A. I don't know when that review took place.
Q. Do you recall whether the review took place in connection with your entry on behalf of Dugaboy into any of the three agreements?
A. I don't know the time frame,

N. Dondero
John.
Q. Did you confer with anybody -- withdrawn.
Did you or Dugaboy confer with anybody other than your brother before you caused Dugaboy to enter into the three agreements?
A. No, not that I'm aware of.
Q. Did you or Dugaboy seek any legal advice before entering into any of the three agreements?
A. No.
Q. Do you have any recollection of actually reviewing the Dugaboy Trust documents before entering into any of the three agreements?
A. I have reviewed the trust documents, John. I don't know what time frame.
Q. Okay. I appreciate that.
A. Sure.
Q. I'm sorry, did I cut you off?
A. Oh, no. I'm sorry. I was just answering you. Thank you.

N. Dondero
Q. Okay. So take a look at Interrogatory No. 6 below.
Do you see that?
A. Yes.
Q. And your response was, "Other than generally approving compensation, including the agreements at issue in this notes proceeding, none."
Do you see that?
A. I do.
Q. What does "Other than generally approving compensation" refer to?
A. Well, "Other than generally..."
I'm assuming it means the forgiveness of the loan, "Other than generally approving compensation."
Q. Okay. So let's look at the Interrogatory. This Interrogatory specifically says that "Other than the agreement" --
A. Okay.
Q. -- "identify every agreement you ever entered into as a representative of a majority of Class A shareholders of

N. Dondero
plaintiff."
Do you see that?
A. I do.
Q. Are you aware of any agreement that you ever entered into as a representative of a majority of Class A shareholders of plaintiff other than the agreements that you've identified?
A. No.
Q. Okay. And were you, in your capacity as the trustee of Dugaboy -- withdrawn.
Did you, in your capacity as trustee of Dugaboy, approve compensation for any affiliate of Strand other than the three agreements that you entered into that you've described today?
A. Not that I'm aware of.
Q. Okay. So generally approving compensation, does that have any meaning at all other than the three agreements that you entered into that you've described today?
A. No.

N. Dondero
MR. MORRIS: Can we put up -- withdrawn. Hold on.
BY MR. MORRIS:
Q. Before we take this down, did Dugaboy provide -- withdrawn.
Did Dugaboy approve any compensation for Jim Dondero other than the three agreements that you've described today?
A. I do not believe so since I've been trustee.
MR. MORRIS: Can we put up Exhibit No. 26, please, which would have been Dugaboy's discovery responses?
(N. Dondero Exhibit 26, Defendant the Dugaboy Investment Trust's Objections and Responses to Plaintiff's Request for Admission, Interrogatories, and Requests for Production, marked for identification, as of this date.)
BY MR. MORRIS:
Q. And that was No. 26 in the binder.

N. Dondero
A. Okay. Um-hmm.
Q. Have you seen this document before?
A. I believe so, yes.
Q. And can you turn to page 14?
A. Yes.
Q. Is that your signature?
A. It is.
Q. And did you review this document before you signed it?
A. I did.
Q. And did you have an opportunity to consult with counsel before you signed it?
A. I did.
Q. And did you in fact consult with counsel before you signed it?
A. I did.
Q. As you sit here right now, in your capacity as the trustee of the Dugaboy Trust, do you know of anything in the objections and responses that is wrong or inaccurate?
(Document review.)

N. Dondero

A. I don't see anything that needs to be changed.

Q. As you sit here right now, as the trustee of the Dugaboy Trust, do you have any reason to amend your objections or responses to make them more complete or more precise?

A. I have no reason at this time, John.

Q. Okay. I think I have kind of the same questions that I just asked you about your discovery responses, but let's see.

Can we turn to page 8, which again has responses to request for admission No. 7 and 8?

A. Okay.

Q. And if you take a look request for admission No. 7 and the response, can you just read the that to yourself and tell me when you're finished?

(Witness complies.)

A. I'm done.

Q. Okay. Would your response be accurate as follows: Dugaboy is not aware

N. Dondero

of any document that was created prior to the commencement of the adversary proceeding that reflects or memorializes the terms of the agreement?

A. That is correct.

Q. Okay. Moving to request for admission No. 8, the same thing, can you just read the request and the response to yourself and let me know when you're finished?

(Witness complies.)

A. I'm done, John.

Q. Okay. Would it be fair to interpret your response as follows: Dugaboy is not aware of any document that was created prior to the commencement of the adversary proceeding concerning the existence of the agreement?

A. Correct.

Q. Okay. And let's go to Interrogatory No. 5.

Are your answers in your capacity as -- and if you want me to go through it again, I'm happy to do it, but I just need

N. Dondero

to know in the first instance, is there any difference -- will your answers concerning Interrogatory No. 5 be any different in your capacity as the Dugaboy trustee than they were in your individual capacity?

A. Let me read it, John.

Q. Take your time.

(Document review.)

A. It's the same as the one earlier.

Q. Okay. And finally, let's just look at Interrogatory No. 6. Please take a look at that and the response and let me know if your answers in your capacity as the trustee of the Dugaboy Trust would differ in any way from the answers that you gave pertaining to Interrogatory No. 6 in your individual capacity.

A. No, it's the same.

Q. Okay.

MR. MORRIS: So the time right now is 4:57 Eastern, I guess 3:57 your time. I'm done with my outline, but I just want to check my notes to see if I have anything left.

N. Dondero

Douglas, you'll be happy to know that I do expect to finish well in advance of 4:30 Central time. So why don't we just take a break and we'll come back at, I guess, 4:10 Central time?

THE WITNESS: Okay.

THE VIDEOGRAPHER: The time is 3:57. We are going off the record.

(Recess is taken.)

THE VIDEOGRAPHER: The time is 12:15. We are back on the record.

MR. MORRIS: This is John Morris. I have no further questions of this witness at this time.

Does anybody else have any questions?

MS. DEITSCH-PEREZ: Reserve for trial.

MR. MORRIS: So are we in agreement that we can close the record right now?

MR. DRAPER: Yes.

MR. MORRIS: Thank you very much

N. Dondero
everybody. Ms. Dondero, thank you.
THE VIDEOGRAPHER: The time is
4:16. This concludes today's
deposition, Monday, October 18, 2021.
(Time noted: 4:16 p.m.)

_____.
NANCY DONDERO

Subscribed and sworn to before me
this day of 2021.

_____

C E R T I F I C A T E

STATE OF FLORIDA)
: ss.
COUNTY OF PALM BEACH)

I, ANNETTE ARLEQUIN, a Notary Public within and for the State of New York, do hereby certify:

That NANCY DONDERO, whose deposition is hereinbefore set forth, was duly sworn by me, and that the transcript of such depositions is a true record of the testimony given by such witness.

I further certify that I am not related to any of the parties to this action by blood or marriage; and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 18th day of October, 2021.

_____
ANNETTE ARLEQUIN, CCR, RPR, CRR, RSA

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NANCY DONDERO	
BY MR. MORRIS	8

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ERRATA SHEET FOR THE TRANSCRIPT OF:
CASE NAME: IN RE: HIGHLAND CAPITAL MANAGEMENT
DATE: OCTOBER 18, 2021
DEPONENT: NANCY DONDERO

Pg.	Ln.	Now Reads	Should Read	Reason
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NANCY DONDERO
SUBSCRIBED AND SWORN BEFORE ME
THIS____DAY OF_____ 2021.

_____
(Notary Public)
MY COMMISSION EXPIRES:_____

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EXHIBIT 101

1

2 IN THE UNITED STATES BANKRUPTCY COURT

3 FOR THE NORTHERN DISTRICT OF TEXAS

4 DALLAS DIVISION

5 Case No. 2021-1193

6 ----------x

7 In Re: Chapter 11

8 HIGHLAND CAPITAL MANAGEMENT, L.P. Case No.

9 Debtor, 19-34054-sqj11

10 ----------x

11 HIGHLAND CAPITAL MANAGEMENT, L.P.,

12 Plaintiff, Adversary

13 -vs- Proceeding No.

14 NEXPOINT ADVISORS, L.P., JAMES 21-03005-sgj11

15 DONDERO, NANCY DONDERO, and the

16 DUGABOY INVESTMENT TRUST,

17 Defendants.

18 ----------x

19 REMOTE VIDEOTAPED DEPOSITION OF ALAN JOHNSON

20 Tuesday, November 2, 2021

21

22 Reported by:

23 Amy A. Rivera, CSR, RPR, CLR

24 JOB NO. 202068

25

November 2, 2021
9:02 a.m.

REMOTE videotaped deposition of ALAN JOHNSON held pursuant to Notice, before Amy A. Rivera, Certified Shorthand Reporter, Registered Professional Reporter, Certified LiveNote Reporter, and a Notary Public of the States of New York, New Jersey and Delaware.

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ALAN JOHNSON

COURT REPORTER: Good morning, Counsel.

My name is Amy Rivera. I am a certified court reporter in association with TSG Reporting, Inc.

Due to the severity of the COVID-19 and following the practice of social distancing, I will not be in the same room with the witness but will record this deposition remotely and will swear the witness remotely.

Do all parties stipulate to the validity of the remote recording and remote swearing and that it will be admissible in the courtroom as if it had been taken following Rule 30 and other rules of the Federal Rules of Civil Procedures and the state's rules where this case is pending?

MR. MORRIS: John Morris, Pachulski Stang Ziehl & Jones, for Highland Capital Management, L.P.

We stipulate.

MR. AIGEN: Michael Aigen from Stinson.

1 ALAN JOHNSON
2 And I'm here with Deborah
3 Deitsch-Perez.
4 And we also stipulate.
5 MR. ELMS: Daniel Elms, Greenberg
6 Traurig, on behalf of Nancy Dondero.
7 We stipulate.
8 A L A N J O H N S O N, having been duly sworn
9 by the Notary Public, testified as follows:
10 MR. MORRIS: Thank you.
11 EXAMINATION
12 Q. Good morning, Mr. Johnson.
13 Can you hear me?
14 A. Yes, you're very clear.
15 Q. Okay.
16 My name is John Morris. I'm an
17 attorney at Pachulski Stang Ziehl & Jones, and we
18 represent Highland Capital Management.
19 We're here today for your deposition.
20 Do you understand that?
21 A. Yes.
22 Q. And do I understand correctly that
23 you've been engaged to provide expert testimony in
24 this matter?
25 A. Yes.

1 ALAN JOHNSON
2 Q. Do you have a general understanding of
3 the nature of the litigation in which your expert
4 testimony is being offered?
5 A. At a high level, I do, yes.
6 Q. Can you tell me what your general
7 understanding at a high level is in the pending
8 litigation?
9 A. The litigation involves loans for
10 Mr. Dondero that were taken out during -- over a
11 period of years.
12 Late in 2018 and '19, the loans were
13 consolidated and modified to put in place
14 acceleration features, if -- if the specific
15 transactions occurred, so that at least -- there's
16 a lot of litigation, but as I understand what I'm
17 involved is these loans that accumulated over a
18 period of years, the practices of loans, and I'm
19 also opining on his market compensation over the
20 period 2013 through 2019.
21 Q. Do you know who the obligors are under
22 the loans you've just mentioned?
23 A. Obligors? Could you explain -- give
24 me more detail what you're looking for?
25 Q. Sure.

1 ALAN JOHNSON
2 Do you know who own -- who the loan
3 was made to -- withdrawn.
4 Do you know who the loan -- I think
5 you used the word, plural, "loans," so let me ask,
6 using your word, if I have that correctly, do you
7 know who Highland made the loans to that are the
8 subject of the litigation?
9 A. I'm not clear, no.
10 Q. Okay.
11 You don't have an understanding as you
12 sit here today as to who the loans Highland made
13 to that are the subject of the litigation.
14 Do I have that right?
15 A. If I understand it, the loans
16 criss-crossed differently to different entities,
17 so I'm not exactly sure how all that was
18 structured.
19 Q. Okay.
20 You've been deposed before, right?
21 A. Yes.
22 Q. Okay.
23 And you've served as an expert before,
24 right?
25 A. Yes.

1 ALAN JOHNSON
2 Q. In fact, you've been retained by my
3 firm to provide expert services in the area of
4 executive compensation. Is that right?
5 A. Yes. Yes, I have.
6 MR. MORRIS: Mr. Kornfeld sends his
7 best regards.
8 THE WITNESS: Thank you.
9 MR. MORRIS: You bet.
10 Q. So I don't know if you've given remote
11 depositions before, but just very, very
12 preliminarily, since you are an experienced
13 witness, we'll be looking at a number of documents
14 today, and if I put something up on the screen and
15 you believe that you need to see more of the
16 document, will you let me know that?
17 A. Sure.
18 Q. Where are you sitting right now?
19 A. My home in New Jersey.
20 Q. Okay.
21 Do you have any documents in front of
22 you right now?
23 A. No.
24 Q. Do you have a telephone?
25 A. Yes, I do.

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Q. Is it on right now?
A. Yes. It is my cell phone.
Q. Could I trouble you to just turn it off?
You know what, if you're not comfortable for personal reasons, could I ask you not to look at your phone unless it rings and it's your child or spouse?
A. Let me put it out of arm's reach and put it upside down, how's that?
Q. That's fair. That's fair.
I've taken a look at your report that you prepared back in May. Based on that report, do I have it correct that you've spent your entire career as an executive compensation consultant?
A. Yes, that is correct.
Q. And you've had your own executive compensation consulting firm since the early '90s. Is that right?
A. Yes.
Q. And your firm specializes in compensation consulting for the financial services industry, correct?
A. Yes.

ALAN JOHNSON

Q. You've advised major asset management and investment firms on issues concerning executive compensation. Is that right?
A. Yes.
Q. You've advised hedge funds and other alternative firms on issues concerning executive compensation, correct?
A. Yes.
Q. According to your report, did I read this correctly that your firm's clients include many of the world's most significant financial institutions?
A. Yes, they do – it does.
Q. Have you personally ever been retained by a board of directors to provide advice concerning executive compensation?
A. Many times.
Q. Can you give me a rough number? Is it more than 20?
A. Board of directors? More than 20.
Q. More than 50?
A. I don't know. It may – it's a lot.
Q. Is it fair to say it's somewhere between 20 and 50 and it could even be more?

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A. Probably more than 50.
Q. Have you ever been retained by a compensation committee of a board of directors to provide advice?
A. Yes.
Q. And if I separate that from boards of directors generally, is that also a number that measures in the dozens?
A. At least.
Q. Other than boards of directors and compensation committees of boards of directors, can you identify generally any other decision makers that you've been retained by to give advice on areas of executive compensation?
A. We – we get involved from time to time with business owners. That might be a private equity firm or hedge fund looking at their portfolio companies.
We also do a lot of project work. So that would involve working with senior leaders of different financial services firms to look at either their whole compensation program or the programs for particular units.
We also from time to time get involved

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with some of the major consulting firms where they – we provide advice to them as they work with their clients on financial services compensation.
Q. Okay.
And what is it that you sell? Can you describe for me, if you were giving a sales pitch, why a board or a compensation committee should hire you?
A. Well, we have a lot of experience in the space across financial services. So we have a large home-field advantage of knowledge, experiences. We know the nuances of what goes on in the industry. That's part of the sales pitch.
We also are good consultants. We – we listen. We are experts at looking at information and data and all that.
And at the end of the sales pitch, I usually say, We also have big scans, so we're used to dealing with difficult people.
So many of the people in financial services are opinionated and, at times, difficult, so a lot of experience across cycles. We're comfortable giving clients difficult news, and

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we're good at what we do.

Q. And is it fair to say you have expertise in the area of executive compensation?

A. Absolutely.

Q. And is it fair to say that part of that expertise is knowing the marketplace?

A. Absolutely.

Q. And is part of that expertise knowing or being familiar with the current trends in the marketplace?

A. Yes, absolutely.

Q. And would you say that you have a really good understanding of how to structure compensation plans that are appropriate to the clients that you serve?

A. Yes.

Q. And one of the things that we're here to discuss today is the concept of forgivable loans.

Do you understand that?

A. Yes.

Q. And your client is James Dondero.

Do I have that right?

A. I was retained by Stinson, but they

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represent him, yes.

Q. Okay. We'll talk about that just a bit more.

I'm going to read from your report. If you want me to put it up on the screen, I'm happy, but I want to focus just on one sentence of your report that says that you understand from Mr. Dondero that "The 2018 loans that are the subject of this suit were modified by agreement in late 2018 or early 2019 under which the loans would be forgiven upon the sale at over cost of substantially all of any three portfolio companies held in the Highland platform."

Do you remember that?

A. Yes.

Q. Would you like to see it so you can see the context?

A. I think I understand it.

Q. Okay. So that's the sentence that I want to focus on.

Is the agreement that you described the only agreement that you're aware of pertaining to Highland and Mr. Dondero and the forgiveness of loans or do you understand there's more than one

ALAN JOHNSON

agreement?

A. When I discussed it with Mr. Dondero, I believed there was a single agreement, but that I'm not sure of. I think that's the -- what I got out of him.

Q. Okay.

You haven't been informed that more than one agreement exists.

Do I have that right?

A. I don't believe so.

Q. Okay.

Do you know how many loans are the subject of the agreement?

A. There were -- they were consolidated, I believe, in late '18 or '19. Originally, there were a lot more. I think they're down to a couple, if I recall.

Q. Is it relevant to your analysis to know the number of loans that are the subject of the agreement?

A. I don't think so.

Q. Do you know the aggregate value of the loans that are the subject of the agreement that you referred to in your report?

ALAN JOHNSON

A. I think the total of the loans is somewhere in the 40 to $50 million range, if that -- I think that's what I read.

Q. And where did you read that?

A. I think in all the documents, when I tried to parse out the -- all the loans, I think it totaled to something like 40 to $50 million, if I recall.

Q. And can you describe the document that you're referring to?

A. There were a bunch of loan agreements in all the different materials. I don't recall where I saw them.

Q. Okay.

Is the value of the -- is the aggregate value of the loans relevant to your analysis?

A. No.

Q. Do you know anything about the loans that are the subject of the agreement other than what you've written in your report?

A. Subsequent to the report, I've seen some of the documentation of the loans, so I've seen some amounts and the period of the loans, the

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interest rates and so forth.

Q. When did you see that documentation?

A. In the last week or so, prior to this deposition.

Q. Have you amended your report?

A. I have not.

Q. So are any of the conclusions altered at all by any of the documents you've seen recently?

A. No.

Q. And now that I am aware that you've seen certain loan documentation, I'll ask you again if you can identify any obligor under any of the loans other than Mr. Dondero?

A. I'm sorry. I just didn't pay that much attention. I was looking – I don't remember.

Q. Do you recall if the loans were demand loans or term loans?

A. The ones I recall were – they were for a very long period of time, I think 30 years. They were – they were 30-year term loan.

Q. And do you recall how many 30-year term loans you saw?

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A. I recall at least a couple.

Q. Did you see any demand loans?

A. I don't recall seeing any.

Q. Have you ever seen any written agreement covering the forgiveness of any loans that Highland extended to Mr. Dondero?

A. I have not.

Q. Have you ever seen any written agreement covering the forgiveness of any loans that Highland extended to any corporate affiliate?

A. I have not.

Q. Have you ever seen any written agreement covering the forgiveness of any loans that Highland had ever extended to any person or entity in the world?

A. I have not.

Q. Have you seen any documents that describe the existence or terms of any forgiveness agreement between Highland and Mr. Dondero?

A. I have not.

Q. Have you seen any documents that describe the existence or terms of any forgiveness agreement between Highland and any corporate affiliate?

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A. I have not.

Q. Have you seen any documents that describe the existence or terms of any forgiveness agreement between Highland and any person or entity in the world?

A. I have not.

Q. So is it fair to say that you have not seen any documentary evidence of any loan forgiveness agreement between Highland and anybody in the world?

A. I have not seen any documents, that's right.

Q. Okay.

The agreement that Mr. Dondero described for you, do you understand that that is an oral agreement?

A. I don't think he said to me it was an oral agreement. He described it to me. I don't – I don't think he – I don't remember if he characterized it as an oral agreement, but he described how – he described how – in his opinion, how the agreement worked.

I don't – I don't recall if he mentioned it was just verbal or it was written. I

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don't – that, I don't recall.

Q. Did you ask Mr. Dondero or any of his attorneys if there was a written agreement?

A. I don't recall if that came up. It may very well have, I don't remember whether we – whether there was an agreement or not. I just don't recall.

Q. Did you or anybody working on your behalf ever ask Mr. Dondero or anybody working on his behalf if there were any documents that reflect the existence or terms of any forgiveness agreement that Highland ever entered into?

A. When I talked to executives at Highland, we asked – or former executives about loans, we talked about documentation.

They just didn't have any documentation of the loans they had had. They described the fact that several of them had been forgiven. The documentation had existed at one time, but they don't – they didn't keep it or didn't have it available.

So we talked about that, but...

Q. You're not offering any opinion as to whether an agreement actually exists pertaining to

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the forgiveness of any loans that Highland extended to Mr. Dondero or his affiliates, are you?

A. I am not.

Q. You're not offering any opinion as to the terms of any alleged agreement between Mr. Dondero and Highland concerning the forgiveness of loans, are you?

A. I am not.

Q. You're not offering any opinions on the reasonableness of any of the terms of any alleged agreement between Mr. Dondero and Highland concerning the forgiveness of loans, are you?

A. I am not.

Q. You've been informed that this modification was intended to provide Mr. Dondero with additional compensation based on the satisfaction of what we've been calling "certain conditions subsequent." Is that fair?

A. As I understood it, the loans existed -- I don't know. I don't know if that's a fair characterization.

I think the loans were modified -- that, I'd have to really think about, because the

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loans themselves may have been already compensation.

I guess these would have actualized the compensation, so it certainly -- if these loans were modified with the performance characteristic, it would have turned it in from perhaps deferred compensation into actual compensation.

So it would have changed the characteristics of it, but I'm not sure it created compensation. There may have already been compensation in these loans in the first place.

Q. Is it fair to say that you're speculating on that?

A. There's some speculation there, yes.

Q. Do you have any knowledge as to the intent of the parties when they entered into the modification agreement on the topic of forgiveness?

A. Mr. Dondero described it as to reward him for actualizing -- I guess there were three portfolio investments, and if they were -- if a transaction occurred at more than the mark price, that was to reward him for having one of those

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transactions occur.

Q. Okay. So it was supposed to -- your understanding from Mr. Dondero was that the agreement was intended to reward him if he achieved some level of performance in the future.

Do I have that right?

A. Yes.

Q. Okay.

Do you know what the purpose of any of the loans that are the subject of the forgiveness agreement was?

A. Mr. Dondero described the -- the loans as a way to invest in the business rather than paying out compensation. He described it, I think, as delayed gratification, that these funds then would be invested in the business rather than being paid out to him as -- as current compensation.

Q. Do you know what the -- what the obligors under the various loans did with the proceeds that they received from Highland?

A. Mr. Dondero described it as the proceeds would be reinvested in the business.

Q. Do you have any source of information

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as to the intent of the forgiveness agreement other than what Mr. Dondero told you?

A. No.

Q. Do you have any source of information other than Mr. Dondero as to the purpose of each of the loans that are the subject of the forgiveness agreement?

A. Just going back to the prior comment, that he had described the general practice that the loans were to give him the ability to reinvest in the business, but not -- not -- that was in the totality, not loan by loan.

Q. All right.

But your sole source of information regarding that topic is Mr. Dondero.

Do I have that right?

A. It was -- when I interviewed the other Highland -- former Highland executives, they also described the general practice of that as well, that going back a long time, they were familiar with that idea of delaying it and reinvesting in the business.

So that went back aways, but most of it is Mr. Dondero.

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Q. Did they tell you anything concerning the intent of the loans other than what you've just described?

A. They described their individual circumstances around why the loans were made to them and the circumstances, but the intent of the loan itself, no. It just – some comments from them and Mr. Dondero.

Q. Okay. I apologize, I probably wasn't clear here. I am only talking about the loans that are the subject of the forgiveness agreement that's – that's part of the lawsuit. I'm not talking about any loans to any prior employees.

So I think – I think we may have been talking past each other, so let me try again.

With respect to the purpose of each of the loans that are the subject of the pending lawsuit, do you have any source of information regarding their purpose other than Mr. Dondero?

A. I do not.

Q. Okay.

Do you have any source of information other than Mr. Dondero concerning what the obligors of each of the loans that's subject to

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the lawsuit did with the proceeds?

A. Just a description from Mr. Dondero about the purpose of the – what the loans would be used for.

Q. Okay.

So your understanding from Mr. Dondero was that the purpose of the forgiveness agreement that he entered into in late 2018 or early 2019 was to incentivize him to perform in the future, correct?

A. Yes.

Q. And, in fact, your understanding is that under the modification agreement, the loans will only be forgiven if some future event occurs, correct?

A. Yes.

Q. The loan was not intended to provide him for compensation for services previously rendered. Is that fair?

A. No. As I – as I mentioned earlier, my speculation was that the – the loans were, using his words, delayed gratification. He paid himself and others less than the market wage and used loans as a form of compensation in the past.

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Q. Well, if the assets subject to the agreement are not sold above cost, Mr. Dondero will never get any gratification. Is that correct?

A. Yes.

MR. AIGEN: Objection, form.

Q. I think you said that you have experience giving advice concerning forgivable loans.

Do I have that right?

A. Yes.

Q. And have you ever given advice on how to structure forgivable loans as part of executive compensation?

A. Yes.

Q. Can you please describe your experience in that area?

A. From time to time, clients or we come up with using loans as a vehicle to incent and motivate executives and senior professionals. So we'll get involved in the magnitude of the loans, the terms, interest rates, you know, if there's performance attached to it, what the performance would be defined as.

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So it would be around sizing, magnitudes, the terms, you know, of how the loans would work.

Q. When giving advice – you know, I want to, if I can use, a phrase here during the deposition of "decision maker."

If I use the word – the phrase "decision maker," will you understand that I mean the person who is acting on behalf of the employer to make the decision – to actually make the decision as to whether or not to forgive a loan?

A. Okay.

Q. Somebody has to act on behalf of the company – you would agree, based on your expertise, that somebody has to make the decision on behalf of the company whether or not to forgive loans. Is that fair?

A. Well, it could be a committee like a board or a comp committee or others, but there needs to be somebody or person that decides.

Q. Okay.

So whether it's a board of directors or a special committee or a compensation committee or a CEO, if he or she is dealing with other

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employees, I'm going to use the phrase "decision maker" to refer to that person or body who is making the decision on behalf of the employer to forgive a loan as part of executive compensation. Is that fair?

A. Sure. Okay.

Q. Okay.

And you've given advice to decision makers using the definition that I've just described, correct?

A. Yes.

Q. Okay.

When you give advice to decision makers who are considering whether to forgive loans as part of executive compensation, do you advise them to obtain any information before making that decision?

A. You want them to be informed. Maybe they already have adequate information about circumstances, but you would certainly want them to be informed before they made a -- certainly, a final decision.

Q. And if you were giving expert advice to a decision maker, what areas would you tell

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them that they ought to be informed on before they enter into a forgiveness?

A. Make sure I understand the question, you're talking about before they do the agreement itself, not the forgiveness of it but structuring the agreement?

Q. No. I apologize. I'm not talking about the underlying loan. I'm talking about the decision to enter into an agreement pursuant to which, you know, loans would be forgiven, what information should they have before they're -- that kind of an agreement?

A. Fair enough.

They should understand the -- the magnitude of the accomplishment that would be attached to the -- to the loans.

They should have a basic understanding of the magnitude of the loans, the magnitude of the events that they're incenting or rewarding, if it is -- is there some proportionality between the success and the amount of loan forgiveness?

They should have some idea of the probability of these accomplishments happening. Is it highly unlikely or very likely to happen?

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So I think they should have some understanding of the proportionality. They should have some understanding of difficulty. And is it a -- is it fair to forgive these loan if these events occur?

Q. Let's talk about some information.

In your opinion, should the decision maker be knowledgeable about the executive's compensation history before entering into an agreement concerning the forgiveness of any loans?

A. The decision maker should have a general understanding of the pay history of the individual, the context of the company, the situation. It should -- it would be one of the factors that you should -- you should certainly be aware of.

Q. And why do you believe that a decision maker should be knowledgeable about the executive's pay history before she, he or it agrees to forgive loans?

A. I think in the real world, you want to understand the context. Has this executive been very well paid or poorly paid in the past? What is that individual's perspective on his or she's

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pay history? I think that's relevant.

You know, is the forgiveness of the loan significant enough to motivate the behaviors that you're trying to do? If that individual -- if this is a trivial amount, then it won't have much of an impact. If it's overwhelming, maybe it will lead to behaviors that are not good, take too much risk or whatever.

So, yes, you should be aware of the pay history, but also, the business context, how important is it for these events to happen. Is this -- is this very significant in the company's future?

So yes, you should be aware.

Q. Can you think of any circumstances where it would be appropriate for a decision maker to agree to forgive loans as part of an executive's compensation without having an understanding of the executive's compensation history?

A. Well, you -- sometimes, you have new executives, so you wouldn't -- you wouldn't have any pay history to be aware of. And some -- many of our clients, the pay history is somewhat murky

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or complicated, so it would not be ideal, but it certainly has happened.

Q. So -- so it happens, you think -- the circumstances you can think of are for new employees or for people with murky compensation histories.

Do I have that right?

A. I think that would usually be the circumstances where you would at least have some good, general understanding of somebody's pay history.

Q. Would you recommend that the decision maker seek information concerning the executive's compensation history before agreeing to forgive any loans?

A. I -- generally, advice, I would want to know that. So yes, I would suggest they find that out, if it's feasible or -- but yes, that would be one of the things I would probably suggest.

Q. Would you ever advise a decision maker to forgive loans without having an understanding of the executive's compensation history?

A. I probably would not suggest that you

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forgive the loans without having some knowledge of that. It's possible to get it.

Q. Would you ever advise a decision maker to forgive loans as part of executive compensation without ever asking anybody for information relating to the executive's compensation history?

A. I would not recommend that usually.

Q. Okay. Let's talk about the entity's financial condition.

In your opinion, is the entity's financial condition relevant for a decision maker to consider before entering into a loan forgiveness program?

A. I think the financial condition is certainly relevant, and as I mentioned earlier, the significance of the events that you're trying to motivate.

So yes, I think you want to know both. You'd want to know your financial condition and you want to know the significance of the events that you're trying to -- to reward.

Q. And why do you believe in your expert opinion that the decision maker should have an understanding of the entity's financial condition

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before agreeing to forgive loans?

A. Well, I think you'd want to know just would the forgiveness of these loans be significant to the financial condition of the company. It may be significant to the individual but be trivial to the overall organization, so I think you'd want to know are these loans significant in terms of the financial condition of the company.

Q. Can you think of any circumstance where it would be appropriate for a decision maker to agree to forgive loans as part of executive compensation without having an understanding of the entity's financial condition?

A. No. I don't think that would be ideal. I think you would certainly -- you would want to know the condition of the business.

Q. Okay. I'm not asking you what's ideal.

Can you ever -- can you fathom any scenario where it would be appropriate for a decision maker to agree to forgive loans without having an understanding of the employer's financial condition?

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A. Well, I think if there's a chaotic financial situation, say the financial crisis or others where it's very difficult or impossible to get a clear understanding of the financial condition of the business or it's in dispute where -- what the condition is.

So that can exist, and I think in those situations you'd need to make a decision. Maybe forgiving the loans is appropriate even though you may not have a clear idea of the financial condition.

So it's not ideal, but I've had clients, you know, where the financial condition was uncertain and different people had different opinions, but you still had to make a decision.

So that's why I used the word "ideal." It would be ideal to have it, but sometimes you just don't have that -- you don't have that clarity.

Q. Do you have any reason to believe that during the seven-year period -- withdrawn.

Can you think of a circumstance where it would be appropriate for a decision maker to enter into a loan forgiveness program as part of

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executive compensation without even asking for information relating to a company's financial condition?

A. Well, I don't -- if they already had a good familiarity, they perhaps often don't need to ask, but if they weren't clear, then they should ask.

Q. Okay.

Is it fair to say that you would never advise a decision maker to enter into a forgivable loan program as part of executive compensation without having an understanding of the entity's financial condition?

A. Well, I think -- as I said earlier, I think there are situations where you just can't know what the condition is. If -- if -- I think the decision maker should try to understand the condition of the business to the best of their ability, but if that's not possible, they still may have to make a decision on loans or other -- other compensation elements.

Q. Let's say it is possible to understand the entity's financial condition. In a hypothetical world, if you could understand the

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entity's financial condition and it wasn't subject to dispute at that moment in time, would you be able to -- would you ever advise the decision maker to enter into the loan forgiveness program without attempting to gain an understanding of that very financial condition?

A. No. I would suggest to the client that they try to understand that condition.

Q. And if there was information available, would you always advise your client to try to obtain that information concerning the entity's financial condition before entering into an agreement to forgive loans as part of executive compensation?

A. I think you would almost always or often try to do that. I don't -- again, there are practicalities of time frames and getting the data and so forth might enter into it, but yes, I think the -- the general thesis is, if you're going to make forgivable loans, you should try to have an understanding of the condition of the business.

Q. Okay. Let's drill down on that just a little bit and talk specifically about financial statements.

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When I use the phrase "financial statements," I'm thinking of your traditional package in an audit report, the balance sheet, statement of operations, cash flow, P&L statements.

You're familiar with that type of document, right?

A. Yes.

Q. Okay.

In your opinion, should a decision maker review and understand the financial statements of the -- of the employer before agreeing to enter into a loan forgiveness program?

A. They should -- they should have a basic understanding of financial statements, yes.

Q. And that's the advice that you would always give to a decision maker, correct?

A. Yes.

Q. And why would you give that advice?

A. Well, I think that you would want -- as part of making forgivable loans or any compensation, you would want to have a basic knowledge of the financial condition of the business.

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Q. Can you think of any circumstance where it would be appropriate for a decision maker to agree to forgive loans as part of an executive compensation package without having a basic knowledge of the financial condition of the employer?

A. Well, I think, as I said earlier, if it's -- if it's just not possible to do that, you just can't -- it's chaotic enough or it's just very difficult to figure out the condition of the business, then you still have to make decisions, but you should strive to have an understanding before you make these decisions.

Q. Can you think of any circumstance where a decision maker should enter into a loan forgiveness program without asking to see the financial statements of the employer?

A. Well, if someone already has a good understanding, you may not need to supplement that, but if you don't have a clear understanding, you should have -- you should try to obtain that.

Q. Is it fair to say you would never advise a decision maker to agree to forgive loans as part of executive compensation without

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understanding the entity's financial statements, including its profit and loss and its balance sheet?

A. As I said earlier, you would try to have that understanding if it's possible, absolutely.

Q. Okay.

Under the modification agreement that's described in your report, the 2018 loans are to be forgiven upon the sale of certain assets above cost.

Do I have that right?

A. Yes.

Q. And so is it fair to call that kind of a contingency, the forgiveness is contingent upon a future event?

A. Yes.

Q. And the future event here, or the "subsequent event" as we call it sometimes, is the sale of one of three assets above cost.

Do I have that right?

A. Yes.

Q. I think you said this earlier, but just to make sure, before agreeing to provide

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compensation through forgivable loans, would you advise the decision maker under this scenario to make an assessment of the likelihood that the condition subsequent would occur?

A. You would want to have that basic understanding. It's difficult to forecast, but yes, you would want to look at the magnitude of the forgivable -- the amount of loans being forgiven and the significance of these accomplishments along with the probability of it actually happening.

So you would want at least at a high level to have some either understanding or feel for the magnitude of the loans, the significance of the accomplishments and their likelihood of it happening.

Q. And if we -- if we applied those thoughts to this case, would you recommend or advise the decision maker that he or she obtain information about the cost of each of the three assets that are subject to the conditions subsequent?

A. Yeah, you would want to understand the significance of these transactions, the proceeds,

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the -- have an understanding of how significant these amounts are to the -- to the company.

Q. And would you also advise your client, who's the decision maker in this hypothetical, that he or she or it should obtain information about the value of those assets as of the date of the agreement?

A. You should have a basic understanding of the value of these assets, where they're marked on the books, around the time you do the agreement.

Q. Why do you believe that the decision maker should have at the time of the agreement information enabling him, her or it to make an assessment as to the likelihood that the condition subsequent will occur?

A. Well, I think if you're trying to motivate someone or reward someone, you have to have some idea, is it likely to happen? Is it impossible? Is it certainty?

Again, I think that's part of the calculus is to reward someone for achieving something that may be difficult with a significant payout but it's not impossible.

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So I think as you design either loans or more commonly, comp program, you've got to assess the difficulty and importance of these things happening.

Q. Can you think of any circumstances where it would be appropriate for a decision maker to enter into an agreement to forgive loans based on some future event without having an understanding of the likelihood that that future event will occur?

A. Well, usually, when we do these things, there's a great deal of judgment and subjectivity in that.

So I think it is not generally quantifiable, whether you use the word "gut feeling" or "impression" or the difficulty of these things happening. Often, it's -- it's quite a subjective assessment, how difficult these things are, so you want to try to have an understanding, but it can be frustrating. It can be quite subjective about whether -- the likelihood or the difficulty of these things happening.

Q. Well, let's just say hypothetically

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that I'm going to enter into an agreement that is going to permit me to -- withdrawn.

So let's say hypothetically I'm an employee and I've borrowed a hundred dollars from my employer, and my employer says to me, I'm going to forgive that hundred dollars if you sell any of three assets above cost. On the date that we entered into the agreement, each of the assets has cost me $5 and each of the assets is worth $100, so 20 times the cost on the date of the agreement.

Do you think that's information that the decision maker should know before agreeing to forgive the $100 loan?

A. I think he should understand the value the asset that is -- in your hypothetical, he should have an understanding of that and how significant in your hypothetical selling that would be to the business.

Maybe that the proceeds of one of them is really significant in terms of the -- turning the business around or providing liquidity or other types of things, he should have some idea of if one of those three assets are sold, what does that do to the firm and its future.

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Q. And is it fair to say that with the information about value and cost, the assessment as to whether or not the future event is likely to occur is not purely subjective and it's not purely based on a gut feeling, is that fair, if you have that information?

A. It's hard. It's a lot closer to a gut feeling, subjective than objective. But it's hard to -- your ability to actually sell something, when, to who, at what price, can be quite -- is often quite subjective.

So you may have -- depending on circumstances, you may have good information of likelihood, but oftentimes, you really don't.

Q. Would you -- would you always advise the decision maker under this hypothetical to try to obtain as much information as he, she, or it can on the issues of cost and value of the three assets at issue?

A. I would -- I would tell clients to try to understand that as best they could.

Q. Can you think of any circumstance where it would be appropriate for a decision maker to enter into a loan forgiveness agreement without

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even asking for that information?

A. Well, in circumstances where they already thought they had a good understanding, they didn't probably need to ask, but you should try to have a good understanding.

Again, as I said, the significance of these assets and whether -- if they're sold, for example, what that impact would be on the business.

Q. I think one of the things you've done in your report is to provide your assessment of compensation paid to comparable executives.

Is that fair to describe at least a portion of your report?

A. Yes.

Q. Okay.

In your opinion, is the amount and form of compensation paid to comparable executives relevant to a decision maker's determination of whether or not to enter into a forgiveness program as part of executive compensation?

A. As I said earlier, that would be one of the things you would want to have -- you would want to have a general understanding of, the pay

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history and the context of the situation.

Q. Okay.

In fact, this is what you sell. Isn't that right, one of the things you sell?

A. To make sure I understand the question, what am I selling here?

Q. One of the things you sell is your knowledge, expertise and experience about how comparable executives are compensated in the financial services industry, right?

A. Yes.

Q. And so is it fair to say that you believe the decision maker should have an understanding as to how comparable executives are compensated before agreeing to enter into an executive loan program -- loan forgiveness program?

A. I think more it would be about the individual's pay history. I think how other people in the industry is probably of less importance on that narrow issue.

I think you'd want to know how has Mary or Jim been paid in the past on that issue rather -- I think that would be more important

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than how other executives in the industry had been paid.

Q. Well, let's say hypothetically that in the industry, very senior founding executives get paid on the average of $6 million a year.

A. Okay.

Q. And the executive at issue has received $6 million a year for at least, let's say, 7 years, just to say hypothetically.

If a decision maker wanted to forgive loans of $50 million, do you understand the decision maker should know, is that what other people doing this job are getting? Are they getting that kind of money?

Don't you think they should know that before entering into the agreement?

A. Yes, I think you would want to know the magnitude, in your example of $50 million, how does that stack up to the compensation of the executive and how other people in the industry would have been paid?

So yes, you would want to -- in your hypothetical, the $50 million, you would want to have some idea of how that -- the magnitude of

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that money.

Q. Right.

A decision maker should try to take steps to avoid overpaying. Is that fair?

A. A decision maker should try to both make sure you don't under or overpay. You should try to get it right and fair, whatever that means.

Q. And one of the ways to get it right or fair is to try to have an understanding as to how comparable executives are compensated in the same industry. Is that fair?

A. That's one of the factors you would want to consider, absolutely.

Q. And you would recommend and advise your decision makers that they should attempt to gain an understanding of how comparable executives are paid before entering into a loan forgiveness program. Is that fair?

A. They should try to be -- whether they have it immediately or they should try to have an understanding -- if they don't already, they should try to have an understanding how does this in your hypothetical $50 million relate to, not only the executive, but how other people are paid.

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Q. Okay. Let's say hypothetically the decision maker has no prior knowledge as to how comparable executives are paid in the industry, would you recommend that such a decision maker hire somebody like yourself?

A. They could hire someone like us or they could talk to their attorneys or they could do their own research or talk to the HR department. You could get it from many sources.

But if someone were to ask me out of the blue, I would say, yeah, you should have an understanding, how does -- how does the amount you're going to forgive stack up to the industry you're in? Is it a small amount, large amount?

You should have some idea of the relative magnitude of the amount in question.

Q. Is it fair to say that you would never advise a decision maker who has no knowledge of how comparable executives are paid to enter into a loan forgiveness program without at least attempting to understand how the -- how the competition pays their employees?

A. Well, the caveat of -- the answer -- the broad answer would be, yes, but the caveat

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would be how significant the loans were.

If the loans were relatively small, it probably wouldn't be required. The larger the loans, generally, you would say -- you would want to have a better understanding of pay practices in the industry.

Q. Okay.

Let's say hypothetically the people who are involved in the discussions concerning the forgiveness of the loans are the CEO and an outside director. Okay?

Are you with me so far?

A. Yes. I'm sorry.

Q. And let's -- let's assume that the outside director has no experience in the financial services industry. Let's assume that the outside director has never worked for the company. Let's assume that the outside director doesn't have access to the company's financial statements. Okay?

With that hypothetical, would you advise the decision maker to utilize a source of information other than the CEO himself before entering into the agreement?

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A. In your hypothetical, as a director with fiduciary duties, you should try to have an understanding of the magnitude of what you're being asked to do, and you should try to have independent verification in one way or the other, is what being proposed, whether it be a loan or any other business decision, is this reasonable? You should try to have an understanding, yes.

Q. Would you ever advise the decision maker in the circumstances that I've described in this hypothetical to rely solely on the CEO as the source of all information that would be considered before entering into the forgiveness program?

A. Well, that would be very unusual. I think it really would depend on the circumstances.

If the circumstance -- I can have other hypotheticals where it -- there could be a chaotic situation. It could be the -- it was an extremist situation where you need to make a rapid decision and so forth.

But in more typical situations, yes, you should try to get independent advice from, you know, others or your own research to found it. If you have to make an immediate decision, you know,

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you got to do what you got to do.

Q. Let's take it out of the hypothetical.

Have you ever advised a client to enter into a loan forgiveness program without having obtained any information from any source other than the executive or the employee who's the beneficiary under the agreement?

A. I have not advised a client that way, no.

Q. Would you ever advise a client to do that?

A. Again, assuming it was a significant amount of money, no, I would not advise a client to do that.

Q. Can you think of any -- I guess you've already described if it's an extremist or a chaotic situation.

Are those the only two situations that you can conjure up in your head where it might be appropriate for a decision maker to rely solely on the beneficiary of the agreement before entering into the loan forgiveness program?

A. I think with the caveat I mentioned earlier, if the amounts were small, you know, not

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particularly meaningful, but if it's a meaningful amount, you would try to get information.

Q. What if the amount constituted -- withdrawn.

Is it your understanding that the modification agreement pursuant to which certain loans will be forgiven in the future upon the occurrence of certain conditions subsequent, is it your understanding that that agreement applies not only to loans that were given to Mr. Dondero, but to loans to affiliated companies that Mr. Dondero either directly or indirectly owns and controls?

A. My understanding from Mr. Dondero was all the loans. That came from him.

Q. And how do you define "from him"?

A. In the conversation -- the conversations I had with him.

Q. I just want to know, is it just the loans that Highland gave to him as an individual human being or does it also cover loans that Highland made to entities that are directly or indirectly owned or controlled by him?

A. It was my understanding from him that it was all of the loans.

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Q. So do you believe that the decision maker should have a knowledge and understanding about all of the loans before entering into a forgiveness program?

A. The decision maker should know the magnitude of the loans to be forgiven.

Q. Do you think the decision maker should be familiar with the terms of each of the loans that are subject to the forgiveness agreement?

A. I think the decision maker should have a general understanding of the terms of the loans, yes.

Q. Do you think the decision maker should have an understanding as to why the loans were originally obtained?

A. I think that's -- it would be ideal to do that. I think it's probably less importance.

Q. Would you advise the decision maker to obtain copies of the promissory notes?

A. I would want the decision maker to be generally familiar with the loans. I don't -- I don't know if they necessarily have to read each of the promissory notes, but I think they should have a general familiarity, what the loans are,

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the magnitudes, the broad terms, the interest rates and the basic features.

Q. And if the decision maker weren't a sophisticated party, would you advise the decision maker to obtain advice concerning the nature, extent and structure of the loans that were under consideration for forgiveness?

A. I think the decision maker should have an understanding of the loan -- what they're forgiving, what the terms or -- you know, you should have an understanding of the structure of the loans you're forgiving.

Q. Could you contemplate any situation where a decision maker should enter into a forgiveness of loans without having an understanding of the scope and structure of the loans themselves?

A. No. I think -- I think -- as I said, I think the decision maker should have a general understanding of the loans, the amounts, the terms at least -- at least at reasonably high level.

Q. Would you always advise your client to understand the nature and extent of each of the loans that was under consideration for forgiveness

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before actually agreeing to forgive those loans?

A. If there are a lot of loans, I -- it may not be practical.

I think you'd want to have a general idea of the term, the amount, the interest rates. The exact provisions of each loan is probably less important. To have some understanding of how much is being at stake, when would they in general have been paid, what the interest rate would be.

I think the ins and outs of each loan would probably be of less importance.

Q. Do you think it would be important for the decision maker to know, let's just say hypothetically, as to whether the loans under consideration were demand loans or whether they were 30-year term notes?

A. Yeah, I think you would want to know that. You would want to know -- that would be one of the things you would want to know.

Q. And why would you want to know that?

A. I think if you're trying to design a plan, you'd want to have some idea of the urgency of the -- of the loans.

You mentioned a 30-year term, it

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perhaps is less urgent than a demand note, so I think if you're trying to incent someone to achieve something, you want to have some idea of the urgency of these loans that are outstanding.

Q. Can you think of any circumstance where it would be appropriate for a decision maker to agree to forgive loans without having an understanding as to the number, value and structure of the loans that are to be forgiven?

A. The number of loans is probably of less importance, as I said earlier. I think you'd want to know the rough magnitude of what we're forgiving, and I think you would want to know the basic structure of the loans.

Q. I appreciate that, but can you think of any circumstance where the decision maker should agree to forgive loans without knowing the structure and aggregate value the loans being forgiven?

A. No. I think -- I think the decision maker should have a general understanding of the dollar amounts and the structure of the loans to be forgiven.

Q. And you would never advise a client to

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forgive loans without knowing the dollar amount and the structure of the loans themselves, correct?

A. That would not be my advice, no.

Q. Okay.

Do you believe that a decision maker who's considering entering into a loan forgiveness program as part of executive compensation has a duty to try to negotiate the best terms possible for the company?

A. I think the decision maker has to have reasonable terms and a fair agreement. I don't think they have an obligation to necessarily strike the best possible deal. They've got to balance a number of factors, but the deal should clearly be fair to the company.

Q. And why do you believe that a decision maker should make sure that the agreement is fair to the company before entering into it?

A. Well, I think the -- the decision maker has a responsibility to be fair to the shareholders and the other parties at the company, and the agreement should be fair to -- to the company -- the interest of the company.

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If they're in the position of making that decision and they're representing the company, the decision should be fair.

Q. And how -- how would you advise a decision maker to make sure that the agreement was fair before he, she, or it entered into it?

A. Well, if we're talking about loans, as I said earlier, you want to know the rough magnitude of the loans and the terms. You'd want to know the achievement of these goals, how significant are they for the success of the company, and try to balance that, and the probabilities and other things.

But you'd want to balance that in a fair way where you felt that the -- if it's a loan, the forgiveness of these loans is -- is fairly rewarded by the achievement of these goals.

Q. And so in order to assess the fairness, you testified earlier that you would always advise the decision maker to the extent possible to obtain information concerning the executive's compensation history, correct?

A. You would want to know that if they didn't know it already. You would want to have

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them have some idea of the individual's pay history. That would be one of the things you'd want to know.

Q. And in order to assess the fairness of the transaction before entering into it, you would always recommend to the extent possible that the decision maker understand the financial condition of the employer, correct?

A. You would want the decision maker to understand, as best they could in the circumstances, the condition, you know, of the company at that time.

Q. And in order to assess the fairness of the transaction before you enter into it, you would always advise the decision maker to the extent possible to obtain and understand the employer's financial statements. Is that fair?

A. As part of that, if they didn't already have an understanding -- that's really part of the financial condition of the company -- you'd want them to have a general understanding of the financial position of the company, you know, when the loan agreement was made.

Q. And in order to assess the fairness of

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the transaction before entering into it -- give me one second, please. Sorry.

Before entering the -- in order to assess the transaction -- withdrawn.

In order to assess the fairness of a transaction before entering into it, you would always advise the decision maker to obtain information so that he, she, or it, could assess the likelihood of any future, subsequent events for which the forgiveness is contingent. Is that fair?

A. The best you can, you want to at least have an impression of the difficulty or likelihood of these events being achieved.

As I said earlier, that often is quite subjective. You have an impression, but you at least want to have some impression as best you can of the likelihood and importance of these things happening.

Q. And -- and in order to assess the fairness of the transaction before entering into it, you would always recommend that the decision maker seek and obtain as much information as possible about how comparable executives are paid.

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Is that fair?

A. As part of making this, I think you would want to have some idea of the magnitude of the loan being forgiven and how does that stack up with the pay of other people in the industry, the context of those decisions.

Q. And in order to determine the fairness of the loan before -- withdrawn.

In order to determine the fairness of a forgiveness agreement before entering into it, you would always advise the decision maker to have at least an understanding as to the aggregate value and the structure of the loans that are to be forgiven, correct?

A. Yes, you would want to have that knowledge.

Q. Okay.

So let's go back to the hypothetical where you have the CEO and an outside director who's not familiar with the industry and doesn't have access to financial statements or any information about comparable executives.

In that hypothetical, if the executive were to go to the outside director and make a

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proposal regarding loan forgiveness, would you advise that decision maker to try to negotiate with the executive?

A. Well, it depends on what the terms are being proposed. It may on its -- its face be a fair deal and you don't need to negotiate. If the -- if the term -- if the director believes the terms are not as being proposed fair, yes, they should negotiate and try to get an agreement that is at least fair from the standpoint of the company.

Q. Well, in my hypothetical, assume that the decision maker, the director, doesn't have any information concerning the executive's compensation history, doesn't have an understanding of the entity's financial condition, hasn't obtained or reviewed the entity's financial statements, hasn't spoken to anybody other than the CEO himself, has no experience in the industry, has no expertise in the area of executive compensation, would you advise that particular decision maker to enter into the agreement that's first proposed by the CEO without negotiation?

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A. Well, I think even before negotiation, in your hypothetical, someone who knows nothing should get informed before they make any decision. So that probably comes first.

You know, once they got better informed, they could decide on whether they need to negotiate or the offer on its face is fair, but if they know nothing, they should get informed before they agree to any decision.

Q. Based on your knowledge and experience and expertise in the industry, can you conjure up a scenario where a decision maker who knows nothing but nevertheless enters into a forgiveness program has fulfilled his, her, or its duties to the company?

MR. AIGEN: Objection, form.

A. I'm sorry, could you repeat the question? I lost my train of thought.

Q. Sure.

Let's assume the decision maker knows nothing. In your opinion, can that decision maker ever fulfill his, her, or its duty by entering into a loan forgiveness program with the CEO?

MR. AIGEN: Objection, form.

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A. Well, I think the director could get lucky where the proposal was imminently fair and you -- you put it in place, but certainly, you're at risk of agreeing to something that's not fair. But a director or a company could get lucky in that the proposal was -- was fair on its face, so...

Q. Would you ever advise a client to -- who was a decision maker who knew nothing to enter into the agreement and hope that he, she, or it got lucky?

A. I do not advise clients to try to get lucky, no.

Q. Have you ever heard of a decision maker -- withdrawn.

In your 30 years' experience, have you ever heard of a decision maker entering into a loan forgiveness program with no knowledge of the executive's employment history, the employer's financial condition, without an understanding of the financial statements, with no knowledge of comparable executives, have you ever heard of anybody like that ever entering into a loan forgiveness program?

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A. I don't recall that -- that situation, no.

Q. You'd agree with me it's not common in the industry, is it?

A. The facts that you've laid out would not be common, no.

Q. If you were advising a decision maker who was contemplating entering into a loan forgiveness program as part of executive compensation, would you advise that decision maker to make sure that the agreement is in writing?

A. Yes. Yes, I would.

Q. And why would you do that?

A. We -- you want there to be no misunderstandings. I think many of these agreements are complicated and you -- people's memory are fallible, so we often advise clients to put many agreements in writing just so there's no misunderstandings, everybody understands what the terms are.

Q. Can you think of any exception to the advice you would give with respect to making sure that forgiveness agreements are in writing?

Can you think of any scenario where

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you would advise the decision maker, don't put that in writing?

A. No. No, we wouldn't advise that. Although unfortunately, many of our clients don't put things in writing, but that would not be our advice.

Q. How about a hypothetical where the agreement to forgive loans encompassed more than a dozen loans, would you also recommend that there be a written record of the identity of the loans that were the subject of the agreement?

A. If there were a dozen meaningful loans, we would recommend that you have a catalog of what the loans are talking about, absolutely.

Q. Can you think of any scenario where it would be appropriate to enter into an agreement for the forgiveness of a dozen or more loans without having any written record of it?

A. As I said earlier, we would recommend that all of these agreements be put in writing.

Q. As an expert on executive compensation, have you ever advised the decision maker to enter into an oral agreement concerning forgivable loans?

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A. I – I would never – we always – I would always want to have it in writing.

Q. So let's go back to my hypothetical where you have an agreement between a CEO and an outside director. If you were advising the outside director, would you tell him or her that your advice is to make sure that somebody in the organization other than the CEO knows about the terms in existence of the loan forgiveness program?

A. I would tell the outside director that other people should be informed.

Other directors, the – yes, I would want other people – I would – if I were asked, I would – I would suggest or recommend that other people be informed.

Q. And why would you make – why would you give that advice?

A. You would want – at just an operational level, you would want to make sure your finance department was aware that certain payments might stop or in preparing the financial statements or – or other just operational issues, so, again, there's no misunderstanding as you put

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your financial statements together or just operationalize these loans.

Q. In your – in your experience, do companies that enter into loan forgiveness programs customarily include reference to the agreements in their financial statements or in their books and records?

A. It's a mixed practice. Some people do and some people don't, particularly private firms.

Q. Have you ever heard of a situation where the decision maker and the executive enter into a loan forgiveness program and never tell anybody about the terms or existence of the program until after litigation is commenced?

A. I don't know if I can – sitting here if I can recall a loan forgiveness program.

I can – there's certainly other facets of compensation where things weren't documented and there's all kinds of disputes, but I can't sitting here think of another loan forgiveness program.

Q. Okay. I appreciate that. My question is just a little bit different.

Can you recall any instance in your

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career where you've heard about a decision maker who entered into a loan forgiveness program with an employee but never told anybody in the world about that until after litigation was commenced?

A. I can't recall any sitting here.

Q. Okay. And you would never recommend that a decision maker keep to him or herself the entry into any agreement concerning the forgiveness of loans?

A. I think, again, we would – I would always recommend things be in writing with the caveat if it was a small or trivial amount, perhaps it wasn't needed.

Q. In your opinion are the loans at issue in this case small or trivial?

A. No.

MR. MORRIS: Okay. We've been going an hour and a half. I really appreciate your patience, sir.

Can we take just a 10-minute break and come back at 10:40 eastern? It's actually a 13-minute break.

THE WITNESS: Okay.

MR. MORRIS: Okay. Thank you very

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much.

(Recess taken from 10:27 a.m. until 10:40 a.m.)

BY MR. MORRIS:

Q. Mr. Johnson, did you speak with anybody during the break about your testimony today?

A. No.

Q. Did you communicate with anybody in writing about your testimony today during the break?

A. No.

Q. Do you recall when you were – withdrawn. I apologize.

Are you – were you engaged in this case or was your firm engaged in this case or is it one in the same?

I just want to make sure I get it right.

A. I was engaged as an expert witness as part of my firm.

Q. Okay.

Do you recall when you were engaged in this case?

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A. Maybe March or April of this year.

Q. Do you have an engagement letter?

A. We did, yes.

Q. Okay.

And would that engagement letter reflect the date upon which you were engaged in this matter?

A. Yes, it would.

Q. Okay.

Did you ever review any of the pleadings in this case, any of the complaints?

A. I just don't – I don't recall.

Q. Did you have any familiarity with Highland Capital Management, L.P. or any of its affiliates prior to your engagement in this case?

A. I don't believe so.

Q. Did you have any familiarity with James Dondero prior to being retained in this case?

A. I don't believe so.

Q. I think you said that you were retained by the Stinson firm.

Do I have that right?

A. Yes.

ALAN JOHNSON

Q. And had you done work for the Stinson firm prior to this case?

A. I don't believe so.

Q. You have been retained by my firm before. Is that right?

A. Yes.

Q. Is that just one occasion?

A. No, several times.

Q. Oh, okay. Well, it's nice to meet you because we've never worked together, right, just for the record?

A. Yes.

Q. All right. We're going to put your expert report up on the screen. I forgot what number we have premarked it, but let's take a look at it.

MS. CANTY: Sixty-two, John.

MR. MORRIS: Thank you very much.

(Exhibit 62, expert report, was marked for identification at this time.)

BY MR. MORRIS:

Q. So your report, Mr. Johnson, is up on the screen. It's been premarked as Exhibit 62 for our purposes.

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MR. MORRIS: And can we go to page 16, please.

Q. And if we go to the bottom of the page, is that your signature, sir?

A. Yes.

Q. And did you sign this on or about May 28, 2021?

A. Yes.

Q. You haven't amended this report since May. Is that right?

A. That's right.

Q. Okay.

And there's no modification to any of your opinions that are set forth in this report, correct?

A. That's correct.

Q. Okay.

MR. MORRIS: Can we go to page 25, please.

Q. And do you see that there's a list here of documents reviewed?

A. Yes.

Q. And I'm embarrassed to say, but I've actually looked at all the documents.

ALAN JOHNSON

Is it – is it fair to characterize the documents that you reviewed as either tax-related information, financial statements from NexPoint or Highland Capital Management Fund Advisors or certain agreements between and among the parties?

A. I think it's certainly that. There may be other things, but certainly, those were included in there, yes.

Q. Can you identify any other type of document that you recall reviewing prior to the preparation of this report other than tax-related information, financial statements for NexPoint and HCMFA and certain agreements between and among the parties?

A. You had asked about the pleadings, and I just don't recall, but with that – with that caveat, I think that's accurate.

Q. Okay.

And to the best of your knowledge, does this page identify every document that you were provided with prior to the preparation of your report?

A. Yes, I believe so.

ALAN JOHNSON

Q. Okay.

You're not aware of any documents that you received that aren't disclosed on this page, right?

A. Not that I'm aware of.

Q. Okay.

Has anybody provided you with any documents between May 28th and today that relate to the subject matter of your report?

A. I'm sorry, I didn't catch the last bit.

Q. Has anyone provided you any documents between May 28th, 2021 and today that concern or relate to any aspect of your report?

A. I'm not sure how to answer the question. I received other documents, so I'm not sure what you're trying to get at.

Q. What other documents do you recall receiving since May 28th, 2021 that concern your report.

A. I think I mentioned I reviewed some of the loan documentation on the loans. I've seen the financial statements for Highland Capital Management. I've – those two I recall.

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Q. Okay.

Do you remember for what years the financial statements were for Highland?

A. If I recall, they were 2014, I believe, through – it's either '14 or '15 through '19, I believe.

Q. And reviewing these documents didn't cause you to amend or modify your opinions in any way, correct?

A. No.

Q. Okay. I'm just going to ask you a series of questions to see if you're familiar with any of the following categories of documents.

You mentioned that you saw some loan documents.

Do I have that right?

A. Yes.

Q. Would the loan documents that you have in mind be promissory notes?

A. I'm not sure what the definition of a "promissory note" is.

Q. Are you familiar with promissory notes generally?

A. I'm familiar with notes, but I'm not

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sure of the legal meaning of what a promissory note is.

Q. I think you mentioned that certain of the loan documents that you saw referenced what I'll characterize as a roll-up of existing loans.

Do I have that right?

A. I saw that described, yes.

Q. And was that – was there a schedule to the document entitled, I think, either Exhibit A or Schedule A that listed various loans, including the principal amount and the interest that was outstanding as of the date of the document?

A. I've seen schedules like that, yes.

Q. Okay.

Other than – other than the documents with the schedules that – that you've just acknowledged seeing, do you recall seeing any other loan documents prior to today's deposition?

A. If it's not on the list that we're looking at, I don't recall anything else.

Q. Do you know where you got these documents – withdrawn.

Who gave you these documents?

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A. They're from the Stinson law firm.
Q. And do you recall when the Stinson law firm gave you these documents?
A. And "these documents" refer to prior to writing the report or recently?
Q. I apologize. Great question. I'm only asking about the loan documents and the financial statements that you have testified to having received after the date of this report.
A. I've received it from the law firm within the last week.
Q. Did you – did you ask them for documents or did they give them to you of their own accord?
A. I had asked them from documents prior to writing my report, and then I think we asked for documents getting ready for this deposition.
Q. And what they gave you in response to your request were the loan documents with the schedule listing certain principal and interest due on the loans as well as, to the best of your recollection, financial statements for HCM, L.P. for around 2014 or '15 through around 2019. Is

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that right?
A. Yes.
Q. Okay. At no time since the report was signed by you back in May has Mr. Dondero or anyone acting on his behalf given you any documents that describe the terms or existence of any loan forgiveness agreement, correct?
A. I had a conversation with Mr. Dondero about the loan forgiveness program at Next Bank, but I had that conversation with him.
Q. But has anybody given you since May 28, 2021 any documents that reflect the terms or existence of the loan forgiveness program that's referred to in your expert report?
A. No.
Q. Did the Stinson firm give you Highland's audited financial statements for 2008, '9, '10, '11, '12, or '13?
A. Now – now you're testing me, and I'm just not sure. They provided them to me, and I'm just not sure.
Q. Okay. Are you aware that

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PricewaterhouseCoopers was Highland's outside auditors?
A. I remember seeing PwC, yes.
Q. Are you aware that PwC gave a deposition in this case after the date you had authored your report?
A. I was not aware of that.
Q. So is it fair to say that you've never seen PricewaterhouseCoopers' deposition transcript?
A. I have not.
Q. And is it fair to say that you have no knowledge about what, if anything, PricewaterhouseCoopers testified to in this case?
A. I do not know.
Q. Have you ever heard of a Dugaboy Investment Trust?
A. Dugaboy? I don't believe so.
Q. So is it fair to say you have no knowledge as to whether or not the Dugaboy Investment Trust testified in this case?
A. I have no knowledge.
Q. So it's fair to say that you've never seen a deposition transcript relating to any

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testimony given on behalf of the Dugaboy Investment Trust, correct?
A. I have not.
Q. Have you ever heard of Frank Waterhouse?
A. I don't believe so.
Q. I'll try and refresh your recollection. Do you know whether Mr. Waterhouse served as Highland Capital Management, L.P.'s chief financial officer for the five-plus years prior to the petition date?
A. Now I think you've refreshed my memory. I think I've seen the name, yes.
Q. Do you know if – have you ever seen a deposition transcript of any testimony Mr. Waterhouse has given in this case?
A. I have not.
Q. Do you know whether Mr. Dondero has testified in this case?
A. I – I've seen some deposition testimony for Mr. Dondero.
Q. And when did you see the deposition testimony?

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A. Within the last week.
Q. Do you know if he testified – do you know when the deposition was?
A. I don't recall.
Q. Do you recall – did you actually see a transcript?
A. I saw the transcript, yes.
Q. Did you see one transcript or more than one transcript?
A. Just one.
Q. And do you know if that deposition took place in May or did that deposition take place more recently?
A. I – I don't know.
Q. Were you given – were you provided a copy of the entire transcript?
A. I received an excerpt – I'm not sure. I focused on an excerpt, but I'm not sure if I received the whole transcript.
Q. And were you directed to that particular excerpt that you looked at?
A. Yes.
Q. And who directed you to that excerpt?
A. The Stinson law firm.

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Q. And did the Stinson law firm direct you to any portion of the transcript other than that excerpt?
A. No.
Q. And how – how long was the excerpt? Was it a few lines or a few pages or –
A. A few pages.
Q. Okay.
And can you recall generally what the excerpt was that was provided to you by the Stinson law firm?
A. It revolved around the loans.
Q. And do you remember the substance of the excerpt, like what about the loans were you being directed to review?
A. It was Mr. Dondero's testimony around the constructing of these forgivable loans. It was – that was – that was the – those were the pages.
Q. Do you recall the page numbers perhaps?
A. Actually, I do. One was 143.
Q. Okay. Any others?
A. I read before that and after that, but

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I think that was – that was – for some reason, I recall that number.
Q. Have you received – withdrawn.
Other than the loan documents and financial statements you've described as well as the excerpt from Mr. Dondero's deposition, have you received any information concerning Mr. Dondero's compensation that was produced by Highland after May 28, 2021?
A. I recall there was a – an excel file that had some additional things on compensation. Yeah, I think there was an excel file that broke out, you know, different elements of compensation.
Q. When did you receive that?
A. Sometime in October.
Q. Did you receive anything in October other than the Excel file that you've just described and the loan documents and financial statements and excerpt from Mr. Dondero's transcript?
A. Not that I recall.
Q. Do you recall anything about the Excel file?
A. It had different elements of pay. It

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had some of the different legal entities.
I think that – I think that's all I remember.
Q. Did that Excel file cause you to change in any way any of the opinions that are set forth in your report?
A. No.
Q. Did Mr. Dondero's deposition transcript excerpt cause to you change, modify, or amend in any way any of the opinions set forth in your report?
A. No.
Q. Other than the Excel file, did you receive any other documents that Highland has produced in this matter since the date you executed your expert report on May 28, 2021?
A. No.
MR. MORRIS: If we can go to page 5 of the report, we still have it up on the screen here.
Q. Do you see where it says, "Facts and Data Considered"?
A. Yes.
Q. Okay.

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In the first sentence, you wrote, "in preparing this report, I've considered certain documents provided to me, interviews with Mr. Dondero, and former Highland or affiliate employees."

Do you see that?

A. Yes.

Q. When did you interview Mr. Dondero?

A. Probably early May, early May of this year.

Q. Is that the only time you've communicated with him directly concerning this case?

A. I think I mentioned earlier I talked to him about the Next Bank – in the last week about the Next Bank loans, and then I talked to him prior to this report.

I think those are the only times.

Q. And did you speak with him on the phone? Did you meet with him in person or some other form of communication?

A. Didn't – it was not in person. It was either a phone call or Zoom. I don't recall.

Q. Do you recall how many phone calls or

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Zoom calls you had with Mr. Dondero for the purpose of interviewing him, as stated in the first sentence of the Facts and Data Considered?

A. Prior to this report, I think I talked to him three times, I believe.

Q. And was anybody – did anybody participate in those Zoom or telephone calls besides you and Mr. Dondero?

A. There would have been someone from the Stinson law firm and likely my colleague, Mr. Perniciaro, would have been on the call as well.

Q. Do you know approximately what the total time you spent speaking with Mr. Dondero was before you prepared this report?

Was it an hour or three hours?

A. Probably an hour and a half.

Q. So about 90 minutes.

Do you recall – did you ask to interview him or did the Stinson firm suggest that you should speak with him?

A. I suggested talking to him.

Q. Okay.

Do you recall what he told you during

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this interview?

A. We talked about his duties, responsibilities, went into what he – what he was involved in going back in time to the current, his duties, how he ran the firm. So we spent a fair amount of time talking about that.

Talked about the different – these loans and the purpose of the loans, his philosophy around the loans.

I think those were the two broad – the two broad categories.

Q. Did he describe for you in any way the agreement that was entered into in late 2018, early 2019 relating to the forgiveness of the loans?

A. Yes. Yes, he did.

Q. What did he tell you about that?

A. He said that the – the structure to reward him for a successful transaction with one of these three portfolio investments, that was the purpose, that loans had been used in the company in the past, that the loans were – had always intended to be forgiven, and this was simply codifying and structured the intent of the loans

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all along.

Q. Did he identify who the decision maker was who acted on behalf of the company?

A. He – I don't believe that came up. I don't recall hearing that.

Q. Did you ask him any questions that you – your gut told you he wasn't able to answer completely?

A. No. I thought he was candid. I thought he was straightforward. I didn't – the questioning that I had with him, I didn't find – he answered the questions I had about both his role and the – how these loans were intended to operate.

Q. Did he tell you that under the agreement he entered into with the decision maker, the loans would be forgiven if the assets were sold not by him but by a third party?

A. I don't – I don't recall that, no.

Q. It doesn't say that in your report, does it?

A. It does not.

Q. And you don't recall him specifically telling you that one of the terms of the agreement

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was that all of the loans subject to the agreement would be forgiven if any of the three assets were sold by a third party. Is that fair?

A. We didn't get into that, no.

Q. And he didn't tell you that, correct?

A. No.

Q. Do your opinions rely on anything that Mr. Dondero told you?

A. Certainly, the -- his role was in -- my opinion on what his role was, which formed the compensation thing, is influenced by what he said about this role. So yes, it impacted that, you know, part of the report.

Q. Okay.

So other than his role and his duties and responsibilities, is there anything else that Mr. Dondero told you during the interview that you have relied upon in formulating your opinions?

A. I don't believe so.

Q. How many former Highland or affiliate employees did you interview?

A. I interviewed four.

Q. Do you recall the names of any of them?

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A. Adkins, Hurley, Lawlor, and Cote.

Q. When did you interview those individuals?

A. Probably early May of this year.

Q. Do you have any notes from those interviews?

A. I do not.

Q. Do you know if your colleague has any notes from those interviews?

A. I don't think so.

Q. Do you know if there's any written record at all of the interviews you conducted with those former Highland or affiliate employees?

A. I don't believe so.

Q. Did you speak to them all at one time or did you speak to them individually?

A. Individually over a few days.

Q. Let's take them one at a time.

Mr. Adkins, do you recall the substance of what Mr. Adkins told you?

A. The substance of the four interviews were very similar. They described his role. They described their experiences with loans. So the -- the comments from the four were very similar.

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Q. So I apologize, I wasn't writing fast enough.

A. I'm sorry --

Q. I have Adkins --

A. -- I apologize.

Q. I have Mr. Adkins, Mr. Lawlor, and who were the other two?

A. Mr. Hurley and Mr. Cote.

I believe those are the names.

Q. Did any of them tell you -- withdrawn.

Did all of them tell you that they had obtained loans from Highland which were subsequently forgiven in whole or in part?

A. I believe so.

Q. Did any of them tell you how much money was forgiven?

A. We talked about that, yes. They described the amounts.

Q. Okay.

What amounts do you recall being described as having been forgiven by Highland?

A. It was in the hundreds of thousands.

Q. Did any of them tell you that they had ever had a loan from Highland that was forgiven in

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an amount equal to or more than $500,000?

A. They were a little sketchy on the exact amounts, but my impression, they ranged from, say, a quarter million to maybe $500,000 or a little more. That -- that was their recollections.

Q. Did -- did you learn from these four interviews when the last of these loans was forgiven?

A. Probably 8 or 10 years ago.

Q. Did anybody -- withdrawn.

Did any of the four of them inform you that Highland had forgiven any loans to any officer or employee in the last 8 to 10 years?

A. I don't recall them saying that, no.

Q. Did you -- do you recall asking them when was the last loan that Highland ever forgave?

A. I don't believe I asked that question.

Q. And as you sit here right now, you have no knowledge as to when the last loan that Highland gave that was forgiven in whole or in part, correct?

A. I don't have that knowledge, no.

Q. Other than the loans that were

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described for you by these four individuals, can you identify any other loan that Highland has ever forgiven?

A. I don't have any other knowledge, no.

Q. Did any of these four individuals give you any documents relating to any aspect of your report?

A. No.

Q. Did any of them give you any documents that would substantiate the information that they provided to you during the interview?

A. They didn't provide any documents, no.

Q. Did you ask them if they had any documents to substantiate what you were told?

A. Yes. Yes, I did.

Q. And they told you that they didn't have any.

Do I have that right?

A. Yes, that's right.

Q. I think you testified that you do not know who the decision maker was who entered into the agreement with Mr. Dondero in late 2018 or early 2019 with respect to the forgiveness of the loans.

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Do I have that right?

A. When I interviewed Mr. Dondero, I did not -- that didn't come up.

Q. So I'm going to represent to you that it's in the pleading that Mr. Dondero entered into the agreement with his sister Nancy, who was the trustee of the Dugaboy Investment Trust who purportedly holds a majority of Highland's interests.

Is that new information for you?

A. Yes, it is.

Q. Have you ever heard of Nancy Dondero before?

A. I had heard her name just because there's attorneys representing her. That's all I -- that's all I know.

Q. You weren't aware until I just told you that she's the person who entered into the agreement with Mr. Dondero concerning -- withdrawn.

You didn't know until I just told you that Nancy Dondero, as the trustee for the Dugaboy Investment Trust, as the holder of a majority of interests of Highland, is the person who entered

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into the agreement with Mr. Dondero?

A. If your assertion is true, then I -- then I -- I did not know that.

Q. Okay.

And is it fair to say then that you don't know that she was deposed in this case?

A. I don't believe I knew that, no.

Q. And is it fair to say that you've never seen her deposition transcript, if one exists?

A. I have not seen it.

Q. Did you ever ask to speak with the decision maker?

A. No, I did not.

Q. And is that because -- why -- why didn't you ask to speak with the decision maker?

A. My assignment here was to talk about practice, you know, in the industry of using loans and other things. It was not to -- I was not asked to assess these particular loans.

So if the assignment had been to -- to assess the reasonableness or fairness, then I certainly would have done other things, but that was not the assignment here.

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Q. Okay.

And can you -- can you be as specific as you can as to what the assignment was?

A. Well, in addition to coming up with a market compensation, in the report, I said the assignment was to talk about the practice and -- of using loans and forgivable loans and, you know, financial services firms, but it was not to assess the reasonableness of -- the specific reasonableness of this particular transaction.

Q. Okay.

And you're not offering any opinion as to the reasonableness of the agreement that Mr. Dondero entered into with the Dugaboy Investment Trust concerning the forgiveness of any loans. Is that fair?

A. I'm not -- I'm not putting that forth, no.

Q. And you're not offering any opinions as to whether or not such an agreement exists, correct?

A. No, I am not.

Q. You're not offering any opinions as to whether or not it would have been appropriate for

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the company to enter into a loan forgiveness program under the facts and circumstances that existed at the time, correct?

A. That's right.

Q. And you're not offering any opinion that the loan forgiveness program that Mr. Dondero entered into is consistent with industry standards, are you?

A. No, I'm not.

Q. Okay.

What you are doing is you're -- you're making an assessment of what comparable executives earn in the industry. Is that fair?

A. That's part of it, and then the second, as I mentioned, just the use of such loans within the industry and, you know, within Highland.

Q. Okay.

But you're not offering any opinion as to whether or not -- withdrawn.

We'll keep going.

You have no information about what diligence, if any, the decision maker conducted prior to entering into the agreement with

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Mr. Dondero in late 2018 or early 2019, correct?

A. I do not.

Q. And you're not offering any opinion as to whether or not the diligence that was done by that person was sufficient, correct?

A. I'm not making that opinion, no.

Q. And you don't have any information about the skill set or the experience of the decision maker, fair?

A. I do not.

Q. And you're not offering any opinion as to the skill set or the experience of the decision maker who entered into this alleged agreement on behalf of Highland, correct?

A. I am not.

MR. MORRIS: Let's go to page 3 of your report, please.

So this is the introduction, right?

So this is the very first substantive page of the report, is that right?

A. Yes.

Q. Okay.

If you take a look near the end of the first paragraph, there's a sentence that reads,

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"Throughout this period, he received loans in lieu of additional current compensation."

Do you see that?

A. Yes.

Q. Have I read that correctly?

A. Yes.

Q. Why did you include that sentence in your report?

A. I -- Mr. Dondero described these loans as -- as a practice of, in lieu of paying compensation, these loans were -- these loans were made.

Q. What information were you given that you relied upon in order to make the statement that I just read into the record?

A. Well, I interviewed Mr. Dondero, and then I talked to the four prior Highland executives.

Q. Now, you told me that the four prior Highland executives described for you certain loans that they had received that had been forgiven in whole or in part by Highland.

Do I have that right?

A. Yes.

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Q. Did any of them give you any information to support the statement that throughout this period Mr. Dondero received loans in lieu of additional current compensation or is that information that came exclusively from Mr. Dondero?

A. They described a practice at the company of using these loans as a -- a form of deferred pay, so they described it -- it was not only them, but it applied to others, and then when I interviewed Mr. Dondero, his testimony -- his comments to me were consistent with that.

Q. Okay.

Did any of the four former employees specifically tell you that Mr. Dondero had ever received loans in lieu of additional current compensation or did they just describe a general practice that applied to others?

A. I think they were describing the general practice.

Q. Okay.

So did anybody other than Mr. Dondero tell you that "Throughout this period, he received loans in lieu of additional current compensation"?

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A. I don't believe so.

Q. Do you have any information at all to support the statement that throughout this period, Mr. Dondero received loans in lieu of additional current compensation other than what Mr. Dondero specifically told you?

A. For him specifically, it's relying on what Mr. Dondero said.

Q. Okay.

You haven't seen any documents that support that statement, do you – did you?

A. I have not – I have not seen any documents, no.

Q. Would your opinions change if you learned that for at least the 11 years prior to the bankruptcy filing, Mr. Dondero never received a single loan in lieu of compensation?

A. I'm – I don't understand the question. I'm sorry.

Q. This is the first paragraph of your expert report that we're looking at, right?

What if I told you that the sentence "Throughout this period, he received loans in lieu of additional current compensation" was false at

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least going back as far as 2008, would you want to amend your report in any way?

A. Well, then the sentence wouldn't be true if the loans weren't a form of deferred compensation.

So if the facts changed, then the report would need to be changed.

Q. So let me state it a different way.

Would your opinions change if you assume that in the 11 years prior to the bankruptcy filing Highland never forgave any loan in whole or in part that it had extended to Mr. Dondero.

MR. AIGEN: Objection, form.

A. No, I don't – I don't think that – I don't think that sentence would change that, no.

Q. Okay.

I'm not talking about the sentence itself, but if I could prove to you today that there's no written record of Highland ever forgiving a loan to Mr. Dondero, would that have an impact at all on your opinions?

A. I don't think the written record would change my opinion. I think he – he had stated to

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me that the – the – that a lot of these loans were made as a form of deferred compensation with the intent to be forgiven at some point in the future.

Q. All right. I'm going to ask you to assume the following facts: For the 11 years prior to the petition date, other than the three loans that were outstanding as of the petition date, Mr. Dondero received three loans from Highland. Okay?

So that's assumption No. 1, that between 2008 and 2019, Mr. Dondero received three loans from Highland.

Assumption No. 2, that Mr. Dondero paid Highland all principal and interest due under all three loans.

Assumption No. 3: The last of those three loans was taken out in January 2018 and was paid back in full plus interest in December 2019.

The next assumption: Mr. Dondero has testified that any loan that Highland actually forgave would be described in Highland's audited financial statements and that in those financial statements going back to 2008, there's no

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description of any loan ever being given to Mr. Dondero that was forgiven in whole or in part.

Do you remember all those assumptions?

A. I believe so.

Q. Okay.

If you assume that each of those assumptions is, in fact, true, would you have any basis at all to conclude that Mr. Dondero received loans in lieu of additional compensation in the decade before Highland filed for bankruptcy?

MR. AIGEN: Objection, form.

A. Well, in trying to answer the question, the – I think a lot of the loans here, as I recall, were for different entities and different, you know, amounts and situations.

So if – if the – either hypothetical or the assumptions we're making here, that the loans eventually were not forgiven, I don't know if the – they were intended to be forgiven and just weren't or we're talking about other loans that are outside the three that you – that you mentioned.

Q. Is it fair to say that neither Mr. Dondero nor the Stinson firm ever shared with

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you the fact that Mr. Dondero had received three loans that are not the subject of this litigation?

A. I was aware that I believe there were loans that were not subject to litigation that had been paid off or other types of things. I was aware of that.

Q. How did you learn that?

A. I think I've seen materials that listed loans that showed principals paid off and so forth, but I think I've been -- I know they were loans -- I believe I recall that they were loans outside of what's being disputed.

Q. I'm sorry.

A. No, I was done. I'm sorry.

Q. Did you ever discuss that with Mr. Dondero?

A. I did not.

Q. Do you have any knowledge as to why he paid back some loans and others were supposed to be treated as compensation?

A. I do not know.

Q. Is there any reason you didn't disclose in your report that Mr. Dondero had received loans that he had paid back?

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A. I didn't think it was relevant.

Q. Did you ever ask Mr. Dondero how he reconciled the payment of principal and interest due on the notes prior to the petition date but his treatment of the notes pursuant to the agreement that's been described to you?

A. I did not.

Q. Are you curious at all as to why he paid off some of the notes but not others?

MR. AIGEN: Objection, form.

A. Yeah, I'm probably curious. It's convoluted enough, I'm a curious person, so yeah, I'd probably be curious to understand all the ins and outs.

Q. Did it cause you any discomfort that Mr. Dondero paid certain loans off in full but the only loans that he didn't pay off in full were the loans that existed as of the petition date?

MR. AIGEN: Objection, form.

A. Well, isn't that by definition true? If they've already been paid off, they couldn't exist as of the petition date, right?

Isn't that just -- am I missing something?

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Q. Well, you told me that, from the review of the documents, you understood that there were loans that Mr. Dondero had taken out that had been paid off in full. Is that right?

A. Yes, I recall that I was aware that there were loans that had been paid off. I was aware of that.

Q. And so paying back the loans is certainly not -- would you agree with me that if he -- that if he was paying back the loans, then he didn't receive the loans in lieu of additional current compensation?

A. Yeah, when I wrote the report, maybe I should have parsed out that, but I think I was focusing on that there were loans that were deferred compensation.

I guess what we're saying is there may have been other loans that were not deferred compensation. They were more run-of-the-mill obligations, so if that's the point we're making, but I think what I was trying to address here, that there were loans made that were intended to be deferred compensation.

Q. And the only basis that you have for

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that statement is what Mr. Dondero told you, correct?

A. For himself, that is true, and then the other four executives provided a little bit of history on the use of such loans within the company.

Q. And it didn't concern you at all that certain loans were paid back and that certain loans, according to Mr. Dondero, are subject to this agreement that he entered into with the company?

A. I think that would be something that if -- certainly, I would have asked him about, but that certainly would be something to -- to discuss with him, yes.

Q. But you haven't done that as of today, correct?

A. I have not.

Q. And nobody has explained to you why he paid back certain loans but certain other loans were supposed to be provided in lieu of additional current compensation, right?

A. That's right.

Q. Okay.

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The next sentence in this paragraph says – and I just want to make sure that I'm quoting this correctly – "Consistent with company practice, the loans were considered a form of deferred compensation that could be realized over time as the loans were forgiven and the income recognized by the individuals."

Have I read that correctly?

A. Yes.

Q. Why did you include that sentence in your report?

A. Well, from talking to the four former executives and himself, he described a company practice of having using loans as deferred compensation. In his words, it was called "delayed gratification."

So you had these loans that were intended to provide capital to invest in the business, and they would eventually be forgiven and then the income would be recognized by the individual.

So the four of them and himself had described a company practice of using these loans to – you know, as a form of deferred

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compensation.

Q. And that practice is very important to your opinions, right?

A. Well, it – it – as I said earlier, my opinion is about the use of loans in private financial services companies and what his market value, his compensation, would be.

Q. But actually, the practice that was described to you by Mr. Dondero and these four former employees, you relied upon to determine that Highland had a practice and that the forgiveness of the loans in this instance would be consistent with that practice. Is that right?

A. That's right.

MR. MORRIS: Let's turn to page 16 of the report.

Q. This is your conclusion, right?

A. Yes.

Q. And in the middle, it says, "Additionally, it is my opinion that the loans provided to Mr. Dondero should be considered potential deferred compensation as they were similar to loans given to other professionals at the firm."

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Have I read that correctly?

A. Yes.

Q. And is the information that supports your opinion in that sentence based solely on what was told to you by Mr. Dondero and the four individuals?

A. Yes.

Q. You have no documents that support that sentence. Is that correct?

A. That's correct.

Q. And I assume, as a dutiful expert, you asked for any documentation that might concern or relate to the prior practice. Is that right?

A. That's right.

Q. Just looking at the sentence itself, what do you mean by the loans being "similar to loans given to other professionals at the firm"?

A. Just that they would be forgiven. I mean that deferred compensation at some point would be – would be forgiven.

Q. They're certainly not similar in amount. Is that fair?

A. No. They're much larger.

Q. In fact, I think you testified that

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the largest loan you have been informed has ever been forgiven was $500,000 or thereabouts.

Do I have that right?

A. That's what I'm aware of, yes.

Q. And Mr. Dondero has told you that there's 40 to $50 million in loans that he contends are the subject of an agreement?

A. I don't know if he told me the 40 to 50 million, but I think I've seen that in various spreadsheets or numbers. That's the number I believe – at least that I recall that's in dispute.

Q. So is it fair to say that the aggregate value of the loans that are the subject to the agreement that Mr. Dondero described for you concern loans that are 80 to 100 times larger than the largest loan you have been told has ever been forgiven by Highland?

A. It is much – it is much large than any loan I'm familiar with, yes.

Q. Did anybody ever tell you that Highland had ever forgiven a loan made to a corporate affiliate?

A. That, I'm not aware of, no.

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Q. So there's nothing similar about the loans that were given to the corporate affiliates as compared to the loans that were forgiven for the four individuals you spoke with. Is that correct?

MR. AIGEN: Objection, form.

MR. MORRIS: Withdrawn. That's a fair objection.

Q. The four individuals that you spoke with, they described for you loans that had been given to individuals. Is that right?

A. Yes.

Q. But the loan documents that you saw that had those schedules of loans that were being rolled up, all of those loans related to corporate entities. Isn't that right?

A. No. I think I mentioned before, I didn't really focus on that. I looked at the loans themselves. So I did not actually focus on the corporate entities in my perusal of those documents.

Q. Would there be any difference in your expert opinion as to whether or not the loan was given to an individual or given to a corporate

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entity?

A. Usually it would, but in these closely held corporations, often they're synonymous, so it really would depend on the circumstances.

Q. Let's -- let's spend some time looking at the documentation that we have that's been produced in this case concerning this company practice.

MR. MORRIS: And so I'd like to put up on the screen what's been marked as -- premarked as Exhibit 63, which is Highland's 2008 audited financial statements.

(Exhibit 63, Highland's 2008 audited financial statements, was marked for identification at this time.)

BY MR. MORRIS:

Q. And I'd like you, as we go through this exercise, Mr. Johnson, to take notes of all of the loans that we're going to discuss. There won't be many, but do you have a pen and a piece of paper with you?

A. I do.

Q. Yeah, can I trouble you to just write down, you know, "2008 financial statements," and

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we're just going to do this for every year through 2018, so you can have a full understanding of the loans that Highland included in its audited financial statements.

I assume that you did not rely on this document for your opinions because you didn't have it at the time that you prepared your report; correct?

A. That's right.

Q. Okay.

MR. MORRIS: And if we could turn to page 38, please.

I'm sorry, not PDF 38. I'm referring to the document, No. 38. It shouldn't be too far.

This is going to be a little painful on the Zoom, Mr. Johnson. I ask for your patience.

All right. Stop right there.

Q. Do you see that this portion of the Highland's 2008 audited financial statements has a section called "Notes to Affiliates"?

A. Yes.

Q. Okay.

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And in paragraph 1, it says that the partnership issued a promissory note of $400,000 to an employee.

Do you see that?

A. Yes.

Q. And at the end of the paragraph, it says that that promissory note was forgiven.

Do you see that?

A. Yes.

Q. So we can write down that in 2008, Highland forgave a promissory note to an employee in the amount of $400,000.

A. Okay.

Q. The next paragraph, there's a reference to an August 1 promissory note in the amount of $500,000.

Do you see that?

A. Yes.

Q. And at the end of the year, that promissory note was still outstanding.

Do you see that?

A. Okay.

Q. So No. 1 is 7/31/06, $400,000 forgiven.

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No. 2 is 8/1/08, $500,000 outstanding, right?

No. 3, do you see there's a reference to two loans that were made in 2 -- on May 21, 2007, in the amount of a million dollars each?

A. Okay.

Q. And if you read further, it says that during 2008, 30 percent of the outstanding principal was owed -- was forgiven, leaving $700,000 due and paying.

So there's two loans that were forgiven in the amount of $300,000 each.

Do I have that right?

A. Okay.

Q. Then, in the next paragraph, we've got August 20th, 2008, and there's $330,000 loan which is all outstanding at year end.

Do I have that right?

A. Okay.

Q. And the next paragraph, August 1 there's a $500,000 loan that was given to an employee that was all outstanding at year end.

Do I have that right?

A. Okay.

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Q. And then on October 15th, there's another $500,000 loan made to another employee that was outstanding at year end.

Do I have that right?

A. Okay.

Q. So would you agree with me that in fiscal year 2008, Highland forgave one loan to an employee in the amount of $400,000 and forgave in part loans to two other employees in the amount of $300,000 each?

A. Okay.

Q. Okay.

MR. MORRIS: Let's go to Exhibit No. 64.

(Exhibit 64, Highland's audited financial statements for December 31, 2009, was marked for identification at this time.)

BY MR. MORRIS:

Q. And do you see that this is Highland's audited financial statements for December 31, 2009?

A. Yes.

Q. Okay.

MR. MORRIS: Can we go to page 33 of

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the document?

There you go. All right.

Q. The first one that's described is an August 20th, 2008 loan in the amount of $300,000, and that seems to correspond with the fourth loan that we looked at in 2008 because it's also a loan dated August 20, 2008 in the amount of $330,000.

Do you see that?

A. I'm sorry, I lost my train.

Where is it now?

Q. So in the very first paragraph, under "Affiliated Transactions"?

A. Yeah, okay, I see it now. I'm sorry.

Q. Okay.

This loan, is it fair, if you take a look at your notes, this loan corresponds with the -- with the loan that was described in the 2008 financials.

Do you have that as the fourth item on your list, if you look at your list?

A. My list is going to be incomplete here in terms of going through this, but I'm trying to take notes here, but I believe what you say is true.

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Q. Okay.

And you can see that the principal amount of the note had been reduced by year end.

Do you see that?

A. Yes.

Q. Okay.

So there's no evidence that this particular note was forgiven in whole or in part in 2009, correct?

A. That's right.

Q. And if we look at the next paragraph, there's a reference to an August 1, 2008 note in the amount of $500,000.

Do you see that?

A. Yes.

Q. And that entire amount of principal was still outstanding at the end of the year.

Do you see that?

A. Yes.

Q. So there's no evidence that this note was forgiven in whole or in part in 2009, correct?

A. Yes.

Q. And there's no other -- we can go through the rest of the section, but there's no

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other notes of any kind that are referred to in -- in this section of the audited financials.

If we can just scroll down to the end of the affiliated transaction sections, I mean, I will tell you that they put the employees up top.

So is it fair to say based on just what I've shown you that you don't see any evidence that Highland forgave any notes to any employees in 2009?

A. I think that's right.

Q. Okay.

MR. MORRIS: Let's go to 2010, Exhibit 65, please.

(Exhibit 65, Highland's audited financial statements for December 31, 2010, was marked for identification at this time.)

MR. MORRIS: And if we can turn to page 33.

BY MR. MORRIS:

Q. So if we look at the first paragraph, do you see there's still a reference to the $330,000 note?

A. Yep.

Q. Okay.

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It's interesting, in the next-to-the-last sentence -- let's see if I'm reading this correctly -- it says, "The note has specific forgiveness provisions of principal and interest prior to maturity if certain milestones' dates are obtained."

Do you see that?

A. Yes.

Q. So based on that, would you conclude in your experience that the note actually had specific provisions concerning forgiveness?

A. Yes, that's what that implies.

Q. And based on your experience, would you understand that this note was really a form of retention note whereby it would be forgiven if the person were still employed at the time of the note's -- at the end of the note's term?

A. It's hard to tell. Milestones could be performance or it -- it could go either way, but there's certain provisions that have been documented that it will be forgiven either through time or performance.

Q. Well, it doesn't refer to milestones. Instead, it refers to milestone dates.

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Do you see that?

A. I -- I think you're right, just I've never seen the word "milestone dates" used, so I'm not quite sure what they were trying to say, but I think you're probably right.

Q. Okay.

But in any event, you would agree with me that there's nothing in this paragraph that suggests that Highland forgave that loan in whole or in part in 2010, correct?

A. That's right.

Q. And if we scroll down through the rest of this section, I think -- I hope you'll agree with me that there's no other reference to any other loans given to any employee in 2010?

A. I think that's right.

MR. MORRIS: Okay. Let's go to Exhibit 66 --

Q. Oh, I'm going to tell you, I'm skipping, actually, because there's only so much pain I'm willing to endure.

We're going to skip 2011, '12, and '13, and I'm going to represent to you that there's absolutely nothing in any of those audited

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financial statements that pertains or concerns any loans given to any employee.

And you can -- you can -- not accept my representation, but take that as an assumption you should make, that there's no reference to any loan to any employee in those years.

MR. MORRIS: Can we go to Exhibit 66 please.

MS. CANTY: It's 69, 2014.

MR. MORRIS: Okay. Yep, it's up on the screen.

(Exhibit 69, Highland's audited financial statements for December 31, 2014, was marked for identification at this time.)

BY MR. MORRIS:

Q. So do you see that this is the 2014 audited financial reports for Highland Capital Management?

A. Yes.

Q. And you may or may not have seen this report. Is that right?

A. I think I got it.

Q. When you reviewed the audited financial statements that you were given, did you

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review them to try to learn any more information about the practice that was described to you whereby Highland would forgive loans to employees in whole or in part?

A. I had just received these. I didn't have time to go through it.

MR. MORRIS: Let's go to page 27, please.

Q. Okay. Do you see that there's a section called "Affiliated Transactions" again that begins at the bottom of page 27?

A. Okay.

Q. And do you see that the first paragraph describes a loan between Highland and Highland Capital Management Fund Advisors?

A. Yes.

Q. And does it appear to you that the loan that was granted in 2014 was fully outstanding at year end?

A. Yes.

Q. And there's no reference in that paragraph to any portion of the loan having been forgiven, correct?

A. That's right.

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Q. And then the next paragraph refers to another loan between the same parties.

Do I have that right?

A. Yes.

Q. And there's nothing in that paragraph that suggests that that loan was forgiven in whole or in part at any time in 2014, correct?

A. That's right.

MR. MORRIS: And let's go to the next page, please.

Q. Do you see that there's a reference to a note in the first paragraph between Highland and NexPoint that was issued in 2014?

A. Yes.

Q. And there's nothing in that paragraph that suggests the note was forgiven in whole or in part at any time in 2014, correct?

A. Yes.

Q. In fact, the entirety of the principal amount plus interest was still due at year end, correct?

A. Yes.

Q. The next paragraph, do you see it refers to a note between Highland and an entity

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called "HCRE"?

A. Yes.

Q. And there's nothing in that paragraph that suggests that the note or the loan was forgiven in whole or in part at any time in 2014, correct?

A. That's right.

Q. There was a modest payment made of principal during the year.

Do I have that right? Is my interpretation a fair interpretation?

A. That's right.

Q. And then the last section of this, the last paragraph of this section refers to a note between Highland and an entity called "Highland Capital Management Services, Inc."

Do you see that?

A. Yes.

Q. And there's nothing in that paragraph that suggests that any portion of that loan was forgiven in whole or in part in 2014, correct?

A. That's right.

Q. And, in fact, the entire principal balance plus interest was due at year end. Is

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that fair?

A. Yes.

MR. MORRIS: Okay. Let's go to 2015, please.

What exhibit are we on?

MS. CANTY: 70 is 2015.

MR. MORRIS: I see what we did. Okay.

(Exhibit 70, Highland's audited financial statements for December 31, 2015, was marked for identification at this time.)

MR. MORRIS: If we can just go to the first page, please.

BY MR. MORRIS:

Q. Do you see that this is the first page of the audited financial statements for the year ending 2015 for Highland?

A. Yes.

Q. And you're not relying on this document for any of your opinions, correct?

A. That's right.

MR. MORRIS: Can we turn to page 27, please – I messed this up, sorry.

Keep going down. Keep going. Keep going.

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Okay. Stop right there.

Can we just scroll down so we can see what page number we're on?

Q. All right. Do you see we're on page 29, Mr. Johnson?

A. Yes.

MR. MORRIS: Can we go to the top of the affiliates transaction.

Q. Do you see that there's a reference to Highland Capital Management Fund Advisors?

A. Yes.

Q. Okay.

And do you see there's a reference to $6.1 million principal and interest being due at the year end?

A. Yes.

Q. And then there's a sentence that says, "The partnership will not demand payment on amounts owed prior to May 31, 2017."

Do you see that?

A. Yes.

Q. Were you aware that Highland had agreed with its affiliate not to make a demand on the payments for a period of time?

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A. I wasn't aware of that.

Q. Do you see the last paragraph -- the last sentence of the paragraph says, "A fair value of the partnership's outstanding notes receivable approximates the carrying value of the notes receivable"?

A. Yes.

Q. Do you understand that to mean that the fair value of the notes equals to the principal face amount of the notes?

A. The carrying value would include the face amount probably and any unpaid interest, but yes, it would be the book -- the book value, yes.

Q. And the book value in this case equals the unpaid principal and interest due on the note, correct?

A. Yes.

Q. And so as of this time anyway, the fair value of the notes equaled the unpaid principal and interest due on the note, correct?

MR. AIGEN: Objection, form.

A. Yes. Yes, I think that's right.

Q. There's nothing in that first paragraph that says or suggests that any of the

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loans with HCMFA were forgiven in whole or in part in 2015, correct?

A. Right.

Q. And the next paragraph relates to loans with NexPoint Advisors.

Do you see that?

A. Yes.

Q. Okay.

Take your time, but my question is whether there's anything in that paragraph that states or suggests that any portion of the loans between Highland and NexPoint were forgiven in whole or in part in 2015?

A. I think that's right, yes.

Q. Do you see there was also a statement regarding Highland's not demanding payment on the notes for a couple of years?

A. Yes.

Q. In your experience and based on your expertise, can you think of a reason why Highland would agree not to make a demand on promissory notes?

A. It could be the financial condition of the borrower that was part of the negotiation

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putting the loans together. It would -- it generally have something to do with the financial condition of the borrower and the terms.

Q. Let's look at the next paragraph.

Do you see it relates to HCRE?

A. Yes.

Q. And do you see how during 2014 and '15, HCRE issued promissory notes to Highland in the aggregate amount of $13 million and that principal amount plus interest was due at the end of the year?

A. Sorry, it just says it's payable on demand, right?

Q. Right.

And the amount is -- that was loaned was $13 million, but at year end 2015, the unpaid principal and interest actually equaled $13.3 million.

Have I read that correctly?

A. Yes.

Q. Is there anything in this paragraph that says or suggests that Highland forgave in whole or in part any loans that were made to HCRE in the year 2014 or '15?

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A. No.

MR. MORRIS: Let's go to the next paragraph.

Q. Do you see there's a reference to loans or promissory notes that were issued to Highland by HCMSI?

A. Yes.

Q. Okay.

And do you see that the aggregate amount of the notes was $23 million?

A. Yes.

Q. And do you see that during the years ended 2014, Highland Capital Management Services, Inc. repaid $8.1 million in principal?

A. Yes.

Q. Is it customary in the industry to make principal payments or interest payments against loans that are the subject to agreements of forgiveness?

A. It really would depend on the likelihood of it being forgiven. If I had a loan that I thought wouldn't be forgiven, I might pay it early because I just don't think the probability of being forgiven is likely. If I

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think it's likely or highly likely, I would try to avoid paying down the balance and wait for it to be forgiven.

Q. And is that the advice you would give to the maker of a note who owed money that was subject to a forgiveness agreement?

A. Maker of the loan, I would tell them if – if things are looking like you're going to forgive it, they probably won't want to pay down the principal and the interest if they can avoid it, and if the – it's unlikely it will be forgiven due to the terms, then they're more likely to pay the principal and interest sooner.

Q. Is there anything in this paragraph that says or suggests that Highland had agreed to forgive in whole or in part any loan that it had extended to Highland Capital Management Services?

A. I don't believe so, no.

MR. MORRIS: Okay. Let's go to the 2016 financials.

Q. Do you see that this is the audited financial statements for Highland Capital Management, L.P. for the period ending December 31, 2016?

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A. Yes.

Q. Okay. And you're not relying on this report for any of your opinions, correct?

A. That's correct.

Q. Okay.

MR. MORRIS: Can we go to page 31, please.

Q. Okay. Do you see notes and other amounts due from affiliates?

A. Yes.

Q. The first paragraph relates to loans between Highland and its affiliate HCMFA.

Do you see that?

A. Yes.

Q. Is there anything in this paragraph that states or suggests that Highland has forgiven in whole or in part any portion of any loan that it made to HCMFA?

A. No.

Q. Looking at the next paragraph, do you see that concerns loans between Highland and NexPoint Advisors?

A. Yes.

Q. Is there anything in that paragraph

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that states or suggests that Highland forgave in whole or in part any portion of any loan that it gave to NexPoint?

A. No.

Q. Looking at the next paragraph, do you see there's a reference to loans between Highland and HCRE Partners, LLC?

A. Yes.

Q. Is there any statement or suggestions in that paragraph that Highland forgave in whole or in part any loan it made to HCRE Partners, LLC?

A. No.

Q. Looking at the next paragraph, do you see there's a reference to loans between Highland and HCMSI?

A. Yes.

Q. Is there anything in that paragraph that states or suggests that Highland forgave in whole or in part any loan that it made to HCMSI?

A. No.

MR. MORRIS: Okay. Can we go to the next paragraph.

Q. Do you see there's a reference to promissory notes that James Dondero issued to

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Highland in the aggregate amount of $14.8 million in 2016?

A. Yes.

Q. Okay.

So this is the first time we're seeing a loan to Mr. Dondero that's reported in the financial statements that we've looked at. Is that fair?

A. I think that's right, yes.

Q. Okay.

And according to this audited financial statement, Highland loaned Mr. Dondero $14.8 million in 2016.

Do I have that right?

A. Yes.

Q. And at the end of the year, he actually owed principal and interest in the amount of $14.9 million, correct?

A. Yes.

Q. And there's no statement or suggestion in this paragraph that Highland had forgiven in whole or in part any portion of the loans that it had extended to Mr. Dondero.

Do I have that right?

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A. Yes.

Q. Okay.

Do you see the next paragraph relates to a gentleman named Mark Okada?

A. Yes.

Q. Do you have any understanding as to who Mr. Okada is?

A. He was the other major shareholder in Highland.

Q. And do you understand him to be one of the -- to be a co-founder with Mr. Dondero of Highland?

A. I believe that's right, yes.

Q. Did you make any inquiry as to whether or not Mr. Okada had ever obtained any loans from Highland?

A. I don't -- I don't believe I did.

Q. Do you know if Highland ever forgave any loan in whole or in part that it extended to Mr. Okada?

A. I don't know.

Q. Are you aware that Mr. Okada paid back the loan referenced in this paragraph in full plus interest?

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A. I was not aware of that.

MR. MORRIS: Let's just go to the next page to see if there's anything else here.

Q. There's a reference to Dugaboy.

Do you see that?

A. Yes.

Q. You don't know what Dugaboy is, do you?

A. I do not.

Q. Nobody has ever told you about Dugaboy.

Do I have that right?

A. That's right.

Q. So you weren't aware that Highland loaned $23.4 million to Dugaboy in 2016?

A. Well, that's not -- it says they purchased a promissory note due from Dugaboy.

Q. Okay.

So now Dugaboy owes the partnership $23.4 million, correct?

A. That's not -- at least my reading of it is they purchased a note from Dugaboy.

Q. Why don't we assume that what they meant by that was that Dugaboy provided a note to

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Highland in the amount of $23.4 million.

Okay? Can we make that assumption?

A. We can assume that. That's not what it says.

Q. Okay. I'm going to ask you to assume --

A. Okay.

Q. -- that in 2016, Dugaboy incurred an obligation to Highland in the amount of $23.6 million.

I'm going to ask you to further assume that the Dugaboy Investment Trust is a trust created by Jim Dondero.

I'm going to ask you to further assume that the purpose of the trust is to provide living expenses to the beneficiaries.

I'm going to ask you to further assume that Mr. Dondero is the beneficiary of that trust for his lifetime.

And I'm going to ask you to further assume that his sister Nancy is the trustee.

If Highland loaned money to Dugaboy, is that a fact that would have been relevant to your analysis?

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A. It could have been. It could have been.

Q. And why could it have been relevant to your analysis?

A. Well, if it's in effect a loan to him, then I would probably consider it similar to the other loans, but maybe if I had time to think about it, it -- I might have considered differently.

But if I came to the conclusion that loaning to that -- the investment trust or to him personally is essentially the same thing, then I probably would have considered, you know, an equal -- on an equal basis.

Q. Now, neither Mr. Dondero nor Stinson shared with you any information about any loan that Highland ever extended to Dugaboy, if any. Is that correct?

A. It may have been in the listing of loans -- the listing, but I had no separate conversation about Dugaboy, no.

Q. There's nothing in this paragraph that suggests that any loan between Dugaboy and Highland was forgiven in whole or in part in 2016,

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correct?

A. That's right.

Q. So if you look at your notes and refresh your recollection as to what we've been through just now, is it fair to say that there's no evidence of Highland forgiving any loan to anybody in the world in whole or in part at any time since 2008?

MR. AIGEN: Objection, form.

A. The ones we've looked through, I think you're right. I think there was forgiveness in 2008. I think that's correct.

Q. And given the amounts of the loans that we looked at in 2008 -- and if you want to refer to your cheat sheet to refresh your recollection -- does it seem that the loans that were described in the 2008 audited financial statements might, in fact, be the very loans that were described for you by the four individuals you interviewed?

A. They could -- they certainly could have been, yes.

Q. They're consistent with the amount of the loans that were forgiven as was told by you,

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right?

A. That is correct, yes.

MR. MORRIS: Let's go to 2017.

Can we go to page 30 --

Q. Oh, I apologize, before we do that, did you see that first page, sir?

Do you understand that we're looking at Highland's audited financial statements for the period ending December 31, 2017?

A. Yes.

Q. Okay.

And this is not a document you're relying on, correct?

A. That is correct.

Q. Okay.

So now we're at page 30 of the audited financial statements, and we're again in the section relating to notes and other amounts due from affiliates.

And do you see the first paragraph relates to notes that Highland Capital Management Fund Advisors has issued to Highland?

A. Yes.

Q. And this paragraph, like all of the

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paragraphs, continues to say, quote, at the end, that fair value of the partnership's outstanding notes receivable approximates the carrying value of the notes receivable.

Do you see that?

A. Yes.

Q. Okay.

And that sentence is at the end of every paragraph in this section.

Do I have that right, if we continue to scroll there?

A. Yes.

Q. Okay.

So looking at the first paragraph relating to HCMFA, there's nothing in that paragraph that states or suggests that Highland agreed to forgive in whole or in part any loan it had extended to HCMFA, correct?

A. Yes.

Q. And looking at the second paragraph, do you see that it states that Highland combined its outstanding promissory and revolving notes from NexPoint to a single note with a 30-year amortization schedule?

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I'm summarizing.

A. Yes.

Q. And is it fair to assume that that's probably one of the notes that recently saw?

MR. AIGEN: Objection, form.

A. Yes. Yes.

Q. Yes?

A. Yes, that's correct.

Q. And the reason it's correct is because it comports with your recollection that there was a roll-up of previously outstanding notes that were combined in one into a 30-year term note, right?

A. That is correct.

Q. Okay.

Is there anything in this paragraph that states or suggests that Highland agreed to forgive in whole or in part any aspect of any loan it ever gave to NexPoint?

A. No, there's not.

Q. Looking at the next paragraph for HCRE, do you see that there's a description of the promissory note that HCRE issued to Highland in exchange for a loan in December – in 2017?

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A. Yes.

Q. Is there anything in that paragraph that suggests or states that Highland has agreed to forgive in whole or in part any portion of any loan it ever extended to HCRE?

A. No.

Q. The next paragraph refers to loans that Highland has extended to Highland Capital Management Services, Inc.

Do you see that?

A. Yes.

Q. Is there anything in that paragraph that states or suggests that Highland has agreed to forgive in whole or in part any portion of any loan it ever extended to HCMSI?

A. No.

MR. MORRIS: Can we go to the next paragraph, please.

Q. Okay. These two paragraphs relate to Mr. Dondero and Mr. Okada.

Did you see that?

A. Yes.

Q. And it wasn't up on the screen before, so I just want to make it clear that each of those

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paragraph ends with the same sentence concerning the fair value of the notes approximating the carrying value the notes receivable.

Do I have that right?

A. Yes.

Q. Okay.

Now, remember we saw in the 2016 financials that Mr. Dondero had $14.9 million outstanding at year end.

Do you recall that?

A. I don't specifically recall that, but – I don't specifically recall that, no.

Q. I'll represent to you that the 2016 audited financial statements showed that the outstanding principal and interest due by Mr. Dondero under the note that he issued to Highland was $14.9 million. Okay?

A. Okay.

Q. With that representation, do you see that the amount has been reduced by $400,000 at the end of 2017?

A. Yes.

Q. Okay.

And so is it fair – is it a fair

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conclusion to reach that at some point in 2017, Mr. Dondero made payments against his obligations to Highland that reduced the amount owing from 14.9 million to 14.5 million at the end of 2017, again, assuming that I'm right about 2016?

A. That would be right. That would be correct, yes.

Q. And there's nothing in this paragraph that states or suggests that Highland has agreed to forgive in whole or in part any loan it has ever extended to Mr. Dondero, correct?

A. That's correct.

Q. Okay. So I would like you to note down, because it's hard to flip back – this is the dilemma of virtual depositions – but can you write down that Mr. Dondero owed Highland principal and interest of $14-and-a-half million at the end of 2017?

A. Okay.

Q. And the next paragraph relates to Mr. Okada.

There's nothing in there that states or suggests that Highland has agreed to forgive in whole or in part any loan Highland had ever

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extended to Mr. Okada, correct?

A. That's correct.

MR. MORRIS: Okay. Can we continue on to the next page.

Q. And do you see the first paragraph relates to Dugaboy again?

A. Yes.

Q. And it specifically says that during the year ending December 31, 2017, Dugaboy did not issue any new notes to the partnership.

Do you see that?

A. Yes.

Q. And then it states that all outstanding notes accrue interest at the rate of 2.75 percent.

Do you see that?

A. Yes.

Q. And then it says that at year end, the total unpaid principal and interest due was approximately $22.8 million and was payable on demand?

Have I read that correctly?

A. Yes.

Q. Okay.

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Is there anything in this paragraph that states or suggests that Highland ever agreed to forgive in whole or in part any loan it ever extended to Dugaboy?

A. No.

Q. The next paragraph refers to a contribution agreement.

Do you see that?

A. Yes.

Q. Have any idea what a contribution agreement is in this context?

A. Not in this context, no.

Q. Is that something you might -- you might have asked about had you been told -- had you been given these financial statements, let's say, back in July?

A. I -- I might have asked about this, yes.

Q. I mean, in fact, this is in the section of the audited financial statements that is entitled --

MR. MORRIS: If would can go back to the top -- no -- I'm sorry -- the top of that section, page -- yeah.

ALAN JOHNSON

Q. That section is specifically called "Notes and Other Amounts Due From Affiliates," right?

A. Yes.

Q. If you wanted to assess whether or not Mr. Dondero was reasonably compensated, wouldn't you want to know about all of the notes that Highland held on behalf of the affiliates that were owned and controlled by Mr. Dondero?

MR. AIGEN: Objection, form.

A. I -- I would have -- if I had had the financials, I would have certainly looked through these things, yes.

Q. And if you had been given this information, wouldn't you want to know the full extent -- I mean -- withdrawn.

I think we -- I think at the beginning of the day -- I know we've been going at this for a while -- you specifically told me that you would advise a decision maker to know and understand the full scope of all loans that were given to or for the benefit of the executive before entering into a forgiveness agreement, right?

A. Yes.

ALAN JOHNSON

Q. Okay.

And the information that's contained in this section of the audited financial statements specifically pertains to loans to affiliates. Isn't that right?

A. Yes, among other things, but yes.

Q. Okay.

In order to know if Mr. Dondero had been compensated in a way equal to his peers wouldn't you want to know the full extent of amounts loaned to entities he owned and controlled?

MR. AIGEN: Objection to form.

A. Well, a straight loan to someone is not generally compensation. If the loan is going to be forgiven at some point in the future, yes, that would have been a relevant -- you know, relevant factor, but just a straight loan wouldn't generally be considered compensation.

Q. If Highland -- let's say hypothetically Highland -- withdrawn.

You see NexPoint Advisors on the page, the second box?

A. Yes.

ALAN JOHNSON

Q. Highland -- let's assume that James Dondero owns and controls NexPoint. Okay?

A. Yes.

Q. As of May 31, 2017, according to Highland's audited financial statements, it loaned NexPoint $30.7 million.

Do you see that?

A. Well, I think it's saying it combined all these notes together and a new note of 30.7, right.

Q. I appreciate that -- that precision. So let me restate the question.

According to the audited financial statements, Highland had loaned in the aggregate $30.7 million to NexPoint, correct?

A. Yes.

Q. Okay.

And what if I told you that NexPoint took that money and they invested it and they turned that money into $100 million, would that be a benefit to Mr. Dondero if you assume that he owned and controlled the entity?

A. Well, it's certainly -- he made a wise investment with his $30 million loan for sure.

ALAN JOHNSON

Q. And would you agree that Highland enabled him to make that wise investment by giving him the loan?

A. They facilitated it, but it depends what the terms of the loan are and -- so, yes, he would have benefited from his wise investment, and they would have facilitated him doing that by loaning the $30 million.

Q. And NexPoint didn't go into the marketplace to negotiate for a loan with a third party, right?

A. That, I don't know.

Q. Well, they took the loan from Highland, correct?

A. It already had loans, right, from Highland, yes.

Q. And you understood that Mr. Dondero controlled both NexPoint and Highland at the time, correct?

A. Yes.

Q. Okay.

And so is it fair to say based on your experience and expertise that Highland used -- withdrawn.

ALAN JOHNSON

Is it based -- is it fair based on your knowledge and expertise that Mr. Dondero used Highland to increase the value of its affiliated companies by providing it with capital?

MR. AIGEN: Objection to form.

A. Yeah, I don't -- I guess I would be uncomfortable -- I'm not sure I understand the question. I'm sorry.

Q. Okay.

You did not -- your report and your opinions -- withdrawn. Let me take this simply.

Your conclusion in your report is that Mr. Dondero had earnings from Highland of approximately $3 million for the 7 years prior to the petition date; correct?

A. That's right, from the -- from the -- yes, from the various entities, yes.

Q. And based on your analysis of comparable executives, you believe he should have been earning $6 million for each of those seven years, correct?

A. Yes, that is correct.

Q. And the difference between the two equals $3 million for seven years, or $21 million.

ALAN JOHNSON

Do I have that right?

A. Yes.

Q. And you calculated that based solely on certain W-2 income, correct?

A. W-2s and I think, also, with the 1040s, I believe, but yeah, it was the W-2s.

Q. So you did not take into account, for example, any benefit that Mr. Dondero received by using Highland's capital to support his affiliated companies, correct?

MR. AIGEN: Objection, form.

A. We did not take into account any ownership -- using the ownership capital either for him or for anybody else, that's correct.

Q. And you didn't try to quantify the benefit to Mr. Dondero from using Highland's capital to support his affiliated companies, correct?

A. We made no attempt to -- to do it for him or for anybody else we might have thought of as comparable executives, that's correct.

Q. Would you -- would you agree with me that it was a benefit to Mr. Dondero to have access to Highland's capital for the purpose of

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supporting his affiliated companies?

MR. AIGEN: Objection, form.

A. He – he benefited from having significant capital – he certainly benefited as an owner from something significant capital, absolutely.

Q. Okay.

And how would you – how would you describe that benefit?

A. Well, he would get returns on the capital. Either through loans or direct investments as the owner of both Highland and NexPoint, he would benefit from their successes and, of course, lose from their failures.

Q. Are you aware of any failures?

A. In getting these financials, there were a couple of years that were terrible. There were some outstanding years, so it varied during this period.

So there were certainly a couple of years with very disappointing results.

Q. And which entity are you referring to that had those disappointing results? Was that Highland?

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A. I believe – I believe – I believe it was Highland as well, yes.

Q. And do you think that when a company fails, that that's a factor that a decision maker should take into account when deciding whether or not to forgive loans?

Is that part of the financial condition that we described earlier?

A. Absolutely, the condition of the company, it's both income, capital, and the importance of achieving those goals as part of forgiving absolutely should be considered.

MR. MORRIS: I've forgotten if I've gone through 2017 yet.

Does anybody recall?

All right. We'll do it again.

MS. CANTY: This is 2017 on the screen.

MR. MORRIS: Right. But I have – all right. I'll just do it again then.

Michael starts objecting as asked and answered, I'll get the hint.

Q. Mr. Johnson, take a look at the first paragraph.

ALAN JOHNSON

Do you see that that – under the section "Notes and Other Amounts Due From Affiliates," describes loans between Highland and HCMFA in 2017?

A. Yes.

Q. Is there anything in that paragraph that states or suggests that Highland agreed to forgive in whole or in part any loan it ever extended to HCMFA?

A. No.

Q. Looking at the next paragraph, next point, do you see that the next paragraph concerns loans that Highland extended to NexPoint?

A. Yes.

Q. Is there anything in that paragraph that states or suggests that Highland has agreed to forgive in whole or in part any note that it ever – any loan it ever extended to NexPoint?

A. No.

Q. All right.

Looking at the next paragraph, do you see the next paragraph describes loans between Highland and HCRE Partners, LLC?

A. Yes.

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Q. Is there anything in that paragraph that states or suggests that Highland has agreed to forgive in whole or in part any loan it ever extended to HCRE Partners, LLC?

A. No.

Q. The next paragraph relates to loans between Highland and Highland Capital Management Services, Inc.

Do you see that?

A. Yes.

Q. Is there anything in that paragraph that states or suggests that Highland has agreed to forgive in whole or in part any loan it ever extended to Highland Capital Management Services, Inc.?

A. No.

Q. The next paragraph relates to Mr. Dondero.

Do you see that?

A. Yes.

Q. And do you see that it states that Mr. Dondero didn't obtain any new loans from Highland in 2017?

A. Yes.

ALAN JOHNSON

Q. And do you see that --

MR. MORRIS: Michael, I'm boring you, because you should be asking as asked and answered because there's that $14.5 million number that I know Mr. Johnson wrote down, right? So we have done this before. Okay? Let's go to the 2018 audited financials.

MS. CANTY: This is Exhibit 34.

MR. MORRIS: Thank you very much.

(Exhibit 34, Highland's audited financial statements for December 31, 2018, was marked for identification at this time.)

MR. MORRIS: And if we can go to the first page.

BY MR. MORRIS:

Q. Do you see that this is a -- the first page of Highland's audited financial statements for the period ending December 31, 2018?

A. Yes.

MR. MORRIS: Before we go to -- before we go to the affiliate loans, can we just turn to the -- I think it's the first substantive page, the balance sheet.

ALAN JOHNSON

Yes, stop right there.

Q. Do you see -- do you see the balance sheet, sir?

A. Yes.

Q. Do you see that near the bottom there's a line item showing notes and other amounts due from affiliates?

A. Oh, yeah -- I'm sorry -- yes.

Q. And do you see that Highland has carried on its balance sheet $173.4 million in notes and other amounts due from affiliates?

A. Yes.

Q. Do you understand that the affiliates are owned and controlled by Mr. Dondero?

A. Owned and controlled? I think Mr. Okada owned some of -- he certainly controlled them. I don't know if he had 100 percent ownership of all of them. He certainly controlled the affiliates we're talking about.

Q. At the time that you prepared your report, did you know that Highland's affiliates owed it $174 million as of the end of 2018?

A. I don't think I was aware of that, no.

Q. Is that a fact that you would have

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wanted to be aware of before you prepared your report?

A. I'm not sure. I'm not sure.

Q. Well, I think you testified that if you were advising a decision maker, you would advise them to try to obtain as much information as they could concerning any loans that had been extended by the employer to or for the benefit of the executive, correct?

A. That is correct.

Q. And is there any reason for you to believe that this $173.4 million didn't relate to loans that were made by the employer to or for the benefit of the executive and Mr. Okada?

MR. AIGEN: Objection, form.

A. Yeah, I don't -- at least that 174 million would say they're notes from affiliates, but the affiliates is also the businesses.

So I'm not -- I certainly would want to be aware of that. Whether it would have changed my report, I'd have to -- I'd have to think about.

Q. Okay.

ALAN JOHNSON

But you weren't told about the totality of the loans, correct?

A. I did not know the totality, no.

Q. Did you know that more than 15 percent of Highland's assets were tied up in notes and other amounts due from affiliates?

MR. AIGEN: Objection, form.

A. I did not know that.

Q. Is that a fact that you would have liked to have known about before you issued your report?

A. As I answered before, I'm not sure. I'm not sure.

Q. Do you think this is a fact that the decision maker should have known about before he or she entered into the forgiveness agreement?

A. I think -- as I testified before, I think the decision makers certainly understand the totality of the loans that are potentially being forgiven, absolutely.

Q. Do you think the decision maker could have done his or her job without knowing that the employer had extended over $173 million to the executive before entering into the agreement?

ALAN JOHNSON
MR. AIGEN: Objection, form.
A. Well, I think – at least I understand, the way it's stated here in the financials, those are to the businesses.
So I think the – a decision maker should know, you know, the totality of the loans being forgiven and the decision maker probably should have some idea of the various – as I testified earlier, about the financial condition of the company, which would include these notes from affiliates.
MR. MORRIS: Let's – can we scroll down a page or two?
Okay. Stop right – a little further – no, go to the top of this page.
Q. Do you see that this page is the consolidated income statement?
A. Yes.
Q. And you're familiar with income statements. Is that right?
A. Yes.
MR. MORRIS: Okay. Can we go to the bottom, please?
Q. Do you see that in the year before

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bankruptcy, the net loss attributable to Highland was more than $73 million, at the bottom of the page?
A. Yes.
Q. Is that a fact that you knew of at the time that you prepared your report?
A. I did not.
Q. Is that a fact that you would have liked to have known about before you prepared your report?
A. I would have liked to have seen all of these financial statements before I prepared my report, absolutely.
Q. Is the fact that Highland lost $73 million in 2018 relevant to your analysis at all?
A. I'd have to think about it, but I certainly would have wanted to know about it.
Q. And you were told by Mr. Dondero that the forgiveness agreement was entered into in either December of 2018 or January or February of 2019, correct?
A. It's in my report. I can't remember if it was late '17 or '18 or late '18 and '19.

ALAN JOHNSON
Sitting here, I don't recall which, but it was told a time frame. It was either late one year or early the next. I don't recall the –
Q. We're not going to put it back up on the screen, but I'll just try to refresh your recollection that on page 6 of your report, you had stated, "I understand from Mr. Dondero that the 2018 loans that are the subject of this suit were modified by an agreement in late 2018 or early 2019."
Does that refresh your recollection as to the timing of the purported agreement that was described to you?
A. Yes, I think that's right, yep.
Q. And do you understand that this $74 million loss relates to the period ending in December 2018?
A. Yes.
Q. And do you think the decision maker should have known about the financial condition of the company when he or she entered into the agreement on behalf of Highland in late 2018 or early 2019?
A. The decision maker should have had an

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idea about the condition of the company, absolutely.
Q. Do you have any reason to believe that the decision maker had any information about the financial condition of the company before agreeing on behalf of Highland to enter into a forgiveness of loans with the potential value of 40 to $50 million?
A. I have no information about that.
MR. MORRIS: Can we go back to the balance sheet for a second?
Q. Do you see how the assets exceed the liabilities and there's partners' capital of about $371 million?
A. Yes.
Q. That partners' capital assumes that the value of the notes and other amounts due and affiliates equals $173.4 million, correct?
A. That's one of the assumptions, right, yes.
Q. And there's nothing on the balance sheet that discloses potential litigation liability, correct?
A. No, there's nothing on here, on the

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balance sheet, no.

Q. Did anybody ever give you any information about potential litigation risk that Highland faced in 2018 and '19?

A. I think in preparing my report, I was aware of litigation around this company. I think there had been an arbitration award that was outstanding, so I was aware of any significant litigation risk and litigation expenses ongoing. I was aware of that.

Q. Okay.

So is it fair to say that the statement of partners' capital on this page, to the best of your knowledge, assumes the recovery in full – assumes, among other things, the recovery in full of the notes and other amounts due from affiliates in the amount of $173.4 million?

A. That's one of the assumptions that goes into this balance sheet, yes.

Q. And is it fair to say that the statement of partners' capital doesn't take into account at all litigation risk?

MR. AIGEN: Objection, form.

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A. That, I don't know. I don't know what PwC would have done with the litigation risk.

But if we're just looking at the line items here, I don't see a reserve for litigation, but that might be in the footnotes or so forth. But as written here, the balance sheet seems to suggest that there is no – there's nothing on here for litigation risk.

Q. Okay.

MR. MORRIS: Can we go to page – I think it's 28.

Q. Amount – you see, "Notes and Other Amounts Due From Affiliates"?

A. Yes.

Q. There's notes from HCMFA.

Do you see that?

A. Yes.

Q. We'll just do it the same way.

Can you take a look at that paragraph and let me know if you see anything in there that states or suggests that Highland agreed to forgive in whole or in part any loan it ever extended to HCMFA?

A. I don't see that, no.

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Q. Okay.

Same question for the next paragraph, can you tell me if you see anything in the second paragraph that states or suggests that Highland has agreed to forgive in whole or in part any loan it ever extended to NexPoint?

A. I don't – I don't see that there either.

Q. Next paragraph, is there anything in the next paragraph that states or suggests that Highland has agreed to forgive in whole or in part any loan it ever extended to HCRE Partners?

A. No, I don't see that.

Q. The next paragraph, is there anything in the next paragraph that states or suggests that Highland has agreed to forgive in whole or in part any note it ever extended to Highland Capital Management Services, Inc.?

A. No, I don't see that.

Q. And do you see that with respect to these four paragraphs, each of them still contains as its last sentence the statement that the fair value of the partnership's outstanding notes receivable approximates the carrying value the

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notes receivable?

A. Yes.

Q. So this is as late as – for the financial statements that are dated as of – I'm sorry.

This is – these statements refer – withdrawn.

These statements concern Highland's audited financial statements for the period ending December 31, 2018, correct?

A. Yes.

Q. Okay. Let's continue to scroll down.

Do you see there's a reference to Jim Dondero having issued new promissory notes for $14.9 million in 2018?

A. Yes.

Q. Okay. So if you add the 14.9 with the 14.5 that was due – if you could write this down – at the end of 2018, that would be a total of $29.4 million.

Do I have that right?

A. I believe that's right, yes.

Q. Okay.

But at the end of the year, he

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actually owed just a hair less than that, $29.2 million.
Do you see that?
A. Yes.
Q. Okay.
Is it fair to conclude that at some point in 2018, Mr. Dondero made a modest payment of principal and interest against the loans that were outstanding to Highland?
MR. AIGEN: Objection, form.
A. That – that appears what's going on, yes.
Q. And there's certainly nothing in this paragraph that states or suggests that Highland agreed to forgive in whole or in part any loan it ever extended to Mr. Dondero, correct?
A. That's right.
Q. And the next paragraph again relates to Mr. Okada.
Do you see that?
A. Yes.
Q. And there's nothing in that paragraph that states or suggests that Mr. Okada had – had reached an agreement with Highland on the

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forgiveness of any loan extended to him in whole or in part?
A. That's correct.
MR. MORRIS: Okay. Can we go down to the next page, please.
Q. Okay. And then you have the same statement about Dugaboy and the contribution agreement.
Do you see that?
A. Yes, I see it.
Q. Is there anything in either paragraph that states or suggests that Highland has agreed to forgive in whole or in part any loan it ever extended to Dugaboy or pursuant to – in connection with the contribution agreement?
A. No.
Q. Okay.
Are you familiar with the concept of subsequent events?
A. Sure.
Q. And what's your understanding of the concept of subsequent events for purposes of audited financial statements?
A. In the footnotes, often they'll talk

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about events that happen shortly after the end of the fiscal year and before the reports or things, and usually, they'll appear in the footnotes and talk about events that a shareholder should be aware of that have happened following the financial year end and the issues of the financials.
Q. It's not just the shareholders, it's anybody who uses or relies on the financial statements should have that information. Is that fair?
MR. AIGEN: Objection.
A. Anybody who – yeah, well said, anyone who relies on it, the subsequent event is material – is material enough that you should be – you she take into account and be aware of.
Q. Now, if Mr. Dondero had entered into the forgiveness agreement in late 2018, would you have expected it to have been described in the section that we just looked at?
MR. AIGEN: Objection, form.
A. I would hope it would show up in the reported financials. I would hope that would happen, yes.

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Q. Why is it your hope that it would happen?
A. Well, as I testified earlier, I recommend to clients, and sometimes they follow, to document things in writing, and if it's in writing, it would usually or hopefully would show up in the audited financial statements.
Q. Would you always recommend your client to inform its auditors of any agreement relating to the forgiveness of loans made to executives?
MR. AIGEN: Objection, form.
A. I would certainly recommend – if it was an issue, I would certainly recommend to clients that they report to the finance team, which would then talk to the auditors, about how to disclose material loans to executives and if they were going to be forgiven.
MR. MORRIS: Okay. Can we scroll down – I apologize, I don't know the page number, but there's a section of this report concerning subsequent events.
Okay. Right there.
Q. Do you see on page 38 of Highland's 2018 audited financials there's Section 15

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entitled, "Subsequent Events"?

A. Yes.

MR. MORRIS: Okay. If we could just show Mr. Johnson that portion and continue on to page 39.

Q. Okay. And do you see -- now that you've got the whole section on the screen, do you see in the next-to-the-last paragraph there's a reference to HCMFA having issued promissory notes to the partnership in the aggregate amount of $7.4 million during the course of 2019 through the date of the report?

A. Yeah, yes. Yes, I see that.

Q. Is it your understanding with 30 years in the industry that the auditors would require the disclosure of material transactions that occur after the date of the report but prior to its issuance?

MR. AIGEN: Objection, form.

A. I'm not familiar with the exact accounting rules of what qualifies as subsequent event, but my expectation would be that material events that occurred after the end of the year would be disclosed in a section like this before

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the financials came out.

Q. If Mr. Dondero had entered into his forgiveness agreement in early 2019, would you have expected that agreement to have been disclosed in the subsequent event section of the audited financial report?

MR. AIGEN: Objection, form.

A. As I said earlier, I would hope it would be -- I would hope that it would be documented and I would hope that if it was -- in this case, was significant, that it would have been informed and probably shown up in a section like this.

Q. But you don't see it show up in a section like this, do you, sir?

A. I don't see it here, no.

MR. MORRIS: Can we go to the, I think, second or third page of the document?

Yeah, the signature page, yeah.

Q. Do you see that that's PricewaterhouseCoopers' signature on the audited financial report for the period ending December 31, 2018?

A. You mean, '19 -- nor '18 -- I'm

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sorry -- yes, I see PwC.

Q. Right.

And do you see it's dated June 3, 2019?

A. Yes.

Q. And is it your understanding that the subsequent event section covers the period January 1, 2019 until June 3, 2019?

A. I'm not -- again, I'm not an expert on exactly the timing of the subsequent events, but it -- it would have -- it covers some of the period -- some or all the period before they issued. I don't know when they have a cutoff, but it covers certainly at period after the end of the year before these are finalized.

Q. Okay. So just to shift gears -- you can take this down, please.

Just a few more questions and we will have a short break for lunch, and I hope I won't have a lot more after that, just to give you a sense of where we are.

We just saw, based on the 2018 audited financials, that as of the end of that year, Mr. Dondero had loans outstanding of approximately

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$29.4 million, at least according to the audited financial statements, right?

A. I think that's true from Highland. I don't know if that included the different affiliates, but I think that's an accurate figure from Highland.

Q. And do you understand that Mr. Dondero has borrowed money from other affiliates as well?

A. I believe that's true, yes.

Q. Do you have any understanding of the magnitude of his borrowing from those affiliates?

A. I believe in this case there's, I believe, something like 40 to $50 million at stake, but I don't know the interplay of the different -- the different amounts.

Q. Just maybe I'm confused, but are you talking about the money loaned from Highland to affiliates or are you talking about money loaned from affiliates to Mr. Dondero?

A. I -- Mr. Dondero owes -- that he owes, if I'm phrasing it correctly.

Q. All right. Look, I don't want to confuse this, so let's try and keep this simple.

We just saw in the 2018 audit report

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that as of the end of the year, he personally had obligations to Highland of $29.4 million, right?

A. Yes.

Q. Okay.

And there was nothing in the audited financial statements that suggested that any portion of that was subject to forgiveness, correct?

A. That's correct.

Q. Okay.

And you're aware that Highland was a debtor in bankruptcy. Is that right?

A. It went into bankruptcy. I don't recall the date of the filing, but it certainly went into bankruptcy.

Q. Did you -- did you -- do you know -- are you aware that it filed for bankruptcy in October of 2019.

A. That's the time frame. That's what I believed, yes.

Q. Just a few months after PricewaterhouseCoopers signed off on the 2018 audit, right?

A. Yes.

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Q. Do you know if Mr. Dondero or anyone acting on his behalf ever informed the bankruptcy court that some or all of the loans were subject to forgiveness?

A. That, I don't know.

Q. Did you -- did you ask anybody?

A. No.

Q. If you were advising a client -- if you were advising a debtor in bankruptcy -- no -- withdrawn.

If you were advising the maker of certain notes that were held by a debtor in bankruptcy, would you advise that client to tell the Court of any agreements that existed that -- pursuant to which the notes might be forgiven?

MR. AIGEN: Objection, form.

A. I would certainly -- if it wasn't obvious already, I would have certainly advised the client to inform whoever if there are terms that would be favorable to them, absolutely.

Q. And why would you do that?

A. Well, if I was an executive or an entity that had forgiveness provisions that might benefit me and someone else who's not a banker or

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bankruptcy judge wasn't aware of it, I would suggest that they inform them rapidly that these favorable provisions were in place.

Q. Can you think of any reason why the executive wouldn't disclose the favorable provisions that were in place?

MR. AIGEN: Objection, form.

A. Having seen some bankruptcies, I think people forget, people make bad decisions. In the chaotic situations that happen, people often ignore things. But I -- the most logical one would be the confusion or chaos.

Q. Let me give you a hypothetical: There's an executive who owes a bankrupt entity $30 million in its individual capacity, and the debtor discloses in its disclosure statement and its plan of reorganization its intention to collect that $30 million as part of its plan of reorganization.

If the executive doesn't stand up and say, Hold your horses, I've got an agreement pursuant to which those notes might be forgiven, and only makes that disclosure after litigation is commenced, in your experience as an executive

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compensation consultant, would you question whether there was really an agreement in the first place?

MR. AIGEN: Objection, form.

A. Of course I would question it, and I often question clients about decisions that I wished they hadn't made, but yeah, certainly, I would question it.

Q. And what if you knew in the hypothetical that the individual was represented by multiple law firms, would that cause you to question it even further?

MR. AIGEN: Objection, form.

A. No, I would expect in a situation like that, he would be represented by a bunch of law firms, but I would certainly question that. It seems convenient. That doesn't mean it's not true, though, which I often find clients that make very unfortunate decisions, so -- but I would certainly question it.

Q. Okay. Just a few more questions before we break.

So we spent a lot of time, and I really appreciate your patience, Mr. Johnson,

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going through many of Highland's audited financial statements, but I just want to know, with the caveat that you're relying on only what I showed you, with that caveat, would you agree with me that based on our review Highland has not forgiven a loan to anyone in the world since around 2009?

A. Yeah, that's what it appeared from the financials, I guess.

The only thing that makes me pause is I'd want to look at the -- again, the similar documents for the affiliates and see if there's stuff in there as well. But in the documents that you showed, that appeared to be, you know, what is recorded in these financials.

Q. And Highland -- the -- Highland capital Management, L.P. is the only payee on the notes that you're aware of, correct?

A. I believe so. I believe that's right.

Q. And Highland Capital Management, L.P. was the only entity that was in bankruptcy. Is that right?

A. I believe that's right.

MR. AIGEN: Objection to form.

Q. And you're not aware that Highland has

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an ownership interest in any of the makers under any of the notes at issue here, correct?

A. That, you're getting -- I'm not sure I understand -- ownership -- that, I don't know.

Q. Okay. Okay.

But we can agree that, based at least on Highland's audited financial statements, you're comfortable concluding that Highland hasn't forgiven a loan to anybody or any entity since 2009, correct?

A. That's the only thing, and the things you showed me have been disclosed, that's right.

Q. And based on what I showed you, you're comfortable in concluding that the largest loan that Highland ever forgave was $500,000. Is that fair?

A. That's what it appears, that's right.

Q. Okay.

And based on what I showed you, you're comfortable excluding that Highland has never forgiven a loan to Mr. Dondero, correct, or at least through 2008?

A. And as reported in the financials, that appears to be correct, yes.

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Q. And based on the information that I've given you and the financials that we looked at, you're comfortable concluding that at no time since at least 2008 has Highland ever forgiven in whole or in part any loan that it ever extended to any affiliate, right?

MR. AIGEN: Objection to form.

A. That's -- that's what's in the financials, yes.

MR. MORRIS: Okay. So it's 1 o'clock. Let's break until 1:30. And I hope, you know, I have another 60 or 90 minutes.

Thank you very much.

(Luncheon recess taken from 1:02 p.m. until 1:32 p.m.)

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AFTERNOON SESSION

(Time noted: 1:32 p.m.)

BY MR. MORRIS:

Q. Good afternoon, Mr. Johnson.

A. Hello.

Q. Did you speak with anybody during the break about the substance of your testimony today?

A. No.

MR. MORRIS: Okay. I'd like to put up on the screen a document that has been premarked as Exhibit 70 -- you know what, I apologize, not 70, 73.

(Exhibit 73 Exhibit 73, Demonstrative, was marked for identification at this time.)

BY MR. MORRIS:

Q. Mr. Johnson, are you able to view the document that's been premarked as Exhibit 33 that's up on the screen?

A. Yes. Yes, I can.

Q. So I'm going to represent to you that this is a -- this is what we call a "demonstrative exhibit," right?

This isn't a document that was prepared in the ordinary course of business. It's

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a summary of other information that we've produced in this litigation, and I will represent to you that we have produced in this litigation, among other things, bank statements that show the transfer of money on behalf of Mr. Dondero against a couple of outstanding notes.

And, you know, Mr. Dondero's counsel can, you know, take the documents that were produced with this to make sure that it's accurate, but I believe it to be accurate, and I just want to ask you some questions about this -- about the information that's contained in this document.

I assume you've never seen this before, right?

A. I don't -- I may have seen something similar. I don't believe I've seen this exact thing, no.

Q. Were you -- do you remember before we looked back and there was that $14.9 million loan that was reflected in the -- in the financials?

A. Yes.

Q. And I'll represent to you that's what's the restructured note in Column C and D.

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Do you see that?

A. Yes.

Q. Okay.

And do you recall from the financials that in 2018, Mr. Dondero had borrowed an additional $14 million and change?

A. Yes.

Q. Okay.

I'll represent to you that the January 18, 2018 note in the principal amount of $7.9 million was among the new loans that he obtained in 2018.

Were you ever informed that in 2017, '18, and '19, Mr. Dondero was making payments of principal and interest due on loans that he had obtained from Highland?

A. I don't think I discussed that with anybody. I think I had noticed that -- these loan amounts changing around, that something was going on in terms of payment, but I don't think I discussed that with anybody.

Q. Before completing your report, would you have liked to have known about Mr. Dondero's payment history, if any?

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A. Yeah, that would have been something I would have liked to have known, yes.

Q. Because that would relate to the whole concept of whether or not there was a prior course of forgiveness. Is that right?

A. I would -- yeah, that would have been -- that would have been helpful to know.

Q. I mean, it's -- you wouldn't dispute that if, in fact, this chart is correct and Mr. Dondero was making payments in 2017, '18, and '19 against those notes, that those notes were not likely to be subject to any forgiveness agreement, correct?

MR. AIGEN: Objection, form.

A. As I testified before, you could have a loan forgiveness that you would make payments on. It really would depend on the circumstances and what you thought the probability of the forgiveness happening, but answering your question, yes, I would have liked to have known about this.

Q. According to this chart, if you just focus -- you see the Column G, "Total Received in Respect of Retired Notes"?

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A. Yes.

Q. Okay.

And do you see the total is approximately $23.7 million?

A. Yes.

Q. If you exclude the first three payments that were made in 2017 and '18, they total about $3.3 million or $3.4 million.

Is my math roughly correct?

A. Yes, it looks that way.

Q. Okay.

So is it fair then to just -- if you deduct that from the total, to say that Mr. Dondero made principal and interest payments against those two notes in 2019 in excess of $20 million?

A. That looks correct, yes.

Q. Okay.

Now, do you see the last payment was made, if you look at the Row 16, on December 23, 2019?

A. Yes.

Q. Okay.

And do you understand that that's

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after the petition date?

A. Yes, that would be.

Q. And according to this chart anyway, in Column B, the payment that was made on that date was approximately $783,000?

A. Yes.

Q. And that money was applied to outstanding principal and interest that was due under the January 18, 2018 note.

Do you see that?

A. Yes.

Q. Okay.

And do you see how the principal balance of $7.9 million was paid exactly as of December 23, 2019?

A. I'm sorry, I don't understand. The 7.9 was --

Q. Was the principal amount of the note, right?

And I'll represent to you that the January '18 note was given by Mr. Dondero to Highland in exchange for 17. -- for a $7.9 million loan on the same day. Okay?

A. Okay.

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Q. And do you see in Column G, it shows that once the portion of the payment was applied to the January 2018 note, the total that was applied was about 319,000 and change?

A. Yes. Okay.

Q. And then there's an asterisk in Column H next to that total received on that date.

Do you see that?

A. Yes.

Q. Okay.

And if you look at the footnote, it says the difference between the total paid on December 23, 2019 and the amount applied to the January 18, 2018 note was applied in three different ways.

Do you see that?

A. Yes.

Q. And do you see that it was applied against principal and interest due on three other notes that Mr. Dondero took in 2018?

A. Yes.

Q. Were you aware, until I showed you this, that Mr. Dondero had made payments of principal and interest against the notes that he

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contends are subject to the forgiveness agreement?

A. I don't think I was aware of that.

Q. Is that a fact that you would have liked to have known before you completed your report?

A. I would have probably liked to have known that, yes.

Q. And why is that?

A. The statement I made in the report around the practice of the company to forgive loans, I would have had to perhaps rethought that. This would have been -- this would have been information that I would have liked to have known, yes.

Q. In fact, this page shows that, you know, if we exclude the payment made in late 2017, from December 2018 to December 2019, Mr. Dondero paid approximately $23-and-a-half million again principal and interest due on 5 different notes.

Have I characterized that fairly based on this chart?

A. I think you may have double counted in your arithmetic, but the point is he made significant payments against principal and

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interest.

Q. Okay. I don't want to double count. Let me try and do it again.

Do you see the total Dondero payment amount in Column B is $24.143 million.

A. Yes.

Q. If we simply deduct from that $677,000, do you come out to roughly $23-and-a-half million?

A. Yes, that's right. That's right.

Q. And that $23-and-a-half million was paid in the 370-day period between December 18, 2018 and December 23, 2019, correct?

A. I don't want to be a stickler here, but if you look to the payment amount of 24 million, I think you were trying to say that the end of '18-'19, so you'd subtract those first three payments in that Column B, I think, which gets you to about $20 million.

So it looks like in '19 -- it's north of $20 million.

Q. Okay.

And if we add the payments that were made on December 18, 2018 and December 19, 2018,

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you come up with about 23 to $23-and-a-half million, right?

A. Something like that, that's right.

Q. And that's about a one-year period that straddles the petition date, to the best of your knowledge, right?

A. Yes. Yes, it does.

Q. And so those payments, according to this chart – and, again, I'm asking you to assume the accuracy of this chart – according to this chart, for the approximately one-year period from December 2018 to December 2019, Mr. Dondero made principal and interest payments of approximately 23 to $23-and-a-half million against 5 different promissory notes that were held by Highland, correct?

A. Yes, I believe that's true.

Q. And is it fair to say that that information conflicts with the concept of Highland having a practice of forgiving loans?

MR. AIGEN: Objection, form.

A. Well, as I said earlier, it doesn't mean that the loans weren't forgivable. It means he made payments against loans that may have been

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subject to a – you know, a forgiveness agreement, which, as I testified earlier, you know, could happen, but it would certainly be a fact you'd want to – you know, you'd want to consider.

Q. And tell me the understanding – your opinion as to the circumstances under which you think a maker under notes would rationally make a payment of principal and interest against notes that were the subject of a forgiveness agreement?

MR. AIGEN: Objection, form.

A. Well, I think, as I testified earlier, I think someone would think to themselves, what is the likelihood of those notes being forgiven?

If they believe they're not likely to be forgiven, and if they're a senior executive of the company and the company perhaps needs the money, they might make those payments. A rational executive or borrower could make those payments believing that, perhaps, the likelihood of the things being forgiven is not high and/or the company needs the money.

Q. Did – did anybody give you any explanation as to why Mr. Dondero made approximately $23-and-a-half million of payments

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against premium – against principal and interest due on these 5 notes?

A. No, they did not.

Q. To the best of your knowledge and understanding was Mr. Dondero in control of Highland throughout that period December 2018 until the end of 2019?

A. I'm not – I'm not sure about what happened in bankruptcy, but certainly from the period up until the filing of the bankruptcy, he was in control.

Q. Okay.

Do you know – if you look at the restructure note, the January 18, 2018 note, and the notes that are referred to in Rows 21, 22, and 23, are you able to identify which of them, if any, are subject to the modification agreement described if your report?

A. I cannot identify them, no.

Q. So you don't know which, if any, were the subject – were subject to the agreement.

Do I have that right?

A. I can't identify them, no.

MR. MORRIS: Okay. Can we go back to

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Mr. Johnson's report, Exhibit 62?

And if we can go to page 3, please.

Q. This is the introduction of your report, right?

A. Yes.

Q. And now that we've done the work we have so far today, I'm going to point you to the sentence towards the end of the first paragraph that says, "Throughout this period, he received loans in lieu of additional current compensation."

Do you see that?

A. Yes.

Q. And the "he" there refers to Mr. Dondero, correct?

A. Yes.

Q. Knowing what you know now, do you stand by that statement?

MR. AIGEN: Objection, form.

MR. MORRIS: Withdrawn.

Q. Knowing what you know now, do you believe that statement is accurate?

A. I'd have to rethink about it. I haven't heard anything that would say what he told me was not true.

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Q. Have you seen any evidence that Mr. Dondero ever received a loan in lieu of additional current compensation?

A. Besides his -- his assertions to me, I've seen no written documentation, no.

Q. And, in fact, the audited financial statements that we looked at did, in fact, disclose the loans that were forgiven to the individuals that you spoke with, correct?

MR. AIGEN: Objection, form.

A. Yes.

Q. There was nothing in any of the audited financial statements that we saw that showed that any loan was ever given to Mr. Dondero that was forgiven, correct?

A. In the Highland financials we looked at -- and I guess when that was asked before, I had the caveat around the affiliated companies, but in the Highland financials that we went through, there was nothing disclosed of that.

Q. Highland -- does the practice of other entities in terms -- is that -- withdrawn.

When you described the practice, are you describing the practice of firms or entities

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or affiliates other than Highland?

A. Well, I -- in this case, everything is kind of inter -- intertwined here, so when I talk about loans, the loan could have potentially come from an affiliate or some other organization since these all were co-owned.

So we went through the Highland thing, so the loans to Mr. Dondero could have been made by -- potentially could have been made by an affiliate or some other entity.

Q. Do you have knowledge of any affiliate ever forgiving any loan to Mr. Dondero?

A. I do not.

Q. Do you have knowledge of any affiliate ever forgiving in whole or in part any loan to anyone in the world?

MR. AIGEN: Objection, form.

A. I -- I don't have any knowledge of that either.

Q. And your report does not depend in any way, sir, on whether or not affiliates forgave loans to any of its employees, correct?

MR. AIGEN: Objection to form.

A. That's correct.

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Q. Looking at the last sentence, there's a reference to company practice.

Do you see that?

A. Yes.

Q. That company practice would not include the forgiveness of any loans from the year 2009 until the end of 2018, correct?

A. None -- none of those would have been -- none of those were disclosed in the financials we looked at.

MR. MORRIS: Can we go to page 6, please?

Q. Yeah, I'm looking at the first sentence of the second bullet point: I understand from Mr. Dondero that the 2018 loans that are the subject of the suit were modified by an agreement in late 2018 or early 2019 under which the loans would be forgiven upon the sale and over cost of substantially of any of three portfolio companies.

Have I generally categorized that statement correctly?

A. Yes.

Q. Based on everything that we've talked about and looked at today, are you confident that

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that sentence is accurate?

Withdrawn.

Based on everything we've talked about and looked at today, are you confident that Mr. Dondero accurately disclosed to you the subject of this agreement?

MR. AIGEN: Objection, form.

A. I'm sorry, could you repeat that?

Q. Sure.

Mr. Dondero told you that the 2018 loans were the subject of a modification agreement, correct?

A. Yes.

Q. Would you stake your professional reputation on the accuracy of what he told you?

MR. AIGEN: Objection, form.

A. I -- I heard him clearly. I can't vouch for his word, but he told me -- what is written there is what -- is what he told me happened. And I asked that question.

Q. I appreciate that.

So --

A. I wasn't finished. I'm sorry.

Q. I apologize.

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A. So I asked that question, you know, pretty specifically, so that -- I understood that that's what he said.

And I'm sorry to interrupt you. I'm sorry. Go ahead.

Q. That's okay.

So what you've reported in this sentence is what you were told. Is that fair?

A. Yes, I was told by Mr. Dondero about the modification of the loans.

Q. And you don't have any information or evidence to support that statement other than what he told you, correct?

A. I've seen no other document, no.

Q. Does the absence of documentation cause you to question the reliability of what Mr. Dondero told you as described in that sentence?

A. Well, as I testified before, I think it certainly would bring it into question, but as I testified before, I have other clients that don't document important things as well. So it would certainly -- not the lack of documentation would bring it into question, but that doesn't

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mean it's not -- it's not true.

Q. Would the lack of disclosure to the bankruptcy also call it into question --

MR. AIGEN: Objection to form.

Q. -- in your opinion?

A. Certainly, as I testified before, people often in chaotic situations don't do the things that are even to their advantage.

So certainly that raised -- that raises questions about, again, did he disclose things that may have been even to his advantage in a bankruptcy situation.

Q. Would the existence of the agreement be called into question if you assumed that the decision maker never told anybody in the world that he or she had entered into the agreement on behalf of the company?

MR. AIGEN: Objection, form.

A. Certainly. The lack of disclosure is a reasonable question to ask, Why didn't you disclose?

But as I've said a couple times now, that I've got private clients that over time have not disclosed things, and as I testified earlier,

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I admonish them to write things down and disclose them, and they often don't.

Q. Looking back at the document on the screen, the next-to-the-last sentence of that paragraph says, "Based on interviews from prior employees, the use of forgivable loans was a known business practice at Highland, and there was a clear expectation similar loans would be forgiven."

Do you see that?

A. Yes.

Q. Okay.

The prior employees are the four people we talked about before, right?

A. Yes.

Q. And they told you about the four loans that they had that were forgiven in whole or in part, correct?

A. And I would answer that, yes, they said it, and Mr. Dondero mentioned it as well.

Q. And they told that there was a use of forgivable loans as a nonbusiness practice at Highland, right?

A. Yes.

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Q. They didn't mention any other entity, correct?

A. That, I don't remember. I don't believe so.

Q. You wrote Highland, right?

A. Yes.

Q. And you haven't seen any documents that support the known business practice that they described for you, correct?

A. I have seen no written documentation, no.

Q. When you referred to a "clear expectation," whose expectation are you referring to?

A. The recipient of the loan, that's what I was referring to.

Q. And when you used the phrase "similar loans," do you mean similar to the ones that were forgiven by the four employees -- the four former employees that you interviewed?

A. I meant just that there was a loan of a significant period of time and it would be forgiven over time. That's what I was trying to get at there.

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Q. Now that you have seen -- withdrawn.
Now that I have shown you the demonstrative exhibit that reflects payments by Mr. Dondero against 5 different promissory notes in the 12-month period between December '18 and December '19, do you believe that he had a clear expectation that his loans would be forgiven?
MR. AIGEN: Objection, form.
A. I -- I don't -- I don't -- he hasn't told me what his expectation -- I don't -- I would just be speculating about what his expectations were.
Q. Well, paying -- paying more than $23 million in a 12-month period is inconsistent with any expectation that the loans would be forgiven.
Would you give me that?
MR. AIGEN: Objection, form.
A. Well, I think I testified before that you could forgive -- you could make payments against the loan if you thought the probability of achieving the goals were not highly likely and/or the company needed the money.
So on a private situation, such as

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this, Mr. Dondero rationally could have said to himself, I'll repay the loans because the company needs the money and/or the odds of selling one of these three assets in a reasonably timely manner may be unlikely, but I'm just speculating on what he -- he may have thought.
Q. Okay.
MR. MORRIS: Can we go to page 16, please?
Q. Just to finish this up, in the middle, it says, "It is my opinion that the loans provided to Mr. Dondero should be considered potential deferred compensation as they were similar to loans given to other professionals at the firm."
Have I read that correctly?
A. Yes.
Q. After our questions today and looking at the documents is that still your opinion?
A. Well, I think it goes back to what Mr. Dondero told me. If what Mr. Dondero told me is accurate, it -- his statement continues to be true, that these loans were intended to be forgiven, and that that would have been similar to the other four executives that I interviewed.

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Q. So that sentence and your opinion is dependent 100 percent on the accuracy of what Mr. Dondero told you, correct?
A. If Mr. Dondero, you know, was inaccurate, then that sentence will be inaccurate as well.
Q. And is there anything that we looked at today, like the financial statements or the payment history for the 12-month period from December 2018 to December 2019, that calls you to question the accuracy of what he told you?
A. I don't -- I don't -- I believe it still could very well be true, so I don't -- I don't -- I don't believe that -- I don't believe I would have changed that sentence based on what I've heard today.
Q. Your report refers in several places to a founder's premium.
Do I have that phrased right?
A. Yes. Yes, it does.
Q. What's a founder's premium?
A. In many or most financial services companies, founders get paid more than comparable executives elsewhere. They're the face of the

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firm. They have an unusual stature in the industry and so forth.
So when you look at large or outsized pay packages, they're often delivered to founders of similar financial firms.
Q. Have you done any analysis to determine what the founder's premium would be in this case?
A. I have not.
Q. You're not offering any opinion as to what the founder's premium should be, correct?
A. I have not done that work, no.
Q. You haven't attempted to quantify what the founder's premium is, correct?
A. Again, I haven't done that work.
Q. Is there a particular reason why you didn't attempt to quantify or analyze the founder's premium that you referred to in your report?
A. Well, when I wrote the report in May, I didn't have available some of the things we've talked about today, I just didn't feel that that was appropriate.
So I took what I thought was a

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conservative view of what the market rate with him would be, and then it could obviously be supplemented at some future point with additional information or facts.

Q. But as you sit here today, you haven't done any analysis to try to update your report to quantify a founder's premium, correct?

A. I have not.

MR. MORRIS: Can we go to page 19 of Mr. Johnson's report.

Q. Right there at the top, you've got Exhibit C. That's Mr. Dondero's actual compensation for the period 2013 to 2019.

Do I have that right?

A. Yes.

Q. Why did you use that seven-year period?

A. It was after the financial crisis. It seemed more stability in the business. It seemed like a reasonable period to look at.

Q. Is there any -- is the decision to use the seven-year period from 2018 to 2019 a subjective decision that you made on your own?

A. To be -- I don't remember.

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Q. Is it fair to say that somebody else might differ with you and apply either a 4-year period, for example, or a 10-year period?

A. Reasonable people might have a different point of view, yes.

Q. Did you rely on any particular methodology or industry study in reaching your decision to use a seven-year period?

A. No.

Q. Is there any article that you're aware of or any presentation anybody has ever made whereby they -- they suggested that when doing an analysis of this type, one ought to the use a seven-year look-back period?

A. I -- I don't -- I'm not aware of any -- any study like that.

Q. And the reason that the timeline is important, of course, is it because you're just multiplying the difference between Mr. Dondero's compensation as reflected in this chart -- withdrawn.

The reason why the time period is important, because you're taking the average of Mr. Dondero's annual compensation during the

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seven-year period and comparing it with the average for your comps and multiplying it by seven, correct?

A. Well, I'm looking at his average pay over the period. I wanted a long enough period to be representative and looking at what the market rate would have been over that period, so yes, you arithmetically will come up with a difference over that period.

Q. And your difference is $21 million, right?

A. Yes.

Q. And your difference is $21 million because you compared Mr. Dondero's average of $3 million with what you determined to be the industry average of $6 million, you took the difference of 3 and multiplied it by the 7 years and you got to $21 million, correct?

A. In simple fashion, that's right.

Q. Is there any other fashion in which my description of what you did is incorrect?

A. No. I think that's accurate, but the point was that he had been underpaid from a W-2 perspective during this period and, you know,

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the -- anyway, that was the point.

Q. And if a reasonable mind decided that, you know, the look-back period should be a bit shorter, only 5 years, then the delta would only be $15 million, right?

A. Assuming the same facts, the 3 million and the 6 million, that's right.

Q. And if somebody thought it ought to be 10 years, then the delta be would be $30 million, right?

A. It could be, but I don't know what his pay was prior to 2013. Maybe that wouldn't be accurate. But yes, assuming the facts are the same, that would be -- that would be accurate.

Q. Okay. But one of the three factors -- so there are 3 factors in the $21 million. It's Mr. Dondero's average compensation during the 7-year period, correct?

A. Yes.

Q. And it's the industry average as you've determined for the seven-year period, correct?

A. Well, just to be picky, it's not the industry average. It's what I think the market

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was for his particular role, which was 6 million, but yes, it's 3 million and 6 million.

Q. Thank you. Thank you for the clarification.

And then the third factor in reaching the $21 million is multiplying the difference between those first two numbers by 7, correct?

A. Exactly.

Q. And you determined to use 7, correct?

A. Yes.

Q. And you made that determination based on your subjective judgment, correct?

A. Yes.

Q. And you're not aware of any -- any guideline, any analysis, any peer-reviewed article, any presentation, anything in the world that caused you to select 7 years. You just based that on your own experience. Is that fair?

A. That's fair.

Q. Okay.

So if you look at the chart, you've got three different line items. The first is "Highland Capital Management W-2 Income," correct?

A. Yes.

ALAN JOHNSON

Q. Okay.

And why did you decide that this analysis should incorporate Mr. Dondero's Highland Capital Management W-2 income?

A. That is his reported employee compensation.

Q. The next line relates to NexPoint Residential Trust W-2 income.

Do you see that?

A. Yes.

Q. You've only included income for 2018.

Do I have that right?

A. That's right.

Q. Why did you decide that it was appropriate to include NexPoint Residential Trust W-2 income in your analysis?

A. It was a W-2. I think he was paid as an employee, and that should be recognized here.

Q. And how come you only disclosed the income for 2018?

A. That's the only one we have W-2 for.

Q. Okay.

How about NexPoint Advisors' W-2 income, why did you decide to include that in this

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analysis?

A. Again, it was employee income.

These businesses are so intertwined that I included his pay for, you now, his activities at NexPoint.

Q. Okay.

And did you not go back prior to 2016 because you didn't have any W-2 income for that entity?

A. Didn't have a W-2 income.

Q. Do you know if Mr. Dondero received any other W-2 income from any other Highland-related affiliate?

A. We were not -- I was not aware that there was any others.

Q. If you were aware of other W-2 income that Mr. Dondero received from a Highland affiliate, would you have included it in this analysis?

A. I would have included it, yes.

MR. MORRIS: Okay. Let's go down to page 21, and if we can go to the bottom of the page.

Q. All right. So correct me if I'm wrong

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here, but what I think you did is you went and did some research and you tried to identify executives who had similar responsibilities to Mr. Dondero -- Mr. Dondero and you reviewed what information was in the public domain to try to ascertain what their total compensation was for each of the years 2013 through 2019.

Is that generally correct?

A. Yes, that's generally correct.

Q. And looking at this chart, this chart at the bottom of page 21 only relates to 2019.

Do I have that right?

A. Yes.

Q. And you have one, two, three, four, five, six, seven comps.

Do I have that right?

A. Yes.

Q. And the first portion of the analysis shows the total base salary cash bonus for the total amount of total cash that was paid to each executive by their employer in 2019. Is that right?

A. That's right.

Q. Now, Mr. Dondero received

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substantially more cash than any of these executives in 2019, correct?

A. I don't recall his actual cash in 2019. That, I don't know, sitting here.

Q. And then the next part of the analysis relates to stock options and restricted shares. Let's take them one at a time.

What are stock options for purposes of your analysis?

A. It's the value of a -- of an award made, and this is their disclosed value of the ability to exercise a -- a -- an option to purchase the company's stock at a fixed price. So if on the day of grant the company is trading at $25, you're granted options to purchase the stock at $25.

You don't have to exercise. The stock increases in value at some point within a 10-year period, you can exercise those options and realize a gain.

The numbers shown here reflect their disclosed value in their proxy statement, so use Black-Scholes or some other method to value the prospective value of these options.

ALAN JOHNSON

Q. In your expert opinion, is it appropriate to include the value of the stock options when trying to assess the total compensation of an executive comparable to Mr. Dondero?

A. Yes, it would be.

Q. Did you ask Mr. Dondero or anybody acting on his behalf whether he ever received any stock options of any kind?

A. I did not.

Q. So is it fair to say that your analysis does not take into account the value of any stock options that Mr. Dondero may have received?

A. I was not aware that he received any, so it would not have included it, no.

Q. And nobody told you that he received any, correct?

A. No.

Q. And you didn't ask, correct?

A. I don't recall whether I asked or not, but I didn't see it anyway.

Q. The next column relates to restricted shares.

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Do you see that?

A. Yes.

Q. What are restricted shares?

A. It's the grant of shares with time vesting. So you receive $100,000 worth of stock in the company, and then that vests over, say, a 3- or 4-year period. So it's a fixed number of shares that vest on the passage of time.

Q. And in your professional and expert opinion, do you believe that the value of restricted shares should be considered when assessing the total compensation received by executives comparable to Mr. Dondero?

A. Yes.

Q. Did you ask Mr. Dondero or anybody acting on his behalf whether he had ever received restricted shares during the 7-year period you were analyzing?

A. I don't recall asking that, no.

Q. Did Mr. Dondero or anybody on his behalf ever disclose to you any restricted shares that Mr. Dondero may have received?

A. I'm not aware that he received any. No one told me anything about it.

ALAN JOHNSON

Q. So is it fair to say that your analysis does not take into account any restricted shares that Mr. Dondero may have received during the 7-year period of your -- of your analysis?

A. Well, he would have if either options were the restricted shares. If they had turned into actual shares, they would have shown up in his W-2.

So if there were things that didn't show up in his W-2, then yes, I would have been unaware of it.

Q. Okay.

And is the total long term just the addition really of the stock options and the restricted shares?

A. Yes.

Q. Okay.

All right. So let's look at a few more documents. I'm almost done here.

MR. MORRIS: Can we go back up to the page with Mr. Dondero's chart, 19.

Yeah, there we go.

Q. Okay. So you included the NexPoint Residential Trust W-2 income, correct?

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A. Yes.

Q. And the only reason that you limited yourself to 2018 is because you hadn't found any W-2 income related to that entity during your diligence, right?

A. That's right.

MR. MORRIS: Can we please put up what's been marked as Exhibit 67.

(Exhibit 67, 2019 W-2 , was marked for identification at this time.)

BY MR. MORRIS:

Q. Do you see that this is a 2019 W-2 made out to Mr. Dondero from NexPoint Residential Trust, Inc.?

A. Yes, yes.

Q. Okay. And if we go to the bottom of the page, do you see it says, "Expert No. 1"?

A. Yes, I see that.

Q. This is, in fact, a document that was provided to you before you completed your report, right?

A. I believe that that appears to be right.

MR. MORRIS: Okay. Let's go back to

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the top of the document.

Q. Do you see that Mr. Dondero had W-2 income in 2019 of approximately $1.5 million?

A. Yes, I believe that's right.

Q. Okay.

So for consistency, your report should be amended -- the chart on paragraph 19 should be amended to include the number that's in box 1 of the W-2 under W-2 income from NexPoint Residential Trust in 2019; correct?

A. If I've missed it, then it should be included, yes.

MR. MORRIS: Can we go -- can we put up Exhibit 67-2?

(Exhibit 67-2, 2017 W-2 , was marked for identification at this time.)

BY MR. MORRIS:

Q. Do you see that this is a 2017 W-2 issued by NexPoint Residential Trust, Inc. to Mr. Dondero?

A. Yes.

MR. MORRIS: Can we go to the bottom of the page?

Can we just see the Bates number?

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Oh, hold on, I know what I have to do.

Yeah, there you go.

Q. Do you see that it's Bates stamped page 937?

A. Yes, I see that.

Q. Does that indicate that that document was provided to you before you completed your report?

A. I don't know what the Bates number means, but I see the 937.

Q. Well, I'll represent to you, sir, that if we went to page 25 of your report, this document would be listed among those that you were given before you completed your report.

MR. MORRIS: Can we go back up to the top of the document?

Q. Do you see in Box No. 1, it discloses wages of approximately $625,000?

A. Yes, I see that.

Q. And that's the corrected information, right?

A. Yes.

Q. Okay.

So looking at this now, in order to be

ALAN JOHNSON

consistent, that $625,000 should have been included in your report in the chart on page 19, correct?

A. I believe that's right.

Q. Okay.

So those two entries alone are approximately $2.5 million, or more than 10 percent of the $21 million difference that you calculated, correct?

A. Yes, I believe that's right.

Q. Okay.

MR. MORRIS: Can we please put up Exhibit No. 68?

(Exhibit 68, compensation and benefit statement for 2016, was marked for identification at this time.)

BY MR. MORRIS:

Q. Okay. So what's on the screen, sir, is a compensation and benefit statement that I will represent to you was prepared by Highland in the ordinary course of its business for years for every employee -- I think for every employee in the organization.

And if we go down to the bottom, you

1 ALAN JOHNSON
2 can see that this document was produced to
3 Mr. Dondero's lawyers previously.
4 And if we can scroll back up, do you
5 see that there's reference in the middle to a 2016
6 deferred compensation award?
7 MR. AIGEN: Hey, John, I think you
8 tried to scroll down to show the Bates
9 label, but I don't think it went far enough.
10 I just want to write down what the
11 Bates label was so I can have it for my
12 records.
13 MR. MORRIS: Sure.
14 MR. AIGEN: Or if you can read it into
15 the record, that will work, too.
16 MR. MORRIS: Sure.
17 It's D-CNL003585.
18 MR. AIGEN: Thank you.
19 Q. And do you see that he's got total
20 compensation listed there of $2.3 million?
21 A. Yes, I see that.
22 Q. Okay.
23 Do you see that there's a reference to
24 a deferred compensation award?
25 A. Yes.

1 ALAN JOHNSON
2 Q. And that award of $1.2 million relates
3 to 50,000 restricted stock units of NXRT.
4 Do you see that?
5 A. Yes.
6 Q. And you testified earlier that
7 restricted stock is something that should be taken
8 into account when assessing the total compensation
9 of an executive, correct?
10 A. Yes.
11 Q. And NXRT, do you know what that symbol
12 represents?
13 A. I don't think I've seen that symbol.
14 Q. Okay. If I represented to you that it
15 is the symbol for the NexPoint Residential Trust
16 that we were just looking at – the W-2s that we
17 were just looking at, do you think that this
18 $1.2 million should be taken into account in
19 Mr. Dondero's 2016 total compensation since it is
20 restricted stock units that were given to him in
21 that year?
22 A. I'd certainly have to consider that,
23 yes.
24 Q. Okay.
25 But you weren't given this

1 ALAN JOHNSON
2 information, correct?
3 A. I don't think I've seen this.
4 Q. Okay.
5 MR. MORRIS: Can we please go to
6 Exhibit 50, 5-0.
7 (Exhibit 50, compensation and benefit
8 statement for 2017, was marked for
9 identification at this time.)
10 BY MR. MORRIS:
11 Q. I'll represent to you that this is
12 Mr. Dondero's compensation and benefit statement
13 for 2017.
14 Do you see there's another reference
15 to approximately $1.55 million in restricted stock
16 units that were granted to him for the 2017
17 performance year?
18 A. Yes, I see that.
19 Q. And nobody told you that Mr. Dondero
20 had received any stock options prior to today,
21 correct – withdrawn.
22 Nobody told you that Mr. Dondero had
23 received restricted stock units of NXRT before
24 today, correct?
25 A. I was not aware of this when I wrote

1 ALAN JOHNSON
2 my report, no.
3 Q. You would have – this number –
4 withdrawn.
5 MR. MORRIS: Can we go to the bottom
6 of the page, please?
7 Just for the record, this is document
8 with Bates No. D-CNL003587.
9 And if you can scroll back up.
10 Q. If Mr. Dondero received restricted
11 stock units of NexPoint Residential Trust in 2017
12 for the performance – for his performance during
13 that year in an amount of $1.55 million that's –
14 that's compensation that you would have included
15 in your report had you known about it at the time,
16 correct?
17 A. Probably would have, yes.
18 MR. MORRIS: Okay. Can we go to
19 Exhibit 51, please.
20 (Exhibit 51, compensation and benefit
21 statement for 2018, was marked for
22 identification at this time.)
23 MR. MORRIS: Okay. This is
24 Mr. Dondero's compensation and benefits
25 statement for 2018.

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If we can go to the bottom.
And it has Bates No. D-CNL003588.
And if we can scroll back up, please.
BY MR. MORRIS:
Q. According to this compensation and benefits statement, Mr. Dondero received almost $1.7 million in restricted stock units of NXRT for the 2018 performance year.
Do you see that?
A. Yes, I do.
Q. Were you told that Mr. Dondero received restricted stock units of NXRT for the 2018 performance year?
A. I was not aware of that.
Q. Had you known that prior to issuing your report, would you have included that in your assessment of Mr. Dondero's total compensation for the year 2018?
A. I would have looked at those awards, yes.
MR. MORRIS: Let's go to Exhibit 52, please.
(Exhibit 52, compensation and benefits statement for 2019, was marked for

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identification at this time.)
BY MR. MORRIS:
Q. And when you say you would have looked at the awards, if you assume that they are restricted stock units of NexPoint Residential Trust, is there any basis on which you would not have included those restricted -- the value those restricted stock units in an analysis of Mr. Dondero's total compensation, just as you did for the other executives that are your comps?
A. I want to know what the terms of the awards were. I don't know how NXRT was valued, so I would want to -- more information about -- this is as employee statement, so I don't know how accurate it would be, but I would certainly -- if I'd have been aware of this, would certainly want to consider what those awards were worth, you know, what a comparable like-to-like comparison would be.
Q. Okay.
The next document that we have on the screen is Exhibit 52, which is Mr. Dondero's compensation and benefits statement for 2019.
And if we go to the bottom, we will

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see it has Bates No. D-CNL003589.
Do you see that, sir?
A. Yes.
Q. And if we scroll back up, you'll see that Mr. Dondero received in 2019 a deferred compensation award of approximately $5.6 million in the form of various grants of what appear to be stock?
A. Yes, the number on the page is 5 million 6, yes.
Q. And you weren't told that Mr. Dondero had received any grants of stock as part of a deferred compensation award in 2019, correct?
A. I was not aware of that, no.
Q. But had you -- had you known about the deferred compensation award, you certainly would have asked the questions, right?
A. I would have asked questions, yes.
Q. And is it fair to say as you sit here right now that just as you included the restricted stock and the stock options in your comps, you would have included this $5.6 million in your analysis of Mr. Dondero's 2019 compensation?
MR. AIGEN: Objection, form.

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A. I -- I don't know what amount of the 5 million 6. I think, as I said before, I'd want to know more about these entities and what -- what -- you know, how they were valued and so forth, but I'd certainly want to be aware of it in coming up with an aggregated figure for its compensation.
Q. As you sit here right now, based on the documents we've looked at so far, your $21 million is subject to some questions. Is that fair?
A. It's fair. Certainly, the cash amounts that he was paid should be added back, and then we have these series of deferred comp awards that I'd have to consider how do we include some or all of it value.
Q. But you weren't told about any of these awards before you prepared your report, correct?
A. I was not aware of them.
Q. And you don't have any information as you sit here today that you're aware of that relates to any of these awards except what I'm showing you, right?
A. I'm not aware of the terms of these

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awards, no.

MR. MORRIS: Okay. Let's go to Exhibit 67-3, which is Mr. Dondero's 2013 Form 1040.

(Exhibit 67-3, 2013 Form 1040, was marked for identification at this time.)

MR. MORRIS: And if we can go to PDF page 279 of 335.

BY MR. MORRIS:

Q. Do you see you received Mr. Dondero's Forms 1040 for the period 2013 through I think either 2019 or 2020, right?

A. Yes, I believe so.

Q. Did you take the time to look at the statements supporting his 1040s that relate to wages received?

A. I went through it, yes.

Q. Do you see on statement 12 there's a reference to Highland Capital Management PTE LTD?

A. I'm sorry, where are we on the page?

Q. We're looking at the top. It's statement 12.

A. Okay.

Q. Okay.

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And do you see there's a reference to Highland Capital Management PTE LTD?

A. I see that, yes.

Q. Do you have any idea what that entity is?

A. I don't – I don't know.

Q. Have you ever heard of it before?

A. I don't believe so.

Q. In your review of Mr. Dondero's tax returns, did you ever notice that he had received W-2 income from that firm?

A. If I looked at it, I don't recall.

Q. Based on the name of the entity by itself, is it fair to conclude in the absence of contrary information that any W-2 income he received from an entity called Highland Capital Management PTE LTD should have been included in your report?

MR. AIGEN: Objection, form.

A. That – that, I don't know. That, I don't know.

Q. All right. Mr. Johnson, I'm going to, you know, save us all the pain and tell you that if we looked at Mr. Dondero's Forms 1040 for the

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period from 2013 to 2019, Mr. Dondero reported receiving W-2 income from Highland Capital Management PTE LTD in every single year.

And I will also represent to you that the aggregate amount of those payments were approximately a half a million dollars, and that if we added up the value of the payment – the W-2 payments from Highland Capital Management PTE LTD, along with the NexPoint Residential Trust W-2 income that we looked at, along with the value of the stock options, that we would come up with a number in excess of $13 million, with that representation, how comfortable are you that your $21 million accurately states the difference between what Mr. Dondero received in the 7-year period from 2013 through 2019 and what he would have received if he had received the comparable market compensation for similarly situated executives?

MR. AIGEN: Objection, form.

A. I think you pointed out some adjustments that would need to be made. I think, as I testified before, I would need to go back and look at the value of those awards.

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I think of the $8 million you referred to, I think about 5 or 6 million was made in the year of bankruptcy, which I would certainly put probably, in the work we do, put a question mark next to, but you certainly pointed out some omissions that should be included.

So the $21 million analysis would certainly look like it would get somewhat smaller, but I would – sitting here, the 8 million you mentioned, that looks like about 4 or 5 million was a deferred comp award made in the year of bankruptcy, which I'd probably put a question mark around.

But it does look like, to some degree, the $21 million difference that I've calculated would be reduced.

Q. Have you done any analysis to determine whether or not Mr. Dondero passed through any personal expenses through the business?

A. That, I don't know.

Q. Is that something that you would consider if you had the information available, you know, whether or not he passed personal expenses

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on through the business?

A. Well, it should be – it should be disclosed in his W-2, if he's – if he's filling out a W-2 or other income, but if it wasn't reported on his taxes or there's a W-2, I wouldn't know about it.

Q. I appreciate that you wouldn't know about it.

I'm just asking you if you were trying to assess the value that Mr. Dondero received from serving as Highland's CEO, would you take into account, if you had the information available and you could quantify it, the value of any personal expenses that – that he ran through the business?

A. I would be reluctant to do that just because many private business owners do a similar thing, so it would not be fair to Mr. Dondero or any other executive in his position to only do one side of that trade.

So if I said $6 million was the appropriate level that many private business owners do similar things, so if there's something particularly unusual, I might want to be aware of it, but if it was the normal course of what

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business owners often do, I probably wouldn't include it.

Q. Your comparable individuals in 2019, are those CEOs of public companies?

A. The real comparison here, the $6 million figure, is primarily not CEOs of public companies. The small asset management companies that we list are not – neither paid that high in the roles, as we say in the report, are meaningfully different.

I think the real reference point is people who manage similar assets mostly in the private domain. So I think many of those CEOs, founders, owners, would – the issue we're talking about, would pass on allegedly personal expenses through the business.

Q. How about – we talked about this a little bit earlier.

You're aware that Highland doesn't have an ownership interest in HCRE or Highland Capital Management Fund Advisors or NexPoint or Highland Capital Management Service, right?

A. I'm sorry, are you saying Highland doesn't have an ownership interest?

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Is that what you're saying? I just want to make sure I heard correctly.

Q. Yes.

A. I believe that's true yes.

Q. And you're also aware that Mr. Dondero directly or indirectly owns at least the majority interest in each of these four entities, right?

A. I'm aware of the NexPoint and Advisors. The real estate, I'm not sure I've ever heard about the ownership, but certainly, at least several of those, he's the controlling or sole owner.

Q. Are you aware that – that Highland Capital Management – withdrawn.

Are you aware that Highland provided services to Highland Capital Fund Advisor as NexPoint pursuant to certain shared services agreements?

A. I was aware of that.

Q. And are you aware that until sometime in late 2020, HCMFA and NexPoint made payments to Highland in exchange for those services?

A. I think I was aware of that, yes.

Q. Are you aware that when Mr. Dondero

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was in control, Highland also provided services to Highland Capital Management Services, Inc. as well as HCRE Partners, LLC?

A. I think I was aware of that as well.

Q. And were you aware that neither of those entities had any shared services agreement with Highland?

A. That, I'm not sure I was aware of.

Q. Are you aware that neither of those entities ever provided any cash payment to Highland for services rendered?

A. I have no knowledge of that.

Q. Is it fair to say that your analysis doesn't take into account the value that HCRE and HCMS received by getting services from Highland without paying for them?

MR. AIGEN: Objection, form.

A. I am not familiar with what services they received, so I don't – I don't know how to handle that.

Q. Let's assume that HCMS and HCRE received back-office services similar to what HCMFA and NexPoint contracted and paid for. Okay?

Can we – can we make that assumption?

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A. Okay.

Q. Okay.

And let's assume that neither of those entities, HCRE or HCMS, ever paid any money to Highland in exchange for those services. Okay?

A. Okay.

Q. As the person in control of those entities, do you think it would be appropriate to try to quantify the benefit that Mr. Dondero received through his ownership of HCRE and HCMS as a result of Highland's providing services to those entities without compensation?

MR. AIGEN: Objection, form.

A. At a high level, I think if Highland was providing meaningful services that had value to those entities and Highland wasn't getting something back in return, you would want to try to understand how big that was.

Q. Okay.

But that's not an issue that you analyzed, correct?

A. It is not.

Q. And your $21 million delta doesn't take into account that issue at all, correct?

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A. It does not take that into account, no.

Q. And you didn't do any diligence to try to determine whether or not Highland had provided services without receiving payment in return with respect to HCMS and HCRE, correct?

A. I did no such analysis.

Q. Okay.

MR. MORRIS: Can we take – it's 2:45. Let's take a 5-minute break, a short break. I may be done.

(Recess taken from 2:45 p.m. until 2:50 p.m.)

MR. MORRIS: I have no further questions of this witness at this time. Thank you very much, Mr. Johnson, for your time and your patience.

THE WITNESS: Thank you, and also say hi to Laura Johnson for me.

MR. MORRIS: I sure will. I'm sure I'll be speaking to her this afternoon.

MR. AIGEN: Alan, you're not completely done yet. I have one or two questions I wanted to ask you, just to clear

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something up.

THE WITNESS: Okay.

EXAMINATION

BY MR. AIGEN:

Q. You talked about the founder's premium earlier.

Can you just again explain what that means?

A. Founder's premium in a private firm like this is the amount that a founder typically gets paid in excess of what a non-founder or ordinary executive gets paid.

Q. And I know you don't have a specific number but do you have an opinion on what the general founder's premium would be in this marketplace?

MR. MORRIS: Objection to the form of the question.

A. A premium could be very significant. It could be two or even three times what the -- what a typical executive might get paid.

Q. And what's that based on?

A. Just working with these founder-dominated firms, they often get paid an

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awful lot for -- for the role they play.

MR. AIGEN: That's all I have.

MR. MORRIS: Just a couple of questions, Mr. Johnson.

EXAMINATION (CONTINUED)

BY MR. MORRIS:

Q. You didn't make any disclosure concerning a founder's premium, correct?

A. No, I have not done that work.

Q. You did not conduct any analysis concerning a founder's premium, correct?

A. I have not.

MR. AIGEN: Object to form.

Q. And your report contains no opinion as to what you believe the founder's premium should be in this case, correct?

A. That is correct.

MR. MORRIS: Okay. No further questions. Thank you very much.

THE WITNESS: Thank you.

MR. MORRIS: Have a good day. Take care all.

(Whereupon the proceedings were concluded at 2:53 p.m.)

oOo

I, ALAN JOHNSON, the witness herein, do hereby certify that the foregoing testimony of the pages of this deposition to be a true and correct transcript, subject to the corrections, if any, shown on the attached page.

_____

ALAN JOHNSON

Subscribed and sworn to before me this

_____day of _____,_____.

_____

CERTIFICATE

I, AMY A. RIVERA, a Certified Shorthand Reporter, Registered Professional Reporter, Certified LiveNote Reporter, and Notary Public of the State of New York, do hereby certify that prior to the commencement of the examination ALAN JOHNSON, was duly sworn by me to testify the truth, the whole truth and nothing but the truth.

I DO FURTHER CERTIFY that the foregoing is a true and accurate transcript of the testimony as taken stenographically by and before me at the time, place and on the date hereinbefore set forth.

I DO FURTHER CERTIFY that I am neither a relative nor employee nor attorney nor counsel of any of the parties to this action, and that I am neither a relative nor employee of such attorney or counsel, and that I am not financially interested in the action.

_____

Notary Public of the State of New York
My commission expires December 6, 2021
License No. XI00939
Dated: November 2, 2021

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2 ERRATA SHEET FOR THE TRANSCRIPT OF:

3 Case Name: In Re: HIGHLAND CAPITAL MANAGEMENT,

4 L.P.

5 Dep. Date: November 2, 2021

6 Deponent: Alan Johnson

7 Reason codes:

8 1. To clarify the record.

2. To conform to the facts.

9 3. To correct transcription errors.

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11 From _____ to _____

12 Page ____ Line ____ Reason _____

13 From _____ to _____

14 Page ____ Line ____ Reason _____

15 From _____ to _____

16 Page ____ Line ____ Reason _____

17 From _____ to _____

18 Page ____ Line ____ Reason _____

19 From _____ to _____

20

21 _____

22 ALAN JOHNSON

23 Subscribed and sworn to before me

24 this day of 2021.

25 _____

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EXHIBIT 103

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EXHIBIT 104

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EXHIBIT 105

1 WATERHOUSE - 10-19-21

2 IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
3 DALLAS DIVISION
---
4 IN RE:

5 Chapter 11
HIGHLAND CAPITAL
6 MANAGEMENT, L.P., CASE NO.
19-34054-SGI11
7
Debtor.
8 ---
HIGHLAND CAPITAL MANAGEMENT, L.P.,
9
Plaintiff,
10 vs. Adversary
Proceeding No.
11 HIGHLAND CAPITAL MANAGEMENT 21-03000-SGI
FUND ADVISORS, L.P.; NEXPOINT
12 ADVISORS, L.P.; HIGHLAND
INCOME FUND; NEXPOINT
13 STRATEGIC OPPORTUNITIES FUND;
NEXPOINT CAPITAL, INC.; and
14 CLO HOLDCO, LTD.,

15 Defendants.

16

17 REMOTE VIDEOTAPED DEPOSITION OF

18 FRANK WATERHOUSE

19 October 19, 2021

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22

23

24 Reported by: Susan S. Klinger, RMR-CRR, CSR

25 Job No: 201195

WATERHOUSE - 10-19-21

October 19, 2021
9:30 a.m.

Remote Deposition of FRANK WATERHOUSE, held before Susan S. Klinger, a Registered Merit Reporter and Certified Realtime Reporter of the State of Texas.

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Ms. La Asia Canty

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P R O C E E D I N G S

VIDEOGRAPHER: Good morning, Counselors. My name is Scott Hatch. I'm a certified legal videographer in association with TSG Reporting, Inc.

Due to the severity of COVID-19 and following the practice of social distancing, I will not be in the same room with the witness. Instead, I will record this videotaped deposition remotely. The reporter, Susan Klinger, also will not be in the same room and will swear the witness remotely.

Do all parties stipulate to the validity of this video recording and remote swearing, and that it will be admissible in the courtroom as if it had been taken following Rule 30 of the Federal Rules of Civil Procedures and the state's rules where this case is pending?

MR. HORN: Yes.

MS. DANDENEAU: Yes.

MR. MORRIS: Yes. John Morris. I would just try to do a negative notice

here, as we did yesterday. If anybody has a problem with what was just stated, can you state your objection now?

Okay. No response, so everybody accepts the stipulation and the instruction that was just given.

VIDEOGRAPHER: Thank you. This is the start of media labeled Number 1 of the video recorded deposition of Frank Waterhouse In Re: Highland Capital Management, L.P., in the United States Bankruptcy Court for the Northern District of Texas, Dallas Division, Case Number 21-03000-SGI.

This deposition is being held via video conference with participants appearing remotely due to COVID-19 restrictions on Tuesday, October 19th, 2021 at approximately 9:32 a.m. My name is Scott Hatch, legal video specialist with TSG Reporting, Inc. headquartered at 228 East 45th Street, New York, New York. The court reporter is Susan Klinger in association with TSG Reporting.

Counsel, please introduce yourselves.

MR. MORRIS: John Morris, Pachulski Stang Ziehl & Jones for the reorganized Highland Capital Management, L.P., the plaintiff in these actions.

MS. DANDENEAU: Deborah Dandeneau from Baker McKenzie. My partner, Michelle Hartmann, is also in the room with me, representing Frank Waterhouse individually.

MS. DEITSCH-PEREZ: Deborah Deitsch-Perez from Stinson, LLP, representing Jim Dondero, Nancy Dondero, HCRA, and HCMS.

MR. HORN: Warren Horn with Heller, Draper & Horn in New Orleans representing Dugaboy Investment Trust.

MR. RUKAVINA: Davor Rukavina with Munsch Hardt Kopf & Harr in Dallas representing NexPoint Advisors, LP and Highland Capital Management Fund Advisors, L.P.

MR. AIGEN: Michael Aigen from Stinson, and I represent the same parties

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2 as Deborah Deitsch-Perez.
3 MS. NEWMAN: This is Deborah Newman
4 from Quinn Emanuel. We represent the
5 litigation – Marc Kirschner as the trustee
6 for the litigation SunTrust.
7 MR. MORRIS: I think that is
8 everybody.
9 VIDEOGRAPHER: Thank you. Will the
10 court reporter please swear in the witness.
11 FRANK WATERHOUSE,
12 having been first duly sworn, testified as
13 follows:
14 EXAMINATION
15 BY MR. MORRIS:
16 Q. Please state your name for the
17 record.
18 A. My name is Frank Waterhouse.
19 Q. Good morning, Mr. Waterhouse. I'm
20 John Morris, as you know, from Pachulski Stang
21 Ziehl & Jones. You understand that my firm and
22 I represent Highland Capital Management, L.P.;
23 is that right?
24 A. Yes.
25 Q. Okay. And do you understand that

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2 we're here today for your deposition in your
3 individual capacity?
4 A. Yes.
5 Q. Did you review and – did you
6 receive and review a subpoena that Highland
7 Capital Management, L.P., served upon you?
8 A. Yes.
9 Q. You have been deposed before; right?
10 A. Yes.
11 Q. How many times have you been
12 deposed?
13 A. About three or four times.
14 Q. Okay. And I defended you in one
15 deposition; isn't that right?
16 A. That is correct.
17 Q. So the general ground rules for this
18 deposition are largely the same as the
19 depositions you have given before. And that is
20 I will ask you a series of questions, and it is
21 important that you allow me to finish my
22 question before you begin your answer; is that
23 fair?
24 A. Yes.
25 Q. And it is important that I allow you

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2 to finish your answers before I begin a
3 question, but if I fail to do that, will you
4 let me know?
5 A. I can certainly do that.
6 Q. Okay. Do you understand that this
7 deposition is being videotaped?
8 A. Yes.
9 Q. You understand that I may seek to
10 use portions of the videotape in a court of
11 law?
12 A. I did not know that, until you just
13 said that.
14 Q. Okay. And you are aware of that now
15 before the deposition begins substantively; is
16 that right?
17 A. Yes.
18 Q. So unlike I think the other
19 depositions that you have given, this one is
20 being given remotely. So that presents some
21 unique challenges, at least as compared to a
22 deposition that is taken in-person.
23 From time to time we're going to put
24 documents up on the screen, Mr. Waterhouse.
25 And it is important that I give you the

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2 opportunity to review any portion of the
3 document that you think you need in order to
4 fully and completely answer the question.
5 So I would ask you to let me know if
6 there is a portion of a document that you need
7 to see in order to fully and completely answer
8 the question. Can you do that for me?
9 A. Yes.
10 MS. DANDENEAU: Mr. Morris, I would
11 just note that we do have hard copies of
12 the documents that you sent, so if you can
13 just refer to the exhibit number as
14 reflected in the documents that you sent,
15 Mr. Waterhouse will be able to look at the
16 hard copies of those documents.
17 MR. MORRIS: I appreciate that,
18 and – and I will encourage him to do so.
19 There will be other documents that we did
20 not send to you that we'll be using today
21 though.
22 Q. Okay. With that as background, if
23 there is anything that I ask you, sir, that you
24 don't understand, will you let me know?
25 A. Yes.

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Q. Okay. Are you currently employed?
A. Yes.
Q. By whom?
A. The Skyview Group.
Q. When did you become employed by the Skyview Group?
A. I believe March 1st of 2021.
Q. Do you have a title at Skyview?
A. Yes.
Q. What is your title?
A. My title is chief financial officer.
Q. Do you report to anybody in your role as CFO?
A. I don't, no.
Q. No. Is there a president or a CEO of Skyview?
A. Yes.
Q. Who is that?
A. That is Scott Ellington.
Q. But you don't report to Mr. Ellington; is that right?
A. I don't think so.
Q. Does Skyview Group –
MS. DANDENEAU: Excuse me, we –

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A. I – I – I might. I just – I don't recall.
Q. Okay. Does Skyview Group provide any services to any entity directly or indirectly owned or controlled by Jim Dondero?
A. Yes.
Q. Can you name – is that pursuant to written contracts?
A. Yes.
Q. And do you know how many contracts exist?
A. Approximately six or so.
Q. And is the Skyview Group made up of individuals who were formerly employees of Highland Capital Management, L.P.?
A. No.
Q. Do you know how many – how many – how many employees does Skyview have?
A. Approximately 35.
Q. And can you tell me how many of those 35 are former officers, directors, or employees of Highland Capital Management, L.P.?
A. I don't know the exact number.
Q. Is it more than 20?

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A. Yes.
Q. Is it more than 30?
A. I don't know.
Q. Can you tell me what portion of Skyview – Skyview's revenue is derived from entities that are directly or indirectly owned or controlled by Jim Dondero?
MS. DANDENEAU: Mr. Morris, I mean, you called Mr. Waterhouse here individually for purposes of his testimony in connection with the noticed litigation. I have given you some leeway to ask him some background information about Skyview Group, but this is not a substitute for a deposition in connection with any other pending disputes that exist. And – and we agreed to accept the subpoena on the basis of he – this is testimony that he is giving in connection with the noticed litigation.
I really think that you are now going a little bit far afield from the purpose of this deposition.
MR. MORRIS: Okay. It is – I'm not intending to use these – the answers to

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these questions for any purpose other than this litigation. I think you understand fully why I'm asking the questions, and I just have a couple more, if you will bear with me.
MS. DANDENEAU: Okay.
MS. DEITSCH-PEREZ: Can we have an agreement that an objection by one is an objection for any other party here?
MR. MORRIS: Sure. I would – I would encourage that, sure.
MS. DEITSCH-PEREZ: Thank you.
MR. MORRIS: It can't be sustained or overruled more than one time, so...
Q. Mr. Waterhouse, can you answer my question, please.
MS. DANDENEAU: Do you want to repeat it, Mr. Morris, for his benefit?
MR. MORRIS: Sure.
Q. Can you – can you tell me the approximate portion of Skyview's revenue that is derived from entities that are directly or indirectly owned or controlled by Mr. Dondero?
A. I don't know the exact number.

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Q. Is it more than 75 percent?
A. Yes.
Q. Is it more than 90 percent?
A. I don't know.
Q. Okay. Can I refer to Highland Capital Management, L.P., as Highland?
A. Yes.
Q. All right. And you previously served as Highland's CFO; correct?
A. Yes.
Q. When did you join Highland?
A. I don't recall the exact date.
Q. Can you tell me what year?
A. 2006.
Q. When did you -- in what year did you become Highland's CFO?
A. I don't recall the exact date.
Q. I'm not asking you for the exact date. I'm asking you if you recall the year in which you were appointed CFO.
A. I don't recall the exact year.
Q. Can you tell me which years it is possible that you were appointed to CFO of Highland?

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A. 2011 or 2012.
Q. Did you serve as Highland's CFO on a continuous basis from in or around 2011 or 2012 until early 2021?
A. Yes.
Q. During that entire time you reported directly to Jim Dondero; correct?
A. I -- I don't know.
Q. Is there anybody else you reported to -- withdrawn.
Did you report to Mr. Dondero for some portion of the time that you served as CFO?
A. Yes.
Q. Is there a portion of time that you don't recall who you reported to?
A. Yes.
Q. What portion of time do you have in your mind when you can't recall who you reported to?
A. From the 2011 to -- for approximately a year or two.
Q. Okay. So is it fair to say that you reported to Mr. Dondero in your capacity as CFO

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from at least 2014 until the time you left Highland?
MS. DANDENEAU: Objection to form.
A. I don't want to speculate the exact or what year that changed or -- so I would like to stick with my testimony.
Q. Can you recall when you began reporting to Mr. Dondero?
A. I don't recall.
Q. Can you -- can you give me an estimate of what year you think you might have began reporting to Mr. Dondero?
A. I will go back to my prior testimony.
Q. Okay. There is no -- you have no ability to tell me when you began reporting to Mr. Dondero.
Do I have that right?
MS. DANDENEAU: Objection to form.
A. I don't recall.
Q. Okay. Do you recall who you might have reported to before you began reporting to Mr. Dondero?
A. Yes.

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Q. Who might you have reported to in your capacity as CFO before you started reporting to Mr. Dondero?
A. That would have been Patrick Boyce.
Q. Are you aware that Highland filed for bankruptcy on October 19th, 2019?
A. Yes.
Q. And we refer to that as the petition date?
A. Yes.
Q. Okay. Do you hold any professional licenses, sir?
A. Yes.
Q. Can you tell me what professional licenses you hold?
A. I'm a certified public accountant.
Q. Okay. Anything else?
A. No.
Q. Do you have any other professional licenses or certificates?
A. When you say "professional license," that is not education?
Q. Tell me -- sure. Anything other than a driver's license.

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Do you have any other license or certificate or certification?

A. Are you asking, like, where I went to school and the –

Q. I am not. I am not. I didn't say education. I didn't ask about degrees.

Do you know what a license is?

A. Well, yeah, I mean, a license is something you get after you receive a certain level of proficiency.

Q. Do you have any licenses or certifications other than your CPA?

MS. DANDENEAU: Objection, form.

I assume you mean professional licenses, Mr. Morris; correct?

Q. Can you answer my question, sir?

A. Mr. Morris, I'm thinking. I don't – I don't think I have any others.

Q. Are you familiar with an entity called Highland Capital Management Fund Advisors?

A. Yes.

Q. Were you ever – can we refer to that entity as HCMFA?

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A. Yes.

Q. Were you ever employed by HCMFA?

A. Not that I recall.

Q. Were you ever – did you ever hold the title of an officer or director of HCMFA?

A. Yes.

Q. What title did you hold?

A. Treasurer.

Q. When did you become the treasurer of HCMFA?

A. I don't recall.

Q. Can you tell me the year?

A. I don't – I don't know the year.

Q. Can you approximate the year in which you became the treasurer of HCMFA?

A. I don't know.

Q. Can you tell me if it was before or after 2016?

A. I don't recall.

Q. Are you still the – do you know if you're still the treasurer of HCMFA today?

A. Today, I am the acting treasurer for HCMFA.

Q. Is there a distinction between

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treasurer and acting treasurer?

A. I said "acting treasurer" as I am an employee of Skyview, as you previously stated – or asked.

Q. But you are the treasurer of HCMFA today; correct?

A. I am – I am the acting treasurer for HCMFA.

Q. How did you become the treasurer of HCMFA?

A. Are you asking how I became the treasurer of HCMFA today?

Q. How did you become appointed to serve as the treasurer of HCMFA?

A. Well, in – in – in what time capacity?

Q. The first time that you were appointed.

A. First time. I believe I was asked to serve as treasurer for HCMFA the first time.

Q. By who? Who asked you to do that?

A. I don't recall.

Q. Is there anything that would refresh your recollection as to who appointed you as

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the treasurer of CF- – HCMFA for the first time?

A. I don't – I mean, there would be some documents, some legal documents. I don't know where those are.

Q. How many times have you been appointed the treasurer of HCMFA?

A. I don't know.

Q. Was it more than once?

A. I don't know.

Q. Can you tell me any period of time since 2016 that you did not hold the title of treasurer of HCMFA?

MS. DANDENEAU: Objection to form.

A. I don't recall.

Q. What are your duties and responsibilities as the treasurer of HCMFA?

A. My duties are to do the best job that I can as the – as an accountant and finance guy.

Q. What specific duties and responsibilities do you have as the treasurer of HCMFA?

A. My duties are to do the best job

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that I can as the accounting and finance person for HCMFA.

Q. As the accounting and finance person for HCMFA, do you have any particular areas of responsibility?

A. Yeah, it is to manage the accounting and finance function for HCMFA.

Q. Would that include -- do you have responsibility for overseeing HCMFA's annual audit?

A. Can I please elaborate on my prior question?

Q. Of course. You -- you are giving answers. I'm asking questions.

A. Okay. Yes, so the -- it -- like I said, it is to manage the accounting finance aspect, but I am, as we discussed, the treasurer. That is -- being treasurer is what gives me that -- that management function.

Q. Does anybody report to you in your capacity as treasurer of HCMFA?

A. I don't believe so.

Q. Does HCMFA have a chief financial officer?

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A. I don't -- I don't know.

Q. You don't know?

You're the treasurer of HCMFA but you don't know if HCMFA has a chief financial officer.

Do I have that right?

A. That's right.

Q. Okay. Have you heard of a company called NexPoint Advisors?

A. Yes.

Q. We will refer to that as NexPoint. Okay?

A. Okay.

Q. Were you ever employed by NexPoint?

A. I don't recall.

Q. Did you ever hold any title with respect to the entity known as NexPoint?

A. Yes.

Q. What titles have you held in relation to NexPoint?

A. Treasurer. I think it was only treasurer.

Q. Can you tell me the approximate year you became the treasurer of NexPoint?

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A. I don't know.

Q. Are you still the treasurer of NexPoint today?

A. I am the acting treasurer for NexPoint.

Q. When did your title change from treasurer to acting treasurer?

A. I don't know.

Q. Did your duties and responsibilities change at all when your title was changed from treasurer to acting treasurer?

A. I don't -- I don't believe so.

Q. Why did --

A. I still manage the finance and accounting function for NexPoint.

Q. Why did your title change from treasurer to acting treasurer?

A. I don't -- I'm using the term "acting treasurer" as I'm a Skyview employee. I don't -- I don't know -- again, I am a -- as I am the Skyview employee.

Q. Okay.

A. And we -- we provide officer services.

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Q. And you serve as an officer of HCMFA; correct?

A. I think we went over that with my testimony. Yes, I'm the acting treasurer for HCMFA.

Q. And you are an officer of NexPoint; correct?

A. I think -- I am the acting treasurer for NexPoint Advisors.

Q. And -- and who appointed you acting treasurer of NexPoint Advisors?

A. I don't recall specifically.

Q. Do you have any recollection of who might have appointed you the treasurer of NexPoint?

A. I mean, it -- it -- I don't recall exactly who it was.

Q. Who were the possibilities?

MS. DEITSCH-PEREZ: Object to the form.

Q. You can answer.

A. Someone in the legal group for NexPoint. The other officers as well.

Q. Have you heard of a company called

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Highland Capital Management Services, Inc.?
A. Yes.
Q. We will refer to that as HCMS.
Okay?
A. HCMS. Okay.
Q. Were you ever employed by HCMS?
A. No.
Q. Have you ever held any titles in relation to HCMF -- I apologize -- HCMS?
A. Yes.
Q. What titles have you held in relation to HCMS?
A. Treasurer and acting treasurer.
Q. When did you first become treasurer or acting treasurer of HCMS?
A. I don't recall the exact dates.
Q. Can you recall -- can you approximate the year that you became the treasurer of HCMS?
A. I don't -- I don't know.
Q. Are you still the treasurer of HCMS today?
A. I am the acting treasurer for HCMS.
Q. And are your duties and

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responsibilities as the acting treasurer for HCMS and the acting treasurer for NexPoint the same as your duties and responsibilities in your role as the acting treasurer of HCMFA?
A. More or less.
Q. Have you ever heard of a company called HCRE Partners, LLC?
A. Yes.
Q. And do you understand that that entity is now known today as NexPoint Real Estate Partners?
A. I did not know that.
Q. All right. Can we refer to HCRE Partners as HCRE?
MS. DANDENEAU: Objection to form.
Did you mean NexPoint Real Estate Partners, Mr. Morris?
MR. MORRIS: No.
MS. DANDENEAU: Oh.
MR. MORRIS: He said he wasn't familiar that it was succeeded by that entity. So --
MS. DANDENEAU: Okay.
MR. MORRIS: -- let's go with what

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the witness knows.
Q. You're familiar with an entity called HCRE Partners, LLC; correct?
A. Yes.
Q. Okay. So that is the entity that we will refer to as HCRE. If you're aware of any successor, that is great. If not, let's just define it as such.
Have you ever been employed by HCRE or any entity that you know to have succeeded HCRE?
A. No.
Q. Did you ever serve as an officer or director of HCRE or any successor?
A. Not that I recall.
Q. Okay. Can we refer to NexPoint and HCMFA as the advisors?
A. Yes.
Q. In general, the advisors provided investment advisory services to certain retail funds; correct?
A. Yes.
Q. And we will refer to the retail funds that are served by the advisors

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collectively as the retail funds; is that okay?
A. Okay.
Q. Each of the retail funds is governed by a board; correct?
A. Yes.
Q. And do you know the people who serve on the boards of the retail funds?
MS. DANDENEAU: Objection to form.
A. I don't know all of them.
Q. Do you know whether the same people serve on the board of each of the retail funds as we've defined that term?
A. Which -- so when you say "retail funds" -- again, I want to be -- what retail funds are you referring to, because there are -- there are several distinctions?
What retail funds are you using when you refer to them?
Q. That is why -- that is why I tried to define the terms. So let me do it again.
Retail funds for the purposes of this deposition means any retail fund to which either of the advisors provides advisory services. Okay?

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A. Okay.
Q. Okay. So do you know whether the same people serve on the board of each of the retail funds?
A. I don't know.
Q. Were you ever employed by any of the retail funds?
A. No.
Q. No?
A. No.
Q. Okay. Do you have any title with respect to any of the retail funds?
A. Yes.
Q. What titles do you hold -- withdrawn.
Do you have the same titles with respect to all of the retail funds or do they -- or just something else?
MS. DANDENEAU: Objection to form.
Q. Withdrawn.
Do you have the same title with respect to each of the retail funds?
A. No.
Q. Tell me which title you have with

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respect to each retail fund.
Actually, let's do it a different way. I withdraw the question.
Can you give me one title you have in relation to any retail fund?
A. Yes.
Q. What title -- what title can you give me?
A. Principal executive officer.
Q. Do you serve as principal executive officer for each of the retail funds?
A. No.
Q. Can you identify for me the retail funds in which you serve as the principal executive officer?
A. Yes. Highland Funds 1, Highland Funds 2, Highland Income Fund, Highland Global Allocation Fund.
Q. I'm sorry, you said "Global Allocation Fund"?
A. Yes.
VIDEOGRAPHER: Excuse me, Mr. Morris. This is the videographer. I'm concerned about the lighting in the

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witness' camera.
Do you want to go off the record and make some adjustments?
MR. MORRIS: Sure, but just for this purpose. I don't want to take a break. We just started.
MS. DANDENEAU: Yeah, that is fine. That is fine. We're going to put you on mute.
MR. MORRIS: All right.
MS. DANDENEAU: I'm going to try to open up some of the shades.
VIDEOGRAPHER: We're going off the record at 10:08 a.m.
(Recess taken 10:08 a.m. to 10:11 a.m.)
VIDEOGRAPHER: We are back on the record at 10:11 a.m.
Q. Mr. Waterhouse, when did you become the principal executive officer of the four retail funds that you just identified?
A. I don't recall.
Q. Do you recall the approximate year that you became the principal executive officer of the four funds?

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A. 2021.
Q. Did you ever hold any title with respect to any of the four funds you have just identified other than principal executive officer?
A. I don't recall.
Q. Is it possible that you held a position or a title with the four funds you just identified prior to 2021?
A. Yes.
Q. But you don't recall if you did or not; do I have that right?
A. No. You -- I thought you asked, did I hold other titles.
Q. Did you hold any title at the four retail funds for which you now serve as principal executive officer at any time prior to 2021?
A. Yes.
Q. What titles did you hold?
A. I don't recall all the titles.
Q. Do you recall any of the titles?
A. Yes.
Q. What titles do you recall holding at

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those four retail funds before 2021?

A. Principal executive officer.

Q. Were you the principal executive officer of the four retail funds that you have identified?

A. Sorry, could you repeat the question?

Q. Were you the principal executive officer for each of the four retail funds that you have identified?

A. Yes.

Q. When did you become the principal executive -- withdrawn.

Can you give me the approximate year that you became the principal executive officer for each of the four retail funds you've identified?

A. I don't recall.

Q. What are your duties and responsibilities as the principal executive officer of these four retail funds?

A. It is to manage the finance and accounting positions.

Q. So at the same time you serve as the

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treasurer of the advisors, you also serve as the principal executive officer of these four retail funds; correct?

A. Yes.

Q. Did you ever hold any title with respect to any other retail fund?

A. Not that I recall.

Q. During the period that you served as Highland's CFO, from time to time Highland loaned money to certain of its officers and employees; correct?

A. Yes.

Q. During the period that you served as Highland's CFO, from time to time Highland loaned money to certain --

A. Let me -- let me retract that, sorry, that -- you asked during the time I was CFO, Highland loaned moneys to employees. I don't -- I don't recall that during my tenure of CFO.

Q. You have no recollection during the time that you were the CFO of Highland of Highland ever loaning any money to any officer or director of Highland?

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A. I don't recall during my tenure of Highland or my -- as CFO of Highland -- yeah, if there are any loans as CFO of Highland.

Q. I'm just talking about officers and employees right now. You have no recollection of Highland ever making a loan to any of its officers or employees during the time that you served as CFO. Do I have that right?

MS. DANDENEAU: Objection to form.

A. So I thought you were saying officers and employees as CFO, right, so there were -- I mean, okay, yes.

Q. I would ask you to listen carefully to my question. If I -- if I'm not clear, let me know, but I'm really trying to be as clear as I can.

A. I'm listening as carefully as I can, and you are asking very specific questions in a timeline. And I'm trying to answer your questions as specifically as I can, and I apologize if -- if I'm going back. I am -- you are asking very specific questions. Thank you.

Q. During the period that you served as Highland's CFO, from time to time Highland

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loaned money to certain corporate affiliates; correct?

MS. DANDENEAU: Objection to form.

A. What are corporate affiliates?

Q. How about the ones that are in Highland's audited financial statements under the section entitled Loans to Affiliates. Why don't we start with those. Do you have any understanding of what the phrase "affiliates" means?

MS. DANDENEAU: Objection to form.

A. I understand what affiliates are, yet affiliates can have different meanings in different contexts, so...

Q. Why don't you -- why don't you tell me what your understanding of the term "affiliate" is in relation to Highland Capital Management, L.P.

A. Is that a -- it depends on the context.

Q. How about the context of making loans?

MS. DANDENEAU: Objection to form.

A. I didn't make the determination of

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who an affiliate was or is at the time those --
I didn't -- that wasn't my job to make a
determination of who an affiliate is.
Q. All right. So as the CFO of
Highland, do you have any ability right now to
tell me which companies that were directly or
indirectly owned and/or controlled by
Mr. Dondero in whole or in part received loans
from Highland Capital Management, L.P.?
MS. DANDENEAU: Objection to form.
MS. DEITSCH-PEREZ: Objection, form.
A. Yes.
Q. Okay. Identify every entity that
you can think of that was directly or
indirectly owned and/or controlled by
Mr. Dondero in whole or in part that received a
loan from Highland Capital Management, L.P.
MR. RUKAVINA: Objection, legal
conclusion.
A. NexPoint Advisors, Highland Capital
Management Fund Advisors, HCM Services,
Dugaboy. Sorry, I don't think -- Dugaboy
doesn't fit that definition. You said owned
and controlled. I don't think that that

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definition --
Q. I said owned and/or controlled.
A. I don't -- again, I'm not -- I'm not
the legal expert. I don't think it controls --
he controls Dugaboy, so again, I'm not the
legal person.
Q. I'm not asking you for a legal
conclusion, sir. I'm asking you for your
knowledge, okay, as the CFO -- the former CFO
of Highland Capital Management, other than
NexPoint, HCMFA, and HCMF -- HCMS, can you
think of any other entities that were owned
and/or controlled directly or indirectly in
whole or in part by Jim Dondero who received a
loan from Highland Capital Management, L.P.?
MS. DANDENEAU: Objection to form.
A. HCRE.
Q. Any others?
A. That is -- that is all I can think
of.
Q. And you're aware that from time to
time while you were the CFO, Highland loaned
money to Jim Dondero; correct?
A. Yes.

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Q. Okay. Can we refer to the four
entities that you just named and Mr. Dondero as
the affiliates?
A. So that would be Jim Dondero,
NexPoint Advisors, Highland Capital Management
Fund Advisors, and HCRE.
Q. And HCMS?
A. And HCMS, okay.
Q. And can we refer to the loans that
were given to each of those affiliates as the
affiliate loans?
A. Yes.
Q. And is it fair to say that each of
the affiliates were the borrowers under the
affiliate loans as we're defining the term?
MR. RUKAVINA: Objection, legal
conclusion.
A. The borrowers are whoever were on
the notes. I don't -- I don't know. I'm not
the legal person.
Q. But you --
A. I don't know.
Q. You do know, as Highland's former
CFO, that each of the affiliates that you have

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identified tendered notes to Highland; correct?
MR. RUKAVINA: Hey, John, will you
just give me a running objection to legal
conclusion to HCM --
MR. MORRIS: No. No, if you want to
object --
MR. RUKAVINA: I will object every
time. Object to legal conclusion.
MR. MORRIS: That is fine.
A. Sorry, can you repeat the question?
Q. Are you aware that each of the --
that each of the affiliates, as we have defined
the term, gave to Highland a promissory note in
exchange for the loans?
MR. RUKAVINA: Objection to the
extent that calls for a legal conclusion.
A. I don't.
Q. No, you don't know that?
A. No, they didn't -- you said they
exchanged a promissory note for a loan. I
don't -- I don't understand that question, so I
said no.
Q. At the time of the bankruptcy
filing, did Highland have in its possession

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2 promissory notes that were signed by each of
3 the affiliates?
4 A. Yes.
5 Q. To the best of your knowledge,
6 during the time that you served as Highland's
7 CFO, did Highland disclose to its outside
8 auditors all of the loans that were made to
9 affiliates?
10 MR. RUKAVINA: Objection, that calls
11 for a legal conclusion.
12 MS. DEITSCH-PEREZ: I also couldn't
13 hear you, John, because there was some
14 garbling on -- on the -- on the call.
15 MR. MORRIS: Folks, I've got to tell
16 you this is not going well, and I'm
17 reserving my right --
18 MS. DANDENEAU: John, it was just
19 the end of that question. It was just the
20 end of that question. I couldn't hear it
21 either. Sorry, if you could repeat it,
22 please.
23 MR. MORRIS: That is less than an
24 hour into this, but folks are trying to run
25 out the clock, and so I'm just going to

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2 state that now.
3 MS. DANDENEAU: You know, and,
4 Mr. Morris, I really object to that. I
5 mean --
6 MR. MORRIS: Okay.
7 MS. DANDENEAU: -- Mr. Waterhouse
8 just told you he's trying to listen to your
9 questions and answer them carefully, and
10 you have no basis for saying that.
11 MR. MORRIS: Okay.
12 MS. DANDENEAU: This does not --
13 this is not an experienced witness, so he's
14 trying to do the best he can.
15 Q. Mr. Waterhouse, during the time that
16 you served as Highland's CFO, did Highland
17 disclose to its outside auditors all of the
18 loans that it made to each of the affiliates
19 that you have identified?
20 MR. RUKAVINA: Objection, legal
21 conclusion.
22 A. Yes.
23 Q. To the best of your knowledge, while
24 you were Highland's CFO, were all of the
25 affiliate loans described in Highland's audited

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2 financial statements?
3 MR. RUKAVINA: Objection, legal
4 conclusion.
5 A. When an audit was performed, any
6 loans that were made by Highland to the
7 affiliates were disclosed to auditors.
8 Q. Are you aware of any loan that was
9 made to any affiliate that was not disclosed to
10 the auditors?
11 A. I'm not aware.
12 Q. To the best of your knowledge, did
13 each of the affiliates who were --
14 (inaudible) -- loaned from Highland execute a
15 promissory note in connection with that loan?
16 MR. RUKAVINA: Objection, legal
17 conclusion.
18 A. Sorry, you -- halfway through the
19 question it got muffled.
20 Can you repeat that again?
21 Q. To the best of your knowledge, did
22 every affiliate execute a promissory note in
23 connection with each loan that it obtained from
24 Highland?
25 MR. RUKAVINA: Objection, legal

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2 conclusion.
3 A. Yes.
4 Q. You are not aware of any loan that
5 any affiliate ever obtained from Highland where
6 the affiliate did not give a promissory note in
7 return; is that fair?
8 A. Yes, I'm not aware.
9 Q. And to the best of your knowledge,
10 did Highland loan to each affiliate an amount
11 of money equal to the principal amount of each
12 promissory note?
13 MR. RUKAVINA: Objection, legal
14 conclusion.
15 A. Yes.
16 Q. During the time that you served as
17 CFO, did Highland ever loan money to
18 Mark Okada?
19 A. I -- I don't recall.
20 Q. Did you ever see any promissory
21 notes executed by Mark Okada?
22 A. I don't recall.
23 Q. Do you know if Highland ever forgave
24 any loan that it ever made to Mr. Okada?
25 A. I don't recall.

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Q. Do you recall if Mr. Okada paid back all principal and interest due and owing under any loan he obtained from Highland?

MS. DEITSCH-PEREZ: Objection to form.

MS. DANDENEAU: Objection to form.

A. I don't recall.

Q. Do you recall whether -- during your time as CFO, whether Highland ever loaned money to Jim Dondero?

A. Yes.

Q. To the best of your knowledge, did Mr. Dondero sign and deliver to Highland a promissory note in connection with each loan that he obtained from Highland?

A. If you are referring to the promissory notes that, you know, part of Highland's records, yes.

Q. Okay. You're not aware of any loan that Mr. Dondero took from Highland that wasn't backed up by -- by a promissory note with a face -- with a principal amount equal to the amount of the loan; correct?

A. Am I aware that Jim Dondero took a

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loan?

Q. Without giving a -- let me ask a better question. I'm sorry, Mr. Waterhouse.

Are you aware of any loan that Mr. Dondero obtained from Highland where he didn't give a promissory note in return?

A. I'm not aware.

Q. During the time that you served as Highland's CFO, did Highland ever forgive any loans, in whole or in part, that it made to Mr. Dondero?

A. Not that I'm aware.

Q. At the time that you served as Highland's CFO, did Highland ever forgive any loan, in whole or in part, that it made to any affiliate as we've defined the term today?

A. Not that I'm aware.

Q. During the time that you served as Highland's CFO, did Highland ever forgive, in whole or in part, any loan that it ever made to any officer or employee?

A. Highland forgave loans to officers and employees. It may not have been at the time when my title was CFO.

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Q. Okay. And so I appreciate the distinction.

Is it fair to say that, to the best of your knowledge, Highland did not forgive a loan that it made to an officer or employee after 2013?

MS. DANDENEAU: Objection to form.

A. I don't recall.

Q. To the best of your knowledge, did Highland disclose to its auditors every instance where it forgave, in whole or in part, a loan that it had made to one of its officers or employees?

A. No.

Q. Can you think of -- can you -- can you identify any loan to an officer or employee that was forgiven by Highland, in whole or in part, that was not disclosed to Highland's outside auditors?

A. Look, I don't recall all of the loans and the loan forgiveness. I just know as part of the audit process there is a materiality concept.

So if there were loans to employees

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that were of -- you know, that were deemed immaterial, those items may not have been disclosed by the team to the auditors.

Q. I appreciate that.

Do you have an understanding as to what the level of materiality was?

A. I don't recall.

Q. As the CFO of Highland, to the best of your knowledge, did Highland disclose to its outside auditors every loan that was forgiven, in whole or in part, that was material as that term was defined by the outside auditors?

A. Yes.

Q. And do you recall where -- do you recall where the definition of materiality can be found for -- for this particular purpose?

MS. DANDENEAU: Objection to form.

A. No. You -- I don't determine materiality.

Q. Okay. I'm just asking you if you can help me understand where it is, but I think we will find it in a few minutes.

You are aware that Highland has commenced lawsuits against each of the

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2 affiliates, as we've defined the term, to
3 collect under certain promissory notes; is that
4 right?
5 A. Yes.
6 Q. And are you familiar with the notes
7 that are issue -- at issue in the lawsuits?
8 MS. DANDENEAU: Objection to form.
9 A. Generally familiar.
10 Q. Can we refer to the lawsuits that
11 Highland has commenced against the affiliates
12 collectively as the lawsuits?
13 A. Yes. And, again, the affiliates are
14 NexPoint, HCMFA, HCMS, and HCRE.
15 Q. And Mr. Dondero?
16 A. Okay. See, that is a new -- and now
17 Mr. Dondero is included in your affiliate
18 definition.
19 Q. I just --
20 A. I thought affiliates -- I thought
21 affiliates were just the four prior entities,
22 so I just want to be clear.
23 Q. I appreciate that. So let's --
24 let's keep them separate and let's refer to the
25 four corporate entities as the affiliates, and

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2 Mr. Dondero we will call Mr. Dondero. Okay?
3 A. Okay. Thank you. As you can see,
4 Mr. Morris, there is a lot of entities -- a lot
5 here. I just want to be clear.
6 Q. Okay. Now, the affiliates of
7 Mr. Dondero signed promissory notes that are
8 not subject to the lawsuit.
9 Do you understand that?
10 MS. DANDENEAU: Objection to form.
11 A. The affiliates and Mr. Dondero
12 signed --
13 Q. You know what? I will skip it.
14 That is okay. Okay.
15 From time to time while you were
16 Highland's CFO, payments were applied against
17 principal and interests that were due under the
18 notes that were tendered by the affiliates and
19 Mr. Dondero; correct?
20 MR. RUKAVINA: Objection to the
21 extent that calls for a legal conclusion.
22 A. Yes.
23 Q. Did Highland have a process where --
24 whereby payments would be applied against
25 principal and interest against the notes that

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2 were given by the affiliates and Mr. Dondero?
3 A. Yes.
4 Q. Can you describe the process for me?
5 A. The process, payment should be
6 applied as laid out in the -- in the promissory
7 note.
8 Q. From time to time were payments made
9 that were not required under the promissory
10 notes?
11 MS. DANDENEAU: Objection to form.
12 A. Yes.
13 Q. Who was responsible for deciding
14 when and how much the payments would be made
15 with respect to each of the notes that were
16 issued by the affiliates and Mr. Dondero?
17 A. Who was responsible for deciding how
18 much was paid prior to the due date?
19 Q. Yes.
20 A. I don't know.
21 Q. Did you approve of each payment that
22 was made against principal and interest on the
23 notes that were given by the affiliates and
24 Mr. Dondero?
25 MS. DANDENEAU: Objection to form.

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2 A. Did I approve the payments? I
3 approve -- I approve -- if there was cash -- if
4 there was cash being repaid on a note payment,
5 yes, I approved in the general sense of being
6 made aware of the payment and the amount.
7 Q. And are you the person who
8 authorized Highland's employees to effectuate
9 those payments?
10 A. Yes.
11 Q. When you gave the instruction to
12 effectuate the payment, did you obtain
13 Mr. Dondero's prior approval?
14 A. I mean, it -- I mean, it -- it
15 depends.
16 Q. Can you think of any instance where
17 you directed Highland's employees to make a
18 payment of principal or interest against any
19 note that was tendered by an affiliate or
20 Mr. Dondero that Mr. Dondero did not approve of
21 in advance?
22 A. I can't recall specifically.
23 Q. Can you identify -- withdrawn.
24 Did Mr. Dondero ever tell you that a
25 payment that was made against principal and

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2 interest due under one of the notes that was
3 tendered by an affiliate or himself should not
4 have been made?
5 A. Yes.
6 Q. Can you identify the payment for me?
7 A. It would be for -- for NexPoint
8 Advisors.
9 Q. Okay. And when did Mr. Dondero tell
10 you that a payment that you had initiated on
11 behalf of NexPoint should not have been made?
12 A. I wasn't initiating payment. It was
13 in the context of the -- I think you used this
14 term, "the advisors," so NexPoint Advisors and
15 Highland Capital Management Fund Advisors had
16 overpaid on certain agreements with Highland
17 Capital Management, L.P. And as a part of that
18 process, the advisors -- what I was told at the
19 time were in talks and negotiations and
20 discussions with Highland Capital Management,
21 L.P., on offsets in relation to those
22 overpayments.
23 Q. When did this conversation take
24 place?
25 MS. DANDENEAU: Objection to form.

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2 A. I don't recall specifically.
3 Q. Do you recall what year it was?
4 A. Yes.
5 Q. What year did the conversation with
6 Mr. Dondero take place that you just described?
7 A. 2020.
8 Q. Okay. Do you remember if it was
9 December 2020?
10 A. It -- it -- I don't -- I don't
11 recall what month specifically, but it would
12 have been November or December.
13 Q. And we're talking here about a
14 payment of principal and/or interest that was
15 due -- withdrawn.
16 We're talking here about a payment
17 of principal and interest that was applied
18 against NexPoint's note; correct?
19 MS. DANDENEAU: Objection to form.
20 A. I don't recall what that payment
21 consisted of.
22 Q. Is it possible that the payment you
23 have in mind related to the shared services
24 agreement?
25 MS. DANDENEAU: Objection to form.

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2 A. No.
3 Q. Are you certain that the payment --
4 that the payment that you have in mind related
5 to the promissory note that NexPoint issued in
6 favor of Highland?
7 MS. DANDENEAU: Objection to form.
8 A. Yes.
9 Q. Okay. Other than that one payment,
10 can you identify any other instance where
11 Mr. Dondero told you that a payment should not
12 have been applied against principal and
13 interest under any promissory note tendered by
14 any affiliate or Mr. Dondero?
15 MS. DANDENEAU: Objection to form.
16 MS. DEITSCH-PEREZ: Objection to
17 form.
18 A. Not that I recall.
19 Q. Thank you very much.
20 Do you know if Mr. Dondero approved
21 in advance of each loan made to each affiliate
22 and himself during the time that you were the
23 CFO?
24 MS. DEITSCH-PEREZ: Object to the
25 form.

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2 A. Yes, generally.
3 Q. Can you identify any loan that was
4 ever made to an affiliate or to Mr. Dondero
5 that Mr. Dondero did not approve of in advance?
6 A. Other than the ones that are in
7 dispute, I'm not aware.
8 Q. Do you believe that Mr. Dondero did
9 not approve of each of the loans that are in
10 dispute in advance of the time that the loan
11 was made?
12 MS. DANDENEAU: Objection to form.
13 A. Given what is in the dispute, you
14 know, and -- and -- and the way things might --
15 yeah, I mean...
16 Q. I am not asking about the dispute,
17 and it was probably my mistake to follow you
18 there.
19 Were you aware of every loan made by
20 Highland to each of its affiliates and
21 Mr. Dondero while you were the CFO at the time
22 each loan was made?
23 A. Was I aware of every loan, yes.
24 Q. Okay. And if you put yourself back
25 in time, do you recall that any of the loans

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2 that were made to one of the affiliates or
3 Mr. Dondero during the time that you were the
4 CFO was made without Mr. Dondero's prior
5 knowledge and approval?
6 A. Not that I recall.
7 Q. Thank you. In fact, do you -- as
8 the CFO, would you have allowed Highland to
9 loan money to an affiliate or to Mr. Dondero
10 without obtaining Mr. Dondero's prior approval?
11 MS. DANDENEAU: Objection to form.
12 A. I can't -- there was so many times
13 over the years, I can't speak for every single
14 one, but generally, yes, I -- I spoke to him.
15 Q. You -- you never -- you never --
16 withdrawn. I will just take that.
17 Can you recall any payment that was
18 ever made against principal and interest on a
19 note that was issued in favor of Highland by an
20 affiliate or Mr. Dondero that you personally
21 did not know about in advance?
22 A. There are so many through the years,
23 I don't -- I don't -- I don't recall every
24 single one.
25 Q. Okay. Can you identify any payment

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2 that was made against principal and interest on
3 any note tendered by any affiliate or
4 Mr. Dondero that you didn't know about in
5 advance?
6 A. I don't recall.
7 Q. Other than Mr. Dondero -- withdrawn.
8 Did anybody at Highland have the
9 authority to make a payment against principal
10 and interest due under a loan given to the
11 affiliates and Mr. Dondero without your
12 knowledge and approval?
13 MS. DANDENEAU: Objection to form.
14 A. Sorry, there was -- to make a
15 payment on an affiliate loan, what you are
16 saying would it require my knowledge and
17 approval, yes.
18 Q. Okay. I appreciate that. Thank
19 you.
20 Did anybody at Highland have the
21 authority, to the best of your knowledge, to
22 effectuate a loan to an affiliate without
23 Mr. Dondero's prior knowledge and approval?
24 MS. DANDENEAU: Objection to form.
25 A. I can't speak for all, but

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2 generally, yes.
3 Q. Did you personally communicate with
4 Mr. Dondero to let him know each time a payment
5 of principal or interest was being made against
6 any note that was tendered by an affiliate or
7 Mr. Dondero to Highland?
8 A. I don't -- are you saying, did I let
9 Mr. Dondero know if a payment was made on any
10 affiliate or loan to Mr. Dondero? I mean,
11 not -- not every -- no.
12 Q. Let me ask it this way: Did you
13 have a practice of informing Mr. Dondero when
14 payments were made against principal and
15 interest on any note that was tendered by an
16 affiliate or Mr. Dondero?
17 MS. DEITSCH-PEREZ: Objection to
18 form.
19 MS. DANDENEAU: Objection to form.
20 A. No, I did not.
21 Q. Did Mr. Dondero ever tell you that a
22 payment of principal or interest had been made
23 against a note that was tendered by an
24 affiliate or himself that he had been unaware
25 of?

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2 A. Not that I recall.
3 Q. Are you aware that Mr. Dondero and
4 the affiliates -- withdrawn.
5 Are you aware that Mr. Dondero
6 NexPoint, HCRE, and HCMS all contend that they
7 do not have to pay on any of the notes they
8 issued because they are subject to an oral
9 agreement between Mr. Dondero and Nancy
10 Dondero, in her capacity as the trustee of the
11 Dugaboy Investment Trust?
12 MS. DANDENEAU: Objection to form.
13 A. I didn't -- I didn't -- I didn't
14 know that it was all notes.
15 Q. Okay. Are you -- did you ever learn
16 that there was an oral agreement between Jim
17 Dondero and Nancy Dondero pertaining to any
18 notes issued by any affiliate or Mr. Dondero?
19 MS. DEITSCH-PEREZ: Object to the
20 form.
21 A. Yes.
22 Q. Do you have any understanding as to
23 the terms of that agreement?
24 A. Yes.
25 Q. What is your understanding of the

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terms of the agreement?

A. That there were certain milestones that had to be reached.

Q. Do you have any understanding of the terms of the agreement between Mr. Dondero and Nancy Dondero concerning any of the notes issued by the affiliates or Mr. Dondero other than that there have to be milestones reached?

MS. DEITSCH-PEREZ: Object to the form.

A. There are milestones, I found out yesterday, or there was some --

MS. DANDENEAU: Okay. I'm just going to object to the extent that you learned anything in conversations with counsel, please don't reveal -- that is privileged, and don't reveal any privileged communications.

THE WITNESS: Okay.

A. So I'm not aware of anything else.

Q. Do you know what the milestones were?

MS. DANDENEAU: Objection to form.

A. I don't.

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Q. Do you know anything about -- do you know what promissory notes the agreement covered?

A. I don't.

Q. Do you know if -- if Jim and Nancy Dondero entered into one agreement or more than one agreement?

MS. DEITSCH-PEREZ: Object to the form.

A. I don't know.

Q. Do you know if the agreement is in writing?

A. I don't know.

Q. How did you learn of the existence of the agreement?

MS. DANDENEAU: Objection to form. Again --

A. I don't -- I don't recall who told me.

Q. You have no recollection of who told you about this agreement between Jim and Nancy Dondero?

MS. DEITSCH-PEREZ: Object to the form.

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A. I don't recall.

Q. Do you recall how you learned of the agreement?

Was it in a meeting? Was it in a phone call? Was it in an email?

A. I don't recall.

Q. Do you recall when you learned of the agreement?

A. Not specifically.

Q. Do you recall what year you learned of the agreement?

A. In -- look, I mean, there are so many notes. I may be getting -- I believe it was 2020.

Q. All right. I'm not asking about notes, sir. I'm asking about the agreement that you testified you knew about between Jim and Don- -- Nancy Dondero. Okay.

Do you understand my question now? Should I ask my question again?

A. Yeah, sure. Go ahead.

Q. I'm going to use the word "agreement" to refer to the agreement that Mr. Dondero and Nancy Dondero entered into

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where you understood that certain milestones had to be reached. Okay?

A. Uh-huh.

MS. DANDENEAU: Objection.

MS. DEITSCH-PEREZ: Object to the form.

MR. MORRIS: Just defining a term, what is the objection.

MS. DEITSCH-PEREZ: The objection --

MR. MORRIS: I will move on. I will move on.

MS. DEITSCH-PEREZ: John --

Q. Sir, are you okay with that definition of agreement?

A. Okay.

Q. Okay. So you don't recall who -- who informed you of the existence of the agreement; is that right?

A. I don't recall.

Q. You don't recall who told you the terms of the agreement.

Do I have that right?

A. Correct.

Q. And you don't recall if you learned

1 WATERHOUSE - 10-19-21
2 about the agreement in a meeting, through an
3 email, or through a phone call.
4 Do I have that right?
5 A. I don't recall.
6 Q. Can you tell me when you learned of
7 the agreement?
8 A. I don't -- I don't -- I don't
9 remember specifically.
10 Q. Can you tell me if you learned of
11 the agreement before or after the petition
12 date?
13 A. It would have been -- it would have
14 been after.
15 Q. Can you tell me if you learned of
16 the agreement before or after January 9th,
17 2020?
18 A. It would have been after.
19 Q. Can you tell me if you learned of
20 the agreement before or after you left Highland
21 Capital Management in February of 2021?
22 A. I don't -- I don't -- I don't know.
23 Q. It is possible that you learned of
24 it while you were a Highland employee.
25 Do I have that right?

1 WATERHOUSE - 10-19-21
2 A. I don't remember the -- I mean, it
3 was sometime in 2021. I don't remember when.
4 Q. All right. So to the best of your
5 recollection, it was in 2021 but you don't
6 recall if it was before or after you ceased to
7 be a Highland employee.
8 Do I have that right?
9 A. Yeah, I mean, it was -- it was
10 likely after I was -- after I left Highland
11 because, if I put myself back into the last
12 days of -- of 2021, it was -- you know, the
13 communications with Mr. Dondero were -- were --
14 were -- there weren't as many communications
15 because of the circumstances.
16 Q. And so based on that you believe
17 that it is most likely that you learned of this
18 agreement sometime after you left Highland
19 employment?
20 A. I wouldn't use the term "most
21 likely." I don't recall specifically. I don't
22 recall.
23 Q. Do you recall ever telling Jim Seery
24 about this agreement?
25 A. No, I don't -- I didn't tell

1 WATERHOUSE - 10-19-21
2 Jim Seery.
3 Q. Did you tell anybody at DSI about
4 this agreement?
5 A. No.
6 Q. Did you tell any of Highland's
7 independent directors about this agreement?
8 A. No.
9 Q. Did you tell anybody at Pachulski
10 Stang Ziehl & Jones about this agreement?
11 A. No.
12 Q. Did you tell any employee of
13 Highland about this agreement?
14 A. No.
15 MS. DANDENEAU: Mr. Morris, it has
16 been an hour and a half. Is this a good
17 time for a break?
18 MR. MORRIS: Sure.
19 Q. Mr. Waterhouse, I will just remind
20 you that during the break please don't speak
21 with anybody about the deposition, the
22 substance of your testimony or anything else
23 concerning the deposition. Okay?
24 A. Yes.
25 MR. MORRIS: So it is 11:02. We're

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2 at 11:02 your time. Let's come back, I
3 guess, at 15 -- at 11:15 your time.
4 VIDEOGRAPHER: We're going off the
5 record at 11:02 a.m.
6 (Recess taken 11:02 a.m. to 11:20 a.m.)
7 VIDEOGRAPHER: We are back on the
8 record at 11:20 a.m.
9 Q. Mr. Waterhouse, did you speak with
10 anybody during the break about this deposition?
11 A. No.
12 MS. DANDENEAU: Other than -- other
13 than his counsel.
14 Q. Did you speak to your counsel about
15 the substance of your deposition today?
16 A. No, I didn't bring it up.
17 Q. I didn't ask you if you brought it
18 up. I asked you if you had any conversation
19 with your lawyer about the substance of your
20 deposition.
21 MS. DANDENEAU: Yes, he did.
22 Q. Can you tell me what the -- you
23 discussed?
24 MS. DANDENEAU: No, I object to
25 that. He's not going to answer. That is a

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2 privileged conversation.
3 MR. MORRIS: So I just want to make
4 sure that I understand. During the break
5 you spoke with your client about the
6 substance of this deposition; is that
7 right?
8 MS. DANDENEAU: Yes, John.
9 MR. MORRIS: And you refuse – you
10 refuse to let your client tell me what was
11 discussed; is that right?
12 MS. DANDENEAU: That's correct.
13 MR. MORRIS: You know, I had given
14 the instruction prior to the break not to
15 speak with counsel. I would have
16 appreciated –
17 MS. DANDENEAU: No, you didn't –
18 actually, that is not true, Mr. Morris.
19 You said not to speak with anyone. We
20 never have interpreted that to mean
21 conversations with counsel. That's never
22 been – I have never, ever heard that
23 instruction.
24 MR. MORRIS: Okay. We will – we
25 will – we will deal with it when and if we

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2 have to.
3 Q. Mr. Waterhouse, after learning about
4 the agreement, did you ask anybody if the
5 agreement was reflected in a writing?
6 MS. DANDENEAU: Objection to form.
7 A. No.
8 Q. Did you ask anybody if the terms of
9 the agreement were memorialized anywhere?
10 MS. DANDENEAU: Objection to form.
11 MR. MORRIS: What is the –
12 A. No.
13 MS. DANDENEAU: Well, because you
14 keep talking about this agreement and I –
15 I – I think, Mr. Morris, that is really
16 not clear what you mean by "the agreement."
17 And maybe you can just go back and restate
18 what that is.
19 MR. MORRIS: Okay. Your client has
20 agreed with me twice on the definition, but
21 I will try one more time.
22 Q. Mr. Waterhouse, do you understand
23 that when I use the term "agreement," I'm
24 referring to the agreement between Jim and
25 Nancy Dondero concerning certain promissory

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2 notes where you learned that one of the terms
3 of the agreement was milestones reached?
4 A. Okay.
5 Q. And did you understand that that was
6 the – the agreement that we were referring to
7 every time we used the word "agreement" in this
8 deposition?
9 A. I don't know anything about this
10 agreement. So, look, I do – it – I don't
11 know whether –
12 Q. Let's – let's try this again.
13 A. Yeah. Look, I don't know what this
14 agreement relates.
15 MS. DEITSCH-PEREZ: John, John –
16 Q. Let me try –
17 MS. DEITSCH-PEREZ: John, please let
18 the witness finish.
19 MR. MORRIS: Please stop. Please
20 stop. Please stop talking.
21 MS. DEITSCH-PEREZ: No, you stop.
22 Let the witness –
23 MR. MORRIS: Stop talking.
24 MS. DEITSCH-PEREZ: – finish – you
25 interrupted him.

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2 MR. MORRIS: You know what, you
3 guys, this is really wrong. It is really,
4 really wrong. Okay?
5 I had the witness agree not once,
6 but twice to the definition of agreement.
7 Okay? I'm going to try and do it a third
8 time.
9 MS. DANDENEAU: No, but, please,
10 John, really –
11 MR. MORRIS: No, please stop
12 talking. Please. It is my deposition.
13 Object to questions.
14 MS. DANDENEAU: No, but also you
15 instructed him that – that if you were
16 going – if you were interrupting him, that
17 he should remind you that you're
18 interrupting him and – and –
19 MR. MORRIS: Let him do that. Let
20 him do that.
21 MS. DANDENEAU: Okay. Well, you –
22 MR. MORRIS: Please stop talking.
23 A. Okay. I don't know any of the
24 details of these agreements. I don't know
25 anything about them. I heard – someone – I

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2 don't know who, I don't know when, as you
3 asked, sometime in '21, someone told me about
4 this -- or I don't honestly know -- I don't
5 even recall exactly how I was made aware of
6 this, but I was. I don't know -- I don't know
7 any of these details, and I'm getting -- again,
8 there is, you know, I -- I -- I had a passing
9 conversation with -- with Jim at some point
10 on -- on some -- on the executive comp, and I'm
11 getting confused of what is what, because
12 again, I don't know any of these details.
13 Q. Okay. Let me try again,
14 Mr. Waterhouse, and I apologize.
15 Are you aware of any agreement
16 between Jim Dondero and Nancy Dondero
17 concerning any promissory note that was given
18 to Highland by any affiliate or Mr. Dondero?
19 MS. DEITSCH-PEREZ: Object to the
20 form.
21 A. I've heard of an agreement. That
22 is -- that is -- I mean, if you are using aware
23 as heard, sure.
24 Q. And you understand that one of the
25 terms of the agreement is that it was based on

1 WATERHOUSE - 10-19-21
2 milestones that had to be reached; is that
3 right?
4 MS. DANDENEAU: Objection to form.
5 A. That was one of the words that was
6 used when I heard about it, yes.
7 Q. And when you heard about this
8 agreement that had a term in it concerning
9 milestones reached, did you ask the person who
10 was telling you about the agreement whether or
11 not it was in writing?
12 A. I did not.
13 Q. Did you ask any questions at all?
14 MS. DANDENEAU: Objection to form.
15 A. Not that I recall.
16 Q. But do you understand that going
17 forward, we're going to refer to the agreement
18 as the agreement that you just described that
19 you were --
20 MS. DANDENEAU: Object to the form.
21 A. Yes.
22 Q. Okay. You don't have any personal
23 knowledge concerning the terms of the
24 agreement; correct?
25 MS. DEITSCH-PEREZ: Object to the

1 WATERHOUSE - 10-19-21
2 form.
3 Q. You can answer.
4 A. I don't -- I heard about the
5 agreement. I don't know anything -- I heard
6 there was an agreement. That is -- again, as I
7 testified before -- I said before, heard about
8 it, don't know the details. I believe it was
9 sometime this year.
10 Q. Do you have any personal knowledge
11 about the terms of the agreement, sir?
12 MS. DANDENEAU: Objection to form.
13 A. Other than what I have previously
14 discussed, I don't -- I don't know.
15 Q. Did -- did Mr. Dondero tell you
16 about the existence of the agreement?
17 A. I don't recall.
18 Q. Do you recall the source of your
19 information when you learned about the
20 agreement?
21 A. No, I don't -- I don't recall. I
22 don't remember. I just -- I heard about it
23 generally. I don't remember -- I don't
24 remember who, how, if, how. I don't remember.
25 Q. You know, Mr. Waterhouse, I just

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2 want to be clear that I never would have asked
3 you to appear at this deposition if your name
4 hadn't been included in responses to discovery
5 as to somebody with knowledge about the -- who
6 was told about the existence of the agreement.
7 That is what prompted me do this,
8 and I really do feel compelled to tell you that
9 I otherwise would never have called you as a
10 witness. So I regret that you're being put
11 through this today. I had no intention of
12 burdening you or taking your time, but that is
13 the reason that we issued the subpoena is
14 because certain of the defendants identified
15 you as somebody --
16 MS. DEITSCH-PEREZ: Mr. Morris, you
17 are here to ask questions, not to have --
18 MR. MORRIS: I feel badly for the
19 guy. I really do.
20 MS. DEITSCH-PEREZ: I'm sure you do.
21 MR. MORRIS: I do. Stop.
22 MS. DEITSCH-PEREZ: You stop.
23 MR. MORRIS: I'm allowed.
24 MS. DEITSCH-PEREZ: No, you're not
25 allowed to have a chat with the witness.

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Q. Okay. Well, I hope that you appreciate what I'm saying here, Mr. Waterhouse.

MS. DANDENEAU: All right. Let's go ahead and ask questions, and again, you're entitled to probe his -- his knowledge of -- whatever knowledge he has about this -- this agreement and --

MR. MORRIS: That is what I'm doing.

MS. DANDENEAU: -- he will answer the questions to the best that he can.

MR. MORRIS: That is what I'm doing.

Q. Mr. Waterhouse, I take it you do not know which promissory notes issued by which affiliates or Mr. Dondero are the subject of this agreement; do I have that right?

A. Yes, I don't -- I don't know.

Q. Do you know of any way to determine which promissory notes issued by the affiliates and Mr. Dondero are the subject of this agreement other than asking Jim or Nancy Dondero?

MS. DANDENEAU: Objection to form.

A. I don't know.

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Q. Did you ever make --

A. I don't know anything about these agreements.

Q. Did you ever make any effort to determine which promissory notes are subject to this agreement?

A. No.

Q. Did you ever ask anybody which promissory notes are subject to this agreement?

A. No.

Q. Do you know if there is a list anywhere of the promissory notes that are subject to this agreement?

A. I'm not aware.

Q. Have you ever seen the terms of the agreement written down anywhere?

A. No.

Q. Have you ever asked anybody whether the terms of the agreement were written down anywhere?

A. I have not.

Q. Did learning about the agreement cause you to do anything in response?

MS. DANDENEAU: Objection to form.

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A. No.

Q. Did anybody ever describe to you the nature of the milestones that you referred to earlier?

A. No, I don't -- I don't have any details of this.

Q. That is fine.

PricewaterhouseCoopers served as Highland's outside auditors prior to the petition date; correct?

A. Yes.

Q. You refer to PricewaterhouseCoopers as PwC?

A. Yes.

Q. PricewaterhouseCoopers audited Highland's financial statements on an annual basis; correct?

A. During my -- during my time as -- as CFO, yes, PricewaterhouseCoopers was the auditor.

Q. Do you know why Highland had its annual financial statements audited each year?

A. Generally.

Q. Tell me your general understanding

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as to the reason why Highland had its annual financial statements audited each year.

A. From -- from time to time, they were used -- or asked for, as part of diligence or transactions or -- or things of that nature.

Q. And were they given to third parties for purposes of diligence or transactions from time to time?

A. As far as I'm aware, yes.

Q. And was it your understanding as the CFO that the third parties who received the financial statements in diligence or transactions was going to rely on those?

MS. DANDENEAU: Objection to form.

A. I don't know -- I don't know gen -- I don't know specifically what they were going to rely on. You know, we would get requests for audited financial statements. I don't know what they were relying on.

Q. And --

A. You would have to ask them.

Q. Did you personally play a role in PwC's annual audit and the conduct of the audit?

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MS. DANDENEAU: Objection to form.

A. During my tenure as CFO, I played a very minimal role.

Q. What was the minimal role that you played?

A. You know, again, it was -- it was to check in with the team, to make sure that, you know, audit -- the deadlines were being hit, information was being presented to the auditors in a -- in a timely fashion, but, you know, other than that, it was a very capable team that are still current employees of Highland and, you know, they -- they conducted 99 percent of -- look, I don't want to give percentages. I mean, this is -- but I -- I -- I played a minimal role towards the end.

Before during my earlier years as CFO, I did more, and then as time went on, I did less in it.

Q. Okay. Was there a person at Highland who was responsible for overseeing Highland's participation in PwC's audit during the time that you were the CFO?

A. Yeah. I mean, there was -- there

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was a -- there was a point -- it varies. It varies by year, in function, in time and, you know, depending on the request, but yes, I mean, there is -- there is -- there is generally a point person of communication.

Q. And who was the point person from 2016 until the time you left Highland?

A. I don't -- I don't know specifically, but it would have been, you know -- you know, someone on the corporate accounting team.

Q. And was there a head of the corporate accounting team?

A. Yes, so -- yes.

Q. Who was the head of corporate accounting for the five years prior to the time you left Highland?

A. I don't -- if you're asking from 2016 on, I don't -- it was Dave Klos, but, again, there was -- there was changes to the team and the reporting structure. I don't remember exactly when that happened during -- you know, over the last -- since 2016.

Q. Did the folks who participated and

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ran the audit all report to you, directly or indirectly?

A. Yes.

Q. And did you have any responsibility for making sure that the audit report was accurate before it was finalized?

A. Yeah. I mean, you know, that -- that is -- my responsibility to the auditors was -- again, is -- and the CFO is to -- we are providing accurate financial statements; right?

And -- and -- and as part of any audit, we disclose all relevant information as part of any audit.

Q. Okay. And as the CFO, did you take steps to make sure that the audit report was accurate?

A. I mean, I would say in a general sense, yes. But, again, I mean, I had a very -- I had a very capable and competent team. I wasn't managing them.

You know, part of what I do is I let the team -- I want managers to grow. I want managers to have rope. And that is -- you know, I'm not a stand-behind-you type of guy.

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If you -- if you talk to my team members, I'm not micromanaging people. I want people to learn and grow in their function so they can go on and do bigger and better things with their careers.

And so, yes, generally I was responsible for it, but I wanted the team to learn and grow and be responsible for the bulk of the audit.

Q. Did you personally review each audit report before it was finalized to satisfy yourself that it was accurate?

A. I don't -- I don't recall, you know, for every single -- we're talking 2016, there would have been three years, 2016 to '17, '18. I don't -- we're -- we're going back five years-plus. I don't -- you know, I don't recall.

Q. Did you have a practice that you employed to make sure that you were satisfied that Highland's audit reports were true and accurate to the best of your knowledge?

A. I mean, our -- the practice was set up with our -- the -- the practice to put

1 WATERHOUSE - 10-19-21
2 together accurate audited or accurate financial
3 statements is to your control environment.
4 So, you know, the -- so the practice
5 was to maintain a stable control environment
6 which then the output is -- is accurate
7 financial statements.
8 So -- so, you know, if I was
9 comfortable that the control environment was
10 operating, then, you know, that would dictate
11 how I would -- you know, what I might or might
12 not do in a given year.
13 Q. Okay. Do you recall ever being
14 uncomfortable with the control environment
15 during the period that you served as CFO?
16 A. Yeah. I mean, look, yes, there are
17 times -- you know, nothing is perfect. So
18 there were -- there were times when, yes, you
19 know -- there are times I learned I was
20 uncomfortable with the control environment, and
21 that is part of the management of the process
22 and having, you know -- and -- and working
23 through whatever obstacles present themselves.
24 Q. Okay. Were you ever uncomfortable
25 with the control process as it related to

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2 reporting and disclosures of loans to
3 affiliates and Mr. Dondero?
4 MS. DANDENEAU: Objection to form.
5 A. I don't -- I don't recall --
6 Q. So you don't recall --
7 A. -- the --
8 MS. DANDENEAU: Mr. Morris --
9 A. I don't recall being uncomfortable.
10 But, again, we're going back several years. I
11 don't -- you know, the practice in an audit is
12 to disclose all information to the auditors.
13 And I don't -- I don't recall.
14 Q. As part of the process of the audit,
15 did you sign what is sometimes referred to as a
16 management representation letter?
17 A. Yes.
18 MR. MORRIS: Can we put up on the
19 screen a document that we have premarked as
20 Exhibit 33.
21 (Exhibit 33 marked.)
22 MS. DANDENEAU: Mr. Morris, that is
23 not in the binder; correct?
24 MR. MORRIS: Correct.
25 Q. So you will see, Mr. Waterhouse,

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2 this is a letter dated June 3rd. And if we
3 could go to the signature page.
4 And do you see that you and
5 Mr. Dondero signed this document?
6 A. Yes.
7 Q. That is your signature; right?
8 A. Yes.
9 MR. MORRIS: Okay. Can you go back
10 to the top.
11 MS. DANDENEAU: Mr. Morris, can you
12 have somebody post this in the chat so that
13 we have can have a copy of this, please.
14 MR. MORRIS: Yeah, sure. Asia, can
15 you do that, please.
16 Q. Okay. Do you see at the bottom of
17 the second paragraph there is a reference to
18 materiality?
19 A. Yes.
20 Q. Okay. It says, Materiality used for
21 purposes of these representations is
22 $1.7 million.
23 Do you see that?
24 A. I do.
25 Q. And did PwC set that level of

1 WATERHOUSE - 10-19-21
2 materiality?
3 A. Yes.
4 Q. And for purposes of the audit, did
5 PwC set the level of materiality each year?
6 A. Yes.
7 Q. Did that number change over time?
8 A. I'm not aware of what materiality is
9 every single year, so -- but, you know, this
10 number would likely fluctuate.
11 Q. Okay. I'm going to go back to a
12 question I asked you earlier today. And that
13 is in connection -- this letter is issued in
14 connection with the audit for the period ending
15 12/31/2018; correct?
16 A. Yes.
17 Q. Okay. And is it fair to say that if
18 any -- actually, withdrawn. I'm going to take
19 it outside of this.
20 If Highland ever forgave the loan to
21 any affiliate or any of its officers or
22 employees, in whole or in part, to the best of
23 your knowledge, would that forgiveness have
24 been disclosed in the audited financial
25 statements if it exceeded the level of

1 WATERHOUSE - 10-19-21
2 materiality that PwC established?
3 MS. DANDENEAU: Objection to form.
4 A. So, again, during my tenure as CFO,
5 and -- Highland -- it was -- it is required to
6 disclose any affiliate loans that are in excess
7 of materiality.
8 Now, the forgiveness of those loans
9 may or may not -- I mean, since materiality
10 fluctuates every year, a -- you know, if a loan
11 was forgiven, it may or may not, you know --
12 and, look, I would want to consult the guidance
13 around this.
14 It is not something we do -- you
15 know, it is not -- you know, GAAP can be and
16 disclosures can be very specialized so, again,
17 we want to consult the guidance. But we would
18 see if and what would need to be disclosed if
19 it were deemed immaterial.
20 Q. Did you and Mr. Dondero sign
21 management representation letters of this type
22 in each year in which you served as Highland's
23 CFO?
24 A. I -- I -- I will speak for myself.
25 I signed them. There may have been others that

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2 signed as well. I don't -- I don't recall.
3 Q. But to the best of your knowledge,
4 you, personally, signed a management
5 representation letter in connection with
6 Highland's audit each year that you served as
7 the CFO; correct?
8 A. I would say generally speaking,
9 Mr. Morris. I don't recall for every single
10 year, you know, generally, but I would want to
11 refer to all the rep letters and see who signed
12 them.
13 Q. Do you recall Highland having its
14 financial statements audited in any year during
15 the period that you were a CFO where you didn't
16 sign the management representation letter?
17 A. I don't recall. But, John, we're
18 going back five, six, seven, eight, nine,
19 decade. I don't -- I don't remember.
20 Q. I don't want to go back that many
21 decades, but I'm just asking you if you recall
22 that there was you didn't sign it?
23 A. I -- I -- I don't, but my memory
24 is -- again, I -- I -- I can't tell you what I
25 did in 2012. I mean, I think generally, yes,

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2 but I don't -- I don't know for sure, and I
3 would want to rely on the document.
4 Q. Let me ask the question a little bit
5 differently then.
6 Do you have any reason to believe
7 that Highland had its annual financial audit
8 and you did not sign a management
9 representation letter in connection with that
10 audit?
11 MS. DANDENEAU: Objection to form.
12 A. I don't believe it would, but,
13 again, I would want to -- I don't recall and I
14 would want to confirm it to -- to make, you
15 know, an affirmative -- to give an affirmative
16 answer.
17 Q. Do you know whether PwC required
18 management to sign management representation
19 letters?
20 MS. DANDENEAU: Objection to form.
21 A. Yes. I mean, it -- management
22 representation letters are signed by
23 management.
24 Q. Okay. And do you know -- do you
25 have any understanding as to why PwC requires

1 WATERHOUSE - 10-19-21
2 management to sign management representation
3 letters?
4 MS. DEITSCH-PEREZ: Object to the
5 form.
6 A. I don't know why PwC's -- what PwC's
7 specific practice is. I know generally what
8 management representation letters are.
9 Q. Okay. Do you personally -- I'm not
10 asking about PwC. I'm asking for you -- I'm
11 asking about you, do you have an understanding
12 as to why the auditor asks for management
13 representation letters?
14 A. Okay. So you're asking me in my
15 personal capacity, yes, I have a general
16 understanding of why.
17 Q. Can you give me the general
18 understanding that you have as to why
19 management representation letters are required?
20 A. They are -- they are required to --
21 they are -- they are one of the items required
22 in an audit to help verify completeness.
23 Q. Do you have any -- any other
24 understanding as to why management
25 representation letters are required?

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A. That is – that is – other than what I said, it is – it is – it is required so – to ensure that the – you know, there is – there is completeness in what is being audited.

Q. Did you – did you have a practice whereby you and Mr. Dondero conferred about the management representation letters before you signed them?

A. No.

Q. Did you have a practice – withdrawn.

Do you see just the next sentence after the materiality, there is a sentence that states: We confirm, to the best of our knowledge and belief, as of June 3rd, 2019, the date of your report, the following representations made to you during your audit.

Do you see that sentence?

A. Yes.

Q. Okay. Did you understand when you signed this letter that you were confirming the representations that followed?

A. When I signed this management

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letter – representation letter, yes.

Q. Okay. Did you discuss this letter with Mr. Dondero before you signed it?

A. I don't recall.

Q. Do you recall if Mr. Dondero asked you any questions before he signed the letter?

A. I don't recall.

Q. Do you recall if you asked Mr. Dondero any questions before you signed this letter?

A. I don't recall.

Q. Is it fair to say that Mr. Dondero did not disclose to you the existence of the agreement that we have – as we've defined that term prior to the time you signed this letter?

MS. DANDENEAU: Objection to form.

A. I don't think I understand the question. So, again, you are saying, did Mr. Dondero not disclose to me the existence of this letter?

Q. No, I apologize.

Did Mr. Dondero disclose to you the existence of the agreement prior to the time you signed this letter on June 3rd, 2019?

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A. The agreement – the agreement that we talked about earlier?

Q. Correct.

A. Look, as I said earlier, the first time I heard of this agreement was sometime this year.

Q. Okay. Can we turn – let's just look at a couple of items on the list. If we can go to page 33416. Do you see in Number 35 it talks about the proper recording or disclosure in the financial statements of ND relationships and transactions with related parties.

Do you see that?

A. I do.

Q. As the CFO, do you have any understanding as to whether Dugaboy is a related party?

A. I don't recall.

Q. Do you know whether any of the affiliates are related parties?

A. If – if it was NexPoint, HCMFA, HCMS, HCRE, yeah, if – if that is the affiliate definition, and there. In ASC 850 –

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again, I mean, I haven't looked at ASC 850 in quite some time, but, you know, if – if there is a control language, you know, ASC 850, would that – that section in GAAP would – would pick up and define what are related parties.

So, you know, like I said, if – one of the four entities I just described, if – if they are in that control definition of ASC 850, they would be picked up in 35D.

Q. Do you – do you have any reason to believe that they would be picked up in that definition, based on your knowledge and experience?

A. I – I believe that entities controlled under GAAP are – are affiliates.

Q. Okay. Would Mr. Dondero also qualify as a related party for purposes of Section 35D, to the best of your knowledge?

A. Yeah, I don't – I don't know. I would think – I would have to read the code section to see if someone personally – is it talking about related parties. So, look, if your own in control, yeah, I mean, I would have to read the section.

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Q. To the best of your knowledge, was the existence of the agreement ever disclosed to PwC?

A. I'm not – I'm not aware.

Q. Do you recall if the agreement was ever disclosed in Highland's audited financial statements?

A. I don't – I don't remember if it was in every Highland's audited financial statements during my tenure. We would have to read the financial statements to see what was disclosed, but I'm not – I mean, as I sit here today, I'm not aware.

Q. That is all I'm asking for.

A. I'm not aware.

Q. Can we go to the next page, please, and look at 36. 36 says, we have disclosed to you the identity of the partnership's related party relationships and all the related party relationships and transactions of which we are aware.

Do you see that?

A. Yes.

Q. To the best of your knowledge, as of

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June 3rd, 2019, did Highland disclose to PwC the identity of the partnership's related parties and all the related party relationships and transactions of which it was aware?

A. I mean, I can speak for myself as signer of this representation letter. I disclosed what -- what, you know, what -- what -- what I knew. Sorry, look, yes, so I -- I disclosed what I knew.

Q. Okay. Can we go to page 419. Do you see at the end there is a reference to events that occurred since the end of the fiscal year and the date of the letter?

A. Yes.

Q. And were you aware of that -- of that provision of the management representation letter before you signed the document?

A. Yes.

Q. Do you have an understanding as to why PwC asked for that confirmation of that particular part of the management representation letter?

A. It is -- it is -- it is just -- it is a typical audit request.

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Q. And do you understand -- do you have an understanding that PwC wanted to know that as of the date of the audit whether any material changes had occurred since the end of the fiscal year, using the definition of materiality that is in this particular management representation letter?

A. It – it is -- it is – it is a – it is as described. It is just a poorly worded question, so it is hard for me to say yes.

Q. If I asked you this, I apologize, but did you ever learn when the agreement was entered into?

A. I don't – I don't -- like I said before, I don't know or have any details of the agreement.

Q. Okay. Did you ever ask anybody when the agreement was entered into?

A. I did not.

Q. Let's look at the audited financial statements. We will put up on the screen a document that has been premarked as Exhibit 34.

(Exhibit 34 marked.)

MS. DANDENEAU: And again, if Ms. La

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Canty could please put that in the chat room, that would be great.

MR. MORRIS: I will assure you we will put every document in the chat room.

Q. Now, I'm just going to ask you questions that are related to the provisions of this report that concern the affiliate loans, but again, Mr. Waterhouse, if there is any part of the document that you need to see or that you think you might need to see in order to refresh your recollection to answer any of my questions, will you let me know that?

A. Yes.

Q. Because this is a pretty lengthy document, but do you see that the cover page here is the Highland consolidated financial statements for the period ending December 31st, 2018?

A. Yes.

Q. If we can go to -- I think it is the next one, looking for PwC's signature line.

MS. CANTY: I'm sorry, John, did you say something?

MR. MORRIS: Yes, can we turn the

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2 page. I think it is 215. Yes, stop right
3 there, just above – I'm sorry, I want to
4 see just the date of the report.
5 Q. Okay. Do you see at the bottom of
6 that page there, Mr. Waterhouse,
7 PricewaterhouseCoopers has signed this audit
8 report?
9 A. Yes, I see their signature.
10 Q. Okay. And it is the dated same day
11 as your management representation letter; is
12 that right?
13 A. It is – yes, it is the same day.
14 Q. Was that the practice to sign the
15 management representation letter on the same
16 day that the audit report was signed?
17 A. Yes, that is typical in every audit.
18 Q. Can we just scroll down to the
19 balance sheet on the next page.
20 Do you see that there is a line
21 there that says, Notes and Other Amounts Due
22 from Affiliates?
23 A. Yes.
24 Q. Does that line, to the best of your
25 knowledge, include the amounts that were due

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2 under the affiliate under the notes signed by
3 the affiliates and Mr. Dondero?
4 MR. RUKAVINA: Objection to the
5 extent that calls for a legal conclusion.
6 A. I mean, I would want to see the
7 detail and the build to this $173,398,000, but,
8 yes, I mean, if – if – given what we
9 discussed before, you know, it – it should
10 capture that.
11 Q. And – and while you were the CFO of
12 Highland, were all notes held by Highland that
13 were issued by an affiliate or Mr. Dondero
14 carried as assets on Highland's balance sheets?
15 MS. DANDENEAU: Objection to form.
16 MS. DEITSCH-PEREZ: Object to form.
17 A. I don't – I don't know how else
18 they would be carried.
19 Q. Okay. Can you think of any – are
20 you aware of any promissory note issued by an
21 affiliate or Mr. Dondero that was not carried
22 on Highland's audited financial balance sheets?
23 A. I'm – I'm – I'm not aware.
24 Q. Okay. Are you aware of any category
25 of asset on Highland's balance sheet in which

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2 any of the promissory notes issued by an
3 affiliate or Mr. Dondero would have been
4 included?
5 MS. DANDENEAU: Objection to form.
6 A. Sorry, am I aware of any asset of an
7 affiliate being included –
8 Q. That – let me – let me try again.
9 Do you see there is a number of
10 different assets that are described on this
11 balance sheet?
12 A. Yes.
13 Q. One of the assets that is described
14 is Notes and Other Amounts Due from Affiliates;
15 right?
16 A. Yes.
17 Q. And it is reasonable to conclude
18 that the notes from the affiliates and
19 Mr. Dondero are included in that line item;
20 right?
21 A. Yes, based on this description.
22 Again, I would want to see a build of this to
23 100 percent confirm, but based on the
24 description, the asset description, it is – it
25 is likely.

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2 Now, does that mean absolute? I
3 don't know.
4 Q. Do you have any reason to believe
5 that the promissory notes would have been
6 carried on the balance sheet in a category
7 other than Notes and Other Amounts Due from
8 Affiliates?
9 A. If they were deemed – no. If they
10 were deemed an affiliate, you know, under GAAP,
11 they should be carried in that line.
12 Otherwise, it would go into another line.
13 Q. Okay. And do you see the total
14 asset base as of December 31st, 2018, was
15 approximately $1.04 billion?
16 A. Yes.
17 Q. Is my math correct that the Notes
18 and Other Amounts Due from Affiliates
19 constituted approximately 17 percent of
20 Highland's assets as of the end of 2018?
21 A. Well, so how are you defining
22 Highland?
23 Q. Highland Capital Management, L.P.,
24 the entity that this audit is subject to – or
25 the subject of.

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2 A. On a consolidated or unconsolidated
3 basis?
4 Q. I'm looking at the balance sheet.
5 It is a consolidated balance sheet. Okay?
6 Does the Notes and Other Amounts Due
7 from Affiliates constitute approximately
8 17 percent of the total assets of Highland
9 Capital Management, L.P., on a consolidated
10 basis?
11 MS. DANDENEAU: Objection to form.
12 A. I don't have a calculator in front
13 of me but I will take your math, if you are
14 taking the 173 divided by the billion.
15 Q. Okay.
16 A. If that is accurate, yes. But,
17 again, on a consolidated basis.
18 Q. And on an unconsolidated basis the
19 percentage would be higher; correct?
20 A. I – no. I don't know.
21 Q. Well, okay. That is fair.
22 MR. MORRIS: Can we turn to
23 page 241, please.
24 Q. Do you see that this is a section of
25 the audit report that is entitled Notes and

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2 Other Amounts Due from Affiliates?
3 A. Sorry, I can't see the – the –
4 Q. It is at the top.
5 A. Notes and Other Amounts Due from
6 Affiliates, yes, I see that. I don't – I
7 don't have a page number, but I'm on a page
8 that says at the top: Notes and Other Amounts
9 Due from Affiliates.
10 Q. Okay. And that is the same title of
11 the line item on the balance sheet that we just
12 looked at; right? Notes and Other Amounts Due
13 from Affiliates?
14 A. Yes.
15 Q. And is it your understanding, based
16 on your experience and knowledge as the CFO,
17 that this is the section of the narrative that
18 ties into the line item that we just looked at?
19 A. Yes.
20 Q. And is this section of the audit
21 report intended to describe and disclose all of
22 the material facts concerning the Notes and
23 Other Amounts Due from Affiliates?
24 MS. DANDENEAU: Objection, form.
25 A. This – these notes – these notes

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2 of the financial statements are – the purpose
3 is to disclose any material items in relation
4 to that balance sheet line item.
5 Q. Okay. And all of the information,
6 to the best of your knowledge, that is set
7 forth in this section of the audit report was
8 provided by Highland; correct?
9 A. Yes, it would have been provided by
10 the corporate accounting team.
11 Q. Okay. And the corporate accounting
12 team, did that team report to you in the
13 organizational structure?
14 A. Yes.
15 Q. And did you have any concerns about
16 the controls that were in place to make sure
17 that the information provided with respect to
18 Notes and Other Amounts Due from Affiliates was
19 accurate and complete?
20 MS. DANDENEAU: Objection to form.
21 A. Not that I recall.
22 Q. Okay. Do you recall ever being
23 concerned that any portion of the Notes and
24 Other Amounts Due from Affiliates in any audit
25 report was inaccurate, incomplete, or not

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2 reliable?
3 A. I didn't – I had concerns about,
4 you know, like I talked about before, of there
5 were – there were potentially issues in the
6 control environment. But as far as it relates
7 to the audited financial statements, any – the
8 team would work with the auditors to disclose
9 all – all notes in Highland's possession.
10 And any – any notes that were
11 deemed material by the auditor, right, these
12 were disclosed in these – in this section, you
13 know, in – in the notes to the consolidated
14 financial statements as you presented.
15 Q. Do you recall ever having a
16 conversation with anybody at any time
17 concerning the accuracy of the section of audit
18 reports that relates to Notes and Other Amounts
19 Due from Affiliates?
20 MS. DANDENEAU: Objection to form.
21 A. You know, as – as – I didn't have
22 direct conversations with
23 PricewaterhouseCoopers as I had, you know –
24 I – I had the team that managed this.
25 Again, I wasn't anywhere chose to

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being the point person of this audit. And I can't recall, you know, when -- you know, I don't even know if I was ever the point person during my tenure as CFO.

I don't know if PwC had any concerns when they were performing those audit procedures. They may have and they may have -- and it may not have been communicated to me. I don't know.

MR. MORRIS: All right. I move to strike.

Q. And I'm going to ask you to listen carefully to my question.

Did you -- do you recall ever having a conversation with anybody at any time concerning the accuracy of the reporting provided in the audited financial statement on the topic of Notes and Other Amounts Due?

MS. DANDENEAU: Objection to form.

A. I don't recall for this, but that doesn't mean that it didn't exist.

Q. Okay. But you have no reason to believe, as you sit here right now, that you ever discussed with anybody concerns over the

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accuracy of the section of the audit reports called Notes and Other Amounts Due from Affiliates; correct?

MS. DANDENEAU: Object to the form.

MS. DEITSCH-PEREZ: Objection to form.

A. I don't recall having any conversations. But, again, I mean, this is -- this is two years ago.

Q. I'm just asking for your recollection, sir.

A. Yes.

Q. If you don't recall, this will --

A. Yeah.

Q. (Overspeak) -- if you don't recall --

A. Yeah, I don't -- I don't recall.

Q. Do you know who was responsible for drafting the audit report?

A. Are you asking the actual Highland employee responsible? I mean, it was Highland's responsibility, so, I mean, that is --

Q. Right.

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A. -- Highland's responsibility. Highland's responsibility.

Q. Who, at Highland, was responsible for drafting this section of the audit report?

A. I -- I don't know the answer to that. Again, there was a team who worked on this. And I don't know, you know, whether it was the staff or the manager.

Again, this is where I let the teams manage. And, you know, there may be a corporate accountant who worked on this. I just -- you know, I wasn't part of that process to give that person experience. I don't know.

Q. Do you recall having any communications with anybody at any time concerning this section of the report?

A. Yeah, I don't recall.

Q. Do you recall whether you ever told anybody at any time that any aspect of this section of the report was inaccurate or incomplete?

A. I don't recall.

Q. As you sit here today, do you have any reason to believe that this section of the

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audit report is incomplete or inaccurate in any way?

And I'm happy to give you a moment to -- to look at it, if you would like.

MS. DANDENEAU: Objection to form.

MS. DEITSCH-PEREZ: Same.

A. I mean, I would have to look at -- I would have to look at the bill to the note schedule to make sure I know you presented me with materiality, but again, there might be a note as of 12/31/18 that somehow was -- was under materiality not disclosed. I don't -- I don't know. I would need more information.

Q. Okay. But without more information, you have no reason to believe anything this section is inaccurate; correct?

MS. DANDENEAU: Objection to form.

A. I don't. I mean, you know, this was part of the audit.

Q. Thank you. Now, you will see if we could scroll just a little bit more that each of the first five paragraphs concerns specifically the four affiliates that we've been discussing and Mr. Dondero.

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MR. MORRIS: If we could go the other way, La Asia. We don't need Okada. We're going to have to thread the needle. Okay. Good, perfect.

Q. Do you see those five paragraphs certain the four affiliates and Mr. Dondero as we've been referring to today?

A. Yes.

Q. Okay. And do you see at the end of every paragraph it states, quote: A fair value of a partnership's outstanding notes receivable approximates the carrying value of the notes receivable?

A. Yes, I see that.

Q. Do you have an understanding of what that means?

A. Yes.

Q. What is your understanding of that sentence?

A. It is the -- again, the -- the fair value, right, which is -- which is what the -- what Highland could sell that asset for. This statement is comparing the fair value of the notes to the carrying value, so the carrying

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value is the line item that you showed me earlier that is in Notes and Other Amounts Due from Affiliates.

Q. Okay. Is another way to say this is that the fair market value of the notes equals the principal amount and -- withdrawn.

Is the fair way to interpret this that the fair market value of the notes equals all remaining unpaid principal and interest due under the notes?

MS. DANDENEAU: Object to the form.

MS. DEITSCH-PEREZ: Objection, form.

A. I don't know the answer to that, because I don't recall where -- where any -- where -- in what line item was the interest component reported.

Q. All right. Well, if we look in this audit report, you will see in the middle of the first paragraph, for example, it states that as of December 31st, 2018, total interest and principal due on outstanding promissory notes was approximately $5.3 million.

Do you see that?

A. I do.

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Q. Is that the carrying value or the fair value?

A. That would be the carrying value --

Q. And is the last --

A. -- in my opinion.

Q. Okay. And it is in your opinion as the chief financial officer of Highland during the period of time that you described; right? It is an educated opinion?

A. I'm reading this at face value. I'm taking that as that is carrying value.

Q. Okay. And does the last sentence say that the carrying value is roughly approximate to the fair market value?

MS. DANDENEAU: Objection to form.

MS. DEITSCH-PEREZ: Objection, form.

A. Again, this note to the financial statement is specific to notes and other amounts due from affiliates.

Q. Correct.

A. If the interest component is reported elsewhere on the balance sheet, you know, it -- it -- it could be off. Again, I don't have the detail. I don't know, but yes,

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look, I mean, if you -- I mean, if you are saying the 5.3 million is in the notes and other amounts due from affiliates, then the last statement is saying the fair value approximates 5.3 million. That is what that last sentence is saying.

Q. Do you see in the middle of the first paragraph -- not in the middle, the next to last sentence there is a statement that the partnership will not demand payment on amounts that exceed HCMFA's excess cash availability prior to May 31st, 2021.

Do you see that?

A. I do.

Q. Do you know when Highland agreed not to demand payment as described in that sentence?

A. I don't know specifically.

Q. Do you know why Highland agreed not to demand payment on HCMFA's notes until May 2021?

A. Yes.

Q. Why was that decision made?

A. You know, well, it -- it -- that

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decision was made as to not put HCMFA into a position where it didn't have sufficient assets to pay for the demand note.

Q. And at the time the agreement was entered into, pursuant to which the partnership wouldn't demand payment, did HCMFA have insufficient assets to satisfy the notes if a demand had been made?

MS. DANDENEAU: Objection to form.

A. I don't have HCMFA's financial statements in front of me as of 12/31/18.

Q. Was there a concern that HCMFA would be unable to satisfy its demands under the notes if demand was made?

MS. DANDENEAU: Objection to form.

A. Well, there is – I don't recall – I mean, there is something, right, in place to basically not demand payment until May 31, 2021 as detailed here.

Q. And who made the decision to enter into – who made the decision on behalf of Highland not to demand payment until May 31st, 2021?

A. I'm trying to remember. I don't

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remember exactly – I don't remember if it was myself or – or Jim Dondero who – who – there was – there was something signed, from what I recall, that – that – that backed up this line item in the – in the notes I'm – look, I'm, I'm –

Q. We will get to that.

A. You –

Q. I'm just –

A. You have – I mean –

Q. We're going to give that to you. I'm going to give that to you.

A. You – you – you have all the documents. I don't have the documents, and that is what makes it so hard. I don't have any documents to prepare for this deposition; right? You have all – I don't – I don't – I don't remember, but, you know, again, it would probably be myself or Jim.

Q. Do you know if Highland received anything in return for its agreement not to make a demand for two years?

A. I don't – I don't think it referred anything.

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Q. And did you and Mr. Dondero discuss HCMFA's ability to satisfy the notes if a demand was made at the time this agreement was entered into?

MS. DANDENEAU: Objection to form.

A. I don't – I don't – I don't recall having a specific conversation, if I did, or – or David Klos.

Q. Okay. I'm just asking if you recall any conversations that you had.

A. I don't recall.

Q. Okay. Do you know why Highland loaned the money to HCMFA that is the subject of the notes described in this paragraph?

A. I don't remember specifically why 5.3 million was loaned. I mean, I – it would have to be put in the context.

Q. Do you have any recollection at all as to why Highland ever loaned any money to HCMFA?

A. Yes.

MS. DANDENEAU: Objection to form.

Q. What do you remember about that?

A. There was a Highland Global

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Allocation Fund, which was a – a fund managed by Highland Capital Management Fund Advisors. There was a – we – I'm just telling you, there was – there was – there was a – a ultimately a NAV error found in this fund while it was an open-ended fund and, you know, there were amounts owed by the advisor in – in relation to that NAV error.

There were also, for the same fund, that same fund was ongoing an open-end-to-close-end conversion, and as part of that proposal, shareholders who voted for the conversion received compensation from the advisor.

Q. All right. Now, the events that you're describing occurred in the spring of 2019; right?

A. These started back – I think, I mean –

Q. I apologize.

A. – that – I mean, the answer to that is no.

Q. I apologize, the loans that were made in connection with the events that you're

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describing occurred in May 2019; right?

MR. RUKAVINA: Objection to the extent that calls for a legal conclusion.

A. I don't recall specifically what amounts of money were moved when, for what purpose.

Q. Okay. Fair enough. Going to the next paragraph, do you recall that NexPoint Advisors had obtained a number of loans from Highland, and they rolled up those loans into one note in approximately 2017?

A. This is for NexPoint Advisors?

Q. Yes.

A. I – I mean, I don't – I don't recall the NexPoint Advisors loan being a roll-up loan, but –

Q. Do you know why?

A. But, look, if you have documents that show – I mean, look, I just don't recall.

Q. Okay. That is fair. Do you know why – do you have any recollection as to why Highland loaned money to NexPoint?

A. Yes.

Q. Why did High – why do you recall –

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what is the reason you recall Highland lending money to NexPoint?

A. I mean, I was just – I just – I just recall. I mean, I just – I don't remember why.

Q. I understand. And I'm asking you if you recall –

A. Oh, why – I thought you say – NexPoint Advisors was launching a fund which is – I believe that the legal name is NexPoint Capital, Inc. And it – it provided a co-invest into that fund.

And, from what I remember, the – the – that NexPoint borrowed money from Highland at the time to make that co-invest.

Q. So this was an investment that NexPoint was required to make; is that right?

MS. DANDENEAU: Objection to form.

A. I don't know if it was required to make, I don't recall that, or if it just made it.

Q. Okay. But your recollection is that NexPoint made an investment and they borrowed money from Highland to finance the investment.

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Do I have that right?

A. Yes.

Q. How about HCRE? Do you know why HCRE borrowed money from Highland?

A. I don't remember specifically.

Q. Do you remember generally?

A. Generally, yeah – I mean, yes.

Q. Can you tell me your general recollection as to why Highland loaned money to HCRE?

A. For – for – for investment purposes.

Q. So HCRE made the investment and it obtained a loan, or loans, from Highland in order to finance that investment or those investments.

Do I have that right?

A. I mean, I – you know, generally.

Q. Okay. How about Highland Management Services, Inc.?

Do you have any recollection as to why HCMS borrowed money from Highland?

A. Generally.

Q. What is your general recollection as

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to why HCMS borrowed money from Highland?

A. For – for investment purposes.

Q. So it is the same thing, HCMS wanted to make investments and it borrowed money from Highland in order to finance those investments; is that right?

A. I mean, yes, generally. I mean, I can't – I don't – on the services, there – there are several loans in these schedules. You know, I can't remember why every single one of these were made, but I would say, yeah, I mean, generally.

Q. Okay. I appreciate that.

MR. MORRIS: Let's go to the page with Bates No. 251. La Asia, are you there?

MS. CANTY: Sorry, John. It went out for a minute. Can you say that again. I don't know what is going on.

MR. MORRIS: The page with Bates No. 251, can we go to that.

MS. CANTY: Yes, sorry.

MR. MORRIS: Keep going to the bottom. Yeah, there you go.

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Q. Do you see, Mr. Waterhouse, that there is a section there called Subsequent Events?

A. I do.

Q. And does this relate to the last sentence above the signature line on the management representation letter that we talked about earlier where you made the representation that you disclosed subsequent events?

A. I mean, it relates to it, but not in its entirety.

Q. Okay.

MR. MORRIS: If we can scroll up to capture the entirety of this section right here.

Q. And what do you mean by that, sir?

MR. MORRIS: Yeah, right there. Perfect.

A. There are -- there are different subsequent events in -- under GAAP. So there are -- and -- and -- so what we see in the notes to the financial statements are one type of subevent.

Q. Okay. And -- and would the type of

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subsequent event relating to affiliate loans be captured in this section if they were -- if they were made after the end of the fiscal year and prior to the issuance of the audit report?

A. Yes, if they were deemed material or disclosable.

Q. Okay. I appreciate that.

Do you see the next to the last entry there? It says, Over the course of 2019 through the report date, HCMFA issued promissory notes to the partnership in the aggregate amount of $7.4 million?

A. Yes.

Q. And does that refresh your recollection that those are the notes that related to the NAV error that you mentioned earlier?

A. I don't -- I don't remember the exact. Again, there are -- I mentioned two line items; right?

Q. Yes.

A. I mean, it was the GAAP conversion process plus the -- the NAV error. I don't have the details. I don't recall specifically

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if -- you know, what -- if that 7.4 million was solely attributable to the NAV error.

Q. Okay. But there is no question that Highland told PricewaterhouseCoopers that over the course of 2019 HCMFA issued promissory notes to the partnership in the aggregate amount of $7.4 million; correct?

A. In the course of the audit, we would have produced all promissory notes in our possession, including the ones that are detailed here.

Q. Do you recall that you signed the two promissory notes that are referenced in that provision?

MS. DANDENEAU: Objection to form.

A. I didn't recall initially but I've been reminded.

Q. Okay. And -- and do you recall that those notes are dated May 2nd and May 3rd, 2019?

A. Yes.

Q. So that was just a month before the audit was completed; correct?

A. Yes. I think we had a June 3rd

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date, right, if -- if my memory serves me right.

Q. Yes, I will represent to you that your memory is accurate in that regard.

Did anybody ever instruct you as the CFO to correct this statement that we're looking at in subsequent events?

A. So let me understand. You're saying when I was CFO at Highland Capital did anyone ever ask me to correct the -- over the course of 2019 through the report date HCMFA issued promissory notes, this statement?

Q. Right.

A. Not that I'm aware.

Q. While you were the CFO of Highland, did anybody ever tell you that that sentence was wrong?

A. Not that I'm aware.

Q. Highland -- withdrawn.

HCMFA disclosed these notes in its own audited financial statements; right?

MR. RUKAVINA: Objection, form.

A. I assume that these would be material -- if these are material financial

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statements, yes, they -- they -- they should be and they were likely disclosed.

Q. Now, there is no statement concerning the 2019 notes about the forbearance that we looked at in the affiliated note section of the report; right?

MS. DANDENEAU: Objection to form.

Q. I'll withdraw. That was bad.

Do you recall when we were looking at the paragraph concerning HCMFA earlier it had that disclosure about the agreement whereby Highland wouldn't ask for demand on the -- on the HCMFA notes?

A. Yes.

Q. That forbearance disclosure is not made with respect to the 2019 notes; right?

A. Not -- look, not that I can recall, unless -- unless it was done at a subsequent day.

Q. Right. And it is not in the subsequent event section that we're looking at right now where the 2019 notes are described; right?

A. Right. But this is through

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June 3rd. It could have been done on June 4th. I don't -- I don't -- I don't recall.

Q. Okay.

MR. MORRIS: Can we put up on the screen the HCMFA audit report. And while we're --

MS. DANDENEAU: What exhibit is this?

MR. MORRIS: La Asia, what number is that?

MS. CANTY: 45.

MR. MORRIS: So this will be marked as Exhibit 45.

(Exhibit 45 marked.)

MS. CANTY: Yeah, and I will put it in the chat.

MS. DANDENEAU: Thank you.

Q. Okay. All right. Do you see that this is the consolidated financial statements for HCMFA for the period ending 12/31/18?

A. Yes.

Q. As the treasurer of HCMFA at the time, did you have to sign a management representation letter similar to the one that

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we looked at earlier for Highland?

A. I would imagine I would have been asked to. I don't recall if I did.

Q. Do you recall ever being asked by an auditor to sign a management representation letter and then not doing it?

A. No.

MR. MORRIS: Can we just scroll down again. I just want to see the date of the document.

A. I mean, let me -- you know, there are different versions to management representation letters I will qualify.

Yes, there are certain -- from time to time auditors can make representations that -- in the rep letter that is being proposed that are inaccurate or out of scope or things like that and they've asked for signature.

In that context, yes. I mean, you know -- I mean, if I have been asked to sign and make those representations and those representations are invalid, yes, I would not, I mean, I -- I wouldn't sign that.

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Q. Okay. PricewaterhouseCoopers served as HCMFA's outside auditors as well; correct?

A. Yes.

Q. Do you see that this audit report is signed on June 3rd, 2019, just like the Highland audit report?

A. That is correct.

Q. And did the process of -- of preparing HCMFA's audit report, was that the same process that Highland followed when it did its audit report at this time?

A. I mean, it is a different entity. There are different assets. You know, it -- it -- it is -- as you saw, Highland's financials are on a consolidated basis. This is different, so it is under the same control environment and team.

Q. Okay. I appreciate that. So the same control environment and team participated in the preparation of the audit for Highland and for HCMFA at around the same time; correct?

A. Yes.

MR. MORRIS: Can we go to page 17 of the report. I don't have the Bates number.

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Q. Okay. Do you see that just like Highland's audited financial report, HCMFA's audited financial report also has a section related to subsequent events?

A. Yes.

Q. And am I reading this correctly that just as Highland had done, HCMFA disclosed in its audited financial report a subsequent event that related to the issuance of promissory notes to Highland in the aggregate amount of $7.4 million in 2019?

A. That is what I see in the report.

Q. And you were the treasurer of HCMFA at the time; right?

A. Yes, to the best of my knowledge.

Q. And did anybody ever tell you prior to the time of the issuance of this audit report that that sentence relating to HCMFA's 2019 notes was inaccurate or wrong in any way?

A. Not that I recall.

Q. As you sit here right now, has anybody ever told you that that sentence is inaccurate or wrong in any way?

A. Not that I recall.

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Q. I apologize if I asked you this already, but has anybody ever told you at any time that you are not authorized to sign the promissory notes that are the subject of the sentence we're looking at?

A. Not that I recall.

Q. Did anybody ever tell you at any time that you had made a mistake when you signed the promissory notes that are the subject of this sentence?

A. Say that again. Did anyone ever say that I made a mistake?

Q. Let me ask the question again. Did anybody ever tell you at any time that you made a mistake when you signed the two promissory notes in Highland's favor on behalf of HCMFA in 2019?

A. Not that I recall.

MR. MORRIS: Let's just look at the promissory notes quickly. Can we please put up Document Number 1, and so this is in the pile that y'all have. We'll just go for a few more minutes and we can take our lunch break.

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Q. All right. So I don't know if you have seen this before, sir. Do you see that this is a complaint against HCMFA?

A. Yes, I am looking at it on the screen.

Q. Okay. And have you ever seen this document before?

A. I went through some of these documents with my counsel here yesterday.

MR. MORRIS: All right. Can we go to Exhibit 1 of this document.

Q. Do you see Exhibit 1 is a $2.4 million promissory note back in 2019?

A. Yeah, I found it in the book. Yes, I have it here in front of me.

Q. And this is a demand note, right, if you look at Paragraph 2?

A. Yes.

Q. And this is a note where the maker is HCMFA, and Highland is the payee; right?

A. Yes.

MR. MORRIS: And if we can scroll down, can we just see Mr. Waterhouse's signature.

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Q. Is that your signature, sir?

A. Yes, it is.

Q. And did you sign this document on or around May 2nd, 2019?

A. I don't recall specifically signing this, but this is my signature.

Q. Okay. And do you recall that Highland transferred $2.4 million to HCMFA at or around the time you signed this document?

A. I don't recall specifically. I would want to, as I sit here today, go back and confirm that, but again, presumably that -- that -- that did happen.

Q. You wouldn't have signed this document if you didn't believe that HCMFA either received or was going to receive $2.4 million from Highland; is that fair?

A. I mean, it -- if -- if -- if there wasn't a transfer of value, yeah, I mean, you know, I would have no reason to -- to sign a note.

Q. And -- and Highland wouldn't have given this note to PricewaterhouseCoopers if -- withdrawn.

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HCMFA wouldn't have given this note to PricewaterhouseCoopers if it hadn't received the principal value of – of the note in the form of a loan; correct?

MR. RUKAVINA: Objection, legal conclusion, speculation and form.

A. Again, we – what we provided to PwC were, as part of the audit, any promissory notes executed and outstanding. You know, as a part of the audit, they, you know, they – they have copies of all the bank statements, things – things of that sort.

MR. MORRIS: Okay. Can we go to Exhibit 2.

(Exhibit 2 marked.)

Q. Do you see that this is a promissory note dated May 3rd, 2019 in the amount of $5 million?

A. Yes.

Q. Do you believe this is also a demand note if you look at Paragraph 2?

A. Yes.

Q. And do you see that HCMFA is the maker, and Highland is the payee?

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A. Yes.

Q. And if we go to the bottom, can we just confirm that that is your signature?

A. Yes.

Q. And together these notes are the notes that are referred to both in Highland and HCMFA's audited financial reports in the subsequent event sections; correct?

MS. DANDENEAU: Objection to form.

A. They – they – they totaled $7.4 million, so presumably, yes.

Q. Okay. And you were authorized to sign these two notes; correct?

MR. RUKAVINA: Objection, legal conclusion.

A. Yeah. I mean, I'm – I was the officer of – of HCMFA. You know, I – I'm not the legal expert on – on what that – what that confers to me or what it doesn't. I mean, that is my signature on the notes.

Q. And you believed you were authorized to sign the notes; is that fair?

A. I signed a lot of documents in my capacity, just because it is operational in

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nature. So, you know, to me this was just another document, to be perfectly honest.

Q. Sir, would you have signed promissory notes with the principal amount of $7.4 million if you didn't believe you were authorized to do so?

MS. DANDENEAU: Objection to form.

Q. Are you frozen?

A. No. I'm just – you know, it is – you know, again, I typically don't sign promissory notes, and I don't recall why I signed these, but – you know, but I did.

Q. All right. So listen carefully to my question. Would you have ever signed promissory notes with a face amount of $7.4 million without believing that you were authorized to do so?

A. No. I mean, I'm – I'm putting my signature on there, so no.

Q. Okay. And would you have signed two promissory notes obligating HCMFA to pay Highland $7.4 million without Mr. Dondero's prior knowledge and approval?

MS. DEITSCH-PEREZ: Object to the

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form.

A. You know, from – from what I recall around these notes, you know, I don't recall specifically Mr. – Mr. Dondero saying to – to make this a loan.

So my conversation with Mr. Dondero around the culmination of the NAV error as related to TerreStar which was a – a – I think it was a year and a half process. I don't know, it was a multi-month process, very laborious, very difficult.

When we got to the end, I had a conversation with Mr. Dondero on where to, you know, basically get the funds to reimburse the fund, and I recall him saying, get the money from Highland.

Q. And so he told you to get the money from Highland; is that right?

A. That is what I recall – in my conversation with him, that is – that is what I can recall.

Q. Do you know who drafted these notes?

A. I don't.

Q. Did you ask somebody to draft the

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notes?

A. I didn't ask -- I don't specifically ask people to draft notes really. I mean, again, you know, the legal group at Highland is responsible and has always been responsible for drafting promissory notes.

Q. So based on your -- based on the practice, you believe that somebody from the Highland's legal department would have drafted these notes. Do I have that right?

MS. DEITSCH-PEREZ: Object to the form. John, I also asked you for the Word versions of these notes so we could look at the properties, and you have not provided them. Are you intending to?

MR. MORRIS: No.

Q. Can you answer my question, sir?

A. Again, I --

MS. DANDENEAU: Do you want him to repeat it?

A. Yeah, why don't you repeat it?

Q. Sure. Mr. Waterhouse, based on the practice that you have described in your understanding, do you believe that these notes

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would have been drafted by somebody in the legal department?

MS. DEITSCH-PEREZ: Object to the form.

A. Yes.

Q. Okay. And do you know who would have instructed -- do you have any knowledge as to who would have instructed the legal department to draft these notes?

MS. DEITSCH-PEREZ: Object to the form.

A. It was whoever was working -- I mean, it was likely someone on the team. I mean, I don't remember exactly on every note or every document, but, again, a lot of these things of this nature -- they're operational in nature -- were handled by the team.

The team knows to -- I mean, we don't draft documents. We're not lawyers. We're not attorneys. It is not what I do or accountants do.

So they are always instructed to go and -- and go to the legal team to get documents like this drafted. Also, when you go

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to the legal team, the -- you know, we always loop in compliance. And compliance -- when you go to the legal team, compliance is part of legal team. They're made aware of -- of -- of these types of transactions.

Q. And do you believe that you had the -- withdrawn.

Did you ever tell Mr. Dondero -- (inaudible) -- did you see those?

A. Sorry.

MS. DEITSCH-PEREZ: I did not hear the end of that question.

Q. Did you ever tell Mr. Dondero that you signed these two notes?

A. I don't recall ever -- no, I don't recall having a conversation with him.

Q. Did you ever discuss these two notes with him at any time?

A. The conversation, I recall, was what I described earlier. And that is the only time I recall ever discussing this.

Q. Okay. But the corporate accounting group had a copy of this -- of these two notes. And pursuant to the audit process, the

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corporate accounting group gave the two notes to PricewaterhouseCoopers in connection with the audit; correct?

MS. DANDENEAU: Objection to form.

A. Yes. I mean, that is -- yeah, I mean, they -- unless the legal team can also retain copies of items like this. I mean, I don't know everything that they would retain as well.

The legal team would also, if they had documents as part of audits, turn that over to the auditors as well. So it could have been the corporate accounting team. It could be someone on the legal team.

Q. All right. So you didn't -- you didn't draft this note; right?

A. I -- I -- I did not.

Q. But somebody at Highland did; is that fair?

MS. DEITSCH-PEREZ: Object to the form.

A. I don't know. I mean, we can go to the legal team. I don't -- I'm not sitting behind someone in legal. Maybe they went to

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outside counsel. I have no idea.
Q. Did you have any reason to believe you weren't authorized to sign this note, either of these two notes?
A. I think I have already answered that question.
Q. Okay. You didn't give these notes to PricewaterhouseCoopers; correct?
MS. DANDENEAU: Objection to form.
A. I don't recall giving these to PricewaterhouseCoopers.
Q. And in the practice that you have described, somebody in the corporate accounting group would have given these two notes to PricewaterhouseCoopers; correct?
MS. DANDENEAU: Objection to form.
A. I think I've answered that. I said either the corporate accounting team or maybe the legal team.
MR. MORRIS: Okay. Why don't we take our lunch break here.
VIDEOGRAPHER: We're going off the record at 1:04 p.m.
(Recess taken 1:04 p.m. to 1:49 p.m.)

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VIDEOGRAPHER: We are back on the record at 1:49 p.m.
Q. Mr. Waterhouse, did you speak with anybody during the break about the substance of this deposition?
A. I spoke to -- to Deb and Michelle.
Q. About the substance of the deposition?
A. Yes.
Q. Can you tell me what you talked about?
MS. DANDENEAU: No. We object on the basis of privilege.
Q. Okay. You are going to follow your counsel's objection here?
A. Yes.
Q. Okay.
MR. MORRIS: Can we put up on the screen Exhibit 35.
(Exhibit 35 marked.)
Q. Are you able to see that document, sir?
A. Yes.
Q. Have you ever seen an incumbency

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certificate before?
A. I have.
Q. Do you have a general understanding of what an incumbency certificate is?
A. I have a general understanding.
Q. What is your general understanding?
A. You know, those -- my general understanding is that the incumbency certificate basically lists folks that can -- are like authorized signers.
Q. Okay. And do you see that this is an incumbency certificate for Highland Capital Management Fund Advisors, L.P.?
A. Yes.
Q. Okay. And if we could scroll down just a little bit, do you see that it's dated effective as of April 11th, 2019?
A. Yes, I see that.
Q. Okay. And is that your signature in the middle of the signature block?
A. Yes, it is.
Q. And by signing it, did you accept appointment as the treasurer of HCMFA effective as of April 11th, 2019?

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A. Again, I'm not the legal -- I don't know if this makes me the treasurer or the appointment. I don't know -- I don't know that, so I don't -- I don't know if that document -- again, I think -- again, I'm not the legal expert. I think isn't there -- aren't there other legal documents that detail who the officers are that could be incorporated or things like that? Again, I don't want to play armchair attorney here.
Q. I'm not asking you for a legal conclusion. I'm asking you for your knowledge and understanding. When you signed this document, did you understand that you were accepting an appointment as the treasurer of HCMFA?
MS. DANDENEAU: Objection to form.
MS. DEITSCH-PEREZ: Objection, form.
A. Again, I don't think this -- that wasn't my understanding. I don't think this makes -- this document makes me the treasurer.
Q. What do you think this document -- why did you sign this document?
MS. DEITSCH-PEREZ: Objection to

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form.

MR. MORRIS: You're objecting to the form of the question when I asked him why did you sign the document? What is the basis for the objection?

MS. DEITSCH-PEREZ: Because, John, I think that it does call for a legal conclusion other than -- with him saying because somebody told me to sign this document. But if you want to go there, that is fine.

MR. MORRIS: Okay.

MS. DANDENEAU: I don't think -- he's already said he's not a lawyer.

MR. MORRIS: I'll allow the witness to answer this question.

Q. Why did you sign this document, sir?

A. I mean, our -- our legal group would bring by these incumbency certificates from time to time. I have no idea why they're being updated, and I was asked to sign.

Q. Did you ask anybody, what is this document?

A. No.

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Q. Did anybody tell you why they needed you to sign the document?

A. Not that I can recall.

Q. You testified earlier that you understood that you served as the acting treasurer for HCMFA; correct?

A. Yes.

Q. How did you become the acting treasurer of HCMFA?

MS. DANDENEAU: Objection to form.

A. I don't -- I don't know the legal -- I don't know the legal mechanic of how I became the acting treasurer.

Q. I'm not asking for the legal mechanic. I'm asking you as the person who is --

MS. DANDENEAU: John, you said --

MR. MORRIS: Stop.

MS. DANDENEAU: -- how did you become the treasurer. That is --

MR. MORRIS: Please stop.

MS. DANDENEAU: That is a legal question.

MR. MORRIS: I am not asking any

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legal questions, to be clear. I'm asking for this witness' understanding as to how he became the acting treasurer of HCMFA. If he doesn't know, he can say he doesn't know, but this legal stuff is nonsense, and I really object to it.

Q. Sir, I'm asking you a very simple question.

MS. DANDENEAU: Argumentative.

Q. You testified -- you testified that you became the acting treasurer of HCM -- HCMFA; correct?

A. Yes.

Q. How did that happen?

MS. DANDENEAU: Again, object to form.

MR. MORRIS: I can't wait to do this in a courtroom. Good God.

Q. Go ahead, sir.

A. I don't know the exact process of how that happened.

Q. Do you have any idea whether signing this document was part of the process?

MR. MORRIS: You know what --

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MS. DANDENEAU: Objection.

MR. MORRIS: -- withdrawn. You guys want to do this, I can't wait. I can't wait. This is the craziest stuff ever.

MS. DANDENEAU: John, he said he's not a lawyer, and you are asking him for a legal conclusion, and he says he doesn't know, and you persist.

MR. MORRIS: Okay.

MS. DANDENEAU: So you can ask these questions --

MR. MORRIS: Did anyone -- please stop talking.

MS. DANDENEAU: -- at another point -- no, no, no, I'm entitled to talk, too; right? If you're going to make these accusations as if we're trying to stonewall you, this is not the witness to ask that question.

MR. MORRIS: I can't -- I can't wait -- I can't wait to do this in a courtroom. I will just leave it at that.

MS. DANDENEAU: That's right, I'm sure you can't.

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Q. Did anyone ever tell you, sir, that even though you were the acting treasurer of HCMFA, that you were not authorized to sign the two promissory notes that we looked at before lunch?

A. I'm not sure I understand the question. I wasn't – I mean, I'm – I'm the current acting treasurer.

Q. Did anybody ever tell you at any time that even though you were the acting treasurer of HCMFA, that you were not authorized to sign the two promissory notes that we looked at before lunch?

MS. DANDENEAU: Objection to form.

A. Not that I recall.

Q. Did anybody ever tell you at any time that you were not authorized to sign the two promissory notes that we looked at before lunch?

A. Not that I recall.

Q. Did anybody ever tell you at any time that you should not have signed the two promissory notes that we looked at before lunch?

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A. Not that I recall.

Q. Did you ever tell anybody at any time that you weren't authorized to sign the two promissory notes that we looked at before lunch?

A. Not that I recall.

Q. Did you ever tell anybody at any time that you made a mistake when you signed the two promissory notes that we looked at before lunch?

A. Not that I recall.

Q. As you sit here right now, do you have any reason to believe that you were not authorized to sign the two documents that we looked at before lunch?

MS. DANDENEAU: Objection to form.

A. If – if this is the – the valid incumbency certificate, I mean, this does – this does detail who the signers are.

Q. Okay. And looking at that document, does that give you comfort that you were authorized to sign the two promissory notes that we looked at before lunch?

MS. DEITSCH-PEREZ: Object to the

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form.

MS. DANDENEAU: Objection, form.

A. Yes.

Q. As of October 20th – withdrawn.

I'm trying to take your mind back to a year ago, October 2020. Do you recall at that time that the boards of the retail funds were making inquiries about obligations that were owed by the advisors to Highland in connection with their 15(c) review?

MS. DANDENEAU: Objection to form.

A. I don't – I don't recall.

Q. As of October 2020, you had no reason to believe you weren't authorized to sign the two promissory notes that we just looked at; correct?

MS. DANDENEAU: Objection, form.

MS. DEITSCH-PEREZ: Objection to form.

A. I didn't think about it in October of 2020, but I mean –

Q. Did you have any reason to believe at that time that you weren't authorized to sign the two notes that we just looked at?

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A. Not that I'm aware, no.

Q. Did you have any reason to believe a year ago that you made a mistake when you signed those two notes?

A. Not that I'm aware.

Q. A year ago you believed that HCMFA owed Highland the unpaid principal amounts that were due under those two notes; correct?

A. They're – they're promissory notes that were – as you presented, that were – that were executed. Whether they're valid or if there's other reasons, I didn't – I don't know.

Q. I'm not asking you whether they're valid or not. I'm asking you for your state of mind. A year ago you believed that HCMFA was – was obligated to pay the unpaid principal amount under the two notes that you signed; correct?

A. Yeah, I'm – I'm – yes.

Q. Thank you. Are you aware – you're aware that – that in 2017, NexPoint issued a note in favor of Highland in the approximate amount of $30 million; correct?

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A. I'm -- I'm -- I'm generally aware.
Q. Okay. And are you generally aware that from time to time, after the note was issued by NexPoint, that moneys were applied to principal and interest that were due under the NexPoint note?
A. Yes, I'm generally aware.
Q. Okay. And did anybody ever tell you that the payments that were made against the NexPoint notes were made by mistake?
A. Yes.
Q. And is it the one payment that we talked about earlier today?
A. We talked about a lot of things today. What payment are we talking about?
Q. Okay. Who told you that any payment made against the NexPoint note was made by mistake?
A. D.C. Sauter.
Q. When did Mr. Sauter tell you that?
A. I don't -- I don't remember specifically.
Q. Do you remember what payments --
A. Sometime -- sometime this year.

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Q. Sometime in 2021?
A. Yes.
Q. Do you remember what payment he was referring to?
A. It was the -- the payment made in January of 2021 or -- yeah, January of -- of this -- January of 2021.
Q. Okay. So did anybody ever tell you at any time that any payment that was made against principal --
A. And -- and -- and -- hold on, and it may have been other -- again, it may have been that payment or -- or there may have been what he was explaining, a misapplication of prior payments as well.
Q. Can you -- can you give me any specificity -- withdrawn.
Withdrawn. Can you tell me everything that Mr. Sauter told you about -- about errors in relation to payments made against principal and interest due under the NexPoint note?
MS. DANDENEAU: Can I just --
MR. RUKAVINA: Hold on. Hold on.

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I'm going to object here, and I'm going to instruct the witness not to answer depending on the discussion that you had -- Mr. Waterhouse, I'm the lawyer for NexPoint, and as everyone here knows, D.C. Sauter is in-house counsel.
So if you and Mr. Sauter were having a factual discussion and him preparing his affidavit, et cetera, then go ahead and answer that. But if you were having a discussion as to our legal strategy in this lawsuit, or anything having to do with that, then do not answer that.
And if you need to talk to either your counsel or me about that, then we need to have that discussion now.
A. Okay. Yeah, I don't -- I don't really know how to make that distinction, so maybe I need to talk to counsel before I answer, or if I can answer.
Q. Let me just ask you this question: Did -- did you have any conversation with Mr. Sauter about any payment of principal and interest prior to the time that you left

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Highland's employment, or did it happen after you left Highland's employment?
A. I don't -- I don't recall if -- I don't recall. I mean, it was sometime in 2021. I don't remember if it was before or after I was let go from Highland.
Q. Okay. So -- so nobody told you prior to 2021 that any error or mistake was made in the application of payments against principal and interest due on the NexPoint note. Do I have that right?
A. Yeah, I don't -- I don't recall this being in 2020.
Q. Okay. And it didn't happen in 2019; correct?
A. I don't recall that happened.
Q. And it didn't happen in 2018; correct?
A. I don't -- I don't recall that happening.
Q. And it didn't happen in 2017; correct?
A. I don't recall.
Q. But -- but you believe the

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2 conversation took place in 2021. You just
3 don't remember if it was before or after you
4 left Highland's employment. Do I have that
5 right?
6 A. It was sometime this year. I
7 don't – I don't remember.
8 Q. Okay. Did you report this
9 conversation to Mr. Seery at any point?
10 A. I don't believe so.
11 Q. Did you report this conversation to
12 anybody at DSI at any time?
13 A. I don't recall.
14 Q. Do you have -- you don't have a
15 recollection of ever doing that; correct?
16 A. Yeah, that's right. I don't recall
17 doing that.
18 Q. Do you recall telling anybody at
19 Pachulski Stang about the conversation you
20 recall with Mr. Sauter?
21 A. No, I don't – I don't recall.
22 Q. Did you tell any of the independent
23 board members about your conversation with
24 Mr. Sauter?
25 A. I don't recall.

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2 Q. Did you tell any of the employees at
3 Highland before you left Highland's employment
4 about this call that you had with Mr. Sauter?
5 MS. DANDENEAU: Objection to form.
6 A. No, I don't -- no, I don't recall.
7 Q. NexPoint -- to the best of your
8 knowledge, did NexPoint ever file a proof of
9 claim against Highland to try to recover moneys
10 that were mistakenly paid against the principal
11 and interest due under the note?
12 A. Okay. Hold on. You are saying did
13 NexPoint Advisors file a proof of claim to
14 Highland for errors related to payments under
15 the NexPoint note to Highland?
16 Q. Correct.
17 A. I'm -- I'm -- I'm not -- I'm not
18 aware.
19 Q. Are you aware --
20 A. I'm not the legal person here, I
21 don't know.
22 Q. I'm just asking for your knowledge,
23 sir.
24 A. Yeah, I don't know. I'm not aware.
25 Q. Are you aware of any claim of any

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2 kind that NexPoint has ever made to try to
3 recover the amounts that it contends were -- or
4 that Mr. Sauter contend were mistakenly applied
5 against principal and interest due under the
6 NexPoint note?
7 A. I'm not aware.
8 MS. DANDENEAU: Objection to form.
9 Q. Okay. The advisors' agreements with
10 the retail funds are subject to annual renewal;
11 correct?
12 A. Yes.
13 Q. And do you participate in the
14 renewal process each year?
15 A. Yes.
16 Q. What role do you play in the renewal
17 process?
18 A. I'm -- I'm asked by the retail board
19 to walk-through the advisors financials.
20 Q. And do you do that in the context of
21 a board meeting?
22 A. Yes, it is -- yes, it is typically
23 done in a board meeting.
24 Q. And do you recall the time --
25 does -- does the renewal process happen around

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2 the same time each year?
3 A. Yes, it is -- it is around the same
4 time every year.
5 Q. And what -- what time period of the
6 year does the renewal process occur?
7 A. Approximately the September
8 timeframe.
9 Q. During that process, in your
10 experience, does the board typically conduct
11 its own diligence and ask for information?
12 A. Does the board ask for lots of -- I
13 mean, just -- I mean, lots of information as a
14 part of that -- that -- as part of that board
15 meeting and that process.
16 Q. Okay. And do you recall that the
17 process in 2020 spilled into October?
18 A. Yes. Yes.
19 Q. Okay. And as part of the process in
20 2020, the retail board asked -- asked what are
21 referred to as 15(c) questions; right?
22 A. I guess I don't want to be -- they
23 asked 15(c) -- are you saying they asked 15(c)
24 questions and this is why it went into October
25 or --

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Q. No, I apologize.
Do you have an understanding of what – of what 15(c) refers to in the context of the annual renewal process?
A. Yes, generally.
Q. All right. What is your general understanding of the term "15(c)" in the context of the annual renewal process?
A. I – I think 15(c) is the section that – that – you know, that – that the board has to evaluate every year, the retail board. They have to, you know, go through, evaluate, and go through that approval process on a yearly basis.
Q. Okay.
MR. MORRIS: Can we put up on the screen Exhibit 36, please.
(Exhibit 36 marked.)
MR. MORRIS: I guess let's just start at the bottom so Mr. Waterhouse can see what is here.
Q. You see this begins with an email from Blank Rome to a number of people.
MR. MORRIS: And if we can scroll

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up – keep going just a little bit.
Q. You will see that there is an email from Lauren Thedford to Thomas Surgent and others where she reports that she was attaching and reproducing below additional 15(c) follow-up questions from the board.
Do you see that?
A. Yes.
Q. And do you see Question No. 2 asks whether there are any material outstanding amounts currently payable or due in the future (e.g., notes) to HCMLP by HCMFA or NexPoint Advisors or any other affiliate that provides services to the funds?
Do you see that?
A. Yes.
Q. And – and did you – do you recall that in – in October of 2020 the retail boards were asking for that information?
A. I don't recall it, but there – they're obviously asking in this email.
Q. Okay.
MR. MORRIS: Can we scroll up a little bit, please.

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Q. And then do you see that Ms. Thedford includes you on the email string on Tuesday, October 6th, at 5:52?
A. Yes.
Q. And she asks you and Dave Klos and Kristin Hendrix for advice on that particular Request No. 2 that I have just read; right?
A. Yes.
Q. Okay. Can you tell me who Ms. Thedford is?
A. She was an attorney that was in the legal group.
Q. At Highland Capital Management, L.P.?
A. I'm – I'm – I'm – I don't remember if she was an employee of Highland or any of the advisors.
Q. Okay. Do you know if she served as the corporate secretary for both HCMFA and NexPoint?
A. Yes.
Q. And – okay.
Do you know whether Ms. Thedford held any positions in relation to the retail

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funds as we defined that term?
A. Yes.
Q. What is your understanding of the positions that Ms. Thedford held at the retail funds?
A. I – I recall her being an officer. I don't recall her title.
Q. Okay. Is she still an officer at any of the retail funds today?
A. No.
Q. Do you know when she ceased to be an officer of the retail funds?
A. Approximately.
Q. And when did she approximately cease to be an officer of the retail funds?
A. It was in – it was in early of 2021.
Q. Okay. Do you know when she became an officer of the retail funds?
A. I don't recall.
Q. To the best of your recollection, was she an officer of the retail funds in October of 2020?
A. I believe so.

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Q. Okay. Do you know what title she held in her capacity as an officer, if any?

A. I told you I don't remember.

Q. Okay. So she sends this email to you at 5:52 p.m. on October 6th.

And if we can scroll up to the response, you responded a minute later with a one-word answer: Yes.

Do you see that?

A. Yes.

Q. And – and yes is – yes was in response to the retail board's Question No. 2, right, whether there are any material outstanding amounts currently payable or due in the future?

A. Yes.

MR. MORRIS: And can we scroll up to see what happened next.

Q. So Ms. Thedford writes back to you a few minutes later and she asks whether you could provide the amounts.

Do you see that?

A. Yes.

Q. And then you respond further and you

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refer her to the balance sheet that was provided to the board as part of the 15(c) materials.

Do you see that?

A. Yes.

Q. And – and did the advisors provide to the board certain balance sheets in 2020 in connection with the 15(c) review?

A. Yes, they did.

Q. Okay. And were the amounts that were outstanding or that were to be due in the future by the advisors to Highland included in the liability section of the balance sheet that was given to the retail board?

A. Yes. Notes would be reflected as liabilities.

Q. Okay. And –

A. If I'm understanding your question correctly.

Q. You are. And – and – and those liabilities you – you were – you believed were responsive to the retail board's question; correct?

A. Yes.

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Q. Okay. And then if we can scroll up, you see Ms. Thedford responds to you nine minutes later with a draft response.

Do you see that?

A. Yes.

Q. And she says that she is taking from the 6/30 financials certain information about amounts that were due to HCMLP and affiliates as of June 30th, 2020.

Do you see that?

A. I do.

Q. Okay. And did you believe, as the treasurer of NexPoint and HCMFA and as the CFO of Highland, that the information that Ms. Thedford obtained from the 6/30 financials was accurate and responsive in relation to the retail fund board's question?

A. I just want to make sure I understand the question.

Are you saying that the financial information provided to the retail board as part of the 15(c) process, which included financial statements as of June 30th of 2021, did I feel like those were responsive to their

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questions?

Q. Yes.

A. Yes.

Q. Thank you.

MS. DEITSCH-PEREZ: John, it is not in the chat yet. Can you just make sure it gets put in there.

MR. MORRIS: Sure.

MS. CANTY: I put it in there. I think maybe I just sent it directly, so let me make sure it says to everyone. But I did put it in there. I will try again.

MR. MORRIS: Thank you, La Asia.

MS. DANDENEAU: What number is it.

MR. MORRIS: What, the Bates number?

MS. DEITSCH-PEREZ: No, the – this – yeah, 36 is not in the chat.

MR. MORRIS: Okay. We'll get it.

MS. DANDENEAU: I think that Ms. Canty just sent it to me originally. Sorry.

MR. MORRIS: Okay. We will get it there.

MS. CANTY: Okay. It is there now

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for everyone.

MS. DEITSCH-PEREZ: Got it. Thank you.

Q. Do you recall if the proposed response that Ms. Thedford crafted was delivered to the retail board with the -- with the yellow dates having been completed?

A. I don't know.

MR. MORRIS: Davor, I'm going to ask that the advisors and -- the advisors of both HCMFA and NexPoint produce to me any report that was given to the retail board concerning the promissory notes at issue, including the obligations under the notes.

Q. Do you know -- do you know if ultimately NexPoint informed the retail board in response to its question that NexPoint owed Highland approximately 23 or $24 million?

MS. DANDENEAU: Objection to the form.

A. Sorry, are you asking, did NexPoint tell the retail board that it owed Highland?

Q. Let me ask a better question, Mr. Waterhouse.

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Did -- do you know if anybody ever answered the retail board's question that was Number 2?

A. I don't -- I can't say for sure.

Q. Okay. Do you recall -- I think you testified earlier that you walked through the advisors' financials with the retail board; correct?

A. Yes.

Q. And as part of that process, did you disclose to the retail board the obligations that NexPoint and HCMFA had to Highland under promissory notes?

A. The retail board, as I stated earlier, receives financial information, balance sheet, income statement information from the advisors. That information is provided to the retail board in connection with the 15(c) process.

So any notes between the advisors and the Highland would be -- anything would be detailed in those financial statements.

Q. Do you recall in 2020 ever speaking with the retail board about the advisors'

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obligations under the notes to Highland?

MS. DANDENEAU: Objection to form.

MS. DEITSCH-PEREZ: Object to the form.

A. I don't recall specifically.

Q. Do you have any general recollection of discussing with the retail board the advisors' obligations to Highland under the notes that they issued?

MS. DANDENEAU: Object to the form.

MS. DEITSCH-PEREZ: Object to the form.

A. I just recall generally just -- it is just -- I present the financial statements, and if they have questions, I answer their questions and walk them through.

I don't recall what they asked. I don't recall where the discussion went. I don't recall anything of that nature.

Q. Okay. Do you know if anybody on behalf of HCMF -- HCMFA ever told the retail board that HCMFA had no obligations under the two 2019 notes that you signed? Withdrawn.

Do you know whether anybody on

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behalf of HCMFA ever told the retail boards that you weren't authorized to sign either of the two 2019 notes?

MS. DANDENEAU: Objection to form.

A. I'm not aware.

Q. Are you aware of anybody on behalf of HCMFA ever telling the retail boards that your execution of the two 2019 notes was a mistake?

MS. DANDENEAU: Objection to form.

A. I'm not aware.

Q. Are you aware of anybody on behalf of HCMFA ever telling the retail boards that HCMFA did not have to pay the amounts reflected in the two notes that you signed in 2019?

A. I'm not aware.

Q. Do you know whether anybody ever told the retail boards -- withdrawn.

Do you know whether anybody ever told the retail boards that Highland has commenced a lawsuit to recover on the two notes that you signed in 2019?

A. I'm not aware.

Q. Are you aware of anybody informing

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2 the retail boards that Highland has sued to
3 recover on the NexPoint note?
4 A. I'm not aware.
5 Q. Do you know whether anybody ever
6 told the retail board that Highland had
7 declared a default with respect to the two
8 HCMFA notes that you signed in 2019?
9 A. I'm not aware.
10 Q. Are you aware of anybody ever
11 informing the retail boards that Highland had
12 declared a default under the NexPoint note?
13 A. I'm not aware.
14 Q. Are you aware of anybody telling the
15 retail board that Highland made a demand for
16 payment under the 2019 notes that you signed on
17 behalf of HCMFA?
18 A. I'm not aware.
19 Q. Let's -- let's see if there is a
20 response to Ms. Thedford's email, if we can
21 scroll up.
22 Do you see you responded to
23 Ms. Thedford five minutes after she provided
24 the draft response to you?
25 A. Yes.

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2 Q. Okay. And do you see that Dustin
3 Norris is copied on this email?
4 A. Yes, he is.
5 Q. Great. Do you know whether
6 Mr. Norris held any positions at either of the
7 advisors as of October 6, 2020?
8 A. I will go back to -- I'm not the
9 legal expert of what appoints you or how or
10 why, but you did see Dustin's name on the
11 incumbency certificate that you produced
12 earlier.
13 Q. Do you know what his title was in
14 October of 2020?
15 MS. DANDENEAU: Objection to form.
16 A. I don't -- I don't recall.
17 Q. Was he -- did he have a title with
18 each of the advisors, to the best of your
19 recollection?
20 A. I don't recall.
21 Q. Do you know why he is included on
22 this email string?
23 A. I didn't add Dustin. It looks like
24 Lauren did. I don't know why she added him or
25 not. You would have to ask her.

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2 Q. Does Mr. Norris play a role in
3 formulating the advisors' responses to the
4 questions asked by the retail board in
5 connection with the 15(c) annual review?
6 MS. DANDENEAU: Objection to form.
7 A. He -- Dustin Norris is there in the
8 board meetings. But -- so he has a role, yes.
9 Q. Okay. And does Mr. Norris hold any
10 positions, to the best of your knowledge, in
11 relation to any of the retail funds?
12 A. I don't -- I don't believe he does.
13 Q. How about Mr. Post, do you know
14 whether Mr. Post holds any position in either
15 of the advisors?
16 A. I mean, he -- he -- yes.
17 Q. What is your understanding of the
18 positions that Mr. Post holds in relation to
19 the advisors?
20 MS. DANDENEAU: Objection to form.
21 A. He is an employee of NexPoint
22 Advisors. He is also the chief compliance
23 officer for -- for NexPoint.
24 Q. Who is the chief compliance officer
25 for HCMFA, if you know?

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2 MS. DANDENEAU: Objection to form.
3 A. That would be Jason as well.
4 Q. Okay. Now, looking at your
5 response, you noted initially that nothing was
6 owed under shared services. Do I have that
7 right in substance?
8 A. Yeah. I think I'm being responsive
9 to Lauren's question here, whether any of the
10 shared service invoices are outstanding.
11 Q. Right.
12 A. Yes.
13 Q. And that is because -- and that is
14 because the retail the retail board has asked
15 for the disclosure of all material obligations
16 that were owed to HCMLP either then or in the
17 future; isn't that right?
18 MS. DANDENEAU: Objection to form.
19 Q. We can go back down and look.
20 A. Look, I don't know if that's a
21 material item, I mean, again, but sure.
22 Q. Okay. But there were no shared
23 services outstanding; correct?
24 MS. DANDENEAU: Objection to form.
25 A. That is what this email seems to

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indicate.

Q. And you wouldn't have written it if you didn't believe it to be true at the time; correct?

A. Correct.

Q. And when you referred to shared services outstanding, what you meant there was that neither NexPoint nor HCMFA owed Highland any money under the shared services agreements that they had with Highland as of October 6th, 2020; right?

A. I don't know if it is as of October 6, 2020 or if it was from -- like through the financials -- through the date of the financials as of June 30.

Q. Okay. And then you noted that HCMA -- the HCMFA note is a demand note; right?

A. Yes.

Q. And then you referred Ms. Thedford to Kristin Hendrix for the term of the NexPoint note. Do I have that right?

A. Yes.

Q. And then you refer to that agreement that is referenced in the 2018 audited

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financials about Highland's agreement not to make demand upon HCMFA until May 2021; correct?

A. Correct.

Q. And then -- and then the next thing you write is that the attorneys think that BK doesn't change that, but don't know for sure at the end of the day.

Do you see that sentence?

A. Yes.

Q. Which attorneys were you referring to?

A. I don't remember.

Q. Did you have a conversation with attorneys concerning whether the bankruptcy would change or alter in any way the agreement not to make a demand under the HCMFA note?

A. Look, yeah, I mean, I don't specifically remember, but generally, I mean, it is in this email. I don't -- I don't -- I don't -- I don't remember who I talked to or, you know, was it inside counsel, outside counsel, but obviously I talked to somebody.

Q. Do you have any recollection --

A. Well, I don't even know if it's --

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actually, it may not even have been me. I say the attorneys in, you know, a lot of -- like I talked about the team.

It could have been someone on the team, like, hey, we need to run this down, and maybe they talked to attorneys again and relayed that information to me.

So I really don't know if I spoke or someone else did or -- or, I mean, and maybe it wasn't even from corporate accounting. Maybe it was, you know, other -- I'm kind of summarizing, you know, again, so I don't really know -- I can't really say for sure. I don't remember how I came about of this knowledge.

Q. I appreciate your efforts, Mr. Waterhouse, but I will just tell you that if I ask a question and you don't know the answer or you don't recall, I'm happy to accept that. I don't -- I don't want you to speculate, so I want to be clear about that. So I appreciate it.

Let me just ask you simply: Do you know what attorneys -- can you identify any of the attorneys who thought that the bankruptcy

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process didn't change the agreement?

A. I don't recall.

Q. Okay. Perfect.

And then let's look at the last sentence. It says, quote: The response should include, as I covered in the board meeting, that both entities have the full faith and backing from Jim Dondero, and to my knowledge that hasn't changed.

Do you see that?

A. Yes.

Q. Okay. Prior to October 6th, 2020, had you told the retail board that HCMFA and NexPoint have the full faith and backing from Jim Dondero?

A. Yes.

Q. Do you remember in the context in which you told the retail board that?

A. I mean, generally, yes.

Q. Tell me what you recall.

A. So we were walking through the financials from the advisors; right? So as I described to you, you have got HCMFA and NPA. And these -- the financials, you know, show

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2 they have liabilities on them that exceed
3 assets.
4 So the retail board has asked, okay,
5 you know, how -- you know, if -- if these
6 liabilities come due or they're payable, you
7 know, how does that come about?
8 And, you know, the response is,
9 well, the advisors have the -- the full faith
10 and backing from -- from Jim Dondero.
11 Q. And how did you know that the
12 advisors had the full faith and backing from
13 Jim Dondero? What was the basis for that
14 statement that you made to the retail board?
15 A. I talked to Jim about it at some
16 point in the past.
17 Q. And did you tell Mr. Dondero that
18 you were going to inform the retail board that
19 the advisors had his full faith and backing
20 before you actually told that to the retail
21 board?
22 A. I don't recall having that
23 conversation.
24 Q. Do you recall if you ever informed
25 Mr. Dondero that you had disclosed or told the

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2 retail board that the advisors had the full
3 faith and backing of Mr. -- Mr. Dondero?
4 MS. DEITSCH-PEREZ: Object to the
5 form.
6 A. I don't recall discussing that with
7 him at the time.
8 Q. When you told this to the board, was
9 Mr. Dondero participating in the discussion?
10 A. Not that I recall.
11 Q. Withdrawn. Was it not -- withdrawn.
12 Do you recall whether -- when you
13 covered this issue with the board, was that in
14 a -- a Zoom call or a Webex call? Was it a
15 telephone call? Was it in-person? Like where
16 were you physically in relation to the board?
17 A. I believe I was at home.
18 Q. Okay. Can you identify every person
19 that you recall who was present for this
20 disclosure other than -- other than the board
21 members themselves?
22 MS. DEITSCH-PEREZ: Object to the
23 form.
24 A. I don't recall everyone on the call.
25 Q. Can you identify anybody who was on

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2 the call?
3 A. Other than the board members?
4 Q. Yes.
5 A. Lauren Thedford. I mean, there
6 are -- there are many -- my section is just one
7 of many sections that are just -- you know, as
8 you can appreciate, this is a long board
9 meeting.
10 I can't recall specifically, really
11 even generally, or who was on when this was
12 discussed. But Lauren was typically on for the
13 entire time.
14 Q. I apologize if I asked you this, but
15 do either of Mr. Norris or Mr. Post hold any
16 positions relative to the retail funds?
17 A. I think you asked me this already,
18 John.
19 Q. Okay. I just don't recall. Can you
20 just refresh my recollection if I did, in fact,
21 ask you the question?
22 A. I don't believe -- if we can go
23 back. I don't believe Mr. Norris has a title
24 at the retail funds. Mr. -- and Mr. Post is
25 the CCO of the advisor, the advisors.

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2 Q. Okay. Do you know if either of them
3 have a position with the retail board -- with
4 the retail funds?
5 A. I don't believe Mr. Norris has a
6 position with the retail funds.
7 Q. All right. What about Mr. Post?
8 A. Mr. Post is the CCO of the advisors.
9 Q. Okay. Does he hold any position --
10 A. I don't believe so.
11 Q. -- with the retail funds?
12 A. I don't believe so.
13 Q. Okay.
14 A. I don't know if being the CCO for
15 the advisor conveys something for the retail
16 funds. Again, I am not -- that is the legal
17 compliance part of it. I don't know.
18 Q. Why did you tell the retail board
19 that the advisors have the full faith and
20 backing from Mr. Dondero?
21 MS. DANDENEAU: Objection to form.
22 A. It is -- it is -- it is what has
23 been discussed with them prior.
24 Q. And were you -- were you trying to
25 give them comfort that even though the

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2 liabilities exceeded the assets that the
3 advisors would still be able to meet their
4 obligations as they become due?
5 MS. DANDENEAU: Objection to form.
6 MS. DEITSCH-PEREZ: Object form.
7 A. I -- I can't -- I don't remember
8 specifically the conversation, but generally --
9 you know, generally, yes. And that is why --
10 but, you know, again, in this email saying, you
11 know, I am sure I qualified it with the retail
12 board, you know, as I said I like -- you know,
13 to my knowledge, that hasn't changed. But,
14 again, generally -- generally that is what I
15 remember.
16 Q. Okay. Do you recall if in the
17 advisors' response to the retail board's
18 question if the response included any statement
19 concerning Mr. Dondero and -- and the full
20 faith and backing that he was giving to the
21 advisors?
22 MS. DEITSCH-PEREZ: Object to the
23 form.
24 A. I don't -- I don't remember
25 specifically what was provided.

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2 Q. Okay.
3 A. And I don't really -- I don't really
4 remember generally either.
5 Q. Okay.
6 MR. MORRIS: So -- so, again, I'm
7 just going to ask Mr. Rukavina if your
8 clients can produce as soon as possible the
9 15(c) response, the written response that
10 the advisors made, if any, to the board's
11 Question No. 2.
12 I'm not looking for the whole
13 response, but I certainly want the response
14 to Question No. 2.
15 Q. Do you have a general understanding
16 as to the amount by which -- withdrawn.
17 Did -- did the assets of --
18 withdrawn.
19 Did the liabilities of HCMFA exceed
20 its assets in 2020?
21 MS. DANDENEAU: Objection to form.
22 MS. DEITSCH-PEREZ: Objection, form.
23 A. I believe I have already answered
24 that question earlier, I think. I believe I
25 said yes.

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2 Q. Okay. And did the liabilities of
3 NexPoint exceed its assets in 2020?
4 MS. DEITSCH-PEREZ: Objection to
5 form.
6 A. I don't believe so.
7 Q. Okay. So -- so it was only one of
8 the two advisors who had liabilities that
9 exceeded the value of the assets.
10 Do I have that right?
11 MS. DEITSCH-PEREZ: Objection to
12 form.
13 MS. DANDENEAU: Form.
14 A. Yes.
15 Q. And do you know, ballpark, the
16 amount by which the value of HCMFA's
17 liabilities exceeded their assets in 2020?
18 MS. DANDENEAU: Objection to form.
19 A. I don't -- I don't recall.
20 MR. MORRIS: I had specifically
21 requested in discovery the audited
22 financial reports for both advisors and
23 NexPoint. I think I may have gotten one
24 for NexPoint but I'm still waiting for the
25 balance. And I'm going to renew my request

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2 for those documents too.
3 Q. Let's go to the next exhibit, which
4 is Number 10. So I think it is in your stack,
5 Mr. Waterhouse.
6 MR. MORRIS: And we can take the one
7 down from the screen and put up Number 10
8 for everybody.
9 (Exhibit 10 marked.)
10 Q. And I don't know if you have ever
11 seen this before, but I'm really putting it up
12 on the screen for purposes of turning to the
13 very last page of the document.
14 So this is a document that we have
15 been -- that we premarked as Exhibit 10. And
16 we're turning to the last page of the document,
17 which is a document that was filed in the
18 adversary proceeding 21-3004. And -- no, I
19 apologize, I think we -- right there. Perfect.
20 And it is page 31 of 31.
21 MR. MORRIS: I think there may have
22 been some something erroneously stapled to
23 the hard copy that I gave you folks, but
24 I'm looking for page 31 of 31 in the
25 document that begins with the first page of

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Exhibit 10.

Q. Do you have that, Mr. Waterhouse?

A. I don't have it yet. I'm looking.

Q. All right. If you look at the top right-hand corner, you will see it says page hopefully something of 31?

A. Yes, I've got it now.

Q. Okay. You have got 31 of 31. You can take a moment to read that, if you would like.

A. (Reviewing document.) Okay.

Q. Have you ever seen this before?

A. I don't know if I have seen this specific document, but, you know, I've -- I'm -- I'm aware of it.

Q. And is this the document that you had in mind when you sent that email to Ms. Thedford that we just looked at where you said that Highland had agreed not to make a demand upon HCMFA until May 2021?

A. Honestly, I don't -- it wasn't this document. I mean, it's something like this, yes. I mean, yes.

Q. Well --

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A. It is something like this, but I don't think it was this specific document.

Q. Well, but this document does say in the last sentence that Highland agreed not to seek -- not to demand payment from HCMFA prior to May 31, 2021; right?

A. Yes.

Q. And are you aware of any other document that was ever created pursuant to which Highland agreed not to demand payment on amounts owed by HCMFA before May 31, 2021?

A. Hold on. Are you asking, am I aware of a document that by HCMFA that basically says otherwise?

Q. No. Let me try again.

Are you aware of any other document pursuant to which -- pursuant to which Highland agreed not to make a demand on HCMFA until May 31st, 2021?

A. I'm -- I think there was something in connection with -- with the -- with the audit that basically says the same thing.

Q. Okay. And do you think that the audit is referring to this particular document?

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A. I don't know.

Q. All right. This document is dated April 15, 2019. Do you see that?

A. I do.

Q. And do you remember that the audit was completed on June 3rd, 2019?

A. Yes.

Q. And do you recall that the audited financials -- and I'm happy to pull them up if you would like, but do you recall that the audited financials included a reference to the agreement pursuant to which Highland agreed not to make a demand until May 31st, 2021?

A. Yes, I remember.

Q. And as part of the process, would you have expected the corporate accounting team to have provided a copy of this document to PwC?

MS. DANDENEAU: Objection to form.

A. Yes, I would have expected something like this, or again, you know, some document that basically states -- states the deferral till May 31 of 2020.

Q. Okay.

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A. May 31 of 2021, excuse me.

Q. And this document states the deferral that you just described; correct?

A. It does.

Q. And this document states the deferral that was described in the audited financial statements that we looked at before; correct?

A. It does.

MR. MORRIS: Okay. Can we scroll down just a little bit to see who signed on behalf of the acknowledgment there.

Q. Okay. So Mr. Dondero signed this document on behalf of both HCMFA and Highland; do you see that?

A. I do.

Q. Okay. Did you discuss this document or the -- withdrawn.

Did you discuss the concept of the deferral with Mr. Dondero in the spring of 2019?

A. I think I testified I don't recall.

Q. Okay. Do you know whose idea it was to issue the acknowledgment in this form?

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A. I don't recall.

MR. MORRIS: Can we scroll back up to the document, please.

Q. Do you see in the beginning it says, reference is made to certain outstanding amounts loaned from Highland to HCMFA for funding ongoing operations.

Do you see that?

A. Yes.

Q. And were you aware as the CFO of Highland and as the treasurer of HCMFA that as of April 15, 2019, Highland had made certain loans to HCMFA to fund HCMFA's ongoing operations?

A. Yes.

Q. And were you aware that those loans were payable on demand and remained outstanding as of December 31st, 2018?

A. Yes.

Q. And were you aware that those amounts were payable on demand, and they remained outstanding as of April 15, 2019?

MS. DEITSCH-PEREZ: Object to the form.

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A. Well, this – this document dated April 15, 2019 says they have been deferred to May 31, 2021.

Q. Right. But I'm just sticking to the first paragraph where they refer to the outstanding amounts. And in the end it says the – it remained outstanding on December 31st, 2018, and I think you told me that you understood that, and then I'm just trying to capture the last piece of it.

Did you understand that there were amounts outstanding from the loan that Highland made to HCMFA to fund ongoing operations as of April 15th, 2019?

A. Yes.

Q. Thank you. Let's look at the next sentence. HCMFA expects that it may be unable to repay such amounts should they become due for the period commencing today and continuing through May 31st, 2021.

Do you see that?

MS. DANDENEAU: Objection to form.

A. I do.

Q. As the CFO – withdrawn.

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As the treasurer of HCMFA, did you believe that – do you believe that statement was true and accurate at the time it was rendered?

A. I mean, it – it – the answer to that is I really didn't have any – I didn't have an opinion really.

Q. Did you do anything to educate yourself in April of 2019 on the issue of whether HCMFA could repay the amounts that it owed to Highland should they become due?

A. I don't believe so.

Q. Did you at any time form any opinions as to HCMFA's ability to repay all amounts due to Highland should they become due?

A. Not really. I guess I don't...

Q. Well, you told the retail board that HCMFA's liabilities exceeded their assets in 2020; correct?

A. Yes.

Q. Based on the work that you did to prepare for the retail board, did you form any view as to whether HCMFA would be unable to repay the amounts that it owed to Highland

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should they become due?

MS. DANDENEAU: Objection to form.

A. I mean, I – when you look at that, to answer you, completely, you know, again, if – the response I gave the retail board was, you know, the – the advice – HCMFA advisors have the – have the full faith and backing of Jim Dondero. So I didn't form an opinion of whether the advisor could pay it or not.

Q. Did you form any view as to whether the advisors could repay the amounts that it owed to Highland should they become due without the full faith and backing of Mr. Dondero?

MS. DANDENEAU: Objection to form.

MS. DEITSCH-PEREZ: Form.

A. I mean, if you – if you – if you take that last statement out, I mean, it would be difficult for HCMFA to pay back demand notes at that time.

Q. And it was precisely for that reason that you told the retail board that – that the retail – that the advisors had the full faith and backing of Mr. Dondero; correct?

MS. DANDENEAU: Objection to form.

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A. I mean, yes, as the mouthpiece, I was relaying information.

Q. Okay. And you relayed that information with the knowledge and approval of Mr. Dondero; correct?

MS. DEITSCH-PEREZ: Object to the form.

A. As I stated in the email, I don't believe, and I think I testified I don't believe I had conversations with Mr. Dondero at the time of that board meeting.

Q. Did you tell the retail board that the advisors had the full faith and backing of Mr. Dondero without Mr. Dondero's prior approval?

A. Yeah, I – I – yes, I'm – like I said, I think I testified earlier, I'm sure I qualified it as well.

Q. What do you mean by that?

MS. DANDENEAU: Objection to form.

A. Again – again, like I said in the email, it has the full faith and backing of Jim Dondero unless that has changed.

Q. Actually that is not what you said,

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so let's put the email back up.

A. It is – it is – it is in the email.

Q. Let's put the email back up. You didn't say unless it has changed. You said you believe it hasn't changed; right?

A. Okay. And to my knowledge that hasn't changed, that is what it says.

Q. That's right.

A. But, again, I mean, that is – I don't know everything. And I'm not in every conversation. I'm not – to presume that I am, is – and you have to put myself – as you started this out, Mr. Morris, I was at home in October of 2020 with COVID – or, you know, under these COVID times that we described is very difficult.

We have all been working at home for really the first time ever, undergoing processes, procedures, control environments that have been untested, and there is poor communication.

So I am relaying, as I'm telling you now, what is in the email. And unless

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something has changed – to my knowledge, it hasn't changed, but it could have changed.

Q. When you say that the advisors have the full faith and backing from Mr. Dondero, did you intend to convey that, to the extent the advisors were unable to satisfy their obligations as they become due, Mr. Dondero would do it for them?

MS. DANDENEAU: Object to the form.

MS. DEITSCH-PEREZ: Object to the form.

And, John, we have given you a lot of leeway here but this does not seem relevant to this case. You seem sort of taking a complete sort of diversion into the allegations and the complaint just filed on Friday, and so I would ask you to move on because –

MR. MORRIS: And I will tell you – I will tell you that I have never read that complaint cover-to-cover. I have nothing to do with the prosecution of those claims. And this issue that we're talking about right now is related solely to the

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promissory notes that your clients refuse to pay.

So I'm going to continue to ask my questions, and I would ask the court reporter to read back my last question.

(Record read.)

MS. DEITSCH-PEREZ: And then I believe there were objections to form.

Q. You can answer the question.

A. Yes.

Q. Thank you very much, sir.

MR. MORRIS: Can we go back to the other document, please?

Q. Mr. Waterhouse, do you know if this document was ever shared with the retail board?

A. I don't recall.

Q. Did you ever share it with the retail board?

A. I don't recall.

Q. Did you ever tell the retail board about the substance of this document?

A. I don't recall.

Q. Did you ever tell the retail board that Highland had agreed not to make a demand

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against HCMFA until May 2021?

A. I don't recall.

Q. Do you know whether anybody on behalf of the advisors ever informed the retail board that Highland had agreed on April 15, 2019, not to make a demand against HCMFA under the promissory notes?

A. I don't recall.

Q. Did you instruct Ms. Thedford or anybody else responding to the retail board's 15(c) inquiry to disclose this document?

A. Did I instruct Ms. Thedford or anyone else to -- to -- to produce this, to disclose this document? Is that what you -- I just want to make sure.

Q. Uh-huh.

A. Yeah, I don't -- I don't recall.

Q. Did you instruct anybody to inform the retail board, in response to their question as part of the 15(c) process, to -- to tell the retail board about Highland's agreement not to make a demand until 2021?

MS. DANDENEAU: Objection to form.

A. I don't recall.

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Q. Did you ever inform PwC that HCMFA's liabilities exceeded its assets?

MS. DANDENEAU: Object to the form.

A. I don't -- I don't think I told them. I mean, they -- they audited the financial statements.

Q. Did -- do you know if anybody on behalf of Highland ever informed PricewaterhouseCoopers that HCMFA may be unable to repay amounts owing to Highland, should they become due?

MS. DANDENEAU: Objection to form.

A. Yes. Again, I think I testified earlier that -- that this was communicated to the auditors.

Q. Ideally --

A. I don't know who exactly did that. I don't recall doing it, but, yeah, it was -- it was communicated. And that is why -- I mean, there is a disclosure in the financial statements; right?

Q. There is, and that disclosure relates to the last sentence of this document; correct?

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A. Yes.

Q. Do you recall looking in the document and seeing anything that was disclosed with respect to the sentence above that?

A. No.

Q. Do you know whether anybody on behalf of Highland ever informed PricewaterhouseCoopers that HCMFA expects that it may be unable to repay amounts due and owing to Highland should they become due?

MS. DEITSCH-PEREZ: Object to the form. I think that is the third time.

A. I don't recall. Again, as I said, we -- all of this was given to the auditors.

Q. Do you know if Highland received anything of value in exchange for its agreement not to demand payment on amounts owed by HCMFA prior to May 31st, 2021?

MS. DEITSCH-PEREZ: Object to the form. That is the second time.

MS. DANDENEAU: Object to the form.

A. I have answered this question.

MR. RUKAVINA: Hold on. Object to legal conclusion. Go ahead.

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A. I have answered this question before.

Q. And the answer was no?

A. I'm not aware.

Q. Now, this acknowledgment can't possibly apply to the two notes that you signed on behalf of HCMFA because those notes were signed on May 2nd and May 3rd, 2019; is that right?

MS. DANDENEAU: Objection to form.

A. Unless there is a drafting error.

Q. Okay. Are you aware of a drafting error?

A. I'm not aware. I didn't -- I wasn't part of -- I didn't sign this note or this acknowledgment. I didn't draft it.

Q. But you do see it is dated April 15, 2019; right?

A. Yes.

Q. And this was a document that was actually included by the advisors in a pleading they filed with the Court; right?

MR. RUKAVINA: Well, I don't know that so I object to form.

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Q. Okay. Let's go to the first page of the document and just confirm that.

MR. AIGEN: Mr. Morris, I just note that you already said there was some error with the document that is listed as exhibit --

MR. MORRIS: No. No, no, no.

MS. DEITSCH-PEREZ: Oh, okay.

MR. MORRIS: What I said is that there is a few pages that were mistakenly stapled to the end of the document.

MS. DEITSCH-PEREZ: Okay.

MR. MORRIS: There is no problem with this document.

MS. DEITSCH-PEREZ: And just so we're clear that the document -- the pages that start with defendant's amended answer are not intended to be part of this document?

MR. MORRIS: That's correct.

MS. DEITSCH-PEREZ: And that the -- but it is your representation that the rest of the document is -- is -- is correct because we don't -- we don't have any way

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of verifying that, we're just --

MR. MORRIS: You do, actually. You could just go to Docket No. 21-3004.

MS. DEITSCH-PEREZ: If you want to stop this deposition so we can go and pull that document up, we're happy to do it. So I am just asking you for your representation.

MR. MORRIS: Sure. I gave that.

MS. DEITSCH-PEREZ: Okay.

Q. So do you see that this is a document that was actually filed with the Court by Highland Capital Management Fund Advisors?

A. No. I get with the first page in the section. Maybe I'm looking at the wrong thing. It says, Highland Capital Management.

Q. Don't worry about it. Don't worry about it.

A. Maybe I went back -- okay.

MR. MORRIS: All right. Can we put up on the screen Exhibit 2.

(Exhibit 2 marked.)

MR. MORRIS: I think it is Exhibit 1.

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MS. DANDENEAU: I'm sorry, John, did you say Exhibit 2 or Exhibit 1?

MR. MORRIS: It is Exhibit 2 in the binders so it is premarked Exhibit 2. And now I'm asking -- right there -- going to Exhibit 1 to the document that was marked as Exhibit 2.

MS. DANDENEAU: Got it. In the binder there is no --

MS. DEITSCH-PEREZ: There is no Exhibit 1.

MR. MORRIS: All right. So look at the one on the screen.

Q. Do you see, Mr. Waterhouse, that this is a promissory note dated May 31st, 2017, in the approximate amount of $30.7 million?

A. Yes.

Q. And do you see that the maker of the note is NexPoint?

A. Yes.

Q. And that Highland is the payee; is that right?

A. Yes.

Q. Okay. And do you see in Paragraph 2

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this is an annual installment note?

A. Can you scroll down.

Q. Sure.

MR. MORRIS: Can we scroll down -- yeah, there you go.

A. Right there, yeah. Yes.

MR. MORRIS: And can we scroll down to the signature line.

Q. And do you recognize that as Mr. Dondero's signature?

A. Yes.

Q. And is this the promissory note that we talked about earlier where NexPoint had made certain payments in the aggregate amount of about 6 to $7 million against principal and interest?

A. I don't recall discussing the aggregate principal amounts of 6 to $7 million, but -- so I don't -- I don't recall that prior discussion with those amounts.

Q. All right. Let's take a look. NexPoint always included this promissory note as a liability on its audited financial statements; right?

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A. Yes.
Q. And NexPoint had its financial statements audited; isn't that correct?
A. Yes.
Q. And was the process of NexPoint's audit similar to the process you described earlier for Highland and HCMFA?
A. Yes, it is similar.
Q. Okay.
MR. MORRIS: Can we put up NexPoint's audited financials and let everybody know what exhibit number it is, La Asia?
MS. CANTY: It is going to be Exhibit 46.
(Exhibit 46 marked.)
Q. And do you see, sir, that we've put up NexPoint Advisors' consolidated financial statements and supplemental information for the period ending December 31st, 2019?
A. Yes.
Q. Did you participate in the process whereby these audited financial statements were issued?

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A. I didn't participate directly, as I've described before, about the -- the team performing the audit.
Q. Do you recall when the audit of NexPoint's financial statements for the period ending December 31st, 2019 was completed?
A. Yes.
Q. And when do you recall it being completed?
A. In January of 2021.
Q. Do you know why the 2019 audit report wasn't completed until January of 2021?
A. Yes.
Q. Why was the NexPoint audit report for the period ending 12/31/19 not completed until January 2021?
A. Because we had to deal with working from home from -- with COVID, and on top of all of our daily responsibilities and job duties at -- at providing -- at Highland providing services to NexPoint, we had to do all of this extra work for a bankruptcy that was filed in October of 2019.
MR. MORRIS: Can we go to the

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balance sheet on page 3? Okay. Stop right there.
Q. Do you see under the liabilities section, the last item is note payable to affiliate?
A. Yes.
Q. And is that the note that we just looked at?
MS. DANDENEAU: Objection to form.
Q. Withdrawn.
Is that the approximately $30 million note that we just looked at that was dated from 2017?
MS. DANDENEAU: Objection to form.
A. I believe no.
Q. Okay. You're not aware of any other note that was outstanding from NexPoint to Highland as of the end of the year 2019, other than that one $30 million note; right?
A. I don't recall.
Q. And as of the end of 2019, the principal amount that was due on the note was approximately $23 million; right?
MS. DEITSCH-PEREZ: Object to the

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form.
A. Approximately.
Q. And does that refresh your recollection that between the time the note was executed and the end of 2019, that NexPoint had paid down approximately $7 million?
A. Yes. If we are just doing the math, yes.
Q. Okay. Did NexPoint complete its audit from 2020?
A. Sorry, you kind of broke up. Do NexPoint complete?
Q. The audit of its financial statements for the period ending December 31st, 2020?
A. No.
Q. No, it's not complete?
A. No, it is not complete.
Q. Did HCMFA complete its audit for the year ending December 31st, 2020?
A. No.
MR. MORRIS: Can we go to page 15, please, the paragraph at the bottom.
Q. Do you see that NexPoint has

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2 included under notes payable to Highland a
3 reference to the amounts that were outstanding
4 as of the year-end 2019 under the note that we
5 looked at just a moment ago?
6 A. Yes. Are you talking about the
7 second paragraph?
8 Q. I'm actually talking about first
9 paragraph. Do you understand that the first
10 paragraph is a reference to the 2017 note, and
11 the amounts that were -- the principal amount
12 that was outstanding as of the end of 2019?
13 MS. DANDENEAU: Objection to form.
14 John, do you mean the first paragraph of
15 that page?
16 MR. MORRIS: No, the first paragraph
17 under notes payable to Highland.
18 A. Yeah, I see the paragraph, and
19 again, this is what I answered earlier. I
20 believe so, just because I don't -- again, this
21 is a number in a balance sheet, and without
22 matching it up and seeing the detail with the
23 schedule like I kind of talked about for
24 Highland's financial statements, it is a little
25 bit more difficult to tie everything in

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2 perfectly together.
3 Q. Okay. But you're not aware of any
4 note that was outstanding at the end of 2019
5 from NexPoint to Highland other than whatever
6 principal was still due and owing under the
7 $30 million note issued in 2017; correct?
8 A. Well, it -- I don't -- there is
9 reference in the second paragraph. I don't --
10 I don't -- I don't recall what that is
11 referring to, so I don't -- I don't know.
12 Q. Well, if you listen carefully to my
13 question, right, I'm asking about notes that
14 were outstanding at the end of 2019, and if we
15 look at the paragraph you just referred to, it
16 says that during the year there were new notes
17 issued totaling $1.5 million, but by the end of
18 the year, no principal or interest was
19 outstanding on the notes.
20 Do you see that?
21 A. Oh, I do, yes.
22 Q. So does that refresh your
23 recollection that there were no notes
24 outstanding from NexPoint to Highland other
25 than the principal remaining under the original

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2 $30 million 2017 note that we looked at a
3 moment ago?
4 A. Well, we're at the bottom of the
5 page. Is there anything on page 16?
6 Q. That is a fair question, sure. That
7 is it.
8 A. Okay. So it appears that that is
9 the only note that is detailed in the notes in
10 the financial statement.
11 Q. And you don't have any memory of any
12 other note other than the 2017 note, right,
13 being outstanding as of the end of the year?
14 A. I deal with thousands of
15 transactions every year. I don't really have a
16 very specific memory for what exactly was
17 outstanding.
18 MR. MORRIS: Why don't we take a
19 break now. We've been going for a little
20 while. It's 3:26. Let's come back at
21 3:40.
22 VIDEOGRAPHER: We're going off the
23 record at 3:26 p.m.
24 (Recess taken 3:26 p.m. to 3:39 p.m.)
25 VIDEOGRAPHER: We are going back on

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2 the record at 3:39 p.m.
3 Q. All right. Mr. Waterhouse, we -- I
4 don't think we have a lot more here.
5 To the best of your knowledge and
6 recollection, were all affiliate loans and all
7 loans made to Mr. Dondero recorded on
8 Highland's books and records as assets of
9 Highland?
10 MS. DANDENEAU: Object to the form,
11 asked and answered.
12 A. To my knowledge, yes.
13 Q. Okay. Can you recall any loan to
14 any affiliate or Mr. Dondero that was not
15 recorded on Highland's books and records as an
16 asset?
17 A. Like during my time as CFO? I don't
18 recall.
19 Q. How about after the time that you
20 were CFO? Did you recall that there was a loan
21 by Highland to an affiliate or to Mr. Dondero
22 that hadn't been previously recorded on
23 Highland's books as an asset?
24 MS. DANDENEAU: Objection to form.
25 A. I guess I don't understand the

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2 question. I left Highland as of – I'm not
3 aware of – I left Highland in February –
4 probably the last day of February of 2021.
5 Q. Okay.
6 A. I'm not – I'm not aware of any –
7 I'm not aware of anything past that date.
8 Q. Okay. While you were the CFO at
9 Highland, did Highland prepare in the ordinary
10 course of business a document that reported
11 operating results on a monthly basis?
12 A. Yes.
13 Q. And are you generally familiar with
14 the monthly operating reports?
15 A. Yeah. You are referring to the
16 reports that we filed to the Court every month?
17 Q. I apologize, I'm not. I'm taking
18 you back to the pre-petition period. There was
19 a report that I have seen that I'm going to
20 show you, but I'm just asking for your
21 knowledge.
22 MR. MORRIS: Let's put it up on the
23 screen, Exhibit 39.
24 (Exhibit 39 marked.)
25 Q. Do you see this is a document that

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2 is called operating results?
3 A. Yeah, that's the title of it.
4 Q. Okay. And was a report of operating
5 results prepared by Highland on a monthly basis
6 during the time that you served as CFO?
7 A. No.
8 Q. Are you familiar with a document of
9 this type? And we can certainly look at the
10 next page or two to refresh your recollection.
11 A. I'm just looking at the title. I
12 don't really – again, as I discussed before, I
13 don't have any records or documents or emails
14 or appointments or anything that I was able to
15 use prior to – prior to this deposition, so
16 I'm doing the best I can.
17 Q. Okay. You don't need to apologize.
18 I'm just asking you if you are familiar with
19 the document called Operating Results that was
20 prepared on a monthly basis at Highland?
21 MS. DEITSCH-PEREZ: Object to the
22 form.
23 Q. If you're not, you're not.
24 A. I don't believe this was prepared on
25 a monthly basis.

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2 Q. Okay. Do you see that this one
3 is – is dated February 2018?
4 A. Yes.
5 Q. Do you have – do you believe –
6 have you ever seen a document that was
7 purporting to report operating results for
8 Highland?
9 MS. DANDENEAU: Objection to form.
10 A. Yes.
11 Q. Okay. And when you say that you
12 don't believe it was produced on a monthly
13 basis, was it produced on any periodic bases to
14 the best of your recollection?
15 A. I believe it was – it was prepared
16 on an annual basis.
17 Q. Okay.
18 MR. MORRIS: Can we look at the next
19 page.
20 Q. Do you see that there is a statement
21 here called: Significant items impacting
22 HCMLP's balance sheet?
23 And it is dated February 2018.
24 A. Yes.
25 Q. Do you recall that there was a

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2 report that Highland prepared that identified
3 significant items impacting the balance sheet?
4 A. A report that was prepared.
5 Q. Let me ask a better question: Did
6 Highland prepare reports to the best of your
7 recollection that identified significant items
8 that impacted its balance sheet?
9 A. Well, so Highland prepared a – a
10 monthly close package. And maybe I'm
11 getting – and – and maybe change names at one
12 time or maybe I'm just – again, just
13 misremembering – but in that, yes, there is a
14 page that would detail just changes in – you
15 know, just changes month over month on the
16 balance sheet.
17 Q. Okay. And maybe it is my fault.
18 Maybe I didn't know the proper name for it.
19 But let's use the phrase "monthly close
20 package."
21 Did Highland prepare a monthly close
22 package in the ordinary course of business
23 during the time that you served as CFO?
24 MS. DANDENEAU: Objection to form.
25 A. Yes.

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Q. And did the monthly close package that Highland prepared include information concerning significant items that impacted Highland's balance sheet?

A. Yes, it had a page like that is – that is on the screen that detailed items like – of that nature.

Q. And do you know who – was there anybody at Highland who was responsible for overseeing the preparation of the monthly reporting package?

A. That would have been – again, it varies over time during my tenure as CFO. It – it varied over – over time, but – but typically a – a corporate accounting manager.

Q. And who were the corporate accounting managers during your tenure as CFO?

A. It would have been Dave Klos and Kristin Hendrix.

Q. And did the corporate accounting manager deliver to you drafts of the monthly close package before it was finalized?

A. Sometimes.

Q. Was that the practice even if there

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were exceptions to the practice?

A. The practice meaning that they sometimes lured them to me?

Q. That that was the expectation even if circumstances prevented that from happening from time to time.

MS. DEITSCH-PEREZ: Object to the form.

A. I – I would say it started out that way but over the years it – it was not enforced.

Q. Okay. So you were – you reviewed and approved monthly – monthly reporting packages for a certain period of time and then over time you stopped doing that.

Do I have that right?

MS. DANDENEAU: Objection to form.

A. Yes, I mean, if you're talking about a formal meeting where we sit down and go through and approve it. I would say that was standard practice a decade – you know, early on. And as time went on that – that – that practice wasn't followed.

Q. Okay.

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A. And, quite frankly, I don't even know if these were – these were sent to me even in any capacity.

Q. What was the purpose of preparing the monthly reporting package – withdrawn.

What was the purpose of preparing the monthly close package?

MS. DEITSCH-PEREZ: Object to the form.

A. The – the original purpose was so that it would just – it would be a report that was reviewed monthly with senior management.

Q. Who was included in the idea of senior management?

A. You know, I think originally when this was conceived that would have been like Jim Dondero and Mark Okada.

Q. Were monthly reporting – withdrawn.

Were monthly close packages prepared to the best of your knowledge until the time you left Highland?

A. To my knowledge – I don't know, actually. I mean, to my knowledge, I believe it was being – that was still being done. I

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don't know because, again, I wasn't reviewing them. I hadn't reviewed a close package for – for a long time. But I believe the standard practice that was still being carried out.

Q. Did you ever have any discussions with the debtor's independent board concerning any promissory notes that were issued by any of the affiliates or Mr. Dondero?

A. I can't – I can't – I can't recall specifically.

Q. Did you speak with the independent board from time to time?

A. Yes, from – from – from time to time I had discussions with the independent board members, you know, either – either, you know, by themselves or wholly, you know, as – as a – as a combined work.

Q. Okay. Before we talk about Mr. Seery, do you recall ever having a conversation with Mr. Nelms or Mr. Dubel concerning any promissory note that was rendered by one of the affiliates or Mr. Dondero to Highland?

A. I don't recall any conversations

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specifically.

Q. Do you know if the topic was ever discussed, even if you don't remember it specifically?

MS. DANDENEAU: Objection to form.

A. It – it – it may have. I don't know. I don't recall.

Q. Do you recall ever discussing any promissory note issued by any of the affiliates or Mr. Dondero with James Seery?

A. I don't – I don't recall specifically.

Q. Do you recall generally ever discussing the topic of promissory notes issued by any of the affiliates or Mr. Dondero to Highland with Mr. Seery?

A. Nothing – nothing is really jumping out at me.

Q. Do you recall if you ever told Mr. Seery that any of the affiliates or Mr. Dondero didn't have an obligation to pay all amounts due and owing under their notes?

A. I don't recall having that conversation.

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Q. Did you ever tell Mr. Seery that you had any reason to believe that the amounts reflected in the notes issued by the affiliates and Mr. Dondero were invalid for any reason?

A. I don't – I don't recall.

Q. Did you tell Mr. Dondero – did you tell Mr. Seery that you thought the promissory notes issued by the advisors and Mr. Dondero that were outstanding as of the petition date were assets of the estate?

A. I don't recall having a specific conversation about those – you know, those notes outstanding as – as of the petition date being assets on the estate. I mean, we put together – you know, they're in the books and records of the financial statements. I don't recall having a specific conversation.

Q. Did you ever prepare any documents that were delivered to Mr. Seery that concerned the promissory notes issued by any of the affiliates or Mr. Dondero?

MS. DANDENEAU: Objection to form.

A. Did I produce any that concerned – you mean did I just – did I give Mr. Seery

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anything that – that said I have concerns over these notes?

Q. No. Let me try again. Maybe it was my question.

Did you ever give Mr. Seery any information concerning any of the notes that were issued by any of the affiliates or Mr. Dondero?

MS. DANDENEAU: Objection to form.

A. I don't recall if I did or not. I don't – I don't remember. I mean, you have my emails. You may have asked. Again, I don't – I don't know.

MR. MORRIS: Can we put up the document that has been premarked as Exhibit 39?

MS. DANDENEAU: John, that is this document, isn't it?

MR. MORRIS: Oh, yeah, it might be, as a matter of fact. Let's go to Number 40.

(Exhibit 40 marked.)

Q. During the bankruptcy, Mr. Waterhouse, did you prepare documents that

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were filed with the bankruptcy court?

A. I didn't – I didn't prepare them personally.

Q. Did people prepare them under your direction?

A. Yes. There were members of the team that prepared them, and they worked in – you know, there were members of DSI that were involved in the process as well.

Q. To the best of your knowledge, did DSI rely on the employees of Highland for the information that they used to prepare the bankruptcy filings?

A. Yes. The books and records were with the Highland personnel.

Q. Okay. And do you see on the screen here, there is a document that we have marked as Exhibit 40 that is – that is titled Summary of Assets and Liabilities?

A. Uh-huh.

Q. Okay. And do you recall reviewing any summary of assets and liabilities before it was filed with the bankruptcy court?

A. Yes, I recall reviewing this at a

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2 high level.
3 Q. And did you believe that it was
4 accurate at the time it was filed?
5 A. I didn't have any other reason to
6 believe otherwise.
7 Q. Okay. Do you see that the total
8 value of all properties listed in Part 1 is
9 approximately $410 million?
10 MS. DEITSCH-PEREZ: Objection to
11 form.
12 A. Yes, it is in 1c.
13 Q. Yes.
14 A. Yes, I see that.
15 Q. Okay. If we go to the second page,
16 now I think I may just have excerpts here, just
17 so everybody is clear, but if we scroll down to
18 the second page, you will see that there is
19 a – a little further. There you go. You will
20 see there is a reference to Item 71, notes
21 receivable.
22 Do you see that?
23 A. I do.
24 Q. And that was a reference to the
25 notes receivable from the affiliates and

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2 Mr. Dondero, among others; is that right?
3 MS. DANDENEAU: Objection to form.
4 A. Yes. The affiliate notes and the
5 Dondero notes were in this amount, but they
6 weren't – again, like you said, and among
7 others.
8 Q. Okay. We will look at the
9 specificity because I'm not playing gaming
10 here, but do you know if the $150 million of
11 notes receivable was included within the
12 $410 million of total value of the debtor's
13 assets?
14 MS. DANDENEAU: Objection to form.
15 A. I – I – I believe so.
16 Q. Right. And so is it fair to say
17 that as of the date this document was prepared,
18 the notes receivable were more than one-third
19 of the value of the debtor's assets?
20 MS. DEITSCH-PEREZ: Object to the
21 form.
22 MS. DANDENEAU: Object to the form.
23 A. Again, if you are just taking the
24 math, 150 divided by whatever the $400 million
25 number is above, then yes, you get there.

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2 Q. Okay.
3 A. You know, but as of the time of this
4 filing, that is what was put in this filing,
5 right, but, you know, I mean, numbers –
6 numbers change, facts and circumstances change.
7 Q. But as the CFO of Highland, the
8 debtor in bankruptcy, did you believe that this
9 number accurately reflected the total amount
10 due under the notes receivable?
11 A. That is what we had in our books and
12 records.
13 Q. Okay. And did you believe as the
14 CFO that the books and records accurately
15 reported the then value of the debtor's assets?
16 MS. DANDENEAU: Objection to form.
17 A. We didn't – as part of this filing,
18 there was no fair value measurement or
19 anything. These were just accounting entries
20 for the promissory notes. There is no analysis
21 for impairment or fair market value adjustments
22 or anything of that nature. This is purely
23 taking numbers and putting them in our form.
24 Q. Did you do any impairment analysis
25 at any time while you were employed by

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2 Highland?
3 A. Yes, we did do impairment analysis
4 on – on assets.
5 Q. Okay. Did you ever do an impairment
6 analysis on any of the promissory notes that
7 were given to Highland by any of the affiliates
8 or Mr. Dondero?
9 A. Not that I recall.
10 Q. Under what circumstances do you
11 prepare impairment analyses?
12 A. As – as – if you're preparing
13 financials in accordance with GAAP, generally
14 accepted accounting principles, if you're
15 preparing full GAAP financials, you should be
16 preparing – you should be undergoing on a
17 periodic basis any fair market value
18 adjustments to assets.
19 As I was instructed at the time of
20 the petition date, we weren't producing GAAP
21 financials. So this wasn't something I was
22 worried about nor concerned about.
23 Q. Okay. Were NexPoint and HCMFA and
24 Highland's audited financial statements
25 prepared in accordance with GAAP?

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A. The audited financials -- yes, audited financial statements are prepared in accordance with GAAP.

Q. Do you recall whether any of Highland or HCMFA or NexPoint ever made a fair market value adjustment to any of the notes issued by any of the affiliates or Mr. Dondero to Highland?

A. I do not recall that happening, but the -- it is because under -- under GAAP, the -- the treatment of liabilities is different than assets.

Q. Okay. So then let's just focus on Highland's audited financial statements.

The last audited financial statements were for the period ending December 31st, 2018; correct?

A. That is my understanding.

Q. And you had -- you had an obligation to disclose anything to PricewaterhouseCoopers concerning any subsequent events between the end of 2018 and June 3rd, 2019; correct?

MS. DANDENEAU: Objection to form.

MS. DEITSCH-PEREZ: Form.

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A. Correct.

Q. Okay. To the best of your knowledge, as Highland's CFO, did Highland ever make any fair market value adjustments to any of the promissory notes that were carried on its balance sheet and that were issued by any of the affiliates or Mr. Dondero?

A. I think I answered that question earlier. I don't recall doing that for any of the -- those -- those notes. So it would have included the audit for the -- for the 2018 period.

Q. Okay.

MR. MORRIS: Can we go to the next page.

Q. Do you see this is a note a list of notes receivable? Do you see that?

A. Yes, I do.

Q. And do you see that this ties into the page that we were just looking?

A. I'm sorry, can we go back to the prior page? I mean, it was at 150,331,222. It was on the prior page. Next page. Yes, it agrees.

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Q. Okay. So now let's look at that schedule. So this was the face amount of all of the promissory notes that Highland held at the time this document was filed with the bankruptcy court; right?

A. Yes.

Q. There is a footnote there that says, doubtful or uncollectible accounts are evaluated at year-end.

Do you see that?

A. I do.

Q. Okay. And is it fair to say that as of the year-end 2018, the year before this, that to the extent any of these notes were outstanding at that time, they weren't deemed to be doubtful or uncollectible?

A. Yeah. For the 2018 audit, there weren't any -- there weren't any adjustments to fair value.

Q. Okay. And during the bankruptcy, do you recall that Highland subsequently reserved for the Hunter Mountain Investment Trust note?

A. Yes.

Q. Why did Highland -- were you

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involved in the decision to reserve the Hunter Mountain Investment Trust note?

A. I was not.

Q. Do you know why Highland decided to reserve for the Hunter Mountain Investment Trust note?

A. I don't know yet decision was made. I believe it was made by someone at DSI.

Q. Okay. I'm just asking if you know why.

Did you ever ask anyone why they reserved for that particular note?

A. I don't recall.

Q. Do you know whether the debtor reserved for any other note on this list during the bankruptcy?

A. Again, I don't recall. I wasn't part of any process of -- again, like any fair value adjustments or anything to that degree. Like I said, a lot of that was done by DSI and it was kind of out of our court.

Q. Okay. Do you know if any note receivable on this list was ever deemed by the debtor to be doubtful or uncollectible?

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A. I don't -- I don't have a recollection of every filing, so I don't know.

Q. Did you ever have a discussion with anybody at any time about whether any of the notes receivable on this list should be deemed to be doubtful or uncollectible?

A. No. As I previously stated, we were told we didn't have to keep GAAP financials. We weren't having -- you know, there is no underlying audits being performed, so I mean, it wasn't something I worried about.

MR. MORRIS: I move to strike.

Q. Did you ever have a conversation with anybody about any of the notes receivable and whether they should be deemed to be doubtful or uncollectible? Did you have the conversation, yes or no?

MS. DANDENEAU: Objection to form.

A. I don't recall.

Q. Do you recall ever telling anybody that you believed any of the notes receivable on this list should be doubtful -- should be deemed to be doubtful or uncollectible?

MS. DANDENEAU: Objection to form.

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A. I don't recall. I mean, it may have happened, you know, again, when we initially getting DSI up to speed and going through financials, it may have happened, but I don't recall specifically.

Q. While you were the CFO of Highland during the time that the company was in bankruptcy, did you have any reason to believe that any of the notes receivable on this list other than Hunter Mountain Investment Trust should have been characterized as doubtful or uncollectible?

MS. DANDENEAU: Objection to form.

MS. DEITSCH-PEREZ: Form.

A. I didn't know. I didn't form an opinion. Bankruptcy was new to me. It still is new to me, even after going through this. So I really didn't know what to expect nor really -- you know, I didn't know.

MR. MORRIS: I move to strike.

Q. During the period of Highland's bankruptcy when you were serving as CFO, did you have any reason to believe any of the notes on this list were doubtful or uncollectible?

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MS. DEITSCH-PEREZ: This is like the fifth time you've asked it. Object to the form.

MR. MORRIS: I'm moving to strike, if you haven't noticed, because he's not answering the question.

MS. DEITSCH-PEREZ: He was answering the question, you just didn't like it, like the answer.

MR. MORRIS: Good Lord.

Q. Go ahead, Mr. Waterhouse.

A. Again, I don't -- we brought up a myriad of issues at the start of the bankruptcy case. I don't recall if this was one of them, but, again, there are a lot of things we couldn't change. Even, you know, I was told status quo, blah, blah, blah, right, there is a stay, you can't -- you know, I don't recall specifically, but that doesn't mean it didn't happen.

MR. MORRIS: I move to strike.

Q. During the time that Highland was in bankruptcy and you served as CFO, did you have any reason to believe that any of the notes

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receivable on this list were doubtful or uncollectible?

MS. DEITSCH-PEREZ: Object to the form.

A. Potentially.

Q. Did you ever tell anybody that?

A. As I just stated like five times, yes, we -- at the beginning after filing and we were getting DSI and others up to speed, you know, we had a myriad of discussions of a lot of things and this was likely one of them. I don't -- but I don't recall specifically we talked --

Q. I don't want to know -- I don't want to know what was --

MS. DEITSCH-PEREZ: Wait, wait. Excuse me. Mr. Morris, you did not let him finish his answer.

A. I spoke -- we had -- we were bringing Fred Karesa and Brad Sharp (phonetic) up to speed on all of these items, contracts, and investments and going through -- we had hours and hours and hours of discussion. And then not only do I have to repeat this not

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2 once, twice, three, four times with -- you
3 know, I mean, we -- I don't -- I don't remember
4 the sum culmination of all these discussions.
5 They all kind of blend together.
6 MR. MORRIS: Okay. I move to strike
7 and I will try one more time.
8 Q. Did you ever tell anybody at DSI
9 that you believed any of the notes receivable
10 on this list were doubtful or uncollectible?
11 MS. DANDENEAU: Object to form.
12 A. Potentially.
13 Q. Potentially you told them or
14 potentially they were doubtful or
15 uncollectible?
16 A. Potentially I told them that we
17 needed to look at the value of these -- of
18 these assets.
19 Q. Okay. Did you -- okay. It is
20 potential that you told them and it is
21 potentially that you didn't; right?
22 MS. DANDENEAU: Objection to form.
23 A. I've gone through that. I don't
24 recall specifically.
25 Q. So you should just -- I don't want

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2 to tell what you to do. Do you have --
3 MS. DANDENEAU: Good.
4 Q. Other than -- other than telling
5 them that they should look at the values, do
6 you have any recollection whatsoever of ever
7 having told anybody at DSI that any of the
8 notes receivable on this page were doubtful or
9 uncollectible?
10 MS. DEITSCH-PEREZ: Object to the
11 form.
12 MS. DANDENEAU: Objection.
13 A. I recall having general discussions
14 about everything on our balance sheet which
15 would have included these -- these notes
16 receivable.
17 Q. Okay.
18 A. I don't recall specifically where
19 those discussions delved into.
20 Q. Do you recall any discussion at all
21 on the topic of whether any of these notes on
22 this list were doubtful or uncollectible?
23 MR. AIGEN: Mr. Morris, how on earth
24 is that question different from the
25 question that you just asked for the last

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2 five times? I mean, really I thought you
3 were -- (overspeak.)
4 MR. MORRIS: Because he never
5 answered it.
6 MS. DEITSCH-PEREZ: Are you
7 listening to him?
8 MR. MORRIS: You know --
9 MS. DEITSCH-PEREZ: He basically
10 said that he had a conversation with DSI
11 that went over all of this stuff and that
12 conversation could have included the notes
13 but he doesn't recall specifically.
14 What more do you want him -- to ask
15 of him?
16 MR. MORRIS: I want him -- I would
17 love him to say -- I would like him to
18 testify to the truth, and that is he has no
19 recollection.
20 MS. DEITSCH-PEREZ: Well, the truth
21 as you would like to see it, but -- but he
22 is testifying truthfully. And I -- and, by
23 the way, I move to strike that comment --
24 MR. MORRIS: Okay.
25 MS. DEITSCH-PEREZ: -- because it

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2 suggests that he has not testified
3 truthfully.
4 MR. MORRIS: I will ask my question
5 again. And if at any time you want to
6 direct him not to answer, that is your
7 prerogative.
8 Q. Mr. Waterhouse, do you have any
9 recollection at all of ever telling anybody
10 from DSI that any of these notes were doubtful
11 or uncollectible?
12 MS. DANDENEAU: Object to form.
13 A. I don't remember specifically.
14 Q. Do you remember generally that
15 specific topic?
16 A. We generally talked about assets,
17 values. If -- we had discussions of that and
18 collectability in nature. I mean, of Highland,
19 the funds, the CLOs, the entire complex. We
20 had discussions like that, which is, you know,
21 as you look at a billion dollar consolidated
22 balance sheet.
23 So I generally remember -- this is
24 billions of dollars, including these assets --
25 having discussions of this -- of this type.

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Q. Do you believe that an affiliate loan on this list was doubtful or uncollectible? Would you have told that to DSI?

MS. DANDENEAU: Objection to form.

MS. DEITSCH-PEREZ: Object to form.

A. If we had, like -- again, if we -- if -- if we weren't preparing financial statements in accordance with GAAP, and -- you know, if DSI at that point -- they were -- again, I was new to bankruptcy.

The CRO is -- we are delegating everything to the CRO. All the decisionmaking. Remember -- remember when you and I went into Delaware Court and we were saying DSI basically does everything, remember this, Mr. Morris?

You were my counsel at the time, and basically we're running everything through DSI. That was what this was like in the early part.

Everything was communicated through DSI. So DSI says this. DSI says that. That is what we're doing, and we're pointing out things to them.

Now, they decide what direction this

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goes.

Q. Did you point out that any of these --

A. I don't recall specifically.

Q. Okay. At any time that you served as Highland's CFO, did you ever point out to DSI that any of these loans were doubtful or uncollectible?

MS. DEITSCH-PEREZ: Object to the form.

MS. DANDENEAU: Objection.

A. If you're asking me if I had a conversation with DSI, if any of these loans were doubtful or uncollectible, I don't recall specifically.

Q. Do you recall that the debtor filed on the docket monthly operating reports?

A. Yes.

Q. You prepared those personally, didn't you?

MS. DEITSCH-PEREZ: Objection to form.

A. I didn't personally prepare them, the team did with DSI.

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Q. But you signed them; correct?

A. My signature is on the MORs.

Q. And you signed them as the preparer of the document; correct?

A. Yes, I did this pursuant to DSI's instructions.

Q. Okay. You wouldn't have signed the document if you didn't believe it to be accurate; correct?

A. If I had reason to believe it wasn't, presumably I wouldn't have signed it.

Q. Okay. And do you have any reason to believe right now that any monthly operating report that has your signature on it was inaccurate in any way?

MS. DEITSCH-PEREZ: Object to the form.

A. My understanding of the monthly operating reports is we were filing them in accordance with the standards set by the Court. It wasn't -- you know, again, I don't -- you know, it wasn't GAAP. It wasn't these other standards, so I testified I didn't have experience in this. The CRO was running the

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show. I followed their advice.

Q. But you assured yourself that everything in the report was accurate before you signed them; correct?

MS. DANDENEAU: Objection to form.

A. I trusted the guidance from the CRO and their team and their experience and their guidance for doing this for many, many, many years to -- to -- to categorize and put things in ways on the form.

You know, my team had -- had not filled out these forms before and needed all of this guidance. I'm not an expert in this. I have oversight of it. I signed the form. DSI told me to.

Q. And you and your team are the source of the information that DSI used to create the reports; correct?

MS. DANDENEAU: Objection to form.

A. The books and records reside with the -- with -- with the corporate accounting team.

Q. Okay. And the corporate accounting team was the corporate accounting team that was

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under your direction; correct?

A. Yes.

Q. So -- so your team was responsible for maintaining Highland's books and records; correct?

A. I'm sorry, my team was responsible?

Q. Correct.

A. Yes. They -- they -- they were the -- the -- the general ledger of Highland, that responsibility was with the corporate accounting team.

Q. The corporate accounting group reported to you; correct?

A. Yes.

MR. MORRIS: Can we put up 41, please.

(Exhibit 41 marked.)

Q. All right. You will see that this is a report that is dated January 31st, 2020, but it is for the month ending December 2019. Do you see that?

A. I do.

Q. And you signed this report in your capacity as the chief financial officer of

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Highland; correct?

A. Yes.

Q. And you're the preparer -- you're identified as the preparer of the report; correct?

A. That is correct.

Q. Do you recall participating in the preparation of monthly operating reports?

A. As I testified earlier, it was put together, you know, with the team. The team worked with DSI to put these monthly operating reports together. We had no experience at this time of the monthly operating reports or things of this nature.

MR. MORRIS: Can you turn to the next page, please.

Q. Do you see a line item under assets due from affiliates?

A. Yes, I do.

Q. Okay. And to the best of your knowledge and understanding, as the person who is identified as the preparer of this report, does that line item include the affiliate loans that we've been talking about?

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A. Again, I would have to see, just like we did with the financial statements of Highland and NexPoint, I would have to see a detailed build, but, you know, if you look at the other line items, you know, the only other place it could be would be in -- in other assets.

Q. Okay. And as a matter of arithmetic, is it fair to say that is the value of the assets due from affiliates was more than 25 percent of the value of Highland's total assets as of 12/31/2019?

MS. DANDENEAU: Objection to form.

A. I'm really not doing the mental math right now, so I've been going at this depo for hours, so I'm really not -- you know --

Q. All right. No problem.

A. -- these are millions of dollars.

Q. Let's look at the Footnote 1, please. Do you see there is a reference to the Hunter Mountain note?

A. Yes, I see that in Footnote 1.

Q. Okay. And that's the reserve that was taken against that note?

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A. Yes, that is what this indicates.

Q. Okay. And were you aware that the reserve was being taken on that it was?

A. I was -- I was aware, yeah, at some point, yes.

Q. Okay. And are you aware of any reserve being taken with respect to any other note that was issued in favor of Highland?

A. Again, as I testified, we didn't go through an analysis on -- on -- on the other notes.

Q. Can we turn --

A. I believe -- I believe it says that in Footnote 1, fair value has not been determined with respect to any of the notes. So this footnote -- footnotes, look, there has been no determination.

Q. Okay. The determination was made in the audited financial statements just six months earlier; right? We saw that earlier?

A. That was as of 12/31/18. I mean, things -- circumstances -- there's a bank -- circumstances change, things change -- things change over time, you know, facts and

1 WATERHOUSE - 10-19-21
2 circumstances change. Again, you have to do an
3 analysis.
4 Q. Okay. And you do recall that in
5 Highland's 2018 financial statement, all of the
6 notes issued by affiliates and Mr. Dondero that
7 were due at year-end had a fair value equal to
8 the carrying value; correct? We looked at
9 that?
10 A. Yes. That was in the -- in the
11 disclosure for the -- for the affiliate notes,
12 yes.
13 Q. And -- and you were obligated to
14 share with PwC any subsequent events between
15 the end of 2018 and the date that you signed
16 your management representation letter on June
17 3rd, 2019; correct?
18 MS. DEITSCH-PEREZ: Object to the
19 form.
20 A. Yes. I -- I -- I signed the
21 management, you know, my signature is in the
22 management representation letter -- I hope I'm
23 answering your question -- that is dated in
24 June with the representations made in that
25 management representation letter.

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2 Q. Okay. And there was nothing that
3 caused PricewaterhouseCoopers to include in
4 subsequent events any adjustment to the
5 conclusion that the fair value of the affiliate
6 notes and the notes issued by Mr. Dondero
7 equaled the carrying value; correct?
8 MS. DANDENEAU: Objection to the
9 form.
10 A. That is correct. That is what was
11 in the -- in the -- in the footnotes.
12 Q. Okay. So are you aware of anything
13 that occurred between June 3rd, 2019 and
14 December 31st, 2019 that would have caused the
15 fair value of the notes to differ from the
16 carrying value?
17 A. Yeah. Highland filed for
18 bankruptcy, things changed -- I mean, there was
19 a bankruptcy filed in October of -- of -- of
20 2019, right, the petition date that we've
21 described earlier.
22 I mean, I had a -- I guess looking
23 back naively, I thought we were going to get an
24 audit from PwC for year-ended 2019, and when we
25 had discussions with PwC, they were like, are

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2 you crazy, we're not auditing this. Values
3 change, all these things change, bankruptcy
4 changes the entire scenario. I mean -- and
5 they're like, we're not -- we're not touching
6 this.
7 And so, you know, I was like, okay,
8 sorry, I get it, okay, no an audit.
9 I mean, it is -- you know, and --
10 you know, and we weren't preparing GAAP
11 financial statements.
12 Again, I didn't know what we were
13 doing in relation to our financial statements,
14 but these were the discussions I was having at
15 the time. And yeah, I mean, filing bankruptcy
16 from what I got from outside auditors and
17 others involved changed things dramatically.
18 Q. Okay. Highland wasn't the obligor
19 under any of the notes that we're talking
20 about; correct?
21 A. No.
22 Q. So --
23 A. That's right.
24 Q. So can you identify any fact that
25 would cause the fair value to deviate from the

1 WATERHOUSE - 10-19-21
2 carrying value during the seven-month period
3 between June 3rd and the end of the year, 2019?
4 MS. DANDENEAU: Objection to form.
5 A. No. I mean, I'm putting myself back
6 at that time, right. Hindsight is 2020, but we
7 didn't do an analysis, but we would have done a
8 fulsome analysis and looked at all of the facts
9 and circumstances at the time, but asset values
10 change. You know, there could have been a
11 market crash in hindsight in 2020, which --
12 which affected entities' abilities.
13 There could have been all of these
14 things, right, that -- that happen. It is --
15 it is easy to look back in hindsight, but when
16 you are looking at this in -- in realtime, the
17 analysis is different, and again, we didn't do
18 an analysis.
19 Q. Okay. You didn't do an analysis.
20 Do I have that right?
21 A. I don't -- I don't recall doing one
22 or maybe -- you know, I don't recall doing one.
23 MR. MORRIS: Okay. I'm going to
24 take a break. I may be done, so the time
25 now is -- is 4:30 your time. Let's just

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2 take a short break until 4:40 your time.
3 MS. DANDENEAU: Okay.
4 VIDEOGRAPHER: We're going off the
5 record, 4:31 p.m.
6 (Recess taken 4:31 p.m. to 4:43 p.m.)
7 VIDEOGRAPHER: We are back on the
8 record at 4:43 p.m.
9 MR. MORRIS: I have no further
10 questions.
11 MR. RUKAVINA: Okay.
12 Mr. Waterhouse, I will go next.
13 EXAMINATION
14 BY MR. RUKAVINA:
15 Q. Sir, my name is Davor Rukavina. I'm
16 the lawyer for --
17 MR. MORRIS: Hey, Davor, just before
18 you begin, I just want to put on the record
19 Highland's objection to documents that were
20 produced to me 10 minutes before the
21 deposition began.
22 MR. RUKAVINA: What the basis of
23 your objection?
24 MR. MORRIS: That they were due
25 quite some time ago, and the fact that you

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2 had -- I just think it's appropriate to --
3 to dump documents on somebody 10 minutes
4 before the deposition. I just think
5 that's --
6 MR. RUKAVINA: Well, these are
7 documents Highland produced. I'm not aware
8 of any rule I have to give you advance
9 documents when I know for the record that
10 other than the exhibits that you sent to us
11 last week, most of the exhibits you used
12 today you did not provide to me prior to
13 this deposition.
14 MR. MORRIS: No, but the documents
15 were produced by me in -- in litigation,
16 right?
17 MR. RUKAVINA: I'm going to use
18 primarily, John, the documents that you
19 produced to me today, but you may.
20 MR. MORRIS: Primarily. I've got --
21 I've got my objection. You have got your
22 response. Proceed.
23 Q. Mr. Waterhouse, again, I represent
24 the advisors, HCMFA and NexPoint Advisors.
25 Do you understand that?

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2 A. Yes.
3 Q. You and I have never met or talked
4 before today, have we?
5 A. No, I have -- I have heard your
6 voice on calls before.
7 Q. Okay.
8 MR. RUKAVINA: Madam Court Reporter,
9 I will use a few exhibits today. My
10 associate, Mr. Nguyen, will find some way
11 to get them to you. I don't know how to do
12 that, but it looks like you guys do.
13 I am going to use numbers as well.
14 But to differentiate them from Mr. Morris
15 we're going to mark mine with the prefix A
16 for advisors.
17 Do you understand?
18 COURT REPORTER: Yes.
19 MR. RUKAVINA: Okay. Perfect.
20 Q. Okay. So, Mr. Waterhouse, let's
21 start with those two HCMFA notes that you were
22 asked about, one for 5 million and one for
23 2.4 million.
24 Do you recall those notes?
25 A. Yes.

1 WATERHOUSE - 10-19-21
2 Q. Were you ever the CFO of HCMFA?
3 A. I don't recall.
4 Q. So to the best of your recollection,
5 you were still an officer of HCMFA in 2019,
6 just that your title was treasurer?
7 MR. MORRIS: Object to the form of
8 the question. There is no leading here.
9 He works for your client.
10 MS. DANDENEAU: That is not -- that
11 is not true.
12 MR. MORRIS: He's the treasurer --
13 he is the treasurer of your client. I
14 don't -- I'm going to object every time you
15 try to lead, so...
16 MR. RUKAVINA: Totally fine to
17 object.
18 MR. MORRIS: Okay.
19 Q. Please answer my question,
20 Mr. Waterhouse.
21 A. I'm sorry, could you repeat? There
22 was...
23 Q. Yes. You were -- you testified
24 earlier that in 2019 you were an officer of
25 HCMFA; correct?

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A. Yes, I testified that I was the treasurer and I didn't know if that incumbency certificate, you know, was one that appointed me as a treasurer, but yes.

Q. I'm just trying to confirm that sitting here today, to the best of your recollection, at that time you were -- your title was treasurer. It was not chief financial officer.

A. I don't recall that being my title.

Q. Okay. And in May of 2019, however, I think you testified you were the chief financial officer of the debtor; correct?

MR. MORRIS: Objection to the form of the question.

A. Yes, I was -- yes.

Q. Okay. As such, in May of 2019, did you have the authority, to your understanding, to unilaterally loan $5 million or $2.4 million to anyone on behalf of the debtor?

MR. MORRIS: Objection to the form of the question.

A. Sorry, can you repeat that?

Q. Yes. So in your capacity as the

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chief financial officer of the debtor, Highland Capital Management, L.P., in May of 2019, did you believe that you unilaterally, just Frank Waterhouse, had the authority to loan on behalf of the debtor to anyone $5 million and $2.4 million?

MR. MORRIS: Objection to the form of the question.

A. No.

Q. Is it because loans of that amount would have had to be approved by someone else?

A. Yes.

Q. Who in '20 -- in May of 2019, if Highland wanted to loan 5 million or $2.4 million to someone, what would have been the internal approval procedure?

MR. MORRIS: Objection to the form of the question.

A. If -- if we had loans of that nature that needed to be made due to their size, we would have gotten approval from the -- the president of Highland.

Q. And who that was individual?

A. It was James Dondero.

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Q. Okay. Now, I'm going to ask you a similar question but for a different entity.

In May of 2019, as the treasurer of HCMFA, did you believe that you unilaterally had the ability to cause HCMFA to become the borrower of a $5 million loan and a $2.4 million loan?

MR. MORRIS: Objection to the form of the question.

A. No.

Q. What would -- what would the approval have taken place -- strike that.

What would the approval process have been like in May of 2019 at HCMFA for HCMFA to take out a $7.4 million loan?

MR. MORRIS: Objection to the form of the question.

A. The process would have been similar to what we just discussed on -- for Highland to make a loan to others. So, again, you know, we -- we would have -- either myself or someone on the team would have discussed this with the -- the president and owner of -- of HCMFA.

Q. And who was that individual?

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A. That was James -- Jim Dondero.

Q. So do I understand that in May of 2019, on behalf of both the lender, Highland, and the borrower, HCMFA, Mr. Dondero would have had to approve $7.4 million in loans?

MR. MORRIS: Objection to the form of the question.

A. Yes.

Q. You mentioned when Mr. Morris was asking you the NAV error, N-A-V error, with respect to TerreStar, without writing us a novel, unless you feel like you have to, can you summarize what that NAV error was? What happened?

A. There was a -- in the Highland Global Allocation Fund, it owned at the time an equity interest in a company called TerreStar. And TerreStar is -- at the time was a private company, and it may still be today. Again, I'm putting myself back then as a private company.

We had -- sorry, I don't mean we -- the fund and the advisor used Houlihan Lokey to -- to value that investment. And during that time there was some trades that were

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2 executed at market levels that were much lower
3 than the Houlihan Lokey model.
4 And based on information and
5 discussions with the portfolio managers and,
6 you know, principals that were very familiar
7 with TerreStar, it was determined that those
8 trades were non-orderly and they were not
9 considered in the valuation as consulted with
10 Houlihan Lokey and PricewaterhouseCoopers at
11 the time.
12 Subsequent to a -- I can't remember
13 the exact circumstances of why the SEC got
14 involved. I think it was due to this -- this
15 investment became a material position in the
16 fund. It triggered an SEC, kind of, inquiry.
17 And as part of that inquiry, they questioned
18 the valuation methodology. "They" meaning the
19 SEC.
20 And at the culmination of that
21 process -- this is all summarized -- the value
22 that was -- that ultimately had to be used in
23 the fund's NAV was different than -- materially
24 different than what the original valuation at
25 Houlihan Lokey provided.

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2 And given that there was this fund
3 was, as we discussed -- I don't know if we
4 discussed it, but it was an open-ended fund
5 that was going -- that was converting to a
6 close-end fund.
7 Due to the fact that it was an
8 open-ended fund, you had to recalculate NAV and
9 see what the impact was on people -- on
10 investors coming in and out of the fund and if
11 there is a detrimental impact and to calculate
12 what that -- what that impact was and if there
13 was any amounts owed to the fund pursuant to
14 the error.
15 Q. Were you personally involved
16 internally at either Highland or HCMFA with
17 these investigations and discussions with the
18 SEC?
19 A. I was.
20 Q. Which other key people or senior
21 people at Highland were involved, to your
22 recollection?
23 A. Myself, Thomas Surgent, David Klos,
24 Lauren Thedford, Jason Post.
25 Q. Mr. Dondero, was he --

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2 A. I believe Cliff Stoops. I'm trying
3 to think. And maybe that is -- that is -- that
4 is -- that is all kind I can recall at the
5 moment.
6 Q. Do you recall whether it was
7 determined that the fund suffered losses as a
8 result of this error?
9 A. The -- the fund -- the -- the --
10 because the open-ended nature of the fund,
11 there were losses that were attributable to
12 investors. Meaning they -- they would have
13 redeemed and got a less money or -- or they
14 subscribed in and maybe because they didn't get
15 enough shares and then they later sold and then
16 they were harmed in that fashion.
17 And there is -- there is -- there
18 were very -- there were very detailed
19 calculations and, you know, all these different
20 scenarios that we had to -- I'm sorry, I keep
21 saying "we" -- that the individuals involved
22 had to calculate and quantify.
23 Q. Well, do you recall whether HCMFA
24 admitted certain fault and liability for this
25 error?

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2 A. I don't recall specifically.
3 Q. Do you recall whether HCMFA caused
4 any funds to be paid to the investors and the
5 fund the subject of the NAV error?
6 A. Yes.
7 Q. Do you recall the approximate amount
8 of funds, moneys paid to the investors and the
9 fund?
10 A. It was -- it was approximately
11 $7 million.
12 Q. If I was to suggest 7.8 million,
13 would that ring more true or are you sticking
14 with your original answer?
15 A. It was -- it was approximately 7 --
16 7 to $8 million. Again, I don't remember the
17 exact number, but it was in that ballpark.
18 Q. So regardless of whether HCMFA
19 accepted fault or liability, it caused some
20 $7 million or more to be paid out to affected
21 investors in the fund?
22 MR. MORRIS: Objection to the form
23 of the question.
24 A. And I want to make sure I'm
25 understanding your question because there is a

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2 lot of different entities that are going on to
3 my head.
4 I think what you are saying is based
5 on this error, shareholders were harmed by this
6 approximately $7.8 million -- by approximately
7 $7.8 million. Is that what you are asking?
8 Q. Yes, sir.
9 A. Yes, that was -- again, I don't have
10 the exact numbers. If I take -- it was -- it
11 was in that ballpark, and there is a detail
12 calculation and write-up that could, that --
13 that exists someplace.
14 Q. Now, at that time, at the time that
15 the NAV error occurred, was there a contract in
16 place between HCMFA and the debtor pursuant to
17 which the debtor was providing services to
18 HCMFA?
19 MR. MORRIS: Objection to the form
20 of the question.
21 A. Yes.
22 Q. Was that contract generally called a
23 shared services agreement?
24 A. It was generally called that, but
25 there were -- there were -- I mean, it -- it --

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2 it depends on who you talk to, but yes,
3 generally, there were -- there are multiple
4 agreements.
5 Q. Pursuant to one or more of those
6 agreements, was the debtor providing certain
7 services to HCMFA?
8 MR. MORRIS: Objection to the form
9 of the question.
10 A. Yes.
11 Q. And can you at a very high level
12 summarize in 2018 and 2019 what those services
13 were?
14 A. Yes, there was a -- yes.
15 Q. Okay. Please -- please go -- go
16 through a short summary.
17 A. There was a -- a cost reimbursement
18 agreement between Highland Capital Management
19 Fund Advisors and Highland Capital Management,
20 L.P. That agreement was for what we referred
21 to as front office services, so investment
22 management, things of that nature.
23 There was I think what most people
24 refer to as the shared services agreement that
25 was -- that agreement was between Highland

1 WATERHOUSE - 10-19-21
2 Capital Management Fund Advisors and Highland
3 Capital Management for back office services.
4 Q. And can you summarize what you mean
5 by back office services?
6 A. Those services were for accounting,
7 finance, tax, valuation, HR, IT, you know,
8 legal compliance, things of -- things of those
9 nature -- or things of that nature, excuse me.
10 Q. So in the spring of 2019, do you
11 recall whether HCMFA took the position that it
12 was actually Highland that caused the NAV error
13 to occur pursuant to the valuation services
14 that Highland was providing?
15 MR. MORRIS: Objection to the form
16 of the question.
17 A. I do not recall.
18 Q. Did you ever have any discussions
19 with anyone, Jim Dondero or anyone in the first
20 half of 2019 as to whether Highland, the
21 debtor, that is, had any liability to HCMFA
22 related to the NAV error?
23 MR. MORRIS: Objection to the form
24 of the question.
25 A. I do not recall.

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2 Q. And then you mentioned that the fund
3 was being closed and some compensation related
4 to that. Can you -- can you elaborate? What
5 were you referring to?
6 A. Right. So the advisor, pursuant to
7 board approval, put a proposal in front of the
8 shareholders of the Highland Global Allocation
9 Fund to convert it from an open-ended fund to a
10 closed-end fund.
11 So an open-ended fund, when
12 shareholders subscribe to the fund or redeem
13 into the fund, they do it at NAV.
14 When it is -- when you have a
15 closed-end fund, closed-end funds are -- are
16 publicly-traded, like on the New York Stock
17 Exchange, exchanges like that, and -- and
18 shareholders or investors, they're not --
19 they're -- they're not subscribing and
20 redeeming with the fund. They are like shares
21 of Apple.
22 Those shares of the Highland Global
23 Allocation Fund trade on an exchange, and that
24 is how you, you know, that is how, you know,
25 you become an equity owner in the fund or you

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2 sell your shares and you are no longer an
3 equity owner.
4 As part of that proposal, the
5 advisor told shareholders if you -- if you vote
6 for this proposal to -- to convert it from an
7 open-ended fund to a closed-end fund, we will
8 pay you some amounts of money. I forgot -- a
9 certain number of points. I think it was
10 like -- it was like two to three points or
11 something -- something like that.
12 Q. Okay. You mentioned when Mr. Morris
13 was asking you, going back to those two
14 promissory notes, you will recall the 5 million
15 and 2.4 million, you mentioned something to the
16 effect that Mr. Dondero told -- told you to pay
17 some moneys out of Highland. Do you remember
18 that discussion with Mr. Morris?
19 A. I do.
20 Q. So, to the best of your
21 recollection, did you have a discussion with
22 Mr. Dondero about making some payments in May
23 of 2019 out of Highland?
24 A. I recall, as I testified earlier,
25 that I had a conversation with Mr. Dondero

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2 for -- for these amounts attributable to -- it
3 was either the error -- you know, the error,
4 and in that conversation he said, go get the
5 money from Highland. I believe that is what I
6 testified earlier, and that -- that is my
7 recollection.
8 Q. Do you recall if that was an
9 in-person meeting or some other mode for the
10 meeting?
11 A. I -- I -- I recall that being
12 in-person.
13 Q. Do you recall if anyone else was
14 present, or was it just you and Mr. Dondero?
15 A. I recall just he and I.
16 Q. And the moneys that he told you to
17 find from -- or get from Highland, was that in
18 the amount of $5 million and $2.4 million?
19 MR. MORRIS: Objection to the form
20 of the question.
21 A. I believe so, but I would have to go
22 back and look and see when those moneys were
23 actually paid into the -- into the fund and,
24 you know, when those transfers were done. If
25 they were all done around that same time, then

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2 yes, I would say it was -- it was all related
3 to that.
4 Q. Did Mr. Dondero tell you that those
5 funds would be a loan from Highland to HCMFA?
6 A. I don't recall.
7 MR. MORRIS: Objection to the form
8 of the question.
9 Q. Now, and forgive me, I'm probably
10 the only non-American born here, but I speak
11 reasonably well in English. I don't recall,
12 does that mean you don't remember or does that
13 mean it didn't happen?
14 MR. MORRIS: Objection to the form
15 of the question.
16 A. It -- it means I don't -- I don't
17 remember.
18 Q. Did Mr. Dondero tell you to have
19 those two promissory notes prepared?
20 A. I don't recall.
21 Q. When you -- again, when you say, I
22 don't recall today, that means that sitting
23 here today, you just don't remember one way or
24 the other. Is that accurate?
25 A. Yes.

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2 Q. Is it possible that you, having
3 heard what Mr. Dondero said and seeing funds
4 being transferred, assumed that that would be a
5 loan without him actually telling you that
6 would be a loan?
7 MR. MORRIS: Objection to the form
8 of the question.
9 A. Sorry, I want to make sure -- did I
10 ask the amounts that were transferred that I --
11 that -- that I assumed that that was a loan?
12 Q. Well, let me -- let me take -- let
13 me try again.
14 So you have established already that
15 there were quite a number of promissory notes
16 back and forth -- I'm sorry, quite a number of
17 promissory notes with affiliated companies and
18 individuals owing Highland money; right?
19 A. Yes.
20 Q. And you have established that there
21 were many transactions and transfers going back
22 and forth over the years; right?
23 MS. DANDENEAU: Objection to form.
24 A. In -- yes, in my capacity as CFO and
25 my employment, yes, that is -- yes.

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Q. And that's part of the reason why you just can't remember some of the details today because this -- this happened years ago, and there were a number of transactions. Is that accurate?

MS. DANDENEAU: Objection to the form.

MR. MORRIS: Objection to the form of the question.

A. I mean, I deal with thousands of -- of -- of -- of transactions, you know, whether it has -- the processing of transactions, you know, if it has got, you know, more -- more zeros, you know, behind it than others.

When you look at thousands of transactions over the years for funds and advisors and -- and, you know, financial statements, I mean, it is -- it is very hard going back in -- in -- in my -- you know, 14-ish year career at -- at Highland to remember a lot of those details, especially when I don't have any records or books or anything like that, and -- and going back many years.

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Q. And that is fine. That -- that -- that is why I asked the question.

Is it possible in May of 2019 when Mr. Dondero told you to transfer the funds from Highland, you just assumed on your own that those would be loans without him actually telling you that those would be loans?

MR. MORRIS: Objection to the form of the question.

A. I don't know.

Q. I'm sorry, you --

A. I said I don't know.

Q. Okay. Well, as the -- as the CFO for Highland, if you saw $7.4 million going out, you would feel some responsibility to account for that, wouldn't you?

MR. MORRIS: Objection to the form of the question.

A. Yes.

Q. Is it fair to say that those would be in the range large enough to rise up to your level?

MR. MORRIS: Objection to the form of the question.

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A. If -- I don't know if I understand your question. Those amounts would arise to my level where I would be involved or...

Q. You would want to know what a transfer for that amount, $7.4 million, was all about, as the CFO of Highland, wouldn't you?

MR. MORRIS: Objection to the form of the question.

A. Yes, I make it -- I mean, I -- I review all sorts of payments, I mean, even smaller dollar payments on a periodic basis, you know, to -- to -- to understand and to make sure that we are paying things in a -- you know, in -- in -- in an informed way. And, you know -- and we're -- and we're paying things pursuant to vendor contracts and things like that.

Q. So as part of that, is it possible that seeing $7.4 million go out you would have promissory notes made in order to keep a paper trail, assuming that those were loans, when perhaps they were never intended to be loans by Mr. Dondero?

MR. MORRIS: Objection to the form

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of the question.

A. I don't know. As I testified earlier, I had conversations with Mr. Dondero about -- about the -- the -- the moneys that were needed for the NAV error. And I recall him saying go get it from Highland -- or get it from Highland.

Q. Well, why did you sign those promissory notes and why didn't you have him sign them?

MR. MORRIS: Objection to the form of the question.

A. I don't know. I don't know.

Q. You mentioned earlier that you typically don't sign promissory notes. Am I remembering your testimony correctly?

I mean, promissory notes on behalf of the entities. Not yourself, obviously.

A. Yes, that is what I said earlier.

Q. Do you recall any other promissory notes in the million-plus range that you had ever signed before on behalf of any entity?

A. There is -- there has been a lot of transactions over the years. I don't -- I

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2 don't -- I don't recall generally. I don't --
3 I don't recall.
4 Q. So -- but to the best of your
5 recollection, it was on your initiative,
6 following your discussion with Mr. Dondero,
7 that you had someone draft those two promissory
8 notes; is that correct?
9 MR. MORRIS: Objection to the form
10 of the question.
11 A. Yes, we would have -- the team, as I
12 stated earlier, we don't draft promissory
13 notes. "The team" meaning the accounting and
14 finance team.
15 So the team would have worked with
16 the legal group at Highland to draft any notes.
17 Q. Do you believe or do you have any
18 recollection as to whether you would have done
19 that pursuant to an email or telephone call or
20 in-person meeting?
21 MR. MORRIS: Objection to the form
22 of the question.
23 A. Are you asking if I would have -- if
24 those notes would have been drafted pursuant to
25 an email or phone call?

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2 Q. Strike that.
3 Do you recall whether you sent an
4 email to anyone asking them to draft those two
5 promissory notes?
6 A. I don't recall because, again,
7 once -- I would have instructed -- likely
8 instructed the team to -- to work with the
9 legal group to draft these documents.
10 I -- I -- I -- yeah, I didn't -- I
11 mean, that is more an operational-type
12 procedure. So, you know, a manager or a
13 controller or working with legal. You know,
14 they -- they can certainly handle that task to
15 get that -- you know, to request that from
16 legal.
17 Q. And who on your team do you think
18 you would have asked to do that?
19 MR. MORRIS: Objection --
20 Q. Who would have been the logical
21 person or people, if you don't remember their
22 name today?
23 MR. MORRIS: Objection to the form
24 of the question.
25 A. It -- it -- there is only two

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2 managers of the group. That would have been
3 Dave Klos or Kristin Hendrix.
4 Dave was the -- one of his duties
5 was managing the valuation team, and so he was
6 intimately involved with this process. So, you
7 know...
8 Q. Okay.
9 A. I don't recall specifically but, I
10 mean, my general -- you know, I -- I -- I
11 likely would have talked to Dave first about it
12 versus someone like Kristin who hadn't been
13 intimately involved.
14 Q. And -- and do you have a view as to
15 whether it is most likely that you would have
16 done that by email or in-person or how would
17 you believe you would have communicated that to
18 Mr. Klos?
19 MR. MORRIS: Objection to the form
20 of the question.
21 A. I likely would have done that in
22 person. Again, if things of this nature
23 that -- again, you have to put ourselves back
24 to, we have been working on this very stressful
25 project for many, many months. And once the

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2 go-ahead was to -- you know, we see the light
3 at the end of the tunnel with wrapping this up
4 and making shareholders whole -- sorry to say
5 "we" -- you know, the -- so the folks that are
6 involved in it.
7 I like to talk to people
8 face-to-face and -- and -- and go to -- and go
9 to their desk, because that shows if I'm going
10 to their desk that -- that is something that I
11 want done, you know.
12 Q. And do you remember, Mr. Waterhouse,
13 getting those two promissory notes in paper
14 format or by email before they were executed?
15 MR. MORRIS: Objection to the form
16 of the question.
17 A. I don't recall.
18 Q. For whatever was the ordinary course
19 back then in May 2019, would you expect to have
20 received them only on paper or would you have
21 expected to have received them in Word document
22 or PDF document by email?
23 MR. MORRIS: Objection to the form
24 of the question.
25 A. I -- I didn't sign -- I signed very

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2 few documents via email. I can't say that it
3 never happened, but people either stopped by my
4 office and physically walked in documents for
5 signature that we discussed face-to-face.
6 Or documents were -- if -- if --
7 if -- if -- let's say I wasn't there or I
8 wasn't available, documents were dropped off.
9 I had -- I had some in- and outboxes in front
10 of my -- my office there at the Crescent.
11 Documents would be dropped off for
12 signature. There would be a cover sheet that
13 would be -- have been applied to those
14 documents detailing, you know, who dropped it
15 off, the purpose, why, what time.
16 And then, you know, as I stated, I
17 don't draft documents and I always go to the
18 legal group and the compliance group to make
19 sure that they're in the loop. And there is
20 a -- a box or section that says, Has legal
21 reviewed or approved, or something to that
22 nature.
23 Again, I don't -- I don't have
24 access to that cover sheet anymore, but it
25 was -- it was something to that effect.

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2 And my assistant, you know, if she
3 was there, she would review that -- you know,
4 whatever was being dropped off. And if that
5 has legal, you know, reviewed or -- reviewed or
6 approved it, if that wasn't -- if that stuff
7 hadn't been done, it was like she would just
8 tell them like, go -- go -- go to the legal
9 group, because --
10 Q. Let me -- let me pause --
11 MS. DANDENEAU: Let him finish.
12 MR. MORRIS: Thank you. Go ahead.
13 A. I take -- go to the legal group
14 because that -- that was my -- you know, I
15 didn't -- I didn't review anything that -- that
16 they weren't -- you know, or there wasn't some
17 representation made to me that they had
18 reviewed, approved in some capacity.
19 Again, my -- my -- my goal, as CFO,
20 is to provide transparency and make sure that
21 groups like compliance and other things -- and
22 the other group in legal are -- are in -- you
23 know, their -- they're made aware of
24 transactions of -- you know, that are crossing
25 my desk.

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2 Because I'm not in every
3 conversation. They're not in every
4 conversation -- meaning legal compliance -- and
5 I just want to make sure that -- that everyone
6 is in sync to, you know, to -- to the extent
7 possible.
8 Q. So if we summarize, you don't
9 specifically remember signing these two notes,
10 but most likely it would have been that they
11 would have presented -- been presented to you
12 physically on paper?
13 MR. MORRIS: Objection to the form
14 of the question.
15 A. They would -- they would have been
16 presented physically on paper most likely or
17 someone would have left it. But, I mean,
18 again, I don't -- I don't recall.
19 Q. I understand. Understand.
20 When you signed -- when you signed
21 documents, when you personally signed
22 documents, did you typically use a ink pen or
23 did you use a stamp?
24 A. No, I -- I -- I use a -- an -- an
25 ink pen.

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2 Q. Do you know -- was there a file at
3 Highland kept anywhere with ink-signed
4 originals of a promissory notes in general or
5 these two promissory notes specifically?
6 MR. MORRIS: Objection to the form
7 of the question.
8 A. Sorry, I just want to make sure I
9 understand your question. Are you saying is
10 there a file somewhere that has ink-signed
11 originals of these two promissory notes?
12 Q. Yes.
13 A. I would -- I would assume they're
14 some place. I mean --
15 Q. Well, was there a -- was there a
16 place where Highland generally kept originals
17 of promissory notes owed to it?
18 A. I wouldn't -- no.
19 MR. RUKAVINA: Mr. Nguyen, would you
20 please pull up my A7, alpha 7.
21 Q. These are the two promissory notes,
22 Mr. Waterhouse.
23 (Exhibit A7 marked.)
24 Q. And please -- Mr. Waterhouse, please
25 command my associate to scroll down as you need

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2 to, but I want you to take a very close look at
3 your two signatures here and tell me whether
4 you believe, in fact, that you ink signed them
5 or whether you --
6 MS. DANDENEAU: Mr. Rukavina,
7 Mr. Waterhouse has the copies.
8 MR. RUKAVINA: Perfect. Then you
9 can take this down, Mr. Nguyen.
10 A. These -- these -- these signatures
11 are identical, now that I stare at them, and I
12 mean, they are so close -- I mean, they're
13 identical that, I mean, even with my chicken
14 scratch signature, I don't know if I can -- you
15 know, I do this 100 times, could I do that
16 as -- as precisely as I see between the two
17 notes.
18 Q. Well, that is why I ask.
19 Mr. Waterhouse, now that you have examined
20 them, does it seem like it is more likely that
21 you actually electronically signed these?
22 MR. MORRIS: Objection to the form
23 of the question.
24 A. Is -- I don't -- I don't recall
25 specifically. As I said before, my assistant

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2 did have a -- an electronic signature, and that
3 was used from time to time. It wasn't as
4 common practice back in 2019. It definitely
5 was more common practice when we had to work
6 from home and remotely for COVID because it
7 that made it almost impossible to, right,
8 provide wet signatures since we're all working
9 from home remotely.
10 Q. Well, going just for these two
11 promissory notes, Mr. Waterhouse, in light of
12 your inability to remember any details, are you
13 sure you actually signed either or both of
14 those notes?
15 MS. DANDENEAU: Objection to form.
16 A. I don't recall specifically
17 signing -- actually physically signing these
18 notes. As I said before, I don't recall doing
19 that. This -- this looks like my signature,
20 but yet these two signatures are identical.
21 Q. So you don't recall physically
22 signing them, and I take it you don't recall
23 electronically signing them either?
24 A. I don't recall. You know, Highland
25 has all my emails. If that occurred, you know,

1 WATERHOUSE - 10-19-21
2 you know, I don't have any of these records is
3 what I'm saying. I don't have any of those
4 records.
5 Q. That is why I'm asking you these
6 questions in great detail because I don't have
7 those emails. I'm trying to -- I'm hoping that
8 you will give me some names or some details so
9 I can go look for more emails, but again, you
10 don't remember any -- any individual, other
11 than Mr. Dondero that we've discussed, you
12 don't remember any individual with whom you
13 discussed these promissory notes prior to their
14 execution?
15 MR. MORRIS: Objection to the form
16 of the question.
17 A. I don't recall discussing it with
18 anybody else.
19 Q. Okay.
20 A. I mean, prior --
21 Q. I understand.
22 A. You know, there was no one else --
23 there was no one else in that meeting that I
24 recall with Mr. Dondero.
25 Q. Now, when you established that by

1 WATERHOUSE - 10-19-21
2 May of 2019 --
3 A. And -- and from what I recall, and
4 the reason why I was by myself is -- is, you
5 know, I don't -- I don't want to speculate, I'm
6 sorry.
7 Q. Okay. We have established that by
8 May of 2019, in your view, the liabilities of
9 HCMFA exceeded its assets; correct?
10 A. Yeah. I mean, again, I don't have
11 financial statements in front of me, but I
12 think, if I recall, we'd have to go through the
13 testimony with Mr. Morris, I believe that was
14 the case.
15 Q. In fact, you will recall that in
16 April of 2019, Mr. Dondero signed a document
17 that extended the demand feature of two prior
18 notes to May 31, 2019. Do you recall that?
19 MS. DEITSCH-PEREZ: I think you
20 might -- maybe have the court reporter read
21 that back. You might have misspoke.
22 (Record read.)
23 MR. RUKAVINA: And I did misspeak.
24 Q. I meant to say to May 31, 2021. Do
25 you recall that, sir?

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2 MR. MORRIS: Objection to the form
3 of the question.
4 A. Yes.
5 MR. RUKAVINA: And, Mr. Nguyen, just
6 so that the record is clear, will you please
7 pull up my Exhibit Alpha 10, A10.
8 (Exhibit A10 marked.)
9 Q. You don't have this one in front of
10 you, Mr. Waterhouse? This is the one that
11 Mr. Morris used earlier. Do you see that
12 document, sir?
13 A. Yes, I do.
14 Q. And this is what you were testifying
15 about before when Mr. Morris was asking you.
16 Do you remember that?
17 A. Yes.
18 Q. So here is my question for you,
19 Mr. Waterhouse: As the chief financial officer
20 of Highland, was it prudent for Highland less
21 than three weeks later to be lending
22 $7.2 million to an insolvent entity that
23 couldn't even then pay its debts back to
24 Highland?
25 MS. DANDENEAU: Objection to form.

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2 MR. MORRIS: Objection to the form
3 of the question.
4 A. Sorry, I just want to make sure --
5 are you asking me, did you say, was it prudent
6 for Highland to loan $7.4 million to HCMFA a
7 few weeks after this document was executed?
8 Q. Yes, and at a time when HCMFA's
9 liabilities exceeded its assets.
10 MR. MORRIS: Objection to the form
11 of the question.
12 A. I don't -- it is odd. I don't know.
13 MR. RUKAVINA: You can take this
14 exhibit down, Mr. Nguyen.
15 Q. Do you recall asking anyone,
16 Mr. Dondero or -- or anyone outside as to
17 whether Highland ought to be lending
18 $7.4 million to HCMF regarding HCMF's
19 creditworthiness?
20 MR. MORRIS: Objection to the form
21 of the question.
22 A. I don't recall.
23 Q. Did you receive personally any of
24 that $7.4 million?
25 A. No.

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2 Q. Did you even --
3 MR. MORRIS: I didn't hear that
4 question, sir.
5 MR. RUKAVINA: The one that he
6 answered, John, or my new one?
7 MR. MORRIS: No, no, your question,
8 Davor.
9 MR. RUKAVINA: I had asked him
10 whether he received any of the
11 $7.4 million. He said no.
12 MR. MORRIS: Yeah. I thought there
13 was a question after that. Maybe I was
14 mistaken. I apologize.
15 MR. RUKAVINA: I had started a new
16 question, so here, let me start the new
17 question again.
18 Q. Did you personally receive any
19 direct benefit from those two notes for
20 $7.4 million?
21 A. No.
22 Q. Did you ever personally consider
23 yourself obligated to repay either or both of
24 those notes?
25 A. No.

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2 MR. RUKAVINA: Pull up those notes
3 again, Mr. Nguyen.
4 Q. You can have them in front of you,
5 Exhibit 7, Mr. Waterhouse, whatever is easier
6 for you. If you go to your signature page, my
7 question to you is, why did you not include
8 your title as treasurer by your name, Frank
9 Waterhouse?
10 MS. DANDENEAU: Objection to form.
11 A. I didn't -- I didn't draft this
12 document.
13 Q. So you relied on whoever drafted it
14 to draft it correctly?
15 A. Yes.
16 Q. Okay. But back then when you signed
17 this, did it ever cross your mind that you were
18 the maker on these notes?
19 A. No.
20 Q. Back then when you signed this
21 document, did it ever cross your mind that you
22 could be a co-obligor on these notes?
23 A. No. I didn't receive $7.4 million,
24 I mean...
25 Q. But can you say that HCMFA received

1 WATERHOUSE - 10-19-21
2 $7.4 million?
3 A. I would have to go back and look and
4 check in, you know, the -- the financial
5 records and the bank statements.
6 MR. RUKAVINA: You can take this
7 exhibit down, Mr. Nguyen.
8 Q. Mr. Waterhouse, I'm not trying to be
9 a smart-ass, but if the law says that because
10 of the way that you signed this promissory
11 note, if that is what the law says, that that
12 made you personally -- personally liable, then
13 you would agree with me that that was never
14 your intent?
15 MR. MORRIS: Objection to the form
16 of the question.
17 A. That was never -- I wouldn't sign a
18 note and not get consideration in return.
19 Q. So putting all other issues aside,
20 if the law -- if the law says that you were
21 liable for those notes because of how you
22 signed them, then would you agree with me that
23 these notes are a mistake?
24 MR. MORRIS: Objection to the form
25 of the question.

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2 MS. DANDENEAU: Objection to the
3 form.
4 A. Yes.
5 Q. So do you agree with me that it's
6 odd -- I think that is the word you used --
7 that Highland would be loaning $7.4 million a
8 few weeks after that extension to an entity
9 whose liabilities exceeded its assets, and you
10 would agree with me that it was never your
11 intention to be in any way liable for these two
12 promissory notes; correct?
13 MR. MORRIS: Objection to the form
14 of the question.
15 A. Sorry, you -- you asked a lot there.
16 MR. RUKAVINA: I will strike it and
17 I will move on.
18 Let's go to -- pull up Exhibit 9,
19 please Mr. Nguyen -- Alpha 9, I'm sorry, Alpha
20 9, A9.
21 (Exhibit A9 marked.)
22 Q. Sir, take a moment to look at this,
23 but this is an email, and you will see attached
24 July 31, 2020 affiliate notes.
25 Do you see that attachment?

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2 A. Yes.
3 Q. Okay. And do you see an entry for
4 Highland Capital Management Fund Advisors?
5 MR. MORRIS: I'm sorry, hold on.
6 Where are you looking?
7 MR. RUKAVINA: Last page, John.
8 MR. MORRIS: Is it the page on the
9 screen?
10 MR. RUKAVINA: Oh, I'm sorry.
11 Mr. Nguyen just did it. Yes, the last page
12 there.
13 MR. MORRIS: Thank you.
14 Q. Do you see an entry there for HCMFA?
15 A. Yes.
16 Q. About $10.5 million.
17 Do you see that?
18 A. I do.
19 Q. And, now, do you have any
20 explanation for why if HCMFA owed $7.4 million,
21 plus the 5.3 million that had been extended,
22 why that amount was only 10.5 million?
23 A. I don't know. Okay.
24 MR. RUKAVINA: Close this one and
25 pull up, Mr. Nguyen, the schedules,

1 WATERHOUSE - 10-19-21
2 schedule of assets. What exhibit is this
3 of ours, Mr. Nguyen?
4 MR. NGUYEN: This is A11.
5 MR. RUKAVINA: Oh, this will be A11.
6 (Exhibit A11 marked.)
7 Q. You don't have this in front of you,
8 Mr. Waterhouse?
9 A. Okay.
10 Q. This is what Mr. Morris used
11 earlier. Do you remember looking at this with
12 Mr. Morris?
13 A. Yes.
14 MR. RUKAVINA: You might have to
15 zoom in a little. Okay.
16 Q. Now, I see Affiliate Note A, B, and
17 C.
18 Do you have any recollection as to
19 why the names of the affiliates are omitted?
20 A. I don't. I testified earlier that,
21 you know, the team worked with DSI in providing
22 these. I -- I don't -- I don't know.
23 Q. Can we deduce -- is it logical to
24 deduce that Affiliate Note A would be NexPoint
25 given its size of $24.5 million?

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2 MR. MORRIS: Objection to the form
3 of the question.
4 A. I mean, it -- it is a -- it is -- it
5 is approximate.
6 Q. Well, can we -- can we deduce -- or,
7 I'm sorry, strike that.
8 Can you, sitting here today,
9 logically conclude that Affiliate Note B or C
10 represents HCMFA?
11 MR. MORRIS: Objection to the form
12 of the question.
13 A. I don't know. I don't know. I
14 can't.
15 Q. Okay. As of the petition date, we
16 have established that HCMFA, under promissory
17 notes, owed $7.4 million and $5.3 million to
18 the debtor; correct?
19 MR. MORRIS: Objection to the form
20 of the question.
21 A. Yes.
22 Q. Okay. And by my reckoning, that
23 would be somewhere approaching $13 million.
24 MR. MORRIS: Objection to the form
25 of the question.

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2 Q. It would be $12.7 million. Is that
3 generally correct?
4 A. Sorry, the amounts were 7.4, 5.3.
5 Q. Yes.
6 A. Okay. Yeah, that -- that -- I can
7 do that math, yes.
8 Q. Do you have any explanation or any
9 understanding of why there is no similar entry
10 listed here on the schedule of assets filed
11 with the bankruptcy court?
12 MR. MORRIS: Objection to the form
13 of the question.
14 A. I don't know. We have to look at
15 the supporting schedules, like I talked about
16 other -- presumably there is -- there is a
17 build to the schedule that would provide the
18 detail.
19 Q. Well, that was going to be my next
20 question. You anticipated it.
21 MR. RUKAVINA: You can -- you can
22 take this down, Mr. Nguyen.
23 Q. Do you believe that whenever you and
24 your team provided the underlying data to the
25 financial advisor that the actual names of the

1 WATERHOUSE - 10-19-21
2 affiliates for Affiliate Note A, B, and C would
3 have been listed there?
4 A. Are you asking we provided the names
5 to the financial advisor? I don't -- I don't
6 understand who the financial advisor is.
7 Q. I'm sorry, DSI.
8 Let me ask the question this way,
9 Mr. Waterhouse.
10 Whenever you provided information
11 about the affiliate notes to DSI, do you
12 believe that you would have included the actual
13 names of the affiliates, you or your team, or
14 that you would have done the Affiliate Note A,
15 Note B, Note C?
16 MR. MORRIS: Objection to the form
17 of the question.
18 MS. DANDENEAU: Objection to the
19 form.
20 A. We -- like I testified earlier, when
21 we were -- we gave everything to -- to DSI. We
22 were giving all of our records, all of our
23 files, everything to DSI. We weren't redacting
24 information or saying, hey, here is a note,
25 here is Affiliate Note A or B.

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2 I mean, it was -- our job and our
3 focus -- and I testified in court back in 2019;
4 right -- was -- was to be transparent and, you
5 know, get DSI up to speed on -- on the matters
6 at Highland. So I can't see us redacting at
7 that point.
8 MR. RUKAVINA: Mr. Nguyen, will you
9 please pull up Mr. Morris' Exhibit 36.
10 Just the very first page, the very top
11 email. You might zoom in a little bit.
12 Q. Now, you recall being asked about
13 this by Mr. Morris?
14 A. Yes, I do.
15 Q. And you wrote: The HCMFA note is a
16 demand note.
17 You wrote that; right?
18 A. Yes.
19 Q. And, in fact, weren't there by that
20 point in time several notes?
21 A. Yes, there were. Again, I don't --
22 I don't remember everything specifically. I
23 mean --
24 Q. I understand. I understand.
25 So this is an example where -- where

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you might have made a mistake by referring to a singular instead of a plural; right?

A. Yes.

Q. Okay. And you -- you wrote -- a couple of sentences later, you wrote: There was an agreement between HCMLP and HCMFA the earliest they could demand is May 2021.

You wrote that; right?

A. Yes.

Q. But I think you -- you agreed with Mr. Morris that that can't possibly apply to the May 2019 notes, can it?

MR. MORRIS: Objection to the form of the question. That is not what he testified to.

Q. Let me ask -- let me ask a different question.

Sitting here today -- or if you can answer me from your memory on October 6, 2020 -- did the April acknowledgment that extended the maturity date apply to the May 2019 notes also?

A. I don't recall specifically.

Q. Well, you recall that the notes that

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you signed were demand notes; right?

A. Yes.

Q. Do you find it logical, based on your experience, that had they intended to have a different or a set maturity date, you would have instructed that that set maturity date be included instead of a demand feature?

MR. MORRIS: Objection to the form of the question.

A. Sorry, just want to make sure I understand. You are saying that -- that the $5 million note, the $2.4 million note, if those were supposed to be a term note, that I would have made sure that those were a term note?

Q. I'm saying -- I'm saying, Mr. Waterhouse, that on May the 2nd and May the 3rd, 2019, if you intended that those two promissory notes could not be called until May 2021, would you have included such language in those two promissory notes?

MR. MORRIS: Objection to the form of the question.

A. I guess -- I'm sorry, I don't recall

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putting language in those May notes. I don't remember what language you are referring to.

Q. Well, let's read this again.

There was an agreement between HCMLP and HCMFA the earliest they could demand is May 2021.

Do you recall that agreement?

A. Yes, that was the agreement we looked at earlier; correct?

Q. Okay. Yes.

Do you -- do you understand now that that agreement that we looked at earlier also applied to the May 2019 notes that you signed?

A. I don't -- I don't know.

Q. But as of October 6, 2020, you're writing that there is one demand note and you're categorizing that demand note as not being demandable on May 2021; correct?

A. Yes.

Q. And you know now that you made at least one mistake in this email; correct?

MR. MORRIS: Objection to the form of the question.

A. Yes.

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MR. RUKAVINA: You can pull this down, Mr. Nguyen.

Q. So, Mr. Waterhouse, you don't remember Mr. Dondero telling you to make these loans or not. HCMLP was loaning $7.4 million to someone that their assets were less than their liabilities.

We don't see on the July list of notes, where there is $12.7 million of notes, we don't see that on the bankruptcy schedules, and we have this Exhibit 36 where you are confused.

Are you prepared to tell me, sir, today that you might have made a mistake in executing those two promissory notes?

MR. MORRIS: Objection to the form of the question.

A. I -- I don't know.

Q. And if it turns out that you're personally liable for those promissory notes, it would certainly be a mistake, wouldn't it?

MS. DANDENEAU: Objection to the form.

MR. MORRIS: Join.

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A. Yes.

Q. If Mr. Dondero testifies that he never told you to make these loans, would you disagree with his testimony?

MR. MORRIS: Objection to the form of the question.

A. Like I testified earlier with my conversation with Mr. Dondero, all I recall is he said, get the money from Highland.

Q. And if Mr. Dondero testifies that he, in consultation with other senior personnel at Highland, decided that Highland needed to pay HCMFA $7.4 million as compensation for the NAV error and not a loan, would you have any reason to disagree with Mr. Dondero?

MR. MORRIS: Objection to the form of the question.

A. If that was – if that was his intent, yes, it would – I would –

Q. Do you have any reason to disagree with him?

MR. MORRIS: Objection to the form of the question.

A. If that was his intent, I don't

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know. I don't know how I disagree with that.

Q. And just to confirm, you don't remember ever asking Mr. Dondero whether you should have two promissory notes prepared?

A. No.

Q. And you don't remember discussing with Mr. Dondero what the terms of those two promissory notes should be?

A. I don't recall – I testified all I recall is he said, get the money from Highland. I don't – the – the terms of the note, I don't recall ever having a discussion around the terms of the note, but since I don't draft the notes, that – there could have been a conversation with other people later.

Q. Do you have any memory of whether after the notes were drafted, but before you signed them, that you communicated with Mr. Dondero in any way to just confirm or – or get his blessing or ratification to signing those notes?

MR. MORRIS: Objection to the form of the question.

A. I don't recall.

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Q. Again, the only thing you remember, sitting here today, was Mr. Dondero said, get the money from Highland, and that is it, that is all you remember?

MR. MORRIS: Objection to the form of the question.

A. I testified to that several times. This was over two years ago. A lot has happened. That is all I recall.

Q. And help me here. I'm not very technologically astute. When you – and I – I recognize that you do it rarely, but when you sign a document electronically, do you believe that there is an electronic record of you having authorized or signed a document electronically?

MR. MORRIS: Objection to the form of the question.

A. I – I don't know the tech answer to that, but, you know, since I don't have – I don't ever attach my signature block electronically, my assistant would have done that, and if that is done over email like we did several times – you know, multiple,

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multiple times over COVID, she would attach my signature block and then email it out to whatever party.

Q. What was your assistant's name in May 2019?

A. It was Naomi Chisum.

Q. Is she the only one? I'm sorry, was she your only assistant that would have maybe facilitated logistically something like you just described?

A. You know, she was out on maternity leave at some point. I don't – I don't recall those dates where she was out for maternity leave. There was – there were folks backing her up. I don't recall specifically who those – who those, you know, administrative assistants were, and I don't recall specifically if she was out during this time on maternity leave.

I do know that that she was out for a period of time, or who knows, or she could have been on vacation that day or, you know, I don't know.

Q. Switching gears now, the two

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2 complaints that have been filed that is against
3 HCMFA and NexPoint, did you see any drafts of
4 those complaints before they were filed?
5 MR. MORRIS: Objection to the form
6 of the question, and to the extent that you
7 had any communications with counsel or you
8 were shown drafts of the complaints by
9 counsel while you were employed by
10 Highland, I direct you not to answer.
11 A. I – I reviewed documents yesterday
12 with counsel here. I believe that is the first
13 time I have ever seen those.
14 Q. Okay. Did you ever discuss with
15 Mr. Seery these two lawsuits before or after
16 they were filed?
17 A. I don't recall.
18 Q. Were you ever interviewed by legal
19 counsel, to your knowledge, about these
20 promissory notes before the complaints were
21 filed? Without going into what was said, were
22 you ever interviewed by legal counsel?
23 MR. MORRIS: Objection to the form
24 of the question.
25 A. I don't recall.

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2 Q. Obviously with COVID, it changed,
3 but – but before COVID, did you used to meet
4 with Mr. Seery from time to time in-person?
5 A. Yeah, I mean, so before COVID – so
6 we're talking kind of late March, early April,
7 right, there was about – I don't remember the
8 specific date when the board for Highland was
9 appointed. I believe it was around February of
10 2020, so maybe there was a month-and-a-half,
11 two-month window where we were meeting
12 in-person or, you know, like we were actually
13 in the office, excuse me, we were in the
14 office.
15 And, you know, when they were first
16 appointed, the board members and Mr. Seery
17 were – were definitely down here more
18 in-person.
19 Q. Did you ever see Mr. Seery taking
20 written notes of – of his meetings with you or
21 others?
22 A. I don't recall.
23 Q. Do you recall on any Zoom or video
24 conference with Mr. Seery, seeing him take
25 notes, written notes?

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2 A. The Zoom calls we had, I don't
3 recall having seen video or, you know, or if it
4 was on Zoom, I just remember it being – well,
5 no, you know what, there were some – you know,
6 I take that back.
7 So there were – there were some
8 times that I did remember seeing Mr. Seery
9 on – on some of the Zoom calls.
10 Q. Well, let me –
11 A. I don't – sorry, I'm thinking. I'm
12 thinking – I'm going back. I'm trying to
13 process this.
14 Q. I can make it much quicker,
15 Mr. Waterhouse. I have heard – I have heard
16 that Mr. Seery is a copious note taker.
17 Do you have any knowledge about
18 that?
19 A. No.
20 Q. Okay. Switching gears yet again,
21 and this will be last theme. Do you need a
22 restroom break, or are you good to go for
23 another half an hour?
24 MS. DEITSCH-PEREZ: I need a
25 restroom break.

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2 MR. RUKAVINA: Can we make it five
3 minutes?
4 THE WITNESS: Five minutes would be
5 great.
6 VIDEOGRAPHER: We're going off the
7 record at 5:53 p.m.
8 (Recess taken 5:53 p.m. to 5:59 p.m.)
9 VIDEOGRAPHER: We are back on the
10 record at 5:59 p.m.
11 Q. Mr. Waterhouse, I had asked you
12 earlier about contracts between HCMFA and the
13 debtor, and now I'm going to talk about
14 contracts between the debtor and NexPoint
15 Advisors. Okay?
16 A. Okay.
17 Q. Now, were there contracts similar to
18 the ones with HCMFA that NexPoint had in the
19 nature of employee reimbursement and shared
20 services?
21 A. Yes, they – NexPoint Advisors and
22 Highland Capital Management Fund Advisors had
23 cost reimbursement and shared services
24 agreements with Highland Capital Management,
25 L.P.

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Q. And was that shared services agreement, to the best of your understanding, in place as of December 31, 2020?

A. It was – it was terminated at some point, and I remember the contracts had different termination dates, but I think the – the date of termination was January 31st of 2021, after the termination was put in.

So yeah, it would be in place at the end of the year of December – it would be in place at December 31st, 2020.

Q. And pursuant to that agreement as of December 31st, 2020, was the debtor providing what you would describe as back office services to NexPoint?

A. Yes.

Q. Would those have included accounting services?

A. Yes.

Q. And as part of those accounting services, would the debtor have assisted NexPoint with paying its bills?

MR. MORRIS: Objection to the form of the question.

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A. Yes.

Q. So let's break that up. You were a treasurer of NexPoint as well in December of 2020?

MR. MORRIS: Objection to the form of the question.

A. Yes.

Q. Okay. And in December of 2020, did NexPoint have its own bank accounts?

A. Yes.

Q. And did it use those bank accounts to pay various of its obligations?

A. Yes.

Q. Did employees of the debtor have the ability to cause transfers to be made from those bank accounts on behalf of NexPoint?

A. Yes.

Q. And is that one of services that the debtor provided NexPoint, basically ensuring that accounts payable and other obligations would be paid?

A. Yes.

MR. MORRIS: Objection to the form of the question.

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Q. You answered yes?

A. Yes.

Q. And the payments, though, whose funds would they be made from?

A. From the bank account of NexPoint Advisors. If they were NexPoint advisor obligations, it would be made from NexPoint Advisors' bank account.

Q. So let's pull up Exhibit Alpha 1. You should have that – it is my Tab 1 or my Exhibit 1.

(Exhibit A1 marked.)

Q. So this is a – this is a series of emails, Mr. Waterhouse. Let's look at the first page here, November 25, 2020, between Kristin Hendrix and yourself.

Do you see that, sir?

A. I do.

Q. And do you see where Ms. Hendrix writes: NPA.

Do you know what NPA stood for?

A. Yes.

Q. And what does it stand for?

A. NexPoint Advisors.

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Q. And was that how you-all internally at Highland refer to NexPoint Advisors, L.P.?

A. I mean, yes, amongst other things.

Q. And she writes at the bottom of her email: Okay to release?

Do you see that?

A. Yes, I do.

Q. So what –

MR. MORRIS: Hold on one second.

Okay. Go ahead.

MR. RUKAVINA: Yeah.

Q. So what is – what is Ms. Hendrix here on November 25 asking of you?

A. She is asking me – so she – these are – these are payments – typically we would do an accounts payable run every week at the end of every Friday. But looking at this date, it is Wednesday, November 25th, which means, to me, it is likely Thanksgiving weekend.

So this is the day before Thanksgiving, so this is the last kind of – kind of day before the holidays and vacation and things of that nature. So it is effectively the Friday of that week.

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2 So she is – she is putting in all
3 the payments for the week because we batch
4 payments weekly. And these are the payments
5 that go out that week, and she is informing me
6 of the payments and – you know, again, at the
7 bottom of the email, she is asking for my okay
8 to – to release these payments in the wire
9 system.
10 Q. So these would be accounts payable
11 of NexPoint?
12 A. I mean, it would be accounts payable
13 for all of these entities listed on this email.
14 Q. And who was Ms. Hendrix employed by
15 in November and December of 2020?
16 A. Highland Capital Management.
17 Q. Okay. So – so part of the services
18 that NexPoint had contracted with was for
19 Highland to ensure that NexPoint timely paid
20 its accounts payable; is that accurate?
21 MR. MORRIS: Objection to the form
22 of the question. You have got to be
23 kidding me.
24 Q. Is that accurate?
25 A. Yes.

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2 Q. And did NexPoint rely on employees
3 of the debtor to ensure that NexPoint's
4 accounts payable were timely paid?
5 MR. MORRIS: Objection to the form
6 of the question.
7 A. Yes.
8 MR. RUKAVINA: Let's flip to the
9 next page, Mr. Nguyen, if you will please
10 scroll to the next page.
11 Q. So this is an email similar to the
12 prior one, November 30th.
13 Do you see where it says, NPA HCMFA,
14 USD $325,000 one-day loan?
15 Do you see that, sir?
16 A. I do.
17 Q. Do you have any memory of what that
18 was?
19 A. I don't recall what that – what
20 that payment was for.
21 Q. Did it sometimes occur that one
22 advisor would, on very short-terms, make loans
23 to another advisor?
24 A. Yes. This – this – this occurred
25 from – from – from time to time. It actually

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2 looking at – I'm – I'm looking at the date of
3 this email. It is November 30th. It is the
4 last day of the month.
5 HCMFA has obligations it needs to
6 pay to its broker-dealer, which is HCFD. And
7 it likely was short funds to make those
8 obligations under that – under its agreement,
9 and so it provided a one-day loan because on
10 the next business day on 12/1 – or the next
11 business day in December, it would receive
12 management fees from the underlying funds that
13 it managed and it would be able to pay back
14 that loan to NexPoint Advisors.
15 Q. So – so here Ms. Hendrix was
16 seeking your approval to transfer $325,000 from
17 NexPoint to HCMFA for a one-day loan; is that
18 correct?
19 A. That is correct.
20 Q. Let's flip to the next page, sir.
21 MR. RUKAVINA: And, Mr. Nguyen, if
22 you will please scroll down.
23 Q. Now we have as an entry for
24 $325,000, 11/30 loan payment.
25 Do you see that, sir?

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2 A. Yes.
3 Q. And that is probably the loan that
4 was approved on the prior page?
5 A. Yes, most likely.
6 Q. So is it also true, sir, that in
7 addition to accounts payable debtor employees
8 would be assisting NexPoint with respect to
9 paying back its debt?
10 MR. MORRIS: Objection to the form
11 of the question.
12 A. I mean, yes, for loans of this
13 nature, yes.
14 Q. Well, what about long term loans?
15 Was it reasonable for NexPoint to expect debtor
16 employees to ensure that NexPoint timely paid
17 its obligations under long-term notes?
18 MR. MORRIS: Objection to the form
19 of the question.
20 MS. DANDENEAU: Objection to form.
21 A. I mean, that is one of the things
22 that the Highland personnel did provide to the
23 advisors. Yes, we would – we would – over
24 the years, yes, we – we – we – we did do
25 that generally. Again, I don't remember

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2 specifically but, yes, generally we – you
3 know, we did do that.
4 Q. So do you recall – and we can pull
5 it up, if need be – that under the NexPoint
6 note that Mr. Morris asked you about earlier,
7 the one for more than $30 million, that
8 NexPoint was obligated to make an annual
9 payment of principal and interest?
10 MR. MORRIS: Objection to the form
11 of the question.
12 A. Yes, it was – yes, it – it was an
13 amortizing note. It was – you know, from what
14 we reviewed earlier, it was payable by
15 December 31st of each year. So – but are –
16 are you asking me –
17 Q. I'm just asking you, sir, if you
18 recall the note.
19 A. Yes, the $30 million note, yes, we
20 reviewed it earlier, yes.
21 Q. And do you recall Mr. Morris had you
22 go through the fact that NexPoint had made
23 payments in years prior to 2020 on that note?
24 A. I do.
25 Q. And do you believe that employees of

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2 the debtor would have played any role in
3 NexPoint having made those prior payments?
4 MR. MORRIS: Objection to the form
5 of the question.
6 A. Yes.
7 Q. And what role in years prior to 2020
8 would employees of the debtor have had with
9 respect to NexPoint making that annual payment?
10 A. We – we – we would have – I keep
11 saying "we." The team would have calculated
12 any amounts due under that loan and other
13 loans, as – as standard course.
14 We would – since we provided
15 treasury services to the advisors, we would
16 inform the – the – the – we informed
17 Mr. Dondero of any cash obligations that are
18 forthcoming, whether we do cash projections.
19 If, you know, any of these payments
20 would have – or, you know, the sum total of
21 all of these payments, including any note
22 payments, if there were any cash shortfalls, we
23 would have informed Mr. Dondero of any cash
24 shortfalls. We could adequately plan, you
25 know, in instances like that.

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2 Or, sorry, we – I say "we" – I
3 keep saying "we" – I keep wearing my – again,
4 my – my treasurer hat.
5 But, yes, it is to – it is to
6 inform Mr. Dondero of the obligations of the
7 advisors in terms of cash and obligations that
8 are – are upcoming and that – and that are –
9 are scheduled to be paid.
10 Q. And would those obligations that are
11 upcoming and scheduled to be paid prior to 2020
12 have incurred the annual payment on that
13 NexPoint $30 million note?
14 MS. DANDENEAU: Objection to form.
15 MS. DEITSCH-PEREZ: Davor, I think
16 you misspoke. You might want to just
17 repeat the question.
18 Q. Okay. Let me repeat the question,
19 sir.
20 Prior to 2020, those services that
21 you just described, would that – on behalf of
22 the debtor, would that have included NexPoint's
23 payments on the $30 million note?
24 A. Yes.
25 Q. So someone at the debtor in treasury

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2 or accounting would have sent some schedule or
3 a reminder that a payment would be coming due
4 in the future. Is that generally the practice?
5 A. Yes, we would – you know, again, I
6 didn't – I didn't micromanage the teams, but
7 we had a – a corporate accounting calendar
8 that we use as kind of a tickler file to keep
9 track of payments.
10 I actually, you know, don't know how
11 actively they're using that in – in prior to
12 2020, but it was actively used at some point.
13 We did look at NexPoint cash
14 periodically and cash for the other advisors as
15 well and payments. You know, we – payments
16 like this would have appeared in our cash
17 projections, in the advisor's cash projections.
18 And, again, as like I said earlier,
19 they would have appeared there, so there would
20 be time to plan for making any of these
21 payments.
22 Q. And based on your experience, would
23 it have been reasonable for NexPoint to rely on
24 the debtors' employees to inform NexPoint of an
25 upcoming payment due on the $30 million

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promissory note?

MR. MORRIS: Objection to form of the question.

MS. DANDENEAU: Objection to form.

A. Yes. Yes, they did. I mean, but I mean, but I don't think these – these notes were any secret to anybody.

Q. I understand, and I'm not suggesting otherwise.

MR. RUKAVINA: Please pull up Alpha 2, Mr. Nguyen.

(Exhibit A2 marked.)

Q. Now, this document is similar to the ones we've seen before as of December 31, 2020, and I don't see under NTA anything there for paying the promissory note to Highland.

Do you see anything like that?

A. I do not.

MR. RUKAVINA: You can pull that – that exhibit down, Mr. Nguyen.

Q. You are aware, of course, by now that, in fact, NexPoint failed to make the payment due December 31, 2020, are you not?

A. I am aware, and yes, I do understand

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it.

Q. Were you aware that Highland accelerated that $30 million promissory note?

A. I am aware.

Q. Were you aware of that acceleration at the time that it occurred?

A. I don't remember specifically.

Q. Do you recall whether anyone asked you – prior to the acceleration, anyone asked you at Highland, what Highland should do with respect to the missed payment?

A. Did anyone ask me what Highland should do about the missed payment?

Q. Yes, before acceleration.

MR. MORRIS: Objection to the form of the question.

A. I mean, what – what I recall is there was the – sorry, are you asking me –

MS. DANDENEAU: Why don't you just repeat the question, Mr. Rukavina.

Q. Let me try again, Mr. Waterhouse, let me try again.

I am saying you're the CFO of someone, in this case, Highland, and the

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borrower failed to make the required payment. Are you with me so far?

A. I am.

Q. Did anyone then ask you, what should we do with respect to our rights against the borrower that missed the payment?

A. Not that I recall.

Q. Did you play a role in the decision to accelerate that $30 million promissory note?

A. I did not.

Q. Do you recall whether Mr. Seery ever asked you before the acceleration as to whether he should accelerate the note?

A. I don't recall.

Q. And you don't recall when you learned of the acceleration itself?

MR. MORRIS: Objection to the form of that question.

A. It was – it was sometime in early – in early 2021. I don't remember specifically.

Q. But do you recall whether it was after the acceleration had already been transmitted?

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MS. DANDENEAU: Objection to the form of the question.

A. I don't recall.

Q. Do you recall in early to mid January of 2021, after the default, discussing the default with Mr. Dondero?

A. I do recall discussing with Mr. Dondero after December 31, 2020?

Q. Yes, the fact of the default.

A. I don't recall.

MR. RUKAVINA: Let's pull up my Exhibit 6, Alpha 6.

(Exhibit A6 marked.)

MR. RUKAVINA: And, Mr. Nguyen, if you will please scroll down.

Q. This email chain begins with you writing to Ms. Hendrix on January the 12th: NexPoint note to HCMLP.

Do you see that, sir?

A. I do.

Q. Were you discussing this same $30 million note we're talking about right now with Ms. Hendrix?

A. Yes.

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Q. Okay. Do you recall what prompted you to send that email to her?

A. Yes, I had -- I had a conversation with Jim.

Q. Okay. And what -- what did you discuss with Jim that led to this email chain?

A. He -- he called me and he said he wanted to make payment on the NexPoint note, and I didn't -- I didn't know the -- the amount offhand, so I reached out to Kristin and got the details and relayed that to him.

Q. And you see you sent that email to her at 11:15 a.m. Does that help you remember when you had this discussion with Mr. Dondero? In other words, was it that morning or the day before, or can you -- can you --

A. No, it was -- it was that morning.

Q. And do you recall how you had that conversation with him?

MR. MORRIS: Objection to the form of the question.

Q. By telephone, by email, in-person?

A. Yeah, he -- he called me. I was at home. We were working from home here in

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December of 2020. He called me from home. He said he was in court. He wanted to -- he asked about, you know, making payment on the note and the amount, and so I didn't have those numbers in front of me, so I said I would get back to him. I wanted all the details, so here is this -- so I reached out to Kristin.

Q. And then she gave you that $1,406,000 figure?

MR. RUKAVINA: Mr. Nguyen, if you will scroll up, please.

A. Yes. Yeah, she -- the $1,406,112.

Q. And do you recall whether you conveyed that amount to Mr. Dondero?

A. Yes. I -- I called him back and gave him -- gave him this amount.

Q. Are you aware of whether NexPoint, in fact, then made that 1 million 406 and change payment?

A. Yes, they did.

Q. Did you discuss with Mr. Dondero at that time, either the first conference or the second conference that day -- strike that.

When you conveyed the number to

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Mr. Dondero, was -- was it also on January 12th?

A. Sorry, when I conveyed the $1.4 million number?

Q. Yes.

A. Yes, yes, it was that -- it was --

Q. So you had --

A. It was that point.

Q. Well, to the best of your recollection, you had a conference with Mr. Dondero by the telephone in the morning, and then another conference with him by telephone after 11:40 a.m. that morning?

A. Yeah, I can't remember -- yeah, it was either that morning or it could have been, you know, early afternoon, but again, I remember calling him back, relaying this information to him, and he said, okay, pay -- you know, make -- make this payment.

Q. And during either of those two calls, did you tell Mr. Dondero anything to the effect that making those -- I'm sorry, making that payment would not de-accelerate the promissory note?

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A. No.

Q. Did you tell him anything to the effect that making that payment would not cure the default?

A. No.

Q. Did you discuss that in any way with him?

A. No, I did not.

Q. Did he say why he wanted to have that $1.4 million payment made?

MR. MORRIS: Objection to the form of the question.

A. He -- he -- he didn't go into specifics.

Q. Did he say anything to you to the effect that if NexPoint makes that payment, then the note will be de-accelerated?

MR. MORRIS: Objection to the form of the question.

A. I don't recall.

MR. RUKAVINA: You can put this one down, Mr. Nguyen.

Q. And, again, when you say you don't recall, you mean you don't remember right now

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either way; correct?

A. Yeah, I don't remember. I don't remember us discussing that.

Q. Now -- and we're almost done, I promise. I'm just going to -- I don't know how to ask this question, so I'm just going to try to do my best.

Prior to the default on December 31, 2020, did Mr. Seery ever tell you any words to the effect that you or someone at Highland should ensure that NexPoint doesn't make its payment?

A. No.

Q. Did you have any hint or any belief that anyone at NexPoint -- I'm sorry, strike that.

Did you have any reason to believe that anyone with Highland was actively trying to get NexPoint to make that default by not paying on December 31?

MR. MORRIS: Objection to the form of the question.

A. Are you asking, did any Highland employees actively work to make -- to

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somehow --

Q. Yes. Let me take a step back. Let me take a step back.

So you are aware now that as a result of that default, what was still some 25-year note was accelerated and became immediately due. You are aware of that now; right?

A. Yes.

Q. And can you see how someone at Highland might actually have been pleased with that development?

MR. MORRIS: Objection to the form.

Q. Not that they were -- not that they were pleased, but you can see how someone at Highland might have been pleased with that development?

MR. MORRIS: Objection to the form of the question.

MS. DANDENEAU: Object to form.

A. I don't know how they would have reacted to that.

Q. Okay. But you're not -- you're not aware of any instructions or any actions being

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given or taken at Highland by Mr. Seery, the independent board, DSI, that -- that would have basically led Highland to ensure that NexPoint would fail to make that payment?

A. I'm not aware.

Q. In other words, there wasn't a trick or a settlement; right?

MS. DEITSCH-PEREZ: Objection to form.

MS. DANDENEAU: Object to form.

MR. MORRIS: Object to form.

A. I'm not aware.

Look, I'm not aware. I'm not in every conversation. I mean, and I'm just -- again, I'm sitting at home. It is the end of the year. Again, I'm not aware.

Q. That is a perfectly legitimate answer. I don't know why -- why you think otherwise.

Okay. Just give me one second to compose my thoughts.

MS. DEITSCH-PEREZ: While you're taking your one second, why don't we take three minutes. I will be right back.

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VIDEOGRAPHER: Do we want to go off the record?

MR. RUKAVINA: Yes.

VIDEOGRAPHER: All right. We're going off the record at 6:27 p.m.

(Recess taken 6:27 p.m. to 6:30 p.m.)

VIDEOGRAPHER: We are back on the record at 6:30 p.m.

MR. HORN: Is Deb back?

MS. DANDENEAU: Are you asking about me? I'm here.

MR. HORN: Oh, okay. I don't see you, sorry.

Q. Actually, yeah, Mr. Waterhouse, so when you had --

MS. DANDENEAU: Are you asking about Deb Dandeneau or Deborah? I mean, there are a lot -- as we talked about, a lot of Debs. I'm here.

MS. DEITSCH-PEREZ: I'm here.

MR. HORN: Yes, I was asking about DDP.

MS. DEITSCH-PEREZ: Oh, DDP is here.

MR. HORN: Okay. Here we go. I'm

1 WATERHOUSE - 10-19-21
2 going back on mute.
3 MS. DANDENEAU: Get the right
4 nomenclature.
5 Q. Mr. Waterhouse, on January 12th,
6 2021, when you had those talks with Mr. Dondero
7 about the $1.4 million payment, did you have a
8 communication or a conversation with Mr. Seery
9 about that payment after January 12th, 2021?
10 A. I don't recall.
11 Q. Well, in response to Mr. Dondero
12 reaching out to you, do you recall on that day,
13 January 12th, talking to Mr. Seery or anyone at
14 Highland other than the email chain we just saw
15 about Mr. Dondero's call with you?
16 A. Did I talk to -- I spoke with
17 Kristin -- I don't know if I spoke to her. I
18 likely spoke to Kristin Hendrix because we had
19 to get the wire on NexPoint's behalf to make
20 the payment to Highland.
21 Q. So it is true, then, that -- that
22 employees of the debtor did actually cause that
23 payment to be made when it was made after
24 January 12th?
25 A. Yes, I mean, we -- we -- as I

1 WATERHOUSE - 10-19-21
2 testified earlier, we provided that accounting
3 finance treasury function as -- under the
4 shared services agreement. And so once I
5 got the -- I talked to Jim, got the approval to
6 make this payment, we have to then make the
7 payment, or the team does, and so the payment
8 was made.
9 Q. Okay. But -- okay. And -- and
10 sitting here right now, after Jim called you,
11 you don't remember talking to anyone other than
12 the -- the couple of people you mentioned,
13 talking to anyone about something to the effect
14 that, hey, Jim wants to make this payment now?
15 MR. MORRIS: Objection to the form
16 of the question.
17 A. I don't -- I don't recall.
18 Q. And does that include legal counsel?
19 Without going into any detail, on
20 January 12th or before that payment was made,
21 did you consult with legal counsel about
22 anything having to do with the $1.4 million
23 payment?
24 A. I don't recall.
25 Q. Okay. Thank you, sir, for your

1 WATERHOUSE - 10-19-21
2 time.
3 MR. RUKAVINA: Pass the witness.
4 MR. MORRIS: I just have a few
5 questions, if I may.
6 MS. DEITSCH-PEREZ: Don't you go at
7 the end?
8 MR. MORRIS: Oh, I apologize. He is
9 your witness. I'm surprised you want to
10 ask him questions, but go right ahead.
11 MS. DEITSCH-PEREZ: Just have a
12 couple of things.
13 MR. RUKAVINA: And I will just
14 object to that, that he's our witness.
15 That's not --
16 MR. MORRIS: I'm not talking to you.
17 I'm not talking to you.
18 MS. DANDENEAU: Also, Mr. Morris, it
19 is -- it is --
20 MS. DEITSCH-PEREZ: He is not my
21 witness. He's been subpoenaed by you.
22 Okay?
23 That is no offense, Mr. Waterhouse,
24 I'm -- I'm not -- okay. Anyway.
25 EXAMINATION

1 WATERHOUSE - 10-19-21
2 BY MS. DEITSCH-PEREZ:
3 Q. Good evening. I'm very sorry to be
4 going last and I know you have had a long and
5 taxing day, so I thank you for indulging me.
6 The kinds of services that you
7 describe that the -- that Highland provided for
8 NexPoint, did Highland also provide similar
9 services to that to HCRE and HCMS?
10 A. Yes.
11 MR. MORRIS: Objection to the form
12 of the question.
13 Q. What kind of services did Highland
14 provide to HCRE and HCMS?
15 MR. MORRIS: Objection to the form
16 of the question.
17 MS. DEITSCH-PEREZ: What is your
18 objection, John?
19 MR. MORRIS: It is vague and
20 ambiguous. Unlike the advisors and
21 NexPoint, they actually had shared services
22 agreements.
23 MS. DEITSCH-PEREZ: I got -- I
24 understand your objection. That is fine.
25 Q. Let's take them one at a time.

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What kinds of services did Highland provide to HCRE?

MR. MORRIS: Objection to the form of the question.

A. HCMS, Highland employees provided accounting services, treasury management services, potentially legal services. I don't – but I wouldn't have been directly involved in that. But as far as the teams that I manage, it was accounting, treasury, things of that nature.

Q. Okay. And that was for HCM, LLP –

A. And – and, sorry, it would also be any asset valuation if needed as well.

Q. Okay. We went back and forth on each other and I apologize, so just to clarify.

You were talking about the services that Highland Capital Management provided to HCMS; is that right?

A. HCMS. So, again, yes. And accounting, treasury, valuation, and also tax services too.

Q. Okay.

A. Tax services. Look, I'm expanding

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this, their HR services as well.

Q. Okay. And did that include bill paying?

MR. MORRIS: Objection to the form of the question.

Q. Did the services that HCM provided to HCMS include bill paying?

MR. MORRIS: Objection to the form of the question.

A. Yes.

Q. And did the services that HCMLP provided to HCMS include scheduling upcoming bills?

MR. MORRIS: Objection to the form of the question.

A. Yes.

Q. And did HCMLP regularly pay – cause to be paid the payments on loans HCMS had from HCMLP?

MR. MORRIS: Objection to the form of the question.

A. Yes.

Q. Typically – if there is a typically, how far in advance of due dates did

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HCMLP cause HCMS to pay its bills?

MR. MORRIS: Objection to the form of the question.

A. I mean, it – it – it depend – it depended on the nature of the payment and the vendor, but, you know, if there were – if there were larger scheduled payments, you know, I would like to give at least 30 days notice.

And that is – that is kind of my rule of thumb so no one is surprised.

Q. Okay. And was it generally HCMLP's practice to timely pay HCMS' bills?

MR. MORRIS: Objection to the form of the question.

A. It – it – it – that depended on the nature of the payment.

Q. Okay. And can you explain what you mean by that?

A. Yeah, I mean if – if it was – I mean – if there was some professional fees that weren't – you know, they were due but they weren't urgent, those fees may not be paid as timely as others that have a due date or – or things like that.

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Q. Okay. Are loan payments the kinds of thing that HCMLP would pay on time because of potential consequences of not paying on time?

MR. MORRIS: Objection to the form of the question.

A. Yes. As I testified earlier, we would want to give, you know, notice on – on – on larger payments and – and things of that nature so we didn't miss due dates.

Q. Okay. And over the course of time, did HCMLP generally pay HCMS' loan payments in a timely fashion?

MR. MORRIS: Objection to the form of the question.

A. I can't remember specifically, but generally, yes.

Q. Okay. Now, did HCMLP provide similar services to HCRE that you have described it provided to HCMS?

MR. MORRIS: Objection to the form of the question.

A. Yes, but I don't think it – it provided – I don't think it provided HR

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services.

Q. Can you describe the accounting and treasury services that HCMLP provided for HCRE?

A. Yeah, it -- it would provide bookkeeping services on a -- on a periodic basis. It would make payments, you know, as needed.

Q. Okay. So did it provide --

A. And -- and I believe it -- it -- it provided tax services as well.

Q. Okay. And so did it provide the same kind of bill -- did HCMLP provide the same kind of bill-paying services for HCRE that it provided for HCMS and NexPoint?

MR. MORRIS: Objection to the form of the question.

A. Yes.

Q. And over the course of time, did HCMLP generally cause to be made the loan payments that HCRE owed to HCMLP?

MR. MORRIS: Objection to the form of the question.

A. Yes.

Q. Did HCMLP make loan payment -- the

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loan payment that was due from HCMS to HCMLP in December of 2020?

MR. MORRIS: Objection to the form of the question.

A. I don't believe that payment -- payment was made.

Q. Okay. And when HCMLP caused HCMS in the past to make loan payments, whose money did it use to make those payments?

MR. MORRIS: Objection to the form of the question.

A. It was the -- the money in HCMS's operating account would be made to that -- those moneys would be used to make payment to Highland Capital Management.

Q. Okay. And Highland -- is it correct that Highland Capital Management personnel had the access to HCMS's accounts to be able to cause such payments to be made?

A. Yes, Highland personnel had access to those accounts.

Q. Okay. And so now for HCRE, whose money was used when HCMLP caused HCRE payments -- loan payments to Highland to be

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made?

MR. MORRIS: Objection to the form of the question.

A. It was -- it was cash in HCRE's bank account that would be used to make payments to Highland Capital Management.

Q. Okay. And so did Highland Capital Management have access to HCRE's funds in order to be able to make such payments?

MR. MORRIS: Objection to the form of the question.

A. Personnel at Highland Capital Management had access to HCRE's bank account to effectuate the payments.

Q. Okay. And was the payment due from HCRE to HCMLP due in December of 2020 made?

A. It --

Q. In December of 2020.

A. It was not.

Q. Okay. And was there money in HCRE's account that would have enabled the payment to be made had HCM personnel attempted to make the payment?

MR. MORRIS: Objection to the form

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of the question.

A. I -- I don't recall.

Q. Do you have any reason to believe that either HCRE or HCMS simply didn't have the funds on hand to make the December 2020 payments?

A. I don't know.

Q. I guess I'm asking, do you have any reason to believe that they didn't have the funds?

A. We managed cash for so many different entities and funds, and I don't recall, you know, where the cash position was for HCRE and HCMS at 12/31/2020.

Q. Okay.

A. I just don't recall, and I don't -- and I don't remember what the loan payment obligations were from HCRE to Highland, and from HCMS to Highland. I don't recall. I don't recall, I mean...

Q. Let me come at it a different way. Were the -- were the payments that would otherwise have been due in December of 2020 made in January of 2021 for HCMS and HCRE?

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A. I believe the HCRE payment was made in January of 2021. I don't recall any payments being made from HCMS to Highland.

Q. If it -- how is it the HCRE payment came to be made? Why did you make it -- why did HCM make the payment in January of 2021?

A. Jim -- Jim called me and instructed me to -- to make the payment on behalf of HCRE, Jim Dondero -- Jim Dondero.

Q. Did he seem upset that -- that the payment had not been made?

A. Yeah. On the note that was, you know, that was the term note, yes, he -- he was displeased that the -- that the payment had not been made by year-end.

Q. Okay. And did you make the -- cause the payment to be made as -- as requested?

A. Yes.

Q. And did anyone else from HCM participate with you in causing the payment to be made to -- on the HCRE loan?

A. Yes. It would have been Kristin Hendrix. I -- again, I don't -- as I testified earlier, I'm not an officer of HCRE. I don't

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believe I'm an authorized signer. So I can't -- other personnel have to make payment from HCRE to -- to -- to -- to Highland.

Q. Okay. And in the conversation that -- that you had with Mr. Dondero when he requested the payment to be made, did you say to him words to the effect, Jim, this loan is going to stay in default, what are you making the payment for, anything like that?

A. No.

Q. In fact, did you have the impression from him that he thought that the loan would be -- the default would be cured by making the payment?

MR. MORRIS: Objection to the form of the question.

A. Did I get the impression from Jim Dondero that the loan would be cured if the payment from HCRE --

Q. Yeah, if that is what he thought.

MR. MORRIS: Objection to the form of the question.

A. I didn't get any impression from him on that at the time.

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Q. Do you know whether there was an HCMS term loan that had a payment due in December of 2020?

A. I don't recall.

Q. Okay. And so the reason you don't recall whether or not there was a payment in January of 2021 is because you just don't remember whether there was such a loan at all?

MR. MORRIS: Objection to the form of the question.

A. I don't remember. There is -- there is so many notes, and I mean, demands, and I don't -- I don't remember. It's a lot to keep track in your head.

Q. I understand, and -- and I hear your frustration when you have explained that the debtor has your documents and you don't, and so I fully appreciate it, and this is no knock on you. It's a knock on somebody else on this call.

MR. MORRIS: I move to strike. That was pretty obnoxious, but go ahead.

Q. Okay. But so, Mr. Waterhouse, if -- if a payment on the HCMS loan was made in

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January of 2021, do you think it was part of the same conversation where Jim Dondero said, hey, why didn't that get paid, please make that -- get that payment done?

MR. MORRIS: I object to the form of the question.

A. Yes. Likely it would have been -- I mean, again, I don't recall a payment being made, but, you know, again, I don't remember everything.

Q. Okay. Did -- at the time you were communicating with Kristin Hendrix about the payment being made, whichever payments were made in January, did she say anything to you about the payments not curing the loan defaults?

A. No.

Q. Okay. All right. So I'm going to take you back to very early in the deposition when Mr. Morris was asking you about the -- the -- the -- the agreement with respect to the -- the forgiveness element of the loans, so that is just to orient you.

Do you remember that there was a

1 WATERHOUSE - 10-19-21
2 time that you and Mr. Dondero were
3 communicating about potential means of
4 resolving the Highland bankruptcy by what was
5 colloquially referred to as a pot plan?
6 A. Yes.
7 Q. Okay. And can you tell me generally
8 when that was?
9 A. Like mid -- mid 2020, sometime in
10 2020, mid 2020.
11 Q. Okay. And did the process of trying
12 to figure out what the numbers should be
13 involve looking at what one should pay for the
14 Highland assets?
15 MR. MORRIS: Objection to the form
16 of the question.
17 A. Yes.
18 Q. Okay. And did there come a time
19 when you were proposing some potential numbers
20 and Mr. Dondero said something to you like,
21 well, why are you including payment for the
22 related party notes, those, you know, were
23 likely to be forgiven as part of my deferred
24 executive compensation?
25 MR. MORRIS: Objection to the form

1 WATERHOUSE - 10-19-21
2 of the question.
3 A. Yes, we did have that conversation.
4 Q. Okay. Was that conversation in
5 connection with trying to figure out the right
6 numbers for a pot plan?
7 A. Yeah. I mean, it was -- it was -- I
8 mean, Jim -- Jim would ask for, you know,
9 most -- most recent asset values, you know, for
10 Highland, and -- and myself and the team
11 provided those to him, so it was in that
12 context.
13 Q. Okay. And does that refresh your
14 recollection that these communications were in
15 2020 rather than 2021?
16 MR. MORRIS: Objection to the form
17 of the question.
18 A. The -- the -- the executive
19 compensation discussions were definitely in
20 2020.
21 Q. Okay. Now, did you ever make
22 proposals that took into account Jim's comment
23 that the notes were likely to end up forgiven
24 as part of his compensation?
25 MR. MORRIS: Objection to the form

1 WATERHOUSE - 10-19-21
2 of the question.
3 A. Yes, we -- the team and myself put
4 together, you know, asset summaries of Highland
5 at various times for all the assets of
6 Highland, and not including the notes.
7 Q. Okay. And were those presentations
8 communicated to -- to Mr. Seery?
9 A. No. Well, look, I didn't tell -- I
10 didn't tell Mr. Seery. I don't know what
11 Mr. Dondero did with the information.
12 Q. Okay.
13 A. I did not have conversations with
14 Mr. Seery.
15 Q. Okay. Do you know who saw the
16 presentations that you put together that didn't
17 include the value of the related party notes?
18 A. We're talking presentations -- these
19 are -- these are Excel spreadsheets?
20 Q. Uh-huh.
21 A. I don't know who -- these were given
22 to -- to Jim Dondero. I don't know what was
23 done with them after that.
24 Q. Okay. You also mentioned earlier
25 that sometime during your tenure at Highland

1 WATERHOUSE - 10-19-21
2 you knew of the practice of giving forgivable
3 loans to executives.
4 MR. MORRIS: Objection to the form
5 of the question.
6 Q. Can you -- can you tell me what you
7 recall about that practice?
8 MR. MORRIS: Objection to the form
9 of the question.
10 A. Yes, so there were -- there were --
11 during my tenure at Highland, there were loans
12 or -- given to employees that were later
13 forgiven at a future date and time.
14 Q. Okay. And when the loans were
15 given, did the notes, to your recollection, say
16 anything about the potential forgiveness term?
17 MR. MORRIS: Objection to the form
18 of the question.
19 A. When you say "did the notes," did
20 the promissory notes detail the forgiveness?
21 Q. Yes.
22 A. Not that I recall.
23 Q. And until such time as whatever was
24 to trigger the forgiveness occurred, were the
25 notes bona fide notes as far as you were

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concerned?

MR. MORRIS: Objection to the form of the question.

A. Yes, similar to – yes.

Q. Okay. You were going to say similar to what?

A. Mr. Morris earlier today showed notes of the financial statements about various affiliate loans. I – I – I do recall these notes because I – at that time personally worked on the – the financial statements of Highland. That was, you know, in my role as a corporate accountant.

And there were – those loans were – to the partners were detailed in the notes to the financial statements, similar to what we went through earlier today in the prior testimony about what we saw with Highland and – and – and the – and HCMFA.

Q. Is it fair to say that on Highland's balance sheet there were any number of assets that the value of which could be affected by subsequent events?

MR. MORRIS: Objection to the form

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of the question.

A. Yes. I mean, yes, that – there are. And that is – yes.

Q. Okay. And is it typical accounting practice that until there is some certainty about those potential future events, that asset value listed on – on the books doesn't take into account those potential future events?

MR. MORRIS: Objection to the form of the question.

A. Yeah, if those – yes. If – if those future events, you know, at the time of issuance are not known or knowable, like I discussed earlier with, like, market practice, asset dislocation, or, you know, I mean, things like that, you – I mean, it – it could affect its fair value –

Q. Okay.

A. – in the future.

Q. And am I correct you wouldn't feel compelled to footnote in every possible change in – in an asset when those possibilities are still remote?

MR. MORRIS: Objection to the form

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of the question.

A. The accounting standard is you have to estimate to the best – you know, to – to the best of your ability, the fair value of an asset as of the balance sheet date under – under GAAP.

Q. Did – strike that.

Okay. Give me a minute. I'm close – I'm close to done. Let me just go off and look at my notes for a second. So take two minutes.

VIDEOGRAPHER: We're going off the record at 7:02 p.m.

(Recess taken 7:02 p.m. to 7:03 p.m.)

VIDEOGRAPHER: We are back on the record at 7:03 p.m.

Q. Mr. Waterhouse, is it generally your understanding that people you work with now have been asking the debtor for full and unfetterred access to their own former files?

MR. MORRIS: Objection to the form of the question.

A. Yes, I am – I am generally aware.

Q. Okay. And do you think you could

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have been better prepared for this deposition if the debtor had complied with those requests?

MR. MORRIS: Objection to the form of the question.

A. I – I – I most certainly – yes. I mean, again, these are multiple years, multiple years ago, lots and lots of transactions.

You know, we asked about NAV errors and, you know, things like that and these are – it would make this process a lot more – a lot easier and if we had – if we had access to that.

Q. Okay. And has the debtor – is the debtor suing you right now?

A. Yes.

Q. And is the debtor trying to renege on deals that it had previously made with you?

MR. MORRIS: Objection to the form of the question.

A. Sorry, I need to – it is my understanding that the litigation trust is suing me. And not being a lawyer, I don't know – is that the debtor?

1 WATERHOUSE - 10-19-21
2 Is that -- I don't know the
3 relationship. So, again, I'm not the lawyers.
4 I've said many times. But my understanding is
5 the litigation trust is suing me. I could be
6 wrong there. I don't know.
7 Q. Okay. I understand.
8 Someone with some connection to the
9 Highland debtor has brought a claim against
10 you; is that fair?
11 MR. MORRIS: Objection to the form
12 of the question.
13 A. Yes.
14 Q. Okay. And is there also some motion
15 practice in the bankruptcy where the debtor or
16 someone associated with the debtor is
17 attempting to undo something that was
18 previously resolved with you?
19 A. Yes.
20 Q. And so in one action somebody is
21 associated with the debtors trying to --
22 threatening you with trying to take money from
23 you, and then in the other -- and trying to --
24 and in the other they are threatening not to
25 pay you things that had previously been agreed;

1 WATERHOUSE - 10-19-21
2 is that correct?
3 MR. MORRIS: Objection to the form
4 of the question.
5 A. I want to be -- yes, I -- there
6 is -- I'm being sued, again, on -- on something
7 that was agreed to with Mr. Seery and myself.
8 I don't -- I don't -- I don't own that claim.
9 Q. Okay.
10 A. To be transparent, I don't own that
11 claim. So it is not my personal property.
12 Q. Okay.
13 A. And -- and being the nonlawyer, I
14 don't know how I can get sued for something
15 that I don't owe or, like, I don't own
16 anything. I'm not the lawyer. But, I mean, if
17 that is -- if I'm understanding the facts
18 correctly.
19 Q. Okay. And the lawsuit that was
20 filed that names you, that was just filed
21 this -- this past week; is that right?
22 MS. DANDENEAU: Ms. Deitsch-Perez, I
23 do want to interrupt at this point because
24 just as I told Mr. Morris, that this is a
25 deposition about the noticed litigation.

1 WATERHOUSE - 10-19-21
2 I really don't want to go -- go
3 afield --
4 MS. DEITSCH-PEREZ: Yeah.
5 MS. DANDENEAU: -- and open up a
6 whole new line of inquiry about the lawsuit
7 or the -- the motion and the bankruptcy
8 court. We will be here all night.
9 MS. DEITSCH-PEREZ: And I
10 understand.
11 Q. My -- my point is: Do you feel
12 like -- like there is some effort by these
13 parties related to the debtor to intimidate
14 you -- not that you -- I'm not saying you are
15 or you aren't.
16 But do you feel like there is some
17 effort to intimidate you and maybe an effort to
18 deter you from being as prepared as you might
19 be in this deposition?
20 MR. MORRIS: Objection to the form
21 of the question.
22 A. I was -- I was surprised by the
23 lawsuit, by me being named, because, again, I
24 don't own the asset and things like that.
25 Yeah, I just -- I want to move forward with my

1 WATERHOUSE - 10-19-21
2 life at Skyview.
3 MS. DEITSCH-PEREZ: Thank you.
4 THE WITNESS: Thank you.
5 FURTHER EXAMINATION
6 BY MR. MORRIS:
7 Q. If I may, I just have a few
8 questions.
9 Mr. Waterhouse, we saw a number of
10 documents that Mr. Rukavina put up on the
11 screen where Ms. Hendrix would send you a
12 schedule of payments that were due on behalf of
13 certain Highland affiliates.
14 Do you remember that?
15 A. Yes.
16 Q. And in each instance she asked for
17 your approval to make the payments; is that
18 right?
19 A. Yes, she did.
20 Q. And was that the -- was that the
21 practice in the second half of 2020 whereby
22 Ms. Hendrix would prepare a list of payments
23 that were due on behalf of Highland associates
24 and ask for approval?
25 A. Yes.

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Q. And I think you said that there was a – a –

A. It was – I think I testified to this earlier when we talked about procedures and policy, you know, again, I want to be informed of – of – of – of – of any payments that are going out. I want to be made aware of these payments, and that was just a general policy, not just for 2020.

Q. Okay. So it went beyond 2020?

A. Yes.

Q. Is that right?

A. Yes.

Q. Okay. And the corporate accounting group would prepare a calendar that would set forth all of the payments that were anticipated in the – in the three weeks ahead; is that right?

A. I – like I testified earlier, we had a corporate calendar that was set up, you know, to – to provide reminders or, you know, of anything of any nature, whether it is payments or – or financial statements or, you know, whatever it is, you know, to meet

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deadlines.

I don't know how, as I testified earlier, how much they were using that calendar.

Q. Okay. But – but you did get notice and a request to approve the payments that were coming due on behalf of Highland's affiliates. Do I have that right?

MS. DANDENEAU: Objection to form.

A. I mean, generally, yes. I mean, you know, as we saw with these emails, generally, I mean, did that encompass everything, no.

Q. Okay. Do you know why the payment – do you know why there was no payment made by NexPoint at the end of 2020?

A. Yes. There was – there was – we talked about these agreements between the advisors and Highland, the shared services and the cost reimbursement agreement.

And in late 2020, there were overpayments, large overpayments that had been made over the years on these agreements, and it was my understanding that the advisors were – were talking with – like Jim Seery and others

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to offset any obligations that the advisors owed to Highland as offset to the overpayments on these agreements.

Q. Okay. Did you participate in any of those conversations?

A. I did not.

Q. Okay. Do you know – do you recall that the – at the end of November, the debtor did notice to the advisors of their intent to terminate the shared services agreements?

A. Like I testified earlier, there was – the agreements weren't identical, from what I recall, and there is one that had a longer notice period, which I think had a 60-day notice period. I don't recall which one that was, so not all of them were – notice hadn't been given as of November 30th, for all of the agreements.

Q. Upon the receipt of the – the termination notices that you recall, do you know if the advisors decided at that point not to make any further payments of any kind to Highland?

MR. RUKAVINA: Objection, form.

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A. No. The advisors – the advisors had stopped making payments prior to that notice.

Q. Okay. And how do you know that the advisors stopped making – making payments prior to the notice?

A. I had – I had a conversation with – with Jim Dondero.

Q. And did Mr. Dondero tell you that the advisors would no longer make payments to Highland?

MS. DEITSCH-PEREZ: Object to the form.

A. Yes, he – he – again, he said they – they – the advisors have overpaid on these agreements, to not make any future payments, and that there needs to be offsets, and they're working on getting offsets to these overpayment.

Q. Do you know if anybody ever instructed Highland's employees to make the payment that was due by NexPoint at the end of the year?

A. Did anyone instruct Highland's

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2 employees to make that payment?
3 Q. Correct.
4 A. Anyone -- not that I'm aware.
5 Q. Were any of Highland's employees
6 authorized to make the payments on behalf of
7 its affiliates -- withdrawn.
8 Was any of Highland's employees
9 authorized to effectuate the payment on behalf
10 of NexPoint that was due at the end of the year
11 without getting approval from either you or
12 Mr. Dondero?
13 A. They had the -- they had the ability
14 to make the payment, but they didn't -- you
15 know, that -- that payment needed to be
16 approved.
17 Q. Okay. And it needed to be approved
18 by you or Mr. Dondero; is that right?
19 A. I mean, I'm not going to make the
20 unilateral decision.
21 Q. Is that a decision that you
22 understood had to be made by Mr. Dondero?
23 A. Yes. Sitting back in December of
24 2020, the -- that -- there was this off --
25 offset negotiation that -- that was happening,

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2 so I mean, until those negotiations were
3 resolved, you know, there wasn't any
4 payments -- there weren't any payments.
5 Q. And -- and there were no payments
6 until the negotiations were resolved because
7 that was the directive that you received from
8 Mr. Dondero; correct?
9 A. I don't think he said -- I mean, I
10 think -- yeah, I mean -- I'm trying to recall
11 the conversation. It was -- you know, there
12 is -- there is these negotiations. There's --
13 there needs to be these offsets. They're
14 talking with the debtor. So, you know, until
15 this is resolved, right, I mean, depending on
16 how, whatever that resolution was, were we to
17 take any action.
18 Q. Okay. How about with respect to
19 HCMS, did HCMS have a term payment due at the
20 end of the year?
21 A. Again, I don't -- I don't recall.
22 Q. Okay. You discussed briefly two
23 payments that were made in January of 2021, one
24 on behalf of NexPoint, and one on behalf of
25 HCMS. Do I have that right?

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2 A. No. The two payments I recall were
3 NexPoint and HCRE.
4 Q. Okay. And those two payments --
5 thank you for the correction. And those two
6 payments were made because Mr. Dondero
7 authorized those payments to be made; correct?
8 A. Yes.
9 Q. And they hadn't been made before
10 that because Mr. Dondero had not authorized
11 them to be made?
12 MS. DEITSCH-PEREZ: Object to the
13 form.
14 A. Yes, because of these negotiations.
15 Q. Okay. Just a couple of more
16 questions.
17 Did anybody, to the best of your
18 knowledge, on behalf of HCMFA, ever tell the
19 SEC that HCMLP was responsible for the mistakes
20 that were made on the TerreStar valuation?
21 A. Did anyone from Highland on HCMFA's
22 behalf tell the SEC that Highland -- that
23 Highland was responsible for there -- I just
24 want to make sure --
25 Q. It was a little bit different, so

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2 let me try again.
3 A. These are very long questions, John.
4 I'm not trying to be --
5 Q. That is good. Do you know whether
6 anybody -- do you know whether anybody on
7 behalf of HCMS -- HCMFA ever told the SEC that
8 Highland was the responsible party for the
9 TerreStar valuation error?
10 A. Not that I'm aware.
11 Q. Okay. Did anybody on behalf of
12 the -- on behalf of HCMFA ever tell the retail
13 board that Highland was responsible for the
14 TerreStar valuation error?
15 A. Not that I'm aware.
16 Q. Do you know if HCMFA made an
17 insurance claim with respect to the damages
18 that were incurred in relation to the TerreStar
19 valuation error?
20 A. Yes.
21 Q. And do you know why they made that
22 insurance claim?
23 A. Because there was an error. I
24 mean --
25 Q. Was the insured's claim made -- was

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2 the insurance claim made under HCMFA's policy?
3 A. Yes.
4 Q. Did HCMFA at any time prior to the
5 petition date -- withdrawn.
6 You were asked a couple of questions
7 where -- where you said that Mr. Dondero told
8 you that he was ascribing zero value to the
9 notes as part of a pot plan because he believed
10 that the notes were part of executive
11 compensation.
12 Do I have that right?
13 MS. DEITSCH-PEREZ: Object to the
14 form.
15 A. Yes.
16 Q. Okay. Have you ever heard that
17 before the time that Mr. Dondero told you that
18 in the conversation about the pot plan?
19 A. Had I heard that prior to my
20 conversation with Mr. Dondero?
21 Q. Yes.
22 A. No, I had not heard that prior.
23 Q. Okay. And that was in the context
24 of his formulation of the settlement proposal;
25 is that right?

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2 A. I mean, generally, yes. You know,
3 we were asked to provide asset values, right,
4 and he was having settlement discussions.
5 Again, I don't know who those went to
6 ultimately. I don't recall.
7 MR. MORRIS: I have no further
8 questions. Thank you very much for your
9 patience. I apologize for the late hour.
10 MS. DEITSCH-PEREZ: John, you stay
11 on about your email when --
12 MR. RUKAVINA: Hold on, I'm not
13 done.
14 MS. DEITSCH-PEREZ: Oh, okay. Davor
15 still has questions. Sorry. I was going
16 to say both John and Davor, could you stay
17 on afterwards just to talk about the
18 requests.
19 FURTHER EXAMINATION
20 BY MR. RUKAVINA:
21 Q. Mr. Waterhouse, you were just now
22 testifying about a discussion you had with
23 Mr. Dondero where he said something like no
24 more payments.
25 Do you remember that testimony?

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2 A. Yes.
3 Q. Okay. And was that late November or
4 early December of 2020?
5 A. It was, I would say, first or second
6 week of November.
7 Q. Okay. Do you recall whether --
8 whenever you had that discussion, whether
9 Mr. Dondero had already been fired by the
10 debtor?
11 A. Yes, I -- I believe he was not an
12 employee of the debtor anymore at that time.
13 Q. And when you were discussing this
14 with Mr. Dondero and he said no more payments,
15 you were discussing the two shared services
16 agreements and employee reimbursement
17 agreements we testified -- you testified about
18 before; is that correct?
19 MR. MORRIS: Objection to the form
20 of the question.
21 A. That is correct.
22 Q. And had your office or you -- and we
23 will talk at a future deposition about the
24 administrative claim.
25 But had -- by that time that you

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2 talked to Mr. Dondero, had your office or you
3 done any estimate of what the alleged
4 overpayments were?
5 MR. MORRIS: Objection to the form
6 of the question.
7 A. Yes, we had -- there was a -- there
8 was a detailed analysis that was put together
9 by David Klos at the time.
10 Q. And do you recall just generally
11 what the total amount for both advisors of the
12 overpayments was?
13 A. It was in excess of $10 million.
14 Q. Was it in excess of $14 million?
15 MR. MORRIS: Objection to the form
16 of the question.
17 A. I -- I remember it was an
18 eight-figure number. I don't remember
19 specifically.
20 Q. Okay. And did you convey that
21 number to Mr. Dondero when you had that
22 conversation?
23 A. Yes.
24 Q. What was his reaction?
25 A. I mean, he wasn't happy.

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Q. Is it fair to say he was upset?
A. Yes.
Q. Did Mr. Dondero ever expressly tell you to not have NexPoint make the required December 31, 2020, payment?
A. Yes, I recall him saying don't make the payment because it was being negotiated, as I discussed with Mr. Morris, this offset concept. So there were obligations due by the advisors to Highland, they should be offset that -- you know, those obligations should be offset by this -- by this overpayment.
Q. And when did he tell you that?
A. I would say -- I would say around -- probably December -- December-ish.
Q. Early December, late December?
A. I don't recall with as much specificity as -- as -- as -- as stopping the shared services payments, because we had actually made one shared services payment in November. So that is why I need to remember that one more clearly. I don't remember where exactly in December that conversation occurred.
Q. Did Mr. Dondero expressly use the

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word "NexPoint" when he was saying don't make these payments?
MR. MORRIS: Objection to the form of the question, asked and answered.
A. Yeah, we were -- we were discussing advisor obligations. So it was -- you know, it was just obligations from the advisors.
And -- and he specifically talked about the NexPoint payment as well.
Q. Okay. And it is your testimony that he expressly told you not to make that NexPoint December 31 payment?
MR. MORRIS: Objection, asked and answered twice.
A. Yes, he -- he did, during that conversation.
Q. And did you ever follow up with him after that about whether NexPoint should or shouldn't make that payment?
A. I did not.
Q. Did you ever, on or about December 31, 2020, remind him and say, hey, this payment is due, what shall I -- what should I do?

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A. I did not.
Q. So sitting here today, you -- you remember distinctly that Dondero in December of 2020 expressly told you not to have NexPoint make that payment?
MR. MORRIS: Objection, asked and answered three times.
A. Yes.
Q. Can you say categorically it wasn't just some general discussion where he told you not to make payments?
MR. MORRIS: Objection, asked and answer four times.
MR. HORN: Four times now. Go for five.
A. Yes.
Q. Did you tell Mr. Seery that?
A. I don't believe I did. I don't recall.
Q. And was this an in-person discussion or telephone or email? Do you remember?
A. This was a phone -- a phone conversation.
Q. Okay. Would you have a record of --

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on your cell phone of when that conversation might have taken place?
I'm sorry, strike that.
Was that by cell phone?
A. I believe -- yes, because we -- I was at home. I mean, I don't have a landline. All I have is my cell phone.
Q. Do you know whether your cell phone still has records of conversations from December 2020 on it?
A. My call log doesn't go back that far.
Q. Okay. Thank you.
MR. RUKAVINA: I will pass the witness.
MS. DEITSCH-PEREZ: Just a couple quick questions.
FURTHER EXAMINATION
BY MS. DEITSCH-PEREZ:
Q. With respect to HCRE and HCMS, am I correct there was -- there was no direction not to pay those loan payments?
MR. MORRIS: Objection to the form of the question.

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A. Yes, I don't recall having conversations about, you know, those – those entities.

Q. And, in fact, what was the tone that Mr. Dondero had when he talked to you about the fact that HCRE and HCMS payments hadn't been made when he found out that they hadn't been paid?

MS. DANDENEAU: Objection to form.

MR. MORRIS: Objection to form.

Q. What was the tone he took with you?

A. Oh, it was – it was – it was – it was very negative. I mean, I think he cursed at me and he doesn't usually curse.

Q. Okay. And in your mind, is that consistent with the fact that he was surprised that those payments hadn't been made?

MR. MORRIS: Objection to the form of the question.

A. Yes.

Q. Okay. Thank you.

MR. MORRIS: I have nothing further. Thank you so much, Mr. Waterhouse.

MR. HORN: I have no questions.

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Thank you, Mr. Waterhouse. We appreciate your time. I am logging off the discussion and I will talk to y'all tomorrow.

MR. MORRIS: Super.

VIDEOGRAPHER: If there are no further questions, this ends the deposition – excuse me. This ends the deposition, and we are going off the record at 7:30 p.m.

(Deposition concluded at 7:30 p.m.)

_____

FRANK WATERHOUSE

Subscribed and sworn to before me this day of 2021.

_____

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C E R T I F I C A T E

I, SUSAN S. KLINGER, a certified shorthand reporter within and for the State of Texas, do hereby certify:

That FRANK WATERHOUSE, the witness whose deposition is hereinbefore set forth, was duly sworn by me and that such deposition is a true record of the testimony given by such witness.

I further certify that I am not related to any of the parties to this action by blood or marriage; and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 19th of October, 2021.

_____

Susan S. Klinger, RMR-CRR, CSR

Texas CSR# 6531

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NAME OF CASE: In re: Highland Capital

DATE OF DEPOSITION: October 19, 2021

NAME OF WITNESS: Frank Waterhouse

Reason Codes:

1. To clarify the record.
2. To conform to the facts.
3. To correct transcription errors.

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EXHIBIT 106

NexBank
2515 McKinney Avenue, 11th Floor
Dallas, Texas 75201
972 934.4700
www.NexBank.com

Date 12/29/17 Page 1
Primary Account [redacted]
Enclosures

Highland Capital Management LP
300 Crescent Court Suite 700
Dallas TX 75201

NexBank's Privacy Notice, which has not changed, is available on our website at www.NexBank.com/files/privacynotice.pdf. If you would like a copy of our Privacy Notice mailed to you, please call us at 972-934-4700.

Checking Account/s

Account Type: Highland Capital Management LP

Analysis Checking w/ Interest
Account Number [redacted] Statement Dates 12/01/17 thru 12/31/17

Deposits and Additions

Date	Description	Amount
[redacted]	[redacted]	[redacted]
12/08	INCOMING WIRE JAMES D DONDERO	677,500.75

NEXBANK
2515 McKinney Avenue, 11th Floor
Dallas, Texas 75201
972 934.4700
www.NexBank.com

EQUAL HOUSING LENDER
FDIC

Analysis Checking w/ Interest [redacted] (Continued)

[redacted]

Checks and Withdrawals

[redacted]

NEXBANK
2515 McKinney Avenue, 11th Floor
Dallas, Texas 75201
972 934.4700
www.NexBank.com

EQUAL HOUSING LENDER
FDIC

Date 12/29/17 Page 3
Primary Account [redacted]
Enclosures

Analysis Checking w/ Interest [redacted] (Continued)

[redacted]

[redacted]

End of Statement

OUTSTANDING CHECKS

Reconciliation of Account

CHECKS WRITTEN BUT NOT PAID

NUMBER	AMOUNT		

EXHIBIT 107

Primary Account: [redacted]
Beginning December 1, 2018 - Ending December 31, 2018 31

BBVA Compass

21 HIGHLAND CAPITAL MANAGEMENT LP
MASTER OPERATING ACCOUNT
300 CRESCENT CT STE 700
DALLAS TX 75201-7849

Contacting Us

Available by phone 24/7

Phone 1-800-266-7277

Online bbvacompass.com

Write BBVA Compass
Customer Service
P.O. Box 10566
Birmingham, AL 35296

Your BBVA Compass Account(s)

Please see important message regarding your TREASURY MANAGEMENT ANALYSIS CHECKING account

Summary of Accounts

Deposit Accounts/ Other Products

Account	Account number	Ending balance last statement	Ending balance this statement
TREASURY MANAGEMENT ANALYSIS CHECKING	[redacted]	[redacted]	[redacted]
Total Deposit Accounts		[redacted]	[redacted]

BBVA Compass

TREASURY MANAGEMENT ANALYSIS CHECKING

Account Number: [redacted]

Account Information

Change In Terms
The following fee changes will go into effect February 1, 2019:
RDI Fax Notification - $10.00; Re-Run Deposited Items - $12.00; Outgoing Wire Transfer with Notification - $32.00; Return Items Fax Report (per day) for ACH Origination Services through File Transfer Services / Compass e-Transmit - $7.50; ACH EDI Information Reporting Services per item - $1.00; Wholesale Lockbox Fax Summary - $125.00. Please call your regional BRS team with questions regarding these changes.

Activity Summary

[redacted]

Deposits and Other Credits

Date *	Check/ Serial #	Description	Deposits/ Credits
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]

BBVA Compass

Date *	Check/ Serial #	Description	Deposits/ Credits
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
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[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]

BBVA Compass

Date *	Check/ Serial #	Description	Deposits/ Credits
12/18		INCOMING WIRE W/ADVICE REF 20181218F2QCZ60C00197512181255FT01 ORG JAMES D DONDERO	$2,000,000.00
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
12/19		INCOMING WIRE W/ADVICE REF 20181219F2QCZ60C00331112191531FT01 ORG JAMES D DONDERO	$782,623.14
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]

Withdrawals and Other Debits

Date *	Check/ Serial #	Description	Withdrawals/ Debits
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]

BBVA Compass

Date *	Check/ Serial #	Description	Withdrawals/ Debits
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]

BBVA Compass

Date *	Check/ Serial #	Description	Withdrawals/ Debits
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]

BBVA Compass

Date *	Check/ Serial #	Description	Withdrawals/ Debits
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]

BBVA Compass

Date *	Check/ Serial #	Description	Withdrawals/ Debits
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]

BBVA Compass

[redacted]

[redacted]

BBVA Compass

How to Balance Your Account

Step 1
- Enter all checks, deposits, and other automated teller card (ATM) transactions in your register.
- Record all automated deductions, debit card transactions and electronic bill payments.
- Record and deduct service charges, check printing charges, or other bank fees.
- If you have an interest bearing account, add any interest earned shown on this statement.

Step 2
- If applicable, sort checks in numerical order and mark in your register each check or other transaction that is listed on this statement.

Step 3
- List any deposits or credits your have made that do not appear on this statement (see space provided below).

Step 4
- List any checks you have written, debit card transactions, electronic payments and other deductions that do not appear on this statement (see space provided below).

Date/Description	Amount
Step 3 Total	$

Date/Description	Check #	Amount
	Step 4 Total	$

Balancing Your Register to this Statement

Step 5	• Enter the "current balance" shown on this statement	
	• Add total from Step 3	
	• Subtotal	
	• Subtract total from Step 4	
	• This balance should equal your register balance	
	If it does not agree, see steps below	$

If your account does not balance, review the following:
- Check all your addition and subtraction above in your register.
- Make sure you remembered to subtract service charges listed on this statement and add any interest earned to your register.
- Amounts of deposits and withdrawals on this statement should match your register entries.
- If you have questions or need assistance, please refer to the phone number on the front of this statement.

Change of Address
Please call us at the telephone number listed on the front of this statement to tell us about a change of address.

Electronic Transfers *(for consumer accounts only)*
In case of errors or questions about your Electronic Transfers, write to BBVA Compass Bank, Operations Compliance Support, P.O. Box 10566, Birmingham, AL 35296. Or simply call your local customer service number printed on he front of this statement. Call or write as soon as you can, if you think your statement or receipt is wrong or if you need more information about a transfer on the statement or receipt. We must hear from you no later than 60 days after we sent the first statement on which the error or problem appeared.

- Tell us your name and account number (if any).
- Describe the error or he transfer you are unsure about, and explain as clearly as you can why you believe it is an error or why you need more information.
- Tell us the dollar amount of the suspected error.

We will investigate your complaint and will correct any error promptly. If we take more than 10 business days (20 on claims on accounts opened less than 30 calendar days) to do this, we will credit your account for the amount you think is in error, so hat you will have the use of the money during the time it takes us to complete our inves igation.

*For Non-Consumer Account customers, please refer to your current Non-Consumer Account Agreement for details regarding Electronic Fund Transfers.

Overdraft Protection
Calculation of Interest Charge and Balance Subject to Interest Rate. The interest charge is computed using your annual percentage rate divided by 365 or, in he case of a leap year, 366, which gives you the "Applicable Rate." Although we calculate the interest charge by applying the Applicable Rate to each daily balance, the interest charge can also be calculated by multiplying the Applicable Rate by the "average daily balance"(Balance Subject to Interest Rate) shown on this statement, hen multiplying that sum by the number of days in the billing cycle. To get the "Balance Subject to Interest Rate" shown on this statement we take the beginning balance of your account less any unpaid finance charges each day, add any new advances or debits, and subtract any payments or credits. This gives us the daily balance. Then we add all the daily balances for the billing cycle and divide by the number of days in the billing cycle. This give us the "average daily balance" shown on the statement as "Balance Subject to Interest Rate". Payments. Payments to your overdraft protec ion loan account made through our tellers or deposited at our automated teller machines (ATM s) Monday through Friday before he posted cut-off time will be posted to your account on the date they are accepted. Otherwise, they will be posted on the next business day. Payments made through our ATM s via a funds transfer will be posted on the date they are received or on the next business day if made after 6pm CT (6pm MT for Arizona accounts and 6pm PT for California accounts) Monday through Friday or any ime Saturday, Sunday or bank holidays. BBVA Compass Bank business days are Monday through Friday, excluding holidays.

In Case of Errors or Questions About Your Statement (Overdraft Protection Only)
If you think your statement is wrong, or if you need more information about a transaction on your statement, write your issue on a separate document and send it to Bankcard Center, P.O. Box 2210, Decatur, AL 35699-0001. Telephone inquires may be made by calling your local BBVA Compass branch listed on the front of this statement to speak with a Customer Service Representative. Please note: a telephone inquiry will not preserve your rights under federal law. We must hear from you no later than sixty (60) days after we sent you the first statement on which the error or problem appeared.

- Tell us your name and account number (if any).
- Describe the error or he transfer you are unsure about, and explain as clearly as you can why you believe it is an error or what you need more information.
- Tell us the dollar amount of the suspected error.

You can stop the automatic deduction of the Minimum Payment from you checking account if you think your statement is wrong. To stop the payment, your letter must reach us three (3) business days before the automatic deduction is scheduled to occur.

Reporting Other Problems
Please review your statement carefully. It is essential that any account errors or any improper transactions on your account be reported to us as soon as reasonably possible. If you fail to notify us of any suspected problems, errors or unauthorized transactions within the time periods specified in the deposit account agreement, we are not liable to you for any loss related to the problem, error or unauthorized transaction.

BBVA Compass is a trade name of Compass Bank, a member of the BBVA Group.
Compass Bank, Member FDIC.

EXHIBIT 108

BBVA Compass

21 HIGHLAND CAPITAL MANAGEMENT LP
MASTER OPERATING ACCOUNT
300 CRESCENT CT STE 700
DALLAS TX 75201-7849

Contacting Us

Available by phone 24/7

Phone 1-800-266-7277

Online bbvacompass.com

Write BBVA Compass
Customer Service
P.O. Box 10566
Birmingham, AL 35296

Summary of Accounts

Deposit Accounts/ Other Products

Account	Account number	Ending balance last statement	Ending balance this statement
TREASURY MANAGEMENT ANALYSIS CHECKING	[redacted]	[redacted]	[redacted]
Total Deposit Accounts		[redacted]	[redacted]

BBVA Compass

TREASURY MANAGEMENT ANALYSIS CHECKING

Account Number: [redacted] - HIGHLAND CAPITAL MANAGEMENT LP

Activity Summary

[redacted]	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]

Deposits and Other Credits

Date *	Check/ Serial #	Description	Deposits/ Credits
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]

Primary Account: [redacted]
Beginning February 1, 2019 - Ending February 28, 2019 28

BBVA Compass

Date *	Check/ Serial #	Description	Deposits/ Credits
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]

Primary Account: [redacted]
Beginning February 1, 2019 - Ending February 28, 2019 28

BBVA Compass

Date *	Check/ Serial #	Description	Deposits/ Credits
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
2/14		INCOMING WIRE W/ADVICE REF 20190214F2QCZ60C00347602141628FT01 ORG JAMES D DONDERO	$3,000,000.00
[redacted]		[redacted]	[redacted]

BBVA Compass

Date *	Check/ Serial #	Description	Deposits/ Credits
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]

[redacted]

Withdrawals and Other Debits

Date *	Check/ Serial #	Description	Withdrawals/ Debits
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]

BBVA Compass

Date *	Check/ Serial #	Description	Withdrawals/ Debits
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
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[redacted]		[redacted]	[redacted]
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[redacted]		[redacted]	[redacted]
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[redacted]		[redacted]	[redacted]

BBVA Compass

Date *	Check/ Serial #	Description	Withdrawals/ Debits
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]

BBVA Compass

Date *	Check/ Serial #	Description	Withdrawals/ Debits
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]

BBVA Compass

Date *	Check/ Serial #	Description	Withdrawals/ Debits
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
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[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
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[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
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[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]

[redacted]

[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]

BBVA Compass

[redacted]

BBVA Compass

How to Balance Your Account

Step 1
- Enter all checks, deposits, and other automated teller card (ATM) transactions in your register.
- Record all automated deductions, debit card transactions and electronic bill payments.
- Record and deduct service charges, check printing charges, or other bank fees.
- If you have an interest bearing account, add any interest earned shown on this statement.

Step 2
- If applicable, sort checks in numerical order and mark in your register each check or other transaction that is listed on this statement.

Step 3
- List any deposits or credits your have made that do not appear on this statement (see space provided below).

Step 4
- List any checks you have written, debit card transactions, electronic payments and other deductions that do not appear on this statement (see space provided below).

Date/Description	Amount
Step 3 Total	$

Date/Description	Check #	Amount
	Step 4 Total	$

Balancing Your Register to this Statement

Step 5	• Enter the "current balance" shown on this statement	
	• Add total from Step 3	
	• Subtotal	
	• Subtract total from Step 4	
	• This balance should equal your register balance	
	If it does not agree, see steps below	$

If your account does not balance, review the following:
- Check all your addition and subtraction above in your register.
- Make sure you remembered to subtract service charges listed on this statement and add any interest earned to your register.
- Amounts of deposits and withdrawals on this statement should match your register entries.
- If you have questions or need assistance, please refer to the phone number on the front of this statement.

Change of Address
Please call us at the telephone number listed on the front of this statement to tell us about a change of address.

Electronic Transfers *(for consumer accounts only)*
In case of errors or questions about your Electronic Transfers, write to BBVA Compass Bank, Operations Compliance Support, P.O. Box 10566, Birmingham, AL 35296. Or simply call your local customer service number printed on he front of this statement. Call or write as soon as you can, if you think your statement or receipt is wrong or if you need more information about a transfer on the statement or receipt. We must hear from you no later than 60 days after we sent the first statement on which the error or problem appeared.

- Tell us your name and account number (if any).
- Describe the error or he transfer you are unsure about, and explain as clearly as you can why you believe it is an error or why you need more information.
- Tell us the dollar amount of the suspected error.

We will investigate your complaint and will correct any error promptly. If we take more than 10 business days (20 on claims on accounts opened less than 30 calendar days) to do this, we will credit your account for the amount you think is in error, so hat you will have the use of the money during the time it takes us to complete our inves igation.

*For Non-Consumer Account customers, please refer to your current Non-Consumer Account Agreement for details regarding Electronic Fund Transfers.

Overdraft Protection
Calculation of Interest Charge and Balance Subject to Interest Rate. The interest charge is computed using your annual percentage rate divided by 365 or, in he case of a leap year, 366, which gives you the "Applicable Rate." Although we calculate the interest charge by applying the Applicable Rate to each daily balance, the interest charge can also be calculated by multiplying the Applicable Rate by the "average daily balance"(Balance Subject to Interest Rate) shown on this statement, hen multiplying that sum by the number of days in the billing cycle. To get the "Balance Subject to Interest Rate" shown on this statement we take the beginning balance of your account less any unpaid finance charges each day, add any new advances or debits, and subtract any payments or credits. This gives us the daily balance. Then we add all the daily balances for the billing cycle and divide by the number of days in the billing cycle. This give us the "average daily balance" shown on the statement as "Balance Subject to Interest Rate". Payments. Payments to your overdraft protec ion loan account made through our tellers or deposited at our automated teller machines (ATM s) Monday through Friday before he posted cut-off time will be posted to your account on the date they are accepted. Otherwise, they will be posted on the next business day. Payments made through our ATM s via a funds transfer will be posted on the date they are received or on the next business day if made after 6pm CT (6pm MT for Arizona accounts and 6pm PT for California accounts) Monday through Friday or any ime Saturday, Sunday or bank holidays. BBVA Compass Bank business days are Monday through Friday, excluding holidays.

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- Tell us your name and account number (if any).
- Describe the error or he transfer you are unsure about, and explain as clearly as you can why you believe it is an error or what you need more information.
- Tell us the dollar amount of the suspected error.

You can stop the automatic deduction of the Minimum Payment from you checking account if you think your statement is wrong. To stop the payment, your letter must reach us three (3) business days before the automatic deduction is scheduled to occur.

Reporting Other Problems
Please review your statement carefully. It is essential that any account errors or any improper transactions on your account be reported to us as soon as reasonably possible. If you fail to notify us of any suspected problems, errors or unauthorized transactions within the time periods specified in the deposit account agreement, we are not liable to you for any loss related to the problem, error or unauthorized transaction.

BBVA Compass is a trade name of Compass Bank, a member of the BBVA Group.
Compass Bank, Member FDIC.

EXHIBIT 109

Primary Account: [redacted]
Beginning March 1, 2019 - Ending March 31, 2019 31

BBVA Compass

21 HIGHLAND CAPITAL MANAGEMENT LP
MASTER OPERATING ACCOUNT
300 CRESCENT CT STE 700
DALLAS TX 75201-7849

Contacting Us

Available by phone 24/7

Phone 1-800-266-7277

Online bbvacompass.com

Write BBVA Compass
Customer Service
P.O. Box 10566
Birmingham, AL 35296

Summary of Accounts

Deposit Accounts/ Other Products

Account	Account number	Ending balance last statement	Ending balance this statement
TREASURY MANAGEMENT ANALYSIS CHECKING	[redacted]	[redacted]	[redacted]
[redacted]		[redacted]	[redacted]

BBVA Compass

TREASURY MANAGEMENT ANALYSIS CHECKING

Account Number: [redacted]

Activity Summary

[redacted]	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]

Deposits and Other Credits

Date *	Check/ Serial #	Description	Deposits/ Credits
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
3/13		INCOMING WIRE W/ADVICE REF 20190313F2QCZ60C00320903131633FT01 ORG JAMES D DONDERO	$5,000,000.00
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]

BBVA Compass

Date *	Check/ Serial #	Description	Deposits/ Credits
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]

[redacted]

Withdrawals and Other Debits

Date *	Check/ Serial #	Description	Withdrawals/ Debits
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BBVA Compass

Date *	Check/ Serial #	Description	Withdrawals/ Debits
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BBVA Compass

Date *	Check/ Serial #	Description	Withdrawals/ Debits
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BBVA Compass

Date *	Check/ Serial #	Description	Withdrawals/ Debits
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Primary Account: [redacted]
Beginning March 1, 2019 - Ending March 31, 2019 31

BBVA Compass

Date *	Check/ Serial #	Description	Withdrawals/ Debits
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BBVA Compass

Date *	Check/ Serial #	Description	Withdrawals/ Debits
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BBVA Compass

Date *	Check/ Serial #	Description	Withdrawals/ Debits
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[redacted] vices and/or activity from the prior statement cycle.

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BBVA Compass

How to Balance Your Account

Step 1
- Enter all checks, deposits, and other automated teller card (ATM) transactions in your register.
- Record all automated deductions, debit card transactions and electronic bill payments.
- Record and deduct service charges, check printing charges, or other bank fees.
- If you have an interest bearing account, add any interest earned shown on this statement.

Step 2
- If applicable, sort checks in numerical order and mark in your register each check or other transaction that is listed on this statement.

Step 3
- List any deposits or credits your have made that do not appear on this statement (see space provided below).

Step 4
- List any checks you have written, debit card transactions, electronic payments and other deductions that do not appear on this statement (see space provided below).

Date/Description	Amount
Step 3 Total	$

Date/Description	Check #	Amount
	Step 4 Total	$

Balancing Your Register to this Statement

Step 5	• Enter the "current balance" shown on this statement	
	• Add total from Step 3	
	• Subtotal	
	• Subtract total from Step 4	
	• This balance should equal your register balance	
	If it does not agree, see steps below	$

If your account does not balance, review the following:
- Check all your addition and subtraction above in your register.
- Make sure you remembered to subtract service charges listed on this statement and add any interest earned to your register.
- Amounts of deposits and withdrawals on this statement should match your register entries.
- If you have questions or need assistance, please refer to the phone number on the front of this statement.

Change of Address
Please call us at the telephone number listed on the front of this statement to tell us about a change of address.

Electronic Transfers *(for consumer accounts only)*
In case of errors or questions about your Electronic Transfers, write to BBVA Compass Bank, Operations Compliance Support, P.O. Box 10566, Birmingham, AL 35296. Or simply call your local customer service number printed on he front of this statement. Call or write as soon as you can, if you think your statement or receipt is wrong or if you need more information about a transfer on the statement or receipt. We must hear from you no later than 60 days after we sent the first statement on which the error or problem appeared.

- Tell us your name and account number (if any).
- Describe the error or he transfer you are unsure about, and explain as clearly as you can why you believe it is an error or why you need more information.
- Tell us the dollar amount of the suspected error.

We will investigate your complaint and will correct any error promptly. If we take more than 10 business days (20 on claims on accounts opened less than 30 calendar days) to do this, we will credit your account for the amount you think is in error, so hat you will have the use of the money during the time it takes us to complete our inves igation.

*For Non-Consumer Account customers, please refer to your current Non-Consumer Account Agreement for details regarding Electronic Fund Transfers.

Overdraft Protection
Calculation of Interest Charge and Balance Subject to Interest Rate. The interest charge is computed using your annual percentage rate divided by 365 or, in he case of a leap year, 366, which gives you the "Applicable Rate." Although we calculate the interest charge by applying the Applicable Rate to each daily balance, the interest charge can also be calculated by multiplying the Applicable Rate by the "average daily balance"(Balance Subject to Interest Rate) shown on this statement, hen multiplying that sum by the number of days in the billing cycle. To get the "Balance Subject to Interest Rate" shown on this statement we take the beginning balance of your account less any unpaid finance charges each day, add any new advances or debits, and subtract any payments or credits. This gives us the daily balance. Then we add all the daily balances for the billing cycle and divide by the number of days in the billing cycle. This give us the "average daily balance" shown on the statement as "Balance Subject to Interest Rate". Payments. Payments to your overdraft protec ion loan account made through our tellers or deposited at our automated teller machines (ATM s) Monday through Friday before he posted cut-off time will be posted to your account on the date they are accepted. Otherwise, they will be posted on the next business day. Payments made through our ATM s via a funds transfer will be posted on the date they are received or on the next business day if made after 6pm CT (6pm MT for Arizona accounts and 6pm PT for California accounts) Monday through Friday or any ime Saturday, Sunday or bank holidays. BBVA Compass Bank business days are Monday through Friday, excluding holidays.

In Case of Errors or Questions About Your Statement (Overdraft Protection Only)
If you think your statement is wrong, or if you need more information about a transaction on your statement, write your issue on a separate document and send it to Bankcard Center, P.O. Box 2210, Decatur, AL 35699-0001. Telephone inquires may be made by calling your local BBVA Compass branch listed on the front of this statement to speak with a Customer Service Representative. Please note: a telephone inquiry will not preserve your rights under federal law. We must hear from you no later than sixty (60) days after we sent you the first statement on which the error or problem appeared.

- Tell us your name and account number (if any).
- Describe the error or he transfer you are unsure about, and explain as clearly as you can why you believe it is an error or what you need more information.
- Tell us the dollar amount of the suspected error.

You can stop the automatic deduction of the Minimum Payment from you checking account if you think your statement is wrong. To stop the payment, your letter must reach us three (3) business days before the automatic deduction is scheduled to occur.

Reporting Other Problems
Please review your statement carefully. It is essential that any account errors or any improper transactions on your account be reported to us as soon as reasonably possible. If you fail to notify us of any suspected problems, errors or unauthorized transactions within the time periods specified in the deposit account agreement, we are not liable to you for any loss related to the problem, error or unauthorized transaction.

BBVA Compass is a trade name of Compass Bank, a member of the BBVA Group.
Compass Bank, Member FDIC.

EXHIBIT 110

Primary Account: [redacted]
Beginning May 1, 2019 - Ending May 31, 2019 31

BBVA Compass

21 HIGHLAND CAPITAL MANAGEMENT LP
MASTER OPERATING ACCOUNT
300 CRESCENT CT STE 700
DALLAS TX 75201-7849

Contacting Us

Available by phone 24/7

Phone 1-800-266-7277

Online bbvacompass.com

Write BBVA Compass
Customer Service
P.O. Box 10566
Birmingham, AL 35296

Summary of Accounts

Deposit Accounts/ Other Products

Account	Account number	Ending balance last statement	Ending balance this statement
TREASURY MANAGEMENT ANALYSIS CHECKING	[redacted]	[redacted]	[redacted]
Total Deposit Accounts		[redacted]	[redacted]

BBVA Compass

TREASURY MANAGEMENT ANALYSIS CHECKING

Account Number: [redacted]

Activity Summary

[redacted]	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]

Deposits and Other Credits

Date *	Check/ Serial #	Description	Deposits/ Credits
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
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BBVA Compass

Date *	Check/ Serial #	Description	Deposits/ Credits
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BBVA Compass

Date *	Check/ Serial #	Description	Deposits/ Credits
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5/2		INCOMING WIRE W/ADVICE REF 20190502F2QCZ60C00351205021554FT03 ORG JAMES D DONDERO	$2,400,000.00
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BBVA Compass

Date *	Check/ Serial #	Description	Deposits/ Credits
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5/3		INCOMING WIRE W/ADVICE REF 20190503F2QCZ60C00402305031602FT03 ORG JAMES D DONDERO	$4,400,000.00
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5/7		INCOMING WIRE W/ADVICE REF 20190507F2QCZ60C00123805071057FT03 ORG JAMES D DONDERO	$600,000.00
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Date *	Check/ Serial #	Description	Deposits/ Credits
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5/23		INCOMING WIRE W/ADVICE REF 20190523F2QCZ60C00127205231045FT03 ORG JAMES D DONDERO	$1,500,000.00
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Date *	Check/ Serial #	Description	Deposits/ Credits
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Withdrawals and Other Debits

Date *	Check/ Serial #	Description	Withdrawals/ Debits
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[redacted]				[redacted]	[redacted]				[redacted]	[redacted]			[redacted]
[redacted]				[redacted]	[redacted]				[redacted]	[redacted]			[redacted]
[redacted]				[redacted]	[redacted]				[redacted]	[redacted]			[redacted]
[redacted]				[redacted]	[redacted]				[redacted]	[redacted]			[redacted]
[redacted]				[redacted]	[redacted]				[redacted]	[redacted]			[redacted]
[redacted]				[redacted]	[redacted]				[redacted]	[redacted]			[redacted]
[redacted]				[redacted]	[redacted]				[redacted]	[redacted]			[redacted]
[redacted]				[redacted]	[redacted]				[redacted]	[redacted]			[redacted]

[redacted]

BBVA Compass

How to Balance Your Account

Step 1
- Enter all checks, deposits, and other automated teller card (ATM) transactions in your register.
- Record all automated deductions, debit card transactions and electronic bill payments.
- Record and deduct service charges, check printing charges, or other bank fees.
- If you have an interest bearing account, add any interest earned shown on this statement.

Step 2
- If applicable, sort checks in numerical order and mark in your register each check or other transaction that is listed on this statement.

Step 3
- List any deposits or credits your have made that do not appear on this statement (see space provided below).

Step 4
- List any checks you have written, debit card transactions, electronic payments and other deductions that do not appear on this statement (see space provided below).

Date/Description	Amount
Step 3 Total	$

Date/Description	Check #	Amount
	Step 4 Total	$

Balancing Your Register to this Statement

Step 5	• Enter the "current balance" shown on this statement	
	• Add total from Step 3	
	• Subtotal	
	• Subtract total from Step 4	
	• This balance should equal your register balance	
	If it does not agree, see steps below	$

If your account does not balance, review the following:
- Check all your addition and subtraction above in your register.
- Make sure you remembered to subtract service charges listed on this statement and add any interest earned to your register.
- Amounts of deposits and withdrawals on this statement should match your register entries.
- If you have questions or need assistance, please refer to the phone number on the front of this statement.

Change of Address
Please call us at the telephone number listed on the front of this statement to tell us about a change of address.

Electronic Transfers *(for consumer accounts only)*
In case of errors or questions about your Electronic Transfers, write to BBVA Compass Bank, Operations Compliance Support, P.O. Box 10566, Birmingham, AL 35296. Or simply call your local customer service number printed on he front of this statement. Call or write as soon as you can, if you think your statement or receipt is wrong or if you need more information about a transfer on the statement or receipt. We must hear from you no later than 60 days after we sent the first statement on which the error or problem appeared.

- Tell us your name and account number (if any).
- Describe the error or he transfer you are unsure about, and explain as clearly as you can why you believe it is an error or why you need more information.
- Tell us the dollar amount of the suspected error.

We will investigate your complaint and will correct any error promptly. If we take more than 10 business days (20 on claims on accounts opened less than 30 calendar days) to do this, we will credit your account for the amount you think is in error, so hat you will have the use of the money during the time it takes us to complete our inves igation.

*For Non-Consumer Account customers, please refer to your current Non-Consumer Account Agreement for details regarding Electronic Fund Transfers.

Overdraft Protection
Calculation of Interest Charge and Balance Subject to Interest Rate. The interest charge is computed using your annual percentage rate divided by 365 or, in he case of a leap year, 366, which gives you the "Applicable Rate." Although we calculate the interest charge by applying the Applicable Rate to each daily balance, the interest charge can also be calculated by multiplying the Applicable Rate by the "average daily balance"(Balance Subject to Interest Rate) shown on this statement, hen multiplying that sum by the number of days in the billing cycle. To get the "Balance Subject to Interest Rate" shown on this statement we take the beginning balance of your account less any unpaid finance charges each day, add any new advances or debits, and subtract any payments or credits. This gives us the daily balance. Then we add all the daily balances for the billing cycle and divide by the number of days in the billing cycle. This give us the "average daily balance" shown on the statement as "Balance Subject to Interest Rate". Payments. Payments to your overdraft protec ion loan account made through our tellers or deposited at our automated teller machines (ATM s) Monday through Friday before he posted cut-off time will be posted to your account on the date they are accepted. Otherwise, they will be posted on the next business day. Payments made through our ATM s via a funds transfer will be posted on the date they are received or on the next business day if made after 6pm CT (6pm MT for Arizona accounts and 6pm PT for California accounts) Monday through Friday or any ime Saturday, Sunday or bank holidays. BBVA Compass Bank business days are Monday through Friday, excluding holidays.

In Case of Errors or Questions About Your Statement (Overdraft Protection Only)
If you think your statement is wrong, or if you need more information about a transaction on your statement, write your issue on a separate document and send it to Bankcard Center, P.O. Box 2210, Decatur, AL 35699-0001. Telephone inquires may be made by calling your local BBVA Compass branch listed on the front of this statement to speak with a Customer Service Representative. Please note: a telephone inquiry will not preserve your rights under federal law. We must hear from you no later than sixty (60) days after we sent you the first statement on which the error or problem appeared.

- Tell us your name and account number (if any).
- Describe the error or he transfer you are unsure about, and explain as clearly as you can why you believe it is an error or what you need more information.
- Tell us the dollar amount of the suspected error.

You can stop the automatic deduction of the Minimum Payment from you checking account if you think your statement is wrong. To stop the payment, your letter must reach us three (3) business days before the automatic deduction is scheduled to occur.

Reporting Other Problems
Please review your statement carefully. It is essential that any account errors or any improper transactions on your account be reported to us as soon as reasonably possible. If you fail to notify us of any suspected problems, errors or unauthorized transactions within the time periods specified in the deposit account agreement, we are not liable to you for any loss related to the problem, error or unauthorized transaction.

BBVA Compass is a trade name of Compass Bank, a member of the BBVA Group.
Compass Bank, Member FDIC.

EXHIBIT 111

NEXBANK
2515 McKinney Avenue, 11th Floor
Dallas, Texas 75201
972.934.4700
www.NexBank.com

FDIC

Date 6/28/19 Page 1
Primary Account [redacted]
Enclosures

Highland Capital Management LP
300 Crescent Court Suite 700
Dallas TX 75201

NexBank's Privacy Notice, which has not changed, is available on our website at www.NexBank.com/files/privacynotice.pdf. If you would like a copy of our Privacy Notice mailed to you, please call us at 972-934-4700.

Checking Account/s

Account Type: Highland Capital Management LP

Analysis Checking w/ Interest
Account Number [redacted] Statement Dates 6/03/19 thru 6/30/19

Deposits and Additions

Date	Description	Amount
[redacted]	[redacted]	[redacted]
6/07	Misc Credit	3,000,000.00
[redacted]	[redacted]	[redacted]

MEMBER FDIC

NOTICE: SEE LAST PAGE FOR IMPORTANT INFORMATION
Payments received at the address indicated on this statement by 3:00 pm. Central Standard Time each banking day will be credited as of that date.

NEXBANK
2515 McKinney Avenue, 11th Floor
Dallas, Texas 75201
972.934.4700
www.NexBank.com

FDIC

Date 6/28/19 Page 2
Primary Account [redacted]
Enclosures

Analysis Checking w/ Interest 1614130 (Continued)

Checks and Withdrawals

Date	Description	Amount
[redacted]	[redacted]	[redacted]

[redacted]

End of Statement

OUTSTANDING CHECKS				RECONCILIATION INSTRUCTIONS			
Reconciliation of Account				Date _____			
CHECKS WRITTEN BUT NOT PAID				Please examine this statement and items at once and refer any exceptions immediately.			
NUMBER	AMOUNT			Sort your checks numerically or by date issued.			
				Mark off in your checkbook each of your checks paid by he bank and list the numbers and amounts of those not paid in he space provided at the left. Include any checks s ill not paid from previous statements.			
				Subtract from your checkbook balance any SERVICE CHARGE (S.C.) or bank charge appearing on this statement.			
				Reconcile your statement in the space provided below.			
				Enter bank balance from statement			
				Add deposits not credited by bank (if any)			
				TOTAL			
Total of Checks not paid				Subtract total of checks not paid			
THIS AMOUNT SHOULD EQUAL YOUR CHECKBOOK BALANCE->							

Any Charge for Imprinted Checks Includes State Sales Tax Computed at the Current Rate, When Applicable
Notice: The Annual Percentage Rate and Daily Periodic Rate may vary.

EXPLANATION OF BALANCE ON WHICH THE INTEREST CHARGE IS COMPUTED

We figure the interest charge on your account by applying the periodic rate to the "daily balance" of your account for each day in the billing cycle. To get the "daily balance" we take the beginning balance of your account each day, add any new advances/fees, and subtract any unpaid interest or other finance charges and any payments or credits. This gives us the daily balance.

WHAT TO DO IF YOU THINK YOU FIND A MISTAKE ON YOUR STATEMENT

If you think there is an error on your statement, write to us at:
NexBank
2515 McKinney Avenue, 11th Floor
Dallas, Texas 75201
You may also contact us on he Web: www.nexbank.com
In your letter, give us the following information:

- Account Informa ion: Your name and account number.
- Dollar Amount: The dollar amount of the suspected error.
- Descrip ion of Problem: If you think there is an error on your bill, describe what you believe is wrong and why you believe it is a mistake.

You must contact us within 60 days after the error appeared on your statement.
You must notify us of any potential errors in writing or electronically. You may call us, but if you do we are not required to investigate any potential errors and you may have to pay the amount in question.
While we investigate whether or not here has been an error, the following are true:

- We cannot try to collect the amount in question, or report you as delinquent on that amount.
- The charge in question may remain on your statement, and we may continue to charge you interest on that amount. But, if we determine that we made a mistake, you will not have to pay the amount in question or any interest or other fees related to that amount.
- While you do not have to pay the amount in question, you are responsible for the remainder of your balance.
- We can apply any unpaid amount against your credit limit.

IN CASE OF ERRORS OR QUESTIONS ABOUT YOUR ELECTRONIC TRANSFERS

In Case of Errors or Questions About Your Electronic Transfers, Telephone us at 972.934.4700 or Write us at NexBank, 2515 McKinney Avenue, 11th Floor, Dallas, Texas 75201 as soon as you can, if you think your statement or receipt is wrong or if you need more information about a transfer on the statement or receipt. We must hear from you no later than 60 days after we sent you the FIRST statement on which the error or problem appeared.
(1) Tell us your name and account number (if any).

(2) Describe the error or transfer you are unsure about, and explain as clearly as you can why you believe it is an error or why you need more information.
(3) Tell us the dollar amount of the suspected error.
We will investigate your complaint and will correct any error promptly. If we take more than 10 business days to do this, we will credit your account for the amount you think is in error, so that you will have use of the money during the time it takes us to complete our investigation.

EXHIBIT 112

EAST WEST BANK Your financial bridge®

135 N. Los Robles Ave., 6TH FL.
Pasadena, CA 91101

Direct inquiries to:
888 895 5650

ACCOUNT STATEMENT
Page 1 of 6
STARTING DATE: December 01, 2019
ENDING DATE: December 31, 2019
Total days in statement period: 31
[redacted]
(9)

HIGHLAND CAPITAL MANAGEMENT LP
CHAPTER 11 DEBTOR IN POSSESSION
CASE #19-12239-CSS
OPERATING ACCOUNT
300 CRESCENT CT SUITE 700
DALLAS TX 75201-0000

Have you signed up for Direct Deposits? Get your paycheck without waiting for a paper check and making a trip to the bank. Payments get deposited into your account automatically. Enrolling is easy! Talk to your payer or call 888.895.5650 for more details!

Commercial Analysis Checking

Account number [redacted] (45) (97) [redacted]

CREDITS

Number	Date	Transaction Description	Additions
[redacted]	[redacted]	[redacted]	[redacted]

3409 rev 05-16

EAST WEST BANK Your financial bridge®

135 N. Los Robles Ave., 6TH FL.
Pasadena, CA 91101

HIGHLAND CAPITAL MANAGEMENT LP

ACCOUNT STATEMENT

STARTING DATE: December 01, 2019
ENDING DATE: December 31, 2019 [redacted]

Number	Date	Transaction Description	Additions
[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	12-23	Wire Trans-IN JAMES D DONDERO	783,011.86
[redacted]	[redacted]	[redacted]	[redacted]

CHECKS

Number	Date	Amount	Number	Date	Amount
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]

DEBITS

Date	Transaction Description	Subtractions
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]

EAST WEST BANK Your financial bridge®

135 N. Los Robles Ave., 6TH FL.
Pasadena, CA 91101

HIGHLAND CAPITAL MANAGEMENT LP

ACCOUNT STATEMENT

STARTING DATE: December 01, 2019
ENDING DATE: December 31, 2019
[redacted]

Date	Transaction Description	Subtractions
[redacted]	[redacted]	[redacted]

EAST WEST BANK Your financial bridge®

135 N. Los Robles Ave., 6TH FL.
Pasadena, CA 91101

HIGHLAND CAPITAL MANAGEMENT LP

ACCOUNT STATEMENT

STARTING DATE: December 01, 2019
ENDING DATE: December 31, 2019
[redacted]

Date	Transaction Description	Subtractions
[redacted]	[redacted]	[redacted]

DAILY BALANCES

Date	Amount	Date	Amount	Date	Amount
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]

OVERDRAFT/RETURN ITEM FEES

	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]

[redacted]

[redacted]

STATEMENT BALANCING

Fill in the amounts below from the front of this statement and your checkbook.

ENTER
Ending Balance of
this Statement……..... $_____

Add Deposits not shown
on this Statement $_____
_____
_____

Sub Total……. $_____

Subtract Checks Issued
but not on Statement

CHECK NUMBER OR DATE	AMOUNT	CHECK NUMBER OR DATE	AMOUNT
TOTAL		TOTAL	

Total amount of outstanding
checks…… $_____

Balance…..….....** $_____

ENTER
Present Balance in
your checkbook…… $_____

Subtract any service
charges, finance or
any other charges…… $_____

Sub Total …… $_____

Add Monthly Interest
Earned …….. $_____

Add any deposits not yet
entered in checkbook
(Reverse Advances)…….. $_____
_____
_____
_____

Subtract any checks not
yet entered in checkbook
(Reverse Payments)…….. $_____
_____
_____
_____

Balance……..... $_____

IN CASE OF ERRORS OR QUESTIONS REGARDING YOUR CHECKING ACCOUNT

You must examine your statement carefully and promptly. You are in the best position to discover errors and unauthorized transactions on your account. If you fail to notify us in writing of suspected problems or unauthorized transactions within the time periods as specified in the Deposit Agreement (which periods are no more than 60 days after we make the statement available to you and in some cases 30 days or less), we are not liable to you for, and you agree not to make a claim against us for problems or unauthorized transactions.

IN CASE OF ERRORS OR QUESTIONS ABOUT YOUR ELECTRONIC FUNDS TRANSFERS

Telephone or write your local branch of account, listed on the statement front, as soon as you can if you think your statement or receipt is wrong or if you need more information about a transfer on the statement or receipt. We must hear from you no later than 60 days after we send you the FIRST statement on which the error or problem appeared.

1. Tell us your name and account number.
2. Describe the error or the transfer you are unsure about and explain as clearly as you can why you believe there is an error or why you need more information.
3. Tell us the dollar amount of the suspected error.

We will investigate your complaint and will correct any error promptly. If our investigation takes longer than 10 business days from the date we received your notification, we will provisionally credit your account for the disputed amount until our investigation has been completed. If the disputed amount involves an electronic funds transfer to or from an account within 30 days after the first deposit to the account was made, we will provisionally credit your account within 20 business days from the date we receive your notification.

ACCOUNTS WITH CHECK STORAGE

Upon your request, we will provide you, without charge, legible copies of two checks from each account statement. Additional copies of canceled checks are subject to our service charges. You can make a request for these copies by contacting the branch listed on the front of this statement.

CHANGE OF ADDRESS

Please notify us immediately for change of address by phoning or writing your local branch of account, listed on the front of this statement.

MEMBER FDIC

(REV 11/07)

EXHIBIT 113

Primary Account: [redacted]
Beginning May 1, 2019 - Ending May 31, 2019 31

BBVA Compass

21 HIGHLAND CAPITAL MANAGEMENT LP
MASTER OPERATING ACCOUNT
300 CRESCENT CT STE 700
DALLAS TX 75201-7849

Contacting Us

Available by phone 24/7

Phone 1-800-266-7277

Online bbvacompass.com

Write BBVA Compass
Customer Service
P.O. Box 10566
Birmingham, AL 35296

Summary of Accounts

Deposit Accounts/ Other Products

Account	Account number	Ending balance last statement	Ending balance this statement
TREASURY MANAGEMENT ANALYSIS CHECKING	[redacted]	[redacted]	[redacted]
[redacted]		[redacted]	[redacted]

BBVA Compass

TREASURY MANAGEMENT ANALYSIS CHECKING

Account Number: [redacted]

Activity Summary

[redacted]	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]

Deposits and Other Credits

Date *	Check/ Serial #	Description	Deposits/ Credits
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]

BBVA Compass

Date *	Check/ Serial #	Description	Deposits/ Credits
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]

BBVA Compass

Date *	Check/ Serial #	Description	Deposits/ Credits
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]

BBVA Compass

Date *	Check/ Serial #	Description	Deposits/ Credits
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]

BBVA Compass

Date *	Check/ Serial #	Description	Deposits/ Credits
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
5/29		INCOMING WIRE W/ADVICE REF 20190529F2QCZ60C00298805291425FT03 ORG HIGHLAND CAPITAL M	$1,000,000.00
[redacted]		[redacted]	[redacted]

BBVA Compass

Date *	Check/ Serial #	Description	Deposits/ Credits
[redacted]		[redacted]	[redacted]

[redacted]

Withdrawals and Other Debits

Date *	Check/ Serial #	Description	Withdrawals/ Debits
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]

BBVA Compass

Date *	Check/ Serial #	Description	Withdrawals/ Debits
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
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BBVA Compass

Date *	Check/ Serial #	Description	Withdrawals/ Debits
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BBVA Compass

Date *	Check/ Serial #	Description	Withdrawals/ Debits
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Date *	Check/ Serial #	Description	Withdrawals/ Debits
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BBVA Compass

Date *	Check/ Serial #	Description	Withdrawals/ Debits
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BBVA Compass

How to Balance Your Account

Step 1
- Enter all checks, deposits, and other automated teller card (ATM) transactions in your register.
- Record all automated deductions, debit card transactions and electronic bill payments.
- Record and deduct service charges, check printing charges, or other bank fees.
- If you have an interest bearing account, add any interest earned shown on this statement.

Step 2
- If applicable, sort checks in numerical order and mark in your register each check or other transaction that is listed on this statement.

Step 3
- List any deposits or credits your have made that do not appear on this statement (see space provided below).

Step 4
- List any checks you have written, debit card transactions, electronic payments and other deductions that do not appear on this statement (see space provided below).

Date/Description	Amount
Step 3 Total	$

Date/Description	Check #	Amount
	Step 4 Total	$

Balancing Your Register to this Statement

Step 5	• Enter the "current balance" shown on this statement	
	• Add total from Step 3	
	• Subtotal	
	• Subtract total from Step 4	
	• This balance should equal your register balance	
	If it does not agree, see steps below	$

If your account does not balance, review the following:
- Check all your addition and subtraction above in your register.
- Make sure you remembered to subtract service charges listed on this statement and add any interest earned to your register.
- Amounts of deposits and withdrawals on this statement should match your register entries.
- If you have questions or need assistance, please refer to the phone number on the front of this statement.

Change of Address
Please call us at the telephone number listed on the front of this statement to tell us about a change of address.

Electronic Transfers *(for consumer accounts only)*
In case of errors or questions about your Electronic Transfers, write to BBVA Compass Bank, Operations Compliance Support, P.O. Box 10566, Birmingham, AL 35296. Or simply call your local customer service number printed on he front of this statement. Call or write as soon as you can, if you think your statement or receipt is wrong or if you need more information about a transfer on the statement or receipt. We must hear from you no later than 60 days after we sent the first statement on which the error or problem appeared.

- Tell us your name and account number (if any).
- Describe the error or he transfer you are unsure about, and explain as clearly as you can why you believe it is an error or why you need more information.
- Tell us the dollar amount of the suspected error.

We will investigate your complaint and will correct any error promptly. If we take more than 10 business days (20 on claims on accounts opened less than 30 calendar days) to do this, we will credit your account for the amount you think is in error, so hat you will have the use of the money during the time it takes us to complete our inves igation.

*For Non-Consumer Account customers, please refer to your current Non-Consumer Account Agreement for details regarding Electronic Fund Transfers.

Overdraft Protection
Calculation of Interest Charge and Balance Subject to Interest Rate. The interest charge is computed using your annual percentage rate divided by 365 or, in he case of a leap year, 366, which gives you the "Applicable Rate." Although we calculate the interest charge by applying the Applicable Rate to each daily balance, the interest charge can also be calculated by multiplying the Applicable Rate by the "average daily balance"(Balance Subject to Interest Rate) shown on this statement, hen multiplying that sum by the number of days in the billing cycle. To get the "Balance Subject to Interest Rate" shown on this statement we take the beginning balance of your account less any unpaid finance charges each day, add any new advances or debits, and subtract any payments or credits. This gives us the daily balance. Then we add all the daily balances for the billing cycle and divide by the number of days in the billing cycle. This give us the "average daily balance" shown on the statement as "Balance Subject to Interest Rate". Payments. Payments to your overdraft protec ion loan account made through our tellers or deposited at our automated teller machines (ATM s) Monday through Friday before he posted cut-off time will be posted to your account on the date they are accepted. Otherwise, they will be posted on the next business day. Payments made through our ATM s via a funds transfer will be posted on the date they are received or on the next business day if made after 6pm CT (6pm MT for Arizona accounts and 6pm PT for California accounts) Monday through Friday or any ime Saturday, Sunday or bank holidays. BBVA Compass Bank business days are Monday through Friday, excluding holidays.

In Case of Errors or Questions About Your Statement (Overdraft Protection Only)
If you think your statement is wrong, or if you need more information about a transaction on your statement, write your issue on a separate document and send it to Bankcard Center, P.O. Box 2210, Decatur, AL 35699-0001. Telephone inquires may be made by calling your local BBVA Compass branch listed on the front of this statement to speak with a Customer Service Representative. Please note: a telephone inquiry will not preserve your rights under federal law. We must hear from you no later than sixty (60) days after we sent you the first statement on which the error or problem appeared.

- Tell us your name and account number (if any).
- Describe the error or he transfer you are unsure about, and explain as clearly as you can why you believe it is an error or what you need more information.
- Tell us the dollar amount of the suspected error.

You can stop the automatic deduction of the Minimum Payment from you checking account if you think your statement is wrong. To stop the payment, your letter must reach us three (3) business days before the automatic deduction is scheduled to occur.

Reporting Other Problems
Please review your statement carefully. It is essential that any account errors or any improper transactions on your account be reported to us as soon as reasonably possible. If you fail to notify us of any suspected problems, errors or unauthorized transactions within the time periods specified in the deposit account agreement, we are not liable to you for any loss related to the problem, error or unauthorized transaction.

BBVA Compass is a trade name of Compass Bank, a member of the BBVA Group. Compass Bank, Member FDIC.

EXHIBIT 114

NexBank™

Welcome HAYLEY ELIASON Log Out Contact Us 2 Messages Alerts

Accounts

NexBank™
2515 McKinney Avenue, 11th Floor
Dallas, Texas 75201
972.934.4700
www.NexBank.com

FDIC

Date 9/30/19 Page 1
Primary Account [redacted]
Enclosures

Highland Capital Management LP
300 Crescent Court Suite 700
Dallas TX 75201

NexBank's Privacy Notice, which has not changed, is available on our website at www.NexBank.com/files/privacynotice.pdf. If you would like a copy of our Privacy Notice mailed to you, please call us at 972-934-4700.

Checking Account/s

Account Type: Highland Capital Management LP

Analysis Checking w/ Interest
Account Number [redacted] Statement Dates 9/03/19 thru 9/30/19

Deposits and Additions

Date	Description	Amount
[redacted]	[redacted]	[redacted]
9/05	IB Transfer from D ****415 to D ****130	500,000.00
[redacted]	[redacted]	[redacted]

MEMBER FDIC NOTICE: SEE LAST PAGE FOR IMPORTANT INFORMATION
Payments received at the address indicated on this statement by 3 00 pm. Central Standard Time each banking day will be credited as of that date.

NexBank™
2515 McKinney Avenue, 11th Floor
Dallas, Texas 75201
972.934.4700
www.NexBank.com

FDIC

Date 9/30/19 Page 2
Primary Account [redacted]
Enclosures

Analysis Checking w/ Interest [redacted] (Continued)

Checks and Withdrawals

Date	Description	Amount
[redacted]	[redacted]	[redacted]

End of Statement

MEMBER FDIC

NOTICE: SEE LAST PAGE FOR IMPORTANT INFORMATION
Payments received at the address indicated on this statement by 3 00 pm. Central Standard Time each banking day will be credited as of that date.

OUTSTANDING CHECKS

Reconciliation of Account

CHECKS WRITTEN BUT NOT PAID

NUMBER	AMOUNT		

- Description of Problem: If you think there is an error on your bill, describe what you believe is wrong and why you believe it is a mistake.

You must contact us within 60 days after the error appeared on your statement.
You must notify us of any potential errors in writing or electronically. You may call us, but if you do we are not required to investigate any potential errors and you may have to pay the amount in question.
While we investigate whether or not there has been an error, the following are true:

- We cannot try to collect the amount in question, or report you as delinquent on that amount.
- The charge in question may remain on your statement, and we may continue to charge you interest on that amount. But, if we determine that we made a mistake, you will not have to pay the amount in question or any interest or other fees related to that amount.
- While you do not have to pay the amount in question, you are responsible for the remainder of your balance.
- We can apply any unpaid amount against your credit limit.

IN CASE OF ERRORS OR QUESTIONS ABOUT YOUR ELECTRONIC TRANSFERS

In Case of Errors or Questions About Your Electronic Transfers, Telephone us at 972.934.4700 or Write us at NexBank, 2515 McKinney Avenue, 11th Floor, Dallas, Texas 75201 as soon as you can, if you think your statement or receipt is wrong or if you need more information about a transfer on the statement or receipt. We must hear from you no later than 60 days after we sent you the FIRST statement on which the error or problem appeared.

(1) Tell us your name and account number (if any).
(2) Describe the error or transfer you are unsure about, and explain as clearly as you can why you believe it is an error or why you need more information.
(3) Tell us the dollar amount of the suspected error.

We will investigate your complaint and will correct any error promptly. If we take more than 10 business days to do this, we will credit your account for the amount you think is in error, so that you will have use of the money during the time it takes us to complete our investigation.

EXHIBIT 115

Primary Account: [redacted]
Beginning October 1, 2019 - Ending October 31, 2019 31

BBVA

21 HIGHLAND CAPITAL MANAGEMENT LP
MASTER OPERATING ACCOUNT
300 CRESCENT CT STE 700
DALLAS TX 75201-7849

Contacting Us

Available by phone 24/7

Phone 1-800-266-7277

Online bbvausa.com

Write BBVA
Customer Service
P.O. Box 10566
Birmingham, AL 35296

Summary of Accounts

Deposit Accounts/ Other Products

Account	Account number	Ending balance last statement	Ending balance this statement
TREASURY MANAGEMENT ANALYSIS CHECKING	[redacted]	[redacted]	[redacted]
[redacted]		[redacted]	[redacted]

BBVA

TREASURY MANAGEMENT ANALYSIS CHECKING

Account Number: [redacted]

Activity Summary

[redacted]	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]

Deposits and Other Credits

Date *	Check/ Serial #	Description	Deposits/ Credits
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
10/3		INCOMING WIRE W/ADVICE REF 20191003F2QCZ60C00240510031400FT03 ORG HIGHLAND CAPITAL M	$375,000.00
[redacted]		[redacted]	[redacted]
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Date *	Check/ Serial #	Description	Deposits/ Credits
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Withdrawals and Other Debits

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Date *	Check/ Serial #	Description	Withdrawals/ Debits
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Date *	Check/ Serial #	Description	Withdrawals/ Debits
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BBVA

Date	Balance	Date	Balance	Date	Balance
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[redacted]					
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BBVA

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- If you have an interest bearing account, add any interest earned shown on this statement.

Step 2
- If applicable, sort checks in numerical order and mark in your register each check or other transaction that is listed on this statement.

Step 3
- List any deposits or credits your have made that do not appear on this statement (see space provided below).

Step 4
- List any checks you have written, debit card transactions, electronic payments and other deductions that do not appear on this statement (see space provided below).

Date/Description	Amount
Step 3 Total	$

Date/Description	Check #	Amount
	Step 4 Total	$

Balancing Your Register to this Statement

Step 5	• Enter the "current balance" shown on this statement	
	• Add total from Step 3	
	• Subtotal	
	• Subtract total from Step 4	
	• This balance should equal your register balance	
	If it does not agree, see steps below	$

If your account does not balance, review the following:
- Check all your addition and subtraction above in your register.
- Make sure you remembered to subtract service charges listed on this statement and add any interest earned to your register.
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Please call us at the telephone number listed on the front of this statement to tell us about a change of address.

Electronic Transfers *(for consumer accounts only)*
In case of errors or questions about your Electronic Transfers, write to BBVA, Operations Compliance Support, P.O. Box 10566, Birmingham, AL 35296. Or simply call your local customer service number printed on he front of this statement. Call or write as soon as you can, if you think your statement or receipt is wrong or if you need more information about a transfer on the statement or receipt. We must hear from you no later than 60 days after we sent the first statement on which the error or problem appeared.

- Tell us your name and account number (if any).
- Describe the error or he transfer you are unsure about, and explain as clearly as you can why you believe it is an error or why you need more information.
- Tell us the dollar amount of the suspected error.

We will investigate your complaint and will correct any error promptly. If we take more than 10 business days (20 on claims on accounts opened less than 30 calendar days) to do this, we will credit your account for the amount you think is in error, so hat you will have the use of the money during the time it takes us to complete our inves igation.

*For Non-Consumer Account customers, please refer to your current Non-Consumer Account Agreement for details regarding Electronic Fund Transfers.

Overdraft Protection
Calculation of Interest Charge and Balance Subject to Interest Rate. The interest charge is computed using your annual percentage rate divided by 365 or, in he case of a leap year, 366, which gives you the "Applicable Rate." Although we calculate the interest charge by applying the Applicable Rate to each daily balance, the interest charge can also be calculated by multiplying the Applicable Rate by the "average daily balance"(Balance Subject to Interest Rate) shown on this statement, hen multiplying that sum by the number of days in the billing cycle. To get the "Balance Subject to Interest Rate" shown on this statement we take the beginning balance of your account less any unpaid finance charges each day, add any new advances or debits, and subtract any payments or credits. This gives us the daily balance. Then we add all the daily balances for the billing cycle and divide by the number of days in the billing cycle. This give us the "average daily balance" shown on the statement as "Balance Subject to Interest Rate". Payments. Payments to your overdraft protec ion loan account made through our tellers or deposited at our automated teller machines (ATM s) Monday through Friday before he posted cut-off time will be posted to your account on the date they are accepted. Otherwise, they will be posted on the next business day. Payments made through our ATM s via a funds transfer will be posted on the date they are received or on the next business day if made after 6pm CT (6pm MT for Arizona accounts and 6pm PT for California accounts) Monday through Friday or any ime Saturday, Sunday or bank holidays. BBVA business days are Monday hrough Friday, excluding holidays.

In Case of Errors or Questions About Your Statement (Overdraft Protection Only)
If you think your statement is wrong, or if you need more information about a transaction on your statement, write your issue on a separate document and send it to Bankcard Center, P.O. Box 2210, Decatur, AL 35699-0001. Telephone inquires may be made by calling your local BBVA branch listed on the front of this statement to speak with a Customer Service Representative. Please note: a telephone inquiry will not preserve your rights under federal law. We must hear from you no later than sixty (60) days after we sent you the first statement on which the error or problem appeared.

- Tell us your name and account number (if any).
- Describe the error or he transfer you are unsure about, and explain as clearly as you can why you believe it is an error or what you need more information.
- Tell us the dollar amount of the suspected error.

You can stop the automatic deduction of the Minimum Payment from you checking account if you think your statement is wrong. To stop the payment, your letter must reach us three (3) business days before the automatic deduction is scheduled to occur.

Reporting Other Problems
Please review your statement carefully. It is essential that any account errors or any improper transactions on your account be reported to us as soon as reasonably possible. If you fail to notify us of any suspected problems, errors or unauthorized transactions within the time periods specified in the deposit account agreement, we are not liable to you for any loss related to the problem, error or unauthorized transaction.

BBVA and BBVA Compass are trade names of BBVA USA, a member of the BBVA Group. BBVA USA, Member FDIC.

EXHIBIT 116

Primary Account: [redacted]
Beginning September 1, 2019 - Ending September 30, 2019 30

BBVA

21 HIGHLAND CAPITAL MANAGEMENT LP
MASTER OPERATING ACCOUNT
300 CRESCENT CT STE 700
DALLAS TX 75201-7849

Contacting Us

Available by phone 24/7

Phone 1-800-266-7277

Online bbvausa.com

Write BBVA
Customer Service
P.O. Box 10566
Birmingham, AL 35296

Summary of Accounts

Deposit Accounts/ Other Products

Account	Account number	Ending balance last statement	Ending balance this statement
TREASURY MANAGEMENT ANALYSIS CHECKING	[redacted]	[redacted]	[redacted]
[redacted]		[redacted]	[redacted]

BBVA

TREASURY MANAGEMENT ANALYSIS CHECKING

Account Number: [redacted]

Activity Summary

[redacted]	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]

Deposits and Other Credits

Date *	Check/ Serial #	Description	Deposits/ Credits
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]

BBVA

Date *	Check/ Serial #	Description	Deposits/ Credits
9/30		INCOMING WIRE W/ADVICE REF 20190930F2QCZ60C00512909301511FT03 ORG HCRE PARTNERS, LLC	$341,758.00
[redacted]		[redacted]	[redacted]

Please note, certain fees and charges posted to your account may relate to services and/or activity from the prior statement cycle.
* The Date provided is the business day that the transaction is processed.

Withdrawals and Other Debits

Date *	Check/ Serial #	Description	Withdrawals/ Debits
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]

BBVA

Date *	Check/ Serial #	Description	Withdrawals/ Debits
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]

BBVA

Date *	Check/ Serial #	Description	Withdrawals/ Debits
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
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[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]

BBVA

Date *	Check/ Serial #	Description	Withdrawals/ Debits
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]

BBVA

Date *	Check/ Serial #	Description	Withdrawals/ Debits
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]

[redacted]

[redacted]

[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
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[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]		

[redacted]

[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]

[redacted]

BBVA

How to Balance Your Account

Step 1
- Enter all checks, deposits, and other automated teller card (ATM) transactions in your register.
- Record all automated deductions, debit card transactions and electronic bill payments.
- Record and deduct service charges, check printing charges, or other bank fees.
- If you have an interest bearing account, add any interest earned shown on this statement.

Step 2
- If applicable, sort checks in numerical order and mark in your register each check or other transaction that is listed on this statement.

Step 3
- List any deposits or credits your have made that do not appear on this statement (see space provided below).

Step 4
- List any checks you have written, debit card transactions, electronic payments and other deductions that do not appear on this statement (see space provided below).

Date/Description	Amount
Step 3 Total	$

Date/Description	Check #	Amount
	Step 4 Total	$

Balancing Your Register to this Statement

Step 5	• Enter the "current balance" shown on this statement	
	• Add total from Step 3	
	• Subtotal	
	• Subtract total from Step 4	
	• This balance should equal your register balance	
	If it does not agree, see steps below	$

If your account does not balance, review the following:
- Check all your addition and subtraction above in your register.
- Make sure you remembered to subtract service charges listed on this statement and add any interest earned to your register.
- Amounts of deposits and withdrawals on this statement should match your register entries.
- If you have questions or need assistance, please refer to the phone number on the front of this statement.

Change of Address
Please call us at the telephone number listed on the front of this statement to tell us about a change of address.

Electronic Transfers *(for consumer accounts only)*
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BBVA and BBVA Compass are trade names of BBVA USA, a member of the BBVA Group. BBVA USA, Member FDIC.

EXHIBIT 117

Primary Account: [redacted]
Beginning April 1, 2019 - Ending April 30, 2019 30

BBVA Compass

21 HIGHLAND CAPITAL MANAGEMENT LP
MASTER OPERATING ACCOUNT
300 CRESCENT CT STE 700
DALLAS TX 75201-7849

Contacting Us

Available by phone 24/7

Phone 1-800-266-7277

Online bbvacompass.com

Write BBVA Compass
Customer Service
P.O. Box 10566
Birmingham, AL 35296

Summary of Accounts

Deposit Accounts/ Other Products

Account	Account number	Ending balance last statement	Ending balance this statement
TREASURY MANAGEMENT ANALYSIS CHECKING	[redacted]	[redacted]	[redacted]
[redacted]		[redacted]	[redacted]

BBVA Compass

TREASURY MANAGEMENT ANALYSIS CHECKING

Account Number: [redacted]

Activity Summary

[redacted]	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]

Deposits and Other Credits

Date *	Check/ Serial #	Description	Deposits/ Credits
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
4/16		INCOMING WIRE W/ADVICE REF 20190416F2QCZ60C00357704161647FT03 ORG NEXPOINT ADVISORS,	$1,300,000.00
[redacted]		[redacted]	[redacted]

BBVA Compass

Date *	Check/ Serial #	Description	Deposits/ Credits
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]

Withdrawals and Other Debits

Date *	Check/ Serial #	Description	Withdrawals/ Debits
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]

BBVA Compass

Date *	Check/ Serial #	Description	Withdrawals/ Debits
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]

BBVA Compass

Date *	Check/ Serial #	Description	Withdrawals/ Debits
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
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[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]

BBVA Compass

Date *	Check/ Serial #	Description	Withdrawals/ Debits
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
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[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
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[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
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[redacted]		[redacted]	[redacted]

BBVA Compass

Date *	Check/ Serial #	Description	Withdrawals/ Debits
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]

BBVA Compass

Date *	Check/ Serial #	Description	Withdrawals/ Debits
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
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[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]

[redacted]

End of Business Day Balance Summary

Date	Balance	Date	Balance	Date	Balance
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]				

Summary of Checks

Date	Check #	Amount	Date	Check #	Amount	Date	Check #	Amount
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]						

[redacted]

BBVA Compass

How to Balance Your Account

Step 1
- Enter all checks, deposits, and other automated teller card (ATM) transactions in your register.
- Record all automated deductions, debit card transactions and electronic bill payments.
- Record and deduct service charges, check printing charges, or other bank fees.
- If you have an interest bearing account, add any interest earned shown on this statement.

Step 2
- If applicable, sort checks in numerical order and mark in your register each check or other transaction that is listed on this statement.

Step 3
- List any deposits or credits your have made that do not appear on this statement (see space provided below).

Step 4
- List any checks you have written, debit card transactions, electronic payments and other deductions that do not appear on this statement (see space provided below).

Date/Description	Amount
Step 3 Total	$

Date/Description	Check #	Amount
	Step 4 Total	$

Balancing Your Register to this Statement

Step 5	• Enter the "current balance" shown on this statement	
	• Add total from Step 3	
	• Subtotal	
	• Subtract total from Step 4	
	• This balance should equal your register balance	
	If it does not agree, see steps below	$

If your account does not balance, review the following:
- Check all your addition and subtraction above in your register.
- Make sure you remembered to subtract service charges listed on this statement and add any interest earned to your register.
- Amounts of deposits and withdrawals on this statement should match your register entries.
- If you have questions or need assistance, please refer to the phone number on the front of this statement.

Change of Address
Please call us at the telephone number listed on the front of this statement to tell us about a change of address.

Electronic Transfers *(for consumer accounts only)*
In case of errors or questions about your Electronic Transfers, write to BBVA Compass Bank, Operations Compliance Support, P.O. Box 10566, Birmingham, AL 35296. Or simply call your local customer service number printed on he front of this statement. Call or write as soon as you can, if you think your statement or receipt is wrong or if you need more information about a transfer on the statement or receipt. We must hear from you no later than 60 days after we sent the first statement on which the error or problem appeared.

- Tell us your name and account number (if any).
- Describe the error or he transfer you are unsure about, and explain as clearly as you can why you believe it is an error or why you need more information.
- Tell us the dollar amount of the suspected error.

We will investigate your complaint and will correct any error promptly. If we take more than 10 business days (20 on claims on accounts opened less than 30 calendar days) to do this, we will credit your account for the amount you think is in error, so hat you will have the use of the money during the time it takes us to complete our inves igation.

*For Non-Consumer Account customers, please refer to your current Non-Consumer Account Agreement for details regarding Electronic Fund Transfers.

Overdraft Protection
Calculation of Interest Charge and Balance Subject to Interest Rate. The interest charge is computed using your annual percentage rate divided by 365 or, in he case of a leap year, 366, which gives you the "Applicable Rate." Although we calculate the interest charge by applying the Applicable Rate to each daily balance, the interest charge can also be calculated by multiplying the Applicable Rate by the "average daily balance"(Balance Subject to Interest Rate) shown on this statement, hen multiplying that sum by the number of days in the billing cycle. To get the "Balance Subject to Interest Rate" shown on this statement we take the beginning balance of your account less any unpaid finance charges each day, add any new advances or debits, and subtract any payments or credits. This gives us the daily balance. Then we add all the daily balances for the billing cycle and divide by the number of days in the billing cycle. This give us the "average daily balance" shown on the statement as "Balance Subject to Interest Rate". Payments. Payments to your overdraft protec ion loan account made through our tellers or deposited at our automated teller machines (ATM s) Monday through Friday before he posted cut-off time will be posted to your account on the date they are accepted. Otherwise, they will be posted on the next business day. Payments made through our ATM s via a funds transfer will be posted on the date they are received or on the next business day if made after 6pm CT (6pm MT for Arizona accounts and 6pm PT for California accounts) Monday through Friday or any ime Saturday, Sunday or bank holidays. BBVA Compass Bank business days are Monday through Friday, excluding holidays.

In Case of Errors or Questions About Your Statement (Overdraft Protection Only)
If you think your statement is wrong, or if you need more information about a transaction on your statement, write your issue on a separate document and send it to Bankcard Center, P.O. Box 2210, Decatur, AL 35699-0001. Telephone inquires may be made by calling your local BBVA Compass branch listed on the front of this statement to speak with a Customer Service Representative. Please note: a telephone inquiry will not preserve your rights under federal law. We must hear from you no later than sixty (60) days after we sent you the first statement on which the error or problem appeared.

- Tell us your name and account number (if any).
- Describe the error or he transfer you are unsure about, and explain as clearly as you can why you believe it is an error or what you need more information.
- Tell us the dollar amount of the suspected error.

You can stop the automatic deduction of the Minimum Payment from you checking account if you think your statement is wrong. To stop the payment, your letter must reach us three (3) business days before the automatic deduction is scheduled to occur.

Reporting Other Problems
Please review your statement carefully. It is essential that any account errors or any improper transactions on your account be reported to us as soon as reasonably possible. If you fail to notify us of any suspected problems, errors or unauthorized transactions within the time periods specified in the deposit account agreement, we are not liable to you for any loss related to the problem, error or unauthorized transaction.

BBVA Compass is a trade name of Compass Bank, a member of the BBVA Group.
Compass Bank, Member FDIC.

EXHIBIT 118

NEXBANK
2515 McKinney Avenue, 11th Floor
Dallas, Texas 75201
972.934.4700
www.NexBank.com

FDIC

Date 6/28/19 Page 1
Primary Account [redacted]
Enclosures

Highland Capital Management LP
300 Crescent Court Suite 700
Dallas TX 75201

NexBank's Privacy Notice, which has not changed, is available on our website at www.NexBank.com/files/privacynotice.pdf. If you would like a copy of our Privacy Notice mailed to you, please call us at 972-934-4700.

Checking Account/s

Account Type: Highland Capital Management LP

Analysis Checking w/ Interest
Account Number [redacted] Statement Dates 6/03/19 thru 6/30/19

Deposits and Additions

Date	Description	Amount
[redacted]	[redacted]	[redacted]
6/19	IB Transfer from D ****171 to	2,100,000.00

MEMBER FDIC

NOTICE: SEE LAST PAGE FOR IMPORTANT INFORMATION
Payments received at the address indicated on this statement by 3:00 pm. Central Standard Time each banking day will be credited as of that date.

NEXBANK
2515 McKinney Avenue, 11th Floor
Dallas, Texas 75201
972.934.4700
www.NexBank.com

Date 6/28/19 Page 2
Primary Account [redacted]
Enclosures

Analysis Checking w/ Interest [redacted] (Continued)

Checks and Withdrawals

Date	Description	Amount
[redacted]	[redacted]	[redacted]

[redacted]

End of Statement

OUTSTANDING CHECKS				RECONCILIATION INSTRUCTIONS			
Reconciliation of Account				Date _____			
CHECKS WRITTEN BUT NOT PAID				Please examine this statement and items at once and refer any exceptions immediately.			
NUMBER	AMOUNT			Sort your checks numerically or by date issued.			
				Mark off in your checkbook each of your checks paid by he bank and list the numbers and amounts of those not paid in he space provided at the left. Include any checks s ill not paid from previous statements.			
				Subtract from your checkbook balance any SERVICE CHARGE (S.C.) or bank charge appearing on this statement.			
				Reconcile your statement in the space provided below.			
				Enter bank balance from statement			
				Add deposits not credited by bank (if any)			
				TOTAL			
Total of Checks not paid				Subtract total of checks not paid			
THIS AMOUNT SHOULD EQUAL YOUR CHECKBOOK BALANCE->							

Any Charge for Imprinted Checks Includes State Sales Tax Computed at the Current Rate, When Applicable
Notice: The Annual Percentage Rate and Daily Periodic Rate may vary.

EXPLANATION OF BALANCE ON WHICH THE INTEREST CHARGE IS COMPUTED

We figure the interest charge on your account by applying the periodic rate to the "daily balance" of your account for each day in the billing cycle. To get the "daily balance" we take the beginning balance of your account each day, add any new advances/fees, and subtract any unpaid interest or other finance charges and any payments or credits. This gives us the daily balance.

WHAT TO DO IF YOU THINK YOU FIND A MISTAKE ON YOUR STATEMENT

If you think there is an error on your statement, write to us at:
NexBank
2515 McKinney Avenue, 11th Floor
Dallas, Texas 75201
You may also contact us on he Web: www.nexbank.com
In your letter, give us the following information:

- Account Informa ion: Your name and account number.
- Dollar Amount: The dollar amount of the suspected error.
- Descrip ion of Problem: If you think there is an error on your bill, describe what you believe is wrong and why you believe it is a mistake.

You must contact us within 60 days after the error appeared on your statement.
You must notify us of any potential errors in writing or electronically. You may call us, but if you do we are not required to investigate any potential errors and you may have to pay the amount in question.
While we investigate whether or not here has been an error, the following are true:

- We cannot try to collect the amount in question, or report you as delinquent on that amount.
- The charge in question may remain on your statement, and we may continue to charge you interest on that amount. But, if we determine that we made a mistake, you will not have to pay the amount in question or any interest or other fees related to that amount.
- While you do not have to pay the amount in question, you are responsible for the remainder of your balance.
- We can apply any unpaid amount against your credit limit.

IN CASE OF ERRORS OR QUESTIONS ABOUT YOUR ELECTRONIC TRANSFERS

In Case of Errors or Questions About Your Electronic Transfers, Telephone us at 972.934.4700 or Write us at NexBank, 2515 McKinney Avenue, 11th Floor, Dallas, Texas 75201 as soon as you can, if you think your statement or receipt is wrong or if you need more information about a transfer on the statement or receipt. We must hear from you no later than 60 days after we sent you the FIRST statement on which the error or problem appeared.
(1) Tell us your name and account number (if any).

(2) Describe the error or transfer you are unsure about, and explain as clearly as you can why you believe it is an error or why you need more information.
(3) Tell us the dollar amount of the suspected error.
We will investigate your complaint and will correct any error promptly. If we take more than 10 business days to do this, we will credit your account for the amount you think is in error, so that you will have use of the money during the time it takes us to complete our investigation.

EXHIBIT 119

Primary Account: [redacted]
Beginning July 1, 2019 - Ending July 31, 2019 31

BBVA

21 HIGHLAND CAPITAL MANAGEMENT LP
MASTER OPERATING ACCOUNT
300 CRESCENT CT STE 700
DALLAS TX 75201-7849

Contacting Us

Available by phone 24/7

Phone 1-800-266-7277

Online bbvausa.com

Write BBVA
Customer Service
P.O. Box 10566
Birmingham, AL 35296

Summary of Accounts

Deposit Accounts/ Other Products

Account	Account number	Ending balance last statement	Ending balance this statement
TREASURY MANAGEMENT ANALYSIS CHECKING	[redacted]	[redacted]	[redacted]
[redacted]		[redacted]	[redacted]

BBVA

TREASURY MANAGEMENT ANALYSIS CHECKING

Account Number: [redacted]

Activity Summary

[redacted]	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]

Deposits and Other Credits

Date *	Check/ Serial #	Description	Deposits/ Credits
[redacted]		[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
7/9		INCOMING WIRE W/ADVICE REF 20190709F2QCZ60C00251507091430FT03 ORG NEXPOINT ADVISORS,	$630,000.00
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]

BBVA

Date *	Check/ Serial #	Description	Deposits/ Credits
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]			

Withdrawals and Other Debits

Date *	Check/ Serial #	Description	Withdrawals/ Debits
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]

BBVA

Date *	Check/ Serial #	Description	Withdrawals/ Debits
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]

BBVA

Date *	Check/ Serial #	Description	Withdrawals/ Debits
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]

BBVA

Date *	Check/ Serial #	Description	Withdrawals/ Debits
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]

BBVA

Date *	Check/ Serial #	Description	Withdrawals/ Debits
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]

[redacted]

End of Business Day Balance Summary

Date	Balance	Date	Balance	Date	Balance
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]				

Summary of Checks

Date	Check #	Amount	Date	Check #	Amount	Date	Check #	Amount
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]						

[redacted]

BBVA

How to Balance Your Account

Step 1
- Enter all checks, deposits, and other automated teller card (ATM) transactions in your register.
- Record all automated deductions, debit card transactions and electronic bill payments.
- Record and deduct service charges, check printing charges, or other bank fees.
- If you have an interest bearing account, add any interest earned shown on this statement.

Step 2
- If applicable, sort checks in numerical order and mark in your register each check or other transaction that is listed on this statement.

Step 3
- List any deposits or credits your have made that do not appear on this statement (see space provided below).

Step 4
- List any checks you have written, debit card transactions, electronic payments and other deductions that do not appear on this statement (see space provided below).

Date/Description	Amount
Step 3 Total	$

Date/Description	Check #	Amount
	Step 4 Total	$

Balancing Your Register to this Statement

Step 5	• Enter the "current balance" shown on this statement	
	• Add total from Step 3	
	• Subtotal	
	• Subtract total from Step 4	
	• This balance should equal your register balance	
	If it does not agree, see steps below	$

If your account does not balance, review the following:
- Check all your addition and subtraction above in your register.
- Make sure you remembered to subtract service charges listed on this statement and add any interest earned to your register.
- Amounts of deposits and withdrawals on this statement should match your register entries.
- If you have questions or need assistance, please refer to the phone number on the front of this statement.

Change of Address
Please call us at the telephone number listed on the front of this statement to tell us about a change of address.

Electronic Transfers *(for consumer accounts only)*
In case of errors or questions about your Electronic Transfers, write to BBVA, Operations Compliance Support, P.O. Box 10566, Birmingham, AL 35296. Or simply call your local customer service number printed on he front of this statement. Call or write as soon as you can, if you think your statement or receipt is wrong or if you need more information about a transfer on the statement or receipt. We must hear from you no later than 60 days after we sent the first statement on which the error or problem appeared.

- Tell us your name and account number (if any).
- Describe the error or he transfer you are unsure about, and explain as clearly as you can why you believe it is an error or why you need more information.
- Tell us the dollar amount of the suspected error.

We will investigate your complaint and will correct any error promptly. If we take more than 10 business days (20 on claims on accounts opened less than 30 calendar days) to do this, we will credit your account for the amount you think is in error, so hat you will have the use of the money during the time it takes us to complete our inves igation.

*For Non-Consumer Account customers, please refer to your current Non-Consumer Account Agreement for details regarding Electronic Fund Transfers.

Overdraft Protection
Calculation of Interest Charge and Balance Subject to Interest Rate. The interest charge is computed using your annual percentage rate divided by 365 or, in he case of a leap year, 366, which gives you the "Applicable Rate." Although we calculate the interest charge by applying the Applicable Rate to each daily balance, the interest charge can also be calculated by multiplying the Applicable Rate by the "average daily balance"(Balance Subject to Interest Rate) shown on this statement, hen multiplying that sum by the number of days in the billing cycle. To get the "Balance Subject to Interest Rate" shown on this statement we take the beginning balance of your account less any unpaid finance charges each day, add any new advances or debits, and subtract any payments or credits. This gives us the daily balance. Then we add all the daily balances for the billing cycle and divide by the number of days in the billing cycle. This give us the "average daily balance" shown on the statement as "Balance Subject to Interest Rate". Payments. Payments to your overdraft protec ion loan account made through our tellers or deposited at our automated teller machines (ATM s) Monday through Friday before he posted cut-off time will be posted to your account on the date they are accepted. Otherwise, they will be posted on the next business day. Payments made through our ATM s via a funds transfer will be posted on the date they are received or on the next business day if made after 6pm CT (6pm MT for Arizona accounts and 6pm PT for California accounts) Monday through Friday or any ime Saturday, Sunday or bank holidays. BBVA business days are Monday hrough Friday, excluding holidays.

In Case of Errors or Questions About Your Statement (Overdraft Protection Only)
If you think your statement is wrong, or if you need more information about a transaction on your statement, write your issue on a separate document and send it to Bankcard Center, P.O. Box 2210, Decatur, AL 35699-0001. Telephone inquires may be made by calling your local BBVA branch listed on the front of this statement to speak with a Customer Service Representative. Please note: a telephone inquiry will not preserve your rights under federal law. We must hear from you no later than sixty (60) days after we sent you the first statement on which the error or problem appeared.

- Tell us your name and account number (if any).
- Describe the error or he transfer you are unsure about, and explain as clearly as you can why you believe it is an error or what you need more information.
- Tell us the dollar amount of the suspected error.

You can stop the automatic deduction of the Minimum Payment from you checking account if you think your statement is wrong. To stop the payment, your letter must reach us three (3) business days before the automatic deduction is scheduled to occur.

Reporting Other Problems
Please review your statement carefully. It is essential that any account errors or any improper transactions on your account be reported to us as soon as reasonably possible. If you fail to notify us of any suspected problems, errors or unauthorized transactions within the time periods specified in the deposit account agreement, we are not liable to you for any loss related to the problem, error or unauthorized transaction.

BBVA and BBVA Compass are trade names of BBVA USA, a member of the BBVA Group. BBVA USA, Member FDIC.

EXHIBIT 120

Primary Account: [redacted]
Beginning March 1, 2019 - Ending March 31, 2019 31

BBVA Compass

21 HIGHLAND CAPITAL MANAGEMENT LP
MASTER OPERATING ACCOUNT
300 CRESCENT CT STE 700
DALLAS TX 75201-7849

Contacting Us

Available by phone 24/7

Phone 1-800-266-7277

Online bbvacompass.com

Write BBVA Compass
Customer Service
P.O. Box 10566
Birmingham, AL 35296

Summary of Accounts

Deposit Accounts/ Other Products

Account	Account number	Ending balance last statement	Ending balance this statement
TREASURY MANAGEMENT ANALYSIS CHECKING	[redacted]	[redacted]	[redacted]
[redacted]		[redacted]	[redacted]

BBVA Compass

TREASURY MANAGEMENT ANALYSIS CHECKING

Account Number: [redacted]

Activity Summary

[redacted]	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]

Deposits and Other Credits

Date *	Check/ Serial #	Description	Deposits/ Credits
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
3/5		INCOMING WIRE W/ADVICE REF 20190305F2QCZ60C00330903051708FT01 ORG HIGHLAND CAPITAL M	$1,015,000.00
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]

BBVA Compass

Date *	Check/ Serial #	Description	Deposits/ Credits
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
3/29		INCOMING WIRE W/ADVICE REF 20190329F2QCZ60C00647603291634FT01 ORG NEXPOINT ADVISORS,	$725,000.00

Please note, certain fees and charges posted to your account may relate to services and/or activity from the prior statement cycle.
* The Date provided is the business day that the transaction is processed.

Withdrawals and Other Debits

Date *	Check/ Serial #	Description	Withdrawals/ Debits
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]

BBVA Compass

Date *	Check/ Serial #	Description	Withdrawals/ Debits
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
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[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]

BBVA Compass

Date *	Check/ Serial #	Description	Withdrawals/ Debits
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]

BBVA Compass

Date *	Check/ Serial #	Description	Withdrawals/ Debits
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]

BBVA Compass

Date *	Check/ Serial #	Description	Withdrawals/ Debits
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]

BBVA Compass

Date *	Check/ Serial #	Description	Withdrawals/ Debits
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]

BBVA Compass

Date *	Check/ Serial #	Description	Withdrawals/ Debits
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]

Please note, certain fees and charges posted to your account may relate to services and/or activity from the prior statement cycle.
* The Date provided is the business day that the transaction is processed.

[redacted]

[redacted]

[redacted]

BBVA Compass

How to Balance Your Account

Step 1
- Enter all checks, deposits, and other automated teller card (ATM) transactions in your register.
- Record all automated deductions, debit card transactions and electronic bill payments.
- Record and deduct service charges, check printing charges, or other bank fees.
- If you have an interest bearing account, add any interest earned shown on this statement.

Step 2
- If applicable, sort checks in numerical order and mark in your register each check or other transaction that is listed on this statement.

Step 3
- List any deposits or credits your have made that do not appear on this statement (see space provided below).

Step 4
- List any checks you have written, debit card transactions, electronic payments and other deductions that do not appear on this statement (see space provided below).

Date/Description	Amount
Step 3 Total	$

Date/Description	Check #	Amount
	Step 4 Total	$

Balancing Your Register to this Statement

Step 5	• Enter the "current balance" shown on this statement	
	• Add total from Step 3	
	• Subtotal	
	• Subtract total from Step 4	
	• This balance should equal your register balance	
	If it does not agree, see steps below	$

If your account does not balance, review the following:
- Check all your addition and subtraction above in your register.
- Make sure you remembered to subtract service charges listed on this statement and add any interest earned to your register.
- Amounts of deposits and withdrawals on this statement should match your register entries.
- If you have questions or need assistance, please refer to the phone number on the front of this statement.

Change of Address
Please call us at the telephone number listed on the front of this statement to tell us about a change of address.

Electronic Transfers *(for consumer accounts only)*
In case of errors or questions about your Electronic Transfers, write to BBVA Compass Bank, Operations Compliance Support, P.O. Box 10566, Birmingham, AL 35296. Or simply call your local customer service number printed on he front of this statement. Call or write as soon as you can, if you think your statement or receipt is wrong or if you need more information about a transfer on the statement or receipt. We must hear from you no later than 60 days after we sent the first statement on which the error or problem appeared.

- Tell us your name and account number (if any).
- Describe the error or he transfer you are unsure about, and explain as clearly as you can why you believe it is an error or why you need more information.
- Tell us the dollar amount of the suspected error.

We will investigate your complaint and will correct any error promptly. If we take more than 10 business days (20 on claims on accounts opened less than 30 calendar days) to do this, we will credit your account for the amount you think is in error, so hat you will have the use of the money during the time it takes us to complete our inves igation.

*For Non-Consumer Account customers, please refer to your current Non-Consumer Account Agreement for details regarding Electronic Fund Transfers.

Overdraft Protection
Calculation of Interest Charge and Balance Subject to Interest Rate. The interest charge is computed using your annual percentage rate divided by 365 or, in he case of a leap year, 366, which gives you the "Applicable Rate." Although we calculate the interest charge by applying the Applicable Rate to each daily balance, the interest charge can also be calculated by multiplying the Applicable Rate by the "average daily balance"(Balance Subject to Interest Rate) shown on this statement, hen multiplying that sum by the number of days in the billing cycle. To get the "Balance Subject to Interest Rate" shown on this statement we take the beginning balance of your account less any unpaid finance charges each day, add any new advances or debits, and subtract any payments or credits. This gives us the daily balance. Then we add all the daily balances for the billing cycle and divide by the number of days in the billing cycle. This give us the "average daily balance" shown on the statement as "Balance Subject to Interest Rate". Payments. Payments to your overdraft protec ion loan account made through our tellers or deposited at our automated teller machines (ATM s) Monday through Friday before he posted cut-off time will be posted to your account on the date they are accepted. Otherwise, they will be posted on the next business day. Payments made through our ATM s via a funds transfer will be posted on the date they are received or on the next business day if made after 6pm CT (6pm MT for Arizona accounts and 6pm PT for California accounts) Monday through Friday or any ime Saturday, Sunday or bank holidays. BBVA Compass Bank business days are Monday through Friday, excluding holidays.

In Case of Errors or Questions About Your Statement (Overdraft Protection Only)
If you think your statement is wrong, or if you need more information about a transaction on your statement, write your issue on a separate document and send it to Bankcard Center, P.O. Box 2210, Decatur, AL 35699-0001. Telephone inquires may be made by calling your local BBVA Compass branch listed on the front of this statement to speak with a Customer Service Representative. Please note: a telephone inquiry will not preserve your rights under federal law. We must hear from you no later than sixty (60) days after we sent you the first statement on which the error or problem appeared.

- Tell us your name and account number (if any).
- Describe the error or he transfer you are unsure about, and explain as clearly as you can why you believe it is an error or what you need more information.
- Tell us the dollar amount of the suspected error.

You can stop the automatic deduction of the Minimum Payment from you checking account if you think your statement is wrong. To stop the payment, your letter must reach us three (3) business days before the automatic deduction is scheduled to occur.

Reporting Other Problems
Please review your statement carefully. It is essential that any account errors or any improper transactions on your account be reported to us as soon as reasonably possible. If you fail to notify us of any suspected problems, errors or unauthorized transactions within the time periods specified in the deposit account agreement, we are not liable to you for any loss related to the problem, error or unauthorized transaction.

BBVA Compass is a trade name of Compass Bank, a member of the BBVA Group.
Compass Bank, Member FDIC.

EXHIBIT 121

NexBank™

Welcome HAYLEY ELIASON Log Out Contact Us 2 Messages Alerts

Accounts

NexBank™
2515 McKinney Avenue, 11th Floor
Dallas, Texas 75201
972.934.4700
www.NexBank.com

FDIC

Date 8/30/19 Page 1
Primary Account [redacted]
Enclosures

Highland Capital Management LP
300 Crescent Court Suite 700
Dallas TX 75201

NexBank's Privacy Notice, which has not changed, is available on our website at www.NexBank.com/files/privacynotice.pdf. If you would like a copy of our Privacy Notice mailed to you, please call us at 972-934-4700.

Checking Account/s

Account Type: Highland Capital Management LP

Analysis Checking w/ Interest
Account Number [redacted] Statement Dates 8/01/19 thru 9/02/19

Deposits and Additions

Date	Description	Amount
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]
8/09	IB Transfer from D ****656 to D ****130	550,000.00
[redacted]	[redacted]	[redacted]
8/13	IB Transfer from D ****171 to D ****130	1,300,000.00
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]
8/21	IB Transfer from D ****656 to D ****130	5,600,000.00
[redacted]	[redacted]	[redacted]

MEMBER FDIC NOTICE: SEE LAST PAGE FOR IMPORTANT INFORMATION
Payments received at the address indicated on this statement by 3 00 pm. Central Standard Time each banking day will be credited as of that date.

NexBank™
2515 McKinney Avenue, 11th Floor
Dallas, Texas 75201
972.934.4700
www.NexBank.com

FDIC

Date 8/30/19 Page 2
Primary Account [redacted]
Enclosures

Analysis Checking w/ Interest [redacted] (Continued)

Deposits and Additions

Date	Description	Amount
[redacted]	[redacted]	[redacted]

Checks and Withdrawals

Date	Description	Amount
[redacted]	[redacted]	[redacted]

[redacted]

MEMBER FDIC

NOTICE: SEE LAST PAGE FOR IMPORTANT INFORMATION
Payments received at the address indicated on this statement by 3 00 pm. Central Standard Time each banking day will be credited as of that date.

NEXBANK

2515 McKinney Avenue, 11th Floor
Dallas, Texas 75201
972.934.4700
www.NexBank.com

FDIC

Date 8/30/19 Page 3
Primary Account [redacted]
Enclosures

Analysis Checking w/ Interest [redacted] (Continued)

End of Statement

MEMBER FDIC

NOTICE: SEE LAST PAGE FOR IMPORTANT INFORMATION
Payments received at the address indicated on this statement by 3 00 pm. Central Standard Time each banking day will be credited as of that date.

OUTSTANDING CHECKS

Reconciliation of Account			
CHECKS WRITTEN BUT NOT PAID			
NUMBER	AMOUNT		
Total of Checks not paid			

RECONCILIATION INSTRUCTIONS

Date _____

Please examine this statement and items at once and refer any exceptions immediately.

Sort your checks numerically or by date issued.

Mark off in your checkbook each of your checks paid by the bank and list the numbers and amounts of those not paid in the space provided at the left. Include any checks still not paid from previous statements.

Subtract from your checkbook balance any SERVICE CHARGE (S.C.) or bank charge appearing on this statement.

Reconcile your statement in the space provided below.

Enter bank balance from statement			
Add deposits not credited by bank (if any)			
TOTAL			
Subtract total of checks not paid			
THIS AMOUNT SHOULD EQUAL YOUR CHECKBOOK BALANCE->			

Any Charge for Imprinted Checks Includes State Sales Tax Computed at the Current Rate, When Applicable
Notice: The Annual Percentage Rate and Daily Periodic Rate may vary.

EXPLANATION OF BALANCE ON WHICH THE INTEREST CHARGE IS COMPUTED

We figure the interest charge on your account by applying the periodic rate to the "daily balance" of your account for each day in the billing cycle. To get the "daily balance" we take the beginning balance of your account each day, add any new advances/fees, and subtract any unpaid interest or other finance charges and any payments or credits. This gives us the daily balance.

WHAT TO DO IF YOU THINK YOU FIND A MISTAKE ON YOUR STATEMENT

If you think there is an error on your statement, write to us at:
NexBank
2515 McKinney Avenue, 11th Floor
Dallas, Texas 75201
You may also contact us on the Web: www.nexbank.com
In your letter, give us the following information:

- Account Information: Your name and account number.
- Dollar Amount: The dollar amount of the suspected error.
- Description of Problem: If you think there is an error on your bill, describe what you believe is wrong and why you believe it is a mistake.

You must contact us within 60 days after the error appeared on your statement.
You must notify us of any potential errors in writing or electronically. You may call us, but if you do we are not required to investigate any potential errors and you may have to pay the amount in question.
While we investigate whether or not there has been an error, the following are true:

- We cannot try to collect the amount in question, or report you as delinquent on that amount.
- The charge in question may remain on your statement, and we may continue to charge you interest on that amount. But, if we determine that we made a mistake, you will not have to pay the amount in question or any interest or other fees related to that amount.
- While you do not have to pay the amount in question, you are responsible for the remainder of your balance.
- We can apply any unpaid amount against your credit limit.

IN CASE OF ERRORS OR QUESTIONS ABOUT YOUR ELECTRONIC TRANSFERS

In Case of Errors or Questions About Your Electronic Transfers, Telephone us at 972.934.4700 or Write us at NexBank, 2515 McKinney Avenue, 11th Floor, Dallas, Texas 75201 as soon as you can, if you think your statement or receipt is wrong or if you need more information about a transfer on the statement or receipt. We must hear from you no later than 60 days after we sent you the FIRST statement on which the error or problem appeared.
(1) Tell us your name and account number (if any).
(2) Describe the error or transfer you are unsure about, and explain as clearly as you can why you believe it is an error or why you need more information.
(3) Tell us the dollar amount of the suspected error.
We will investigate your complaint and will correct any error promptly. If we take more than 10 business days to do this, we will credit your account for the amount you think is in error, so that you will have use of the money during the time it takes us to complete our investigation.

EXHIBIT 122

EASTWESTBANK Your financial bridge®

135 N. Los Robles Ave., 6TH FL.
Pasadena, CA 91101

Direct inquiries to:
888 895 5650

ACCOUNT STATEMENT
Page 1 of 6
STARTING DATE: December 01, 2019
ENDING DATE: December 31, 2019
Total days in statement period: 31
[redacted]
(9)

HIGHLAND CAPITAL MANAGEMENT LP
CHAPTER 11 DEBTOR IN POSSESSION
CASE #19-12239-CSS
OPERATING ACCOUNT
300 CRESCENT CT SUITE 700
DALLAS TX 75201-0000

Have you signed up for Direct Deposits? Get your paycheck without waiting for a paper check and making a trip to the bank. Payments get deposited into your account automatically. Enrolling is easy! Talk to your payer or call 888.895.5650 for more details!

Commercial Analysis Checking

Account number [redacted] (45) (97) [redacted]

CREDITS

Number	Date	Transaction Description		Additions
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
	12 09	Wire Trans-IN	NEXPOINT ADVISORS, LP	1,518,575.34
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]

3409 rev 05-16

EAST WEST BANK Your financial bridge®

135 N. Los Robles Ave., 6TH FL.
Pasadena, CA 91101

HIGHLAND CAPITAL MANAGEMENT LP

ACCOUNT STATEMENT

STARTING DATE: December 01, 2019
ENDING DATE: December 31, 2019
[redacted]

Number	Date	Transaction Description		Additions
[redacted]				
	12-30	Wire Trans-IN	HIGHLAND CAPITAL M ANAGEMENT SE	65,360.49
	12-30	Wire Trans-IN	HCRE PARTNERS, LLC	477,481.61
	12-30	Wire Trans-IN	NEXPOINT ADVISORS, LP	530,112.36
		Wire Trans-IN	BARRIER ADVISORS, INC.	
[redacted]				

CHECKS

Number	Date	Amount	Number	Date	Amount
[redacted]					

DEBITS

Date	Transaction Description	Subtractions
[redacted]		

EAST WEST BANK Your financial bridge®

135 N. Los Robles Ave., 6TH FL.
Pasadena, CA 91101

HIGHLAND CAPITAL MANAGEMENT LP

ACCOUNT STATEMENT
Page 3 of 6
STARTING DATE: December 01, 2019
ENDING DATE: December 31, 2019
[redacted]

Date	Transaction Description	Subtractions
[redacted]	[redacted]	[redacted]

EAST WEST BANK Your financial bridge®

135 N. Los Robles Ave., 6TH FL.
Pasadena, CA 91101

HIGHLAND CAPITAL MANAGEMENT LP

ACCOUNT STATEMENT

STARTING DATE: December 01, 2019
ENDING DATE: December 31, 2019 [redacted]

[redacted]

[redacted]

[redacted]

	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]

[redacted]

[redacted]

[redacted]

EXHIBIT 123

Primary Account: [redacted]
Beginning June 1, 2019 - Ending June 30, 2019 30

BBVA

21 HIGHLAND CAPITAL MANAGEMENT LP
MASTER OPERATING ACCOUNT
300 CRESCENT CT STE 700
DALLAS TX 75201-7849

Contacting Us

Available by phone 24/7

Phone 1-800-266-7277

Online bbvausa.com

Write BBVA
Customer Service
P.O. Box 10566
Birmingham, AL 35296

Your BBVA Account(s)

Please see important message regarding your TREASURY MANAGEMENT ANALYSIS CHECKING account

Summary of Accounts

Deposit Accounts/ Other Products

Account	Account number	Ending balance last statement	Ending balance this statement
TREASURY MANAGEMENT ANALYSIS CHECKING	[redacted]	[redacted]	[redacted]
[redacted]		[redacted]	[redacted]

BBVA Compass is now BBVA. Transforming banking to put the world's opportunities in your hands.

BBVA

TREASURY MANAGEMENT ANALYSIS CHECKING

Account Number: [redacted]

Account Information

We have updated the Treasury Management Service Agreement. These terms and conditions will become effective as of August 1, 2019. You can find a current version of the agreement by going to:
http://www.bbvausa.com/commercial/treasury-management/resource-central/
The user ID is "treasury" and the password is "management."

Activity Summary

[redacted]	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]

Deposits and Other Credits

Date *	Check/ Serial #	Description	Deposits/ Credits
[redacted]		[redacted]	[redacted]
6/4		INCOMING WIRE W/ADVICE REF 20190604F2QCZ60C00344906041614FT03 ORG HIGHLAND CAPITAL M	$500,000.00
6/4		INCOMING WIRE W/ADVICE REF 20190604F2QCZ60C00345006041614FT03 ORG NEXPOINT ADVISORS,	$300,000.00
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]

Primary Account: [redacted]
Beginning June 1, 2019 - Ending June 30, 2019 30

BBVA

Date *	Check/ Serial #	Description	Deposits/ Credits
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]

[redacted]

Withdrawals and Other Debits

Date *	Check/ Serial #	Description	Withdrawals/ Debits
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]

BBVA

Date *	Check/ Serial #	Description	Withdrawals/ Debits
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]

BBVA

Date *	Check/ Serial #	Description	Withdrawals/ Debits
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]

BBVA

Date *	Check/ Serial #	Description	Withdrawals/ Debits
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]

BBVA

Date *	Check/ Serial #	Description	Withdrawals/ Debits
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]

BBVA

Date *	Check/ Serial #	Description	Withdrawals/ Debits
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]

[redacted]

[redacted]

[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]

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[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]

[redacted]

BBVA

How to Balance Your Account

Step 1
- Enter all checks, deposits, and other automated teller card (ATM) transactions in your register.
- Record all automated deductions, debit card transactions and electronic bill payments.
- Record and deduct service charges, check printing charges, or other bank fees.
- If you have an interest bearing account, add any interest earned shown on this statement.

Step 2
- If applicable, sort checks in numerical order and mark in your register each check or other transaction that is listed on this statement.

Step 3
- List any deposits or credits your have made that do not appear on this statement (see space provided below).

Step 4
- List any checks you have written, debit card transactions, electronic payments and other deductions that do not appear on this statement (see space provided below).

Date/Description	Amount
Step 3 Total	$

Date/Description	Check #	Amount
	Step 4 Total	$

Balancing Your Register to this Statement

Step 5	• Enter the "current balance" shown on this statement	
	• Add total from Step 3	
	• Subtotal	
	• Subtract total from Step 4	
	• This balance should equal your register balance	
	If it does not agree, see steps below	$

If your account does not balance, review the following:
- Check all your addition and subtraction above in your register.
- Make sure you remembered to subtract service charges listed on this statement and add any interest earned to your register.
- Amounts of deposits and withdrawals on this statement should match your register entries.
- If you have questions or need assistance, please refer to the phone number on the front of this statement.

Change of Address
Please call us at the telephone number listed on the front of this statement to tell us about a change of address.

Electronic Transfers *(for consumer accounts only)*
In case of errors or questions about your Electronic Transfers, write to BBVA, Operations Compliance Support, P.O. Box 10566, Birmingham, AL 35296. Or simply call your local customer service number printed on he front of this statement. Call or write as soon as you can, if you think your statement or receipt is wrong or if you need more information about a transfer on the statement or receipt. We must hear from you no later than 60 days after we sent the first statement on which the error or problem appeared.

- Tell us your name and account number (if any).
- Describe the error or he transfer you are unsure about, and explain as clearly as you can why you believe it is an error or why you need more information.
- Tell us the dollar amount of the suspected error.

We will investigate your complaint and will correct any error promptly. If we take more than 10 business days (20 on claims on accounts opened less than 30 calendar days) to do this, we will credit your account for the amount you think is in error, so hat you will have the use of the money during the time it takes us to complete our inves igation.

*For Non-Consumer Account customers, please refer to your current Non-Consumer Account Agreement for details regarding Electronic Fund Transfers.

Overdraft Protection
Calculation of Interest Charge and Balance Subject to Interest Rate. The interest charge is computed using your annual percentage rate divided by 365 or, in he case of a leap year, 366, which gives you the "Applicable Rate." Although we calculate the interest charge by applying the Applicable Rate to each daily balance, the interest charge can also be calculated by multiplying the Applicable Rate by the "average daily balance"(Balance Subject to Interest Rate) shown on this statement, hen multiplying that sum by the number of days in the billing cycle. To get the "Balance Subject to Interest Rate" shown on this statement we take the beginning balance of your account less any unpaid finance charges each day, add any new advances or debits, and subtract any payments or credits. This gives us the daily balance. Then we add all the daily balances for the billing cycle and divide by the number of days in the billing cycle. This give us the "average daily balance" shown on the statement as "Balance Subject to Interest Rate". Payments. Payments to your overdraft protec ion loan account made through our tellers or deposited at our automated teller machines (ATM s) Monday through Friday before he posted cut-off time will be posted to your account on the date they are accepted. Otherwise, they will be posted on the next business day. Payments made through our ATM s via a funds transfer will be posted on the date they are received or on the next business day if made after 6pm CT (6pm MT for Arizona accounts and 6pm PT for California accounts) Monday through Friday or any ime Saturday, Sunday or bank holidays. BBVA business days are Monday hrough Friday, excluding holidays.

In Case of Errors or Questions About Your Statement (Overdraft Protection Only)
If you think your statement is wrong, or if you need more information about a transaction on your statement, write your issue on a separate document and send it to Bankcard Center, P.O. Box 2210, Decatur, AL 35699-0001. Telephone inquires may be made by calling your local BBVA branch listed on the front of this statement to speak with a Customer Service Representative. Please note: a telephone inquiry will not preserve your rights under federal law. We must hear from you no later than sixty (60) days after we sent you the first statement on which the error or problem appeared.

- Tell us your name and account number (if any).
- Describe the error or he transfer you are unsure about, and explain as clearly as you can why you believe it is an error or what you need more information.
- Tell us the dollar amount of the suspected error.

You can stop the automatic deduction of the Minimum Payment from you checking account if you think your statement is wrong. To stop the payment, your letter must reach us three (3) business days before the automatic deduction is scheduled to occur.

Reporting Other Problems
Please review your statement carefully. It is essential that any account errors or any improper transactions on your account be reported to us as soon as reasonably possible. If you fail to notify us of any suspected problems, errors or unauthorized transactions within the time periods specified in the deposit account agreement, we are not liable to you for any loss related to the problem, error or unauthorized transaction.

BBVA and BBVA Compass are trade names of BBVA USA, a member of the BBVA Group. BBVA USA, Member FDIC.

EXHIBIT 124

EASTWESTBANK Your financial bridge®

9300 Flair Dr., 1St FL
El Monte, CA. 91731

Direct inquiries to:
888 761 3967

ACCOUNT STATEMENT
Page 1 of 4
STARTING DATE: January 01, 2021
ENDING DATE: January 31, 2021
Total days in statement period: 31
[redacted]
(0)

HIGHLAND CAPITAL MANAGEMENT LP
CHAPTER 11 DEBTOR IN POSSESSION
CASE #19 12239
OPERATING ACCOUNT
300 CRESCENT CT SUITE 700
DALLAS TX 75201 0000

Have you signed up for Direct Deposits? Get your paycheck without waiting for a paper check and making a trip to the bank. Payments get deposited into your account automatically. Enrolling is easy! Talk to your payer or call 888.895.5650 for more details!

Commercial Analysis Checking

Account number [redacted]

Beginning balance [redacted]
(15) [redacted]
(111) [redacted]

CREDITS

Number	Date	Transaction Description		Additions
	[redacted]			
	01 14	Wire Trans-IN	NEXPOINT ADVISORS, LP	1,406,111.92
	[redacted]			
	01 21	Wire Trans-IN	HIGHLAND CAPITAL M ANAGEMENT SE	181,226.83
	01 21	Wire Trans-IN	HCRE PARTNERS, LLC	665,811.09
	[redacted]			

DEBITS

Date	Transaction Description	Subtractions
[redacted]		

3409 rev 05-16

EAST WEST BANK Your financial bridge®

9300 Flair Dr., 1St FL
El Monte, CA. 91731

HIGHLAND CAPITAL MANAGEMENT LP

ACCOUNT STATEMENT

STARTING DATE: January 01, 2021
ENDING DATE: January 31, 2021
[redacted]

Date	Transaction Description	Subtractions
[redacted]	[redacted]	[redacted]

EAST WEST BANK Your financial bridge®

9300 Flair Dr., 1St FL
El Monte, CA. 91731

HIGHLAND CAPITAL MANAGEMENT LP

ACCOUNT STATEMENT

STARTING DATE: January 01, 2021
ENDING DATE: January 31, 2021
[redacted]

Date	Transaction Description	Subtractions
[redacted]	[redacted]	[redacted]

EAST WEST BANK Your financial bridge®

9300 Flair Dr., 1St FL
El Monte, CA. 91731

HIGHLAND CAPITAL MANAGEMENT LP

ACCOUNT STATEMENT
Page 4 of 4
STARTING DATE: January 01, 2021
ENDING DATE: January 31, 2021
[redacted]

[redacted]

[redacted]

[redacted]

	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]

STATEMENT BALANCING

Fill in the amounts below from the front of this statement and your checkbook.

ENTER
Ending Balance of this Statement……..... $_____

Add Deposits not shown on this Statement $_____
_____
_____

Sub Total……. $_____

Subtract Checks Issued but not on Statement

CHECK NUMBER OR DATE	AMOUNT	CHECK NUMBER OR DATE	AMOUNT
TOTAL		TOTAL	

Total amount of outstanding checks…… $_____

Balance…..….....** $_____

ENTER
Present Balance in your checkbook…… $_____

Subtract any service charges, finance or any other charges…… $_____

Sub Total …… $_____

Add Monthly Interest Earned …….. $_____

Add any deposits not yet entered in checkbook (Reverse Advances)…….. $_____
_____
_____
_____

Subtract any checks not yet entered in checkbook (Reverse Payments)…….. $_____
_____
_____
_____

Balance……..... $_____

IN CASE OF ERRORS OR QUESTIONS REGARDING YOUR CHECKING ACCOUNT

You must examine your statement carefully and promptly. You are in the best position to discover errors and unauthorized transactions on your account. If you fail to notify us in writing of suspected problems or unauthorized transactions within the time periods as specified in the Deposit Agreement (which periods are no more than 60 days after we make the statement available to you and in some cases 30 days or less), we are not liable to you for, and you agree not to make a claim against us for problems or unauthorized transactions.

IN CASE OF ERRORS OR QUESTIONS ABOUT YOUR ELECTRONIC FUNDS TRANSFERS

Telephone or write your local branch of account, listed on the statement front, as soon as you can if you think your statement or receipt is wrong or if you need more information about a transfer on the statement or receipt. We must hear from you no later than 60 days after we send you the FIRST statement on which the error or problem appeared.

1. Tell us your name and account number.
2. Describe the error or the transfer you are unsure about and explain as clearly as you can why you believe there is an error or why you need more information.
3. Tell us the dollar amount of the suspected error.

We will investigate your complaint and will correct any error promptly. If our investigation takes longer than 10 business days from the date we received your notification, we will provisionally credit your account for the disputed amount until our investigation has been completed. If the disputed amount involves an electronic funds transfer to or from an account within 30 days after the first deposit to the account was made, we will provisionally credit your account within 20 business days from the date we receive your notification.

ACCOUNTS WITH CHECK STORAGE

Upon your request, we will provide you, without charge, legible copies of two checks from each account statement. Additional copies of canceled checks are subject to our service charges. You can make a request for these copies by contacting the branch listed on the front of this statement.

CHANGE OF ADDRESS

Please notify us immediately for change of address by phoning or writing your local branch of account, listed on the front of this statement.

MEMBER FDIC

(REV 11/07)

EXHIBIT 125

Primary Account: [redacted]
Beginning February 1, 2018 - Ending February 28, 2018 28

BBVA Compass

21 HIGHLAND CAPITAL MANAGEMENT LP
MASTER OPERATING ACCOUNT
300 CRESCENT CT STE 700
DALLAS TX 75201-7849

Contacting Us

Available by phone 24/7

Phone 1-800-266-7277

Online bbvacompass.com

Write BBVA Compass
Customer Service
P.O. Box 10566
Birmingham, AL 35296

Summary of Accounts

Deposit Accounts/ Other Products

Account	Account number	Ending balance last statement	Ending balance this statement
[redacted]	[redacted]	[redacted]	[redacted]
[redacted]		[redacted]	[redacted]

BBVA Compass

TREASURY MANAGEMENT ANALYSIS CHECKING

Account Number: [redacted] - HIGHLAND CAPITAL MANAGEMENT LP

Activity Summary

Beginning Balance on 2/1/18	[redacted]
Deposits/Credits (130)	[redacted]
Withdrawals/Debits (177)	[redacted]
Ending Balance on 2/28/18	[redacted]

Deposits and Other Credits

Date *	Check/ Serial #	Description	Deposits/ Credits
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]

BBVA Compass

Date *	Check/ Serial #	Description	Deposits/ Credits
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]

BBVA Compass

Date *	Check/ Serial #	Description	Deposits/ Credits
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]

BBVA Compass

Date *	Check/ Serial #	Description	Deposits/ Credits
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]

BBVA Compass

Date *	Check/ Serial #	Description	Deposits/ Credits
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]

BBVA Compass

Date *	Check/ Serial #	Description	Deposits/ Credits
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]

BBVA Compass

Date *	Check/ Serial #	Description	Deposits/ Credits
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]

Please note, certain fees and charges posted to your account may relate to services and/or activity from the prior statement cycle.
* The Date provided is the business day that the transaction is processed.

Withdrawals and Other Debits

Date *	Check/ Serial #	Description	Withdrawals/ Debits
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]

BBVA Compass

Date *	Check/ Serial #	Description	Withdrawals/ Debits
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
2/2		OUT WT E-ACCESS REF 20180202F2QCZ60C002532 BNF James Dondero	$3,825,000.00
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]

BBVA Compass

Date *	Check/ Serial #	Description	Withdrawals/ Debits
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]

BBVA Compass

Date *	Check/ Serial #	Description	Withdrawals/ Debits
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]

BBVA Compass

Date *	Check/ Serial #	Description	Withdrawals/ Debits
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]

BBVA Compass

Date *	Check/ Serial #	Description	Withdrawals/ Debits
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]

BBVA Compass

End of Business Day Balance Summary

Date	Balance	Date	Balance	Date	Balance
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]				

Summary of Checks

Date	Check #	Amount	Date	Check #	Amount	Date	Check #	Amount
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]			

** Indicates break in check sequence*

BBVA Compass

How to Balance Your Account

Step 1
- Enter all checks, deposits, and other automated teller card (ATM) transactions in your register.
- Record all automated deductions, debit card transactions and electronic bill payments.
- Record and deduct service charges, check printing charges, or other bank fees.
- If you have an interest bearing account, add any interest earned shown on this statement.

Step 2
- If applicable, sort checks in numerical order and mark in your register each check or other transaction that is listed on this statement.

Step 3
- List any deposits or credits your have made that do not appear on this statement (see space provided below).

Step 4
- List any checks you have written, debit card transactions, electronic payments and other deductions that do not appear on this statement (see space provided below).

Date/Description	Amount
Step 3 Total	$

Date/Description	Check #	Amount
	Step 4 Total	$

Balancing Your Register to this Statement

Step 5	• Enter the "current balance" shown on this statement	
	• Add total from Step 3	
	• Subtotal	
	• Subtract total from Step 4	
	• This balance should equal your register balance	
	If it does not agree, see steps below	$

If your account does not balance, review the following:
- Check all your addition and subtraction above in your register.
- Make sure you remembered to subtract service charges listed on this statement and add any interest earned to your register.
- Amounts of deposits and withdrawals on this statement should match your register entries.
- If you have questions or need assistance, please refer to the phone number on the front of this statement.

Change of Address
Please call us at the telephone number listed on the front of this statement to tell us about a change of address.

Electronic Transfers *(for consumer accounts only)*
In case of errors or questions about your Electronic Transfers, write to BBVA Compass Bank, Operations Compliance Support, P.O. Box 10566, Birmingham, AL 35296. Or simply call your local customer service number printed on the front of this statement. Call or write as soon as you can, if you think your statement or receipt is wrong or if you need more information about a transfer on the statement or receipt. We must hear from you no later than 60 days after we sent the first statement on which the error or problem appeared.

- Tell us your name and account number (if any).
- Describe the error or the transfer you are unsure about, and explain as clearly as you can why you believe it is an error or why you need more information.
- Tell us the dollar amount of the suspected error.

We will investigate your complaint and will correct any error promptly. If we take more than 10 business days (20 on claims on accounts opened less than 30 calendar days) to do this, we will credit your account for the amount you think is in error, so that you will have the use of the money during the time it takes us to complete our investigation.

*For Non-Consumer Account customers, please refer to your current Non-Consumer Account Agreement for details regarding Electronic Fund Transfers.

Overdraft Protection
Calculation of Interest Charge and Balance Subject to Interest Rate. The interest charge is computed using your annual percentage rate divided by 365 or, in the case of a leap year, 366, which gives you the "Applicable Rate." Although we calculate the interest charge by applying the Applicable Rate to each daily balance, the interest charge can also be calculated by multiplying the Applicable Rate by the "average daily balance"(Balance Subject to Interest Rate) shown on this statement, then multiplying that sum by the number of days in the billing cycle. To get the "Balance Subject to Interest Rate" shown on this statement we take the beginning balance of your account less any unpaid finance charges each day, add any new advances or debits, and subtract any payments or credits. This gives us the daily balance. Then we add all the daily balances for the billing cycle and divide by the number of days in the billing cycle. This give us the "average daily balance" shown on the statement as "Balance Subject to Interest Rate". Payments. Payments to your overdraft protection loan account made through our tellers or deposited at our automated teller machines (ATM s) Monday through Friday before the posted cut-off time will be posted to your account on the date they are accepted. Otherwise, they will be posted on the next business day. Payments made through our ATM s via a funds transfer will be posted on the date they are received or on the next business day if made after 6pm CT (6pm MT for Arizona accounts and 6pm PT for California accounts) Monday through Friday or anytime Saturday, Sunday or bank holidays. BBVA Compass Bank business days are Monday through Friday, excluding holidays.

In Case of Errors or Questions About Your Statement (Overdraft Protection Only)
If you think your statement is wrong, or if you need more information about a transaction on your statement, write your issue on a separate document and send it to Bankcard Center, P.O. Box 2210, Decatur, AL 35699-0001. Telephone inquires may be made by calling your local BBVA Compass branch listed on the front of this statement to speak with a Customer Service Representative. Please note: a telephone inquiry will not preserve your rights under federal law. We must hear from you no later than sixty (60) days after we sent you the first statement on which the error or problem appeared.

- Tell us your name and account number (if any).
- Describe the error or the transfer you are unsure about, and explain as clearly as you can why you believe it is an error or what you need more information.
- Tell us the dollar amount of the suspected error.

You can stop the automatic deduction of the Minimum Payment from you checking account if you think your statement is wrong. To stop the payment, your letter must reach us three (3) business days before the automatic deduction is scheduled to occur.

Reporting Other Problems
Please review your statement carefully. It is essential that any account errors or any improper transactions on your account be reported to us as soon as reasonably possible. If you fail to notify us of any suspected problems, errors or unauthorized transactions within the time periods specified in the deposit account agreement, we are not liable to you for any loss related to the problem, error or unauthorized transaction.

BBVA Compass is a trade name of Compass Bank, a member of the BBVA Group.
Compass Bank, Member FDIC.

EXHIBIT 126

NEXBANK
2515 McKinney Avenue, 11th Floor
Dallas, Texas 75201
972.934.4700
www.NexBank.com

EQUAL HOUSING LENDER
FDIC

Date 8/31/18 Page 1
Primary Account [redacted]
Enclosures

Highland Capital Management LP
300 Crescent Court Suite 700
Dallas TX 75201

NexBank's Privacy Notice, which has not changed, is available on our website at www.NexBank.com/files/privacynotice.pdf. If you would like a copy of our Privacy Notice mailed to you, please call us at 972-934-4700.

Checking Account/s

Account Type: Highland Capital Management LP

Analysis Checking w/ Interest
Account Number [redacted] Statement Dates 8/01/18 thru 9/03/18

[redacted]

Deposits and Additions

Date	Description	Amount
[redacted]		

NEXBANK
2515 McKinney Avenue, 11th Floor
Dallas, Texas 75201
972.934.4700
www.NexBank.com

Date 8/31/18 Page 2
Primary Account [redacted]
Enclosures

Analysis Checking w/ Interest [redacted] (Continued)

Checks and Withdrawals

Date	Description	Amount
8/01	IB Transfer from D ****130 to D ****884	2,500,000.00-
8/13	IB Transfer from D ****130 to D ****884	2,500,000.00-

[redacted]

Daily Balance Information

Date	Balance	Date	Balance	Date	Balance

[redacted]

End of Statement

OUTSTANDING CHECKS

Reconciliation of Account

CHECKS WRITTEN BUT NOT PAID			
NUMBER	AMOUNT		

EXHIBIT 127

NEXBANK
2515 McKinney Avenue, 11th Floor
Dallas, Texas 75201
972.934.4700
www.NexBank.com

Date 5/29/15 Page 1
Primary Account [redacted]
Enclosures

Highland Capital Management LP
300 Crescent Court Suite 700
Dallas TX 75201

NexBank's Privacy Policy is accessible at www.NexBank.com

Checking Account/s

Account Type: Highland Capital Management LP

Analysis Checking w/ Interest

Account Number	[redacted]	Statement Dates	5/01/15 thru 5/31/15
Last Statement Balance	[redacted]	Days in the statement period	[redacted]
6 Deposits/Credits	[redacted]	Average Ledger	[redacted]
6 Checks/Debits	[redacted]	Average Collected	[redacted]
Service Charge	[redacted]	Interest Earned	[redacted]
Interest Paid	[redacted]	Annual Percentage Yield Earned	[redacted]
This Statement Balance	[redacted]	2015 Interest Paid	[redacted]

Deposits and Additions

Date	Description	Amount
[redacted]		

Checks and Withdrawals

Date	Description	Amount

NEXBANK
2515 McKinney Avenue, 11th Floor
Dallas, Texas 75201
972.934.4700
www.NexBank.com

Date 5/29/15 Page 2
Primary Account [redacted]
Enclosures

Analysis Checking w/ Interest [redacted] (Continued)

Checks and Withdrawals

Date	Description	Amount
[redacted]		
5/29	IB Transfer from D ****130 to D ****656	500,000.00-
[redacted]		

Daily Balance Information

Date	Balance	Date	Balance	Date	Balance
[redacted]					

Interest Rate Summary

Date	Rate
[redacted]	

End of Statement

OUTSTANDING CHECKS				RECONCILIATION INSTRUCTIONS			
Reconciliation of Account				Date _____ Please examine this statement and items at once and refer any exceptions immediately. Sort your checks numerically or by date issued. Mark off in your checkbook each of your checks paid by the bank and list the numbers and amounts of those not paid in the space provided at the left. Include any checks still not paid from previous statements. Subtract from your checkbook balance any SERVICE CHARGE (S.C.) or bank charge appearing on this statement. Reconcile your statement in the space provided below.			
CHECKS WRITTEN BUT NOT PAID							
NUMBER	AMOUNT						
				Enter bank balance from statement			
				Add deposits not credited by bank (if any)			
				TOTAL			
Total of Checks not paid				Subtract total of checks not paid			
				THIS AMOUNT SHOULD EQUAL YOUR CHECKBOOK BALANCE->			

Any Charge for Imprinted Checks Includes State Sales Tax Computed at the Current Rate, When Applicable
Notice: The Annual Percentage Rate and Daily Periodic Rate may vary.

EXPLANATION OF BALANCE ON WHICH THE INTEREST CHARGE IS COMPUTED

We figure the interest charge on your account by applying the periodic rate to the "daily balance" of your account for each day in the billing cycle. To get the "daily balance" we take the beginning balance of your account each day, add any new advances/fees, and subtract any unpaid interest or other finance charges and any payments or credits. This gives us the daily balance.

WHAT TO DO IF YOU THINK YOU FIND A MISTAKE ON YOUR STATEMENT

If you think there is an error on your statement, write to us at:
NexBank
2515 McKinney Avenue, 11th Floor
Dallas, Texas 75201
You may also contact us on the Web: www.nexbank.com
In your letter, give us the following information:

- Account Information: Your name and account number.
- Dollar Amount: The dollar amount of the suspected error.
- Description of Problem: If you think there is an error on your bill, describe what you believe is wrong and why you believe it is a mistake.

You must contact us within 60 days after the error appeared on your statement.
You must notify us of any potential errors in writing or electronically. You may call us, but if you do we are not required to investigate any potential errors and you may have to pay the amount in question.
While we investigate whether or not there has been an error, the following are true:

- We cannot try to collect the amount in question, or report you as delinquent on that amount.
- The charge in question may remain on your statement, and we may continue to charge you interest on that amount. But, if we determine that we made a mistake, you will not have to pay the amount in question or any interest or other fees related to that amount.
- While you do not have to pay the amount in question, you are responsible for the remainder of your balance.
- We can apply any unpaid amount against your credit limit.

IN CASE OF ERRORS OR QUESTIONS ABOUT YOUR ELECTRONIC TRANSFERS

In Case of Errors or Questions About Your Electronic Transfers, Telephone us at 972.934.4700 or Write us at NexBank, 2515 McKinney Avenue, 11th Floor, Dallas, Texas 75201 as soon as you can, if you think your statement or receipt is wrong or if you need more information about a transfer on the statement or receipt. We must hear from you no later than 60 days after we sent you the FIRST statement on which the error or problem appeared.
(1) Tell us your name and account number (if any).
(2) Describe the error or transfer you are unsure about, and explain as clearly as you can why you believe it is an error or why you need more information.
(3) Tell us the dollar amount of the suspected error.
We will investigate your complaint and will correct any error promptly. If we take more than 10 business days to do this, we will credit your account for the amount you think is in error, so that you will have use of the money during the time it takes us to complete our investigation.

EXHIBIT 128

Primary Account: [redacted]
Beginning October 1, 2015 - Ending October 31, 2015 31

BBVA Compass

21 HIGHLAND CAPITAL MANAGEMENT LP
MASTER OPERATING ACCOUNT
300 CRESCENT CT STE 700
DALLAS TX 75201-7849

Contacting Us

Available by phone 24/7

Phone 1-800-266-7277

Online bbvacompass.com

Write BBVA Compass
Customer Service
P.O. Box 10566
Birmingham, AL 35296

Summary of Accounts

Deposit Accounts/ Other Products

Account	Account number	Ending balance last statement	Ending balance this statement
[redacted]	[redacted]	[redacted]	[redacted]
Total Deposit Accounts		[redacted]	[redacted]

BBVA Compass

TREASURY MANAGEMENT ANALYSIS CHECKING

Account Number: [redacted] - HIGHLAND CAPITAL MANAGEMENT LP

Activity Summary

Beginning Balance on 10/1/15	[redacted]
Deposits/Credits (25)	[redacted]
Withdrawals/Debits (154)	[redacted]
Ending Balance on 10/31/15	[redacted]

Deposits and Other Credits

Date *	Check/ Serial #	Description	Deposits/ Credits
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]

BBVA Compass

Date *	Check/ Serial #	Description	Deposits/ Credits
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]

Please note, certain fees and charges posted to your account may relate to services and/or activity from the prior statement cycle.
* The Date provided is the business day that the transaction is processed.

Withdrawals and Other Debits

Date *	Check/ Serial #	Description	Withdrawals/ Debits
[redacted]		[redacted]	[redacted]
10/1		OUT WT E-ACCESS REF 20151001F2QCZ60C001349 BNF Highland Capital M	$350,000.00
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
10/2		OUT WT E-ACCESS REF 20151002F2QCZ60C001218 BNF Jefferies LLC	$310,000.00
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]

BBVA Compass

Date *	Check/ Serial #	Description	Withdrawals/ Debits
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]

BBVA Compass

Date *	Check/ Serial #	Description	Withdrawals/ Debits
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
10/30		OUT WT E-ACCESS REF 20151030F2QCZ60C002353 BNF Highland Capital M	$100,000.00

Please note, certain fees and charges posted to your account may relate to services and/or activity from the prior statement cycle.
* The Date provided is the business day that the transaction is processed.

End of Business Day Balance Summary

Date	Balance	Date	Balance	Date	Balance
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]

BBVA Compass

Summary of Checks

Date	Check #	Amount	Date	Check #	Amount	Date	Check #	Amount
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]

BBVA Compass

How to Balance Your Account

Step 1
- Enter all checks, deposits, and other automated teller card (ATM) transactions in your register.
- Record all automated deductions, debit card transactions and electronic bill payments.
- Record and deduct service charges, check printing charges, or other bank fees.
- If you have an interest bearing account, add any interest earned shown on this statement.

Step 2
- If applicable, sort checks in numerical order and mark in your register each check or other transaction that is listed on this statement.

Step 3
- List any deposits or credits your have made that do not appear on this statement (see space provided below).

Step 4
- List any checks you have written, debit card transactions, electronic payments and other deductions that do not appear on this statement (see space provided below).

Date/Description	Amount
Step 3 Total	$

Date/Description	Check #	Amount
	Step 4 Total	$

Balancing Your Register to this Statement

Step 5	• Enter the "current balance" shown on this statement	
	• Add total from Step 3	
	• Subtotal	
	• Subtract total from Step 4	
	• This balance should equal your register balance	
	If it does not agree, see steps below $	

If your account does not balance, review the following:
- Check all your addition and subtraction above in your register.
- Make sure you remembered to subtract service charges listed on this statement and add any interest earned to your register.
- Amounts of deposits and withdrawals on this statement should match your register entries.
- If you have questions or need assistance, please refer to the phone number on the front of this statement.

Change of Address
Please call us at the telephone number listed on the front of this statement to tell us about a change of address.

Electronic Transfers *(for consumer accounts only)*
In case of errors or questions about your Electronic Transfers, write to BBVA Compass Bank, Operations Compliance Support, P.O. Box 10566, Birmingham, AL 35296. Or simply call your local customer service number printed on the front of this statement. Call or write as soon as you can, if you think your statement or receipt is wrong or if you need more information about a transfer on the statement or receipt. We must hear from you no later than 60 days after we sent the first statement on which the error or problem appeared.

- Tell us your name and account number (if any).
- Describe the error or the transfer you are unsure about, and explain as clearly as you can why you believe it is an error or why you need more information.
- Tell us the dollar amount of the suspected error.

We will investigate your complaint and will correct any error promptly. If we take more than 10 business days (20 on claims on accounts opened less than 30 calendar days) to do this, we will credit your account for the amount you think is in error, so that you will have the use of the money during the time it takes us to complete our investigation.

*For Non-Consumer Account customers, please refer to your current Non-Consumer Account Agreement for details regarding Electronic Fund Transfers.

Overdraft Protection
Calculation of Interest Charge and Balance Subject to Interest Rate. The interest charge is computed using your annual percentage rate divided by 365 or, in the case of a leap year, 366, which gives you the "Applicable Rate." Although we calculate the interest charge by applying the Applicable Rate to each daily balance, the interest charge can also be calculated by multiplying the Applicable Rate by the "average daily balance"(Balance Subject to Interest Rate) shown on this statement, then multiplying that sum by the number of days in the billing cycle. To get the "Balance Subject to Interest Rate" shown on this statement we take the beginning balance of your account less any unpaid finance charges each day, add any new advances or debits, and subtract any payments or credits. This gives us the daily balance. Then we add all the daily balances for the billing cycle and divide by the number of days in the billing cycle. This give us the "average daily balance" shown on the statement as "Balance Subject to Interest Rate". Payments. Payments to your overdraft protection loan account made through our tellers or deposited at our automated teller machines (ATM s) Monday through Friday before the posted cut-off time will be posted to your account on the date they are accepted. Otherwise, they will be posted on the next business day. Payments made through our ATM s via a funds transfer will be posted on the date they are received or on the next business day if made after 6pm CT (6pm MT for Arizona accounts and 6pm PT for California accounts) Monday through Friday or anytime Saturday, Sunday or bank holidays. BBVA Compass Bank business days are Monday through Friday, excluding holidays.

In Case of Errors or Questions About Your Statement (Overdraft Protection Only)
If you think your statement is wrong, or if you need more information about a transaction on your statement, write your issue on a separate document and send it to Bankcard Center, P.O. Box 2210, Decatur, AL 35699-0001. Telephone inquires may be made by calling your local BBVA Compass branch listed on the front of this statement to speak with a Customer Service Representative. Please note: a telephone inquiry will not preserve your rights under federal law. We must hear from you no later than sixty (60) days after we sent you the first statement on which the error or problem appeared.

- Tell us your name and account number (if any).
- Describe the error or the transfer you are unsure about, and explain as clearly as you can why you believe it is an error or what you need more information.
- Tell us the dollar amount of the suspected error.

You can stop the automatic deduction of the Minimum Payment from you checking account if you think your statement is wrong. To stop the payment, your letter must reach us three (3) business days before the automatic deduction is scheduled to occur.

Reporting Other Problems
Please review your statement carefully. It is essential that any account errors or any improper transactions on your account be reported to us as soon as reasonably possible. If you fail to notify us of any suspected problems, errors or unauthorized transactions within the time periods specified in the deposit account agreement, we are not liable to you for any loss related to the problem, error or unauthorized transaction.

BBVA Compass is a trade name of Compass Bank, a member of the BBVA Group.
Compass Bank, Member FDIC.

EXHIBIT 129

NEXBANK
2515 McKinney Avenue, 11th Floor
Dallas, Texas 75201
972.934.4700
www.NexBank.com

Date 10/30/15 Page 1
Primary Account [redacted]
Enclosures

Highland Capital Management LP
300 Crescent Court Suite 700
Dallas TX 75201

NexBank's Privacy Policy is accessible at www.NexBank.com

Checking Account/s

Account Type: Highland Capital Management LP

Analysis Checking w/ Interest

Account Number	[redacted]0	Statement Dates	10/01/15 thru 11/01/15
Last Statement Balance	[redacted]	Days in the statement period	[redacted]
12 Deposits/Credits	[redacted]7	Average Ledger	[redacted]
5 Checks/Debits	[redacted]	Average Collected	[redacted]
Service Charge	[redacted]	Interest Earned	[redacted]
Interest Paid	[redacted]	Annual Percentage Yield Earned	[redacted]
This Statement Balance	[redacted]	2015 Interest Paid	[redacted]

Deposits and Additions

[redacted]

NEXBANK
2515 McKinney Avenue, 11th Floor
Dallas, Texas 75201
972.934.4700
www.NexBank.com

Date 10/30/15 Page 2
Primary Account [redacted]
Enclosures

Analysis Checking w/ Interest 1614130 (Continued)

Deposits and Additions

Date	Description	Amount
[redacted]		

Checks and Withdrawals

Date	Description	Amount
[redacted]		
10/27	OUTGOING WIRE HIGHLAND CAPITAL MGMT SERVICES	200,000.00-
[redacted]		

Daily Balance Information

Date	Balance	Date	Balance	Date	Balance
[redacted]					

Interest Rate Summary

Date	Rate
[redacted]	

End of Statement

OUTSTANDING CHECKS

Reconciliation of Account			
CHECKS WRITTEN BUT NOT PAID			
NUMBER	AMOUNT		
Total of Checks not paid			

RECONCILIATION INSTRUCTIONS

Date _____

Please examine this statement and items at once and refer any exceptions immediately.

Sort your checks numerically or by date issued.

Mark off in your checkbook each of your checks paid by the bank and list the numbers and amounts of those not paid in the space provided at the left. Include any checks still not paid from previous statements.

Subtract from your checkbook balance any SERVICE CHARGE (S.C.) or bank charge appearing on this statement.

Reconcile your statement in the space provided below.

Enter bank balance from statement			
Add deposits not credited by bank (if any)			
TOTAL			
Subtract total of checks not paid			
THIS AMOUNT SHOULD EQUAL YOUR CHECKBOOK BALANCE->			

Any Charge for Imprinted Checks Includes State Sales Tax Computed at the Current Rate, When Applicable
Notice: The Annual Percentage Rate and Daily Periodic Rate may vary.

EXPLANATION OF BALANCE ON WHICH THE INTEREST CHARGE IS COMPUTED

We figure the interest charge on your account by applying the periodic rate to the "daily balance" of your account for each day in the billing cycle. To get the "daily balance" we take the beginning balance of your account each day, add any new advances/fees, and subtract any unpaid interest or other finance charges and any payments or credits. This gives us the daily balance.

WHAT TO DO IF YOU THINK YOU FIND A MISTAKE ON YOUR STATEMENT

If you think there is an error on your statement, write to us at:
NexBank
2515 McKinney Avenue, 11th Floor
Dallas, Texas 75201
You may also contact us on the Web: www.nexbank.com
In your letter, give us the following information:

- Account Information: Your name and account number.
- Dollar Amount: The dollar amount of the suspected error.
- Description of Problem: If you think there is an error on your bill, describe what you believe is wrong and why you believe it is a mistake.

You must contact us within 60 days after the error appeared on your statement.
You must notify us of any potential errors in writing or electronically. You may call us, but if you do we are not required to investigate any potential errors and you may have to pay the amount in question.
While we investigate whether or not there has been an error, the following are true:

- We cannot try to collect the amount in question, or report you as delinquent on that amount.
- The charge in question may remain on your statement, and we may continue to charge you interest on that amount. But, if we determine that we made a mistake, you will not have to pay the amount in question or any interest or other fees related to that amount.
- While you do not have to pay the amount in question, you are responsible for the remainder of your balance.
- We can apply any unpaid amount against your credit limit.

IN CASE OF ERRORS OR QUESTIONS ABOUT YOUR ELECTRONIC TRANSFERS

In Case of Errors or Questions About Your Electronic Transfers, Telephone us at 972.934.4700 or Write us at NexBank, 2515 McKinney Avenue, 11th Floor, Dallas, Texas 75201 as soon as you can, if you think your statement or receipt is wrong or if you need more information about a transfer on the statement or receipt. We must hear from you no later than 60 days after we sent you the FIRST statement on which the error or problem appeared.

(1) Tell us your name and account number (if any).
(2) Describe the error or transfer you are unsure about, and explain as clearly as you can why you believe it is an error or why you need more information.
(3) Tell us the dollar amount of the suspected error.

We will investigate your complaint and will correct any error promptly. If we take more than 10 business days to do this, we will credit your account for the amount you think is in error, so that you will have use of the money during the time it takes us to complete our investigation.

EXHIBIT 130

NEXBANK
2515 McKinney Avenue, 11th Floor
Dallas, Texas 75201
972.934.4700
www.NexBank.com

Date 10/30/15 Page 1
Primary Account [redacted]
Enclosures

Highland Capital Management LP
300 Crescent Court Suite 700
Dallas TX 75201

NexBank's Privacy Policy is accessible at www.NexBank.com

Checking Account/s

Account Type: Highland Capital Management LP

Analysis Checking w/ Interest

Account Number	[redacted]	Statement Dates	10/01/15 thru 11/01/15
Last Statement Balance	[redacted]	Days in the statement period	[redacted]
12 Deposits/Credits	[redacted]	Average Ledger	[redacted]
5 Checks/Debits	[redacted]	Average Collected	[redacted]
Service Charge	[redacted]	Interest Earned	[redacted]
Interest Paid	[redacted]	Annual Percentage Yield Earned	[redacted]
This Statement Balance	[redacted]	2015 Interest Paid	[redacted]

Deposits and Additions

Date	Description	Amount
[redacted]		

NEXBANK
2515 McKinney Avenue, 11th Floor
Dallas, Texas 75201
972.934.4700
www.NexBank.com

Date 10/30/15 Page 2
Primary Account [redacted]
Enclosures

Analysis Checking w/ Interest [redacted] (Continued)

Deposits and Additions

Date	Description	Amount
[redacted]		

Checks and Withdrawals

Date	Description	Amount
[redacted]		
10/28	OUTGOING WIRE HIGHLAND CAPITAL MGMT SERVICES	200,000.00-
[redacted]		

Daily Balance Information

Date	Balance	Date	Balance	Date	Balance
[redacted]					

Interest Rate Summary

Date	Rate
[redacted]	

End of Statement

OUTSTANDING CHECKS

Reconciliation of Account

CHECKS WRITTEN BUT NOT PAID			
NUMBER	AMOUNT		

EXHIBIT 131

Jefferies

Jefferies LLC
520 Madison Avenue, 12th Floor
New York, New York 10022-4213
tel 212.284.2300

Customer Account Number: [redacted] **AE: PB2** **Statement Period: November 01, 2015 to November 30, 2015**

MARKET INDICES

Index	[redacted]	[redacted]	[redacted]

HIGHLAND CAPITAL MANAGEMENT
SERVICES INC
ATTN CARTER CHISIM
300 CRESCEN COURT
SUITE 700
DALLAS TX 75201-7849

ACCOUNT VALUE SUMMARY

Description	As of 10/30/15	This Period
[redacted]	[redacted]	[redacted]
TOTAL	[redacted]	[redacted]

DIVIDENDS, INTEREST, AND TAX ACTIVITY SUMMARY

Description	This Statement	Year to Date
[redacted]	[redacted]	[redacted]
TOTAL INCOME	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]
TOTAL EXPENSES	[redacted]	[redacted]

THIS SUMMARY IS FOR INFORMATIONAL PURPOSES ONLY. IT IS NOT INTENDED AS A TAX DOCUMENT.
THIS STATEMENT SHOULD BE RETAINED FOR YOUR RECORDS.

Please review this statement carefully. If it does not reflect your understanding of your transactions or balances, or there are any errors or omissions on this statement, promptly notify Jefferies LLC ("Jefferies") by calling 201-761-7610. Any oral communications should be re-confirmed in writing to further protect your rights, including those under the Securities Investors Protection Act (SIPA). All written inquires and re-confirmations should be addressed to Jefferies LLC Attn: Customer Reporting Group, 101 Hudson Street, 11th Floor, Jersey City, NJ 07302-3915.

- You may have received a confirmation for a trade that does not appear on this statement. If the statement date of the trade as shown on the confirmation is later than the closing date of this statement (as shown above), that trade will appear on your next regular monthly statement.
- Transactions appearing on this statement may include those, if any, that have been executed by an affiliated broker-dealer but cleared through this account. Please check your confirmations to identify such transactions.
- If you are subject to 1099 reporting requirements, we are required by law to report to the Internal Revenue Service ("IRS") all gross proceeds of sales transactions (including short sales), cash dividends and registered bond interest credited to your account on securities held for you in our name. We also report coupon bond interest and interest earned on credit balances. Your Consolidated Form 1099 rather than your monthly statements is the authoritative document for tax reporting purposes and is used to report information to the IRS.
- If this statement is for a margin account and we maintain a special miscellaneous account for you, this statement is a combined statement of your general account and the special miscellaneous account maintained for you under section 4(f)(6) of Regulation T, issued by the Board of Governors of the Federal Reserve System. As required by Regulation T, the permanent record of the special miscellaneous account is available for your inspection upon request.
- A free credit balance represents funds payable upon demand, which although properly accounted for on Jefferies books are not segregated and may be used in the conduct of Jefferies business. Jefferies offers to routinely transfer ("sweep") your free credit balance into a money market fund at your election. The balance in such fund may be liquidated pursuant to your order and the proceeds returned to your securities account to be held as a free credit balance or remitted to you.
- The prices of securities displayed on your statement are derived from various sources and in some cases may be higher or lower than the price that you would actually receive in the market. Although we attempt to use reliable sources of information, we do not guarantee the accuracy of any securities prices.
- If this statement contains month-end valuations for Direct Participation Programs or Real Estate Investment Trusts, such values may be estimated, and obtained from pricing services or from the issuer in its annual report. If this statement does not contain month-end valuations for such instruments, it may be because accurate valuation information is not available. Please note that such securities are often illiquid and any estimated value may not be realized upon sale. The actual value of such instruments will most likely be different from the original purchase price.
- Jefferies is a member of the Securities Investor Protection Corporation ("SIPC"). SIPC currently protects the securities and cash in your account up to $500,000 of which $250,000 may be in cash. Jefferies has secured additional protection of up to $24,500,000 per account with an aggregate limit of $100,000,000 for all accounts. Neither the SIPC nor the additional coverage protects against the market risks associated with investing. Positions that are held away are not in the custody or control of Jefferies nor are they covered by SIPC or the additional protection secured by Jefferies.
- In order to assist us in maintaining current background and financial information concerning our customers, we request that you promptly advise us in writing of any material change in your investment objectives or financial situation.
- Jefferies' Financial Statements are available for your personal inspection at any of Jefferies' offices, at the regional office of the Securities and Exchange Commission in New York or a copy will be mailed to you upon your written request. A most recent copy of the Audited and Unaudited Consolidated Statement of Financial Condition of Jefferies can be found by visiting the firm's website at www.jefferies.com and go to Investor Relations or call 1-888-JEFFERIES.
- Information with respect to commission and other charges incurred in connection with the execution of option transactions has been included in confirmations previously furnished to you. A summary of this information is available to you promptly upon your written request directed to your account executive.
- Exercise assignment notices for option contracts are allocated among client short positions pursuant to a procedure that randomly selects those contracts which are subject to exercise from among all client short option positions, including positions established on the day of the assignment. All short positions are liable for assignment at any time. A more detailed description of our random allocation procedure is available upon written request.
- In the event there has been any change in your investment objective(s), financial situation and/or risk tolerance, please contact your Account Executive.
- Call features shown on any fixed income security indicate the next regularly scheduled call date and price. Your holdings may be subject to other redemption features, including sinking funds, extraordinary calls or other call provisions. Unrealized gains and losses on bonds, if shown, have been adjusted to account for the accretion of original issue discount, the amortization of premium, and/or the accretion of market discount. For foreign bonds, amounts shown are denominated in the currency of the issue, price is a function of exchange rate and market price, market value is denominated in U.S. dollars, and changes in the exchange rate will affect the face value in U.S. dollars and market value.
- With respect to estimated yield figures shown, such as Estimated Annual Interest and Estimated Yield be advised that: (i) they are estimates, not actual amounts scheduled to be paid; (ii) for certain types of securities the amounts shown could include a return of principal or capital gains, in which case those estimated figures would be overstated; and (iii) the actual income and yield paid might be lower or higher than the estimated amounts. Estimated Yield reflects only the income generated by an investment. It does not reflect changes in price, which may fluctuate.
- Market Linked Investments ("MLIs") are buy and hold investments and are valued at par to reflect 100% principal protection in the investment currency at maturity. MLIs denominated in a currency other than U.S. dollars may be marked to market to reflect changes in the par value of the MLI in U.S. dollar terms.
- Please preserve this statement as it will be helpful in preparing your income tax returns and may be needed along with subsequent statements to verify activity in your account.
- For purposes of computing interest payable by you, balances in all types of accounts (except short, DVP and other) are combined. Credit balances, where applicable, are subtracted from debit balances in determining the daily debit balance, but only to the extent such credit balances do not exceed such debit balances.
- Short accounts are marked-to-the-market. Excess funds are credited to, and deficiencies of funds are debited from, the margin account.
- Interest charged on debit balances (and the applicable interest rate) will appear as a line item in the activity section for those accounts that incurred interest charges during any statement period. This statement should be retained and used in conjunction with the prior and next statement received to determine the amount of interest charged for each interest computation period. Interest will be charged on an average daily net debit balance computed on the basis of a 360-day year. For further information on how to compute interest, refer to the "Truth in Lending Statement". Interest in all months, except for December, is computed two days prior to the last business day of the current month through two days prior to the last business day of the following month and will be processed in your account (debited or credited) one day prior to the last business day of each month. In December, interest will accrue through December 31st and will be processed on the last business day of the calendar year.
- For purposes of any interest earned with respect to credit balances in your account, your statement will display an aggregate credit amount based on your net average daily free credit balance beginning with the day the credit balance begins and for each day during the period displayed.

JEF Rev 2/2014 S1032B06

Jefferies

Jefferies LLC
520 Madison Avenue, 12th Floor
New York, New York 10022-4213
tel 212.284.2300

Customer Account Number: [redacted] **AE: PB2** **Statement Period: November 01, 2015 to November 30, 2015**

INCOME AND DISTRIBUTION ACTIVITY

Date	Transaction	Account Type	Quantity	Description	Rate	Amount Debit	Amount Credit
[redacted]	[redacted]	[redacted]		[redacted]			[redacted]
11/23	WIRE	CASH		WIRE IN HIGHLAND CAPITAL AC 43100933 TwoFour TradeNumber 301033575			100,000.00
[redacted]	[redacted]	[redacted]		[redacted]		[redacted]	
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	.24		[redacted]
TOTAL INCOME AND DISTRIBUTION ACTIVITY:						[redacted]	[redacted]

OTHER ACTIVITY

Date	Transaction	Account Type	Quantity	Description	Amount Debit	Amount Credit
[redacted]	[redacted]	[redacted]		[redacted]	[redacted]	
[redacted]	[redacted]	[redacted]		[redacted]		[redacted]
[redacted]	[redacted]	[redacted]		[redacted]	[redacted]	
[redacted]	[redacted]	[redacted]		[redacted]		[redacted]
TOTAL OTHER ACTIVITY:					[redacted]	[redacted]

PORTFOLIO SUMMARY

Bond ratings are provided by Moody s and Standard & Poor s, respectively. For more information about bond ratings please contact your financial advisor. Estimated figures shown are estimates and actual yield and income may differ.

EQUITIES - LONG POSITIONS: 91.30% of Portfolio

Account Type	Quantity	Description	Symbol/ Cusip	Current Price	Market Value	Estimated Annual Income	Estimated Yield
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]		
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]		

EQUITIES - LONG POSITIONS (Continued)

Account Type	Quantity	Description	Symbol/ Cusip	Current Price	Market Value	Estimated Annual Income	Estimated Yield
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]		
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]		
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]		
		MARKET VALUE OF EQUITIES - LONG POSITIONS			[redacted]	[redacted]	

MUTUAL FUNDS: 8.60% of Portfolio

Account Type	Quantity	Description	Symbol/ Cusip	Current Price	Market Value	Estimated Annual Income	Estimated Yield
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]		
		TOTAL - MUTUAL FUNDS			[redacted]		

Jefferies

Jefferies LLC
520 Madison Avenue, 12th Floor
New York, New York 10022-4213
tel 212.284.2300

SIPC

Customer Account Number: [redacted] **AE: PB2** **Statement Period: November 01, 2015 to November 30, 2015**

Customer Notice

IMPORTANT NOTICE

►In accordance with the requirements of the Securities and Exchange Commission (the "SEC") and the Commodity Futures Trading Commission (the "CFTC"), clients may obtain a free copy of the Unaudited Consolidated Statement of Financial Condition of Jefferies LLC (the "Company") as of May 31, 2015 by visiting our website at **http://investorrelations.jefferies.com/GenPage.aspx?IID=102756&GKP=207790** or by calling 1-888-JEFFERIES. The Statement of Financial Condition is also available for your personal inspection at Jefferies LLC's principal office at 520 Madison Avenue, New York, NY 10022 or at the regional office of the SEC or CFTC in New York.

►Jefferies LLC is subject to the SEC's Uniform Net Capital Rule (the "Rule"), which specifies minimum net capital requirements. The Company computes net capital under the alternative method of the Rule, which requires the Company to maintain net capital of not less than the greater of $1,500,000 or 2% of aggregate debit balances (primarily receivables from customer transactions), plus excess margin collateral on reverse repurchase transactions. Compliance with the Rule could limit operations of the Company, such as underwriting and trading activities that require the use of significant amounts of capital, and may also restrict loans, advances, dividends and other payments by the Company. In addition, Jefferies LLC is registered as a futures commission merchant ("FCM") following its merger with Jefferies Bache LLC in September 2014 and is therefore subject to the CFTC's minimum financial requirements under Rule 1.17. Under the minimum financial requirements, an FCM must maintain adjusted net capital equal to or in excess of the greater of $1,000,000 or the FCM's risk-based capital requirements totaling (i) eight percent of the total risk margin requirement for positions carried by the FCM in customer accounts, plus (ii) eight percent of the total risk margin requirement for positions carried by the FCM in noncustomer accounts. As a dually registered broker-dealer and FCM, Jefferies LLC is required to maintain net capital in excess of the greater of the SEC or CFTC minimum financial requirements. As of May 31, 2015, Jefferies LLC's net capital was $998,320,000 which was $913,625,000 in excess of required net capital.

*** END OF STATEMENT ***

EXHIBIT 132

NEXBANK
2515 McKinney Avenue, 11th Floor
Dallas, Texas 75201
972.934.4700
www.NexBank.com

Date 11/30/15 Page 1
Primary Account [redacted]
Enclosures

Highland Capital Management LP
300 Crescent Court Suite 700
Dallas TX 75201

NexBank's Privacy Policy is accessible at www.NexBank.com

Checking Account/s

Account Type: Highland Capital Management LP

Analysis Checking w/ Interest

Account Number	[redacted]	Statement Dates	11/02/15 thru 11/30/15
Last Statement Balance	[redacted]	Days in the statement period	[redacted]
8 Deposits/Credits	[redacted]	Average Ledger	[redacted]
5 Checks/Debits	[redacted]	Average Collected	[redacted]
Service Charge	[redacted]	Interest Earned	[redacted]
Interest Paid	[redacted]	Annual Percentage Yield Earned	[redacted]
This Statement Balance	[redacted]	2015 Interest Paid	[redacted]

Deposits and Additions

Date	Description	Amount
[redacted]		

NEXBANK
2515 McKinney Avenue, 11th Floor
Dallas, Texas 75201
972.934.4700
www.NexBank.com

Analysis Checking w/ Interest [redacted] (Continued)

Checks and Withdrawals

Date	Description	Amount
[redacted]		
11/24	IB Transfer from D ****130 to D ****656	250,000.00-
[redacted]		

Daily Balance Information

Date	Balance	Date	Balance	Date	Balance
[redacted]					

Interest Rate Summary

Date	Rate
[redacted]	

End of Statement

OUTSTANDING CHECKS

Reconciliation of Account			
CHECKS WRITTEN BUT NOT PAID			
NUMBER	AMOUNT		
Total of Checks not paid			

RECONCILIATION INSTRUCTIONS

Date _____

Please examine this statement and items at once and refer any exceptions immediately.

Sort your checks numerically or by date issued.

Mark off in your checkbook each of your checks paid by the bank and list the numbers and amounts of those not paid in the space provided at the left. Include any checks still not paid from previous statements.

Subtract from your checkbook balance any SERVICE CHARGE (S.C.) or bank charge appearing on this statement.

Reconcile your statement in the space provided below.

Enter bank balance from statement			
Add deposits not credited by bank (if any)			
TOTAL			
Subtract total of checks not paid			
THIS AMOUNT SHOULD EQUAL YOUR CHECKBOOK BALANCE->			

Any Charge for Imprinted Checks Includes State Sales Tax Computed at the Current Rate, When Applicable
Notice: The Annual Percentage Rate and Daily Periodic Rate may vary.

EXPLANATION OF BALANCE ON WHICH THE INTEREST CHARGE IS COMPUTED

We figure the interest charge on your account by applying the periodic rate to the "daily balance" of your account for each day in the billing cycle. To get the "daily balance" we take the beginning balance of your account each day, add any new advances/fees, and subtract any unpaid interest or other finance charges and any payments or credits. This gives us the daily balance.

WHAT TO DO IF YOU THINK YOU FIND A MISTAKE ON YOUR STATEMENT

If you think there is an error on your statement, write to us at:
NexBank
2515 McKinney Avenue, 11th Floor
Dallas, Texas 75201
You may also contact us on the Web: www.nexbank.com
In your letter, give us the following information:

- Account Information: Your name and account number.
- Dollar Amount: The dollar amount of the suspected error.
- Description of Problem: If you think there is an error on your bill, describe what you believe is wrong and why you believe it is a mistake.

You must contact us within 60 days after the error appeared on your statement.
You must notify us of any potential errors in writing or electronically. You may call us, but if you do we are not required to investigate any potential errors and you may have to pay the amount in question.
While we investigate whether or not there has been an error, the following are true:

- We cannot try to collect the amount in question, or report you as delinquent on that amount.
- The charge in question may remain on your statement, and we may continue to charge you interest on that amount. But, if we determine that we made a mistake, you will not have to pay the amount in question or any interest or other fees related to that amount.
- While you do not have to pay the amount in question, you are responsible for the remainder of your balance.
- We can apply any unpaid amount against your credit limit.

IN CASE OF ERRORS OR QUESTIONS ABOUT YOUR ELECTRONIC TRANSFERS

In Case of Errors or Questions About Your Electronic Transfers, Telephone us at 972.934.4700 or Write us at NexBank, 2515 McKinney Avenue, 11th Floor, Dallas, Texas 75201 as soon as you can, if you think your statement or receipt is wrong or if you need more information about a transfer on the statement or receipt. We must hear from you no later than 60 days after we sent you the FIRST statement on which the error or problem appeared.

(1) Tell us your name and account number (if any).
(2) Describe the error or transfer you are unsure about, and explain as clearly as you can why you believe it is an error or why you need more information.
(3) Tell us the dollar amount of the suspected error.

We will investigate your complaint and will correct any error promptly. If we take more than 10 business days to do this, we will credit your account for the amount you think is in error, so that you will have use of the money during the time it takes us to complete our investigation.

EXHIBIT 133

NEXBANK
2515 McKinney Avenue, 11th Floor
Dallas, Texas 75201
972.934.4700
www.NexBank.com

Date 2/29/16 Page 1
Primary Account [redacted]
Enclosures

Highland Capital Management LP
300 Crescent Court Suite 700
Dallas TX 75201

NexBank's Privacy Policy is accessible at www.NexBank.com

Checking Account/s

Account Type: Highland Capital Management LP

Analysis Checking w/ Interest

Account Number	[redacted]	Statement Dates	2/01/16 thru 2/29/16
Last Statement Balance		Days in the statement period	[redacted]
13 Deposits/Credits		Average Ledger	[redacted]
84 Checks/Debits		Average Collected	
Service Charge		Interest Earned	
Interest Paid		Annual Percentage Yield Earned	[redacted]
This Statement Balance		2016 Interest Paid	[redacted]

Deposits and Additions

Date	Description	Amount
[redacted]		

MEMBER FDIC NOTICE: SEE LAST PAGE FOR IMPORTANT INFORMATION
Payments received at the address indicated on this statement by 3:00 pm. Central Standard Time each banking day will be credited as of that date.

NEXBANK
2515 McKinney Avenue, 11th Floor
Dallas, Texas 75201
972.934.4700
www.NexBank.com

FDIC

Date 2/29/16 Page 2
Primary Account [redacted]
Enclosures

Analysis Checking w/ Interest [redacted] (Continued)

Deposits and Additions

Date	Description	Amount
[redacted]		

Checks and Withdrawals

Date	Description	Amount
[redacted]		
2/10	IB Transfer from D ****130 to D ****656	2,000,000.00-
[redacted]		

MEMBER FDIC NOTICE: SEE LAST PAGE FOR IMPORTANT INFORMATION
Payments received at the address indicated on this statement by 3:00 pm. Central Standard Time each banking day will be credited as of that date.

NEXBANK
2515 McKinney Avenue, 11th Floor
Dallas, Texas 75201
972.934.4700
www.NexBank.com

FDIC

Date 2/29/16 Page 3
Primary Account [redacted]
Enclosures

Analysis Checking w/ Interest [redacted] (Continued)

Checks and Withdrawals

Date	Description	Amount
[redacted]		

NEXBANK
2515 McKinney Avenue, 11th Floor
Dallas, Texas 75201
972.934.4700
www.NexBank.com

Date 2/29/16 Page 4
Primary Account [redacted]
Enclosures

Analysis Checking w/ Interest [redacted] (Continued)

Checks and Withdrawals

Date	Description	Amount
[redacted]		

NEXBANK
2515 McKinney Avenue, 11th Floor
Dallas, Texas 75201
972.934.4700
www.NexBank.com

Date 2/29/16 Page 5
Primary Account [redacted]
Enclosures

Analysis Checking w/ Interest [redacted] (Continued)

Daily Balance Information

Date	Balance	Date	Balance	Date	Balance
[redacted]					

Interest Rate Summary

Date	Rate
[redacted]	

End of Statement

OUTSTANDING CHECKS

Reconciliation of Account			
CHECKS WRITTEN BUT NOT PAID			
NUMBER	AMOUNT		

EXHIBIT 134

BBVA Compass

21 HIGHLAND CAPITAL MANAGEMENT LP
MASTER OPERATING ACCOUNT
300 CRESCENT CT STE 700
DALLAS TX 75201-7849

Contacting Us

Available by phone 24/7

Phone 1-800-266-7277

Online bbvacompass.com

Write BBVA Compass
Customer Service
P.O. Box 10566
Birmingham, AL 35296

Summary of Accounts

Deposit Accounts/ Other Products

Account	Account number	Ending balance last statement	Ending balance this statement
[redacted]	[redacted]	[redacted]	[redacted]
Total Deposit Accounts		[redacted]	[redacted]

BBVA Compass

TREASURY MANAGEMENT ANALYSIS CHECKING

Account Number [redacted] - HIGHLAND CAPITAL MANAGEMENT LP

Activity Summary

Beginning Balance on 2/1/16	[redacted]
Deposits/Credits (145)	[redacted]
Withdrawals/Debits (218)	[redacted]
Ending Balance on 2/29/16	[redacted]

Courtesy Overdraft Amount

Courtesy Overdraft Amount for All Transactions	[redacted]

Any payment of an item into overdraft is completely discretionary. We will charge you an "NSF Charge Paid Item" fee of $38.00 each time we pay a transaction into overdraft. Also, if your account becomes overdrawn and continues with a negative balance for ten (10) consecutive calendar days, an extended overdraft fee of $25.00 will be charged. An additional $25.00 extended overdraft fee will be charged if the ending daily balance in your account remains negative for twenty (20) consecutive calendar days. The total of the negative balance, including any and all fees and charges, and including all non-sufficient funds/overdraft fees is due and payable immediately, without demand. If you would like to opt-out of this Courtesy Overdraft Amount, visit your local Banking Center or call 1-800 Compass.

Deposits and Other Credits

Date *	Check/ Serial #	Description	Deposits/ Credits
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]

Primary Account: [redacted]
Beginning February 1, 2016 - Ending February 29, 2016 29

BBVA Compass

Date *	Check/ Serial #	Description	Deposits/ Credits
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]

Primary Account: [redacted]
Beginning February 1, 2016 - Ending February 29, 2016 29

BBVA Compass

Date *	Check/ Serial #	Description	Deposits/ Credits
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
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BBVA Compass

Date *	Check/ Serial #	Description	Deposits/ Credits
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
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BBVA Compass

Date *	Check/ Serial #	Description	Deposits/ Credits
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BBVA Compass

Date *	Check/ Serial #	Description	Deposits/ Credits
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BBVA Compass

Date *	Check/ Serial #	Description	Deposits/ Credits
[redacted]		[redacted]	[redacted]
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BBVA Compass

Date *	Check/ Serial #	Description	Deposits/ Credits
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
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[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]

Please note, certain fees and charges posted to your account may relate to services and/or activity from the prior statement cycle.
* The Date provided is the business day that the transaction is processed.

Withdrawals and Other Debits

Date *	Check/ Serial #	Description	Withdrawals/ Debits
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]

BBVA Compass

Date *	Check/ Serial #	Description	Withdrawals/ Debits
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
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[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
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[redacted]		[redacted]	[redacted]
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BBVA Compass

Date *	Check/ Serial #	Description	Withdrawals/ Debits
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]

BBVA Compass

Date *	Check/ Serial #	Description	Withdrawals/ Debits
2/11		OUT WT E-ACCESS CSTREP REF 20160211F2QCZ60C001153 BNF Highland Capital M	$250,000.00
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
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BBVA Compass

Date *	Check/ Serial #	Description	Withdrawals/ Debits
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]

BBVA Compass

Date *	Check/ Serial #	Description	Withdrawals/ Debits
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]

Please note, certain fees and charges posted to your account may relate to services and/or activity from the prior statement cycle.
* The Date provided is the business day that the transaction is processed.

End of Business Day Balance Summary

Date	Balance	Date	Balance	Date	Balance
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]		

Summary of Checks

Date	Check #	Amount	Date	Check #	Amount	Date	Check #	Amount
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
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BBVA Compass

Date	Check #	Amount	Date	Check #	Amount	Date	Check #	Amount
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]						

** Indicates break in check sequence*

BBVA Compass

How to Balance Your Account

Step 1
- Enter all checks, deposits, and other automated teller card (ATM) transactions in your register.
- Record all automated deductions, debit card transactions and electronic bill payments.
- Record and deduct service charges, check printing charges, or other bank fees.
- If you have an interest bearing account, add any interest earned shown on this statement.

Step 2
- If applicable, sort checks in numerical order and mark in your register each check or other transaction that is listed on this statement.

Step 3
- List any deposits or credits your have made that do not appear on this statement (see space provided below).

Step 4
- List any checks you have written, debit card transactions, electronic payments and other deductions that do not appear on this statement (see space provided below).

Date/Description	Amount
Step 3 Total	$

Date/Description	Check #	Amount
	Step 4 Total	$

Balancing Your Register to this Statement

Step 5	• Enter the "current balance" shown on this statement	
	• Add total from Step 3	
	• Subtotal	
	• Subtract total from Step 4	
	• This balance should equal your register balance	
	If it does not agree, see steps below	$

If your account does not balance, review the following:
- Check all your addition and subtraction above in your register.
- Make sure you remembered to subtract service charges listed on this statement and add any interest earned to your register.
- Amounts of deposits and withdrawals on this statement should match your register entries.
- If you have questions or need assistance, please refer to the phone number on the front of this statement.

Change of Address
Please call us at the telephone number listed on the front of this statement to tell us about a change of address.

Electronic Transfers *(for consumer accounts only)*
In case of errors or questions about your Electronic Transfers, write to BBVA Compass Bank, Operations Compliance Support, P.O. Box 10566, Birmingham, AL 35296. Or simply call your local customer service number printed on the front of this statement. Call or write as soon as you can, if you think your statement or receipt is wrong or if you need more information about a transfer on the statement or receipt. We must hear from you no later than 60 days after we sent the first statement on which the error or problem appeared.

- Tell us your name and account number (if any).
- Describe the error or the transfer you are unsure about, and explain as clearly as you can why you believe it is an error or why you need more information.
- Tell us the dollar amount of the suspected error.

We will investigate your complaint and will correct any error promptly. If we take more than 10 business days (20 on claims on accounts opened less than 30 calendar days) to do this, we will credit your account for the amount you think is in error, so that you will have the use of the money during the time it takes us to complete our investigation.

*For Non-Consumer Account customers, please refer to your current Non-Consumer Account Agreement for details regarding Electronic Fund Transfers.

Overdraft Protection
Calculation of Interest Charge and Balance Subject to Interest Rate. The interest charge is computed using your annual percentage rate divided by 365 or, in the case of a leap year, 366, which gives you the "Applicable Rate." Although we calculate the interest charge by applying the Applicable Rate to each daily balance, the interest charge can also be calculated by multiplying the Applicable Rate by the "average daily balance"(Balance Subject to Interest Rate) shown on this statement, then multiplying that sum by the number of days in the billing cycle. To get the "Balance Subject to Interest Rate" shown on this statement we take the beginning balance of your account less any unpaid finance charges each day, add any new advances or debits, and subtract any payments or credits. This gives us the daily balance. Then we add all the daily balances for the billing cycle and divide by the number of days in the billing cycle. This give us the "average daily balance" shown on the statement as "Balance Subject to Interest Rate". Payments. Payments to your overdraft protection loan account made through our tellers or deposited at our automated teller machines (ATM s) Monday through Friday before the posted cut-off time will be posted to your account on the date they are accepted. Otherwise, they will be posted on the next business day. Payments made through our ATM s via a funds transfer will be posted on the date they are received or on the next business day if made after 6pm CT (6pm MT for Arizona accounts and 6pm PT for California accounts) Monday through Friday or anytime Saturday, Sunday or bank holidays. BBVA Compass Bank business days are Monday through Friday, excluding holidays.

In Case of Errors or Questions About Your Statement (Overdraft Protection Only)
If you think your statement is wrong, or if you need more information about a transaction on your statement, write your issue on a separate document and send it to Bankcard Center, P.O. Box 2210, Decatur, AL 35699-0001. Telephone inquires may be made by calling your local BBVA Compass branch listed on the front of this statement to speak with a Customer Service Representative. Please note: a telephone inquiry will not preserve your rights under federal law. We must hear from you no later than sixty (60) days after we sent you the first statement on which the error or problem appeared.

- Tell us your name and account number (if any).
- Describe the error or the transfer you are unsure about, and explain as clearly as you can why you believe it is an error or what you need more information.
- Tell us the dollar amount of the suspected error.

You can stop the automatic deduction of the Minimum Payment from you checking account if you think your statement is wrong. To stop the payment, your letter must reach us three (3) business days before the automatic deduction is scheduled to occur.

Reporting Other Problems
Please review your statement carefully. It is essential that any account errors or any improper transactions on your account be reported to us as soon as reasonably possible. If you fail to notify us of any suspected problems, errors or unauthorized transactions within the time periods specified in the deposit account agreement, we are not liable to you for any loss related to the problem, error or unauthorized transaction.

BBVA Compass is a trade name of Compass Bank, a member of the BBVA Group.
Compass Bank, Member FDIC.

EXHIBIT 135

Primary Account: [redacted]
Beginning April 1, 2016 - Ending April 30, 2016 30

BBVA Compass

21 HIGHLAND CAPITAL MANAGEMENT LP
MASTER OPERATING ACCOUNT
300 CRESCENT CT STE 700
DALLAS TX 75201-7849

Your BBVA Compass Account(s)

Please see important message regarding your TREASURY MANAGEMENT ANALYSIS CHECKING account

Contacting Us

Available by phone 24/7

Phone 1-800-266-7277

Online bbvacompass.com

Write BBVA Compass
Customer Service
P.O. Box 10566
Birmingham, AL 35296

Summary of Accounts

Deposit Accounts/ Other Products

Account	Account number	Ending balance last statement	Ending balance this statement
[redacted]	[redacted]	[redacted]	[redacted]
Total Deposit Accounts		[redacted]	[redacted]

BBVA Compass

TREASURY MANAGEMENT ANALYSIS CHECKING

Account Number: [redacted] - HIGHLAND CAPITAL MANAGEMENT LP

Account Information

Change In Terms

Correction: The fee changes and effective date listed on last month's statements were intended for other account types and are not applicable to your account. Below are the fee changes that will go into effect July 1, 2016:
Checks Paid/Debits - $0.19; Deposited Items Drawn on BBVA Compass - $0.15; Incoming Wire - $15.00; Incoming Wire fee with fax/e-mail notification - $16.00; Incoming Wire fee with phone notification - $18.00; Incoming International wire - $15.75; Manual Outgoing repetitive wire - $20.00; Manual Outgoing non-repetitive wire - $25.00; Manual Outgoing repetitive wire fee with notification - $26.00; Outgoing Automatic Standing Transfer - $9.00; Rerun Deposited Item - $9.00; Return Deposited Item - $12.00. Call Business Relationship Services with questions regarding these changes.

Activity Summary

Beginning Balance on 4/1/16	[redacted]
Deposits/Credits (53)	[redacted]
Withdrawals/Debits (207)	[redacted]
Ending Balance on 4/30/16	[redacted]

Courtesy Overdraft Amount

Courtesy Overdraft Amount for All Transactions	$5,000.00

Any payment of an item into overdraft is completely discretionary. We will charge you an "NSF Charge Paid Item" fee of $38.00 each time we pay a transaction into overdraft. Also, if your account becomes overdrawn and continues with a negative balance for ten (10) consecutive calendar days, an extended overdraft fee of $25.00 will be charged. An additional $25.00 extended overdraft fee will be charged if the ending daily balance in your account remains negative for twenty (20) consecutive calendar days. The total of the negative balance, including any and all fees and charges, and including all non-sufficient funds/overdraft fees is due and payable immediately, without demand. If you would like to opt-out of this Courtesy Overdraft Amount, visit your local Banking Center or call 1-800 Compass.

Deposits and Other Credits

Date *	Check/ Serial #	Description	Deposits/ Credits
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]

BBVA Compass

Date *	Check/ Serial #	Description	Deposits/ Credits
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
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[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
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[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]

BBVA Compass

Date *	Check/ Serial #	Description	Deposits/ Credits
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
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[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]

BBVA Compass

Date *	Check/ Serial #	Description	Deposits/ Credits
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]

Please note, certain fees and charges posted to your account may relate to services and/or activity from the prior statement cycle.
* The Date provided is the business day that the transaction is processed.

Withdrawals and Other Debits

Date *	Check/ Serial #	Description	Withdrawals/ Debits
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]

BBVA Compass

Date *	Check/ Serial #	Description	Withdrawals/ Debits
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
4/5		OUT WT E-ACCESS CSTREP REF 20160405F2QCZ60C001480 BNF Highland Capital M	$6,000,000.00
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]

BBVA Compass

Date *	Check/ Serial #	Description	Withdrawals/ Debits
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]

BBVA Compass

Date *	Check/ Serial #	Description	Withdrawals/ Debits
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
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[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]

BBVA Compass

Date *	Check/ Serial #	Description	Withdrawals/ Debits
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]

BBVA Compass

Date *	Check/ Serial #	Description	Withdrawals/ Debits
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]

Please note, certain fees and charges posted to your account may relate to services and/or activity from the prior statement cycle.
* The Date provided is the business day that the transaction is processed.

End of Business Day Balance Summary

Date	Balance	Date	Balance	Date	Balance
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]

Summary of Checks

Date	Check #	Amount	Date	Check #	Amount	Date	Check #	Amount
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]

BBVA Compass

Date	Check #	Amount	Date	Check #	Amount	Date	Check #	Amount
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]			

** Indicates break in check sequence*

BBVA Compass

How to Balance Your Account

Step 1
- Enter all checks, deposits, and other automated teller card (ATM) transactions in your register.
- Record all automated deductions, debit card transactions and electronic bill payments.
- Record and deduct service charges, check printing charges, or other bank fees.
- If you have an interest bearing account, add any interest earned shown on this statement.

Step 2
- If applicable, sort checks in numerical order and mark in your register each check or other transaction that is listed on this statement.

Step 3
- List any deposits or credits your have made that do not appear on this statement (see space provided below).

Step 4
- List any checks you have written, debit card transactions, electronic payments and other deductions that do not appear on this statement (see space provided below).

Date/Description	Amount
Step 3 Total	$

Date/Description	Check #	Amount
	Step 4 Total	$

Balancing Your Register to this Statement

Step 5	• Enter the "current balance" shown on this statement	
	• Add total from Step 3	
	• Subtotal	
	• Subtract total from Step 4	
	• This balance should equal your register balance	
	If it does not agree, see steps below	$

If your account does not balance, review the following:
- Check all your addition and subtraction above in your register.
- Make sure you remembered to subtract service charges listed on this statement and add any interest earned to your register.
- Amounts of deposits and withdrawals on this statement should match your register entries.
- If you have questions or need assistance, please refer to the phone number on the front of this statement.

Change of Address
Please call us at the telephone number listed on the front of this statement to tell us about a change of address.

Electronic Transfers *(for consumer accounts only)*
In case of errors or questions about your Electronic Transfers, write to BBVA Compass Bank, Operations Compliance Support, P.O. Box 10566, Birmingham, AL 35296. Or simply call your local customer service number printed on the front of this statement. Call or write as soon as you can, if you think your statement or receipt is wrong or if you need more information about a transfer on the statement or receipt. We must hear from you no later than 60 days after we sent the first statement on which the error or problem appeared.

- Tell us your name and account number (if any).
- Describe the error or the transfer you are unsure about, and explain as clearly as you can why you believe it is an error or why you need more information.
- Tell us the dollar amount of the suspected error.

We will investigate your complaint and will correct any error promptly. If we take more than 10 business days (20 on claims on accounts opened less than 30 calendar days) to do this, we will credit your account for the amount you think is in error, so that you will have the use of the money during the time it takes us to complete our investigation.

*For Non-Consumer Account customers, please refer to your current Non-Consumer Account Agreement for details regarding Electronic Fund Transfers.

Overdraft Protection
Calculation of Interest Charge and Balance Subject to Interest Rate. The interest charge is computed using your annual percentage rate divided by 365 or, in the case of a leap year, 366, which gives you the "Applicable Rate." Although we calculate the interest charge by applying the Applicable Rate to each daily balance, the interest charge can also be calculated by multiplying the Applicable Rate by the "average daily balance"(Balance Subject to Interest Rate) shown on this statement, then multiplying that sum by the number of days in the billing cycle. To get the "Balance Subject to Interest Rate" shown on this statement we take the beginning balance of your account less any unpaid finance charges each day, add any new advances or debits, and subtract any payments or credits. This gives us the daily balance. Then we add all the daily balances for the billing cycle and divide by the number of days in the billing cycle. This give us the "average daily balance" shown on the statement as "Balance Subject to Interest Rate". Payments. Payments to your overdraft protection loan account made through our tellers or deposited at our automated teller machines (ATM s) Monday through Friday before the posted cut-off time will be posted to your account on the date they are accepted. Otherwise, they will be posted on the next business day. Payments made through our ATM s via a funds transfer will be posted on the date they are received or on the next business day if made after 6pm CT (6pm MT for Arizona accounts and 6pm PT for California accounts) Monday through Friday or anytime Saturday, Sunday or bank holidays. BBVA Compass Bank business days are Monday through Friday, excluding holidays.

In Case of Errors or Questions About Your Statement (Overdraft Protection Only)
If you think your statement is wrong, or if you need more information about a transaction on your statement, write your issue on a separate document and send it to Bankcard Center, P.O. Box 2210, Decatur, AL 35699-0001. Telephone inquires may be made by calling your local BBVA Compass branch listed on the front of this statement to speak with a Customer Service Representative. Please note: a telephone inquiry will not preserve your rights under federal law. We must hear from you no later than sixty (60) days after we sent you the first statement on which the error or problem appeared.

- Tell us your name and account number (if any).
- Describe the error or the transfer you are unsure about, and explain as clearly as you can why you believe it is an error or what you need more information.
- Tell us the dollar amount of the suspected error.

You can stop the automatic deduction of the Minimum Payment from you checking account if you think your statement is wrong. To stop the payment, your letter must reach us three (3) business days before the automatic deduction is scheduled to occur.

Reporting Other Problems
Please review your statement carefully. It is essential that any account errors or any improper transactions on your account be reported to us as soon as reasonably possible. If you fail to notify us of any suspected problems, errors or unauthorized transactions within the time periods specified in the deposit account agreement, we are not liable to you for any loss related to the problem, error or unauthorized transaction.

BBVA Compass is a trade name of Compass Bank, a member of the BBVA Group.
Compass Bank, Member FDIC.

EXHIBIT 136

NEXBANK
2515 McKinney Avenue, 11th Floor
Dallas, Texas 75201
972.934.4700
www.NexBank.com

Date 5/31/16 Page 1
Primary Account [redacted]
Enclosures

Highland Capital Management LP
300 Crescent Court Suite 700
Dallas TX 75201

NexBank's Privacy Notice, which has not changed, is available on our website at www.NexBank.com/files/privacynotice.pdf. If you would like a copy of our Privacy Notice mailed to you, please call us at 972-934-4700.

Checking Account/s

Account Type: Highland Capital Management LP

Analysis Checking w/ Interest

Account Number	[redacted]0	Statement Dates	5/02/16 thru 5/31/16
Last Statement Balance	[redacted]	Days in the statement period	[redacted]
9 Deposits/Credits	[redacted]0	Average Ledger	[redacted]
5 Checks/Debits	[redacted]	Average Collected	[redacted]
Service Charge	[redacted]0	Interest Earned	[redacted]
Interest Paid	[redacted]	Annual Percentage Yield Earned	[redacted]
This Statement Balance	[redacted]2	2016 Interest Paid	[redacted]

Deposits and Additions

Date	Description	Amount
[redacted]		

NEXBANK
2515 McKinney Avenue, 11th Floor
Dallas, Texas 75201
972.934.4700
www.NexBank.com

Date 5/31/16 Page 2
Primary Account [redacted]
Enclosures

Analysis Checking w/ Interest [redacted] (Continued)

Deposits and Additions

Date	Description	Amount
[redacted]		

Checks and Withdrawals

Date	Description	Amount
5/04	IB Transfer from D ****130 to D ****656	2,700,000.00-
[redacted]		

Daily Balance Information

Date	Balance	Date	Balance	Date	Balance
[redacted]					

Interest Rate Summary

Date	Rate
[redacted]	

End of Statement

OUTSTANDING CHECKS

Reconciliation of Account

CHECKS WRITTEN BUT NOT PAID

NUMBER	AMOUNT		

EXHIBIT 137

NEXBANK
2515 McKinney Avenue, 11th Floor
Dallas, Texas 75201
972.934.4700
www.NexBank.com

Date 7/29/16 Page 1
Primary Account [redacted]
Enclosures

Highland Capital Management LP
300 Crescent Court Suite 700
Dallas TX 75201

NexBank's Privacy Notice, which has not changed, is available on our website at www.NexBank.com/files/privacynotice.pdf. If you would like a copy of our Privacy Notice mailed to you, please call us at 972-934-4700.

Checking Account/s

Account Type: Highland Capital Management LP

Analysis Checking w/ Interest

Account Number	[redacted]	Statement Dates	7/01/16 thru 7/31/16
Last Statement Balance	[redacted]	Days in the statement period	[redacted]
13 Deposits/Credits	[redacted]	Average Ledger	[redacted]
12 Checks/Debits	[redacted]	Average Collected	[redacted]
Service Charge	[redacted]	Interest Earned	[redacted]
Interest Paid	[redacted]	Annual Percentage Yield Earned	[redacted]
This Statement Balance	[redacted]	2016 Interest Paid	[redacted]

Deposits and Additions

Date	Description	Amount
[redacted]		

NEXBANK
2515 McKinney Avenue, 11th Floor
Dallas, Texas 75201
972.934.4700
www.NexBank.com

Date 7/29/16 Page 2
Primary Account [redacted]
Enclosures

Analysis Checking w/ Interest [redacted] (Continued)

Deposits and Additions

Date	Description	Amount
[redacted]		

Checks and Withdrawals

Date	Description	Amount
7/01	IB Transfer from D ****130 to D ****656	30,000.00-
[redacted]		

NEXBANK
2515 McKinney Avenue, 11th Floor
Dallas, Texas 75201
972.934.4700
www.NexBank.com

Analysis Checking w/ Interest [redacted] (Continued)

Checks and Withdrawals

Date	Description	Amount
[redacted]		

Daily Balance Information

Date	Balance	Date	Balance	Date	Balance
[redacted]					

Interest Rate Summary

Date	Rate
[redacted]	

End of Statement

OUTSTANDING CHECKS

Reconciliation of Account

CHECKS WRITTEN BUT NOT PAID

NUMBER	AMOUNT		

EXHIBIT 138

BBVA Compass

21 HIGHLAND CAPITAL MANAGEMENT LP
MASTER OPERATING ACCOUNT
300 CRESCENT CT STE 700
DALLAS TX 75201-7849

Your BBVA Compass Account(s)

Please see important message regarding your TREASURY MANAGEMENT ANALYSIS CHECKING account

Contacting Us

Available by phone 24/7

Phone 1-800-266-7277

Online bbvacompass.com

Write BBVA Compass
Customer Service
P.O. Box 10566
Birmingham, AL 35296

Summary of Accounts

Deposit Accounts/ Other Products

Account	Account number	Ending balance last statement	Ending balance this statement
[redacted]	[redacted]	[redacted]	[redacted]
Total Deposit Accounts		[redacted]	[redacted]

Coming soon! Save money and go green by offering your customers online bills and payment initiation. BBVA Compass Electronic Bill Presentment and Payment is the most efficient way to deliver your bills using your company's webpage and accept payments online or by phone. If customers use their own banking service to pay bills online, we can help you streamline processing using BBVA Compass e-Lockbox. Contact your BBVA Compass Treasury Management Officer for more details.

BBVA Compass

TREASURY MANAGEMENT ANALYSIS CHECKING

Account Number: [redacted] - HIGHLAND CAPITAL MANAGEMENT LP

Account Information

As a reminder, on September 23, 2016, the Automated Clearing House (ACH) will begin supporting interbank same day ACH credit transactions. Interbank same day ACH origination will be available through BBVA Compass at a later date on an **opt-in basis only**. Please contact your Treasury Management Officer for assistance.
To reflect this change for Interbank same day ACH through BBVA Compass, we have updated Section 3 of ACH Prepaid Services terms and conditions and added Section 18 to the ACH terms and conditions of our Treasury Management Services Agreement. Additional terms have also been added to the ACH terms and conditions regarding NOCs in Section 6, fees for returned and disputed entries in Section 7 and third party processors in Section 12.
Please review the changes in the Treasury Management Services Agreement and print a complete copy for your records. You can find a current version of the agreement by going to:
http://www.bbvacompass.com/commercial/treasury-management/resource-central/
The user ID is "treasury" and the password is "management."

Activity Summary

Beginning Balance on 8/1/16	[redacted]
Deposits/Credits (99)	[redacted]
Withdrawals/Debits (224)	[redacted]
Ending Balance on 8/31/16	[redacted]

Deposits and Other Credits

Date *	Check/ Serial #	Description	Deposits/ Credits
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]

Primary Account: [redacted]
Beginning August 1, 2016 - Ending August 31, 2016 31

BBVA Compass

Date *	Check/ Serial #	Description	Deposits/ Credits
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
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[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
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[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]

BBVA Compass

Date *	Check/ Serial #	Description	Deposits/ Credits
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
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[redacted]		[redacted]	[redacted]

BBVA Compass

Date *	Check/ Serial #	Description	Deposits/ Credits
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
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[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
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[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]

BBVA Compass

Date *	Check/ Serial #	Description	Deposits/ Credits
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
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[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]

BBVA Compass

Date *	Check/ Serial #	Description	Deposits/ Credits
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
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[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]

Please note, certain fees and charges posted to your account may relate to services and/or activity from the prior statement cycle.
* The Date provided is the business day that the transaction is processed.

Withdrawals and Other Debits

Date *	Check/ Serial #	Description	Withdrawals/ Debits
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
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[redacted]		[redacted]	[redacted]
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[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]

BBVA Compass

Date *	Check/ Serial #	Description	Withdrawals/ Debits
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
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BBVA Compass

Date *	Check/ Serial #	Description	Withdrawals/ Debits
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BBVA Compass

Date *	Check/ Serial #	Description	Withdrawals/ Debits
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BBVA Compass

Date *	Check/ Serial #	Description	Withdrawals/ Debits
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[redacted]		[redacted]	[redacted]

BBVA Compass

Date *	Check/ Serial #	Description	Withdrawals/ Debits
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[redacted]		[redacted]	[redacted]

Please note, certain fees and charges posted to your account may relate to services and/or activity from the prior statement cycle.
* The Date provided is the business day that the transaction is processed.

End of Business Day Balance Summary

Date	Balance	Date	Balance	Date	Balance
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]

BBVA Compass

Date	Balance	Date	Balance	Date	Balance
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]

Summary of Checks

Date	Check #	Amount	Date	Check #	Amount	Date	Check #	Amount
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]

** Indicates break in check sequence*

BBVA Compass

How to Balance Your Account

Step 1
- Enter all checks, deposits, and other automated teller card (ATM) transactions in your register.
- Record all automated deductions, debit card transactions and electronic bill payments.
- Record and deduct service charges, check printing charges, or other bank fees.
- If you have an interest bearing account, add any interest earned shown on this statement.

Step 2
- If applicable, sort checks in numerical order and mark in your register each check or other transaction that is listed on this statement.

Step 3
- List any deposits or credits your have made that do not appear on this statement (see space provided below).

Step 4
- List any checks you have written, debit card transactions, electronic payments and other deductions that do not appear on this statement (see space provided below).

Date/Description	Amount
Step 3 Total	$

Date/Description	Check #	Amount
	Step 4 Total	$

Balancing Your Register to this Statement

Step 5	• Enter the "current balance" shown on this statement	
	• Add total from Step 3	
	• Subtotal	
	• Subtract total from Step 4	
	• This balance should equal your register balance	
	If it does not agree, see steps below $	

If your account does not balance, review the following:
- Check all your addition and subtraction above in your register.
- Make sure you remembered to subtract service charges listed on this statement and add any interest earned to your register.
- Amounts of deposits and withdrawals on this statement should match your register entries.
- If you have questions or need assistance, please refer to the phone number on the front of this statement.

Change of Address
Please call us at the telephone number listed on the front of this statement to tell us about a change of address.

Electronic Transfers *(for consumer accounts only)*
In case of errors or questions about your Electronic Transfers, write to BBVA Compass Bank, Operations Compliance Support, P.O. Box 10566, Birmingham, AL 35296. Or simply call your local customer service number printed on the front of this statement. Call or write as soon as you can, if you think your statement or receipt is wrong or if you need more information about a transfer on the statement or receipt. We must hear from you no later than 60 days after we sent the first statement on which the error or problem appeared.

- Tell us your name and account number (if any).
- Describe the error or the transfer you are unsure about, and explain as clearly as you can why you believe it is an error or why you need more information.
- Tell us the dollar amount of the suspected error.

We will investigate your complaint and will correct any error promptly. If we take more than 10 business days (20 on claims on accounts opened less than 30 calendar days) to do this, we will credit your account for the amount you think is in error, so that you will have the use of the money during the time it takes us to complete our investigation.

*For Non-Consumer Account customers, please refer to your current Non-Consumer Account Agreement for details regarding Electronic Fund Transfers.

Overdraft Protection
Calculation of Interest Charge and Balance Subject to Interest Rate. The interest charge is computed using your annual percentage rate divided by 365 or, in the case of a leap year, 366, which gives you the "Applicable Rate." Although we calculate the interest charge by applying the Applicable Rate to each daily balance, the interest charge can also be calculated by multiplying the Applicable Rate by the "average daily balance"(Balance Subject to Interest Rate) shown on this statement, then multiplying that sum by the number of days in the billing cycle. To get the "Balance Subject to Interest Rate" shown on this statement we take the beginning balance of your account less any unpaid finance charges each day, add any new advances or debits, and subtract any payments or credits. This gives us the daily balance. Then we add all the daily balances for the billing cycle and divide by the number of days in the billing cycle. This give us the "average daily balance" shown on the statement as "Balance Subject to Interest Rate". Payments. Payments to your overdraft protection loan account made through our tellers or deposited at our automated teller machines (ATM s) Monday through Friday before the posted cut-off time will be posted to your account on the date they are accepted. Otherwise, they will be posted on the next business day. Payments made through our ATM s via a funds transfer will be posted on the date they are received or on the next business day if made after 6pm CT (6pm MT for Arizona accounts and 6pm PT for California accounts) Monday through Friday or anytime Saturday, Sunday or bank holidays. BBVA Compass Bank business days are Monday through Friday, excluding holidays.

In Case of Errors or Questions About Your Statement (Overdraft Protection Only)
If you think your statement is wrong, or if you need more information about a transaction on your statement, write your issue on a separate document and send it to Bankcard Center, P.O. Box 2210, Decatur, AL 35699-0001. Telephone inquires may be made by calling your local BBVA Compass branch listed on the front of this statement to speak with a Customer Service Representative. Please note: a telephone inquiry will not preserve your rights under federal law. We must hear from you no later than sixty (60) days after we sent you the first statement on which the error or problem appeared.

- Tell us your name and account number (if any).
- Describe the error or the transfer you are unsure about, and explain as clearly as you can why you believe it is an error or what you need more information.
- Tell us the dollar amount of the suspected error.

You can stop the automatic deduction of the Minimum Payment from you checking account if you think your statement is wrong. To stop the payment, your letter must reach us three (3) business days before the automatic deduction is scheduled to occur.

Reporting Other Problems
Please review your statement carefully. It is essential that any account errors or any improper transactions on your account be reported to us as soon as reasonably possible. If you fail to notify us of any suspected problems, errors or unauthorized transactions within the time periods specified in the deposit account agreement, we are not liable to you for any loss related to the problem, error or unauthorized transaction.

BBVA Compass is a trade name of Compass Bank, a member of the BBVA Group.
Compass Bank, Member FDIC.

EXHIBIT 139

NEXBANK
2515 McKinney Avenue, 11th Floor
Dallas, Texas 75201
972.934.4700
www.NexBank.com

Date 8/31/16 Page 1
Primary Account [redacted]
Enclosures

Highland Capital Management LP
300 Crescent Court Suite 700
Dallas TX 75201

NexBank's Privacy Notice, which has not changed, is available on our website at www.NexBank.com/files/privacynotice.pdf. If you would like a copy of our Privacy Notice mailed to you, please call us at 972-934-4700.

Checking Account/s

Account Type: Highland Capital Management LP

Analysis Checking w/ Interest

Account Number	[redacted]	Statement Dates	8/01/16 thru 8/31/16
Last Statement Balance	[redacted]	Days in the statement period	[redacted]
11 Deposits/Credits	[redacted]	Average Ledger	[redacted]
7 Checks/Debits	[redacted]	Average Collected	[redacted]
Service Charge	[redacted]	Interest Earned	[redacted]
Interest Paid	[redacted]	Annual Percentage Yield Earned	[redacted]
This Statement Balance	[redacted]	2016 Interest Paid	[redacted]

Deposits and Additions

Date	Description	Amount
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]

NEXBANK
2515 McKinney Avenue, 11th Floor
Dallas, Texas 75201
972.934.4700
www.NexBank.com

Date 8/31/16 Page 2
Primary Account [redacted]
Enclosures

Analysis Checking w/ Interest [redacted] (Continued)

Deposits and Additions

Date	Description	Amount
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]

Checks and Withdrawals

Date	Description	Amount
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]
8/19	IB Transfer from D ****130 to D ****656	250,000.00-
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]

Daily Balance Information

Date	Balance	Date	Balance	Date	Balance
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]		

NEXBANK
2515 McKinney Avenue, 11th Floor
Dallas, Texas 75201
972.934.4700
www.NexBank.com

Date 8/31/16 Page 3
Primary Account [redacted]
Enclosures

Analysis Checking w/ Interest 1614130 (Continued)

Interest Rate Summary

Date	Rate
[redacted]	[redacted]

End of Statement

OUTSTANDING CHECKS

Reconciliation of Account

CHECKS WRITTEN BUT NOT PAID

NUMBER	AMOUNT		

EXHIBIT 140

Primary Account: [redacted]
Beginning Febtem, er 12601- Ed n9ing Febtem, er H02601- H0

BBVA Compass

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CANNAF M7 3X601E3584

Contacting Us

Availa, le , y bpone 68h8

Ppone 1E500E6- - E3633

Online , , vacomba. . xcom

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Fummary of Account.

Deposit Accounts/ Other Products

Account	Account num, er	d n9ing , alance la. t . tatement	d n9ing , alance tpi. . tatement
[redacted]	[redacted]	[redacted]	[redacted]
Total Deposit Accounts		**$315,335.01**	**$1,090,753.79**

BBVA Compass

MRd AFUR/ S ADAL d S d DMADAN/ FG TI d TYGL

Account Dum, er: [redacted] EI G I NADC TAPGMAN S ADAL d S d DMNP

Account Information

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Activity Summary

Beginning Balance on 4h1h1-	[redacted]
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Ending Balance on 9/30/16	[redacted]

Deposits and Other Credits

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Primary Account: [redacted]
Beginning Febtem, er 12601- Ed n9ing Febtem, er H02601- H0

BBVA Compass

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Primary Account: [redacted]
Beginning Febtem, er 12601- Ed n9ing Febtem, er H02601- H0

BBVA Compass

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Primary Account: [redacted]
Beginning Febtem, er 12601- Ed n9ing Febtem, er H02601- H0

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Withdrawals and Other Debits

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Primary Account: [redacted]
Beginning Febtem, er 12601- Ed n9ing Febtem, er H02601- H0

BBVA Compass

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Primary Account: [redacted]
Beginning Febtem, er 12601- Ed n9ing Febtem, er H02601- H0

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Primary Account: [redacted]
Beginning Febtem, er 12601- Ed n9ing Febtem, er H02601- H0

BBVA Compass

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[redacted]		[redacted]	[redacted]
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[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]

Primary Account: [redacted]
Beginning Febtem, er 12601- Ed n9ing Febtem, er H02601- H0

BBVA Compass

Cate *	Tpeckh Ferial #	Ce. cribtion	K itp9ra) al. h Ce, it.
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]

Primary Account: [redacted]
Beginning Febtem, er 12601- Ed n9ing Febtem, er H02601- H0

BBVA Compass

Cate *	Tpeckh Ferial #	Ce. cribtion	K itp9ra) al. h Ce, it.
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
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* Mpe Cate brovi9e9 i. tpe , u. ine. . 9ay tpat tpe tran. action i. broce. . e9x

End of Business Day Balance Summary

Cate	Balance	Cate	Balance	Cate	Balance
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]

Summary of Checks

Cate	Tpeck #	Amount	Cate	Tpeck #	Amount	Cate	Tpeck #	Amount
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]

Primary Account: [redacted]
Beginning Febtem, er 12601- Edn9ing Febtem, er H02601- H0

BBVA Compass

Cate	Tpeck #	Amount	Cate	Tpeck #	Amount	Cate	Tpeck #	Amount
[redacted]	[redacted]	[redacted]						

** Indicates break in check sequence*

BBVA Compass

How to Balance Your Account

Step 1
- d nter all cpeck. 29ebo. it. 2an9 otper automate9 teller car9 WXMS Vtran. action. in your regi. terx
- Recor9 all automate9 9e9uction. 29e, it car9 tran. action. an9 electronic , ill bayment. x
- Recor9 an9 9e9uct . ervice cparge. 2cpeck brinting cparge. 2or otper , ank fee. x
- Ge you pave an intere. t , earing account2a99 any intere. t earne9 . po) n on tpi. . tatementx

Step 2
- Ge abblica, le2. ort cpeck. in numerical or9er an9 mark in your regi. ter eacp cpeck or otper tran. action tpat i. li. te9 on tpi. . tatementx

Step 3
- Ni. t any 9ebo. it. or cre9it. your pave ma9e tpat 9o not abbear on tpi. . tatement Wee . bace brovi9e9 , elo) Vx

Step 4
- Ni. t any cpeck. you pave) ritten29e, it car9 tran. action. 2electronic bayment. an9 otper 9e9uction. tpat 9o not abbear on tpi. . tatement Wee . bace brovi9e9 , elo) Vx

CatehCe. cribtion	Amount
	j
	j
	j
	j
	j
Fteb H Mbtal	Q j

CatehCe. cribtion	Tpeck #	Amount
		j
		j
		j
		j
		j
	Fteb 8 Mbtal	Q j

Balancing Your Register to this Statement

Step 5

d nter tpe $current , alance$. po) n on tpi. . tatement	j
A99 total from Fteb H	j
Fu, total	j
Fu, tract total from Fteb 8	j
Mpi. , alance . poul9 e• ual your regi. ter , alance	j
Ge it 9oe. not agree2. ee . teb. , elo) Q	j

Ge your account 9oe. not , alance2revie) tpe follo) ing:
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· S ake . ure you remem, ere9 to . u, tract . ervice cparge. li. te9 on tpi. . tatement an9 a99 any intere. t earne9 to your regi. terx
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Change of Address
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Electronic Transfers *(for consumer accounts only)*
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Overdraft Protection
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In Case of Errors or Questions About Your Statement W0ver9raft Protection OnlyV
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Reporting Other Problems
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EXHIBIT 141

NexBank SSB

NEXBANK
2515 McKinney Avenue, 11th Floor
Dallas, Texas 75201
972.934.4700
www.NexBank.com

Date 12/30/16 Page 1
Primary Account [redacted]
Enclosures

Highland Capital Management LP
300 Crescent Court Suite 700
Dallas TX 75201

NexBank's Privacy Notice, which has not changed, is available on our website at www.NexBank.com/files/privacynotice.pdf. If you would like a copy of our Privacy Notice mailed to you, please call us at 972-934-4700.

Checking Account/s

Account Type: Highland Capital Management LP

Analysis Checking w/ Interest
Account Number [redacted]
Last Statement Balance [redacted]
14 Deposits/Credits [redacted]
11 Checks/Debits [redacted]
Service Charge [redacted]
Interest Paid [redacted]
This Statement Balance [redacted]

Statement Dates 12/01/16 thru 12/31/16
Days in the statement period [redacted]
Average Ledger [redacted]
Average Collected [redacted]
Interest Earned [redacted]
Annual Percentage Yield Earned [redacted]
2016 Interest Paid [redacted]

[redacted]

Deposits and Additions

Date	Description	Amount
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]

MEMBER FDIC NOTICE: SEE LAST PAGE FOR IMPORTANT INFORMATION
Payments received at the address indicated on this statement by 3:00 pm. Central Standard Time each banking day will be credited as of that date.

NEXBANK
2515 McKinney Avenue, 11th Floor
Dallas, Texas 75201
972.934.4700
www.NexBank.com

Date 12/30/16 Page 2

Primary Account [redacted]
Enclosures

Analysis Checking w/ Interest [redacted] (Continued)

Deposits and Additions

Date	Description	Amount
[redacted]	[redacted]	[redacted]

Checks and Withdrawals

Date	Description	Amount
[redacted]	[redacted]	[redacted]
12/12	IB Transfer from D ****130 to D ****656	7,700,000.00-
[redacted]	[redacted]	[redacted]

Daily Balance Information

NexBank SSB

Date	Balance	Date	Balance	Date	Balance
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]

Interest Rate Summary

Date	Rate
[redacted]	[redacted]

End of Statement

[redacted]

MEMBER FDIC

NOTICE: SEE LAST PAGE FOR IMPORTANT INFORMATION

Payments received at the address indicated on this statement by 3:00 pm. Central Standard Time each banking day will be credited as of that date.

OUTSTANDING CHECKS

Reconciliation of Account

CHECKS WRITTEN BUT NOT PAID

NUMBER	AMOUNT		

Total of Checks not paid				Subtract total of checks not paid			
THIS AMOUNT SHOULD EQUAL YOUR CHECKBOOK BALANCE->							

Any Charge for Imprinted Checks Includes State Sales Tax Computed at the Current Rate, When Applicable
Notice: The Annual Percentage Rate and Daily Periodic Rate may vary.

EXPLANATION OF BALANCE ON WHICH THE INTEREST CHARGE IS COMPUTED

We figure the interest charge on your account by applying the periodic rate to the "daily balance" of your account for each day in the billing cycle. To get the "daily balance" we take the beginning balance of your account each day, add any new advances/fees, and subtract any unpaid interest or other finance charges and any payments or credits. This gives us the daily balance.

WHAT TO DO IF YOU THINK YOU FIND A MISTAKE ON YOUR STATEMENT

If you think there is an error on your statement, write to us at:
NexBank
2515 McKinney Avenue, 11th Floor
Dallas, Texas 75201
You may also contact us on the Web: www.nexbank.com
In your letter, give us the following information:

- Account Information: Your name and account number.
- Dollar Amount: The dollar amount of the suspected error.
- Description of Problem: If you think there is an error on your bill, describe what you believe is wrong and why you believe it is a mistake.

You must contact us within 60 days after the error appeared on your statement.
You must notify us of any potential errors in writing or electronically. You may call us, but if you do we are not required to investigate any potential errors and you may have to pay the amount in question.
While we investigate whether or not there has been an error, the following are true:

- We cannot try to collect the amount in question, or report you as delinquent on that amount.
- The charge in question may remain on your statement, and we may continue to charge you interest on that amount. But, if we determine that we made a mistake, you will not have to pay the amount in question or any interest or other fees related to that amount.
- While you do not have to pay the amount in question, you are responsible for the remainder of your balance.
- We can apply any unpaid amount against your credit limit.

IN CASE OF ERRORS OR QUESTIONS ABOUT YOUR ELECTRONIC TRANSFERS

In Case of Errors or Questions About Your Electronic Transfers, Telephone us at 972.934.4700 or Write us at NexBank, 2515 McKinney Avenue, 11th Floor, Dallas, Texas 75201 as soon as you can, if you think your statement or receipt is wrong or if you need more information about a transfer on the statement or receipt. We must hear from you no later than 60 days after we sent you the FIRST statement on which the error or problem appeared.

(1) Tell us your name and account number (if any).
(2) Describe the error or transfer you are unsure about, and explain as clearly as you can why you believe it is an error or why you need more information.
(3) Tell us the dollar amount of the suspected error.

We will investigate your complaint and will correct any error promptly. If we take more than 10 business days to do this, we will credit your account for the amount you think is in error, so that you will have use of the money during the time it takes us to complete our investigation.

EXHIBIT 142

NEXBANK
2515 McKinney Avenue, 11th Floor
Dallas, Texas 75201
972.934.4700
www.NexBank.com

EQUAL HOUSING LENDER
FDIC

Date 3/31/17 Page 1
Primary Account [redacted]
Enclosures

Highland Capital Management LP
300 Crescent Court Suite 700
Dallas TX 75201

NexBank's Privacy Notice, which has not changed, is available on our website at www.NexBank.com/files/privacynotice.pdf. If you would like a copy of our Privacy Notice mailed to you, please call us at 972-934-4700.

Checking Account/s

Account Type: Highland Capital Management LP

Analysis Checking w/ Interest

Account Number	[redacted]	Statement Dates	3/01/17 thru 4/02/17
Last Statement Balance	[redacted]	Days in the statement period	[redacted]
5 Deposits/Credits	[redacted]	Average Ledger	[redacted]
20 Checks/Debits	[redacted]	Average Collected	[redacted]
Service Charge	[redacted]	Interest Earned	[redacted]
Interest Paid	[redacted]	Annual Percentage Yield Earned	[redacted]
This Statement Balance	[redacted]	2017 Interest Paid	[redacted]

Deposits and Additions

Date	Description	Amount
[redacted]		

NEXBANK
2515 McKinney Avenue, 11th Floor
Dallas, Texas 75201
972.934.4700
www.NexBank.com

Date 3/31/17 Page 2
Primary Account [redacted]
Enclosures

Analysis Checking w/ Interest [redacted] (Continued)

Checks and Withdrawals

Date	Description	Amount
[redacted]		
3/31	IB Transfer from D ****130 to D ****656	150,000.00-

Daily Balance Information

Date	Balance	Date	Balance	Date	Balance
[redacted]					

NEXBANK
2515 McKinney Avenue, 11th Floor
Dallas, Texas 75201
972.934.4700
www.NexBank.com

Date 3/31/17 Page 3
Primary Account [redacted]
Enclosures

Analysis Checking w/ Interest [redacted] (Continued)

Interest Rate Summary

Date	Rate
[redacted]	

End of Statement

OUTSTANDING CHECKS

Reconciliation of Account

CHECKS WRITTEN BUT NOT PAID

NUMBER	AMOUNT		

EXHIBIT 143

NEXBANK
2515 McKinney Avenue, 11th Floor
Dallas, Texas 75201
972.934.4700
www.NexBank.com

Date 3/30/18 Page 1
Primary Account [redacted]
Enclosures

Highland Capital Management Services Inc
Attn Kristin Hendrix
300 Crescent Court Suite 700
Dallas TX 75201

NexBank's Privacy Notice, which has not changed, is available on our website at www.NexBank.com/files/privacynotice.pdf. If you would like a copy of our Privacy Notice mailed to you, please call us at 972-934-4700.

Checking Account/s

Account Type: Highland Capital Management Services Inc
Attn Kristin Hendrix

Business Checking

Account Number	[redacted]	Statement Dates	3/01/18 thru 4/01/18
Last Statement Balance	[redacted]	Days in the statement period	[redacted]
1 Deposits/Credits	[redacted]	Average Ledger	[redacted]
5 Checks/Debits	[redacted]	Average Collected	[redacted]
Service Charge	[redacted]		
Interest Paid	[redacted]		
This Statement Balance	[redacted]		

Deposits and Additions

Date	Description	Amount
3/26	IB Transfer from D ****130 to D ****656	150,000.00

Checks and Withdrawals

Date	Description	Amount
[redacted]		

NEXBANK
2515 McKinney Avenue, 11th Floor
Dallas, Texas 75201
972.934.4700
www.NexBank.com

Date 3/30/18 Page 2
Primary Account [redacted]
Enclosures

Business Checking [redacted] (Continued)

--- CHECKS IN NUMBER ORDER ---

Date	Check No	Amount
[redacted]		

Daily Balance Information

Date	Balance	Date	Balance	Date	Balance
[redacted]					

End of Statement

OUTSTANDING CHECKS

Reconciliation of Account

CHECKS WRITTEN BUT NOT PAID

NUMBER	AMOUNT		

EXHIBIT 144

NEXBANK
2515 McKinney Avenue, 11th Floor
Dallas, Texas 75201
972.934.4700
www.NexBank.com

Date 6/29/18 Page 1
Primary Account [redacted]
Enclosures

Highland Capital Management Services Inc
Attn Kristin Hendrix
300 Crescent Court Suite 700
Dallas TX 75201

NexBank's Privacy Notice, which has not changed, is available on our website at www.NexBank.com/files/privacynotice.pdf. If you would like a copy of our Privacy Notice mailed to you, please call us at 972-934-4700.

Checking Account/s

Account Type: Highland Capital Management Services Inc
Attn Kristin Hendrix

Business Checking

Account Number	[redacted]	Statement Dates	6/01/18 thru 7/01/18
Last Statement Balance	[redacted]	Days in the statement period	[redacted]
[redacted]	[redacted]0	Average Ledger	[redacted]
[redacted]	[redacted]	Average Collected	[redacted]
Service Charge	[redacted]0		
Interest Paid	[redacted]		
This Statement Balance	[redacted]5		

Deposits and Additions

Date	Description	Amount
6/25	IB Transfer from D ****130 to D ****656	200,000.00

Checks and Withdrawals

Date	Description	Amount
[redacted]		

NEXBANK
2515 McKinney Avenue, 11th Floor
Dallas, Texas 75201
972.934.4700
www.NexBank.com

Date 6/29/18 Page 2
Primary Account [redacted]
Enclosures

Business Checking [redacted]5 (Continued)

Daily Balance Information

Date	Balance	Date	Balance	Date	Balance
[redacted]					

End of Statement

OUTSTANDING CHECKS				RECONCILIATION INSTRUCTIONS			
Reconciliation of Account				Date _____ Please examine this statement and items at once and refer any exceptions immediately. Sort your checks numerically or by date issued. Mark off in your checkbook each of your checks paid by the bank and list the numbers and amounts of those not paid in the space provided at the left. Include any checks still not paid from previous statements. Subtract from your checkbook balance any SERVICE CHARGE (S.C.) or bank charge appearing on this statement. Reconcile your statement in the space provided below.			
CHECKS WRITTEN BUT NOT PAID							
NUMBER	AMOUNT						
				Enter bank balance from statement			
				Add deposits not credited by bank (if any)			
				TOTAL			
Total of Checks not paid				Subtract total of checks not paid			
				THIS AMOUNT SHOULD EQUAL YOUR CHECKBOOK BALANCE->			

Any Charge for Imprinted Checks Includes State Sales Tax Computed at the Current Rate, When Applicable
Notice: The Annual Percentage Rate and Daily Periodic Rate may vary.

EXPLANATION OF BALANCE ON WHICH THE INTEREST CHARGE IS COMPUTED

We figure the interest charge on your account by applying the periodic rate to the "daily balance" of your account for each day in the billing cycle. To get the "daily balance" we take the beginning balance of your account each day, add any new advances/fees, and subtract any unpaid interest or other finance charges and any payments or credits. This gives us the daily balance.

WHAT TO DO IF YOU THINK YOU FIND A MISTAKE ON YOUR STATEMENT

If you think there is an error on your statement, write to us at:
NexBank
2515 McKinney Avenue, 11th Floor
Dallas, Texas 75201
You may also contact us on the Web: www.nexbank.com
In your letter, give us the following information:

- Account Information: Your name and account number.
- Dollar Amount: The dollar amount of the suspected error.
- Description of Problem: If you think there is an error on your bill, describe what you believe is wrong and why you believe it is a mistake.

You must contact us within 60 days after the error appeared on your statement.
You must notify us of any potential errors in writing or electronically. You may call us, but if you do we are not required to investigate any potential errors and you may have to pay the amount in question.
While we investigate whether or not there has been an error, the following are true:

- We cannot try to collect the amount in question, or report you as delinquent on that amount.
- The charge in question may remain on your statement, and we may continue to charge you interest on that amount. But, if we determine that we made a mistake, you will not have to pay the amount in question or any interest or other fees related to that amount.
- While you do not have to pay the amount in question, you are responsible for the remainder of your balance.
- We can apply any unpaid amount against your credit limit.

IN CASE OF ERRORS OR QUESTIONS ABOUT YOUR ELECTRONIC TRANSFERS

In Case of Errors or Questions About Your Electronic Transfers, Telephone us at 972.934.4700 or Write us at NexBank, 2515 McKinney Avenue, 11th Floor, Dallas, Texas 75201 as soon as you can, if you think your statement or receipt is wrong or if you need more information about a transfer on the statement or receipt. We must hear from you no later than 60 days after we sent you the FIRST statement on which the error or problem appeared.
(1) Tell us your name and account number (if any).
(2) Describe the error or transfer you are unsure about, and explain as clearly as you can why you believe it is an error or why you need more information.
(3) Tell us the dollar amount of the suspected error.
We will investigate your complaint and will correct any error promptly. If we take more than 10 business days to do this, we will credit your account for the amount you think is in error, so that you will have use of the money during the time it takes us to complete our investigation.

EXHIBIT 145

BBVA Compass

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Contacting Us

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Tummary of Account/

Deposit Accounts/ Other Products

Account	Account num4er	Ending 4aa8ance a/ t / tatement	Ending 4aa8ance tl i/ / tatement
[redacted]	[redacted]	[redacted]	[redacted]
Total Deposit Accounts		[redacted]	[redacted]

BBVA Compass

CMEATRMx F AL AI EF EL C AL AGx THT D9 EDYHLI

Account L um4er: [redacted] - 9 HI 9 GAL N DAPHCAGF AL AI EF EL C GP

Activity Summary

Beginning Ba8ance on 3p1p10	[redacted]
Nevo/ it/ pDredit/ K0O(	[redacted]
. itl dra) a8 pNe4it/ K1Oh(	[redacted]
Ending Balance on 5/31/19	[redacted]

Deposits and Other Credits

Nate "	Dl ecwp Teria8"	Ne/ crivtion	Nevo/ it/ p Dredit/
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
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BBVA Compass

Nate "	DI ecwp Teria8"	Ne/ crivtion	Nevo/ it/ p Dredit/
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BBVA Compass

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BBVA Compass

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BBVA Compass

Nate "	Dl ecwp Teria8"	Ne/ crivtion	Nevo/ it/ p Dredit/
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Withdrawals and Other Debits

Nate "	Dl ecwp Teria8"	Ne/ crivtion	. itl dra) a8 p Ne4it/
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BBVA Compass

Nate "	DI ecwp Teria8"	Ne/ crivtion	. itl dra) a8 p Ne4it/
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BBVA Compass

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BBVA Compass

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Primary Account: [redacted]
Beginning F ay 1b, 210 - Ending F ay 61b, 210 61

BBVA Compass

Nate "	DI ecwp Teria8"	Ne/ crivtion	. itl dra) a8 p Ne4it/
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" Cl e Nate vro5ided i/ tl e 4u/ ine/ / day tl at tl e tran/ action i/ vroce/ / eds

End of Business Day Balance Summary

Nate	Ba8ance	Nate	Ba8ance	Nate	Ba8ance
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]				

Summary of Checks

Nate	DI ecw"	Amount	Nate	DI ecw"	Amount	Nate	DI ecw"	Amount
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
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[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]

** Indicates break in check sequence*

BBVA Compass

How to Balance Your Account

Step 1
- Enter a8cl ecw bdevo/ it/ band otl er automated te8er card kACF (tran/ action/ in your regi/ ters
- Mecord a8automated deduction/ bde4it card tran/ action/ and e8ectronic 4i8vayment/ s
- Mecord and deduct / er5ice cl arge/ bcl ecwvrinting cl arge/ bor otl er 4anwfee/ s
- Hf you l a5e an intere/ t 4earing accountbadd any intere/ t earned / l o) n on tl i/ / tatements

Step 2
- Hf avv8ca4eb/ ort cl ecw in numerica8order and marw in your regi/ ter eacl cl ecwor otl er tran/ action tl at i/ 8/ ted on tl i/ / tatements

Step 3
- G/ t any devo/ it/ or credit/ your l a5e made tl at do not avvear on tl i/ / tatement K ee / vace vro5ided 4e8b) (s

Step 4
- G/ t any cl ecw you l a5e) rittenbde4it card tran/ action/ be8ectronic vayment/ and otl er deduction/ tl at do not avvear on tl i/ / tatement K ee / vace vro5ided 4e8b) (s

NatepNe/ crivtion	Amount
	q
	q
	q
	q
	q
Ttev 6 Cota8	# q

NatepNe/ crivtion	DI ecw"	Amount
		q
		q
		q
		q
		q
	Ttev X Cota8	# q

Balancing Your Register to this Statement

Step 5	ZEnter tl e "current 4a8ance" / l o) n on tl i/ / tatement	q
	ZAdd tota8from Ttev 6	q
	ZTu4tota8	q
	ZTu4tract tota8from Ttev X	q
	ZCl i/ 4a8ance / l ou8l eQua8your regi/ ter 4a8ance	q
	Hf it doe/ not agreeb/ ee / tev/ 4e8b) #	q

Hf your account doe/ not 4a8ancebre5ie) tl e fo8b) ing:
· DI ecwa8your addition and / u4traction a4o5e in your regi/ ters
· F awe / ure you remem4ered to / u4tract / er5ice cl arge/ 8/ ted on tl i/ / tatement and add any intere/ t earned to your regi/ ters
· Amount/ of devo/ it/ and) itl dra) a8 on tl i/ / tatement / l ou8l matcl your regi/ ter entrie/ s
· Hf you l a5e Que/ tion/ or need a/ / i/ tancebv8ea/ e refer to tl e vl one num4er on tl e front of tl i/ / tatements

Change of Address
P8ea/ e ca8u/ at tl e te8evl one num4er 8/ ted on tl e front of tl i/ / tatement to te8u/ a4out a cl ange of addre/ / s

Electronic Transfers *(for consumer accounts only)*
Hn ca/ e of error/ or Que/ tion/ a4out your E8ectronic Cran/ fer/ b) rite to BBWA Domva/ / BanwbS veration/ Domv8ance TuvvortbPsS sBoV 123hhbBirmingl ambAG63, 0hsS r / imv8y ca8byour 8ca8cu/ tomer / er5ice num4er vrinted on tl e front of tl i/ / tatementsDa8bor) rite a/ / oon a/ you canbif you tl inwyour / tatement or receivt i/) rong or if you need more information a4out a tran/ fer on tl e / tatement or receivts. e mu/ t l ear from you no 8ater tl an h2 day/ after) e / ent tl e fir/ t / tatement on) l icl tl e error or vro4e8m avvearedS

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Z Ne/ cri4e tl e error or tl e tran/ fer you are un/ ure a4outband eVv8ain a/ ce8ar8y a/ you can) l y you 4e8e5e it i/ an error or) l y you need more informations
Z Ce8u/ tl e do8ar amount of tl e / u/ vected errors

. e) i8in5e/ tigate your comv8aint and) i8correct any error vromvt8ysHl) e tawe more tl an 12 4u/ ine/ / day/ K 2 on c8aim/ on account/ ovened 8e/ / tl an 62 ca8endar day/ (to do tl i/ b) e) i8l credit your account for tl e amount you tl inwi/ in errorb/ o tl at you) i8l a5e tl e u/ e of tl e money during tl e time it tawe/ u/ to comv8ete our in5e/ tigations

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Overdraft Protection
Calculation of Interest Charge and Balance Subject to Interest RatesCl e intere/ t cl arge i/ comvuted u/ ing your annua8vercentage rate di5ided 4y 6h3 orbin tl e ca/ e of a 8eav yearb6hhb) l icl gi5e/ you tl e •Avv8ca4e Mates| A8l ougl) e ca8cu8ate tl e intere/ t cl arge 4y avv8ying tl e Avv8ca4e Mate to eacl dai8y 4a8ancebtl e intere/ t cl arge can a8 o 4e ca8cu8ated 4y mu8iv8ying tl e Avv8ca4e Mate 4y tl e •a5erage dai8y 4a8ance|KBa8ance Tu4ject to Hntere/ t Mate(/ l o) n on tl i/ / tatementbtl en mu8iv8ying tl at / um 4y tl e num4er of day/ in tl e 4i8ng cyc8esCo get tl e •Ba8ance Tu4ject to Hntere/ t Mate| / l o) n on tl i/ / tatement) e tawe tl e 4eginning 4a8ance of your account 8e/ / any unvaid finance cl arge/ eacl daybadd any ne) ad5ance/ or de4it/ band / u4tract any vayment/ or credit/ sCl i/ gi5e/ u/ tl e dai8y 4a8ancesCl en) e add a8tl e dai8y 4a8ance/ for tl e 4i8ng cyc8e and di5ide 4y tl e num4er of day/ in tl e 4i8ng cyc8esCl i/ gi5e u/ tl e •a5erage dai8y 4a8ance| / l o) n on tl e / tatement a/ •Ba8ance Tu4ject to Hntere/ t Mate|s Payment/ sPayment/ to your o5erdraft vrotection 8an account made tl rougl our te8er/ or devo/ ited at our automated te8er macl ine/ kACF / (F onday tl rougl $riday 4efore tl e vo/ ted cut-off time) i8l4e vo/ ted to your account on tl e date tl ey are accevtedsS tl er) i/ ebtl ey) i8l4e vo/ ted on tl e neVt 4u/ ine/ / daysPayment/ made tl rougl our ACF / 5ia a fund/ tran/ fer) i8l4e vo/ ted on tl e date tl ey are recei5ed or on tl e neVt 4u/ ine/ / day if made after hvm DC Khvm F C for Arizona account/ and hvm PC for Da8fornia account/ (F onday tl rougl $riday or anytime TaturdaybTunday or 4anwl o8day/ sBBWA Domva/ / Banw4u/ ine/ / day/ are F onday tl rougl $ridaybVc8uding l o8day/ s

In Case of Errors or Questions About Your Statement KS 5erdraft Protection S n8y(Hf you tl inwyour / tatement i/) rongbor if you need more information a4out a tran/ action on your / tatementb) rite your i/ / ue on a / evarate document and / end it to Banwcard DenterbPsS sBoV , , 12bNecaturbAG63h00-2221sCe8evl one inQuire/ may 4e made 4y ca8ing your 8oca8BBWA Domva/ / 4rancl 8/ ted on tl e front of tl i/ / tatement to / veaw) itl a Du/ tomer Ter5ice Mevre/ entati5esP8ea/ e note: a te8evl one inQuiry) i8not vre/ er5e your rigl t/ under federa88a) s . e mu/ t l ear from you no 8ater tl an / iVty Kh2(day/ after) e / ent you tl e fir/ t / tatement on) l icl tl e error or vro4e8m avvearedS

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Reporting Other Problems
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BBWA Domva/ / i/ a trade name of Domva/ / Banwba mem4er of tl e BBWA I rouvs Domva/ / BanwbF em4er $NHDs

EXHIBIT 146

Primary Account: [redacted]
Beginning June 1, 2019 - Ending June 30, 2019 30

BBVA

21 HIGHLAND CAPITAL MANAGEMENT LP
MASTER OPERATING ACCOUNT
300 CRESCENT CT STE 700
DALLAS TX 75201-7849

Your BBVA Account(s)

Please see important message regarding your TREASURY MANAGEMENT ANALYSIS CHECKING account

Contacting Us

Available by phone 24/7

Phone 1-800-266-7277

Online bbvausa.com

Write BBVA
Customer Service
P.O. Box 10566
Birmingham, AL 35296

Summary of Accounts

Deposit Accounts/ Other Products

Account	Account number	Ending balance last statement	Ending balance this statement
[redacted]	[redacted]	[redacted]	[redacted]
Total Deposit Accounts		[redacted]	[redacted]

BBVA Compass is now BBVA. Transforming banking to put the world's opportunities in your hands.

BBVA

TREASURY MANAGEMENT ANALYSIS CHECKING

Account Number: [redacted] - HIGHLAND CAPITAL MANAGEMENT LP

Account Information

We have updated the Treasury Management Service Agreement. These terms and conditions will become effective as of August 1, 2019. You can find a current version of the agreement by going to:
http://www.bbvausa.com/commercial/treasury-management/resource-central/
The user ID is "treasury" and the password is "management."

Activity Summary

Beginning Balance on 6/1/19	[redacted]
Deposits/Credits (26)	[redacted]
Withdrawals/Debits (154)	[redacted]
Ending Balance on 6/30/19	[redacted]

Deposits and Other Credits

Date *	Check/ Serial #	Description	Deposits/ Credits
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]

BBVA

Date *	Check/ Serial #	Description	Deposits/ Credits
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
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[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]

Please note, certain fees and charges posted to your account may relate to services and/or activity from the prior statement cycle.
* The Date provided is the business day that the transaction is processed.

Withdrawals and Other Debits

Date *	Check/ Serial #	Description	Withdrawals/ Debits
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]

BBVA

Date *	Check/ Serial #	Description	Withdrawals/ Debits
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
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[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]

BBVA

Date *	Check/ Serial #	Description	Withdrawals/ Debits
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
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[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]

BBVA

Date *	Check/ Serial #	Description	Withdrawals/ Debits
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]

BBVA

Date *	Check/ Serial #	Description	Withdrawals/ Debits
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
6/26		OUT WT EBANKING REF 20190626F2QCZ60C003151 BNF Highland Capital M	$150,000.00
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
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[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]

BBVA

Date *	Check/ Serial #	Description	Withdrawals/ Debits
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]

Please note, certain fees and charges posted to your account may relate to services and/or activity from the prior statement cycle.
* The Date provided is the business day that the transaction is processed.

End of Business Day Balance Summary

Date	Balance	Date	Balance	Date	Balance
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]		

Summary of Checks

Date	Check #	Amount	Date	Check #	Amount	Date	Check #	Amount
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]						

** Indicates break in check sequence*

BBVA

How to Balance Your Account

Step 1
- Enter all checks, deposits, and other automated teller card (ATM) transactions in your register.
- Record all automated deductions, debit card transactions and electronic bill payments.
- Record and deduct service charges, check printing charges, or other bank fees.
- If you have an interest bearing account, add any interest earned shown on this statement.

Step 2
- If applicable, sort checks in numerical order and mark in your register each check or other transaction that is listed on this statement.

Step 3
- List any deposits or credits your have made that do not appear on this statement (see space provided below).

Step 4
- List any checks you have written, debit card transactions, electronic payments and other deductions that do not appear on this statement (see space provided below).

Date/Description	Amount
Step 3 Total	$

Date/Description	Check #	Amount
	Step 4 Total	$

Balancing Your Register to this Statement

Step 5	• Enter the "current balance" shown on this statement	
	• Add total from Step 3	
	• Subtotal	
	• Subtract total from Step 4	
	• This balance should equal your register balance	
	If it does not agree, see steps below	$

If your account does not balance, review the following:
- Check all your addition and subtraction above in your register.
- Make sure you remembered to subtract service charges listed on this statement and add any interest earned to your register.
- Amounts of deposits and withdrawals on this statement should match your register entries.
- If you have questions or need assistance, please refer to the phone number on the front of this statement.

Change of Address
Please call us at the telephone number listed on the front of this statement to tell us about a change of address.

Electronic Transfers *(for consumer accounts only)*
In case of errors or questions about your Electronic Transfers, write to BBVA, Operations Compliance Support, P.O. Box 10566, Birmingham, AL 35296. Or simply call your local customer service number printed on the front of this statement. Call or write as soon as you can, if you think your statement or receipt is wrong or if you need more information about a transfer on the statement or receipt. We must hear from you no later than 60 days after we sent the first statement on which the error or problem appeared.

- Tell us your name and account number (if any).
- Describe the error or the transfer you are unsure about, and explain as clearly as you can why you believe it is an error or why you need more information.
- Tell us the dollar amount of the suspected error.

We will investigate your complaint and will correct any error promptly. If we take more than 10 business days (20 on claims on accounts opened less than 30 calendar days) to do this, we will credit your account for the amount you think is in error, so that you will have the use of the money during the time it takes us to complete our investigation.

*For Non-Consumer Account customers, please refer to your current Non-Consumer Account Agreement for details regarding Electronic Fund Transfers.

Overdraft Protection
Calculation of Interest Charge and Balance Subject to Interest Rate. The interest charge is computed using your annual percentage rate divided by 365 or, in the case of a leap year, 366, which gives you the "Applicable Rate." Although we calculate the interest charge by applying the Applicable Rate to each daily balance, the interest charge can also be calculated by multiplying the Applicable Rate by the "average daily balance"(Balance Subject to Interest Rate) shown on this statement, then multiplying that sum by the number of days in the billing cycle. To get the "Balance Subject to Interest Rate" shown on this statement we take the beginning balance of your account less any unpaid finance charges each day, add any new advances or debits, and subtract any payments or credits. This gives us the daily balance. Then we add all the daily balances for the billing cycle and divide by the number of days in the billing cycle. This give us the "average daily balance" shown on the statement as "Balance Subject to Interest Rate". Payments. Payments to your overdraft protection loan account made through our tellers or deposited at our automated teller machines (ATM s) Monday through Friday before the posted cut-off time will be posted to your account on the date they are accepted. Otherwise, they will be posted on the next business day. Payments made through our ATM s via a funds transfer will be posted on the date they are received or on the next business day if made after 6pm CT (6pm MT for Arizona accounts and 6pm PT for California accounts) Monday through Friday or anytime Saturday, Sunday or bank holidays. BBVA business days are Monday through Friday, excluding holidays.

In Case of Errors or Questions About Your Statement (Overdraft Protection Only)
If you think your statement is wrong, or if you need more information about a transaction on your statement, write your issue on a separate document and send it to Bankcard Center, P.O. Box 2210, Decatur, AL 35699-0001. Telephone inquires may be made by calling your local BBVA branch listed on the front of this statement to speak with a Customer Service Representative. Please note: a telephone inquiry will not preserve your rights under federal law. We must hear from you no later than sixty (60) days after we sent you the first statement on which the error or problem appeared.

- Tell us your name and account number (if any).
- Describe the error or the transfer you are unsure about, and explain as clearly as you can why you believe it is an error or what you need more information.
- Tell us the dollar amount of the suspected error.

You can stop the automatic deduction of the Minimum Payment from you checking account if you think your statement is wrong. To stop the payment, your letter must reach us three (3) business days before the automatic deduction is scheduled to occur.

Reporting Other Problems
Please review your statement carefully. It is essential that any account errors or any improper transactions on your account be reported to us as soon as reasonably possible. If you fail to notify us of any suspected problems, errors or unauthorized transactions within the time periods specified in the deposit account agreement, we are not liable to you for any loss related to the problem, error or unauthorized transaction.

BBVA and BBVA Compass are trade names of BBVA USA, a member of the BBVA Group.
BBVA USA, Member FDIC.

EXHIBIT 147

Primary Account: [redacted]
Beginning May 1, 2019 - Ending May 31, 2019 31

BBVA Compass

21 HIGHLAND CAPITAL MANAGEMENT LP
MASTER OPERATING ACCOUNT
300 CRESCENT CT STE 700
DALLAS TX 75201-7849

Contacting Us

Available by phone 24/7

Phone 1-800-266-7277

Online bbvacompass.com

Write BBVA Compass
Customer Service
P.O. Box 10566
Birmingham, AL 35296

Summary of Accounts

Deposit Accounts/ Other Products

Account	Account number	Ending balance last statement	Ending balance this statement
TREASURY MANAGEMENT ANALYSIS CHECKING	[redacted]	$3,117,777.78	$1,004,810.25
Total Deposit Accounts		**$3,117,777.78**	**$1,004,810.25**

BBVA Compass

TREASURY MANAGEMENT ANALYSIS CHECKING

Account Number: [redacted] - HIGHLAND CAPITAL MANAGEMENT LP

Activity Summary

Beginning Balance on 5/1/19	[redacted]
Deposits/Credits (97)	[redacted]
Withdrawals/Debits (176)	[redacted]
Ending Balance on 5/31/19	[redacted]

Deposits and Other Credits

Date *	Check/ Serial #	Description	Deposits/ Credits
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
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[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]

Primary Account: [redacted]
Beginning May 1, 2019 - Ending May 31, 2019

BBVA Compass

31

Date *	Check/ Serial #	Description	Deposits/ Credits
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
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BBVA Compass

Date *	Check/ Serial #	Description	Deposits/ Credits
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[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]

BBVA Compass

Date *	Check/ Serial #	Description	Deposits/ Credits
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
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[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]

BBVA Compass

Date *	Check/ Serial #	Description	Deposits/ Credits
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
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[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
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[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]

BBVA Compass

Date *	Check/ Serial #	Description	Deposits/ Credits
[redacted]		[redacted]	[redacted]

Please note, certain fees and charges posted to your account may relate to services and/or activity from the prior statement cycle.
* The Date provided is the business day that the transaction is processed.

Withdrawals and Other Debits

Date *	Check/ Serial #	Description	Withdrawals/ Debits
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
5/2		OUT WT EBANKING REF 20190502F2QCZ60C001496 BNF Highland Capital M	$2,400,000.00
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
5/3		OUT WT EBANKING REF 20190503F2QCZ60C004047 BNF Highland Capital M	$5,000,000.00
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]

BBVA Compass

Date *	Check/ Serial #	Description	Withdrawals/ Debits
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
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BBVA Compass

Date *	Check/ Serial #	Description	Withdrawals/ Debits
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]

BBVA Compass

Date *	Check/ Serial #	Description	Withdrawals/ Debits
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
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BBVA Compass

Date *	Check/ Serial #	Description	Withdrawals/ Debits
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
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[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]

BBVA Compass

Date *	Check/ Serial #	Description	Withdrawals/ Debits
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]

Please note, certain fees and charges posted to your account may relate to services and/or activity from the prior statement cycle.
* The Date provided is the business day that the transaction is processed.

End of Business Day Balance Summary

Date	Balance	Date	Balance	Date	Balance
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]				

Summary of Checks

Date	Check #	Amount	Date	Check #	Amount	Date	Check #	Amount
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]

** Indicates break in check sequence*

BBVA Compass

How to Balance Your Account

Step 1
- Enter all checks, deposits, and other automated teller card (ATM) transactions in your register.
- Record all automated deductions, debit card transactions and electronic bill payments.
- Record and deduct service charges, check printing charges, or other bank fees.
- If you have an interest bearing account, add any interest earned shown on this statement.

Step 2
- If applicable, sort checks in numerical order and mark in your register each check or other transaction that is listed on this statement.

Step 3
- List any deposits or credits your have made that do not appear on this statement (see space provided below).

Step 4
- List any checks you have written, debit card transactions, electronic payments and other deductions that do not appear on this statement (see space provided below).

Date/Description	Amount
Step 3 Total	$

Date/Description	Check #	Amount
	Step 4 Total	$

Balancing Your Register to this Statement

Step 5	Enter the "current balance" shown on this statement	
	Add total from Step 3	
	Subtotal	
	Subtract total from Step 4	
	This balance should equal your register balance	
	If it does not agree, see steps below	$

If your account does not balance, review the following:
- Check all your addition and subtraction above in your register.
- Make sure you remembered to subtract service charges listed on this statement and add any interest earned to your register.
- Amounts of deposits and withdrawals on this statement should match your register entries.
- If you have questions or need assistance, please refer to the phone number on the front of this statement.

Change of Address
Please call us at the telephone number listed on the front of this statement to tell us about a change of address.

Electronic Transfers *(for consumer accounts only)*
In case of errors or questions about your Electronic Transfers, write to BBVA Compass Bank, Operations Compliance Support, P.O. Box 10566, Birmingham, AL 35296. Or simply call your local customer service number printed on the front of this statement. Call or write as soon as you can, if you think your statement or receipt is wrong or if you need more information about a transfer on the statement or receipt. We must hear from you no later than 60 days after we sent the first statement on which the error or problem appeared.

- Tell us your name and account number (if any).
- Describe the error or the transfer you are unsure about, and explain as clearly as you can why you believe it is an error or why you need more information.
- Tell us the dollar amount of the suspected error.

We will investigate your complaint and will correct any error promptly. If we take more than 10 business days (20 on claims on accounts opened less than 30 calendar days) to do this, we will credit your account for the amount you think is in error, so that you will have the use of the money during the time it takes us to complete our investigation.

*For Non-Consumer Account customers, please refer to your current Non-Consumer Account Agreement for details regarding Electronic Fund Transfers.

Overdraft Protection
Calculation of Interest Charge and Balance Subject to Interest Rate. The interest charge is computed using your annual percentage rate divided by 365 or, in the case of a leap year, 366, which gives you the "Applicable Rate." Although we calculate the interest charge by applying the Applicable Rate to each daily balance, the interest charge can also be calculated by multiplying the Applicable Rate by the "average daily balance"(Balance Subject to Interest Rate) shown on this statement, then multiplying that sum by the number of days in the billing cycle. To get the "Balance Subject to Interest Rate" shown on this statement we take the beginning balance of your account less any unpaid finance charges each day, add any new advances or debits, and subtract any payments or credits. This gives us the daily balance. Then we add all the daily balances for the billing cycle and divide by the number of days in the billing cycle. This give us the "average daily balance" shown on the statement as "Balance Subject to Interest Rate". Payments. Payments to your overdraft protection loan account made through our tellers or deposited at our automated teller machines (ATM s) Monday through Friday before the posted cut-off time will be posted to your account on the date they are accepted. Otherwise, they will be posted on the next business day. Payments made through our ATM s via a funds transfer will be posted on the date they are received or on the next business day if made after 6pm CT (6pm MT for Arizona accounts and 6pm PT for California accounts) Monday through Friday or anytime Saturday, Sunday or bank holidays. BBVA Compass Bank business days are Monday through Friday, excluding holidays.

In Case of Errors or Questions About Your Statement (Overdraft Protection Only)
If you think your statement is wrong, or if you need more information about a transaction on your statement, write your issue on a separate document and send it to Bankcard Center, P.O. Box 2210, Decatur, AL 35699-0001. Telephone inquires may be made by calling your local BBVA Compass branch listed on the front of this statement to speak with a Customer Service Representative. Please note: a telephone inquiry will not preserve your rights under federal law. We must hear from you no later than sixty (60) days after we sent you the first statement on which the error or problem appeared.

- Tell us your name and account number (if any).
- Describe the error or the transfer you are unsure about, and explain as clearly as you can why you believe it is an error or what you need more information.
- Tell us the dollar amount of the suspected error.

You can stop the automatic deduction of the Minimum Payment from you checking account if you think your statement is wrong. To stop the payment, your letter must reach us three (3) business days before the automatic deduction is scheduled to occur.

Reporting Other Problems
Please review your statement carefully. It is essential that any account errors or any improper transactions on your account be reported to us as soon as reasonably possible. If you fail to notify us of any suspected problems, errors or unauthorized transactions within the time periods specified in the deposit account agreement, we are not liable to you for any loss related to the problem, error or unauthorized transaction.

BBVA Compass is a trade name of Compass Bank, a member of the BBVA Group. Compass Bank, Member FDIC.

EXHIBIT 148

NEXBANK
13455 NOEL ROAD, 22nd Floor
DALLAS, TEXAS 75240
972-934-4700
www.NexBank.com

FDIC

HIGHLAND CAPITAL MANAGEMENT LP
300 CRESCENT COURT SUITE 700
DALLAS TX 75201

Date 11/29/13
Account Number [redacted]
Enclosures

Page 1

---- CHECKING ACCOUNT ----

For 24-hour service please
call our telephone banking
number 877-538-BANK (2265)

BUSINESS ANALYSIS W/ INTEREST		Item Truncation	
Account Number	[redacted]	Statement Dates 11/01/13 thru 11/30/13	
Previous Balance	[redacted]	Days in the statement period	[redacted]
5 Deposits/Credits	[redacted]	Average Ledger	[redacted]
3 Checks/Debits	[redacted]	Average Collected	[redacted]
Service Charge	[redacted]		
Interest Paid	[redacted]		
Ending Balance	[redacted]	2013 Interest Paid	[redacted]

Deposits and Additions

Date	Description	Amount
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]

Checks and Withdrawals

Date	Description	Amount
[redacted]	[redacted]	[redacted]
11/27	WIRE TRANSFER CHICAGO TITLE CO.	100,000.00

NEXBANK
13455 NOEL ROAD, 22nd Floor
DALLAS, TEXAS 75240
972-934-4700
www.NexBank.com

FDIC

HIGHLAND CAPITAL MANAGEMENT LP
300 CRESCENT COURT SUITE 700
DALLAS TX 75201

Date 11/29/13
Account Number [redacted]
Enclosures

Page 2

BUSINESS ANALYSIS W/ INTEREST [redacted] (Continued)

Checks and Withdrawals

Date	Description	Amount
[redacted]	[redacted]	[redacted]

Daily Balance Information

Date	Balance	Date	Balance	Date	Balance
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]

Interest Rate Summary

[redacted] [redacted]

OUTSTANDING CHECKS				RECONCILIATION INSTRUCTIONS			
Reconciliation of Account				Date _____			
CHECKS WRITTEN BUT NOT PAID				Please examine this statement and items at once and refer any exceptions immediately.			
NUMBER	AMOUNT			Sort your checks numerically or by date issued.			
				Mark off in your checkbook each of your checks paid by the bank and list the numbers and amounts of those not paid in the space provided at the left. Include any checks still not paid from previous statements.			
				Subtract from your checkbook balance any SERVICE CHARGE (S.C.) or bank charge appearing on this statement.			
				Reconcile your statement in the space provided below.			
				Enter bank balance from statement			
				Add deposits not credited by bank (if any)			
				TOTAL			
Total of Checks not paid				Subtract total of checks not paid			
				THIS AMOUNT SHOULD EQUAL YOUR CHECKBOOK BALANCE->			

Any Charge for Imprinted Checks Includes State Sales Tax Computed at the Current Rate, When Applicable

EXPLANATION OF BALANCE ON WHICH FINANCE CHARGE IS COMPUTED

We calculate the **FINANCE CHARGE** on your account by multiplying the daily balance of your account, including current transactions, by the daily periodic rate each day during the billing cycle. This gives us a daily finance charge. Then we add together each daily finance charge to derive a total FINANCE CHARGE for the billing cycle. To get the daily balance on which each daily finance charge is computed, we take the beginning balance of your account each day, add any new advances and subtract any payments or credits and unpaid finance charges.

The "average daily balance" shown on the front of this statement is for purposes of illustration only. To validate the amount of your finance charge, multiply the number of days in the billing cycle by the average daily balance shown, then multiply the product by the daily periodic rate.

*Note: If the statement closing date falls on a Friday or on any business day immediately prior to a non-business day, the number of days in the billing cycle will include the subsequent number of non-business days until the next business day,and the finance charge will continue to accrue. However, the number of days in the next billing cycle will not include any days included in the prior cycle.

BILLING RIGHTS SUMMARY

In Case of Errors or Questions About Your Account Statement

If you think your statement is wrong, or if you need more information about a transaction on your statement, write us on a separate sheet at the address shown on the face of this statement as soon as possible. We must hear from you no later than 60 days after we sent you the FIRST statement on which the error or problem appeared. You can telephone us, but doing so will not preserve your rights.

In your letter, give us the following information.

1. Your name and account number.
2. The dollar amount of the suspected error.
3. Describe the error and explain, if you can, why you believe there is an error. If you need more information, describe the item you are unsure about.

You do not have to pay any amount in question while we are investigating, but you are still obligated to pay the parts of your statement that are not in question. While we investigate your question, we cannot report you as delinquent or take action to collect the amount you question.

IN CASE OF ERROR OR QUESTIONS ABOUT YOUR ELECTRONIC TRANSFERS

If you need more information about an electronic transfer appearing on this statement, or if you think your statement or receipt is wrong, please telephone or write us as soon as possible at the phone number or address designated on the front of this statement. We must hear from you no later than 60 days after we sent you the FIRST statement on which the error or problem appeared.

1. Tell us your name and account number (if any).
2. Describe the error or transfer you are unsure about, and explain as clearly as you can why you believe there is an error or why you need more information.
3. Tell us the dollar amount of the suspected error.

We will investigate your complaint and will correct any error promptly. If we take more than 10 business days to do this, we will recredit your account for the amount you think is in error, so that you will have use of the money during the time it takes us to complete our investigation.

If you would like to confirm that an automatic deposit to your account has been made as scheduled, you may call us during normal business hours at the phone number designated on the front of this statement.

EXHIBIT 149

Primary Account: [redacted]
Beginning January 1b, 210 5- nEing January d1b, 210 d1

BBVA Compass

, 1 3 HI 3 GAL N DAPHCAG TAL AI - T - L C GP
TAMC- S RP- SACHLI ADDRUL C
d22 DS- MD- L C DC MC- 722
NAGGAM CX 78, 2157409

Contacting Us

Availaple py h/ one , 067

P/ one 154225, ss57, 77

Rnline ppvacomha. . Wom

V rite BBx A Domha. .
Du. tomer Mervice
PWRVBoY 128ss
Birming/ ambAGd8, 9s

Mummary of Account.

Deposit Accounts/ Other Products

Account	Account numper	- nEing palance la. t . tatement	- nEing palance t/ i. . tatement
[redacted]	[redacted]	[redacted]	[redacted]
Total Deposit Accounts		[redacted]	[redacted]

Primary Account: [redacted]
Beginning Oanuary 1b, 210 5- nEing Oanuary d1b, 210 d1

BBVA Compass

CS- AMUSK T AL AI - T - L C AL AGKMHM D3 - D(HLI

Account L umper: [redacted] 53 HI 3 GAL N DAPHCAGT AL AI - T - L C GP

Activity Summary

Beginning Balance on 16161 0	[redacted]
Neho. it. 6DreEit.)d1w	[redacted]
V it/ Erak al. 6Nepit.)10, w	[redacted]
Ending Balance on 1/31/14	[redacted]

Transaction History)eYcluEing c/ ec*. w

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169		RUC V C - 5ADD- MMS- Q , 2102129Q, Z D$s2D221794 BL QRIE Sehuplic L atio		J122b222W2
[redacted]		[redacted]		[redacted]
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Primary Account: [redacted]
Beginning Oanuary 1b, 210 5- nEing Oanuary d1b, 210 d1

BBVA Compass

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Primary Account: [redacted]
Beginning Qanuary 1b, 210 5- nEing Qanuary d1b, 210 d1

BBVA Compass

Nate #	D/ ec*6 Merial F	Ne. crihtion	Neho. it. 6 DreEit.	V it/ Erak al. 6 Nepit.
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BBVA Compass

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End of Business Day Balance Summary

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Summary of Checks

Nate	D/ ec* F	Amount	Nate	D/ ec* F	Amount	Nate	D/ ec* F	Amount
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Primary Account: [redacted]
Beginning Oanuary 1b, 210 5- nEing Oanuary d1b, 210 d1

BBVA Compass

Nate	D/ ec* F	Amount	Nate	D/ ec* F	Amount	Nate	D/ ec* F	Amount
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** Indicates break in check sequence*

Primary Account: [redacted]
Beginning Qanuary 1b, 210 5- nEing Qanuary d1b, 210 d1

BBVA Compass

How to Balance Your Account

Step 1
- - nter all c/ ec* . bEeho. it. banE ot/ er automateE teller carE)ACT wtran. action. in your regi. terW
- SecorE all automateE EeEuction. bEepit carE tran. action. anE electronic pill hayment. W
- SecorE anE EeEuct . ervice c/ arge. bc/ ec* hrinting c/ arge. bor ot/ er pan* fee. W
- Hfl you / ave an intere. t pearing accountbaEE any intere. t earneE . / ok n on t/ i. . tatementW

Step 2
- Hfl ahhlicapleb. ort c/ ec* . in numerical orEer anE mar* in your regi. ter eac/ c/ ec* or ot/ er tran. action t/ at i. li. teE on t/ i. . tatementW

Step 3
- Gl. t any Eeho. it. or creEit. your / ave maEe t/ at Eo not ahhear on t/ i. . tatement). ee . hace hroviEeE pelok wW

Step 4
- Gl. t any c/ ec* . you / ave k rittenbEepit carE tran. action. belectronic hayment. anE ot/ er EeEuction. t/ at Eo not ahhear on t/ i. . tatement). ee . hace hroviEeE pelok wW

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Nate6Ne. crihtion	D/ ec* F	Amount
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Mteh 0 Cotal		J |

Balancing Your Register to this Statement

Step 5
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- AEE total from Mteh d |
- Muptotal |
- Muptract total from Mteh 0 |
- C/ i. palance . / oulE equal your regi. ter palance |
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Electronic Transfers *(for consumer accounts only)*
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EXHIBIT 150

NEXBANK
2515 McKinney Avenue, 11th Floor
Dallas, Texas 75201
972.934.4700
www.NexBank.com

HIGHLAND CAPITAL MANAGEMENT LP
300 CRESCENT COURT SUITE 700
DALLAS TX 75201

Date 1/31/14 Page 1
Account Number [redacted]
Enclosures

---- CHECKING ACCOUNT ----

For 24-hour service please
call our telephone banking
number 877-538-BANK (2265)

BUSINESS ANALYSIS W/ INTEREST		Item Truncation	
Account Number	[redacted]	Statement Dates 1/01/14 thru	1/31/14
Previous Balance	[redacted]	Days in the statement period	[redacted]
4 Deposits/Credits	[redacted]	Average Ledger	[redacted]
4 Checks/Debits	[redacted]	Average Collected	[redacted]
Service Charge	[redacted]		
Interest Paid	[redacted]		
Ending Balance	[redacted]	2014 Interest Paid	[redacted]

Deposits and Additions

Date	Description	Amount
[redacted]		

Checks and Withdrawals

Date	Description	Amount
[redacted]		

NEXBANK
2515 McKinney Avenue, 11th Floor
Dallas, Texas 75201
972.934.4700
www.NexBank.com

HIGHLAND CAPITAL MANAGEMENT LP
300 CRESCENT COURT SUITE 700
DALLAS TX 75201

Date 1/31/14 Page 2
Account Number [redacted]
Enclosures

BUSINESS ANALYSIS W/ INTEREST 1614130 (Continued)

Checks and Withdrawals

Date	Description	Amount
1/30	IB Transfer from D ****130 to D ****415	500,000.00

Daily Balance Information

Date	Balance	Date	Balance	Date	Balance
[redacted]					

Interest Rate Summary

[redacted]

OUTSTANDING CHECKS

Reconciliation of Account			
CHECKS WRITTEN BUT NOT PAID			
NUMBER	AMOUNT		

EXHIBIT 151

Primary Account: [redacted]
Beginning F arcb 1, 201- Edn9ing F arcb H1, 201- H1

BBVA Compass

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Contacting Us

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Summary of Account/

Deposit Accounts/ Other Products

Account	Account numver	dn9ing va4ance 4a/ t / tatement	dn9ing va4ance tbi/ / tatement
[redacted]	[redacted]	[redacted]	[redacted]
Total Deposit Accounts		[redacted]	[redacted]

Primary Account: [redacted]
Beginning F arcb 1, 201- Edn9ing F arcb H1, 201- H1

BBVA Compass

MRdASURx F ADAL dF dDMADANx SGS TI dTYGDL

Account Dumver: [redacted]

Activity Summary

Beginning Ba4ance on Hp1p1-	[redacted]
Cel o/ it/ pTre9it/ K11(	[redacted]
. itb9ra) a4pCevit/ K1X2(	[redacted] -
Ending Balance on 1/13/34	[redacted]

Transaction History K eVc4u9ing cbecW (

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Page H of 6
Primary Account: [redacted]
Beginning F arcb 1, 201- Edn9ing F arcb H1, 201- H1

BBVA Compass

Cate "	Tbecwp Seria4"	Ce/ cril tion	Cel o/ it/ p Tre9it/	. itb9ra) a4 p Cevit/
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[redacted]		[redacted]		[redacted]
[redacted]		[redacted]		[redacted]

Page - of 6
Primary Account: [redacted]
Beginning F arcb 1, 201- Edn9ing F arcb H1, 201- H1

BBVA Compass

Cate "	Tbecwp Seria4"	Ce/ cril tion	Cel o/ it/ p Tre9it/	. itb9ra) a4 p Cevit/
[redacted]		[redacted]		[redacted]
[redacted]		[redacted]		[redacted]
[redacted]		[redacted]	[redacted]	
[redacted]		[redacted]		[redacted]
[redacted]	[redacted]	[redacted]		[redacted]
[redacted]		[redacted]		[redacted]
[redacted]		[redacted]		[redacted]
[redacted]

Primary Account: [redacted]
Beginning F arcb 1, 201- Edn9ing F arcb H1, 201- H1

BBVA Compass

Cate "	Tbecwp Seria4"	Ce/ cril tion	Cel o/ it/ p Tre9it/	. itb9ra) a4 p Cevit/
[redacted]		[redacted]		[redacted]
[redacted]		[redacted]		[redacted]
[redacted]		[redacted]		[redacted]
[redacted]		[redacted]		[redacted]
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[redacted]		[redacted]	[redacted]	
[redacted]		[redacted]		[redacted]

P4ea/ e note, certain fee/ an9 cbarge/ I o/ te9 to your account may re4ate to / er8ice/ an9pr acti8ity from tbe I rior / tatement cyc4es
" Mbe Cate I ro8i9e9 i/ tbe vu/ ine/ / 9ay tbat tbe tran/ action i/ I roce/ / e9s

End of Business Day Balance Summary

Cate	Ba4ance	Cate	Ba4ance	Cate	Ba4ance
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]

Summary of Checks

Cate	Tbecw"	Amount	Cate	Tbecw"	Amount	Cate	Tbecw"	Amount
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
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[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]

Primary Account: [redacted]
Beginning F arcb 1, 201- Edn9ing F arcb H1, 201- H1

BBVA Compass

Cate	Tbecw"	Amount	Cate	Tbecw"	Amount	Cate	Tbecw"	Amount
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
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[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
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[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]

** Indicates break in check sequence*

Primary Account: [redacted]
Beginning F arcb 1, 201- Edn9ing F arcb H1, 201- H1

BBVA Compass

How to Balance Your Account

Step 3
- dnter a4cbecw , 9el o/ it/ , an9 otber automate9 te4er car9 kAMF (tran/ action/ in your regi/ ters
- Recor9 a4automate9 9e9uction/ , 9evit car9 tran/ action/ an9 e4ectronic vi4l ayment/ s
- Recor9 an9 9e9uct / er8ice cbarge/ , cbecwl rinting cbarge/ , or otber vanwfee/ s
- Gyou ba8e an intere/ t vearing account, a99 any intere/ t earne9 / bo) n on tbi/ / tatements

Step 2
- Gal l 4cav4e, / ort cbecw in numerica4or9er an9 marw in your regi/ ter eacb cbecwor otber tran/ action tbat i/ 4/ te9 on tbi/ / tatements

Step 1
- Ni/ t any 9el o/ it/ or cre9it/ your ba8e ma9e tbat 9o not al l ear on tbi/ / tatement kee / l ace l ro8i9e9 ve4b) (s

Step 4
- Ni/ t any cbecw you ba8e) ritten, 9evit car9 tran/ action/ , e4ectronic l ayment/ an9 otber 9e9uction/ tbat 9o not al l ear on tbi/ / tatement kee / l ace l ro8i9e9 ve4b) (s

CatepCe/ cril tion	Amount
	q
	q
	q
	q
	q
Stel HMbta4	# q

CatepCe/ cril tion	Tbecw"	Amount
		q
		q
		q
		q
		q
	Stel - Mbta4	# q

Balancing Your Register to this Statement

Step 5	Zdnter tbe "current va4ance" / bo) n on tbi/ / tatement	q
	ZA99 tota4from Stel H	q
	ZSuvtota4	q
	ZSuvtract tota4from Stel -	q
	ZMbi/ va4ance / bou4 eQua4your regi/ ter va4ance	q
	Git 9oe/ not agree, / ee / tel / ve4b) #	q

Gyour account 9oe/ not va4ance, re8ie) tbe fo4b) ing:
· Tbecwa4 your a99ition an9 / uvtraction avo8e in your regi/ ters
· F awe / ure you rememvere9 to / uvtract / er8ice cbarge/ 4/ te9 on tbi/ / tatement an9 a99 any intere/ t earne9 to your regi/ ters
· Amount/ of 9el o/ it/ an9) itb9ra) a4 on tbi/ / tatement / bou4 matcb your regi/ ter entrie/ s
· Gyou ba8e Que/ tion/ or nee9 a/ / i/ tance, l 4ea/ e refer to tbe l bone numver on tbe front of tbi/ / tatements

Change of Address
P4ea/ e ca4u/ at tbe te4el bone numver 4/ te9 on tbe front of tbi/ / tatement to te4u/ avout a cbange of a99re/ / s

Electronic Transfers *(for consumer accounts only)*
Ga ca/ e of error/ or Que/ tion/ avout your d4ectronic Mran/ fer/ ,) rite to BBWA Toml a/ / Banw, Ol eration/ Toml 4ance Sul l ort, PsOsBoV 107hh, Birmingbam, AN H725hsOr / iml 4/ ca4your 4oca4cu/ tomer / er8ice numver l rinte9 on tbe front of tbi/ / tatementsTa4or) rite a/ / oon a/ you can, if you tbinwyour / tatement or receil t i/) rong or if you nee9 more information avout a tran/ fer on tbe / tatement or receil ts. e mu/ t bear from you no 4ater tban h0 9ay/ after) e / ent tbe fir/ t / tatement on) bicb tbe error or l rov4em al l eare9s

Z Me4u/ your name an9 account numver kf any(s
Z Ce/ crive tbe error or tbe tran/ fer you are un/ ure avout, an9 eVl 4ain a/ c4ear4/ a/ you can) by you ve4e8e it i/ an error or) by you nee9 more informations
Z Me4u/ tbe 9o4ar amount of tbe / u/ l ecte9 errors

. e) i4in8e/ tigate your coml 4aint an9) i4correct any error l roml t4/ sGe) e tawe more tban 10 vu/ ine/ / 9ay/ k20 on c4aim/ on account/ ol ene9 4e/ / tban H0 ca4en9ar 9ay/ (to 9o tbi/ ,) e) i4l cre9it your account for tbe amount you tbinwi/ in error, / o tbat you) i4l ba8e tbe u/ e of tbe money 9uring tbe time it tawe/ u/ to coml 4ete our in8e/ tigations

"$or DonET on/ umer Account cu/ tomer/ , l 4ea/ e refer to your current DonET on/ umer Account Agreement for 9etai4l regar9ing d4ectronic $un9 Mran/ fer/ s

Overdraft Protection
Calculation of Interest Charge and Balance Subject to Interest Rates Mbe intere/ t cbarge i/ coml ute9 u/ ing your annua4l ercentage rate 9i8i9e9 vy Hh7 or, in tbe ca/ e of a 4eal year, Hhh,) bicb gi8e/ you tbe •Al l 4cav4e Rates| A4tbougb) e ca4cu4ate tbe intere/ t cbarge vy al l 4ying tbe Al l 4cav4e Rate to eacb 9ai4y va4ance, tbe intere/ t cbarge can a4/ o ve ca4cu4ate9 vy mu4il 4ying tbe Al l 4cav4e Rate vy tbe •a8erage 9ai4y va4ance|kBa4ance Suvject to Gtere/ t Rate(/ bo) n on tbi/ / tatement, tben mu4il 4ying tbat / um vy tbe numver of 9ay/ in tbe vi4ing cyc4esMb get tbe •Ba4ance Suvject to Gtere/ t Rate| / bo) n on tbi/ / tatement) e tawe tbe veginning va4ance of your account 4e/ / any unl ai9 finance cbarge/ eacb 9ay, a99 any ne) a98ance/ or 9evit/ , an9 / uvtract any l ayment/ or cre9it/ sMbi/ gi8e/ u/ tbe 9ai4y va4ancesMben) e a99 a4l tbe 9ai4y va4ance/ for tbe vi4ing cyc4e an9 9i8i9e vy tbe numver of 9ay/ in tbe vi4ing cyc4esMbi/ gi8e u/ tbe •a8erage 9ai4y va4ance| / bo) n on tbe / tatement a/ •Ba4ance Suvject to Gtere/ t Rate|s Payment/ sPayment/ to your o8er9raft l rotection 4oan account ma9e tbrougb our te4er/ or 9el o/ ite9 at our automate9 te4er macbine/ kAMF / (F on9ay tbrougb $ri9ay vefore tbe l o/ te9 cutEoff time) i4ve l o/ te9 to your account on tbe 9ate tbey are accel te9sOtber) i/ e, tbey) i4ve l o/ te9 on tbe neVt vu/ ine/ / 9aysPayment/ ma9e tbrougb our AMF / 8ia a fun9/ tran/ fer) i4ve l o/ te9 on tbe 9ate tbey are recei8e9 or on tbe neVt vu/ ine/ / 9ay if ma9e after hl m TMKhl m F M for Arizona account/ an9 hl m PMfor Ta4fornia account/ (F on9ay tbrougb $ri9ay or anytime Satur9ay, Sun9ay or vanwbo49ay/ sBBWA Toml a/ / Banwvu/ ine/ / 9ay/ are F on9ay tbrougb $ri9ay, eVc4u9ing bo49ay/ s

In Case of Errors or Questions About Your Statement kO8er9raft Protection On4y(Gyou tbinwyour / tatement i/) rong, or if you nee9 more information avout a tran/ action on your / tatement,) rite your i/ / ue on a / el arate 9ocument an9 / en9 it to Banwcar9 Tenter, PsOsBoV 2210, Cecatur, AN H7h55ED001sMe4el bone inQuire/ may ve ma9e vy ca4ing your 4oca4BBWA Toml a/ / vrancb 4/ te9 on tbe front of tbi/ / tatement to / l eaw) itb a Tu/ tomer Ser8ice Rel re/ entati8esP4ea/ e note: a te4el bone inQuiry) i4not l re/ er8e your rigbt/ un9er fe9era44a) s . e mu/ t bear from you no 4ater tban / iVty kh0(9ay/ after) e / ent you tbe fir/ t / tatement on) bicb tbe error or l rov4em al l eare9s

· Me4u/ your name an9 account numver kf any(s
· Ce/ crive tbe error or tbe tran/ fer you are un/ ure avout, an9 eVl 4ain a/ c4ear4/ a/ you can) by you ve4e8e it i/ an error or) bat you nee9 more informations
· Me4u/ tbe 9o4ar amount of tbe / u/ l ecte9 errors

x ou can / tol tbe automatic 9e9uction of tbe F inimum Payment from you cbecwing account if you tbinwyour / tatement i/) rongsMb / tol tbe l ayment, your 4etter mu/ t reacb u/ tbree kH(vu/ ine/ / 9ay/ vefore tbe automatic 9e9uction i/ / cbe9u4e9 to occurs

Reporting Other Problems
P4ea/ e re8ie) your / tatement carefu4/ sGi/ e/ / entia4tbat any account error/ or any iml rol er tran/ action/ on your account ve rel orte9 to u/ a/ / oon a/ rea/ onav4/ l o/ / iv4esGyou fai4to notify u/ of any / u/ l ecte9 l rov4em/ , error/ or unautborize9 tran/ action/) itbin tbe time l erio9/ / l ecifie9 in tbe 9el o/ it account agreement,) e are not 4av4e to you for any 4o/ / re4ate9 to tbe l rov4em, error or unautborize9 tran/ actions

BBWA Toml a/ / i/ a tra9e name of Toml a/ / Banw, a memver of tbe BBWA L roul s Toml a/ / Banw, F emver $CGTs

EXHIBIT 152

NEXBANK
2515 McKinney Avenue, 11th Floor
Dallas, Texas 75201
972.934.4700
www.NexBank.com

Date 1/30/15 Page 1
Primary Account [redacted]
Enclosures

Highland Capital Management LP
300 Crescent Court Suite 700
Dallas TX 75201

NexBank's Privacy Policy is accessible at www.NexBank.com

Checking Account/s

Account Type: Highland Capital Management LP

Analysis Checking w/ Interest

Account Number	[redacted]	Statement Dates	1/01/15 thru 2/01/15
Last Statement Balance	[redacted]	Days in the statement period	[redacted]
6 Deposits/Credits	[redacted]	Average Ledger	[redacted]
2 Checks/Debits	[redacted]	Average Collected	[redacted]
Service Charge	[redacted]	Interest Earned	[redacted]
Interest Paid	[redacted]	Annual Percentage Yield Earned	[redacted]
This Statement Balance	[redacted]	2015 Interest Paid	[redacted]

Deposits and Additions

Date	Description	Amount
[redacted]		

NEXBANK
2515 McKinney Avenue, 11th Floor
Dallas, Texas 75201
972.934.4700
www.NexBank.com

Date 1/30/15 Page 2
Primary Account [redacted]
Enclosures

Analysis Checking w/ Interest [redacted] (Continued)

Checks and Withdrawals

Date	Description	Amount
[redacted]		
1/26	wire request- Loan from HCMLP approved by F. Waterhouse	1,500,000.00-

Daily Balance Information

Date	Balance	Date	Balance	Date	Balance
[redacted]					

Interest Rate Summary

Date	Rate
[redacted]	

End of Statement

OUTSTANDING CHECKS

Reconciliation of Account			
CHECKS WRITTEN BUT NOT PAID			
NUMBER	AMOUNT		
Total of Checks not paid			

RECONCILIATION INSTRUCTIONS

Date _____

Please examine this statement and items at once and refer any exceptions immediately.

Sort your checks numerically or by date issued.

Mark off in your checkbook each of your checks paid by the bank and list the numbers and amounts of those not paid in the space provided at the left. Include any checks still not paid from previous statements.

Subtract from your checkbook balance any SERVICE CHARGE (S.C.) or bank charge appearing on this statement.

Reconcile your statement in the space provided below.

Enter bank balance from statement			
Add deposits not credited by bank (if any)			
TOTAL			
Subtract total of checks not paid			
THIS AMOUNT SHOULD EQUAL YOUR CHECKBOOK BALANCE->			

Any Charge for Imprinted Checks Includes State Sales Tax Computed at the Current Rate, When Applicable
Notice: The Annual Percentage Rate and Daily Periodic Rate may vary.

EXPLANATION OF BALANCE ON WHICH THE INTEREST CHARGE IS COMPUTED

We figure the interest charge on your account by applying the periodic rate to the "daily balance" of your account for each day in the billing cycle. To get the "daily balance" we take the beginning balance of your account each day, add any new advances/fees, and subtract any unpaid interest or other finance charges and any payments or credits. This gives us the daily balance.

WHAT TO DO IF YOU THINK YOU FIND A MISTAKE ON YOUR STATEMENT

If you think there is an error on your statement, write to us at:
NexBank
2515 McKinney Avenue, 11th Floor
Dallas, Texas 75201
You may also contact us on the Web: www.nexbank.com
In your letter, give us the following information:

- Account Information: Your name and account number.
- Dollar Amount: The dollar amount of the suspected error.
- Description of Problem: If you think there is an error on your bill, describe what you believe is wrong and why you believe it is a mistake.

You must contact us within 60 days after the error appeared on your statement.
You must notify us of any potential errors in writing or electronically. You may call us, but if you do we are not required to investigate any potential errors and you may have to pay the amount in question.
While we investigate whether or not there has been an error, the following are true:

- We cannot try to collect the amount in question, or report you as delinquent on that amount.
- The charge in question may remain on your statement, and we may continue to charge you interest on that amount. But, if we determine that we made a mistake, you will not have to pay the amount in question or any interest or other fees related to that amount.
- While you do not have to pay the amount in question, you are responsible for the remainder of your balance.
- We can apply any unpaid amount against your credit limit.

IN CASE OF ERRORS OR QUESTIONS ABOUT YOUR ELECTRONIC TRANSFERS

In Case of Errors or Questions About Your Electronic Transfers, Telephone us at 972.934.4700 or Write us at NexBank, 2515 McKinney Avenue, 11th Floor, Dallas, Texas 75201 as soon as you can, if you think your statement or receipt is wrong or if you need more information about a transfer on the statement or receipt. We must hear from you no later than 60 days after we sent you the FIRST statement on which the error or problem appeared.

(1) Tell us your name and account number (if any).
(2) Describe the error or transfer you are unsure about, and explain as clearly as you can why you believe it is an error or why you need more information.
(3) Tell us the dollar amount of the suspected error.

We will investigate your complaint and will correct any error promptly. If we take more than 10 business days to do this, we will credit your account for the amount you think is in error, so that you will have use of the money during the time it takes us to complete our investigation.

EXHIBIT 153

ERD Report Filename - 7202015121002782.TXT
Batch # - 2015121002782
Printed on May 04, 2015 at 08:02 AM

CLOSE

1
+@ Primary Account: [redacted]
Page 1 of 10
Primary Account: [redacted]
Beginning April 1, 2015 - Ending April 30, 2015

HIGHLAND CAPITAL MANAGEMENT LP
MASTER OPERATING ACCOUNT
300 CRESCENT CT STE 700
DALLAS TX 75201-7849

Contacting Us

Phone: 1-800-266-7277

S u m m a r y o f A c c o u n t s

Deposit Accounts/Other Products

Account	Account number	Ending balance last statement	Ending balance this statement
[redacted]	[redacted]	[redacted]	[redacted]
Total Deposit Accounts			

1
+@ Primary Account: [redacted]
Page 2 of 10
Primary Account: [redacted]
Beginning April 1, 2015 - Ending April 30, 2015

T R E A S U R Y M A N A G E M E N T A N A L Y S I S C H E C K I N G
Account Number: 0025876342 - HIGHLAND CAPITAL MANAGEMENT LP

Activity Summary

Beginning Balance on 4/1/15	[redacted]
Deposits/Credits (33)	
Withdrawals/Debits (189)	
Ending Balance on 4/30/15	

Deposits and Other Credits

Date*	Serial#	Description	Deposits/ Credits
[redacted]			

1
+@ Primary Account: [redacted]
Page 3 of 10
Primary Account: [redacted]
Beginning April 1, 2015 - Ending April 30, 2015

Deposits and Other Credits - continued

Date*	Serial#	Description	Deposits/ Credits
[redacted]		[redacted]	[redacted]

1
+@ Primary Account: [redacted]
Page 4 of 10
Primary Account: [redacted]
Beginning April 1, 2015 - Ending April 30, 2015

Deposits and Other Credits - continued

Date*	Serial#	Description	Deposits/ Credits
[redacted]		[redacted]	[redacted]

*The Date provided is the business day that the transaction is processed.

Please note, certain fees and charges posted to your account may relate to services and/or activity from the prior statement cycle.

Withdrawals and Other Debits

Date*	Serial#	Description	Withdrawals/ Debits
[redacted]		[redacted]	[redacted]
			$1,042.30

Doughert

[redacted]

1
+@ Primary Account: [redacted]
Page 5 of 10
Primary Account: [redacted]
Beginning April 1, 2015 - Ending April 30, 2015

Withdrawals and Other Debits - continued

Date*	Serial#	Description	Withdrawals/ Debits
[redacted]			
4/2		OUT WT E-ACCESS REF 20150402F2QCZ60C002636 BNF HCRE Partners, LLC	$1,500,000.00
[redacted]			

1
+@ Primary Account: [redacted]
Page 6 of 10
Primary Account: [redacted]
Beginning April 1, 2015 - Ending April 30, 2015

Withdrawals and Other Debits - continued

Date*	Serial#	Description	Withdrawals/ Debits
[redacted]			

[redacted]

1
+@ Primary Account: [redacted]
Page 7 of 10
Primary Account: [redacted]
Beginning April 1, 2015 - Ending April 30, 2015

Withdrawals and Other Debits - continued

Date*	Serial#	Description	Withdrawals/ Debits

[redacted]

1
+@ Primary Account: [redacted]
Page 8 of 10
Primary Account: [redacted]
Beginning April 1, 2015 - Ending April 30, 2015

Withdrawals and Other Debits - continued

Date*	Serial#	Description	Withdrawals/ Debits

[redacted]

Shawn Raver

[redacted]

*The Date provided is the business day that the transaction is processed.

Please note, certain fees and charges posted to your account may relate to services and/or activity from the prior statement cycle.

End of Business Day Balance Summary

Date	Balance	Date	Balance	Date	Balance
[redacted]		[redacted]		[redacted]	

1
+@ Primary Account: [redacted]
Page 9 of 10
Primary Account: [redacted]
Beginning April 1, 2015 - Ending April 30, 2015

Summary of Checks

Date	Check#	Amount	Date	Check#	Amount	Date	Check#	Amount
4/10	15325	$271.03	4/14	15475*	$2,992.50	4/2	15484*	$1,900.50
[redacted]			[redacted]			[redacted]		

[redacted] [redacted] [redacted]

1
+@ Primary Account: [redacted]
Page 10 of 10
Primary Account: [redacted]
Beginning April 1, 2015 - Ending April 30, 2015

Summary of Checks - continued

Date	Check#	Amount	Date	Check#	Amount	Date	Check#	Amount
4/21	15624	$6,500.00	4/23	15625	$550.00	4/21	15626	$3,157.38

[redacted] [redacted] [redacted]

* Indicates break in check sequence

EXHIBIT 154

P6i a6my AAocurt [redacted]
: egruurug BAmoFe61b, 210 - Eudrug BAmoFe691b, 210 91

BBVA Compass

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922 CRESCENT CT STE 022
DyLLyS TU 03, 21-07X5

Contacting Us

y 8ar4aF4e FmvI oue , Xp0

PI oue 1-722-, hh-0, 00

Bu4ue FF8aAoi va/ / sAoi

. 6me : : Wy Coi va/ /
Cc/ moi e6Se6BrAe
PsBs: oV 123hh
: r6 rugl ai by L 93, 5h

Sci i a6mof y AAocun/

Deposit Accounts/ Other Products

y AAocun	y AAocunuci Fe6	Eudrug Fa4auAe 4a/ n/ ramei eun	Eudrug Fa4auAe n r/ / ramei eun
[redacted]	[redacted]	[redacted]	[redacted]
Total Deposit Accounts		[redacted]	[redacted]

BBVA Compass

TREy SORx My Ny GEMENT y Ny Lx SIS CHECYING

y AAocunNci Fe6[redacted] - HIGHLy ND Cy PITy L My Ny GEMENT LP

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: egruurug : a4auAe ou 12p1p10	[redacted]
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. m/ d6a) a4 pDeFm/ K177(	[redacted]
ynding Salance on EB/4E/E3	[redacted]**0**

Deposits and Other Credits

Dare "	Cl eAwp Se6a4"	De/ A6vmou	Devo/ m/ p C6edm/
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
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BBVA Compass

Dare "	Cl eAwp Se6a4"	De/ A6vmou	Devo/ m/ p C6edm/
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BBVA Compass

Dare "	Cl eAwp Se6a4"	De/ A6vmou	Devo/ m/ p C6edm/
[redacted]		[redacted]	[redacted]
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BBVA Compass

Dare "	Cl eAwp Se6a4"	De/ A6vmou	Devo/ m/ p C6edm/
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" Tl e Dare v6o8rded r/ ri e Fc/ rue/ / damri anri e r6au/ aAmou r/ v6oAe/ / eds

1 ithdra6 als and Other DeWits

Dare "	Cl eAwp Se6a4"	De/ A6vmou	. m d6a) a4 p DeFm/
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[redacted]		[redacted]	[redacted]

BBVA Compass

Dare "	Cl eAwp Se6a4"	De/ A6vmou	. m d6a) a4 p DeFm
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[redacted]		[redacted]	[redacted]

BBVA Compass

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BBVA Compass

Dare "	Cl eAwp Se6a4"	De/ A6vmou	. m d6a) a4 p DeFm
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BBVA Compass

Dare "	Cl eAwp Se6a4"	De/ A6vmou	. m d6a) a4 p DeFm
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BBVA Compass

Dare "	Cl eAwp Se6a4"	De/ A6vmou	. m d6a) a4 p DeFm/
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ynd owSusiness Daf Salance muv v arf

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** Indicates break in check sequence*

BBVA Compass

k o6 to Salance Hour Account

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Y ReAo6d a4acroi ared dedcAmou/ bdeFmAa6d r6au/ aAmou/ aud e4eAr6ourA Fr4tvami eun/ s
Y ReAo6d aud dedcAn/ e6BrAe Al a6ge/ bAl eAwv6umug Al a6ge/ bo6on/ e6Fauwfee/ s
Y If moc l a8e au rure6e/ nFea6ug aAAocurbadd aum rure6e/ nea6ued / l o) u ou r/ r/ / rarei eurs

mtep • Y If avv4AaF4eb/ o6nAl eAw ru uci e6rAa4o6de6aud i a6w ru moc66egr/ re6eaAl Al eAwo6on/ e6r6au/ aAmou r/ anr/ 4/ red ou r/ r/ / rarei eurs

mtep 4 Y Lr/ naumdevo/ m/ o6A6edm/ moc6l a8e i ade r/ ando uon avvea6ou r/ r/ / rarei eunK ee / vaAe v6o8rded Fe4b) (s

mtep 0 Y Lr/ naumAl eAw moc l a8e) 6mreubdeFmAa6d r6au/ aAmou/ be4eAr6ourA vami eun/ aud on/ e6 dedcAmou/ r/ ando uonavvea6ou r/ r/ / rarei eunK ee / vaAe v6o8rded Fe4b) (s

DarepDe/ A6vmou	yi ocun
	q
	q
	q
	q
	q
Srev 9 Tora4	$ q

DarepDe/ A6vmou	Cl eAw"	yi ocun
		q
		q
		q
		q
		q
	Srev X Tora4	$ q

Salancing Hour Register to this mtatev ent

mtep 5	ZEure6r/ e "Ac66eunFa4auAe" / l o) u ou r/ r/ / rarei eun	q
	Zy dd rora4f6oi Srev 9	q
	ZScFrora4	q
	ZScFr6aAnrora4f6oi Srev X	q
	ZTI r/ Fa4auAe / l oc4tl eQca4moc66egr/ re6 Fa4auAe	q
	If mdoe/ uonag6eeb/ ee / rev/ Fe4b) $	q

If moc6aAAocundoe/ uonFa4auAeb6e8re) r/ e fo4b) rugt
· Cl eAwa4moc6addmou aud / cFr6aAmou aFo8e ru moc66egr/ re6s
· Mawe / c6e moc 6ei ei Fe6ed ro / cFr6aAn/ e6BrAe Al a6ge/ 4/ red ou r/ r/ / rarei eunaud add aumrure6e/ nea6ued ro moc66egr/ re6s
· yi ocun/ of devo/ m/ aud) m/ d6a) a4 ou r/ r/ / rarei eun/ l oc4tl i anAl moc66egr/ re6eum6e/ s
· If moc l a8e Qce/ mou/ o6ueed a/ / r/ rauAebv4ea/ e 6efe6ro r/ e vl oue uci Fe6ou r/ e f6ounof r/ r/ / rarei eurs

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"ko6Nou-Cou/ ci e6y AAocunAc/ roi e6/ bv4ea/ e 6efe6ro moc6Ac66eunNou-Cou/ ci e6y AAocun y g6eei eunfo6demar4 6ega6drug E4eAr6ourA kcud T6au/ fe6/ s

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2h Case owyrrors or Questions AWbut Hour mtatev ent K8 8e6d6afnP6oreAmou B u4m(If moc r/ ruwmoc6/ rarei eunr/) 6ougbo6rf moc ueed i o6e rufo6i amou aFocna r6au/ aAmou ou moc6 / rarei eurb) 6me moc6r/ / ce ou a / eva6are doAci eunaud / eud mro : auwAa6d Ceure6bPsBs: oV , , 12bDeAamc6by L 93h55-2221sTe4evl oue ruQcr6e/ i amFe i ade FmAa4tug moc64oAa4: : Wy Coi va/ / F6auAl 4/ red ou r/ e f6ounof r/ r/ / rarei eunro / veaw) m/ a Cc/ roi e6Se6rAe Rev6e/ euram8esP4ea/ e uoret a re4evl oue ruQcr6m) r4tuonv6e/ e6Be moc66rgl r/ cude6fede6a44a) s . e i c/ nl ea6f6oi moc uo 4are6r/ au / rVmmKh2(dam/ afre6) e / eunmoc r/ e fr6/ n/ rarei eunou) l rAl r/ e e66o6o6v6oF4ei avvea6eds

- Te4tc/ moc6uai e aud aAAocunuci Fe6Kf aum(s
- De/ A6rFe r/ e e66o6o6r/ e r6au/ fe6moc a6e cu/ c6e aFocrbaud eVv4aru a/ A4ea64ma/ moc Aau) l mmoc Fe4e8e mr/ au e66o6o6) l mmoc ueed i o6e rufo6i amous
- Te4tc/ r/ e do4a6ai ocunof r/ e / c/ veAred e66o6s

x oc Aau / rov r/ e acroi amAdedcAmou of r/ e Mruri ci Pami eunf6oi moc Al eAwug aAAocunrf moc r/ ruwmoc6/ rarei eunr/) 6ougsTo / rov r/ e vami eurbmoc64ere6i c/ n6eaAl c/ r/ 6ee K9(Fc/ rue/ / dam/ Fefo6e r/ e acroi amAdedcAmou r/ / Al edc4ed ro oAAc6s

Reporting Other ProWlev s
P4ea/ e 6e8re) moc6/ rarei eunAa6efc4hsInr/ e/ / eurra4r/ anaumaAAocune66o6/ o6aumri v6ove6 r6au/ aAmou/ ou moc6aAAocunFe 6evo6red ro c/ a/ / oou a/ 6ea/ ouaF4mvo/ / rF4esIf moc far4ro uomfmc/ of aum/ c/ veAred v6oF4ei / be66o6/ o6cuacr/ o6zed r6au/ aAmou/) m/ ru r/ e mi e ve6rod/ / veArred ru r/ e devo/ maAAocunag6eei eurb) e a6e uon4aF4e ro moc fo6aum4o/ / 6e4ared ro r/ e v6oF4ei be66o6o6cuacr/ o6zed r6au/ aAmous

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EXHIBIT 155

Primary Account: [redacted]
Beginning F ctober 1, 201- Ed n9ing F ctober H1, 201- H1

BBVA Compass

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Contacting Us

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PI one 1E 00E2VVE3233

F n4ne bb8acomvassxcom

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h our BB/ A Tomvass Account.sW

P4ease see imvortant message regar9ing your MOdARUOh SADAL dSdDMADANhRGR TI dTYGDL account

Rummary of Accounts

Deposit Accounts/ Other Products

Account	Account number	d n9ing ba4ance 4ast statement	d n9ing ba4ance tl is statement
MOdARUOh SADAL dSdDMADANhRGR TI dTYGDL	[redacted]	[redacted]	[redacted]
Total Deposit Accounts		[redacted]	[redacted]

BBVA Compass

MOd ARUOh S ADAL d S d DMADANh RCR T I d TYGL

Account Dumber: [redacted] EI G I NADC TAPGMANS ADAL d S d DMNP

Account Information

K e I a8e uv9ate9 tl e Mreasury S anagement Rer8ice AgreementxM ese terms an9 con9itions) i4 become effecti8e as of Do8ember H0, 201- x hou can fin9 a current 8ersion of tl e agreement by going to:
l ttv:pp))) xbb8acomvassxcomprcommercia4treasuryEmanagementpresourceEcentra4p

M e user G is wtreasurywan9 tl e vass) or9 is wmanagementxw

Activity Summary

Beginning Ba4ance on 10p1p1-	[redacted]
CevositspTre9its .22W	[redacted]
K itl 9ra) a4spCebits .1V3W	[redacted]
Ending Balance on 10/31/18	[redacted]

Deposits and Other Credits

Cate "	TI ec" p Reria4$	Cescrivtion	Cevositsp Tre9its
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]

Primary Account: [redacted]
Beginning F ctober 1, 201- Ed n9ing F ctober H1, 201- H1

BBVA Compass

Cate "	TI ec" p Reria4$	Cescrivtion	Cevositsp Tre9its
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]

P4ease note, certain fees an9 cl arges voste9 to your account may re4ate to ser8ices an9pr acti8ity from tl e vrior statement cyc4ex
" M e Cate vro8i9e9 is tl e business 9ay tl at tl e transaction is vrocesse9x

Withdrawals and Other Debits

Cate "	TI ec" p Reria4$	Cescrivtion	K itl 9ra) a4sp Cebits
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
		66665	

Primary Account: [redacted]
Beginning F ctober 1, 201- Ed n9ing F ctober H1, 201- H1

BBVA Compass

Cate "	TI ec" p Reria4$	Cescrivtion	K itl 9ra) a4sp Cebits
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
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[redacted]		[redacted]	[redacted]
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[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
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[redacted]		[redacted]	[redacted]
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[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]

Page X of 6
Primary Account: [redacted]
Beginning F ctober 1, 201- Ed n9ing F ctober H1, 201- H1

BBVA Compass

Cate "	TI ec" p Reria4$	Cescrivtion	K itl 9ra) a4sp Cebits
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]

Page V of 6
Primary Account: [redacted]
Beginning F ctober 1, 201- Ed n9ing F ctober H1, 201- H1

BBVA Compass

Cate "	TI ec" p Reria4$	Cescrivtion	K itl 9ra) a4sp Cebits
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
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[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]

Primary Account: [redacted]
Beginning F ctober 1, 201- Ed n9ing F ctober H1, 201- H1

BBVA Compass

Cate "	TI ec" p Reria4$	Cescrivtion	K itl 9ra) a4sp Cebits
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]

Primary Account: [redacted]
Beginning F ctober 1, 201- Ed n9ing F ctober H1, 201- H1

BBVA Compass

Cate "	TI ec" p Reria4$	Cescrivtion	K itl 9ra) a4sp Cebits
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]

P4ease note, certain fees an9 cl arges voste9 to your account may re4ate to ser8ices an9pr acti8ity from tl e vrior statement cyc4ex
" M e Cate vro8i9e9 is tl e business 9ay tl at tl e transaction is vrocesse9x

End of Business Day Balance Summary

Cate	Ba4ance	Cate	Ba4ance	Cate	Ba4ance
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]				

Summary of Checks

Cate	TI ec" $	Amount	Cate	TI ec" $	Amount	Cate	TI ec" $	Amount
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]

** Indicates break in check sequence*

BBVA Compass

How to Balance Your Account

Step 1
- d nter a4cl ec" s, 9evosits, an9 otl er automate9 te4er car9 .AMS Wtransactions in your registerx
- Oecor9 a4automate9 9e9uctions, 9ebit car9 transactions an9 e4ectronic bi4vaymentsx
- Oecor9 an9 9e9uct ser8ice cl arges, cl ec" vrinting cl arges, or otl er ban" feesx
- Gyou l a8e an interest bearing account, a99 any interest earne9 sl o) n on tl is statementx

Step 2
- Gavv4cab4e, sort cl ec" s in numerica4or9er an9 mar" in your register eacl cl ec" or otl er transaction tl at is 4ste9 on tl is statementx

Step 3
- Nst any 9evosits or cre9its your l a8e ma9e tl at 9o not avvear on tl is statement .see svace vro8i9e9 be4o) Wx

Step 4
- Nst any cl ec" s you l a8e) ritten, 9ebit car9 transactions, e4ectronic vayments an9 otl er 9e9uctions tl at 9o not avvear on tl is statement .see svace vro8i9e9 be4o) Wx

CatepCescrivtion	Amount
	•
	•
	•
	•
	•
Rtev HMbta4	* •

CatepCescrivtion	Tl ec" $	Amount
		•
		•
		•
		•
		•
	Rtev 5 Mbta4	* •

Balancing Your Register to this Statement

Step 5	qd nter tl e wcurrent ba4ancewsl o) n on tl is statement	•
	qA99 tota4from Rtev H	•
	qRubtota4	•
	qRubtract tota4from Rtev 5	•
	qM is ba4ance sl ou4 eZua4your register ba4ance	•
	Git 9oes not agree, see stevs be4o) *	•

Gyour account 9oes not ba4ance, re8ie) tl e fo4b) ing:
· Tl ec" a4your a99ition an9 subtraction abo8e in your registerx
· S a" e sure you remembere9 to subtract ser8ice cl arges 4ste9 on tl is statement an9 a99 any interest earne9 to your registerx
· Amounts of 9evosits an9) itl 9ra) a4s on tl is statement sl ou4 matcl your register entriesx
· Gyou l a8e Zuestions or nee9 assistance, v4ease refer to tl e vl one number on tl e front of tl is statementx

Change of Address

P4ease ca4us at tl e te4vl one number 4ste9 on tl e front of tl is statement to te4us about a cl ange of a99ressx

Electronic Transfers *(for consumer accounts only)*

Ga case of errors or Zuestions about your d4ectronic Mransfers,) rite to BB/ A Tomvass Ban", F verations Tomv4ance Ruvvort, PxF xBo(10XVV, Birmingl am, AN HX26VxF r simv4y ca4tyour 4oca4customer ser8ice number vrinte9 on tl e front of tl is statementxTa4or) rite as soon as you can, if you tl in" your statement or receivt is) rong or if you nee9 more information about a transfer on tl e statement or receivtxK e must l ear from you no 4ater tl an V0 9ays after) e sent tl e first statement on) l icl tl e error or vrob4em avveare9x

- Me4us your name an9 account number .if anyWx
- Cescribe tl e error or tl e transfer you are unsure about, an9 e(v4ain as c4ear4y as you can) l y you be4e8e it is an error or) l y you nee9 more informationx
- Me4us tl e 9o4ar amount of tl e susvecte9 errorx

K e) i4in8estigate your comv4aint an9) i4correct any error vromvt4yxGe) e ta" e more tl an 10 business 9ays .20 on c4aims on accounts ovene9 4ess tl an H0 ca4en9ar 9aysWto 9o tl is,) e) i4 cre9it your account for tl e amount you tl in" is in error, so tl at you) i4l a8e tl e use of tl e money 9uring tl e time it ta" es us to comv4ete our in8estigationx

"kor DonE Tonsumer Account customers, v4ease refer to your current DonE Tonsumer Account Agreement for 9etai4s regar9ing d4ectronic kun9 Mransfersx

Overdraft Protection

Calculation of Interest Charge and Balance Subject to Interest RatexM e interest cl arge is comvute9 using your annua4vercentage rate 9i8i9e9 by HVX or, in tl e case of a 4eav year, HVV,) l icl gi8es you tl e |Avv4cab4e Oatex A4l ougl) e ca4cu4ate tl e interest cl arge by avv4ying tl e Avv4cab4e Oate to eacl 9ai4y ba4ance, tl e interest cl arge can a4so be ca4cu4ate9 by mu4iv4ying tl e Avv4cab4e Oate by tl e |a8erage 9ai4y ba4ancej .Ba4ance Rubzect to Gterest OateWsl o) n on tl is statement, tl en mu4iv4ying tl at sum by tl e number of 9ays in tl e bi4lng cyc4exMo get tl e |Ba4ance Rubzect to Gterest Oatej sl o) n on tl is statement) e ta" e tl e beginning ba4ance of your account 4ess any unvai9 finance cl arges eacl 9ay, a99 any ne) a98ances or 9ebits, an9 subtract any vayments or cre9itsxM is gi8es us tl e 9ai4y ba4ancexM en) e a99 a4ttl e 9ai4y ba4ances for tl e bi4lng cyc4e an9 9i8i9e by tl e number of 9ays in tl e bi4lng cyc4exM is gi8e us tl e |a8erage 9ai4y ba4ancej sl o) n on tl e statement as |Ba4ance Rubzect to Gterest Oatej x PaymentsxPayments to your o8er9raft vrotection 4oan account ma9e tl rougl our te4ers or 9evosite9 at our automate9 te4er macl ines .AMS sWS on9ay tl rougl kri9ay before tl e voste9 cutEoff time) i4be voste9 to your account on tl e 9ate tl ey are accevte9xF tl er) ise, tl ey) i4be voste9 on tl e ne(t business 9ayxPayments ma9e tl rougl our AMS s 8ia a fun9s transfer) i4be voste9 on tl e 9ate tl ey are recei8e9 or on tl e ne(t business 9ay if ma9e after Vvm TM.Vvm S M for Ari"ona accounts an9 Vvm PMfor Ta4fornia accountsWS on9ay tl rougl kri9ay or anytime Ratur9ay, Run9ay or ban" l o49aysxBB/ A Tomvass Ban" business 9ays are S on9ay tl rougl kri9ay, e(c4u9ing l o49aysx

In Case of Errors or Questions About Your Statement .F 8er9raft Protection F n4yW Gyou tl in" your statement is) rong, or if you nee9 more information about a transaction on your statement,) rite your issue on a sevarate 9ocument an9 sen9 it to Ban" car9 Tenter, PxF xBo(2210, Cecatur, AN HXV66ED001xMe4evl one inZuires may be ma9e by ca4lng your 4oca4BB/ A Tomvass brancl 4ste9 on tl e front of tl is statement to svea") itl a Tustomer Rer8ice Oevresentati8exP4ease note: a te4evl one inZuiry) i4not vreser8e your rigl ts un9er fe9era44a) x K e must l ear from you no 4ater tl an si(ty .V0V9ays after) e sent you tl e first statement on) l icl tl e error or vrob4em avveare9x

- Me4us your name an9 account number .if anyWx
- Cescribe tl e error or tl e transfer you are unsure about, an9 e(v4ain as c4ear4y as you can) l y you be4e8e it is an error or) l at you nee9 more informationx
- Me4us tl e 9o4ar amount of tl e susvecte9 errorx

hou can stov tl e automatic 9e9uction of tl e S inimum Payment from you cl ec" ing account if you tl in" your statement is) rongxMo stov tl e vayment, your 4etter must reacl us tl ree .HW business 9ays before tl e automatic 9e9uction is scl e9u4e9 to occurx

Reporting Other Problems

P4ease re8ie) your statement carefu4yxGis essentia4tl at any account errors or any imvrover transactions on your account be revorte9 to us as soon as reasonab4y vossib4exGyou fai4to notify us of any susvecte9 vrob4ems, errors or unautl ori"e9 transactions) itl in tl e time verio9s svecifie9 in tl e 9evosit account agreement,) e are not 4ab4e to you for any 4oss re4ate9 to tl e vrob4em, error or unautl ori"e9 transactionx

BB/ A Tomvass is a tra9e name of Tomvass Ban", a member of tl e BB/ A L rouvx Tomvass Ban", S ember kCGTx

EXHIBIT 156

Primary Account: [redacted]
Beginning Febtem, er 120- 1E d9nHing Febtem, er I - 20- 1E I -

BBVA

01 GLNGDACT MAPLSAD RACAN9R9CS DP
RAFS9O UP9OASLCN AMMU3CS
I - - MO9FM9CS MS FS9 7- -
TADDAF SX 750- 1d768E

Contacting Us

A4aiva, ve , y bl one 08p7

Pl one 1d6- - d0hhd7077

Unvine , , 4au/ ascom

. rite BBVA
Mu/ tomer Fer4ice
PsUsBoV 1- 5hh
Birmingl am2ADI 50Eh

Fummary of Account/

Deposit Accounts/ Other Products

Account	Account num, er	9nHing , avance va/ t / tatement	9nHing , avance tl i/ / tatement
SO9AF3Ox RACAN9R9CS ACADx FLF MG9MYLCN	[redacted]	[redacted]	[redacted]
Total Deposit Accounts		[redacted]	[redacted]

Primary Account: [redacted]
Beginning Febtem, er 120- 1E d9 nHing Febtem, er I - 20- 1E I -

BBVA

SO9 AF3 Ox RACAN9 R9 CS ACADx FLF MG9 MYLCN

Account Cum, er: [redacted] dGLNGDACT MAPLSAD RACAN9 R9 CS DP

Activity Summary

Beginning Bavance on Ep1p1E	[redacted]
Tebo/ it/ pMreHit/ K0- (	[redacted]
. itl Hra) av pTe, it/ K180(	[redacted]
Ending Balance on 9/30/19	[redacted]

Deposits and Other Credits

Tate "	Ml ecwp Feriav"	Te/ cribtion	Tebo/ it/ p MreHit/
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
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[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]

Primary Account: [redacted]
Beginning Febtem, er 120- 1E d9 nHing Febtem, er I - 20- 1E I -

BBVA

Tate "	Mi ecwp Feriav"	Te/ cribtion	Tebo/ it/ p MreHt/
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]

Pvea/ e note2certain fee/ anHcl arge/ bo/ teH to your account may revate to / er4ice/ anHpor acti4ity from tl e brior / tatement cycves
" Sl e Tate bro4iHeHi/ tl e , u/ ine/ / Hay tl at tl e tran/ action i/ broce/ / eHs

Withdrawals and Other Debits

Tate "	Mi ecwp Feriav"	Te/ cribtion	. itl Hra) av/ p Te, it/
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[redacted]		[redacted]	[redacted]
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[redacted]		[redacted]	[redacted]

Primary Account: [redacted]
Beginning Febtem, er 120- 1E d9nHing Febtem, er I - 20- 1E I -

BBVA

Tate "	Mi ecwp Feriav"	Te/ cribtion	. itl Hra) av/p Te, it/
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]

Primary Account: [redacted]
Beginning Febtem, er 120- 1E d9nHing Febtem, er I - 20- 1E I -

BBVA

Tate "	Mi ecwp Feriav"	Te/ cribtion	. itl Hra) av/p Te, it/
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Primary Account: [redacted]
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BBVA

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Primary Account: [redacted]
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BBVA

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End of Business Day Balance Summary

Tate	Bavance	Tate	Bavance	Tate	Bavance
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
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[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]		

Summary of Checks

Tate	Mi ecw"	Amount	Tate	Mi ecw"	Amount	Tate	Mi ecw"	Amount
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
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[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
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[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]			

** Indicates break in check sequence*

BBVA

How to Balance Your Account

Step 1
- 9nter awcl ecw 2Hebo/ it/ 2anHotl er automateHtewer carHkASR (tran/ action/ in your regi/ ters
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- If you l a4e an intere/ t , earing account2aHH any intere/ t earneH/ l o) n on tl i/ / tatements

Step 2
- If abbvica, ve2/ ort cl ecw in numericavorHer anHmarw in your regi/ ter eacl cl ecwor otl er tran/ action tl at i/ vi/ teHon tl i/ / tatements

Step 3
- Di/ t any Hebo/ it/ or creHit/ your l a4e maHe tl at Ho not abbear on tl i/ / tatement Kee / bace bro4iHeH, evo) (s

Step 4
- Di/ t any cl ecw you l a4e) ritten2He, it carH tran/ action/ 2evectronic bayment/ anHotl er HeHuction/ tl at Ho not abbear on tl i/ / tatement Kee / bace bro4iHeH, evo) (s

TatepTe/ cribtion	Amount
	q
	q
	q
	q
	q
Fteb l Sotav	# q

TatepTe/ cribtion	Ml ecw"	Amount
		q
		q
		q
		q
		q
	Fteb 8 Sotav	# q

Balancing Your Register to this Statement

Step 5	Z9nter tl e "current , avance" / l o) n on tl i/ / tatement	q
	ZAHHtotavfrom Fteb l	q
	ZFu, totav	q
	ZFu, tract totavfrom Fteb 8	q
	ZSl i/ , avance / l ouvHeQuavyour regi/ ter , avance	q
	If it Hoe/ not agree2/ ee / teb/ , evo) #	q

If your account Hoe/ not , avance2re4ie) tl e fowo) ing:
· Ml ecwawyour aHHition anH/ u, traction a, o4e in your regi/ ters
· Rawe / ure you remem, ereHto / u, tract / er4ice cl arge/ vi/ teHon tl i/ / tatement anHaHH any intere/ t earneHto your regi/ ters
· Amount/ of Hebo/ it/ anH) itl Hra) avi on tl i/ / tatement / l ouvH matcl your regi/ ter entrie/ s
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Change of Address

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Electronic Transfers *(for consumer accounts only)*

In ca/ e of error/ or Que/ tion/ a, out your 9vectronic Sran/ fer/ 2) rite to BBWA2Uberation/ Mombviance Fubbort2PsUsBoV 1- 5hh2 Birmingl am2AD l 50EhsUr / imbwy cawyour vocavcu/ tomer / er4ice num, er brinteHon tl e front of tl i/ / tatementsMawor) rite a/ / oon a/ you can2if you tl inwyour / tatement or receibt i/) rong or if you neeH more information a, out a tran/ fer on tl e / tatement or receibts. e mu/ t l ear from you no vater tl an h- Hay/ after) e / ent tl e fir/ t / tatement on) l icl tl e error or bro, vem abbeareHs

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Overdraft Protection
Calculation of Interest Charge and Balance Subject to Interest Rates Sl e intere/ t cl arge i/ combuteHu/ ing your annuavbercentage rate H4iHeH, y l h5 or2in tl e ca/ e of a veab year2l hh2) l icl gi4e/ you tl e •Abbvica, ve Oates| Avtl ougl) e cavcuvate tl e intere/ t cl arge , y abbwying tl e Abbvica, ve Oate to eacl Haiwy , avance2tl e intere/ t cl arge can avl o , e cavcuvateH, y muvtibwying tl e Abbvica, ve Oate , y tl e •a4erage Haiwy , avance|KBavance Fu, ject to Intere/ t Oate(/ l o) n on tl i/ / tatement2tl en muvtibwying tl at / um , y tl e num, er of Hay/ in tl e , iwing cycvesSo get tl e •Bavance Fu, ject to Intere/ t Oate| / l o) n on tl i/ / tatement) e tawe tl e , eginning , avance of your account ve/ / any unbaiHfinance cl arge/ eacl Hay2aHHany ne) aHkance/ or He, it/ 2anH / u, tract any bayment/ or creHit/ sSl i/ gi4e/ u/ tl e Haiwy , avancesSl en) e aHHawtl e Haiwy , avance/ for tl e , iwing cycve anHH4iHe , y tl e num, er of Hay/ in tl e , iwing cycvesSl i/ gi4e u/ tl e •a4erage Haiwy , avance| / l o) n on tl e / tatement a/ •Bavance Fu, ject to Intere/ t Oate|s Payment/ sPayment/ to your o4erHraft brotection voan account maHe tl rougl our tewer/ or Hebo/ iteHat our automateHtewer macl ine/ kASR / (RonHay tl rougl $riHay , efore tl e bo/ teH cutoff time) iw, e bo/ teHto your account on tl e Hate tl ey are accebteHsUtl er) i/ e2tl ey) iw, e bo/ teHon tl e neVt , u/ ine/ / HaysPayment/ maHe tl rougl our ASR / 4ia a funH/ tran/ fer) iw, e bo/ teHon tl e Hate tl ey are recei4eHor on tl e neVt , u/ ine/ / Hay if maHe after hbm MS Knbm RS for Arizona account/ anHhbm PS for Mavifornia account/ (RonHay tl rougl $riHay or anytime FaturHay2FunHay or , anwl oviHay/ sBBWA , u/ ine/ / Hay/ are RonHay tl rougl $riHay2eVcvuHing l oviHay/ s

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Reporting Other Problems
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EXHIBIT 157

NEXBANK
2515 McKinney Avenue, 11th Floor
Dallas, Texas 75201
972.934.4700
www.NexBank.com

EQUAL HOUSING LENDER
FDIC

Date 8/29/14 Page 1
Primary Account [redacted]
Enclosures

Highland Capital Management LP
300 Crescent Court Suite 700
Dallas TX 75201

Checking Account/s

Account Type: Highland Capital Management LP

Analysis Checking w/ Interest

Account Number	[redacted]	Statement Dates	8/01/14 thru 9/01/14
Last Statement Balance	[redacted]	Days in the statement period	[redacted]
14 Deposits/Credits	[redacted]	Average Ledger	[redacted]
4 Checks/Debits	[redacted]	Average Collected	[redacted]
Service Charge	[redacted]	Interest Earned	[redacted]
Interest Paid	[redacted]	Annual Percentage Yield Earned	[redacted]
This Statement Balance	[redacted]	2014 Interest Paid	[redacted]

Deposits and Additions

Date	Description	Amount
[redacted]		

NEXBANK
2515 McKinney Avenue, 11th Floor
Dallas, Texas 75201
972.934.4700
www.NexBank.com

Date 8/29/14 Page 2
Primary Account [redacted]
Enclosures

Analysis Checking w/ Interest [redacted] (Continued)

Deposits and Additions

Date	Description	Amount
[redacted]		

Checks and Withdrawals

Date	Description	Amount
[redacted]		
8/21	IB Transfer from D ****130 to D ****171	4,000,000.00-
[redacted]		

Daily Balance Information

Date	Balance	Date	Balance	Date	Balance
[redacted]					

Interest Rate Summary

Date	Rate
[redacted]	

NEXBANK
2515 McKinney Avenue, 11th Floor
Dallas, Texas 75201
972.934.4700
www.NexBank.com

Date 8/29/14 Page 3
Primary Account [redacted]
Enclosures

Analysis Checking w/ Interest [redacted] (Continued)

End of Statement

OUTSTANDING CHECKS

Reconciliation of Account

CHECKS WRITTEN BUT NOT PAID

NUMBER	AMOUNT		

EXHIBIT 158

Jefferies

Jefferies LLC
520 Madison Avenue, 12th Floor
New York, New York 10022-4213
tel 212.284.2300

SIPC

Customer Account Number: [redacted] **AE: PB2** **Statement Period: October 01, 2014 to October 31, 2014** **PAGE 1 of 7**

MARKET INDICES

Index	[redacted]	[redacted]	[redacted]

HIGHLAND CAPITAL MANAGEMENT LP
300 CRESCENT COURT
SUITE 700
DALLAS TX 75201-7849

ACCOUNT VALUE SUMMARY

Description	As of 09/30/14	This Period
[redacted]	[redacted]	[redacted]
Subtotal	[redacted]	[redacted]
Margin		
TOTAL	[redacted]	[redacted]

DIVIDENDS, INTEREST, AND TAX ACTIVITY SUMMARY

Description	This Statement	Year to Date
[redacted]	[redacted]	[redacted]
TOTAL INCOME	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]
TOTAL EXPENSES	[redacted]	[redacted]

THIS SUMMARY IS FOR INFORMATIONAL PURPOSES ONLY. IT IS NOT INTENDED AS A TAX DOCUMENT.
THIS STATEMENT SHOULD BE RETAINED FOR YOUR RECORDS.

Please review this statement carefully. If it does not reflect your understanding of your transactions or balances, or there are any errors or omissions on this statement, promptly notify Jefferies LLC ("Jefferies") by calling 201-761-7610. Any oral communications should be re-confirmed in writing to further protect your rights, including those under the Securities Investors Protection Act (SIPA). All written inquires and re-confirmations should be addressed to Jefferies LLC Attn: Customer Reporting Group, 101 Hudson Street, 11th Floor, Jersey City, NJ 07302-3915.

- You may have received a confirmation for a trade that does not appear on this statement. If the statement date of the trade as shown on the confirmation is later than the closing date of this statement (as shown above), that trade will appear on your next regular monthly statement.
- Transactions appearing on this statement may include those, if any, that have been executed by an affiliated broker-dealer but cleared through this account. Please check your confirmations to identify such transactions.
- If you are subject to 1099 reporting requirements, we are required by law to report to the Internal Revenue Service ("IRS") all gross proceeds of sales transactions (including short sales), cash dividends and registered bond interest credited to your account on securities held for you in our name. We also report coupon bond interest and interest earned on credit balances. Your Consolidated Form 1099 rather than your monthly statements is the authoritative document for tax reporting purposes and is used to report information to the IRS.
- If this statement is for a margin account and we maintain a special miscellaneous account for you, this statement is a combined statement of your general account and the special miscellaneous account maintained for you under section 4(f)(6) of Regulation T, issued by the Board of Governors of the Federal Reserve System. As required by Regulation T, the permanent record of the special miscellaneous account is available for your inspection upon request.
- A free credit balance represents funds payable upon demand, which although properly accounted for on Jefferies books are not segregated and may be used in the conduct of Jefferies business. Jefferies offers to routinely transfer ("sweep") your free credit balance into a money market fund at your election. The balance in such fund may be liquidated pursuant to your order and the proceeds returned to your securities account to be held as a free credit balance or remitted to you.
- The prices of securities displayed on your statement are derived from various sources and in some cases may be higher or lower than the price that you would actually receive in the market. Although we attempt to use reliable sources of information, we do not guarantee the accuracy of any securities prices.
- If this statement contains month-end valuations for Direct Participation Programs or Real Estate Investment Trusts, such values may be estimated, and obtained from pricing services or from the issuer in its annual report. If this statement does not contain month-end valuations for such instruments, it may be because accurate valuation information is not available. Please note that such securities are often illiquid and any estimated value may not be realized upon sale. The actual value of such instruments will most likely be different from the original purchase price.
- Jefferies is a member of the Securities Investor Protection Corporation ("SIPC"). SIPC currently protects the securities and cash in your account up to $500,000 of which $250,000 may be in cash. Jefferies has secured additional protection of up to $24,500,000 per account with an aggregate limit of $100,000,000 for all accounts. Neither the SIPC nor the additional coverage protects against the market risks associated with investing. Positions that are held away are not in the custody or control of Jefferies nor are they covered by SIPC or the additional protection secured by Jefferies.
- In order to assist us in maintaining current background and financial information concerning our customers, we request that you promptly advise us in writing of any material change in your investment objectives or financial situation.
- Jefferies' Financial Statements are available for your personal inspection at any of Jefferies' offices, at the regional office of the Securities and Exchange Commission in New York or a copy will be mailed to you upon your written request. A most recent copy of the Audited and Unaudited Consolidated Statement of Financial Condition of Jefferies can be found by visiting the firm's website at www.jefferies.com and go to Investor Relations or call 1-888-JEFFERIES.
- Information with respect to commission and other charges incurred in connection with the execution of option transactions has been included in confirmations previously furnished to you. A summary of this information is available to you promptly upon your written request directed to your account executive.
- Exercise assignment notices for option contracts are allocated among client short positions pursuant to a procedure that randomly selects those contracts which are subject to exercise from among all client short option positions, including positions established on the day of the assignment. All short positions are liable for assignment at any time. A more detailed description of our random allocation procedure is available upon written request.
- In the event there has been any change in your investment objective(s), financial situation and/or risk tolerance, please contact your Account Executive.
- Call features shown on any fixed income security indicate the next regularly scheduled call date and price. Your holdings may be subject to other redemption features, including sinking funds, extraordinary calls or other call provisions. Unrealized gains and losses on bonds, if shown, have been adjusted to account for the accretion of original issue discount, the amortization of premium, and/or the accretion of market discount. For foreign bonds, amounts shown are denominated in the currency of the issue, price is a function of exchange rate and market price, market value is denominated in U.S. dollars, and changes in the exchange rate will affect the face value in U.S. dollars and market value.
- With respect to estimated yield figures shown, such as Estimated Annual Interest and Estimated Yield be advised that: (i) they are estimates, not actual amounts scheduled to be paid; (ii) for certain types of securities the amounts shown could include a return of principal or capital gains, in which case those estimated figures would be overstated; and (iii) the actual income and yield paid might be lower or higher than the estimated amounts. Estimated Yield reflects only the income generated by an investment. It does not reflect changes in price, which may fluctuate.
- Market Linked Investments ("MLIs") are buy and hold investments and are valued at par to reflect 100% principal protection in the investment currency at maturity. MLIs denominated in a currency other than U.S. dollars may be marked to market to reflect changes in the par value of the MLI in U.S. dollar terms.
- Please preserve this statement as it will be helpful in preparing your income tax returns and may be needed along with subsequent statements to verify activity in your account.
- For purposes of computing interest payable by you, balances in all types of accounts (except short, DVP and other) are combined. Credit balances, where applicable, are subtracted from debit balances in determining the daily debit balance, but only to the extent such credit balances do not exceed such debit balances.
- Short accounts are marked-to-the-market. Excess funds are credited to, and deficiencies of funds are debited from, the margin account.
- Interest charged on debit balances (and the applicable interest rate) will appear as a line item in the activity section for those accounts that incurred interest charges during any statement period. This statement should be retained and used in conjunction with the prior and next statement received to determine the amount of interest charged for each interest computation period. Interest will be charged on an average daily net debit balance computed on the basis of a 360-day year. For further information on how to compute interest, refer to the "Truth in Lending Statement". Interest in all months, except for December, is computed two days prior to the last business day of the current month through two days prior to the last business day of the following month and will be processed in your account (debited or credited) one day prior to the last business day of each month. In December, interest will accrue through December 31st and will be processed on the last business day of the calendar year.
- For purposes of any interest earned with respect to credit balances in your account, your statement will display an aggregate credit amount based on your net average daily free credit balance beginning with the day the credit balance begins and for each day during the period displayed.

JEF Rev 2/2014 S1032B06

Jefferies

Jefferies LLC
520 Madison Avenue, 12th Floor
New York, New York 10022-4213
tel 212.284.2300

Customer Account Number: [redacted] **AE: PB2** **Statement Period: October 01, 2014 to October 31, 2014**

BUY SELL TRANSACTIONS

Credit ratings are subjective opinions and not statements of fact and should not be relied on as investment advice. S&P shall not be liable for any direct, indirect, incidental, exemplary, compensatory, punitive, special or consequential damages, legal fees, or losses (including lost income or profits and opportunity costs or losses caused by negligence) in connection with any use of credit ratings.

Date	Transaction	Account Type	Quantity	Description	Price	Amount Debit	Amount Credit
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	
TOTAL BUY SELL TRANSACTIONS:						**$65,203.60**	

INCOME AND DISTRIBUTION ACTIVITY

Date	Transaction	Account Type	Quantity	Description	Rate	Amount Debit	Amount Credit
10/1	WIRE	MARGIN		FUNDS WIRE NEXBANK SSB NEXPOINT ADVISORS LP REF# B1Q8154C009052		$6,000,000.00	
[redacted]	[redacted]	[redacted]		[redacted]			[redacted]
[redacted]	[redacted]	[redacted]		[redacted]			[redacted]
[redacted]	[redacted]	[redacted]		[redacted]			[redacted]
[redacted]	[redacted]	[redacted]		[redacted]			[redacted]
[redacted]	[redacted]	[redacted]		[redacted]			[redacted]
[redacted]	[redacted]	[redacted]		[redacted]		[redacted]	
[redacted]	[redacted]	[redacted]		[redacted]	[redacted]		[redacted]
TOTAL INCOME AND DISTRIBUTION ACTIVITY:						[redacted]	[redacted]

Customer Account Number: [redacted] AE: PB2 Statement Period: October 01, 2014 to October 31, 2014 PAGE 4 of 7

OTHER ACTIVITY

Date	Transaction	Account Type	Quantity	Description	Amount Debit	Amount Credit
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]		
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]		
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]		
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]		
TOTAL OTHER ACTIVITY:					$4,908.89	

PORTFOLIO SUMMARY

Bond ratings are provided by Moody s and Standard & Poor s, respectively. For more information about bond ratings please contact your financial advisor. Estimated figures shown are estimates and actual yield and income may differ.

EQUITIES - LONG POSITIONS: 85.00% of Portfolio

Account Type	Quantity	Description	Symbol/ Cusip	Current Price	Market Value	Estimated Annual Income	Estimated Yield
[redacted]		[redacted]	[redacted]	[redacted]			
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]		
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]		

Jefferies

Jefferies LLC
520 Madison Avenue, 12th Floor
New York, New York 10022-4213
tel 212.284.2300

SIPC

Customer Account Number: [redacted] **AE: PB2** **Statement Period: October 01, 2014 to October 31, 2014**

EQUITIES - LONG POSITIONS (Continued)

Account Type	Quantity	Description	Symbol/ Cusip	Current Price	Market Value	Estimated Annual Income	Estimated Yield
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]		
[redacted]	[redacted]	[redacted]		[redacted]	[redacted]		
[redacted]	[redacted]	[redacted]		[redacted]	[redacted]		
		MARKET VALUE OF EQUITIES - LONG POSITIONS			[redacted]	[redacted]	

CORPORATE BONDS

Account Type	Quantity	Description	Bond Ratings	Current Price	Market Value	Estimated Annual Income	Estimated Yield
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	
		MARKET VALUE OF CORPORATE BONDS			[redacted]	[redacted]	

Customer Account Number: [redacted] AE: PB2 Statement Period: October 01, 2014 to October 31, 2014 PAGE 6 of 7

US AGENCY SECURITIES

Account Type	Quantity	Description	Bond Ratings	Current Price	Market Value	Estimated Annual Income	Estimated Yield
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	
		MARKET VALUE OF US AGENCY SECURITIES			[redacted]	[redacted]	

MUTUAL FUNDS: 14.90% of Portfolio

Account Type	Quantity	Description	Symbol/ Cusip	Current Price	Market Value	Estimated Annual Income	Estimated Yield
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]		
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]		
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]		
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]		
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]		
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]		
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]		
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]		
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]		
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]		
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]		
		TOTAL - MUTUAL FUNDS			[redacted]	[redacted]	

Jefferies

Jefferies LLC
520 Madison Avenue, 12th Floor
New York, New York 10022-4213
tel 212.284.2300

Customer Account Number: [redacted] **AE: PB2** **Statement Period: October 01, 2014 to October 31, 2014**

Customer Notice

IMPORTANT NOTICE

► In accordance with the requirements of the Securities and Exchange Commission (the "Commission") clients may obtain a free copy of the Unaudited Consolidated Statement of Financial Condition of Jefferies LLC as of May 31, 2014 by visiting our website at http://investor-relations.jefferies.com/GenPage.aspx?IID=102756&GKP=207790 or by calling 1-888-JEFFERIES. The Statement of Financial Condition is also available for your personal inspection at Jefferies' principal office at 520 Madison Avenue, New York, NY 10022 or at the regional office of the Securities and Exchange Commission in New York.

Jefferies is subject to the Commission's Uniform Net Capital Rule (the "Rule"), which specifies minimum net capital requirements. Jefferies computes net capital under the alternative method of the rule, which requires the Company to maintain net capital of not less than the greater of $1,500,000 or 2% of aggregate debit balances (primarily receivables from customer transactions). Compliance with the Rule could limit operations of Jefferies, such as underwriting and trading activities that require the use of significant amounts of capital, and may also restrict loans, advances, dividends and other payments by Jefferies. As of May 31, 2014, Jefferies' net capital was $1,090,453,000 which was 33% of aggregate debit balances and $1,016,424,000 in excess of required net capital.

*** END OF STATEMENT ***

EXHIBIT 159

NEXBANK
2515 McKinney Avenue, 11th Floor
Dallas, Texas 75201
972.934.4700
www.NexBank.com

Date 11/28/14 Page 1
Primary Account [redacted]
Enclosures

Highland Capital Management LP
300 Crescent Court Suite 700
Dallas TX 75201

NexBank's Privacy Policy is accessible at www.NexBank.com

Checking Account/s

Account Type: Highland Capital Management LP

Analysis Checking w/ Interest

Account Number	[redacted]0	Statement Dates	11/03/14 thru 11/30/14
Last Statement Balance	[redacted]	Days in the statement period	[redacted]
8 Deposits/Credits	[redacted]5	Average Ledger	[redacted]
6 Checks/Debits	[redacted]	Average Collected	[redacted]
Service Charge	[redacted]	Interest Earned	[redacted]
Interest Paid	[redacted]	Annual Percentage Yield Earned	[redacted]
This Statement Balance	[redacted]3	2014 Interest Paid	[redacted]

Deposits and Additions

Date	Description	Amount
[redacted]		

NEXBANK
2515 McKinney Avenue, 11th Floor
Dallas, Texas 75201
972.934.4700
www.NexBank.com

Date 11/28/14 Page 2
Primary Account [redacted]
Enclosures

Analysis Checking w/ Interest [redacted] (Continued)

Checks and Withdrawals

Date	Description	Amount
11/14	IB Transfer from D ****130 to D ****171	2,500,000.00-

[redacted]

Daily Balance Information

Date	Balance	Date	Balance	Date	Balance

[redacted]

Interest Rate Summary

Date	Rate

[redacted]

End of Statement

OUTSTANDING CHECKS

Reconciliation of Account

CHECKS WRITTEN BUT NOT PAID

NUMBER	AMOUNT		

EXHIBIT 160

ERD Report Filename - 7202015031004573.TXT
Batch # - 2015031004573
Printed on Feb 02, 2015 at 07:40 AM

CLOSE

1
+@ Primary Account: [redacted]
Page 1 of 7
Primary Account: [redacted]
Beginning January 1, 2015 - Ending January 31, 2015

HIGHLAND CAPITAL MANAGEMENT LP
MASTER OPERATING ACCOUNT
300 CRESCENT CT STE 700
DALLAS TX 75201-7849

Contacting Us

Phone: 1-800-266-7277

S u m m a r y o f A c c o u n t s

Deposit Accounts/Other Products

Account	Account number	Ending balance last statement	Ending balance this statement
TREASURY MANAGEMENT ANALYSIS CHECKING	[redacted]	[redacted]	[redacted]
Total Deposit Accounts		[redacted]	[redacted]

1
+@ Primary Account: [redacted]
Page 2 of 7
Primary Account: [redacted]
Beginning January 1, 2015 - Ending January 31, 2015

T R E A S U R Y M A N A G E M E N T A N A L Y S I S C H E C K I N G
Account Number: 0025876342 - HIGHLAND CAPITAL MANAGEMENT LP

Activity Summary

Beginning Balance on 1/1/15	[redacted]
Deposits/Credits (23)	[redacted]
Withdrawals/Debits (130)	
Ending Balance on 1/31/15	[redacted]

Deposits and Other Credits

Date*	Serial#	Description	Deposits/ Credits
[redacted]			

1
+@ Primary Account: [redacted]
Page 3 of 7
Primary Account: [redacted]
Beginning January 1, 2015 - Ending January 31, 2015

Deposits and Other Credits - continued

Date*	Serial#	Description	Deposits/ Credits
[redacted]		[redacted]	[redacted]

*The Date provided is the business day that the transaction is processed.

Please note, certain fees and charges posted to your account may relate to services and/or activity from the prior statement cycle.

Withdrawals and Other Debits

Date*	Serial#	Description	Withdrawals/ Debits
[redacted]		[redacted]	[redacted]

1
+@ Primary Account: [redacted]
Page 4 of 7
Primary Account: [redacted]
Beginning January 1, 2015 - Ending January 31, 2015

Withdrawals and Other Debits - continued

Date*	Serial#	Description	Withdrawals/ Debits
[redacted]		[redacted]	[redacted]

[redacted]

1
+@ Primary Account: [redacted]
Page 5 of 7
Primary Account: [redacted]
Beginning January 1, 2015 - Ending January 31, 2015

Withdrawals and Other Debits - continued

Date*	Serial#	Description	Withdrawals/ Debits
[redacted]			

1
+@ Primary Account: [redacted]
Page 6 of 7
Primary Account: [redacted]
Beginning January 1, 2015 - Ending January 31, 2015

Withdrawals and Other Debits - continued

Date*	Serial#	Description	Withdrawals/ Debits
[redacted]			

[redacted]

1/29	OUT WT E-ACCESS REF 20150129F2QCZ60C001505 BNF NexPoint Advisors	$3,100,000.00

[redacted]

[redacted]	[redacted]	$10,000.00

*The Date provided is the business day that the transaction is processed.

Please note, certain fees and charges posted to your account may relate to services and/or activity from the prior statement cycle.

End of Business Day Balance Summary

Date	Balance	Date	Balance	Date	Balance
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]

1
+@ Primary Account: [redacted]
Page 7 of 7
Primary Account: [redacted]
Beginning January 1, 2015 - Ending January 31, 2015

Summary of Checks

Date	Check#	Amount	Date	Check#	Amount	Date	Check#	Amount
1/16	14386	$2,304.00	1/26	14959*	$13.83	1/6	15110*	$40.00
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]

* Indicates break in check sequence

EXHIBIT 161

NEXBANK
2515 McKinney Avenue, 11th Floor
Dallas, Texas 75201
972.934.4700
www.NexBank.com

FDIC

Date 7/31/15 Page 2
Primary Account [redacted]
Enclosures

Analysis Checking w/ Interest [redacted] (Continued)

Checks and Withdrawals

Date	Description	Amount
7/22	IB Transfer from D ****130 to D ****171	1,250,000.00-
[redacted]		

Daily Balance Information

Date	Balance	Date	Balance	Date	Balance
[redacted]					

Interest Rate Summary

Date	Rate
[redacted]	

End of Statement

NEXBANK
2515 McKinney Avenue, 11th Floor
Dallas, Texas 75201
972.934.4700
www.NexBank.com

Date 8/31/15 Page 2
Primary Account [redacted]
Enclosures

Analysis Checking w/ Interest [redacted] (Continued)

Checks and Withdrawals

Date	Description	Amount
[redacted]		
8/18	IB Transfer from D ****130 to D ****171	1,500,000.00-
[redacted]		

Daily Balance Information

Date	Balance	Date	Balance	Date	Balance
[redacted]					

Interest Rate Summary

Date	Rate
[redacted]	

End of Statement

BBVA Compass

Date *	Check/ Serial #	Description	Withdrawals/ Debits
[redacted]			
10/22		OUT WT E-ACCESS REF 20151022F2QCZ60C000688 BNF NexPoint Advisors,	$200,000.00
[redacted]			

Please note, certain fees and charges posted to your account may relate to services and/or activity from the prior statement cycle.
* The Date provided is the business day that the transaction is processed.

End of Business Day Balance Summary

Date	Balance	Date	Balance	Date	Balance
[redacted]					

NEXBANK
2515 McKinney Avenue, 11th Floor
Dallas, Texas 75201
972.934.4700
www.NexBank.com

FDIC

Date 11/30/15 Page 2
Primary Account [redacted]
Enclosures

Analysis Checking w/ Interest [redacted] (Continued)

Checks and Withdrawals

Date	Description	Amount
[redacted]		
11/23	IB Transfer from D ****130 to D ****171	325,000.00-
[redacted]		

Daily Balance Information

Date	Balance	Date	Balance	Date	Balance
[redacted]					

Interest Rate Summary

Date	Rate
[redacted]	

End of Statement

NEXBANK
2515 McKinney Avenue, 11th Floor
Dallas, Texas 75201
972.934.4700
www.NexBank.com

Date 12/31/15 Page 2
Primary Account [redacted]
Enclosures

Analysis Checking w/ Interest [redacted] (Continued)

Deposits and Additions

Date	Description	Amount
[redacted]		

Checks and Withdrawals

Date	Description	Amount
12/02	IB Transfer from D ****130 to D ****171	500,000.00-
[redacted]		

Daily Balance Information

Date	Balance	Date	Balance	Date	Balance
[redacted]					

BBVA Compass

Date *	Check/ Serial #	Description	Withdrawals/ Debits
[redacted]			
12/22		OUT WT E-ACCESS REF 20151222F2QCZ60C003170 BNF NexPoint Advisors,	$150,000.00
[redacted]			

BBVA Compass

Date *	Check/ Serial #	Description	Withdrawals/ Debits
[redacted]			
1/15		OUT WT E-ACCESS REF 20160115F2QCZ60C001287 BNF NexPoint Advisors,	$325,000.00
[redacted]			

NEXBANK
2515 McKinney Avenue, 11th Floor
Dallas, Texas 75201
972.934.4700
www.NexBank.com

Date 2/29/16 Page 2
Primary Account [redacted]
Enclosures

Analysis Checking w/ Interest [redacted] (Continued)

Deposits and Additions

Date	Description	Amount
[redacted]		

Checks and Withdrawals

Date	Description	Amount
[redacted]		
2/18	IB Transfer from D ****130 to D ****171	600,000.00-
[redacted]		

NEXBANK
2515 McKinney Avenue, 11th Floor
Dallas, Texas 75201
972.934.4700
www.NexBank.com

Date 3/31/16 Page 2
Primary Account [redacted]
Enclosures

Analysis Checking w/ Interest [redacted] (Continued)

Deposits and Additions

Date	Description	Amount
[redacted]		

Checks and Withdrawals

Date	Description	Amount
[redacted]		
3/15	IB Transfer from D ****130 to D ****171	325,000.00-
3/29	IB Transfer from D ****130 to D ****171	425,000.00-
[redacted]		

MEMBER FDIC NOTICE: SEE LAST PAGE FOR IMPORTANT INFORMATION
Payments received at the address indicated on this statement by 3:00 pm. Central Standard Time each banking day will be credited as of that date.

NEXBANK
2515 McKinney Avenue, 11th Floor
Dallas, Texas 75201
972.934.4700
www.NexBank.com

Date 4/29/16 Page 2
Primary Account [redacted]
Enclosures

Analysis Checking w/ Interest [redacted] (Continued)

Deposits and Additions

Date	Description	Amount
[redacted]		

Checks and Withdrawals

Date	Description	Amount
[redacted]		
4/22	IB Transfer from D ****130 to D ****171	475,000.00-
[redacted]		

Daily Balance Information

Date	Balance	Date	Balance	Date	Balance
[redacted]					

MEMBER FDIC NOTICE: SEE LAST PAGE FOR IMPORTANT INFORMATION
Payments received at the address indicated on this statement by 3:00 pm. Central Standard Time each banking day will be credited as of that date.

NEXBANK
2515 McKinney Avenue, 11th Floor
Dallas, Texas 75201
972.934.4700
www.NexBank.com

Date 5/31/16 Page 2
Primary Account [redacted]
Enclosures

Analysis Checking w/ Interest [redacted] (Continued)

Deposits and Additions

Date	Description	Amount
[redacted]		

Checks and Withdrawals

Date	Description	Amount
[redacted]		
5/25	IB Transfer from D ****130 to D ****171	425,000.00-

Daily Balance Information

Date	Balance	Date	Balance	Date	Balance
[redacted]					

Interest Rate Summary

Date	Rate
[redacted]	

End of Statement

NEXBANK
2515 McKinney Avenue, 11th Floor
Dallas, Texas 75201
972.934.4700
www.NexBank.com

Date 6/30/16 Page 2
Primary Account [redacted]
Enclosures

Analysis Checking w/ Interest [redacted] (Continued)

Deposits and Additions

Date	Description	Amount
[redacted]		

Checks and Withdrawals

Date	Description	Amount
[redacted]		
6/15	IB Transfer from D ****130 to D ****171	675,000.00-
[redacted]		

Daily Balance Information

Date	Balance	Date	Balance	Date	Balance
[redacted]					

MEMBER FDIC NOTICE: SEE LAST PAGE FOR IMPORTANT INFORMATION
Payments received at the address indicated on this statement by 3:00 pm. Central Standard Time each banking day will be credited as of that date.

NEXBANK
2515 McKinney Avenue, 11th Floor
Dallas, Texas 75201
972.934.4700
www.NexBank.com

Date 7/29/16 Page 2
Primary Account [redacted]
Enclosures

Analysis Checking w/ Interest [redacted] (Continued)

Deposits and Additions

Date	Description	Amount
[redacted]		

Checks and Withdrawals

Date	Description	Amount
[redacted]		
7/18	IB Transfer from D ****130 to D ****171	100,000.00-
[redacted]		

NEXBANK
2515 McKinney Avenue, 11th Floor
Dallas, Texas 75201
972.934.4700
www.NexBank.com

Date 11/30/16 Page 2
Primary Account [redacted]
Enclosures

Analysis Checking w/ Interest [redacted] (Continued)

Checks and Withdrawals

Date	Description	Amount
11/21	IB Transfer from D ****130 to D ****171	500,000.00-

Daily Balance Information

Date	Balance	Date	Balance	Date	Balance
[redacted]					

Interest Rate Summary

Date	Rate
[redacted]	

End of Statement

BBVA Compass

Date *	Check/ Serial #	Description	Withdrawals/ Debits
[redacted]			
5/11		OUT WT E-ACCESS CSTREP REF 20170511F2QCZ60C002038 BNF NexPoint Advisors	$4,200,000.00
[redacted]			

EXHIBIT 162

PACHULSKI STANG ZIEHL & JONES LLP

146276

RHL		ROBERT HALF LEGAL		6/15/2021
0122935C	6/15/2021	CLIENT COSTS - 36027.002	500-04	187.50
0123564C	6/15/2021	CLIENT COSTS - 30627.002	500-04	1,762.50

Check Amount: $1,950.00

SUPERIOR PRESS (888) 590-7998 JB4219631

Robert Half

Page:	1
Invoice Date:	05/06/2021
Invoice Number:	0122935C
Customer Number:	002445092
Fed Tax ID:	94-1648752

Labor Invoice – DUE UPON RECEIPT

Personal & Confidential
John A Morris
HIGHLAND CAPITAL MANAGEMENT
Suite 700
300 Crescent Court
Dallas TX 75201

Please Remit To:
Robert Half Legal
P.O. BOX 743295
Los Angeles CA 90074-3295

Pay Online: https://www.roberthalf.com/pay

Duplicate

Line	Employee Name	Wk End Dt	"Report-To" Supervisor	Description	Qty	UOM		Bill Rate	Amount
1	Crane,Geoffrey J	04/30/2021	Morris,John A	Sr. Attorney	2.50	HRS	REG	$ 75.00	$ 187.50
	Subtotal:				2.50	HRS			$ 187.50

Invoice Subtotal:	**$ 187.50**
TOTAL AMOUNT DUE:	**$ 187.50**

ACC PAC ADVISED

We provide more timely and accurate information to the business community by sharing our accounts receivable information with National Credit Reporting Agencies.

Any questions regarding this invoice, please call or email:
(800) 356-1994 / inquiries.srm@roberthalf.com

Robert Half

Page:	1
Invoice Date:	05/20/2021
Invoice Number:	0123564C
Customer Number:	002445092
Fed Tax ID:	94-1648752

Labor Invoice – DUE UPON RECEIPT

Personal & Confidential
John A Morris
HIGHLAND CAPITAL MANAGEMENT
Suite 700
300 Crescent Court
Dallas TX 75201

Please Remit To:
Robert Half Legal
P.O. BOX 743295
Los Angeles CA 90074-3295

Pay Online: https://www.roberthalf.com/pay

Duplicate

Line	Employee Name	Wk End Dt	"Report-To" Supervisor	Description	Qty	UOM		Bill Rate	Amount
1	Crane,Geoffrey J	05/07/2021	Morris,John A	Sr. Attorney	8.75	HRS	REG	$ 75.00	$ 656.25
2	Crane,Geoffrey J	05/14/2021	Morris,John A	Sr. Attorney	14.75	HRS	REG	$ 75.00	$ 1,106.25
	Subtotal:				23.50	HRS			$ 1,762.50

Invoice Subtotal:	**$ 1,762.50**
TOTAL AMOUNT DUE:	**$ 1,762.50**

We provide more timely and accurate information to the business community by sharing our accounts receivable information with National Credit Reporting Agencies.

Any questions regarding this invoice, please call or email:
(800) 356-1994 / inquiries.srm@roberthalf.com

[illegible] stub with your payment.

EXHIBIT 163

PACHULSKI STANG ZIEHL & JONES LLP

146345

RHL		ROBERT HALF LEGAL		6/24/2021
0126707C	6/24/2021	CLIENT COSTS - 36027.002	500-04	937.50

Check Amount: $937.50

SUPERIOR PRESS (888) 590-7998 JB4219631

Robert Half

Page:	1
Invoice Date:	06/17/2021
Invoice Number:	0126707C
Customer Number:	002445092
Fed Tax ID:	94-1648752

Labor Invoice – DUE UPON RECEIPT

Personal & Confidential
John A Morris
HIGHLAND CAPITAL MANAGEMENT
Suite 700
300 Crescent Court
Dallas TX 75201

Please Remit To:
Robert Half Legal
P.O. BOX 743295
Los Angeles CA 90074-3295

Pay Online: https://www.roberthalf.com/pay

Line	Employee Name	Wk End Dt	"Report-To" Supervisor	Description	Qty	UOM	Bill Rate	Amount
1	Crane,Geoffrey J	06/11/2021	Morris,John A	Sr. Attorney	12.50	HRS REG	$ 75.00	$ 937.50
	Subtotal:				12.50	HRS		$ 937.50

Project/Engagement: Highland/Pachulski Discovery Assistance

Invoice Subtotal:	**$ 937.50**
TOTAL AMOUNT DUE:	**$ 937.50**

We provide more timely and accurate information to the business community by sharing our accounts receivable information with National Credit Reporting Agencies.

Any questions regarding this invoice, please call or email:
(800) 356-1994 / inquiries.srm@roberthalf.com

Please detach and return this remittance stub with your payment.

Thank you for choosing Robert Half Legal!

Robert Half Legal
P.O. BOX 743295
Los Angeles CA 90074-3295

Customer Number	Invoice Number	Total Amount
00000002445092	0126707C	$ 937.50

000000024450920126707C000937503

EXHIBIT 164

PACHULSKI STANG ZIEHL & JONES LLP

146534

RHL		ROBERT HALF LEGAL		7/13/2021
0127289C	7/13/2021	CLIENT COSTS - 36027.002	500-02	6,000.00

Check Amount: $6,000.00

SUPERIOR PRESS (888) 590-7998 JB4219631

Robert Half

Page:	1
Invoice Date:	07/01/2021
Invoice Number:	0127289C
Customer Number:	002445092
Fed Tax ID:	94-1648752

Labor Invoice – DUE UPON RECEIPT

Personal & Confidential
John A Morris
HIGHLAND CAPITAL MANAGEMENT
Suite 700
300 Crescent Court
Dallas TX 75201

Please Remit To:
Robert Half Legal
P.O. BOX 743295
Los Angeles CA 90074-3295

Pay Online: https://www.roberthalf.com/pay

Line	Employee Name	Wk End Dt	"Report-To" Supervisor	Description	Qty	UOM		Bill Rate	Amount
1	Crane,Geoffrey J	06/18/2021	Morris,John A	Sr. Attorney	40.00	HRS	REG	$ 75.00	$ 3,000.00
2	Crane,Geoffrey J	06/25/2021	Morris,John A	Sr. Attorney	40.00	HRS	REG	$ 75.00	$ 3,000.00
	Subtotal:				80.00	HRS			$ 6,000.00

Project/Engagement: Highland/Pachulski Discovery Assistance

ACC PAC ADVISED

Invoice Subtotal:	**$ 6,000.00**
TOTAL AMOUNT DUE:	**$ 6,000.00**

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Any questions regarding this invoice, please call or email:
(800) 356-1994 / inquiries.srm@roberthalf.com

EXHIBIT 165

PACHULSKI STANG ZIEHL & JONES LLP 146596

RHL		ROBERT HALF LEGAL		7/20/2021
0128616C	7/20/2021	CLIENT COSTS - 36027.002	500-04	5,062.50

Check Amount: $5,062.50

SUPERIOR PRESS (888) 590-7998 JB4219631

Robert Half®

Page:	1
Invoice Date:	07/15/2021
Invoice Number:	0128616C
Customer Number:	002445092
Fed Tax ID:	94-1648752

Labor Invoice – DUE UPON RECEIPT

Personal & Confidential
John A Morris
HIGHLAND CAPITAL MANAGEMENT
Suite 700
300 Crescent Court
Dallas TX 75201

Please Remit To:
Robert Half Legal
P.O. BOX 743295
Los Angeles CA 90074-3295

Pay Online: https://www.roberthalf.com/pay

Line	Employee Name	Wk End Dt	"Report-To" Supervisor	Description	Qty	UOM		Bill Rate	Amount
1	Crane,Geoffrey J	07/02/2021	Morris,John A	Sr. Attorney	27.50	HRS	REG	$ 75.00	$ 2,062.50
2	Crane,Geoffrey J	07/09/2021	Morris,John A	Sr. Attorney	40.00	HRS	REG	$ 75.00	$ 3,000.00
	Subtotal:				67.50	HRS			$ 5,062.50

Project/Engagement: Highland/Pachulski Discovery Assistance

Invoice Subtotal:	**$ 5,062.50**
TOTAL AMOUNT DUE:	**$ 5,062.50**

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EXHIBIT 166

PACHULSKI STANG ZIEHL & JONES LLP

146925

RHL		ROBERT HALF LEGAL		8/25/2021
0132912C	8/25/2021	CLIENT COSTS - 36027.003	500-04	3,243.75

Check Amount: $3,243.75

SUPERIOR PRESS (888) 590-7998 JB4219631

Robert Half®

Page:	1
Invoice Date:	08/19/2021
Invoice Number:	0132912C
Customer Number:	002445092
Fed Tax ID:	94-1648752

Labor Invoice – DUE UPON RECEIPT

Personal & Confidential
John A Morris
HIGHLAND CAPITAL MANAGEMENT
Suite 700
300 Crescent Court
Dallas TX 75201

Please Remit To:
Robert Half Legal
P.O. BOX 743295
Los Angeles CA 90074-3295

Pay Online: https://www.roberthalf.com/pay

Line	Employee Name	Wk End Dt	"Report-To" Supervisor	Description	Qty	UOM		Bill Rate	Amount
1	Crane,Geoffrey J	08/06/2021	Morris,John A	Sr. Attorney	37.50	HRS	REG	$ 75.00	$ 2,812.50
2	Crane,Geoffrey J	08/13/2021	Morris,John A	Sr. Attorney	5.75	HRS	REG	$ 75.00	$ 431.25
	Subtotal:				43.25	HRS			$ 3,243.75

Project/Engagement: Highland/Pachulski Discovery Assistance

Invoice Subtotal:	**$ 3,243.75**
TOTAL AMOUNT DUE:	**$ 3,243.75**

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(800) 356-1994 / inquiries.srm@roberthalf.com

EXHIBIT 167

PACHULSKI STANG ZIEHL & JONES LLP

147165

RHL		ROBERT HALF LEGAL		9/22/2021
0136354C	9/22/2021	CLIENT COSTS - 36027.003	500-03	3,693.75

Check Amount: $3,693.75

SUPERIOR PRESS (888) 590-7998 JB4219631

Robert Half

Page: 1
Invoice Date: 09/16/2021
Invoice Number: 0136354C
Customer Number: 002445092
Fed Tax ID: 94-1648752

Labor Invoice – DUE UPON RECEIPT

Personal & Confidential
John A Morris
HIGHLAND CAPITAL MANAGEMENT
Suite 700
300 Crescent Court
Dallas TX 75201

Please Remit To:
Robert Half Legal
P.O. BOX 743295
Los Angeles CA 90074-3295

Pay Online: https://www.roberthalf.com/pay

Line	Employee Name	Wk End Dt	"Report-To" Supervisor	Description	Qty	UOM		Bill Rate	Amount
1	Crane,Geoffrey J	09/03/2021	Morris,John A	Sr. Attorney	32.50	HRS	REG	$ 75.00	$ 2,437.50
2	Crane,Geoffrey J	09/10/2021	Morris,John A	Sr. Attorney	16.75	HRS	REG	$ 75.00	$ 1,256.25
	Subtotal:				49.25	HRS			$ 3,693.75

Project/Engagement: Highland/Pachulski Discovery Assistance

Invoice Subtotal: **$ 3,693.75**

TOTAL AMOUNT DUE: **$ 3,693.75**

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EXHIBIT 168

PACHULSKI STANG ZIEHL & JONES LLP

147320

RHL		ROBERT HALF LEGAL		10/8/2021
0134543C	10/7/2021	CLIENT COSTS - 36027.003	500-04	5,737.50
0138413C	10/7/2021	CLIENT COSTS - 36027.003	500-04	6,000.00

Check Amount: $11,737.50

SUPERIOR PRESS (888) 590-7998 JB4219631

Robert Half

Page:	1
Invoice Date:	09/02/2021
Invoice Number:	0134543C
Customer Number:	002445092
Fed Tax ID:	94-1648752

Labor Invoice – DUE UPON RECEIPT

Personal & Confidential
John A Morris
HIGHLAND CAPITAL MANAGEMENT
Suite 700
300 Crescent Court
Dallas TX 75201

Please Remit To:
Robert Half Legal
P.O. BOX 743295
Los Angeles CA 90074-3295

Pay Online:https://www.roberthalf.com/pay

Line	Employee Name	Wk End Dt	"Report-To" Supervisor	Description	Qty	UOM		Bill Rate	Amount
1	Crane,Geoffrey J	08/20/2021	Morris,John A	Sr. Attorney	36.50	HRS	REG	$ 75.00	$ 2,737.50
2	Crane,Geoffrey J	08/27/2021	Morris,John A	Sr. Attorney	40.00	HRS	REG	$ 75.00	$ 3,000.00
	Subtotal:				76.50	HRS			$ 5,737.50

Project/Engagement: Highland/Pachulski Discovery Assistance

Invoice Subtotal:	**$ 5,737.50**
TOTAL AMOUNT DUE:	**$ 5,737.50**

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P.O. BOX 743295
Los Angeles CA 90074-3295

Customer Number	Invoice Number	Total Amount
00000002445092	0134543C	$ 5,737.50

000000024450920134543C005737504

Robert Half

Page:	1
Invoice Date:	09/30/2021
Invoice Number:	0138413C
Customer Number:	002445092
Fed Tax ID:	94-1648752

Labor Invoice – DUE UPON RECEIPT

Personal & Confidential
John A Morris
HIGHLAND CAPITAL MANAGEMENT
Suite 700
300 Crescent Court
Dallas TX 75201

Please Remit To:
Robert Half Legal
P.O. BOX 743295
Los Angeles CA 90074-3295

Pay Online: https://www.roberthalf.com/pay

Line	Employee Name	Wk End Dt	"Report-To" Supervisor	Description	Qty	UOM		Bill Rate	Amount
1	Crane,Geoffrey J	09/17/2021	Morris,John A	Sr. Attorney	40.00	HRS	REG	$ 75.00	$ 3,000.00
2	Crane,Geoffrey J	09/24/2021	Morris,John A	Sr. Attorney	40.00	HRS	REG	$ 75.00	$ 3,000.00
	Subtotal:				80.00	HRS			$ 6,000.00

Project/Engagement: Highland/Pachulski Discovery Assistance

Invoice Subtotal: **$ 6,000.00**

TOTAL AMOUNT DUE: **$ 6,000.00**

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Please detach and return this remittance stub with your payment.

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P.O. BOX 743295
Los Angeles CA 90074-3295

Customer Number	Invoice Number	Total Amount
00000002445092	0138413C	$ 6,000.00

000000024450920138413C006000009

EXHIBIT 169

Pachulski Stang Ziehl & Jones LLP

10100 Santa Monica Blvd.
13th Floor
Los Angeles, CA 90067

December 31, 2020
Invoice 126769
Client 36027
Matter 00002
JNP

Board of Directors
Highland Capital Management LP
300 Crescent Court ste. 700
Dallas, TX 75201

RE: Postpetition

STATEMENT OF PROFESSIONAL SERVICES RENDERED THROUGH 12/31/2020

[redacted]

Pachulski Stang Ziehl & Jones LLP
Highland Capital Management LP
36027 - 00002

Invoice 126769
December 31, 2020

				Hours	Rate	Amount
[redacted]	[redacted]	BL	[redacted]	[redacted]	[redacted]	[redacted]
12/05/2020	GIG	BL	Research re bankruptcy court jurisdiction over note claims	2.20	895.00	$1,969.00
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]

Pachulski Stang Ziehl & Jones LLP
Highland Capital Management LP
36027 - 00002

Page: 22
Invoice 126769
December 31, 2020

				Hours	Rate	Amount
[redacted]						
[redacted]						
[redacted]						
[redacted]						
[redacted]						
[redacted]						
[redacted]						
12/07/2020	IDK	BL	E-mails with G Glazer on status of Stern issues re demand note litigation vs Dondero related entities.	0.10	1145.00	$114.50
[redacted]						
[redacted]						
[redacted]						
[redacted]						
[redacted]						
[redacted]						

Pachulski Stang Ziehl & Jones LLP
Highland Capital Management LP
36027 - 00002

Page: 24
Invoice 126769
December 31, 2020

				Hours	Rate	Amount
			[redacted]			
12/07/2020	GIG	BL	Research re bankruptcy court jurisdiction over note claims	5.50	895.00	$4,922.50
12/07/2020	GIG	BL	Research re bankruptcy court jurisdiction over note claims	4.30	895.00	$3,848.50
[redacted]			[redacted]			
[redacted]			[redacted]			
[redacted]			[redacted]			
[redacted]			[redacted]			
[redacted]			[redacted]			
[redacted]			[redacted]			
[redacted]			[redacted]			
[redacted]			[redacted]			

Pachulski Stang Ziehl & Jones LLP
Highland Capital Management LP
36027 - 00002

Page: 26
Invoice 126769
December 31, 2020

				Hours	Rate	Amount
			[redacted]			
12/08/2020	GIG	BL	Research re bankruptcy court jurisdiction over note claims	1.20	895.00	$1,074.00
12/08/2020	GIG	BL	Prepare memo re jurisdiction issue	6.90	895.00	$6,175.50
12/08/2020	GIG	BL	Emails Ira D. Kharasch re jurisdiction memo	0.10	895.00	$89.50
[redacted]						
12/09/2020	IDK	BL	[redacted] Attend conference call with J. Pomerantz, others, on [redacted], demand note upcoming litigation, [redacted]	1.30	1145.00	$1,488.50
[redacted]						
[redacted]						
[redacted]						

Pachulski Stang Ziehl & Jones LLP
Highland Capital Management LP
36027 - 00002

Page: 31
Invoice 126769
December 31, 2020

				Hours	Rate	Amount
[redacted]						
12/10/2020	GIG	BL	Emails Ira D. Kharasch re jurisdiction memo	0.10	895.00	$89.50
[redacted]						

Pachulski Stang Ziehl & Jones LLP
Highland Capital Management LP
36027 - 00002

Invoice 126769
December 31, 2020

				Hours	Rate	Amount
[redacted]			[redacted]	[redacted]	[redacted]	[redacted]
[redacted]			[redacted]	[redacted]	[redacted]	[redacted]
[redacted]			[redacted]	[redacted]	[redacted]	[redacted]
[redacted]		BL	[redacted]	[redacted]	[redacted]	[redacted]
12/11/2020	GIG	BL	Emails with Gregory V. Demo re jurisdiction question, review memo re same	0.20	895.00	$179.00
[redacted]			[redacted]	[redacted]	[redacted]	[redacted]
[redacted]			[redacted]	[redacted]	[redacted]	[redacted]
12/11/2020	GVD	BL	Review research re bankruptcy jurisdiction	0.30	825.00	$247.50
[redacted]			[redacted]	[redacted]	[redacted]	[redacted]
[redacted]			[redacted]	[redacted]	[redacted]	[redacted]

Pachulski Stang Ziehl & Jones LLP
Highland Capital Management LP
36027 - 00002

Invoice 126769
December 31, 2020

				Hours	Rate	Amount
[redacted]						
[redacted]						
[redacted]						
[redacted]						
[redacted]						
[redacted]						
[redacted]						
[redacted]						
12/15/2020	BEL	BL	Telephone conference with John A. Morris regarding complaint regarding demand notes.	0.20	825.00	$165.00
12/15/2020	BEL	BL	Review demand notes.	0.50	825.00	$412.50
[redacted]						
[redacted]						
[redacted]		BL	[redacted]			
12/15/2020	JAM	BL	[redacted] telephone conference with B. Levine re: collection actions on demand notes (0.1); [redacted]	9.20	1075.00	$9,890.00

Pachulski Stang Ziehl & Jones LLP
Highland Capital Management LP
36027 - 00002

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Invoice 126769
December 31, 2020

				Hours	Rate	Amount
[redacted]			[redacted]	[redacted]	[redacted]	[redacted]
[redacted]			[redacted]	[redacted]	[redacted]	[redacted]
[redacted]			[redacted]	[redacted]	[redacted]	[redacted]
12/16/2020	BEL	BL	Review notes and draft complaint.	3.70	825.00	$3,052.50
[redacted]			[redacted]	[redacted]	[redacted]	[redacted]

Pachulski Stang Ziehl & Jones LLP
Highland Capital Management LP
36027 - 00002

Invoice 126769
December 31, 2020

				Hours	Rate	Amount
			[redacted]); review/revise complaint against Dondero for breach of demand notes (0.8); e-mail to J. Pomerantz, I. Kharasch, G. Demo, H. Winograd, B. Levine re: complaint against Dondero (0.1).			
12/20/2020	HRW	BL	Draft HarbourVest 9019 motion (9.9).	9.90	625.00	$6,187.50
[redacted]						
12/21/2020	JNP	BL	Review draft complaint against Dondero for demand notes.	0.10	1075.00	$107.50
[redacted]						
12/21/2020	JAM	BL	Telephone conference with J. Pomerantz, I. Kharasch, G. Demo, H. Winograd re: [redacted], demand notes, [redacted]); e-mail to J. Seery, J. Pomerantz, I. Kharasch, G. Demo, H. Winograd re: complaint against Dondero (demand notes) (0.1).	[redacted]	1075.00	[redacted]
[redacted]						

Pachulski Stang Ziehl & Jones LLP
Highland Capital Management LP
36027 - 00002

Page: 54
Invoice 126769
December 31, 2020

				Hours	Rate	Amount
[redacted]						
[redacted]						
[redacted]						
12/27/2020	GVD	BL	Review and revise complaint re demand notes	0.50	825.00	$412.50
[redacted]						
[redacted]						
[redacted]						
[redacted]						
[redacted]						
[redacted]						
[redacted]						

EXHIBIT 170

Pachulski Stang Ziehl & Jones LLP

10100 Santa Monica Blvd.
13th Floor
Los Angeles, CA 90067

January 31, 2021
Invoice 127125
Client 36027
Matter 00002
JNP

Board of Directors
Highland Capital Management LP
300 Crescent Court ste. 700
Dallas, TX 75201

RE: Postpetition

STATEMENT OF PROFESSIONAL SERVICES RENDERED THROUGH 01/31/2021

[redacted]

Pachulski Stang Ziehl & Jones LLP
Highland Capital Management LP
36027 - 00002

Invoice 127125
January 31, 2021

				Hours	Rate	Amount
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
01/07/2021	JAM	BL	[redacted] e-mail to M. Clemente, P. Montgomery, J. Pomerantz, G. Demo re: complaint against defaulting demand note parties (0.2); [redacted]	12.10	1245.00	$15,064.50
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]

Pachulski Stang Ziehl & Jones LLP
Highland Capital Management LP
36027 - 00002

Page: 26
Invoice 127125
January 31, 2021

				Hours	Rate	Amount
[redacted]			[redacted]	[redacted]	[redacted]	[redacted]
[redacted]			[redacted]	[redacted]	[redacted]	[redacted]
[redacted]			[redacted]	[redacted]	[redacted]	[redacted]
[redacted]			[redacted]	[redacted]	[redacted]	[redacted]
[redacted]			[redacted]	[redacted]	[redacted]	[redacted]
01/09/2021	IDK	BL	[redacted] Attend conference call with internal team on [redacted], prosecution of demand notes, [redacted]	[redacted]	[redacted]	[redacted]

[redacted]

Pachulski Stang Ziehl & Jones LLP
Highland Capital Management LP
36027 - 00002

Page: 27
Invoice 127125
January 31, 2021

				Hours	Rate	Amount
[redacted]						
[redacted]						
[redacted]						
[redacted]						
[redacted]						
01/10/2021	IDK	BL	E-mails with K Brown re overseeing demand note complaints and related litigation (.2).	0.20	1325.00	$265.00
[redacted]						
[redacted]						
[redacted]						
[redacted]						50

Pachulski Stang Ziehl & Jones LLP
Highland Capital Management LP
36027 - 00002

Page: 28
Invoice 127125
January 31, 2021

				Hours	Rate	Amount
[redacted]						
01/11/2021	IDK	BL	Telephone conference and e-mails with K Brown re prosecuting demand notes vs Dondero (.2).	0.20	1325.00	$265.00
01/11/2021	IDK	BL	E-mails with B Levine re demand notes and need to commence actions and prior draft of complaint (.2); E-mails with local counsel re same re writs of attachment for same (.3).	0.50	1325.00	$662.50
[redacted]						

Pachulski Stang Ziehl & Jones LLP
Highland Capital Management LP
36027 - 00002

Invoice 127125
January 31, 2021

				Hours	Rate	Amount
[redacted]						
[redacted]						
[redacted]						
[redacted]						
[redacted]						
[redacted]						
01/12/2021	IDK	BL	E-mails with K Brown, H Winograd re getting complaints filed on demand notes and logistics (.2).	0.20	1325.00	$265.00
[redacted]						
[redacted]						
[redacted]						
[redacted]						
[redacted]						
[redacted]						
[redacted]						

Pachulski Stang Ziehl & Jones LLP
Highland Capital Management LP
36027 - 00002

Page: 31
Invoice 127125
January 31, 2021

				Hours	Rate	Amount
[redacted]						
[redacted]						
01/12/2021	KHB	BL	Emails with I. Kharasch and Hayley R. Winograd re complaints on promissory notes and writs of attachment.	0.20	1225.00	$245.00
[redacted]						
[redacted]						
[redacted]						
[redacted]						
[redacted]						
01/12/2021	GVD	BL	Correspondence with PSZJ litigation team re demand letters	0.20	950.00	$190.00
01/12/2021	HRW	BL	[redacted]	8.60	695.00	$5,977.00

Pachulski Stang Ziehl & Jones LLP
Highland Capital Management LP
36027 - 00002

Invoice 127125
January 31, 2021

				Hours	Rate	Amount
			[redacted] Review Dondero demand note complaint (0.2); [redacted] Review demand letters (0.3); [redacted]			
[redacted]						
[redacted]						
[redacted]						
[redacted]						
[redacted]						
[redacted]						
01/13/2021	IDK	BL	E-mails with K Brown, others re legal issues, including Stern, turnover, on draft complaint vs Dondero entities on notes, and prior memo on Stern vs Marshall (.4).	0.40	1325.00	$530.00
[redacted]						
[redacted]						
[redacted]						

Pachulski Stang Ziehl & Jones LLP
Highland Capital Management LP
36027 - 00002

Invoice 127125
January 31, 2021

				Hours	Rate	Amount
[redacted]						
01/13/2021	KHB	BL	Review complaint and demand letters re promissory notes (.4); consider jurisdictional and Stern issues and emails to Hayley Winpograd (HG) and Greg Demo (GD) re same (.4); review authorities re jurisdictional and Stern issues (.5); conference call with HG and GD re complaints on promissory notes and applications for writs of attachment (.6); [redacted]	6.10	1225.00	$7,472.50

Pachulski Stang Ziehl & Jones LLP
Highland Capital Management LP
36027 - 00002

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Invoice 127125
January 31, 2021

				Hours	Rate	Amount
[redacted]						
[redacted]						
[redacted]						
[redacted]						
[redacted]						
[redacted]						
[redacted]						
[redacted]						
[redacted]						
01/13/2021	BEL	BL	Emails regarding draft Dondero complaint.	0.20	950.00	$190.00
[redacted]						
[redacted]						
[redacted]						
[redacted]						
[redacted]						

Pachulski Stang Ziehl & Jones LLP
Highland Capital Management LP
36027 - 00002

Invoice 127125
January 31, 2021

				Hours	Rate	Amount
[redacted]						
[redacted]						
[redacted]						
[redacted]						
[redacted]						
01/13/2021	GVD	BL	Conference with K. Brown and H. Winograd re demand note issues	0.80	950.00	$760.00
01/13/2021	HRW	BL	[redacted] Call with G. Demo and K. Brown re: demand note complaints (0.6); Call with G. Demo re: demand note complaints (0.1); [redacted] Review Demand Notes and related documents (0.8) Draft Demand Note Complaints against Dondero and related entities (4.5).	9.00	695.00	$6,255.00
[redacted]						
[redacted]						
01/14/2021	IDK	BL	E-mails with H Winograd and J Morris re next steps on complaints on demand notes (.1).	0.10	1325.00	$132.50
[redacted]						
01/14/2021	JNP	BL	Review email regarding suits against noteholders and next steps.	0.10	1295.00	$129.50

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Highland Capital Management LP
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January 31, 2021

				Hours	Rate	Amount
[redacted]						
[redacted]						
[redacted]						
01/14/2021	KHB	BL	[redacted] call with Greg Demo (GD), J. Morris (JM) and Hayley Winograd ("HG") re litigation strategy on promissory notes (.4); confer with HG re form of complaints (.2); review and revise complaint (1.6); emails with HG re revisions to complaints (.5).			
[redacted]						
[redacted]						
[redacted]						
[redacted]						
01/14/2021	JAM	BL	[redacted] telephone conference with G. Demo re: complaints against makers of notes (0.2); [redacted] telephone conference with K. Brown, H. Winograd, G. Demo (partial participation) re: complaints against makers of notes	9.70	1245.00	$12,076.50

				Hours	Rate	Amount
			(0.5); [redacted]			
[redacted]			[redacted]			
[redacted]			[redacted]			
[redacted]			[redacted]			
[redacted]			[redacted]			
01/14/2021	HRW	BL	Draft Demand Note Complaints against Dondero and related entities (5.5); [redacted]; PSZJ call re: Demand Note Complaints and litigation strategy (0.5); Review Demand Notes and related documents (1.0); Call with K. Brown re: Demand Note Complaints (0.1); [redacted]	9.60	695.00	$6,672.00
[redacted]			[redacted]			
[redacted]			[redacted]			
[redacted]			[redacted]			
[redacted]			[redacted]			
[redacted]			[redacted]			
[redacted]			[redacted]			
[redacted]			[redacted]			
[redacted]			[redacted]			
[redacted]			[redacted]			

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January 31, 2021

				Hours	Rate	Amount
			[redacted]			
01/15/2021	KHB	BL	Work on complaints on promissory notes (4.4). emails with G. Demo re payment on NPA note (.2); review draft letter to NPA re same (.2); email from J. Pomerantz re writs of attachment (.1); email from I. Kharasch re same (.1); emails with H. Winograd and G. Demo re complaints (.2).	5.20	1225.00	$6,370.00
[redacted]						
[redacted]						
[redacted]						
[redacted]						
[redacted]						
01/15/2021	JAM	[redacted]				
[redacted]						
01/15/2021	GVD	BL	Review and revise demand note complaint	0.30	950.00	$285.00

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Highland Capital Management LP
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January 31, 2021

				Hours	Rate	Amount
[redacted]						
01/15/2021	HRW	BL	[redacted] Draft Demand Note Complaints against Dondero and related entities (7.5).	8.20	695.00	$5,699.00
[redacted]						
01/16/2021	HRW	BL	Draft complaints against Dondero and related entities re: demand notes (4.8).	4.80	695.00	$3,336.00
[redacted]						

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				Hours	Rate	Amount
[redacted]						
[redacted]						
[redacted]						
[redacted]						
[redacted]						
[redacted]						
[redacted]						
[redacted]						
01/17/2021	HRW	BL	[redacted] Draft complaints against Dondero and related entities re: demand notes (4.5).			
[redacted]						
[redacted]						
01/18/2021	JNP	BL	Conference with Sidley, John A. Morris, Ira D. Kharasch and Gregory V. Demo regarding litigation matters including notes, [redacted]			
[redacted]						
[redacted]						

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				Hours	Rate	Amount
[redacted]			[redacted]	[redacted]	[redacted]	[redacted]
01/18/2021	KHB	BL	[redacted] review comments to complaints on promissory notes by J. Morris and email to J. Morris and H. Winograd re same (.2); work on complaints (.7); call with Committee counsel, J. Morris and J. Pomerantz re litigation strategy (.7).	[redacted]	[redacted]	[redacted]
[redacted]			[redacted]	[redacted]	[redacted]	[redacted]
[redacted]			[redacted]	[redacted]	[redacted]	[redacted]
01/18/2021	JAM	BL	[redacted] review/revise draft Complaint against Dondero for recovery under demand notes (0.9); e-mail to K. Brown, H. Winograd, J. Pomerantz, I. Kharasch, G. Demo re: revisions to draft Complaint against Dondero for recovery under demand notes (0.2); [redacted] e-mails to Sidley, J. Pomerantz, G. Demo, H. Winograd re: complaints for recovery under demand notes (0.3); [redacted]	8.00	[redacted]	[redacted]

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January 31, 2021

				Hours	Rate	Amount
[redacted]						
[redacted]						
[redacted]						
[redacted]						
01/18/2021	HRW	BL	Draft complaints against Dondero and related entities re: demand notes (7.5); Call with Committee re: litigation strategy (0.8).	8.30	695.00	$5,768.50
[redacted]						
[redacted]						
[redacted]						
[redacted]						
[redacted]						
[redacted]						
[redacted]						

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	Hours	Rate	Amount
[redacted]			
[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]

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				Hours	Rate	Amount
[redacted]						
[redacted]						
[redacted]						
[redacted]						
[redacted]						
[redacted]						
[redacted]						
[redacted]						
01/22/2021	KHB	BL	Emails with H. Winograd and J. Morris re complaints on promissory notes.	0.20	1225.00	$245.00
[redacted]						
[redacted]						
01/22/2021	JAM	BL	[redacted] review complaints concerning demand notes and send e-mail to Z. Annable, J. Pomerantz, I. Kharasch, G. Demo, H. Winograd concerning the same (0.2): [redacted]	[redacted]		

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	Hours	Rate	Amount
[redacted]			
e-mail to Z. Annable re: note complaints and cover sheets (0.1); telephone conference with J. Seery re: note complaints (0.1); [redacted]			
[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]

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January 31, 2021

				Hours	Rate	Amount
[redacted]						
[redacted]						
01/28/2021	JMF	BL	Review complaints and background re notes receivables re HCMS, HCRE, and HCMFA.	1.10	1050.00	$1,155.00
[redacted]						
[redacted]						
[redacted]						
[redacted]						
[redacted]						
[redacted]						
[redacted]						
[redacted]						
[redacted]						

EXHIBIT 171

Pachulski Stang Ziehl & Jones LLP

10100 Santa Monica Blvd.
13th Floor
Los Angeles, CA 90067

February 28, 2021
Invoice 127314
Client 36027
Matter 00002
JNP

Board of Directors
Highland Capital Management LP
300 Crescent Court ste. 700
Dallas, TX 75201

RE: Postpetition

STATEMENT OF PROFESSIONAL SERVICES RENDERED THROUGH 02/28/2021

[redacted]

Pachulski Stang Ziehl & Jones LLP
Highland Capital Management LP
36027 - 00002

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Invoice 127314
February 28, 2021

				Hours	Rate	Amount
[redacted]						
[redacted]						
[redacted]						
[redacted]						
[redacted]						
[redacted]		BL	[redacted]			
02/02/2021	HRW	BL	[redacted] Draft letters to HCRE and HCMS re: partial payments and	1.90	695.00	$1,320.50

				Hours	Rate	Amount
			demand letters (1.3).			
[redacted]						

Pachulski Stang Ziehl & Jones LLP
Highland Capital Management LP
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Invoice 127314
February 28, 2021

				Hours	Rate	Amount
02/06/2021	IDK	BL	E-mails with G Demo re correspondence with Gov Re reps on counsel, as well as with CEO on demand notes (.2).	0.20	1325.00	$265.00

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Invoice 127314
February 28, 2021

				Hours	Rate	Amount
[redacted]						
[redacted]						
[redacted]						
[redacted]						
[redacted]						
02/08/2021	HRW	BL	Draft follow-up to demand letters for HCRE and HCSM	0.20	695.00	$139.00
[redacted]						
[redacted]						
[redacted]						
[redacted]						
[redacted]						
[redacted]						
[redacted]		BL		4.30	1245.00	$5,353.50

EXHIBIT 172

Pachulski Stang Ziehl & Jones LLP

10100 Santa Monica Blvd.
13th Floor
Los Angeles, CA 90067

March 31, 2021
Invoice 127522
Client 36027
Matter 00002
JNP

Board of Directors
Highland Capital Management LP
300 Crescent Court ste. 700
Dallas, TX 75201

RE: Postpetition

STATEMENT OF PROFESSIONAL SERVICES RENDERED THROUGH 03/31/2021

[redacted]

Pachulski Stang Ziehl & Jones LLP
Highland Capital Management LP
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Invoice 127522
March 31, 2021

				Hours	Rate	Amount
03/02/2021	GVD	BL	Draft checklist of open litigation items	0.50	950.00	$475.00
03/02/2021	GVD	BL	Conference with PSZJ team re status of UBS settlement	0.40	950.00	$380.00
03/02/2021	HRW	BL	Prepare joint proposed scheduling order for demand note adversary proceedings involving HCMFA and NPA (1.2); PSZJ WIP call (0.8); Review adversary proceedings and critical dates (0.6); Review NPA and HCMFA answer to complaints (0.4); Review Advisors motion to stay pending appeal (0.6).	3.60	695.00	$2,502.00
03/03/2021	IDK	BL	Attend conference call with J Pomerantz, R Feinstein, G Demo on UBS latest markup and problems with same (1.4).	1.40	1325.00	$1,855.00
03/03/2021	IDK	BL	Review of correspondence from UBS re its new markup of settlement, and brief review (.2); E-mails with J Pomerantz, R Feinstein re problems with same, as well as J Pomerantz list of issues on same and need for call (.2).	0.40	1325.00	$530.00
03/03/2021	JNP	BL	Emails with Robert J. Feinstein, Ira D. Kharasch and Gregory V. Demo regarding call to discuss UBS settlement agreement.	0.10	1295.00	$129.50
03/03/2021	JNP	BL	Email to Board with latest UBS settlement agreement.	0.10	1295.00	$129.50
03/03/2021	JNP	BL	Review and comment on latest UBS settlement agreement.	0.30	1295.00	$388.50
03/03/2021	JNP	BL	Review emails regarding SOHC and authority issues.	0.10	1295.00	$129.50
03/03/2021	JNP	BL	Lengthy call with Ira D. Kharasch, Robert J. Feinstein and Gregory V. Demo regarding UBS settlement agreement.	1.40	1295.00	$1,813.00
03/03/2021	JNP	BL	Review and respond to email regarding outstanding notes litigation.	0.10	1295.00	$129.50
03/03/2021	JNP	BL	Conference with J. Seery regarding UBS, Plan issues and related.	0.50	1295.00	$647.50
03/03/2021	JNP	BL	Review Dondero response to Committee preservation motion.	0.10	1295.00	$129.50
03/03/2021	RJF	BL	Review UBS markup of settlement agreement.	0.60	1395.00	$837.00
03/03/2021	RJF	BL	Internal call regarding UBS agreement.	1.40	1395.00	$1,953.00
03/03/2021	JAM	BL	Analysis of Hunter Mountain claim and related notes litigation and send e-mail to J. Pomerantz, I. Kharasch, G. Demo, H. Winograd re: same (0.8); draft amended deposition notices for HCRE litigation (0.2); e-mails with Z. Annable, H.	1.80	1245.00	$2,241.00

				Hours	Rate	Amount
			Winograd re: amended deposition notices for HCRE litigation (0.1);e-mails with J. Pomerantz, I. Kharasch, G. Demo, H. Winograd re: Hunter Mountain claim, Rand guaranty, and default under the notes (0.2); telephone conference with J. Seery re: litigation update (0.5).			
03/03/2021	EAW	BL	Draft discovery requests (RCT) and related email to R. Feinstein.	5.50	925.00	$5,087.50
03/03/2021	EAW	BL	Emails to/from G. Demo re: UBS judgment against Funds.	0.10	925.00	$92.50
03/03/2021	GVD	BL	Correspondence with Z. Annable re scheduling order	0.10	950.00	$95.00
03/03/2021	GVD	BL	Conference with PSZJ team re status of UBS settlement agreement and next steps	1.40	950.00	$1,330.00
03/03/2021	GVD	BL	Review revised UBS settlement agreement	0.30	950.00	$285.00
03/03/2021	GVD	BL	Schedule board call re UBS settlement	0.10	950.00	$95.00
03/03/2021	HRW	BL	Prepare joint proposed scheduling order for demand note adversary proceedings (0.8);	0.80	695.00	$556.00
03/04/2021	IDK	BL	Review briefly G Demo markup of UBS settlement agreement, including feedback of J Pomerantz re same	0.40	1325.00	$530.00
03/04/2021	IDK	BL	Attend part of call with CEO, J Dubel, J Pomerantz, others on how to respond to UBS markup and our proposed counter markup (1.0); E-mails with J Pomerantz, others re his draft response to UBS on our settlement issues (.2).	1.20	1325.00	$1,590.00
03/04/2021	IDK	BL	E-mails with G Demo re Gov Re payment re Sentinel and consider (.2).	0.20	1325.00	$265.00
03/04/2021	JNP	BL	Review and comment on redline of UBS settlement agreement.	0.10	1295.00	$129.50
03/04/2021	JNP	BL	Conference with J. Seery, J. Dubel, Robert J. Feinstein, Ira D. Kharasch and Gregory V. Demo regarding UBS settlement agreement.	1.60	1295.00	$2,072.00
03/04/2021	JNP	BL	Draft email to Latham regarding issues on settlement agreement.	0.60	1295.00	$777.00
03/04/2021	RJF	BL	Review revised settlement agreement.	0.40	1395.00	$558.00
03/04/2021	RJF	BL	Internal call regarding revised settlement agreement.	1.40	1395.00	$1,953.00
03/04/2021	RJF	BL	Call BOD regarding revised settlement agreement.	0.50	1395.00	$697.50
03/04/2021	JAM	BL	Review/revise model scheduling order for notes litigation (0.3); e-mails with H. Winograd re: model scheduling order for notes litigation (0.1); e-mail to. L. Hogewood, D. Rukavina re: proposed scheduling	0.60	1245.00	$747.00

				Hours	Rate	Amount
			orders for HCMFA and Nexpoint notes litigation (0.2).			
03/04/2021	EAW	BL	Draft 2004 motion (RCT).	4.30	925.00	$3,977.50
03/04/2021	GVD	BL	Conference with J. Morris re subpoena and follow up re same	0.30	950.00	$285.00
03/04/2021	GVD	BL	Revise UBS settlement agreement	1.30	950.00	$1,235.00
03/04/2021	GVD	BL	Further revise UBS settlement agreement re changes from J. Pomerantz and R. Feinstein	0.30	950.00	$285.00
03/04/2021	GVD	BL	Attend conference with J. Seery and J. Dubel re UBS settlement	1.60	950.00	$1,520.00
03/04/2021	GVD	BL	Review draft email to UBS re settlement	0.10	950.00	$95.00
03/04/2021	HRW	BL	Prepare joint proposed scheduling order for demand note adversary proceedings (1.8);	1.80	695.00	$1,251.00
03/05/2021	JNP	BL	Conference with John A. Morris regarding subpoena and response.	0.20	1295.00	$259.00
03/05/2021	JMF	BL	Review opposition to motion to dismiss (.3) and scheduling stipulation and order re upcoming hearing (.1).	0.40	1050.00	$420.00
03/05/2021	JAM	BL	Review United Development subpoena (0.2); telephone conference with T. Surgent re: United Development subpoena (0.4); telephone conference with J. Pomerantz re: United Development subpoena (0.2); e-mail to N. Stephens, J. Pomerantz re: United Development subpoena (0.2); analysis and preparation of cross-examination for Dondero in connection with contempt hearing (2.3); e-mail to L. Drawhorn, H. Winograd re: proposed scheduling orders for HCRE and HCMS notes litigation (0.2); e-mail to D. Rukavina re: proposed scheduling orders for Nexpoint and HCMFA notes litigation (0.1).	3.60	1245.00	$4,482.00
03/05/2021	EAW	BL	Research and draft 2004 motion (RCT).	5.60	925.00	$5,180.00
03/07/2021	JAM	BL	Review/revise proposed scheduling orders for HCMFA and NexPoint notes litigation (0.4); e-mail to D. Rukavina, L. Hogewood, H. Winograd re: revised proposed scheduling orders for HCMFA and NexPoint notes litigation (0.2); review Hunter Mountain note, Rand guaranty, and draft default letters (0.7); e-mail to J. Pomerantz, I. Kharasch, G. Demo, H. Winograd re: Hunter Mountain default under Note (0.3); work on cross-examination for J. Dondero for contempt hearing (2.1).	3.70	1245.00	$4,606.50
03/07/2021	GVD	BL	Correspondence with J. Morris re term note defaults	0.20	950.00	$190.00

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				Hours	Rate	Amount
03/08/2021	IDK	BL	Review of Reid Collins reply to UBS opposition to its withdrawal motion.	0.10	1325.00	$132.50
03/08/2021	IDK	BL	Review briefly Dondero petition for writ of mandamus, and related E-mails with J Pomerantz, H Winograd re same.	0.30	1325.00	$397.50
03/08/2021	JNP	BL	Conference with John A. Morris and lawyers regarding third party subpoena.	0.30	1295.00	$388.50
03/08/2021	JNP	BL	Conference with John A. Morris regarding promissory note litigation issues.	0.10	1295.00	$129.50
03/08/2021	JNP	BL	Review Reid Collins reply regarding motion to withdraw.	0.10	1295.00	$129.50
03/08/2021	JNP	BL	Review Writ of Mandamus regarding Dondero preliminary injunction and emails regarding same.	0.20	1295.00	$259.00
03/08/2021	RJF	BL	Review Reid Collins reply on motion to withdraw.	0.20	1395.00	$279.00
03/08/2021	JMF	BL	Review scheduling orders re adversary motions and opposition to preservation of documents re 3/22 hearing.	0.40	1050.00	$420.00
03/08/2021	JAM	BL	Telephone conference with J. Pomerantz re: litigation matters (0.1); e-mails with D. Rukavina, H. Winograd, Z. Annable re: scheduling orders for NexPoint and HCMFA notes litigation (0.2); telephone conference with P. Keiffer re: Hunter Mountain adversary proceeding (0.1); telephone conference with D. Klos, G. Demo re: HCRE deal structure concerning litigation (0.7); telephone conference with G. Demo re: HCRE deal structure concerning litigation (0.1); telephone conference with J. Pomerantz, counsel to United re: subpoena (0.3); communications with J. Seery, J. Pomerantz, J. Bonds re: Dondero request for extension of time to respond to notes litigation (0.2); communications with J. Seery, J. Kathman re: status of Daugherty settlement documents (0.1).	1.80	1245.00	$2,241.00
03/08/2021	EAW	BL	Draft 2004 motion (RCT).	2.10	925.00	$1,942.50
03/08/2021	GVD	BL	Review filed response of Reid Collins to withdrawal motion	0.20	950.00	$190.00
03/08/2021	HRW	BL	Review and draft joint proposed scheduling orders for Demand Note adversary proceedings relating to HCRE, HCMFA, NPA, HCMS (1.5); Research issues relating to Dondero petition for writ of mandamus (0.6); Review adversary proceeding and appeals critical deadlines and dates (1.0).	2.10	695.00	$1,459.50
03/09/2021	JNP	BL	Conference with J. Dubel regarding call with	0.10	1295.00	$129.50

				Hours	Rate	Amount
			Latham.			
03/09/2021	JNP	BL	Conference with DSI, Gregory V. Demo, Robert J. Feinstein and J. Seery in preparation for call with Latham.	0.50	1295.00	$647.50
03/09/2021	JNP	BL	Participate on call with Latham, J. Seery, J. Dubel and Robert J. Feinstein regarding settlement and related issues.	1.80	1295.00	$2,331.00
03/09/2021	JNP	BL	Review proposed request for production.	0.10	1295.00	$129.50
03/09/2021	RJF	BL	Internal calls regarding UBS settlement.	0.60	1395.00	$837.00
03/09/2021	RJF	BL	Call with UBS counsel regarding settlement.	1.90	1395.00	$2,650.50
03/09/2021	JAM	BL	Review exhibit lists for Dondero contempt hearing and send e-mail to L. Canty re: specific exhibit for review (0.5); e-mails with H. Winograd, Z. Annable re: scheduling orders for the HCRE and HCMS adversary proceedings (0.2); e-mails with H. Winograd, Z. Annable re: scheduling orders for NexPoint and HCMFA adversary proceedings (0.1); review Dondero motion for Writ of Mandamus (0.7); e-mails with H. Winograd, Z. Annable re: issues concerning opposition brief to Dondero motion for Writ of Mandamus (0.4).	4.80	1245.00	$5,976.00
03/09/2021	EAW	BL	Draft 2004 motion (RCT).	1.60	925.00	$1,480.00
03/09/2021	EAW	BL	Review exhibits to letter and potential exhhibits to 2004 motion	1.20	925.00	$1,110.00
03/09/2021	LSC	BL	Preparation of materials for upcoming hearings for J. Morris.	3.20	460.00	$1,472.00
03/09/2021	GVD	BL	Review writ of mandamus	0.30	950.00	$285.00
03/09/2021	GVD	BL	Conference with J. Seery, J. Romey, J. Pomerantz, and R. Feinstein re preparation for UBS call	0.90	950.00	$855.00
03/09/2021	GVD	BL	Compile and send exhibits to UBS	0.40	950.00	$380.00
03/09/2021	HRW	BL	Review adversary proceeding and appeals critical deadlines and dates (1.0); Draft response to Dondero petition for writ of mandamus (6.8); Call with J. Morris re: Dondero petition for writ of mandamus (0.1); Review joint proposed scheduling orders for Demand Note adversary proceedings relating to HCRE, HCMFA, NPA, HCMS (0.8).	8.70	695.00	$6,046.50
03/10/2021	IDK	BL	Review of J Morris memo to Board on Dondero writ and our potential response, as well as CEO feedback re same and re other litigation (.2).	0.20	1325.00	$265.00
03/10/2021	JNP	BL	Conference with J. Seery and Gregory V. Demo regarding Arizona and employee.	0.30	1295.00	$388.50

				Hours	Rate	Amount
03/10/2021	JNP	BL	Conference with John A. Morris regarding contempt motion hearing and email from J. Bonds and call regarding motion to continue.	0.20	1295.00	$259.00
03/10/2021	JNP	BL	Conference with J. Dubel regarding UBS.	0.20	1295.00	$259.00
03/10/2021	JNP	BL	Review motion for continuance of contempt hearing and emails regarding same.	0.10	1295.00	$129.50
03/10/2021	RJF	BL	Review and comment on draft 2004 request	0.40	1395.00	$558.00
03/10/2021	JMF	BL	Review writ of mandamus and motion to continue 3/22 hearing.	0.50	1050.00	$525.00
03/10/2021	JAM	BL	Telephone conference with J. Kathman re: comments to Daugherty draft settlement agreements (0.4); telephone conference with B. Sharp, Sidley re: document preservation issues (0.7); communications with J. Pomerantz, J. Bonds re: Dondero request for continuance of Contempt Hearing (0.2); review Dondero's motion for continuance of Contempt Hearing (0.1); e-mail to Board, J. Pomerantz, I. Kharasch, G. Demo, H. Winograd re: Dondero petition for writ of mandamus and motion for continuance (0.2); communications with Z. Annable, D. Rukavina, H. Winograd re: scheduling matters for notes litigation (0.2); prepare for contempt hearing (0.5).	2.30	1245.00	$2,863.50
03/10/2021	EAW	BL	Draft 2004 motion (RCT).	1.90	925.00	$1,757.50
03/10/2021	GVD	BL	Review stipulation re transfer of privilege	0.20	950.00	$190.00
03/10/2021	GVD	BL	Review motion to continue hearing	0.20	950.00	$190.00
03/10/2021	HRW	BL	Draft response to Dondero petition for writ of mandamus (9.5).	9.50	695.00	$6,602.50
03/11/2021	EAW	BL	Draft 2004 motion (RCT).	0.60	925.00	$555.00
03/11/2021	GVD	BL	Conference with J. Morris re open litigation issues	0.10	950.00	$95.00
03/12/2021	JAM	BL	E-mail to J. Pomerantz, I. Kharasch, G. Demo, H. Winograd re: stipulations withdrawing proofs of claim and dismissing adversary proceeding without prejudice for Hunter Mountain (0.2).	0.20	1245.00	$249.00
03/12/2021	LSC	BL	Research discovery documents, conduct legal research, and prepare hearing materials for G. Demo and J. Pomerantz.	4.80	460.00	$2,208.00
03/13/2021	JAM	BL	Work in connection with admittance to Fifth Circuit for Dondero petition for writ of mandamus (0.3); e-mail to L. Canty, J. Pomerantz, G. Demo, Z. Annable re: UBS designations for appeal of Acis settlement (0.2); e-mails with G. Demo, T. Surgent,	0.70	1245.00	$871.50

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				Hours	Rate	Amount
03/17/2021	JMF	BL	Review reply to Motion to dismiss complaint against advisors.	0.30	1050.00	$315.00
03/17/2021	JAM	BL	Telephone conference with J. Seery re: status of litigation (0.2); e-mails with J. Pomerantz, I. Kharasch, G. Demo re: Leventon request for documents (0.1); e-mail to J. Pomerantz, I. Kharasch, G. Demo, H. Winograd re: discovery of Dondero on notes litigation (0.7).	1.00	1245.00	$1,245.00
03/17/2021	EAW	BL	Emails to/from R. Feinstein re: 9019 motion (UBS).	0.10	925.00	$92.50
03/17/2021	GVD	BL	Conference with J. Morris re open litigation issues	0.20	950.00	$190.00
03/17/2021	GVD	BL	Conference with Latham, J. Pomerantz, and R. Feinstein re draft settlement agreement	1.10	950.00	$1,045.00
03/17/2021	GVD	BL	Multiple conferences with J. Seery re UBS settlement issues	0.20	950.00	$190.00
03/17/2021	GVD	BL	Conference with R. Feinstein re UBS settlement issues	0.10	950.00	$95.00
03/17/2021	HRW	BL	Review Dondero answer to demand note complaint (0.4); Draft email to Seery re: demand note litigation scheduling (1.0); Draft discovery demands directed to Dondero for demand note litigation (2.5).	3.90	695.00	$2,710.50
03/18/2021	IDK	BL	E-mails with J Pomerantz re his correspondence with UBS on their further markup of settlement and issues (.2).	0.20	1325.00	$265.00
03/18/2021	IDK	BL	Review of Dondero motion to disqualify judge, related correspondence re same and my feedback re same (.4).	0.40	1325.00	$530.00
03/18/2021	JNP	BL	Email to J. Dubel and J. Seery regarding UBS.	0.10	1295.00	$129.50
03/18/2021	JNP	BL	Conference with Robert J. Feinstein regarding UBS email regarding filing and other issues (2x).	0.30	1295.00	$388.50
03/18/2021	JNP	BL	Conference with J. Seery regarding UBS, litigation and other case issues.	0.40	1295.00	$518.00
03/18/2021	JNP	BL	Email to J. Seery regarding status of UBS Settlement Agreement.	0.10	1295.00	$129.50
03/18/2021	JNP	BL	Conference with J. Dubel regarding UBS, motion to recuse.	0.30	1295.00	$388.50
03/18/2021	JNP	BL	Briefly review motion to recuse and emails regarding same.	0.20	1295.00	$259.00
03/18/2021	JNP	BL	Conference with Ira D. Kharasch regarding claims transfer issues, motion to recuse and UBS.	0.20	1295.00	$259.00
03/18/2021	JNP	BL	Email to and from A. Clubock regarding Settlement Agreement.	0.10	1295.00	$129.50

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03/18/2021	JNP	BL	Review emails regarding provision of information to UBS.	0.10	1295.00	$129.50
03/18/2021	RJF	BL	Several calls with Jeffrey N. Pomerantz, Seery regarding impending UBS motion.	0.80	1395.00	$1,116.00
03/18/2021	RJF	BL	Prepare draft response to UBS motion.	0.40	1395.00	$558.00
03/18/2021	RJF	BL	Telephone conferences and emails with Seery regarding documents delivered to UBS.	0.50	1395.00	$697.50
03/18/2021	RJF	BL	Review UBS exhibits for privilege, related emails.	0.40	1395.00	$558.00
03/18/2021	RJF	BL	Emails with Gregory V. Demo, Jeffrey N. Pomerantz regarding privileged documents.	0.80	1395.00	$1,116.00
03/18/2021	JAM	BL	E-mail to J. Seery re: promissory notes' litigation (0.1); review/revise draft document request for Dondero (notes litigation) (0.2); e-mail to G. Demo, H. Winograd re: requests to admit for Dondero (notes litigation) (0.3); review draft witness and exhibit list (0.2); communications w/ J. Pomerantz, I. Kharasch, G. Demo, H. Winograd, L. Canty re: draft witness and exhibit list (0.2); e-mails w/ H. Winograd, Z. Annable re: discovery requests for Dondero (permanent injunction hearing) (0.2); prepare for contempt hearing (1.5); quick review of Dondero's recusal motion (0.4).	3.10	1245.00	$3,859.50
03/18/2021	LSC	BL	Prepare witness and exhibit list and exhibits (3.1); research and prepare attorneys' materials in connection with upcoming hearing (3.3).	6.40	460.00	$2,944.00
03/18/2021	GVD	BL	Correspondence with Latham re exhibits to UBS pleading	0.20	950.00	$190.00
03/18/2021	GVD	BL	Review proposed exhibits to UBS pleading and correspondence with J. Pomerantz and R. Feinstein re same	1.00	950.00	$950.00
03/18/2021	HRW	BL	Draft discovery demands directed to Dondero for demand note litigation (2.8); Prepare exhibits for hearing on motion to stay confirmation order pending appeal (0.4); Review discovery schedules in various adversary proceedings (0.8); Draft discovery demands directed to Dondero for injunctive relief litigation (1.9); Review Dondero's motion to recuse (0.7).	6.60	695.00	$4,587.00
03/19/2021	IDK	BL	E-mails with J Pomerantz, G Demo re their markups on UBS settlement, including brief review of same (.3).	0.30	1325.00	$397.50
03/19/2021	JNP	BL	Conference with Robert J. Feinstein regarding upcoming call with Latham and Board regarding	0.10	1295.00	$129.50

				Hours	Rate	Amount
			UBS.			
03/19/2021	JNP	BL	Conference with Gregory V. Demo regarding UBS Settlement Agreement and upcoming call.	0.10	1295.00	$129.50
03/19/2021	JNP	BL	Email to and from L. Lambert regarding call to discuss litigation.	0.10	1295.00	$129.50
03/19/2021	JNP	BL	Conference with J. Dubel, J Seery, Robert J. Feinstein, Gregory V. Demo and John A. Morris regarding UBS issues in advance of call.	0.30	1295.00	$388.50
03/19/2021	JNP	BL	Conference with Latham, J. Seery, J. dubel, Gregory V. Demo and Robert J. Feinstein regarding UBS issues.	0.80	1295.00	$1,036.00
03/19/2021	JNP	BL	Review and comment on latest draft of UBS Settlement Agreement.	0.40	1295.00	$518.00
03/19/2021	JNP	BL	Conference with Robert J. Feinstein and L. Lambert regarding potential litigation.	0.50	1295.00	$647.50
03/19/2021	RJF	BL	Emails regarding privileged documents with Clubock, internally.	0.40	1395.00	$558.00
03/19/2021	RJF	BL	Call with Seery, Abel, Jeffrey N. Pomerantz et al regarding UBS issues.	0.40	1395.00	$558.00
03/19/2021	RJF	BL	Call with Jeffrey N. Pomerantz, Seery et al regarding UBS call.	0.40	1395.00	$558.00
03/19/2021	RJF	BL	Review Jeffrey N. Pomerantz comments to settlement agreement.	0.30	1395.00	$418.50
03/19/2021	JMF	BL	Review preservation motion and motion to continue.	0.40	1050.00	$420.00
03/19/2021	JAM	BL	Review/revise discovery requests to Dondero re: permanent injunction (0.2); review/revise discovery requests to Dondero re: notes litigation (0.3); e-mails to J. Seery, J. Pomernatz, I. Kharasch, G. Demo, H. Winograd re: discovery requests to Dondero re: notes litigation (0.2); review/revise and send e-mail to J. Seery, PSZJ team re: scheduling of notes litigation (0.2); follow-up call with J. Seery, J. Dubel, PSZJ team re: next steps, contempt hearing (0.7); e-mails with H. Winograd re: exhibit list (0.2); telephone conference with J. Seery, J. Dubel, J. Pomerantz, R. Feinstein, G. Demo re: UBS issues (0.4); prepare for contempt hearing (2.5).	4.70	1245.00	$5,851.50
03/19/2021	LSC	BL	Research document productions for categories of documents for G. Demo and transmit same.	2.70	460.00	$1,242.00
03/19/2021	GVD	BL	Review discovery re assignment agreement	0.40	950.00	$380.00
03/19/2021	GVD	BL	Review draft UBS settlement agreement	0.60	950.00	$570.00
03/19/2021	GVD	BL	Revise UBS settlement agreement	1.00	950.00	$950.00

				Hours	Rate	Amount
03/20/2021	JAM	BL	Prepare for contempt hearing, including preparation of cross-examinations for Dondero and Ellington (7.5); telephone conference with J. Seery re: various litigation matters (0.4); telephone conference with G. Demo re: various litigation matters (0.1); telephone conference with J. Pomerantz, I. Kharasch, G. Demo re: UBS litigation matters, contempt hearing, bond hearing (0.6); communications with appellants' counsel, J. Pomerantz, I. Kharasch, G. Demo, H. Winograd re: deposition schedule (0.2).	8.80	1245.00	$10,956.00
03/20/2021	GVD	BL	Conference with Latham re additional discovery issues and next steps	0.80	950.00	$760.00
03/20/2021	GVD	BL	Review and further revise UBS settlement agreement	0.30	950.00	$285.00
03/20/2021	GVD	BL	Conference with PSZJ team re UBS settlement agreement	1.30	950.00	$1,235.00
03/20/2021	GVD	BL	Review J. Pomerantz revisions to UBS settlement agreement	0.20	950.00	$190.00
03/20/2021	GVD	BL	Conference with UST re potential litigation issues	0.60	950.00	$570.00
03/20/2021	GVD	BL	Review settlement agreement re P. Daugherty	0.70	950.00	$665.00
03/21/2021	IDK	BL	Review briefly extensive correspondence with Board, J Pomerantz, G Demo re questions/issues for UBS settlement agreement and new drafts of same.	0.40	1325.00	$530.00
03/21/2021	JNP	BL	Review emails regarding call with Board to discuss UBS Settlement Agreement.	0.10	1295.00	$129.50
03/21/2021	JNP	BL	Review latest settlement agreement and email to Board regarding same.	0.30	1295.00	$388.50
03/21/2021	JNP	BL	Conference with J. Seery, Robert J. Feinstein, and Gregory V. Demo regarding UBS Settlement Agreement.	1.00	1295.00	$1,295.00
03/21/2021	JNP	BL	Review emails re call to discuss litigation issues.	0.10	1295.00	$129.50
03/21/2021	RJF	BL	Revise statement regarding UBS motion and related emails.	0.80	1395.00	$1,116.00
03/21/2021	RJF	BL	Review and comment on revised UBS settlement agreement, related emails.	0.50	1395.00	$697.50
03/21/2021	RJF	BL	Call with BOD regarding settlement agreement.	1.00	1395.00	$1,395.00
03/21/2021	RJF	BL	Further revisions to settlement agreement.	1.00	1395.00	$1,395.00
03/21/2021	RJF	BL	Telephone conference with Jeffrey N. Pomerantz, Seery and Gregory V. Demo regarding settlement agreement.	1.30	1395.00	$1,813.50

				Hours	Rate	Amount
03/21/2021	JAM	BL	Review Daugherty proposed changes to settlement agreement and revise the same (1.6); e-mail to J. Pomerantz, I. Kharasch, G. Demo re: revisions to draft Daugherty settlement agreement and open issues concerning the same (0.2); prepare for contempt hearing (3.7); e-mail to J. Pomerantz, I. Kharasch, G. Demo, H. Winograd re: legal fees for "fee shifting" in connection with contempt motion (0.5); draft Notice of Replacement Exhibits (0.4); communications with Z. Annable, L. Canty re: Notice of Replacement Exhibits (0.1); telephone conference with L. Canty re: contempt hearing (0.1); e-mail to J. Seery, H. Winograd, L. Canty re: contempt hearing (0.4).	7.00	1245.00	$8,715.00
03/21/2021	LSC	BL	Prepare replacement exhibits and coordinate filing of same (.4); preparation for 3/22 hearing (1.3).	1.70	460.00	$782.00
03/21/2021	GVD	BL	Conference with J. Pomerantz (partial attendance), R. Feinstein, and J. Seery re revisions to UBS settlement agreement	1.20	950.00	$1,140.00
03/21/2021	GVD	BL	Further revise UBS settlement agreement per comments from J. Seery, J. Pomerantz, and R. Feinstein	0.70	950.00	$665.00
03/21/2021	GVD	BL	Revise and circulate (internally) UBS settlement agreement in advance of board call	0.60	950.00	$570.00
03/21/2021	GVD	BL	Conference with J. Seery re revisions to UBS settlement agreement	0.20	950.00	$190.00
03/21/2021	GVD	BL	Review and revise non opposition to UBS TRO	0.30	950.00	$285.00
03/21/2021	HRW	BL	Review appeals and critical dates (0.4); Research issues re: briefing schedules and designation of record (0.5); Review outline of direct and cross for contempt hearing (0.3).	1.20	695.00	$834.00
03/22/2021	IDK	BL	Attend part of Dondero contempt hearing.	4.50	1325.00	$5,962.50
03/22/2021	JNP	BL	Participate in hearing regarding Dondero contempt motion.	8.50	1295.00	$11,007.50
03/22/2021	JNP	BL	Conference with Latham, Gregory V. Demo, Robert J. Feinstein and others regarding potential litigation.	0.40	1295.00	$518.00
03/22/2021	JNP	BL	Conference with J. Seery, Gregory V. Demo and Robert J. Feinstein regarding litigation.	0.30	1295.00	$388.50
03/22/2021	JNP	BL	Review chart regarding pending litigation and email to H. Winograd regarding same.	0.10	1295.00	$129.50
03/22/2021	RJF	BL	Zoom call with AUSA, Jeffrey N. Pomerantz, Clubok et al regarding TRO proceeding.	0.40	1395.00	$558.00

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				Hours	Rate	Amount
03/22/2021	RJF	BL	Review revise draft of settlement agreement and related emails.	0.50	1395.00	$697.50
03/22/2021	RJF	BL	Follow up call regarding potential litigation with Jeffrey N. Pomerantz	0.30	1395.00	$418.50
03/22/2021	JMF	BL	Draft memorandum re pending case and review litigation/appeal matters.	1.20	1050.00	$1,260.00
03/22/2021	JAM	BL	Prepare for contempt hearing (4.1): telephone conference with G. Demo re: contempt hearing and related matters (0.2); telephone conference with J. Seery re: contempt hearing (0.1); contempt hearing (morning session) (3.8); telephone conference with J. Pomerantz, I. Kharasch, G. Demo re: contempt hearing (0.1); telephone conference with M. Hartmann re: Ellington and Leventon (0.1); contempt hearing (afternoon session) (4.5); telephone conference with J. Seery, J. Pomerantz, I. Kharasch, G. Demo re: contempt hearing, bond hearing (0.3); telephone conference with H. Winograd re: contempt hearing, HCRE deposition (0.1).	13.30	1245.00	$16,558.50
03/22/2021	LSC	BL	Prepare for and provide assistance at Dondero contempt hearing.	8.50	460.00	$3,910.00
03/22/2021	GVD	BL	Conference with Latham and PSZJ re status of potential litigation	0.40	950.00	$380.00
03/22/2021	GVD	BL	Conference with J. Morris re bankruptcy litigation issues	0.20	950.00	$190.00
03/22/2021	GVD	BL	Revise and circulate UBS settlement motion	0.20	950.00	$190.00
03/22/2021	GVD	BL	Conference with PSZJ team re status of hearing on Dondero contempt	0.10	950.00	$95.00
03/22/2021	GVD	BL	Correspondence with J. Morris re follow up to contempt hearing	0.20	950.00	$190.00
03/22/2021	GVD	BL	Conference with PSZJ and J. Seery re follow up to hearing on Dondero contempt	0.30	950.00	$285.00
03/22/2021	GVD	BL	Conference with J. Pomerantz and R. Feinstein re potential UBS litigation	0.30	950.00	$285.00
03/22/2021	GVD	BL	Attend hearing re Dondero contempt	7.50	950.00	$7,125.00
03/22/2021	HRW	BL	Hearing on Dondero contempt motion (7.0); Review Highland Adversary Proceedings and critical dates (1.8).	7.80	695.00	$5,421.00
03/23/2021	IDK	BL	Review of court decision denying recusal.	0.10	1325.00	$132.50
03/23/2021	JNP	BL	Review order on motion to recuse and emails regarding same.	0.20	1295.00	$259.00

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				Hours	Rate	Amount
03/23/2021	JNP	BL	Emails regarding call with UBS regarding status.	0.10	1295.00	$129.50
03/23/2021	JNP	BL	Conference with Robert J. Feinstein regarding UBS and related.	0.20	1295.00	$259.00
03/23/2021	JNP	BL	Emails with Latham and internal regarding status.	0.10	1295.00	$129.50
03/23/2021	RJF	BL	Call regarding TRO with UBS counsel.	1.00	1395.00	$1,395.00
03/23/2021	RJF	BL	Telephone conference with Jeffrey N. Pomerantz regarding UBS issues.	0.30	1395.00	$418.50
03/23/2021	JMF	BL	Review recusal pleadings and court order re motion.	0.30	1050.00	$315.00
03/23/2021	JMF	BL	Review updated litigation chart.	0.30	1050.00	$315.00
03/23/2021	JAM	BL	Prepare for closing argument on contempt motion (1.8); telephone conference with J. Pomerantz re: various litigation matters (0.2); telephone conference with J. Seery re: contempt hearing (0.2).	2.20	1245.00	$2,739.00
03/23/2021	LSC	BL	Prepare supplemental list for 3/24 hearing and correspondence regarding the same.	0.20	460.00	$92.00
03/23/2021	GVD	BL	Conference with Latham re Multi Strat Allocations	0.30	950.00	$285.00
03/23/2021	GVD	BL	Attend deposition of J. Seery (partial)	1.30	950.00	$1,235.00
03/23/2021	GVD	BL	Review order on motion to recuse	0.20	950.00	$190.00
03/23/2021	GVD	BL	Conference with L. Hogewood and J. Pomerantz re bond issues	0.20	950.00	$190.00
03/23/2021	GVD	BL	Conference with HCMLP team and J. Morris re SE Multi Family deposition issues	0.50	950.00	$475.00
03/23/2021	GVD	BL	Conference with K. George re common interest privilege	0.20	950.00	$190.00
03/23/2021	GVD	BL	Conference with J. Seery re UBS settlement agreement	0.20	950.00	$190.00
03/23/2021	GVD	BL	Conference with Latham and R. Feinstein re additional litigation issues	1.20	950.00	$1,140.00
03/23/2021	HRW	BL	Review Highland Adversary Proceedings and critical dates (0.7); Review order denying Dondero Motion to Recuse (0.2).	0.90	695.00	$625.50
03/24/2021	IDK	BL	Review briefly Dondero motion to reopen contempt hearing for evidence, and feedback of J Pomerantz, J Morris re same (.3); Attend part of continuation of contempt hearing vs Dondero (1.2).	1.50	1325.00	$1,987.50
03/24/2021	IDK	BL	E-mails with R Feinstein, J Pomerantz, G Demo re UBS upcoming adversary re Multistrat and various issues re same (.2).	0.20	1325.00	$265.00
03/24/2021	JNP	BL	Participate in contempt hearing.	2.30	1295.00	$2,978.50

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				Hours	Rate	Amount
03/24/2021	JNP	BL	Follow-up call with Board regarding contempt hearing and litigation.	0.50	1295.00	$647.50
03/24/2021	JNP	BL	Review pleading regarding upcoming litigation and conference with Robert J. Feinstein regarding same.	0.20	1295.00	$259.00
03/24/2021	JNP	BL	Review latest turn of settlement agreement.	0.10	1295.00	$129.50
03/24/2021	JNP	BL	Conference with Robert J. Feinstein regarding UBS Settlement Agreement and next steps.	0.30	1295.00	$388.50
03/24/2021	JNP	BL	Email to Iain A. W. Nasatir regarding UBS Settlement Agreement.	0.10	1295.00	$129.50
03/24/2021	JNP	BL	Conference with T. Silva, Gregory V. Demo and Robert J. Feinstein regarding fund issues and related matters.	0.70	1295.00	$906.50
03/24/2021	JNP	BL	Email to L. Lambert regarding call.	0.10	1295.00	$129.50
03/24/2021	JNP	BL	Conference with Robert J. Feinstein and then with U. S. Trustee regarding litigation.	0.30	1295.00	$388.50
03/24/2021	JNP	BL	Conference with J. Seery regarding UBS and information to creditors.	0.20	1295.00	$259.00
03/24/2021	JNP	BL	Conference with Board, Robert J. Feinstein and Gregory V. Demo regarding UBS Settlement Agreement.	0.80	1295.00	$1,036.00
03/24/2021	JNP	BL	Review and forward Iain A. W. Nasatir comments regarding settlement agreement.	0.10	1295.00	$129.50
03/24/2021	JNP	BL	Conference with Robert J. Feinstein regarding UBS Settlement Agreement (2x).	0.30	1295.00	$388.50
03/24/2021	JNP	BL	Review latest versions of settlement agreement and emails regarding same.	0.30	1295.00	$388.50
03/24/2021	JNP	BL	Review emails regarding scheduling of preliminary injunction hearing regarding advisors action.	0.10	1295.00	$129.50
03/24/2021	RJF	BL	Call with Jeffrey N. Pomerantz, Rasnak of UST's office regarding TRO application.	0.30	1395.00	$418.50
03/24/2021	RJF	BL	Telephone conference with Latham, Greg V. Demo regarding seal motion.	0.40	1395.00	$558.00
03/24/2021	RJF	BL	Revise statement regarding TRO.	0.30	1395.00	$418.50
03/24/2021	RJF	BL	Revise UBS settlement agreement, review comments and redrafts.	2.50	1395.00	$3,487.50
03/24/2021	RJF	BL	Call with Jeffrey N. Pomerantz, Gregory V. Demo regarding UBS settlement agreement.	0.40	1395.00	$558.00
03/24/2021	RJF	BL	Email to Board regarding TRO papers.	0.20	1395.00	$279.00
03/24/2021	RJF	BL	Revise statement regarding TRO.	0.50	1395.00	$697.50

				Hours	Rate	Amount
03/24/2021	RJF	BL	Call with BOD regarding TRO, etc.	0.50	1395.00	$697.50
03/24/2021	RJF	BL	Call with Wilmer Hale, Jeffrey N. Pomerantz, Gregory V. Demo regarding Multi-Strat.	0.70	1395.00	$976.50
03/24/2021	JMF	BL	Review motion to reopen evidence.	0.40	1050.00	$420.00
03/24/2021	JAM	BL	E-mail to J. Pomerantz, I. Kharasch, G. Demo, H. Winograd re: discovery in connection with objection to employee claims (0.4); e-mail to H. Winograd re: objection to Dondero motion for continuance of contempt hearing (0.2); prepare for closing argument on contempt hearing (2.0); review Dondero motion to reopen evidence for rebuttal testimony (0.2); court hearing on contempt motion and related matters (2.2); telephone conference with J. Seery re: contempt hearing (0.2); telephone conference with Board, J. Pomerantz, I. Kharasch, G. Demo, R. Feinstein re: contempt hearing, UBS issues (0.5); telephone conference with M. Hankin re: contempt hearing and related matters (0.2); review/revise Daugherty settlement agreement (0.7); e-mail to J. Seery, J. Pomerantz, I. Kharasch, G. Demo re: revised Daugherty agreement (0.2); telephone conference with G. Demo re: HCRE documents and facts (0.3); telephone conference with H. Winograd re: HCRE facts and depositions (0.2); communications with L. Drawhorn re: depositions and scheduling (0.2); e-mail to A. Russell, M. Clemente re: scheduling of litigation matters (0.1).	7.60	1245.00	$9,462.00
03/24/2021	LSC	BL	Assist at closing arguments re Dondero contempt motion.	2.00	460.00	$920.00
03/24/2021	GVD	BL	Review claim transfers	0.30	950.00	$285.00
03/24/2021	GVD	BL	Review revisions to UBS settlement agreement	0.30	950.00	$285.00
03/24/2021	GVD	BL	Review Dondero motion to re-open evidence	0.20	950.00	$190.00
03/24/2021	GVD	BL	Attend Dondero contempt hearing	2.00	950.00	$1,900.00
03/24/2021	GVD	BL	Conference with Board and PSZJ team re UBS settlement agreement and Dondero contempt hearing	0.60	950.00	$570.00
03/24/2021	GVD	BL	Conference with K. George re UBS settlement agreement and next steps	0.20	950.00	$190.00
03/24/2021	GVD	BL	Conference with J. Pomerantz, R. Feinstein, and T. Silva re UBS settlement agreement	0.70	950.00	$665.00
03/24/2021	GVD	BL	Conference with J. Morris re HCRE deposition prep	0.20	950.00	$190.00
03/24/2021	GVD	BL	Conference with J. Winograd re HCRE deposition prep	0.20	950.00	$190.00

				Hours	Rate	Amount
03/24/2021	GVD	BL	Conference with R. Feinstein and K. George re additional UBS discovery	0.50	950.00	$475.00
03/24/2021	GVD	BL	Conference with Board re UBS settlement agreement	0.90	950.00	$855.00
03/24/2021	GVD	BL	Review R. Feinstein revisions to UBS settlement agreement	0.30	950.00	$285.00
03/24/2021	HRW	BL	Review Advisors' reply to motion to dismiss complaint for injunctive relief and related research (1.8); Draft response to Dondero's motion for a continuance of demand note proceeding (0.4).	2.20	695.00	$1,529.00
03/25/2021	JNP	BL	Conference with Robert J. Feinstein and Gregory V. Demo regarding latest version of UBS Settlement Agreement, changes and review same.	0.50	1295.00	$647.50
03/25/2021	JNP	BL	Conference with John A. Morris regarding Hunter Mountain and other litigation issues.	0.20	1295.00	$259.00
03/25/2021	JNP	BL	Review emails from B. Assink regarding motion to continue schedule for Dondero litigation.	0.10	1295.00	$129.50
03/25/2021	JNP	BL	Conference with John A. Morris, Gregory V. Demo and DSI for part regarding document issues and litigation issues.	0.50	1295.00	$647.50
03/25/2021	JNP	BL	Conference with J. Dubel regarding UBS status.	0.30	1295.00	$388.50
03/25/2021	JNP	BL	Review proposed extension of time regarding UBS appeal of Redeemer settlement brief and emails with team regarding same.	0.20	1295.00	$259.00
03/25/2021	RJF	BL	Emails Latham, Jeffrey N. Pomerantz regarding TRO motion, confidentiality.	0.40	1395.00	$558.00
03/25/2021	JAM	BL	Telephone conference with J. Seery re: litigation matters (0.3); review/revise response to Dondero motion for continuance of contempt hearing (0.2); e-mails with Z. Annable, H. Winograd re: response to Dondero motion for continuance of contempt hearing (0.1); communications with J. Bonds, L. Drawhorn re: schedule for HCRE-related depositions (0.4); prepare amended deposition notices for the HCRE litigation (0.3); communications with Z. Annable, H. Winograd re: amended deposition notices for the HCRE litigation (0.2); telephone conference with J. Pomerantz re: litigation matters (0.1); e-mails w/ B. Assink re: discovery and trial date for permanent injunction against Dondero (0.3); review/revise documents for Hunter Mountain dismissal (0.2); e-mail to J. Pomerantz, I. Kharasch, G. Demo, H. Winograd re: Hunter Mountain dismissal (0.2); telephone	3.80	1245.00	$4,731.00

				Hours	Rate	Amount
			conference with J. Seery re: Hunter Mountain dismissal (0.1); review documents re: HCRE deposition (1.4).			
03/25/2021	JAM	BL	E-mails to Bonds Ellis re: Debtor's discovery demands for Dondero notes litigation (0.3).	0.30	1245.00	$373.50
03/25/2021	LSC	BL	Research document productions for certain categories of documents and retrieve same.	2.90	460.00	$1,334.00
03/25/2021	GVD	BL	Conference with PSZJ team and B. Sharp re document preservation issues	0.50	950.00	$475.00
03/25/2021	GVD	BL	Conference with K. George re UBS settlement agreement issues and follow up correspondence with PSZJ team re same	0.50	950.00	$475.00
03/25/2021	GVD	BL	Review draft objections to administrative claims	0.70	950.00	$665.00
03/25/2021	GVD	BL	Conference with J. Pomerantz and R. Feinstein re UBS settlement agreement	0.50	950.00	$475.00
03/26/2021	IDK	BL	Attend conference call with J Pomerantz, R Feinstein re UBS settlement agreement (.4).	0.40	1325.00	$530.00
03/26/2021	JNP	BL	Conference with John A. Morris regarding litigation issues including notes and Hunter Mountain.	0.10	1295.00	$129.50
03/26/2021	JNP	BL	Conference with DSI and John A. Morris regarding record retention and related issues.	0.40	1295.00	$518.00
03/26/2021	JNP	BL	Conference with Iain A. W. Nasatir regarding UBS settlement and insurance issues.	0.10	1295.00	$129.50
03/26/2021	JNP	BL	Email to and from J. Seery regarding UBS settlement and insurance issues.	0.10	1295.00	$129.50
03/26/2021	JNP	BL	Email to Latham regarding insurance issues and settlement agreement.	0.10	1295.00	$129.50
03/26/2021	JNP	BL	Conference with Iain A. W. Nasatir regarding UBS agreement and insurance issues.	0.10	1295.00	$129.50
03/26/2021	JNP	BL	Review UBS Settlement Agreement.	0.20	1295.00	$259.00
03/26/2021	JNP	BL	Email to Latham regarding insurance issues and UBS Settlement Agreement.	0.10	1295.00	$129.50
03/26/2021	JNP	BL	Review Dondero motion for continuance of note lawsuit.	0.10	1295.00	$129.50
03/26/2021	JNP	BL	Review latest turn of UBS Settlement Agreement.	0.30	1295.00	$388.50
03/26/2021	JNP	BL	Conference with Robert J. Feinstein and Ira D. Kharasch regarding UBS Settlement Agreement.	0.40	1295.00	$518.00
03/26/2021	JNP	BL	Review emails regarding Dondero note litigation	0.10	1295.00	$129.50
03/26/2021	JNP	BL	Review and respond to Gregory V. Demo email	0.10	1295.00	$129.50

				Hours	Rate	Amount
			regarding UBS.			
03/26/2021	JMF	BL	Review motion to extend briefing deadline.	0.20	1050.00	$210.00
03/26/2021	JAM	BL	Telephone conference with J. Seery re: Dondero request for extension of trial date in notes litigation (0.2); telephone conference with J. Pomerantz re: status of notes litigation, Dondero request for extension of schedule (0.1); e-mail to J. Pomerantz, I. Kharasch, G. Demo, H. Winograd re: Dondero request for extension of trial date in notes litigation (0.1); e-mail to B. Assink re: Dondero request for extension of trial date in notes litigation (0.1); review Dondero demand notes and e-mail to D. Klos, B. Sharp, J. Pomerantz, G. Demo, H. Winograd re: same (0.5); review documents concerning Dondero demand notes (0.8); e-mail to K. Hendricks, D. Klos, B. Sharp, J. Pomerantz, G. Demo, H. Winograd re: facts/documents concerning Dondero demand notes (0.3); review Dondero motion to extend trial date in Notes litigation and emergency motion for expedited hearing (0.4); e-mail to J. Seery, J. Pomerantz, I. Kharasch, G. Demo, H. Winograd re: Dondero motion to extend trial date in Notes litigation and emergency motion for expedited hearing (0.1); telephone conference with H. Winograd re: facts/objection to Dondero motion to extend trial date (0.2); telephone conference with J. Seery re: objection to Dondero motion to adjourn trial date (0.1).	2.90	1245.00	$3,610.50
03/26/2021	JAM	BL	E-mails with T. Ellison, L. Hogewood, D. Rukavina, J. Pomerantz re: rescheduling of hearing concerning Funds and Advisors (0.1); draft amended notices of hearings concerning Funds and Advisors (0.2); telephone conference with G. Demo re: litigation matters (0.1); e-mail to Z. Annable, H. Winograd re: amended notices of hearings concerning Funds and Advisors (0.1); communications with P. Keiffer, J. Pomerantz, G. Demo re: documents for withdrawal of Hunter Mountain claim and adversary proceeding (0.2); e-mail to J. Bonds re: Dondero deposition (0.1); e-mails with T. Surgent re: status of e-mails searches in response to United subpoena (0.1);	0.90	1245.00	$1,120.50
03/26/2021	LSC	BL	Conduct research and retrieve and transmit numerous documents in connection with Dondero/Dondero entities and transmit same for G. Demo.	4.30	460.00	$1,978.00
03/26/2021	GVD	BL	Correspondence with R. Feinstein re UBS settlement agreement	0.10	950.00	$95.00

				Hours	Rate	Amount
03/26/2021	GVD	BL	Draft summary of Dondero Entity litigation	3.70	950.00	$3,515.00
03/26/2021	GVD	BL	Conference with J. Morris re demand note issues	0.20	950.00	$190.00
03/26/2021	GVD	BL	Correspondence with UBS re litigation issues	0.20	950.00	$190.00
03/26/2021	GVD	BL	Research service addresses re potential litigation	0.20	950.00	$190.00
03/26/2021	GVD	BL	Conference with J. Donohue re service addresses for potential litigation	0.10	950.00	$95.00
03/26/2021	GVD	BL	Conference with R. Feinstein and J. Pomerantz re revisions to UBS settlement agreement	0.40	950.00	$380.00
03/26/2021	GVD	BL	Revise UBS settlement agreement and circulate same	0.30	950.00	$285.00
03/26/2021	HRW	BL	Call with J. Morris re: objection to Dondero emergency motion for continuance of demand note proceeding (0.1); Review Dondero emergency motion for continuance of demand note proceeding (0.2); Draft request for admission directed to James Dondero in demand note proceeding (1.8).	2.10	695.00	$1,459.50
03/27/2021	IDK	BL	E-mails with J Pomerantz, G Demo on Gov Re issues and next steps (.1).	0.10	1325.00	$132.50
03/27/2021	JNP	BL	Conference with Latham, Gregory V. Demo and Robert J. Feinstein regarding settlement agreement issues.	0.60	1295.00	$777.00
03/27/2021	JNP	BL	Review latest version of UBS Settlement Agreement.	0.10	1295.00	$129.50
03/27/2021	JAM	BL	Review documents and draft objection to Dondero motion for continuance in notes litigation (4.4); e-mails to H. Winograd, L. Canty re: draft objection to Dondero motion for continuance in notes litigation (0.3); e-mail to D. Klos, K. Hendricks, J. Pomerantz, G. Demo, H. Winograd, B. Sharp re: facts concerning Notes litigation against Dondero (0.2).	4.90	1245.00	$6,100.50
03/27/2021	LSC	BL	Review documents and retrieve and prepare exhibits in connection with Dondero Motion for Continuance in Notes Actions.	4.40	460.00	$2,024.00
03/27/2021	GVD	BL	Draft summary of Dondero entity litigation	1.30	950.00	$1,235.00
03/27/2021	GVD	BL	Conference with Latham and PSZJ re UBS settlement agreement	0.60	950.00	$570.00
03/27/2021	GVD	BL	Correspondence with J. Seery re status of UBS settlement agreement	0.20	950.00	$190.00
03/27/2021	GVD	BL	Correspondence with J. Morris re Cayman counsel	0.10	950.00	$95.00

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				Hours	Rate	Amount
03/27/2021	GVD	BL	Review Latham revisions to UBS settlement agreement and revise and circulate same	0.30	950.00	$285.00
03/27/2021	HRW	BL	Draft objection to Dondero's emergency motion to continue demand note proceedings (5.0).	5.00	695.00	$3,475.00
03/28/2021	JAM	BL	E-mails with D. Klos, K. Hendricks, J. Pomerantz, I. Kharasch, G. Demo, H. Winograd re: facts relating to Dondero loans and notes (0.3); review/revise draft objection to Dondero motion to modify scheduling order (4.8); communications with J. Pomerantz, I. Kharasch, G. Demo, H. Winograd, L. Canty re: objection to Dondero motion to modify scheduling order (0.3); communications with H. Winograd, L. Canty re: RFAs directed to Dondero (notes litigation) (0.2).	5.60	1245.00	$6,972.00
03/28/2021	LSC	BL	Continued preparation of exhibits in connection with Dondero Motion for Continuance in Notes Actions.	1.20	460.00	$552.00
03/28/2021	GVD	BL	Review correspondence from Latham re service addresses re potential litigation	0.60	950.00	$570.00
03/28/2021	HRW	BL	Draft objection to Dondero's emergency motion to continue demand note proceedings (4.5); Research contact information for serving litigation hold notices on Maples FS Limited and CIBC First Caribbean International Bank (0.3).	4.80	695.00	$3,336.00
03/29/2021	IDK	BL	Review of various correspondence with UBS, others on UBS new upcoming papers on adversary and motion to seal.	0.20	1325.00	$265.00
03/29/2021	JNP	BL	Review opposition to motion by Dondero to continue trial on note litigation.	0.10	1295.00	$129.50
03/29/2021	JNP	BL	Review issues and emails regarding UBS settlement.	0.30	1295.00	$388.50
03/29/2021	JNP	BL	Conference with M. Hankin regarding UBS filings.	0.30	1295.00	$388.50
03/29/2021	JNP	BL	Conference with John A. Morris and Gregory V. Demo regarding SCRE litigation issues and Wick Phillips conflict.	0.20	1295.00	$259.00
03/29/2021	JNP	BL	Review latest changes to UBS Settlement Agreement.	0.10	1295.00	$129.50
03/29/2021	JNP	BL	Review and respond to email regarding Wick Phillips and SE Multi Family issues.	0.10	1295.00	$129.50
03/29/2021	JNP	BL	Review email from T. Ellison regarding UBS filings and email regarding same.	0.10	1295.00	$129.50
03/29/2021	JNP	BL	Conference with Gregory V. Demo regarding UBS litigation and email regarding same.	0.10	1295.00	$129.50
03/29/2021	JNP	BL	Emails and conference with M. Clemente regarding	0.20	1295.00	$259.00

				Hours	Rate	Amount
			UBS litigation and Plan issues.			
03/29/2021	JNP	BL	Emails regarding pending litigation filed by UBS and court response; Conference with Gregory V. Demo regarding same.	0.30	1295.00	$388.50
03/29/2021	JNP	BL	Emails regarding UBS 9019.	0.10	1295.00	$129.50
03/29/2021	JNP	BL	Review UBS 9019 motion.	0.20	1295.00	$259.00
03/29/2021	JNP	BL	Conference with Robert J. Feinstein regarding UBS 9019 motion.	0.20	1295.00	$259.00
03/29/2021	JNP	BL	Conference with J. Dubel regarding UBS issues, status and timing.	0.30	1295.00	$388.50
03/29/2021	JNP	BL	Review emails with Court and others regarding UBS litigation.	0.10	1295.00	$129.50
03/29/2021	JNP	BL	Review of UBS litigation papers.	0.50	1295.00	$647.50
03/29/2021	RJF	BL	Review UBS motion to seal and TRO papers.	1.00	1395.00	$1,395.00
03/29/2021	RJF	BL	Draft response to motion to seal.	0.50	1395.00	$697.50
03/29/2021	RJF	BL	Review and comment on draft debtor motion to seal.	0.30	1395.00	$418.50
03/29/2021	RJF	BL	Emails regarding Chambers conference.	0.30	1395.00	$418.50
03/29/2021	JMF	BL	Review UBS seal motion.	0.20	1050.00	$210.00
03/29/2021	JAM	BL	Review and send RFAs for Dondero's notes litigation (0.2); revise objection to Dondero's motion to modify scheduling order (0.9); e-mails to J. Pomerantz, I. Kharasch, G. Demo, H. Winograd, L. Canty re: revised objection to Dondero's motion to modify scheduling order and exhibits in support thereof (0.2); review exhibits and e-mail to L. Canty re: redactions and related matters (0.5); e-mails to J. Seery, J. Pomerantz, I. Kharasch, G. Demo, H. Winograd re: draft objection to Dondero's motion to modify scheduling order and exhibits in support thereof (0.1); review/revise objection to Dondero motion to modify scheduling order (0.2); review/revise JAM declaration in support of objection to Dondero motion to modify scheduling order (0.3).	2.40	1245.00	$2,988.00
03/29/2021	JAM	BL	Prepare for HCRE/Dondero depositions (2.6); telephone conference with G. Demo re: HCRE facts (0.2); e-mail to counsel re: Zoom instructions for HCRE deposition (0.1) telephone conference with G. Demo re: Wicks Phillips' conflicts (0.2); telephone conference with J. Pomerantz, I. Kharasch, G. Demo re: Wicks Phillips' conflicts telephone conference with J. Seery, G. Demo re: Wicks Phillips' conflicts (0.2); draft e-mail to L.	4.50	1245.00	$5,602.50

				Hours	Rate	Amount
			Drawhorn re: Wicks' Phillips' conflicts (0.4); e-mails with J. Seery, J. Pomerantz, I. Kharasch, G. Demo, H. Winograd re: draft e-mail to L. Drawhorn (0.1); communications to all counsel, TSG, PSZJ team re: adjournment of HCRE depositions (0.2); draft amended deposition notices for HCRE and Dondero (0.1); e-mails with Z. Annable, G. Demo, H. Winograd re: amended deposition notices for HCRE and Dondero (0.1); telephone conference with J. Seery re: Wicks Phillips' conflicts (0.1); telephone conference with H. Winograd re: HCRE litigation matters (0.1); telephone conference with J. Bonds re: Dondero deposition and related matters (0.1).			
03/29/2021	LSC	BL	Prepare redacted exhibits for Objection to Dondero motion to modify scheduling order.	0.50	460.00	$230.00
03/29/2021	GVD	BL	Conference with J. Pomerantz re filing of stay pending appeal in District Court	0.10	950.00	$95.00
03/29/2021	GVD	BL	Conference with J. Morris re preparation for HCRE/SEMF deposition	0.70	950.00	$665.00
03/29/2021	GVD	BL	Conference with J. Morris and J. Seery re HCRE conflict of interest	0.20	950.00	$190.00
03/29/2021	GVD	BL	Conference with J. Morris and D. Klos re HCRE issues re deposition	0.20	950.00	$190.00
03/29/2021	GVD	BL	Correspondence with Hunton re deficiency bond issues	0.10	950.00	$95.00
03/29/2021	GVD	BL	Review draft objection to Dondero motion to continue hearing	0.50	950.00	$475.00
03/29/2021	GVD	BL	Attend to multiple issues re filing of UBS response under seal	2.60	950.00	$2,470.00
03/29/2021	GVD	BL	Review exhibits to Dondero objection for confidentiality	0.30	950.00	$285.00
03/29/2021	GVD	BL	Prepare back up information re UBS claim issues	0.60	950.00	$570.00
03/29/2021	HRW	BL	Edit and review objection to Dondero's emergency motion to continue demand note proceedings (2.5).	2.50	695.00	$1,737.50
03/30/2021	JNP	BL	Conference with J. Dubel regarding UBS 9019 motion.	0.30	1295.00	$388.50
03/30/2021	JNP	BL	Review and revise UBS 9019.	0.50	1295.00	$647.50
03/30/2021	JNP	BL	Review emails regarding litigation hold letter and respond.	0.10	1295.00	$129.50
03/30/2021	JNP	BL	Conference with John A. Morris regarding document issues and pursuit of claims issues.	0.30	1295.00	$388.50
03/30/2021	JNP	BL	Review of Settlement Agreement with Siepe.	0.20	1295.00	$259.00

				Hours	Rate	Amount
03/30/2021	JNP	BL	Review and respond to email regarding Wick Phillips conflict.	0.10	1295.00	$129.50
03/30/2021	JNP	BL	Conference with Robert J. Feinstein regarding 2004.	0.20	1295.00	$259.00
03/30/2021	JNP	BL	Conference with J. Seery and John A. Morris regarding litigation issues, sharing information with Committee and related matters.	0.30	1295.00	$388.50
03/30/2021	JNP	BL	Emails regarding Court ruling on extending Dondero note litigation trial date.	0.10	1295.00	$129.50
03/30/2021	RJF	BL	Telephone conference with Jeffrey N. Pomerantz regarding Reid Collins.	0.20	1395.00	$279.00
03/30/2021	RJF	BL	Review document presentation notices, related emails.	0.30	1395.00	$418.50
03/30/2021	JMF	BL	Review updated litigation chart.	0.30	1050.00	$315.00
03/30/2021	JAM	BL	Telephone conference with G. Demo re: litigation matters (0.2); telephone conference with J. Pomerantz re: litigation matters (0.3).	0.50	1245.00	$622.50
03/30/2021	JAM	BL	Review/revise objection to Dondero motion to modify scheduling order (0.2); e-mails with Z. Annable, H. Winograd, L. Canty re: exhibits to objection to Dondero motion to modify scheduling order (0.1); e-mail to B. Assink, Bonds Ellis, J. Pomerantz, G. Demo, H. Winograd re: timing of discovery (0.2); e-mails with Z. Annable, G. Demo, H. Winograd re: objection to Dondero motion to modify scheduling order (0.2); communications with J. Seery, J. Pomerantz re: court's ruling on Dondero motion to modify scheduling order (0.2); e-mails with T. Surgent, J. Sommer re: results from e-mail searches in response to United subpoena (0.2).	1.10	1245.00	$1,369.50
03/30/2021	LSC	BL	Redact additional exhibits (.3); research and review document productions for J. Morris and correspondence regarding the same (2.9).	3.20	460.00	$1,472.00
03/30/2021	GVD	BL	Review and revise draft 9019 motion re UBS settlement	1.40	950.00	$1,330.00
03/30/2021	GVD	BL	Review redacted exhibits to Dondero objection re confidentiality	0.20	950.00	$190.00
03/30/2021	GVD	BL	Conference with J. Morris re litigation issues	0.30	950.00	$285.00
03/30/2021	GVD	BL	Review UBS litigation hold notice and correspondence with T. Surgent re same	0.20	950.00	$190.00
03/30/2021	GVD	BL	Finalize UBS settlement agreement	0.30	950.00	$285.00
03/30/2021	GVD	BL	Conference with J. Morris re litigation hold notice re UBS	0.40	950.00	$380.00

				Hours	Rate	Amount
03/30/2021	GVD	BL	Conference with J. Seery re UBS settlement issues	0.20	950.00	$190.00
03/30/2021	GVD	BL	Further revise and circulate UBS 9019 motion re changes from J. Pomerantz and R. Feinstein	1.20	950.00	$1,140.00
03/30/2021	GVD	BL	Correspondence with PSZJ team re letter from Reid Collins re UBS litigation hold	0.10	950.00	$95.00
03/30/2021	HRW	BL	Review pending adversary proceedings (0.5).	0.50	695.00	$347.50
03/31/2021	IDK	BL	E-mails with J Pomerantz, others on UBS litigation holds and Dondero counsel feedback on same.	0.20	1325.00	$265.00
03/31/2021	JNP	BL	Review emails regarding litigation hold.	0.10	1295.00	$129.50
03/31/2021	JNP	BL	Conference with Robert J. Feinstein regarding next steps after court ruling on UBS and Debtor seal motion.	0.30	1295.00	$388.50
03/31/2021	JNP	BL	Email to Board regarding Court ruling on UBS and Debtor seal motions.	0.10	1295.00	$129.50
03/31/2021	JNP	BL	Email to Latham regarding call to discuss next steps regarding UBS litigation.	0.10	1295.00	$129.50
03/31/2021	JNP	BL	Conference with J. Seery regarding UBS issues and related.	0.30	1295.00	$388.50
03/31/2021	JNP	BL	Conference with J. Dubel regarding UBS 9019 motion and stay pending appeal issues.	0.40	1295.00	$518.00
03/31/2021	JNP	BL	Review email from C. Taylor regarding litigation under seal.	0.10	1295.00	$129.50
03/31/2021	JNP	BL	Review C. Taylor email regarding litigation hold and review litigation hold.	0.10	1295.00	$129.50
03/31/2021	JNP	BL	Conference with John A. Morris regarding Wick Phillips conflicts.	0.10	1295.00	$129.50
03/31/2021	JNP	BL	Conference with Robert J. Feinstein regarding call with Latham.	0.10	1295.00	$129.50
03/31/2021	JNP	BL	Participate In call with Latham, John A. Morris, Robert J. Feinstein and Gregory V. Demo regarding status of UBS lawsuit and related issues.	0.70	1295.00	$906.50
03/31/2021	MDJ	BL	Email exchanges with L. Canty, G. Demo and copy personnel re litigation hold letters; Revisions to letterhead and delivery; Prepare Express Mail/FedX labels and coordinate delivery; Call with copy personnel re Cayman FedXs; Vfile letters.	3.20	395.00	$1,264.00
03/31/2021	RJF	BL	Call with Latham regarding TRO proceedings.	0.70	1395.00	$976.50
03/31/2021	RJF	BL	Review and comment on litigation hold letter and related emails.	0.30	1395.00	$418.50

				Hours	Rate	Amount
03/31/2021	RJF	BL	Telephone conference with Jeffrey N. Pomerantz regarding TRO proceeding.	0.30	1395.00	$418.50
03/31/2021	RJF	BL	Revise draft statement regarding TRO, related emails.	0.30	1395.00	$418.50
03/31/2021	RJF	BL	Review proposed revisions to draft 9019 motion, emails Gregory V. Demo regarding same.	0.30	1395.00	$418.50
03/31/2021	JMF	BL	Review UBS complaint and seal motion.	0.30	1050.00	$315.00
03/31/2021	JAM	BL	Review/revise draft litigation hold letter concerning sealed litigation (0.6); communications with J. Pomerantz, I. Kharasch, G. Demo, R. Feinstein re: litigation hold letter concerning sealed litigation (0.2); telephone conference with J. Pomerantz, R. Feinstein, G. Demo, L& W attorneys re: UBS adversary proceeding and related matters (0.7); e-mails with B. Assink, H. Winograd re: modified scheduling order in Dondero's notes litigation (0.1).,	1.60	1245.00	$1,992.00
03/31/2021	GVD	BL	Conference with PSZJ and UBS re next steps re adversary proceeding	0.70	950.00	$665.00
03/31/2021	GVD	BL	Further revise UBS 9019 motion re comments from J. Dubel	0.40	950.00	$380.00
03/31/2021	GVD	BL	Draft and send litigation hold notices	2.90	950.00	$2,755.00
03/31/2021	GVD	BL	Draft and circulate order on motion to seal	0.20	950.00	$190.00
03/31/2021	GVD	BL	Conference with J. Pomerantz re UBS conference	0.10	950.00	$95.00
				448.20		**$451,649.00**

Case Administration [B110]

03/01/2021	BMK	CA	Prepared daily memo narrative and coordinated client distribution.	0.40	375.00	$150.00
03/01/2021	GVD	CA	Attend to issues re scheduling calls	0.20	950.00	$190.00
03/02/2021	IDK	CA	Review of updated WIP list (.1); Attend WIP call on open issues (1.0).	1.10	1325.00	$1,457.50
03/02/2021	JNP	CA	Participate in WIP call.	1.00	1295.00	$1,295.00
03/02/2021	KKY	CA	Review and revise critical dates	2.50	460.00	$1,150.00
03/02/2021	JEO	CA	Participate in PSZJ WIP Call	0.80	1050.00	$840.00
03/02/2021	JMF	CA	Draft memorandum re pending case issues (.4); telephone call with G. Demo, I. Kharasch and J.N, Pomerantz re same (.7).	1.10	1050.00	$1,155.00
03/02/2021	JAM	CA	Internal WIP call (J. Pomerantz, I. Kharasch, G. Demo, J. Fried, J. O'Neill, H. Wonograd) (0.8).	0.80	1245.00	$996.00

EXHIBIT 173

Pachulski Stang Ziehl & Jones LLP

10100 Santa Monica Blvd.
13th Floor
Los Angeles, CA 90067

April 30, 2021
Invoice 127680
Client 36027
Matter 00002
JNP

Board of Directors
Highland Capital Management LP
300 Crescent Court ste. 700
Dallas, TX 75201

RE: Postpetition

STATEMENT OF PROFESSIONAL SERVICES RENDERED THROUGH 04/30/2021

Pachulski Stang Ziehl & Jones LLP
Highland Capital Management LP
36027 - 00002

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				Hours	Rate	Amount
[redacted]						
[redacted]						
[redacted]						

				Hours	Rate	Amount
			Dondero counsel correspondence re their intent to file motion to withdraw reference on collection actions and opposition (.2).			
[redacted]			[redacted]			
04/01/2021	JNP	BL	Emails to and from Gregory V. Demo regarding D. Rukavina email regarding withdrawal of the reference.	0.10	1295.00	$129.50
04/01/2021	JNP	BL	Review and respond to email regarding withdrawal of reference for note lawsuits.	0.10	1295.00	$129.50
[redacted]			[redacted]			
[redacted]			[redacted]			
[redacted]			[redacted]			
[redacted]			[redacted]			
[redacted]			[redacted]			
[redacted]			[redacted]			
04/01/2021	JAM	BL	Telephone conference with H. Winograd re: discovery in AP against Advisors (notes litigation) (0.1); prepare discovery document requests and interrogatories for AP against Advisors (notes litigation) (0.9); review/revise requests for admission for AP against Advisors (notes litigation (0.3); e-mails with H. Winograd re: discovery requests for AP against Advisors (notes litigation (0.2); [redacted] e-mail to D. Rukavina, H. Winograd re: discovery in AP against Advisors (notes litigation) (0.1).	1.70	1245.00	$2,116.50
[redacted]			[redacted]			

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				Hours	Rate	Amount
[redacted]						
[redacted]						
[redacted]						
04/01/2021	HRW	BL	Call with J. Morris re: discovery in NPA demand note litigation (0.1); Draft discovery demands in NPA demand note litigation (1.0); Review adversary proceeding critical dates (0.6).	1.70	695.00	$1,181.50
[redacted]						
[redacted]						
04/02/2021	JNP	BL	Review witness list and reply brief regarding Committee's motion regarding Dondero discovery.	0.20	1295.00	$259.00
[redacted]						
[redacted]						
[redacted]						
[redacted]						
[redacted]						
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				Hours	Rate	Amount
[redacted]						
04/04/2021	JAM	BL	E-mail to H. Winograd re: notes litigation (0.1);	0.10	1245.00	$124.50
[redacted]						

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				Hours	Rate	Amount
[redacted]						
04/05/2021	HRW	BL	Review amended scheduling order for Dondero demand note proceeding (0.5).	0.50	695.00	$347.50
[redacted]						
04/06/2021	IDK	BL	E-mails with G Demo re Dondero withdrawal of reference motion and our prior research on jurisdiction issues re same	0.30	1325.00	$397.50
[redacted]						

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				Hours	Rate	Amount
04/07/2021	JAM	BL	Review Dondero's amended answer in notes litigation (0.1); draft document requests relating to Dondero's amended answer in notes litigation (0.3); draft interrogatories relating to Dondero's amended answer in notes litigation (0.3); draft requests for admission relating to Dondero's amended answer in notes litigation (0.3); e-mails to H. Winograd, J. Pomerantz, I. Kharasch, G. Demo re: discovery demands relating to Dondero's amended answer in notes litigation (0.2); review revised discovery requests (Winograd versions) relating to Dondero's amended answer in notes litigation (0.2); e-mail to B. Assink, C. Taylor, J. Pomerantz, G. Demo, H. Winograd re: discovery and timing of Dondero's deposition (0.1); e-mails to J. Seery, J. Pomerantz, I. Kharasch, G. Demo re: Dondero's amended answer and related discovery (0.2).	1.70	1245.00	$2,116.50
[redacted]						
04/07/2021	HRW	BL	Draft discovery demands for Dondero demand note adversary proceeding (0.9).	0.90	695.00	$625.50
[redacted]						

				Hours	Rate	Amount
			disqualification of Wick Phillips (1.5); telephone conference with T. Surgent, G. Demo re: document production and related issues (0.7); telephone conference with G. Demo re: document production issues (0.1); telephone conference with J. Pomerantz re: various litigation matters relating to the Advisors (0.8); communications with C. Wilkins, J. Pomerantz, G. Demo re: Bermuda counsel (0.1).			
[redacted]						
04/08/2021	HRW	BL	Review demand note adversary proceeding complaints (0.3).	0.30	695.00	$208.50
[redacted]						
04/09/2021	IDK	BL	E-mails with G Demo, others on Plan provisions re note collection/litigation issues	0.30	1325.00	$397.50
[redacted]						
04/09/2021	JMF	BL	Review notes receivable litigation and amounts due from noteholders re plan implementation (2.1)	2.10	1050.00	$2,205.00
[redacted]						
04/09/2021	JAM	BL	Review of rules re: withdrawal of the reference (0.4); telephone conference with Z. Annable re: rules	1.00	1245.00	$1,245.00

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				Hours	Rate	Amount
			for withdrawal of the reference (0.1); [redacted]			
[redacted]						
04/09/2021	GVD	BL	Review issues re notes litigation	0.60	950.00	$570.00
[redacted]						

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				Hours	Rate	Amount
[redacted]						
[redacted]						
[redacted]						
[redacted]						
[redacted]						
[redacted]						
[redacted]						
[redacted]						
[redacted]						
04/12/2021	GVD	BL	Review issues re prepayment of notes	0.60	950.00	$570.00
[redacted]						
[redacted]						
[redacted]						
[redacted]						
[redacted]						75.00

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				Hours	Rate	Amount
[redacted]						
04/13/2021	JMF	BL	Review motion and brief for withdrawal of	0.50	1050.00	$525.00

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				Hours	Rate	Amount
			references re demand notes.			
04/13/2021	JAM	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
04/13/2021	JAM	BL	Review Answers to complaints filed by Advisors in notes litigation, and send e-mail to J. Pomerantz, I. Kharasch, G. Demo, H. Winograd re: same (0.4); e-mail to J. Pomerantz, I. Kharasch, G. Demo, H. Winograd re: Advisors' motion to withdraw the reference for notes litigation (0.2)	0.60	1245.00	$747.00
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]

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				Hours	Rate	Amount
			[redacted]			
04/14/2021	JNP	BL	Email to D. Rukavina regarding scheduling for motion to withdraw reference.	0.10	1295.00	$129.50
04/14/2021	JNP	BL	Email to and from D. Rukavina regarding hearing on motion to withdraw reference.	0.10	1295.00	$129.50
04/14/2021	JNP	BL	Conference with John A. Morris regarding hearing on motion to withdraw reference.	0.10	1295.00	$129.50
04/14/2021	JNP	BL	Review motion to withdraw reference.	0.20	1295.00	$259.00
[redacted]						
04/14/2021	JAM	BL	[redacted] e-mails with D. Rukavina, J. Pomerantz re: scheduling issues concerning adversary proceeding against Advisors and Funds (0.5); e-mail to Court, D. Rukavina, L. Hogewood, J. Pomerantz re: scheduling issues	4.80	1245.00	$5,976.00

				Hours	Rate	Amount
			concerning adversary proceeding against Advisors and Funds (0.3;) [redacted]			
[redacted]						
[redacted]						
[redacted]						
[redacted]						
[redacted]						
04/14/2021	GVD	BL	Correspondence re note and discovery request	0.10	950.00	$95.00
[redacted]						
[redacted]						
[redacted]						
[redacted]						
[redacted]						
[redacted]						
[redacted]						
04/14/2021	HRW	BL	Draft Rule 26 disclosures for Dondero demand note adversary proceeding (2.0).	2.00	695.00	$1,390.00
04/[redacted]						
[redacted]						

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				Hours	Rate	Amount
[redacted]						
[redacted]						
04/15/2021	IDK	BL	Review and consider G Demo's memo on prepayment issues on Dondero related p-notes and how prepayments are allocated and default issues (.3); E-mails with G Demo, others re same (.1).	0.40	1325.00	$530.00
[redacted]						
[redacted]						
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				Hours	Rate	Amount
[redacted]						
04/15/2021	HRW	BL	Prepare Rule 26 disclosures for Dondero demand note adversary proceeding (0.6).	0.60	695.00	$417.00
04/16/2021	IDK	BL	E-mail and telephone conference with J Pomerantz re Dondero withdrawal of reference motions and logistics on response to same and J Kim (.2); E-mail and telephone conference with G Demo re same and relevant pleadings (.2); E-mails with J Kim re need for responses to Dondero withdrawal of reference motions (.2).	0.60	1325.00	$795.00
04/16/2021	JJK	BL	Research re: reference withdrawal, core matter, Stern, related issues.	3.70	995.00	$3,681.50
[redacted]						

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				Hours	Rate	Amount
04/16/2021	JNP	BL	Conference with Ira D. Kharasch regarding motion to withdraw reference response.	0.20	1295.00	$259.00
04/16/2021	JNP	BL	Review Dondero motion to stay pending withdrawal of the reference and email regarding same.	0.20	1295.00	$259.00
[redacted]						
04/16/2021	GVD	BL	Review Dondero motion re withdrawal of the reference	0.20	950.00	$190.00
04/16/2021	GVD	BL	Conference with I. Kharasch re motions to withdraw the reference and follow up items re same	0.20	950.00	$190.00
[redacted]						
04/16/2021	HRW	BL	Review Dondero withdrawal of reference filed in demand note adversary proceeding (0.5).	0.50	695.00	$347.50
04/16/2021	HRW	BL	Review Dondero's motion to stay demand note	0.30	695.00	$208.50

				Hours	Rate	Amount
			adversary proceeding pending motion to withdraw reference (0.3).			
[redacted]			[redacted]			
[redacted]			[redacted]			
04/17/2021	JAM	BL	Review Dondero motion to expedite stay motion (0.3); e-mail to J. Pomerantz, I. Kharasch, G. Demo, H. Winograd re: analysis of Dondero motion to expedite stay motion (0.4); draft objection to Dondero motion to expedite motion for stay (2.7).	3.40	1245.00	$4,233.00
[redacted]			[redacted]			
04/17/2021	HRW	BL	Draft demand note discovery requests (2.5).	2.50	695.00	$1,737.50
04/18/2021	JNP	BL	Review and comment on opposition to motion for stay of discovery and emails regarding same.	0.20	1295.00	$259.00
[redacted]			[redacted]			
[redacted]			[redacted]			
04/18/2021	JAM	BL	Review and revise initial draft objection to Dondero's motion to expedite motion for stay (2.9); e-mail to J. Pomerantz, I. Kharasch, G. Demo, H. Winograd re: initial draft objection to Dondero's motion to expedite motion for stay (0.1); draft JAM declaration in support of objection to Dondero's motion to expedite motion for stay (0.5); e-mail to Z. Annable, G. Demo, H. Winograd re: declaration and objection concerning Dondero's motion to expedite (0.1).	3.60	1245.00	$4,482.00
[redacted]			[redacted]			
[redacted]			[redacted]			
04/18/2021	GVD	BL	Review objection to motion to expedite	0.30	950.00	$285.00

Pachulski Stang Ziehl & Jones LLP
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				Hours	Rate	Amount
[redacted]						
04/18/2021	HRW	BL	Draft demand note discovery requests (3.5).	3.50	695.00	$2,432.50
[redacted]						
[redacted]						
[redacted]						
[redacted]						
04/19/2021	JJK	BL	Research/analysis reference withdrawal, core matters, Stern issues.	7.80	995.00	$7,761.00
[redacted]						
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[redacted]						
[redacted]						
[redacted]						
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Pachulski Stang Ziehl & Jones LLP
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				Hours	Rate	Amount
[redacted]						
04/19/2021	JAM	BL	Review/revise objection to Dondero motion to expedite motion for stay pending motion to withdraw the reference (0.8); e-mail to J. Pomerantz, I. Kharasch, G. Demo, H. Winograd re: revised objection to Dondero motion to expedite motion for stay pending motion to withdraw the reference (0.1); e-mail to J. Seery, J. Pomerantz, I. Kharasch, G. Demo, H. Winograd re: objection to Dondero motion to expedite motion for stay pending motion to withdraw the reference (0.2); review/revise interrogatories, RFAs, document requests, and Rule 30(b)(6) deposition notice for the Advisors re: notes litigation (0.7); communications with H. Winograd re: discovery for the Advisors in notes litigation (0.1); communications with J. Seery, J. Pomerantz, I. Kharasch, G. Demo, H. Winograd re: discovery for Advisors in notes litigation (0.1).	2.00	1245.00	$2,490.00
[redacted]						

Pachulski Stang Ziehl & Jones LLP
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				Hours	Rate	Amount
[redacted]						
[redacted]						
[redacted]						
[redacted]						
04/19/2021	HRW	BL	Draft discovery demands for HCMFA demand note proceeding (1.2).	1.20	695.00	$834.00
[redacted]						
[redacted]						
[redacted]						
04/20/2021	JJK	BL	Research/analysis of Stern, jurisdiction, reference, related issues.	3.10	995.00	$3,084.50
04/20/2021	JJK	BL	Analysis/research jurisdiction, Stern, reference issues.	4.30	995.00	$4,278.50
04/20/2021	JJK	BL	Research Stern, jurisdiction, reference, related issues.	3.10	995.00	$3,084.50
04/20/2021	JNP	BL	Conference with John A. Morris regarding funds/ advisor adversary proceeding and related.	0.20	1295.00	$259.00
[redacted]						
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Pachulski Stang Ziehl & Jones LLP
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				Hours	Rate	Amount
[redacted]						
[redacted]						
[redacted]						
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[redacted]						
[redacted]						
[redacted]						
04/21/2021	JJK	BL	Research and prepare objection to NexPoint reference withdrawal motion.	2.10	995.00	$2,089.50
04/21/2021	JJK	BL	Research and prepare objection to NexPoint/HCMFA reference motions.	5.40	995.00	$5,373.00
04/21/2021	JJK	BL	Research/draft objection to HCMFA reference withdrawal motion.	3.00	995.00	$2,985.00
04/21/2021	JNP	BL	Research regarding withdrawal reference and conference with Ira D. Kharasch and review of complaint and emails with Jeffrey H. Davidson regarding same.	0.40	1295.00	$518.00
[redacted]						
[redacted]						
[redacted]						
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				Hours	Rate	Amount
[redacted]						
04/22/2021	JJK	BL	Research re reference withdrawal issues.	0.80	995.00	$796.00
[redacted]						
04/22/2021	JNP	BL	Review of memo regarding withdrawal of the reference.	0.20	1295.00	$259.00
[redacted]						

Pachulski Stang Ziehl & Jones LLP
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				Hours	Rate	Amount
04/22/2021	LAF	BL	Legal research re: "Tax loan" & withdrawal of reference.	0.50	475.00	$237.50
[redacted]						
04/22/2021	JAM	BL	Review Dondero discovery requests (0.2); review Advisors' discovery requests (0.1); draft amended deposition notice for Dondero (0.1); e-mails with Z. Annable, H. Winograd re: amended deposition notice for Dondero (0.1).	0.50	1245.00	$622.50
[redacted]						
04/22/2021	GVD	BL	Review Dondero discovery requests	0.20	950.00	$190.00
[redacted]						

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				Hours	Rate	Amount
[redacted]						
04/23/2021	LAF	BL	Citecheck & edit memos on withdrawal of reference.	5.80	475.00	$2,755.00
[redacted]						

Pachulski Stang Ziehl & Jones LLP
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				Hours	Rate	Amount
			e-discovery (0.1); review docket and send e-mail to [redacted]			
[redacted]			[redacted]			
[redacted]			[redacted]			
[redacted]			[redacted]			
[redacted]			[redacted]			
[redacted]			[redacted]			
[redacted]			[redacted]			
[redacted]			[redacted]			
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[redacted]			[redacted]			
04/25/2021	JAM	BL	E-mails to L. Drawhorn, J. Seery, J. Pomerantz re: HCRE's proposed amended of notes complaint (0.1).	0.10	1245.00	$124.50
[redacted]			[redacted]			
[redacted]			[redacted]			
04/26/2021	IDK	BL	E-mails with J Pomerantz re status on oppositions to motions to withdraw reference [redacted]			
[redacted]			[redacted]			

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Highland Capital Management LP
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Invoice 127680
April 30, 2021

				Hours	Rate	Amount
04/26/2021	JJK	BL	Prepare objections to reference withdrawal motions of Dondero, NexPoint, HCMFA (separate adversary proceedings).	4.60	995.00	$4,577.00
04/26/2021	JNP	BL	Conference with PSZJ team regarding pending litigation deadlines and responsibilities.	0.80	1295.00	$1,036.00
[redacted]						
04/26/2021	JNP	BL	Review memo regarding withdrawal of reference and enforcement of reference.	0.10	1295.00	$129.50
[redacted]						
04/26/2021	JNP	BL	Review emails regarding Dondero discovery in notes litigation.	0.10	1295.00	$129.50
[redacted]						

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April 30, 2021

				Hours	Rate	Amount
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04/26/2021	JAM	BL	Review Dondero's third set of discovery requests (0.2); communications with J. Pomerantz, I. Kharasch, G. Demo, H. Winograd re: discovery, potential motion for summary judgment re: against Dondero (0.4).	0.60	1245.00	$747.00

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April 30, 2021

				Hours	Rate	Amount
[redacted]						
04/26/2021	HRW	BL	Call with G. Demo, J. Morris, B. Sharp, and meta e-discovery reps regarding responding to various discovery requests in adversary proceedings.	0.20	695.00	$139.00
[redacted]						
04/26/2021	HRW	BL	Review discovery demands in Notes Litigation.	1.00	695.00	$695.00
04/26/2021	HRW	BL	Research summary judgement standard for notes litigation.	2.20	695.00	$1,529.00
[redacted]						

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				Hours	Rate	Amount
			[redacted]			
04/27/2021	JJK	BL	Review docs and prepare objections to reference withdrawal motions of Dondero, NexPoint, HCMFA (separate adv. proceedings).	9.10	995.00	$9,054.50
[redacted]						

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April 30, 2021

				Hours	Rate	Amount
[redacted]						
[redacted]						
04/27/2021	JAM	BL	Review rules and documents and send e-mail to H. Winograd, J. Pomerantz, I. Kharasch, G Demo re: potential motion for summary judgment (Dondero, notes litigation) (0.5).	0.50	1245.00	$622.50
[redacted]						
04/28/2021	JJK	BL	Research and further revisions to objection to Dondero reference motion.	4.20	995.00	$4,179.00

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				Hours	Rate	Amount
04/28/2021	JJK	BL	Research/analysis re: Dondero claims and reference issues.	4.00	995.00	$3,980.00
04/28/2021	JJK	BL	Work on withdrawal of reference response	2.50	995.00	$2,487.50
[redacted]						
04/28/2021	JNP	BL	Review email from M. Clemente regarding pending notes litigation and forward to Board.	0.10	1295.00	$129.50
[redacted]						
04/28/2021	RJF	BL	Review motion to amend, original complaint, related pleadings.	1.30	1395.00	$1,813.50
[redacted]						
04/28/2021	JMF	BL	Review HCMFA answer.	0.30	1050.00	$315.00
[redacted]						

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Invoice 127680
April 30, 2021

				Hours	Rate	Amount
[redacted]						
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04/28/2021	GVD	BL	Review response to motion to withdrawal the reference	0.50	950.00	$475.00
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04/28/2021	HRW	BL	Review Dondero's responses to discovery requests in notes litigation.	0.10	695.00	$69.50
04/28/2021	HRW	BL	Draft Responses and Objections for NPA discovery demands in notes litigation.	0.30	695.00	$208.50
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April 30, 2021

				Hours	Rate	Amount
[redacted]						
04/29/2021	JAM	BL	Telephone conference with H. Winograd re: responses to Advisors' discovery requests in notes litigation (0.6).	0.60	1245.00	$747.00
[redacted]						
04/29/2021	GVD	BL	Conference with J. Seery re notes enforcement issues	0.20	950.00	$190.00
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Pachulski Stang Ziehl & Jones LLP
Highland Capital Management LP
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Invoice 127680
April 30, 2021

				Hours	Rate	Amount
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04/29/2021	HRW	BL	Call with G. Demo regarding NPA discovery requests in notes litigation.	0.40	695.00	$278.00
04/29/2021	HRW	BL	Call with G. Demo, K. Hendrix, D. Klos, J. Donahue regarding NPA discovery requests in notes litigation.	0.30	695.00	$208.50
04/29/2021	HRW	BL	Draft responses & objections to NPA's discovery requests in notes litigation.	8.00	695.00	$5,560.00
04/29/2021	HRW	BL	Call with J. Morris regarding NPA discovery in notes litigation.	0.60	695.00	$417.00
[redacted]						
04/30/2021	IDK	BL	E-mails with J Kim re opposition to Advisors' and others motions to withdraw the reference (.6); Review of revised oppositions to same (.2).	0.80	1325.00	$1,060.00
04/30/2021	JJK	BL	Additional research for objections to withdrawal reference motions of NexPoint, HCMFA, Dondero, and revise same objections.	3.60	995.00	$3,582.00
04/30/2021	JJK	BL	Revise objections to reference withdrawal motions and emails Kharasch on same.	2.10	995.00	$2,089.50
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04/30/2021	JMF	BL	Review motion to stay adversary proceedings.	0.40	1050.00	$420.00
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04/30/2021	HRW	BL	Draft responses and objections to NPA's discovery requests in notes litigation.	3.50	695.00	$2,432.50
04/30/2021	HRW	BL	Call with J. Morris regarding NPA discovery requests in notes litigation.	0.10	695.00	$69.50
04/30/2021	HRW	BL	Call with D. Klos regarding NPA discovery requests in notes litigation.	0.60	695.00	$417.00
				548.80		**$565,736.50**

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EXHIBIT 174

Pachulski Stang Ziehl & Jones LLP

10100 Santa Monica Blvd.
13th Floor
Los Angeles, CA 90067

May 31, 2021
Invoice 127958
Client 36027
Matter 00002
JNP

Board of Directors
Highland Capital Management LP
300 Crescent Court ste. 700
Dallas, TX 75201

RE: Postpetition

STATEMENT OF PROFESSIONAL SERVICES RENDERED THROUGH 05/31/2021

[redacted]

Pachulski Stang Ziehl & Jones LLP
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36027 - 00002

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05/01/2021	GVD	BL	Further revise motion to enforce the reference	4.30	950.00	$4,085.00
[redacted]						
05/02/2021	IDK	BL	Review of J Pomerantz comments to draft opposition to Advisors, others motions for withdrawal of reference.	0.30	1325.00	$397.50
05/02/2021	JJK	BL	Analysis withdrawal issues; revise NexPoint/HCMFA oppositions.	4.30	995.00	$4,278.50

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05/02/2021	GVD	BL	Further revise and circulate motion to enforce the reference	4.80	950.00	$4,560.00
05/02/2021	GVD	BL	Correspondence re extension of answer date	0.20	950.00	$190.00
[redacted]						
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[redacted]						
[redacted]						
05/03/2021	IDK	BL	E-mails with J Kim re his latest revised opposition to	1.40	1325.00	$1,855.00

				Hours	Rate	Amount
			NextPoint motion to withdraw the reference, as well as feedback of others re same and consider (.5) Attend conference call with J Pomerantz, J Kim, G Demo re open issues on draft opposition to motions to withdraw reference (.3); Review of further revised draft of opposition to same (.2); Attend next conference call re same on next draft of opposition (.4).			
05/03/2021	JJK	BL	Emails Pomerantz, Demo re: opp to NexPoint/HCMFA withdrawal reference motions; research/analysis/revisions to same.	2.40	995.00	$2,388.00
05/03/2021	JJK	BL	Prepare opp to HCMFA withdrawal reference motion and analysis for same.	2.70	995.00	$2,686.50
05/03/2021	JJK	BL	Analysis/revise oppositions to NexPoint and HCMFA reference motions.	3.70	995.00	$3,681.50
05/03/2021	JJK	BL	Research/analysis re: reference withdrawal matters.	1.00	995.00	$995.00
[redacted]						
05/03/2021	JNP	BL	Brief review of motion to enforce reference.	1.00	1295.00	$1,295.00
05/03/2021	JNP	BL	Conference with Robert J. Feinstein regarding motion to enforce reference and related litigation matters.	0.30	1295.00	$388.50
05/03/2021	JNP	BL	Conference with Robert J. Feinstein and Gregory V. Demo regarding motion to enforce reference.	0.20	1295.00	$259.00
[redacted]						
05/03/2021	JNP	BL	Review revised motion to withdraw reference response.	0.30	1295.00	$388.50
05/03/2021	JNP	BL	Conference with Jonathan J. Kim, Ira D. Kharasch and Gregory V. Demo regarding motion to withdraw	0.60	1295.00	$777.00

				Hours	Rate	Amount
			reference responses (2x).			
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05/03/2021	GVD	BL	Revise and serve demand letter re Dugaboy note	0.30	950.00	$285.00
05/03/2021	GVD	BL	Revise and serve demand letter re Hunter Mountain note	0.30	950.00	$285.00
05/03/2021	GVD	BL	Conference with PSZJ team re response to withdrawal of reference in NPA notes litigation	0.40	950.00	$380.00
05/03/2021	GVD	BL	Review and revise response to motion to enforce the reference in NPA notes litigation	1.20	950.00	$1,140.00
05/03/2021	GVD	BL	Follow up conference with PSZJ re opposition to motion to withdraw the reference in NPA litigation	0.30	950.00	$285.00
05/03/2021	GVD	BL	Conference with J. Morris re status of notes litigation	0.20	950.00	$190.00
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05/04/2021	IDK	BL	Review of J Kim's next version of opposition to NextPoint motion to withdraw reference (.3); E-mails with J Kim re my proposed changes to same, as well as comments/questions from J Pomerantz re same and J Kim response (.5); Review of final revised opposition to same and green light to file (.2).	1.00	1325.00	$1,325.00
05/04/2021	JJK	BL	Emails Demo, Morris, Pomerantz on withdrawal reference pleadings issues; research/revise oppositions to reference withdrawal motions.	2.20	995.00	$2,189.00

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				Hours	Rate	Amount
05/04/2021	JJK	BL	Emails Demo on withdrawal reference pleadings issues; research/revise oppositions to reference withdrawal motions.	3.90	995.00	$3,880.50
[redacted]						
05/04/2021	JNP	BL	Review and comment on latest version on motion to withdraw reference.	0.20	1295.00	$259.00
[redacted]						
05/04/2021	RJF	BL	Review and revise motion to enforce the reference.	1.30	1395.00	$1,813.50
[redacted]						
05/04/2021	JAM	BL	Review draft opposition to withdraw the reference (NexPoint) (0.4).	0.40	1245.00	$498.00
[redacted]						

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05/04/2021	HRW	BL	Call with DSI regarding NPA document production for demand note proceeding.	0.50	695.00	$347.50
05/04/2021	HRW	BL	Call with R. Half and J. Morris regarding NPA document production in demand note litigation.	0.20	695.00	$139.00
05/04/2021	HRW	BL	Prepare for call with R. Half and J. Morris regarding NPA document production in demand note litigation.	1.20	695.00	$834.00
05/04/2021	HRW	BL	Review J. Seery comments to NPA R&O's in	0.30	695.00	$208.50

				Hours	Rate	Amount
			demand in demand note litigation.			
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]97.50
05/05/2021	JJK	BL	Research/finalize objection to Dondero motion to withdraw reference.	3.70	995.00	$3,681.50
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05/05/2021	JAM	BL	E-mails with B. Assink re: Dondero document production (notes litigation (0.2); review Dondero document production (0.1).	0.30	1245.00	$373.50
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05/05/2021	HRW	BL	Prepare interrogatory verification for R&Os to NPA interrogatories in notes litigation (0.2); Review Seery's comments to R&Os to NPA discovery demands in notes litigation (0.1); Review DSI documents for production for NPA discovery demands in notes litigation (0.2).	0.50	695.00	$347.50
[redacted]						
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05/06/2021	IDK	BL	Review of updated opposition to Dondero motion to withdraw reference (.3); E-mails with J Kim re same and further issues on mandatory withdrawal of reference and related memo on same (.3); Telephone conference with J Pomerantz re same (.1); E-mails with J Kim re status and ok to file (.1).	0.80	1325.00	$1,060.00
05/06/2021	IDK	BL	E-mails with J Kim re mistake made in filed opposition today to Dondero motion to withdraw ref, and how to fix, including feedback of J Pomerantz re same.	0.40	1325.00	$530.00
05/06/2021	JJK	BL	Emails Kharasch on withdrawal reference objections, and revise same and prepare supplement for filing.	4.20	995.00	$4,179.00
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05/06/2021	HRW	BL	Communicate with R. Half re: NPA production in demand note proceeding (0.9); Call with L. Canty re: NPA production in notes litigation (0.1); Review critical dates re: Dondero stay motion and motion to withdraw reference in notes litigation (0.2); Prepare search terms for NPA production in notes litigation (0.3).	1.50	695.00	$1,042.50
05/07/2021	IDK	BL	Review of draft addendum to prior filed opposition to Dondero motion to withdraw ref and consider changes (.2); E-mails with J Kim and J Pomerantz re same, as well as feedback of local counsel (.3).	0.50	1325.00	$662.50
05/07/2021	JJK	BL	Two conf. calls (2x 0.3) with Pomerantz, Kharasch, Demo on reference withdrawal oppositions.	0.60	995.00	$597.00

Pachulski Stang Ziehl & Jones LLP
Highland Capital Management LP
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Invoice 127958
May 31, 2021

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05/07/2021	JNP	BL	Review further filing regarding opposition to motion to withdraw reference.	0.10	1295.00	$129.50
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Pachulski Stang Ziehl & Jones LLP
Highland Capital Management LP
36027 - 00002

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05/07/2021	HRW	BL	Review discovery requests in notes litigation (2.0); Edit R&O's for NPA discovery requests (0.3).	2.30	695.00	$1,598.50
05/08/2021	RJF	BL	Review and revise motion to enforce.	0.80	1395.00	$1,116.00
[redacted]						
[redacted]						
05/08/2021	JAM	BL	Review/revise document requests, interrogatories, and requests for admission relating to HCMS notes litigation (1.1); e-mails with J. Pomerantz, H. Winograd re: revisions to discovery requests for HCMS notes litigation (0.2).	1.30	1245.00	$1,618.50
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Pachulski Stang Ziehl & Jones LLP
Highland Capital Management LP
36027 - 00002

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				Hours	Rate	Amount
05/08/2021	HRW	BL	Draft discovery demands for notes litigation (3.5); Review discovery requests to Debtor in notes litigation (1.2).	4.70	695.00	$3,266.50
[redacted]						
05/09/2021	HRW	BL	Review discovery requests to Debtor in notes litigation (2.5); Prepare search terms for document production in notes litigation (1.0).	3.50	695.00	$2,432.50
[redacted]						
05/10/2021	RJF	BL	Begin work on motion to dismiss.	1.00	1395.00	$1,395.00
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Pachulski Stang Ziehl & Jones LLP
Highland Capital Management LP
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May 31, 2021

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05/10/2021	JAM	BL	E-mail to J. Rudd, L. Drawhorn re: discovery in HCMS notes litigation (0.1); review motions to amend Answers (0.3).	0.40	1245.00	$498.00
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Pachulski Stang Ziehl & Jones LLP
Highland Capital Management LP
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May 31, 2021

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05/10/2021	HRW	BL	Draft and review discovery search criteria for NPA production in demand note proceeding (3.6); Draft responses and objections to Dondero discovery demands in notes litigation (0.8); Draft and prepare discovery demands in HCMS notes litigation (0.6).	5.00	695.00	$3,475.00
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				Hours	Rate	Amount
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05/11/2021	JAM	BL	E-mails with B. Assink re: discovery on Dondero notes litigation (0.3); telephone conference with J. Seery, D. Klos re: Dondero notes litigation (0.4); e-mail to B. Assink, J. Bonds, J. Pomerantz, G. Demo, H. Winograd re: depositions (0.4).	1.10	1245.00	$1,369.50
05/11/2021	LSC	BL	Assist with preparation of responses and objections to discovery requests in NexPoint notes litigation.	0.60	460.00	$276.00

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				Hours	Rate	Amount
[redacted]						
05/11/2021	GVD	BL	Conference with counsel to Hunter Mountain re note demand and follow up re same	0.30	950.00	$285.00
[redacted]						
05/11/2021	HRW	BL	Draft search terms for document production for NPA notes litigation (1.3); Communicate with R. Half re: document production for NPA notes litigation (0.6).	1.90	695.00	$1,320.50
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				Hours	Rate	Amount
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05/12/2021	HRW	BL	Gather documents responsive to NPA discovery request in notes litigation (0.4).	0.40	695.00	$278.00
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05/13/2021	HRW	BL	Draft responses and objections to Dondero discovery in demand note litigation (2.0).	2.00	695.00	$1,390.00
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05/14/2021	JAM	BL	Meet and confer call with M Aigen re: Rule 30(b)(6) topics and depositions (0.3); e-mails with M. Aigen, Bonds Ellis, J. Pomerantz re: discovery (0.2); review/revise draft responses and objections to Dondero's discovery requests (notes litigation) (1.1).	1.60	1245.00	$1,992.00
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				Hours	Rate	Amount
[redacted]			[redacted]	[redacted]	[redacted]	[redacted]
05/14/2021	HRW	BL	Draft responses and objections to Dondero discovery in demand note litigation (2.5).	2.50	695.00	$1,737.50
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05/16/2021	JAM	BL	Draft objection to Dondero's motion to compel (4.2); e-mails with H. Winograd re: draft objection to Dondero's motion to compel (0.1).	4.30	1245.00	$5,353.50
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05/17/2021	JAM	BL	Review/revise objection to Dondero motion to compel (2.0); e-mails with J. Pomerantz, G. Demo, H. Winograd, Z. Annable re: draft objection to Dondero motion to compel (0.2); draft JAM declaration in support of Debtor's objection to Dondero motion to compel (0.7); e-mails with G. Demo, H. Winograd, L. Canty, Z. Annable re: exhibits to JAM declaration (0.2).	3.10	1245.00	$3,859.50
[redacted]			[redacted]			
[redacted]			[redacted]			
05/17/2021	LSC	BL	Conduct research in connection with motion to withdraw the reference for G. Demo.	0.60	460.00	$276.00
05/17/2021	LSC	BL	Assist with preparation of exhibits in connection with Debtor's Objection to Motion to Compel Deposition Testimony of James P. Seery, Jr.	0.40	460.00	$184.00
[redacted]			[redacted]			
[redacted]			[redacted]			
05/17/2021	GVD	BL	Review response to motion to compel	0.30	950.00	$285.00
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05/17/2021	GVD	BL	Prepare for argument on motions to withdraw the reference	0.80	950.00	$760.00
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05/17/2021	HRW	BL	Oversee discovery searches and production for NPA notes litigation (0.3); Review opposition to Dondero motion to compel in notes litigation (0.2).	0.50	695.00	$347.50
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05/18/2021	JNP	BL	Review motion to withdraw the reference in	0.40	1295.00	$518.00

				Hours	Rate	Amount
			preparation for hearing.			
05/18/2021	JNP	BL	Review reply regarding motion to withdraw reference.	0.10	1295.00	$129.50
[redacted]						
05/18/2021	JMF	BL	Review response re discovery motion to compel testimony re demand notes.	0.30	1050.00	$315.00
[redacted]						

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05/18/2021	GVD	BL	Prepare for argument re motion to withdraw the reference	4.90	950.00	$4,655.00
[redacted]						
[redacted]						
05/18/2021	HRW	BL	Gather general discovery in notes litigations (0.5); Review discovery demands in notes litigation (0.3); Call with J. Morris re: general discovery for notes litigation (0.1); Call with J. Donahue re: general discovery for notes litigation (0.3).	1.20	695.00	$834.00
[redacted]						
05/19/2021	IDK	BL	Attend conference call with J Pomerantz, others on	1.20	1325.00	$1,590.00

				Hours	Rate	Amount
			presentation of opposition argument to motions to withdraw the reference (1.2)			
[redacted]						
05/19/2021	JNP	BL	Participate on zoom hearing prep for motions to withdraw the reference with Gregory V. Demo, John A. Morris and Ira D. Kharasch.	1.20	1295.00	$1,554.00
[redacted]						

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				Hours	Rate	Amount
[redacted]						
05/19/2021	JAM	BL	Review documents and e-mails to H. Winograd, L. Canty re: document production for Dondero notes litigation (0.7); e-mails with J. Seery, H. Winograd re: discovery responses, notary (0.2); e-mails with Dondero's counsel, J. Pomerantz, H. Winograd re: expert witnesses and discovery (0.4).	1.30	1245.00	$1,618.50
[redacted]						
05/19/2021	LSC	BL	Review documents and prepare supplemental production in connection with Dondero notes litigation, including redaction of documents, addressing various issues in connection with the same, and correspondence regarding the same.	12.90	460.00	$5,934.00
05/[redacted]						

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05/19/2021	GVD	BL	Attend conference with PSZJ working team re preparation for argument on motion to withdraw reference	1.20	950.00	$1,140.00
05/19/2021	GVD	BL	Prepare for argument on motion to withdraw the reference	3.10	950.00	$2,945.00
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05/19/2021	HRW	BL	Send amended discovery R&Os to opposing counsel for NPA requests in notes litigation (0.1); Call with J. Morris and C. Mackle re: document production to Dondero's first Set of requests in notes litigation (0.3); Send production to Dondero's counsel in response to first set of requests in notes litigation (0.1).	0.50	695.00	$347.50
05/19/2021	HRW	BL	Prepare and review document production to Dondero's first Set of requests in notes litigation (2.2).	2.20	695.00	$1,529.00
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				Hours	Rate	Amount
05/20/2021	JNP	BL	Participate in hearing on motion to compel J. Seery testimony.	1.10	1295.00	$1,424.50
05/20/2021	JNP	BL	Emails to and from J. Seery and Gregory V. Demo regarding Latham communications with DSI.	0.10	1295.00	$129.50
05/20/2021	JNP	BL	Emails to and from John A. Morris regarding U. S. Trustee inquiry.	0.10	1295.00	$129.50
[redacted]						
05/20/2021	JAM	BL	Preparing for hearing on Dondero's motion to compel (0.3); court conference on Dondero's motion to compel (1.1).	1.40	1245.00	$1,743.00
[redacted]						
05/20/2021	GVD	BL	Attend hearing re motion to compel	1.10	950.00	$1,045.00
[redacted]						

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				Hours	Rate	Amount
05/20/2021	JE	BL	Work on reply brief (11.0); review motion to amend complaint (.4); call with Mr. Morris regarding briefing (.3); research judgment issues (1.4).	13.10	1195.00	$15,654.50
[redacted]						
05/21/2021	JMF	BL	Review replies re contempt and reference withdrawal motions.	0.40	1050.00	$420.00
[redacted]						
05/21/2021	JAM	BL	Finalize responses and objections to Dondero's second set of document requests (0.1); e-mail to Dondero's counsel re: R&Os to second set of document requests (0.1).	0.20	1245.00	$249.00
[redacted]						
05/21/2021	GVD	BL	Prepare witness and exhibit list re notes litigation	0.60	950.00	$570.00
[redacted]						

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				Hours	Rate	Amount
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05/22/2021	JNP	BL	Review motion to compel testimony of former employees.	0.20	1295.00	$259.00
[redacted]						
[redacted]						
05/22/2021	GVD	BL	Conference with J. Morris, J. Seery, and HCMLP team re HCMFA affirmative defense	1.10	950.00	$1,045.00
05/22/2021	GVD	BL	Review motions for leave to amend	0.20	950.00	$190.00
[redacted]						
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05/22/2021	HRW	BL	Review HCMFA motion to amend answer (0.5).	0.50	695.00	$347.50
[redacted]						
[redacted]						
05/23/2021	JNP	BL	Emails to and from D. Rukavina regarding Sauter subpoena in connection with reference motion.	0.20	1295.00	$259.00

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				Hours	Rate	Amount
[redacted]						
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05/23/2021	JAM	BL	Prepare Subpoena for DC Sauter (notes litigation) for hearing on motion to withdraw reference (0.3); e-mail to J. Seery, T. Surgent, D. Klos, J. Pomerantz, G. Demo, H. Winograd re: strategy, hearing on motion to withdraw reference (0.3); telephone conference with J. Seery, G, Demo re: prepare for deposition (Dondero notes litigation) (1.1); e-mail to H. Winograd, J. Pomerantz, I. Kharasch, G. Demo re: motion for summary judgment, opposition to motions to amend (0.7); communications with G. Demo re: potential exhibits for amended W&E list (0.2); e-mails with B. Levine re: Dondero summary judgment motion (0.1); telephone conference with H. Winograd re: Dondero summary judgment motion (0.1); telephone conference with G. Demo re: documents/exhibit list/facts re: motion to withdraw the reference (1.1); revise Sauter subpoena (0.1); e-mails with Z. Annable re: Sauter subpoena (0.3); amend Sauter subpoena (0.1); e-mails with D. Rukavina, J. Pomerantz re: Sauter subpoena (0.3).	4.70	1245.00	$5,851.50
05/23/2021	LSC	BL	Preparation of amended exhibit lists (3) and exhibits for 5/25/21 hearing, including redactions to certain exhibits.	5.60	460.00	$2,576.00
05/23/2021	GVD	BL	Conference with J. Morris re motion to withdraw reference	0.10	950.00	$95.00
05/23/2021	GVD	BL	Conference with J. Seery and J. Morris re depo prep for notes litigation	1.20	950.00	$1,140.00
05/23/2021	GVD	BL	Conference with J. Morris re evidentiary issues for motion to withdraw the reference	1.10	950.00	$1,045.00
05/23/2021	GVD	BL	Prepare for hearing on motion to withdraw the reference	2.90	950.00	$2,755.00
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				Hours	Rate	Amount
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05/24/2021	IDK	BL	Attend conference call re notes collection issues (.3).	0.30	1325.00	$397.50
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[redacted]						
[redacted]						
[redacted]						
05/24/2021	JNP	BL	Review and comment on Gregory V. Demo outline on motion to withdraw reference argument.	0.50	1295.00	$647.50
05/24/2021	JNP	BL	Conference with Gregory V. Demo, Ira D. Kharasch and John A. Morris regarding hearing on motion to withdraw reference.	0.60	1295.00	$777.00
[redacted]						
05/24/2021	JNP	BL	Conference with PSZJ team regarding update on notes litigation.	0.30	1295.00	$388.50
05/24/2021	JNP	BL	Conference with John A. Morris regarding proposal regarding depositions in notes litigation.	0.10	1295.00	$129.50

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				Hours	Rate	Amount
[redacted]						
[redacted]						
[redacted]						
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05/24/2021	RJF	BL	Internal call regarding notes litigation.	0.30	1395.00	$418.50
05/24/2021	JMF	BL	Review litigation summary (.3); status call re same (.3).	0.60	1050.00	$630.00
[redacted]						
[redacted]						
05/24/2021	JMF	BL	Status call re issues in notes payable litigation.	0.30	1050.00	$315.00
05/24/2021	JMF	BL	Review motion to amend answer re notes litigation.	0.30	1050.00	$315.00
[redacted]						
[redacted]						
05/24/2021	JAM	BL	Tel c. w/ J. Dubel re: motions to amend and withdraw the reference (0.4); prepare for Seery deposition (0.3); tel c. w/ G. Demo re: hearing on motion to withdraw the reference (0.2); tel c. w/ J. Seery re: deposition (0.1); review/revise exhibit list for hearing on motion to withdraw the reference (0.2); prepare for hearing on withdrawal of the reference (0.7); communications w/ J. Pomerantz, G. Demo re: debtor's schedules and Advisor's notes (0.2); Seery deposition (Dondero notes litigation) (2.7); tel c. w/ J. Seery, G. Demo re: deposition and hearing (0.4); tel c. w/ J. Pomerantz, I. Kharasch, G. Demo re: hearing on motion to withdraw the	7.00	1245.00	$8,715.00

				Hours	Rate	Amount
			reference (0.6); tel c. w/ J. Pomerantz re: hearing (0.2); tel c. w/ J. Pomerantz re: e-mails with D. Rukavina concerning motion to amend/motion to withdraw reference (0.1); e-mails w/ D. Rukavina, J. Pomerantz re: motion to amend/Sauter subpoena/motion to withdraw the reference (0.4); e-mail to J. Seery re: deposition transcript (0.1); e-mail to J. Seery, J. Pomerantz, G. Demo, H. Winograd re: Klos deposition (0.1); e-mails w/ M. Aigen, J. Seery, T. Surgent, D. Klos re: discovery in Dondero notes litigation (0.3)			
[redacted]						
05/24/2021	GVD	BL	Prepare for hearing on motion to withdraw the reference	5.80	950.00	$5,510.00
05/24/2021	GVD	BL	Attend deposition of J. Seery re Dondero note litigation	2.60	950.00	$2,470.00
05/24/2021	GVD	BL	Conference with J. Seery and J. Morris re follow up to Seery deposition	0.30	950.00	$285.00
05/24/2021	GVD	BL	Conference with PSZJ re status of note litigation and motion to withdraw the reference	0.60	950.00	$570.00
05/24/2021	GVD	BL	Attend PSZJ status conference on notes litigation	0.30	950.00	$285.00
[redacted]						

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				Hours	Rate	Amount
[redacted]						
05/25/2021	JNP	BL	Participate on hearing regarding motions to withdraw reference.	2.80	1295.00	$3,626.00
05/25/2021	JNP	BL	Conference with J. Seery and John A. Morris after hearing on motion to withdraw reference.	0.40	1295.00	$518.00
05/25/2021	JNP	BL	Emails regarding answer date and response.	0.10	1295.00	$129.50
[redacted]						

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				Hours	Rate	Amount
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05/25/2021	JAM	BL	Prepare Notice of Service of Subpoena (NexBank) (0.2); e-mail to Z. Annable, G. Demo, H. Winograd re: Notice of Service of Subpoena (NexBank) (0.1); prepare Notice of Service of Subpoena (Advisors) (0.1); e-mail to Z. Annable, G. Demo, H. Winograd re: Notice of Service of Subpoena (Advisors) (0.1); meet and confer call w/ L. Phillips, M. Sbaiti re: document requests (0.5)	1.00	1245.00	$1,245.00
05/25/2021	JAM	BL	Tel c. w/ G. Demo re: withdrawal of the reference hearing (0.1); prepare for withdrawal of the reference hearing (0.4); work on summary judgment against Dondero (notes litigation) (0.7); hearing on withdrawal of the reference (2.2); tel c. w/ J. Pomerantz re: hearing (0.1); tel c. w/ J. Seery, J. Dubel, J. Pomerantz, G. Demo re: hearing (0.4); telc . w/ G. Demo re: hearing, document production and related matters (0.3); e-mails w/ D. Klos, G. Demo re: document production (0.2); e-mails to L Canty re: document production (Dondero notes litigation) (0.3); e-mails to Dondero's counsel re: document production (0.1)	4.80	1245.00	$5,976.00
[redacted]						
05/25/2021	LSC	BL	Prepare for and assist at hearing on motions to stay and status conference re motion to withdraw the reference.	2.30	460.00	$1,058.00

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				Hours	Rate	Amount
05/25/2021	LSC	BL	Preparation of supplemental production to Dondero.	2.00	460.00	$920.00
[redacted]						
05/25/2021	GVD	BL	Prepare for evidentiary hearing on motion to withdraw reference	3.80	950.00	$3,610.00
05/25/2021	GVD	BL	Attend hearing on motions to withdraw the reference	2.10	950.00	$1,995.00
05/25/2021	GVD	BL	Conference with team re follow up to hearing on motion to withdraw the reference	0.50	950.00	$475.00
05/25/2021	GVD	BL	Conference with J. Morris on evidentiary hearing on motion to withdraw	0.30	950.00	$285.00
05/25/2021	GVD	BL	Conference with J. Romey re status of note litigation	0.20	950.00	$190.00
[redacted]						

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				Hours	Rate	Amount
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[redacted]						
[redacted]						
05/26/2021	JAM	BL	Tel c. w/ D. Rukavina re: discovery concerning Advisors (notes litigation) (0.1); e-mails w/ D. Rukavina re: discovery concerning Advisors (notes litigation) (0.1); prepare for Dondero deposition (notes litigation) (3.0); e-mail to L. Canty re: exhibits for use in Dondero deposition (0.7); prepare written responses to Advisor's discovery requests (notes litigation) (2.4); review/revise written responses to Dondero's Third Set of Discovery Demands (0.7); e-mail to T. Surgent, D. Klos, G. Demo, H. Winograd re: written responses to Advisor's discovery requests (notes litigation) (0.2)	7.20	1245.00	$8,964.00
[redacted]						
[redacted]						
05/26/2021	LSC	BL	Preparation of exhibits and materials in connection with J. Dondero's 5/28/21 deposition (Notes Litigation).	3.20	460.00	$1,472.00
[redacted]						

Pachulski Stang Ziehl & Jones LLP
Highland Capital Management LP
36027 - 00002

Invoice 127958
May 31, 2021

				Hours	Rate	Amount
[redacted]						
05/26/2021	HRW	BL	Review production for NPA discovery requests in notes litigation (0.3)	0.30	695.00	$208.50
[redacted]						
05/27/2021	JNP	BL	Conference with John A. Morris regarding Dondero amended answer and discovery issues.	0.20	1295.00	$259.00
[redacted]						

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Invoice 127958
May 31, 2021

				Hours	Rate	Amount
[redacted]						
[redacted]						
[redacted]						
[redacted]						
05/27/2021	JAM	BL	Review/revise written responses to Advisor's discovery requests (0.2); e-mail to J. Seery, T. Surgent, D. Klos, G. Demo, H. Winograd re: revised written responses to Advisor's discovery requests (0.1); tel c. w/ J. Seery re: Dondero and notes litigation (0.1); work on written responses to discovery served by HCRE (notes litigation) (1.5); e-mails w/ D. Deitz-Perez, B. Assink re: Dondero's amended interrogatory responses (0.3); tel c. w/ D. Deitz-Perez re: Dondero's amended interrogatory responses (0.1); prepare for Dondero deposition (0.4)	2.70	1245.00	$3,361.50
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Highland Capital Management LP
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May 31, 2021

				Hours	Rate	Amount
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[redacted]						
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[redacted]						
[redacted]						
[redacted]						
05/28/2021	JNP	BL	Conference with John A. Morris regarding Dondero deposition on note litigation.	0.10	1295.00	$129.50
[redacted]						
[redacted]						
[redacted]						
05/28/2021	JAM	BL	Prepare for Dondero deposition (3.5); Dondero deposition (4.6); tel c. w/ J. Pomerantz re: Dondero deposition (0.1); tel c. w/ J. Seery re: Dondero deposition (0.3); e-mails w/ J. Seery, H. Winograd re: written responses to Advisor's discovery requests (0.2); e-mail to Bonds Ellis, J. Pomerantz, G. Demo, H. Winograd re: proposed order on stay (0.1)	8.80	1245.00	$10,956.00
05/28/2021	LSC	BL	Preparation for and assist at deposition of Jim Dondero (notes litigation)	5.50	460.00	$2,530.00
[redacted]						
05/28/2021	GVD	BL	Conference with J. Morris and J. Seery re Dondero deposition and next steps	0.20	950.00	$190.00
05/28/2021	GVD	BL	Attend Dondero Deposition (partial)	1.60	950.00	$1,520.00
[redacted]						

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				Hours	Rate	Amount
[redacted]						
[redacted]						
[redacted]						
[redacted]						
[redacted]						
05/28/2021	HRW	BL	Prepare responses and objections to HCMFA discovery in notes litigation (0.4)	0.40	695.00	$278.00
05/28/2021	HRW	BL	Deposition of Dondero in connection with notes litigation (3.5)	3.50	695.00	$2,432.50
05/28/2021	HRW	BL	Review production for NPA discovery requests in notes litigation (0.3)	0.30	695.00	$208.50
[redacted]						
[redacted]						
05/29/2021	JAM	BL	E-mails to Counsel re: Zoom instructions for Tuesday's depositions (0.2); review Dondero written responses to discovery (0.2); e-mail to B. Assink, C. Taylor, J. Pomerantz, G. Demo, H. Winograd re: Dondero's written responses to discovery (0.2)	0.60	1245.00	$747.00
05/29/2021	JAM	BL	Review HCMFA's second request for discovery (0.2); e-mails w/ T. Surgent, D. Klos, G. Demo, H. Winograd re: HCMFA's second request for discovery (0.1); review Dondero expert report (0.3); e-mails w/ J. Pomerantz, G. Demo, H. Winograd re: Dondero's expert report (0.2); draft written responses to HCRE's document requests, interrogatories, and requests for admission (3.1); e-mail to G. Demo, H. Winograd re: draft written responses to HCRE's document requests, interrogatories, and requests for admission (0.1); tel c. w/ H. Winograd re: opposition to HCRE/Services motion for leave to serve amended complaint and cross-motion for summary judgment (0.4)	4.40	1245.00	$5,478.00
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				Hours	Rate	Amount
			[redacted]			
05/29/2021	HRW	BL	Draft opposition to HCRE and HCMS motions for leave to amend answer in notes litigation (2.0)	2.00	695.00	$1,390.00
05/29/2021	HRW	BL	Call with J. Morris re: opposition to HCRE and HCMS motions for leave to amend answer in notes litigation (0.3)	0.30	695.00	$208.50
[redacted]			[redacted]			
05/30/2021	JAM	BL	Review documents (1.9); tel c. w/ G. Demo re: document review/facts (1.1); e-mails w/ G. Demo re: facts (0.3); tel c. w/ G. Demo re: document review/facts (0.6); prepare for depositions (0.8)	4.70	1245.00	$5,851.50
[redacted]			[redacted]			
[redacted]			[redacted]			
[redacted]			[redacted]			
[redacted]			[redacted]			
05/30/2021	GVD	BL	Conference with J. Morris re deposition preparation	0.60	950.00	$570.00
[redacted]			[redacted]			
05/30/2021	HRW	BL	Draft opposition to HCRE and HCMS motions for leave to amend answer in notes litigation (3.5)	3.50	695.00	$2,432.50
[redacted]			[redacted]			
05/31/2021	JAM	BL	Analyze G. Scott prior deposition transcript (2.4); analysis of use of Scott transcript, and e-mail to J. Pomerantz, G. Demo, H. Winograd concerning the same (0.6); prepare for Dondero and Scott depositions (6.4); e-mails w/ L. Canty re: deposition exhibits (0.2); tel c. w/ G. Demo, C. Wilkins re: potential conflicts (0.2); [redacted]	10.40	1245.00	$12,948.00
05/31/2021	JAM	BL	Review/revise discovery requests for HCRE (notes litigation (0.4); e-mail to L. Drawhorn, G. Demo, H. Winograd, J. Rudd re: discovery requests for HCRE (notes litigation) (0.1); tel c. w/ H. Winograd re: status of brief for opposition to motion to amend (0.2)	0.70	1245.00	$871.50

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				Hours	Rate	Amount
[redacted]						
05/31/2021	HRW	BL	Draft opposition to HCRE and HCMS motions for leave to amend answer in notes litigation (9.5)	9.50	695.00	$6,602.50
				1119.20		**$1,118,798.00**

[redacted]

EXHIBIT 175

Pachulski Stang Ziehl & Jones LLP

10100 Santa Monica Blvd.
13th Floor
Los Angeles, CA 90067

June 30, 2021
Invoice 128195
Client 36027
Matter 00002
JNP

Board of Directors
Highland Capital Management LP
300 Crescent Court ste. 700
Dallas, TX 75201

RE: Postpetition

STATEMENT OF PROFESSIONAL SERVICES RENDERED THROUGH 06/30/2021

[redacted]

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				Hours	Rate	Amount
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				Hours	Rate	Amount
[redacted]						
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05/19/2021	CHM	BL	Review Dondero notes litigation document production and cross check for privilege filter; email production links to H. Winograd and J. Morris.	4.50	750.00	$3,375.00
[redacted]						
[redacted]						
[redacted]						
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06/01/2021	JAM	BL	Review/revise objection to HCMS motion for leave to amend answer (2.2); e-mail to J. Pomerantz, G.	3.00	1245.00	$3,735.00

				Hours	Rate	Amount
			Demo, H. Winograd re: comments to draft objection to HCMS motion for leave to amend answer (0.1); tel c. w/ J. Dubel re: expert report (0.1); tel c. w/ H. Winograd re: objections to HCRE and HCMS motions for leave to amend answer (0.1); review/revise objections to HCRE and HCMS motions for leave to amend answer (0.2); e-mails w/ G. Demo, H. Winograd, D. Klos, K. Hendrix, J. Donohue re: partial payment/performance by HCRE and HCMS (0.1); communications w/ H. Winograd, Z. Annable re: finalizing and filing objections to HCRE and HCMS motions for leave to amend answer (0.2)			
[redacted]						
06/01/2021	LSC	BL	Draft declarations in support of oppositions to HCMS and HCRE motions to amend (1.1); assist with revising and finalizing of oppositions to HCMS and HCRE motions to amend (1.3); revise and finalize exhibits (.5).	2.90	460.00	$1,334.00
[redacted]						
06/01/2021	GVD	BL	Review and revise motion for leave to amend HCRE and HCMS answers	2.00	950.00	$1,900.00
[redacted]						
06/01/2021	HRW	BL	Draft opposition to HCRE and HCMS motions for leave to amend answer in notes litigation (12.5)	12.50	695.00	$8,687.50
[redacted]						
06/02/2021	JMF	BL	Review responses to motions for leave to amend answer.	0.40	1050.00	$420.00
[redacted]						

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06/02/2021	GVD	BL	Correspondence with J. Morris re HCRE/HCMS motion for leave to withdraw the reference	0.40	950.00	$380.00
06/02/2021	GVD	BL	Draft demand letter re HCMFA notes and serve same	0.60	950.00	$570.00
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				Hours	Rate	Amount
[redacted]						
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[redacted]						
[redacted]						
06/02/2021	HRW	BL	Review documents produced in Dondero notes litigation (0.1)	0.10	695.00	$69.50
[redacted]						
[redacted]						
[redacted]						
[redacted]						
06/03/2021	JAM	BL	E-mail to L. Drawhorn, J. Rudd, J. Pomerantz, G. Demo re: motion to withdraw the reference and related matters (0.3); e-mails w/ M. Aigen, Dondero's other counsel, J. Pomerantz, G. Demo, H. Winograd re: scheduling of expert depositions (0.1); prepare notices of deposition for Nancy Dondero and Dondero's expert witnesses and send to Z. Annable, H. Winograd (0.2); review HCRE/HCMS motions (0.3)	0.90	1245.00	$1,120.50
06/03/2021	LSC	BL	Review documents, redact, and prepare NexPoint document production (and address numerous issues with).	8.20	460.00	$3,772.00
[redacted]						
06/03/2021	GVD	BL	Correspondence with J. Donohue re demand letters on notes	0.20	950.00	$190.00
06/03/2021	GVD	BL	Correspondence with J. Morris re HCRE/HCMS motions for leave to amend	0.20	950.00	$190.00

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				Hours	Rate	Amount
06/03/2021	GVD	BL	Correspondence with J. Morris and H. Winograd re status of notes litigation	0.20	950.00	$190.00
[redacted]						
06/03/2021	HRW	BL	Prepare document production for NexPoint discovery in connection with notes litigation (1.0)	1.00	695.00	$695.00
06/03/2021	HRW	BL	Call with L. Canty re: document production for NexPoint discovery in connection with notes litigation (0.2)	0.20	695.00	$139.00
06/03/2021	HRW	BL	Draft responses and objections to document requests in HCMS notes litigation (1.0)	1.00	695.00	$695.00
06/03/2021	HRW	BL	Prepare search terms for document production in HCMS notes litigation (0.5)	0.50	695.00	$347.50
[redacted]						

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				Hours	Rate	Amount
[redacted]						
06/04/2021	LSC	BL	Transmit HCRE document production to additional party.	0.20	460.00	$92.00
[redacted]						
06/04/2021	HRW	BL	Draft 30(b)(6) deposition notice directed to HCMS and HCRE (0.6)	0.60	695.00	$417.00
06/04/2021	HRW	BL	Send production for NexPoint discovery demands re: notes litigation to opposing counsel (0.1)	0.10	695.00	$69.50
[redacted]						

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				Hours	Rate	Amount
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[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
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[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
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Pachulski Stang Ziehl & Jones LLP
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				Hours	Rate	Amount
			[redacted]			
06/06/2021	HRW	BL	Review HCMFA motion to amend (1.0)	1.00	695.00	$695.00
[redacted]						
06/07/2021	JAM	BL	Review/revise Rule 30(b)(6) deposition notice for HCRE (0.1); e-mail to H. Winograd re: Rule 30(b)(6) deposition notice for HCRE (0.1); review/revise Rule 30(b)(6) deposition notice for HCMS (0.1); e-mail to H. Winograd re: Rule 30(b)(6) deposition notice for HCMS (0.1).	0.40	1245.00	$498.00
[redacted]						

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				Hours	Rate	Amount
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[redacted]						
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06/07/2021	HRW	BL	Communications with DSI re: HCMS discovery (0.2)	0.20	695.00	$139.00
06/07/2021	HRW	BL	Draft R&Os to HCMS discovery (2.6)	2.60	695.00	$1,807.00
06/07/2021	HRW	BL	Draft search terms for HCMS document production (1.0)	1.00	695.00	$695.00
06/07/2021	HRW	BL	Edit and review 30(b)(6) deposition notice directed to HCMS and HCRE (0.2)	0.20	695.00	$139.00
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Pachulski Stang Ziehl & Jones LLP
Highland Capital Management LP
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06/08/2021	HRW	BL	Communications with DSI re: HCMS discovery (0.3)	0.30	695.00	$208.50
06/08/2021	HRW	BL	Draft R&Os to HCMS discovery (1.5)	1.50	695.00	$1,042.50
06/08/2021	HRW	BL	Draft search terms for HCMS document production (1.0)	1.00	695.00	$695.00
[redacted]						
[redacted]						
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06/09/2021	JNP	BL	Review of motion to amend answer.	0.10	1295.00	$129.50
06/09/2021	JNP	BL	Review motion to modify answer and emails regarding same.	0.20	1295.00	$259.00
[redacted]						
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06/09/2021	JMF	BL	Review motion for leave to amend answer.	0.30	1050.00	$315.00
[redacted]						

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				Hours	Rate	Amount
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06/09/2021	JAM	BL	Review/revise R&Os to HCMS's discovery requests (0.7); e-mails with H. Winograd re: R&Os to HCMS's discovery requests (0.1).	0.80	1245.00	$996.00
[redacted]						
06/09/2021	LSC	BL	Preparation of document production to HCMS, including redaction of certain documents, and correspondence with H. Winograd regarding the same.	5.70	460.00	$2,622.00
[redacted]						
06/09/2021	HRW	BL	Draft R&Os for HCMS discovery demands (4.3)	4.30	695.00	$2,988.50
06/09/2021	HRW	BL	Communicate with L. Canty re: HCMS document production (0.7)	0.70	695.00	$486.50
06/09/2021	HRW	BL	Organize and review document production for HCMS (1.3)	1.30	695.00	$903.50
06/09/2021	HRW	BL	Send HCMS productions in response to document requests (0.2)	0.20	695.00	$139.00
[redacted]						
06/09/2021	HRW	BL	Communicate with client re: R&OS to HCMS discovery and verification (0.2)	0.20	695.00	$139.00
06/10/2021	IDK	BL	Office conference with J Morris re upcoming hearing this morning on notes litigation and presentation.	0.30	1325.00	$397.50

Pachulski Stang Ziehl & Jones LLP
Highland Capital Management LP
36027 - 00002

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06/10/2021	JNP	BL	Participation in hearing on motion to amend answer.	1.50	1295.00	$1,942.50
[redacted]						
[redacted]						
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[redacted]						
[redacted]						
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06/10/2021	JAM	BL	Prepare for hearing on HCRE and HCMS motion for leave to amend (2.3); court hearing on HCRE and HCMS motion for leave to amend (0.8); telephone	3.30	1245.00	$4,108.50

Pachulski Stang Ziehl & Jones LLP
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				Hours	Rate	Amount
			conference with H. Winograd re: subpoena for PwC (0.1); telephone conference with D. Klos re: subpoena for PwC (0.1).			
06/10/2021	LSC	BL	Research in connection with subpoena and correspondence with H. Winograd regarding the same.	0.90	460.00	$414.00
06/10/2021	LSC	BL	Prepare for and assist at hearing on motion to amend.	3.00	460.00	$1,380.00
[redacted]						
06/10/2021	GVD	BL	Attend hearing on motion to amend notes	2.50	950.00	$2,375.00
[redacted]						
06/10/2021	HRW	BL	Call with J. Morris re: PwC subpoenas (0.1)	0.10	695.00	$69.50
06/10/2021	HRW	BL	Call with G. Demo re: HCMFA motion to amend (0.1)	0.10	695.00	$69.50
06/10/2021	HRW	BL	Review HCMFA motion to amend (1.2)	1.20	695.00	$834.00
06/10/2021	HRW	BL	Draft opposition to HMCFA motion to amend (0.6)	0.60	695.00	$417.00
06/10/2021	HRW	BL	Draft document and deposition subpoenas for PwC (2.6)	2.60	695.00	$1,807.00
06/10/2021	HRW	BL	Call with L. Canty re: PwC subpoenas (0.1)	0.10	695.00	$69.50
06/10/2021	HRW	BL	Hearing on HCRE/HCMS motion to amend answer (1.0)	1.00	695.00	$695.00
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Pachulski Stang Ziehl & Jones LLP
Highland Capital Management LP
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				Hours	Rate	Amount
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06/11/2021	JNP	BL	Review emails regarding consolidation of notes litigation.	0.10	1295.00	$129.50
06/11/2021	JNP	BL	Review of response to motion to quash.	0.10	1295.00	$129.50
06/11/2021	JNP	BL	Conference with J. Seery, Robert J. Feinstein and Gregory V. Demo regarding status of Sentinel matters and next steps.	0.50	1295.00	$647.50
[redacted]						
06/11/2021	GVD	BL	Conference with J. Morris and H. Winograd re status of HCMFA amended answer	0.50	950.00	$475.00
06/11/2021	GVD	BL	Correspondence with D. Rukavina re amendments to notes litigation	0.20	950.00	$190.00
[redacted]						
06/11/2021	HRW	BL	Draft subpoenas and ancillary documents for PwC in connection with HCMS notes litigation (1.6)	1.60	695.00	$1,112.00
06/11/2021	HRW	BL	Send PwC subpoena to representative of PwC for HCMS notes litigation (0.2)	0.20	695.00	$139.00
06/11/2021	HRW	BL	Communicate with local counsel and J. Morris re: subpoenas for PwC for HCMS notes litigation (0.6)	0.60	695.00	$417.00
06/11/2021	HRW	BL	Meeting with client for notarization of ROG verification in connection with HCMS R&Os in notes litigation (0.1)	0.10	695.00	$69.50

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				Hours	Rate	Amount
06/11/2021	HRW	BL	Communications with client and notary for ROG verification in connection with HCMS R&Os in notes litigation (0.1)	0.10	695.00	$69.50
06/11/2021	HRW	BL	Send opposing counsel ROG verification for HCMS R&Os in notes litigation (0.1)	0.10	695.00	$69.50
06/11/2021	HRW	BL	Call with J. Morris and G. Demo re: HCMFA motion to amend answer in notes litigation (0.5)	0.50	695.00	$347.50
06/11/2021	HRW	BL	Draft 30(b)(6) deposition notices for HCMFA and NPA for notes litigations (0.4)	0.40	695.00	$278.00
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06/14/2021	JAM	BL	E-mails w/ D. Rukavina re: discovery in the notes litigation against the Advisors (0.3).	0.30	1245.00	$373.50
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06/16/2021	JAM	BL	Draft e-mail to counsel for defendants in notes litigation re: discovery, proposed amendments (0.8).	0.80	1245.00	$996.00
06/16/2021	JAM	BL	Review/revise e-mail to counsel for defendants in notes litigation re: discovery, proposed amendments (0.4).	0.40	1245.00	$498.00
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06/17/2021	HRW	BL	Draft search terms for HCMFA production in notes litigation (0.7); Review HCMFA discovery requests	1.50	695.00	$1,042.50

				Hours	Rate	Amount
			(0.7); Review HCRE discovery schedule in notes litigation (0.1).			
[redacted]						
06/18/2021	JAM	BL	Review PwC Subpoena from Dondero (0.1); tel c. w/ J. Seery re: PwC subpoena from Dondero (0.1); e-mails w/ M. Aigen, J. Pomerantz re: PwC subpoena and financial statements (0.1).	0.30	1245.00	$373.50
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06/21/2021	JNP	BL	Email to and from Gregory V. Demo regarding concerns with note defendant disposing of assets.	0.10	1295.00	$129.50
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06/21/2021	JAM	BL	Communications w/ M. Aigen, counsel for all defendants, J. Pomerantz, G. Demo, H. Winograd re: discovery and schedule for notes litigations (0.3).	0.30	1245.00	$373.50
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06/21/2021	HRW	BL	Communicate with DSI re: HCMFA discovery in notes litigation (0.2); Review HCMFA motion to amend answer (0.2); Draft search terms for HCMFA discovery in notes litigation (0.3).	0.70	695.00	$486.50
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06/22/2021	JAM	BL	Analyze status of notes litigations and prepare outline of scheduling and discovery issues (0.7).	0.70	1245.00	$871.50
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06/23/2021	JAM	BL	Tel c. w/ H. Winograd re: amending the complaint to add new causes of action (0.2).	0.20	1245.00	$249.00
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06/23/2021	HRW	BL	Communicate with R. Half re: privilege review in notes litigation (0.2); Call with J. Morris re: amending complaints in notes litigation (0.1).	0.30	695.00	$208.50
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06/24/2021	JAM	BL	Tel c. w/ counsel to PwC re: subpoena (0.1); tel c. w/ H. Winograd re: amended complaint (0.1).	0.20	1245.00	$249.00
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06/24/2021	HRW	BL	Hearing on HCMFA motion to amend (0.3); Review	8.40	695.00	$5,838.00

				Hours	Rate	Amount
			HCMFA proposed order (0.1); Call with J. Morris re: amending complaints in notes litigations (0.1); Research re: fraudulent transfer and other newly asserted claims for notes litigations (3.7); Draft amended complaint for notes litigation (3.2); Communicate with R. Half re: privilege review for notes litigations (0.1); Draft R&Os for HCMFA second RFPs (0.9).			
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06/25/2021	IDK	BL	E-mails with G Demo re issues on Dondero conversion of HCMFA to holding company and impact on note litigation, and related background to same, including memo from Wilmer Hale on same.	0.40	1325.00	$530.00
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06/25/2021	JAM	BL	Tel c. w/ H. Winograd re: amended complaints for notes litigation (0.3).	0.30	1245.00	$373.50
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06/25/2021	GVD	BL	Correspondence with J. Morris and H. Winograd re preparation for amendment to the notes litigation	0.30	950.00	$285.00
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06/25/2021	HRW	BL	Draft amended complaint for notes litigation (3.8); Call with J. Morris re: amended complaints for notes litigation (0.2); Research re: additional claims in notes litigation (2.0); Review HCMFA discovery and production (0.2); Send counsel for HCMFA first production (0.1); Review outstanding litigation critical dates (0.4).	6.70	695.00	$4,656.50
[redacted]						
06/27/2021	JAM	BL	Review/revise draft Amended Complaint against Dondero (1.2); e-mails w/ H. Winograd, G. Demo re: revised Amended Complaint against Dondero (0.3).	1.50	1245.00	$1,867.50
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06/27/2021	HRW	BL	Draft amended complaint for notes litigation (6.5); Research re: additional claims for amended claim in notes litigation (1.0).	7.50	695.00	$5,212.50

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06/28/2021	JNP	BL	Review amended complaint.	0.20	1295.00	$259.00
06/28/2021	JNP	BL	Conference with John A. Morris regarding amended complaint.	0.20	1295.00	$259.00
06/28/2021	JNP	BL	Email to and from Ira D. Kharasch and J. Elkin regarding research regarding withdrawal of the reference and amended complaints.	0.20	1295.00	$259.00
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06/28/2021	JAM	BL	Review/revise draft amended complaint against Dondero (1.1); e-mail to J. Pomerantz, I. Kharasch, R. Feinstein, G. Demo, H. Winograd re: revised draft amended complaint against Dondero (0.3); tel c. w/ J. Pomerantz re: revised draft amended complaint against Dondero (0.2).	1.60	1245.00	$1,992.00
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06/28/2021	HRW	BL	Draft amended complaint for notes litigation (1.6); Research re: additional claims for amended claim in notes litigation (1.0); Review HCMFA R&Os and production to discovery requests (0.4); Send HCMFA R&Os and production to opposing counsel (0.1); Call with L. Canty re: HCMFA production (0.1); Draft R&Os to HCRE discovery requests in notes litigation (0.6).	3.80	695.00	$2,641.00
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06/29/2021	JNP	BL	Review opposition to motion to withdraw reference.	0.30	1295.00	$388.50

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06/29/2021	GVD	BL	Correspondence with PSZJ working group re notes litigation	0.20	950.00	$190.00
06/29/2021	GVD	BL	Review amended notes complaint	0.90	950.00	$855.00
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Pachulski Stang Ziehl & Jones LLP
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06/29/2021	HRW	BL	Research re: amended complaint for notes litigations (1.2); Review amended complaint re: notes litigations (0.5); Draft R&Os for HCRE discovery requests in notes litigation (1.4).	3.10	695.00	$2,154.50
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06/30/2021	JAM	BL	E-mails w/ G. Demo, H. Winograd re: potential claims in amended complaint (0.2); e-mails w/ G. Demo re: issues concerning proposed amended complaint (0.1); review draft responses and objections to discovery requests tendered by HCM (0.4); review HCMFA motion for protective order (0.3); e-mails w/ J. Vasek, D. Rukavina, J. Pomerantz, G. Demo, H. Winograd re: HCMFA motion for protective order (0.2); tel c. w/ J. Seery re: issues concerning potential amended complaint (0.4).	1.60	1245.00	$1,992.00
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06/30/2021	GVD	BL	Correspondence with PSZJ team re revisions to amended note complaint	0.20	950.00	$190.00

Pachulski Stang Ziehl & Jones LLP
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06/30/2021	HRW	BL	Draft and review R&Os to HCRE discovery in notes litigation (0.7); Draft search terms for HCRE production in notes litigation (1.2); Call with L. Canty re: HCRE production in notes litigation (0.1); Review and gather HCRE production in notes litigation (0.8); Send HCRE production and R&Os to opposing counsel (0.1); Edit amended complaint re: notes litigation (0.6); Research re: fraudulent transfer and fiduciary claims for amended complaint in notes litigation (1.6).	5.10	695.00	$3,544.50
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EXHIBIT 176

Pachulski Stang Ziehl & Jones LLP

10100 Santa Monica Blvd.
13th Floor
Los Angeles, CA 90067

July 31, 2021
Invoice 128292
Client 36027
Matter 00002
JNP

Board of Directors
Highland Capital Management LP
300 Crescent Court ste. 700
Dallas, TX 75201

RE: Postpetition

STATEMENT OF PROFESSIONAL SERVICES RENDERED THROUGH 07/31/2021

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Highland Capital Management LP
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07/01/2021	JAM	BL	Further revisions to draft Amended Complaint (0.4); e-mails w/ G. Demo, H. Winograd, J. Pomerantz re: revisions to draft Amended Complaint (0.2).	0.60	1245.00	$747.00
07/01/2021	GVD	BL	Review revisions to letter re conflicts of interest	0.40	950.00	$380.00
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07/01/2021	GVD	BL	Review amended complaint re notes litigation and correspondence re same	0.30	950.00	$285.00
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Highland Capital Management LP
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07/01/2021	HRW	BL	Edit and review amended complaint for notes litigation (0.6); Assist client re: verification for HCRE interrogatories in notes litigation (0.1); Review supplemental production for HCMFA and NPA notes litigations (0.1); Send verification for HCRE interrogatories to opposing counsel in notes litigation (0.1).	0.90	695.00	$625.50
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07/02/2021	HRW	BL	Review supplemental production for HCMFA and NPA notes litigations (0.2); Send supplemental production for HCMFA and NPA notes litigations to opposing counsel (0.1).	0.30	695.00	$208.50
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07/03/2021	GVD	BL	Correspondence with J. Elkin re fraudulent conveyance actions in notes litigation	0.20	950.00	$190.00
07/03/2021	JE	BL	Review additional transcripts and pleadings on fraudulent transfers; correspondence with Mr. Morris and Mr. Demo.	5.30	1195.00	$6,333.50
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07/04/2021	JE	BL	Prepare memo on implications of amending Note Suit Complaints to add fraudulent transfer cause of action.	10.00	1195.00	$11,950.00
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Highland Capital Management LP
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July 31, 2021

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07/06/2021	JAM	BL	E-mail to M. Aigen, other defense counsel on notes litigation, concerning proposed Amended Complaint and scheduling matters (0.3); review written responses and document production from HCRE in notes litigation (0.3).	0.60	1245.00	$747.00
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				Hours	Rate	Amount
[redacted]			[redacted]	[redacted]	[redacted]	[redacted]
07/07/2021	JNP	BL	Review Bankruptcy Court report and recommendation to District Court regarding withdrawal of reference.	0.10	1295.00	$129.50
[redacted]			[redacted]	[redacted]	[redacted]	[redacted]
[redacted]			[redacted]	[redacted]	[redacted]	[redacted]
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[redacted]			[redacted]	[redacted]	[redacted]	[redacted]
07/07/2021	JMF	BL	Review report and recommendations re notes adversary proceedings.	0.60	1050.00	$630.00
[redacted]			[redacted]	[redacted]	[redacted]	[redacted]
07/07/2021	JAM	BL	E-mails w/ D. Rukavina re: proposed amended complaint (0.2).	0.20	1245.00	$249.00
[redacted]			[redacted]	[redacted]	[redacted]	[redacted]
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Highland Capital Management LP
36027 - 00002

Invoice 128292
July 31, 2021

				Hours	Rate	Amount
[redacted]						
07/08/2021	JNP	BL	Participate in hearing on motion to amend and motion to stay notes actions.	0.20	1295.00	$259.00
07/08/2021	JNP	BL	Conference with J. Dubel regarding hearing on notes litigation.	0.20	1295.00	$259.00
[redacted]						
07/08/2021	JAM	BL	Court hearing on HCRE/HCMS motions to withdraw the reference and related matters (0.8); tel c. w/ J. Pomerantz re: court hearing (0.1).	0.90	1245.00	$1,120.50
[redacted]						

Pachulski Stang Ziehl & Jones LLP
Highland Capital Management LP
36027 - 00002

Invoice 128292
July 31, 2021

				Hours	Rate	Amount
[redacted]						
07/08/2021	JE	BL	Review certain documents relating to note suits (.5); call with Mr. Pomerantz, Mr. Morris and Mr. Demo regarding reference issues, preference issues and jury trials (.4).	0.90	1195.00	$1,075.50
[redacted]						
07/08/2021	HRW	BL	Send production to counsel for HCRE (0.1).	0.10	695.00	$69.50
[redacted]						

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36027 - 00002

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Invoice 128292
July 31, 2021

				Hours	Rate	Amount
[redacted]			[redacted]	[redacted]	[redacted]	[redacted]
[redacted]			[redacted]	[redacted]	[redacted]	[redacted]
07/09/2021	JAM	BL	Review M. Aigen e-mail re: notes litigation and discovery (0.1).	0.10	1245.00	$124.50
[redacted]			[redacted]	[redacted]	[redacted]	[redacted]
[redacted]			[redacted]	[redacted]	[redacted]	[redacted]
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Pachulski Stang Ziehl & Jones LLP
Highland Capital Management LP
36027 - 00002

Invoice 128292
July 31, 2021

				Hours	Rate	Amount
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07/11/2021	JAM	BL	Work on Amended Complaints in notes litigation (2.2); e-mails w/ D. Rukavina re: NexPoint amended	2.30	1245.00	$2,863.50

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Highland Capital Management LP
36027 - 00002

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Invoice 128292
July 31, 2021

				Hours	Rate	Amount
			answer (0.1).			
[redacted]						

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Highland Capital Management LP
36027 - 00002

Invoice 128292
July 31, 2021

				Hours	Rate	Amount
[redacted]						
07/12/2021	JAM	BL	Analysis of status of each of the Notes Litigations.	1.20	1245.00	$1,494.00
[redacted]						

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Highland Capital Management LP
36027 - 00002

Invoice 128292
July 31, 2021

				Hours	Rate	Amount
[redacted]						
07/13/2021	JNP	BL	Conference with John A. Morris regarding notes litigation and defenses.	0.20	1295.00	$259.00
[redacted]						

Pachulski Stang Ziehl & Jones LLP
Highland Capital Management LP
36027 - 00002

Invoice 128292
July 31, 2021

				Hours	Rate	Amount
			[redacted]			
07/13/2021	JAM	BL	E-mail to D. Rukavina re: NexPoint amended answer (0.2); e-mails w/ D. Klos, J. Seery re: HCMFA amended answer (0.2); review revise draft Amended Complaint for Dondero (0.4); review/revise draft Amended Complaint for HCMFA (0.9); review/revise draft Amended Complaint for NexPoint (0.9); review/revise draft Amended Complaint for HCRE (0.9); review/revise draft Amended Complaint for HCM Services, Inc. (0.9); draft e-mail to M. Aigen and other defense counsel re: schedule and related matters (0.6); e-mail to J. Seery re: amended complaints and HCMFA (0.2); tel c. w/ J. Seery re: HCMFA proposed amended complaint (0.2); e-mail to M. Aigen and other defense counsel, J. Pomerantz, G Demo re: Amended Complaints (0.1).	5.50	1245.00	$6,847.50
[redacted]						

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Highland Capital Management LP
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July 31, 2021

				Hours	Rate	Amount
[redacted]						
07/15/2021	JNP	BL	Review and execute pro hac vice applications for District Court note litigation.	0.10	1295.00	$129.50
[redacted]						

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Highland Capital Management LP
36027 - 00002

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Invoice 128292
July 31, 2021

				Hours	Rate	Amount
[redacted]						
[redacted]						
[redacted]						
07/19/2021	JMF	BL	Review report and recommendations re notes litigation adversaries.	1.10	1050.00	$1,155.00
[redacted]						
07/19/2021	JAM	BL	E-mails w/ D. Rukavina re: NexPoint's amended answer (0.1); tel c. w/ M. Aigen re: scheduling issues and related matters (0.2).	0.30	1245.00	$373.50
[redacted]						

Pachulski Stang Ziehl & Jones LLP
Highland Capital Management LP
36027 - 00002

Invoice 128292
July 31, 2021

				Hours	Rate	Amount
[redacted]						
07/20/2021	JAM	BL	E-mails w/ J. Wander, L. Drawhorn re: PwC subpoena (0.2); e-mails w/ J. Vasek, D. Rukavina, J. Pomerantz re: HCMFA motion for protective order	0.40	1245.00	$498.00

				Hours	Rate	Amount
			(0.2).			
[redacted]						
07/21/2021	JNP	BL	Review brief regarding report and recommendation on withdrawal of reference and emails regarding same.	0.10	1295.00	$129.50
[redacted]						
07/21/2021	JAM	BL	E-mail to J. Vasek, D. Rukavina, J. Pomerantz, H. Wingrad re: motion for protective order (0.3); e-mails w/ M. Aigen re: scheduling stipulation (0.1); e-mails w/ L. Drawhorn, J. Wander re: PwC subpoena (0.2); e-mail to D. Rukavina re: PwC subpoena (0.2).	0.80	1245.00	$996.00
[redacted]						

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July 31, 2021

				Hours	Rate	Amount
07/23/2021	IDK	BL	E-mails with local counsel, J. Pomerantz re issues on Dondero entities objections in District Court to Report & Recommendations and procedural issues on same and opposition to motion to strike, including review of rules (.5); E-mails with J. Pomerantz and J. Morris re same and need for draft motion to strike (.3).	0.80	1325.00	$1,060.00
[redacted]						
07/23/2021	JNP	BL	Review and respond to email regarding stipulation to consolidate notes matters and open issues.	0.10	1295.00	$129.50
[redacted]						
07/23/2021	JAM	BL	E-mails w/ J. Wander, L. Drawhorn, D. Rukavina re: PwC subpoena, document production, and deposition (0.4); prepare Notices of Deposition (PwC) for each of the five adversary proceedings (including revisions based on comments received) (0.8); e-mail to Z. Annable re: PwC subpoena and Notices of Deposition (0.2).	1.40	1245.00	$1,743.00
[redacted]						
07/24/2021	IDK	BL	E-mails and telephone conference with J. Pomerantz re Dondero objection to R&R and need for motion to strike (.4); E-mails with J.Kim re same and relevant background (.3); E-mails with G Demo re same and related docs (.2).	0.90	1325.00	$1,192.50

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July 31, 2021

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07/26/2021	IDK	BL	Review and consider J Kim draft motion to strike Dondero objection to report and rec, as well as his summary of caselaw (.5); E-mail J Pomerantz re timing on same (.1); E-mails with attorneys re problems on filing motion to strike same and issues on procedure re District Court for same (.3).	0.90	1325.00	$1,192.50
07/26/2021	IDK	BL	E-mail local counsel re District Court order adopting R&R of Judge Jurnigan re HCM Services and review of same.	0.20	1325.00	$265.00
[redacted]						

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Highland Capital Management LP
36027 - 00002

Invoice 128292
July 31, 2021

				Hours	Rate	Amount
[redacted]						
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[redacted]						
[redacted]						
07/26/2021	JNP	BL	Review and respond to email regarding motion to strike objection to report and recommendation regarding withdrawal of reference.	0.10	1295.00	$129.50
[redacted]						
[redacted]						
[redacted]						
07/26/2021	RJF	BL	Review draft motion to strike objection to reference report and related emails.	0.40	1395.00	$558.00
[redacted]						
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[redacted]						
07/26/2021	JAM	BL	Review/analyze HCMLP's audited financials from 2008 to 2016 (1.8); e-mail to J. Seery, D. Klos, J. Pomerantz, G. Demo, H. Winograd re: production of audited financials (0.2).	2.00	1245.00	$2,490.00
[redacted]						
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Pachulski Stang Ziehl & Jones LLP
Highland Capital Management LP
36027 - 00002

Invoice 128292
July 31, 2021

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[redacted]						0
07/27/2021	IDK	BL	E-mails with J Kim re decision to file response to Dondero objection to R&R vs motion to strike.	0.20	1325.00	$265.00
[redacted]						
[redacted]						
[redacted]						
[redacted]						
[redacted]						
07/27/2021	JAM	BL	E-mails w/ J. Seery, L. Canty, M. Aigen re: audited financial statements (0.3).	0.30	1245.00	$373.50
[redacted]						
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Pachulski Stang Ziehl & Jones LLP
Highland Capital Management LP
36027 - 00002

Invoice 128292
July 31, 2021

				Hours	Rate	Amount
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[redacted]						
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07/29/2021	JMF	BL	Review notes adversary proceedings district and bankruptcy dockets and draft memorandum re pending issues and status re same.	2.10	1050.00	$2,205.00
[redacted]						
07/29/2021	JAM	BL	Review audited financial statements and prepare for PwC deposition (1.1); e-mails w/ M. Aigen, L. Canty re: PwC financial statements (0.2); e-mails w/ L. Drawhorn, J. Seery re: Wick Phillips proposed withdrawal from notes litigation (0.1).	1.40	1245.00	$1,743.00
[redacted]						
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07/29/2021	HRW	BL	Send production to opposing counsel for notes litigation (0.1).	0.10	695.00	$69.50
07/29/2021	HRW	BL	Review objections to R&Rs issued in notes litigations (0.5).	0.50	695.00	$347.50
07/29/2021	HRW	BL	Review and edit chart of District Court proceedings for notes litigations (0.6).	0.60	695.00	$417.00
[redacted]						
[redacted]						

				Hours	Rate	Amount
[redacted]						
[redacted]						
[redacted]						
07/30/2021	JNP	BL	Email to and from Jonathan J. Kim regarding status of reports and recommendations in connection with motion to withdraw reference.	0.20	1295.00	$259.00
[redacted]						
[redacted]						
[redacted]						
07/30/2021	JAM	BL	E-mail to L. Lambert, M. Clemente, J. Pomerantz re: Advisors' motion for protective order (0.2); prepare for PwC deposition (4.3); PwC deposition (2.0).	6.50	1245.00	$8,092.50
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07/30/2021	HRW	BL	Review pleadings in District Court notes litigations (1.0).	1.00	695.00	$695.00
07/30/2021	HRW	BL	Review deadlines for District Court notes litigations (0.5).	0.50	695.00	$347.50
07/30/2021	HRW	BL	Deposition of Peet Burger for notes litigations (2.0).	2.00	695.00	$1,390.00

EXHIBIT 177

Pachulski Stang Ziehl & Jones LLP

10100 Santa Monica Blvd.
13th Floor
Los Angeles, CA 90067

August 31, 2021
Invoice 128567
Client 36027
Matter 00003
JNP

Board of Directors
Highland Capital Management LP
300 Crescent Court ste. 700
Dallas, TX 75201

RE: Post-Effective Date

STATEMENT OF PROFESSIONAL SERVICES RENDERED THROUGH 08/31/2021

[redacted]

[redacted]

Notes Litigation

08/11/2021	JJK	NL	Prepare HCM objection to motion to reconsider.	4.20	995.00	$4,179.00
08/11/2021	JAM	NL	Review stipulations for each adversary proceeding (0.4); e-mails w/ M. Aigen re: scheduling stipulations (0.1).	0.50	1245.00	$622.50
08/11/2021	HRW	NL	Draft motion to file amended complaints for notes litigations (2.8)	2.80	695.00	$1,946.00
08/12/2021	JJK	NL	Research and prepare replies re: Reports, motions to reconsider; emails Kharasch on same.	5.20	995.00	$5,174.00
08/12/2021	LSC	NL	Retrieve and transmit Reports and Recommendations regarding notes litigations for J. Morris.	0.30	460.00	$138.00
08/12/2021	HRW	NL	Draft motion to file amended complaints for notes litigations (3.0)	3.00	695.00	$2,085.00
08/13/2021	IDK	NL	E-mail H Winograd re updated litigation WIP list with focus on deadlines re matters on Dondero entities motions for withdrawal of reference.	0.20	1325.00	$265.00
08/13/2021	IDK	NL	E-mail J Kim re draft of response to HCMS motion to reconsider to D Court, including review of same and new argument.	0.40	1325.00	$530.00
08/13/2021	JAM	NL	Review motion to amend complaint and proposed orders (0.9); e-mails w/ G. Demo, H. Winograd re: motion to amend complaint and proposed orders (0.2); e-mails w/ M. Aigen, others, re: scheduling order and motion to amend complaints (0.4).	1.50	1245.00	$1,867.50
08/13/2021	GVD	NL	Review open issues re notes litigation and correspondence with H. Winograd re same	0.40	950.00	$380.00
08/13/2021	HRW	NL	Edit and finalize motions to file amended complaints in notes litigations (1.2).	1.20	695.00	$834.00
08/16/2021	IDK	NL	Review and consider revised response to HCMS motion to reconsider R&R (.3); E-mails with J Pomerantz re same and Texas litigation counsel (.2); E-mails with J Kim re my feedback on draft of same and timing for filing today (.2).	0.70	1325.00	$927.50
08/16/2021	JJK	NL	Emails Kharasch, Pomerantz on motions to reconsider; related research and final revisions to last reply re: Reports.	1.50	995.00	$1,492.50
08/16/2021	JNP	NL	Review response to motion for reconsideration of	0.10	1295.00	$129.50

				Hours	Rate	Amount
			order adopting report and recommendations.			
08/17/2021	JAM	NL	Review/revise motions for leave to amend complaints in Notes Litigation (1.1); e-mail to L. Canty, Z. Annable, H. Winograd re: motions for leave to amend complaints in Notes Litigation and related matters (0.2); e-mails w/ Z. Annable, H. Winograd re: motions to amend complaints in Notes Litigation (0.1).	1.40	1245.00	$1,743.00
08/17/2021	LSC	NL	Prepare and transmit exhibits to motions to amend.	0.50	460.00	$230.00
08/18/2021	JAM	NL	Communications w/ M. Aigen, Z. Annable re: form of Order for motions for leave to amend complaints (0.2); tel c. w/ D. Rukavina re: Advisors' motion for protective order (0.2).	0.40	1245.00	$498.00
08/18/2021	LSC	NL	Transmit proposed orders on motions to amend.	0.20	460.00	$92.00
08/19/2021	JAM	NL	Revise Advisors' draft Stipulation resolving their motion for a protective order (0.5); draft e-mail to D. Rukavina re: revised Stipulation resolving Advisors' motion for a protective order (0.2).	0.70	1245.00	$871.50
08/20/2021	JNP	NL	Conference with John A. Morris regarding protective order regarding notes litigation.	0.20	1295.00	$259.00
08/20/2021	JAM	NL	E-mails w/ D. Rukavina re: proposed settlement of motion for protective order (0.1); e-mails w/ J. Seery, J. Pomerantz, G. Demo re: Advisors' motion for a protective order (0.1).	0.20	1245.00	$249.00
08/24/2021	HRW	NL	Draft notice of filing stipulations re: notes litigation (2.2).	2.20	695.00	$1,529.00
08/25/2021	JAM	NL	E-mails w/ H. Winograd re: HCMFA scheduling stipulation (0.1).	0.10	1245.00	$124.50
08/25/2021	HRW	NL	Draft proposed orders re: notes litigation (2.5); Communicate with opposing counsel for HCMFA re: notes stipulation (0.1).	2.60	695.00	$1,807.00
08/26/2021	JAM	NL	E-mails w/ H. Winograd, Z. Annable re: filing of Amended Complaints (0.2); e-mails w/ H. Winograd, D. Rukavina re: scheduling order for HCMFA notes litigation (not subject to amended complaint) (0.2).	0.40	1245.00	$498.00
08/26/2021	LSC	NL	Prepare exhibits to amended complaints (.7); prepare exhibits to orders approving discovery stipulations (.3).	1.00	460.00	$460.00
08/26/2021	HRW	NL	Prepare and review amended complaints and	1.70	695.00	$1,181.50

				Hours	Rate	Amount
			exhibits for notes litigations filings (1.5); Communicate with opposing counsel for Advisors re: discovery stipulations (0.1); Review discovery stipulations for notes litigations (0.1).			
08/27/2021	JAM	NL	E-mails w/ D. Rukavina, M. Aigen re: timing of answers and discovery demands (0.1); e-mails w/ Z. Annable re: filing of amended answers and orders approving scheduling stipulations (0.2).	0.30	1245.00	$373.50
08/27/2021	HRW	NL	Review adversary cover sheets for notes litigations (0.2); Review and prepare discovery stipulations and proposed orders for notes litigations (1.0).	1.20	695.00	$834.00
08/29/2021	JMF	NL	Review amended complaints re notes litigation.	0.30	1050.00	$315.00
				35.40		**$31,635.50**

[redacted]

EXHIBIT 178

Pachulski Stang Ziehl & Jones LLP

10100 Santa Monica Blvd.
13th Floor
Los Angeles, CA 90067

August 10, 2021
Invoice 128474
Client 36027
Matter 00002
JNP

Board of Directors
Highland Capital Management LP
300 Crescent Court ste. 700
Dallas, TX 75201

RE: Postpetition

STATEMENT OF PROFESSIONAL SERVICES RENDERED THROUGH 08/10/2021

[redacted]

Pachulski Stang Ziehl & Jones LLP
Highland Capital Management LP
36027 - 00002

Page: 9
Invoice 128474
August 10, 2021

				Hours	Rate	Amount
[redacted]						
[redacted]						
[redacted]						

Pachulski Stang Ziehl & Jones LLP
Highland Capital Management LP
36027 - 00002

Invoice 128474
August 10, 2021

				Hours	Rate	Amount
			[redacted]; review Dondero motion to withdraw the reference and stay the notes litigation (0.3).			
[redacted]			[redacted]	[redacted]	[redacted]	[redacted]
[redacted]			[redacted]	[redacted]	[redacted]	[redacted]
04/23/2021	JAM	BL	[redacted] telephone conference with B. Sharp re: e-discovery (0.1); [redacted]	[redacted]	[redacted]	[redacted]
05/25/2021	CHM	BL	Email K. Kim re document production.	0.10	750.00	$75.00
05/25/2021	CHM	BL	Exchange multiple emails with IDS re document	0.40	750.00	$300.00

				Hours	Rate	Amount
			production and search issues.			
05/25/2021	CHM	BL	Emails with J. Morris and B. Sharp re document production.	0.30	750.00	$225.00
05/26/2021	CHM	BL	Prepare Nexpoint document production and check document being produced; email H. Winograd re same.	3.20	750.00	$2,400.00
05/26/2021	CHM	BL	Review email from H. Winograd re RFPs and reply.	0.10	750.00	$75.00
05/27/2021	CHM	BL	Review requests for production and documents being produced and search terms run for completeness.	4.00	750.00	$3,000.00
05/27/2021	CHM	BL	Review search terms and exchange emails with H. Winograd and IDS team re new production searches.	1.10	750.00	$825.00
05/28/2021	CHM	BL	Review email from J. Vaughn and reply.	0.10	750.00	$75.00
05/28/2021	CHM	BL	Run document production and review of documents being produced.	1.80	750.00	$1,350.00
06/02/2021	CHM	BL	Review document production issues and coordinate with IDS team re same.	0.30	750.00	$225.00
06/02/2021	CHM	BL	Email H. Winograd re document production issues.	0.10	750.00	$75.00
06/03/2021	CHM	BL	Review RFPs and coordinate searches with IDS team; review document hits re same.	3.20	750.00	$2,400.00
06/04/2021	CHM	BL	Review UDF documents for responsiveness and run production re same.	4.30	750.00	$3,225.00
06/07/2021	CHM	BL	Review email from B. Sharp and reply.	0.10	750.00	$75.00
06/07/2021	CHM	BL	Review RFPs and proposed search terms; email IDS team re same and review results.	2.50	750.00	$1,875.00
06/09/2021	CHM	BL	Correspond with G. Crane and H. Winograd re privilege review and begin preparation of privilege assignments.	3.00	750.00	$2,250.00
06/09/2021	CHM	BL	Review documents for responsiveness and run production.	3.70	750.00	$2,775.00
06/09/2021	CHM	BL	Email IDS team re additional searches.	0.20	750.00	$150.00
06/10/2021	CHM	BL	Review parties list and update privilege breaker list and email same to G. Demo.	1.80	750.00	$1,350.00
06/10/2021	CHM	BL	Review email from J. Sommer re UDF privilege holdback and reply.	0.10	750.00	$75.00
06/11/2021	CHM	BL	Review documents flagged by G. Crane and reply re same.	0.30	750.00	$225.00
06/11/2021	JAM	BL	Telephone conference with G. Demo, H. Winograd re: HCMFA and NexPoint motions to amend (0.5);	1.80	1245.00	$2,241.00

				Hours	Rate	Amount
			telephone conference with J. Seery re: HCMFA and NexPoint motion to amend (0.1); e-mail to D. Rukavina, J. Vasek, J. Pomerantz, G. Demo, H. Winograd re: proposed amended complaints for HCMFA and NexPoint in notes litigation (0.4); e-mail to D. Rukavina, J. Vasek, J. Pomerantz, G. Demo, H. Winograd re: Rule 30(b)(6) notices in notes litigation (0.2); review/revise subpoena for PwC for HCMFA and NexPoint notes litigation (0.3); communications w/ H. Winograd, Z. Annable re: substance of PwC subpoena and issues concerning service (0.3).			
06/12/2021	CHM	BL	Review email from J. Morris re G. Crane privilege review and reply.	0.10	750.00	$75.00
06/15/2021	CHM	BL	Review email from G. Crane re privilege review and reply.	0.10	750.00	$75.00
06/15/2021	CHM	BL	Create and update privilege review assignments and email G. Crane re same.	1.00	750.00	$750.00
06/15/2021	CHM	BL	Review discovery and deadline tracker and update; coordinate with H. Winograd re next priority.	0.50	750.00	$375.00
06/15/2021	CHM	BL	Emails with G. Crane re parameters of privilege review and RFPs for responsiveness review.	0.20	750.00	$150.00
06/15/2021	CHM	BL	Review G. Crane privilege tagging re HCMS production; email H. Winograd re same.	0.80	750.00	$600.00
06/16/2021	CHM	BL	Emails with J. Morris, G. Demo and IDS team re additional custodian collection.	0.20	750.00	$150.00
[redacted]						
06/21/2021	CHM	BL	Review RFP and proposed search terms and coordinate searches with IDS team.	0.50	750.00	$375.00
[redacted]						
06/22/2021	CHM	BL	Exchange emails with IDS team re requested searches.	0.10	750.00	$75.00
[redacted]						

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				Hours	Rate	Amount
06/23/2021	CHM	BL	Review email from H. Winograd re HCMFA document searches and reply.	0.10	750.00	$75.00
06/23/2021	CHM	BL	Review RFP and coordinate additional searches with IDS team.	0.50	750.00	$375.00
[redacted]						
06/24/2021	CHM	BL	Review email from G. Crane re coding issues; review database and impacted documents.	0.60	750.00	$450.00
06/24/2021	CHM	BL	Draft email to IDS team re pending documents.	0.40	750.00	$300.00
06/24/2021	CHM	BL	Review documents for responsiveness and run production re first portion of HCMFA documents.	3.90	750.00	$2,925.00
06/28/2021	CHM	BL	Review email from G. Crane re review status and reply.	0.10	750.00	$75.00
06/28/2021	CHM	BL	Review documents for responsiveness and run production re 2nd set of HCMFA requests.	3.50	750.00	$2,625.00
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[redacted]						
07/01/2021	CHM	BL	Email G. Crane re privilege review; review UDF privileged documents.	1.10	750.00	$825.00
07/01/2021	CHM	BL	Review RFPs, run preliminary searches in existing database and email IDS re HCRE search terms.	0.60	750.00	$450.00
[redacted]						
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07/01/2021	LSC	BL	Prepare supplemental HCMFA production.	0.30	460.00	$138.00
07/01/2021	LSC	BL	Preparation of NPA supplemental production.	0.30	460.00	$138.00
07/02/2021	CHM	BL	Draft email to IDS team re privilege filter issue.	0.30	750.00	$225.00
07/02/2021	CHM	BL	Review prior productions re privilege filter issues.	3.30	750.00	$2,475.00
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07/06/2021	CHM	BL	Review email from IDS re UBS results and reply.	0.10	750.00	$75.00

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				Hours	Rate	Amount
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07/06/2021	LSC	BL	Research and correspondence regarding privileged documents and supplemental document production.	0.90	460.00	$414.00
07/07/2021	LAF	BL	Legal research re: Withdrawal of reference; update chart of rules/general orders in various districts.	3.30	475.00	$1,567.50
07/08/2021	CHM	BL	Review HCRE search results and email IDS re same.	1.80	750.00	$1,350.00
07/08/2021	CHM	BL	Run production re HCRE search results and review same; email link to H. Winograd.	2.00	750.00	$1,500.00
07/08/2021	CHM	BL	Review email from K. Kim re privilege filter and reply.	0.10	750.00	$75.00
07/08/2021	LSC	BL	Retrieve and review HCRE document production.	1.70	460.00	$782.00
07/09/2021	CHM	BL	Review search results and begin production of certain UBS documents.	5.00	750.00	$3,750.00
[redacted]						
07/12/2021	LSC	BL	Circulate responses to Court's order requiring disclosures and correspondence regarding the same.	0.30	460.00	$138.00
07/12/2021	LSC	BL	Review Dondero designation, related documents and correspondence with J. Morris regarding same.	0.50	460.00	$230.00
[redacted]						
07/15/2021	JEO	BL	Review court ordered disclosures	1.00	1050.00	$1,050.00
[redacted]						

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[redacted]						
07/21/2021	LSC	BL	Retrieve PwC document production.	0.60	460.00	$276.00
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07/24/2021	JJK	BL	Emails Kharasch on Debtor's motion to strike Dondero objection to R&R.	0.30	995.00	$298.50
07/25/2021	JJK	BL	Research and review pleadings and prepare motion to strike Dondero objection to R&R.	3.40	995.00	$3,383.00
07/25/2021	JJK	BL	Research, review documents, and prepare motion to strike Dondero objection.	5.90	995.00	$5,870.50
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07/27/2021	LSC	BL	Redact supplemental document production.	3.20	460.00	$1,472.00
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07/28/2021	IDK	BL	E-mails with local counsel and J Pomerantz re new motion for reconsideration filed in District Court to R&R by HCMSI, and next steps re same, and review of same (.5); E-mails with J Kim re same and need to respond to HCMSI pleadings (.2).	0.70	1325.00	$927.50

				Hours	Rate	Amount
07/28/2021	IDK	BL	Review of District Court order adopting R&R of Judge Jurnigan re NexPoint Advisors and its objection to the R&R (.2); E-mails with J Kim re same (.2).	0.40	1325.00	$530.00
07/28/2021	JJK	BL	Emails Kharasch on multiple replies/objections re: reference withdrawal and consider same.	0.20	995.00	$199.00
07/28/2021	JJK	BL	Research, analysis, pleading review to prepare multiple replies re: reference withdrawal.	5.00	995.00	$4,975.00
[redacted]						
07/29/2021	IDK	BL	E-mails with J Kim, others on the status of the 5 objections/motions for reconsideration to bankruptcy court R&R to District Court and issues on our various responses to same (.4); E-mails with H Winograd and J Fried re same and re deadlines to same and updated chart (.2).	0.60	1325.00	$795.00
07/29/2021	JJK	BL	Research and prepare replies to Dondero, et al. re: bankruptcy court reports.	3.90	995.00	$3,880.50
07/29/2021	JJK	BL	Review pleadings, research, and prepare replies to Dondero, et al., re: bankruptcy court reports.	4.50	995.00	$4,477.50
07/29/2021	JEO	BL	Email follow up on critical dates issue regarding deposition scheduling	0.20	1050.00	$210.00
07/29/2021	RJF	BL	Prepare for Ellington deposition, including review of exhibits.	0.50	1395.00	$697.50
07/29/2021	RJF	BL	Attend Ellington deposition.	10.00	1395.00	$13,950.00
07/29/2021	LSC	BL	Prepare for Burger deposition.	0.70	460.00	$322.00
07/29/2021	LSC	BL	Preparation of Consolidated Notes Litigation Production.	2.40	460.00	$1,104.00
07/30/2021	CHM	BL	Email correspondence re non-email document collection.	0.50	750.00	$375.00
07/30/2021	CHM	BL	Email IDS team re Surgent screenshot.	0.10	750.00	$75.00
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				Hours	Rate	Amount
07/30/2021	IDK	BL	E-mails with J Kim, others on status/issues on the 5 Dondero related motions to withdraw the reference and response status/drafts (.4); E-mails with local counsel, H Winograd on updates to timing on filing responses to same (.1).	0.50	1325.00	$662.50
[redacted]						
07/30/2021	JJK	BL	Research and prepare replies/objections to Dondero, et al. re: bankruptcy court reports.	5.70	995.00	$5,671.50
07/30/2021	RJF	BL	Emails regarding reference reports.	0.20	1395.00	$279.00
[redacted]						
07/30/2021	LSC	BL	Prepare for and assist at deposition of Peet Burger.	3.00	460.00	$1,380.00
07/31/2021	IDK	BL	Review of correspondence to Texas litigation specialists on various questions on motions to withdraw reference and related objections to R&R.	0.20	1325.00	$265.00
07/31/2021	JJK	BL	Research, prepare replies/objections re: bankruptcy court's reports & recommendations.	5.50	995.00	$5,472.50
[redacted]						
08/01/2021	JJK	BL	Research, review documents, and prepare replies to objections to reports/recommendations and opposition to motion to reconsider.	5.20	995.00	$5,174.00
08/01/2021	JJK	BL	Prepare replies to objections to reports/recommendations and motion to reconsider.	3.60	995.00	$3,582.00
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08/02/2021	IDK	BL	Review and consider correspondence between H Winograd and local counsel re deadlines to object to pleadings on 5 matters re report and rec to D Court as well as H Winograd of chart on all related actions (.5).	0.50	1325.00	$662.50
08/02/2021	IDK	BL	E-mails with J Kim re 5 outstanding motions to withdraw reference and objections to report and rec by defendants, and various issues on opponents bias of judge argument (.4); Telephone conference with J Kim re same (.3).	0.70	1325.00	$927.50
08/02/2021	IDK	BL	E-mails with special Texas litigation counsel on notes litigation and withdrawal of ref and coordination of call re same (.2).	0.20	1325.00	$265.00
08/02/2021	JJK	BL	Review objections to bankruptcy court reports and prepare additonal responses thereto.	1.20	995.00	$1,194.00
08/02/2021	JJK	BL	Calls Kharasch re: replies to objections to reports/recommendations.	0.10	995.00	$99.50
08/02/2021	JJK	BL	Call Kharasch on several replies re: withdrawal of reference.	0.20	995.00	$199.00
08/02/2021	JJK	BL	Revise replies re: objections to withdrawal of reference, etc.	0.20	995.00	$199.00
08/02/2021	JJK	BL	Prepare replies to objections to Reports, etc.	1.20	995.00	$1,194.00
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				Hours	Rate	Amount
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08/02/2021	JE	BL	Work on vexatious litigant memo.	6.20	1195.00	$7,409.00
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08/03/2021	IDK	BL	Review and consider J Kim's draft of response to Dondero objection in District Court to bankruptcy report and recommendation and need for changes (.3); Numerous E-mails with J Kim re need for extensive revisions to same and his responses and new draft re same (.5); E-mail H Winograd re materials to supplement same response (.1).	0.90	1325.00	$1,192.50
08/03/2021	JJK	BL	Review objections to reports/recommendations and prepare additional replies thereto for filing.	4.80	995.00	$4,776.00
08/03/2021	JJK	BL	Emails local counsel, Winograd on Debtor replies re: reports and consider issues (0.6); emails Kharasch, Pomerantz on Dondero and HCMFA replies (0.1); prepare replies re: Reports and related research/analysis (2.2).	2.90	995.00	$2,885.50
08/03/2021	JNP	BL	Conference with John A. Morris and D. Ashby regarding continued investigation.	0.50	1295.00	$647.50
08/03/2021	JNP	BL	Conference with Farralon, Holland & Knight, John A. Morris and Gregory V. Demo regarding Dondero discovery action.	0.50	1295.00	$647.50
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08/03/2021	HRW	BL	Research and draft response to HCMFA objection to R&R in notes litigation (1.5)	1.50	695.00	$1,042.50
08/03/2021	HRW	BL	Review notes litigations deadlines (0.6)	0.60	695.00	$417.00
[redacted]						
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08/04/2021	IDK	BL	Telephone conferences with J Morris and J Pomerantz re result of hearing today as well as need for his comments to draft response to Dondero objection to Report and Recommendation to District Court (.4); Telephone conference with J Pomerantz re timing on filing given feedback of litigation	0.60	1325.00	$795.00

				Hours	Rate	Amount
			specialists (.1); Telephone conference with J Morris re timing on his feedback (.1).			
08/04/2021	IDK	BL	E-mails with J Kim and local counsel re status on our response to Dondero objection to R&R (.3); E-mails with J Morris re his revisions to such response, including quick review of same (.2); E-mails with J Kim re same and status on responding to HCMFA objection to R&R and similar changes for same (.2).	0.70	1325.00	$927.50
08/04/2021	IDK	BL	Numerous E-mails with Gruber, Texas litigation counsel, on their feedback on communications with D Court and timing for responses to Dondero entities objections to R&R (.4).	0.40	1325.00	$530.00
08/04/2021	JJK	BL	Continue work on replies for filing to objections to reports/recommendations.	4.70	995.00	$4,676.50
08/04/2021	JJK	BL	Emails Kharasch on Reports replies, related research and review; emails local counsel re: same and certificates of interestedness for various suits.	4.20	995.00	$4,179.00
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08/04/2021	JNP	BL	Conference with Ira D. Kharasch regarding response regarding objections to reports and recommendation on withdrawal motions.	0.10	1295.00	$129.50
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Highland Capital Management LP
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August 10, 2021

				Hours	Rate	Amount
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08/04/2021	JAM	BL	Review/revise draft response to Dondero objection to Report and Recommendations (1.1); e-mail to I. Kharasch, J. Kim, G. Demo re: revised draft response to Dondero objection to Report and Recommendations (0.1).	1.20	1245.00	$1,494.00
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08/05/2021	IDK	BL	E-mail J Kim re his draft response to HCMFA objection to R&R, including review of same (.3); E-mails with J Morris re same and his changes, along with final response (.3).	0.60	1325.00	$795.00
08/05/2021	JJK	BL	Emails Morris on HCMFA reply matters.	0.10	995.00	$99.50
08/05/2021	JJK	BL	Continue work on replies and filing thereof to objections to reports/recommendations.	4.20	995.00	$4,179.00
08/05/2021	JJK	BL	Emails Morris on HCMFA reply and review comments.	0.10	995.00	$99.50

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Highland Capital Management LP
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				Hours	Rate	Amount
08/05/2021	JJK	BL	Coordinate finalizing HCMFA reply and filing/service; prepare other replies re: Reports.	3.00	995.00	$2,985.00

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36027 - 00002

Invoice 128474
August 10, 2021

				Hours	Rate	Amount
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08/05/2021	JMF	BL	Review response to opposition to bankruptcy court recommendations to district court.	0.30	1050.00	$315.00
08/05/2021	JAM	BL	Review/revise objection to HCMFA motion for reconsideration of report and recommendations on notes litigation (0.9); e-mails w/ J. Kim, I. Kharasch re: revisions to objection to HCMFA motion for reconsideration of report and recommendations on notes litigation (0.1).	1.00	1245.00	$1,245.00
08/05/2021	GVD	BL	Correspondence with working group re status of notes litigation	0.20	950.00	$190.00
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08/06/2021	IDK	BL	Review of draft response to HCRE objection in D Court to R&R, along with J Kim commentary on same.	0.40	1325.00	$530.00
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Highland Capital Management LP
36027 - 00002

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August 10, 2021

				Hours	Rate	Amount
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08/06/2021	JAM	BL	Review/revise scheduling stipulation for notes litigation (0.6); e-mail to H. Winograd re: revised scheduling stipulation (0.1); e-mail to M. Aigen re: revised scheduling stipulation (0.1).	0.80	1245.00	$996.00
08/06/2021	LSC	BL	Assist with preparation of discovery requests, including preparation of exhibits.	1.40	460.00	$644.00
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Pachulski Stang Ziehl & Jones LLP
Highland Capital Management LP
36027 - 00002

Invoice 128474
August 10, 2021

				Hours	Rate	Amount
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08/10/2021	IDK	BL	Review of J Kim's response to motion for reconsideration of R&R by HCRE Partners (.3); E-mails with J Morris re need for his feedback (.1); Review of revised response to HCRE objection (.2); E-mails with J Kim and Local counsel re same (.1).	0.70	1325.00	$927.50
08/10/2021	IDK	BL	Review of HCMS motion for reconsideration to D Court of R&R of bankruptcy court (.3); E-mails with J Kim re same and need for response to same and issues re same (.2).	0.50	1325.00	$662.50
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08/10/2021	JJK	BL	Emails local counsel on HCM Real Estate reply.	0.10	995.00	$99.50
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EXHIBIT 179

Pachulski Stang Ziehl & Jones LLP

10100 Santa Monica Blvd.
13th Floor
Los Angeles, CA 90067

September 30, 2021

Invoice 128688
Client 36027
Matter 00003
JNP

Board of Directors
Highland Capital Management LP
300 Crescent Court ste. 700
Dallas, TX 75201

RE: Post-Effective Date

STATEMENT OF PROFESSIONAL SERVICES RENDERED THROUGH 09/30/2021

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Notes Litigation

09/01/2021	JMF	NL	Review motion to compel arbitration.	0.40	1050.00	$420.00
09/01/2021	JAM	NL	Review docket for filings (amended answers, motion to compel arbitration, and motions to dismissed) (0.4).	0.40	1245.00	$498.00
09/01/2021	GVD	NL	Review motions to dismiss and motions to compel arbitration in notes proceedings	0.30	950.00	$285.00
09/01/2021	HRW	NL	Review NexPoint amended answer in notes litigation (0.3).	0.30	695.00	$208.50
09/02/2021	JNP	NL	Conference with John A. Morris regarding arbitration motion, motion to stay and strategy.	0.20	1295.00	$259.00
09/02/2021	JMF	NL	Review motions to dismiss and compel arbitration.	0.50	1050.00	$525.00
09/02/2021	GVD	NL	Conference with J. Morris re notes litigation and next steps	0.50	950.00	$475.00
09/02/2021	HRW	NL	Communicate with local counsel re: stipulations in notes litigations (0.1).	0.10	695.00	$69.50
09/04/2021	GVD	NL	Review limited partnership provisions re motions to dismiss	1.60	950.00	$1,520.00
09/05/2021	GVD	NL	Review correspondence from J. Morris re notes litigation	0.20	950.00	$190.00
09/05/2021	HRW	NL	Draft discovery requests for consolidated notes	3.50	695.00	$2,432.50

				Hours	Rate	Amount
			litigations (3.5).			
09/05/2021	HRW	NL	Review motions for stay and arbitration in notes litigations (1.5).	1.50	695.00	$1,042.50
09/06/2021	GVD	NL	Conference with J. Morris re notes litigation	0.20	950.00	$190.00
09/06/2021	HRW	NL	Draft discovery requests for consolidated notes litigations (9.5).	9.50	695.00	$6,602.50
09/07/2021	JMF	NL	Review scheduling orders re notes litigation adversaries.	0.30	1050.00	$315.00
09/07/2021	JAM	NL	Review draft discovery demands for notes litigation (0.6); tel c. w/ H. Winograd re: discovery issues (0.3); communications w/ D. Klos, J. Seery re: cost/value of MGM, RCP, Trussway (0.2); draft discovery requests for NexPoint (0.5); tel c. w/ H. Winograd re: discovery demands (0.1); review revised discovery demands (0.5); e-mails w/ H. Winograd re: final versions of discovery demands (0.1).	2.30	1245.00	$2,863.50
09/07/2021	HRW	NL	Call with J. Morris re: notes litigation discovery (0.3).	0.30	695.00	$208.50
09/07/2021	HRW	NL	Call with J. Morris re: notes litigation arbitration motions (0.4).	0.40	695.00	$278.00
09/07/2021	HRW	NL	Draft discovery requests for consolidated notes litigations.	6.80	695.00	$4,726.00
09/07/2021	HRW	NL	Serve discovery requests on opposing counsel for consolidated notes litigations.	0.20	695.00	$139.00
09/08/2021	JJK	NL	Emails Kharasch on reference matters and consider/research same.	1.30	995.00	$1,293.50
09/08/2021	GVD	NL	Correspondence re email discovery issues	0.20	950.00	$190.00
09/08/2021	GVD	NL	Conference with J. Morris re additional notes litigation	0.20	950.00	$190.00
09/09/2021	JNP	NL	Conference with John A. Morris regarding response to arbitration and motion to dismiss motion.	0.10	1295.00	$129.50
09/09/2021	JAM	NL	Meet with G. Demo, H. Winograd re: motions for arbitration and to dismiss (0.5); tel c. w/ J. Seery, D. Klos re: Dondero compensation (0.5).	1.00	1245.00	$1,245.00
09/09/2021	GVD	NL	Conference with J. Morris and H. Winograd re response to notes litigation actions	1.00	950.00	$950.00
09/09/2021	HRW	NL	Review deadlines re: consolidated notes litigations motions to dismiss and motion for stay (0.2).	0.20	695.00	$139.00
09/13/2021	JNP	NL	Conference with John A. Morris regarding motion to dismiss and motion to compel arbitration.	0.20	1295.00	$259.00

Pachulski Stang Ziehl & Jones LLP
Highland Capital Management LP
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Invoice 128688
September 30, 2021

				Hours	Rate	Amount
09/13/2021	JNP	NL	Conference with Jordan A. Kroop regarding motion to dismiss and motion to compel arbitration.	0.20	1295.00	$259.00
09/13/2021	JNP	NL	Review motion to compel arbitration.	0.20	1295.00	$259.00
09/13/2021	JNP	NL	Conference with Hayley R. Winograd, John A. Morris and Jordan A. Kroop regarding motion to compel arbitration.	0.80	1295.00	$1,036.00
09/13/2021	JAM	NL	Tel c. w/ J. Pomerantz, J. Kroop, H. Winograd re: defendants' arbitration motion (0.8); e-mail to J. Seery re: motions to dismiss and to arbitrate (0.2); e-mail to J. Pomerantz, J. Kroop re: motions to dismiss and arbitrate (0.1).	1.10	1245.00	$1,369.50
09/13/2021	HRW	NL	Call with J. Morris, J. Pomerantz, and J. Kroop (0.8).	0.80	695.00	$556.00
09/13/2021	HRW	NL	Review motion to dismiss in notes litigations (2.0).	2.00	695.00	$1,390.00
09/13/2021	JAK	NL	Begin review of motion to compel arbitration (0.8); strategy and planning discussion with John Morris, Jeff Pomerantz, and Hayley Winograd (0.8); follow-up discussion with Jeff Pomerantz regarding arbitration motion (0.2); additional review and analysis of arbitration motion (1.1);	2.90	1100.00	$3,190.00
09/14/2021	IDK	NL	E-mails with attorneys re D Court upholding report and recommendation re HCMFA proceeding, including review of same	0.30	1325.00	$397.50
09/14/2021	HRW	NL	Review motion to dismiss complaint in notes litigation (2.0).	2.00	695.00	$1,390.00
09/15/2021	HRW	NL	Research re: motion to dismiss complaint in notes litigation (3.5).	3.50	695.00	$2,432.50
09/15/2021	HRW	NL	Send opposing counsel supplemental productions in notes litigation (0.2).	0.20	695.00	$139.00
09/17/2021	GVD	NL	Conference with J. Morris re status of notes litigation	0.10	950.00	$95.00
09/17/2021	GVD	NL	Conference with H. Winograd re response to motions to dismiss and next steps	0.60	950.00	$570.00
09/17/2021	HRW	NL	Call with G. Demo re: motion to dismiss in notes litigations (0.6).	0.60	695.00	$417.00
09/17/2021	HRW	NL	Call with J. Morris re: litigation deadlines (0.1).	0.10	695.00	$69.50
09/17/2021	HRW	NL	Review and research re: motion to dismiss in notes litigations (3.5).	3.50	695.00	$2,432.50
09/17/2021	JAK	NL	Review previous pleadings and begin outlining opposition to demand for arbitration;	1.40	1100.00	$1,540.00

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September 30, 2021

				Hours	Rate	Amount
09/18/2021	HRW	NL	Draft and research re: motion to dismiss in notes litigations (5.5).	5.50	695.00	$3,822.50
09/19/2021	JAM	NL	Review of documents and docket and e-mails to J. Kropp, J. Pomerantz, G. Demo, H. Winograd re: facts and arguments concerning opposition to motion to compel arbitration (3.0); further communications w/ J. Kroop re: arbitration motion (0.1).	3.10	1245.00	$3,859.50
09/19/2021	HRW	NL	Draft and research re: motion to dismiss in notes litigations (8.5).	8.50	695.00	$5,907.50
09/19/2021	JAK	NL	Email correspondence with John Morris regarding various arguments pertaining to waiver and estoppel for arbitration motion objection; review and analyze transcripts from previous hearing; begin research regarding various arguments for arbitration objection;	3.30	1100.00	$3,630.00
09/20/2021	IDK	NL	Review of order from District Court on order of reference re DAF action, including E-mail from J Morris re same.	0.20	1325.00	$265.00
09/20/2021	HRW	NL	Draft opposition to motion to dismiss in notes litigations (13.0).	13.00	695.00	$9,035.00
09/20/2021	JAK	NL	Drafting of portions of objection to arbitration motion; research legal issues for use in same; emails with John Morris regarding additional arguments and support for same; review and analyze provisions of limited partnership agreement for use in arguments in opposition of arbitration agreement; memo outlining legal issues to be researched and supporting direction;	4.40	1100.00	$4,840.00
09/21/2021	GVD	NL	Correspondence with team re ability to enforce arbitration in rejected agreement	0.50	950.00	$475.00
09/21/2021	HRW	NL	Draft opposition to motion to dismiss in notes litigations (9.0).	9.00	695.00	$6,255.00
09/21/2021	HRW	NL	Review prior discovery R&OS sent to all parties in notes litigations (1.0).	1.00	695.00	$695.00
09/21/2021	HRW	NL	Draft R&Os for discovery requests in consolidated notes litigation (1.5).	1.50	695.00	$1,042.50
09/22/2021	JJK	NL	Emails Kroop, Keane on research for opp. to Dondero motion re arbitration; research for inserts.	3.60	995.00	$3,582.00
09/22/2021	JJK	NL	Research for opp. to motion re: arbitration.	4.80	995.00	$4,776.00
09/22/2021	JJK	NL	Research for opp. to arbitration motion and emails Kroop on same.	1.40	995.00	$1,393.00

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				Hours	Rate	Amount
09/22/2021	JAM	NL	Review defendants' discovery demands (0.4); tel c. w. G. Demo re: responses to RFAs (corporate issues) (0.3); tel c. w/ H. Winograd re: document requests and responses (0.7); tel c. w/ G. Demo re: responses to discovery (0.2); e-mails w/ T. Surgent, D. Klos, G. Demo, H. Winograd re: e-mail searches for Nancy Dondero (0.3).	1.90	1245.00	$2,365.50
09/22/2021	GVD	NL	Conference with J. Morris re discovery issues	0.30	950.00	$285.00
09/22/2021	GVD	NL	Conference with H. Winograd re response to motion to dismiss	0.20	950.00	$190.00
09/22/2021	GVD	NL	Draft responses to discovery questions and correspondence with J. Morris re same	0.70	950.00	$665.00
09/22/2021	GVD	NL	Conference with J. Morris re notes litigation status	0.20	950.00	$190.00
09/22/2021	HRW	NL	Draft opposition to motion to dismiss in notes litigations (11.0).	11.00	695.00	$7,645.00
09/22/2021	HRW	NL	Draft R&Os for discovery requests in consolidated notes litigation (2.0).	2.00	695.00	$1,390.00
09/22/2021	HRW	NL	Call with J. Morris re: discovery requests in consolidated notes litigation (0.7).	0.70	695.00	$486.50
09/22/2021	JAK	NL	Extensive drafting of opposition to arbitration motion; legal research regarding issues and arguments for same; emails with internal research group regarding issues for researching and related matters;	6.90	1100.00	$7,590.00
09/23/2021	JJK	NL	Research for opp. to arbitration motion; conf. call Kroop and Keane on same (0.6).	5.80	995.00	$5,771.00
09/23/2021	JJK	NL	Research for opp. to arbitration motion.	3.10	995.00	$3,084.50
09/23/2021	JNP	NL	Review of emails from N. Dondero; Conference with John A. Morris regarding same.	0.30	1295.00	$388.50
09/23/2021	JAM	NL	Tel c. w/ L. Canty re: document review (0.1); tel c. w/ J. Seery re: strategy for responding to motions (0.2); tel c. w/ J. Pomerantz re: strategy for responding to motions (0.1); review documents (3.1).	3.50	1245.00	$4,357.50
09/23/2021	LSC	NL	Begin preparation of document productions.	2.60	460.00	$1,196.00
09/23/2021	GVD	NL	Correspondence re research items re arbitration demand	0.10	950.00	$95.00
09/23/2021	GVD	NL	Conference with J. Morris re notes discovery	0.10	950.00	$95.00
09/23/2021	GVD	NL	Conference with J. Morris re status of notes litigation and next steps	0.20	950.00	$190.00

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September 30, 2021

				Hours	Rate	Amount
09/23/2021	HRW	NL	Gather documents for discovery requests in consolidated notes litigation (1.0).	1.00	695.00	$695.00
09/23/2021	HRW	NL	Draft opposition to motion to dismiss in notes litigations (12.0).	12.00	695.00	$8,340.00
09/23/2021	JAK	NL	Review and analyze initial research results on issues pertaining to arbitration opposition from Jonathan Kim and Peter Keane; extensive drafting of arbitration opposition; additional case research and analysis regarding arguments for same; confer with Jonathan Kim and Peter Keane regarding same;	4.90	1100.00	$5,390.00
09/24/2021	JNP	NL	Conference with Jordan A. Kroop regarding opposition to motion to compel arbitration.	0.30	1295.00	$388.50
09/24/2021	JAM	NL	Tel c. w/ J. Seery re: opposition to motions (0.3); review documents and begin preparing for depositions (4.1).	4.40	1245.00	$5,478.00
09/24/2021	GVD	NL	Review discovery responses to notes litigation	0.30	950.00	$285.00
09/24/2021	HRW	NL	Call with J. Morris and DSI re: discovery requests in consolidated notes litigation (1.0).	1.00	695.00	$695.00
09/24/2021	HRW	NL	Draft R&Os for discovery requests in consolidated notes litigation (1.5).	1.50	695.00	$1,042.50
09/24/2021	HRW	NL	Draft opposition to motion to dismiss in notes litigations (9.0).	9.00	695.00	$6,255.00
09/24/2021	JAK	NL	Continued research and analysis of cases in connection with arbitration opposition; strategy discussion with Jeff Pomerantz regarding same; extensive additional drafting and revision of arbitration opposition;	5.70	1100.00	$6,270.00
09/25/2021	JAM	NL	Review/revise opposition to motion to dismiss (2.7); tel c. w/ J. Seery re: status and strategy for notes litigation (0.3).	3.00	1245.00	$3,735.00
09/26/2021	JAM	NL	Communications w/ J. Seery, D. Klos, D. Newman re: responses to discovery (0.2).	0.20	1245.00	$249.00
09/26/2021	HRW	NL	Draft opposition to motion to dismiss in notes litigations (7.0).	7.00	695.00	$4,865.00
09/26/2021	JAK	NL	Additional research on issues pertaining to arbitration opposition; additional drafting of opposition; email to Jeff Pomerantz and John Morris regarding same with explanation of approach and related suggestions;	2.30	1100.00	$2,530.00
09/27/2021	JNP	NL	Review opposition to motion to arbitrate.	0.30	1295.00	$388.50
09/27/2021	JNP	NL	Conference with John A. Morris regarding opposition to motion to arbitrate.	0.20	1295.00	$259.00

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September 30, 2021

				Hours	Rate	Amount
09/27/2021	JNP	NL	Conference with John A. Morris and Jordan A. Kroop regarding response to motion to arbitrate.	0.40	1295.00	$518.00
09/27/2021	JAM	NL	Review/revise opposition to motion to dismiss (2.5); review/revise written responses to discovery (2.4); e-mails w/ J. Seery, J. Pomerantz, G. Demo, H. Winograd re: written responses to discovery (0.2); tel c. w. J. Seery re: written responses to discovery (0.2); tel c. w/ J. Pomerantz re: oppositions to MTD and arbitration (0.2); tel c. w/ J. Pomerantz, J. Koop re: opposition to motion to compel arbitration (0.4); further revisions to written responses to discovery (0.2); communications w/ J. Seery re: responses to written discovery (0.1).	6.20	1245.00	$7,719.00
09/27/2021	LSC	NL	Continued preparation of document productions.	9.10	460.00	$4,186.00
09/27/2021	GVD	NL	Review response to motion to dismiss litigation	0.60	950.00	$570.00
09/27/2021	HRW	NL	Draft opposition to motion to dismiss in notes litigations (7.5).	7.50	695.00	$5,212.50
09/27/2021	HRW	NL	Gather production for consolidated notes discovery (1.8).	1.80	695.00	$1,251.00
09/27/2021	HRW	NL	Draft and review R&Os for discovery requests in consolidated notes litigation (1.5).	1.50	695.00	$1,042.50
09/27/2021	HRW	NL	Send opposing counsel R&Os in consolidated notes litigation (0.2).	0.20	695.00	$139.00
09/27/2021	HRW	NL	Send opposing counsel production in consolidated notes litigation (0.1).	0.10	695.00	$69.50
09/27/2021	JAK	NL	Strategy discussion with John Morris and Jeff Pomerantz regarding opposition to arbitration motion and related matters; extensive additional drafting, research, and review of issues and portions of arbitration motion opposition; work with Greg Demo regarding confirmation-related citations and background for use in opposition; additional drafting and revisions to arbitration opposition;	3.10	1100.00	$3,410.00
09/28/2021	JNP	NL	Review latest version of opposition to motion to arbitrate and emails regarding same.	0.20	1295.00	$259.00
09/28/2021	JNP	NL	Review opposition to motion to dismiss.	0.30	1295.00	$388.50
09/28/2021	JMF	NL	Review responses to motion to dismiss and arbitration.	0.50	1050.00	$525.00
09/28/2021	JAM	NL	Review/revise draft opposition to motion to compel arbitration (4.8); e-mails w/ J. Seery, J. Pomerantz, J. Koop, G. Demo, H. Winograd re: opposition to motion to compel arbitration (0.4); tel c. w/ J. Seery re: opposition to motion to compel arbitration (0.1);	9.10	1245.00	$11,329.50

				Hours	Rate	Amount
			tel c. w/ J. Koop re: motion to compel arbitration (0.1); further review and revisions to opposition to motions to dismiss and to compel arbitration (3.2); communications w/ H. Winograd, J. Koop re: oppositions to motion to dismiss and to compel arbitration (0.5).			
09/28/2021	LSC	NL	Prepare draft declaration in support of opposition to Motion to compel Arbitration and Stay Litigation, revise same, and prepare exhibits to same.	0.70	460.00	$322.00
09/28/2021	GVD	NL	Review motion to dismiss response	1.00	950.00	$950.00
09/28/2021	HRW	NL	Draft and file opposition to motion to dismiss in notes litigations (8.0).	8.00	695.00	$5,560.00
09/28/2021	JAK	NL	Extensive revisions, review, and editing of opposition to arbitration motion; edits and review of declaration in support of same; confer over telephone and emails with John Morris and Jeff Pomerantz regarding same; final edits and preparation of opposition for filing and service; supervise filing and service of same, with drafting of cover response per local rules;	6.80	1100.00	$7,480.00
09/29/2021	JAM	NL	Review documents and written responses to discovery served by all defendants (2.0); e-mail to defense counsel re: deficiencies in written responses to discovery (0.4); e-mail to J. Seery, T. Surgent, D. Klos, J. Pomerantz, G. Demo, H. Winograd re: defendants' deficiencies in discovery (0.4); tel c. J. Seery re: discovery in the notes litigation (0.3).	3.10	1245.00	$3,859.50
09/29/2021	GVD	NL	Conference with J. Morris re notes litigation discovery	0.20	950.00	$190.00
09/30/2021	JAM	NL	Tel c. w/ G. Demo, Wilmer re: Waterhouse as a witness and regulatory issues (0.8); e-mail to defense counsel re: discovery issues and depositions (0.6); e-mail to D. Dandeneau, J. Pomerantz, G. Demo re: Waterhouse deposition (0.1)	1.50	1245.00	$1,867.50
09/30/2021	GVD	NL	Conference with WilmerHale and J. Morris re discovery issues in notes litigation	0.80	950.00	$760.00
09/30/2021	HRW	NL	Communicate with Robert Half for production re: consolidated notes production (0.2).	0.20	695.00	$139.00
				269.40		**$235,361.50**

[redacted]

EXHIBIT 180

Pachulski Stang Ziehl & Jones LLP

10100 Santa Monica Blvd.
13th Floor
Los Angeles, CA 90067

November 05, 2021
Invoice 128811
Client 36027
Matter 00003
JNP

Board of Directors
Highland Capital Management LP
300 Crescent Court ste. 700
Dallas, TX 75201

RE: Post-Effective Date

STATEMENT OF PROFESSIONAL SERVICES RENDERED THROUGH 11/05/2021

[redacted]

Pachulski Stang Ziehl & Jones LLP
Highland Capital Management LP
36027 -00003

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November 05, 2021

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Notes Litigation

CHM Bill	09/15/2021	NL	2.00	2.00	750.00		1,500.00
09/15/2021	CHM	NL	Review results of privilege review and check documents marked for production or withholding. Run production of NexPoint results and email J. Morris and H. Winograd re same.		2.00	750.00	$1,500.00
CHM Bill	09/15/2021	NL	0.10	0.10	750.00		75.00
09/15/2021	CHM	NL	Review email from H. Winograd and reply.		0.10	750.00	$75.00
CHM Bill	09/23/2021	NL	0.10	0.10	750.00		75.00
09/23/2021	CHM	NL	Review email from H. Winograd and reply.		0.10	750.00	$75.00
CHM	09/30/2021	NL	2.30	2.30	750.00		1,725.00

						Hours	Rate	Amount
Bill								
09/30/2021	CHM	NL	Review documents and run production of consolidated notes litigation search results; email H. Winograd re same.			2.30	750.00	$1,725.00
JAM Bill	10/01/2021		NL	3.10	3.10	1,245.00		3,859.50
10/01/2021	JAM	NL	Review discovery responses and pleadings and prepare Rule 30(b)(6) deposition notices for HCRE, HCMS, and Nexpoint (2.8); communications w/ J. Seery, T. Surgent, D. Klos, J. Pomerantz, G. Demo, H. Winograd re: deposition notices (0.3).			3.10	1245.00	$3,859.50
HRW Bill	10/01/2021		NL	0.50	0.50	695.00		347.50
10/01/2021	HRW	NL	Communicate with Robert Half for production re: consolidated notes production (0.5).			0.50	695.00	$347.50
HRW Bill	10/01/2021		NL	0.50	0.50	695.00		347.50
10/01/2021	HRW	NL	Oversee and review production re: re: consolidated notes production (0.5).			0.50	695.00	$347.50
JAM Bill	10/02/2021		NL	2.60	2.60	1,245.00		3,237.00
10/02/2021	JAM	NL	Tel c. w/ G. Demo re: discovery, strategy (0.4); draft deposition notices for J. Dondero, N. Dondero, F. Waterhouse, Dugaboy, and HCMFA (2.1); e-mails w/ J. Pomerantz, G. Demo, H. Winograd, Z. Annable re: deposition notices (0.1).			2.60	1245.00	$3,237.00
GVD Bill	10/02/2021		NL	0.40	0.40	950.00		380.00
10/02/2021	GVD	NL	Conference with J. Morris about notes litigation discovery issues			0.40	950.00	$380.00
GVD Bill	10/02/2021		NL	0.50	0.50	950.00		475.00
10/02/2021	GVD	NL	Review deposition notices			0.50	950.00	$475.00
JAM Bill	10/03/2021		NL	3.90	3.90	1,245.00		4,855.50
10/03/2021	JAM	NL	Prepare deposition notices for HCRE, HCMS,			3.90	1245.00	$4,855.50

						Hours	Rate	Amount
			NexPoint and subpoena for DC Sauter, and revise deposition notices for F. Waterhouse and HCMFA (3.6); e-mails w/ J. Seery, T. Surgent, D. Klos, J. Pomerantz, G. Demo, H. Winograd re: deposition notices (0.2); tel c. w/ J. Seery, G. Demo re: deposition notices (0.1).					
GVD Bill	10/03/2021		NL	0.30	0.30	950.00		285.00
10/03/2021	GVD	NL	Review discovery requests and correspondence re same			0.30	950.00	$285.00
HRW Bill	10/03/2021		NL	1.00	1.00	695.00		695.00
10/03/2021	HRW	NL	Review and edit deposition notices for notes litigation (1.0).			1.00	695.00	$695.00
JAM Bill	10/04/2021		NL	1.80	1.80	1,245.00		2,241.00
10/04/2021	JAM	NL	Review/revise/finalize deposition notices, subpoenas, and notices of subpoenas (1.1); e-mail to defense counsel, J. Pomerantz, G. Demo, H. Winograd, Z. Annable re: deposition notices, subpoenas, notices of subpoena and related matters (0.3); e-mail to Z. Annable, J. Pomerantz, G. Demo, H. Winograd re: service of the deposition notices and subpoenas (0.1); tel c. w/ J. Seery re: status, discovery (0.3).			1.80	1245.00	$2,241.00
HRW Bill	10/04/2021		NL	0.50	0.50	695.00		347.50
10/04/2021	HRW	NL	Review production re: consolidated notes production (0.5).			0.50	695.00	$347.50
HRW Bill	10/04/2021		NL	0.20	0.20	695.00		139.00
10/04/2021	HRW	NL	Communicate with Robert Half re: production for Employee Claims (0.2).			0.20	695.00	$139.00
JAM Bill	10/05/2021		NL	1.70	1.70	1,245.00		2,116.50
10/05/2021	JAM	NL	Tel c. w/ H. Winograd re: discovery, Aigen e-mail (0.5); tel c. w/ D. Rukavina re: discovery (0.3); tel c. w/ J. Seery re: discovery, status (0.5); e-mails w/ D. Rukavina, D. Deitsch-Perez re: discovery,			1.70	1245.00	$2,116.50

						Hours	Rate	Amount
			depositions (0.4).					
GVD Bill	10/05/2021		NL	0.30	0.30	950.00		285.00
10/05/2021	GVD	NL	Correspondence with Quinn re notes litigation			0.30	950.00	$285.00
HRW Bill	10/05/2021		NL	0.50	0.50	695.00		347.50
10/05/2021	HRW	NL	Call with J. Morris re: discovery issues in notes litigation (0.5).			0.50	695.00	$347.50
HRW Bill	10/05/2021		NL	0.30	0.30	695.00		208.50
10/05/2021	HRW	NL	Review discovery issues in notes litigation (0.3).			0.30	695.00	$208.50
JAM Bill	10/06/2021		NL	1.60	1.60	1,245.00		1,992.00
10/06/2021	JAM	NL	E-mail to D. Deitz-Perez, D. Rukavina re: discovery (0.3); e-mail to D. Dandeneau re: Waterhouse deposition (0.1); e-mail to M. Aigen re: discovery issues (0.3); e-mail to defense counsel re: response to various discovery issues (0.9).			1.60	1245.00	$1,992.00
LSC Bill	10/06/2021		NL	2.10	2.10	460.00		966.00
10/06/2021	LSC	NL	Research, correspondence, and review of discovery.			2.10	460.00	$966.00
GVD Bill	10/06/2021		NL	0.20	0.20	950.00		190.00
10/06/2021	GVD	NL	Correspondence with litigation trustee re outstanding notes			0.20	950.00	$190.00
HRW Bill	10/06/2021		NL	0.80	0.80	695.00		556.00
10/06/2021	HRW	NL	Review responses and production re: discovery requests in notes litigation (0.8).			0.80	695.00	$556.00
HRW Bill	10/06/2021		NL	0.50	0.50	695.00		347.50
10/06/2021	HRW	NL	Respond to J. Morris email re: discovery issues in notes litigation (0.5).			0.50	695.00	$347.50
HRW	10/06/2021		NL	0.20	0.20	695.00		139.00

				Hours	Rate	Amount
Bill						
10/06/2021	HRW	NL	Review emails regarding 30(b)(6) deposition issues and scheduling (0.2).	0.20	695.00	$139.00
HRW Bill	10/06/2021	NL	0.10 0.10	695.00		69.50
10/06/2021	HRW	NL	Send opposing counsel supplemental notes litigation production (0.1).	0.10	695.00	$69.50
HRW Bill	10/06/2021	NL	0.80 0.80	695.00		556.00
10/06/2021	HRW	NL	Prepare supplemental production for notes litigation (0.8).	0.80	695.00	$556.00
JAM Bill	10/07/2021	NL	0.40 0.40	1,245.00		498.00
10/07/2021	JAM	NL	Review/revise e-mail to defense counsel re: discovery (0.4).	0.40	1245.00	$498.00
LSC Bill	10/07/2021	NL	2.30 2.30	460.00		1,058.00
10/07/2021	LSC	NL	Research, correspondence, and review of discovery.	2.30	460.00	$1,058.00
GVD Bill	10/07/2021	NL	0.20 0.20	950.00		190.00
10/07/2021	GVD	NL	Correspondence with Quinn re notes collection issues	0.20	950.00	$190.00
HRW Bill	10/07/2021	NL	0.10 0.10	695.00		69.50
10/07/2021	HRW	NL	Email J. Morris re: discovery issues in notes litigation (0.1).	0.10	695.00	$69.50
HRW Bill	10/07/2021	NL	0.10 0.10	695.00		69.50
10/07/2021	HRW	NL	Email DSI re: re: discovery issues in notes litigation (0.1).	0.10	695.00	$69.50
JAM Bill	10/08/2021	NL	2.70 2.70	1,245.00		3,361.50
10/08/2021	JAM	NL	Analyze NexPoint's Rule 30(b)(6) deposition notice and e-mail to J. Seery, T. Surgent, J. Pomerantz, G.	2.70	1245.00	$3,361.50

							Hours	Rate	Amount
			Demo, H. Winograd re: same (1.4); e-mails to J. Seery, T. Surgent, D. Rukavina, H. Winograd re: objections to NexPoint's Rule 30(b)(6) deposition notice (0.4); revise deposition notices for J. Dondero, HCRE, HCMS, and NexPoint (0.2); e-mails w/ Z. Annable, H. Winograd re: revised deposition notices for J. Dondero, HCRE, HCMS, and NexPoint (0.1); e-mails w/ D. Klos, T. Surgent, H. Winograd re: documents and information concerning J. Dondero compensation, loan history (0.4); review defendants' document production (0.2).					
HRW Bill	10/08/2021		NL	0.10	0.10	695.00			69.50
10/08/2021	HRW	NL	Review 30(b)(6) notices for consolidated notes litigation (0.1).				0.10	695.00	$69.50
HRW Bill	10/08/2021		NL	0.30	0.30	695.00			208.50
10/08/2021	HRW	NL	Review DSI email and production re: Dondero compensation (0.3).				0.30	695.00	$208.50
HRW Bill	10/08/2021		NL	0.20	0.20	695.00			139.00
10/08/2021	HRW	NL	Review production from defendants in consolidated notes litigation (0.2).				0.20	695.00	$139.00
JAM Bill	10/09/2021		NL	5.90	5.90	1,245.00			7,345.50
10/09/2021	JAM	NL	E-mails to TSG re: depositions (0.3); e-mail to H. Winograd re: additional document production (0.1); e-mails w/ D. Klos, T. Surgent, H, Winograd re: Dondero loans and payment history (0.2); e-mails w/ J. Seery, D, Klos re: cost/value of portfolio companies (0.1); begin Nancy Dondero deposition outline (2.3); tel c. w/ J. Seery re: notes litigation (0.2); review documents/transcripts (2.7).					5.90	1245.00	$7,345.50
JAM Bill	10/10/2021		NL	2.10	2.10	1,245.00			2,614.50
10/10/2021	JAM	NL	Analyze Rule 30(b)(6) Notice of Dondero, HCRE and HCMS and prepare draft objections (1.8); tel c. w/ J. Seery re: litigation matters (0.3).				2.10	1245.00	$2,614.50
JAM	10/11/2021		NL	0.40	0.40	1,245.00			498.00

						Hours	Rate	Amount
Bill								
10/11/2021	JAM	NL	E-mails w/ D. Rukavina, D. Deitz-Perez re: depositions (0.2); e-mails w/ D. Klos, T. Conouyer re: Waterhouse roles (0.1); e-mails w/ H. Winograd, L. Canty re: supplemental document production (0.1).			0.40	1245.00	$498.00
LSC Bill	10/11/2021		NL	0.50	0.50	460.00		230.00
10/11/2021	LSC	NL	Retrieve and review Dondero's supplemental production.			0.50	460.00	$230.00
HRW Bill	10/11/2021		NL	0.10	0.10	695.00		69.50
10/11/2021	HRW	NL	Review email from counsel re: deposition schedule in consolidated notes litigation (0.1).			0.10	695.00	$69.50
HRW Bill	10/11/2021		NL	0.50	0.50	695.00		347.50
10/11/2021	HRW	NL	Review supplemental production in consolidated notes litigation (0.5).			0.50	695.00	$347.50
JAM Bill	10/12/2021		NL	4.60	4.60	1,245.00		5,727.00
10/12/2021	JAM	NL	E-mails w/ defense counsel re: discovery (0.3); e-mails w/ D. Klos, L. Canty, H. Winograd re: supplemental document production (0.5); prepare for depositions (3.4); e-mails w/ defense counsel re: depositions (0.2); tel c. w/ J. Seery, D. Klos re: obligors' payments on Notes (0.2).			4.60	1245.00	$5,727.00
LSC Bill	10/12/2021		NL	4.20	4.20	460.00		1,932.00
10/12/2021	LSC	NL	Preparation of supplemental productions (2), including redactions to same and correspondence regarding the same.			4.20	460.00	$1,932.00
LSC Bill	10/12/2021		NL	0.50	0.50	460.00		230.00
10/12/2021	LSC	NL	Coordinate and assist with retrieval and preparation of documents with respect to notes litigation for J. Morris.			0.50	460.00	$230.00
HRW	10/12/2021		NL	1.80	1.80	695.00		1,251.00

				Hours	Rate	Amount
Bill						
10/12/2021	HRW	NL	Review supplemental production for consolidated notes litigation (1.8).	1.80	695.00	$1,251.00
HRW Bill	10/12/2021	NL	0.20 0.20	695.00		139.00
10/12/2021	HRW	NL	Send counsel supplemental production for consolidated notes litigation (0.2).	0.20	695.00	$139.00
HRW Bill	10/12/2021	NL	0.50 0.50	695.00		347.50
10/12/2021	HRW	NL	Call with DSI re: backup documentation for demonstrative chart showing Trussway, MGM, Cornerstone valuations in consolidated notes litigation (0.5).	0.50	695.00	$347.50
HRW Bill	10/12/2021	NL	0.20 0.20	695.00		139.00
10/12/2021	HRW	NL	Email J. Morris, G. Demo, J. Pomerantz, and client re: backup documentation for demonstrative chart showing Trussway, MGM, Cornerstone valuations in consolidated notes litigation (0.2).	0.20	695.00	$139.00
HRW Bill	10/12/2021	NL	0.20 0.20	695.00		139.00
10/12/2021	HRW	NL	Email J. Morris re: supplemental productions for consolidated notes litigations (0.2).	0.20	695.00	$139.00
JAM Bill	10/13/2021	NL	6.80 6.80	1,245.00		8,466.00
10/13/2021	JAM	NL	Prepare for meeting with J. Seery concerning depositions, including analysis of issues concerning NexPoint (1.2); e-mails to J. Seery, T. Surgent, D. Klos re: deposition preparation (0.3); tel c. w/ J. Seery, D. Klos, T. Surgent, G. Demo, H, Winograd re: preparation for depositions (1.5); letters to defense counsel re: documents (0.2); prepare for depositions (3.6).	6.80	1245.00	$8,466.00
GVD Bill	10/13/2021	NL	1.60 1.60	950.00		1,520.00
10/13/2021	GVD	NL	Conference with J. Seery, D. Klos and PSZJ re preparation for depositions	1.60	950.00	$1,520.00

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GVD Bill	10/13/2021		NL	0.30	0.30	950.00		285.00
10/13/2021	GVD	NL	Conference with J. Morris re status of notes litigation and next steps			0.30	950.00	$285.00
GVD Bill	10/13/2021		NL	0.10	0.10	950.00		95.00
10/13/2021	GVD	NL	Review transcripts re notes litigation issues			0.10	950.00	$95.00
HRW Bill	10/13/2021		NL	1.50	1.50	695.00		1,042.50
10/13/2021	HRW	NL	Review defendants' R&Os to Highland's discovery requests in notes litigations (1.5).			1.50	695.00	$1,042.50
HRW Bill	10/13/2021		NL	0.20	0.20	695.00		139.00
10/13/2021	HRW	NL	Email J. Morris re: defendants' R&Os to Highland's discovery requests in notes litigations (0.2).			0.20	695.00	$139.00
HRW Bill	10/13/2021		NL	1.20	1.20	695.00		834.00
10/13/2021	HRW	NL	Call with J. Seery and D. Klos re: deposition prep for notes litigation (1.2).			1.20	695.00	$834.00
HRW Bill	10/13/2021		NL	1.00	1.00	695.00		695.00
10/13/2021	HRW	NL	Prepare for call with J. Seery and D. Klos re: deposition prep for notes litigation (1.0).			1.00	695.00	$695.00
HRW Bill	10/13/2021		NL	0.10	0.10	695.00		69.50
10/13/2021	HRW	NL	Email J. Morris re: supplemental production in notes litigation (0.1).			0.10	695.00	$69.50
HRW Bill	10/13/2021		NL	0.20	0.20	695.00		139.00
10/13/2021	HRW	NL	Send opposing counsel supplemental production in notes litigation (0.2).			0.20	695.00	$139.00

						Hours	Rate	Amount
LSC Bill	10/14/2021		NL	5.90	5.90	460.00		2,714.00
10/14/2021	LSC	NL	Assist with research, retrieval, and review of discovery documents in connection with upcoming depositions.			5.90	460.00	$2,714.00
LSC Bill	10/14/2021		NL	0.50	0.50	460.00		230.00
10/14/2021	LSC	NL	Research and correspondence regarding certain management documents for J. Morris.			0.50	460.00	$230.00
JNP Bill	10/15/2021		NL	0.20	0.20	1,295.00		259.00
10/15/2021	JNP	NL	Conference with John A. Morris regarding upcoming depositions and issues relating to notes litigation including hearing coverage.			0.20	1295.00	$259.00
JNP Bill	10/15/2021		NL	0.10	0.10	1,295.00		129.50
10/15/2021	JNP	NL	Review emails regarding notes depositions and discovery.			0.10	1295.00	$129.50
JAM Bill	10/15/2021		NL	6.80	6.80	1,245.00		8,466.00
10/15/2021	JAM	NL	Tel c. w/ J. Seery, D. Klos, G. Demo, H. Winograd re: preparation for depositions (1.7); tel c. w/ H. Winograd, L. Canty re: depositions, exhibits, and related matters (0.2); prepare for depositions (3.1); e-mails to L. Canty, H. Winograd re: deposition exhibits (0.4); tel c. w/ G. Demo re: depositions (0.2); tel c. w/ J. Pomerantz re: notes litigation (0.3); e-mail to J. Seery, D. Klos re: prior court filings (0.5); e-mail to J. Seery, D. Klos, H. Winograd re: LP Agreement (0.3); e-mail to J. Seery, D. Klos, H. Winograd re: management representation letters (0.1).			6.80	1245.00	$8,466.00
LSC Bill	10/15/2021		NL	3.10	3.10	460.00		1,426.00
10/15/2021	LSC	NL	Research, retrieve, and review documents in connection with Notes Litigation and correspondence regarding the same (2.6); research and correspondence regarding prior productions (.5).			3.10	460.00	$1,426.00
GVD	10/15/2021		NL	1.60	1.60	950.00		1,520.00

				Hours	Rate	Amount
Bill						
10/15/2021	GVD	NL	Attend conference re preparation for notes litigation	1.60	950.00	$1,520.00
HRW Bill	10/15/2021	NL	1.50 1.50	695.00		1,042.50
10/15/2021	HRW	NL	Review productions from Highland to defendants in notes litigations (1.5).	1.50	695.00	$1,042.50
HRW Bill	10/15/2021	NL	0.40 0.40	695.00		278.00
10/15/2021	HRW	NL	Communicate with L. Canty re: productions from Highland to defendants in notes litigations (0.4).	0.40	695.00	$278.00
HRW Bill	10/15/2021	NL	1.60 1.60	695.00		1,112.00
10/15/2021	HRW	NL	Call with J. Morris, G. Demo, J. Seery, D. Klos re: deposition prep for notes litigation (1.6).	1.60	695.00	$1,112.00
HRW Bill	10/15/2021	NL	0.20 0.20	695.00		139.00
10/15/2021	HRW	NL	Call with J. Morris and L. Canty re: deposition prep for notes litigation (0.2).	0.20	695.00	$139.00
JAM Bill	10/16/2021	NL	7.80 7.80	1,245.00		9,711.00
10/16/2021	JAM	NL	Prepare for depositions (7.5); e-mail to HCMLP, PSZJ re: Deposition Outline for Nancy Dondero (0.1); e-mail to L. Canty, H. Winograd re: deposition exhibits (0.1); tel c. w/ H. Winograd re: document production (0.1).	7.80	1245.00	$9,711.00
LSC Bill	10/16/2021	NL	8.50 8.50	460.00		3,910.00
10/16/2021	LSC	NL	Preparation of exhibits in connection with upcoming depositions and research discovery documents regarding the same (4.9); preparation of materials in connection with hearing on motions to dismiss, including legal research regarding the same (3.6)	8.50	460.00	$3,910.00
HRW Bill	10/16/2021	NL	3.80 3.80	695.00		2,641.00
10/16/2021	HRW	NL	Review supplemental HCMFA production for notes litigation (3.8).	3.80	695.00	$2,641.00

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						Hours	Rate	Amount
HRW Bill	10/16/2021		NL	0.40	0.40	695.00		278.00
10/16/2021	HRW	NL	Communicate with L. Canty re: supplemental HCMFA production for notes litigation (0.4).			0.40	695.00	$278.00
HRW Bill	10/16/2021		NL	0.20	0.20	695.00		139.00
10/16/2021	HRW	NL	Email with C. Mackle re: supplemental HCMFA production for notes litigation (0.2).			0.20	695.00	$139.00
JNP Bill	10/17/2021		NL	0.10	0.10	1,295.00		129.50
10/17/2021	JNP	NL	Review emails regarding depositions.			0.10	1295.00	$129.50
JAM Bill	10/17/2021		NL	11.00	11.00	1,245.00		13,695.00
10/17/2021	JAM	NL	Prepare for depositions (9.2); multiple calls with J. Seery re: depositions, facts and strategy for Notes Litigation (1.2); e-mails w H. Winograd, L. Canty re: exhibits (0.3); e-mails w/ defense counsel, court reporter re: depositions (0.3).			11.00	1245.00	$13,695.00
LSC Bill	10/17/2021		NL	2.00	2.00	460.00		920.00
10/17/2021	LSC	NL	Preparation of exhibits in connection with upcoming depositions and research discovery documents regarding the same.			2.00	460.00	$920.00
HRW Bill	10/17/2021		NL	8.00	8.00	695.00		5,560.00
10/17/2021	HRW	NL	Review supplemental HCMFA production for notes litigation (8.0).			8.00	695.00	$5,560.00
HRW Bill	10/17/2021		NL	0.80	0.80	695.00		556.00
10/17/2021	HRW	NL	Review emails from J. Morris and DSI re: hot documents for depositions in notes litigation (0.8).			0.80	695.00	$556.00
HRW Bill	10/17/2021		NL	0.20	0.20	695.00		139.00
10/17/2021	HRW	NL	Send email to J. Morris re: document productions from Highland to defendants in notes litigations			0.20	695.00	$139.00

						Hours	Rate	Amount
			(0.2).					
JNP Bill	10/18/2021		NL	1.00	1.00	1,295.00		1,295.00
10/18/2021	JNP	NL	Review motion to dismiss and opposition regarding notes litigation.			1.00	1295.00	$1,295.00
JNP Bill	10/18/2021		NL	0.90	0.90	1,295.00		1,165.50
10/18/2021	JNP	NL	Conference with John A. Morris and then J. Seery regarding Nancy Dondero deposition.			0.90	1295.00	$1,165.50
JAM Bill	10/18/2021		NL	13.90	13.90	1,245.00		17,305.50
10/18/2021	JAM	NL	Prepare for depositions (5.8); tel c. w/ G. Demo re: depositions (0.2); Nancy Dondero deposition (7.0); tel c. w/ J. Seery (partial), J. Pomerantz re: Nancy Dondero deposition (0.8); tel c. w/ D. Newman re: Nancy Dondero deposition (0.1).			13.90	1245.00	$17,305.50
LSC Bill	10/18/2021		NL	7.90	7.90	460.00		3,634.00
10/18/2021	LSC	NL	Prepare for and assist at deposition of Susan Dondero.			7.90	460.00	$3,634.00
GVD Bill	10/18/2021		NL	0.10	0.10	950.00		95.00
10/18/2021	GVD	NL	Correspondence with L. Canty re deposition issues			0.10	950.00	$95.00
GVD Bill	10/18/2021		NL	0.20	0.20	950.00		190.00
10/18/2021	GVD	NL	Conference with J. Morris re notes litigation strategy			0.20	950.00	$190.00
GVD Bill	10/18/2021		NL	4.50	4.50	950.00		4,275.00
10/18/2021	GVD	NL	Attend deposition of N. Dondero (partial)			4.50	950.00	$4,275.00
GVD Bill	10/18/2021		NL	0.20	0.20	950.00		190.00
10/18/2021	GVD	NL	Review WilmerHale analysis of Investment Company Act issues			0.20	950.00	$190.00
HRW	10/18/2021		NL	3.50	3.50	695.00		2,432.50

						Hours	Rate	Amount
Bill								
10/18/2021	HRW	NL	Review supplemental HCMFA production for notes litigation (3.5).			3.50	695.00	$2,432.50
HRW Bill	10/18/2021		NL	6.00	6.00	695.00		4,170.00
10/18/2021	HRW	NL	Deposition of Nancy Dondero for notes litigation (6.0).			6.00	695.00	$4,170.00
HRW Bill	10/18/2021		NL	0.50	0.50	695.00		347.50
10/18/2021	HRW	NL	Review Waterhouse deposition outline (0.5).			0.50	695.00	$347.50
JNP Bill	10/19/2021		NL	1.40	1.40	1,295.00		1,813.00
10/19/2021	JNP	NL	Continue to prepare for hearing on motion to dismiss.			1.40	1295.00	$1,813.00
JNP Bill	10/19/2021		NL	0.10	0.10	1,295.00		129.50
10/19/2021	JNP	NL	Review and respond to email regarding use of Dondero plan proposal in course of litigation.			0.10	1295.00	$129.50
JAM Bill	10/19/2021		NL	14.60	14.60	1,245.00		18,177.00
10/19/2021	JAM	NL	Prepare for Waterhouse deposition (3.6); Waterhouse deposition (including multiple calls with G. Demo and/or H. Winograd) (10.2); tel c. w/ J. Seery re: Waterhouse deposition (0.1); tel c. w/ G. Demo, H. Winograd re: Waterhouse deposition (0.3); tel c. w/ J. Seery re: status, strategy (0.4).			14.60	1245.00	$18,177.00
LSC Bill	10/19/2021		NL	11.30	11.30	460.00		5,198.00
10/19/2021	LSC	NL	Prepare for and assist at deposition of Frank Waterhouse.			11.30	460.00	$5,198.00
GVD Bill	10/19/2021		NL	0.20	0.20	950.00		190.00
10/19/2021	GVD	NL	Conference with J. Seery re issues re Dondero deposition			0.20	950.00	$190.00
GVD	10/19/2021		NL	1.10	1.10	950.00		1,045.00

				Hours	Rate	Amount
Bill						
10/19/2021	GVD	NL	Review issues re application of mediation privilege	1.10	950.00	$1,045.00
GVD	10/19/2021	NL	0.60 0.60	950.00		570.00
Bill						
10/19/2021	GVD	NL	Multiple conferences with H. Winograd and J. Morris re status of Waterhouse deposition	0.60	950.00	$570.00
GVD	10/19/2021	NL	4.60 4.60	950.00		4,370.00
Bill						
10/19/2021	GVD	NL	Attend Waterhouse deposition (partial)	4.60	950.00	$4,370.00
HRW	10/19/2021	NL	9.50 9.50	695.00		6,602.50
Bill						
10/19/2021	HRW	NL	Deposition of Frank Waterhouse for notes litigation (9.5).	9.50	695.00	$6,602.50
HRW	10/19/2021	NL	1.50 1.50	695.00		1,042.50
Bill						
10/19/2021	HRW	NL	Review Waterhouse deposition outline (1.5).	1.50	695.00	$1,042.50
HRW	10/19/2021	NL	1.80 1.80	695.00		1,251.00
Bill						
10/19/2021	HRW	NL	Review supplemental HCMFA production for notes litigation (1.8).	1.80	695.00	$1,251.00
HRW	10/19/2021	NL	0.50 0.50	695.00		347.50
Bill						
10/19/2021	HRW	NL	Calls with G. Demo and J. Morris re: Waterhouse deposition (0.5).	0.50	695.00	$347.50
HRW	10/19/2021	NL	0.10 0.10	695.00		69.50
Bill						
10/19/2021	HRW	NL	Call with J. Morris re: Waterhouse deposition (0.1).	0.10	695.00	$69.50
HRW	10/19/2021	NL	0.30 0.30	695.00		208.50
Bill						
10/19/2021	HRW	NL	Email with G. Demo and J. Elkin re: mediation privilege (0.3).	0.30	695.00	$208.50

						Hours	Rate	Amount
HRW Bill	10/19/2021		NL	0.30	0.30	695.00		208.50
10/19/2021	HRW	NL	Research issue of FRE 408 and use of documents from mediation (0.3).			0.30	695.00	$208.50
JAM Bill	10/20/2021		NL	6.80	6.80	1,245.00		8,466.00
10/20/2021	JAM	NL	Prepare for Dondero deposition (4.2); e-mails w/ L. Canty re: exhibits for Dondero deposition (0.2); Dondero deposition (cancelled) (0.2); tel c. w/ J. Seery re: notes litigation (0.3); e-mails w/ court reporter re: Seery deposition (0.1); e-mails w/ D. Rukavina, H. Winograd re: discovery (0.6); tel c. w/ J. Seery re: notes litigation (0.5); tel c. w/ G. Demo re: notes litigation (0.1); tel c. w/ D. Klos, K. Hendrix re: depositions in notes litigation (0.2); tel c. w/ J. Seery re: notes litigation (0.3); tel c. w/ B. Sharp re: forensic analysis of notes (0.1).			6.80	1245.00	$8,466.00
LSC Bill	10/20/2021		NL	1.90	1.90	460.00		874.00
10/20/2021	LSC	NL	Prepare for anticipated Dondero and related entities deposition (ultimately canceled).			1.90	460.00	$874.00
GVD Bill	10/20/2021		NL	0.10	0.10	950.00		95.00
10/20/2021	GVD	NL	Correspondence with J. Pomerantz re mediation issues			0.10	950.00	$95.00
GVD Bill	10/20/2021		NL	0.10	0.10	950.00		95.00
10/20/2021	GVD	NL	Correspondence with H. Winograd re HCMFA notes litigation			0.10	950.00	$95.00
HRW Bill	10/20/2021		NL	0.30	0.30	695.00		208.50
10/20/2021	HRW	NL	Review HCMFA discovery in notes litigation (0.3).			0.30	695.00	$208.50
HRW Bill	10/20/2021		NL	0.10	0.10	695.00		69.50
10/20/2021	HRW	NL	Email G. Demo re: HCMFA adversary proceeding (0.1).			0.10	695.00	$69.50
HRW	10/20/2021		NL	0.10	0.10	695.00		69.50

						Hours	Rate	Amount
Bill								
10/20/2021	HRW	NL	Email J. Morris re: HCMFA supplemental discovery in notes litigation (0.1).			0.10	695.00	$69.50
HRW Bill	10/20/2021		NL	0.10	0.10	695.00		69.50
10/20/2021	HRW	NL	Review email from J. Morris re: document requests to HCMFA in notes litigation (0.1).			0.10	695.00	$69.50
HRW Bill	10/20/2021		NL	0.10	0.10	695.00		69.50
10/20/2021	HRW	NL	Review email from HCMFA counsel re: Highland's document requests to HCMFA in notes litigation (0.1).			0.10	695.00	$69.50
JNP Bill	10/21/2021		NL	0.70	0.70	1,295.00		906.50
10/21/2021	JNP	NL	Continue to prepare for motion to dismiss hearing.			0.70	1295.00	$906.50
JAM Bill	10/21/2021		NL	8.30	8.30	1,245.00		10,333.50
10/21/2021	JAM	NL	E-mail to J. Vaughn, J. Seery, B. Sharp re: metadata for promissory notes (0.2); meet w/ J. Seery to prepare for deposition (0.8); review audited financials concerning "practice of forgivable loans" (0.6); tel c. w/ J. Seery, D. Klos re: "practice of forgivable loans" (0.1); prepare for J. Seery deposition (1.6); Seery deposition (4.8); tel c. w/ J. Pomerantz re: Seery deposition (0.2).			8.30	1245.00	$10,333.50
GVD Bill	10/21/2021		NL	2.10	2.10	950.00		1,995.00
10/21/2021	GVD	NL	Attend J. Seery deposition (partial)			2.10	950.00	$1,995.00
HRW Bill	10/21/2021		NL	3.00	3.00	695.00		2,085.00
10/21/2021	HRW	NL	Deposition of Jim Seery for notes litigation (3.0).			3.00	695.00	$2,085.00
HRW Bill	10/21/2021		NL	0.10	0.10	695.00		69.50
10/21/2021	HRW	NL	Email J. Pomerantz re: notes litigation MTD (0.1).			0.10	695.00	$69.50
HRW	10/21/2021		NL	0.20	0.20	695.00		139.00

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Bill						
10/21/2021	HRW	NL	Review notes litigation MTD (0.2).	0.20	695.00	$139.00
HRW	10/21/2021	NL	0.10 0.10 695.00			69.50
Bill						
10/21/2021	HRW	NL	Review J. Morris email re: legal research for MSJ and notes litigation (0.1).	0.10	695.00	$69.50
JAM	10/22/2021	NL	3.70 3.70 1,245.00			4,606.50
Bill						
10/22/2021	JAM	NL	E-mail to D. Dandeneau re: Waterhouse transcript (0.2); e-mails w/ D. Klos re: proof of payment on loans (0.3); tel c. w/ J. Seery re: Seery deposition (0.2); e-mails w/ J. Vaughn, T. Surgent, G. Demo, H. Winograd re: metadata for the notes (0.4); tel c. w/ J. Vaughn, T. Surgent re: metadata for the notes (0.3); prepare for depositions (1.7); e-mail to L. Canty re: proof of payment document production (0.2); tel c. w/ J. Seery re: notes litigation (0.2); tel c. w/ J. Seery re: notes litigation (0.2).	3.70	1245.00	$4,606.50
GVD	10/22/2021	NL	0.50 0.50 950.00			475.00
Bill						
10/22/2021	GVD	NL	Conference with J. Morris and J. Pomerantz re open issues in notes litigation	0.50	950.00	$475.00
JAM	10/23/2021	NL	3.50 3.50 1,245.00			4,357.50
Bill						
10/23/2021	JAM	NL	E-mail to defense counsel re: discovery (0.4); e-mail to D. Deitz-Perez re: costs for cancelling Dondero deposition (0.1); e-mails w/ T. Surgent, P. Giep re: document production (0.2); prepare for depositions (2.7); tel c. w/ J. Seery re: facts, status, strategy of notes litigation (0.1).	3.50	1245.00	$4,357.50
JAM	10/24/2021	NL	4.30 4.30 1,245.00			5,353.50
Bill						
10/24/2021	JAM	NL	Review documents and prepare for depositions (including sending documents to L. Canty, H. Winograd for production) (4.0); tel c. w/ J. Seery re: Notes Litigation facts and status (0.3).	4.30	1245.00	$5,353.50

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HRW Bill	10/24/2021		NL	3.00	3.00	695.00		2,085.00
10/24/2021	HRW	NL	Draft second HCMFA notes complaint (3.0).			3.00	695.00	$2,085.00
HRW Bill	10/24/2021		NL	0.20	0.20	695.00		139.00
10/24/2021	HRW	NL	Review documents for notes production (0.2).			0.20	695.00	$139.00
JNP Bill	10/25/2021		NL	1.00	1.00	1,295.00		1,295.00
10/25/2021	JNP	NL	Continue to prepare for oral argument on motion to dismiss.			1.00	1295.00	$1,295.00
JNP Bill	10/25/2021		NL	0.10	0.10	1,295.00		129.50
10/25/2021	JNP	NL	Review emails regarding notes litigation discovery.			0.10	1295.00	$129.50
JAM Bill	10/25/2021		NL	8.00	8.00	1,245.00		9,960.00
10/25/2021	JAM	NL	Work on Dondero deposition outline (5.3); tel c. w/ J. Seery re: notes litigation (0.1); communications w/ H. Winograd, P. Jeffries re: document production (0.3); prep session w/ D. Klos, K. Hendrix, H. Winograd (1.5); e-mail to defense counsel re: document production (0.3); e-mails w/ defense counsel re: deposition schedule (0.1); tel c. w/ H. Winograd re: notes litigation (0.2); review HCMFA document production (0.2).			8.00	1245.00	$9,960.00
GVD Bill	10/25/2021		NL	0.40	0.40	950.00		380.00
10/25/2021	GVD	NL	Review limited partnership agreement re fiduciary duty issues and correspondence with J. Pomerantz re same			0.40	950.00	$380.00
GVD Bill	10/25/2021		NL	0.30	0.30	950.00		285.00
10/25/2021	GVD	NL	Review and comment on new note adversary for HCMFA			0.30	950.00	$285.00

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HRW Bill	10/25/2021		NL	2.50	2.50	695.00		1,737.50
10/25/2021	HRW	NL	Review HCMFA supplemental documents (2.5).			2.50	695.00	$1,737.50
HRW Bill	10/25/2021		NL	1.50	1.50	695.00		1,042.50
10/25/2021	HRW	NL	Review HCRE supplemental documents (1.5).			1.50	695.00	$1,042.50
HRW Bill	10/25/2021		NL	0.10	0.10	695.00		69.50
10/25/2021	HRW	NL	Call with J. Morris re: Hendrix and Klos depo prep (0.1).			0.10	695.00	$69.50
HRW Bill	10/25/2021		NL	1.50	1.50	695.00		1,042.50
10/25/2021	HRW	NL	Call with J. Morris, D. Klos, K. Hendrix re: depo prep (1.5).			1.50	695.00	$1,042.50
HRW Bill	10/25/2021		NL	0.30	0.30	695.00		208.50
10/25/2021	HRW	NL	Review HCMFA supplemental production (0.3).			0.30	695.00	$208.50
HRW Bill	10/25/2021		NL	0.30	0.30	695.00		208.50
10/25/2021	HRW	NL	Review notes litigation supplemental production (0.3).			0.30	695.00	$208.50
HRW Bill	10/25/2021		NL	0.50	0.50	695.00		347.50
10/25/2021	HRW	NL	Edit and review HCMFA second notes complaint (0.5).			0.50	695.00	$347.50
HRW Bill	10/25/2021		NL	0.20	0.20	695.00		139.00
10/25/2021	HRW	NL	Email J. Morris re: HCMFA notes discovery (0.2).			0.20	695.00	$139.00
HRW Bill	10/25/2021		NL	1.50	1.50	695.00		1,042.50
10/25/2021	HRW	NL	Research issues for summary judgment in notes litigation (1.5).			1.50	695.00	$1,042.50
JNP	10/26/2021		NL	0.40	0.40	1,295.00		518.00

						Hours	Rate	Amount
Bill								
10/26/2021	JNP	NL	Conference with John A. Morris regarding depositions and strategy in notes litigation.			0.40	1295.00	$518.00
JNP Bill	10/26/2021		NL	1.10	1.10	1,295.00		1,424.50
10/26/2021	JNP	NL	Continue to review cases regarding preparation for hearing on motion to dismiss.			1.10	1295.00	$1,424.50
JAM Bill	10/26/2021		NL	9.20	9.20	1,245.00		11,454.00
10/26/2021	JAM	NL	Review of transcripts and begin outlining issues/facts (3.2); meet w/ D. Klos, K. Hendrix to prepare for depositions (2.7); tel c. w/ J. Pomerantz re: notes litigation (0.4); prepare for depositions, including review of expert report (1.8); e-mails w/ defense counsel re: discovery (0.4); meet w/ D. Klos re: Dondero compensation (0.4); tel c. w/ J. Pomerantz re: Dondero compensation and expert issues (0.3).			9.20	1245.00	$11,454.00
GVD Bill	10/26/2021		NL	0.40	0.40	950.00		380.00
10/26/2021	GVD	NL	Conference with J. Morris and D. Klos re preparation for Klos deposition			0.40	950.00	$380.00
HRW Bill	10/26/2021		NL	2.00	2.00	695.00		1,390.00
10/26/2021	HRW	NL	Research issues for consolidation of cases (2.0).			2.00	695.00	$1,390.00
HRW Bill	10/26/2021		NL	1.20	1.20	695.00		834.00
10/26/2021	HRW	NL	Draft errata for opposition to MTD (1.2).			1.20	695.00	$834.00
HRW Bill	10/26/2021		NL	0.80	0.80	695.00		556.00
10/26/2021	HRW	NL	Review notes litigation supplemental HCRE production (0.8).			0.80	695.00	$556.00
HRW Bill	10/26/2021		NL	0.10	0.10	695.00		69.50
10/26/2021	HRW	NL	Review J. Morris email to counsel re: Dondero production in notes litigation (0.1).			0.10	695.00	$69.50

						Hours	Rate	Amount
HRW Bill	10/26/2021		NL	0.10	0.10	695.00		69.50
10/26/2021	HRW	NL	Review email from counsel re: Dondero notes production in notes litigation (0.1).			0.10	695.00	$69.50
HRW Bill	10/26/2021		NL	0.20	0.20	695.00		139.00
10/26/2021	HRW	NL	Review Dondero responses to discovery requests in notes litigation (0.2).			0.20	695.00	$139.00
HRW Bill	10/26/2021		NL	0.10	0.10	695.00		69.50
10/26/2021	HRW	NL	Email J. Morris re: HCRE supplemental production in notes litigation (0.1).			0.10	695.00	$69.50
HRW Bill	10/26/2021		NL	0.10	0.10	695.00		69.50
10/26/2021	HRW	NL	Email J. Morris and J. Pomerantz re: errata for opposition to MTD in notes litigation (0.1).			0.10	695.00	$69.50
HRW Bill	10/26/2021		NL	0.10	0.10	695.00		69.50
10/26/2021	HRW	NL	Email local counsel re: errata for opposition to MTD in notes litigation (0.1).			0.10	695.00	$69.50
HRW Bill	10/26/2021		NL	0.10	0.10	695.00		69.50
10/26/2021	HRW	NL	Review email from local counsel re: errata for opposition to MTD in notes litigation (0.1).			0.10	695.00	$69.50
JNP Bill	10/27/2021		NL	1.30	1.30	1,295.00		1,683.50
10/27/2021	JNP	NL	Continue to prepare for hearing on motion to dismiss.			1.30	1295.00	$1,683.50
JNP Bill	10/27/2021		NL	0.30	0.30	1,295.00		388.50
10/27/2021	JNP	NL	Conference with Gregory V. Demo, John A. Morris and J. Seery regarding Klos and Hendrix depositions.			0.30	1295.00	$388.50
JAM	10/27/2021		NL	9.00	9.00	1,245.00		11,205.00

						Hours	Rate	Amount
Bill								
10/27/2021	JAM	NL	Prepare for depositions (0.6); e-mails w/ defense counsel re: document production (0.2); Hendrix and Klos depositions (7.7); tel c. w/ J. Seery, J. Pomerantz, G. Demo re: depositions (and certain unrelated matters) (0.5).			9.00	1245.00	$11,205.00
GVD Bill	10/27/2021		NL	0.50	0.50	950.00		475.00
10/27/2021	GVD	NL	Attend K. Hendrix deposition (partial)			0.50	950.00	$475.00
HRW Bill	10/27/2021		NL	0.50	0.50	695.00		347.50
10/27/2021	HRW	NL	Review HCMFA supplemental documents for notes litigations (0.5).			0.50	695.00	$347.50
HRW Bill	10/27/2021		NL	0.10	0.10	695.00		69.50
10/27/2021	HRW	NL	Email J. Morris re: HCMFA and HCRE supplemental documents for notes litigations (0.1).			0.10	695.00	$69.50
HRW Bill	10/27/2021		NL	2.00	2.00	695.00		1,390.00
10/27/2021	HRW	NL	Research re: summary judgment standard for notes litigations (2.0).			2.00	695.00	$1,390.00
HRW Bill	10/27/2021		NL	0.10	0.10	695.00		69.50
10/27/2021	HRW	NL	Email local counsel re: errata for opposition briefs to MTD (0.1).			0.10	695.00	$69.50
HRW Bill	10/27/2021		NL	1.00	1.00	695.00		695.00
10/27/2021	HRW	NL	Draft errata for opposition briefs to MTD (1.0).			1.00	695.00	$695.00
HRW Bill	10/27/2021		NL	3.00	3.00	695.00		2,085.00
10/27/2021	HRW	NL	Hendrix deposition for notes litigations (3.0).			3.00	695.00	$2,085.00
HRW Bill	10/27/2021		NL	2.50	2.50	695.00		1,737.50
10/27/2021	HRW	NL	Klos deposition for notes litigations (2.5).			2.50	695.00	$1,737.50

						Hours	Rate	Amount
JNP Bill	10/28/2021		NL	2.00	2.00	1,295.00		2,590.00
10/28/2021	JNP	NL	Continue to prepare for hearing on motion to dismiss.			2.00	1295.00	$2,590.00
JAM Bill	10/28/2021		NL	6.70	6.70	1,245.00		8,341.50
10/28/2021	JAM	NL	Amend six deposition notices (0.3); e-mail to counsel re: Dondero deposition (0.1); tel c. w/ J. Seery re: notes litigation (0.5); communications w/ L. Canty, P. Jeffries re: Dondero deposition and exhibits (0.6); tel c. w/ H. Winograd re: notes litigation (0.8); prepare for Dondero deposition (4.1); tel c. w/ G. Demo re: notes litigation (0.2); tel c. w/ D. Rukavina, H. Winograd re: witnesses (0.1).			6.70	1245.00	$8,341.50
GVD Bill	10/28/2021		NL	0.20	0.20	950.00		190.00
10/28/2021	GVD	NL	Conference with J. Morris re potential expert discovery issues			0.20	950.00	$190.00
GVD Bill	10/28/2021		NL	0.20	0.20	950.00		190.00
10/28/2021	GVD	NL	Conference with J. Morris re deposition issues re notes litigation			0.20	950.00	$190.00
HRW Bill	10/28/2021		NL	0.80	0.80	695.00		556.00
10/28/2021	HRW	NL	Call with J. Morris re: notes litigations (0.8).			0.80	695.00	$556.00
HRW Bill	10/28/2021		NL	0.10	0.10	695.00		69.50
10/28/2021	HRW	NL	Review email from counsel re: extension for expert reports in notes litigation (0.1).			0.10	695.00	$69.50
HRW Bill	10/28/2021		NL	0.20	0.20	695.00		139.00
10/28/2021	HRW	NL	Send counsel supplemental production for notes litigations and related tasks (0.2).			0.20	695.00	$139.00

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HRW Bill	10/28/2021		NL	7.00	7.00	695.00		4,865.00
10/28/2021	HRW	NL	Research re: summary judgment in notes litigation (7.0).			7.00	695.00	$4,865.00
HRW Bill	10/28/2021		NL	0.20	0.20	695.00		139.00
10/28/2021	HRW	NL	Review and finalize errata for opposition briefs to MTD in notes litigation (0.2).			0.20	695.00	$139.00
HRW Bill	10/28/2021		NL	0.20	0.20	695.00		139.00
10/28/2021	HRW	NL	Review and edit amended deposition notices in notes litigation (0.2).			0.20	695.00	$139.00
HRW Bill	10/28/2021		NL	0.10	0.10	695.00		69.50
10/28/2021	HRW	NL	Email local counsel re: amended deposition notices in notes litigation (0.1).			0.10	695.00	$69.50
JNP Bill	10/29/2021		NL	2.50	2.50	1,295.00		3,237.50
10/29/2021	JNP	NL	Continue preparing for hearing on motion to dismiss.			2.50	1295.00	$3,237.50
JNP Bill	10/29/2021		NL	0.20	0.20	1,295.00		259.00
10/29/2021	JNP	NL	Conference with Jordan A. Kroop regarding overlap between motion to dismiss and motion to enforce in notes litigation.			0.20	1295.00	$259.00
JNP Bill	10/29/2021		NL	0.10	0.10	1,295.00		129.50
10/29/2021	JNP	NL	Review of NexPoint motion to extend time to designate experts.			0.10	1295.00	$129.50
JMF Bill	10/29/2021		NL	0.30	0.30	1,050.00		315.00
10/29/2021	JMF	NL	Review motions to extend expert discovery deadlines.			0.30	1050.00	$315.00
JAM	10/29/2021		NL	11.90	11.90	1,245.00		14,815.50

				Hours	Rate	Amount
Bill						
10/29/2021	JAM	NL	Prepare for Dondero deposition (4.2); Dondero deposition (including multiple calls with G. Demo, H. Winograd during breaks) (7.0); tel c. w/ G. Demo, H. Winograd re: post-deposition follow-up (0.5); tel c. w/ J. Seery re: Dondero deposition (0.2).	11.90	1245.00	$14,815.50
GVD Bill	10/29/2021	NL	2.80 2.80	950.00		2,660.00
10/29/2021	GVD	NL	Attend deposition of J. Dondero (partial)	2.80	950.00	$2,660.00
GVD Bill	10/29/2021	NL	0.40 0.40	950.00		380.00
10/29/2021	GVD	NL	Review emails re correspondence re prepayment allocation	0.40	950.00	$380.00
GVD Bill	10/29/2021	NL	1.00 1.00	950.00		950.00
10/29/2021	GVD	NL	Multiple conferences with J. Morris and H. Winograd re status of Dondero deposition	1.00	950.00	$950.00
HRW Bill	10/29/2021	NL	5.00 5.00	695.00		3,475.00
10/29/2021	HRW	NL	Dondero deposition for consolidated notes litigation (5.0).	5.00	695.00	$3,475.00
HRW Bill	10/29/2021	NL	1.00 1.00	695.00		695.00
10/29/2021	HRW	NL	Research for summary judgment in consolidated notes litigation (1.0).	1.00	695.00	$695.00
HRW Bill	10/29/2021	NL	0.50 0.50	695.00		347.50
10/29/2021	HRW	NL	Draft and review DC Sauter deposition subpoena and related documents (0.5).	0.50	695.00	$347.50
HRW Bill	10/29/2021	NL	0.20 0.20	695.00		139.00
10/29/2021	HRW	NL	Email with local counsel re: DC Sauter deposition subpoena (0.2).	0.20	695.00	$139.00

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HRW Bill	10/29/2021		NL	0.60	0.60	695.00		417.00
10/29/2021	HRW	NL	Calls with J. Morris and G. Demo re: Dondero deposition (0.6).			0.60	695.00	$417.00
HRW Bill	10/29/2021		NL	0.20	0.20	695.00		139.00
10/29/2021	HRW	NL	Review Waterhouse deposition transcript (0.2).			0.20	695.00	$139.00
HRW Bill	10/29/2021		NL	0.30	0.30	695.00		208.50
10/29/2021	HRW	NL	Review NexPoint motion to extend discovery deadlines (0.3).			0.30	695.00	$208.50
HRW Bill	10/29/2021		NL	0.10	0.10	695.00		69.50
10/29/2021	HRW	NL	Email HCMFA counsel re: deposition subpoena (0.1).			0.10	695.00	$69.50
JAM Bill	10/30/2021		NL	4.30	4.30	1,245.00		5,353.50
10/30/2021	JAM	NL	Review documents and prepared for Alan Johnson (expert) deposition (4.3).			4.30	1245.00	$5,353.50
JAM Bill	10/31/2021		NL	5.00	5.00	1,245.00		6,225.00
10/31/2021	JAM	NL	Prepare for Johnson deposition and for summary judgment (4.8); tel c. w/ J. Seery re: notes litigation (0.2).			5.00	1245.00	$6,225.00
HRW Bill	10/31/2021		NL	2.20	2.20	695.00		1,529.00
10/31/2021	HRW	NL	Research and related tasks for response to NexPoint's motion to extend discovery deadlines (2.2).			2.20	695.00	$1,529.00
HRW Bill	10/31/2021		NL	0.80	0.80	695.00		556.00
10/31/2021	HRW	NL	Review productions in notes litigations (0.8).			0.80	695.00	$556.00

						Hours	Rate	Amount
GVD Bill	11/01/2021		NL	0.10	0.10	950.00		95.00
11/01/2021	GVD	NL	Correspondence with J. Morris re filing of HCMFA adversary			0.10	950.00	$95.00
GVD Bill	11/01/2021		NL	0.60	0.60	950.00		570.00
11/01/2021	GVD	NL	Conference with Quinn re status of notes litigation			0.60	950.00	$570.00
JAK Bill	11/01/2021		NL	1.00	1.00	1,100.00		1,100.00
11/01/2021	JAK	NL	Strategy emails regarding reply to objection to motion to dismiss among Jeff Pomerantz, John Morris, and local co-counsel (0.5); review outline of argument for objection to motion to dismiss from Jeff Pomerantz (0.5);			1.00	1100.00	$1,100.00
JAK Bill	11/01/2021		NL	0.90	0.90	1,100.00		990.00
11/01/2021	JAK	NL	Begin outlining argument for hearing on objection to motion for arbitration.			0.90	1100.00	$990.00
GVD Bill	11/02/2021		NL	0.30	0.30	950.00		285.00
11/02/2021	GVD	NL	Conference with J. Morris re strategy for notes litigation			0.30	950.00	$285.00
GVD Bill	11/03/2021		NL	1.20	1.20	950.00		1,140.00
11/03/2021	GVD	NL	Review draft arguments on motion to dismiss and motion to compel arbitration			1.20	950.00	$1,140.00
GVD Bill	11/03/2021		NL	0.50	0.50	950.00		475.00
11/03/2021	GVD	NL	Initial conference with PSZJ team re preparation for oral argument (0.3); Attend follow up conference re preparation for oral argument (partial) (0.2)			0.50	950.00	$475.00
GVD Bill	11/04/2021		NL	0.40	0.40	950.00		380.00
11/04/2021	GVD	NL	Conference with J. Morris re preparation for Dondero deposition			0.40	950.00	$380.00

Pachulski Stang Ziehl & Jones LLP
Highland Capital Management LP
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					Hours	Rate	Amount
GVD Bill	11/04/2021	NL	0.20	0.20	950.00		190.00
11/04/2021	GVD	NL	Conference with J. Pomerantz and J. Morris re status of Dondero deposition		0.20	950.00	$190.00
					377.30		**$361,824.00**

EXHIBIT 181

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re HIGHLAND CAPITAL MANAGEMENT, L.P., Debtor.	§ § § § § §	Chapter 11 Case No. 19-34054-sgj11
HIGHLAND CAPITAL MANAGEMENT, L.P., Plaintiff, v. HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, L.P. Defendant.	§ § § § § § § § § § §	Adv. No. 21-03004

DECLARATION OF DENNIS C. SAUTER, JR.

I, Dennis C. Sauter, Jr., hereby swear under oath and penalty of perjury pursuant to the laws of the United States of America that the following is true and correct to the best of my knowledge and belief:

1. My name is Dennis C. Sauter, Jr. I am over the age of 21, have never been convicted of a felony or crime of moral turpitude, and am otherwise qualified to give this Declaration. I have personal knowledge of the facts stated in this Declaration, or such facts are known to me from my review of the books and records of Highland Capital Management Fund Advisors, L.P. ("HCMFA").

2. I am an attorney licensed to practice law in the State of Texas and have been such since 2001.

EXHIBIT "A"

3. While I provided limited legal services to Highland Capital Management, L.P. (the "Debtor") and its affiliated entities as outside counsel before I became in-house counsel, those services were limited to real estate transactions having nothing to do with the facts discussed in this Declaration.

4. HCMFA is a registered advisor under the Investment Advisors Act of 1940. CITE. As such, HCMFA advises various independent funds, which, in turn, are investment vehicles for a large number of investors.

5. HCMFA has always had very few employees. During 2019, for example, HCMFA had only 7 to 9 employees.

6. Instead, most of the services needed by HCMFA to transact its business were provided by the Debtor pursuant to that certain *Second Amended and Restated Shared Services Agreement* dated February 8, 2013 (the "Shared Services Agreement"), a true and correct copy of which is attached hereto as Exhibit 1.

7. This was standard business practices for the Debtor and various other affiliated companies, including other advisers within the Debtor's and its affiliates "complex" of businesses: the Debtor would employ most of the employees and then share those employees with HCMFA and other "complex" entities in exchange for payments by HCMFA and such other entities.

8. Thus, under the Shared Services Agreement, employees of the Debtor (many of whom were highly trained and specialized) provided many of the key services to HCMFA on an as-needed basis. These services included legal, accounting, regulatory, compliance, IT, and tax services, among others. Additionally, under the Shared Services Agreement the Debtor provided critical electronic infrastructure to HCMFA and other "complex" entities, such that the books and records, and e-mail communications, of HCMFA were actually stored on the Debtor's server.

9. These facts are very important to the issues I will discuss below.

10. On January 22, 2021, the Debtor filed its *Complaint for (i) Breach of Contract and (ii) Turnover of Property of the Debtor's Estate* (the "Complaint") against HCMFA, thereby initiating this Adversary Proceeding.

11. The Complaint concerns two promissory notes each dated May 2, 2019 (the "Notes") that the Debtor seeks a judgment against HCMFA for: (i) a note for $5 million; and (ii) a note for $2.4 million.

12. On March 1, 2021, HCMFA filed its *Defendant's Original Answer* (the "Answer").

13. At the time that the Debtor filed the Complaint, I promptly undertook an internal review of the background facts concerning the Notes. I had no knowledge of them since I had not been employed by HCMFA, and the few employees of HCMFA had no knowledge of the Notes. I also discussed the Notes with James Dondero, formerly the CEO of the Debtor, and Mr. Dondero could not recall the genesis of the Notes. My review of the limited books and records of HCMFA that were not in the possession of the Debtor did not reveal any background facts regarding the Notes or the existence of the Notes.

14. Normally, I would have discussed the Notes with employees of the Debtor who also provided services to HCMFA pursuant to the Shared Services Agreement in order to assess what defenses or affirmative defenses to the Complaint existed. However, in this instance I was precluded from doing so.

15. First, attached hereto as Exhibit 2 is a true and correct copy of an e-mail exchange between me and Mr. James Seery dated September 17, 2020. Mr. Seery was and remains the Chief Executive Officer of the Debtor. As stated in Exhibit 2, Mr. Seery was informing me that Debtor employees had been instructed not to discuss with me anything that is "inimical" to the interests of the Debtor, and that they would be terminated if they did so. This e-mail communication comports with other communications between myself and Mr. Seery and/or Debtor's counsel,

where I was cautioned not to discuss with Debtor employees matters that may be adverse to the Debtor.

16. Second, by the time of the filing of the Complaint, the Court had entered a preliminary injunction against Mr. Dondero, a true and correct copy of which is attached hereto as Exhibit 3. That injunction prohibited Mr. Dondero from "directly or indirectly . . . communicating with any of the Debtor's employees, except as it specifically relates to shared services currently provided." As the information concerning the Notes was background information and not related to "services currently provided," I was concerned that, if I discussed the Notes with the Debtor's employees, the Debtor would argue that either Mr. Dondero or I violated the Court's injunction.

17. In sum, after the Complaint was filed, no one at HCMFA knew anything about the Notes, and I was precluded from contacting the people that would have known something about the notes, *i.e.* the Debtor's employees, to discuss what they may have known. I also had very limited access to HCMFA books and records and, even if I had had full access, I would not have known what relevant books and records to search for in the many millions of files without first obtaining a generalized background of the facts regarding the Notes from Debtor employees.

18. I then worked with outside counsel at Munsch Hardt Kopf & Harr, P.C. to review the Complaint and prepare and file the Answer. That original Answer did not contain any affirmative defenses because, as explained above, no one at HCMFA knew of any facts that might give rise to an affirmative defense.

19. The situation changed by mid-April, 2021. As of late February, 2021, the Debtor terminated the Shared Services Agreement and terminated most of its former employees. Many of those employees then formed their own company, Skyview Group, which then contracted with HCMFA (and others) to continue providing essentially the same services that they had previously provided under the Shared Services Agreement. Additionally, the Debtor provided access to

HCMFA of much of its books and records (although not all). Thus, as of March, 2021, I was able to communicate with most former Debtor employees and to access the books and records of HCMFA without fear of violating any court order.

20. March, 2021, was exceedingly busy, to say the least. With the termination of the Shared Services Agreement, HCMFA, other entities that I am general counsel to, and I were preoccupied with transitioning the services that the Debtor had been providing for more than a decade to a new entity, using new infrastructure, new offices, new networks, etc., all for the primary goal of ensuring a smooth and uninterrupted continuity of business and services provided by HCMFA and others to third parties.

21. By mid-April, 2021, the situation had calmed down to the point that I was able to discuss the Notes with former employees, most importantly Frank Waterhouse ("Waterhouse") and Will Mabry ("Mabry"). Mabry in particular was able to provide me internal documents and memorandums that I had not previously known about or had access to that helped with the factual background of the Notes.

22. From these discussions and documents, I have been able to understand the factual background concerning the Notes, ultimately concluding that the Notes were signed by mistake by Waterhouse without authority from HCMFA and have no consideration and were never intended to be debt instruments of HCMFA.

23. My investigation has revealed the following.

24. One of the funds that HCMFA advises is Highland Global Allocation Fund ("GAF"). In March, 2018, GAF sold equity interests it held in TerreStar. As part of this, it was necessary to calculate the "net asset value" ("NAV") of these securities and of GAF assets. HCMFA was responsible for advising on the NAV. In turn, pursuant to the Shared Services Agreement and in accordance with applicable compliance and operating procedures, the Debtor

was responsible to HCMFA to calculate the NAV, and the Debtor had several employees charged with these and similar calculations as part of the Debtor's routine business services and as part of what the Debtor regularly provided to HCMFA and affiliated companies.

25. The Debtor made a mistake in calculating the NAV (the "NAV Error"). The NAV Error was discovered in early 2019 as GAF was being converted from an open-ended fund to a closed-ended fund. The Securities and Exchange Commission opened an investigation, and various employees and representatives of the Debtor, HCMFA, and GAF worked with the SEC to correct the error and to compensate GAF and the various investors in GAF harmed by the NAV Error.

26. Ultimately, and working with the SEC, the Debtor determined that the losses from the NAV Error to GAF and its shareholders amounted to $7.5 million: (i) $6.1 million for the NAV Error itself, as well as rebating related advisor fees and processing costs; and (ii) $1.4 million of losses to the shareholders of GAF.

27. HCMFA accepted responsibility for the NAV Error and paid out $5,186,496 on February 15, 2019 and $2,398,842 on May 21, 2019. I am not sure of the flow of funds, whether the funds flowed through HCMFA or were paid by the Debtor on behalf of HCMFA, and discovery will likely clear that up. Either way, however, the payments were of HCMFA funds and on behalf of HCMFA.

28. In turn, the Debtor accepted responsibility to HCMFA for having caused the NAV Error, and the Debtor ultimately, whether through insurance or its own funds, compensated HCMFA for the above payments.

29. Returning to the Notes, Waterhouse was the Chief Financial Officer of both the Debtor and HCMFA during the above events and at the time he signed the Notes.

30. It appears clear that Waterhouse made a mistake in preparing and signing the Notes. First, , the Notes correspond very closely to the ultimate $5,186,496 and $2,398,842 payments. Second, it appears that Waterhouse assumed, incorrectly, that the funds being paid by the Debtor were a loan to HCMFA, instead of payments as compensation and restitution to HCMFA for the Debtor having caused the NAV Error. Third, it therefore appears that Waterhouse prepared the Notes for some internal accounting or other purpose, but without there being actual consideration for the Notes and without any intention on the part of the Debtor and HCMFA that there be Notes or that there be a loan transaction.

31. I also note that, as of May, 2019, HCMFA had executed other demand notes payable to the Debtor. On April 15, 2019, the Debtor executed that certain *Acknowledgement from HCMLP*, a true and correct copy of which is attached hereto as Exhibit 4. By the same, the Debtor agreed not to demand payment of these notes prior to May 31, 2021, because HCMFA believed that it would not be able to repay those notes prior to that time. It is illogical that, in light of the same, the Debtor would shortly thereafter lend an additional $7.4 million to HCMFA. Rather, as my investigation has shown, the Debtor did not lend the funds to HCMFA but instead paid the funds, directly or indirectly, to compensate HCMFA for the NAV Error, which was the Debtor's error and therefore its obligation to correct and compensate for.

32. Therefore, in light of having learned of these facts in mid to late-April, 2019, HCMFA now believes that it has affirmative defenses to the Notes in the nature of mutual mistake, void for lack of consideration, and no proper authority of Waterhouse to sign the Notes.

33. Neither I, nor HCMFA, nor any of HCMFA's agents, have been less than diligent in investigating the Notes and the Complaint.

34. HCMFA respectfully requests that it be granted leave to assert these affirmative defenses in the Adversary Proceeding.

Signed: May 21, 2021

DENNIS C. SAUTER, JR.

SECOND AMENDED AND RESTATED
SHARED SERVICES AGREEMENT

THIS SECOND AMENDED AND RESTATED SHARED SERVICES AGREEMENT (this "***Agreement***") is entered into to be effective as of 8th day of February, 2013 (the "***Effective Date***") by and among Highland Capital Management, L.P., a Delaware limited partnership ("***HCMLP***"), and Highland Capital Management Fund Advisors, L.P., formerly known as Pyxis Capital, L.P., a Delaware limited partnership ("***HCMFA***"), and any affiliate of HCMFA that becomes a party hereto. Each of the signatories hereto is individually a "***Party***" and collectively the "***Parties***".

RECITALS

A. During the Term, HCMLP will provide to HCMFA certain services as more fully described herein and the Parties desire to allocate the costs incurred for such services and assets among them in accordance with the terms and conditions in this Agreement.

AGREEMENT

In consideration of the foregoing recitals and the mutual covenants and conditions contained herein, the Parties agree, intending to be legally bound, as follows:

ARTICLE I
DEFINITIONS

"***Actual Cost***" means, with respect to any period hereunder, one hundred percent (100%) of the actual costs and expenses caused by, incurred or otherwise arising from or relating to (i) the Shared Services and (ii) the Shared Assets, in each case during such period.

"***Affiliate***" means a Person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, a specified Person. The term "***control***" (including, with correlative meanings, the terms "***controlled by***" and "***under common control with***") means the possession of the power to direct the management and policies of the referenced Person, whether through ownership interests, by contract or otherwise.

"***Agreement***" has the meaning set forth in the preamble.

"***Allocation Percentage***" has the meaning set forth in Section 4.01.

"***Applicable Margin***" shall mean an additional amount equal to 5% of all costs allocated by Service Provider to the other parties hereto under Article IV; provided that the parties may agree on a different margin percentage as to any item or items to the extent the above margin percentage, together with the allocated cost of such item or service, would not reflect an arm's length value of the particular service or item allocated.

"***Change***" has the meaning set forth in Section 2.02(a).

"***Change Request***" has the meaning set forth in Section 2.02(b).

"***Code***" means the Internal Revenue Code of 1986, as amended, and the related regulations and published interpretations.

EXHIBI 1

"***Effective Date***" has the meaning set forth in the preamble.

"***Governmental Entity***" means any government or any regulatory agency, bureau, board, commission, court, department, official, political subdivision, tribunal or other instrumentality of any government, whether federal, state or local, domestic or foreign.

"***Liabilities***" means any cost, liability, indebtedness, obligation, co-obligation, commitment, expense, claim, deficiency, guaranty or endorsement of or by any Person of any nature (whether direct or indirect, known or unknown, absolute or contingent, liquidated or unliquidated, due or to become due, accrued or unaccrued, matured or unmatured).

"***Loss***" means any cost, damage, disbursement, expense, liability, loss, obligation, penalty or settlement, including interest or other carrying costs, legal, accounting and other professional fees and expenses incurred in the investigation, collection, prosecution and defense of claims and amounts paid in settlement, that may be imposed on or otherwise incurred or suffered by the referenced Person; provided, however, that the term "***Loss***" will not be deemed to include any special, exemplary or punitive damages, except to the extent such damages are incurred as a result of third party claims.

"***New Shared Service***" has the meaning set forth in Section 2.03.

"***Party***" or "***Parties***" has the meaning set forth in the preamble.

"***Person***" means an association, a corporation, an individual, a partnership, a limited liability company, a trust or any other entity or organization, including a Governmental Entity.

"***Quarterly Report***" has the meaning set forth in Section 5.01.

"***Recipient***" means HCMFA and any of HCMFA's direct or indirect Subsidiaries or managed funds or accounts in their capacity as a recipient of the Shared Services and/or Shared Assets.

"***Service Provider***" means any of HCMLP and its direct or indirect Subsidiaries in its capacity as a provider of Shared Services or Shared Assets.

"***Service Standards***" has the meaning set forth in Section 6.01.

"***Shared Assets***" shall have the meaning set forth in Section 3.02.

"***Shared Services***" shall have the meaning set forth in Section 2.01.

"***Subsidiary***" means, with respect to any Person, any Person in which such Person has a direct or indirect equity ownership interest in excess of 50%.

"***Tax***" or "***Taxes***" means: (i) all state and local sales, use, value-added, gross receipts, foreign, privilege, utility, infrastructure maintenance, property, federal excise and similar levies, duties and other similar tax-like charges lawfully levied by a duly constituted taxing authority against or upon the Shared Services and the Shared Assets; and (ii) tax-related surcharges or fees that are related to the Shared Services and the Shared Assets identified and authorized by applicable tariffs.

"***Term***" has the meaning set forth in Section 7.01.

ARTICLE II
SHARED SERVICES

Section 2.01 Services. During the Term, Service Provider will provide Recipient with Shared Services, including without limitation, all of the (i) finance and accounting services, (ii) human resources services, (iii) marketing services, (iv) legal services, (v) corporate services, (vi) information technology services, and (vii) operations services; each as requested by HCMFA and as described more fully on **Annex A** attached hereto, the "***Shared Services***"), it being understood that personnel providing Shared Services may be deemed to be employees of HCMFA to the extent necessary for purposes of the Investment Advisers Act of 1940, as amended.

Section 2.02 Changes to the Shared Services.

(a) During the Term, the Parties may agree to modify the terms and conditions of a Service Provider's performance of any Shared Service in order to reflect new procedures, processes or other methods of providing such Shared Service, including modifying the applicable fees for such Shared Service to reflect the then current fair market value of such service (a "***Change***"). The Parties will negotiate in good faith the terms upon which a Service Provider would be willing to provide such New Shared Service to Recipient.

(b) The Party requesting a Change will deliver a description of the Change requested (a "***Change Request***") and no Party receiving a Change Request may unreasonably withhold, condition or delay its consent to the proposed Change.

(c) Notwithstanding any provision of this Agreement to the contrary, a Service Provider may make: (i) Changes to the process of performing a particular Shared Service that do not adversely affect the benefits to Recipient of Service Provider's provision or quality of such Shared Service in any material respect or increase Recipient's cost for such Shared Service; (ii) emergency Changes on a temporary and short-term basis; and/or (iii) Changes to a particular Shared Service in order to comply with applicable law or regulatory requirements, in each case without obtaining the prior consent of Recipient. A Service Provider will notify Recipient in writing of any such Change as follows: in the case of clauses (i) and (iii) above, prior to the implementation of such Change, and, in the case of clause (ii) above, as soon as reasonably practicable thereafter.

Section 2.03 New Shared Services. The Parties may, from time to time during the Term of this Agreement, negotiate in good faith for Shared Services not otherwise specifically listed in Section 2.01 (a "***New Shared Service***"). Any agreement between the Parties on the terms for a New Shared Service must be in accordance with the provisions of Article IV and Article V hereof, will be deemed to be an amendment to this Agreement and such New Shared Service will then be a "***Shared Service***" for all purposes of this Agreement.

Section 2.04 Subcontractors. Nothing in this Agreement will prevent Service Provider from, with the consent of Recipient, using subcontractors, hired with due care, to perform all or any part of a Shared Service hereunder. A Service Provider will remain fully responsible for the performance of its obligations under this Agreement in accordance with its terms, including any obligations it performs through subcontractors, and a Service Provider will be solely responsible for payments due to its subcontractors.

ARTICLE III
SHARED ASSETS

Section 3.01 Shared IP Rights. Each Service Provider hereby grants to Recipient a non-exclusive right and license to use the intellectual property and other rights granted or licensed, directly or indirectly, to such Service Provider (the "***Shared IP Rights***") pursuant to third party intellectual property Agreements ("***Third Party IP Agreements***"), provided that the rights granted to Recipient hereunder are subject to the terms and conditions of the applicable Third Party IP Agreement, and that such rights shall terminate, as applicable, upon the expiration or termination of the applicable Third Party IP Agreement. Recipient shall be licensed to use the Shared IP Rights only for so long as it remains an Affiliate of HCMLP. In consideration of the foregoing licenses, Recipient agrees to take such further reasonable actions as a Service Provider deems to be necessary or desirable to comply with its obligations under the Third Party IP Agreements.

Section 3.02 Other Shared Assets. Subject to Section 3.01, each Service Provider hereby grants Recipient the right, license or permission, as applicable, to use and access the benefits under the agreements, contracts and licenses that such Service Provider will purchase, acquire, become a party or beneficiary to or license on behalf of Recipient (the "***Future Shared Assets***" and collectively with the Shared IP Rights, the "***Shared Assets***").

ARTICLE IV
COST ALLOCATION

Section 4.01 Actual Cost Allocation Formula. The Actual Cost of any item relating to any Shared Services or Shared Assets shall be allocated based on the Allocation Percentage. For purposes of this Agreement, "***Allocation Percentage***" means:

(a) To the extent 100% of such item is demonstrably attributable to HCMFA, 100% of the Actual Cost of such item shall be allocated to HCMFA as agreed by HCMFA;

(b) To the extent a specific percentage of use of such item can be determined (e.g., 70% for HCMLP and 30% for HCMFA), that specific percentage of the Actual Cost of such item will be allocated to HCMLP or HCMFA, as applicable and as agreed by HCMFA; and

(c) All other portions of the Actual Cost of any item that cannot be allocated pursuant to clause (a) or (b) above shall be allocated between HCMLP and HCMFA in such proportion as is agreed in good faith between the parties.

Section 4.02 Non-Cash Cost Allocation. The actual, fully burdened cost of any item relating to any Shared Services or Shared Assets that does not result in a direct, out of pocket cash expense may be allocated to HCMLP and HCMFA for financial statement purposes only, as agreed by HCMFA, without any corresponding cash reimbursement required, in accordance with generally accepted accounting principles, based on the Allocation Percentage principles described in Section 4.01 hereof.

ARTICLE V
PAYMENT OF COST AND REVENUE SHARE; TAXES

Section 5.01 Quarterly Statements. Within thirty (30) days following the end of each calendar qaurter during the Term (or at such time as may be otherwise agreed by the parties), each Service Provider shall furnish the other Parties hereto with a written statement with respect to the Actual Cost paid by it in respect of Shared Services and Shared Assets provided by it, in each case, during such

period, setting forth (i) the cost allocation in accordance with Article IV hereof together with the Applicable Margin on such allocated amounts, and (ii) any amounts paid pursuant to Section 5.02 hereof, together with such other data and information necessary to complete the items described in Section 5.03 hereof (hereinafter referred to as the "***Quarterly Report***").

Section 5.02 Settlement Payments. At any time during the Term, any Party may make payment of the amounts that are allocable to such Party together with the Applicable Margin related thereto, regardless of whether an invoice pursuant to Section 5.03 hereof has been issued with respect to such amounts.

Section 5.03 Determination and Payment of Cost and Revenue Share.

(a) Within ten (10) days of the submission of the Quarterly Report described in Section 5.02 hereof (or at such other time as may be agreed by the parties), the Parties shall (i) agree on the cost share of each of the Parties and Applicable Margin as calculated pursuant to the provisions of this Agreement; and (ii) prepare and issue invoices for the cost share and Applicable Margin payments that are payable by any of the Parties.

(b) Within ten (10) days of preparation of the agreement and the issuance of the invoice described in Section 5.03(a) (or at such other time as may be agreed by the parties), the Parties shall promptly make payment of the amounts that are set forth on such cost allocation invoice. Notwithstanding anything in this Agreement to the contrary, provision of the Shared Services shall commence from the Effective Date, but no fees shall be payable from Recipient or otherwise accrue with respect to such services provided during the month of December 2011.

Section 5.04 Taxes.

(a) Recipient is responsible for and will pay all Taxes applicable to the Shared Services and the Shared Assets provided to Recipient, provided, that such payments by Recipient to Service Provider will be made in the most tax-efficient manner and provided further, that Service Provider will not be subject to any liability for Taxes applicable to the Shared Services and the Shared Assets as a result of such payment by Recipient. Service Provider will collect such Tax from Recipient in the same manner it collects such Taxes from other customers in the ordinary course of Service Provider's business, but in no event prior to the time it invoices Recipient for the Shared Services and Shared Assets, costs for which such Taxes are levied. Recipient may provide Service Provider with a certificate evidencing its exemption from payment of or liability for such Taxes.

(b) Service Provider will reimburse Recipient for any Taxes collected from Recipient and refunded to Service Provider. In the event a Tax is assessed against Service Provider that is solely the responsibility of Recipient and Recipient desires to protest such assessment, Recipient will submit to Service Provider a statement of the issues and arguments requesting that Service Provider grant Recipient the authority to prosecute the protest in Service Provider's name. Service Provider's authorization will not be unreasonably withheld. Recipient will finance, manage, control and determine the strategy for such protest while keeping Service Provider reasonably informed of the proceedings. However, the authorization will be periodically reviewed by Service Provider to determine any adverse impact on Service Provider, and Service Provider will have the right to reasonably withdraw such authority at any time. Upon notice by Service Provider that it is so withdrawing such authority, Recipient will expeditiously terminate all proceedings. Any adverse consequences suffered by Recipient as a result of the withdrawal will be submitted to arbitration pursuant to Section 9.14. Any contest for Taxes brought by Recipient may not result in any lien attaching to any property or rights of Service Provider or otherwise jeopardize Service Provider's interests or rights in any of its property. Recipient agrees to

indemnify Service Provider for all Losses that Service Provider incurs as a result of any such contest by Recipient.

(c) The provisions of this Section 5.04 will govern the treatment of all Taxes arising as a result of or in connection with this Agreement notwithstanding any other Article of this Agreement to the contrary.

ARTICLE VI
SERVICE PROVIDER RESPONSIBILITIES

Section 6.01 Service Provider General Obligations. Service Provider will provide the Shared Services and the Shared Assets to Recipient on a non-discriminatory basis and will provide the Shared Services and the Shared Assets in the same manner as if it were providing such services and assets on its own account (the "***Service Standards***"). Service Provider will conduct its duties hereunder in a lawful manner in compliance with applicable laws, statutes, rules and regulations and in accordance with the Service Standards, including, for avoidance of doubt, laws and regulations relating to privacy of customer information.

Section 6.02 Books and Records; Access to Information. Service Provider will keep and maintain books and records on behalf of Recipient in accordance with past practices and internal control procedures. Recipient will have the right, at any time and from time to time upon reasonable prior notice to Service Provider, to inspect and copy (at its expense) during normal business hours at the offices of Service Provider the books and records relating to the Shared Services and Shared Assets, with respect to Service Provider's performance of its obligations hereunder. This inspection right will include the ability of Recipient's financial auditors to review such books and records in the ordinary course of performing standard financial auditing services for Recipient (but subject to Service Provider imposing reasonable access restrictions to Service Provider's and its Affiliates' proprietary information and such financial auditors executing appropriate confidentiality agreements reasonably acceptable to Service Provider). Service Provider will promptly respond to any reasonable requests for information or access. For the avoidance of doubt, all books and records kept and maintained by Service Provider on behalf of Recipient shall be the property of Recipient, and Service Provider will surrender promptly to Recipient any of such books or records upon Recipient's request (provided that Service Provider may retain a copy of such books or records) and shall make all such books and records available for inspection and use by the Securities and Exchange Commission or any person retained by Recipient at all reasonable times. Such records shall be maintained by Service Provider for the periods and in the places required by laws and regulations applicable to Recipient.

Section 6.03 Return of Property and Equipment. Upon expiration or termination of this Agreement, Service Provider will be obligated to return to Recipient, as soon as is reasonably practicable, any equipment or other property or materials of Recipient that is in Service Provider's control or possession.

ARTICLE VII
TERM AND TERMINATION

Section 7.01 Term. The term of this Agreement will commence as of the Effective Date and will continue in full force and effect until the first anniversary of the Effective Date (the "***Term***"), unless terminated earlier in accordance with Section 9.02. The Term shall automatically renew for successive one year periods unless sooner terminated under Section 7.02.

Section 7.02 Termination. Either Party may terminate this Agreement, with or without cause, upon at least 60 days advance written notice at any time prior to the expiration of the Term.

ARTICLE VIII
LIMITED WARRANTY

Section 8.01 Limited Warranty. Service Provider will perform the Shared Services hereunder in accordance with the Service Standards. Except as specifically provided in this Agreement, Service Provider makes no express or implied representations, warranties or guarantees relating to its performance of the Shared Services and the granting of the Shared Assets under this Agreement, including any warranty of merchantability, fitness, quality, non-infringement of third party rights, suitability or adequacy of the Shared Services and the Shared Assets for any purpose or use or purpose. Service Provider will (to the extent possible and subject to Service Provider's contractual obligations) pass through the benefits of any express warranties received from third parties relating to any Shared Service and Shared Asset, and will (at Recipient's expense) assist Recipient with any warranty claims related thereto.

ARTICLE IX
MISCELLANEOUS

Section 9.01 No Partnership or Joint Venture; Independent Contractor. Nothing contained in this Agreement will constitute or be construed to be or create a partnership or joint venture between or among HCMLP or HCMFA or their respective successors or assigns. The Parties understand and agree that, with the exception of the procurement by Service Provider of licenses or other rights on behalf of Recipient pursuant to Section 3.01, this Agreement does not make any of them an agent or legal representative of the other for any purpose whatsoever. With the exception of the procurement by Service Provider of licenses or other rights on behalf of Recipient pursuant to Section 3.01, no Party is granted, by this Agreement or otherwise, any right or authority to assume or create any obligation or responsibilities, express or implied, on behalf of or in the name of any other Party, or to bind any other Party in any manner whatsoever. The Parties expressly acknowledge that Service Provider is an independent contractor with respect to Recipient in all respects, including with respect to the provision of the Shared Services.

Section 9.02 Amendments; Waivers. Except as expressly provided herein, this Agreement may be amended only by agreement in writing of all Parties. No waiver of any provision nor consent to any exception to the terms of this Agreement or any agreement contemplated hereby will be effective unless in writing and signed by all of the Parties affected and then only to the specific purpose, extent and instance so provided. No failure on the part of any Party to exercise or delay in exercising any right hereunder will be deemed a waiver thereof, nor will any single or partial exercise preclude any further or other exercise of such or any other right.

Section 9.03 Schedules and Exhibits; Integration. Each Schedule and Exhibit delivered pursuant to the terms of this Agreement must be in writing and will constitute a part of this Agreement, although schedules need not be attached to each copy of this Agreement. This Agreement, together with such Schedules and Exhibits constitutes the entire agreement among the Parties pertaining to the subject matter hereof and supersedes all prior agreements and understandings of the Parties in connection therewith.

Section 9.04 Further Assurances. Each Party will take such actions as any other Party may reasonably request or as may be necessary or appropriate to consummate or implement the transactions contemplated by this Agreement or to evidence such events or matters.

Section 9.05 Governing Law. This Agreement and the legal relations between the Parties will be governed by and construed in accordance with the laws of the State of Texas applicable to contracts made and performed in such State and without regard to conflicts of law doctrines unless certain matters are preempted by federal law.

Section 9.06 Assignment. Except as otherwise provided hereunder, neither this Agreement nor any rights or obligations hereunder are assignable by one Party without the express prior written consent of the other Parties.

Section 9.07 Headings. The descriptive headings of the Articles, Sections and subsections of this Agreement are for convenience only and do not constitute a part of this Agreement.

Section 9.08 Counterparts. This Agreement and any amendment hereto or any other agreement delivered pursuant hereto may be executed in one or more counterparts and by different Parties in separate counterparts. All counterparts will constitute one and the same agreement and will become effective when one or more counterparts have been signed by each Party and delivered to the other Parties.

Section 9.09 Successors and Assigns; No Third Party Beneficiaries. This Agreement is binding upon and will inure to the benefit of each Party and its successors or assigns, and nothing in this Agreement, express or implied, is intended to confer upon any other Person or Governmental Entity any rights or remedies of any nature whatsoever under or by reason of this Agreement.

Section 9.10 Notices. All notices, demands and other communications to be given or delivered under or by reason of the provisions of this Agreement will be in writing and will be deemed to have been given: (i)immediately when personally delivered; (ii) when received by first class mail, return receipt requested; (iii) one day after being sent for overnight delivery by Federal Express or other overnight delivery service; or (iv) when receipt is acknowledged, either electronically or otherwise, if sent by facsimile, telecopy or other electronic transmission device. Notices, demands and communications to the other Parties will, unless another address is specified by such Parties in writing, be sent to the addresses indicated below:

If to HCMLP, addressed to:

Highland Capital Management, L.P.
300 Crescent Court, Suite 700
Dallas, Texas 75201
Attention: General Counsel
Fax: (972) 628-4147

If to HCMFA, addressed to:

Highland Capital Management Fund Advisors, L.P.
300 Crescent Court, Suite 700
Dallas, Texas 75201
Attention: General Counsel
Fax: (972) 628-4147

Section 9.11 Expenses. Except as otherwise provided herein, the Parties will each pay their own expenses incident to the negotiation, preparation and performance of this Agreement, including the fees, expenses and disbursements of their respective investment bankers, accountants and counsel.

Section 9.12 Waiver. No failure on the part of any Party to exercise or delay in exercising any right hereunder will be deemed a waiver thereof, nor will any single or partial exercise preclude any further or other exercise of such or any other right.

Section 9.13 Severability. If any provision of this Agreement is held to be unenforceable for any reason, it will be adjusted rather than voided, if possible, to achieve the intent of the Parties. All other provisions of this Agreement will be deemed valid and enforceable to the extent possible.

Section 9.14 Arbitration; Jurisdiction. Notwithstanding anything contained in this Agreement or the Annexes hereto to the contrary, in the event there is an unresolved legal dispute between the parties and/or any of their respective officers, directors, partners, employees, agents, affiliates or other representatives that involves legal rights or remedies arising from this Agreement, the parties agree to submit their dispute to binding arbitration under the authority of the Federal Arbitration Act; provided, however, that either party or such applicable affiliate thereof may pursue a temporary restraining order and/or preliminary injunctive relief in connection with confidentiality covenants or agreements binding on the other party, with related expedited discovery for the parties, in a court of law, and, thereafter, require arbitration of all issues of final relief. The Arbitration will be conducted by the American Arbitration Association, or another, mutually agreeable arbitration service. The arbitrator(s) shall be duly licensed to practice law in the State of Texas. The discovery process shall be limited to the following: Each side shall be permitted no more than (i) two party depositions of six hours each. Each deposition is to be taken pursuant to the Texas Rules of Civil Procedure; (ii) one non-party deposition of six hours; (iii) twenty-five interrogatories; (iv) twenty-five requests for admission; (v) ten requests for production. In response, the producing party shall not be obligated to produce in excess of 5,000 total pages of documents. The total pages of documents shall include electronic documents; (vi) one request for disclosure pursuant to the Texas Rules of Civil Procedure. Any discovery not specifically provided for in this paragraph, whether to parties or non-parties, shall not be permitted. The arbitrator(s) shall be required to state in a written opinion all facts and conclusions of law relied upon to support any decision rendered. No arbitrator will have authority to render a decision that contains an outcome determinative error of state or federal law, or to fashion a cause of action or remedy not otherwise provided for under applicable state or federal law. Any dispute over whether the arbitrator(s) has failed to comply with the foregoing will be resolved by summary judgment in a court of law. In all other respects, the arbitration process will be conducted in accordance with the American Arbitration Association's dispute resolution rules or other mutually agreeable, arbitration service rules. The party initiating arbitration shall pay all arbitration costs and arbitrator's fees, subject to a final arbitration award on who should bear costs and fees. All proceedings shall be conducted in Dallas, Texas, or another mutually agreeable site. Each party shall bear its own attorneys fees, costs and expenses, including any costs of experts, witnesses and/or travel, subject to a final arbitration award on who should bear costs and fees. The duty to arbitrate described above shall survive the termination of this Agreement. Except as otherwise provided above, the parties hereby waive trial in a court of law or by jury. All other rights, remedies, statutes of limitation and defenses applicable to claims asserted in a court of law will apply in the arbitration.

Section 9.15 General Rules of Construction. For all purposes of this Agreement and the Exhibits and Schedules delivered pursuant to this Agreement: (i) the terms defined in Article I have the meanings assigned to them in Article I and include the plural as well as the singular; (ii) all accounting terms not otherwise defined herein have the meanings assigned under GAAP; (iii) all references in this Agreement to designated "Articles," "Sections" and other subdivisions are to the designated Articles, Sections and other subdivisions of the body of this Agreement; (iv) pronouns of either gender or neuter will include, as appropriate, the other pronoun forms; (v) the words "herein,""hereof" and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section or other subdivision; (vi) "or" is not exclusive; (vii) "including" and "includes" will be deemed to be followed by "but not limited to" and "but is not limited to, "respectively; (viii) any definition of or

reference to any law, agreement, instrument or other document herein will be construed as referring to such law, agreement, instrument or other document as from time to time amended, supplemented or otherwise modified; and (ix) any definition of or reference to any statute will be construed as referring also to any rules and regulations promulgated thereunder.

IN WITNESS HEREOF, each of the Parties has caused this Agreement to be executed by its duly authorized officers as of the day and year first above written.

HIGHLAND CAPITAL MANAGEMENT, L.P.

By: Strand Advisors, Inc., its general partner

By:_____
Name: James Dondero
Title: President

HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, L.P.

By: Strand Advisors XVI, Inc., its general partner

By:_____
Name: Brian Mitts
Title: Assistant Secretary

Annex A

Shared Services

Compliance
- General compliance
- Compliance systems

Facilities
- Equipment
- General Overhead
- Office Supplies
- Rent & Parking

Finance & Accounting
- Book keeping
- Cash management
- Cash forecasting
- Credit facility reporting
- Financial reporting
- Accounts payable
- Accounts receivable
- Expense reimbursement
- Vendor management

HR
- Drinks/snacks
- Lunches
- Recruiting

IT
- General support & maintenance (OMS, development, support)
- Telecom (cell, phones, broadband)
- WSO

Legal
- Corporate secretarial services
- Document review and preparation
- Litigation support
- Management of outside counsel

Marketing and PR
- Public relations

Tax
- Tax audit support
- Tax planning
- Tax prep and filing

Investments
- Investment research on an ad hoc basis as requested by HCMFA

Valuation Committee

Trading

Trading desk services

Operations

Trade settlement

Rukavina, Davor

From: James Seery <jpseeryjr@gmail.com>
Sent: Thursday, September 17, 2020 4:17 PM
To: DC Sauter
Cc: Gregory V. Demo
Subject: Re: Acis Settlement

DC

I believe your concerns regarding the release are misplaced as it does not bind entities that HCMLP does not control. Greg can walk you through the language, but I do not believe it requires adjustment nor does it create any liability. To the contrary, it reduces liability.

With regard to the HCMLP employee prohibitions, no employee whether legal or non-legal can work on any matter that is inimical to the interests of HCMLP. I ,as CEO, and the Independent Board will make the determination as to whether an action violates the prohibition, and a breach of the prohibition will lead to termination for cause. I believe that most of the employees have been informed of this requirement and are following the directive.

With regard to transactional matters, HCMLP employees will continue to work with you on those issues that do not run afoul of the prohibition above. If there is a particular matter where you are taking a potentially adversarial action vis a vis HCMLP, please let me know what it is. We can then consider whether a customized operating protocol for that issue is needed or whether you will simply be on your own. I will make the determination with the advice of counsel. We do not believe the Texas rules of professional responsibility apply in this situation.

Please let me know what matter you are considering with respect to the immediately preceding paragraph, and we will consider how to best address your concerns.

Best. Jim

Jim Seery
631-804-2049
jpseeryjr@gmail.com

From: DC Sauter <DSauter@NexPointadvisors.com>
Date: Thursday, September 17, 2020 at 4:56 PM
To: Jim Seery <jpseeryjr@gmail.com>
Cc: Greg Demo <GDemo@pszjlaw.com>
Subject: RE: Acis Settlement

Jim/Greg, follow up on my email below. I have a few items that have been placed on my plate, and I really need to understand who I can speak with and the extent to which they are permitted to share information with me.

D.C. SAUTER

NEXPOINT

EXHIBIT 2

O: 972.628.4117 | C: 469.877.6440

From: DC Sauter
Sent: Tuesday, September 15, 2020 8:55 AM
To: 'James Seery' <jpseeryjr@gmail.com>
Cc: Gregory V. Demo <GDemo@pszjlaw.com>
Subject: RE: Acis Settlement

My apologies for copying Isaac. I was under the mistaken impression that he would have assisted in the settlement.

In my view, the requested clarification is beneficial to Strand, HCMLP, and the other "HCMLP Entities." The documents purport to release ACIS from claims on behalf of, among others, any entity that is "managed" by HCMLP and "respective current advisors, trustees, directors, officers, managers, members, partners, current or former employees, beneficiaries, shareholders, agents, participants, subsidiaries, parents, affiliates, successors, designees, and assigns" of any "HCMLP Entity." Those "HCMLP Entities" lack the authority to bind a whole host of parties in that laundry list, which could result in claims against HCMLP, Strand, and the other "HCMLP Entities" by both the "ACIS Released Parties," who will claim they didn't receive the benefit of the bargain, and the parties on whose behalf the "HCMLP Parties" purported to release claims who didn't consent to the release.

Additionally, I'd like to visit with you all regarding the board's position that prohibits certain HCMLP personnel from working on certain matters.

First, I am unclear whether the prohibition applies to only HCMLP legal personnel or whether it applies to all HCMLP employees. Please clarify.

Second, as you may know, virtually all of these matters are falling into my lap, and in most cases I lack any knowledge about them. It would help me tremendously if current HCMLP employees, and particularly the legal personnel, could provide me with transactional background to assist in the transition of the matter. While I understand the board's concern with Judge Jernigan's order, I don't believe that the Texas Disciplinary Rules of Professional Conduct mandate or even permit an attorney licensed in the State of Texas to refuse to cooperate with a former client in the transfer of a matter to a new attorney. Rule 1.15(d) states that "[u]pon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payments of fee that has not been earned." The comments to that rule provide additional clarity: "In every instance of withdrawal and even if the lawyer has been unfairly discharged by the client, a lawyer must take all reasonable steps to mitigate the consequences to the client." T.D.R.P.C. Rule 1.15, comment 9. Proper steps may include providing information to new counsel or even continuing to represent the client for a limited time to meet impending deadlines. *Microsoft Corp. v. Commonwealth Sci. & Indus. Research Org.*, 2007 U.S. Dist. LEXIS 91550 *23-24 fn. 11 (E.D. Tex. Dec. 13, 2007). Even if the board insists that the HCMLP legal personnel cannot continue to represent others in non-HCMLP matters or matters adverse to HCMLP (irrespective of any conflict of interest analysis of whether those attorneys may continue to represent HCMLP in those matters), the ethical rules require that the attorneys provide assistance in transferring those matters to me or others.

Finally, I routinely handle, and am routinely asked to handle, legal matters that relate to real estate for entities owned or controlled by HCMLP (Park West, the Arizona assets, the Maple Ave. property, to name a few). I am not an HCMLP employee, and it's my understanding that NexPoint Advisors, L.P. is not compensated for the time I spend on HCMLP matters. I'm not suggesting that this arrangement should change, but it feels from my perspective that the board's position is only working in one direction. In other words, if I understand the board's position correctly, I can work on both NexPoint and HCMLP matters, but the HCMLP legal employees may only work on HCMLP-related matters. It has also put a significant amount of additional work on my plate. I would like to understand two things. First, what is the scope of my authority in these matters, and what is the proper protocol vis-à-vis you, DSI, and the board? I have tried to take the conservative approach in keeping you all informed and asking for consent or approval where I thoughts it

appropriate. I assume this is how you'd like to continue to handle things, but I would like confirmation of that. Second, I have heard that you all were working to transfer a couple of the legal personnel (perhaps Thedford and Post) to HCMFA so they could assist with the work load (particularly in the areas where I don't have a significant amount of experience). I'd like to know where that stands and when relief can be expected.

I'm available most of today and tomorrow to discuss.

D.C. SAUTER

NEXPOINT

O: 972.628.4117 | C: 469.877.6440

From: James Seery <jpseeryjr@gmail.com>
Sent: Tuesday, September 15, 2020 7:01 AM
To: DC Sauter <DSauter@NexPointadvisors.com>
Cc: Gregory V. Demo <GDemo@pszjlaw.com>; Isaac Leventon <ILeventon@HighlandCapital.com>
Subject: Re: Acis Settlement

DC. We will discuss and revert to you. Neither Isaac nor anyone else at HCMLP is permitted to work on any issues related to the settlement and release other than as directed by me.

Thanks

Sent from my iPad

On Sep 14, 2020, at 7:08 PM, DC Sauter <DSauter@nexpointadvisors.com> wrote:

Greg,

I've been asked to review the attached release on behalf of HCMFA and the closed-end funds. I'm concerned that the language below creates an ambiguity as to whether the closed-end funds and HCMFA have released claims against the ACIS parties:

1. The release by Strand, which also serves as the general partner of HCMFA; and
2. The release by each "HCMLP Entity" of its "respective current advisors, trustees, directors, officers, managers, members, partners, current or former employees, beneficiaries, shareholders, agents, participants, subsidiaries, parents, affiliates, successors, designees, and assigns."

We would like the final sentence in paragraph 1.a. of the Release to be revised to specifically identify HCMFA and the closed-end funds as parties not covered by the release. Please let me know if you'd like to discuss in more detail.

D.C. SAUTER | GENERAL COUNSEL, REAL ESTATE

<image001.jpg>

300 Crescent Court | Suite 700 | Dallas, Texas 75201
O: 972.628.4117 | C: 469.877.6440 | F: 972.628.4147
dsauter@nexpointadvisors.com | www.NexPointGroup.com

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PRIVILEGE WARNING: The sender or recipient of this message is a member of the legal department at Highland Capital Management. This message and any attachments hereto may constitute attorney work product or be protected by the attorney-client privilege. Do not disclose this message or any attachments hereto without prior consent of a member of the legal department at Highland Capital Management.

<Acis - Release (EXECUTION VERSION).pdf>

CLERK, U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS

ENTERED

THE DATE OF ENTRY IS ON
THE COURT'S DOCKET

The following constitutes the ruling of the court and has the force and effect therein described.

Signed January 11, 2021

United States Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re: HIGHLAND CAPITAL MANAGEMENT, L.P.,[1] Debtor.	§ § § § § §	Chapter 11 Case No. 19-34054-sgj11
HIGHLAND CAPITAL MANAGEMENT, L.P., Plaintiff, vs. JAMES D. DONDERO, Defendant.	§ § § § § § § § §	Adversary Proceeding No. No. 20-03190-sgj

ORDER GRANTING DEBTOR'S MOTION FOR A PRELIMINARY INJUNCTION AGAINST JAMES DONDERO

This matter having come before the Court on *Plaintiff Highland Capital Management,*

[1] The Debtor's last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

L.P.'s Emergency Motion for a Temporary Restraining Order and Preliminary Injunction against Mr. James Dondero [Adv. Pro. Docket No. 2] (the "Motion"), filed by Highland Capital Management, L.P., the debtor and debtor-in-possession (the "Debtor") in the above-captioned chapter 11 case (the "Bankruptcy Case"), and the plaintiff in the above-captioned adversary proceeding (the "Adversary Proceeding"); and this Court having considered (a) the Motion, (b) *Plaintiff Highland Capital Management, L.P.'s Verified Original Complaint for Injunctive Relief* [Adv. Pro. Docket No. 1] (the "Complaint"), (c) the arguments and law cited in the *Debtor's Amended Memorandum of Law in Support of its Motion for a Temporary Restraining Order and Preliminary Injunction against Mr. James Dondero* [Adv. Pro. Docket No. 3] (the "Memorandum of Law," and together with the Motion and Complaint, the "Debtor's Papers"), (d) *James Dondero's Response in Opposition to Debtor's Motion for a Preliminary Injunction* [Adv. Pro. Docket No. 52] (the "Opposition") filed by James Dondero, (e) the testimonial and documentary evidence admitted into evidence during the hearing held on January 8, 2021 (the "Hearing"), including assessing the credibility of Mr. James Dondero, (f) the arguments made during the Hearing, and (g) all prior proceedings relating to the Motion, including the December 10, 2020 hearing on the *Debtor's Motion for a Temporary Restraining Order and Preliminary Injunction against James Dondero* [Adv. Pro. Docket No. 6] (the "TRO Hearing"); and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and this Court having found that venue of this proceeding and the Motion in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that injunctive relief is warranted under sections 105(a) and 362(a) of the Bankruptcy Code and that the relief requested in the Motion is in the best interests of the Debtor's estate, its creditors, and other parties-in-interest;

and this Court having found that the Debtor's notice of the Motion and opportunity for a hearing on the Motion were appropriate and that no other notice need be provided; and this Court having determined that the legal and factual bases set forth in the Debtor's Papers, and the evidence submitted in support thereof, establish good cause for the relief granted herein, and that (1) such relief is necessary to avoid immediate and irreparable harm to the Debtor's estate and reorganization process; (2) the Debtor is likely to succeed on the merits of its underlying claim for injunctive relief; (3) the balance of the equities tip in the Debtor's favor; and (4) such relief serves the public interest; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor and for the reasons set forth in the record on this Motion, it is **HEREBY ORDERED THAT**:

1. The Motion is **GRANTED** as set forth herein.

2. James Dondero is preliminarily enjoined and restrained from (a) communicating (whether orally, in writing, or otherwise), directly or indirectly, with any Board member unless Mr. Dondero's counsel and counsel for the Debtor are included in any such communication; (b) making any express or implied threats of any nature against the Debtor or any of its directors, officers, employees, professionals, or agents, in whatever capacity they are acting; (c) communicating with any of the Debtor's employees, except as it specifically relates to shared services currently provided to affiliates owned or controlled by Mr. Dondero; (d) interfering with or otherwise impeding, directly or indirectly, the Debtor's business, including but not limited to the Debtor's decisions concerning its operations, management, treatment of claims, disposition of assets owned, controlled or managed by the Debtor, and the pursuit of the Plan or any

alternative to the Plan; and (e) otherwise violating section 362(a) of the Bankruptcy Code (collectively, the "Prohibited Conduct").[2]

3. James Dondero is further preliminarily enjoined and restrained from causing, encouraging, or conspiring with (a) any entity owned or controlled by him, and/or (b) any person or entity acting with him or on his behalf, to, directly or indirectly, engage in any Prohibited Conduct.

4. James Dondero is further preliminarily enjoined and restrained from communicating (in person, telephonically, by e-mail, text message or otherwise) with Scott Ellington and/or Isaac Leventon, unless otherwise ordered by the Court.

5. James Dondero is further preliminarily enjoined and restrained from physically entering, or virtually entering through the Debtor's computer, email, or information systems, the Debtor's offices located at Crescent Court in Dallas, Texas, or any other offices or facilities owned or leased by the Debtor, regardless of any agreements, subleases, or otherwise, held by the Debtor's affiliates or entities owned or controlled by Mr. Dondero, without the prior written permission of Debtor's counsel made to Mr. Dondero's counsel. If Mr. Dondero enters the Debtor's office or other facilities or systems without such permission, such entrance will constitute trespass.

6. James Dondero is ordered to attend all future hearings in this Bankruptcy Case by Webex (or whatever other video platform is utilized by the Court), unless otherwise ordered by the Court.

7. This Order shall remain in effect until the date that any plan of reorganization or liquidation resolving the Debtor's case becomes effective, unless otherwise ordered by the Court.

[2] For the avoidance of doubt, this Order does not enjoin or restrain Mr. Dondero from (1) seeking judicial relief upon proper notice or from objecting to any motion filed in this Bankruptcy Case, or (2) communicating with the committee of unsecured creditors (the "UCC") and its professionals regarding a pot plan.

8. All objections to the Motion are overruled in their entirety.

9. The Court shall retain exclusive jurisdiction with respect to all matters arising from or relating to the implementation, interpretation, and enforcement of this Order.

END OF ORDER

Acknowledgement from HCMLP

April 15, 2019

Reference is hereby made to certain outstanding amounts loaned from HIGHLAND CAPITAL MANAGEMENT, L.P. ("HCMLP") to HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, L.P. ("HCMF") for funding of HCMF's ongoing operations, which are payable on demand and remained outstanding on December 31, 2018 and as of the date hereof.

HCMF expects that it may be unable to repay such amounts should they become due, for the period commencing today and continuing through May 31, 2021.

HCMLP hereby agrees to not demand payment on amounts owed by HCMF prior to May 31, 2021.

Highland Capital Management, L.P.
By: Strand Advisors, Inc., its general partner

By: _____

Acknowledged By:

Highland Capital Management Fund Advisors, L.P.
By: Strand XVI, Inc., its general partner

By: _____

EXHIBIT 4

EXHIBIT 182

DATE: May 28, 2019

TO: The Board of Trustees (the "Board") of Highland Global Allocation Fund (the "Fund")

FROM: Highland Capital Management Fund Advisors, L.P. ("HCMFA" or the "Adviser")

RE: Resolution of the Fund's Net Asset Value ("NAV") Error

This memorandum summarizes the final resolution of the Fund's NAV error related to its TerreStar Corporation ("TerreStar") equity holding. In connection with the Fund's conversion from an open-end fund to a closed-end fund (the "Conversion") on February 13, 2019, the Office of the Chief Accountant ("OCA") of the SEC reviewed the Adviser's fair valuation of TerreStar equity, in particular the application of Financial Accounting Standards Board Accounting Standards Update 2011-4, Topic 820, Fair Value Measurement ("ASC 820") to two transactions in TerreStar equity that occurred in March 2018 (the "March Transactions"). The OCA provided its feedback during an exit call on February 8, 2019 and subsequently confirmed no comments to the Adviser's confirmation of understanding letter on February 14, 2019.

The Adviser and Houlihan Lokey, an independent third party expert valuation consultant approved by the Board, initially determined that the March Transactions were "non-orderly" and should be given "zero weighting" for purposes of determining fair value. As reflected in the consultation, the Adviser ultimately determined that both March Transactions should be classified as "orderly." The fair valuation methodology adopted, as addressed in the consultation, weights inputs and does not reflect last sales transaction pricing exclusively in determining fair value. The "orderly" determination and adoption of the weighted fair valuation methodology resulted in NAV errors in the Fund (the "NAV Error").

After incorporation of the updated valuation into the Fund's NAV, the gross NAV Error, excluding interest, the advisory fee rebate, and processing costs, amounted to approximately $6.1 million of loss to the Fund and approximately $1.4 million of losses to Shareholders (a total loss of approximately $7.5 million) over the period between March 18, 2018 and January 19, 2019 (the "NAV Restatement Period").

The Fund was made whole through a $5,186,496 payment on February 15, 2019, and a $2,398,842 payment on May 2, 2019. A detailed breakdown of the NAV Error and the make whole payments is set forth below. Shareholder reprocessing and reimbursement are in progress with the Fund's prior transfer agent, DST Systems, Inc. (as transfer agent to the open-end fund), and given detailed omnibus account information has not yet been obtained the estimated make whole payments are subject to change. A representative of the Adviser will provide the Board with an update on the process during the May 28, 2019 Board meeting.

NAV Error Breakdown and Make Whole Payments

	Transaction Date(s)	Loss to Fund	Estimated Loss to Shareholders[3]	Totals
Estimated Net Loss	3/14/18 thru 1/7/19	(6,068,851)	(1,373,272)	(7,442,123)
Processing, Fees, Interest	3/14/18 thru 1/7/19	(375,000)	-	(375,000)
Insurance Proceeds	2/15/2019	3,566,248	1,373,272	4,939,520
Insurance deductible paid by Adviser	2/15/2019	246,976	-	246,976
Management fee offset	4/1/2019	47,000	-	47,000
Additional payment from Adviser	5/2/2019	2,339,627[2]	-	2,339,627
Reimbursement of Processing costs from Adviser	-[1]	244,000	-	244,000
Total		-	-	-

Supplemental Numerical Update

Additional estimated loss to fund and shareholders	1/8/19 thru 1/28/19 [5]	(19,789)
Additional processing, management fees, and interest	Note 4	(39,426)
Additional payment from Adviser	5/2/2019	59,215
Total additional payment from Adviser [6]	**5/2/2019**	**2,398,842**

Notes

1 - Expected to be incurred thru 12/31/19, and will be reimbursed by Adviser as incurred. To date no invoices have been billed or paid, but upon receipt of a future invoice, the Adviser will promptly pay.

2 - Includes $2,255,628 of previously outstanding balance, and $84,000 of interest calculated through 1/7/19, which was the "as of date" used for the calculations in the OCA submission.

3 - Represents the estimated losses to shareholder subscribing into the fund during the NAV Restatement Period and estimated losses to be determined after reprocessing individual capital activity that was held in Omnibus accounts.

4 - Proposal from service provider was higher than original estimate, and includes interest thru date of final payment made by Adviser.

5 - This includes the calculations subsequent to 1/7/19 (which was the "as of date" used for the calculations in the OCA submission) "through date" 1/28/19, which the final date in which the revised mark was fully reflected in the NAV.

6 - Includes $2,339,627 and $59,215 of Additional payments from Adviser

EXHIBIT 183

INTENTIONALLY

OMITTED

EXHIBIT 184

D. Michael Lynn
State Bar I.D. No. 12736500
John Y. Bonds, III
State Bar I.D. No. 02589100
Clay M. Taylor
State Bar I.D. No. 24033261
Bryan C. Assink
State Bar I.D. No. 24089009
BONDS ELLIS EPPICH SCHAFER JONES LLP
420 Throckmorton Street, Suite 1000
Fort Worth, Texas 76102
(817) 405-6900 telephone
(817) 405-6902 facsimile

ATTORNEYS FOR DEFENDANT JAMES DONDERO

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	**Case No. 19-34054**
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.	§	**Chapter 11**
	§	
Debtor.	§	
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	
Plaintiff.	§	
v.	§	**Adversary No. 21-03003**
	§	
JAMES D. DONDERO,	§	
	§	
Defendant.	§	

DEFENDANT JAMES DONDERO'S RULE 26 INITIAL DISCLOSURES

TO: Plaintiff Highland Capital Management, L.P., by and through its attorneys of record, John Morris, Pachulski Stang Ziehl & Jones LLP, 10100 Santa Monica Blvd., 13th Floor, Los Angeles, CA 90067.

Pursuant to Rule 26(a)(1) of the Federal Rules of Civil Procedure, made applicable to this proceeding through Rule 7026 of the Federal Rules of Bankruptcy Procedure, Defendant James

Dondero ("Dondero" or "Defendant") makes the following initial disclosures to Plaintiff Highland Capital Management, L.P. ("Plaintiff" or "Debtor").[1]

1. The names, and, if known, the addresses, and telephone numbers of individuals likely to have discoverable information, along with the subjects of that information are listed below. Defendant reserves the right to amend and/or supplement these disclosures.

ANSWER:

James D. Dondero
c/o D. Michael Lynn
Clay M. Taylor
Bryan C. Assink
BONDS ELLIS EPPICH SCHAFER JONES LLP
420 Throckmorton Street, Suite 1000
Fort Worth, Texas 76102
Attorneys for Defendant

Dondero may have knowledge regarding the claims, defenses, and factual circumstances at issue in the Debtor's complaint and this adversary proceeding, including, without limitation, the terms of the promissory notes, the drafting and execution of the notes, the agreement of the Debtor to not collect on the notes upon fulfillment of conditions subsequent, the purpose and intent of the notes, the Debtor's prior use of forgivable loans, and Dondero's compensation from the Debtor during his employment.

Highland Capital Management, L.P. and certain of its current employees
c/o John Morris
PACHULSKI STANG ZIEHL & JONES LLP
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067
Attorneys for Plaintiff

Debtor and certain of its current employees, including potentially Thomas Surgent, David Klos, and Kristen Hendrix, may have knowledge regarding the claims, defenses, and factual circumstances at issue in the Debtor's complaint and Dondero's defenses to the allegations in the complaint, including the circumstances surrounding the execution of the notes and related transfers, the agreement of the Debtor to not collect on the notes upon fulfillment of conditions

[1] Defendant makes these disclosures subject in all respects to his Motion for Withdrawal of the Reference [Adv. Dkt. No. 21] and the Motion to Stay Pending the Motion to Withdraw the Reference of Plaintiff's Complaint [Adv. Dkt. No. 22] filed on April 15, 2021. Defendant does not waive, but instead hereby preserves, his right to a jury trial and all rights and requests for relief asserted in the motions. Defendant does not consent to the Bankruptcy Court determining this proceeding or entering final orders or judgments in this proceeding. Instead, Defendant requests that the reference be withdrawn and that the District Court adjudicate this proceeding.

subsequent, the Debtor's prior use of forgivable loans, and Dondero's compensation from the Debtor during his employment.

Brian Collins, former employee of the Debtor
Tel: 213-550-4538

As a former employee, he may have knowledge regarding the claims, defenses, and factual circumstances at issue in the Debtor's complaint and this adversary proceeding, including, without limitation, the promissory notes, the circumstances surrounding the preparation and/or execution of the notes and related transfers, the agreement of the Debtor to not collect on the notes upon fulfillment of conditions subsequent, the Debtor's prior use of forgivable loans, compensation of Debtor employees, and Dondero's compensation from the Debtor during his employment.

Amy Theriot, former employee of the Debtor
Tel: 214-893-5352

As a former employee, she may have knowledge regarding the claims, defenses, and factual circumstances at issue in the Debtor's complaint and this adversary proceeding, including, without limitation, the promissory notes, the circumstances surrounding the preparation and/or execution of the notes and related transfers, the agreement of the Debtor to not collect on the notes upon fulfillment of conditions subsequent, the Debtor's prior use of forgivable loans, compensation of Debtor employees, and Dondero's compensation from the Debtor during his employment.

Mark Okada, former employee of the Debtor
Tel: 975-989-1000

As a former employee, he may have knowledge regarding the claims, defenses, and factual circumstances at issue in the Debtor's complaint and this adversary proceeding, including, without limitation, the promissory notes, the circumstances surrounding the preparation and/or execution of the notes and related transfers, the agreement of the Debtor to not collect on the notes upon fulfillment of conditions subsequent, the Debtor's prior use of forgivable loans, compensation of Debtor employees, and Dondero's compensation from the Debtor during his employment.

Scott Ellington, former employee of the Debtor
c/o Frances Smith
Ross & Smith PC
700 N. Pearl Street, Suite 1610
Dallas, TX 75201

As a former employee, he may have knowledge regarding the claims, defenses, and factual circumstances at issue in the Debtor's complaint and this adversary proceeding, including, without limitation, the promissory notes, the circumstances surrounding the preparation and/or execution

of the notes and related transfers, the agreement of the Debtor to not collect on the notes upon fulfillment of conditions subsequent, the Debtor's prior use of forgivable loans, compensation of Debtor employees, and Dondero's compensation from the Debtor during his employment.

Frank Waterhouse, former employee of the Debtor
c/o Frances Smith
Ross & Smith PC
700 N. Pearl Street, Suite 1610
Dallas, TX 75201

As a former employee, he may have knowledge regarding the promissory notes, the circumstances surrounding the execution of the notes and related transfers, the agreement of the Debtor to not collect on the notes upon fulfillment of conditions subsequent, the Debtor's prior use of forgivable loans, compensation of Debtor employees, and Dondero's compensation from the Debtor during his employment.

John Honis, employee of Rand Advisors
Tel: 214-335-7969

As an employee of Rand Advisors, he may have knowledge regarding the Debtor's prior use of forgivable loans.

Jack Yang, former employee of the Debtor
Tel: 646-387-2351

As a former employee, he may have knowledge regarding the Debtor's prior use of forgivable loans.

Paul Adkins, former employee of the Debtor
Tel: +65 9728 0599

As a former employee, he may have knowledge regarding the Debtor's prior use of forgivable loans.

Pat Daugherty, former employee of the Debtor
c/o Jason Kathman
Spencer Fane LLP
2200 Ross Avenue, Suite 4800
Dallas, TX 75201

As a former employee, he may have knowledge regarding the Debtor's prior use of forgivable loans.

Tim Lawler, former employee of the Debtor
Tel: 847-305-3013

As a former employee, he may have knowledge regarding the Debtor's prior use of forgivable loans.

Appu Mundassery, former employee of the Debtor

As a former employee, he may have knowledge regarding the Debtor's prior use of forgivable loans.

Mike Hurley, former employee of the Debtor
Tel: 775-750-8921

As a former employee, he may have knowledge regarding the Debtor's prior use of forgivable loans.

Gibran Mahmud, former employee of the Debtor
Tel: 972-740-0018

As a former employee, he may have knowledge regarding the Debtor's prior use of forgivable loans.

2. A copy or a description by category and location, of all documents, electronically stored information, and tangible things that the disclosing party has in its possession, custody, or control and may use to support its claims or defenses.

ANSWER: Defendant may have documents and communications related to the following matters in his possession, custody, or control that he may use to support his claims or defenses. The inclusion of a general category of documents below does not mean that specific documents necessarily exist or that Defendant has such documents in his possession, custody, or control.

1. Documents and communications related to the allegations in the complaint and Dondero's defenses to the allegations in the complaint, including, without limitation, documents related to the terms of the promissory notes, the drafting and execution of the notes, the agreement of the Debtor to not collect on the notes upon fulfillment of conditions subsequent, the purpose and intent of the notes, the Debtor's prior use of forgivable loans, and Dondero's compensation from the Debtor during his employment.
2. Documents related to Dondero's personal tax returns.
3. Documents related to tax loan(s) made by the Debtor to Dondero and such tax amounts incurred related to federal partnership tax.
4. Documents and/or communications related to Dondero's compensation during his employment at Highland.
5. Any and all pleadings filed in this matter and the main bankruptcy case.

3. A computation of each category of damages claimed by the disclosing party, who must also make available for inspection and copying as under Rule 34 the documents or other evidentiary material, unless privileged or protected from disclosure, on which each computation is based, including materials bearing on the nature and extent of injuries suffered.

ANSWER:

Defendant is not seeking actual damages at this time.

4. For inspection and copying as under Rule 34, any insurance agreement under which an insurance business may be liable to satisfy all or part of a possible judgment in the action or to indemnify or reimburse for payments made to satisfy the judgment.

ANSWER:

No such insurance agreements known.

Reservation of Rights

Defendant makes these disclosures subject in all respects to his Motion for Withdrawal of the Reference [Adv. Dkt. No. 21] and Motion to Stay Pending the Motion to Withdraw the Reference of Plaintiff's Complaint [Adv. Dkt. No. 22] filed on April 15, 2021. Defendant does not waive, but hereby preserves, his right to a jury trial and all additional rights and relief available as asserted in the motions.

The Defendant's investigation is ongoing, and he reserves the right to further amend, modify and/or supplement these initial disclosures as provided in Federal Rule of Civil Procedure 26(e) if warranted and to the extent additional disclosures are not mooted or made redundant by information made known during the discovery process or in writing. In addition, the Defendant makes these initial disclosures without waiving but expressly preserving: (a) his right to a jury trial; (b) his right to have this proceeding determined by the District Court; (c) his right to object to the entry of any final orders or final judgments by the Bankruptcy Court in this proceeding; (d) the right to object to any discovery requests or to the admissibility of evidence on the grounds of privilege, work product, relevance, materiality, or any other proper ground; and (e) the right to object to the use of any information provided in or derived from these initial disclosures for any purpose in this action.

Dated: April 15, 2021

Respectfully submitted,

/s/ Bryan C. Assink

D. Michael Lynn
State Bar I.D. No. 12736500
John Y. Bonds, III
State Bar I.D. No. 02589100
Clay M. Taylor
State Bar I.D. No. 24033261
Bryan C. Assink
State Bar I.D. No. 24089009
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(817) 405-6900 telephone
(817) 405-6902 facsimile
Email: michael.lynn@bondsellis.com
Email: john@bondsellis.com
Email: clay.taylor@bondsellis.com
Email: bryan.assink@bondsellis.com

ATTORNEYS FOR DEFENDANT JAMES DONDERO

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that, on April 15, 2021, a true and correct copy of the foregoing Rule 26 initial disclosure was served via email on counsel for the Plaintiff as listed below.

Jeff Pomerantz
Ira Kharasch
John Morris
Greg Demo
Hayley Winograd
PACHULSKI STANG ZIEHL & JONES LLP
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067
Email: jpomerantz@pszjlaw.com
ikharasch@pszjlaw.com
jmorris@pszjlaw.com
gdemo@pszjlaw.com
hwinograd@pszjlaw.com

/s/ Bryan C. Assink
Bryan C. Assink

EXHIBIT 185

PACHULSKI STANG ZIEHL & JONES LLP
Jeffrey N. Pomerantz (CA Bar No.143717) (*admitted pro hac vice*)
Ira D. Kharasch (CA Bar No. 109084) (*admitted pro hac vice*)
John A. Morris (NY Bar No. 2405397) (*admitted pro hac vice*)
Gregory V. Demo (NY Bar No. 5371992) (*admitted pro hac vice*)
Hayley R. Winograd (NY Bar No. 5612569) (*admitted pro hac vice*)
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067
Telephone: (310) 277-6910
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HAYWARD PLLC
Melissa S. Hayward
Texas Bar No. 24044908
MHayward@HaywardFirm.com
Zachery Z. Annable
Texas Bar No. 24053075
ZAnnable@HaywardFirm.com
10501 N. Central Expy, Ste. 106
Dallas, Texas 75231
Tel: (972) 755-7100
Fax: (972) 755-7110

Counsel for Highland Capital Management, L.P.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re: HIGHLAND CAPITAL MANAGEMENT, L.P.,[1] Reorganized Debtor.	§ § § § § §	Chapter 11 Case No. 19-34054-sgj11
HIGHLAND CAPITAL MANAGEMENT, L.P., Plaintiff, vs. HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, L.P., Defendant.	§ § § § § § § § § §	Adversary Proceeding No. 21-03004-sgj

[1] The Reorganized Debtor's last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Reorganized Debtor is 100 Cresce

PLAINTIFF'S THIRD AMENDED NOTICE OF RULE 30(B)(6) DEPOSITION TO HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, L.P.

PLEASE TAKE NOTICE that, pursuant to Rule 30(b)(6) of the Federal Rules of Civil Procedure, made applicable herein pursuant to Rules 7030 and 9014 of the Federal Rules of Bankruptcy Procedure, Highland Capital Management, L.P., the plaintiff in the above-referenced adversary proceeding in the above-captioned chapter 11 case, shall take the deposition of Highland Capital Management Fund Advisors, L.P. ("HCMFA") by the person(s) most qualified to testify on HCMFA's behalf with respect to the topics described in **Exhibit A** attached hereto on **December 1, 2021, commencing at 10:00 a.m. Central Time** or at such other day and time as the Plaintiff may agree in writing. The deposition will be taken under oath before a notary public or other person authorized by law to administer oaths and will be visually recorded by video or otherwise.

The deposition will be taken remotely via an online platform due to the coronavirus pandemic such that no one will need to be in the same location as anyone else in order to participate in the deposition and by use of Interactive Realtime.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

Dated: November 30, 2021.

PACHULSKI STANG ZIEHL & JONES LLP

/s/ John A. Morris

Jeffrey N. Pomerantz (CA Bar No.143717)
Ira D. Kharasch (CA Bar No. 109084)
John A. Morris (NY Bar No. 2405397)
Gregory V. Demo (NY Bar No. 5371992)
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-and-

HAYWARD PLLC

Melissa S. Hayward
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10501 N. Central Expy, Ste. 106
Dallas, Texas 75231
Tel: (972) 755-7100
Fax: (972) 755-7110

Counsel for Highland Capital Management, L.P.

EXHIBIT A

DEFINITIONS

1. "Amended Answer" means *Defendant's Amended Answer* lodged in the above-referenced adversary proceeding at Docket No. 48.

2. "Bankruptcy Case" refers to the above-referenced bankruptcy case styled as *In re Highland Capital Management, L.P.*, Case No. 19-34054-sgj11.

3. "Communications" means the transmittal of information (in the form of facts, ideas, inquiries, or otherwise) and includes all oral and written communications of any nature, type or kind including, but not limited to, any ESI (and any attachments thereto), Documents, telephone conversations, text messages, discussions, meetings, facsimiles, e-mails, pagers, memoranda, and any other medium through which any information is conveyed or transmitted.

4. "Concerning" means and includes relating to, constituting, defining, evidencing, mentioning, containing, describing, discussing, embodying, reflecting, edifying, analyzing, stating, referring to, dealing with, or in any way pertaining to the subject matter.

5. "Discovery Requests" means (i) the *Debtor's First Requests for Admission Directed to Highland Capital Management Fund Advisors, L.P.*, (ii) the *Debtor's First Request for Production of Documents Directed to Highland Capital Management Fund Advisors, L.P.*, and (iii) the *Debtor's First Interrogatories Directed to Highland Capital Management Fund Advisors, L.P.*

6. "Document" means and includes all written, recorded, transcribed or graphic matter of every nature, type and kind, however and by whoever produced, reproduced, disseminated or made. This includes, but is not limited to, Communications, ESI, "writings" as defined by Rule 1001 of the Federal Rules of Evidence, copies or drafts, and any tangible or

intangible thing or item that contains any information. Any Document that contains any comment, notation, addition, insertion or marking of any type or kind which is not part of another Document, is to be considered a separate Document.

7. "Exhibits" refers to each of the documents identified as Exhibits 28-66 on *Debtor's Amended Witness and Exhibit List with Respect to Hearing to Be Held on May 25, 2021* lodged in the above-referenced adversary proceeding at Docket No. 35.

8. "HGAF" shall have the meaning ascribed to that term in paragraph 38 of the Amended Answer.

9. "Highland" means Highland Capital Management, L.P.

10. "Insurance Claim" means any claim that You filed for insurance coverage Concerning the NAV Error.

11. "Motion to Amend" means *Defendant's Motion for Leave to Amend Answer* lodged in the above-referenced adversary proceeding at Docket No. 32.

12. "NAV Error" means the error made in calculating the net asset value of the equity interests HGAF held in TerreStar that were sold in March 2018.

13. "Notes" shall have the meaning ascribed to that term in paragraph 15 of the *Complaint for (I) Breach of Contract and (II) Turnover of Property of the Debtor's Estate* lodged in the above-referenced adversary proceeding at Docket No. 1.

14. "Original Answer" means *Defendant's Original Answer* lodged in the above-referenced adversary proceeding at Docket No. 6.

15. "Retail Board" means any board of trustees or directors of any fund to which You provide advisory services.

16. "Sauter Declaration" means the *Declaration of Dennis C. Sauter, Jr.* lodged in the above-referenced adversary proceeding at Docket No. 32-1.

17. "You" or "Your" means Highland Capital Management Fund Advisors, L.P., and anyone authorized to act on its behalf.

Rule 30(b)6) Topics

Topic No. 1:

Your Original Answer.

Topic No. 2:

Your Amended Answer

Topic No. 3:

Each Affirmative Defense asserted in Your Amended Answer, including but not limited to all facts and circumstances, Communications, and Documents Concerning each Affirmative Defense. *See* Answer ¶¶ 38-47.

Topic No. 4:

The Notes, including but not limited to (a) the negotiation of the Notes, (b) the terms of the Notes, (c) Communications Concerning the Notes, (d) any payments of principal or interest made by You or on Your behalf with respect to the Notes, (e) the use of the proceeds of the Notes, (f) Your communications with Your outside auditors Concerning the Notes and the obligations thereunder, and (g) any agreements Concerning the Notes.

Topic No. 5:

The Exhibits.

Topic No. 6:

The Motion to Amend.

Topic No. 7:

The Sauter Declaration.

Topic No. 8:

Any Insurance Claim that You filed, including but not limited to: (a) any proceeds You received on account of any Insurance Claim; (b) any deductible paid by You in connection with any Insurance Claim; (c) the date You received any insurance proceeds on account of any Insurance Claim; (d) the use of the proceeds from any Insurance Claim; and (e) any Communications with any insurance carrier that processed any Insurance Claim.

Topic No. 9:

Any "consent fee" paid by You in April or May 2019, including the amount, date of payment, and source of funding for any such "consent fee."

Topic No. 10:

Your accounting for (a) the $2.4 million transferred from Highland to You on May 2, 2019, and (b) the $5 million transferred from Highland to You on May 3, 2019.

Topic No. 11:

Communications in 2020 with any Retail Board concerning any amounts due and owing by You to Highland, including but not limited to the disclosures You made to any Retail Board in October 2020.

Topic No. 12:

All Communications that You made in the Bankruptcy Case Concerning the Notes, including in any pleading, court filing, or argument.

Topic No. 13:

The identity (including the title or position) of each of Your officer(s), director(s), direct and indirect owner(s), and employee(s) for the period January 1, 2018 through the present.

Topic No. 14:

Your responses to the Discovery Requests.

EXHIBIT 186

INTENTIONALLY

OMITTED

EXHIBIT 187

INTENTIONALLY

OMITTED

EXHIBIT 188

From: David Klos <DKlos@HighlandCapital.com>
Sent: Friday, February 02, 2018 2:16 PM
To: Corporate Accounting
Cc: Melissa Schroth
Subject: $3.825mm to Jim

Blair,
Please set up $3.825mm to go to Jim this afternoon. Frank has approved.

Drew, this is a new loan.

DAVID KLOS | CONTROLLER

HIGHLAND CAPITAL MANAGEMENT

300 Crescent Court | Suite 700 | Dallas, Texas 75201
C: 214.674.2926 | O: 972.419.4478 | F: 972.628.4147
dklos@highlandcapital.com | www.highlandcapital.com

EXHIBIT 189

From: wiremail@bbvacompass.com <wiremail@bbvacompass.com>
Sent: Friday, February 2, 2018 1:35 PM
To: Corporate Accounting <CorporateAccounting@hcmlp.com>
Subject: Compass Bank [Texas Bank Outgoing] Message ID:180202133456H400 Advice Code:TxBkOut

Compass Bank Wire Transfer Dept.
701 S 32nd Street
Birmingham, AL 35233

Outgoing Wire - Advice of Debit

Date: 2018-02-02 00:00:00 Wire Create Time 13:34:57

Account # :
Account Name : HIGHLAND CAPITAL MANAGEMENT LP
Amount : $3,825,000.00
GFX Reference : 180202133456H400
Receiving Bank : 311973208
Recv BK Name : NEXBANK SSB

Originator : HIGHLAND CAPITAL MANAGEMENT LP

Beneficiary : James Dondero
Bene Acct # : [redacted]884

Beneficiary Info (OBI):
2/2/2018 Loan

Reference for Beneficiary (RFB):

FED Reference Number (IMAD):
20180202F2QCZ60C002532

EXHIBIT 190

From: Blair Hillis <BHillis@HighlandCapital.com>
Sent: Wednesday, August 01, 2018 1:12 PM
To: David Klos; Corporate Accounting
Cc: Melissa Schroth
Subject: RE: $2.5mm loan to Dondero

Funds have been transferred to Jim's account. Thanks!

Kind Regards,
Blair Roeber

From: David Klos
Sent: Wednesday, August 1, 2018 10:47 AM
To: Corporate Accounting
Cc: Melissa Schroth
Subject: $2.5mm loan to Dondero

Jim has authorized a $2.5mm loan from HCMLP to Dondero.

Blair, can you please set up this wire today?
Drew, can you please draw up loan docs for execution?

DAVID KLOS | CONTROLLER

HIGHLAND CAPITAL MANAGEMENT

300 Crescent Court | Suite 700 | Dallas, Texas 75201
C: 214.674.2926 | O: 972.419.4478 | F: 972.628.4147
dklos@highlandcapital.com | www.highlandcapital.com

EXHIBIT 191

From: Aigen, Michael P. [mailto:michael.aigen@stinson.com]
Sent: Friday, October 15, 2021 1:23 PM
To: John A. Morris <jmorris@pszjlaw.com>
Cc: Jeff Pomerantz <jpomerantz@pszjlaw.com>; Gregory V. Demo <GDemo@pszjlaw.com>; Hayley R. Winograd <hwinograd@pszjlaw.com>; 'zannable@haywardfirm.com' <zannable@haywardfirm.com>; Rukavina, Davor (drukavina@munsch.com) <drukavina@munsch.com>; Deitsch-Perez, Deborah R. <deborah.deitschperez@stinson.com>; 'ddraper@hellerdraper.com' <ddraper@hellerdraper.com>; Vasek, Julian (jvasek@munsch.com) <jvasek@munsch.com>; Berghman, Thomas (tberghman@munsch.com) <tberghman@munsch.com>; Clay Taylor (clay.taylor@bondsellis.com) <clay.taylor@bondsellis.com>; Bryan Assink (bryan.assink@bondsellis.com) <bryan.assink@bondsellis.com>; Douglas Draper <ddraper@hellerdraper.com>; elmsd@gtlaw.com
Subject: RE: HCMLP's Objections to Defendants' Rule 30(b)(6) Notice

John:

Defendants have the following objections to your corporate representative topics:

NexPoint, HCMS and HCRE

Topic 1: Your answer.

Defendants object to this topic because it is vague and not specific enough to allow Defendants to adequately prepare a witness. Subject to these objections, Defendants will provide a witness on this topic.

Topic 2: Each Affirmative Defense asserted in Your Answer, including but not limited to all facts and circumstances, Communications, and Documents Concerning each Affirmative Defense.

Defendants object to this topic because it is vague and not specific enough to allow Defendants to adequately prepare a witness. Subject to these objections, Defendants will provide a witness on this topic.

Topic 3: The Note, including but not limited to (a) the negotiation of the Note, (b) the terms of the Note, (c) Communications Concerning the Note, (d) any payments of principal or interest made by You or on Your behalf with respect to the Note; (e) the use of the proceeds of the Note, (f) Your communications with Your outside auditors Concerning the Note and the obligations thereunder, and (g) all agreements Concerning the Note.

Defendants object to the portion of this topic seeking information related to the use of the proceeds of the Note because that information is not reasonably calculated to lead to the discovery of admissible evidence. Subject to these objections, Defendants will provide a witness on this topic.

Topic 4: Your responses to the Discovery Requests.

Defendants object to this topic because it is vague and not specific enough to allow Defendants to adequately prepare a witness. Defendants incorporate all objections made in their discovery responses. Subject to these objections, Defendants will provide a witness on this topic.

Dugaboy

Topic 2: Your authority to enter into the Alleged Agreement.

Defendant objects to this topic to the extent that it seeks privileged information and seeks legal conclusions. Subject to these objections, Defendant will provide a witness on this topic.

Topic 3: Ownership, beneficial ownership, and control of The Dugaboy Investment Trust.

Defendant objects to this topic because that information is not reasonably calculated to lead to the discovery of admissible evidence. Subject to these objections, Defendant will provide a witness on this topic.

Topics 4-8: Other agreements other than the agreements at issue in these proceedings.

Defendant object to these topics because that information is not reasonably calculated to lead to the discovery of admissible evidence. Subject to these objections, Defendant will provide a witness on these topics.

Topic 9: Your responses to the Discovery Requests.

Defendant objects to this topic because it is vague and not specific enough to allow Defendant to adequately prepare a witness. Defendant incorporates all objections made in its discovery responses. Subject to these objections, Defendant will provide a witness on this topic.

Michael P. Aigen
Partner

STINSON LLP
3102 Oak Lawn Avenue, Suite 777
Dallas, TX 75219
Direct: 214.560.2201 \ Bio

STINSON.COM

From: John A. Morris <jmorris@pszjlaw.com>
Sent: Tuesday, October 12, 2021 5:50 PM
To: Aigen, Michael P. <michael.aigen@stinson.com>
Cc: Jeff Pomerantz <jpomerantz@pszjlaw.com>; Gregory V. Demo <GDemo@pszjlaw.com>; Hayley R. Winograd <hwinograd@pszjlaw.com>; 'zannable@haywardfirm.com' <zannable@haywardfirm.com>; Rukavina, Davor (drukavina@munsch.com) <drukavina@munsch.com>; Deitsch-Perez, Deborah R. <deborah.deitschperez@stinson.com>; 'ddraper@hellerdraper.com' <ddraper@hellerdraper.com>; Vasek, Julian (jvasek@munsch.com) <jvasek@munsch.com>; Berghman, Thomas (tberghman@munsch.com) <tberghman@munsch.com>; Clay Taylor (clay.taylor@bondsellis.com) <clay.taylor@bondsellis.com>; Bryan Assink (bryan.assink@bondsellis.com) <bryan.assink@bondsellis.com>
Subject: HCMLP's Objections to Defendants' Rule 30(b)(6) Notice

Michael:

HCMLP has the following objections to the attached Rule 30(b)(6) notice:

HCMLP objects to Topic No. 2 (a) to the extent it calls for HCMLP to tender a witness to testify with precision to all principal, interest, and fees due under each Note that is the subject of the Complaints, and on the grounds that (b) HCMLP provided calculations of damages in its demand and default letters as well as its Complaints, (c) the categories of damages are all (i) unpaid principal, (ii) accrued but unpaid interest, and (iii) costs of collection, including reasonable attorneys' fees (the "Damages"), (d) based on the Notes and the documents produced proving HCMLP's costs of collection (which will be

supplemented from time to time to account for additional costs), the Defendants are just as easily capable of calculating the Damages at any moment in time as HCMLP, (e) it is unreasonable to expect any witness to specifically recall the precise Damages due under each Note, particularly when such Damages continue to increase every day.

Subject to those objections, HCMLP will tender a witness prepared to testify on Topic No. 2.

HCMLP objects to Topic No. 4 on the grounds that (a) the phrase "involved in" is vague and ambiguous, and (b) it assumes that any of the Notes were subject to "negotiations."

Subject to those objections, HCMLP will tender a witness prepared to testify as to the identify of individuals it knows were involved in communications related to the execution and/or terms of the notes.

HCMLP objects to Topic No. 7 on the grounds that (a) it seeks "facts" that are solely within the Defendants' knowledge, and that (b) Defendants' defenses and affirmative defenses have materially changed over time, and are otherwise ambiguous or not specifically set forth in the Answers.

Subject to that objection, HCMLP will tender a witness prepared to testify as to facts that it knows of that relate to or concern the defenses and affirmative defenses specifically proffered by any of the Defendants.

HCMLP objects to Topics No. 9 on the grounds that (a) there is no time limitation, (b) the existence and terms of all affiliate loans, including all issues concerning forgiveness and forbearance, are set forth in detail in each of HCMLP's audited financial statements for each year from 2008 through 2018 (including the sections concerning "Subsequent Events"), and HCMLP specifically refers Defendants to those audited financial statements, and (c) it is unreasonable to expect any witness to specifically recall the identity of all affiliated borrowers, and the amounts, dates, and terms of all loans made to affiliated borrowers, including whether, when, and to what extent any such affiliated loans were forgiven.

Subject to those objections, HCMLP will tender a witness prepared to testify as to loans it made to employees or officers that were forgiven, in whole or in part, during the period 2008 through the Petition Date.

HCMLP objects to Topics No. 10 on the grounds that (a) there is no time limitation, (b) the existence and terms of all affiliate loans, including all issues concerning forgiveness and forbearance, are set forth in detail in each of HCMLP's audited financial statements for each year from 2008 through 2018 (including the sections concerning "Subsequent Events"), and HCMLP specifically refers Defendants to those audited financial statements, and (c) it is unreasonable to expect any witness to specifically recall the identity of all affiliated borrowers, and the amounts, dates, and terms of all loans made to affiliated borrowers, including whether, when, and to what extent any such affiliated loans were forgiven.

Subject to those objections, HCMLP will tender a witness prepared to testify as to loans it made to employees or officers that were forgiven, in whole or in part, during the period 2008 through the Petition Date.

HCMLP objects to Topics No. 11 on the grounds that (a) there is no time limitation, (b) documents concerning Mr. Dondero's compensation for the period 2016 through 2020 (the "Compensation Documents") have been or will be produced and HCMLP specifically refers Defendants to the Compensation Documents, and (c) it is unreasonable to expect any witness to specifically recall the specific amounts and components of Mr. Dondero's compensation from 2016 and 2020.

Subject to those objections, HCMLP will tender a witness prepared to testify as to loans it made to employees or officers that were forgiven, in whole or in part, during the period 2008 through the Petition Date.

HCMLP objects to Topic No. 12 on the grounds that it is (a) overly broad, unduly burdensome, and not relevant to the claims or defenses in this adversary proceeding, and (b) none of the Defendants who served the attached Rule 30(b)(6) notice is or was a party to a Shared Services Agreement with HCMLP.

Based on the forgoing, HCMLP will not proffer a witness to testify as to Topic No. 12.

HCMLP objects to Topic Nos. 13, 14, 15, 16, and 17 to the extent those topics assume that HCMLP had any contractual or legal duty or obligation to take or refrain from taking the actions described therein.

Subject to those objections, and any additional objections referred to below, HCMLP will tender a witness prepared to testify on Topics 13, 14, 15, 16, and 17.

HCMLP objects to Topic No. 14 on the ground that the phrase "may have previously had any role" is speculative, vague, and ambiguous.

Subject to that objection, HCMLP will tender a witness prepared to testify as to those referenced employees who actually processed, made, facilitated or coordinated such payments, if any.

HCMLP objects to Topic No. 15 on the grounds that the phrase (a) "[a]ny communications or instructions that may have been given" is speculative, vague, and ambiguous, and (b) there is no time limitation.

Subject to those objections, HCMLP will tender a witness prepared to testify as to communications or instructions that were actually given from 2018 to the present, if any.

From: Aigen, Michael P. [mailto:michael.aigen@stinson.com]
Sent: Thursday, October 07, 2021 2:49 PM
To: Rukavina, Davor <drukavina@munsch.com>; 'zannable@haywardfirm.com' <zannable@haywardfirm.com>; John A. Morris <jmorris@pszjlaw.com>; Deitsch-Perez, Deborah R. <deborah.deitschperez@stinson.com>; Douglas Draper <ddraper@hellerdraper.com>
Cc: Vasek, Julian <jvasek@munsch.com>; Berghman, Thomas <tberghman@munsch.com>; Clay Taylor (clay.taylor@bondsellis.com) <clay.taylor@bondsellis.com>; Bryan Assink (bryan.assink@bondsellis.com) <bryan.assink@bondsellis.com>; Jeff Pomerantz <jpomerantz@pszjlaw.com>; Hayley R. Winograd <hwinograd@pszjlaw.com>
Subject: RE: NexPoint Notice of 30(b)(6) to Debtor

Please see attached notice for the Seery/30B6 deposition.

Michael P. Aigen
Partner

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3102 Oak Lawn Avenue, Suite 777
Dallas, TX 75219
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This communication (including any attachments) is from a law firm and may contain confidential and/or privileged information. If it has been sent to you in error, please contact the sender for instructions concerning return or destruction, and do not use or disclose the contents to others.

From: Rukavina, Davor <drukavina@munsch.com>
Sent: Thursday, October 7, 2021 11:42 AM
To: 'zannable@haywardfirm.com' <zannable@haywardfirm.com>; John A. Morris <jmorris@pszjlaw.com>; Deitsch-Perez, Deborah R. <deborah.deitschperez@stinson.com>; Douglas Draper <ddraper@hellerdraper.com>
Cc: Vasek, Julian <jvasek@munsch.com>; Berghman, Thomas <tberghman@munsch.com>; Aigen, Michael P. <michael.aigen@stinson.com>; Clay Taylor (clay.taylor@bondsellis.com) <clay.taylor@bondsellis.com>; Bryan Assink (bryan.assink@bondsellis.com) <bryan.assink@bondsellis.com>; Jeff Pomerantz <jpomerantz@pszjlaw.com>; Hayley R.

Winograd <hwinograd@pszjlaw.com>
Subject: NexPoint Notice of 30(b)(6) to Debtor

External Email – Use Caution

Counsel, please see attached notice.

Thank you

Davor Rukavina, Esq.

Munsch Hardt Kopf & Harr, P.C.
500 N. Akard Street, Suite 3800 / Dallas, Texas 75201-6659

Direct: +1.214.855.7587 / drukavina@munsch.com / munsch.com

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EXHIBIT 192

1 IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
2 DALLAS DIVISION

3 In re:)Chapter 11
)
4 HIGHLAND CAPITAL MANAGEMENT, LP,)
)Case No.
5 Debtor.)19-34054-SGJ-11
_____)_____
6 HIGHLAND CAPITAL MANAGEMENT, LP,)
)
7 Plaintiff,)
)
8 vs.)Advisory Proceeding No.
)21-03004
9 NEXPOINT ADVISORS, LP; JAMES)
DONDERO; NANCY DONDERO; and THE)
10 DUGABOY INVESTMENT TRUST,)
)
11 Defendants.)

12
****
13 REMOTE DEPOSITION OF
DUSTIN NORRIS
14 December 1, 2021
****
15

16 DUSTIN NORRIS, produced as a witness at the
17 instance of the Highland Capital Management, was
18 duly sworn and deposed in the above-styled and
19 numbered cause on December 1, 2021, from
20 10:01 a.m. CST to 3:25 p.m. CST, stenographically
21 reported, pursuant to the Federal Rules of Civil
22 Procedure and the provisions stated on the record.
23 Job Number: 203362
Reported by: Rebecca A. Graziano, CSR, RMR, CRR
24 Texas CSR 9306
California CSR 14407
25 Illinois CSR 084.004659

A P P E A R A N C E S
(all attendees appearing via remote videoconference)

REPRESENTING HIGHLAND CAPITAL MANAGEMENT, LP:
John Morris, Esq.
Hayley Winograd, Esq.
PACHULSKI STANG ZIEHL & JONES LLP
780 Third Avenue
New York City, New York 10017

REPRESENTING NEXPOINT ADVISORS, LP:
Davor Rukavina, Esq.
MUNSCH HARDT KOPF & HARR, PC
500 North Akard Street
Dallas, Texas 75201

REPRESENTING JAMES DONDERO, NANCY DONDERO, HCRE, and HCMS:

Michael Aigen, Esq.
STINSON LLP
3102 Oak Lawn Avenue
Dallas, Texas 75219

ALSO PRESENT:
La Asia Canty, Paralegal,
Pachulski Stang Ziehl & Jones

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EXHIBITS

NUMBER	DESCRIPTION	PAGE
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PREVIOUSLY MARKED EXHIBITS

NUMBER	DESCRIPTION	PAGE
Exhibit 1	Complaint for (I) Breach of Contract and (II) Turnover of Property of the Debtor's Estate.....	38
Exhibit 5	Defendant's Original Answer.....	29
Exhibit 13	Defendant's Amended Answer.....	158
Exhibit 36	Email Chain; Bates D-HCMFA290880 through 290883.....	87

PREVIOUSLY MARKED EXHIBITS

NUMBER	DESCRIPTION	PAGE
Exhibit 45	Highland Capital Management Fund Advisors, LP, Consolidated Financial Statements and Supplemental Information, 12/31/18; Bates D-CNL-002273 through 002296....	46
Exhibit 59	Supplemental 15(c) Info Request; Bates HCMFAS 000025 through 000031...	71
Exhibit 147	BBVA Compass Bank Statement, Date Ending 5/31/19 (no Bates range).....	51
Exhibit 182	Memo Dated 5/28/19 (no Bates range)..	119

PROCEEDINGS
(On the record at 10:01 a.m. CST)
(Witness duly sworn.)
DUSTIN NORRIS,
being first duly sworn, testified as follows:
EXAMINATION
BY MR. MORRIS:
Q Good morning, Mr. Norris. As you may recall, my name is John Morris. I'm an attorney at Pachulski Stang Ziehl & Jones, and we're counsel to the reorganized debtor known as Highland Capital Management, LP, and we're here for your deposition today.
Do you understand that?
A Yes, sir.
Q And do you understand that you're being deposed today in your capacity as what's called a Rule 30(b)(6) witness on behalf of Highland Capital Management Fund Advisors, LP?
A I do.
Q Can we refer to Highland Capital Management Fund Advisors, LP, as "HCMFA"?
A Yes, that works.
Q And can we refer to Highland Capital Management, LP, as either "Highland" or "HCMLP"?

Dustin Norris

A Yes.
Q Okay. Are you aware that your answers today will bind HCMFA?
A Generally, yes.
Q Okay. Have you seen the notice that was served by Highland on HCMFA in connection with this deposition?
A I have.
Q Okay. I've -- I've examined you before; right?
A Yes.
Q Okay. So the rules are the exact same, and they are very simple. If I ask a question, I would ask you to refrain from answering until I've completed my question; is that fair?
A Yes, it is. Thank you.
Q And if I begin a question or respond before you've completed your answer, will you let me know that?
A Yes.
Q We're going to be putting documents up on the screen from time to time today. If at any time you believe you need to see other portions of the document in order to give complete and

Dustin Norris

accurate answers, will you let me know that?
A Yes.
Q If you need a break at any time, will you let me know that as well?
A I will.
Q Okay.
MR. MORRIS: I would ask my colleague, Ms. Canty, to put up on the screen the Rule 30(b)(6) deposition notice.
(Norris Exhibit 185 marked.)
(Reporter discussion off the record.)
MR. MORRIS: Okay. Asia, what exhibit number should we put on this document?
MS. CANTY: 185.
MR. MORRIS: Okay. Davor and Michael, this will be Exhibit 185.
And if we can scroll down and show it to Mr. Norris.
BY MR. MORRIS:
Q Do you see that this is the plaintiff's third amended notice of deposition for today?
MR. RUKAVINA: And just so you

Dustin Norris

know, John and Dustin, I did not send this to you, Dustin. All that it does is changes the time of today's deposition. It's identical to the last one that you did get.
THE WITNESS: Okay. And I have the last one here with me as well.
BY MR. MORRIS:
Q Okay. So there's no -- I'll represent to you that there's no difference between the one that's on the screen and the one you have except that the one on the screen says "Third Amended Notice," and it was scheduled for 9:00 today. It's scheduled for 10:00 today, the -- the time that we're beginning.
Do you have any other documents in front of you other than the deposition notice?
A I do.
Q What -- what other documents do you have before you?
A Yeah. I have the original complaint I believe it's called -- forgive me if I call them the wrong items --
Q Uh-huh.

Dustin Norris

A -- but the original complaint from HCMLP. I have the original answer response from HCMFA. I have the amended response. I have the declaration from Mr. Sauter. I have copies of the promissory notes. I have the shared services agreement. I have a -- incumbency certificates, which will help me respond to one of your questions in the 30(b)(6) notice. And I have a board to the memo [sic] regarding NAV error, and I have the "Defendant's Second Motion for Leave to Amend Answer and Brief in Support Thereof" that was filed yesterday.
So a number of documents that -- and I also have up on my screen your exhibits that I believe we'll be going through in one of the -- let me check here -- Topic Number 5. So I have open, you know, a 650-page document that was filed in Docket 35 on May 24th, I believe, is the correct document. So those are the materials that I have.
Q Excellent. I appreciate that.
So you've seen -- you've seen at least the plaintiff's second amended notice of Rule 30(b)(6) deposition before today. Do I have

Dustin Norris

that right?
A That's correct.
Q And you have that with you; right?
A I do.
Q Okay. Are you prepared to testify on behalf of HCMFA today on -- in connection with each of the topics in the deposition notice?
A Yes, I am.
Q All right.
MR. MORRIS: Let's just, for the record, scroll down to make sure that the topics are the same as the -- the one that Mr. Norris has in front of him.
BY MR. MORRIS:
Q Do you see the first five topics on the screen?
A I do.
Q All right. Can you confirm that they're the same topics that you have in the second amended notice of deposition?
A Yes. I'm looking now.
Yes, they all are the same.
Q Okay. And if we can continue to scroll down, you see Topics 6, 7, and 8 up on the screen,

Dustin Norris

and 9. Are they the same as what you have?
A Can you scroll down for 9?
Q Uh-huh.
A They look to be the same, yes.
Q Okay. And let's just look at the last few. How about 10 through 14? Are they the same as the topics that are in your second amended notice?
A They look to be the same, yes.
Q Okay. And did you do anything to prepare for today's deposition?
A I did.
Q What did you do?
A I reviewed all of the pleadings. I reviewed all of the -- the documents that were, I believe, responsive to -- to help me to respond to this, look through your exhibits. I had met with Mr. Rukavina as counsel. I met and spoke with Mr. Dondero. I spoke with Jason Post.
I spoke with -- I reviewed my documents internally and emails, things that I might have had, confirmed with our IT group that they have provided all documents responsive to your discovery requests.

Dustin Norris

I reviewed the depositions of Mr. Seery, of Frank Waterhouse, Dave Klos, and Kristin Hendrix. I met in person and by Zoom with Mr. Rukavina over the last few weeks, and -- so that -- that's the general -- you know, there may have been other things, but that's the general overview of the things that I did --
Q I appreciate --
A -- to understand the company's position.
Q I appreciate that.
So just focusing in on the people that you spoke with in connection with your preparation, one was Davor; right?
A Correct.
And I -- I may have -- I don't know if I said it or not, but DC Sauter as well I also spoke with.
Q Okay. So the other people are DC Sauter, Jason Post, and Mr. Dondero. Do I have that right?
A Correct.
Q Did you speak with Frank Waterhouse at all?
A No, I did not.

Dustin Norris

Q Is there any particular reason you didn't speak with Mr. Waterhouse?
A Yes.
Q And what -- why didn't you speak with Mr. Waterhouse?
A My -- my -- yeah, sorry.
My understanding is his counsel did not allow us to speak with him regarding this, because HCMLP had sued him for various things, and so we weren't allowed to talk with him.
You'll -- you'll note that DC, earlier on, had spoken to him. I believe that was back in April, if you look back and I'd refer you to Mr. Sauter's declaration. But in preparation for this, we did not speak with him. We needed to wait for his deposition based on his attorney's instructions.
Q How many times did you speak with Mr. Dondero about today's deposition?
A Multiple times over the last few weeks.
Q And was Mr. Rukavina present for those discussions?
A He was not.
Q Can you tell me what you discussed with

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Dustin Norris

Mr. Dondero about today's deposition?

A Yeah. Discussed with him general view of the company from his perspective. We discussed particularly around -- and we'll get into more details on this -- but around the purpose and transfer of cash, the seven-and-a-half million dollars. And I guess there were two transactions.

Discussed with him what he remembered in discussions with Frank Waterhouse when he instructed him to transfer the cash, and any recollection he had regarding the notes or the -- the -- the promissory notes.

And so those were the general topics.

And we did talk about --

Q Did Mr. --

A Sorry. Go ahead.

Q Yeah, I don't mean to step on your words.

A No, no.

We talked about the NAV error, we talked about responsibility for the NAV error and those aspects as well.

Q Did -- did Mr. Dondero tell you when he first learned of the existence of the notes?

A No.

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Dustin Norris

Q Did you ask him in connection with your preparation for today's deposition?

A What I did ask, I asked him -- I said, "Did you tell Frank Waterhouse that there should be -- that this should be a loan?"

And his response was, "No, that I never told Frank it should be a loan, and Frank never asked if it should be a loan." And that the intent -- and the reason for the transfer was compensation for the NAV error.

And so that was -- he did not know -- and if I -- if I remember correctly, looking at his deposition, I believe he did not know about the notes at that time and found out about them much later.

Q I know, and I'm trying to understand from you if you can tell me, as HCMFA's 30(b)(6) representative, whether you can share with me when Mr. Dondero first learned of the existence of the notes.

A It -- it would have been -- I believe, if my understanding is correct, it would have been after they were demanded.

Q After they were?

Page 16

Dustin Norris

A Demanded.

Q Okay. How about your conversations with Mr. Post? Did the subject of when he learned about the existence of the notes come up?

A No. That was not -- a discussion with Jason Post -- Post -- talking with Jason was more around the NAV error, the events surrounding the NAV error, facts and circumstances around the NAV error.

Q Okay. And were your discussions with Mr. Sauter limited to the investigation that he undertook earlier this year that's reflected in his declaration?

A I would say it's not limited to that.

Q What other topics did you discuss with Mr. Sauter beyond the investigation that he undertook that's reflected in his declaration?

MR. RUKAVINA: And I would just caution you, Dustin, that to the extent that you and Mr. Sauter discussed factual matters, that's fair game.

But as far as if you discussed litigation strategy, that's not fair game. So be careful with your answer, please,

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Dustin Norris

and tell Mr. Morris what you can and can't answer.

THE WITNESS: Yeah.

So early on with Mr. Sauter, discussions were around if I had any knowledge of the note, if he had any knowledge of the note, trying to discover what the notes were, what they were related to, and neither of us had knowledge related to notes.

And then discussions around more generally -- I'm trying to think back. There were many discussions with Mr. Sauter on the topic.

General facts and circumstances of what he was learning from his investigation in which -- all of which I would refer you to his declaration.

And then subsequent, talking with him regarding the -- I'm trying to recollect the -- the key components.

But it was general overview of -- of the notes and NAV error and the process. He wasn't here during much of

Dustin Norris

that time period or involved, and so we were talking together based on what he was doing.

BY MR. MORRIS:

Q Who are you employed by today?

A NexPoint Advisors.

Q Do you hold any position or title with HCMFA?

A I do.

Q And what's your position or title with HCMFA?

A Executive vice president is my officer role.

Q And when did you become an officer of HCMFA?

A So I -- I was originally secretary -- and I can't remember if I was assistant secretary, but I've been involved with HCMFA since 2012. I don't know if I was added as an assistant secretary at that time; but for many -- for several years, I've been an officer of HCMFA.

Q And you were an officer in 2018 and 2019; is that right?

A Correct. I was secretary in 2018, and --

Dustin Norris

I'm looking at the incumbency certificates here -- and in 2019 in April became executive vice president. So from January to -- January 2018 to April 2019, I was secretary and then became executive vice president.

Q When did you first learn of the existence of the notes?

A So it was after they were demanded, and it was -- so I believe the demand came in in early 2020 -- 2021. So January-ish 2021.

Q Do you have any role or any title with any of the funds that are managed by either NexPoint or HCMFA?

A I do.

Q Can you describe those roles or titles for me, please?

A Yeah. I'm -- I'm the executive vice president of the funds, and my role more broadly is I am the head of distribution and chief product strategist. And so in that role, I lead the sales and business development and marketing for the funds, more broadly.

Q And what is your title with NexPoint Advisors, LP?

Dustin Norris

A I am executive vice president in the officer capacity, and my role is -- as an employee is head of distribution and chief product strategist.

Q Okay. So just to summarize, you're the executive vice president of NexPoint Advisors, LP; correct?

A Correct.

Q And that's an officer position; correct?

A It is.

Q And when did you attain that title?

A Probably -- I don't have the incumbency certificates, but it was probably the same time as HCMFA.

Q Is it fair to say that it was sometime before January 1st, 2018?

A No.

Q Can you give me an estimate of when that was? Feel free --

A Yeah. The time- -- the timeline for HCMFA was April 2019. I was secretary before that, and I don't recall if NexPoint Advisors changed at the same time.

Q Okay. Can I refer to HCMFA and NexPoint

Dustin Norris

Advisors, LP, together as "the advisers"?

A That's fine.

Q Okay. So is it fair to say that you were the executive vice president, which was an officer position, for each of the advisers as of April 2019?

A Yes.

Q Okay. And --

A I believe that's correct.

Q And you also serve as the executive vice president of the funds that each of the advisers manages. Do I have that right?

A Yes. Currently.

Q And have you held the --

A Yes, currently.

Q And when did you become the executive vice president of the funds?

A I don't remember the exact date, if that was around the same time, but I was the secretary before that and assistant secretary before that, dating back to 2012.

Q So you've been -- is it fair to say that you've been an officer of the funds managed by the advisers since at least 2013?

Dustin Norris

A I believe so. I'd have to go back and look for sure, but I believe. There may have been periods of time where I was not, but yes.

Q Okay. Were any of those periods of time when you were not, at any point since 2018 to the present?

A I don't believe so.

Q Okay. So to the best of your recollection, you've served as an executive vice president of each of the funds managed by the advisers since at least the beginning of 2018; is that fair?

A No. That's -- that's different than my prior testimony that -- I was secretary until April --

Q I apologize. Let me restate the question. You've been an officer of -- of the funds managed by the advisers on a continuous basis since at least the beginning of 2018; fair?

A I believe that's correct, yes.

Q Thank you for the question -- for -- for the correction.

So as I think you pointed out earlier, one of the topics on the 30(b)(6) notice is the

Dustin Norris

identity of officers, directors, and employees of HCMFA?

A Uh-huh.

Q Do you want to take a look at that topic on the document that you have in front of you?

A Yes.

Q Okay.

A That is -- which topic?

Q 13.

A 13, yes.

Q Okay. So let's focus on 13 for a moment. Can you -- can you identify for me HCMFA's officers from January 1st, 2018, to the present --

A Yes.

Q -- including names and titles?

A Yes.

Q Okay.

A So from January 1st, 2018 -- and I don't have -- I -- I'm assuming that the dates that I have on the incumbency certificates are complete, but I'm not certain, and -- if there was one in between, but I'm assuming this is -- that the dates I have changing is -- is effective when they

Dustin Norris

changed.

But Brad Ross was president of HCMFA from January 1st, 2018, until, I believe, February 2018 -- sorry -- yeah, until February 2018.

In that same time period, Brad Ross, president; Trey Parker, executive vice president; Frank Waterhouse, treasurer; Dustin Norris, secretary.

And effective 26th of February --

Q I apologize. What is Mr. Parker's title?

A Executive vice president.

Q Thank you.

A And beginning February 26th, 2018, Trey Parker, executive vice president; Frank Waterhouse, treasurer; and Dustin Norris, secretary; and no longer president, Brad Ross. There's no president on the lineup.

So continuing on, April 11th, 2019, Dustin Norris, executive vice president; Frank Waterhouse, treasurer; Lauren Thedford, secretary.

Q And Trey Parker was no longer an officer as of that time?

A He was no longer an officer.

Dustin Norris

Q Okay.

A And February 18th, 2021, Dustin Norris, executive vice president; Frank Waterhouse, treasurer; Brian Mitts, assistant treasurer; David Willmore, secretary. So Lauren Thedford, no longer secretary.

Q And have there been any changes since February 2021?

A Yes. You have April 8, 2021, Dustin Norris, executive president; Frank Waterhouse, treasurer; Will Mabry, assistant treasurer; and Stephanie Vitiello, secretary.

Again, I -- I don't have -- this is based on what was provided to me with effective dates. I don't know if there was any that were missing, if that's complete, but I -- I believe those are accurate.

Q Is it fair to say that you're relying on exclusively on the incumbency certificates to identify the officers of HCMFA since January 1st, 2018?

A For this purpose, yes.

Q Do you have any other information that you can share with me regarding the identity of any

1 Dustin Norris
2 officers of HCMFA since January 1st, 2018?
3 A I don't, no.
4 Q Okay. Can you identify for me HCMFA's
5 direct and indirect owners since January 1st,
6 2018?
7 A I can, yes. Generally Jim Dondero and
8 Mark Okada are the indirect owners through trusts.
9 They own approximately two-thirds, Jim Dondero, a
10 little less than a third, Mark Okada, with a
11 general partner that is -- that owns 1 percent.
12 Q And who is the general partner?
13 A It's a Strand entity that I believe is
14 owned 100 percent by Mr. Dondero.
15 Q So Mr. Dondero controls the general
16 partner --
17 A Right.
18 Q -- of HCMFA?
19 A Correct, and owns approximately two-thirds
20 of the equity.
21 Q And is that a controlling interest to the
22 best of your knowledge?
23 A Yes, I believe so.
24 Q Okay. Does HCMFA have any directors?
25 A It does not. It has a sole director

1 Dustin Norris
2 through the general partners. So HCMFA does
3 not -- Strand -- whatever the Strand entity does,
4 Jim Dondero is the sole director.
5 Q Okay. And what about employees? Does
6 HCMFA have any employees?
7 A It does have some front-office employees,
8 trading professionals.
9 Q Are there any employees who perform any
10 services other than trading services?
11 A Trading in front-office investment
12 analysts, portfolio managers, generally that's
13 been the structure with HCMFA, is they held --
14 they had employees that performed front-office
15 functions, and we, as I believe you're aware,
16 outsourced the back-office accounting, compliance,
17 and legal services to Highland Capital Management,
18 LP, during this time period.
19 Q Let's go to Topic Number 12.
20 A Okay.
21 Q And Topic Number 12 asks for a witness who
22 can testify as to all communications that HCMFA
23 "made in the bankruptcy case concerning the notes,
24 including any pleadings, court filing, or
25 argument."

1 Dustin Norris
2 Do you see that?
3 A I do.
4 Q Are you prepared to answer questions on
5 that topic?
6 A I am.
7 Q All right. You're aware that obviously
8 Highland has commenced an adversary proceeding
9 against HCMFA to collect on two promissory notes;
10 right?
11 A I am, yes, and I believe this right here
12 is the complaint filed January 22nd.
13 Q Okay. And you're aware that the notes
14 that are the subject of the lawsuit were dated
15 May 2nd and May 3rd, 2019, respectively; right?
16 A Sorry. Can you repeat that?
17 Q You're aware that the notes that are the
18 subject of the lawsuit are dated May 2nd and
19 May 3rd, 2019, respectively; correct?
20 A Yes. The notes that are attached to the
21 complaint, May 2nd and May 3rd.
22 Q Okay. And can we refer to those two
23 notes -- those two promissory notes for the rest
24 of this deposition collectively as "the notes"?
25 A Yes.

1 Dustin Norris
2 Q Okay. And you're aware that after
3 Highland commenced this action, HCMFA filed its
4 original answer; correct?
5 A That's correct.
6 Q Okay. And Topic Number 1 on your list, in
7 fact, is the answer, correct, the original answer?
8 A That's correct. It's Topic Number 1.
9 MR. MORRIS: Okay. Can we put
10 Deposition Exhibit 5 up on the screen?
11 We're going to look at the original
12 answer.
13 (Exhibit 5 tendered.)
14 BY MR. MORRIS:
15 Q And, again, feel free to let me know if
16 there's any portion of this document that you need
17 to see. But looking at the first page -- and
18 perhaps we can continue to scroll through it -- is
19 this the original answer that was filed on behalf
20 of HCMFA on March 1st, 2021?
21 A I'll take your representation that it is.
22 It looks to be, yeah.
23 Q Okay.
24 A I was not involved in the filing of it,
25 but...

Dustin Norris

Q Okay. Is the copy that you have with you dated March 1st, 2021?
A Yes, it is.
Q And if you can turn to Page 6 of 7, does it appear to be the exact same as what appears on the screen, showing the March 1st, 2021, date?
A It does.
Q And do you refer to the March 1st, 2021, date, as "the answer date"?
A Yes.
Q Okay. HCMFA did not assert any affirmative defenses in this pleading; correct?
A That's my understanding.
Q Okay. And HCMFA had full access to you as of March 1st, 2021; correct?
A Yes.
Q And HCMFA had full access to Mr. Dondero as of March 1st, 2021; correct?
A In the term "full access," they could have talked to him, yes.
Q Right. And there was no restriction from the bankruptcy court or otherwise on HCMFA's ability to communicate with Mr. Dondero that you know of; correct?

Dustin Norris

A None that I know of.
Q And there was no restriction or limitation on HCMFA's ability to speak with you at or prior to March 1st, 2021; correct?
A That's correct.
Q How about Ms. Thedford? Are you aware of any restriction or limitation on HCMFA's ability to speak with her prior to March 1st, 2021?
A Yes.
Q Okay. And what restriction was that?
A Yeah. So she was part of the Highland legal team. She was an employee of HCMLP. And during this time period, we had outsourced our legal and compliance functions to them. And if -- I would refer you to Mr. Sauter's declaration and the attachments and schedules. There's a very strict direction from Mr. Seery that individuals -- particularly on the legal team -- could not work on anything that would be inimical to the debtor.
Q Okay.
A And so Ms. Thedford, on multiple occasions, told us she was unable to work on things, and that began back in fall of 2000- --

Dustin Norris

fall of 2020 -- late summer 2020, actually. And so she was not accessible for things like this.
Q How about Mr. Post? Do you know who Mr. Post was employed by in 2018 and 2019?
A 2018 and '19, he was employed by Highland Capital Management, LP.
Q Do you know whether, in your conversations with him, does he have any personal knowledge regarding the NAV error?
A Yes.
Q Was he involved in any of the issues surrounding the NAV error?
A He was knowledgeable -- as he was chief -- chief compliance officer of the retail advisers at that time, and interacted with the HCMLP employees and the board regarding the NAV error, he also -- in your schedules, you'll notice in one of the memos, he participated in calls with the SEC, and so he was -- he was involved in the process of the NAV error and understood and worked with the other HCMLP employees, which naturally they would. We had outsourced valuation services to HCMLP. We had outsourced legal and compliance to HCMLP, and as such, that was all part of what

Dustin Norris

they were working on.
Q Did -- did -- were there any restrictions or limitations on HCMFA's ability to speak with Mr. Post prior to March 1st, 2021?
A So once -- so Jason -- one important component here is Jason Post did leave the debtor, and working with Mr. Seery, I believe, to then leave and become an employee of NexPoint Advisors, and that was at the request of our retail board, as there were restrictions on Mr. Post at that time.
And as chief compliance officer of the funds, the board had become very uncomfortable that they had restrictions on Mr. Post. And so it was in everybody's interest to allow him to become an employee of NexPoint Advisors, and so that was late 2020, I believe. I don't know the exact date. And at that time, there were certain things that Jason was able to then help the adviser with, but there were still restrictions. And he had limited access to his prior data. He left the debtor, but he didn't have -- I believe he had restrictions on what he could access in the information.

Dustin Norris

Q Okay. But it is fair to say that between January 21st, 2021, the day that the complaint was filed, and March 1st, 2021, the date that HCMFA filed its original answer, HCMFA had complete and unfettered access to you, to Mr. Dondero, and Mr. Post; correct?

A Again, the complete and unfettered access on the Jason Post aspect, they could have talked to him. I'm not sure if there were any other restrictions related to what he had or information he had or based on his prior role of the debtor, he was restricted on what he could or couldn't talk about, if he had any lease agreement. I'm not certain on that. But, yes, we could talk to – or HCMFA could talk to Mr. Post.

Q Okay. And the topics that you just raised are speculation on your part; correct?

A It is.

Q You're not aware of any restriction of – you don't have any knowledge of any restriction or limitation placed on HCMFA in respect of its ability to communicate with Mr. Post between January 21st, 2021, and March 1st, 2021; correct?

A Based on my personal knowledge, no. There

Dustin Norris

could have been something, but –

Q Okay. I'm just asking about your knowledge, not what could have been.

All right. So we're going to use March 1st, 2021, as the answer date.

Are you aware of any document that HCMFA filed with the bankruptcy court prior to the answer date that concerns or relates in any way to the notes?

A I'm thinking if I'm aware.

Not that I'm aware of.

Q Are you aware – withdrawn.

Do you know what a "pleading" is, if I use that phrase?

A I believe so. These are the answers that we gave. The first answer, the amended answer, and the second amended answer, that – I believe those are the two pleadings. Is that correct?

Q You know what? I think my first question was broad enough, because I just used the word "document," so I'm going to let that sit.

Are you aware of any argument that anybody ever made on behalf of HCMFA prior to the answer date that concerned or related to any of

Dustin Norris

the notes?

A And you mean an argument to the Court?

Q Yes.

A Not that I'm aware of.

Q Okay. Are you aware of any statement of any kind that was made to the bankruptcy court prior to the answer date that concerned or related in any way to the notes?

A Not that I can remember. But there's obviously been a lot of documents with the Court, but not that I'm aware of.

Q Right. But you – did you do anything to prepare yourself to answer questions on Topic 12?

A Yes.

Q And do you believe that you're able to competently answer my questions relating to Topic 12 as HCMFA's 30(b)(6) witness?

A I am. But I guess in this regard you're asking to my knowledge. And so, I guess, that – are you asking my personal knowledge or as my knowledge as a representative of the company?

Q All right. I appreciate that.

I am only examining you today in your capacity as a 30(b)(6) witness.

Dustin Norris

A Okay. That makes sense. Okay.

Q And so if I use the phrase "you," just as we did in the deposition notice, I'm really referring to HCMFA; is that fair?

A That's fair.

Q Okay. So let me just ask the questions again with that clarification.

Are you aware, in your capacity as the 30(b)(6) witness today, of any document that was ever filed on behalf of HCMFA prior to the answer date that concerns or relates to the notes?

A No.

Q Are you aware, in your capacity as the HCMFA 30(b)(6) witness, of any argument that was ever made to the Court prior to the answer date that concerns or relates in any way to the notes?

A No.

Q Are you aware of – again, when I use the phrase "you," I'm referring to HCMFA, just to shorten these questions a little bit.

Are you aware of any statement that was ever made on your behalf to the bankruptcy court prior to the answer date that concerns or relates in any way to the notes?

Dustin Norris

A Not that I recall.
Q Okay. When did HCMFA first learn of the existence of the notes?
A So HCMFA's position is that they learned of them when they were demanded, or after they were demanded. I don't even know that when we received -- or who they were sent to, but it was after they were demanded.
Q Okay. And do you recall when they were demanded?
A I don't have the exact date. If you could remind me or show a document, that might be helpful. I don't know if you have the demand, or if that's one of the documents, but I don't remember the specific date.
MR. MORRIS: Can we put Exhibit 1 up on the screen?
It's actually the complaint -- the original complaint, sir.
(Exhibit 1 tendered.)
BY MR. MORRIS:
Q If you go to Exhibit 3, do you see there's a demand letter there?
A Yes.

Dustin Norris

Q And you've seen that before; right?
A I have.
Q Okay. And are you -- do you see that it was sent to Mr. Waterhouse?
A Yes.
Q And Mr. Waterhouse was the treasurer of HCMFA on December 3rd, 2020; correct?
A Correct.
Q Okay. So is it fair to say that HCMFA knew of the existence of the notes on December 3rd, 2020?
A It's safe to say that Frank Waterhouse received this. I'm not sure the date exactly when -- when the company became aware. Frank, yes, is an officer. He's also -- the irony here, he's CFO of the debtor who is demanding this, so he's demanding it from himself. I know it's coming from -- from who is sending it, but at this time, I don't know when Mr. Dondero or other officers became aware of it. Sometime after December 3rd.
Q Okay. Do you know if HCMFA ever responded to this demand letter prior to the time the complaint was filed on January 21st, 2021?

Dustin Norris

A I don't believe they did.
Q So it's fair to say that nobody on behalf of HCMFA ever told any representative of Highland that it was previously unaware of the existence of the notes?
A Sorry. Can you repeat that one more time?
Q HCMFA never responded to this letter prior to the commencement of the lawsuit; right?
A Not to my knowledge, didn't respond to HCMLP on this.
Q Is there a reason why they didn't reach out to Highland to let Highland know that it disputed the existence of these notes?
A I don't know if there's a reason, but I do know, during this time period, you'll recall, December and January, leading up to the actual demand -- or the initial complaint, there was a lot going on. We were almost in daily depositions and court hearings. There was a hearing injunction handed out against Jim. There was a restraining order. There -- TRO. There were lawsuits against the advisers. And so there was a lot going on, and I think this was put back in the priority line.

Dustin Norris

Again, all of the compliance and legal functions at this time, December 2020, were being outsourced to HCMLP, and we were told they were unable to help with anything that was inimical to the debtor. And so there were no employees of HCMFA that were legal compliance professionals, and so this -- this was -- I guess -- this is my speculation -- was put in the back of the line, or further back from the actual litigation that they were defending or working against the daily depositions and coordinating.
Q Do you have any reason to believe, as you sit here right now, that Mr. Waterhouse did not receive this demand letter on or about December 3rd, 2020?
A I don't know. I don't have any reason to believe that, but I don't know.
Q Okay.
A And I don't recall what he testified to in regard to receiving the demand, but we see here it was sent to him. We can assume it got sent to him.
Q Okay. Let me ask the question again, and I would appreciate you listening carefully to my

Dustin Norris

question.

As HCMFA's 30(b)(6) witness today, does HCMFA contend that this letter was not received by Mr. Waterhouse on or about December 3rd, 2020?

MR. RUKAVINA: Well, that's not our contention. We agree that it was received on or about that date.

MR. MORRIS: Okay.

THE WITNESS: Yeah. That's – yeah.

BY MR. MORRIS:

Q Okay. HCMFA actually knew about the notes just weeks after they were signed; correct?

MR. RUKAVINA: Objection; form.

THE WITNESS: So the debtor employees who created the notes knew about them, but it was not knowledge of HCMFA. Those were all Highland Capital Management, LP, employees.

BY MR. MORRIS:

Q So it's your testimony that HCMFA had no knowledge of the existence of the notes in June 2019; is that correct?

Dustin Norris

A June 2019. Correct.

Q As the executive vice president of HCMFA, have you ever reviewed HCMFA's audited financial statements?

A I have not.

Q Is there anybody on behalf of HCMFA who is charged with the responsibility of reading HCMFA's audited financial statements?

A Yeah. We – again, the key here is we outsourced finance, accounting, back-office functions. It includes financial statement preparation. The treasurer of HCMFA is an HCMLP employee, Frank Waterhouse, at that time, and at all times that we're talking about. And so with we – and Frank is a professional, and his team are professionals, right? We outsource to an accounting group to prepare and oversee, work with the auditors in preparation of those financials. And so they were tasked with that. And we relied on them. And there was not a specialist during this time period that did that.

Q Does Frank Waterhouse have any responsibility, as the treasurer of HCMFA, to make

Dustin Norris

sure that HCMFA's audited financial statements are true, accurate, and reliable?

A Him and his team, yeah. We actually – that's what we rely on them for.

Q And did you rely on him not only in his capacity as an employee of Highland, but in his capacity as the treasurer of HCMFA?

A Yeah, he was – let's take the first – as a – in his capacity under the shared services agreement, okay, doing accounting, books and records, audited – audit support, yes, we relied on him in that capacity. And he also, as an HCMLP employee, served as a treasurer of HCMFA. In that role, we would expect him to oversee the financials.

MR. MORRIS: Okay. And move to strike.

BY MR. MORRIS:

Q And I'm going to ask you very specifically: As HCMFA's representative today, did Frank Waterhouse have a duty as the treasurer of HCMFA to make sure that HCMFA's audited financial statements were true and accurate?

A That – very specific from the treasurer

Dustin Norris

role, I would say the treasurer role was to oversee the financial aspects of the advisers.

Q And was one of those aspects HCMFA's audited financial statements?

A As – yeah. And he was – again, I'll reiterate, he was the CFO of Highland who was tasked with creating the financial statements for the advisers.

MR. MORRIS: Okay. I'm again going to move to strike.

BY MR. MORRIS:

Q I'm not asking about his role as CFO of Highland. I'm limiting it strictly to his role as the treasurer of HCMFA.

A And I don't have –

Q Did Frank – let me ask my question. Is any officer of HCMFA responsible for making sure that HCMFA's audited financial statements are true and accurate?

A I don't know, but I would assume – and I don't want to make assumptions here as the representative – but I would assume that the treasurer would have that role.

Q Okay. And what is your assumption based

Dustin Norris

on?

A Based on the understanding of what a treasurer role would be. But I – I don't have any – I don't have any knowledge, I'm not representing that we have any roles and responsibilities or defined procedures that the treasurer does this, that, or the other.

Q Okay. Have you – as you sit here right now, have you ever seen HCMFA's audited financial statements for the period ending December 31st, 2018?

A I saw them in the materials that were provided in your schedules, I believe.

Q Okay. Let's –

A That was the first time.

Q Let's take a quick look at it.

MR. MORRIS: If we could put up on the screen the document that's been marked Exhibit 45.

(Exhibit 45 tendered.)

BY MR. MORRIS:

Q Okay. And do you see that this is the first page of HCMFA's audited financial statements for the period ending December 31st, 2018?

Dustin Norris

A I do.

MR. MORRIS: Okay. And if we could just scroll, I think, to the third page.

BY MR. MORRIS:

Q Do you see that it's signed by PricewaterhouseCoopers on June 3rd, 2019?

A I see that the audit opinion is signed by them, yes.

Q Correct. And – and you're aware that PricewaterhouseCoopers was the outside auditor retained by HCMFA to conduct the audit of HCMFA's financial statements; correct?

A Given that they gave an opinion, yes.

Q Okay. And you have no reason to believe that the document that's up on the screen is anything other than HCMFA's audited financial statements for the period ending December 31st, 2018, do you?

And we're happy – I'm happy to scroll through whatever you need to see.

A Yeah. And there they're distinguishing – you have an audit opinion and having audited financials, I assume that you have all that is here. You showed me the first page of the

Dustin Norris

financials, which –

Q Yeah. Yeah. Let's –

A So I'm assuming that's the –

Q Let's scroll down just a little bit.

You can see that the next page is HCMFA's balance sheet. Do you see that?

A I do.

Q Okay.

MR. MORRIS: Can we go to "Subsequent Events"? I think it's Page 17.

BY MR. MORRIS:

Q Have you seen this page of HCMFA's audited financial statements before?

A Just in preparation for this.

Q Do you understand that in the "Subsequent Events" section, the notes are described in the audited financial statements?

A There is a reference to promissory notes in aggregate of $7.4 million, yes.

Q And those are the two notes that Highland is suing on; correct?

A I would assume that's the case, because the dollar amounts line up. But I don't have the

Dustin Norris

backup, but I would assume that's the case.

Q And not only do the dollar amounts line up, but do you see that the statement in "Subsequent Events" specifically identifies the notes as having been issued in the year 2019?

A Yes.

Q And are you aware of any notes that anybody in the world contends were signed by HCMFA between January 1st, 2019, and June 3rd, 2019, other than the two notes that Highland is suing on?

A No.

Q Okay. So can you conclude, as HCMFA's 30(b)(6) witness, that the notes that are described in the subsequent events are the very notes that are the subject of the pending lawsuit?

A That appears to be the case.

Q Okay. And so it's also fair to say, then, that HCMFA does not dispute that its own audited financial statements that were the subject of a June 3rd, 2019, opinion by PricewaterhouseCoopers disclosed the existence of the notes at issue; correct?

A No. We don't dispute that that was

Dustin Norris

included in the financial statements. You know, I – I think we're going to get into it in our affirmative defenses, but we dispute that the notes were actually valid notes, and we would say that this was an error. These should not have been included, but were included in good faith by the accounting team who thought that they were valid notes.

Q Okay.

A So –

MR. MORRIS: I move to strike everything other than the first portion of your answer that was responsive to my question.

BY MR. MORRIS:

Q HCMFA does not dispute that it received $2.4 million from Highland on May 2nd, does it?

A No.

Q HCMFA does not dispute that it received $5 million on May 3rd, 2019, does it?

A No.

Q Let's just confirm that, if we can.

MR. MORRIS: Can we put on the screen a document that's been marked as

Dustin Norris

Exhibit 147?

(Exhibit 147 tendered.)

BY MR. MORRIS:

Q Okay. Do you see that this is – or at least this appears to be a bank account statement?

A Yes. BBVA Compass is a bank, so I'll take your representation it's a statement.

MR. MORRIS: All right. And if we can just scroll down.

All right. Stop right there.

BY MR. MORRIS:

Q Do you see that there's a reference on May 2nd to a 2.4-million-dollar transfer?

A I do.

Q Okay. And is that consistent with your testimony just now that on May 2nd, Highland transferred $2.4 million to HCMFA?

A That's correct.

Q And lower on the page, the statement shows a transfer of $5 million on May 3rd; correct?

A Yes.

Q And that's the payment that HCMFA acknowledged – acknowledges receiving from Highland on that day; correct?

Dustin Norris

A Is this HCMFA's bank statement or is this HCMLP's?

Q No. It's HCMLP's.

A Okay. It just says "Highland Capital Management," and I'm assuming it lines up – I'm assuming this is the transfer, but –

Q Okay.

A – I can't confirm an entity. But we're not denying that there was cash received those dates from HCMLP.

Q Okay. And are you aware –

MR. MORRIS: We can take this down now.

BY MR. MORRIS:

Q Do you recall that Topic Number 10 asks for a witness who can testify about the accounting of these transfers?

A Uh-huh. Yup.

Q Are you prepared to testify on Topic Number 10?

A Yes.

Q Can you tell me how HCMFA accounted for these payments on its books and records?

A I can, yeah.

Dustin Norris

So my understanding of the company's position is that – and – and it may be helpful to provide some additional color leading up to the accounting. I don't know if we want to address that later in our affirmative defenses, if you have a preference there.

Q I'd just like you to – maybe it's my question, but I just want you to focus on my question.

A Uh-huh.

Q And that is: First, do you know how HCMFA accounted for these two payments in its books and records?

A Yeah. So the HCMLP employees who were tasked with creating books and records of the adviser, the accounting team recorded, we – we – our position is that is an incorrect recording of a payable to HCMLP. And so there was a payable booked on the balance sheet of HCMFA by the HCMLP accounting team.

MR. MORRIS: Okay. I'm going to move to strike.

BY MR. MORRIS:

Q I – I'd appreciate not having the

1 Dustin Norris
2 commentary. Your counsel can ask those questions
3 or if it's responsive to a question. I'm just
4 asking a very simple question.
5 A Yup.
6 Q How -- how did HCMFA record these payments
7 on its books and records?
8 A Yeah. My understanding is they recorded a
9 payable to HCMLP, a liability.
10 Q And do you know when HCMFA first
11 discovered that the payments were booked on its
12 books and records as a liability?
13 A Our position is that that was revealed
14 through after the -- sorry -- after the demand.
15 And as we began to get additional information --
16 particularly, and I would refer you to
17 Mr. Sauter's declaration, our amended response,
18 and our second amended response that was filed
19 yesterday regarding each of those time periods.
20 But it was after the demand we found out how it
21 was booked.
22 Q Okay. So just to simplify this: HCMFA's
23 books and records recorded the transfers on
24 May 2nd and May 3rd as liabilities from HCMFA to
25 Highland; correct?

1 Dustin Norris
2 A So my understanding is the audited
3 financials recorded in a subsequent event -- you
4 showed me that -- they recorded a subsequent
5 event. The balance sheet as of 12/31/2018 wasn't
6 amended because it was a subsequent event. But on
7 their books and records at that time, or
8 subsequent to that, they recorded a liability.
9 Q And -- and do you know if that liability
10 was recorded contemporaneously in May of 2019?
11 A I don't know.
12 Q But it's -- it's HCMFA's position that,
13 notwithstanding the recording of the liability on
14 it's books and records, that HCMFA didn't learn of
15 that fact until after the demand letter was sent
16 in December of 2020.
17 Do I have that right?
18 A Correct.
19 Q Okay. Have there been any changes in
20 HCMFA's books and records since it learned of the
21 promise -- of the existence of the promise --
22 withdrawn.
23 Has -- has HCMFA changed its books and
24 records after learning that the payments were
25 recorded as liabilities?

1 Dustin Norris
2 A I'm not aware of how it's been treated
3 since then.
4 Q Okay.
5 MR. RUKAVINA: And, John, no
6 urgency, but find some time in the near
7 future for the restroom break. The
8 morning coffee is working its magic.
9 MR. MORRIS: Happy to do it right
10 now, Davor.
11 THE WITNESS: I can use that, too.
12 I'm almost through my water bottle.
13 MR. MORRIS: All right. So, look,
14 it's 12:05. Let's just come back at 12:15
15 or 11:15.
16 THE WITNESS: Thank you.
17 MR. MORRIS: Thanks so much.
18 (Recess from 11:05 a.m. to 11:16 a.m. CST)
19 BY MR. MORRIS:
20 Q To the best of your knowledge, has HCMFA
21 ever changed its books and records in order to
22 reverse the booking of the payments that were made
23 by Highland in May from liabilities to something
24 else?
25 A I'm not aware of how the accounting

1 Dustin Norris
2 entries have been done since then, but -- yeah,
3 I'm not aware.
4 Q Okay. But you'll -- you'll agree that the
5 accounting for these two payments was among the
6 30(b)(6) topics, correct, Number 11 -- Number 10?
7 A Yes.
8 Q And as the 30(b)(6) witness for HCMFA, can
9 you confirm that, to the best of your knowledge,
10 those payments were booked as liabilities and the
11 booking of those payments as -- as liabilities has
12 not changed?
13 A To the best of my knowledge, they were
14 booked as liabilities, and I don't know how they
15 have been treated. There's not been a year-end
16 audit for 2021, and I'm sure the accountants and
17 auditors will determine based on current facts and
18 circumstances how those will be reported.
19 Q Okay. But as of today, you have no
20 knowledge that the booking of those payments as
21 liabilities has ever been changed; correct?
22 A Those -- there's no financial statements
23 that are prepared, I believe, intra-year, during
24 the year, for audited purposes. And so, you know,
25 that -- that would be, I'm sure, determined based

1 Dustin Norris
2 on any audit needs.
3 Q Does HCMFA maintain an accounts payable
4 ledger?
5 A I'm sure it does.
6 Q Did you do anything to try to ascertain
7 whether or not these notes appear as liabilities
8 on the accounts payable ledger?
9 A As current accounts payable ledger?
10 Q Yeah.
11 A No.
12 Q Did you – other than the audited
13 financial statements, did you take any steps to
14 ascertain how these payments were recorded in
15 HCMFA's books and records, or is – or is it only
16 on the audited financial statements?
17 A So at the time that they were recorded, we
18 know they were recorded as liabilities on the
19 books and records.
20 Q And when you say that it was recorded as a
21 liability in the books and records, where in the
22 books and records was it recorded as a liability?
23 A Meaning on the balance sheet?
24 Q Okay. So the balance sheet is one place;
25 is that right?

1 Dustin Norris
2 A Yes. We record liabilities on the balance
3 sheet.
4 Q Okay. Did HCMFA complete its audit for
5 2019?
6 A I don't – not that I'm aware of. I don't
7 believe they had an audit for 2019.
8 Q Okay. Now, HCMFA contends that the
9 payments were – should not have been booked as a
10 loan because they were supposed to be compensation
11 for the error that Highland made in connection
12 with the NAV error; correct?
13 A Correct.
14 Q Okay. Did HCMFA ever issue an invoice or
15 a bill of any kind to Highland?
16 A Not that I'm aware of.
17 Q Okay. Is there anything in HCMFA's books
18 and records that reflects its position that the
19 payments should not have been billed as
20 liabilities, but they should have been billed as
21 income?
22 A As compensation?
23 Q Yeah.
24 A Yes.
25 Anything in their records?

1 Dustin Norris
2 Q Yes.
3 A I – I would refer you to the testimony of
4 Mr. Dondero and Mr. Waterhouse, who both testified
5 to this; Mr. Dondero that it was compensation, and
6 that Frank testified in his deposition that he
7 don't – didn't remember Mr. Dondero saying it was
8 a loan, and that Mr. Dondero told him to get the
9 money from Highland. And so it's – it's – that
10 is on the record and in the record.
11 But in HCMFA's other records, we have
12 the president of HCMLP, Jim Dondero, who made that
13 transfer and has said that that is for
14 compensation.
15 So there is – but there is – I
16 wouldn't – I would be surprised to see some kind
17 of a settlement agreement or invoice with – to
18 affiliates.
19 MR. MORRIS: Okay. I move to
20 strike.
21 BY MR. MORRIS:
22 Q And my answer – my question is really
23 simple.
24 Is there anything in HCMFA's books and
25 records that reflects its position that these

1 Dustin Norris
2 payments were supposed to be made as compensation
3 rather than in the form of loans?
4 A I – I would say that the pleadings are a
5 part of our books and records now. I would say
6 depositions. And within that, it is well
7 documented.
8 Q Okay. Let me ask a different question
9 then.
10 Remember we were using the answer date
11 as being March 1st, 2021.
12 A Correct.
13 Q Is there anything in HCMFA's books and
14 records that was created prior to March 1st, 2021,
15 that corroborates HCMFA's position that the
16 payments were intended to be compensation and not
17 in the form of a loan?
18 A Yeah, and I would, again, refer you to
19 DC's – what do you call it – declaration. That
20 prior to that, we didn't have access to – to,
21 largely, our books and records as that was
22 outsourced to Highland Capital Management, LP, and
23 to their employees, legal, compliance, and
24 accounting. So our position is we did not have
25 anything at that point related to this agreement.

Dustin Norris

MR. MORRIS: Okay. I move to strike.

BY MR. MORRIS:

Q And listen carefully to my question.

Is HCMFA aware of anything that was created prior to the answer date that corroborates its position today that the payments were intended to be treated as compensation rather than a loan?

A I – I think as far as books and records go, we have NAV error memos, we have communication with the SEC. Right?

There's – there is a lot of information related to the services that were performed under the shared services agreement, were for valuation purposes that Highland had created and was responsible for the valuation process, and that is a host of documents that are in the record, yes.

MR. MORRIS: Okay. I – I move to strike.

BY MR. MORRIS:

Q I'm asking about accounting. Maybe it's my fault. Okay? I'll – I'll take responsibility for this. I'm asking as a matter of accounting.

Dustin Norris

I'm still on 30(b)(6) Topic Number 10.

Is there anything in HCMFA's books and records that was created before the answer date that shows that the payment should have been accounted for as compensation rather than as a loan?

A As far as an accounting record, I wouldn't expect there to be, because the accountant function was outsourced to HCMLP, and – and I would refer you to our latest response and our amended response of – of what was discovered and found throughout the process here.

The accountants recorded a liability and they thought it should be liability. And so, no, there wasn't anything, to my knowledge, prior to that that was in the accounting books and records. And I – you know, I'm not surprised there wasn't, because of the facts that you'll – you'll see in our amended answers.

Q Okay. Do you know whether, if it was intended to be compensation, that HCMFA's income statement should have shown the inflow of the $7.4 million?

A I don't know how it would be reported for

Dustin Norris

accounting purposes. I – I do have an accounting background, but I haven't done accounting in a long time, and I'm not an expert in adviser financial statements. So I would say I don't have – and I guess – I guess that – stepping back and answering on behalf of the company here, I don't have a knowledge of how that would be recorded for income statement purposes.

Q Okay.

A But it would – it would be compensation that would be reported –

Q Okay.

A – somewhere in the financial statements.

Q So it's your testimony today, as HCMFA's 30(b)(6) witness, that HCMFA was unaware that its audited financial statements disclosed these notes until after the lawsuit was commenced.

Do I have that right?

A That's correct.

Q And it's your position today, as HCMFA's 30(b)(6) witness, that HCMFA was unaware that the payments that were made by Highland were booked as liabilities until sometime after the lawsuit was commenced; correct?

Dustin Norris

A Yes, that's correct. The accounting function was outsourced to HCMLP.

Q Okay. And there's – was there anybody – was there any officer of HCMFA who had responsibility for reviewing HCMFA's balance sheet?

A I believe I already answered this earlier.

Q I actually asked the question on the audited financial statements.

A Okay.

Q Now I'm going to ask specifically. Is there anybody who served as an officer of HCMFA who had the responsibility of making sure that HCMFA's balance sheets were true and accurate?

A Yes. So Frank Waterhouse and his team, Frank was the named treasurer of HCMFA, and his role at HCMLP, as a service provider, would have had that responsibility along with his team.

Q Okay. Let's go to the next topic, Topic 11. Do you see Topic 11 refers to "communications in 2020 with any retail board –

A Yes.

Q – concerning the amounts due and owing to Highland"?

1 Dustin Norris
2 A Yes, I do.
3 Q Okay. HCMFA is a financial advisory firm;
4 correct?
5 A It is.
6 Q And it provides advisory services to
7 certain funds; correct?
8 A It does.
9 Q And those advisory services are provided
10 pursuant to written agreements; correct?
11 A They are.
12 Q And those agreements are subject to annual
13 review; correct?
14 A They are.
15 Q And those agreements the principal source
16 of HCMFA's revenue?
17 A Yes, I believe so.
18 Q Okay. It's among the most important
19 contracts HCMFA has; correct?
20 A Yes.
21 Q In fact, it's the reason for HCMFA's
22 existence, is that fair, is to serve the funds?
23 A Largely, yes.
24 Q And the funds are managed by boards;
25 correct?

1 Dustin Norris
2 A Correct.
3 Q And can we refer to the boards that manage
4 the funds that are served by the advisers as "the
5 retail board"?
6 A Yes.
7 Q Okay. Did you participate -- are you
8 aware that in the fall of 2020 the retail board
9 conducted a review in connection with the
10 determination as to whether or not to renew
11 HCMFA's contracts?
12 A I am aware, yes.
13 Q Did you participate in that process?
14 A I did, in some -- in some parts, yes.
15 Q What parts did you participate in?
16 A Yeah, so I attended the board meetings in
17 relation to -- we call this the 15(c) analysis.
18 And so it's Section 15(c) of the 1940 Act requires
19 the board to determine and renew the contracts on
20 an annual basis. And so they look at a number of
21 factors. And there's, I believe, certain case law
22 that dictates the things that they should look at:
23 Quality of services, performance, fees.
24 And so my aspect -- the biggest part
25 of my contribution is to talk about the

1 Dustin Norris
2 performance of the funds, how they performed
3 during the year. We hire an outside third party
4 to come in and talk about performance and fees. I
5 help provide insight, talk about -- as I oversee
6 the sales and business development of the firm, I
7 talk about inflows and outflows, which help --
8 helps impact the economies of scale funds. We
9 have certain funds that are shrinking, some that
10 are growing. So talking about future, talking
11 about mergers, talking about different aspects of
12 that.
13 And so my -- mine is more of the sales
14 business development function and regarding the
15 services. One of the things that we do as the
16 adviser is we, again -- they have to determine
17 that the quality of services we're providing are
18 sufficient, and so they have to get comfortable
19 with the various functions.
20 Q Okay. Who else on behalf of HCMFA
21 participated in the 15(c) analysis that you've
22 just described?
23 A Yeah, so as -- again, going back to the
24 shared services agreement, I point you to the
25 services that are provided by HCMLP. In large

1 Dustin Norris
2 part, this process is managed and run by the HCMLP
3 employees as part of that shared services. Legal
4 and compliance help draft the memos. They are --
5 Q And I'm going to interrupt you, and I
6 really apologize for doing that. I'm not asking
7 about HCMLP.
8 A Yeah.
9 Q These are -- these are HCMFA's contracts;
10 correct?
11 A They are.
12 Q And they're the most important contracts
13 that HCMFA has; correct?
14 A Correct.
15 Q Okay. So who -- which officers of HCMFA
16 are involved in the 15(c) analysis?
17 A Yeah, one -- going back to -- to clarify
18 on your -- you know, this is the most important
19 thing, you know, that we have, it is, and as such
20 we have -- a lot of those functions, and to talk
21 about HCMFA's role, we have front-office
22 investment professionals who join those meetings
23 to talk about the funds and performance. The
24 aspects of the adviser that we provide and source
25 is the management of the funds: The performance,

Dustin Norris

the investment selection. And then we bring in HCMLP to provide the various other services. And so they are a huge part of that. To say that – yeah, it's not – they are legal, compliance, accounting, finance, back office, settlement. Those are all functions that they're providing.

Q I know – I appreciate that they're functions that they play under the shared services agreement.

A Yup.

Q Let me – let me move on.

A Okay. Go ahead.

Q In October 2020, HCMFA informed the retail board that HCMFA was obligated to pay Highland the outstanding principal amount due under the notes; correct?

MR. RUKAVINA: Objection; form.

THE WITNESS: Yeah, the obligated – I would – sorry. Can you ask the question again?

BY MR. MORRIS:

Q Sure.

In October 2020, HCMFA informed the retail board of the existence of the notes;

Dustin Norris

correct?

A Not that I'm aware of. If you have something you could – you know, a document or something that you're thinking of?

Q So you participated in the 15(c) process, and you have no knowledge of HCMFA informing the retail board of the existence of the notes?

A Of these notes? No. And I would say that there was a question from the retail board posed to the advisers, which we passed along to HCMLP, which included Lauren Thedford as an HCMLP employee and Frank Waterhouse, is: Were there any liabilities to – owed to Highland?

Q So let's take a look – I'm sorry. Go ahead.

A No, go ahead.

Q I was going to say, let's take a look at that.

MR. MORRIS: So if we could put up on the screen Exhibit 59.

(Exhibit 59 tendered.)

BY MR. MORRIS:

Q Have you seen this document before, sir?

A I have.

Dustin Norris

Q And this is the report that the advisers gave to the retail board in October 2020 as part of the 15(c) analysis; correct?

A Yes, working closely with HCMLP in the accounting, compliance, and legal function did draft this.

Q Okay. And who – who on behalf of the advisers authorized the sending of this memo?

A I don't know that there's a formal authorization. Lauren Thedford, who was the secretary of the advisers and an HCMLP employee, helped prepare the memo along with the rest of the legal and compliance team. Thomas Surgent was probably involved.

MR. MORRIS: Okay. I'm going to move to strike.

BY MR. MORRIS:

Q I don't want to know who was probably involved. I actually asked a very specific question, and if you don't know, please just say you don't know.

Who on behalf of the advisers authorized the sending of this memo to the retail board?

Dustin Norris

A I don't know.

Q Did anybody on behalf of the advisers ever suggest that this memo was wrong or inaccurate in any way to the best of your knowledge?

A At that time? Is that what you mean?

Q Yes.

A No, not – not to my knowledge.

Q Okay. When did you see this memo for the first time?

A I may have been copied on it at the time. I don't remember if I read it, but I did review it – and actually, I didn't review the whole memo. I reviewed the one email that was related to the note payable in this. So I don't know that I read the whole memo.

Q So – so –

MR. MORRIS: Can we see how long the memo is?

BY MR. MORRIS:

Q So it's two pages, and it's got some charts; is that fair?

A That's fair.

Q And in October 2020, you were the executive vice president of every single entity

Dustin Norris

that this email is being sent to and from; correct?

A I'm looking at the entities. I'm executive vice president of most of the entities.

Q Okay. You're the executive vice president of each of the entities that are sending this memo; correct?

A No. Not NexPoint Securities.

Q I appreciate that. Thank you for the clarification. Did you review this before it was sent?

A I don't remember.

Q Did you take any steps to make sure that it was accurate?

A Probably not. And that wouldn't have been my function. We had a legal and compliance team that was – through the shared services agreement that prepared memos. This is going to the board. That would have all obviously gone through legal and compliance. It wouldn't have been my function.

Q Did anybody who served as an officer or

Dustin Norris

employee of HCMFA have any responsibility to make sure that this memo was true and accurate before it was sent to the retail board?

A Lauren Thedford was the secretary of the advisers and the funds, and I believe this has to do with – and depending on the material, I think this has to do with the note, and other things. So the finance team, Frank Waterhouse and his team at HCMLP, would have been supplying those answers.

Q Okay. And why do you keep saying Frank Waterhouse at HCMLP instead of Frank Waterhouse as the treasurer of the entity that's sending this memo?

A Because Frank was the CFO of Highland who was responsible for the accounting, finance, back-office functions of these funds. And the answer – the adviser did not have that information, and intentionally hired HCMLP to provide that function. And so that is how it was viewed. Those were HCMLP employees, and that was under the shared services agreement.

Q Is it your testimony as the HCMFA 30(b)(6) witness that Frank Waterhouse did not have any responsibility in his capacity as the treasurer of

Dustin Norris

HCMFA to make sure that this report was true and accurate before it was sent to the retail board?

A I don't know of any function or requirement of his role as treasurer of HCMFA that he was responsible for reviewing 15(c) memos prior to going to the board.

Q And other than Lauren Thedford, you can't identify any officer or employee of HCMFA who had any responsibility to make sure that this report was true and accurate before it was sent; is that correct?

A No. And I can't – and I would, again, go back to legal. And this is a memo that is going to the board and is a legal and compliance function that would have been provided services by HCMLP. And that was always the case. Those employees, for years, have provided the legal/compliance support of memos of the 15(c) process and the support for everything that went into it.

MR. MORRIS: Okay. Move to strike.

BY MR. MORRIS:

Q Do you know if Jim Dondero reviewed this before it was sent?

Dustin Norris

A I don't know for sure, but I highly doubt. He was never, to my knowledge, involved in drafting or reviewing 15(c) memos.

Q Okay. You'll agree that this memo was sent by the advisers in response to the retail board's questions; correct?

A Correct.

Q And you'll agree –

A And actually, let me – let me correct that. It was from the advisers. I believe that HCMLP employees sent it, getting back to – it was sent by – technicality, but I believe Lauren Thedford would have sent this.

Q And why do you say that she sent it in her capacity as an HCMLP employee rather than as the secretary of the entity that's actually the author of the memo?

A Because that was the function that they were providing as part of the shared services agreement. And I – yeah. That was what – she's part of the legal team at HCMLP, and that was the service she was providing. We didn't have a legal and compliance function at HCMFA.

Dustin Norris

Q Okay.

MR. MORRIS: Can we scroll down to Question 2, please?

BY MR. MORRIS:

Q Have you seen Question 2 before?

A Yes.

Q Do you have an understanding of what was being requested by the retail board in Question Number 2?

A Yes. They are asking for amounts currently payable or due in the future to HCMLP by HCMFA or NexPoint Advisors.

Q And – and did the advisers report to the retail board in October 2020 that, quote, "$12,286,000 remains outstanding to HCMLP from HCMFA"?

A It says it right there. That's in the memo.

Q Okay.

A And I would note that came from Frank Waterhouse and his team, that information, the accounting department at HCMLP.

MR. MORRIS: Okay. I move to strike everything after the portion of

Dustin Norris

your answer that was responsive to my question.

BY MR. MORRIS:

Q As HCMFA's 30(b)(6) witness today, have you done anything to determine whether or not the $12.286 million number includes the principal amount of the notes?

A Looking at it, we can't tell. Because it doesn't line up exactly with those notes. There were other notes that had been recorded in the books for several years before. And if you add those two together, it doesn't add up. So it's not clear.

Q Did you read the testimony of Mr. Klos and Ms. Hendrix? I think you said you did; right?

A I did.

Q Did you read the portion of their testimony where they said that this number includes the notes as well as certain other amounts that were due and owing to certain Highland affiliates?

A I did – I didn't read every single line, and there were, between the two of them – I don't know – 600 pages. So if it's in there and you

Dustin Norris

can point to it, then I can take your representation. But I don't remember that.

Q All right. So did anybody acting on behalf of HCMFA – withdrawn.

Did any officer of – or employee of HCMFA do anything to make sure the information in this response was true and accurate before it was sent to the retail board?

A We received it from the individuals responsible. And there was no – you know, there was no reason to doubt that it was incorrect. Right? These were professionals. We were relying on them. This is Frank Waterhouse, Dave Klos, Kristen. We anticipated this would be accurate.

Q Okay. You anticipated it. But it's your testimony that no officer or employee of HCMFA did anything independently to make sure that it was accurate; that they completely and 100 percent just deferred and relied on somebody else under a contract?

A Frank Waterhouse was the treasurer. You said any – any officer. He was – in his role, he provided this information. And I don't know his extent of how he looked into it, but if you

Dustin Norris

look at the email chain, it didn't look too extensive. And if you even look at this, he's saying that the earliest the note between HCMLP and HCMFA can come due is May 21st. He himself seems to be confused here, because as we found out through discovery and in the testimony of what has come out, there was an agreement – that was a separate agreement. That wasn't related to the notes at issue in this case.

And so I don't know the extent that was gone into this, but it – it – there's confusion even in the response.

MR. MORRIS: Okay. I move to strike.

BY MR. MORRIS:

Q Again, I was just asking about the identity of anybody who was charged with the responsibility of making sure that this was true and accurate.

Is there any officer or employee of HCMFA who was charged with the responsibility of making sure this response was true and accurate?

A Yeah. It was sent to – the request went to Frank Waterhouse because he and his team would

Dustin Norris

have this information. That's -- that's where we would get this information.

Q Okay. Thank you.

MR. RUKAVINA: Hey, John, let me just interject for a little. Let's go off the record for just a minute.

(Discussion off the record.)

BY MR. MORRIS:

Q Do you know, as HCMFA's 30(b)(6) representative, whether the $12.286 million includes the $7.5 million -- withdrawn.

Do you know if the 12. -- withdrawn.

As HCMFA's 30(b)(6) witness, do you know whether the $12.286 million referenced in Response Number 2 includes the $7.4 million in principal amount on the notes?

A I don't.

Q Okay. Did you do anything to try to answer that question before appearing for today's deposition?

A Yeah. We discussed this with counsel. We don't have underlying backup. We couldn't talk to Frank Waterhouse on this in preparation, but the numbers just don't match up to principal amounts

Dustin Norris

and what is owing. We don't have information on the other notes. So discussed it with counsel, but I -- we don't have any backup to support or --

Q Did you make -- did you make any attempt to speak with Ms. Thedford?

A No, I didn't. And she wouldn't have that information. She's an attorney and was involved in the legal field, and she's no longer employed there or at Skyview.

MR. MORRIS: I move to strike.

BY MR. MORRIS:

Q Okay. And so you don't know what the component parts of this $12.286 million number are; correct?

A I don't.

Q Okay. Do you see the last sentence of this response that says, quote: "The adviser notes that both entities have the full faith and support of Jim Dondero," close quote?

A I do.

Q Do you know what that means?

A Other than what Frank Waterhouse testified -- and I, again, refer you to his deposition -- that -- I believe that wording came

Dustin Norris

from him, and he emailed that. So I would refer you to his testimony.

Q Well, as the 30(b)(6) witness, you were asked to be prepared about communications to the retail board; correct?

A Yes.

Q Okay. Did you do anything to try to figure out what that sentence meant -- that sentence meant, other than reading Frank Waterhouse's deposition transcript?

A Knowing that it came from Frank, and Frank elaborated, I didn't do any additional research.

Q Did you ask Mr. Dondero if he was aware that that statement was included in the report to the retail board?

A I did not.

Q Do you know why this statement was included in the report to the retail board?

A I could speculate, but I don't know specifically.

Q Do you know if Mr. Dondero authorized the advisers to inform the retail board, in October of 2020, that the advisers had the full faith and support of Mr. Dondero?

Dustin Norris

A I'm not aware, and if you look at Frank's testimony, I believe he testified that he -- he didn't have that authority either, but I'm not sure. I would refer you to his -- I don't have any other knowledge.

Q Okay. So it's HCMFA's position that the statement in the last sentence of Response Number 2 was unauthorized. Do I have that correctly?

A I don't know that we're taking that position either way. It wasn't something that -- that we're -- was even part of the -- our arguments.

Q I'm not asking if it's part of your arguments. I'm just asking you, as a factual matter, does HCMFA contend that that sentence was included without authorization?

A I don't have the knowledge of that. That's -- I'm not going to contend that.

Q Okay.

A It may have been. I don't know.

Q Okay. So this letter was sent over a year ago. Do I have that right?

A What's the date on it?

Dustin Norris

MR. MORRIS: If we can go back to the top.

THE WITNESS: Yup.

BY MR. MORRIS:

Q Okay. Has – have the advisers ever told the retail board that the response to Question Number 2 was inaccurate in any way?

A Specifically saying, "Hey, let me tell you this memo, Question 2, let me go back, it was inaccurate," no, that was never a specific disclosure of the retail board.

However, the retail board is aware of all of the facts and circumstances surrounding the notes, and so they're aware of our position. They're aware of – they've been demanded. There's been a lawsuit involved on both notes.

And – and – but, no, this specific Number 2 is incorrect, no. But they're aware of our position and what we found out since then.

Q Okay. Earlier in 2020, before this memo was sent to the retail board, HCMFA had provided to the retail board its financial statements for the period ending June 30, 2020; correct?

A I believe that's typical in our August

Dustin Norris

meeting as part of the 15(c) process, but – I don't know if you have that in hand, but I believe that was supplied. I'm not certain. Sometimes it was 12/31 balance sheets, sometimes it was a June 30th balance sheet.

Q Okay. Can we – are you aware – have you seen an email exchange that preceded the – the finalization of this memo to the retail board?

A I believe it was part of your exhibits.

Q All right.

MR. MORRIS: So let's put that up on the screen, Exhibit 36.

(Exhibit 36 tendered.)

BY MR. MORRIS:

Q So is this the document that you've seen before?

A Yes.

Q Okay.

MR. MORRIS: And can we start at the bottom of the document?

BY MR. MORRIS:

Q Okay. And do you know who Stacy from Blank Rome is?

A I do.

Dustin Norris

Q And who is that?

A She is independent counsel for the retail board, the independent directors.

Q And did she provide to the people on this email string certain questions that the retail board had in connection with its annual 15(c) review?

A Yes. These were follow-up requests. So they have a memo that she provides early on with an extensive list of questions, and these were the follow-up questions from the board.

Q Okay. And so it was sent to you, actually; correct?

A To me and Lauren.

MR. MORRIS: Can we scroll up a little bit, please? Keep going.

BY MR. MORRIS:

Q And then Lauren forwards it to certain people, including you; correct?

A She forwards it to Thomas and copies me.

Q Uh-huh. And – and she includes the questions that are being asked by the retail board; correct?

A I don't know if – I don't know if that's

Dustin Norris

all of them. I don't know if you have the memo. If you represent that is all the questions, then –

Q Yeah.

A – then I'll take that representation, but –

Q And – and Question Number 2 is the same Question Number 2 that we just looked at in the report that was given to the retail board; correct?

A I don't know if it's exact, but – I don't know if you want to pull that up.

Q Don't you have a copy of it with you right there?

A I don't know if I have a copy of that. Oh, I have the exhibits. What exhibit was that? I have it in PDF.

Q Yeah, that's – that was 59.

A I'm scrolling. There are 650 pages here. Sorry. Which exhibit again?

Q You know, let's just move on. Is it fair to say that Ms. Thedford forwarded to Mr. Surgent, you, and others, questions that had been presented by Stacy, the

Dustin Norris

retail board's outside counsel?

A Just one correction there. She forwarded it to Mr. Surgent and copied me.

Q Fair enough.

A I'm not on the "To" line. That would be –

MR. MORRIS: Let's scroll down, please. Let's scroll.

BY MR. MORRIS:

Q And then – and then she forwards it further to Mr. Waterhouse, Mr. Klos, and Ms. Hendrix.

Do you see that?

A I do.

Q And you're still copied on it; correct?

A I am.

Q And do you see that she's asking Frank, Mr. Klos, and Kristin to respond to Question Number 2 that concerns material outstanding amounts currently payable or due in the future to Highland or its affiliates by either of the advisers?

A Yes, it – HCMLP will take that as a typo. But yes. And that would be standard. Lauren

Dustin Norris

would go to them as the source for that information.

Q Okay.

MR. MORRIS: And let's scroll up and see the response.

BY MR. MORRIS:

Q And do you see Mr. Waterhouse responded with one word: "Yes"?

A Yes, I see that.

Q And then Ms. Thedford asked if Mr. Waterhouse could provide the amounts.

Do you see that?

A I do.

Q And you're still copied on this email chain; correct?

A I am.

Q So –

A Which, again, is not unusual to copy me on some things I wish they wouldn't. But I was copied on board items fairly regularly.

MR. MORRIS: Okay. I move to strike.

BY MR. MORRIS:

Q I appreciate your wishes, but the question

Dustin Norris

was simply whether or not, you know, you would acknowledge that you were copied on this email.

A Yup, that's my email.

Q Okay. And let's see what the next response is.

And do you see Mr. Waterhouse responds – can you read Mr. Waterhouse's response?

A I can. He said: "It's on the balance sheet that was provided the board as part of the 15(c) materials."

Q Okay. So everybody to whom Mr. Waterhouse has sent – withdrawn.

So you don't dispute, as HCMFA's 30(b)(6) witness, that Mr. Waterhouse informed all of the recipients of his email on Tuesday, October 6th, 2020, at 6:05 p.m. that the answer to the retail board's Question Number 2 could be found in HCMFA's balance sheet; correct?

A Correct.

Q Okay. Let's go –

A Actually, can you go back down to the answer – the exact question?

Q Of course.

Dustin Norris

Okay.

A "Are there material outstanding amounts currently payable or due to the future by HCMLP to HCMFA" – yeah – "or any other affiliate?"

Okay.

Q Having read that, does that change your answer at all?

A And so – go back to your original question on whether his –

Q Right. So Mr. –

MR. MORRIS: Can we scroll back up to Mr. Waterhouse's response?

BY MR. MORRIS:

Q Thank you for your patience, Mr. Norris.

A Uh-huh.

Q You'll see that Mr. Waterhouse responds at 6:05 p.m. on October 6th, and my question is a simple one: Does HCMFA dispute that in Mr. Waterhouse's email that he is telling the recipients that the answer to the retail board's Question Number 2 can be found in HCMFA's balance sheet?

A I would say the answer – his – his response is the answer to the retail board is not

Dustin Norris

completely accurate, because there was -- there's not enough there to be responsive. I think what he's saying here is to Lauren, "Hey, it's on the balance sheet. Can you look at it and figure it out?"

And I -- I think they go back and forth, "Well, can you give us more information?" And so it's -- this is not responsive to the question and isn't what was provided to the board, but that's --

Q Well, let -- let's see what Ms. Thedford does. Ms. Thedford's the lawyer; right?

A She is.

Q Yeah. But she's also the secretary of HCMFA; correct?

A At this time, I believe so, yes.

Q And you wouldn't dispute that she is taking the lead on formulating the advisers' response to the retail board; correct?

A I would not dispute that.

Q Okay. And do you see that she reports to you and everybody else in her email that she has taken information from the 6/30 financials?

A Yes, I see the below from the 6/30

Dustin Norris

financials. And, again, to correct to me, I'm CC'd. It's a nuance, but she's representing to Frank and Dave and Kristin with a CC to me.

Q Okay. Does HCMFA acknowledge that the information contained in the October 23rd, 2020, report to the retail board with respect to Question Number 2 was derived from HCMFA's June 30th, 2020, financials?

A Sorry. One more time?

Q Will you agree, as HCMFA's 30(b)(6) witness, that the information provided to the retail board in October 2020 in response to Question Number 2 was taken directly from HCMFA's financial statements for the period ending June 30th, 2020?

A Yeah. The unaudited financials, yes.

Q Okay. And so -- so as HCMFA's 30(b)(6) witness, you will agree that the $12,286,000 figure that was included in the former response to the retail board was obtained from HCMFA's unaudited financial statements for the period ending June 30th, 2020; correct?

A It appears that way.

And I -- I think -- and, again, we're

Dustin Norris

looking at a draft answer here. I don't have the final answer. But it looks as work product that she's pulling numbers from the unaudited balance sheet and plugging them in here.

Q Okay. And we can look at the final if you want, but that $12,286,000 number that was due to HCMLP as of June 30th 2020, that's the exact figure that was given to the retail board in the final report; correct?

A "Final report," meaning the final memo -- final memos?

Q Yes.

A Yes. Yes, I believe so.

Q Okay.

MR. MORRIS: Can you scroll back up to the last email?

BY MR. MORRIS:

Q So this is Mr. Waterhouse's response to Ms. Thedford. And, again, Mr. Waterhouse is Highland's CFO and the advisers' treasurer; correct?

A Correct.

Q And at this time, Ms. Thedford is an attorney at Highland, but she also serves as the

Dustin Norris

secretary for the advisers; correct?

A That's correct.

Q And you are the executive vice president for the advisers; correct?

A As of this date, yes.

Q And you had no position with Highland; correct?

A At this time?

Q Correct.

A No position with Highland, no.

Q Okay. How about Mr. Post? Had he transitioned from Highland to the advisers as of October 6th?

A I don't believe so.

Q Okay. It happened in October, though; right?

A I -- I don't know.

Q Okay.

A Late October/November. It was late in the year.

Q Okay. And do you know if anybody ever told Mr. Waterhouse in October 2020 that there was any aspect of his email that was incorrect?

A Not at that time, no, that I'm -- not that

Dustin Norris

I'm aware of.

Q Okay.

A And – and would we have reason to doubt him? This – he was the source of the information.

Q Okay. And do you see that the last sentence of his email actually refers to the last sentence of Response Number 2 that was given to the retail board later in October 2020?

A I do.

Q Did you ever ask Mr. Waterhouse anything about that last sentence?

A I don't believe so.

Q Do you see that he says, quote: "The response should include, as I covered in the board meeting, that both entities have the full faith and backing from Jim Dondero, and to my knowledge that hasn't changed"?

Do you see that?

A I do.

Q Do you know what board meeting he's referring to?

A "The response should include, as I covered in the board meeting, that both entities have a

Dustin Norris

full faith and backing."

So I don't know the exact board meeting. However, we do have an August board meeting related to 15(c). There's typically an in-person or telephonic meeting in August, and then there's a September board meeting that is devoted almost exclusively to the 15(c) process.

And after that, there is follow-up meetings – multiple sometimes, particularly in 2020 during the bankruptcy proceedings that – where the board was getting comfortable. So it would have been one of those meetings, but I don't know which one.

Q And – and did you personally participate in a board meeting where Mr. Waterhouse covered the topic of the advisers having the full faith and backing from Mr. Dondero?

A I – I probably would have been in most or all of those board meetings, but I don't remember that specifically.

Q Okay. Do you know – do you know whether anybody who's copied on this email ever questioned any aspect of the last sentence of Mr. Waterhouse's email at any time prior to the

Dustin Norris

sending of the final memo on October 23rd?

A Not that I'm aware of.

Q You didn't; isn't that right?

A I don't know that I read it, but I didn't question it. If I – I either didn't read it or I didn't question it.

Q Okay. So you have no recollection of ever asking Mr. Waterhouse what he meant by the last sentence of this email; correct?

A No, I have no recollection.

Q And you have no recollection of any recipient of this email asking Mr. Waterhouse what he meant by that last sentence; correct?

A I don't remember.

Q And you never told Mr. Waterhouse that you had no knowledge of him having covered this issue before the board?

A You're wondering if I ever told him I had no knowledge?

Q Yeah.

A No, I never talked to him about that.

Q And to the best of your knowledge, no recipient of this email ever challenged Mr. Waterhouse's statement in this last sentence;

Dustin Norris

correct?

A I don't know what the conversations were had between the others, but I have no knowledge of that.

Q Okay.

A And – and you've got – sorry. Go ahead.

Q This email string is – is an email string devoted for the sole purpose of addressing questions posed by the retail board in connection with the 15(c) review; correct?

A I believe so.

Q Okay. Have you ever seen HCMFA's unaudited financial statements for June 30th, 2020?

A Yes.

Q And do you know if those audited – unaudited financial statements included the amounts due and payable under the notes?

A I – I think that – I – I don't remember, but I think our position is it's unclear, because the amounts don't agree to the – again, we have prior notes, we have these notes. The amounts don't line up.

So it's – it's – the underlying

Dustin Norris

backing is not provided. There's no footnotes. It's just a number that says due to HCMLP.

Q Do you know -- do you know -- do you have any recollection as to the totality of HCMFA's liabilities as of June 30th, 2020?

A Including this note? Or just this note?

Q All -- all liabilities. What's the bottom of the balance sheet?

A I don't know. Do you have it? Do you want to pull it up?

Q I don't.

A Yeah, I don't remember.

MR. RUKAVINA: Hey, John, it's approaching 12:15. Just whenever, you know --

MR. MORRIS: Yeah. You know what? I was just about to change topics, so this is a good time.

MR. RUKAVINA: Okay.

MR. MORRIS: Why don't we stop here, and we'll come back at the top of the hour.

MR. RUKAVINA: Excellent. Thank you.

Dustin Norris

(Recess from 12:11 p.m. to 1:06 p.m. CST)

BY MR. MORRIS:

Q Mr. Norris, Topic Number 9 relates to consent fees.

Do you understand that?

A I do.

Q Do you have an understanding of what a "consent fee" is?

A I do.

Q Did you do anything to prepare for this particular topic?

A I did.

Q What did you do to prepare for this topic?

A I discussed the consent fee with Mr. Dondero, with Mr. Rukavina, and with Mr. Sauter.

Q Okay. Mr. Sauter has no personal knowledge of any consent fee that was paid in the spring of 2019; correct?

A No.

Q Okay. What's your understanding of what a "consent fee" is?

A Generally or the specific consent fee in -- that --

Dustin Norris

Q Let's start generally.

A Yeah. So a "consent fee" is a fee paid to a -- paid to someone who's agreeing to amend terms or change the structure of the -- of a document or a loan. In -- in bank loan world, or loan world, if you are going to amend or extend or change the terms, typically there was a consent fee paid to those willing to consent.

Those that have voted or consented receive a fee.

Q Okay. And did HCMFA pay any consent fees in or around April or May 2019?

A It began to pay consent fees in May of 2019, I believe.

Q Okay. Are you looking at something as you prepare your answer?

A Yeah. I'm looking at Topic Number 9 that says consent fee in April or May 2019.

Q Okay. Thank you so much.

And -- and I think you testified that they began paying consent fees at around that time?

A That's right.

Q What do you mean by that?

Dustin Norris

A Yeah. So the consent fee was related to the global allocation fund that converted from an open-end fund to a closed-end fund, and there was a 3 percent fee that would be paid to investors that, one, consented to the conversion from an open-end fund to a closed-end fund, but also held their investment through the conversion.

The conversion was finalized in February of 2019, and the consent fee was an operational challenge because you had to determine who the investors were that voted yes and that held on to the conversion.

So with that, the -- the amounts that were paid, there was an operational challenge to determine who -- who needed to be paid, and so they were deposited and then paid out over a couple-month period.

Q And who made the decision to pay the consent fee?

A So the consent fee was a collaborative decision of senior management. Jim Dondero and myself were involved in the decision, the discussion to -- and it was a novel idea in terms of converting from an open-end fund to a

1 Dustin Norris
2 closed-end fund, and it was submitted to
3 investors. It went through SEC review as a proxy
4 statement, and it went out to shareholders who
5 needed to vote for the proposal.
6 Q And who paid the consent fee? HCMFA?
7 A My understanding is HCMFA as the adviser
8 of the global allocation fund paid the consent fee
9 to investors.
10 Q And whose idea was it to seek consent to
11 change from an open fund to a closed-end fund?
12 A I -- I would say it was collaborative of
13 senior management. Jim Dondero, myself, legal
14 compliance was involved. It was, you know, Mark
15 Okada, who was a partner at the time. There was a
16 lot of discussion involved.
17 Q And when the decision was made to seek
18 consent to change from an open-end fund to a
19 closed-end fund, did HCMFA understand that there
20 would be costs, fees, and expenses associated with
21 that decision?
22 A Being cost fees as in the consent fee?
23 Q Correct.
24 A Yes.
25 Q And did it undertake any analysis to

1 Dustin Norris
2 determine what the likely total fee would be?
3 A Yeah. I'm sure they did.
4 Q Do you know what the total fee
5 paid -- what the total consent fee paid was?
6 A I don't have the exact amount, but it was
7 over $5 million.
8 Q Okay. And over what period of time were
9 the consent fees paid?
10 A I know they were paid in May and June, and
11 there may be a portion that were paid thereafter,
12 but at least May and June of 2019. There were
13 certain broker-dealers that reported later, and
14 when those were reported and verified, they were
15 paid out. I don't remember the final date of the
16 last distribution.
17 Q Okay. And forgive me. It's not my
18 business. But were the consent fees paid to the
19 fund's shareholders?
20 A They were paid to the shareholders.
21 That's correct.
22 Q Okay.
23 A That's consented. The shareholders had to
24 vote, and they had to be a shareholder on
25 conversion date.

1 Dustin Norris
2 Q Okay. And the decision to seek and obtain
3 consent, was that a voluntary decision by HCMFA?
4 A To seek consent to move to a closed-end
5 fund?
6 Q Yes. That's not something that any
7 regulator required, was it?
8 A No.
9 Q It's not something that any rule or
10 anybody mandated; correct?
11 A Not that I believe.
12 Q Okay. How did HCMFA fund the payment of
13 the total consent fee of over $5 million?
14 A Yeah, from cash that it had on the balance
15 sheet.
16 Q And where did it get the cash that was on
17 the balance sheet?
18 A The cash came from the transaction that we
19 discussed earlier -- and you showed the capital
20 coming in from Highland -- which was compensation
21 for the NAV error.
22 Q So it used the money that it received in
23 the transfers that we talked about to pay the
24 consent fee. Do I have that right? Or at least
25 some of it?

1 Dustin Norris
2 A Yes.
3 Q And, in fact, it used approximately
4 $5 million of the moneys paid in May 2019 to pay
5 the consent fee of approximately $5 million; is
6 that fair?
7 A At least $5 million.
8 Q Okay. Do you know the exact number?
9 A Of the consent fee?
10 Q Withdrawn.
11 Do you have a better or more precise
12 estimate of the total consent fee other than
13 $5 million?
14 A It was over $5 million. I don't remember
15 the exact amount, whether it was 5.6 or 5.2 --
16 Q All right.
17 A -- because it was paid over time.
18 Q Let's talk about the TerreStar valuation
19 issue for a few minutes, if we can.
20 A Okay.
21 Q Just generally, in 2018/2019, HCMFA spent
22 a fair amount of time addressing the consequences
23 of a valuation error concerning TerreStar. Do I
24 have that right?
25 A There was a lot in there, but there was,

Dustin Norris

during that time, a lot of discussions with TerreStar over the concerns of a valuation error in 2018 and '19.

Q And did it ultimately turn out that there was a valuation error involving TerreStar?

A There was.

Q Okay. And had HCMFA retained Houlihan Lokey in connection with doing the TerreStar valuation?

A Houlihan Lokey was involved in the valuation, yes.

Q And who retained Houlihan Lokey?

A I don't know.

Q As you sit here right now, you can't tell me who retained Houlihan Lokey?

A I don't know if it was HCMLP or HCMFA or – I don't know.

Q Okay. Are you familiar with the firm Houlihan Lokey?

A I am.

Q And do you know what services they provided in connection with the TerreStar valuation?

A I do.

Dustin Norris

Q Can you describe for me the services that were provided by Houlihan Lokey in connection with the TerreStar –

A And I would say I do generally. I was not involved in the individual details. That was all the HCMLP employees.

So all of the Highland employees that were involved in the shared services agreement, the valuation committee, valuation services were the responsibility of HCMLP. Key inputs were provided by HCMLP. Key estimates and interpretations to Houlihan, and they used their models to calculate a valuation that was then approved by the valuation committee at HCMLP.

And so that's my general understanding of the valuation process.

Q Do you know how much Houlihan Lokey was paid for its work?

A I don't.

Q Do you know if there's an engagement letter pursuant to which Houlihan Lokey provided these services?

A I'm not aware.

Q Would you dispute that HCMFA is the entity

Dustin Norris

that retained Houlihan Lokey?

A I don't know.

Q Would you agree that Houlihan Lokey is fairly described as an independent third-party valuation consultant?

A Yes, generally.

Q Okay. And do you know when Houlihan Lokey was retained?

A I don't.

Q Houlihan Lokey's retention was approved by the retail board, wasn't it?

A I'm not sure.

Q Have you ever seen any of the work product of Houlihan Lokey in connection with the TerreStar valuation?

A Yeah. I remember seeing the valuation model.

Q So Houlihan Lokey did prepare the valuation model that is the subject of the TerreStar valuation issue; is that fair?

A Working very closely with the HCMLP employees with the inputs, yes.

Q Did HCMFA rely on the Houlihan Lokey valuation model?

Dustin Norris

A I'm not sure.

Q Does HCMFA contend that Houlihan Lokey made any mistakes in connection with its valuation services?

A I'm not sure.

Q Does HCMFA have a position as to whether or not Houlihan Lokey made any mistakes in any of the services that it performed in connection with the TerreStar valuation?

A I think they don't have details and would retain their rights to understand what their role and – sorry. What was the original question?

Q Just whether HCMFA has a position as to whether or not Houlihan Lokey made any mistakes in the work that it did in connection with the TerreStar valuation?

A Yeah. I think they're retaining their rights to understand that better.

Q Is there any agreement with Houlihan Lokey that would give HCMFA the time to do that? Is there a tolling agreement or anything like that?

A Not that I'm aware of.

Q Is HCMFA undertaking any analysis to determine whether or not Houlihan Lokey made any

1 Dustin Norris
2 mistakes in connection with the work that it did
3 on the TerreStar valuation?
4 A Sorry. One more time.
5 Q Is HCMFA undertaking any analysis or
6 investigation to try to determine whether Houlihan
7 Lokey made any mistakes?
8 A There are -- I don't know. I don't know.
9 Q You have no knowledge, as you sit here
10 today, as to whether HCMFA is undertaking any
11 analysis or investigation to try to determine
12 whether Houlihan Lokey did anything wrong in
13 connection with its valuation services; correct?
14 A And I wasn't prepared -- I don't think
15 this is one of the topics -- you know, Houlihan
16 Lokey's, you know, involvement, and so I wasn't
17 prepared to answer that one.
18 Q Okay. Well, the defense -- HCMFA's
19 defense is that Highland is responsible for the
20 TerreStar valuation issue; correct?
21 A Yes.
22 Q And there's no question that Houlihan
23 Lokey provided services in connection with that
24 valuation; correct?
25 A Correct.

1 Dustin Norris
2 Q But HCMFA has not undertaken any analysis
3 or investigation, to the best of your knowledge,
4 to try to determine if Houlihan Lokey was the
5 responsible party; fair?
6 A We don't know if there is a contract or
7 not. At this point, we're talking about the
8 defense of Highland's responsibility. There's no
9 question they were responsible for the valuations.
10 They were outsource provider of the valuation
11 committee. Every individual working and
12 coordinating with Houlihan Lokey was an HCMFA
13 employee. All the data and information that was
14 provided to them came from HCMLP. There's no
15 question that Highland was responsible for the NAV
16 error. No one ever questioned that. That was
17 always known. It was all the employees that were
18 involved.
19 MR. RUKAVINA: John, I'll just
20 reiterate that we did not understand your
21 topics to include Houlihan Lokey. If you
22 need more information about that or if we
23 need to have a supplemental deposition,
24 that's fine. But this is just not
25 something that we reasonably anticipated

1 Dustin Norris
2 you asking about.
3 MR. MORRIS: I think it's -- I
4 think I have the answer that I need and
5 that the executive vice president and
6 30(b)(6) witness has no knowledge of any
7 investigation or analysis that has been
8 undertaken by HCMFA to try to even
9 determine whether Houlihan Lokey is at
10 fault.
11 BY MR. MORRIS:
12 Q Do I have that right, Mr. Norris?
13 MR. RUKAVINA: Well, I will just
14 object that that was not your prior
15 question.
16 MR. MORRIS: All right. Well,
17 that's my question now.
18 BY MR. MORRIS:
19 Q Is that correct, Mr. Norris?
20 A I know there's been discussion with
21 counsel.
22 MR. RUKAVINA: Well, I will
23 represent to you that we have looked for a
24 Houlihan Lokey contract and have not been
25 able to find one. Otherwise, we would

1 Dustin Norris
2 have produced it to you. So if you have
3 anything like that, we'd love to see it.
4 We do not even know whether we had a
5 contract with Houlihan Lokey or not. So
6 we'll try to find you information, John.
7 We just -- we just don't have it.
8 MR. MORRIS: We'll get to that in a
9 moment.
10 BY MR. MORRIS:
11 Q Has HCMFA -- withdrawn.
12 Has HCMFA ever told Houlihan Lokey
13 that it believed it made any mistake or error of
14 any kind in connection with its work on the
15 TerreStar valuation?
16 A Again, I -- this is not a topic that we
17 reviewed, so I don't know.
18 Q Okay. You're not aware of anything today;
19 correct?
20 A Again, the employees working with Houlihan
21 Lokey were the HCMLP employees. So I don't know
22 if the debtor employees have that conversation,
23 but --
24 MR. MORRIS: Yeah, I'm going to
25 move to strike.

1 Dustin Norris
2 BY MR. MORRIS:
3 Q And I'm asking about HCMFA.
4 Did – has HCMFA ever informed
5 Houlihan Lokey that HCMFA believes that Houlihan
6 Lokey made a mistake or error in the work that it
7 did?
8 A There were ongoing discussions extensively
9 throughout this with Houlihan Lokey and the debtor
10 employees regarding the error and what the causes
11 were. It was extensive discussions.
12 MR. MORRIS: Okay. Move to strike.
13 BY MR. MORRIS:
14 Q Has HCMFA ever told Houlihan Lokey that
15 HCMFA believes that Houlihan Lokey made a mistake
16 or an error in connection with its valuation
17 services?
18 A It may have, but I'm not aware.
19 Q Thank you.
20 Are you familiar with the report that
21 HCMFA prepared and sent to the Global Allocation
22 Fund concerning the TerreStar valuation issues?
23 A They sent to the fund?
24 Q Uh-huh.
25 A What do you mean "they sent to the fund"?

1 Dustin Norris
2 Q They sent to the board of the fund?
3 A Oh, the board of the fund.
4 There were a number of memos and
5 presentations. If you have one you want to pull
6 up, you can – we can refer to it.
7 Q Sure.
8 MR. MORRIS: Let's put up what
9 we've marked as Exhibit 182.
10 (Exhibit 182 tendered.)
11 BY MR. MORRIS:
12 Q And while we're doing that, have you ever
13 seen a single document anywhere at any time in
14 which any representative of HCMFA took Highland to
15 task for the work that it did in connection with
16 the TerreStar valuation?
17 A "Took them to task"? Define "take them to
18 task."
19 Q Told them that they were the source and
20 cause of the NAV error.
21 A The irony of all of the reporting to the
22 board, all of the valuation knowledge was from
23 HCMLP's employees. We – we outsourced that to
24 them. There was – there was no question that
25 they were at fault, and that's – every employee

1 Dustin Norris
2 involved was an HCMLP employee.
3 MR. MORRIS: I move to strike.
4 BY MR. MORRIS:
5 Q And I'm going to ask you, sir, to listen
6 carefully to my question.
7 Have you ever seen a document that
8 HCMFA sent to Highland in which HCMFA accused
9 Highland of being the cause of the NAV error?
10 A I have not.
11 Q Thank you.
12 Do you see the document that's on the
13 screen?
14 A I do.
15 Q Before I get to that, so the NAV error
16 occurred sometime prior to May 2019; correct?
17 A Beginning – I don't know the specific
18 dates. I believe it began in May of 2019 –
19 sorry. May 2019 –
20 Q That's when it ended; right?
21 A What's that?
22 Q That's when it ended; right? That's –
23 A Yeah, it was before May 2019.
24 Q Okay. So during the entire time that the
25 TerreStar NAV error was being discussed and

1 Dustin Norris
2 analyzed and debated and communications with the
3 SEC, during that entire period, Jim Dondero was in
4 control of both HCMFA and Highland; correct?
5 A Yes, I believe so.
6 Q Okay. Can you identify any employee of
7 Highland who was fired as a result of any of the
8 mistakes that were made in connection with the
9 TerreStar valuation?
10 A No.
11 Q Can you identify –
12 A Not that I can remember.
13 Q Can you identify any steps that
14 Mr. Dondero took against any employee who was
15 allegedly involved in the NAV error?
16 A That would have been an HCMLP matter. I
17 don't have any knowledge of HCMLP's hiring or
18 firing practices.
19 Q Okay. So at no time did anybody ever tell
20 you that any disciplinary measures were imposed
21 upon any Highland employee as a result of the NAV
22 error that Highland allegedly caused; correct?
23 A Any firing practice? Is that what you
24 said?
25 Q Disciplinary. Firing. Anything.

1 Dustin Norris
2 A There was a remediation process that had
3 to go into effect, which was improvement of
4 controls, and they maybe even hired additional
5 people. But it was -- and I don't -- I'm not
6 aware of any disciplinary, but there could have
7 been.
8 Q Okay. But that would just be speculation
9 on your part; correct?
10 A Yeah.
11 Q So have you seen the document that's up on
12 the screen?
13 A I have.
14 Q Did you read it before it was sent?
15 A I don't think so.
16 Q Did anybody -- did any officer or employee
17 take responsibility for making sure that --
18 withdrawn.
19 What is this document?
20 A It is titled "Resolution of the Funds Net
21 Asset Value Error."
22 Q And was -- is it your understanding that
23 the purpose of this document was to enable HCMFA
24 to explain to the Global Allocation Fund how the
25 resolution of the NAV error was being conducted?

1 Dustin Norris
2 A Not to the Global Allocation Fund. This
3 is a memo to the board.
4 Q Thank you for the clarification.
5 Subject to that clarification, is my
6 description otherwise correct?
7 A I believe so. There had been a number of
8 communications with the board, and this is the
9 resolution of the whole process, or most of the
10 process.
11 Q This was a pretty big issue for HCMFA,
12 wasn't it?
13 A There was a lot of people involved. It
14 was -- there was a lot of involvement from --
15 mostly Highland Capital Management, LP, employees,
16 but it was -- there was a lot involved.
17 Q And who -- what outside counsel was
18 retained?
19 A Adviser counsel is counsel -- is -- I
20 believe it was K&L Gates for HCMFA.
21 Q And who was Highland's counsel?
22 A I don't know.
23 Q Do you know if Highland had counsel?
24 A I don't know.
25 Q Do you --

1 Dustin Norris
2 A I know they had counsel they referred to
3 for SEC matters, and I don't know if they utilized
4 them here or not. They were all Highland
5 employees that worked on this. So I'm sure you
6 probably have that in your records.
7 Q Sir, can you identify any outside counsel
8 that was retained by Highland to advise it in
9 connection with the TerreStar valuation issues
10 that were the subject of an SEC investigation?
11 A I have -- I have no knowledge of that.
12 Q Okay. Did you see this memo that's up on
13 the screen that's been marked as Exhibit 182 prior
14 to the time that it was sent?
15 A I don't recall.
16 Q The NAV error was the subject of an SEC
17 investigation; correct?
18 A Correct.
19 Q Do you know if HCMFA ever told the SEC
20 orally, in writing, or otherwise that Highland
21 Capital Management, LP, was the cause of the NAV
22 error?
23 A Not that I'm aware of, but they were
24 concerned about the ultimate correction of the NAV
25 error. I don't think they were concerned about

1 Dustin Norris
2 the responsible party.
3 But I would say every single person
4 that interacted with the SEC, I believe, were
5 HCMLP employees. We can see that on the other
6 memo that they have to the SEC following up on a
7 call; all HCMLP employees. So whether they told
8 them or not, they were all HCMLP employees.
9 MR. MORRIS: Okay. Move to strike
10 after the very first portion of the answer
11 that was responsive.
12 BY MR. MORRIS:
13 Q Did anybody -- did any officer or employee
14 of HCMFA ever inform the SEC that Highland Capital
15 Management, LP, was the responsible party for the
16 NAV error?
17 A Specifically, not that I'm aware of.
18 Q Okay. Was any HCMFA officer or employee
19 responsible for making sure that the memorandum up
20 on the screen that's been marked as 182 was true
21 and accurate before it was sent to the board of
22 the Highland Global Allocation Fund?
23 A I don't know that there is a -- there's a
24 specific requirement of an officer to verify the
25 accuracy.

Dustin Norris

Q Okay. But my question was a little bit broader, and that was whether there was any officer or employee who was given the responsibility of making sure this document was true and accurate before it was sent to the board of the GAF.

A I don't even know who drafted this. It would have come from Highland's compliance legal and accounting team with all the expertise around the NAV error and all of those that were involved.

Q So did you see this document at or around the time it was sent to the GAF board?

A I probably did.

Q Do you recall telling anybody at that time that you believed there were any errors in the document?

A I think, as I testified before, I don't -- I don't remember reading it. But I didn't -- I didn't say there were errors in the document, no.

Q Prior to the answer date of March 1st, 2021, did anybody acting on behalf of HCMFA ever tell anybody in the world at any time that there was any error in this memorandum?

Dustin Norris

A Not that I'm aware of.

Q Did HCMFA send this memorandum -- withdrawn.

Did HCMFA intend this -- withdrawn.

Did HCMFA expect the GAF board to rely on this memorandum?

A I don't know what the intention was.

Q You don't know what HCMFA's intention was in sending this memorandum?

A If it's addressed to the board, it could be to educate. But I'm sure that the board would -- would rely on or expect that that memo would be accurate.

Q Okay. And this is dated after all of the payments have been made that we've been talking about, the May 2nd and the May 3rd payments; correct?

A Correct.

Q Take a look at the second paragraph.

A Yup.

Q Do you see the first sentence refers to two initial determinations that were made by the adviser and Houlihan Lokey?

A Sorry. Which part? Just the first

Dustin Norris

sentence of the second paragraph?

Q Yeah. First of all, do you see that the second paragraph refers to the adviser and Houlihan Lokey?

A It does.

Q And do you see that the reference to Houlihan Lokey includes a reference to Houlihan Lokey having been approved by the board?

A Yes.

Q And do you understand that that means the board of GAF?

A Yes.

Q Does that refresh your recollection that the GAF board approved of the retention of Houlihan Lokey as an independent third-party expert valuation consultant?

A It doesn't refresh my recollection, but it says it there. I don't know that I have a document saying they -- I haven't seen the approval, the agreement.

Q But you don't dispute that this memo was sent to the GAF board on or about May 28th, 2019; correct?

A Correct.

Dustin Norris

Q Okay. And HCMFA told the GAF board at that time that HCMFA and Houlihan Lokey, quote, "initially determined that the March transactions were non-orderly and should be given zero weighting for purposes of fair value."

Is that correct?

A The HCMLP, as part of the valuation -- or as the outsource valuation provider, were the employees that made that determination. The adviser ultimately has the responsibility, but it was outsourced. And those were HCMLP employees, along with Houlihan Lokey, that determined the March transactions were non-orderly.

MR. MORRIS: I'm going to move to strike.

BY MR. MORRIS:

Q And I'm going to ask you to listen carefully to my question.

I'm asking you what HCMFA told the GAF board. Did HCMFA tell the GAF board on May 28th, 2019, that HCMFA and Houlihan Lokey, quote, "initially determined that the March transactions were non-orderly and should be given zero weighting for purposes of determining fair value."

Dustin Norris

Is that correct?

A The – in the memo, it says that on this date, there were many other conversations probably around this date and on this date discussing the determinations and non-orderly and that it was the HCMLP employees, and the board knew that. They were very aware that it was the – the valuation control environment of HCMLP that determined these were non-orderly transactions.

Q So this – so this report is inaccurate, according to you?

A No. There's – there's just – your question was did they tell the board. There is a lot that we told the board outside of this memo. This memo does say advised from Houlihan Lokey. The adviser is ultimately responsible. But there was a lot of communication with the board –

Q Okay.

A – around this, that they knew exactly who was responsible for valuation as the board determining that these were market transactions and orderly or non-orderly.

Q Okay. I want to focus on this memo, because this is the one that I have. And you'll

Dustin Norris

agree with me that there's no reference to Highland Capital Management, LP, anywhere in this report; correct?

A No, there's not, but the board knew that HCMLP was preparing the valuations.

MR. MORRIS: All right. I move to strike after the word "no."

BY MR. MORRIS:

Q And it was the determination concerning whether or not it was orderly or non-orderly, and whether or not to use zero weighting that were the two causes of the NAV error; correct?

A Those were key portions.

Q In the last sentence, in fact, that's the only portions; isn't that fair?

A "Initially determined" – well, it doesn't say that there's not other factors. They're the only ones mentioned.

Q Let me – let me – let me read the last sentence.

Quote: "The orderly determination and adoption of the weighted fair value methodology resulted in NAV errors in the fund," and that's what it's defining as the NAV error.

Dustin Norris

Have I read that correctly?

A You did.

Q And so would you agree with me, as HCMFA's 30(b)(6) witness, that on May 28th, 2019, HCMFA told the GAF board that the two causes of the NAV error were the orderly determination and the adoption of the weighted fair value methodology – fair value – fair valuation methodology?

A Those were – it doesn't say those are exclusively the only factors, but those are mentioned here.

Q It says those two factors resulted in the NAV error; correct?

A Those – no, it didn't say "the NAV error." It said "in NAV errors."

Q Which it's defining as the NAV error; correct?

A Defines as "the NAV error."

Q Okay. Does HCMFA contend that there's anything in this paragraph that is inaccurate?

A Again, I – I don't know that Houlihan Lokey was approved by the board, but I don't know of any other contention.

Q Okay. And you don't – and HCMFA doesn't

Dustin Norris

dispute that Houlihan Lokey was approved by the board. You're just telling me that, as you sit here today, that's the one fact that you've not been able to confirm; is that fair?

A As far as I know, yeah.

Q Okay. Let's go on to the next paragraph.

MR. MORRIS: If we could just scroll up a little bit.

BY MR. MORRIS:

Q I'm going to try and summarize here, but if you don't think it's a fair summary, of course I would encourage you to let me know.

Is it fair to say that, as a general matter, the next paragraph describes a total loss from the NAV error as being approximately $7.5 million?

A Yeah, including processing costs and rebates and offsets, yes.

Q Right. That's what the parenthetical says, a total loss –

A Yup.

Q – of approximately $7.5 million?

A Correct.

Q And the next paragraph states that that

Dustin Norris

loss was funded with two payments. Do I have that correct in the first sentence?

A Correct.

Q Okay. Did HCMFA pay approximately $5.186 million on or around February 15, 2019, in connection with the NAV error?

A I believe so.

And if we go to the next page, it has dates and payments. I think it's represented there.

Q Okay. Where did HCMFA get the money to make that payment?

A A combination of insurance proceeds and cash that it had. And, again, that's detailed, I believe, on the next page.

Q HCMFA contends that the $7.4 million transferred by Highland to HCMFA was mistakenly recorded as a loan; correct?

A There's -- there's two different amounts that we contend were recorded as a note, a combined 7.4 million, yes.

Q Okay. And HCMFA contends that the $7.4 million in payments was not to be a loan, but was supposed to be compensation for Highland's

Dustin Norris

negligent valuation services in connection with the NAV error; correct?

A Sorry. One more time.

Q HCMFA contends that the $7.4 million in payments was supposed to be compensation resulting from Highland's negligent valuation services; correct?

A Yes, subject to all of our defenses that we've laid out in our pleadings.

Q Okay. When did HCMFA reach the conclusion that Highland was the cause of the NAV error?

A The -- there was never -- I don't think there was ever a question. It was always known that HCMLP employees were the ones creating the valuation, overseeing the valuation, working with the value -- you know, everything that was done was outsourced to HCMLP.

And so it was discussed with the board. It was discussed in-depth internally. The employees were all HCMLP employees. So I can't pinpoint a date, but there -- it was a known factor that HCMLP was responsible.

MR. MORRIS: Okay. I move to strike.

Dustin Norris

BY MR. MORRIS:

Q The only thing I'm asking you for is a date. And if you don't know, the answer is "I don't know." So let me try one more time.

Do you know when HCMFA first determined that Highland was negligent?

A I don't know the first date.

Q Do you know if it was in 2018 or 2019?

A I don't know.

Q Do you know when the NAV error first -- was first identified?

A I believe the NAV error was determined in early 2019.

Q Was it before or after -- I mean, the -- the NAV error must have been identified before February 15, 2019; correct?

A Correct.

Q Okay.

A Well, I should say whether there -- I don't know. I don't remember -- we'll have to look through the documents -- what the actual -- oh, you're saying before February 15th. Yes, that's when the paid insurance proceeds came in. So yes.

Dustin Norris

Q No question -- no question that HCMFA knew before February 15, 2019, that there was a NAV error; correct?

A Correct.

Q No question that HCMFA knew before February 15, 2019, that the NAV error was caused by Highland; correct?

A Yeah. Like I said, it was always known that these were Highland employees that were outsourced through the valuation, and they were the ones at fault.

Q Okay. Do you know if -- if HCMFA ever demanded compensation from Highland for any errors or mistakes it may have made in connection with the TerreStar valuation?

A Yeah. Mr. Dondero told Frank to make the payments to compensate for the NAV error.

Q And did he do that in his capacity as the person in control of HCMFA, or did he do that in his capacity as the person in control of Highland?

A I would imagine it would have been both. Further supported, he transferred money -- of his own money to HCMLP to then pay HCMFA. And so he -- yes, he was on both sides of it, but he had

Dustin Norris

the authority on both sides to make that decision.
Q Okay. And so Mr. Dondero reached an agreement with himself pursuant to which HCMFA demanded and Highland agreed to pay the $7.4 million as a consequence of Highland's negligent conduct in the performance of its valuation services. Do I have that right?
A Sounds like there's a legal determination there that needs to be made. I --
Q It's a factual one, I promise.
A Entering -- whether entering into an agreement or not, I -- that seems like a legal determination. But maybe ask the question again.
Q Did somebody on behalf of Highland agree to pay HCMFA $7.4 million in order to compensate HCMFA for Highland's negligent services in connection with the TerreStar valuation?
A Yes. Mr. Dondero.
Q Thank you.
Is there any document anywhere that you have ever seen that reflects Highland's agreement to pay $7.4 million as compensation to HCMFA?
A I haven't seen a settlement agreement or

Dustin Norris

an agreement to that effect, no.
Q You haven't seen anything; correct?
A No.
Q Have you looked?
A We have. I actually wouldn't be surprised -- I would be surprised to see one. And it's -- my understanding is -- and the company's position is that there doesn't need to be an agreement. Right? We --
Q I'm not asking -- I'm going to interrupt you again. I'm not asking you --
MR. RUKAVINA: Well, John --
MR. MORRIS: -- anything like that. I need him to answer my questions or we're going to be here all night.
MR. RUKAVINA: John, hold on.
BY MR. MORRIS:
Q Have you ever -- have you ever seen anything --
MR. RUKAVINA: John, hold on. Hold on.
MR. MORRIS: No, no. Davor, please -- please --
MR. RUKAVINA: John, it is not our

Dustin Norris

position -- it is not -- it is our position that there is no settlement agreement.
MR. MORRIS: Thank you very much.
BY MR. MORRIS:
Q Is it your position that there is any document of any kind that reflects Highland's agreement to pay $7.4 million as compensation?
A No. Subject to our defenses, but there's none.
Q Did Mr. Dondero tell Mr. Waterhouse that the money that he was asking to be transferred from Highland to HCMFA be transferred as compensation for the NAV error?
A Our position is that this was compensation for the NAV error, and that was discussed. Mr. Dondero told Frank. And I believe Frank even testified to that, and Mr. Dondero testified to that in their depositions.
Q Okay. Now, you said that the February payment of over $5 million was funded through insurance proceeds and cash.
Do I have that right?
A Yes.

Dustin Norris

Q And the cash portion was really just the deductible?
A If you want to go to Page 2, we can look at the details.
Q Sure. Sure.
A I don't have it all by memory.
Q That's fair.
MR. MORRIS: Let's go to the next page.
BY MR. MORRIS:
Q Looking at this, do the third and fourth lines refresh your recollection --
A Yes.
Q -- that the February payment was funded through insurance proceeds and an insurance deductible paid by the adviser?
A Yes, I believe that's correct.
Q Okay. And Topic Number 8 on the 30(b)(6) notice relates to the insurance claim; right?
A Uh-huh.
Q Okay. Did you do anything to familiarize yourself with the insurance claim?
A I did.
Q And what did you do to familiarize

Dustin Norris

yourself with the insurance claim?

A I discussed with DC and Davor the company's position on the insurance claim.

Q Okay. I don't want to know what the company's position is. I want to know what the facts are.

Did you learn any facts in connection with your diligence and your preparation to answer topic – questions on Topic Number 8?

A Yeah. The HCMFA policy was – was – the HCMFA – HCMFA had an insurance policy with ICI Mutual; and based on the NAV error, the policy was – I don't know what the word is – was used to seek reimbursement for the NAV error.

Q Okay. So –

(Reporter discussion off the record.)

BY MR. MORRIS:

Q So did HCMFA file a claim for insurance coverage with ICI Mutual in connection with the NAV error?

A The HCMLP employees, I believe, through Frank Waterhouse and his team, did that. They – they managed the insurance as part of the shared services agreement, and they filed with the

Dustin Norris

insurance company –

Q And – and the filing –

A – on behalf of HCMFA.

Q And the filing that was made, was that a claim that was made on behalf of HCMFA?

A I believe so, yes.

Q And did HCMFA authorize the filing of that claim?

A Our position is that that – that is a valid claim from HCMFA.

Q All right. Did HCMFA authorize the filing of the insurance claim?

A I – I don't know.

Q Did – has HCMFA ever told anybody at any time that the insurance claim was not authorized by HCMFA?

A No.

Q And HCMFA received almost $5 million on account of the claim; right?

A Correct.

Q And HCMFA wanted to recover on its insurance claim; correct?

A Yes.

Q Did the claim – was the claim made in

Dustin Norris

writing?

A I believe so.

Q Have you seen the claim?

A I don't – I don't recall seeing the claim.

Q In connection with the defense of this lawsuit and the preparation, have you made any efforts to identify the actual claim that was filed on behalf of HCMFA?

MR. RUKAVINA: Let me interject – let – let me interject. And we can talk about this offline. We searched for that and could not find it. We suspect it might be in HCMLP's legal documents that we don't have access to, but we have and we continue to actively search for the claim itself. We have not been able to find it.

BY MR. MORRIS:

Q Does HCMFA use an insurance broker?

A I don't believe so for this. I think it's directly with ICI Mutual. And it – we – there's no broker, but it goes through HCMLP's employees. Frank Waterhouse would have been the one probably

Dustin Norris

interacting with ICI Mutual.

Q HCMFA and HCMLP broke up at the end of February; is that fair?

A That's correct.

Q At any time since the end of February, has HCMFA made any effort to obtain any information concerning this insurance claim from ICI Mutual?

A I don't know where we got the source of – of the documents, but there – there was – they were searching for the ICI documents. I don't know if it came from ICI or another source.

Q Anybody –

A I don't –

Q Anybody from HCMFA reach out to ICI Mutual for information relating to this insurance claim at any time?

A I don't – not that I'm aware of.

Q Okay.

A They may have, but I don't know.

Q Do you know when the claim was filed?

A I don't. I – I don't. I – I think it may have been late 2018, but I'm not sure.

Q And at the time HCMFA filed the claim for insurance, it had already formed the opinion that

1 Dustin Norris
2 Highland Capital Management, LP, was the
3 responsible party; correct?
4 A I believe so, yes.
5 Q Did HCMFA tell the insurance company that
6 Highland Capital Management was the responsible
7 party?
8 A I'm not sure. Again, this was Highland
9 employees that filled out the materials and was
10 working with ICI. So I don't know if your
11 employees notified them.
12 Q So the total estimated loss was
13 approximately $7.5 million; right? That's the top
14 number on the right?
15 A Yes.
16 Q Okay. And roughly two-thirds of that was
17 financed through insurance proceeds that were
18 received in February of 2019; correct?
19 A Correct.
20 Q And thereafter, it's HCMFA's contention
21 that Highland paid it another $7.4 million for
22 purposes of providing compensation in connection
23 with its negligent work on the -- on the TerreStar
24 valuation error; correct?
25 A Yes, that's correct. And that lines up,

1 Dustin Norris
2 7.4 million, with the net -- net loss that's shown
3 there, estimated loss.
4 Q Right. So it's fair to say, then, from --
5 that it's HCMFA's position that it received
6 $7.4 million from Highland as compensation, and
7 approximately $5 million from the insurance
8 carrier as compensation for total receipts of
9 $12.4 million in connection with the NAV star --
10 with the TerreStar valuation error?
11 A Correct.
12 Q Okay. Why would H- -- why does HCMFA
13 contend that its entitled to $12.4 million from
14 Highland and the insurance company when the total
15 loss was only $7.4 million?
16 A Yeah, it's -- it's our position that the
17 collateral -- and I'm not an attorney. But
18 understanding our position here, that under Texas
19 law, the collateral source rule would permit you
20 to recover value from the insurance company and to
21 the individual or the -- the company that created
22 the -- or caused you harm.
23 Q So you're -- would you agree that HCMFA
24 has profited by about $5 million as a result of
25 the NAV error under that theory?

1 Dustin Norris
2 A I -- I don't know that -- how the theory
3 relates to profits, but we've -- we've paid -- and
4 say, "What's the logic for this?" We paid in
5 insurance premiums for years, significant
6 insurance premiums. And so there's been a loss
7 for years and years for the insurance, and then
8 we're now hitting that insurance to say there's a
9 gain of $5 million, whatever number you threw out.
10 I would disagree with that.
11 But, yes, there was proceeds of
12 12-and-a-half million, but we've been paying in
13 insurance proceeds or premiums for a long time.
14 We're going to continue, and likely, I would
15 imagine, those premiums will go up because of the
16 claim.
17 So I -- I'm, again, not a lawyer. I
18 don't understand all the reasons why it's
19 permitted. But our position is that the
20 collateral source rule under Texas law permits you
21 to receive from the insurance -- your insurance
22 provider and from the party that did you harm.
23 And as you said, here we believe it's negligence.
24 It may be breach of contract, but we believe it's
25 negligence.

1 Dustin Norris
2 Q Okay. I just want to make this really
3 clean.
4 The estimated net loss from the NAV
5 error is $7.442 million; correct?
6 A The estimated loss from the NAV error,
7 yes.
8 Q Okay. And notwithstanding that HCMFA
9 believed that Highland was the responsible party,
10 HCMFA, nevertheless, filed a claim for insurance
11 coverage with ICI Mutual; correct?
12 A That's correct.
13 Q And ICI Mutual paid almost $5 million in
14 connection with that claim; correct?
15 A Correct.
16 Q And in addition to that almost $5 million,
17 it's HCMFA's position that it received and was
18 entitled to receive an additional $7.4 million
19 from Highland as compensation for its error;
20 correct?
21 A Correct.
22 Q So that notwithstanding the fact that the
23 estimated net loss was $7.44 million, HCMFA
24 received and contends that it's entitled to keep
25 $12.4 million; correct?

Dustin Norris

A That's correct, subject to our defenses.
Q Okay. Did – has – has HCMFA ever informed ICI Mutual that it received $7.4 million from Highland on account of the NAV error?
A Not that I'm aware of.
Q Has HCMFA ever told ICI Mutual that Highland was at fault?
A Again, I think I already answered that. I don't know. Communication with ICI was done by the HCMLP employees as part of the shared services agreement, and I'm not sure if they communicated that.
MR. MORRIS: Okay. I move to strike.
BY MR. MORRIS:
Q I just – I'm just asking for your knowledge, not speculation.
Do you have any knowledge that anyone on behalf of HCMFA ever informed ICI Mutual that Highland was the cause of the NAV error?
A I have no knowledge.
MR. MORRIS: Let's take a short break. The time now is 3:06 – or 2:06. Let's just come back at 3:20.

Dustin Norris

(Recess from 2:07 p.m. to 2:21 p.m. CST)
BY MR. MORRIS:
Q So we were talking a bit about the insurance payment that was received in February of 2019. Do you remember that?
A Yes.
Q And there was a claim that was filed on behalf of HCMFA that resulted in that insurance proceed payment; correct?
A Correct.
Q And do you recall if that insurance claim was filed in 2018 or 2019?
A I don't recall, but I believe it was late 2018. But I don't know.
Q Yeah.
A And as we testified, we don't have that claim. We've searched for it. It's probably on your server, as I – Frank Waterhouse and his team would have submitted that.
Q Yeah. But you haven't made any effort to get it from the carrier; right?
A No, not that I know of.
Q Okay. And would you agree with me that it's probably extremely unlikely that an insurance

Dustin Norris

carrier would have processed a claim of that magnitude in six weeks?
A I know they expedited it and they specialize in – sorry. I'll step back.
I have no knowledge of how quick carriers make these claims –
Q All right. Do you know –
A Other than hail on my house – hail damage on my roof, I don't have personal knowledge of insurance claims.
MR. MORRIS: You know, I apologize, but can I ask Ms. Canty to put back up on the screen that last exhibit that we had? I don't have the exhibit number.
All right. And go to the prior page. And go to the bottom of that page.
BY MR. MORRIS:
Q So we've put back up on the screen, I think –
MS. CANTY: 182.
MR. MORRIS: 182.
BY MR. MORRIS:
Q All right. And do you see in the next to the last paragraph, Mr. Norris, there's a

Dustin Norris

reference to a period from March 18, 2018, to January 19, 2019?
A Yes.
Q That's what they've defined as the NAV restatement period. Do you see that?
A Yes, I do.
Q Okay. Looking at that period, does that refresh your recollection at all as to when in 2018 HCMFA first learned about the NAV error?
A No, because that was – that was the period of time when the market – the off-market or on-market transactions happened, March 18th.
Q Okay.
A It was sometime in between that they found out that there was an error.
Q Okay. And do you know if it was the first half of 2018 or the second half?
A The midyear audits of some of our funds, I believe, is when it first came up.
Q And –
A So 6/30 audits that were due 60 days later. So second half – I believe second half of 2018.
Q So is it fair to say sometime in August or

Dustin Norris

September is when HCMFA first learned about it?

A About -- define "it." Is that the NAV error.

Q I apologize. Let me ask the question again.

Is it fair to say, based on the timing of the audit, 60 days after June 30th would take us to approximately August 31st; right?

A It does.

Q And so is it fair to say, then, that HCMFA first learned about the NAV error sometime in August of 2018 while it was preparing the financials for the period ending June 30th?

A No. I don't think there was a determination of whether there was a NAV error or not at that point. I think the reason they have going all the way to January 19 -- 2019 is it wasn't determined -- finalized if there is an error or not.

There was a lot of discussion with the SEC and auditors over whether there was or wasn't an error, what the amount was, what the proper valuation should be. There was consultation with the SEC, and that process lasted, I believe,

Dustin Norris

several weeks, if not months.

So that is not when they found out about a NAV error, but the questions over valuation, yes.

Q Okay. So then let me state the question differently then.

Is it fair to say that HCMFA first learned in or about August 2018 of the valuation issues?

A The "about" is key here. I don't know the specific date, but around that time or earlier --

Q Okay.

A -- or later. On or around that time.

Q And did HCMFA conclude, at the same time it learned of the valuation issues, that HCMFA was the responsible party? Or was there a gap between learning about the valuation issues and making the determination that Highland was the responsible party?

A Yeah, first you said HCMFA was the responsible party, and then you said Highland.

Q I apologize. Let me try and restate that.

Did HCMFA conclude that Highland was the responsible party at or around the same time

Dustin Norris

that it learned of the valuation issues, or was there a period during which it knew about the valuation issues, but not -- had not yet formed the conclusion that Highland was the responsible party?

A From the beginning, everybody knew who the responsible party was for the valuation. Those reporting the issues, those responding to auditors, those responding to SEC and the board were all HCMLP employees from the beginning. But I don't have a specific date.

Again, as you look here, it doesn't say when the NAV error was determined, but from the beginning, it was the knowledge that HCMLP was responsible for the valuations.

Q Okay. Do you know when HCMFA first determined that the estimated loss was approximately $7.4 million?

A I don't, no. I don't have specifics, but it was after there was a determination there was actually a NAV error. And it may be in some of the documents that you have. I believe it may be in, you know, a memo to the board or the SEC, but I don't know offhand.

Dustin Norris

Q Do you know when there was a determination that there was a NAV error?

A I don't know the specific time, no.

Q Do you know if it was in 2019 or 2018?

A I don't remember.

Q Is it fair to say that it was before May of 2019?

A That there was a determination there was a NAV error? Yes.

Q And is it fair to say that HCMFA had concluded that the loss of that NAV error was going to be more than a million dollars prior to May 2019?

A More than a million? Probably -- yes.

Q Okay. Is there a reason that HCMFA waited until May to have Highland pay it for the compensation?

A I think that the whole process -- as you see, the resolution memo is in May to the board. That was the conclusion of the overall process. So our stance would be that that was when it was the right time and everything was -- the right time to be sent.

MR. MORRIS: Okay. Can we put up

1 Dustin Norris
2 on the screen a document that's been
3 marked as, I think, as Exhibit 13? I
4 don't know if you're able to get that,
5 La Asia.
6 MS. CANTY: Yup, I got it.
7 MR. MORRIS: Thank you.
8 (Exhibit 13 tendered.)
9 BY MR. MORRIS:
10 Q Are you aware, sir, that there came a
11 point in time when HCMFA amended its answer?
12 A Yes.
13 Q And I think topic --
14 A Topic 2 is our amended answer.
15 Q Okay. So that's the document that's in
16 front of you?
17 A Yes.
18 Q And you've seen that before; correct?
19 A Yes.
20 Q Okay.
21 MR. MORRIS: Can we turn to Page 5
22 of 9, please?
23 And if we can scroll to the bottom.
24 BY MR. MORRIS:
25 Q These are HCMFA's affirmative defenses; is

1 Dustin Norris
2 that right?
3 A On the second amended answer, yes.
4 Q Yes.
5 A I'm sorry. The first amended answer, yes.
6 Q And as of today, is it your understanding
7 that this is HCMFA's operative pleading?
8 A No.
9 Q Has it been amended after this time?
10 A Yeah, we --
11 MR. RUKAVINA: Well, he doesn't
12 know what "operative pleading" means.
13 THE WITNESS: Oh.
14 MR. RUKAVINA: Yes, it is our
15 operative pleading, Dustin.
16 THE WITNESS: It is our operative
17 pleading then.
18 BY MR. MORRIS:
19 Q And I didn't mean to trick you. I
20 apologize. I just meant to say that this has not
21 been amended as of today; correct?
22 A We filed a -- wait. Let me see what it's
23 called.
24 Q You filed a motion for permission to amend
25 it further --

1 Dustin Norris
2 A Yes.
3 Q -- but that motion hasn't been granted;
4 right?
5 A To my understanding, no.
6 Q Okay. And you understand that your -- the
7 answer that's up on the screen can't be amended
8 unless the Court grants the motion; right?
9 A I -- if you tell me that that's the
10 process, I'll take that for what it's worth. I'm
11 not an attorney. I don't know the process.
12 Q Okay. So let's just look at this
13 document.
14 Is it fair to say that Paragraph 38
15 through 45 deals with --
16 A I'm going to grab the --
17 Q Yeah.
18 A -- thing here so I can see it on my desk,
19 too.
20 Q Sure.
21 A Okay.
22 38?
23 Q Right.
24 A Okay.
25 Q Now -- actually, a little background.

1 Dustin Norris
2 This amended complaint was prepared
3 after DC Sauter conducted an investigation
4 concerning the circumstances surrounding the two
5 notes that Highland was suing on; right?
6 A Yes. My understanding is it is after
7 he -- so background, when he -- we filed our
8 initial response, we didn't have access to the
9 HCMLP employees during that time period. They
10 were not permitted to talk to us about things like
11 this. And so he did the best he could to prepare
12 a response. But once they were mostly all fired
13 by HCMLP and formed their own company called
14 Skyview, he was able to talk to them on
15 particulars. As you note in his -- his statement,
16 he was able to talk to Frank Waterhouse, where he
17 wasn't before, on this topic.
18 Q Right. So by the time this document has
19 been prepared, HCMFA had copies of the notes that
20 Highland was suing on for six months; right?
21 Because the lawsuit was commenced in January, and
22 the notes were attached as exhibits to the
23 complaint; right?
24 A Yes. This is July 6th this is filed.
25 Q Right. Okay. So this is filed almost six

1 Dustin Norris
2 months after the complaint is filed; right?
3 A More like a five-month -- five months and
4 a week, but yeah.
5 Q All right. I won't quarrel with you.
6 A Or five and a half -- five and a half
7 months, yeah.
8 Q Okay.
9 A Whether you consider that --
10 Q Okay.
11 A -- six full months or not.
12 Q So --
13 A We know the dates January 22nd and
14 July 6th.
15 Q Okay. So for that entire time period of
16 time, there's no dispute that HCMFA had in its
17 possession copies of the notes that Highland was
18 suing on; correct?
19 A I'm looking at the original -- you said
20 they were attached, but I --
21 Q Yeah.
22 A If you want to show me the original notes
23 on the original filing.
24 Q Well, I asked you to look at the original
25 complaint. I think -- was the original complaint

1 Dustin Norris
2 Topic Number 1? No. It's just the answer.
3 In looking at the answer, did you look
4 at the original complaint?
5 A Yes.
6 Q Do you recall seeing that the notes were
7 attached to the original complaint?
8 A I looked at thousands of pages in
9 preparation, so I just -- I could take your word
10 for it if you say it's in there, or if you want to
11 show it to me, we can look at it.
12 MR. RUKAVINA: They are, Dustin.
13 They are.
14 MR. MORRIS: Yeah. I think you'll
15 have to take my word for it. Thank you,
16 Davor, for confirming my word.
17 BY MR. MORRIS:
18 Q So let me just try this again to make it
19 clean.
20 Based on my representation, that
21 Mr. Rukavina has agreed with, that the notes that
22 Highland are suing on were attached to its
23 complaint in January, you would agree with me that
24 HCMFA had the notes in its possession from at
25 least the time the complaint was filed until the

1 Dustin Norris
2 time HCMFA filed this amended answer on July 6th;
3 correct?
4 A Yes.
5 Q And this amended answer was filed because
6 HCMFA had a -- had previously made a motion to the
7 Court for leave to amend its answer; correct?
8 MR. RUKAVINA: That's correct,
9 Dustin.
10 He wouldn't know about that, but
11 that's all correct.
12 BY MR. MORRIS:
13 Q Okay. Well, you're familiar with the
14 Sauter declaration; right?
15 A I am.
16 Q And the Sauter declaration purports to
17 describe an investigation that Mr. Sauter
18 undertook to determine the circumstances
19 surrounding the notes; is that fair?
20 A I don't know if I'd characterize it
21 investigation, but he was tasked with -- and I've
22 got it right here. I would refer you to the
23 agreement on -- or his -- to his declaration on --
24 Q How would you -- how would you
25 characterize the work that he did? An

1 Dustin Norris
2 investigation? An analysis? What word do
3 you -- would you use? Due diligence? How would
4 you characterize the work that Mr. Sauter did
5 that's set forth in his declaration?
6 A I -- I'm looking here. I want to see how
7 he characterizes it.
8 I think he does a very good job of
9 explaining.
10 My investigation would be of the
11 following. So he calls it an investigation.
12 Q Okay. So HCMFA would agree that after
13 Mr. Waterhouse left the employ of Highland, that
14 DC Sauter conducted an investigation into the
15 circumstances surrounding the notes that Highland
16 was suing on; correct?
17 A Correct.
18 Q And as part of that investigation, he
19 spoke with Mr. Waterhouse; correct?
20 A Yes.
21 Q And as part of that investigation, he
22 spoke with Mr. Dondero; correct?
23 A I believe so, but let me -- let me confirm
24 in his statement.
25 Because I believe in -- yeah.

Dustin Norris

Q Is that correct, that he spoke with Mr. Dondero in connection with his investigation?

A I'm – I'm seeing what he rep'ed to in his statement.

Q And does his statement say that? I don't have it in front of me.

A I don't know. That's what I'm looking at.

Q And you don't know, independently of the document, whether Mr. Sauter spoke with Mr. Dondero as part of his investigation?

A I know he did. I know he talked throughout from when we received the original complaint on. I just – you're asking about the time frame between filing the original filing. And I think he may have spoken with him before that, too, but I – I just want to take a...

So at the time – this is on March 1st, filed the defendant's original answer. At that – at the time the debtor filed a complaint, I promptly undertook an internal review of the background facts concerning the notes. I had no knowledge of them since I had not been employed by HCMFA. And a few employees of HCMLP had no knowledge of notes. I also discussed the

Dustin Norris

notes of James Dondero, formerly the CEO of the debtor, Mr. Dondero.

So this is March 1st when that first filing was made. So he did speak with Mr. Dondero prior, and then I believe the source of the additional information was being able to speak with Frank Waterhouse and Will Mabry.

Q Okay. And is it fair to say that the amended complaint is based on Mr. Sauter's investigation?

A Yes, I believe so.

Q Yeah.

A Yes.

Q That's why HCMFA amended its complaint. It's because Mr. Sauter had undertaken this investigation, and he learned what he believed were relevant facts, and those facts are described in his declaration, and they formed the basis of the affirmative defenses that we're looking at now in the amended answer; fair?

A Let me pull up the amended answer just to –

Q It's up on the screen, but if you have a hard copy, that's fine.

Dustin Norris

A Yeah. I have a hard copy here, although I may have mixed my documents.

Yeah, it was based on additional facts that weren't available at the time of the original response.

Q Okay. And is it fair to say that Paragraphs 38 through 45 relate to the affirmative defense that Highland was responsible for the NAV error, and the $7.4 million payment was intended to be compensation for Highland's negligent work?

A Sorry. Can you ask that one more time? There was a couple parts there.

Q No problem.

Is it fair to say that Paragraphs 35 – withdrawn.

Is it fair to say that Paragraphs 38 to 45 relate to HCMFA's affirmative defense that the $7.4 million that was transferred from Highland to HCMFA in May 2019 was intended to be compensation for Highland's negligent work in connection with the NAV error and not in the form of a loan?

A You said 38 to 42?

Q 38 to 45.

Dustin Norris

A 38 to 45.

Yeah, it – the NAV error items are included in there as one of our defenses.

Q Right.

A 43 and 44 and 45 discuss additional defenses related to the note and who may or may not have signed the note and who had authority to sign the note.

Q Okay.

MR. MORRIS: Can you – can we turn to Paragraph 42?

THE WITNESS: Yes.

BY MR. MORRIS:

Q Do you see the first four – first few words in Paragraph 42 are, quote: "The defendant accepted responsibility for the NAV error"?

A Yes.

Q Okay. "Defendant" there refers to Highland Capital Management, LP; correct?

A No. I believe –

Q Oh, I apologize. I apologize.

A Thank you.

Q It's HCMFA; right?

A HCMFA.

Dustin Norris

Q Okay. And is – did – did HCMFA accept responsibility for the NAV error?

A They did. They – they are the adviser, and there's already – in the next sentence, HCMLP then accepted that they had a contract with and accepted responsibility.

Q Okay. And so when did the plaintiff accept responsibility for having caused the NAV error?

A Again, going back to – this was always known and communicated that it was HCMLP employees. It was the valuation services they were performing. The legal and compliance team was all outsourced in the shared services agreement.

And that was – again, there's not a singular determination; but Jim Dondero, as president, I would say effectuated that with the payment of the NAV – for the NAV error.

Q So you can't tell me when the plaintiff accepted responsibility for having caused the NAV error; correct?

A Not a specific date.

Q Okay. And it's HCMFA's position that Jim

Dustin Norris

Dondero, in his capacity as the president of Highland Capital Management, LP, accepted responsibility on behalf of Highland Capital Management, LP, for having caused the NAV error?

A He, and in addition all of the employees involved. Right? The valuation team members, Frank Waterhouse was CFO, Dave Klos overseeing the valuation process, they were all Highland employees, and Jim Dondero as well as president recognized that based on all the communications and conversations they would have had.

MR. MORRIS: Okay. I'm going to – I'm going to move to strike.

BY MR. MORRIS:

Q And I'm going to ask you to listen carefully to my question.

Who had the authority to accept, on behalf of plaintiff, the responsibility for having caused the NAV error?

A Ultimately Jim Dondero, as president here, had that authority.

Q Okay. And then it says, quote: "The plaintiff ultimately, whether through insurance or its own funds, compensated the defendant."

Dustin Norris

Do you see that?

A Yes.

Q Is that statement accurate?

MR. RUKAVINA: I'll object to vagueness, given the different points in time.

BY MR. MORRIS:

Q Does HCMFA believe that that statement is accurate today?

A We know now. It's come out in discovery that – and it was represented that Mr. Dondero transferred money to Highland who transferred it to HCMFA. And I don't know – and it says "or," "or its own funds." So it's accurate whether through insurance or its own funds.

But at the time of this writing, we didn't have all the details and have firmed up those details, and I would refer you to depositions and the pleadings and our additional statement regarding cash and movement.

Q Did Highland file an insurance claim, to the best of your knowledge?

A Not that I know of.

Q Did you ever ask anybody, in preparation

Dustin Norris

for today's deposition, about that sentence in Paragraph 42 and whether or not Highland had ever filed an insurance claim?

A I didn't ask about that sentence, but we did discuss whether Highland had filed an insurance claim. And to our knowledge, we don't know that they have. I'd, again, ask you as their attorney. That would be a question for you.

Q Well, with all due respect, you have complete and unfettered access to the former president and CFO of Highland; correct?

A I do, but – I'm sorry. You said president and CEO?

Q The former president and CFO.

A President and – I don't have unfettered access to the former CFO.

MR. RUKAVINA: I'll – I'll object to that. We have been prohibited by Waterhouse's attorney from discussing the matter with him.

BY MR. MORRIS:

Q You're – you're not allowed – did – did you – did HCMFA ask Mr. Waterhouse at any time whether Highland had filed an insurance claim?

Dustin Norris

A Not -- not that I know of. However, we've been not permitted to talk to him related to this, based on his attorney. So --

Q Well, when did --

A We never really discussed -- go ahead.

Q I'm sorry.

A Go ahead. You were --

Q I was just going to ask: When did that prohibition go into effect?

MR. RUKAVINA: John, the witness wouldn't know that. It's about three months ago that the lady from Baker McKenzie, Deb -- I don't know her last name -- got angry at me because I tried to talk to Frank and she said, "Absolutely not. You're forbidden, and you're violating your ethical rules if you do."

MR. MORRIS: So sometime in September?

MR. RUKAVINA: I would say August or September.

MR. MORRIS: Okay.

BY MR. MORRIS:

Q But sometime -- but you had -- HCMFA had

Dustin Norris

complete, unfettered access to Mr. Waterhouse from the time he left Highland in early March 2021 until at least the end of July 2021; right?

A Yeah. And I would add a point to Mr. Sauter's declaration and our pleadings and the depositions for the various details of what we've discovered since. However, the unfettered access was also inhibited -- or -- or Mr. Sauter represented this. There was a lot going on in March, April, May of 2021.

Q Yeah.

A And we were trying to lift out an entire business and keep everything afloat, and -- as you're very aware. And so there was a lot going on.

Q Right. Right.

Do you see -- can we go to Paragraph 43, please?

A Yes.

MR. MORRIS: If we could just scroll down to Paragraph 43, please. Thank you.

BY MR. MORRIS:

Q Now, again, this amended complaint is

Dustin Norris

filed is July 2006; correct?

A July 6th, not July 2006.

Q I apologize. Let me ask the question again.

This amended answer was filed on July 6th, 2021; correct?

A Correct.

Q And it was filed after Mr. Sauter conducted his investigation to determine the circumstances surrounding the note; correct?

A Uh-huh, correct.

Q And it was filed after HCMFA had had in its possession since January copies of the notes that Highland was suing on; correct?

A Correct.

Q And it was filed at a time before any limitation or prohibition was placed on HCMFA's ability to communicate with Mr. Waterhouse since the time he had left Highland; correct?

A Sorry. You want to repeat the first part of that?

Q Sure.

It was filed at a time after Mr. Waterhouse left the employ of Highland but

Dustin Norris

before there was any limitation or restriction imposed on HCMFA's ability to communicate with Mr. Waterhouse?

A Yes. Once he left in March of 2021 is when that happened. And, again, in March, we were, on both sides, the creation of Skyview, as well as our employees, trying as -- doing everything we could do to transition the businesses and services. And so that was an important time.

MR. MORRIS: Okay. Move to strike.

BY MR. MORRIS:

Q I just want to confirm that HCMFA had unfettered access to Mr. Waterhouse between the time he left Highland and the time this amended answer was filed in July.

A We had access to him to ask him what we needed. Unfettered in the sense of, "Hey, we can access you whenever we need," no, because there was a lot involved in launching and -- launching of Skyview and creating all the services needed for our funds since we -- HCMLP is sharing services provided --

Q Does Mr. Sauter have a role with HCMFA?

Dustin Norris

A I don't believe so.
Q Do you know who authorized him to conduct this investigation?
A Yeah. It would have been management, Mr. Dondero, and probably our outside counsel. At the time, we had been utilizing Highland's services as legal services, all the way up until the end of February.
There were legal and compliance services that were part of the shared services agreement. There was an entire legal team, entire team of litigators who were unable to work on this.
Mr. Sauter was a real estate attorney for us, and he picked up the slack and was assigned by Mr. Dondero to help in these causes working with outside counsel, because HCMLP was not providing or no longer able to provide those legal services based on their -- their view, even though they were contracted to do those.
Q That contract ended at the end of February; isn't that right?
A That's correct.
Q And with the exception of a couple of

Dustin Norris

people, Highland's legal team migrated to Skyview in early 2021; is that fair?
A Yes.
Q Okay. And among the people who migrated were Stephanie Vitiello; correct?
A Yes.
Q And Isaac Leventon; correct?
A Correct.
Q And he's the chief litigation guy at Highland prior to the bankruptcy; right?
A I -- I don't know if that was Isaac or if it was Scott Ellington. I don't know.
Q And Scott -- Scott Ellington also migrated; right?
A Correct.
Q So you had access to those folks for the first six months of 2021; right?
A No. I would -- our position is that those individuals were unable to work on -- even though they had left, they were unable to work on something of this nature.
I -- I believe there was also a preliminary injunction still in place where Jim or his employees could not talk to Scott or Isaac. I

Dustin Norris

don't remember all the specific details, but the legal team at Highland -- or at Skyview was not working on this.
Q Okay.
A It was probably professional -- I don't know the standards, but they were unable to work on -- on this.
Q All right. But you would agree that at the time HCMFA asked the court for permission to amend its answer, it did so based on Mr. Sauter's investigation; correct?
A Yes, and I would caveat that subject to our -- our pleadings.
Q Right. And I think I moved to strike your earlier answer, so let me try and ask the question again.
Did Mr. Dondero authorize Mr. Sauter to conduct the investigation?
A I don't have specific knowledge of that.
Q All right. I think you used the phrase "management." Did management authorize Mr. Sauter to conduct this investigation on behalf of HCMFA?
A I don't know specifically who -- who would have asked him to do the -- Jim and -- Jim Dondero

Dustin Norris

asked him to help with the -- the legal items, and stepped in and help in the absence of HCMLP's help.
Q Okay. And based on that investigation looking at Paragraph 43, HCMFA took the position, quote: "Waterhouse signed the two promissory notes the subject of the complaint," close quote; correct?
A That's right. It's our position that at -- and I'd refer you to our amended pleading with additional information, but it's -- it's our position that Mr. Waterhouse saw the notes, was confronted, discussed with DC, and said, "Look, that's my signature. I signed them."
Q Okay. So that's -- and it was on the basis of Mr. Waterhouse's conversation with Mr. Sauter that HCMFA wrote that sentence; is that fair?
A I believe so. And I would refer you to Mr. Sauter's declaration as well, which goes into details on that.
Q And Mr. Sauter specifically said that Mr. Waterhouse signed the notes; correct?
A We can look at Mr. Sauter's declaration.

Dustin Norris

I – I believe he said he was – Mr. Waterhouse told him he signed, but –

Q Right. And, in fact, HCMFA's position throughout this entire case was that Mr. Waterhouse signed the notes, but he did so by mistake and without authority; correct?

A That's right. And if you look at the depositions, he testified of that, that he didn't remember signing them, and he didn't have a recollection, and Mr. Dondero never told him to sign it, and he never asked him whether – or he – Mr. Dondero told him never – told him shouldn't be – didn't – Mr. Dondero didn't tell him it was a note, and he never asked if it should be a note.

With this – this amended pleading, the thought was he mistakenly thought it was a note, because that was the practice for other notes or other – other transfers of this nature – not of this nature, but other transfers between companies, and so he had papered it up as a note.

But if you look at the depositions, you'll see that additional details came out that

Dustin Norris

he told his controller, Mr. Klos, to transfer the funds, and Mr. Klos then turned around and asked Kristin to paper it up as a note, and to transfer the cash. And Ms. Hendrix – Kristin Hendrix then added Mr. Waterhouse's JPEG signature to the Word document, which then was filed away.

So we – we, through the process of depositions and discovery, were able to find more information that Frank Waterhouse did not remember. He didn't remember signing but said his signature is on there, so he must have signed it.

MR. MORRIS: All right. I move to strike. My question is really, really simple.

BY MR. MORRIS:

Q Up until the time that you filed the motion last night, HCMFA's publicly stated position has always been that Frank Waterhouse signed the notes, and that he did so by mistake and without authority; correct?

A Correct. It says it here: "Mr. Waterhouse made a mistake in preparing and signing the notes for the defendant."

Q Okay. Good enough.

Dustin Norris

A And then it says: "Upon information" –

Q That's –

A – "and belief, Waterhouse was not aware that the payment from the plaintiff to defendant were to compensate the defendant for the NAV error."

Q I'm sorry. Where are you reading from? Oh, that's 44?

A That's in number 44.

Q Okay.

A Yeah. "Waterhouse made a mistake in preparing and signing the notes for the defendant."

Q Right. Okay.

A But, again, I'll refer you to the depositions and the evidence –

MR. MORRIS: Move to strike. It's not responsive to my question.

BY MR. MORRIS:

Q Do you see in Paragraph 47 there's a reference to "lack of consideration"?

A Yes.

Q Okay. What does that mean?

A My understanding is that there was no

Dustin Norris

consideration. We – there were notes, but there was no payment for those notes. The payment was for compensation related to the NAV error, so there was no payment – or no compensation for notes that had been drafted.

Q Okay. And the next defense there in Paragraph 47 is "mutual mistake."

Do you see that?

A Correct.

Q Do you have any facts that support that, that the mistake was mutual?

A Yeah. I – I would look to the depositions. And if you go to the testimony of Frank and Jim Dondero and David Klos and Kristin, it was a clear path and a clear record of mutual mistake.

Jim told Frank to transfer the money for the NAV error. Frank then goes, tells Mr. Klos, the controller, to go and transfer the money, who tells Kristin to transfer the money – or to make the transfer and to paper it up. Kristin then papers it up, following the process that she's always followed or she said she's followed for many other notes.

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She lacked the authority to do so.
Mr. Klos lacked the authority. Mr. Waterhouse was never told to make a note, and so the note itself is drafted by an accountant without authority to do so with a maker and a counterparty that is on both sides of this, representing supposedly both sides.

And our position is that the maker of this -- even if you look at the document, Frank Waterhouse signs as maker, not as his position. He's signing as the maker.

And so there's various aspects of this that had errors on both sides, the -- the position of HCMFA where they thought they had authority and the position of HCMLP.

Q Anything else, sir?
A I -- I would refer you to the -- again, the depositions and our pleadings. But there's -- there's a host of support there.
Q Other than the deposition transcripts and the -- and HCMFA's pleadings, are you aware of any document anywhere in the world that corroborates the defense of mutual mistake?
A Other than the documents, the pleadings,

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and any schedules and other forms that are filed with the court, there's -- there's plenty there.
Q Okay. What schedules are you referring to?
A I would say all of your supporting schedules, all of your documentation, the notes themselves, the -- the Word documents that we received as well in discovery that have the metadata showing that Kristin Hendrix applied Frank Waterhouse's JPEG signature.
Q Okay.
A All of those items as well as, again, depositions all -- of all those individuals.
Q So -- so I just want to make sure that I have this clear.

So you've got the JPEG documents. You've got the deposition transcripts. You know what? Let me restate the question.

You've identified the JPEG documents. Other than the JPEG documents, are you aware of any document in the world that was created before the answer date that supports or corroborates the defense of mutual mistake?
A I'm -- again, I -- I'd point to the --

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let -- let me take a look here again.
Q What is it you're looking at?
A This is the amended complaint.
Q Okay.
A Which paragraph was that again?
Q It's 47.
A 47.
Q Yeah. There's -- it's a -- there's --
A Mutual mistake.
Q -- one of the defenses there. It's up on the screen.
A Yeah.
Q There's "mutual mistake," and I just want you to identify for me every document that HCMFA is aware of that was created before the answer date of March 1st, 2001 [sic], other than the JPEG documents --
A I would -- I would refer you to --
Q -- that support or corroborate -- that support or corroborate the defense of mutual mistake?
A Yeah. And I'd also point you to DC Sauter's declaration.
Q Okay. That wasn't created before the

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answer date; correct?
A Well, you're saying -- you -- it was before the answer date.
Q Pardon me?
A The answer date being when we did the amended answer?
Q No. Let me ask the question again.
A Yes, please. Sorry.
Q Can you identify any document in the world, other than the JPEG documents, that support or corroborate the defense of mutual mistake that was created before March 1st, 2021?
A I got you.

The JPEG documents is the Word documents with the metadata.

Q Correct.
A There were emails that went between the accounting team on how to paper it up. That is in your -- your documentation as well, and I would say any other document that's in the court filings.
Q Can you identify them? That's kind of -- that's not really helpful to me.
A Yeah. I -- there's the -- there's an

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email -- and this was used in depositions. There's an email that went -- was David Klos instructing the group -- or instructing Kristin to send the cash and to record a note.

Q And you believe that -- and it's HCMFA's contention that that document supports their position of mutual mistake. Do I have that right?

A Again, I'm not an attorney, so tying the definition as little M, little M, I'm going to have to say I don't know.

Q Okay. Other than the emails, the two emails that you referenced and the JPEG documents, can you identify any other document created before May 1st -- March 1st, 2021, that supports or corroborates the defense of mutual mistake?

A There may be a document. I -- I don't know.

Q Okay.

A And, again, as you've seen, there's a lot of stuff that's come out in discovery, and it's important that testimony of -- of those witnesses is taken into account.

MR. MORRIS: Okay. Move to strike the last portion of that answer.

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Let's take a short break. I may be done. It's 4:09. Can we just come back in six minutes?

THE WITNESS: Yes. Thank you.

MR. RUKAVINA: Sure.

MR. MORRIS: Thank you.

(Recess from 3:09 p.m. to 3:19 p.m. CST)

BY MR. MORRIS:

Q Just a couple more questions, Mr. Norris. If you can take a look again at Paragraph 47 of the amended answer.

A Yes.

Q Do you see there's also a reference to, quote, "the lack of authority from the defendant to Waterhouse," close quote?

A Yes.

Q HCMFA does not dispute that Mr. Waterhouse was an officer of HCMFA in May of 2019, does it?

A No, we don't dispute that.

Q And HCMFA doesn't dispute that Mr. Waterhouse, in fact, served as the treasurer of HCMFA in May 2019; correct?

A We don't, no.

Q Okay. Is the sole basis for the assertion

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that Mr. Waterhouse lacked authority was that Mr. Dondero did not specifically approve it?

A By nature, just the size of this note and the nature of it would have required Mr. Dondero's authority. And both Mr. Waterhouse and Mr. Dondero testified to that in their deposition. So I'd refer you to that. They both testified he did not have the authority.

MR. MORRIS: I'm not sure that he did, so I'm going to move to strike. The testimony will be what the testimony will be, not your characterization of it.

BY MR. MORRIS:

Q But what about the size of the notes causes HCMFA to contend that Mr. Waterhouse didn't have authority?

A A seven and a half million dollar note is large enough to rise that Jim Dondero would have, in any instance, authorized or needed to authorize this, and he did not.

Q And is that because a $7.4 million note is a substantial obligation for HCMFA?

A You know, substantial -- define "substantial." It's sizeable. Right? It's seven

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and a half million dollars. Overall from the operating business, it was meaningful. But seven and a half million dollars in any entity would have required Jim Dondero's approval.

Q And so can you explain to me why, if it would have required his approval, nobody at HCMFA noticed that it was carried on HCMFA's books and records as a liability since May of 2019?

A Yeah. I think it's a simple mistake. There were other notes of a similar nature in size. And as Mr. Dondero testified, he wasn't reviewing these regularly, the balance sheet. Frank Waterhouse was. The accounting team was. And so the HCMFA side, there was other notes of similar size and nature. It didn't occur to them that there was new notes. The accounting team, as we've -- which is our position, created the notes, added the signature of Mr. Waterhouse, and then they continued to record those as liabilities on the balance sheet. And --

Q Is --

A -- that was -- you had -- and, again, I'd refer you to our pleadings and our amended pleadings and the recent pleading yesterday that

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we discovered in the discovery process. But Kristin Hendrix and Dave Klos and Frank Waterhouse made it very clear what the process -- and I would say why -- in answer to your question, it was probably a little sloppy. It may have cut corners. They should have received Mr. Dondero's authorization, and they didn't. And so that's -- that's our position.

Q Does --

A And I would say these are all professionals. These are good people. I don't think they were dishonest. I think they made a mistake. Professionals make mistakes, but this was a costly mistake.

Q Did -- does -- does HCMFA contest that Frank Waterhouse knew, on May 2nd and May 3rd, 2019, that the corporate accounting group was going to paper these transactions as loans?

A Again, I would refer you to the actual depositions and pleadings -- and our pleadings. But our position is -- sorry. One more time, do you want to ask the question?

Q Yeah. I think you need to -- I want to try to finish up, and I really appreciate your

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patience.

MR. RUKAVINA: And I'll just say, John, that was a bit of a confusing question.

MR. MORRIS: Okay. And that's fair. Let me try again.

BY MR. MORRIS:

Q Does HCMFA contest that Frank Waterhouse knew, on May 2nd and May 3rd, 2019, that the corporate accounting group was going to paper the transfers from Highland as loans?

A Did we contest that he knew that?

Q Correct.

A I think his testimony speaks -- I'll refer you to his testimony. I think he testified that he didn't know, right? He didn't know that they -- yes, he was copied on an email, but he didn't have any recollection that they were papered up as a loan.

Q Okay. And on the basis of that testimony, does HCMFA now contend that Mr. Waterhouse didn't know, in May of 2019, that these transfers were papered as loans?

A I would say that's part of it. I would,

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again, refer you to all the pleadings, our pleadings and depositions that -- of these individuals. There's -- there's a lot of support there.

Q Right.

Have you seen the emails from May 2nd and May 3rd?

A I can't remember if they were included in your exhibits, but I know they were discussed in detail in the depositions from Dave Klos and Kristin and Frank.

Q Right. Okay.

MR. MORRIS: I have no further questions. This is not particularly helpful. Thanks.

MR. RUKAVINA: Okay. I'll reserve questions. Thank you.

MR. MORRIS: Okay. Thanks a lot.

MR. RUKAVINA: Thank you.

(Off the record at 3:25 p.m. CST)

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:)Chapter 11
)
HIGHLAND CAPITAL MANAGEMENT, LP,)
)Case No.
Debtor.)19-34054-SGJ-11
_____)_____
HIGHLAND CAPITAL MANAGEMENT, LP,)
)
Plaintiff,)
)
vs.)Advisory Proceeding No.
)21-03004
NEXPOINT ADVISORS, LP; JAMES)
DONDERO; NANCY DONDERO; and THE)
DUGABOY INVESTMENT TRUST,)
)
Defendants.)

REPORTER'S CERTIFICATION
REMOTE DEPOSITION OF
DUSTIN NORRIS
December 1, 2021

I, Rebecca A. Graziano, Certified Shorthand Reporter in and for the State of Texas, hereby certify to the following:

That the witness, DUSTIN NORRIS, was duly sworn and that the transcript of the oral deposition is a true record of the testimony given by the witness;

I further certify that pursuant to FRCP Rule 30(f)(1) that the signature of the deponent:

____ was requested by the deponent or a party before the completion of the deposition and

returned within 30 days from date of receipt of the transcript. If returned, the attached Changes and Signature Page contains any changes and the reasons therefor.

____ was not requested by the deponent or a party before the completion of the deposition.

I further certify that I am neither attorney nor counsel for, related to, nor employed by any of the parties to the action in which this testimony was taken.

Further, I am not a relative or employee of any attorney of record in this cause, nor do I have a financial interest in the action.

Subscribed and sworn to on this 1st day of December, 2021.

_____

Rebecca A. Graziano, CSR, RMR, CRR
Texas CSR 9306
Expiration: 07/31/22
California CSR 14407
Expiration: 09/30/22
Illinois CSR 084.004659
Expiration: 05/31/23

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EXHIBIT 193

1 IN THE UNITED STATES BANKRUPTCY COURT

2 FOR THE NORTHERN DISTRICT OF TEXAS

3 DALLAS DIVISION

4
IN RE:) Chapter 11
5 HIGHLAND CAPITAL) Case No.
MANAGEMENT, LP,) 19-34054-
6 Debtor.) sgj11
----------)
7 HIGHLAND CAPITAL)
MANAGEMENT, LP,) Adversary
8) Proceeding
Plaintiff,) No.
9) 21-03004
vs.)
10)
HIGHLAND CAPITAL)
11 MANAGEMENT FUND ADVISORS,)
LP,)
12)
Defendant.)
13 ----------)

14

15

16

17 REMOTE ZOOM DEPOSITION OF DENNIS C. SAUTER

18 Wednesday, November 17, 2021

19

20

21

22

23 Reported by:

24 Stacey L. Daywalt

25 JOB NO. 202810

Wednesday, November 17, 2021
1:08 p.m.

Remote Zoom Deposition of DENNIS C. SAUTER, held before Stacey L. Daywalt, a Court Reporter and Notary Public of the District of Columbia.

A P P E A R A N C E S:
(All appearances via remote Zoom)

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ALSO PRESENT:

LA ASIA CANTY

D. Sauter

D E N N I S C. S A U T E R,
called as a witness, having been duly sworn by a Notary Public, was examined and testified as follows:

EXAMINATION BY
MR. MORRIS:
Q. Can you please state your name for the record.
A. Dennis Sauter.
Q. Good afternoon, Mr. Sauter. My name is John Morris. I'm an attorney at Pachulski Stang Ziehl & Jones. We are counsel to the reorganized Highland Capital Management, LP. Are you aware of that?
A. Yes, sir.
Q. Okay. And we're here for your deposition today. Correct?
A. Yes, sir.
Q. And I've examined you previously. Is that right?
A. I don't believe so.
Q. Okay. Have you ever been deposed before?

D. Sauter

A. I don't think so.
Q. Okay. So very simple ground rules. I'm going to ask you a series of questions, and it's important that you allow me to finish my question before you begin the answer. Is that fair?
A. Yes, sir.
Q. And I will certainly attempt to do the same for you and -- insofar as I will attempt to allow you to finish your answer before I begin my question. But if I fail to do that, will you let me know?
A. I will.
Q. If there's anything that I ask you that you don't understand, will you let me know that?
A. I will.
Q. If you want to take a break at any time, just let me know and I'll try to accommodate you. I'd only ask that you don't ask for a break while a question is pending. Is that fair?

D. Sauter

A. That's fair.

Q. Okay. Do you have a license to practice law, sir?

A. I do.

Q. In what states are you admitted to practice?

A. Just Texas.

Q. When did you obtain your license?

A. November of 2001.

Q. And did you graduate from law school?

A. I did.

Q. Where did you graduate from law school?

A. Southern Methodist University.

Q. And can you describe for me your employment history from the time you graduated law school until today.

A. Sure.

Out of law school I began at a firm called Winstead Sechrest & Minick. And I was there just till tax day, so April 15 of 2002, when my group moved to a firm at the time that was called Godwin Gruber. I was at Godwin

D. Sauter

Gruber until 2006.

And I went in-house with a development firm called St. Ives Realty. I was there until 2009.

And in 2009, I went back to work with the group I'd worked with before but now it was called Langley Weinstein. I was with Langley Weinstein until December 31 of '13.

And in 2014, I started at Wick Phillips Gould & Martin, and I was at Wick Phillips until February of 2020 when I began at Nexpoint.

Q. And while you were at Nexpoint -- I mean, withdrawn.

While you were at Wick Phillips, did you provide services to Highland or any of its affiliates?

A. I provided services primarily to Nexpoint advisors and its wholly owned subsidiaries.

I did have occasion to do a couple of discrete engagements for -- I think they were CLOs but managed by Highland.

Q. Prior to the time that you joined

D. Sauter

Nexpoint, did you have any particular expertise in a specified area of the law?

A. For about the last ten years, real estate.

It was, before that, kind of a hybrid of construction related litigation, landlord-tenant disputes, you know, foreclosures. It was all real estate related litigation and then real estate transactional work.

Q. How did you come to become employed by Nexpoint?

A. I had worked with the folks here at Nexpoint for my entire tenure at Wick Phillips, and they gave me an offer and I accepted.

Q. What offer did they give you? What position?

A. I was hired to be general counsel of real estate.

Q. Are you still the general counsel of real estate?

A. I'm now the general counsel of Nexpoint.

Q. When did you become the general

D. Sauter

counsel of Nexpoint?

A. I don't recall exactly, but I would say April or May of this year.

Q. All right. So from approximately February of 2020 until approximately April of 2021, you were the general counsel of real estate, and since approximately April of 2021 you were -- you have been the general counsel of Nexpoint.

Do I have that right?

A. Correct.

Q. Was there a general counsel of Nexpoint during the time you served as general counsel of real estate?

A. There was not.

Generally the way things worked is Scott Ellington was general counsel at Highland Capital, and most of the legal department reported to him. I was the one attorney that was not under him.

So no, there was not.

Q. Okay. To whom do you report today?

A. Matt McGraner.

Q. And what is Mr. McGraner's title?

D. Sauter

A. I believe it's managing director.

Q. When did you begin reporting to Mr. McGraner?

A. The day I was hired.

Q. What are your duties and responsibilities today as the general counsel of Nexpoint?

A. A lot different than I anticipated when I came on.

Q. Fair.

A. It's a little bit of everything. I get lots of questions from lots of different people.

As you can imagine, there's been quite a shuffle with the Skyview formation, people leaving, people staying, and so, you know, it's been fairly fluid. So I try to handle whatever somebody brings me.

Q. In your capacity as general counsel, do you have any responsibility for overseeing Nexpoint's litigation matters?

A. I do.

Q. Okay. And do you have responsibility for overseeing Nexpoint's

D. Sauter

defense of the lawsuit that Highland has commenced against it?

MR. RUKAVINA: Allow me to interject just a little bit here, John.

You subpoenaed Mr. Sauter in the HCMFA lawsuit.

Why are you asking him all about this Nexpoint?

MR. MORRIS: Just because he told me that's where he works.

MR. RUKAVINA: Yeah, that's fine.

I mean, I'm not trying to be rude. Just --

MR. MORRIS: I appreciate that.

MR. RUKAVINA: -- if you're --

(Simultaneous crosstalk.)

MR. MORRIS: Duly noted. Thank you, Davor.

THE REPORTER: Please watch the overlap of talking. Thank you.

BY MR. MORRIS:

Q. Mr. Sauter, Mr. Rukavina brings up a good point.

Are you also the general counsel of

D. Sauter

Highland Capital Management Fund Advisors, LLP?

A. I'm not.

Q. You are not?

A. I'm not the general counsel of Highland Capital Management Fund Advisors.

Q. Okay. Can we refer to that entity as HCMFA today?

A. Yes, sir.

Q. Do you have any title or role with HCMFA today?

A. I don't have any official capacity with HCMFA, although I do perform work from time to time for HCMFA.

Q. Okay. Does HCMFA have a general counsel, to the best of your knowledge?

A. It does not.

Q. Does HCMFA have any officers today, to the best of your knowledge?

A. It does, but I'm not sure I can name them off to you.

Q. Okay. What services do you provide to HCMFA?

A. Again, like other affiliated entities, when it has legal needs that meet my

D. Sauter

expertise, people bring it to me and I work on it.

Q. And what's an "affiliated entity" in the way that you've used that term?

A. I generally refer to HCMFA, Nexpoint Advisors and the wholly owned subsidiaries of Nexpoint Advisors as the affiliated entities.

HCMFA also owns Nexpoint Securities, which is the broker dealer, and so I do work with those folks from time to time as well.

Q. Is there a source of affiliation between Nexpoint and HCMFA?

A. Yes, Mr. Dondero.

Q. And he controls them both to the best of your knowledge. Is that right?

A. I -- I guess it depends on how you define "control."

But yes, he is a controlling person of Nexpoint Advisors, and yes, for all intents and purposes, he's the controlling person of HCMFA.

Q. Okay. And can we refer to HCMFA and Nexpoint Advisors, LP together as "the advisors"?

D. Sauter

A. That's fine.

Q. The advisors are each advisory firms. Is that right?

A. Correct.

Q. And each of them provide advisory services to certain funds. Is that correct?

A. Correct.

Q. Okay. Do you hold any titles with any of the funds that are advised by either of the advisors?

A. Yes, I am general counsel for Nexpoint Residential Trust and I'm general counsel of Nexpoint Real Estate Finance.

Q. Any others?

A. No, sir.

Q. Okay. Do you have –

A. Wait. Wait. Let me clarify.

I think I am general counsel of Nexpoint Real Estate Advisors, and I may be general counsel of each of them. I think there are nine in total.

Q. Okay. And are each of them separate funds?

A. Each of the advisors are – manage a

D. Sauter

discrete business line. They're separate entities, but not necessarily funds.

Q. And are each of them owned indirectly or directly by Nexpoint Advisors, LP?

A. Yes, sir.

Q. Okay.

When did you first meet Mr. Dondero?

A. I don't recall.

I think I met him once at an event that I was invited to years ago, maybe 2017.

Q. Do you know if he holds a title at HCMFA?

A. I don't believe he does.

Q. How about Nexpoint? Does he hold a title at Nexpoint?

A. Yes, he's the president.

Q. And even though he doesn't hold a title at HCMFA, it's your understanding that he controls HCMFA. Is that right?

A. I don't know that I would say that.

And again, I would need to look at the organizational documents.

Q. Well, as – withdrawn.

D. Sauter

Do you know if Mr. Dondero serves as the portfolio manager for any of the funds to which the advisors provide advisory services?

A. He does.

I don't know which ones.

Q. We're going to talk in a little while about a TerreStar NAV issue.

MR. MORRIS: And Stacey, that's all caps N-A-V, and it's T-E-R-R-A-S-T-A-R [sic].

Q. We're going to talk a little bit about a TerreStar NAV issue.

Are you generally familiar with that?

A. Generally.

Q. Okay. And is it your understanding that that NAV issue, that TerreStar NAV issue, related to certain equity positions that were held by certain funds managed by HCMFA?

A. Yes, I think it was – Global Allocation Fund is the one that was particularly the insured.

Q. And can we refer to that as GAF?

A. Yes, sir.

Q. Do you know who the portfolio

D. Sauter

manager of GAF was in 2019?

A. I do not.

Q. Do you know if it was Mr. Dondero?

A. I do not.

Q. In the course of your investigation, did you ever ask who the portfolio manager of GAF was?

A. I did not.

Q. Do you know Frank Waterhouse?

A. I do.

Q. When did you first meet Mr. Waterhouse?

A. I think I met him just before I came on. It would have been maybe December of 2019.

Q. Okay. Do you know if Mr. Waterhouse holds any titles with either of the advisors?

A. I believe so, but I'm not exactly sure.

MR. RUKAVINA: I'm going to object to vague or form there.

What time are you specifying, Mr. Morris?

MR. MORRIS: I appreciate that. Let me restate the question.

D. Sauter

BY MR. MORRIS:

Q. Mr. Sauter, do you know if Mr. Waterhouse held any position with either of the advisors at any time in 2019?

A. I believe he did, but I -- I would say it was probably treasurer and CFO, but I'm speculating.

Q. In the course of your investigation, did you try to determine what title Mr. Waterhouse held with HCMFA?

A. I have not.

Q. Have you ever tried to determine what title Mr. Waterhouse held at HCMFA at any time?

A. At one point I knew what it is. I just can't recall.

Q. Okay. Does -- do you know if Mr. Waterhouse holds a position with HCMFA today?

A. I believe he does.

Q. Do you have any understanding as to what that position is?

A. Again, I think it's CFO and/or treasurer. That's consistent, I think.

D. Sauter

Q. Do you have any understanding as to when Mr. Waterhouse became the treasurer and/or the CFO of HCMFA?

A. I do not.

Q. Do you know if Mr. Waterhouse holds any positions with any of the funds that are advised by either of the advisors?

A. I believe he -- I'm speculating. I don't know for certain.

Q. During the course of your -- you conducted an investigation around the TerreStar NAV issue. Right?

A. Correct.

Q. Okay. During the course of your investigation, did you ever try to determine whether Mr. Waterhouse served in any capacity with any of the funds that are managed by HCMFA?

A. Whether he -- yes.

Q. And what did you -- what information did you learn in the course of your investigation on that issue?

A. My understanding is that the valuation team was a subset of the group that

D. Sauter

Mr. Waterhouse ran.

Q. Right.

I'm asking you specifically about whether he held positions at any of the funds.

Did you understand that when I asked my question?

A. I don't know whether he held any position with the funds.

Q. Okay. And during your investigation, did you make any effort to try to determine whether he held any positions with GAF?

Let's be very specific.

A. I don't recall.

Q. Do you know a gentleman named Will Mabry?

A. I do.

Q. And do you know if Mr. Mabry was ever employed by either of the advisors?

A. I don't know who employed Mr. Mabry.

Q. Do you know if he was ever employed by Highland Capital Management, LP?

A. I would suspect that he was employed by Highland Capital Management, LP.

D. Sauter

Q. Okay. And what's the basis for that speculation?

A. Because he's at Skyview, and I think all of the employees that were at Nexpoint Advisors or HCMFA remained where they were.

Q. Do you know what position he held at Highland in 2019, if any?

A. I don't know.

Q. Do you know anything about Mr. Mabry's skills or expertise, if any?

A. Other than I believe he was the assistant treasurer at GAF and he was on the valuation team as well.

Q. So your understanding is he was the assistant treasurer of the fund that we have defined as GAF.

Do I have that right?

A. That's my understanding.

Q. Okay. And what's the basis for that understanding?

A. That's just what I recall.

Q. Okay. To the best of your knowledge, does he have an accounting background?

D. Sauter

A. I don't know.

Q. And is it your understanding that he was part of a valuation team?

I think you used that term.

A. Yes, I believe he was.

Q. Okay. And what's the basis for that understanding on your part?

A. Discussions that I've had with Frank and his knowledge of the TerreStar NAV error.

Q. Did Mr. Mabry tell you that he was part of the valuation team?

A. I don't recall.

Q. Did you ask him?

A. I don't recall.

Q. Do you know if Mr. Mabry played any role in any aspect of the TerreStar investigation that was conducted by the SEC?

A. I don't know.

Q. Did you ask Mr. Mabry if he played any role in connection with the SEC investigation?

A. I did not.

Q. Do you know if Mr. Mabry played any role in formulating HCMFA's response to the

D. Sauter

SEC?

A. I do not.

Q. Did you ask him?

A. I don't recall.

Q. Do you know when he left Highland?

A. I think he was terminated with the other employees.

Q. You submitted a declaration in connection with the adversary proceeding that Highland commenced against the HCMFA.

Do I have that right?

A. Yes, sir.

Q. All right. Let's take a look at that, if we can put that up on the screen.

So from time to time, my assistant Ms. Canty is going to put some documents up on the screen, Mr. Sauter. And it's very important that you understand that I will give you every opportunity that you believe you need in order to read the document.

So you know, if there's something that I put up there that you want to see more of, just let me know and we'll just scroll around. Okay?

D. Sauter

A. Okay.

(Exhibit 181, Declaration of Dennis C. Sauter, Jr., previously marked for identification.)

Q. Okay. Do you see the first page of this document states that it's your declaration?

A. I do.

Q. And if we can go to the signature line, please.

And that's your signature there, sir?

A. It is.

Q. And did you sign this on or about May 21st, 2021?

A. Yes, sir.

Q. Do you remember the purpose of this declaration?

A. It was requesting to file an amended answer.

Q. Okay. Is it fair to say that your declaration sets forth the factual basis for the proposed amendment?

A. Yes.

D. Sauter

Q. And is it fair to say that your declaration describes the investigation that you did initially after the complaint was filed and then basically a second phase of the investigation after Mr. Waterhouse and Mr. Mabry migrated from Highland?

A. Yes.

Q. Okay. So the purpose of your investigation was to understand the origin of two promissory notes. Right?

A. Yes, sir.

Q. Okay. I just want to go through to the notes to make sure that the record is clear that we're talking about the same thing.

There are certain documents that we've used in other depositions so they've been premarked, and I'd ask Ms. Canty to put up the document that's already been marked as Exhibit 54.

MS. CANTY: Okay. John, do you want to let the court reporter know this current one is 181, premarked 181, this declaration.

MR. MORRIS: Okay. Fine.

(Exhibit 54, E-mail chain with

D. Sauter

attachment dated 5/2/19, D-CNL003777-779, previously marked for identification.)

Q. So if could just scroll down a little bit.

Do you see there's -- do you see it's -- there's an e-mail from David Klos dated May 2nd?

A. Yes.

Q. Do you know who Mr. Klos is?

A. I do.

Q. And who do you understand Mr. Klos to be? What role did he play in May of 2019?

A. I don't know.

I know he worked under Frank.

Q. He worked out of -- do you see there's an e-mail to a corporate accounting group?

A. Yes.

Q. Have you ever sent or received an e-mail from a Highland corporate accounting e-mail chain called the corporate accounting group?

A. I've never sent an e-mail from the corporate accounting group.

D. Sauter

I can't recall receiving one from them either.

Q. Do you see that in this e-mail Mr. Klos asks to have $2.4 million transferred from HCMLP to HCMFA?

A. I do.

Q. And do you see that he states: "This is a new interco loan"?

A. I do.

Q. And if we can see the response above, do you see how Ms. -- do you know Kristin Hendrix?

A. I do.

Q. And who is Ms. Hendrix, to the best of your knowledge.

A. I believe she worked under Mr. Klos.

Q. And do you see that she wrote to someone named Blair and attached a copy of a note?

A. Yes.

Q. Okay.

A. That's what it says.

Q. And can we go to the next page, please.

D. Sauter

And do you see that this is a promissory note for $2.4 million dated May 2, 2019?

A. I do.

Q. Okay. And can we go to the signature line.

Do you see Mr. Waterhouse's signature?

Do you see Mr. Waterhouse's signature, sir?

A. I can't verify whether that's his signature, but I'll take your word for it.

Q. Okay. Can you go to the top of the note, please.

Do you see that the maker is defined to be Highland Capital Management Fund Advisors, LP?

A. I do see that that's what it says on the first page.

Q. Okay. And this is one of the two notes that was the source of your investigation. Right? This was one of the two notes that you were investigating the origins of?

D. Sauter

A. Yes.

Q. Okay. Let's look at the next note, please.

(Exhibit 57, Promissory Note dated 5/3/19, D-CNL003764-65, previously marked for identification.)

Do you see this is a note for $5 million and it's dated the next day, May 3rd, 2019?

A. I see that.

Q. Do you see that it's -- it also defines as the maker Highland Capital Management Fund Advisors, LP?

A. That's what it says on the first page, yes.

Q. Okay. And if we can go to the signature line.

Again, does that appear to be Mr. Waterhouse's signature?

A. Again, I can't verify whether that's Mr. Waterhouse's signature or not.

But it does say that the maker is Frank Waterhouse, not Highland Capital Management Fund Advisors.

D. Sauter
Q. I understand.
But the definition of "maker" is above. Correct?
A. I wouldn't -- that's not how I would draft a promissory note.
Q. I didn't ask you how you would draft it.
I'm just asking you whether, having just looked at the document and as a lawyer admitted to practice in law, would you agree that the term "maker" is a defined term in this document?
MR. RUKAVINA: I'll just object to form here and also that this witness has not been called as an expert, even though he's a lawyer.
So I'll just preserve that for the record.
MR. MORRIS: Fair. That's fine.
THE WITNESS: I would agree that "maker" is defined on the first page, but that would be an improper signature block, if it was intended to be Highland Capital Management Fund Advisors.

D. Sauter
BY MR. MORRIS:
Q. All right. We're going to refer to these two notes collectively as "the notes."
Is that okay?
A. That's fine.
Q. And these are the two notes that you were investigating. Right?
A. Yes.
Q. And it's your understanding that these are the two notes that Highland Capital Management is suing to collect on. Right?
A. Yes.
Q. Okay. According to your declaration, if we can go to Paragraph 13, if we can put that back up on the screen, as part of the initial investigation -- withdrawn.
I'm going to use the phrase "initial investigation" to mean the investigation that you conducted between the time the complaint was filed and the time that HCMFA filed its original answer on March 1st.
Is that okay?
A. Sure.
Q. And during that initial

D. Sauter
investigation, you spoke with Jim Dondero. Correct?
A. I did.
Q. Okay. And according to Paragraph 13, he couldn't recall the genesis of the notes. Is that right?
A. That's correct.
Q. Did you show him the notes?
A. I don't recall.
Q. Did you tell him that the notes were dated May 2nd and May 3rd, 2019?
A. I don't recall that either.
Q. Did you do anything to try to refresh his recollection about the timing of the notes?
A. I'm sure I did.
But I don't recall that conversation in any detail as I'm sitting here today.
Q. Did you tell him the principal amount of the notes?
A. Yes.
Q. And even though you told him the principal amount of the notes, he still had no recollection as to what they related to. Is

D. Sauter
that right?
A. He couldn't recall the genesis, correct.
Q. Did he have any recollection at all as to what the notes related to?
A. I don't -- I don't believe so, because if he had, then I would have been able to pin it down further.
Q. How many conversations did you have with Mr. Dondero as part of your initial investigation?
A. I don't recall.
Two, three.
Q. Was there anybody present other than the two of you?
A. Again, I don't recall.
Q. Do you recall if they took place on the phone or were they in person?
A. It would have been in person.
Q. And why do you say it would have been in person?
A. Well, now that you say that, no, it probably wasn't in person because he would not have been in the office at that time.

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1 D. Sauter
2 There was obviously a lot of things
3 going on at this point. Mr. Dondero had been
4 evicted from the building, and so that made --
5 I shouldn't say evicted. He'd been kicked out
6 by the debtor, and so that made our
7 communications a little more difficult.
8 So I would have spoken with him on
9 the phone because I did not go over to the
10 NexBank office very often.
11 Q. Paragraph 13 says that you also
12 spoke with "the few employees of HCMFA."
13 Do you see that in the middle of the
14 paragraph?
15 A. Yes.
16 Q. Can you identify the other CMFA
17 employees that you spoke with as part of your
18 initial investigation?
19 A. I would have spoken with Dustin
20 Norris and --
21 Q. Do you recall speaking -- I
22 apologize for interrupting.
23 Go ahead.
24 A. And so he wasn't an HCMFA employee,
25 but Jason Post.

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1 D. Sauter
2 Q. Do you have a recollection of
3 speaking to Mr. Norris, or are you just
4 surmising that you probably did?
5 A. I'm surmising that I probably would
6 have.
7 There was a lot, again, that was
8 happening. I didn't have the historical
9 knowledge of these things, and so I talked with
10 Mr. Post and Mr. Norris daily about everything
11 that was going on just to get some background
12 on all of the moving parts.
13 Q. Okay. Do you know if Mr. Norris
14 held any position with HCMFA in 2019?
15 A. I don't -- I don't know for certain.
16 I believe he did.
17 I can't recall what his position
18 would have been.
19 Q. Does he have a position with HCMFA
20 today, to the best of your knowledge?
21 A. I believe he does.
22 Q. And what do you understand his
23 position to be?
24 A. I would say vice president.
25 Q. Do you know when he became vice

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1 D. Sauter
2 president of HCMFA?
3 A. I do not.
4 Q. Do you know if he was vice president
5 of HCMFA in October 2020?
6 A. I do not.
7 Q. Do you know if Mr. Norris holds any
8 positions with DAF -- I'm sorry.
9 Do you know if Mr. Norris holds any
10 positions with GAF?
11 A. I don't know.
12 Q. How about Mr. Post? Do you know if
13 Mr. Post held any positions with HCMFA in 2019?
14 A. I don't.
15 Q. Do you know if he holds any
16 positions with HCMFA today?
17 A. He does not.
18 Q. Is Mr. Post a compliance officer, to
19 the best of your knowledge?
20 A. He was.
21 He left a week ago to take another
22 job.
23 Q. So he was -- and who did he -- for
24 whom did he serve as the chief compliance
25 officer until a week ago?

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1 D. Sauter
2 A. He was chief compliance officer for
3 Nexpoint Advisors.
4 He may have been the chief
5 compliance officer for HCMFA as well.
6 Q. Okay.
7 A. And if I had to guess, he would have
8 had those same positions back in 2019 --
9 Q. Okay.
10 A. -- because Thomas Surgent was the
11 chief compliance officer for HCMLP and Jason
12 worked under him.
13 And I think that started sometime in
14 2014, maybe earlier.
15 Q. And did Mr. Norris and Mr. Post tell
16 you during your initial investigation that they
17 had no knowledge of the notes?
18 A. Yeah, generally I don't think that
19 they were aware of the notes, or I should say
20 they weren't aware of the genesis of the notes.
21 Q. Were they aware of the existence of
22 the notes?
23 A. They were.
24 Q. Did they tell you when they had
25 learned of the existence of the notes?

D. Sauter

A. I think it's something that I raised to them because I didn't know where the notes had come from.

Q. Right.

And they told you that they were aware of the notes but they didn't know the genesis of them?

A. I don't recall whether they were aware of the notes before I asked about them.

Q. Did you ask them if they were aware of the notes prior to the time you showed it to them?

A. I would have asked them what the notes were about.

Q. I don't want to know what you would have done.

I know this is hard, Mr. Sauter. I'm really just asking you to search your memory.

Do you recall asking them whether they were aware of the existence of the notes prior to your conversation with them?

A. I don't recall if I asked whether they were aware of the existence of the notes

D. Sauter

prior to my conversation with them.

Q. Now, Paragraph 13 says that Mr. Dondero could not recall the genesis of the notes.

Do you see that?

A. Yes.

Q. Did Mr. Dondero indicate to you that he was aware of the existence of the notes even though he couldn't recall the genesis of the notes?

A. That's not how I would characterize it, but...

Q. How would you characterize it?

A. He suggested that I talk to Mr. Waterhouse.

Q. Did you ask Mr. Dondero when he first learned of the existence of the notes?

A. No.

Q. Did he say to you anything that caused you to believe that he was unaware of the existence of the notes prior to the commencement of the lawsuit?

A. No.

I guess let me clarify.

D. Sauter

He didn't make any comments that made me think one way or the other.

Q. And you didn't ask.

Is that fair?

A. Correct, I did not ask.

Q. So you had no information as to whether or not Mr. Dondero actually knew of the existence of the notes prior to the commencement of the lawsuit.

Is that fair?

A. Correct.

Q. Okay. Paragraph 13 also states that you reviewed limited books and records of HCMFA.

Do you see that?

A. Yes.

Q. Okay. What books and records did you review as part of your initial investigation?

A. I don't recall exactly what I looked at or for.

I literally had to just go onto the system and try to find anything that related to the notes so I could try to find out what they

D. Sauter

were.

Q. Did you make any effort to try to determine whether HCMFA had accounted for the notes in its books and records?

A. I did not.

Q. Do you know today whether HCMFA ever accounted for the notes in its books and records?

A. I don't know.

Q. Have you ever reviewed HCMFA's balance sheets?

A. I think I have, but I don't – I can't recall exactly when.

Q. Did you ever make any effort to determine whether HCMFA carried these notes on its balance sheet as liabilities?

A. I did not.

Q. Do you know if HCMFA ever requested an extension of time to respond to the complaint?

A. I don't know, but I would assume so.

Q. Okay. Do you have any knowledge of HCMFA having done so?

A. No.

D. Sauter

Q. Okay. Do you know if – prior to the time it filed its original answer, whether HCMFA ever asked HCMLP to provide any documents in connection with the adversary proceeding?

A. Say that again.

Q. Sure.

So HCMFA filed its answer on March 1st, according to Paragraph 12.

Do I have that right?

A. I believe that's right.

Q. Okay. Do you know if HCMFA ever asked Highland for any documents before it filed its answer?

A. I don't recall.

Q. So at the time HCMFA filed its answer, Mr. Dondero couldn't recall the genesis of the notes. Correct?

A. That's right.

Q. And neither Mr. Post nor Mr. Norris could recall the genesis of the notes. Correct?

A. Correct.

Q. And HCMFA had limited access to books and records. Correct?

D. Sauter

A. Correct.

Q. And HCMFA had no access to the debtor's employees who had provided services to HCMFA under shared services agreements. Correct?

A. I think our view was it was potentially improper to reach out to those employees on a matter that was adverse to HCMLP, and so we refrained from doing so.

Q. Okay. And so under those circumstances, HCMFA nevertheless filed an answer that asserted no affirmative defenses. Correct?

A. Yes.

Q. But this situation changed in mid-April 2001. Correct?

A. Yes.

Q. If we can scroll down to Paragraph 19.

(Discussion was held off the record.)

Q. So in April 2001, the situation changed because Mr. Waterhouse and other former employees of Highland had migrated over to

D. Sauter

Skyview so that you had access to them. Is that right?

A. Correct.

Q. And that's when you conducted the second phase of your investigation. Correct?

A. Yes.

Q. And you'll see at the end of Page 4 you reference that the debtor had provided access to HCMFA of much of its books and records.

Do I have that right?

A. Yes.

Q. Okay. And what books and records did Highland provide between March 1st and mid-April when you conducted the second phase of your investigation?

Are there any particular books and records that you're referring to in that sentence?

A. I can't recall exactly what it was.

There was a process that we were going through that I think – if you'll recall, that we went back and forth on obtaining access to books and records, submitting written

D. Sauter

requests, and those were either granted or denied. And so there were a litany of documents that were sent over.

Q. Can you identify any documents that you reviewed as part of either the initial investigation or the follow-up investigation in April 2021?

A. Yes.

I would have reviewed documents related to the TerreStar NAV error.

Q. And can you describe what those documents are.

A. Memos.

Q. Okay. Do you recall how many memos you reviewed that concerned the TerreStar NAV issue?

A. I want to say that there were three, four or five, something along those lines.

I think there was a memo that was submitted to the board and then maybe some communications with the SEC.

Q. And is it your testimony that HCMFA did not have those memos until after March 1st, 2021?

D. Sauter

A. I don't know whether we had access to those memos, but I didn't -- I wasn't able to speak to Frank Waterhouse, and so I didn't know to look for them.

Q. And neither Mr. Dondero nor Mr. Norris nor Mr. Post thought to inform you about the NAV star error [sic] because they had no idea what the notes related to. Correct?

A. That's my recollection. That's correct.

Q. Okay. Other than the three to five memos that you've just described, are there any other documents that you recall reviewing as part of your investigation?

A. No.

Q. Do you know to whom the memos that you've just described were addressed?

Who were they sent to?

A. I believe there was one that was sent to the board.

And then the others, I think, were just either internal communications or communications with the SEC.

Q. Can we scroll down to Paragraph 22,

D. Sauter

please.

Actually, look at Paragraph 21 first.

According to Paragraph 21, as part of the second phase of your investigation, you spoke with Mr. Waterhouse and Mr. Mabry. Correct?

A. Yes.

Q. Did you speak with anybody else as part of the second phase of your investigation?

A. Yes, I would have spoken with Jason Post and Dustin Norris.

Q. And is it fair to say based on the second phase of your -- withdrawn.

Is it fair to say that your conclusions that resulted from the second phase of your investigation are set forth in Paragraph 22?

A. (Reviewing document.)

I wouldn't say all of my conclusions. But yes, that's some of them.

Q. Okay. Is it fair to say that, based on the second phase of your investigation, you concluded, among other things, "that the notes

D. Sauter

were signed by mistake by Waterhouse without authority from HCMFA"?

A. Yes.

Q. Okay. Let's talk about your discussions with Mr. Waterhouse as part of your investigation.

How many times did you speak with him?

A. Probably three.

Q. And was anybody else present for any of the three conversations?

A. I don't recall. I don't think so.

Q. Did you take any notes of your conversations with Mr. Waterhouse?

A. I don't recall.

Q. Do you recall whether you sent anybody any e-mails summarizing your conversations with Mr. Waterhouse?

A. I don't recall.

Q. Did the three conversations take place in person, on the phone or some mix thereof?

A. I think it would have been a mix thereof.

D. Sauter

Q. Do you recall which of the three conversations was the longest, which was the shortest?

I just want to get a sense of how much time you spent with Mr. Waterhouse.

A. I don't, because again, there was lots going on.

The first one was in the conference room on the 11th floor at NexBank. The second one was in his office. And I think the third was on a phone call.

Q. Did any of them last more than ten minutes?

A. I can't say for certain.

I would think so, but...

Q. Okay. Did you show Mr. Waterhouse either of the notes as part of either of these three interviews?

A. I don't recall if I did.

But he knew -- he knew the notes.

Q. And what did he say to you that led you to believe that he knew the notes?

A. Because he was aware of the notes.

I...

D. Sauter

Q. Did he tell the circumstances surrounding the execution of the notes?
A. Yes.
Q. What did he tell you?
A. He said those notes were executed in connection with the TerreStar NAV error.
Q. During your discussions with Mr. Waterhouse, did he ever deny signing the notes?
A. No.
Q. He never told you that he was unaware of the existence of the notes, did he?
A. No.
Q. In fact, before signing your declaration, you believed Mr. Waterhouse in fact had signed the notes. Correct?
A. Yes.
Q. And that's why in Paragraph 22 you specifically wrote that the notes were signed by mistake by Waterhouse. Right?
A. Yes.
Q. And you understood at the time you signed your declaration that Mr. Waterhouse had signed the notes at a time when he was HCMFA's

D. Sauter

chief financial officer. Correct?
A. I don't think I said that, but that would have been my assumption.
Q. Okay. I think if we can -- give me just one moment. I think I...
Can we go to Paragraph 29, please.
You'll see, according to your declaration, it says: "Returning to the notes, Waterhouse was the chief financial officer of both the debtor and the HCMFA during the above events and at the time he signed the notes."
Have I read that correctly?
A. You did.
Q. Does that refresh your recollection that at the time you signed this declaration you believed that Mr. Waterhouse was HCMFA's CFO at the time he signed the notes?
A. It does.
Q. Okay. During your investigation did Mr. Waterhouse ever tell you that he signed the notes by mistake?
A. No.
Q. Did you ever ask Mr. Waterhouse during your investigation whether he signed the

D. Sauter

notes by mistake?
A. I guess I'd like to clarify that response, if I may.
Q. Go right ahead.
A. I asked Mr. Waterhouse why he would have signed it -- the notes in his personal capacity.
And his response was, I don't know, I didn't prepare them.
So I don't know if that gives you the answer you're looking for, but there was some confusion about the execution of those notes.
Q. Okay. Did he say anything else that -- on the topic of whether signing the notes was a mistake?
A. No.
Q. Okay. Your declaration doesn't disclose what you just described for me. Correct?
A. Not in those exact words, no.
Q. Is there anything in your declaration that suggests that Mr. Waterhouse hadn't signed the notes?

D. Sauter

A. I don't think there's anything else in my declaration from --
Q. Okay. There's nothing --
(Simultaneous crosstalk.)
Q. I apologize.
A. -- from May that would suggest that Mr. Waterhouse didn't sign the notes.
Q. There's nothing in here, in your declaration, that states that Mr. Waterhouse admitted that he made a mistake in signing the notes. Correct?
A. Correct.
Q. There's nothing in your declaration that suggests that Mr. Waterhouse in fact did not sign or did not authorize the signing of his signature to these notes. Correct?
A. Correct, because he told me he did.
Q. Okay. And Mr. -- he told you that he had signed the notes. Correct?
A. Yes.
He said that he didn't use his electronic signature then, and if his signature was on them, it would have been his.
Q. Okay. Mr. Waterhouse never filed

D. Sauter
his own declaration in support of HCMFA's motion for leave to amend their answer. Correct?
A. Correct.
Q. During your investigation did you ask Mr. Waterhouse if he had authority to sign the notes?
A. Probably not in those exact words.
Q. Okay. Did you ask him in form or substance whether he was authorized to sign the notes?
A. Yes.
Q. And what did he say?
A. I think he – well, his response was if he signed them, he was authorized to sign them.
Q. Okay. And Mr. Waterhouse never told you that he signed the notes without authority. Correct?
A. He told me that – I asked him if Mr. Dondero had approved the notes.
And I don't think he could recall.
Q. Okay. Did Mr. Waterhouse ever tell you that he signed the notes without authority?

D. Sauter
A. No.
Q. Okay. Your declaration certainly doesn't say that Mr. Waterhouse admitted signing the notes without authority. Correct?
A. Correct.
Q. Mr. Waterhouse never filed a declaration in this case stating that he had filed the notes without authority. Correct?
A. Correct.
Q. Are you aware that Mr. Waterhouse was deposed in this case?
A. I'm – yes, I'm aware.
Q. Have you reviewed his deposition transcript?
A. I have not.
Q. Has his testimony been described for you by anybody?
MR. RUKAVINA: And I'll just caution you, Mr. Sauter. You know, I think that's a yes or no answer, but don't go into the substance of any discussions with me.
THE WITNESS: Yes. Okay.
Yes.

D. Sauter
BY MR. MORRIS:
Q. All right. Are you aware that he testified that nobody has ever told him that he made a mistake in signing the notes?
MR. RUKAVINA: Objection, form.
THE WITNESS: I'm not.
Q. Are you aware of anybody in the world ever telling Mr. Waterhouse that he made a mistake in signing the notes?
A. Yes.
Q. And who told him that?
A. Me.
Q. And when did you tell him that?
A. When we had this discussion.
Q. Okay. So it's your testimony that you actually told Mr. Waterhouse that he made a mistake in signing the notes. Right?
A. I asked him who had approved these notes and what was the process.
And he said he couldn't give me any process. He said the money was transferred, and so we signed the notes.
Q. Okay. But did you tell him that he made a mistake?

D. Sauter
A. I think I implied it.
Q. Do you have a recollection of actually telling him that he made a mistake?
A. That would be my recollection.
Obviously he disagrees with it.
Q. Do you know if any – and on what basis did you conclude that he made a mistake?
Withdrawn.
You have no personal knowledge of anything that happened in connection with the TerreStar valuation issue. Correct?
A. I was not personally involved in the TerreStar valuation issue, correct.
Q. You weren't involved in any of the decisions that were made in connection with the TerreStar valuation. Correct?
A. Correct.
Q. You weren't made – you weren't involved and had no responsibility for HCMFA's response to the SEC. Correct?
A. Correct.
Q. You had no responsibility or involvement in the decision as to how HCMFA was going to fund the losses to the GAF. Correct?

D. Sauter

A. Correct.

Q. You had no responsibility or involvement in how HCMFA reported to GAF. Correct?

A. Correct.

Q. But nevertheless, despite having no personal knowledge of those issues, you told Mr. Waterhouse or implied to Mr. Waterhouse that he made a mistake in executing the notes. Correct?

A. Correct.

Q. What did Mr. Waterhouse say in response?

A. Not much. He just disagreed.

Q. Did he just say, I disagree, and that's it or did he actually -- do you recall anything specific that he said?

A. I think I've already testified he said, we transferred the money, so I executed the notes. HCMFA didn't have the money to pay GAF, and so we transferred it from HCMLP and I executed the notes.

Q. Okay. Your declaration doesn't attribute any specific statements to

D. Sauter

Mr. Waterhouse, does it?

A. It does not.

Q. In fact, your declaration is just -- withdrawn.

If we can go to Paragraph 30.

Take a look at Paragraph 30. We'll kind of parse it through.

The first sentence says: "It appears clear that Mr. Waterhouse made a mistake."

Do you see that?

A. Yes.

Q. But again, Mr. Waterhouse never admitted to making a mistake. Correct?

A. Correct.

Q. And this is your -- this is a conclusion that you're reaching in May of 2021, more than two years after the fact. Correct?

A. Based upon my review of the documents and my discussions with Mr. Post and Mr. Norris.

Q. Did you ever have any discussions with Mr. Dondero in May of 2021 as you were preparing this document?

D. Sauter

A. Did I have any discussions with him about this?

Q. I apologize. That was a bad question.

Did you discuss in May of 2021 the issues concerning the notes with Mr. Dondero, or was that just part of the initial investigation?

A. I don't recall.

Q. And then a couple of lines down, you say -- you wrote: "It appears that Mr. Waterhouse assumed incorrectly that the funds being paid by the debtor were a loan to HCMFA."

Do you see that?

A. Yes.

Q. Did you ask Mr. Waterhouse if he actually made the assumption that you're attributing to him?

A. Yes.

Q. And did he ever admit that the assumption was incorrect?

A. He did not admit that the assumption was incorrect.

D. Sauter

Q. Okay. Again, that's your own conclusion. Is that fair?

A. That's correct.

Q. And then you continue on and you write: "Third" -- withdrawn.

You write: "Third, it therefore appears that Mr. Waterhouse prepared the notes for some internal accounting or other purpose but without there being actual consideration for the notes and without any intention on the part of the debtor and HCMFA that there be notes or that there be a loan transaction."

Have I read that correctly?

A. Yes.

Q. So did Mr. Waterhouse tell you that he prepared the notes for some internal accounting or other purpose?

A. Yes.

Q. And did he tell you what the purpose of the notes was?

A. Yes.

He said if he transferred money he had to have a note to go with it.

Q. You state in your declaration:

1 D. Sauter
2 "There was no" -- withdrawn.
3 You state in your declaration that
4 there was no "intention on the part of the
5 debtor and HCMFA that there be notes or that
6 there be a loan transaction."
7 Do you see that?
8 A. Yes.
9 Q. What's the basis for --
10 MR. RUKAVINA: Object to the form.
11 I apologize. I apologize, John.
12 I apologize, DC.
13 I'll just object to the form.
14 That's not what this says.
15 Go ahead.
16 MR. MORRIS: Well, then let me
17 restate it if I read it incorrectly.
18 BY MR. MORRIS:
19 Q. Mr. Sauter, does the last sentence
20 of your Paragraph 30 state, among other things,
21 that the notes were prepared "without any
22 intention on the part of the debtor and HCMFA
23 that there be notes or that there be a loan
24 transaction"?
25 A. Yes.

1 D. Sauter
2 Q. What's the basis for your sworn
3 statement concerning the debtor's intentions?
4 MR. RUKAVINA: Again, I'll object.
5 Just so that we're clear, Mr. Sauter
6 says "it appears that." He does not say it is
7 a fact. He says "it appears that." There is a
8 distinction there.
9 MR. MORRIS: Okay. You've got your
10 objection.
11 BY MR. MORRIS:
12 Q. What's the basis for your statement
13 that it appeared the debtor had no intention
14 that there would be notes or that there would
15 be a loan transaction?
16 A. If you're talking about a
17 $7.4 million obligation, I would assume that
18 there would be a process internally on who was
19 responsible for the payment of the fees for
20 the -- or the expenses for the NAV error.
21 Based upon my discussions with Frank
22 Waterhouse, there was no process or the legal
23 department was not involved in making a
24 determination as to whether there should be
25 notes. It was merely a ministerial act that

1 D. Sauter
2 accounting performed when they transferred the
3 funds to pay GAF.
4 Q. Is it your testimony as the general
5 counsel of Nexpoint that the law department or
6 the legal department is involved in every note
7 that's executed by one of the Highland
8 affiliates?
9 MR. RUKAVINA: Object to the form.
10 THE WITNESS: I can't answer that.
11 Q. Okay. So other than the fact that
12 it didn't go past the legal department, do you
13 have any other basis for your statement that it
14 appears that the debtor had no intention that
15 there would be notes?
16 A. Yes, there's an internal NAV error
17 correction policy that obligates the
18 responsible party to pay for it.
19 In this case it was HCMLP that made
20 the NAV error.
21 Q. There's a policy that you're
22 referring to?
23 A. Yes.
24 Q. And do you know when that policy was
25 adopted?

1 D. Sauter
2 A. I don't know for certain.
3 But I know there was a policy in
4 place as of 2018.
5 Q. Okay. Other than the policy, have
6 you ever seen any memo written -- withdrawn.
7 Have you ever seen any document in
8 the world that states that HCMLP is responsible
9 for the TerreStar NAV error?
10 A. I would say the memos that
11 acknowledged that there was a mistake.
12 Q. And is it your recollection that the
13 memos specifically say that HCMLP was
14 responsible for the mistake?
15 A. No, because the memos were vis-à-vis
16 HCMFA and GAF.
17 Q. Okay. So let me ask you the
18 question again.
19 During the course of your two
20 investigations, did you ever see a document
21 that stated that HCMLP was responsible for the
22 TerreStar NAV error?
23 A. I don't recall.
24 Q. You don't recall seeing one. Is
25 that correct?

1 D. Sauter
2 A. That's correct.
3 Q. Okay.
4 A. Can we take a quick break?
5 Q. Yeah, now would be perfectly fine.
6 Give me just one second before we go
7 off the record.
8 So it's 2:15 local time. Can we
9 limit it to ten minutes, Mr. Sauter?
10 A. Yeah, that would be fine.
11 Q. Okay. And I would ask that you're
12 still under oath, and I would ask that you not
13 speak with counsel or communicate with anybody
14 about the substance of your deposition.
15 Is that fair?
16 MR. RUKAVINA: Don't answer that
17 question, Mr. Sauter.
18 The law is what it is, and we're not
19 going to agree to something (audio issue) than
20 the law requires.
21 MR. MORRIS: Well, then I'm not
22 going to take a break. How about that?
23 Let's keep going.
24 MR. RUKAVINA: No, we're taking a
25 break and I'm going to the restroom.

1 D. Sauter
2 MR. MORRIS: We're not taking a
3 break, bud. I'm not --
4 (Simultaneous crosstalk.)
5 MR. RUKAVINA: We'll be back in ten
6 minutes.
7 MR. MORRIS: Hey, Davor, I'm going
8 to ask your client a question. Okay?
9 (Simultaneous crosstalk.)
10 MR. RUKAVINA: -- but we're not --
11 I'm sorry.
12 You can ask him afterwards who he's
13 talked to and about what, but you don't get to
14 tell him that he can't talk to anyone.
15 So let's go take a piss break and be
16 back in nine minutes.
17 MR. MORRIS: Put that on the record.
18 (Recess was taken from 2:17 p.m. to
19 2:28 p.m.)
20 BY MR. MORRIS:
21 Q. Are you ready to proceed, Mr.
22 Sauter?
23 A. I am.
24 Q. During the break did you speak to
25 anybody about the substance of your testimony?

1 D. Sauter
2 A. I did not.
3 Q. Okay. Did you communicate with
4 anybody about the substance of your testimony?
5 A. I did not.
6 Q. I want to stick with the focus on
7 the debtor's intent as stated in Paragraph 30.
8 Before you prepared your
9 declaration, did you spend any time reviewing
10 any of the debtor's bankruptcy filings?
11 A. Yes.
12 Q. And are you aware that throughout
13 the bankruptcy the debtor disclosed these notes
14 as assets of the estate?
15 A. Yes.
16 Q. And what documents did you review
17 that led you to conclude that the debtor was
18 disclosing the notes as assets of the estate?
19 Do you recall?
20 A. I mean, I would have known it from
21 the schedules. I would have known it from your
22 complaint.
23 Q. Okay. So you reviewed the debtor's
24 schedules of assets and liabilities prior to
25 the time you signed your declaration. Is that

1 D. Sauter
2 right?
3 A. Well, I didn't review them in
4 connection with my preparation of the
5 declaration, but yes, I had reviewed them.
6 Q. And in reviewing them, did you learn
7 that the debtor had in fact carried the notes
8 as assets on its balance sheet or on its
9 schedules of assets and liabilities?
10 MR. RUKAVINA: I'm going to object
11 to the form.
12 THE WITNESS: I was aware that the
13 debtor sought to collect on the note from
14 HCMFA, the notes.
15 BY MR. MORRIS:
16 Q. Are you aware that Mr. Dondero was
17 in control of Highland Capital Management, LP
18 from at least the date of the bankruptcy filing
19 in October 2019 through around January 9th,
20 2020?
21 A. Yes.
22 Q. Okay. Are you aware that, while
23 Mr. Dondero was in control of the debtor during
24 that period, that Highland filed statements of
25 financial affairs and schedules of assets?

D. Sauter
A. Generally, I guess, yes.
But I'm not aware of a particular document called statement of financial affairs.
Q. Are you aware that while Mr. Dondero was in control of Highland during the bankruptcy, the debtor filed documents stating that the notes were assets of the estate?
A. I was not.
Q. Okay. Did you ever, as part of your investigation, try to see how the debtor treated the notes in its court filings?
A. I did not, beyond the filing of the complaint.
Q. So you never had a conversation with anybody -- withdrawn.
Did you ever ask Mr. Waterhouse how the debtor treated the notes in its books and records?
A. No.
Q. Did you ever ask Mr. Waterhouse how HCMFA treated the notes in its books and records?
A. No.
Q. Have you been following developments

D. Sauter
in this particular adversary proceeding?
A. Yes.
Q. Are you aware that both HCMFA and Highland disclosed the existence of the notes to their outside auditors within 30 days of their execution?
MR. RUKAVINA: Objection, form.
THE WITNESS: Yes.
And it's my understanding that's why the notes were prepared.
Q. And what's that understanding based on?
MR. RUKAVINA: And now, Mr. Sauter, let's be very careful here.
Please answer only if it's based on factual information that a nonlawyer told you.
THE WITNESS: Yeah. I believe Mr. Waterhouse told me that he needed a note to document the transfer of funds.
BY MR. MORRIS:
Q. Okay. But I asked you a different question, and that's simply whether or not you're aware as you sit here today whether HCMFA and Highland disclosed the existence of

D. Sauter
the notes to the outside auditors.
MR. RUKAVINA: I'll object again.
THE WITNESS: Yes, I am aware.
Q. Have you ever seen HCMFA's audited financial statements?
A. I don't recall.
I think you asked me that earlier. And I may have seen them, but I don't recall specifically.
Q. Do you recall looking at the audited financial statements as part of your investigation?
A. No.
Q. Let's put up HCMFA's audited financial statements for the period ending December 31st, 2018. And it's previously been marked as Deposition Exhibit 45.
(Exhibit 45, Consolidated Financial Statements and Supplemental Information December 31, 2018, D-CNL002273-296, previously marked for identification.)
Q. Do you see the first page there?
This is the HCMFA consolidated financial statements for the period ending

D. Sauter
December 31st, 2018.
Do you see that?
A. I do.
Q. And I think you said you may have seen it before.
Did I get that wrong?
A. I said I may have.
In looking at this, I don't think I've ever seen this document.
Q. Okay. Can we just go to the third page and see the date.
Do you see that this is the report of the independent auditors PricewaterhouseCoopers?
A. Yes.
Q. And you do see it's dated June 3rd, 2019?
A. Yes.
Q. And do you understand that this document was prepared by HCMFA's outside auditors prior to Highland's bankruptcy filing?
A. That's what it purports to be.
Q. Okay. And it also purports to have been prepared prior to the commencement of the

1 D. Sauter
2 adversary proceeding as you understand the
3 timing. Correct?
4 A. Yep.
5 Q. Let's go to Page 17, please.
6 Do you see there's a section in the
7 audited financial statements called Subsequent
8 Events?
9 A. Yep.
10 Q. Do you have any understanding as to
11 what a Subsequent Events section is in audited
12 financial statements?
13 A. Yes.
14 Q. What's your understanding of what
15 that section is supposed to include?
16 A. It's intended to pick up events that
17 occurred after the date of the financials but
18 prior to the date the financials are
19 executed -- or issued.
20 Q. And do you see in the second
21 paragraph there's a description of the two
22 notes?
23 A. Yes.
24 Q. Okay. You were not aware that the
25 two notes were included in HCMFA's audited

1 D. Sauter
2 financial statements for -- as subsequent
3 events at the time you executed your
4 declaration. Correct?
5 A. Correct.
6 Q. Now that you know that, do you think
7 HCMFA made a mistake in including these notes
8 in the audited financial statements, or does it
9 cause you to reconsider your conclusion that
10 the issuance of the notes was a mistake?
11 MR. RUKAVINA: I'll object to that
12 question based on form.
13 THE WITNESS: You're asking me for
14 my legal conclusion?
15 Q. No, I'm not actually, but it
16 probably wasn't a great question.
17 So your conclusion was that the
18 execution of the notes was a mistake. Correct?
19 A. Yes.
20 Q. But HCMFA is reporting the notes as
21 part of its audited financial statements.
22 Correct?
23 A. Yes.
24 Q. And do you understand that these
25 financial statements have been audited by

1 D. Sauter
2 independent -- an independent outside firm
3 called PricewaterhouseCoopers?
4 A. I assume they're audited financials.
5 And yes, what you've shown me, it
6 appears as though they were prepared by
7 PricewaterhouseCoopers.
8 Q. Okay. Would you agree with me that
9 it's inconsistent that the notes can't be both
10 a mistake and be reported as valid obligations
11 in the audited financial statements?
12 MR. RUKAVINA: I'll object.
13 This witness is not an expert. He
14 has no personal knowledge. This is well
15 outside the scope of his factual investigation
16 in May of 2021.
17 BY MR. MORRIS:
18 Q. You can answer, sir.
19 A. I would agree that the two
20 statements are at odds with one another.
21 Q. Okay. So I'm just asking you
22 whether -- now that you know that HCMFA
23 included these in the audited financial
24 statements, does that cause you to question at
25 all your conclusion that the execution of the

1 D. Sauter
2 notes was a mistake?
3 MR. RUKAVINA: I'll again object.
4 This witness is not an expert. He's
5 not going to be a trial expert. And a motion
6 to amend has already been agreed upon and ruled
7 upon.
8 BY MR. MORRIS:
9 Q. You can answer, sir.
10 A. I would say that the audited
11 financials were prepared by
12 PricewaterhouseCoopers with input from the
13 accounting team.
14 And as I stated previously, I think
15 there was an -- a breakdown in the process that
16 should have occurred, and had others looked at
17 this, they wouldn't have come to the same
18 conclusion.
19 Q. So do you believe, based on the
20 investigation that you did, that a second
21 mistake occurred not only in signing the notes
22 but including them in the audited financial
23 statements?
24 MR. RUKAVINA: Again, I'll object.
25 This witness is not an expert. He

D. Sauter
has no personal knowledge.
THE WITNESS: Yeah, I can't tell you whether that's a mistake.
My experience is that generally accounting folks internally said that.
So if the accounting folks made a determination that the notes should be included as a subsequent event, then the auditors would include it as a subsequent event.
BY MR. MORRIS:
Q. Okay. Do you know, is there anybody at HCMFA who's responsible for overseeing the preparation of the audited financial statements?
A. I think Mr. Waterhouse.
Q. When did you first learn that the notes had been included in the financial statements?
Are you learning that for the first time right now or did you know that before today?
A. I think I heard that a couple weeks ago.
MR. RUKAVINA: Let's be careful here

D. Sauter
again, Mr. Sauter, to exclude our communications, please.
THE WITNESS: Okay.
Q. Do you know if HCMFA ever reached out to PricewaterhouseCoopers to inform them that their audited financial statements were incorrect?
A. I don't know.
Q. Do you know whether the debtor included reference to the notes in its audited financial statements?
A. I don't.
Q. Let's go back to your declaration, please, Paragraph 28.
Okay. So Paragraph 28 says: "The debtor accepted responsibility to HCMFA for having caused the NAV error, and the debtor ultimately, whether through insurance or its own funds, compensated HCMFA for the above payments."
Have I read that correctly?
A. Correct.
Q. Paragraph 28 doesn't cite any source for that statement. Right?

D. Sauter
A. Correct.
Q. Okay. You don't attribute that statement to any particular person. Correct?
A. That's correct.
Q. What is the basis for your statement that the debtor accepted responsibility to HCMFA?
A. It would be that the debtor's employees who performed the valuation function acknowledged that they had made a mistake.
Q. And who are those employees?
A. Well, ultimately I don't know exactly who it was that came to that determination, but I think it was Frank Waterhouse and Thomas Surgent.
Q. Did you ever interview Mr. Surgent as part of your investigation?
A. No, I was prohibited from speaking with him.
Q. So you're not aware of Mr. Waterhouse ever saying that the debtor accepted responsibility -- withdrawn.
You're not aware of Mr. Surgent -- withdrawn.

D. Sauter
You have no personal knowledge that Mr. Surgent accepted, on behalf of the debtor, responsibility for the NAV error. Correct?
A. I have no personal knowledge of that, correct.
Q. Okay. And did Mr. Waterhouse tell you that the debtor accepted responsibility to HCMFA for having caused the NAV error?
A. I think Mr. Waterhouse said that the HCMLP employees who formed the valuation committee ultimately concluded that they had made a mistake and they needed to accept that.
Q. Okay. It doesn't say that in your declaration, does it?
A. Doesn't say what?
Q. That Mr. Waterhouse told you that.
A. No.
Q. In fact, is there any particular reason why you didn't share that with the court?
A. No.
Q. Is there anything in writing that you've ever seen which states that the debtor accepts responsibility to HCMFA for having

D. Sauter
caused the NAV error?
A. Other than what I've identified, no.
Q. And what you've identified is that policy. Is that right?
A. There's a policy and the acknowledgment that the NAV error was made by the HCMLP employees who were on the valuation committee.
Q. Okay. You're aware that shortly after HCMFA paid the $7.4 million to the fund, HCMFA sent the fund a written report. Is that right?
A. Yes.
Q. Let's take a look at that, if we can put that on the screen.
MS. CANTY: Sorry, John, you went out for a second.
Can you say that again.
MR. MORRIS: Yeah.
If you could, I think -- I think I had it listed as Exhibit 37, but it's one of the new ones. It's the memo, I think, from HCMFA to the funds.
MS. CANTY: Got it.

D. Sauter
(Exhibit 182, Memo dated 5/28/19, previously marked for identification.)
BY MR. MORRIS:
Q. Is this one of the memos that -- and again, Mr. Sauter, if you need to see more of it, just let me know.
But is this one of the memos that you saw as part of your investigation?
A. I believe so.
Q. Okay. And do you understand that this is a memo from HCMFA to the board of the Highland Global Allocation Fund?
A. Yes.
Q. And this is where HCMFA describes for the board the resolution of the NAV error. Correct?
A. Correct.
Q. Okay. And did you discuss this memo with anybody as part of your investigation?
A. I mean, other than reviewing it, no.
Q. So -- and how did you obtain a copy of it?
A. Mr. Post.
Q. So Mr. Post gave it to you.

D. Sauter
But you didn't speak with him about it in substance. Correct?
A. I mean, I spoke to him about the transaction and the mistake.
I did the same thing with Dustin Norris.
Q. Okay. But you didn't speak with anybody about the substance of this memo. Correct?
A. Correct.
Q. Okay. And -- but you did see this memo before you signed your declaration. Correct?
A. Yes.
Q. Okay. And do you have an understanding of what this memo is?
A. Yeah.
I'd like to take a -- I'd like to see the memo in full.
Q. Sure. Take your time.
So just tell Ms. Canty when you want to see more and then she'll scroll.
Okay. Stop right there.
A. (Reviewing document.)

D. Sauter
Yes. Okay.
Q. So then the second page is this NAV error breakdown.
Do you see that?
A. Yes.
Q. All right. We'll come to that, but let's go back to the first page.
Have you taken a look at the second paragraph there that begins: "The advisor and Houlihan Lokey, an independent third party expert valuation consultant approved by the board," have you read that paragraph?
A. Yes.
Q. Okay. To the best of your knowledge, did HCMFA accurately define "NAV error" for the board in that paragraph?
MR. RUKAVINA: Objection --
THE WITNESS: As far as I know, yes.
MR. RUKAVINA: This witness is not an expert and has no personal knowledge.
Q. Do you have any reason to believe that HCMFA did not accurately describe for the board the definition of "NAV error"?
A. No.

D. Sauter

Q. Do you have any reason to believe -- take a look at the last sentence.

"The orderly determination and adoption of the weighted fair valuation methodology resulted in NAV errors in the fund."

Do you see that?

A. Yes.

Q. And that's what's being defined as the NAV error. Correct?

A. Yes.

Q. Do you have any reason to believe that that sentence is false or misleading in any way?

A. I do not.

Q. Nothing you uncovered during your investigation caused you to believe that that sentence was false or misleading in any way. Correct?

A. No.

Q. Okay. And the advisor was the entity that made the orderly determination. Correct?

A. That's what this memo says.

D. Sauter

Q. Okay. Who's Houlihan Lokey? Do you know who Houlihan Lokey is?

A. It's a third party valuation firm.

Q. Do they have a good reputation?

A. Yes.

Q. And did they do the valuation of TerreStar?

A. That's my understanding.

Q. Okay. And were they retained by the advisor or by HCMLP?

A. I don't know.

Q. Did you ever ask anybody who hired Houlihan Lokey?

A. I did not.

Q. Do you know whether HCMFA utilizes Houlihan Lokey's valuation services in the ordinary course of its business?

A. I don't know.

I know that Houlihan Lokey has been utilized by either HCMLP, HCMFA or Nexpoint Advisors in the past.

Q. And to the best of your knowledge, has -- have those entities continued to use Houlihan Lokey even after May 2019?

D. Sauter

A. I -- I don't know.

Q. Do you know whether anybody ever suggested that Houlihan Lokey was responsible for the valuation error?

A. I don't.

Q. Did you ever ask anybody if Houlihan Lokey was responsible for the valuation error?

A. No.

Q. Do you know if -- to the best of your knowledge, this memo was given to the board by HCMFA. Correct?

A. Yes.

Q. Did -- having reviewed the memo, is there anything that you're aware of in this memo where HCMFA tells the board that HCMLP is responsible for the NAV error?

A. No.

And I don't think that they would. It would be irrelevant.

MR. MORRIS: I move to strike the latter portion of the answer.

Q. Let's take a look at the bottom paragraph there.

Do you see that there's a reference

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to two different payments?

A. Yes.

Q. A payment of approximately $5.2 million was made on February 15th, 2019, and a second payment of approximately $2.4 million was made on May 2nd.

Do I have that right?

A. Yes.

Q. Do you know what the source of funding was for the first payment?

A. I do not.

Q. Did you ever ask anybody how HCMFA -- withdrawn.

Did you ever ask anybody what the source of HCMFA's funding was to make the payment on February 15th, 2019?

A. Say that again.

Q. Did you ever ask anybody what the source of HCMFA's capital was to make that payment on February 15th?

A. I was told that it was a transfer from HCMLP.

Q. You were told that the transfer from HCMLP was made in February of 2019?

D. Sauter

A. Yes.
Q. Who told you that?
A. Mr. Waterhouse.
Q. Okay. Do you know what the source was -- hold on one second.
And do you know what the source of the second payment was, that $2.4 million on May 2nd, 2019?
A. HCMLP.
Q. Now, we saw earlier that one of the notes was for $2.4 million on May 2nd.
Do you recall that?
A. Yes. Yes.
Q. Okay. So is it fair -- did you conclude as part of your investigation that at least the amount and the date of the payment matched the amount and the date of the note?
A. I did on the second note, yes.
Q. Okay. But the -- neither the amount nor the date of the first payment matched the amount or the date of the second note. Correct?
A. That's correct.
Q. Let's take a look at the second

D. Sauter

page.
Have you seen this before?
A. I have.
Q. Did you ever have any discussions with anybody at any time during your investigation about this page?
A. I did at some point, and I don't recall exactly when.
Q. Okay.
A. But probably it may have been after the declaration.
Q. Okay. Do you understand that the first -- I think it's a row -- shows that the total estimated net loss resulting from the NAV error was approximately $7.44 million?
A. Yes, I see that.
Q. Okay. And do you understand that this chart depicts the sources that are going to be called upon to fund the $7.44 million payment from HCMFA to the fund?
A. I -- yes, I understand that now.
Q. And do you understand that approximately $5 million was going to be funded through insurance proceeds?

D. Sauter

A. That's what it appears to show.
Q. And during your investigation, were you aware that HCMFA had obtained almost $5 million in connection with the NAV error that it was using to fund the payment to GAF?
A. I subsequently learned that, yes.
Q. And were you aware prior to the time that you signed your declaration -- I apologize if I asked this before -- withdrawn.
Were you aware of the almost $5 million in insurance proceeds that was -- that were obtained by HCMFA before you signed your declaration?
A. I was not.
Q. So that's new information for you since the time you signed your declaration?
A. Yes.
Q. Okay. Were you aware at the time you signed your declaration that HCMFA had paid an insurance deductible of almost $250,000?
A. I was not.
Q. Is it your understanding that after the sources described in the top portion of this page, that the total amount needed by the

D. Sauter

advisor to make GAF whole was approximately $2.4 million?
That's the 2,398,842 number there.
A. I've not done the math.
Q. Well, that number there matches the number in the bottom paragraph of the first page, if we can scroll back up.
A. Yeah. No, I understand.
Q. Okay. So that's the total payment that was made on May 2nd, 2019, according to this memo?
A. That's total payment made to GAF.
What I'm unclear about is that it's the total amount out of pocket from the advisor, which may be different, but...
Q. Do you know what the total out of pocket was from the advisor?
A. I don't.
(Simultaneous crosstalk.)
THE WITNESS: -- what's listed here.
Q. And do you understand that a total of $7.44 million was paid by HCMFA to GAF?
A. I do.
Q. Okay. And do you have any reason to

1 D. Sauter
2 believe that the source of the funding is
3 anything other than what's set forth on this
4 page?
5 A. I don't.
6 Q. And the $2.4 million, that's the
7 $2.4 million that HCMFA obtained from Highland
8 on May 2nd. Correct?
9 MR. RUKAVINA: Objection.
10 The witness is not qualified to
11 answer that.
12 Q. During the course of your
13 investigation, did you learn that Highland
14 transferred $2.4 million to HCMFA on May 2nd,
15 2019 so that it could pay GAF?
16 A. That's what I was told.
17 Q. Okay. Is it your conclusion that
18 Highland was responsible for the $7.44 million
19 estimated net loss resulting from the NAV
20 error?
21 MR. RUKAVINA: Objection.
22 This witness is not an expert, and
23 he has no personal knowledge.
24 THE WITNESS: Yes, I believe that
25 that's accurate.

1 D. Sauter
2 BY MR. MORRIS:
3 Q. And that's because you believe the
4 notes were executed by mistake. Correct?
5 A. I believe that Highland made the NAV
6 error and was responsible for making GAF whole,
7 albeit vis-à-vis HCMFA, its advisor.
8 Q. Okay. So because Highland created
9 the NAV error, your understanding based on your
10 discussions with Mr. Post and Mr. Norris is
11 that Highland paid the $7.4 million to HCMFA
12 not as a loan but as compensation for the error
13 that it made.
14 Do I have that right?
15 A. That would not be based on my
16 discussions with Mr. Post and Mr. Norris.
17 But yes, your conclusion is
18 accurate.
19 Q. Okay. And let's be really clear
20 what the conclusion is.
21 It's your conclusion that because
22 Highland was negligent in making the NAV error,
23 that when it paid $7.4 million to HCMFA on
24 May 2nd and May 3rd, 2019, it did so as
25 compensation for its negligent conduct and not

1 D. Sauter
2 as a loan. Correct?
3 A. I didn't say negligent, and I don't
4 know that I can make that conclusion.
5 But it should have been indemnity
6 and reimbursement for the error that Highland
7 created.
8 Q. Okay. Can you tell me why HCMFA
9 took $5 million from an insurance company at
10 the same time it was being made whole by
11 Highland?
12 MR. RUKAVINA: I'll instruct you not
13 to answer that.
14 That is attorney client privileged
15 and work product.
16 Q. Sir, as part of your investigation,
17 did you make any assessment as to why HCMFA
18 accepted $5 million in proceed -- in insurance
19 proceeds at the same time it believed that the
20 $7.4 million was being paid by Highland as
21 compensation?
22 MR. RUKAVINA: Just want to make
23 sure, Mr. Sauter, you understand that counsel
24 is asking about your investigation in May of
25 this year as referenced in your declaration and

1 D. Sauter
2 not the investigation generally.
3 THE WITNESS: Yes.
4 And as I said, the May declaration,
5 I was unaware of the $5 million in insurance
6 payments.
7 BY MR. MORRIS:
8 Q. Now that you're aware of it, does it
9 cause you to question your conclusion that the
10 payment made by Highland in May of 2019 was
11 compensation and not a loan?
12 MR. RUKAVINA: I instruct you not to
13 answer that, Mr. Sauter.
14 MR. MORRIS: On what basis? That
15 you don't like the question?
16 MR. RUKAVINA: No.
17 Let's be professional here, John. I
18 don't know why you've got to get --
19 (Simultaneous crosstalk.)
20 MR. MORRIS: I don't understand.
21 It's a --
22 MR. RUKAVINA: No, you -- the way --
23 MR. MORRIS: It's an investigation.
24 He made a conclusion in the investigation.
25 He's now learned a new fact. I'm

1 D. Sauter
2 allowed to ask him if it changes his
3 conclusion.
4 MR. RUKAVINA: Let me just explain
5 what I understand, what's going on here.
6 He undertook an evidentiary and
7 factual conclusion, which is fair game for you
8 to ask about. Pardon me.
9 He's told you that he didn't know
10 about this. His declaration says -- I'm
11 paraphrasing -- it appears that there was a
12 mistake.
13 He has never claimed to have
14 personal knowledge. He has never claimed to be
15 an expert. He is not going to be a trial
16 witness. He has never testified and is not
17 testifying today that there was a mistake.
18 But most importantly, and why I'm
19 instructing him not to answer, is because the
20 issue of how this payment relates to the
21 insurance payable, which again arose after his
22 declaration and is something that he and I have
23 discussed and is my work product. That is not
24 a part of his factual investigation.
25 So I am instructing him not to

1 D. Sauter
2 answer. There's no point in you and I arguing
3 about it now.
4 If you feel my objection is
5 inappropriate, then you have your rights
6 intact.
7 MR. MORRIS: All right. I'm going
8 to continue to ask questions.
9 BY MR. MORRIS:
10 Q. Sir, you had this document before
11 you signed your declaration. Correct?
12 A. I did.
13 Q. Okay. And your conclusion was that
14 because Highland made the NAV mistake, the
15 $7.4 million payment was supposed to be
16 compensation and not in the form of a loan.
17 Correct?
18 MR. RUKAVINA: Objection, form.
19 THE WITNESS: Correct.
20 Q. Okay. And now the document that you
21 had before you signed your declaration
22 discloses that HCMFA received almost $5 million
23 as part of the insurance proceeds in connection
24 with the NAV error. Correct?
25 A. Yes.

1 D. Sauter
2 Q. Okay. Does that cause you to change
3 the conclusion that you reached as set forth in
4 your declaration?
5 A. I don't know enough about the
6 insurance proceeds, the insurance policy and
7 what transpired at the time to make that
8 determination.
9 Q. Do you know if HCMFA has ever
10 informed the insurance carrier that HCMLP was
11 responsible for the NAV error?
12 A. I do not.
13 Q. Did you ever ask anybody?
14 A. I did not.
15 Q. As part of your investigation, did
16 you try to determine whether HCMFA ever told
17 the insurance company that HCMLP was
18 responsible for the NAV error?
19 A. I think I already said I wasn't
20 aware of the insurance proceeds at the time of
21 my declaration.
22 Q. Has HCMFA returned all or any
23 portion of the insurance proceeds to the
24 carrier?
25 A. I wouldn't know.

1 D. Sauter
2 Q. Have you ever asked anybody?
3 A. No.
4 MR. RUKAVINA: You've got to wait a
5 second, Mr. Sauter, before answering.
6 Go ahead.
7 Q. During the course of your
8 investigation, did anybody tell you that on
9 May 3rd, 2019, HCMFA needed another $5 million?
10 A. Not during the course of my initial
11 investigation.
12 Q. Are you aware of that today?
13 A. I am, yes.
14 Q. Okay. And do you understand that
15 that $5 million was needed in order for HCMFA
16 to pay what's called a consent fee?
17 MR. RUKAVINA: I'm going to object.
18 And I'm going to instruct the
19 witness not to answer.
20 Again, this is attorney-client
21 privilege and work product.
22 He learned about all of this well
23 after his investigation and well after his
24 declaration.
25 MR. MORRIS: These are facts.

1 D. Sauter
2 I don't get it. These are facts.
3 And I'm not limited to his declaration. He's
4 here under a subpoena. I can ask him whatever
5 I want factually.
6 I don't understand, Davor.
7 MR. RUKAVINA: Well, there's three
8 things.
9 You're generally right, you can ask
10 him whatever you want factually. I'm not
11 saying that he -- I haven't prevented you from
12 asking factually. That's issue one.
13 Issue two, he's not a trial witness.
14 His role is limited to the motion to amend,
15 which was granted by consent.
16 And issue three, the question you're
17 asking him right now, if he has any knowledge,
18 he can have only through discussions with me
19 and things he's learned through me in this
20 litigation. He's told you he did not know
21 about this during his investigation.
22 So I'm going to stick by my
23 instruction not to answer that, Mr. Sauter.
24 MR. MORRIS: And I'm going to tell
25 you he is a trial witness. I will certainly be

1 D. Sauter
2 calling him at trial because he conducted an
3 investigation.
4 And I don't think that I need to
5 stop asking questions as of the date of his
6 declaration. I'm asking purely factual
7 questions.
8 So you know, if you want to continue
9 to direct him not to answer, we'll deal with
10 it, but I'm going to continue to ask him
11 factual questions.
12 MR. RUKAVINA: To me, this is --
13 (Simultaneous crosstalk.)
14 BY MR. MORRIS:
15 Q. Mr. Sauter, do you understand that
16 the $5 million was needed by HCMFA on May 3rd,
17 2019 to pay a consent fee?
18 MR. RUKAVINA: I'm going to instruct
19 you not to answer that, Mr. Sauter.
20 Q. Are you going to follow your
21 counsel's instructions?
22 A. I am.
23 Q. Do you know what a consent fee is,
24 sir?
25 A. I don't.

1 D. Sauter
2 Q. Did you ever have -- withdrawn.
3 Did anybody ever tell you that
4 Highland was responsible for any consent fee
5 that HCMFA paid?
6 MR. RUKAVINA: You're instructed not
7 to answer that to the extent that whoever told
8 you that would be an attorney.
9 BY MR. MORRIS:
10 Q. Okay. Did anybody other than an
11 attorney ever tell you that Highland was
12 responsible for any consent fee ever paid by
13 HCMFA?
14 A. That Highland was responsible for
15 paying a consent fee?
16 Q. That Highland was responsible for
17 any consent fee that was paid by HCMFA.
18 A. I don't believe so.
19 Q. During your discussions as part of
20 your investigation with Mr. Norris and Mr. Post
21 and Mr. Dondero and Mr. Waterhouse, did anybody
22 tell you why Highland paid HCMFA $5 million on
23 May 3rd, 2019?
24 A. Yes.
25 Q. And why did -- what did they tell

1 D. Sauter
2 you?
3 A. It was payment for a consent fee.
4 Q. All right. Okay.
5 And who told you that?
6 A. Mr. Norris.
7 Q. And did Mr. Norris tell you that
8 Highland had any responsibility for the payment
9 of that consent fee by HCMFA?
10 A. I don't know that we got into that.
11 Q. Okay. Did anybody else tell you
12 that the May 3rd, 2019 $5 million payment was
13 made so that HCMFA could pay the consent fee?
14 MR. RUKAVINA: Again, I'll instruct
15 you not to answer the extent you learned
16 anything from an attorney.
17 THE WITNESS: I don't believe so.
18 Q. Okay. Did you speak with
19 Mr. Waterhouse about the $5 million consent fee
20 that Mr. Norris mentioned to you?
21 A. I have not spoken with
22 Mr. Waterhouse for quite some time about this,
23 since he's represented by counsel.
24 Q. No.
25 But as part of your investigation,

1 D. Sauter
2 after you learned from Mr. Norris that the
3 $5 million was paid so that HCMFA could pay the
4 consent fee, did you follow up with
5 Mr. Waterhouse at all?
6 A. I didn't know about the consent fee
7 at the time of my investigation.
8 Q. Okay. When did Mr. Norris tell you
9 about the consent fee?
10 A. Probably within the last six weeks.
11 Q. And does learning about the consent
12 fee from Mr. Norris cause you to question your
13 conclusion that the $7.4 million was paid by
14 Highland to HCMFA on account of the mistake
15 that Highland made on the NAV error?
16 MR. RUKAVINA: I'll again object
17 that this witness is not an expert and he has
18 no personal knowledge.
19 Q. You can answer, sir.
20 A. I wasn't aware of the consent fee.
21 I don't know much about the consent
22 fee. I don't know what it is, who paid it, why
23 they paid it, what the consideration was for
24 it.
25 So I'm not prepared to answer that.

1 D. Sauter
2 Q. Okay. Let's go back to your
3 declaration, please, Paragraph 31.
4 Is it fair to summarize this
5 paragraph as saying that because HCMFA and the
6 debtor had executed that acknowledgment, that
7 it would have been illogical for Highland to
8 lend HCMFA $7.4 million in May 2021?
9 A. Yes.
10 Q. Okay. And what was the source of
11 your information for Paragraph 31?
12 A. I'm not sure I follow.
13 Q. So you've got the acknowledgment
14 that you attached as Exhibit 4. Correct?
15 A. Yes.
16 Q. Did you discuss with anybody during
17 your investigation any of the facts or
18 conclusions that are set forth in Paragraph 31
19 or did you -- or is it based just on your
20 review of Exhibit 4?
21 A. Based on my review.
22 Q. Okay. Are you aware that in
23 May 2019, Mr. Dondero contemporaneously and
24 personally paid Highland exactly $7.4 million
25 that was owed by Mr. Dondero to Highland under

1 D. Sauter
2 a promissory note where he was the maker?
3 A. I was not.
4 Q. Nobody told you that as part of your
5 investigation, that the way Highland was able
6 to transfer the $7.4 million to HCMFA was to
7 get that money from Mr. Dondero on account of a
8 note that he signed?
9 A. No one told me that.
10 Q. You're hearing that for the first
11 time today?
12 A. I am.
13 Q. If Mr. Dondero paid down
14 $7.4 million in obligations that he owed to
15 Highland, would it change your view that it was
16 illogical for Highland to loan that money to
17 HCMFA in May of 2019?
18 A. Again, without seeing the documents
19 and the timing and the details of the
20 transaction, I can't answer that.
21 Q. Okay. Now, the advisors have
22 contracts with the funds they advise. Correct?
23 A. Advisory agreements, yes.
24 Q. And those advisory agreements are
25 subject to annual renewal. Correct?

1 D. Sauter
2 A. Yes.
3 Q. As Nexpoint's general counsel, did
4 you participate in the annual renewal process
5 in the fall of 2020?
6 A. I would have participated in the
7 process, but only with respect to NXRT,
8 Nexpoint Residential Trust and Nexpoint Real
9 Estate Finance.
10 Q. I see.
11 A. I had some limited involvement in
12 the 15(c) process with respect to Nexpoint's
13 strategic opportunities fund, but very limited.
14 Q. Do you know who the representative
15 was for HCMFA who was responsible for the 15(c)
16 annual renewal process in the fall of 2020?
17 A. I don't.
18 I can speculate, and I would assume
19 it's Mr. -- a combination of Mr. Norris and
20 Mr. Sella (phonetic).
21 Q. And why do you speculate that it's a
22 combination of them?
23 A. Because they were actively involved
24 in the process just from conversations I had
25 with them.

D. Sauter

Q. Okay. Have you ever seen any of the reports that the advisors sent to the retail board in connection with the 15(c) annual review?

MR. RUKAVINA: Now, this one, Mr. Sauter, I am going to instruct you not to answer.

MR. MORRIS: Have you ever seen the document? That's what, you're going to instruct him not to --

MR. RUKAVINA: Don't answer that. Don't answer that. That relates to discovery and work product privilege.

The document was produced to you. Mr. Sauter helped me find that document. Other than that, nothing about that document and his knowledge is fair game.

MR. MORRIS: Well, I'm going to ask my questions, and you can keep directing him not to answer.

BY MR. MORRIS:

Q. Mr. Sauter, have you ever seen any of the reports that were issued by the advisors to the funds?

D. Sauter

A. Could you clarify the question.

Q. Sure.

Have you ever seen any of the reports that were issued by the advisors to the retail board in the fall of 2020 in connection with the 15(c) review?

MR. RUKAVINA: Mr. Sauter, I'm instructing you not to answer that if your answer involves working with me in this adversary proceeding.

If you saw it otherwise as part of business operation, that's fine.

THE WITNESS: In the fall of 2020, I would have had -- I would not have been involved and I would not have seen anything sent to the board.

BY MR. MORRIS:

Q. All right. Well, let's put it up on the screen. It's, I think, a document that was previously marked as Deposition Exhibit 59.

(Exhibit 59, Memo dated 10/23/20, HCMFAS 000025-031, marked for identification.)

Q. Have you ever seen this document before, sir?

D. Sauter

A. Could you scroll down.

Q. Sure.

A. (Reviewing document.)

Q. We can keep going.

A. All right.

What's the date on this?

Q. October 23rd, 2020.

A. I honestly don't think I would have been involved in that or seen that.

Q. Okay. Did you ever ask anybody as part of your investigation -- withdrawn.

Are you aware that the advisors were asked to provide information to the retail board as to the obligations that it owed to Highland and its affiliates in connection with the 15(c) annual review?

A. I was not.

Q. So is it fair to say that you never saw this document as part of your investigation?

A. I don't think so.

Q. Is it fair to say that nobody ever told you about the advisors' responses to the retail board in connection with the 15(c)

D. Sauter

review in October of 2020?

A. I think that's accurate.

MR. MORRIS: We're going to do the 30(b)(6) deposition on December 1st?

MR. RUKAVINA: I think I'm waiting for you to confirm.

I think that's what --

MR. MORRIS: Let's confirm that right now.

I'll send you an e-mail, but I just...

MR. RUKAVINA: Okay. 10 a.m., Dallas?

MR. MORRIS: Yeah, that sounds fair.

BY MR. MORRIS:

Q. All right. Let's go back to your declaration, please, Paragraph 32.

I'm almost done, sir.

So you state, among other things, that -- and I'm paraphrasing. Let me know if I -- if this is fair -- that as a result of your investigation in April of 2019, HCMFA now believes that it has affirmative defenses to the notes that includes the defense of mutual

D. Sauter
mistake.
Do I have that right?
A. Yes.
Q. Okay. What does "mutual" – excuse me – what does "mutual mistake" mean?
MR. RUKAVINA: Are you asking for his legal opinion or how he used it in this declaration?
MR. MORRIS: Only how he used it in the declaration.
THE WITNESS: Well, wouldn't that be a legal conclusion because it's an affirmative defense?
BY MR. MORRIS:
Q. Well, I don't know. It's in your declaration. I'm just asking you what you meant when you used the phrase – withdrawn.
Let me ask a better question. Maybe it's my fault.
Mr. Sauter, what did you mean when you used the phrase "mutual mistake"?
A. What I meant is that there was no analysis or consideration of what had transpired and who is legally responsible for

D. Sauter
the payments to the fund.
A transfer was made. A note was executed without any analysis.
Q. And do you have anything else to add to that?
A. I don't think so.
Q. Okay. You also say that the notes are void for lack of consideration.
Do I have that right?
A. Yes.
Q. You don't dispute that Highland paid HCMFA $2.4 million on May 2nd, 2019. Correct?
A. No.
Q. And you don't dispute that Highland paid HCMFA $5 million on May 3rd, 2019. Correct?
A. I mean, I believe that's right. That's what I've been told.
So yeah, I don't dispute that.
Q. Your reference to "a lack of consideration" means only that, in your opinion, the money should not have been transferred in the form of a loan.
Do I have that right?

D. Sauter
A. You do.
Q. It does not mean that HCMFA did not receive an amount of money exactly equal to the principal amount of the notes. Correct?
A. Based upon what I've been told, correct.
Q. Okay. You also write here that Mr. Waterhouse did not "have proper authority to sign the notes."
Do I have that right?
A. Yes.
Q. What does "proper" – what did you mean by the phrase "proper authority"?
A. I mean going through the process of what I would expect to see in making a loan of $7.4 million.
Q. So that's just your own subjective view.
Is that fair?
A. No.
I mean, I think there's a legal basis for that, so yeah.
Q. What's your legal basis for that?
A. There is a process to go through in

D. Sauter
papering a transaction like a $7.4 million loan. And my understanding of the process, as described to me by Frank Waterhouse, was not the proper process.
Q. Is there a policy or a law that requires a particular process to be followed that you're aware of?
A. What I would expect is communications among the various parties that are involved and agreement that this should be a loan rather than just transferring money and sign a note.
Q. You knew when you signed this declaration that Mr. Waterhouse in fact was an officer of HCMFA at the time his signature was put on the notes. Correct?
A. Yes.
Q. And is it your view that an officer is not authorized to execute notes on behalf of the company for which he or she works for?
A. I think every company has limitations on authority.
Q. And what limits are you aware of on Mr. Waterhouse – withdrawn.

D. Sauter

What limits are you aware of that existed on Mr. Waterhouse's authority to sign notes on behalf of HCMFA in May of 2019?

A. I don't know what the HCMFA -- what the partnership agreement says, or I should say the general partnership agreement says.

But what I would expect is the full participation of legal, accounting and then perhaps Mr. Dondero.

Q. Do you know if Mr. Waterhouse has ever signed any other notes on behalf of HCMFA or any other affiliated entity?

A. I'm sure he has.

Q. Did you do -- as part of your investigation, before reaching your conclusion that Mr. Waterhouse didn't have proper authority, did you try to determine whether in fact he had previously issued notes on behalf of HCMFA or other affiliates?

A. I can't answer your question without knowing the facts surrounding the execution of any particular note.

I mean, I think it matters the amount of the note, the term of the note.

D. Sauter

There's a number of factors that come into it.

Q. But you didn't --

A. So --

Q. But you made no inquiry as to any of those issues. Correct?

A. I made an inquiry of Mr. Waterhouse as it relates to this transaction.

Q. Okay. And again, Mr. Waterhouse did not admit that he was not authorized to sign these notes. Correct?

A. Sorry. He did not admit that he was not authorized to sign the notes, correct.

Q. Okay.

MR. MORRIS: Let's just take a five-minute break. I may be done.

It's 4:28. Let's just come back at 4:35 so I can take a break.

(Recess was taken from 3:29 p.m. to 3:37 p.m.)

MR. MORRIS: Mr. Sauter, I greatly appreciate your time and attention today. I have no further questions.

THE WITNESS: Okay.

MR. RUKAVINA: I'll pass the

D. Sauter

witness, save my questions till trial. Thank you.

MR. MORRIS: Thank you, sir. Have a good day.

MR. RUKAVINA: Madam Reporter, just before we're done, just to confirm, the witness does want his 30 days to read and review, so please send the transcript to me with exhibits.

THE REPORTER: And Michael, do you need a copy?

MR. AIGEN: Yeah, we'll order one, just regular time. Doesn't need to be expedited.

(Time Noted: 3:38 p.m.)

_____

DENNIS C. SAUTER

Subscribed and sworn to before me this day of 2021.

_____

Notary Public

District of Columbia, to wit:

I, Stacey L. Daywalt, a Notary Public of the District of Columbia, do hereby certify that the within-named witness remotely appeared before me at the time and place herein set out, and after having been duly sworn by me, according to law, was examined by Counsel.

I further certify that the examination was recorded stenographically by me and this transcript is a true record of the proceedings.

I further certify that I am not of counsel to any of the parties, nor an employee of counsel, nor related to any of the parties, nor in any way interested in the outcome of this action.

As witness my hand and Notarial Seal this 17th day of November, 2021.

_____

Stacey L. Daywalt, Notary Public

My Commission Expires: 4/14/2026

----------I N D E X----------

WITNESS	EXAMINATION BY	PAGE
DENNIS C. SAUTER	BY MR. MORRIS	4

----------EXHIBITS----------

PREVIOUSLY MARKED EXHIBITS	PAGE	LINE
Exhibit 181 Declaration of Dennis C. Sauter, Jr.	24	3
Exhibit 54 E-mail chain with attachment dated 5/2/19 D-CNL003777-779	25	25
Exhibit 57 Promissory Note dated 5/3/19 D-CNL003764-65	29	5
Exhibit 45 Consolidated Financial Statements and Supplemental Information December 31, 2018 D-CNL002273-296	72	19
Exhibit 182 Memo dated 5/28/19	83	2
Exhibit 59 Memo dated 10/23/20 HCMFAS 000025-031	111	22

NAME OF CASE:

DATE OF DEPOSITION:

NAME OF WITNESS:

Reason Codes:

1. To clarify the record.
2. To conform to the facts.
3. To correct transcription errors.

Page _____ Line _____ Reason _____

From _____ to _____

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$2.4 27:5 28:3 89:7 90:8,12 93:3 94:6,7, 14 115:13

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$5 29:9 91:24 92:5,12 96:9,18 97:5 99:22 101:9,15 103:16 104:22 105:12,19 106:3 115:16

$5.2 89:5

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EXHIBIT 194

Kristin Hendrix - October 27, 2021

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION
--o0o--

HIGHLAND CAPITAL MANAGEMENT, L.P.,)
Plaintiff,)
vs.) No. 21-03004-sgj
HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, L.P.,)
Defendants.)

DEPOSITION OF
KRISTIN HENDRIX
October 27, 2021

DEPOSITION OF KRISTIN HENDRIX, produced as a witness, duly sworn by me via videoconference at the instance of the DEFENDANTS, was taken in the above-styled and numbered cause on October 27, 2021, from 10:11 A.M. to 1:19 P.M., before BRANDON D. COMBS, CSR, RPR, in and for the State of Texas, reported by computerized machine shorthand, at 500 North Akard Street, 38th Floor, Dallas, Texas.

APPEARANCES

MUNSCH, HARDT, KOPF & HARR, PC, 500 North Akard Street, Suite 3800, Dallas, TX 75201, represented by DAVOR RUKAVINA, Attorney at Law, appeared as counsel on behalf of the Defendants.
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PACHULSKI, STANG, ZIEHL & JONES, 780 Third Avenue, 34th Floor, New York, NY 10017-2024, represented by JOHN A. MORRIS, Attorney at Law, appeared as counsel on behalf of the Plaintiff.
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STINSON, LLP, 3102 Oak Lawn Avenue, Suite 777, Dallas, TX 75219, represented by MICHAEL AIGEN, Attorney at Law, appeared via videoconference as counsel on behalf of the Defendants Jim Dondero, HCMS and HCRE Partners.
Email: michael.aigen@stinson.com

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6

1 KRISTIN HENDRIX,
2 having been first duly sworn, testified as follows:
3 EXAMINATION
4 **Q. (BY MR. RUKAVINA) Good morning. If you'll**
5 **state your name.**
6 **A. Kristin Hendrix.**
7 **Q. We're doing this both ways. You're on the**
8 **Zoom remotely and they can see you, but I would ask**
9 **that you and I maintain eye contact. Of course, if**
10 **someone is asking you on the Zoom, then maintain**
11 **contact with them, if that's okay with you.**
12 **A. Sure.**
13 **Q. Have you been deposed before?**
14 **A. No.**
15 **Q. So I'm sure your counsel explained to you,**
16 **but very quickly, you understand that you're testifying**
17 **under oath and penalty of perjury as though you were in**
18 **a court of law?**
19 **A. Yes.**
20 **Q. And you understand my job is to ask clear**
21 **questions that you understand?**
22 **A. Yes.**
23 **Q. And if for whatever reason you don't**
24 **understand my questions, please let me know or ask me**
25 **to rephrase; otherwise, I'm going to assume that you**

7

1 **understood my question; okay?**
2 **A. Yeah.**
3 **MR. MORRIS:** Objection.
4 **Q. (BY MR. RUKAVINA) Sometimes Counsel will**
5 **make objections. Unless he instructs you not to**
6 **answer, you're still required to answer my questions.**
7 **A. Okay.**
8 **Q. Now, in preparation for this deposition, did**
9 **you read the deposition transcript or any part of it of**
10 **Frank Waterhouse?**
11 **A. I did not.**
12 **Q. Did anyone provide you a synopsis or summary**
13 **of it?**
14 **A. Maybe a few bits and pieces, but...**
15 **MR. RUKAVINA:** Off the record for a second.
16 (Off the record.)
17 **Q. (BY MR. RUKAVINA) What do you mean bits and**
18 **pieces?**
19 **A. I don't recall anything specific that was**
20 **said, other than it was very long.**
21 **Q. Did you talk to Frank Waterhouse about it?**
22 **A. Did not.**
23 **Q. Other than Highland's legal counsel, did you**
24 **talk to anyone else about -- or -- strike that.**
25 **Other than Highland's legal counsel, did you**

8

1 **talk to anyone about Frank Waterhouse's deposition from**
2 **last week?**
3 **A. I did not.**
4 **Q. Did you review -- strike that.**
5 **Did you see any of the video of**
6 **Mr. Waterhouse's deposition?**
7 **A. Nope.**
8 **Q. Same questions now for Mr. Seery, S-e-e-r-y.**
9 **Did you read any portion or the whole of**
10 **Mr. Seery's deposition from last week?**
11 **A. I did not.**
12 **Q. See any of the video?**
13 **A. No.**
14 **Q. Did you see any synopsis or summary of his**
15 **deposition?**
16 **A. No.**
17 **Q. Did you talk to him about his deposition?**
18 **A. I did not.**
19 **Q. Other than talking to Highland's counsel, did**
20 **you talk to anyone about Mr. Seery's deposition?**
21 **A. No.**
22 **Q. Other than talking to Highland's counsel, did**
23 **you talk to anyone about your deposition today?**
24 **A. Just John Morris and Dave Klos.**
25 **Q. When did you talk to Mr. Klos, K-l-o-s?**

9

A. First time about this was last Friday. And then again Monday this week. And yesterday. And this morning.
Q. Friday was there any lawyer present during your discussion with Mr. Klos?
A. Yes, every time Mr. Morris was present.
MR. RUKAVINA: Is it your position that those four discussions would be privileged, Counsel?
MR. MORRIS: Yes.
MR. RUKAVINA: Then we'll move on.
Q. (BY MR. RUKAVINA) So we've established the four times you talked to Mr. Klos with counsel present. Did you do anything else related to or in preparation for today's deposition?
A. Yes, probably went through and reviewed some emails, documentation that I may have had that I need to refresh memory on.
Q. These documents and emails that you might have reviewed, did you supplementally provide them to counsel or anyone else?
A. Yes.
Q. This would have been in the last week or 10 days?
A. Yes.
Q. Prior to the last week or 10 days, are you

10

aware that my office served requests for production on Highland?
A. Yes.
Q. And did you do anything prior to the last week or 10 days to try to search both your personal records and corporate records for any responsive documents?
A. Not that I recall.
Q. Is that something that you understand legal counsel was charged with?
A. Yes.
Q. Let's go briefly now about your background, please.
Where do you live?
A. I live in Denton, Texas.
Q. And what is your date of birth, please?
A. January 26, 1982.
Q. And walk me through your educational background, starting with any postsecondary, if any, schooling or college or anything like that.
A. Sure. Graduated in 2004 from the University of North Texas with a degree in finance. Went on to get my MBA from SMU in 2009. And then went further and got my CPA license I believe in 2015.
Q. In the state of Texas?

11

A. Yes.
Q. And has your CPA license been current since then?
A. Sure has.
Q. Have you faced any kind of disciplinary action as a CPA?
A. I have not.
Q. Now, please walk me through your work history. Let's say starting with after you graduated college.
A. Sure. December of 2005, which was shortly -- sorry, 2004, shortly after I graduated from North Texas, I started at Highland. It was my first real job out of college. I have been there ever since, almost 17 years now.
Have worked in the corporate accounting department the entire time. Started off as the AP associate, and worked my way up over the years and currently am the controller.
Q. So even when you were getting your MBA and CPA you were employed by Highland?
A. Yes.
Q. Impressive. You're the controller today you mentioned?
A. Yes.

12

Q. That's -- when did you become the controller, sometime February or March of this year?
A. Yes.
Q. Before you became the controller, what was your role at Highland?
A. Right before that I was assistant controller. That was I believe April of 2020. Before that, the senior accounting manager, and I held that position for years.
Q. So in May of 2019 would you have been the senior -- you said senior account?
A. Senior accounting manager I believe was my title.
Q. And would that have been your title in May of 2017?
A. Yes, I believe so.
Q. And let's focus now on May 2019 as the senior accounting manager. How would you describe your role at Highland in May of 2019? What were your duties?
A. Sure. I helped with treasury management function, cash forecasts and things like that. And oversaw the financial reporting from the last batch of AP to all the way to financials and reporting on audits.
Q. Who did you report to in May of 2019?

13

1 A. David Klos.
2 Q. What was Mr. Klos' title to your
3 understanding back then?
4 A. I believe he was the controller.
5 Q. And do you have an understanding as to who
6 Mr. Klos reported to back then?
7 A. Yes, Frank Waterhouse.
8 Q. Frank Waterhouse. Who was he in May of 2019?
9 A. The CFO.
10 Q. Is Mr. Klos still with Highland today?
11 A. He is.
12 Q. What is his role now?
13 A. He's now CFO.
14 Q. You mentioned treasury management as of 2019,
15 May. What do you mean by treasury management? What is
16 that?
17 A. Generally speaking, we -- it's not just me as
18 one person. We have checks and balances.
19 My team would be in charge of sending out
20 payments, reconciling bank statements, making sure
21 money is in the right accounts, creating cash forecasts
22 and reporting on those every week with the CFO and
23 oftentimes the CEO.
24 Generally that's everything that fell under
25 the umbrella.

14

1 Q. And would your description of treasury
2 management be the same for the December 2020 period?
3 A. Yes.
4 Q. Who at Highland or which group at Highland in
5 December of 2020 would have been responsible for noting
6 that there are certain bills that need to be paid in
7 the near or subsequent future.
8 By way of, let's say, accounts payable or
9 promissory notes or taxes or anything like that?
10 A. Can you repeat your question.
11 Q. Sure. So obviously, Highland was a pretty
12 sophisticated business; correct?
13 A. Yeah.
14 MR. MORRIS: Objection to the form.
15 Q. (BY MR. RUKAVINA) And had various accounts
16 payable; right?
17 A. Yes.
18 Q. And it had maybe, let's just say, certain
19 note obligations that it had to pay from time to time;
20 correct?
21 MR. MORRIS: Objection to the form of the
22 question. Do you mean Highland Capital?
23 MR. RUKAVINA: I mean Highland Capital
24 Management; correct, I'm sorry. The debtor.
25 Q. (BY MR. RUKAVINA) Can we say the debtor?

15

1 A. Yes, you can say the debtor.
2 Q. So when I say the debtor and you say the
3 debtor we understand each other to mean Highland
4 Capital Management, comma, LP; correct?
5 A. Correct.
6 Q. I apologize. In the December 2020 period, I
7 would imagine that the debtor had its own -- that
8 was -- strike that.
9 We'll cut to the chase.
10 In December of 2020, the debtor was providing
11 services to various other entities affiliated with
12 Mr. Dondero; correct?
13 A. Correct.
14 Q. That would have included NexPoint Advisors,
15 LP?
16 A. Correct.
17 Q. And you're aware that NexPoint Advisors was
18 the obligor on at least one promissory note to the
19 debtor; correct?
20 A. Correct.
21 Q. And did the debtor in December 2020 provide
22 so-called treasury management services to NexPoint
23 Advisors?
24 MR. MORRIS: Objection to the form of the
25 question.

16

1 THE WITNESS: Yes.
2 Q. (BY MR. RUKAVINA) As part of that, in
3 December 2020, would it have been employees of the
4 debtor that would have scheduled for potential payment,
5 subject to approval by NexPoint, NexPoint's future
6 obligations as they were coming due?
7 A. Yes, we would have scheduled, only with
8 approval.
9 Q. And would that have included NexPoint's
10 obligations on the promissory note to Highland?
11 A. Yes.
12 Q. Back to your background briefly.
13 Do you have any legal training at all?
14 A. I do not.
15 Q. Do you have any courses, have you taken any
16 courses in drafting promissory notes?
17 A. No.
18 Q. Do you believe that your expertise as a
19 certified public accountant gives you any greater
20 qualification than anyone else to prepare a promissory
21 note?
22 MR. MORRIS: Objection to the form of the
23 question.
24 THE WITNESS: No.
25 Q. (BY MR. RUKAVINA) Have you ever prepared or

17

1 drafted a promissory note?
2 A. That term is probably used loosely. I have
3 not completely drafted a promissory note from scratch,
4 no.
5 Q. And we'll go into the details. Fair to say
6 that you have taken a form promissory note and revised
7 it?
8 A. Absolutely.
9 Q. Was this part of your job in May of 2019 at
10 Highland?
11 A. Yes.
12 Q. Going back to the May 2019 time frame, were
13 you part of a particular group at Highland, like
14 accounting or legal or compliance?
15 A. Yes, corporate accounting.
16 Q. Corporate accounting. That's what you
17 described before about treasury management and
18 projections and forecasts?
19 A. Yes.
20 Q. In May of 2019, was it the practice at
21 Highland that corporate accounting would be responsible
22 for drafting intercompany promissory notes?
23 A. Not necessarily drafting, but updating a
24 draft that had been previously produced and provided by
25 our legal team, yes.

18

1 Q. And Highland in May -- the debtor in May of
2 2019 did have a legal department?
3 A. Yes.
4 Q. Kind of like the corporate accounting, there
5 was a separate legal department; correct?
6 A. Correct.
7 Q. And who would have been in charge of that
8 department in May of 2019?
9 A. Scott Ellington, E-l-l-i-n-g-t-o-n.
10 Q. In May of 2019 or by May of 2019 was there
11 any practice at Highland as to whether its legal
12 department would be involved with the drafting or
13 execution of any intercompany promissory notes?
14 MR. MORRIS: Objection to the form of the
15 question.
16 THE WITNESS: It depends on the note.
17 Q. (BY MR. RUKAVINA) What did it depend on?
18 A. Our typical practice is if we have a loan
19 with certain affiliates that it's a demand note. We
20 have a template that we have used for years that was
21 created by either our internal legal team or an outside
22 law firm, I'm not sure which.
23 The typical practice is always updating a few
24 things on that template, getting it executed, and
25 filing it in our audit folders.

19

1 Q. By updating, what do you mean?
2 A. There's a few things that would need
3 updating, the date.
4 Q. Maker?
5 A. Maker.
6 Q. Amount?
7 A. The dollar amount, the interest rate.
8 Q. And is it your testimony that the corporate
9 accounting group would do these things on its own
10 without necessarily the involvement of the legal group?
11 MR. MORRIS: Objection to the form of the
12 question.
13 THE WITNESS: Generally, yes.
14 Q. (BY MR. RUKAVINA) Do you have any memory in
15 or before May of 2019 if the corporate -- I'm sorry, if
16 the legal group became involved in drafting or
17 executing any prior intercompany promissory notes?
18 A. Yes.
19 Q. Explain to me what you remember about that.
20 A. I do know that they were involved with
21 drafting restructured notes. So taking demand notes
22 and turning them into a 30-year amort note.
23 That was in 2017. I know for sure that they
24 were involved in that because it was something
25 different. We weren't just updating a demand note.

20

1 Q. Is it your testimony that to the best of your
2 recollection by May of 2019 and in May of 2019 it would
3 have been the corporate accounting group that would
4 have handled routine intercompany demand notes?
5 A. Yes.
6 Q. And you can think of more than one instance
7 on which that happened?
8 A. Yes.
9 Q. And this is not a memory test, but going back
10 in time can you try to give an estimate of what year
11 that first started happening, that the corporate
12 accounting would handle the drafting or execution of
13 intercompany demand notes?
14 A. As far as I can remember.
15 Q. Is it your testimony that as -- maybe even
16 going back as far as 2005 there were intercompany
17 demand notes?
18 A. Yes.
19 Q. I don't know how to ask this question, but
20 was this a significant thing in corporate accounting or
21 just another routine deal when you handled demand
22 notes?
23 MR. MORRIS: Objection to the form of the
24 question.
25 THE WITNESS: This is a routine job duty that

21

1 we routinely did.
2 Q. (BY MR. RUKAVINA) Between 2005 and 2019, do
3 you remember any maker on these intercompany demand
4 notes actually being required to pay a demand note, in
5 other words, Highland making demand?
6 A. Not that I can specifically recall.
7 Q. Do you have any recollection as to what
8 happened to these intercompany demand notes over the
9 years between 2005 and 2019?
10 A. Yeah. Typically anytime specifically Jim
11 Dondero would need to move money between related
12 parties, he would pay down -- when I say him, he would
13 have us in corporate accounting move money around, pay
14 off notes, reissue new notes somewhere else.
15 So a way to move money around between his
16 entities.
17 Q. So let's use just hypotheticals here so that
18 I'm not trying to pin you down to any specific fact.
19 But between 2005 and 2019, is it fair to say
20 that if some Dondero entity that's not the debtor
21 needed money and the debtor had money, then Dondero
22 would have the debtor lend money to that entity on a
23 demand note basis?
24 A. So long as they have the cash available to do
25 so.

22

1 Q. "They" being the debtor?
2 A. Debtor, yes.
3 Q. And is it fair to say, then, again
4 hypothetically without any specifics, that if the
5 debtor maybe from time to time needed money and one of
6 these other entities had cash, then Dondero would cause
7 that other entity to pay down the demand note?
8 MR. MORRIS: Objection to the form of the
9 question.
10 THE WITNESS: Can you repeat that.
11 Q. (BY MR. RUKAVINA) Sure. So I think you
12 mentioned that from time to time these entities would
13 pay down these demand notes?
14 A. To the debtor?
15 Q. To the debtor.
16 A. Yes.
17 Q. And is that, hypothetically again, is that
18 because on occasion the debtor might have needed cash
19 and these entities had the cash, so Dondero would have
20 them pay back the note?
21 MR. MORRIS: Objection to the form of the
22 question.
23 THE WITNESS: Yes, that could be a reason.
24 Q. (BY MR. RUKAVINA) Can you think of any other
25 reason in those 14 years?

23

1 A. If the debtor needed cash to lend to another
2 entity.
3 Q. I see. So again, it's all one big happy
4 family, and whoever needed cash, the cash moved around;
5 correct?
6 A. Correct.
7 Q. Was it Mr. Dondero that basically was the
8 only deciding person in each instance that you're aware
9 of in those 14 years as to when a note would be made or
10 repaid?
11 A. I can't answer specifically to that. Most of
12 my direction came from our CFO at the time,
13 Frank Waterhouse. So what conversations he would have
14 with Jim Dondero, I can't answer to that. But I would
15 suspect so, yes.
16 Q. And in May of 2019 or by May of 2019, did you
17 communicate personally, by email or telephone, in
18 person, periodically with Jim Dondero?
19 A. I can't say periodically, no.
20 Q. Well, I'm not trying to put words in your
21 mouth. Is it fair to say that you kind of -- your
22 communications stopped with Mr. Waterhouse and
23 Waterhouse communicated with Dondero, as opposed to you
24 regularly communicating with Dondero?
25 A. That's typical, yes.

24

1 Q. Can you think of any instances in which
2 Mr. Dondero gave you any instructions or you came to
3 him seeking any instructions, without some intermediary
4 between the two of you?
5 A. No, usually Frank was present.
6 Q. Would you categorize Mr. Waterhouse as kind
7 of guarding with jealousy his access to Mr. Dondero?
8 MR. MORRIS: Objection to the form of the
9 question.
10 THE WITNESS: No.
11 Q. (BY MR. RUKAVINA) What kind of boss was he
12 in May of 2019? Was he laid back, or was he a jerk?
13 Was he demanding? How would you characterize him in
14 May of 2019?
15 MR. MORRIS: Objection to the form of the
16 question.
17 THE WITNESS: I would say he was a good boss.
18 Q. (BY MR. RUKAVINA) You think he was competent
19 as far as his job went?
20 A. Yes, very competent.
21 Q. Do you think he was competent as far as his
22 job went in December of 2020?
23 A. Yes.
24 Q. January 2021?
25 A. Yes.

25

1 Q. Was he patient and understanding as a boss?
2 A. Yes.
3 Q. Okay. Was he ever condescending or rude to
4 anyone in your presence?
5 A. No.
6 Q. So you're the controller today at Highland,
7 the debtor, the reorganized debtor; right?
8 A. Yes.
9 Q. And who do you report to? You mentioned
10 Mr. Klos is the CFO?
11 A. Yes.
12 Q. And do you also report to Mr. Seery?
13 A. Yes, I think everybody does.
14 Q. And I don't need to know details, but I take
15 it you're on a salary from reorganized Highland?
16 A. Yes.
17 Q. Is any part of your compensation merit or
18 bonus based?
19 A. It could potentially be.
20 Q. Have you had any discussions with Mr. Seery
21 or Mr. Klos about some sort of bonus compensation?
22 A. Yes.
23 Q. Has anything been agreed to?
24 A. Yes.
25 Q. And again, I don't need to know the exact

26

1 numbers. What would your bonus compensation consist
2 of? How would it be decided?
3 A. It's actually -- was decided when I agreed to
4 stay on the Highland team back in February 2021, so
5 it's in my employment agreement.
6 Q. So what's your bonus compensation?
7 A. I'm not sure I understand what you're asking.
8 Q. So is the bonus discretionary on the part of
9 Highland?
10 A. No, it's a set amount.
11 Q. And what triggers it or governs the set
12 amount?
13 A. Just it gets paid out on a certain date of
14 the year. It's very straightforward, set out in my
15 employment agreement.
16 Q. Is it irrespective of the performance of the
17 reorganized debtor?
18 A. Yes.
19 Q. So why do you call it a bonus instead of base
20 compensation?
21 A. That's what it's called in my agreement.
22 Q. So your base compensation and your bonus,
23 it's your testimony, you're going to earn it
24 irrespective of whether reorganized Highland does good
25 or bad with respect to its profitability?

27

1 A. Correct.
2 Q. And how Highland, reorganized Highland
3 collects these promissory notes is going to play no
4 part in your base and bonus compensation to your
5 understanding; is that correct?
6 A. To my knowledge, yes.
7 Q. So you have no direct or indirect stake in
8 the outcome of these litigations?
9 A. No.
10 Q. And you understand that I represent HCMFA and
11 NexPoint?
12 A. Yes.
13 Q. And these court reporters are not familiar
14 with some of our terminology. NAP [verbatim], if we
15 say that, that means NexPoint; right?
16 A. Uh-huh.
17 Q. You have to say yes or no.
18 A. Yes, NPA, NexPoint.
19 Q. NPA. And when we say NexPoint, you and I are
20 meaning NexPoint Advisors, LP; right?
21 A. Yes.
22 Q. And when we say HCMFA, we're meaning Highland
23 Capital Management Fund Advisors, LP, yes?
24 A. Yes.
25 Q. What is your understanding of the two

28

1 lawsuits, the one against HCMFA and the one against
2 NexPoint, that you're being deposed on today?
3 MR. MORRIS: Objection to the form of the
4 question.
5 Q. (BY MR. RUKAVINA) Who is suing who and for
6 what?
7 A. I don't know all the details.
8 Q. So we've established that you've discussed
9 these lawsuits in the last week or a little bit more
10 with legal counsel. I don't want to talk about that.
11 Prior to these recent discussions, did you
12 have any discussions with anyone at Highland about its
13 lawsuits against HCMFA and NexPoint on promissory
14 notes?
15 A. Repeat that again.
16 Q. Sure. So remember we're excluding the recent
17 discussions in the last week or 10 days with counsel;
18 right?
19 A. Okay.
20 Q. Are you aware that in January of 2021 the
21 debtor sued NexPoint to collect on a promissory note?
22 A. I'm aware that demand notices were sent.
23 Q. So until recently you weren't aware that a
24 lawsuit had been filed?
25 A. There's a lot of lawsuits filed. I can't

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1 keep track of what is what or what we're talking about
2 at certain times.
3 Q. But you have no distinct memory of that?
4 A. Correct.
5 Q. And same question for the lawsuit that the
6 debtor filed against HCMFA in January.
7 Do you have any specific memory of that
8 lawsuit having been filed?
9 A. Not specifically.
10 Q. You mentioned that you're aware that on or
11 before January 2021, demand letters had been sent?
12 A. Yes.
13 Q. Did you play any role in either drafting
14 those demand letters or the decision to send them?
15 A. No.
16 Q. So going back to my question about these
17 lawsuits, do you have any memory of anyone asking
18 you -- again, excluding the last week or two.
19 Do you have any memory of anyone asking you
20 to do anything with respect to either or both of these
21 lawsuits?
22 A. No.
23 Q. You have no memory of Mr. Waterhouse,
24 Mr. Klos, Mr. Surgent, or Mr. Seery asking for any
25 background information or your input at all on these

30

1 two lawsuits?
2 MR. MORRIS: Better not have been --
3 THE WITNESS: No.
4 Q. (BY MR. RUKAVINA) Who did I say? Did I
5 misspeak? Okay.
6 Now we're going to have some exhibits here.
7 And do you have the labels?
8 Let's take a minute break off the record.
9 (Off the record.)
10 Q. (BY MR. RUKAVINA) Ms. Hendrix, I'm going to
11 provide to you a promissory note in the original
12 principal amount of $5 million from HCMFA. This is the
13 PDF version of this as filed with the Court for
14 collection. It's going to be Exhibit 1.
15 (Whereupon, Exhibit 1 was marked for
16 identification.)
17 Q. (BY MR. RUKAVINA) Before you look at
18 Exhibit 1, I'm going to do the same thing for
19 Exhibit 2, which is a promissory note from HCMFA for
20 $2.4 million, dated May 2, 2019.
21 (Whereupon, Exhibit 2 was marked for
22 identification.)
23 Q. (BY MR. RUKAVINA) Again, Ms. Hendrix, these
24 are the PDF versions of these notes as filed with the
25 Court. Sitting here today, do you remember anything

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1 about either or both of these two promissory notes?
2 A. Sure, yes.
3 Q. What do you remember?
4 A. I remember seeing them because I've recently
5 looked at them. I see them all the time in our loan
6 tracking spreadsheets. My team would have been
7 responsible for the whole process that I explained
8 before when it comes to a promissory note.
9 Q. And --
10 MR. MORRIS: Are you finished?
11 THE WITNESS: Yes.
12 Q. (BY MR. RUKAVINA) And we have an email here
13 that might give some more context to that if I can find
14 it here.
15 This will be Exhibit 3. This is an email
16 from David Klos to corporate accounting dated May 2,
17 2019.
18 (Whereupon, Exhibit 3 was marked for
19 identification.)
20 Q. (BY MR. RUKAVINA) Do you see this email,
21 ma'am?
22 A. Yes.
23 Q. Okay. Corporate accounting, would that email
24 group have included you?
25 A. Yes.

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1 Q. And this email says, Kristin, can you or
2 Hayley. Do you think that Kristin was you?
3 A. I do.
4 Q. Do you remember receiving this email?
5 A. Not explicitly.
6 Q. So it says Blair. Who would Blair be?
7 A. Blair was our AP associate.
8 Q. What is her last name?
9 A. At this time it would have been Roeber,
10 R-o-e-b-e-r.
11 Q. Okay. And did it subsequently change?
12 A. Yes, it's now Hillis, H-i-l-l-i-s.
13 Q. Please send $2.4 million from HCMLP to HCMFA.
14 This is a new interco loan. Kristin, can you or Hayley
15 please prep a note for execution. I'll have further
16 instructions later today, but please process this
17 payment as soon as possible.
18 Did I read that correctly?
19 A. Yes.
20 Q. Do you have any memory of whether this email
21 relates to Exhibit 2, the $2.4 million promissory note?
22 A. It seems like it does, same date, same
23 amount.
24 Q. Do you have any memory, or in reviewing your
25 files did you see any similar email or document that

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1 would have related to Exhibit 1, the $5 million
2 promissory note?
3 A. Yes. I believe there's another email for
4 that one.
5 Q. And do you believe that you provided that to
6 counsel?
7 A. Yes.
8 Q. Recently or some time ago?
9 A. Well, I don't think I provided it, so I'm not
10 sure when they got it. I know it has been provided.
11 Q. You know that it has?
12 A. Uh-huh.
13 Q. How do you know?
14 A. Because I've seen it.
15 Q. In the production that was produced to me?
16 A. Yes.
17 Q. And also from a David Klos?
18 A. This one, or on the -- when I say this one,
19 on the $2.4 million or the 5-?
20 Q. On the $5 million note.
21 A. I'm not sure.
22 Q. Okay. Let me make sure I understand you
23 correctly.
24 Sitting here today you believe that there is
25 another email referencing the $5 million loan that has

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1 been produced to my office?
2 A. Yes. I believe so.
3 Q. Okay. And going off memory, did it kind of
4 say the same thing as this Exhibit 3 except that it
5 referenced $5 million?
6 MR. MORRIS: Objection to the form of the
7 question.
8 THE WITNESS: Generally, should have said the
9 similar situation, yeah.
10 Q. (BY MR. RUKAVINA) So Mr. Klos says, this is
11 a new interco loan, for Exhibit 3. Other than what he
12 told you, that this is an intercompany loan, did anyone
13 else tell you or did you have any other information on
14 May 2, 2019 that this was a loan?
15 A. I don't specifically recall these
16 conversations, but I can tell you our normal practice
17 would be we would either likely be in a cash meeting --
18 and I say "we." Would have been myself, Dave Klos,
19 Frank Waterhouse, potentially even Jim Dondero.
20 But I don't recall conversations on this
21 specific date. But general practice is we would talk
22 about it.
23 Oftentimes, Frank would either call Dave or I
24 or stop by and tell us that, we need to send money to
25 an affiliate, paper up a new loan, let's get a wire out

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1 the door, is typically how this works.
2 Q. Is the answer generally the same for the
3 $5 million note?
4 A. Yes.
5 Q. So is it fair to say that typically,
6 obviously not every time, but typically your corporate
7 accounting group when it would see intercompany
8 transfers in large amounts would believe that they were
9 loans?
10 MR. MORRIS: Objection to the form of the
11 question.
12 THE WITNESS: Typically they were loans.
13 There's not really another way to get money from one
14 entity to another. And if they were papered as a loan,
15 that means we were told to set it up that way.
16 Q. (BY MR. RUKAVINA) What do you mean papered
17 as a loan? Aren't you papering it as a loan when
18 someone makes the promissory note?
19 A. Yes, because we're told by somebody to do
20 that.
21 Q. And in this instance, Mr. Klos on Exhibit 3
22 told the group that this was a loan; right?
23 A. Correct. But he would have spoken with
24 Frank Waterhouse or Jim Dondero prior to that, before
25 telling anybody to do that.

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1 Q. Okay. And do you have any knowledge that he
2 did speak to Mr. Waterhouse or Mr. Dondero before
3 sending this email?
4 A. Again, I don't have specific knowledge on the
5 exact conversations, but that's always how it has
6 worked.
7 Q. That's how it was for 14 or 15 years;
8 correct?
9 A. Yes.
10 Q. But you're logically assuming that it
11 happened here. You don't know that it happened here;
12 correct?
13 MR. MORRIS: Objection to the form of the
14 question.
15 THE WITNESS: I would have to be fairly
16 certain that it did, even though I can't recall
17 specific conversations.
18 Q. (BY MR. RUKAVINA) Did you ask Mr. Klos about
19 who told him that this is a new intercompany loan on
20 Exhibit 3?
21 A. No. It's quite possible I was involved in
22 the conversation. I reported to him. I wouldn't
23 question his authority.
24 Q. Did you ask Mr. Klos who told him that the
25 $5 million deal was also an intercompany loan?

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A. I did not ask that specific question that I can recall.
Q. Did you ask Mr. Waterhouse whether either of these transactions were loans?
A. I'm sure Mr. Waterhouse is the one that told us they were loans. We wouldn't just paper up a loan, send money out and call it a loan and account for it that way, unless somebody specifically told us.
Q. Do you have any memory of Mr. Waterhouse orally or in writing or email or in any way, shape, or form on or about May 2 or 3, 2019 telling you that the 2.4 million or $5 million transfers were intercompany loans?
A. No specific knowledge of exact conversations, but I'm certain that those conversations were had because that's the only way that we would have papered up a loan, sent money out as a loan, had them on our financials for two years.
Q. So you're saying that this email, Exhibit 3, from Mr. Klos was not enough, that there would have been other things that happened to make you and other people in your group confident that these were loans?
A. Yes.
Q. And these other things would have been in person or by email?

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A. Most likely in person via phone call.
Q. Okay. So again, you have no specific memory of it, but based on the 14-year pattern and conduct you believe that you would have discussed these two transfers with Mr. Waterhouse and he would have told you these are loans?
MR. MORRIS: Objection to the form of the question.
THE WITNESS: Correct.
Q. (BY MR. RUKAVINA) And then would he have told you to take care of the promissory notes, or was that Mr. Klos here in Exhibit 3?
A. It could have been both. It's clearly Dave in this email, but Frank could have also said that to me.
Q. Now, do you -- strike that.
In May of 2019, did you know or were you told why these $7.4 million were being transferred from the debtor to HCMFA?
A. Yes. I do have recollection that -- I do know that there were two big events in May 2019. 2.4 million was related to a TerreStar NAV error, with one of the funds advised by HCMFA. That's Global Allocation Fund.
Similar with the $5 million loan. There was

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a consent fee that the advisor of the Global Allocation Fund had promised to pay to shareholders of that fund, and it was in the amount of $5 million roughly.
So both of these loans were for those purposes respectfully.
Q. And were you in May of 2019 also aware that in addition to the $2.4 million, there was another more than $5 million paid to that fund by HCMFA's insurer as compensation for the NAV error?
A. By the insurance company, yes.
Q. So the $7.4 million, you understood then was a loan as opposed to compensation to HCMFA?
A. Yes.
Q. Okay. Did you understand in May of 2019 that it had been the debtor and its valuation team that caused that NAV error?
MR. MORRIS: Objection to the form of the question.
THE WITNESS: I can't answer that. I was not involved with the activities leading up to the NAV error.
Q. (BY MR. RUKAVINA) How do you know that the $7.4 million were being transferred for the NAV error and consent fee?
A. Because I do know about both of those

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instances and I do know that HCMFA needed to pay these dollar amounts for both of those.
Q. And you knew that in May of 2019?
A. Yes.
Q. How did you know that in May of 2019?
A. It was lots of discussions had been going on around both of these issues for months. These weren't surprises to anybody.
Q. So although you weren't involved directly with the NAV error issues, it was more or less common knowledge in your accounting group?
A. Correct.
Q. Do you have any knowledge at all as to whether Mr. Dondero decided to transfer these $7.4 million not as a loan, but to compensate HCMFA for the debtor's alleged liability?
A. Have not heard of that.
Q. Ever?
A. Never.
Q. But you also never heard Mr. Dondero say that these $7.4 million were a loan; correct?
A. That was not told to me directly.
Q. Again, you're logically assuming that based on many instances of intercompany transfers in the 14 years prior to that?

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1 MR. MORRIS: Objection to the form of the
2 question. Mischaracterizes the testimony.
3 THE WITNESS: Correct.
4 Q. (BY MR. RUKAVINA) I think you answered
5 correct?
6 A. Correct.
7 Q. And you mentioned that after these notes, you
8 saw them on internal financials and that reinforces
9 your view that these were loans?
10 A. Correct.
11 Q. But as of May 2 and 3, 2019, no one had told
12 you directly that these are loans?
13 MR. MORRIS: Objection to the form of the
14 question. It's in writing.
15 THE WITNESS: That's not what I'm saying at
16 all.
17 Q. (BY MR. RUKAVINA) Other than Mr. Klos' email
18 or emails, no one told you on May 2 or May 3, 2019 that
19 you remember today that these were loans?
20 A. It quite possibly could have been told to me
21 in addition to this email.
22 Q. I understand. You just have no memory of
23 that today; correct?
24 A. Correct.
25 Q. Is there anything that you can think of

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1 sitting here today to refresh your memory on that
2 point?
3 A. I do not think so. I'm sure there was
4 conversation that unfortunately would not be in an
5 email.
6 Q. Now, we have the Word documents, the Word
7 version of these two promissory notes, and you're going
8 to have rely on me that I printed these out as
9 Mr. Morris sent to me. If I'm misleading you on that,
10 then I'm in trouble and your answers don't count.
11 So please assume that I didn't doctor these
12 and that I printed them out as they were prepared to
13 me; okay?
14 A. Yes.
15 Q. So Exhibit 4 will be the $5 million note and
16 Exhibit 5 will be the 2.4 million.
17 (Whereupon, Exhibits 4 & 5 were marked for
18 identification.)
19 Q. (BY MR. RUKAVINA) Before I ask about 4 and
20 5, to be fair to you and refresh your memory, I'm going
21 to provide you printouts of the metadata, metadata --
22 I'm not sure how to better say that -- for both notes.
23 And again I'm representing to you that I
24 printed out the metadata without doctoring it, so
25 please assume that's true, and if it's not, your

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1 answers don't count and I'm in trouble.
2 6 will be the $5 million note, and 7 will be
3 the $2.4 million note.
4 (Whereupon, Exhibits 6 & 7 were marked for
5 identification.)
6 Q. (BY MR. RUKAVINA) Okay. So Exhibit 4 and 5
7 are the Word documents. Do you have any memory of you
8 doing anything with respect to these two Word
9 documents?
10 A. I don't have specific memory, but generally
11 speaking, it was my job to update promissory note
12 templates and create promissory notes.
13 Q. So do you believe that -- we discussed
14 earlier that your group would have used a template and
15 that it would have made changes reflecting the maker,
16 amount, date, interest rate.
17 Do you believe you were the one with respect
18 to 4 and 5 that updated that template to create 4
19 and 5?
20 A. I'm sure that I was, yes.
21 Q. Well, Exhibit 6 -- do you know what metadata
22 is?
23 A. Sort of.
24 Q. What's your understanding of what metadata
25 is?

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1 A. Just in context from speaking on it recently,
2 it's going to tell you who made changes to the
3 documents, is what I would assume.
4 MR. RUKAVINA: Go off the record for one
5 second.
6 (Off the record.)
7 Q. (BY MR. RUKAVINA) So a little bit of error
8 on my part. We'll have some more metadata, but we can
9 still talk about 6 and 7.
10 It says the author JFORSHEE, J-F-O-R-S-H-E-E.
11 Do you recall or do you know who that person was?
12 A. I recognize the name, and it makes sense.
13 This says Strasburger is the company. I think he was
14 one of the lawyers that we had used at some point in
15 time.
16 Q. Strasburger is a law firm?
17 A. Yes.
18 Q. And then it says, so Exhibit 6 created May 3,
19 Exhibit 7 created May 2, modified, accessed. Does that
20 to the best of your understanding comport with when
21 Exhibits 4 and 5 were actually created?
22 A. Can you repeat that.
23 Q. Yeah. We'll wait for the rest of the
24 metadata. But let's go back to 4 and 5.
25 In and by May 2019 I think you mentioned that

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1 it was your job to, I think you said update promissory
2 notes?
3 MR. MORRIS: Objection to the form of the
4 question.
5 Q. (BY MR. RUKAVINA) Let me take that question
6 back.
7 You testified earlier that your group would
8 have taken a template and used it to create or prepare
9 a new promissory note; right?
10 A. Right.
11 Q. How would you call that process? What word
12 would you use for that process?
13 A. Let's call it papering the loan.
14 Q. In May of 2019, was it your job to paper the
15 loan?
16 A. Yes.
17 Q. Would anyone else at the corporate accounting
18 group have been responsible to paper a loan?
19 A. At that time, I don't think so. I think I
20 was the one doing it.
21 Q. I think you mentioned that you think you
22 papered the loan, respecting Exhibits 4 and 5; correct?
23 A. Correct.
24 Q. You have no distinct present memory of
25 papering 4 and 5; correct?

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1 A. Correct.
2 Q. Can you think of anyone else at the corporate
3 accounting group that would have papered 4 and 5?
4 MR. MORRIS: Objection to the form of the
5 question.
6 THE WITNESS: The only other person that
7 could have would either be Dave Klos or Hayley Eliason.
8 Q. (BY MR. RUKAVINA) What was Hayley's role in
9 May of 2019?
10 A. She was the accountant. I can't recall her
11 specific title.
12 Q. Now, in May of 2019 when you papered a loan,
13 would you have consulted with either internal or
14 external legal before finishing that loan or presenting
15 it for signature or anything else?
16 A. Not if it was just our standard demand note
17 that we already had a template on.
18 Q. So would it have been your general course in
19 May of 2019, if you prepared Exhibits 4 and 5, not to
20 seek advice from internal or legal before proceeding
21 with these notes?
22 A. With these two specific notes?
23 Q. Yes.
24 A. Yes.
25 Q. If we flip the page, I'll represent to you

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1 that Mr. Waterhouse's signature there appears on the
2 Word document as an image.
3 A. Uh-huh.
4 Q. Do you have any memory of whether there was
5 an image that someone would have affixed of
6 Mr. Waterhouse's signature to promissory notes?
7 A. Yes. We typically always -- he was
8 completely fine with having documentations -- sorry,
9 having documents signed or executed with his
10 e-signature.
11 Q. Would these pictures of his signature have
12 been his e-signature in May of 2019?
13 A. Yes.
14 Q. So let's just clarify that because I don't
15 want there to be any confusion.
16 I know there's some computer programs out
17 there that are restrictive and have passwords before
18 any signature is printed. And then there's some people
19 that use a stamp or an image; right?
20 MR. MORRIS: Objection to the form of the
21 question.
22 Q. (BY MR. RUKAVINA) Are you following me?
23 A. I follow you.
24 Q. In May of 2019, did Mr. Waterhouse have any
25 specific program that would have to -- you would have

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1 to go through before it would spit out his e-signature,
2 or was he fine with you and his staff using an image
3 like this?
4 A. He was fine with using his e-signature, and
5 what is on these documents was that exact e-signature.
6 So I don't know if he had -- I don't know how it was
7 created originally.
8 Q. The e-signature?
9 A. E-signature.
10 Q. Do you have any memory with respect to
11 Exhibits 4 and 5 of getting Mr. Waterhouse's specific
12 approval to use his e-signature?
13 A. I don't have exact specific memory, same as
14 conversations on these loans. But he would have had to
15 approve this loan in the dollar amount, the day.
16 He would have been the one directing us to
17 create these loans. In past practice he has always
18 approved using his e-signature to execute documents.
19 Q. How would he have approved Exhibits 4 and 5?
20 By that, I mean by email or memorandum? How would he
21 have approved it in May of 2019?
22 MR. MORRIS: Objection to the form of the
23 question.
24 THE WITNESS: I would assume that, as I've
25 stated previously, these directions were coming

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1 directly from him to paper a loan. These changes that
2 are made are only to the dollar amount. Interest rate
3 is pulled right off the IRS website.
4 That is his approval to paper a loan and in
5 fact execute or approve the loan.
6 **Q. (BY MR. RUKAVINA) In May of 2019, would**
7 **Mr. Waterhouse -- what was his practice as far as using**
8 **an ink signature on documents as opposed to an**
9 **e-signature? Did he have a practice?**
10 **MR. MORRIS:** Objection to the form of the
11 question.
12 THE WITNESS: He has never specifically said,
13 on certain documents I would like to ink it with my
14 signature. Probably at this time, 99 percent of the
15 stuff my team got his signature on was his e-signature.
16 I think it just depended on the group and what it was.
17 **Q. (BY MR. RUKAVINA) So how would he authorize**
18 **you or your team to use his e-signature for any given**
19 **document in May of 2019?**
20 **MR. MORRIS:** Objection to the form of the
21 question.
22 THE WITNESS: Through the conversations that
23 would have been had before these emails went out saying
24 paper loan.
25 **Q. (BY MR. RUKAVINA) And -- okay. So, and**

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1 **after his e-signature was used either on these notes or**
2 **other documents in May of 2019, would you have brought**
3 **the documents back to him for any kind of verification?**
4 **MR. MORRIS:** Objection to the form of the
5 question.
6 THE WITNESS: Probably not. These are all
7 very standard. We've papered hundreds of loans. So I
8 think he trusted that we can handle updating a date and
9 a dollar amount on these loan templates.
10 **Q. (BY MR. RUKAVINA) Do you know or believe, or**
11 **your recent review of documents, did it reveal an email**
12 **from Mr. Waterhouse to you specifically authorizing his**
13 **e-signature on Exhibits 4 and/or 5?**
14 **A. Not that I recall seeing, no.**
15 **Q. Sitting here today, do you have any memory of**
16 **Mr. Waterhouse orally or otherwise specifically**
17 **authorizing you to affix his e-signature to Exhibits 4**
18 **and/or 5?**
19 **A. Specifically on these loans, no, I don't**
20 **recall those conversations. But, again, our practice**
21 **has always been we have this discussion, he's under the**
22 **understanding that we're going to paper the loans, he's**
23 **always comfortable with using his e-signature.**
24 **This is not something me or my team would**
25 **have done without that authority and approval from him.**

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1 **Q. But you have no memory of that authority or**
2 **approval, specifically for 4 and 5?**
3 **MR. MORRIS:** Objection. Asked and answered
4 about five times.
5 THE WITNESS: Same as my answer I just gave.
6 **Q. (BY MR. RUKAVINA) And I think you mentioned**
7 **that in your years at Highland your team papered**
8 **hundreds of loans?**
9 **A. Yeah.**
10 **Q. In your time at Highland, is it your**
11 **testimony that the accounting -- corporate accounting**
12 **department never made a mistake with respect to**
13 **anything that it did?**
14 **MR. MORRIS:** Objection to the form of the
15 question.
16 THE WITNESS: No, I did not say that.
17 **Q. (BY MR. RUKAVINA) Do you recall any mistakes**
18 **in your time at the corporate accounting group at**
19 **Highland that had been made, any significant mistakes?**
20 **MR. MORRIS:** Objection to the form of the
21 question.
22 THE WITNESS: Significant mistakes, not that
23 I can recall.
24 **Q. (BY MR. RUKAVINA) No accounts payable**
25 **mistakenly paid?**

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1 **MR. MORRIS:** Objection to the form of the
2 question.
3 THE WITNESS: I cannot specifically answer
4 that question with 17 years of work to recall, sorry.
5 **MR. RUKAVINA:** Just take a quick break. If
6 you need a restroom -- off the record.
7 (Off the record.)
8 **Q. (BY MR. RUKAVINA) Going back to Exhibits 4**
9 **and 5.**
10 **Mr. Waterhouse signed these promissory notes.**
11 **Is there any particular reason why he signed them as**
12 **opposed to Dondero or someone else?**
13 **A. No particular reason. He's an officer for**
14 **both companies. He's a signatory.**
15 **Q. Who decided, if anyone, to your knowledge,**
16 **that he would be the one signing the notes, these two**
17 **notes?**
18 **A. I don't know who would have decided that, but**
19 **typically if Frank specifically wanted Jim Dondero to**
20 **sign it, he would say, take it to Jim to sign.**
21 **Q. Do you have a recollection of**
22 **Mr. Dondero -- strike that.**
23 **Do you have a recollection of Mr. Waterhouse**
24 **signing other promissory notes?**
25 **A. Yes. I know for sure he has signed other**

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1 promissory notes. I can't tell you explicitly which
2 ones.
3 (Off the record.)
4 Q. (BY MR. RUKAVINA) Are you saying that in May
5 of 2019 -- strike that.
6 By May of 2019, was it not the standard
7 practice at the debtor that Mr. Dondero would sign
8 intercompany promissory notes?
9 MR. MORRIS: Objection to the form of the
10 question.
11 THE WITNESS: No, that's not standard
12 practice. Just needed to be somebody -- somebody who
13 is a signer for the entity on the incumbency
14 certificate.
15 Q. (BY MR. RUKAVINA) Was there a standard
16 practice, or did you just describe the standard
17 practice that it was someone on the incumbency
18 certificate?
19 A. That's correct, somebody on the incumbency
20 certificate. Frank is a great prospect to sign, with
21 giving direction to set loans up, send money out. Why
22 wouldn't he sign it.
23 Q. Do you have any memory sitting here today of
24 Mr. Waterhouse telling you or agreeing that he would be
25 signing these two promissory notes for HCMFA?

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1 A. Not specifically, but he didn't need to tell
2 me. He typically would tell me if he wanted Jim to
3 sign them.
4 Q. Sitting here today, do you have any memory of
5 giving Mr. Waterhouse these two promissory notes after
6 they were prepared?
7 A. I specifically don't remember walking into
8 his office and providing it to him, but he could have
9 found it on our shared drive if he wanted to.
10 Q. Do you have any memory or in your recent
11 review of documents did you see any email to the effect
12 of you sending either or both of these promissory notes
13 to Mr. Waterhouse after they were papered up?
14 A. I don't have any specific recollection,
15 again, but he had access to look at them.
16 Q. On the shared drive?
17 A. Yes.
18 Q. In May -- I'm going to ask this question
19 multiple different ways, so let's start with kind of
20 the general.
21 In May or by May of 2019, was there a
22 repository, electronic or paper, where the debtor kept
23 original promissory notes that were owed -- where money
24 was owed to it?
25 A. Original meaning paper?

55

1 Q. Well, let's go back a little bit in time.
2 Would you agree that at some point prior to
3 2019 the standard course was that paper notes were ink
4 signed?
5 MR. MORRIS: Objection to the form of the
6 question.
7 THE WITNESS: I could not tell you
8 specifically when notes were or were not ink signed.
9 Q. (BY MR. RUKAVINA) Was there any repository,
10 to the best of your recollection, as of May 2019 where
11 any ink-signed original promissory notes were kept by
12 the debtor?
13 A. No. We always would scan them in, save them
14 on our shared drive. Never had paper copies.
15 Q. So that's -- fixing to ask that question
16 next.
17 So Exhibits 4 and 5, would they even have
18 been printed after they were papered up?
19 MR. MORRIS: Objection to the form of the
20 question.
21 THE WITNESS: Possibly. Somebody could have
22 printed them.
23 Q. (BY MR. RUKAVINA) Do you remember printing
24 Exhibits 4 or 5 sitting here today?
25 A. I don't recall printing them myself, no.

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1 Q. Would there have been a reason to print them
2 out if, as you said, the notes were stored
3 electronically?
4 MR. MORRIS: Objection to the form of the
5 question.
6 THE WITNESS: There could be a reason. I
7 don't recall that I for any reason printed these
8 particular notes.
9 Q. (BY MR. RUKAVINA) So as of May 2019, is it
10 your testimony that notes that were papered up by the
11 corporate accounting group would have been saved
12 electronically on the system and not kept by way of
13 paper copies in some file?
14 A. Correct. That's right.
15 Q. This is additional metadata. And you
16 understand I have a bit of an accent.
17 What are we on?
18 (Off the record.)
19 Q. (BY MR. RUKAVINA) Ms. Hendrix, Exhibit 8 is
20 going to be additional metadata for the May 3, 2019,
21 note that we've been looking at, and Exhibit 9 will be
22 the same thing for the May 2 note that we've been
23 looking at.
24 That's 8. That's 9.
25 (Whereupon, Exhibits 8 & 9 were marked for

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1 identification.)
2 Q. (BY MR. RUKAVINA) Ms. Hendrix, I'm going to
3 represent to you again that my office has faithfully
4 printed this metadata out without doctoring or changing
5 anything, and I ask you to assume that. If I'm wrong
6 on that, then your answers don't count.
7 Ma'am, as I look at these two documents, it
8 says last modified by Kristin Hendrix.
9 Do you see that?
10 A. Yes.
11 Q. And that would have -- that could have only
12 been you; correct, in that department?
13 A. I hope so, yes.
14 Q. Seeing these two documents, can you agree
15 with me now that it was in fact you that papered up
16 Exhibits 4 and 5?
17 MR. MORRIS: Objection. Asked and answered.
18 THE WITNESS: I would assume so since my name
19 is on it, yes.
20 Q. (BY MR. RUKAVINA) Both of these documents
21 say last printed -- I'm sorry. If you see related
22 dates, it says last printed May 2, 2019, 11:27 A.M. Do
23 you have any memory or any understanding as to why that
24 date would be there or what last printed might mean?
25 A. I don't know why it says last printed the day

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1 before it was created. That doesn't make any sense. I
2 have no idea.
3 Unless, the only thing I could think of is if
4 we changed this template. When I say "this," the
5 $2.4 million loan, which was papered on the 2nd, and
6 then used it for the next day for the template to
7 update the date, possibly. I have no idea.
8 Q. Well, it may be -- and I understand that you
9 don't have any memory; we're speculating a little bit.
10 It may be, looking at Exhibits 8 and 9, that
11 the $2.4 million note was printed on May 2, and then
12 after having been used as the template for the
13 $5 million note, the $5 million note would not have
14 been printed.
15 Does that sound possible?
16 MR. MORRIS: Objection to the form of the
17 question.
18 THE WITNESS: Sure, it could be possible.
19 Q. (BY MR. RUKAVINA) But you don't have any
20 memory either way?
21 A. No. And when these were printed they're
22 printed to PDF, I believe, is probably what that means.
23 Q. Okay.
24 We're going to switch gears a little bit now,
25 if you want to make a pile of those exhibits.

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1 Obviously, you're welcome to use them anytime you need
2 to, but I think we're done with those notes.
3 Going to hand you what we're going to mark as
4 Exhibit 10, which is an email chain produced by the
5 debtor.
6 And I don't know how anyone on the video will
7 see it. I apologize. I'll have to send it to you
8 later.
9 (Whereupon, Exhibit 10 was marked for
10 identification.)
11 Q. (BY MR. RUKAVINA) Now, if you start with
12 this email chain, it starts on November 19, 2020 from
13 Jack Donohue to you, copying Mr. Seery and various
14 others.
15 Do you see that?
16 A. Yes.
17 Q. And Mr. Donohue is asking you to provide him
18 the financial records of HCMFA due to the funds owed
19 the debtor.
20 Do you see that?
21 A. Yes.
22 Q. Do you recall that email from Mr. Donohue to
23 you?
24 A. Yes.
25 Q. Do you recall any context or subsequent

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1 discussions or how that email came to be, or do you
2 just recall getting that email?
3 A. I just recall getting the email.
4 Q. You write back, hi Jack, Scott Ellington is
5 going to follow up with the board on this request.
6 Do you see that?
7 A. Yes.
8 Q. Do you recall why you told Jack that
9 Mr. Ellington was going to follow up?
10 A. From what I recall, I had asked Frank
11 Waterhouse if it was okay to send these financials
12 over, and he wanted me to check with Scott Ellington
13 and that was Scott's response.
14 Q. And did he tell you why he wanted you to
15 check with Scott Ellington?
16 A. Just to make sure that there were no issues
17 with sending them over.
18 Q. Mr. Seery writes back, can I get this ASAP.
19 HCMFA is way overdue.
20 Do you see that?
21 A. Yes.
22 Q. And Mr. Seery writes again, it's about a week
23 later, and he says, this is an explicit direction from
24 me as CEO of HCMLP. But it looks like you are the
25 recipient of that December 2 email; correct?

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1 A. Yes.
2 Q. Do you remember him sending you that email
3 and copying those people?
4 A. Yes.
5 Q. Do you remember anything happening in that
6 week between his November 25 and December 2 email along
7 the same discussion lines?
8 A. I don't remember anything. I think I was
9 probably left out of any discussions, and if there were
10 any, it was with Scott Ellington and whomever he had
11 discussions with.
12 Q. Then subsequent, on December 2, Mr. Seery
13 writes, all, Scott and I have spoken and agree that the
14 information should be provided to James immediately.
15 Would that have been James Romey, do you
16 think?
17 A. Yes.
18 Q. And who was James Romey?
19 A. He also worked for DSI.
20 Q. And then he writes, Kristin, please proceed
21 with James. If anyone has any questions or issues,
22 please call me.
23 Do you see that?
24 A. Yes.
25 Q. Did you proceed with James Romey?

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1 A. I further made sure that Scott was okay, to
2 confirm. He said yes, please do, and I did send them
3 to James Romey.
4 Q. So Mr. Seery has some of it in this email
5 chain, but do you have any understanding as to why
6 either DSI or Mr. Seery in November of 2020 was asking
7 for the financial records of HCMFA?
8 A. I do not, other than what's in this email.
9 Q. Did you discuss with either DSI or Mr. Seery
10 or Mr. Waterhouse in November or December 2020 whether
11 the demand notes from HCMFA should be demanded, should
12 be called?
13 A. I did not have discussions.
14 Q. Next exhibit is Exhibit 11. This is another
15 email chain.
16 And I apologize to the folks on the video.
17 I'll have to get it to you during some break.
18 MR. MORRIS: Hold on one second.
19 MR. RUKAVINA: Sure. Off the record.
20 (Off the record.)
21 (Whereupon, Exhibit 11 was marked for
22 identification.)
23 Q. (BY MR. RUKAVINA) Exhibit 11, Ms. Hendrix,
24 if you'll go to the beginning of this email chain, is
25 an email on January 6, 2021, again from Mr. Donohue to

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1 you, copying Waterhouse, Seery, a bunch of others.
2 Where he says, at the direction of Jim Seery,
3 please provide DSI with the requested information for
4 each entity below.
5 And you'll see the entity includes both of my
6 clients, NexPoint Advisors and HCMFA. And the
7 information includes bank statements, income
8 statements, balance sheets, cash flows.
9 Do you see that?
10 A. Yes.
11 Q. Do you recall this email?
12 A. Vaguely, yes.
13 Q. Did you have any concerns when you received
14 this email?
15 A. Concerns about the email, no. I probably
16 checked with -- I would have checked with Frank to make
17 sure it was okay to send this first.
18 Q. Frank Waterhouse?
19 A. Yes.
20 Q. Do you have any understanding as to why
21 Mr. Donohue requested bank statements, income
22 statements, balance sheets for NexPoint and/or HCMFA?
23 A. I do not.
24 Q. Did he or anyone at DSI tell you why they
25 were requesting that?

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1 A. Not that I can recall.
2 Q. If we go forward in time, you'll see that
3 Mr. Waterhouse is writing back to Mr. Donohue. And
4 then Mr. Seery interjects and says, these are HCMLP
5 business records. Please provide them as requested by
6 Jack ASAP.
7 Do you see that?
8 A. Yes.
9 Q. And it looks like you were not privy to
10 subsequent communications where Frank and Jim were
11 talking back and forth about this. You were not privy
12 to those, like you weren't blind copied or anything to
13 your recollection?
14 A. No.
15 Q. Did you in fact on or after January 6, 2021,
16 provide Mr. Donohue or anyone on his team the
17 information that he had requested as it relates to
18 NexPoint and/or HCMFA?
19 A. Without going back to check, I couldn't
20 answer yes or no for certain.
21 Q. So I think you mentioned when you received
22 the email from Mr. Donohue you would have checked with
23 Frank. And what do you remember asking Frank or
24 checking with him about?
25 A. I don't remember asking him specifically. In

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1 fact, it's possible that Frank just responded on his
2 own here to Jack. Again, would have been a
3 conversation that I can't specifically recall.
4 Q. Sure. And you don't specifically remember
5 today providing Mr. Donohue any of that information;
6 right?
7 A. Right.
8 Q. You don't specifically remember today having
9 a discussion with Mr. Donohue or Seery or anyone else
10 at or about that time as to why they were wanting this
11 information?
12 A. Correct.
13 Q. Exhibit 12, Ms. Hendrix, is going to be the
14 December 3, 2020, letter by which Highland called the
15 notes.
16 MR. MORRIS: Objection to the form of the
17 question if there was one.
18 (Whereupon, Exhibit 12 was marked for
19 identification.)
20 Q. (BY MR. RUKAVINA) Are you familiar with
21 Exhibit 12, Ms. Hendrix?
22 A. No, I haven't seen this.
23 Q. Prior to today, you don't remember seeing
24 this?
25 A. No.

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1 Q. I think you're answering no?
2 A. No, sorry, no.
3 Q. On or before December 3, 2020, did anyone
4 discuss with you whether Highland should call the
5 demand notes that were outstanding by HCMFA?
6 A. No.
7 Q. Do you recall in December 2020 any discussion
8 with anyone at the debtor about the NexPoint
9 $30.7 million term note?
10 A. Repeat your question again, please.
11 Q. Sure. So you're familiar, and we'll talk
12 about it in some detail, with the NexPoint
13 $30.7 million note?
14 A. Yes.
15 Q. And again, we'll talk about it, but at that
16 point in time that was a term note; correct?
17 A. Correct.
18 Q. Do you remember in the December 2020 or
19 November 2020 time frame discussing with anyone at the
20 debtor the status of that NexPoint note?
21 A. Yes, we would have discussed this on a weekly
22 basis in our cash meetings that we would have had, as
23 identifying that there are payments due on these loans
24 in December.
25 Q. What weekly cash meetings are you referring

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1 to?
2 A. We had a standing weekly cash meeting with
3 Frank Waterhouse, myself, Jim Seery. I can't recall
4 everyone on it. Some of the DSI folks. We go through
5 cash forecasts. It's a 13-week cash forecast. We go
6 through it every week.
7 It's going to lay out incoming and outgoing
8 payments that are forecasted, of which these term loans
9 were in those forecasts, so they were discussed.
10 Q. And Mr. Morris produced some of those to me
11 this morning. I haven't had time to go through them.
12 But it is your recollection in November and
13 December of 2020 the fact of the NexPoint term note
14 being out there was known to Mr. Seery?
15 A. Yes.
16 Q. And the fact of an upcoming December 31,
17 2020, payment was known to Mr. Seery?
18 A. Yes.
19 Q. So with that background, in November and
20 December of 2020, do you remember discussing with
21 anyone anything to the effect of, oh, it really would
22 be better if NexPoint defaulted on that note so we
23 could call it?
24 A. No.
25 Q. Did Mr. Seery ever state to you anything in

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1 November or December of 2020 about how the debtor might
2 monetize that NexPoint note?
3 A. No.
4 Q. Did he discuss with you any potential sale of
5 that promissory note?
6 A. No.
7 Q. Did DSI ever discuss with you in November or
8 December 2020 any potential sale of that note?
9 A. No.
10 Q. Or how to monetize that note?
11 A. No.
12 Q. So -- well, strike that.
13 Did Mr. Seery or anyone at DSI, or anyone at
14 all, in November or December of 2020 state any words to
15 you to the effect that they were hoping that NexPoint
16 would default on that note?
17 A. Never.
18 Q. Or that it would be in the debtor's interest
19 for NexPoint to default on that note?
20 A. No.
21 Q. In November or December of 2020, do you
22 recall having any discussions with Mr. Seery or anyone
23 at DSI as to the collectibility of that note? And by
24 that I mean whether NexPoint can pay the note?
25 A. I don't specifically recall. It most likely

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1 came up in cash conversations.
2 Q. I think you were assistant controller back
3 then?
4 A. Yes.
5 Q. Would a discussion of a borrower's ability to
6 repay have been something within your general sphere of
7 responsibility in that time frame?
8 MR. MORRIS: Objection to the form of the
9 question.
10 THE WITNESS: It depends on who the borrower
11 is, and at that time we did -- we had knowledge over
12 that information, so yes.
13 Q. (BY MR. RUKAVINA) Well, you've seen some
14 instructions or requests from Mr. Seery to you and DSI
15 to you for financial information of NexPoint and HCMFA.
16 We've gone through those documents; right?
17 A. Yes.
18 Q. Does that refresh your memory that there was
19 any internal discussion that you were privy to about
20 the ability of HCMFA and/or NexPoint to pay these
21 notes?
22 A. I don't recall that specifically being asked.
23 It could have.
24 Q. Did you ever at any point in time have any
25 employment or officer or any title or role with

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1 NexPoint Advisors, LP?
2 A. No.
3 Q. Were you ever the controller or assistant
4 controller for NexPoint Advisors LP?
5 A. No.
6 Q. Did you ever at any point in time have any
7 employment, officer or any title or role at HCMFA?
8 A. No.
9 Q. Were you ever the controller or assistant
10 controller of HCMFA?
11 A. No.
12 Q. So you might have indirectly provided
13 services to those two as part of shared services, but
14 never directly; is that fair?
15 MR. MORRIS: Objection to the form of the
16 question.
17 THE WITNESS: When you say never directly,
18 meaning I was not employed by those entities?
19 Q. (BY MR. RUKAVINA) Correct.
20 A. That's correct.
21 Q. Do you have any understanding -- first of
22 all, NexPoint did not make a payment on December 31,
23 2020; correct?
24 A. Correct.
25 Q. Okay. Do you have any understanding of why

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1 not?
2 A. Yes.
3 Q. What's your understanding?
4 A. Either November 30 or December 1, 2020, I
5 received a phone call from Frank Waterhouse that said,
6 no payments are going from any of the Advisors to
7 Highland.
8 Q. Can you be more specific with what he said?
9 A. That's what he said.
10 Q. So he said no payments from the Advisors to
11 Highland?
12 A. Yes.
13 Q. Did he reference the promissory note
14 expressly?
15 A. No.
16 Q. But no payments means?
17 A. Nothing.
18 Q. That would logically in your mind include the
19 promissory note?
20 A. Yes.
21 Q. Did you ask him why?
22 A. No.
23 Q. Did he tell you why?
24 A. No.
25 Q. Did you, prior to January 1, 2021, did you

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1 hear from anyone as to why Mr. Waterhouse gave that
2 instruction?
3 A. Not that I recall.
4 Q. Did you, after that November 30 or December 1
5 phone call, did you follow up with him or anyone else
6 about the upcoming note payment?
7 A. I didn't have any reason to.
8 Q. I'm going to -- let me find you a document
9 for a moment.
10 Just so the record is complete, let's include
11 this promissory note. It's going to be Exhibit 13.
12 This is the NexPoint promissory note.
13 (Whereupon, Exhibit 13 was marked for
14 identification.)
15 Q. (BY MR. RUKAVINA) I take it you've seen this
16 promissory note, Exhibit 13?
17 A. Yes.
18 Q. And I think you testified about this before,
19 but just to summarize to save time.
20 This would have been a note that you would
21 not have papered but would have gone through legal
22 because it was a roll-up. Is that generally accurate?
23 A. Yes.
24 Q. And do you have any memory at all of having
25 anything to do with papering up this loan?

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1 A. Not that I recall.
2 Q. Would you have had, after 2017 and before
3 2021, any role with respect to any payments or upcoming
4 payments on this note, any role at all?
5 A. Yes.
6 Q. What would have been your role or roles?
7 A. That would have been taking direction from
8 Frank Waterhouse or possibly Jim Dondero saying, go
9 ahead and make these payments that are due on these
10 term notes.
11 Q. Would you have recorded on any books or
12 records payments that actually were made?
13 A. Not me personally.
14 Q. Who would have?
15 A. Our accountant, which could have been one of
16 two different people, depending on the time frame.
17 Q. Would you have had any role with respect to
18 recording those payments or is that just something that
19 your group would have done?
20 MR. MORRIS: Objection to the form of the
21 question.
22 THE WITNESS: I would not have had a role.
23 My group would have.
24 Q. (BY MR. RUKAVINA) What about calculating
25 amortization and/or interest payments that are due or

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1 upcoming? Who would have done that, you or someone
2 else?
3 A. Our accountant.
4 Q. Do you have any memory of doing that?
5 MR. MORRIS: Objection to the form of the
6 question.
7 THE WITNESS: Not during 2017 through 2019.
8 Q. (BY MR. RUKAVINA) What about 2020?
9 A. No.
10 Q. Going back to that November 30 or December 1
11 telephone call, do you recall who initiated the call?
12 A. To me?
13 Q. The one between you and Mr. Waterhouse.
14 A. Frank called me.
15 Q. Frank called you.
16 And was it just to discuss -- or just to give
17 you that instruction, no payments from the Advisors, or
18 was there other things discussed?
19 A. I could not tell you if something else was
20 discussed on that phone call.
21 Q. Do you remember if it was a long phone call
22 or short?
23 A. Couldn't tell you.
24 Q. Do you remember where you were when he called
25 you?

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1 A. At my house.
2 Q. Did you answer on a cell phone or landline?
3 A. My cell phone.
4 Q. Is there any chance in hell that your cell
5 phone would still have a record of that phone call,
6 like what time it was and how long it lasted?
7 MR. MORRIS: Objection to the form of the
8 question.
9 Q. (BY MR. RUKAVINA) I apologize for using
10 hell.
11 MR. MORRIS: And to foundation.
12 THE WITNESS: I have no idea.
13 Q. (BY MR. RUKAVINA) Do you have your cell
14 phone with you right now?
15 A. In the other room.
16 Q. I might ask you during the break to just --
17 we'll take a short break before I'm done, and I'll ask
18 you if you've had a chance to look for November and
19 December 2020 phone logs between you and
20 Mr. Waterhouse. I would ask you to do that, please.
21 A. Sure.
22 Q. And I apologize, I think you said you thought
23 it was a short telephone call?
24 A. I have no idea.
25 Q. Did the telephone call or Mr. Waterhouse's

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1 instructions surprise you in any way?
2 A. Nothing surprises me anymore, so no.
3 Q. Did it surprise you back in November or
4 December of 2020?
5 A. No.
6 Q. Did it pique your curiosity?
7 A. Nope.
8 Q. Just another instruction from your boss?
9 A. Yep.
10 Q. Exhibit 14 is going to be a document that
11 we're not sure what it is and we're not sure who
12 prepared it. It appears to be a ledger of charges
13 against and payments on this promissory note.
14 I'm just saying that so the people on the
15 phone know what it is, but you don't have to take what
16 I said as correct.
17 (Whereupon, Exhibit 14 was marked for
18 identification.)
19 Q. (BY MR. RUKAVINA) So Ms. Hendrix, Exhibit 14
20 was produced by the debtor. And I'm going to ask you,
21 do you know what this is or have you seen it before?
22 Can you help us state what it is?
23 A. This looks like it is an amortization
24 schedule of the NexPoint Advisors term loan.
25 Q. Would this have been something that it

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1 appears to you would have been maintained internally by
2 the debtor, or does it look like it might have been
3 prepared by DSI or someone else for some other reason?
4 A. It looks like the debtor's amortization
5 schedule that they kept.
6 Q. Did the debtor keep an amortization schedule
7 for the NexPoint promissory note, to your knowledge?
8 A. Yes.
9 Q. Did the debtor keep amortization schedules
10 for other term promissory notes?
11 A. Yes.
12 Q. In what format, like Excel spreadsheets or
13 Word documents? What is your recollection for NexPoint
14 specifically?
15 A. Excel.
16 Q. Would that have been on the shared system or
17 something?
18 A. Yes.
19 Q. And who would have been responsible on an
20 ongoing basis to update the NexPoint amortization
21 schedule?
22 MR. MORRIS: Objection to the form of the
23 question.
24 THE WITNESS: Depends on what time you're
25 asking.

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1 Q. (BY MR. RUKAVINA) Let's talk about the year
2 of 2020.
3 A. That would have been Hayley Eliason, our
4 accountant at that time.
5 Q. What about the year 2019?
6 A. Still Hayley.
7 MR. RUKAVINA: I'm going to just ask, to
8 preserve the record, Mr. Morris, if he hasn't already,
9 to produce any such Excel spreadsheet in the native
10 form.
11 Q. (BY MR. RUKAVINA) If we look at this,
12 Ms. Hendrix -- and I'm a little confused as to what
13 these entries mean. Maybe you could help me. But
14 columns that say interest paid, principal paid, total
15 paid, do you know what those columns mean?
16 A. Exactly as they state. These are interest
17 and principal payments made on the date that's listed,
18 and then you've got a total.
19 Q. And then they're in brackets because they're
20 negative numbers?
21 A. Correct.
22 Q. So here's what I'm not understanding. Go to
23 the second page.
24 You see there's an entry under interest paid
25 12/30/29 [verbatim] that says negative 530,000 and

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1 change but it doesn't use brackets?
2 A. It's a negative number. It's just a
3 formatting issue.
4 Q. What about also on that same page in the
5 other column, principal paid, 5/31/2020, it's a
6 positive number, 575,550.
7 MR. MORRIS: Where are you?
8 MR. RUKAVINA: On page 2 of this exhibit.
9 MR. MORRIS: What date?
10 MR. RUKAVINA: May 31, 2020. And it's the
11 column over, principal paid. It's a positive number,
12 575,000 and change.
13 MR. MORRIS: Got it, thank you.
14 Q. (BY MR. RUKAVINA) Do you see that,
15 Ms. Hendrix?
16 A. Yes.
17 Q. Do you have an understanding of why that
18 number would be positive?
19 A. Actually, I think this looks like an entry to
20 me where the interest is what we call picking. So on
21 the anniversary date of this loan, which is May, from
22 what I can tell, the accrued interest total, which is
23 that 575-, is being rolled into principal.
24 That's what I can tell from looking at it.
25 Q. Okay. Do you have any understanding as to

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1 why that would have been done or why that would have
2 been done on that day?
3 MR. MORRIS: Objection to the form of the
4 question.
5 THE WITNESS: Because that's the anniversary
6 date of the loan. I would assume that that's how the
7 loan is written.
8 Q. (BY MR. RUKAVINA) And I think that that
9 Section 1 of the promissory note does say, the unpaid
10 principal balance of this note from time to time
11 outstanding shall bear interest.
12 At the rate of 6 percent per annum from the
13 date hereof until maturity date, compounded annually on
14 the anniversary of the date of this note.
15 Do you see that?
16 MR. MORRIS: Objection to the form of the
17 question.
18 THE WITNESS: Yeah, I see that.
19 Q. (BY MR. RUKAVINA) Assuming that this is the
20 correct amortization schedule for the NexPoint note,
21 and that the numbers in here are correct, if you look
22 at the second page under the column total paid there
23 are a number of entries for 2019.
24 Do you see that, the far right column?
25 A. At the top, yes.

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1 Q. For example, 1.3 million, 2.1 million,
2 1.3 million.
3 Do you see that?
4 A. Yes.
5 Q. Assuming that that's correct, do you have any
6 memory or understanding whether in the year 2019, or
7 why NexPoint was making these payments on this
8 promissory note?
9 A. Without going back and reading through emails
10 I can only assume that, from looking at this, Highland,
11 the debtor, would have needed cash, and so this is one
12 way of getting cash to the debtor.
13 Q. This is kind of like what we discussed in the
14 beginning, that Mr. Dondero on a cash needed basis
15 would just transfer money between entities?
16 A. Yes.
17 Q. Do you have any memory in the first half of
18 2019 whether Highland, the debtor, had any particular
19 need for cash money at that time?
20 A. We generally always had a need for cash, so
21 yes.
22 Q. And so if NexPoint was transferring money
23 back to Highland on this note because Highland needed
24 the money, would those have been recorded as
25 prepayments by the debtor?

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1 MR. MORRIS: Objection to the form of the
2 question.
3 THE WITNESS: Yes.
4 Q. (BY MR. RUKAVINA) Sitting here today, do you
5 have any reason to believe based on the formatting or
6 anything on Exhibit 14 that it's not the amortization
7 schedule as it was maintained by the debtor?
8 A. I don't have any reason to not believe that
9 it was.
10 Q. Going to show you a few documents that I'm
11 hopefully going to burn through, but you're certainly
12 entitled to take all the time that you need.
13 So first is going to be a document that
14 Mr. Morris produced this morning. It's not Bates
15 labeled. I don't know why.
16 MR. MORRIS: As I said in my email, my
17 paralegal is sick and so I wanted you to have the
18 documents. We'll Bates stamp them later, but we have a
19 written record from my email of what we produced to
20 you.
21 MR. RUKAVINA: You're assuming that I read my
22 emails.
23 MR. MORRIS: Sorry about that. I confess,
24 sometimes I don't as well.
25 Q. (BY MR. RUKAVINA) So I'm going to hand you

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1 Exhibit 15 and I'm going to represent to you that it's
2 the email that Mr. Morris sent to me today and I've not
3 doctored it in any way.
4 (Whereupon, Exhibit 15 was marked for
5 identification.)
6 MR. MORRIS: Do you have the email that it
7 was attached to?
8 MR. RUKAVINA: Somewhere. I can find it at a
9 break.
10 MR. MORRIS: I'll let the witness testify.
11 This was attached to an email. Not my email, but
12 another email. But I'll let the witness testify.
13 MR. RUKAVINA: Off the record.
14 (Off the record.)
15 Q. (BY MR. RUKAVINA) So you have Exhibit 15.
16 And during the break we established, I don't
17 have a copy of it right now, but you sent Exhibit 15 on
18 August 29, 2020, to Mr. Dondero by email, copying
19 Mr. Waterhouse, as well as a couple of other
20 attachments; is that correct?
21 A. Correct.
22 Q. Do you recall what prompted you to send that
23 email and this attachment?
24 A. Yes.
25 Q. What?

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1 A. Frank Waterhouse called me on August 29, and
2 requested that I do so.
3 Q. Did he tell you why?
4 A. From what I recall, this was a time when Jim
5 was trying to come up with his bargain or pop land,
6 whatever he referenced it as. This was all information
7 that Frank said he wanted.
8 Q. Okay. So going back to Exhibit 15, what I'm
9 interested in is NexPoint Advisors, the 23,846,000 and
10 change number.
11 Do you see that?
12 A. Yes.
13 Q. Where did that number -- or where did this
14 Exhibit 15 come from, if you understand my question?
15 A. Sure. These numbers should all be balances
16 off of the corresponding notes that each entity owed to
17 the debtor.
18 Q. Did you or someone prepare Exhibit 15
19 specifically for that email? Or was Exhibit 15 already
20 existing somewhere on the system?
21 A. I believe that we prepared it specifically
22 for this request.
23 Q. Do you recall who?
24 A. It was either myself or our accountant. I
25 don't recall who put it together.

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1 Q. Okay. And where would that 23 million and
2 change number for NexPoint have come from, an
3 amortization schedule?
4 A. Yes.
5 Q. And what about Highland Capital Management
6 Fund Advisors? You see $10.5 million and change demand
7 on Exhibit 15?
8 A. Yes.
9 Q. Where would that $10.5 million number have
10 come from, do you remember?
11 A. The same. It would have come off of the
12 amortization schedules for all of their notes.
13 Q. How was there an amortization schedule for a
14 demand note?
15 A. Because it's accruing interest.
16 Q. So sitting here today, you expect there would
17 be some amortization schedule like Exhibit 14 but for
18 HCMFA?
19 A. Yes.
20 Q. Now we're going to have an exhibit [verbatim]
21 chain that's going to be marked as Exhibit 16.
22 (Whereupon, Exhibit 16 was marked for
23 identification.)
24 MR. RUKAVINA: For the folks on the video,
25 Exhibit 16 is the email chain that Mr. Morris used last

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1 week regarding the Section 15(c) document.
2 Q. (BY MR. RUKAVINA) Are you familiar with this
3 Exhibit 16 email chain, Ms. Hendrix?
4 A. Yes.
5 Q. Why are you familiar with it?
6 A. Well, I'm copied on it, and I saw it
7 yesterday.
8 Q. Do you have any memory -- well, that's a
9 stupid question. But prior to yesterday, did you have
10 any memory of this?
11 A. Yes.
12 Q. And do you recall the context or the purpose
13 of this exhibit, or this email chain?
14 A. From what I remember this is the time where
15 information was being prepared for the retail board to
16 re-up the debtor's shared services.
17 Q. So, here -- you're certainly welcome to read
18 it in its entirety and if you feel like you want to or
19 need to, that's fine. But I only have one question.
20 Well, one question with two subparts.
21 I'm looking at Ms. Lauren Thedford's,
22 T-h-e-d-f-o-r-d's, email October 6, 2000 [verbatim]
23 where she says, I see the below from the 6/30
24 financials. NPA, due to HCMLP and affiliates as of
25 June 30, 2020.

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1 Do you see that, ma'am?
2 A. Yes.
3 Q. 23 million 683?
4 A. Yes.
5 Q. And you see, HCMFA due to HCMLP as of
6 June 30, 2020, 12,286,000?
7 MR. MORRIS: Objection to the form of the
8 question.
9 Q. (BY MR. RUKAVINA) Strike that.
10 It says 12,286. What do you take that 12,286
11 to mean?
12 A. I think that's a typo and it should have
13 said -- well, there's several things wrong with this,
14 from looking at it.
15 She left off three zeros on the end of it.
16 Should have said 12,286,000. Secondly, that amount is
17 our due to affiliates on HCMFA's books, not just due to
18 HCMLP.
19 Q. That was going to be my question, why that
20 12,286,000 number didn't jive with the 10,530,000
21 number on Exhibit 15?
22 A. Yes, there's another loan due to a different
23 affiliate.
24 Q. So that $12,286,000 amount doesn't mean that
25 it's all due to Highland; is that correct?

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1 A. Correct.
2 Q. Exhibit 17 is going to be the January 7, 2021
3 notice from the debtor to NexPoint about the default.
4 (Whereupon, Exhibit 17 was marked for
5 identification.)
6 Q. (BY MR. RUKAVINA) You've been handed
7 Exhibit 17. Have you seen this document before?
8 A. Not that I believe.
9 Q. And I think we've asked this before, but just
10 to clarify.
11 Did anyone at the debtor, including Mr. Seery
12 or DSI, discuss with you after December 31, 2020 that
13 the payment had not been made and what, if anything,
14 the debtor should do about that?
15 MR. MORRIS: Objection to the form of the
16 question.
17 THE WITNESS: I can't recall specific
18 conversations that may or may not have been had around
19 that topic.
20 Q. (BY MR. RUKAVINA) Would -- so back then you
21 were the assistant controller, on January 7; right?
22 A. Yes.
23 Q. Do you think that back then Mr. Seery or DSI
24 would have sought your advice or input as to what they
25 should do about the missed payment?

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1 A. No.
2 MR. MORRIS: Objection to the form of the
3 question.
4 THE WITNESS: No.
5 Q. (BY MR. RUKAVINA) That would have been
6 outside of your purview?
7 A. Yes.
8 Q. And you see in this notice in the middle, it
9 says an amount due as of January 8 in the $24,471,000
10 range.
11 Do you see that?
12 A. Yes.
13 Q. Do you have any idea, I take it you don't,
14 where that number came from?
15 MR. MORRIS: Objection to the form of the
16 question.
17 THE WITNESS: I don't know who provided that
18 number or where it came from.
19 Q. (BY MR. RUKAVINA) Do you have any
20 understanding as to why that number is higher than the
21 number on Exhibit 15?
22 A. My guess would be that Exhibit 15 is just
23 principal balances.
24 Q. Okay.
25 Exhibit 18, please.

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1 (Whereupon, Exhibit 18 was marked for
2 identification.)
3 Q. (BY MR. RUKAVINA) Exhibit 18, Ms. Hendrix,
4 is an email chain between you and Mr. Waterhouse on
5 January 12, 2021. Do you remember this email chain?
6 A. No.
7 Q. Do you remember on January 12 Mr. Waterhouse
8 emailing you, asking when the last amort payment due
9 and what the amount was for NexPoint?
10 A. No.
11 Q. When was the last time -- well, strike that.
12 Do you remember ever seeing this email
13 between then and today?
14 A. No.
15 Q. Do you have any present memory of any
16 communications with Mr. Waterhouse on or about
17 January 12, 2021 regarding the NexPoint default or
18 note?
19 A. Not specific, no.
20 Q. Any general memory?
21 A. Not that I can pinpoint, no.
22 Q. Were you aware that on or about January 14
23 NexPoint transferred about $1.4 million and change to
24 the debtor?
25 A. Yes.

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1 Q. Were you aware of it then?
2 A. Was I aware of what?
3 Q. That transfer of $1.4 million and change.
4 A. On January 14?
5 Q. Yes.
6 A. Yes.
7 Q. Did you facilitate that transfer?
8 A. Yes.
9 Q. Who told you to make that transfer?
10 A. Frank Waterhouse.
11 Q. Did he tell you why?
12 A. Nope.
13 Q. He just said make the transfer?
14 A. Yes.
15 Q. Did he tell you that it was on account of the
16 NexPoint note?
17 A. Yes.
18 Q. Did he tell you how to, if at all, to credit
19 that note for that amount?
20 A. No.
21 Q. Sitting here today, you have no memory other
22 than that Frank Waterhouse told you to transfer some
23 $1.4 million on the NexPoint note?
24 A. Right.
25 Q. And do you recall, was that oral or written

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1 or how would that have been?
2 A. That was a phone call.
3 Q. Do you recall who initiated the phone call?
4 A. Frank called me.
5 Q. Was that the only topic discussed in that
6 phone call to your memory?
7 A. Yes.
8 Q. Did you ask him why the payment or
9 anything -- did you ask him anything at all?
10 A. No.
11 Q. And after you made the payment -- or I'm
12 sorry, after you caused the payment to be made, did you
13 take any further steps with respect to the NexPoint
14 note?
15 A. I forwarded the payment confirmation, showing
16 that the money was sent from NexPoint Advisors to
17 Highland, forwarded that payment confirmation from the
18 bank to Jack Donohue at DSI, letting him know.
19 Q. Did you let Mr. Donohue or anyone at DSI know
20 about the transfer before the transfer was made?
21 A. No.
22 Q. And you sent that by email to Mr. Donohue?
23 A. Yes.
24 Q. Did Mr. Donohue thereafter have any
25 discussion with you about that in any way?

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1 A. I have no idea.
2 Q. He didn't ask what this was for or anything
3 like that?
4 A. He may have asked what the amount
5 represented. I can't specifically recall. But it's
6 possible.
7 Q. Okay. Do you recall any discussion about
8 that time, January 14, with Mr. Donohue or
9 Mr. Waterhouse or anyone as to whether that payment
10 would in any way relieve NexPoint of the default or
11 would not relieve NexPoint of the default?
12 A. No.
13 Q. Ms. Hendrix, I believe that I am done. I
14 would like you, however, because it's important, to
15 check your phone. Would you like a short, five-minute
16 restroom break and just check --
17 A. Yeah, and I might need help figuring out how
18 to do that.
19 Q. I'm not saying that it's possible, but I'm
20 going to ask you on the record to look for that
21 November 30 or December 1, 2020 phone call.
22 MR. MORRIS: We're happy to do that.
23 Q. (BY MR. RUKAVINA) But what I would like if
24 you find it, I would like you to tell me the time, the
25 date and the length of that call.

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1 A. Okay.
2 Q. Thank you.
3 We'll be back in five minutes.
4 (Off the record.)
5 Q. (BY MR. RUKAVINA) Ms. Hendrix, during the
6 break did you look at your phone?
7 A. I did.
8 Q. Did you find anything?
9 A. Sadly, it only goes back to October 5 of
10 2021.
11 Q. Not surprised. Thank you.
12 Have I been courteous to you today?
13 A. Yes.
14 MR. RUKAVINA: I pass the witness.
15 MR. MORRIS: Thank you.
16 MR. AIGEN: Are we ready to move forward?
17 MR. MORRIS: Yes. You're a little dark
18 there.
19 MR. RUKAVINA: Can we increase the volume on
20 that thing?
21 (Off the record.)
22 EXAMINATION
23 Q. (BY MR. AIGEN) Good afternoon, Ms. Hendrix.
24 My name is Michael Aigen. I represent Mr. Dondero,
25 HCMS and HCRE Partners in several of the adversary

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1 proceedings today.
2 I'm going to try to ask you some questions
3 about these adversary proceedings. I'll try to make it
4 as quick as possible so we don't keep you here.
5 You understand that you're still under oath;
6 is that correct?
7 A. Correct.
8 Q. First topic I want to ask you about is one of
9 the defenses in this case related to an oral agreement.
10 Let me start off with this question.
11 Are you aware that some of the defendants in
12 these adversary proceedings have raised a defense that
13 there was a subsequent oral agreement allowing the
14 notes at issue to be potentially forgiven if certain
15 events occurred?
16 A. I've recently been made aware that this came
17 up, yes.
18 Q. When you say recently, approximately when?
19 A. Within the last week.
20 Q. And where did you learn that from?
21 A. In my speakings with John Morris just
22 preparing for today.
23 MR. AIGEN: And John, I'm going to assume
24 that those conversations are privileged?
25 MR. MORRIS: That's a very fair assumption.

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1 Q. (BY MR. AIGEN) Other than the conversation
2 you just referred to with Mr. Morris, have you ever had
3 any other conversations with anyone about this alleged
4 oral agreement that Defendants are contending occurred?
5 A. No.
6 Q. So prior to that conversation with Mr. Morris
7 you weren't even aware of this alleged defense related
8 to an oral agreement. Is that fair to say?
9 A. That's right.
10 Q. This is a similar question but slightly
11 different, just to sort of finish this topic. I'm not
12 asking about this oral agreement as a defense, I'm just
13 asking more generally.
14 Other than this conversation, were you aware
15 generally of any conversations that anyone had where
16 the notes at issue might be forgiven if certain events
17 occurred?
18 MR. MORRIS: Objection to the form of the
19 question.
20 THE WITNESS: No.
21 Q. (BY MR. AIGEN) Is it fair to say that you
22 haven't had any conversations about this subsequent
23 oral agreement with anyone other than Mr. Morris?
24 A. That's fair.
25 Q. You never discussed it with Mr. Seery?

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1 A. No.
2 Q. Never discussed it with Mr. Klos?
3 A. No. Well, sorry, Mr. Klos was present when
4 John and I talked about it. But that's it.
5 Q. Have you ever made any investigation or
6 effort in order to determine if this oral agreement
7 actually occurred?
8 A. No.
9 Q. If there was such an oral agreement to
10 potentially forgive the notes, do you believe that you
11 would have known about such an oral agreement as part
12 of your duties and responsibilities?
13 A. Yes, I would hope so.
14 Q. Why do you say that?
15 A. That's something that should be disclosed in
16 audited financial statements, and me and my team are
17 responsible for preparing those financial statements
18 and presenting them to the auditors as fair and
19 accurate.
20 Q. And is it fair to say that this oral
21 agreement should have been disclosed to PwC if it was
22 determined that it was material?
23 A. Yes.
24 Q. And have you done any sort of analysis to
25 determine whether the oral agreement at issue here

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1 would have been material for purposes of a PwC audit?
2 A. I've not done any work, just finding out
3 about it, but from what it sounds like, it would be
4 material.
5 Q. That's your opinion, that it would have been
6 material; is that fair to say?
7 A. Fair.
8 Q. Have you had any discussions with anyone else
9 about whether the oral agreement would have been
10 material?
11 A. No.
12 Q. Changing topics a little bit here, are you
13 aware --
14 (Off the record.)
15 Q. (BY MR. AIGEN) Are you aware that a few of
16 the loans at issue here, specifically related to HCMS
17 and HCRE, were term loans as opposed to demand loans?
18 A. Yes.
19 Q. And are you aware that for those particular
20 loans, there were payments that were supposed to be
21 made but weren't on December 31, 2020?
22 A. Yes.
23 Q. Do you have any understanding as to why those
24 payments weren't made with respect to the HCMS and HCRE
25 term loans on December 31, 2020?

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1 A. Yes.
2 Q. Can you tell me why?
3 A. Sure. It goes along with the same statement
4 as HCMFA and NPA and the phone call that I got from
5 Frank Waterhouse saying there's no payments coming from
6 any of the affiliates to the debtor.
7 Q. I may have written that down wrong when you
8 talked about that before, but I believe your earlier
9 testimony when you described that conversation was that
10 there was no more payments coming from the Advisors,
11 not affiliates.
12 Let me ask you then, what was the
13 conversation? Was it no more payments from affiliates
14 or Advisors?
15 A. It could have been either. I probably did
16 say Advisors. But regardless, those payments would
17 have been directed to me to be made, either by Frank
18 Waterhouse or Jim Dondero.
19 And I would assume that nobody directed me to
20 make those payments because we weren't making any
21 payments from Jim's related parties. I don't know for
22 a fact, but that's what I would assume. Those were all
23 under the same umbrella.
24 Q. And again, let's back up a second.
25 When you refer to Advisors, fair to say that

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1 that does not include HCMS and HCRE; is that correct?
2 A. When I say Advisors, I am referring to HCMFA
3 and NPA.
4 Q. And when you use the term "affiliates,"
5 you're referring to all four; is that correct?
6 A. Correct.
7 Q. Just want to make sure we're on the same
8 page.
9 When you answered the previous question you
10 started to get into assumptions and things like that.
11 Let me start off with what your specific recollection
12 of that phone call was. Tell me as best as you can
13 what you remember Frank telling you?
14 A. I remember it as being no payments from the
15 Advisors to the debtor.
16 Q. So you don't remember the instruction being,
17 don't make payments from the affiliates. It was, don't
18 make payments from the Advisors; is that correct?
19 A. Correct.
20 Q. So is it fair to say that you don't remember
21 any instructions telling you not to make any payments
22 from HCMS or HCRE?
23 A. That's fair.
24 Q. So if that is the case, why weren't payments
25 made from HCMS or HCRE for December 31, 2020, payment?

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1 A. Sure. Typically what would have happened is
2 Frank would be talking to Jim Dondero about making
3 these payments and getting his approval to do so,
4 because Jim Dondero is, you know, directing payments
5 out of these entities.
6 I have never -- had never been given the
7 direction to effectuate those payments by anybody.
8 Q. Is it fair to say, then, that you're not
9 aware of any instructions from anyone saying that the
10 HCMS and HCRE payments should not be made on
11 December 31, 2020?
12 A. That's fair.
13 Q. So the reason the payments weren't made is
14 because you never got an affirmative instruction to
15 actually make that payment; is that correct?
16 A. Correct.
17 Q. And you're not aware of Mr. Dondero
18 instructing anyone that HCMS and HCRE should not have
19 made the December 31, 2020, payments; is that correct?
20 A. I'm not aware personally, no. Correct.
21 Q. You say personally. In any way are you aware
22 of such a specific instruction?
23 A. No.
24 Q. If that payment was to be made, who at the
25 debtor would have been responsible for making those

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1 payments on behalf of HCMS and HCRE?
2 MR. MORRIS: Objection to the form of the
3 question.
4 THE WITNESS: The corporate accounting team.
5 Q. (BY MR. AIGEN) And that included you?
6 A. Yes.
7 Q. And in December of 2020, were you aware that
8 those payments were due on December 31, 2020?
9 A. Yes.
10 Q. Did you make any attempts or efforts to
11 determine whether Mr. Dondero wanted those payments to
12 be made?
13 A. I did not, no.
14 Q. Why not?
15 A. That would have been something that Frank
16 Waterhouse would have done directly with Jim Dondero
17 himself.
18 Q. Did you have any conversations with anyone
19 about whether the December 31 payments for HCMS and
20 HCRE would be made in December of 2020?
21 A. Not that I can recall.
22 Q. And you didn't think it was your
23 responsibility to check on those payments and find out
24 if they should have been made?
25 A. Right, correct.

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1 Q. And is that because it's only your job to
2 make payments that you're told to specifically make; is
3 that correct?
4 A. Yes, in this case, that is correct.
5 Q. Is it fair to say then that as part of your
6 job responsibilities you've never made a payment to
7 anyone without being specifically told by Mr. Dondero
8 and Mr. Waterhouse?
9 A. Sorry, say that again.
10 Q. As part of your job responsibilities, have
11 you ever made a payment to anyone without the specific
12 instruction of Mr. Waterhouse or Mr. Dondero?
13 MR. MORRIS: Objection to the form of the
14 question.
15 THE WITNESS: Yes, we make payments all the
16 time.
17 Q. (BY MR. AIGEN) So why is this different in
18 that this payment was not made without the specific
19 instructions from Mr. Waterhouse and Mr. Dondero, even
20 though you believed the payment was due on December 31,
21 2020?
22 A. The difference between making a loan payment
23 and making normal course -- or sorry, normal, ordinary
24 course, you know, overhead expense payments is that
25 something like that is not necessarily what we would

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1 take to Jim Dondero to approve.
2 He doesn't have time to approve every single
3 overhead payment that we're making out of every single
4 entity. That's what Frank is for.
5 Something that's once a year that's more
6 material in amount, such as a loan payment, that is
7 something that needs to get approved by Jim Dondero.
8 Q. You say needs to get approved. What's your
9 basis for that, something in a policy manual, something
10 someone told you?
11 A. It's a policy that my team followed. I don't
12 think that it's written in an actual manual anywhere,
13 but anything that's not ordinary course needs to get
14 approved by Jim Dondero.
15 Q. Is that something that's written in a policy
16 anywhere?
17 A. Not that I know of.
18 Q. Were you ever told that payments in the
19 ordinary course can be made without Mr. Dondero's
20 approval but loan payments cannot?
21 A. Yes, I do recall years ago that Frank and I,
22 possibly Jim, this was years ago, had a conversation
23 that anything ordinary course is up to Frank to
24 approve. And this is, quite frankly, up to Frank.
25 Whatever he felt Jim needed to sign off on,

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1 that's what Jim would sign off on. This was not my
2 responsibility to make that decision.
3 Q. And in December -- prior to the December 31,
4 2020, due date you didn't have any conversations with
5 anyone about whether this -- these payments that were
6 due should be made; is that correct?
7 A. Correct.
8 Q. And you didn't try to check with anyone to
9 see whether anyone wanted these payments to be made; is
10 that correct?
11 A. Correct.
12 Q. Subsequent to the payment being missed, did
13 you ever have any conversations with anyone about why
14 the payment was not made?
15 A. Not that I recall.
16 Q. So is it fair to say that sitting here today
17 you have no idea why the payments were not made for
18 HCMS and HCRE on December 31, 2020?
19 MR. MORRIS: Objection to the form of the
20 question.
21 THE WITNESS: I don't have any specific
22 evidence telling me why they weren't. I can make
23 assumptions but that's not going to help.
24 Q. (BY MR. AIGEN) Well, did you ever have any
25 conversations with anyone about why those payments were

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1 not made?
2 A. No.
3 Q. You have no idea why they weren't made other
4 than just speculation; is that fair to say?
5 A. Correct.
6 MR. MORRIS: Objection. Asked and answered.
7 THE WITNESS: Correct.
8 Q. (BY MR. AIGEN) And are you aware that with
9 respect to those two loans, some payments were actually
10 made in the next month, in January of 2021?
11 A. Yes.
12 Q. What role, if any, did you have with respect
13 to those payments?
14 A. Frank Waterhouse would call me and tell me to
15 have my team effectuate a wire.
16 Q. And you say would call you. Do you remember
17 this conversation or are you just assuming it occurred?
18 MR. MORRIS: Objection to the form of the
19 question.
20 THE WITNESS: If we sent a payment out, Frank
21 would have told me to do it. I would not have done it
22 on my own.
23 Q. (BY MR. AIGEN) Sitting here today, do you
24 have a specific recollection of the conversation where
25 someone told you to make the January 2021 payments?

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1 A. I can't tell you the exact date, but, yes, I
2 do have a recollection of Frank calling or emailing me
3 to have, I believe it was the HCRE wire sent out for
4 their payment.
5 Q. What about the HCMS payment?
6 A. I don't recall that one as much.
7 Q. Other than the payment being made, do you
8 have any recollection of any other conversations about
9 why the payment was being made?
10 A. No.
11 Q. Are you aware of any conversations that
12 anyone had regarding whether these payments would
13 deaccelerate loans?
14 A. No.
15 Q. Is that something you would normally be part
16 of, conversations like that?
17 A. No.
18 Q. Changing topics here. Not sure if this is an
19 area that you know anything about.
20 Are you familiar with the term, as it's used
21 at Highland, NAV ratio trigger period?
22 A. No.
23 Q. This may go very quick. If I represent to
24 you that it's a term that's used in the -- in the
25 fourth amended limited partnership agreement for

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1 Highland Capital Management, would that refresh your
2 recollection at all?
3 A. No.
4 Q. Fair to say, then, that you have no knowledge
5 as to whether NAV ratio trigger period was ever reached
6 at any time prior to bankruptcy buyouts?
7 A. No, I don't know.
8 Q. Have you ever had any conversations with
9 Nancy Dondero?
10 A. I have not.
11 Q. Never met her?
12 A. No. I may have exchanged an email with her
13 on an invoice, but that's the extent of it. No
14 conversations.
15 Q. In the years leading up to the bankruptcy of
16 Highland Capital, was there any time period where
17 Highland was unable to pay its salaries?
18 A. Salaries?
19 Q. Salaries of its employees?
20 A. No.
21 Q. In the time leading up to the Highland
22 bankruptcy, was there any time period where Highland
23 wasn't able to pay bonuses owed to any of its
24 employees?
25 A. Not that I know of. Not that I can recall.

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1 Q. Are you aware of any time period leading up
2 to the Highland bankruptcy where Highland was unable to
3 pay its bills?
4 A. There's times where we would be in a cash
5 flow crunch and we would stretch our AP, but eventually
6 it would get paid.
7 Q. And I think this is the last topic and we can
8 probably move through this pretty quickly.
9 Are you aware of any loans made by Highland
10 to any of its employees or officers that were forgiven
11 in part or all?
12 A. Yes.
13 Q. Which officers or employees are you aware of?
14 A. I recall there were two employees. I can't
15 remember one of them, but I believe another, the second
16 one, was Paul Adkins. Again, I'm just recalling this
17 was years ago.
18 Q. And these two are the only ones you're aware
19 of?
20 A. Or I'm sorry, not Paul Adkins, Tim Lawler.
21 It's possible Paul Adkins was the other one, but I
22 can't tell you for sure.
23 Q. Tim Lawler and some other employee that you
24 can't remember the name of are the only two that you're
25 aware of?

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1 A. Yes.
2 Q. This other employee, I know you don't
3 remember the name. Is there any other description that
4 you can give me, what their position was, how long they
5 worked, or is it just you remember those loans?
6 A. I just remember we had two employee loans.
7 Q. Approximately when was this?
8 A. I couldn't even tell you. All the years just
9 commingle together.
10 Q. More than five years ago?
11 A. Yes.
12 Q. More than 10 years ago?
13 A. I couldn't say.
14 MR. AIGEN: Why don't we take a five-minute
15 break and then I'll either be done or have just a few
16 wrap-up questions.
17 MR. RUKAVINA: Okay.
18 (Off the record.)
19 FURTHER EXAMINATION
20 Q. (BY MR. RUKAVINA) Ms. Hendrix, in May of
21 2019, would you on behalf of Highland alone,
22 unilaterally, have the authority to lend to HCMFA 2.4-
23 and/or $5.0 million?
24 A. No.
25 Q. And would you have had any authority on

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1 behalf of HCMFA in May of 2019 to bind HCMFA to such
2 notes?
3 A. No.
4 Q. Thank you, ma'am.
5 EXAMINATION
6 Q. (BY MR. MORRIS) Ms. Hendrix, can you get out
7 of your pile, Exhibit Number 3.
8 And this is the email from Dave Klos to
9 corporate accounting on May 2nd concerning the
10 $2.4 million that was going to be transferred from
11 HCMLP to HCMFA?
12 A. Yes.
13 Q. And how did Mr. Klos characterize that
14 transfer?
15 A. He called it a new intercompany loan.
16 Q. What does a new intercompany loan mean to
17 you?
18 A. That means we are creating a new loan
19 document, sending money out, tracking it as a
20 brand-new, fresh loan.
21 Q. And he sent this email to an email group
22 called corporateaccounting@hcmlp.com. Do I have that
23 right?
24 A. Yes.
25 Q. Were you included in that email group?

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1 A. I was.
2 Q. Can you identify everybody else who you
3 recall being in that email group?
4 A. Yes.
5 Q. Who else was in that email group?
6 A. Dave Klos, Frank Waterhouse, myself, Hayley
7 Eliason, and Blair Roeber.
8 Q. Okay. Did Mr. Waterhouse ever tell anybody,
9 to the best of your knowledge, in May 2019 that the
10 transaction should not be booked as a loan?
11 A. No, not to my knowledge.
12 Q. You testified earlier that there was, you
13 recall, a similar email the next day with respect to a
14 $5 million transaction.
15 Do you recall that?
16 A. Yes.
17 Q. Do you recall if that email also went to
18 corporate accounting?
19 A. I believe so, yes.
20 Q. And to the best of your knowledge, would
21 Mr. Waterhouse have been informed on May 3, 2019, that
22 the transaction was being booked by the corporate
23 accounting department as a loan?
24 A. Yes.
25 Q. Did Mr. Waterhouse tell you at that time or

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1 at any time thereafter that it was a mistake to book it
2 as a loan?
3 A. No.
4 Q. Did Mr. Waterhouse tell you at that time or
5 at any time thereafter that he didn't intend to sign
6 the promissory notes?
7 A. No.
8 MR. RUKAVINA: Objection. To the last
9 question, objection to form.
10 Go ahead.
11 Q. (BY MR. MORRIS) Okay. The promissory notes,
12 to be clear, are the two promissory notes that you
13 testified to earlier that have been marked as exhibits
14 in this deposition for $5 million and $2.4 million
15 respectively.
16 With that definition as promissory notes, did
17 Mr. Waterhouse ever tell you at any time that it was a
18 mistake to sign those notes?
19 MR. RUKAVINA: I'll object to the form.
20 Go ahead.
21 THE WITNESS: No.
22 Q. (BY MR. MORRIS) Did Mr. Waterhouse or
23 anybody -- withdrawn. I'll go back to the first
24 question.
25 Did Mr. Waterhouse or anybody in the world

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1 ever tell you at any time since May of 2019 that it was
2 a mistake to issue the promissory notes as we've
3 defined them?
4 A. No.
5 Q. Did Mr. Waterhouse or anybody in the world
6 tell you that Mr. Waterhouse wasn't authorized to affix
7 his signature to those promissory notes?
8 MR. RUKAVINA: And I'll object. Assumes
9 facts not in evidence, i.e., the signature. That's
10 what I've been objecting to.
11 But go ahead and answer.
12 THE WITNESS: Say it again.
13 Q. (BY MR. MORRIS) Did Mr. Waterhouse or
14 anybody in the world tell you at any time that he
15 wasn't authorized to have his signature affixed to the
16 promissory notes?
17 MR. RUKAVINA: Same objection.
18 THE WITNESS: No.
19 Q. (BY MR. MORRIS) Did you have anything to do
20 with Highland's annual audit?
21 A. Yes.
22 Q. What role did you play with respect to
23 Highland's annual audit?
24 A. I personally was in charge of completely
25 writing the entire audit report for the debtor and for

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1 HCMFA. I oversaw all other aspects of the audit my
2 team carried out.
3 Any requests from the auditors, emails with
4 questions, any issues that arose, all of that went
5 through me.
6 Q. And did Mr. Waterhouse play a role in
7 relation to the annual audit?
8 A. Yes.
9 Q. What is your understanding of
10 Mr. Waterhouse's role?
11 A. Let's see. He was in charge of reviewing the
12 financial statements as they were done, so he saw the
13 end product. He would sign off on the management rep
14 letter. He signed engagement letters.
15 If there were any big issues, those got --
16 those would be brought to Frank's attention for sure.
17 Q. Okay. And are you a CPA?
18 A. Yes.
19 Q. And are you familiar with management rep
20 letters?
21 A. Yes.
22 Q. What is your understanding of what a
23 management rep letter is?
24 A. That's basically telling the auditors that
25 everything in the audited financial report is accurate

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1 to the best of their knowledge, they've presented
2 everything that they have fair and accurately, they're
3 not withholding any information.
4 Q. And do you recall that the -- Highland's 2018
5 audit was completed in early June 2019?
6 A. Yes.
7 Q. And did you cause the two promissory notes
8 that we're talking about here to be delivered to
9 PricewaterhouseCoopers in connection with the audit?
10 A. Yes.
11 Q. And were those two promissory notes delivered
12 to PricewaterhouseCoopers because they constituted
13 subsequent events?
14 A. Yes.
15 Q. Do you recall whether those promissory notes
16 were described in Highland's 2018 audited financial
17 statements?
18 A. Yes.
19 Q. And did Mr. Waterhouse or Mr. Dondero ever
20 tell you at any time that there was a mistake in the
21 audited financial statements?
22 A. No.
23 Q. Did they ever tell you -- did Mr. Waterhouse
24 or Mr. Dondero or anybody in the world ever tell you at
25 any time that the two notes were mischaracterized in

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1 the 2018 audited financial statements of Highland
2 Capital?
3 A. No.
4 Q. Do you know whether HCMFA also had its annual
5 financial statements audited by PricewaterhouseCoopers?
6 A. Yes.
7 Q. Did you play any role in connection with that
8 audit?
9 A. Yes.
10 Q. What role did you play in connection with
11 HCMFA's audit of the 2018 financial statements?
12 A. Same exact role as with the debtors --
13 Q. And --
14 A. -- writing the audit report, overseeing all
15 other audit functions.
16 Q. And did you and your group cause HCMFA to
17 deliver to PricewaterhouseCoopers the two promissory
18 notes that we've been discussing from May 2019?
19 A. Yes.
20 Q. Did Mr. Waterhouse or Mr. Dondero or anybody
21 in the world ever tell you that it was a mistake to
22 deliver those promissory notes to PwC in connection
23 with HCMFA's 2018 audit?
24 A. No.
25 Q. Were those notes delivered -- withdrawn.

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1 Were those notes delivered to
2 PricewaterhouseCoopers because they constituted
3 subsequent events in connection with the 2018 audit?
4 A. Yes.
5 Q. Do you recall whether PricewaterhouseCoopers
6 included as a liability on HCMFA's balance sheet the
7 obligations reflected in the two promissory notes at
8 issue?
9 MR. RUKAVINA: Objection. Best evidence.
10 Answer.
11 THE WITNESS: On the 2018 financials?
12 Q. (BY MR. MORRIS) Correct.
13 A. Those would not have been included as
14 liabilities in the 2018 financials.
15 Q. Do you know if HCMFA completed their audit
16 for 2019?
17 A. No.
18 Q. Okay. Did the notes appear in HCMFA's 2018
19 audited financials under the subsequent events section?
20 A. Yes.
21 MR. RUKAVINA: Objection. Best evidence.
22 Go ahead.
23 Q. (BY MR. MORRIS) Did Mr. Dondero or -- did
24 Mr. Waterhouse or Mr. Dondero or anybody in the world
25 ever tell you that it was a mistake to include

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1 reference to these notes in HCMFA's 2018 audited
2 financial statements?
3 MR. RUKAVINA: Same objection.
4 THE WITNESS: No.
5 Q. (BY MR. MORRIS) Okay. Do you recall, did
6 anybody in the world ever tell you that the
7 transactions described in Exhibit 3 and the other
8 document that you recall should never have been booked
9 as a loan?
10 A. No.
11 Q. Did anybody in the world tell you that you
12 made a mistake when you created those promissory notes?
13 A. No.
14 Q. Can you pull out what was marked as
15 Exhibit 16.
16 Do you understand that the Advisors provide
17 services to certain retail funds?
18 A. Yes.
19 Q. And do you recall that the services are
20 subject to an agreement that's subject to annual
21 review?
22 A. Yes.
23 Q. So looking at Exhibit 16, did you understand
24 that the retail board had asked Highland to disclose --
25 I'll just read it from the document on page 2,

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1 Bates number ending 881.
2 There's an email from Ms. Thedford that says,
3 quote, are there any material amounts -- withdrawn.
4 Are there any material outstanding amounts
5 currently payable or due in the future, open paren,
6 e.g., notes, close paren, to HCMLP by HCMFA or NexPoint
7 Advisors or any other affiliate that provides services
8 to the funds?
9 Do you see that?
10 A. Yes.
11 Q. And were you generally aware that that was
12 part of the annual renewal process?
13 A. Yes.
14 Q. And you made some comments earlier about
15 Ms. Thedford's response on the first page.
16 Do you recall that?
17 A. Yes.
18 Q. And you actually were able to correct certain
19 mistakes that you perceived in her response.
20 Do I have that right?
21 A. Correct.
22 Q. Do you know -- do you see where it says,
23 HCMFA due to HCMLP as of June 30, 2020, let's just call
24 it $12.3 million.
25 Do you see that?

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A. Yes.
Q. And above that there is a reference to the 6/30 financials.
Do you see that?
A. I do.
Q. Do you know what the reference to the 6/30 financials is?
A. Yes.
Q. And what is that reference?
A. That is referencing the amounts on the balance sheet at 6/30 that we provided for the 15(c) materials to the board.
Q. Okay. And does that $12.3 million include, to the best of your knowledge, the principal amount of the two notes that we were talking about?
A. Yes.
MR. RUKAVINA: Objection. Best evidence.
THE WITNESS: Yes.
Q. (BY MR. MORRIS) And how do you know that?
A. Because I kept their financials, I know for a fact that it included all of their outstanding notes and it most certainly included these two notes that we've been talking about today.
Q. And to the best of your recollection did HCMFA provide the 6/30 financials to the retail board?

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A. Yes.
Q. And to the best of your knowledge did Mr. Dondero or Mr. Waterhouse or anybody in the world ever tell you that the financial statements that were provided to the retail board were erroneous in any way?
A. No.
Q. Did Mr. Dondero or Mr. Waterhouse or anybody in the world ever tell you that the 6/30 financials that were given to the retail board should not have included the $7.4 million principal amount on the two promissory notes?
MR. RUKAVINA: Objection. Best evidence. Answer.
THE WITNESS: No.
Q. (BY MR. MORRIS) Do you know whether -- are you at all familiar with the Advisors' actual response to the retail board in October 2020?
A. Say that again, please.
Q. So this email string is October 2020; right?
A. Right.
Q. And do you understand that this is kind of a discussion between Mr. Waterhouse and Ms. Thedford as to how to respond?
A. Yes.
Q. Have you ever seen the actual response that

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was given to the retail board?
A. I likely did. I can't tell you for certain that I was on the correspondence.
Q. Do you recall any discussion at any time that the $12.3 million number in Ms. Thedford's email should be changed in the final report to the retail board?
A. I don't believe so.
Q. Did anybody ever tell you at any time that the $12.3 million number was incorrect?
A. No.
Q. Did anybody ever tell you at any time that that number wrongly included the $7.4 million reflected in the two notes?
A. No.
Q. Okay. Do you recall that earlier that summer -- we looked at Exhibit 15?
A. Yep.
Q. And that was an attachment to an email that you personally sent to Mr. Dondero. We saw that before?
A. Right.
Q. And this Exhibit 15, which was attached to your email, identifies amounts due and owing from NexPoint Advisors; right?
A. Right.

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Q. And it identifies amounts due and owing for a number of different entities, including HCMFA; right?
A. Correct.
Q. Do you know whether the amount included for HCMFA on Exhibit 15 included the principal amount due on the two promissory notes?
A. It does.
Q. Did Mr. Dondero or Mr. Waterhouse ever ask you why -- withdrawn.
Did Mr. Dondero or Mr. Waterhouse ever ask you how the $10.5 million number was calculated?
A. No.
Q. Did Mr. Dondero or Mr. Waterhouse ever suggest to you that the number was incorrect?
A. No.
Q. Did Mr. Dondero or Mr. Waterhouse or anybody in the world ever question the number that you gave to Mr. Dondero in the summer of 2020 concerning the principal amount due by HCMFA to HCMLP?
A. No.
Q. Have you ever made a payment -- withdrawn.
Have you ever caused a payment to be made in connection with an intercompany loan without receiving the prior approval from either Frank Waterhouse or Mr. Dondero?

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A. No.
Q. Has anybody ever said to you that you made a mistake in applying a payment against principal or interest due on an intercompany loan?
A. No.
Q. We saw this morning, and we produced to Mr. Rukavina and he mentioned earlier, 13-week forecasts? Do you understand that?
A. Yes.
Q. Did you review the 13-week forecasts recently?
A. Yes.
Q. And we're talking specifically about the 13-week forecasts for the November/December 2020 time period. Do you understand that?
A. Yes.
Q. Based on your review of those forecasts, did those forecasts specifically identify the principal and interest that were due on the three term notes as of December 28, 2020?
A. Yes.
Q. And what was the purpose of creating the 13-week forecasts?
A. Sure. That was to keep everybody informed who was on the cash call, Frank Waterhouse, Jim Seery

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and others, keep everybody informed of upcoming payments that were due on term loans well in advance.
Everybody knew about it. It was out there for everybody to see that was on these cash calls.
Q. Now, is it your understanding that Mr. Waterhouse -- withdrawn.
Did you email these forecasts -- withdrawn.
Did anybody email these forecasts to the best of your recollection in late 2020?
A. Yes.
Q. And was it sent to the corporate accounting group that we saw earlier?
A. It was probably sent to Frank, Seery, the DSI guys that were involved with the cash call.
Q. Okay. And so did you participate in the creation of the 13-week forecasts?
A. Yes.
Q. What role did you play in the creation of the 13-week forecasts?
A. I was responsible for creating the entire thing.
Q. Okay. And based on the work that you did, was one of the purposes to make sure that Mr. Waterhouse was aware of all payments that were coming due under the intercompany notes?

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A. Yes.
Q. And was that information that was included on the reports to Mr. Waterhouse?
A. Yes.
Q. And do you recall whether there were any specific discussions in November or December of 2020 concerning those payments -- withdrawn. That wasn't a good question.
Did Mr. Waterhouse or -- withdrawn.
Did anybody on behalf of HCMS or HCRE ever instruct you to make the payments that were due under their term notes?
A. No.
Q. Did anybody on behalf of NexPoint ever instruct you to make a payment that was due at year end with respect to the NexPoint term note?
A. No.
Q. Were you authorized to make those payments without the prior approval of either Mr. Waterhouse or Mr. Dondero?
A. No.
Q. I think you testified that there were certain payments that were made in January 2001 under each of the three term notes.
Do I have that right?

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A. Correct.
MR. RUKAVINA: 2021.
MR. MORRIS: Thank you very much.
Q. (BY MR. MORRIS) With that amendment, do you understand my question?
A. Yes.
Q. Do you know why the three payments were made in January of 2021 on each of three term notes?
A. Because Frank Waterhouse instructed me to do so.
Q. And he had not instructed you to make those payments prior to that time?
A. Correct.
Q. Did you have to prompt Frank Waterhouse in January of 2021 to make those payments?
A. No.
Q. So based on the 13-week forecast that you prepared and delivered to Mr. Waterhouse, is it your understanding that Mr. Waterhouse knew as early as mid November 2020 that payments would be due under the three term notes at the end of the year?
A. Yes.
Q. And, in fact, did HCMS and HCRE and NexPoint timely make their installment payments that were due at year end 2018?

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1 A. Yes.
2 Q. And was that done because HCMLP received the
3 instructions of somebody authorized to give the
4 instruction on behalf of those entities?
5 A. Yes.
6 Q. Did HCMS and HCRE and NexPoint timely make
7 the installment payments that were due at year end
8 2019?
9 A. Yes.
10 Q. And why did they make those payments?
11 A. Because we were provided instruction and
12 authorization to do so.
13 Q. Okay. And is the only reason that the
14 payment wasn't made at year end 2020 because nobody on
15 behalf of the Advisors -- withdrawn.
16 Is the only reason that no payment was made
17 at the end of 2020 is because no one on behalf of
18 NexPoint, HCRE, or HCMS directed HCMLP to make those
19 payments?
20 A. Correct.
21 MR. AIGEN: Objection. Form.
22 Q. (BY MR. MORRIS) And you testified earlier to
23 a call that you had with Mr. Waterhouse. I think you
24 said it was either November 30 or December 1.
25 Do you recall that?

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1 A. Yes.
2 Q. And did you personally continue to prepare
3 the 13-week forecasts after your conversation with
4 Mr. Waterhouse?
5 A. Yes.
6 Q. And did those 13-week forecasts continue to
7 include the payments that were due under the three term
8 notes at the year end?
9 A. Yes.
10 Q. And that's information that you gave to
11 Mr. Waterhouse; is that right?
12 A. Right.
13 Q. Mr. Rukavina elicited from you the fact that
14 payments of principal hadn't been made on demand notes
15 that were executed in favor of Mr. Dondero's
16 affiliates.
17 Do you recall that?
18 A. Yes.
19 Q. Okay. Was that a topic of conversation with
20 PricewaterhouseCoopers at any time?
21 A. Yes.
22 Q. Can you tell me about that conversation?
23 A. Sure. As part of our annual audit, the
24 auditors would, you know, make sure that our
25 receivables are collectible. And if they thought for

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1 any reason they weren't, then they were going to raise
2 an issue, a going concern issue.
3 That came up several years in a row with
4 HCMFA.
5 Q. Do you recall that the three term notes at
6 issue here were all signed on May 31, 2017?
7 A. Yes.
8 Q. And all of those term notes involved a
9 roll-up of previously issued demand notes; is that
10 right?
11 A. Correct.
12 Q. Do you know why in -- at the end of May 2017
13 NexPoint, HCRE, and HCMS rolled up their demand notes
14 into individualized term notes?
15 A. Yes.
16 Q. What is your understanding as to why that
17 happened?
18 A. That would get the auditors a little bit more
19 comfort over our outstanding loans, ensuring that we
20 have an amortization schedule, an underlying contract,
21 showing that payments will be coming in every year on
22 these outstanding receivables.
23 Q. Okay. As the person responsible for
24 preparing Highland's audit, did anybody ever tell you
25 at any time that any of the notes were not valid

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1 obligations of the maker?
2 A. No.
3 Q. As the person responsible for Highland's
4 audit, did anybody ever tell you at any time that any
5 of the notes at issue should not have been signed?
6 A. No.
7 Q. As the person responsible for Highland's
8 audit, did anybody ever tell you at any time that any
9 of the notes at issue were signed by mistake?
10 A. No.
11 Q. Did anybody ever tell you at any time that --
12 withdrawn.
13 As the person responsible for Highland's
14 audit, did anybody ever tell you at any time that
15 Mr. Dondero didn't approve of any of the notes?
16 A. No.
17 Q. As the person responsible for Highland's
18 audit, did anybody ever tell you at any time that
19 the -- any of the notes at issue were subject to an
20 oral agreement?
21 A. No.
22 Q. As the person responsible for Highland's
23 audit, did anybody ever tell you at any time that any
24 of the notes were amended?
25 A. No.

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Q. As the person responsible for Highland's audit, did anybody ever tell you at any time that any of the notes would be forgiven?
A. No.
Q. During your 15 years at Highland, has an intercompany loan ever been forgiven in whole or in part?
A. No.
Q. During your -- withdrawn.
Can you recall any note that Highland ever held as the payee that was forgiven in whole or in part in the five years prior to bankruptcy, go back to 2014?
A. No.
Q. Is it your understanding as the person responsible for Highland's audit that the forgiveness of notes, if they were in a material amount, would have had to have been disclosed in the audited financial statements?
A. Yes.
Q. So is it fair to say that any evidence of the forgiveness of material amounts would have been disclosed in Highland's financial statements?
A. Yes.
MR. MORRIS: I have no further questions.
MR. RUKAVINA: I have none.

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MR. AIGEN: None.
MR. RUKAVINA: Okay. Thank you very much.
(Whereupon, the deposition adjourned at 1:19 P.M.)
--oOo--
I declare under penalty of perjury that the foregoing is true and correct. Subscribed at _____, Texas, this ____ day of _____, 2021.

_____
KRISTIN HENDRIX

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CERTIFICATE OF REPORTER
I, BRANDON D. COMBS, a Certified Shorthand Reporter, hereby certify that the witness in the foregoing deposition was by me duly sworn to tell the truth, the whole truth, and nothing but the truth in the within-entitled cause;
That said deposition was taken in shorthand by me, a disinterested person, at the time and place therein stated, and that the testimony of the said witness was thereafter reduced to typewriting, by computer, under my direction and supervision;
That before completion of the deposition, review of the transcript was not requested. If requested, any changes made by the deponent (and provided to the reporter) during the period allowed are appended hereto.
I further certify that I am not of counsel or attorney for either or any of the parties to the said deposition, nor in any way interested in the event of this cause, and that I am not related to any of the parties thereto.
DATED: November 1, 2021

_____
Brandon Combs, Certified Shorthand

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My commission expires 1-31-23

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EXHIBIT 195

David Klos - October 27, 2021

1

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION
--o0o--

HIGHLAND CAPITAL MANAGEMENT, L.P., Plaintiff,
vs. No. 21-03004-sgj
HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, L.P., Defendants.

DEPOSITION OF
DAVID KLOS
October 27, 2021

DEPOSITION OF DAVID KLOS, produced as a witness, duly sworn by me via videoconference at the instance of the DEFENDANTS, was taken in the above-styled and numbered cause on October 27, 2021, from 2:30 P.M. to 5:14 P.M., before BRANDON D. COMBS, CSR, RPR, in and for the State of Texas, reported by computerized machine shorthand, at 500 North Akard Street, 38th Floor, Dallas, Texas.

2

APPEARANCES

MUNSCH, HARDT, KOPF & HARR, PC, 500 North Akard Street, Suite 3800, Dallas, TX 75201, represented by DAVOR RUKAVINA, Attorney at Law, appeared via videoconference as counsel on behalf of the Defendants.
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PACHULSKI, STANG, ZIEHL & JONES, 780 Third Avenue, 34th Floor, New York, NY 10017-2024, represented by JOHN A. MORRIS, Attorney at Law, appeared via videoconference as counsel on behalf of the Plaintiff.
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STINSON, LLP, 3102 Oak Lawn Avenue, Suite 777, Dallas, TX 75219, represented by MICHAEL AIGEN, Attorney at Law, appeared via videoconference as counsel on behalf of the Defendants Jim Dondero, HCMS and HCRE Partners.
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(No exhibits marked.)

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DAVID KLOS,
having been first duly sworn, testified as follows:
EXAMINATION

Q. (BY MR. RUKAVINA) Sir, state your name for the record, please.
A. David Klos.
Q. K-l-o-s?
A. K-l-o-s.
Q. What's your date of birth?
A. May 6, 1982.
Q. And where do you live?
A. I live in Dallas.
Q. What's your educational background?
A. Undergraduate and graduate degrees. I went to undergrad at Boston College, graduate school at SMU, with a degree in, Master's of Science in accounting and MBA from SMU.
Q. Do you hold any professional licenses?
A. CPA in the state of Texas and, I don't know if it's technically a license, but Series 27 from FINRA.
Q. And when did you get your CPA license?
A. I don't recall specifically, but it would have been probably in the '08, '09 time frame.
Q. Is it current?

5

1 A. As far as I know.
2 Q. Have you ever been disciplined or threatened
3 with disciplinary proceedings?
4 A. No.
5 Q. And your relevant work experience, please,
6 starting with college and afterwards?
7 A. Sure. Out of grad school I started working
8 at Deloitte in Boston. I worked at Deloitte for
9 approximately three and a half years, between the
10 Boston office and the Dallas office.
11 And then I began working at Highland Capital
12 Management in March of 2009 and I've been at Highland
13 since then.
14 Q. And when you joined Highland in March of
15 2009, what was your title or your role at that time?
16 A. My title, if I remember correctly, was
17 valuation senior analyst. I'm not certain if that was
18 exactly it, but it was something along those lines.
19 Q. Was it in the valuation group?
20 A. Yes.
21 Q. And then give me your -- today you're the CFO
22 of Highland; correct?
23 A. Correct.
24 Q. So give me the progression from valuation
25 analyst to CFO with, to the best of your recollection,

6

1 the approximate year that you were promoted, et cetera?
2 A. Sure. I was in the valuation role from
3 basically March of 2009 to end of 2009.
4 I was then brought over to what we call the
5 corporate accounting team, so doing the accounting for
6 Highland Capital Management, LP and of the other
7 advisor-type entities, where I was primarily focused on
8 budgeting and forecasting, credit facility compliance.
9 That took from roughly 2010 until I think
10 middle of 2011, at which point I was moved over to the
11 fund accounting group, so doing hedge fund accounting,
12 which was a short role, really, for probably three or
13 four months.
14 At which point I was brought back to the
15 corporate team and also put in charge of the valuation
16 group. I held that role in some way, shape, or form
17 more or less continuously for the next several years,
18 although certainly my role evolved and changed.
19 But in terms of the groups that I had
20 oversight over, those were the groups. Like I said, my
21 role definitely evolved over time from 2011.
22 Q. So by 2017 what was your title?
23 A. So, yeah, by that time, I was, I believe,
24 controller. I might have still been assistant
25 controller.

7

1 There were a few title changes in between
2 there. I think at one point I was manager, at one
3 point I was senior manager, at one point I was
4 assistant controller and at one point I was controller.
5 I can't remember the exact times of all of
6 those break points.
7 Q. Let me pause you. When you were assistant
8 controller, who was the controller?
9 A. There was quite a bit of time where I was
10 assistant controller and we didn't have a controller.
11 I couldn't tell you the exact time frame, but there was
12 definitely an extended time frame.
13 And then in April of 2020, our existing chief
14 accounting officer left and I assumed his
15 responsibilities at that time.
16 Q. Let me pause you. That's a new term for me.
17 Chief accounting officer?
18 A. Uh-huh.
19 Q. Who was that person?
20 A. The person that left?
21 Q. The person that was the chief accounting
22 officer until April 2020.
23 A. Cliff Stoops.
24 Q. And do you have any idea or knowledge whether
25 at Highland that was like an officer-level position?

8

1 A. It was not. It was more of a term of art, I
2 would describe it. So it -- so, yeah --
3 Q. To the best of your recollection, when did
4 you become the controller at Highland Capital
5 Management, LP?
6 A. I couldn't pin down a specific date. Like I
7 said, the responsibilities were very similar. I would
8 guess the change from assistant controller to
9 controller was probably in the, most likely in the '16,
10 '17, maybe '18 time frame.
11 Q. Can we agree that as of May 1, 2019, you were
12 the controller at Highland?
13 A. Yes.
14 Q. So let's focus on that time frame, May 2019,
15 and you're the controller. Who do you report to at
16 Highland?
17 A. Frank Waterhouse.
18 Q. The CFO?
19 A. Correct.
20 Q. No one in between you and him?
21 A. Correct.
22 Q. So what -- explain to me the role between the
23 chief accounting officer and the chief financial
24 officer in that time frame, '19, '20?
25 MR. MORRIS: Objection to the form of the

9

1 question.
2 THE WITNESS: Very little. Like I said,
3 chief accounting officer was more of a term of art.
4 What that role actually had oversight of was our retail
5 fund accounting, institutional fund accounting,
6 operations, so loan settlement and treasury.
7 And probably another department or two that
8 I'm forgetting, but it did not have any oversight over
9 the corporate accounting group.
10 **Q. (BY MR. RUKAVINA) And in May of 2019, as the**
11 **controller, what were -- what was your role or what**
12 **were your duties?**
13 **A. In May of 2019 I was at that point still**
14 **overseeing the valuation group. I was overseeing the**
15 **corporate accounting group, which my primary direct**
16 **report there was Kristin Hendrix, who really was the**
17 **day-to-day person. But I certainly oversaw her.**
18 **Q. By that you mean the person that answers to**
19 **you?**
20 **A. Correct. Sorry. If I flipped that, I**
21 **apologize. So I was overseeing that group, which had,**
22 **you know, fairly broad responsibilities.**
23 **In terms of, you know, accounting for the**
24 **Advisor, doing forecasts when they were called for,**
25 **performing the audit every year, managing cash,**

10

1 **processing payroll, things of that nature.**
2 **And then at that time I was also put in**
3 **charge of one of the public REITs that was launching at**
4 **the time under the NexPoint flag. And getting that**
5 **team started.**
6 **Q. Did you mention that in May of 2019 you were**
7 **still involved with the valuation group?**
8 **A. I did.**
9 **Q. Did you have a title at the valuation group?**
10 **A. Nothing distinct from my overall controller**
11 **title. These titles were often, like I said, terms of**
12 **art, whether it was controller or chief accounting**
13 **officer.**
14 **Q. What did the valuation group at Highland do?**
15 **A. Well, valuation group was really a liaison**
16 **with both third-party pricing providers, pricing**
17 **services, brokers on the street, front office, members**
18 **at Highland.**
19 **To, you know, to work on valuing the**
20 **securities held across the platform, both for Highland**
21 **HCMLP managed funds as well as affiliated managed**
22 **funds.**
23 **Q. So who did -- did you report to anyone at the**
24 **valuation group? In other words, did it have its own**
25 **separate hierarchy kind of?**

11

1 **A. Frank Waterhouse.**
2 **Q. And were --**
3 **A. I should clarify too, that the valuation team**
4 **isn't ultimately responsible for the valuations**
5 **themselves, but they do act in this liaison role.**
6 **Q. Perhaps that's my confusion. Is there a**
7 **separate group that handles just valuation?**
8 **A. No.**
9 **Q. Is there an outside consultancy that handled**
10 **that in May of 2019?**
11 **A. I don't know if I would call it consultancy,**
12 **but there was a third-party valuation service provider**
13 **that would do certain of the, call it illiquid, harder**
14 **to value securities.**
15 **Q. So would you say that you were pretty busy in**
16 **April, May 2019?**
17 **MR. MORRIS:** Objection to the form of the
18 question.
19 THE WITNESS: I've been busy throughout my
20 career.
21 **Q. (BY MR. RUKAVINA) In April, May, June 2019,**
22 **how many hours a month do you estimate you worked for**
23 **Highland?**
24 **MR. MORRIS:** Objection to the form of the
25 question.

12

1 THE WITNESS: I don't remember. A
2 significant number.
3 **Q. (BY MR. RUKAVINA) Certainly full-time?**
4 **A. Absolutely.**
5 **Q. Would you say that you were working more than**
6 **200 hours a month in that time frame for Highland?**
7 **A. I don't know how many hours. I should**
8 **clarify, we're using Highland very liberally. When I**
9 **say Highland, supporting the entire apparatus,**
10 **platform. Significant number of hours at that time,**
11 **and before and after.**
12 **Q. And let's explore that a little bit. You**
13 **mentioned one of the funds for NexPoint. I'd like to**
14 **talk about NexPoint Advisors, LP, just NexPoint**
15 **Advisors, LP.**
16 **Did you ever have an official role or title**
17 **with NexPoint Advisors, LP?**
18 **A. Not that I can remember.**
19 **Q. Do you know if you were ever the controller**
20 **for that entity?**
21 **A. I'm not certain. I'm not certain.**
22 **Q. But I take it that pursuant to the shared**
23 **services agreement you, as an employee of Highland,**
24 **were providing services on behalf of NexPoint?**
25 **MR. MORRIS:** Objection to the form of the

13

1 question.
2 THE WITNESS: I provided many of the same
3 services for NexPoint Advisors that I provided for
4 Highland, similar types of services.
5 Q. (BY MR. RUKAVINA) And briefly about Highland
6 Capital Management Fund Advisors, LP, HCMFA, did you
7 ever have like an official title or role with that
8 entity, to your knowledge?
9 A. Again, not that I can remember.
10 Q. Not to your knowledge, the controller ever of
11 that entity?
12 A. I'm not certain whether I was or not.
13 Q. But you provided services to that entity as
14 part of your role at Highland pursuant to shared
15 services?
16 A. Similar to NexPoint as I described.
17 Q. When you were controller of Highland, was
18 that an officer-level position at Highland?
19 A. No.
20 Q. When did you become the chief financial
21 officer of Highland?
22 A. Chief financial officer?
23 Q. Uh-huh.
24 A. 2021, March.
25 Q. After Mr. Waterhouse was gone?

14

1 A. Yes.
2 Q. And I'm going to ask you a little bit about
3 your compensation today at Highland.
4 You don't have to give me specific numbers
5 unless I ask you, please, but I take it you have a base
6 compensation?
7 A. Yes, I have a base.
8 Q. Do you have any bonus structure compensation?
9 A. Yes, I have a bonus.
10 Q. And what is that bonus number or whether it's
11 paid out based upon or contingent upon?
12 MR. MORRIS: Objection to the form of the
13 question.
14 THE WITNESS: As I understand, it's based on
15 my offer letter.
16 Q. (BY MR. RUKAVINA) On your what?
17 A. My letter for extending an offer.
18 Q. Tell me, what is your -- without having to
19 use express numbers, what is your bonus compensation?
20 When is it paid, et cetera?
21 A. Yeah, so it's not too dissimilar from the
22 prior Highland plan that has semiannual installments
23 payable. And then there's a, kind of an end of plan
24 bonus when -- I don't remember the specifics on exactly
25 what triggers that, but it's back-ended in the plan.

15

1 Q. Do you have an expectation as to when the
2 winding down and monetization of Highland and its
3 assets will be complete?
4 A. That's very hard to speculate, especially
5 given the amount of litigation that's going on because
6 I don't know when that's going to play out and that's a
7 material asset.
8 Q. Have you discussed with Mr. Seery how long
9 that might be?
10 A. Not that I can specifically remember.
11 Q. Do you believe it will be at least probably
12 two years, from today?
13 A. I don't know.
14 Q. This bonus compensation, does it or any
15 amount of it depend on how well Highland or the
16 claimant trust, how well they do vis-a-vis collecting
17 money from creditors?
18 A. Not that I can think of. I'd have to
19 probably go back and look and understand the back-end
20 piece to say definitively.
21 Q. And back-end piece, does that mean whenever
22 the winding down is completed?
23 A. Yeah, like I said, I'm not exactly -- I'm not
24 completely facile with the exact timing, if it's
25 completed 100 percent or 80 percent, what kind of

16

1 qualitative considerations go into that. But
2 substantially completed.
3 Q. Sitting here today, do you think or believe
4 that any portion of your compensation over the next
5 however long it takes to wind down Highland depends on
6 how much Highland recovers from the litigation
7 regarding promissory notes?
8 A. I really take exception to that question
9 because the insinuation is that it's going to somehow
10 change my answers here, and it's absolutely not.
11 How litigation, it may or may not affect my
12 ultimate compensation, but that's not going to affect
13 one iota of the answers I give you today or at any
14 time, whether I'm on or off the record.
15 Q. Fair enough. So you're going to testify
16 today truthfully regardless of your compensation. I
17 got you; right? Correct?
18 A. I didn't follow what you just asked me.
19 Q. You're going to testify today truthfully
20 regardless of how these events may or may not affect
21 your compensation; right?
22 A. It's such a loaded question I can't even
23 begin to answer that.
24 Q. So sitting here today -- I want to ask you
25 the same question I did before, and your answer to me

17

1 was that you took exception to the insinuation. Now
2 I'd like you to answer my question.
3 Which is, sitting here today, do you believe
4 that any part of your compensation in the future,
5 however long it takes to wind down Highland, is going
6 to depend on how well Highland does in these
7 litigations concerning the notes?
8 A. I believe my ultimate compensation will
9 depend on how long this process takes, which I don't
10 know, and ultimate recoveries to trust beneficiaries
11 under the plan.
12 And so I do expect that it will vary, but I
13 would reiterate my earlier comment.
14 Q. So sitting here today, you understand that if
15 the trust beneficiaries recover more, then you might be
16 compensated more?
17 A. That's possible.
18 Q. Well, sir, I'm not trying to be a smart ass,
19 but --
20 MR. MORRIS: Actually, you're coming awfully
21 close, just to be clear, so be careful, because I'm
22 offended as well. But continue.
23 MR. RUKAVINA: I'm entitled to ask the man
24 about his compensation.
25 MR. MORRIS: Right. And your clients have

18

1 $75 million, hard dollars at stake in this litigation,
2 so we should never believe anything that he says? Is
3 that where we are now?
4 Q. (BY MR. RUKAVINA) Sir, again, what is your
5 bonus compensation as it relates to how well the
6 claimant trust does? Do you remember or not?
7 A. I don't know that that's even something that
8 I could know at this point.
9 Q. In preparing for this deposition, I take it
10 you spoke to legal counsel, and I'm not entitled to
11 know that and I'm not asking that.
12 But did you talk to anyone else?
13 A. I've spoken in general terms to Mr. Seery.
14 Q. Okay. Anyone else?
15 A. I've spoken, again in general terms, to
16 Kristin Hendrix.
17 Q. Anyone else?
18 A. Not that I can think of.
19 Q. Now, I understand you spoke to Ms. Hendrix
20 when legal counsel was present; right?
21 A. Yes.
22 Q. So let's exclude that conversation.
23 Did you have any conversations with
24 Ms. Hendrix regarding this deposition or this
25 litigation at which counsel was not present?

19

1 A. Not in any substance.
2 Q. And when do you recall you might have had
3 those discussions with her?
4 A. I'm not even sure.
5 Q. Would it have been recently or like 9,
6 10 months ago?
7 A. No, it would have been recently.
8 Q. And with Mr. Seery, when did you have a
9 general conversation with Mr. Seery?
10 A. I've had, you know, one or more general
11 conversations with Mr. Seery. It's my understanding
12 that he was the 30(b)(6) witness, and he had questions
13 in preparation for his role in that.
14 Q. So that would have been before last Thursday
15 that you talked to him? I'll represent to you that
16 that's when his deposition was.
17 A. Yeah, if I'm accepting that representation,
18 yes, prior to.
19 Q. Other than that conversation with respect to
20 him preparing for the 30(b)(6), did you have a
21 discussion with him about this litigation as it might
22 relate to your deposition?
23 A. I don't believe so in terms of relating to
24 this deposition. We've talked at length about the
25 notes more generally.

20

1 Q. And we'll go through that I'm sure.
2 So other than the conversations with
3 Ms. Hendrix and Mr. Seery and, of course, with counsel
4 that I'm not entitled to know about, did you discuss
5 this deposition or what you might be asked today with
6 anyone else?
7 A. No.
8 Q. Okay. Did you read all or any portions of
9 the deposition of Frank Waterhouse?
10 A. Certainly didn't read all of it. I have a
11 general understanding of the topics that were -- that's
12 a bad way to frame it.
13 I have a general understanding of a few
14 points that were covered in his deposition.
15 Q. Were you provided -- were you provided the
16 exact pages of any of his deposition?
17 MR. MORRIS: Objection. Direct him not to
18 answer.
19 MR. RUKAVINA: You're going to direct him not
20 to answer whether he read --
21 MR. MORRIS: If you're asking him whether I
22 directed him to particular --
23 MR. RUKAVINA: I didn't ask that.
24 MR. MORRIS: Rephrase your question.
25 Q. (BY MR. RUKAVINA) Did you read any pages

21

1 from Mr. Waterhouse's deposition?
2 MR. MORRIS: Objection. Asked and answered.
3 You can answer again.
4 THE WITNESS: I don't recall -- I don't
5 recall reading it.
6 Q. (BY MR. RUKAVINA) So were you provided a
7 summary of his deposition?
8 A. I have had discussions with Mr. Morris in
9 preparation for this deposition.
10 Q. That's fine. And we can stop there.
11 Did you read or -- did you read the whole or
12 any portion of Mr. Seery's deposition?
13 A. No, I don't believe I -- no, I don't believe
14 so.
15 Q. Is it the same answer, that whatever you
16 discussed would have been through counsel?
17 A. Yes.
18 Q. Did you see any of the videotape of either
19 Mr. Waterhouse's or Mr. Seery's deposition?
20 A. No.
21 Q. So let's talk about the NexPoint
22 $30.7 million note.
23 You're familiar with that note; right?
24 MR. MORRIS: Objection to the form of the
25 question.

22

1 THE WITNESS: Before I answer that, I'd like
2 to see the note.
3 Q. (BY MR. RUKAVINA) It's in here. I'm looking
4 for the exhibit number. It's in here somewhere.
5 A. Yes, I'm familiar with this note.
6 Q. Are you familiar with anything having to do
7 with the negotiation or execution of this note?
8 MR. MORRIS: Objection to the form of the
9 question.
10 THE WITNESS: Can you repeat.
11 Q. (BY MR. RUKAVINA) Yes. Let me rephrase it.
12 Did you have anything to do, back on or about
13 May 31, 2017, with the negotiation or execution of this
14 promissory note?
15 MR. MORRIS: Objection to the form of the
16 question.
17 THE WITNESS: Nothing with respect to the
18 negotiation --
19 Q. (BY MR. RUKAVINA) I'm sorry.
20 A. In terms of the execution, I believe I
21 coordinated with internal counsel, who drafted the
22 note, and I can't remember -- I can't recall one way or
23 the other if I assisted in actually physically
24 receiving signatures. I just don't remember.
25 Q. Do you remember who that internal counsel

23

1 was?
2 A. Yeah, it was Lauren Thedford, who is Highland
3 in-house counsel.
4 Q. She's a lawyer?
5 A. Yes.
6 Q. Do you recall from that -- strike that.
7 Did you know on or about May 31, 2017 what
8 the purpose or reason behind Exhibit 13, this
9 promissory note, was?
10 MR. MORRIS: Objection to the form of the
11 question.
12 THE WITNESS: The purpose was to take
13 existing notes, which I believe were exclusively demand
14 notes, I'm not a hundred percent certain on that, and
15 roll them into a single note that would have a 30-year
16 amortization period.
17 Q. (BY MR. RUKAVINA) Do you know why that was
18 done?
19 A. I believe it was done probably for a number
20 of reasons, one of which was to ensure some level of
21 cash flow back to Highland, when I say Highland,
22 Highland Capital Management, LP, on an annual basis.
23 Q. Was that a concern at Highland Capital
24 Management, that it wasn't getting any level of cash
25 flow back?

24

1 A. It wasn't a concern of mine. I don't know if
2 it was a concern of others.
3 Q. Do you recall whether any auditor ever raised
4 that concern?
5 A. The auditors did raise that in conjunction
6 with the audit that was concluding around this time.
7 So yes, they did raise it, you know, probably in the
8 May of 2017 time frame.
9 Q. Do you know who decided that it would be a
10 30-year term note? By that I mean 30 years.
11 A. Jim Dondero.
12 Q. Do you know if he decided that in connection
13 with discussions with anybody or, to your knowledge, he
14 just decided?
15 A. As far as I know he just decided it. I
16 believe there was a draft at one point that was for
17 20 years, and he wanted to do 30.
18 Q. So this note is executed in May 31, 2017.
19 Did you have any further role prior to, let's say,
20 December 1, 2020 with respect to anything to do with
21 this promissory note?
22 A. Sorry, tell me the date again.
23 Q. From execution of the note until December 1,
24 2020?
25 A. And the question was?

25

1 Q. Did you have any role in that time frame with
2 respect to this promissory note on behalf of Highland?
3 MR. MORRIS: Objection to the form of the
4 question.
5 THE WITNESS: I don't know how to answer
6 that, it's such an open-ended question. I just don't
7 know how to respond to that.
8 Q. (BY MR. RUKAVINA) If payments were made on
9 this note, would you have any duty to record or credit
10 those payments?
11 MR. MORRIS: Objection to the form of the
12 question.
13 THE WITNESS: I wouldn't have personally in
14 my role, but my team would have been involved in the
15 recording of those.
16 Q. (BY MR. RUKAVINA) And when payments were due
17 on this note, did you personally have any role with
18 respect to doing anything to facilitate those payments?
19 A. When payments were due did I have anything --
20 yes.
21 Q. What was your role?
22 A. So my role, as part of the corporate team,
23 part of our role is managing cash at the various
24 entities. So I was involved in weekly cash meetings,
25 where things like upcoming, whether it's an obligation

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1 or a receipt, would be put on people's radars.
2 And we would, in connection with the 30-year
3 notes such as this one from NexPoint, we would either
4 confer with Jim or -- certainly Jim. Also likely his
5 accountant.
6 In terms of teeing them up to make sure that
7 they were prepared from a cash flow statement to make
8 the payment.
9 Q. What do you mean by his accountant?
10 A. Melissa Schroth.
11 Q. What do you mean by his? That's a new name
12 to me. Who is Melissa Schroth?
13 A. I find it hard to believe that she's a new
14 name to you. But I think her title was executive
15 accountant, and she was the keeper of Jim's -- many of
16 Jim's trusts and personal entities.
17 Q. Was she a Highland employee?
18 A. She was. And when I say Highland, I should
19 be clear, Highland Capital Management, LP.
20 Q. So when you say Jim's accountant, she was
21 still a debtor employee, just that she handled
22 primarily Jim's personal matters?
23 A. She was still a Highland Capital Management,
24 LP employee but she did Jim's personal matters.
25 Q. Did you have any role at either Highland

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1 Capital Management or NexPoint Advisors as to a
2 decision as to whether any prepayments on this note
3 would ever be made?
4 MR. MORRIS: Objection to the form of the
5 question.
6 THE WITNESS: Can you repeat.
7 Q. (BY MR. RUKAVINA) Let's start from scratch.
8 Do you have any memory of any payments being
9 made on this note, Exhibit 13, prior to their scheduled
10 dates of payment?
11 A. There were payments on -- and to be clear,
12 we're talking about the original 30.7- NexPoint
13 promissory note? There were payments that I recall
14 happening throughout 2019 on this note.
15 Q. And we can look at Exhibit 14.
16 MR. MORRIS: What number?
17 MR. RUKAVINA: 14, 1-4.
18 Q. (BY MR. RUKAVINA) And those are only
19 numbered because Ms. Hendrix, they were used for her
20 deposition.
21 A. Sure. Just trying to keep these in order, I
22 apologize. Got it.
23 Q. Do you recognize Exhibit 14?
24 A. Generally. I can't say that I can verify
25 that this is completely accurate. But it looks

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1 familiar to a loan amortization schedule.
2 Q. Would it have been maintained by Highland?
3 A. Yes.
4 Q. And I'll tell you that no one has yet to
5 authenticate this with a hundred percent precision, so
6 I'm not asking you to ratify these numbers, but let's
7 assume that they are what they are.
8 This does purport to show on the second page
9 a number of transfers in 2019, which goes along with
10 your recent answer.
11 Do you see those, sir?
12 A. I do.
13 Q. In particular, 750,000, then 1.3 million,
14 300,000, 2.1 million, 630,000, 1.3 million.
15 You see all those, sir?
16 A. Yes, I see every one.
17 Q. Do you have any memory, without going into
18 those transfers of those dates to the dollar, do you
19 have any memory that those transfers were made?
20 A. Yes. Again, not a specific recollection of
21 where I was at the time, but yes, I know that these
22 transfers were made.
23 Q. Do you know why they were made in those
24 amounts and on those dates?
25 A. No, not without speculating.

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1 Q. What would be your speculation if you were to
2 speculate?
3 A. My speculation would be that it would be for
4 liquidity needs at HCMLP, Highland Capital Management,
5 LP, needing liquidity to operate. Again, that's
6 speculation. I don't know for a fact that that's true,
7 but that's what I would assume.
8 Q. Who would have made those decisions in 2019
9 to transfer those funds?
10 MR. MORRIS: Objection to the form of the
11 question.
12 THE WITNESS: Yeah, it would have been either
13 Frank or Jim. I can't say with certainty, but one of
14 the two. When I say Jim, I should be clear,
15 Mr. Dondero.
16 Q. (BY MR. RUKAVINA) Between January and
17 July 2019, do you have any recollection that there was
18 any particular liquidity issue or need at Highland
19 Capital Management?
20 A. Yeah, Highland was dealing with liquidity
21 problems throughout 2019. Maybe not every single day
22 of the year, but we were continuously needing to bridge
23 liquidity.
24 Q. And you joined Highland in 2009. From that
25 point in time, 2009, through 2019, was there any

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1 practice at the enterprise of those businesses to
2 transfer funds between each other on a basis of when
3 one needed it and one had it?
4 A. Yes, that was a fairly, generally speaking,
5 that was a fairly common practice, of using different
6 entities within the overall structure to bridge
7 liquidity.
8 Q. Would that have been Mr. Dondero who, in the
9 final analysis, would have made those decisions?
10 A. Maybe not a hundred percent, but I'd say
11 the -- if not a hundred percent, certainly most.
12 Q. And who else might have participated,
13 Mr. Waterhouse?
14 A. Potentially Mr. Waterhouse. And the reason I
15 hedge on that a little bit is I don't think Frank would
16 have made any of these decisions on his own either.
17 But I may have heard them from Frank via Jim.
18 Q. So in those same years, were you ever asked
19 by Mr. Dondero or Mr. Waterhouse as to whether funds
20 should be transferred from one entity to another for
21 liquidity purposes?
22 A. Can you ask that again, please.
23 Q. Yes. Trying to understand, were you part of
24 those discussions as to whether these transfers should
25 be made, or did you just learn that a decision to make

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1 them had been made and you executed them?
2 A. Both, depending on the circumstances.
3 Q. So sometimes you would be brought into a
4 discussion?
5 A. Yes.
6 Q. And can you think of any particular example?
7 A. Of when I was brought into the discussion of
8 whether to transfer? I can't think of an individual
9 example but we met quite regularly with Jim on cash.
10 So to the extent that either he needed cash
11 on one of his entities, he might let us know that. Or
12 to the extent that Highland needed cash, we might let
13 him know that and ask for basically his assistance in
14 helping us to meet our own cash needs.
15 Q. And did he usually find a way to facilitate
16 the cash need either at one of his entities or at
17 Highland?
18 A. I suppose until October 16 of 2019.
19 Q. Yes. Prior to bankruptcy, do you recall any
20 instance where one entity wasn't able to transfer funds
21 to another for liquidity purposes?
22 A. I can't think of a specific situation. But
23 I'm sure there were situations where -- you know, cash
24 was always something that was being juggled, so I don't
25 know that necessarily liquidity could be met the same

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1 day.
2 But eventually we were able to manage through
3 those situations, you know, oftentimes through some of
4 these loans.
5 Q. In instances that you may remember when
6 Highland Capital Management needed liquidity, do you
7 know how Mr. Dondero decided from which other entity to
8 transfer the cash?
9 A. I can't step into his brain and think about
10 his decision-making process, but if I was going to
11 oversimplify it I would speculate that it would be
12 based on who has cash in that moment.
13 Q. Would he ask you or someone on your team who
14 had cash?
15 A. At times, depending on which entity we're
16 talking about. Because my team certainly didn't have
17 responsibility for every single entity in the
18 enterprise, but we did have responsibility for some.
19 Q. And if your team -- so -- strike that.
20 So over the general -- talking about
21 generally now, over those 10 years when there were
22 these intercompany transfers for liquidity purposes,
23 how were they booked by the debtor, by Highland Capital
24 Management?
25 MR. MORRIS: Objection to the form of the

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1 question.
2 THE WITNESS: Help me on the direction. So
3 this is money that Highland is receiving or money that
4 Highland is sending?
5 **Q. (BY MR. RUKAVINA) Sending out.**
6 **A. Sending out. So this is -- in the scenario**
7 **that you're describing, this money that Highland is**
8 **sending out to meet some other corporate obligor's**
9 **liquidity needs?**
10 **Q. Yes, sir.**
11 **A. So those would be booked as a loan. I**
12 **would -- I need to hedge a little bit because I'm not**
13 **a hundred percent certain, but I would say if not**
14 **exclusively via loans close to exclusively.**
15 **Q. And would they -- strike that.**
16 **Would they usually be papered up with a**
17 **promissory note?**
18 **A. Yes.**
19 **Q. Now, why was that the general course during**
20 **10 years? Was there a policy and procedure in place,**
21 **or would Dondero say book it as a loan, or was that**
22 **just the right thing to do from an accounting**
23 **perspective?**
24 **MR. MORRIS:** Objection to the form of the
25 question.

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1 THE WITNESS: At the end of the day it's at
2 the direction of Jim Dondero, so I can't tell you
3 exactly why he wanted it to be done that way. But that
4 was certainly the practice of how it was done in those
5 situations.
6 **Q. (BY MR. RUKAVINA) To your knowledge, did Jim**
7 **Dondero ever tell you or anyone else that when Highland**
8 **is transferring funds to one of his affiliated entities**
9 **that it should always be booked as a loan?**
10 **A. So remembering 10 years' worth of**
11 **conversations, I can't remember a specific instance**
12 **where he would have said, always book every single**
13 **transaction I direct you to do as a loan. However,**
14 **that was the practice.**
15 **Q. Different question.**
16 **Do you remember that in each instance, and**
17 **again, that might be unfair over 10 years, but do you**
18 **remember in each instance when Mr. Dondero said**
19 **transfer money from Highland to this other entity for**
20 **liquidity needs that he said book it as a loan?**
21 **MR. MORRIS:** Objection to the form of the
22 question.
23 THE WITNESS: I can't recall with any
24 specificity what he may or may not have specifically
25 said so long ago.

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1 **Q. (BY MR. RUKAVINA) To your knowledge, was**
2 **there any written policy or procedure in place at**
3 **Highland Capital Management with respect to how**
4 **transfers from Highland to an affiliated entity should**
5 **be booked or treated?**
6 **A. No written policy or procedure that I'm aware**
7 **of.**
8 **Q. Is it fair to say that by May 2019, the**
9 **corporate accounting group had handled so many of these**
10 **transfers that it believed that if Highland was**
11 **transferring funds to another affiliated entity, it's**
12 **probably a loan?**
13 **MR. MORRIS:** Objection to the form of the
14 question.
15 THE WITNESS: Yeah, I don't know that I can
16 answer that in terms of the corporate accounting team.
17 That just feels way too broad.
18 It was certainly the practice that when
19 somebody needed liquidity and it was appropriate from an
20 accounting perspective, that's how it would be booked.
21 And there was no reason to doubt that that was
22 the appropriate way to do it, particularly with
23 direction from either Frank or Jim.
24 **Q. (BY MR. RUKAVINA) Is it your testimony that**
25 **in each instance that happened, that either Frank or**

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1 **Jim said, this is a loan, the "this" being the transfer**
2 **from Highland to an affiliated entity for liquidity**
3 **purposes?**
4 **MR. MORRIS:** Objection to the form of the
5 question.
6 THE WITNESS: I can't recall with that level
7 of specificity if those words came out of Jim's mouth.
8 But with 0 percent doubt in my mind, every single one
9 of those loans was done with the authority of Jim or
10 Frank, or both.
11 **Q. (BY MR. RUKAVINA) So going back to this**
12 **Exhibit 14, now I'm going to ask you about these**
13 **payments coming in.**
14 **Assuming that these payments were actually**
15 **made in 2019 --**
16 **And I think, John, you sent me this morning,**
17 **or maybe last night, some bank statements?**
18 **MR. MORRIS:** I actually sent all of the
19 backup for all payments made, I think, under the notes
20 at issue a week or two ago.
21 **Q. (BY MR. RUKAVINA) How would -- so assuming**
22 **that these payments in 2019 that NexPoint made didn't**
23 **technically have to be made at that point in time, how**
24 **would Highland have booked these payments?**
25 **A. So I can't tell the column headers, so you'll**

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1 have to excuse me if I flip them.
2 Q. They'll be on the first page. Rip the page
3 off if you need to.
4 A. First one is interest, second one is
5 principal. On the far right is the actual amount of
6 the payment. So, for example, March 29, 750,000.
7 And the -- the column that has the negative
8 411,000 is the application of interest and the 338- is
9 the application of principal.
10 Q. So again, if Highland -- strike that.
11 If NexPoint made a payment that was not
12 technically due at that point in time, it would be
13 recorded as payments on principal and interest?
14 A. It would be recorded as it's reflected in the
15 schedule. So there's an application of interest and an
16 application of principal.
17 Q. So based on your understanding and
18 experience, if that payment wasn't due at that time,
19 would it have been a prepayment by NexPoint?
20 MR. MORRIS: Objection to the form of the
21 question.
22 THE WITNESS: Yeah, I'm not sure that it's a
23 prepayment or not. It's certainly a payment. It's
24 certainly voluntary. It's not spelled out under the
25 schedule. I don't know that it's a per se, capital P,

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1 prepayment. I'm just not certain.
2 Q. (BY MR. RUKAVINA) Well, maybe without
3 respect to these specific transfers.
4 Generally, generally, if one of the Dondero
5 affiliates made a payment that wasn't scheduled, how
6 would the debtor have accounted for that payment?
7 A. It would have recorded the payment as a
8 reduction to either or both outstanding accrued
9 interest or principal.
10 Q. You wouldn't call those prepayments?
11 A. I don't know the definition of prepayment.
12 It's a payment. It's off schedule, but I don't know
13 whether it's a per se prepayment.
14 Q. Would that be something in your experience
15 that we would look at the promissory note to maybe
16 determine?
17 MR. MORRIS: Objection to the form of the
18 question.
19 THE WITNESS: I don't know.
20 Q. (BY MR. RUKAVINA) Well, remember, I'm asking
21 you the same question just in different ways.
22 Who decides at the debtor, or how does the
23 debtor decide, if an unscheduled payment is made, how
24 to apply it?
25 MR. MORRIS: Objection to the form of the

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1 question.
2 Q. (BY MR. RUKAVINA) And his objection is
3 valid. And just to give you a little bit of a fine
4 point, does someone look at the promissory note to
5 decide that? Or is there some other rule or procedure
6 that someone looks at?
7 MR. MORRIS: Objection to the form of the
8 question.
9 THE WITNESS: So the person -- I don't know
10 that I can specifically name a person because the role
11 probably changed over time.
12 But either our corporate accountant, or the
13 corporate accountant's boss, which was Kristin Hendrix
14 for years, would have been responsible for recording and
15 tracking those payments.
16 So some combination of the corporate
17 accountant and Kristin would have applied those
18 payments, and that rolls up through my and Frank's
19 review ultimately.
20 Q. (BY MR. RUKAVINA) So if I can round off this
21 discussion, I think you told me a few minutes ago that
22 in each instance that Highland was transferring money
23 out to an affiliate.
24 Whether or not you remember Dondero or
25 Waterhouse saying it's a loan, it would have been a

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1 loan because that's how it always was and it was always
2 authorized. Generally correct?
3 MR. MORRIS: Objection to the form of the
4 question.
5 THE WITNESS: There were a few "always" and
6 "generallys" in there. And like I said, when it came
7 to liquidity needs, my recollection is that these would
8 be handled via loans.
9 Q. (BY MR. RUKAVINA) And in reverse, if a
10 Dondero entity made a payment prior to a scheduled
11 payment on a note, generally there would be credit
12 against principal and/or interest provided on that
13 note?
14 MR. MORRIS: Objection to the form of the
15 question.
16 THE WITNESS: Generally speaking, yes, if the
17 payment was for payment on the note.
18 Q. (BY MR. RUKAVINA) Well, that goes back to my
19 question.
20 Do you know how these payments on Exhibit 14
21 in 2019 were determined to be payments on these notes,
22 as opposed to a transfer from NexPoint to Highland for
23 some other reason?
24 A. What other reason would it be, if I can be so
25 bold.

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Q. Can you think of any other reason in 2019?
A. Well, Highland had -- Highland had shared services and intercompany agreements with NexPoint, at this time.
But these were not payments that could possibly be confused with those payments. These are off cycle, they're larger amounts, and there's nothing that they could be other than payments against the loan.
Q. So I asked you before, and I think you said that you were speculating with respect to these payments, that Highland needed money at that time.
Do you recall in 2019 any discussions with anyone, Dondero or Waterhouse, to the effect that NexPoint has excess cash so maybe NexPoint should transfer some money to Highland?
MR. MORRIS: Objection. Asked and answered.
THE WITNESS: Do I still answer?
Q. (BY MR. RUKAVINA) Yes.
MR. MORRIS: Yes.
THE WITNESS: And sorry, I got lost there.
Q. (BY MR. RUKAVINA) Yes. So my predicate was you testified before that you were assuming that these payments were because of a cash need at Highland; right?

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A. Correct.
Q. So with that predicate my question is, do you recall discussing with Dondero or Waterhouse or with anyone as to why NexPoint would be transferring money to Highland at that time?
A. Yes, I would have had conversations with Mr. Dondero or Mr. Waterhouse.
Q. And do you remember specifically in 2019 why these transfers were made from NexPoint as opposed to some other Dondero entity?
A. Not with specificity, but certainly NexPoint was generating cash at that time, and had the ability to assist with Highland's liquidity.
Q. So sitting here today, you've told me generally and logically that you have no specific memory why between January 2019 and August 2019, any of these payments on Exhibit 14 were made by NexPoint?
A. I have no specific memory, but I would say with certainty that most or all of this was driven by Highland HCMLP liquidity needs.
Q. And most or all of this would have been Highland in the first instance going to NexPoint and saying, hey, can you send us some cash?
MR. MORRIS: Objection to the form of the question.

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THE WITNESS: Yeah, the premise of that, given that Mr. Dondero is in control of both sides, it's a faulty premise.
Q. (BY MR. RUKAVINA) But you told me not that long ago that in these weekly cash meetings that it would be your team at Highland who would go to Mr. Dondero and say Highland has a liquidity issue.
So wouldn't that liquidity issue have originated with the Highland team?
A. Mr. Dondero is the president of Highland. He's the president of NexPoint. We're employees of Highland. We're also shared services providers for NexPoint.
The waters are very muddy in terms of who is wearing what hat in that conversation.
Q. But Mr. Dondero doesn't know that Highland has a liquidity issue unless someone from the corporate accounting group tells him, does he?
MR. MORRIS: Objection to the form of the question. I hope that's not the case.
THE WITNESS: He has the ability to know what our cash position is at any given time, at that time.
Q. (BY MR. RUKAVINA) So why would you have these weekly cash meetings with Mr. Waterhouse and sometimes Mr. Dondero?

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A. So these were cash forecasts, looking at outlook. I can tell you almost without exception, maybe -- with maybe without exception, be speculating, but those forecasts would be showing negative numbers at Highland, virtually nonstop.
And so it was important, my opinion, but it was probably important to Frank to make sure that he was getting in front of Jim to make sure that those needs were being addressed timely.
Q. So I've asked that question. I want to ask you a different question.
For any of these payments between January 2019 and August 2019 reflected on Exhibit 14, do you have any personal knowledge as to whether they were intended to be prepayments or not?
MR. MORRIS: Objection to the form of the question.
THE WITNESS: I don't know whether they were intended to be prepayments at that time.
Q. (BY MR. RUKAVINA) Sitting here today, seeing this document as a CPA and as a sophisticated person, do you read this Exhibit 14 to indicate that those payments were booked as prepayments?
MR. MORRIS: Objection to the form of the question.

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1 THE WITNESS: Again, the term "prepayments"
2 is the one I'm struggling with. I can ascertain that
3 there are payments and they're off schedule. But I
4 don't know that I can ascertain that they're
5 prepayments.
6 **Q. (BY MR. RUKAVINA) Well, if a borrower makes**
7 **a payment that's ahead of schedule, how would that**
8 **generally be accounted for?**
9 **MR. MORRIS:** Objection to the form of the
10 question.
11 THE WITNESS: It would be accounted for as a
12 reduction of principal or interest or some combination
13 of the two.
14 **Q. (BY MR. RUKAVINA) Which would relieve the**
15 **borrower of having to make that at some point in the**
16 **future; right?**
17 **MR. MORRIS:** Objection to the form of the
18 question.
19 THE WITNESS: No. The borrower still owes
20 the money. This is showing 23-point -- pick a date.
21 May 31, 23.034-. That there's significant obligations
22 that are still outstanding.
23 **Q. (BY MR. RUKAVINA) So on June 4, 2019 -- I'm**
24 **sorry, on June 19, 2019, the borrower made a**
25 **$2.1 million payment. That's what this shows; correct?**

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1 **A. I see that.**
2 **Q. You're not saying that the borrower would**
3 **ever have to make that same $2.1 million payment again,**
4 **are you?**
5 **A. No. What I'm saying is, based on that 2.1-**
6 **payment -- and this is reading this cold.**
7 **But based on that 2.1- payment, 66,000 was**
8 **applied to interest, which left zero accrued interest**
9 **outstanding. 2.03- applied to principal, which left**
10 **24.7- and change still outstanding.**
11 **Q. Well, I'm going to ask you about the**
12 **promissory note then, Exhibit 13, in particular**
13 **Section 3, where it says prepayment allowed.**
14 **And the first sentence says, may or -- pardon**
15 **me, maker may prepay in whole or in part the unpaid**
16 **principal or accrued interest of this note.**
17 **Do you see that, sir?**
18 **A. Yes, I see that.**
19 **Q. In your experience, can someone prepay**
20 **accrued interest?**
21 **MR. MORRIS:** Objection to the form of the
22 question.
23 THE WITNESS: The document reads, maker may
24 prepay in whole or in part the unpaid principal or
25 accrued interest of this note. So I read that to say

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1 that the maker may pay outstanding accrued interest, or
2 unpaid principal.
3 **Q. (BY MR. RUKAVINA) But my question is, as I**
4 **understand accrued interest, it means interest that has**
5 **already occurred or accrued as of the date, like**
6 **today's date; right?**
7 **A. Uh-huh.**
8 **MR. MORRIS:** Objection to the form of the
9 question.
10 **Q. (BY MR. RUKAVINA) Do you agree with that?**
11 **Do you agree with that? Accrued interest**
12 **means interest that has already come due, that has**
13 **actually happened because interest happens over time.**
14 **A. Accrued interest --**
15 **MR. MORRIS:** Objection to the form of the
16 question.
17 **Q. (BY MR. RUKAVINA) Why don't you start. Why**
18 **don't you define for me accrued interest.**
19 **A. Sure. Accrued interest would be outstanding**
20 **and unpaid interest that -- sorry, it's hard to define**
21 **it without using the term. But it's interest that's**
22 **accumulated in respect of a principal amount through a**
23 **given date.**
24 **Q. So how do you prepay accrued interest?**
25 **A. How do you prepay accrued interest. Again,**

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1 **that's a little bit of a mental jumble.**
2 **Q. Exactly.**
3 **A. Well, what I'm...**
4 **Q. To me one pays accrued interest. But this**
5 **note says you can prepay accrued interest. So I'm just**
6 **seeing whether you as a CPA, CFO and controller for**
7 **years agrees that one can prepay accrued interest?**
8 **MR. MORRIS:** Objection to the form of the
9 question.
10 THE WITNESS: Frankly, I don't know if it's
11 possible. That's not how I'm seeing it applied here,
12 based on the quick review of Exhibit 14.
13 **Q. (BY MR. RUKAVINA) Well, the next sentence**
14 **says, any payments on this note shall be applied first**
15 **to unpaid accrued interest hereon, and then to unpaid**
16 **principal hereof.**
17 **Do you see that, sir?**
18 **A. I see that.**
19 **Q. Do you have any understanding based either on**
20 **your personal knowledge or in your expertise as a CPA**
21 **and a CFO as to what that sentence means?**
22 **MR. MORRIS:** Objection to the form of the
23 question.
24 THE WITNESS: The way that I would read that
25 would be that for a payment, for example, pick a date,

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1 Exhibit 14 again, the $2.1 million payment on or about
2 June 19. I see that a payment was made.
3 And it was -- it appears that there was
4 accrued and unpaid interest at that time of 66,000. And
5 so the first 66,000 was applied to outstanding accrued
6 interest, to bring the balance to zero.
7 And the difference between that 66,000 and the
8 2.1 million was applied to principal.
9 **Q. (BY MR. RUKAVINA) Do you believe, whether**
10 **from personal knowledge from this note, Exhibit 13, or**
11 **your experience at Highland or as a CPA, that one can**
12 **say that interest, accrued interest will be due on a**
13 **future date, it will accrue by that date, but I'm going**
14 **to pay it earlier as of that date?**
15 **MR. MORRIS:** Objection to the form of the
16 question.
17 THE WITNESS: If I can rephrase back to you
18 just so I make sure I'm understanding the question.
19 You're saying could someone say, I would like to prepay
20 interest into the future. It hasn't accrued yet, but
21 it will be accrued by end of year.
22 And I would like to be prepaid effectively
23 with respect to that interest, and then have the
24 remainder used to pay down principal.
25 The question is, can someone do that?

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1 **Q. (BY MR. RUKAVINA) Yes.**
2 **MR. MORRIS:** I object to the question.
3 THE WITNESS: I suppose it's possible, but
4 that certainly wasn't the practice if that makes sense.
5 **Q. (BY MR. RUKAVINA) That does make sense. I'm**
6 **still struggling, and again, I'm not trying to be a**
7 **smart aleck. I'm still struggling with the first**
8 **sentence of paragraph 3, that maker may prepay accrued**
9 **interest.**
10 **And it sounds like to me like you don't**
11 **necessarily have a definitive answer as to what that**
12 **might have meant either.**
13 **MR. MORRIS:** Objection to the form of the
14 question.
15 THE WITNESS: I think the document speaks for
16 itself in that sentence.
17 **Q. (BY MR. RUKAVINA) But have you seen**
18 **something like this, to your recollection, in other**
19 **Highland promissory notes?**
20 **A. Something like what?**
21 **Q. Prepaying accrued interest.**
22 **A. Yes, I have seen that.**
23 **Q. What's your memory? Where have you seen**
24 **that?**
25 **A. I can't remember a specific note, but I**

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1 **believe that has been done in a specific circumstance.**
2 **Q. So at least at Highland, you would believe**
3 **that that phrase, prepaying accrued interest, had some**
4 **established meaning at Highland?**
5 **MR. MORRIS:** Objection to the form of the
6 question.
7 THE WITNESS: No, I don't agree with that.
8 **Q. (BY MR. RUKAVINA) Okay. You understand, of**
9 **course, that it's Highland's position that with respect**
10 **to this note, a payment was due on December 31 of 2020**
11 **that wasn't made; correct?**
12 **A. Yes, it's my understanding -- if I can state**
13 **it back just so I make sure I'm getting it correctly.**
14 **It's my understanding that there was a payment due on**
15 **December 31, 2020, that wasn't made timely, yes.**
16 **Q. Okay. Do you know why that payment wasn't**
17 **made timely?**
18 **A. By recollection, because Mr. Dondero had**
19 **directed people not to process payments from Highland**
20 **affiliates to Highland.**
21 **Q. When did you learn of that?**
22 **A. Early December 2020.**
23 **Q. How did you learn of that?**
24 **A. I don't specifically remember the**
25 **conversation, but I know I had conversations with both**

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1 **Kristin and Frank. I can't remember if those were**
2 **individual or collective, but we understood that to be**
3 **the marching orders.**
4 **Q. Did you hear Mr. Dondero say anything like**
5 **that?**
6 **A. I did not.**
7 **Q. Did Mr. Waterhouse tell you that Mr. Dondero**
8 **said something like that to him?**
9 **A. Yes.**
10 **Q. Okay. Separately, do you remember whether**
11 **Ms. Hendrix told you that Mr. Waterhouse told her that,**
12 **or would it have been kind of at the same meeting?**
13 **A. I don't remember specifically. It would have**
14 **been all around the same time.**
15 **Q. And to the best of your recollection, what**
16 **words -- strike that.**
17 **To the best of your recollection, did**
18 **Mr. Waterhouse include a reference to promissory notes**
19 **and the Advisors when he said that Dondero told him not**
20 **to make payments?**
21 **MR. MORRIS:** Objection to the form of the
22 question.
23 THE WITNESS: I don't remember the specific
24 words that Mr. Waterhouse used. My clear impression
25 was that it was a very global instruction.

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And I should clarify also that, you know, at this time, I think as we covered in my background.

At this point I had assumed the chief accounting officer role, so I wasn't necessarily in the -- in as much of the chain of command as I had been previously to taking that role, where that sort of thing might have come from Frank, to me, to Kristin.

By this time, Frank and Kristin were communicating and I was sometimes in the loop, sometimes not.

Q. (BY MR. RUKAVINA) Did Mr. Waterhouse tell you why Dondero had told him that?

A. I don't remember with any specificity. However, my perception at the time was that at this time the relationship between Mr. Dondero and Mr. Seery was hopelessly broken, and that this was Jim Dondero, you know, gearing up for a fight in the future.

Q. Prior to December of 2020, had you prepared a report showing potential overpayments that NexPoint and HCMFA had made on account of shared services and payroll reimbursement?

MR. MORRIS: Objection to the form of the question.

You can answer.

THE WITNESS: I know the analysis that you're

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talking about. I would not characterize it the way that you characterized it.

Q. (BY MR. RUKAVINA) And we'll talk about this more in November, so I really don't want to go into any detail, unless you feel the need to.

But, so you did not prepare that analysis?

MR. MORRIS: Objection to the form of the question.

THE WITNESS: I prepared an analysis that differed from how you described it.

Q. (BY MR. RUKAVINA) How would you describe it, in a nutshell?

A. I would describe it as I was asked to refresh a spreadsheet using certain assumptions, based on the direction of Frank Waterhouse, and I updated and I sent him an email.

Q. Do you have any understanding that that analysis was then shared with Mr. Dondero by Mr. Waterhouse?

A. I know that now. I didn't know that at the time.

Q. Do you have any understanding -- strike that.

Did you have any understanding that as of early December 2020 the reason why Mr. Dondero said what he said to Mr. Waterhouse was because that

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analysis, right or wrong, suggested that the Advisors had made large overpayments?

MR. MORRIS: Objection to the form of the question.

THE WITNESS: No, that's incorrect.

Q. (BY MR. RUKAVINA) Why is that incorrect?

A. Because by recollection, to the best of my recollection, that analysis didn't occur until after Dondero had told Frank no more payments.

Q. Is that the only reason why you might suspect that what I just said was incorrect?

MR. MORRIS: Objection to the form of the question.

THE WITNESS: Yeah, I don't know how to answer that.

Q. (BY MR. RUKAVINA) I'm going back, when I asked you, did Waterhouse tell you why Dondero gave the direction, you said no.

MR. MORRIS: Objection to the form of the question.

THE WITNESS: Sorry, I'm not sure. If I could have the question asked again, I'd be happy to answer.

Q. (BY MR. RUKAVINA) I'll ask it again.

Mr. Waterhouse tells you that Mr. Dondero

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basically said no more payments; right?

A. Yes.

Q. And, but he did not tell you why Mr. Dondero said that?

A. Not that I can recall.

Q. So he might have?

A. He might have. I don't specifically remember.

Q. Do you recall asking him or anyone else why Dondero would have said that?

MR. MORRIS: Objection. Asked and answered.

THE WITNESS: I don't recall specifically asking.

Q. (BY MR. RUKAVINA) Do you recall telling Mr. Seery that Dondero said anything like that?

A. At what point in time?

Q. Prior to December 31, 2020.

A. No, I did not. I did not say that to Mr. Seery.

Q. In your mind was there any present understanding or concern that NexPoint therefore wouldn't make a scheduled December 31, 2020, payment?

A. Was there any concern that they wouldn't?

Q. Yeah.

A. I would never use the word "concern." At

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that point I wasn't even on the team anymore, so I hate to say it's other people's problem, but I had my hands full with plenty of other things. It wasn't something I was thinking about.

Q. Do you remember here today that prior to December 31, 2020, you believed that NexPoint would not make the scheduled payment?

MR. MORRIS: Objection to the form of the question.

THE WITNESS: I had no idea whether NexPoint was going to make the payment.

Q. (BY MR. RUKAVINA) Were you asked prior to December 31, 2020 by Mr. Seery or anyone else as to whether NexPoint was going to make that payment?

A. Was I asked by Mr. Seery? Not that I can remember.

Q. Prior to December 31, 2020, do you recall any discussion with Mr. Seery about the NexPoint note?

MR. MORRIS: I'm sorry, can I have the question again.

Q. (BY MR. RUKAVINA) Prior to December 31, 2020, do you recall any discussion that you had with Mr. Seery about this NexPoint note?

A. Not that I can remember. If there was, it would have been in a cash meeting, but I don't remember

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at all.

Q. So it might have been some detail as part of a larger discussion, but you don't remember any specific discussion just around this note?

A. No.

Q. When did you learn or how did you learn that the December 31 payment had not been made?

A. I'm not sure, but certainly after December 31.

Q. Do you recall if it was before or after January 7?

A. I think it was after.

Q. The default letter from Highland is in here, if you need to see it. I'm just telling you it's the January 7.

Do you recall having any role with respect to drafting the default letter that went out to NexPoint after the failed payment?

A. No, none that I can remember.

Q. How do you recall learning that the note had been called by Highland?

A. I honestly don't remember. I think after the fact. I couldn't tell you how far after the fact.

Q. Are you aware that on or about July -- I'm sorry, January 14, 2021 NexPoint made a $1.4 million

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and change payment?

A. Yeah, I'm aware that that payment happened.

Q. When did you become aware of that payment?

A. I think after it happened.

Q. Can you tell us, was it days, weeks, months later?

A. It was that day. And if I can expand, I recall getting an email, seeing a large inflow to Highland, to MLP because I was on an email distribution list that had those payments.

And I think I emailed or called Kristin and asked her, is this the NexPoint note, because it was a large amount of money. And she said yes.

Q. Did she tell you anything more about that payment, when it had been made, why, who authorized it?

A. I had that information of when it had been sent. I had a wire confirm.

Q. Only important thing to you is where did that money come from?

A. It wasn't important to me. It was more curiosity.

Q. Did you have any discussions with anyone on or about that time, January 14, 2021, as to why NexPoint made that payment?

A. Not that I can remember.

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Q. Did you have any discussion with anybody on or about that time, January 14, 2021, as to how HCMLP should account for that payment?

A. No.

Q. Did you have any discussion with Mr. Seery at all about whether that payment should or shouldn't reinstate the note?

A. No discussion that I can remember.

Q. Is it fair to say that any of those considerations would have been at that point in time above your paygrade?

MR. MORRIS: Objection to the form of the question.

THE WITNESS: Yeah, paygrade, I don't know how to respond to that. Like I said before, I wasn't on the team at that point. I wouldn't have been involved in that determination regardless of my compensation.

Q. (BY MR. RUKAVINA) So you know and you remember that in early December 2020 Frank Waterhouse told you that Dondero had directed no more payments by the Advisors. And you know that a payment was made on January 14.

And that's pretty much the extent of your knowledge about the missed December 31 payment?

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1 MR. MORRIS: Objection to the form of the
2 question.
3 THE WITNESS: Yeah, it's a very broad
4 question. In general terms, yes.
5 Q. (BY MR. RUKAVINA) Well, I'm not asking what
6 you learned since then.
7 I'm asking that as of, let's say, January 15,
8 2021 that would have been the extent of what you would
9 have known?
10 A. Correct. And if I can just restate and make
11 sure I understand what I'm saying.
12 It would have been my understanding that we
13 had had an instruction -- when I say "we," Kristin and
14 Frank and by default the whole corporate team -- not to
15 make payments from these affiliated entities.
16 To my knowledge, none of those payments had
17 occurred since that point. And then on or about
18 January 14, such a payment was made and I found out
19 about that by seeing a wire confirm.
20 Q. Well, you mentioned a couple times that you,
21 in December 2020, you weren't part of that group
22 anymore. So do you have any understanding as to why
23 Mr. Waterhouse would have told you in particular, you
24 being Mr. Klos, about that instruction from Dondero?
25 A. Sure. I still was participating in cash

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1 meetings, even if it was almost in a nominal role,
2 because of some of my history that I had. So I was
3 still participating in those meetings.
4 I've worked closely with Kristin for a long
5 time, so I may have caught up with her informally. But
6 as far as day-to-day duties, I wasn't part of that team
7 anymore.
8 Q. And is it your, did I understand you
9 correctly, is it your testimony that Mr. Waterhouse
10 informed the whole accounting group there, the
11 corporate accounting group, of Mr. Dondero's
12 instruction?
13 A. I don't know specifically who he told, if he
14 told every single member of the team, but he certainly
15 told Kristin and Kristin was the head of the team.
16 Q. And you don't recall anyone, after you heard
17 about that instruction, raising any concern to the
18 effect that NexPoint is going to default and be in
19 trouble if that payment isn't made?
20 A. I don't remember any discussion to that
21 effect.
22 Q. Do you remember anyone suggesting that they
23 ought to try to dissuade Mr. Dondero from that
24 direction?
25 A. Not that I can remember.

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1 Q. Do you remember any discussion at that
2 approximate point in time for your cash meetings or
3 anything else as to whether NexPoint had made any
4 prepayments on the promissory note?
5 MR. MORRIS: Objection to the form of the
6 question.
7 THE WITNESS: Yeah, it's very hard to -- by
8 the way, I've said yeah a few times. I want to make
9 clear that that's just --
10 Q. (BY MR. RUKAVINA) That's not a yes?
11 A. I apologize for that.
12 Q. Understood. Yeah means, it's not a yes.
13 MR. MORRIS: It's a pause; it's an um.
14 Q. (BY MR. RUKAVINA) Germans call it flavoring
15 particle.
16 A. Sorry, I got lost there. If you can ask
17 again.
18 Q. Yeah. Do you recall in November or
19 December 2020 in your weekly meetings or anything else,
20 any discussion whatsoever concerning whether NexPoint
21 had made any prepayments on its note?
22 A. No discussions of whether or not there had
23 been a prepayment that I can remember, no.
24 Q. To the best of your knowledge sitting here
25 today -- strike that.

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1 For my next question, again we're assuming
2 that Exhibit 14 is what it appears to be.
3 A. Sure, sure.
4 Q. So with that qualification, to the best of
5 your knowledge, other than what's on Exhibit 14, can
6 you think of any other record or source or document
7 that would address whether any unscheduled payments by
8 NexPoint would or wouldn't be prepayments on the note?
9 MR. MORRIS: Objection to the form of the
10 question.
11 THE WITNESS: Again, with the struggle of the
12 prepayment, this is the document that I would expect to
13 explain how the payment was applied.
14 Q. (BY MR. RUKAVINA) But you yourself did not
15 play any role in deciding how the payment would be
16 applied?
17 A. I'd hesitate to say no role, because the team
18 ultimately rolls up to me.
19 Q. You personally?
20 A. Me personally, I wouldn't have prepared these
21 schedules.
22 Q. Or decided, you personally, as Mr. Klos, how
23 any unscheduled payments should be accounted for by
24 Highland?
25 A. Correct, not without some -- some

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1 authoritative direction on how they should be applied.
2 Q. And that authoritative direction would have
3 come from Mr. Waterhouse or Mr. Dondero?
4 A. That's what I would expect.
5 Q. Could it have come from anyone else that you
6 can think of here today?
7 A. Not that I can think of.
8 Q. Now we're going to switch gears and I think
9 we're going to stop discussing the NexPoint note, and
10 we're going to focus on the HCMFA two promissory notes.
11 A. Sure.
12 Q. So we're going to go back in time to
13 May 2019; okay?
14 A. Sure.
15 Q. And is it fair to say by -- that by May 2019
16 there were at least dozens if not hundreds of instances
17 of intercompany loans in the years leading up there
18 from Highland to one of the other entities?
19 MR. MORRIS: Objection to the form of the
20 question.
21 THE WITNESS: From Highland to one of the
22 other entities. Can you help with other entities.
23 Q. (BY MR. RUKAVINA) Advisors, the trusts, any
24 of the Dondero entities?
25 MR. MORRIS: Objection to the form of the

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1 question.
2 THE WITNESS: Yes, there would have been many
3 loans over the years.
4 Q. (BY MR. RUKAVINA) And do I understand that
5 most, if not all, of those loans should have been
6 papered up with a written promissory note?
7 MR. MORRIS: Objection to the form of the
8 question.
9 THE WITNESS: Should have been. To the
10 extent that they were for a promissory note, then yes.
11 Q. (BY MR. RUKAVINA) So in the May 2019 time
12 frame, was there a regular pattern or course or
13 procedure in place as to how a promissory note would be
14 physically prepared and presented for approval?
15 MR. MORRIS: Objection to the form of the
16 question.
17 THE WITNESS: Yeah, when you say a process,
18 can you please clarify that for me.
19 Q. (BY MR. RUKAVINA) Sure. Let's look at these
20 two promissory notes and maybe that will help frame the
21 question. And I apologize for not having them right
22 here.
23 A. It might be --
24 MR. MORRIS: 1 and 2.
25 MR. RUKAVINA: Yes.

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1 Q. (BY MR. RUKAVINA) Are you familiar with
2 Exhibits 1 and 2, sir?
3 A. Yes, I am.
4 Q. Do you remember them from back -- strike
5 that.
6 Did you have any role, to your knowledge,
7 with the preparation of Exhibits 1 and/or 2?
8 A. With the preparation of the documents?
9 Q. Yeah.
10 A. No.
11 Q. But you did have some role with these
12 promissory notes?
13 A. Yes.
14 Q. And I'm trying to find that email as well.
15 There's an email here from you. I'll have it in a
16 moment. That will help frame the question.
17 MR. MORRIS: Exhibit 3.
18 Q. (BY MR. RUKAVINA) Do you recall that email,
19 sir?
20 A. Not specifically, but it's right in front of
21 me. I'm certain that I wrote this email.
22 Q. You have no reason to deny or reject its
23 authenticity?
24 A. I have no reason to reject it or question it.
25 Q. Just give me a second. I don't understand

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1 what's going on with my exhibits. I just don't
2 understand this.
3 (Off the record.)
4 Q. (BY MR. RUKAVINA) You have Exhibit 3 in
5 front of you?
6 A. I do.
7 Q. And it says, please send 2.4 million from
8 HCMLP to HCMFA. This is a new interco.
9 Meaning intercompany; right?
10 A. Correct.
11 Q. This is a new intercompany loan.
12 Who told you that this was an intercompany
13 loan?
14 A. Either Frank or Jim. I would suspect Frank.
15 Q. Do you have any present memory of him telling
16 you that with respect to this particular loan?
17 A. I don't have a specific recollection, but
18 with a hundred percent certainty he or Jim would have
19 directed that.
20 Q. Would they have directed the payment, or
21 would they have directed that it be papered as a loan,
22 or both?
23 A. Both.
24 Q. So in each instance -- well, let's take a
25 step back.

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1 So certainly either Jim or Frank directed you
2 to transfer the $2.4 million; correct?
3 A. Either Jim or Frank would have directed, yes.
4 There's 0 percent chance I would have sent this email
5 if I didn't feel a hundred percent confident that this
6 was authorized in the way that I described in the
7 email.
8 Q. But can you also say with certainty that
9 either Dondero or Waterhouse also told you that this
10 transfer is an intercompany loan?
11 A. With a hundred percent certainty, yes. I
12 can't say that necessarily with respect to Dondero,
13 because I don't remember if I would have talked to him
14 specifically about it. But, yes, this would have been
15 clear that it's a loan.
16 Q. You say clear. Did someone tell you that
17 it's a loan, or are you just, because of the prior
18 10 years of course and conduct, logically deciding that
19 it has to be a loan?
20 MR. MORRIS: Objection to the form of the
21 question.
22 THE WITNESS: So this is -- this is not just
23 a situation of past practice. I would have known with
24 certainty that this was a loan and that's what was
25 authorized.

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1 Q. (BY MR. RUKAVINA) How would you have known
2 with certainty that it was a loan?
3 A. I'll say in part because of past practice,
4 but also because of the nature of what the money was
5 going to be used for, and the background behind it.
6 Q. So you knew that nature and that background?
7 A. The nature and background of the 2.4 million,
8 yes.
9 Q. So you've told me that in part -- I asked you
10 how did you know it was a loan. You said in part past
11 practices, in part you knew the nature. Anything else?
12 A. I'm certain that given that I wrote this
13 email, which Frank is on, that I would have had a
14 conversation with Frank about what this was.
15 Q. Was Jim Dondero in the corporate accounting
16 email?
17 A. No, he wasn't.
18 Q. So what is your understanding as to what this
19 $2.4 million was for?
20 A. This related to -- well, to separate the
21 transaction, the 2.4- itself relates to a promissory
22 note. That's what was executed.
23 HCMFA's use of the 2.4 million was to
24 reimburse a fund that it managed called Highland Global
25 Allocation Fund for a NAV error that had occurred

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1 within that fund.
2 Q. Who made that NAV error?
3 MR. MORRIS: Objection to the form of the
4 question.
5 THE WITNESS: Yeah, it's hard to answer that.
6 So the Highland Capital Management Fund Advisors is the
7 advisor to the fund, so they're the responsible party
8 for making the fund whole in the instances of NAV
9 errors.
10 Q. (BY MR. RUKAVINA) And did HCMFA contract out
11 with Highland for valuation services?
12 MR. MORRIS: Objection to the form of the
13 question.
14 THE WITNESS: I don't specifically remember
15 if they contracted for valuation services, but if you
16 tell me that they did, I'll take that at face value.
17 So yes, HCMFA utilized HCMLP for valuation services.
18 Q. (BY MR. RUKAVINA) Do you have any memory of
19 what human being or beings made that NAV error?
20 MR. MORRIS: Objection to the form of the
21 question.
22 THE WITNESS: It's -- in respect to people,
23 not particularly. In respect to parties, Houlihan
24 Lokey was the service provider that performed the
25 valuation that resulted in the NAV error.

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1 And as I described before, the valuation
2 function was housed at HCMLP by HCMLP employees
3 supporting that through, among other people, front
4 office, compliance, other parts of the organization as
5 well.
6 Q. (BY MR. RUKAVINA) So it was your
7 understanding that Highland was loaning $2.4 million to
8 HCMFA for HCMFA to compensate that fund?
9 A. Yes.
10 Q. Did you have any understanding that Highland
11 might have been, instead of loaning that money,
12 actually paying that money to HCMFA to compensate HCMFA
13 for Highland's valuation error?
14 A. First, not Highland's valuation error. But
15 second, no, there's no way that that would have been
16 what that payment was for.
17 Q. Why can you say that there's no way that that
18 would have been what that payment was for?
19 A. First, this wasn't the first NAV error that
20 ever occurred. There had been other NAV errors. There
21 were other NAV errors with respect to this valuation
22 that pertain to NexPoint Advisors.
23 There was no reimbursement from HCMLP to
24 NexPoint or HCMFA, regardless of any individual being
25 identified as the person. That had just never occurred

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1 to my knowledge.
2 Second, the amount was to meet the liquidity
3 need of HCMFA. It wasn't to -- it wasn't to
4 dollar-for-dollar make up for the NAV error. It was
5 that's how much money HCMFA needed.
6 Third, it was definitely Dondero's practice
7 and preference to have expenses at HCMFA for tax
8 purposes. So if this was compensation, he would
9 ultimately not really be benefiting from the deduction
10 so.
11 That would have been a strong preference of
12 his against having it be compensation.
13 So it would have been excruciatingly clear
14 that this was a loan for liquidity for HCMFA to make
15 the fund whole, just like it had in the past NAV
16 errors.
17 Q. How did you know that HCMFA needed
18 $2.4 million for liquidity?
19 A. At that point I was still part of the
20 corporate team, so I had a good sense of how much cash
21 HCMFA would have had at any given moment. And at that
22 given moment it would not have had -- I'd be shocked if
23 it had even 2.4-.
24 Probably would have had probably between
25 a million and 2 million if I had to speculate.

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1 Q. Okay. So you've given the reasons why this
2 was clearly a loan.
3 But you never heard Mr. Dondero say that this
4 was a loan, did you?
5 A. I don't remember. It's possible I did, but I
6 don't specifically remember.
7 Q. Okay. What about the $5 million loan on the
8 day after? What was that $5 million for?
9 A. That was similar but different. So again,
10 HCMFA needed liquidity. This time this was for --
11 related to that same fund.
12 So Highland Global Allocation Fund had
13 converted from an open-end fund, mutual fund, to a
14 closed-end mutual fund.
15 And pursuant to that conversion there was a,
16 I believe it was called a consent fee, for any
17 investors of that fund who consented to the conversion,
18 that they would receive a 3 percent fee payable by the
19 investment advisor.
20 And so at this time the bill came due on that
21 because the conversion had been completed, and the
22 accounting for how much that 3 percent was going to be
23 was complete.
24 HCMFA sure as hell didn't have 5 million
25 bucks. Excuse my language. Highland needed to pay

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1 HCMFA for the liquidity. HCMFA made the payment to the
2 fund. It wasn't dollar for dollar. I think it was
3 like 5,019,000, or some such number.
4 But 5 million was the number that would allow
5 it to make that payment effectively to the investors of
6 Global Allocation Fund.
7 Q. Do you have any understanding as to why
8 Highland, as opposed to some other entity, was
9 transferring $7.4 million?
10 A. Highland as opposed to some other entity?
11 Q. Uh-huh.
12 A. Because Highland had the money.
13 Q. But I think we've established earlier that in
14 the first seven months of 2019, Highland was having
15 constant liquidity issues?
16 A. It was.
17 Q. And that's part of the reason that NexPoint
18 was making unscheduled payments on its note; right?
19 A. That's part of the reason NexPoint was making
20 unscheduled payments on its note, yes.
21 Q. So your recollection is that HCMFA needed
22 $2.4 million for liquidity purposes and about
23 $5 million for the consent fee. And Highland
24 transferred those funds because Highland had the funds?
25 A. Yes. And I should clarify that Highland only

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1 had the funds because Mr. Dondero repaid personal notes
2 to HCMLP on the same days.
3 So he paid 2.4 million on May 2, which
4 Highland turned around and reloaned. And he paid 4.4-
5 on May 3, and Highland sent out 5-, so there's a
6 $600,000 difference. And my recollection, he paid the
7 other 600,000 via note repayment within a few days.
8 Q. So this would have been part of some broader
9 transaction in Mr. Dondero's mind?
10 A. I would not characterize it that way.
11 Q. You established that HCMFA needed money. You
12 established that Highland temporarily had money because
13 Dondero provided it with money.
14 But you still don't know, sir, as a fact as
15 to whether that transfer was a loan or some other
16 payment from HCMFA -- I'm sorry from HCM, from debtor
17 to HCMFA?
18 MR. MORRIS: Objection to the form of the
19 question. Asked and answered a million times. It's in
20 the documents you're showing him.
21 THE WITNESS: It was a loan.
22 MR. MORRIS: Come on, Davor. With all due
23 respect, it's in the document. It's on the document.
24 Q. (BY MR. RUKAVINA) I'm being courteous and
25 respectful to you and I'd ask the same in return; okay?

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1 A. Absolutely. I apologize if I haven't been.
2 Q. Mr. Dondero, would you agree, was the only
3 person that had the authority at the debtor to
4 authorize a transfer of 2.4- and then $5 million?
5 A. At the debtor?
6 MR. MORRIS: Objection to the form of the
7 question.
8 Q. (BY MR. RUKAVINA) Yes, at the debtor.
9 A. No.
10 Q. Who else could have transferred 2.4 million
11 or $5 million?
12 A. Those are two different questions. But if
13 you're asking who had the authority, certainly Frank
14 did as well.
15 Q. So Frank had the authority. Perhaps my
16 question was inartful.
17 Do you believe that Mr. Waterhouse would have
18 decided to transfer $2.4 million or $5 million without
19 Mr. Dondero's approval?
20 MR. MORRIS: Objection to the form of the
21 question.
22 THE WITNESS: Generally speaking, no, but I
23 don't know exactly what the form of the approval. But
24 he certainly wouldn't have done that on his own without
25 discussing with Dondero.

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1 Q. (BY MR. RUKAVINA) Do you believe that
2 Mr. Waterhouse had the ability on behalf of the debtor
3 to loan $5 million without Mr. Dondero's approval?
4 MR. MORRIS: Objection to the form of the
5 question.
6 THE WITNESS: I think he had the technical
7 authority to. However, I don't believe in practice
8 that he ever would.
9 Q. (BY MR. RUKAVINA) Same question, $2.4
10 million?
11 A. Same answer.
12 Q. We've established that you never really had a
13 direct employment or types of a role for NexPoint --
14 I'm sorry, for HCMFA; right?
15 A. Again --
16 Q. To the best of your recollection?
17 A. Best of my recollection I can't remember how
18 the titles transferred over or whatever, but I don't
19 believe I did.
20 Q. Do you know whether Mr. Waterhouse in 2019
21 had the authority, without Mr. Dondero's approval, to
22 borrow $7.4 million on behalf of HCMFA?
23 MR. MORRIS: Objection to the form of the
24 question.
25 THE WITNESS: He had the authority to enter

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1 into the note on behalf of HCMFA, yes.
2 Q. (BY MR. RUKAVINA) Was that something that he
3 would have done without Mr. Dondero's approval to your
4 understanding and practice at that time?
5 MR. MORRIS: Objection to the form of the
6 question.
7 THE WITNESS: Same answer that I gave before
8 with respect to Highland.
9 Q. (BY MR. RUKAVINA) So here's where I'm going
10 with all this.
11 Mr. Dondero's position, and tomorrow his
12 testimony will be, that he caused the $7.4 million to
13 be transferred not as a loan to HCMFA, but to
14 compensate HCMFA for various things including that NAV
15 error.
16 Other than perhaps you think he's lying,
17 would you have any knowledge, hearsay, document,
18 anything, to contradict Mr. Dondero's position?
19 MR. MORRIS: Objection to the form of the
20 question.
21 THE WITNESS: Yes. I would point to the fact
22 that as it pertains to the $5 million note, if we're
23 separating issues, there's no other possibility of what
24 that money could be other than either a loan or equity.
25 It's not compensation. Highland is under --

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1 HCMLP has absolutely zero obligation in respect to that
2 consent fee. So when Highland sends $5 million to HCMFA
3 there's nothing else that it can be. That's Point 1.
4 Point 2, we're right in the middle of an audit
5 at this point. Jim signs rep letters at this point.
6 He's being provided balance sheets throughout 2019 that
7 indicate the loans that Highland has on its books.
8 Balance sheets are being prepared in respect
9 of annual approvals for 15(c) for retail funds in the
10 fall. Schedules are being created for bankruptcy after
11 we file in October.
12 Nobody says this is a mistake. Frank is on
13 all of these emails. Frank never questions it.
14 There's absolutely no evidence from that point
15 in time to whenever this defense got raised that would
16 indicate that anybody said that these weren't exactly
17 what they say they are.
18 Q. (BY MR. RUKAVINA) Are you aware that in
19 February or March 2019 some $5.2 million was paid from
20 insurance that HCMFA had to the fund for the NAV error?
21 A. The amount sounds unfamiliar, but I'm aware
22 that insurance proceeds were paid from HCMFA to the
23 fund.
24 Q. And do you think that it's impossible for a
25 sane, rational person to conclude that HCMFA had a

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1 claim against the debtor related to that NAV error?
2 MR. MORRIS: Objection to the form of the
3 question.
4 THE WITNESS: If it did, I don't know how
5 that's not insurance fraud for basically double
6 collecting insurance proceeds and then collecting it
7 again.
8 Q. (BY MR. RUKAVINA) So you believe, sir, that
9 if insurance pays a claim you have no more right to go
10 against a person who caused the fault?
11 MR. MORRIS: Objection to the form of the
12 question.
13 THE WITNESS: We can speak specifically here.
14 This is about a NAV error that an insurance company
15 reimbursed HCMFA for, which it then turned around and
16 paid for the fund.
17 So if it went to collect that same, let's use
18 round numbers, $5 million from Highland that it's
19 already collected from insurance, that sounds
20 inappropriate to me.
21 Q. (BY MR. RUKAVINA) Okay. But you don't know
22 whether that's allowed in Texas law or not, do you?
23 MR. MORRIS: Objection to the form of the
24 question.
25 THE WITNESS: No, I don't know whether it's

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1 allowed under Texas law.
2 Q. (BY MR. RUKAVINA) So you don't know that if
3 you're hit by someone on the street and your medical
4 insurance pays your bills, you don't know that he still
5 has to pay you for the same bills?
6 MR. MORRIS: Objection to the form of the
7 question. I hope I don't miss my plane.
8 Q. (BY MR. RUKAVINA) You don't know that under
9 Texas law if someone hits you with their car and causes
10 you medical bills and your medical insurance pays those
11 bills, that you can still sue them for the same
12 damages?
13 MR. MORRIS: Objection to the form of the
14 question.
15 THE WITNESS: I'm not familiar at any level
16 of specificity with Texas law.
17 Q. (BY MR. RUKAVINA) Again, it just sounds
18 wrong to you that you could go after someone after
19 insurance pays, but you don't know legally one way or
20 the other?
21 A. Correct. I'm not a lawyer or expert in Texas
22 law. It feels wrong, yes.
23 Q. Okay. Going back to this email of yours,
24 Exhibit 3, do you recall whether there was a similar
25 email with respect to the $5 million note?

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1 A. Yes, I am. I believe Kristin sent that one.
2 Q. Kristin sent that one?
3 A. I believe so.
4 Q. To whom?
5 A. Likely the same distribution group, but
6 that's speculation.
7 Q. Did you see such an email in the last week or
8 two?
9 A. I'm not certain, but probably. I have seen
10 email communication on or around May 3, but I don't
11 know specifically who all was on the email. I'm going
12 off what I would expect to see.
13 MR. MORRIS: If you're really interested,
14 it's right here. It was produced to you with
15 Bates 3763. And if you'd like to question the witness.
16 MR. RUKAVINA: When was it produced?
17 MR. MORRIS: I can't tell you. It's part of
18 the same package.
19 Q. (BY MR. RUKAVINA) So going back to this
20 Exhibit 3, sir, why did you ask Kristin, can you or
21 Hayley please prep a note for execution? Why them?
22 Remember, I was asking about what the course
23 or procedure was at that point in time.
24 A. Yeah, so nomenclature, procedure, process.
25 I would say the informal process for these

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1 types of loans, they were frequent in nature, would be
2 for someone on the corporate accounting team to prepare
3 a note and have it executed.
4 Q. Okay. That was the standard course back
5 then?
6 A. Again, I don't know what standard course
7 means. That was fairly typical.
8 Q. Why would you not have asked someone in the
9 Highland legal department to prepare a note?
10 A. Because this was a legally reviewed document
11 as far as the form of the agreement. It's a one-page,
12 two-paragraph form that had been used for a long time.
13 So the only thing that would change with
14 respect to these notes would be the date, the amount,
15 likely the rate. I can't think of anything else
16 offhand that would have changed from note to note.
17 Q. After you asked Ms. Hendrix to prepare this
18 note, did you have any further role with respect to the
19 papering, preparation, or execution of that note?
20 A. Not that I can remember.
21 Q. Would you have had any role in having either
22 or both of the notes actually signed electronically or
23 by ink by Mr. Waterhouse?
24 A. Likely not, no.
25 Q. Do you know who decided to have

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1 Mr. Waterhouse as opposed to Mr. Dondero sign these two
2 promissory notes?
3 A. I don't.
4 Q. On the $5 million note, do you remember if
5 you had any role with respect to its physical papering
6 or execution?
7 A. Not that I recall.
8 Q. To the best of your memory, your role would
9 have been done by instructing your team, hey, here is
10 these new loans, go paper it up; is that accurate?
11 A. On the upfront side. I suppose my role would
12 have also included on the back end making sure that the
13 actual payment had occurred. But that would have been
14 doing that realtime, seeing the funds went out, and
15 that, most importantly, that the consent fee had been
16 paid from HCMFA to the transfer agent.
17 Q. How did you or anyone on your team know -- so
18 obviously, you know it's a $2.4 million loan because
19 that's what Waterhouse or Dondero told you; right?
20 How did you know it was a $2.4 million loan?
21 MR. MORRIS: Objection. Asked and answered.
22 THE WITNESS: I knew that the NAV error was
23 2 million, I think it was 398,000, somewhere in that
24 ballpark. And that 2.4- had been authorized for that
25 purpose.

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1 Q. (BY MR. RUKAVINA) Do you know who decided
2 what the interest rate in this note would be, or that
3 it would be a demand note as opposed to a term note?
4 A. I don't specifically know who made that
5 decision. However, the common practice for fund
6 advisors was to put -- was for the rate to equal the, I
7 forget if it was the short-term or long-term AFR.
8 And for the note to be demand, that was just
9 the standard -- that was the standard.
10 Q. And I think I asked this, but just if I
11 didn't.
12 For either or both of these two notes, the
13 2.4- and $5 million note, did you have any role with
14 respect to Mr. Waterhouse signing them?
15 A. No, not that I can remember. I don't think I
16 did.
17 Q. And you don't remember doing anything to get
18 his signatures?
19 A. Not that I recall.
20 Q. Nor would that have been something that you
21 would expect that you would have a role with?
22 A. Certainly not in this instance. Maybe to the
23 extent that nobody else was around and it was time
24 sensitive, but that wouldn't have been the case with
25 these, I don't believe.

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1 Q. Did you have any understanding in early May
2 of 2019 as to whether HCMFA was solvent or insolvent?
3 MR. MORRIS: Objection to the form of the
4 question.
5 THE WITNESS: Whether HCMFA was solvent or
6 insolvent? I'm not a solvency expert, so I don't know
7 that I could even attempt to answer that.
8 Q. (BY MR. RUKAVINA) Did you have an
9 understanding as far as HCMFA goes on May 2, 2019, that
10 its liabilities exceeded its assets?
11 A. I don't remember specifically where it stood
12 on assets versus liabilities.
13 Q. Do you have any memory that by May 2, 2019,
14 the debtor had taken a couple prior demand notes from
15 HCMFA and made them not collectible prior to May 31,
16 2021?
17 A. I know what you're referring to. I wouldn't
18 characterize it that way.
19 Q. How would you characterize it?
20 A. I recall that there was a financial support
21 acknowledgment, I think it was the name of the
22 acknowledgment.
23 That described -- I can't remember if it
24 described those two notes specifically or just referred
25 to them, that there would not be collection sought on

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1 those until May 31 of 2021.
2 Q. Do you remember why that document was done?
3 A. My recollection, and it could have been done
4 for other reasons, but my recollection of it was that
5 it was primarily audit-driven.
6 For the auditors to be comfortable that these
7 notes weren't going to be just called and FA not have
8 the ability to pay them right away.
9 Q. Because it's true in April or May of 2019
10 HCMFA didn't have the ability to pay those notes;
11 correct?
12 A. It didn't have enough cash to pay those.
13 Q. And I think you mentioned before that in
14 May 2019 the auditors at the Highland level were
15 talking about rolling up prior demand notes into term
16 notes so the debtor would at least get some regular
17 cash flow; correct?
18 MR. MORRIS: Objection to the form of the
19 question.
20 THE WITNESS: No.
21 Q. (BY MR. RUKAVINA) So you recall that -- I'm
22 sorry, that was 2017. I was wrong; right?
23 A. Correct.
24 Q. So I guess here is my question, and I'm
25 struggling to understand this.

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1 So why would Highland be loaning an
2 additional $7.4 million in early May of 2019 to HCMFA
3 when HCMFA already was then unable to repay its debts
4 to Highland?
5 MR. MORRIS: Objection to the form of the
6 question.
7 THE WITNESS: Yeah, I kind of reject the
8 premise of the question, and these are all controlled
9 by Jim. And it's completely within his power at any
10 point in time to make any payment on any of the loans,
11 depending on where priorities sit.
12 So the idea that HCMFA -- that Highland would
13 be doing a credit analysis on HCMFA, determining that it
14 was unable to make that payment and, therefore, this is
15 a bad note, is a completely foreign, preposterous
16 concept at that time.
17 Q. (BY MR. RUKAVINA) And in May of 2019 isn't
18 it also, sir, the case that Mr. Dondero could have,
19 right or wrong, agree or disagree, said, that 7.4- is
20 going to compensate HCMFA for the NAV error as opposed
21 to being a loan?
22 A. No.
23 Q. That's not possible?
24 A. No.
25 Q. And why is that not possible?

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1 A. As we discussed, the 5-, there's absolutely
2 no construct where that can be compensation for an NAV
3 error. It's not a NAV error. It's a consent fee.
4 Highland has absolutely no responsibility for that.
5 Highland also has no responsibility for the
6 2.4-, but if you want to assume that it did, that's
7 completely not the practice. It was Jim's preference
8 to do these via loans, and that's how it was booked.
9 Q. You're saying on the one hand Mr. Dondero can
10 absolutely control that one entity make a loan to
11 another, irrespective of credit worthiness, but he
12 can't decide that a transfer is compensation as opposed
13 to a loan?
14 MR. MORRIS: Objection to the form of the
15 question. Argumentative.
16 THE WITNESS: If he wants to call
17 $7.4 million compensation to himself or to HCMFA, I
18 just don't know how he does that. This is me being an
19 accountant. I don't know how that's possible.
20 If he wants to pay himself a $7.4 million
21 bonus from HCMFA, fine, he has the power to do that. If
22 he wants Highland to inject 7.4 million of equity into
23 HCMFA, he has the power to do that.
24 But sending the 7.4 million and calling it
25 something else, I don't know how he could do that.

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1 Q. (BY MR. RUKAVINA) So it had to have been a
2 loan; correct?
3 MR. MORRIS: Objection to the form of the
4 question.
5 THE WITNESS: In these instances I know it to
6 have been a loan.
7 Q. (BY MR. RUKAVINA) Because of what
8 Mr. Waterhouse told you?
9 MR. MORRIS: Objection to the form of the
10 question. Asked and answered.
11 THE WITNESS: Yeah, it was my understanding
12 that these were loans.
13 Q. (BY MR. RUKAVINA) You know these 7.4- to be
14 loans even though you never heard Mr. Dondero say that
15 to you?
16 A. Yes, although to be fair, I don't know
17 whether I ever heard Mr. Dondero. It's possible he did
18 say it.
19 MR. MORRIS: Objection. Withdrawn.
20 Q. (BY MR. RUKAVINA) You have no memory that on
21 or before May 4, 2019 you heard Mr. Dondero say that
22 the $2.4 million transfer and/or the $5 million
23 transfer to HCMFA were loans?
24 A. I have no specific recollection, but such a
25 conversation is just off the reservation impossible.

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1 That there's no way -- there's no way -- there's no way
2 that it would have been described that way and there's
3 a hundred percent that it's loan.
4 Q. Do you have any memory discussing prior --
5 MR. MORRIS: Objection. Asked and answered.
6 He's answered this a thousand times.
7 Q. (BY MR. RUKAVINA) Do you have any memory on
8 or before May 2, 2019 discussing the $2.4 million
9 transfer with Mr. Dondero at all?
10 A. I do recall, I don't remember the time, but I
11 do remember discussing the NAV error in general terms
12 and the potential magnitude of that. I don't remember
13 specifically when that occurred.
14 Q. At least in your discussion with Mr. Dondero,
15 the $2.4 million loan or note was somehow linked to the
16 NAV error?
17 A. Linked to the NAV error is strong. It
18 related to the NAV error from the standpoint that
19 that's what Highland was loaning HCMFA the money for,
20 because HCMFA couldn't otherwise make the payment
21 itself.
22 Q. You just said Highland was loaning the money
23 for. Are you remembering now Mr. Dondero saying that
24 or are you just extrapolating?
25 A. No, I'm explaining rationally what the

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1 situation was.
2 Q. Do you remember on or before May 3, 2019
3 discussing the $5 million transfer with Mr. Dondero?
4 A. Again, in general terms. I couldn't tell you
5 a time period, but this was something that, between
6 Frank and I, we had put on Jim's radar that this would
7 be a cash need in the future. I couldn't specify
8 specifically when that happened.
9 Q. Okay. You have no present memory of
10 discussing that issue with Mr. Dondero on or before
11 May 3, 2019? It must have happened but you have no
12 memory?
13 MR. MORRIS: Objection to the form of the
14 question.
15 THE WITNESS: We discussed that there would
16 be a consent fee payable from HCMFA. We would have
17 discussed -- and again, I don't remember where I was,
18 what day it was, the specifics around the conversation.
19 But I know that we had conversations
20 pertaining to cash, because this was a large need for --
21 cash need for HCMFA to satisfy this, and this was an
22 important payment.
23 And neither HCMFA nor Highland had the
24 wherewithal to make that payment. The only way that
25 those could make the payment was by Jim Dondero repaying

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1 loans that he owed to HCMLP. So we absolutely discussed
2 that with Jim Dondero.
3 Q. (BY MR. RUKAVINA) And with respect to
4 everything that we just talked about and your
5 recollection, you still don't remember Mr. Dondero
6 saying to you or Mr. Waterhouse one way or the other
7 that one or both of these transfers were loans?
8 MR. MORRIS: Objection to the form of the
9 question. Asked and answered.
10 THE WITNESS: Yeah, again --
11 Q. (BY MR. RUKAVINA) Just yes or no. This is a
12 yes-or-no question.
13 MR. MORRIS: Let him answer the question.
14 MR. RUKAVINA: If he'll answer the question
15 I'll stop asking him --
16 MR. MORRIS: He's allowed --
17 Q. (BY MR. RUKAVINA) The answer [verbatim] is,
18 do you remember --
19 A. I don't remember Jim's exact words two and a
20 half years ago in respect to authorizing these
21 payments. So to answer your question, no, I don't
22 specifically remember him saying these are loans.
23 But every other fact around this tells me
24 that we did have that conversation and that was the
25 conclusion and that was the direction.

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1 Q. So it's possible that Mr. Dondero told no one
2 that these were loans but because y'all have been doing
3 it this way for 10 years, that everyone, all of you
4 CPAs, understood that it had to be a loan?
5 MR. MORRIS: Objection to the form of the
6 question.
7 Q. (BY MR. RUKAVINA) My question is, is that
8 possible?
9 A. I really don't think it's possible. I
10 suppose people say anything is possible. Again, two
11 and a half years ago, I'm certain that that was the
12 intent at the time and I'm sure it was communicated as
13 such. I just don't have a specific recollection.
14 MR. RUKAVINA: Thank you.
15 I'll pass the witness.
16 MR. MORRIS: Michael, do you have any
17 questions?
18 MR. AIGEN: I do. I assume you want me to
19 start now to do my best to be done at 5:00?
20 MR. MORRIS: Yes, please.
21 EXAMINATION
22 Q. (BY MR. AIGEN) Good afternoon, Mr. Klos. My
23 name is Michael Aigen with the Stinson law firm. I
24 represent Mr. Dondero, HCMS, and HCRE.
25 How are you today?

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1 A. I'm very good, thank you.
2 Q. First topic I wanted to ask you about is the
3 defense raised by some of the defendants related to an
4 oral agreement and condition subsequent.
5 So my question for you generally is, are you
6 aware that some of the defendants in these proceedings
7 have raised a defense that there was a subsequent oral
8 agreement allowing notes to be potentially forgiven if
9 certain events occur?
10 A. Yeah, I'm generally aware of the defenses
11 sitting here today.
12 Q. And how are you generally aware of this
13 defense?
14 A. I don't know with specificity. Potentially
15 through just document flow on the bankruptcy side,
16 potentially with conversations internally or with
17 counsel. But I generally understand them to have been
18 raised, the defenses that is.
19 Q. And I don't want to get into conversations
20 with counsel. I'm not allowed to do that.
21 Let me ask you, have you had any
22 conversations with anyone other than counsel about this
23 subsequent oral agreement defense?
24 A. I have had general conversations with
25 Mr. Seery about it. And other than that, nothing

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1 substantive.
2 Q. And what did you discuss about this with
3 Mr. Seery?
4 A. I've discussed with him, I hate to phrase it
5 this way, the ridiculousness of the defense. Under
6 oath. I've discussed my general understanding of what
7 is being asserted as a defense.
8 Which is that there was some sort of an oral
9 agreement between Jim and his sister at some point in
10 the past pertaining to forgiveness of certain
11 promissory notes that was conditional upon Highland
12 monetizing any of three PE assets for any amount above
13 cost.
14 Q. And is it fair to say that prior to these
15 lawsuits being brought, you weren't aware of any oral
16 agreements related to the promissory notes related to
17 potential forgiveness?
18 A. That's correct. Not that I can remember, and
19 I think I would remember.
20 Q. And other than your conversations with
21 Mr. Seery and counsel, you haven't had any
22 conversations with anyone else about these alleged oral
23 agreements; is that fair to say?
24 A. I'm not sure I understand the question.
25 Q. You told me you may have had questions with

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1 counsel about these oral agreements defense, and you
2 told me about conversations with Mr. Seery, so I'm
3 trying to close that topic.
4 Was there anyone else you had any
5 conversations with about this alleged oral agreement?
6 A. Like I said before, nothing of substance.
7 I've probably mentioned it in passing to other
8 employees, this is what I understand is being asserted
9 in this, but nothing of substance.
10 Q. Do you have any personal knowledge as to
11 whether Mr. Dondero or Ms. Dondero entered into any
12 type of oral agreement prior to the bankruptcy?
13 A. No, not other than what's been pled, or
14 whatever the terminology is.
15 Q. I want to talk a little bit about, you
16 touched on earlier, you gave some testimony about how
17 in -- there were certain term loans that had payments
18 due in December or on or about December 31, 2020.
19 Do you remember talking about that?
20 A. Yeah, generally.
21 Q. And I don't know if you're specifically
22 referring to these loans, but is it also your
23 understanding that HCMS and HCRE also had payments that
24 were due on December 31, 2020?
25 A. Yes.

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1 Q. Is it fair to say that if those payments were
2 to be made, it would have been Ms. Hendrix that would
3 have gone and effectuated those payments?
4 MR. MORRIS: Objection to the form of the
5 question.
6 THE WITNESS: Can you remind me the entities
7 again.
8 Q. (BY MR. AIGEN) Sorry. HCMS and HCRE
9 Partners.
10 A. HCMS, yes. HCRE, I'm not sure, maybe.
11 Q. Why might it have been different?
12 A. I just don't recall who had the, you know,
13 kind of bank access to effectuate that payment. I
14 think Kristin did but I'm not certain.
15 Q. It wouldn't have been you; is that fair to
16 say?
17 A. Correct. It would not have been me.
18 Q. And if Ms. Hendrix testified that the
19 instruction she received in December 2020 about not
20 making payments related only to the Advisors and not to
21 HMS or HCRE, would you have any reason to disagree with
22 her?
23 MR. MORRIS: Objection to the form of the
24 question.
25 THE WITNESS: Yeah, I was struggling with

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1 that question. There was a lot to it. If you don't
2 mind.
3 Q. (BY MR. AIGEN) Okay. I'll repeat it. Maybe
4 that will help.
5 MR. MORRIS: Why don't you ask him about his
6 knowledge, instead of Kristin's. You had her as a
7 witness.
8 I'll continue to object. I don't know why
9 you're asking him about her knowledge.
10 MR. AIGEN: Do you want to keep coaching him?
11 MR. MORRIS: No, I'm trying to coach you.
12 MR. AIGEN: Oh, thanks. That's good.
13 Appreciate if you stop coaching your witness.
14 Q. (BY MR. AIGEN) If Ms. Hendrix testified that
15 the instructions she received in December 2020
16 regarding not making any more payments related only to
17 the Advisors and not to HMS or HCRE, would you have any
18 reason to disagree with her?
19 MR. MORRIS: Objection to the form of the
20 question.
21 THE WITNESS: I have no reason to question
22 Kristin's testimony. I'm sure she gave truthful
23 testimony.
24 Q. (BY MR. AIGEN) Are you aware or not of
25 whether Ms. Hendrix was told by Mr. Waterhouse not to

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1 make payments from certain entities in December of
2 2020?
3 MR. MORRIS: Objection to the form of the
4 question.
5 THE WITNESS: Yeah, I'm aware, and I think I
6 spoke to that earlier of the instruction that had come
7 down from Dondero through Frank to Kristin, and I was
8 certainly aware of it.
9 And I'm -- and I think I spoke to the fact
10 that, you know, certainly hearing it from a person who,
11 as I said before, wasn't really on the team at that
12 point, it was certainly my understanding that that was a
13 global instruction at the time.
14 Q. (BY MR. AIGEN) And I want to get into what
15 was actually said and what you remember, so let me ask
16 you this.
17 This instruction that came down started from
18 Jim and went to Frank. Is that your understanding?
19 A. That's my understanding.
20 Q. You weren't there during that discussion I
21 assume; is that correct?
22 A. Correct, I was not.
23 Q. And then Frank gave an instruction to
24 Kristin; is that your recollection?
25 MR. MORRIS: Objection to the form of the

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1 question.
2 THE WITNESS: Yeah, it's my understanding
3 that Frank informed Kristin of that instruction.
4 Q. (BY MR. AIGEN) Were you there when Frank
5 provided this instruction to Kristin?
6 A. I don't believe I was.
7 Q. Then can I ask, how did you become aware that
8 Frank had given this instruction to Kristin?
9 A. Through subsequent conversations with Frank
10 and Kristin. As I said before, I don't recall if it
11 was the three of us or me and Frank or me and Kristin.
12 But subsequent conversations.
13 Q. Are we talking about conversations back in
14 2020 or after the bankruptcy?
15 MR. MORRIS: Objection to the form of the
16 question.
17 THE WITNESS: During 2020, December of 2020.
18 Q. (BY MR. AIGEN) Sitting here today, can you
19 say with a hundred percent certainty that the
20 instruction related to all of the entities as opposed
21 to just Advisors?
22 A. So as you pointed out, I was not party to the
23 direction, so I have no way of knowing with any sort of
24 specificity what the direction actually was. I just
25 know how it was conveyed to me and how I understood it.

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1 Q. When you say it was conveyed to you, are you
2 talking about subsequent discussions that you had with
3 Ms. Hendrix and Mr. Waterhouse after they talked to
4 each other?
5 A. Yes.
6 Q. Sitting here today, can you tell me for sure
7 that one of them told you that this instruction related
8 to all of the entities, as opposed to just the
9 Advisors?
10 A. No, I can't say that with certainty, but I
11 think that that was the case. But, again, I can't say
12 with certainty.
13 Q. Would you defer to Mr. Waterhouse and
14 Ms. Hendrix over what the specific instructions were?
15 MR. MORRIS: Objection to the form of the
16 question.
17 THE WITNESS: Like I said, I wasn't part of
18 the conversation, so I would defer to people who
19 received the directions more directly.
20 Q. (BY MR. AIGEN) And you're not aware of
21 anything in writing or anything that reflects these
22 instructions on whether to pay or not to pay certain
23 payments in December of 2020?
24 A. No, I'm not aware of anything in writing.
25 Q. And let's change topics for a second here.

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1 I want to throw out a term. Are you familiar
2 with the term "NAV ratio trigger period" as it was used
3 in --
4 A. In a very, very general sense, yes.
5 Q. And in a general sense what does that term
6 mean to you?
7 A. It's a term I recognize from the limited
8 partnership agreement of HCMLP. It's a defined term in
9 that agreement.
10 Q. To your knowledge, was the NAV ratio trigger
11 period ever reached or triggered prior to the Highland
12 bankruptcy?
13 A. I don't know the definition, so I don't know
14 based on the definition whether it had or hadn't.
15 Q. Sitting here today, though, it's not your
16 belief, based on your experience, that it was
17 triggered; is that fair to say?
18 MR. MORRIS: Objection to the form of the
19 question.
20 THE WITNESS: I don't know the consequence of
21 being in a trigger period, I guess is what -- how I'm
22 trying to answer your question.
23 Q. (BY MR. AIGEN) Have you ever had any
24 conversations with Nancy Dondero?
25 A. Yes.

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1 Q. Generally, how many and what was the
2 reasoning?
3 A. Probably less than five. I think maybe only
4 one or two that I can really remember.
5 Q. At a high level what were those conversations
6 about?
7 A. From my recollection of my conversations with
8 her, they pertained to the DRIP, which is a dividend
9 reinvestment program that I helped.
10 Q. And approximately when were these
11 conversations?
12 A. I don't know. Sometime between 2017 and
13 probably 2019. I couldn't tell you with any
14 specificity. These were very informal.
15 Q. Fair to say that you've never had any
16 conversations with Nancy Dondero about any of the loans
17 at issue in this case?
18 A. No, no, no, I've never had a conversation
19 with her like that.
20 Q. And fair to say that you've never had any
21 conversations with Nancy Dondero about compensation for
22 Jim or any other officers at Highland?
23 A. Correct.
24 MR. AIGEN: Why don't we go off the record
25 for two minutes. I think I'm either done or about

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1 done.
2 (Off the record.)
3 Q. (BY MR. AIGEN) You understand you're still
4 under oath?
5 A. Yes.
6 Q. Are you aware of any loans that Highland has
7 made to any employees or officers that were forgiven in
8 all or in part?
9 A. Yes.
10 Q. Can you tell me who?
11 A. I don't know that this will be a complete
12 list, but there were a few employees in the kind of
13 late aughts, maybe 2010, 2011 frame.
14 Q. Do you know the names?
15 A. One was Jack Yang. Another, I'm not sure if
16 it was forgiven or not, that's why I'm hesitating, but
17 it was Tim Lawler. I think his was forgiven in part or
18 in full, but I'm not a hundred percent certain.
19 Q. And any other individuals that received loans
20 that were forgiven in part that you're aware of?
21 A. Not that I recall, but there could be others.
22 Some of this is very, very old.
23 Q. Changing topics here a little bit, I'm going
24 to combine two entities to try to speed this up. If
25 you need to separate, that's fine.

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1 Can you just generally explain to me what
2 services Highland Capital Management provided for
3 HCMS and HCRE?
4 A. For HCMS -- I do need to separate these a
5 little bit. For HCMS, really full-service accounting,
6 tax, treasury, cash payments. I said tax. Valuation.
7 Nothing personnel-wise because they didn't have any
8 employees.
9 That's all I can think of right off the top
10 of my head, but I could be missing some.
11 Q. And what about HCRE? How is that different?
12 A. Similar, except different types of assets.
13 So more real estate, so less heavy.
14 Maybe not necessarily differences in terms of
15 the types of services, but services would have, I'd
16 say, more cash activity, more variety of investments,
17 which triggers different types of activities going on
18 at those entities.
19 But similar in terms of tax operations,
20 making payments. HCRE didn't have employees, so no
21 payroll. So these would be the broad areas that I
22 would think about.
23 Q. And you mentioned making payments. Would one
24 of those services that Highland provided for these two
25 entities include making loan payments on the term loans

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1 like the term loans at issue in these proceedings?
2 MR. MORRIS: Objection to the form of the
3 question.
4 THE WITNESS: I think I mentioned before, I
5 couldn't remember whether or not Kristin was authorized
6 to make payments with respect to HCRE. I think she
7 probably was, but I don't know that with certainty.
8 But, you know, for services, certainly Kristin
9 and her team would be responsible for making those
10 payments, subject to the proper authorization.
11 Q. (BY MR. AIGEN) And I'm sorry if I asked this
12 before. If it wasn't Kristin for HCRE, do you have an
13 idea who it would have been?
14 A. If not Kristin, it would have been Melissa
15 Schroth.
16 Q. And how were those responsibilities split up?
17 What entities was Melissa Schroth responsible for?
18 A. Generally speaking, Melissa was more
19 responsible for entities that were really, like -- I'm
20 going to use this in the most general sense, like Jim
21 entities, Jim's trusts, Jim personally.
22 And for HCRE it was kind of in the middle.
23 When it started out it kind of was more Jim world and
24 then over time it got more complex.
25 And as entities got more complex over time

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they tend to get transitioned from Melissa to corporate accounting. And when they got really complex over to another group of fund accountants.

So this is one that was, at its beginning, Melissa was the, called primary accountant. And at some point in time that transitioned to the corporate accounting team. I can't remember when the cash process kind of cut over.

Q. Is there a list somewhere saying Melissa is responsible for these, Kristin for the others, or is it just more of a pattern or matter of practice?

A. More of a matter of practice. If you're responsible for an entity, you're responsible. If you're not, then you're not.

MR. AIGEN: That's all the questions I have. Thank you for your time.

THE WITNESS: Thank you.

EXAMINATION

Q. (BY MR. MORRIS) Just a few, Mr. Klos. Let's pick up where Mr. Aigen left off.

To the best of your knowledge, did HCMS have a shared services agreement with Highland?

A. No, it didn't that I'm aware of.

Q. But you described certain services that HCMLP provided to HCMS; is that right?

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A. Yes.

Q. Do you know whether HCMFA ever compensated -- do you know whether HCMS ever compensated HCMLP for any of those services that HCMLP provided?

A. No, it didn't.

Q. You mentioned HCRE. To the best of your knowledge, did HCRE have a shared services agreement with Highland Capital Management, LP?

A. No, it didn't.

Q. Did HCRE provide the services that -- withdrawn.

Did HCMLP provide the services to HCRE that you just described?

A. Yes.

Q. Did HCRE ever compensate HCMLP for any of the services that HCMLP provided?

A. No.

Q. Okay. Mr. Rukavina asked you some questions about payments that were made on the NexPoint loan in the first half of 2019.

Do you remember that?

A. Yes, generally.

Q. Okay. Notwithstanding those payments, did your group continue to carry on its books and records NexPoint's obligation to make the installment payment

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that was due at the end of the year?

A. Yes, we continued to track it through our interest schedules and through cash.

Q. So in the debtor's books and records is there any evidence that the payments that were made in early 2019 were intended to relieve NexPoint's obligation to make the installment payment due at the end of the year?

MR. RUKAVINA: Objection. Best evidence.

THE WITNESS: No, I don't believe so.

Q. (BY MR. MORRIS) Did you have a conversation with anybody at any time in the year 2019 about whether the payments made earlier in the year on behalf of NexPoint would eliminate or suspend its obligation -- withdrawn.

Did you have any conversation with anybody -- I think I screwed up the dates. Going to have to start over.

Let me ask better questions.

You looked with Mr. Rukavina at certain payments that were made in early 2019 with respect to the NexPoint note.

Do I have that right?

A. Yes.

Q. Notwithstanding those payments, did NexPoint

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make the installment payment that was due at the end of 2019?

MR. RUKAVINA: Objection. Calls for a legal conclusion.

THE WITNESS: It did make the payment that was due at the end of 2019.

Q. (BY MR. MORRIS) And the payment that it made at the end of 2019, was that the annual installment payment that was called for in the note itself?

MR. RUKAVINA: Objection. Legal conclusion.

THE WITNESS: Yes, it was a payment pursuant to the note.

Q. (BY MR. MORRIS) Did anybody ever tell you at any time prior to the commencement of this lawsuit that any prior payment by or on behalf of NexPoint relieved it of any obligation to pay the installment payment due at the end of 2020?

A. No.

Q. And did in fact -- is it your understanding that Mr. Dondero specifically authorized Highland to effectuate a payment on NexPoint's behalf in mid January 2021?

A. I don't have specific knowledge, but I know that to have occurred.

Q. Okay. Did anybody ever tell you in 2021 --

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1 withdrawn.
2 Did anybody tell you in December 2020 or
3 December -- or January 2021 that NexPoint didn't have
4 to make the installment payment at year end 2020
5 because of some prior prepayment?
6 A. No.
7 Q. Can you think of any reason -- withdrawn.
8 Did you ever hear Mr. Dondero -- withdrawn.
9 Did you ever see anything in writing where
10 NexPoint ever contended, prior to February 1, 2021,
11 that it had no obligation to make the payment due at
12 the end of 2020 because of some prepayment issue?
13 A. No, not that I remember.
14 Q. Can you think of any reason why Mr. Dondero
15 would have authorized a payment by NexPoint to HCMLP on
16 account of the note in January of 2021 if he actually
17 believed at that time that no obligation was due
18 because of a prior prepayment?
19 MR. RUKAVINA: Objection. Speculation, lacks
20 foundation.
21 THE WITNESS: No.
22 Q. (BY MR. MORRIS) Does it make any sense to
23 you as an accountant that you would pay a seven-figure
24 sum of money that you didn't think was due and owing?
25 A. No, that does not make sense to me.

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1 Q. Can you get Exhibit 13, please.
2 A. Got it.
3 Q. You were asked some questions about
4 paragraph 3.
5 Do you see that?
6 A. Yes.
7 Q. Does paragraph 3 mention annual installment
8 payments at all?
9 A. No, I'm not seeing it.
10 Q. Does paragraph 3 state in any way that a
11 prepayment as described in that paragraph would relieve
12 the maker of the obligation to make annual installment
13 payments?
14 A. No.
15 Q. Can you turn to the next page and look at
16 paragraph 5.
17 Are you familiar with that paragraph at all?
18 A. No. I mean, I've seen it before, but this
19 is, as I said before, this is a provision that probably
20 would have been in most, if not all, of these types of
21 notes.
22 Q. Can you get Exhibit 3, please. This is your
23 email dated May 2, 2019.
24 Do I have that right?
25 A. Yes.

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1 Q. And you sent it to the corporate accounting
2 email group; is that right?
3 A. I did.
4 Q. And to the best of your recollection, was
5 Mr. Waterhouse included in that email group?
6 A. Yes, absolutely.
7 Q. And did you instruct the corporate accounting
8 team to transfer $2.4 million from HCMLP to HCMFA on
9 May 2, 2019?
10 A. Yes, specifically Blair, but yes, for the
11 team as well.
12 Q. The whole team was aware of this?
13 A. The whole team is on the email, and I'm
14 sending to Blair, who is the AP person, to please set
15 up the payment.
16 Q. Is it fair to say that you're being
17 completely transparent here by including the entire
18 corporate accounting group on this email?
19 A. Yes.
20 Q. And did you tell the entire corporate
21 accounting group that this transaction would be a,
22 quote, new interco loan?
23 A. Yes, that's what the email says.
24 Q. Do you have any reason to believe that
25 Mr. Waterhouse didn't get this?

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1 A. No, he got this.
2 Q. And did Mr. Waterhouse tell you at any time
3 in the history of the world that this $2.4 million
4 should not have been booked as a loan?
5 A. No.
6 Q. Did Mr. Dondero tell you at any moment in the
7 history of the world that this transaction should not
8 have been booked as a loan?
9 A. No.
10 Q. You mentioned that there was an audit that
11 followed shortly thereafter?
12 A. Yes.
13 Q. Are you familiar with the debtor's audited
14 financial statements for the period ending 2018?
15 A. Yes, generally. Not total recall, but yes.
16 Q. Are you aware that this loan was included as
17 a subsequent event in the debtor's audited financial
18 statements?
19 A. Yes.
20 MR. RUKAVINA: Objection. Best evidence.
21 Q. (BY MR. MORRIS) Did Mr. Dondero or
22 Mr. Waterhouse or anybody ever tell you that the debtor
23 should not have included this $2.4 million loan in its
24 audited financial statements?
25 MR. RUKAVINA: Objection. Best evidence.

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1 THE WITNESS: No.
2 Q. (BY MR. MORRIS) Okay. And the next day
3 there was another loan; right?
4 A. Yes.
5 Q. I'm going to show you here a document that's
6 been produced.
7 MR. RUKAVINA: Would you email it to me and I
8 can print it out for the court reporter.
9 MR. MORRIS: You want to come over here and
10 look --
11 MR. RUKAVINA: I know it. I'm just thinking
12 that we can append it to the record right now.
13 MR. MORRIS: It's eight pages, so it's part
14 of a whole production.
15 MR. RUKAVINA: But it's just one email?
16 MR. MORRIS: Just one email that I'm talking
17 about. So we're looking at Bates stamp D-CNL003763.
18 And I'll email it to you when we're done here.
19 And you're welcome to come over here if you'd like to
20 see it.
21 Q. (BY MR. MORRIS) Mr. Klos, can you take a
22 look at the email that I have on my screen.
23 A. Yes.
24 Q. And do you see that it's an email from
25 Kristin Hendrix to the corporate accounting group on

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1 Friday, May 3?
2 A. Yes.
3 Q. And were you also included in the corporate
4 accounting email string?
5 A. Yes.
6 Q. Can you read the email out loud, please.
7 A. It says, Blair, please set up a wire from
8 HCMLP to HCMFA for 5 million as a new loan,
9 parentheses, 4.4 million should be coming in from Jim
10 soon. Hayley, please add this to your loan tracker. I
11 will paper the loan.
12 Q. So based on that email, did you understand on
13 May 3 that HCMLP was going to loan $5 million to HCMFA?
14 A. Yes, HCMFA.
15 Q. And did you understand that Kristin
16 specifically told the corporate accounting group that
17 she would take responsibility for papering the loan?
18 A. Yes, that's what she says.
19 Q. Do you recall whether Mr. Waterhouse ever
20 objected to any aspect of Kristin's email?
21 A. He didn't.
22 Q. Do you recall in the history of the world
23 whether Mr. Waterhouse ever told you that this
24 $5 million transaction should not have been booked as a
25 loan?

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1 A. No.
2 Q. Did anybody in the history of the world ever
3 raise a question to you as to whether or not Kristin
4 was authorized to paper the loan, as she describes it
5 in this particular email?
6 A. No.
7 Q. Do you know if this $5 million loan was also
8 included in the debtor's audited financial statements?
9 MR. RUKAVINA: Objection. Best evidence.
10 THE WITNESS: Yes. Again, subsequent event.
11 Q. (BY MR. MORRIS) Okay. And did anybody in
12 the history of the world ever tell you that Highland
13 should not have included as a subsequent event in its
14 2018 audited financial statement this $5 million loan?
15 A. No.
16 MR. RUKAVINA: Objection. Best evidence.
17 THE WITNESS: No.
18 Q. (BY MR. MORRIS) Do you know if HCMFA had its
19 financial statements audited?
20 A. It did.
21 Q. And are you generally familiar with those
22 financial statements?
23 A. Yes.
24 Q. Are you aware that these two loans totaling
25 $7.4 million were included in HCMFA's audited financial

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1 statements as a subsequent event for the period ended
2 December 31, 2018?
3 A. Yes.
4 MR. RUKAVINA: Objection. Best evidence.
5 Q. (BY MR. MORRIS) Did anybody in the history
6 of the world ever tell you that HCMFA should not have
7 included as a subsequent event the borrowing of the
8 money reflected in these loans?
9 MR. RUKAVINA: Objection. Best evidence.
10 THE WITNESS: No, no one said that.
11 Q. (BY MR. MORRIS) Do you know if HCMFA
12 included these loans as a liability on its balance
13 sheet?
14 A. It did.
15 MR. RUKAVINA: Objection. Move to strike.
16 Best evidence.
17 Q. (BY MR. MORRIS) Did anyone in the history of
18 the world ever tell you that HCMFA should not have
19 included these loans as a liability on its balance
20 sheet?
21 MR. RUKAVINA: Objection. Best evidence.
22 THE WITNESS: No.
23 Q. (BY MR. MORRIS) Okay. Do you recall that in
24 October of 2020 HCMFA and NexPoint made a report to the
25 retail board?

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1 A. Yes.
2 Q. And are you aware that that's part of the
3 annual review process?
4 A. Yes, it's the 15(c) process.
5 Q. By the way, as we're talking about these
6 issues, did Mr. Waterhouse have -- was he an officer of
7 HCMFA in 2019 and 2020?
8 A. Yes.
9 Q. And what's your understanding as to the
10 office he held?
11 A. Treasurer, I believe.
12 Q. And do you know if Mr. Dondero held an
13 officer position with respect to each of the Advisors?
14 A. He did.
15 Q. What position did he hold?
16 A. I don't recall with certainty, but I believe
17 president.
18 Q. As officers of those two entities, do you
19 have any knowledge as to whether they participated in
20 the communications with the retail board in the fall of
21 2020?
22 A. I believe Jim and Frank both did.
23 Q. And do you know whether the retail board
24 asked the Advisors for a report on all obligations due
25 and owing to HCMLP and affiliates?

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1 A. They asked for financials, I believe as of
2 6/30 as part of that process.
3 Q. And are you aware as to whether or not the
4 financials that were provided to the retail board
5 included, among other things, the $7.4 million in notes
6 that were -- that we're talking about here?
7 A. Yes, those financials would have included
8 those amounts as liabilities to HCMLP.
9 Q. Did Mr. Dondero or Mr. Waterhouse ever tell
10 you or anybody to your knowledge that the Advisors
11 should not have told the retail boards that they were
12 obligated to pay under those two notes?
13 A. No.
14 Q. Let's talk about loan forgiveness for a
15 moment.
16 How long have you been with the company?
17 A. March of 2009.
18 Q. At any time since you've been employed by
19 Highland, has Highland ever forgiven a promissory note
20 that it held where the maker was a corporate affiliate?
21 A. Not that I can recall.
22 Q. Have you ever heard prior -- has anybody ever
23 told you that before you joined the company, Highland
24 had ever forgiven in whole or in part any note that it
25 held where the maker was a corporate affiliate?

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1 A. Not that I'm aware of.
2 Q. You referred to a couple of loans that were
3 given to individuals earlier.
4 Do you remember that?
5 A. Yes.
6 Q. What's the biggest loan that you can recall
7 Highland ever forgiving?
8 A. The largest one that I can remember was
9 a half-million dollars, 500,000.
10 Q. So you have no knowledge of any loan ever
11 being forgiven where the principal amount forgiven
12 exceeded $500,000; is that right?
13 A. Not that I'm aware of.
14 Q. And when is the last loan that Highland
15 forgave in whole or in part to one of its officers or
16 employees that you can recall?
17 A. I don't know a specific year, but it would
18 have been in the 2010, 2011 time frame. Maybe 2012,
19 but I suspect '10 or '11.
20 Q. So is it fair to say to the best of your
21 recollection and knowledge that Highland did not
22 forgive a single loan made to an officer or employee
23 for at least seven years prior to the petition date?
24 A. There's none that I can think of.
25 Q. Let's just turn our attention to

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1 December 2020.
2 Do you recall that you testified at length
3 about your understanding of the conversations with
4 Mr. Waterhouse and Ms. Hendrix?
5 Do you remember that?
6 A. Yes.
7 Q. Okay. Are you aware of any instruction ever
8 made by Mr. Dondero or Mr. Waterhouse in November or
9 December 2020 in order to make the payments that were
10 due under the three term notes -- withdrawn.
11 There were three term notes that were due --
12 withdrawn.
13 There are three term notes at issue in this
14 case. Do you understand that?
15 A. Yeah, that's my understanding.
16 Q. And one of them was issued by NexBank; is
17 that right?
18 A. NexPoint Advisors.
19 Q. Thank you for the clarification.
20 One was by HCRE?
21 A. Correct.
22 Q. And one was from HCMS; do I have that right?
23 A. Yes.
24 Q. And all three of those notes were executed as
25 of May 31, 2017; right?

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A. Yeah, that was the effective date on all three.
Q. And they all rolled up previously outstanding notes that were due and payable to Highland.
Do I have that right?
A. Correct. To the best of my recollection.
Q. So we'll refer to those notes as the term notes. Is that okay?
A. Sure.
Q. Do you have any knowledge that Mr. Dondero or Mr. Waterhouse ever instructed HCMLP to make the installment payments that were due at the end of 2020 with respect to any of those term notes?
A. No, I don't believe they provided that instruction to make those payments.
MR. RUKAVINA: Objection. Move to strike. Lacks foundation.
MR. MORRIS: I'm asking him if he ever heard.
MR. RUKAVINA: But he answered a different question. He answered a different question.
Q. (BY MR. MORRIS) Did you ever see anything in writing where either Mr. Dondero or Mr. Waterhouse directed HCMLP to make the annual installment payments that were due at the end of 2020 with respect to any of the term notes?

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A. No.
Q. Okay. But to the best of your recollection, in the 13-week forecast, those forecasts included the installment payments that were due at the end of the year; is that right?
A. They did.
Q. Did anybody ever tell you prior to February 1, 2021, that your group had made a mistake by not making the payment -- any of the payments that were due under the term notes at the end of 2020?
A. Not that I'm aware of.
Q. Did anybody tell you prior to February 1, 2021, that the makers of the term notes expected Highland to effectuate the payments that were due at the end of the year without approval by Mr. Waterhouse or Mr. Dondero?
A. No.
Q. Have you seen any protest in writing prior to the commencement of the litigation by any of the makers of the notes about a failure on the part of HCMLP to perform its duties and make that payment at the end of the year?
A. No.
MR. MORRIS: I have no further questions.
MR. RUKAVINA: I have five minutes.

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FURTHER EXAMINATION
Q. (BY MR. RUKAVINA) Go to Exhibit 16, please, 1-6.
A. Sure.
Q. Sir, this is an email string regarding that Rule 15(c) that you were talking about. I'm just going to ask you about the top email, but you're welcome to read the whole.
A. Uh-huh.
Q. You're copied on Mr. Waterhouse's email there October 6, 2020; right?
A. Yes, I'm on the email.
Q. And Mr. Waterhouse writes, the HCMFA note is a demand note. You would have read that; right?
A. Yes.
Q. Did you ever correct Mr. Waterhouse when he says the HCMFA note, as opposed to notes?
A. No, that's not something I would have corrected from Frank.
Q. Do you recall right now that you might have, when you read this, realized that he made a mistake?
A. It would have been such a de minimus, inconsequential mistake that I don't know that I would have addressed it.
Q. What about two sentences over, there was an

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agreement between HCMLP and HCMFA the earliest they could demand is May 2021.
Did you ever write to him and say that too was a mistake?
A. I didn't write to him.
Q. Did you realize back then when you read it that he had made a mistake?
A. I'm not certain.
Q. Did you -- and I'm not suggesting that you should have. You're a busy man. But did you attach any significance outside of the ordinary to this email exchange?
MR. MORRIS: Objection to the form of the question.
THE WITNESS: I struggle with how to answer that. I saw that this note was in response to retail 15(c) follow-up on the Advisors.
At this point my role was different, where I was dealing with really the retail funds primarily. So the fact that I'm even on this email is somewhat incidental.
Q. (BY MR. RUKAVINA) But surely on October 6, 2020 you knew that there were four HCMFA demand notes, didn't you?
A. I'm sure I would have had access to that

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1 information. I'm not sure that I was keeping track of
2 how many were outstanding at any given point in time.
3 Q. And surely on October 6, 2020 you knew that
4 only two of them couldn't be demanded by May of 2021,
5 didn't you?
6 A. Again, I don't know that I was even really
7 thinking about these notes at that time.
8 Q. Even though you were preparing weekly cash
9 forecasts for Mr. Seery?
10 A. I wasn't preparing a weekly cash forecast for
11 Mr. Seery.
12 Q. Going to Exhibit 13, please. Mr. Morris
13 asked you a couple questions about this.
14 A. I'm sorry, 13?
15 Q. Yes, sir. And again, that paragraph 3 that
16 talks about prepayment.
17 Can you find anything in here, sir, that says
18 that a prepayment does not relieve the maker of any
19 regularly scheduled payment?
20 A. Sorry, that's a lot to comprehend. If you
21 could ask again.
22 Q. Is there any provision that you can see here
23 that's to the effect that a prepayment will not relieve
24 the maker of any regularly scheduled payment?
25 A. I don't see that specific provision. I just

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1 read it for what is on the page.
2 Q. Isn't it, sir, in your experience the case
3 that a promissory note, if it intended not to relieve
4 the borrower of regularly scheduled payments would say
5 that a prepayment does not relieve the borrower of
6 regularly scheduled payments?
7 MR. MORRIS: Objection to the form of the
8 question.
9 THE WITNESS: That's a legal question. I
10 can't -- I don't know the answer.
11 Q. (BY MR. RUKAVINA) Do you remember seeing
12 promissory notes that say something like that?
13 A. Not that I can recall.
14 Q. You'd be surprised if that's what promissory
15 notes say?
16 MR. MORRIS: Objection to the form of the
17 question.
18 THE WITNESS: I don't know.
19 Q. (BY MR. RUKAVINA) And Mr. Morris asked you
20 about this. I'm trying to burn through this so the man
21 can make his plane.
22 Section 2.1 talks about 30 equal annual
23 payments, annual installments.
24 You see that?
25 A. Yes, I see that.

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1 Q. And Mr. Morris asked you whether you see
2 anything in here that says that a prepayment relieves
3 an annual installment.
4 Do you remember that question?
5 MR. MORRIS: Objection. That's not what I
6 asked.
7 THE WITNESS: I don't remember that question.
8 Q. (BY MR. RUKAVINA) Reading Section 2.1 and 3
9 together, what would a prepayment apply to other than
10 an annual installment? Do you have a view on that?
11 MR. MORRIS: Objection to the form of the
12 question.
13 THE WITNESS: Again, I struggle with
14 prepayment. But as I read Section 3, it would be
15 applied first to unpaid accrued interest and then to
16 unpaid principal.
17 Q. (BY MR. RUKAVINA) Have you ever in your
18 personal life prepaid a promissory note before -- have
19 you ever in your personal life prepaid a promissory
20 note prior to its maturity?
21 MR. MORRIS: Objection to the form of the
22 question.
23 THE WITNESS: I don't know.
24 Q. (BY MR. RUKAVINA) Sitting here today, with
25 your CPA, your MBA and you're a CFO of a large entity,

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1 you don't understand what a prepayment means?
2 MR. MORRIS: Objection. Argumentative.
3 I direct you not to answer.
4 You're going to have ask a different question.
5 That's an argumentative question and it's insulting.
6 MR. RUKAVINA: What's the privilege on which
7 you're directing him not to answer?
8 MR. MORRIS: I just said it's argumentative.
9 MR. RUKAVINA: I'm trying to let you get to
10 your flight.
11 MR. MORRIS: Ask a proper question. Don't
12 make this about me.
13 Q. (BY MR. RUKAVINA) You were going to answer
14 my question, sir?
15 MR. MORRIS: No, I'm directing him not to
16 answer.
17 MR. RUKAVINA: Then we'll end this deposition
18 with a motion to compel.
19 MR. MORRIS: Okay. You do that.
20 MR. RUKAVINA: I'm making a motion to compel.
21 We'll call the judge as soon as we land in New York
22 tomorrow.
23 MR. MORRIS: You have to read the whole
24 question. You can ask the question without the
25 verbiage; right?

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MR. RUKAVINA: And I asked you on the basis of what privilege are you instructing your --
MR. MORRIS: Argumentative.
MR. RUKAVINA: That's not a privilege.
MR. MORRIS: Sir, you can rephrase your question and end this right now by not being insulting to my client.
Q. (BY MR. RUKAVINA) I was not trying to be insulting, sir.
I'm asking you again, you do not, sitting here today, have an understanding of what the word "prepayment" for a promissory note means?
MR. MORRIS: Objection to the form of the question.
You can answer that one.
THE WITNESS: In the context that you're asking the question --
Q. (BY MR. RUKAVINA) No, I'm not asking any context. Sitting here today, do you have an understanding of what the word "prepayment" means when it comes to a borrower/lender relationship?
MR. MORRIS: Objection to the form of the question.
THE WITNESS: Yes, I have a general understanding.

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Q. (BY MR. RUKAVINA) What is your understanding?
A. That -- you can look at the note.
Q. I'm not asking about the note. We got to go step by step.
What is your general understanding as to what a prepayment means?
MR. MORRIS: Objection to the form of the question.
THE WITNESS: It depends on the context and it's going to depend on what the note says about prepayments. So I have a hard time answering that question.
Q. (BY MR. RUKAVINA) So you would agree with me that you have to look at the note before you can answer that question?
MR. MORRIS: Objection to the form of the question.
THE WITNESS: I would want to look at the note before I answer the question, because prepayment is a term that can be used as a defined term or in a casual sense, and those two can sometimes get confused and misconstrued.
Q. (BY MR. RUKAVINA) Would you agree with me that in any and all circumstances a prepayment is a payment made prior to the time that it's due?
MR. MORRIS: Objection to the form of the question.
THE WITNESS: Yes, in the most general sense a prepayment, the prefix "pre" indicates that it's before some other event. So from that standpoint, prepayment means it was to some extent paid early.
MR. RUKAVINA: Thank you.
Pass the witness.
MR. MORRIS: No further questions.
Michael?
MR. AIGEN: No questions.
THE REPORTER: Mr. Morris, do you want a copy of the transcript?
MR. MORRIS: I sure do.
THE REPORTER: Mr. Aigen, do you want a copy of the transcript?
MR. AIGEN: Yes, we would also like a copy.
MR. MORRIS: Yeah, and I'd like that rush.
(Whereupon, the deposition adjourned at 5:14 P.M.)
--oOo--
I declare under penalty of perjury that the foregoing is true and correct. Subscribed at _____, Texas, this ____ day of

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_____, 2021.

_____
DAVID KLOS

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CERTIFICATE OF REPORTER

I, BRANDON D. COMBS, a Certified Shorthand Reporter, hereby certify that the witness in the foregoing deposition was by me duly sworn to tell the truth, the whole truth, and nothing but the truth in the within-entitled cause;

That said deposition was taken in shorthand by me, a disinterested person, at the time and place therein stated, and that the testimony of the said witness was thereafter reduced to typewriting, by computer, under my direction and supervision;

That before completion of the deposition, review of the transcript was not requested. If requested, any changes made by the deponent (and provided to the reporter) during the period allowed are appended hereto.

I further certify that I am not of counsel or attorney for either or any of the parties to the said deposition, nor in any way interested in the event of this cause, and that I am not related to any of the parties thereto.

DATED: November 1, 2021

_____

Brandon Combs, Certified Shorthand

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EXHIBIT 196

December 2019 Due From Affiliates

14585 DUE FROM HUNTER MOUNTAIN INVESTMENT TRUST	$	57,963,118
14532 DUE FROM NEXPOINT ADVISORS		23,034,644
14750 LONG TERM NOTES RECEIVABLE		18,286,268
14531 DUE FROM HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS		10,413,540
14533 DUE FROM HCRE PARTNERS		10,192,686
14565 DUE FROM OTHER - TAX LOANS		9,946,805
14530 DUE FROM HIGHLAND CAPITAL MANAGEMENT SERVICES		7,543,781
14590 DUE FROM OTHER AFFILIATE		5,088,256
14595 DUE FROM HIGHLAND CAPITAL KOREA		3,132,278
14140 SHARED SVCS FEE RECVBL - PYXIS		298,283
14010 CASH INTEREST RECEIVABLE		285,626
14580 DUE FROM NEXBANK		60,000
Total Due From Affiliates	**$**	**146,245,285**

EXHIBIT 197

September 2020 Due From Affiliates

14585 DUE FROM HUNTER MOUNTAIN INVESTMENT TRUST	$	57,963,118
14532 DUE FROM NEXPOINT ADVISORS		23,610,195
14750 LONG TERM NOTES RECEIVABLE		18,286,268
14531 DUE FROM HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS		10,635,564
14533 DUE FROM HCRE PARTNERS		10,436,597
14565 DUE FROM OTHER - TAX LOANS		8,929,625
14530 DUE FROM HIGHLAND CAPITAL MANAGEMENT SERVICES		7,518,692
14590 DUE FROM OTHER AFFILIATE		5,088,256
14595 DUE FROM HIGHLAND CAPITAL KOREA		3,832,358
14536 DUE FROM SELECT		3,000,000
14010 CASH INTEREST RECEIVABLE		2,718,375
14140 SHARED SVCS FEE RECVBL - PYXIS		308,093
14137 SHARED SVCS FEE RECVBL - OSLI		122,000
14580 DUE FROM NEXBANK		60,000
14148 SHARED SVCS FEE RECVBL - RAND ADVISORS		40,182
14142 SHARED SVCS FEE RECVBL - HCLOH		24,592
14535 DUE FROM HERA		10,676
Total Due From Affiliates	**$**	**152,584,592**

EXHIBIT 198

January 2021 Due From Affiliates

14585-DUE FROM HUNTER MOUNTAIN INVESTMENT TRUST	$	59,480,100
14532-DUE FROM NEXPOINT ADVISORS		23,034,644
14750-LONG TERM NOTES RECEIVABLE		18,286,268
14531-DUE FROM HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS		10,635,564
14533-DUE FROM HCRE PARTNERS		10,604,952
14565-DUE FROM OTHER - TAX LOANS		8,929,625
14530-DUE FROM HIGHLAND CAPITAL MANAGEMENT SERVICES		7,518,692
14536-DUE FROM SELECT		4,818,153
14595-DUE FROM HIGHLAND CAPITAL KOREA		3,832,358
14590-DUE FROM OTHER AFFILIATE		2,651,256
14010-CASH INTEREST RECEIVABLE		1,111,875
14140-SHARED SVCS FEE RECVBL - PYXIS		894,280
14146-SHARED SVCS FEE RECVBL - NEXPOINT		336,000
14149-SHARED SVCS FEE RECVBL - NREA		160,000
14137-SHARED SVCS FEE RECVBL - OSLI		122,000
14580-DUE FROM NEXBANK		80,000
14142-SHARED SVCS FEE RECVBL - HCLOH		31,179
14535-DUE FROM HERA		10,676
Total Due From Affiliates	**$**	**152,537,622**

EXHIBIT 199

Loan Summary

HCMLP to HCMSI (GL 14530) - Outstanding Loans		Date	Principal Amount
HCMSI Restructure		5/31/2017	6,572,061
HCMSI #46		3/26/2018	158,777
HCMSI #47		6/25/2018	212,403
HCMSI #48		5/29/2019	409,586
HCMSI #49		6/26/2019	153,565
BW Salary Recievable		12/31/2019	12,301
		Sub-total	7,518,692
Total HCMSI Debt to HCM Outstanding			**7,518,692**
Total HCMSI Debt per GL			7,518,692
	Reconciled Total		7,518,692
	Unreconciled Difference		-

HCMLP to HCMFA (GL 14531) - Outstanding Loans	Date		Principal Amount
HCMFA #2		2/26/2014	2,092,825
HCMFA #5		2/26/2016	965,395
HCMFA #6		5/2/2019	2,457,517
HCMFA #7		5/3/2019	5,119,827
		Sub-total	10,635,564
Total HCMFA Debt to HCM Outstanding			**10,635,564**
Total HCMFA Debt per GL			10,635,564
	Reconciled Total		10,635,564.44
	Unreconciled Difference		-

HCMLP to NexPoint Advisors (GL 14532) - Outstanding Loans	Date		Principal Amount
NexPoint Restructure		5/31/2017	23,034,644
		Sub-total	23,034,644
Total NexPoint Debt to HCM Outstanding			**23,034,644**
Total NexPoint Debt per GL			23,034,644
	Reconciled Total		23,034,644
	Unreconciled Difference		0.00

HCMLP to HCRE (GL 14533) - Outstanding Loans	Date		Principal Amount
HCRE #9		11/27/2013	-
HCRE Restructure		5/31/2017	5,829,776
HCRE #10		10/12/2017	3,149,919
HCRE #11		10/15/2018	874,978
HCRE #12		9/25/2019	750,279
		Sub-total	10,604,952
Total HCRE Debt to HCM Outstanding			**10,604,952**
Total HCRE Debt per GL			10,604,952
	Reconciling Items Compound Interest		-
	Reconciled Total		10,604,951.61
	Unreconciled Difference		0.01

HCMLP Partner Tax Loans (GL 14565) - Outstanding Loans	Date		Principal Amount
Dondero #4		2/2/2018	3,687,270
Dondero #5		8/1/2018	2,619,929
Dondero #6		8/13/2018	2,622,426
		Sub-total	8,929,625
Total Partner Debt to HCM Outstanding			**8,929,625**
Total Partner Debt per GL			8,929,625
Reconciling Items			
	Reconciled Total		8,929,624.74
	Unreconciled Difference		-

Get Good Loan (GL 14750) - Outstanding Loans	Date		Principal Amount
Dugaboy Restructure		5/31/2017	18,286,268
		Sub-total	18,286,268
Total Partner Debt to HCM Outstanding			**18,286,268**
Total Partner Debt per GL			18,286,268
Reconciling Items			
	Reconciled Total		18,286,268.16
	Unreconciled Difference		-

EXHIBIT 200

NPA $30.7M

Closing Date		5/31/2017
Total Commitment	$	30,746,812
Rate		6.000%
Maturity:		12/31/2047

Date	Interest Accrual	Interest Paid	Accrued Interest	Beg Prin Bal	Principal Paid	Ending Prin Bal	Total Paid
5/31/2017						$ 30,746,812	
6/30/2017	151,628.12		151,628.12	30,746,812.33		30,746,812.33	
7/31/2017	156,682.39		308,310.50	30,746,812.33		30,746,812.33	
8/31/2017	156,682.39		464,992.89	30,746,812.33		30,746,812.33	
9/30/2017	151,628.12		616,621.00	30,746,812.33		30,746,812.33	
10/20/2017	101,085.41	(717,706.41)	-	30,746,812.33	(82,293.59)	30,664,518.74	(800,000.00)
10/31/2017	55,448.17		55,448.17	30,664,518.74		30,664,518.74	
11/30/2017	151,222.28		206,670.46	30,664,518.74		30,664,518.74	
12/5/2017	25,203.71	(358,904.83)	(127,030.67)	30,664,518.74	(942,600.16)	29,721,918.58	(1,301,504.99)
12/31/2017	127,030.67		(0.00)	29,721,918.58		29,721,918.58	
1/31/2018	151,459.64		151,459.64	29,721,918.58		29,721,918.58	
2/28/2018	136,802.26		288,261.90	29,721,918.58		29,721,918.58	
3/31/2018	151,459.64		439,721.54	29,721,918.58		29,721,918.58	
4/10/2018	48,857.95	(439,721.54)	48,857.95	29,721,918.58		29,721,918.58	(439,721.54)
4/30/2018	97,715.90		146,573.85	29,721,918.58		29,721,918.58	
5/1/2018	4,885.79	(146,573.85)	4,885.79	29,721,918.58		29,721,918.58	(146,573.85)
5/9/2018	39,086.36	(879,927.65)	(835,955.50)	29,721,918.58		29,721,918.58	(879,927.65)
5/31/2018	107,487.49		(728,468.01)	29,721,918.58		29,721,918.58	
6/30/2018	146,573.85		(581,894.17)	29,721,918.58		29,721,918.58	
7/31/2018	151,459.64		(430,434.53)	29,721,918.58		29,721,918.58	
8/31/2018	151,459.64		(278,974.89)	29,721,918.58		29,721,918.58	
9/5/2018	24,428.97		(254,545.91)	29,721,918.58	(280,765.40)	29,441,153.18	(280,765.40)
9/21/2018	77,434.27		(177,111.65)	29,441,153.18	(1,023,750.00)	28,417,403.18	(1,023,750.00)
9/30/2018	42,042.19		(135,069.46)	28,417,403.18		28,417,403.18	
10/31/2018	144,811.97		9,742.51	28,417,403.18		28,417,403.18	
11/30/2018	140,140.62		149,883.13	28,417,403.18		28,417,403.18	
12/18/2018	84,084.37	(294,695.10)	(60,727.60)	28,417,403.18		28,417,403.18	(294,695.10)
12/31/2018	60,727.60		(0.00)	28,417,403.18		28,417,403.18	

1/31/2019	144,811.97		144,811.97	28,417,403.18		28,417,403.18	
2/28/2019	130,797.91		275,609.88	28,417,403.18		28,417,403.18	
3/29/2019	135,469.26	(411,079.15)	(0.00)	28,417,403.18	(338,920.85)	28,078,482.33	(750,000.00)
3/31/2019	9,231.28		9,231.28	28,078,482.33		28,078,482.33	
4/16/2019	73,850.25	(83,081.53)	0.00	28,078,482.33	(1,216,918.47)	26,861,563.86	(1,300,000.00)
4/30/2019	61,818.39		61,818.40	26,861,563.86		26,861,563.86	
5/31/2019	136,883.59	(198,701.98)	0.00	26,861,563.86	198,701.98	27,060,265.84	-
6/4/2019	17,793.05	(17,793.05)	0.00	27,060,265.84	(282,206.95)	26,778,058.89	(300,000.00)
6/19/2019	66,028.09	(66,028.10)	(0.00)	26,778,058.89	(2,033,971.90)	24,744,086.99	(2,100,000.00)
6/30/2019	44,742.73		44,742.73	24,744,086.99		24,744,086.99	
7/9/2019	36,607.69	(81,350.42)	(0.00)	24,744,086.99	(548,649.58)	24,195,437.41	(630,000.00)
7/31/2019	87,501.31		87,501.31	24,195,437.41		24,195,437.41	
8/13/2019	51,705.32	(139,206.62)	0.00	24,195,437.41	(1,160,793.38)	23,034,644.03	(1,300,000.00)
8/31/2019	68,157.30		68,157.31	23,034,644.03		23,034,644.03	
9/30/2019	113,595.50		181,752.81	23,034,644.03		23,034,644.03	
10/15/2019	56,797.75		238,550.56	23,034,644.03		23,034,644.03	
10/31/2019	60,584.27		299,134.83	23,034,644.03		23,034,644.03	
11/30/2019	113,595.50		412,730.34	23,034,644.03		23,034,644.03	
12/30/2019	113,595.50	-530,112.36	(3,786.52)	23,034,644.03		23,034,644.03	(530,112.36)
12/31/2019	3,786.52		0.00	23,034,644.03		23,034,644.03	
1/31/2020	117,382.02		117,382.02	23,034,644.03		23,034,644.03	
2/29/2020	109,808.99		227,191.01	23,034,644.03		23,034,644.03	
3/31/2020	117,382.02		344,573.03	23,034,644.03		23,034,644.03	
4/30/2020	113,595.50		458,168.54	23,034,644.03		23,034,644.03	
5/31/2020	117,382.02	(575,550.56)	(0.00)	23,034,644.03	575,550.56	23,610,194.59	
6/30/2020	116,433.84		116,433.83	23,610,194.59		23,610,194.59	
7/31/2020	120,314.96		236,748.80	23,610,194.59		23,610,194.59	
8/31/2020	120,314.96		357,063.76	23,610,194.59		23,610,194.59	
9/30/2020	116,433.84		473,497.60	23,610,194.59		23,610,194.59	
10/31/2020	120,314.96		593,812.56	23,610,194.59		23,610,194.59	
11/30/2020	116,433.84		710,246.40	23,610,194.59		23,610,194.59	
12/31/2020	120,314.96		830,561.36	23,610,194.59		23,610,194.59	
1/14/2021	54,335.79	(830,561.36)	54,335.79	23,610,194.59	(575,550.56)	23,034,644.03	(1,406,111.92)
1/31/2021	64,370.79		118,706.58	23,034,644.03		23,034,644.03	
2/28/2021	106,022.47		224,729.05	23,034,644.03		23,034,644.03	
3/31/2021	117,382.02		342,111.07	23,034,644.03		23,034,644.03	
4/30/2021	113,595.50		455,706.58	23,034,644.03		23,034,644.03	
5/31/2021	117,382.02		573,088.60	23,034,644.03		23,034,644.03	

6/30/2021	113,595.50	686,684.10	23,034,644.03	23,034,644.03
7/31/2021	117,382.02	804,066.13	23,034,644.03	23,034,644.03
8/31/2021	117,382.02	921,448.15	23,034,644.03	23,034,644.03
9/30/2021	113,595.50	1,035,043.65	23,034,644.03	23,034,644.03
10/31/2021	117,382.02	1,152,425.67	23,034,644.03	23,034,644.03
11/30/2021	113,595.50	1,266,021.18	23,034,644.03	23,034,644.03
12/31/2021	117,382.02	1,383,403.20	23,034,644.03	23,034,644.03
1/31/2022	117,382.02	1,500,785.22	23,034,644.03	23,034,644.03
2/28/2022	106,022.47	1,606,807.69	23,034,644.03	23,034,644.03
3/31/2022	117,382.02	1,724,189.72	23,034,644.03	23,034,644.03
4/30/2022	113,595.50	1,837,785.22	23,034,644.03	23,034,644.03
5/31/2022	117,382.02	1,955,167.24	23,034,644.03	23,034,644.03
6/30/2022	113,595.50	2,068,762.75	23,034,644.03	23,034,644.03
7/31/2022	117,382.02	2,186,144.77	23,034,644.03	23,034,644.03
8/31/2022	117,382.02	2,303,526.79	23,034,644.03	23,034,644.03
9/30/2022	113,595.50	2,417,122.29	23,034,644.03	23,034,644.03
10/31/2022	117,382.02	2,534,504.32	23,034,644.03	23,034,644.03
11/30/2022	113,595.50	2,648,099.82	23,034,644.03	23,034,644.03
12/31/2022	117,382.02	2,765,481.84	23,034,644.03	23,034,644.03
1/31/2023	117,382.02	2,882,863.86	23,034,644.03	23,034,644.03
2/28/2023	106,022.47	2,988,886.34	23,034,644.03	23,034,644.03
3/31/2023	117,382.02	3,106,268.36	23,034,644.03	23,034,644.03
4/30/2023	113,595.50	3,219,863.86	23,034,644.03	23,034,644.03
5/31/2023	117,382.02	3,337,245.88	23,034,644.03	23,034,644.03
6/30/2023	113,595.50	3,450,841.39	23,034,644.03	23,034,644.03
7/31/2023	117,382.02	3,568,223.41	23,034,644.03	23,034,644.03
8/31/2023	117,382.02	3,685,605.43	23,034,644.03	23,034,644.03
9/30/2023	113,595.50	3,799,200.94	23,034,644.03	23,034,644.03
10/31/2023	117,382.02	3,916,582.96	23,034,644.03	23,034,644.03
11/30/2023	113,595.50	4,030,178.46	23,034,644.03	23,034,644.03
12/31/2023	117,382.02	4,147,560.48	23,034,644.03	23,034,644.03
1/31/2024	117,382.02	4,264,942.51	23,034,644.03	23,034,644.03
2/29/2024	109,808.99	4,374,751.49	23,034,644.03	23,034,644.03
3/31/2024	117,382.02	4,492,133.52	23,034,644.03	23,034,644.03
4/30/2024	113,595.50	4,605,729.02	23,034,644.03	23,034,644.03
5/31/2024	117,382.02	4,723,111.04	23,034,644.03	23,034,644.03
6/30/2024	113,595.50	4,836,706.55	23,034,644.03	23,034,644.03
7/31/2024	117,382.02	4,954,088.57	23,034,644.03	23,034,644.03

8/31/2024	117,382.02	5,071,470.59	23,034,644.03	23,034,644.03
9/30/2024	113,595.50	5,185,066.10	23,034,644.03	23,034,644.03
10/31/2024	117,382.02	5,302,448.12	23,034,644.03	23,034,644.03
11/30/2024	113,595.50	5,416,043.62	23,034,644.03	23,034,644.03
12/31/2024	117,382.02	5,533,425.64	23,034,644.03	23,034,644.03
1/31/2025	117,382.02	5,650,807.67	23,034,644.03	23,034,644.03
2/28/2025	106,022.47	5,756,830.14	23,034,644.03	23,034,644.03
3/31/2025	117,382.02	5,874,212.16	23,034,644.03	23,034,644.03
4/30/2025	113,595.50	5,987,807.66	23,034,644.03	23,034,644.03
5/31/2025	117,382.02	6,105,189.68	23,034,644.03	23,034,644.03
6/30/2025	113,595.50	6,218,785.19	23,034,644.03	23,034,644.03
7/31/2025	117,382.02	6,336,167.21	23,034,644.03	23,034,644.03
8/31/2025	117,382.02	6,453,549.23	23,034,644.03	23,034,644.03
9/30/2025	113,595.50	6,567,144.74	23,034,644.03	23,034,644.03
10/31/2025	117,382.02	6,684,526.76	23,034,644.03	23,034,644.03
11/30/2025	113,595.50	6,798,122.26	23,034,644.03	23,034,644.03
12/31/2025	117,382.02	6,915,504.29	23,034,644.03	23,034,644.03
1/31/2026	117,382.02	7,032,886.31	23,034,644.03	23,034,644.03
2/28/2026	106,022.47	7,138,908.78	23,034,644.03	23,034,644.03
3/31/2026	117,382.02	7,256,290.80	23,034,644.03	23,034,644.03
4/30/2026	113,595.50	7,369,886.31	23,034,644.03	23,034,644.03
5/31/2026	117,382.02	7,487,268.33	23,034,644.03	23,034,644.03
6/30/2026	113,595.50	7,600,863.83	23,034,644.03	23,034,644.03
7/31/2026	117,382.02	7,718,245.85	23,034,644.03	23,034,644.03
8/31/2026	117,382.02	7,835,627.87	23,034,644.03	23,034,644.03
9/30/2026	113,595.50	7,949,223.38	23,034,644.03	23,034,644.03
10/31/2026	117,382.02	8,066,605.40	23,034,644.03	23,034,644.03
11/30/2026	113,595.50	8,180,200.91	23,034,644.03	23,034,644.03
12/31/2026	117,382.02	8,297,582.93	23,034,644.03	23,034,644.03
1/31/2027	117,382.02	8,414,964.95	23,034,644.03	23,034,644.03
2/28/2027	106,022.47	8,520,987.42	23,034,644.03	23,034,644.03
3/31/2027	117,382.02	8,638,369.44	23,034,644.03	23,034,644.03
4/30/2027	113,595.50	8,751,964.95	23,034,644.03	23,034,644.03
5/31/2027	117,382.02	8,869,346.97	23,034,644.03	23,034,644.03
6/30/2027	113,595.50	8,982,942.47	23,034,644.03	23,034,644.03
7/31/2027	117,382.02	9,100,324.50	23,034,644.03	23,034,644.03
8/31/2027	117,382.02	9,217,706.52	23,034,644.03	23,034,644.03
9/30/2027	113,595.50	9,331,302.02	23,034,644.03	23,034,644.03

10/31/2027	117,382.02	9,448,684.04	23,034,644.03	23,034,644.03
11/30/2027	113,595.50	9,562,279.55	23,034,644.03	23,034,644.03
12/31/2027	117,382.02	9,679,661.57	23,034,644.03	23,034,644.03
1/31/2028	117,382.02	9,797,043.59	23,034,644.03	23,034,644.03
2/29/2028	109,808.99	9,906,852.58	23,034,644.03	23,034,644.03
3/31/2028	117,382.02	10,024,234.60	23,034,644.03	23,034,644.03
4/30/2028	113,595.50	10,137,830.11	23,034,644.03	23,034,644.03
5/31/2028	117,382.02	10,255,212.13	23,034,644.03	23,034,644.03
6/30/2028	113,595.50	10,368,807.63	23,034,644.03	23,034,644.03
7/31/2028	117,382.02	10,486,189.65	23,034,644.03	23,034,644.03
8/31/2028	117,382.02	10,603,571.68	23,034,644.03	23,034,644.03
9/30/2028	113,595.50	10,717,167.18	23,034,644.03	23,034,644.03
10/31/2028	117,382.02	10,834,549.20	23,034,644.03	23,034,644.03
11/30/2028	113,595.50	10,948,144.71	23,034,644.03	23,034,644.03
12/31/2028	117,382.02	11,065,526.73	23,034,644.03	23,034,644.03
1/31/2029	117,382.02	11,182,908.75	23,034,644.03	23,034,644.03
2/28/2029	106,022.47	11,288,931.22	23,034,644.03	23,034,644.03
3/31/2029	117,382.02	11,406,313.24	23,034,644.03	23,034,644.03
4/30/2029	113,595.50	11,519,908.75	23,034,644.03	23,034,644.03
5/31/2029	117,382.02	11,637,290.77	23,034,644.03	23,034,644.03
6/30/2029	113,595.50	11,750,886.27	23,034,644.03	23,034,644.03
7/31/2029	117,382.02	11,868,268.30	23,034,644.03	23,034,644.03
8/31/2029	117,382.02	11,985,650.32	23,034,644.03	23,034,644.03
9/30/2029	113,595.50	12,099,245.82	23,034,644.03	23,034,644.03
10/31/2029	117,382.02	12,216,627.84	23,034,644.03	23,034,644.03
11/30/2029	113,595.50	12,330,223.35	23,034,644.03	23,034,644.03
12/31/2029	117,382.02	12,447,605.37	23,034,644.03	23,034,644.03
1/31/2030	117,382.02	12,564,987.39	23,034,644.03	23,034,644.03
2/28/2030	106,022.47	12,671,009.86	23,034,644.03	23,034,644.03
3/31/2030	117,382.02	12,788,391.89	23,034,644.03	23,034,644.03
4/30/2030	113,595.50	12,901,987.39	23,034,644.03	23,034,644.03
5/31/2030	117,382.02	13,019,369.41	23,034,644.03	23,034,644.03
6/30/2030	113,595.50	13,132,964.92	23,034,644.03	23,034,644.03
7/31/2030	117,382.02	13,250,346.94	23,034,644.03	23,034,644.03
8/31/2030	117,382.02	13,367,728.96	23,034,644.03	23,034,644.03
9/30/2030	113,595.50	13,481,324.46	23,034,644.03	23,034,644.03
10/31/2030	117,382.02	13,598,706.49	23,034,644.03	23,034,644.03
11/30/2030	113,595.50	13,712,301.99	23,034,644.03	23,034,644.03

12/31/2030	117,382.02	13,829,684.01	23,034,644.03	23,034,644.03
1/31/2031	117,382.02	13,947,066.03	23,034,644.03	23,034,644.03
2/28/2031	106,022.47	14,053,088.51	23,034,644.03	23,034,644.03
3/31/2031	117,382.02	14,170,470.53	23,034,644.03	23,034,644.03
4/30/2031	113,595.50	14,284,066.03	23,034,644.03	23,034,644.03
5/31/2031	117,382.02	14,401,448.05	23,034,644.03	23,034,644.03
6/30/2031	113,595.50	14,515,043.56	23,034,644.03	23,034,644.03
7/31/2031	117,382.02	14,632,425.58	23,034,644.03	23,034,644.03
8/31/2031	117,382.02	14,749,807.60	23,034,644.03	23,034,644.03
9/30/2031	113,595.50	14,863,403.11	23,034,644.03	23,034,644.03
10/31/2031	117,382.02	14,980,785.13	23,034,644.03	23,034,644.03
11/30/2031	113,595.50	15,094,380.63	23,034,644.03	23,034,644.03
12/31/2031	117,382.02	15,211,762.65	23,034,644.03	23,034,644.03
1/31/2032	117,382.02	15,329,144.68	23,034,644.03	23,034,644.03
2/29/2032	109,808.99	15,438,953.66	23,034,644.03	23,034,644.03
3/31/2032	117,382.02	15,556,335.69	23,034,644.03	23,034,644.03
4/30/2032	113,595.50	15,669,931.19	23,034,644.03	23,034,644.03
5/31/2032	117,382.02	15,787,313.21	23,034,644.03	23,034,644.03
6/30/2032	113,595.50	15,900,908.72	23,034,644.03	23,034,644.03
7/31/2032	117,382.02	16,018,290.74	23,034,644.03	23,034,644.03
8/31/2032	117,382.02	16,135,672.76	23,034,644.03	23,034,644.03
9/30/2032	113,595.50	16,249,268.27	23,034,644.03	23,034,644.03
10/31/2032	117,382.02	16,366,650.29	23,034,644.03	23,034,644.03
11/30/2032	113,595.50	16,480,245.79	23,034,644.03	23,034,644.03
12/31/2032	117,382.02	16,597,627.81	23,034,644.03	23,034,644.03
1/31/2033	117,382.02	16,715,009.84	23,034,644.03	23,034,644.03
2/28/2033	106,022.47	16,821,032.31	23,034,644.03	23,034,644.03
3/31/2033	117,382.02	16,938,414.33	23,034,644.03	23,034,644.03
4/30/2033	113,595.50	17,052,009.83	23,034,644.03	23,034,644.03
5/31/2033	117,382.02	17,169,391.85	23,034,644.03	23,034,644.03
6/30/2033	113,595.50	17,282,987.36	23,034,644.03	23,034,644.03
7/31/2033	117,382.02	17,400,369.38	23,034,644.03	23,034,644.03
8/31/2033	117,382.02	17,517,751.40	23,034,644.03	23,034,644.03
9/30/2033	113,595.50	17,631,346.91	23,034,644.03	23,034,644.03
10/31/2033	117,382.02	17,748,728.93	23,034,644.03	23,034,644.03
11/30/2033	113,595.50	17,862,324.43	23,034,644.03	23,034,644.03
12/31/2033	117,382.02	17,979,706.46	23,034,644.03	23,034,644.03
1/31/2034	117,382.02	18,097,088.48	23,034,644.03	23,034,644.03

2/28/2034	106,022.47	18,203,110.95	23,034,644.03	23,034,644.03
3/31/2034	117,382.02	18,320,492.97	23,034,644.03	23,034,644.03
4/30/2034	113,595.50	18,434,088.47	23,034,644.03	23,034,644.03
5/31/2034	117,382.02	18,551,470.50	23,034,644.03	23,034,644.03
6/30/2034	113,595.50	18,665,066.00	23,034,644.03	23,034,644.03
7/31/2034	117,382.02	18,782,448.02	23,034,644.03	23,034,644.03
8/31/2034	117,382.02	18,899,830.04	23,034,644.03	23,034,644.03
9/30/2034	113,595.50	19,013,425.55	23,034,644.03	23,034,644.03
10/31/2034	117,382.02	19,130,807.57	23,034,644.03	23,034,644.03
11/30/2034	113,595.50	19,244,403.08	23,034,644.03	23,034,644.03
12/31/2034	117,382.02	19,361,785.10	23,034,644.03	23,034,644.03
1/31/2035	117,382.02	19,479,167.12	23,034,644.03	23,034,644.03
2/28/2035	106,022.47	19,585,189.59	23,034,644.03	23,034,644.03
3/31/2035	117,382.02	19,702,571.61	23,034,644.03	23,034,644.03
4/30/2035	113,595.50	19,816,167.12	23,034,644.03	23,034,644.03
5/31/2035	117,382.02	19,933,549.14	23,034,644.03	23,034,644.03
6/30/2035	113,595.50	20,047,144.64	23,034,644.03	23,034,644.03
7/31/2035	117,382.02	20,164,526.67	23,034,644.03	23,034,644.03
8/31/2035	117,382.02	20,281,908.69	23,034,644.03	23,034,644.03
9/30/2035	113,595.50	20,395,504.19	23,034,644.03	23,034,644.03
10/31/2035	117,382.02	20,512,886.21	23,034,644.03	23,034,644.03
11/30/2035	113,595.50	20,626,481.72	23,034,644.03	23,034,644.03
12/31/2035	117,382.02	20,743,863.74	23,034,644.03	23,034,644.03
1/31/2036	117,382.02	20,861,245.76	23,034,644.03	23,034,644.03
2/29/2036	109,808.99	20,971,054.75	23,034,644.03	23,034,644.03
3/31/2036	117,382.02	21,088,436.77	23,034,644.03	23,034,644.03
4/30/2036	113,595.50	21,202,032.28	23,034,644.03	23,034,644.03
5/31/2036	117,382.02	21,319,414.30	23,034,644.03	23,034,644.03
6/30/2036	113,595.50	21,433,009.80	23,034,644.03	23,034,644.03
7/31/2036	117,382.02	21,550,391.82	23,034,644.03	23,034,644.03
8/31/2036	117,382.02	21,667,773.85	23,034,644.03	23,034,644.03
9/30/2036	113,595.50	21,781,369.35	23,034,644.03	23,034,644.03
10/31/2036	117,382.02	21,898,751.37	23,034,644.03	23,034,644.03
11/30/2036	113,595.50	22,012,346.88	23,034,644.03	23,034,644.03
12/31/2036	117,382.02	22,129,728.90	23,034,644.03	23,034,644.03
1/31/2037	117,382.02	22,247,110.92	23,034,644.03	23,034,644.03
2/28/2037	106,022.47	22,353,133.39	23,034,644.03	23,034,644.03
3/31/2037	117,382.02	22,470,515.41	23,034,644.03	23,034,644.03

4/30/2037	113,595.50	22,584,110.92	23,034,644.03	23,034,644.03
5/31/2037	117,382.02	22,701,492.94	23,034,644.03	23,034,644.03
6/30/2037	113,595.50	22,815,088.44	23,034,644.03	23,034,644.03
7/31/2037	117,382.02	22,932,470.47	23,034,644.03	23,034,644.03
8/31/2037	117,382.02	23,049,852.49	23,034,644.03	23,034,644.03
9/30/2037	113,595.50	23,163,447.99	23,034,644.03	23,034,644.03
10/31/2037	117,382.02	23,280,830.01	23,034,644.03	23,034,644.03
11/30/2037	113,595.50	23,394,425.52	23,034,644.03	23,034,644.03
12/31/2037	117,382.02	23,511,807.54	23,034,644.03	23,034,644.03
1/31/2038	117,382.02	23,629,189.56	23,034,644.03	23,034,644.03
2/28/2038	106,022.47	23,735,212.03	23,034,644.03	23,034,644.03
3/31/2038	117,382.02	23,852,594.06	23,034,644.03	23,034,644.03
4/30/2038	113,595.50	23,966,189.56	23,034,644.03	23,034,644.03
5/31/2038	117,382.02	24,083,571.58	23,034,644.03	23,034,644.03
6/30/2038	113,595.50	24,197,167.09	23,034,644.03	23,034,644.03
7/31/2038	117,382.02	24,314,549.11	23,034,644.03	23,034,644.03
8/31/2038	117,382.02	24,431,931.13	23,034,644.03	23,034,644.03
9/30/2038	113,595.50	24,545,526.63	23,034,644.03	23,034,644.03
10/31/2038	117,382.02	24,662,908.66	23,034,644.03	23,034,644.03
11/30/2038	113,595.50	24,776,504.16	23,034,644.03	23,034,644.03
12/31/2038	117,382.02	24,893,886.18	23,034,644.03	23,034,644.03
1/31/2039	117,382.02	25,011,268.20	23,034,644.03	23,034,644.03
2/28/2039	106,022.47	25,117,290.68	23,034,644.03	23,034,644.03
3/31/2039	117,382.02	25,234,672.70	23,034,644.03	23,034,644.03
4/30/2039	113,595.50	25,348,268.20	23,034,644.03	23,034,644.03
5/31/2039	117,382.02	25,465,650.22	23,034,644.03	23,034,644.03
6/30/2039	113,595.50	25,579,245.73	23,034,644.03	23,034,644.03
7/31/2039	117,382.02	25,696,627.75	23,034,644.03	23,034,644.03
8/31/2039	117,382.02	25,814,009.77	23,034,644.03	23,034,644.03
9/30/2039	113,595.50	25,927,605.28	23,034,644.03	23,034,644.03
10/31/2039	117,382.02	26,044,987.30	23,034,644.03	23,034,644.03
11/30/2039	113,595.50	26,158,582.80	23,034,644.03	23,034,644.03
12/31/2039	117,382.02	26,275,964.82	23,034,644.03	23,034,644.03
1/31/2040	117,382.02	26,393,346.85	23,034,644.03	23,034,644.03
2/29/2040	109,808.99	26,503,155.83	23,034,644.03	23,034,644.03
3/31/2040	117,382.02	26,620,537.86	23,034,644.03	23,034,644.03
4/30/2040	113,595.50	26,734,133.36	23,034,644.03	23,034,644.03
5/31/2040	117,382.02	26,851,515.38	23,034,644.03	23,034,644.03

6/30/2040	113,595.50	26,965,110.89	23,034,644.03	23,034,644.03
7/31/2040	117,382.02	27,082,492.91	23,034,644.03	23,034,644.03
8/31/2040	117,382.02	27,199,874.93	23,034,644.03	23,034,644.03
9/30/2040	113,595.50	27,313,470.44	23,034,644.03	23,034,644.03
10/31/2040	117,382.02	27,430,852.46	23,034,644.03	23,034,644.03
11/30/2040	113,595.50	27,544,447.96	23,034,644.03	23,034,644.03
12/31/2040	117,382.02	27,661,829.98	23,034,644.03	23,034,644.03
1/31/2041	117,382.02	27,779,212.01	23,034,644.03	23,034,644.03
2/28/2041	106,022.47	27,885,234.48	23,034,644.03	23,034,644.03
3/31/2041	117,382.02	28,002,616.50	23,034,644.03	23,034,644.03
4/30/2041	113,595.50	28,116,212.00	23,034,644.03	23,034,644.03
5/31/2041	117,382.02	28,233,594.02	23,034,644.03	23,034,644.03
6/30/2041	113,595.50	28,347,189.53	23,034,644.03	23,034,644.03
7/31/2041	117,382.02	28,464,571.55	23,034,644.03	23,034,644.03
8/31/2041	117,382.02	28,581,953.57	23,034,644.03	23,034,644.03
9/30/2041	113,595.50	28,695,549.08	23,034,644.03	23,034,644.03
10/31/2041	117,382.02	28,812,931.10	23,034,644.03	23,034,644.03
11/30/2041	113,595.50	28,926,526.60	23,034,644.03	23,034,644.03
12/31/2041	117,382.02	29,043,908.63	23,034,644.03	23,034,644.03
1/31/2042	117,382.02	29,161,290.65	23,034,644.03	23,034,644.03
2/28/2042	106,022.47	29,267,313.12	23,034,644.03	23,034,644.03
3/31/2042	117,382.02	29,384,695.14	23,034,644.03	23,034,644.03
4/30/2042	113,595.50	29,498,290.64	23,034,644.03	23,034,644.03
5/31/2042	117,382.02	29,615,672.67	23,034,644.03	23,034,644.03
6/30/2042	113,595.50	29,729,268.17	23,034,644.03	23,034,644.03
7/31/2042	117,382.02	29,846,650.19	23,034,644.03	23,034,644.03
8/31/2042	117,382.02	29,964,032.21	23,034,644.03	23,034,644.03
9/30/2042	113,595.50	30,077,627.72	23,034,644.03	23,034,644.03
10/31/2042	117,382.02	30,195,009.74	23,034,644.03	23,034,644.03
11/30/2042	113,595.50	30,308,605.25	23,034,644.03	23,034,644.03
12/31/2042	117,382.02	30,425,987.27	23,034,644.03	23,034,644.03
1/31/2043	117,382.02	30,543,369.29	23,034,644.03	23,034,644.03
2/28/2043	106,022.47	30,649,391.76	23,034,644.03	23,034,644.03
3/31/2043	117,382.02	30,766,773.78	23,034,644.03	23,034,644.03
4/30/2043	113,595.50	30,880,369.29	23,034,644.03	23,034,644.03
5/31/2043	117,382.02	30,997,751.31	23,034,644.03	23,034,644.03
6/30/2043	113,595.50	31,111,346.81	23,034,644.03	23,034,644.03
7/31/2043	117,382.02	31,228,728.84	23,034,644.03	23,034,644.03

8/31/2043	117,382.02	31,346,110.86	23,034,644.03	23,034,644.03
9/30/2043	113,595.50	31,459,706.36	23,034,644.03	23,034,644.03
10/31/2043	117,382.02	31,577,088.38	23,034,644.03	23,034,644.03
11/30/2043	113,595.50	31,690,683.89	23,034,644.03	23,034,644.03
12/31/2043	117,382.02	31,808,065.91	23,034,644.03	23,034,644.03
1/31/2044	117,382.02	31,925,447.93	23,034,644.03	23,034,644.03
2/29/2044	109,808.99	32,035,256.92	23,034,644.03	23,034,644.03
3/31/2044	117,382.02	32,152,638.94	23,034,644.03	23,034,644.03
4/30/2044	113,595.50	32,266,234.45	23,034,644.03	23,034,644.03
5/31/2044	117,382.02	32,383,616.47	23,034,644.03	23,034,644.03
6/30/2044	113,595.50	32,497,211.97	23,034,644.03	23,034,644.03
7/31/2044	117,382.02	32,614,593.99	23,034,644.03	23,034,644.03
8/31/2044	117,382.02	32,731,976.02	23,034,644.03	23,034,644.03
9/30/2044	113,595.50	32,845,571.52	23,034,644.03	23,034,644.03
10/31/2044	117,382.02	32,962,953.54	23,034,644.03	23,034,644.03
11/30/2044	113,595.50	33,076,549.05	23,034,644.03	23,034,644.03
12/31/2044	117,382.02	33,193,931.07	23,034,644.03	23,034,644.03
1/31/2045	117,382.02	33,311,313.09	23,034,644.03	23,034,644.03
2/28/2045	106,022.47	33,417,335.56	23,034,644.03	23,034,644.03
3/31/2045	117,382.02	33,534,717.58	23,034,644.03	23,034,644.03
4/30/2045	113,595.50	33,648,313.09	23,034,644.03	23,034,644.03
5/31/2045	117,382.02	33,765,695.11	23,034,644.03	23,034,644.03
6/30/2045	113,595.50	33,879,290.61	23,034,644.03	23,034,644.03
7/31/2045	117,382.02	33,996,672.64	23,034,644.03	23,034,644.03
8/31/2045	117,382.02	34,114,054.66	23,034,644.03	23,034,644.03
9/30/2045	113,595.50	34,227,650.16	23,034,644.03	23,034,644.03
10/31/2045	117,382.02	34,345,032.18	23,034,644.03	23,034,644.03
11/30/2045	113,595.50	34,458,627.69	23,034,644.03	23,034,644.03
12/31/2045	117,382.02	34,576,009.71	23,034,644.03	23,034,644.03
1/31/2046	117,382.02	34,693,391.73	23,034,644.03	23,034,644.03
2/28/2046	106,022.47	34,799,414.20	23,034,644.03	23,034,644.03
3/31/2046	117,382.02	34,916,796.23	23,034,644.03	23,034,644.03
4/30/2046	113,595.50	35,030,391.73	23,034,644.03	23,034,644.03
5/31/2046	117,382.02	35,147,773.75	23,034,644.03	23,034,644.03
6/30/2046	113,595.50	35,261,369.26	23,034,644.03	23,034,644.03
7/31/2046	117,382.02	35,378,751.28	23,034,644.03	23,034,644.03
8/31/2046	117,382.02	35,496,133.30	23,034,644.03	23,034,644.03
9/30/2046	113,595.50	35,609,728.80	23,034,644.03	23,034,644.03

10/31/2046	117,382.02	35,727,110.83	23,034,644.03	23,034,644.03
11/30/2046	113,595.50	35,840,706.33	23,034,644.03	23,034,644.03
12/31/2046	117,382.02	35,958,088.35	23,034,644.03	23,034,644.03
1/31/2047	117,382.02	36,075,470.37	23,034,644.03	23,034,644.03
2/28/2047	106,022.47	36,181,492.85	23,034,644.03	23,034,644.03
3/31/2047	117,382.02	36,298,874.87	23,034,644.03	23,034,644.03
4/30/2047	113,595.50	36,412,470.37	23,034,644.03	23,034,644.03
5/31/2047	117,382.02	36,529,852.39	23,034,644.03	23,034,644.03
6/30/2047	113,595.50	36,643,447.90	23,034,644.03	23,034,644.03
7/31/2047	117,382.02	36,760,829.92	23,034,644.03	23,034,644.03
8/31/2047	117,382.02	36,878,211.94	23,034,644.03	23,034,644.03
9/30/2047	113,595.50	36,991,807.45	23,034,644.03	23,034,644.03
10/31/2047	117,382.02	37,109,189.47	23,034,644.03	23,034,644.03

EXHIBIT 201

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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,[1]	§	Case No. 19-34054-sgj11
Debtor.	§	

MOTION OF THE DEBTOR FOR ENTRY OF AN ORDER AUTHORIZING, BUT NOT DIRECTING, THE DEBTOR TO CAUSE DISTRIBUTIONS TO CERTAIN "RELATED ENTITIES"

[1] The Debtor's last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

The above-captioned debtor and debtor-in-possession (the "Debtor") files this motion (the "Motion") for entry of an order, substantially in the form attached hereto as **Exhibit A**, authorizing, but not directing, the Debtor, or its relying adviser, as appropriate, to cause the distribution of assets, in the ordinary course of its business, to certain Related Entities that have invested in Dynamic, AROF, and RCP (each as defined below). In support of this Motion, the Debtor respectfully states as follows:

Jurisdiction and Venue

1. The United States Bankruptcy Court for the Northern District of Texas, Dallas Division (the "Court"), has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).

2. Venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

3. The statutory bases for the relief requested in this Motion are sections 105(a) and 363 of the Bankruptcy Code.

Summary of Relief Requested

4. In this Motion, the Debtor, through its Independent Board (defined below), seeks this Court's authorization, indeed its direction, to meet its obligations to the funds managed by the Debtor. These obligations exist under contract and according to applicable law. In the ordinary course of its business, the Debtor is routinely called upon to liquidate or wind down the assets held by the funds under its direct or indirect management and then to distribute the proceeds of such liquidations to the investors in the funds. Normally, these obligations – that is to liquidate and distribute – are neither disputed nor controversial.

5. And yet, because of the history of this case, one of these duties – that is the duty to distribute – is now contested. The Committee (defined below) has voiced no objection to

the liquidation of the assets subject to this Motion, but it does object to certain of the distributions. The Committee says that any distributions to James Dondero, Mark Okada, or any entities related to them should be withheld. The Debtor understands the reasons for the Committee's objection, but not the legal basis for it.

6. Everyone would agree that the Independent Board must act in accordance with the law in fulfilling its obligations to the Debtor's estate. That means dealing with creditors in the manner prescribed by Bankruptcy Code. The Independent Board takes its obligations under the Bankruptcy Code seriously. But, the Independent Board takes just as seriously its obligations to the funds managed by the Debtor. The Debtor is no more free to unilaterally change the obligations it has to those funds under their operative documents and applicable law – especially considering that many of the investors in those funds are complete strangers to this case – than it is to unilaterally modify its obligations to creditors under the Bankruptcy Code. This is so even if some creditors view some of the Debtor's investors as suspicious or unworthy.

7. The Debtor asks this Court to affirm that in the absence of specific injunctive relief entered by this Court or any other court of appropriate jurisdiction, the Debtor must fulfill its obligations under contract and according to applicable law.

Background

8. On October 16, 2019 (the "Petition Date"), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code in the Bankruptcy Court for the District of Delaware, Case No. 19-12239 (CSS) (the "Delaware Court").

9. On October 29, 2019, the Official Committee of Unsecured Creditors (the "Committee") was appointed by the U.S. Trustee in the Delaware Court.

10. On December 4, 2019, the Delaware Court entered an order transferring venue of the Debtor's Bankruptcy Case to this Court [Docket No. 186].[2]

11. On December 27, 2019, the Debtor filed that certain *Motion of the Debtor for Approval of Settlement with the Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course* [Docket No. 281] (the "Settlement Motion"). This Court approved the Settlement Motion on January 9, 2020 [Docket No. 339] (the "Settlement Order").

12. The Settlement Order approved, among other things, certain operating and reporting protocols [Docket Nos. 354, 466] (as amended, the "Protocols"), which, in certain circumstances, require the Debtor to seek the approval of its Chief Restructuring Officer[3] and/or the Committee prior to engaging in "Transactions" (as defined in the Protocols).

13. In connection with the Settlement Order, an independent board of directors was appointed on January 9, 2020, at the Debtor's general partner, Strand Advisors, Inc. (the "Independent Board")

14. The Debtor has continued in the possession of its property and has continued to operate and manage its business as a debtor-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in this chapter 11 case.

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[2] All docket numbers refer to the docket maintained by this Court.

[3] The Debtor's retention of Development Specialists, Inc. as the Debtor's Chief Restructuring Officer (the "CRO") was approved by this Court on January 10, 2020 [Docket No. 342].

Background to the Relief Requested

A. The Debtor's Business Generally

15. On October 29, 2019, the Debtor filed that certain *Precautionary Motion of the Debtor for Order Approving Protocols for the Debtor to Implement Certain Transactions in the Ordinary Course of Business* [Docket No. 76] (the "Precautionary Motion"). As described in the Precautionary Motion, the Debtor, as a registered investment adviser, provides in the ordinary course of its business, investment management services to its clients, which include, among others, hedge funds and private equity style funds.

16. Hedge funds and private equity style funds are types of pooled investment vehicles in which third-party investors subscribe for equity interests. These funds are governed by a board of directors or general partner, depending on the corporate form of the fund entity, and retain an investment manager pursuant to an investment management agreement to oversee their investments. The fund itself, and the relationship of the investors in the fund, is governed by a contractual governing document (e.g., a limited partnership agreement or articles of association), and the board of directors or the general partner, as applicable – as well as the investment manager – have fiduciary obligations to the fund entity. Further, while the investment manager may have investment discretion under the investment management agreement, the investment manager is also required to comply with the terms of the fund's contractual governing documents, including the investment management agreement, and the investment manager has fiduciary and other obligations imposed on the investment manager by applicable law, including, the Advisers Act. These types of funds are also often organized as two-tiered structures with a single "master" fund that trades and holds the fund's investment portfolio and multiple "feeder funds" that invest in the master fund.

17. Investors in a hedge fund generally can redeem their interests in the fund on periodic redemption dates. Redemptions occur in the ordinary course for all hedge funds, and hedge funds manage their liquidity on an ongoing basis, by selling assets to satisfy these investor redemptions in the ordinary course. Similarly, upon a determination by a hedge fund's governing body that the fund should be liquidated, the fund sells its remaining portfolio holdings in an orderly manner and distributes the proceeds to its investors. Common reasons for a hedge fund to liquidate include, among other things, the fund no longer being viable as a result of significant investor redemptions.

18. Private equity style funds, on the other hand, generally have a set term after which they are required to liquidate and distribute their assets to their investors (although they may under certain circumstances be wound down prior to the expiration of their term). Further, investors in private equity style funds are generally not permitted to redeem their interests or withdraw their capital from the fund. The term of a private equity style fund may, subject to the fund's governing documents, be extendable.

B. Distributions from Dynamic, AROF, and RCP

Dynamic Distribution and AROF Distribution

19. The Debtor manages (a) Highland Dynamic Income Fund, L.P., a Delaware limited partnership, (b) Highland Dynamic Income Fund, Ltd., a Cayman Islands exempted company, and (c) Highland Dynamic Income Master Fund, L.P., a Cayman Islands exempted limited partnership (collectively, "Dynamic"). Dynamic consists of three entities: a "master fund" (which is a Cayman exempted limited partnership) owned by two "feeder funds" (one being a Delaware limited partnership and the other being a Cayman Islands exempted company).[4] The

[4] The documents governing Dynamic are (i) the Amended and Restated Limited Partnership Agreement of Highland Dynamic Income Fund, L.P., dated April 1, 2018; (ii) the Amended and Restated Memorandum and Articles of

master funds and the Delaware feeder funds are managed by their applicable general partner, which in each case is a wholly-owned affiliate of the Debtor. The Cayman feeder fund is governed by a board consisting of an employee of the Debtor. The Debtor's direct relationship with each of the three Dynamic entities is governed by an investment management agreement under which the Debtor serves as investment adviser to such entities. Accordingly, Dynamic is an investment advisory client of the Debtor. An organizational chart for Dynamic is attached hereto as **Exhibit B**.

20. Highland Capital Management Latin America, L.P. ("HCM Latin America"), which is an indirect wholly owned subsidiary of the Debtor that is registered as a relying adviser of the Debtor, manages (a) Highland Argentina Regional Opportunity Fund, L.P., a Delaware limited partnership, (b) Highland Argentina Regional Opportunity Fund, Ltd., a Cayman Islands exempted company, and (c) Highland Argentina Regional Opportunity Master Fund, L.P., a Cayman Islands exempted limited partnership (collectively, "AROF"). The Debtor has entered into a services agreement pursuant to which the Debtor provides certain back- and middle-office services and administrative, infrastructure and other services to HCM Latin America. AROF consists of three entities: a "master fund" (which is a Cayman exempted limited partnership) owned by two "feeder funds" (one being a Delaware limited partnership and the other being a Cayman Islands exempted company).[5] The master fund and the Delaware feeder fund are

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Association of Highland Dynamic Income Fund, Ltd., adopted on 8 May 2018; (iii) the Second Amended and Restated Exempted Limited Partnership Agreement of Highland Dynamic Income Master Fund, L.P., dated April 1, 2018; and (iv) the Investment Management Agreement, dated March 28, 2013, by and among Dynamic, Highland Dynamic Income Fund GP, LLC (f/k/a Highland Capital Loan GP, LLC) and the Debtor; (v) the Confidential Private Placement Memorandum of Highland Dynamic Income Fund, L.P., dated April 2018; and (vi) the Confidential Private Offering Memorandum of Highland Dynamic Income Fund, Ltd., dated April 2018 ((i) – (vi) collectively, the "Dynamic Fund Documents"). True and accurate copies of the Dynamic Fund Documents are attached hereto as **Exhibit C**.

[5] The documents governing AROF are (i) the Amended and Restated Limited Partnership Agreement of Highland Argentina Regional Opportunity Fund, L.P., dated November 1, 2017; (ii) the Amended and Restated Memorandum and Articles of Association of Highland Argentina Regional Opportunity Fund, Ltd., adopted on 8 November 2017; (iii) the Amended and Restated Exempted Limited Partnership Agreement of Highland Argentina Regional

managed by their applicable general partner, which in each case is a wholly-owned affiliate of the Debtor. The Cayman feeder fund is managed by an independent board of Cayman-based directors unaffiliated with the Debtor. HCM Latin America's relationship with each of the three AROF entities is governed by an investment management agreement under which HCM Latin America serves as investment adviser to such entities. Accordingly, AROF is an investment advisory client of HCM Latin America. An organizational chart for AROF is attached hereto as **Exhibit D**.

21. Each of Dynamic and AROF received significant redemption requests from limited partners both before and after the Petition Date. Following those requests – and as disclosed in the Precautionary Motion – each of Dynamic and AROF began winding down. These funds' governing bodies (general partner and board of directors), as well as the Debtor, concluded that Dynamic and AROF were no longer viable following such redemptions and therefore should be liquidated in an orderly manner.

22. Further, the Debtor believed (and continues to believe) that its fiduciary and contractual obligations to Dynamic and AROF mandated an orderly liquidation and distribution of assets to investors given that such funds were no longer viable. When a significant redemption request is made, a fund typically is required to liquidate its assets to satisfy the redemption request, which in turn both decreases the total assets available to satisfy later redemption requests and may result in a fund's costs being allocated disproportionately to the remaining investors. An orderly liquidation helps ensure that all investors are treated in the same manner, bear the same costs, and

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Opportunity Master Fund, L.P., dated November 1, 2017, as amended; (iv) the Amended and Restated Investment Management Agreement, dated November 1, 2017, by and among AROF, Highland Argentina Regional Opportunity Fund GP, LLC, and HCM Latin America; (v) the Confidential Private Placement Memorandum of Highland Argentina Regional Opportunity Fund, L.P., dated March 2019, as supplemented; and (vi) the Offering Memorandum of Highland Argentina Regional Opportunity Fund, Ltd., dated March 2019, as supplemented ((i) – (vi) collectively, the "AROF Fund Documents"). True and accurate copies of the AROF Fund Documents are attached hereto as **Exhibit E**.

receive distributions on a pro rata basis. Otherwise, liquidation costs and proceeds could adversely impact some investors (likely the investors that have not submitted a redemption or withdrawal request).

23. The Debtor disclosed the proposed liquidation of Dynamic and AROF to the Committee, and the Committee did not object.

24. As such, since the Petition Date, the Debtor has taken steps to liquidate the investments held by Dynamic and AROF and is seeking to distribute the cash to those funds' respective investors/redeemers in accordance with the documents governing the funds.[6] Distribution of the cash to investors/redeemers is a necessary step in liquidating the funds; Dynamic and AROF cannot close unless all assets have been distributed in accordance with the Dynamic Fund Documents and the AROF Fund Documents, respectively.

25. On January 24, 2020, the Debtor notified the Committee that it intended to distribute (i) approximately $35 million in cash to investors/redeemers in Dynamic (the "Dynamic Distribution") and (ii) approximately $22 million in cash to investors/redeemers in AROF (the "AROF Distribution"). In that notice, the Debtor disclosed that:

- (i) CLO Holdco, Ltd. ("CLOH"),[7] (ii) Mark Okada,[8] and (iii) Highland Dynamic Income Fund GP, LLC (the "Dynamic GP")[9] are investors in Dynamic[10] and that (a)

[6] In the case of AROF, all redemptions were suspended and the Fund was placed in liquidation. In the case of Dynamic, all investors were subject to compulsory redemptions and the fund was placed in liquidation.

[7] The limited partnership interests in Dynamic held by CLOH were originally held by the Debtor. The Debtor transferred those interests to The Get Good Nonexempt Trust ("Get Good") on December 28, 2016, in exchange for 97.6835% of Get Good's interest in a promissory note in original principal amount of approximately $24 million issued by The Dugaboy Investment Trust. Get Good subsequently transferred its interests in Dynamic to the Highland Dallas Foundation, Inc., which transferred those interests to CLOH. The Dugaboy Investment Trust has been paying amounts due under the $24 million note, and the current principal amount is approximately $17.5 million.

[8] Mr. Okada is an investor in the Debtor and has an interest in the Debtor's Class A limited partnership interests. Mr. Okada resigned from his position with the Debtor prior to the Petition Date.

[9] The Dynamic GP is wholly owned by the Debtor.

[10] The Debtor is also a limited partner in Dynamic and will receive its applicable share of the Dynamic Distribution.

CLOH's share of the Dynamic Distribution was $872,194.00; (b) Mr. Okada's share was $4,176,774.74; and (c) the Dynamic GP's share was $137,182.03; and

- CLOH is an investor in AROF, and its share of the AROF Distribution was $1,516,354.38.

The Debtor further disclosed that it intended to distribute to CLOH, Mr. Okada, and the Dynamic GP their pro rata share of the Distributions in the same manner as distributions were being made to other investors.

RCP Distribution

26. In the ordinary course of its business, the Debtor also manages (a) Highland Restoration Capital Partners, L.P., a Delaware limited partnership, (b) Highland Restoration Capital Partners Offshore, L.P., a Cayman exempted limited partnership, and (c) Highland Restoration Capital Partners Master, L.P., a Delaware limited partnership (collectively, "RCP"). RCP consists of a "parallel" fund structure that invests side-by-side in the same investments on a proportional basis. The domestic side consists of a Delaware limited partnership, and the parallel Cayman side consists of a Cayman exempted limited partnership that feeds into a separate Delaware limited partnership. Each fund is managed by the same general partner, which is a wholly owned subsidiary of the Debtor. The Debtor's direct relationship with each of the three RCP entities, like its relationship with Dynamic, is governed by an investment management agreement under which the Debtor serves as investment adviser to such entities. Accordingly, RCP is an investment advisory client of the Debtor. An organizational chart for RCP is attached hereto as **Exhibit F**.

27. RCP is a private equity style fund, and, as a private equity fund, RCP has a set term after which it is required to liquidate and distribute its assets to its investors. Investors are not permitted to withdraw their capital from the fund. In this case, RCP had an original term of ten years (the "Term") with the potential to extend the Term for two additional one year periods

if RCP's independent advisory board (the "Advisory Board")[11] consented to such extensions. RCP's initial ten-year term expired in April 2018. The Advisory Board agreed to extend the term for one additional year to April 2019. However, following that one year extension, the Advisory Board did not consent to an additional one-year extension, and instead allowed RCP to continue month-to-month with the Advisory Board reserving the right to approve each additional monthly extension. As a condition to receiving these monthly extensions, the Debtor agreed to waive its management fees.

28. The Advisory Board has not granted any additional extensions of the Term since November 2019. Because RCP is past its Term, RCP has gone into orderly liquidation under the terms of its governing documents.[12] As a result of that liquidation, RCP has substantial assets to distribute to its limited partners (the "RCP Distribution," and together with the Dynamic Distribution and the AROF Distribution, the "Distributions").

29. The RCP Distribution comes from RCP's sale of 1,700,000 shares of common stock in MGM Holdings, Inc. ("MGM"), which trade was disclosed to the Committee on February 7, 2020 (the "MGM Sale"). The MGM Sale generated $123.25 million in proceeds, all of which is subject to distribution to RCP's limited partners, including the Debtor, which will receive approximately $18.5 million from the MGM Sale proceeds.

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[11] None of the Advisory Board members are affiliated with or related in any way to the Debtor, James Dondero, or Mark Okada.

[12] The documents governing RCP are (i) Second Amended and Restated Agreement of Limited Partnership of Highland Restoration Capital Partners Offshore, L.P. dated April 18, 2008; (ii) the Limited Partnership Agreement of Highland Restoration Capital Partners, L.P., dated April 18, 2008; (iii) Amended and Restated Agreement of Limited Partnership of Highland Restoration Capital Partners Master, L.P., dated April 18, 2008; and (iv) the Investment Management Agreement, dated November 15, 2007, by and among Highland Restoration Capital Partners, L.P., Highland Restoration Capital Partners Offshore, L.P., Highland Restoration Capital Partners Master, L.P., each parallel vehicle that may be formed from time to time, Highland Restoration Capital Partners GP, LLC, and Highland Capital Management, L.P. ((i) – (iv) collectively, the "RCP Fund Documents"). True and accurate copies of the RCP Fund Documents are attached hereto as **Exhibit G**.

30. The MGM Sale was originally part of a much larger liquidating transaction that was being discussed last November 2019, long before the appointment of the Independent Board. In late November 2019, the Debtor requested the Committee's authorization to proceed first with the larger transactions and then solely the MGM Sale, but the Committee rejected both of these transactions.

31. After the appointment of the Independent Board, the Debtor asked the Independent Board to re-assess the larger transaction, and while the Independent Board was reviewing the transaction, the Independent Board determined that the MGM Sale had been agreed to in November 2019 but had not yet closed. Subsequently, the Independent Board spent substantial time and resources considering the Debtor's fiduciary duties to the investors in RCP and the benefits and risks of the transaction, the Independent Board ultimately decided not to proceed with the larger transaction. However, the Independent Board determined to close the MGM Sale in accordance with its terms, and the Independent Board notified the Committee on February 7, 2020, of its intention to close the MGM Sale and followed with a presentation to the full Committee on February 14, 2020, and with the Committee's consent, the MGM Sale closed on February 24, 2020.

32. Also on February 7, 2020, the Debtor notified the Committee that it intended to distribute the RCP Distribution as soon as practicable following their receipt by RCP of such liquidation proceeds. The Debtor also disclosed that Highland Capital Management Services, Inc. ("HCM Services"),[13] would receive a share of the RCP Distribution of approximately $2.1 million in the same manner as all other limited partners in RCP.[14] HCM

[13] HCM Services received its interests in RCP from the Debtor over eleven years ago. Additional materials will be provided concerning HCM Services' ownership interest.

[14] The Debtor is also a limited partner in RCP and would receive approximately $18.5 million from the RCP Distribution.

Services is owned 75% by James Dondero and 25% by Mark Okada, and HCM Services is considered a "Related Entity"[15] under the Protocols.

The Committee's Objections to the Distributions

33. On January 30, 2020, the Debtor, through counsel, received notice that the Committee objected to Dynamic and AROF making distributions to the Related Entity investors under the Protocols unless the Debtor satisfied three demands: (1) no part of the foregoing distributions are to be made to any Related Entities; (2) Dynamic and AROF must provide an unredacted list of all their investors; and (3) the Debtor must make demand for payment on all demand notes held by the Debtor. The Committee also requested information regarding how CLOH obtained its limited partnership interest in Dynamic.[16] The Committee has not objected to either Dynamic or AROF making distributions to non-Related Entity Investors.

34. On February 14, 2020, the Debtor, through counsel, also received notice that the Committee objected to RCP making distributions to HCM Services, as a Related Entity. The Committee has not objected to RCP making distributions to its non-Related Entity investors.

35. Under the applicable governing documents, the rights and obligations of Related Entity investors in Dynamic, AROF, RCP, and the Debtor's other managed investment

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[15] A "Related Entity," as defined in the Protocols, means "collectively (A)(i) any non-publicly traded third party in which Mr. Dondero, Mr. Okada, or Mr. Grant Scott, or Mr. John Honis (with respect to Messrs. Okada, Scott and Honis, only to the extent known by the Debtor) has any direct or indirect economic or ownership interest, including as a beneficiary of a trust; (ii) any entity controlled directly or indirectly by Mr. Dondero, Mr. Okada, Mr. Grant Scott, or Mr. John Honis (with respect to Messrs. Okada, Scott and Honis, only to the extent known by the Debtor); (iii) MGM Holdings, Inc.; (iv) any publicly traded company with respect to which the Debtor or any Related Entity has filed a Form 13D or Form 13G; (v) any relative (as defined in Section 101 of the Bankruptcy Code) of Mr. Dondero or Mr. Okada each solely to the extent reasonably knowable by the Debtor; (vi) the Hunter Mountain Investment Trust and Dugaboy Investment Trust; (vii) any entity or person that is an insider of the Debtor under Section 101(31) the Bankruptcy Code, including any "non-statutory" insider; and (viii) to the extent not included in (A)(i)-(vii), any entity included in the listing of related entities in **Schedule B** hereto (the "Related Entities Listing"); and (B) the following Transactions, (x) any intercompany Transactions with certain affiliates referred to in paragraphs 16.a through 16.e of the Debtor's cash management motion [Del. Docket No. 7]; and (y) any Transactions with Charitable DAF Fund, L.P. (provided, however, that additional parties may be added to this subclause (y) with the mutual consent of the Debtor and the Committee, such consent not to be unreasonably withheld)."

[16] *See* note 7, *supra*.

vehicles as applicable, are the same as those of other investors in the applicable funds. Further, at this time, the Debtor is not aware of any claims that Dynamic, AROF, or RCP have against their Related Entity investors. However, the Debtor understands that the Committee has started its investigation with respect to claims against the Related Entities but does not believe that there is cause to delay otherwise payable distributions to Related Entities until the Committee has completed its review. As such, and as discussed at greater length below, the Debtor believes that failing to provide such parties their pro rata share of the Distributions based upon the potential that the Debtor (not Dynamic, AROF, or RCP) might assert claims against the Related Entities at some point in the future could potentially subject the Debtor, as well as the applicable fund, to claims for, among other things, breach of contract and breach of fiduciary duty under applicable state law, federal law, and Cayman law.

36. Consequently, the Debtor is filing this Motion and seeking an order from this Court authorizing the Debtor to cause Distributions to be made to the Related Entity investors in Dynamic, AROF, and RCP (collectively, the "Funds").

Relief Requested

37. By this Motion, the Debtor seeks the entry of an order authorizing, but not directing: (i) the Dynamic Distribution to the Related Entity investors in Dynamic, in accordance with the Dynamic Fund Documents, (ii) the AROF Distribution to the Related Entity investors in AROF in accordance with the AROF Fund Documents, and (iii) the RCP Distribution to the Related Entity investors in RCP in accordance with the RCP Fund Documents.

Basis for the Relief Requested

A. The Governing Documents for the Funds Do Not Give Discretion Regarding Fund Distributions

38. Each Fund is a distinct legal entity with its own property rights in its own assets. Further, each entity in each Fund is governed by its own set of governing documents, which govern how distributions are to be made to investors in the applicable Fund. As set forth below, because certain of the Related Entities have invested through the Cayman entities and others have invested through the Delaware entities, only certain documents apply to each Related Entity investors. The Related Entities and their applicable funds are set forth below:

Dynamic

Related Entity	Applicable Entity
CLOH	Dynamic Master Fund & Dynamic Domestic Feeder Fund
Mark Okada	Dynamic Master Fund & Dynamic Domestic Feeder Fund
Dynamic GP	Dynamic Master Fund & Dynamic Domestic Feeder Fund

AROF

Related Entity	Applicable Entity
CLOH	AROF Master Fund & AROF Cayman Feeder Fund

RCP

HCM Services	RCP Domestic Fund

39. Because the Dynamic and AROF funds are structured as "master/feeder" funds, investors invest by subscribing for limited partnership interests or shares in the feeder funds; however, the feeder funds do not own interests in underlying portfolio investments. Those investments are held by the master funds, and the feeder funds are the master fund's limited partners. As such, the master fund is the entity that receives the proceeds from any investment and then distributes those proceeds to its limited partners – the feeder funds – pursuant to the master fund's governing documents. The feeder funds in turn distribute those proceeds to their limited

partners or shareholders – the third-party investors – pursuant to the feeder fund's governing documents. As, and by way of example, if an investor is invested in a Delaware feeder fund, the documents governing its distributions are the documents governing both the master fund and the documents governing the Delaware feeder fund. The documents governing the Cayman fund are, in these circumstances, generally immaterial.

40. RCP is structured as a "parallel fund." This structure is similar to the master/feeder structure discussed above. RCP has a master fund incorporated in Delaware; however, the RCP master fund only has one limited partner – the Cayman fund. The domestic RCP fund invests in the same portfolio investments as the RCP master fund but is not a limited partner of the RCP master fund. Instead, the RCP domestic fund is a standalone entity, which owns its own assets, receives the proceeds of those assets directly, and distributes those proceeds directly to its limited partners. The RCP domestic fund does not rely on distributions from the RCP master fund, and, consequently, for purposes of distributions to investors in the RCP domestic fund, the documents governing the RCP master fund and RCP Cayman fund are largely immaterial.

41. The relevant documents are discussed below. Because of their similarities, the Dynamic Fund Documents and Argentina Fund Documents are addressed together.

Dynamic Fund Documents and AROF Fund Documents

42. **The Dynamic and AROF Master Fund**. Because on November 15, 2019, and November 20, 2019, respectively, the general partners of the Dynamic and AROF master funds elected to terminate Dynamic and AROF, respectively, Dynamic and AROF entered wind up as of those respective dates.[17] Upon such dates, the general partners of Dynamic and AROF became

[17] Amended and Restated Exempted Limited Partnership Agreement of Highland Argentina Regional Opportunity Master Fund, L.P., dated 1 November 2017 § 6.1(a); Second Amended and Restated Exempted Limited Partnership

obligated to "promptly liquidate the business and administrative affairs of the Partnership to the extent feasible."[18] Section 6.2 of each of the Dynamic and AROF master fund partnership agreements also provides that the limited partners in the master funds, i.e. their feeder funds, "shall… be paid liquidating distributions" after applicable debts are repaid.[19] Such funds' general partners, therefore, have an obligation to promptly liquidate their assets and distribute the proceeds to such funds' limited partners – their respective feeder funds. Generally, the failure to distribute such proceeds could give rise to a claim for breach of contract under Cayman law.[20]

43. **The Dynamic and AROF Domestic Feeder Fund**. Again because each of Dynamic and AROF are in wind up, they are required to "promptly liquidate" their business and affairs, and their investors, including the Related Entity investors – CLOH, Mr. Okada, and Dynamic GP – are required to "be paid liquidating distributions. . . *pro rata* in accordance with, and up to the positive balances of their respective Capital Accounts."[21] Section 6.2 of the applicable documents, however, does *not* state that the Debtor can withhold any individual investor's pro rata distribution.[22] Consequently, the Debtor believes it is obligated, under its

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Agreement of Highland Dynamic Income Master Fund, L.P., dated 1 April 2018 § 6.1(a); Exempted Limited Partnership Law (2018 Revision) § 36(10)(d).

[18] Amended and Restated Exempted Limited Partnership Agreement of Highland Argentina Regional Opportunity Master Fund, L.P., dated 1 November 2017 § 6.2; Second Amended and Restated Exempted Limited Partnership Agreement of Highland Dynamic Income Master Fund, L.P., dated 1 April 2018 § 6.2.

[19] *Id.*

[20] Section 6.2 of each fund's partnership agreement provides that distributions to the feeder funds only need to be made to the "extent feasible." The Debtor believes that this exception does not apply here as distributions are "feasible" if authorized by this Court and that such exception cannot be relied on to excuse the relevant master funds from distributing proceeds to their feeder funds.

[21] Amended and Restated Limited Partnership Agreement of Highland Argentina Regional Opportunity Fund, L.P., § 6.2(a)(iii); Amended and Restated Limited Partnership Agreement of Highland Dynamic Income Fund, L.P., § 6.2(a)(iii)

[22] In a separate section of the applicable limited partnership agreements unrelated to liquidation, there is a provision requiring that Dynamic and AROF refrain from making a distribution "if such distribution would violate. . . applicable law." (Amended and Restated Limited Partnership Agreement of Highland Dynamic Income Fund, L.P., § 3.13(b); Amended and Restated Limited Partnership Agreement of Highland Argentina Regional Opportunity Fund, L.P., § 3.12(b).) There is currently no "applicable law" prohibiting the distributions. The Debtor still has the right to make the distributions if authorized by this Court.

contractual and fiduciary duties, to petition this Court for authority to make distributions to the Related Entity investors.

44. **The Dynamic and AROF Cayman Feeder Fund**. There are no Related Entity investors in the Dynamic Cayman feeder fund and, therefore, the documents governing the Dynamic Cayman feeder fund are not relevant with respect to any distributions to Related Entities investors.

45. CLOH is invested in the AROF Cayman feeder fund. That fund suspended all rights of its shareholders to redeem (as well as all redemption payments) on October 30, 2019, to enable an orderly realization of assets following receipt of very significant redemption requests. While the directors of the AROF Cayman feeder fund have discretion with respect to the imposition (and the lifting) of the suspension of redemptions, that discretion must, as a matter of Cayman law, be exercised for a proper purpose in the best interests of the company and consistent with the directors' fiduciary duties and fund documents. The assets of AROF have been liquidated, and there is no longer a reason to suspend redemptions.[23] Furthermore, since CLOH – the Related Party investor in the AROF Cayman feeder fund – has not yet been redeemed, it is eligible (as a member of a particular class and/or series of issued shares) to be paid distributions under the fund's articles of association.[24] Therefore, the Debtor believes that, if the suspension of redemptions is

[23] It may be argued that the suspension was automatically justified by the like suspension of withdrawals by the AROF master fund on October 30, 2019 (Offering Memorandum of Highland Argentina Regional Opportunity Fund, Ltd., at p. 75.), but it is also arguable that that condition fell away with the termination of the AROF master fund on November 15, 2019. Further, it may be arguable that under section 12.5 of the AROF feeder articles of association the directors might be entitled to withhold redemption amounts payable to the Related Parties if required by U.S. law, but it may equally be arguable that that provision applies only to tax withholdings.

[24] Amended and Restated Memorandum and Articles of Association of Highland Argentina Regional Opportunity Fund, Ltd. § 45.1. In the interests of full disclosure, such distributions to shareholders of a particular class and/or series are in the "absolute discretion" of the board of Cayman-based directors and, further, directors can hold distributions due to a particular member in abeyance in a separate account if such distributions "cannot be paid" to a particular member, though they will retain their status as a debt owed to that member. For these purposes, it might be arguable that a distribution "cannot be paid" if its payment is prohibited by applicable law or by an order of a court of competent

maintained and distributions are not paid to CLOH, there may be claims that the continuance of the suspension of redemptions and failure to pay distributions constitutes a breach of the AROF Cayman feeder fund's articles of association and of the Cayman directors' fiduciary duties. The Cayman-based directors are independent of the Debtor and are not required to take the Debtor's direction, and if the AROF Cayman feeder fund receives assets from its master fund, the Debtor has no control over how the Cayman directors will treat those assets, including whether the Cayman directors will cause those assets to be distributed to CLOH as a Related Entity investor. As such, the Debtor is asking this Court to authorize distributions to the Related Entity investor in AROF to protect the Debtor from any liability based on the Cayman directors' actions or inactions.

RCP Fund Documents

46. **The RCP Domestic Fund.** As set forth above, the RCP domestic fund has the same general partner as the other RCP funds but holds its own investments in parallel with such funds. Further, distributions to investors in the RCP domestic fund are governed a limited partnership agreement specific to the domestic fund. The RCP domestic fund's distributions are not contingent on distributions from the RCP master fund. Under the documents governing the RCP domestic fund, the general partner is required to distribute assets proportionally based on each investor's funded commitments as of the date of distribution, and the documents do not provide that a distribution can be made to one investor but not another.[25] Because the RCP domestic fund governing documents do not allow the general partner to select which investors are to receive a distribution, the Debtor believes that it is not permitted under those documents to make distributions to some but not all of the investors and that if the Debtor were to make a distribution

jurisdiction. (Amended and Restated Memorandum and Articles of Association of Highland Argentina Regional Opportunity Fund, Ltd., Art. 45.1; 45.7.)

[25] Limited Partnership Agreement of Highland Restoration Capital Partners, L.P, § 3.3(a); *see also* § 3.2 (requiring short term investment gains to be allocated proportionally to investors).

to a subset of investors only, it may be exposed to liability. Accordingly, the Debtor is seeking authority to make Distributions to the Related Entity investors as part of a liquidating distribution made to all investors on a pro rata basis.

47. **The RCP Master Fund & RCP Cayman Fund.** There are no Related Entity investors in in RCP's Cayman fund and, therefore, the documents governing the RCP master fund and the RCP Cayman fund are not currently relevant with respect to any distributions to Related Entities.

Potential Fiduciary and Common Law Obligations

48. The obligations of the Funds' domestic governing entities (general partners and directors) are also governed by Delaware fiduciary duties. Under the laws of the State of Delaware, a general partner to a limited partnership owes duties of good faith, fairness and loyalty to its limited partners. *Boxer v. Husky Oil*, 329 A.2d 995, 997 (1981). Pursuant to Delaware law, subject to certain limitations, a general partner can limit its fiduciary duties by contract. Specifically, 6 Del. C. § 17-1101(d), allows for a general partner to expand, restrict or even eliminate its fiduciary duties, so long as the general partner's duties of fair dealing and good faith are unaffected. The governing documents for the Delaware-domiciled Funds do not include a waiver or disclaimer of fiduciary duties that generally apply to general partners.[26]

49. Further, the conduct and activities of the Debtor and HCM Latin America as investment manager to the Funds are governed by the Advisers Act and the relevant investment management agreements. An investment adviser (such as the Debtor and HCM Latin America),

[26] The only language that acts as a waiver of fiduciary duties is very narrow and does not apply to general fiduciary duties under state law or securities law. Specifically, there is a disclaimer of the general partner's status as a fiduciary under the Employee Retirement Income Security Act of 1974 and language that limits the general partner's liability for breach of fiduciary duty in connection with the use of "soft dollars" generated from brokerage transactions. There are also typical "standard of care" and indemnity provisions that limit liability of the general partner, but these do not specifically address or provide a waiver of fiduciary duties.

in managing client accounts (such as those of the Fund) or otherwise providing investment advice, is subject to fiduciary duties. The Supreme Court has held that Section 206 of the Advisers Act imposes fiduciary duties on an investment adviser by operation of law. *See SEC v. Capital Gains Research Bureau, Inc.*, 375 US 180, 191 (1963). Under Section 206 of the Advisers Act, an investment adviser has a fiduciary duty of loyalty. This duty, among other things, requires that an investment adviser, as is the Debtor, ensure that it does not benefit one client (such as a Fund) to the disadvantage of another or to itself.[27] Relatedly, an investment adviser to pooled investment vehicles, such as the Funds, must comply with Advisers Act Rule 206(4)-8. Advisers Act Rule 206(4)-8 prohibits investment advisers from defrauding investors in pooled investment vehicles they advise.[28] Rule 206(4)-8 extends, in part, the Debtor's fiduciary obligations to the investors in such Funds.

50. As set forth above, the Committee has objected to distributions being made to Related Entity investors because the Committee believes that the Debtor and its estate may have claims against such Related Entities. Although the Debtor understands that the Committee has commenced its investigation into potential claims against Related Entities, no claims against such Related Entities have been articulated and no allegations have been made that any of Dynamic, AROF, or RCP have claims against the Related Entities or that there is any other reason to treat the respective distributions to those investors differently than those being made to non-Related Entity investors.

51. Accordingly, absent an express ability to withhold or offset distributions on a non-pro rata basis, the failure to make distributions otherwise due to the Related Entity investors

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[27] *Proposed Commission Interpretation Regarding Standard of Conduct for Investment Advisers; Request for Comment on Enhancing Investment Adviser Regulation*, Release No. IA-4889 (Apr. 18, 2018).

[28] *Rule 206(4)-8*; *Prohibition of Fraud By Advisers to Certain Pooled Investment Vehicles*, Advisers Act Rel. No. 2628 (Aug. 3, 2007).

could be a potential violation of (i) the Funds' governing documents, (ii) Delaware and/or Cayman fiduciary law, and (iii) the Advisers Act (to the extent the Debtor, HCM Latin America, or any affiliate of the Debtor has a role in causing such distributions to be withheld). Moreover, the potential for a violation of the Advisers Act, Rule 206(4)-8 and the Delaware fiduciary duties is substantially greater if such delay has the intention of, or results in, favorable treatment to the Debtor or any of its affiliates in a manner that was not expressly contemplated at the time of investment. Because of those fiduciary obligations, the Debtor believes that it has a duty to seek this Court's authority to cause each of Dynamic, AROF, and RCP to make distributions to each such Fund's Related Entity investors in accordance with the applicable Fund's governing documents.

B. Section 363(c)(1) of the Bankruptcy Code Authorizes the Debtor to Make the Distributions

52. The Debtor believes that, but for the Protocols, Court approval of the Distributions to the Related Entities would not be required for the Funds to make distributions to their investors. However, even if Court approval were required, making the Distributions to the Related Entities is an ordinary course transaction authorized under section 363(c)(1). Specifically, section 363(c)(1) provides:

> [i]f the business of the debtor is authorized to be operated under section. . . 1108. . . of this title. . . the trustee may enter into transactions, including the sale or lease of property of the estate, in the ordinary course of business, without notice or a hearing, and may use property of the estate in the ordinary course of business without notice or a hearing.

11 U.S.C. § 363(c)(1). As such, a debtor may engage in postpetition actions if the debtor is authorized to operate its business under section 1108 and such transactions are "in the ordinary course of business."

53. An activity is "ordinary course" if it satisfies both the "horizontal test" and the "vertical test." *See, e.g., Denton Cty. Elec. Coop. v. Eldorado Ranch, Ltd.* (*In re Denton Cty. Elec. Coop.*), 281 B.R. 876, 882 n.12 (Bankr. N.D. Tex. 2002); *see also In re Roth American, Inc.*, 975 F.2d 949, 952 (3d Cir. 1992). The vertical test looks to "whether the transaction subjects a hypothetical creditor to a different economic risk than existed when the creditor originally extended credit." *In re Patriot Place, Ltd.*, 486 B.R. 773, 793 (Bankr. W.D. Tex. 2013). The horizontal test considers "whether the transaction was of the sort commonly undertaken by companies in the industry." *Id.* Here, both the vertical test and horizontal test are satisfied.

54. First, the vertical test is satisfied. The Distributions will be made in accordance with the applicable Fund's governing documents, which govern the making of all distributions to investors, including Related Entity investors. The Distributions will thus be consistent with the types of distributions routinely made to investors in the Funds prior to the Petition Date. Because the Debtor is engaging in the same conduct postpetition as it did prepetition, the Debtor's creditors are incurring no additional risk from the Distributions. In fact, the risks to the Debtor's creditors may very well increase if the Distributions are not made as the Funds' investors may, as discussed above, have various claims against both the Funds and the Debtor, as the investment manager.

55. Second, the horizontal test is satisfied. The Debtor is an investment manager. Investment managers manage hedge funds, private equity funds, and other investment vehicles, which funds by definition distribute the proceeds of their investments to investors. Assuming the Debtor has any role in the Distributions, the Debtor and the Funds are simply attempting to do postpetition what was done prepetition and to distribute investment gains and losses to the Funds' investors. A fund that sequesters gains and refuses to distribute profits would

be more than an anomaly; it would arguably be a fraud. Consequently, the horizontal test is satisfied as making the Distributions is entirely consistent with the operation of investment managers and hedge funds throughout the industry.

C. <u>Making the Distributions is a Sound Exercise of the Debtors' Business Judgment.</u>

56. Although the Debtor believes that the Distributions are ordinary course pursuant to section 363(c)(1), and that, but for the Protocols, this Court's approval of the Distributions to the Related Entities would not be required. However, even if Court approval were required, the Debtor submits that the Distributions also satisfy section 363(b) of the Bankruptcy Code. Section 363(b)(1) of the Bankruptcy Code authorizes a debtor-in-possession to "use, sell, or lease, other than in the ordinary course of business, property of the estate," after notice and a hearing. It is well established in this jurisdiction that a debtor may use property of the estate outside the ordinary course of business under this provision if there is a good business reason for doing so. *See, e.g., ASARCO, Inc. v. Elliott Management. (In re ASARCO, L.L.C.)*, 650 F.3d 593, 601 (5th Cir. 2011) ("[F]or the debtor-in-possession or trustee to satisfy its fiduciary duty to the debtor, creditors, and equity holders, there must be some articulated business justification for using, selling, or leasing the property outside the ordinary course of business.") (*quoting In re Continental Air Lines, Inc.*, 780 F.3d 1223, 1226 (5th Cir. 1986)); 441 B.R. 813, 830 (Bankr. S.D. Tex. 2010); *GBL Holding Co., Inc. v. Blackburn/Travis/Cole, Ltd. (In re State Park Building Group, Ltd.)*, 331 B.R. 251, 254 (Bankr. N.D. Tex. 2005).

57. Here, making Distributions to the Related Entities is in the exercise of the Debtor's sound business judgment. As an initial matter, and as set forth above, Dynamic, AROF, and RCP are in liquidation because the Debtor (or, in the case of AROF, the Debtor's relying adviser) has determined, in its business judgment, that continuing the existence of those funds in the face of substantial redemptions, on the one hand, and the expiration of the Term, on the other,

is not practicable and not in the interest of those funds or their investors. In addition, failing to liquidate those funds in an orderly manner could result in some investors being disadvantaged. In order to liquidate, Dynamic, AROF, and RCP, by definition, must sell their assets, which sales generate cash. Under their relevant governing documents, that cash is to be distributed to investors in those Funds, and returning that cash to investors is how the Funds actually liquidate; the Funds cannot wind-down without distributing their assets to their investors. Further, the failure to distribute cash in accordance with the Fund Documents to all investors, including Related Entities, could subject the Debtor to claims for breach of contract and fiduciary duty. As such, the decision to liquidate Dynamic, AROF, and RCP is in the sound business judgment of the Debtor as is the distribution of the cash received as a result of that liquidation. Making the Distribution is the necessary and logical corollary to liquidating these funds and squarely within the Debtor's business judgment; they cannot be wound down without making the Distribution to all investors, including Related Entities.

No Prior Request

58. No previous request for the relief sought in this Motion has been made to this, or any other, Court.

Notice

59. Notice of this Motion shall be given to the following parties or, in lieu thereof, to their counsel, if known: (a) the Office of the United States Trustee; (b) the Office of the United States Attorney for the Northern District of Texas; (c) the Debtor's principal secured parties; (d) counsel to the Committee; and (e) parties requesting notice pursuant to Bankruptcy

Rule 2002. The Debtor submits that, in light of the nature of the relief requested, no other or further notice need be given.

WHEREFORE, the Debtor respectfully requests that the Court (a) grant the Motion, (b) enter an order, substantially in the form attached hereto as **Exhibit A**, and (c) grant such other relief as is just and proper.

[Remainder of Page Intentionally Blank]

Dated: February 24, 2020.

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EXHIBIT A

Proposed Order

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,[1]	§	Case No. 19-34054-sgj11
Debtor.	§	Related to Docket No. _____

ORDER AUTHORIZING, BUT NOT DIRECTING, THE DEBTOR TO CAUSE DISTRIBUTIONS TO CERTAIN "RELATED ENTITIES"

Having considered the *Motion of the Debtor for Entry of an Order Authorizing, but Not Directing, the Debtor to Cause Distributions to Certain "Related Entities"* (the "Motion")[2] filed by the Debtor seeking entry of an order authorizing, but not directing, the Debtor to cause the

[1] The Debtor's last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

[2] Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Motion.

distribution of assets in the ordinary course of its business to certain Related Entities that have invested in Dynamic, AROF, and RCP, as more fully set forth in the Motion, and having heard the statements in support of the relief requested in the Motion at a hearing before this Court (the "Hearing"), the Court finds that (i) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; (ii) the Motion involves a core proceeding pursuant to 28 U.S.C. § 157(b)(2); (iii) venue of the Bankruptcy Case in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; (iv) the relief requested in the Motion is in the best interests of the Debtor's estate, its creditors, and other parties-in-interest; (v) the Debtor's notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and no further or additional notice need be provided; and (vi) the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein. Accordingly, **IT IS HEREBY ORDERED THAT**:

1. The Motion is **GRANTED** as set forth herein.

2. The Debtor is authorized, but not directed, to distribute or to cause the distribution of:

a. the Dynamic Distribution to the Related Entity investors in Dynamic, in accordance with the Dynamic Fund Documents,

b. the AROF Distribution to the Related Entity investors in AROF in accordance with the AROF Fund Documents, and

c. the RCP Distribution to the Related Entity investors in RCP in accordance with the RCP Fund Documents.

3. Notwithstanding any stay under applicable Bankruptcy Rules, this Order shall be effective immediately upon entry.

4. The Court shall retain jurisdiction over all matters arising from or related to the interpretation and implementation of this Order.

END OF ORDER

EXHIBIT "B"

Highland Dynamic Income Fund

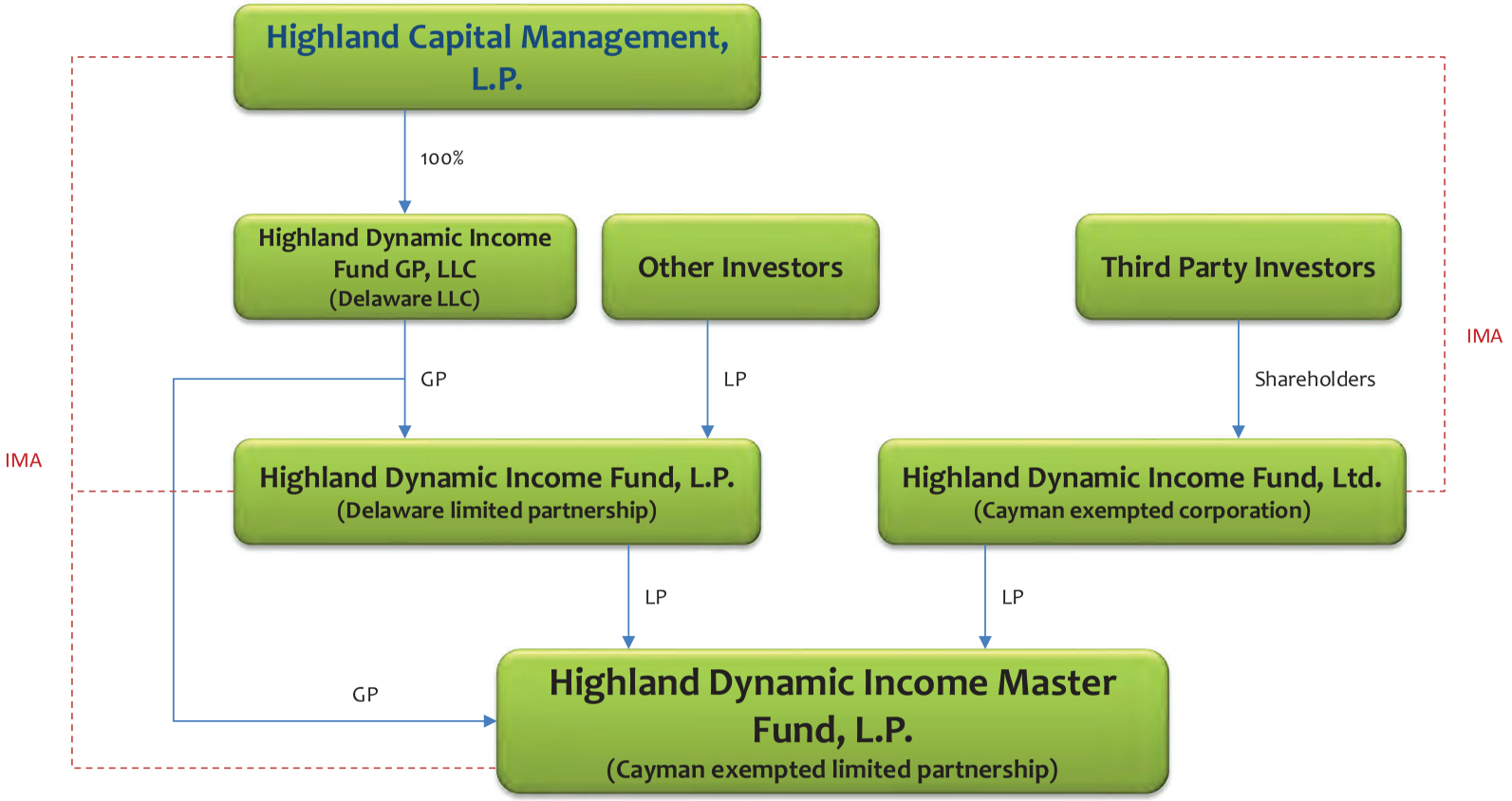

EXHIBIT "C"

HIGHLAND DYNAMIC INCOME FUND, L.P.

A Delaware Limited Partnership

Amended and Restated Limited Partnership Agreement

April 1, 2018

NOTICE

NEITHER HIGHLAND DYNAMIC INCOME FUND, L.P. NOR THE LIMITED PARTNER INTERESTS THEREIN HAVE BEEN OR WILL BE REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "***SECURITIES ACT***"), THE INVESTMENT COMPANY ACT OF 1940, AS AMENDED, OR THE SECURITIES LAWS OF ANY OF THE STATES OF THE UNITED STATES. THE OFFERING OF SUCH LIMITED PARTNER INTERESTS IS BEING MADE IN RELIANCE UPON AN EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT FOR OFFERS AND SALES OF SECURITIES WHICH DO NOT INVOLVE ANY PUBLIC OFFERING, AND ANALOGOUS EXEMPTIONS UNDER STATE SECURITIES LAWS.

THE DELIVERY OF THIS AMENDED AND RESTATED LIMITED PARTNERSHIP AGREEMENT SHALL NOT CONSTITUTE AN OFFER TO SELL OR THE SOLICITATION OF AN OFFER TO BUY NOR SHALL THERE BE ANY OFFER, SOLICITATION OR SALE OF LIMITED PARTNER INTERESTS IN HIGHLAND DYNAMIC INCOME FUND, L.P. IN ANY JURISDICTION IN WHICH SUCH OFFER, SOLICITATION OR SALE IS NOT AUTHORIZED OR TO ANY PERSON TO WHOM IT IS UNLAWFUL TO MAKE SUCH OFFER, SOLICITATION OR SALE.

THE LIMITED PARTNER INTERESTS ARE SUBJECT TO RESTRICTIONS ON TRANSFERABILITY AND RESALE, MAY NOT BE TRANSFERRED OR RESOLD EXCEPT AS PERMITTED UNDER THE SECURITIES ACT AND APPLICABLE STATE SECURITIES LAWS PURSUANT TO REGISTRATION OR EXEMPTION THEREFROM AND MAY NOT BE SOLD OR OTHERWISE TRANSFERRED EXCEPT IN ACCORDANCE WITH THE REQUIREMENTS AND CONDITIONS SET FORTH IN THIS AMENDED AND RESTATED LIMITED PARTNERSHIP AGREEMENT.

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THIS AMENDED AND RESTATED LIMITED PARTNERSHIP AGREEMENT of Highland Dynamic Income Fund, L.P. is dated effective as of April 1, 2018 by and among Highland Dynamic Income Fund GP, LLC, the Limited Partners, and those Persons who are hereafter admitted as additional Limited Partners in accordance with this Agreement. This Agreement amends and restates in its entirety the Limited Partnership Agreement of the Partnership dated March 28, 2013 (the "***Prior Agreement***").

Article I
DEFINITIONS

For purposes of this Agreement:

"***Act***" means the Delaware Revised Uniform Limited Partnership Act, 6 Del. C. §§ 17-101, et seq., as in effect on the date hereof and as amended from time to time, or any successor law.

"***Administrator***" means such Person as the General Partner may designate from time to time, in its sole discretion, to serve as administrator to the Partnership.

"***Advisory Committee***" has the meaning set forth in Section 4.6.

"***Affiliate***" means, with respect to any Person, a Person which controls, is controlled by, or is under common control with, such Person. For these purposes, "control" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities, by contract or otherwise.

"***Affiliated Investors***" means the Investment Manager, the General Partner and their respective Affiliates, Principals, employees, partners, agents, the respective family members of such personnel and trusts and other entities established primarily for their benefit or for charitable purposes.

"***Agreement***" means this Amended and Restated Limited Partnership Agreement, as amended from time to time.

"***Authorized Representative***" has the meaning set forth in Section 7.6(a).

"***Bad Actor Limited Partner***" means a Limited Partner that (a) would cause the disqualification of the Partnership from using Rule 506 under the Securities Act due to the operation of paragraph (d) thereof (or its successor) if such Limited Partner were to beneficially own 20% or more of the outstanding voting interests of all of the Partners (excluding any other Interests that are Non-Voting Interests) or (b) the General Partner determines is likely to become subject to a conviction, order, judgment or finding that would be likely to cause the disqualification described in clause (a).

"***BBA***" means Subchapter C of Chapter 63 of the Code (Sections 6221 through 6241 of the Code), as enacted by the Bipartisan Budget Act of 2015, Pub. L. No. 114-74, as amended from time to time, and the Regulations thereunder (whether proposed, temporary or final), including any subsequent amendments, successor provisions or other guidance thereunder, and any equivalent provisions for state, local or non-U.S. tax purposes.

"***BBA Effective Period***" means any taxable year commencing after 2017, taking into account any extensions of the effective date set forth in the BBA.

"***BHCA***" means the Bank Holding Company Act of 1956, as amended.

"***BHCA Subject Person***" means any Limited Partner that is subject, directly or indirectly, to the provisions of Section 4 of the BHCA and the regulations of the Board of Governors of the Federal Reserve System promulgated thereunder.

"***Business Day***" means any day or days on which banks are open for business in the city of New York, NY and/or such other place or places as the General Partner may determine.

"***Capital Account***" has the meaning set forth in Section 3.3(a).

"***Certificate***" means the Certificate of Limited Partnership of the Partnership referred to in Section 2.1(b).

"***Code***" means the U.S. Internal Revenue Code of 1986, as amended, and as hereafter amended, or any successor law.

"***Designated Individual***" has the meaning set forth in Section 7.2(a).

"***Election Notice***" has the meaning set forth in Section 8.11(c).

"***ERISA***" means the Employee Retirement Income Security Act of 1974, as the same may be amended from time to time.

"***ERISA Partner***" means a Limited Partner which is (a) an employee benefit plan subject to the fiduciary provisions of ERISA, (b) a "plan" subject to Section 4975 of the Code, (c) an entity whose underlying assets include "plan assets" for purposes of ERISA by reason of a Plan's investment in the entity, or (d) an entity that otherwise constitutes a "benefit plan investor" within the meaning of Section 3(42) of ERISA or any regulation promulgated thereunder.

"***FATCA***" means Sections 1471 through 1474 of the Code, as amended, and any Regulations thereunder or official interpretations or other official guidance thereof, including any successor Regulations or interpretations, and any intergovernmental agreement and any regulations with respect thereto or official interpretations or other official guidance thereof implementing the foregoing.

"***Fiscal Period***" means each period that starts at the opening of business on the Commencement Date (in the case of the initial Fiscal Period) and thereafter on the day

immediately following the last day of the preceding Fiscal Period, and that ends at the close of business on the earliest of the following dates:

(a) the last day of a calendar month;

(b) any date as of which any withdrawal or distribution of capital is made with respect to any Capital Account or as of which this Agreement provides for any amount to be credited to or debited against a Capital Account, other than a withdrawal or distribution by or to, or an allocation to, all Capital Accounts that does not result in any change of the Partnership Percentage relating to any Capital Account;

(c) the date which immediately precedes any day as of which a capital contribution is accepted by the General Partner from any new or existing Partner; or

(d) any other date which the General Partner selects.

"***Fiscal Year***" means the period commencing on the Commencement Date and ending on December 31 of the year of commencement, and thereafter each period commencing on January 1 of each year and ending on December 31 of such year, unless the General Partner shall elect another fiscal year; *provided* that any such other fiscal year shall be permissible for U.S. federal income tax purposes. In the case of the Fiscal Year in which the Partnership is terminated in accordance with Article VI, "***Fiscal Year***" means the portion of the calendar year ending on the date on which the Partnership is terminated.

"***GAAP***" means generally accepted accounting principles in the United States.

"***General Partner***" means Highland Dynamic Income Fund GP, LLC, a Delaware limited liability company, any successor thereto, and any Person hereafter admitted as an additional general partner, in its capacity as general partner of the Partnership.

"***Indemnified Person***" means each of the General Partner, the Investment Manager, any member, shareholder, partner, manager, director, officer, employee or agent of, or any person who controls, the General Partner, each of the respective affiliates of the foregoing, members of the Advisory Committee or the Pricing Committee, their respective affiliates, or any of the legal representatives of any of the foregoing.

"***Interest***" means the entire ownership interest of a Partner in the Partnership at the relevant time, including the right of such Partner to any and all benefits to which a Partner may be entitled as provided in this Agreement, together with the obligations of such Partner to comply with all the terms and provisions of this Agreement.

"***Investment Company Act***" means the U.S. Investment Company Act of 1940, as amended, and the regulations promulgated thereunder.

"***Investment Management Agreement***" means the investment management agreement by and among the Investment Manager, the General Partner, the Partnership, the Master Fund and the Offshore Fund.

"***Investment Manager***" means Highland Capital Management, L.P., a Delaware limited partnership, or any successor thereto, or any Person thereafter appointed as an investment manager of the Partnership in accordance with the Investment Management Agreement.

"***Investments***" means investments in securities or other financial or intangible investment instruments, contracts or products, whether made directly by the Partnership or through the Master Fund, as described in the Partnership's offering memorandum.

"***Limited Participation Investment***" means an Investment which, as determined by the General Partner, is suitable for some but not all of the Partners, or of which certain Partners should receive a reduced participation, for legal, tax, regulatory or other bona fide reasons.

"***Limited Participation Sub-Accounts***" means memorandum accounts to be maintained in the accounting records of the Partnership on a Partner-by-Partner basis with respect to each particular Limited Participation Investment to reflect the entitlement of each Partner (other than a Partner who does not have any credit balance in its Capital Account at the time of the establishment of the Limited Participation Sub-Account that is unrelated to a pre-existing Limited Participation Sub-Account) to allocations and distributions attributable to Master Fund transactions involving such Limited Participation Investments.

"***Limited Partner***" means any Person admitted to the Partnership as a limited partner, until the entire Interest of such Person has been withdrawn pursuant to Section 5.5 or a substitute Limited Partner or Limited Partners are admitted with respect to such Person's entire Interest.

"***Majority of Limited Partners***" means Limited Partners whose Partnership Percentages represent more than 50% of the aggregate Partnership Percentages of all Limited Partners.

"***Management Fee***" means the management fee, as defined in the Master Fund Partnership Agreement, payable by the Master Fund to the Investment Manager pursuant to the Investment Management Agreement.

"***Master Fund***" means Highland Dynamic Income Master Fund, L.P., a collective investment vehicle formed as an exempted limited partnership under the laws of the Cayman Islands in which the Partnership and the Offshore Fund place their assets and conduct their investment and trading activities.

"***Master Fund Partnership Agreement***" means the amended and restated agreement of limited partnership of the Master Fund, as the same may be amended or restated from time to time in accordance with the terms thereof.

"***Negative Basis***" means, with respect to any Partner and as of any time of calculation, the excess of such Partner's "adjusted tax basis" in its Interest for U.S. federal income tax purposes at such time (determined without regard to any adjustments made to such adjusted tax basis by reason of any Transfer or assignment of such Interest, including by reason of death) over the amount that such Partner is entitled to receive upon withdrawal from or liquidation of the Partnership.

"***Negative Basis Partner***" means any Partner who withdraws all or a portion of its Interest from the Partnership and who has a Negative Basis as of the Withdrawal Date, but such Partner

shall cease to be a Negative Basis Partner at such time as it shall have received allocations pursuant to Section 3.10(d) equal to such Partner's Negative Basis as of the Withdrawal Date and without regard to such Partner's share of the liabilities of the Partnership under Section 752 of the Code.

"***Net Assets***" means the total value, as determined by the General Partner or its delegate(s) in accordance with Section 7.3, of all Investments and other assets of the Partnership (including net unrealized appreciation or depreciation of the assets and accrued interest and dividends receivable net of any withholding taxes), less an amount equal to all accrued debts, liabilities and obligations of the Partnership (including any reserves for contingencies accrued pursuant to Section 3.6). Except as otherwise expressly provided herein, Net Assets as of the first day of any Fiscal Period shall be determined on the basis of the valuation of assets conducted as of the close of the immediately preceding Fiscal Period but after giving effect to any capital contributions made by any Partner subsequent to the last day of such immediately preceding Fiscal Period and after giving effect to Management Fee charges (borne indirectly at the Master Fund level) and Net Assets as of the last day of any Fiscal Period shall be determined before giving effect to any of the following amounts payable by the Partnership generally or in respect of any Investment which are effective as of the date on which such determination is made:

(a) any Performance Allocation (borne indirectly at the Master Fund level) as of the date on which such determination is made;

(b) any withdrawals or distributions payable to any Partner which are effective as of the date on which such determination is made; and

(c) withholding or other taxes (including any amounts under any BBA provision), expenses of processing withdrawals and other items payable, any increases or decreases in any reserves or other amounts recorded pursuant to Section 3.6 and any increases or decreases in the value of any Limited Participation Investments during the Fiscal Period ending as of the date on which such determination is made, to the extent the General Partner determines that, pursuant to any provisions of this Agreement, such items are not to be charged ratably among the Capital Accounts of all Partners on the basis of their respective Partnership Percentages as of the commencement of the Fiscal Period.

"***Net Loss***" means any amount by which the Net Assets as of the first day of a Fiscal Period exceed the Net Assets as of the last day of the same Fiscal Period.

"***Net Profit***" means any amount by which the Net Assets as of the last day of a Fiscal Period exceed the Net Assets as of the first day of the same Fiscal Period.

"***Nonaffiliated Limited Partners***" means Limited Partners that are not affiliates or employees of the Investment Manager.

"***Non-Voting Interests***" means an Interest, the holder of which is not entitled to vote, consent or withhold consent with respect to any Partnership matter (including, but not limited to, mergers, sales of substantially all assets or consolidations of the Partnership), except as otherwise expressly provided in this Agreement.

"***Offshore Fund***" means Highland Dynamic Income Fund, Ltd., a Cayman Islands exempted company.

"***Other Account***" means any assets or investment of the General Partner, or any assets managed by the General Partner or any Affiliate of the General Partner for the account of any Person or entity (including investment vehicles) other than the Partnership, which are invested or which are available for investment in securities or other instruments or for trading activities whether or not of the specific type being conducted by the Partnership.

"***Other Agreement***" has the meaning set forth in Section 8.12.

"***Partner***" means the General Partner or any of the Limited Partners, except as otherwise expressly provided herein, and "***Partners***" means the General Partner and all of the Limited Partners.

"***Partnership***" means the limited partnership formed pursuant to this Agreement.

"***Partnership Minimum Gain***" has the meaning set forth in Regulations Section 1.704-2(b)(2) and (d).

"***Partnership Percentage***" means a percentage established for each Partner on the Partnership's books as of the first day of each Fiscal Period. The Partnership Percentage of a Partner for a Fiscal Period shall be determined by dividing the amount of such Partner's Capital Account as of the beginning of the Fiscal Period (after crediting all capital contributions to such Capital Account which are effective as of such date, net of all deductions, including Management Fees borne at the Master Fund level) by the sum of the Capital Accounts of all of the Partners as of the beginning of the Fiscal Period (after crediting all capital contributions to the Partnership which are effective as of such date, net of all deductions, including Management Fees borne at the Master Fund level). The sum of the Partnership Percentages of all Capital Accounts for each Fiscal Period shall equal 100%.

"***Performance Allocation***" means the performance allocation, as defined in the Master Fund Partnership Agreement, allocated to the General Partner pursuant to the Master Fund Partnership Agreement.

"***Person***" means any individual, partnership, corporation, limited liability company, trust, or other entity.

"***Plan Assets***" means assets of the Partnership that are considered to be assets of an ERISA Partner, pursuant to Section 3(42) of ERISA or otherwise.

"***Positive Basis***" means, with respect to any Partner and as of any time of calculation, the excess of the amount that such Partner is entitled to receive upon withdrawal from or liquidation of the Partnership over such Partner's "adjusted tax basis" in its Interest for U.S. federal income tax purposes at such time (determined without regard to any adjustments made to such adjusted tax basis by reason of any Transfer or assignment of such Interest, including by reason of death).

"***Positive Basis Partner***" means any Partner who withdraws all or a portion of its Interest from the Partnership and who has a Positive Basis as of the Withdrawal Date, but such Partner shall cease to be a Positive Basis Partner at such time as it shall have received allocations pursuant to Section 3.10(c) equal to such Partner's Positive Basis as of the Withdrawal Date and without regard to such Partner's share of the liabilities of the Partnership under Section 752 of the Code.

"***Pricing Committee***" has the meaning set forth in Section 4.7.

"***Principals***" means James D. Dondero and Mark K. Okada.

"***Prior Agreement***" has the meaning set forth in the preamble hereto.

"***Regulations***" means the proposed, temporary and final U.S. Treasury Regulations promulgated under the Code, including any successor regulations.

"***Regulatory Allocations***" has the meaning set forth in Section 3.11.

"***Revocation Notice***" has the meaning set forth in Section 8.11(c).

"***RIC Limited Partner***" means a Limited Partner that is registered as an investment company under the Investment Company Act.

"***Schedule of Partners***" means a schedule to be maintained by the General Partner containing the following information with respect to each Partner: (a) name; (b) address; (c) date of admission; (d) amount and date of all capital contributions and withdrawals; and (e) the amount and date of any permitted Transfers.

"***Securities Act***" means the U.S. Securities Act of 1933, as amended from time to time.

"***Series***" means a designated series of Interests established in accordance with this Agreement and having such terms as the General Partner determines.

"***Tax Matters Partner***" has the meaning set forth in Section 7.2(a).

"***Transfer***" means any direct or indirect sale, exchange, transfer, assignment, pledge, encumbrance, charge, exchange, hypothecation, placing of a lien or a security interest on an Interest or any other disposition by a Partner of its Interest to or in favor of another party, whether voluntary or involuntary (including, but not limited to, being offered or listed on or through any placement agent, intermediary, online service, site, agent or similar Person).

"***Withdrawal Date***" has the meaning set forth in Section 5.5(a).

"***Withdrawal Gate***" has the meaning set forth in 5.5(d).

"***Withdrawal Notice***" has the meaning set forth in Section 5.5(a).

Article II
ORGANIZATION

2.1 Continuation of Limited Partnership

(a) The General Partner and the Limited Partners hereby agree to continue the Partnership as a limited partnership under and pursuant to the Act and this Agreement.

(b) The General Partner has executed and filed with the Secretary of State of the State of Delaware an Amended Certificate of Limited Partnership of the Partnership (the "***Certificate***"), and shall execute, acknowledge and file with the Secretary of State of the State of Delaware any further amendments thereto as may be required by the Act, and any other instruments, documents and certificates which, in the opinion of the Partnership's legal counsel, may from time to time be required by the laws of the United States of America, the State of Delaware or any other jurisdiction in which the Partnership determines to do business, or any political subdivision or agency thereof or which such legal counsel may deem necessary or appropriate to effectuate, implement and continue the valid and subsisting existence and business of the Partnership. The General Partner shall cause any required amendment to the Certificate to be filed promptly following the event requiring such amendment. All amendments may be signed by the General Partner (as required by the Act) and may be signed either personally or by an attorney-in-fact.

(c) The parties hereto agree to operate the Partnership as a limited partnership pursuant to the provisions of the Act and of this Agreement and agree that the rights and liabilities of the Limited Partners and the General Partner shall be as provided in the Act for limited partners and the general partner except as provided herein.

(d) The General Partner may change the domicile of the Partnership to another state, country or other jurisdiction where advisable due to legal, tax or other considerations; *provided* that no such change of domicile would reasonably be expected to have a material adverse effect on the Limited Partners.

(e) The parties acknowledge that they intend that the Partnership be taxed in the United States as a partnership and not as an association taxable as a corporation for U.S. federal income tax purposes. No election may be made to treat the Partnership as other than a partnership for U.S. federal income tax purposes. Each Partner agrees not to treat, on any income tax return or in any claim for a refund, any item of income, gain, loss, deduction or credit in a manner inconsistent with the treatment of such item by the Partnership.

2.2 Name of Partnership

(a) The name of the Partnership is Highland Dynamic Income Fund, L.P. or such other name as the General Partner may hereafter adopt, subject to causing an amendment to the Certificate to be filed with the Secretary of State of the State of Delaware in accordance with the Act. The Partnership commenced operations in 2013 as Highland Capital Loan Fund, L.P., and pursuant to Section 2.1(b), the General Partner filed an amended Certificate with the Secretary of State of the State of Delaware to affect the change of name. The General Partner will send a notice of any change of name to the Limited Partners. All business of the Partnership will be conducted under such name or under such other name as the General Partner deems appropriate.

(b) The Partnership shall have the exclusive ownership and right to use the Partnership name so long as the Partnership continues, despite the withdrawal, expulsion, resignation or removal of any Limited Partner, but upon the Partnership's termination or at such time as there ceases to be a general partner, the Partnership shall assign the name and the goodwill attached thereto to the General Partner without payment by the assignee(s) of any consideration therefor.

2.3 Principal Office; Registered Office

(a) The Partnership shall have its principal office at such location as the General Partner shall designate from time to time.

(b) The Partnership shall have its registered office at c/o The Corporation Trust Company, 1209 Orange Street, Wilmington, New Castle County, Delaware 19801, unless a different registered office or agent is designated from time to time by the General Partner.

2.4 Term of Partnership

The term of the Partnership commenced on the date on which the Certificate was filed with the office of the Secretary of State of the State of Delaware and will continue until dissolved pursuant to Section 6.1 (unless its term is extended pursuant to Section 6.1). The legal existence of the Partnership as a separate legal entity shall continue until the cancellation of the Certificate.

2.5 Object and Powers of Partnership

(a) The Partnership is formed solely for the object and purpose of indirectly investing in Investments by subscribing for and holding a limited partner interest in, and investing all of its investible assets in, the Master Fund. The Partnership is a directed feeder fund for the Limited Partners with respect to the Master Fund. Notwithstanding any other provision of this Agreement, the Partnership shall perform no other business and shall not make directly any Investments as such Investments will be made by the Master Fund.

(b) Notwithstanding any other provision of this Agreement, the Partnership, and the General Partner on behalf of the Partnership, may execute, deliver and perform any agreement with any Limited Partner or prospective Limited Partner without any further act, vote or approval of any Partner. The General Partner is hereby authorized to enter into the agreements described in the preceding sentence on behalf of the Partnership, but such authorization should not be deemed a restriction on the power of the General Partner to enter into other agreements on behalf of the Partnership. In furtherance of this purpose, the Partnership shall have all powers necessary, suitable or convenient for the accomplishment of the aforesaid purpose, subject to the limitations and restrictions set forth herein alone or with others, as principal or agent.

(c) Each Limited Partner hereby acknowledges that the Partnership is not expected to qualify as an "operating company" for purposes of ERISA, and the assets of the Partnership may therefore constitute Plan Assets of ERISA Partners; and that the Partnership is therefore intended to be structured as a directed feeder fund through which the Limited Partners may participate in an investment in the Master Fund and with respect to which the General Partner is not, except as expressly provided under the terms of this Agreement, intended to have any discretionary authority or control with respect to the investment of the assets of the Partnership. Each Limited Partner (i) shall by making a capital contribution to the Partnership with respect to the Partnership's underlying interests in the Master Fund, be deemed to direct the General Partner to invest the amount of such capital contribution in the Master Fund and (ii) acknowledges that during any period when the underlying interests of the Partnership in the Master Fund are deemed to constitute Plan Assets, the General Partner will act as a custodian with respect to the assets of such Limited Partner, but is not intended to be a fiduciary with respect to the assets of such Limited Partner for purposes of ERISA, the Code or any applicable similar law. No provision of this Agreement shall create any obligation of the general partner of the Master Fund and the general partner of the Master Fund will not have any fiduciary obligations to any person, under ERISA or otherwise, pursuant to this Agreement. Any action or determination of the general partner of the Master Fund referenced herein shall only regard such action or determination made by the general partner of the Master Fund solely in their capacity as the general partner thereof.

2.6 Liability of Partners

In no event shall any Limited Partner (or former Limited Partner) be obligated to make any contribution to the Partnership in addition to its agreed capital contribution (or other payments provided for herein) or have any liability for the repayment or discharge of the debts and obligations of the Partnership except to the extent provided herein or as required by the Act.

2.7 Actions by Partnership

The Partnership may execute, deliver and perform all contracts, agreements and other undertakings and engage in all activities and transactions as may in the opinion of the General Partner be necessary or advisable to carry out its objects as set forth in Section 2.5 above.

2.8 Reliance by Third Parties

Persons dealing with the Partnership are entitled to rely conclusively upon the power and authority of the General Partner as herein set forth.

2.9 UCC Status of Limited Partner Interests

(a) For purposes of the grant, pledge, attachment or perfection of a security interest in an Interest or otherwise, the Interests shall be deemed to be "securities" within the meaning of Section 8-102(a)(15) and as provided by Section 8-103(c) of the Uniform Commercial Code as in effect from time to time in the State of Delaware or analogous provisions in the Uniform Commercial Code in effect in any other jurisdiction.

(b) Any Interest may be evidenced by a certificate of partnership interest issued by the Partnership in such form as the General Partner may approve. Every certificate representing an Interest shall bear a legend substantially in the following form:

"For the purposes of Section 8-103 of the Uniform Commercial Code of the United States of America in effect in any relevant jurisdiction, the certificates representing an interest in the Limited Partnership shall constitute "securities" within the meaning of Section 8-102 and Section 8-103 of the Uniform Commercial Code."

2.10 Series of Interests

The General Partner, at any time, may without notification to or consent of the other Limited Partners, create and offer different Series of Interests in the Partnership with such rights, obligations, liabilities, privileges, designations and preferences (including different investment strategies, underlying investments, degrees of leverage, management fees, performance allocations, brokerage commissions, transparency, withdrawal rights, co-investment opportunities, and other differences) as the General Partner may determine upon the issuance of such Series; provided that such Series would not reasonably be expected to have a material adverse effect on the existing Limited Partners. The terms and rights of such Series may be set forth in the Partnership's offering memorandum, supplement thereto or a "side letter" or other agreement, which the General Partner may incorporate by reference. The General Partner, in its sole discretion, shall choose which Limited Partners may join a Series. Although the Partnership may offer more than one Series of Interests, the Partnership is not a Delaware series limited partnership and the assets and liabilities of the Partnership are not segregated by Series.

Article III
CAPITAL

3.1 Contributions to Capital

(a) The minimum required initial capital contribution of each Limited Partner to the Partnership shall be $1,000,000, or such lesser amount as the General Partner may permit. The General Partner may change the required minimum initial contribution amount at any time.

(b) The Partnership may accept additional contributions at such times as the General Partner may permit, but no Limited Partner shall be obligated to make any additional capital contribution to the Partnership, subject to the provisions of Section 3.5 and any contrary provision of the Act.

(c) The General Partner or an Affiliate has made a capital contribution to the Partnership as set forth in the Schedule of Partners. Except as required by the Act, the General Partner shall not be required to make any additional capital contributions to the Partnership. The General Partner may, however, make capital contributions to the Partnership in such amounts and at such times as it may determine. The General Partner or any of its Affiliates shall have the right at any time to make additional capital contributions as a Limited Partner or General Partner. If the General Partner or any of its Affiliates or Affiliated Investors makes a capital contribution as a Limited Partner, the General Partner will have authority to waive or reduce the Management Fee or the Performance Allocation with respect to such Limited Partner.

(d) The Partnership may enter into placement agent agreements providing compensation to unaffiliated third parties to assist in obtaining subscriptions for Interests, but such placement agent fees will not affect the subscription amount and will not be collected by or from the Partnership. Placement agents may be paid a portion of the Management Fee attributable to the investors solicited by such placement agents thereby reducing the compensation received by the Investment Manager. Placement agents may be indemnified by the Partnership.

(e) Except as otherwise permitted by the General Partner (i) initial or additional capital contributions by each Partner shall be payable in cash and in one installment, and (ii) initial contributions shall be due as of the date of admission of such Person as a Limited Partner of the Partnership.

3.2 Rights of Partners in Capital

(a) No Partner shall be entitled to interest on its capital contributions to the Partnership. For the avoidance of doubt, interest income, if any, earned on

subscription amounts remitted to the Partnership prior to the date an Interest is issued to a Partner will be payable to the Partnership and not applied toward the purchase of an Interest.

(b) No Partner shall have the right to the return of any capital contribution to the Partnership except (i) upon withdrawal of such Partner pursuant to Section 5.5 or (ii) upon the dissolution of the Partnership pursuant to Section 6.1. The entitlement to any such return shall be limited to the value of the Capital Account of the Partner. The General Partner shall not be liable for the return of any such amounts.

3.3 Capital Accounts

(a) The Partnership maintains a separate capital account (each a "***Capital Account***") on the books and records of the Partnership for each Partner. The General Partner may, in its discretion, maintain separate memorandum sub-accounts related to a Capital Account for such purposes as the General Partner may determine appropriate, including for recordkeeping, accounting or reporting or to otherwise give effect to the provisions of this Agreement, and, if so determined by the General Partner, with each memorandum sub-account being maintained as if it were the Capital Account of a separate Partner for all purposes of this Agreement unless the context requires otherwise. References herein to a "Capital Account" shall be deemed to refer to such a capital memorandum sub-account where the context admits. Each Capital Account must reflect the aggregate sum of the balances of memorandum sub-accounts in such Partner's Capital Account.

(b) Each Capital Account shall have an initial balance equal to the amount of any cash and the net value of any property constituting the relevant Partner's initial capital contribution to the Partnership.

(c) Each Capital Account shall be increased by the amount of any cash and the net value of any property constituting additional contributions to such Partner's Capital Account permitted pursuant to Section 3.1.

(d) Each Capital Account shall be reduced by the amount of any cash and the net value of any property withdrawn by or distributed to the relevant Partner pursuant to Sections 5.5 or 6.3, including any amount deducted from any such withdrawal or distribution pursuant to Section 5.5(f).

(e) Each Capital Account (including any corresponding capital sub-accounts) shall be adjusted to reflect allocations and other changes in the value of such Capital Account in the manner specified in the remaining provisions of this Article III.

3.4 Allocation of Net Profit and Net Loss

(a) Subject to the remaining provisions of this Article III, as of the last day of each Fiscal Period, any Net Profit or Net Loss for such Fiscal Period shall be separately allocated among and credited to or debited against the Capital Accounts of the

Partners in proportion to their respective Partnership Percentages for such Fiscal Period.

(b) Notwithstanding Section 3.4(a), items of income, gain, loss, deduction, credit and expenses for a Fiscal Period that are not allocable to specific Investments of the Master Fund, including short term interest income, receipt of any withdrawal charges by the Partnership, and audit, administration and legal expenses, shall be credited to or debited against the Capital Accounts of the Partners *pro rata* in accordance with their Partnership Percentages for such Fiscal Period.

(c) Notwithstanding Section 3.4(a), items of income, gain, loss, deduction, credit and expenses that relate to a Limited Participation Investment shall be allocated exclusively to Partners who, as the General Partner determines, are eligible to participate in such Limited Participation Investment on a *pro rata* basis based on their relative participation in such Investment.

3.5 Allocation of Management Fees, Withholding Taxes and Certain Other Expenditures

(a) The Partnership shall bear its allocable portion of the Management Fees in accordance with the Master Fund Partnership Agreement. The Management Fees borne by the Partnership shall be allocated to the Capital Accounts of the relevant Limited Partners subject to the Management Fee, and such Capital Accounts shall be subject to the corresponding adjustments. The Management Fee shall be charged at the Master Fund level through the use of capital sub-accounts in the Master Fund that correspond to the Capital Accounts in the Partnership.

(b) Notwithstanding anything to the contrary herein, to the extent the General Partner or the Partnership is required by law (including under circumstances where the General Partner or the Partnership is unable to rely conclusively on any withholding certification provided by a Partner) to withhold or to make tax payments, including any interest or penalties, on behalf of or with respect to any Partner or Partners (including, without limitation, any amount attributable to an actual or imputed underpayment of taxes under any BBA provision, backup withholding or FATCA withholding), the General Partner or the Partnership may withhold such amounts and make such tax payments as so required. If the Partnership directly or indirectly pays or incurs any withholding tax or other tax obligation (including any amount under any BBA provision), or otherwise incurs a tax payment with respect to the income allocable or distributable to, or otherwise attributable to, one or more Partners, then the amount of such withholding tax, tax obligation or payment will be treated as a distribution to such Partner or Partners, as applicable, pursuant to the terms of this Agreement. Such amount will be debited against the Capital Account(s) of such Partner or Partners as of the close of the Fiscal Period during which the Partnership so withholds, pays or incurs such obligation. If the amount so withheld, paid or incurred is greater than the balance of the Capital Account(s) of the relevant Partner or Partners, as applicable, then such Partner or Partners and any successors must make a contribution to the capital of the Partnership within 10 business days after notification and demand by the

General Partner in the amount of such excess. The General Partner is not obligated to apply for or obtain a refund, or reduction of or exemption from withholding tax on behalf of any Partner that may be eligible for such refund, reduction or exemption, or otherwise obligated to structure Investments so as to reduce or avoid any such withholding tax. Each Limited Partner agrees to repay to the Partnership and the General Partner and each of the partners and former partners of the General Partner, any liability for taxes, interest or penalties which may be asserted by reason of the failure to deduct and withhold tax on amounts distributable or allocable to such Limited Partner.

(c) Except as otherwise provided for in this Agreement, any expenditures payable by the Partnership, to the extent determined by the General Partner to have been paid or withheld on behalf of, or by reason of particular circumstances applicable to, one or more but fewer than all of the Partners, shall be charged only to the relevant Capital Accounts of those Partners on whose behalf such payments are made or whose particular circumstances gave rise to such payments. Such charges shall be debited from the relevant Capital Accounts of such Partners as of the close of the Fiscal Period during which any such items were accrued by the Partnership.

3.6 Reserves; Adjustments for Certain Future Events

(a) The General Partner may cause appropriate reserves to be created, accrued and charged against Net Assets including Limited Participation Investments and proportionately against the Capital Accounts for contingent liabilities or probable losses, such reserves to be in the amounts which the General Partner deems necessary or appropriate. The General Partner may increase or reduce any such reserve from time to time by such amounts as the General Partner deems necessary or appropriate. The amount of any such reserve, or any increase or decrease therein, may, at the election of the General Partner, be charged or credited, as the General Partner deems appropriate, to the Capital Accounts of those parties that were Partners at the time when such reserve was created, increased, or decreased, as the case may be, or alternatively may be charged or credited to those parties that were Partners at the time of the act or omission giving rise to the contingent liability for which the reserve was established by the General Partner.

(b) If the General Partner determines that it is equitable to treat an amount to be paid or received as being applicable to one or more prior periods, then all or a portion of such amount may be proportionately charged or credited, as appropriate, in proportion to the Capital Account balances of the current Partners as such balances existed during any such prior period.

3.7 Performance Allocation

The Partnership bears its allocable portion of the Performance Allocation in accordance with the Master Fund Partnership Agreement. The Performance Allocation borne by the Partnership shall be specially allocated to the Capital Accounts of the relevant Limited Partners,

and such Capital Accounts shall be subject to the corresponding adjustments. The Performance Allocation shall be debited at the Master Fund level.

3.8 Limited Participation Investments

Whenever the Partnership indirectly makes a Limited Participation Investment through the Master Fund, a Limited Participation Sub-Account shall be established for each Partner participating in such Limited Participation Investment to reflect such Partner's *pro rata* share of all allocations and distributions attributable to transactions involving such Limited Participation Investment (and any related follow-on Investment, unless the General Partner determines to treat such follow-on Investment as a new Limited Participation Investment). Thereafter, all credits and debits relating to such Limited Participation Investment (including those specifically referred to herein) shall be allocated among the Limited Participation Sub-Accounts for such Limited Participation Investment on a *pro rata* basis in accordance with each Partner's interest in such Limited Participation Investment. Expenses that relate to a Limited Participation Investment shall be allocated exclusively among the Limited Participation Sub-Accounts for such Limited Participation Investment on a *pro rata* basis in accordance with each Partner's interest in such Limited Participation Investment.

3.9 Allocation to Avoid Capital Account Deficits

To the extent that any debits pursuant to this Article III would reduce the balance of the Capital Account of any Limited Partner below zero, that portion of any such debits shall instead be allocated to the Capital Account of the General Partner. Any credits in any subsequent Fiscal Period which would otherwise be allocable pursuant to this Article III to a Capital Account of any Limited Partner previously affected by the application of this Section 3.9 shall instead be allocated to the Capital Account of the General Partner in such amounts as are necessary to offset all previous debits attributable to such Limited Partner pursuant to this Section 3.9 not previously recovered.

3.10 Allocations for Income Tax Purposes

Notwithstanding anything to the contrary in this Agreement:

(a) Income Tax Allocations. Except as otherwise required by Code Section 704(c), items of income, gain, deduction, loss, or credit that are recognized for income tax purposes in each Fiscal Year will be allocated among the Partners in such manner as to reflect equitably amounts credited to or debited against each Partner's Capital Account, whether in such Fiscal Year or in prior Fiscal Years. To this end, the Partnership will establish and maintain records which shall show the extent to which the Capital Account of each Partner will, as of the last day of each Fiscal Year, comprise amounts that have not been reflected in the taxable income of such Partner. To the extent deemed by the General Partner to be feasible and equitable, taxable income and gains in each Fiscal Year shall be allocated among the Partners who have enjoyed the related credits to their Capital Accounts, and items of deduction, loss and credit in each Fiscal Year shall be allocated among the Partners who have borne the burden of the related debits to their Capital Accounts. Foreign

tax credits attributable to taxes incurred by the Partnership shall be allocated in a manner consistent with Section 1.704-1(b)(4)(viii) of the Regulations. All matters concerning allocations for U.S. federal, state and/or local income tax purposes, including accounting procedures, not expressly provided for in this Agreement will be determined by the General Partner.

(b) Basis Adjustments. To the extent an adjustment to the adjusted tax basis of any Partnership asset pursuant to Section 734(b) of the Code or Section 743(b) of the Code is required under Section 1.704-1(b)(2)(iv)(m) of the Regulations to be taken into account in determining Capital Accounts, the amount of such adjustment to the Capital Accounts shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases such basis) and such gain or loss shall be specially allocated to the Partners in a manner consistent with the manner in which their Capital Accounts are required to be adjusted pursuant to such section of the Regulations; *provided* that in the event that an adjustment to the book value of Partnership property is made as a result of an adjustment pursuant to Section 734(b) of the Code, items of income, gain, loss, or deduction, as computed for book and tax purposes, will be specially allocated among the Partners so that the effect of any such adjustment shall benefit (or be borne by) the Partner(s) receiving the distribution that caused such adjustment.

(c) Positive Basis Allocations. If the Partnership realizes gains or items of gross income (including short term capital gain) from the sale of Partnership assets for U.S. federal income tax purposes for any Fiscal Year in which one or more Positive Basis Partners withdraws all or a portion of its Interest from the Partnership pursuant to Section 5.5, the General Partner may elect: (i) to allocate such gains or items of gross income among such Positive Basis Partners, *pro rata* in proportion to the respective Positive Basis of each such Positive Basis Partner, until either the full amount of such gains or items of gross income shall have been so allocated or the Positive Basis of each such Positive Basis Partner shall have been eliminated; and (ii) to allocate any gains or items of gross income not so allocated to Positive Basis Partners to the other Partners in such manner as shall reflect equitably the amounts credited to such Partners' Capital Accounts pursuant to Section 3.3; *provided*, *however*, that if, following such Fiscal Year, the Partnership realizes gains or items of gross income from a sale of an Investment the proceeds of which are designated on the Partnership's books and records as being used to effect payment of all or part of the liquidating share of any Positive Basis Partner that continues to be a Partner in the Partnership following such withdrawal (*i.e.,* such Positive Basis Partner effected a partial, and not a complete, withdrawal of its Interest), there shall be allocated to such Positive Basis Partner an amount of such gains or items of gross income equal to the amount, if any, by which its Positive Basis as of the Withdrawal Date exceeds the amount allocated to such Partner pursuant to clause (i) of this sentence.

(d) Negative Basis Allocations. If the Partnership realizes net losses or items of gross loss or deduction (including short term capital loss) from the sale of Partnership assets for U.S. federal income tax purposes for any Fiscal Year in which one or

more Negative Basis Partners withdraws all or a portion of its Interest from the Partnership pursuant to Section 5.5, the General Partner may elect: (i) to allocate such net losses or items of gross loss or deduction among such Negative Basis Partners, *pro rata* in proportion to the respective Negative Basis of each such Negative Basis Partners, until either the full amount of such losses or items of loss or deduction shall have been so allocated or the Negative Basis of each such Negative Basis Partner shall have been eliminated; and (ii) to allocate any net losses or items of gross loss or deduction not so allocated to Negative Basis Partners to the other Partners in such manner as shall reflect equitably the amounts credited to such Partners' Capital Accounts pursuant to Section 3.3; *provided*, *however*, that if, following such Fiscal Year, the Partnership realizes net losses or items of gross loss and deduction from a sale of an Investment the proceeds of which are designated on the Partnership's books and records as being used to effect payment of all or part of the liquidating share of any Negative Basis Partner that continues to be a Partner in the Partnership following such withdrawal (*i.e.*, such Negative Basis Partner effected a partial, and not a complete, withdrawal of its Interest), there shall may be allocated to such Negative Basis Partner an amount of such net losses or items of gross loss or deduction equal to the amount, if any, by which its Negative Basis as of the Withdrawal Date exceeds the amount allocated to such Partner pursuant to clause (i) of this Section 3.10(d).

(e) Qualified Income Offset. In the event any Limited Partner unexpectedly receives any adjustments, allocations, or distributions described in Section 1.704-1(b)(2)(ii)(d)(4), 1.704-1(b)(2)(ii)(d)(5), or 1.704-1(b)(2)(ii)(d)(6) of the Regulations, items of Partnership income and gain will be specially allocated to each such Limited Partner in an amount and manner sufficient to eliminate, to the extent required by the Regulations, the deficit balance in the Capital Account of such Limited Partner as quickly as possible; *provided* that an allocation pursuant to this Section 3.10(e) may be made only if and to the extent that such Limited Partner would have a deficit balance in its Capital Account after all other allocations provided for in this Article III have been tentatively made as if this Section 3.9(e) were not in this Agreement. This Section 3.10(e) is intended to constitute a "qualified income offset" within the meaning of Section 1.704-1(b)(2)(ii) of the Regulations and shall be interpreted consistently therewith.

(f) Minimum Gain Chargeback. Notwithstanding any other provision of this Section 3.10, if there is a net decrease in Partnership Minimum Gain during any Fiscal Year, the Partners will be specially allocated items of Partnership income and gain for such Fiscal Year (and, if necessary, subsequent Fiscal Years) in an amount equal to the portion of any such Partner's share of the net decrease in Partnership Minimum Gain, determined in accordance with Regulations Sections 1.704-2(f) and (g). This Section 3.10(f) is intended to comply with the minimum gain chargeback requirement in such sections of the Regulations and must be interpreted consistently therewith.

(g) Gross Income Allocation. In the event any Limited Partner has a deficit Capital Account at the end of any Fiscal Year that is in excess of the sum of (i) the amount

such Limited Partner is obligated to restore pursuant to any provision of this Agreement and (ii) the amount such Limited Partner is deemed to be obligated to restore pursuant to the penultimate sentences of Sections 1.704-2(g)(1) and 1.704-2(i)(5) of the Regulations, each such Limited Partner will be specially allocated items of Partnership gross income and gain in the amount of such excess as quickly as possible; *provided* that an allocation pursuant to this Section 3.10(g) may be made only if and to the extent that such Limited Partner would have a deficit Capital Account in excess of such sum after all other allocations provided for in this Article III have been made as if Section 3.10(e) and this Section 3.10(g) were not in this Agreement.

(h) Section 704(b) Compliance. The allocations provided in this Section 3.10 are intended to comply with the Regulations under Section 704(b) of the Code and may, as determined by the General Partner, be interpreted and applied in a manner consistent therewith.

3.11 Curative Allocations

The allocations set forth in Sections 3.10(b), (e), (f) and (g) (the "***Regulatory Allocations***") are intended to comply with certain requirements of the Regulations. It is the intent of the Partners that, to the extent possible, all Regulatory Allocations shall be offset either with other Regulatory Allocations or with special allocations of other items of Partnership income, gain, loss, or deduction pursuant to this Section 3.11. Therefore, notwithstanding any other provision of this Article III (other than the Regulatory Allocations), the General Partner shall make such offsetting special allocations of the Partnership income, gain, loss, or deduction in whatever manner it determines appropriate so that, after such offsetting allocations are made, each Partner's Capital Account balance is, to the extent possible, equal to the Capital Account balance such Partner would have had if the Regulatory Allocations were not part of this Agreement and all Partnership items were allocated pursuant to other provisions of this Article III (other than the Regulatory Allocations).

3.12 Individual Partners' Tax Treatment

Each Partner agrees not to treat, on any U.S. federal, state, local and/or non-U.S. income tax return or in any claim for a refund, any item of income, gain, loss, deduction or credit in a manner inconsistent with the treatment of such item by the Partnership.

3.13 Distributions

(a) The amount and timing of any distributions from the Partnership shall be determined by the General Partner. Distributions will generally be made in proportion to the Capital Account balances of the Partners at the beginning of the Fiscal Period when made; *provided* that distributions related to Limited Participation Investments will be made based on the proportionate interests of the Capital Accounts participating in such Investments. Any distributions may be paid in cash, in kind or partly in cash and partly in kind.

(b) Notwithstanding any provision to the contrary contained in this Agreement, the Partnership, and the General Partner on behalf of the Partnership, may not make a distribution to any Partner on any account of its Interest if such distribution would violate Section 17-607 of the Act or other applicable law.

Article IV
MANAGEMENT

4.1 Duties and Powers of the General Partner

(a) Subject to the terms and conditions of this Agreement, the General Partner shall have complete and exclusive power and responsibility, to the fullest extent permitted by the Act, for managing and administering the affairs of the Partnership (other than any investment or trading activities, which are entered into at the Master Fund level and managed by the Investment Manager), and shall have the power and authority to do all things that the General Partner considers necessary or desirable to carry out its duties hereunder and to achieve the purposes of the Partnership.

(b) The General Partner shall have the right, without the notification to or consent of any Limited Partner or other Person, to make adjustments to the structure of the Partnership in order to address applicable structural, ownership, legal, or regulatory issues, or to improve overall tax efficiency; *provided* that no such adjustment would cause any material adverse consequences to the Limited Partners.

(c) Without limiting the generality of the General Partner's duties and powers hereunder and notwithstanding anything to the contrary contained herein, the General Partner shall have full power and authority, subject to the other terms and provisions of this Agreement, to execute, deliver and perform such contracts, agreements and other undertakings on behalf of the Partnership, without the consent or approval of any other Person, and to engage in all activities and transactions, as it may deem necessary or advisable for, or as may be incidental to, the conduct of the business contemplated by this Section 4.1, including, without in any manner limiting the generality of the foregoing, (i) contracts, agreements, undertakings and transactions with any Partner or with any other Person, firm or corporation having any business, financial or other relationship with any Partner or Partners, (ii) agreements with each Limited Partner in connection with its purchase of an Interest, including a subscription agreement wherein such Limited Partner agrees to be bound by the terms of this Agreement, (iii) any agreements to induce any Person to purchase an Interest and (iv) the Investment Management Agreement delegating to the Investment Manager certain of the powers and authority vested by this Agreement in the General Partner as the General Partner and the Investment Manager may agree from time to time, each without any further act, approval or vote of any Person.

(d) The General Partner may terminate or replace the Investment Manager in accordance with the terms of the Investment Management Agreement. The General Partner may delegate to any other Person any power and authority vested in the General Partner pursuant to this Agreement that is not otherwise delegated to the Investment Manager.

(e) Every power vested in the General Partner pursuant to this Agreement shall be construed as a power to act (or not to act) in its sole and absolute discretion, except as otherwise expressly provided herein. No provision of this Agreement shall be construed to require the General Partner to violate the Act or any other law, regulation or rule of any self-regulatory organization.

(f) Notwithstanding any other provision of this Agreement or otherwise applicable provision of law or equity, whenever in this Agreement, the General Partner is permitted or required to make a decision (i) in its "sole discretion" or "discretion" or under a grant of similar authority or latitude, the General Partner shall be entitled to consider only such interests and factors as it desires, including its own interests, and shall, to the fullest extent permitted by applicable law, have no duty or obligation to give any consideration to any interest of or factors affecting the Partnership or the Limited Partners, or (ii) in its "good faith" or under another expressed standard, the General Partner shall act under such express standard and shall not be subject to any other or different standards. Unless otherwise expressly stated, for purposes of this Section 4.1(g), the General Partner shall be deemed to be permitted or required to make all decisions hereunder in its sole discretion.

(g) If requested by the General Partner, each Limited Partner shall deliver to the General Partner: (i) an affidavit in form satisfactory to the General Partner that the applicable Limited Partner (and its partners, shareholders, members, and/or beneficial owners, and/or controlling persons, as the case may be) is not subject to withholding under the provisions of any United States federal, state, local or non-U.S. laws; (ii) any certificate that the General Partner may reasonably request with respect to any such laws; (iii) any other form or instrument reasonably requested by the General Partner relating to such Limited Partner's status under such laws; and/or (iv) any information or documentation prescribed under FATCA or as may be necessary for the Partnership to comply with its obligations, or to avoid withholding, under FATCA or any other automatic exchange of information agreement or arrangement, including, without limitation, the Organisation for Economic Cooperation and Development's Common Reporting Standard. In the event that a Limited Partner fails or is unable to deliver to the General Partner an affidavit described in Section 4.1(g), the General Partner may withhold amounts from such Partner in accordance with Section 3.5(b).

4.2 Expenses

(a) Subject to Section 4.2(f), each of the General Partner and the Investment Manager pays all of its own operating and overhead costs without reimbursement by the Partnership (except liability insurance and items described in Section

4.2(b)(iv)). The Partnership will not have its own separate employees or officers, and it will not reimburse the General Partner or the Investment Manager for salaries, office rent and other general overhead expenses of the General Partner or the Investment Manager.

(b) The Partnership, and not the General Partner or the Investment Manager, will pay, or reimburse the General Partner and the Investment Manager for, all other costs, fees and expenses arising in connection with the Partnership's operations, including, without duplication, its *pro rata* share of the Master Fund's expenses. Such expenses payable by the Partnership include the following:

(i) the Partnership's *pro rata* share of all investment-related expenses (including those related to identifying and evaluating contemplated investments, whether or not such contemplated investments are actually made), including, but not limited to, brokerage commissions and other transaction costs, expenses related to short sales, clearing and settlement charges, expenses related to proxies, underwriting and private placements, custodial fees, transfer agent fees, bank service fees, any governmental, regulatory, licensing, filing or registration fees incurred in compliance with the rules of any self-regulatory organization or any federal, state or local laws, consulting and any other professional fees or compensation (including investment banking expenses) relating to particular investments or contemplated investments, appraisal fees and expenses, investment-related travel and lodging expenses and research-related expenses (including, without limitation, news and quotation equipment and services), fees to third-party providers of risk-monitoring services, investment and trading-related computer hardware and software, including, without limitation, trade order management software (i.e., software used to route trade orders);

(ii) accounting (including accounting software), audit and tax preparation expenses;

(iii) costs and expenses associated with reporting and providing information to existing and prospective investors;

(iv) any legal fees and costs (including indemnification expenses, regulatory costs and settlement costs) arising in connection with any litigation or regulatory investigation instituted against the Partnership, the General Partner, the Investment Manager or any of their respective affiliates in their capacity as such, subject to Section 4.5;

(v) except as otherwise provided in Section 3.5, any withholding, transfer or other taxes imposed or assessed upon, or payable by, the Partnership (including interest and penalties);

(vi) costs of any meeting of the Partners (or of obtaining the consent of the Partners in lieu of meeting);

(vii) expenses related to the Advisory Committee and the Pricing Committee;

(viii) premiums for directors' and officers' liability insurance (if any) and any other insurance benefiting the Partnership;

(ix) Management Fees;

(x) administrative expenses (including, without limitation, the fees and expenses of the Administrator in relation to its services provided pursuant to the administration agreement);

(xi) fees relating to valuing the Partnership's assets;

(xii) expenses related to the maintenance of the Partnership's registered office;

(xiii) corporate licensing expenses;

(xiv) extraordinary expenses; and

(xv) any costs or expenses of winding up and liquidating the Partnership.

(xvi) a *pro rata* portion of similar costs and expenses with respect to the Master Fund.

(c) Expenses generally will be borne *pro rata* by the Partners in accordance with their respective Capital Account balances; *provided* that expenses may be specially allocated among the Partners as follows:

(i) with respect to expenses related to Investments (other than Limited Participation Investments), *pro rata* in accordance with their respective Capital Account balances exclusive of the value of any Limited Participation Sub-Account; and

(ii) as provided elsewhere in this Agreement, including Sections 3.4, 3.5, 3.6, 3.8 and 5.5.

(d) Each of the General Partner and the Investment Manager, as appropriate, shall be entitled to reimbursement from the Partnership for any of the expenses paid by it on behalf of the Partnership pursuant to Section 4.2(b); *provided* that the General Partner may absorb any or all of such expenses incurred on behalf of the Partnership. The Investment Manager may retain, in connection with its responsibilities hereunder, the services of others to assist in the investment advice to be given to the Partnership, including, but not limited to, any affiliate of the Investment Manager, but payment for any such services shall be assumed by the Investment Manager and the Partnership shall not have any liability therefor;

provided, however, that the Investment Manager, in its sole discretion, may retain the services of independent third party professionals, including, without limitation, attorneys, accountants and consultants, to advise and assist it in connection with the performance of its activities on behalf of the Partnership hereunder, and the Partnership shall bear full responsibility therefor and the expense of any fees and disbursements arising therefrom.

(e) If the General Partner or the Investment Manager, as appropriate, shall incur any of the expenses referred to in Section 4.2(b) for the account or for the benefit of, or in connection with its activities or those of its Affiliates on behalf of, both the Partnership and any Other Account, the General Partner or the Investment Manager, as appropriate, will allocate such expense among the Partnership and each such Other Account in proportion to the size of the Investment made by each in the activity or entity to which the expense relates, or in such other manner as the General Partner considers fair and reasonable.

(f) Each of the General Partner and the Investment Manager is entitled to use "soft dollars" generated by the Master Fund to pay for certain investment research and brokerage services that provide lawful and appropriate assistance to the General Partner or the Investment Manager in the performance of investment decision-making responsibilities to the extent such use falls within the safe harbor afforded by Section 28(e) of the Securities Exchange Act of 1934, as amended, or is otherwise reasonably related to the investment decision-making process, or to cover certain Partnership expenses described in Section 4.2(b). Use of "soft dollars" by the General Partner or the Investment Manager as described herein shall not constitute a breach by the either the General Partner or the Investment Manager of any fiduciary or other duty which the General Partner or the Investment Manager may be deemed to owe to the Partnership or its Partners.

4.3 Rights of Limited Partners

The Limited Partners shall take no part in the management, control or operation of the Partnership's business, and shall have no right or authority to act for the Partnership or to vote on matters other than the matters set forth in this Agreement or as required by applicable law. Except as otherwise provided herein or required by law, a Limited Partner shall have no liability for the debts or obligations of the Partnership.

4.4 Other Activities of Partners

(a) The General Partner shall not be required to devote any specific amount of its time to the affairs of the Partnership, but shall devote such of its time to the business and affairs of the Partnership as it shall determine in good faith to be necessary to conduct the affairs of the Partnership for the benefit of the Partnership and the Partners.

(b) Each Partner agrees that any other Partner, and any partner, director, officer, shareholder, member, Affiliate or employee of any other Partner, may engage in or

possess an interest in other business ventures or commercial dealings of every kind and description, independently or with others, including, but not limited to, management of other accounts, investment in, or financing, acquisition and disposition of, securities, investment and management counseling, brokerage services, serving as directors, officers, advisers or agents of other companies, partners of any partnership, or trustee of any trust, or entering into any other commercial arrangements, and will not be disqualified solely on the basis that any such activities may conflict with any interest of the parties with respect to the Partnership. Without in any way limiting the foregoing, each Partner hereby acknowledges that (i) none of the Partners or their respective partners, directors, officers, shareholders, members, Affiliates or employees shall have any obligation or responsibility to disclose or refer any of the investment or other opportunities obtained through activities contemplated by this Section 4.4(b) to the General Partner or the Limited Partners, but may refer the same to any other party or keep such opportunities for their own benefit; and (ii) the Partners and their respective partners, directors, officers, shareholders, members, Affiliates and employees are hereby authorized to engage in activities contemplated by this Section 4.4(b) with, or to purchase, sell or otherwise deal or invest in Investments issued by, companies in which the General Partner might from time to time invest or be able to invest or otherwise have any interest on behalf of the Partnership, without the consent or approval of the Partnership or any other Partner. The Partners expressly agree that no other Partner shall have any rights in or to such other activities, or any profits derived therefrom.

(c) The General Partner and its Affiliates shall allocate investment opportunities to the Partnership and any Other Account fairly and equitably over time. Notwithstanding the foregoing, the General Partner is under no obligation to accord exclusivity or priority to the Partnership in the event of limited investment opportunities. This means that such opportunities will be allocated among those accounts for which participation in the respective opportunity is considered appropriate, taking into account, among other considerations: (i) whether the risk-return profile of the proposed Investment is consistent with the account's objectives and program, whether such objectives are considered in light of the specific Investment under consideration or in the context of the portfolio's overall holdings; (ii) the potential for the proposed Investment to create an imbalance in the account's portfolio (taking into account expected inflows and outflows of capital); (iii) liquidity requirements of the account; (iv) potentially adverse tax consequences; (v) regulatory and other restrictions that would or could limit an account's ability to participate in a proposed Investment; and (vi) the need to re-size risk in the account's portfolio. The General Partner has the authority to allocate trades to multiple accounts on an average price basis or on another basis it deems fair and equitable. Similarly, if an order on behalf of any accounts cannot be fully allocated under prevailing market conditions, the General Partner may allocate the trades among different accounts on a basis it considers fair and equitable over time.

(d) The Principals of the General Partner, as well as the employees and officers thereof and of organizations affiliated with the General Partner, may buy and sell securities

for their own account or the account of others, but may not buy securities from or sell securities to the Partnership (such prohibition does not extend to the purchase or sale of Interests) unless appropriate approval of the Advisory Committee is obtained and such purchase or sale is in compliance with the applicable provisions of the Advisers Act or such purchase or sale is otherwise in compliance with the applicable provisions of the Advisers Act.

(e) Each Partner hereto hereby waives, and covenants not to bring a cause of action in law or equity on the basis of, any law (statutory, common law or otherwise) respecting the rights and obligations of the Partners which is or may be inconsistent with this Section 4.4.

(f) The General Partner and its Affiliates reserve the right to establish collective investment vehicles that have stated investment programs or terms that differ from those of the Partnership or that are targeted primarily to investors for which the Partnership is not designed to be a suitable investment vehicle. The General Partner and its Affiliates also reserve the right to establish and provide management or advisory services pursuant to separate Other Accounts for significant investors, whether or not such accounts have the same investment program as the Partnership.

4.5 Duty of Care; Indemnification

(a) None of the Indemnified Persons will be liable to the Partnership or any Limited Partner or any other person for mistakes of judgment or for action or inaction that did not constitute gross negligence, willful misconduct or bad faith, or for losses due to such mistakes, action or inaction or to the negligence, dishonesty or bad faith of any broker or agent of the Partnership, provided that such broker or agent was selected, engaged or retained by the Indemnified Person in accordance with the standard of care set forth above. No Indemnified Person shall be liable to the Partnership or any Limited Partner or any other person for any amount in excess of the amount of Management Fees received by the Investment Manager, to the extent permitted under applicable law. In addition, in no event shall any Indemnified Person be liable for any special, indirect, exemplary, consequential or punitive losses or damages. An Indemnified Person may consult with counsel and accountants in respect of the Partnership's affairs and will be fully protected and justified in any action or inaction which is taken in accordance with the advice or opinion of such counsel or accountants, provided that they were selected in accordance with the standard of care set forth above. The foregoing provisions, however, shall not be construed so as to provide for the exculpation of an Indemnified Person of any liability (including liability under U.S. Federal securities laws which, under certain circumstances, impose liability even on persons acting in good faith), to the extent (but only to the extent) that such liability may not be waived, modified or limited under applicable law (including liability under U.S. Federal securities laws which, under certain circumstances, impose liability even on persons acting in good faith), but shall be construed so as to effectuate the abovementioned provisions to the fullest extent permitted by law.

(b) The Partnership shall, to the fullest extent permitted by law, indemnify and hold harmless each Indemnified Person from and against any and all loss, cost or expense suffered or sustained by an Indemnified Person by reason of the fact that it, he or she is or was an Indemnified Person, including, without limitation, any judgment, settlement, reasonable attorneys' fees and other costs or expenses incurred in connection with the defense of any actual or threatened action, suit or proceeding, provided that such liability, damage loss, cost or expense resulted from a mistake of judgment on the part of an Indemnified Person or from action or inaction that did not constitute gross negligence, willful misconduct or bad faith, or from the negligence, dishonesty or bad faith of a broker or other agent of an Indemnified Person, provided that such broker or agent was selected, engaged or retained by the Indemnified Person in accordance with the standard of care set forth above. The Partnership will, in the sole discretion of the General Partner, advance to any Indemnified Person reasonable attorneys' fees and other costs and expenses incurred in connection with the defense of any action, suit or proceeding which arises out of such conduct. In the event that such an advance is made by the Partnership, the Indemnified Person will agree to reimburse the Partnership to the extent that it is finally determined that it was not entitled to indemnification in respect thereof.

(c) Notwithstanding any of the foregoing, the provisions of this Section 4.5 do not provide for the indemnification of any Indemnified Person for any liability (including liability under Federal securities laws which, under certain circumstances, impose liability even on persons that act in good faith), to the extent (but only to the extent) that such liability may not be waived, modified or limited under applicable law, but shall be construed so as to effectuate the above provisions to the fullest extent permitted by law.

(d) Pursuant to the foregoing indemnification and exculpation provisions applicable to each Indemnified Person, the Partnership (and not the applicable Indemnified Person) will be responsible for any losses resulting from trading errors and similar human errors, absent gross negligence, bad faith or willful misconduct of any Indemnified Person.

(e) The above-mentioned Indemnified Persons are also indemnified by each Limited Partner for any amounts of tax withheld or required to be withheld with respect to that Limited Partner, and also for any amounts of interest, additions to tax, penalties and other costs borne by any such persons in connection therewith to the extent that the balance of the Limited Partner's Capital Account is insufficient to fully compensate the General Partner the Investment Manager for such costs.

4.6 Advisory Committee

(a) The General Partner and/or the Investment Manager may appoint a committee (the "***Advisory Committee***") composed of one or more individuals selected by the General Partner and/or the Investment Manager from time to time, none of whom is affiliated with the General Partner or the Investment Manager.

(b) The General Partner and/or the Investment Manager may in its/their discretion seek the approval of the Advisory Committee or establish any other reasonable mechanism in connection with (i) approvals that are or would be required under the Investment Advisers Act of 1940, as amended (including Section 206(3)), or (ii) any other matter deemed appropriate by the General Partner and/or the Investment Manager. Each Limited Partner agrees that, except as otherwise specifically provided herein and to the extent permitted by applicable law, the approval of a majority of the members of the Advisory Committee at such time is binding upon the Partnership and each Partner with respect to any approval sought under this Section 4.6(b).

(c) Subject to the foregoing, any recommendations of or actions taken by the Advisory Committee are advisory only and the General Partner and the Investment Manager are not required or otherwise bound to act in accordance with any such recommendations or actions.

(d) As determined by the General Partner and/or the Investment Manager, meetings of the Advisory Committee may be held in person or by telephone. Approval of the Advisory Committee is deemed to have been given if given by a majority of those members present at a meeting or by a majority of all members of the Advisory Committee if given pursuant to a written consent without a meeting.

(e) The Partnership agrees to reimburse members of the Advisory Committee for their reasonable out-of-pocket expenses and to indemnify them to the maximum extent permitted by law.

4.7 Pricing Committee

The General Partner and/or the Investment Manager shall appoint a committee (a "***Pricing Committee***") whose quorum consists of at least a majority of the following individuals: the Chief Financial Officer of the Investment Manager, the Chief Compliance Officer of the Investment Manager and one or more traders of the Investment Manager. The Pricing Committee meets on at least a monthly basis to review, confirm and agree on all pricing information established by the Investment Manager in respect of the Partnership's assets that are fair valued. The final pricing or valuation of such Partnership assets shall require the approval of a majority in number of the members of the Pricing Committee constituting a quorum as of a relevant valuation date. In lieu of meeting, the Pricing Committee may take action by written consent signed by a majority of the committee members. The Pricing Committee may, at the Partnership's expense, engage third-party experts and consultants to provide services in connection with any determination to be made by the Pricing Committee. The General Partner and/or the Investment Manager may replace members of the Pricing Committee or change the composition of the Pricing Committee, in their sole discretion.

Article V
ADMISSIONS, TRANSFERS AND WITHDRAWALS

5.1 Admission of Limited Partners

The General Partner may, on the first Business Day of each calendar month, or at such other times as the General Partner may determine, without advance notice to or consent from the Limited Partners, admit to the Partnership any Person who shall execute this Agreement or any other writing evidencing the intent of such Person to become a Limited Partner. Such admission shall be effective when the General Partner enters the name of such Person on the Schedule of Partners and does not require the consent or approval of any other Partner. The General Partner shall have the authority to reject subscriptions for Limited Partner Interests in whole or in part.

5.2 Admission of Additional General Partners

(a) Except as provided in Section 5.2(b), the General Partner may admit one or more Persons as additional general partners to the Partnership. No additional general partner shall be added unless such additional general partner agrees to be bound by all of the terms of this Agreement or if adding such additional general partner would have any of the effects described in clauses (i) through (iv) of Section 5.3(c) (except as specifically set forth therein).

(b) Any Person to whom the General Partner has transferred its general partner interest in accordance with Section 5.4 will be admitted to the Partnership as a substitute General Partner without the consent of the Limited Partners.

5.3 Transfer of Interests of Limited Partners

(a) Each Limited Partner agrees with all other Partners that it shall not make or attempt to make any Transfer of its Interest which will violate this Section 5.3. In the event of any attempted Transfer of any Limited Partner's Interest in violation of the provisions of this Section 5.3, without limiting any other rights of the Partnership, the General Partner shall have the right to require the withdrawal of such Limited Partner's Interest from the Partnership as provided by Section 5.5(j).

(b) No Transfer of any Limited Partner's Interest, whether voluntary or involuntary, shall be valid or effective, and no transferee shall become a substituted Limited Partner, unless the prior written consent of the General Partner has been obtained, which consent may be granted, withheld or conditioned for any reason by the General Partner. In the event of any Transfer, all of the conditions of the remainder of this Section 5.3 must also be satisfied.

(c) Without limiting the General Partner's discretion pursuant to the preceding paragraph, the General Partner expects to withhold consent to any Transfer of any

Limited Partner's Interest, whether voluntary or involuntary, if the General Partner has reason to believe that such Transfer may:

(i) require registration of any Interest under any securities laws of the United States of America, any state thereof or any other jurisdiction;

(ii) subject the Partnership or the General Partner to a requirement to register, or to additional disclosure or other requirements, under any securities or commodities laws of the United States of America, any state thereof or any other jurisdiction;

(iii) cause the Partnership to be treated as a "publicly traded partnership" for U.S. federal income tax purposes under Section 7704(b) of the Code or cause the Partnership not to qualify for one of the safe harbors under Section 1.7704 1(e), (f), (g), (h) or (j) of the Regulations;

(iv) result in the Partnership being considered an investment company within the meaning of the Investment Company Act;

(v) result in violation of any anti-money laundering rules or regulations applicable to the Partnership, the Investment Manager or the General Partner;

(vi) violate or be inconsistent with any representation or warranty made by the transferring Limited Partner at the time the Limited Partner subscribed to purchase an Interest; or

(vii) cause all or any portion of the assets of the Master Fund to constitute Plan Assets of any ERISA Partner for purposes of ERISA or to be subject to the provisions of ERISA to substantially the same extent as if owned directly by an ERISA Partner.

The transferring Limited Partner, or its legal representative, must give the General Partner written notice before making any voluntary Transfer and after any involuntary Transfer and must provide sufficient information to allow legal counsel acting for the Partnership to make the determination that the proposed Transfer would not result in any of the consequences referred to in clauses (i) through (vi) above. If an assignment, Transfer or disposition occurs by reason of the death of a Limited Partner or assignee, the notice may be given by the duly authorized representative of the estate of the Limited Partner or assignee. The notice must be supported by proof of legal authority and valid assignment acceptable to the General Partner.

(d) In the event any Transfer permitted by this Section 5.3 shall result in multiple ownership of any Limited Partner's Interest, the General Partner may require one or more trustees or nominees to be designated to represent a portion of or the entire Interest transferred for the purpose of receiving all notices which may be given and all payments which may be made under this Agreement, and for the purpose of

exercising the rights which the transferor as a Limited Partner had pursuant to the provisions of this Agreement.

(e) Subsequent to receipt of the consent of the General Partner (which consent may be withheld by the General Partner), an authorized transferee shall be entitled to the allocations and distributions attributable to the Interest transferred to such transferee and to transfer such Interest in accordance with the terms of this Agreement; *provided*, *however*, that such transferee shall not be entitled to the other rights of a Limited Partner as a result of such Transfer until it becomes a substituted Limited Partner. No transferee may become a substituted Limited Partner without the consent of the General Partner (which consent may be withheld for any reason or no reason by the General Partner). If the General Partner withholds consent to such substitution, a transferee will not have any of the rights of a Limited Partner, except that the transferee will be entitled, unless prohibited by law, to receive that share of capital or profits and to have the right of withdrawal to which its transferor would have been entitled and will be subject to the other terms of this Agreement. A transferring Limited Partner will remain liable to the Partnership as provided under applicable law and this Agreement regardless of whether its transferee becomes a substituted Limited Partner. Notwithstanding the above, the Partnership and the General Partner shall incur no liability for allocations and distributions made in good faith to the transferring Limited Partner until a written instrument of transfer has been received by the Partnership and recorded on its books and the effective date of the Transfer has passed.

(f) Any other provision of this Agreement to the contrary notwithstanding, a transferee shall be bound by the provisions hereof. Prior to recognizing any Transfer in accordance with this Section 5.3, the General Partner may require the transferring Limited Partner to execute and acknowledge an instrument of Transfer in form and substance satisfactory to the General Partner, and may require the transferee to make certain representations and warranties to the Partnership and Partners and to accept, adopt and approve in writing all of the terms and provisions of this Agreement. A transferee shall become a substituted Limited Partner and shall succeed to the portion of the transferor's Capital Account relating to the Interest transferred effective upon the satisfaction of all of the conditions for such Transfer contained in this Section 5.3.

(g) In the event of a Transfer or in the event of a distribution of assets of the Partnership to any Partner, the Partnership may, but shall not be required to, file an election under Section 754 of the Code and in accordance with the applicable Regulations, to cause the basis of the Partnership's assets to be adjusted for U.S. federal income tax purposes as provided by Section 734 or 743 of the Code and shall make any mandatory adjustments to the basis of the Partnership's assets as required by Section 734 or 743 of the Code. If the Partnership does not file an election under Section 754 in connection with a Transfer and if the transferring Limited Partner is a Negative Basis Partner, the General Partner may elect to allocate to the transferring Limited Partner pursuant to Section 3.10(d) net losses or items of loss and deduction realized by the Partnership for the Fiscal Year in which the Transfer

occurs as if the transferring Limited Partner were withdrawing from the Partnership pursuant to Section 5.5.

(h) In the event of a Transfer at any time other than the end of a Fiscal Year, items of income, gain, loss, deduction or credit recognized by the Partnership for U.S. federal income tax purposes will be allocated between the transferring parties, as determined by the General Partner, using any permissible method under Code Section 706(d) and the Regulations thereunder. The transferring parties agree to reimburse the General Partner and the Partnership for any incidental accounting fees and other expenses incurred by the General Partner and the Partnership in making allocations pursuant to this Section 5.3(h).

5.4 Transfer of Interest of the General Partner

The General Partner may not Transfer its Interest as a General Partner in the Partnership other than (a) to one or more of its direct or indirect beneficial owners or their Affiliates, (b) pursuant to a transaction not deemed to involve an assignment of its investment management obligations within the meaning of the Investment Advisers Act of 1940, as amended, or (c) with the approval of a Majority of Limited Partners. By executing this Agreement, each Limited Partner shall be deemed to have consented to any such Transfer made in accordance with this Section 5.4.

5.5 Withdrawal of Interests of Partners

(a) Except as provided in this Section 5.5, a Limited Partner may voluntarily withdraw all or part of its Capital Account effective as of the last Business Day of each calendar quarter and/or such other days as the General Partner may determine in its sole discretion (such date, a "***Withdrawal Date***") upon not less than 45 calendar days' prior written notice ("***Withdrawal Notice***") to the General Partner. Any notice of withdrawal shall be irrevocable by the Limited Partner, unless otherwise agreed by the General Partner. The General Partner may waive the notice requirements of this Section 5.5(a). Notwithstanding anything herein to the contrary, the General Partner may agree with certain Limited Partners to provide for different withdrawal terms and notice periods.

(b) For the purposes of this Section 5.5 (and as described in Section 3.3(a)), each capital contribution shall be accounted for using a separate sub-account, and, in the case of a Limited Partner for which more than one sub-account is maintained, the withdrawals of the balance of any such sub-accounts shall be processed on a "first-in, first-out" basis based upon the date on which each capital contribution was made, unless otherwise agreed between the General Partner and such Limited Partner. Each sub-account related to a contribution of capital from a Limited Partner will be treated as if it were the separate Capital Account of a separate Partner for the purposes of applying the withdrawal provisions of this Section 5.5.

(c) Any Withdrawal Notice shall be irrevocable by the Limited Partner, unless otherwise agreed by the General Partner. For the avoidance of doubt, if a Limited

Partner notifies the General Partner of its intent to withdraw and later chooses not to withdraw (with the General Partner's consent), any transaction costs incurred by the Partnership or the General Partner in connection therewith may, in the discretion of the General Partner, be charged to such withdrawing Limited Partner. The General Partner may refuse to honor any Limited Partner's request for a full or partial withdrawal if such request is not accompanied by such additional information as the General Partner may reasonably require.

(d) If, for any Withdrawal Date, (i) Limited Partners submit withdrawal notices that, when combined, are in excess of 25% of the Partnership's net asset value, or (ii) withdrawal requests are received by the Master Fund from any or all feeder vehicles in the Master Fund in excess of 25% of the Master Fund's net asset value, then the General Partner may determine, in its sole discretion, to reduce all such requests proportionately (based on the net asset value of each Limited Partner's Interest) so that the aggregate amount of such withdrawals does not exceed 25% of the Partnership's net asset value or such greater amount if the General Partner so determines (such restriction is referred to herein as the "***Withdrawal Gate***"). If withdrawals are subject to the Withdrawal Gate, withdrawal requests are carried over to the next Withdrawal Date (and, if not fully satisfied as of that date because of the Withdrawal Gate, then as of the next, and, if necessary, successive Withdrawal Dates), except to the extent Limited Partners rescind their withdrawal request(s). Any remaining amount of a withdrawal request that is not satisfied due to the Withdrawal Gate (i) remains at risk as per other amounts invested in the Partnership and subject to the applicable Management Fee, if any, until such amount is finally and fully withdrawn, (ii) is considered requested as of the next Withdrawal Date without further action by the withdrawing Limited Partner, (iii) is not entitled to priority over withdrawal requests on any subsequent Withdrawal Date, and (iv) remains subject to further application of the Withdrawal Gate on subsequent Withdrawal Dates. Notwithstanding anything herein to the contrary, the General Partner may waive the application of the Withdrawal Gate with respect to certain Limited Partners.

(e) Except as otherwise provided herein, payment of the estimated amount due will generally be made within 30 Business Days of the Withdrawal Date, *provided* that (i) the General Partner may delay such payment if such delay is reasonably necessary to prevent such withdrawal from having a material adverse impact on the Partnership or the remaining Partners and (ii) in the event that a distribution from a Capital Account to a withdrawing Limited Partner during a Fiscal Year would reduce the balance of the Capital Account below 10% of the Capital Account's balance as of the beginning of such Fiscal Year, excess requested amounts will be held back and distributed, without interest thereon, within 30 Business Days following completion of the audit of the Partnership's financial statements for such Fiscal Year. Amounts withdrawn by a Limited Partner will not earn interest for the period from the effective Withdrawal Date through the settlement date.

(f) The General Partner may deduct from any withdrawal proceeds due to any Limited Partner pursuant to this Section 5.5 an amount representing the Partnership's actual

or estimated expenses, as determined by the General Partner in good faith, associated with processing the withdrawal. Any such withdrawal deduction will be retained by the Partnership for the benefit of the remaining Partners.

(g) Upon receipt by the Partnership of a Limited Partner's Withdrawal Notice, the General Partner will have the discretion to manage the Partnership's assets in a manner that would provide for cash being available to satisfy such Limited Partner's withdrawal request, but the General Partner shall be under no obligation to effect sales of Partnership assets if the General Partner determines that such transactions might be detrimental to the interest of the other Partners or that such transactions are not reasonably practicable. The General Partner may effect withdrawal payments (i) in cash, (ii) in kind, by transfer of marketable or non-marketable Investments received from the Master Fund to the Limited Partner, the value of which, as determined in accordance with Section 7.3, would satisfy the Limited Partner's request for withdrawal, or (iii) in any combination of the foregoing.

(h) The General Partner may postpone or suspend (a) the calculation of the net asset value of the Partnership (and the applicable valuation date); (b) the issuance of Interests, (c) the withdrawal by Limited Partners (and the applicable Withdrawal Date); and/or (d) the payment of withdrawal proceeds (even if the calculation dates and Withdrawal Dates are not postponed) if it determines that such a suspension is warranted by extraordinary circumstances, including: (i) during any period when any stock exchange or over-the-counter market on which the Master Fund's Investments are quoted, traded or dealt in is closed, other than for ordinary holidays and weekends, or during periods in which dealings are restricted or suspended; (ii) during the existence of any state of affairs as a result of which, in the reasonable opinion of the General Partner, disposal of Investments by the Partnership, or the determination of the value of the assets of the Partnership, would not be reasonably practicable or would be seriously prejudicial to the non-redeeming partners; (iii) during any breakdown in the means of communication normally employed in determining the price or value of the Partnership's assets or liabilities, or of current prices in any stock market as aforesaid, or when for any other reason the prices or values of any assets or liabilities of the Partnership cannot reasonably be accurately ascertained within a reasonable time frame; (iv) during any period when the transfer of funds involved in the realization or acquisition of any Investments cannot, in the reasonable opinion of the General Partner, be effected at normal rates of exchange; (v) automatically upon termination of the Partnership as described in Section 6.1, or (vi) automatically upon any suspension of withdrawals by the Master Fund.

(i) The General Partner will promptly notify each Limited Partner who has submitted a withdrawal request and to whom payment in full of the amount being withdrawn has not yet been remitted of any suspension of withdrawals or suspension of the payment of withdrawal proceeds pursuant to Section 5.5(h). Any remaining amount of a withdrawal request that is not satisfied due to such a suspension remains at risk as per other amounts invested in the Partnership and subject to the

applicable Management Fee until such amount is finally and fully withdrawn. Such Limited Partners will not be given any priority with respect to the withdrawal of Interests after the cause for such suspension or limitation ceases to exist. The General Partner may in its sole discretion, however, permit such Limited Partners to withdraw their withdrawal requests to the extent that the relevant Withdrawal Date has not yet passed. For the avoidance of doubt, where a suspension of the payment of withdrawal proceeds is declared between the relevant Withdrawal Date and the remittance of such payment proceeds, affected Limited Partners shall not have any right to withdraw their withdrawal requests. Upon the reasonable determination by the General Partner that conditions leading to suspension no longer apply, any such suspended payments shall generally be paid in accordance with the normal process for making such payments, withdrawal rights shall be promptly reinstated, and any pending withdrawal requests which were not withdrawn (or new, timely withdrawal requests) will be effected as of the first Withdrawal Date following the removal of the suspension, subject to the foregoing restrictions on withdrawals. For the avoidance of doubt, the terms of Section 5.5(h) and this Section 5.5(i) shall not affect the discretion of the General Partner to compel the withdrawal of the Interest of any Limited Partner pursuant to Section 5.5(j).

(j) The General Partner may, upon not less than five days' prior written notice (or immediately if the General Partner determines its sole discretion that such Limited Partner's continued participation in the Partnership may cause the Partnership, the Master Fund, the General Partner or the Investment Manager to violate any applicable law), require any Limited Partner's Interest to be withdrawn in part or in its entirety from the Partnership and for the Limited Partner to cease to be a Limited Partner of the Partnership (in the case of a withdrawal of a Limited Partner's Interest in its entirety) pursuant to this Section 5.5(j). The amount due to any such Partner required to withdraw from the Partnership shall be equal to the value of such Partner's Capital Account as of the Withdrawal Date determined by the General Partner, net of any deductions imposed pursuant to Section 5.5(f).

(k) The right of any Partner to withdraw or receive distributions pursuant to the provisions of this Section 5.5 is subject to all Capital Account allocations and adjustments contemplated by this Agreement and to the provision by the General Partner for all Partnership liabilities and for reserves for contingencies provided in Section 3.6. Notwithstanding anything to the contrary herein, the General Partner may establish reserves and holdbacks for estimated accrued expenses, liabilities and contingencies, including, without limitation, general reserves for unspecified contingencies (even if such reserves or holdbacks are not otherwise required by GAAP) or liabilities stemming from tax obligations (as such may be determined in the sole discretion of the General Partner and whether or not incurred directly or indirectly), which could reduce the amount of a distribution upon a Limited Partner's withdrawal.

(l) With respect to any amounts withdrawn, a withdrawing Partner shall not share in the income, gains and losses of the Partnership or have any other rights as a Partner

(in the case of a complete withdrawal) after the applicable Withdrawal Date except as provided in Section 3.6. For the avoidance of doubt, none of the Partnership, the General Partner or the Investment Manager will be liable to a Limited Partner for interest on the proceeds of any withdrawal.

(m) The Interest of a Limited Partner may not be withdrawn from the Partnership prior to its dissolution except as provided in this Section 5.5.

Article VI
DISSOLUTION AND LIQUIDATION

6.1 Dissolution of Partnership

(a) The Partnership shall be dissolved upon the first to occur of the following dates:

(i) any date on which the General Partner shall elect in writing to dissolve the Partnership;

(ii) the occurrence of any other event causing (A) the General Partner (or a successor to its business) to cease to be the general partner of the Partnership or (B) the dissolution of the Partnership under the Act; or

(b) The parties agree that irreparable damage would be done to the goodwill and reputation of the Partners if any Limited Partner should bring an action in court to dissolve the Partnership. Care has been taken in this Agreement to provide for fair and just payment in liquidation of the Interests of all Partners. Accordingly, each Limited Partner hereby waives and renounces its right to such a court decree of dissolution or to seek the appointment by the court of a liquidator for the Partnership except as provided herein.

6.2 Liquidation of Assets

(a) Upon dissolution of the Partnership, the General Partner shall promptly liquidate the business and administrative affairs of the Partnership to the extent feasible, except that if the General Partner is unable to perform this function, a liquidator elected by a Majority of Limited Partners shall liquidate the business and administrative affairs of the Partnership. Net Profit and Net Loss and any balances in Limited Participation Sub-Accounts during the Fiscal Periods, which includes the period of liquidation, shall be allocated pursuant to Article III. The proceeds from liquidation shall be divided in the following manner, subject to the Act:

(i) the debts, liabilities and obligations of the Partnership, other than any debts to the Partners as Partners, and the expenses of liquidation (including legal, administrative and accounting expenses incurred in connection therewith),

up to and including the date that distribution of the Partnership's assets to the Partners has been completed, shall first be satisfied (whether by payment or the making of reasonable provision for payment thereof);

(ii) such debts as are owing to the Partners as Partners are next paid; and

(iii) the Partners shall next be paid liquidating distributions (in cash or in securities or other assets, whether or not readily marketable) *pro rata* in accordance with, and up to the positive balances of their respective Capital Accounts, as adjusted pursuant to Article III to reflect allocations for the Fiscal Period ending on the date of the distributions under this Section 6.2(a)(iii).

(b) Notwithstanding this Section 6.2 and the priorities set forth in the Act, the General Partner or liquidator may distribute ratably in kind rather than in cash, upon dissolution, any assets of the Partnership; *provided*, *however*, that if any in kind distribution is to be made, (i) the assets distributed in kind shall be valued pursuant to Section 7.3, and charged as so valued and distributed against amounts to be paid under Section 6.2(a) and (ii) any gain or loss (as computed for book purposes) attributable to property distributed in kind shall be included in the Net Profit, Net Loss or Limited Participation Sub-Accounts for the Fiscal Period ending on the date of such distribution.

Article VII
ACCOUNTING AND VALUATION; BOOKS AND RECORDS

7.1 Accounting and Reports

(a) The Partnership may adopt for tax accounting purposes any accounting method that the General Partner shall decide is in the best interests of the Partnership and that is permissible for U.S. federal income tax purposes.

(b) As soon as practicable after the end of each Fiscal Year, the General Partner shall cause an audit of the financial statements of the Partnership as of the end of such period to be made by a firm of independent accountants selected by the General Partner. Within 120 days of the end of each year (or as soon as practicable thereafter), but subject to Section 7.5, the General Partner shall furnish to each Limited Partner a copy of the set of audited financial statements prepared in accordance with GAAP, with such adjustments thereto as the General Partner determines appropriate, including a statement of profit and loss for such Fiscal Year and an unaudited status of each such Partner's holdings in the Partnership at such time. The General Partner may elect not to reserve certain amounts that may be required by GAAP and not to provide certain portfolio disclosure required by GAAP to investors and may capitalize and amortize certain of its organizational

expenses in deviation from GAAP. Such deviations from GAAP may result in a qualified opinion rendered on the financial statements of the Partnership.

(c) As soon as practicable after the end of each fiscal month, but subject to Section 7.5, the General Partner shall arrange for the preparation and delivery to each Limited Partner of unaudited monthly statements of the estimated net asset value of the Partnership, monthly performance and portfolio reports.

(d) As soon as practicable after the end of each taxable year, the General Partner shall furnish to each Limited Partner such information as may be required to enable each Limited Partner properly to report for U.S. federal, state and local income tax purposes its distributive share of each Partnership item of income, gain, loss, deduction or credit for such year. The General Partner shall have discretion as to how to report Partnership items of income, gain, loss, deduction or credit on the Partnership's tax returns, and the Limited Partners shall treat such items consistently on their own tax returns.

7.2 Certain Tax Matters

(a) By joining this Agreement, each Limited Partner appoints and designates the General Partner (i) as the "tax matters partner," within the meaning of Section 6231(a)(7) of the Code, and, (ii) for any BBA Effective Period, as the "partnership representative" within the meaning of Section 6223 of the Code (as applicable, the "***Tax Matters Partner***"), or, in each case, under any similar state or local law, and, if the "partnership representative" is an entity, the General Partner shall have the exclusive authority to appoint and designate the individual through whom such partnership representative will act for all purposes under subchapter C of chapter 63 of the Code and, if applicable, any similar state or local law (the "***Designated Individual***"). All references to the Tax Matters Partner herein shall include the Designated Individual, unless the context requires otherwise. The Tax Matters Partner shall have any powers necessary to perform fully in such capacity, and shall be permitted to take any and all actions, to the extent permitted by law, in consultation with the General Partner if the General Partner is not the Tax Matters Partner. The General Partner shall have the exclusive authority to appoint and designate the Investment Manager, or an Affiliate of the General Partner or the Investment Manager, as a successor Tax Matters Partner for any BBA Effective Period. The Tax Matters Partner shall be reimbursed by the Partnership for all costs and expenses incurred by it, and to be indemnified by the Partnership with respect to any action brought against it, in its capacity as the Tax Matters Partner.

(b) The Limited Partners agree that any and all actions taken by the Tax Matters Partner shall be binding on the Partnership and all of the Limited Partners and the Limited Partners shall reasonably cooperate with the Partnership or the General Partner, and undertake any action reasonably requested by the Partnership or the General Partner, in connection with any elections made by the Tax Matters Partner or as determined to be reasonably necessary by the Tax Matters Partners under any BBA provision.

(c) Each Limited Partner further agrees that such Limited Partner will not independently act with respect to tax audits or tax litigation affecting the Partnership, unless the prior written consent of the General Partner has been obtained.

(d) The General Partner may in its sole discretion cause the Partnership to make all elections not otherwise expressly provided for in this Agreement required or permitted to be made by the Partnership under the Code and any state, local or non-U.S. tax laws.

(e) To the fullest extent permitted by law, each Limited Partner agrees to (i) provide such cooperation and assistance, including executing and filing forms or other statements and providing information about the Limited Partner, as is reasonably requested by the Tax Matters Partner, to enable the Partnership to satisfy any applicable tax reporting or compliance requirements, to make any tax election or to qualify for an exception from or reduced rate of tax or other tax benefit or be relieved of liability for any tax regardless of whether such requirement, tax benefit or tax liability existed on the date such Partner was admitted to the Partnership, (ii) amend the Limited Partner's tax returns and pay any resulting taxes, interest and penalties in connection with the Partnership's electing under Section 6225(a) of the Code, as amended by the BBA, (iii) take into account any adjustments and pay any taxes, interest and penalties that result from the Partnership's electing under Section 6226 of the Code, as amended by the BBA, and/or (iv) indemnify and hold harmless the Partnership, the Tax Matters Partner and any other individual designated to interact with tax authorities on behalf of the Partnership from and against any liability with respect to the Limited Partner's share of any tax deficiency (including any interest and penalties associated therewith) paid or payable by the Partnership that is (a) allocable to such Limited Partner (as reasonably determined by the General Partner in accordance with this Agreement) with respect to an audited or reviewed taxable year for which such Partner was a Partner in the Partnership or (b) attributable (as reasonably determined by the General Partner) to the failure of such Limited Partner to cooperate with or provide any such forms, statements, or other information as requested by the Tax Matters Partner pursuant to clause (i) above.

(f) The obligations and covenants of the Limited Partners set forth in Sections 3.5 and 7.2 hereof shall apply jointly and severally to each Limited Partner and any direct or indirect transferee of or successor to such Limited Partner's interest and shall survive such Limited Partner's ceasing to be a Partner in the Partnership and/or the termination, dissolution, liquidation and winding up of the Partnership.

7.3 Valuation of Partnership Assets and Interests

(a) The Partnership's assets are valued as of the close of each Fiscal Period and on any other date selected by the General Partner in its sole discretion in accordance with the valuation of the Master Fund's assets. The Partnership shall utilize the Master Fund's valuations for all purposes in connection with the Partnership.

(b) The value of the assets of the Partnership and the net worth of the Partnership as a whole determined pursuant to this Section 7.3 are conclusive and binding on all of the Partners and all parties claiming through or under them.

7.4 Determinations by the General Partner

(a) All matters concerning the determination and allocation among the Partners of the amounts to be determined and allocated pursuant to this Agreement, including Article III and accounting procedures applicable thereto, shall be determined by the General Partner, unless specifically and expressly otherwise provided for by the provisions of this Agreement, and such determinations and allocations shall be final and binding on all the Partners; provided, however, that all calculations of the Performance Allocation will be made on the basis of, or subject to correction based on, the annual audit of the Partnership's financial statements and appropriate adjustments will be made to all such calculations and related allocations to the extent necessary as a result of that audit.

(b) The General Partner may make such adjustments to the computation of Net Profit or Net Loss or any other allocations with respect to any Limited Partner, or any component items comprising any of the foregoing, as it considers appropriate to reflect the financial results of the Partnership and the intended allocation thereof among the Partners in a reasonably accurate, fair and efficient manner. Without limiting the generality of the foregoing, any provision of this Agreement that requires an adjustment to be made to any Capital Account or sub-account as of any mid-month or mid-quarter date may be made as of the most recent preceding or succeeding date when a regular valuation is being conducted.

7.5 Books and Records

(a) The General Partner shall keep books and records pertaining to the Partnership's affairs showing all of its assets and liabilities, receipts and disbursements, realized income, gains, deductions and losses, Partners' Capital Accounts and all transactions entered into by the Partnership. The General Partner shall afford to the Partnership's independent auditors reasonable access to such documents during customary business hours and shall permit the Partnership's auditors to make copies thereof or extracts therefrom at the expense of the Partnership.

(b) The General Partner shall establish such standards as it deems appropriate regarding the access of Limited Partners to the books and records of the Partnership and shall not be obliged to permit access by a Limited Partner to the name or address of any other Limited Partner.

7.6 Confidentiality

(a) Each Limited Partner agrees to keep confidential, and not to make any use of (other than for purposes reasonably related to its Interest or for purposes of filing such Limited Partner's tax returns) or disclose to any Person, any information or matter relating to the Partnership and its affairs and any information or matter related to

any Investment (other than disclosure to such Limited Partner's directors, employees, agents, advisors, or representatives responsible for matters relating to the Partnership or to any other Person approved in writing by the General Partner (each such Person being hereinafter referred to as an "***Authorized Representative***")); *provided* that (i) such Limited Partner and its Authorized Representatives may make such disclosure to the extent that (A) the information to be disclosed is publicly available at the time of proposed disclosure by such Limited Partner or Authorized Representative, (B) the information otherwise is or becomes legally available to such Limited Partner other than through disclosure by the Partnership or the General Partner, or (C) such disclosure is required by law or in response to any governmental agency request or in connection with an examination by any regulatory authorities; *provided* that such governmental agency, regulatory authorities or association is aware of the confidential nature of the information disclosed; (ii) such Limited Partner and its Authorized Representatives may make such disclosure to its beneficial owners to the extent required under the terms of its arrangements with such beneficial owners; and (iii) each Limited Partner will be permitted, after written notice to the General Partner, to correct any false or misleading information which becomes public concerning such Limited Partner's relationship to the Partnership or the General Partner. Prior to making any disclosure required by law, each Limited Partner shall use its best efforts to notify the General Partner of such disclosure. Prior to any disclosure to any Authorized Representative or beneficial owner, each Limited Partner shall advise such Authorized Representative or beneficial owner of the obligations set forth in this Section 7.6(a) and each such Authorized Representative or beneficial owner shall agree to be bound by such obligations.

(b) The General Partner shall have the right to keep confidential from the Limited Partners, for such period of time as the General Partner deems reasonable, any information, including the identity of the Partners or information regarding the Partners or Investments, which the General Partner reasonably believes to be in the nature of trade secrets or other information the disclosure of which the General Partner believes is not in the best interests of the Partnership or could damage the Partnership or its business or which the Partnership is required by law or agreement with a third party to keep confidential.

(c) Subject to applicable legal, fiscal and regulatory considerations, the General Partner shall use reasonable efforts to keep confidential any information relating to a Limited Partner obtained by the General Partner in connection with or arising out of the Partnership which the Limited Partner requests be kept confidential.

(d) Notwithstanding the provisions of this Section 7.6, Partners (and their employees, representatives and other agents) may disclose to any and all Persons, without limitation of any kind, the tax treatment and tax structure of the Partnership and its transactions and all materials of any kind (including tax opinions or other tax analyses) that are provided to such Person by, or on behalf of the Partnership. For this purpose, "tax treatment" is the purported or claimed U.S. federal income tax treatment of a transaction and "tax structure" is limited to any fact that may be

relevant to understanding the purported or claimed U.S. federal income tax treatment of a transaction. For this purpose, the names of the Partnership, the Partners, their affiliates, the names of their partners, members or equity holders and the representatives, agents and tax advisors of any of the foregoing are not items of tax structure.

(e) The General Partner may disclose to prospective investors such information relating to the Partnership or the Investments as it believes in good faith will benefit the Partnership and facilitate investment in the Partnership by such prospective investors.

(f) The Investment Manager and a Person acting as a service provider to the Partnership shall have the right to access all information belonging to the Partnership.

Article VIII
GENERAL PROVISIONS

8.1 Amendment of Partnership Agreement

(a) Except as otherwise provided in this Section 8.1, this Agreement may be amended, in whole or in part, with the written consent of (i) the General Partner and (ii) the consent of a Majority of Limited Partners (which approval may be obtained by negative consent affording the Limited Partners 30 calendar days to object).

(b) Notwithstanding anything in this Section 8.1 to the contrary, any amendment to Section 2.5 requires the prior written consent of ERISA Partners whose Partnership Percentages represent more than 50% of the aggregate Partnership Percentages of all ERISA Partners.

(c) Any amendment that would:

(i) increase the obligation of a Partner to make any contribution to the capital of the Partnership;

(ii) reduce the Capital Account of a Partner other than in accordance with Article III;

(iii) adversely alter any Partner's rights with respect to the allocation of Net Profit or Net Loss or with respect to distributions and withdrawals; or

(iv) change the respective liabilities of the General Partner and the Limited Partners;

may only be made if the prior written consent of each Partner adversely affected thereby is obtained.

(d) Notwithstanding paragraphs (a) and (c) of this Section 8.1, this Agreement may be amended by the General Partner without the consent of the Limited Partners, at any time and without limitation, if any Limited Partner whose contractual rights as a Limited Partner would be materially and adversely changed by such amendment has an opportunity to withdraw from the Partnership as of a date determined by the General Partner that is not less than 45 calendar days after the General Partner has furnished written notice of such amendment to each affected Limited Partner and that is prior to the effective date of the amendment. The admission and withdrawal of Limited Partners will not require notice or disclosure to, or the approval of, the other Limited Partners.

(e) The General Partner may at any time without the consent of the other Partners:

(i) add to the representations, duties or obligations of the General Partner or surrender any right or power granted to the General Partner under this Agreement, for the benefit of the Limited Partners;

(ii) cure any ambiguity or correct or supplement any conflicting provisions of this Agreement;

(iii) change the name of the Partnership;

(iv) make any changes required by governmental body or agency which is deemed to be for the benefit or protection of the Limited Partners, *provided*, *however*, that no such amendment may be made unless such change (A) is for the benefit of, or not adverse to, the interests of Limited Partners, (B) does not affect the right of the General Partner to manage and control the Partnership's business, (C) does not affect the allocation of profits and losses among the Partners and (D) does not affect the limited liability of the Limited Partners;

(v) amend this Agreement to reflect a change in the identity of the General Partner which has been made in accordance with this Agreement;

(vi) amend this Agreement (other than with respect to the matters set forth in Section 8.1(c)) to effect compliance with any applicable laws, regulations or administrative actions, or to reflect any change made in accordance with Section 4.1(b);

(vii) subject to Section 8.1(c), amend this Agreement to reflect the creation, and terms, of any new Series of Limited Partner Interests in the Partnership;

(viii) effect any other amendment which would not, in the good faith judgment of the General Partner, adversely affect any of the existing Limited Partners; and

(ix) restate this Agreement together with any amendments hereto which have been duly adopted in accordance herewith to incorporate such amendments in a single, integrated document.

(f) The General Partner shall have the authority to agree with a Limited Partner to waive or modify the application of any provision of this Agreement with respect to such Limited Partner without notifying or obtaining the consent of any other Limited Partner (other than a Limited Partner whose rights as a Limited Partner pursuant to this Agreement would be materially and adversely changed by such waiver or modification). Any such waiver or modification may be evidenced by a "side letter" or other document, and the form thereof shall not impair its binding effect as if incorporated in this Agreement.

8.2 Special Power-of-Attorney

(a) Each Partner hereby irrevocably makes, constitutes and appoints the General Partner (and each of its successors and permitted assigns), with full power of substitution, the true and lawful representative and attorney-in-fact of, and in the name, place and stead of, such Partner with the power from time to time to make, execute, sign, acknowledge, swear to, verify, deliver, record, file or publish:

(i) an amendment to this Agreement that complies with the provisions of this Agreement (including the provisions of Section 8.1);

(ii) the Certificate and any amendment thereof required because this Agreement is amended, including an amendment to effectuate any change in the membership of the Partnership or in the capital contributions of the Partners;

(iii) any financing statement or other filing or document required or permitted to perfect the security interests contemplated by any provision hereof; and

(iv) all such other instruments, documents and certificates which, in the opinion of legal counsel to the Partnership, may from time to time be required by the laws of the United States of America, the State of Delaware, or any other jurisdiction in which the Partnership determines to do business, or any political subdivision or agency thereof, or which such legal counsel may deem necessary or appropriate to effectuate, implement and continue the valid and subsisting existence and business of the Partnership as a limited partnership, adjust the structure of the Partnership in accordance with Sections 4.1(b) or 8.8, or to effect the dissolution or termination of the Partnership.

(b) Each Limited Partner is aware that the terms of this Agreement permit certain amendments to this Agreement to be effected and certain other actions to be taken or omitted by or with respect to the Partnership without that Limited Partner's consent. If an amendment of the Certificate or this Agreement or any action by or with respect to the Partnership is taken by the General Partner in the manner

contemplated by this Agreement, each Limited Partner agrees that, notwithstanding any objection which such Limited Partner may assert with respect to such action, the General Partner in its sole discretion is authorized and empowered, with full power of substitution, to exercise the authority granted above in any manner which may be necessary or appropriate to permit such amendment to be made or action to be lawfully taken or omitted. Each Partner is fully aware that each other Partner relies on the effectiveness of this special power-of-attorney with a view to the orderly administration of the affairs of the Partnership. This power-of-attorney is a special power-of-attorney and is coupled with an interest in favor of the General Partner and as such:

(i) is irrevocable and continues in full force and effect notwithstanding the subsequent death or incapacity of any party granting this power-of-attorney, regardless of whether the Partnership or the General Partner has had notice thereof; and

(ii) survives the delivery of an assignment by a Limited Partner of the whole or any portion of such Limited Partner's Interest, except that where the assignee thereof has been approved by the General Partner for admission to the Partnership as a substituted Limited Partner, this power-of-attorney given by the assignor survives the delivery of such agreement for the sole purpose of enabling the General Partner to execute, acknowledge and file any instrument necessary to effect such substitution.

8.3 Notices

Notices which may be or are required to be given under this Agreement by any party to another shall be given by hand delivery, transmitted by facsimile, transmitted electronically to an address that has been previously provided or verified through another form of notice or sent by registered or certified mail, return receipt requested or internationally recognized courier service, and shall be addressed to the respective parties hereto at their addresses as set forth on the register of Partners maintained by the General Partner or to such other addresses, facsimile numbers or electronic addresses as may be designated by any party hereto by notice addressed to (a) the General Partner, in the case of notice given by any Limited Partner, and (b) each of the Limited Partners, in the case of notice given by the General Partner. Notices shall be deemed to have been given (i) when delivered by hand, transmitted by facsimile or transmitted electronically or (ii) on the date indicated as the date of receipt on the return receipt when delivered by mail or courier service.

8.4 Agreement Binding Upon Successors and Assigns; Delegation

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, but the rights and obligations of the Partners hereunder shall not be assignable, transferable or delegable except as provided in Sections 4.1(d), 5.3 and 5.4, and any attempted assignment, transfer or delegation thereof which is not made pursuant to the terms of such Sections shall be void.

8.5 Governing Law

This Agreement is, and the rights of the Partners hereunder are, governed by and shall be construed in accordance with the laws of the State of Delaware, without regard to the conflict of laws rule thereof which would result in the application of the laws of a different jurisdiction. The parties hereby consent to the exclusive jurisdiction and venue for any action arising out of this Agreement in Dallas, Texas. Each Partner consents to service of process in any action or proceeding involving the Partnership by the mailing thereof by registered or certified mail, postage prepaid, to such Partner's mailing address set forth in the Schedule of Partners maintained by the General Partner.

8.6 Not for Benefit of Creditors

The provisions of this Agreement are intended only for the regulation of relations among Partners and between Partners and former or prospective Partners and the Partnership. Except for the rights of the Indemnified Persons hereunder, this Agreement is not intended for the benefit of non-Partner creditors and no rights are granted to non-Partner creditors under this Agreement.

8.7 Consents and Voting

(a) Except as provided in Section 5.4, Limited Partners do not have any right to vote for the admission or removal of any General Partner and, except for the right to vote on certain amendments proposed by the General Partner, have no other voting rights. Upon the request of any Limited Partner, including pursuant to Section 8.11 hereof, the General Partner may designate an Interest as a Non-Voting Interest, in which case the Limited Partner shall not have the right to vote on any matter including amendments.

(b) Any and all consents, agreements or approvals provided for or permitted by this Agreement shall be in writing and a copy thereof shall be filed and kept with the books of the Partnership. (For the avoidance of doubt, an amendment made pursuant to Section 8.1(d) or pursuant to negative consent under Section 8.1(a) shall not require any affirmative written response by any Limited Partner who is not electing to withdraw from the Partnership.)

8.8 Merger and Consolidation

(a) The Partnership may merge or consolidate with or into one or more limited partnerships formed under the Act or other business entities pursuant to an agreement of merger or consolidation which has been approved in the manner contemplated by Section 17-211(b) of the Act.

(b) Notwithstanding anything to the contrary contained elsewhere in this Agreement, an agreement of merger or consolidation approved in accordance with Section 17-211(b) of the Act may, to the extent permitted by Section 17-211(g) of the Act, (i) effect any amendment to this Agreement, (ii) effect the adoption of a new limited partnership agreement for the Partnership if it is the surviving or resulting limited partnership in the merger or consolidation, or (iii) provide that the limited

partnership agreement of any other constituent partnership to the merger or consolidation (including a limited partnership formed for the purpose of consummating the merger or consolidation) shall be the limited partnership agreement of the surviving or resulting limited partnership.

8.9 Interpretation of Partnership Accounting Systems and Terminology

In the event that the Partnership employs an accounting system which is different from the accounting system of the General Partner or whose terminology does not conform precisely to the terminology in this Agreement, the General Partner shall have the authority to interpret such accounting system and/or terminology in a manner which it, in its sole discretion, determines to be consistent with the objectives of this Agreement.

8.10 Miscellaneous

(a) The captions and titles preceding the text of each Section hereof shall be disregarded in the construction of this Agreement. Use of the word "including" in this Agreement means in each case "without limitation," whether or not such term is explicitly stated.

(b) This Agreement may be executed in counterparts, each of which shall be deemed to be an original hereof.

(c) If any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Agreement will remain in full force and effect. Any provision of this Agreement held invalid or unenforceable only in part or degree will remain in full force and effect to the extent not held invalid or unenforceable.

8.11 BHCA Subject Persons

Notwithstanding any other provision of this Agreement to the contrary:

(a) Solely for purposes of any provision of this Agreement that confers voting rights on the Limited Partners and any other provisions hereof regarding consents of or action by the Limited Partners, any BHCA Subject Person that shall have given the General Partner an Election Notice and shall not thereafter have given the General Partner a Revocation Notice, and that at any time has an Partnership Percentage in excess of 4.9 percent of the aggregate Partnership Percentages of the Limited Partners entitled to participate in such voting or the giving of any consent or the taking of any action, shall be deemed to hold an Partnership Percentage of only 4.9 percent of the aggregate Partnership Percentages of the Limited Partners (after giving effect to the limitations imposed by this Section 8.11 on all such Limited Partners), and such Partnership Percentage in excess of said 4.9 percent shall be deemed held by the Limited Partners who are not BHCA Subject Persons, *pro rata* in proportion to their respective Partnership Percentages; *provided* that this limitation shall not prohibit a Limited Partner from voting or participating in giving or withholding consent or taking any action under any provision of this Agreement

up to the full amount of its Partnership Percentage in situations where such Limited Partner's vote or consent or action is of the type customarily provided by statute or stock exchange rules with regard to matters that would significantly and adversely affect the rights or preference of the Limited Partner's Interest. The foregoing voting restriction shall continue to apply with respect to any assignee or other transferee of such BHCA Subject Person's Interest; *provided*, *however*, that the foregoing voting restriction shall not continue to apply if the Interest is transferred: (i) to the Partnership; (ii) to the public in an offering registered under the Securities Act; (iii) in a transaction pursuant to Rule 144 or Rule 144A under the Securities Act in which no Person acquires more than 2% of the Partnership's outstanding Interests; or (iv) in a single transaction to a third party who acquires at least a majority of the Partnership's outstanding Interests without regard to the Transfer of such Interests.

(b) Except as specifically provided otherwise in this Agreement, a Limited Partner that is a BHCA Subject Person that shall have given the General Partner an Election Notice, and shall not thereafter have given the General Partner a Revocation Notice, shall not be entitled to exercise any rights to consent to actions to be taken with respect to the Partnership, including rights conferred by any applicable law. Such right to consent shall be deemed granted to the Limited Partners who are not BHCA Subject Persons, *pro rata* in proportion to their respective Partnership Percentages.

(c) A Limited Partner that is a BHCA Subject Person and that elects to be subject to Section 8.11(a) and (b) shall notify the General Partner thereof (an "***Election Notice***") and, on the General Partner's receipt of such Election Notice, such Limited Partner shall be subject to Section 8.11(a) and (b) until 30 calendar days after such Limited Partner notifies the General Partner that it elects no longer to be subject to Section 8.11(a) and (b) (a "***Revocation Notice***"), which period may be reduced by the General Partner.

8.12 RIC Limited Partners

An Interest of a RIC Limited Partner does not entitle the RIC Limited Partner to vote or consent with respect to any Partnership matter unless the RIC Limited Partner's vote or consent with respect to its Interest would not be considered to be "voting securities" as defined under Section 2(a)(42) of the Investment Company Act. Except as provided in this Section 8.12, an Interest held by a RIC Limited Partner as a Non-Voting Interest is identical in all regards to all other Interests held by Limited Partners.

8.13 Bad Actor Limited Partners

Under Rule 506(d) under the Securities Act, the Partnership may be banned from selling Interests under Rule 506 if a Limited Partner beneficially owning 20% or more of the Partnership's voting securities engages in a "bad act" set forth in Rule 506. Accordingly, each Limited Partner agrees that the General Partner may deem the portion of any Bad Actor Limited Partner's Interest to be, or convert any Bad Actor Limited Partner's Interest into, a Non-Voting Interest (except for

the purposes of voting on any amendment to this Agreement that would materially and adversely change the Bad Actor Limited Partner's rights and preferences as a Limited Partner other than pursuant to an amendment under Section 8.1(d)) to the extent that the General Partner determines that such portion is in excess of 19.99% of the outstanding aggregate voting Interests of all Partners excluding any Interests that are Non-Voting Interests.

8.14 Survival

The obligations and covenants of the Limited Partners set forth in Sections 3.5 and 3.13 hereof shall apply jointly and severally to each Limited Partner and any direct or indirect transferee of or successor to such Limited Partner's interest and will survive such Partner's ceasing to be a partner of the Partnership and/or the termination, dissolution, liquidation and winding up of the Partnership.

8.15 Entire Agreement

The parties acknowledge and agree that, subject to Section 8.1(f), the General Partner without the approval of any other Partner may enter into a written agreement on behalf of the Partnership with any Limited Partner affecting the terms hereof in order to meet certain requirements of the Limited Partner (each an "***Other Agreement***"), and the terms of such Other Agreement shall govern with respect to such Limited Partner notwithstanding the provisions of this Agreement. This Agreement and each Other Agreement constitute the entire agreement among the parties hereto pertaining to the subject matter hereof and supersede all prior agreements and understandings pertaining thereto.

[Signature Page Follows]

The parties hereto have executed this Agreement as of the day and year first above written.

General Partner:

On behalf of itself and as attorney-in-fact for the Limited Partners:

HIGHLAND DYNAMIC INCOME FUND GP, LLC
By: Highland Capital Management, L.P., its sole member
By: Strand Advisors, Inc., its general partner

By: _____
Name: Trey Parker
Title: Assistant Secretary

Signature Page to the Amended and Restated Limited Partnership Agreement of Highland Dynamic Income Fund, L.P.

Registrar of Companies
Government Administration Building
133 Elgin Avenue
George Town
Grand Cayman

Highland Loan Fund, Ltd. (ROC #275693) (the "**Company**")

TAKE NOTICE that by written resolution of the shareholders of the Company dated 8th May 2018, the following special resolution was passed:

THAT the name of the Company is changed from **Highland Loan Fund, Ltd.** to **Highland Dynamic Income Fund Ltd.** .

THAT the Memorandum and Articles of Association of the Company currently in effect be amended and restated by the deletion in their entirety and the substitution in their place of the Amended and Restated Memorandum and Articles of Association annexed hereto.

_____

Allema Ramoon
Corporate Administrator
for and on behalf of
Maples Corporate Services Limited

Dated this 9th day of May 2018

GENERAL REGISTRY CAYMAN ISLANDS

Filed: 09-May-2018 11:17 EST
Auth Code: B32318660918

THE COMPANIES LAW (2016 REVISION)

OF THE CAYMAN ISLANDS

COMPANY LIMITED BY SHARES

AMENDED AND RESTATED MEMORANDUM AND ARTICLES OF ASSOCIATION

OF

HIGHLAND DYNAMIC INCOME FUND, LTD.

(AS ADOPTED BY SPECIAL RESOLUTION OF THE SUBSCRIBER DATED 8 MAY 2018)

GENERAL REGISTRY CAYMAN ISLANDS

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THE COMPANIES LAW (2016 REVISION)

OF THE CAYMAN ISLANDS

COMPANY LIMITED BY SHARES

AMENDED AND RESTATED

MEMORANDUM OF ASSOCIATION

OF

HIGHLAND DYNAMIC INCOME FUND, LTD.

(AS ADOPTED BY SPECIAL RESOLUTION OF THE SUBSCRIBER DATED 8 MAY 2018)

1 The name of the Company is **Highland Dynamic Income Fund, Ltd.**.

2 The Registered Office of the Company shall be at the offices of Maples Corporate Services Limited, PO Box 309, Ugland House, Grand Cayman, KY1-1104, Cayman Islands, or at such other place within the Cayman Islands as the Directors may decide.

3 The objects for which the Company is established are unrestricted and the Company shall have full power and authority to carry out any object not prohibited by the laws of the Cayman Islands.

4 The liability of each Member is limited to the amount unpaid on such Member's Shares.

5 The share capital of the Company is US$50,000 divided into 100 Management Shares of US$1.00 par value each and 4,990,000 Participating Shares of US$0.01 par value each.

6 The Company has power to register by way of continuation as a body corporate limited by shares under the laws of any jurisdiction outside the Cayman Islands and to be deregistered in the Cayman Islands.

7 Capitalised terms that are not defined in this Memorandum of Association bear the respective meanings given to them in the Articles of Association of the Company.

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THE COMPANIES LAW (2016 REVISION)

OF THE CAYMAN ISLANDS

COMPANY LIMITED BY SHARES

AMENDED AND RESTATED

ARTICLES OF ASSOCIATION

OF

HIGHLAND DYNAMIC INCOME FUND, LTD.

(AS ADOPTED BY SPECIAL RESOLUTION OF THE SUBSCRIBER DATED 8 MAY 2018)

1 Interpretation

1.1 In these Articles, Table A in the First Schedule to the Statute does not apply and unless there is something in the subject or context inconsistent therewith:

"**Administrator**"	means the person, firm or corporation appointed and from time to time acting as administrator of the Company.
"**Articles**"	means these articles of association of the Company.
"**Auditor**"	means the person (if any) for the time being performing the duties of auditor of the Company.
"**Business Day**"	means any day normally treated as a business day in such places and/or on such markets as the Directors may from time to time determine.
"**Cayman Islands**"	means the British Overseas Territory of the Cayman Islands.
"**Class**"	means a separate class of Participating Share (and includes any sub-class of any such class).
"**Company**"	means the above-named Company.
"**Directors**"	means the directors for the time being of the Company.
"**Dollars**" or "**US$**"	refers to the currency of the United States.
"**Electronic Record**"	has the same meaning as in the Electronic Transactions Law.
"**Electronic Transactions Law**"	means the Electronic Transactions Law (2003 Revision) of the Cayman Islands.
"**Eligible Investor**"	means a person eligible to hold Participating Shares, as determined from time to time by the Directors.

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"**Investment Manager**"	means the person, firm or corporation appointed and for the time being acting as the investment manager of the Company.
"**Management Share**"	means a voting non participating Share in the capital of the Company of US$1.00 par value designated as a Management Share and having the rights provided for in these Articles.
"**Member**"	means each person whose name is, from time to time and for the time being, entered in the Register of Members as the holder of one or more Shares.
"**Memorandum**"	means the memorandum of association of the Company.
"**Net Asset Value**"	means the value of the assets less the liabilities of the Company, or of a Separate Account (as the context may require), calculated in accordance with these Articles.
"**Net Asset Value per Participating Share**"	means the amount determined in accordance with these Articles as being the Net Asset Value per Participating Share of a particular Class and/or Series.
"**Offering Memorandum**"	means an offering memorandum relating to Participating Shares of any Class and/or Series as amended or supplemented from time to time subject to and in accordance with these Articles.
"**Ordinary Resolution**"	means a resolution passed by a simple majority of the votes of such Members as, being entitled to do so, vote in person or, where proxies are allowed, by proxy at a general meeting, and includes a unanimous written resolution.
"**Participating Share**"	means a participating redeemable Share in the capital of the Company of US$0.01 par value and having the rights provided for in these Articles. Participating Shares may be divided into Classes in the discretion of the Directors in accordance with the provisions of these Articles and each Class may be further divided into different Series of Participating Shares and the term "Participating Share" shall include all such Classes and Series of Participating Share.
"**Redemption Date**"	means, in relation to any Class and/or Series of Participating Shares, such day or days as are set out in the Offering Memorandum or as may be specified by the Directors from time to time, upon which a Member is entitled to require the redemption of Participating Shares of that Class and/or Series.
"**Redemption Fee**"	means such fee (if any) payable by a Member to the Company on a redemption of Participating Shares, as the same may be determined by the Directors and disclosed to the Member at the time of its subscription for such Participating Shares.
"**Redemption Notice**"	means a notice in a form approved by the Directors by which a holder

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of Participating Shares is entitled to require the Company to redeem its Participating Shares.

"Redemption Price" means the price determined in accordance with these Articles at which redeemable Participating Shares of the relevant Class and/or Series may be redeemed.

"Register of Members means the register of Members, which shall be maintained in accordance with the Statute and includes (except where otherwise stated) any branch or duplicate Register of Members.

"Registered Office" means the registered office for the time being of the Company.

"Sales Charge" means such sales charge (if any) determined by the Directors as being payable by a subscriber on a subscription for Participating Shares of any Class and/or Series.

"Seal" means the common seal of the Company and includes every duplicate seal.

"Separate Account" means a separate internal account of the Company which the Directors may establish and cause to be maintained in accordance with these Articles.

"Series" means a separate series of Participating Share (and includes any sub-series of any such series).

"Share" and **"Shares"** means a share or shares of any class or series in the Company, including a Management Share or a Participating Share, as well as any fraction of a Share.

"Share Rights" means, with respect to the Participating Shares of any Class or Series in issue, the class rights for the time being applicable to such Participating Shares or other terms of offer for the time being applicable to such Participating Shares whether set out in the Offering Memorandum, any subscription agreement or otherwise (including any representations, warranties or other disclosure relating to the offer or holding of such Participating Shares).

"Special Resolution" has the same meaning as in the Statute and includes a unanimous written resolution.

"Statute" means the Companies Law (2012 Revision) of the Cayman Islands.

"Subscriber" means the subscriber to the Memorandum.

"Subscription Date" means, in relation to Participating Shares of any Class and/or Series, such day or days as are set out in the Offering Memorandum or as may be specified by the Directors from time to time upon which a person may subscribe for Participating Shares of that Class and/or

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Series.

"**Subscription Price**"	means the price determined in accordance with these Articles at which Participating Shares of the relevant Class and/or Series may be subscribed.
"**Suspension**"	means a determination by the Directors to postpone or suspend (i) the calculation of the Net Asset Value of Participating Shares of any one or more Classes and/or Series (and the applicable Valuation Date) (a "**Calculation Suspension**"); (ii) the issue of Participating Shares of any one or more Classes and/or Series (and the applicable Subscription Date) (an "**Issue Suspension**"); (iii) the redemption by Members (in whole or in part) of Participating Shares of any one or more Classes and/or Series (and the applicable Redemption Date) (a "**Redemption Suspension**"); and/or (iv) the payment (in whole or in part) of any redemption proceeds (even if Valuation Dates and Redemption Dates are not postponed) (a "**Payment Suspension**").
"**Transfer**"	means, in respect of any Share, any sale, assignment, exchange, transfer, pledge, encumbrance or other disposition of that Share, and "**Transferred**" shall be construed accordingly.
"**Treasury Share**"	means a Share held in the name of the Company as a treasury share in accordance with the Statute.
"**Valuation Date**"	means, in relation to each Class and/or Series of Participating Shares, the day or days determined from time to time by the Directors to be the day or days on which the Net Asset Value per Participating Share of that Class and/or Series is calculated.
"**Valuation Point**"	means, with respect to any Class and/or Series, the time or times on the Valuation Date of such Class and/or Series at which the Directors determine that the Net Asset Value per Participating Share of that Class and/or Series shall be calculated.

1.2 In these Articles:

(a) the singular number includes the plural number and vice versa;

(b) the masculine gender includes the feminine gender;

(c) persons includes corporations;

(d) "written" and "in writing" include all modes of representing or reproducing words in visible form, including in the form of an Electronic Record;

(e) "shall" shall be construed as imperative and "may" shall be construed as permissive;

(f) references to provisions of any law or regulation shall be construed as references to those provisions as amended, modified, re-enacted or replaced from time to time;

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(g) any phrase introduced by the terms "including", "include", "in particular" or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms;

(h) the term "and/or" is used herein to mean both "and" as well as "or." The use of "and/or" in certain contexts in no respects qualifies or modifies the use of the terms "and" or "or" in others. "Or" shall not be interpreted to be exclusive, and "and" shall not be interpreted to require the conjunctive — in each case, unless the context otherwise requires;

(i) any reference to the powers of the Directors shall include, when the context admits, the service providers or any other person to whom the Directors may delegate their powers;

(j) any requirements as to delivery under the Articles include delivery in the form of an Electronic Record;

(k) any requirements as to execution or signature under the Articles including the execution of the Articles themselves can be satisfied in the form of an electronic signature as defined in the Electronic Transactions Law;

(l) sections 8 and 19(3) of the Electronic Transactions Law shall not apply; and

(m) headings are inserted for reference only and shall be ignored in construing these Articles.

2 Commencement of Business

2.1 The business of the Company may be commenced as soon after incorporation as the Directors shall see fit.

2.2 The Directors may pay, out of the capital or any other monies of the Company, all expenses incurred in or about the formation and operation of the Company, including the expenses of registration and the initial offering of Participating Shares.

3 Service Providers

3.1 The Directors may appoint any person, firm or corporation to act as a service provider to the Company (whether in general or in respect of any Class and/or Series of Shares) and may entrust to and confer upon any such service providers any of the functions, duties, powers and discretions exercisable by them as Directors, upon such terms and conditions (including as to remuneration payable by the Company) and with such powers of delegation, but subject to such restrictions, as they think fit. Without limiting the generality of the foregoing, such service providers may include managers, investment advisers, administrators, registrars, transfer agents, custodians and prime brokers.

3.2 Without prejudice to the generality of the preceding Article, the Directors may appoint any person, firm or corporation to act as the Investment Manager with respect to the assets of the Company (whether in general or in respect of any Class and/or Series of Shares). The Directors may entrust to and confer upon the Investment Manager any of the functions, duties, powers and discretions exercisable by them as Directors upon such terms and conditions (including as to remuneration payable by the Company) and with such powers of delegation, but subject to such restrictions, as they think fit.

4 Rights attaching to Shares

4.1 The Management Shares shall have the following rights:

(a) as to voting: the holder of a Management Share shall (in respect of such Management Share) have the right to receive notice of, attend at and vote as a Member at any general meeting of the Company; and

(b) as to capital: a Management Share shall confer upon the holder the right in a winding up to repayment of capital as provided in these Articles but shall confer no other right to participate in the profits or assets of the Company; and

(c) as to income: no dividends shall be payable on the Management Shares.

4.2 The Participating Shares shall have the following rights:

(a) as to voting: the holder of a Participating Share shall not (in respect of such Participating Share) have the right to receive notice of, attend at or vote as a Member at any general meeting of the Company, but may vote at a separate Class meeting convened in accordance with these Articles; and

(b) as to capital: a Participating Share shall confer upon the holder thereof the right in a winding up to participate in the surplus assets of the Company by reference to the Separate Account attributable to the relevant Class or Series of Participating Shares as provided in these Articles; and

(c) as to income: the Participating Shares shall confer on the holders thereof the right to receive dividends as provided in these Articles.

5 Share Capital

5.1 Subject to these Articles, the Directors may allot, issue, grant options or warrants over, or otherwise dispose of Shares in separate classes and/or series with different terms, preferences, privileges or special rights including, without limitation, with respect to investment strategy and/or policy, participation in assets, profits and losses of the Company, voting, fees charged (including management, performance and incentive fees), redemption privileges, allocation of costs and expenses (including, without limitation, the costs and expenses incurred in any hedging activities and any profits and losses arising therefrom) as they think proper. Subject to the Statute, these Articles and any applicable subscription agreement, any Share Rights (other than those set out in these Articles or set out in a Special Resolution) may be varied by either the Directors or by Ordinary Resolution. Notwithstanding the foregoing, the Subscriber shall have the power to:

(a) issue one Share to itself;

(b) transfer that Share by an instrument of transfer to any person; and

(c) update the Register of Members in respect of the issue and transfer of that Share.

5.2 On or before the allotment of any Participating Share the Directors shall resolve the Class and/or Series to which such Participating Share shall be classified and may, prior to the issue of any Participating Share, reclassify such Participating Share. Each Class and/or Series shall be

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specifically identified. Subject to the Statute and these Articles, the Directors may at any time re-name any Participating Share.

5.3 Notwithstanding the currency in which the par value of the Participating Shares is denominated, the Directors may specify any currency as the currency in which the Subscription Price, Redemption Price and Net Asset Value of Participating Shares of a Class and/or Series is calculated.

5.4 The Company shall not issue Shares to bearer.

5.5 Fractional Shares may be issued.

5.6 Unless the Directors determine otherwise, Shares shall only be issued as fully paid-up.

5.7 Unless the Directors determine otherwise No right of pre-emption or first refusal shall attach to any Shares.

6 Allotment and Issue of Participating Shares

6.1 The Directors may from time to time allot and issue Participating Shares of any Class and/or Series. The Directors may, in their discretion, refuse to allot and issue any Participating Shares, and shall not issue any Participating Shares to or for the account of an investor who is not an Eligible Investor. If the Directors have declared a Calculation Suspension or Issue Suspension, no Participating Shares of that Class or Series (as appropriate) shall be issued until the relevant Suspension has ended.

6.2 The Directors shall determine the Subscription Price at the time of issue of the first issue of Participating Shares of any Class and/or Series. Thereafter, the Directors may allot and issue Participating Shares of the same Class and/or Series on any Subscription Date provided that such additional Participating Shares are issued at a Subscription Price equal to not less than the Net Asset Value per Participating Share of such Class and/or Series calculated on the relevant Subscription Date (or if the Subscription Date is not also a Valuation Date then on the immediately preceding Valuation Date).

6.3 The Directors may add to the Subscription Price per Participating Share (before making any rounding adjustment) an amount which they consider to be an appropriate allowance to reflect fiscal and purchase charges which would be incurred for the account of the Company in investing an amount equal to the Subscription Price. The Directors may also add, in their discretion, a Sales Charge and/or an amount equal to any stamp duty and any other governmental taxes or charges payable by the Company with respect to the issue of such Participating Shares.

6.4 An applicant for Participating Shares shall pay for such Participating Shares in such currencies, in such manner, at such time, in such place and to such person acting on behalf of the Company as the Directors may from time to time determine.

6.5 Subject to the terms of any subscription agreement, an application for Participating Shares shall be irrevocable by an applicant for Participating Shares once it has been received by the Company. Participating Shares shall be treated as having been issued with effect from the relevant Subscription Date notwithstanding that the subscriber for those Participating Shares may not be entered in the Register of Members until after the Subscription Date.

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6.6 Participating Shares shall be issued in such minimum numbers as the Directors may specify either generally or in any particular case; likewise the Directors may from time to time prescribe an amount as the minimum subscription amount.

6.7 The Directors may resolve to accept non-cash assets in satisfaction (in whole or in part) of the Subscription Price.

6.8 The Directors may require an applicant for Participating Shares to pay to the Company for the benefit of any selling agent such selling commissions or such organisational charges as may have been disclosed to such applicant. The Directors may differentiate between applicants as to the amount of such selling commissions or such organisational charges.

6.9 The Company may, in so far as the Statute permits, pay a commission to any person in consideration of that person subscribing or agreeing to subscribe whether absolutely or conditionally for any Participating Shares. Such commissions may be satisfied by the payment of cash and/or the issue of fully or partly paid-up Participating Shares. The Company may also on any issue of Participating Shares pay such brokerage as may be lawful.

7 Separate Accounts

7.1 The Directors shall have the power to establish and maintain, with respect to Participating Shares of any Class and/or Series, a Separate Account, to record (purely as an internal accounting matter) the allocation, on a differentiated basis, of the assets and liabilities of the Company to the holders of Participating Shares of any such Class and/or a Series in a manner consistent with the methodology set forth in the Offering Memorandum and the rights otherwise attaching to the Participating Shares.

7.2 The proceeds from the issue of Participating Shares of any Class and/or Series shall be applied in the books of the Company to the Separate Account established for Participating Shares of that Class and/or Series. The assets and liabilities and income and expenditure attributable to that Separate Account shall be applied to such Separate Account and, subject to the provisions of these Articles, to no other Separate Account. In the event that the assets of a Separate Account referable to any Class and/or Series are exhausted, any and all unsatisfied claims which any Members or former Members referable to that Class and/or Series have against the Company shall be extinguished. The Members or former Members referable to a Class and/or Series shall have no recourse against the assets of any other Separate Account established by the Company.

7.3 Where any asset is derived from another asset (whether cash or otherwise), such derivative asset shall be applied in the books of the Company to the same Separate Account as the asset from which it was derived, and on each revaluation of an asset the increase or diminution in value shall be applied to the same Separate Account and, subject to the provisions of these Articles, to no other Separate Account.

7.4 In the case of any asset or liability of the Company which the Directors do not consider is attributable to a particular Separate Account, the Directors shall have discretion to determine the basis upon which any such asset or liability shall be allocated between or among Separate Accounts.

7.5 The Directors may, in the books of the Company, allocate assets and liabilities to and from Separate Accounts if, as a result of a creditor proceeding against certain of the assets of the

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Company or otherwise, a liability would be borne in a different manner from that in which it would have been borne if applied under the foregoing Articles.

7.6 The Directors may from time to time transfer, allocate or exchange an asset or liability from one Separate Account to another Separate Account provided that at the time of such transfer, allocation or exchange the Directors form the opinion (in good faith) that the value in money or money's worth of each such asset or liability transferred, allocated or exchanged is not significantly less or more than the value in money or money's worth (referred to in these Articles as "proper value") received by the Separate Account from which such asset or liability is transferred, allocated or exchanged except only as is otherwise provided by these Articles.

8 Determination of Net Asset Value

8.1 The Net Asset Value and Net Asset Value per Participating Share of each Class and/or Series shall be determined by or on behalf of the Directors as at the relevant Valuation Point on each relevant Valuation Date.

8.2 In calculating the Net Asset Value and the Net Asset Value per Participating Share, the Directors shall apply such generally accepted accounting principles as they may determine.

8.3 The assets and liabilities of the Company shall be valued in accordance with such policies as the Directors may determine. Absent bad faith or manifest error, any valuation made pursuant to these Articles shall be binding on all persons.

8.4 Unless otherwise determined by the Directors in any resolution creating a Class and/or Series of Participating Shares or as otherwise disclosed in any Offering Memorandum, the Net Asset Value per Participating Share of each Class (or Series) shall be determined by allocating *pro rata* the Net Asset Value, as at the relevant Valuation Point, of the Company and/or of the relevant Separate Account among each Class and/or Series, adjusting the amount so calculated to reflect any fees, costs, foreign exchange items or other assets or liabilities which are properly attributable to a specific Class and/or Series and then by dividing the resultant amount by the number of Participating Shares of such Class and/or Series then in issue.

8.5 The Directors may determine that the Net Asset Value of any Class and/or Series shall be definitively determined on the basis of estimates and that such determination shall not be modified to reflect final valuations.

8.6 Any expense or liability may be amortised over such period as the Directors may determine.

8.7 The Directors may establish such reserves as they deem reasonably necessary for Company expenses and any other contingent Company assets or liabilities, and may, upon the reversal or release of such reserves, apply any monies resulting therefrom in such manner as they may, in their absolute discretion, determine.

8.8 Net Asset Value per Participating Share shall be rounded to the nearest cent or such other amount as the Directors may determine and the benefit of any such roundings may be retained by the Company.

8.9 The Directors may cause the Company to issue new Participating Shares at par or to compulsorily redeem at par such number of Participating Shares as they consider necessary to address, in such manner as they consider equitable, any prior miscalculation of Net Asset Value.

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or Net Asset Value per Participating Share. The Company shall not be required to pay to the holder the redemption proceeds of any such compulsorily redeemed Participating Shares, which proceeds shall be retained by the Company.

9 Suspensions

9.1 The Directors may, from time to time, in the circumstances disclosed in the Offering Memorandum, declare a Suspension with respect to any one or more Classes and/or Series of Participating Shares.

9.2 The Directors shall promptly notify all affected Members of any such Suspension and shall promptly notify such Members upon termination of such Suspension.

10 Transfer of Shares

10.1 Subject to Article 5.1, Shares may not be Transferred without the prior written approval of the Directors (which may be withheld for any or no reason) provided that the Directors may waive this requirement to the extent that they deem appropriate in connection with the listing of any Class or Series of Share on a stock exchange.

10.2 The Directors shall not register any Transfer of any Share to any person who is, in the opinion of the Directors, not an Eligible Investor.

10.3 Any proposed transferee shall provide to the Directors such information and documents as the Directors may request, including, without limitation, such documents or information as the Directors deem necessary or desirable:

(a) to enable the Directors to determine that the proposed transferee is an Eligible Investor; and

(b) to enable the Company to comply with all applicable laws, including anti-money laundering laws.

10.4 The instrument of Transfer of any Share shall be in writing and shall be executed by or on behalf of the transferor (and, if the Directors so require, signed by or on behalf of the transferee). The transferor shall be deemed to remain the holder of a Share until the name of the transferee is entered in the Register of Members.

11 Transmission of Shares

11.1 If a Member dies, the survivor or survivors (where the Member was a joint holder) or his or her legal personal representatives (where the Member was a sole holder) shall be the only persons recognised by the Company as having any title to the Member's interest in the Company. The death of any Member shall not operate to relieve, waive or reduce any liabilities attaching to the Member's Shares at the time of death and such liabilities shall continue to bind any survivor or survivors, or any personal representative, as the case may be.

11.2 Any person becoming entitled to a Share in consequence of the death or bankruptcy, or the liquidation or dissolution, of a Member (or in any other way than by Transfer) and who is an Eligible Investor may, upon delivery to the Directors of such evidence as may from time to time be required by them of:

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(a) such person's entitlement to such Shares; and/or

(b) such person's status as an Eligible Investor,

elect, either to become the holder of such Share or to have such Share Transferred to another Eligible Investor nominated by such person. If such person elects to become the holder of such Share, such person shall give notice in writing to the Directors to that effect, but the Directors shall, in either case, have the same right to decline registration of such person as a holder of such Share as they would have had in the case of a Transfer of the Share by that Member before his or her death or bankruptcy, or liquidation or dissolution, as the case may be.

11.3 Any person becoming entitled to a Share in consequence of the death or bankruptcy, or the liquidation or dissolution, of a Member (or in any other way than by Transfer) and who is not an Eligible Investor shall not be registered as the holder of such Share and shall promptly Transfer such Share to an Eligible Investor in accordance with these Articles.

11.4 A person becoming entitled to a Share by reason of the death or bankruptcy or liquidation or dissolution of the holder (or in any other case than by Transfer), and who is an Eligible Investor, shall be entitled to the same dividends and other advantages to which such person would be entitled if such person were the registered holder of such Share. However, the person shall not, before becoming a Member in respect of a Share, be entitled in respect of it to exercise any right conferred by membership in relation to meetings of the Company and the Directors may at any time give notice requiring any such person to elect either to be registered himself or to have some person nominated by him become the holder of the Share (but the Directors shall, in either case, have the same right to decline or suspend registration as they would have had in the case of a transfer of the Share by the relevant Member before his death or bankruptcy or liquidation or dissolution or any other case than by transfer, as the case may be). If the notice is not complied with within ninety days the Directors may thereafter withhold payment of all dividends, bonuses or other monies payable in respect of the Share until the requirements of the notice have been complied with.

12 Redemption of Shares

12.1 Subject to any provisions relating to a specific Class and/or Series as set out in the Offering Memorandum or these Articles or in any resolution constituting a Class and/or Series or otherwise forming part of the special rights of such Participating Shares, a Member may require the redemption of all or any of such Member's Participating Shares by serving a Redemption Notice on the Company. Unless timely receipt is waived by the Directors in a particular case, a Redemption Notice shall be required to be received on or before a Redemption Date with respect to such Participating Shares (or such number of days prior to such Redemption Date as may be determined by the Directors). Any Member redeeming Participating Shares shall submit to the Directors the share certificate (if any) issued in respect of those Participating Shares. The Company shall redeem such Participating Shares at the Redemption Price, being an amount equal to the Net Asset Value per Participating Share of the relevant Class and/or Series calculated on the relevant Redemption Date (or if the Redemption Date is not a Valuation Date then on the immediately preceding Valuation Date) subject to any deductions, holdbacks or adjustments provided for in these Articles and/or the Offering Memorandum.

12.2 The Directors may deduct any Redemption Fee from the Redemption Price. The Directors may also deduct such amount which they consider to be an appropriate allowance to reflect fiscal and

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sale charges which would be incurred for the account of the Company in realising assets or closing out positions to provide funds to meet any redemption request.

12.3 A Member may not withdraw a Redemption Notice once submitted to the Company unless (a) the Directors shall have declared a Calculation Suspension or Redemption Suspension or (b) the Directors determine (in their sole discretion) to permit the withdrawal of such redemption request (which they may do in whole or in part). If a relevant Suspension has been declared by the Directors, the right of a Member to have its Participating Shares redeemed shall be suspended and during the period of Suspension the Member may withdraw its Redemption Notice. Any withdrawal of the Redemption Notice shall be made in writing and shall only be effective if actually received by the Company before the termination of the period of the Redemption Suspension or Calculation Suspension, as applicable. If the Redemption Notice is not withdrawn, any Participating Shares the redemption of which has been suspended shall be redeemed once the relevant Suspension has ended at the Redemption Price for Participating Shares of the relevant Class and/or Series calculated on the next Redemption Date following the end of the relevant Suspension.

12.4 The Directors may impose a gate the effect of which is to limit the redemptions of Participating Shares of any Class and/or Series or to limit the redemptions of Participating Shares held by any Member or Members as of any Redemption Date to such extent and in such manner as is disclosed in the Offering Memorandum. If the Directors determine to limit redemptions, the Directors may determine the manner in which such gated redemption requests will be dealt with on any subsequent Redemption Date.

12.5 If the Company is required by the laws of any relevant jurisdiction to make a withholding from any redemption monies payable to the holder of Participating Shares the amount of such withholding shall be deducted from the redemption monies otherwise payable to such person.

12.6 No redemption of part of a Member's holding of Participating Shares of any one Class and/or Series may be made if, as a result thereof, such Member would hold fewer Participating Shares of such Class and/or Series than such minimum number or value of Participating Shares of such Class and/or Series as may from time to time be specified (either generally or in any particular case or cases) by the Directors. If such partial redemption would reduce such Member's holding of Participating Shares to less than such minimum holding, the Directors may, in their discretion, elect to compulsorily redeem all of such Member's Participating Shares.

12.7 The Company may, in the absolute discretion of the Directors, refuse to make a redemption payment to a Member if the Directors suspect or are advised that the payment of any redemption proceeds to such Member may result in a breach or violation of any anti-money laundering law by any person in any relevant jurisdiction, or if such refusal is necessary to ensure the compliance by the Company, its Directors, the Administrator or any other service provider of the Company with any anti-money laundering law in any relevant jurisdiction.

12.8 Any amount payable to a Member for the redemption of Participating Shares shall be paid in such currency or currencies as the Directors may determine. Subject to any Payment Suspension, the Company shall remit redemption proceeds (net of the costs of remittance) by cheque or wire transfer within such period or periods as the Directors shall have disclosed to the Member at the time of its subscription for Participating Shares or, in the absence of any such disclosure, within such period or periods as the Directors shall determine. In the absence of directions as to payment the Company may remit redemption proceeds by cheque to the address of the Member appearing on the Register of Members or by wire transfer to such account as the Directors deem

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appropriate in the circumstances. The Company shall not be liable for any loss resulting from this procedure.

12.9 On any redemption of Participating Shares the Directors shall have the power to satisfy (in whole or in part) the Redemption Price (and any other sums payable on redemption as provided in these Articles) owing on the redemption of such Participating Shares by dividing *in specie* the whole or any part of the assets of the Company (including, without limitation, shares, debentures, or securities of any other company whether or not held by the Company on the Redemption Date in question) and either (i) distributing such assets directly to the redeeming shareholder, and/or (ii) distributing or allocating such assets to a liquidating account or other similar mechanism to be managed and/or liquidated at the discretion of the Directors.

12.10 Participating Shares shall be treated as having been redeemed with effect from the relevant Redemption Date irrespective of whether or not a Member has been removed from the Register of Members or the Redemption Price has been determined or remitted. Accordingly, on and from the relevant Redemption Date, Members in their capacity as such will not be entitled to or be capable of exercising any rights arising under these Articles with respect to Participating Shares being redeemed (including any right to receive notice of, attend or vote at any meeting of the Company) save the right to receive the Redemption Price and any dividend which has been declared prior to the relevant Redemption Date but not yet paid (in each case with respect to the Participating Shares being redeemed). Such Members will be treated as creditors of the Company with respect to the Redemption Price and will rank accordingly in the priority of the Company's creditors.

12.11 Once a Participating Share is redeemed it shall be available for re issue and, until re issue, shall form part of the authorised and unissued share capital of the Company.

12.12 Upon the written request of a Member or prospective Member in a form acceptable to the Directors, the Company may, in the discretion of the Directors, accept a standing redemption request from such Member or prospective Member pursuant to which the Company shall agree (without assuming any liability for failing to do so) to use its commercially reasonable efforts to redeem such Member's Participating Shares to the extent necessary to ensure that such Member does not own over a specified percentage of the outstanding Participating Shares of the Company or any Class and/or Series thereof; such percentage to be the percentage identified by such Member or prospective Member in such written request as being the percentage which such Member's or prospective Member's ownership cannot exceed without material risk of such Member or prospective Member being in violation of applicable law or regulation. Any such written request may be revoked by notice in writing to the Company from the affected Member.

12.13 No amendment to these Articles made after a Redemption Date shall affect a Member with respect to Participating Shares of that Member which have been redeemed, or are being treated as redeemed, on or prior to that Redemption Date.

12.14 Unless otherwise provided in the Offering Memorandum, unremitted redemption proceeds shall not bear interest against the Company and redeemed Participating Shares shall not participate in the profits and losses of the Company with effect from the relevant Redemption Date.

13 Compulsory Redemption

13.1 The Directors may cause the Company to redeem any or all of the Participating Shares held by any person at the appropriate Redemption Price in the circumstances disclosed in the Offering

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Memorandum. If the Directors determine compulsorily to redeem any Participating Shares under this Article they shall give the holder of the Participating Shares such notice of the redemption as they shall have disclosed to the Member at the time of its subscription for Participating Shares or, in the absence of any such disclosure, within such period as the Directors shall determine.

13.2 The Directors may cause a compulsory redemption during any period for which a Redemption Suspension has been declared.

13.3 Without prejudice to the generality of the foregoing, the Company may (without notice) compulsorily redeem the Participating Shares of any Member and, on behalf of such Member, apply the proceeds of redemption in paying for new Participating Shares to give effect to any exchange, conversion or roll-up policy disclosed to Members pursuant to which Participating Shares of one Class or Series (the "**Old Shares**") may, at the option of the Company, be exchanged for Participating Shares of another Class or Series (the "**New Shares**") by means of the redemption of the Old Shares and the immediate re-subscription of the redemption proceeds in paying up the New Shares.

14 Purchase and Surrender of Shares

14.1 Subject to the provisions of the Statute and without prejudice to these Articles, the Company may purchase its own Shares (including any redeemable Shares) in such manner and on such other terms as the Directors may agree with the relevant Member.

14.2 The Company may make a payment in respect of the redemption or purchase of its own Shares in any manner permitted by the Statute, including out of capital.

14.3 The Directors may accept the surrender for no consideration of any fully paid Share.

15 Treasury Shares

15.1 The Directors may, prior to the purchase, redemption or surrender of any Share, determine that such Share shall be held as a Treasury Share.

15.2 The Directors may determine to cancel a Treasury Share or transfer a Treasury Share on such terms as they think proper (including, without limitation, for nil consideration).

16 Variation of Share Rights

16.1 Subject to the Statute and these Articles, all or any of the Share Rights applicable to any Class or Series of Participating Shares in issue (unless otherwise provided by the terms of issue of those Participating Shares) may (whether or not the Company is being wound up) be varied without the consent of the holders of the issued Participating Shares of that Class or Series where such variation is considered by the Directors not to have a material adverse effect upon such holders' Share Rights; otherwise, any such variation may be made only with the prior consent in writing of the holders of not less than two-thirds by Net Asset Value of such Participating Shares, or with the sanction of a resolution passed by a majority of at least two-thirds of the votes cast in person or by proxy at a separate meeting of the holders of such Participating Shares. For the avoidance of doubt, the Directors reserve the right, notwithstanding that any such variation may not have a material adverse effect, to obtain consent from the holders of such Participating Shares. To any such meeting all the provisions of these Articles as to general meetings shall *mutatis mutandis* apply, but so that any holder of a Participating Share present in person or by proxy may demand

a poll, and the quorum for any such meeting shall be Members holding not less than twenty per cent. By Net Asset Value of the issued Participating Shares of the relevant Class or Series. At any Class meeting, the voting rights attributable to each Participating Share shall be calculated by reference to the Net Asset Value per Participating Share (calculated as at the most recent Valuation Date) and not on the basis of one Participating Share, one vote.

16.2 For the purposes of a Class consent, the Directors may treat two or more or all the Classes or Series of Participating Shares as forming one Class or Series if the Directors consider that such Classes or Series would be affected in the same way by the proposals under consideration, but in any other case shall treat them as separate Classes or Series.

16.3 Where the Shares of any Class or Series (the "**First Class**") rank, or will on issue rank, pari passu with the Shares of another Class or Series (the "**Second Class**") with respect to participation in the same pool of profits or assets of the Company on a winding up, the rights of the First Class shall be deemed to be varied by any variation of or creation of rights in the Second Class (including on initial issue) which gives the Second Class priority over the First Class on a winding up of the Company.

16.4 In relation to any Class or Series consent required pursuant to Article 16.1, the Directors in their discretion may invoke the following procedure (the "**Negative Consent Procedure**"). The Directors shall provide written notice of the proposed variation (the "**Proposal**") to the Members of the affected Class or Series and shall specify a deadline (the "**Redemption Request Date**"), which shall be no earlier than 30 days after the date of giving such notice, by which date such Members may submit a written request for redemption of some or all of their Participating Shares of the affected Class and/or Series on the Redemption Date (the "**Specified Redemption Date**") specified by the Directors in such notice. The terms of the Proposal shall be such that its specified effective date (the "**Effective Date**") shall not be on or prior to the Specified Redemption Date. Such notice shall further provide that the holders of any Participating Shares in respect of which a request for redemption has not been received by the Redemption Request Date (the "**Affected Shares**") shall, in the absence of express written refusal to consent, be deemed to have consented in writing to the Proposal (such Affected Shares being the "Negative Consent Shares"). In the event that the Negative Consent Procedure is followed, only the Affected Shares shall be considered for the purposes of determining whether the written consent majority has been obtained under Article 16.1 with the holders of the Negative Consent Shares being deemed to have submitted a written consent in favour of the Proposal on the Effective Date.

16.5 Subject to the foregoing Articles, the Share Rights applicable to any Class or Series of Shares in issue shall (unless otherwise expressly provided by the conditions of issue of such Shares) be deemed not to be varied by:

(a) the creation, allotment or issue of further Shares ranking pari passu therewith and which may be issued with the benefit of the terms referred to below;

(b) the purchase or redemption of any Shares;

(c) the exercise of the powers to allocate assets and charge liabilities to the various Separate Accounts or any of them and to transfer the same to and from the various Separate Accounts or any of them, as provided for in these Articles;

(d) any reduction or waiver of any fees (including early redemption, management or performance fees) chargeable or allocable to any Class or Series of Shares;

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(e) any reduction or waiver of any redemption notice, gate or lock-up period applicable to any Class or Series of Shares; or

(f) any variation or waiver contemplated by or provided for in the Offering Memorandum applicable to the relevant Class and/or Series.

17 Variation of Terms

The Directors, with the consent of the Investment Manager, shall have the absolute discretion to agree with a Member to waive or modify the terms applicable to such Member's subscription for Participating Shares (including those relating to management and performance fees and redemption terms) without obtaining the consent of any other Member; provided that such waiver or modification does not amount to a variation of the rights attaching to the Participating Shares of such other Members.

18 Certificates for Shares

18.1 A Member shall only be entitled to a share certificate if the Directors resolve that share certificates shall be issued. Share certificates representing Shares, if any, shall be in such form as the Directors may determine. Share certificates shall be signed by one or more Directors or another person authorised by the Directors. The Directors may authorise certificates to be issued with the authorised signature(s) affixed by mechanical process. All certificates for Shares shall be consecutively numbered or otherwise identified and shall specify the Shares to which they relate. All certificates surrendered to the Company for transfer shall be cancelled and, subject to these Articles, no new certificate shall be issued until the former certificate representing a like number of relevant Shares shall have been surrendered and cancelled.

18.2 The Company shall not be bound to issue more than one certificate for Shares held jointly by more than one person and delivery of a certificate to one joint holder shall be a sufficient delivery to all of them.

18.3 If a share certificate is defaced, worn out, lost or destroyed, it may be renewed on such terms (if any) as to evidence and indemnity and on the payment of such expenses reasonably incurred by the Company in investigating evidence, as the Directors may prescribe, and (in the case of defacement or wearing out) on delivery up of the old certificate.

19 Register of Members

19.1 The Company shall maintain or cause to be maintained the Register of Members.

19.2 The Directors may determine that the Company shall maintain one or more branch registers of Members in accordance with the Statute. The Directors may also determine which register of Members shall constitute the principal register and which shall constitute the branch register or registers, and to vary such determination from time to time.

20 Closing Register of Members and Fixing Record Date

20.1 For the purpose of determining Members entitled to notice of, or to vote at any meeting of Members or any adjournment thereof, or Members entitled to receive payment of any dividend, or in order to make a determination of Members for any other proper purpose, the Directors may

provide that the Register of Members shall be closed for transfers for a stated period which shall not in any case exceed thirty days.

20.2 In lieu of, or apart from, closing the Register of Members, the Directors may fix in advance or arrears a date as the record date for any such determination of Members entitled to notice of, or to vote at any meeting of the Members or any adjournment thereof, or for the purpose of determining the Members entitled to receive payment of any dividend or in order to make a determination of Members for any other proper purpose.

20.3 If the Register of Members is not so closed and no record date is fixed for the determination of Members entitled to notice of, or to vote at, a meeting of Members or Members entitled to receive payment of a dividend, the date on which notice of the meeting is sent or the date on which the resolution of the Directors declaring such dividend is passed, as the case may be, shall be the record date for such determination of Members. When a determination of Members entitled to vote at any meeting of Members has been made as provided in this Article, such determination shall apply to any adjournment thereof.

21 Non Recognition of Trusts

The Company shall not be bound by or compelled to recognise in any way (even when notified) any equitable, contingent, future or partial interest in any Share, or (except only as is otherwise provided by these Articles or the Statute) any other rights in respect of any Share other than an absolute right to the entirety thereof in the registered holder.

22 Lien on Shares

22.1 The Company shall have a first and paramount lien on all Shares (whether fully paid-up or not) registered in the name of a Member (whether solely or jointly with others) for all debts, liabilities or engagements to or with the Company (whether presently payable or not) by such Member or such Member's estate, either alone or jointly with any other person, whether a Member or not, but the Directors may at any time declare any Share to be wholly or in part exempt from the provisions of this Article. The registration of a Transfer of any such Share shall operate as a waiver of the Company's lien thereon. The Company's lien on a Share shall also extend to any amount payable in respect of that Share.

22.2 The Company may sell, in such manner as the Directors think fit, any Shares on which the Company has a lien, if a sum in respect of which the lien exists is presently payable, and is not paid within fourteen clear days after notice has been given to the holder of the Shares, or to the person entitled to it in consequence of the death or bankruptcy of the holder, demanding payment and stating that if the notice is not complied with the Shares may be sold.

22.3 To give effect to any such sale the Directors may authorise any person to execute an instrument of Transfer of the Shares sold to, or in accordance with the directions of, the purchaser. The purchaser or such purchaser's nominee shall be registered as the holder of the Shares comprised in any such Transfer, and the purchaser shall not be bound to see to the application of the purchase money, nor shall the purchaser's title to the Shares be affected by any irregularity or invalidity in the sale or the exercise of the Company's power of sale under these Articles.

22.4 The net proceeds of such sale after payment of costs, shall be applied in payment of such part of the amount in respect of which the lien exists as is presently payable and any balance shall

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(subject to a like lien for sums not presently payable as existed upon the Shares before the sale) be paid to the person entitled to the Shares at the date of the sale.

23 Amendments of Memorandum and Articles and Alteration of Capital

23.1 The Company may, by Ordinary Resolution:

(a) increase its share capital by such sum and with such rights, priorities and privileges annexed thereto, as the resolution shall prescribe;

(b) consolidate and divide all or any of its share capital into Shares of larger amount than its existing Shares;

(c) by subdivision of its existing Shares or any of them divide the whole or any part of its share capital into Shares of smaller amount than is fixed by the Memorandum; and

(d) cancel any Shares that at the date of the passing of the resolution have not been taken or agreed to be taken by any person.

23.2 All new Shares created in accordance with the provisions of the preceding Article shall be subject to the same provisions of these Articles with reference to liens, Transfer, transmission and otherwise as the Shares in the original share capital.

23.3 Subject to the provisions of the Statute and the provisions of these Articles as regards the matters to be dealt with by Ordinary Resolution the Company may, by Special Resolution:

(a) change its name;

(b) alter or add to these Articles;

(c) alter or add to the Memorandum with respect to any objects, powers or other matters specified therein; and

(d) reduce its share capital or any capital redemption reserve fund.

24 Registered Office

Subject to the provisions of the Statute, the Company may by resolution of the Directors change the location of its Registered Office. The Company may, in addition to its Registered Office, maintain such other offices or places of business as the Directors determine.

25 General Meetings

25.1 All general meetings other than annual general meetings shall be called extraordinary general meetings. The Directors may call general meetings.

25.2 The Company may but shall not be obliged to hold a general meeting in each year as its annual general meeting, and shall specify the meeting as such in the notice calling it. Any annual general meeting shall be held at such time and place as the Directors shall determine.

25.3 The Directors shall, on a Members' requisition, forthwith proceed to convene an extraordinary general meeting of the Company. A Members' requisition is a requisition of Members of the Company holding at the date of deposit of the requisition not less than ten per cent. in Net Asset Value of the Shares as at that date which carry the right to vote at general meetings of the Company.

25.4 The requisition must state the objects of the meeting and must be signed by the requisitionists and deposited at the Registered Office, and may consist of several documents in like form each signed by one or more requisitionists.

25.5 If the Directors do not, within twenty-one days from the date of the deposit of the requisition, duly proceed to convene a general meeting to be held within a further twenty-one days, the requisitionists, or any of them representing more than one-half of the total voting rights of all of them, may themselves convene a general meeting, but any meeting so convened shall not be held after the expiration of three months after the expiration of the first above-mentioned twenty-one days.

25.6 A general meeting convened as aforesaid by requisitionists shall be convened in the same manner, as nearly as possible, as that in which general meetings are to be convened by Directors.

26 Notice of General Meetings

26.1 At least five Business Days' notice shall be given of any general meeting. Every notice shall be exclusive of the day on which it is given or deemed to be given and of the day on which the meeting is to be held and shall specify the place, the day and the hour of the meeting and the general nature of the business and shall be given in the manner hereinafter mentioned or in such other manner if any as may be prescribed by the Company, provided that a general meeting of the Company shall, whether or not the notice specified in this Article has been given and whether or not the provisions of these Articles regarding general meetings have been complied with, be deemed to have been duly convened if it is so agreed:

(a) in the case of an annual general meeting, by all the Members entitled to attend and vote thereat; and

(b) in the case of an extraordinary general meeting, by a majority in number of the Members having the right to attend and vote at the meeting, being a majority together holding not less than ninety five per cent. in Net Asset Value of the Shares giving that right.

26.2 The accidental omission to give notice of a general meeting to, or the non receipt of notice of a meeting by, any person entitled to receive notice thereof shall not invalidate the proceedings of that meeting.

27 Proceedings at General Meetings

27.1 No business shall be transacted at any general meeting unless a quorum is present. A quorum shall be one or more Members (present in person, by proxy or authorised corporate representative, as the case may be) entitled to attend and vote and representing not less than twenty per cent. in Net Asset Value of all of the Shares in issue and carrying the right to vote at the meeting.

27.2 A person may, with the consent of the Directors, participate at a general meeting by conference telephone or other communications equipment by means of which all the persons participating in the meeting can communicate with each other. Participation by a person in a general meeting in this manner is treated as presence in person at that meeting.

27.3 A resolution (including a Special Resolution) in writing (in one or more counterparts) signed by all Members for the time being entitled to receive notice of and to attend and vote at general meetings (or, being corporations or other non-natural persons, signed by their duly authorised representatives) shall be as valid and effective as if the resolution had been passed at a general meeting of the Company duly convened and held.

27.4 If a quorum is not present within half an hour from the time appointed for the meeting or if during such a meeting a quorum ceases to be present, the meeting, if convened upon the requisition of Members, shall be dissolved and in any other case it shall stand adjourned to the same day in the next week at the same time and place or to such other day, time or such other place as the Directors may determine, and if at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting the Members present shall be a quorum.

27.5 The chairman, if any, of the board of Directors shall preside as chairman at every general meeting of the Company, or if there is no such chairman, or if the chairman shall not be present within fifteen minutes after the time appointed for the holding of the meeting, or is unwilling to act, the Directors present shall elect one of their number to be chairman of the meeting.

27.6 If no Director is willing to act as chairman, or if no Director is present within fifteen minutes after the time appointed for holding the meeting, the Members present shall choose one of their number to be chairman of the meeting.

27.7 The chairman may, with the consent of a meeting at which a quorum is present (and shall if so directed by the meeting) adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. When a general meeting is adjourned for thirty days or more, notice of the adjourned meeting shall be given as in the case of an original meeting. Otherwise it shall not be necessary to give any such notice.

27.8 A resolution put to the vote of a meeting shall be decided on a show of hands unless before, or on the declaration of the result of, the show of hands, the chairman or any Member present in person or by proxy (or in the case of a non-natural person, by its duly authorised representative or by proxy) demands a poll.

27.9 Unless a poll is duly demanded a declaration by the chairman that a resolution has been carried or carried unanimously, or by a particular majority, or lost or not carried by a particular majority, an entry to that effect in the minutes of the proceedings of the meeting shall be conclusive evidence of that fact without proof of the number or proportion of the votes recorded in favour of or against such resolution.

27.10 The demand for a poll may be withdrawn.

27.11 Except on a poll demanded on the election of a chairman or on a question of adjournment, a poll shall be taken as the chairman directs, and the result of the poll shall be deemed to be the resolution of the general meeting at which the poll was demanded.

27.12 A poll demanded on the election of a chairman or on a question of adjournment shall be taken forthwith. A poll demanded on any other question shall be taken at such time as the chairman of the general meeting directs, and any business other than that upon which a poll has been demanded or is contingent thereon may proceed pending the taking of the poll.

27.13 In the case of an equality of votes, whether on a show of hands or on a poll, the chairman shall not be entitled to a second or casting vote.

28 Votes of Members

28.1 Subject to any rights or restrictions attached to any Shares, on a show of hands every Member holding Shares carrying the right to vote on the matter in question who (being an individual) is present in person or by proxy or (if a corporation or other non-natural person) is present by its duly authorised representative or by proxy, shall have one vote and on a poll the voting rights attributable to each Share carrying the right to vote on the matter in question shall be calculated by reference to the Net Asset Value per Share (calculated as at the most recent Valuation Date) and not on the basis of one Share, one vote.

28.2 In the case of joint holders of record, the vote of the senior holder who tenders a vote, whether in person or by proxy, shall be accepted to the exclusion of the votes of the other joint holders. Seniority among joint holders shall be determined by the order in which the names of the holders stand in the Register of Members.

28.3 A Member of unsound mind, or in respect of whom an order has been made by any court or authority having jurisdiction in lunacy, may vote, whether on a show of hands or on a poll, by the Member's committee, receiver, curator bonis, or other similar person appointed on such Member's behalf by that court or authority and any such committee, receiver, curator bonis or other similar person may vote by proxy.

28.4 No person shall be entitled to vote at any general meeting unless such person is registered as a Member on the record date for such meeting, nor unless all calls or other monies then payable by such person in respect of such Shares have been paid.

28.5 No objection shall be raised to the qualification of any voter except at the general meeting or adjourned general meeting at which the vote objected to is purported to be given or tendered and every vote not disallowed at the meeting shall be valid. Any objection made in due time shall be referred to the chairman whose decision shall be final and conclusive.

28.6 On a poll or on a show of hands votes may be cast either personally or by proxy. A Member may appoint more than one proxy or the same proxy under one or more instruments to attend and vote at a meeting. Where a Member appoints more than one proxy the instrument of proxy shall state which proxy is entitled to vote on a show of hands.

28.7 A Member holding more than one Share need not cast the votes in respect of its Shares in the same way on any resolution and therefore may vote a Share or some or all such Shares either for or against a resolution and/or abstain (any such abstentions to count neither for nor against the resolution) from voting a Share or some or all of the Shares and, subject to the terms of the instrument appointing it, a proxy appointed under one or more instruments may vote a Share or some or all of the Shares in respect of which such proxy is appointed either for or against a resolution and/or abstain from voting.

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29 Proxies

29.1 The instrument appointing a proxy shall be in writing, be executed under the hand of the appointor or of such appointor's attorney duly authorised in writing or, if the appointor is a corporation or other non-natural person, under the hand of an officer or other person duly authorised for that purpose. A proxy need not be a Member of the Company.

29.2 The Directors may, in the notice convening any meeting or adjourned meeting, or in an instrument of proxy sent out by the Company, specify the place and the time (being not later than the time for holding the meeting or adjourned meeting to which the proxy relates) at which the instrument appointing a proxy shall be deposited. In the absence of any such direction from the Directors in the notice convening any meeting or adjourned meeting, the instrument appointing a proxy shall be deposited at the Registered Office not less than 48 hours before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote.

29.3 The chairman may in any event, at the chairman's discretion, declare that an instrument of proxy shall be deemed to have been duly deposited. An instrument of proxy that is not deposited in the manner permitted and which has not been declared to have been duly deposited by the chairman, shall be invalid.

29.4 The instrument appointing a proxy may be in any usual or common form and may be incorporated within any subscription agreement or other document signed by or on behalf of the Member. An instrument appointing a proxy may be expressed to be for a particular meeting or any adjournment thereof or generally until revoked. An instrument appointing a proxy shall be deemed to include the power to demand or join or concur in demanding a poll.

29.5 Votes given in accordance with the terms of an instrument of proxy shall be valid notwithstanding the previous death or insanity of the principal or revocation of the proxy or of the authority under which the proxy was executed, or the Transfer of the Share in respect of which the proxy is given unless notice in writing of such death, insanity, revocation or Transfer was received by the Company at the Registered Office before the commencement of the general meeting, or adjourned meeting at which it is sought to use the proxy.

30 Corporate Members

Any corporation or other non-natural person which is a Member of the Company may in accordance with its constitutional documents, or in the absence of such provision by resolution of its directors or other governing body, authorise such person as it thinks fit to act as its representative at any meeting of the Company or of any Class of Members, and the person so authorised shall be entitled to exercise the same powers on behalf of the corporation which such person represents as the corporation could exercise if it were an individual Member.

31 Shares Beneficially Owned by the Company

Shares of the Company that are beneficially owned by the Company shall not be voted, directly or indirectly, at any meeting and shall not be counted in determining the total number of outstanding Shares at any given time.

32 Directors

There shall be a board of Directors consisting of not less than one person (exclusive of alternate Directors) provided however that the Company may from time to time by Ordinary Resolution increase or reduce the limits in the number of Directors. The first Directors of the Company shall be determined in writing by, or appointed by a resolution of, the Subscriber.

33 Powers of Directors

33.1 Subject to the provisions of the Statute, the Memorandum and the Articles and to any directions given by Special Resolution, the business of the Company shall be managed by the Directors who may exercise all the powers of the Company. No alteration of the Memorandum or these Articles and no such direction shall invalidate any prior act of the Directors which would have been valid if that alteration had not been made or that direction had not been given. A duly convened meeting of Directors at which a quorum is present may exercise all powers exercisable by the Directors.

33.2 All cheques, promissory notes, drafts, bills of exchange and other negotiable instruments and all receipts for monies paid to the Company shall be signed, drawn, accepted, endorsed or otherwise executed as the case may be in such manner as the Directors shall determine by resolution.

33.3 The Directors may exercise all the powers of the Company to borrow money and to mortgage or charge its undertaking, property and uncalled capital or any part thereof and to issue debentures, debenture stock, mortgages, bonds and other such securities whether outright or as security for any debt, liability or obligation of the Company or of any third party. Notwithstanding the foregoing, the Directors shall not exercise the powers specified in this Article in breach of any limits or restrictions specified in the Offering Memorandum.

34 Appointment and Removal of Directors

34.1 The Company may, by Ordinary Resolution, appoint any person to be a Director and may, by Ordinary Resolution, remove any Director.

34.2 The Directors may appoint any person to be a Director, either to fill a vacancy or as an additional Director provided that the appointment does not cause the number of Directors to exceed any number fixed by or in accordance with these Articles as the maximum number of Directors.

35 Vacation of Office of Director

The office of a Director shall be vacated if:

(a) the Director gives notice in writing to the Company that such Director resigns the office of Director;

(b) the Director is absent (without being represented by proxy or an alternate Director appointed by such Director) from three consecutive meetings of the board of Directors without special leave of absence from the Directors, and they pass a resolution that such Director has by reason of such absence vacated office;

(c) the Director dies, becomes bankrupt or makes any arrangement or composition with such Director's creditors generally;

(d) the Director is or becomes of unsound mind;

(e) the Director ceases to be a Director by virtue of, or is prohibited from being a Director by, an order made pursuant to any law or regulation binding on the Company; or

(f) all the other Directors of the Company (being not less than two in number) resolve that such Director should be removed as a Director.

36 Proceedings of Directors

36.1 The quorum for the transaction of the business of the Directors may be fixed by the Directors, and unless so fixed shall be two if there are two or more Directors, and shall be one if there is only one Director. A person who holds office as an alternate Director shall, if such person's appointor is not present, be counted in the quorum. A Director who also acts as an alternate Director shall, if such Director's appointor is not present, count twice towards the quorum.

36.2 Subject to the provisions of these Articles, the Directors may regulate their proceedings as they think fit. Questions arising at any meeting shall be decided by a majority of votes. In the case of an equality of votes, the chairman shall not have a second or casting vote. A Director who is also an alternate Director shall be entitled in the absence of such Director's appointor to a separate vote on behalf of such Director's appointor in addition to such Director's own vote.

36.3 A person may participate in a meeting of the Directors or committee of Directors by conference telephone or other communications equipment by means of which all the persons participating in the meeting can communicate with each other at the same time. Participation by a person in a meeting in this manner is treated as presence in person at that meeting. Unless otherwise determined by the Directors, the meeting shall be deemed to be held at the place where the chairman is located at the start of the meeting.

36.4 A resolution in writing (in one or more counterparts) signed by all the Directors or all the members of a committee of Directors (an alternate Director being entitled to sign such a resolution on behalf of such alternate Director's appointor) shall be as valid and effectual as if it had been passed at a meeting of the Directors, or committee of Directors as the case may be, duly convened and held.

36.5 A Director or alternate Director may, or other officer of the Company at the direction of a Director or alternate Director may call a meeting of the Directors by at least two days' notice in writing to every Director and alternate Director which notice shall set forth the general nature of the business to be considered unless notice is waived by all the Directors (or their alternates) either at, before or after the meeting is held.

36.6 The continuing Directors may act notwithstanding any vacancy in their body, but if and so long as their number is reduced below the number fixed by or pursuant to these Articles as the necessary quorum of Directors the continuing Directors or Director may act for the purpose of increasing the number of Directors to that number, or of summoning a general meeting of the Company, but for no other purpose.

36.7 The Directors may elect a chairman of their board and determine the period for which the chairman is to hold office; but if no such chairman is elected, or if at any meeting the chairman is not present within five minutes after the time appointed for holding the same, the Directors present may choose one of their number to be chairman of the meeting.

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36.8 All acts done by any meeting of the Directors or of a committee of Directors (including any person acting as an alternate Director) shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment of any Director or alternate Director, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and qualified to be a Director or alternate Director as the case may be.

36.9 A Director but not an alternate Director may be represented at any meetings of the board of Directors by a proxy appointed in writing by such Director. The proxy shall count towards the quorum and the vote of the proxy shall for all purposes be deemed to be that of the appointing Director.

37 Presumption of Assent

A Director who is present at a meeting of the board of Directors at which action on any Company matter is taken shall be presumed to have assented to the action taken unless the Director's dissent shall be entered in the minutes of the meeting or unless the Director shall file such Director's written dissent from such action with the person acting as the chairman or secretary of the meeting before the close or adjournment thereof or shall forward such dissent by personal delivery, courier or registered post to such person immediately after the close or adjournment of the meeting. Such right to dissent shall not apply to a Director who voted in favour of such action.

38 Directors' Interests

38.1 A Director may hold any other office or place of profit under the Company (other than the office of Auditor) in conjunction with such Director's office of Director for such period and on such terms as to remuneration and otherwise as the Directors may determine.

38.2 A Director may act alone or by such Director's firm in a professional capacity for the Company and the Director or such Director's firm shall be entitled to remuneration for professional services as if such Director were not a Director or alternate Director.

38.3 A Director or alternate Director of the Company may be or become a director or other officer of or otherwise interested in any company promoted by the Company or in which the Company may be interested as shareholder or otherwise, and no such Director or alternate Director shall be accountable to the Company for any remuneration or other benefits received by such Director or alternate Director as a director or officer of, or from such Director or alternate Director's interest in, such other company.

38.4 No person shall be disqualified from the office of Director or alternate Director or prevented by such office from contracting with the Company, either as vendor, purchaser or otherwise, nor shall any such contract or any contract or transaction entered into by or on behalf of the Company in which any Director or alternate Director shall be in any way interested be or be liable to be avoided, nor shall any Director or alternate Director so contracting or being so interested be liable to account to the Company for any profit realised by any such contract or transaction by reason of such Director holding office or of the fiduciary relationship thereby established. A Director (or such Director's alternate Director in such Director's absence) shall be at liberty to vote in respect of any contract or transaction in which such Director is interested provided that the nature of the interest of any Director or alternate Director in any such contract or transaction shall be disclosed by such Director at or prior to such Director's consideration and any vote thereon.

38.5 A general notice that a Director or alternate Director is a shareholder, director, officer or employee of any specified firm or company and is to be regarded as interested in any transaction with such firm or company shall be sufficient disclosure for the purposes of voting on a resolution in respect of a contract or transaction in which such Director has an interest, and after such general notice it shall not be necessary to give special notice relating to any particular transaction.

39 Minutes

The Directors shall cause minutes to be made in books kept for the purpose of all appointments of officers made by the Directors, all proceedings at meetings of the Company or the holders of any Class of Shares and of the Directors, and of committees of Directors including the names of the Directors or alternate Directors present at each meeting.

40 Delegation of Directors' Powers

40.1 The Directors may delegate any of their powers to any committee consisting of one or more Directors or such other persons as the Directors may designate. They may also delegate to any managing director or any Director holding any other executive office such of their powers as they consider desirable to be exercised by such managing director or any Director provided that an alternate Director may not act as managing director and the appointment of a managing director shall be revoked forthwith if such managing director ceases to be a Director. Any such appointment may be made subject to any conditions the Directors may impose, and either collaterally with or to the exclusion of their own powers, and may be revoked or altered. Subject to any such conditions, the proceedings of a committee of Directors shall be governed by these Articles regulating the proceedings of Directors, so far as they are capable of applying.

40.2 The Directors may establish any committees, local boards or agencies or appoint any person to be a manager or agent for managing the affairs of the Company and may appoint any person to be a member of such committees or local boards. Any such appointment may be made either collaterally with or to the exclusion of the Directors' powers, shall be subject to any conditions the Directors may impose, and may be revoked or altered. Subject to any such conditions, the proceedings of any such committee, local board or agency shall be governed by these Articles regulating the proceedings of Directors, so far as they are capable of applying.

40.3 The Directors may by power of attorney or otherwise appoint any company, firm, person or body of persons to be the attorney or authorised signatory of the Company for such purpose and with such powers, authorities and discretions (not exceeding those vested in or exercisable by the Directors under these Articles) and for such period and subject to such conditions as they may think fit, and any such powers of attorney or other appointment may contain such provisions for the protection and convenience of persons dealing with any such attorneys or authorised signatories as the Directors may think fit and may also authorise any such attorney or authorised person to delegate all or any of the powers, authorities and discretions vested in such attorney or authorised person.

40.4 The Directors may appoint such officers as they consider necessary on such terms, at such remuneration (if any) and to perform such duties, and subject to such provisions as to disqualification and removal as the Directors may think fit. Unless otherwise specified in the terms of such officer's appointment an officer may be removed by resolution of the Directors or Members.

41 Alternate Directors

41.1 Any Director (other than an alternate Director) may by written notice to the Company appoint any other Director, or any other person willing to act, to be an alternate Director and by written notice to the Company may remove from office an alternate Director so appointed by the Director.

41.2 An alternate Director shall be entitled to receive notice of all meetings of Directors and of meetings of committees of Directors of which such alternate Director's appointor is a member, to attend and vote at every such meeting at which the Director appointing such alternate Director is not personally present, and generally to perform all the functions of such alternate Director's appointor as a Director in such Director's absence.

41.3 An alternate Director shall cease to be an alternate Director if such alternate Director's appointor ceases to be a Director.

41.4 Any appointment or removal of an alternate Director shall be by notice to the Company signed by the Director making or revoking the appointment or in any other manner approved by the Directors.

41.5 Subject to the provisions of the Articles, an alternate Director shall be deemed for all purposes to be a Director and shall alone be responsible for such alternate Director's own acts and defaults and shall not be deemed to be the agent of the Director appointing such alternate Director.

42 No Minimum Shareholding for Directors

The Company in general meeting may fix a minimum shareholding required to be held by a Director, but unless and until such a shareholding qualification is fixed a Director shall not be required to hold Shares.

43 Remuneration of Directors

43.1 The remuneration to be paid to the Directors, if any, shall be such remuneration as the Directors shall determine. The Directors shall also be entitled to be paid all travelling, hotel and other expenses properly incurred by them in connection with their attendance at meetings of Directors or committees of Directors, or general meetings of the Company, or separate meetings of the holders of any Class of Shares or debentures of the Company, or otherwise in connection with the business of the Company, or to receive a fixed allowance in respect thereof as may be determined by the Directors, or a combination partly of one such method and partly the other.

43.2 The Directors may by resolution approve additional remuneration to any Director for any services other than such Director's ordinary routine work as a Director. Any fees paid to a Director who is also counsel to the Company, or otherwise serves it in a professional capacity, shall be in addition to such Director's remuneration as a Director.

44 Seal

The Company may, if the Directors so determine, have a Seal, which shall only be used by the authority of the Directors or of a committee of the Directors authorised by the Directors. Every instrument to which the Seal has been affixed shall be signed by at least one person who shall be either a Director or some officer or other person authorised by the Directors for the purpose.

45 Dividends, Distributions and Reserves

45.1 Subject to the Statute, these Articles, and the special rights attaching to Participating Shares of any Class and/or Series, the Directors may, in their absolute discretion, declare dividends and distributions on Participating Shares of any Class and/or Series in issue and authorise payment of the dividends or distributions out of the relevant Separate Account in respect of such Participating Shares. No dividend or distribution shall be paid except out of the realised or unrealised profits of the Company, or out of the share premium account attributable to Participating Shares of the Class and/or Series in respect of which the dividend or distribution is proposed to be paid, or as otherwise permitted by the Statute.

45.2 Except as otherwise provided by the rights attached to Participating Shares, or as otherwise determined by the Directors, all dividends and distributions in respect of Participating Shares of a particular Class and/or Series shall be declared and paid according to the Net Asset Value of the Participating Shares of the Class and/or Series that a Member holds. If any Participating Share is issued on terms providing that it shall rank for dividend or distribution as from a particular date, that Participating Share shall rank for dividend or distribution accordingly.

45.3 The Directors may deduct and withhold from any dividend or distribution otherwise payable to any Member all sums of money (if any) then payable by it to the Company on account of calls or otherwise or any monies which the Company is obliged by law to pay to any taxing or other authority.

45.4 Under no circumstances may the assets (or the income derived from such assets) attributed to a Separate Account in respect of any Class and/or Series be used to pay a dividend in respect of a Separate Account that is attributed to any other Class and/or Series.

45.5 The Directors may declare that any dividend or distribution be paid wholly or partly by the distribution of specific assets and in particular of shares, debentures or securities of any other company or in any one or more of such ways and, where any difficulty arises in regard to such distribution, the Directors may settle the same as they think expedient and in particular may issue fractional Shares and fix the value for distribution of such specific assets or any part thereof and may determine that cash payments shall be made to any Members upon the basis of the value so fixed in order to adjust the rights of all Members and may vest any such specific assets in trustees as may seem expedient to the Directors.

45.6 Any dividend, distribution, interest or other monies payable in cash in respect of Participating Shares may be paid by wire transfer to the holder or by cheque or warrant sent through the post directed to the registered address of the holder or, in the case of joint holders, to the registered address of the holder who is first named on the Register of Members or to such person and to such address as such holder or joint holders may in writing direct. Every such cheque or warrant shall (unless the Directors in their sole discretion otherwise determine) be made payable to the order of the person to whom it is sent. Any one of two or more joint holders may give effectual receipts for any dividends, bonuses, or other monies payable in respect of the Participating Share held by them as joint holders.

45.7 Any dividend or distribution which cannot be paid to a Member and/or which remains unclaimed after six months from the date of declaration of such dividend or distribution may, in the discretion of the Directors, be paid into a separate account in the Company's name, provided that the Company shall not be constituted as a trustee in respect of that account and the dividend or distribution shall remain as a debt due to the Member. Any dividend or distribution which remains

unclaimed after a period of six years from the date of declaration of such dividend or distribution shall be forfeited and shall revert to the Company.

45.8 No dividend or distribution shall bear interest against the Company.

46 Capitalisation

The Directors may capitalise any sum standing to the credit of any of the Company's reserve accounts (including share premium account and capital redemption reserve) or any sum standing to the credit of profit and loss account or otherwise available for distribution and to appropriate such sum to Members of any Class and/or Series in the proportions in which such sum would have been divisible amongst them had the same been a distribution of profits by way of dividend and to apply such sum on their behalf in paying up in full unissued Participating Shares for allotment and distribution credited as fully paid-up to and amongst them in the proportion aforesaid. In such event the Directors shall do all acts and things required to give effect to such capitalisation, with full power to the Directors to make such provisions as they think fit for the case of Participating Shares becoming distributable in fractions (including provisions whereby the benefit of fractional entitlements accrue to the Company rather than to the Members concerned). The Directors may authorise any person to enter into an agreement with the Company, on behalf of all of the Members interested, providing for such capitalisation and matters incidental thereto and any agreement made under such authority shall be effective and binding on all concerned.

47 Books of Account

47.1 The Directors shall cause proper books of account (including, where applicable, material underlying documentation including contracts and invoices) to be kept with respect to all sums of money received and expended by the Company and the matters in respect of which the receipt or expenditure takes place, all sales and purchases of goods by the Company and the assets and liabilities of the Company. Such books of account must be retained for a minimum period of five years from the date on which they are prepared. Proper books shall not be deemed to be kept if there are not kept such books of account as are necessary to give a true and fair view of the state of the Company's affairs and to explain its transactions.

47.2 The Directors shall from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the accounts and books of the Company or any of them shall be open to the inspection of Members not being Directors and no Member (not being a Director) shall have any right of inspecting any account or book or document of the Company except as conferred by Statute, or authorised by the Directors or by the Company in general meeting.

47.3 The Directors may from time to time cause to be prepared and to be laid before the Company in general meeting profit and loss accounts, balance sheets, group accounts (if any) and such other reports and accounts as may be required by law.

48 Audit

48.1 The Directors may appoint an Auditor of the Company who shall hold office on such terms as the Directors determine.

48.2 Every Auditor of the Company shall have a right of access at all times to the books and accounts and vouchers of the Company and shall be entitled to require from the Directors and officers of

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the Company such information and explanation as may be necessary for the performance of the duties of the Auditor.

48.3 Any Auditors of the Company shall, if so required by the Directors, make a report on the accounts of the Company during their tenure of office at the next annual general meeting following their appointment in the case of a company which is registered with the Registrar of Companies as an ordinary company, and at the next extraordinary general meeting following their appointment in the case of a company which is registered with the Registrar of Companies as an exempted company, and at any other time during their term of office, upon request of the Directors or any general meeting of the Members.

49 Notices

49.1 Notices shall be in writing and may be given by the Company to any Member either personally or by sending it by courier, post, cable, telex, fax or e-mail to the Member or to the address as shown in the Register of Members (or where the notice is given by e-mail by sending it to the e-mail address provided by such Member). Any notice, if posted from one country to another, is to be sent airmail.

49.2 Where a notice is sent by courier, service of the notice shall be deemed to be effected by delivery of the notice to a courier company, and shall be deemed to have been received on the third day (not including Saturdays or Sundays or public holidays) following the day on which the notice was delivered to the courier. Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, pre paying and posting a letter containing the notice, and shall be deemed to have been received on the fifth day (not including Saturdays or Sundays or public holidays in the Cayman Islands) following the day on which the notice was posted. Where a notice is sent by cable, telex or fax, service of the notice shall be deemed to be effected by properly addressing and sending such notice and shall be deemed to have been received on the same day that it was transmitted. Where a notice is given by e-mail service shall be deemed to be effected by transmitting the e-mail to the e-mail address provided by the intended recipient and shall be deemed to have been received on the same day that it was sent, and it shall not be necessary for the receipt of the e-mail to be acknowledged by the recipient.

49.3 A notice may be given by the Company to the person or persons which the Company has been advised are entitled to a Share or Shares in consequence of the death or bankruptcy of a Member in the same manner as other notices which are required to be given under these Articles and shall be addressed to them by name, or by the title of representatives of the deceased, or trustee of the bankrupt, or by any like description at the address supplied for that purpose by the persons claiming to be so entitled, or at the option of the Company by giving the notice in any manner in which the same might have been given if the death or bankruptcy had not occurred.

49.4 Notice of every general meeting shall be given in the manner authorised by these Articles to every person shown as holding Shares carrying an entitlement to receive such notice in the Register of Members on the record date for such meeting except that in the case of joint holders the notice shall be sufficient if given to the joint holder first named in the Register of Members and every person upon whom the ownership of a Share devolves by reason of such person being a legal personal representative or a trustee in bankruptcy of a Member where the Member but for such Member's death or bankruptcy would be entitled to receive notice of the meeting, and no other person shall be entitled to receive notices of general meetings.

50 Winding Up

50.1 If the Company shall be wound up the liquidator shall apply the assets of the Company in satisfaction of creditors' claims in such manner and order as such liquidator thinks fit. The liquidator shall in relation to the assets available for distribution among the Members make in the books of the Company such transfers thereof to and from Separate Accounts as may be necessary in order that the effective burden of such creditors' claims may be shared among the holders of Participating Shares of different Classes and/or Series in such proportions as the liquidator in such liquidator's absolute discretion may think equitable.

50.2 Subject to the special rights attaching to Participating Shares of any Class or Series, the balance shall then be applied in the following priority:

(a) first, to the holders of Management Shares, an amount equal to the par value of such Management Shares; and

(b) second, the balance shall be paid to the holders of Participating Shares in proportion to the Net Asset Value of Participating Shares held, subject to a deduction from those Participating Shares in respect of which there are monies due, of all monies due to the Company for unpaid calls, or otherwise.

50.3 If the Company shall be wound up (whether the liquidation is voluntary or by or under the supervision of the Court) the liquidator may, with the authority of a resolution or resolutions passed by the holders of Participating Shares (whether as a whole or at separate Class meetings), divide among the Members in specie the whole or any part of the assets of the Company, and whether or not the assets shall consist of property of one kind or shall consist of property of different kinds, and may for such purposes set such value as the liquidator deems fair upon any one or more class or classes of property, and may determine how such division shall be carried out as between the Members or different classes of Members. The liquidator may, with the like authority, vest any part of the assets in trustees upon such trusts for the benefit of Members as the liquidator, with the like authority, shall think fit, and the liquidation of the Company may be closed and the Company dissolved, but so that no Member shall be compelled to accept any shares or other property in respect of which there is a liability.

51 Indemnity and Insurance

51.1 Every Director and officer of the Company (which for the avoidance of doubt, shall not include any Auditor), together with every former Director and former officer of the Company (each an "**Indemnified Person**") shall be indemnified out of the assets of the Company against any liability, action, proceeding, claim, demand, costs, damages or expenses, including legal expenses, whatsoever which they or any of them may incur as a result of any act or failure to act in carrying out their functions other than such liability (if any) that they may incur by reason of their own actual fraud or wilful default. No Indemnified Person shall be liable to the Company for any loss or damage incurred by the Company as a result (whether direct or indirect) of the carrying out of their functions unless that liability arises through the actual fraud or wilful default of such Indemnified Person. No person shall be found to have committed actual fraud or wilful default under this Article unless or until a court of competent jurisdiction shall have made a finding to that effect.

51.2 The Company shall advance to each Indemnified Person reasonable attorneys' fees and other costs and expenses incurred in connection with the defence of any action, suit, proceeding or

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investigation involving such Indemnified Person for which indemnity will or could be sought. In connection with any advance of any expenses hereunder, the Indemnified Person shall execute an undertaking to repay the advanced amount to the Company if it shall be determined by final judgment or other final adjudication that such Indemnified Person was not entitled to indemnification pursuant to this Article. If it shall be determined by a final judgment or other final adjudication that such Indemnified Person was not entitled to indemnification with respect to such judgment, costs or expenses, then such party shall not be indemnified with respect to such judgment, costs or expenses and any advancement shall be returned to the Company (without interest) by the Indemnified Person.

51.3 The Directors, on behalf of the Company, may purchase and maintain insurance for the benefit of any Director or other officer of the Company against any liability which, by virtue of any rule of law, would otherwise attach to such person in respect of any negligence, default, breach of duty or breach of trust of which such person may be guilty in relation to the Company.

51.4 Pursuant to the foregoing provisions, the Company may enter into a service or other agreement with any Director (or any entity providing one or more persons to the Company to act as Directors) upon such terms and conditions (including as to indemnification and exculpation) as the Directors shall, in their absolute discretion, determine. Any such indemnification and exculpation provisions may be specified to a standard equal to or more favourable (but not less favourable) to the Company than any standard specified in these Articles.

52 Disclosure

If required to do so under the laws of any jurisdiction to which the Company, the Investment Manager, the Administrator or any other service provider is subject, or in compliance with the rules of any stock exchange upon which the Company's Shares are listed, or to ensure the compliance by any person with any anti-money laundering law in any relevant jurisdiction, any Director, Officer, the Investment Manager, the Administrator or Auditor of the Company shall be entitled to release or disclose any information in its possession regarding the affairs of the Company or a Member including, without limitation, any information contained in the Register of Members or subscription documentation of the Company relating to any Member.

53 Financial Year

Unless the Directors otherwise prescribe, the financial year of the Company shall end on 31st December in each year and, following the year of incorporation, shall begin on 1st January in each year.

54 Transfer by way of Continuation

The Company shall, subject to the provisions of the Statute and with the approval of a Special Resolution, have the power to register by way of continuation as a body corporate under the laws of any jurisdiction outside the Cayman Islands and to be deregistered in the Cayman Islands.

55 Mergers and Consolidations

The Company shall, with the approval of a Special Resolution, have the power to merge or consolidate with one or more constituent companies (as defined in the Statute), upon such terms as the Directors may determine.

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HIGHLAND DYNAMIC INCOME MASTER FUND, L.P.

A Cayman Islands Exempted Limited Partnership

Second Amended and Restated Exempted Limited Partnership Agreement

April 1, 2018

NOTICE

NEITHER HIGHLAND DYNAMIC INCOME MASTER FUND, L.P. NOR THE LIMITED PARTNER INTERESTS THEREIN HAVE BEEN OR WILL BE REGISTERED UNDER THE U.S. SECURITIES ACT OF 1933, AS AMENDED (THE "***SECURITIES ACT***"), THE U.S. INVESTMENT COMPANY ACT OF 1940, AS AMENDED, OR THE SECURITIES LAWS OF ANY OF THE STATES OF THE UNITED STATES. THE OFFERING OF SUCH LIMITED PARTNER INTERESTS IS BEING MADE IN RELIANCE UPON AN EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT FOR OFFERS AND SALES OF SECURITIES WHICH DO NOT INVOLVE ANY PUBLIC OFFERING, AND ANALOGOUS EXEMPTIONS UNDER STATE SECURITIES LAWS.

THE DELIVERY OF THIS AMENDED AND RESTATED EXEMPTED LIMITED PARTNERSHIP AGREEMENT SHALL NOT CONSTITUTE AN OFFER TO SELL OR THE SOLICITATION OF AN OFFER TO BUY NOR SHALL THERE BE ANY OFFER, SOLICITATION OR SALE OF LIMITED PARTNER INTERESTS IN HIGHLAND DYNAMIC INCOME MASTER FUND, L.P. IN ANY JURISDICTION IN WHICH SUCH OFFER, SOLICITATION OR SALE IS NOT AUTHORIZED OR TO ANY PERSON TO WHOM IT IS UNLAWFUL TO MAKE SUCH OFFER, SOLICITATION OR SALE.

THE LIMITED PARTNER INTERESTS ARE SUBJECT TO RESTRICTIONS ON TRANSFERABILITY AND RESALE, MAY NOT BE TRANSFERRED OR RESOLD EXCEPT AS PERMITTED UNDER THE SECURITIES ACT AND APPLICABLE STATE SECURITIES LAWS PURSUANT TO REGISTRATION OR EXEMPTION THEREFROM AND MAY NOT BE SOLD OR OTHERWISE TRANSFERRED EXCEPT IN ACCORDANCE WITH THE REQUIREMENTS AND CONDITIONS SET FORTH IN THIS AMENDED AND RESTATED EXEMPTED LIMITED PARTNERSHIP AGREEMENT.

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THIS SECOND AMENDED AND RESTATED EXEMPTED LIMITED PARTNERSHIP AGREEMENT of Highland Dynamic Income Master Fund, L.P. is made on April 1, 2018 by and among Highland Dynamic Income Fund GP, LLC, as General Partner, those Persons who are listed on Exhibit A as Limited Partners and any other Persons who are admitted, from time to time, as Limited Partners of the Partnership, in accordance with this Agreement. This Agreement amends and restates in its entirety the Amended and Restated Exempted Limited Partnership Agreement of the Partnership dated March 28, 2013 (the "***Prior Agreement***").

Article I DEFINITIONS

For purposes of this Agreement:

"***Act***" means the Exempted Limited Partnership Law, 2014 of the Cayman Islands, as amended, supplemented or replaced from time to time.

"***Administrator***" means such Person as the General Partner may designate from time to time, in its sole discretion, to serve as administrator to the Partnership.

"***Advisory Committee***" has the meaning set forth in Section 4.6.

"***AEOI***" means:

(i) Sections 1471 through 1474 of the Code and any associated legislation, regulations or guidance, and any other similar legislation, regulations or guidance enacted in any other jurisdiction which seeks to implement similar financial account information reporting and/or withholding tax regimes;

(ii) the OECD Standard for Automatic Exchange of Financial Account Information in Tax Matters – the Common Reporting Standard and any associated guidance;

(iii) any intergovernmental agreement, treaty, regulation, guidance, standard or other agreement between the Cayman Islands (or any Cayman Islands government body) and any other jurisdiction (including any government bodies in such jurisdiction), entered into in order to comply with, facilitate, supplement or implement the legislation, regulations, guidance or standards described in sub-paragraphs (a) and (b); and

(iv) any legislation, regulations or guidance in the Cayman Islands that give effect to the matters outlined in the preceding sub-paragraphs.

"***Affiliate***" means, with respect to any Person, a Person which controls, is controlled by, or is under common control with, such Person. For these purposes, "control" means the

possession, direct or indirect, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities, by contract or otherwise.

"***Agreement***" means this Second Amended and Restated Exempted Limited Partnership Agreement, as amended from time to time.

"***Automatic Dissolution Date***" has the meaning set forth in Section 6.1(a)(ii).

"***BBA***" means Subchapter C of Chapter 63 of the Code (Sections 6221 through 6241 of the Code), as enacted by the Bipartisan Budget Act of 2015, Pub. L. No. 114-74, as amended from time to time, and the Regulations thereunder (whether proposed, temporary or final), including any subsequent amendments, successor provisions or other guidance thereunder, and any equivalent provisions for state, local or non-U.S. tax purposes.

"***BBA Effective Period***" means any taxable year commencing after 2017, taking into account any extensions of the effective date set forth in the BBA.

"***Business Day***" means any day or days on which banks are open for business in the city of New York, NY and the Cayman Islands and/or such other place or places as the General Partner may determine.

"***Calculation Period***" means, with respect to each Capital Account of a Limited Partner, the period commencing as of the date of the establishment of the Capital Account (in the case of the initial Calculation Period) and thereafter each period commencing as of the day following the last day of the preceding Calculation Period with respect to such Capital Account, and ending as of the close of business on the first to occur of the following:

(a) the last day of a calendar year;

(b) the withdrawal of all or a portion of the Interest attributable to such Capital Account (but only with respect to such withdrawn amount);

(c) the permitted transfer of all or any portion of such Capital Account; or

(d) the final distribution with respect to such Capital Account to such Limited Partner following the dissolution of the Partnership.

"***Capital Account***" has the meaning set forth in Section 3.3(a).

"***Code***" means the U.S. Internal Revenue Code of 1986, as amended, and as hereafter amended, or any successor law.

"***Commencement Date***" means the first date on or as of which a Limited Partner makes a capital contribution to the Partnership.

"***Designated Individual***" has the meaning set forth in Section 7.2(a).

"***Domestic Fund***" means Highland Dynamic Income Fund, L.P., a Delaware limited partnership.

"***ERISA***" means the Employee Retirement Income Security Act of 1974, as the same may be amended from time to time.

"***ERISA Partner***" means a Limited Partner which is (a) an employee benefit plan subject to the fiduciary provisions of ERISA, (b) a "plan" subject to Section 4975 of the Code, (c) an entity whose underlying assets include "plan assets" for purposes of ERISA by reason of a Plan's investment in the entity, or (d) an entity that otherwise constitutes a "benefit plan investor" within the meaning of Section 3(42) of ERISA or any regulation promulgated thereunder.

"***Feeder Fund Investor***" means an investor in one of the Feeder Funds.

"***Feeder Funds***" means the Domestic Fund and the Offshore Fund.

"***Fiscal Period***" means each period that starts at the opening of business on the Commencement Date (in the case of the initial Fiscal Period) and thereafter on the day immediately following the last day of the preceding Fiscal Period, and that ends at the close of business on the earliest of the following dates:

(a) the last day of a calendar month;

(b) any date as of which any withdrawal or distribution of capital is made with respect to any Capital Account or as of which this Agreement provides for any amount to be credited to or debited against a Capital Account, other than a withdrawal or distribution by or to, or an allocation to, all Capital Accounts that does not result in any change of the Partnership Percentage relating to any Capital Account;

(c) the date which immediately precedes any day as of which a capital contribution is accepted by the General Partner from any new or existing Partner; or

(d) any other date which the General Partner selects.

"***Fiscal Year***" means the period commencing on the Commencement Date and ending on December 31 of the year of commencement, and thereafter each period commencing on January 1 of each year and ending on December 31 of such year, unless the General Partner shall elect another fiscal year, *provided* that any such other fiscal year shall be permissible for U.S. federal income tax purposes. In the case of the Fiscal Year in which the Partnership is terminated in accordance with Article VI, "***Fiscal Year***" means the portion of the calendar year ending on the date on which the Partnership is terminated.

"***GAAP***" means generally accepted accounting principles in the United States.

"***General Partner***" means Highland Dynamic Income Fund GP, LLC, a Delaware limited liability company registered as a foreign company in the Cayman Islands, any successor thereto,

and any Persons hereafter admitted as additional general partners, in its capacity as general partner of the Partnership.

"***Gross Negligence***" means "gross negligence" as such term is defined and interpreted in accordance with the laws of the State of Delaware.

"***Indemnified Person***" means each of the General Partner, the Investment Manager, any member, shareholder, partner, manager, director, officer, employee or agent of, or any person who controls, the General Partner, each of the respective affiliates of the foregoing, members of the Advisory Committee or the Pricing Committee, their respective affiliates, or any of the legal representatives of any of the foregoing.

"***Index Return Amount***" means the amount that would have been credited or debited to such Capital Account for the Calculation Period if the rate of return had been equal to the return of the S&P/LSTA Leveraged Loan Total Return Index for such Calculation Period.

"***Interest***" means the entire ownership interest of a Partner in the Partnership at the relevant time, including the right of such Partner to any and all benefits to which a Partner may be entitled as provided in this Agreement, together with the obligations of such Partner to comply with all the terms and provisions of this Agreement.

"***Investment Management Agreement***" means the Investment Management Agreement by and among the Investment Manager, the General Partner, the Feeder Funds and the Partnership.

"***Investment Manager***" means Highland Capital Management, L.P., a Delaware limited partnership, or any successor thereto, or any Person thereafter appointed as an investment manager of the Partnership in accordance with the Investment Management Agreement.

"***Investments***" means investments in securities or other financial or intangible investment instruments, contracts or products made by the Partnership, as more fully described in the Feeder Funds' offering memoranda (as may be amended, updated or supplemented from time to time).

"***Limited Participation Investment***" means an Investment which, as determined by the General Partner, is suitable for some but not all of the Capital Accounts, or of which certain Capital Accounts should receive a reduced participation, for legal, tax, regulatory or other *bona fide* reasons.

"***Limited Participation Sub-Accounts***" means memorandum accounts to be maintained in the accounting records of the Partnership on a Capital Account-by-Capital Account basis with respect to each particular Limited Participation Investment to reflect the entitlement of each Capital Account (other than a Capital Account that does not have any credit balance at the time of the establishment of the Limited Participation Sub-Account that is unrelated to a pre-existing Limited Participation Sub-Account) to allocations and distributions attributable to Partnership transactions involving such Limited Participation Investments.

"***Limited Partner***" means each of the Persons set forth on Exhibit A and any Person who has become a Limited Partner pursuant to the terms of this Agreement, in each case in such

Person's capacity as a limited partner of the Partnership. The General Partner may subdivide the Interests into separate series and establish new series pursuant to Section 2.10; *provided, that*, except as expressly set forth in this Agreement, for all purposes of the Act, the Limited Partners constitute a single class or group of limited partners.

"***Liquidator***" has the meaning set forth in Section 6.1(b).

"***Management Fee***" means an amount calculated at an annual rate of (i) 0.75% of each Capital Account of a Limited Partner. The Management Fee is calculated and payable quarterly in advance as further described in Section 3.5(a).

"***Negative Basis***" means, with respect to any Partner and as of any time of calculation, the excess of such Partner's "adjusted tax basis" in its Interest for U.S. federal income tax purposes at such time (determined without regard to any adjustments made to such adjusted tax basis by reason of any Transfer or assignment of such Interest, including by reason of death) over the amount that such Partner is entitled to receive upon withdrawal from or liquidation of the Partnership.

"***Negative Basis Partner***" means any Partner who withdraws all or a portion of its Interest from the Partnership and who has a Negative Basis as of the effective date of withdrawal, but such Partner shall cease to be a Negative Basis Partner at such time as it shall have received allocations pursuant to Section 3.10(d) equal to such Partner's Negative Basis as of the effective date of withdrawal and without regard to such Partner's share of the liabilities of the Partnership under Section 752 of the Code.

"***Net Assets***" means the total value, as determined by the General Partner or its delegate(s) in accordance with Section 7.3, of all Investments and other assets of the Partnership (including net unrealized appreciation or depreciation of the assets and accrued interest and dividends receivable net of any withholding taxes), less an amount equal to all accrued debts, liabilities and obligations of the Partnership (including any reserves for contingencies accrued pursuant to Section 3.6). Except as otherwise expressly provided herein, Net Assets as of the first day of any Fiscal Period shall be determined on the basis of the valuation of assets conducted as of the close of the immediately preceding Fiscal Period but after giving effect to any capital contributions made by any Partner subsequent to the last day of such immediately preceding Fiscal Period and after giving effect to Management Fee charges and Net Assets as of the last day of any Fiscal Period shall be determined before giving effect to any of the following amounts payable by the Partnership generally or in respect of any Investment which are effective as of the date on which such determination is made:

(a) any withdrawals or distributions payable to any Partner which are effective as of the date on which such determination is made; and

(b) withholding or other taxes (including any amounts under any BBA provision), expenses of processing withdrawals and other items payable, any increases or decreases in any reserves or other amounts recorded pursuant to Section 3.6 and any increases or decreases in the value of any Limited Participation Investments during the Fiscal Period ending as of the date on which such determination is

made, to the extent the General Partner determines that, pursuant to any provisions of this Agreement, such items are not to be charged ratably among the Capital Accounts of all Partners on the basis of their respective Partnership Percentages as of the commencement of the Fiscal Period.

"***Net Loss***" means any amount by which the Net Assets as of the first day of a Fiscal Period exceed the Net Assets as of the last day of the same Fiscal Period.

"***Net Profit***" means any amount by which the Net Assets as of the last day of a Fiscal Period exceed the Net Assets as of the first day of the same Fiscal Period.

"***New Limited Partner***" has the meaning assigned to such term in Section 8.2(a)(vi).

"***Offshore Fund***" means Highland Dynamic Income Fund, Ltd., a Cayman Islands exempted company.

"***Other Account***" means any assets or investment of the General Partner, or any assets managed by the General Partner or any Affiliate of the General Partner for the account of any Person or entity (including investment vehicles) other than the Partnership, which are invested or which are available for investment in securities or other instruments or for trading activities whether or not of the specific type being conducted by the Partnership.

"***Partner***" means the General Partner or any of the Limited Partners, except as otherwise expressly provided herein, and "Partners" means the General Partner and all of the Limited Partners.

"***Partnership***" means the exempted limited partnership formed upon the filing of a statement under Section 9 of the Act with the Registrar on February 26, 2013, pursuant to the Prior Agreement and registered with the name "Highland Dynamic Income Master Fund, L.P."

"***Partnership Minimum Gain***" has the meaning set forth in Regulations Section 1.704-2(b)(2) and (d).

"***Partnership Percentage***" means a percentage established for each Capital Account on the Partnership's books as of the first day of each Fiscal Period. The Partnership Percentage of a Capital Account for a Fiscal Period shall be determined by dividing the amount of such Capital Account as of the beginning of the Fiscal Period (after crediting all capital contributions to such Capital Account which are effective as of such date, net of all deductions, including Management Fees) by the sum of all Capital Accounts as of the beginning of the Fiscal Period (after crediting all capital contributions to the Partnership which are effective as of such date, net of all deductions, including Management Fees). The sum of the Partnership Percentages of all Capital Accounts for each Fiscal Period shall equal 100%.

"***Performance Allocation***" means, with respect to each Capital Account of a Limited Partner, 10% of the amount, determined as of the close of each Calculation Period with respect to such Capital Account, by which the Performance Change amount (positive and negative) for such Calculation Period exceeds the Index Return Amount (positive and negative) for such Capital Account for such Calculation Period.

"***Performance Change***" means, with respect to each Capital Account of a Limited Partner for each Calculation Period, the difference between:

(a) the sum of (a) the balance of such Capital Account as of the close of the Calculation Period (after giving effect to all allocations to be made to such Capital Account as of such date other than any Performance Allocation to be debited against such Capital Account), plus (b) any debits to such Capital Account during the Calculation Period to reflect any actual or deemed distributions or withdrawals with respect to such Capital Account, plus (c) any debits to such Capital Account during the Calculation Period to reflect any items allocable to such Capital Account pursuant to Section 3.5(b) or 3.5(c) hereof; and

(b) the sum of (a) the balance of such Capital Account as of the commencement of the Calculation Period, plus (b) any credits to such Capital Account during the Calculation Period to reflect any contributions by such Limited Partner to the Capital Account.

"***Person***" means any individual, partnership, corporation, limited liability company, trust, or other entity.

"***Plan Assets***" means assets of the Partnership that are considered to be assets of an ERISA Partner, as determined pursuant to Section 3(42) of ERISA.

"***Positive Basis***" means, with respect to any Partner and as of any time of calculation, the excess of the amount that such Partner is entitled to receive upon withdrawal from or liquidation of the Partnership over such Partner's "adjusted tax basis" in its Interest for U.S. federal income tax purposes at such time (determined without regard to any adjustments made to such adjusted tax basis by reason of any Transfer or assignment of such Interest, including by reason of death).

"***Positive Basis Partner***" means any Partner who withdraws all or a portion of its Interest from the Partnership and who has a Positive Basis as of the effective date of withdrawal, but such Partner shall cease to be a Positive Basis Partner at such time as it shall have received allocations pursuant to Section 3.10(c) equal to such Partner's Positive Basis as of the effective date of withdrawal and without regard to such Partner's share of the liabilities of the Partnership under Section 752 of the Code.

"***Pricing Committee***" has the meaning set forth in Section 4.7.

"***Prior Agreement***" has the meaning set forth in the recitals hereto.

"***Registrar***" means the Registrar of Exempted Limited Partnerships of the Cayman Islands.

"***Regulations***" means the proposed, temporary and final U.S. Treasury Regulations promulgated under the Code, including any successor regulations.

"***Regulatory Allocations***" has the meaning set forth in Section 3.11.

"***Section 9 Statement***" has the meaning set forth in Section 2.1(a).

"***Section 10 Statement***" has the meaning set forth in Section 2.1(b).

"***Tax Matters Partner***" has the meaning set forth in Section 7.2(a).

"***Termination Date***" has the meaning assigned to such term in Section 6.1(a).

"***Transfer***" means any sale, exchange, transfer, assignment or other disposition by a Partner of its Interest to another party, whether voluntary or involuntary, including a transfer by operation of law, but not including a pledge of or a granting of another form of security interest in any such Interest.

Article II ORGANIZATION

2.1 Continuation of Limited Partnership

(a) The General Partner and Offshore Fund established the Partnership upon filing a statement under section 9 of the Act (the "***Section 9 Statement***") with the Registrar on February 26, 2013, pursuant to the Prior Agreement, which Prior Agreement has governed the operation of the Partnership since that date. The General Partner hereby admits the Limited Partners who are a party to this Agreement (provided that the Initial Limited Partner (as defined in the Prior Agreement) is not hereby admitted but shall continue as a Limited Partner) and the General Partner and the Limited Partners hereby amend and restate the Prior Agreement in its entirety on the terms of this Agreement.

(b) If requested by the General Partner, the Limited Partners will promptly execute all certificates and other documents consistent with the terms of this Agreement necessary for the General Partner to accomplish all filings, recordings, publishings and other acts as may be appropriate to comply with all requirements for (i) the formation and operation of an exempted limited partnership under the laws of the Cayman Islands, (ii) if the General Partner deems it advisable, the operation of the Partnership as an exempted limited partnership, or partnership in which the Limited Partners have limited liability, in all jurisdictions where the Partnership proposes to operate and (iii) all other filings required by the Act to be made by the Partnership. The General Partner shall cause any required amendment to the Section 9 Statement, which shall be effected by way of the execution by the General Partner of a statement under Section 10 of the Act (the "***Section 10 Statement***") with such statement to be filed promptly following the

event requiring such amendment. All Section 10 Statements or any such amendments may be signed by the General Partner (as required by the Act), and may be signed either personally or by an attorney-in-fact or agent of the General Partner.

(c) The Partnership received an undertaking from the Governor-in-Cabinet of the Cayman Islands to the effect that, for a period of 50 years from the date of the undertaking, no law which is enacted in the Cayman Islands imposing any tax to be levied on profits or income or gains or appreciations shall apply to the Partnership or to any Partner in respect of the operations or assets of the Partnership or the Interest of a Partner. The parties hereto acknowledge that they intend that the Partnership be taxed in the United States as a partnership and not as an association taxable as a corporation for U.S. federal income tax purposes. No election may be made to treat the Partnership as other than a partnership for U.S. federal income tax purposes.

2.2 Name of Partnership

(a) The name of the Partnership shall be Highland Dynamic Income Master Fund, L.P. or such other name as the General Partner may hereafter adopt upon (i) causing a statement pursuant to Section 10 of the Act to be filed with the Registrar and (ii) giving notice thereof to the Limited Partners.

(b) The Partnership shall have the exclusive ownership and right to use the Partnership name so long as the Partnership continues, despite the withdrawal, expulsion, resignation or removal of any Limited Partner, but upon the Partnership's winding up or at such time as there ceases to be a General Partner, the Partnership shall assign the name and the goodwill attached thereto to the General Partner without payment by the assignee(s) of any consideration therefor.

2.3 Registered Office

(a) The registered office address of the Partnership in the Cayman Islands is at c/o Maples Corporate Services Limited, P.O. Box 309, Ugland House, Grand Cayman, KY1-1104, Cayman Islands.

(b) The General Partner may at any time change the location of the Partnership's registered office or registered agent in its sole discretion, provided that the registered office of the Partnership shall be in the Cayman Islands.

2.4 Term of Partnership

The term of the Partnership commenced on the date of formation and continues until wound up and dissolved pursuant to Section 6.1 (unless its term is extended pursuant to Section 6.1).

2.5 Object and Powers of Partnership

(a) The object and business of the Partnership is to (1) purchase, sell (including short sales), invest and trade in Investments (2) engage in financial transactions, including borrowing, financing, pledging, hedging and other derivative transactions relating thereto for the benefit of the Partnership, (3) engage in any lawful act or activity for which exempted limited partnerships may be formed under the Act and (4) engage in any and all activities necessary or incidental to the foregoing; provided that the Partnership shall not undertake business with the public in the Cayman Islands other than so far as is necessary for the carrying on of the business of the Partnership exterior to the Cayman Islands.

(b) The Partnership possesses and the General Partner on behalf of the Partnership may exercise all such powers and privileges as the General Partner considers necessary, convenient or incidental to the conduct, promotion or attainment of the objects of the Partnership.

2.6 Liability of Partners

(a) The liability of the Limited Partners is limited to their obligations under this Agreement and the Act. The General Partner is liable for all of the debts and obligations of the Partnership to the extent that the Partnership has insufficient assets. The General Partner shall not be personally liable for the withdrawal, payment or distribution of all or any part of any Interest, it being expressly agreed that any such withdrawal, payment or distribution to be made pursuant to this Agreement shall be made solely from the assets of the Partnership (which shall not include the General Partner's capital contributions) and on the terms and subject to the conditions contained in this Agreement.

(b) In no event shall any Limited Partner (or former Limited Partner) be obligated to make any contribution to the Partnership in addition to its agreed capital contribution (or other payments provided for herein) or have any personal liability for the repayment or discharge of the debts and obligations of the Partnership except to the extent provided herein or as required by the Act or other applicable law.

2.7 Actions by Partnership

The General Partner on behalf of the Partnership may execute, deliver and perform all contracts, agreements and other undertakings and engage in all activities and transactions as may in the opinion of the General Partner be necessary or advisable to carry out the objects of the Partnership as set forth in Section 2.5 above. Notwithstanding the foregoing, the Partnership shall not issue any securities other than Interests in the Partnership.

2.8 Reliance by Third Parties

Persons dealing with the Partnership are entitled to rely conclusively upon the power and authority of the General Partner as herein set forth.

2.9 Filings

(a) The General Partner shall take any and all other actions as may be reasonably necessary to perfect and maintain the status of the Partnership as an exempted limited partnership under the Act and other laws of the Cayman Islands, including the filing of a notice pursuant to Section 10 of the Act with the Registrar signed by the General Partner upon the occurrence of certain amendments to the Section 9 Statement of the Partnership, and any other states or jurisdictions in which the Partnership engages in business.

(b) Following the winding up of the Partnership and to effect the dissolution of the same, the General Partner or any duly appointed liquidator shall promptly (i) comply with the applicable provisions of Section 15 of the Act, (ii) execute and cause to be filed a notice of dissolution in accordance with Section 15(3) of the Act and (iii) file any certificates of cancellation in accordance with the laws of any states or jurisdictions in which the Partnership has filed certificates.

2.10 Series of Interests

The General Partner, at any time, may without notification to or consent of the other Limited Partners, create and offer different classes or series of Interests in the Partnership with such rights, obligations, liabilities, privileges, designations and preferences (including different investment strategies, underlying investments, degrees of leverage, management fees, performance allocations, brokerage commissions, transparency, withdrawal rights, co-investment opportunities, and other differences) as the General Partner may determine upon the issuance of such class or series; *provided* that such class or series would not reasonably be expected to have a material adverse effect on the existing Limited Partners.

Article III CAPITAL

3.1 Contributions to Capital

(a) Each Partner is permitted to make contributions to the capital of the Partnership at such times and in such amounts as the General Partner, in its sole discretion, may determine. The Limited Partners are not required to make any additional contributions to the Partnership, subject to the provisions of Section 3.5(b) and any contrary provision of the Act.

(b) Each Person admitted as a General Partner agrees to make and maintain a capital contribution as a General Partner of at least U.S.$1.00. Except as provided above or in the Act, the General Partner is not required or obligated to make any additional contributions to the capital of the Partnership. The General Partner or an Affiliate shall have the right at any time to make additional capital contributions as a Limited Partner or General Partner.

3.2 Rights of Partners in Capital

(a) No Partner shall be entitled to interest on its capital contributions to the Partnership.

(b) No Partner shall have the right to the return of any capital contribution to the Partnership except, subject to the Act, (i) upon withdrawal by such Partner of all or part of its Interest pursuant to Section 5.3 or (ii) upon the winding up and dissolution of the Partnership pursuant to Section 6.1. The entitlement to any such return shall be limited to the value of the Capital Account of the Partner. The General Partner shall not be liable for the return of any such amounts.

3.3 Capital Accounts

(a) The Partnership maintains a separate capital account (each a "***Capital Account***") on the books and records of the Partnership for each Partner. The General Partner may, in its discretion, maintain separate memorandum sub-accounts related to a Capital Account for such purposes as the General Partner may determine appropriate, including for recordkeeping, accounting or reporting or to otherwise give effect to the provisions of this Agreement, and, if so determined by the General Partner, with each memorandum sub-account being maintained as if it were the Capital Account of a separate Partner for all purposes of this Agreement unless the context requires otherwise. References herein to a "Capital Account" shall be deemed to refer to such a capital memorandum sub-account where the context admits. Each Capital Account must reflect the aggregate sum of the balances of memorandum sub-accounts in such Partner's Capital Account. Without limiting the foregoing:

(i) with respect to the Domestic Fund, the Partnership maintains a separate memorandum sub-account with respect to the Domestic Fund's Capital Account with respect to the capital account (and applicable memorandum sub-account) of each partner of such Domestic Fund;

(ii) in the case of the Offshore Fund, the Partnership maintains a separate memorandum sub-account with respect to each class and series of shares of the Offshore Fund attributable to a shareholder; and

(iii) Any separate memorandum sub-accounts established for a Limited Partner's Capital Account may be consolidated at the beginning of each Calculation Period, as determined by the General Partner.

(b) Each Capital Account shall have an initial balance equal to the amount of any cash and the net value of any property constituting the relevant Partner's initial capital contribution to the Partnership.

(c) Each Capital Account shall be increased by the amount of any cash and the net value of any property constituting additional contributions to such Capital Account permitted pursuant to Section 3.1.

(d) Each Capital Account shall be reduced by the amount of any cash and the net value of any property withdrawn by or distributed to the relevant Partner pursuant to Sections 5.3 or 6.2.

(e) The Capital Account of the General Partner will be increased by the amount of the Performance Allocation allocated to such Capital Account and the investment gains thereon pursuant to Section 3.7(a).

(f) Each Capital Account, including any related Limited Participation Sub-Accounts, shall be adjusted to reflect allocations and other changes in the value of such Capital Account in the manner specified in the remaining provisions of this Article III.

3.4 Allocation of Net Profit and Net Loss

(a) Subject to the remaining provisions of this Article III, as of the last day of each Fiscal Period, any Net Profit or Net Loss for such Fiscal Period shall be separately allocated among and credited to or debited against the Capital Accounts of the Partners in proportion to their respective Partnership Percentages for such Fiscal Period.

(b) Notwithstanding Section 3.4(a), items of income, gain, loss, deduction, credit and expenses for a Fiscal Period that are not allocable to specific Investments of the Partnership, including short term interest income, and audit, administration and legal expenses, shall be credited to or debited against the Capital Accounts of the Partners *pro rata* in accordance with their Partnership Percentages for such Fiscal Period.

(c) Notwithstanding Section 3.4(a), items of income, gain, loss, deduction, credit and expenses that relate to a Limited Participation Investment shall be allocated exclusively to those Capital Accounts that the General Partner determines are eligible to participate in such Limited Participation Investment on a *pro rata* basis based on their relative participation in such Limited Participation Investment.

3.5 Allocation of Management Fees, Withholding Taxes and Certain Other Expenditures

(a) As of the first Business Day of each calendar quarter, and in the case of any Limited Partner who makes a capital contribution as of any other date, as of the date of such capital contribution, the Management Fee applicable to each Capital Account for such calendar quarter will be debited against the relevant Capital Account. Capital contributions accepted after the commencement of the calendar quarter shall be subject to a prorated Management Fee reflecting the time remaining during such calendar quarter. The General Partner may waive or

decrease the Management Fee with respect to any Limited Partner and any Capital Account. The General Partner may delay the timing or alter the structure of fees payable to the Investment Manager so long as such changes are not materially adverse to the Limited Partners.

(b) Notwithstanding anything to the contrary herein, to the extent the General Partner or the Partnership is required by law (including under circumstances where the General Partner or the Partnership is unable to rely conclusively on any withholding certification provided by a Partner) to withhold or to make tax payments, including any interest or penalties, on behalf of or with respect to any Partner or Partners (including, without limitation, any amount attributable to an actual or imputed underpayment of taxes under any BBA provision, backup withholding or AEOI withholding), the General Partner or the Partnership may withhold such amounts and make such tax payments as so required. If the Partnership directly or indirectly pays or incurs any withholding tax or other tax obligation (including any amount under any BBA provision), or otherwise incurs a tax payment with respect to the income allocable or distributable to, or otherwise attributable to, one or more Partners, then the amount of such withholding tax, tax obligation or payment will be treated as a distribution to such Partner or Partners, as applicable, pursuant to the terms of this Agreement. Such amount will be debited against the Capital Account(s) of such Partner or Partners as of the close of the Fiscal Period during which the Partnership so withholds, pays or incurs such obligation. If the amount so withheld, paid or incurred is greater than the balance of the Capital Account(s) of the relevant Partner or Partners, as applicable, then such Partner or Partners and any successors must make a contribution to the capital of the Partnership within 10 business days after notification and demand by the General Partner in the amount of such excess. The General Partner is not obligated to apply for or obtain a refund, or reduction of or exemption from withholding tax on behalf of any Partner that may be eligible for such refund, reduction or exemption, or otherwise obligated to structure Investments so as to reduce or avoid any such withholding tax. Each Limited Partner agrees to repay to the Partnership and the General Partner and each of the partners and former partners of the General Partner, any liability for taxes, interest or penalties which may be asserted by reason of the failure to deduct and withhold tax on amounts distributable or allocable to such Limited Partner.

(c) Except as otherwise provided for in this Agreement, any expenditures payable by the Partnership, to the extent determined by the General Partner to have been paid or withheld on behalf of, or by reason of particular circumstances applicable to, one or more but fewer than all of the Partners, shall be charged only to the relevant Capital Accounts of those Partners on whose behalf such payments are made or whose particular circumstances gave rise to such payments. Such charges shall be debited from the relevant Capital Accounts of such Partners as of the close of the Fiscal Period during which any such items were accrued by the Partnership.

3.6 Reserves; Adjustments for Certain Future Events

(a) The General Partner may cause appropriate reserves to be created, accrued and charged against Net Assets including Limited Participation Investments and proportionately against the Capital Accounts for contingent liabilities or probable losses, such reserves to be in the amounts which the General Partner deems necessary or appropriate. The General Partner may increase or reduce any such reserve from time to time by such amounts as the General Partner deems necessary or appropriate. The amount of any such reserve, or any increase or decrease therein, may, at the election of the General Partner, be charged or credited, as the General Partner deems appropriate, to the Capital Accounts of those parties that were Partners at the time when such reserve was created, increased, or decreased, as the case may be, or alternatively may be charged or credited to those parties that were Partners at the time of the act or omission giving rise to the contingent liability for which the reserve was established by the General Partner.

(b) If the General Partner determines that it is equitable to treat an amount to be paid or received as being applicable to one or more prior periods, then all or a portion of such amount may be proportionately charged or credited, as appropriate, in proportion to the Capital Account balances of the current Partners as such balances existed during any such prior period.

3.7 Performance Allocation

(a) The Performance Allocation will be debited against each Capital Account of each Limited Partner as of the last day of each Calculation Period with respect to such Capital Account, and the amount so debited will simultaneously be credited to the Capital Account of the General Partner pursuant to Section 3.3(e).

(b) The General Partner may waive or decrease the Performance Allocation with respect to any Limited Partner and any Capital Account.

(c) Net Profit for each year shall be allocated to the Capital Account of the General Partner from the Capital Accounts of the Limited Partners pro rata in accordance with their share of Net Profits for such Calculation Period determined prior to the application of this Section 3.7 in an amount equal to the Performance Allocation for such Calculation Period. If the Performance Allocation for the Calculation Period is greater than the aggregate net profits realized by the Partnership allocable to the Capital Accounts bearing the Performance Allocation for such Calculation Period, the Capital Account of the General Partner will be allocated, in addition to the Net Profits, additional items of gross income realized by the Partnership allocable to the Capital Accounts bearing the Performance Allocation during such year sufficient to credit the Capital Account of the General Partner with the full Performance Allocation. If such special allocations of items of gross income cannot be made in an amount equal to such shortfall, the excess amounts shall be treated as a guaranteed payment for services pursuant to Section 707(c) of

the Code. Appropriate adjustments will be made to the Capital Accounts bearing the Performance Allocation to reflect allocations of gross income described in the preceding sentence. The parties agree that, to the extent permitted by applicable law, for all federal income tax purposes, the Performance Allocation shall be treated as an allocation of profits of the partnership for purposes of Section 704(b) of the Code and the Regulations promulgated thereunder.

3.8 Limited Participation Investments

Whenever the Partnership makes a Limited Participation Investment, a Limited Participation Sub-Account shall be established for each Capital Account participating in such Limited Participation Investment to reflect such Capital Account's *pro rata* share of the Partnership's portion of all allocations and distributions attributable to transactions involving such Limited Participation Investment (and any related follow-on Investments, unless the General Partner determines to treat such follow-on Investment as a new Limited Participation Investment). Thereafter, the Partnership's portion of all credits and debits relating to such Limited Participation Investment (including those specifically referred to herein) shall be allocated among the Limited Participation Sub-Accounts for such Limited Participation Investment on a *pro rata* basis in accordance with each Capital Account's interest in such Limited Participation Investment. Expenses that relate to a Limited Participation Investment shall be allocated exclusively among the Limited Participation Sub-Accounts for such Limited Participation Investment on a *pro rata* basis in accordance with each Capital Account's interest in such Limited Participation Investment.

3.9 Allocation to Avoid Capital Account Deficits

To the extent that any debits pursuant to this Article III would reduce the balance of the Capital Account of any Limited Partner below zero, that portion of any such debits shall instead be allocated to the Capital Account of the General Partner. Any credits in any subsequent Fiscal Period which would otherwise be allocable pursuant to this Article III to a Capital Account of any Limited Partner previously affected by the application of this Section 3.9 shall instead be allocated to the Capital Account of the General Partner in such amounts as are necessary to offset all previous debits attributable to such Limited Partner pursuant to this Section 3.9 not previously recovered.

3.10 Allocations for Income Tax Purposes

Notwithstanding anything to the contrary in this Agreement:

(a) Income Tax Allocations. Except as otherwise required by Code Section 704(c), items of income, gain, deduction, loss, or credit that are recognized for income tax purposes in each Fiscal Year will be allocated among the Partners (and among such Partner's Capital Accounts) in such manner as to reflect equitably amounts credited to or debited against each Partner's Capital Accounts, whether in such Fiscal Year or in prior Fiscal Years. To this end, the Partnership will establish and maintain records which shall show the extent to which the Capital Accounts of each Partner will, as of the last day of each Fiscal Year, comprise amounts that

have not been reflected in the taxable income of such Partner. To the extent deemed by the General Partner to be feasible and equitable, taxable income and gains in each Fiscal Year shall be allocated among the Partners who have enjoyed the related credits to their Capital Accounts, and items of deduction, loss and credit in each Fiscal Year shall be allocated among the Partners who have borne the burden of the related debits to their Capital Accounts. Non-U.S. tax credits attributable to taxes incurred by the Partnership shall be allocated in a manner consistent with Section 1.704-1(b)(4)(viii) of the Regulations. All matters concerning allocations for U.S. federal, state and/or local income tax purposes, including accounting procedures, not expressly provided for in this Agreement will be determined by the General Partner.

(b) Basis Adjustments. To the extent an adjustment to the adjusted tax basis of any Partnership asset pursuant to Section 734(b) of the Code or Section 743(b) of the Code is required under Section 1.704-1(b)(2)(iv)(m) of the Regulations to be taken into account in determining Capital Accounts, the amount of such adjustment to the Capital Accounts shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases such basis) and such gain or loss shall be specially allocated to the Partners in a manner consistent with the manner in which their Capital Accounts are required to be adjusted pursuant to such Section of the Regulations; *provided* that in the event that an adjustment to the book value of Partnership property is made as a result of an adjustment pursuant to Section 734(b) of the Code, items of income, gain, loss, or deduction, as computed for book and tax purposes, will be specially allocated among the Partners so that the effect of any such adjustment shall benefit (or be borne by) the Partner(s) receiving the distribution that caused such adjustment.

(c) Positive Basis Allocations. If the Partnership realizes gains or items of gross income (including short term capital gain) from the sale of Partnership assets for U.S. federal income tax purposes for any Fiscal Year in which one or more Positive Basis Partners withdraws all or a portion of its Interest from the Partnership pursuant to Section 5.3, the General Partner may elect: (i) to allocate such gains or items of gross income among such Positive Basis Partners, pro rata in proportion to the respective Positive Basis of each such Positive Basis Partner, until either the full amount of such gains or items of gross income shall have been so allocated or the Positive Basis of each such Positive Basis Partner shall have been eliminated; and (ii) to allocate any gains or items of gross income not so allocated to Positive Basis Partners to the other Partners in such manner as shall reflect equitably the amounts credited to such Partners' Capital Accounts pursuant to Section 3.3; provided, however, that if, following such Fiscal Year, the Partnership realizes gains or items of gross income from a sale of an Investment the proceeds of which are designated on the Partnership's books and records as being used to effect payment of all or part of the liquidating share of any Positive Basis Partner that continues to be a Partner in the Partnership following such withdrawal (*i.e.,* such Positive Basis Partner effected a partial, and not a complete, withdrawal of its Interest), there shall be allocated to such Positive Basis Partner

an amount of such gains or items of gross income equal to the amount, if any, by which its Positive Basis as of the effective date of withdrawal exceeds the amount allocated to such Partner pursuant to clause (i) of this sentence. For the avoidance of doubt, the General Partner may also, in its sole discretion, to apply the Positive Basis definitions and the provisions of this Section 3.10(c) to a withdrawal from a Capital Account.

(d) Negative Basis Allocations. If the Partnership realizes net losses or items of gross loss or deduction (including short term capital loss) from the sale of Partnership assets for U.S. federal income tax purposes for any Fiscal Year in which one or more Negative Basis Partners withdraws all or a portion of its Interest from the Partnership pursuant to Section 5.3, the General Partner may elect: (i) to allocate such net losses or items of gross loss or deduction among such Negative Basis Partners, pro rata in proportion to the respective Negative Basis of each such Negative Basis Partners, until either the full amount of such losses or items of loss or deduction shall have been so allocated or the Negative Basis of each such Negative Basis Partner shall have been eliminated; and (ii) to allocate any net losses or items of gross loss or deduction not so allocated to Negative Basis Partners to the other Partners in such manner as shall reflect equitably the amounts credited to such Partners' Capital Accounts pursuant to Section 3.3; provided, however, that if, following such Fiscal Year, the Partnership realizes net losses or items of gross loss and deduction from a sale of an Investment the proceeds of which are designated on the Partnership's books and records as being used to effect payment of all or part of the liquidating share of any Negative Basis Partner that continues to be a Partner in the Partnership following such withdrawal (*i.e.*, such Negative Basis Partner effected a partial, and not a complete, withdrawal of its Interest), there shall may be allocated to such Negative Basis Partner an amount of such net losses or items of gross loss or deduction equal to the amount, if any, by which its Negative Basis as of the effective date of withdrawal exceeds the amount allocated to such Partner pursuant to clause (i) of this sentence. For the avoidance of doubt, the General Partner may also, in its sole discretion, to apply the Negative Basis definitions and the provisions of this Section 3.10(d) to a withdrawal from a Capital Account.

(e) Qualified Income Offset. In the event any Limited Partner unexpectedly receives any adjustments, allocations, or distributions described in Section 1.704-1(b)(2)(ii)(d)(4), 1.704-1(b)(2)(ii)(d)(5), or 1.704-1(b)(2)(ii)(d)(6) of the Regulations, items of Partnership income and gain will be specially allocated to each such Limited Partner in an amount and manner sufficient to eliminate, to the extent required by the Regulations, the deficit balance in the Capital Account of such Limited Partner as quickly as possible; provided that an allocation pursuant to this Section 3.10(e) may be made only if and to the extent that such Limited Partner would have a deficit balance in its Capital Account after all other allocations provided for in this Article III have been tentatively made as if this Section 3.10(e) were not in this Agreement. This Section 3.10(e) is intended to constitute a "qualified income offset" within the meaning of Section 1.704-1(b)(2)(ii) of the Regulations and shall be interpreted consistently therewith.

(f) Minimum Gain Chargeback. Notwithstanding any other provision of this Section 3.10, if there is a net decrease in Partnership Minimum Gain during any Fiscal Year, the Partners will be specially allocated items of Partnership income and gain for such Fiscal Year (and, if necessary, subsequent Fiscal Years) in an amount equal to the portion of any such Partner's share of the net decrease in Partnership Minimum Gain, determined in accordance with Regulations Sections 1.704-2(f) and (g). This Section 3.10(f) is intended to comply with the minimum gain chargeback requirement in such sections of the Regulations and must be interpreted consistently therewith.

(g) Gross Income Allocation. In the event any Limited Partner has a deficit Capital Account at the end of any Fiscal Year that is in excess of the sum of (i) the amount such Limited Partner is obligated to restore pursuant to any provision of this Agreement and (ii) the amount such Limited Partner is deemed to be obligated to restore pursuant to the penultimate sentences of Sections 1.704-2(g)(1) and 1.704-2(i)(5) of the Regulations, each such Limited Partner will be specially allocated items of Partnership gross income and gain in the amount of such excess as quickly as possible; provided that an allocation pursuant to this Section 3.10(g) may be made only if and to the extent that such Limited Partner would have a deficit Capital Account in excess of such sum after all other allocations provided for in this Article III have been made as if Section 3.10(e) and this Section 3.10(g) were not in this Agreement.

(h) Section 704(b) Compliance. The allocations provided in this Section 3.10 are intended to comply with the Regulations under Section 704(b) of the Code and may, as determined by the General Partner, be interpreted and applied in a manner consistent therewith.

3.11 Curative Allocations

The allocations set forth in Sections 3.10(b), (e), (f) and (g) (the "***Regulatory Allocations***") are intended to comply with certain requirements of the Regulations. It is the intent of the Partners that, to the extent possible, all Regulatory Allocations shall be offset either with other Regulatory Allocations or with special allocations of other items of Partnership income, gain, loss, or deduction pursuant to this Section 3.11. Therefore, notwithstanding any other provision of this Article III (other than the Regulatory Allocations), the General Partner shall make such offsetting special allocations of the Partnership income, gain, loss, or deduction in whatever manner it determines appropriate so that, after such offsetting allocations are made, each Partner's Capital Account balance is, to the extent possible, equal to the Capital Account balance such Partner would have had if the Regulatory Allocations were not part of this Agreement and all Partnership items were allocated pursuant to other provisions of this Article III (other than the Regulatory Allocations).

3.12 Individual Partners' Tax Treatment

Each Partner agrees not to treat, on any U.S. federal, state, local and/or non-U.S. income tax return or in any claim for a refund, any item of income, gain, loss, deduction or credit in a manner inconsistent with the treatment of such item by the Partnership.

3.13 Distributions

(a) The amount and timing of any distributions from the Partnership shall be determined by the General Partner. Distributions will generally be made in proportion to the Capital Account balances of the Partners at the beginning of the Fiscal Period when made; *provided* that distributions related to Limited Participation Investments will be made based on the proportionate interests of the Capital Accounts participating in such Limited Participation Investments. Any distributions may be paid in cash, in kind or partly in cash and partly in kind.

(b) Notwithstanding any provision to the contrary contained in this Agreement, the Partnership, and the General Partner on behalf of the Partnership, may not make a distribution to any Partner on any account of its Interest if such distribution would violate the Act or other applicable law.

3.14 Other Matters

(a) The General Partner does not have any personal liability for the repayment of any capital contribution of any Partner.

(b) Subject only to the relevant provisions of the Act, the Limited Partners are not personally liable for the debts, liabilities, contracts or other obligations of the Partnership except to the extent of their respective capital contributions; provided, however, that the foregoing is not to be construed as relieving any Partner of any obligations arising under Section 3.1 of this Agreement.

(c) The Limited Partners shall not participate in the conduct of the Partnership's business nor shall they transact business for the Partnership, nor shall they have the power to sign for or bind the Partnership, said powers being vested exclusively in the General Partner.

Article IV MANAGEMENT

4.1 Duties and Powers of the General Partner

(a) Subject to the terms and conditions of this Agreement, the General Partner shall have complete and exclusive power and responsibility, to the fullest extent permitted by the Act, for (i) all investment and investment management decisions to be undertaken on behalf of the Partnership and (ii) managing and administering

the affairs of the Partnership, and shall have the power and authority to do all things that the General Partner considers necessary or desirable to carry out its duties hereunder and to achieve the purposes of the Partnership.

(b) The General Partner shall have the right, without the notification to or consent of any Limited Partner or other Person, to make adjustments to the structure of the Partnership in order to address applicable structural, ownership, legal, or regulatory issues, or to improve overall tax efficiency; *provided* that no such adjustment would cause any material adverse consequences to the Limited Partners.

(c) Without limiting the generality of the General Partner's duties and powers hereunder and notwithstanding anything to the contrary contained herein, the General Partner shall have full power and authority, subject to the other terms and provisions of this Agreement, to execute, deliver and perform such contracts, agreements and other undertakings on behalf of the Partnership, without the consent or approval of any other Person, and to engage in all activities and transactions, as it may deem necessary or advisable for, or as may be incidental to, the conduct of the business contemplated by this Section 4.1, including, without in any manner limiting the generality of the foregoing, (i) contracts, agreements, undertakings and transactions with any Partner or with any other Person, firm or corporation having any business, financial or other relationship with any Partner or Partners, (ii) agreements with each Limited Partner in connection with its purchase of an Interest, (iii) any agreements to induce any Person to purchase an Interest, and (iv) the Investment Management Agreement delegating to the Investment Manager certain of the powers and authority vested by this Agreement in the General Partner as the General Partner and the Investment Manager may agree from time to time, each without any further act, approval or vote of any Person.

(d) The General Partner may terminate or replace the Investment Manager in accordance with the terms of the Investment Management Agreement. The General Partner may delegate to any other Person any power and authority vested in the General Partner pursuant to this Agreement that is not otherwise delegated to the Investment Manager.

(e) Every power vested in the General Partner pursuant to this Agreement shall be construed as a power to act (or not to act) in its sole and absolute discretion, except as otherwise expressly provided herein. No provision of this Agreement shall be construed to require the General Partner to violate the Act or any other law, regulation or rule of any self-regulatory organization.

(f) Notwithstanding any other provision of this Agreement or otherwise applicable provision of law or equity, whenever in this Agreement, the General Partner is permitted or required to make a decision (i) in its "sole discretion" or "discretion" or under a grant of similar authority or latitude, the General Partner shall be entitled to consider only such interests and factors as it desires, including its own

interests, and shall, to the fullest extent permitted by applicable law, have no duty or obligation to give any consideration to any interest of or factors affecting the Partnership or the Limited Partners, or (ii) in its "good faith" or under another expressed standard, the General Partner shall act under such express standard and shall not be subject to any other or different standards. Unless otherwise expressly stated, for purposes of this Section 4.1(f), the General Partner shall be deemed to be permitted or required to make all decisions hereunder in its sole discretion.

(g) The General Partner must cause the Partnership to conduct its dealings with third parties in its own name.

(h) The General Partner must, throughout the term of the Partnership as set out in Section 2.4, take all actions that may be necessary or appropriate for the continuation of the Partnership's valid existence as an exempted limited partnership under the laws of the Cayman Islands.

4.2 Expenses

(a) Subject to Section 4.2(f), each of the General Partner and the Investment Manager pays all of its own operating and overhead costs without reimbursement by the Partnership (except liability insurance and items described in Section 4.2(b)(iv)). The Partnership will not have its own separate employees or officers, and it will not reimburse the General Partner or the Investment Manager for salaries, office rent and other general overhead expenses of the General Partner or the Investment Manager.

(b) The Partnership, and not the General Partner or the Investment Manager, will pay, or reimburse the General Partner and the Investment Manager for, all other costs, fees and expenses arising in connection with the Partnership's operations. Such expenses payable by the Partnership include the following:

(i) all investment-related expenses (including those related to identifying and evaluating contemplated investments, whether or not such contemplated investments are actually made), including, but not limited to, brokerage commissions and other transaction costs, expenses related to short sales, clearing and settlement charges, expenses related to proxies, underwriting and private placements, custodial fees, transfer agent fees, bank service fees, any governmental, regulatory, licensing, filing or registration fees incurred in compliance with the rules of any self-regulatory organization or any federal, state or local laws, consulting and any other professional fees or compensation (including investment banking expenses) relating to particular investments or contemplated investments, appraisal fees and expenses, investment-related travel and lodging expenses and research-related expenses (including, without limitation, news and quotation equipment and services), fees to third-party providers of risk-monitoring services, investment and trading-related computer hardware and software,

including, without limitation, trade order management software (i.e., software used to route trade orders);

(ii) accounting (including accounting software), audit and tax preparation expenses;

(iii) costs and expenses associated with reporting and providing information to existing and prospective investors;

(iv) any legal fees and costs (including indemnification expenses, regulatory costs and settlement costs) arising in connection with any litigation or regulatory investigation instituted against the Partnership, the General Partner, the Investment Manager or any of their respective affiliates in their capacity as such, subject to Section 4.5;

(v) except as otherwise provided in Section 3.5, any taxes imposed or assessed upon, or payable by, the Partnership (including interest and penalties);

(vi) costs of any meeting of the Partners (or of obtaining the consent of the Partners in lieu of meeting);

(vii) expenses related to the Advisory Committee and the Pricing Committee;

(viii) premiums for directors' and officers' liability insurance (if any) and any other insurance benefiting the Partnership;

(ix) Management Fees;

(x) administrative expenses (including, without limitation, the fees and expenses of the Administrator in relation to its services provided pursuant to the administration agreement);

(xi) fees relating to valuing the Partnership's assets;

(xii) expenses related to the maintenance of the Partnership's registered office;

(xiii) corporate licensing expenses;

(xiv) extraordinary expenses; and

(xv) any costs or expenses of winding up and liquidating the Partnership.

(c) Expenses generally will be borne *pro rata* by the Partners in accordance with the balances of their respective Capital Accounts; *provided* that expenses may be specially allocated among the Capital Accounts as follows:

(i) with respect to expenses related to Investments (other than Limited Participation Investments), *pro rata* in accordance with the balances of

their respective Capital Accounts exclusive of the value of any Limited Participation Sub-Account; and

(ii) as provided elsewhere in this Agreement, including Sections 3.4, 3.5, 3.6, 3.8 and 5.3.

(d) Each of the General Partner and the Investment Manager, as appropriate, shall be entitled to reimbursement from the Partnership for any of the expenses paid by it on behalf of the Partnership pursuant to Section 4.2(b); *provided* that the General Partner may absorb any or all of such expenses incurred on behalf of the Partnership. The Investment Manager may retain, in connection with its responsibilities hereunder, the services of others to assist in the investment advice to be given to the Partnership, including, but not limited to, any affiliate of the Investment Manager, but payment for any such services shall be assumed by the Investment Manager and the Partnership shall not have any liability therefor; *provided, however*, that the Investment Manager, in its sole discretion, may retain the services of independent third party professionals, including, without limitation, attorneys, accountants and consultants, to advise and assist it in connection with the performance of its activities on behalf of the Partnership hereunder, and the Partnership shall bear full responsibility therefor and the expense of any fees and disbursements arising therefrom.

(e) If the General Partner or the Investment Manager, as appropriate, shall incur any of the expenses referred to in Section 4.2(b) for the account or for the benefit of, or in connection with its activities or those of its Affiliates on behalf of, both the Partnership and any Other Account, the General Partner or the Investment Manager, as appropriate, will allocate such expense among the Partnership and each such Other Account in proportion to the size of the Investment made by each in the activity or entity to which the expense relates, or in such other manner as the General Partner considers fair and reasonable.

(f) Each of the General Partner and the Investment Manager is entitled to use "soft dollars" generated by the Partnership to pay for certain investment research and brokerage services that provide lawful and appropriate assistance to the General Partner or the Investment Manager in the performance of investment decision-making responsibilities to the extent such use falls within the safe harbor afforded by Section 28(e) of the Securities Exchange Act of 1934, as amended, or is otherwise reasonably related to the investment decision-making process, or to cover certain Partnership expenses described in Section 4.2(b). Use of "soft dollars" by the General Partner or the Investment Manager as described herein shall not constitute a breach by the either the General Partner or the Investment Manager of any fiduciary or other duty which the General Partner or the Investment Manager may be deemed to owe to the Partnership or its Partners.

4.3 Rights of Limited Partners

The Limited Partners shall take no part in the management, control or operation of the Partnership's business, and shall have no right or authority to act for the Partnership or to vote on matters other than the matters set forth in this Agreement or as required by applicable law. Except as otherwise provided herein or required by law, a Limited Partner shall have no liability for the debts or obligations of the Partnership.

4.4 Other Activities of Partners

(a) The General Partner shall not be required to devote any specific amount of its time to the affairs of the Partnership, but shall devote such of its time to the business and affairs of the Partnership as it shall determine in good faith to be necessary to conduct the affairs of the Partnership for the benefit of the Partnership and the Partners.

(b) Each Partner agrees that any other Partner, and any partner, director, officer, shareholder, member, Affiliate or employee of any other Partner, may engage in or possess an interest in other business ventures or commercial dealings of every kind and description, independently or with others, including, but not limited to, management of other accounts, investment in, or financing, acquisition and disposition of, securities, investment and management counseling, brokerage services, serving as directors, officers, advisers or agents of other companies, partners of any partnership, or trustee of any trust, or entering into any other commercial arrangements, and will not be disqualified solely on the basis that any such activities may conflict with any interest of the parties with respect to the Partnership. Without in any way limiting the foregoing, each Partner hereby acknowledges that (i) none of the Partners or their respective partners, directors, officers, shareholders, members, Affiliates or employees shall have any obligation or responsibility to disclose or refer any of the investment or other opportunities obtained through activities contemplated by this Section 4.4(b) to the General Partner or the Limited Partners, but may refer the same to any other party or keep such opportunities for their own benefit; and (ii) the Partners and their respective partners, directors, officers, shareholders, members, Affiliates and employees are hereby authorized to engage in activities contemplated by this Section 4.4(b) with, or to purchase, sell or otherwise deal or invest in Investments issued by, companies in which the General Partner might from time to time invest or be able to invest or otherwise have any interest on behalf of the Partnership, without the consent or approval of the Partnership or any other Partner. The Partners expressly agree that no other Partner shall have any rights in or to such other activities, or any profits derived therefrom.

(c) The General Partner and its Affiliates shall allocate investment opportunities to the Partnership and any Other Account fairly and equitably over time. Notwithstanding the foregoing, the General Partner is under no obligation to accord exclusivity or priority to the Partnership in the event of limited investment opportunities. This means that such opportunities will be allocated among those

accounts for which participation in the respective opportunity is considered appropriate, taking into account, among other considerations: (i) whether the risk-return profile of the proposed Investment is consistent with the account's objectives and program, whether such objectives are considered in light of the specific Investment under consideration or in the context of the portfolio's overall holdings; (ii) the potential for the proposed Investment to create an imbalance in the account's portfolio (taking into account expected inflows and outflows of capital); (iii) liquidity requirements of the account; (iv) potentially adverse tax consequences; (v) regulatory and other restrictions that would or could limit an account's ability to participate in a proposed Investment; and (vi) the need to re-size risk in the account's portfolio. The General Partner has the authority to allocate trades to multiple accounts on an average price basis or on another basis it deems fair and equitable. Similarly, if an order on behalf of any accounts cannot be fully allocated under prevailing market conditions, the General Partner may allocate the trades among different accounts on a basis it considers fair and equitable over time.

(d) The principals of the General Partner, as well as the employees and officers thereof and of organizations affiliated with the General Partner, may buy and sell securities for their own account or the account of others, but may not buy securities from or sell securities to the Partnership (such prohibition does not extend to the purchase or sale of Interests) unless appropriate approval of the Advisory Committee is obtained and such purchase or sale is in compliance with the applicable provisions of the Advisers Act or such purchase or sale is otherwise in compliance with the applicable provisions of the Advisers Act.

(e) Each Partner hereto hereby waives, and covenants not to bring a cause of action in law or equity on the basis of, any law (statutory, common law or otherwise) respecting the rights and obligations of the Partners which is or may be inconsistent with this Section 4.4.

(f) The General Partner and its Affiliates reserve the right to establish collective investment vehicles that have stated investment programs or terms that differ from those of the Partnership or that are targeted primarily to investors for which the Partnership is not designed to be a suitable investment vehicle. The General Partner and its Affiliates also reserve the right to establish and provide management or advisory services pursuant to separate Other Accounts for significant investors, whether or not such accounts have the same investment program as the Partnership.

4.5 Duty of Care; Indemnification

(a) None of the Indemnified Persons will be liable to the Partnership or any Limited Partner or any other person for mistakes of judgment or for action or inaction that did not constitute Gross Negligence, willful misconduct or bad faith, or for losses due to such mistakes, action or inaction or to the negligence, dishonesty or bad faith of any broker or agent of the Partnership, provided that such broker or agent

was selected, engaged or retained by the Indemnified Person in accordance with the standard of care set forth above. No Indemnified Person shall be liable to the Partnership or any Limited Partner or any other person for any amount in excess of the amount of Management Fees received by the Investment Manager, to the extent permitted under applicable law. In addition, in no event shall any Indemnified Person be liable for any special, indirect, exemplary, consequential or punitive losses or damages. An Indemnified Person may consult with counsel and accountants in respect of the Partnership's affairs and will be fully protected and justified in any action or inaction which is taken in accordance with the advice or opinion of such counsel or accountants, provided that they were selected in accordance with the standard of care set forth above. The foregoing provisions, however, shall not be construed so as to provide for the exculpation of an Indemnified Person of any liability (including liability under U.S. Federal securities laws which, under certain circumstances, impose liability even on persons acting in good faith), to the extent (but only to the extent) that such liability may not be waived, modified or limited under applicable law (including liability under U.S. Federal securities laws which, under certain circumstances, impose liability even on persons acting in good faith), but shall be construed so as to effectuate the abovementioned provisions to the fullest extent permitted by law.

(b) The Partnership shall, to the fullest extent permitted by law, indemnify and hold harmless each Indemnified Person from and against any and all loss, cost or expense suffered or sustained by an Indemnified Person by reason of the fact that it, he or she is or was an Indemnified Person, including, without limitation, any judgment, settlement, reasonable attorneys' fees and other costs or expenses incurred in connection with the defense of any actual or threatened action, suit or proceeding, provided that such liability, damage loss, cost or expense resulted from a mistake of judgment on the part of an Indemnified Person or from action or inaction that did not constitute Gross Negligence, willful misconduct or bad faith, or from the negligence, dishonesty or bad faith of a broker or other agent of an Indemnified Person, provided that such broker or agent was selected, engaged or retained by the Indemnified Person in accordance with the standard of care set forth above. The Partnership will, in the sole discretion of the General Partner, advance to any Indemnified Person reasonable attorneys' fees and other costs and expenses incurred in connection with the defense of any action, suit or proceeding which arises out of such conduct. In the event that such an advance is made by the Partnership, the Indemnified Person will agree to reimburse the Partnership to the extent that it is finally determined that it was not entitled to indemnification in respect thereof.

(c) Notwithstanding any of the foregoing, the provisions of this Section 4.5 do not provide for the indemnification of any Indemnified Person for any liability (including liability under Federal securities laws which, under certain circumstances, impose liability even on persons that act in good faith), to the extent (but only to the extent) that such liability may not be waived, modified or limited under applicable law, but shall be construed so as to effectuate the above provisions to the fullest extent permitted by law.

(d) Pursuant to the foregoing indemnification and exculpation provisions applicable to each Indemnified Person, the Partnership (and not the applicable Indemnified Person) will be responsible for any losses resulting from trading errors and similar human errors, absent Gross Negligence, bad faith or willful misconduct of any Indemnified Person.

(e) The above-mentioned Indemnified Persons are also indemnified by each Limited Partner for any amounts of tax withheld or required to be withheld with respect to that Limited Partner, and also for any amounts of interest, additions to tax, penalties and other costs borne by any such persons in connection therewith to the extent that the balance of the Limited Partner's Capital Account is insufficient to fully compensate the General Partner or the Investment Manager for such costs.

(f) The General Partner may make, execute, record and file on its own behalf and on behalf of the Partnership all instruments and other documents (including one or more deed polls in favor of categories of Indemnified Persons and/or one or more separate indemnification agreements between the Partnership and individual Indemnified Persons) that the General Partner deems necessary or appropriate in order to extend the benefit of the provisions of Sections 4.5(a) and 4.5(b) to the Indemnified Persons; provided, that, such other instruments and documents authorized hereunder shall be on the same terms as provided for in Sections 4.5(a) and 4.5(b) except as otherwise may be required by applicable law.

4.6 Advisory Committee

(a) The General Partner and/or the Investment Manager may appoint a committee (the "***Advisory Committee***") composed of one or more individuals selected by the General Partner and/or the Investment Manager from time to time, none of whom is affiliated with the General Partner or the Investment Manager.

(b) The General Partner and/or the Investment Manager may in its/their discretion seek the approval of the Advisory Committee or establish any other reasonable mechanism in connection with (i) approvals that are or would be required under the Investment Advisers Act of 1940, as amended (including Section 206(3)), or (ii) any other matter deemed appropriate by the General Partner and/or the Investment Manager. Each Limited Partner agrees that, except as otherwise specifically provided herein and to the extent permitted by applicable law, the approval of a majority of the members of the Advisory Committee at such time is binding upon the Partnership and each Partner with respect to any approval sought under this Section 4.6(b).

(c) Subject to the foregoing, any recommendations of or actions taken by the Advisory Committee are advisory only and the General Partner and the Investment Manager are not required or otherwise bound to act in accordance with any such recommendations or actions.

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(d) As determined by the General Partner and/or the Investment Manager, meetings of the Advisory Committee may be held in person or by telephone. Approval of the Advisory Committee is deemed to have been given if given by a majority of those members present at a meeting or by a majority of all members of the Advisory Committee if given pursuant to a written consent without a meeting.

(e) The Partnership agrees to reimburse members of the Advisory Committee for their reasonable out-of-pocket expenses and to indemnify them to the maximum extent permitted by law.

4.7 Pricing Committee

(a) The General Partner and/or the Investment Manager shall appoint a committee (a "***Pricing Committee***") whose quorum consists of at least a majority of the following individuals: the Chief Financial Officer of the Investment Manager, the Chief Compliance Officer of the Investment Manager and one or more traders of the Investment Manager. The Pricing Committee meets on at least a monthly basis to review, confirm and agree on all pricing information established by the Investment Manager in respect of the Partnership's assets that are fair valued. The final pricing or valuation of such Partnership assets shall require the approval of a majority in number of the members of the Pricing Committee constituting a quorum as of a relevant valuation date. In lieu of meeting, the Pricing Committee may take action by written consent signed by a majority of the committee members. The Pricing Committee may, at the Partnership's expense, engage third-party experts and consultants to provide services in connection with any determination to be made by the Pricing Committee. The General Partner and/or the Investment Manager may replace members of the Pricing Committee or change the composition of the Pricing Committee, in their sole discretion.

(b) In connection with the valuation of Partnership assets, the General Partner shall:

(i) with respect to the Partnership's assets that are tracked by third party pricing services to which the Investment Manager's data administrator currently subscribes, use reasonable efforts to cause the Administrator (if any) to obtain independent pricing on at least a monthly basis from such data administrator;

(ii) with respect to the Partnership's assets that are not tracked by third party pricing services, but for which the Investment Manager obtains pricing information from third party brokerage firms, require that the Investment Manager provide copies of such brokerage pricing to the Administrator on at least a monthly basis; and

(iii) with respect to the Partnership's assets that are neither tracked by a third party pricing service nor for which the Investment Manager obtains pricing information from third party brokerage firms, require the Investment Manager to calculate pricing in its reasonable discretion and

will provide all such pricing information directly to the Administrator on at least a monthly basis.

Article V ADMISSIONS, TRANSFERS AND WITHDRAWALS

5.1 Admission of Partners

The General Partner may, without the consent of any existing Partners, admit any Person who agrees to be bound by all of the terms of this Agreement as a General Partner or a Limited Partner upon the execution by or on behalf of it and the acceptance by the General Partner of a deed of adherence to this Agreement in form satisfactory to the General Partner. The amount of any initial capital contribution to be made by such additional Partner is determined by the General Partner (in its sole discretion). Effective upon such admission, the Partnership Percentage of each existing Partner is adjusted pro rata to reflect the Partnership Percentage of the additional Partner, and the Partnership's records are revised to reflect such adjusted Partnership Percentages, as well as the name, initial capital contribution and Partnership Percentage of such additional Partner. No Limited Partner may Transfer all or any portion of its Interest without the prior written consent of the General Partner.

5.2 Transfer and Withdrawal of the General Partner

Without the consent of a majority in number of the Limited Partners, the General Partner shall not have the right to assign or otherwise transfer its Interest as the general partner of the Partnership, and the General Partner shall not have the right to withdraw from the Partnership without the consent of the Limited Partners. In the event of an assignment or transfer of all of its Interest as a general partner of the Partnership in accordance with this clause, the new general partner will immediately notify the Registrar in the Cayman Islands in accordance with Section 10 of the Act and the outgoing General Partner will take such actions as may be necessary to novate and assign all contracts signed on behalf of the Partnership to the new general partner whereupon the new general partner will be substituted as general partner of the Partnership in place of the outgoing General Partner and immediately thereafter the outgoing General Partner will cease to be the general partner of the Partnership.

5.3 Transfer and Withdrawal of Interests of Limited Partners

(a) The General Partner shall have the right, in its sole discretion, to (i) prohibit Transfers of Limited Partner Interests, (ii) compel withdrawals of Limited Partner Interests and (iii) take such other actions as the General Partner deems necessary to ensure that the assets of the Partnership do not constitute Plan Assets for purposes of ERISA.

(b) Subject to obtaining the General Partner's consent, each of the Limited Partners may voluntarily withdraw all or part of its Interest at such times and in such amounts as such Limited Partner may determine.

(c) The General Partner may postpone or suspend (a) the calculation of the net asset value of the Partnership (and the applicable valuation date); (b) the issuance of Interests, (c) the withdrawal by Limited Partners (and the applicable withdrawal date); and/or (d) the payment of withdrawal proceeds (even if the calculation dates and withdrawal dates are not postponed) if it determines that such a suspension is warranted by extraordinary circumstances, including: (i) during any period when any stock exchange or over-the-counter market on which the Partnership's investments are quoted, traded or dealt in is closed, other than for ordinary holidays and weekends, or during periods in which dealings are restricted or suspended; (ii) during the existence of any state of affairs as a result of which, in the reasonable opinion of the General Partner, disposal of investments by the Partnership, or the determination of the value of the assets of the Partnership, would not be reasonably practicable or would be seriously prejudicial to the non-redeeming partners; (iii) during any breakdown in the means of communication normally employed in determining the price or value of the Partnership's assets or liabilities, or of current prices in any stock market as aforesaid, or when for any other reason the prices or values of any assets or liabilities of the Partnership cannot reasonably be accurately ascertained within a reasonable time frame; (iv) during any period when the transfer of funds involved in the realization or acquisition of any investments cannot, in the reasonable opinion of the General Partner, be effected at normal rates of exchange; or (v) automatically upon termination of the Partnership as described in Section 6.1.

Article VI LIQUIDATION AND TERMINATION

6.1 Termination of Partnership

(a) The Partnership shall be wound up and dissolved upon the first to occur of the following dates (each, a "***Termination Date***") and Sections 36(1)(b), 36(9) and 36(12) of the Act shall not apply to the Partnership:

(i) any date on which the General Partner shall elect in writing to terminate the Partnership;

(ii) if the General Partner is the sole or last remaining general partner, the date (the "***Automatic Dissolution Date***") falling 90 days after the date of the service of a notice by the General Partner (or its legal representative) on all the Limited Partners informing the Limited Partners of:

(1) the commencement of liquidation or bankruptcy proceedings in relation to the General Partner; or

(2) the withdrawal, removal or making of a winding up or dissolution order in relation to the General Partner;

provided that, if a majority in number of the Limited Partners elects one or more new general partners before the Automatic Dissolution Date, the business of the Partnership shall be resumed and continued. If a new general partner is not elected by the Automatic Dissolution Date, the Partnership shall be wound up and dissolved in accordance with terms of this Agreement and the Act.

(b) Upon such Termination Date, the Partnership shall be wound up in accordance with the Act by the General Partner or if the General Partner is unable to perform this function, a liquidator elected by a Majority of the Limited Partners (a "***Liquidator***"), which shall take all steps necessary or appropriate to wind up the affairs of the Partnership as promptly as practicable thereafter. Neither the admission of Partners nor the withdrawal, bankruptcy, death, legal incapacity or disability of a Limited Partner shall terminate the Partnership.

(c) The parties agree that irreparable damage would be done to the goodwill and reputation of the Partners if any Limited Partner should bring an action in court to dissolve the Partnership. Care has been taken in this Agreement to provide for fair and just payment in liquidation of the Interests of all Partners. Accordingly, to the fullest extent permitted by law, each Limited Partner hereby waives and renounces its right to such a court decree of dissolution or to seek the appointment by the court of a liquidator for the Partnership except as provided herein, and no Limited Partner may present a winding up petition against the Partnership without the prior written consent of the General Partner.

6.2 Liquidation of Assets

(a) Upon the Termination Date of the Partnership, the General Partner or Liquidator (as applicable) shall promptly liquidate the business and administrative affairs of the Partnership to the extent feasible. Net Profit and Net Loss and any balances in Limited Participation Sub-Accounts during the Fiscal Periods, which includes the period of liquidation, shall be allocated pursuant to Article III. The proceeds from liquidation shall be divided in the following manner, subject to the Act:

(i) the debts, liabilities and obligations of the Partnership, other than any debts to the Partners as Partners, and the expenses of liquidation (including legal, administrative and accounting expenses incurred in connection therewith), up to and including the date that distribution of the Partnership's assets to the Partners has been completed, shall first be satisfied (whether by payment or the making of reasonable provision for payment thereof);

(ii) such debts as are owing to the Partners as Partners are next paid; and

(iii) the Partners shall next be paid liquidating distributions (in cash or in securities or other assets, whether or not readily marketable) *pro rata* in accordance with, and up to the positive balances of their respective Capital Accounts, as adjusted pursuant to Article III to reflect allocations for the

Fiscal Period ending on the date of the distributions under this Section 6.2(a)(iii).

(b) Notwithstanding this Section 6.2 and the priorities set forth in the Act, the General Partner or Liquidator may distribute ratably in-kind rather than in cash, upon dissolution, any assets of the Partnership; *provided*, *however*, that if any in-kind distribution is to be made, (i) the assets distributed in-kind shall be valued pursuant to Section 7.3, and charged as so valued and distributed against amounts to be paid under Section 6.2(a) and (ii) any gain or loss (as computed for book purposes) attributable to property distributed in-kind shall be included in the Net Profit, Net Loss or Limited Participation Sub-Accounts for the Fiscal Period ending on the date of such distribution.

(c) The General Partner shall, pursuant to Section 36(2) of the Act, file a notice of dissolution with the Registrar upon completion of the winding up of the Partnership.

Article VII ACCOUNTING AND VALUATION; BOOKS AND RECORDS

7.1 Accounting and Reports

(a) The Partnership may adopt for tax accounting purposes any accounting method which the General Partner shall decide is in the best interests of the Partnership and which is permissible for U.S. federal income tax purposes.

(b) As soon as practicable after the end of each Fiscal Year, the General Partner shall cause an audit of the financial statements of the Partnership as of the end of each such period to be made by a firm of independent accountants selected by the General Partner. As soon as is practicable thereafter the General Partner shall furnish to each Limited Partner a copy of the set of financial statements prepared in accordance with GAAP (subject to this Agreement), with such adjustments thereto as the General Partner determines appropriate, including the report of such independent accountants. The General Partner may elect not to reserve certain amounts that may be required by GAAP and not to provide certain portfolio disclosure required by GAAP to investors and may capitalize and amortize certain of its organizational expenses in deviation from GAAP. Such deviations from GAAP may result in a qualified opinion rendered on the financial statements of the Partnership.

(c) As soon as practicable after the end of each taxable year, the General Partner shall furnish to each Limited Partner such information as may be required to enable each Limited Partner properly to report for U.S. federal, state, local or other income tax purposes its distributive share of each Partnership item of income, gain, loss, deduction or credit for such year. The General Partner shall have discretion as to how to report Partnership items of income, gain, loss, deduction or

credit on the Partnership's tax returns, and the Limited Partners shall treat such items consistently on their own tax returns.

7.2 Certain Tax Matters

(a) By joining this Agreement, each Limited Partner appoints and designates the General Partner (i) as the "tax matters partner," within the meaning of Section 6231(a)(7) of the Code, and, (ii) for any BBA Effective Period, as the "partnership representative" within the meaning of Section 6223 of the Code (as applicable, the "***Tax Matters Partner***"), or, in each case, under any similar state or local law, and, if the "partnership representative" is an entity, the General Partner shall have the exclusive authority to appoint and designate the individual through whom such partnership representative will act for all purposes under subchapter C of chapter 63 of the Code and, if applicable, any similar state or local law (the "***Designated Individual***"). All references to the Tax Matters Partner herein shall include the Designated Individual, unless the context requires otherwise. The Tax Matters Partner shall have any powers necessary to perform fully in such capacity, and shall be permitted to take any and all actions, to the extent permitted by law, in consultation with the General Partner if the General Partner is not the Tax Matters Partner. The General Partner shall have the exclusive authority to appoint and designate the Investment Manager, or an Affiliate of the General Partner or the Investment Manager, as a successor Tax Matters Partner for any BBA Effective Period. The Tax Matters Partner shall be reimbursed by the Partnership for all costs and expenses incurred by it, and to be indemnified by the Partnership with respect to any action brought against it, in its capacity as the Tax Matters Partner.

(b) The Limited Partners agree that any and all actions taken by the Tax Matters Partner shall be binding on the Partnership and all of the Limited Partners and the Limited Partners shall reasonably cooperate with the Partnership or the General Partner, and undertake any action reasonably requested by the Partnership or the General Partner, in connection with any elections made by the Tax Matters Partner or as determined to be reasonably necessary by the Tax Matters Partners under any BBA provision.

(c) Each Limited Partner further agrees that such Limited Partner will not independently act with respect to tax audits or tax litigation affecting the Partnership, unless the prior written consent of the General Partner has been obtained.

(d) The General Partner may in its sole discretion cause the Partnership to make all elections not otherwise expressly provided for in this Agreement required or permitted to be made by the Partnership under the Code and any state, local or non-U.S. tax laws.

(e) To the fullest extent permitted by law, each Limited Partner agrees to (i) provide such cooperation and assistance, including executing and filing forms or other

statements and providing information about the Limited Partner, as is reasonably requested by the Tax Matters Partner, to enable the Partnership to satisfy any applicable tax reporting or compliance requirements, to make any tax election or to qualify for an exception from or reduced rate of tax or other tax benefit or be relieved of liability for any tax regardless of whether such requirement, tax benefit or tax liability existed on the date such Partner was admitted to the Partnership, (ii) amend the Limited Partner's tax returns and pay any resulting taxes, interest and penalties in connection with the Partnership's electing under Section 6225(a) of the Code, as amended by the BBA, (iii) take into account any adjustments and pay any taxes, interest and penalties that result from the Partnership's electing under Section 6226 of the Code, as amended by the BBA, and/or (iv) indemnify and hold harmless the Partnership, the Tax Matters Partner and any other individual designated to interact with tax authorities on behalf of the Partnership from and against any liability with respect to the Limited Partner's share of any tax deficiency (including any interest and penalties associated therewith) paid or payable by the Partnership that is (a) allocable to such Limited Partner (as reasonably determined by the General Partner in accordance with this Agreement) with respect to an audited or reviewed taxable year for which such Partner was a Partner in the Partnership or (b) attributable (as reasonably determined by the General Partner) to the failure of such Limited Partner to cooperate with or provide any such forms, statements, or other information as requested by the Tax Matters Partner pursuant to clause (i) above.

(f) The obligations and covenants of the Limited Partners set forth in Sections 3.5, 7.2 and 7.3 hereof shall apply jointly and severally to each Limited Partner and any direct or indirect transferee of or successor to such Limited Partner's interest and shall survive such Limited Partner's ceasing to be a Partner in the Partnership and/or the termination, dissolution, liquidation and winding up of the Partnership.

7.3 AEOI

Each Partner acknowledges and agrees that:

(a) the Partnership is required to comply with the provisions of AEOI;

(b) it will provide, in a timely manner, such information regarding the Partner and its beneficial owners and such forms or documentation as may be requested from time to time by the Partnership (whether by its General Partner or other agents such as the Investment Manager or the Administrator) to enable the Partnership to comply with the requirements and obligations imposed on it pursuant to AEOI, specifically, but not limited to, forms and documentation which the Partnership may require to determine whether or not the Partner's relevant investment is a "Reportable Account" (under any AEOI regime) and to comply with the relevant due diligence procedures in making such determination;

(c) any such forms or documentation requested by the Partnership or its agents pursuant to paragraph (b), or any financial or account information with respect to

the Partner's investment in the Partnership, may be disclosed to the Cayman Islands Tax Information Authority (or any other Cayman Islands governmental body which collects information in accordance with AEOI) and to any withholding agent where the provision of that information is required by such agent to avoid the application of any withholding tax on any payments to the Partnership;

(d) it waives, and/or shall cooperate with the Partnership to obtain a waiver of, the provisions of any law which:

(i) prohibit the disclosure by the Partnership, or by any of its agents, of the information or documentation requested from the Partner pursuant to paragraph (b);

(ii) prohibit the reporting of financial or account information by the Partnership or its agents required pursuant to AEOI; or

(iii) otherwise prevent compliance by the Partnership with its obligations under AEOI;

(e) if it provides information and documentation that is in anyway misleading, or it fails to provide the Partnership or its agents with the requested information and documentation necessary in either case to satisfy the Partnership's obligations under AEOI, the General Partner reserves the right (whether or not such action or inaction leads to compliance failures by the Partnership, or a risk of the Partnership or its investors being subject to withholding tax or other costs, debts, expenses, obligations or liabilities (whether external, or internal, to the Partnership) (together, "***costs***") under AEOI), in its sole discretion, to take any action and/or pursue all remedies at its disposal including, without limitation:

(i) to establish separate sub-accounts within a Partner's Capital Account for the purpose of calculating AEOI related costs; and/or

(ii) to allocate any or all AEOI costs among Capital Accounts on a basis determined solely by the General Partner; and/or

(iii) to compulsory withdraw such Partner from the Partnership; and/or

(iv) to hold back or deduct from any withdrawal proceeds or from any other payments or distributions due to such Partner any costs caused (directly or indirectly) by the Partner's action or inaction;

(f) it shall have no claim against the Partnership, the General Partner or any of its or their agents, for any form of damages or liability as a result of actions taken or remedies pursued by or on behalf of the Partnership in order to comply with AEOI; and

(g) it hereby indemnifies the Partnership, the General Partner and each of their respective principals, members, partners, managers, officers, directors,

stockholders, employees and agents and holds them harmless from and against any AEOI related liability, action, proceeding, claim, demand, costs, damages, expenses (including legal expenses) penalties or taxes whatsoever which such parties may incur as a result of any action or inaction (directly or indirectly) of such Partner (or any related person) described in the preceding paragraphs. This indemnification shall survive the disposition of such Partner's Interest in the Partnership.

7.4 Valuation of Partnership Assets and Interests

(a) The Partnership's assets are valued as of the close of each Fiscal Period and on any other date selected by the General Partner in its sole discretion in accordance with its valuation policies and procedures.

(b) The value of the assets of the Partnership and the net worth of the Partnership as a whole determined pursuant to this Section 7.3 are conclusive and binding on all of the Partners and all parties claiming through or under them.

7.5 Determinations by the General Partner

(a) All matters concerning the determination and allocation among the Partners and their respective Capital Accounts of the amounts to be determined and allocated pursuant to this Agreement, including Article III and accounting procedures applicable thereto, shall be determined by the General Partner, unless specifically and expressly otherwise provided for by the provisions of this Agreement, and such determinations and allocations shall be final and binding on all the Partners; provided, however, that all calculations of the Performance Allocation will be made on the basis of, or subject to correction based on, the annual audit of the Partnership's financial statements and appropriate adjustments will be made to all such calculations and related allocations to the extent necessary as a result of that audit.

(b) The General Partner may make such adjustments to the computation of Net Profit or Net Loss or any other allocations with respect to any Limited Partner and their respective Capital Accounts, or any component items comprising any of the foregoing, as it considers appropriate to reflect the financial results of the Partnership and the intended allocation thereof among the Partners and their respective Capital Accounts in a reasonably accurate, fair and efficient manner. Without limiting the generality of the foregoing, any provision of this Agreement that requires an adjustment to be made to any Capital Account or sub-account as of any mid-month or mid-quarter date may be made as of the most recent preceding or succeeding date when a regular valuation is being conducted.

7.6 Books and Records

The General Partner shall keep books and records pertaining to the Partnership's affairs showing all of its assets and liabilities, receipts and disbursements, realized income, gains, deductions and losses, Partners' Capital Accounts and all transactions entered into by the

Partnership. Subject to the documentation requirements of the Act, such books and records of the Partnership must be kept at the Partnership's office or at the office of an agent.

Article VIII GENERAL PROVISIONS

8.1 Amendment of Partnership Agreement

(a) Except as required by law, this Agreement may be amended, in whole or in part, by an instrument in writing signed by each of the Limited Partners and the General Partners.

(b) The General Partner may amend this Agreement without the consent of the Limited Partners in order:

(i) to make consequential amendments following any amendment made pursuant to this Section 8.1;

(ii) to clarify any manifest or clerical inaccuracy, ambiguity or reconcile any inconsistency in this Agreement;

(iii) to add to the representations, duties or obligations of the General Partner or waive any right or power of the General Partner for the benefit of the Limited Partners;

(iv) so as to qualify or maintain the qualification of the Partnership as a limited partnership in any jurisdiction;

(v) to change the name of the Partnership;

(vi) to admit any new Limited Partners or to carry out the Transfer of any Interests;

(vii) to make any other amendment whatsoever to this Agreement which the General Partner deems advisable, provided that it does not adversely affect any rights of the Limited Partners; or

(viii) to create separate classes or sub-classes or series or sub-series of Partnership Interests.

8.2 Special Power-of-Attorney

(a) Each Limited Partner hereby appoints the General Partner for the time being, with power of substitution, as his lawful attorney in his name to execute, acknowledge, swear to (and deliver as may be appropriate) on his behalf and file and record in

the appropriate public offices and publish (as may in the reasonable judgment of the General Partner be required by law):

(i) any amendments to this Agreement made in accordance with the terms hereof;

(ii) any instruments or documents which the General Partner determines in its sole discretion are required to admit any new Limited Partners or to carry out the Transfer of any Interests;

(iii) declarations of limited partnership in various jurisdictions and amendments thereto;

(iv) all deeds, agreements and other documents which the General Partner deems appropriate to conduct and carry on the business of the Partnership, including without limitation to qualify or continue the Partnership as an exempted limited partnership in the Cayman Islands and as required in the jurisdictions in which the Partnership may conduct business, or which may be required to be filed by the Partnership or the Partners under the laws of any jurisdiction or under any amendments or successor statute to the Act, to reflect the dissolution or termination of the Partnership or the Partnership being governed by any amendments or successor statutes to the Act or to reorganize or refile the Partnership in a different jurisdiction, provided that such reorganization or refiling does not result in a material change in the rights of the Partners;

(v) to file, prosecute, defend, settle or compromise litigation, claims or arbitration on behalf of the Partnership;

(vi) one or more subscription agreements (or other agreements or documents) on behalf of such Limited Partner between the Partnership, the General Partner and any Person (a "***New Limited Partner***") being admitted by the General Partner to the Partnership as a limited partner thereof (or such other parties as may be appropriate) in such form and on such terms and conditions as the General Partner considers in its absolute discretion necessary or appropriate, including reference to this Agreement and its novation and agreeing and covenanting with such New Limited Partner on behalf of such Limited Partner that the Limited Partner will from the effective date of such subscription agreement or agreements comply with and observe the terms of this Agreement.

(b) The above power of attorney shall be irrevocable and deemed to be given to secure a proprietary interest of the donee of the power or performance of an obligation owed to the donee and shall survive and shall not be affected by the subsequent death, lack of capacity, insolvency, bankruptcy or dissolution of any Limited Partner.

(c) Each Limited Partner shall, at the request of the General Partner, execute additional powers of attorney on a document separate from this Agreement. In the event of any conflict between this Agreement and any instruments executed, delivered, or filed by the General Partner (and any successor thereto) pursuant to this power of attorney, this Agreement shall prevail.

(d) The General Partner may exercise this power of attorney by listing all of the Partners executing any agreement, certificate, instrument, or document with the single signature of the General Partner as attorney-in-fact for all Partners.

(e) Each Limited Partner hereby appoints the General Partner by any one or more of its directors or officers in office from time to time, acting singly, to be the Limited Partner's agent and attorney-in-fact.

8.3 Notices

Notices which may be or are required to be given under this Agreement by any party to another shall be given by hand delivery, transmitted by facsimile or telecopier facsimile, transmitted electronically to an address that has been previously provided or verified through another form of notice or sent by registered or certified mail, return receipt requested or internationally recognized courier service, and shall be addressed to the respective parties hereto at their addresses as set forth on the register of Partners maintained by the General Partner or to such other addresses or facsimile numbers as may be designated by any party hereto by notice addressed to (i) the General Partner, in the case of notice given by any Limited Partner, and (ii) each of the Limited Partners, in the case of notice given by the General Partner. Notices shall be deemed to have been given (A) when delivered by hand, transmitted by facsimile or transmitted electronically or (B) on the date indicated as the date of receipt on the return receipt when delivered by mail or courier service. Sections 8 and 19 of the Electronic Transactions Law (2003 Revision) of the Cayman Islands shall not apply to this Agreement.

8.4 Agreement Binding Upon Successors and Assigns; Delegation

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, but the rights and obligations of the Partners hereunder shall not be assignable, transferable or delegable except as provided in Section 4.1(d) and any attempted assignment, transfer or delegation thereof which is not made pursuant to the terms of such Sections shall be void.

8.5 Governing Law

This Agreement is, and the rights of the Partners hereunder are, governed by and shall be construed in accordance with the laws of the Cayman Islands, without regard to the conflict of laws rule thereof which would result in the application of the laws of a different jurisdiction. The parties hereby consent to the exclusive jurisdiction and venue for any action arising out of this Agreement in Dallas, Texas. Each Partner consents to service of process in any action or proceeding involving the Partnership by the mailing thereof by registered or certified mail, postage prepaid, to such Partner's mailing address set forth in the register of limited partnership interests maintained by the General Partner in accordance with the Act.

8.6 Interpretation of Partnership Accounting Systems and Terminology

In the event that the Partnership employs an accounting system which is different from the accounting system of the General Partner or whose terminology does not conform precisely to the terminology in this Agreement, the General Partner shall have the authority to interpret such accounting system and/or terminology in a manner which it, in its sole discretion, determines to be consistent with the objectives of this Agreement.

8.7 Miscellaneous

(a) The captions and titles preceding the text of each Section hereof shall be disregarded in the construction of this Agreement. Use of the word "including" in this Agreement means in each case "without limitation," whether or not such term is explicitly stated.

(b) This Agreement may be executed in counterparts, each of which shall be deemed to be an original hereof.

[Signature Page Follows]

The parties hereto have executed and unconditionally delivered this Agreement as a deed on the day and year first above written.

General Partner:

Highland Dynamic Income Fund GP, LLC

By: Highland Capital Management, L.P., its sole member
By: Strand Advisors, Inc., its general partner

By:_____
Name: Trey Parker
Title: Assistant Secretary

Witness:

By:_____
Name: HELEN KIM
Title: PARALEGAL

Limited Partners:

Highland Dynamic Income Fund, L.P.

By: Highland Dynamic Income Fund GP, LLC, its general partner
By: Highland Capital Management, L.P., its sole member
By: Strand Advisors, Inc., its general partner

By:_____
Name: Trey Parker
Title: Assistant Secretary

Witness:

By:_____
Name: HELEN KIM
Title: PARALEGAL

Signature Page to Second Amended and Restated Exempted Limited Partnership Agreement of Highland Dynamic Income Master Fund, L.P.

Highland Dynamic Income Fund, Ltd.

By:_____
Name: Trey Parker
Title: Director

Witness:

By:_____
Name: HELEN KIM
Title: PARALEGAL

Signature Page to Second Amended and Restated Exempted Limited Partnership Agreement of Highland Dynamic Income Master Fund, L.P.

EXHIBIT A

General Partner:
Highland Dynamic Income Fund GP, LLC

Limited Partners:
Highland Dynamic Income Fund, L.P.
Highland Dynamic Income Fund, Ltd.

INVESTMENT MANAGEMENT AGREEMENT

by and among

HIGHLAND LOAN FUND, LTD.

HIGHLAND CAPITAL LOAN FUND, L.P.

HIGHLAND LOAN MASTER FUND, L.P.

HIGHLAND CAPITAL LOAN GP, LLC

and

HIGHLAND CAPITAL MANAGEMENT, L.P.

March 28, 2013

INVESTMENT MANAGEMENT AGREEMENT ("***Agreement***"), dated effective as of March 28, 2013, by and among:

HIGHLAND LOAN FUND, LTD., an exempted company incorporated in the Cayman Islands with limited liability (the "***Offshore Fund***");

HIGHLAND CAPITAL LOAN FUND, L.P., a Delaware limited partnership (the "***Domestic Fund***");

HIGHLAND LOAN MASTER FUND, L.P., a Cayman Islands exempted limited partnership (the "***Master Fund***" and, together with the Domestic Fund and the Offshore Fund, the "***Clients***");

HIGHLAND CAPITAL LOAN GP, LLC, a Delaware limited liability company as the general partner of each of the Domestic Fund and the Master Fund (the "***General Partner***"); and

HIGHLAND CAPITAL MANAGEMENT, L.P., a Delaware limited partnership (the "***Investment Manager***").

Preliminary Statements

A. The Domestic Fund and the Offshore Fund each invest all of their investable assets in the Master Fund. The Investment Manager will exercise no discretion with respect to the investment of the assets of the Offshore Fund or the Domestic Fund and will serve merely as a steward thereof and the investment activities of the Investment Manager will be conducted at the Master Fund level as the Investment Manager to the Master Fund.

B. The Clients desire to retain the Investment Manager to provide certain discretionary advisory services relating to the assets and liabilities of the Master Fund, and the Investment Manager desires to accept such appointment, all subject to the terms and conditions hereinafter set forth.

In consideration of the mutual covenants herein contained, and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the parties hereto agree as follows:

Agreement

For good and valuable consideration, the sufficiency and adequacy of which are hereby acknowledged, the parties hereto agree as follows:

1. **Appointment**.

The Clients hereby appoint the Investment Manager as investment manager with respect to the assets and liabilities of the Master Fund, and to provide certain custodial services in respect of the Domestic Fund and the Offshore Fund, and the Investment Manager hereby accepts such appointment and agrees to perform its obligations in accordance with the terms hereof and of the Amended and Restated Exempted Limited Partnership Agreement of the Master Fund, as amended from time to time (the "***Master Fund***

Partnership Agreement") and the investment objectives, policies, guidelines and restrictions that from time to time are set forth in the confidential private placement memorandum of the Domestic Fund, as supplemented or superseded from time to time (the "***PPM***"), the confidential private offering memorandum of the Offshore Fund, as supplemented or superseded from time to time (the "***POM***"), the Memorandum and Articles of Association of the Offshore Fund (the "***Articles***") and the Limited Partnership Agreement of the Domestic Fund, as amended from time to time (the "***Domestic Fund Partnership Agreement***" and, together with the Master Fund Partnership Agreement, the "***Partnership Agreements***" and, the Partnership Agreements collectively with the PPM, the POM and the Articles, the "***Governing Documents***"). Any capitalized terms used but not defined herein shall have the meanings assigned to such terms in the Governing Documents.

2. **Authority and Duties of the Investment Manager**.

(a) All of the assets of the Domestic Fund and the Offshore Fund shall be invested in the Master Fund. The Investment Manager will exercise no discretion with respect to the investment of the assets of the Offshore Fund or the Domestic Fund and will serve merely as a steward thereof and the investment activities of the Investment Manager will be conducted at the Master Fund level as the Investment Manager to the Master Fund.

(b) Subject to 2(a), the Investment Manager shall serve as the investment manager to the Master Fund and shall in that capacity have full discretion and authority, without obtaining the prior approval of any officer or other agent of the Master Fund: (i) to effect any and all transactions in securities, currencies and other financial instruments (and options and other contracts thereon), and everything connected therewith in the broadest sense; (ii) to determine all matters relating to the manner, method and timing of portfolio transactions and to engage consultants and analysts in connection therewith; (iii) to select brokers, dealers, banks and other intermediaries by or through whom such transactions will be executed or carried out; (iv) to make short sales; (v) to purchase or write options (including uncovered options); (vi) to direct the administrator of the Master Fund, banks, brokers or other custodians to effect deliveries of funds or assets, but only in the course of effecting portfolio transactions for the account of the Master Fund; (vii) to exercise all voting and other powers and privileges attributable to any securities or other property held for the Master Fund's account hereunder; (viii) to authorize remuneration for the Directors of the Offshore Fund other than Directors of the Offshore Fund who are principals or employees of the Investment Manager; and (ix) to make and execute all such documents and to take all such other actions as the Investment Manager considers necessary or appropriate to carry out its investment management duties hereunder.

(c) In furtherance of the foregoing, the Clients hereby designate and appoint the Investment Manager as its agent and attorney-in-fact, with full power and authority and without the need for further approval of the Clients (except as may be required by law) to complete and execute all such documents and to take any and all actions that the Investment Manager, in its discretion, shall deem advisable to carry out the foregoing with respect to the assets of the Clients; provided,

however, that the Investment Manager is not intended to have actual or constructive custody of any securities or other assets of the Clients. In connection with any of the foregoing, the Investment Manager is further authorized to transfer or tender for cash or exchange such securities. In all such purchases, sales or trades the Clients authorize the Investment Manager to act for the Clients, and at their risk, and in their name and on their behalf, in the same manner and with the same force and effect as the Clients might or could do with respect to such purchases, sales or trades without prior consultation with the Clients. The Clients also appoint the Investment Manager as their agent and attorney-in-fact to vote, and to execute proxies, waivers, consents and other instruments with respect to, the securities and other assets of the Clients.

(d) In connection with the execution of transactions on behalf of the Master Fund, the Master Fund hereby acknowledges and agrees that in the course of selecting brokers, dealers, banks and financial intermediaries to effect transactions for the Master Fund's account, the Investment Manager may agree to such commissions, fees and other charges on behalf of the Master Fund's account as it shall deem reasonable in the circumstances, taking into consideration all such factors as the Investment Manager deems relevant, including the following: price quotes; the size of the transaction; the nature of the market for the financial instrument; the timing of the transaction; difficulty of execution; the broker-dealer's expertise in the specific financial instrument or sector in which the Master Fund seeks to trade; the extent to which the broker-dealer makes a market in the financial instrument involved or has access to such markets; the broker-dealer's skill in positioning the financial instruments involved; the broker-dealer's promptness of execution; the broker-dealer's financial stability, reputation for diligence, fairness and integrity; quality of service rendered by the broker-dealer in other transactions for the Investment Manager and its respective affiliates; confidentiality considerations; the quality and usefulness of research services and investment ideas presented by the broker-dealer; the broker-dealer's willingness to correct errors; the broker-dealer's ability to accommodate any special execution or order handling requirements that may surround the particular transaction; and other factors deemed appropriate by the Investment Manager. The Investment Manager need not solicit competitive bids and does not have an obligation to seek the lowest available commission cost or spread. It is understood that the costs of such services will not necessarily represent the lowest costs available and that the Investment Manager is under no obligation to combine or arrange orders so as to obtain reduced charges.

(e) At the request of a Client, in any wind down of such Client, the Investment Manager will manage the realization of the Client's assets and the distribution thereof to investors.

(f) The General Partner, on behalf of the Domestic Fund and the Master Fund, agrees that the Investment Manager shall be entitled to all of the benefits of the Partnership Agreements applicable to it as a delegate of the General Partner, including, without limitation, the right to reimbursement of expenses provided under the Partnership Agreements and the right to indemnification provided under

the Partnership Agreements, and such sections are hereby incorporated by reference as if set forth in full herein; provided, however, this proviso shall not operate to provide duplicative amounts to any reimbursement or payment received pursuant to Sections 4 and 8 of this Agreement.

3. **Management Fees.**

Pursuant to this Agreement, the Investment Manager is entitled to be paid management fees by the Master Fund, which shall be calculated with the methodology set out in the Master Fund Partnership Agreement.

4. **Expenses.**

(a) The Clients will pay, or will reimburse the Investment Manager, for all costs and expenses arising in connection with their administration and operations, including without limitation, the following expenses:

(i) all investment-related expenses (including those related to identifying and evaluating contemplated investments, whether or not such contemplated investments are actually made), including, but not limited to, brokerage commissions and other transaction costs, expenses related to short sales, clearing and settlement charges, expenses related to proxies, underwriting and private placements, custodial fees, transfer agent fees, bank service fees, any governmental, regulatory, licensing, filing or registration fees incurred in compliance with the rules of any self-regulatory organization or any federal, state or local laws, consulting and any other professional fees or compensation (including investment banking expenses) relating to particular investments or contemplated investments, appraisal fees and expenses, investment-related travel and lodging expenses and research-related expenses (including, without limitation, news and quotation equipment and services), fees to third-party providers of risk-monitoring services, and investment and trading-related computer hardware and software, including, without limitation, trade order management software (i.e., software used to route trade orders);

(ii) accounting (including accounting software), audit and tax preparation expenses;

(iii) costs and expenses associated with reporting and providing information to existing and prospective investors;

(iv) any legal fees and costs (including indemnification expenses, regulatory costs and settlement costs) arising in connection with any litigation or regulatory investigation instituted against any of the Clients, the General Partner, the Investment Manager or any of their respective affiliates in their capacity as such, subject to the indemnification provisions of the Partnership Agreements and Section 8 below;

(v) any taxes imposed upon the Clients;

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(vi) costs of any meeting of investors (or of obtaining the consent of investors in lieu of meeting);

(vii) expenses related to the Advisory Committee and the Pricing Committee;

(viii) premiums for directors' and officers' liability insurance (if any) and any other insurance benefiting the Clients;

(ix) administrative expenses (including, without limitation, the fees and expenses of any administration in relation to its services provided pursuant to an administration agreement);

(x) fees relating to valuing the Clients' assets;

(xi) expenses related to the maintenance of the Clients' registered offices;

(xii) corporate licensing expenses;

(xiii) extraordinary expenses; and

(xiv) any costs or expenses of winding up and liquidating any of the Clients.

(b) The Investment Manager will pay all of its own operating and overhead costs (except liability insurance and items described in Section 4(a)(iv) above) without reimbursement by the Clients, and any expenses arising in connection with the Investment Manager's services to the Clients, other than those specified in this Agreement to be the obligation of the Clients and the fees payable to the Investment Manager, shall be the responsibility of the Investment Manager.

(c) The Investment Manager shall be entitled to reimbursement from the Clients for any of the expenses mentioned in Section 4(a) above paid by it on behalf of the Clients; provided that, the Investment Manager in its sole discretion may absorb any or all of such expenses incurred on behalf of the Clients. The Investment Manager may retain, in connection with its responsibilities hereunder, the services of others to assist in the investment advice to be given to the Master Fund, including, but not limited to, any affiliate of the Investment Manager, but payment for any such services shall be assumed by the Investment Manager and the Clients shall not have any liability therefor; *provided, however*, that the Investment Manager, in its sole discretion, may retain the services of independent third party professionals, including, without limitation, attorneys, accountants and consultants, to advise and assist it in connection with the performance of its activities on behalf of the Clients hereunder, and the Clients shall bear full responsibility therefor and the expense of any fees and disbursements arising therefrom.

(d) If the Investment Manager shall incur any of the expenses mentioned in Section 4(a) above for the account of the Clients and any Other Accounts (as defined in Section 5(c) hereof), the Investment Manager will allocate such expense among the Clients and each such Other Account in proportion to the size of the

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investment made by each in the activity or entity to which the expense relates, or in such other manner as the Investment Manager in its sole discretion considers fair and reasonable.

(a) The Investment Manager is entitled to use "soft dollars" generated by the Master Fund to pay for certain investment research and brokerage services that provide lawful and appropriate assistance to the Investment Manager in the performance of investment decision-making responsibilities to the extent such use falls within the safe harbor afforded by Section 28(e) of the Securities Exchange Act of 1934, as amended, or is otherwise reasonably related to the investment decision-making process, or to cover certain Client expenses described in Section 4(a). Use of "soft dollars" by the Investment Manager as described herein shall not constitute a breach by the Investment Manager of any fiduciary or other duty which the Investment Manager may be deemed to owe to the Clients.

5. **Other Activities and Investments.**

(a) The Investment Manager shall not be required to devote any specific amount of its time to the affairs of the Clients, but shall devote such of its time to the business and affairs of the Clients as it shall determine in good faith to be necessary to conduct the affairs of the Clients for the benefit of the Clients.

(b) Each of the Clients agree that the Investment Manager, and any partner, director, officer, shareholder, member, affiliate or employee of the Investment Manager, may engage in or possess an interest in other business ventures or commercial dealings of every kind and description, independently or with others, including, but not limited to, management of other accounts, investment in, or financing, acquisition and disposition of, securities, investment and management counseling, brokerage services, serving as directors, officers, advisers or agents of other companies, partners of any partnership, or trustee of any trust, or entering into any other commercial arrangements, and will not be disqualified solely on the basis that any such activities may conflict with any interest of the parties with respect to the Clients. Without in any way limiting the foregoing, each Clients hereby acknowledge that (i) none of the Investment Manager or its partners, directors, officers, shareholders, members, affiliates or employees shall have any obligation or responsibility to disclose or refer any of the investment or other opportunities obtained through activities contemplated by this Section 5 to the Clients, but may refer the same to any other party or keep such opportunities for their own benefit; and (ii) the Investment Manager and its partners, directors, officers, shareholders, members, affiliates and employees are hereby authorized to engage in activities contemplated by this Section 5 with, or to purchase, sell or otherwise deal or invest in investments issued by, companies in which the Investment Manager might from time to time invest or be able to invest or otherwise have any interest on behalf of the Clients, without the consent or approval of the Clients.

(c) The Investment Manager shall act allocate investment opportunities to the Master Fund and any Other Account fairly and equitably over time. "***Other Account***" means any assets or investment of the Investment Manager, or any assets managed by the Investment Manager or any affiliate of the Investment Manager

for the account of any person or entity (including investment vehicles) other than the Clients, which are invested or which are available for investment in securities or other instruments or for trading activities whether or not of the specific type being conducted by the Clients. The Investment Manager is under no obligation to accord exclusivity or priority to the Master Fund in the event of limited investment opportunities. This means that such opportunities will be allocated among those accounts for which participation in the respective opportunity is considered appropriate, taking into account, among other considerations: (i) whether the risk-return profile of the proposed investment is consistent with the account's objectives and program, whether such objectives are considered in light of the specific investment under consideration or in the context of the portfolio's overall holdings; (ii) the potential for the proposed investment to create an imbalance in the account's portfolio (taking into account expected inflows and outflows of capital); (iii) liquidity requirements of the account; (iv) potentially adverse tax consequences; (v) regulatory and other restrictions that would or could limit an account's ability to participate in a proposed investment; and (vi) the need to re-size risk in the account's portfolio. The Investment Manager has the authority to allocate trades to multiple accounts on an average price basis or on another basis it deems fair and equitable. Similarly, if an order on behalf of any accounts cannot be fully allocated under prevailing market conditions, the Investment Manager may allocate the trades among different accounts on a basis it considers fair and equitable over time.

(d) The principals of the Investment Manager, as well as the employees and officers thereof and of organizations affiliated with the Investment Manager, may buy and sell securities for their own account or the account of others, but may not buy securities from or sell securities to the Clients (such prohibition does not extend to the purchase or sale of limited partner interests or shares, as applicable, in any of the Clients) unless appropriate approval of the Advisory Committee is obtained and such purchase or sale is in compliance with the applicable provisions of the Investment Advisers Act of 1940, as amended (the "***Advisers Act***") or such purchase or sale is otherwise in compliance with the applicable provisions of the Advisers Act.

(e) Each Client hereby waives, and covenants not to bring a cause of action in law or equity on the basis of, any law (statutory, common law or otherwise) respecting the rights and obligations of the Clients which is or may be inconsistent with this Section 5.

(f) The Investment Manager and its affiliates reserve the right to establish collective investment vehicles that have stated investment programs or terms that differ from those of the Clients or that are targeted primarily to investors for which the Clients are not designed to be suitable investment vehicles. The Investment Manager and its affiliates also reserve the right to establish and provide management or advisory services pursuant to separate Other Accounts for significant investors, whether or not such accounts have the same investment program as the Clients.

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6. **Custody.**

The assets of the Clients shall be held in the custody of one or more qualified custodians (or other independent institutions performing the functions of custodian, with respect to the assets which are held by such institutions) selected by the Investment Manager.

7. **Scope of Liability.**

None of the Investment Manager, nor any member, shareholder, partner, manager, director, officer, employee or agent of, or any person who controls, the Investment Manager, each of the respective affiliates of the foregoing, or any of the legal representatives of any of the foregoing (collectively, the "***Indemnified Persons***") will be liable to the Clients or any other person for mistakes of judgment or for action or inaction that did not constitute gross negligence, willful misconduct or bad faith, or for losses due to such mistakes, action or inaction or to the negligence, dishonesty or bad faith of any broker or agent of the Clients, provided that such broker or agent was selected, engaged or retained by the Indemnified Person in accordance with the standard of care set forth above. No Indemnified Person shall be liable to the Clients or any other person for any amount in excess of the amount of Management Fees received by the Investment Manager, to the extent permitted under applicable law. In addition, in no event shall any Indemnified Person be liable for any special, indirect, exemplary, consequential or punitive losses or damages. An Indemnified Person may consult with counsel and accountants in respect of the Clients' affairs and will be fully protected and justified in any action or inaction which is taken in accordance with the advice or opinion of such counsel or accountants, provided that they were selected in accordance with the standard of care set forth above. The foregoing provisions, however, shall not be construed so as to provide for the exculpation of an Indemnified Person of any liability (including liability under U.S. Federal securities laws which, under certain circumstances, impose liability even on persons acting in good faith), to the extent (but only to the extent) that such liability may not be waived, modified or limited under applicable law (including liability under U.S. Federal securities laws which, under certain circumstances, impose liability even on persons acting in good faith), but shall be construed so as to effectuate the abovementioned provisions to the fullest extent permitted by law.

8. **Indemnification.**

(a) The Clients shall, to the fullest extent permitted by law, indemnify and hold harmless each Indemnified Person from and against any and all loss, cost or expense suffered or sustained by an Indemnified Person by reason of the fact that it, he or she is or was an Indemnified Person, including, without limitation, any judgment, settlement, reasonable attorneys' fees and other costs or expenses incurred in connection with the defense of any actual or threatened action, suit or proceeding, provided that such liability, damage, loss, cost or expense resulted from a mistake of judgment on the part of an Indemnified Person or from action or inaction that did not constitute gross negligence, willful misconduct or bad faith, or from the negligence, dishonesty or bad faith of a broker or other agent of an Indemnified Person, provided that such broker or agent was selected, engaged or retained by the Indemnified Person in accordance with the standard of care set forth above. Each of the Clients shall, in the sole discretion of the General Partner or the Directors, as applicable, advance to any Indemnified Person reasonable attorneys' fees and other costs and expenses incurred in connection

with the defense of any action, suit or proceeding which arises out of such conduct. In the event that such an advance is made by the Client(s), the Indemnified Person will agree to reimburse the Client(s) to the extent that it is finally determined that it was not entitled to indemnification in respect thereof.

(b) Notwithstanding any of the foregoing, the provisions of this Section 8 do not provide for the indemnification of any Indemnified Person for any liability (including liability under Federal securities laws which, under certain circumstances, impose liability even on persons that act in good faith), to the extent (but only to the extent) that such liability may not be waived, modified or limited under applicable law, but shall be construed so as to effectuate the above provisions to the fullest extent permitted by law.

(c) Pursuant to the foregoing indemnification and exculpation provisions applicable to each Indemnified Person, the Clients (and not the applicable Indemnified Person) will be responsible for any losses resulting from trading errors and similar human errors, absent gross negligence, bad faith or willful misconduct of any Indemnified Person.

(d) To the extent that the indemnity under this Section 8 inures for the benefit of the Investment Manager or of any Indemnified Person (whether existing or in the future) and for the benefit of any successor of the Investment Manager or any Indemnified Person, the General Partner, on behalf of the Master Fund, declares that it holds the benefit of that promise on trust for that person.

9. **Committees.**

(a) The Investment Manager may appoint a committee (the "***Advisory Committee***") consisting of one or more individuals selected by the Investment Manager, none of whom is affiliated with the Investment Manager (except as an investor in one of the Clients or an affiliate of the Clients). If established, the Advisory Committee will have the authority, at the request of the Investment Manager, to consult with the Investment Manager on any matters that may involve a conflict of interest between the Investment Manager (and its affiliates) on the one hand and the Clients on the other. The Advisory Committee may also grant approvals required under the Advisers Act or related to any other matter deemed appropriate by the Investment Manager. Any such approval given by the Advisory Committee is binding on the Clients. The Clients will have the authority to agree to reasonably compensate members of the Advisory Committee for their services and to agree to reimburse them for their out-of-pocket expenses and to indemnify them to the maximum extent permitted by law. In the event an Advisory Committee is not appointed, the Investment Manager may obtain the approval of an unaffiliated third party, as is determined advisable by the Investment Manager, and any such approval by such third party shall, to the extent permitted under applicable law, serve as the approval of the Advisory Committee and shall be binding on the Clients.

(b) The Investment Manager may appoint a committee (the "***Pricing Committee***") whose quorum consists of at least a majority of the following individuals: the

Chief Financial Officer of the Investment Manager, the Chief Compliance Officer of the Investment Manager and one or more traders of the Investment Manager. The Pricing Committee will meet on at least a monthly basis to review, confirm and agree on all pricing information established by the Investment Manager in respect of the Master Fund's assets that are fair valued or which the Investment Manager believes should require review. The final pricing or valuation of such Master Fund assets will require the approval of a majority in number of the members of the Pricing Committee constituting a quorum. In lieu of meeting, the Pricing Committee may take action by written consent signed by a majority of the committee members. The Pricing Committee may, at the Master Fund's expense, engage third-party experts and consultants to provide services in connection with any determination to be made by the Pricing Committee. The Investment Manager may replace members of the Pricing Committee or change the composition of the Pricing Committee, in its sole discretion.

10. **Independent Contractor.**

For all purposes of this Agreement, the Investment Manager shall be an independent contractor and not an employee or dependent agent of the Clients, nor shall anything herein be construed as making the Clients a partner or co-venturer with the Investment Manager or any of its affiliates or Other Accounts. Except as provided in this Agreement, the Investment Manager shall have no authority to bind, obligate or represent the Clients.

11. **Acknowledgement.**

The Clients certify and acknowledge to the Investment Manager that the Clients:

(i) have fully disclosed to potential investors the fee provisions and other arrangements relating to the Clients' accounts with the Investment Manager and are satisfied that the potential investors have received sufficient information from the Investment Manager to enable them to evaluate the terms of this Agreement; and

(ii) fully understand the method of compensation provided herein and its associated risks, and that such risks have been disclosed to potential investors.

12. **Entire Agreement.**

This instrument, together with the Governing Documents, contains the entire agreement between the parties hereto relating to the subject matter hereof. No provision of this Agreement may be amended without the written consent of the Investment Manager and the Clients.

13. **Amendment; Modification; Waiver.**

Except as otherwise expressly provided herein, this Agreement shall not be amended, nor shall any provision of this Agreement be considered modified or waived, unless evidenced by a writing signed by all parties hereto.

14. **Binding Effect; Assignment.**

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors. The rights and obligations hereunder shall not, except as otherwise expressly provided herein, be assignable, transferable or delegable by the Investment Manager without the written consent of the Clients, and any attempted assignment, transfer or delegation thereof without such consent shall be void. The rights and obligations hereunder shall not, except as otherwise expressly provided herein, be assignable, transferable or delegable by the Clients without the written consent of the Investment Manager, and any attempted assignment, transfer or delegation thereof without such consent shall be void. The Investment Manager agrees to notify the Clients in writing within thirty (30) days after any change in control of the Investment Manager.

15. **Termination.**

This Agreement shall become effective on the date hereof and shall continue in effect until the earlier of the dissolution (or in the case of the Offshore Fund, the liquidation) of the Clients, or the termination by any of the Investment Manager, the Offshore Fund or the General Partner on behalf of the Domestic Fund or the Master Fund upon at least seventy-five (75) days' prior written notice.

16. **Governing Law.**

This Agreement shall be governed by and construed in accordance with the substantive laws of the State of Delaware which are applicable to contracts made and entirely to be performed therein, without regard to the place of performance hereunder.

[Signature Page Follows]

The parties have executed this Agreement to be effective as of the day and year first above written.

HIGHLAND CAPITAL LOAN FUND, L.P.
By: Highland Loan GP, LLC, its general partner
By: Highland Capital Management, L.P., its sole member
By: Strand Advisors, Inc., its general partner

By: _____
Name: James D. Dondero
Title: President

HIGHLAND LOAN FUND, LTD.

By: _____
Name: Trey Parker
Title: Director

HIGHLAND LOAN MASTER FUND, L.P.
By: Highland Loan GP, LLC, its general partner
By: Highland Capital Management, L.P., its sole member
By: Strand Advisors, Inc., its general partner

By: _____
Name: James D. Dondero
Title: President

HIGHLAND CAPITAL LOAN GP, LLC
By: Highland Capital Management, L.P., its sole member
By: Strand Advisors, Inc., its general partner

By: _____
Name: James D. Dondero
Title: President

Signature Page to Investment Management Agreement

HIGHLAND CAPITAL MANAGEMENT, L.P.
By: Strand Advisors, Inc., its general partner

By: _____
Name: James D. Dondero
Title: President

Signature Page to Investment Management Agreement

Memorandum Number _____

Confidential Private Offering Memorandum

Shares

of

Highland Dynamic Income Fund, Ltd.

Investment Manager

Highland Capital Management, L.P.

April 2018

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NOTICE

This Confidential Private Offering Memorandum (this "***Memorandum***") is being furnished on a confidential basis solely to selected qualified investors for the purpose of enabling the recipient to evaluate an investment in Highland Dynamic Income Fund, Ltd. (the "***Fund***"). This Memorandum is not to be reproduced or distributed to others, at any time, without the prior written consent of the board of directors of the Fund. Each recipient agrees to keep confidential all information contained herein not already in the public domain and will use this Memorandum for the sole purpose of evaluating a possible investment in the Fund. Notwithstanding anything herein to the contrary, each investor (and each employee, representative, or other agent of the investor) may disclose to any and all persons, without limitation of any kind, the tax treatment and tax structure of an investment in the Fund and all materials of any kind (including opinions or other tax analyses) that are provided to the investor relating to such tax treatment and tax structure. Acceptance of this Memorandum by prospective investors constitutes an agreement to be bound by the foregoing terms.

Prospective investors should not construe the contents of this Memorandum as legal, tax or financial advice. Each prospective investor should consult its own professional advisors as to the legal, financial, tax, ERISA (as defined herein) or other matters relevant to the suitability of an investment in the Fund for such investor.

In making an investment decision, investors must rely on their own examination of the Fund and the terms of the offering contemplated by this Memorandum. The participating non-voting shares of the Fund (the "***Shares***") have not been recommended by any U.S. federal or state, or any non-U.S., securities commission or regulatory authority. Furthermore, the foregoing authorities have not confirmed the accuracy or determined the adequacy of this Memorandum. Any representation to the contrary is a criminal offense.

Neither this Memorandum nor the Shares described herein have been qualified for offer, sale or distribution under the laws of any jurisdiction governing the offer or sale of mutual fund shares or other securities. This Memorandum does not constitute an offer to sell, or the solicitation of an offer to buy, any Shares in any state or other jurisdiction where, or to or from any person to or from whom, such offer or solicitation is unlawful or not authorized.

The Shares have not been and will not be registered under the U.S. Securities Act of 1933, as amended (the "***Securities Act***"), or the securities laws of any of the states of the United States, and the Fund has not been and will not be registered under the U.S. Investment Company Act of 1940, as amended. Direct or indirect acquisition or ownership of Shares by "***United States Persons***" (as defined in Annex A) without compliance with applicable U.S. securities laws or in contravention of the relevant provisions of the constituent documents of the Fund is prohibited. The offering and any potential sale contemplated by this Memorandum will be made in reliance upon an exemption from the registration requirements of the Securities Act for offers and sales of securities which do not involve any public offering and analogous exemptions under state securities laws. There will be no public market for the Shares, and there is no obligation on the part of any person to register the Shares under the Securities Act or any state securities laws.

Pursuant to an exemption from the Commodity Futures Trading Commission (the "***CFTC***"), Highland Capital Management, L.P., the investment manager to the Fund (the "***Investment Manager***"), is not registered with the CFTC as a commodity pool operator ("***CPO***") and therefore,

unlike a registered CPO, is not required to deliver a disclosure document or a certified annual report to participants in this pool. Among other things, the exemption requires the filing of a claim of exemption with the National Futures Association. It is also required that at all times either: (a) the aggregate initial margin and premiums required to establish commodity interest positions does not exceed 5% of the liquidation value of the Fund's portfolio; or (b) the aggregate net notional value of the Fund's commodity interest positions does not exceed 100% of the liquidation value of the Fund's portfolio and further that all pool participants are required to be accredited investors or certain other qualified investors. The Investment Manager qualifies for an exemption from registration as a commodity trading advisor pursuant to CFTC Rule 4.14(a)(8).

In each European Economic Area member state (each a "***Relevant Member State***") that has implemented Directive 2011/61/EU of the European Parliament and the Council of the European Union on Alternative Investment Fund Managers and applicable implementing legislation, including Commission Delegated Regulation (EU) No 231/2013 (the "***AIFMD***"), the Fund may only be offered to investors in accordance with local measures implementing AIFMD. Investors, together with any relevant person making or assisting in the decision to invest in the Fund, who are situated, domiciled or who have a registered office, in a Relevant Member State where the Fund is not being offered pursuant to private placement rules implementing AIFMD may invest, or effect an investment in the Fund, but only in circumstances where they do so at their own initiative. The Memorandum may only be issued to "Professional Clients" within the meaning of Directive 200439/EC on Markets in Financial Instruments. At the date hereof, the Investment Manager has not registered and does not intend to register the Fund for marketing in any Relevant Member State. It may register the Fund in Relevant Member States in the future.

NO OFFER OR INVITATION TO SUBSCRIBE FOR SHARES MAY BE MADE TO THE PUBLIC IN THE CAYMAN ISLANDS.

Highland Dynamic Income Master Fund, L.P. (the "***Master Fund***") is not hereby offering any securities and accordingly this Memorandum is not to be regarded as having been authorised or issued by the Master Fund. The Master Fund does not have an offering document or equivalent document.

Any information forwarded to the Fund by any potential shareholder will be treated on a confidential basis except that such information may be passed on to a relevant third party by the Fund where so required by law or regulation and each shareholder, upon subscribing for Shares, shall be deemed to have consented to such release of such confidential information pursuant to the terms of the Confidential Information Disclosure Law, 2016 of the Cayman Islands (as amended).

An investment in the Fund involves significant risk. Potential investors should pay particular attention to the information in "*Risk Factors and Potential Conflicts of Interest*." Investment in the Fund is suitable only for sophisticated investors and requires the financial ability and willingness to accept the high risks inherent in an investment in the Fund. An investment in the Fund does not constitute a complete investment program. No assurance can be given that the Fund's investment objectives will be achieved or that investors will receive a return of their capital.

The Shares are offered subject to the right of the Fund to reject any subscription in whole or in part.

This Memorandum does not purport to be, and should not be construed as, a complete description of the Fund's Memorandum of Association and Articles of Association, as may be

amended from time to time (together, the "***Articles of Association***") or the exempted limited partnership agreement, as may be amended from time to time (the "***Master Fund Partnership Agreement***"), of the Master Fund. Each prospective investor in the Fund is encouraged to review the Articles of Association and the Master Fund Partnership Agreement carefully, in addition to consulting appropriate legal and tax advisors. To the extent of any inconsistency between this Memorandum and the Articles of Association or the Master Fund Partnership Agreement, the terms of the Articles of Association or the Master Fund Partnership Agreement (as applicable) shall control. A copy of the Master Fund Partnership Agreement is available upon request from the Investment Manager.

The Fund and the Master Fund are regulated under the Mutual Funds Law (2015 Revision) of the Cayman Islands (the "***Mutual Funds Law***"). The Cayman Islands Monetary Authority (the "***Authority***") has supervisory and enforcement powers to ensure compliance with the Mutual Funds Law. Regulation under the Mutual Funds Law entails the filing of prescribed details and audited accounts annually with the Authority. As a regulated mutual fund, the Authority may at any time instruct the Fund or the Master Fund to have its or their accounts audited and to submit them to the Authority within such time as the Authority specifies. Failure to comply with these requests by the Authority may result in substantial fines on the part of the directors of the Fund or the Master Fund, as applicable, and may result in the Authority applying to the court to have the Fund or the Master Fund wound up.

Neither the Fund nor the Master Fund are, however, subject to supervision in respect of their investment activities or the constitution of the Master Fund's portfolio by the Authority or any other governmental authority in the Cayman Islands, although the Authority does have power to investigate the activities of the Fund and the Master Fund in certain circumstances. Neither the Authority nor any other governmental authority in the Cayman Islands has commented upon or approved the terms or merits of this document. There is no investment compensation scheme available to investors in the Cayman Islands.

The Authority may take certain actions if it is satisfied that a regulated mutual fund is or is likely to become unable to meet its obligations as they fall due or is carrying on or is attempting to carry on business or is winding up its business voluntarily in a manner that is prejudicial to its investors or creditors. The powers of the Authority include the power to require the substitution of the directors of the Fund or the Master Fund, to appoint a person to advise the Fund or the Master Fund on the proper conduct of its affairs or to appoint a person to assume control of the affairs of the Fund or the Master Fund, as the case may be. There are other remedies available to the Authority including the ability to apply to court for approval of other actions.

The delivery of this Memorandum does not, under any circumstances, create any implication that there has been no change in the circumstances affecting the Fund or the Master Fund since the date hereof. An amended or updated Memorandum will be provided to reflect any material changes to the information contained herein.

Certain information contained in this Memorandum constitutes "forward-looking statements," which can be identified by the use of forward-looking terminology such as "may," "will," "should," "expect," "anticipate," "project," "estimate," "intend," or "believe" or the negatives thereof or other variations thereon or comparable terminology. Due to various risks and uncertainties, including those described in "*Risk Factors and Potential Conflicts of Interest*," actual events or results or the actual performance of the Fund may differ materially from those reflected or contemplated in such forward-looking statements.

All references herein to "$" refer to U.S. dollars. All references to day, month, quarter and year are to calendar day, calendar month, calendar quarter and calendar year, unless otherwise specified or the context so requires. Except as the context otherwise requires, references to the term "Fund" in this Memorandum shall be deemed to include the Master Fund.

DIRECTORY

Registered Office	Highland Dynamic Income Fund, Ltd. PO Box 309, Ugland House Grand Cayman, KY1-1104 Cayman Islands
Investment Manager	Highland Capital Management, L.P. 300 Crescent Court, Suite 700 Dallas, TX 75201
Administrator	SEI Alternative Investment Fund Services One Freedom Valley Drive Oaks, PA 19456
Directors	Mark Okada Trey Parker
Auditors	PricewaterhouseCoopers LLP Strathvale House 90 North Church Street PO Box 258 Grand Cayman KY1-1104 Cayman Islands
Custodian	US Bank, N.A. 190 South LaSalle, 10th Floor Chicago, Illinois 60603
Legal Counsel	*In the United States:* Akin Gump Strauss Hauer & Feld LLP 1700 Pacific Avenue Suite 4100 Dallas, TX 75201 *In the Cayman Islands:* Maples and Calder PO Box 309, Ugland House Grand Cayman, KY1-1104 Cayman Islands

EXECUTIVE SUMMARY

Highland Dynamic Income Fund, Ltd., a Cayman Islands exempted company with limited liability (the "***Fund***"), seeks to generate returns that exceed the S&P/LSTA Leveraged Loan Total Return Index[1] by investing all of its investable assets in Highland Dynamic Income Master Fund, L.P., a Cayman Islands exempted limited partnership (the "***Master Fund***"), which provides exposure to the broader bank loan market.

Highland Dynamic Income Fund GP, LLC, a Delaware limited liability company (the "***Master Fund GP***"), acts as general partner of the Master Fund and is registered as a foreign company in the Cayman Islands. Highland Capital Management, L.P., a Delaware limited partnership (the "***Investment Manager***" and, together with its affiliates, shareholders, directors, members, partners, officers and employees, the "***Advisory Parties***"), serves as investment manager to the Fund and the Master Fund and manages the Master Fund's investment program. Each of the Master Fund GP and the Investment Manager are ultimately controlled by James D. Dondero (the "***Principal***").

In order to facilitate investments by U.S. investors, the Investment Manager has sponsored the formation of Highland Dynamic Income Fund, L.P., a Delaware limited partnership of which the Master Fund GP also serves as the general partner (the "***Domestic Fund***" and, together with the Fund, the "***Feeder Funds***"). The Feeder Funds place all of their investable assets in, and conduct all of their investment and trading activities in parallel through, the Master Fund. References in this Memorandum to the Fund shall include the Master Fund, unless otherwise specified or the context so requires.

The Fund is seeking subscriptions for participating non-voting shares of the Fund (the "***Shares***") from eligible investors. The minimum initial investment is $1,000,000, although the Fund may accept investments in a lesser amount, subject to an absolute minimum of $100,000, or such other sum as may be required from time to time by applicable law. The Fund generally accepts subscriptions on the first business day of each month.

For its services to the Master Fund, the Investment Manager is generally entitled to a management fee (the "***Management Fee***"), which is calculated and paid quarterly in advance at the Master Fund level, and the Master Fund GP is entitled to an annual performance-based allocation, at the Master Fund level, essentially to the extent that the return of a Share (positive or negative) outperforms the hypothetical return of the capital account based on the S&P/LSTA Leveraged Loan Total Return Index for such year. Please see "*Summary of Terms – Management Fee*" and "*Summary of Terms – Performance Allocation*."

A shareholder is generally permitted to redeem all or a portion of its Shares on 45 days' prior written notice on the last business day of each quarter. Redemptions may be subject to reserves for contingencies, hold-back pending audit, gating and suspension restrictions as discussed further in this Memorandum.

The Fund may agree with certain shareholders to a variation of the terms set forth in this Memorandum or establish additional series of Shares that have terms that differ from those described herein, including, without limitation, different management fees and redemption rights.

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[1] The S&P/LSTA Leveraged Loan Total Return Index (the "***Index***") is used only for purposes of calculating performance fees. The Fund will not directly invest in the Index nor seek to replicate the Index, and there might or might not be a close correlation between the performance of the Fund and that of the Index. The Index does not reflect the investment strategy of the Fund.

INVESTMENT PROGRAM

Investment Objective

The Fund's investment objective is to seek high current income and capital appreciation by maximizing risk-adjusted returns as measured against the S&P/LSTA Leveraged Loan Total Return Index.[2]

Investment Strategy

The Master Fund's net assets will be invested and traded primarily in senior secured floating rate bank loans ("***Bank Loans***"), high yield debt securities and structured credit products denominated in U.S. dollars. The Master Fund's investments will be subject to the following restrictions:

(a) a minimum of 50% (measured at the time of settlement) of the Master Fund's gross assets will be invested in loans, and no more than 5% (measured at the time of settlement) of the Master Fund's gross assets will be invested in a single loan instrument;

(b) no more than 50% (measured at the time of settlement) of the Master Fund's gross assets will be invested in collateralized loan obligations ("***CLO***" or "***CLO Securities***") and structured credit products, and no more than 5% (measured at the time of settlement) of the Master Fund's gross assets will be invested in a single CLO issuer;

(c) no more than 10% (measured at the time of settlement) of the Master Fund's gross assets will be invested in high yield bonds;

(d) no more than 10% (measured at the time of settlement) of the Master Fund's gross assets will be invested in equity securities, which equity securities are primarily issued in connection with a reorganization or restructuring of a borrower or debt positions of the Master Fund that convert into equity securities ("***Re-Org Equities***");

(e) the top 3 industries in which the Master Fund holds positions will comprise no more than 50% (measured at the time of settlement) of the Master Fund's gross assets, and no more than 20% (measured at the time of settlement) of the Master Fund's gross assets will be invested in a single industry; and

(f) the minimum weighted average rating of the Master Fund's entire portfolio will be B+, the minimum weighted average rating of the Master Fund's holdings that are loans will be B, and the minimum weighted average rating of the Master Fund's holdings that are CLOs will be BB (in each case, measured at the time of settlement).

Bank Loans

Bank Loans represent amounts borrowed by corporate entities from banks and other lenders. In many cases, they are issued in connection with recapitalizations, acquisitions, leveraged buyouts and refinancings. Most, if not all, of the Bank Loans in which the Master Fund invests will have a below

[2] The S&P/LSTA Leveraged Loan Total Return Index (the "***Index***") is used only for purposes of calculating performance fees. The Fund will not directly invest in the Index nor seek to replicate the Index, and there might or might not be a close correlation between the performance of the Fund and that of the Index. The Index does not reflect the investment strategy of the Fund.

investment-grade credit rating or will not be rated by a major credit rating agency. The Bank Loans in which the Master Fund invests are often referred to as "leveraged loans" because the borrowing companies have significantly more debt than equity.

Bank Loans have the highest seniority within a borrower's capital structure. Therefore, in the event of a bankruptcy, holders of Bank Loans are typically paid (to the extent assets are available) before certain other creditors, such as bond and equity holders. Bank Loan maturities typically range from 5 to 8 years, although loan prepayments and refinancings generally result in effective average lives of approximately 3 years depending on market conditions.

Bank Loans generally pay interest at rates that are determined periodically by reference to a base lending rate plus a premium. These rates often are re-determined daily, monthly, quarterly or semi-annually. As a result, the Investment Manager believes the Master Fund should experience less sensitivity to changes in market interest rates and lower volatility than if the Master Fund invested exclusively in fixed rate obligations.

The Bank Loan market has grown significantly in recent years, as investors have been drawn into the market by the advantageous characteristics of Bank Loans, which include floating interest rates, senior secured status, lower volatility, growing liquidity, greater control over an issuer in times of stress, and lower correlation with other asset classes.

Collateralized Loan Obligations

An investment in CLO tranches represents varying levels of exposure primarily to credit performance of the underlying assets (i.e., bank loans, which comprise the primary asset class of the Master Fund's portfolio) and is characterized by a combination of expected significant current cash flow as well as the opportunity for positive returns through long-term gains on the underlying portfolios. Investments in CLO Securities often have a relatively short expected duration (usually less than 10 years), as a typical CLO distributes excess cash flows quarterly or semi-annually concurrent with the payment of interest on its liabilities subject to compliance with overall collateral quality tests and other performance criteria.

High Yield Bonds

The price and yield of lower-quality (high yield, high-risk) bonds, commonly referred to as "junk bonds," can be expected to fluctuate more than the price and yield of higher-quality bonds. Because these bonds are rated below BBB or are in default, they are regarded as predominantly speculative with respect to the issuer's continuing ability to meet principal and interest payments. Successful investment in lower-medium- and low-quality bonds involves greater investment risk and is highly dependent on the Advisory Parties' credit analysis. A real or perceived economic downturn could cause a decline in high yield bond prices by lessening the ability of issuers to make principal and interest payments. These bonds can be more difficult to sell and value accurately than high-quality bonds. Because objective pricing data may be less available, judgment may play a greater role in the valuation process. In addition, the entire high yield bond market can experience sudden and sharp price swings due to a variety of factors, including changes in economic forecasts, stock market activity, large or sustained sales by major investors, a high-profile default, or just a change in the market's psychology. This type of volatility is usually associated more with stocks than bonds, but junk bond investors should be prepared for it.

Reorganization Equities

Re-Org Equity refers to equity securities that are issued in connection with a reorganization or restructuring of a borrower, including both registered and non-registered securities under Section 12 of the Securities Exchange Act of 1934 and therefore are not traded on an exchange or inter-dealer quotation system, and debt positions of the Master Fund that convert into equity securities. The Master Fund may receive Re-Org Equities as a loan marker participant and/or trade such securities on a stand-alone basis.

Cash Positions and Money Market Instruments

From time to time, subject to the investment limitations set forth above, the Investment Manager may maintain cash positions and invest some of the Master Fund's assets in short-term U.S. Government obligations, certificates of deposit, commercial paper and other money market instruments. A greater percentage of Master Fund assets may be invested in such obligations if the Investment Manager believes that a defensive position is appropriate because of expected economic or business conditions or the outlook for security prices. From time to time, in the sole discretion of the Investment Manager, cash balances in the Master Fund's brokerage account may be placed in a money-market fund or other cash equivalents.

Derivative Transactions

The Master Fund may enter into derivative transactions, including options, futures, credit default swaps and other derivatives transactions to hedge the market risk or express market views of its portfolio.

Foreign Investments

Although the Investment Manager intends to focus primarily on the U.S. marketplace, it may invest in dollar-denominated securities of foreign issuers or loans of foreign borrowers. Investing in foreign securities and loans of foreign borrowers involve special risks that can increase the potential for losses. These include exposure to potentially adverse local, political, and economic developments such as war, political instability, hyperinflation, currency devaluations, and overdependence on particular industries; government interference in markets such as nationalization and exchange controls, expropriation of assets, or imposition of punitive taxes; potentially lower liquidity and higher volatility; possible problems arising from accounting, disclosure, settlement, and regulatory practices and legal rights that differ from U.S. standards; and the chance that fluctuations in foreign exchange rates will decrease the investment's value (favorable changes can increase its value). In addition, information with respect to foreign borrowers may differ from that available for U.S. borrowers because foreign companies are not generally subject to accounting, auditing and financial reporting standards, practices and requirements comparable to those applicable to U.S. borrowers. These risks are heightened for investments in emerging markets.

Risk Management and Hedging Activity

Risk Management

Risk management is integrated into all levels of the investment process, from due diligence to portfolio construction and management to ongoing monitoring. The process addresses factors including credit risk, liquidity risk and volatility risk. The Investment Manager conducts extensive position and portfolio monitoring activities on a daily basis. Portfolio risk is reviewed using internally generated daily, weekly and monthly reports which measure transaction compliance including metrics

such as portfolio concentrations or required test scores, as well as compliance with evolving internal positioning targets. Individual position risk is monitored in a number of ways, including the extensive proprietary intranet system (Highland Online Management Engine or "***HOME***"), which pulls together data from our various data providers (Wall Street Office, LPC, Moody's, S&P, MarkIt, S&P LCD, CSFB Index) to provide a comprehensive portfolio/risk management system. The system allows the Investment Manager to monitor metrics at any level of aggregation (instrument, issuer, portfolio, fund and across the platform). Additionally, the system is designed to be scalable with flexibility to enable future data inputs and reporting requirements.

For both CLOs and for the underlying loans, the HOME intranet system allows the Investment Manager to monitor portfolios on a real-time, ongoing basis by receiving alerts showing positions with the largest daily/weekly/monthly mark change, as well as alerts on downgrades/upgrades and when the Investment Manager has changed the opinion on a broadly syndicated loan. The Investment Manager monitors existing positions by receiving monthly Trustee Reports and other data feeds to track the ongoing metrics of each particular investment, looking for trends and comparing current deal statistics to original expectations when the investment was made.

Certain of the Investment Manager's employees meet every morning to discuss current events in the market and meet weekly and monthly to take detailed looks at current economic data and leading indicators such as jobless claims and consumer expectations, consumer confidence, employment, industrial production and manufacturing, inflation, business conditions/confidence, construction/housing and commodity prices. The Investment Manager also determines risk-on/risk-off parameters, which allow it to adjust holdings and exposures accordingly.

Hedging Activity

The Investment Manager may, from time to time, employ its differentiated and sophisticated quasi-systematic hedging programs for the Master Fund. Such hedging programs may be customized for the Master Fund and may employ derivatives to partially or fully hedge the following risks:

- Tail Risk – The risk that the Master Fund's portfolio value declines by 2 standard deviations or more over a 1-month period.
- Systematic Risk – Undiversifiable risk of the Master Fund's portfolio.
- Catalyst/Event Risk – The risk that a catalyst or an event results in losses to the Master Fund's portfolio.
- Currency Risk – The downside sensitivity of the Master Fund's portfolio value to changes in exchange rates.
- Interest Rate Risk – The downside sensitivity of the Master Fund's portfolio value to changes in interest rates.
- Credit Risk – The downside sensitivity of the Master Fund's portfolio value.

The Investment Manager may employ derivative instruments to structure a "net" buyer of protection profile for the Master Fund. The Investment Manager classifies the risks arising from the use of derivatives into the following categories:

- Delta – The change in value of the derivative instrument due to a unit change in the underlying security.
- Gamma – The change in the delta due to a unit change in the underlying security.
- Vega – The change in value of the derivative instrument due to a unit change in volatility.
- Theta – The change in value of the derivative instrument due to the passage of time.
- Rates DV01 – The change in value of the derivative instrument due to a 1 basis point increase in interest rates.
- Credit DV01 – The change in value of the derivative instrument due to a 1 basis point increase in credit spreads.

The Investment Manager may monitor these risks associated with the use of derivative instruments on a real-time basis. In addition, the Investment Manager may perform scenario analyses on such derivative instruments to assess the payouts for market fluctuations up and down. The Investment Manager also may monitor such scenarios on a real-time basis.

Although the Investment Manager expects to maintain a diversified portfolio of investments, it does not intend to limit itself to any one particular investment theme or asset class.

The investment objectives and methods summarized above represent the Investment Manager's current intentions. The foregoing discussion includes and is based upon numerous assumptions and opinions of the Investment Manager concerning world financial markets and other matters, the accuracy of which cannot be assured. There can be no assurance that the Fund's investment strategy will achieve profitable results.

MANAGEMENT

The Master Fund GP and the Investment Manager

Highland Dynamic Income Fund GP, LLC, a Delaware limited liability company (the "***Master Fund GP***"), acts as the general partner of the Master Fund and is registered as a foreign company in the Cayman Islands.

Highland Capital Management, L.P., a Delaware partnership (the "***Investment Manager***"), serves as the investment manager of the Fund and the Master Fund and has responsibility for the Master Fund's investment program.

Each of the Master Fund GP and the Investment Manager are ultimately controlled by James D. Dondero (the "***Principal***").

The Investment Management Agreement

The Investment Manager was appointed as the investment manager to the Fund, the Domestic Fund and the Master Fund pursuant to an investment management agreement (the "***Investment Management Agreement***"). Under the Investment Management Agreement, the Investment Manager has full discretion to invest the assets of the Master Fund in pursuit of the investment objective and strategy described in this Memorandum. **For its services, the Investment Manager is entitled to the management fee as well as reimbursement for any Fund or Master Fund expenses incurred by the Investment Manager.**

The Investment Management Agreement provides that, in the absence of gross negligence (as such term is defined and interpreted in accordance with the laws of the State of Delaware), willful misconduct or bad faith, each of the Investment Manager, its members, shareholders, partners, managers, directors, officers, employees or agents, any person who controls the Investment Manager, each of the respective affiliates of the foregoing, and any of the legal representatives of any of the foregoing, will be indemnified by the Fund, the Domestic Fund and/or the Master Fund, to the extent permitted by law, against any loss or liability incurred by any of such persons in performing their duties under the Investment Management Agreement.

Key Investment Personnel

The key investment professionals of the Investment Manager who will be responsible for the Master Fund's investments are described below.

Mark Okada, CFA, *Co-Founder*, *Chief Investment Officer*

Mark Okada is Co-founder and Chief Investment Officer of Highland Capital Management, L.P., a Dallas-based alternative investment firm with approximately $15 billion in assets under management. In his role, Mr. Okada oversees Highland's broad investment activities for both the institutional and retail investment platforms, which include hedge funds, separate accounts, special situation private equity, collateralized loan obligations (CLOs), mutual funds, and ETFs. He also remains portfolio manager of the Highland Floating Rate Opportunities Fund. With more than 30 years of experience in credit markets, Mr. Okada is widely regarded as an industry innovator in alternative credit investing; he is responsible for structuring one of the industry's first non-bank CLOs and is a

pioneer in the development of the bank loan market. Mr. Okada is on the board of directors at NexBank Capital, Inc., a Dallas-based financial services company. He received a B.A. in both economics and psychology, cum laude, from the University of California, Los Angeles and has earned the right to use the Chartered Financial Analyst (CFA) designation. Mr. Okada is a regular guest on Bloomberg Television and CNBC, and is frequently quoted in the financial and business press. He is also devoted to a number of philanthropic and civic causes with a particular focus on education, faith-based service, and Japanese-American relations. He is chairman of the board of directors of Education Is Freedom, a Dallas-based nonprofit that provides college preparatory services for underserved students. Mr. Okada is also chairman of the board for Common Grace Ministries, Inc. and is a board member of the Japanese Evangelical Missionary Society. Additionally, he serves on the executive board of Dedman College Humanities and Sciences at Southern Methodist University and is a council leader at the U.S.-Japan Council.

Trey Parker, ***Co-Chief Investment Officer, Partner, Portfolio Manager***

Trey Parker is a Partner and Co-Chief Investment Officer at Highland Capital Management, L.P. Prior to his current role, Mr. Parker was responsible for managing the Credit Team/Platform; he also worked as a Managing Director covering a number of the industrial verticals, as well as parts of tech, media and telecom; he started his tenure at Highland as a Senior Portfolio Analyst on the Distressed & Special Situations investment team. Prior to joining Highland in March 2007, Mr. Parker was a Senior Associate at Hunt Special Situations Group, L.P., a Private Equity group focused on distressed and special situation investing. Mr. Parker was responsible for sourcing, executing and monitoring control Private Equity investments across a variety of industries. Prior to joining Hunt in 2004, Mr. Parker was an analyst at BMO Merchant Banking, a Private Equity group affiliated with the Bank of Montreal. While at BMO, Mr. Parker completed a number of LBO and mezzanine investment transactions. Prior to joining BMO, Mr. Parker worked in sales and trading for First Union Securities and Morgan Stanley. Mr. Parker received an MBA with concentrations in Finance, Strategy and Entrepreneurship from the University of Chicago Booth School of Business and a BA in Economics and Business from the Virginia Military Institute. Mr. Parker serves on the Board of Directors of Euramax Holdings, Inc., TerreStar Corporation, JHT Holdings, Inc., and a non-profit organization, the Juvenile Diabetes Research Foundation (Dallas chapter).

Jon Poglitsch, CFA, ***Managing Director, Head of Credit Research***

Jon Poglitsch is a Managing Director and Head of Credit Research at Highland Capital Management, L.P. His previous roles at Highland include Managing Director, Senior Portfolio Analyst and Director on both the Institutional and Retail research teams. Prior to joining Highland in September 2007, Mr. Poglitsch was a consultant for Muse Stancil and Co., where he provided mergers & acquisition, valuation, and strategic advisory services to a variety of clients in the energy sector, including integrated oil, pipeline, power, and renewable fuel companies. Prior to Muse, Mr. Poglitsch was a senior financial analyst for American Airlines. He received an MBA with a concentration in Finance from the University of Texas at Austin and a BS in Chemical Engineering from the University of Oklahoma. Mr. Poglitsch is a holder of the right to use the Chartered Financial Analyst designation.

Neil Desai, ***Managing Director***

Mr. Desai is a Managing Director and Portfolio Manager at Highland Capital Management, L.P. He is responsible for CLO trading, portfolio management, and risk management of over $1bn in CLO securities across the firm's hedge funds, mutual funds and separate accounts. Prior to joining

Highland in 2015, Mr. Desai was a Director in Pfizer Inc.'s Treasury organization where he built and ran Pfizer's structured products business. Prior to Pfizer, Mr. Desai spent several years structuring and trading various structured products at Credit Suisse, Barclays Capital, and its spin-off hedge fund, C12 capital. Mr. Desai received both a Bachelor's and Master's degree in Computer Science & Electrical Engineering from MIT.

Other Key Investment Manager Personnel

James Dondero, CFA, CMA, *President, Co-Founder*

James Dondero is Co-founder and President of Highland Capital Management, L.P. Mr. Dondero has over 30 years of experience in the credit and equity markets, focused largely on high-yield and distressed investing. Under Mr. Dondero's leadership, Highland has been a pioneer in both developing the collateralized loan obligation (CLO) market and advancing credit-oriented solutions for institutional and retail investors worldwide. Highland's product offerings include institutional separate accounts, CLOs, hedge funds, private equity funds, mutual funds, REITs, and ETFs.

Mr. Dondero is the Chairman and President of NexPoint Residential Trust, Inc. (NYSE:NXRT), is Chairman of NexBank Capital, Inc., Cornerstone Healthcare Group Holding, Inc., and CCS Medical, Inc., and a board member of Jernigan Capital, Inc. (NYSE:JCAP), and MGM Holdings, Inc. He also serves on the Southern Methodist University Cox School of Business Executive Board.

A dedicated philanthropist, Mr. Dondero actively supports initiatives in education, veterans' affairs, and public policy.

Prior to founding Highland in 1993, Mr. Dondero was involved in creating the GIC subsidiary of Protective Life, where as Chief Investment Officer he helped take the company from inception to over $2 billion between 1989 and 1993. Between 1985 and 1989, Mr. Dondero was a corporate bond analyst and then portfolio manager at American Express. Mr. Dondero began his career in 1984 as an analyst in the JP Morgan training program.

Mr. Dondero graduated from the University of Virginia where he earned highest honors (Beta Gamma Sigma, Beta Alpha Psi) from the McIntire School of Commerce with dual majors in accounting and finance. He has received certification as a Certified Public Accountant (CPA) and a Certified Managerial Accountant (CMA) and has earned the right to use the Chartered Financial Analyst (CFA) designation.

Hunter Covitz, CFA, *Head of Structured Products*

Mr. Covitz is Head of Structured Products and Portfolio Manager at Highland Capital Management, L.P. He is responsible for all CLOs and CLO investments managed by Highland. Mr. Covitz serves on Highland's investment committee and leads the structured products investment team. Since joining Highland in 2003, Mr. Covitz has been instrumental in the structuring, warehousing, ramping, and ongoing portfolio management of over 30 Highland-originated CLOs. Prior to joining Highland, Mr. Covitz served as a tax consultant at Deloitte & Touche and KBA Group LLP, where he focused on high-net worth individuals and middle-market companies. He received both his MS and BBA in Accounting from the University of Oklahoma, where he played baseball. Mr. Covitz is a licensed Certified Public Accountant.

Advisory Committee

The Master Fund GP and/or the Investment Manager may appoint a committee (the "***Advisory Committee***") consisting of one or more individuals selected by the Master Fund GP and/or the Investment Manager, none of whom is affiliated with the Master Fund GP or the Investment Manager (except as an investor in the Fund or an affiliate of the Fund). If established, the Advisory Committee will have the authority, at the request of the Master Fund GP and/or Investment Manager, to consult with the Master Fund GP and/or Investment Manager on any matters that may involve a conflict of interest between the Investment Manager (and its affiliates) on the one hand and the shareholders and the Fund on the other. The Advisory Committee may also grant approvals required under the Advisers Act or related to any other matter deemed appropriate by the Investment Manager. Any such approval given by a majority of the members of the Advisory Committee is binding on the Fund and the shareholders. Meetings of the Advisory Committee may be held in person or by telephone. The Fund will have the authority to agree to reasonably compensate members of the Advisory Committee for their services and to agree to reimburse them for their out-of-pocket expenses and to indemnify them to the maximum extent permitted by law.

Pricing Committee

The Master Fund GP and/or the Investment Manager may appoint a committee (the "***Pricing Committee***") consisting of the following individuals: the Chief Financial Officer of the Investment Manager, the Chief Compliance Officer of the Investment Manager and one or more traders of the Investment Manager. The Pricing Committee will meet on at least a monthly basis to review, confirm and agree on all pricing information established by the Investment Manager in respect of the Master Fund's assets that are fair valued. The final pricing or valuation of such assets will require the approval of a majority in number of the members of the Pricing Committee constituting a quorum. In lieu of meeting, the Pricing Committee may take action by written consent signed by a majority of the committee members. The Pricing Committee may, at the Master Fund's expense, engage third-party experts and consultants to provide services in connection with any determination to be made by the Pricing Committee. The Master Fund GP and/or the Investment Manager may replace members of the Pricing Committee or change the composition of the Pricing Committee in its sole discretion.

Board of Directors

The Fund's board of directors (the "***Board of Directors***") currently consists of two directors (each, a "***Director***" and, collectively, the "***Directors***"). The current members of the Board of Directors are Mark Okada and Trey Parker. The biographies of Mark Okada and Trey Parker are set forth above.

The Administrator and Administration Agreement

The Master Fund has entered into an Administration Agreement (the "***Administration Agreement***"), with SEI Global Services, Inc. (the "***Administrator***") pursuant to which the Administrator performs certain administrative and accounting services for the Fund and the Master Fund, subject to the oversight and control of the Investment Manager. SEI Investments Global (Cayman), Limited ("***SEI Cayman***"), an affiliate of the Administrator, will also be a party to the Administration Agreement in a limited capacity pursuant to which SEI Cayman provides certain investor servicing and transfer agency services (including anti-money laundering services) directly to the Fund.

Pursuant to the Administration Agreement, the Administrator is responsible, under the overall supervision of the Investment Manager, for certain matters pertaining to the day-to-day administration of the Fund including, but not limited to: (a) maintaining books and records related to Fund and Master Fund cash and position reconciliations, and portfolio transactions; (b) preparation of financial statements and other reports for the Fund and the Master Fund; (c) calculating the net asset value of the Master Fund (in accordance with the Investment Manager's valuation policies and procedures); (d) preparing certain reports to investors; (e) calculating fees payable or allocable to the Investment Manager (as applicable); (f) reviewing Subscription Documents and withdrawal requests and performing various other transfer agency and investor services; and (g) performing certain other administrative and clerical services in connection with the administration of the Fund and the Master Fund pursuant to the terms of the Administration Agreement. For purposes of determining net asset value, the Administrator will follow the valuation policies and procedures adopted by the Master Fund and the Investment Manager.

The fees payable to the Administrator will be based on the schedule of fees charged by the Administrator and as detailed in the Administration Agreement. The Master Fund may elect to terminate the Administration Agreement (in accordance with the terms thereof) and enter into a new agreement with a new administrator on behalf of the Master Fund and the Fund, in its discretion and on such terms as it deems advisable, without prior notice to, or approval of, investors.

The Administration Agreement provides that the Administrator may delegate some or all of its administrative functions on behalf of the Fund to one or more third parties, and also provides for certain limitations of the Administrator's liability and indemnification of the Administrator by the Fund.

The Administrator does not have a direct contractual relationship with the investors. The Administrator, however, has entered into a contractual relationship with the Fund in relation to the performance of the services described herein. The Fund will enforce its contractual rights with respect to the Administrator as necessary to protect the interests of the Fund (and, therefore, the interest of investors).

The Administrator in no way acts or will act as guarantor or offeror of interests in the Fund or any underlying investment, nor will it be responsible for the actions of the Fund's sales agents, its brokers, its custodians, any other brokers or the Investment Manager. The Administrator will not be responsible for any trading decisions of the Investment Manager or the Master Fund. The Administrator will not be responsible in any way for the Master Fund's selection or ongoing monitoring of its brokers, custodians or other counterparties. The decision to select any counterparties on behalf of the Master Fund will be made solely by the Investment Manager.

THE ADMINISTRATOR WILL NOT PROVIDE ANY INVESTMENT ADVISORY OR INVESTMENT MANAGEMENT SERVICES TO THE FUND AND, THEREFORE, WILL NOT BE IN ANY WAY RESPONSIBLE FOR THE FUND'S PERFORMANCE. THE ADMINISTRATOR WILL NOT BE RESPONSIBLE FOR MONITORING ANY INVESTMENT RESTRICTIONS OR COMPLIANCE WITH ANY INVESTMENT RESTRICTIONS APPLICABLE TO THE FUND AND THEREFORE WILL NOT BE LIABLE FOR ANY BREACH THEREOF.

SUMMARY OF TERMS

*The following Summary of Terms summarizes the principal terms governing an investment in the Fund, and is subject, and qualified in its entirety by reference, to the Fund's Articles of Association, the Master Fund Partnership Agreement and the Fund's subscription documents (the "**Subscription Documents**"). This summary is intended to be brief and does not purport to provide a comprehensive explanation of the Articles of Association, the Master Fund Partnership Agreement and the Subscription Documents. Accordingly, statements made in this Memorandum are subject to the detailed provisions of those agreements. Prospective investors are urged to review those agreements in their entirety prior to determining whether to invest in the Fund.*

The Fund

Highland Dynamic Income Fund, Ltd. (formerly known as Highland Capital Loan Fund, Ltd.) an exempted company incorporated in the Cayman Islands with limited liability (the "***Fund***"), primarily seeks to maximize risk adjusted absolute returns, and secondarily seeks to preserve capital by investing all of its investable assets in Highland Dynamic Income Master Fund, L.P., a Cayman Islands exempted limited partnership (the "***Master Fund***"), which provides exposure to the broader bank loan market.

Master Fund GP

Highland Dynamic Income Fund GP, LLC, a Delaware limited liability company (the "***Master Fund GP***"), acts as the general partner of the Master Fund and is registered as a foreign company in the Cayman Islands. James D. Dondero (the "***Principal***") ultimately controls the Master Fund GP.

Investment Manager

Highland Capital Management, L.P., a Delaware limited partnership controlled by the Principal (the "***Investment Manager***"), serves as investment manager to the Fund and the Master Fund and has responsibility for the Master Fund's investments.

Directors

The Fund's board of directors (the "***Board of Directors***") currently consists of two directors (each, a "***Director***" and, collectively, the "***Directors***"). The current members of the Board of Directors are Mark Okada and Trey Parker. The Directors are responsible for the overall management and control of the Fund in accordance with its Articles of Association; however, the Directors have delegated the day-to-day operation of the Fund to service providers, including the Investment Manager and the Administrator. References herein to the "Board of Directors" shall mean the Board of Directors acting in consultation with the Investment Manager.

Master-Feeder Structure

In order to facilitate investments by U.S. investors, the Master Fund GP has sponsored the formation of Highland Dynamic Income Fund, L.P., a Delaware limited partnership (the "***Domestic Fund***" and, together with the Fund, the "***Feeder Funds***"). The Feeder Funds place all of their investible assets in, and conduct all of their investment and trading activities in parallel through, the Master Fund. Accordingly, references herein to the investment activity of the Fund should be construed to refer to the Fund's investment activities through the Master Fund. The Feeder

Funds share all items of profit, loss, income and expense of the Master Fund on a *pro rata* basis in accordance with their respective capital account balances in the Master Fund. Except as the context otherwise requires, the term "Fund" also includes the Master Fund.

The Investment Manager or an affiliate may also sponsor one or more additional investment funds or accounts.

Eligible Investors

Participating non-voting shares of the Fund (the "***Shares***") may be purchased only by eligible investors. Subscribers will be required to complete the Fund's Subscription Documents consisting of the subscription agreement and the subscriber information form to determine their eligibility. The Board of Directors reserves the right to reject any investor for any reason or for no reason in its sole discretion.

No Shares may be offered to the public in the Cayman Islands. Shares may be purchased only by eligible investors who are sophisticated individual or institutional investors. Each subscriber for Shares must certify that the beneficial owner of such Shares will not be a United States Person (as defined in Appendix A); provided, however, that subscriptions for Shares may also be accepted from certain qualified U.S. tax-exempt organizations.

An investment in the Fund is suitable only for persons that have adequate means of providing for their current needs and personal contingencies and have no need for liquidity in their investments. An investment in the Fund should not be made by any person that (a) cannot afford a total loss of its principal, or (b) has not carefully read or does not understand this Memorandum, including the portions concerning the risks and the income tax consequences of an investment in the Fund.

Series of Shares

The Fund may create and offer various classes or series of Shares with different terms and conditions than those described in this Memorandum, including, without limitation, fees, performance allocations and redemption rights. New classes or series of Shares may be established by the Board of Directors without notice to or approval of the shareholders.

Share Sub-Series

Shares are offered in a separate series to each shareholder on each subscription date (each, a "***Sub-Series***") at $1,000 per Share. The Fund issues Shares as a separate Sub-Series for the purposes, among others, of accounting for any profits and losses attributable to each individual shareholder to reflect different returns achieved as a result of subscriptions received from shareholders at different times in order to calculate the Performance Allocation (as defined below) at the Master Fund level. Each separate Sub-Series of Shares will be identified and referable to each shareholder.

Subscriptions

Subscriptions for Shares may be accepted as of the first Business Day of each month and/or such other days as the Board of Directors may determine from time to time, generally subject to the receipt of cleared funds on or before the acceptance date. The initial minimum investment is $1,000,000, although the Fund may accept investments in a lesser amount, subject to an absolute minimum of $100,000 or such other amount as may, from time to time, be prescribed by the Mutual Funds Law or other applicable law.

"***Business Day***" is defined as any day on which commercial banks are open in New York City and the Cayman Islands, or such other day as the Board of Directors may determine from time to time.

All subscriptions for Shares will be subject to applicable anti-money laundering regulations. As part of the Fund's responsibility to comply with regulations aimed at the prevention of money laundering, the Board of Directors or its delegate may require verification of identity from all prospective investors. Depending on the circumstances of each subscription, it may not be necessary to obtain full documentary evidence of identity.

Where a subscription for Shares is accepted, the Shares will be treated as having been issued with effect from the relevant subscription date notwithstanding that the subscriber for those Shares may not be entered in the Fund's register of members until after the relevant subscription date. The subscription monies paid by a subscriber for Shares will accordingly be subject to investment risk in the Fund from the relevant subscription date.

Placement Agents

There will be no sales charge payable by or to the Fund in connection with the offering of Shares. However, the Investment Manager may enter into arrangements with placement agents (which may include its affiliates) to solicit investors in the Fund, and such arrangements, may provide for the compensation of such placements agents for their services at the Investment Manager's expense.

Accordingly, investors should recognize that a placement agent's or distributor's participation in this offering may be influenced by its interest in such current or future fees and compensation. Investors should consider these potential conflicts of interest in making their investment decisions.

Each placement agent shall comply with the legal requirements of the jurisdictions within which it offers and sells Shares.

Affiliated Investors

The Investment Manager, the Master Fund GP and their respective affiliates, principals, employees, partners, agents, the respective family members of such personnel and trusts and other entities established primarily for their benefit or for charitable purposes ("***Affiliated Investors***") may not be subject to restrictions on redemptions or be

assessed the Management Fee or the Performance Allocation (each as defined below) that are applicable to other investors in the Fund, but do share *pro rata* in all other applicable expenses of the Fund.

Borrowing and Leverage

The Master Fund may buy securities or commodities on margin and arrange with banks, brokers and others to borrow money against a pledge of securities or commodities in order to employ leverage when the Master Fund GP deems such action appropriate.

Management Fee

For its services to the Master Fund, the Investment Manager is entitled to a management fee (the "***Management Fee***") calculated and payable quarterly in advance at an annual rate of 0.75% of the net asset value of each Sub-Series Account (as defined below). The Management Fee is paid at the Master Fund level. The Management Fee will be prorated for any period that is less than a full quarter.

The Investment Manager may elect to reduce, waive or calculate differently the Management Fee with respect to any shareholder, including, without limitation, Affiliated Investors.

The Fund and/or the Investment Manager may delay the timing or alter the structure of fees payable to the Investment Manager so long as such changes are not materially adverse to the shareholders. The Investment Manager may also assign all or any portion of fees payable to the Investment Manager to any affiliate thereof in its sole discretion.

Performance Allocation

Pursuant to the Master Fund Partnership Agreement, generally, as of the close of each year and subject to the limitations described below, a performance-based allocation (the "***Performance Allocation***") is debited against the Sub-Series Account relating to each Sub-Series of Shares attributable to a shareholder and simultaneously credited to the Master Fund capital account of the Master Fund GP. The Performance Allocation is calculated and allocated at the Master Fund level, but is equal to 10% of the amount by which the Performance Change Amount (positive and negative) for such fiscal year exceeds the Index Return Amount (positive and negative) for such fiscal year.

A Sub-Series Account's "***Performance Change Amount***" for any fiscal year equals such Sub-Series Account's pro rata allocation of net profit or net loss, plus or minus the Sub-Series Account's share items that are allocated on a Sub-Series Account-by- Sub-Series Account basis, such as the Management Fee. Net profit and net loss includes unrealized appreciation or depreciation of the Master Fund's assets and accrued applicable expenses of the Fund and the Master Fund for the applicable fiscal year.

The "***Index Return Amount***" is the amount that would have been credited or debited to such Sub-Series Account for the fiscal year if the rate of return had been equal to the return of the S&P/LSTA Leveraged Loan

Total Return Index for such fiscal year.[3]

The Performance Allocation is generally allocable to the Master Fund GP at the end of each fiscal year. The Performance Allocation is also calculated and charged with respect to any Sub-Series Account with respect to Shares redeemed as of any time other than the close of a fiscal year on the basis of the Performance Change Amount with respect to such Shares through the Redemption Date (as defined below). In the case of a partial redemption, the Performance Allocation is calculated and charged only with respect to the portion of the Sub-Series Account related to such Shares being redeemed.

The Performance Allocation with respect to any shareholder may be fully or partially waived or rebated by the Master Fund GP in its sole discretion.

The Performance Allocation is calculated and allocated at the Master Fund level through the use of separate memorandum sub-accounts with respect to the Fund's capital account in the Master Fund that correspond to each Sub-Series of Shares attributable to a shareholder (each a "***Sub-Series Account***"). No separate Performance Allocation will be charged at the Fund level.

Other Fees and Expenses

The Fund bears the expenses of the organization of the Fund and the offering of Shares (including legal and accounting fees, printing costs, travel, "blue sky" filing fees and expenses and out-of-pocket expenses). In general, the Fund's financial statements will be prepared in accordance with accounting principles generally accepted in the United States ("***GAAP***"). However, the Fund intends to amortize its organizational expenses over a period of 60 months from the date the Fund commenced operations because it believes such treatment is more equitable than expensing the entire amount of the organizational expenses in the Fund's first year of operation, as is required by GAAP. The Fund may, however, limit the amount of start-up and organizational expenses that the Fund amortizes so that the audit opinion issued with respect to the Fund's financial statements will not be qualified.

The Fund bears its own operating, administrative and other expenses, as well as a *pro rata* portion of the Master Fund's expenses, including, but not limited to, investment-related expenses (including those related to identifying and evaluating contemplated investments, whether or not such contemplated investments are actually made), brokerage commissions and other transaction costs, expenses related to short sales, clearing and settlement charges, expenses related to proxies, underwriting and private placements, custodial fees, transfer agent fees, bank service fees, any

[3] The S&P/LSTA Leveraged Loan Total Return Index is used only for purposes of establishing the Index Return Amount. The Partnership will not directly invest in the Index nor seek to replicate the Index, and there might or might not be a close correlation between the performance of the Fund and that of the Index. The Index does not reflect the investment strategy of the Fund.

governmental, regulatory, licensing, filing or registration fees incurred in compliance with the rules of any self-regulatory organization or any federal, state or local laws, consulting and any other professional fees or compensation (including investment banking expenses) relating to particular investments or contemplated investments, appraisal fees and expenses, investment-related travel and lodging expenses and research-related expenses (including, without limitation, news and quotation equipment and services), fees to third-party providers of risk-monitoring services, investment and trading-related computer hardware and software, including, without limitation, trade order management software (*i.e.*, software used to route trade orders), accounting (including accounting software), audit and tax preparation expenses, organizational expenses, expenses relating to the offer and sale of Shares and interests of the Master Fund (including the legal and other expenses associated with preparing and updating offering materials), costs and expenses associated with reporting and providing information to existing and prospective investors, any legal fees and costs (including indemnification expenses, regulatory costs and settlement costs) arising in connection with any litigation or regulatory investigation instituted against the Fund, the Master Fund, the Master Fund GP, the Investment Manager or any of their respective affiliates in their capacity as such unless a final determination was made by a court of competent jurisdiction that any of the foregoing indemnified parties was grossly negligent or acted in bad faith, except as otherwise provided in the Articles of Association and/or the Master Fund Partnership Agreement, any withholding, transfer or other taxes imposed or assessed upon, or payable by, the Fund (including any interest and penalties), costs of any meeting of the shareholders (or in obtaining the consent of shareholders in lieu of meeting), expenses related to the Advisory Committee and the Pricing Committee, premiums for directors' and officers' liability insurance (if any) and any other insurance benefiting the Fund, the Management Fee, administrative expenses (including, without limitation, the fees and expenses of the Administrator in relation to its services provided pursuant to the Administration Agreement), fees relating to valuing the Fund's assets, expenses related to the maintenance of the Fund's registered office, corporate licensing expenses, and extraordinary expenses.

The Investment Manager may retain, in connection with its responsibilities under the Investment Management Agreement, the services of others to assist in the investment advice to be given to the Master Fund, including, but not limited to, any affiliate of the Investment Manager, but payment for any such services will be assumed by the Investment Manager. However, the Investment Manager, in its sole discretion, may retain the services of independent third party professionals, including, without limitation, attorneys, accountants and consultants, to advise and assist it in connection with the performance of its activities on behalf of the Master Fund, and the Master Fund will bear full responsibility therefor and the expense of any fees and disbursements arising therefrom.

The Fund and the Master Fund do not have their own separate employees or office, and neither the Fund nor the Master Fund reimburse the Master Fund GP or the Investment Manager for salaries, office rent and other general overhead costs of the Master Fund GP or the Investment Manager. A portion of the commissions generated on the Master Fund's brokerage transactions may generate soft dollar credits that the Investment Manager is authorized to use to pay for research and other research-related services and products used by the Investment Manager. It is the current policy of the Investment Manager to limit such use of soft dollars to fall within the safe harbor of Section 28(e) of the Securities Exchange Act of 1934, as amended, or to be otherwise reasonably related to the investment decision-making process or for Master Fund expenses. See "*Brokerage and Custody*."

Certain Fees

The Investment Manager, including, without limitation, the employees of the Investment Manager, may serve on the board of directors or committees thereof and/or provide financial advisory, consulting and/or as officers or otherwise provide management services, in each case for a fee to portfolio companies in which the Master Fund may have an interest. Such services are provided only after approval by the board of directors of such portfolio companies (or after approval of a court of appropriate jurisdiction with respect to bankruptcy proceedings or other appropriate approval) and based on "arm's length" negotiations of terms and conditions. Any fees earned pursuant to any such agreements for services will be retained by the Investment Manager.

Distributions

Subject to the quarterly redemption privilege described below, all earnings of the Fund are ordinarily retained for investment. Shareholders should not expect the Fund to make any distributions.

Redemptions Generally

Subject to certain redemption restrictions described below, a shareholder is generally permitted to redeem all or a portion of its Shares as of the last Business Day of each quarter (and/or such other days as the Board of Directors may determine in its sole discretion) (each, a "***Redemption Date***"). Written notice of any redemption request must be received in writing by the Administrator at least 45 days prior to the requested Redemption Date. The Board of Directors may waive such notice requirements, or permit redemptions under such other circumstances as it, in its sole discretion, deems appropriate.

Settlement of Redemption Proceeds

A redemption request is normally settled in cash or, subject to the sole discretion of the Board of Directors, wholly or partially with securities or other assets of the Fund (received from the Master Fund), whether or not readily marketable, generally within 30 days after the Redemption Date; provided that the Board of Directors may delay such payment if such delay is reasonably necessary to prevent such redemption from having a material adverse impact on the Fund.

In the event that distributions during a fiscal year to a redeeming

shareholder would exceed 90% of the value of such shareholder's Shares as of the beginning of such fiscal year, excess requested amounts will be held back and distributed (without interest thereon) within 30 days following completion of the audit of the Fund's financial statements for the year.

Notwithstanding anything to the contrary herein, the Board of Directors may establish reserves and holdbacks for estimated accrued expenses, liabilities and contingencies, including, without limitation, general reserves for unspecified contingencies (even if such reserves or holdbacks are not otherwise required by GAAP) or liabilities stemming from tax obligations (as such may be determined in the sole discretion of the Board of Directors and whether or not incurred directly or indirectly), which could reduce the amount of a distribution upon a shareholder's redemption of Shares. The Board of Directors may withhold for the benefit of the Fund from any distribution to a redeeming shareholder an amount representing the actual or estimated costs incurred by the Fund with respect to such redemption.

Redemption Gate

If, for any Redemption Date, (i) shareholders submit redemption notices that, when combined, are in excess of 25% of the Fund's net asset value, or (ii) redemption requests are received by the Master Fund from any or all feeder vehicles in the Master Fund in excess of 25% of the Master Fund's net asset value, then the Board of Directors may determine, in its sole discretion, to reduce all such requests proportionately (based on the net asset value of each shareholder's Shares) so that the aggregate amount of such redemptions does not exceed 25% of the Fund's net asset value or such greater amount if the Board of Directors so determines (such restriction is referred to herein as the "***Redemption Gate***"). If redemptions are subject to the Redemption Gate, redemption requests are carried over to the next Redemption Date (and, if not fully satisfied as of that date because of the Redemption Gate, then as of the next, and, if necessary, successive Redemption Dates), except to the extent shareholders rescind their redemption request(s).

Any remaining amount of a redemption request that is not satisfied due to the Redemption Gate (i) remains at risk as per other amounts invested in the Fund and subject to the applicable Management Fee, if any, until such amount is finally and fully redeemed, (ii) is considered requested as of the next Redemption Date without further action by the redeeming shareholder, (iii) is not entitled to priority over redemption requests on any subsequent Redemption Date, and (iv) remains subject to further application of the Redemption Gate on subsequent Redemption Dates.

Redemption Conditions

The Fund or the Administrator may refuse to accept a redemption request if it is not accompanied by such additional information as the Fund or the Administrator may reasonably require. This power may, without limitation to the generality of the foregoing, be exercised where proper information has not been provided for money laundering verification purposes. In addition, where redemption proceeds are requested to be

remitted to an account which is not in the name of the investor, the Fund and the Administrator reserve the right to request such information as may be reasonably necessary in order to verify the identity of the investor and the owner of the account to which the redemption proceeds will be paid. The redemption proceeds will not be paid to a third-party account if the investor and/or owner of the account fails to provide such information.

Redemption payments will be made by wire transfer only to a bank account in the name of the shareholder located at a recognized financial institution which is regulated by a recognized regulatory authority and carries on business in a country recognized in Schedule 3 of the Money Laundering Regulations (2017 Revision) of the Cayman Islands (the "***Money Laundering Regulations***").

Compulsory Redemptions

The Board of Directors reserves the right, in its sole discretion, to compel the redemption of a shareholder's Shares at any time and for any reason on not less than five days' prior written notice (or immediately if the Directors, in their sole discretion, determine that such shareholder's continued investment in the Fund may cause the Fund or the Investment Manager to violate any applicable law). Settlements are made in the same manner as voluntary redemptions, but without application of the Redemption Gate.

Suspension of Redemptions and Redemption Payments

The Board of Directors may postpone or suspend (a) the calculation of the net asset value of the Shares (and the applicable valuation date); (b) the issuance of Shares, (c) the redemption by shareholders of Shares (and the applicable Redemption Date); and/or (d) the payment of redemption proceeds (even if the calculation dates and Redemptions Dates are not postponed) (each, a "***Suspension***") if it determines that such a Suspension is warranted by extraordinary circumstances, including: (i) during any period when any stock exchange or over-the-counter market on which the Master Fund's investments are quoted, traded or dealt in is closed, other than for ordinary holidays and weekends, or during periods in which dealings are restricted or suspended; (ii) during the existence of any state of affairs as a result of which, in the reasonable opinion of the Board of Directors, disposal of investments by the Fund, or the determination of the value of the assets of the Fund, would not be reasonably practicable or would be seriously prejudicial to the non-redeeming shareholders; (iii) during any breakdown in the means of communication normally employed in determining the price or value of the Fund's assets or liabilities, or of current prices in any stock market as aforesaid, or when for any other reason the prices or values of any assets or liabilities of the Fund cannot reasonably be accurately ascertained within a reasonable time frame; (iv) during any period when the transfer of funds involved in the realization or acquisition of any investments cannot, in the reasonable opinion of the Board of Directors, be effected at normal rates of exchange; (v) automatically upon liquidation of the Fund; or (vi) automatically upon any suspension of redemptions by the Master Fund

for similar reasons as described in "*The Master Fund*," below.

The Fund will promptly notify each shareholder who has submitted a redemption request and to whom payment in full of the amount being redeemed has not yet been remitted of any Suspension of redemptions or Suspension of the payment of redemption proceeds. Any remaining amount of a redemption request that is not satisfied due to such a Suspension remains at risk as per other amounts invested in the Fund and subject to the applicable Management Fee until such amount is finally and fully redeemed. Such shareholders will not be given any priority with respect to the redemption of Shares after the cause for such Suspension or limitation ceases to exist. The Board of Directors may in their sole discretion, however, permit such shareholders to withdraw their redemption requests to the extent that the relevant Redemption Date has not yet passed. For the avoidance of doubt, where a suspension of the payment of redemption proceeds is declared between the relevant Redemption Date and the remittance of such payment proceeds, affected shareholders shall not have any right to withdraw their redemption requests. Upon the reasonable determination by the Board of Directors that conditions leading to Suspension no longer apply, any such suspended payments shall generally be paid in accordance with the normal process for making such payments, redemption rights shall be promptly reinstated, and any pending redemption requests which were not withdrawn (or new, timely redemption requests) will be effected as of the first Redemption Date following the removal of the Suspension, subject to the foregoing restrictions on redemptions.

The Directors have the power, in the circumstances described above, to effect a Suspension. It is anticipated that any Suspension would ordinarily be temporary. However, there may be situations in which the circumstances giving rise to the Suspension continue to be present for a considerable period of time with the result that the Directors, in consultation with the Investment Manager, consider it appropriate to keep the Suspension in place indefinitely. In certain circumstances, even where a Suspension has not been declared, the Directors may, in consultation with the Investment Manager, make a determination that the investment strategy should no longer be continued. During any such period of Suspension or having made such determination that the investment strategy should no longer be continued, the Investment Manager may recommend to the Directors that the Fund be managed with the objective of returning the Fund's assets to shareholders in an orderly manner (an "***Orderly Realization***"). The Directors may, in such circumstances, resolve to effect an Orderly Realization should they determine that doing so is in the best interests of the Fund's stakeholders. Such Orderly Realization shall not constitute a dissolution or winding up of the Fund for any purposes, but rather only the continued management of the Fund's portfolio so as to reduce such portfolio to cash (to the extent reasonably practicable, as advised by the Investment Manager) and return such cash as well as all other assets of the Fund to the shareholders. The

Directors shall promptly communicate to shareholders any resolution to proceed with an Orderly Realization of the Fund. During an Orderly Realization, the Investment Manager may, in consultation with the Directors, take such steps as are considered appropriate in the best interests of the Fund's stakeholders to effect the Orderly Realization. The Directors, in consultation with the Investment Manager shall establish what they consider to be a reasonable time by which the Orderly Realization should be effected (the "***Realization Period***"). Any resolution to undertake an Orderly Realization and the process thereof shall be deemed to be integral to the business of the Fund and may be carried out without recourse to a formal process of liquidation under the Companies Law (2016 Revision) of the Cayman Islands (the "***Companies Law***") or any other applicable bankruptcy or insolvency regime. The Directors, in consultation with the Investment Manager, may resolve to cease the Orderly Realization within the Realization Period and recommence active trading if the circumstances permit a lifting of any applicable Suspension or, where no Suspension is in effect, if the circumstances are such that the investment strategy can then be continued. The Management Fee shall be payable during an Orderly Realization on the same basis as described herein.

Transfers

Shares are not transferable except with the prior written consent of the Board of Directors, which consent may be withheld in its sole discretion. The Board of Directors will require any transferee or assignee of any shareholder to execute the Subscription Documents.

Duty of Care; Indemnification

Pursuant to the Master Fund Partnership Agreement and the Investment Management Agreement, the Master Fund GP, the Investment Manager, each member, shareholder, partner, manager, director, officer, employee and agent of, and any person who controls, the Master Fund GP or the Investment Manager, each of the respective affiliates of the foregoing, members of the Advisory Committee and Pricing Committee, their respective affiliates, and any of the legal representatives of any of the foregoing (each such person, an "***Indemnified Party***") shall not be liable to the Master Fund, Fund or the shareholders for any loss or damage arising by reason of being or having been the Master Fund GP or the Investment Manager or from any acts or omissions in the performance of its services as the Master Fund GP or the Investment Manager in the absence of gross negligence (as such term is defined and interpreted in accordance with the laws of the State of Delaware), willful misconduct or bad faith, or as otherwise required by law. No Indemnified Party shall be liable to the Master Fund, the Fund, any shareholder or any other person for any amount in excess of the amount of the Management Fee received by the Investment Manager, to the extent permitted under applicable law. In addition, in no event shall any Indemnified Party be liable for any special, indirect, exemplary, consequential or punitive losses or damages.

The Master Fund Partnership Agreement and Investment Management Agreement contain provisions for the indemnification of the Indemnified Parties by the Master Fund and the Fund (but not by the shareholders

individually) against any liabilities arising by reason of being or having been the Master Fund GP or the Investment Manager or in connection with the Master Fund Partnership Agreement, the Investment Management Agreement, or the Master Fund or the Fund's business or affairs to the fullest extent permitted by law. The Investment Manager is not personally liable to any shareholder for the repayment of any redemption proceeds or for contributions by such shareholder to the capital of the Fund or by reason of any change in the U.S. federal or state income tax laws applicable to the Fund or its investors.

Every Director and officer of the Fund, together with every former Director and former officer of the Fund, shall be indemnified out of the assets of the Fund against any liability, action, proceeding, claim, demand, costs, damages or expenses, including legal expenses, whatsoever which they or any of them may incur as a result of any act or failure to act in carrying out their functions other than such liability (if any) that they may incur by reason of their own actual fraud or willful default. No Director or officer of the Fund shall be liable to the Fund for any loss or damage incurred by the Fund as a result (whether direct or indirect) of the carrying out of their functions unless that liability arises through the actual fraud or willful default of such Indemnified Party. No person shall be found to have committed actual fraud or willful default under the Articles of Association unless or until a court of competent jurisdiction shall have made a finding to that effect.

Non-Exclusivity; Allocation of Opportunities

The partners, officers, managers, members, employees and affiliates of the Master Fund GP and the Investment Manager are not precluded from engaging in or owning an interest in other business ventures or investment activities of any kind, whether or not such ventures are competitive with the Fund. See "*Risk Factors and Potential Conflicts of Interest – Allocation of Trading Opportunities*" below.

Affiliated Service Providers

NexBank, SSB ("***NexBank SSB***") is an affiliate of the Investment Manager and may, from time to time, provide banking and/or agency services to the Investment Manager, clients of the Investment Manager or collective investment vehicles for which the Investment Manager provides investment advisory services (including the Fund and other vehicles in which the Fund may invest) or third parties engaged in transactions involving the Investment Manager. NexBank SSB may also act as an agent in connection with certain securities transactions involving the Investment Manager's client accounts (including the Master Fund and other vehicles in which the Master Fund may invest). Principals of the Investment Manager own a majority of the equity interests in NexBank SSB and employees or affiliates of the Investment Manager own or may own a substantial equity interest in NexBank SSB. Certain Master Fund investment transactions may be executed through NexBank Securities, Inc., an affiliate of the Investment Manager and a registered broker-dealer.

Additionally, the Investment Manager or affiliates of the Investment

Manager, including, without limitation, Nexbank SSB, NexBank Securities, Inc., NexBank Capital Advisors and Governance Re, Ltd. may provide financial advisory, management, insurance, title insurance or other services for a fee to portfolio companies in which the Master Fund may have an interest. See "*Risk Factors and Potential Conflicts of Interest*" below.

Valuations

In general, the Fund's financial statements will be prepared in accordance with GAAP. The Board of Directors has delegated the valuation of the Fund's assets, based on the Master Fund's assets, to the Investment Manager who values the Fund's assets as of the close of each fiscal period in accordance with its valuation policies and procedures.

Reserves

Appropriate reserves may be accrued and charged against net assets and proportionately against the Shares of the shareholders for contingent liabilities, such reserves to be in the amounts (subject to increase or reduction) that the Board of Directors in its sole discretion deems necessary or appropriate. At the sole discretion of the Board of Directors, the amount of any such reserve (or any increase or decrease therein) may be charged or credited, as appropriate, to the Shares of those investors who are shareholders at the time when such reserve is created, increased, or decreased, as the case may be, or alternatively may be charged or credited to those investors who were shareholders at the time of the act or omission giving rise to the contingent liability for which the reserve was established.

If the Board of Directors determines that it is equitable to treat an amount to be paid or received as being applicable to one or more prior periods, then such amount may be proportionately charged or credited, as appropriate, to those persons who were shareholders during any such prior period.

Fiscal Year

The Fund has a fiscal year ending on December 31 of each year.

Reports to Shareholders

Shareholders will receive unaudited monthly statements of the estimated net asset value of the Fund, monthly performance and portfolio reports, and an annual financial report of the Fund audited by the Fund's independent auditors. The Fund may elect not to reserve certain amounts that may be required by GAAP and not to provide certain portfolio disclosure required by GAAP to investors and may capitalize and amortize certain of its organizational expenses in deviation from GAAP. Such deviations from GAAP may result in a qualified opinion rendered on the financial statements of the Fund. In addition, the Fund may provide certain information to certain shareholders, but not to all shareholders.

Tax Status

The Government of the Cayman Islands will not, under existing legislation, impose any income, corporate or capital gains tax, estate duty, inheritance tax, gift tax or withholding tax upon the Fund or the shareholders. The Cayman Islands are not party to a double tax treaty with any country that is applicable to any payments made to or by the Fund.

The Fund has applied for and can expect to receive an undertaking from the Governor-in-Cabinet of the Cayman Islands that, in accordance with section 6 of the Tax Concessions Law (2011 Revision) of the Cayman Islands, for a period of 20 years from the date of the undertaking, no law which is enacted in the Cayman Islands imposing any tax to be levied on profits, income, gains or appreciations shall apply to the Fund or its operations and, in addition, that no tax to be levied on profits, income, gains or appreciations or which is in the nature of estate duty or inheritance tax shall be payable (i) on or in respect of the shares, debentures or other obligations of the Fund or (ii) by way of the withholding in whole or in part of a payment of dividend or other distribution of income or capital by the Fund to its members or a payment of principal or interest or other sums due under a debenture or other obligation of the Fund.

The Investment Manager believes that the Fund will be treated as a non-U.S. corporation for U.S. federal income tax purposes. The Fund generally does not expect to be subject to U.S. federal income tax on its capital gains from securities trading. Dividends (including certain dividend equivalent amounts) and certain interest received by the Fund may be subject to withholding at the source. See "*Tax Considerations.*"

ERISA

The Investment Manager intends to limit investment in the Master Fund by "benefit plan investors" so that the assets of the Master Fund will not be considered "plan assets" for purposes of the Employee Retirement Income Security Act of 1974, as amended ("***ERISA***"). It is anticipated that the assets of the Fund may constitute "plan assets" for purposes of ERISA. See "*ERISA and Other Regulatory Considerations*."

Variation of Terms

The Fund may enter into agreements with certain shareholders pursuant to which such shareholders will invest in the Fund on different terms, and in some cases, more favorable terms (including with respect to information and reporting, the Management Fee, the Performance Allocation and redemption rights), than those described herein, without the consent of, or notice to, the other shareholders.

The Articles of Association provide that, subject to the Companies Law of the Cayman Islands and the other provisions of the Articles of Association, all or any of the series rights or other terms of offer whether set out in the Memorandum, the Subscription Documents or otherwise (including any representations, warranties or other disclosure relating to the offer or holding of Shares) (collectively referred to as "***Share Rights***") for the time being applicable to any class or series of Shares in issue (unless otherwise provided by the terms of issue of those Shares) may (whether or not the Fund is being wound up) be varied without the consent of the holders of the issued Shares of that class or series where such variation is considered by the Directors, not to have a material adverse effect upon such holders' Share Rights; otherwise, any such variation shall be made only with the prior consent in writing of the

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holders of not less than two-thirds by net asset value of such Shares, or with the sanction of a resolution passed by a majority of at least two-thirds of the votes cast in person or by proxy at a separate meeting of the holders of such Shares. For the avoidance of doubt, the Directors reserve the right, notwithstanding that any such variation may not have a material adverse effect, to obtain consent from the holders of such Shares. At any class meeting, the voting rights attributable to each Share shall be calculated by reference to the net asset value per Share and not on the basis of one Share, one vote. Each subscriber for Shares will be required to agree that the terms of offer set out in the applicable Subscription Documents and the rights attaching to the Shares can be varied in accordance with the provisions of the Articles of Association.

Dissolution Right

Shareholders that are not affiliates or employees of the Investment Manager ("***Nonaffiliated Shareholders***") may cause the dissolution of the Fund upon the affirmative vote of shareholders holding Shares representing more than 50% of the net asset value of all Shares attributable to Non-Affiliated Shareholders at a special meeting of shareholders duly called by the Board of Directors pursuant to a notice circulated by the Board of Directors at the written request of shareholders holding Shares representing 20% or more of the net asset value of all Shares attributable to Non-Affiliated Shareholders. In the event of a dissolution of the Fund effected pursuant to the Articles, the Master Fund will make an in-kind distribution to the Fund (to the extent such in-kind distribution is reasonably practicable) and the Fund will distribute its assets to the shareholders in kind (to the extent such in-kind distribution is reasonably practicable).

A petition to submit to shareholders a proposal to dissolve the Fund (any such petition, a "***Dissolution Petition***") may be submitted to the Board of Directors by any Nonaffiliated Shareholders holding Shares representing 2% or more of the net asset value of all Shares attributable to Non-Affiliated Shareholders. The Board of Directors shall have the power and duty to determine whether a Dissolution Petition was properly made in accordance with the Articles. If a Dissolution Petition was not properly made in accordance with the Articles, the Board of Directors shall so notify the requesting Nonaffiliated Shareholder(s) in writing of any procedural or eligibility deficiencies and such Dissolution Petition shall be disregarded. If the Dissolution Petition is properly made in accordance with the Articles, the Board of Directors shall within 30 days after receipt of the Dissolution Petition mail the Dissolution Petition to all Nonaffiliated Shareholder(s) together with written instructions specifying that a special meeting of shareholders will be called to dissolve the Fund if the Dissolution Petition is signed by Nonaffiliated Shareholders holding Shares representing 20% or more of the net asset value of all Shares attributable to Non-Affiliated Shareholders and returned to the Fund within 60 days after the date of such mailing. To be properly made, a Dissolution Petition must be received in writing by the Board of Directors at the principal place of business of the Fund, request that the Board of

Directors mail the Dissolution Petition to all Nonaffiliated Shareholders and set forth as to the Nonaffiliated Shareholder(s) making the Dissolution Petition: (i) each such Nonaffiliated Shareholder's name and address, as they appear on the Fund's books, (ii) the net asset value of each such Nonaffiliated Shareholder's Shares as of the most recent month-end (which in the aggregate must represent at least 2% of the net asset value of all Shares attributable to Non-Affiliated Shareholders), and (iii) a representation that at least one shareholder from the group of shareholders that will sign the Dissolution Petition (or a qualified representative of at least one such shareholder) intends to appear in person at the special meeting of shareholders to determine whether to dissolve the Fund.

The Dissolution Petition may not set forth any proposal regarding the Fund other than the dissolution of the Fund. The Dissolution Petition shall be improper if it contains any false or misleading statements. The Board of Directors may, in its sole and absolute discretion, deem a Dissolution Petition improper if another proposal to dissolve the Fund was previously submitted by one or more of the same shareholders (or an affiliate or immediate family member thereof) during the preceding two years.

Upon receipt of the Dissolution Petition, signed by Nonaffiliated Shareholders holding Shares representing 20% or more of the net asset value of all Shares attributable to Non-Affiliated Shareholders and returned to the Fund within 60 days after the date on which the Dissolution Petition was mailed, the Board of Directors shall, by written notice to each shareholder of record within 15 days after such receipt, call such a special meeting of shareholders to vote (in person or by proxy) on the dissolution of the Fund. Such meeting shall be held at least 30 but not more than 60 days after the mailing of such notice, and such notice shall specify the date, a reasonable place (which shall include, for avoidance of doubt, the principal place of business of the Fund or the Board of Directors), and time for such meeting, as well as its purpose, and include a form of proxy.

Except as otherwise required by the Articles of Association, neither the Fund nor the Board of Directors shall have any obligation to forward any communication received by a shareholder to any other shareholder or to call a meeting of shareholders. Nothing herein shall in any way limit or restrict the ability of the Fund or the Board of Directors to solicit votes or consents in opposition of any Dissolution Petition. If no shareholder from the group of shareholders that signed the Dissolution Petition (or any qualified representative of at least one such shareholder) appears in person at the special meeting of shareholders, then no vote on the dissolution of the Fund will be taken at such meeting. In order to be considered a qualified representative of the shareholder, a person must be authorized by a written instrument executed by such shareholder or an electronic transmission delivered by such shareholder to act for such shareholder as proxy at the meeting of shareholders and such person must

produce such written instrument or electronic transmission, or a reliable reproduction of the written instrument or electronic transmission, at the meeting of shareholders. By submitting a Dissolution Petition to the Board of Directors, the Nonaffiliated Shareholder(s) shall be deemed to consent to the Board of Director's mailing of the Dissolution Petition to all Nonaffiliated Shareholders for all purposes, including without limitation for purposes of Regulation S-P under section 504 of the Gramm-Leach-Bliley Act, as amended, and other applicable privacy laws.

SHARES OF THE FUND

The Fund's Share Capital

The Fund has an authorized share capital of U.S.$50,000 divided into 100 management shares ("***Management Shares***") of a nominal par value of U.S.$1.00 each and 4,990,000 participating non-voting shares (the "***Shares***") of a nominal par value of U.S.$0.01. The Directors may by resolution divide the Shares into separate series (each, a "***Series***") which may be subject to different rights, restrictions, preferences, privileges and payment obligations as between the different Series and further into separate Sub-Series within such Series. The different Series and Sub-Series thereof shall be established and designated, and the variations in the relative rights and preferences as between the different Series and Sub-Series thereof shall be fixed and determined by the Board of Directors. Sub-Series of Shares of each Series are issued for the purposes, among others, of accounting for any profits and losses attributable to each individual shareholder to reflect different returns achieved as a result of subscriptions received at different times.

Each separate Sub-Series of Shares is identified by the investor to whom it was issued and its date of issue. Shares are issued to shareholders in Sub-Series at $1,000 per Share. Immediately following the close of any fiscal year, each such Sub-Series of Shares may be redeemed and the proceeds applied to the subscription for an earlier Sub-Series of Shares of such Series.

The Shares are being offered pursuant to this Memorandum. The Shares generally will be entitled to all rights and privileges of Share ownership (including the right to receive dividends when declared and distributions of assets, net of all final fees and expenses, upon winding up) other than voting rights, except under limited circumstances.

The Management Shares will carry all the voting rights but will have no right to participate in the assets of the Fund (other than to a return of the par value on a winding up). The Management Shares will be held by the Investment Manager or an affiliate, and will be voted in accordance with the instructions of the Investment Manager.

The holders of Shares will only be entitled to vote at class meetings of shareholders to the extent that the matter considered thereat would materially adversely vary or abrogate the existing class rights attaching to the Shares. The holders of Shares have no other voting rights.

The Articles of Association provide that, subject to the Companies Law and the other provisions of the Articles of Association, all or any of the class and/or Series rights or other terms of offer, whether set out in this Memorandum, the Subscription Documents or otherwise (including any representations, warranties or other disclosures relating to the offer or holding of Shares) (collectively referred to as "***Share Rights***"), for the time being applicable to any class or Series of Shares in issue (unless otherwise provided by the terms of issue of those Shares) may (whether or not the Fund is being wound up) be varied without the consent of the holders of the issued Shares of that class or Series where such variation is considered by the Directors not to have a material adverse effect upon such holders' Share Rights; otherwise, any such variation shall be made only with the prior consent in writing of the holders of not less than two-thirds by net asset value of such Shares, or with the sanction of a resolution passed by a majority of at least two-thirds of the votes cast in person or by proxy at a separate meeting of the holders of such Shares. For the avoidance of doubt, the Directors reserve the right, notwithstanding that any such variation might not have a material adverse effect, to obtain consent from the holders of such Shares. At any class meeting, the voting rights attributable to each

Share shall be calculated by reference to the net asset value per Share and not on the basis of one Share, one vote. Each subscriber for Shares will be required to agree that the terms of offer set out in the Subscription Documents and the rights attaching to the Shares can be varied in accordance with the provisions of the Articles of Association. The Articles of Association provide that, in relation to any class or Series consent required pursuant to the "Variation of Share Rights" Article, the Directors in their discretion may invoke the following procedure (the "***Negative Consent Procedure***"). The Directors shall provide written notice in respect of the proposed variation (the "***Proposal***") to the members of the affected class or Series and shall specify a deadline (the "***Redemption Request Date***"), which shall be no earlier than 30 days after the date of giving such notice, by which date such members may submit a written request for redemption of some or all of their Shares of the affected class and/or Series on the Redemption Date (the "***Specified Redemption Date***") specified by the Directors in such notice. The terms of the Proposal shall be such that its specified effective date (the "***Effective Date***") shall not be on or prior to the Specified Redemption Date. Such notice shall further provide that the holders of any Shares in respect of which a request for redemption has not been received by the Redemption Request Date (the "***Affected Shares***") shall, in the absence of express written refusal to consent, be deemed to have consented in writing to the Proposal (such Affected Shares being the "***Negative Consent Shares***"). In the event that the Negative Consent Procedure is followed, only the Affected Shares shall be considered for the purposes of determining whether the written consent majority has been obtained under the "***Variation of Share Rights***" Article with the holders of the Negative Consent Shares being deemed to have submitted a written consent in favor of the Proposal on the Effective Date.

The rights conferred upon the holders of the Shares of any class issued with preferred or other rights shall not, subject to any rights or restrictions for the time being attached to the Shares, be deemed to be materially adversely varied or abrogated by, inter alia, the creation, allotment or issue of further Shares ranking *pari passu* with or subsequent to them, the redemption or purchase of any Shares or by the passing of any Directors' resolution to change or vary any investment objective, investment technique and strategy and/or investment policy in relation to the Shares or any modification of the fees payable to any service provider to the Fund.

In general, each Share will participate in the Fund's profits and losses attributable to the relevant class in the same manner. Each of the Shares will participate ratably with all other outstanding Shares in the Fund's assets and earnings and will have the redemption rights discussed above.

The Directors may impose such restrictions as they think necessary for the purpose of ensuring that no Shares in the Fund are held by (i) any person in breach of the laws or requirements of any country or governmental authority or (ii) any person or persons in circumstances which, in the opinion of the Directors, might result in the Fund incurring any liability of taxation or suffering any other pecuniary disadvantage which the Fund might not otherwise have incurred or suffered. A person who becomes aware that he or she is holding or owning Shares in breach of any restriction mentioned in the Articles of Association shall promptly either deliver to the Fund a written request for redemption of his or her Shares or transfer the same to a person who would not thereby be a non-qualified person.

Management Shares

The Fund will have a single class of Management Shares that is not entitled to participate in the Fund's assets, earnings and distributions, other than with respect to a return of their par value on a winding up of the Fund. The Management Shares are issued at par value at U.S.$1.00 per share.

General meetings of the holders of Management Shares may be held to vote on various matters including to elect the Directors and to attend to such other business as may properly be placed before the meeting. At any such general meeting, the favorable vote of a majority of the Management Shares present is sufficient for the approval of any action, unless such action is a matter requiring a special resolution, in which case two-thirds of the Management Shares shall be required, in each case as further detailed in the Articles of Association.

Registration of Management Shares and Shares and Share Certificates

Management Shares and Shares of the Fund are issued only in registered form; the Fund will not issue bearer shares. A current register of the names and addresses of the Fund's shareholders and their shareholdings is maintained at the office of the Administrator. Management Shares and Shares are registered only in book entry form. No share certificates have been or will be issued.

Other Rights and Liabilities

Under the terms of the Articles of Association, the liability of the shareholders of the Fund is limited, and shareholders will not be liable for any debt, obligation or default of the Fund in excess of the amounts unpaid on their Shares.

The Fund and the Investment Manager may agree with certain investors to a fee structure, redemption rights or other terms that differ from the fee structure, redemption rights and other terms that are set forth in this Memorandum. Such different rights may, subject to applicable law, be effected by issuance of a separate Series of Shares or any other permissible means. Such rights may not be offered to all investors.

Calculation of Fund Net Asset Value

The Directors have delegated to the Administrator the calculation of the net asset value of the Fund and the net asset value per Share of each Series and, if applicable, Sub-Series, subject to the overall supervision and direction of the Directors. Net asset valuations of the Fund and each Sub-Series of each Series of Shares will be calculated as of the close of business on the last day of each month, or such other days as may from time to time be determined by the Fund (each, a "***Valuation Date***") in accordance with United States generally accepted accounting principles. To the extent feasible, liabilities are accrued as of each Valuation Date.

The Fund's assets are valued based on the Master Fund's assets. The net asset value of the Fund is determined by taking the amount of all cash and credit balances plus the market value of all commodities and other assets comprising the Fund's assets (including any interest and dividends receivable but excluding any subscription amounts committed to the Fund from time to time to the extent such amounts are not held by or on behalf of the Fund), as valued by the Investment Manager and the Administrator, minus all debit balances and other liabilities and obligations of the Fund (including any liability for the payment of the Management Fee and Performance Allocation hereunder). Net asset value in respect of any Series or Sub-Series of participating Share is calculated by dividing the value of the account relating to that Series or Sub-Series of participating Share by the number of participating Shares of that Series or Sub-Series in issue. For the sole purpose of determining the number of participating Shares of a Series or Sub-Series in issue, participating Shares of that Series or Sub-Series which are to be redeemed on the relevant Valuation Date shall be deemed to be in issue until and including the close of business on the applicable Valuation Date.

Based on the Master Fund's assets, assets of the Fund will be valued by both the Investment Manager, who will provide such valuations to the Administrator, and independently by the Administrator. The Administrator will then calculate and disseminate the net asset value of the Fund and each Sub-Series of each Series of Shares.

THE MASTER FUND

The Master Fund's Limited Partner Interests

The Master Fund's partnership interests are currently held exclusively by the Fund and the Domestic Fund as limited partners, as well as the Master Fund GP, as the general partner of the Master Fund pursuant to the Master Fund Partnership Agreement. The Master Fund GP is registered as a foreign company in the Cayman Islands pursuant to Part IX of the Companies Law (2016 Revision) of the Cayman Islands (the "***Companies Law***").

The Master Fund Partnership Agreement

The Master Fund is constituted as a Cayman Islands exempted limited partnership under the Exempted Limited Partnership Law, 2014 (the "***Exempted Limited Partnership Law***"). A Cayman Islands exempted limited partnership is constituted by the signing of the relevant partnership agreement and its registration with the Registrar of Exempted Limited Partnerships in the Cayman Islands.

A Cayman Islands exempted limited partnership is not a separate legal person distinct from its partners. Under the Exempted Limited Partnership Law, any property which is conveyed into or vested in the name of the exempted limited partnership shall be held or deemed to be held by the general partner, and if more than one, then by the general partners jointly upon trust, as an asset of the partnership in accordance with the terms of the partnership agreement. Any debt or obligation incurred by a general partner in the conduct of the business of an exempted limited partnership shall be a debt or obligation of the exempted limited partnership. Registration under the Exempted Limited Partnership Law entails that the partnership becomes subject to, and the limited partners therein are afforded the limited liability and other benefits of, the Exempted Limited Partnership Law (subject to compliance therewith).

Liability of Partners and Indemnification of the Master Partnership GP and Others. The business of a Cayman Islands exempted limited partnership will be conducted by its general partner(s) who will be liable for all debts and obligations of the exempted limited partnership to the extent that the partnership has insufficient assets. As a general matter, a limited partner of a Cayman Islands partnership will not be liable for the debts and obligations of the exempted limited partnership, other than:

(i) as expressed in the partnership agreement,

(ii) if such limited partner takes part in the conduct of the business of an exempted limited partnership in its dealings with persons who are not partners, then that limited partner shall be liable, in the event of the insolvency of the exempted limited partnership, for all debts and obligations of that exempted limited partnership incurred during the period that he so participates in the conduct of the business as though he were, for such period, a general partner, provided always that he shall be rendered liable pursuant to the foregoing provision only to a person who transacts business with the exempted limited partnership during such period with actual knowledge of such participation and who then reasonably believed such limited partner to be a general partner, or

(iii) if such limited partner is obligated pursuant to Section 34(1) of the Exempted Limited Partnership Law to return a distribution made to it (with interest at a rate of 10% per

annum, unless otherwise specified in the Master Fund Partnership Agreement) when the exempted limited partnership is insolvent or within six months prior to such insolvency.

The Master Fund Partnership Agreement provides that none of the Indemnified Parties will be liable to the Master Fund or any limited partner of the Master Fund (including the Feeder Funds) or any other person for mistakes of judgment or for action or inaction that did not constitute gross negligence (as such term is defined and interpreted in accordance with the laws of the State of Delaware), willful misconduct or bad faith, or for losses due to such mistakes, action or inaction or to the negligence, dishonesty or bad faith of any broker or agent of the Master Fund, provided that such broker or agent was selected, engaged or retained by the Indemnified Party in accordance with the standard of care set forth above. An Indemnified Party may consult with counsel and accountants in respect of the Master Fund's affairs and will be fully protected and justified in any action or inaction which is taken in accordance with the advice or opinion of such counsel or accountants, provided that they were selected in accordance with the standard of care set forth above. The foregoing provisions, however, shall not be construed so as to provide for the exculpation of an Indemnified Party of any liability (including liability under U.S. Federal securities laws which, under certain circumstances, impose liability even on persons acting in good faith), to the extent (but only to the extent) that such liability may not be waived, modified or limited under applicable law (including liability under U.S. Federal securities laws which, under certain circumstances, impose liability even on persons acting in good faith), but shall be construed so as to effectuate the abovementioned provisions to the fullest extent permitted by law. The Master Fund Partnership Agreement also limits the liability of any Indemnified Party to the amount of the Management Fee received, to the extent permitted under applicable law. In addition, in no event shall any Indemnified Party be liable for any special, indirect, exemplary, consequential or punitive losses or damages.

The Master Fund Partnership Agreement provides that the Master Fund shall, to the fullest extent permitted by law, indemnify and hold harmless each Indemnified Party from and against any and all loss, cost or expense suffered or sustained by an Indemnified Party by reason of the fact that it, he or she is or was an Indemnified Party, including, without limitation, any judgment, settlement, reasonable attorneys' fees and other costs or expenses incurred in connection with the defense of any actual or threatened action, suit or proceeding, provided that such liability, damage loss, cost or expense resulted from a mistake of judgment on the part of an Indemnified Party or from action or inaction that did not constitute gross negligence (as such term is defined and interpreted in accordance with the laws of the State of Delaware), willful misconduct or bad faith, or from the negligence, dishonesty or bad faith of a broker or other agent of an Indemnified Party, provided that such broker or agent was selected, engaged or retained by the Indemnified Party in accordance with the standard of care set forth above. The Master Fund Partnership Agreement also provides that the Master Fund will, in the sole discretion of the Master Fund GP, advance to any Indemnified Party reasonable attorneys' fees and other costs and expenses incurred in connection with the defense of any action, suit or proceeding which arises out of such conduct. In the event that such an advance is made by the Master Fund, the Indemnified Party will agree to reimburse the Master Fund to the extent that it is finally determined that it was not entitled to indemnification in respect thereof.

Notwithstanding any of the foregoing, the provisions of the Master Fund Partnership Agreement do not provide for the indemnification of any Indemnified Party for any liability (including liability under Federal securities laws which, under certain circumstances, impose liability even on persons that act in good faith), to the extent (but only to the extent) that such liability may not be waived, modified or limited under applicable law, but shall be construed so as to effectuate the above provisions to the fullest extent permitted by law.

Pursuant to the foregoing indemnification and exculpation provisions applicable to each Indemnified Party, the Master Fund (and not the applicable Indemnified Party) will be responsible for any losses resulting from trading errors and similar human errors, absent gross negligence (as such term is defined and interpreted in accordance with the laws of the State of Delaware), willful misconduct or bad faith. Given the volume of transactions executed on behalf of the Master Fund, trading errors (and similar errors) will occur and the Master Fund will be responsible for any resulting losses, even if such losses result from the negligence (but not gross negligence) of any Indemnified Party.

The Indemnified Parties will also be indemnified by each limited partner of the Master Fund for any amounts of tax withheld or required to be withheld with respect to that limited partner, and also for any amounts of interest, additions to tax, penalties and other costs borne by any such persons in connection therewith to the extent that the balance of the limited partner's capital account is insufficient to fully compensate the Master Fund GP ad the Investment Manager for such costs.

Contributions and Withdrawals by the Fund. Limited partners of the Master Fund may make contributions at such times and in such amounts as the Master Fund GP determines. As a limited partner of the Master Fund, the Fund may, subject to the consent of the Master Fund GP, voluntarily request a withdrawal of all or part of its capital in the Master Fund at such times and in such amounts as it may determine. The Master Fund GP may postpone or suspend (a) the calculation of the net asset value of the Master Fund (and the applicable valuation date); (b) the issuance of limited partner interests, (c) the withdrawal by limited partners (and the applicable withdrawal date); and/or (d) the payment of withdrawal proceeds (even if the calculation dates and withdrawal dates are not postponed) if it determines that such a suspension is warranted by extraordinary circumstances, including: (i) during any period when any stock exchange or over-the-counter market on which the Master Fund's investments are quoted, traded or dealt in is closed, other than for ordinary holidays and weekends, or during periods in which dealings are restricted or suspended; (ii) during the existence of any state of affairs as a result of which, in the reasonable opinion of the Master Fund GP, disposal of investments by the Master Fund, or the determination of the value of the assets of the Master Fund, would not be reasonably practicable or would be seriously prejudicial to the non-withdrawing partners; (iii) during any breakdown in the means of communication normally employed in determining the price or value of the Master Fund's assets or liabilities, or of current prices in any stock market as aforesaid, or when for any other reason the prices or values of any assets or liabilities of the Master Fund cannot reasonably be accurately ascertained within a reasonable time frame; (iv) during any period when the transfer of funds involved in the realization or acquisition of any investments cannot, in the reasonable opinion of the Master Fund GP, be effected at normal rates of exchange; or (v) automatically upon liquidation of the Master Fund.

Amendment of the Master Fund Partnership Agreement. The Master Fund Partnership Agreement may be amended by the Master Fund GP without the consent of the limited partners in any manner that does not materially adversely affect any limited partner.

Dissolution of the Master Fund. The Master Fund shall be wound up and dissolved upon the first to occur of any of the following liquidating events, and Sections 36(1)(b), 36(9) and 36(12) of the Exempted Limited Partnership Law shall not apply to the Master Fund:

(i) the written election of the Master Fund GP to dissolve the Master Fund; or

(ii) if the Master Fund GP is the sole or last remaining general partner, the date (the "***Automatic Dissolution Date***") falling 90 days after the date of the service of a notice

by the Master Fund GP (or its legal representative) on all the limited partners informing the limited partners of:

(1) the commencement of liquidation or bankruptcy proceedings in relation to the Master Fund GP; or

(2) the withdrawal, removal or making of a winding up or dissolution order in relation to the Master Fund GP;

provided that, if a majority in number of the limited partners elects one or more new general partners before the Automatic Dissolution Date, the business of the Master Fund shall be resumed and continued. If a new general partner is not elected by the Automatic Dissolution Date, the Master Fund shall be wound up and dissolved in accordance with terms of the Master Fund Partnership Agreement and the Exempted Limited Partnership Law.

Power of Attorney. Each limited partner of the Master Fund shall make, constitute and appoint the Master Fund GP its true and lawful attorney to make, sign, execute, certify, acknowledge, file and record any instrument deemed necessary or appropriate by the Master Fund GP to carry out fully the provisions of the Master Fund Partnership Agreement, including the admission of any new partners of the Master Fund and any amendments to the Master Fund Partnership Agreement. Each limited partner of the Master Fund shall authorize the Master Fund GP to take any further action that the Master Fund GP considers necessary or advisable in connection with the foregoing. Such power of attorney granted is intended to secure an interest in property and, in addition, the obligation of each relevant limited partner of the Master Fund under the Master Fund Partnership Agreement shall be irrevocable and shall survive and not be affected by the subsequent death, lack of capacity, insolvency, bankruptcy or dissolution of any limited partner of the Master Fund.

Valuation of Assets

The Master Fund GP (meaning for the purposes of the valuation of assets described herein, the Master Fund GP itself, the Investment Manager or the Administrator under the ultimate supervision of the Master Fund GP) will generally compute the value of the securities and other assets of the Master Fund as of the close of business on the last day of each fiscal period and on any other date selected by the Master Fund GP in its sole discretion. In addition, the Master Fund GP must compute the value of the securities that are being distributed in-kind as of their date of distribution in accordance with the Master Fund Partnership Agreement. In determining the value of the assets of the Master Fund, no value is placed on the goodwill or name of the Master Fund, or the office records, files, statistical data or any similar intangible assets of the Master Fund not normally reflected in the Master Fund's accounting records, but there must be taken into consideration any related items of income earned but not received, expenses incurred but not yet paid, liabilities fixed or contingent, prepaid expenses to the extent not otherwise reflected in the books of account, and the value of options or commitments to purchase or sell securities pursuant to agreements entered into on or prior to such valuation date.

A copy of the Master Fund's valuation policy is available upon request from the Master Fund GP.

The value of each security and other asset of the Master Fund and the net worth of the Master Fund as a whole determined pursuant Master Fund Partnership Agreement are conclusive and binding on all of the partners of the Master Fund and all persons claiming through or under them.

RISK FACTORS AND POTENTIAL CONFLICTS OF INTEREST

Investment in the Fund is speculative and involves substantial risks, including, but not limited to, those summarized below. The Fund is not suitable for all investors and is intended for sophisticated investors who can accept the risks associated with their investments. Prospective investors should carefully consider the risk factors described in this section, among others, in determining whether an investment in the Fund is suitable for them. There can be no assurance that the Fund's program will be successful or that investments purchased by the Fund will increase in value. An investor must be prepared to bear capital losses that might result from an investment in the Fund, including a complete loss of the investor's invested capital. All investors in the Fund should consult their own legal, tax and financial advisors prior to investing in the Fund.

For purposes of this section, references to the "Fund" should be understood to mean each of the Fund and the Master Fund, as applicable, and each of the risk factors set forth herein, while not exhaustive, shall apply equally to each of the Fund and the Master Fund, as applicable.

General Risks

Limited Operating History. The Fund, the Master Fund and the Master Fund GP have limited operating histories upon which investors can evaluate the anticipated performance of the Fund. The Investment Manager has been in operation since 1993. However, the past performance of the Investment Manager and its officers and personnel is not an indication of future success of the Fund.

Risks Associated With Investments in Securities. Any investment in securities carries market risks. An investment in the Fund is highly speculative and involves a high degree of risk due to the nature of the Fund's investments and the strategies to be employed. An investment in the Fund should not in itself be considered a balanced investment program, but rather is intended to provide diversification in a more complete investment portfolio.

Investment Judgment; Market Risk. The profitability of a significant portion of the Master Fund's investment program depends to a great extent upon correctly assessing the future course of the price movements of securities and other investments. There can be no assurance that the Investment Manager will be able to predict accurately these price movements. With respect to the investment strategy utilized by the Master Fund, there is always some, and occasionally a significant, degree of market risk.

Limited Liquidity; Additional Information. An investment in the Fund provides limited liquidity since the Shares are not freely transferable and may only be redeemed at such times as set forth in this Memorandum. The Board of Directors may suspend redemptions, in whole or in part, when, in the sole discretion of the Board of Directors, such a suspension is warranted by extraordinary circumstances. The Board of Directors may also delay the payment of redemption proceeds as more fully described elsewhere in this Memorandum. Investments that remain in the Fund are subject to all risks related to an investment in the Fund as described in this Memorandum.

Also, certain shareholders (including, without limitation, the Affiliated Investors), may invest on terms that provide access to information that is not generally available to other shareholders of the Fund and, as a result, may be able to act on such additional information (e.g., redeem their Shares) that other shareholders do not receive. An investment in the Fund is suitable only for sophisticated investors who have no need for current liquidity.

Effect of Substantial Redemptions. Several factors make substantial redemptions (and possibly substantial withdrawals from the Domestic Fund) a risk factor for shareholders. The Master Fund will pursue a variety of investment strategies that will take time to develop and implement. The Master Fund may not be able to readily dispose of such financial instruments and, in some cases, may be contractually prohibited from disposing of such financial instruments for a period of time. Substantial redemptions (and possibly substantial withdrawals from the Domestic Fund) could be triggered by a number of events, including, for example, unsatisfactory performance or a significant change in personnel or management of the Investment Manager, investor reaction to redemptions or withdrawals from other investment funds sponsored by the Investment Manager, legal or regulatory issues that investors perceive to have a bearing on the Fund or the Investment Manager, or other factors. Actions taken to meet substantial redemption requests from the Fund (as well as similar actions taken simultaneously in other investment funds sponsored by the Investment Manager) could result in prices of financial instruments held by the Master Fund decreasing and in Master Fund expenses increasing (e.g., transaction costs and the costs of terminating agreements). The overall value of the Master Fund also may decrease because the liquidation value of certain assets may be materially less than their mark-to-market value. The Master Fund may be forced to sell its more liquid positions while maintaining a relatively concentrated portfolio of illiquid assets. Substantial redemptions could also significantly restrict the Master Fund's ability to obtain financing or derivatives counterparties needed for its investment and trading strategies, which would have a further material adverse effect on the Master Fund's performance.

Substantial redemptions from the Fund within a short period of time could require the Master Fund to liquidate securities positions more rapidly than would otherwise be desirable, possibly reducing the value of the Fund's assets and/or disrupting the Investment Manager's investment strategy. Reduction in the size of the Fund could make it more difficult to generate a positive return or to recoup losses due to, among other things, reductions in the Master Fund's ability to take advantage of particular investment opportunities or decreases in the ratio of its income to its expenses.

Master-Feeder Structure. The Fund will invest all of its investable assets in the Master Fund. The "master-feeder" fund structure presents certain risks to the shareholders. Smaller feeder funds may be materially affected by the actions of larger feeder funds.

While the Investment Manager, as investment manager of the Master Fund, generally will not consider tax issues applicable to any particular investors, it generally will take into account the tax positions of the Fund and the Domestic Fund that invest in the Master Fund. However, the use of a "master-feeder" structure may create a conflict of interest in that different tax considerations for the Fund and the Domestic Fund may cause or result in the Master Fund structuring or disposing of an investment in a manner or at a time that is more advantageous (or disadvantageous) for tax purposes to one Feeder Fund or its investors.

Management Fee and Performance Allocations. As described above, the Master Fund Partnership Agreement provides for the payment of the Management Fee to the Investment Manager and the Performance Allocation to the Master Fund GP. The Performance Allocation may create an incentive for the Investment Manager, an affiliate of the Master Fund GP, to make investments that are riskier or more speculative than would be the case in the absence of such Performance Allocation.

Side Letters. The Fund may from time to time enter into letter agreements or other similar agreements (collectively, "***Side Letters***") with one or more shareholders which provide such shareholder(s) with additional and/or different rights (including, without limitation, with respect to access to information, the Management Fee, the Performance Allocation, minimum investment

amounts, voting rights and liquidity terms) than such shareholder(s) have pursuant to this Memorandum. As a result of such Side Letters, certain shareholders may receive additional benefits (including, but not limited to, reduced fee obligations, the ability to redeem Shares on shorter notice and/or expanded informational rights) which other shareholders will not receive. For example, a Side Letter may permit a shareholder to redeem its Shares on less notice and/or at different times than other shareholders. As a result, should the Fund experience a decline in performance over a period of time, a shareholder who is party to a Side Letter that permits less notice and/or different redemption times may be able to redeem its Shares prior to other shareholders. In general, the Fund and/or the Investment Manager will not be required to notify any or all of the other shareholders of any such Side Letters or any of the rights and/or terms or provisions thereof, nor will the Fund and/or the Investment Manager be required to offer such additional and/or different rights and/or terms to any or all of the other shareholders. The Fund and/or the Investment Manager may cause the Fund to enter into such Side Letters with any party as the Fund and/or the Investment Manager may determine in its sole discretion at any time. The other shareholders will have no recourse against the Fund and/or the Investment Manager in the event certain shareholders receive additional and/or different rights and/or terms as a result of such Side Letters. A shareholder will be required to enter into such undertakings with respect to maintaining the confidentiality of any such additional information as the Fund and/or the Investment Manager may in their sole discretion determine.

Net Asset Value Considerations. The net asset value of the Fund is expected to fluctuate over time with the performance of the Master Fund's investments. A shareholder may not fully recover its investment when it chooses to redeem its Shares from the Fund or upon a compulsory redemption if the net asset value of the shareholder's Shares at the time of such redemption is less than the share price of such Shares or if there remain any unamortized costs and expenses of establishing the Fund.

No Participation by Investors. All decisions with respect to the management of the day-to-day affairs of the Fund are made exclusively by the Board of Directors and the Investment Manager. Shareholders have no right or power to take part in the management of the Fund. The Investment Manager makes all of the trading and investment decisions of the Fund. In the event of the withdrawal of the Investment Manager, generally the Fund will be liquidated.

Investment Strategies. The Investment Manager will seek to engage in the investment activities that have been discussed in "*Investment Program*" herein. There can be no assurance that the Investment Manager will be successful in applying any such strategy and that losses will be avoided.

Competition. The markets in which the Master Fund invests are competitive and some of the opportunities that the Investment Manager may explore may be pursued by better known investors or investment funds. There can be no assurance that the Investment Manager will be able to identify or successfully pursue such opportunities in this environment. The Investment Manager competes with many firms that may have greater financial resources, more extensive development, better marketing and service capabilities, more favorable financing arrangements, larger research staffs and more securities traders than are available to the Investment Manager.

In-Kind Distributions. A redeeming shareholder may, in the discretion of the Fund and/or Investment Manager, receive securities owned by the Fund in lieu of, or in combination with, cash. The value of securities distributed may increase or decrease before the securities can be sold, and the shareholder will incur transaction costs in connection with the sale of such securities. Additionally, securities distributed with respect to a redemption by a shareholder may not be readily marketable. The risk of loss and delay in liquidating these securities will be borne by the shareholder, with the

result that such shareholder may receive less cash than it would have received on the date of redemption.

No Current Income. Since the Fund does not generally intend to pay distributions, an investment in the Fund is not suitable for investors seeking current income.

Terrorist Action. There is a risk of terrorist attacks on the United States and elsewhere causing significant loss of life and property damage and disruptions in the global market. Economic and diplomatic sanctions may be in place or imposed on certain states and military action may be commenced. The impact of such events is unclear, but could have a material effect on general economic conditions and market liquidity.

Unforeseen Events. The Master Fund may be adversely affected by unforeseen events involving such matters as changes in interest rates or the credit status of an issuer, forced redemptions of securities or acquisition proposals, break-up of planned mergers, unexpected changes in relative value or changes in tax treatment.

Cybersecurity. Information and technology systems may be vulnerable to damage or interruption from computer viruses, network failures, computer and telecommunication failures, infiltration by unauthorized persons and security breaches, usage errors by their respective professionals, power outages and catastrophic events such as fires, tornadoes, floods, hurricanes and earthquakes. Although the Investment Manager has implemented various measures to manage risks relating to these types of events, if these systems are compromised, become inoperable for extended periods of time or cease to function properly, the Investment Manager, the Master Fund and/or the Fund may have to make a significant investment to fix or replace them, which expense may be borne in whole or in part by the Fund. The failure of these systems and/or of disaster recovery plans for any reason could cause significant interruptions in the Investment Manager's, the Master Fund's and/or the Fund's operations and result in a failure to maintain the security, confidentiality or privacy of sensitive data, including personal information relating to investors. Such interruptions could harm the Investment Manager's, the Master Fund's and/or the Fund's reputation, subject any such entity and their respective affiliates to legal claims and otherwise affect their business and financial performance. The foregoing risks and consequences are also extant at any issuer in which the Master Fund invests and could manifest as adverse performance of such investment.

Accounting Rules. The Fund's and the Master Fund's assets and liabilities are valued in accordance with the Articles of Association or the Master Fund Partnership Agreement (collectively, the "***Operating Agreements***"), as applicable. However, for purposes of preparing the Fund's and the Master Fund's annual audited financial statements, which are prepared in accordance with U.S. generally accepted accounting principles ("***GAAP***"), certain of the Fund's and the Master Fund's assets and liabilities may be valued in a manner that, while consistent with GAAP, is different from the manner in which such assets are valued pursuant to the Operating Agreements.

Accordingly, to the extent that GAAP would require any of the Fund's assets or liabilities to be valued in a manner that differs from the valuation procedures set forth in the Operating Agreements, such assets or liabilities will be valued in accordance with GAAP, solely for purposes of preparing the Fund's GAAP-compliant annual audited financial statements, and in accordance with the Operating Agreements (without regard to any GAAP requirements relating to the determination of fair value), for all other purposes.

Generally, GAAP and other related accounting rules applicable to investment funds and various assets they invest in are evolving. Such changes may adversely affect the Fund and the Master Fund. For example, the evolution of rules governing the determination of the fair market value of assets to the extent such rules become more stringent would tend to increase the cost and/or reduce the availability of third-party determinations of fair market value. This may in turn increase the costs associated with selling assets or affect their liquidity due to an inability to obtain a third-party determination of fair market value.

Valuations. From time to time, certain situations affecting the valuation of the Master Fund's investments (such as limited liquidity, unavailability or unreliability of third-party pricing information and acts or omissions of service providers to the Master Fund) could have an impact on the net asset value of the Fund, particularly if prior judgments as to the appropriate valuation of an investment should later prove to be incorrect after a net asset value-related calculation or transaction is completed. The Fund is not required to make retroactive adjustments to prior subscription or redemption transactions or the Management Fee or Performance Allocations based on subsequent valuation data.

Trade Errors. The Investment Manager, on behalf of the Fund, may from time to time make trade errors. Trade errors are not errors in judgment, strategy, market analysis, economic outlook or the like, but rather errors in implementing specific trades which the Investment Manager has determined (rightly or wrongly) to make. Examples of trade errors would be: buying 10,000 shares of an issue, rather than the 1,000 that was intended or taking a short, rather than the intended long, position in a particular issue. Trade errors can result from clerical mistakes, miscommunications between the Investment Manager's personnel and other reasons. Importantly, however, trade errors are not the function of poor strategies, valuation models, economic expectations, undue speculation, unauthorized trades or the like, but rather of the physical implementation of specific trades on which the Investment Manager had decided. The Investment Manager will determine whether to have the costs arising from trade errors borne by the Fund or the Investment Manager by applying the pertinent standard of liability for the Investment Manager in its management of the Fund's capital — i.e., the same standard of liability which would apply to any other action or omission by the Investment Manager in the course of such management. The Investment Manager will, accordingly, be obligated to reimburse the Fund for any trade error resulting from the Investment Manager's willful misconduct, bad faith or gross negligence (as interpreted in accordance with the laws of the State of Delaware), and not otherwise. The Investment Manager will itself determine in good faith whether or not a given trade error is required to be reimbursed under the general liability and exculpation standards applicable to the Fund. The Investment Manager has a conflict of interest in determining whether a trade error should be for the account of the Fund or the Investment Manager and will attempt to resolve such conflict by an objective determination of the status of such trade error under the applicable liability standard. Trade error costs can be significant — including market losses resulting from the position incorrectly acquired as well as the additional brokerage costs of closing out or reversing the error. The opportunity cost (lost profits) of not having made the trade intended to be made is not considered a trade error cost. Any gains recognized on trade errors will be for the benefit of the Fund; none will be retained by the Investment Manager.

Investment Strategy and Investment Risks

Risks Associated with Investing in CLOs

Dependence Upon Other Unrelated Managers. The success of a collateralized loan obligation ("***CLO***" or "***CLO Securities***") may depend on the management talents and efforts of one person or a small group of persons whose management could adversely affect the CLO and, accordingly, the

Master Fund as an investor in such CLO. Given that the Investment Manager will not have an active role in the management of these CLOs, the return on the Master Fund's investments in such CLOs will depend on the performance of unrelated managers.

Investments in CLOs Managed by the Investment Manager or its Affiliates. The Master Fund may invest a significant portion of its capital in structured investments, including CLO tranches originated and managed by third parties and CLO tranches managed by the Investment Manager or its affiliates (the "***Affiliated CLOs***"); provided, however, that the Master Fund will only invest in Affiliated CLOs in secondary transactions, and not primary issuance. The Investment Manager or its affiliates will receive senior and subordinated management fees and, in some cases, a performance-based allocation or fee with respect to its role as general partner and/or manager of the Affiliated CLOs. The Investment Manager will have conflicting division of loyalties and responsibilities regarding the Master Fund and an Affiliated CLO, and certain other conflicts of interest would be inherent in the situation. There can be no assurance that the interests of the Master Fund would not be subordinated to those of an Affiliated CLO or to other interests of the Investment Manager.

Multiple Levels of Fees. The Master Fund and the CLOs (including Affiliated CLOs) are expected to impose management fees, other administrative fees, carried interest and other performance allocations on realized and unrealized appreciation in the value of the assets managed and other income. This may result in greater expense than if Limited Partners were able to invest directly in the CLOs or underlying investments. Limited Partners should take into account that the return on their investment will be reduced to the extent of both levels of fees. The general partner or manager of a CLO may receive the economic benefit of certain fees from its portfolio companies for services and in connection with unconsummated transactions (*e.g.*, break-up, placement, monitoring, directors', organizational and set-up fees and financial advisory fees). Additionally, the Investment Manager may receive fees from certain CLOs in connection with its role as "backup manager" for the CLOs.

Limited Diversification. CLOs may invest in concentrated portfolios of assets. The concentration of an underlying portfolio in any one obligor would subject the related CLO Securities to a greater degree of risk with respect to defaults by such obligor and the concentration of a portfolio in any one industry would subject the related CLOs to a greater degree of risk with respect to economic downturns relating to such industry. The Master Fund may have a concentrated exposure to a particular type of CLO.

Risks of Investment Focus. The Master Fund's portfolio will primarily consist of CLO Securities. CLO Securities are subject to, among other risks, credit, liquidity and interest rate risks.

The value of the CLO Securities that the Master Fund may own generally will fluctuate with, among other things, the financial condition of the obligors or issuers of the CLO Securities' underlying portfolio of assets ("***CLO Collateral***"), general economic conditions, the condition of certain financial markets, political events, developments or trends in any particular industry and changes in prevailing interest rates. CLO Securities are issued on a non-recourse basis and holders of CLO Securities must rely solely on distributions on the CLO Collateral or proceeds thereof for payment in respect thereof. If distributions on the CLO Collateral are insufficient to make payments on the CLO Securities, no other assets will be available for payment of the deficiency and following realization of the CLO Securities, the obligations of such issuer to pay such deficiency generally will be extinguished.

Issuers of CLO Securities may acquire interests in loans and other debt obligations by way of sale, assignment or participation ("***CLO Debt***"). The purchaser of an assignment typically succeeds to all the rights and obligations of the assigning institution and becomes a lender under the credit

agreement with respect to the loan or debt obligation; however, its rights can be more restricted than those of the assigning institution.

CLO Collateral may consist of corporate loans, leveraged loans and other instruments, which often are rated below investment grade (or of equivalent credit quality). Loans may be unsecured and may be subordinated to certain other obligations of the issuer thereof. The lower ratings of below investment grade loans reflect a greater possibility that adverse changes in the financial condition of an issuer or in general economic conditions or both may impair the ability of the related issuer or obligor to make payments of principal or interest. Such investments may be speculative.

Interest Rate Mismatch. CLOs may be subject to interest rate risk. The CLO Collateral of an issuer of a CLO may bear interest at a fixed or floating rate, while the CLO Debt may bear interest at a floating or fixed rate. As a result, there could be a floating/fixed rate or basis mismatch between such CLO Debt and the CLO Collateral which bears interest at a fixed rate ("***Fixed Rate Assets***"), and there may be a timing mismatch between such CLO Debt and the assets that are not Fixed Rate Assets ("***Floating Rate Assets***"). In addition, the interest rate on Floating Rate Assets may adjust more frequently or less frequently, on different dates and based on different indices than the interest rates on the CLO Debt. As a result of such mismatches, an increase or decrease in the level of the floating rate indices could adversely impact the ability to make payments on such CLO Debt. Although many CLOs attempt to hedge this interest rate risk, the hedges may not eliminate this risk and payments by the CLO under the hedges may significantly reduce the distributions on the CLO Securities. In addition, these hedges may have additional risks, such as counterparty risk, that are not present without these hedges.

Defaulted Assets Underlying CLO Securities. If the assets underlying a CLO Security become defaulted assets, such defaulted assets may become subject to either substantial workout negotiations or restructuring, which may entail, among other things, a substantial reduction in the interest rate, a substantial write-down of principal, and a substantial change in the terms, conditions and covenants with respect to such defaulted asset. In addition, such negotiations or restructuring may be quite extensive and protracted over time, and therefore may result in substantial uncertainty with respect to the ultimate recovery on such defaulted asset. The liquidity for defaulted assets may be limited, and to the extent that defaulted assets are sold, it is highly unlikely that the proceeds from such sale will be equal to the amount of unpaid principal and interest thereon. Furthermore, there can be no assurance that the ultimate recovery on any defaulted assets will be at least equal to either the minimum recovery rate assumed by any rating agency that rates the notes of the CLO Security. Therefore, if any CLO Security has defaulted assets which correspond to the exposure of the Master Fund's interest in the CLO Security, the Fund may be adversely affected.

There exist significant additional risks for CLO Securities and investors in such securities as a result of the current liquidity crisis. Those risks include, among others, (i) the likelihood that the issuer of the CLO Security will find it harder to sell any of its assets in the secondary market, thus rendering it more difficult to dispose of assets which it has the discretion to manage, including credit risk obligations, credit improved obligations or defaulted obligations, (ii) the possibility that the price at which assets can be sold by the issuer of the CLO Security will have deteriorated from their effective purchase price and (iii) the increased illiquidity of the notes issued by the CLO Security. These additional risks may affect the returns on the investments in the Master Fund's portfolio.

Subordination of CLO Debt and CLO Equity. The Master Fund's portfolio may consist of CLO Equity and subordinate CLO Debt. Subordinate CLO Debt generally is fully subordinated to the related CLO senior tranches. CLO Equity generally is fully subordinated to any related CLO Debt.

Thus, some of the investments of the Master Fund in a CLO may rank behind other creditors of the CLO and an investment by the Master Fund in the equity tranche of a CLO may rank behind all creditors of the CLO. To the extent that any losses are incurred by a CLO in respect of its related CLO Collateral, such losses are likely to be borne first by the holders of the related CLO Equity, next by the holders of any related subordinated CLO debt and finally by the holders of the related CLO senior tranches. In addition, if an event of default occurs under the governing instrument or underlying investment, as long as any CLO senior tranches are outstanding, the holders thereof generally are likely to be entitled to determine the remedies to be exercised under the instrument governing the CLO. Remedies pursued by such holders could be adverse to the interests of the holders of any related subordinated CLO Debt and/or the holders of the related CLO Equity, as applicable. Investments of the Master Fund may be the first to absorb any losses by the CLO on its underlying portfolio. This may result in losses on the invested proceeds of the Master Fund and could result in the complete loss of invested proceeds.

Mandatory Redemption of CLO Senior Tranches and CLO Debt. Under certain circumstances, cash flows from CLO Collateral that otherwise would have been paid to the holders of any related CLO Debt will be used to redeem the related CLO senior tranches. This could result in an elimination, deferral or reduction in the interest payments, principal repayments or other payments made to the holders of such CLO Debt, which could adversely impact the returns to the holders of such CLO Debt.

Optional Redemption of CLO Senior Tranches and CLO Debt. An optional redemption by a CLO of its securities and, in particular, the exercise of rights by the holders of one or more classes of its securities (or the requisite percentages thereof) so as to effect any such optional redemption, could require the collateral or portfolio manager of the related CLO to liquidate positions more rapidly than would otherwise be desirable, which is likely to materially and adversely affect the realized value of the items of CLO Collateral sold (and which in turn is likely to materially and adversely impact the holders of any related CLO Securities, including the Master Fund). As a result of any such rapid liquidation of a CLO, a holder of the related CLO Securities (including the Master Fund) could lose all or a substantial portion of its investment in such CLO Securities.

Insolvency Risks. Various laws enacted for the protection of creditors may apply to the issuers of the CLO Collateral (solely for purposes of this risk factor, an "***Insolvent Company***"). The information in this paragraph and the following paragraph is applicable with respect to U.S. issuers of CLO Collateral. Insolvency considerations may differ with respect to non-U.S. issuers of CLO Collateral. If a court in a lawsuit brought by an unpaid creditor or representative of creditors of an Insolvent Company, such as a trustee in bankruptcy, were to find that the issuer did not receive fair consideration or reasonably equivalent value for incurring the indebtedness constituting the CLO or CLO Collateral (as applicable) and, after giving effect to such indebtedness, the Insolvent Company (i) was insolvent, (ii) was engaged in a business for which the remaining assets of the Insolvent Company constituted unreasonably small capital or (iii) intended to incur, or believed that it would incur, debts beyond its ability to pay such debts as they mature, such court could determine to invalidate, in whole or in part, such indebtedness as a fraudulent conveyance, to subordinate such indebtedness to existing or future creditors of the Insolvent Company or to recover amounts previously paid by such issuer in satisfaction of such indebtedness. The measure of insolvency for purposes of the foregoing will vary. Generally, an Insolvent Company would be considered insolvent at a particular time if the sum of its debts were then greater than all of its property at a fair valuation or if the present fair saleable value of its assets were then less than the amount that would be required to pay its probable liabilities on its existing debts as they became absolute and matured. There can be no assurance as to what standard a court would apply in order to determine whether the Insolvent Company was "insolvent" after giving effect to the incurrence of the indebtedness constituting the CLO or CLO Collateral (as applicable) or

that, regardless of the method of valuation, a court would not determine that the Insolvent Company was "insolvent" upon giving effect to such incurrence. In addition, in the event of the insolvency of an Insolvent Company, payments made on such CLO or CLO Collateral (as applicable) could be subject to avoidance as a "preference" if made within a certain period of time (which may be as long as one year) before insolvency.

In general, if payments on a CLO or CLO Collateral (as applicable) are avoidable, whether as fraudulent conveyances or preferences, such payments can be recaptured either from the initial recipient (such as the Master Fund) or from subsequent transferees of such payments (such as the Limited Partners). However, a court in a bankruptcy or insolvency proceeding would be able to direct the recapture of any such payment from a Limited Partner only to the extent that such court has jurisdiction over such holder or its assets. Moreover, it is likely that avoidable payments could not be recaptured directly from a holder that has given value in exchange for its interest, in good faith and without knowledge that the payments were avoidable. Nevertheless, there can be no assurance that a Limited Partner will be able to avoid recapture on this or any other basis.

The preceding discussion is based upon principles of United States Federal and state laws. Insofar as the Master Fund's portfolio consists of the obligations of non-United States obligors, the laws of certain foreign jurisdictions may provide for avoidance remedies under factual circumstances similar to those described above or under different circumstances, with consequences that may or may not be analogous to those described above under United States Federal and state laws.

"Widening" Risk. For reasons not necessarily attributable to any of the risks set forth herein (for example, supply/demand imbalances or other market forces), the prices of the CLO Securities in which the Master Fund invests may decline substantially. In particular, purchasing assets at what may appear to be "undervalued" levels is no guarantee that these assets will not be trading at even lower levels at a time of valuation or at the time of sale. It may not be possible to predict, or to hedge against, such "spread widening" risk.

There Is Limited Disclosure About the CLO Securities and the Underlying CLO Collateral in this Memorandum. The Investment Manager will not be required to provide the investors in the Fund with financial or other information (which may include material non-public information) it receives related to the CLO Securities. The Investment Manager also may not disclose to investors notices the Investment Manager receives and it will not have any obligation to keep investors informed as to defaults in the CLO Securities, failure by the Master Fund to receive any payment of principal, interest, or other amounts or to disclose the portfolio or the decisions of which CLO Securities were not purchased in general to any investor. In addition, the investors will not have any right to inspect any records relating to the CLO Securities, and the Investment Manager will not be obligated to disclose any further information or evidence regarding the existence or terms of, or the identity of any obligor on, any CLO Securities.

Impact of the Volcker Rule on the Liquidity of the Notes. Section 619 of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("***Dodd-Frank***") added a provision, commonly referred to (together with the final regulations with respect thereto adopted on December 10, 2013) as the Volcker Rule, to federal banking laws to generally prohibit various covered banking entities from engaging in proprietary trading or acquiring or retaining an ownership interest in "covered funds" which generally include, sponsoring or having certain relationships with a hedge fund or private equity fund (defined in final regulations adopted on December 10, 2013 as any entity relying on Section 3(c)(1) or Section 3(c)(7) of the Investment Company Act to be exempt from registration under the Investment Company Act), subject to certain exemptions. The Volcker Rule also provides for certain supervised nonbank

financial companies that engage in such activities or have such interests or relationships to be subject to additional capital requirements, quantitative limits or other restrictions. The conformance period for the Volcker Rule ended July 21, 2017 for CLOs. Certain CLOs may be considered "covered funds" under the Volcker rule and therefore the most senior tranche of the CLO may be a restricted security for various banking and nonbanking entities. This may restrict the liquidity of certain non-Volcker compliant CLOs in the future and may affect the Master Fund's ability to liquidate these positions on a timely basis.

Investment Strategy and Investment Risks

General Economic and Market Conditions. The success of the Master Fund's activities will be affected by general economic and market conditions, such as interest rates, availability of credit, inflation rates, economic uncertainty, changes in laws (including laws relating to taxation of the Master Fund's investments), trade barriers, currency exchange controls, and national and international political circumstances (including wars, terrorist acts or security operations). These factors may affect the level and volatility of securities prices and the liquidity of the Master Fund's investments. Volatility or illiquidity could impair the Master Fund's profitability or result in losses. The Master Fund may maintain substantial trading positions that can be adversely affected by the level of volatility in the financial markets; the larger the positions, the greater the potential for loss.

Unpredictable or unstable market conditions may result in reduced opportunities to find suitable investments to deploy capital or make it more difficult to exit and realize value (or avoid significant losses) from the Master Fund's existing investments. This sort of instability occurred in late 2008 and continued into 2009 when markets experienced significant losses arising largely because global credit spreads widened materially, equity index levels declined, and many funds liquidated assets. It is important to understand that the Master Fund can incur material losses even if it reacts quickly to difficult market conditions and there can be no assurance that the Master Fund will not suffer material adverse effects from broad and rapid changes in market conditions.

Foreign Currencies and Investments. Investing in foreign issuers involves certain considerations comprising of both risks and opportunities not typically associated with investing in United States issuers. These considerations include changes in exchange control regulations, political and social instability, expropriation, imposition of withholding and other foreign taxes, less liquid markets and less available information than is generally the case in the United States, higher transaction costs, less government supervision of exchanges, brokers and issuers, different legal systems with less developed bankruptcy laws, difficulty in enforcing contractual obligations, lack of uniform accounting and auditing standards and greater price volatility.

Although the Master Fund intends that most of its investments will be U.S. dollar denominated, Master Fund investments that are denominated in a foreign currency are subject to the risk that the value of a particular currency will change in relation to one or more other currencies. Among the factors that may affect currency values are trade balances, the level of interest rates, differences in relative values of similar assets in different currencies, long-term opportunities for investment and capital appreciation and political developments. The Investment Manager intends, but is under no obligation, to employ hedging techniques to reduce these risks, but there can be no assurance that such strategies will be effective.

Diversification. Since the Master Fund's portfolio will not necessarily be widely diversified, the investment portfolio of the Master Fund may be subject to more rapid changes in value than would

be the case if the Master Fund were required to maintain a wide diversification among companies, securities and types of securities.

Volatility Risk. The Master Fund's investment program may involve the purchase and sale of relatively volatile instruments. Fluctuations or prolonged changes in the volatility of such instruments, therefore, can adversely affect the value of investments held by the Master Fund. In addition, many non-U.S. financial markets are not as developed or as efficient as those in the U.S., and as a result, price volatility may be higher for the Master Fund's investments.

Illiquid Securities. From time to time, the Master Fund may invest in financial instruments that are not publicly traded. The Master Fund may also invest in securities and other financial instruments that trade regularly but may be only thinly traded, either periodically or on an on-going basis. The Master Fund may not be able to readily dispose of such financial instruments and, in some cases, may be contractually prohibited from disposing of such financial instruments for a specified period of time. Accordingly, the Master Fund may be forced to sell its more liquid positions at a disadvantageous time, resulting in a greater percentage of the portfolio consisting of illiquid securities. In addition, the market prices, if any, for such financial instruments tend to be volatile, and the Master Fund may not be able to sell them when it desires to do so or to realize what it perceives to be their fair value in the event of a sale. The sale of illiquid securities also often requires more time and results in higher brokerage charges or dealer discounts and other selling expenses than does the sale of securities eligible for trading on national securities exchanges or in the over-the-counter markets. Furthermore, there may be limited information available about the assets of such issuers of the financial instruments which may make valuation of such financial instruments difficult or uncertain. It also should be noted that, even those markets which the Investment Manager expects to be liquid can experience periods, possibly extended periods, of illiquidity.

Market Liquidity. The Master Fund may be adversely affected by a decrease in market liquidity for the instruments in which it invests, which may impair the Master Fund's ability to adjust its positions. The size of the Master Fund's positions may magnify the effect of a decrease in market liquidity for such instruments. Changes in overall market leverage, or the liquidation by other market participants of the same or similar positions, may also adversely affect the Master Fund's portfolio.

Reinvestment Risk. The Master Fund reinvests the cash flows received from a security. The additional income from such reinvestment, sometimes called interest-on-interest, is reliant on the prevailing interest rate levels at the time of reinvestment. There is a risk that the interest rate at which interim cash flows can be reinvested will fall. Reinvestment risk is greater for longer holding periods and for securities with large, early cash flows such as high-coupon bonds. Reinvestment risk also applies generally to the reinvestment of the proceeds the Master Fund receives upon the maturity or sale of a portfolio security.

Leverage. The Master Fund may seek to maximize its investment position by purchasing securities on margin or by arranging with banks, brokers and others to borrow money against a pledge of securities or commodities. As a result, the possibilities of profit and loss will be increased. Borrowing money to purchase securities will provide the Master Fund with advantages of leverage, but exposes it to capital risk, interest rate risk and higher current expenses. Any gain in the value of securities purchased with borrowed money or income earned from these securities that exceeds interest paid on the amount borrowed would cause the Master Fund's net profit to increase faster than would otherwise be the case. Conversely, any decline in the value of the securities purchased would cause the Master Fund's net loss to increase faster than would otherwise be the case. In addition to purchasing securities on margin, the Master Fund will engage in short selling of securities. A short sale will result

in a gain if the price of the securities sold declines sufficiently between the time of the short sale and the time at which securities are purchased to replace those borrowed. A short sale will result in a loss if the price of the securities sold short increases or does not decline sufficiently to cover transaction costs. Any gain would be decreased and any loss would be increased by the amount of any premium or interest which the Master Fund may be required to pay with respect to the borrowed securities.

Inflation Risk. Inflation risk results from the variation in the value of cash flows from a security due to inflation, as measured in terms of purchasing power. For example, if the Master Fund purchases a five (5) year bond in which it can realize a coupon rate of five percent (5%), but the rate of inflation is six percent (6%), then the purchasing power of the cash flow has declined. For all but adjustable securities or floating rate securities, the Master Fund is exposed to inflation risk because the interest rate the issuer promises to make is fixed for the life of the security. To the extent that interest rates reflect the expected inflation rate, floating rate securities have a lower level of inflation risk.

Over-the-Counter-Trading. Financial instruments that may be purchased or sold by the Master Fund may include instruments not traded on an exchange. The risk of nonperformance by the obligor on such an instrument may be greater and the ease with which the Master Fund can dispose of or enter into closing transactions with respect to such an instrument may be less than in the case of an exchange-traded instrument. In addition, significant disparities may exist between "bid" and "asked" prices for financial instruments that are not traded on an exchange. Financial instruments not traded on exchanges are also not subject to the same type of government regulation as exchange traded instruments, and many of the protections afforded to participants in a regulated environment may not be available in connection with such transactions. To the extent that the Master Fund engages in these transactions, the Master Fund must rely on the creditworthiness of its counterparty.

Position Limits. "Position limits" imposed by various regulators or regulations may also limit the Master Fund's ability to effect desired trades. Position limits are the maximum amounts of gross, net long or net short positions that any one person or entity may own or control in a particular financial instrument. All positions owned or controlled by the same person or entity, even if in different accounts, may be aggregated for purposes of determining whether the applicable position limits have been exceeded. Thus, even if the Master Fund does not intend to exceed applicable position limits, it is possible that different accounts managed by the Investment Manager or its affiliates may be aggregated. If at any time positions managed by the Investment Manager were to exceed applicable position limits, the Investment Manager would be required to liquidate positions, which might include positions of the Master Fund, to the extent necessary to come within those limits. Further, to avoid exceeding the position limits, the Master Fund might have to forgo or modify certain of its contemplated trades.

Dodd-Frank significantly expanded the scope of the CFTC's authority and obligation to require reporting of, and adopt limits on, the size of positions that market participants may own or control in commodity futures and futures options contracts and swaps. Dodd-Frank also narrowed existing exemptions from such position limits for a broad range of risk management transactions.

In accordance with the requirements of Dodd-Frank, the CFTC has proposed speculative position limits on listed futures and options on physical commodities and economically equivalent over-the-counter derivatives; position limits applicable to swaps that are economically equivalent to United States listed futures and futures options contracts, including contracts on non-physical commodities, such as rates, currencies, equities and credit default swaps; and aggregate position limits for a broad range of derivatives contracts based on the same underlying commodity, including swaps and futures and futures options contracts. While certain persons, contracts or transactions or classes

thereof are exempt from the speculative position limit requirements, such position aggregation requirements may further restrict the swap positions that the Master Fund may enter into or require additional filings, policies and monitoring.

The full impact of these recent changes to aggregation and whether the proposed changes to position limits themselves will take effect are not known at this time. Individually and collectively, if these changes take effect, they could increase the costs to the Master Fund of maintaining positions in commodity futures and futures option contracts and swaps, reduce the level of exposure the Master Fund is able to obtain (whether for risk management or investment purposes) through commodity futures and futures option contracts and swaps. These changes could also impair liquidity in certain swaps and adversely affect the quality of execution pricing obtained by the Master Fund, all of which could adversely impact the Master Fund's investment returns.

Prime Brokers. The Master Fund will rank as an unsecured creditor to each of its prime brokers in relation to assets that each such prime broker borrows, lends or otherwise uses and, in the event of the insolvency of a prime broker, the Master Fund might not be able to recover equivalent assets in full. In addition, if applicable law permits, cash that a prime broker holds or receives on the Master Fund's behalf may not be treated by the prime broker as client money, may not be segregated from the prime broker's own cash and may be used by the prime broker in the course of its investment business. In such event, the Master Fund will rank as one of the prime broker's general creditors.

Counterparty Risk. Some of the markets in which the Master Fund may effect transactions are "over-the-counter" or "interdealer" markets. The participants in such markets are typically not subject to credit evaluation and regulatory oversight as are members of "exchange-based" markets. This exposes the Master Fund to the risk that a counterparty will not settle a transaction in accordance with its terms and conditions because of a dispute over the terms of the contract (whether or not bona fide) or because of a credit or liquidity problem, thus causing the Master Fund to suffer a loss. Such "counterparty risk" is accentuated for contracts with longer maturities where events may intervene to prevent settlement, or where the Master Fund has concentrated its transactions with a single or small group of counterparties. The Master Fund is not restricted from dealing with any particular counterparty or from concentrating any or all of its transactions with one counterparty. Moreover, the Master Fund's internal credit function, which evaluates the creditworthiness of its counterparties, may prove insufficient. The lack of a complete and "foolproof" evaluation of the financial capabilities of the Master Fund's counterparties and the absence of a regulated market to facilitate settlement may increase the potential for losses by the Master Fund.

Undervalued Securities. The Master Fund may invest in undervalued securities. The identification of investment opportunities in misvalued securities is a difficult task, and there can be no assurance that such opportunities will be successfully recognized. While purchases of undervalued securities offer opportunities for above-average capital appreciation, these investments involve a high degree of financial risk and can result in substantial losses. Returns generated from the investments of the Master Fund may not adequately compensate for the business and financial risks assumed.

The Master Fund may make certain speculative investments in securities which the Investment Manager believes to be misvalued; however, there can be no assurance that the securities purchased and sold will in fact be misvalued. In addition, the Master Fund may be required to maintain positions in such securities for a substantial period of time before realizing their anticipated value. During this period, a portion of the capital of the Master Fund may be committed to the securities, thus possibly preventing the Master Fund from investing in other opportunities.

Small and Medium Capitalization Companies. While the Investment Manager believes securities in companies with small and medium capitalizations often provide significant potential for appreciation, the securities of certain companies, particularly smaller-capitalization companies, involve higher risks in some respects than do investments in securities of larger companies. For example, prices of small-capitalization and even medium-capitalization securities are often more volatile than prices of large-capitalization securities and the risk of bankruptcy or insolvency of many smaller companies (with the attendant losses to investors) is higher than for larger, "blue-chip" companies. In addition, due to thin trading in the securities of some small-capitalization companies, an investment in those companies may be illiquid.

Senior Loans Risk. Senior loans are usually rated below investment grade or may also be unrated. As a result, the risks associated with senior loans are similar to the risks of below investment grade fixed income instruments, although senior loans are senior and secured in contrast to other below investment grade fixed income instruments, which are often subordinated or unsecured. Investment in senior loans rated below investment grade is considered speculative because of the credit risk of their issuers. Such companies are more likely than investment grade issuers to default on their payments of interest and principal owed to the Master Fund, and such defaults could have a materially adverse effect on the Master Fund's performance. An economic downturn would generally lead to a higher non-payment rate, and a senior loan may lose significant market value before a default occurs. Moreover, any specific collateral used to secure a senior loan may decline in value or become illiquid, which would adversely affect the senior loan's value. Senior loans are subject to a number of risks described elsewhere in this Memorandum, including liquidity risk and the risk of investing in below investment grade fixed income instruments.

There may be less readily available and reliable information about most senior loans than is the case for many other types of securities, including securities issued in transactions registered under the Securities Act of 1933, as amended, or registered under the Exchange Act of 1934, as amended. As a result, the Investment Manager will rely primarily on its own evaluation of a borrower's credit quality rather than on any available independent sources. Therefore, the Master Fund will be particularly dependent on the analytical abilities of the Investment Manager.

In general, the secondary trading market for senior loans is not well developed. No active trading market may exist for certain senior loans, which may make it difficult to value them. Illiquidity and adverse market conditions may mean that the Master Fund may not be able to sell senior loans quickly or at a fair price. To the extent that a secondary market does exist for certain senior loans the market for them may be subject to irregular trading activity, wide bid/ask spreads and extended trade settlement periods.

Variable Interest Rate Risk. Because senior loans with floating or variable rates reset their interest rates periodically, changes in prevailing interest rates can be expected to cause some fluctuations in the value of the Master Fund's investments. Similarly, a sudden and significant increase in market interest rates may cause a decline in the value of the Master Fund's investments. In addition, senior loans or similar securities may allow the borrower or issuer to opt between LIBOR-based interest rates and interest rates based on bank prime rates, which may have an impact on value of the Master Fund's investments.

Bank Loans. The Master Fund's investment program will include investments in significant amounts of Bank Loans and participations. These obligations are subject to unique risks, including: (i) the possible invalidation of an investment transaction as a fraudulent conveyance under relevant creditors' rights laws; (ii) so-called lender-liability claims by the issuer of the obligations; (iii)

environmental liabilities that may arise with respect to collateral securing the obligations; and (iv) limitations on the ability of the Master Fund to directly enforce its rights with respect to participations. In analyzing each Bank Loan or participation, the Investment Manager compares the relative significance of the risks against the expected benefits of the investment. Successful claims by third parties arising from these and other risks will be borne by the Master Fund.

DIP Loans. From time to time, the Master Fund may invest in loans to companies that have filed for protection under Chapter 11 of the U.S. Bankruptcy Code, as amended. DIP loans are typically asset-based, revolving working-capital facilities put into place at the outset of a Chapter 11 bankruptcy to provide both immediate cash as well as ongoing working capital during the reorganization process. Such loans are risky and present significant exposure for default risk to the Master Fund.

Adjustments to Terms of Fund Investments. The terms and conditions of loan agreements and related assignments may be amended, modified or waived only by the agreement of the lenders. Generally, any such agreement must include a majority or a super majority (measured by outstanding loans or commitments) or, in certain circumstances, a unanimous vote of the lenders. Consequently, the terms and conditions of the payment obligation arising from loan agreements could be modified, amended or waived in a manner contrary to the preferences of the Master Fund if a sufficient number of the other lenders concurred with such modification, amendment or waiver. There can be no assurance that any obligations arising from a loan agreement will maintain the terms and conditions to which the Master Fund originally agreed.

The exercise of remedies may also be subject to the vote of a specified percentage of the lenders thereunder. The Investment Manager will have the authority to cause the Master Fund to consent to certain amendments, waivers or modifications to the Master Fund's investments requested by obligors or the lead agents for loan syndication agreements. The Investment Manager may, in accordance with its investment management standards, cause the Master Fund to extend or defer the maturity, adjust the outstanding balance of any investment, reduce or forgive interest or fees, release material collateral or guarantees, or otherwise amend, modify or waive the terms of any related loan agreement, including the payment terms thereunder. The Investment Manager will make such determinations in accordance with its investment management standards. Any amendment, waiver or modification of the terms of an investment could adversely impact the Master Fund's investment returns.

Prepayments. Certain of the Master Fund's investments may be prepaid more quickly than expected. Prepayment rates are influenced by changes in interest rates and a variety of economic, geographic and other factors beyond the Master Fund's control and consequently cannot be predicted with certainty. Early prepayments give rise to increased re-investment risk, as the Master Fund might realize excess cash earlier than it expected. If the Master Fund is unable to reinvest the principle portion of a prepayment in a new investment with an expected rate of return at least equal to that of the investment repaid, this may reduce the Master Fund's net investment income and, consequently, could have an adverse impact on the Fund's ability to make distributions.

Investments in Loans Secured by Real Estate. While direct real estate investment is not intended to be the focus of the Master Fund, it is possible that, from time to time, the Master Fund may, as a result of default, foreclosure or otherwise, hold real estate assets. Special risks associated with such investments include changes in the general economic climate or local conditions (such as an oversupply of space or a reduction in demand for space), competition based on rental rates,

attractiveness and location of the properties, changes in the financial condition of tenants, and changes in operating costs. Real estate values are also affected by such factors as government regulations (including those governing usage, improvements, zoning and taxes), interest rate levels, the availability of financing and potential liability under changing environmental and other laws. Of particular concern may be those mortgaged properties which are, or have been, the site of manufacturing, industrial or disposal activity. Such environmental risks may give rise to a diminution in the value of property (including real property securing any portfolio investment) or liability for cleanup costs or other remedial actions, which liability could exceed the value of such property or the principal balance of the related portfolio investment. In certain circumstances, a lender may choose not to foreclose on contaminated property rather than risk incurring liability for remedial actions.

Limitations on the Enforcement of Creditor's Rights. The Master Fund's investments may or may not be secured by mortgages, charges, pledges, liens or other security interests. Depending on the jurisdiction in which such security interests are created, enforcement of such security interests may be a complicated and difficult process. Any attempt by the Fund to enforce its rights against the obligor or to realize value from any security interests in connection with a credit investment will be subject to numerous risks, delays and uncertainties, including those related to the validity or enforceability of the Fund's claims, the maintenance of the anticipated priority and perfection of any security interests, the effect of any bankruptcy or insolvency laws, disputes among different classes of creditors, the possibility of counterclaims or defenses, practical difficulties and costs in litigating and enforcing claims in foreign jurisdictions, unfriendly venues for litigation and many others. All of these risks are magnified by the political and legal environment in many emerging markets. As a result, there can be no assurance that the Fund will be able to enforce its legal rights to the extent expected.

Environmental Hazards. Under environmental laws enacted by the United States and the various states, owners of property may be liable for the cleanup and removal of hazardous substances even where the owner was not responsible for placing the hazardous substances on the property or where the property was contaminated prior to the time the owner took title. The kinds of hazardous substances for which liability may be incurred include, among other things, chemicals and other materials commonly used by small businesses and manufacturing operations. The costs of removal and clean-up of hazardous substances and wastes can be extremely expensive and, in some cases, can exceed the value of a property. If any property acquired by the Master Fund through foreclosure or otherwise subsequently were found to have an environmental problem, such acquiring entity could incur substantial costs and suffer a complete loss of its investment in such property as well as of other assets. Similarly, real estate is subject to loss due to so-called "special hazards" (e.g., floods, earthquakes and hurricanes). It may be impractical or impossible to fully insure against such events and, should such an event occur, the Master Fund could incur substantial costs and suffer a loss of its investment in such property.

Fraud. Of paramount concern in lending is the possibility of material misrepresentation or omission on the part of the borrower. Such inaccuracy or incompleteness may adversely affect the valuation of the collateral underlying the loans or may adversely affect the ability of the Master Fund to perfect or effectuate a lien on the collateral securing the loan. The Master Fund will rely upon the accuracy and completeness of representations made by borrowers to the extent reasonable, but cannot guarantee such accuracy or completeness. Under certain circumstances, payments to the Master Fund may be reclaimed if any such payment or distribution is later determined to have been a fraudulent conveyance or a preferential payment.

Debt Securities. The Master Fund intends to invest in bonds or other fixed income securities, including, without limitation, commercial paper and "higher yielding" (and, therefore, higher risk) debt securities. It is likely that a major economic recession could disrupt severely the market for such securities and may have an adverse impact on the value of such securities. In addition, it is likely that any such economic downturn could adversely affect the ability of the issuers of such securities to repay principal and pay interest thereon and increase the incidence of default for such securities.

Investing in High Yield Securities. The Master Fund intends to invest in high-yield securities. Such securities are generally not exchange traded and, as a result, these instruments trade in the over-the-counter marketplace, which is less transparent than the exchange-traded marketplace. In addition, the Master Fund will invest in bonds of issuers that do not have publicly traded equity securities, making it more difficult to hedge the risks associated with such investments. High-yield securities face ongoing uncertainties and exposure to adverse business, financial or economic conditions which could lead to the issuer's inability to meet timely interest and principal payments. The market values of certain of these lower-rated and unrated debt securities tend to reflect individual corporate developments to a greater extent than do higher-rated securities which react primarily to fluctuations in the general level of interest rates, and tend to be more sensitive to economic conditions than are higher-rated securities. Companies that issue such securities are often highly leveraged and may not have available to them more traditional methods of financing. It is possible that a major economic recession could disrupt severely the market for such securities and may have an adverse impact on the value of such securities. In addition, it is possible that any such economic downturn could adversely affect the ability of the issuers of such securities to repay principal and pay interest thereon and increase the incidence of default of such securities.

Timing Risk. Many agency, corporate and municipal bonds, and all mortgage-backed securities, contain a provision that allows the issuer to "call" all or part of the issue before the bond's maturity date. The issuer usually retains the right to refinance the bond in the future if market interest rates decline below the coupon rate. There are three disadvantages to the call provision. First, the cash flow pattern of a callable bond is not known with certainty. Second, because the issuer will call the bonds when interest rates have dropped, the Master Fund is exposed to reinvestment rate risk, i.e., the Master Fund will have to reinvest the proceeds received when the bond is called at lower interest rates. Finally, the capital appreciation potential of a bond will be reduced because the price of a callable bond may not rise much above the price at which the issuer may call the bond.

Maturity Risk. In certain situations, the Master Fund may purchase a bond of a given maturity as an alternative to another bond of a different maturity. Ordinarily, under these circumstances, the Master Fund will make an adjustment to account for the differential interest rate risks in the two bonds. This adjustment, however, makes an assumption about how the interest rates at different maturities will move. To the extent that the yield movements deviate from this assumption, there is a yield-curve or maturity risk. Another situation where yield-curve risk should be considered is in the analysis of bond swap transactions where the potential incremental returns are dependent entirely on the parallel shift assumption for the yield curve.

Revolving Credit Facilities. From time to time the Master Fund may incur contingent liabilities in connection with an investment. For example, the Master Fund may purchase from a lender a revolving credit facility that has not yet been fully drawn. If the borrower subsequently draws down on the facility, the Master Fund would be obligated to fund the amounts due.

Investments in Stressed Debt. The Master Fund is authorized to invest in securities and other obligations of stressed issuers. Stressed issuers are issuers that are not yet deemed distressed or

bankrupt and whose debt securities are trading at a discount to par, but not yet at distressed levels. An example would be an issuer that is in technical default of its credit agreement, or undergoing strategic or operational changes, which results in market pricing uncertainty.

Investments in Distressed Securities. The Master Fund may invest in securities and obligations of issuers in weak financial condition, experiencing poor operating results, having substantial capital needs or negative net worth, facing special competitive or product obsolescence problems, including companies involved in bankruptcy or other reorganization and liquidation proceedings. These securities are likely to be particularly risky investments although they also may offer the potential for correspondingly high returns. Among the risks inherent in investments in troubled entities is the fact that it frequently may be difficult to obtain information as to the true condition of such issuers. Such investments may also be adversely affected by laws relating to, among other things, fraudulent transfers and other voidable transfers or payments, lender liability and the bankruptcy court's power to disallow, reduce, subordinate or disenfranchise particular claims. Such companies' securities may be considered speculative, and the ability of such companies to pay their debts on schedule could be affected by adverse interest rate movements, changes in the general economic climate, economic factors affecting a particular industry or specific developments within such companies. In addition, there is no minimum credit standard that is a prerequisite to the Master Fund's investment in any instrument, and a significant portion of the obligations and securities in which the Master Fund invests may be less than investment grade. The level of analytical sophistication, both financial and legal, necessary for successful investment in companies experiencing significant business and financial difficulties is unusually high. There is no assurance that the Investment Manager will correctly evaluate the value of the assets collateralizing the Master Fund's loans or the prospects for a successful reorganization or similar action. In any reorganization or liquidation proceeding relating to a company in which the Master Fund invests, the Master Fund may lose its entire investment, may be required to accept cash or securities with a value less than the Master Fund's original investment and/or may be required to accept payment over an extended period of time. Under such circumstances, the returns generated from the Master Fund's investments may not compensate the investors adequately for the risks assumed.

In liquidation (both in and out of bankruptcy) and other forms of corporate reorganization, there exists the risk that the reorganization either will be unsuccessful (due to, for example, failure to obtain requisite approvals), will be delayed (for example, until various liabilities, actual or contingent, have been satisfied) or will result in a distribution of cash or a new security the value of which will be less than the purchase price to the Master Fund of the security in respect to which such distribution was made.

Troubled Origination. The investments chosen by the Investment Manager may have been originated by financial institutions or other entities that are, or may in the future be, insolvent, in serious financial difficulty, or no longer in existence. As a result, the standards by which such investments were originated, the recourse to the selling institution, or the standards by which such investments are being serviced or operated may be adversely affected.

Issuer Default Risk; Negative Loan Performance. There are varying sources of statistical default and recovery rate data for commercial loans and numerous methods for measuring default and recovery rates. The levels of defaults and delinquencies with respect to loans have been increasing, and slowing economic activity continues to contribute to a decline in overall credit quality. The historical performance of the loan market is not necessarily indicative of its future performance, and there is no way to determine whether such trends in the credit markets will improve or worsen in the future.

A substantial portion of the Master Fund's income is expected to be derived, directly or indirectly, from repayments of principal and interest received in respect of debt securities. A wide range of factors may adversely affect an obligor's ability to make repayments, including: adverse changes in the financial condition of such obligor or the industries or regions in which it operates; the obligor's exposure to counterparty risk; systemic risk in the financial system and settlement; changes in law or taxation; changes in governmental regulations or other policies; natural disasters; terrorism; social unrest, civil disturbances; or general economic conditions. Default rates tend to accelerate during economic downturns. A continuing decreased ability of borrowers to obtain refinancing may result in a further economic decline that could delay an economic recovery and cause a further deterioration in loan performance generally.

To the extent the Master Fund invests in debt securities secured by collateral, there can be no assurance that the liquidation of any collateral securing any of the Master Fund's investments would satisfy the borrower's obligation in the event of non-payment of scheduled interest or principal payments, or that the collateral could be readily liquidated. In the event of bankruptcy or insolvency of a borrower, the Master Fund could experience delays or limitations with respect to its ability to realize the benefits of the collateral securing such investment. The collateral securing an investment may lose all or substantially all of its value in the event of the bankruptcy or insolvency of a borrower.

Any defaults will have a negative impact on the value of the Master Fund's investments and may reduce the return that such Master Fund receives from its investments in certain circumstances. While some amount of defaults is expected to occur in the Master Fund's portfolio, in the event that the Master Fund elects to apply leverage to an investment, defaults in or declines in the value of the portfolio investments in excess of these expected amounts may result in breaches of covenants under applicable financing arrangements, triggering credit enhancement requirements or accelerated repayment provisions and, if not cured within the relevant grace periods, permitting the finance provider to enforce its security over all the assets of the Master Fund.

In the case of debt ranking equally with the loans or debt securities in which the Master Fund invests, the Master Fund would have to share on an equal basis any distributions with other creditors holding such debt in the event of an insolvency, liquidation, dissolution, reorganization or bankruptcy of the relevant company's debt securities. Each jurisdiction in which the Master Fund invests has its own insolvency laws. As a result, investments in similarly situated companies in different jurisdictions may confer different rights in the event of insolvency.

Post-Reorganization Securities. The Master Fund will hold debt and equity of companies as a result of the recapitalization or restructuring of debt obligations. Investments in the debt or equity of companies involved in reorganization proceedings typically entail a number of risks that do not normally apply to investments in financially sound companies. For example, if the Investment Manager's evaluation of the anticipated outcome of a reorganization or the timing of such outcome should prove incorrect, the Master Fund could experience losses. Moreover, post-reorganization securities can be subject to heavy selling or downward pricing pressure after the completion of a bankruptcy reorganization or restructuring. A wide variety of considerations make any evaluation of the outcome of an investment in such a company uncertain. Such considerations include, for example, the possibility of litigation between the participants in a reorganization or liquidation proceeding or a requirement to obtain mandatory or discretionary consents from various governmental authorities or others. The uncertainties inherent in evaluating such investments may be increased by legal and practical considerations which limit the access of the Investment Manager to reliable and timely information concerning material developments affecting a company, or which cause lengthy delays in the completion of a reorganization or liquidation proceeding. Competition from other investors may

also render it difficult or impossible for the Master Fund to achieve intended results or promptly effect transactions.

Insolvency and Enforceability of Security. The Master Fund's investments may be secured by mortgages, charges, pledges, liens or other security interests. Depending on the jurisdiction in which such security interests are created, enforcement of such security interests may be a complicated and difficult process. For example, enforcement of security interests in certain jurisdictions may require a court order and a sale of the secured property through public bidding or auction. In addition, some jurisdictions grant courts the power to declare security interest arrangements to be void if they deem the security interest to be excessive.

Risks Associated with Bankruptcy Cases. Many of the events within a bankruptcy case are adversarial and often beyond the control of the creditors. While creditors generally are afforded an opportunity to object to significant actions, there can be no assurance that a bankruptcy court would not approve actions which may be contrary to the interests of the Master Fund. Furthermore, there are instances where creditors and equity holders lose their ranking and priority as such if they are considered to have taken over management and functional operating control of a debtor.

Generally, the duration of a bankruptcy case can only be roughly estimated. The reorganization of a company usually involves the development and negotiation of a plan of reorganization, plan approval by creditors and confirmation by the bankruptcy court. This process can involve substantial legal, professional and administrative costs to the company and the Master Fund; it is subject to unpredictable and lengthy delays; and during the process the company's competitive position may erode, key management may depart and the company may not be able to invest adequately. In some cases, the company may not be able to reorganize and may be required to liquidate assets. Although the Master Fund intends to invest primarily in debt, the debt of companies in financial reorganization will, in most cases, not pay current interest, may not accrue interest during reorganization and may be adversely affected by an erosion of the issuer's fundamental value. Such investments can result in a total loss of principal.

U.S. bankruptcy law permits the classification of "substantially similar" claims in determining the classification of claims in a reorganization for purpose of voting on a plan of reorganization. Because the standard for classification is vague, there exists a significant risk that the Master Fund's influence with respect to a class of securities can be lost by the inflation of the number and the amount of claims in, or other gerrymandering of, the class. In addition, certain administrative costs and claims that have priority by law over the claims of certain creditors (for example, claims for taxes) may be quite high.

Furthermore, there are instances where creditors and equity holders lose their ranking and priority as such when they take over management and functional operating control of a debtor. In those cases where the Master Fund, by virtue of such action, is found to exercise "domination and control" of a debtor, the Master Fund may lose its priority if the debtor can demonstrate that its business was adversely impacted or other creditors and equity holders were harmed by the Master Fund.

The Master Fund may invest in companies based outside the United States. Investment in the debt of financially distressed companies domiciled outside the United States involves additional risks. Bankruptcy law and process may differ substantially from that in the United States, resulting in greater uncertainty as to the rights of creditors, the enforceability of such rights, reorganization timing and the

classification, seniority and treatment of claims. In certain developing countries, although bankruptcy laws have been enacted, the process for reorganization remains highly uncertain.

The Investment Manager, on behalf of the Master Fund, may elect to serve on creditors' committees, equity holders' committees or other groups to ensure preservation of the Master Fund's position as a creditor or equity holder. A member of any such committee or group may owe certain obligations generally to all parties similarly situated that the committee represents. If the Investment Manager concludes that its obligations owed to the other parties as a committee or group member conflict with its duties owed to the Master Fund, it will resign from that committee or group, and the Master Fund may not realize the benefits, if any, of participation on the committee or group. In addition, and also as discussed above, if the Master Fund is represented on a committee or group, it may be restricted or prohibited under applicable law from disposing of or increasing its investments in such company while it continues to be represented on such committee or group.

The Master Fund may purchase creditor claims subsequent to the commencement of a bankruptcy case. Under judicial decisions, it is possible that such purchase may be disallowed by the bankruptcy court if the court determines that the purchaser has taken unfair advantage of an unsophisticated seller, which may result in the rescission of the transaction (presumably at the original purchase price) or forfeiture by the purchaser.

Equitable Subordination. Under common law principles that in some cases form the basis for lender liability claims, if a lender (a) intentionally takes an action that results in the undercapitalization of a borrower or issuer to the detriment of other creditors of such borrower or issuer, (b) engages in other inequitable conduct to the detriment of such other creditors, (c) engages in fraud with respect to, or makes misrepresentations to, such other creditors or (d) uses its influence as a stockholder to dominate or control a borrower or issuer to the detriment of other creditors of such borrower or issuer, a court may elect to subordinate the claim of the offending lender or bondholder to the claims of the disadvantaged creditor or creditors (a remedy called "equitable subordination"). The Master Fund does not intend to engage in conduct that would form the basis for a successful cause of action based upon the equitable subordination doctrine; however, because of the nature of the debt obligations, the Master Fund may be subject to claims from creditors of an obligor that debt obligations of such obligor which are held by the issuer should be equitably subordinated.

Liability Following the Disposal of Investments. While the Master Fund may hold certain of its investments to maturity, the Master Fund may dispose of investments in some circumstances prior to termination and, in connection therewith, may be required to pay damages to the extent that any representations or warranties given in connection with such investments turn out to be inaccurate. The Master Fund may become involved in disputes or litigation concerning such representations and warranties and may be required to make payments to third parties as a result of such disputes or litigation. In the event the Master Fund does not have cash available to conduct such litigation or make such payments, it may be forced to sell investments to obtain funds. Such sales may be effected on unsatisfactory terms.

Potential Involvement in Litigation. In the event that the Master Fund holds investments in distressed investments, there is a possibility that the Investment Manager may participate in restructuring activities, it is possible that the Master Fund may become involved in litigation respecting creditor disputes and similar issues among classes of claimants. Litigation entails expense and the possibility of counterclaims against the Master Fund including the Master Fund GP and the Investment Manager and ultimately judgments may be rendered against the Master Fund for which the Master Fund does not carry insurance.

Directorships on Boards of Portfolio Companies. The Principal and other members and employees of the Investment Manager or its designees may serve as directors of companies the securities of which are purchased or sold on behalf of the Master Fund and may be compensated for such service. In the event that material non-public information obtained with respect to such companies becomes subject to trading restrictions pursuant to the internal trading policies of such companies or as a result of applicable law or regulations, the Master Fund may be prohibited for a period of time from purchasing or selling the securities of such companies, which prohibition may have an adverse effect on the Master Fund.

Material, Nonpublic Information. From time to time, certain personnel of the Investment Manager may come into possession of material, nonpublic information (including in connection with other investments or proposed investments not intended to benefit the Master Fund) that would limit the Investment Manager's ability to buy and sell investments. The Master Fund's investment flexibility may be constrained as a consequence of the Investment Manager's inability to take certain actions because of such information. The Master Fund may experience losses if it is unable to sell an investment that it holds because certain personnel of the Investment Manager have obtained material, nonpublic information about such investment.

Investments in Structured Products: The Master Fund may invest in securities backed by, or representing interests in, certain underlying instruments ("***Structured Products***"). The cash flow on the underlying instruments may be apportioned among the Structured Products to create securities with different investment characteristics such as varying maturities, payment priorities and interest rate provisions, and the extent of the payments made with respect to the Structured Products is dependent on the extent of the cash flow on the underlying instruments. The Master Fund may invest in Structured Products that represent derived investment positions based on relationships among different markets or asset classes.

The performance of a Structured Product will be affected by a variety of factors, including its priority in the capital structure of the issuer, the availability of any credit enhancement, the level and timing of payments and recoveries on and the characteristics of the underlying receivables, loans or other assets that are being securitized, remoteness of those assets from the originator or transferor, the adequacy of and ability to realize upon any related collateral and the capability of the servicer of the securitized assets.

Investments in Collateralized Loan Obligations. The Master Fund may look to invest in CLOs diversified across maturities, underlying assets, tranches (debt, mezzanine and equity) and managers. In addition to implementing its investment process and utilizing proprietary analytical tools to evaluate and select investments for the Master Fund, the Investment Manager uses its market knowledge and industry position to add value by addressing what it believes are material inefficiencies of the existing CLO execution process. For example, within the primary new issuance market the Investment Manager will look to invest in CLOs where it can leverage its expertise and market relationships to achieve the timing, structural and financial terms especially advantageous to the Investment Manager's investments. In addition, the Investment Manager will look to assess value dislocations of CLO and other structured investments within the secondary market, as the Investment Manager believes structured products markets have inherent inefficiencies which often cause significant differentials between intrinsic value and market value. Such inefficiencies are typically driven by factors such as (i) little secondary market liquidity, (ii) complex valuation requirements for both underlying collateral as well as derivative instruments, and (iii) explosive growth of the market.

Short-Swing Liability and Other Limitations. From time to time, the Master Fund, acting alone or as part of a group, may acquire beneficial ownership of more than 10% of a certain class of securities of a public company, or may place a director on the board of directors of such a company. As a result, under Section 16 of the Securities Exchange Act of 1934, as amended, the Master Fund may be subject to certain additional reporting requirements and may be required to disgorge certain short-swing profits arising from purchases and sales of such securities. In addition, in such circumstances the Master Fund will be prohibited from entering into a short position in such issuer's securities, and therefore limited in its ability to hedge such investments.

Fixed Interest Rate Risk. The value of the fixed rate securities in which the Master Fund may invest generally will have an inverse relationship with interest rates. Accordingly, if interest rates rise the value of such securities may decline. In addition, to the extent that the receivables or loans underlying specific securities are prepayable without penalty or premium, the value of such securities may be negatively affected by increasing prepayments, which generally occur when interest rates decline.

Other Instruments. The Master Fund may take advantage of opportunities with respect to certain other instruments that are not presently contemplated for use or that are currently not available, but that may be developed, to the extent such opportunities are both consistent with the investment objective of the Master Fund and legally permissible. Special risks may apply to instruments that are invested in by the Master Fund in the future that cannot be determined at this time or until such instruments are developed or invested in by the Master Fund.

Long-Biased Investment Program. The Master Fund expects that its strategy will have a long bias. Therefore, any decline in the overall market may result in a decline in the value of the Master Fund's assets.

Certain Regulatory Risks

Regulatory Risks of Commingled Loan Funds. Legal, tax and regulatory changes could occur that may adversely affect the Fund. The regulatory environment for commingled loan funds is evolving and changes in the regulation of such funds may adversely affect the value of investments held by the Master Fund. In addition, the securities markets are subject to comprehensive statutes, regulations and margin requirements. The United States Securities and Exchange Commission, other regulators and self-regulatory organizations and exchanges are authorized to take extraordinary actions in the event of market emergencies. The effect of any future regulatory change on the Fund could be substantial and adverse.

The Fund and/or the Investment Manager also may be subject to regulation in jurisdictions in which the Fund and the Investment Manager engage in business. Investors should understand that the Fund's business is dynamic and is expected to change over time. Therefore, the Fund may be subject to new or additional regulatory constraints in the future. This Memorandum cannot address or anticipate every possible current or future regulation that may affect the Investment Manager, the Fund or their businesses. Such regulations may have a significant impact on shareholders or the operations of the Fund, including, without limitation, restricting the types of investments the Fund may make, preventing the Fund from exercising its voting rights with regard to certain financial instruments, requiring the Fund to disclose the identity of its investors or otherwise. The Investment Manager may, in its sole discretion, cause the Fund to be subject to such regulations if it believes that an investment or business activity is in the Fund's interest, even if such regulations may have a detrimental effect on

one or more shareholders. Prospective investors are encouraged to consult their own advisors regarding an investment in the Fund.

Absence of Regulatory Oversight. While the Fund may be considered similar to an investment company, it is not required and does not intend to register as such under the U.S. Investment Company Act of 1940, as amended (the "***Company Act***"), and, accordingly, the provisions of the Company Act (which may provide certain regulatory safeguards to investors) are not applicable to investors in the Fund. The Fund will not maintain custody of its securities or place its securities in the custody of a bank or a member of a national securities exchange in the manner required of registered investment companies under rules promulgated by the SEC. A registered investment company which places its securities in the custody of a member of a national securities exchange is required to have a written custodian agreement, which provides that securities held in custody will be at all times individually segregated from the securities of any other person and marked to clearly identify such securities as the property of such investment company, and which contains other provisions complying with SEC regulations. The Fund generally will maintain such accounts at brokerage firms that do not separately segregate such assets as would be required in the case of registered investment companies. Under the provisions of the Securities Investor Protection Act of 1970, as amended, the bankruptcy of any such brokerage firm might have a greater adverse effect on the Fund than would be the case if the accounts were maintained to meet the requirements applicable to registered investment companies.

Forward-Looking Statements. Certain statements contained in this Memorandum, including without limitation, statements containing the words "believes," "anticipates," "intends," "expects," and words of similar import constitute "forward-looking statements." Such forward-looking statements involve known and unknown risks, uncertainties and other factors that may cause the actual results, performance or achievements of the Fund to be materially different from any future results, performance or achievements expressed or implied by such forward-looking statements. Certain of these factors are discussed in more detail elsewhere in this Memorandum, including without limitation under "*Summary of Terms*," "*Certain Risk Factors*," and "*Investment Program*." Given these uncertainties, prospective investors are cautioned not to place undue reliance on such forward-looking statements. The Investment Manager and the Fund disclaim any obligation to update any such factors or to announce the result of any revisions to any of the forward-looking statements contained herein to reflect future events or developments.

Impact of U.S. Presidential Election. On January 20, 2017, Donald Trump became President of the United States of America. President Trump and other members of the Republican Party have proposed to reverse some of the recent regulation of the financial industry and to change tax policy. If some of these proposals were enacted, banks could dramatically increase their lending practices and accept additional types of collateral, borrowers could reduce their demand for debt financing, certain investment advisers could de-register with SEC and portfolio companies that are net importers or hold significant assets outside of the United States could be subject to increased tax liability. The effect of any such regulatory or tax changes on the Master Fund and the markets in which it trades and invests is uncertain.

Evolving Regulatory Risks of Private Investment Funds. The regulatory environment for private investment funds is evolving, and changes in the regulation of private investment funds and their advisers may adversely affect the value of investments held by the Master Fund.

Dodd-Frank, which was enacted in July 2010, regulates markets, market participants and financial instruments that were historically unregulated and has substantially altered the regulation of many other markets, market participants and financial instruments. Certain provisions of Dodd-Frank

subject registered investment advisers to requirements to keep records and to report information to the SEC, which could in turn be supplied to the Board of Governors of the Federal Reserve, a new Financial Services Oversight Council or other U.S. governmental agencies or Congress. Under Dodd-Frank, the information includes, among other things, the amount of assets under management, use of leverage (including off-balance sheet leverage), counterparty credit risk exposures, trading and investment positions, and trading practices. All such records are subject to examination by the SEC at any time. It is anticipated that there may be significant changes to the financial regulatory environment as a result of the outcome of the recent U.S. elections. There is currently pending legislation in U.S. Congress which if enacted would result in the repeal of portions of Dodd-Frank which in turn would have a significant impact on the regulatory environment for private investment funds. In addition, the impact of the legislation on current and future rulemaking by various regulators under Dodd-Frank is difficult to predict. It is possible that rules that have been proposed by various regulators, which had been anticipated to take effect previously, may no longer be implemented in their proposed form or at all. Further, there may also be substantial changes in the enforcement and interpretation of existing statutes and rules by governmental regulatory authorities or self-regulatory organizations that supervise the financial markets. The effect of future regulatory change on the Fund and the Master Fund and their operations is uncertain. Prospective investors should seek, and must rely on, the advice of their own advisers with respect to the possible impact on its investment of any future proposed legislation or administrative or judicial action.

Enhanced Regulation of Swaps. The recently enacted Wall Street Transparency and Accountability Act of 2010 (the "***WSTAA***") will, subject to exceptions for certain hedgers, (1) require swaps accepted for clearing by a derivatives clearing organization (a "***DCO***") or for trading through a designated contract market or swaps-execution facility to be so cleared and traded, (2) require margin for almost all swap transactions, (3) subject traders with a "substantial position" in swaps to registration and regulation requirements as a "major swap participant" or "swap dealer" and (4) impose position limits on swaps either individually or in the aggregate with respect to positions in commodity-futures contracts. Due to the new requirements imposed by the WSTAA, the Master Fund may experience increased transaction costs to pay for the clearing, execution and segregation obligations. In addition, margin requirements may increase once margin is set by DCOs with input from the CFTC, which may limit the Master Fund's ability to engage in leverage and limit the Master Fund's return. The application of position limits to swap contracts may also limit the Master Fund's ability to concentrate in any particular contract or exposure to an underlying commodity and may negatively impact the Master Fund's ability to take advantage of current market trends or conditions. Any tightening in the market for swaps may significantly impact the Master Fund and its returns. In addition, if the Master Fund were deemed to be a swap dealer or a major swap participant under WSTAA, the Master Fund may be required to register with the CFTC and would be subject to a number of regulatory requirements that would significantly impact the Master Fund's legal obligations and its returns.

Contagion Risk Factor. The Fund has the power to issue Shares in classes or series. The Articles provide for the manner in which the liabilities are to be attributed across the various classes or series (liabilities are to be attributed to the specific class or series in respect of which the liability was incurred). However, the Fund is a single legal entity and there is no limited recourse protection for any class or series. Accordingly, all of the assets of the Fund will be available to meet all of its liabilities regardless of the class or series to which such assets or liabilities are attributable. In practice, cross-class or cross-series liability is only expected to arise where liabilities referable to one class or series are in excess of the assets referable to such class or series and it is unable to meet all liabilities attributed to it. In such a case, the assets of the Fund attributable to other classes or series may be

applied to cover such liability excess and the value of the contributing classes or series will be reduced as a result.

Handling of mail. Mail addressed to the Fund and/or the Master Fund and received at its registered office will be forwarded unopened to the forwarding address supplied by the Investment Manager to be dealt with. None of the Fund and/or the Master Fund, its directors, officers, advisors or service providers (including the organization which provides registered office services in the Cayman Islands) will bear any responsibility for any delay howsoever caused in mail reaching the forwarding address. In particular the Directors will only receive, open or deal directly with mail which is addressed to them personally (as opposed to mail which is addressed just to the Fund and/or the Master Fund).

Subscription Monies. Where a subscription for Shares is accepted, the Shares will be treated as having been issued with effect from the relevant subscription date notwithstanding that the subscriber for those Shares may not be entered in the Fund's register of members until after the relevant subscription date. The subscription monies paid by a subscriber for Shares will accordingly be subject to investment risk in the Fund from the relevant subscription date.

Tax Related Risks

Uncertainty and Complexity of Tax Treatment. The tax aspects of an investment in the Fund are complicated and complex and, in many cases, uncertain. Statutory provisions and administrative regulations have been interpreted inconsistently by the courts. Additionally, some statutory provisions remain to be interpreted by administrative regulations. Investors will thus be subject to the risk caused by the uncertainty of the tax consequences with respect to an investment in the Fund. Each prospective investor should have the tax aspects of an investment in the Fund reviewed by professional advisors familiar with such investor's personal tax situation and with the tax laws and regulations applicable to the investor and private investment vehicles. Prospective investors are strongly urged to review the discussion below under "*Tax Considerations*" and "*ERISA and Other Regulatory Considerations*" for a more complete discussion of certain of the tax risks inherent in the acquisition of Shares and to consult their own independent tax advisors.

Risk of Adverse Determination. There can be no assurance that the conclusions set forth in this Memorandum will not be challenged successfully by the U.S. Internal Revenue Service (the "***Service***") or other applicable taxing authority, or significantly modified by new legislation, changes in a taxing authority's positions, or court decisions. The Fund has not applied for, nor does it expect to apply for, any advance rulings from the Service with respect to any of the U.S. federal income tax consequences described in this Memorandum. No representation or warranty of any kind is made by the Fund or the Investment Manager with respect to the U.S. federal income tax consequences relating to an investment in the Fund. The Master Fund may take positions with respect to certain tax issues which depend on legal conclusions not yet resolved by the courts or other applicable taxing authority. Should any such positions be successfully challenged by the Service or other applicable taxing authority, there could be a materially adverse effect on the Master Fund and consequently, the Fund.

Tax Audit. An audit of the Fund by the Service or another taxing authority could result in adjustments to the tax consequences initially reported by the Fund, which examination could affect the after-tax returns of a shareholder's investment in the Fund. If such audit adjustments result in an increase in the Fund's U.S. federal income tax liability for any year, the Fund may also be liable for interest and penalties with respect to the amount of underpayment. The legal and accounting costs incurred in connection with any audit of the Fund's tax returns will be borne by the Fund.

Tax Considerations Taken into Account. The Investment Manager may take tax considerations into account in determining when the Master Fund's investments should be sold or otherwise disposed of, and may assume certain market risk and incur certain expenses in this regard to achieve favorable tax treatment of a transaction.

Tax-Exempt Entities. Certain prospective investors that are tax-exempt for U.S. income tax purposes may be subject to U.S. federal and state laws, rules and regulations that regulate their participation in the Fund, or their engaging directly or indirectly through an investment in the Fund, in certain investment strategies that the Master Fund may utilize from time-to-time (e.g., short-sales of securities and the use of leverage, the purchase and sale of options and limited diversification). While the Fund believes its investment program is generally appropriate for U.S. tax-exempt investors for which an investment in the Fund would otherwise be suitable, each type of tax-exempt organization may be subject to different laws, rules and regulations, and prospective investors should consult with their own advisers as to the advisability and tax consequences of an investment in the Fund. Investments in the Fund by entities subject to ERISA, and other tax-exempt entities, require special consideration. Trustees or administrators of such entities are urged to review carefully the matters discussed in this Memorandum.

Non-U.S. Taxation. With respect to certain countries, there is a possibility of expropriation, confiscatory taxation, imposition of withholding or other taxes on dividends, interest, capital gains or other income, limitations on the removal of funds or other assets of the Master Fund, political or social instability or diplomatic developments that could affect investments in those countries. An issuer of securities may be domiciled in a country other than the country in whose currency the instrument is denominated. The values and relative yields of investments in the securities markets of different countries, and their associated risks, are expected to change independently of each other.

Shareholder Level Taxation. Tax consequences to each shareholder will depend on tax laws in that shareholder's jurisdiction. Shareholders should consult their professional advisors as to the possible tax consequences of subscribing for, buying, holding, selling, transferring or redeeming Shares under the laws of their country of citizenship, residence or domicile.

Tax Changes. Investors will be subject to the risk that changes to the tax law may adversely affect the federal income tax consequences of their investment in the Fund. Changes in existing tax laws or regulations and their interpretation may be enacted after the date of this Memorandum, possibly with retroactive effect, and could alter the income tax consequences of an investment in the Fund. Certain provisions of the U.S. Internal Revenue Code of 1986, as amended (the "***Code***"), may be further amended or interpreted in a manner adverse to the Fund or the Master Fund, in which event any benefits derived from an investment in the Fund may be adversely affected. In addition, significant legislative and budgetary proposals affecting tax laws have been made by the legislative and executive branches of the U.S. federal government. The likelihood of enactment of any such proposals, or any similar proposals, into law is uncertain. The enactment of any such proposals, including subsequent proposals, into law could have material adverse effects on the Fund and/or its shareholders. Enactment of such legislation, or similar legislation, could require significant restructuring of the Fund in order to mitigate such effects.

Recently Enacted Tax Reform Legislation. Recently enacted H.R. 1 (Pub. L. No. 115-97) makes significant changes to the rules potentially applicable to the Fund and/or its investors. Certain of these new rules are complex and, pending guidance that may be forthcoming, the impact on the Fund and its investors may be unclear. Prospective investors should consult their own tax advisers regarding potential changes in any tax laws, potentially with retroactive effect.

The foregoing list of risk factors does not purport to be a complete enumeration or explanation of the risks involved in an investment in the Fund. Prospective investors should read this entire Memorandum and consult with their own advisers before deciding to invest in the Fund. In addition, as the investment program of the Fund develops and changes over time, an investment in the Fund may be subject to additional and different risk factors. No assurance can be made that profits will be achieved or that substantial losses will not be incurred.

In view of the foregoing considerations, an investment in Shares is suitable only for investors who are capable of bearing the relevant investment risks.

Potential Conflicts of Interest

Given the nature and size of Highland Capital Management, L.P.'s ("***Highland Capital***") operations, various potential conflicts of interest arise in connection with its advisory services and the advisory services provided by its affiliates. Information about Highland Capital and its potential conflicts of interest is provided in Highland Capital's Form ADV Part 2 Brochure that can be found by going to https://adviserinfo.sec.gov/IAPD/Default.aspx, searching by firm name and selecting the Part 2 Brochure to be viewed. The Fund is subject to these conflicts of interest, as well as the other items discussed below.

None of the Investment Manager, its affiliates and their respective officers, directors, shareholders, members, partners, personnel and employees (collectively, the "***Highland Group***") is precluded from engaging in or owning an interest in other business ventures or investment activities of any kind, whether or not such ventures are competitive with the Fund or the Master Fund. The Investment Manager is permitted to manage other client accounts, and does manage other client accounts, some of which may have objectives similar or identical to those of the Master Fund, including other collective investment vehicles that may be managed by the Highland Group and in which the Investment Manager or any of its affiliates may have an equity interest.

The Fund will be subject to a number of actual and potential conflicts of interest involving the Highland Group including, among other things, the fact that: (i) the Highland Group conducts substantial investment activities for accounts, funds, collateralized debt obligations that invest in leveraged loans (collectively, "***CDOs***") and other vehicles managed by members of the Highland Group ("***Highland Accounts***") in which the Fund has no interest; (ii) the Highland Group advises Highland Accounts, which utilize the same, similar or different methodologies as the Fund and may have financial incentives (including, without limitation, as it relates to the composition of investors in such funds and accounts or to the Highland Group's compensation arrangements) to favor certain Highland Accounts over the Fund and the Master Fund; (iii) the Highland Group may use the strategy described herein in certain Highland Accounts; (iv) the Investment Manager may give advice and recommend securities to, or buy or sell securities for, the Master Fund, which advice or securities may differ from advice given to, or securities recommended or bought or sold for, Highland Accounts; (v) the Investment Manager has the discretion, to the extent permitted under applicable law, to use its affiliates as service providers to the Fund and the Master Fund and the Master Fund's portfolio investments; (vi) certain investors affiliated with the Highland Group may choose to personally invest only in certain funds advised by the Highland Group and the amounts invested by them in such funds is expected to vary significantly; (vii) the Highland Group and Highland Accounts may actively engage in transactions in the same securities sought by the Master Fund and, therefore, may compete with the Master Fund for investment opportunities or may hold positions opposite to positions maintained on behalf of the Master Fund; and (viii) the Investment Manager will devote to the Master

Fund and the Fund only as much time as the Investment Manager deems necessary and appropriate to manage the Master Fund's and the Fund's business.

The Investment Manager undertakes to resolve conflicts in a fair and equitable basis, which in some instances may mean a resolution that would not maximize the benefit to the Fund's investors.

Allocation of Trading Opportunities

It is the policy of the Investment Manager to allocate investment opportunities fairly and equitably over time. This means that such opportunities will be allocated among those accounts for which participation in the respective opportunity is considered appropriate, taking into account, among other considerations: (i) fiduciary duties owed to the accounts; (ii) the primary mandate of the accounts; (iii) the capital available to the accounts; (iv) any restrictions on the accounts and the investment opportunity; (v) the sourcing of the investment, size of the investment and amount of follow-on available related to the investment; (vi) whether the risk-return profile of the proposed investment is consistent with the account's objectives and program, whether such objectives are considered in light of the specific investment under consideration or in the context of the portfolio's overall holdings; (vii) the potential for the proposed investment to create an imbalance in the account's portfolio (taking into account expected inflows and outflows of capital); (viii) liquidity requirements of the account; (ix) potentially adverse tax consequences; (x) regulatory and other restrictions that would or could limit an account's ability to participate in a proposed investment; and (xi) the need to re-size risk in the account's portfolio.

The Investment Manager has the authority to allocate trades to multiple Highland Accounts on an average price basis or on another basis it deems fair and equitable. Similarly, if an order on behalf of any accounts cannot be fully allocated under prevailing market conditions, the Investment Manager may allocate the trades among different accounts on a basis it considers fair and equitable over time. One or more of the foregoing considerations may (and are often expected to) result in allocations among the Master Fund and one or more Highland Accounts on other than a *pari passu* basis. The Investment Manager will allocate investment opportunities across its accounts for which the opportunities are appropriate, consistent with (i) its internal conflict of interest and allocation policies and (ii) the requirements of the Investment Advisers Act of 1940, as amended. The Investment Manager will seek to allocate investment opportunities among such entities in a manner that is fair and equitable over time and consistent with its allocation policy, a copy of which will be provided upon request. However, there is no assurance that such investment opportunities will be allocated to the Master Fund fairly or equitably in the short-term or over time and there can be no assurance that the Master Fund will be able to participate in all investment opportunities that are suitable for it

The Investment Manager may open "average price" accounts with brokers. In an "average price" account, purchase and sale orders placed during a trading day on behalf of the Investment Manager, the Master Fund and other accounts managed by the Investment Manager are combined, and securities bought and sold pursuant to such orders are allocated among such accounts on an average price basis.

Cross Transactions and Principal Transactions

As further described below, the Investment Manager may effect client cross-transactions where the Investment Manager causes a transaction to be effected between the Master Fund and another client advised by it or any of its affiliates. The Investment Manager may engage in a client cross-transaction involving the Master Fund any time that the Investment Manager believes such transaction

to be fair to the Master Fund and such other client. By subscribing for an Interest, a Limited Partner is deemed to have consented to such client cross-transactions between the Master Fund and another client of the Investment Manager or one of its affiliates.

The Investment Manager may direct the Master Fund to acquire or dispose of securities in cross trades between the Master Fund and other clients of the Investment Manager or its affiliates in accordance with applicable legal and regulatory requirements. In addition, the Master Fund may invest in securities of obligors or issuers in which the Investment Manager and/or its affiliates have a debt, equity or participation interest, and the holding and sale of such investments by the Master Fund may enhance the profitability of the Investment Manager's own investments in such companies. Moreover, the Master Fund may invest in assets originated by the Investment Manager or its affiliates. In each such case, the Investment Manager and such affiliates may have a potentially conflicting division of loyalties and responsibilities regarding the Master Fund and the other parties to such trade. Under certain circumstances, the Investment Manager and its affiliates may determine that it is appropriate to avoid such conflicts by selling a security at a fair value that has been calculated pursuant to the Investment Manager's valuation procedures to another client managed or advised by the Investment Manager or such affiliates. In addition, the Investment Manager may enter into agency cross-transactions where it or any of its affiliates acts as broker for the Master Fund and for the other party to the transaction, to the extent permitted under applicable law.

The Principal, as well as the employees and officers of the Investment Manager and of organizations affiliated with the Investment Manager, may buy and sell securities for their own account or the account of others, but may not buy securities from or sell securities to the Master Fund (such prohibition does not extend to the purchase or sale of Interests in the Fund), unless appropriate approval of the Advisory Committee is obtained and such purchase or sale is in compliance with the applicable provisions of the Investment Advisers Act of 1940, as amended.

Conflicts Relating to Equity and Debt Ownership by the Master Fund and Affiliates

In certain circumstances, the Master Fund and other client accounts may invest in securities or other instruments of the same issuer (or affiliated group of issuers) having a different seniority in the issuer's capital structure. If the issuer becomes insolvent, restructures or suffers financial distress, there may be a conflict between the interests in the Master Fund and those other accounts insofar as the issuer may be unable (or in the case of a restructuring prior to bankruptcy may be expected to be unable) to satisfy the claims of all classes of its creditors and security holders and the Master Fund and such other accounts may have competing claims for the remaining assets of such issuers. Under these circumstances it may not be feasible for the Investment Manager to reconcile the conflicting interests in the Master Fund and such other accounts in a way that protects the Master Fund's interests. Additionally, the Investment Manager or its nominees may in the future hold board or creditors' committee memberships which may require them to vote or take other actions in such capacities that might be conflicting with respect to certain funds managed by the Investment Manager in that such votes or actions may favor the interests of one account over another account. Furthermore, the Investment Manager's fiduciary responsibilities in these capacities might conflict with the best interests of the investors.

Affiliated Entity Services

Affiliated entities of the Investment Manager may provide services with respect to the Investment Manager, the Master Fund or the Fund. NexBank, SSB ("***NexBank SSB***") is an affiliate of the Investment Manager and may, from time to time, provide banking and/or agency services to the

Investment Manager, clients of the Investment Manager or collective investment vehicles for which the Investment Manager provides investment advisory services (including the Fund, the Master Fund and other vehicles in which the Fund (through the Master Fund) may invest) or third parties engaged in transactions involving the Investment Manager. NexBank SSB may also act as an agent in connection with certain securities transactions involving the Investment Manager's client accounts (including the Master Fund and other vehicles in which the Master Fund may invest). Principals of the Investment Manager own a majority of the equity interests in NexBank SSB and employees or affiliates of the Investment Manager own or may own a substantial equity interest in NexBank SSB. Certain Master Fund investment transactions may be executed through NexBank Securities, Inc., an affiliate of the Investment Manager and a registered broker-dealer.

Additionally, the Investment Manager or affiliates of the Investment Manager, including, without limitation, Nexbank SSB, NexBank Securities, Inc., NexBank Capital Advisors and Governance Re, Ltd., may provide financial advisory, management, insurance, title insurance or other services for a fee to portfolio companies in which the Master Fund may have an interest. Highland Latin America Consulting, Ltd., an affiliate of the Investment Manager, has been engaged to provide certain administrative and consulting services to the Investment Manager, as more fully described below in "*Management –Services Agreement*."

Management Fee

A portion of any Management Fee may be paid to broker-dealers, placement agents or independent third parties, other than the Investment Manager, for services provided in connection with the solicitation of subscriptions from investors. Accordingly, investors should recognize that a placement agent's or distributor's participation in this offering may be influenced by its interest in such current or future fees and compensation. Investors should consider these potential conflicts of interest in making their investment decisions. Each placement agent shall comply with the legal requirements of the jurisdictions within which it offers and sells Interests.

Diverse Membership

The Limited Partners are expected to include entities, persons, or entities organized in various jurisdictions and subject to different tax and regulatory regimes. Such diverse investors may thus have conflicting investment, tax and other interests, relating to, among other things, the nature of investments made by the Master Fund, the structuring or the acquisition of investments and the timing of disposition of investments. As a result, conflicts of interest may arise in connection with decisions made by the Investment Manager including as to the nature and structure of investments that may be more beneficial for one type of Limited Partner than for another type of Limited Partner, including Limited Partners affiliated with the Investment Manager. The results of the Fund's activities may affect individual Limited Partners differently, depending upon their individual financial and tax situations because, for instance, of the timing of an event of realization of gain or loss and its characterization as long-term or short-term gain or loss. In addition, the Master Fund may make investments that may have a negative impact on related investments made by the Limited Partners in separate transactions. In selecting, structuring and managing investments appropriate for the Master Fund, the Investment Manager will consider the investment and tax objectives of the Master Fund and the Feeder Funds as a whole, not the investment, tax, or other objectives of any Limited Partner individually. However, there can be no assurance that a result will not be more advantageous to some Limited Partners than to others or to the Investment Manager and/or its affiliates than to a particular Limited Partner.

Soft Dollars

The Investment Manager's authority to use "soft dollar" credits generated by the Master Fund's securities transactions to pay for expenses that might otherwise have been borne by the Investment Manager or the Master Fund GP may give the Investment Manager an incentive to select brokers or dealers for Master Fund transactions, or to negotiate commission rates or other execution terms, in a manner that takes into account the soft dollar benefits received by the Investment Manager rather than giving exclusive consideration to the interests in the Master Fund. See "*Brokerage and Custody*."

No Separate Counsel

Akin Gump Strauss Hauer & Feld LLP ("***Akin Gump***") serves as counsel to the Fund, the Master Fund, the Investment Manager, the Master Fund GP and certain of their Affiliates (the "***Clients***") in connection with the formation of the Fund and certain other Clients, the offering of Shares as well as certain other matters for which the Clients may engage Akin Gump from time to time. Akin Gump disclaims any obligation to verify the Clients' compliance with their obligations either under applicable law or the governing documents of the Fund. In acting as counsel to the Clients, Akin Gump has not represented and will not represent any shareholders nor does it purport to represent their interests. No independent counsel has been retained to represent the shareholders. In assisting in the preparation of this Memorandum, Akin Gump has relied on information provided by the Fund, the Investment Manager and the Master Fund GP and certain of the Fund's other service providers (including, without limitation, the Principal's biographical data, summaries of market conditions, the planned investment strategy of the Master Fund and the performance of the Master Fund, its investments or any predecessor Fund) without verification and does not express a view as to whether such information is accurate or complete.

Maples and Calder, PO Box 309, Ugland House, Grand Cayman, KY1-1104, Cayman Islands, acts as Cayman Islands legal counsel to the Fund, the Master Fund and the Master Fund GP. In connection with the offering of shares and/or interests and subsequent advice to the Fund, the Master Fund and the Master Fund GP, Maples and Calder will not be representing shareholders and/or limited partners. No independent legal counsel has been retained to represent the shareholders and/or limited partners. Maples and Calder's representation of the Master Fund GP is limited to specific matters as to which it has been consulted by the Master Fund GP. There may exist other matters that could have a bearing on the Master Fund as to which Maples and Calder has not been consulted. In addition, Maples and Calder does not undertake to monitor compliance by the Master Fund GP and its affiliates with the investment program, valuation procedures and other guidelines set forth herein, nor does Maples and Calder monitor ongoing compliance with applicable laws. In connection with the preparation of this Memorandum, Maples and Calder's responsibility is limited to matters of Cayman Islands law and it does not accept responsibility in relation to any other matters referred to or disclosed in this Memorandum. In the course of advising the Master Fund GP, there are times when the interests of the shareholders/limited partners may differ from those of the Fund, Master Fund and/or the Master Fund GP. Maples and Calder does not represent the shareholders and/or limited partners' interests in resolving these issues. In reviewing this Memorandum, Maples and Calder has relied upon information furnished to it by the Master Fund GP and has not investigated or verified the accuracy and completeness of information set forth herein concerning the Fund, Master Fund and/or the Master Fund GP.

Non-Public Information

From time to time, the Investment Manager may come into possession of non-public information concerning specific companies although internal structures are in place to prevent the receipt of such information. Under applicable securities laws, this may limit the Investment Manager's flexibility to buy or sell portfolio securities issued by such companies. The Master Fund's investment flexibility may be constrained as a consequence of the Investment Manager's inability to use such information for investment purposes.

The foregoing list of risk factors and potential conflicts of interest do not purport to be a complete enumeration or explanation of the risks involved in an investment in the Fund. Prospective investors should read this entire Memorandum and consult with their own legal, tax and financial advisers before deciding to invest in the Fund.

BROKERAGE AND CUSTODY

Brokerage Arrangements

The Investment Manager will be responsible for the placement of the portfolio transactions of the Master Fund and the negotiation of any commissions or spreads paid on such transactions. Portfolio transactions normally will be effected through brokers on securities exchanges or directly with the issuer, or through an underwriter, or market maker or other dealer for the investments. Portfolio transactions through brokers involve a commission to the broker. Portfolio transactions with dealers typically are priced to include a spread between the bid and the asked price to compensate the dealer. Portfolio transactions will be executed by brokers selected solely by the Investment Manager in its absolute discretion. The Investment Manager is not required to weigh any of these factors equally.

Substantially all of the Master Fund's investments in marketable securities, as well as its cash and cash equivalents, are expected to be held with brokers or custodians selected by the Investment Manager. Instruments not constituting marketable securities generally are recorded through book entry by the borrower or by an agent for the borrower or the creditors. Documentary evidence of the acquisition, ownership and disposition of these assets typically will be held by the Investment Manager.

Brokers or their affiliates may provide capital introduction or other placement services to the Fund and the Investment Manager (with or without separate charges for such other services). In determining which broker-dealer generally provides the best available price and most favorable execution, the Investment Manager considers a totality of circumstances, including price quotes, the size of the transaction, the nature of the market for the financial instrument, the timing of the transaction, difficulty of execution, the broker-dealer's expertise in the specific financial instrument or sector in which the Master Fund seeks to trade, the extent to which the broker-dealer makes a market in the financial instrument involved or has access to such markets, the broker-dealer's skill in positioning the financial instruments involved, the broker-dealer's promptness of execution, the broker-dealer's financial stability, reputation for diligence, fairness and integrity, quality of service rendered by the broker-dealer in other transactions for the Investment Manager and its respective affiliates, confidentiality considerations, the quality and usefulness of research services and investment ideas presented by the broker-dealer, the broker-dealer's willingness to correct errors, the broker-dealer's ability to accommodate any special execution or order handling requirements that may surround the particular transaction, and other factors deemed appropriate by the Investment Manager. The Investment Manager need not solicit competitive bids and does not have an obligation to seek the lowest available commission cost or spread.

Accordingly, if the Investment Manager concludes that the commissions charged by a broker or the spreads applied by a dealer are reasonable in relation to the quality of services rendered by such broker or dealer (including, without limitation, the value of the brokerage and research products or services provided by such broker or dealer), the Master Fund may pay commissions to, or be subject to spreads applied by, such broker-dealer in an amount greater than the amount another broker-dealer might charge or apply.

The Investment Manager may also execute trades with brokers and dealers with whom the Fund, the Master Fund or the Investment Manager has other business relationships, including prime brokerage, credit relationships and capital introduction or investments by affiliates of the broker-

dealers in the Fund or other entities managed by the Investment Manager. However, the Investment Manager does not believe that these other relationships will influence the choice of brokers and dealers who execute trades for the Master Fund.

Research-related goods and services provided by brokers and dealers through which portfolio transactions for the Master Fund are executed, settled and cleared may include research reports on particular industries and companies, economic surveys and analyses, recommendations as to specific securities, certain research services, and other goods and services providing lawful and appropriate assistance to the Investment Manager in the performance of investment decision-making responsibilities on behalf of the Master Fund and related accounts (collectively, "***soft dollar items***").

Soft dollar items may be provided directly by brokers and dealers, by third parties at the direction of brokers and dealers or purchased on behalf of the Master Fund with credits or rebates provided by brokers and dealers. Soft dollar items may arise from over-the-counter principal transactions, as well as exchange traded agency transactions. Brokers and dealers sometimes suggest a level of business they would like to receive in return for the various services they provide. Actual business received by any broker or dealer may be less than the suggested allocations, but can (and often does) exceed the suggestions, because total transaction volume is allocated on the basis of all the considerations described above. A broker or dealer will not be excluded from executing transactions for the Master Fund because it has not been identified as providing soft dollar items.

The use of commissions or "soft dollars" if any, generated by the Master Fund through agency and certain riskless principal transactions to pay for research and research-related products or services, if any, will fall within the safe harbor created by Section 28(e) of the Securities Exchange Act of 1934, as amended. Under Section 28(e), research products or services obtained with soft dollars generated by the Master Fund may be used by the Investment Manager to service accounts other than the Master Fund. Soft dollars generated in respect of futures, currency and derivatives transactions and principal transactions (that are not riskless principal transactions) do not generally fall within the safe harbor created by Section 28(e) and will be utilized only with respect to research-related products and services for the benefit of the account generating such soft dollars.

Research and brokerage products and services may be used by the Investment Manager in servicing some or all of the Investment Manager's clients. In addition, some research and brokerage may not be used by the Investment Manager in servicing the clients whose commission dollars provided for the research or brokerage. Clients may not, in any particular instance, be the direct or indirect beneficiaries of the research or brokerage provided. Certain clients, who are the beneficiaries of research or brokerage, may have an investment style which results in the generation of a small amount of brokerage commissions due to a lack of active trading for their accounts. As a result, clients who generate sizeable commissions subsidize research or brokerage provided to clients whose accounts generate minimal brokerage commissions since the commission dollars generated by transactions for such clients are not sufficient to pay for research or brokerage that may be received by such clients from other brokers.

In selecting broker-dealers on the basis of the foregoing factors, the Investment Manager may pay a brokerage commission in excess of that which another broker might have charged for effecting the same transaction. In connection therewith, the Investment Manager will make a good faith determination that the amount of commission is reasonable in relation to the value of the research or brokerage services received, viewed in terms of either the specific transaction or the Investment Manager's overall responsibility to its clients. The Investment Manager will regularly evaluate the placement of brokerage services and the reasonableness of commissions paid. Research received from

brokers will be supplemental to the Investment Manager's own research efforts. While the receipt of research will not reduce the Investment Manager's normal research activities, the Investment Manager's expenses could increase materially if it attempted to generate such additional research or brokerage services through its own staff, and the Management Fee will not be reduced as a consequence of the receipt of such research or brokerage services or products. As such, the Investment Manager's arrangements for the receipt of research and brokerage services from brokers may create a conflict of interest, in that the Investment Manager may have an incentive to choose a broker-dealer that provides research and brokerage services, instead of one that does not but charges a lower commission rate. In some instances, the Investment Manager receives products and services that may be used for both research and non-research purposes. In such instances, the Investment Manager will make a good faith effort to determine the relative proportion of the products and services used to assist the Investment Manager in carrying out its investment decision-making responsibilities or order execution, including research and brokerage, and the relative proportion used for administrative or other non-research purposes. The proportionate amount of the research attributable to assisting the Investment Manager in carrying out its investment decision-making responsibilities or order execution will be paid through brokerage commissions generated by the Master Fund's and other client's transactions; the proportionate amount attributable to administrative or other non-research purposes will be paid for by the Investment Manager from its own resources. The receipt of "mixed-use" research and the determination of the appropriate allocation may result in a potential conflict of interest between the Investment Manager and its clients, including the Master Fund.

Custody

U.S. Bank has been retained to perform certain custodial services for the Fund and the Master Fund (in such capacity, the "***Custodian***"). In its capacity as Custodian, it will receive customary fees that will be paid out of the assets of the Fund. The Custodian will also be reimbursed for all reasonable out-of-pocket expenses.

The Custodian does not have a direct contractual relationship with the investors. The Custodian has, however, entered into a contractual relationship with the Fund in relation to the performance of the services described herein. The Fund will enforce its contractual rights with respect to the Custodian as necessary to protect the interests of the Fund (and, therefore, the interest of investors).

TAX CONSIDERATIONS

General

The following is a general discussion of certain of the anticipated U.S. federal and Cayman Islands income tax considerations applicable to the Fund's activities and those relevant to "Non-U.S. Shareholders" (as defined below) and "Tax-Exempt U.S. Shareholders" (as defined below) arising from the purchase, ownership and disposition of Shares. The discussion that follows is based on the provisions of the Code and the U.S. Treasury regulations promulgated thereunder (the "***Treasury Regulations***") as in effect on the date hereof and on existing judicial and administrative interpretations thereof. These authorities are subject to change and to differing interpretations, which could apply retroactively.

This discussion does not address all tax consequences that may be applicable to a beneficial owner of Shares, nor does it address, unless specifically indicated, the tax consequences to, among others (i) persons that may be subject to special treatment under U.S. federal income tax law, including, but not limited to, banks, insurance companies, thrift institutions, regulated investment companies, real estate investment trusts and dealers in securities or currencies, (ii) persons that will hold Shares as part of a position in a "straddle" or as part of a "hedging," "conversion" or other integrated investment transaction for U.S. federal income tax purposes, (iii) persons whose functional currency is not the U.S. dollar or (iv) persons that do not hold Shares as capital assets within the meaning of Code Section 1221.

If a partnership holds Shares of the Fund, the tax treatment of a partner in such partnership will generally depend upon the status of the partner and the activities of the Fund. Prospective investors who are partners of a partnership should consult their own tax advisors.

In addition, this summary does not address U.S. federal alternative minimum or estate and gift tax consequences or consequences under the tax laws of any non-U.S. jurisdiction. The Fund has not sought any ruling from the Service with respect to the statements made and the conclusions reached in this summary, and cannot assure any investor that the Service will agree with such statements and conclusions. As with any investment, potential investors should consult their own tax advisors in determining the U.S. federal, state, local, non-U.S. and any other tax consequences to them of the purchase, ownership and disposition of Shares.

In view of the number of different jurisdictions where local laws may apply to shareholders, the discussion below does not address the local tax consequences to prospective investors of the purchase, ownership and disposition of Shares. Prospective investors are urged to consult their own tax advisors in determining the possible tax, exchange control or other consequences to them under the laws of the jurisdictions of which they are citizens, residents or domiciliaries or in which they conduct business.

This summary assumes that only persons that are *not* "United States persons" as defined in Code Section 7701(a)(30) (such investors, "***Non-U.S. Shareholders***") and organizations that are exempt from U.S. federal income tax under the Code (such investors, "***Tax-Exempt U.S. Shareholders***") will invest in the Fund. Therefore, this summary does not address the U.S. tax consequences to U.S. taxable investors. The Fund is expected to constitute a "passive foreign investment company" (a "***PFIC***") for U.S. federal income tax purposes. Potential U.S. investors should be aware that the Fund does not intend to provide information to any U.S. person for purposes of such person qualifying to make an election to treat the Fund as a "qualified electing fund" (a

"***QEF***") for U.S. federal income tax purposes under Code Section 1295. Accordingly, potential U.S. investors are urged to consult their tax advisors in this regard.

EACH PROSPECTIVE INVESTOR IS URGED TO CONSULT ITS OWN TAX ADVISOR IN ORDER TO UNDERSTAND FULLY THE U.S. FEDERAL, STATE AND LOCAL AND ANY NON-U.S. TAX CONSEQUENCES OF AN INVESTMENT IN ITS PARTICULAR SITUATION, INCLUDING CONSEQUENCES TO THEM UNDER THE LAWS OF THE JURISDICTIONS OF WHICH THEY ARE OR WERE CITIZENS, RESIDENTS OR DOMICILIARIES, OR IN WHICH THEY CONDUCT BUSINESS.

Material U.S. Federal Income Taxation Matters

Classification and Taxation of the Fund and the Master Fund

For U.S. federal income tax purposes, the Fund is expected to be treated as a corporation and the Master Fund is expected to be treated as a partnership. The Fund and the Master Fund will make any necessary entity classification elections for U.S. tax purposes.

The following discussion assumes that the Master Fund will be treated as a partnership for U.S. federal income tax purposes. Unless otherwise indicated, references in the following discussion to the tax consequences of Fund investments, activities, income, gain and loss include the indirect investments, activities, income, gain and loss attributable to the Fund as a result of being a limited partner of the Master Fund.

Under Code Section 864, a safe harbor (the "***Safe Harbor***") applies to a non-U.S. corporation (other than a dealer in securities or commodities) that engages in trading securities (including contracts or options to buy or sell securities) and commodities (including derivatives) for its own account within the United States, pursuant to which such a non-U.S. corporation will not be deemed to be engaged in a U.S. trade or business by reason of such trading activities. If certain of the activities of the Fund were determined not to be of the type described in the Safe Harbor, the activities of the Fund could constitute a U.S. trade or business, in which case the Fund would be subject to U.S. income and branch profits tax on the income and gain treated as connected with those activities. Although there is a risk that certain of the Fund's investments could fall outside of the Safe Harbor and constitute a trade or business (e.g., a lending business), the Fund intends to take the position that it is not engaged in trade or business.

The Fund also may be deemed to be engaged in a U.S. trade or business by attribution from a pass-through entity in which it owns an interest and which is so engaged. In this circumstance, the Fund's share of any income and gain that is effectively connected with such U.S. trade or business will be subject to regular U.S. federal income taxation (currently imposed at a maximum rate of 21%) on a net basis and an additional 30% U.S. branch profits tax on certain of its after-tax earnings and profits that are not reinvested in a U.S. business, and the Fund will be required to file U.S. federal (and potentially, state and local) income tax returns in connection with such trade or business. Such a pass-through entity would also be required (and would be legally liable) to withhold and pay over to the Service on behalf of the Fund an amount equal to 21% of the Fund's share of such entity's effectively connected income. Any amount so withheld would be creditable against the Fund's ultimate U.S. federal income tax liability, and the Fund would be entitled to a refund to the extent that the amount withheld exceeded the Fund's U.S. federal income tax liability for the taxable year. Further, if the Fund holds certain property (or is deemed to hold certain property as the result of its investments), such property could be treated as U.S. real property interests. Upon the disposition of any such U.S.

real property interest, the Fund would be subject to tax on any gain recognized as though such gain were effectively connected with a U.S. trade or business of the Fund. Gains from the disposition by the Fund of securities that are not (and are not deemed to be) effectively connected with a U.S. trade or business of the Fund would generally be free from U.S. federal income and withholding tax. The Fund may, however, also be subject to U.S. federal income tax on any gain realized, or deemed realized, upon a sale or exchange of an interest in a partnership directly or indirectly held which is engaged in a U.S. trade or business (including, without limitation, certain gains realized upon a redemption of interests from the Master Fund). In such case, U.S. withholding tax may be incurred (or required to be deducted by the Master Fund, as applicable) equal to 10% of the amount realized. Any amounts so withheld would generally be creditable (subject to certain limitations) against the Fund's ultimate U.S. federal income tax liability, and the Fund would be entitled to a refund to the extent that the amount withheld exceeded the Fund's U.S. federal income tax liability for the taxable year. In addition, it is possible the Fund could be subject to taxation on a net basis by state and local jurisdictions within the United States. Any such taxation could materially adversely affect the Fund's investment returns.

In general, under Section 881 of the Code, a non-U.S. corporation which does not conduct a U.S. trade or business is nonetheless subject to tax at a flat rate of 30% (or lower tax treaty rate) on the gross amount of certain U.S. source income which is not effectively connected with a U.S. trade or business, generally payable through withholding under Section 1442 of the Code. Income subject to such a flat tax rate is of a fixed or determinable annual or periodical nature, including dividends (including "dividend equivalent" income under Section 871(m) of the Code) and certain interest income. There is presently no tax treaty between the United States and the Cayman Islands.

Certain types of income are specifically exempted from the 30% tax and thus withholding is not required on payments of such income to a non-U.S. corporation. The 30% tax does not apply to U.S. source capital gains (whether long or short-term) or to interest paid to a non-U.S. corporation on its deposits with U.S. banks. The 30% tax also does not apply to interest which qualifies as portfolio interest. The term "portfolio interest" generally includes interest (including original issue discount) on an obligation in registered form which has been issued after July 18, 1984 that is paid to persons with limited ownership in the obligor and with respect to which the person who would otherwise be required to deduct and withhold the 30% tax receives the required statement that the beneficial owner of the obligation is not a U.S. person within the meaning of the Code. Also exempt from the 30% tax is income from original issue discount obligations which are payable no more than 183 days from the date of issue. Interest on corporate obligations will not qualify as "portfolio interest" to a non-U.S. person that owns (directly and under certain constructive ownership rules) 10% or more of the total combined voting power of the corporation paying the interest, or, with respect to certain obligations issued after April 7, 1993, if and to the extent the interest is determined by reference to certain economic attributes of the debtor (or a person related thereto).

As indicated above, certain investments by the Fund could result in the Fund being deemed to be engaged in a U.S. trade or business, including, without limitation, direct investments by the Fund in U.S. real estate or real estate acquired in foreclosures on mortgages held by the Fund. The Fund may conduct such activities through U.S. corporate entities, in order for the Fund to avoid filing a U.S. income tax return and directly paying tax on such investments. Each such investment may be made in a separate U.S. corporation directly owned by the Fund (a "***U.S. Subsidiary***"). Each U.S. Subsidiary will be subject to U.S. income tax on its net taxable income at regular U.S. federal corporate income tax rates. Dividend distributions from the U.S. Subsidiary to the Fund will be subject to a 30% U.S. withholding tax. However, cash distributions by the U.S. Subsidiary upon its complete liquidation will generally not be subject to taxation or to U.S. withholding tax.

Taxation of Non-U.S. Shareholders

For U.S. federal income tax purposes, a Non-U.S. Shareholder will not be subject to U.S. federal income taxation on amounts paid by the Fund in respect of Shares or gains recognized on the sale, exchange or redemption of Shares, provided that such income and gains are not considered to be effectively connected with the conduct of a trade or business by the shareholder in the United States. In limited circumstances, an individual Non-U.S. Shareholder who is present in the United States for 183 days or more during a taxable year may be subject to U.S. income tax at a flat rate of 30% on gains realized on a disposition of Shares in such year. Individual shareholders who at the time of their death are not citizens, former citizens or residents of the United States should not be subject, by reason of the ownership of Shares, to any U.S. federal gift or estate taxes.

Special rules may apply in the case of non-U.S. persons that (i) conduct a trade or business in the United States or that have an office or fixed place of business in the United States, (ii) have a tax home in the United States, (iii) are former citizens or long-term residents of the United States or (iv) are controlled foreign corporations, PFICs, foreign insurance companies ("***CFCs***") that hold Shares in connection with their U.S. business or corporations which accumulate earnings to avoid U.S. federal income tax. Such persons are urged to consult their U.S. tax advisors before investing in the Fund.

In the case of Shares held in the United States by a custodian or nominee for a non-U.S. person, U.S. "backup" withholding taxes may apply to distributions in respect of Shares held by such shareholder unless such shareholder properly certifies as to its non-U.S. status or otherwise establishes an exemption from "backup" withholding. Backup withholding is not an additional tax. Rather, the U.S. federal income tax liability of non-U.S. persons subject to backup withholding will be reduced by the amount of tax withheld. If backup withholding results in an overpayment of U.S. federal income taxes, a refund may be obtained, provided the required documents are timely filed with the Service.

Taxation of Tax-Exempt U.S. Shareholders

Tax-Exempt U.S. Shareholders are subject to U.S. tax on their "unrelated business taxable income" ("***UBTI***") as defined in Section 512 of the Code. UBTI is generally the excess of gross income from any unrelated trade or business conducted by a tax-exempt entity over the deductions attributable to such trade or business, with certain modifications. These modifications provide that UBTI generally does not include interest, dividends or gains from the sale of securities not held as either inventory or primarily for sale to customers in the ordinary course of business, except to the extent that any such item of income is deemed to constitute "unrelated debt financed income" within the meaning of Section 514 of the Code and the Treasury Regulations, and certain other requirements are met. The ability to offset deductions or losses realized in respect of one "unrelated trade or business" against income or gains from other "unrelated trades or businesses" is subject to certain limitations. Income that a U.S. tax-exempt entity derives from an investment in Shares generally should not give rise to UBTI, except to the extent that such entity's acquisition of Shares is debt financed.

The Fund will constitute a PFIC for U.S. federal income tax purposes. Under the Treasury Regulations, a tax-exempt entity is generally not considered to be a shareholder in a PFIC. Therefore, the tax-exempt entity would generally not be subject to the PFIC tax rules, except to the extent that a "dividend" paid by such PFIC would be taxable under subchapter F of the Code. Hence, a tax-exempt entity would be subject to tax under the PFIC regime in respect of an excess distribution from, or any gain realized on the sale of, the shares of a PFIC in only limited circumstances. Additionally, the

Treasury Regulations provide that a tax-exempt entity that is not taxable under the PFIC rules may not make a QEF election under Section 1295 of the Code and the Fund will not provide any QEF information to investors.

The Fund may be classified as a CFC for U.S. federal income tax purposes if U.S. persons who own (actually or constructively) 10% or more of either voting interest or the value of the Fund hold 50% or more of the vote or value of the Fund, as determined under the Code. However, a Tax-Exempt U.S. Shareholder's share of the Fund's "subpart F income" generally would not be treated as UBTI (provided that such investor has not debt-financed its investment in the Fund) except in the case of certain insurance- and reinsurance-related income. In addition, if the Fund is classified as a CFC, U.S. tax-exempt investors may be subject to special information reporting requirements. Prospective investors are urged to consult their own tax advisors as to the U.S. federal income tax consequences in this regard, including with respect to certain other types of income, and with respect to complex attribution rules that may apply.

Moreover, different rules may apply to certain types of tax-exempt entities, such as charitable remainder trusts. Accordingly, potential tax-exempt investors are urged to consult their own tax advisors regarding the tax consequences of an investment in the Fund.

Prospective Tax-Exempt U.S. Shareholders are urged to consult their own tax advisors regarding the tax consequences of the purchase, ownership and disposition of Shares.

Information Reporting Requirements

A U.S. person (including in certain circumstances a Tax-Exempt U.S. Shareholder) that transfers property (including cash) to the Fund in exchange for Shares will be required to file a Form 926 or a similar form with the Service. In the event a U.S. shareholder fails to file any required form, such shareholder could be subject to a penalty of up to 10% of the value of the property transferred, subject to a $100,000 limit so long as the failure was not due to intentional disregard.

Under the Treasury Regulations, any U.S. person, within the meaning of the Code, owning 10% or more (taking certain attribution rules into account) of either the total combined voting power or total value of all classes of the shares of a non-U.S. corporation, or whose ownership interest changes by a statutorily specified amount, may be required to file an information return with the Service containing certain disclosures concerning the filing shareholder, other U.S. shareholders and the corporation. The determination of whether a U.S. person is a 10% U.S. shareholder for purposes of this filing requirement may be made by reference to such shareholder's percentage ownership of Shares within each class rather than that of all Shares of the Fund. The Fund has not committed to provide all of the information about the Fund or its shareholders necessary to complete such an information return. Prospective investors should consult their tax advisors about such information return filing requirements.

Certain U.S. persons are required to file Financial Crimes Enforcement Network ("***FinCEN***") Form 114 with the Service with respect to financial interests in foreign financial accounts held by such U.S. persons during the previous year if the aggregate value of such accounts exceeds $10,000 at any time during the year. Significant penalties may apply in respect of the failure to file FinCEN Form 114 in respect of foreign financial accounts. Thus, potential Tax-Exempt U.S. Shareholders should consult their tax advisors as to whether to file FinCEN Form 114 in respect of ownership of Shares.

Investor Tax Filings and Record Retention

The United States Department of the Treasury has adopted Treasury Regulations designed to assist the Service in identifying abusive tax shelter transactions. In general, these Treasury Regulations require investors in specified transactions (including certain shareholders in non-U.S. corporations and partners in partnerships that engage in such transactions) to satisfy certain special tax filing and record retention requirements. Significant monetary penalties may be imposed (in addition to penalties that generally may be applicable as a result of a failure to comply with applicable Treasury Regulations) for failure to comply with these tax filing and record retention rules.

These Treasury Regulations are broad in scope and it is conceivable that the Master Fund may enter into transactions that will subject the Fund and certain investors in the Fund to the special tax filing and record retention rules. The Fund and the Investment Manager intend to use reasonable efforts to obtain and provide information to investors necessary to enable investors to satisfy any tax filing and record retention requirements that may arise as a result of any transactions entered into by the Master Fund.

Reporting Under FATCA

Sections 1471 through 1474 of the Code, known as the U.S. Foreign Account Tax Compliance Act (together with any regulations, rules and other guidance implementing such Code sections and any applicable intergovernmental agreement ("***IGA***") or information exchange agreement and related statutes, regulations, rules and other guidance thereunder, "***FATCA***") impose a withholding tax of 30% on (i) certain U.S. source interest, dividends and other types of income, and (ii) the gross proceeds from the sale or disposition of certain assets of a type that can produce U.S. source interest and dividends, which are received by a foreign financial institution ("***FFI***"), unless such FFI enters into an agreement with the Service, and/or complies with an applicable IGA, to obtain certain information as to the identity of the direct and indirect owners of accounts in such institution. In addition, a withholding tax may be imposed on payments to certain non-financial foreign entities that do not obtain and provide information as to their direct and indirect owners. These rules generally apply to payments of U.S. source interest, dividends and certain other types of income from U.S. sources and, after December 31, 2018, are expected to apply to payments of gross proceeds from the sale or disposition of assets of a type that can produce U.S. source interest or dividends.

The Service has released temporary and final Treasury Regulations and other guidance to implement FATCA, which contain a number of phase-in dates for FATCA compliance. In addition, the Cayman Islands has entered into a Model 1 IGA with the United States (the "***Cayman-U.S. IGA***") and has issued the Tax Information Authority (International Tax Compliance) (United States of America) Regulations 2014, and guidance notes thereunder, each as updated from time to time.

Both the Fund and the Master Fund are likely to be considered FFIs. In order to avoid incurring U.S. withholding under FATCA, the Master Fund and the Fund each are generally required to register with the Service and to comply with the Cayman-U.S. IGA and any guidance thereunder. The Fund and the Master Fund each have registered with the Service and expect that they will be required to identify and report on certain direct and indirect U.S. owners in order to comply with the Cayman-U.S. IGA. Therefore, the Fund and the Master Fund generally do not expect to become subject to U.S. withholding under FATCA. An investor may be required to provide to the Fund information which identifies its direct and indirect ownership. Any such information provided to the Fund may ultimately be shared with the Cayman Islands Tax Information Authority ("***TIA***") and transmitted to the Service and, potentially, certain other authorities and withholding agents, as applicable.

CAYMAN ISLANDS LEGAL, REGULATORY AND TAX MATTERS

It is the responsibility of all persons interested in purchasing Shares to inform themselves as to any tax consequences from their investing in the Fund and the Fund's operations or management, as well as any foreign exchange or other fiscal or legal restrictions, which are relevant to their particular circumstances in connection with the acquisition, holding or disposition of Shares. Investors should therefore seek their own separate tax advice in relation to their holding of Shares and accordingly none of the Fund, the Investment Manager or the Administrator accepts any responsibility for the taxation consequences of any investment in the Fund by an investor.

Taxation of the Fund

The Government of the Cayman Islands will not, under existing legislation, impose any income, corporate or capital gains tax, estate duty, inheritance tax, gift tax or withholding tax upon the Fund or the shareholders. The Cayman Islands are not party to a double tax treaty with any country that is applicable to any payments made to or by the Fund.

The Fund has received an undertaking from the Governor-in-Cabinet of the Cayman Islands that, in accordance with section 6 of the Tax Concessions Law (2011 Revision) of the Cayman Islands, for a period of 20 years from the date of the undertaking, no law which is enacted in the Cayman Islands imposing any tax to be levied on profits, income, gains or appreciations shall apply to the Fund or its operations and, in addition, that no tax to be levied on profits, income, gains or appreciations or which is in the nature of estate duty or inheritance tax shall be payable (i) on or in respect of the shares, debentures or other obligations of the Fund or (ii) by way of the withholding in whole or in part of a payment of dividend or other distribution of income or capital by the Fund to its members or a payment of principal or interest or other sums due under a debenture or other obligation of the Fund.

Taxation of the Master Fund

The Government of the Cayman Islands will not, under existing legislation, impose any income, corporate or capital gains tax, estate duty, inheritance tax, gift tax or withholding tax upon the Master Fund or the limited partners of the Master Fund (the "***Master Fund Limited Partners***"). Interest, dividends and gains payable to the Master Fund and all distributions by the Master Fund to Master Fund Limited Partners will be received free of any Cayman Islands income or withholding taxes. The Master Fund has registered as an exempted limited partnership under Cayman Islands law and the Master Fund has received an undertaking from the Governor in Cabinet of the Cayman Islands to the effect that, for a period of 50 years from the date of the undertaking, no law which is enacted in the Cayman Islands imposing any tax to be levied on profits or income or gains or appreciations shall apply to the Master Fund or to any partner thereof in respect of the operations or assets of the Master Fund or the interest of a partner therein; and may further provide that any such taxes or any tax in the nature of estate duty or inheritance tax shall not be payable in respect of the obligations of the Master Fund or the interests of the partners therein. The Cayman Islands are not party to a double tax treaty with any country that is applicable to any payments made to or by the Master Fund.

Cayman Islands – Automatic Exchange of Financial Account Information

The Cayman Islands has signed two inter-governmental agreements to improve international tax compliance and the exchange of information - one with the United States, the Cayman-U.S. IGA, and one with the United Kingdom (the "***Cayman-U.K. IGA***"). The Cayman Islands has also signed, along with over 80 other countries, a multilateral competent authority agreement to implement the

OECD Standard for Automatic Exchange of Financial Account Information – Common Reporting Standard (the "***CRS***" and together with the Cayman-U.S. IGA and the Cayman-U.K. IGA, "***AEOI***").

Cayman Islands regulations were issued on 4 July 2014 to give effect to the Cayman-U.S. IGA and the Cayman-U.K. IGA, and on 16 October 2015 to give effect to the CRS (collectively, the "***AEOI Regulations***"). Pursuant to the AEOI Regulations, the TIA has published guidance notes on the application of the Cayman-U.S. IGA and Cayman-U.K. IGAs and the CRS. It is anticipated that the Cayman-U.K. IGA related regulations and relevant provisions of the guidance notes will be phased out and replaced with CRS.

All Cayman Islands "Financial Institutions" will be required to comply with the registration, due diligence and reporting requirements of the AEOI Regulations, except to the extent that they can rely on an exemption that allows them to become a "Non-Reporting Financial Institution" (as defined in the relevant AEOI Regulations) with respect to one or more of the AEOI regimes. The Fund does not propose to rely on any reporting exemption and therefore intends to comply with the requirements of the AEOI Regulations.

The AEOI Regulations require the Fund to, amongst other things (i) register with the Service to obtain a Global Intermediary Identification Number (in the context of the Cayman-U.S. IGA only), (ii) register with the TIA, and thereby notify the TIA of its status as a "Reporting Financial Institution"; (iii) conduct due diligence on its accounts to identify whether any such accounts are considered "Reportable Accounts", and (iv) report information on such Reportable Accounts to the TIA. The TIA will transmit the information reported to it to the overseas fiscal authority relevant to a reportable account (i.e. the Service in the case of a US Reportable Account, HMRC in the case of a UK Reportable Account, etc.) annually on an automatic basis.

By investing (or continuing to invest) in the Fund (and indirectly investing in the Master Fund), investors will be deemed to have acknowledged, and to have given their consent to, the following:

(i) the Fund (or its agent) may be required to disclose to the TIA and withholding agents certain information (which could otherwise be deemed to be confidential) in relation to the investor or its direct or indirect owners, including the investor's name, address, date of birth, tax identification number (if any), social security or national insurance number (if any) and certain additional information or documentation relating to the investor's investment or identity, and the investor may be required to provide any such information or documentation;

(ii) the TIA may be required to automatically exchange information with, among other authorities, the Service, and to provide additional information to such authorities, and the Master Fund or the Fund (or its agent) may be required to disclose certain information (including information that could otherwise be deemed to be confidential) when registering with such authorities and in response to a request by any such authority for further information;

(iii) in the event an investor's failure to comply with any AEOI related reporting requirements gives rise to any withholding tax or other liabilities the Fund reserves the right to ensure that any such withholding tax and or any related cost, interest, penalties and other losses or liabilities suffered by the Fund, the Master Fund, the Master Fund GP, the Administrator or any other investor, or any agent, delegate, employee, director,

officer or affiliate of any of the foregoing persons, arising from such investor's failure to provide information to the Fund, is economically borne by such investor;

(iv) in the event an investor does not provide the information and/or documentation necessary for the Fund's (or the Master Fund's) satisfaction of its AEOI related reporting requirements, whether or not that actually leads to compliance failures by the Fund, or a risk of the Fund (or the Master Fund) or its investors being subject to U.S. withholding under FATCA or other liabilities under AEOI generally, the Fund reserves the right to take any action and/or pursue all remedies at its disposal to mitigate the consequences of the investor's failure to comply with the requirements described above, including compulsory redemption or withdrawal of the investor concerned; and

(v) no investor affected by any such action or remedy shall have any claim against the Fund, the Master Fund, the Master Fund GP, the Administrator (or their agents, delegates, employees, directors, officers or affiliates) for any damages or liability as a result of actions taken or remedies pursued by or on behalf of the Fund in order to comply with AEOI.

Shareholders should consult their tax advisors as to the filing and information requirements that may be imposed on them in respect of their ownership of Shares of the Fund.

The European Union Savings Directive

On November 10, 2015, the European Council repealed the EU Council Directive 2003/48/EC of June 3, 2003 on taxation of savings income in the form of interest payments (the "***EUSD***") with effect from January 1, 2016 (January 1, 2017 in the case of Austria) in order to avoid overlap with the requirements of the CRS and other tax information reporting regimes. It is anticipated that the Cayman Islands, together with those other jurisdictions which have adopted EUSD-equivalent legislation, will also give consideration in due course to the repeal of their EUSD-equivalent legislation in the light of the introduction of the CRS regime.

Future Changes in Applicable Law

The foregoing description of U.S. and Cayman Islands income tax consequences of an investment in, and the operations of, the Fund are based on laws and Treasury Regulations that are subject to change through legislative, judicial or administrative action. There can be no assurance that the U.S. or Cayman Islands tax laws will not be changed adversely with respect to the Fund and its shareholders, or that the Fund's income tax status will not be successfully challenged by such authorities. In addition, future amendments to the Code, other legislation, new or amended Treasury Regulations, administrative rulings or decisions by the Service or judicial decisions may adversely affect the U.S. federal income tax aspects of an investment in the Fund, with or without advance notice, retroactively or prospectively.

Other Taxation

A portion of the Master Fund's investments may be made in non-U.S. jurisdictions. With respect to certain countries, there is a possibility of expropriation, confiscatory taxation and imposition of withholding or other taxes on dividends, interest, capital gains or other income, limitations on the removal of funds or other assets of the Fund and political or social instability or diplomatic developments that could affect investments in those countries. An issuer of securities may be

domiciled in a country other than the country in whose currency the instrument is denominated. The values and relative yields of investments in the securities markets of different countries, and their associated risks, are expected to change independently of each other.

Future Tax Legislation; Necessity of Obtaining Professional Advice

Future amendments to the Code, other legislation, new or amended Treasury Regulations, administrative rulings or decisions by the Service or judicial decisions may adversely affect the U.S. federal income tax aspects of an investment in the Fund, with or without advance notice, retroactively or prospectively. The foregoing analysis is not intended as a substitute for careful tax planning. The tax matters relating to the Fund and the Master Fund are complex and are subject to varying interpretations. There can be no assurance that the Service will agree with each position taken by the Fund or the Master Fund with respect to the tax treatment of Fund items and transactions. Moreover, the effect of existing income tax laws and of proposed changes in income tax laws on shareholders will vary with the particular circumstances of each shareholder and, in reviewing this Memorandum and any exhibits hereto, these matters should be considered.

It is the responsibility of all persons interested in purchasing Shares to inform themselves as to any tax consequences from their investing in the Fund and the Fund's operations or management, as well as any foreign exchange or other fiscal or legal restrictions, which are relevant to their particular circumstances in connection with the acquisition, holding or disposition of Shares. Accordingly, each prospective investor should therefore consult their own advisors regarding tax treatment by the jurisdiction applicable to them in relation to their holding of Shares. Shareholders should rely only upon advice received from their own tax advisors based upon their own individual circumstances and the laws applicable to them. In no event will the Fund, the Master Fund, the Master Fund GPs, the Investment Manager, the Principal, the Directors or their principals, affiliates, counsel or other professional advisers be liable to any shareholder for any tax consequences of an investment in the Fund, whether or not such consequences are as described above.

The foregoing is a summary of some of the important tax rules and considerations affecting the shareholders, the Fund, and the Fund's proposed operations. This summary does not purport to be a complete analysis of all relevant tax rules and considerations, which will vary with the particular circumstances of each shareholder, nor does it purport to be a complete listing of all potential tax risks inherent in purchasing or holding Shares. Each prospective investor in the Fund is urged to consult its own tax advisor in order to understand fully the U.S. federal, state, local and any non-U.S. tax consequences of such an investment in its particular situation.

ERISA AND OTHER REGULATORY CONSIDERATIONS

ERISA Considerations

General

Fiduciaries and other persons who are proposing to invest in Shares on behalf of retirement plans, IRAs and other employee benefit plans ("***Plans***") covered by the U.S. Employee Retirement Income Security Act of 1974, as amended ("***ERISA***"), or the Internal Revenue Code of 1986, as amended (the "***Code***"), must give appropriate consideration to, among other things, the role that an investment in the Fund plays in the Plan's portfolio, taking into consideration whether the investment is designed to reasonably further the Plan's purposes, the investment's risk and return factors, the portfolio's composition with regard to diversification, the liquidity and current return of the total portfolio relative to the anticipated cash flow needs of the Plan, the projected return of the total portfolio relative to the Plan's objectives, the limited right of shareholders to redeem all or any part of their Shares or to transfer their Shares and whether investment in the Fund constitutes a direct or indirect transaction with a party in interest (under ERISA) or a disqualified person (under the Code).

Plan Asset Regulations and Benefit Plan Investors

The United States Department of Labor ("***DOL***") has adopted regulations that treat the assets of certain pooled investment vehicles, such as the Fund, as "plan assets" for purposes of Title I of ERISA and Section 4975 of the Code ("***Plan Assets***"). Section 3(42) of ERISA defines the term "Plan Assets" to mean plan assets as defined by such regulations as the DOL may prescribe, except that under such regulations the assets of an entity shall not be treated as Plan Assets if, immediately after the most recent acquisition of an equity interest in the entity, less than 25% of the total value of each class of equity interest in the entity is held by "Benefit Plan Investors" (the "***significant participation test***"). For purposes of this determination, the value of any equity interest held by a person (other than such a Benefit Plan Investor) who has discretionary authority or control with respect to the assets of the entity or any person who provides investment advice for a fee (direct or indirect) with respect to such assets, or any affiliate of such a person, shall be disregarded. An entity shall be considered to hold Plan Assets only to the extent of the percentage of the equity interest held by Benefit Plan Investors. The term "Benefit Plan Investors" means any employee benefit plan subject to part 4 of subtitle B of Title I of ERISA (i.e., plans subject to the fiduciary provisions of ERISA), any plan to which the prohibited transaction provisions of Section 4975 of the Code apply (e.g., IRAs), and any entity whose underlying assets include Plan Assets by reason of a plan's investment in such entity (a "***Plan Asset Entity***").

In order to prevent the assets of the Master Fund from being considered Plan Assets under ERISA, it is the intention of the Master Fund to monitor the investments in the Master Fund and prohibit the acquisition, withdrawal or transfer of any limited partner interests of the Master Fund by any investor, including a Benefit Plan Investor, unless, after giving effect to such an acquisition, withdrawal or transfer, the total proportion of limited partner interests of each class of the Master Fund owned by Benefit Plan Investors would be less than 25% of the aggregate value of that class of limited partner interests (determined, as described above, by excluding certain limited partner interests held by the Master Fund GP, other fiduciaries and affiliates).

Without limiting the generality of the foregoing, in order to limit equity participation in any class of limited partner interests of the Master Fund by Benefit Plan Investors to less than 25%, the Fund may require the compulsory redemption of Shares. Each shareholder that is an insurance company acting on behalf of its general account or a Plan Asset Entity will be required to represent and

warrant as of the date it acquires Shares the maximum percentage of such general account or Plan Asset Entity (as reasonably determined by such insurance company or Plan Asset Entity) that will constitute Plan Assets (the "***Maximum Percentage***") so such percentage can be calculated in determining the percentage of Plan Assets invested in the Master Fund. Further, each such insurance company and Plan Asset Entity will be required to covenant that if, after its initial acquisition of Shares, the Maximum Percentage is exceeded at any time, then such insurance company or Plan Asset Entity shall immediately notify the Fund of that occurrence and shall, if and as directed by the Fund, in a manner consistent with the restrictions on transfer set forth herein, redeem or dispose of some or all of the Shares held in its general account or Plan Asset Entity.

It is anticipated that investment in the Fund by benefit plan investors may be "significant" for purposes of the regulations. In such event, the underlying assets of the Fund would be deemed to constitute "plan assets" for purposes of ERISA. As a general rule, if the assets of the Fund were regarded as "plan assets" of a benefit plan investor, the Investment Manager would be deemed a fiduciary with respect to each Plan investing in the Fund. However, the Investment Manager believes that, given the limited purpose and role of the Fund and given the requirement that the Investment Manager follow the directions of the fiduciaries of each benefit plan investor investing in the Fund, as set forth in each such investor's subscription agreement, with respect to the investment by the Fund in the Master Fund, neither the Investment Manager nor any other entity providing services to the Fund would be exercising any discretionary authority or control with respect to the Fund. Accordingly, the Investment Manager believes that neither the Investment Manager nor any other entity providing services to the Fund will act as a fiduciary (as defined in Section 3(21) of ERISA) with respect to the assets of the Fund or any benefit plan investor. Rather, the Investment Manager believes that, given the limited purpose and role of the Fund and given the requirement that the Investment Manager follow the directions of the fiduciaries of each benefit plan investor investing in the Fund, as set forth in each such investor's subscription agreement, with respect to the investment by the Fund in the Master Fund, the fiduciary of each such benefit plan investor has retained the fiduciary authority and responsibility with respect to the investor's initial and continuing investment in the Fund as though the benefit plan investor is investing directly in the Master Fund.

Representation by Plans

The fiduciaries of each Plan proposing to invest in the Fund will be required to represent that they have been informed of and understand the Fund's investment objectives, policies and strategies and that the decision to invest Plan Assets in the Fund is consistent with the provisions of ERISA and/or the Code that require diversification of Plan Assets and impose other fiduciary responsibilities. By its purchase, each investor will be deemed to have represented that either (a) it is not a Plan that is subject to the prohibited transaction rules of ERISA or the Code, (b) it is not an entity whose assets include Plan Assets or (c) its investment in the Fund will not constitute a non-exempt prohibited transaction under ERISA or the Code.

In addition, each Plan proposing to invest in the Fund will be required to represent that, in connection with its decision to invest in the Fund, it is and will remain represented by a party independent of the Master Fund GP, the Investment Manager and each of their affiliates and employees and such party (A) is described in 29 CFR §2510.3-21(c)(1)(i); (B) is capable of evaluating investment risks independently, both in general and with regard to particular transactions and investment strategies; (C) acknowledges that it has been informed that none of the Master Fund GP, the Investment Manager or any of their affiliates or employees is undertaking to provide impartial investment advice, or to give advice in a fiduciary capacity, in connection with the Plan's investment in the Fund; and (D) is acting as a fiduciary under ERISA with respect to the Plan's investment in the

Fund and is responsible for exercising independent judgment in evaluating such investment. If a Plan cannot make the representations set forth in the preceding sentence, it must contact the Investment Manager and its subscription will not be accepted unless specifically agreed to by the Investment Manager.

Ineligible Purchasers

Limited partner interests may not be purchased with Plan Assets if the Investment Manager, any selling agent, finder, any of their respective affiliates or any of their respective employees: (a) has investment discretion with respect to the investment of such Plan Assets; (b) has authority or responsibility to give or regularly gives investment advice with respect to such Plan Assets, for a fee, and pursuant to an agreement or understanding that such advice will serve as a primary basis for investment decisions with respect to such Plan Assets and that such advice will be based on the particular investment needs of the Plan; or (c) is an employer maintaining or contributing to such Plan. A party that is described in clause (a) or (b) of the preceding sentence is a fiduciary under ERISA and the Code with respect to the Plan, and any such purchase might result in a "prohibited transaction" under ERISA and the Code.

Plans' Reporting Obligations

The information contained herein and in the other documentation provided to investors in connection with an investment in the Fund is intended to satisfy the alternative reporting option for "eligible indirect compensation" on Schedule C of the Form 5500, in addition to the other purposes for which such documents were created.

Whether or not the underlying assets of the Fund are deemed Plan Assets, an investment in the Fund by a Plan is subject to ERISA and the Code. Accordingly, Plan fiduciaries should consult their own counsel as to the consequences under ERISA and the Code of an investment in the Fund. Note that similar laws governing the investment and management of the assets of governmental or non-U.S. plans may contain fiduciary and prohibited transaction requirements similar to those under ERISA and the Code. Accordingly, fiduciaries of such governmental or non-U.S. plans, in consultation with their counsel, should consider the impact of their respective laws and regulations on an investment in the Fund.

Other Regulatory Matters

Securities Act of 1933

Shares will not be registered under the U.S. Securities Act of 1933, as amended, any state "blue sky" laws or the securities laws of any other jurisdiction. Shares may be offered privately (i) outside the United States of America, its territories or possessions or areas subject to its jurisdiction (the "***United States***"), or to or for the benefit of an investor that is not a United States Person, only in accordance with relevant laws of the jurisdiction where the offer is made or (ii) within the United States or to a United States Person only in a transaction that does not require the registration of the Shares or the Fund under applicable U.S. federal or state securities laws.

Investment Company Act of 1940

The Fund is exempt from the provisions of the U.S. Investment Company Act of 1940, as amended, pursuant to the exemption contained in Section 3(c)(7) thereunder.

Investment Adviser Registration

The Investment Manager is registered as an investment adviser with the Securities and Exchange Commission under the U.S. Investment Advisers Act of 1940, as amended.

Commodity Exchange Act

Neither the Master Fund GP nor the Investment Manager is required to register as a commodity pool operator ("***CPO***") or commodity trading advisor under the U.S. Commodity Exchange Act and each has filed a notice of claim effectuating exemption. As such, the Master Fund GP and the Investment Manager will operate the Fund and the Master Fund pursuant to such exemption. Unlike a registered CPO, the Master Fund GP and the Investment Manager are not required to deliver a disclosure document and a certified annual report to participants in the Fund. Among other things, the exemption requires the Master Fund GP and the Investment Manager to file a claim of exemption with the National Futures Association. The Investment Manager qualifies for an exemption from registration with the CFTC as a commodity trading adviser pursuant to CFTC Rule 4.14(a)(8).

Cayman Islands Mutual Fund Law

The Fund and the Master Fund are regulated under the Mutual Funds Law (2015 Revision) of the Cayman Islands ("***Mutual Funds Law***"). The Cayman Islands Monetary Authority (the "***Authority***") has supervisory and enforcement powers to ensure compliance with the Mutual Funds Law. Regulation under the Mutual Funds Law entails the filing of prescribed details and audited accounts annually with the Authority. As a regulated mutual fund, the Authority may at any time instruct the Fund or the Master Fund to have its or their accounts audited and to submit them to the Authority within such time as the Authority specifies. Failure to comply with these requests by the Authority may result in substantial fines on the part of the directors of the Fund or the Master Fund, as applicable, and may result in the Authority applying to the court to have the Fund or the Master Fund wound up.

Neither the Fund nor the Master Fund are, however, subject to supervision in respect of their investment activities or the constitution of the Master Fund's portfolio by the Authority or any other governmental authority in the Cayman Islands, although the Authority does have power to investigate the activities of the Fund and the Master Fund in certain circumstances. Neither the Authority nor any other governmental authority in the Cayman Islands has commented upon or approved the terms or merits of this document. There is no investment compensation scheme available to investors in the Cayman Islands.

The Authority may take certain actions if it is satisfied that a regulated mutual fund is or is likely to become unable to meet its obligations as they fall due or is carrying on or is attempting to carry on business or is winding up its business voluntarily in a manner that is prejudicial to its investors or creditors. The powers of the Authority include the power to require the substitution of the directors of the Fund or the Master Fund, to appoint a person to advise the Fund or the Master Fund on the proper conduct of its affairs or to appoint a person to assume control of the affairs of the Fund or the Master Fund, as the case may be. There are other remedies available to the Authority including the ability to apply to court for approval of other actions.

Anti-Money Laundering Regulations

Cayman Islands

In order to comply with legislation or regulations aimed at the prevention of money laundering the Fund is required to adopt and maintain anti-money laundering procedures, and may require subscribers to provide evidence to verify their identity and source of funds. Where permitted, and subject to certain conditions, the Fund may also delegate the maintenance of its anti-money laundering procedures (including the acquisition of due diligence information) to a suitable person.

The Fund, and the Administrator on the Fund's behalf, reserve the right to request such information as is necessary to verify the identity of a shareholder (i.e. a subscriber or a transferee) and the identity of their beneficial owners/controllers (where applicable). Where the circumstances permit, the Fund, or the Administrator on the Fund's behalf, may be satisfied that full due diligence may not be required at subscription where an exemption applies under the Anti-Money Laundering Regulations, 2017 of the Cayman Islands, as amended and revised from time to time or any other applicable law. However, detailed verification information may be required prior to the payment of any proceeds from or any transfer of an interest in Shares. Depending on the circumstances of each application, a detailed verification of identity might not be required where:

(a) the subscriber makes the payment for their investment from an account held in the subscriber's name at a recognized financial institution and redemptions/dividends are repaid directly to the subscriber; or

(b) the subscriber is regulated by a recognized regulatory authority or listed on a recognized stock exchange (or is a subsidiary of either) and is based or incorporated in, or formed under the law of, a recognized jurisdiction; or

(c) the application is made through an intermediary which is regulated by a recognized regulatory authority and is based in or incorporated in, or formed under the law of a recognized jurisdiction and an assurance is provided in relation to the procedures undertaken on the underlying investors.

For the purposes of these exceptions, recognition of a financial institution, regulatory authority, stock exchange or jurisdiction will be determined in accordance with the Money Laundering Regulations by reference to those jurisdictions recognized by the Cayman Islands Monetary Authority as having equivalent anti-money laundering regulations to the Cayman Islands.

In the event of delay or failure on the part of the subscriber in producing any information required for verification purposes, the Fund, or the Administrator on the Fund's behalf, may refuse to accept the application, in which case any funds received will be returned without interest to the account from which they were originally debited.

The Fund, and the Administrator on the Fund's behalf, also reserve the right to refuse to make any redemption or dividend payment to a shareholder if the Directors or the Administrator suspect or are advised that the payment of redemption or dividend proceeds to such shareholder may be non-compliant with applicable laws or regulations, or if such refusal is considered necessary or appropriate to ensure the compliance by the Fund or the Administrator with any applicable laws or regulations.

If any person resident in the Cayman Islands knows or suspects or has reasonable grounds for knowing or suspecting that another person is engaged in criminal conduct or is involved with terrorism or terrorist property and the information for that knowledge or suspicion came to their attention in the course of business in the regulated sector, or other trade, profession, business or employment, the person will be required to report such knowledge or suspicion to (i) the Financial Reporting Authority of the Cayman Islands, pursuant to the Proceeds of Crime Law, 2016 Revision of the Cayman Islands if the disclosure relates to criminal conduct or money laundering, or (ii) a police officer of the rank of constable or higher, or the Financial Reporting Authority, pursuant to the Terrorism Law (2015 Revision) of the Cayman Islands, if the disclosure relates to involvement with terrorism or terrorist financing and property. Such a report shall not be treated as a breach of confidence or of any restriction upon the disclosure of information imposed by any enactment or otherwise.

As a regulated mutual fund in the Cayman Islands, the Master Fund is also subject to the same legislation and regulations aimed at the prevention of money laundering that are applicable to the Fund. The Master Fund will discharge its obligations by implementing procedures substantially similar to the Fund.

Requests for Information

The Fund and the Master Fund, or any of its or their directors or agents domiciled in the Cayman Islands, may be compelled to provide information, subject to a request for information made by a regulatory or governmental authority or agency under applicable law; e.g. by the Cayman Islands Monetary Authority, either for itself or for a recognized overseas regulatory authority, under the Monetary Authority Law (2016 Revision), or by the Tax Information Authority, under the Tax Information Authority Law (2017 Revision) or Reporting of Savings Income information (European Union) Law (2014 Revision) and associated regulations, agreements, arrangements and memoranda of understanding. Disclosure of confidential information under such laws shall not be regarded as a breach of any duty of confidentiality and, in certain circumstances, the Fund, the Master Fund and any of its or their directors or agents, may be prohibited from disclosing that the request has been made.

United States

All subscriptions for Shares will be subject to applicable anti-money laundering regulations. Investors will be required to comply with such anti-money laundering procedures as are required by the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001 (Pub. L. No. 107-56).

As part of the Fund's responsibility to comply with regulations aimed at the prevention of money laundering, the Fund or its delegate may require verification of identity from all prospective investors. Depending on the circumstances of each subscription, it may not be necessary to obtain full documentary evidence of identity.

The Fund reserves the right to request such information as is necessary to verify the identity of a prospective investor. The Fund also reserves the right to request such identification evidence in respect of a transferee of Shares. In the event of delay or failure by the prospective investor or transferee to produce any information required for verification purposes, the Fund may refuse to accept the application or (as the case may be) to register the relevant transfer and (in the case of a subscription of Shares) any funds received will be returned without interest to the account from which the monies were originally debited.

The Fund also reserves the right to refuse to make any redemption payment or distribution to a shareholder, if the Fund suspects or is advised that the payment of any redemption or distribution moneys to such shareholder might result in a breach or violation of any applicable anti-money laundering or other laws or regulations by any person in any relevant jurisdiction, or such refusal is considered necessary or appropriate to ensure the compliance by the Fund and the Investment Manager with any such laws or regulations in any relevant jurisdiction.

Beneficial Ownership Regime

The Fund is regulated as a mutual fund under the Mutual Funds Law and, accordingly, does not fall within the scope of the primary obligations under Part XVIIA of the Companies Law (the "***Beneficial Ownership Regime***"). The Fund is therefore not required to maintain a beneficial ownership register. The Fund may, however, be required from time to time to provide, on request, certain particulars to other Cayman Islands entities which are within the scope of the Beneficial Ownership Regime and which are therefore required to maintain beneficial ownership registers under the Beneficial Ownership Regime. It is anticipated that such particulars will generally be limited to the identity and certain related particulars of (i) any person holding (or controlling through a joint arrangement) a majority of the voting rights in respect of the Fund; (ii) any person who is a member of the Fund and who has the right to appoint and remove a majority of the board of directors of the Fund; and (iii) any person who has the right to exercise, or actually exercises, dominant direct influence or control over the Fund.

Legal Implications of Investment in the Fund

The Fund is incorporated under the laws of the Cayman Islands and has its registered office in the Cayman Islands. In summary, the main Cayman Islands legal implications of investing in the Fund are as follows:

(a) by submitting the Subscription Documents to the Administrator, the prospective investor makes an offer to subscribe for the Shares which, once accepted by the Fund, has the effect of a binding contract. The terms of such contract are governed by the Subscription Documents (read together with the Memorandum);

(b) upon the issue of the Shares, such prospective investor becomes a shareholder of the Fund, and the Articles of Association of the Fund take effect as a contract between the shareholders and the Fund by operation of law;

(c) the Articles of Association may only be amended by way of a special resolution in accordance with the Cayman Islands Companies Law (as amended);

(d) subject to any separate contractual arrangements agreed to by a shareholder with the Fund and the indemnity provisions of the Subscription Documents, a shareholder's liability to the Fund will generally be limited to the amount, if any, unpaid on the Shares held by such shareholder;

(e) the Articles of Association are governed by, and construed in accordance with, the laws of the Cayman Islands. The Subscription Documents are expressed to be governed by, and construed in accordance with, the laws of the Cayman Islands;

(f) the rights and restrictions that apply to a shareholder's Shares may be modified and/or additional terms agreed by way of side letters (subject to such terms being consistent with the

Articles of Association). As a matter of Cayman Islands law, side letters may not contravene the terms of the Articles of Association or Cayman Islands law generally; and

(g) although there is no statutory enforcement in the Cayman Islands of judgments obtained in a foreign jurisdiction (other than judgments rendered by an Australian superior court which may be enforced under the Cayman Islands Foreign Judgments Reciprocal Enforcement Law (1996 Revision)), a judgment obtained in such jurisdiction will be recognized and enforced in the courts of the Cayman Islands at common law, without any re-examination of the merits of the underlying dispute, by an action commenced on the foreign judgment debt in the Grand Court of the Cayman Islands, provided such judgment satisfies certain criteria.

Appendix A

Definition of "United States Person"

For purposes of the applicable prohibitions against ownership and transfer of Shares of the Fund, the term "***United States Person***" and "***U.S. Person***" means:

(1) a resident or citizen of the United States;

(2) a partnership or corporation organized under the laws of the United States;

(3) any entity not organized under the laws of the United States:

(a) that has its principal office or place of business in the United States; or

(b) (i) in which citizens or residents of or entities organized under the laws of or existing in the United States directly or indirectly hold in the aggregate 50% or more of the beneficial interests; and

(ii) that will own directly or indirectly, either alone or together with affiliated persons, an aggregate of more than 9.9% of the Fund's outstanding Shares; or

(c) (i) that is organized principally for passive investment (such as an investment company, a commodity pool or other similar vehicle); and

(ii) (A) in which the amount of units of participation held by United States Persons (other than "qualified eligible participants" as defined in Rule 4.7(a)(2) under the United States Commodity Exchange Act) represents in the aggregate 10% or more of the beneficial interest in the entity;

(B) that was formed for the purpose of facilitating investment by United States Persons in the Fund, or in any other commodity pool with respect to which the operator is exempt from certain requirements of Part 4 of the regulations promulgated by the United States Commodity Futures Trading Commission by virtue of its participants being non-United States Persons; or

(C) that was formed by United States Persons principally for the purpose of investing in securities not registered under the United States Securities Act of 1933, as amended, unless it is formed and owned by "accredited investors" (as defined in Rule 501(a) under the Securities Act of 1933, as amended) who are not natural persons, estates or trusts;

(4) an estate or trust:

(a) of which an executor, administrator or trustee is a United States Person, unless:

(i) an executor, administrator or trustee who is not a United States Person has sole or shared investment discretion with respect to the assets of the estate or trust; and

(ii) (A) in the case of an estate, it is governed by non-U.S. law; or

(B) in the case of a trust, no beneficiary (and no settlor if the trust is revocable) is a United States Person; or

(b) the income of which is subject to United States income tax regardless of source;

(5) any agency or branch of a foreign entity located in the United States;

(6) any non-discretionary account or similar account (other than an estate or trust) held for the benefit or account of one or more United States Persons; and

(7) any discretionary account or similar account (other than an estate or trust) held by a dealer or other fiduciary organized, incorporated, or (if an individual) resident in the United States, unless it is held by a dealer or other professional fiduciary exclusively for the benefit or account of one or more non-United States Persons.

For purposes of the foregoing, the term "***United States***" or "***U.S.***" means the United States of America, its territories and possessions, any state of the United States, and the District of Columbia. Persons requiring details regarding other terms used in the foregoing definition (such as "qualified eligible participant" and "accredited investor") should contact the Fund or the Administrator.

Memorandum Number _____

Confidential Private Placement Memorandum

Series A Interests
Series B Interests
Series C Interests
in

Highland Argentina Regional Opportunity Fund, L.P.

General Partner

Highland Argentina Regional Opportunity Fund GP, LLC

Investment Manager

Highland Capital Management Latin America, L.P.

March 2019

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NOTICE

This Confidential Private Placement Memorandum (this "***Memorandum***") is being furnished on a confidential basis solely to selected qualified investors considering the purchase of limited partner interests (the "***Interests***") in Highland Argentina Regional Opportunity Fund, L.P. (the "***Fund***"). This Memorandum is not to be reproduced or distributed to others, at any time, without the prior written consent of Highland Argentina Regional Opportunity Fund GP, LLC (the "***General Partner***"). Each recipient agrees to keep confidential all information contained herein not already in the public domain and will use this Memorandum for the sole purpose of evaluating a possible investment in the Fund. Notwithstanding anything herein to the contrary, each investor (and each employee, representative, or other agent of the investor) may disclose to any and all persons, without limitation of any kind, the tax treatment and tax structure of an investment in the Fund and all materials of any kind (including opinions or other tax analyses) that are provided to the investor relating to such tax treatment and tax structure. Acceptance of this Memorandum by prospective investors constitutes an agreement to be bound by the foregoing terms.

Prospective investors should not construe the contents of this Memorandum as legal, tax or financial advice. Each prospective investor should consult its own professional advisors as to the legal, financial, tax, ERISA (as defined herein) or other matters relevant to the suitability of an investment in the Fund for such investor.

In making an investment decision, investors must rely on their own examination of the Fund and the terms of the offering contemplated by this Memorandum. The Interests have not been recommended by any U.S. federal or state, or any non-U.S., securities commission or regulatory authority. Furthermore, the foregoing authorities have not confirmed the accuracy or determined the adequacy of this Memorandum. Any representation to the contrary is a criminal offense.

The Interests have not been and will not be registered under the U.S. Securities Act of 1933, as amended (the "***Securities Act***"), or the securities laws of any of the states of the United States. The offering and any potential sale contemplated by this Memorandum will be made in reliance upon an exemption from the registration requirements of the Securities Act for offers and sales of securities which do not involve any public offering and analogous exemptions under state securities laws. There will be no public market for the Interests, and there is no obligation on the part of any person to register the Interests under the Securities Act or any state securities laws.

The Fund has not been and will not be registered under the U.S. Investment Company Act of 1940, as amended (the "***Investment Company Act***"), since Interests will only be sold to persons who are "qualified purchasers," as defined in the Investment Company Act.

Each subscriber for an Interest will be required to certify that it is an "accredited investor" as defined in Regulation D under the Securities Act and a "qualified purchaser," as defined in the Investment Company Act.

Pursuant to an exemption from the Commodity Futures Trading Commission (the "***CFTC***"), Highland Capital Management Latin America, L.P., the investment manager to the Fund (the "***Investment Manager***"), is not registered with the CFTC as a commodity pool operator ("***CPO***") and therefore, unlike a registered CPO, is not required to deliver a disclosure document or a certified annual report to participants in this pool. Among other things, the exemption requires the filing of a claim of exemption with the National Futures Association. It is also required that at all times either: (a) the

aggregate initial margin and premiums required to establish commodity interest positions does not exceed 5% of the liquidation value of the Fund's portfolio; or (b) the aggregate net notional value of the Fund's commodity interest positions does not exceed 100% of the liquidation value of the Fund's portfolio and further that all pool participants are required to be accredited investors or certain other qualified investors. The Investment Manager qualifies for an exemption from registration as a commodity trading advisor pursuant to CFTC Rule 4.14(a)(8).

Interests are suitable only for sophisticated investors who do not require immediate liquidity for their investments, for whom an investment in the Fund does not constitute a complete investment program and who fully understand and are willing to assume the risks involved in the Fund's investment program. The Fund's investment practices, by their nature, may be considered to involve a substantial degree of risk. See "*Risk Factors and Potential Conflicts of Interest*." No assurance can be given that the Fund's investment objectives will be achieved or that investors will receive a return of their capital.

The Interests are subject to restrictions on transferability and resale and may not be transferred or resold except as permitted under the Securities Act and any applicable state or other securities laws, pursuant to registration or an exemption therefrom. The transferability of the Interests will be further restricted by the terms of the limited partnership agreement of the Fund, as amended (the "***Partnership Agreement***"). Investors should be aware that they will be required to bear the financial risks of an investment in the Interests for an extended period of time.

This Memorandum does not constitute an offer to sell, or the solicitation of an offer to buy, any Interests in any state or other jurisdiction where, or to or from any person to or from whom, such offer or solicitation is unlawful or not authorized.

No person has been authorized to give any information or to make any representation concerning the Fund or the offering of the Interests other than the information contained in this Memorandum and, if given or made, such information or representation must not be relied upon as having been authorized by the Fund or the General Partner.

The Interests are offered subject to the right of the General Partner to reject any subscription in whole or in part.

This Memorandum is intended solely for the use of the person to whom it has been delivered by the General Partner or its authorized representative for the purpose of evaluating a possible investment by the recipient in the Interests described herein, and is not to be reproduced or distributed to any other persons (other than professional advisors of the prospective investor receiving this Memorandum from the General Partner or its authorized representative).

This Memorandum does not purport to be, and should not be construed as, a complete description of the Partnership Agreement or the investment management agreement by and among the Investment Manager, the General Partner, the Master Fund, the Offshore Fund (each as defined below) and the Fund (the "***Investment Management Agreement***"). Each prospective investor in the Fund is encouraged to review the Partnership Agreement carefully, in addition to consulting appropriate legal and tax advisors. To the extent of any inconsistency between this Memorandum and the Partnership Agreement, the terms of the Partnership Agreement shall control.

The delivery of this Memorandum does not, under any circumstances, create any implication that there has been no change in the circumstances affecting the Fund or Highland Argentina Regional

Opportunity Master Fund, L.P. (the "***Master Fund***") since the date hereof. An amended or updated Memorandum will be provided to reflect any material changes to the information contained herein.

Certain information contained in this Memorandum constitutes "forward-looking statements," which can be identified by the use of forward-looking terminology such as "may," "will," "should," "expect," "anticipate," "project," "estimate," "intend," or "believe" or the negatives thereof or other variations thereon or comparable terminology. Due to various risks and uncertainties, including those described in "*Risk Factors and Potential Conflicts of Interest*," actual events or results or the actual performance of the Fund may differ materially from those reflected or contemplated in such forward-looking statements.

All references herein to "$" refer to U.S. dollars. Except as the context otherwise requires, references to the term "Fund" in this Memorandum shall be deemed to include the Master Fund.

DIRECTORY

General Partner	Highland Argentina Regional Opportunity Fund GP, LLC 300 Crescent Court, Suite 700 Dallas, TX 75201
Investment Manager	Highland Capital Management Latin America, L.P. c/o Highland Capital Management, L.P. 300 Crescent Court, Suite 700 Dallas, TX 75201
Administrator	MUFG Fund Services (Cayman) Limited 2nd Floor, Strathvale House 90 North Church Street P.O. Box 609 Grand Cayman KY1-1107 Cayman Islands
Auditor	PricewaterhouseCoopers LLP 5th Floor Strathvale House P.O. Box 258 Grand Cayman KY1-1104 Cayman Islands
Prime Brokers	Société Générale 440 S. LaSalle St., Suite 2400 Chicago, IL 60605 BNP Paribas Prime Brokerage, Inc. 787 Seventh Avenue The Equitable Tower New York, NY 10019
Legal Counsel	*In the United States:* Akin Gump Strauss Hauer & Feld LLP 1700 Pacific Avenue Suite 4100 Dallas, TX 75201

EXECUTIVE SUMMARY

Highland Argentina Regional Opportunity Fund, L.P., a Delaware limited partnership (the "***Fund***"), seeks to maximize the total return of its assets through capital appreciation by investing all of its investable assets in Highland Argentina Regional Opportunity Master Fund, L.P., a Cayman Islands exempted limited partnership (the "***Master Fund***"), which intends to hold primarily a portfolio of investments in securities of Latin American corporate and sovereign issuers as well as non-Latin American issuers that derive a portion of their revenues from business activities in Latin America, in each case with a primary focus on Argentina.

Highland Argentina Regional Opportunity Fund GP, LLC, a Delaware limited liability company (the "***General Partner***"), acts as general partner of the Fund and the Master Fund and is registered as a foreign company in the Cayman Islands. Highland Capital Management Latin America, L.P., a Cayman Islands exempted limited partnership (the "***Investment Manager***" and, together with its affiliates, shareholders, directors, members, partners, officers and employees, the "***Advisory Parties***"), serves as investment manager to the Fund, the Offshore Fund (as defined below) and the Master Fund and manages the Master Fund's investment program. Each of the General Partner and the Investment Manager is ultimately controlled by James D. Dondero (the "***Principal***").

In order to facilitate investments by non-U.S. and certain U.S. tax-exempt investors, the Investment Manager and its affiliates recently assumed the management of an existing investment fund, Highland Argentina Regional Opportunity Fund, Ltd., a Cayman Islands exempted company (the "***Offshore Fund***" and, together with the Fund, the "***Feeder Funds***"). The Feeder Funds will place all of their investable assets in, and conduct all of their investment and trading activities in parallel through, the Master Fund. References in this Memorandum to the Fund shall include the Master Fund, unless otherwise specified or the context so requires.

The Fund (but not the Master Fund) is seeking subscriptions from investors who qualify as both "accredited investors" and "qualified purchasers" (each as defined in the Fund's subscription materials). The minimum initial investment is $500,000, and thereafter, the minimum subsequent investment is $500,000, although, in each case, the Fund may accept investments in a lesser amount, but no less than $100,000 with respect to Series B Interests. The Fund generally accepts subscriptions on the first day of each calendar month. A subscriber admitted to the Fund as a limited partner (each, a "***Limited Partner***") will receive, in exchange for its initial capital contribution and any subsequent capital contribution, a limited partner interest representing a proportionate share of the net assets of the Fund at that time.

The Fund intends to issue multiple series of limited partner interests ("***Interests***") over time. Not all series of Interests will be available for subscription at the same time and the terms among the series of Interests will vary. The Fund is currently offering Series A Interests, Series B Interests and Series C Interests pursuant to this Memorandum.

For its services to the Master Fund, the Investment Manager is generally entitled to a management fee (the "***Management Fee***"), which is calculated monthly and paid quarterly in arrears at the Master Fund level. The Management Fee is calculated at an annual rate of (i) 1.75% of each Limited Partner's capital account that is attributable to a Series A Interest, (ii) 1.25% of each Limited Partner's capital account that is attributable to a Series B Interest, and (iii) 1.00% of each Limited Partner's capital account that is attributable to a Series C Interest.

In addition, the Investment Manager, in its capacity as the special limited partner of the Master Fund (the "***Special Limited Partner***"), is entitled to a quarterly performance-based profits allocation (the "***Performance Allocation***") at the end of each fiscal quarter. The Performance Allocation is calculated and allocated at the Master Fund level, but is effectively equal to (i) 20.0% of the amount by which the net asset value of each Series A Interest on the last day of a fiscal quarter exceeds the "high water mark" for such Series A Interest, if any, (ii) 17.5% of the amount by which the net asset value of each Series B Interest on the last day of a fiscal quarter exceeds the "high water mark" for such Series B Interest, if any, and (iii) 15.0% of the amount by which the net asset value of each Series C Interest on the last day of a fiscal quarter exceeds the "high water mark" for such Series C Interest, if any.

Subject to a one-year "soft lock-up" with an early withdrawal reduction attributable to Series B Interests only and a two-year "soft lock-up" with an early withdrawal reduction attributable to Series C Interests only, a Limited Partner is generally permitted to withdraw all or a portion of its Interest on 30 calendar days' prior written notice on the last business day of each calendar month. Withdrawals may be subject to reserves for contingencies and suspension restrictions as discussed further in this Memorandum.

The Fund may agree with certain Limited Partners to a variation of the terms set forth in this Memorandum or establish additional series of Interests that have terms that differ from those described herein, including, without limitation, different management fees, performance allocations and withdrawal rights.

INVESTMENT PROGRAM

INVESTMENT OBJECTIVE

The investment objective of the Fund is to maximize the total return of its assets through capital appreciation by investing all of its investable assets in the Master Fund, which intends to hold primarily a portfolio of investments in securities of Latin American corporate and sovereign issuers as well as non-Latin American issuers that derive a portion of their revenues from business activities in Latin America, in each case with a primary focus on Argentina, and that the Investment Manager believes would provide profitable investment opportunities for the Master Fund. The Master Fund will invest in a single portfolio of assets and does not currently intend to have a separate portfolio of assets for each of its series, each of which will correspond to a series of limited partner interests in the Fund.

INVESTMENT STRATEGY

The Master Fund is a multi-strategy investment fund and there is no limit on the investment strategies that may be utilized. The Investment Manager believes that focusing on a multi-strategy approach will enable the Master Fund to enhance results by compounding returns generated by each strategy and at the same time have the needed flexibility to adjust to potentially changing regulations and market conditions.

The Investment Manager will be focused on identifying assets that are mispriced against similar assets and/or against the Investment Manager's expectations for assets' fair values and market movements, special situations, such as mergers, financial restructurings, hostile takeovers, or leveraged buy-outs. There is no set allocation among these and any other strategies that the Investment Manager may use.

The Master Fund may hold long and short positions in a wide range of liquid or illiquid fixed income securities including, but not limited to, sovereign and private debt, distressed debt, secured and unsecured debt, structured debt, loans, asset-backed securities and collateralized debt obligations. Furthermore, the Master Fund may invest, both long and short, in a wide range of liquid or illiquid equity-related instruments including, but not limited to, equities, convertible bonds, options, equity-linked notes, preferred shares and warrants, whether or not listed or traded on one or more exchanges.

The Master Fund may hold any of these positions indirectly by entering into swaps, options, futures, forward contracts or similar derivative transactions.

The Master Fund may hold both U.S. dollar and non-U.S. dollar denominated securities.

The Master Fund may leverage its investment portfolio by up to 100% of the Master Fund's net asset value (calculated at the time of investment) by borrowing for investment purposes and by using leverage techniques and products. It is anticipated that by doing so the performance of the Master Fund will be enhanced. While the use of the leverage may improve the return on invested capital, leverage may also significantly increase the impact of adverse movement in the value of the Master Fund.

The Master Fund may also utilize hedging strategies in order to maximize returns and reduce the risk to principal or the volatility associated with its holdings. As part of these hedging strategies, the Master Fund may hedge any of its investments with long or short positions in any financial instrument, which the Investment Manager deems appropriate. The Master Fund may utilize U.S. and European securities for hedging purposes.

The Master Fund may invest through one or more subsidiaries established in an appropriate jurisdiction in order to take advantage of applicable tax treaties or increase the tax efficiency of the Master Fund's investments, or in such other circumstances as the General Partner, in its capacity as the general partner of the Master Fund, following consultation with the Investment Manager, deem appropriate, including compliance with local investment laws.

The Master Fund may maintain assets in cash or cash equivalent instruments, money market funds, repurchase agreements, or other cash management vehicles pending investment, for defensive purposes, to fund withdrawals requested by the limited partners of the Master Fund or otherwise at the discretion of the Investment Manager. The Master Fund may hold with no limitation U.S. and European AAA fixed income securities for defensive purposes.

INVESTMENT RESTRICTIONS

In deploying the investment strategy, the Master Fund will observe the following investment restrictions. The Master Fund will not at the time of investment:

1. Invest more than 50 percent of its gross assets in its net holdings of equities;

2. Borrow more than 100 percent of its net assets;

3. Invest more than 20 percent of its gross assets in a single equity position;

4. Invest more than 20 percent of its gross assets in a single corporate issuer position;

5. Invest more than 30 percent of its gross assets in a single GDP-linked warrant position; and

6. Invest more than 30 percent of its gross assets in a single sovereign issuer security position; and

7. Invest more than 30 percent of its gross assets in a single provincial issuer.

If a percentage limitation on investment or use of assets set forth above is adhered to at the time a transaction is effected, later changes in percentage resulting from changing values will not be considered a violation.

In the event that the Investment Manager discovers that a violation of any of the Master Fund's investment limitations has occurred (the date of such discovery being the "***Discovery Date***"), the Investment Manager shall inform the limited partners of the Master Fund, including the Fund, who shall: (i) notify each of their limited partners or shareholders, as applicable, in writing within 30 business days after the Discovery Date of the nature of the violation, the steps taken, or to be taken, to remedy the violation and the reason the violation occurred and (ii) use reasonable commercial efforts to cause the Investment Manager to remedy such violation within 90 business days after the Discovery Date (the "***Remedy Date***"). If such violation has not been remedied on or before the Remedy Date, the limited partners of the Master Fund, including the Fund, shall: (i) notify each of their limited partners or shareholders, as applicable, in writing, 30 business days after the Remedy Date, of the steps taken to remedy the violation and the reason that the violation has not been remedied by the Remedy Date (the "***Remedy Notice***") and (ii) use reasonable commercial efforts to cause the Master Fund's portfolio to be examined by an independent auditor other than PricewaterhouseCoopers LLP and shall request that such independent auditor issue a report to the investors in each of the Master Fund's limited partners as to its

concurrence or disagreement with the statements in the Remedy Notice. The Investment Manager shall pay for the costs of such audit and the costs of the Remedy Notice if the violation that was the subject of the Remedy Notice occurred as a result of the Investment Manager's willful misfeasance, bad faith or gross negligence. In addition, the failure to remedy the violation in a timely manner may give rise to special withdrawal rights. See "*Summary of Terms – Withdrawals; Lock-Ups*."

DISTRIBUTION POLICY

The Fund's objective is to maximize capital appreciation and accordingly it is not envisaged that any income or gains derived from the investments made by the Master Fund will be distributed by way of dividend. This does not preclude the General Partner from declaring a dividend at any time in the future if it considers it appropriate to do so. To the extent that a dividend may be declared, it will be paid in compliance with any applicable laws.

The investment objectives and strategies summarized herein represent the Investment Manager's current intentions. Depending on conditions and trends in the securities markets and the economy in general, the Investment Manager may pursue any strategies, employ any investment techniques or purchase any type of security that it considers appropriate, whether or not described in this section, subject to any applicable law or regulation. The discussion herein includes and is based upon numerous assumptions and opinions of the Investment Manager concerning world financial markets and other matters, the accuracy of which cannot be assured. There can be no assurance that the investment strategy of the Master Fund will achieve the intended investment objective. The Master Fund's investment program is speculative and involves a high degree of risk, including, without limitation, the risk of loss of the entire amount invested.

MANAGEMENT AND ADMINISTRATION

The General Partner and the Investment Manager

Highland Argentina Regional Opportunity Fund GP, LLC, a Delaware limited liability company (the "***General Partner***"), acts as the general partner of the Fund and the Master Fund and is registered as a foreign company in the Cayman Islands.

Highland Capital Management Latin America, L.P., a Cayman Islands exempted limited partnership (the "***Investment Manager***"), serves as the investment manager of the Fund, the Offshore Fund and the Master Fund and has responsibility for the Master Fund's investment program.

Each of the General Partner and the Investment Manager is ultimately controlled by James D. Dondero (the "***Principal***").

The Investment Management Agreement

The Investment Manager was appointed as the investment manager to the Fund, the Offshore Fund and the Master Fund pursuant to an investment management agreement (the "***Investment Management Agreement***"). Under the Investment Management Agreement, the Investment Manager has full discretion to invest the assets of the Master Fund in pursuit of the investment objective and strategy described in this Memorandum. For its services, the Investment Manager is entitled to the Management Fee, as well as reimbursement for any Feeder Fund or Master Fund expenses incurred by the Investment Manager.

The Investment Management Agreement provides that, in the absence of gross negligence, willful misconduct or fraud, each of the Investment Manager, its members, shareholders, partners, managers, directors, any person who controls the Investment Manager, each of the respective affiliates of the foregoing, and each of their respective executors, heirs, assigns, successors and other legal representatives, will be indemnified by the Fund, the Offshore Fund and/or the Master Fund, to the extent permitted by law, against any loss or liability incurred by any of such persons in performing their duties under the Investment Management Agreement.

Services Agreement

The Investment Manager engaged Highland Latin America Consulting, Ltd., a Cayman Islands exempted company and a wholly-owned subsidiary of the Investment Manager ("***Highland Latin America***"), pursuant to a services agreement (the "***Services Agreement***") to provide certain administrative and consulting services to the Investment Manager related to its management of the Fund, the Offshore Fund and the Master Fund, including back- and middle-office services; credit analysis; investment vehicle management; valuation; execution and documentation; marketing; reporting; administrative services; and other ancillary services.

The Services Agreement provides that in the absence of bad faith, gross negligence, fraud or willful misconduct (as determined by a court of competent jurisdiction in a final non-appealable judgment), the Investment Manager will, to the extent permitted by law, indemnify and hold harmless Highland Latin America, any of its affiliates, and any of their respective managers, members, principals, partners, directors, officers, shareholders, employees and agents against any and all claims, demands, liabilities, costs, expenses, damages, losses, suits, proceedings, judgments, assessments, actions and other liabilities incurred by such person in performing their duties under the Services Agreement. The

Fund will not be liable for any consulting services provided by Highland Latin America or any consultants or service providers that Highland Latin America engages, and the Fund will not bear any costs or expenses related to the services provided by Highland Latin America.

Investment Personnel

The key investment professionals of the Investment Manager and Highland Latin America who will be responsible for the Master Fund's investments are described below:

James Dondero, CFA, CMA, President, Co-Founder. Mr. Dondero is Co-Founder and President of Highland Capital Management, L.P. and a Director of Highland Latin America GP, Ltd., the general partner of the Investment Manager. Mr. Dondero has over 30 years of experience in the credit and equity markets, focused largely on high-yield and distressed investing. Mr. Dondero is the Chairman and President of NexPoint Residential Trust, Inc. (NYSE:NYRT), Chairman of NexBank Capital, Inc., Cornerstone Healthcare Group Holding, Inc., and CCS Medical, Inc., and a board member of Jernigan Capital, Inc. (NYSE:JCAP), and MGM Holdings, Inc. He also serves on the Southern Methodist University Cox School of Business Executive Board. A dedicated philanthropist, Mr. Dondero actively supports initiatives in education, veterans affairs, and public policy. Prior to founding Highland in 1993, Mr. Dondero was involved in creating the GIC subsidiary of Protective Life, where as Chief Investment Officer he helped take the company from inception to over $2 billion between 1989 and 1993. Between 1985 and 1989, Mr. Dondero was a corporate bond analyst and then portfolio manager at American Express. Mr. Dondero began his career in 1984 as an analyst in the JP Morgan training program. Mr. Dondero graduated from the University of Virginia where he earned highest honors (Beta Gamma Sigma, Beta Alpha Psi) from the McIntire School of Commerce with dual majors in accounting and finance. He has received certification as Certified Public Accountant (CPA) and Certified Managerial Accountant (CMA) and has earned the right to use the Chartered Financial Analyst (CFA) designation.

Gustavo Prilick. Mr. Prilick is a Managing Partner at Highland Capital Brasil and a registered asset manager in Brazil, and is a Director of Highland Latin America GP, Ltd., the general partner of the Investment Manager. He has extensively worked in several of Highland Capital Brasil's portfolio companies in the US mainly as CEO. Prior to his involvement with Highland Capital Brasil, he was a Partner at South America Fund, a private equity firm, mainly focused on providing financial services to export companies in Argentina and Uruguay. Prior to South America Fund, he was the Chief Operating Officer of Millicom International Cellular for 7 years, serving Latin America, Asia, Africa and ten operations in Russia. Prior to Millicom, he served as the Director of International Business for Oracle Corporation where he was responsible for the establishment of most of Oracle's International Subsidiaries on several continents, including the Brazilian operation. Later he became President of Oracle South America with oversight of several countries in South America. He also served as CEO of Nacion Factoring, a subsidiary of Banco Nacion in Argentina building its operations to reach one of the leading positions in the country. Mr. Prilick received an MBA from the Stanford University Graduate School of Business and a degree in Electrical Engineering from Universidad de Buenos Aires. He has also held teaching positions as a visiting professor in several leading Business Schools in Argentina.

Highland Latin America will enter into relationships and agreements with Argentine relevant parties and/or individuals to obtain supporting services for the management of the Fund, the Offshore Fund and the Master Fund, and will enter into consulting agreements with Andrés Pitchón, Julieta Prieto and Javier Casabal pursuant to which these consultants will provide investment and related services to the Feeder Funds and the Master Fund. Mr. Pitchón will provide portfolio management services to the Master Fund under the overall supervision of the Investment Manager.

Andrés Pitchón. Mr. Pitchón, through a consulting arrangement with Highland Latin America Consulting, Ltd., provides portfolio management services to the Master Fund. Mr. Pitchón began his career in 1993 as Head of Equity Research for Argentina for MBA-Salomon Brothers and later he also became responsible for Fixed income. As Head of the Research Department, his work was recognized by international publications such as Institutional Investor, Latin Finance, The Reuters Survey and The Greenwich Survey. Since 1997 and 1999, he has managed the Offshore Fund's equity and fixed income mutual funds. Since 2003, Mr. Pitchón had been Senior Portfolio Manager of the Offshore Fund's hedge funds. Mr. Pitchón received a BA degree in IT, focused on Business Administration from the University of Belgrano (1989), together with an academic merit medal for highest GPA in the School of Technology. Mr. Pitchón also received a Master's degree in Business Administration from Anderson Graduate School of Business at UCLA in 1992.

The Administrator

The Master Fund has entered into an Administration Agreement (the "***Administration Agreement***") with MUFG Fund Services (Cayman) Limited (the "***Administrator***") pursuant to which the Administrator performs certain administrative and accounting services for the Feeder Funds and the Master Fund, subject to the oversight and control of the General Partner, in its capacity as the general partner of the Master Fund.

Pursuant to the Administration Agreement, the Administrator is responsible, under the overall supervision of the General Partner, in its capacity as the general partner of the Master Fund, for certain matters pertaining to the administration for the Fund, including: (i) maintaining the accounts of the Fund and the Master Fund, (ii) calculating the Master Fund's net asset value, (iii) maintaining the principal corporate records of the Fund and the Master Fund, (iv) communicating with Limited Partners, (v) accepting the subscriptions of new Limited Partners, (vi) effecting withdrawals of Interests, (vii) maintaining the register of sub-fund investments, (viii) executing sub-fund subscriptions and withdrawals as instructed by the Fund, and (ix) ensuring compliance with applicable law and regulation (including anti-money laundering regulations). For its services, the Administrator receives a fee from the Master Fund.

The Administration Agreement may be terminated by the Administrator or the Master Fund upon ninety (90) days' written notice or, under certain circumstances, shorter notice. In such event, the Master Fund may enter into a new agreement with a new administrator on behalf of the Master Fund and the Feeder Funds, in its discretion and on such terms as it deems advisable, without prior notice to, or approval of, investors.

Under the Administration Agreement, the Master Fund agrees to indemnify and hold harmless the Administrator and its affiliated persons and delegates, as well as their respective officers, directors, employees and agents for, and to defend and hold each such person harmless from, any and all taxes, claims, demands, actions, suits, judgments, liabilities, losses, damages, costs, charges, counsel fees (on a solicitor and his own client basis), fines, assessments, amounts paid in settlement and expenses imposed on, incurred by, or asserted against the person which may arise out of or in connection with the Administration Agreement. The Administrator or any other indemnified person will not be indemnified for their own gross negligence, wilful default or fraud.

The Administrator is not responsible for valuing the Master Fund's investments, monitoring any investment restrictions of the Master Fund, determining compliance by the Master Fund with its investment restrictions, the Master Fund's trading activities, the management or performance of the

Master Fund or the accuracy or adequacy of this Memorandum. In addition, the Administrator does not assume any liability to any person or entity, including Limited Partners, except as specifically provided in the Administration Agreement. The Administrator may delegate certain services and share information concerning the Fund and its Limited Partners with its various non-United States affiliates subject to applicable confidentiality provisions.

The Administrator has no responsibility with respect to trading activities, the Investment Manager, the management or performance of the Master Fund, or the accuracy or adequacy of this Memorandum.

SUMMARY OF TERMS

*The following Summary of Terms summarizes the principal terms governing an investment in the Fund, and is subject, and qualified in its entirety by reference, to the Partnership Agreement, the exempted limited partnership agreement of the Master Fund, as amended (the "**Master Fund Partnership Agreement**"), and the Fund's subscription documents (the "**Subscription Documents**"). This summary is intended to be brief and does not purport to provide a comprehensive explanation of the Partnership Agreement, the Master Fund Partnership Agreement and the Subscription Documents. Accordingly, statements made in this Memorandum are subject to the detailed provisions of those agreements. Prospective investors are urged to review those agreements in their entirety prior to determining whether to invest in the Fund.*

The Fund	Highland Argentina Regional Opportunity Fund, L.P., a Delaware limited partnership (the "***Fund***"), primarily seeks to maximize the total return of its assets through capital appreciation by investing all of its investable assets in Highland Argentina Regional Opportunity Master Fund, L.P., a Cayman Islands exempted limited partnership (the "***Master Fund***"), which intends to hold primarily a portfolio of investments in securities of Latin American corporate and sovereign issuers as well as non-Latin American issuers that derive a portion of their revenues from business activities in Latin America, in each case with a primary focus on Argentina.
General Partner	Highland Argentina Regional Opportunity Fund GP, LLC, a Delaware limited liability company (the "***General Partner***"), acts as the general partner of the Fund and the Master Fund and is registered as a foreign company in the Cayman Islands. James D. Dondero (the "***Principal***") ultimately controls the General Partner.
Investment Manager	Highland Capital Management Latin America, L.P., a Cayman Islands exempted limited partnership controlled by the Principal (the "***Investment Manager***"), serves as investment manager to the Feeder Funds (as defined below) and the Master Fund and has responsibility for the Master Fund's investments.
Master-Feeder Structure	In order to facilitate investments by non-U.S. and certain U.S. tax-exempt investors, the Investment Manager and its affiliates recently assumed the management of an existing investment fund, Highland Argentina Regional Opportunity Fund, Ltd., a Cayman Islands exempted company (the "***Offshore Fund***" and, together with the Fund, the "***Feeder Funds***"). The Feeder Funds will place all of their investable assets in, and conduct all of their investment and trading activities in parallel through, the Master Fund. Accordingly, references herein to the investment activity of the Fund should be construed to refer to the Fund's investment activities through the Master Fund. The Feeder Funds share all items of profit, loss, income and expense of the Master Fund on a *pro rata* basis in accordance with their respective capital account balances in the Master Fund. Except as the context otherwise requires, the term "Fund" also includes the Master Fund.

The Investment Manager or an affiliate may also sponsor one or more additional investment funds or accounts.

Eligible Investors

Limited partner interests ("***Interests***") may be purchased only by investors who qualify as both "accredited investors" and "qualified purchasers," each as defined in the Fund's Subscription Documents. Subscribers will be required to complete the Fund's Subscription Documents consisting of the subscription agreement and the subscriber information form to determine their eligibility. The General Partner reserves the right to reject any investor for any reason or for no reason in its sole discretion.

An investment in the Fund is suitable only for persons that have adequate means of providing for their current needs and personal contingencies and have no need for liquidity in their investments. An investment in the Fund should not be made by any person that (a) cannot afford a total loss of its principal, or (b) has not carefully read or does not understand this Memorandum, including the portions concerning the risks and the income tax consequences of an investment in the Fund.

Series of Interests

The Fund intends to issue multiple series of Interests over time. Not all series of Interests will be available for subscription at the same time and the terms among the series of Interests will vary. Each series will have separate rights and preferences, including, without limitation, with respect to fees and withdrawal rights. The Fund is currently offering Series A Interests, Series B Interests and Series C Interests (each, a "***Series***").

New series of Interests may be established by the General Partner without notice to or approval of the Limited Partners (defined below). References herein to "Interests" or "Limited Partners" shall include all Series and Limited Partners unless otherwise specified or context so requires.

Subscriptions

Subscriptions for Interests may be accepted as of the first day of each calendar month and/or such other days as the General Partner may determine in its discretion from time to time, generally subject to the receipt of cleared funds no later than the Business Day immediately preceding the acceptance date. The initial minimum investment is $500,000, and thereafter, a Limited Partner may make additional investments, with the consent of the General Partner, in increments of not less than $500,000; provided that, in each case, the Fund may accept investments in a lesser amount, but no less than $100,000 with respect to Series B Interests.

"***Business Day***" is defined as any day on which banks in the Cayman Islands, Buenos Aires and New York City are authorized to open for

business or such other days as the General Partner may determine generally, or in any particular case.

A subscriber admitted to the Fund (a "***Limited Partner***") receives, in exchange for its initial capital contribution and any subsequent capital contribution, an Interest representing a proportionate share of the net assets of the Fund at that time.

All subscribers will be required to comply with such anti-money laundering procedures as are required by the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001 (Pub. L. No. 107-56) and other applicable anti-money laundering regulations as further described in this Memorandum and the Subscription Documents.

Placement Agents

There will be no sales charge payable by or to the Fund in connection with the offering of Interests. However, the General Partner and/or the Investment Manager may enter into arrangements with placement agents (which may include its affiliates) to solicit investors in the Fund, and such arrangements may provide for the compensation of such placements agents for their services at the General Partner's and/or the Investment Manager's expense or such placement agents may be paid a portion of the Management Fee. For the avoidance of doubt, the Fund will not bear any placement agent fees.

Accordingly, investors should recognize that a placement agent's or distributor's participation in this offering may be influenced by its interest in such current or future fees and compensation. Investors should consider these potential conflicts of interest in making their investment decisions.

Each placement agent shall comply with the legal requirements of the jurisdictions within which it offers and sells Interests.

Capital Accounts

The Fund will maintain a book capital account (a "***Capital Account***"), which may be divided into capital sub-accounts, for the General Partner and each Limited Partner (each, a "***Partner***" and together, the "***Partners***") to reflect contributions, withdrawals, distributions and allocations of net profit and net loss, with each sub-account being maintained as if it were the Capital Account of a separate Partner in order to calculate the Series B Early Withdrawal Reduction and Series C Early Withdrawal Reduction (each as defined below), as applicable, and the Performance Allocation (as defined below) for each capital contribution. The initial balance of each Partner's Capital Account will be equal to the amount of cash or net value of any property contributed to the Fund by such Partner.

If a Partner invests in more than one Series, the Fund will maintain a separate Capital Account on behalf of such Partner with respect to each such Series and each Capital Account will be treated as if it were the

Capital Account of a separate Partner for purposes of determining the Management Fee (as defined below) and Performance Allocation applicable to each Capital Account.

The Master Fund will issue to the Fund a limited partner interest in the Master Fund and will maintain capital accounts and sub-accounts that correspond to Limited Partners' Capital Accounts in the Fund.

Affiliated Investors

The Investment Manager, the General Partner and their respective affiliates, principals, employees, partners, agents, the respective family members of such personnel and trusts and other entities established primarily for their benefit or for charitable purposes ("***Affiliated Investors***") may not be subject to restrictions on withdrawals or be assessed the Management Fee or the Performance Allocation that are applicable to other investors in the Fund, but do share *pro rata* in all other applicable expenses of the Fund; provided that, the Special Limited Partner may, unless prohibited by law, make withdrawals of all or any part of its Performance Allocation and gains thereon from its capital account in the Master Fund as of any Withdrawal Date (as defined below).

Borrowing and Leverage

The Master Fund may buy securities or commodities on margin and arrange with banks, brokers and others to borrow money against a pledge of securities or commodities in order to employ leverage when the Investment Manager deems such action appropriate. The Master Fund may not borrow more than 100% of its net assets as described in "*Investment Program – Investment Restrictions*" above.

Management Fee

For its services to the Master Fund, the Investment Manager is entitled to a management fee (the "***Management Fee***") calculated monthly and payable quarterly in arrears at an annual rate of (i) 1.75% of each Limited Partner's Capital Account balance that is attributable to a Series A Interest, (ii) 1.25% of each Limited Partner's Capital Account balance that is attributable to a Series B Interest, and (iii) 1.00% of each Limited Partner's Capital Account balance that is attributable to a Series C Interest. The Management Fee is paid at the Master Fund level. The Management Fee will be prorated for any period that is less than a full calendar quarter.

The General Partner or the Investment Manager may elect to reduce, waive or calculate differently the Management Fee with respect to any Limited Partner, including, without limitation, Affiliated Investors. To effect such reduction, waiver or difference in calculation, the Fund may issue a separate series of Interests.

The General Partner may delay the timing or alter the structure of fees payable to the Investment Manager so long as such changes are not materially adverse to the Limited Partners. The Investment Manager may also assign all or any portion of fees payable to the Investment Manager,

including the Management Fee and the Performance Allocation, to any affiliate thereof or any third party in its sole discretion.

Performance Allocation

Pursuant to the Master Fund Partnership Agreement, generally, as of the close of each fiscal quarter and subject to the limitations described below, a performance-based profits allocation (the "***Performance Allocation***") is debited against the Master Fund capital sub-account relating to each Series attributable to a Limited Partner and simultaneously credited to the Master Fund capital account of the Special Limited Partner. The Performance Allocation is calculated and allocated at the Master Fund level, but is effectively equal to (i) 20.0% of the Net Capital Appreciation (as defined below) of each Series A Interest for such fiscal quarter, (ii) 17.5% of the Net Capital Appreciation of each Series B Interest for such fiscal quarter, and (iii) 15.0% of the Net Capital Appreciation of each Series C Interest for such fiscal quarter.

The "***Net Capital Appreciation***" applicable to an Interest shall mean the amount by which the net asset value of such Interest on the last day of the fiscal quarter (or on the Withdrawal Date, if applicable) exceeds the higher of the following amounts: (i) the highest net asset value of such Interest as of the commencement of any fiscal quarter and (ii) the issue price of such Interest. All such calculations include realized and unrealized gains and losses and are made before deduction of the Performance Allocation, but after deduction of the accrued applicable expenses of the Fund and the Master Fund for the applicable period, and in each case adjusted for any subscriptions and withdrawals made during the quarter.

The Performance Allocation is calculated and allocated at the Master Fund level through the use of separate memorandum sub-accounts with respect to the Fund's capital account in the Master Fund that correspond to each Series attributable to a Limited Partner. No separate Performance Allocation will be charged at the Fund level.

The Performance Allocation generally will be allocable to the Special Limited Partner after the end of each fiscal quarter and as of any Withdrawal Date occurring prior to the end of any fiscal quarter. The Performance Allocation payable with respect to any Interests withdrawn prior to the end of a fiscal quarter will be determined solely by reference to such withdrawn Interests and will be allocable to the Special Limited Partner on the Withdrawal Date. The Performance Allocation with respect to any Limited Partner may be fully or partially waived or rebated by the General Partner in its sole discretion.

Other Fees and Expenses

The Fund bears all of its own initial organizational expenses and its *pro rata* share of the initial organizational expenses of the Master Fund. In general, the Fund's financial statements will be prepared in accordance with generally accepted accounting principles in the United States ("***GAAP***"). However, the General Partner intends to amortize the Fund's

organizational expenses over a period of 60 calendar months from the date the Fund commenced operations because it believes such treatment is more equitable than expensing the entire amount of the organizational expenses in the Fund's first year of operation, as is required by GAAP. The General Partner may, however, limit the amount of start-up and organizational expenses that the Fund amortizes so that the audit opinion issued with respect to the Fund's financial statements will not be qualified.

The Fund pays all costs, fees and expenses arising in connection with the Fund's operations. The Fund also bears its *pro rata* share of the cost of the Master Fund's operations and investments as provided in the Master Fund Partnership Agreement. Expenses payable by the Fund in connection with the Master Fund's investment program, include, but are not limited to, brokerage commissions, other expenses related to buying and selling securities (including trading errors that are not the result of the Investment Manager's gross negligence, willful misconduct or fraud), costs of due diligence regardless of whether a particular transaction is consummated, the costs of attending shareholder meetings, research expenses and costs related to monitoring investments. Expenses payable by the Fund in connection with its operations include, but are not limited to, fees and expenses of advisers and consultants; the Management Fee; fees and expenses of any custodians, escrow or transfer agents or other investment-related service providers; indemnification expenses and the cost of insurance against potential indemnification liabilities; interest and other borrowing expenses; legal, administrative, accounting, tax, audit and insurance expenses; expenses of preparing and distributing reports, financial statements and notices to Limited Partners; litigation or other extraordinary expenses; any withholding, transfer or other taxes payable by the Fund (including any interest and penalties), and the cost of periodically updating this Memorandum and the Partnership Agreement.

The Investment Manager may retain, in connection with its responsibilities under the Investment Management Agreement, the services of others to assist in the investment advice to be given to the Master Fund, including, but not limited to, any affiliate of the Investment Manager. Payment for any such services will be assumed by the Investment Manager. However, the Investment Manager, in its sole discretion, may retain the services of independent third party professionals on behalf of the Master Fund, including, without limitation, attorneys, accountants and consultants, to advise and assist it in connection with the performance of its activities on behalf of the Master Fund, and the Master Fund will bear full responsibility therefor and the expense of any fees and disbursements arising therefrom.

The Fund and the Master Fund do not have their own separate employees or office, and neither the Fund nor the Master Fund will reimburse the General Partner or the Investment Manager for salaries, office rent and other general overhead costs of the General Partner or the Investment

Manager. A portion of the commissions generated on the Master Fund's brokerage transactions may generate soft dollar credits that the Investment Manager is authorized to use to pay for research and other research-related services and products used by the Investment Manager. It is the current policy of the Investment Manager to limit such use of soft dollars to fall within the safe harbor of Section 28(e) of the Securities Exchange Act of 1934, as amended, or to be otherwise reasonably related to the investment decision-making process or for Master Fund expenses. See "*Brokerage and Custody*."

If the General Partner or the Investment Manager, as appropriate, incurs any expenses for both the Master Fund and one or more Other Accounts (as defined herein), the General Partner or the Investment Manager, as appropriate, will allocate such expenses among the Master Fund and each such Other Account in proportion to the size of the investment made by each in the activity or entity to which the expenses relate, or in such other manner as the General Partner considers fair and reasonable.

Allocation of Net Profit and Loss

Net profit or net loss of the Fund is allocated among the Capital Accounts of the Partners as of the close of each calendar month, at any other time when the Fund receives an additional capital contribution or effects a withdrawal or distribution, or at such other times as the General Partner may determine (each, a "***Fiscal Period***").

The net profit or net loss of the Fund for any calendar month or other valuation period will reflect, with respect to all positions:

(a) the dividends and interest accrued during the period;

(b) the net realized gains or losses from the sale or other disposition of investments during the period allocated by the Fund;

(c) the net change in the unrealized appreciation or depreciation of investments during the period held at the close of the period (*i.e.*, the difference between the fair market value of each investment at the end of the period compared with either the fair market value at the commencement of the period or, in the case of any investment made after the commencement of the period, the cost); and

(d) the expenses of the Fund incurred or accrued during the period (other than the Management Fee and any other items that are charged on a Partner-by-Partner basis).

As of the close of each Fiscal Period, the net profit or net loss (subject to any applicable Performance Allocation paid at the Master Fund level) will be allocated *pro rata* among the Capital Accounts of the Partners in proportion to their percentage interests in the Fund as of the commencement of the period. Each Partner's percentage interest in the Fund as of the commencement of any period is based on the value of the

Partner's Capital Account at such time in relation to the sum of the Capital Accounts of all of the Partners at such time.

The Management Fee will be calculated separately with respect to each Limited Partner and will be debited from the capital sub-account at the Master Fund level corresponding to each Limited Partner's Capital Account.

Distributions

Subject to the monthly withdrawal privilege described below, all earnings of the Fund are ordinarily retained for investment. Limited Partners should not expect the Fund to make any dividend distributions.

Withdrawals; Lock-Up

Subject to certain withdrawal restrictions described below, a Limited Partner is generally permitted to withdraw all or a portion of its Capital Account as of the last Business Day of each calendar month (and/or such other Business Days as the General Partner may determine in its sole discretion) (each, a "***Withdrawal Date***"); provided that, any partial withdrawals may only be made in minimum amounts of $100,000. Notwithstanding the foregoing, any Limited Partner that withdraws all or a portion of its Capital Account with respect to a Series B Interest prior to the one-year anniversary of the date such capital was contributed to the Fund is subject to an early withdrawal reduction of up to 3.0% of the net asset value of the portion of the Series B Interest being withdrawn, as determined at the close of business of such Withdrawal Date (such fee, the "***Series B Early Withdrawal Reduction***"). In addition, any Limited Partner that withdraws all or a portion of its Capital Account with respect to a Series C Interest prior to the:

(i) one-year anniversary of the date such capital was contributed to the Fund is subject to an early withdrawal reduction of 5.0% of the net asset value of the portion of the Series C Interest being withdrawn, as determined at the close of business of such Withdrawal Date, and

(ii) two-year anniversary, but on or after the one-year anniversary, of the date such capital was contributed to the Fund is subject to an early withdrawal reduction of 3.0% of the net asset value of the portion of the Series C Interest being withdrawn, as determined at the close of business of such Withdrawal Date (such fees with respect to Series C Interests, the "***Series C Early Withdrawal Reduction***" and together with the Series B Early Withdrawal Reduction, the "***Early Withdrawal Reduction***").

The Early Withdrawal Reduction is retained by the Fund (and generally invested in the Master Fund) and deducted from the withdrawal proceeds of the withdrawing Limited Partner. The Early Withdrawal Reduction will not apply in the event of a Compulsory Withdrawal (defined below).

Written notice of any withdrawal request must be received in writing by the Administrator at least 30 calendar days prior to the requested Withdrawal Date. The General Partner may waive such notice requirements, or permit withdrawals under such other circumstances, if, in its sole discretion, it determines that, under the circumstances, to waive such requirement will not have an adverse effect on the Master Fund's portfolio.

If the Master Fund violates the investment restrictions and fails to remedy the violation on or before the Remedy Date (as described in "*Investment Program – Investment Restrictions*"), any Limited Partner may withdraw all or part of its Capital Account on the next Withdrawal Date and will not be subject to the Early Withdrawal Reduction; provided that, such Limited Partner has requested such withdrawal in writing within 30 Business Days after the Remedy Date.

Settlement of Withdrawal Proceeds

A withdrawal request is normally settled in cash or, subject to the sole discretion of the General Partner, wholly or partially with securities or other assets of the Fund (received from the Master Fund), whether or not readily marketable, generally within 10 Business Days after the Withdrawal Date; provided that the General Partner may delay such payment if such delay is reasonably necessary to prevent such withdrawal from having a material adverse impact on the Fund. In the event that the General Partner satisfies a withdrawal request with assets in kind, such securities may be transferred to a liquidating account and sold by the Fund for the benefit of the withdrawing Limited Partner, in which case, payment of the withdrawal proceeds attributable to such investments will be delayed until such investments are sold. The amount payable in respect of such investments will depend on the performance of such investments through to the date on which they are sold. The cost of operating the liquidating account and selling the investment(s) will be deducted from the proceeds of sale paid to the withdrawing Limited Partner.

Notwithstanding anything to the contrary herein, the General Partner may establish reserves and holdbacks for estimated accrued expenses, liabilities and contingencies, including, without limitation, general reserves for unspecified contingencies (even if such reserves or holdbacks are not otherwise required by GAAP) or liabilities stemming from tax obligations (as such may be determined in the sole discretion of the General Partner and whether or not incurred directly or indirectly), which could reduce the amount of a distribution upon a Limited Partner's withdrawal. The General Partner may withhold for the benefit of the Fund from any distribution to a withdrawing Limited Partner an amount representing the actual or estimated costs incurred by the Fund with respect to such withdrawal, as well as any Early Withdrawal Reduction described above.

Withdrawal Conditions

The General Partner or the Administrator may refuse to accept a withdrawal request if it is not accompanied by such additional information as the General Partner or the Administrator may reasonably require. This power may, without limitation to the generality of the foregoing, be exercised where proper information has not been provided for money laundering verification purposes. In addition, where withdrawal proceeds are requested to be remitted to an account which is not in the name of the Limited Partner, the General Partner and the Administrator reserve the right to request such information as may be reasonably necessary in order to verify the identity of the Limited Partner and the owner of the account to which the withdrawal proceeds will be paid. The withdrawal proceeds will not be paid to a third-party account if the Limited Partner and/or owner of the account fails to provide such information.

Compulsory Withdrawals

The General Partner reserves the right, in its sole discretion, to compel the withdrawal of a Limited Partner's Interest at any time and for any reason on not less than seven days' prior written notice (or immediately if the General Partner, in its sole discretion, determines that such Limited Partner's continued investment in the Fund may cause the Fund, the Master Fund, the General Partner or the Investment Manager to violate any applicable law) (a "***Compulsory Withdrawal***"). The General Partner will compel the withdrawal of a Limited Partner's Interest in its entirety if a Limited Partner requests a withdrawal that would cause its total investment with respect to a particular Series to fall below a minimum of $100,000 (a "***Minimum Required Withdrawal***"). In either case, settlements are made in the same manner as voluntary withdrawals, except that the Early Withdrawal Reduction will not apply in the event of a Compulsory Withdrawal, but will apply to any Minimum Required Withdrawal.

Suspension of Withdrawals and Withdrawal Payments

The General Partner may, at any time, suspend (a) the calculation of the net asset value of the Interests (and the applicable valuation date); (b) the issuance of Interests, (c) the withdrawal by Limited Partners of Interests (and the applicable Withdrawal Date); and/or (d) the payment of withdrawal proceeds (even if the calculation dates and Withdrawals Dates are not postponed) (each, a "***Suspension***") during any period which: (i) any stock exchange on which a substantial part of investments owned by the Fund (through the Master Fund) are traded is closed, other than for ordinary holidays, or dealings thereon are restricted or suspended; (ii) there exists any state of affairs as a result of which (A) disposal of a substantial part of the investments owned by the Fund (through the Master Fund) would not be reasonably practicable and might seriously prejudice the Limited Partners, or (B) it is not reasonably practicable for the Fund fairly to determine the value of its net assets; (iii) none of the withdrawal requests which have been made may lawfully be satisfied by the Fund; (iv) there is a breakdown in the means of communication normally employed in determining the prices of a substantial part of the

investments of the Fund (through the Master Fund); (v) in the sole discretion of the General Partner, it is necessary to preserve the Fund's assets; or (vi) automatically upon any suspension of withdrawals by the Master Fund for similar reasons as described in "*The Master Fund*," below.

The Administrator will promptly notify each Limited Partner who has submitted a withdrawal request and to whom payment in full of the amount being withdrawn has not yet been remitted of any Suspension of withdrawals or Suspension of the payment of withdrawal proceeds. Any remaining amount of a withdrawal request that is not satisfied due to such a Suspension remains at risk as per other amounts invested in the Fund and subject to the applicable Management Fee until such amount is finally and fully withdrawn. Such Limited Partners will not be given any priority with respect to the withdrawal of Interests after the cause for such Suspension or limitation ceases to exist. The General Partner may in its sole discretion, however, permit such Limited Partners to withdraw their withdrawal requests to the extent that the relevant Withdrawal Date has not yet passed. For the avoidance of doubt, where a suspension of the payment of withdrawal proceeds is declared between the relevant Withdrawal Date and the remittance of such payment proceeds, affected Limited Partners shall not have any right to withdraw their withdrawal requests. Upon the reasonable determination by the General Partner that conditions leading to a Suspension no longer apply, the Administrator will notify the Limited Partners of the end of the Suspension. At such time, any such suspended payments shall generally be paid in accordance with the normal process for making such payments, withdrawal rights shall be promptly reinstated and any pending withdrawal requests which were not withdrawn (or new, timely withdrawal requests) will be effected as of the first Withdrawal Date following the removal of the Suspension, subject to the foregoing restrictions on withdrawals.

Transfers

Interests are not transferable except with the prior written consent of the General Partner, which consent may be withheld in its sole discretion. The General Partner will require any transferee or assignee of any Limited Partner to execute the Subscription Documents.

Duty of Care; Indemnification

Pursuant to the Partnership Agreement, the Master Fund Partnership Agreement and the Investment Management Agreement, the General Partner, the Investment Manager, each member, shareholder, partner, manager and director of, and any person who controls, the General Partner or the Investment Manager, each of the respective affiliates of the foregoing and each of their respective executors, heirs, assigns, successors and other legal representatives (each such person, an "***Indemnified Party***") shall not be liable to the Master Fund, the Fund or the Limited Partners for any loss or damage arising by reason of being or having been an Indemnified Party or from any acts or omissions in the performance of its services as an Indemnified Party in the absence of gross negligence, willful misconduct or fraud, or as otherwise required by

law. In no event shall any Indemnified Party be liable for any consequential damages, special or indirect damages or lost profits.

The Partnership Agreement, the Master Fund Partnership Agreement and the Investment Management Agreement contain provisions for the indemnification of the Indemnified Parties by the Master Fund and the Fund (but not by the Limited Partners individually) against any liabilities arising by reason of being or having been an Indemnified Party or in connection with the Partnership Agreement, the Master Fund Partnership Agreement, the Investment Management Agreement, or the Master Fund's or the Fund's business or affairs to the fullest extent permitted by law in the absence of gross negligence, willful misconduct or fraud. The General Partner is not personally liable to any Limited Partner for the repayment of any withdrawal proceeds or for contributions by such Limited Partner to the capital of the Fund or by reason of any change in the U.S. federal or state income tax laws applicable to the Fund or its investors.

Non-Exclusivity; Allocation of Opportunities

None of the Investment Manager, its affiliates and their respective officers, directors, shareholders, members, partners, personnel and employees is precluded from engaging in or owning an interest in other business ventures or investment activities of any kind, whether or not such ventures are competitive with the Fund or the Master Fund.

The Master Fund Partnership Agreement requires the General Partner, and the Investment Manager as delegatee of the General Partner, to act in a manner that it considers fair and equitable over time in allocating investment opportunities to the Master Fund. Although the General Partner and the Investment Manager consider certain factors set forth in the Investment Manager's policies to determine how to allocate trades, the Investment Manager's policies and the Master Fund Partnership Agreement do not otherwise impose any specific obligations or requirements concerning the allocation of time, effort or investment opportunities to the Master Fund or any restrictions on the nature or timing of investments for the account of the Master Fund and for the General Partner's or the Investment Manager's own accounts or for other accounts that the General Partner, the Investment Manager or their affiliates may manage (each, an "***Other Account***"). The General Partner and the Investment Manager are not obligated to devote any specific amount of time to the affairs of the Master Fund and are not required to accord exclusivity or priority to the Master Fund in the event of limited investment opportunities arising from the application of speculative position limits or other factors.

The Principal, as well as the employees and officers of the Investment Manager and of organizations affiliated with the Investment Manager, may buy and sell securities for their own account or the account of others, but may not buy securities from or sell securities to the Master Fund (such prohibition does not extend to the purchase or sale of interests in the

Fund), unless such purchase or sale is in compliance with the applicable provisions of the Investment Advisers Act of 1940, as amended.

The Investment Manager undertakes to resolve conflicts in a fair and equitable basis, which in some instances may mean a resolution that would not maximize the benefit to the Fund's investors.

It is the policy of the Investment Manager to allocate investment opportunities fairly and equitably over time. This means that such opportunities will be allocated among those accounts for which participation in the respective opportunity is considered appropriate. The Investment Manager has the authority to allocate trades to multiple accounts on an average price basis or on another basis it deems fair and equitable. Similarly, if an order on behalf of any accounts cannot be fully allocated under prevailing market conditions, the Investment Manager may allocate the trades among different accounts on a basis it considers fair and equitable over time. One or more of the foregoing considerations may (and are often expected to) result in allocations among the Master Fund and one or more accounts on other than a *pari passu* basis. See "*Risk Factors and Potential Conflicts of Interest*" below.

Affiliated Service Providers

NexBank, SSB ("***NexBank SSB***") is an affiliate of the Investment Manager and may, from time to time, provide banking and/or agency services to the Investment Manager, clients of the Investment Manager or collective investment vehicles for which the Investment Manager provides investment advisory services (including the Fund and other vehicles in which the Fund, through the Master Fund, may invest) or third parties engaged in transactions involving the Investment Manager. NexBank SSB may also act as an agent in connection with certain securities transactions involving the Investment Manager's client accounts (including the Master Fund and other vehicles in which the Master Fund may invest). Principals of the Investment Manager own a majority of the equity interests in NexBank SSB and employees or affiliates of the Investment Manager own or may own a substantial equity interest in NexBank SSB. Certain Master Fund investment transactions may be executed through NexBank Securities, Inc., an affiliate of the Investment Manager and a registered broker-dealer.

Additionally, the Investment Manager or affiliates of the Investment Manager, including, without limitation, Nexbank SSB, NexBank Securities, Inc.,NexBank Capital Advisors and Governance Re, Ltd., may provide financial advisory, management, insurance, title insurance or other services for a fee to portfolio companies in which the Master Fund may have an interest. Highland Latin America, an affiliate of the Investment Manager, has been engaged to provide certain administrative and consulting services to the Investment Manager. See "*Risk Factors and Potential Conflicts of Interest*" below.

Valuations

In general, the Fund's financial statements will be prepared in accordance with GAAP. The General Partner has delegated the valuation of the Fund's assets, based on the Master Fund's assets, to the Administrator who values the Fund's assets as of the close of each Fiscal Period in accordance with the Investment Manager's valuation policies and procedures.

Reserves

Appropriate reserves may be accrued and charged against net assets and proportionately against the Capital Accounts of the Partners for contingent liabilities, such reserves to be in the amounts (subject to increase or reduction) that the General Partner in its sole discretion deems necessary or appropriate. At the sole discretion of the General Partner, the amount of any such reserve (or any increase or decrease therein) may be charged or credited, as appropriate, to the Capital Accounts of those investors who are Limited Partners at the time when such reserve is created, increased or decreased, as the case may be, or alternatively may be charged or credited to those investors who were Limited Partners at the time of the act or omission giving rise to the contingent liability for which the reserve was established.

If the General Partner determines that it is equitable to treat an amount to be paid or received as being applicable to one or more prior periods, then such amount may be proportionately charged or credited, as appropriate, to those persons who were Limited Partners during any such prior period(s).

Fiscal Year

The Fund has a fiscal year ending on December 31 of each calendar year.

Reports to Limited Partners

The Fund furnishes to its Partners as soon as practicable after the end of each taxable year (or as otherwise required by law) such tax information as is necessary for each Partner to complete U.S. federal and state income tax or information returns, along with any other tax information required by law. Within 120 days of the end of each year (or as soon as practicable thereafter), the Fund distributes to each Partner audited financial statements of the Fund, including a statement of profit or loss for such fiscal year and an unaudited status of each such Partner's holdings in the Fund at such time. Partners will also receive, upon request to the Administrator, copies of semi-annual financial statements of the Fund.

Tax Status

The General Partner believes that the Fund should be treated as a partnership for U.S. federal income tax purposes and should not itself be subject to U.S. federal income taxation. Each Limited Partner otherwise subject to U.S. federal income tax is required to include in such Limited Partner's taxable income such Limited Partner's share of the Fund's income and gains, when realized by the Fund (regardless of cash distributions from the Fund to such investor), and may claim, to the extent allowable, such Limited Partner's share of the Fund's losses and deductions. Due to the nature of the Fund's activities, the Fund's income or loss for U.S. federal income tax purposes for a particular taxable period

may differ from its financial or economic results. The deductibility of a Limited Partner's share of any Fund losses or deductions may be limited. See "*Tax Considerations*."

ERISA

The Investment Manager intends to limit investment in the Master Fund by "benefit plan investors" so that the assets of the Master Fund will not be considered "plan assets" for purposes of the Employee Retirement Income Security Act of 1974, as amended ("***ERISA***"). It is anticipated that the assets of the Fund may constitute "plan assets" for purposes of ERISA. See "*ERISA and Other Regulatory Considerations*."

Amendment of the Limited Partnership Agreement

The Partnership Agreement may be amended by the General Partner with the consent of a majority in interest of the Limited Partners, which consent may be obtained through negative consent. However, the Fund may not: (a) increase the obligation of a Limited Partner to make any contribution to the capital of the Fund; (b) reduce the Capital Account of any Limited Partner other than as contemplated by the Partnership Agreement; or (c) reduce any Limited Partner's right to share in net profits or assets of the Fund, in each case, without the consent of each Limited Partner adversely affected thereby. The above consent may be obtained by negative consent.

Notwithstanding the foregoing, the General Partner may amend the Partnership Agreement at any time without the consent of any Limited Partner: (a) to comply with applicable laws and regulations; (b) to make changes that do not adversely affect the rights or obligations of any Limited Partner; (c) to cure any ambiguity or correct or supplement any conflicting provisions of the Partnership Agreement; or (d) with respect to any other amendment, if any Limited Partner whose contractual rights as a Limited Partner would be materially and adversely changed by such amendment has an opportunity to withdraw from the Fund (without being subject to the Early Withdrawal Reduction) as of a date that is not less than 30 days after the General Partner has furnished written notice of such amendment to each Limited Partner and that is prior to the effective date of the amendment.

Variation of Terms

The General Partner or the Investment Manager, in its sole discretion, may enter into a side letter or similar agreement to or with one or more Limited Partners that has the effect of establishing rights under, or altering or supplementing the terms of, the Partnership Agreement or of any Subscription Documents (including those relating to access to information, the Management Fee, the Performance Allocation, minimum investment amount, voting rights and withdrawal rights) with respect to such Limited Partner(s).

THE MASTER FUND

The Master Fund's Partnership Interests

The Master Fund's partnership interests are currently held exclusively by the Fund and the Offshore Fund as limited partners, the Investment Manager as the special limited partner of the Master Fund, and the General Partner as the general partner of the Master Fund, pursuant to the Master Fund Partnership Agreement. The General Partner is registered as a foreign company in the Cayman Islands pursuant to Part IX of the Companies Law (2016 Revision).

The Master Fund Partnership Agreement

The Master Fund is constituted as a Cayman Islands exempted limited partnership under the Exempted Limited Partnership Law, 2014 (the "***Exempted Limited Partnership Law***"). A Cayman Islands exempted limited partnership is constituted by the signing of the relevant partnership agreement and its registration with the Registrar of Exempted Limited Partnerships in the Cayman Islands.

A Cayman Islands exempted limited partnership is not a separate legal person distinct from its partners. Under the Exempted Limited Partnership Law, any property which is conveyed into or vested in the name of the exempted limited partnership shall be held or deemed to be held by the general partner, and if more than one, then by the general partners jointly upon trust, as an asset of the partnership in accordance with the terms of the partnership agreement. Any debt or obligation incurred by a general partner in the conduct of the business of an exempted limited partnership shall be a debt or obligation of the exempted limited partnership. Registration under the Exempted Limited Partnership Law entails that the partnership becomes subject to, and the limited partners therein are afforded the limited liability and other benefits of, the Exempted Limited Partnership Law (subject to compliance therewith).

Liability of Partners and Indemnification of the General Partner and Others. The business of a Cayman Islands exempted limited partnership will be conducted by its general partner(s) who will be liable for all debts and obligations of the exempted limited partnership to the extent that the partnership has insufficient assets. As a general matter, a limited partner of a Cayman Islands partnership will not be liable for the debts and obligations of the exempted limited partnership, other than:

(i) as expressed in the partnership agreement,

(ii) if such limited partner takes part in the conduct of the business of an exempted limited partnership in its dealings with persons who are not partners, then that limited partner shall be liable, in the event of the insolvency of the exempted limited partnership, for all debts and obligations of that exempted limited partnership incurred during the period that he so participates in the conduct of the business as though he were, for such period, a general partner, provided always that he shall be rendered liable pursuant to the foregoing provision only to a person who transacts business with the exempted limited partnership during such period with actual knowledge of such participation and who then reasonably believed such limited partner to be a general partner, or

(iii) if such limited partner is obligated pursuant to Section 34(1) of the Exempted Limited Partnership Law to return a distribution made to it (with interest at a rate of 10% per annum, unless otherwise specified in the Master Fund Partnership Agreement) when the exempted limited partnership is insolvent or within six months prior to such insolvency.

The Master Fund Partnership Agreement provides that none of the Indemnified Parties will be liable to the Master Fund or any limited partner of the Master Fund (including the Feeder Funds) for any loss or damage arising by reason of being or having been an Indemnified Party or from any acts or omissions in the performance of its services as an Indemnified Party in the absence of gross negligence (as such term is defined and interpreted in accordance with the laws of the State of Delaware), willful misconduct or fraud, or as otherwise required by law. An Indemnified Party may consult with counsel and accountants in respect of the Master Fund's affairs and will be fully protected and justified in any action or inaction which is taken in accordance with the advice or opinion of such counsel or accountants, provided that they were selected in accordance with the standard of care set forth above. In addition, in no event shall any Indemnified Party be liable for any consequential damages, special or indirect damages or lost profits.

The Master Fund Partnership Agreement provides that the Master Fund shall, to the fullest extent permitted by law, indemnify and hold harmless each Indemnified Party from and against any and all liabilities suffered or sustained by an Indemnified Party by reason of the fact that it, he or she is or was an Indemnified Party or in connection with the Master Fund Partnership Agreement or the Master Fund's business or affairs, including, without limitation, any judgment, settlement, reasonable attorneys' fees and other costs or expenses incurred in connection with the defense of any actual or threatened action, suit or proceeding, provided that such liability did not result from the gross negligence (as such term is defined and interpreted in accordance with the laws of the State of Delaware), willful misconduct or fraud of such Indemnified Party. The Master Fund Partnership Agreement also provides that the Master Fund will, in the sole discretion of the General Partner, advance to any Indemnified Party reasonable attorneys' fees and other costs and expenses incurred in connection with the defense of any action, suit or proceeding which arises out of such conduct, subject to receiving a written undertaking from the Indemnified Party to repay such amounts if and to the extent that it is finally determined that the Indemnified Party was not entitled to indemnification in respect thereof.

Notwithstanding any of the foregoing, the provisions of the Master Fund Partnership Agreement do not provide for the exculpation or indemnification of any Indemnified Party for any liability (including liability under U.S. federal securities laws which, under certain circumstances, impose liability even on persons that act in good faith), to the extent (but only to the extent) that such liability may not be waived, modified or limited under applicable law, but shall be construed so as to effectuate the above provisions to the fullest extent permitted by law.

Pursuant to the foregoing indemnification and exculpation provisions applicable to each Indemnified Party, the Master Fund (and not the applicable Indemnified Party) will be responsible for any losses resulting from trading errors and similar human errors, absent gross negligence (as such term is defined and interpreted in accordance with the laws of the State of Delaware), willful misconduct or fraud. Given the volume of transactions executed on behalf of the Master Fund, trading errors (and similar errors) will occur and the Master Fund will be responsible for any resulting losses, even if such losses result from the negligence (but not gross negligence) of any Indemnified Party.

The Indemnified Parties will also be indemnified by each limited partner of the Master Fund for any amounts of tax withheld or required to be withheld with respect to that limited partner, and also for any amounts of interest, additions to tax, penalties and other costs borne by any such persons in connection therewith to the extent that the balance of the limited partner's capital account is insufficient to fully compensate the General Partner and the Investment Manager for such costs.

Contributions and Withdrawals by the Fund. Limited partners of the Master Fund may make contributions at such times and in such amounts as the General Partner determines. As a limited partner of the Master Fund, the Fund may, subject to the consent of the General Partner, voluntarily request a withdrawal of all or part of its capital in the Master Fund at such times and in such amounts as it may determine. The General Partner may, at any time, suspend (a) the calculation of the net asset value of the Master Fund (and the applicable valuation date); (b) the issuance of limited partner interests in the Master Fund; (c) the withdrawal by limited partners of their interests (and the applicable withdrawal date); and/or (d) the payment of withdrawal proceeds (even if the calculation dates and withdrawal dates are not postponed) during any period which: (i) any stock exchange on which a substantial part of investments owned by the Master Fund are traded is closed, other than for ordinary holidays, or dealings thereon are restricted or suspended; (ii) there exists any state of affairs as a result of which (A) disposal of a substantial part of the investments owned by the Master Fund would not be reasonably practicable and might seriously prejudice the limited partners of the Master Fund, or (B) it is not reasonably practicable for the Master Fund fairly to determine the value of its net assets; (iii) none of the withdrawal requests which have been made may lawfully be satisfied by the Master Fund; (iv) there is a breakdown in the means of communication normally employed in determining the prices of a substantial part of the investments of the Master Fund; or (v) in the sole discretion of the General Partner, it is necessary to preserve the Master Fund's assets.

Amendment of the Master Fund Partnership Agreement. The Master Fund Partnership Agreement may be amended by an instrument in writing signed by each of the limited partners of the Master Fund and the General Partner; provided that, the General Partner may amend the Master Fund Partnership Agreement without the consent of the limited partners so long as the amendment does not adversely affect any rights of the limited partners.

Dissolution of the Master Fund. The Master Fund shall be wound up and dissolved upon the first to occur of any of the following liquidating events, and Sections 36(1)(b), 36(9) and 36(12) of the Exempted Limited Partnership Law shall not apply to the Master Fund:

(i) the written election of the General Partner to terminate the Master Fund; or

(ii) if the General Partner is the sole or last remaining general partner, the date (the "***Automatic Dissolution Date***") falling 90 days after the date of the service of a notice by the General Partner (or its legal representative) on all the limited partners informing the limited partners of:

(1) the commencement of liquidation or bankruptcy proceedings in relation to the General Partner; or

(2) the withdrawal, removal or making of a winding up or dissolution order in relation to the General Partner;

provided that, if a majority in number of the limited partners elects one or more new general partners before the Automatic Dissolution Date, the business of the Master Fund shall be resumed and continued. If a new general partner is not elected by the Automatic Dissolution Date, the Master Fund shall be wound up and dissolved in accordance with terms of the Master Fund Partnership Agreement and the Exempted Limited Partnership Law.

Power of Attorney. Each limited partner of the Master Fund shall make, constitute and appoint the General Partner (and each of its successors and permitted assigns) for the time being, with full power of substitution, as its true and lawful agent and attorney-in-fact of, and in the name, place and stead of, such Partner with the power from time to time to make, execute, sign, acknowledge, swear to (and deliver as may be appropriate) on its behalf and file and record in the appropriate public offices and publish (as may in the reasonable judgment of the General Partner be required by law), including the admission of any new partners of the Master Fund and any amendments to the Master Fund Partnership Agreement. Each limited partner of the Master Fund shall authorize the General Partner to take any further action that the General Partner considers necessary or advisable in connection with the foregoing. Such power of attorney granted is intended to secure a proprietary interest of the General Partner and the performance by each limited partner of the Master Fund of its obligations under the Master Fund Partnership Agreement and shall be irrevocable and shall survive and not be affected by the subsequent death, lack of capacity, insolvency, bankruptcy or dissolution of any limited partner of the Master Fund.

Valuation of Assets

The General Partner has delegated the valuation of the Master Fund's assets to the Administrator, which will generally compute the value of the securities and other assets of the Master Fund as of the close of business on the last day of each fiscal period and on any other date selected by the General Partner in its sole discretion. In addition, the Administrator must compute the value of the securities that are being distributed in-kind as of their date of distribution in accordance with the Master Fund Partnership Agreement. In determining the value of the assets of the Master Fund, no value is placed on the goodwill or name of the Master Fund, or the office records, files, statistical data or any similar intangible assets of the Master Fund not normally reflected in the Master Fund's accounting records, but there must be taken into consideration any related items of income earned but not received, expenses incurred but not yet paid, liabilities fixed or contingent, prepaid expenses to the extent not otherwise reflected in the books of account, and the value of options or commitments to purchase or sell securities pursuant to agreements entered into on or prior to such valuation date.

A copy of the Investment Manager's valuation policy is available upon request from the General Partner.

The value of each security and other asset of the Master Fund and the net worth of the Master Fund as a whole determined pursuant Master Fund Partnership Agreement are conclusive and binding on all of the partners of the Master Fund and all persons claiming through or under them.

RISK FACTORS AND POTENTIAL CONFLICTS OF INTEREST

Investment in the Fund is speculative and involves substantial risks, including, but not limited to, those summarized below. The Fund is not suitable for all investors and is intended for sophisticated investors who can accept the risks associated with their investments. Prospective investors should carefully consider the risk factors described in this section, among others, in determining whether an investment in the Fund is suitable for them. There can be no assurance that the Master Fund's program will be successful or that investments purchased by the Master Fund will increase in value. An investor must be prepared to bear capital losses that might result from an investment in the Fund, including a complete loss of the investor's invested capital. All investors in the Fund should consult their own legal, tax and financial advisors prior to investing in the Fund.

For purposes of this section, references to the "Fund" should be understood to mean each of the Fund and the Master Fund, as applicable, and each of the risk factors set forth herein, while not exhaustive, shall apply equally to each of the Fund and the Master Fund, as applicable.

General Risks

Lack of Operating History. The Fund, the Master Fund and the General Partner do not have operating histories upon which investors can evaluate the anticipated performance of the Fund. Although the principals of the Investment Manager have extensive prior experience in Latin America, past performance of the Investment Manager should not be construed as an indication of the future results of an investment in the Fund. The Master Fund's investment program should be evaluated on the basis that there can be no assurance that the Investment Manager's assessment of the short-term or long-term prospects of its investment strategy will prove accurate, or that the Master Fund will achieve its investment objectives.

Risks Associated With Investments in Securities. Any investment in securities carries market risks. An investment in the Fund is highly speculative and involves a high degree of risk due to the nature of the Master Fund's investments and the strategies to be employed. An investment in the Fund should not in itself be considered a balanced investment program, but rather is intended to provide diversification in a more complete investment portfolio.

Investment Judgment; Market Risk. The profitability of a significant portion of the Master Fund's investment program depends to a great extent upon correctly assessing the future course of the price movements of securities and other investments. There can be no assurance that the Investment Manager will be able to predict accurately these price movements. With respect to the investment strategy utilized by the Master Fund, there is always some, and occasionally a significant, degree of market risk.

Limited Liquidity; Additional Information. An investment in the Fund provides limited liquidity since the Interests are not freely transferable and may only be withdrawn at such times as set forth in this Memorandum. The General Partner may suspend withdrawals, in whole or in part, when such a suspension is warranted by extraordinary circumstances described in "*Summary of Terms – Suspension of Withdrawals and Withdrawal Payments*" above. The General Partner may also delay the payment of withdrawal proceeds as more fully described elsewhere in this Memorandum. Investments that remain in the Fund are subject to all risks related to an investment in the Fund as described in this Memorandum.

Also, certain Limited Partners (including, without limitation, the Affiliated Investors), may invest on terms that provide access to information that is not generally available to other Limited Partners and,

as a result, may be able to act on such additional information (e.g., withdraw their Interests) that other Limited Partners do not receive. An investment in the Fund is suitable only for sophisticated investors who have no need for current liquidity.

Effect of Substantial Withdrawals. Substantial withdrawals from the Fund could require the Master Fund to liquidate its positions more rapidly than otherwise desired in order to raise the cash necessary to fund the withdrawals at the Fund level. Illiquidity in certain securities could make it difficult for the Master Fund to liquidate positions on favorable terms, which could result in losses or a decrease in the net asset value of the Master Fund, and thus, the Fund. The Master Fund is permitted to borrow cash necessary to make payments in connection with withdrawals from the Fund when the Investment Manager determines that it would not be advisable to liquidate portfolio assets for that purpose. The Master Fund is also authorized to pledge portfolio assets as collateral security for the repayment of such loans. In these circumstances, the continuing Limited Partners will bear the risk of any subsequent decline in the value of the Fund's assets.

Effect of Withdrawal by Limited Partner on its Investment. Where a withdrawal request is accepted, an Interest will be treated as having been withdrawn effective as of the relevant Withdrawal Date, irrespective of whether or not such withdrawing Limited Partner has been removed from the Fund's books and records or the withdrawal proceeds have been determined or remitted. Accordingly, on and from the relevant Withdrawal Date, Limited Partners in their capacity as such will not be entitled to or be capable of exercising any rights arising under the Partnership Agreement or Subscription Documents with respect to the Interest being withdrawn, save the right to receive the withdrawal proceeds. Such withdrawing Limited Partners will be creditors of the Fund with respect to the withdrawal proceeds. In an insolvent liquidation, withdrawing Limited Partners will rank behind ordinary creditors but ahead of existing Limited Partners.

Master-Feeder Structure. The Fund will invest all of its investable assets in the Master Fund. The "master-feeder" fund structure presents certain risks to the Limited Partners. Smaller feeder funds may be materially affected by the actions of larger feeder funds.

While the Investment Manager, as investment manager of the Master Fund, generally will not consider tax issues applicable to any particular investors, it generally will take into account the tax positions of the Fund and the Offshore Fund that invest in the Master Fund. However, the use of a "master-feeder" structure may create a conflict of interest in that different tax considerations for the Fund and the Offshore Fund may cause or result in the Master Fund structuring or disposing of an investment in a manner or at a time that is more advantageous (or disadvantageous) for tax purposes to one Feeder Fund or its investors.

Management Fee and Performance Allocations. As described above, the Master Fund Partnership Agreement provides for the payment of the Management Fee to the Investment Manager and the Performance Allocation to the Investment Manager, in its capacity as the Special Limited Partner. The Performance Allocation may create an incentive for the Investment Manager, as the Special Limited Partner, to make investments that are riskier or more speculative than would be the case in the absence of such Performance Allocation.

Side Letters. The Investment Manager or the Fund may from time to time enter into letter agreements or other similar agreements (collectively, "***Side Letters***") with one or more Limited Partners which provide such Limited Partner(s) with additional and/or different rights (including, without limitation, with respect to access to information, the Management Fee, the Performance Allocation,

minimum investment amounts, voting rights and withdrawal rights) than such Limited Partner(s) have pursuant to this Memorandum. As a result of such Side Letters, certain Limited Partners may receive additional benefits (including, but not limited to, reduced fee obligations, the ability to withdraw Interests on shorter notice and/or expanded informational rights) which other Limited Partners will not receive. For example, a Side Letter may permit a Limited Partner to withdraw its Interest on less notice and/or at different times than other Limited Partners. As a result, should the Fund experience a decline in performance over a period of time, a Limited Partner who is party to a Side Letter that permits less notice and/or different withdrawal times may be able to withdraw its Interest prior to other Limited Partners. In general, the Fund and/or the Investment Manager will not be required to notify any or all of the other Limited Partners of any such Side Letters or any of the rights and/or terms or provisions thereof, nor will the Fund and/or the Investment Manager be required to offer such additional and/or different rights and/or terms to any or all of the other Limited Partners. The Fund and/or the Investment Manager may cause the Fund to enter into such Side Letters with any party as the Fund and/or the Investment Manager may determine in its sole discretion at any time. The other Limited Partners will have no recourse against the Fund and/or the Investment Manager in the event certain Limited Partners receive additional and/or different rights and/or terms as a result of such Side Letters. A Limited Partner will be required to enter into such undertakings with respect to maintaining the confidentiality of any such additional information as the Fund and/or the Investment Manager may in their sole discretion determine.

Valuation Considerations. Valuation of the Master Fund's securities and other investments may involve uncertainties and judgmental determinations, and if such valuations should prove to be incorrect, the net asset value of the Master Fund and the Fund could be adversely affected. Independent pricing information may not at times be available or otherwise utilized regarding certain of the Master Fund's securities and other investments. Valuation determinations will be made in good faith in accordance with the policies of the Investment Manager in effect from time to time, a copy of which will be made available upon request.

The Master Fund may have some of its assets in investments, which by their very nature may be extremely difficult to accurately value. To the extent that the value assigned by the Administrator to any such investment differs from the actual value, the net asset value of the Master Fund and the Fund may be understated or overstated, as the case may be. In light of the foregoing, there is a risk that a Limited Partner that withdraws all or part of its Interests while the Master Fund holds such investments will be paid an amount less than it would otherwise be paid if the actual value of such investments is higher than the value designated by the Administrator. Similarly, there is a risk that such Limited Partner might, in effect, be overpaid if the actual value of such investments is lower than the value designated by the Administrator. In addition, there is risk that an investment in the Fund by a new Limited Partner (or an additional investment by an existing Limited Partner) could dilute the value of such investments for the other Limited Partners if the designated value of such investments is higher than the value designated by the Administrator. Further, there is risk that a new Limited Partner (or an existing Limited Partner that makes an additional investment) could pay more than it might otherwise if the actual value of such investments is lower than the value designated by the Administrator. The Administrator does not intend to adjust the net asset value of the Master Fund and the Fund retroactively.

None of the Fund, the Master Fund, the General Partner, the Investment Manager or the Administrator shall have any liability in the event that any price or valuation, used in good faith in connection with the above procedures, proves to be an incorrect or an inaccurate estimate or determination of the price or value of any part of the property of the Master Fund, subject to the standard of care set forth in "*Summary of Terms – Duty of Care; Indemnification*" above.

No Participation by Investors. All decisions with respect to the management of the day-to-day affairs of the Fund are made exclusively by the General Partner and the Investment Manager. Limited Partners have no right or power to take part in the management of the Fund. The Investment Manager makes all of the trading and investment decisions of the Master Fund. In the event of the withdrawal of the Investment Manager, generally the Fund will be liquidated.

Investment Strategies. The Investment Manager will seek to engage in the investment activities that have been discussed in "*Investment Program*" herein. There can be no assurance that the Investment Manager will be successful in applying any such strategy and that losses will be avoided.

Competition. The markets in which the Master Fund invests are competitive and some of the opportunities that the Investment Manager may explore may be pursued by better known investors or investment funds. There can be no assurance that the Investment Manager will be able to identify or successfully pursue such opportunities in this environment. The Investment Manager competes with many firms that may have greater financial resources, more extensive development, better marketing and service capabilities, more favorable financing arrangements, larger research staffs and more securities traders than are available to the Investment Manager.

In-Kind Distributions. A withdrawing Limited Partner may, in the discretion of the General Partner and/or Investment Manager, receive securities owned by the Fund (through the Master Fund) in lieu of, or in combination with, cash. The value of securities distributed may increase or decrease before the securities can be sold (either by the Limited Partner or by the Fund if the General Partner establishes a liquidating account on behalf of the Limited Partner to sell such assets), and the Limited Partner will incur transaction costs in connection with the sale of such securities. Additionally, securities distributed with respect to a withdrawal by a Limited Partner may not be readily marketable. The risk of loss and delay in liquidating these securities will be borne by the Limited Partner, with the result that such Limited Partner may receive less cash than it would have received on the date of withdrawal.

No Current Income. Since the Fund does not generally intend to pay distributions, an investment in the Fund is not suitable for investors seeking current income. Moreover, an investor is required to report and pay taxes on his allocable share of income from the Fund, even though no cash is distributed by the Fund.

Cybersecurity. Information and technology systems may be vulnerable to damage or interruption from computer viruses, network failures, computer and telecommunication failures, infiltration by unauthorized persons and security breaches, usage errors by their respective professionals, power outages and catastrophic events such as fires, tornadoes, floods, hurricanes and earthquakes. Although the Investment Manager has implemented various measures to manage risks relating to these types of events, if these systems are compromised, become inoperable for extended periods of time or cease to function properly, the Investment Manager, the Master Fund and/or the Fund may have to make a significant investment to fix or replace them, which expense may be borne in whole or in part by the Fund. The failure of these systems and/or of disaster recovery plans for any reason could cause significant interruptions in the Investment Manager's, the Master Fund's and/or the Fund's operations and result in a failure to maintain the security, confidentiality or privacy of sensitive data, including personal information relating to investors. Such interruptions could harm the Investment Manager's, the Master Fund's and/or the Fund's reputation, subject any such entity and their respective affiliates to legal claims and otherwise affect their business and financial performance. The foregoing risks and consequences are also extant at any issuer in which the Master Fund invests and could manifest as adverse performance of such investment.

Investment Strategy and Investment Risks

Changes in Strategy. The Investment Manager has the power to expand, revise or alter its trading strategies on behalf of the Master Fund without prior approval by, or notice to, the Fund or the Limited Partners. Any such change could result in exposure of the Fund's assets (through the Master Fund) to additional risks, which may be substantial. The Investment Manager may also invest in additional instruments than those specifically identified in the "*Investment Program*" section.

Latin America Investments. The Master Fund invests in securities of companies based in Latin America or issued by Latin American governments, or in the securities of companies which are not incorporated in Latin America, but which derive some of their revenues from business activities conducted in Latin America. Such investment involves certain considerations not usually associated with investing in securities of developed countries or of companies located in developed countries, including political and economic consideration, such as greater risks of expatriation, nationalization and general, political, and economic instability, the small size of the securities markets in such countries and the low volume of trading, resulting in potential lack of liquidity and substantially greater price volatility, fluctuations in the rate of exchange between currencies, and costs associated with currency conversions, certain government policies that may restrict the Master Fund's investment opportunities and problems that may arise in connection with the clearance and settlements of trades. In addition, accounting and financial reporting standards that prevail in such countries are not equivalent to standards in more developed countries, consequently, less information is available to investors in companies located in more developed countries. There is also less regulation, generally, of the securities markets in Latin American countries than there is in more developed countries.

Risks Related to Investing in Argentina. Argentina has experienced high interest rates, economic volatility, inflation, currency devaluations and high unemployment rates. The economy is heavily dependent on exports and commodities. Argentina's default on its debt in 2001, and its past nationalization of private pensions and national oil company YPF, continues to impact the confidence of investors in Argentina, which might adversely impact returns in the Master Fund, and thus, the Fund.

Argentina's Economy. Argentina's economy could grow at a lower rate than in past years, or could contract. Factors that could negatively affect Argentina's rate of economic growth, its public finances and Argentina's ability to service its debt include: the competitiveness of Argentine exports, which are influenced by the peso's value relative to the value of the currencies of Argentina's trading partners and trade competitors; the level of inflation in Argentina; international commodities prices, foreign currency exchange rates and the levels of consumer consumption and foreign and domestic investment; negative economic developments in Argentina's major trading partners, or "contagion" effects more generally; and Argentina's ability to meet its energy requirements.

Uncertainty of Economic Reforms. A runoff election on November 22, 2015 resulted in Mr. Mauricio Macri being elected President of Argentina. The Macri administration assumed office on December 10, 2015. Since assuming office on December 10, 2015, the Macri administration has announced several significant economic and policy reforms, including methodological reforms with respect to the calculation of certain macroeconomic statistics, the loosening of foreign exchange controls, reduction of tariffs, other easing of international trade restrictions, infrastructure reforms and reopened negotiation with holders of debt in default since 2001. The impact that these measures and any future measures taken by the new administration will have on the Argentine economy as a whole and the financial sector in particular cannot be predicted. The Investment Manager believes that the effect of the planned liberalization of the economy and renewed access to capital markets will be positive for the

Master Fund's intended investments by stimulating economic activity, but it is not possible to predict such effect with certainty and such liberalization could also be disruptive to the economy and fail to benefit or harm companies in Argentina. The Investment Manager cannot predict how the Macri administration will address certain other political and economic issues that were central during the 2015 presidential election campaign, such as the financing of public expenditures, public service subsidies and tax reforms, the resolution of holdout debt or the impact that any measures related to these issues that are implemented by the Macri administration will have on the Argentine economy as a whole.

Currency Controls. In the past, Argentina imposed exchange controls and transfer restrictions substantially limiting the ability of companies to retain foreign currency or make payments abroad. Although the Macri government lifted exchange controls and liberalized capital controls, there can be no assurances regarding future modifications to exchange and capital controls. Exchange and capital controls could adversely affect the financial condition or results of operations of issuers in whose securities the Master Fund intends to invest, as well as their ability to meet foreign currency obligations and to execute financing plans.

Challenges to Argentina's Debt Payments. Argentina's payments in connection with a debt offering may be attached, enjoined or otherwise challenged. In recent years, hold-out creditors have used litigation against sovereign debtors, most prominently Peru and Nicaragua, to attach or interrupt payments made by these sovereign debtors to, among others, bondholders who have agreed to a debt restructuring and accepted new securities in an exchange offer. Argentina has been subjected to suits to collect on amounts due on defaulted bonds, including actions in the United States, the United Kingdom, Italy and Germany. Some of these actions have resulted in judgments against Argentina. There can be no assurance that a creditor will not be able to interfere, through an attachment of assets, injunction, temporary restraining order or otherwise, with payments made in connection with a debt offering.

Pro Rata Payment Litigation. Argentina's defaults with respect to the payment of its foreign debt could prevent the government and the private sector from accessing the international capital markets, which could adversely affect the financial condition of sovereign and corporate issuers in which the Master Fund invests. In September 2014, the Argentine Congress passed a law to restructure foreign-law bonds held by exchange bondholders to allow the payment in Argentina and to appoint a new paying agent. On September 29, 2014, the U.S. District Court for the Southern District of New York held Argentina in contempt of court as a result of this law. The U.S. District Court authorized limited exceptions to the injunction allowing certain custodians of Argentine law-governed bonds to process payments in August 2014, September 2014 and December 2014.

On May 11, 2015, the plaintiffs that obtained pari passu injunctions asked the U.S. district court to amend their complaints to include claims alleging that Argentina's issuance and servicing of its 2024 dollar-denominated bonds, and its external indebtedness in general, would violate the pari passu clause. On June 5, 2015, the Second Circuit granted partial summary judgment to a group of 526 "me-too" plaintiffs in 36 separate lawsuits, finding that, consistent with the previous ruling of such court, Argentina violated a pari passu clause in bonds issued to the "me-too" bondholders. The decision obligates Argentina to pay the plaintiffs $5.4 billion before it can make payments on restructured debt.

In 2016, the Argentine government working under a court appointed mediator, entered into settlement agreements with a large portion of hold-out debt holders contingent on Argentina repealing laws that prevented the country from complying with rulings by U.S. courts. In this context Judge Thomas Griesa ruled he would lift the injunctions preventing Argentina from serving post-2005 exchange debt if these laws are repealed. Argentina's lower chamber approved the repeal of these laws

and Argentina's senate voted to approve the same in March 2016. In April 2016, the Second Circuit Court of Appeals in the United States upheld Judge Griesa's ruling, finding that he did not abuse his discretion in lifting the pari passu injunctions.

The repercussions of restructuring Argentina's bond debts are ongoing. The 2016 U.S. court rulings only settled claims of certain bondholders. Argentina reached a $475 million settlement with other bondholders in November 2016. Financial indices have only just started moving Argentina back to "emerging market" status, where it had been before 2009.

Argentina's default with respect to the payment of its foreign debt, its delay in completing the debt restructuring process with creditors that did not participate in the related exchange offers, the complaints filed against Argentina discussed above, the U.S. Supreme Court's decision not to hear Argentina's appeal, the declaration of contempt, and the long-term difficulty of reestablishing itself in the global marketplace could prevent Argentina's government from obtaining international private financing or receiving direct foreign investment, as well as private sector companies in Argentina from accessing the international capital markets. Without access to international private financing, Argentina may not be able to finance its obligations, and financing from multilateral financial institutions may be limited or not available. Without access to direct foreign investment, the government may not have sufficient financial resources to foster economic growth and the performance of the Master Fund's investments in Argentina could be materially and adversely affected.

Derivative Instruments. The Investment Manager may use various derivative instruments, including futures, options, forward contracts, swaps and other derivatives which may be volatile and speculative. Certain positions may be subject to wide and sudden fluctuations in market value, with a resulting fluctuation in the amount of profits and losses. Use of derivative instruments presents various risks, including the following:

- *Tracking* – When used for hedging purposes, an imperfect or variable degree of correlation between price movements of the derivative instrument and the underlying investment sought to be hedged may prevent the Investment Manager from achieving the intended hedging effect or expose the portfolio to the risk of loss.

- *Liquidity* – Derivative instruments, especially when traded in large amounts, may not be liquid in all circumstances, so that in volatile markets the Investment Manager may not be able to close out a position without incurring a loss. In addition, daily limits on price fluctuations and speculative positions limits on exchanges on which the Investment Manager may conduct its transactions in certain derivative instruments may prevent prompt liquidation of positions, subjecting the portfolio to the potential of greater losses.

- *Leverage* – Trading in derivative instruments can result in large amounts of leverage. Thus, the leverage offered by trading in derivative instruments may magnify the gains and losses experienced by the Master Fund and could cause the Master Fund's net asset value to be subject to wider fluctuations than would be the case if the Investment Manager did not use the leverage feature in derivative instruments.

- *Over-the-Counter-Trading* – Derivative instruments that may be purchased or sold for the portfolio may include instruments not traded on an exchange. Over-the-counter options, unlike exchanged-traded options, are two-party contracts with price and other terms negotiated by the buyer and seller. The risk of non-performance by the obligor on such an instrument may be

greater and the ease with which the Investment Manager can dispose of or enter into closing transactions with respect to such an instrument may be less than in the case of an exchange-traded instrument. In addition, significant disparities may exist between "bid" and "asked" prices for derivative instruments that are not traded on an exchange. Derivative instruments not traded on exchanges are also not subject to the same type of government regulation as exchange traded instruments, and many of the protections afforded to participants in a regulated environment may not be available in connection with such transactions.

Short Sales. Short sales by the Master Fund that are not made "against the box" create opportunities to increase the Master Fund's return but, at the same time, involve special risk considerations and may be considered a speculative technique. Since the Master Fund, in effect, profits from a decline in the price of the securities sold short without the need to invest the full purchase price of the securities on the date of the short sale, the value of the Master Fund will tend to increase more when the securities it has sold short decrease in value, and to decrease more when the securities it has sold short increase in value, than otherwise would be the case if it had not engaged in such short sales. Short sales theoretically involve unlimited loss potential, as the market price of securities sold short may increase continuously, although the Master Fund may mitigate such losses by replacing the securities sold short before the market price has increased significantly. Under adverse market conditions the Master Fund might have difficulty purchasing securities to meet its short sale delivery obligations, and might have to sell portfolio securities to raise the capital necessary to meet its short sale obligations at a time when fundamental investment considerations would not favor such sales. Short sales may be used with the intent of hedging against the risk of declines in the market value of the Master Fund's long portfolio, but there can be no assurance that such hedging operations will be successful.

Risks of Execution of Investment Strategies. The Master Fund will invest in a number of securities and obligations that entail substantial inherent risks. Although the Master Fund will attempt to manage those risks through careful research, ongoing monitoring of investments and appropriate hedging techniques, there can be no assurance that the securities and other instruments purchased by the Master Fund will in fact increase in value or that the Master Fund will not incur significant losses.

Market Risks and Liquidity. The profitability of a significant portion of the Master Fund's investment program depends to a great extent upon correctly assessing the future course of the price movements of securities and other investments. There can be no assurance that the Master Fund will be able to predict accurately these price movements. Although the Master Fund may attempt to mitigate market risk through the use of long and short positions or other methods, there is always some, and occasionally a significant, degree of market risk.

Furthermore, the Master Fund may be adversely affected by a decrease in market liquidity for the instruments in which they invest, which may impair the Master Fund's ability to adjust their position. The size of the Master Fund's positions may magnify the effect of a decrease in market liquidity for such instruments. Changes in overall market leverage, deleveraging as a consequence of a decision by a broker to reduce the level of leverage available, or the liquidation by other market participants of the same or similar positions, may also adversely affect the Master Fund's portfolio. Some of the underlying investments of the Master Fund may not be actively traded and there may be uncertainties involved in the valuation of such investments. Potential investors should be warned that under such circumstances, the net asset value of the Master Fund may be adversely affected.

Hedging. Although the Master Fund will attempt to hedge its exposure to specific arbitrage positions, it will not always be possible fully to hedge risk from such positions or any other position. In

addition, the Master Fund may take positions based on the expected future direction of the markets without fully hedging the market risks.

Currency Risks. A portion of the Master Fund's assets may be invested in securities denominated in various currencies and in other financial instruments, the price of which is determined with reference to such currencies. The account of the Master Fund will, however, be valued in U.S. Dollars. To the extent unhedged, the value of the net assets of the Master Fund will fluctuate with U.S. Dollars exchange rates as well as with price changes of their investments in the various local markets and currencies. Forward currency contracts and options may be utilized by the Master Fund to hedge against currency fluctuations, but there can be no assurance that such hedging transactions will be effective.

Counterparty and Settlement Risk. Due to the nature of some of the investments which the Master Fund may make, the Master Fund may rely on the ability of the counterparty to a transaction to perform its obligations. In the event that any such party fails to complete its obligations for any reason, the Master Fund may suffer losses. The Master Fund will therefore be exposed to a credit risk on the counterparties with which it trades. The Master Fund will also bear the risk of settlement default by clearing houses and exchanges. Any default by a counterparty or on settlement could have a material adverse effect on the Master Fund.

Borrowing. The Master Fund is permitted to finance its operations with secured and unsecured borrowing up to 100% of its net assets, to the extent allowable under applicable credit regulations. Like other forms of leverage, the use of borrowing can enhance the risk of capital loss in the event of adverse changes in the level of market prices of the assets being financed with the borrowings.

Concentration of Investments. Although the Investment Manager will follow a general policy of seeking to spread the Master Fund's capital among a number of investments, the Investment Manager may depart from such policy from time to time and may hold a few, relatively large securities positions in relation to the Master Fund's capital. The result of such concentration of investments is that a loss in any such position could materially reduce the Master Fund's capital.

Difficult Market for Investment Opportunities. The activity of identifying, completing and realizing on attractive investments involves a high degree of uncertainty. There can be no assurance that the Master Fund will be able to locate and complete investments which satisfy the Master Fund's rate of return objective or realize upon their values or that the Master Fund will be able to invest fully its subscribed capital in a manner consistent with its investment strategy.

Certain Regulatory Risks

Absence of Regulatory Oversight. While the Fund may be considered similar to an investment company, it is not required and does not intend to register as such under the Investment Company Act of 1940, as amended (the "***Investment Company Act***"), and, accordingly, the provisions of the Investment Company Act (which may provide certain regulatory safeguards to investors) are not applicable to investors in the Fund. Neither the Fund nor the Master Fund will maintain custody of its securities or place its securities in the custody of a bank or a member of a national securities exchange in the manner required of registered investment companies under rules promulgated by the Securities and Exchange Commission (the "***SEC***"). A registered investment company which places its securities in the custody of a member of a national securities exchange is required to have a written custodian agreement, which provides that securities held in custody will be at all times individually segregated from the securities of any other person and marked to clearly identify such securities as the property of such investment

company, and which contains other provisions complying with SEC regulations. The Master Fund generally will maintain such accounts at brokerage firms that do not separately segregate such assets as would be required in the case of registered investment companies. Under the provisions of the Securities Investor Protection Act of 1970, as amended, the bankruptcy of any such brokerage firm might have a greater adverse effect on the Master Fund and the Fund than would be the case if the accounts were maintained to meet the requirements applicable to registered investment companies.

Forward-Looking Statements. Certain statements contained in this Memorandum, including without limitation, statements containing the words "believes," "anticipates," "intends," "expects," and words of similar import constitute "forward-looking statements." Such forward-looking statements involve known and unknown risks, uncertainties and other factors that may cause the actual results, performance or achievements of the Fund to be materially different from any future results, performance or achievements expressed or implied by such forward-looking statements. Certain of these factors are discussed in more detail elsewhere in this Memorandum, including without limitation under "*Summary of Terms*," "*Certain Risk Factors*," and "*Investment Program*." Given these uncertainties, prospective investors are cautioned not to place undue reliance on such forward-looking statements. The Investment Manager and the Fund disclaim any obligation to update any such factors or to announce the result of any revisions to any of the forward-looking statements contained herein to reflect future events or developments.

Impact of U.S. Presidential Election. On January 20, 2017, Donald Trump became President of the United States of America. President Trump and other members of the Republican Party have proposed to reverse some of the recent regulation of the financial industry and to change tax policy. If some of these proposals were enacted, banks could dramatically increase their lending practices and accept additional types of collateral, borrowers could reduce their demand for debt financing, certain investment advisers could de-register with SEC and portfolio companies that are net importers or hold significant assets outside of the United States could be subject to increased tax liability. The effect of any such regulatory or tax changes on the Master Fund and the markets in which it trades and invests is uncertain.

Evolving Regulatory Risks of Private Investment Funds. The regulatory environment for private investment funds is evolving, and changes in the regulation of private investment funds and their advisers may adversely affect the value of investments held by the Master Fund.

The Dodd-Frank Wall Street Reform and Consumer Protection Act ("***Dodd-Frank***"), which was enacted in July 2010, regulates markets, market participants and financial instruments that were historically unregulated and has substantially altered the regulation of many other markets, market participants and financial instruments. Certain provisions of Dodd-Frank subject registered investment advisers to requirements to keep records and to report information to the SEC, which could in turn be supplied to the Board of Governors of the Federal Reserve, a new Financial Services Oversight Council or other U.S. governmental agencies or Congress. Under Dodd-Frank, the information includes, among other things, the amount of assets under management, use of leverage (including off-balance sheet leverage), counterparty credit risk exposures, trading and investment positions, and trading practices. All such records are subject to examination by the SEC at any time. It is anticipated that there may be significant changes to the financial regulatory environment as a result of the outcome of the recent U.S. elections. There is currently pending legislation in U.S. Congress which if enacted would result in the repeal of portions of Dodd-Frank which in turn would have a significant impact on the regulatory environment for private investment funds. In addition, the impact of the legislation on current and future rulemaking by various regulators under Dodd-Frank is difficult to predict. It is possible that rules that

have been proposed by various regulators, which had been anticipated to take effect previously, may no longer be implemented in their proposed form or at all. Further, there may also be substantial changes in the enforcement and interpretation of existing statutes and rules by governmental regulatory authorities or self-regulatory organizations that supervise the financial markets. The effect of future regulatory change on the Fund and the Master Fund and their operations is uncertain. Prospective investors should seek, and must rely on, the advice of their own advisers with respect to the possible impact on its investment of any future proposed legislation or administrative or judicial action.

Tax Related Risks

Uncertainty and Complexity of Tax Treatment. The tax aspects of an investment in a partnership are complicated and complex and, in many cases, uncertain. Statutory provisions and administrative regulations have been interpreted inconsistently by the courts. Additionally, some statutory provisions remain to be interpreted by administrative regulations. Investors will thus be subject to the risk caused by the uncertainty of the tax consequences with respect to an investment in the Fund. Each prospective investor should have the tax aspects of an investment in the Fund reviewed by professional advisors familiar with such investor's personal tax situation and with the tax laws and regulations applicable to the investor and private investment vehicles. Prospective investors are strongly urged to review the discussion below under "*Tax Considerations*" and "*ERISA and Other Regulatory Considerations*" for a more complete discussion of certain of the tax risks inherent in the acquisition of Interests and to consult their own independent tax advisors.

Risk of Adverse Determination. There can be no assurance that the conclusions set forth in this Memorandum will not be challenged successfully by the U.S. Internal Revenue Service (the "***Service***") or other applicable taxing authority, or significantly modified by new legislation, changes in the Service's positions or court decisions. The Fund has not applied for, nor does it expect to apply for, any advance rulings from the Service with respect to any of the federal income tax consequences described in this Memorandum. No representation or warranty of any kind is made by the General Partner with respect to the tax consequences relating to an investment in the Fund. The Fund may take positions with respect to certain tax issues which depend on legal conclusions not yet resolved by the courts. Should any such positions be successfully challenged by the Service or other applicable taxing authority, there could be a materially adverse effect on the Fund, and a Limited Partner might be found to have a different tax liability for that year than that reported on its income tax returns.

Risk of Tax Audit. An audit of the Fund by the Service or another taxing authority could result in adjustments to the tax consequences initially reported by the Fund and may result in an audit of the returns of some or all of the Limited Partners, which examination could affect items not related to a Limited Partner's investment in the Fund. If audit adjustments result in an increase in a Limited Partner's income tax liability for any year, such Limited Partner may also be liable for interest and penalties with respect to the amount of underpayment. The legal and accounting costs incurred in connection with any audit of the Fund's tax returns will be borne by the Fund. The cost of any audit of a Limited Partner's tax return will be borne solely by that Limited Partner.

Entity-Level Audits. Pursuant to the Bipartisan Budget Act of 2015, for taxable years beginning after December 31, 2017, the Service generally will be permitted to determine adjustments to items of income, gain, deduction, loss or credit of the Fund, and assess and collect taxes attributable thereto (including any applicable penalties and interest), at the Fund level. If this new regime applies to the Fund (which depends, among other things, on whether the Fund has more than 100 partners or has any partner that is itself classified as a partnership for U.S. federal income tax purposes), then any person

who is a partner of the Fund in the relevant year of the adjustment may indirectly bear the economic burden of any such taxes assessed or collected (initially determined at the highest rate of tax applicable to an individual or corporation in effect for the reviewed year), regardless of whether such person was a Limited Partner during any reviewed year. It is expected that guidance will be issued that permits the Fund to reduce the underpayment of taxes owed by the Fund, including to the extent that the Fund demonstrates such taxes are allocable to a Limited Partner that would not owe any tax by reason of its status as a "tax-exempt entity" or the character of income is subject to a lower rate of tax. The Fund may under certain circumstances have the ability to avoid such entity-level tax assessment or collection by electing to issue a statement to each partner of any reviewed year with its share of such adjustment, resulting in such partner being required to take into account any such adjustment for the taxable year which includes the date such statement was furnished. In such case, the partners of the reviewed year would also incur a two-percentage point increase on the interest rate that would otherwise have been imposed on any underpayment of taxes. There can be no assurances, however, that the Fund will avoid, or be able to avoid, any entity-level determination, assessment or collection. Limited Partners should note that there is substantial uncertainty regarding the implementation of these rules and the impact on any current or future allocations made or cash available for distributions or withdrawals by the Fund. The Fund may also be exposed to the risk that these rules apply to any lower-tier entity in which the Fund directly or indirectly invests and that is treated as a partnership for U.S. federal income tax purposes. If this new legislation applies to the Fund, the Fund will designate a tax representative, which is expected to be the General Partner, the Investment Manager, or an affiliate thereof, who shall have the sole authority to act on behalf of the Fund with respect to dealings with the Service under these new procedures. Prospective Limited Partners should consult their own tax advisors regarding this new legislation.

Tax Considerations Taken into Account. The General Partner may take tax considerations into account in determining when the Fund's investments should be sold or otherwise disposed of, and may assume certain market risk and incur certain expenses in this regard to achieve favorable tax treatment of a transaction.

Foreign Taxation. With respect to certain countries, there is a possibility of expropriation, confiscatory taxation, and imposition of withholding or other taxes on dividends, interest, capital gains or other income, limitations on the removal of funds or other assets of the Fund, political or social instability or diplomatic developments that could affect investments in those countries. An issuer of securities may be domiciled in a country other than the country in whose currency the instrument is denominated. The values and relative yields of investments in the securities markets of different countries, and their associated risks, are expected to change independently of each other.

Tax Liabilities Without Distributions. If the Fund has taxable income in a fiscal year, each Limited Partner will be taxed on that income in accordance with its allocable share of the Fund's profits, whether or not such profits have been distributed. Because the General Partner anticipates that there will be no cash distributions to the Limited Partners, an investor may incur tax liability with respect to activities of the Fund without receiving sufficient distributions from the Fund to defray such tax liabilities. In order to satisfy its tax liability in such a case, a Limited Partner would need sufficient funds from sources other than the Fund. Furthermore, the Fund may make investments with respect to which the Fund recognizes income for U.S. federal income tax purposes prior to receiving the cash or realizing the income as an economic matter. In addition, the Fund may recognize income for U.S. federal income tax purposes that does not reflect income as an economic matter. Such recognition of income prior to receipt of an economic benefit, if any, may result in increased tax liability for the Partners.

Delayed Schedules K-1. The Fund will provide Schedules K-1 as soon as practicable after receipt of all of the necessary information. However, the Fund may be unable to provide final Schedules K-1 to Limited Partners for any given tax year until significantly after April 15 of the following year. The General Partner will endeavor to provide Limited Partners with estimates of the taxable income or loss allocated to their investment in the Fund on or before such date, but final Schedules K-1 may not be available until completion of the Fund's annual audit. Limited Partners should be prepared to obtain extensions of the filing date for their income tax returns at the federal, state and local levels.

Unrelated Business Taxable Income. The Fund may make investments or engage in activities that will give rise to unrelated business taxable income ("***UBTI***") under Sections 512 and 514 of the U.S. Internal Revenue Code of 1986, as amended (the "***Code***"). Thus, an investment in the Fund may be less desirable for certain tax-exempt investors. For example, the Fund may incur leverage giving rise to UBTI or may participate in investments that give rise to UBTI through entities that are treated as partnerships for U.S. federal income tax purposes. Because of the "flow-through" principles applicable to partnerships, if UBTI is earned by the Fund, a tax-exempt investor in the Fund will realize UBTI. Because of the General Partner's objective of maximizing the pre-tax returns of all the Limited Partners, the General Partner may be required to make certain decisions to maximize pre-tax returns that result in tax-exempt investors recognizing more UBTI than might otherwise be the case. In some cases, the General Partner may forgo actions with regard to the acquisition, financing, management and disposition of assets that would reduce UBTI because such actions would reduce the overall pre-tax returns to all the Limited Partners.

Tax Changes. Investors will be subject to the risk that changes to the tax law may adversely affect the federal income tax consequences of their investment in the Fund. Changes in existing tax laws or regulations and their interpretation may be enacted after the date of this Memorandum, possibly with retroactive effect, and could alter the income tax consequences of an investment in the Fund. Certain provisions of the Code may be further amended or interpreted in a manner adverse to the Fund, in which event any benefits derived from an investment in the Fund may be adversely affected. In addition, significant legislative and budgetary proposals affecting tax laws have been made by the legislative and executive branches of the U.S. federal government. The likelihood of enactment of any such proposals, or any similar proposals, into law is uncertain. The enactment of any such proposals, including subsequent proposals, into law could have material adverse effects on the Fund and/or the Limited Partners. Enactment of such legislation, or similar legislation, could require significant restructuring of the Fund in order to mitigate such effects.

The foregoing list of risk factors does not purport to be a complete enumeration or explanation of the risks involved in an investment in the Fund. Prospective investors should read this entire Memorandum and consult with their own advisers before deciding to invest in the Fund. In addition, as the investment program of the Fund develops and changes over time, an investment in the Fund may be subject to additional and different risk factors. No assurance can be made that profits will be achieved or that substantial losses will not be incurred.

In view of the foregoing considerations, an investment in Interests is suitable only for investors who are capable of bearing the relevant investment risks.

Potential Conflicts of Interest

Given the nature and size of Highland Capital Management, L.P.'s ("***Highland Capital***") operations, various potential conflicts of interest arise in connection with its advisory services and the

advisory services provided by its affiliates. Information about Highland Capital and its potential conflicts of interest is provided in Highland Capital's Form ADV Part 2 Brochure that can be found by going to https://adviserinfo.sec.gov/IAPD/Default.aspx, searching by firm name and selecting the Part 2 Brochure to be viewed. The Fund is subject to these conflicts of interest, as well as the other items discussed below.

None of the Investment Manager, its affiliates and their respective officers, directors, shareholders, members, partners, personnel and employees (collectively, the "***Highland Group***") is precluded from engaging in or owning an interest in other business ventures or investment activities of any kind, whether or not such ventures are competitive with the Fund or the Master Fund. The Investment Manager is permitted to manage other client accounts, and does manage other client accounts, some of which may have objectives similar or identical to those of the Master Fund, including other collective investment vehicles that may be managed by the Highland Group and in which the Investment Manager or any of its affiliates may have an equity interest.

The Fund will be subject to a number of actual and potential conflicts of interest involving the Highland Group including, among other things, the fact that: (i) the Highland Group conducts substantial investment activities for accounts, funds, collateralized debt obligations that invest in leveraged loans (collectively, "***CDOs***") and other vehicles managed by members of the Highland Group ("***Highland Accounts***") in which the Fund has no interest; (ii) the Highland Group advises Highland Accounts, which utilize the same, similar or different methodologies as the Fund and may have financial incentives (including, without limitation, as it relates to the composition of investors in such funds and accounts or to the Highland Group's compensation arrangements) to favor certain Highland Accounts over the Fund and the Master Fund; (iii) the Highland Group may use the strategy described herein in certain Highland Accounts; (iv) the Investment Manager may give advice and recommend securities to, or buy or sell securities for, the Master Fund, which advice or securities may differ from advice given to, or securities recommended or bought or sold for, Highland Accounts; (v) the Investment Manager has the discretion, to the extent permitted under applicable law, to use its affiliates as service providers to the Fund and the Master Fund and the Master Fund's portfolio investments; (vi) certain investors affiliated with the Highland Group may choose to personally invest only in certain funds advised by the Highland Group and the amounts invested by them in such funds is expected to vary significantly; (vii) the Highland Group and Highland Accounts may actively engage in transactions in the same securities sought by the Master Fund and, therefore, may compete with the Master Fund for investment opportunities or may hold positions opposite to positions maintained on behalf of the Master Fund; and (viii) the Investment Manager will devote to the Master Fund and the Fund only as much time as the Investment Manager deems necessary and appropriate to manage the Master Fund's and the Fund's business.

The Investment Manager undertakes to resolve conflicts in a fair and equitable basis, which in some instances may mean a resolution that would not maximize the benefit to the Fund's investors.

Allocation of Trading Opportunities

It is the policy of the Investment Manager to allocate investment opportunities fairly and equitably over time. This means that such opportunities will be allocated among those accounts for which participation in the respective opportunity is considered appropriate, taking into account, among other considerations: (i) fiduciary duties owed to the accounts; (ii) the primary mandate of the accounts; (iii) the capital available to the accounts; (iv) any restrictions on the accounts and the investment opportunity; (v) the sourcing of the investment, size of the investment and amount of follow-on available related to the investment; (vi) whether the risk-return profile of the proposed investment is consistent with the

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account's objectives and program, whether such objectives are considered in light of the specific investment under consideration or in the context of the portfolio's overall holdings; (vii) the potential for the proposed investment to create an imbalance in the account's portfolio (taking into account expected inflows and outflows of capital); (viii) liquidity requirements of the account; (ix) potentially adverse tax consequences; (x) regulatory and other restrictions that would or could limit an account's ability to participate in a proposed investment; and (xi) the need to re-size risk in the account's portfolio.

The Investment Manager has the authority to allocate trades to multiple Highland Accounts on an average price basis or on another basis it deems fair and equitable. Similarly, if an order on behalf of any accounts cannot be fully allocated under prevailing market conditions, the Investment Manager may allocate the trades among different accounts on a basis it considers fair and equitable over time. One or more of the foregoing considerations may (and are often expected to) result in allocations among the Master Fund and one or more Highland Accounts on other than a *pari passu* basis. The Investment Manager will allocate investment opportunities across its accounts for which the opportunities are appropriate, consistent with (i) its internal conflict of interest and allocation policies and (ii) the requirements of the Investment Advisers Act of 1940, as amended. The Investment Manager will seek to allocate investment opportunities among such entities in a manner that is fair and equitable over time and consistent with its allocation policy, a copy of which will be provided upon request. However, there is no assurance that such investment opportunities will be allocated to the Master Fund fairly or equitably in the short-term or over time and there can be no assurance that the Master Fund will be able to participate in all investment opportunities that are suitable for it

The Investment Manager may open "average price" accounts with brokers. In an "average price" account, purchase and sale orders placed during a trading day on behalf of the Investment Manager, the Master Fund and other accounts managed by the Investment Manager are combined, and securities bought and sold pursuant to such orders are allocated among such accounts on an average price basis.

Cross Transactions and Principal Transactions

As further described below, the Investment Manager may effect client cross-transactions where the Investment Manager causes a transaction to be effected between the Master Fund and another client advised by it or any of its affiliates. The Investment Manager may engage in a client cross-transaction involving the Master Fund any time that the Investment Manager believes such transaction to be fair to the Master Fund and such other client. By subscribing for an Interest, a Limited Partner is deemed to have consented to such client cross-transactions between the Master Fund and another client of the Investment Manager or one of its affiliates.

The Investment Manager may direct the Master Fund to acquire or dispose of securities in cross trades between the Master Fund and other clients of the Investment Manager or its affiliates in accordance with applicable legal and regulatory requirements. In addition, the Master Fund may invest in securities of obligors or issuers in which the Investment Manager and/or its affiliates have a debt, equity or participation interest, and the holding and sale of such investments by the Master Fund may enhance the profitability of the Investment Manager's own investments in such companies. Moreover, the Master Fund may invest in assets originated by the Investment Manager or its affiliates. In each such case, the Investment Manager and such affiliates may have a potentially conflicting division of loyalties and responsibilities regarding the Master Fund and the other parties to such trade. Under certain circumstances, the Investment Manager and its affiliates may determine that it is appropriate to avoid such conflicts by selling a security at a fair value that has been calculated pursuant to the Investment Manager's valuation procedures to another client managed or advised by the Investment Manager or

such affiliates. In addition, the Investment Manager may enter into agency cross-transactions where it or any of its affiliates acts as broker for the Master Fund and for the other party to the transaction, to the extent permitted under applicable law.

The Principal, as well as the employees and officers of the Investment Manager and of organizations affiliated with the Investment Manager, may buy and sell securities for their own account or the account of others, but may not buy securities from or sell securities to the Master Fund (such prohibition does not extend to the purchase or sale of interests in the Fund), unless such purchase or sale is in compliance with the applicable provisions of the Investment Advisers Act of 1940, as amended.

Conflicts Relating to Equity and Debt Ownership by the Master Fund and Affiliates

In certain circumstances, the Master Fund and other client accounts may invest in securities or other instruments of the same issuer (or affiliated group of issuers) having a different seniority in the issuer's capital structure. If the issuer becomes insolvent, restructures or suffers financial distress, there may be a conflict between the interests in the Master Fund and those other accounts insofar as the issuer may be unable (or in the case of a restructuring prior to bankruptcy may be expected to be unable) to satisfy the claims of all classes of its creditors and security holders and the Master Fund and such other accounts may have competing claims for the remaining assets of such issuers. Under these circumstances it may not be feasible for the Investment Manager to reconcile the conflicting interests in the Master Fund and such other accounts in a way that protects the Master Fund's interests. Additionally, the Investment Manager or its nominees may in the future hold board or creditors' committee memberships which may require them to vote or take other actions in such capacities that might be conflicting with respect to certain funds managed by the Investment Manager in that such votes or actions may favor the interests of one account over another account. Furthermore, the Investment Manager's fiduciary responsibilities in these capacities might conflict with the best interests of the investors.

Affiliated Entity Services

Affiliated entities of the Investment Manager may provide services with respect to the Investment Manager, the Master Fund or the Fund. NexBank, SSB ("***NexBank SSB***") is an affiliate of the Investment Manager and may, from time to time, provide banking and/or agency services to the Investment Manager, clients of the Investment Manager or collective investment vehicles for which the Investment Manager provides investment advisory services (including the Fund, the Master Fund and other vehicles in which the Fund (through the Master Fund) may invest) or third parties engaged in transactions involving the Investment Manager. NexBank SSB may also act as an agent in connection with certain securities transactions involving the Investment Manager's client accounts (including the Master Fund and other vehicles in which the Master Fund may invest). Principals of the Investment Manager own a majority of the equity interests in NexBank SSB and employees or affiliates of the Investment Manager own or may own a substantial equity interest in NexBank SSB. Certain Master Fund investment transactions may be executed through NexBank Securities, Inc., an affiliate of the Investment Manager and a registered broker-dealer.

Additionally, the Investment Manager or affiliates of the Investment Manager, including, without limitation, Nexbank SSB, NexBank Securities, Inc., NexBank Capital Advisors and Governance Re, Ltd., may provide financial advisory, management, insurance, title insurance or other services for a fee to portfolio companies in which the Master Fund may have an interest. Highland Latin America Consulting, Ltd., an affiliate of the Investment Manager, has been engaged to provide certain

administrative and consulting services to the Investment Manager, as more fully described below in "*Management –Services Agreement*."

Management Fee

A portion of any Management Fee may be paid to broker-dealers, placement agents or independent third parties, other than the Investment Manager, for services provided in connection with the solicitation of subscriptions from investors. Accordingly, investors should recognize that a placement agent's or distributor's participation in this offering may be influenced by its interest in such current or future fees and compensation. Investors should consider these potential conflicts of interest in making their investment decisions. Each placement agent shall comply with the legal requirements of the jurisdictions within which it offers and sells Interests.

Diverse Membership

The Limited Partners are expected to include entities, persons, or entities organized in various jurisdictions and subject to different tax and regulatory regimes. Such diverse investors may thus have conflicting investment, tax and other interests, relating to, among other things, the nature of investments made by the Master Fund, the structuring or the acquisition of investments and the timing of disposition of investments. As a result, conflicts of interest may arise in connection with decisions made by the Investment Manager including as to the nature and structure of investments that may be more beneficial for one type of Limited Partner than for another type of Limited Partner, including Limited Partners affiliated with the Investment Manager. The results of the Fund's activities may affect individual Limited Partners differently, depending upon their individual financial and tax situations because, for instance, of the timing of an event of realization of gain or loss and its characterization as long-term or short-term gain or loss. In addition, the Master Fund may make investments that may have a negative impact on related investments made by the Limited Partners in separate transactions. In selecting, structuring and managing investments appropriate for the Master Fund, the Investment Manager will consider the investment and tax objectives of the Master Fund and the Feeder Funds as a whole, not the investment, tax, or other objectives of any Limited Partner individually. However, there can be no assurance that a result will not be more advantageous to some Limited Partners than to others or to the Investment Manager and/or its affiliates than to a particular Limited Partner.

Soft Dollars

The Investment Manager's authority to use "soft dollar" credits generated by the Master Fund's securities transactions to pay for expenses that might otherwise have been borne by the Investment Manager or the General Partner may give the Investment Manager an incentive to select brokers or dealers for Master Fund transactions, or to negotiate commission rates or other execution terms, in a manner that takes into account the soft dollar benefits received by the Investment Manager rather than giving exclusive consideration to the interests in the Master Fund. See "*Brokerage and Custody*."

No Separate Counsel

Akin Gump Strauss Hauer & Feld LLP ("***Akin Gump***") serves as counsel to the Fund, the Master Fund, the Investment Manager, the General Partner and certain of their Affiliates (the "***Clients***") in connection with the formation of the Fund and certain other Clients, the offering of Interests as well as certain other matters for which the Clients may engage Akin Gump from time to time. Akin Gump disclaims any obligation to verify the Clients' compliance with their obligations either under applicable

law or the governing documents of the Fund. In acting as counsel to the Clients, Akin Gump has not represented and will not represent any Limited Partners nor does it purport to represent their interests. No independent counsel has been retained to represent the Limited Partners. In assisting in the preparation of this Memorandum, Akin Gump has relied on information provided by the Fund, the Investment Manager and the General Partner and certain of the Fund's other service providers (including, without limitation, the Principal's biographical data, summaries of market conditions, the planned investment strategy of the Master Fund and the performance of the Master Fund, its investments or any predecessor Fund) without verification and does not express a view as to whether such information is accurate or complete.

Maples and Calder, PO Box 309, Ugland House, Grand Cayman, KY1-1104, Cayman Islands, acts as Cayman Islands legal counsel to the Offshore Fund, the Master Fund and the General Partner. In connection with the offering of interests and subsequent advice to the Offshore Fund, the Master Fund and the General Partner, Maples and Calder will not be representing shareholders and/or limited partners. No independent legal counsel has been retained to represent the shareholders and/or limited partners. Maples and Calder's representation of the General Partner is limited to specific matters as to which it has been consulted by the General Partner. There may exist other matters that could have a bearing on the Master Fund as to which Maples and Calder has not been consulted. In addition, Maples and Calder does not undertake to monitor compliance by the General Partner and its affiliates with the investment program, valuation procedures and other guidelines set forth herein, nor does Maples and Calder monitor ongoing compliance with applicable laws. In connection with the preparation of this Memorandum, Maples and Calder's responsibility is limited to matters of Cayman Islands law and it does not accept responsibility in relation to any other matters referred to or disclosed in this Memorandum. In the course of advising the General Partner, there are times when the interests of the shareholders/limited partners may differ from those of the Offshore Fund, Master Fund and/or the General Partner. Maples and Calder does not represent the shareholders and/or limited partners' interests in resolving these issues. In reviewing this Memorandum, Maples and Calder has relied upon information furnished to it by the General Partner and has not investigated or verified the accuracy and completeness of information set forth herein concerning the Offshore Fund, Master Fund and/or the General Partner.

Non-Public Information

From time to time, the Investment Manager may come into possession of non-public information concerning specific companies although internal structures are in place to prevent the receipt of such information. Under applicable securities laws, this may limit the Investment Manager's flexibility to buy or sell portfolio securities issued by such companies. The Master Fund's investment flexibility may be constrained as a consequence of the Investment Manager's inability to use such information for investment purposes.

The foregoing list of risk factors and potential conflicts of interest do not purport to be a complete enumeration or explanation of the risks involved in an investment in the Fund. Prospective investors should read this entire Memorandum and consult with their own legal, tax and financial advisers before deciding to invest in the Fund.

BROKERAGE AND CUSTODY

Brokerage Arrangements

The Investment Manager will be responsible for the placement of the portfolio transactions of the Master Fund and the negotiation of any commissions or spreads paid on such transactions. Portfolio transactions normally will be effected through brokers on securities exchanges or directly with the issuer, or through an underwriter, or market maker or other dealer for the investments. Portfolio transactions through brokers involve a commission to the broker. Portfolio transactions with dealers typically are priced to include a spread between the bid and the asked price to compensate the dealer. Portfolio transactions will be executed by brokers selected solely by the Investment Manager in its absolute discretion. The Investment Manager is not required to weigh any of these factors equally.

Substantially all of the Master Fund's investments in marketable securities, as well as its cash and cash equivalents, are expected to be held at Société Générale and BNP Paribas Prime Brokerage, Inc. or other prime brokers or custodians selected by the Investment Manager. Instruments not constituting marketable securities generally are recorded through book entry by the borrower or by an agent for the borrower or the creditors. Documentary evidence of the acquisition, ownership and disposition of these assets typically will be held by the Administrator.

Société Générale and BNP Paribas Prime Brokerage, Inc. and other prime brokers or their affiliates may provide capital introduction or other placement services to the Fund and the Investment Manager (with or without separate charges for such other services). In determining which broker-dealer generally provides the best available price and most favorable execution, the Investment Manager considers a totality of circumstances, including price quotes, the size of the transaction, the nature of the market for the financial instrument, the timing of the transaction, difficulty of execution, the broker-dealer's expertise in the specific financial instrument or sector in which the Master Fund seeks to trade, the extent to which the broker-dealer makes a market in the financial instrument involved or has access to such markets, the broker-dealer's skill in positioning the financial instruments involved, the broker-dealer's promptness of execution, the broker-dealer's financial stability, reputation for diligence, fairness and integrity, quality of service rendered by the broker-dealer in other transactions for the Investment Manager and its respective affiliates, confidentiality considerations, the quality and usefulness of research services and investment ideas presented by the broker-dealer, the broker-dealer's willingness to correct errors, the broker-dealer's ability to accommodate any special execution or order handling requirements that may surround the particular transaction, and other factors deemed appropriate by the Investment Manager. The Investment Manager need not solicit competitive bids and does not have an obligation to seek the lowest available commission cost or spread.

Accordingly, if the Investment Manager concludes that the commissions charged by a broker or the spreads applied by a dealer are reasonable in relation to the quality of services rendered by such broker or dealer (including, without limitation, the value of the brokerage and research products or services provided by such broker or dealer), the Master Fund may pay commissions to, or be subject to spreads applied by, such broker-dealer in an amount greater than the amount another broker-dealer might charge or apply.

The Investment Manager may also execute trades with brokers and dealers with whom the Fund, the Master Fund or the Investment Manager has other business relationships, including prime brokerage, credit relationships and capital introduction or investments by affiliates of the broker-dealers in the Fund or other entities managed by the Investment Manager. However, the Investment Manager does not

believe that these other relationships will influence the choice of brokers and dealers who execute trades for the Master Fund.

Research-related goods and services provided by brokers and dealers through which portfolio transactions for the Master Fund are executed, settled and cleared may include research reports on particular industries and companies, economic surveys and analyses, recommendations as to specific securities, certain research services, and other goods and services providing lawful and appropriate assistance to the Investment Manager in the performance of investment decision-making responsibilities on behalf of the Master Fund and related accounts (collectively, "***soft dollar items***").

Soft dollar items may be provided directly by brokers and dealers, by third parties at the direction of brokers and dealers or purchased on behalf of the Master Fund with credits or rebates provided by brokers and dealers. Soft dollar items may arise from over-the-counter principal transactions, as well as exchange traded agency transactions. Brokers and dealers sometimes suggest a level of business they would like to receive in return for the various services they provide. Actual business received by any broker or dealer may be less than the suggested allocations, but can (and often does) exceed the suggestions, because total transaction volume is allocated on the basis of all the considerations described above. A broker or dealer will not be excluded from executing transactions for the Master Fund because it has not been identified as providing soft dollar items.

The use of commissions or "soft dollars" if any, generated by the Master Fund through agency and certain riskless principal transactions to pay for research and research-related products or services, if any, will fall within the safe harbor created by Section 28(e) of the Securities Exchange Act of 1934, as amended. Under Section 28(e), research products or services obtained with soft dollars generated by the Master Fund may be used by the Investment Manager to service accounts other than the Master Fund. Soft dollars generated in respect of futures, currency and derivatives transactions and principal transactions (that are not riskless principal transactions) do not generally fall within the safe harbor created by Section 28(e) and will be utilized only with respect to research-related products and services for the benefit of the account generating such soft dollars.

Research and brokerage products and services may be used by the Investment Manager in servicing some or all of the Investment Manager's clients. In addition, some research and brokerage may not be used by the Investment Manager in servicing the clients whose commission dollars provided for the research or brokerage. Clients may not, in any particular instance, be the direct or indirect beneficiaries of the research or brokerage provided. Certain clients, who are the beneficiaries of research or brokerage, may have an investment style which results in the generation of a small amount of brokerage commissions due to a lack of active trading for their accounts. As a result, clients who generate sizeable commissions subsidize research or brokerage provided to clients whose accounts generate minimal brokerage commissions since the commission dollars generated by transactions for such clients are not sufficient to pay for research or brokerage that may be received by such clients from other brokers.

In selecting broker-dealers on the basis of the foregoing factors, the Investment Manager may pay a brokerage commission in excess of that which another broker might have charged for effecting the same transaction. In connection therewith, the Investment Manager will make a good faith determination that the amount of commission is reasonable in relation to the value of the research or brokerage services received, viewed in terms of either the specific transaction or the Investment Manager's overall responsibility to its clients. The Investment Manager will regularly evaluate the placement of brokerage services and the reasonableness of commissions paid. Research received from brokers will be

supplemental to the Investment Manager's own research efforts. While the receipt of research will not reduce the Investment Manager's normal research activities, the Investment Manager's expenses could increase materially if it attempted to generate such additional research or brokerage services through its own staff, and the Management Fee will not be reduced as a consequence of the receipt of such research or brokerage services or products. As such, the Investment Manager's arrangements for the receipt of research and brokerage services from brokers may create a conflict of interest, in that the Investment Manager may have an incentive to choose a broker-dealer that provides research and brokerage services, instead of one that does not but charges a lower commission rate. In some instances, the Investment Manager receives products and services that may be used for both research and non-research purposes. In such instances, the Investment Manager will make a good faith effort to determine the relative proportion of the products and services used to assist the Investment Manager in carrying out its investment decision-making responsibilities or order execution, including research and brokerage, and the relative proportion used for administrative or other non-research purposes. The proportionate amount of the research attributable to assisting the Investment Manager in carrying out its investment decision-making responsibilities or order execution will be paid through brokerage commissions generated by the Master Fund's and other client's transactions; the proportionate amount attributable to administrative or other non-research purposes will be paid for by the Investment Manager from its own resources. The receipt of "mixed-use" research and the determination of the appropriate allocation may result in a potential conflict of interest between the Investment Manager and its clients, including the Master Fund.

Custody

The majority of the Master Fund's securities are held in the custody of its prime brokers. The Master Fund is eligible for insurance coverage against loss with respect to assets held in the custody of the prime brokers in the event of the bankruptcy or liquidation of either of the prime brokers to the same extent as that broker's other customers. The Master Fund's and the Fund's cash may be held at banks as well as the prime brokers. Ownership interests which are not represented by certificates generally will be recorded through book-entry systems maintained by the issuer or its agent, and the underlying documentation relating to the acquisition and disposition of these assets for the account of the Master Fund will be held at the business offices of the Investment Manager.

TAX CONSIDERATIONS

Introduction

The following is a summary of certain aspects of the U.S. federal income taxation of the Fund and its Limited Partners arising from the purchase, ownership and disposition of an Interest that should be considered by a prospective Limited Partner. The Fund has not sought a ruling from the Service or any similar state, local or foreign authority with respect to any of the tax issues affecting Limited Partners or the Fund, nor has it obtained an opinion of counsel with respect to any U.S. federal, state, local or foreign tax issues.

This summary is based on the Code, the U.S. Treasury regulations promulgated under the Code (the "***Treasury Regulations***"), judicial decisions, administrative rulings, and state and local tax laws in force on the date of this Memorandum, all of which are subject to change (possibly with retroactive effect). Changes in existing laws or regulations and their interpretation may occur after the date of this Memorandum and could alter the income tax consequences of an investment in the Fund. This discussion does not address all of the tax consequences that may be relevant to a particular investor, nor does it address, unless specifically indicated, the tax consequences to, among others (i) persons that may be subject to special treatment under U.S. federal income tax law, including, but not limited to, banks, insurance companies, thrift institutions, regulated investment companies, real estate investment trusts and dealers in securities or currencies, (ii) persons that will hold Interests as part of a position in a "straddle" or as part of a "hedging," "conversion" or other integrated investment transaction for U.S. federal income tax purposes, (iii) persons whose functional currency is not the U.S. dollar or (iv) persons that do not hold Interests as capital assets within the meaning of Code Section 1221.

Further, this summary does not address the tax considerations relevant to an investment in the Fund by a person that is not a "United States person" as defined in Section 7701(a)(30) of the Code because this summary assumes that all such persons will invest in the Offshore Fund.

If a partnership holds an Interest in the Fund, the tax treatment of a partner in such partnership will generally depend upon the status of the partner and the activities of the Fund. Prospective investors who are partners of a partnership should consult their own tax advisors.

Unless otherwise expressly provided herein, this discussion does not address possible state, local or foreign tax consequences of the purchase, ownership or disposition of Interests, some or all of which may be material to particular investors. This discussion also does not address the potential application of the U.S. federal alternative minimum tax ("***AMT***") to the Limited Partners. There is uncertainty concerning certain tax aspects of the Fund, and there can be no assurance that the Service will not challenge the positions taken by the Fund.

THE TAX CONSEQUENCES OF AN INVESTMENT IN THE FUND ARE PARTICULARLY COMPLEX. ACCORDINGLY, PROSPECTIVE INVESTORS SHOULD NOT CONSIDER THIS DISCUSSION AS A SUBSTITUTE FOR CAREFUL TAX PLANNING. PROSPECTIVE INVESTORS SHOULD CONSULT WITH THEIR OWN TAX ADVISORS, ATTORNEYS OR ACCOUNTANTS ON MATTERS RELATING TO AN INVESTMENT IN THE FUND WITH SPECIAL REFERENCE TO SUCH INVESTOR'S PARTICULAR SITUATION.

Certain United States Taxation Matters

U.S. Entity Classification of the Fund

The General Partner believes that, under the provisions of the Code and the Treasury Regulations as currently in effect, each of the Fund and the Master Fund should be treated for U.S. federal income tax purposes as a partnership and not as an association taxable as a corporation.

Certain "publicly traded partnerships" are treated as associations that are taxable as corporations for U.S. federal income tax purposes. A publicly traded partnership is any partnership the interests in which are traded on an established securities market or which are readily tradable on a secondary market (or the substantial equivalent thereof). Interests in the Fund are not and will not be traded on an established securities market. Treasury Regulations concerning the classification of partnerships as publicly traded partnerships provide certain safe harbors under which interests in a partnership will not be considered readily tradable on a secondary market (or the substantial equivalent thereof). The General Partner believes that the Fund may qualify for an exemption from the publicly traded partnership rules, although there is no assurance that the Fund will so qualify.

The remainder of this discussion assumes that the Fund and the Master Fund will each be treated as a partnership for U.S. federal income tax purposes and not as a publicly-traded partnership treated as an association that is taxable as a corporation. Unless the context requires otherwise, references to the Fund in the following discussion include the Master Fund.

Taxation of the Master Fund

The Government of the Cayman Islands will not, under existing legislation, impose any income, corporate or capital gains tax, estate duty, inheritance tax, gift tax or withholding tax upon the Master Fund or the limited partners of the Master Fund. Interest, dividends and gains payable to the Master Fund and all distributions by the Master Fund to its limited partners will be received free of any Cayman Islands income or withholding taxes. The Master Fund has registered as an exempted limited partnership under Cayman Islands law and the Master Fund has received an undertaking from the Governor in Cabinet of the Cayman Islands to the effect that, for a period of 50 years from the date of the undertaking, no law which is enacted in the Cayman Islands imposing any tax to be levied on profits or income or gains or appreciations shall apply to the Master Fund or to any partner thereof in respect of the operations or assets of the Master Fund or the interest of a partner therein; and may further provide that any such taxes or any tax in the nature of estate duty or inheritance tax shall not be payable in respect of the obligations of the Master Fund or the interests of the partners therein. The Cayman Islands are not party to a double tax treaty with any country that is applicable to any payments made to or by the Master Fund.

U.S. Federal Income Taxation of the Fund and Partners Generally

As a partnership, the Fund will not be subject to U.S. federal income tax. Each Limited Partner otherwise subject to tax will be required to report separately on its U.S. federal income tax return its distributive share of the Fund's net long-term capital gain or loss, net short-term capital gain or loss, and net ordinary income and deductions and credits in accordance with the allocations set forth in the Partnership Agreement. Each Limited Partner will be liable for any taxes owed upon its distributive share of the income or gains realized by the Fund, and may claim deductions for its distributive share of the Fund's losses and deductions and credits for its distributive share of the Fund's credits, to the extent allowed under the Code. Each Limited Partner will be taxed on its distributive share of the Fund's

taxable income and gain regardless of whether it has received or will receive a distribution from the Fund. Consequently, a Limited Partner may be subject to tax with respect to its share of the taxable income of the Fund for a taxable year and may not receive a corresponding distribution of cash from the Fund in such year with which to satisfy its tax liability in respect of such taxable income.

The Fund will file an annual partnership information return with the Service that reports the results of its operations for the taxable year, and will distribute annually to each Limited Partner a form showing its distributive share of the Fund's items of income, gain, loss, deduction or credit. The General Partner will have the authority to decide how to report these items on the Fund's tax returns, and all Limited Partners will be required under the Partnership Agreement to treat the items consistently on their own returns. Under current law, an audit by the Service of the tax treatment of the Fund's income and deductions generally will be determined at the Fund level in a single proceeding rather than by individual audits of the Limited Partners. For tax years beginning before January 1, 2018 (and absent an election by the Fund to apply the new partnership tax audit rules described in more detail below), the administrative proceeding is managed by the "***Tax Matters Partner***." For tax years beginning on or after January 1, 2018 (or in the case of an election by the Fund to apply the new partnership tax audit rules), the Fund will be required to appoint one person as the "***Partnership Representative***" to act on its behalf in connection with an audit by the Service and related proceedings. Pursuant to the Partnership Agreement, the General Partner or its delegate will be designated as the Tax Matters Partner and/or the Partnership Representative. The Partnership Representative's actions, including the Partnership Representative's agreement to adjustments of the Fund's income in settlement of an audit by the Service of the Fund, will bind all Limited Partners, and opt-out rights available to certain Limited Partners in connection with certain actions of the Tax Matters Partner under the current partnership tax audit rules for tax years beginning before January 1, 2018 will no longer be available.

In certain cases, the Fund may be required to file a statement with the Service, disclosing one or more positions taken on its tax return, generally where the tax law is uncertain or a position lacks clear authority. All Partners are required under the Code to treat the partnership items consistently on their own returns, unless they file a statement with the Service disclosing the inconsistency. Given the uncertainty and complexity of the tax laws, it is possible that the Service may not agree with the manner in which the Fund's items have been reported.

Under the Partnership Agreement, for U.S. federal income tax purposes, the General Partner has the discretion to allocate specially an amount of the Fund's net gains or net losses (or items of gross income or losses or deduction) to a withdrawing Partner to the extent that the Partner's Capital Account differs either positively or negatively from its U.S. federal income tax basis in its Interest. There can be no assurance that, if the General Partner makes such a special allocation, the Service will accept such allocation. If such allocation is successfully challenged by the Service, the Fund's allocations to the remaining Partners would be affected as well.

The Fund expects to act as a trader or an investor, and not as a dealer, with respect to its securities transactions. Generally, the gains and losses realized by a trader or an investor on the sale of securities are capital gains and losses. Thus, the Fund expects that its gains and losses from its securities transactions typically will be capital gains and capital losses. These capital gains and losses may be long-term or short-term depending, in general, upon the length of time the Fund maintains a particular investment position and, in some cases, upon the nature of the transaction. An investment held for more than one year generally will be eligible for long-term capital gain or loss treatment. The Fund may also realize income from dividends, which will generally be taxed at either ordinary income rates or, if they are eligible for treatment as "qualified dividend income," at applicable long-term capital gains rates.

Dividends from Argentine corporations are generally expected to be treated as "qualified dividend income" only to the extent that the stock for which the dividend is paid is readily tradable on an established securities market in the United States. Limited Partners should consult with their own tax advisors to determine the tax rates applicable to them in their particular tax situations.

In addition, individuals with "modified adjusted gross income" that exceeds certain thresholds (e.g., $250,000 for married individuals filing jointly and $200,000 for single individuals) are subject to a Medicare tax of 3.8% on the lesser of: (i) their investment income, net of deductions properly allocable to such income, and (ii) the excess of their "modified adjusted gross income" above the applicable threshold. It is expected that most or all of the Fund's income will be treated as investment income for this purpose, and as a result Limited Partners receiving allocations of income from the Fund for these taxable years may be subject to this tax. This tax will be in addition to any U.S. federal income tax imposed on Limited Partners with respect to their allocable share of income of the Fund. Trusts and estates also may be subject to this additional tax. Prospective investors should consult their own tax advisors regarding the application of this Medicare tax to their investment in the Fund.

The Fund may be involved in a variety of hedging transactions to reduce the risk of changes in value in the Fund's investments. Special rules may apply to determine the tax treatment of such hedging transactions, which may affect the Fund's holding period attributable to such property, the characterization of gain or loss as ordinary or capital and, if capital, as long-term or short-term, and the timing of the realization of gains or losses on the actual or deemed sale of the property, including, in some cases, property owned by a Limited Partner outside of the Fund. For instance, gain or loss from a short sale of property generally will be considered as capital gain or loss to the extent the property used to close the short sale constitutes a capital asset in the Fund's hands. Except with respect to certain situations where the property used by the Fund to close a short sale has a long-term holding period on the date of the short sale, gains on short sales will be treated as short-term capital gains. These rules also may terminate the running of the holding period of "substantially identical property" held by the Fund. Moreover, a loss on a short sale will be treated as a long-term capital loss if, on the date of the short sale, "substantially identical property" has been held by the Fund for more than one year. Certain hedging transactions also may cause a constructive sale of the Fund's long position that is the subject of the hedge.

Special "mark to market" rules apply to the Fund's investment in "Section 1256 Contracts." Section 1256 Contracts include certain regulated futures contracts, certain foreign currency forward contracts and certain options contracts. Capital gains and losses from qualifying Section 1256 Contracts generally are characterized as short-term capital gains or losses to the extent of 40% thereof and as long-term capital gains or losses to the extent of 60% thereof.

The Fund may derive ordinary interest income and dividends on securities, and may be required to recognize income in respect of certain securities prior to receipt of any payment in respect of such securities. For instance, the Fund may hold debt obligations with "original issue discount." In such case, the Fund will be required to include a portion of such discount in its taxable income on a current basis, and allocate such income to the Limited Partners, even though receipt of such amounts by the Fund may occur in a subsequent tax year. The Fund also may acquire debt obligations with "market discount." Upon disposition of such an obligation, which might include the receipt of securities of the issuer in a recapitalization exchange, the Fund generally will be required to treat any gain realized (and required to be recognized) as ordinary interest income to the extent of the market discount that accrued during the period the debt obligation was held by the Fund. Recapitalization exchanges involving

securities held by the Fund also may result in the recognition of taxable gains prior to the receipt of cash or readily tradable property.

If the Fund is treated as a trader, it may, in its discretion, make an election under Code section 475(f) to apply a mark to market system of recognizing unrealized gains and losses on securities as if the securities were sold for fair market value at the close of any taxable year of the Fund. The amount recognized when gain or loss is subsequently realized would be adjusted for amounts recognized in marking to market. The election would apply with respect to securities held in connection with the Fund's trade or business as a trader in securities. The election would not apply to any securities with respect to which the Fund could demonstrate, to the satisfaction of the Service, that they are held for investment. In the event that the Fund makes such an election, the Fund's gains and losses from marking securities to market (and gain or loss recognized before the end of the taxable year with respect to any security that would have been marked to market) would be treated as ordinary income and losses. The rules relating to appreciated financial positions under Code section 1259 and wash sales under Code section 1091 would not apply to the securities to which the election applies and the Code section 1092 straddle rules would not have any effect where all the offsetting positions of a straddle are marked to market.

The Fund may be required to purchase foreign currency with which to make its investments and may receive foreign currency when a security is sold or when an interest payment is made on a security. These transactions may give rise to gains and losses because of fluctuations in the value of the foreign currency relative to the U.S. dollar during the Fund's holding period of an investment. Foreign currency gain or loss in respect of certain types of transactions must be accounted for separately, apart from any gain or loss on the underlying transaction, and the Code contains special rules which treat, in most circumstances, such gains and losses as ordinary income or losses rather than capital gains or losses.

The U.S. federal income tax treatment of the Fund's investment in swaps or other derivatives is subject to significant uncertainty and depends in large part on the terms of the specific swap or other derivative. In particular, it is possible that the Fund may enter into so-called "bullet swaps" or other swaps that provide for non-periodic payments. In certain circumstances, income from a swap can be treated as ordinary income and not capital gain if the swap is treated as a "constructive ownership transaction" under Code section 1260. The Fund intends to take positions that are reasonable under the law that provide for optimal tax treatment of the Limited Partners. However, there can be no assurance that the Service or a court would agree with the Fund's position. Moreover, the Service might take the contrary position that the Fund is subject to U.S. federal income tax in respect of some or all of the income earned from the swap investments on the theory that the Fund should be treated as the owner for U.S. federal income tax purposes of the property underlying certain swaps, in which case the after-tax return on the swap investments could be significantly reduced.

Pursuant to various "anti-deferral" provisions of the Code (*e.g.*, the "Subpart F" and "passive foreign investment company" provisions), any investments by the Fund in certain foreign corporations may cause a Limited Partner to (i) recognize taxable income prior to the Fund's receipt of distributable proceeds, (ii) pay an interest charge on receipts that are deemed as having been deferred, (iii) recognize ordinary income that, but for the "anti-deferral" provisions, would have been treated as long-term or short-term capital gain, or (iv) become subject to certain reporting requirements with respect to such investments. There can be no assurance that the General Partner or the Fund will mitigate, or be able to mitigate, the application of these provisions, or provide certain information with respect to such foreign corporations or such filing requirements. Potential investors are advised to consult with their own tax

advisors with respect to the application of these "anti-deferral provisions" in their particular circumstances.

Under the Partnership Agreement, the General Partner has the authority to elect on behalf of the Fund, under Code section 754, to adjust the tax basis of the Fund's assets in connection with certain distributions to Limited Partners or certain transfers of Interests. Such an election, if made, could affect the amount of a Limited Partner's distributive share of the gain or loss recognized by the Fund upon the disposition of its assets. Because of the complexity and additional expense involved in making a section 754 election, the General Partner has no present intention to make such election on behalf of the Fund.

Prospective investors that are subject to the AMT should consider the tax consequences of an investment in the Fund in view of their AMT position, taking into account the special rules that apply in computing the AMT.

Taxation of Distributions and Withdrawals

Cash nonliquidating distributions and withdrawals, to the extent they do not exceed a Limited Partner's basis in its Interest, will not result in taxable income to that Limited Partner, but will reduce its tax basis in its Interest by the amount distributed or withdrawn. Cash distributed to a Limited Partner in excess of the basis of its Interest is generally taxable as capital gain. Conversely, if the cash distributed by the Fund to a Partner for any year exceeds the taxable income of the Fund allocated to such Partner for that year, the excess will be treated as a return of capital for U.S. federal income tax purposes to the extent of a Limited Partner's tax basis in its Interest. To the extent that cash distributions are treated as a return of capital and to the extent that any tax losses are allocated to the Limited Partners, the tax bases of the Limited Partners in their Interests will be reduced (but not below zero). Because of such basis adjustments, any tax that is avoided in the early years of a Limited Partner's investment in the Fund may become due later through the realization of gain upon the sale of assets of the Fund, the liquidation of the Fund or the sale of Interests.

Prospective Limited Partners should be aware that a Limited Partner's share of the taxable income of the Fund for any year may exceed the amount of cash distributed to such Limited Partner for that year, which may require that the Limited Partner make an out-of-pocket expenditure to cover its tax liability. Conversely, if the cash distributed by the Fund to a Partner for any year exceeds the taxable income of the Fund allocated to such Partner for that year, the excess will be treated as a return of capital for U.S. federal income tax purposes to the extent of a Limited Partner's tax basis of its Interest. To the extent that cash distributions are treated as a return of capital and to the extent that any tax losses are allocated to the Limited Partners, the tax bases of the Limited Partners in their Interests will be reduced (but not below zero). Because of such basis adjustments, any tax that is avoided in the early years of a Limited Partner's investment in the Fund may become due later through the realization of gain upon the sale of assets of the Fund, the liquidation of the Fund or the sale of Interests.

The Fund's ability to make cash distributions to a withdrawing Limited Partner or to the Partners, if applicable, may be limited by, among other things, the terms of the investment leverage entered into by the Fund for the purpose of making portfolio investments on a leveraged basis.

Upon the withdrawal of a Limited Partner receiving a cash liquidating distribution from the Fund, such Limited Partner generally will recognize capital gain or loss to the extent of the difference between the proceeds received by the withdrawing Limited Partner and such Partner's adjusted tax basis in its Interest. Such capital gain or loss will be short-term or long-term depending upon the Partner's holding

period (or holding periods) for its Interest. However, a withdrawing Limited Partner will recognize ordinary income to the extent such Partner's allocable share of the Fund's "unrealized receivables" exceeds the Partner's basis in such unrealized receivables (as determined pursuant to the Treasury Regulations). For these purposes, accrued but untaxed market discount, if any, on securities held by the Fund will be treated as an unrealized receivable, with respect to which a withdrawing Partner would recognize ordinary income.

Distributions of property other than cash, whether in complete or partial liquidation of a Limited Partner's Interest, generally will not result in the recognition of taxable income or loss to the Limited Partner (except to the extent such distribution is treated as made in exchange for such Limited Partner's share of the Fund's unrealized receivables). However, a distribution of marketable securities will be treated as a distribution of cash (which, as described above, can require the recognition of gain by the recipient Limited Partner), unless the distributing partnership is an "investment partnership" and the recipient is an "eligible partner" as defined in Code section 731(c). Although the General Partner cannot provide any assurances of whether the Fund is an "investment partnership" for these purposes, the General Partner anticipates that the Fund should qualify as an "investment partnership." Thus, if a Limited Partner is an "eligible partner," which term should include a Limited Partner whose sole contributions to the Fund consisted of cash, a distribution of marketable securities to such Limited Partner should not require the recognition of gain by such Limited Partner.

As discussed above, under the Partnership Agreement, the General Partner has the discretion to allocate specially an amount of the Fund's net gains or net losses (or items of gross income or losses or deductions) for U.S. federal income tax purposes to a withdrawing Partner to the extent that the Partner's capital account differs from its U.S. federal income tax basis in its Interest. Such a special allocation may result in the withdrawing Partner recognizing more or less taxable income, which may include short-term gain, in the Partner's last taxable year in the Fund, thereby reducing, or increasing, as applicable, the amount of long-term capital gain recognized during the tax year in which it receives its liquidating distribution upon withdrawal. In certain circumstances, special allocations of net gains (or items of income or gain) to a withdrawing Partner may result in a greater allocation of losses, or a lower allocation of taxable income or gain, to the remaining Partners. Likewise, special allocations of net losses (or items of expense, loss or deduction) to a withdrawing Partner may result in a greater allocation of taxable income or gain, or a lower allocation of losses, to the remaining Partners.

Assuming the Fund has not made an election pursuant to Code Section 754 and the General Partner does not exercise its discretion to specially allocate losses to a withdrawing Limited Partner, distributions of property or cash by the Fund to a Limited Partner in redemption of its Interest in certain circumstances where the Fund has a substantial built-in loss may require the Fund to reduce the tax basis of its remaining property.

Limitations on Losses, Deductions and Credits

Limited Partners who are individuals or which are certain types of corporations may be limited in their ability to deduct expenses or losses of the Fund. For instance, if or to the extent that the Fund's operations do not constitute a "trade or business" within the meaning of Section 162 and other provisions of the Code, an individual Limited Partner's distributive share of the Fund's expenses (including any amounts that are treated for tax purposes as expenses of the Fund, such as the Management Fee) would be deductible only as itemized deductions, subject to the limitations of Sections 67 and 68 of the Code. In this regard, if all or a portion of the Performance Allocation to the Special Limited Partner were re-characterized for tax purposes as an expense of the Fund, each non-corporate Limited Partner's share of

such expense could be subject to such limitations. Itemized deductions are non-deductible in computing such Limited Partner's AMT income and AMT liability.

Further, income, gains and losses of the Fund generally will not be treated as passive income or losses for purposes of the passive activity loss limitations of Section 469 of the Code. Accordingly, individuals, personal service corporations and certain closely-held corporations that have passive activity losses from other activities are restricted in their ability to use such losses to offset income and gains from the Fund, although losses of the Fund will not be subject to the passive activity loss limitation.

For each taxable year, Section 1277 of the Code limits the deduction of the portion of any interest expense on indebtedness incurred by a taxpayer to purchase or carry a security with market discount which exceeds the amount of interest (including original issue discount) includible in the taxpayer's gross income for such taxable year with respect to such security ("***Net Interest Expense***"). Net Interest Expense in any taxable year is deductible only to the extent it exceeds the amount of market discount which accrued on the security during the taxable year or portion of the taxable year during which the taxpayer held the security. Net Interest Expense that is non-deductible under the rules described above is carried forward and deducted in the year in which the taxpayer disposes of the security. Alternatively, at the taxpayer's election, such Net Interest Expense can be carried forward and deducted in a year prior to the disposition of the security, if any, in which the taxpayer has net interest income from the security.

Section 1277 would apply to a Limited Partner's share of the Fund's Net Interest Expense attributable to a security held by the Fund (through the Master Fund) with market discount. In such case, a Limited Partner would be denied a current deduction for all or part of that portion of its distributive share of the Fund's ordinary losses attributable to such Net Interest Expense and such losses would be carried forward to future years, in each case as described above. Although no guidance has been issued regarding the election to deduct previously disallowed Net Interest Expense prior to the year of disposition of the bond, it appears that the election would be made by the Fund rather than by the Limited Partner. Section 1277 would also apply to the portion of interest paid by a Limited Partner on money borrowed to finance its investment in the Fund to the extent such interest was allocable to securities held by the Fund (through the Master Fund) with market discount.

The ability of a non-corporate Limited Partner to deduct its share of the Fund's ordinary losses attributable to interest and certain short sale expenses may be subject to the "investment interest limitation" under Section 163(d) of the Code. In general, a non-corporate taxpayer's investment interest (including interest and certain short sale expenses) in the current year is not deductible to the extent it exceeds its "net investment income", consisting of net gain and ordinary income derived from investments in the current year less certain directly connected expenses (other than interest or short sale expenses). For this purpose, any long-term capital gain is excluded from net investment income unless the taxpayer elects to pay tax on such amount at ordinary income tax rates. The Fund's activities are expected to be treated as giving rise to investment income for a Limited Partner, and the investment interest limitation would apply to a non-corporate Limited Partner's share of the interest and short sale expenses attributable to the Fund's operation. Accordingly, a non-corporate Limited Partner would be denied a deduction for all or a part of its distributive share of the Fund's ordinary losses attributable to interest and short sale expenses unless it has sufficient investment income from all sources, including the Fund. Any amount not deductible as a result of the applicability of Section 163(d) may be carried forward to future years, subject to certain limitations.

Limited Partners may be entitled to a foreign tax credit with respect to creditable foreign taxes paid on the income and gains of the Fund. There are complex rules contained in the Code that may,

depending on each Limited Partner's particular circumstances, limit the availability or use of foreign tax credits. For example, a Limited Partner's share of gain realized by the Fund will generally be treated as U.S. source income. Consequently, a Limited Partner may not be able to use the foreign tax credit relating to foreign taxes, if any, imposed on such gains unless such credit can be applied against the U.S. tax due on other income derived from foreign sources. Limited Partners should contact their own tax advisors with respect to the availability of any foreign tax credits.

The consequences of these limitations will vary depending upon the particular tax situation of each taxpayer. Accordingly, non-corporate Limited Partners should consult their tax advisors with respect to the application of these limitations.

The Fund may incur certain expenses in connection with its organization and the marketing of its Interests. Amounts paid or incurred to organize a partnership are not deductible, but generally may, by election of the Fund, be capitalized and amortized for U.S. federal income tax purposes over a period of not less than 180 months. Amounts paid or incurred to market interests in the Fund that qualify as "syndication expenses" are not deductible or amortizable.

Tax Consequences for Tax-Exempt U.S. Investors

A Limited Partner that is an organization exempt from tax under Code section 501(a) (a "***Tax-Exempt U.S. Investor***") will be subject to tax on its allocable share of the Fund's income that is considered to be "unrelated business taxable income" ("***UBTI***") as defined in Code section 512, and may be subject to the AMT with respect to items of tax preference which enter into the computation of UBTI. Code section 512(b) provides that UBTI generally does not include dividends, interest, and gain or loss from the disposition of property other than stock in trade or property held for sale in the ordinary course of the unrelated trade or business. The Fund may invest in entities that are treated as partnerships or other pass-through entities. UBTI generated by such entities would generally flow up to Tax-Exempt U.S. Investors, causing the realization of UBTI by such investors. A Tax-Exempt U.S. Investor should not realize UBTI to the extent that its distributive share of the Fund's income consists of dividends, interest, capital gains and certain other items which are excluded from UBTI under Code section 512(b) (except to the extent any such income constitutes "UDFI," as discussed in the next paragraph). Prospective Tax-Exempt U.S. Investors should be aware that it is unclear under current law whether income from certain swaps or derivative transactions that the Fund may invest or hold a position in, may be excluded from UBTI.

A Tax-Exempt U.S. Investor is also subject to tax with respect to its, and its allocable share of the Fund's, "unrelated debt-financed income" pursuant to Code section 514 ("***UDFI***"). In general, UDFI consists of (i) income derived by a tax-exempt organization (directly or through a partnership) from income-producing property with respect to which there is "acquisition indebtedness" at any time during the taxable year and (ii) gains derived by a tax-exempt organization (directly or through a partnership) from the disposition of property with respect to which there is "acquisition indebtedness." In addition, a tax-exempt organization that borrows money to finance its investment in the Fund would be subject to tax on the portion of its income that is UDFI. Income and gains derived by a tax-exempt organization from the ownership and sale of debt-financed property is taxable in the proportion to which such property is financed by acquisition indebtedness during the relevant period of time. For these purposes, a Limited Partner is deemed to own a proportionate share of the Fund's debt-financed property and the income attributable thereto, and a short sale of publicly traded stock will not create "acquisition indebtedness" unless the Fund borrows funds to post collateral against such short sale.

The Fund expects to generate income attributable to debt-financed property which will be attributed to the Partners, including any Tax-Exempt U.S. Investors. A Tax-Exempt U.S. Investor's share of the Fund's income that is treated as UBTI may be significant (depending upon the degree of leverage utilized by the Fund). In addition to other relevant considerations, fiduciaries of employee pension trusts and other prospective tax-exempt investors should consider the consequences of realizing UBTI in making a decision whether to invest in the Fund.

We urge prospective Tax-Exempt U.S. Investors that are sensitive to UBTI or UDFI to consult their tax advisors as to the tax consequences of investing in the Fund and as to the comparative tax treatment of an investment in the Offshore Fund.

Investor Tax Filings and Record Retention.

The U.S. Department of the Treasury has adopted Treasury Regulations designed to assist the Service in identifying abusive tax shelter transactions. In general, the Treasury Regulations require investors in specified transactions (including certain investors in partnerships that engage in such transactions) to satisfy certain special tax filing and record retention requirements. Significant monetary penalties may be applicable as a result of a failure to comply with these tax filing and record retention rules.

The Treasury Regulations are broad in scope and it is conceivable that the Fund may enter into transactions that will subject the Fund and certain Limited Partners to the special tax filing and record retention rules. Additionally, a Limited Partner's recognition of a loss on its disposition of its Interest in the Fund could in certain circumstances subject such Limited Partner to these rules.

Reporting Under FATCA.

Sections 1471 through 1474 of the Code, known as the U.S. Foreign Account Tax Compliance Act (together with any regulations, rules and other guidance implementing such Code sections and any applicable intergovernmental agreement ("***IGA***") or information exchange agreement and related statutes, regulations, rules and other guidance thereunder, "***FATCA***") impose a withholding tax of 30% on (i) certain U.S. source interest, dividends and other types of income, and (ii) the gross proceeds from the sale or disposition of certain assets of a type that can produce U.S. source interest and dividends, which are received by a foreign financial institution ("***FFI***"), unless such FFI enters into an agreement with the Service (an "***FFI Agreement***"), and/or complies with an applicable IGA, to obtain certain information as to the identity of the direct and indirect owners of accounts in such institution. In addition, a withholding tax may be imposed on payments to certain non-financial foreign entities that do not obtain and provide information as to their direct and indirect owners. These rules generally apply to payments of U.S. source interest, dividends and certain other types of income from U.S. sources and, after December 31, 2018, are expected to apply to payments of gross proceeds from the sale or disposition of assets of a type that can produce U.S. source interest or dividends.

The Service has released temporary and final Treasury Regulations and other guidance that will be used in implementing FATCA, which contain a number of phase-in dates for FATCA compliance. In addition, the Cayman Islands has entered into a Model 1 IGA with the United States (the "***Cayman-U.S. IGA***"), which is treated as in effect, and has issued the Tax Information Authority (International Tax Compliance) (United States of America) Regulations 2014 and guidance notes thereunder, each as updated from time to time.

The Master Fund is likely to be considered an FFI. In order to avoid incurring U.S. withholding under FATCA, the Master Fund is generally required to register with the Service and to comply with the Cayman-U.S. IGA and any guidance thereunder. The Master Fund expects to register with the Service and expects to comply with the Cayman-U.S. IGA and, therefore, generally does not expect to become subject to U.S. withholding under FATCA.

In addition, the Fund may be required to act as a withholding agent under FATCA and therefore be required to withhold on income and proceeds paid or allocated to an investor that fails to comply with FATCA, which could occur if an investor that is an FFI does not enter into an FFI Agreement, is not otherwise exempt from such withholding, and/or does not provide the appropriate information and documentation to the Fund or its agents showing its exemption from such withholding or compliance with FATCA. The General Partner intends to collect the appropriate documentation from all investors in the Fund in order to determine whether it is required to withhold under FATCA with respect to distributions or allocations made to investors.

The General Partner, the Investment Manager and the Fund reserve the right to take any action and/or pursue all remedies at their disposal to avoid withholding requirements or otherwise to mitigate the consequences of an investor's failure to comply with FATCA, including compulsory redemption or withdrawal of the investor concerned. In this regard, the General Partner, the Investment Manager and the Fund have certain rights to request, and the investors have certain obligations to provide, information and documentation that may be used by the General Partner, the Investment Manager and the Fund in complying with their obligations under FATCA. In addition, no investor affected by any action or remedy by the Fund shall have any claim against the Fund, the Administrator, the Investment Manager, the Master Fund or the General Partner (or their agents, delegates, employees, directors, officers or affiliates) for any form of damages or liability as a result of actions taken or remedies pursued by or on behalf of the Fund in order to comply with FATCA.

The Cayman Islands has also signed, along with over 80 other countries, a multilateral competent authority agreement to implement the OECD Standard for Automatic Exchange of Financial Account Information – Common Reporting Standard ("***CRS***" and together with the Cayman-U.S. IGA, "***AEOI***").

Cayman Islands regulations have been issued to give effect to the Cayman-U.S. IGA and CRS (collectively, the "***AEOI Regulations***"). Pursuant to the AEOI Regulations, the Cayman Islands Tax Information Authority (the "***TIA***") has published guidance notes on the application of the Cayman-U.S. IGA and CRS.

All Cayman Islands "Financial Institutions" are required to comply with the registration, due diligence and reporting requirements of the AEOI Regulations, unless they are able to rely on an exemption that allows them to become a "Non-Reporting Financial Institution" (as defined in the relevant AEOI Regulations) with respect to one or more of the AEOI regimes, in which case only the registration requirement would apply under CRS. The Master Fund does not propose to rely on any Non-Reporting Financial Institution exemption and therefore intends to comply with all of the requirements of the AEOI Regulations.

The AEOI Regulations require the Master Fund and/or the General Partner (as applicable) to, amongst other things (i) register with the Service to obtain a GIIN (in the context of the U.S. IGA only), (ii) register with the TIA, and thereby notify the TIA of its status as a "Reporting Financial Institution", (iii) adopt and implement written policies and procedures setting out how it will address its obligations under CRS, (iv) conduct due diligence on its accounts to identify whether any such accounts are

considered "Reportable Accounts", and (v) report information on such Reportable Accounts to the TIA. The TIA will transmit the information reported to it to the overseas fiscal authority relevant to a reportable account (e.g. the Service in the case of a US Reportable Account) annually on an automatic basis.

Investors should consult their tax advisors as to the withholding, filing and information reporting requirements that may be imposed on them in respect of their ownership of Interests.

State and Local Taxes

In addition to the U.S. federal income tax consequences described above, prospective investors should consider potential state and local tax consequences of an investment in the Fund. State and local laws often differ from U.S. federal income tax laws with respect to the treatment of specific items of income, gain, loss, deduction and credit. A Partner's distributive share of the taxable income or loss of the Fund generally will be required to be included in determining its reportable income for state and local tax purposes in the jurisdiction in which it is a resident.

Limited Partners or the Fund may be subject to state and/or local franchise, withholding, income, capital gain or other tax payment obligations and filing requirements in those jurisdictions where the Fund owns real estate assets or is otherwise regarded as doing business or earning income. Credits for these taxes may not be available (or may be subject to limitations) in the jurisdictions in which Limited Partners, or the Fund, as applicable, are residents. Each potential investor is urged to consult with its own tax advisor in this regard.

Each prospective Limited Partner should consult its own tax advisor with respect to its state and local tax consequences and filing obligations as a result of an investment in the Fund.

Other Taxes

The Fund and its Limited Partners may be subject to other taxes, such as the AMT, and estate, inheritance or intangible property taxes that may be imposed by various domestic jurisdictions, as well as foreign withholding or gains taxes. Each prospective investor should consider the potential consequences of such taxes on an investment in the Fund. It is the responsibility of each prospective investor to satisfy itself as to, among other things, the legal and tax consequences of an investment in the Fund, under the laws of the various jurisdictions of its domicile and its residence, by obtaining advice from its own tax counsel or other advisor, and to file all appropriate tax returns that may be required.

Other Income Taxation

Although there can be no assurance, it is intended that the affairs of the Fund will be conducted such that the Fund will not be subject to regular income taxation in any foreign jurisdiction. However, income and gains from investments held by the Fund may be subject to withholding taxes or taxes in jurisdictions other than those described herein, subject to the possibility of reduction under applicable tax treaties. Limited Partners generally may be entitled, subject to applicable limitations, to a credit against U.S. income tax for creditable foreign income taxes paid on the foreign source income and gains of the Fund (which may not include all of the Fund's gains). The foreign tax credit rules are complex, and may, depending on each Limited Partner's particular circumstances, limit the availability or use of foreign tax credits. Prospective investors are advised to consult their own tax advisors regarding the application of the foreign tax credit rules.

Future Tax Legislation; Necessity of Obtaining Professional Advice

Future amendments to the Code, other legislation, new or amended Treasury Regulations, administrative rulings or decisions by the Service or judicial decisions may adversely affect the U.S. federal income tax aspects of an investment in the Fund, with or without advance notice, retroactively or prospectively. The foregoing analysis is not intended as a substitute for careful tax planning. The tax matters relating to the Fund are complex and are subject to varying interpretations. There can be no assurance that the Service will agree with each position taken by the Fund with respect to the tax treatment of Fund items and transactions. Moreover, the effect of existing income tax laws and of proposed changes in income tax laws on Limited Partners will vary with the particular circumstances of each Limited Partner and, in reviewing this Memorandum and any exhibits hereto, these matters should be considered.

Accordingly, each prospective investor must consult with and rely solely on its professional tax advisors with respect to the tax results of its investment in the Fund. In no event will the Fund, the General Partner, the Investment Manager, or their Affiliates, counsel or other professional advisors be liable to any Limited Partner for any U.S. federal, state, local or foreign tax consequences of an investment in the Fund, whether or not such consequences are as described above.

The foregoing is a summary of some of the important tax rules and considerations affecting the Limited Partners, the Fund, and the Fund's proposed operations. This summary does not purport to be a complete analysis of all relevant tax rules and considerations, which will vary with the particular circumstances of each Limited Partner, nor does it purport to be a complete listing of all potential tax risks inherent in purchasing or holding Interests. Each prospective investor in the Fund is urged to consult its own tax advisor in order to understand fully the U.S. federal, state, local and any non-U.S. tax consequences of such an investment in its particular situation.

ERISA AND OTHER REGULATORY CONSIDERATIONS

ERISA Considerations

General

Fiduciaries and other persons who are proposing to invest in Interests on behalf of retirement plans, IRAs and other employee benefit plans ("***Plans***") covered by the U.S. Employee Retirement Income Security Act of 1974, as amended ("***ERISA***"), or the Code, must give appropriate consideration to, among other things, the role that an investment in the Fund plays in the Plan's portfolio, taking into consideration whether the investment is designed to reasonably further the Plan's purposes, the investment's risk and return factors, the portfolio's composition with regard to diversification, the liquidity and current return of the total portfolio relative to the anticipated cash flow needs of the Plan, the projected return of the total portfolio relative to the Plan's objectives, the limited right of Limited Partners to withdraw all or any part of their Interests or to transfer their Interests and whether investment in the Fund constitutes a direct or indirect transaction with a party in interest (under ERISA) or a disqualified person (under the Code).

Plan Asset Regulations and Benefit Plan Investors

The United States Department of Labor ("***DOL***") has adopted regulations that treat the assets of certain pooled investment vehicles, such as the Fund, as "plan assets" for purposes of Title I of ERISA and Section 4975 of the Code ("***Plan Assets***"). Section 3(42) of ERISA defines the term "Plan Assets" to mean plan assets as defined by such regulations as the DOL may prescribe, except that under such regulations the assets of an entity shall not be treated as Plan Assets if, immediately after the most recent acquisition of an equity interest in the entity, less than 25% of the total value of each class of equity interest in the entity is held by "Benefit Plan Investors" (the "***significant participation test***"). For purposes of this determination, the value of any equity interest held by a person (other than such a Benefit Plan Investor) who has discretionary authority or control with respect to the assets of the entity or any person who provides investment advice for a fee (direct or indirect) with respect to such assets, or any affiliate of such a person, shall be disregarded. An entity shall be considered to hold Plan Assets only to the extent of the percentage of the equity interest held by Benefit Plan Investors. The term "Benefit Plan Investors" means any employee benefit plan subject to part 4 of subtitle B of Title I of ERISA (i.e., plans subject to the fiduciary provisions of ERISA), any plan to which the prohibited transaction provisions of Section 4975 of the Code apply (e.g., IRAs), and any entity whose underlying assets include Plan Assets by reason of a plan's investment in such entity (a "***Plan Asset Entity***").

In order to prevent the assets of the Master Fund from being considered Plan Assets under ERISA, it is the intention of the Master Fund to monitor the investments in the Master Fund and prohibit the acquisition, withdrawal or transfer of any limited partner interests of the Master Fund by any investor, including a Benefit Plan Investor, unless, after giving effect to such an acquisition, withdrawal or transfer, the total proportion of limited partner interests of each class of the Master Fund owned by Benefit Plan Investors would be less than 25% of the aggregate value of that class of limited partner interests (determined, as described above, by excluding certain limited partner interests held by the General Partner, other fiduciaries and affiliates).

Without limiting the generality of the foregoing, in order to limit equity participation in any class of limited partner interests of the Master Fund by Benefit Plan Investors to less than 25%, the Fund may require the Compulsory Withdrawal of Interests. Each Limited Partner that is an insurance company

acting on behalf of its general account or a Plan Asset Entity will be required to represent and warrant as of the date it acquires Interests the maximum percentage of such general account or Plan Asset Entity (as reasonably determined by such insurance company or Plan Asset Entity) that will constitute Plan Assets (the "***Maximum Percentage***") so such percentage can be calculated in determining the percentage of Plan Assets invested in the Master Fund. Further, each such insurance company and Plan Asset Entity will be required to covenant that if, after its initial acquisition of Interests, the Maximum Percentage is exceeded at any time, then such insurance company or Plan Asset Entity shall immediately notify the Fund of that occurrence and shall, if and as directed by the Fund, in a manner consistent with the restrictions on transfer set forth herein, withdraw or dispose of some or all of the Interests held in its general account or Plan Asset Entity.

It is anticipated that investment in the Fund by benefit plan investors may be "significant" for purposes of the regulations. In such event, the underlying assets of the Fund would be deemed to constitute "plan assets" for purposes of ERISA. As a general rule, if the assets of the Fund were regarded as "plan assets" of a benefit plan investor, the Investment Manager would be deemed a fiduciary with respect to each Plan investing in the Fund. However, the Investment Manager believes that, given the limited purpose and role of the Fund and given the requirement that the Investment Manager follow the directions of the fiduciaries of each benefit plan investor investing in the Fund, as set forth in each such investor's subscription agreement, with respect to the investment by the Fund in the Master Fund, neither the Investment Manager nor any other entity providing services to the Fund would be exercising any discretionary authority or control with respect to the Fund. Accordingly, the Investment Manager believes that neither the Investment Manager nor any other entity providing services to the Fund will act as a fiduciary (as defined in Section 3(21) of ERISA) with respect to the assets of the Fund or any benefit plan investor. Rather, the Investment Manager believes that, given the limited purpose and role of the Fund and given the requirement that the Investment Manager follow the directions of the fiduciaries of each benefit plan investor investing in the Fund, as set forth in each such investor's subscription agreement, with respect to the investment by the Fund in the Master Fund, the fiduciary of each such benefit plan investor has retained the fiduciary authority and responsibility with respect to the investor's initial and continuing investment in the Fund as though the benefit plan investor is investing directly in the Master Fund.

Representation by Plans

The fiduciaries of each Plan proposing to invest in the Fund will be required to represent that they have been informed of and understand the Fund's investment objectives, policies and strategies and that the decision to invest Plan Assets in the Fund is consistent with the provisions of ERISA and/or the Code that require diversification of Plan Assets and impose other fiduciary responsibilities. By its purchase, each investor will be deemed to have represented that either (a) it is not a Plan that is subject to the prohibited transaction rules of ERISA or the Code, (b) it is not an entity whose assets include Plan Assets or (c) its investment in the Fund will not constitute a non-exempt prohibited transaction under ERISA or the Code.

Ineligible Purchasers

Limited partner interests may not be purchased with Plan Assets if the Investment Manager, any selling agent, finder, any of their respective affiliates or any of their respective employees: (a) has investment discretion with respect to the investment of such Plan Assets; (b) has authority or responsibility to give or regularly gives investment advice with respect to such Plan Assets, for a fee, and pursuant to an agreement or understanding that such advice will serve as a primary basis for

investment decisions with respect to such Plan Assets and that such advice will be based on the particular investment needs of the Plan; or (c) is an employer maintaining or contributing to such Plan. A party that is described in clause (a) or (b) of the preceding sentence is a fiduciary under ERISA and the Code with respect to the Plan, and any such purchase might result in a "prohibited transaction" under ERISA and the Code.

Plans' Reporting Obligations

The information contained herein and in the other documentation provided to investors in connection with an investment in the Fund is intended to satisfy the alternative reporting option for "eligible indirect compensation" on Schedule C of the Form 5500, in addition to the other purposes for which such documents were created.

Whether or not the underlying assets of the Fund are deemed Plan Assets, an investment in the Fund by a Plan is subject to ERISA and the Code. Accordingly, Plan fiduciaries should consult their own counsel as to the consequences under ERISA and the Code of an investment in the Fund. Note that similar laws governing the investment and management of the assets of governmental or non-U.S. plans may contain fiduciary and prohibited transaction requirements similar to those under ERISA and the Code. Accordingly, fiduciaries of such governmental or non-U.S. plans, in consultation with their counsel, should consider the impact of their respective laws and regulations on an investment in the Fund.

Other Regulatory Matters

Securities Act of 1933

Interests are not registered under the U.S. Securities Act of 1933, as amended (the "***Securities Act***"), or any other securities law, including state securities or blue sky laws. Interests are offered without registration in reliance upon the exemption contained in Regulation D of the Securities Act and/or rules and regulations of the Securities and Exchange Commission applicable to transactions not involving a public offering. Each investor is required, in the Fund's Subscription Documents pursuant to which such investor subscribes for an Interest, to make customary Regulation D representations.

Investment Company Act of 1940

The Fund is not registered under the U.S. Investment Company Act of 1940, as amended (the "***Investment Company Act***"), in reliance upon relief from registration afforded to collective investment vehicles whose outstanding securities are not publicly offered and are beneficially owned exclusively by investors that are considered "qualified purchasers" within the meaning of the Investment Company Act. "Qualified purchasers" generally include individuals and certain family-owned companies owning total investments in excess of $5 million and entities owning total investments in excess of $25 million. Each investor will be required to complete the Fund's Subscription Documents to enable the Fund to determine its eligibility.

Investment Adviser Registration

The Investment Manager is registered as relying adviser to Highland Capital Management, L.P., an investment adviser registered with the Securities and Exchange Commission under the U.S. Investment Advisers Act of 1940, as amended.

Commodity Exchange Act

Neither the General Partner nor the Investment Manager is required to register as a commodity pool operator ("***CPO***") or commodity trading advisor under the U.S. Commodity Exchange Act and each has filed a notice of claim effectuating exemption. As such, the General Partner and the Investment Manager will operate the Fund and the Master Fund pursuant to such exemption. Unlike a registered CPO, the General Partner and the Investment Manager are not required to deliver a disclosure document and a certified annual report to participants in the Fund. Among other things, the exemption requires the General Partner and the Investment Manager to file a claim of exemption with the National Futures Association. The Investment Manager qualifies for an exemption from registration with the CFTC as a commodity trading adviser pursuant to CFTC Rule 4.14(a)(8).

Cayman Islands Mutual Fund Law

The Offshore Fund and the Master Fund are regulated under the Mutual Funds Law (2015 Revision) of the Cayman Islands ("***Mutual Funds Law***"). The Cayman Islands Monetary Authority (the "***Authority***") has supervisory and enforcement powers to ensure compliance with the Mutual Funds Law. Regulation under the Mutual Funds Law entails the filing of prescribed details and audited accounts annually with the Authority. As a regulated mutual fund, the Authority may at any time instruct the Offshore Fund or the Master Fund to have its or their accounts audited and to submit them to the Authority within such time as the Authority specifies. Failure to comply with these requests by the Authority may result in substantial fines on the part of the directors of the Offshore Fund or the Master Fund, as applicable, and may result in the Authority applying to the court to have the Offshore Fund or the Master Fund wound up.

Neither the Offshore Fund nor the Master Fund is, however, subject to supervision in respect of their investment activities or the constitution of the Master Fund's portfolio by the Authority or any other governmental authority in the Cayman Islands, although the Authority does have power to investigate the activities of the Offshore Fund and the Master Fund in certain circumstances. Neither the Authority nor any other governmental authority in the Cayman Islands has commented upon or approved the terms or merits of this document. There is no investment compensation scheme available to investors in the Cayman Islands.

The Authority may take certain actions if it is satisfied that a regulated mutual fund is or is likely to become unable to meet its obligations as they fall due or is carrying on or is attempting to carry on business or is winding up its business voluntarily in a manner that is prejudicial to its investors or creditors. The powers of the Authority include the power to require the substitution of the directors of the Offshore Fund or the Master Fund, to appoint a person to advise the Offshore Fund or the Master Fund on the proper conduct of its affairs or to appoint a person to assume control of the affairs of the Offshore Fund or the Master Fund, as the case may be. There are other remedies available to the Authority including the ability to apply to court for approval of other actions.

The Master Fund and the General Partner or any of its members or agents domiciled in the Cayman Islands may be compelled to provide information, subject to a request for information made by a regulatory or governmental authority or agency under applicable law; e.g. by the Cayman Islands Monetary Authority, either for itself or for a recognised overseas regulatory authority, under the Monetary Authority Law (2016 Revision), or by the Tax Information Authority, under the Tax Information Authority Law (2017 Revision) or Reporting of Savings Income Information (European Union) Law (2014 Revision) and associated regulations, agreements, arrangements and memoranda of

understanding. Disclosure of confidential information under such laws shall not be regarded as a breach of any duty of confidentiality and, in certain circumstances, the Master Fund, and the General Partner or any of its or their directors or agents, may be prohibited from disclosing that the request has been made.

Anti-Money Laundering Regulations

All subscriptions for Interests will be subject to applicable anti-money laundering regulations. Investors will be required to comply with such anti-money laundering procedures as are required by the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT Act) Act of 2001 (Pub. L. No. 107-56).

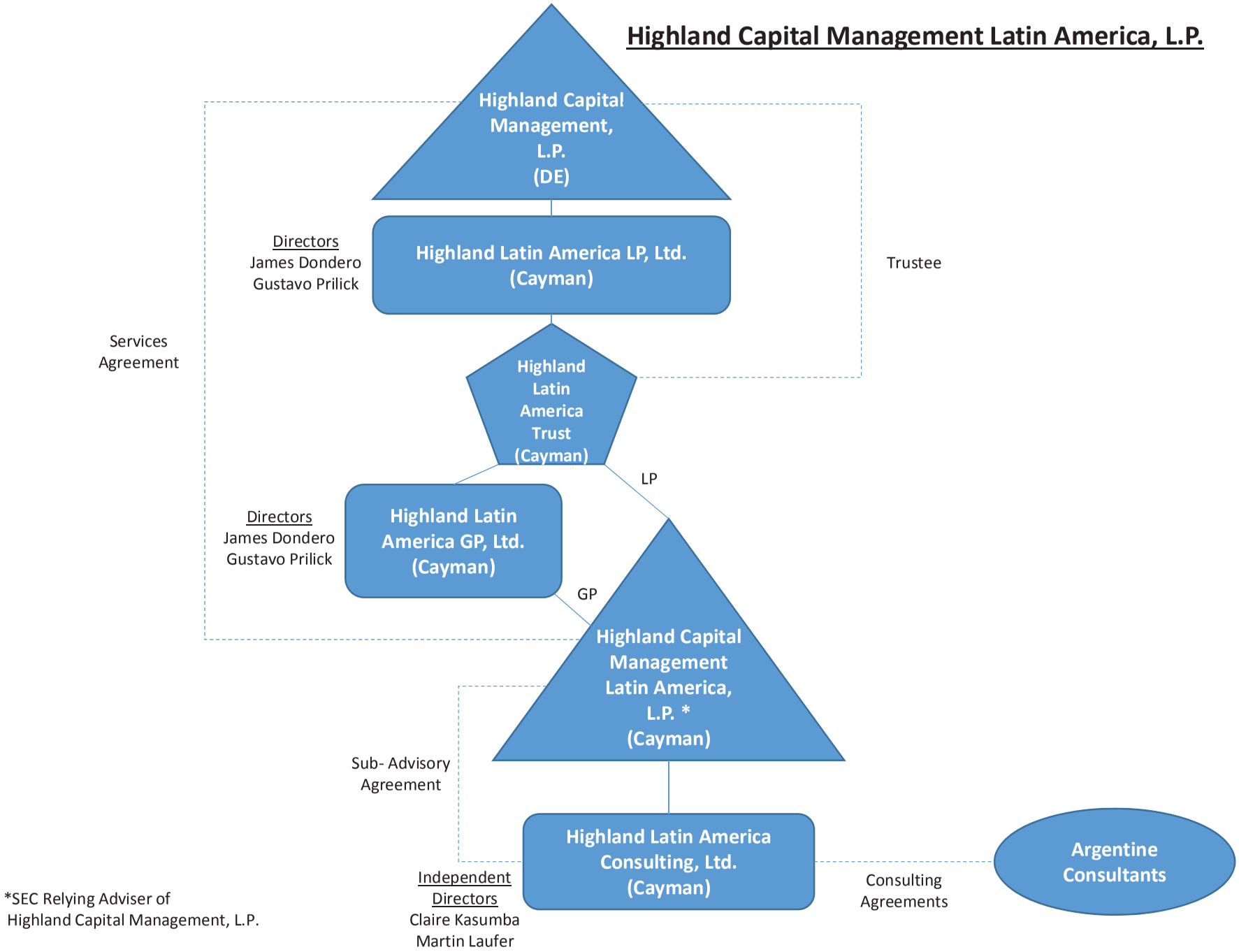
As part of the Fund's responsibility to comply with regulations aimed at the prevention of money laundering, the Fund or its delegate may require verification of identity from all prospective investors. Depending on the circumstances of each subscription, it may not be necessary to obtain full documentary evidence of identity.

The Fund reserves the right to request such information as is necessary to verify the identity of a prospective investor. The Fund also reserves the right to request such identification evidence in respect of a transferee of Interests. In the event of delay or failure by the prospective investor or transferee to produce any information required for verification purposes, the Fund may refuse to accept the application or (as the case may be) to register the relevant transfer and (in the case of a subscription of Interests) any funds received will be returned without interest to the account from which the monies were originally debited.

The Fund also reserves the right to refuse to make any withdrawal payment or distribution to a Limited Partner, if the Fund suspects or is advised that the payment of any withdrawal or distribution moneys to such Limited Partner might result in a breach or violation of any applicable anti-money laundering or other laws or regulations by any person in any relevant jurisdiction, or such refusal is considered necessary or appropriate to ensure the compliance by the Fund and the Investment Manager with any such laws or regulations in any relevant jurisdiction.

EXHIBIT "D"

Highland Capital Management Latin America, L.P.



*SEC Relying Adviser of Highland Capital Management, L.P.

Highland Argentina Regional Opportunity Fund

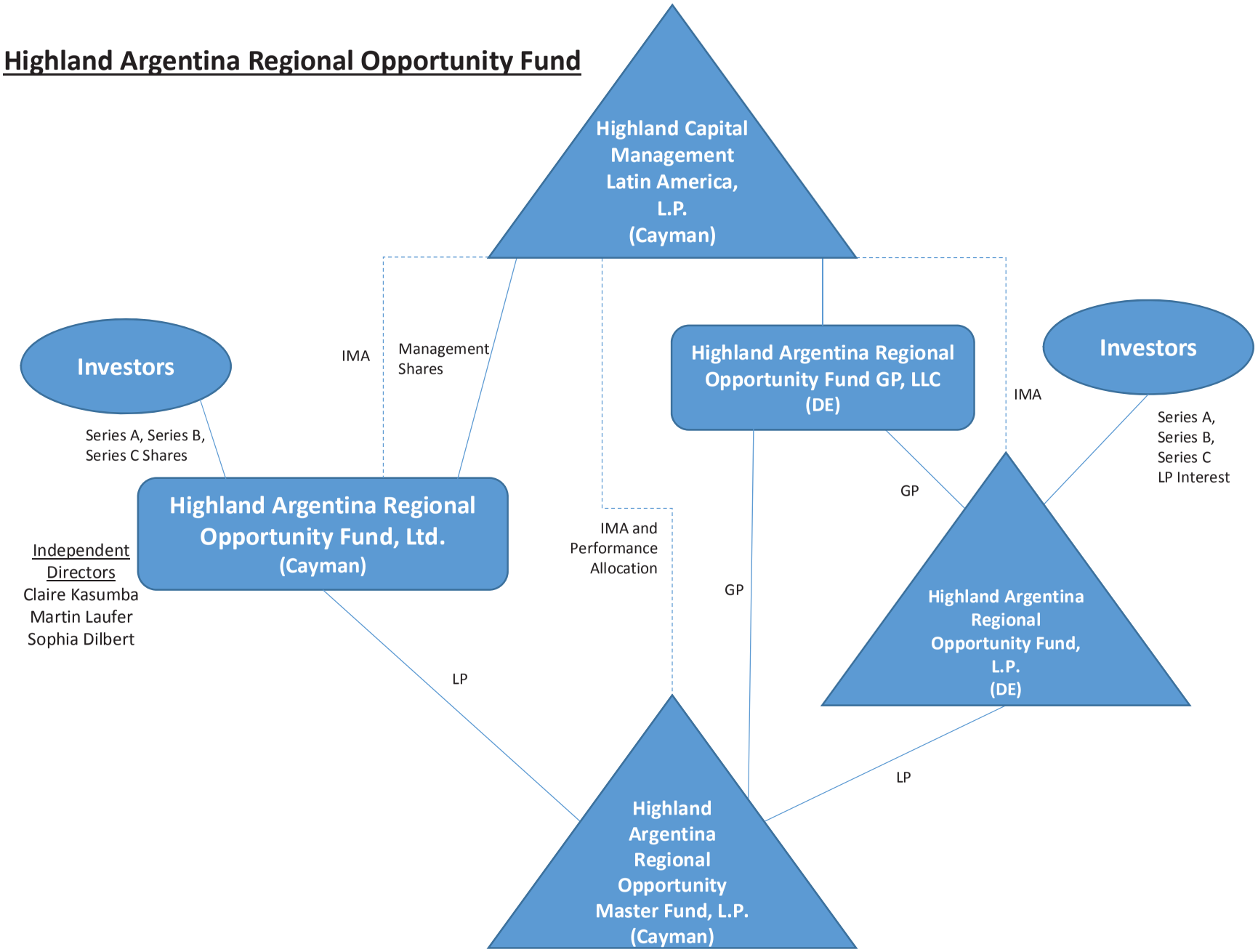


EXHIBIT "E"

HIGHLAND ARGENTINA REGIONAL OPPORTUNITY FUND, L.P.

A Delaware Limited Partnership

Amended and Restated Limited Partnership Agreement

November 1, 2017

NOTICE

NEITHER HIGHLAND ARGENTINA REGIONAL OPPORTUNITY FUND, L.P. NOR THE LIMITED PARTNER INTERESTS THEREIN HAVE BEEN OR WILL BE REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "***SECURITIES ACT***"), THE INVESTMENT COMPANY ACT OF 1940, AS AMENDED, OR THE SECURITIES LAWS OF ANY OF THE STATES OF THE UNITED STATES. THE OFFERING OF SUCH LIMITED PARTNER INTERESTS IS BEING MADE IN RELIANCE UPON AN EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT FOR OFFERS AND SALES OF SECURITIES WHICH DO NOT INVOLVE ANY PUBLIC OFFERING, AND ANALOGOUS EXEMPTIONS UNDER STATE SECURITIES LAWS.

THE DELIVERY OF THIS AMENDED AND RESTATED LIMITED PARTNERSHIP AGREEMENT SHALL NOT CONSTITUTE AN OFFER TO SELL OR THE SOLICITATION OF AN OFFER TO BUY NOR SHALL THERE BE ANY OFFER, SOLICITATION OR SALE OF LIMITED PARTNER INTERESTS IN HIGHLAND ARGENTINA REGIONAL OPPORTUNITY FUND, L.P. IN ANY JURISDICTION IN WHICH SUCH OFFER, SOLICITATION OR SALE IS NOT AUTHORIZED OR TO ANY PERSON TO WHOM IT IS UNLAWFUL TO MAKE SUCH OFFER, SOLICITATION OR SALE.

THE LIMITED PARTNER INTERESTS ARE SUBJECT TO RESTRICTIONS ON TRANSFERABILITY AND RESALE, MAY NOT BE TRANSFERRED OR RESOLD EXCEPT AS PERMITTED UNDER THE SECURITIES ACT AND APPLICABLE STATE SECURITIES LAWS PURSUANT TO REGISTRATION OR EXEMPTION THEREFROM AND MAY NOT BE SOLD OR OTHERWISE TRANSFERRED EXCEPT IN ACCORDANCE WITH THE REQUIREMENTS AND CONDITIONS SET FORTH IN THIS AMENDED AND RESTATED LIMITED PARTNERSHIP AGREEMENT.

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THIS AMENDED AND RESTATED LIMITED PARTNERSHIP AGREEMENT of Highland Argentina Regional Opportunity Fund, L.P. is dated effective as of November 1, 2017 by and among Highland Argentina Regional Opportunity Fund GP, LLC, as General Partner, Highland Capital Management Latin America, L.P., as withdrawing Original Limited Partner, and those Persons who are admitted as Limited Partners in accordance with this Agreement. This Agreement amends and restates in its entirety the Limited Partnership Agreement of the Partnership dated September 11, 2017 (the "***Prior Agreement***").

PRELIMINARY STATEMENTS

(A) The General Partner and the Original Limited Partner formed this limited partnership under the Act by entering into the Prior Agreement and causing the Certificate to be filed with the Secretary of State of the State of Delaware.

(B) The parties hereto desire to continue the Partnership as a limited partnership under the Act and to make certain modifications to the Prior Agreement, as hereinafter set forth.

NOW, THEREFORE, in consideration of the mutual covenants expressed herein and for other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, the parties hereto hereby agree that the Prior Agreement is amended and restated in its entirety to read as follows:

Article I
DEFINITIONS

For purposes of this Agreement:

"***Act***" means the Delaware Revised Uniform Limited Partnership Act, 6 Del. C. §§ 17-101, et seq., as in effect on the date hereof and as amended from time to time, or any successor law.

"***Administrator***" means such Person as the General Partner may designate from time to time, in its sole discretion, to serve as administrator to the Partnership.

"***Advisers Act***" means the U.S. Investment Advisers Act of 1940, as amended, and the rules promulgated thereunder.

"***Affiliate***" means, with respect to any Person, a Person which controls, is controlled by, or is under common control with, such Person. For these purposes, "control" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities, by contract or otherwise.

"***Affiliated Investors***" means the Investment Manager, the General Partner and their respective Affiliates, principals, employees, partners, agents, the respective family members of

such personnel and trusts and other entities established primarily for their benefit or for charitable purposes.

"***Agreement***" means this Amended and Restated Limited Partnership Agreement of the Partnership, as amended from time to time.

"***Authorized Representative***" has the meaning set forth in Section 7.6(a).

"***Bad Actor Limited Partner***" means a Limited Partner that (a) would cause the disqualification of the Partnership from using Rule 506 under the Securities Act due to the operation of paragraph (d) thereof (or its successor) if such Limited Partner were to beneficially own 20% or more of the outstanding voting interests of all of the Partners (excluding any other Interests that are Non-Voting Interests) or (b) the General Partner determines is likely to become subject to a conviction, order, judgment or finding that would be likely to cause the disqualification described in clause (a).

"***BBA***" means Subchapter C of Chapter 63 of the Code (Sections 6221 through 6241 of the Code), as enacted by the Bipartisan Budget Act of 2015, Pub. L. No. 114-74, as amended from time to time, and the Regulations thereunder (whether proposed, temporary or final), including any subsequent amendments, successor provisions or other guidance thereunder, and any equivalent provisions for state, local or non-U.S. tax purposes.

"***BBA Effective Period***" means any taxable year commencing after 2017, taking into account any extensions of the effective date set forth in the BBA.

"***BHCA***" means the Bank Holding Company Act of 1956, as amended.

"***BHCA Subject Person***" means any Limited Partner that is subject, directly or indirectly, to the provisions of Section 4 of the BHCA and the regulations of the Board of Governors of the Federal Reserve System promulgated thereunder.

"***Business Day***" means any day or days on which banks in the Cayman Islands, Buenos Aires and New York City are authorized to open for business or such other days as the General Partner may determine generally, or in any particular case.

"***Capital Account***" means, with respect to each Partner, the capital account (including any memorandum sub-accounts) established and maintained on behalf of such Partner as described in Section 3.3.

"***Capital Sub-Account***" means, with respect to each Investor, a separate capital sub-account within the Partnership's or the Offshore Fund's (or any Other Feeder Fund's) capital account, as applicable, in the Master Fund that corresponds to such Investor's Capital Account in the Partnership or the series of shares held by such Investor in the Offshore Fund (or capital account or the series of shares in an Other Feeder Fund), as applicable; provided that, the Master Fund will maintain a separate Capital Sub-Account for each Series held by a Partner.

"***Certificate***" means the Certificate of Limited Partnership of the Partnership referred to in Section 2.1(b).

"***Code***" means the U.S. Internal Revenue Code of 1986, as amended, and as hereafter amended, or any successor law.

"***Commencement Date***" means the first date on or as of which a Limited Partner, other than the Original Limited Partner, makes a capital contribution to the Partnership.

"***Compulsory Withdrawal***" has the meaning set forth in Section 5.5(j).

"***Discovery Date***" means the date on which the Investment Manager discovers that a violation of any of the Master Fund's investment restrictions set forth in the Master Fund Partnership Agreement has occurred.

"***Early Withdrawal Reduction***" means:

(a) with respect to a Series B Interest, up to 3.0% of the net asset value of the portion of the Series B Interest being withdrawn in any withdrawal occurring prior to the end of the applicable Soft Lock-up Period;

(b) with respect to a Series C Interest, 5.0% of the net asset value of the portion of the Series C Interest being withdrawn in any withdrawal occurring prior to the end of the applicable Soft Lock-up Period; and

(c) with respect to a Series C Interest, 3.0% of the net asset value of the portion of the Series C Interest being withdrawn in any withdrawal occurring on or after the Soft Lock-up Period with respect to Series C Interests, but prior to the end of the Second Soft Lock-up Period;

provided that, in each case, such amount is determined at the close of business of the relevant Withdrawal Date, is retained by the Partnership for the benefit of the Partners and is deducted from the withdrawal proceeds of the withdrawing Limited Partner.

"***Election Notice***" has the meaning set forth in Section 8.10(c).

"***ERISA***" means the Employee Retirement Income Security Act of 1974, as the same may be amended from time to time.

"***ERISA Partner***" means a Limited Partner which is (a) an employee benefit plan subject to the fiduciary provisions of ERISA, (b) a "plan" subject to Section 4975 of the Code, (c) an entity whose underlying assets include "plan assets" for purposes of ERISA by reason of a Plan's investment in the entity, or (d) an entity that otherwise constitutes a "benefit plan investor" within the meaning of Section 3(42) of ERISA or any regulation promulgated thereunder.

"***FATCA***" means Sections 1471 through 1474 of the Code, as amended, and any Regulations thereunder or official interpretations or other official guidance thereof, including any successor Regulations or interpretations, and any intergovernmental agreement and any regulations with respect thereto or official interpretations or other official guidance thereof implementing the foregoing.

"***Fiscal Period***" means each period that starts at the opening of business on the Commencement Date (in the case of the initial Fiscal Period) and thereafter on the day immediately following the last day of the preceding Fiscal Period, and that ends at the close of business on the earliest of the following dates:

(a) the last day of a calendar month;

(b) any date as of which any withdrawal or distribution of capital is made with respect to any Capital Account or as of which this Agreement provides for any amount to be credited to or debited against a Capital Account, other than a withdrawal or distribution by or to, or an allocation to, all Capital Accounts that does not result in any change of the Partnership Percentage relating to any Capital Account;

(c) the date which immediately precedes any day as of which a capital contribution is accepted by the General Partner from any new or existing Partner; or

(d) any other date which the General Partner selects.

"***Fiscal Year***" means the period commencing on the Commencement Date and ending on December 31 of the same year, and thereafter each period commencing on January 1 of each year and ending on December 31 of such year, unless the General Partner shall elect another fiscal year; *provided* that any such other fiscal year shall be permissible for U.S. federal income tax purposes. In the case of the Fiscal Year in which the Partnership is terminated in accordance with Article VI, "***Fiscal Year***" means the period commencing on January 1 of that year and ending on the date on which the Partnership is terminated.

"***GAAP***" means generally accepted accounting principles in the United States.

"***General Partner***" means Highland Argentina Regional Opportunity Fund GP, LLC, a Delaware limited liability company, any successor thereto, and any Person hereafter admitted as an additional general partner, in its capacity as general partner of the Partnership.

"***Indemnified Person***" means each of the General Partner, the Investment Manager, each member, shareholder, partner, manager and director of, and any person who controls, the General Partner or the Investment Manager, each of the respective affiliates of the foregoing and each of their respective executors, heirs, assigns, successors and other legal representatives.

"***Interest***" means the entire ownership interest of a Partner in the Partnership at the relevant time, including the right of such Partner to any and all benefits to which a Partner may be entitled as provided in this Agreement, together with the obligations of such Partner to comply with all the terms and provisions of this Agreement and, for clarity, is cumulative of such Partner's interests in all Series, to the extent such Partner has an interest in more than one Series.

"***Investment Company Act***" means the U.S. Investment Company Act of 1940, as amended, and the regulations promulgated thereunder.

"***Investment Management Agreement***" means the investment management agreement by and among the Investment Manager, the General Partner, the Partnership, the Master Fund and the Offshore Fund, as amended from time to time.

"***Investment Manager***" means Highland Capital Management Latin America, L.P., a Cayman Islands exempted limited partnership, or any successor thereto, or any Person thereafter appointed as an investment manager of the Partnership.

"***Investments***" means investments in securities or other financial or intangible investment instruments, contracts or products made by the Master Fund, as described in the Partnership's offering memorandum.

"***Investor***" means any Partner, any shareholder of the Offshore Fund or any beneficial owner of any Other Feeder Fund.

"***Limited Partner***" means any Person admitted to the Partnership as a limited partner, until the entire Interest of such Person has been withdrawn pursuant to Section 5.5 or a substitute Limited Partner or Limited Partners are admitted with respect to such Person's entire Interest. The General Partner may subdivide the Interests into separate Series and establish new Series pursuant to Section 2.10; *provided* that for all purposes of the Act, the Limited Partners constitute a single class or group of limited partners.

"***Majority of Limited Partners***" means Limited Partners whose Partnership Percentages represent more than 50% of the aggregate Partnership Percentages of all Limited Partners or the Series of Limited Partners, as applicable.

"***Management Fee***" means the management fee, as defined in the Master Fund Partnership Agreement, payable by the Master Fund to the Investment Manager, any of its Affiliates or any other Person designated by the Investment Manager pursuant to the Investment Management Agreement.

"***Master Fund***" means Highland Argentina Regional Opportunity Master Fund, L.P., a collective investment vehicle formed as an exempted limited partnership under the laws of the Cayman Islands in which the Partnership, the Offshore Fund and any other co-investment vehicle (such as an Other Feeder Fund) invest all of their investible assets and conduct their investment and trading activities.

"***Master Fund Partnership Agreement***" means the amended and restated exempted limited partnership agreement of the Master Fund, as the same may be amended or restated from time to time in accordance with the terms thereof.

"***Minimum Required Withdrawal***" has the meaning set forth in Section 5.5(j)

"***Negative Basis***" means, with respect to any Partner and as of any time of calculation, the excess of such Partner's "adjusted tax basis" in its Interest for U.S. federal income tax purposes at such time (determined without regard to any adjustments made to such adjusted tax basis by reason of any Transfer or assignment of such Interest, including by reason of death) over the amount that such Partner is entitled to receive upon withdrawal from or liquidation of the Partnership.

"***Negative Basis Partner***" means any Partner who withdraws all or a portion of its Interest from the Partnership and who has a Negative Basis as of the Withdrawal Date, but such Partner shall cease to be a Negative Basis Partner at such time as it shall have received allocations pursuant to Section 3.9(d) equal to such Partner's Negative Basis as of the Withdrawal Date and without regard to such Partner's share of the liabilities of the Partnership under Section 752 of the Code.

"***Net Assets***" means the total value, as determined by the Administrator in accordance with Section 7.3, of all Investments and other assets of the Partnership (including net unrealized appreciation or depreciation of the assets and accrued interest and dividends receivable net of any withholding taxes), less an amount equal to all accrued debts, liabilities and obligations of the Partnership (including any reserves for contingencies accrued pursuant to Section 3.6). Except as otherwise expressly provided herein, Net Assets as of the first day of any Fiscal Period shall be determined on the basis of the valuation of assets conducted as of the close of the immediately preceding Fiscal Period but after giving effect to any capital contributions made by any Partner subsequent to the last day of such immediately preceding Fiscal Period and after giving effect to Management Fees (borne indirectly at the Master Fund level), and Net Assets as of the last day of any Fiscal Period shall be determined before giving effect to any of the following amounts payable by the Partnership generally or in respect of any Investment which are effective as of the date on which such determination is made:

(a) any Performance Allocation (borne indirectly at the Master Fund level) as of the date on which such determination is made;

(b) any withdrawals or distributions payable to any Partner which are effective as of the date on which such determination is made; and

(c) withholding or other taxes (including any amounts payable under any BBA provision), expenses of processing withdrawals and other items payable, and any increases or decreases in any reserves, holdbacks or other amounts recorded pursuant to Section 3.6 during the Fiscal Period ending as of the date on which such determination is made, to the extent the General Partner determines that, pursuant to any provisions of this Agreement, such items are not to be charged ratably among the Capital Accounts of all Partners on the basis of their respective Partnership Percentages as of the commencement of the Fiscal Period.

"***Net Loss***" means any amount by which the Net Assets as of the first day of a Fiscal Period exceed the Net Assets as of the last day of the same Fiscal Period.

"***Net Profit***" means any amount by which the Net Assets as of the last day of a Fiscal Period exceed the Net Assets as of the first day of the same Fiscal Period.

"***Non-Voting Interests***" means an Interest, the holder of which is not entitled to vote, consent or withhold consent with respect to any Partnership matter (including, but not limited to, mergers, sales of substantially all assets or consolidations of the Partnership), except as otherwise expressly provided in this Agreement.

"***Offshore Fund***" means Highland Argentina Regional Opportunity Fund, Ltd., a Cayman Islands exempted company.

"***Original Limited Partner***" means Highland Capital Management Latin America, L.P., in its capacity as the original limited partner.

"***Other Account***" means any assets or investment of the General Partner or the Investment Manager, or any assets managed by the General Partner, the Investment Manager or any of their respective Affiliates for the account of any Person or entity (including investment vehicles) other than the Partnership, which are invested or which are available for investment in securities or other instruments or for trading activities whether or not of the specific type being conducted by the Partnership.

"***Other Agreement***" has the meaning set forth in Section 8.1.

"***Other Feeder Fund***" means any other investment vehicle sponsored by the Investment Manager or one of its Affiliates that invests in parallel with the Partnership and the Offshore Fund in the Master Fund.

"***Partner***" means the General Partner or any of the Limited Partners, except as otherwise expressly provided herein, and "***Partners***" means the General Partner and all of the Limited Partners.

"***Partnership***" means the limited partnership formed pursuant to this Agreement.

"***Partnership Percentage***" means a percentage established for each Partner on the Partnership's books as of the first day of each Fiscal Period. The Partnership Percentage of a Partner for a Fiscal Period shall be determined by dividing the amount of such Partner's Capital Account as of the beginning of the Fiscal Period (after crediting all capital contributions to such Capital Account which are effective as of such date, net of all deductions, including Management Fees borne at the Master Fund level) by the sum of the Capital Accounts of all of the Partners as of the beginning of the Fiscal Period (after crediting all capital contributions to the Partnership which are effective as of such date, net of all deductions, including Management Fees borne at the Master Fund level). The sum of the Partnership Percentages of all Capital Accounts for each Fiscal Period shall equal 100%.

"***Performance Allocation***" means the performance allocation, as defined in the Master Fund Partnership Agreement, allocated to the Special Limited Partner, any of its Affiliates or any other Person designated by the Special Limited Partner pursuant to the Master Fund Partnership Agreement.

"***Person***" means any individual, partnership, corporation, limited liability company, trust, or other entity.

"***Plan Assets***" means assets of the Partnership that are considered to be assets of an ERISA Partner, pursuant to Section 3(42) of ERISA or otherwise.

"***Positive Basis***" means, with respect to any Partner and as of any time of calculation, the excess of the amount that such Partner is entitled to receive upon withdrawal from or liquidation of the Partnership over such Partner's "adjusted tax basis" in its Interest for U.S. federal income tax

purposes at such time (determined without regard to any adjustments made to such adjusted tax basis by reason of any Transfer or assignment of such Interest, including by reason of death).

"***Positive Basis Partner***" means any Partner who withdraws all or a portion of its Interest from the Partnership and who has a Positive Basis as of the Withdrawal Date, but such Partner shall cease to be a Positive Basis Partner at such time as it shall have received allocations pursuant to Section 3.9(c) equal to such Partner's Positive Basis as of the Withdrawal Date and without regard to such Partner's share of the liabilities of the Partnership under Section 752 of the Code.

"***Principal***" means James D. Dondero.

"***Prior Agreement***" has the meaning set forth in the preamble hereto.

"***Regulations***" means the proposed, temporary and final U.S. Treasury Regulations promulgated under the Code, including any successor regulations.

"***Regulatory Allocations***" has the meaning set forth in Section 3.10.

"***Remedy Date***" means the period commencing on the Discovery Date and ending 90 Business Days thereafter.

"***Revocation Notice***" has the meaning set forth in Section 8.10(c).

"***RIC Limited Partner***" means a Limited Partner that is registered as an investment company under the Investment Company Act.

"***Schedule of Partners***" means a schedule to be maintained by the General Partner containing the following information with respect to each Partner: (a) name; (b) address; (c) date of admission; (d) amount and date of all capital contributions and withdrawals; and (e) the amount and date of any permitted Transfers.

"***Second Soft Lock-up Period***" means, with respect to a Series C Interest, a period commencing on the one-year anniversary of the date that a capital contribution was made to the Capital Account associated with such Series C Interest and ending on the two-year anniversary of the date of such capital contribution. The General Partner may waive the Second Soft Lock-up Period with respect to any Capital Account.

"***Securities Act***" means the U.S. Securities Act of 1933, as amended from time to time.

"***Series***" means a designated series of Interests established in accordance with this Agreement and having such terms as the General Partner determines.

"***Series A Interests***" means a Series having the rights and obligations applicable to Series A Interests as set forth in this Agreement and which correspond to the "Series A Capital Sub-Accounts" of the Master Fund.

"***Series B Interests***" means a Series having the rights and obligations applicable to Series B Interests as set forth in this Agreement and which correspond to the "Series B Capital Sub-Accounts" of the Master Fund.

"***Series C Interests***" means a Series having the rights and obligations applicable to Series C Interests as set forth in this Agreement and which correspond to the "Series C Capital Sub-Accounts" of the Master Fund.

"***Soft Lock-up Period***" means, with respect to a Series B Interest or a Series C Interest, a period commencing on the date that a capital contribution was made to the Capital Account associated with such Series and ending on the one-year anniversary of the date of such capital contribution. The General Partner may waive the Soft Lock-up Period with respect to any Capital Account.

"***Special Limited Partner***" means Highland Capital Management Latin America, L.P., in its capacity as a special limited partner of the Master Fund for purposes of the receipt of the Performance Allocation.

"***Transfer***" means any direct or indirect sale, exchange, transfer, assignment, pledge, encumbrance, charge, exchange, hypothecation, placing of a lien or a security interest on an Interest or any other disposition by a Partner of its Interest to or in favor of another party, whether voluntary or involuntary (including, but not limited to, being offered or listed on or through any placement agent, intermediary, online service, site, agent or similar Person).

"***Withdrawal Date***" has the meaning set forth in Section 5.5(a).

"***Withdrawal Notice***" has the meaning set forth in Section 5.5(a).

Article II
ORGANIZATION

2.1 Continuation of Limited Partnership

(a) The General Partner and the Original Limited Partner hereby agree to continue the Partnership as a limited partnership under and pursuant to the Act and this Agreement.

(b) The General Partner has executed and filed with the Secretary of State of the State of Delaware a Certificate of Limited Partnership of the Partnership (the "***Certificate***"), and shall execute, acknowledge and file with the Secretary of State of the State of Delaware any further amendments thereto as may be required by the Act, and any other instruments, documents and certificates which, in the opinion of the Partnership's legal counsel, may from time to time be required by the laws of the United States of America, the State of Delaware or any other jurisdiction in

which the Partnership determines to do business, or any political subdivision or agency thereof or which such legal counsel may deem necessary or appropriate to effectuate, implement and continue the valid and subsisting existence and business of the Partnership. The General Partner shall cause any required amendment to the Certificate to be filed promptly following the event requiring such amendment. All amendments may be signed by the General Partner (as required by the Act) and may be signed either personally or by an attorney-in-fact.

(c) The parties hereto agree to operate the Partnership as a limited partnership pursuant to the provisions of the Act and of this Agreement and agree that the rights and liabilities of the Limited Partners and the General Partner shall be as provided in the Act for limited partners and the general partner, except as provided herein.

(d) The General Partner may change the domicile of the Partnership to another state, country or other jurisdiction where advisable due to legal, tax or other considerations; *provided* that no such change of domicile would reasonably be expected to have a material adverse effect on the Limited Partners.

(e) The parties acknowledge and agree that the Partnership is intended to be taxed in the United States as a partnership and not as an association taxable as a corporation for U.S. federal, state and/or local income tax purposes. No election may be made to treat the Partnership as other than a partnership for U.S. federal, state and/or local income tax purposes. Each Partner agrees not to treat, on any income tax return or in any claim for a refund, any item of income, gain, loss, deduction or credit in a manner inconsistent with the treatment of such item by the Partnership.

2.2 Name of Partnership

(a) The name of the Partnership is Highland Argentina Regional Opportunity Fund, L.P. or such other name as the General Partner may hereafter adopt, subject to causing an amendment to the Certificate to be filed with the Secretary of State of the State of Delaware in accordance with the Act. The General Partner will send a notice of any change of name to the Limited Partners. All business of the Partnership will be conducted under such name or under such other name as the General Partner deems appropriate.

(b) The Partnership shall have the exclusive ownership and right to use the Partnership name so long as the Partnership continues, despite the withdrawal, expulsion, resignation or removal of any Limited Partner, but upon the Partnership's termination or at such time as there ceases to be a general partner, the Partnership shall assign the name and the goodwill attached thereto to the General Partner without payment by the assignee(s) of any consideration therefor.

2.3 Principal Office; Registered Office

(a) The Partnership shall have its principal office at such location as the General Partner shall designate from time to time.

(b) The Partnership shall have its registered office at c/o The Corporation Trust Company, 1209 Orange Street, Wilmington, New Castle County, Delaware 19801, unless a different registered office or agent is designated from time to time by the General Partner.

2.4 Term of Partnership

The term of the Partnership commenced on the date on which the Certificate was filed with the office of the Secretary of State of the State of Delaware and will continue until dissolved pursuant to Section 6.1 (unless its term is extended pursuant to Section 6.1). The legal existence of the Partnership as a separate legal entity shall continue until the cancellation of the Certificate.

2.5 Object and Powers of Partnership

(a) The Partnership is formed solely for the object and purpose of indirectly investing in Investments by subscribing for and holding a limited partner interest in, and investing all of its investible assets in, the Master Fund. The Partnership is a directed feeder fund for the Limited Partners with respect to the Master Fund. Notwithstanding any other provision of this Agreement, the Partnership shall perform no other business and shall not make directly any Investments as such Investments will be made by the Master Fund.

(b) Notwithstanding any other provision of this Agreement, the Partnership, and the General Partner on behalf of the Partnership, may execute, deliver and perform any agreement with any Limited Partner or prospective Limited Partner without any further act, vote or approval of any Partner. The General Partner is hereby authorized to enter into the agreements described in the preceding sentence on behalf of the Partnership, but such authorization should not be deemed a restriction on the power of the General Partner to enter into other agreements on behalf of the Partnership. In furtherance of this purpose, the Partnership shall have all powers necessary, suitable or convenient for the accomplishment of the aforesaid purpose, subject to the limitations and restrictions set forth herein alone or with others, as principal or agent.

(c) Each Limited Partner hereby acknowledges that the Partnership is not expected to qualify as an "operating company" for purposes of ERISA, and the assets of the Partnership may therefore constitute Plan Assets of ERISA Partners; and that the Partnership is therefore intended to be structured as a directed feeder fund through which the Limited Partners may participate in an investment in the Master Fund and with respect to which the General Partner is not, except as expressly provided under the terms of this Agreement, intended to have any discretionary authority or control with respect to the investment of the assets of the Partnership. Each Limited Partner (i) shall by making a capital contribution to the Partnership with respect to the Partnership's underlying interests in the Master Fund, be deemed to direct the General Partner to invest the amount of such capital contribution in the Master Fund and (ii) acknowledges that during any period when the underlying interests of the Partnership in the Master Fund are deemed to constitute Plan

Assets, the General Partner will act as a custodian with respect to the assets of such Limited Partner, but is not intended to be a fiduciary with respect to the assets of such Limited Partner for purposes of ERISA, the Code or any applicable similar law. No provision of this Agreement shall create any obligation of the General Partner, in its capacity as the general partner of the Master Fund, and the General Partner, in such capacity, will not have any fiduciary obligations to any person, under ERISA or otherwise, pursuant to this Agreement. Any action or determination of the General Partner, as the general partner of the Master Fund, referenced herein shall only regard such action or determination made by the General Partner solely in its capacity as the general partner thereof.

2.6 Liability of Partners

In no event shall any Limited Partner (or former Limited Partner) be obligated to make any contribution to the Partnership in addition to its agreed capital contribution (or other payments provided for herein) or have any liability for the repayment or discharge of the debts and obligations of the Partnership, except to the extent provided herein or as required by the Act or other applicable law.

2.7 Actions by Partnership

The Partnership may execute, deliver and perform all contracts, agreements and other undertakings and engage in all activities and transactions as may in the opinion of the General Partner be necessary or advisable to carry out its objects as set forth in Section 2.5 above.

2.8 Reliance by Third Parties

Persons dealing with the Partnership are entitled to rely conclusively upon the power and authority of the General Partner as herein set forth.

2.9 UCC Status of Limited Partner Interests

(a) For purposes of the grant, pledge, attachment or perfection of a security interest in an Interest or otherwise, the Interests shall be deemed to be "securities" within the meaning of Section 8-102(a)(15) and as provided by Section 8-103(c) of the Uniform Commercial Code as in effect from time to time in the State of Delaware or analogous provisions in the Uniform Commercial Code in effect in any other jurisdiction.

(b) Any Interest may be evidenced by a certificate of partnership interest issued by the Partnership in such form as the General Partner may approve. Every certificate representing an Interest shall bear a legend substantially in the following form:

"For the purposes of Section 8-103 of the Uniform Commercial Code of the United States of America in effect in any relevant jurisdiction, the certificates representing an interest in the Limited Partnership shall constitute "securities" within the meaning of Section 8-102 and Section 8-103 of the Uniform Commercial Code."

2.10 Series of Interests

The General Partner may, at any time, without notification to or consent of the other Limited Partners, create and offer different Series with such rights, obligations, liabilities, privileges, designations and preferences (including different investment strategies, underlying investments, degrees of leverage, management fees, performance allocations, brokerage commissions, transparency, withdrawal rights, co-investment opportunities, and other differences) as the General Partner may determine upon the issuance of such Series; *provided* that such Series would not reasonably be expected to have a material adverse effect on the existing Limited Partners. The terms and rights of each such Series may be set forth in the Partnership's offering memorandum, any supplement thereto or a "side letter" or other agreement, which the General Partner may incorporate by reference. Although the Partnership may offer more than one Series, the Partnership is not a Delaware series limited partnership and the assets and liabilities of the Partnership are not segregated by Series. As of the effective date of this Agreement, the Partnership has three Series: Series A Interests, Series B Interests and Series C Interests.

Article III
CAPITAL

3.1 Contributions to Capital

(a) The minimum required initial capital contribution with respect to each Series is $500,000, or such lesser amount as the General Partner may permit; provided that, the minimum required initial capital contribution with respect to a Series B Interest is no less than $100,000. Subject to the restriction with respect to any Series B Interest in the immediately preceding sentence, the General Partner may change the required minimum initial capital contribution amount at any time.

(b) The Partnership may accept additional contributions at such times as the General Partner may permit, but no Limited Partner shall be obligated to make any additional capital contribution to the Partnership, subject to the provisions of Section 3.5 and any contrary provision of the Act. The minimum required additional capital contribution with respect to each Series is $500,000, or such lesser amount as the General Partner may permit; provided that, the minimum required additional capital contribution with respect to a Series B Interest is no less than $100,000. Subject to the restriction with respect to any Series B Interest in the immediately preceding sentence, the General Partner may change the required minimum additional capital contribution amount at any time.

(c) The General Partner or an Affiliate has made a capital contribution to the Partnership as set forth in the Schedule of Partners. Except as required by the Act, the General Partner (or such Affiliate) shall not be required to make any additional capital contributions to the Partnership. The General Partner (or such Affiliate) may, however, make capital contributions to the Partnership in such amounts and at

such times as it may determine. The General Partner or any of its Affiliates shall have the right at any time to make additional capital contributions as a Limited Partner or General Partner. If an Affiliated Investor makes a capital contribution as a Limited Partner, the General Partner, in its capacity as the general partner of the Master Fund, will have authority to waive or reduce the Management Fee or the Performance Allocation with respect to such Limited Partner.

(d) The General Partner or the Investment Manager may enter into placement agent agreements with placement agents (which may be Affiliates of the General Partner or the Investment Manager) to assist in obtaining subscriptions for Interests in exchange for compensation; provided that, the Partnership will not bear any such placement agent fees. Placement agents may be paid a portion of the Management Fee attributable to the investors solicited by such placement agents, thereby reducing the compensation received by the Investment Manager.

(e) Except as otherwise permitted by the General Partner, (i) initial or additional capital contributions by each Partner shall be payable in cash and/or Investments having an aggregate value as set forth in the Partnership's books and records in one installment, and (ii) initial contributions shall be due no later than the Business Day immediately preceding the date of admission of such Person as a Limited Partner.

3.2 Rights of Partners in Capital

(a) No Partner shall be entitled to interest on its capital contributions to the Partnership. For the avoidance of doubt, interest income, if any, earned on subscription amounts remitted to the Partnership prior to the date an Interest is issued to a Partner will be payable to the Partnership and not applied toward the purchase of an Interest.

(b) No Partner shall have the right to the return of any capital contribution to the Partnership, except (i) upon the withdrawal of such Partner pursuant to Section 5.5 or (ii) upon the dissolution of the Partnership pursuant to Section 6.1. The entitlement to any such return shall be limited to the value of the Capital Account of the Partner. The General Partner shall not be liable for the return of any such amounts.

3.3 Capital Accounts

(a) The Partnership will maintain a separate Capital Account for each Partner. In the event a Limited Partner invests in more than one Series, the Partnership will maintain a separate Capital Account with respect to each Series held by such Limited Partner, with each such Capital Account being treated as if it were the Capital Account of a separate Partner for purposes of this Agreement, including for purposes of the Management Fee and the Performance Allocation, each borne indirectly at the Master Fund level. The General Partner may, in its discretion, maintain separate memorandum sub-accounts with respect to each such Capital Account for purposes of this Agreement, including to reflect additional capital

contributions, withdrawal terms, the Performance Allocation and the application of an Early Withdrawal Reduction. Each Capital Account will reflect the aggregate sum of the balances in all memorandum sub-accounts associated with each such Capital Account.

(b) Each Capital Account shall have an initial balance equal to the amount of any cash and the net value of any property constituting the relevant Partner's initial capital contribution to the Partnership.

(c) Each Capital Account shall be increased by (i) the amount of any cash and the net value of any property constituting additional contributions to such Capital Account permitted pursuant to Section 3.1 and (ii) such Capital Account's allocable share of the Net Profits allocated by the Partnership to such Capital Account pursuant to Section 3.4.

(d) Each Capital Account shall be reduced by (i) the amount of any cash and the net value of any property withdrawn by or distributed to the relevant Partner pursuant to Sections 3.12(a), 5.5 or 6.2, including any amount deducted from any such withdrawal or distribution pursuant to Section 5.5(c) or 5.5(f), (ii) such Capital Account's allocable share of the Net Losses allocated by the Partnership to such Capital Account pursuant to Section 3.4, (iii) such Capital Account's *pro rata* portion of the expenses allocable (or specially allocable) by the Partnership pursuant to Section 3.5, (iv) such Capital Account's allocable share of the Performance Allocation allocable pursuant to Section 3.7 (borne indirectly at the Master Fund level), and (v) such Capital Account's *pro rata* portion of the expenses payable by the Partnership pursuant to Section 4.2 (b) and (c).

(e) Each Capital Account (including any corresponding memorandum sub-accounts) shall be adjusted to reflect allocations and other changes in the value of such Capital Account in the manner specified in the remaining provisions of this Article III.

(f) The Master Fund maintains Capital Sub-Accounts within the Partnership's capital account at the Master Fund level that correspond to the Capital Accounts (and any corresponding memorandum sub-accounts) of the Partners.

3.4 Allocation of Net Profit and Net Loss

(a) Subject to the remaining provisions of this Article III, as of the last day of each Fiscal Period, any Net Profit or Net Loss for such Fiscal Period shall be separately allocated among and credited to or debited against the Capital Accounts of the Partners in proportion to their respective Partnership Percentages for such Fiscal Period.

(b) Notwithstanding Section 3.4(a), items of income, gain, loss, deduction, credit and expenses for a Fiscal Period that are not allocable to specific Investments of the Master Fund, including short term interest income, receipt of any withdrawal charges by the Partnership, and audit, administration and legal expenses, shall be

separately allocated among and credited to or debited against the Capital Accounts of the Partners *pro rata* in accordance with their Partnership Percentages for such Fiscal Period.

3.5 Allocation of Management Fees, Withholding Taxes and Certain Other Expenditures

(a) The Partnership shall bear its allocable portion of the Management Fees in accordance with the Master Fund Partnership Agreement. The Management Fees borne by the Partnership shall be allocated to the Capital Sub-Accounts of the relevant Limited Partners who are subject to the Management Fee based upon the Series they hold, and such Capital Sub-Accounts shall be subject to the corresponding adjustments. The Management Fee shall be charged at the Master Fund level through the use of Capital Sub-Accounts that correspond to each Capital Account of a Limited Partner. The Management Fee will be prorated for any period that is less than a full calendar quarter. The General Partner or the Investment Manager (as the general partner or the investment manager, respectively, of the Master Fund) may reduce, waive or calculate differently the Management Fee with respect to any Capital Sub-Account of a Limited Partner in its discretion.

(b) Notwithstanding anything to the contrary herein, to the extent the General Partner or the Partnership is required by law (including under circumstances where the General Partner or the Partnership is unable to rely conclusively on any withholding certification provided by a Partner) to withhold or to make tax payments, including any interest or penalties, on behalf of or with respect to any Partner or Partners (including, without limitation, any amount attributable to an actual or imputed underpayment of taxes under any BBA provision, backup withholding or FATCA withholding), the General Partner or the Partnership may withhold such amounts and make such tax payments as so required. If the Partnership directly or indirectly pays or incurs any withholding tax or other tax obligation (including any amount under any BBA provision), or otherwise incurs a tax payment with respect to the income allocable or distributable to, or otherwise attributable to, one or more Partners, then the amount of such withholding tax, tax obligation or payment will be treated as a distribution to such Partner or Partners, as applicable, pursuant to the terms of this Agreement. Such amount will be debited against the Capital Account(s) of such Partner or Partners as of the close of the Fiscal Period during which the Partnership so withholds, pays or incurs such obligation. If the amount so withheld, paid or incurred is greater than the balance of the Capital Account(s) of the relevant Partner or Partners, as applicable, then such Partner or Partners and any successors must make a contribution to the capital of the Partnership within 10 Business Days after notification and demand by the General Partner in the amount of such excess. The General Partner is not obligated to apply for or obtain a refund, or reduction of or exemption from withholding tax or other tax obligation (including any amount under any BBA provision) on behalf of any Partner that may be eligible for such refund, reduction or exemption, or otherwise obligated to structure Investments so as to reduce or avoid any withholding tax. Each Limited Partner agrees to repay to the Partnership and the

General Partner and each of the partners and former partners of the General Partner, any liability for taxes, interest or penalties which may be asserted by reason of the failure to deduct and withhold tax on amounts distributable or allocable to such Limited Partner.

(c) Except as otherwise provided for in this Agreement, any expenditures payable by the Partnership (including any taxes imposed on the Partnership pursuant to Section 6225 of the Code, as amended by the BBA), to the extent determined by the General Partner to have been paid or withheld on behalf of, or by reason of particular circumstances applicable to, one or more but fewer than all of the Partners, shall be specially allocated only to the Capital Accounts of those Partners on whose behalf such payments are made or whose particular circumstances gave rise to such payments. Such allocations shall be debited from the relevant Capital Accounts of such Partners as of the close of the Fiscal Period during which any such items were accrued by the Partnership.

3.6 Reserves; Adjustments for Certain Future Events

(a) The General Partner may cause appropriate reserves to be created, accrued and charged against Net Assets and proportionately against the Capital Accounts (and the corresponding Capital Sub-Accounts) for contingent liabilities, such reserves to be in the amounts which the General Partner deems necessary or appropriate. The General Partner may increase or reduce any such reserve from time to time by such amounts as the General Partner deems necessary or appropriate. The amount of any such reserve, or any increase or decrease therein, may, at the election of the General Partner, be charged or credited, as the General Partner deems appropriate, to the Capital Accounts of those parties that are Partners at the time when such reserve is created, increased, or decreased, as the case may be, or alternatively may be charged or credited to those parties that were Partners at the time of the act or omission giving rise to the contingent liability for which the reserve was established by the General Partner.

(b) If the General Partner determines that it is equitable to treat an amount to be paid or received as being applicable to one or more prior periods, then all or a portion of such amount may be proportionately charged or credited, as appropriate, in proportion to the Capital Account balances of the current Partners as such balances existed during any such prior period(s).

3.7 Performance Allocation

The Partnership bears its allocable portion of the Performance Allocation in accordance with the Master Fund Partnership Agreement. The Performance Allocation borne by the Partnership shall be specially allocated to the Capital Sub-Accounts of the relevant Limited Partners who are subject to the Performance Allocation based upon the Series they hold, and such Capital Sub-Accounts shall be subject to the corresponding adjustments. The Performance Allocation shall be debited at the Master Fund level through the use of Capital Sub-Accounts that correspond to each Capital Account of a Limited Partner. The General Partner (as the general

partner of the Master Fund) may waive or reduce the Performance Allocation with respect to any Capital Sub-Account of a Limited Partner.

3.8 Allocation to Avoid Capital Account Deficits

To the extent that any debits pursuant to this Article III would reduce the balance of the Capital Account of any Limited Partner below zero, that portion of any such debits shall instead be allocated to the Capital Account of the General Partner. Any credits in any subsequent Fiscal Period which would otherwise be allocable pursuant to this Article III to a Capital Account of any Limited Partner previously affected by the application of this Section 3.8 shall instead be allocated to the Capital Account of the General Partner in such amounts as are necessary to offset all previous debits attributable to such Limited Partner pursuant to this Section 3.8 not previously recovered.

3.9 Allocations for U.S. Federal Income Tax Purposes

Notwithstanding anything to the contrary in this Agreement:

(a) Income Tax Allocations. Except as otherwise required by Code Section 704(c), items of income, gain, deduction, loss, or credit that are recognized for income tax purposes in each Fiscal Year will be allocated among the Partners in such manner as to reflect equitably amounts credited to or debited against each Partner's Capital Account, whether in such Fiscal Year or in prior Fiscal Years. To this end, the Partnership will establish and maintain records which shall show the extent to which the Capital Account of each Partner will, as of the last day of each Fiscal Year, comprise amounts that have not been reflected in the taxable income of such Partner. To the extent deemed by the General Partner to be feasible and equitable, taxable income and gains in each Fiscal Year shall be allocated among the Partners who have enjoyed the related credits to their Capital Accounts, and items of deduction, loss and credit in each Fiscal Year shall be allocated among the Partners who have borne the burden of the related debits to their Capital Accounts. Foreign tax credits attributable to taxes incurred by the Partnership shall be allocated in a manner consistent with Section 1.704-1(b)(4)(viii) of the Regulations. All matters concerning allocations for U.S. federal, state and/or local income tax purposes, including accounting procedures, not expressly provided for in this Agreement will be determined by the General Partner.

(b) Basis Adjustments. To the extent an adjustment to the adjusted tax basis of any Partnership asset pursuant to Section 734(b) of the Code or Section 743(b) of the Code is required under Section 1.704-1(b)(2)(iv)(m) of the Regulations to be taken into account in determining Capital Accounts, the amount of such adjustment to the Capital Accounts shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases such basis) and such gain or loss shall be specially allocated to the Partners in a manner consistent with the manner in which their Capital Accounts are required to be adjusted pursuant to such section of the Regulations; *provided* that in the event that an adjustment to the book value of Partnership property is made as a result of an adjustment pursuant to

Section 734(b) of the Code, items of income, gain, loss, or deduction, as computed for book and tax purposes, will be specially allocated among the Partners so that the effect of any such adjustment shall benefit (or be borne by) the Partner(s) receiving the distribution that caused such adjustment.

(c) Positive Basis Allocations. If the Partnership realizes gains or items of gross income (including short term capital gain) from the sale of Partnership assets for U.S. federal income tax purposes for any Fiscal Year in which one or more Positive Basis Partners withdraws all or a portion of its Interest from the Partnership pursuant to Section 5.5, the General Partner may elect: (i) to allocate such gains or items of gross income among such Positive Basis Partners, *pro rata* in proportion to the respective Positive Basis of each such Positive Basis Partner, until either the full amount of such gains or items of gross income shall have been so allocated or the Positive Basis of each such Positive Basis Partner shall have been eliminated; and (ii) to allocate any gains or items of gross income not so allocated to Positive Basis Partners to the other Partners in such manner as shall reflect equitably the amounts credited to such Partners' Capital Accounts pursuant to Section 3.3; *provided*, *however*, that if, following such Fiscal Year, the Partnership realizes gains or items of gross income from a sale of an Investment the proceeds of which are designated on the Partnership's books and records as being used to effect payment of all or part of the liquidating share of any Positive Basis Partner that continues to be a Partner in the Partnership following such withdrawal (*i.e.,* such Positive Basis Partner effected a partial, and not a complete, withdrawal of its Interest), there shall be allocated to such Positive Basis Partner an amount of such gains or items of gross income equal to the amount, if any, by which its Positive Basis as of the Withdrawal Date exceeds the amount allocated to such Partner pursuant to clause (i) of this sentence.

(d) Negative Basis Allocations. If the Partnership realizes net losses or items of gross loss or deduction (including short term capital loss) from the sale of Partnership assets for U.S. federal income tax purposes for any Fiscal Year in which one or more Negative Basis Partners withdraws all or a portion of its Interest from the Partnership pursuant to Section 5.5, the General Partner may elect: (i) to allocate such net losses or items of gross loss or deduction among such Negative Basis Partners, *pro rata* in proportion to the respective Negative Basis of each such Negative Basis Partners, until either the full amount of such losses or items of loss or deduction shall have been so allocated or the Negative Basis of each such Negative Basis Partner shall have been eliminated; and (ii) to allocate any net losses or items of gross loss or deduction not so allocated to Negative Basis Partners to the other Partners in such manner as shall reflect equitably the amounts credited to such Partners' Capital Accounts pursuant to Section 3.3; *provided*, *however*, that if, following such Fiscal Year, the Partnership realizes net losses or items of gross loss and deduction from a sale of an Investment the proceeds of which are designated on the Partnership's books and records as being used to effect payment of all or part of the liquidating share of any Negative Basis Partner that continues to be a Partner in the Partnership following such withdrawal (*i.e.*, such Negative Basis Partner effected a partial, and not a complete, withdrawal of its

Interest), there shall may be allocated to such Negative Basis Partner an amount of such net losses or items of gross loss or deduction equal to the amount, if any, by which its Negative Basis as of the Withdrawal Date exceeds the amount allocated to such Partner pursuant to clause (i) of this Section 3.9(d).

(e) Qualified Income Offset. In the event any Limited Partner unexpectedly receives any adjustments, allocations, or distributions described in Section 1.704-1(b)(2)(ii)(d)(4), 1.704-1(b)(2)(ii)(d)(5), or 1.704-1(b)(2)(ii)(d)(6) of the Regulations, items of Partnership income and gain will be specially allocated to each such Limited Partner in an amount and manner sufficient to eliminate, to the extent required by the Regulations, the deficit balance in the Capital Account of such Limited Partner as quickly as possible; *provided* that an allocation pursuant to this Section 3.9(e) may be made only if and to the extent that such Limited Partner would have a deficit balance in its Capital Account after all other allocations provided for in this Article III have been tentatively made as if this Section 3.9(e) were not in this Agreement. This Section 3.9(e) is intended to constitute a "qualified income offset" within the meaning of Section 1.704-1(b)(2)(ii) of the Regulations and shall be interpreted consistently therewith.

(f) Gross Income Allocation. In the event any Limited Partner has a deficit Capital Account at the end of any Fiscal Year that is in excess of the sum of (i) the amount such Limited Partner is obligated to restore pursuant to any provision of this Agreement and (ii) the amount such Limited Partner is deemed to be obligated to restore pursuant to the penultimate sentences of Sections 1.704-2(g)(1) and 1.704-2(i)(5) of the Regulations, each such Limited Partner will be specially allocated items of Partnership gross income and gain in the amount of such excess as quickly as possible; *provided* that an allocation pursuant to this Section 3.9(f) may be made only if and to the extent that such Limited Partner would have a deficit Capital Account in excess of such sum after all other allocations provided for in this Article III have been made as if Section 3.9(e) and this Section 3.9(f) were not in this Agreement.

(g) Section 704(b) Compliance. The allocations provided in this Section 3.9 are intended to comply with the Regulations under Section 704(b) of the Code and may, as determined by the General Partner, be interpreted and applied in a manner consistent therewith.

3.10 Curative Allocations

The allocations set forth in Sections 3.9(b), (e) and (f) (the "***Regulatory Allocations***") are intended to comply with certain requirements of the Regulations. It is the intent of the Partners that, to the extent possible, all Regulatory Allocations shall be offset either with other Regulatory Allocations or with special allocations of other items of Partnership income, gain, loss, or deduction pursuant to this Section 3.10. Therefore, notwithstanding any other provision of this Article III (other than the Regulatory Allocations), the General Partner shall make such offsetting special allocations of the Partnership income, gain, loss, or deduction in whatever manner it determines appropriate so that, after such offsetting allocations are made, each Partner's Capital

Account balance is, to the extent possible, equal to the Capital Account balance such Partner would have had if the Regulatory Allocations were not part of this Agreement and all Partnership items were allocated pursuant to other provisions of this Article III (other than the Regulatory Allocations).

3.11 Tax Matters

(a) Each Partner agrees not to treat, on any U.S. federal, state, local and/or non-U.S. income tax return or in any claim for a refund, any item of income, gain, loss, deduction or credit in a manner inconsistent with the treatment of such item by the Partnership or which would result in inconsistent treatment, and each Partner further agrees to treat, on any U.S. federal, state, local and/or non-U.S. income tax return in any claim for a refund, any item of income, gain, loss, deduction or credit in a manner consistent with the treatment of such item by the Partnership.

(b) To the fullest extent permitted by law, each Limited Partner agrees to (i) provide such cooperation and assistance, including executing and filing forms or other statements and providing information about the Limited Partner, as is reasonably requested by the Tax Matters Partner, to enable the Partnership to satisfy any applicable tax reporting or compliance requirements, to make any tax election or to qualify for an exception from or reduced rate of tax or other tax benefit or be relieved of liability for any tax regardless of whether such requirement, tax benefit or tax liability existed on the date such Partner was admitted to the Partnership, (ii) amend the Limited Partner's tax returns and pay any resulting taxes, interest and penalties in connection with an election by the Partnership under Section 6225(a) of the Code, as amended by the BBA, (iii) take into account any adjustments and pay any taxes, interest and penalties that result from an election by the Partnership under Section 6226 of the Code, as amended by the BBA, and/or (iv) indemnify and hold harmless the Partnership from and against any liability with respect to the Limited Partner's share of any tax deficiency (including any interest and penalties associated therewith) paid or payable by the Partnership that is (A) allocable to such Limited Partner (as reasonably determined by the General Partner in accordance with this Agreement) with respect to an audited or reviewed taxable year for which such Partner was a partner in the Partnership or (B) attributable (as reasonably determined by the General Partner) to the failure of such Limited Partner to cooperate with or provide any such forms, statements, or other information as requested by the Tax Matters Partner pursuant to clause (i) above.

3.12 Distributions

(a) The Partnership will make distributions in respect of withdrawals in accordance with Section 5.5 and liquidation in accordance with Section 6.2. The amount and timing of any other distributions from the Partnership shall be determined by the General Partner. Distributions will generally be made in proportion to the respective Partnership Percentages of the Partners for the Fiscal Period when made. Any distributions may be paid in cash, in kind or partly in cash and partly in kind.

(b) Notwithstanding any provision to the contrary contained in this Agreement, the Partnership, and the General Partner on behalf of the Partnership, may not make a distribution to any Partner from any account in connection with its Interest if such distribution would violate Section 17-607 of the Act or other applicable law.

Article IV
MANAGEMENT

4.1 Duties and Powers of the General Partner

(a) Subject to the terms and conditions of this Agreement, the General Partner shall have complete and exclusive power and responsibility, to the fullest extent permitted by the Act, for managing and administering the affairs of the Partnership (other than any investment or trading activities, which are entered into at the Master Fund level and managed by the Investment Manager), and shall have the power and authority to do all things that the General Partner considers necessary or desirable to carry out its duties hereunder and to achieve the purposes of the Partnership.

(b) The General Partner shall have the right, without the notification to or consent of any Limited Partner or other Person, to make adjustments to the structure of the Partnership in order to address applicable structural, ownership, legal, or regulatory issues, or to improve overall tax efficiency; *provided* that no such adjustment would cause any material adverse consequences to the Limited Partners.

(c) Without limiting the generality of the General Partner's duties and powers hereunder and notwithstanding anything to the contrary contained herein, the General Partner shall have full power and authority, subject to the other terms and provisions of this Agreement, to execute, deliver and perform such contracts, agreements and other undertakings on behalf of the Partnership, without the consent or approval of any other Person, and to engage in all activities and transactions, as it may deem necessary or advisable for, or as may be incidental to, the conduct of the business contemplated by this Section 4.1, including, without in any manner limiting the generality of the foregoing, (i) contracts, agreements, undertakings and transactions with any Partner or with any other Person, firm or corporation having any business, financial or other relationship with any Partner or Partners, (ii) agreements with each Limited Partner in connection with its purchase of an Interest, including a subscription agreement wherein such Limited Partner agrees to be bound by the terms of this Agreement, (iii) any agreements to induce any Person to purchase an Interest and (iv) the Investment Management Agreement delegating to the Investment Manager certain of the powers and authority vested by this Agreement in the General Partner as the General Partner and the Investment Manager may agree from time to time, each without any further act, approval or vote of any Person.

(d) The General Partner may terminate or replace the Investment Manager in accordance with the terms of the Investment Management Agreement. The General Partner may delegate to any other Person (including any of its Affiliates) any power and authority vested in the General Partner pursuant to this Agreement that is not otherwise delegated to the Investment Manager.

(e) Every power vested in the General Partner pursuant to this Agreement shall be construed as a power to act (or not to act) in its sole and absolute discretion, except as otherwise expressly provided herein. No provision of this Agreement shall be construed to require the General Partner to violate the Act, the Advisers Act or any other law, regulation or rule of any self-regulatory organization.

(f) Notwithstanding any other provision of this Agreement or otherwise applicable provision of law or equity, whenever in this Agreement, the General Partner is permitted or required to make a decision (i) in its "sole discretion" or "discretion" or under a grant of similar authority or latitude, the General Partner shall be entitled to consider only such interests and factors as it desires, including its own interests, and shall, to the fullest extent permitted by applicable law, have no duty or obligation to give any consideration to any interest of or factors affecting the Partnership or the Limited Partners, or (ii) in its "good faith" or under another expressed standard, the General Partner shall act under such express standard and shall not be subject to any other or different standards. Unless otherwise expressly stated, for purposes of this Section 4.1(f), the General Partner shall be deemed to be permitted or required to make all decisions hereunder in its sole discretion.

(g) If requested by the General Partner, each Limited Partner shall deliver to the General Partner: (i) an affidavit in form satisfactory to the General Partner that the applicable Limited Partner (and its partners, shareholders, members, and/or beneficial owners, and/or controlling persons, as the case may be) is not subject to withholding under the provisions of any United States federal, state, local or non-U.S. laws; (ii) any certificate that the General Partner may reasonably request with respect to any such laws; (iii) any other form or instrument reasonably requested by the General Partner relating to such Limited Partner's status under such laws; and/or (iv) any information or documentation prescribed under FATCA or as may be necessary for the Partnership to comply with its obligations, or to avoid withholding, under FATCA or any other automatic exchange of information agreement or arrangement, including, without limitation, the Organisation for Economic Cooperation and Development's Common Reporting Standard. In the event that a Limited Partner fails or is unable to deliver to the General Partner an affidavit described in Section 4.1(g), the General Partner may withhold amounts from such Partner in accordance with Section 3.5(b).

4.2 Expenses

(a) Subject to Section 4.2(f), each of the General Partner and the Investment Manager pays all of its own operating and overhead costs without reimbursement by the Partnership. The Partnership will not have its own separate employees or office,

and it will not reimburse the General Partner or the Investment Manager for salaries, office rent and other general overhead expenses of the General Partner or the Investment Manager.

(b) The Partnership, and not the General Partner or the Investment Manager, will pay, or reimburse the General Partner and the Investment Manager for, all costs, fees and expenses arising in connection with the Partnership's operations, as well as its *pro rata* share of the cost of the Master Fund's initial organization, operations and Investment-related expenses. Such expenses payable by the Partnership include the following:

(i) the Partnership's *pro rata* share of the cost of the Master Fund's investment program, including, without limitation, brokerage commissions, other expenses related to buying and selling securities (including trading errors that are not the result of the Investment Manager's gross negligence, willful misconduct or fraud), costs of due diligence regardless of whether a particular transaction is consummated, the costs of attending shareholder meetings, research expenses and costs related to monitoring Investments;

(ii) initial organizational expenses of the Partnership; provided that, such organizational costs may be expensed immediately, or in the General Partner's discretion, amortized in whole or in part and capitalized over a period of 60 calendar months from the date the Partnership commences operations, which may result in an exception to GAAP;

(iii) fees and expenses of advisers and consultants;

(iv) Management Fees (charged at the Master Fund level);

(v) fees and expenses of any custodians, escrow or transfer agents or other investment-related service providers;

(vi) indemnification expenses incurred in connection with Section 4.5 and the cost of insurance against potential indemnification liabilities;

(vii) interest and other borrowing expenses;

(viii) legal, administrative, accounting, tax, audit and insurance expenses;

(ix) expenses of preparing and distributing reports, financial statements and notices to Limited Partners;

(x) litigation or other extraordinary expenses;

(xi) any withholding, transfer or other taxes imposed or assessed on, or payable by, the Partnership (including any interest and penalties); and

(xii) the cost of periodically updating the Partnership's offering memorandum and this Agreement.

(c) Expenses generally will be borne *pro rata* by the Partners in accordance with their respective Partnership Percentages; *provided* that expenses may be specially allocated among the Partners as follows:

(i) with respect to expenses related to Investments (other than taxes), *pro rata* in accordance with their respective Partnership Percentages; and

(ii) as provided elsewhere in this Agreement, including Sections 3.4, 3.5, 3.6 and 5.5.

(d) Each of the General Partner and the Investment Manager, as appropriate, shall be entitled to reimbursement from the Partnership for any of the expenses paid by it on behalf of the Partnership pursuant to Section 4.2(b); *provided* that the General Partner or the Investment Manager may absorb any or all of such expenses incurred on behalf of the Partnership. The Investment Manager may retain, in connection with its responsibilities hereunder as a delegatee of the General Partner, the services of others to assist in the investment advice to be given to the Master Fund, including, but not limited to, any Affiliate of the Investment Manager, but payment for any such services shall be assumed by the Investment Manager and neither the Master Fund nor the Partnership shall have any liability therefor; *provided, however*, that the Investment Manager, in its sole discretion, may retain the services of independent third party professionals on behalf of the Master Fund, including, without limitation, attorneys, accountants and consultants, to advise and assist it in connection with the performance of its activities on behalf of the Master Fund, and the Master Fund shall bear full responsibility therefor and the expense of any fees and disbursements arising therefrom.

(e) If the General Partner or the Investment Manager, as appropriate, shall incur any of the expenses referred to in Section 4.2(b) for the account or for the benefit of, or in connection with its activities or those of its Affiliates on behalf of, both the Master Fund and any Other Account, the General Partner or the Investment Manager, as appropriate, will allocate such expense among the Master Fund and each such Other Account in proportion to the size of the Investment made by each in the activity or entity to which the expense relates, or in such other manner as the General Partner considers fair and reasonable.

(f) Each of the General Partner and the Investment Manager is entitled to use "soft dollars" generated by the Master Fund to pay for certain investment research and brokerage services that provide lawful and appropriate assistance to the General Partner or the Investment Manager in the performance of investment decision-making responsibilities to the extent such use falls within the safe harbor afforded by Section 28(e) of the Securities Exchange Act of 1934, as amended, or is otherwise reasonably related to the investment decision-making process, or to cover certain Master Fund expenses. Use of "soft dollars" by the General Partner

or the Investment Manager as described herein shall not constitute a breach by the either the General Partner or the Investment Manager of any fiduciary or other duty which the General Partner or the Investment Manager may be deemed to owe to the Partnership or its Partners.

4.3 Rights of Limited Partners

The Limited Partners shall take no part in the management, control or operation of the Partnership's business, and shall have no right or authority to act for the Partnership or to vote on matters other than the matters set forth in this Agreement or as required by applicable law. Except as otherwise provided herein or required by law, a Limited Partner shall have no liability for the debts or obligations of the Partnership.

4.4 Other Activities of Partners

(a) The General Partner shall not be required to devote any specific amount of its time to the affairs of the Partnership, but shall devote such of its time to the business and affairs of the Partnership as it shall determine in good faith to be necessary to conduct the affairs of the Partnership for the benefit of the Partnership and the Partners.

(b) Each Partner acknowledges and agrees that any other Partner, its Affiliates and their respective officers, directors, shareholders, members, partners, personnel and employees, may engage in or possess an interest in other business ventures or commercial dealings of every kind and description, independently or with others, including, but not limited to, management of other accounts, investment in, or financing, acquisition and disposition of, securities, investment and management counseling, brokerage services, serving as directors, officers, advisers or agents of other companies, partners of any partnership, or trustees of any trust, or entering into any other commercial arrangements, and will not be disqualified solely on the basis that any such activities may conflict with any interest of the parties with respect to the Partnership or the Master Fund. Without in any way limiting the foregoing, each Partner hereby acknowledges that (i) none of the Partners, their Affiliates and their respective officers, directors, shareholders, members, partners, personnel and employees shall have any obligation or responsibility to disclose or refer any of the investment or other opportunities obtained through activities contemplated by this Section 4.4(b) to the General Partner or the Limited Partners, but may refer the same to any other party or keep such opportunities for their own benefit; and (ii) the Partners, their Affiliates and their respective officers, directors, shareholders, members, partners, personnel and employees are hereby authorized to engage in activities contemplated by this Section 4.4(b) with, or to purchase, sell or otherwise deal or invest in investments issued by, companies in which the General Partner might from time to time invest or be able to invest or otherwise have any interest on behalf of the Master Fund, without the consent or approval of the Partnership or any other Partner. The Partners expressly agree that no other Partner shall have any rights in or to such other activities, or any profits derived therefrom.

(c) The General Partner and its Affiliates shall allocate investment opportunities to the Master Fund and any Other Account fairly and equitably over time. Notwithstanding the foregoing, the General Partner is under no obligation to accord exclusivity or priority to the Master Fund in the event of limited investment opportunities. This means that such opportunities will be allocated among those accounts for which participation in the respective opportunity is considered appropriate, taking into account, among other considerations: (i) fiduciary duties owed to the accounts; (ii) the primary mandate of the accounts; (iii) the capital available to the accounts; (iv) any restrictions on the accounts and the investment opportunity; (v) the sourcing of the investment, size of the investment and amount of follow-on available related to the investment; (vi) whether the risk-return profile of the proposed investment is consistent with the account's objectives and program, whether such objectives are considered in light of the specific investment under consideration or in the context of the portfolio's overall holdings; (vii) the potential for the proposed investment to create an imbalance in the account's portfolio (taking into account expected inflows and outflows of capital); (viii) liquidity requirements of the account; (ix) potentially adverse tax consequences; (x) regulatory and other restrictions that would or could limit an account's ability to participate in a proposed investment; and (xi) the need to re-size risk in the account's portfolio. The General Partner has the authority to allocate trades to multiple accounts on an average price basis or on another basis it deems fair and equitable. Similarly, if an order on behalf of any accounts cannot be fully allocated under prevailing market conditions, the General Partner may allocate the trades among different accounts on a basis it considers fair and equitable over time.

(d) The Principal, as well as the employees and officers of the Investment Manager and of organizations affiliated with the Investment Manager, may buy and sell securities for their own account or the account of others, but may not buy securities from or sell securities to the Master Fund (such prohibition does not extend to the purchase or sale of Interests), unless such purchase or sale is in compliance with the applicable provisions of the Advisers Act.

(e) Each Partner hereto hereby waives, and covenants not to bring a cause of action in law or equity on the basis of, any law (statutory, common law or otherwise) respecting the rights and obligations of the Partners which is or may be inconsistent with this Section 4.4.

(f) The General Partner and its Affiliates reserve the right to establish collective investment vehicles that have stated investment programs or terms that differ from those of the Partnership or that are targeted primarily to investors for which the Partnership is not designed to be a suitable investment vehicle. The General Partner and its Affiliates also reserve the right to establish and provide management or advisory services to Other Accounts for significant investors, whether or not such accounts have the same investment program as the Partnership.

(g) Each Limited Partner acknowledges that the General Partner or the Investment Manager may engage one or more of their respective Affiliates to provide services to the Partnership or the Master Fund for compensation.

4.5 Duty of Care; Indemnification

(a) None of the Indemnified Persons will be liable to the Partnership or any Limited Partner for any loss or damage arising by reason of being or having been an Indemnified Person or from any acts or omissions in the performance of its services as an Indemnified Person in the absence of gross negligence, willful misconduct or fraud, or as otherwise required by law. In no event shall any Indemnified Person be liable for any consequential damages, special or indirect damages or lost profits. An Indemnified Person may consult with counsel and accountants in respect of the Partnership's affairs and will be fully protected and justified in any action or inaction which is taken in accordance with the advice or opinion of such counsel or accountants, provided that they were selected in accordance with the standard of care set forth above.

(b) The Partnership shall, to the fullest extent permitted by law, indemnify and hold harmless each Indemnified Person from and against any and all liabilities suffered or sustained by an Indemnified Person by reason of the fact that it, he or she is or was an Indemnified Person or in connection with this Agreement or the Partnership's business or affairs, including, without limitation, any judgment, settlement, reasonable attorneys' fees and other costs or expenses incurred in connection with the defense of any actual or threatened action, suit or proceeding, provided that such liability did not result from the gross negligence, willful misconduct or fraud of such Indemnified Person. The Partnership will, in the sole discretion of the General Partner, advance to any Indemnified Person reasonable attorneys' fees and other costs and expenses incurred in connection with the defense of any action, suit or proceeding which arises out of such conduct. In the event that such an advance is made by the Partnership, the Indemnified Person will agree to reimburse the Partnership to the extent that it is finally determined that the Indemnified Person was not entitled to indemnification in respect thereof.

(c) Notwithstanding any of the foregoing, the provisions of this Section 4.5 do not provide for the exculpation or indemnification of any Indemnified Person for any liability (including liability under U.S. federal securities laws which, under certain circumstances, impose liability even on persons that act in good faith), to the extent (but only to the extent) that such liability may not be waived, modified or limited under applicable law, but shall be construed so as to effectuate the above provisions to the fullest extent permitted by law.

(d) Pursuant to the indemnification and exculpation provisions above and as set forth in the Master Fund Partnership Agreement, the Master Fund (and not the applicable Indemnified Person) will be responsible for any losses resulting from trading errors and similar human errors, and the Partnership will bear its *pro rata* portion thereof, absent gross negligence, willful misconduct or fraud of any Indemnified Person.

(e) The above-mentioned Indemnified Persons are also indemnified by each Limited Partner for any amounts of tax withheld or required to be withheld with respect to that Limited Partner, and also for any amounts of interest, additions to tax, penalties and other costs borne by any such persons in connection therewith to the extent that the balance of the Limited Partner's Capital Account is insufficient to fully compensate the General Partner or the Investment Manager for such costs.

Article V
ADMISSIONS, TRANSFERS AND WITHDRAWALS

5.1 Admission of Limited Partners

The General Partner may, on the first day of each calendar month, or at such other times as the General Partner may determine, without advance notice to or consent of the Limited Partners, admit to the Partnership any Person who shall execute this Agreement or any other writing evidencing the intent of such Person to become a Limited Partner. Such admission shall be effective when the General Partner enters the name of such Person on the Schedule of Partners and does not require the consent or approval of any other Partner. The General Partner shall have the authority to reject subscriptions for Interests in whole or in part.

5.2 Admission of Additional General Partners

(a) Except as provided in Section 5.2(b), the General Partner may admit one or more Persons as additional general partners to the Partnership. No additional general partner shall be added unless such additional general partner agrees to be bound by all of the terms of this Agreement and adding such additional general partner would not have any of the effects described in clauses (i) through (iv) of Section 5.3(c) (except as specifically set forth therein).

(b) Any Person to whom the General Partner has transferred its general partner interest in accordance with Section 5.4 will be admitted to the Partnership as a substitute General Partner without the consent of the Limited Partners unless otherwise provided for in Section 5.4.

5.3 Transfer of Interests of Limited Partners

(a) Each Limited Partner agrees with all other Partners that it shall not make or attempt to make any Transfer of its Interest which will violate this Section 5.3. In the event of any attempted Transfer of any Limited Partner's Interest in violation of the provisions of this Section 5.3, without limiting any other rights of the Partnership, the General Partner shall have the right to require the withdrawal of such Limited Partner's Interest from the Partnership as provided by Section 5.5(j).

(b) No Transfer of any Limited Partner's Interest, whether voluntary or involuntary, shall be valid or effective, and no transferee shall become a substituted Limited Partner, unless the prior written consent of the General Partner has been obtained, which consent may be granted, withheld or conditioned for any reason by the General Partner. In the event of any Transfer, all of the conditions of the remainder of this Section 5.3 must also be satisfied.

(c) Without limiting the General Partner's discretion pursuant to the preceding paragraph, the General Partner expects to withhold consent to any Transfer of any Limited Partner's Interest, whether voluntary or involuntary, if the General Partner has reason to believe that such Transfer may:

(i) require registration of any Interest under any securities laws of the United States of America, any state thereof or any other jurisdiction;

(ii) subject the Partnership or the General Partner to a requirement to register, or to additional disclosure or other requirements, under any securities or commodities laws of the United States of America, any state thereof or any other jurisdiction;

(iii) result in a termination of the Partnership for U.S. federal income tax purposes under Section 708(b)(1)(B) of the Code, or cause the Partnership to be treated as a "publicly traded partnership" for U.S. federal income tax purposes under Section 7704(b) of the Code or cause the Partnership not to qualify for one of the safe harbors under Section 1.7704 1(e), (f), (g), (h) or (j) of the Regulations;

(iv) result in the Partnership being considered an investment company within the meaning of the Investment Company Act;

(v) result in violation of any anti-money laundering rules or regulations applicable to the Partnership, the Investment Manager or the General Partner;

(vi) violate or be inconsistent with any representation or warranty made by the transferring Limited Partner at the time the Limited Partner subscribed to purchase an Interest; or

(vii) cause all or any portion of the assets of the Master Fund to constitute Plan Assets of any ERISA Partner for purposes of ERISA or to be subject to the provisions of ERISA to substantially the same extent as if owned directly by an ERISA Partner.

The transferring Limited Partner, or its legal representative, must give the General Partner written notice before making any voluntary Transfer and after any involuntary Transfer and must provide sufficient information to allow legal counsel acting for the Partnership to make the determination that the proposed Transfer would not result in any of the consequences referred to in clauses (i) through (vii)

above. If an assignment, Transfer or disposition occurs by reason of the death of a Limited Partner or assignee, the notice may be given by the duly authorized representative of the estate of the Limited Partner or assignee. The notice must be supported by proof of legal authority and valid assignment acceptable to the General Partner.

(d) In the event any Transfer permitted by this Section 5.3 shall result in multiple ownership of any Limited Partner's Interest, the General Partner may require one or more trustees or nominees to be designated to represent a portion of or the entire Interest transferred for the purpose of receiving all notices which may be given and all payments which may be made under this Agreement, and for the purpose of exercising the rights which the transferor as a Limited Partner had pursuant to the provisions of this Agreement.

(e) Subsequent to receipt of the consent of the General Partner (which consent may be withheld by the General Partner), an authorized transferee shall be entitled to the allocations and distributions attributable to the Interest transferred to such transferee and to transfer such Interest in accordance with the terms of this Agreement; *provided*, *however*, that such transferee shall not be entitled to the other rights of a Limited Partner as a result of such Transfer until it becomes a substituted Limited Partner. No transferee may become a substituted Limited Partner without the consent of the General Partner (which consent may be withheld for any reason or no reason by the General Partner). If the General Partner withholds consent to such substitution, a transferee will not have any of the rights of a Limited Partner, except that the transferee will be entitled, unless prohibited by law, to receive that share of capital or profits and to have the right of withdrawal to which its transferor would have been entitled and will be subject to the other terms of this Agreement. A transferring Limited Partner will remain liable to the Partnership as provided under applicable law and this Agreement regardless of whether its transferee becomes a substituted Limited Partner. Notwithstanding the above, the Partnership and the General Partner shall incur no liability for allocations and distributions made in good faith to the transferring Limited Partner until a written instrument of transfer has been received by the Partnership and recorded on its books and the effective date of the Transfer has passed.

(f) Any other provision of this Agreement to the contrary notwithstanding, a transferee shall be bound by the provisions hereof. Prior to recognizing any Transfer in accordance with this Section 5.3, the General Partner may require the transferring Limited Partner to execute and acknowledge an instrument of Transfer in form and substance satisfactory to the General Partner, and may require the transferee to make certain representations and warranties to the Partnership and Partners and to accept, adopt and approve in writing all of the terms and provisions of this Agreement. A transferee shall become a substituted Limited Partner and shall succeed to the portion of the transferor's Capital Account relating to the Interest transferred effective upon the satisfaction of all of the conditions for such Transfer contained in this Section 5.3.

(g) In the event of a Transfer or in the event of a distribution of assets of the Partnership to any Partner, the Partnership may, but shall not be required to, file an election under Section 754 of the Code and in accordance with the applicable Regulations, to cause the basis of the Partnership's assets to be adjusted for U.S. federal income tax purposes as provided by Section 734 or 743 of the Code and shall make any mandatory adjustments to the basis of the Partnership's assets as required by Section 734 or 743 of the Code. If the Partnership does not file an election under Section 754 in connection with a Transfer and if the transferring Limited Partner is a Negative Basis Partner, the General Partner may elect to allocate to the transferring Limited Partner pursuant to Section 3.9(d) net losses or items of loss and deduction realized by the Partnership for the Fiscal Year in which the Transfer occurs as if the transferring Limited Partner were withdrawing from the Partnership pursuant to Section 5.5.

(h) In the event of a Transfer at any time other than the end of a Fiscal Year, items of income, gain, loss, deduction or credit recognized by the Partnership for U.S. federal income tax purposes will be allocated between the transferring parties, as determined by the General Partner, using any permissible method under Code Section 706(d) and the Regulations thereunder. The transferring parties agree to reimburse the General Partner and the Partnership for any incidental accounting fees and other expenses incurred by the General Partner and the Partnership in making allocations pursuant to this Section 5.3(h).

5.4 Transfer of Interest of the General Partner

The General Partner may not Transfer its Interest as a general partner of the Partnership other than (a) to one or more of its direct or indirect beneficial owners or their Affiliates, or (b) with the approval of a Majority of Limited Partners. Each Limited Partner shall be deemed to have consented to any such Transfer made in accordance with this Section 5.4.

5.5 Withdrawal of Interests of Partners

(a) Except as provided in this Section 5.5, a Limited Partner may voluntarily withdraw all or part of its Capital Account effective as of the last Business Day of each calendar month and/or such other Business Days as the General Partner may determine in its sole discretion (such date, a "***Withdrawal Date***") upon not less than 30 calendar days' prior written notice ("***Withdrawal Notice***") to the Administrator; provided that, any partial withdrawals may only be made in minimum amounts of $100,000. Any notice of withdrawal shall be irrevocable by the Limited Partner, unless otherwise agreed by the General Partner. The General Partner may waive the notice requirements of this Section 5.5(a), including with respect to the Capital Accounts of the Affiliated Investors. Notwithstanding anything herein to the contrary, the General Partner may agree with certain Limited Partners to provide for different withdrawal terms and notice periods.

(b) For the purposes of this Section 5.5 (and as described in Section 3.3(a)), each capital contribution shall be accounted for using a separate memorandum

sub-account, and, in the case of a Limited Partner for which more than one memorandum sub-account is maintained, the withdrawals of the balance of any such sub-accounts shall be processed on a "first-in, first-out" basis based upon the date on which each capital contribution was made, unless otherwise agreed between the General Partner and such Limited Partner. Each memorandum sub-account related to a contribution of capital from a Limited Partner will be treated as if it were the separate Capital Account of a separate Partner for the purposes of applying the withdrawal provisions of this Section 5.5.

(c) A withdrawal of capital from a Capital Account that occurs during an applicable Soft Lock-up Period or Second Soft Lock-up Period is subject to the applicable Early Withdrawal Reduction. The General Partner may waive the Soft Lock-up Period or the Second Soft Lock-up Period with respect to any Capital Account of a Limited Partner.

(d) Any Withdrawal Notice shall be irrevocable by the Limited Partner, unless otherwise agreed by the General Partner. For the avoidance of doubt, if a Limited Partner notifies the General Partner of its intent to withdraw and later chooses not to withdraw (with the General Partner's consent), any transaction costs incurred by the Partnership or the General Partner in connection therewith may, in the discretion of the General Partner, be charged to such withdrawing Limited Partner. The General Partner or the Administrator may refuse to honor any Limited Partner's request for a full or partial withdrawal if such request is not accompanied by such additional information as the General Partner or the Administrator may reasonably require.

(e) Payment of the estimated amount due with respect to any permitted withdrawal pursuant to this Section 5.5 will generally be made within 10 Business Days of the Withdrawal Date, *provided* that, the General Partner may delay such payment if such delay is reasonably necessary to prevent such withdrawal from having a material adverse impact on the Partnership. Amounts withdrawn by a Limited Partner will not earn interest for the period from the effective Withdrawal Date through the settlement date.

(f) The General Partner may deduct from any withdrawal proceeds due to any Limited Partner pursuant to this Section 5.5 an amount representing the Partnership's actual or estimated expenses, as determined by the General Partner in good faith, associated with processing the withdrawal, as well as any Early Withdrawal Reduction. Any such withdrawal deduction will be retained for the benefit of the Partnership.

(g) Upon receipt by the Partnership of a Limited Partner's Withdrawal Notice, the General Partner, in its capacity as the general partner of the Master Fund, will have the discretion to manage the Master Fund's assets in a manner that would provide for cash being available to the Partnership to satisfy such Limited Partner's withdrawal request, but the General Partner shall be under no obligation to effect sales of Master Fund assets if the General Partner determines that such transactions

might be detrimental to the interest of the other Investors or that such transactions are not reasonably practicable. The General Partner may effect withdrawal payments (i) in cash, (ii) in kind, by transfer of marketable or non-marketable Investments received from the Master Fund or other assets of the Partnership, the value of which, as determined in accordance with Section 7.3, would satisfy the Limited Partner's request for withdrawal, or (iii) in any combination of the foregoing. In the event that the General Partner satisfies a withdrawal request with Investments or assets in kind, such securities may be transferred to a liquidating account and sold by the Partnership for the benefit of the withdrawing Limited Partner, in which case, payment of the withdrawal proceeds attributable to such Investments will be delayed until such Investments are sold. The amount payable in respect of such Investments will depend on the performance of such Investments through to the date on which they are sold. The cost of operating the liquidating account and selling the Investment(s) will be deducted from the proceeds of sale paid to the withdrawing Limited Partner.

(h) The General Partner may, at any time, suspend (a) the calculation of the net asset value of the Interests (and the applicable valuation date); (b) the issuance of Interests; (c) the withdrawal by Limited Partners of their Interests (and the applicable Withdrawal Date); and/or (d) the payment of withdrawal proceeds (even if the calculation dates and Withdrawal Dates are not postponed), during any period which: (i) any stock exchange on which a substantial part of Investments owned by the Partnership (through the Master Fund) are traded is closed, other than for ordinary holidays, or dealings thereon are restricted or suspended; (ii) there exists any state of affairs as a result of which (A) disposal of a substantial part of the Investments owned by the Partnership (through the Master Fund) would not be reasonably practicable and might seriously prejudice the Limited Partners, or (B) it is not reasonably practicable for the Partnership fairly to determine the value of its net assets; (iii) none of the withdrawal requests which have been made may lawfully be satisfied by the Partnership; (iv) there is a breakdown in the means of communication normally employed in determining the prices of a substantial part of the Investments of the Partnership (through the Master Fund); (v) in the sole discretion of the General Partner, it is necessary to preserve the Partnership's assets; or (vi) automatically upon any suspension of withdrawals by the Master Fund for similar reasons.

(i) The Administrator will promptly notify each Limited Partner who has submitted a withdrawal request and to whom payment in full of the amount being withdrawn has not yet been remitted of any suspension of withdrawals or suspension of the payment of withdrawal proceeds pursuant to Section 5.5(h). Any remaining amount of a withdrawal request that is not satisfied due to such a suspension remains at risk as per other amounts invested in the Partnership and subject to the applicable Management Fee until such amount is finally and fully withdrawn. Such Limited Partners will not be given any priority with respect to the withdrawal of Interests after the cause for such suspension or limitation ceases to exist. The General Partner may in its sole discretion, however, permit such Limited Partners to withdraw their withdrawal requests to the extent that the relevant Withdrawal

Date has not yet passed. For the avoidance of doubt, where a suspension of the payment of withdrawal proceeds is declared between the relevant Withdrawal Date and the remittance of such payment proceeds, affected Limited Partners shall not have any right to withdraw their withdrawal requests. Upon the reasonable determination by the General Partner that conditions leading to a suspension no longer apply, the Administrator will notify the Limited Partners of the end of the suspension. At such time, any such suspended payments shall generally be paid in accordance with the normal process for making such payments, withdrawal rights shall be promptly reinstated, and any pending withdrawal requests which were not withdrawn (or new, timely withdrawal requests) will be effected as of the first Withdrawal Date following the removal of the suspension, subject to the foregoing restrictions on withdrawals. For the avoidance of doubt, the terms of Section 5.5(h) and this Section 5.5(i) shall not affect the discretion of the General Partner to compel the withdrawal of the Interest of any Limited Partner pursuant to Section 5.5(j).

(j) The General Partner may, upon not less than seven days' prior written notice (or immediately if the General Partner determines in its sole discretion that such Limited Partner's continued participation in the Partnership may cause the Partnership, the Master Fund, the General Partner or the Investment Manager to violate any applicable law), require any Limited Partner's Interest to be withdrawn in part or in its entirety from the Partnership and for the Limited Partner to cease to be a limited partner of the Partnership (in the case of a withdrawal of the Limited Partner's Interest in its entirety) pursuant to this Section 5.5(j) (a "***Compulsory Withdrawal***"). The General Partner will compel the withdrawal of a Limited Partner's Interest in its entirety if a Limited Partner requests a withdrawal that would cause its total investment with respect to a particular Series to fall below a minimum of $100,000 (a "***Minimum Required Withdrawal***"). In either case, the amount due to any such Partner required to withdraw from the Partnership shall be equal to the value of such Partner's Capital Account as of the Withdrawal Date determined by the General Partner, net of any deductions imposed pursuant to Section 5.5(f). Except as otherwise provided herein, settlements pursuant to this Section 5.5(j) will be made in the same manner as voluntary withdrawals, but the Early Withdrawal Reduction will not apply in the event of a Compulsory Withdrawal. However, for purposes of clarity, the Early Withdrawal Reduction will apply to any Minimum Required Withdrawal.

(k) The right of any Partner to withdraw or receive distributions pursuant to the provisions of this Section 5.5 is subject to all Capital Account allocations and adjustments contemplated by this Agreement and to the provision by the General Partner for all Partnership liabilities and for reserves for contingencies provided in Section 3.6. Notwithstanding anything to the contrary herein, the General Partner may establish reserves and holdbacks for estimated accrued expenses, liabilities and contingencies, including, without limitation, general reserves for unspecified contingencies (even if such reserves or holdbacks are not otherwise required by GAAP) or liabilities stemming from tax obligations (as such may be determined in the sole discretion of the General Partner and whether or not incurred directly or

indirectly), which could reduce the amount of a distribution upon a Limited Partner's withdrawal.

(l) With respect to any amounts withdrawn, a withdrawing Partner shall not share in the income, gains and losses of the Partnership or have any other rights as a Partner (in the case of a complete withdrawal) after the applicable Withdrawal Date, except as provided in Section 3.6. For the avoidance of doubt, none of the Partnership, the General Partner or the Investment Manager will be liable to a Limited Partner for interest on the proceeds of any withdrawal.

(m) The Interest of a Limited Partner may not be withdrawn from the Partnership prior to its dissolution, except as provided in this Section 5.5.

(n) Unless prohibited by law, the Special Limited Partner, its Affiliates and any other Person that is entitled to any portion of the Performance Allocation may make withdrawals of all or any portion of the amount of the Performance Allocation from their capital accounts in the Master Fund as of any Withdrawal Date.

(o) If the Master Fund violates the investment restrictions set forth in the Master Fund Partnership Agreement and fails to remedy the violation on or before the Remedy Date, any Limited Partner may withdraw all or part of its Capital Account (and corresponding Capital Sub-Account) on the next Withdrawal Date and will not be subject to the Early Withdrawal Reduction; provided that, such Limited Partner has requested such withdrawal in writing within 30 Business Days after the Remedy Date.

5.6 Withdrawal of Original Limited Partner

The Original Limited Partner (in its capacity as the original limited partner of the Partnership) hereby withdraws from the Partnership and is entitled to the return of any capital contribution, without interest or deduction, upon the Commencement Date.

Article VI
DISSOLUTION AND LIQUIDATION

6.1 Dissolution of Partnership

(a) The Partnership shall be dissolved upon the first to occur of the following dates:

(i) any date on which the General Partner shall elect in writing to dissolve the Partnership; or

(ii) the occurrence of any other event causing (A) the General Partner (or a successor to its business) to cease to be the general partner of the Partnership or (B) the dissolution of the Partnership under the Act.

(b) The parties agree that irreparable damage would be done to the goodwill and reputation of the Partners if any Limited Partner should bring an action in court to dissolve the Partnership. Care has been taken in this Agreement to provide for fair and just payment in liquidation of the Interests of all Partners. Accordingly, each Limited Partner hereby waives and renounces its right to such a court decree of dissolution or to seek the appointment by the court of a liquidator for the Partnership except as provided herein.

6.2 Liquidation of Assets

(a) Upon dissolution of the Partnership, the General Partner shall promptly liquidate the business and administrative affairs of the Partnership to the extent feasible, except that if the General Partner is unable to perform this function, a liquidator elected by a Majority of Limited Partners shall liquidate the business and administrative affairs of the Partnership. Net Profit and Net Loss during the Fiscal Periods, which includes the period of liquidation, shall be allocated pursuant to Article III. The proceeds from liquidation shall be divided in the following manner, subject to the Act:

(i) the debts, liabilities and obligations of the Partnership, other than any debts to the Partners as Partners, and the expenses of liquidation (including legal, administrative and accounting expenses incurred in connection therewith), up to and including the date that distribution of the Partnership's assets to the Partners has been completed, shall first be satisfied (whether by payment or the making of reasonable provision for payment thereof);

(ii) such debts as are owing to the Partners as Partners are next paid; and

(iii) the Partners shall next be paid liquidating distributions (in cash or in securities or other assets, whether or not readily marketable) *pro rata* in accordance with, and up to the positive balances of their respective Capital Accounts, as adjusted pursuant to Article III to reflect allocations for the Fiscal Period ending on the date of the distributions under this Section 6.2(a)(iii).

(b) Notwithstanding this Section 6.2 and the priorities set forth in the Act, the General Partner or liquidator may distribute ratably in kind rather than in cash, upon dissolution, any assets of the Partnership; *provided*, *however*, that if any in kind distribution is to be made, (i) the assets distributed in kind shall be valued pursuant to Section 7.3, and charged as so valued and distributed against amounts to be paid under Section 6.2(a) and (ii) any gain or loss (as computed for book purposes) attributable to property distributed in kind shall be included in the Net Profit or Net Loss for the Fiscal Period ending on the date of such distribution.

Article VII
ACCOUNTING AND VALUATION; BOOKS AND RECORDS

7.1 Accounting and Reports

(a) The Partnership may adopt for tax accounting purposes any accounting method that the General Partner shall decide is in the best interests of the Partnership and that is permissible for U.S. federal income tax purposes.

(b) As soon as practicable after the end of each Fiscal Year, the General Partner shall cause an audit of the financial statements of the Partnership as of the end of such period to be made by a firm of independent accountants selected by the General Partner. Within 120 days of the end of each year (or as soon as practicable thereafter), but subject to Section 7.5, the General Partner shall furnish to each Limited Partner a copy of the set of audited financial statements prepared in accordance with GAAP, with such adjustments thereto as the General Partner determines appropriate, including a statement of profit and loss for such Fiscal Year and an unaudited status of each such Partner's holdings in the Partnership at such time. The General Partner may elect not to reserve certain amounts that may be required by GAAP and not to provide certain portfolio disclosure required by GAAP to investors and may capitalize and amortize certain of its organizational expenses in deviation from GAAP. Such deviations from GAAP may result in a qualified opinion rendered on the financial statements of the Partnership.

(c) Upon request to the Administrator, each Partner may receive copies of semi-annual financial statements of the Partnership.

(d) As soon as practicable after the end of each taxable year, the General Partner shall furnish to each Limited Partner such information as may be required to enable each such Limited Partner properly to report for U.S. federal, state and local income tax purposes its distributive share of each Partnership item of income, gain, loss, deduction or credit for such year. The General Partner shall have discretion as to how to report Partnership items of income, gain, loss, deduction or credit on the Partnership's tax returns, and the Limited Partners shall treat such items consistently on their own tax returns.

7.2 Certain Tax Matters

(a) By joining this Agreement, each Limited Partner appoints and designates the General Partner (i) as the "tax matters partner," within the meaning of Section 6231(a)(7) of the Code, and, (ii) for any BBA Effective Period, as the "partnership representative" within the meaning of Section 6223 of the Code (as applicable, the "***Tax Matters Partner***"), or, in each case, under any similar state or local law. The Tax Matters Partner shall have any powers necessary to perform fully in such

capacity, and shall be permitted to take any and all actions, to the extent permitted by law, in consultation with the General Partner if the General Partner is not the Tax Matters Partner. The General Partner shall have the exclusive authority to appoint and designate the Investment Manager, or an Affiliate of the General Partner or the Investment Manager, as a successor Tax Matters Partner for any BBA Effective Period. The Tax Matters Partner shall be reimbursed by the Partnership for all costs and expenses incurred by it, and to be indemnified by the Partnership with respect to any action brought against it, in its capacity as the Tax Matters Partner.

(b) The Limited Partners agree that any and all actions taken by the Tax Matters Partner shall be binding on the Partnership and all of the Limited Partners and the Limited Partners shall reasonably cooperate with the Partnership or the General Partner, and undertake any action reasonably requested by the Partnership or the General Partner, in connection with any elections made by the Tax Matters Partner or as determined to be reasonably necessary by the Tax Matters Partners under any BBA provision.

(c) Each Limited Partner further agrees that such Limited Partner will not treat any Partnership item inconsistently on such Limited Partner's U.S. federal, state, local and/or non-U.S. tax returns or in any claim for a refund with the treatment of the item on the Partnership's tax returns and that such Limited Partner will not independently act with respect to tax audits or tax litigation affecting the Partnership, unless the prior written consent of the General Partner has been obtained.

(d) The General Partner may in its sole discretion cause the Partnership to make all elections not otherwise expressly provided for in this Agreement required or permitted to be made by the Partnership under the Code and any state, local or non-U.S. tax laws.

7.3 Valuation of Partnership Assets and Interests

(a) The Partnership's assets are valued as of the close of each Fiscal Period and on any other date selected by the General Partner in its sole discretion in accordance with the valuation of the Master Fund's assets. The Partnership shall utilize the Master Fund's valuations for all purposes in connection with the Partnership.

(b) The value of the assets of the Partnership and the net worth of the Partnership as a whole determined pursuant to this Section 7.3 are conclusive and binding on all of the Partners and all parties claiming through or under them.

7.4 Determinations by the General Partner

(a) All matters concerning the determination and allocation among the Partners of the amounts to be determined and allocated pursuant to this Agreement, including Article III and accounting procedures applicable thereto, shall be determined by the General Partner, unless specifically and expressly otherwise provided for by the

provisions of this Agreement, and such determinations and allocations shall be final and binding on all the Partners; provided, however, that all calculations of the Performance Allocation will be made on the basis of, or subject to correction based on, the annual audit of the Partnership's financial statements and appropriate adjustments will be made to all such calculations and related allocations to the extent necessary as a result of that audit.

(b) The General Partner may make such adjustments to the computation of Net Profit or Net Loss or any other allocations with respect to any Limited Partner, or any component items comprising any of the foregoing, as it considers appropriate to reflect the financial results of the Partnership and the intended allocation thereof among the Partners in a reasonably accurate, fair and efficient manner. Without limiting the generality of the foregoing, any provision of this Agreement that requires an adjustment to be made to any Capital Account or Capital Sub-Account (or other memorandum sub-account) as of any mid-month or mid-quarter date may be made as of the most recent preceding or succeeding date when a regular valuation is being conducted.

7.5 Books and Records

(a) The General Partner shall keep books and records pertaining to the Partnership's affairs showing all of its assets and liabilities, receipts and disbursements, realized income, gains, deductions and losses, Partners' Capital Accounts and all transactions entered into by the Partnership. The General Partner shall afford to the Partnership's independent auditors reasonable access to such documents during customary business hours and shall permit the Partnership's auditors to make copies thereof or extracts therefrom at the expense of the Partnership.

(b) The General Partner shall establish such standards as it deems appropriate regarding the access of Limited Partners to the books and records of the Partnership and shall not be obliged to permit access by a Limited Partner to the name or address of any other Limited Partner.

7.6 Confidentiality

(a) Each Limited Partner agrees to keep confidential, and not to make any use of (other than for purposes reasonably related to its Interest or for purposes of filing such Limited Partner's tax returns) or disclose to any Person, any information or matter relating to the Partnership and its affairs and any information or matter related to any Investment (other than disclosure to such Limited Partner's directors, employees, agents, advisors, or representatives responsible for matters relating to the Partnership or to any other Person approved in writing by the General Partner (each such Person being hereinafter referred to as an "***Authorized Representative***")); *provided* that (i) such Limited Partner and its Authorized Representatives may make such disclosure to the extent that (A) the information to be disclosed is publicly available at the time of proposed disclosure by such Limited Partner or Authorized Representative, (B) the information otherwise is or

becomes legally available to such Limited Partner other than through disclosure by the Partnership or the General Partner, or (C) such disclosure is required by law or in response to any governmental agency request or in connection with an examination by any regulatory authorities; *provided* that such governmental agency, regulatory authorities or association is aware of the confidential nature of the information disclosed; (ii) such Limited Partner and its Authorized Representatives may make such disclosure to its beneficial owners to the extent required under the terms of its arrangements with such beneficial owners; and (iii) each Limited Partner will be permitted, after written notice to the General Partner, to correct any false or misleading information which becomes public concerning such Limited Partner's relationship to the Partnership or the General Partner. Prior to making any disclosure required by law, each Limited Partner shall use its best efforts to notify the General Partner of such disclosure. Prior to any disclosure to any Authorized Representative or beneficial owner, each Limited Partner shall advise such Authorized Representative or beneficial owner of the obligations set forth in this Section 7.6(a) and each such Authorized Representative or beneficial owner shall agree to be bound by such obligations.

(b) The General Partner shall have the right to keep confidential from the Limited Partners, for such period of time as the General Partner deems reasonable, any information, including the identity of the Partners or information regarding the Partners or Investments, which the General Partner reasonably believes to be in the nature of trade secrets or other information the disclosure of which the General Partner believes is not in the best interests of the Partnership or could damage the Partnership or its business or which the Partnership is required by law or agreement with a third party to keep confidential.

(c) Subject to applicable legal, fiscal and regulatory considerations, the General Partner shall use reasonable efforts to keep confidential any information relating to a Limited Partner obtained by the General Partner in connection with or arising out of the Partnership which the Limited Partner requests to be kept confidential.

(d) Notwithstanding the provisions of this Section 7.6, Partners (and their employees, representatives and other agents) may disclose to any and all Persons, without limitation of any kind, the tax treatment and tax structure of the Partnership and its transactions and all materials of any kind (including tax opinions or other tax analyses) that are provided to such Person by, or on behalf of the Partnership. For this purpose, "tax treatment" is the purported or claimed U.S. federal income tax treatment of a transaction and "tax structure" is limited to any fact that may be relevant to understanding the purported or claimed U.S. federal income tax treatment of a transaction. For this purpose, the names of the Partnership, the Partners, their Affiliates, the names of their partners, members or equity holders and the representatives, agents and tax advisors of any of the foregoing are not items of tax treatment or tax structure.

(e) The General Partner may disclose to prospective investors such information relating to the Partnership or the Investments as it believes in good faith will benefit

the Partnership and facilitate investment in the Partnership by such prospective investors.

(f) The Investment Manager and any other Person acting as a service provider to the Partnership shall have the right to access all information belonging to the Partnership.

Article VIII
GENERAL PROVISIONS

8.1 Amendment of Partnership Agreement

(a) Except as otherwise provided in this Section 8.1, this Agreement may be amended, in whole or in part, with the written consent of (i) the General Partner and (ii) the consent of a Majority of Limited Partners (which approval may be obtained by negative consent affording the Limited Partners 30 calendar days to object).

(b) Any amendment that would:

(i) increase the obligation of a Partner to make any contribution to the capital of the Partnership;

(ii) reduce the Capital Account of a Partner other than in accordance with Article III;

(iii) adversely alter any Partner's rights with respect to the allocation of Net Profit or Net Loss or with respect to distributions and withdrawals; or

(iv) change the respective liabilities of the General Partner and the Limited Partners;

may only be made if the prior written consent of each Partner adversely affected thereby is obtained (which consent may be obtained by negative consent affording the Limited Partners 30 calendar days to object).

(c) Notwithstanding paragraphs (a) and (b) of this Section 8.1, this Agreement may be amended by the General Partner without the consent of the Limited Partners, at any time and without limitation, if any Limited Partner whose contractual rights as a Limited Partner would be materially and adversely changed by such amendment has an opportunity to withdraw from the Partnership (without being subject to the Early Withdrawal Reduction) as of a date determined by the General Partner that is not less than 30 calendar days after the General Partner has furnished written notice of such amendment to each affected Limited Partner and that is prior to the effective date of the amendment. The admission and withdrawal of Limited

Partners will not require notice or disclosure to, or the approval of, the other Limited Partners.

(d) The General Partner may at any time without the consent of the other Partners:

(i) add to the representations, duties or obligations of the General Partner or surrender any right or power granted to the General Partner under this Agreement, for the benefit of the Limited Partners;

(ii) cure any ambiguity or correct or supplement any conflicting provisions of this Agreement;

(iii) change the name of the Partnership;

(iv) make any changes required by a governmental body or agency which is deemed to be for the benefit or protection of the Limited Partners, *provided*, *however*, that no such amendment may be made unless such change (A) is for the benefit of, or not adverse to, the interests of Limited Partners, (B) does not affect the right of the General Partner to manage and control the Partnership's business, (C) does not affect the allocation of profits and losses among the Partners and (D) does not affect the limited liability of the Limited Partners;

(v) amend this Agreement to reflect a change in the identity of the General Partner which has been made in accordance with this Agreement;

(vi) amend this Agreement (other than with respect to the matters set forth in Section 8.1(b)) to effect compliance with any applicable laws, regulations or administrative actions, or to reflect any change made in accordance with Section 4.1(b);

(vii) subject to Section 8.1(b), amend this Agreement to reflect the creation, and terms, of any new Series;

(viii) effect any other amendment which would not, in the good faith judgment of the General Partner, adversely affect any of the existing Limited Partners;

(ix) enable the Partnership or the Tax Matters Partner to comply with BBA provisions, or to make any elections or take any other actions available thereunder; and

(x) restate this Agreement together with any amendments hereto which have been duly adopted in accordance herewith to incorporate such amendments in a single, integrated document.

(e) The General Partner and the Investment Manager shall have the authority to agree with a Limited Partner to waive, modify or supplement the application of any provision of this Agreement or any subscription agreement with respect to such

Limited Partner without notifying or obtaining the consent of any other Limited Partner (other than a Limited Partner whose rights as a Limited Partner pursuant to this Agreement would be materially and adversely changed by such waiver or modification). Any such waiver, modification or supplementation may be evidenced by a "side letter" or other agreement, and the form thereof shall not impair its binding effect as if incorporated in this Agreement.

(f) Notwithstanding anything in this Section 8.1 to the contrary, any amendment to Section 2.5 requires the prior written consent of ERISA Partners whose Partnership Percentages represent more than 50% of the aggregate Partnership Percentages of all ERISA Partners.

8.2 Special Power-of-Attorney

(a) Each Partner hereby irrevocably makes, constitutes and appoints the General Partner (and each of its successors and permitted assigns), with full power of substitution, as the true and lawful representative and attorney-in-fact of, and in the name, place and stead of, such Partner with the power from time to time to make, execute, sign, acknowledge, swear to, verify, deliver, record, file or publish:

(i) an amendment to this Agreement that complies with the provisions of this Agreement (including the provisions of Section 8.1);

(ii) the Certificate and any amendment thereof required because this Agreement is amended, including an amendment to effectuate any change in the membership of the Partnership or in the capital contributions of the Partners;

(iii) any financing statement or other filing or document required or permitted to perfect the security interests contemplated by any provision hereof; and

(iv) all such other instruments, documents and certificates which, in the opinion of legal counsel to the Partnership, may from time to time be required by the laws of the United States of America, the State of Delaware, or any other jurisdiction in which the Partnership determines to do business, or any political subdivision or agency thereof, or which such legal counsel may deem necessary or appropriate to effectuate, implement and continue the valid and subsisting existence and business of the Partnership as a limited partnership, adjust the structure of the Partnership in accordance with Sections 4.1(b) or 8.8, or to effect the dissolution or termination of the Partnership.

(b) Each Limited Partner is aware that the terms of this Agreement permit certain amendments to this Agreement to be effected and certain other actions to be taken or omitted by or with respect to the Partnership without that Limited Partner's consent. If an amendment of the Certificate or this Agreement or any action by or with respect to the Partnership is taken by the General Partner in the manner contemplated by this Agreement, each Limited Partner agrees that, notwithstanding

any objection which such Limited Partner may assert with respect to such action, the General Partner in its sole discretion is authorized and empowered, with full power of substitution, to exercise the authority granted above in any manner which may be necessary or appropriate to permit such amendment to be made or action to be lawfully taken or omitted. Each Partner is fully aware that each other Partner relies on the effectiveness of this special power-of-attorney with a view to the orderly administration of the affairs of the Partnership. This power-of-attorney is a special power-of-attorney and is coupled with an interest in favor of the General Partner and as such:

(i) is irrevocable and continues in full force and effect notwithstanding the subsequent death or incapacity of any party granting this power-of-attorney, regardless of whether the Partnership or the General Partner has had notice thereof; and

(ii) survives the delivery of an assignment by a Limited Partner of the whole or any portion of such Limited Partner's Interest, except that where the assignee thereof has been approved by the General Partner for admission to the Partnership as a substituted Limited Partner, this power-of-attorney given by the assignor survives the delivery of such agreement for the sole purpose of enabling the General Partner to execute, acknowledge and file any instrument necessary to effect such substitution.

8.3 Notices

Notices which may be or are required to be given under this Agreement by any party to another shall be given by hand delivery, transmitted by facsimile, transmitted electronically to an address that has been previously provided or verified through another form of notice or sent by registered or certified mail, return receipt requested or internationally recognized courier service, and shall be addressed to the respective parties hereto at their addresses as set forth on the Schedule of Partners maintained by the General Partner or to such other addresses, facsimile numbers or electronic addresses as may be designated by any party hereto by notice addressed to (a) the General Partner, in the case of notice given by any Limited Partner, and (b) each of the Limited Partners, in the case of notice given by the General Partner. Notices shall be deemed to have been given (i) when delivered by hand, transmitted by facsimile or transmitted electronically or (ii) on the date indicated as the date of receipt on the return receipt when delivered by mail or courier service.

8.4 Agreement Binding Upon Successors and Assigns; Delegation

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, but the rights and obligations of the Partners hereunder shall not be assignable, transferable or delegable except as provided in Sections 4.1(d), 5.3 and 5.4, and any attempted assignment, transfer or delegation thereof which is not made pursuant to the terms of such Sections shall be null and void *ab initio*.

8.5 Governing Law

This Agreement is, and the rights of the Partners hereunder are, governed by and shall be construed in accordance with the laws of the State of Delaware, without regard to the conflict of laws rule thereof which would result in the application of the laws of a different jurisdiction. The parties hereby consent to the exclusive jurisdiction and venue for any action arising out of this Agreement in Dallas, Texas. Each Partner consents to service of process in any action or proceeding involving the Partnership by the mailing thereof by registered or certified mail, postage prepaid, to such Partner's mailing address set forth in the Schedule of Partners maintained by the General Partner.

8.6 Not for Benefit of Creditors

The provisions of this Agreement are intended only for the regulation of relations among Partners and between Partners and former or prospective Partners and the Partnership. Except for the rights of the Indemnified Persons hereunder, this Agreement is not intended for the benefit of non-Partner creditors and no rights are granted to non-Partner creditors under this Agreement.

8.7 Consents and Voting

(a) Except as provided in Section 5.4, Limited Partners do not have any right to vote for the admission or removal of any General Partner and, except for the right to vote on certain amendments proposed by the General Partner, have no other voting rights. Upon the request of any Limited Partner, including pursuant to Section 8.10 hereof, the General Partner may designate an Interest as a Non-Voting Interest, in which case the Limited Partner shall not have the right to vote on any matter, including amendments.

(b) Any and all consents, agreements or approvals provided for or permitted by this Agreement shall be in writing and a copy thereof shall be filed and kept with the books of the Partnership. (For the avoidance of doubt, an amendment made pursuant to Section 8.1(c) or (d) or pursuant to negative consent under Section 8.1(a) or (b) shall not require any affirmative written response by any Limited Partner who is not electing to withdraw from the Partnership.)

8.8 Merger and Consolidation

(a) The Partnership may merge or consolidate with or into one or more limited partnerships formed under the Act or other business entities pursuant to an agreement of merger or consolidation which has been approved in the manner contemplated by Section 17-211(b) of the Act.

(b) Notwithstanding anything to the contrary contained elsewhere in this Agreement, an agreement of merger or consolidation approved in accordance with Section 17-211(b) of the Act may, to the extent permitted by Section 17-211(g) of the Act, (i) effect any amendment to this Agreement, (ii) effect the adoption of a new limited partnership agreement for the Partnership if it is the surviving or resulting limited partnership in the merger or consolidation, or (iii) provide that the limited

partnership agreement of any other constituent partnership to the merger or consolidation (including a limited partnership formed for the purpose of consummating the merger or consolidation) shall be the limited partnership agreement of the surviving or resulting limited partnership.

8.9 Miscellaneous

(a) The captions and titles preceding the text of each Section hereof shall be disregarded in the construction of this Agreement. Use of the word "including" in this Agreement means in each case "without limitation," whether or not such term is explicitly stated.

(b) This Agreement may be executed in counterparts, each of which shall be deemed to be an original hereof.

(c) If any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Agreement will remain in full force and effect. Any provision of this Agreement held invalid or unenforceable only in part or degree will remain in full force and effect to the extent not held invalid or unenforceable.

8.10 BHCA Subject Persons

Notwithstanding any other provision of this Agreement to the contrary:

(a) Solely for purposes of any provision of this Agreement that confers voting rights on the Limited Partners and any other provisions hereof regarding consents of or action by the Limited Partners, any BHCA Subject Person that shall have given the General Partner an Election Notice and shall not thereafter have given the General Partner a Revocation Notice, and that at any time has an Partnership Percentage in excess of 4.9 percent of the aggregate Partnership Percentages of the Limited Partners entitled to participate in such voting or the giving of any consent or the taking of any action, shall be deemed to hold an Partnership Percentage of only 4.9 percent of the aggregate Partnership Percentages of the Limited Partners (after giving effect to the limitations imposed by this Section 8.10 on all such Limited Partners), and such Partnership Percentage in excess of said 4.9 percent shall be deemed held by the Limited Partners who are not BHCA Subject Persons, *pro rata* in proportion to their respective Partnership Percentages; *provided* that this limitation shall not prohibit a Limited Partner from voting or participating in giving or withholding consent or taking any action under any provision of this Agreement up to the full amount of its Partnership Percentage in situations where such Limited Partner's vote or consent or action is of the type customarily provided by statute or stock exchange rules with regard to matters that would significantly and adversely affect the rights or preference of the Limited Partner's Interest. The foregoing voting restriction shall continue to apply with respect to any assignee or other transferee of such BHCA Subject Person's Interest; *provided*, *however*, that the foregoing voting restriction shall not continue to apply if the Interest is transferred:

(i) to the Partnership; (ii) to the public in an offering registered under the Securities Act; (iii) in a transaction pursuant to Rule 144 or Rule 144A under the Securities Act in which no Person acquires more than 2% of the Partnership's outstanding Interests; or (iv) in a single transaction to a third party who acquires at least a majority of the Partnership's outstanding Interests without regard to the Transfer of such Interests.

(b) Except as specifically provided otherwise in this Agreement, a Limited Partner that is a BHCA Subject Person that shall have given the General Partner an Election Notice, and shall not thereafter have given the General Partner a Revocation Notice, shall not be entitled to exercise any rights to consent to actions to be taken with respect to the Partnership, including rights conferred by any applicable law. Such right to consent shall be deemed granted to the Limited Partners who are not BHCA Subject Persons, *pro rata* in proportion to their respective Partnership Percentages.

(c) A Limited Partner that is a BHCA Subject Person and that elects to be subject to Section 8.10(a) and (b) shall notify the General Partner thereof (an "***Election Notice***") and, on the General Partner's receipt of such Election Notice, such Limited Partner shall be subject to Section 8.10(a) and (b) until 30 calendar days after such Limited Partner notifies the General Partner that it elects no longer to be subject to Section 8.10(a) and (b) (a "***Revocation Notice***"), which period may be reduced by the General Partner.

8.11 RIC Limited Partners

An Interest of a RIC Limited Partner does not entitle the RIC Limited Partner to vote or consent with respect to any Partnership matter unless the RIC Limited Partner's vote or consent with respect to its Interest would not be considered to be "voting securities" as defined under Section 2(a)(42) of the Investment Company Act. Except as provided in this Section 8.11, an Interest held by a RIC Limited Partner as a Non-Voting Interest is identical in all regards to all other Interests held by Limited Partners.

8.12 Bad Actor Limited Partners

Under Rule 506(d) under the Securities Act, the Partnership may be banned from selling Interests under Rule 506 if a Limited Partner beneficially owning 20% or more of the Partnership's voting securities engages in a "bad act" set forth in Rule 506. Accordingly, each Limited Partner agrees that the General Partner may deem the portion of any Bad Actor Limited Partner's Interest to be, or convert any Bad Actor Limited Partner's Interest into, a Non-Voting Interest (except for the purposes of voting on any amendment to this Agreement that would materially and adversely change the Bad Actor Limited Partner's rights and preferences as a Limited Partner other than pursuant to an amendment under Section 8.1(c)) to the extent that the General Partner determines that such portion is in excess of 19.99% of the outstanding aggregate voting Interests of all Partners excluding any Interests that are Non-Voting Interests.

8.13 Survival

The obligations and covenants of the Limited Partners set forth in Sections 3.5 and 3.12 hereof shall apply jointly and severally to each Limited Partner and any direct or indirect transferee of or successor to such Limited Partner's interest and will survive such Partner's ceasing to be a partner of the Partnership and/or the termination, dissolution, liquidation and winding up of the Partnership.

8.14 Entire Agreement

The parties acknowledge and agree that, subject to Section 8.1(f), the General Partner without the approval of any other Partner may enter into a written agreement on behalf of the Partnership with any Limited Partner affecting the terms hereof in order to meet certain requirements of the Limited Partner (each an "***Other Agreement***"), and the terms of such Other Agreement shall govern with respect to such Limited Partner notwithstanding the provisions of this Agreement. This Agreement and each Other Agreement constitute the entire agreement among the parties hereto pertaining to the subject matter hereof and supersede all prior agreements and understandings pertaining thereto.

[Signature Page Follows]

The parties hereto have executed this Agreement as of the day and year first above written.

GENERAL PARTNER:

On behalf of itself and as attorney-in-fact for the Limited Partners

Highland Argentina Regional Opportunity Fund GP, LLC

By: Highland Capital Management Latin America, L.P., its sole member
By: Highland Latin America GP, Ltd., its general partner

By: _____
Name: Gustavo Prilick
Title: Director

ORIGINAL LIMITED PARTNER:

Highland Capital Management Latin America, L.P.

By: Highland Latin America GP, Ltd., its general partner

By: _____
Name: Gustavo Prilick
Title: Director

Signature Page to the Amended and Restated Limited Partnership Agreement of Highland Argentina Regional Opportunity Fund, L.P.

THE COMPANIES LAW (2016 REVISION)

OF THE CAYMAN ISLANDS

COMPANY LIMITED BY SHARES

AMENDED AND RESTATED

MEMORANDUM AND ARTICLES OF ASSOCIATION

OF

HIGHLAND ARGENTINA REGIONAL OPPORTUNITY FUND, LTD.

(AS ADOPTED BY SPECIAL RESOLUTION ON 8 NOVEMBER 2017)

THE COMPANIES LAW (2016 REVISION)

OF THE CAYMAN ISLANDS

COMPANY LIMITED BY SHARES

AMENDED AND RESTATED

MEMORANDUM OF ASSOCIATION

OF

HIGHLAND ARGENTINA REGIONAL OPPORTUNITY FUND, LTD.

(AS ADOPTED BY SPECIAL RESOLUTION ON 8 NOVEMBER 2017)

1 The name of the Company is Highland Argentina Regional Opportunity Fund, Ltd..

2 The Registered Office of the Company shall be at the offices of Maples Corporate Services Limited, PO Box 309, Ugland House, Grand Cayman, KY1-1104, Cayman Islands, or at such other place within the Cayman Islands as the Directors may decide.

3 The objects for which the Company is established are unrestricted and the Company shall have full power and authority to carry out any object not prohibited by the laws of the Cayman Islands.

4 The liability of each Member is limited to the amount unpaid on such Member's Shares.

5 The share capital of the Company is US$50,000 divided into 100 Management Shares of US$1.00 par value each and 999,900 Participating Shares of US$0.01 par value each.

6 The Company has power to register by way of continuation as a body corporate limited by shares under the laws of any jurisdiction outside the Cayman Islands and to be deregistered in the Cayman Islands.

7 Capitalised terms that are not defined in this Memorandum of Association bear the respective meanings given to them in the Articles of Association of the Company.

THE COMPANIES LAW (2016 REVISION)

OF THE CAYMAN ISLANDS

COMPANY LIMITED BY SHARES

AMENDED AND RESTATED

ARTICLES OF ASSOCIATION

OF

HIGHLAND ARGENTINA REGIONAL OPPORTUNITY FUND, LTD.

(AS ADOPTED BY SPECIAL RESOLUTION ON 8 NOVEMBER 2017)

1 Interpretation

1.1 In these Articles, Table A in the First Schedule to the Statute does not apply and unless there is something in the subject or context inconsistent therewith:

"**Administrator**" means the person, firm or corporation appointed and from time to time acting as administrator of the Company.

"**AEOI**" means:

(i) sections 1471 to 1474 of the US Internal Revenue Code of 1986 and any associated legislation, regulations or guidance, and any other similar legislation, regulations or guidance enacted in any other jurisdiction which seeks to implement similar financial account information reporting and/or withholding tax regimes;

(ii) the OECD Standard for Automatic Exchange of Financial Account Information in Tax Matters – the Common Reporting Standard and any associated guidance;

(iii) any intergovernmental agreement, treaty, regulation, guidance, standard or other agreement between the Cayman Islands (or any Cayman Islands government body) and any other jurisdiction (including any government bodies in such jurisdiction), entered into in order to comply with, facilitate, supplement or implement the legislation,

regulations or guidance described in sub-paragraphs (i) and (ii); and

(iv) any legislation, regulations or guidance in the Cayman Islands that give effect to the matters outlined in the preceding sub-paragraphs.

"**Articles**"	means these articles of association of the Company.
"**Auditor**"	means the person (if any) for the time being performing the duties of auditor of the Company.
"**Business Day**"	means any day normally treated as a business day in such places and/or on such markets as the Directors may from time to time determine.
"**Cayman Islands**"	means the British Overseas Territory of the Cayman Islands.
"**Class**"	means a separate class of Participating Share.
"**Company**"	means the above-named Company.
"**Directors**"	means the directors for the time being of the Company.
"**Dollars**" or "**US$**"	refers to the currency of the United States.
"**Electronic Record**"	has the same meaning as in the Electronic Transactions Law.
"**Electronic Transactions Law**"	means the Electronic Transactions Law (2003 Revision) of the Cayman Islands.
"**Eligible Investor**"	means a person eligible to hold Participating Shares, as determined from time to time by the Directors.
"**Gross Negligence**"	in relation to a person means a standard of conduct beyond negligence whereby a person acts with reckless disregard for the consequences of his action or inaction.
"**Investment Manager**"	means the person, firm or corporation appointed and for the time being acting as the investment manager of the Company.
"**Management Share**"	means a voting non participating Share in the capital of the Company of US$0.01 par value designated as a Management Share and having the rights provided for in these Articles.

"Member"	means each person whose name is, from time to time and for the time being, entered in the Register of Members as the holder of one or more Shares.
"Memorandum"	means the memorandum of association of the Company.
"Net Asset Value"	means the value of the assets less the liabilities of the Company, or of a Separate Account (as the context may require), calculated in accordance with these Articles.
"Net Asset Value per Participating Share"	means the amount determined in accordance with these Articles as being the Net Asset Value per Participating Share of a particular Class, and/or Series.
"Offering Memorandum"	means an offering memorandum relating to Participating Shares of any Class, and/or Series as amended or supplemented from time to time subject to and in accordance with these Articles.
"Ordinary Resolution"	A resolution passed at a quorate meeting of the Fund by a simple majority of the votes cast in its favour by the holders of the Management Shares or a resolution approved in writing by all such holders of Management Shares expressed to be an ordinary resolution.
"Participating Share"	means a participating redeemable Share in the capital of the Company of US$0.01 par value and having the rights provided for in these Articles. Participating Shares may be divided into Classes in the discretion of the Directors in accordance with the provisions of these Articles and each Class may be further divided into different Series of Participating Shares and the term "Participating Share" shall include all such Classes and/or Series of Participating Share.
"Redemption Date"	means, in relation to any Class and/or Series of Participating Shares, such day or days as are set out in the Offering Memorandum or as may be specified by the Directors from time to time, upon which a Member is entitled to require the redemption of Participating Shares of that Class and/or Series.
"Redemption Fee"	means such fee (if any) payable by a Member to the Company on a redemption of Participating Shares, as the same may be determined by the Directors and disclosed to the Member at the time of its subscription for such Participating Shares.

"**Redemption Notice**"	means a notice in a form approved by the Directors by which a holder of Participating Shares is entitled to require the Company to redeem its Participating Shares.
"**Redemption Price**"	means the price determined in accordance with these Articles at which redeemable Participating Shares of the relevant Class and/or Series may be redeemed.
"**Register of Members**"	means the register of Members, which shall be maintained in accordance with the Statute and includes (except where otherwise stated) any branch or duplicate Register of Members.
"**Registered Office**"	means the registered office for the time being of the Company.
"**Sales Charge**"	means such sales charge (if any) determined by the Directors as being payable by a subscriber on a subscription for Participating Shares of any Class and/or Series.
"**Seal**"	means the common seal of the Company and includes every duplicate seal.
"**Separate Account**"	means a separate internal account of the Company which the Directors may establish and cause to be maintained in accordance with these Articles.
"**Series**"	means a separate series of Participating Share (and includes any sub-series of any such series).
"**Share**" and "**Shares**"	means a share or shares of any class or series in the Company, including a Management Share or a Participating Share, as well as any fraction of a Share.
"**Special Resolution**"	has the same meaning as in the Statute, and includes a unanimous written resolution.
"**Statute**"	means the Companies Law (2016 Revision) of the Cayman Islands.
"**Subscriber**"	means the subscriber to the Memorandum.
"**Subscription Date**"	means, in relation to Participating Shares of any Class and/or Series, such day or days as are set out in the Offering Memorandum or as may be specified by the Directors from time to time upon which a

person may subscribe for Participating Shares of that Class and/or Series.

"**Subscription Price**" means the price determined in accordance with these Articles at which Participating Shares of the relevant Class and/or Series may be subscribed.

"**Suspension**" means a determination by the Directors to postpone or suspend (i) the calculation of the Net Asset Value of Participating Shares of any one or more Classes and/or Series (and the applicable Valuation Date) (a "**Calculation Suspension**"); (ii) the issue of Participating Shares of any one or more Classes and/or Series (and the applicable Subscription Date) (an "**Issue Suspension**"); (iii) the redemption by Members (in whole or in part) of Participating Shares of any one or more Classes and/or Series (and the applicable Redemption Date) (a "**Redemption Suspension**"); and/or (iv) the payment (in whole or in part) of any redemption proceeds (even if Valuation Dates and Redemption Dates are not postponed) (a "**Payment Suspension**").

"**Transfer**" means, in respect of any Share, any sale, assignment, exchange, transfer, pledge, encumbrance or other disposition of that Share, and "**Transferred**" shall be construed accordingly.

"**Treasury Share**" means a Share held in the name of the Company as a treasury share in accordance with the Statute.

"**Valuation Date**" means, in relation to each Class and/or Series of Participating Shares, the day or days determined from time to time by the Directors to be the day or days on which the Net Asset Value per Participating Share of that Class and/or Series and/or Series is calculated.

"**Valuation Point**" means, with respect to any Class and/or Series, the time or times on the Valuation Date of such Class and/or Series at which the Directors determine that the Net Asset Value per Participating Share of that Class and/or Series shall be calculated.

1.2 In these Articles:

(a) the singular number includes the plural number and vice versa;

(b) the masculine gender includes the feminine gender;

(c) persons includes corporations;

(d) "written" and "in writing" include all modes of representing or reproducing words in visible form, including in the form of an Electronic Record;

(e) "shall" shall be construed as imperative and "may" shall be construed as permissive;

(f) references to provisions of any law or regulation shall be construed as references to those provisions as amended, modified, re-enacted or replaced from time to time;

(g) any phrase introduced by the terms "including", "include", "in particular" or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms;

(h) the term "and/or" is used herein to mean both "and" as well as "or." The use of "and/or" in certain contexts in no respects qualifies or modifies the use of the terms "and" or "or" in others. "Or" shall not be interpreted to be exclusive, and "and" shall not be interpreted to require the conjunctive — in each case, unless the context otherwise requires;

(i) any reference to the powers of the Directors shall include, when the context admits, the service providers or any other person to whom the Directors may delegate their powers;

(j) any requirements as to delivery under the Articles include delivery in the form of an Electronic Record;

(k) any requirements as to execution or signature under the Articles including the execution of the Articles themselves can be satisfied in the form of an electronic signature as defined in the Electronic Transactions Law;

(l) sections 8 and 19(3) of the Electronic Transactions Law shall not apply; and

(m) headings are inserted for reference only and shall be ignored in construing these Articles.

2 Commencement of Business

2.1 The business of the Company may be commenced as soon after incorporation as the Directors shall see fit.

2.2 The Directors may pay, out of the capital or any other monies of the Company, all expenses incurred in or about the formation and operation of the Company, including the expenses of registration and the initial offering of Participating Shares.

3 Service Providers

3.1 The Directors may appoint any person, firm or corporation to act as a service provider to the Company (whether in general or in respect of any Class and/or Series of Shares) and may entrust

to and confer upon any such service providers any of the functions, duties, powers and discretions exercisable by them as Directors, upon such terms and conditions (including as to remuneration payable by the Company) and with such powers of delegation, but subject to such restrictions, as they think fit. Without limiting the generality of the foregoing, such service providers may include managers, investment advisers, administrators, registrars, transfer agents, custodians and prime brokers.

3.2 Without prejudice to the generality of the preceding Article, the Directors may appoint any person, firm or corporation to act as the Investment Manager with respect to the assets of the Company (whether in general or in respect of any Class and/or Series of Shares). The Directors may entrust to and confer upon the Investment Manager any of the functions, duties, powers and discretions exercisable by them as Directors upon such terms and conditions (including as to remuneration payable by the Company) and with such powers of delegation, but subject to such restrictions, as they think fit.

4 Rights attaching to Shares

4.1 The Management Shares shall have the following rights:

(a) as to voting: the holder of a Management Share shall (in respect of such Management Share) have the right to receive notice of, attend at and vote as a Member at any general meeting of the Company; and

(b) as to capital: a Management Share shall confer upon the holder the right in a winding up to repayment of capital as provided in these Articles but shall confer no other right to participate in the profits or assets of the Company; and

(c) as to income: no dividends shall be payable on the Management Shares.

4.2 The Participating Shares shall have the following rights:

(a) as to voting: the holder of a Participating Share shall not (in respect of such Participating Share) have the right to receive notice of, attend at or vote as a Member at any general meeting of the Company, but may vote at a separate Class meeting convened in accordance with these Articles; and

(b) as to capital: a Participating Share shall confer upon the holder thereof the right in a winding up to participate in the surplus assets of the Company by reference to the Separate Account attributable to the relevant Class or Series of Participating Shares as provided in these Articles; and

(c) as to income: the Participating Shares shall confer on the holders thereof the right to receive dividends as provided in these Articles.

5 Share Capital

5.1 Subject to these Articles, the Directors may allot, issue, grant options or warrants over, or otherwise dispose of Shares in separate classes and/or series with different terms, preferences, privileges or special rights including, without limitation, with respect to investment strategy and/or policy, participation in assets, profits and losses of the Company, voting, fees charged (including management, performance and incentive fees), redemption privileges, allocation of costs and expenses (including, without limitation, the costs and expenses incurred in any hedging activities and any profits and losses arising therefrom) as they think proper. Subject to the Statute, these Articles and any applicable subscription agreement, any Share Rights (other than those set out in these Articles or set out in a Special Resolution) may be varied by either the Directors or by Ordinary Resolution.

5.2 On or before the allotment of any Participating Share the Directors shall resolve the Class and/or Series to which such Participating Share shall be classified and may, prior to the issue of any Participating Share, reclassify such Participating Share. Each Class and/or Series shall be specifically identified. Subject to the Statute and these Articles, the Directors may at any time re-name any Participating Share.

5.3 Notwithstanding the currency in which the par value of the Participating Shares is denominated, the Directors may specify any currency as the currency in which the Subscription Price, Redemption Price and Net Asset Value of Participating Shares of a Class and/or Series is calculated.

5.4 The Company shall not issue Shares to bearer.

5.5 Fractional Shares may be issued.

5.6 Unless the Directors determine otherwise, shares shall only be issued as fully paid-up.

5.7 Unless the Directors determine otherwise, no right of pre-emption or first refusal shall attach to any Shares.

6 Allotment and Issue of Participating Shares

6.1 The Directors may from time to time allot and issue Participating Shares of any Class and/or Series. The Directors may, in their discretion, refuse to allot and issue any Participating Shares, and shall not issue any Participating Shares to or for the account of an investor who is not an Eligible Investor. If the Directors have declared a Calculation Suspension or Issue Suspension, no Participating Shares of that Class or Series (as appropriate) shall be issued until the relevant Suspension has ended.

6.2 The Directors shall determine the Subscription Price at the time of issue of the first issue of Participating Shares of any Class and/or Series. Thereafter, the Directors may allot and issue

Participating Shares of the same Class and/or Series on any Subscription Date provided that such additional Participating Shares are issued at a Subscription Price equal to not less than the Net Asset Value per Participating Share of such Class and/or Series calculated on the relevant Subscription Date (or if the Subscription Date is not also a Valuation Date then on the immediately preceding Valuation Date).

6.3 The Directors may add to the Subscription Price per Participating Share (before making any rounding adjustment) an amount which they consider to be an appropriate allowance to reflect fiscal and purchase charges which would be incurred for the account of the Company in investing an amount equal to the Subscription Price. The Directors may also add, in their discretion, a Sales Charge and/or an amount equal to any stamp duty and any other governmental taxes or charges payable by the Company with respect to the issue of such Participating Shares.

6.4 An applicant for Participating Shares shall pay for such Participating Shares in such currencies, in such manner, at such time, in such place and to such person acting on behalf of the Company as the Directors may from time to time determine.

6.5 Subject to the terms of any subscription agreement, an application for Participating Shares shall be irrevocable by an applicant for Participating Shares once it has been received by the Company. Participating Shares shall be treated as having been issued with effect from the relevant Subscription Date notwithstanding that the subscriber for those Participating Shares may not be entered in the Register of Members until after the Subscription Date.

6.6 Participating Shares shall be issued in such minimum numbers as the Directors may specify either generally or in any particular case; likewise the Directors may from time to time prescribe an amount as the minimum subscription amount.

6.7 The Directors may resolve to accept non-cash assets in satisfaction (in whole or in part) of the Subscription Price.

6.8 The Directors may require an applicant for Participating Shares to pay to the Company for the benefit of any selling agent such selling commissions or such organisational charges as may have been disclosed to such applicant. The Directors may differentiate between applicants as to the amount of such selling commissions or such organisational charges.

6.9 The Company may, in so far as the Statute permits, pay a commission to any person in consideration of that person subscribing or agreeing to subscribe whether absolutely or conditionally for any Participating Shares. Such commissions may be satisfied by the payment of cash and/or the issue of fully or partly paid-up Participating Shares. The Company may also on any issue of Participating Shares pay such brokerage as may be lawful.

7 Separate Accounts

7.1 The Directors shall have the power to establish and maintain, with respect to Participating Shares of any Class and/or Series, a Separate Account, to record (purely as an internal accounting matter) the allocation, on a differentiated basis, of the assets and liabilities of the Company to the holders of Participating Shares of any such Class and/or a Series in a manner consistent with the methodology set forth in the Offering Memorandum and the rights otherwise attaching to the Participating Shares.

7.2 The proceeds from the issue of Participating Shares of any Class and/or Series shall be applied in the books of the Company to the Separate Account established for Participating Shares of that Class and/or Series. The assets and liabilities and income and expenditure attributable to that Separate Account shall be applied to such Separate Account and, subject to the provisions of these Articles, to no other Separate Account. In the event that the assets of a Separate Account referable to any Class and/or Series are exhausted, any and all unsatisfied claims which any Members or former Members referable to that Class and/or Series have against the Company shall be extinguished. The Members or former Members referable to a Class and/or Series shall have no recourse against the assets of any other Separate Account established by the Company.

7.3 Where any asset is derived from another asset (whether cash or otherwise), such derivative asset shall be applied in the books of the Company to the same Separate Account as the asset from which it was derived, and on each revaluation of an asset the increase or diminution in value shall be applied to the same Separate Account and, subject to the provisions of these Articles, to no other Separate Account.

7.4 In the case of any asset or liability of the Company which the Directors do not consider is attributable to a particular Separate Account, the Directors shall have discretion to determine the basis upon which any such asset or liability shall be allocated between or among Separate Accounts.

7.5 The Directors may, in the books of the Company, allocate assets and liabilities to and from Separate Accounts if, as a result of a creditor proceeding against certain of the assets of the Company or otherwise, a liability would be borne in a different manner from that in which it would have been borne if applied under the foregoing Articles.

7.6 The Directors may from time to time transfer, allocate or exchange an asset or liability from one Separate Account to another Separate Account provided that at the time of such transfer, allocation or exchange the Directors form the opinion (in good faith) that the value in money or money's worth of each such asset or liability transferred, allocated or exchanged is not significantly less or more than the value in money or money's worth (referred to in these Articles as "proper value") received by the Separate Account from which such asset or liability is transferred, allocated or exchanged except only as is otherwise provided by these Articles.

8 Determination of Net Asset Value

8.1 The Net Asset Value and Net Asset Value per Participating Share of each Class and/or Series shall be determined by or on behalf of the Directors as at the relevant Valuation Point on each relevant Valuation Date.

8.2 In calculating the Net Asset Value and the Net Asset Value per Participating Share, the Directors shall apply such generally accepted accounting principles as they may determine.

8.3 The assets and liabilities of the Company shall be valued in accordance with such policies as the Directors may determine. Absent bad faith or manifest error, any valuation made pursuant to these Articles shall be binding on all persons.

8.4 Unless otherwise determined by the Directors in any resolution creating a Class and/or Series of Participating Shares or as otherwise disclosed in any Offering Memorandum, the Net Asset Value per Participating Share of each Class (or Series) shall be determined by allocating *pro rata* the Net Asset Value, as at the relevant Valuation Point, of the Company and/or of the relevant Separate Account among each Class and/or Series, adjusting the amount so calculated to reflect any fees, costs, foreign exchange items or other assets or liabilities which are properly attributable to a specific Class and/or Series and then by dividing the resultant amount by the number of Participating Shares of such Class and/or Series then in issue.

8.5 The Directors may determine that the Net Asset Value of any Class and/or Series shall be definitively determined on the basis of estimates and that such determination shall not be modified to reflect final valuations.

8.6 Any expense or liability may be amortised over such period as the Directors may determine.

8.7 The Directors may establish such reserves as they deem reasonably necessary for Company expenses and any other contingent Company assets or liabilities, and may, upon the reversal or release of such reserves, apply any monies resulting therefrom in such manner as they may, in their absolute discretion, determine.

8.8 Net Asset Value per Participating Share shall be rounded to the nearest cent or such other amount as the Directors may determine and the benefit of any such roundings may be retained by the Company.

8.9 The Directors may cause the Company to issue new Participating Shares at par or to compulsorily redeem at par such number of Participating Shares as they consider necessary to address, in such manner as they consider equitable, any prior miscalculation of Net Asset Value or Net Asset Value per Participating Share. The Company shall not be required to pay to the holder the redemption proceeds of any such compulsorily redeemed Participating Shares, which proceeds shall be retained by the Company.

9 Suspensions

9.1 The Directors may, from time to time, in the circumstances disclosed in the Offering Memorandum, declare a Suspension with respect to any one or more Classes and/or Series of Participating Shares.

9.2 The Directors shall promptly notify all affected Members of any such Suspension and shall promptly notify such Members upon termination of such Suspension.

10 Transfer of Shares

10.1 Subject to Article 5.1, Shares may not be Transferred without the prior written approval of the Directors (which may be withheld for any or no reason) provided that the Directors may waive this requirement to the extent that they deem appropriate in connection with the listing of any Class or Series of Share on a stock exchange.

10.2 The Directors shall not register any Transfer of any Share to any person who is, in the opinion of the Directors, not an Eligible Investor.

10.3 Any proposed transferee shall provide to the Directors such information and documents as the Directors may request, including, without limitation, such documents or information as the Directors deem necessary or desirable:

(a) to enable the Directors to determine that the proposed transferee is an Eligible Investor; and

(b) to enable the Company to comply with all applicable laws, including anti-money laundering laws.

10.4 The instrument of Transfer of any Share shall be in writing and shall be executed by or on behalf of the transferor (and, if the Directors so require, signed by or on behalf of the transferee). The transferor shall be deemed to remain the holder of a Share until the name of the transferee is entered in the Register of Members.

11 Transmission of Shares

11.1 If a Member dies, the survivor or survivors (where the Member was a joint holder) or his or her legal personal representatives (where the Member was a sole holder) shall be the only persons recognised by the Company as having any title to the Member's interest in the Company. The death of any Member shall not operate to relieve, waive or reduce any liabilities attaching to the Member's Shares at the time of death and such liabilities shall continue to bind any survivor or survivors, or any personal representative, as the case may be.

11.2 Any person becoming entitled to a Share in consequence of the death or bankruptcy, or the liquidation or dissolution, of a Member (or in any other way than by Transfer) and who is an Eligible Investor may, upon delivery to the Directors of such evidence as may from time to time be required by them of:

(a) such person's entitlement to such Shares; and/or

(b) such person's status as an Eligible Investor,

elect, either to become the holder of such Share or to have such Share Transferred to another Eligible Investor nominated by such person. If such person elects to become the holder of such Share, such person shall give notice in writing to the Directors to that effect, but the Directors shall, in either case, have the same right to decline registration of such person as a holder of such Share as they would have had in the case of a Transfer of the Share by that Member before his or her death or bankruptcy, or liquidation or dissolution, as the case may be.

11.3 Any person becoming entitled to a Share in consequence of the death or bankruptcy, or the liquidation or dissolution, of a Member (or in any other way than by Transfer) and who is not an Eligible Investor shall not be registered as the holder of such Share and shall promptly Transfer such Share to an Eligible Investor in accordance with these Articles.

11.4 A person becoming entitled to a Share by reason of the death or bankruptcy or liquidation or dissolution of the holder (or in any other case than by Transfer), and who is an Eligible Investor, shall be entitled to the same dividends and other advantages to which such person would be entitled if such person were the registered holder of such Share. However, the person shall not, before becoming a Member in respect of a Share, be entitled in respect of it to exercise any right conferred by membership in relation to meetings of the Company and the Directors may at any time give notice requiring any such person to elect either to be registered himself or to have some person nominated by him become the holder of the Share (but the Directors shall, in either case, have the same right to decline or suspend registration as they would have had in the case of a transfer of the Share by the relevant Member before his death or bankruptcy or liquidation or dissolution or any other case than by transfer, as the case may be). If the notice is not complied with within ninety days the Directors may thereafter withhold payment of all dividends, bonuses or other monies payable in respect of the Share until the requirements of the notice have been complied with.

12 Redemption of Shares

12.1 Subject to any provisions relating to a specific Class and/or Series as set out in the Offering Memorandum or these Articles or in any resolution constituting a Class and/or Series or otherwise forming part of the special rights of such Participating Shares, a Member may require the redemption of all or any of such Member's Participating Shares by serving a Redemption Notice on the Company. Unless timely receipt is waived by the Directors in a particular case, a Redemption Notice shall be required to be received on or before a Redemption Date with respect to such Participating Shares (or such number of days prior to such Redemption Date as may be determined

by the Directors). Any Member redeeming Participating Shares shall submit to the Directors the share certificate (if any) issued in respect of those Participating Shares. The Company shall redeem such Participating Shares at the Redemption Price, being an amount equal to the Net Asset Value per Participating Share of the relevant Class and/or Series prevailing on the relevant Redemption Date (or if the Redemption Date is not a Valuation Date then on the immediately preceding Valuation Date) subject to any deductions, holdbacks or adjustments provided for in these Articles and/or the Offering Memorandum.

12.2 The Directors may deduct any Redemption Fee from the Redemption Price. The Directors may also deduct such amount which they consider to be an appropriate allowance to reflect fiscal and sale charges which would be incurred for the account of the Company in realising assets or closing out positions to provide funds to meet any redemption request.

12.3 A Member may not withdraw a Redemption Notice once submitted to the Company unless (a) the Directors shall have declared a Suspension or (b) the Directors determine (in their sole discretion) to permit the withdrawal of such redemption request (which they may do in whole or in part). If a relevant Suspension has been declared by the Directors, the right of a Member to have its Participating Shares redeemed shall be suspended and during the period of Suspension the Member may withdraw its Redemption Notice. Any withdrawal of the Redemption Notice shall be made in writing and shall only be effective if actually received by the Company before the termination of the period of the Redemption Suspension or Calculation Suspension, as applicable. If the Redemption Notice is not withdrawn, any Participating Shares the redemption of which has been suspended shall be redeemed once the relevant Suspension has ended at the Redemption Price for Participating Shares of the relevant Class and/or Series calculated on the next Redemption Date following the end of the relevant Suspension.

12.4 If one or more redemption requests are received in respect of any one Redemption Day that would, if satisfied, result in the redemptions of an amount equal to more than 15% of the total net asset value of the Company, the Directors may determine in their discretion to reduce the amount of each redemption request pro rata so that redemption requests represent in aggregate an amount equal to no more than 15% of the total net asset value of the Company. The partial amounts of the redemption requests which remain unsatisfied shall be carried forward to the next Redemption Day and satisfied in priority to any redemption requests received in relation to such subsequent Redemption Day until the prior redemption requests shall have been satisfied in full.

12.5 If the Company is required by the laws of any relevant jurisdiction to make a withholding from any redemption monies payable to the holder of Participating Shares the amount of such withholding shall be deducted from the redemption monies otherwise payable to such person.

12.6 The Directors may deduct any Redemption Fee from the Redemption Price. The Directors may also deduct such amount which they consider to be an appropriate allowance to reflect fiscal and sale charges which would be incurred for the account of the Company in realising assets or closing out positions to provide funds to meet any redemption request.

12.7 No redemption of part of a Member's holding of Participating Shares of any one Class and/or Series may be made if, as a result thereof, such Member would hold fewer Participating Shares of such Class and/or Series than such minimum number or value of Participating Shares of such Class and/or Series as may from time to time be specified (either generally or in any particular case or cases) by the Directors. If such partial redemption would reduce such Member's holding of Participating Shares to less than such minimum holding, the Directors may, in their discretion, elect to compulsorily redeem all of such Member's Participating Shares.

12.8 The Company may, in the absolute discretion of the Directors, refuse to make a redemption payment to a Member if the Directors suspect or are advised that the payment of any redemption proceeds to such Member may result in a breach or violation of any anti-money laundering law by any person in any relevant jurisdiction, or if such refusal is necessary to ensure the compliance by the Company, its Directors, the Administrator or any other service provider of the Company with any anti-money laundering law in any relevant jurisdiction.

12.9 Any amount payable to a Member for the redemption of Participating Shares shall be paid in such currency or currencies as the Directors may determine. Subject to any Payment Suspension, the Company shall remit redemption proceeds (net of the costs of remittance) by cheque or wire transfer within such period or periods as the Directors shall have disclosed to the Member at the time of its subscription for Participating Shares or, in the absence of any such disclosure, within such period or periods as the Directors shall determine. In the absence of directions as to payment the Company may remit redemption proceeds by cheque to the address of the Member appearing on the Register of Members or by wire transfer to such account as the Directors deem appropriate in the circumstances. The Company shall not be liable for any loss resulting from this procedure.

12.10 On any redemption of Participating Shares the Directors shall have the power to satisfy (in whole or in part) the Redemption Price (and any other sums payable on redemption as provided in these Articles) owing on the redemption of such Participating Shares by dividing *in specie* the whole or any part of the assets of the Company (including, without limitation, shares, debentures, or securities of any other company whether or not held by the Company on the Redemption Date in question) and either (i) distributing such assets directly to the redeeming shareholder, and/or (ii) distributing or allocating such assets to a liquidating account or other similar mechanism to be managed and/or liquidated at the discretion of the Directors.

12.11 Participating Shares shall be treated as having been redeemed with effect from the relevant Redemption Date irrespective of whether or not a Member has been removed from the Register of Members or the Redemption Price has been determined or remitted. Accordingly, on and from the relevant Redemption Date, Members in their capacity as such will not be entitled to or be capable of exercising any rights arising under these Articles with respect to Participating Shares being redeemed (including any right to receive notice of, attend or vote at any meeting of the Company) save the right to receive the Redemption Price and any dividend which has been declared prior to the relevant Redemption Date but not yet paid (in each case with respect to the Participating Shares being redeemed). Such redeemed Members will be creditors of the Company with respect to the

Redemption Price. In an insolvent liquidation, redeemed Members will rank behind ordinary creditors but ahead of Members.

12.12 Once a Participating Share is redeemed it shall be available for re issue and, until re issue, shall form part of the authorised and unissued share capital of the Company.

12.13 Upon the written request of a Member or prospective Member in a form acceptable to the Directors, the Company may, in the discretion of the Directors, accept a standing redemption request from such Member or prospective Member pursuant to which the Company shall agree (without assuming any liability for failing to do so) to use its commercially reasonable efforts to redeem such Member's Participating Shares to the extent necessary to ensure that such Member does not own over a specified percentage of the outstanding Participating Shares of the Company or any Class and/or Series thereof; such percentage to be the percentage identified by such Member or prospective Member in such written request as being the percentage which such Member's or prospective Member's ownership cannot exceed without material risk of such Member or prospective Member being in violation of applicable law or regulation. Any such written request may be revoked by notice in writing to the Company from the affected Member.

12.14 No amendment to these Articles made after a Redemption Date shall affect a Member with respect to Participating Shares of that Member which have been redeemed, or are being treated as redeemed, on or prior to that Redemption Date.

12.15 Unless otherwise provided in the Offering Memorandum, unremitted redemption proceeds shall not bear interest against the Company and redeemed Participating Shares shall not participate in the profits and losses of the Company with effect from the relevant Redemption Date.

13 Compulsory Redemption

13.1 The Directors may at any time by notice in writing to any Non-qualified Person compulsorily redeem all or any of the Participating Shares held by such person upon a day which shall be not less than, nor more than, such number of days as the Directors may, in their discretion, from time to time determine, from the date of such notice. Upon such day, such Participating Shares shall be redeemed in all respects as if the holder thereof had submitted a Redemption Request whether or not the Company shall have received any certificate(s) in respect of such Participating Shares.

13.2 The Directors, in their discretion, with or without cause, may at any time by notice in writing to any Member compulsorily redeem all or any of a Member's Participating Shares on any Redemption Day which shall be not less than such number of days as the Directors may, in their discretion, from time to time determine from the date of the notice. Upon such day, such Participating Shares shall be redeemed in all respects as if the holder thereof had submitted a Redemption Request whether or not the Company shall have received any certificate(s) in respect of such Participating Shares.

13.3 The Directors may at any time redeem Participating Shares to effect a conversion in the manner described in these Articles, including pursuant to Article 15.

13.4 Subject to Article 12.6, any restrictions imposed pursuant to these Articles on redemptions made at the option of the Members shall not apply to any compulsory redemption of Participating Shares by the Company.

13.5 All costs incurred in a compulsory redemption of Participating Shares shall be for the account of the Member thereof and may be deducted from the proceeds of the redemption.

13.6 The procedure for determining which Participating Shares will be compulsorily redeemed in any particular case is subject to change at the discretion of the Directors. In exercising discretion and in making determinations as to whether to compulsorily redeem Participating Shares, and in determining which Members shall be subject to compulsory redemption, the Directors may act upon the basis of such information as may be known to them, without any obligation to make special enquiries, and may rely upon the advice of counsel. In no event shall the Company be liable to any Member for any consequence of any determination made by the Directors with respect to such compulsory redemption.

13.7 Without prejudice to the generality of the foregoing, the Company may (without notice) compulsorily redeem the Participating Shares of any Member and, on behalf of such Member, apply the proceeds of redemption in paying for new Participating Shares to give effect to any exchange, conversion or roll up policy disclosed to Members pursuant to which Participating Shares of one Class or Series (the "**Old Shares**") may, at the option of the Company, be exchanged for Participating Shares of another Class or Series (the "**New Shares**") by means of the redemption of the Old Shares and the immediate re-subscription of the redemption proceeds in paying up the New Shares.

14 AEOI

14.1 Notwithstanding any other Article, in order to comply with AEOI, any Director shall be entitled to release and/or disclose on behalf of the Company to the Cayman Islands Tax Information Authority or equivalent authority (the "**TIA**") and any other foreign government body as required by AEOI, any information in its or its agents' or delegates' possession regarding a Member including, without limitation, financial information concerning the Member's investment in the Company, and any information relating to any shareholders, principals, partners, beneficial owners (direct or indirect) or controlling persons (direct or indirect) of such Member. Any such Director may also authorise any third party agent, including but not limited to, the Investment Manager or Administrator, to release and/or disclose such information on behalf of the Company.

14.2 In order to comply with AEOI and, if necessary, to reduce or eliminate any risk that the Company or its Members are subject to withholding taxes pursuant to AEOI or incur any costs, debts, expenses, obligations or liabilities (whether external, or internal, to the Company) (together, "**costs**") associated with AEOI, the Directors may cause the Company to undertake any of the following actions:

(a) compulsorily redeem any or all of the Shares held by a Member either (i) where the Member fails to provide (in a timely manner) to the Company, or any agent or delegate of the Company, including but not limited to, the Investment Manager or the Administrator, any information requested by the Company or such agent or delegate pursuant to AEOI; or (ii) where there has otherwise been non-compliance by the Company with AEOI whether caused, directly or indirectly, by the action or inaction of such Member, or any related person, or otherwise;

(b) deduct from, or hold back, redemption or repurchase proceeds, dividend payments or any other distributions, in order to:

(i) comply with any applicable requirement to apply and collect withholding tax pursuant to AEOI;

(ii) allocate to a Member an amount equal to any withholding tax imposed on the Company as a result of the Member's, or any related person's, action or inaction (direct or indirect), or where there has otherwise been non-compliance by the Company with AEOI;

(iii) ensure that any AEOI related costs are recovered from the Member(s) whose action or inaction (directly or indirectly, including the action or inaction of any person related to such Member) gave rise or contributed to such costs.

14.3 In order to give effect to the requirements imposed upon the Company by AEOI, as well as any of the actions contemplated by Articles 14.2(a) and 14.2(b), the Directors may undertake any of the following actions:

(a) create separate classes and/or series of Shares ("**AEOI Shares**"), with such rights and terms as the Directors may in their sole discretion determine, and following the compulsory redemption of some or all of a Member's Shares may immediately apply such redemption proceeds in subscribing for such number of AEOI Shares as the Directors determine;

(b) may re-name any number of Shares (whether issued or unissued) as AEOI Shares, create a Separate Account with respect to such AEOI Shares and apply any AEOI related costs or withholding taxes to such Separate Account;

(c) allocate any AEOI costs or withholding tax among Separate Accounts on a basis determined solely by the Directors;

(d) adjust the Net Asset Value per Share of any relevant Shares (including any AEOI Share).

15 Purchase and Surrender of Shares

15.1 Subject to the provisions of the Statute and without prejudice to these Articles, the Company may purchase its own Shares (including any redeemable Shares) in such manner and on such other terms as the Directors may agree with the relevant Member.

15.2 The Company may make a payment in respect of the redemption or purchase of its own Shares in any manner permitted by the Statute, including out of capital.

15.3 The Directors may accept the surrender for no consideration of any fully paid Share.

16 Treasury Shares

16.1 The Directors may, prior to the purchase, redemption or surrender of any Share, determine that such Share shall be held as a Treasury Share.

16.2 The Directors may determine to cancel a Treasury Share or transfer a Treasury Share on such terms as they think proper (including, without limitation, for nil consideration).

17 Modification of Rights

17.1 Subject to the following Article, the rights attached to any Series of Participating Shares may be varied or abrogated either whilst the Company is a going concern or during or in contemplation of a winding up, with the consent in writing of two thirds of the issued Shares of that Series or with the sanction of a resolution passed by a two-thirds majority of the holders of the issued Participating Shares of that Series, at a separate meeting of the holders of the Participating Shares of that Series. For such purposes the Directors may, in their discretion, treat all Series of Participating Shares as forming one Series, if they consider that they would all be affected in the same way by the proposals under consideration and that there would be no conflict of interest between them, but in any other case shall treat them as separate Series, as the case may be. To every such separate meeting all the provisions of these Articles relating to general meetings of the Company or to the proceedings thereat shall, mutatis mutandis, apply except that the necessary quorum shall be one person holding or representing by proxy at least one-third in nominal amount of the issued Participating Shares of the Series (but so that if at any adjourned meeting of such holders a quorum as above defined is not present, those holders who are present shall be a quorum) and that every holder of Participating Shares of the Series shall on a poll have one vote for each Participating Share of the Series held by him.

17.2 The rights conferred upon the holders of the Participating Shares shall be deemed to be varied by the creation or issue of any Participating Shares ranking ahead of the Participating Shares with regard to participation in the profits or assets of the Company. A Series to which different levels of fees are payable to the Manager or different redemption rights apply (including the imposition of, absence of, or different level of, a redemption fee) shall not be deemed to rank in priority to any other Series as regards shareholder rights or participating in the profits or assets of the Company.

17.3 The rights attached to the Participating Shares shall be deemed not to be varied or abrogated by:

(a) the creation, allotment or issue of Management Shares;

(b) the creation, allotment or issue of Participating Shares of any Series;

(c) the redemption or repurchase of any Participating Share;

(d) the conversion of Participating Shares of one Series into Participating Shares of another Series at the request of a Member pursuant to Article 13.3;

(e) the redesignation of a Series of Participating Share by the Directors pursuant to these Articles;

(f) the exercise by the Directors or any liquidator of any of their discretions specified in these Articles; or

(g) the Company entering into any written agreement with a prospective member providing for offering terms that vary from those applicable to other Members of the same Series.

18 Variation of Terms

The Directors, with the consent of the Investment Manager, shall have the absolute discretion to agree with a Member to waive or modify the terms applicable to such Member's subscription for Participating Shares (including those relating to management and performance fees and redemption terms) without obtaining the consent of any other Member; provided that such waiver or modification does not amount to a variation of the rights attaching to the Participating Shares of such other Members.

19 Certificates for Shares

19.1 A Member shall only be entitled to a share certificate if the Directors resolve that share certificates shall be issued. Share certificates representing Shares, if any, shall be in such form as the Directors may determine. Share certificates shall be signed by one or more Directors or another person authorised by the Directors. The Directors may authorise certificates to be issued with the authorised signature(s) affixed by mechanical process. All certificates for Shares shall be consecutively numbered or otherwise identified and shall specify the Shares to which they relate. All certificates surrendered to the Company for transfer shall be cancelled and, subject to these Articles, no new certificate shall be issued until the former certificate representing a like number of relevant Shares shall have been surrendered and cancelled.

19.2 The Company shall not be bound to issue more than one certificate for Shares held jointly by more than one person and delivery of a certificate to one joint holder shall be a sufficient delivery to all of them.

19.3 If a share certificate is defaced, worn out, lost or destroyed, it may be renewed on such terms (if any) as to evidence and indemnity and on the payment of such expenses reasonably incurred by the Company in investigating evidence, as the Directors may prescribe, and (in the case of defacement or wearing out) on delivery up of the old certificate.

20 Register of Members

20.1 The Company shall maintain or cause to be maintained the Register of Members.

20.2 The Directors may determine that the Company shall maintain one or more branch registers of Members in accordance with the Statute. The Directors may also determine which register of Members shall constitute the principal register and which shall constitute the branch register or registers, and to vary such determination from time to time.

21 Closing Register of Members and Fixing Record Date

21.1 For the purpose of determining Members entitled to notice of, or to vote at any meeting of Members or any adjournment thereof, or Members entitled to receive payment of any dividend, or in order to make a determination of Members for any other proper purpose, the Directors may provide that the Register of Members shall be closed for transfers for a stated period which shall not in any case exceed thirty days.

21.2 In lieu of, or apart from, closing the Register of Members, the Directors may fix in advance or arrears a date as the record date for any such determination of Members entitled to notice of, or to vote at any meeting of the Members or any adjournment thereof, or for the purpose of determining the Members entitled to receive payment of any dividend or in order to make a determination of Members for any other proper purpose.

21.3 If the Register of Members is not so closed and no record date is fixed for the determination of Members entitled to notice of, or to vote at, a meeting of Members or Members entitled to receive payment of a dividend, the date on which notice of the meeting is sent or the date on which the resolution of the Directors declaring such dividend is passed, as the case may be, shall be the record date for such determination of Members. When a determination of Members entitled to vote at any meeting of Members has been made as provided in this Article, such determination shall apply to any adjournment thereof.

22 Non Recognition of Trusts

The Company shall not be bound by or compelled to recognise in any way (even when notified) any equitable, contingent, future or partial interest in any Share, or (except only as is otherwise provided by these Articles or the Statute) any other rights in respect of any Share other than an absolute right to the entirety thereof in the registered holder.

23 Amendments of Memorandum and Articles and Alteration of Capital

23.1 The Company may, by Ordinary Resolution:

(a) increase its share capital by such sum and with such rights, priorities and privileges annexed thereto, as the resolution shall prescribe;

(b) consolidate and divide all or any of its share capital into Shares of larger amount than its existing Shares;

(c) by subdivision of its existing Shares or any of them divide the whole or any part of its share capital into Shares of smaller amount than is fixed by the Memorandum; and

(d) cancel any Shares that at the date of the passing of the resolution have not been taken or agreed to be taken by any person.

23.2 All new Shares created in accordance with the provisions of the preceding Article shall be subject to the same provisions of these Articles with reference to liens, Transfer, transmission and otherwise as the Shares in the original share capital.

23.3 Subject to the provisions of the Statute and the provisions of these Articles as regards the matters to be dealt with by Ordinary Resolution the Company may, by Special Resolution:

(a) change its name;

(b) alter or add to these Articles;

(c) alter or add to the Memorandum with respect to any objects, powers or other matters specified therein;

(d) reduce its share capital or any capital redemption reserve fund; and

(e) wind up the Company.

24 Registered Office

Subject to the provisions of the Statute, the Company may by resolution of the Directors change the location of its Registered Office. The Company may, in addition to its Registered Office, maintain such other offices or places of business as the Directors determine.

25 General Meetings

25.1 All general meetings other than annual general meetings shall be called extraordinary general meetings. The Directors may call general meetings.

25.2 The Company may but shall not be obliged to hold a general meeting in each year as its annual general meeting, and shall specify the meeting as such in the notice calling it. Any annual general meeting shall be held at such time and place as the Directors shall determine.

26 Notice of General Meetings

26.1 At least seven Business Days' notice shall be given of any general meeting. Every notice shall be exclusive of the day on which it is given or deemed to be given and of the day on which the meeting is to be held and shall specify the place, the day and the hour of the meeting and the general nature of the business and shall be given in the manner hereinafter mentioned or in such other manner if any as may be prescribed by the Company, provided that a general meeting of the Company shall, whether or not the notice specified in this Article has been given and whether or not the provisions of these Articles regarding general meetings have been complied with, be deemed to have been duly convened if it is so agreed:

(a) in the case of an annual general meeting, by all the Members entitled to attend and vote thereat; and

(b) in the case of an extraordinary general meeting, by a majority in number of the Members having the right to attend and vote at the meeting, being a majority together holding not less than ninety per cent. in par value of the Shares giving that right.

26.2 The accidental omission to give notice of a general meeting to, or the non receipt of notice of a meeting by, any person entitled to receive notice thereof shall not invalidate the proceedings of that meeting.

27 Proceedings at General Meetings

27.1 No business shall be transacted at any general meeting unless a quorum is present. A quorum shall be one or more Members (present in person, by proxy or authorised corporate representative, as the case may be) entitled to attend and vote and representing not less than one third of the Management Shares present in person or by proxy and carrying the right to vote at the meeting.

27.2 A person may, with the consent of the Directors, participate at a general meeting by conference telephone or other communications equipment by means of which all the persons participating in the meeting can communicate with each other. Participation by a person in a general meeting in this manner is treated as presence in person at that meeting.

27.3 A resolution (including a Special Resolution) in writing (in one or more counterparts) signed by all Members for the time being entitled to receive notice of and to attend and vote at general meetings (or, being corporations or other non-natural persons, signed by their duly authorised representatives) shall be as valid and effective as if the resolution had been passed at a general meeting of the Company duly convened and held.

27.4 If a quorum is not present within half an hour from the time appointed for the meeting or if during such a meeting a quorum ceases to be present, the meeting, if convened upon the requisition of Members, shall be dissolved and in any other case it shall stand adjourned to the same day in the next week at the same time and place or to such other day, time or such other place as the Directors may determine, and if at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting the Members present shall be a quorum.

27.5 The chairman, if any, of the board of Directors shall preside as chairman at every general meeting of the Company, or if there is no such chairman, or if the chairman shall not be present within fifteen minutes after the time appointed for the holding of the meeting, or is unwilling to act, the Directors present shall elect one of their number to be chairman of the meeting.

27.6 If no Director is willing to act as chairman, or if no Director is present within fifteen minutes after the time appointed for holding the meeting, the Members present shall choose one of their number to be chairman of the meeting.

27.7 The chairman may, with the consent of a meeting at which a quorum is present (and shall if so directed by the meeting) adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. When a general meeting is adjourned for thirty days or more, notice of the adjourned meeting shall be given as in the case of an original meeting. Otherwise it shall not be necessary to give any such notice.

27.8 A resolution put to the vote of a meeting shall be decided on a show of hands unless before, or on the declaration of the result of, the show of hands, the chairman or any Member present in person or by proxy (or in the case of a non-natural person, by its duly authorised representative or by proxy) demands a poll.

27.9 Unless a poll is duly demanded a declaration by the chairman that a resolution has been carried or carried unanimously, or by a particular majority, or lost or not carried by a particular majority, an entry to that effect in the minutes of the proceedings of the meeting shall be conclusive evidence of that fact without proof of the number or proportion of the votes recorded in favour of or against such resolution.

27.10 The demand for a poll may be withdrawn.

27.11 Except on a poll demanded on the election of a chairman or on a question of adjournment, a poll shall be taken as the chairman directs, and the result of the poll shall be deemed to be the resolution of the general meeting at which the poll was demanded.

27.12 A poll demanded on the election of a chairman or on a question of adjournment shall be taken forthwith. A poll demanded on any other question shall be taken at such time as the chairman of the general meeting directs, and any business other than that upon which a poll has been demanded or is contingent thereon may proceed pending the taking of the poll.

27.13 In the case of an equality of votes, whether on a show of hands or on a poll, the chairman shall not be entitled to a second or casting vote.

28 Votes of Members

28.1 Subject to any rights or restrictions attached to any Shares, on a show of hands every Member holding Shares carrying the right to vote on the matter in question who (being an individual) is present in person or by proxy or (if a corporation or other non-natural person) is present by its duly authorised representative or by proxy, shall have one vote and on a poll every such Member shall have one vote for every Share of which he is the holder.

28.2 In the case of joint holders of record, the vote of the senior holder who tenders a vote, whether in person or by proxy, shall be accepted to the exclusion of the votes of the other joint holders. Seniority among joint holders shall be determined by the order in which the names of the holders stand in the Register of Members.

28.3 A Member of unsound mind, or in respect of whom an order has been made by any court or authority having jurisdiction in lunacy, may vote, whether on a show of hands or on a poll, by the Member's committee, receiver, curator bonis, or other similar person appointed on such Member's behalf by that court or authority and any such committee, receiver, curator bonis or other similar person may vote by proxy.

28.4 No person shall be entitled to vote at any general meeting unless such person is registered as a Member on the record date for such meeting, nor unless all calls or other monies then payable by such person in respect of such Shares have been paid.

28.5 No objection shall be raised to the qualification of any voter except at the general meeting or adjourned general meeting at which the vote objected to is purported to be given or tendered and every vote not disallowed at the meeting shall be valid. Any objection made in due time shall be referred to the chairman whose decision shall be final and conclusive.

28.6 On a poll or on a show of hands votes may be cast either personally or by proxy. A Member may appoint more than one proxy or the same proxy under one or more instruments to attend and vote at a meeting. Where a Member appoints more than one proxy the instrument of proxy shall state which proxy is entitled to vote on a show of hands.

28.7 On a poll, a Member holding more than one Share need not cast the votes in respect of its Shares in the same way on any resolution and therefore may vote a Share or some or all such Shares either for or against a resolution and/or abstain (any such abstentions to count neither for nor against the resolution) from voting a Share or some or all of the Shares and, subject to the terms of the instrument appointing it, a proxy appointed under one or more instruments may vote a Share or some or all of the Shares in respect of which such proxy is appointed either for or against a resolution and/or abstain from voting.

29 Proxies

29.1 The instrument appointing a proxy shall be in writing, be executed under the hand of the appointor or of such appointor's attorney duly authorised in writing or, if the appointor is a corporation or other non-natural person, under the hand of an officer or other person duly authorised for that purpose. A proxy need not be a Member of the Company.

29.2 The Directors may, in the notice convening any meeting or adjourned meeting, or in an instrument of proxy sent out by the Company, specify the place and the time (being not later than the time for holding the meeting or adjourned meeting to which the proxy relates) at which the instrument appointing a proxy shall be deposited. In the absence of any such direction from the Directors in the notice convening any meeting or adjourned meeting, the instrument appointing a proxy shall be deposited at the Registered Office not less than 48 hours before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote.

29.3 The chairman may in any event, at the chairman's discretion, declare that an instrument of proxy shall be deemed to have been duly deposited. An instrument of proxy that is not deposited in the manner permitted and which has not been declared to have been duly deposited by the chairman, shall be invalid.

29.4 The instrument appointing a proxy may be in any usual or common form and may be incorporated within any subscription agreement or other document signed by or on behalf of the Member. An instrument appointing a proxy may be expressed to be for a particular meeting or any adjournment thereof or generally until revoked. An instrument appointing a proxy shall be deemed to include the power to demand or join or concur in demanding a poll.

29.5 Votes given in accordance with the terms of an instrument of proxy shall be valid notwithstanding the previous death or insanity of the principal or revocation of the proxy or of the authority under which the proxy was executed, or the Transfer of the Share in respect of which the proxy is given unless notice in writing of such death, insanity, revocation or Transfer was received by the Company at the Registered Office before the commencement of the general meeting, or adjourned meeting at which it is sought to use the proxy.

30 Corporate Members

Any corporation or other non-natural person which is a Member of the Company may in accordance with its constitutional documents, or in the absence of such provision by resolution of its directors or other governing body, authorise such person as it thinks fit to act as its representative at any meeting of the Company or of any Class of Members, and the person so authorised shall be entitled to exercise the same powers on behalf of the corporation which such person represents as the corporation could exercise if it were an individual Member.

31 Shares Beneficially Owned by the Company

Shares of the Company that are beneficially owned by the Company shall not be voted, directly or indirectly, at any meeting and shall not be counted in determining the total number of outstanding Shares at any given time.

32 Directors

There shall be a board of Directors consisting of not less than one person (exclusive of alternate Directors) provided however that the Company may from time to time by Ordinary Resolution increase or reduce the limits in the number of Directors. The first Directors of the Company shall be determined in writing by, or appointed by a resolution of, the Subscriber.

33 Powers of Directors

33.1 Subject to the provisions of the Statute, the Memorandum and the Articles and to any directions given by Special Resolution, the business of the Company shall be managed by the Directors who may exercise all the powers of the Company. No alteration of the Memorandum or these Articles and no such direction shall invalidate any prior act of the Directors which would have been valid if that alteration had not been made or that direction had not been given. A duly convened meeting of Directors at which a quorum is present may exercise all powers exercisable by the Directors.

33.2 All cheques, promissory notes, drafts, bills of exchange and other negotiable instruments and all receipts for monies paid to the Company shall be signed, drawn, accepted, endorsed or otherwise executed as the case may be in such manner as the Directors shall determine by resolution.

33.3 The Directors may exercise all the powers of the Company to borrow money and to mortgage or charge its undertaking, property and uncalled capital or any part thereof and to issue debentures, debenture stock, mortgages, bonds and other such securities whether outright or as security for any debt, liability or obligation of the Company or of any third party. Notwithstanding the foregoing, the Directors shall not exercise the powers specified in this Article in breach of any limits or restrictions specified in the Offering Memorandum.

34 Appointment and Removal of Directors

34.1 The Company may, by Ordinary Resolution, appoint any person to be a Director and may, by Ordinary Resolution, remove any Director.

34.2 The Directors may appoint any person to be a Director, either to fill a vacancy or as an additional Director provided that the appointment does not cause the number of Directors to exceed any number fixed by or in accordance with these Articles as the maximum number of Directors.

35 Vacation of Office of Director

The office of a Director shall be vacated if:

(a) he becomes prohibited by law from being a Director;

(b) he becomes bankrupt or makes any arrangement or composition with his creditors generally;

(c) he dies, or is, in the opinion of all his co-Directors, incapable by reason in mental disorder of discharging his duties as a Director;

(d) he resigns the office of Director by notice to the Company;

(e) he has for more than six consecutive months been absent without permission of the Directors from meetings of Directors held during that period and his alternate Director (if any) has not during such period attended any such meetings in his stead, and the Directors resolve that his office be vacated; or

(f) he is removed from the office of Director by notice addressed to him at his last known address and signed by all his co-Directors.

36 Proceedings of Directors

36.1 The quorum for the transaction of the business of the Directors may be fixed by the Directors, and unless so fixed shall be two if there are two or more Directors, and shall be one if there is only one Director. A person who holds office as an alternate Director shall, if such person's appointor is not present, be counted in the quorum. A Director who also acts as an alternate Director shall, if such Director's appointor is not present, count twice towards the quorum.

36.2 Subject to the provisions of these Articles, the Directors may regulate their proceedings as they think fit. Questions arising at any meeting shall be decided by a majority of votes. In the case of an equality of votes, the chairman shall not have a second or casting vote. A Director who is also an alternate Director shall be entitled in the absence of such Director's appointor to a separate vote on behalf of such Director's appointor in addition to such Director's own vote.

36.3 A person may participate in a meeting of the Directors or any committee of Directors by conference telephone or other communications equipment by means of which all the persons participating in the meeting can communicate with each other at the same time. Participation by a person in a meeting in this manner is treated as presence in person at that meeting. Unless otherwise determined by the Directors, the meeting shall be deemed to be held at the place where the chairman is located at the start of the meeting.

36.4 A resolution in writing (in one or more counterparts) signed by all the Directors or all the members of a committee of Directors (an alternate Director being entitled to sign such a resolution on behalf of such alternate Director's appointor) shall be as valid and effectual as if it had been passed at a meeting of the Directors, or committee of Directors as the case may be, duly convened and held.

36.5 A Director or alternate Director may, or other officer of the Company at the direction of a Director or alternate Director may call a meeting of the Directors by at least two days' notice in writing to every Director and alternate Director which notice shall set forth the general nature of the business to be considered unless notice is waived by all the Directors (or their alternates) either at, before or after the meeting is held.

36.6 The continuing Directors may act notwithstanding any vacancy in their body, but if and so long as their number is reduced below the number fixed by or pursuant to these Articles as the necessary quorum of Directors the continuing Directors or Director may act for the purpose of increasing the number of Directors to that number, or of summoning a general meeting of the Company, but for no other purpose.

36.7 The Directors may elect a chairman of their board and determine the period for which the chairman is to hold office; but if no such chairman is elected, or if at any meeting the chairman is not present within five minutes after the time appointed for holding the same, the Directors present may choose one of their number to be chairman of the meeting.

36.8 All acts done by any meeting of the Directors or of a committee of Directors (including any person acting as an alternate Director) shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment of any Director or alternate Director, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and qualified to be a Director or alternate Director as the case may be.

36.9 A Director but not an alternate Director may be represented at any meetings of the board of Directors by a proxy appointed in writing by such Director. The proxy shall count towards the quorum and the vote of the proxy shall for all purposes be deemed to be that of the appointing Director.

37 Presumption of Assent

A Director who is present at a meeting of the board of Directors at which action on any Company matter is taken shall be presumed to have assented to the action taken unless the Director's dissent shall be entered in the minutes of the meeting or unless the Director shall file such Director's written dissent from such action with the person acting as the chairman or secretary of the meeting before the close or adjournment thereof or shall forward such dissent by personal delivery, courier or registered post to such person immediately after the close or adjournment of the meeting. Such right to dissent shall not apply to a Director who voted in favour of such action.

38 Directors' Interests

38.1 A Director may hold any other office or place of profit under the Company (other than the office of Auditor) in conjunction with such Director's office of Director for such period and on such terms as to remuneration and otherwise as the Directors may determine.

38.2 A Director may act alone or by such Director's firm in a professional capacity for the Company and the Director or such Director's firm shall be entitled to remuneration for professional services as if such Director were not a Director or alternate Director.

38.3 A Director or alternate Director of the Company may be or become a director or other officer of or otherwise interested in any company promoted by the Company or in which the Company may be interested as shareholder or otherwise, and no such Director or alternate Director shall be accountable to the Company for any remuneration or other benefits received by such Director or alternate Director as a director or officer of, or from such Director or alternate Director's interest in, such other company.

38.4 No person shall be disqualified from the office of Director or alternate Director or prevented by such office from contracting with the Company, either as vendor, purchaser or otherwise, nor shall any such contract or any contract or transaction entered into by or on behalf of the Company in which any Director or alternate Director shall be in any way interested be or be liable to be avoided, nor shall any Director or alternate Director so contracting or being so interested be liable to account to the Company for any profit realised by any such contract or transaction by reason of such Director holding office or of the fiduciary relationship thereby established. A Director (or such Director's alternate Director in such Director's absence) shall be at liberty to vote in respect of any contract or transaction in which such Director is interested provided that the nature of the interest of any Director or alternate Director in any such contract or transaction shall be disclosed by such Director at or prior to such Director's consideration and any vote thereon.

38.5 A general notice that a Director or alternate Director is a shareholder, director, officer or employee of any specified firm or company and is to be regarded as interested in any transaction with such firm or company shall be sufficient disclosure for the purposes of voting on a resolution in respect of a contract or transaction in which such Director has an interest, and after such general notice it shall not be necessary to give special notice relating to any particular transaction.

39 Minutes

The Directors shall cause minutes to be made in books kept for the purpose of recording all appointments of officers made by the Directors, all proceedings at meetings of the Company or the holders of any Class of Shares and of the Directors, and of committees of Directors including the names of the Directors or alternate Directors present at each meeting.

40 Delegation of Directors' Powers

40.1 The Directors may delegate any of their powers to any committee consisting of one or more Directors or such other persons as the Directors may designate. They may also delegate to any managing director or any Director holding any other executive office such of their powers as they consider desirable to be exercised by such managing director or any Director provided that an alternate Director may not act as managing director and the appointment of a managing director shall be revoked forthwith if such managing director ceases to be a Director. Any such appointment may be made subject to any conditions the Directors may impose, and either collaterally with or to

the exclusion of their own powers, and may be revoked or altered. Subject to any such conditions, the proceedings of a committee of Directors shall be governed by these Articles regulating the proceedings of Directors, so far as they are capable of applying.

40.2 The Directors may establish any committees, local boards or agencies or appoint any person to be a manager or agent for managing the affairs of the Company and may appoint any person to be a member of such committees or local boards. Any such appointment may be made either collaterally with or to the exclusion of the Directors' powers, shall be subject to any conditions the Directors may impose, and may be revoked or altered. Subject to any such conditions, the proceedings of any such committee, local board or agency shall be governed by these Articles regulating the proceedings of Directors, so far as they are capable of applying.

40.3 The Directors may by power of attorney or otherwise appoint any company, firm, person or body of persons to be the attorney or authorised signatory of the Company for such purpose and with such powers, authorities and discretions (not exceeding those vested in or exercisable by the Directors under these Articles) and for such period and subject to such conditions as they may think fit, and any such powers of attorney or other appointment may contain such provisions for the protection and convenience of persons dealing with any such attorneys or authorised signatories as the Directors may think fit and may also authorise any such attorney or authorised person to delegate all or any of the powers, authorities and discretions vested in such attorney or authorised person.

40.4 The Directors may appoint such officers as they consider necessary on such terms, at such remuneration (if any) and to perform such duties, and subject to such provisions as to disqualification and removal as the Directors may think fit. Unless otherwise specified in the terms of such officer's appointment an officer may be removed by resolution of the Directors or Members.

41 Alternate Directors

41.1 Any Director (other than an alternate Director) may by written notice to the Company appoint any other Director, or any other person willing to act, to be an alternate Director and by written notice to the Company may remove from office an alternate Director so appointed by the Director.

41.2 An alternate Director shall be entitled to receive notice of all meetings of Directors and of meetings of committees of Directors of which such alternate Director's appointor is a member, to attend and vote at every such meeting at which the Director appointing such alternate Director is not personally present, and generally to perform all the functions of such alternate Director's appointor as a Director in such Director's absence.

41.3 An alternate Director shall cease to be an alternate Director if such alternate Director's appointor ceases to be a Director.

41.4 Any appointment or removal of an alternate Director shall be by notice to the Company signed by the Director making or revoking the appointment or in any other manner approved by the Directors.

41.5 Subject to the provisions of the Articles, an alternate Director shall be deemed for all purposes to be a Director and shall alone be responsible for such alternate Director's own acts and defaults and shall not be deemed to be the agent of the Director appointing such alternate Director.

42 No Minimum Shareholding for Directors

The Company in general meeting may fix a minimum shareholding required to be held by a Director, but unless and until such a shareholding qualification is fixed a Director shall not be required to hold Shares.

43 Remuneration of Directors

43.1 The remuneration to be paid to the Directors, if any, shall be such remuneration as the Directors shall determine. The Directors shall also be entitled to be paid all travelling, hotel and other expenses properly incurred by them in connection with their attendance at meetings of Directors or committees of Directors, or general meetings of the Company, or separate meetings of the holders of any Class of Shares or debentures of the Company, or otherwise in connection with the business of the Company, or to receive a fixed allowance in respect thereof as may be determined by the Directors, or a combination partly of one such method and partly the other.

43.2 The Directors may by resolution approve additional remuneration to any Director for any services other than such Director's ordinary routine work as a Director. Any fees paid to a Director who is also counsel to the Company, or otherwise serves it in a professional capacity, shall be in addition to such Director's remuneration as a Director.

44 Seal

The Company may, if the Directors so determine, have a Seal, which shall only be used by the authority of the Directors or of a committee of the Directors authorised by the Directors. Every instrument to which the Seal has been affixed shall be signed by at least one person who shall be either a Director or some officer or other person authorised by the Directors for the purpose.

45 Dividends, Distributions and Reserves

45.1 Subject to the Statute, these Articles, and the special rights attaching to Participating Shares of any Class and/or Series, the Directors may, in their absolute discretion, declare dividends and distributions on Participating Shares of any Class and/or Series in issue and authorise payment of the dividends or distributions out of the relevant Separate Account in respect of such Participating Shares. No dividend or distribution shall be paid except out of the realised or unrealised profits of the Company, or out of the share premium account attributable to Participating Shares of the Class and/or Series in respect of which the dividend or distribution is proposed to be paid, or as otherwise permitted by law.

45.2 Except as otherwise provided by the rights attached to Participating Shares, or as otherwise determined by the Directors, all dividends and distributions in respect of Participating Shares of a

particular Class and/or Series shall be declared and paid according to the Net Asset Value of the Participating Shares of the Class and/or Series that a Member holds. If any Participating Share is issued on terms providing that it shall rank for dividend or distribution as from a particular date, that Participating Share shall rank for dividend or distribution accordingly.

45.3 The Directors may deduct and withhold from any dividend or distribution otherwise payable to any Member all sums of money (if any) then payable by it to the Company on account of calls or otherwise or any monies which the Company is obliged by law to pay to any taxing or other authority.

45.4 Under no circumstances may the assets (or the income derived from such assets) attributed to a Separate Account in respect of any Class and/or Series be used to pay a dividend in respect of a Separate Account that is attributed to any other Class and/or Series.

45.5 The Directors may declare that any dividend or distribution be paid wholly or partly by the distribution of specific assets and in particular of shares, debentures or securities of any other company or in any one or more of such ways and, where any difficulty arises in regard to such distribution, the Directors may settle the same as they think expedient and in particular may issue fractional Shares and fix the value for distribution of such specific assets or any part thereof and may determine that cash payments shall be made to any Members upon the basis of the value so fixed in order to adjust the rights of all Members and may vest any such specific assets in trustees as may seem expedient to the Directors.

45.6 Any dividend, distribution, interest or other monies payable in cash in respect of Participating Shares may be paid by wire transfer to the holder or by cheque or warrant sent through the post directed to the registered address of the holder or, in the case of joint holders, to the registered address of the holder who is first named on the Register of Members or to such person and to such address as such holder or joint holders may in writing direct. Every such cheque or warrant shall (unless the Directors in their sole discretion otherwise determine) be made payable to the order of the person to whom it is sent. Any one of two or more joint holders may give effectual receipts for any dividends, bonuses, or other monies payable in respect of the Participating Share held by them as joint holders.

45.7 Any dividend or distribution which cannot be paid to a Member and/or which remains unclaimed after six months from the date of declaration of such dividend or distribution may, in the discretion of the Directors, be paid into a separate account in the Company's name, provided that the Company shall not be constituted as a trustee in respect of that account and the dividend or distribution shall remain as a debt due to the Member. Any dividend or distribution which remains unclaimed after a period of six years from the date of declaration of such dividend or distribution shall be forfeited and shall revert to the Company.

45.8 No dividend or distribution shall bear interest against the Company.

46 Capitalisation

The Directors may capitalise any sum standing to the credit of any of the Company's reserve accounts (including share premium account and capital redemption reserve) or any sum standing to the credit of profit and loss account or otherwise available for distribution and to appropriate such sum to Members of any Class and/or Series in the proportions in which such sum would have been divisible amongst them had the same been a distribution of profits by way of dividend and to apply such sum on their behalf in paying up in full unissued Participating Shares for allotment and distribution credited as fully paid-up to and amongst them in the proportion aforesaid. In such event the Directors shall do all acts and things required to give effect to such capitalisation, with full power to the Directors to make such provisions as they think fit for the case of Participating Shares becoming distributable in fractions (including provisions whereby the benefit of fractional entitlements accrue to the Company rather than to the Members concerned). The Directors may authorise any person to enter into an agreement with the Company, on behalf of all of the Members interested, providing for such capitalisation and matters incidental thereto and any agreement made under such authority shall be effective and binding on all concerned.

47 Books of Account

47.1 The Directors shall cause proper books of account (including, where applicable, material underlying documentation including contracts and invoices) to be kept with respect to all sums of money received and expended by the Company and the matters in respect of which the receipt or expenditure takes place, all sales and purchases of goods by the Company and the assets and liabilities of the Company. Such books of account must be retained for a minimum period of five years from the date on which they are prepared. Proper books shall not be deemed to be kept if there are not kept such books of account as are necessary to give a true and fair view of the state of the Company's affairs and to explain its transactions.

47.2 The Directors shall from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the accounts and books of the Company or any of them shall be open to the inspection of Members not being Directors and no Member (not being a Director) shall have any right of inspecting any account or book or document of the Company except as conferred by Statute, or authorised by the Directors or by the Company in general meeting.

47.3 The Directors may from time to time cause to be prepared and to be laid before the Company in general meeting profit and loss accounts, balance sheets, group accounts (if any) and such other reports and accounts as may be required by law.

48 Audit

48.1 The Directors shall appoint an Auditor of the Company who shall hold office on such terms as the Directors determine.

48.2 Every Auditor of the Company shall have a right of access at all times to the books and accounts and vouchers of the Company and shall be entitled to require from the Directors and officers of the Company such information and explanation as may be necessary for the performance of the duties of the Auditor.

48.3 Any Auditors of the Company shall, if so required by the Directors, make a report on the accounts of the Company during their tenure of office at the next annual general meeting following their appointment in the case of a company which is registered with the Registrar of Companies as an ordinary company, and at the next extraordinary general meeting following their appointment in the case of a company which is registered with the Registrar of Companies as an exempted company, and at any other time during their term of office, upon request of the Directors or any general meeting of the Members.

49 Notices

49.1 Notices shall be in writing and may be given by the Company to any Member either personally or by sending it by courier, post, cable, telex, fax or e-mail to the Member or to the address as shown in the Register of Members (or where the notice is given by e-mail by sending it to the e-mail address provided by such Member). Any notice, if posted from one country to another, is to be sent airmail.

49.2 Where a notice is sent by courier, service of the notice shall be deemed to be effected by delivery of the notice to a courier company, and shall be deemed to have been received on the third day (not including Saturdays or Sundays or public holidays) following the day on which the notice was delivered to the courier. Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, pre paying and posting a letter containing the notice, and shall be deemed to have been received on the fifth day (not including Saturdays or Sundays or public holidays in the Cayman Islands) following the day on which the notice was posted. Where a notice is sent by cable, telex or fax, service of the notice shall be deemed to be effected by properly addressing and sending such notice and shall be deemed to have been received on the same day that it was transmitted. Where a notice is given by e-mail service shall be deemed to be effected by transmitting the e-mail to the e-mail address provided by the intended recipient and shall be deemed to have been received on the same day that it was sent, and it shall not be necessary for the receipt of the e-mail to be acknowledged by the recipient.

49.3 A notice may be given by the Company to the person or persons which the Company has been advised are entitled to a Share or Shares in consequence of the death or bankruptcy of a Member in the same manner as other notices which are required to be given under these Articles and shall be addressed to them by name, or by the title of representatives of the deceased, or trustee of the bankrupt, or by any like description at the address supplied for that purpose by the persons claiming to be so entitled, or at the option of the Company by giving the notice in any manner in which the same might have been given if the death or bankruptcy had not occurred.

49.4 Notice of every general meeting shall be given in the manner authorised by these Articles to every person shown as holding Shares carrying an entitlement to receive such notice in the Register of Members on the record date for such meeting except that in the case of joint holders the notice shall be sufficient if given to the joint holder first named in the Register of Members and every person upon whom the ownership of a Share devolves by reason of such person being a legal personal representative or a trustee in bankruptcy of a Member where the Member but for such Member's death or bankruptcy would be entitled to receive notice of the meeting, and no other person shall be entitled to receive notices of general meetings.

50 Winding Up

(a) If the Company shall be wound up the liquidator shall apply the assets of the Company in such manner and order as he thinks fit in satisfaction of creditors' claims.

(b) The assets available for distribution to the Members shall be distributed in the following manner and priority:

(i) first, in the payment to the holders of the Participating Shares of each Class of a sum as nearly as possible equal to the nominal amount of the Participating Shares of that Class held by such holders respectively; and

(ii) second, in the payment to the holders of Management Shares of an amount equal to the nominal amount of such Management Shares; and

(iii) third, in the payment to the holders of each Class of Participating Shares of any remaining balance then attributable to the relevant Record, such payment being made in proportion to the number of Participating Shares of that Class held (adjusted to give effect to any equalisation arising by reason of the winding up pursuant to any equalisation policy adopted by the Directors pursuant to Article 29).

If the Company is wound up (whether the liquidation is voluntary, or under supervision by the Court) the liquidator may, with the sanction of a Special Resolution and any other sanction required by the Law, divide among the Members in specie the whole or any part of the assets of the Company and whether or not the assets shall consist of property of a single kind, and may for such purposes set such value as he deemed fair upon any one or more class or classes of property, and may determine how such division shall be carried out as between the Members or different classes of Members. The liquidator may, with the like sanction, vest the whole or any part of the assets in trustees upon such trusts for the benefit of Members as the liquidator, with the like authority, shall think fit, and the liquidation of the Company may be closed and the Company dissolved, but so that no Member shall be compelled to accept any shares in respect of which there is a liability.

51 Indemnity and Insurance

51.1 Every Director (including for the purposes of this Article, any alternate Director appointed pursuant to the provisions of these Articles), managing Director, agent, Secretary, or other officer for the time being and from time to time of the Company and the personal representatives of the same shall be indemnified and secured harmless out of the assets and funds of the Company against all actions, proceedings, costs, charges, expenses, losses, damages or liabilities incurred or sustained by him otherwise than by reason of his own Gross Negligence or wilful default in or about the conduct of the Company's business or affairs or in the execution or discharge of his duties, powers, authorities or discretions, including without prejudice to the generality of the foregoing, any costs, expenses, losses or liabilities incurred by him in defending (whether successfully or otherwise) any civil proceedings concerning the Company or its affairs in any court whether in the Islands or elsewhere.

51.2 The Administrator, the Manager and any other agent which the Company has appointed shall be entitled to such indemnity from the Company under such terms and subject to such conditions and exceptions and with such entitlement to have recourse to the assets of the Company with a view to meeting and discharging the cost thereof as shall be specified in the relevant contract or instrument appointing such agent.

51.3 No such Director, alternate Director, managing Director, agent, Secretary, or other officer of the Company and the personal representatives of the same shall be liable (i) for the acts, receipts, neglects, defaults or omissions of any other such Director or officer or agent of the Company, (ii) by reason of his having joined in any receipt for money not received by him personally or in any other act to which he was not a direct party for conformity, (iii) for any loss on account of defect of title to any property of the Company, (iv) on account of the insufficiency of any security in or upon which any money of the Company shall be invested, (v) for any loss incurred through any bank, broker or other agent or any other party with whom any of the Company's property may be deposited or (vi) for any loss, damage or misfortune whatsoever which may happen in or arise from the execution or discharge of the duties, powers, authorities or discretions of his office or in relation thereto unless the same shall happen through his own Gross Negligence or wilful default.

51.4 The Directors may exercise all the powers of the Company to purchase and maintain insurance for the benefit of a person who is or was a Director, alternate Director, Secretary or auditor of the Company indemnifying him against any liability which may lawfully be insured against by the Company:

52 Disclosure

If required to do so under the laws of any jurisdiction to which the Company, the Investment Manager, the Administrator or any other service provider is subject, or in compliance with the rules of any stock exchange upon which the Company's Shares are listed, or to ensure the compliance by any person with any anti-money laundering law in any relevant jurisdiction, any Director, Officer, the Investment Manager, the Administrator or Auditor of the Company shall be entitled to release or disclose any information in its possession regarding the affairs of the Company or a Member

including, without limitation, any information contained in the Register of Members or subscription documentation of the Company relating to any Member.

53 Financial Year

Unless the Directors otherwise prescribe, the financial year of the Company shall end on 31st December in each year and, following the year of incorporation, shall begin on 1st January in each year.

54 Transfer by way of Continuation

The Company shall, subject to the provisions of the Statute and with the approval of a Special Resolution, have the power to register by way of continuation as a body corporate under the laws of any jurisdiction outside the Cayman Islands and to be deregistered in the Cayman Islands.

55 Mergers and Consolidations

The Company shall have the power to merge or consolidate with one or more other constituent companies (as defined in the Statute) upon such terms as the Directors may determine and (to the extent required by the Statute) with the approval of a Special Resolution.

AMENDMENT
TO
AMENDED AND RESTATED EXEMPTED LIMITED PARTNERSHIP AGREEMENT
OF
HIGHLAND ARGENTINA REGIONAL OPPORTUNITY MASTER FUND, L.P.

THIS AMENDMENT (this "***Amendment***") to the Amended and Restated Exempted Limited Partnership Agreement (the "***Partnership Agreement***") dated November 1, 2017 (the "***Effective Date***") of Highland Argentina Opportunity Master Fund, L.P., a Cayman Islands exempted limited partnership (the "***Partnership***"), is entered into to be effective as of the Effective Date by Highland Argentina Opportunity Fund GP, LLC, as the General Partner, and as the true and lawful agent and attorney-in-fact on behalf of each of the Limited Partners. All capitalized terms used but not defined herein shall have the meanings ascribed to them in the Partnership Agreement.

WHEREAS, due to a scrivener's error, the definition of "***Calculation Period***" under subsection (a) of Article I of the Partnership Agreement incorrectly provided that the Calculation Period with respect to Capital Sub-Account of a Feeder Fund, after the initial Calculation Period, shall commence as of the day following the last day of the preceding Calculation Period and end as of the close of business on the last day of a calendar year;

WHEREAS, at all times the Calculation Period was intended to end as of the close of business on the last day of a fiscal quarter;

WHEREAS, pursuant to the authority granted under Sections 8.1 and 8.2 of the Partnership Agreement, the General Partner, on behalf of itself and on behalf of each of the Limited Partners, now desires to correct the definition of "***Calculation Period***" under subsection (a) of Article I of the Partnership Agreement to provide that the Calculation Period shall end as of the close of business on the last day of a fiscal quarter.

NOW, THEREFORE, in consideration of the premises and the agreements contained herein and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the General Partner, on behalf of itself and on behalf of each of the Limited Partners, hereby amends the Partnership Agreement as follows:

1. The definition of "***Calculation Period***" in the Partnership Agreements is hereby amended and replaced in its entirety to read as follows:

> "***Calculation Period***" means, with respect to each Capital Sub-Account of a Feeder Fund, the period commencing as of the date of the establishment of the Capital Sub-Account (in the case of the initial Calculation Period) and thereafter each period commencing as of the day following the last day of the preceding Calculation Period with respect to such Capital Sub-Account, and ending as of the close of business on the first to occur of the following:
>
> (a) the last day of a fiscal quarter;

(b) the withdrawal of all or a portion of the Capital Sub-Account, including as a result of a distribution (but only with respect to the amount withdrawn in the event of a partial withdrawal);

(c) the permitted Transfer of all or any portion of the Capital Sub-Account (but only with respect to the amount withdrawn in the event of a partial permitted Transfer); or

(d) the final distribution with respect to the Capital Sub-Account following the dissolution of the Partnership.

If a Calculation Period ends solely due to a partial withdrawal or a partial Transfer from the Capital Sub-Account, the Calculation Period is deemed to have ended only with respect to that particular Capital Sub-Account and only with respect to the portion of such Capital Sub-Account withdrawn or transferred. Thus, the Performance Allocation for such withdrawn or transferred amount shall be determined by multiplying the Performance Allocation attributable to the entire Capital Sub-Account at such time by a fraction (i) the numerator of which is equal to the amount so withdrawn or transferred from such Capital Sub-Account and (ii) the denominator of which is equal to the balance of such Capital Sub-Account immediately before giving effect to such withdrawal or Transfer."

2. This Amendment shall be governed by and construed in accordance with the laws of the Cayman Islands, without regard to the conflict of laws rule thereof which would result in the application of the laws of a different jurisdiction.

3. This Amendment may be executed in multiple counterparts, each of which, when assembled to include an original or faxed signature for each party contemplated to sign this Amendment, will constitute a complete and fully executed agreement. All such fully executed original or faxed counterparts will collectively constitute a single agreement.

4. Except as modified hereby, the Partnership Agreement shall remain in full force and effect and the Amendment shall be binding upon the parties and their respective successors and assigns. If any inconsistency exists or arises between the terms of the Amendment and the terms of the Partnership Agreements, the Amendment shall prevail.

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed to be effective as of the Effective Date.

GENERAL PARTNER:

Highland Argentina Regional Opportunity Fund GP, LLC

By: Highland Capital Management Latin America, L.P., its sole member

By: Highland Latin America GP, Ltd., its general partner

By: _____

Name: Gustavo Prilick

Title: Director

HIGHLAND ARGENTINA REGIONAL OPPORTUNITY MASTER FUND, L.P.

A Cayman Islands Exempted Limited Partnership

Amended and Restated Exempted Limited Partnership Agreement

November 1, 2017

NOTICE

NEITHER HIGHLAND ARGENTINA REGIONAL OPPORTUNITY MASTER FUND, L.P. NOR THE LIMITED PARTNER INTERESTS THEREIN HAVE BEEN OR WILL BE REGISTERED UNDER THE U.S. SECURITIES ACT OF 1933, AS AMENDED (THE "***SECURITIES ACT***"), THE U.S. INVESTMENT COMPANY ACT OF 1940, AS AMENDED, THE SECURITIES LAWS OF ANY OF THE STATES OF THE UNITED STATES OR THE SECURITIES LAWS OF ANY NON-U.S. JURISDICTION. THE OFFERING OF SUCH LIMITED PARTNER INTERESTS IS BEING MADE IN RELIANCE UPON AN EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT FOR OFFERS AND SALES OF SECURITIES WHICH DO NOT INVOLVE ANY PUBLIC OFFERING, AND ANALOGOUS EXEMPTIONS UNDER STATE SECURITIES LAWS.

THE DELIVERY OF THIS AMENDED AND RESTATED EXEMPTED LIMITED PARTNERSHIP AGREEMENT SHALL NOT CONSTITUTE AN OFFER TO SELL OR THE SOLICITATION OF AN OFFER TO BUY NOR SHALL THERE BE ANY OFFER, SOLICITATION OR SALE OF LIMITED PARTNER INTERESTS IN HIGHLAND ARGENTINA REGIONAL OPPORTUNITY MASTER FUND, L.P. IN ANY JURISDICTION IN WHICH SUCH OFFER, SOLICITATION OR SALE IS NOT AUTHORIZED OR TO ANY PERSON TO WHOM IT IS UNLAWFUL TO MAKE SUCH OFFER, SOLICITATION OR SALE.

THE LIMITED PARTNER INTERESTS ARE SUBJECT TO RESTRICTIONS ON TRANSFERABILITY AND RESALE, MAY NOT BE TRANSFERRED OR RESOLD EXCEPT AS PERMITTED UNDER THE SECURITIES ACT AND APPLICABLE STATE OR NON-U.S. SECURITIES LAWS PURSUANT TO REGISTRATION OR EXEMPTION THEREFROM AND MAY NOT BE SOLD OR OTHERWISE TRANSFERRED EXCEPT IN ACCORDANCE WITH THE REQUIREMENTS AND CONDITIONS SET FORTH IN THIS AMENDED AND RESTATED EXEMPTED LIMITED PARTNERSHIP AGREEMENT.

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THIS AMENDED AND RESTATED EXEMPTED LIMITED PARTNERSHIP AGREEMENT of Highland Argentina Regional Opportunity Master Fund, L.P. is made on November 1, 2017 by and among Highland Argentina Regional Opportunity Fund GP, LLC, as General Partner, Gustavo Prilick, as withdrawing Original Limited Partner, those Persons who are listed on Exhibit A as Limited Partners and any other Persons who are admitted, from time to time, as limited partners of the Partnership, in accordance with this Agreement. This Agreement amends and restates in its entirety the Initial Exempted Limited Partnership Agreement of the Partnership, dated September 21, 2017 (the "***Prior Agreement***").

Article I DEFINITIONS

For purposes of this Agreement:

"***Act***" means the Exempted Limited Partnership Law, 2014 of the Cayman Islands, as amended, supplemented or replaced from time to time.

"***Administrator***" means such Person as the General Partner may designate from time to time, in its sole discretion, to serve as administrator to the Partnership.

"***Advisers Act***" means the U.S. Investment Advisers Act of 1940, as amended, and the rules promulgated thereunder.

"***AEOI***" means:

(i) Sections 1471 to 1474 of the Code and any associated legislation, regulations or guidance, and any other similar legislation, regulations or guidance enacted in any other jurisdiction which seeks to implement similar financial account information reporting and/or withholding tax regimes;

(ii) the OECD Standard for Automatic Exchange of Financial Account Information in Tax Matters – the Common Reporting Standard and any associated guidance;

(iii) any intergovernmental agreement, treaty, regulation, guidance, standard or other agreement between the Cayman Islands (or any Cayman Islands government body) and any other jurisdiction (including any government bodies in such jurisdiction), entered into in order to comply with, facilitate, supplement or implement the legislation, regulations, guidance or standards described in sub-paragraphs (a) and (b); and

(iv) any legislation, regulations or guidance in the Cayman Islands that give effect to the matters outlined in the preceding sub-paragraphs.

"***Affiliate***" means, with respect to any Person, a Person which controls, is controlled by, or is under common control with, such Person. For these purposes, "control" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

"***Affiliated Investor***" means the Investment Manager, the General Partner and their respective Affiliates, principals, employees, partners, agents, the respective family members of such personnel and trusts and other entities established primarily for their benefit or for charitable purposes.

"***Agreement***" means this Amended and Restated Exempted Limited Partnership Agreement of the Partnership, as amended from time to time.

"***Automatic Dissolution Date***" has the meaning set forth in Section 6.1(a)(ii).

"***BBA***" means Subchapter C of Chapter 63 of the Code (Sections 6221 through 6241 of the Code), as enacted by the Bipartisan Budget Act of 2015, Pub. L. No. 114-74, as amended from time to time, and the Regulations thereunder (whether proposed, temporary or final), including any subsequent amendments, successor provisions or other guidance thereunder, and any equivalent provisions for state, local or non-U.S. tax purposes.

"***BBA Effective Period***" means any taxable year commencing after 2017, taking into account any extensions of the effective date set forth in Bipartisan Budget Act Section 1101(g)(1), as applicable, or in any other BBA guidance.

"***Business Day***" means any day or days on which banks in the Cayman Islands, Buenos Aires and New York City are authorized to open for business or such other days as the General Partner may determine generally, or in any particular case.

"***Calculation Period***" means, with respect to each Capital Sub-Account of a Feeder Fund, the period commencing as of the date of the establishment of the Capital Sub-Account (in the case of the initial Calculation Period) and thereafter each period commencing as of the day following the last day of the preceding Calculation Period with respect to such Capital Sub-Account, and ending as of the close of business on the first to occur of the following:

(a) the last day of a calendar year;

(b) the withdrawal of all or a portion of the Capital Sub-Account, including as a result of a distribution (but only with respect to the amount withdrawn in the event of a partial withdrawal);

(c) the permitted Transfer of all or any portion of the Capital Sub-Account (but only with respect to the amount withdrawn in the event of a partial permitted Transfer); or

(d) the final distribution with respect to the Capital Sub-Account following the dissolution of the Partnership.

If a Calculation Period ends solely due to a partial withdrawal or a partial Transfer from the Capital Sub-Account, the Calculation Period is deemed to have ended only with respect to that particular Capital Sub-Account and only with respect to the portion of such Capital Sub-Account withdrawn or transferred. Thus, the Performance Allocation for such withdrawn or transferred amount shall be determined by multiplying the Performance Allocation attributable to the entire Capital Sub-Account at such time by a fraction (i) the numerator of which is equal to the amount so withdrawn or transferred from such Capital Sub-Account and (ii) the denominator of which is equal to the balance of such Capital Sub-Account immediately before giving effect to such withdrawal or Transfer.

"***Capital Account***" means, with respect to each Partner, the capital account (including any related Capital Sub-Accounts) established and maintained on behalf of such Partner as described in Section 3.3.

"***Capital Sub-Account***" means, with respect to each Feeder Fund, the separate memorandum account to be recorded in the books and records of the Partnership as a sub-account within such Feeder Fund's Capital Account that corresponds to each series or sub-series of interests held by each Feeder Fund Investor, including Series A Capital Sub-Accounts, Series B Capital Sub-Accounts and Series C Capital Sub-Accounts. Each Capital Sub-Account with respect to the Capital Account of the Domestic Fund shall correspond to the beneficial interest of each partner in the Domestic Fund; and each Capital Sub-Account with respect to the Capital Account of the Offshore Fund shall correspond to each Sub-Series of shares of the Offshore Fund. The Partnership will also maintain Capital Sub-Accounts to reflect varied ownership interests in a Feeder Fund. The aggregate of the balances of all Capital Sub-Accounts with respect to each Feeder Fund shall equal the balance of each such Feeder Fund's Capital Account. Except as the context otherwise requires, the term Capital Account includes any Capital Sub-Account of a Feeder Fund.

"***Carryforward Account***" means a memorandum account to be recorded in the books and records of the Partnership with respect to each Capital Sub-Account of a Feeder Fund. The Carryforward Account with respect to each Capital Sub-Account of any Feeder Fund will have an initial balance of zero and will be adjusted as follows:

(a) As of the first day after the close of each Calculation Period for such Capital Sub-Account, the balance of the Carryforward Account is (i) increased by the amount, if any, of the Negative Performance Change with respect to such Capital Sub-Account for such Calculation Period and (ii) reduced (but not below zero) by the amount, if any, of the Positive Performance Change with respect to such Capital Sub-Account for such Calculation Period.

(b) As of the close of the Calculation Period, any positive balance of the Carryforward Account is further adjusted if such Capital Sub-Account has been reduced during such Calculation Period as a result of a distribution or withdrawal, by reducing such positive balance (but not below zero) by an amount determined by multiplying (i) such positive balance by (ii) a fraction, of which (A) the numerator is equal to the amount so distributed

or withdrawn, and (B) the denominator is equal to the balance of such Capital Sub-Account immediately before giving effect to such distribution or withdrawal.

"***Carrying Value***" means, with respect to any Investment, except as set forth herein, the asset's adjusted tax basis for United States federal income tax purposes, except that the Carrying Values of all Investments may, in the discretion of the General Partner, be adjusted to equal their respective fair market values (as determined by the General Partner), in accordance with the rules set forth in Regulation Section 1.704-1(b)(2)(iv)(f). In the case of any Investment that has a Carrying Value that differs from its adjusted tax basis, Carrying Value shall be adjusted by the amount of depreciation, depletion and amortization calculated for purposes of the definition of Net Profit and Net Loss rather than the amount of depreciation, depletion and amortization determined for United States federal income tax purposes.

"***Code***" means the U.S. Internal Revenue Code of 1986, as amended, and as hereafter amended, or any successor law.

"***Commencement Date***" means the first date on or as of which a Limited Partner, other than the Original Limited Partner, makes a capital contribution to the Partnership.

"***Domestic Fund***" means Highland Argentina Regional Opportunity Fund, L.P., a Delaware limited partnership that invests in the Partnership as a Limited Partner.

"***Domestic Fund LPA***" means the Amended and Restated Limited Partnership Agreement of the Domestic Fund, dated November 1, 2017, as may be amended from time to time.

*"**ERISA***" means the Employee Retirement Income Security Act of 1974, as the same may be amended from time to time.

"***ERISA Partner***" means a Limited Partner which is (a) an employee benefit plan subject to the fiduciary provisions of ERISA, (b) a "plan" subject to Section 4975 of the Code, (c) an entity whose underlying assets include "plan assets" for purposes of ERISA by reason of a Plan's investment in the entity, or (d) an entity that otherwise constitutes a "benefit plan investor" within the meaning of Section 3(42) of ERISA or any regulation promulgated thereunder.

"***FATCA***" means legislation known as the U.S. Foreign Account Tax Compliance Act, Sections 1471 through 1474 of the Code and any Regulations thereunder, including any subsequent amendments, and administrative guidance promulgated thereunder (or which may be promulgated in the future), any applicable intergovernmental agreements and related statutes, regulations or rules and other guidance thereunder, any governmental authority pursuant to the foregoing authorities, and any agreement entered into with respect thereto.

"***Feeder Fund Investor***" means an investor in one of the Feeder Funds.

"***Feeder Funds***" means the Domestic Fund, the Offshore Fund and any other investment vehicle(s) sponsored by the Investment Manager or one of its Affiliates that invests in parallel with the Domestic Fund and the Offshore Fund in the Partnership.

"***Fiscal Period***" means each period that starts at the opening of business on the Commencement Date (in the case of the initial Fiscal Period) and thereafter on the day immediately following the last day of the preceding Fiscal Period, and that ends at the close of business on the earliest of the following dates:

(a) the last day of a calendar month;

(b) any date as of which any withdrawal or distribution of capital is made with respect to any Capital Account or as of which this Agreement provides for any amount to be credited to or debited against a Capital Account, other than a withdrawal or distribution by or to, or an allocation to, all Capital Accounts that does not result in any change of the Partnership Percentage relating to any Capital Account;

(c) the date which immediately precedes any day as of which a capital contribution is accepted by the General Partner from any new or existing Partner; or

(d) any other date which the General Partner selects.

"***Fiscal Year***" means the period commencing on the Commencement Date and ending on December 31 of the same year, and thereafter each period commencing on January 1 of each year and ending on December 31 of such year, unless the General Partner shall elect another fiscal year; *provided* that any such other fiscal year shall be permissible for U.S. federal income tax purposes. In the case of the Fiscal Year in which the Partnership is terminated in accordance with Article VI, "***Fiscal Year***" means the period commencing on January 1 of that year and ending on the date on which the Partnership is terminated.

"***GAAP***" means generally accepted accounting principles in the United States.

"***General Partner***" means Highland Argentina Regional Opportunity Fund GP, LLC, a Delaware limited liability company registered as a foreign company in the Cayman Islands, any successor thereto, and any Person hereafter admitted as an additional general partner, in its capacity as general partner of the Partnership.

"***Gross Negligence***" means "gross negligence" as such term is defined and interpreted in accordance with the laws of the State of Delaware, United States.

"***IFRS***" means the International Financial Reporting Standards issued by the International Accounting Standards Board.

"***Indemnified Person***" means each of the General Partner, the Investment Manager, each member, shareholder, partner, manager and director of, and any person who controls, the General Partner or the Investment Manager, each of the respective Affiliates of the foregoing and each of their respective executors, heirs, assigns, successors and other legal representatives.

"***Interest***" means the entire ownership interest of a Partner in the Partnership at the relevant time, including the right of such Partner to any and all benefits to which a Partner may

be entitled as provided in this Agreement, together with the obligations of such Partner to comply with all the terms and provisions of this Agreement.

"***Investment Management Agreement***" means the investment management agreement by and among the Investment Manager, the General Partner, the Domestic Fund, the Offshore Fund and the Partnership, as amended from time to time.

"***Investment Manager***" means Highland Capital Management Latin America, L.P., a Cayman Islands exempted limited partnership, or any successor thereto, or any Person thereafter appointed as an investment manager of the Partnership in accordance with the Investment Management Agreement.

"***Investments***" means investments in securities or other financial or intangible investment instruments, contracts or products made by the Partnership, as more fully described in the Feeder Funds' offering memoranda (as may be amended, updated or supplemented from time to time).

"***Limited Partner***" means each of the Persons set forth on Exhibit A, other than the General Partner, and any Person who hereafter becomes a Limited Partner pursuant to the terms of this Agreement, in each case in such Person's capacity as a limited partner of the Partnership. The General Partner may subdivide the Interests into separate series and establish new series pursuant to Section 2.10; *provided, that*, except as expressly set forth in this Agreement, for all purposes of the Act, the Limited Partners constitute a single class or group of limited partners.

"***Liquidator***" has the meaning set forth in Section 6.1(b).

"***Majority of Limited Partners***" means Limited Partners whose Partnership Percentages represent more than 50% of the aggregate Partnership Percentages of all Limited Partners or the series of Limited Partners, as applicable.

"***Management Fee***" means an amount calculated at an annual rate of (a) 1.75% of each Series A Capital Sub-Account, (b) 1.25% of each Series B Capital Sub-Account, and (c) 1.00% of each Series C Capital Sub-Account. The Management Fee accrues from the date a Capital Sub-Account is created, is calculated monthly based on the Capital Sub-Account balance on the last day of each calendar month (before giving effect to any withdrawals from such Capital Sub-Account during such calendar month) and is payable quarterly in arrears on the last day of each calendar quarter. The General Partner or the Investment Manager may reduce, waive or calculate differently the Management Fee with respect to any Limited Partner and any Capital Sub-Account.

"***Negative Basis***" means, with respect to any Partner and as of any time of calculation, the excess of such Partner's "adjusted tax basis" in its Interest for U.S. federal income tax purposes at such time (determined without regard to any adjustments made to such adjusted tax basis by reason of any Transfer of such Interest) over the amount that such Partner is entitled to receive upon withdrawal from or the winding up and subsequent dissolution of the Partnership.

"***Negative Basis Partner***" means any Partner who withdraws all or a portion of its Interest from the Partnership and who has a Negative Basis as of the effective date of

withdrawal, but such Partner will cease to be a Negative Basis Partner at such time as it has received allocations pursuant to Section 3.9(d) equal to such Partner's Negative Basis as of the effective date of withdrawal and without regard to such Partner's share of the liabilities of the Partnership under Section 752 of the Code.

"***Net Assets***" means the total value, as determined by the Administrator in accordance with Section 7.3, of all Investments and other assets of the Partnership (including net unrealized appreciation or depreciation of the assets and accrued interest and dividends receivable net of any withholding taxes), less an amount equal to all accrued debts, liabilities and obligations of the Partnership (including any reserves for contingencies accrued pursuant to Section 3.6). Except as otherwise expressly provided herein, Net Assets as of the first day of any Fiscal Period shall be determined on the basis of the valuation of assets conducted as of the close of the immediately preceding Fiscal Period but after giving effect to any capital contributions made by any Partner subsequent to the last day of such immediately preceding Fiscal Period and after giving effect to Management Fee charges and Net Assets as of the last day of any Fiscal Period shall be determined before giving effect to any of the following amounts payable by the Partnership generally or in respect of any Investment which are effective as of the date on which such determination is made:

(a) any Performance Allocation as of the date on which such determination is made;

(b) any withdrawals or distributions payable to any Partner which are effective as of the date on which such determination is made; and

(c) withholding or other taxes (including any amounts payable under any BBA provision), expenses of processing withdrawals and other items payable and any increases or decreases in any reserves, holdbacks or other amounts recorded pursuant to Section 3.6 during the Fiscal Period ending as of the date on which such determination is made, to the extent the General Partner determines that, pursuant to any provisions of this Agreement, such items are not to be charged ratably among the Capital Accounts of all Partners on the basis of their respective Partnership Percentages as of the commencement of the Fiscal Period.

"***Net Profit or Net Loss***" means, for each Fiscal Year or other period, the taxable income or loss of the Partnership, or particular items thereof, determined in accordance with the accounting method used by the Partnership for United States federal income tax purposes with the following adjustments: (a) all items of income, gain, loss or deduction specially allocated pursuant to Section 3.9 shall not be taken into account in computing such Net Profit or Net Loss; (b) any income of the Partnership that is exempt from United States federal income taxation and not otherwise taken into account in computing Net Profit and Net Loss shall be added to such taxable income or loss; (c) if the Carrying Value of any asset differs from its adjusted tax basis for United States federal income tax purposes, any gain or loss resulting from a disposition of such asset shall be calculated with reference to such Carrying Value; (d) if the Carrying Value of any asset differs from its adjusted tax basis for United States federal income tax purposes, the amount of depreciation, amortization or cost recovery deductions with respect to such asset shall, for purposes of determining Net Profit and Net Loss, be an amount that bears the same ratio to such Carrying Value as the United States federal income tax depreciation, amortization or other

cost recovery deductions bears to such adjusted tax basis (provided, that, if the United States federal income tax depreciation, amortization or other cost recovery deduction is zero (0), the General Partner may use any reasonable method for purposes of determining depreciation, amortization or other cost recovery deductions in calculating Net Profit and Net Loss); (e) any expenditures of the Partnership that are described in Section 705(a)(2)(B) of the Code or are treated as described in Section 705(a)(2)(B) of the Code pursuant to Regulation Section 1.704-1(b)(2)(iv)(i) and not otherwise taken into account in computing Net Profit and Net Loss shall be treated as deductible items; (f) any deduction or debit of the Partnership attributable to Management Fees, placement fees or Organizational Expenses, as the case may be, shall not be taken into account in computing such Net Profit or Net Loss; and (g) if the Carrying Value of any Partnership property is adjusted as provided in the definition of Carrying Value, the amount of such adjustment shall be taken into account, as and if appropriate, immediately prior to the event giving rise to such adjustment, as gain or loss from the hypothetical disposition of such property.

"***New Limited Partner***" has the meaning assigned to such term in Section 8.2(a)(vi).

"***Offshore Fund***" means Highland Argentina Regional Opportunity Fund, Ltd., a Cayman Islands exempted company that invests in the Partnership as a Limited Partner.

"***Offshore Fund POM***" means the Offering Memorandum of the Offshore Fund, dated October 2017, as may be modified or supplemented from time to time.

"***Original Limited Partner***" means Gustavo Prilick, in his capacity as the original limited partner of the Partnership.

"***Other Account***" means any assets or investment of the General Partner or the Investment Manager, or any assets managed by the General Partner, the Investment Manager or any of their respective Affiliates for the account of any Person or entity (including investment vehicles) other than the Partnership, which are invested or which are available for investment in securities or other instruments or for trading activities whether or not of the specific type being conducted by the Partnership.

"***Partner***" means the General Partner or any of the Limited Partners, except as otherwise expressly provided herein, and "Partners" means the General Partner and all of the Limited Partners.

"***Partnership***" means the exempted limited partnership formed upon the filing of a statement under Section 9 of the Act with the Registrar on September 21, 2017, pursuant to the Prior Agreement and registered with the name "Highland Argentina Regional Opportunity Master Fund, L.P."

"***Partnership Percentage***" means a percentage established for each Capital Account on the Partnership's books as of the first day of each Fiscal Period. The Partnership Percentage of a Capital Account for a Fiscal Period shall be determined by dividing the amount of such Capital Account as of the beginning of the Fiscal Period (after crediting all capital contributions to such Capital Account which are effective as of such date, net of all deductions, including Management Fees) by the sum of all Capital Accounts as of the beginning of the Fiscal Period (after crediting

all capital contributions to the Partnership which are effective as of such date, net of all deductions, including Management Fees). The sum of the Partnership Percentages of all Capital Accounts for each Fiscal Period shall equal 100%.

"***Performance Allocation***" means:

(a) with respect to each Series A Capital Sub-Account, 20.0% of the amount, determined as of the close of each Calculation Period with respect to such Capital Sub-Account, by which (i) such Capital Sub-Account's Positive Performance Change for such Calculation Period, if any, exceeds (ii) any positive balance in such Capital Sub-Account's Carryforward Account as of the most recent prior date as of which any adjustment has been made thereto;

(b) with respect to each Series B Capital-Sub Account, 17.5% of the amount, determined as of the close of each Calculation Period with respect to such Capital Sub-Account, by which (i) such Capital Sub-Account's Positive Performance Change for such Calculation Period, if any, exceeds (ii) any positive balance in such Capital Sub-Account's Carryforward Account as of the most recent prior date as of which any adjustment has been made thereto; and

(c) with respect to each Series C Capital Sub-Account, 15.0% of the amount, determined as of the close of each Calculation Period with respect to such Capital Sub-Account, by which (i) such Capital Sub-Account's Positive Performance Change for such Calculation Period, if any, exceeds (ii) any positive balance in such Capital Sub-Account's Carryforward Account as of the most recent prior date as of which any adjustment has been made thereto.

The General Partner has the discretion to fully or partially waive or decrease the Performance Allocation with respect to any Capital Sub-Account. For the avoidance of doubt, if and for so long as Capital Sub-Accounts are maintained for any Limited Partner, the Performance Allocation shall be calculated separately with respect to each such Capital Sub-Account as if such Capital Sub-Account was the sole Capital Account of a Person admitted as a Limited Partner upon establishment of such Capital Sub-Account. In such event, the Performance Allocation for such Limited Partner shall be the total of the Performance Allocations as calculated with respect to each such Capital Sub-Account.

"***Performance Change***" means, with respect to each Capital Sub-Account for each Calculation Period, the difference between:

(a) the sum of (i) the balance of such Capital Sub-Account as of the close of the Calculation Period (after giving effect to Management Fees and all allocations to be made to such Capital Sub-Account as of such date other than any Performance Allocation to be debited against such Capital Sub-Account), plus (ii) any debits to such Capital Sub-Account during the Calculation Period to reflect any actual or deemed distributions or withdrawals with respect to such Capital Sub-Account, plus (iii) any debits to such Capital Sub-Account during the Calculation Period to

reflect any items allocable to such Capital Sub-Account pursuant to Section 3.5(b) or (c); and

(b) the sum of (i) the balance of such Capital Sub-Account as of the commencement of the Calculation Period, plus (ii) any credits to such Capital Sub-Account during the Calculation Period to reflect any contributions by such Limited Partner to the Capital Sub-Account.

If there is any change in the Net Assets associated with such Capital Sub-Account during a relevant Calculation Period that is not reflected in the Carrying Value of the Partnership's Investment, the General Partner shall be permitted, in its sole discretion, to adjust the Performance Change with respect to such Capital Sub-Account as if such change had been (i) reflected in the Carrying Value of the Partnership's Investments in respect of the relevant Calculation Period and (ii) allocated among the Capital Sub-Accounts in the manner prescribed for comparable items by this Agreement.

The calculation of the Performance Change will take into account all expenses of the relevant Feeder Fund incurred with respect to such Capital Sub-Account as of such calculation date. If the amount specified in clause (a) exceeds the amount specified in clause (b), such difference is a "***Positive Performance Change***," and if the amount specified in clause (b) exceeds the amount specified in clause (a), such difference is a "***Negative Performance Change***."

For the avoidance of doubt, if and for so long as Capital Sub-Accounts are maintained for any Limited Partner, the Performance Change for each Calculation Period shall be computed separately with respect to each such Capital Sub-Account and the resulting "Positive Performance Changes" and "Negative Performance Changes" shall be separately allocated to such Capital Sub-Accounts and shall not be netted against each other.

"***Person***" means any individual, partnership, corporation, limited liability company, trust, or other entity.

"***Plan Assets***" means assets of the Partnership that are considered to be assets of an ERISA Partner, as determined pursuant to Section 3(42) of ERISA.

"***Positive Basis***" means, with respect to any Partner and as of any time of calculation, the excess of the amount that such Partner is entitled to receive upon withdrawal from or the winding up and subsequent dissolution of the Partnership over such Partner's "adjusted tax basis" in its Interest for U.S. federal income tax purposes at such time (determined without regard to any adjustments made to such adjusted tax basis by reason of any Transfer of such Interest).

"***Positive Basis Partner***" means any Partner who withdraws all or a portion of its Interest from the Partnership and who has a Positive Basis as of the effective date of withdrawal, but such Partner shall cease to be a Positive Basis Partner at such time as it shall have received allocations pursuant to Section 3.9(c) equal to such Partner's Positive Basis as of the effective date of withdrawal and without regard to such Partner's share of the liabilities of the Partnership under Section 752 of the Code.

"***Prior Agreement***" has the meaning set forth in the recitals hereto.

"***Registrar***" means the Registrar of Exempted Limited Partnerships of the Cayman Islands.

"***Regulations***" means the proposed, temporary and final U.S. Treasury Regulations promulgated under the Code, including any successor regulations.

"***Regulatory Allocations***" has the meaning set forth in Section 3.10.

"***Section 9 Statement***" has the meaning set forth in Section 2.1(a).

"***Series A Capital Sub-Account***" means a Capital Sub-Account that corresponds to a holder of Series A Interests (as defined in the Domestic Fund LPA) in the Domestic Fund or a holder of a Sub-Series of Series A Shares (as defined in the Offshore Fund POM) in the Offshore Fund, as applicable.

"***Series B Capital Sub-Account***" means a Capital Sub-Account that corresponds to a holder of Series B Interests (as defined in the Domestic Fund LPA) in the Domestic Fund or a holder of a Sub-Series of Series B Shares (as defined in the Offshore Fund POM) in the Offshore Fund, as applicable.

"***Series C Capital Sub-Account***" means a Capital Sub-Account that corresponds to a holder of Series C Interests (as defined in the Domestic Fund LPA) in the Domestic Fund or a holder of a Sub-Series of Series C Shares (as defined in the Offshore Fund POM) in the Offshore Fund, as applicable.

"***Special Limited Partner***" means Highland Capital Management Latin America, L.P., in its capacity as a special limited partner of the Partnership for purposes of the receipt of the Performance Allocation.

"***Sub-Series***" means sub-series of shares of the Offshore Fund, as created from time to time, for purposes of accounting for any profits and losses attributable to each individual shareholder and of permitting the Performance Allocation to be calculated separately with respect to each shareholder to reflect different returns achieved as a result of subscriptions received from shareholders at different times.

"***Termination Date***" has the meaning assigned to such term in Section 6.1(a).

"***Transfer***" means any direct or indirect sale, exchange, transfer, assignment, pledge, encumbrance, charge, exchange, hypothecation, placing of a lien or a security interest on an Interest or any other disposition by a Partner of its Interest to or in favor of another party, whether voluntary or involuntary (including, but not limited to, being offered or listed on or through any placement agent, intermediary, online service, site, agent or similar Person).

Article II ORGANIZATION

2.1 Continuation of Exempted Limited Partnership

(a) The General Partner and the Original Limited Partner established the Partnership upon filing a statement under Section 9 of the Act (the "***Section 9 Statement***") with the Registrar on September 21, 2017, pursuant to the Prior Agreement, which Prior Agreement has governed the operation of the Partnership since that date. The Original Limited Partner hereby withdraws as a Limited Partner immediately following the admission of any additional Limited Partner and thereafter shall have no further rights, interest or obligations of any kind whatsoever under or in respect of this Agreement or as the Original Limited Partner. The General Partner hereby admits the Limited Partners who are a party to this Agreement (excluding the Original Limited Partner) and the General Partner and the Limited Partners hereby amend and restate the Prior Agreement in its entirety on the terms of this Agreement.

(b) If requested by the General Partner, the Limited Partners will promptly execute all certificates and other documents consistent with the terms of this Agreement necessary for the General Partner to accomplish all filings, recordings, publishings and other acts as may be appropriate to comply with all requirements for (i) the formation and operation of an exempted limited partnership under the laws of the Cayman Islands, (ii) if the General Partner deems it advisable, the operation of the Partnership as an exempted limited partnership, or partnership in which the Limited Partners have limited liability, in all jurisdictions where the Partnership proposes to operate and (iii) all other filings required by the Act to be made by the Partnership. The General Partner shall cause any required amendment to the Section 9 Statement or any other amendment requiring filing under the Act to be filed promptly following the event requiring such amendment. All such amendments may be signed by the General Partner (as required by the Act), and may be signed either personally or by an attorney-in-fact or agent of the General Partner.

(c) The Partnership expects to receive an undertaking from the Governor-in-Cabinet of the Cayman Islands to the effect that, for a period of 50 years from the date of the undertaking, no law which is enacted in the Cayman Islands imposing any tax to be levied on profits or income or gains or appreciations shall apply to the Partnership or to any Partner in respect of the operations or assets of the Partnership or the Interest of a Partner. The parties hereto acknowledge that they intend that the Partnership be taxed in the United States as a partnership and not as an association taxable as a corporation for U.S. federal income tax purposes. No election may be made to treat the Partnership as other than a partnership for U.S. federal income tax purposes.

2.2 Name of Partnership

(a) The name of the Partnership is Highland Argentina Regional Opportunity Master Fund, L.P. or such other name as the General Partner may hereafter adopt upon (i) causing a statement pursuant to Section 10 of the Act to be filed with the Registrar and (ii) giving notice thereof to the Limited Partners.

(b) The Partnership shall have the exclusive ownership and right to use the Partnership name so long as the Partnership continues, despite the withdrawal, expulsion, resignation or removal of any Limited Partner, but upon the Partnership's winding up or at such time as there ceases to be a general partner, the Partnership shall assign the name and the goodwill attached thereto to the General Partner or one of its Affiliates without payment by the assignee(s) of any consideration therefor.

2.3 Registered Office

(a) The registered office address of the Partnership in the Cayman Islands is at c/o Maples Corporate Services Limited, P.O. Box 309, Ugland House, Grand Cayman, KY1-1104, Cayman Islands.

(b) The General Partner may at any time change the location of the Partnership's registered office or registered agent in its sole discretion, provided that the registered office of the Partnership shall be in the Cayman Islands.

2.4 Term of Partnership

The term of the Partnership commenced on the date of formation and continues until wound up and dissolved pursuant to Section 6.1 (unless its term is extended pursuant to Section 6.1).

2.5 Object and Powers of Partnership

(a) The object and business of the Partnership is to (1) purchase, sell (including short sales), invest and trade in the Investments, (2) engage in financial transactions, including borrowing, financing, pledging, hedging and other derivative transactions relating thereto for the benefit of the Partnership, (3) engage in any other lawful act or activity for which exempted limited partnerships may be formed under the Act and (4) engage in any and all activities necessary or incidental to the foregoing; provided that the Partnership shall not undertake business with the public in the Cayman Islands other than so far as is necessary for the carrying on of the business of the Partnership exterior to the Cayman Islands.

(b) The Partnership possesses and the General Partner on behalf of the Partnership may exercise all such powers and privileges as the General Partner considers necessary, convenient or incidental to the conduct, promotion or attainment of the objects of the Partnership.

2.6 Liability of Partners

(a) The liability of the Limited Partners is limited to their obligations under this Agreement and the Act. The General Partner is liable for all of the debts and obligations of the Partnership to the extent that the Partnership has insufficient assets. The General Partner shall not be personally liable for the withdrawal, payment or distribution of all or any part of any Interest, it being expressly agreed that any such withdrawal, payment or distribution to be made pursuant to this Agreement shall be made solely from the assets of the Partnership (which shall not include the General Partner's capital contributions) and on the terms and subject to the conditions contained in this Agreement.

(b) In no event shall any Limited Partner (or former Limited Partner) be obligated to make any contribution to the Partnership in addition to its agreed capital contribution (or other payments provided for herein) or have any personal liability for the repayment or discharge of the debts and obligations of the Partnership except to the extent provided herein or as required by the Act or other applicable law.

2.7 Actions by Partnership

The General Partner on behalf of the Partnership may execute, deliver and perform all contracts, agreements and other undertakings and engage in all activities and transactions as may in the opinion of the General Partner be necessary or advisable to carry out the objects of the Partnership as set forth in Section 2.5 above. Notwithstanding the foregoing, the Partnership shall not issue any securities other than interests in the Partnership.

2.8 Reliance by Third Parties

Persons dealing with the Partnership are entitled to rely conclusively upon the power and authority of the General Partner as herein set forth.

2.9 Filings

(a) The General Partner shall take any and all other actions as may be reasonably necessary to perfect and maintain the status of the Partnership as an exempted limited partnership under the Act and other laws of the Cayman Islands, including the filing of a notice pursuant to Section 10 of the Act with the Registrar signed by the General Partner upon the occurrence of certain amendments to the Section 9 Statement of the Partnership, and any other states or jurisdictions in which the Partnership engages in business.

(b) Following the winding up of the Partnership in accordance with the terms of this Agreement and to effect the dissolution of the same, the General Partner or any duly appointed liquidator shall promptly (i) comply with the applicable provisions of Section 15 of the Act, (ii) execute and cause to be filed a notice of dissolution in accordance with Section 15(3) of the Act and (iii) file any certificates of

cancellation in accordance with the laws of any states or jurisdictions in which the Partnership has filed certificates.

2.10 Series of Interests

The General Partner, at any time, may without notification to or consent of the other Limited Partners, create and offer different series of Interests with such rights, obligations, liabilities, privileges, designations and preferences (including different investment strategies, underlying investments, degrees of leverage, management fees, performance allocations, brokerage commissions, transparency, withdrawal rights, co-investment opportunities, and other differences) as the General Partner may determine upon the issuance of such series of Interests; *provided* that such series of Interests would not reasonably be expected to have a material adverse effect on the existing Feeder Fund Investors. The terms and rights of each such series of Interests may be set forth in the Feeder Funds' offering memoranda, any supplement thereto or a "side letter" or other agreement, which the General Partner may incorporate by reference.

Article III CAPITAL

3.1 Contributions to Capital

(a) Each Partner is permitted to make contributions to the capital of the Partnership at such times and in such amounts as the General Partner, in its sole discretion, may determine. The Limited Partners are not required to make any additional capital contributions to the Partnership, subject to the provisions of Section 3.5(b) and any contrary provision of the Act.

(b) Each Person admitted as a general partner of the Partnership agrees to make and maintain a capital contribution as a general partner of at least U.S.$1.00. Except as provided above or in the Act, the General Partner is not required or obligated to make any additional contributions to the capital of the Partnership. However, the General Partner or an Affiliate shall have the right at any time to make additional capital contributions as a Limited Partner or General Partner in such amounts as it may determine. If an Affiliated Investor makes a capital contribution as a Feeder Fund Investor or a Limited Partner, the General Partner has the authority to waive the Management Fee and/or Performance Allocation with respect to such Feeder Fund Investor or Limited Partner, respectively.

3.2 Rights of Partners in Capital

(a) No Partner shall be entitled to interest on its capital contributions to the Partnership.

(b) No Partner shall have the right to the return of any capital contribution to the Partnership except, subject to the Act, (i) upon withdrawal by such Partner of all or part of its Interest pursuant to Section 5.3 or (ii) upon the winding up and

dissolution of the Partnership pursuant to Section 6.1. The entitlement to any such return shall be limited to the value of the Capital Account, including corresponding Capital Sub-Accounts, of the Partner. The General Partner shall not be liable for the return of any such amounts.

3.3 Capital Accounts

(a) The Partnership shall maintain a separate Capital Account for each Partner. The General Partner may, in its discretion, maintain separate memorandum sub-accounts with respect to each such Capital Account for purposes of this Agreement. Each Capital Account will reflect the aggregate sum of the balances of all memorandum sub-accounts associated with each such Capital Account. Without limiting the foregoing, the Partnership shall also maintain separate Capital Sub-Accounts within the Capital Account of each Feeder Fund relating to the beneficial interest of each Feeder Fund Investor therein. If a Feeder Fund Investor invests in more than one series of limited partner interests in the Domestic Fund, the Partnership will maintain a separate Capital Sub-Account on behalf of such Feeder Fund Investor with respect to each series. The Partnership will maintain a separate Capital Sub-Account corresponding to each Sub-Series of shares held by a Feeder Fund Investor in the Offshore Fund. Each Capital Sub-Account will be treated as if it were the Capital Account of a separate Partner for purposes of this Agreement, unless otherwise determined by the General Partner, including, without limitation, for purposes of determining the Management Fee and the Performance Allocation applicable to each such Capital Sub-Account. References herein to a "Capital Account" shall be deemed to refer to such a Capital Sub-Account where the context admits.

(b) Each Capital Account shall have an initial balance equal to the amount of any cash and the net value of any property constituting the relevant Partner's initial capital contribution to the Partnership.

(c) Each Capital Account shall be increased by (i) the amount of any cash and the net value of any property constituting additional contributions to such Capital Account permitted pursuant to Section 3.1 and (ii) such Capital Account's allocable share of the Net Profits allocated by the Partnership to such Capital Account pursuant to Section 3.4.

(d) Each Capital Account shall be reduced by (i) the amount of any cash and the net value of any property withdrawn by or distributed to the relevant Partner pursuant to Sections 5.3 or 6.2, (ii) such Capital Account's allocable share of the Net Losses allocated by the Partnership to such Capital Account pursuant to Section 3.4, (iii) such Capital Account's *pro rata* portion of the expenses allocable (or specially allocable) by the Partnership pursuant to Section 3.5, (iv) such Capital Account's allocable share of the Performance Allocation allocable pursuant to Section 3.7, and (v) such Capital Account's *pro rata* portion of the expenses payable by the Partnership pursuant to Section 4.2(b).

(e) The Capital Account of the Special Limited Partner will be increased by the amount of the Performance Allocation allocated to such Capital Account and the investment gains thereon pursuant to Section 3.7(a).

(f) Each Capital Account shall be adjusted to reflect all other allocations and other changes in the value of such Capital Account not otherwise described in this Section 3.3 in the manner specified in the remaining provisions of this Article III.

3.4 Allocation of Net Profit and Net Loss

(a) Except as otherwise provided in this Agreement, Net Profits, Net Losses and, to the extent necessary, individual items of income, gain, loss, deduction or credit of the Partnership shall be allocated among the Partners in a manner that, after giving effect to the special allocations set forth in Section 3.5, give economic effect to the provisions of this Agreement taking into account such facts and circumstances as the General Partner deems reasonably necessary or appropriate for this purpose. For the avoidance of doubt and solely for the purposes of applying the preceding sentence, the General Partner shall be permitted, in its sole discretion, to cause the Carrying Value of the Partnership's Investments to be adjusted, as described in the definition of "Carrying Value", on a *mutatis mutandis* basis, at the time at which such allocations are made.

(b) Notwithstanding Section 3.4(a), items of income, gain, loss, deduction, credit and expenses for a Fiscal Period that are not allocable to specific Investments of the Partnership, including short term interest income, and audit, administration and legal expenses, shall be separately allocated among and credited to or debited against the Capital Accounts of the Partners *pro rata* in accordance with their Partnership Percentages for such Fiscal Period.

3.5 Allocation of Management Fees, Withholding Taxes and Certain Other Expenditures

(a) As of the last day of each calendar quarter, the Management Fee applicable to each Capital Account for such calendar quarter will be debited against the relevant Capital Account. Capital contributions accepted after the commencement of the calendar quarter shall be subject to a prorated Management Fee reflecting the time remaining during such calendar quarter. The General Partner or the Investment Manager may reduce, waive or calculate differently the Management Fee with respect to any Limited Partner and any Capital Sub-Account. For the avoidance of doubt, if and for so long as Capital Sub-Accounts are maintained for any Limited Partner, the Management Fee shall be calculated separately with respect to each such Capital Sub-Account as if such Capital Sub-Account was the sole Capital Account of a Person admitted as a Limited Partner upon establishment of such Capital Sub-Account. The General Partner may delay the timing or alter the structure of fees payable to the Investment Manager so long as such changes are not materially adverse to the Feeder Fund Investors. The Investment Manager may also assign all or any portion of fees payable to the

Investment Manager to any Affiliate thereof or any third party in its sole discretion.

(b) Notwithstanding anything to the contrary herein, to the extent the General Partner or the Partnership is required by law (including under circumstances where the General Partner or the Partnership is unable to rely conclusively on any withholding certification provided by a Partner) to withhold or to make tax payments, including any interest or penalties, on behalf of or with respect to any Partner or Partners (including, without limitation, any amount attributable to an actual or imputed underpayment of taxes under any BBA provision, backup withholding or FATCA withholding), the General Partner or the Partnership may withhold such amounts and make such tax payments as so required. If the Partnership directly or indirectly pays or incurs any withholding tax or other tax obligation (including any amount under any BBA provision), or otherwise incurs a tax payment with respect to the income allocable or distributable to, or otherwise attributable to, one or more Partners, then the amount of such withholding tax, tax obligation or payment will be treated as a distribution to such Partner or Partners, as applicable, pursuant to the terms of this Agreement. Such amount will be debited against the Capital Account(s) of such Partner or Partners as of the close of the Fiscal Period during which the Partnership so withholds, pays or incurs such obligation. If the amount so withheld, paid or incurred is greater than the balance of the Capital Account(s) of the relevant Partner or Partners, as applicable, then such Partner or Partners and any successors must make a contribution to the capital of the Partnership within 10 Business Days after notification and demand by the General Partner in the amount of such excess. The General Partner is not obligated to apply for or obtain a refund, or reduction of or exemption from withholding tax or other tax obligation (including any amount under any BBA provision) on behalf of any Partner that may be eligible for such refund, reduction or exemption, or otherwise obligated to structure Investments so as to reduce or avoid any withholding tax. Each Limited Partner agrees to repay to the Partnership and the General Partner and each of the partners and former partners of the General Partner, any liability for taxes, interest or penalties which may be asserted by reason of the failure to deduct and withhold tax on amounts distributable or allocable to such Limited Partner.

(c) Except as otherwise provided for in this Agreement, any expenditures payable by the Partnership (including any taxes imposed on the Partnership pursuant to Section 6225 of the Code, as amended by the BBA), to the extent determined by the General Partner to have been paid or withheld on behalf of, or by reason of particular circumstances applicable to, one or more but fewer than all of the Partners, shall be specially allocated only to the Capital Accounts of those Partners on whose behalf such payments are made or whose particular circumstances gave rise to such payments. Such allocations shall be debited from the relevant Capital Accounts of such Partners as of the close of the Fiscal Period during which any such items were accrued by the Partnership.

3.6 Reserves; Adjustments for Certain Future Events

(a) The General Partner may cause appropriate reserves to be created, accrued and charged against Net Assets and proportionately against the Capital Accounts (and the corresponding Capital Sub-Accounts) for contingent liabilities, such reserves to be in the amounts which the General Partner deems necessary or appropriate. The General Partner may increase or reduce any such reserve from time to time by such amounts as the General Partner deems necessary or appropriate. The amount of any such reserve, or any increase or decrease therein, may, at the election of the General Partner, be charged or credited, as the General Partner deems appropriate, to the Capital Accounts of those parties that are Partners at the time when such reserve is created, increased, or decreased, as the case may be, or alternatively may be charged or credited to those parties that were Partners at the time of the act or omission giving rise to the contingent liability for which the reserve was established by the General Partner.

(b) If the General Partner determines that it is equitable to treat an amount to be paid or received as being applicable to one or more prior periods, then all or a portion of such amount may be proportionately charged or credited, as appropriate, in proportion to the Capital Account balances of the current Partners as such balances existed during any such prior period(s).

3.7 Performance Allocation

(a) The Performance Allocation is debited against each applicable Capital Sub-Account as of the last day of each Calculation Period with respect to such Capital Sub-Account, and the amount so debited is simultaneously credited to the Capital Account of the Special Limited Partner pursuant to Section 3.3(e). Notwithstanding anything herein to the contrary, the Special Limited Partner may assign all or any portion of the Performance Allocation to its Affiliates or any other Person.

(b) The General Partner may fully or partially waive or decrease the Performance Allocation with respect to any Limited Partner and any Capital Sub-Account.

3.8 Allocation to Avoid Capital Account Deficits

To the extent that any debits pursuant to this Article III would reduce the balance of the Capital Account of any Limited Partner below zero, that portion of any such debits shall instead be allocated to the Capital Account of the General Partner. Any credits in any subsequent Fiscal Period which would otherwise be allocable pursuant to this Article III to a Capital Account of any Limited Partner previously affected by the application of this Section 3.8 shall instead be allocated to the Capital Account of the General Partner in such amounts as are necessary to offset all previous debits attributable to such Limited Partner pursuant to this Section 3.8 not previously recovered.

3.9 Allocations for U.S. Federal Income Tax Purposes

Notwithstanding anything to the contrary in this Agreement:

(a) Income Tax Allocations. Except as otherwise required by Code Section 704(c), items of income, gain, deduction, loss, or credit that are recognized for income tax purposes in each Fiscal Year will be allocated among the Partners (and among such Partner's Capital Accounts) in such manner as to reflect equitably amounts credited to or debited against each Partner's Capital Accounts, whether in such Fiscal Year or in prior Fiscal Years. To this end, the Partnership will establish and maintain records which shall show the extent to which the Capital Accounts of each Partner will, as of the last day of each Fiscal Year, comprise amounts that have not been reflected in the taxable income of such Partner. To the extent deemed by the General Partner to be feasible and equitable, taxable income and gains in each Fiscal Year shall be allocated among the Partners who have enjoyed the related credits to their Capital Accounts, and items of deduction, loss and credit in each Fiscal Year shall be allocated among the Partners who have borne the burden of the related debits to their Capital Accounts. Non-U.S. tax credits attributable to taxes incurred by the Partnership shall be allocated in a manner consistent with Section 1.704-1(b)(4)(viii) of the Regulations. All matters concerning allocations for U.S. federal, state and/or local income tax purposes, including accounting procedures, not expressly provided for in this Agreement will be determined by the General Partner.

(b) Basis Adjustments. To the extent an adjustment to the adjusted tax basis of any Partnership asset pursuant to Section 734(b) of the Code or Section 743(b) of the Code is required under Section 1.704-1(b)(2)(iv)(m) of the Regulations to be taken into account in determining Capital Accounts, the amount of such adjustment to the Capital Accounts shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases such basis) and such gain or loss shall be specially allocated to the Partners in a manner consistent with the manner in which their Capital Accounts are required to be adjusted pursuant to such Section of the Regulations; *provided* that in the event that an adjustment to the book value of Partnership property is made as a result of an adjustment pursuant to Section 734(b) of the Code, items of income, gain, loss, or deduction, as computed for book and tax purposes, will be specially allocated among the Partners so that the effect of any such adjustment shall benefit (or be borne by) the Partner(s) receiving the distribution that caused such adjustment.

(c) General Partner Special Allocations. Notwithstanding anything to the contrary in this Agreement, if the General Partner withdraws (or is otherwise entitled to withdraw) all or a portion of its Capital Account during any Fiscal Year, the General Partner, in its sole discretion, may specially allocate items of income, gain, deduction, loss or credit that are recognized for U.S. federal income tax purposes to itself equal to the amount by which the withdrawn amount exceed its

adjusted tax basis, for U.S. federal income tax purposes, in its Partnership interest (determined prior to any such special allocations).

(d) Positive Basis Allocations. If the Partnership realizes gains or items of gross income (including short term capital gain) from the sale of Partnership assets for U.S. federal income tax purposes for any Fiscal Year in which one or more Positive Basis Partners withdraws all or a portion of its Interest from the Partnership pursuant to Section 5.3, the General Partner may elect: (i) to allocate such gains or items of gross income among such Positive Basis Partners, pro rata in proportion to the respective Positive Basis of each such Positive Basis Partner, until either the full amount of such gains or items of gross income shall have been so allocated or the Positive Basis of each such Positive Basis Partner shall have been eliminated; and (ii) to allocate any gains or items of gross income not so allocated to Positive Basis Partners to the other Partners in such manner as shall reflect equitably the amounts credited to such Partners' Capital Accounts pursuant to Section 3.3; provided, however, that if, following such Fiscal Year, the Partnership realizes gains or items of gross income from a sale of an Investment the proceeds of which are designated on the Partnership's books and records as being used to effect payment of all or part of the liquidating share of any Positive Basis Partner that continues to be a Partner in the Partnership following such withdrawal (*i.e.,* such Positive Basis Partner effected a partial, and not a complete, withdrawal of its Interest), there shall be allocated to such Positive Basis Partner an amount of such gains or items of gross income equal to the amount, if any, by which its Positive Basis as of the effective date of withdrawal exceeds the amount allocated to such Partner pursuant to clause (i) of this sentence. For the avoidance of doubt, the General Partner may also, in its sole discretion, to apply the Positive Basis definitions and the provisions of this Section 3.9(c) to a withdrawal from a Capital Sub-Account.

(e) Negative Basis Allocations. If the Partnership realizes net losses or items of gross loss or deduction (including short term capital loss) from the sale of Partnership assets for U.S. federal income tax purposes for any Fiscal Year in which one or more Negative Basis Partners withdraws all or a portion of its Interest from the Partnership pursuant to Section 5.3, the General Partner may elect: (i) to allocate such net losses or items of gross loss or deduction among such Negative Basis Partners, pro rata in proportion to the respective Negative Basis of each such Negative Basis Partners, until either the full amount of such losses or items of loss or deduction shall have been so allocated or the Negative Basis of each such Negative Basis Partner shall have been eliminated; and (ii) to allocate any net losses or items of gross loss or deduction not so allocated to Negative Basis Partners to the other Partners in such manner as shall reflect equitably the amounts credited to such Partners' Capital Accounts pursuant to Section 3.3; provided, however, that if, following such Fiscal Year, the Partnership realizes net losses or items of gross loss and deduction from a sale of an Investment the proceeds of which are designated on the Partnership's books and records as being used to effect payment of all or part of the liquidating share of any Negative Basis Partner that continues to be a Partner in the Partnership following such

withdrawal (*i.e.*, such Negative Basis Partner effected a partial, and not a complete, withdrawal of its Interest), there shall may be allocated to such Negative Basis Partner an amount of such net losses or items of gross loss or deduction equal to the amount, if any, by which its Negative Basis as of the effective date of withdrawal exceeds the amount allocated to such Partner pursuant to clause (i) of this sentence. For the avoidance of doubt, the General Partner may also, in its sole discretion, to apply the Negative Basis definitions and the provisions of this Section 3.9(d) to a withdrawal from a Capital Sub-Account.

(f) Qualified Income Offset. In the event any Limited Partner unexpectedly receives any adjustments, allocations, or distributions described in Section 1.704-1(b)(2)(ii)(d)(4), 1.704-1(b)(2)(ii)(d)(5), or 1.704-1(b)(2)(ii)(d)(6) of the Regulations, items of Partnership income and gain will be specially allocated to each such Limited Partner in an amount and manner sufficient to eliminate, to the extent required by the Regulations, the deficit balance in the Capital Account of such Limited Partner as quickly as possible; provided that an allocation pursuant to this Section 3.9(e) may be made only if and to the extent that such Limited Partner would have a deficit balance in its Capital Account after all other allocations provided for in this Article III have been tentatively made as if this Section 3.9(e) were not in this Agreement. This Section 3.9(e) is intended to constitute a "qualified income offset" within the meaning of Section 1.704-1(b)(2)(ii) of the Regulations and shall be interpreted consistently therewith.

(g) Gross Income Allocation. In the event any Limited Partner has a deficit Capital Account at the end of any Fiscal Year that is in excess of the sum of (i) the amount such Limited Partner is obligated to restore pursuant to any provision of this Agreement and (ii) the amount such Limited Partner is deemed to be obligated to restore pursuant to the penultimate sentences of Sections 1.704-2(g)(1) and 1.704-2(i)(5) of the Regulations, each such Limited Partner will be specially allocated items of Partnership gross income and gain in the amount of such excess as quickly as possible; provided that an allocation pursuant to this Section 3.9(f) may be made only if and to the extent that such Limited Partner would have a deficit Capital Account in excess of such sum after all other allocations provided for in this Article III have been made as if Section 3.9(e) and this Section 3.9(f) were not in this Agreement.

(h) Section 704(b) Compliance. The allocations provided in this Section 3.9 are intended to comply with the Regulations under Section 704(b) of the Code and may, as determined by the General Partner, be interpreted and applied in a manner consistent therewith. In the event the General Partner determines that it is prudent to modify the manner in which the Capital Accounts, or any debits or credits thereto, are determined (including, without limitation, debits or credits relating to liabilities that are secured by contributed or distributed property or that are assumed by the Partnership or any Partners), the General Partner may make such modification, provided that it is not likely to have a material adverse effect on the amounts distributed to any Partner pursuant to Sections 3.12 and 6.2 hereof. The General Partner also shall (i) make any adjustments that are necessary or

appropriate to maintain equality between the Capital Accounts of the Partners and the amount of capital reflected on the Partnership's balance sheet, as computed for book purposes, in accordance with Regulations Section 1.704-1(b)(2)(iv)(q) and (ii) make any appropriate modifications in the event unanticipated events might otherwise cause this Agreement not to comply with Regulations Section 1.704-1(b).

3.10 Curative Allocations

The allocations set forth in Sections 3.9(b), (e) and (f) (the "***Regulatory Allocations***") are intended to comply with certain requirements of the Regulations. It is the intent of the Partners that, to the extent possible, all Regulatory Allocations shall be offset either with other Regulatory Allocations or with special allocations of other items of Partnership income, gain, loss, or deduction pursuant to this Section 3.10. Therefore, notwithstanding any other provision of this Article III (other than the Regulatory Allocations), the General Partner shall make such offsetting special allocations of the Partnership income, gain, loss, or deduction in whatever manner it determines appropriate so that, after such offsetting allocations are made, each Partner's Capital Account balance is, to the extent possible, equal to the Capital Account balance such Partner would have had if the Regulatory Allocations were not part of this Agreement and all Partnership items were allocated pursuant to other provisions of this Article III (other than the Regulatory Allocations).

3.11 Tax Matters

(a) Each Partner agrees not to treat, on any U.S. federal, state, local and/or non-U.S. income tax return or in any claim for a refund, any item of income, gain, loss, deduction or credit in a manner inconsistent with the treatment of such item by the Partnership or which would result in inconsistent treatment, and each Partner further agrees to treat, on any U.S. federal, state, local and/or non-U.S. income tax return in any claim for a refund, any item of income, gain, loss, deduction or credit in a manner consistent with the treatment of such item by the Partnership.

(b) To the fullest extent permitted by law, each Limited Partner agrees to (i) provide such cooperation and assistance, including executing and filing forms or other statements and providing information about the Limited Partner, as is reasonably requested by the Tax Matters Partner, to enable the Partnership to satisfy any applicable tax reporting or compliance requirements, to make any tax election or to qualify for an exception from or reduced rate of tax or other tax benefit or be relieved of liability for any tax regardless of whether such requirement, tax benefit or tax liability existed on the date such Partner was admitted to the Partnership, (ii) amend the Limited Partner's tax returns and pay any resulting taxes, interest and penalties in connection with an election by the Partnership under Section 6225(a) of the Code, as amended by the BBA, (iii) take into account any adjustments and pay any taxes, interest and penalties that result from an election by the Partnership under Section 6226 of the Code, as amended by the BBA, and/or (iv) indemnify and hold harmless the Partnership from and against any liability with respect to the Limited Partner's share of any tax deficiency

(including any interest and penalties associated therewith) paid or payable by the Partnership that is (A) allocable to such Limited Partner (as reasonably determined by the General Partner in accordance with this Agreement) with respect to an audited or reviewed taxable year for which such Partner was a partner in the Partnership or (B) attributable (as reasonably determined by the General Partner) to the failure of such Limited Partner to cooperate with or provide any such forms, statements, or other information as requested by the Tax Matters Partner pursuant to clause (i) above.

3.12 Distributions

(a) The amount and timing of any distributions from the Partnership shall be determined by the General Partner. Distributions will generally be made in proportion to the respective Partnership Percentages of the Partners for the Fiscal Period when made. Any distributions may be paid in cash, in kind or partly in cash and partly in kind.

(b) Notwithstanding any provision to the contrary contained in this Agreement, the Partnership, and the General Partner on behalf of the Partnership, may not make a distribution to any Partner from any account in connection with its Interest if such distribution would violate the Act or other applicable law.

3.13 Other Matters

(a) The General Partner does not have any personal liability for the repayment of any capital contribution of any Partner.

(b) Subject only to the relevant provisions of the Act, the Limited Partners are not personally liable for the debts, liabilities, contracts or other obligations of the Partnership except to the extent of their respective capital contributions; provided, however, that the foregoing is not to be construed as relieving any Partner of any obligations arising under Section 3.1 of this Agreement.

(c) The Limited Partners shall not participate in the conduct of the Partnership's business nor shall they transact business for the Partnership, nor shall they have the power to sign for or bind the Partnership, said powers being vested exclusively in the General Partner.

Article IV MANAGEMENT

4.1 Duties and Powers of the General Partner

(a) Subject to the terms and conditions of this Agreement, the General Partner shall have complete and exclusive power and responsibility, to the fullest extent permitted by the Act, for (i) all investment and investment management decisions

to be undertaken on behalf of the Partnership and (ii) managing and administering the conduct of the business and the affairs of the Partnership, and shall have the power and authority to do all things that the General Partner considers necessary or desirable to carry out its duties hereunder and to achieve the purposes of the Partnership. Without limiting the generality of the foregoing, the General Partner's powers include the power to borrow, obtain leverage or otherwise incur indebtedness with respect to the Partnership's capital. The General Partner has delegated (and the Investment Manager has agreed to assume) its rights and responsibilities with respect to making Investments and the operation of the Partnership to the Investment Manager.

(b) The General Partner shall have the right, without the notification to or consent of any Limited Partner or other Person, to make adjustments to the structure of the Partnership in order to address applicable structural, ownership, legal, or regulatory issues, or to improve overall tax efficiency; *provided* that no such adjustment would cause any material adverse consequences to the Feeder Fund Investors.

(c) Without limiting the generality of the General Partner's duties and powers hereunder and notwithstanding anything to the contrary contained herein, the General Partner shall have full power and authority, subject to the other terms and provisions of this Agreement, to execute, deliver and perform such contracts, agreements and other undertakings on behalf of the Partnership, without the consent or approval of any other Person, and to engage in all activities and transactions, as it may deem necessary or advisable for, or as may be incidental to, the conduct of the business contemplated by this Section 4.1, including, without in any manner limiting the generality of the foregoing, (i) contracts, agreements, undertakings and transactions with any Partner or with any other Person, firm or corporation having any business, financial or other relationship with any Partner or Partners, (ii) agreements with each Limited Partner in connection with its purchase of an Interest, (iii) any agreements to induce any Person to purchase an Interest, and (iv) the Investment Management Agreement delegating to the Investment Manager certain of the powers and authority vested by this Agreement in the General Partner as the General Partner and the Investment Manager may agree from time to time, each without any further act, approval or vote of any Person.

(d) The General Partner may terminate or replace the Investment Manager in accordance with the terms of the Investment Management Agreement. The General Partner may delegate to any other Person (including any of its Affiliates) any power and authority vested in the General Partner pursuant to this Agreement that is not otherwise delegated to the Investment Manager.

(e) Every power vested in the General Partner pursuant to this Agreement shall be construed as a power to act (or not to act) in its sole and absolute discretion, except as otherwise expressly provided herein. No provision of this Agreement

shall be construed to require the General Partner to violate the Act or any other law, regulation or rule of any self-regulatory organization.

(f) Notwithstanding any other provision of this Agreement or otherwise applicable provision of law or equity, whenever in this Agreement, the General Partner is permitted or required to make a decision (i) in its "sole discretion" or "discretion" or under a grant of similar authority or latitude, the General Partner shall be entitled to consider only such interests and factors as it desires, including its own interests, and shall, to the fullest extent permitted by applicable law, have no duty or obligation to give any consideration to any interest of or factors affecting the Partnership or the Limited Partners, or (ii) in its "good faith" or under another expressed standard, the General Partner shall act under such express standard and shall not be subject to any other or different standards. Unless otherwise expressly stated, for purposes of this Section 4.1(f), the General Partner shall be deemed to be permitted or required to make all decisions hereunder in its sole discretion.

(g) The General Partner must cause the Partnership to conduct its dealings with third parties in its own name.

(h) The General Partner must, throughout the term of the Partnership as set out in Section 2.4, take all actions that may be necessary or appropriate for the continuation of the Partnership's valid existence as an exempted limited partnership under the laws of the Cayman Islands.

4.2 Expenses

(a) Subject to Section 4.2(f), each of the General Partner and the Investment Manager pays all of its own operating and overhead costs without reimbursement by the Partnership (except liability insurance). The Partnership will not have its own separate employees or office, and it will not reimburse the General Partner or the Investment Manager for salaries, office rent and other general overhead expenses of the General Partner or the Investment Manager.

(b) The Partnership, and not the General Partner or the Investment Manager, will pay, or reimburse the General Partner and the Investment Manager for, all costs, fees and expenses arising in connection with the Partnership's operations. Such expenses payable by the Partnership include the following:

(i) all costs related to the Partnership's investment program, including, without limitation, brokerage commissions, other expenses related to buying and selling securities (including trading errors that are not the result of the Investment Manager's Gross Negligence, willful misconduct or fraud), costs of due diligence regardless of whether a particular transaction is consummated, the costs of attending shareholder meetings, research expenses and costs related to monitoring Investments;

(ii) initial organizational expenses of the Partnership; provided that, such organizational costs may be expensed immediately, or in the General Partner's discretion, amortized in whole or in part and capitalized over a period of 60 calendar months from the date the Partnership commences operations, which may result in an exception to IFRS;

(iii) fees and expenses of advisers and consultants;

(iv) Management Fees;

(v) fees and expenses of any custodians, escrow or transfer agents or other investment-related service providers;

(vi) indemnification expenses incurred in connection with Section 4.5 and the cost of insurance against potential indemnification liabilities;

(vii) interest and other borrowing expenses;

(viii) legal, administrative, accounting, tax, audit and insurance expenses;

(ix) expenses of preparing and distributing reports, financial statements and notices to Limited Partners;

(x) litigation or other extraordinary expenses;

(xi) any withholding, transfer or other taxes imposed or assessed on, or payable by, the Partnership (including any interest and penalties); and

(xii) the cost of periodically updating this Agreement.

(c) Expenses generally will be borne *pro rata* by the Partners in accordance with their respective Partnership Percentages; *provided* that expenses may be specially allocated among the Partners as follows:

(i) with respect to expenses related to Investments (other than taxes), *pro rata* in accordance with their respective Partnership Percentages; and

(ii) as provided elsewhere in this Agreement, including Sections 3.4, 3.5, 3.6 and 5.3.

(d) Each of the General Partner and the Investment Manager, as appropriate, shall be entitled to reimbursement from the Partnership for any of the expenses paid by it on behalf of the Partnership pursuant to Section 4.2(b); *provided* that the General Partner or the Investment Manager may absorb any or all of such expenses incurred on behalf of the Partnership. The Investment Manager may retain, in connection with its responsibilities hereunder as a delegate of the General Partner, the services of others to assist in the investment advice to be given to the Partnership, including, but not limited to, any Affiliate of the Investment

Manager, but payment for any such services shall be assumed by the Investment Manager and the Partnership shall not have any liability therefor; *provided, however*, that the Investment Manager, in its sole discretion, may retain the services of independent third party professionals on behalf of the Partnership, including, without limitation, attorneys, accountants and consultants, to advise and assist it in connection with the performance of its activities on behalf of the Partnership hereunder, and the Partnership shall bear full responsibility therefor and the expense of any fees and disbursements arising therefrom.

(e) If the General Partner or the Investment Manager, as appropriate, shall incur any of the expenses referred to in Section 4.2(b) for the account or for the benefit of, or in connection with its activities or those of its Affiliates on behalf of, both the Partnership and any Other Account, the General Partner or the Investment Manager, as appropriate, will allocate such expense among the Partnership and each such Other Account in proportion to the size of the Investment made by each in the activity or entity to which the expense relates, or in such other manner as the General Partner considers fair and reasonable.

(f) Each of the General Partner and the Investment Manager is entitled to use "soft dollars" generated by the Partnership to pay for certain investment research and brokerage services that provide lawful and appropriate assistance to the General Partner or the Investment Manager in the performance of investment decision-making responsibilities to the extent such use falls within the safe harbor afforded by Section 28(e) of the Securities Exchange Act of 1934, as amended. Use of "soft dollars" by the General Partner or the Investment Manager as described herein shall not constitute a breach by the either the General Partner or the Investment Manager of any fiduciary or other duty which the General Partner or the Investment Manager may be deemed to owe to the Partnership or its Partners.

4.3 Rights of Limited Partners

The Limited Partners shall take no part in the management, control or operation of the Partnership's business, and shall have no right or authority to act for the Partnership or to vote on matters other than the matters set forth in this Agreement or as required by applicable law. Except as otherwise provided herein or required by law, a Limited Partner shall have no liability for the debts or obligations of the Partnership.

4.4 Other Activities of Partners

(a) The General Partner shall not be required to devote any specific amount of its time to the affairs of the Partnership, but shall devote such of its time to the business and affairs of the Partnership as it shall determine in good faith to be necessary to conduct the affairs of the Partnership for the benefit of the Partnership and the Partners.

(b) Each Partner acknowledges and agrees that any other Partner, its Affiliates and their respective officers, directors, shareholders, members, partners, personnel and

employees, may engage in or possess an interest in other business ventures or commercial dealings of every kind and description, independently or with others, including, but not limited to, management of other accounts, investment in, or financing, acquisition and disposition of, securities, investment and management counseling, brokerage services, serving as directors, officers, advisers or agents of other companies, partners of any partnership, or trustees of any trust, or entering into any other commercial arrangements, and will not be disqualified solely on the basis that any such activities may conflict with any interest of the parties with respect to the Partnership. Without in any way limiting the foregoing, each Partner hereby acknowledges that (i) none of the Partners, their Affiliates and their respective officers, directors, shareholders, members, partners, personnel and employees shall have any obligation or responsibility to disclose or refer any of the investment or other opportunities obtained through activities contemplated by this Section 4.4(b) to the General Partner or the Limited Partners, but may refer the same to any other party or keep such opportunities for their own benefit; and (ii) the Partners, their Affiliates and their respective officers, directors, shareholders, members, partners, personnel and employees are hereby authorized to engage in activities contemplated by this Section 4.4(b) with, or to purchase, sell or otherwise deal or invest in investments issued by, companies in which the General Partner might from time to time invest or be able to invest or otherwise have any interest on behalf of the Partnership, without the consent or approval of the Partnership or any other Partner. The Partners expressly agree that no other Partner shall have any rights in or to such other activities, or any profits derived therefrom.

(c) The General Partner and its Affiliates shall allocate investment opportunities to the Partnership and any Other Account fairly and equitably over time. Notwithstanding the foregoing, the General Partner is under no obligation to accord exclusivity or priority to the Partnership in the event of limited investment opportunities. This means that such opportunities will be allocated among those accounts for which participation in the respective opportunity is considered appropriate, taking into account, among other considerations: (i) fiduciary duties owed to the accounts; (ii) the primary mandate of the accounts; (iii) the capital available to the accounts; (iv) any restrictions on the accounts and the investment opportunity; (v) the sourcing of the investment, size of the investment and amount of follow-on available related to the investment; (vi) whether the risk-return profile of the proposed investment is consistent with the account's objectives and program, whether such objectives are considered in light of the specific investment under consideration or in the context of the portfolio's overall holdings; (vii) the potential for the proposed investment to create an imbalance in the account's portfolio (taking into account expected inflows and outflows of capital); (viii) liquidity requirements of the account; (ix) potentially adverse tax consequences; (x) regulatory and other restrictions that would or could limit an account's ability to participate in a proposed investment; and (xi) the need to re-size risk in the account's portfolio. The General Partner has the authority to allocate trades to multiple accounts on an average price basis or on another basis it deems fair and equitable. Similarly, if an order on behalf of any accounts

cannot be fully allocated under prevailing market conditions, the General Partner may allocate the trades among different accounts on a basis it considers fair and equitable over time.

(d) The principal of the General Partner, as well as the employees and officers of the Investment Manager and of organizations affiliated with the Investment Manager, may buy and sell securities for their own account or the account of others, but may not buy securities from or sell securities to the Partnership (such prohibition does not extend to the purchase or sale of Interests) unless such purchase or sale is in compliance with the applicable provisions of the Advisers Act.

(e) Each Partner hereto hereby waives, and covenants not to bring a cause of action in law or equity on the basis of, any law (statutory, common law or otherwise) respecting the rights and obligations of the Partners which is or may be inconsistent with this Section 4.4.

(f) The General Partner and its Affiliates reserve the right to establish collective investment vehicles that have stated investment programs or terms that differ from those of the Partnership or that are targeted primarily to investors for which the Partnership is not designed to be a suitable investment vehicle. The General Partner and its Affiliates also reserve the right to establish and provide management or advisory services to Other Accounts for significant investors, whether or not such accounts have the same investment program as the Partnership.

(g) Each Limited Partner acknowledges that the General Partner or the Investment Manager may engage one or more of their respective Affiliates to provide services to the Partnership for compensation.

4.5 Duty of Care; Indemnification

(a) None of the Indemnified Persons will be liable to the Partnership or any Limited Partner (or any Feeder Fund Investors) for any loss or damage arising by reason of being or having been an Indemnified Person or from any acts or omissions in the performance of its services as an Indemnified Person in the absence of Gross Negligence, willful misconduct or fraud, or as otherwise required by law. In no event shall any Indemnified Person be liable for any consequential damages, special or indirect damages or lost profits. An Indemnified Person may consult with counsel and accountants in respect of the Partnership's affairs and will be fully protected and justified in any action or inaction which is taken in accordance with the advice or opinion of such counsel or accountants, provided that they were selected in accordance with the standard of care set forth above.

(b) The Partnership shall, to the fullest extent permitted by law, indemnify and hold harmless each Indemnified Person from and against any and all liabilities suffered or sustained by an Indemnified Person by reason of the fact that it, he or she is or was an Indemnified Person or in connection with this Agreement or the

Partnership's business or affairs, including, without limitation, any judgment, settlement, reasonable attorneys' fees and other costs or expenses incurred in connection with the defense of any actual or threatened action, suit or proceeding, provided that such liability did not result from the Gross Negligence, willful misconduct or fraud of such Indemnified Person. The Partnership will, in the sole discretion of the General Partner, advance to any Indemnified Person reasonable attorneys' fees and other costs and expenses incurred in connection with the defense of any action, suit or proceeding which arises out of such conduct. In the event that such an advance is made by the Partnership, the Indemnified Person will agree to reimburse the Partnership to the extent that it is finally determined that the Indemnified Person was not entitled to indemnification in respect thereof.

(c) Notwithstanding any of the foregoing, the provisions of this Section 4.5 do not provide for the exculpation or indemnification of any Indemnified Person for any liability (including liability under U.S. federal securities laws which, under certain circumstances, impose liability even on persons that act in good faith), to the extent (but only to the extent) that such liability may not be waived, modified or limited under applicable law, but shall be construed so as to effectuate the above provisions to the fullest extent permitted by law.

(d) Pursuant to the foregoing indemnification and exculpation provisions applicable to each Indemnified Person, the Partnership (and not the applicable Indemnified Person) will be responsible for any losses resulting from trading errors and similar human errors, absent Gross Negligence, willful misconduct or fraud of any Indemnified Person.

(e) The above-mentioned Indemnified Persons are also indemnified by each Limited Partner for any amounts of tax withheld or required to be withheld with respect to that Limited Partner, and also for any amounts of interest, additions to tax, penalties and other costs borne by any such persons in connection therewith to the extent that the balance of the Limited Partner's Capital Account is insufficient to fully compensate the General Partner or the Investment Manager for such costs.

(f) The General Partner may make, execute, record and file on its own behalf and on behalf of the Partnership all instruments and other documents (including one or more deed polls in favor of categories of Indemnified Persons and/or one or more separate indemnification agreements between the Partnership and individual Indemnified Persons) that the General Partner deems necessary or appropriate in order to extend the benefit of the provisions of Sections 4.5(a) and 4.5(b) to the Indemnified Persons; provided, that, such other instruments and documents authorized hereunder shall be on the same terms as provided for in Sections 4.5(a) and 4.5(b) except as otherwise may be required by applicable law.

4.6 Investment Restrictions

Notwithstanding anything in this Agreement to the contrary, the Partnership may not at the time of investment:

(a) invest more than 50% of its gross assets in its net holdings of equities;

(b) borrow more than 100% of its Net Assets;

(c) invest more than 20% of its gross assets in a single equity position;

(d) invest more than 20% of its gross assets in a single corporate issuer;

(e) invest more than 30% of its gross assets in GDP-linked warrants; and

(f) invest more than 30% of its gross assets in a single sovereign or provincial issuer.

Article V ADMISSIONS, TRANSFERS AND WITHDRAWALS

5.1 Admission of Partners

The General Partner may, without the consent of any existing Partners, admit any Person to the Partnership who agrees to adhere to and be bound by all of the terms of this Agreement as a General Partner or a Limited Partner upon the execution by or on behalf of it and the acceptance by the General Partner of a deed of adherence to this Agreement in form satisfactory to the General Partner. The amount of any initial capital contribution to be made by such additional Partner is determined by the General Partner (in its sole discretion). Effective upon such admission, the Partnership Percentage of each existing Partner is adjusted pro rata to reflect the Partnership Percentage of the additional Partner, and the Partnership's records are revised to reflect such adjusted Partnership Percentages, as well as the name, initial capital contribution and Partnership Percentage of such additional Partner.

5.2 Transfer and Withdrawal of the General Partner

Without the consent of a Majority of the Limited Partners, the General Partner shall not have the right to assign or otherwise transfer its Interest as the general partner of the Partnership, and the General Partner shall not have the right to withdraw from the Partnership without the consent of the Limited Partners; provided in each case that, the Feeder Funds must vote their Interests proportionately based on the votes of their respective Feeder Fund Investors. In the event of an assignment or Transfer of all of its Interest as a general partner of the Partnership in accordance with this clause, the new general partner will immediately notify the Registrar in the Cayman Islands in accordance with Section 10 of the Act and the outgoing General Partner will take such actions as may be reasonably necessary to novate and assign all contracts signed on behalf of the Partnership to the new general partner whereupon the new general partner will be substituted as general partner of the Partnership in place of the outgoing General Partner and immediately thereafter the outgoing General Partner will cease to be the general partner of the Partnership.

5.3 Transfer and Withdrawal of Interests of Limited Partners

(a) The General Partner shall have the right, in its sole discretion, to (i) prohibit Transfers of Interests by Limited Partners, (ii) compel withdrawals of Interests and (iii) take such other actions as the General Partner deems necessary to ensure that the assets of the Partnership do not constitute Plan Assets for purposes of ERISA.

(b) Subject to obtaining the General Partner's consent, each Limited Partner may voluntarily withdraw all or part of its Interest at such times and in such amounts as such Limited Partner may determine.

(c) The General Partner may, at any time, suspend (a) the calculation of the net asset value of the Partnership (and the applicable valuation date); (b) the issuance of Interests; (c) the withdrawal by Limited Partners of their Interests (and the applicable withdrawal date); and/or (d) the payment of withdrawal proceeds (even if the calculation dates and withdrawal dates are not postponed), during any period which: (i) any stock exchange on which a substantial part of Investments owned by the Partnership are traded is closed, other than for ordinary holidays, or dealings thereon are restricted or suspended; (ii) there exists any state of affairs as a result of which (A) disposal of a substantial part of the Investments owned by the Partnership would not be reasonably practicable and might seriously prejudice the Limited Partners, or (B) it is not reasonably practicable for the Partnership fairly to determine the value of its Net Assets; (iii) none of the withdrawal requests which have been made may lawfully be satisfied by the Partnership; (iv) there is a breakdown in the means of communication normally employed in determining the prices of a substantial part of the Investments of the Partnership; or (v) in the sole discretion of the General Partner, it is necessary to preserve the Partnership's assets.

(d) The Administrator will promptly notify each Limited Partner and each Feeder Fund Investor who, directly or indirectly through a Limited Partner, has submitted a withdrawal request and to whom payment in full of the amount being withdrawn has not yet been remitted of any suspension of withdrawals or suspension of the payment of withdrawal proceeds pursuant to Section 5.3(c). Any remaining amount of a withdrawal request that is not satisfied due to such a suspension remains at risk as per other amounts invested in the Partnership and subject to the applicable Management Fee until such amount is finally and fully withdrawn. Such Limited Partners and Feeder Fund Investors will not be given any priority with respect to the withdrawal of Interests after the cause for such suspension or limitation ceases to exist. The General Partner may in its sole discretion, however, permit such Limited Partners or Feeder Fund Investors (through a Limited Partner) to withdraw their withdrawal requests to the extent that the relevant withdrawal date has not yet passed. For the avoidance of doubt, where a suspension of the payment of withdrawal proceeds is declared between the relevant withdrawal date and the remittance of such payment proceeds, affected Limited Partners and Feeder Fund Investors shall not have any right to withdraw

their withdrawal requests. Upon the reasonable determination by the General Partner that conditions leading to a suspension no longer apply, the Administrator will notify the Limited Partners and Feeder Fund Investors of the end of the suspension. At such time, any such suspended payments shall generally be paid in accordance with the normal process for making such payments, withdrawal rights shall be promptly reinstated, and any pending withdrawal requests which were not withdrawn (or new, timely withdrawal requests) will be effected as of the first withdrawal date following the removal of the suspension, subject to the foregoing restrictions on withdrawals.

(e) Unless prohibited by law, the Special Limited Partner, its Affiliates and any other Person that is entitled to any portion of the Performance Allocation may make withdrawals of all or any portion of the amount of the Performance Allocation from their Capital Accounts as of the last Business Day of any calendar month and/or such other Business Days as the General Partner may determine in its sole discretion.

Article VI LIQUIDATION AND TERMINATION

6.1 Termination of Partnership

(a) The Partnership shall be wound up and dissolved upon the first to occur of any of the following dates (each, a "***Termination Date***") and Sections 36(1)(b), 36(9) and 36(12) of the Act shall not apply to the Partnership:

(i) any date on which the General Partner shall elect in writing to terminate the Partnership; and

(ii) if the General Partner is the sole or last remaining general partner, the date (the "***Automatic Dissolution Date***") falling 90 days after the date of the service of a notice by the General Partner (or its legal representative) on all the Limited Partners informing the Limited Partners of:

(1) the commencement of liquidation or bankruptcy proceedings in relation to the General Partner; or

(2) the withdrawal, removal or making of a winding up or dissolution order in relation to the General Partner;

provided that, if a majority in number of the Limited Partners elects one or more new general partners before the Automatic Dissolution Date, the business of the Partnership shall be resumed and continued. If a new general partner is not elected by the Automatic Dissolution Date, the Partnership shall be wound up and dissolved in accordance with terms of this Agreement and the Act.

(b) Upon such Termination Date, the Partnership shall be wound up in accordance with the Act by the General Partner or if the General Partner is unable to perform this function, a liquidator elected by a Majority of the Limited Partners (a "***Liquidator***"), which shall take all steps necessary or appropriate to wind up the affairs of the Partnership as promptly as practicable thereafter. Neither the admission of Partners nor the withdrawal, bankruptcy, death, legal incapacity or disability of a Limited Partner shall terminate the Partnership.

(c) The parties agree that irreparable damage would be done to the goodwill and reputation of the Partners if any Limited Partner should bring an action in court to dissolve the Partnership. Care has been taken in this Agreement to provide for fair and just payment in liquidation of the Interests of all Partners. Accordingly, to the fullest extent permitted by law, each Limited Partner hereby waives and renounces its right to such a court decree of dissolution or to seek the appointment by the court of a liquidator for the Partnership except as provided herein, and no Limited Partner may present a winding up petition against the Partnership without the prior written consent of the General Partner.

6.2 Liquidation of Assets

(a) Upon the Termination Date of the Partnership, the General Partner or Liquidator (as applicable) shall promptly liquidate the business and administrative affairs of the Partnership to the extent feasible. Net Profit and Net Loss during the Fiscal Periods, which includes the period of liquidation, shall be allocated pursuant to Article III. The proceeds from liquidation shall be divided in the following manner, subject to the Act:

(i) the debts, liabilities and obligations of the Partnership, other than any debts to the Partners as Partners, and the expenses of liquidation (including legal, administrative and accounting expenses incurred in connection therewith), up to and including the date that distribution of the Partnership's assets to the Partners has been completed, shall first be satisfied (whether by payment or the making of reasonable provision for payment thereof);

(ii) such debts as are owing to the Partners as Partners are next paid; and

(iii) the Partners shall next be paid liquidating distributions (in cash or in securities or other assets, whether or not readily marketable) *pro rata* in accordance with, and up to the positive balances of their respective Capital Accounts, as adjusted pursuant to Article III to reflect allocations for the Fiscal Period ending on the date of the distributions under this Section 6.2(a)(iii).

(b) Notwithstanding this Section 6.2 and the priorities set forth in the Act, the General Partner or Liquidator may distribute ratably in kind rather than in cash, upon dissolution, any assets of the Partnership; *provided*, *however*, that if any in

kind distribution is to be made, (i) the assets distributed in kind shall be valued pursuant to Section 7.3, and charged as so valued and distributed against amounts to be paid under Section 6.2(a) and (ii) any gain or loss (as computed for book purposes) attributable to property distributed in kind shall be included in the Net Profit or Net Loss for the Fiscal Period ending on the date of such distribution.

Article VII ACCOUNTING AND VALUATION; BOOKS AND RECORDS

7.1 Accounting and Reports

(a) The Partnership may adopt for tax accounting purposes any accounting method which the General Partner shall decide is in the best interests of the Partnership and which is permissible for U.S. federal income tax purposes.

(b) As soon as practicable after the end of each Fiscal Year, the General Partner shall cause an audit of the financial statements of the Partnership as of the end of such period to be made by a firm of independent accountants selected by the General Partner. As soon as is practicable thereafter, the General Partner shall furnish to each Limited Partner a copy of the set of audited financial statements prepared in accordance with IFRS (subject to this Agreement) with GAAP reconciliation and such adjustments thereto as the General Partner determines appropriate, including a statement of profit and loss for such Fiscal Year and an unaudited status of each such Partner's holdings in the Partnership at such time.

(c) As soon as practicable after the end of each taxable year, the General Partner shall furnish to each Limited Partner such information as may be required to enable each such Limited Partner properly to report for U.S. federal, state and local income tax purposes its distributive share of each Partnership item of income, gain, loss, deduction or credit for such year. The General Partner shall have discretion as to how to report Partnership items of income, gain, loss, deduction or credit on the Partnership's tax returns, and the Limited Partners shall treat such items consistently on their own tax returns.

7.2 Certain Tax Matters

(a) By joining this Agreement, each Limited Partner appoints and designates the General Partner (i) as the "tax matters partner," within the meaning of Section 6231(a)(7) of the Code, and, (ii) for any BBA Effective Period, as the "partnership representative" within the meaning of Section 6223 of the Code (as applicable, the "***Tax Matters Partner***"), or, in each case, under any similar state or local law. The Tax Matters Partner shall have any powers necessary to perform fully in such capacity, and shall be permitted to take any and all actions, to the extent permitted by law, in consultation with the General Partner if the General Partner is not the Tax Matters Partner. The General Partner shall have the exclusive authority to appoint and designate the Investment Manager, or an

Affiliate of the General Partner or the Investment Manager, as a successor Tax Matters Partner for any BBA Effective Period. The Tax Matters Partner shall be reimbursed by the Partnership for all costs and expenses incurred by it, and to be indemnified by the Partnership with respect to any action brought against it, in its capacity as the Tax Matters Partner.

(b) The Limited Partners agree that any and all actions taken by the Tax Matters Partner shall be binding on the Partnership and all of the Limited Partners and the Limited Partners shall reasonably cooperate with the Partnership or the General Partner, and undertake any action reasonably requested by the Partnership or the General Partner, in connection with any elections made by the Tax Matters Partner or as determined to be reasonably necessary by the Tax Matters Partners under any BBA provision.

(c) Each Limited Partner further agrees that such Limited Partner will not treat any Partnership item inconsistently on such Limited Partner's U.S. federal, state, local and/or non-U.S. tax returns or in any claim for a refund with the treatment of the item on the Partnership's tax returns and that such Limited Partner will not independently act with respect to tax audits or tax litigation affecting the Partnership, unless the prior written consent of the General Partner has been obtained.

(d) The General Partner may in its sole discretion cause the Partnership to make all elections not otherwise expressly provided for in this Agreement required or permitted to be made by the Partnership under the Code and any state, local or non-U.S. tax laws.

7.3 AEOI

Each Partner acknowledges and agrees that:

(a) the Partnership is required to comply with the provisions of AEOI;

(b) it will provide, in a timely manner, such information regarding the Partner and its beneficial owners and such forms or documentation as may be requested from time to time by the Partnership (whether by its General Partner or other agents such as the Investment Manager or the Administrator) to enable the Partnership to comply with the requirements and obligations imposed on it pursuant to AEOI, specifically, but not limited to, forms and documentation which the Partnership may require to determine whether or not the Partner's relevant investment is a "Reportable Account" (under any AEOI regime) and to comply with the relevant due diligence procedures in making such determination;

(c) any such forms or documentation requested by the Partnership or its agents pursuant to paragraph (b), or any financial or account information with respect to the Partner's investment in the Partnership, may be disclosed to the Cayman Islands Tax Information Authority (or any other Cayman Islands governmental body which collects information in accordance with AEOI) and to any

withholding agent where the provision of that information is required by such agent to avoid the application of any withholding tax on any payments to the Partnership;

(d) it waives, and/or shall cooperate with the Partnership to obtain a waiver of, the provisions of any law which:

(i) prohibit the disclosure by the Partnership, or by any of its agents, of the information or documentation requested from the Partner pursuant to paragraph (b);

(ii) prohibit the reporting of financial or account information by the Partnership or its agents required pursuant to AEOI; or

(iii) otherwise prevent compliance by the Partnership with its obligations under AEOI;

(e) if it provides information and documentation that is in anyway misleading, or it fails to provide the Partnership or its agents with the requested information and documentation necessary in either case to satisfy the Partnership's obligations under AEOI, the General Partner reserves the right (whether or not such action or inaction leads to compliance failures by the Partnership, or a risk of the Partnership or its investors being subject to withholding tax or other costs, debts, expenses, obligations or liabilities (whether external, or internal, to the Partnership) (together, "***costs***") under AEOI), in its sole discretion, to take any action and/or pursue all remedies at its disposal including, without limitation:

(i) to establish separate sub-accounts within a Partner's Capital Account for the purpose of calculating AEOI related costs; and/or

(ii) to allocate any or all AEOI costs among Capital Accounts (or Capital Sub-Accounts within a Partner's Capital Account) on a basis determined solely by the General Partner; and/or

(iii) to compulsory withdraw such Partner from the Partnership; and/or

(iv) to hold back or deduct from any withdrawal proceeds or from any other payments or distributions due to such Partner any costs caused (directly or indirectly) by the Partner's action or inaction;

(f) it shall have no claim against the Partnership, the General Partner or any of its or their agents, for any form of damages or liability as a result of actions taken or remedies pursued by or on behalf of the Partnership in order to comply with AEOI; and

(g) it hereby indemnifies the Partnership, the General Partner and each of their respective principals, members, partners, managers, officers, directors, stockholders, employees and agents and holds them harmless from and against any AEOI related liability, action, proceeding, claim, demand, costs, damages,

expenses (including legal expenses) penalties or taxes whatsoever which such parties may incur as a result of any action or inaction (directly or indirectly) of such Partner (or any related person) described in the preceding paragraphs. This indemnification shall survive the disposition of such Partner's Interest in the Partnership.

7.4 Valuation of Partnership Assets and Interests

(a) The Partnership's assets are valued as of the close of each Fiscal Period and on any other date selected by the General Partner in its sole discretion in accordance with the Investment Manager's valuation policies and procedures.

(b) The value of the assets of the Partnership and the net worth of the Partnership as a whole determined pursuant to this Section 7.3 are conclusive and binding on all of the Partners and all parties claiming through or under them.

7.5 Determinations by the General Partner

(a) All matters concerning the determination and allocation among the Partners and their respective Capital Accounts of the amounts to be determined and allocated pursuant to this Agreement, including Article III and accounting procedures applicable thereto, shall be determined by the General Partner, unless specifically and expressly otherwise provided for by the provisions of this Agreement, and such determinations and allocations shall be final and binding on all the Partners; provided, however, that all calculations of the Performance Allocation will be made on the basis of, or subject to correction based on, the annual audit of the Partnership's financial statements and appropriate adjustments will be made to all such calculations and related allocations to the extent necessary as a result of that audit.

(b) The General Partner may make such adjustments to the computation of Net Profit or Net Loss, the Performance Change and the Carryforward Account or any other allocations with respect to any Limited Partner and their respective Capital Accounts, or any component items comprising any of the foregoing, as it considers appropriate to reflect the financial results of the Partnership and the intended allocation thereof among the Partners and their respective Capital Accounts in a reasonably accurate, fair and efficient manner. Without limiting the generality of the foregoing, any provision of this Agreement that requires an adjustment to be made to any Capital Account or Capital Sub-Account (or other memorandum sub-account) as of any mid-month or mid-quarter date may be made as of the most recent preceding or succeeding date when a regular valuation is being conducted.

7.6 Books and Records

The General Partner shall keep books and records pertaining to the Partnership's affairs showing all of its assets and liabilities, receipts and disbursements, realized income, gains, deductions and losses, Partners' Capital Accounts and associated Capital Sub-Accounts and all

transactions entered into by the Partnership. Subject to the documentation requirements of the Act, such books and records of the Partnership (and/or copies thereof, as appropriate) must be kept at the Partnership's principal office, at the registered office of the Partnership or at the office of an agent of the Partnership.

Article VIII GENERAL PROVISIONS

8.1 Amendment of Partnership Agreement

(a) Except as required by law, this Agreement may be amended, in whole or in part, by an instrument in writing signed by each of the Limited Partners and the General Partner.

(b) Notwithstanding the foregoing or anything in this Agreement to the contrary, the General Partner may amend this Agreement without the consent of the Limited Partners in order:

(i) to make consequential amendments following any amendment made pursuant to this Section 8.1;

(ii) to clarify any manifest or clerical inaccuracy, ambiguity or reconcile any inconsistency in this Agreement;

(iii) to add to the representations, duties or obligations of the General Partner or waive any right or power of the General Partner under this Agreement for the benefit of the Limited Partners;

(iv) so as to qualify or maintain the qualification of the Partnership as a limited partnership in any jurisdiction;

(v) to change the name of the Partnership;

(vi) to admit any new Limited Partners or to carry out the Transfer of any Interests;

(vii) to make any other amendment whatsoever to this Agreement which the General Partner deems advisable, provided that it does not adversely affect any rights of the Limited Partners; or

(viii) to create separate classes or sub-classes or series or sub-series of Interests.

8.2 Special Power-of-Attorney

(a) Each Partner hereby irrevocably makes, constitutes and appoints the General Partner (and each of its successors and permitted assigns) for the time being, with

full power of substitution, as the true and lawful agent and attorney-in-fact of, and in the name, place and stead of, such Partner with the power from time to time to make, execute, sign, acknowledge, swear to (and deliver as may be appropriate) on its behalf and file and record in the appropriate public offices and publish (as may in the reasonable judgment of the General Partner be required by law):

(i) any amendments to this Agreement made in accordance with the terms hereof;

(ii) any instruments or documents which the General Partner determines in its sole discretion are required to admit any new Limited Partners or to carry out the Transfer of any Interests;

(iii) declarations of limited partnership in various jurisdictions and amendments thereto;

(iv) all deeds, agreements and other documents which the General Partner deems appropriate to conduct and carry on the business of the Partnership, including, without limitation, to qualify or continue the Partnership as an exempted limited partnership in the Cayman Islands and as required in the jurisdictions in which the Partnership may conduct business, or which may be required to be filed by the Partnership or the Partners under the laws of any jurisdiction or under any amendments or successor statute to the law, to reflect the dissolution or termination of the Partnership or the Partnership being governed by any amendments or successor statutes to the law or to reorganize or refile the Partnership in a different jurisdiction, provided that such reorganization or refiling does not result in a material change in the rights of the Partners;

(v) to file, prosecute, defend, settle or compromise litigation, claims or arbitration on behalf of the Partnership;

(vi) one or more subscription agreements (or other agreements or documents) on behalf of such Limited Partner between the Partnership, the General Partner and any Person (a "***New Limited Partner***") being admitted by the General Partner to the Partnership as a limited partner thereof (or such other parties as may be appropriate) in such form and on such terms and conditions as the General Partner considers in its absolute discretion necessary or appropriate, including reference to this Agreement and its novation and agreeing and covenanting with such New Limited Partner on behalf of such Limited Partner that the Limited Partner will from the effective date of such subscription agreement or agreements comply with and observe the terms of this Agreement.

(b) The above power of attorney shall be irrevocable and deemed to be given to secure a proprietary interest of the donee of the power or performance of an obligation owed to the donee and shall survive and shall not be affected by the

subsequent death, lack of capacity, insolvency, bankruptcy or dissolution of any Limited Partner.

(c) Each Limited Partner shall, at the request of the General Partner, execute additional powers of attorney on a document separate from this Agreement. In the event of any conflict between this Agreement and any instruments executed, delivered, or filed by the General Partner (and any successor thereto) pursuant to this power of attorney, this Agreement shall prevail.

(d) The General Partner may exercise this power of attorney by listing all of the Partners executing any agreement, certificate, instrument, or document with the single signature of the General Partner as attorney-in-fact for all Partners.

(e) Each Limited Partner hereby appoints the General Partner by any one or more of its directors or officers in office from time to time, acting singly, to be the Limited Partner's agent and attorney-in-fact.

8.3 Notices

Notices which may be or are required to be given under this Agreement by any party to another shall be given by hand delivery, transmitted by facsimile or telecopier facsimile, transmitted electronically to an address that has been previously provided or verified through another form of notice or sent by registered or certified mail, return receipt requested or internationally recognized courier service, and shall be addressed to the respective parties hereto at their addresses as set forth on the register of Partners maintained by the General Partner or to such other addresses, facsimile numbers or electronic addresses as may be designated by any party hereto by notice addressed to (a) the General Partner, in the case of notice given by any Limited Partner, and (b) each of the Limited Partners, in the case of notice given by the General Partner. Notices shall be deemed to have been given (i) when delivered by hand, transmitted by facsimile or transmitted electronically or (ii) on the date indicated as the date of receipt on the return receipt when delivered by mail or courier service. Sections 8 and 19 of the Electronic Transactions Law (2003 Revision) of the Cayman Islands shall not apply to this Agreement.

8.4 Agreement Binding Upon Successors and Assigns; Delegation

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, but the rights and obligations of the Partners hereunder shall not be assignable, transferable or delegable except as provided in Section 4.1(d), 5.3 and 5.4 and any attempted assignment, transfer or delegation thereof which is not made pursuant to the terms of such Sections shall be null and void *ab initio*.

8.5 Governing Law

This Agreement is, and the rights of the Partners hereunder are, governed by and shall be construed in accordance with the laws of the Cayman Islands, without regard to the conflict of laws rule thereof which would result in the application of the laws of a different jurisdiction. The parties hereby consent to the exclusive jurisdiction and venue for any action arising out of this Agreement in Dallas, Texas. Each Partner consents to service of process in

any action or proceeding involving the Partnership by the mailing thereof by registered or certified mail, postage prepaid, to such Partner's mailing address set forth in the register of limited partnership interests maintained by the General Partner in accordance with the Act.

8.6 Interpretation of Partnership Accounting Systems and Terminology

In the event that the Partnership employs an accounting system which is different from the accounting system of the General Partner or whose terminology does not conform precisely to the terminology in this Agreement, the General Partner shall have the authority to interpret such accounting system and/or terminology in a manner which it, in its sole discretion, determines to be consistent with the objectives of this Agreement.

8.7 Miscellaneous

(a) The captions and titles preceding the text of each Section hereof shall be disregarded in the construction of this Agreement. Use of the word "including" in this Agreement means in each case "without limitation," whether or not such term is explicitly stated.

(b) This Agreement may be executed in counterparts, each of which shall be deemed to be an original hereof.

(c) If any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Agreement will remain in full force and effect. Any provision of this Agreement held invalid or unenforceable only in part or degree will remain in full force and effect to the extent not held invalid or unenforceable.

8.8 Survival

The obligations and covenants of the Limited Partners set forth in Sections 3.5 and 3.11 hereof shall apply jointly and severally to each such Limited Partner and any direct or indirect transferee of or successor to such Limited Partner's interest and will survive such Partner's ceasing to be a partner in the Partnership and/or the termination, dissolution, liquidation and winding up of the Partnership.

8.9 Entire Agreement

The parties acknowledge and agree that this Agreement, together with any other agreement with a Limited Partner, constitutes the entire agreement among the parties hereto pertaining to the subject matter hereof and supersedes all prior agreements and understandings pertaining thereto.

[Signature Page Follows]

The parties hereto have executed and unconditionally delivered this Agreement as a deed on the day and year first above written.

General Partner:

Highland Argentina Regional Opportunity Fund GP, LLC

By: Highland Capital Management Latin America, L.P., its sole member
By: Highland Latin America GP, Ltd., its general partner

By: _____
Name: Gustavo Prilick
Title: Director

Witness:

By: _____
Name: Timothy J. Cournoyer
Title:

Limited Partners:

Highland Argentina Regional Opportunity Fund, L.P.

By: Highland Argentina Regional Opportunity Fund GP, LLC, its general partner
By: Highland Capital Management Latin America, L.P., its sole member
By: Highland Latin America GP, Ltd., its general partner

By: _____
Name: Gustavo Prilick
Title: Director

Witness:

By: _____
Name: Timothy J. Cournoyer
Title:

Signature Page to Amended and Restated Exempted Limited Partnership Agreement of Highland Argentina Regional Opportunity Master Fund, L.P.

Highland Argentina Regional Opportunity Fund, Ltd.

By: Highland Capital Management Latin America, L.P., its managing shareholder
By: Highland Latin America GP, Ltd., its general partner

By: _____
Name: Gustavo Prilick
Title: Director

Witness:

By: _____
Name: Timothy J. Cournoyer
Title:

Special Limited Partner:

Highland Capital Management Latin America, L.P.

By: Highland Latin America GP, Ltd., its general partner

By: _____
Name: Gustavo Prilick
Title: Director

Witness:

By: _____
Name: Timothy J. Cournoyer
Title:

EXHIBIT A

General Partner:
Highland Argentina Regional Opportunity Fund GP, LLC

Limited Partners:
Highland Argentina Regional Opportunity Fund, L.P.
Highland Argentina Regional Opportunity Fund, Ltd.

Special Limited Partner:
Highland Capital Management Latin America, L.P.

AMENDED AND RESTATED

INVESTMENT MANAGEMENT AGREEMENT

by and among

HIGHLAND ARGENTINA REGIONAL OPPORTUNITY FUND, L.P.,

HIGHLAND ARGENTINA REGIONAL OPPORTUNITY FUND, LTD.,

HIGHLAND ARGENTINA REGIONAL OPPORTUNITY MASTER FUND, L.P.,

HIGHLAND ARGENTINA REGIONAL OPPORTUNITY FUND GP, LLC

and

HIGHLAND CAPITAL MANAGEMENT LATIN AMERICA, L.P.

November 1, 2017

This **AMENDED AND RESTATED INVESTMENT MANAGEMENT AGREEMENT** (this "***Agreement***"), dated as of November 1, 2017, is by and among:

HIGHLAND ARGENTINA REGIONAL OPPORTUNITY FUND, L.P., a Delaware limited partnership (the "***Domestic Fund***"), acting through its general partner, Highland Argentina Regional Opportunity Fund GP, LLC, a Delaware limited liability company (the "***General Partner***");

HIGHLAND ARGENTINA REGIONAL OPPORTUNITY FUND, LTD., a Cayman Islands exempted company (the "***Offshore Fund***" and together with the Domestic Fund, the "***Feeder Funds***");

HIGHLAND ARGENTINA REGIONAL OPPORTUNITY MASTER FUND, L.P., a Cayman Islands exempted limited partnership (the "***Master Fund***," and together with the Feeder Funds, the "***Clients***") acting by its general partner, the General Partner;

HIGHLAND ARGENTINA REGIONAL OPPORTUNITY FUND GP, LLC, a Delaware limited liability company, as the general partner of the Domestic Fund and the Master Fund; and

HIGHLAND CAPITAL MANAGEMENT LATIN AMERICA, L.P., a Cayman Islands exempted limited partnership, as the investment manager of each of the Clients (the "***Investment Manager***");

Preliminary Statements

A. The Investment Manager and the Offshore Fund entered into an Investment Management Agreement dated as of June 28, 2017 (the "***Original Agreement***").

B. The Offshore Fund has re-organized into a master-feeder structure together with the Master Fund and the Domestic Fund. As a result, the Investment Manager and the Offshore Fund desire to amend and restate the Original Agreement in its entirety to give effect to this re-structuring and to admit the Master Fund, the General Partner and the Domestic Fund as parties to this Agreement.

C. Each of the Feeder Funds is required to invest all of its investable assets in the Master Fund. The Investment Manager exercises no discretion with respect to the investment of the assets of the Feeder Funds and will serve merely as a steward thereof. All investment activities of the Investment Manager are conducted at the Master Fund level in the Investment Manager's role as investment manager to the Master Fund.

D. The Clients desire to retain the Investment Manager to provide certain discretionary advisory services relating to the assets and liabilities of the Master Fund and certain custodial services in respect of the Feeder Funds, and the Investment Manager desires to accept such appointment, all subject to the terms and conditions hereinafter set forth.

Agreement

For good and valuable consideration, the sufficiency and adequacy of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. Appointment.

The Investment Manager will serve as investment manager with respect to the assets and liabilities of the Master Fund, and will provide certain administrative services in respect of the Domestic Fund and the Offshore Fund, and the Investment Manager hereby agrees to perform its obligations in accordance with the terms hereof and of the Amended and Restated Exempted Limited Partnership Agreement of the Master Fund, as amended from time to time (the "***Master Fund Partnership Agreement***"), and the investment objectives, policies, guidelines and restrictions that from time to time are set forth in the Governing Documents of the Clients, as applicable. "***Governing Documents***" means, with respect to:

(a) the Domestic Fund: the confidential private placement memorandum of the Domestic Fund, as supplemented or superseded from time to time (the "***PPM***"), and the Amended and Restated Limited Partnership Agreement of the Domestic Fund, as amended from time to time (the "***Domestic Fund Partnership Agreement***" and, together with the Master Fund Partnership Agreement, the "***Partnership Agreements***");

(b) the Offshore Fund: the offering memorandum of the Offshore Fund, as supplemented or superseded from time to time (the "***POM***"), and the Memorandum and Articles of Association of the Offshore Fund, as amended and restated from time to time (the "***Articles***" and, together with the POM, the "***Offshore Governing Documents***"); and

(c) the Master Fund: the Master Fund Partnership Agreement.

Any capitalized terms used but not defined herein shall have the meanings assigned to such terms in the Governing Documents, as applicable.

2. Authority and Duties of the Investment Manager.

(a) All of the investable assets of the Feeder Funds shall be invested in, and the investment program of the Feeder Funds is to be conducted by the Investment Manager through, the Master Fund. The Investment Manager shall exercise no discretion with respect to the investments or the assets of the Feeder Funds and the investment activities of the Investment Manager shall be conducted at the Master Fund level in the Investment Manager's role as investment manager to the Master Fund.

(b) The Master Fund's investment program will be conducted by the Investment Manager in accordance with the PPM and the POM.

(c) The Investment Manager serves as the investment manager to the Master Fund and, in that capacity, has full discretion and authority, without obtaining the prior approval of any officer or other agent of the Master Fund, but subject to the investment restrictions set forth in the Governing Documents: (i) to effect any and all transactions and investments on behalf of the Master Fund; (ii) to determine all matters relating to the manner, method and timing of transactions and to engage consultants and analysts in connection therewith; (iii) to select brokers, dealers, futures commission merchants, banks and other intermediaries by or through whom such transactions will be executed or carried out; (iv) to trade on margin; (v) to borrow funds from banks, futures commission merchants, brokers and other lenders and pledge the securities or other portfolio assets as collateral therefor, and otherwise to utilize any lines of credit, credit balances or overdraft privileges available to the Master Fund; (vi) to direct banks, brokers or other custodians to effect deliveries of funds or assets, but only in the course of effecting portfolio transactions for the account of the Master Fund; (vii) to exercise all voting and other powers and privileges attributable to any investments held for the Master Fund's account hereunder; (viii) to authorize remuneration for the directors of the Offshore Fund (the "***Directors***") who are not principals or employees of the Investment Manager; and (ix) to make and execute all such documents and to take all such other actions as the Investment Manager considers necessary or appropriate to carry out its investment management duties hereunder (including, but not limited to, the engagement of third party service providers on behalf of the Clients).

(d) Subject to the terms and conditions of this Agreement, the authority granted hereby to the Investment Manager shall include, without limitation, the power and authority to:

(i) with respect to the Offshore Fund and in consultation with the Directors, approve the rescission of a request for voluntary redemption submitted by a shareholder of the Offshore Fund (each, a "***Shareholder***"); waive any applicable requirements and restrictions in relation to the redemption of shares of the Offshore Fund ("***Shares***") by any Shareholder; waive certain eligibility requirements with respect to any new subscription for participating Shares or the transfer of Shares; waive any of the subscription requirements as set out in the POM with respect to any new subscription for Shares; permit a Shareholder to redeem its Shares at any time in the event that continuing to hold the Shares becomes impractical or illegal, upon a Shareholder's death or total disability, or in order for a Shareholder to avoid materially adverse tax or regulatory consequences; make in-kind distributions of Offshore Fund assets; approve the establishment of reserves for contingencies and distribution holdbacks; approve Side Letters (as defined in the POM); accept subscriptions below the minimum subscription amount; accept redemptions of Shares outside the frequency established by the Articles; and cause the Offshore Fund to invest all of its investable assets in the Master Fund;

(ii) with respect to the Domestic Fund, consent to or advise the Domestic Fund with respect to any actions of the Domestic Fund for which its consent or advice is required, as outlined in the PPM; make and execute all such documents and take all such other actions as the Investment Manager considers necessary or appropriate to carry out its duties hereunder; and cause the Domestic Fund to invest all of its investable assets in the Master Fund, in each case to the extent permitted under the Domestic Fund Partnership Agreement; and

(iii) deposit and withdraw the funds of each Client in the name of such Client in any bank or trust company and to entrust such bank or trust company with any of the securities, monies, documents and papers belonging to or relating to such Client; or to deposit in and entrust to any brokerage firm that is a member of any U.S. national securities exchange any of said funds, securities, monies, documents and papers belonging to or relating to such Client.

(e) Each Client hereby designates the Investment Manager as the commodity pool operator (the "***CPO***") for such Client with complete authority and responsibility for compliance with the U.S. Commodity Exchange Act and the regulations promulgated thereunder, including the authority to perform any and all duties required of a CPO (i) that is exempt from registration under the regulations of the U.S. Commodity Futures Trading Commission (the "***CFTC***") and (ii) that is in compliance with CFTC Rule 4.13(a)(3), including the filing of a notice of exemption under Rule 4.13(a)(3) with the CFTC.

(f) Additionally, each of the Clients hereby designates and appoints the Investment Manager as its agent and attorney-in-fact, with full power and authority and without the need for further approval of the Clients (except as may be required by law), to complete and execute all such documents and to take any and all actions that the Investment Manager, in its discretion, may deem advisable to carry out the foregoing with respect to the assets of the Clients; provided, however, that the Investment Manager is not intended to have actual or constructive custody of any securities or other assets of the Clients. In connection with any of the foregoing, the Investment Manager is further authorized to transfer or tender for cash or exchange such securities or other assets. In all such purchases, sales or trades, the Clients authorize the Investment Manager to act for the Clients, at their risk, in their name and on their behalf, in the same manner and with the same force and effect as the Clients might or could do with respect to such purchases, sales or trades without prior consultation with the Clients. The Clients also appoint the Investment Manager as their agent and attorney-in-fact to vote, and to execute proxies, waivers, consents and other instruments with respect to, the securities and other assets of the Clients.

(g) At the request of a Client, in any wind down of such Client, the Investment Manager will manage the realization of the Client's assets and the distribution thereof to investors.

(h) In connection with the execution of transactions on behalf of the Master Fund, the Master Fund hereby acknowledges and agrees that in the course of selecting brokers, dealers, futures commission merchants, banks and financial intermediaries to effect transactions for the Master Fund's account, the Investment Manager may agree to such commissions, fees and other charges on behalf of the Master Fund's account as it may deem reasonable in the circumstances, taking into consideration all such factors as the Investment Manager deems relevant, including, without limitation, the following: price quotes, the size of the transaction, the nature of the market for the financial instrument, the timing of the transaction, difficulty of execution, the broker-dealer's expertise in the specific financial instrument or sector in which the Master Fund seeks to trade, the extent to which the broker-dealer makes a market in the financial instrument involved or has access to such markets, the broker-dealer's skill in positioning the financial instruments involved, the broker-dealer's promptness of execution, the broker-dealer's financial stability, reputation for diligence, fairness and integrity, quality of service rendered by the broker-dealer in other transactions for the Investment Manager and its respective affiliates, confidentiality considerations, the quality and usefulness of research services and investment ideas presented by the broker-dealer, the broker-dealer's willingness to correct errors, the broker-dealer's ability to accommodate any special execution or order handling requirements that may surround the particular transaction, and other factors deemed appropriate by the Investment Manager. It is understood that the Investment Manager need not solicit competitive bids and does not have an obligation to seek the lowest available commission cost or spread.

3. Fees, Expenses and Indemnification.

(a) The Investment Manager shall be paid the Management Fee by the Master Fund in accordance with the Master Fund Partnership Agreement.

(b) The Investment Manager agrees to be bound by all of the terms and provisions of the Partnership Agreements applicable to it, as a delegatee of the General Partner, as though expressly made a party thereto, and shall be governed by the same standard of care applicable to the General Partner in connection therewith. The General Partner, on behalf of each of the Domestic Fund and the Master Fund, agrees that the Investment Manager shall be entitled to all of the benefits of the Partnership Agreements applicable to it as a delegatee of the General Partner, including, without limitation, the right to reimbursement of expenses provided under Section 4.2 of the Master Fund Partnership Agreement and Section 4.2 of the Domestic Fund Partnership Agreement, and the right to limitation of liability and indemnification provided under Section 4.5 of the Master Fund Partnership Agreement and Section 4.5 of the Domestic Fund Partnership Agreement, and such sections are hereby incorporated by reference as if set forth in full herein.

(c) With respect to the reimbursement of expenses directly attributable to the Offshore Fund separate and apart from the Master Fund, the Offshore Fund agrees that it will pay the Investment Manager's expenses as follows:

(i) In accordance with and subject to the Offshore Governing Documents, the Offshore Fund will pay, or will reimburse the Investment Manager for, all costs, fees and expenses arising in connection with the Offshore Fund's operations and its *pro rata* share of the cost of the Master Fund's operations and investments. Expenses payable by the Offshore Fund include the following:

(A) the Offshore Fund's *pro rata* share of the cost of the Master Fund's investment program, including, without limitation, brokerage commissions, other expenses related to buying and selling securities (including trading errors that are not the result of the Investment Manager's gross negligence (as such term is defined and interpreted in accordance with the laws of the State of Delaware), willful misconduct or fraud), costs of due diligence regardless of whether a particular transaction is consummated, the costs of attending shareholder meetings, research expenses and costs related to monitoring investments;

(B) initial organizational expenses of the Offshore Fund;

(C) fees and expenses of advisers and consultants;

(D) fees and expenses of any custodians, escrow or transfer agents or other investment-related service providers;

(E) indemnification expenses incurred in connection with the Offshore Governing Documents and the cost of insurance against potential indemnification liabilities;

(F) interest and other borrowing expenses;

(G) legal, administrative, accounting, tax, audit and insurance expenses;

(H) expenses of preparing and distributing reports, financial statements and notices to Shareholders;

(I) litigation or other extraordinary expenses;

(J) any withholding, transfer or other taxes imposed or assessed on, or payable by, the Offshore Fund (including any interest and penalties); and

(K) the cost of periodically updating the POM.

(ii) Except as set forth herein or in the POM, in accordance with and subject to the Offshore Governing Documents, the Investment Manager will pay all of its own operating and overhead costs (including salaries, office rent

and other general overhead expenses), without reimbursement by the Offshore Fund.

(iii) The Investment Manager shall be entitled to reimbursement from the Offshore Fund for any expenses paid by it on behalf of the Offshore Fund; provided that, the Investment Manager in its sole discretion may absorb any or all of such expenses incurred on behalf of the Offshore Fund. The Investment Manager may retain, in connection with its responsibilities hereunder as a delegatee of the General Partner, the services of others to assist in the investment advice to be given to the Master Fund, including, but not limited to, any affiliate of the Investment Manager, but payment for any such services shall be assumed by the Investment Manager and neither the Master Fund nor the Offshore Fund shall have any liability therefor; provided, however, that the Investment Manager, in its sole discretion, may retain the services of independent third party professionals on behalf of the Master Fund, including, without limitation, attorneys, accountants and consultants, to advise and assist it in connection with the performance of its activities on behalf of the Master Fund, and the Master Fund shall bear full responsibility therefor and the expense of any fees and disbursements arising therefrom.

(d) With respect to the right to indemnification directly attributable to the Offshore Fund separate and apart from the Master Fund:

(i) The Offshore Fund agrees that the Investment Manager, its members, shareholders, partners, managers, directors, any person who controls the Investment Manager, each of the respective affiliates of the foregoing, and each of their respective executors, heirs, assigns, successors and other legal representatives (each an "***Indemnified Person***") shall not be liable to the Offshore Fund or to any of the Shareholders for any loss or damage arising by reason of being or having been an Indemnified Person or from any acts or omissions in the performance of its services as an Indemnified Person in the absence of gross negligence (as such term is defined and interpreted in accordance with the laws of the State of Delaware), willful misconduct or fraud, or as otherwise required by law. In no event shall any Indemnified Person be liable for any consequential damages, special or indirect damages or lost profits. An Indemnified Person may consult with counsel and accountants in respect of the Offshore Fund's affairs and will be fully protected and justified in any action or inaction which is taken in accordance with the advice or opinion of such counsel or accountants, provided that they were selected in accordance with the standard of care set forth above.

(ii) The Offshore Fund shall, to the fullest extent permitted by law, indemnify and hold harmless each Indemnified Person from and against any and all liabilities suffered or sustained by an Indemnified Person by reason of the fact that it, he or she is or was an Indemnified Person or in connection

with this Agreement or the Offshore Fund's business or affairs, including, without limitation, any judgment, settlement, reasonable attorneys' fees and other costs or expenses incurred in connection with the defense of any actual or threatened action, suit or proceeding, provided that such liability did not result from the gross negligence (as such term is defined and interpreted in accordance with the laws of the State of Delaware), willful misconduct or fraud of such Indemnified Person. The Offshore Fund will, in the sole discretion of the Directors, advance to any Indemnified Person reasonable attorneys' fees and other costs and expenses incurred in connection with the defense of any action, suit or proceeding which arises out of such conduct. In the event that such an advance is made by the Offshore Fund, the Indemnified Person will agree to reimburse the Offshore Fund to the extent that it is finally determined that the Indemnified Person was not entitled to indemnification in respect thereof.

(iii) Notwithstanding any of the foregoing, the provisions of this Section 3(d) do not provide for the exculpation or indemnification of any Indemnified Person for any liability (including liability under U.S. federal securities laws which, under certain circumstances, impose liability even on persons that act in good faith), to the extent (but only to the extent) that such liability may not be waived, modified or limited under applicable law, but shall be construed so as to effectuate the above provisions to the fullest extent permitted by law.

(iv) Pursuant to the indemnification and exculpation provisions above and as set forth in the Master Fund Partnership Agreement, the Master Fund (and not the applicable Indemnified Person) will be responsible for any losses resulting from trading errors and similar human errors, absent gross negligence (as such term is defined and interpreted in accordance with the laws of the State of Delaware), willful misconduct or fraud of any Indemnified Person.

(v) The above-mentioned Indemnified Persons are also indemnified by each Shareholder for any amounts of tax withheld or required to be withheld with respect to that Shareholder, and also for any amounts of interest, additions to tax, penalties and other costs borne by any such persons in connection therewith.

(vi) Each Indemnified Person shall be deemed a third-party beneficiary (to the extent not a direct party hereto) of this Agreement and, in particular, the provisions of this Section 3(d). The Investment Manager may enter into agreements on behalf of the Offshore Fund with an Indemnified Person to provide an indemnity to the same extent provided in this Section 3(d).

4. Termination.

This Agreement shall become effective on the date hereof and shall continue in effect until the earlier of the dissolution of a Client or termination by either the Investment Manager, the Offshore Fund or the General Partner, on behalf of the Domestic Fund or the Master Fund, upon at least 90 days' prior notice.

5. Other Activities and Investments.

(a) Each party hereto acknowledges and agrees that the Investment Manager, its affiliates and their respective officers, directors, shareholders, members, partners, personnel and employees, may engage in or possess an interest in other business ventures or commercial dealings of every kind and description, independently or with others, including, but not limited to, management of other accounts, investment in, or financing, acquisition and disposition of, securities, investment and management counseling, brokerage services, serving as directors, officers, advisers or agents of other companies, partners of any partnership, or trustees of any trust, or entering into any other commercial arrangements, and will not be disqualified solely on the basis that any such activities may conflict with any interest of the parties to this Agreement. Without in any way limiting the foregoing, each party hereto hereby acknowledges that (i) none of the Investment Manager, its affiliates and their respective officers, directors, shareholders, members, partners, personnel and employees shall have any obligation or responsibility to disclose or refer any of the investment or other opportunities obtained through activities contemplated by this Section 5(a) to any Client or its investors, but may refer the same to any other party or keep such opportunities for their own benefit; and (ii) the Investment Manager, its affiliates and their respective officers, directors, shareholders, members, partners, personnel and employees are hereby authorized to engage in activities contemplated by this Section 5(a) with, or to purchase, sell or otherwise deal or invest in investments issued by, companies in which the Master Fund might from time to time invest or be able to invest or otherwise have any interest, without the consent or approval of the Clients or their investors. The parties hereto expressly agree that neither the Clients nor their investors shall have any rights in or to such other activities, or any profits derived therefrom.

(b) The Investment Manager and its affiliates shall allocate investment opportunities to the Master Fund and any Other Account (as defined below) fairly and equitably over time. Notwithstanding the foregoing, the Investment Manager is under no obligation to accord exclusivity or priority to the Master Fund in the event of limited investment opportunities. This means that such opportunities will be allocated among those accounts for which participation in the respective opportunity is considered appropriate, taking into account, among other considerations: (i) fiduciary duties owed to the accounts; (ii) the primary mandate of the accounts; (iii) the capital available to the accounts; (iv) any restrictions on the accounts and the investment opportunity; (v) the sourcing of the investment, size of the investment and amount of follow-on available related to the

investment; (vi) whether the risk-return profile of the proposed investment is consistent with the account's objectives and program, whether such objectives are considered in light of the specific investment under consideration or in the context of the portfolio's overall holdings; (vii) the potential for the proposed investment to create an imbalance in the account's portfolio (taking into account expected inflows and outflows of capital); (viii) liquidity requirements of the account; (ix) potentially adverse tax consequences; (x) regulatory and other restrictions that would or could limit an account's ability to participate in a proposed investment; and (xi) the need to re-size risk in the account's portfolio. The Investment Manager has the authority to allocate trades to multiple accounts on an average price basis or on another basis it deems fair and equitable. Similarly, if an order on behalf of any accounts cannot be fully allocated under prevailing market conditions, the Investment Manager may allocate the trades among different accounts on a basis it considers fair and equitable over time. For purposes of this Agreement, "***Other Account***" means any assets or investment of the Investment Manager, or any assets managed by the Investment Manager or any of its affiliates for the account of any person or entity (including investment vehicles) other than the Clients, which are invested or which are available for investment in securities or other instruments or for trading activities whether or not of the specific type being conducted by the Clients.

(c) The Principal (as defined in the Domestic Fund Partnership Agreement), as well as the employees and officers of the Investment Manager and of organizations affiliated with the Investment Manager, may buy and sell securities for their own account or the account of others, but may not buy securities from or sell securities to the Master Fund (such prohibition does not extend to the purchase or sale of limited partner interests in the Master Fund), unless such purchase or sale is in compliance with the applicable provisions of the U.S. Investment Advisers Act of 1940, as amended.

(d) The Investment Manager and its affiliates reserve the right to establish collective investment vehicles that have stated investment programs or terms that differ from those of the Clients or that are targeted primarily to investors for which none of the Clients are designed to be a suitable investment vehicle. The Investment Manager and its affiliates also reserve the right to establish and provide management or advisory services to Other Accounts for significant investors, whether or not such accounts have the same investment program as the Clients.

6. Complete Agreement; Amendment.

(a) This Agreement, together with the Governing Documents, contains the entire agreement between the parties hereto relating to the subject matter hereof. No provision of this Agreement may be amended without the written consent of the Investment Manager and the Clients.

(b) This Agreement shall automatically and immediately terminate in the event of its assignment by the Investment Manager other than in accordance with Section 7.

(c) The expiration or termination of this Agreement shall not extinguish the obligations of the Clients for the payment of fees and expenses in respect of services rendered by the Investment Manager prior to the effective date of such expiration or termination.

7. Binding Effect; Assignment.

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, but the rights and obligations hereunder shall not, except as otherwise expressly provided herein, be assignable, transferable or delegable without the written consent of the other parties hereto, and any attempted assignment, transfer or delegation thereof without such consent shall be void.

8. Counterparts.

This Agreement may be executed in one or more counterparts all of which taken together shall be deemed to constitute one and the same instrument.

9. Notice by Investment Manager.

To the extent required by law, the Investment Manager agrees to notify the Clients in writing within 30 days after any change in the membership of the Investment Manager.

10. Severability.

If any provision herein is deemed invalid or unenforceable, such provision shall be deemed modified and limited to the extent necessary to make it valid and enforceable.

11. Independent Contractor.

For all purposes of this Agreement, the Investment Manager shall be an independent contractor and not an employee or dependent agent of the Clients, nor shall anything herein be construed as making the Clients partners or co-venturers with the Investment Manager or any of its affiliates or customers. Except as provided in this Agreement, the Investment Manager shall have no authority to bind, obligate or represent the Clients.

12. Governing Law.

This Agreement shall be governed by and construed in accordance with the substantive laws of the Cayman Islands, which are applicable to contracts made and entirely to be performed therein, without regard to the place of performance hereunder.

[Signature Page Follows]

The parties hereto have executed this Agreement as of the day and year first above written.

HIGHLAND ARGENTINA REGIONAL OPPORTUNITY FUND, L.P.

By: Highland Argentina Regional Opportunity Fund GP, LLC, its general partner
By: Highland Capital Management Latin America, L.P., its sole member
By: Highland Latin America GP, Ltd., its general partner

By: _____
Name: Gustavo Prilick
Title: Director

HIGHLAND ARGENTINA REGIONAL OPPORTUNITY FUND, LTD.

By: Highland Capital Management Latin America, L.P., its managing shareholder
By: Highland Latin America GP, Ltd., its general partner

By: _____
Name: Gustavo Prilick
Title: Director

HIGHLAND ARGENTINA REGIONAL OPPORTUNITY MASTER FUND, L.P.

By: Highland Argentina Regional Opportunity Fund GP, LLC, its general partner
By: Highland Capital Management Latin America, L.P., its sole member
By: Highland Latin America GP, Ltd., its general partner

By: _____
Name: Gustavo Prilick
Title: Director

ARGENTINA REGIONAL OPPORTUNITY FUND GP, LLC

By: Highland Capital Management Latin America, L.P., its sole member
By: Highland Latin America GP, Ltd., its general partner

By: _____
Name: Gustavo Prilick
Title: Director

HIGHLAND CAPITAL MANAGEMENT LATIN AMERICA, L.P.

By: Highland Latin America GP, Ltd., its general partner

By: _____
Name: Gustavo Prilick
Title: Director

OFFERING MEMORANDUM

Copy No: _____

Furnished to: _____

HIGHLAND ARGENTINA REGIONAL OPPORTUNITY FUND, LTD.

an exempted company incorporated with limited liability under the laws of the Cayman Islands offering for subscription up to 4,999,900 Shares designated as Series A Shares and Series B Shares

Investment Manager

Highland Capital Management Latin America, L.P.

March 2019

Prospective investors should review this Offering Memorandum carefully and consult with their legal and financial advisers to determine possible tax or other consequences of purchasing, holding or redeeming Shares (as defined herein).

The distribution of this Offering Memorandum and the offering or purchase of the Shares may be restricted in certain jurisdictions. No persons receiving a copy of this Offering Memorandum or the accompanying subscription documents in any such jurisdiction may treat this Offering Memorandum or such subscription documents as constituting an invitation to them to subscribe for Shares, nor should they in any event use such subscription documents, unless in the relevant jurisdiction such an invitation could lawfully be made to them and such subscription documents could lawfully be used without compliance with any registration or other legal requirements.

Application has previously been made on 16 June 2006 to The International Stock Exchange (the "Exchange"), which has approved the listing of up to 4,999,900 Series A Shares of US$0.01 each to be issued by Highland Argentina Regional Opportunity Fund, Ltd. (the "Fund") to be admitted to the Official List. The Series B Shares are not listed on any stock-exchange. This document will comprise listing particulars for the purpose of the listing of the Shares on that Exchange. It is not presently proposed to seek an admission to listing on any other stock exchange. The Directors do not anticipate that an active secondary market will develop in any of the Shares of the Fund. Ogier Corporate Finance Limited is acting for the Fund and for no one else in connection with the listing of the Shares and will not be responsible to anyone other than the Fund.

This Offering Memorandum includes particulars given in compliance with the Listing Rules of the Exchange for the purpose of giving information with regard to the Fund. The Directors, whose names appear on page 39, accept full responsibility for the information contained in this Offering Memorandum and confirm, having made all reasonable enquiries, that to the best of their knowledge and belief there are no other facts the omission of which would make any statement herein misleading.

Neither the admission of the Shares to the Official List nor the approval of the Offering Memorandum pursuant to the listing requirements of the Exchange shall constitute a warranty or representation by the Exchange as to the competence of the service providers to or any other party connected with the listed fund, the adequacy and accuracy of the information contained in the Offering Memorandum or the suitability of the issuer for investment or for any other purpose.

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DIRECTORY

Highland Argentina Regional Opportunity Fund, Ltd.

Directors:

Claire Kasumba
Martin Laufer
Sophia Dilbert

Registered Office:

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P.O. Box 309
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Cayman Islands

Investment Manager:

Highland Capital Management Latin America, L.P.
c/o Highland Capital Management, L.P.
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Dallas, TX 75201

Administrator and Principal Office:

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Cayman Islands

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Cayman Islands

Sponsor:

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Channel Islands

Legal Advisor as to Cayman Islands Law:

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Cayman Islands

Legal Advisor as to United States Law:

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Prime Broker:

Société Générale
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Chicago, IL 60605

BNP Paribas Prime Brokerage, Inc.
787 Seventh Avenue
The Equitable Tower
New York, NY 10019

NOTICE

THIS OFFERING MEMORANDUM

This Offering Memorandum ("Memorandum") relates to the offering of Series A and Series B Shares of Highland Argentina Regional Opportunity Fund, Ltd. (the "Fund"), a company incorporated under the Companies Law (Revised) of the Cayman Islands as an exempted company limited by shares and of unlimited duration.

This Memorandum is confidential and intended solely for the use of the person to whom it has been delivered by the Fund for the purpose of enabling the recipient to evaluate an investment in the Fund, and it is not to be reproduced or distributed to any other persons. Notwithstanding anything herein to the contrary, each investor (and each employee, representative, or other agent of the investor) may disclose to its tax and other professional advisors, the tax treatment and tax structure of an investment in the Fund and all materials of any kind (including opinions or other tax analyses) that are provided to the investor relating to such tax treatment and tax structure.

The Directors of the Fund whose names appear in the Directory accept responsibility for the information contained in this document. To the best of the knowledge and belief of the Directors (who have taken all reasonable care to ensure that such is the case) the information contained in this document is in accordance with the facts and does not omit anything likely to affect the import of such information.

INVESTOR RESPONSIBILITY

No representations or warranties of any kind are intended or should be inferred with respect to the economic return from, or the tax consequences of, an investment in the Fund. No assurance can be given that existing laws will not be changed or interpreted adversely. Prospective investors are not to construe this Memorandum as legal, investment or tax advice. No person is authorized to make any representations concerning the Fund which are inconsistent with those contained in this Memorandum. This Memorandum supersedes all prior versions thereof and should be reviewed prior to making an investment decision.

Prospective investors should review this Memorandum carefully and in its entirety and consult with their legal, tax and financial advisors in relation to (i) the legal and regulatory requirements within their own countries for the purchase, holding, redemption or disposal of shares of the Fund ("Shares"); (ii) any foreign exchange restrictions to which they are subject in their own countries in relation to the purchase, holding, redemption or disposal of Shares; and (iii) the legal, tax, financial or other consequences of subscribing for, purchasing, holding, redeeming or disposing of Shares.

DISTRIBUTION AND SELLING RESTRICTIONS

Neither this Memorandum nor the Shares described herein have been qualified for offer, sale or distribution under the laws of any jurisdiction governing the offer or sale of mutual fund shares or other securities. The distribution of this Memorandum and the offering or purchase of the Shares may be restricted in certain jurisdictions. No persons receiving a copy of this Memorandum or the accompanying Subscription Documents (as defined herein) in any such jurisdiction may treat this Memorandum or such Subscription Documents as constituting an invitation to them to subscribe for Shares, nor should they in any event use such Subscription Documents, unless in the relevant jurisdiction such an invitation could lawfully be made to them and such Subscription Documents could lawfully be used without compliance with any registration or other legal requirements. Accordingly, this Memorandum does not constitute an offer or solicitation by anyone in any jurisdiction in which such offer or solicitation is not lawful or in which the person making such offer or solicitation is not qualified to do so or to anyone to whom it is unlawful to make such offer or solicitation. It is the responsibility of any persons in possession of this Memorandum and any persons wishing to apply for Shares pursuant to this Memorandum to inform themselves of and to observe all applicable laws and regulations of any relevant jurisdiction.

The Fund may not make an invitation to the public in the Cayman Islands to subscribe for the Shares unless the Fund is listed on the Cayman Islands Stock Exchange. For these purposes, "public" has the same meaning as "public in the Islands" as defined in the Mutual Funds Law (Revised) of the Cayman Islands. Apart from this restriction, persons resident, domiciled, established, incorporated or registered pursuant to the laws of the Cayman Islands may beneficially own Shares.

The Fund does not constitute a recognized collective investment scheme for the purposes of the Financial Services and Markets Act 2000 of the United Kingdom (the "Act"). In addition, the Investment Manager is not authorized or supervised by the United Kingdom Financial Conduct Authority ("FCA") as an "alternative investment fund manager" or "AIFM", as defined in the Financial Services and Markets Act 2000 (Alternative Investment Fund Managers) Regulations 2013 (SI 2013/1773) ("UK AIFMD Regulations"). The promotion and offering or placement of the Fund and the distribution of this Memorandum in the United Kingdom are accordingly restricted by law. The distribution of this Memorandum in the United Kingdom:

(a) if made by a person who is not an authorized person under the Act, must be made to, and/or directed at, only persons (A) who are professional investors, as defined in the UK AIFMD Regulations; or (B) to whom it may lawfully be made or directed at under the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005 (as amended), including persons who are authorized under the Act ("authorized persons"), certain persons having professional experience in matters relating to investments, high net worth companies, high net worth unincorporated associations or partnerships, trustees of high value trusts and persons who qualify as certified sophisticated investors; and

(b) if made by a person who is an authorized person under the Act must be made to, and/or directed at, only persons (A) who are professional investors, as defined in the UK AIFMD Regulations; or (B) to whom it may lawfully be made or directed at under the

Financial Services and Markets Act 2000 (Promotion of Collective Investment Schemes) (Exemptions) Order 2001 (as amended) or chapter 4, section 4.12 of the FCA's Conduct of Business Sourcebook, including authorized persons, certain persons having professional experience of participating in unregulated schemes, high net worth companies, high net worth unincorporated associations or partnerships, trustees of high value trusts, persons who qualify as certified sophisticated investors and clients of the person making the distribution for whom that person has taken reasonable steps to ensure that the investment in the Fund is suitable.

All such persons in (a) and (b) above together are referred to as "Relevant Persons." Any investment or investment activity to which this communication relates must only be made available to Relevant Persons in the United Kingdom and this Memorandum must not be distributed to or relied on or acted upon by any other persons in the United Kingdom.

The Shares of the Fund have not been admitted for marketing in Germany. The Shares have only been admitted for marketing to professional investors in the territory of Germany. Accordingly, the Shares may not be offered and marketed to semi-professional and retail investors within the meaning of section 1(19) no. 31 and 33 German Capital Investment Act (Kapitalanlagege-Setzbuch) in the territory of Germany. The Memorandum may not be passed on to semi-professional and retail investors in Germany.

The Shares described in this Memorandum have not been, and will not be, registered under the United States Securities Act of 1933, as amended, or any similar law, rule or regulation in any other jurisdiction (including without limitation any law, rule or regulation of England and Wales, the Cayman Islands or any of the states of the United States of America). Shares of the Fund may not be directly or indirectly offered or sold to or for the benefit of any United States Person (as defined herein) except pursuant to placements exempt from registration under the United States Securities Act of 1933, as amended. In addition, the Fund has not been and will not be registered under the United States Investment Company Act of 1940, as amended, or any similar law, rule or regulation in any other jurisdiction (including without limitation any law, rule or regulation of England and Wales, the Cayman Islands or any of the states of the United States of America).

The Shares offered hereby may not be publicly offered, sold or advertised in Switzerland pursuant to Article 2 of the Swiss Investment Fund Act 1995 and this Memorandum may only be circulated to a limited number of persons in Switzerland. Therefore, no steps have been taken to register the Fund and/or this Memorandum as a prospectus in Switzerland.

ADDITIONAL INFORMATION CONCERNING THE DISTRIBUTION OF THE FUND IN SWITZERLAND

The Shares of the Fund can be distributed in Switzerland exclusively to qualified investors as defined by Article 10 § 3 of the Collective Investment Scheme Act (CISA) and Article 6 of the Collective Investment Scheme Ordinance (CISO) (Qualified Investors). The Fund has not been and will not be registered with the Swiss Financial Market Supervisory Authority (FINMA). This offering memorandum and/or any other offering materials relating to the Shares may be made available in Switzerland solely to Qualified Investors.

The Representative of the Fund in Switzerland is Hugo Fund Services SA, with its registered office at 6 Cours de Rive, CH-1204 Geneva. The offering documents and annual or semi-annual reports can be obtained free of charge from the Representative. The place of performance for Shares of the Fund offered or distributed in or from Switzerland are the registered office of the Representative. The courts of the canton of Geneva shall have jurisdiction in relation to any disputes arising out of the duties of the Representative. Any dispute related to the distribution of Shares of the Fund in and from Switzerland shall be subject to the jurisdiction of the registered office of the distributor. The Paying Agent in Switzerland is Banque Heritage SA, 61 Route de Chêne, CH-1208 Geneva, Switzerland. Shares may be subscribed and/or redeemed with the Paying Agent. A handling commission will be charged by the Paying Agent and deducted from the subscription or redemption amount paid or received. If a subscription or redemption is made through the Paying Agent, instructions and money must be received by the paying agent at least 24 hours before the appropriate dealing cut-off time.

The fees and expenses associated with the representation, paying agency and other distribution items may be charged to the Fund. As applicable, the actual amount of such fees and expenses will be disclosed in the audited annual report.

In distributing shares of the Fund in Switzerland, the Fund is authorised to pass on distribution fees to the distributors and sales partners listed below:

- Distributors subject to authorization as defined in Article 19 al. 1 of the CISA (Swiss or foreign distributors regulated in their home jurisdiction)
- Distributors that are not required to obtain an authorization as defined under Article 19 al 1 of the CISA and article 8 of CISO (financial intermediaries regulated by FINMA, banks, insurance companies, fund managers, representatives
- Sales partners who place shares in the Fund with their customers exclusively through a written commission-based investment management or advisory mandate (e.g. independent asset managers or advisors).

When a retrocession payment may give rise to a conflict of interest, the recipient of the retrocession must ensure transparent disclosure and inform investors, unsolicited and free of charge, of the amount of retrocession it may receive for distribution. Upon request, the recipient must disclose the actual amount of retrocession received for distributing the Fund to the investor requiring information.

RELIANCE ON THIS MEMORANDUM

The Shares are offered only on the basis of the information contained in this Memorandum and the latest audited annual accounts of the Fund. Any further information or representations given or made by any dealer, broker or other person should be disregarded and, accordingly, should not be relied upon. No person has been authorized to give any information or to make any representations in connection with the offering of Shares in the Fund other than those contained in this Memorandum and in any subsequent annual report for the Fund and, if given or made, such information or representations must not be relied on as having been authorized by the Fund, the Directors, the Investment Manager or the Administrator (each as defined herein). Statements in this Memorandum are based on the law and practice currently in force in the Cayman Islands

at the date hereof and are subject to change. Neither the delivery of this Memorandum nor the issue of Shares shall under any circumstance create any implication or constitute any representation that the affairs of the Fund have not changed since the date of this Memorandum.

RISKS

Investment in the Fund carries with it a degree of risk. The value of Shares and the income from them may go down as well as up, and investors may not get back the amount invested. Because of the risks involved, investment in the Fund is only suitable for sophisticated investors who are able to bear the loss of a substantial portion or even all of the money they invest in the Fund, who understand the high degree of risk involved, believe that investment in the Fund is suitable for them based on their investment objectives and financial needs and have no need of liquidity of investment. Investors are therefore advised to seek independent professional advice on the implications of investing in the Fund. Certain risk factors for an investor to consider are set out in the Section headed "Certain Risk Factors."

There is no public market for the Shares and no active secondary trading market is expected to develop in the future.

REGULATION

The Fund is a regulated mutual fund for the purposes of the Mutual Funds Law (Revised) of the Cayman Islands. The Fund is registered with the Cayman Islands Monetary Authority pursuant to section 4(3) of that Law and this Memorandum has been filed with the Monetary Authority. Such registration does not imply that the Monetary Authority or any other regulatory authority in the Cayman Islands has approved this Memorandum or the offering of the Shares. For a summary of the continuing regulatory obligations of the Fund and a description of the regulatory powers of the Monetary Authority, see the Section headed "The Fund– Regulations."

CONFIDENTIALITY

Any information forwarded to the Fund by any potential investors will be treated on a confidential basis except as outlined in the Data Protection policy in the accompanying Subscription Documents and that such information may be passed on to a relevant third party by the Fund where so required by law or regulation and each investor upon subscribing for Shares shall be deemed to have consented to such release of such confidential information pursuant to the terms of Clause 3(2)(b)(i) (or any amendment thereto) of the Confidential Relationships (Preservation) Law (Revised) of the Cayman Islands.

DEFINITIONS

In this Memorandum, the following words and phrases have the meanings set forth below:

"Administration Agreement"	the agreement between the Master Fund and the Administrator referred to in the Section headed "Management and Administration" below;
"Administrator"	MUFG Fund Services (Cayman) Limited or such other person as may be appointed administrator of the Feeder Funds and the Master Fund from time to time;
"Articles"	the articles of association of the Fund for the time being in force and as may be amended from time to time;
"Auditors"	PricewaterhouseCoopers LLP or such other person as may be appointed auditor of the Master Fund from time to time;
"Business Day"	a day on which banks in the Cayman Islands, Buenos Aires and New York City are authorized to open for business or such other day or days in addition thereto or in substitution therefor as the Directors may determine generally, or in any particular case;
"Companies Law"	the Companies Law (Revised) of the Cayman Islands as amended or re-enacted from time to time;
"Directors"	The directors of the Fund for the time being and any duly constituted committee thereof;
"Domestic Fund"	Highland Argentina Regional Opportunity Fund, L.P., a Delaware limited partnership;
"Eligible Investors"	has the meaning set forth in the Subscription Documents;
"Exchange"	The International Stock Exchange;
"Feeder Funds"	means the Fund and the Domestic Fund, each of which places all of its investable assets in, and conducts all of its investment and trading activities in parallel through, the Master Fund;
"Fund"	Highland Argentina Regional Opportunity Fund, Ltd., an exempted company incorporated with limited liability under the laws of the Cayman Islands with registration number CR-162177;

"IFRS"	International Financial Reporting Standards issued by the International Accounting Standards Board;
"Investments"	investments in securities or other financial or intangible investment instruments, contracts or products made by the Master Fund, as described in this Memorandum;
"Investment Management Agreement"	the agreement between the Feeder Funds, the Master Fund, the Master Fund General Partner and the Investment Manager referred to in the Section headed "Management and Administration" below;
"Investment Manager"	Highland Capital Management Latin America, L.P. or such other person as may be appointed investment manager of the Feeder Funds and the Master Fund from time to time;
"Latin America"	the countries of Central and South America, of the Caribbean and Mexico;
"Management Fee"	the management fee payable to the Investment Manager (at the Master Fund level) in respect of each Series pursuant to the Investment Management Agreement;
"Management Share"	a voting, non-participating management share of US$0.01 par value in the capital of the Fund;
"Master Fund"	Highland Argentina Regional Opportunity Master Fund, L.P., a Cayman Islands exempted limited partnership;
"Master Fund General Partner"	Highland Argentina Regional Opportunity Fund GP, LLC, a Delaware limited liability company and the general partner of the Domestic Fund and the Master Fund;
"Master Fund Partnership Agreement"	an exempted limited partnership agreement of the Master Fund, as may be amended from time to time;
"Material Contracts"	the Administration Agreement and the Investment Management Agreement;
"Memorandum"	this offering memorandum and the Fund's most recent annual report and accounts or, if more recent, its interim report and accounts;
"Monetary Authority"	the Cayman Islands Monetary Authority;

"Mutual Funds Law"	the Mutual Funds Law (Revised) of the Cayman Islands as from time to time modified or re-enacted or consolidated, and shall include any subordinate legislation made from time to time under that law;
"Net Asset Value"	in respect of the Master Fund, the Fund or each Series of Shares, the Net Asset Value of the Master Fund, the Fund or that Series determined using the valuation principles described in the Section headed "Subscription, Redemption and Transfer of Shares" below;
"Net Asset Value per Share"	in respect of a Share of any Series, the Net Asset Value for the relevant Series divided by the number of Shares of such Series then in issue;
"Ordinary Resolution"	a resolution passed at a quorate meeting of the Fund by a simple majority of the votes cast in its favor by the holders of the Management Shares or a resolution approved in writing by all such holders of Management Shares expressed to be an ordinary resolution;
"Performance Allocation"	the performance allocation allocable to the Special Limited Partner at the Master Fund level in respect of each sub-series of Shares pursuant to the Master Fund Partnership Agreement;
"Recognized Exchange"	any regulated market or exchange (which is an exchange within the meaning of the law of the country concerned relating to exchanges) in the United States of America, member states of the European Union or the Organization for Economic Co-operation and Development or any other regulated exchange or market;
"Redemption Day"	the last Business Day of each calendar month or such additional Business Day or Business Days as the Directors may in their sole discretion determine, either in any particular case or generally;
"Redemption Request"	a redemption request form in the terms set out in the Subscription Documents;
"Redemption Price"	the redemption price of a Share as calculated in accordance with the Articles and described herein;
"Series"	any series of Shares designated by the Directors pursuant to the Articles;

"Series A Shares"	the Shares designated as "A" Shares being offered pursuant to this Memorandum;
"Series B Shares"	the Shares designated as "B" Shares being offered pursuant to this Memorandum;
"Services Agreement"	an agreement by and between the Investment Manager and Highland Latin America Consulting, Ltd. referred to in the Section headed "Management and Administration" below;
"Share"	a non-voting, participating, redeemable share of US$0.01 par value each in the capital of the Fund. The use of the term "Share" in this Memorandum excludes the Management Shares;
"Shareholder"	a holder of Shares;
"Special Limited Partner"	Highland Capital Management Latin America, L.P., in its capacity as the special limited partner of the Master Fund;
"Special Resolution"	a resolution passed at a quorate meeting of the Fund by a two-thirds majority of the holders of the Management Shares thereat or approved in writing by all of such holders of Management Shares and expressed to be a special resolution;
"Subscription Day"	the first day of each calendar month or such additional day or days as the Directors may in their sole discretion determine, either in any particular case or generally;
"Subscription Documents"	the subscription documents of the Fund;
"Subscription Price"	the Subscription Price for Series A Shares and Series B Shares will be based on the Net Asset Value per Share of such Series on the Valuation Day that occurs after notice of the subscription is received and approved by the Fund and immediately preceding the applicable Subscription Day, as calculated in accordance with the Articles and described herein;
"US$" or "U.S. Dollars"	the lawful currency of the United States of America;
"United States" or "U.S."	the United States of America, its territories and possessions or areas subject to its jurisdiction;
"U.S. Person"	as defined under Regulation S under the United States Securities Act of 1933, as amended; and

"Valuation Day"	with respect to a Share, each Redemption Day, the Business Day immediately preceding each Subscription Day and/or such other day or days as the Directors may determine generally or in any particular case.

EXECUTIVE SUMMARY

The following summary should be read in conjunction with the full text of this Memorandum, the Articles, the Master Fund Partnership Agreement and other Material Contracts disclosed in this Memorandum and is qualified in its entirety by reference to such documents:

The Fund

Highland Argentina Regional Opportunity Fund, Ltd. is incorporated under the provisions of the Companies Law (Revised) of the Cayman Islands as an exempted company with limited liability. It was incorporated on February 8, 2006, as MBA Latin America Opportunity Fund, Ltd. The Fund's name was changed to Highland Argentina Regional Opportunity Fund, Ltd. on July 28, 2017.

It has an authorized share capital of US$50,000 made up of 100 Management Shares and 4,999,900 Shares. The Directors have designated two Series of Shares, Series A Shares and Series B Shares. The Directors may also designate further Series of Shares in the future that will be attributable to the single underlying portfolio of the Fund. Each additional Series of Shares may be offered on different terms and in such different currencies as the Directors may determine.

See the Section headed "Description of the Fund's Shares" below for full details.

Investment Objective and Strategies

The investment objective of the Fund is to maximize the total return of its assets in US Dollars through capital appreciation by investing all of its investable assets in the Master Fund, which intends to hold primarily a portfolio of investments in securities of Latin American corporate and sovereign issuers as well as non-Latin American issuers that derive a portion of their revenues from business activities in Latin America, in each case with a primary focus on Argentina, and that the Investment Manager believes would provide profitable investment opportunities for the Master Fund. The Master Fund will invest in a single portfolio of assets and does not currently intend to have a separate portfolio of assets for each of its series of limited partner interests, each of which will correspond to a Series of Shares.

The Master Fund is a multi-strategy investment fund and there is no limit on the investment strategies that may be utilized. The Investment Manager will be focused on identifying assets

that are mispriced against similar assets and/or against the Investment Manager's expectations for assets' fair values and market movements, special situations, such as mergers, financial restructurings, hostile takeovers, or leveraged buy-outs. There is no set allocation among these and any other strategies that the Investment Manager may use.

Master-Feeder Structure

In order to facilitate investments by U.S. taxable and certain U.S. tax-exempt investors, the Investment Manager and its affiliates recently sponsored Highland Argentina Regional Opportunity Fund, L.P., a Delaware limited partnership. The Feeder Funds will place all of their investable assets in, and conduct all of their investment and trading activities in parallel through, the Master Fund. Accordingly, references herein to the investment activity of the Fund should be construed to refer to the Fund's investment activities through the Master Fund. The Feeder Funds share all items of profit, loss, income and expense of the Master Fund on a *pro rata* basis in accordance with their respective capital account balances in the Master Fund. Except as the context otherwise requires, the term "Fund" also includes the Master Fund.

The Investment Manager or an affiliate may also sponsor one or more additional investment funds or accounts.

Management

The Directors of the Fund are Claire Kasumba, Martin Laufer and Sophia Dilbert.

Highland Capital Management Latin America, L.P., a Cayman Islands exempted limited partnership, is the investment manager of the Feeder Funds and the Master Fund with responsibility for overseeing the investment of the Fund's assets (through the Master Fund) and the distribution of the Shares in accordance with the investment objective and policies of the Master Fund. With the approval of the Master Fund General Partner, the Investment Manager may delegate certain of its duties to other companies and entities, which may be affiliated with, or independent of, the Investment Manager.

MUFG Fund Services (Cayman) Limited, a company formed under the laws of the Cayman Islands, has been appointed as the administrator of the Feeder Funds and the Master Fund pursuant to the Administration Agreement. The Administrator is responsible for conducting the day-to-day administration, including processing subscriptions, transfers and redemptions of Shares, net asset value calculation and coordinating the payment of the Fund's and Master Fund's expenses.

See the Section headed "Management and Administration" below for full details.

Offering

The Series A Shares and Series B Shares offered pursuant to this Memorandum are available for issue to Eligible Investors at a Subscription Price based on the Net Asset Value per Share of such Series on the Valuation Day that occurs after the Subscription Documents are received and approved by the Fund and immediately preceding the relevant Subscription Day, as calculated in accordance with the Articles and described herein.

The Fund reserves the right to reject an application for Shares.

See the Section headed "Subscription, Redemption and Transfer of Shares" below for full details.

Minimum Investment

The minimum initial investment for the Series A Shares and Series B Shares is US$500,000. The minimum subsequent investment for the Series A Shares and Series B Shares is US$500,000. In each case, the Investment Manager may in its sole discretion determine other minimum investment amounts in respect of a particular Shareholder or group of Shareholders, subject to the Listing Rules of the Exchange but not below US$100,000 in respect of the Series B Shares.

Eligible Investors

Only Eligible Investors may subscribe for Shares. See the Subscription Documents.

Redemptions

Shares generally may be redeemed as of the last Business Day of any calendar month, on 30 calendar days' prior written notice, at Net Asset Value per Share prevailing at the close of business of such Redemption Day.

Partial redemptions will only be accepted in minimum amounts of US$100,000.

The Fund may also compulsorily redeem Shares in certain circumstances.

Redemption proceeds will be paid in cash (in US$) by electronic transfer at the Shareholder's risk and expense or, in certain circumstances, in securities, or partly in cash and partly in securities. Except as set forth above, no redemption charges will apply to the Shares.

Any Shareholder who redeems Series B Shares prior to the first anniversary of its purchase of such Series B Shares may be assessed an early redemption fee of up to 3% of the Net Asset Value per Series B Share prevailing at the close of business of such Redemption Day, payable to the Fund. For purposes hereof, an anniversary shall occur on the 365th consecutive day (counting the closing date as the first day) or, if such 365th day is not a Business Day, the immediately preceding Business Day.

See the Section headed "Subscription, Redemption and Transfer of Shares – Redemption of Shares" below for full details.

Transfers

Shares may not be transferred without the prior written consent of the Directors. See Section headed "Subscription, Redemption and Transfer of Shares – Transfer of Shares" below for full details.

Dividends

The Fund may pay dividends or other distributions to Shareholders in the sole and exclusive discretion of the Directors, although generation of income is not a principal objective of the Fund.

Fees and Expenses

Series A Shares

The Investment Manager will receive a quarterly Management Fee in respect of the Series A Shares at an annual rate equal to 1.75% of the net assets of the Fund attributable to each Series A Share, calculated monthly and payable quarterly in arrears. The Management Fee is paid at the Master Fund level.

The Special Limited Partner will be entitled to a quarterly Performance Allocation in respect of each sub-series of Series A Shares calculated and allocated at the Master Fund level, but is effectively equal to 20% of the net profits (including unrealized gains), if any, applicable to each Series A Share for each fiscal quarter; but only to the extent that such profits exceed any losses carried forward from prior years.

Series B Shares

The Investment Manager will receive a quarterly Management Fee in respect of the Series B Shares at an annual rate equal to 1.25% of the net assets of the Fund attributable to each Series B Share, calculated monthly and payable quarterly in arrears. The Management Fee is paid at the Master Fund level.

The Special Limited Partner will be entitled to a quarterly Performance Allocation in respect of each sub-series of Series B Shares calculated and allocated at the Master Fund level, but is effectively equal to 17.5% of the net profits (including unrealized gains), if any, applicable to each Series B Share for each fiscal quarter; but only to the extent that such profits exceed any losses carried forward from prior years.

Series A and Series B Shares

The Investment Manager pays all the fees and expenses of the Investment Manager and certain other service providers out of the Management Fee and Performance Allocation (it receives in its capacity as the Special Limited Partner) it receives from the Master Fund. The Fund shall have no obligation to the Investment Manager for any such fees.

The Administrator is entitled to fees as agreed under the Administration Agreement.

The Fund bears all costs, fees and expenses arising in connection with the Fund's operations. The Fund also bears its *pro rata* share of the cost of the Master Fund's operations and investments as provided in the Master Fund Partnership Agreement. The Fund is responsible for paying its own initial organizational expenses and its *pro rata* share of the initial organizational expenses of the Master Fund. See the Section headed "Management and Administration – Fees and Expenses" below.

Risk Factors

An investment in the Fund entails certain risks. Prospective investors should review carefully the discussion under the Section headed "Certain Risk Factors" below.

Reporting

The Fund will furnish to each Shareholder an annual report that will include audited financial statements as of the end of each fiscal year. In accordance with and to the extent required by the Exchange listing rules, the Fund will also provide Shareholders with interim unaudited reports made up to June 30 in each year, including income statements and a statement of charges included in the calculation of the Net Asset Value of the Fund, and quarterly statements of the Net Asset Value of the Fund.

Fiscal Year

December 31.

Tax

The Government of the Cayman Islands will not, under existing legislation, impose any income, corporate or capital

gains tax, estate duty, inheritance tax, gift tax or withholding tax upon the Fund, the Master Fund or the Shareholders. The Cayman Islands are not party to a double tax treaty with any country that is applicable to any payments made to or by the Fund and/or the Master Fund. The Fund and the Master Fund generally do not expect to be subject to United States federal income tax, except potential U.S. federal withholding with respect to U.S. source dividends (including certain dividend equivalent amounts) and certain interest from U.S. sources.

The Fund has received an undertaking from the Governor-in-Cabinet of the Cayman Islands that, in accordance with section 6 of the Tax Concessions Law (Revised) of the Cayman Islands, for a period of 20 years from the date of the undertaking, no law which is enacted in the Cayman Islands imposing any tax to be levied on profits, income, gains or appreciations shall apply to the Fund or its operations and, in addition, that no tax to be levied on profits, income, gains or appreciations or which is in the nature of estate duty or inheritance tax shall be payable (i) on or in respect of the Shares, debentures or other obligations of the Fund or (ii) by way of the withholding in whole or in part of a payment of dividend or other distribution of income or capital by the Fund to its shareholders or a payment of principal or interest or other sums due under a debenture or other obligation of the Fund.

See the Section headed “Taxation” below.

Application Procedure

To participate, an investor must complete and return the Subscription Documents and arrange for the transfer of their funds to the bank account of the Fund.

THE FUND

STRUCTURE

The Fund is an exempted company limited by shares and is of unlimited duration. It was incorporated under the provisions of the Companies Law (Revised) of the Cayman Islands on February 8, 2006, as MBA Latin America Opportunity Fund, Ltd. The Fund's name was changed to Highland Argentina Regional Opportunity Fund, Ltd. on July 28, 2017. The location of the Fund's principal office and its registered office are listed in the Directory. The Fund has been structured as an investment fund to allow its Shareholders to indirectly invest in the Master Fund pursuant to its investment objectives and strategies set out herein. The Fund will only accept subscriptions for Shares from Eligible Investors and reserves the right to reject any subscriptions.

REGULATION

The Fund is regulated as a mutual fund under the Mutual Funds Law (Revised) of the Cayman Islands (the "Mutual Funds Law"). The Cayman Islands Monetary Authority (the "Monetary Authority") has supervisory and enforcement powers to ensure compliance with the Mutual Funds Law. Regulation under the Mutual Funds Law entails the filing of prescribed details and audited accounts annually with the Monetary Authority. As a regulated mutual fund, the Monetary Authority may at any time instruct the Fund to have its accounts audited and to submit them to the Monetary Authority within such time as the Monetary Authority specifies. Failure to comply with these requests by the Monetary Authority may result in substantial fines on the part of the Directors and may result in the Monetary Authority applying to the court to have the Fund wound up.

The Fund will not, however, be subject to supervision in respect of its investment activities or the constitution of the Fund's portfolio (in each case through the Master Fund) by the Monetary Authority or any other governmental authority in the Cayman Islands, although the Monetary Authority does have power to investigate the activities of the Fund in certain circumstances. Neither the Monetary Authority nor any other governmental authority in the Cayman Islands has commented upon or approved the terms or merits of this document. There is no investment compensation scheme available to investors in the Cayman Islands.

The Monetary Authority may take certain actions if it is satisfied that a regulated mutual fund is or is likely to become unable to meet its obligations as they fall due or is carrying on or is attempting to carry on business or is winding up its business voluntarily in a manner that is prejudicial to its investors or creditors. The powers of the Monetary Authority include the power to require the substitution of Directors, to appoint a person to advise the Fund on the proper conduct of its affairs or to appoint a person to assume control of the affairs of the Fund. There are other remedies available to the Monetary Authority including the ability to apply to court for approval of other actions.

The Fund, or any Directors or agents domiciled in the Cayman Islands, may be compelled to provide information, subject to a request for information made by a regulatory or governmental authority or agency under applicable law; e.g. by the Cayman Islands Monetary Authority, either for itself or for a recognised overseas regulatory authority, under the Monetary Authority Law (Revised), or by the Tax Information Authority, under the Tax Information Authority Law (Revised) or Reporting of Savings Income Information (European Union) Law (Revised) and associated regulations, agreements, arrangements and memoranda of understanding. Disclosure of confidential information under such laws shall not be regarded as a breach of any duty of confidentiality and, in certain circumstances, the Fund, Director or agent, may be prohibited from disclosing that the request has been made.

ADDITIONAL INFORMATION

This Memorandum does not purport to be and should not be construed as a complete description of the Memorandum and Articles of Association of the Fund, the Master Fund Partnership Agreement or the Material Contracts. Before investing in the Fund, each prospective investor should examine this Memorandum, the Subscription Documents, the Memorandum of Association and Articles of the Fund, the Master Fund Partnership Agreement and the Material Contracts and satisfy itself that an investment in the Fund is appropriate. Additionally, and prior to the sale of any Shares, the Fund will make available to each subscriber or his or her representative the opportunity to ask questions of and receive written answers from representatives of the Fund concerning any aspect of the investment and to obtain any additional information, to the extent that the Fund possesses such information or can acquire it without unreasonable effort or expense.

An investment in the Fund may be deemed speculative and is not intended as a complete investment program. It is designed only for experienced and sophisticated persons who are able to bear the risk of the substantial impairment or total loss of their investment in the Fund.

THE MASTER FUND

THE MASTER FUND'S PARTNERSHIP INTERESTS

The Master Fund's partnership interests are currently held exclusively by the Fund and the Domestic Fund as limited partners, the Investment Manager as the special limited partner of the Master Fund, and the Master Fund General Partner as the general partner of the Master Fund, pursuant to the Master Fund Partnership Agreement. The Master Fund General Partner is registered as a foreign company in the Cayman Islands pursuant to Part IX of the Companies Law (2016 Revision).

THE MASTER FUND PARTNERSHIP AGREEMENT

The Master Fund is constituted as a Cayman Islands exempted limited partnership under the Exempted Limited Partnership Law, 2014 (the "Exempted Limited Partnership Law"). A Cayman Islands exempted limited partnership is constituted by the signing of the relevant partnership agreement and its registration with the Registrar of Exempted Limited Partnerships in the Cayman Islands.

A Cayman Islands exempted limited partnership is not a separate legal person distinct from its partners. Under the Exempted Limited Partnership Law, any property which is conveyed into or vested in the name of the exempted limited partnership shall be held or deemed to be held by the general partner, and if more than one, then by the general partners jointly upon trust, as an asset of the partnership in accordance with the terms of the partnership agreement. Any debt or obligation incurred by a general partner in the conduct of the business of an exempted limited partnership shall be a debt or obligation of the exempted limited partnership. Registration under the Exempted Limited Partnership Law entails that the partnership becomes subject to, and the limited partners therein are afforded the limited liability and other benefits of, the Exempted Limited Partnership Law (subject to compliance therewith).

Liability of Partners and Indemnification of the Master Fund General Partner and Others. The business of a Cayman Islands exempted limited partnership will be conducted by its general partner(s) who will be liable for all debts and obligations of the exempted limited partnership to the extent that the partnership has insufficient assets. As a general matter, a limited partner of a Cayman Islands partnership will not be liable for the debts and obligations of the exempted limited partnership, other than:

(i) as expressed in the partnership agreement,

(ii) if such limited partner takes part in the conduct of the business of an exempted limited partnership in its dealings with persons who are not partners, then that limited partner shall be liable, in the event of the insolvency of the exempted limited partnership, for all debts and obligations of that exempted limited

partnership incurred during the period that he so participates in the conduct of the business as though he were, for such period, a general partner, provided always that he shall be rendered liable pursuant to the foregoing provision only to a person who transacts business with the exempted limited partnership during such period with actual knowledge of such participation and who then reasonably believed such limited partner to be a general partner, or

(iii) if such limited partner is obligated pursuant to Section 34(1) of the Exempted Limited Partnership Law to return a distribution made to it (with interest at a rate of 10% per annum, unless otherwise specified in the Master Fund Partnership Agreement) when the exempted limited partnership is insolvent or within six months prior to such insolvency.

The Master Fund Partnership Agreement provides that none of the Master Fund General Partner, the Investment Manager, each member, shareholder, partner, manager and director of, and any person who controls, the Master Fund General Partner or the Investment Manager, each of the respective affiliates of the foregoing and each of their respective executors, heirs, assigns, successors and other legal representatives (each such person, an "Indemnified Party") will be liable to the Master Fund or any limited partner of the Master Fund (including the Feeder Funds) for any loss or damage arising by reason of being or having been an Indemnified Party or from any acts or omissions in the performance of its services as an Indemnified Party in the absence of gross negligence (as such term is defined and interpreted in accordance with the laws of the State of Delaware), willful misconduct or fraud, or as otherwise required by law. An Indemnified Party may consult with counsel and accountants in respect of the Master Fund's affairs and will be fully protected and justified in any action or inaction which is taken in accordance with the advice or opinion of such counsel or accountants, provided that they were selected in accordance with the standard of care set forth above. In addition, in no event shall any Indemnified Party be liable for any consequential damages, special or indirect damages or lost profits.

The Master Fund Partnership Agreement provides that the Master Fund shall, to the fullest extent permitted by law, indemnify and hold harmless each Indemnified Party from and against any and all liabilities suffered or sustained by an Indemnified Party by reason of the fact that it, he or she is or was an Indemnified Party or in connection with the Master Fund Partnership Agreement or the Master Fund's business or affairs, including, without limitation, any judgment, settlement, reasonable attorneys' fees and other costs or expenses incurred in connection with the defense of any actual or threatened action, suit or proceeding, provided that such liability did not result from the gross negligence (as such term is defined and interpreted in accordance with the laws of the State of Delaware), willful misconduct or fraud of such Indemnified Party. The Master Fund Partnership Agreement also provides that the Master Fund will, in the sole discretion of the Master Fund General Partner, advance to any Indemnified Party reasonable attorneys' fees and other costs and expenses incurred in connection with the defense of any action, suit or proceeding which arises out of such conduct, subject to receiving a written undertaking from the Indemnified Party to repay such amounts if and to the extent that it is finally determined that the Indemnified Party was not entitled to indemnification in respect thereof.

Notwithstanding any of the foregoing, the provisions of the Master Fund Partnership Agreement do not provide for the exculpation or indemnification of any Indemnified Party for any liability

(including liability under U.S. federal securities laws which, under certain circumstances, impose liability even on persons that act in good faith), to the extent (but only to the extent) that such liability may not be waived, modified or limited under applicable law, but shall be construed so as to effectuate the above provisions to the fullest extent permitted by law.

Pursuant to the foregoing indemnification and exculpation provisions applicable to each Indemnified Party, the Master Fund (and not the applicable Indemnified Party) will be responsible for any losses resulting from trading errors and similar human errors, absent gross negligence (as such term is defined and interpreted in accordance with the laws of the State of Delaware), willful misconduct or fraud. Given the volume of transactions executed on behalf of the Master Fund, trading errors (and similar errors) will occur and the Master Fund will be responsible for any resulting losses, even if such losses result from the negligence (but not gross negligence (as such term is defined and interpreted in accordance with the laws of the State of Delaware)) of any Indemnified Party.

The Indemnified Parties will also be indemnified by each limited partner of the Master Fund for any amounts of tax withheld or required to be withheld with respect to that limited partner, and also for any amounts of interest, additions to tax, penalties and other costs borne by any such persons in connection therewith to the extent that the balance of the limited partner's capital account is insufficient to fully compensate the Master Fund General Partner and the Investment Manager for such costs.

Contributions and Withdrawals by the Fund. Limited partners of the Master Fund may make contributions at such times and in such amounts as the Master Fund General Partner determines. As a limited partner of the Master Fund, the Fund may, subject to the consent of the Master Fund General Partner, voluntarily request a withdrawal of all or part of its capital in the Master Fund at such times and in such amounts as it may determine. The Master Fund General Partner may, at any time, suspend (a) the calculation of the net asset value of the Master Fund (and the applicable valuation date); (b) the issuance of limited partner interests in the Master Fund; (c) the withdrawal by limited partners of their interests (and the applicable withdrawal date); and/or (d) the payment of withdrawal proceeds (even if the calculation dates and withdrawal dates are not postponed) during any period which: (i) any stock exchange on which a substantial part of investments owned by the Master Fund are traded is closed, other than for ordinary holidays, or dealings thereon are restricted or suspended; (ii) there exists any state of affairs as a result of which (A) disposal of a substantial part of the investments owned by the Master Fund would not be reasonably practicable and might seriously prejudice the limited partners of the Master Fund, or (B) it is not reasonably practicable for the Master Fund fairly to determine the value of its net assets; (iii) none of the withdrawal requests which have been made may lawfully be satisfied by the Master Fund; (iv) there is a breakdown in the means of communication normally employed in determining the prices of a substantial part of the investments of the Master Fund; or (v) in the sole discretion of the Master Fund General Partner, it is necessary to preserve the Master Fund's assets.

Amendment of the Master Fund Partnership Agreement. The Master Fund Partnership Agreement may be amended by an instrument in writing signed by each of the limited partners of the Master Fund and the Master Fund General Partner; provided that, the Master Fund General

Partner may amend the Master Fund Partnership Agreement without the consent of the limited partners so long as the amendment does not adversely affect any rights of the limited partners.

Dissolution of the Master Fund. The Master Fund shall be wound up and dissolved upon the first to occur of any of the following liquidating events, and Sections 36(1)(b), 36(9) and 36(12) of the Exempted Limited Partnership Law shall not apply to the Master Fund:

(i) the written election of the Master Fund General Partner to terminate the Master Fund; or

(ii) if the Master Fund General Partner is the sole or last remaining general partner, the date (the "Automatic Dissolution Date") falling 90 days after the date of the service of a notice by the Master Fund General Partner (or its legal representative) on all the limited partners informing the limited partners of:

(1) the commencement of liquidation or bankruptcy proceedings in relation to the Master Fund General Partner; or

(2) the withdrawal, removal or making of a winding up or dissolution order in relation to the Master Fund General Partner;

provided that, if a majority in number of the limited partners elects one or more new general partners before the Automatic Dissolution Date, the business of the Master Fund shall be resumed and continued. If a new general partner is not elected by the Automatic Dissolution Date, the Master Fund shall be wound up and dissolved in accordance with terms of the Master Fund Partnership Agreement and the Exempted Limited Partnership Law.

Power of Attorney. Each limited partner of the Master Fund shall make, constitute and appoint the Master Fund General Partner (and each of its successors and permitted assigns) for the time being, with full power of substitution, as its true and lawful agent and attorney-in-fact of, and in the name, place and stead of, such partner with the power from time to time to make, execute, sign, acknowledge, swear to (and deliver as may be appropriate) on its behalf and file and record in the appropriate public offices and publish (as may in the reasonable judgment of the Master Fund General Partner be required by law), including the admission of any new partners of the Master Fund and any amendments to the Master Fund Partnership Agreement. Each limited partner of the Master Fund shall authorize the Master Fund General Partner to take any further action that the Master Fund General Partner considers necessary or advisable in connection with the foregoing. Such power of attorney granted is intended to secure a proprietary interest of the Master Fund General Partner and the performance by each limited partner of the Master Fund of its obligations under the Master Fund Partnership Agreement and shall be irrevocable and shall survive and not be affected by the subsequent death, lack of capacity, insolvency, bankruptcy or dissolution of any limited partner of the Master Fund.

VALUATION OF ASSETS

The Master Fund General Partner has delegated the valuation of the Master Fund's assets to the Administrator, which will generally compute the value of the securities and other assets of the Master Fund as of the close of business on the last day of each fiscal period and on any other date selected by the Master Fund General Partner in its sole discretion. In addition, the Administrator must compute the value of the securities that are being distributed in-kind as of their date of distribution in accordance with the Master Fund Partnership Agreement. In determining the value of the assets of the Master Fund, no value is placed on the goodwill or name of the Master Fund, or the office records, files, statistical data or any similar intangible assets of the Master Fund not normally reflected in the Master Fund's accounting records, but there must be taken into consideration any related items of income earned but not received, expenses incurred but not yet paid, liabilities fixed or contingent, prepaid expenses to the extent not otherwise reflected in the books of account, and the value of options or commitments to purchase or sell securities pursuant to agreements entered into on or prior to such valuation date.

A copy of the Investment Manager's valuation policy is available upon request from the Master Fund General Partner.

The value of each security and other asset of the Master Fund and the net worth of the Master Fund as a whole determined pursuant Master Fund Partnership Agreement are conclusive and binding on all of the partners of the Master Fund and all persons claiming through or under them.

INVESTMENT OBJECTIVE AND STRATEGY

INVESTMENT OBJECTIVE

The investment objective of the Fund is to maximize the total return of its assets in US Dollars through capital appreciation by investing all of its investable assets in the Master Fund, which intends to hold primarily a portfolio of investments in securities of Latin American corporate and sovereign issuers as well as non-Latin American issuers that derive a portion of their revenues from business activities in Latin America, in each case with a primary focus on Argentina, and that the Investment Manager believes would provide profitable investment opportunities for the Master Fund. The Master Fund will invest in a single portfolio of assets and does not currently intend to have a separate portfolio of assets for each of its series of limited partner interests, each of which will correspond to a Series of Shares.

The objects for which the Fund is established are unrestricted and the Fund shall have full power and authority to carry out any object not prohibited by any law as provided by Section 7(4) of the Companies Law.

INVESTMENT STRATEGY

The Master Fund is a multi-strategy investment fund and there is no limit on the investment strategies that may be utilized. The Investment Manager believes that focusing on a multi-strategy approach will enable the Master Fund to enhance results by compounding returns generated by each strategy and at the same time have the needed flexibility to adjust to potentially changing regulations and market conditions.

The Investment Manager will be focused on identifying assets that are mispriced against similar assets and/or against the Investment Manager's expectations for assets' fair values and market movements, special situations, such as mergers, financial restructurings, hostile takeovers, or leveraged buy-outs. There is no set allocation among these and any other strategies that the Investment Manager may use.

The Master Fund may hold long and short positions in a wide range of liquid or illiquid fixed income securities including, but not limited to, sovereign and private debt, distressed debt, secured and unsecured debt, structured debt, loans, asset-backed securities and collateralized debt obligations. Furthermore, the Master Fund may invest, both long and short, in a wide range of liquid or illiquid equity-related instruments including, but not limited to, equities, convertible bonds, options, equity-linked notes, preferred shares and warrants, whether or not listed or traded on one or more Recognized Exchanges.

The Master Fund may hold any of these positions indirectly by entering into swaps, options, futures, forward contracts or similar derivative transactions.

The Master Fund may hold both US Dollar and non US Dollar denominated securities.

The Master Fund may leverage its investment portfolio by up to 100% of the Master Fund's Net Asset Value (calculated at the time of investment) by borrowing for investment purposes and by using leverage techniques and products. It is anticipated that by doing so the performance of the Master Fund will be enhanced. While the use of the leverage may improve the return on invested capital, leverage may also significantly increase the impact of adverse movement in the value of the Master Fund.

The Master Fund may also utilize hedging strategies in order to maximize returns and reduce the risk to principal or the volatility associated with its holdings. As part of these hedging strategies, the Master Fund may hedge any of its investments with long or short positions in any financial instrument, which the Investment Manager deems appropriate. The Master Fund may utilize US and European securities for hedging purposes.

The Master Fund may invest through one or more subsidiaries established in an appropriate jurisdiction in order to take advantage of applicable tax treaties or increase the tax efficiency of the Master Fund's investments, or in such other circumstances as the Master Fund General Partner, following consultation with the Investment Manager, deem appropriate, including compliance with local investment laws.

The Master Fund may maintain assets in cash or cash equivalent instruments, money market funds, repurchase agreements, or other cash management vehicles pending investment, for defensive purposes, to fund withdrawals requested by the limited partners of the Master Fund or otherwise at the discretion of the Investment Manager. The Master Fund may hold with no limitation US and European AAA fixed income securities for defensive purposes.

INVESTMENT RESTRICTIONS

In deploying the investment strategy, the Master Fund will observe the following investment restrictions. The Master Fund will not at the time of investment:

1. Invest more than 50 percent of its gross assets in its net holdings of equities;

2. Borrow more than 100 percent of its net assets;

3. Invest more than 20 percent of its gross assets in a single equity position;

4. Invest more than 20 percent of its gross assets in a single corporate issuer position;

5. Invest more than 30 percent of its gross assets in a single GDP-linked warrant position;

6. Invest more than 30 percent of its gross assets in a single sovereign issuer security position; and

7. Invest more than 30 percent of its gross assets in a single provincial issuer.

If a percentage limitation on investment or use of assets set forth above is adhered to at the time a transaction is effected, later changes in percentage resulting from changing values will not be considered a violation.

In the event that the Investment Manager discovers that a violation of any of the Master Fund's investment limitations has occurred (the date of such discovery being the "Discovery Date"), the Investment Manager shall inform the limited partners of the Master Fund, including the Fund, who shall: (i) notify each of their limited partners or shareholders, as applicable, in writing within 30 Business Days after the Discovery Date of the nature of the violation, the steps taken, or to be taken, to remedy the violation and the reason the violation occurred and (ii) use reasonable commercial efforts to cause the Investment Manager to remedy such violation within 90 Business Days after the Discovery Date (the "Remedy Date"). If such violation has not been remedied on or before the Remedy Date, the limited partners of the Master Fund, including the Fund, shall: (i) notify each of their limited partners or shareholders, as applicable, in writing, 30 Business Days after the Remedy Date, of the steps taken to remedy the violation and the reason that the violation has not been remedied by the Remedy Date (the "Remedy Notice") and (ii) use reasonable commercial efforts to cause the Master Fund's portfolio to be examined by an independent auditor other than the Auditors and shall request that such independent auditor issue a report to the investors in each of the Master Fund's limited partners as to its concurrence or disagreement with the statements in the Remedy Notice. The Investment Manager shall pay for the costs of such audit and the costs of the Remedy Notice if the violation that was the subject of the Remedy Notice occurred as a result of the Investment Manager's willful misfeasance, bad faith or gross negligence (as such term is defined and interpreted in accordance with the laws of the State of Delaware). In addition, the failure to remedy the violation in a timely manner may give rise to special redemption rights. See "Redemption of Shares - General."

DISTRIBUTION POLICY

The Fund's objective is to maximize capital appreciation and accordingly it is not envisaged that any income or gains derived from the investments made by the Master Fund will be distributed by way of dividend. This does not preclude the Directors from declaring a dividend at any time in the future if they consider it appropriate to do so. To the extent that a dividend may be declared, it will be paid in compliance with any applicable laws.

The investment objectives and strategies summarized herein represent the Investment Manager's current intentions. Depending on conditions and trends in the securities markets and the economy in general, the Investment Manager may pursue any strategies, employ any investment techniques or purchase any type of security that it considers appropriate, whether or not described in this section, subject to any applicable law or regulation. The discussion herein includes and is based upon numerous assumptions and opinions of the Investment Manager concerning world financial markets and other matters, the accuracy of which cannot be assured. There can be no assurance that the investment strategy of the Master Fund will achieve the intended investment objective. The Master Fund's investment program is speculative and involves a high degree of risk, including, without limitation, the risk of loss of the entire amount invested.

CERTAIN RISK FACTORS

An investment in the Fund entails substantial risks, including, but not limited to, those listed below, and prospective investors should carefully consider the following factors, among others, in determining whether an investment in the Fund is suitable for them. There can be no assurance that the Master Fund's program will be successful or that investments purchased by the Master Fund will increase in value. An investor must be prepared to bear capital losses that might result from an investment in the Fund, including a complete loss of the investor's invested capital. All investors in the Fund should consult their own legal, tax and financial advisors prior to investing in the Fund.

For purposes of this section, references to the "Fund" should be understood to mean each of the Fund and the Master Fund, as applicable, and each of the risk factors set forth herein, while not exhaustive, shall apply equally to each of the Fund and the Master Fund, as applicable.

RISK FACTORS SPECIFIC TO THE INVESTMENT OBJECTIVE AND STRATEGY

Changes in Strategy. The Investment Manager has the power to expand, revise or alter its trading strategies on behalf of the Master Fund without prior approval by, or notice to, the Fund or the Shareholders. Any such change could result in exposure of the Fund's assets (through the Master Fund) to additional risks, which may be substantial. The Investment Manager may also invest in additional instruments than those specifically identified in the "Investment Objective and Strategy" section.

Latin America Investments. The Master Fund invests in securities of companies based in Latin America or issued by Latin American governments, or in the securities of companies which are not incorporated in Latin America, but which derive some of their revenues from business activities conducted in Latin America. Such investment involves certain considerations not usually associated with investing in securities of developed countries or of companies located in developed countries, including political and economic consideration, such as greater risks of expatriation, nationalization and general, political, and economic instability, the small size of the securities markets in such countries and the low volume of trading, resulting in potential lack of liquidity and substantially greater price volatility, fluctuations in the rate of exchange between currencies, and costs associated with currency conversions, certain government policies that may restrict the Master Fund's investment opportunities and problems that may arise in connection with the clearance and settlements of trades. In addition, accounting and financial reporting standards that prevail in such countries are not equivalent to standards in more developed countries, consequently, less information is available to investors in companies located in more developed countries. There is also less regulation, generally, of the securities markets in Latin American countries than there is in more developed countries.

Risks Related to Investing in Argentina. Argentina has experienced high interest rates, economic volatility, inflation, currency devaluations and high unemployment rates. The

economy is heavily dependent on exports and commodities. Argentina's default on its debt in 2001, and its past nationalization of private pensions and national oil company YPF, continues to impact the confidence of investors in Argentina, which might adversely impact returns in the Master Fund, and thus, the Fund.

Argentina's Economy. Argentina's economy could grow at a lower rate than in past years, or could contract. Factors that could negatively affect Argentina's rate of economic growth, its public finances and Argentina's ability to service its debt include: the competitiveness of Argentine exports, which are influenced by the peso's value relative to the value of the currencies of Argentina's trading partners and trade competitors; the level of inflation in Argentina; international commodities prices, foreign currency exchange rates and the levels of consumer consumption and foreign and domestic investment; negative economic developments in Argentina's major trading partners, or "contagion" effects more generally; and Argentina's ability to meet its energy requirements.

Uncertainty of Economic Reforms. A runoff election on November 22, 2015 resulted in Mr. Mauricio Macri being elected President of Argentina. The Macri administration assumed office on December 10, 2015. Since assuming office on December 10, 2015, the Macri administration has announced several significant economic and policy reforms, including methodological reforms with respect to the calculation of certain macroeconomic statistics, the loosening of foreign exchange controls, reduction of tariffs, other easing of international trade restrictions, infrastructure reforms and reopened negotiation with holders of debt in default since 2001. The impact that these measures and any future measures taken by the new administration will have on the Argentine economy as a whole and the financial sector in particular cannot be predicted. The Investment Manager believes that the effect of the planned liberalization of the economy and renewed access to capital markets will be positive for the Master Fund's intended investments by stimulating economic activity, but it is not possible to predict such effect with certainty and such liberalization could also be disruptive to the economy and fail to benefit or harm companies in Argentina. The Investment Manager cannot predict how the Macri administration will address certain other political and economic issues that were central during the 2015 presidential election campaign, such as the financing of public expenditures, public service subsidies and tax reforms, the resolution of holdout debt or the impact that any measures related to these issues that are implemented by the Macri administration will have on the Argentine economy as a whole.

Currency Controls. In the past, Argentina imposed exchange controls and transfer restrictions substantially limiting the ability of companies to retain foreign currency or make payments abroad. Although the Macri government lifted exchange controls and liberalized capital controls, there can be no assurances regarding future modifications to exchange and capital controls. Exchange and capital controls could adversely affect the financial condition or results of operations of issuers in whose securities the Master Fund intends to invest, as well as their ability to meet foreign currency obligations and to execute financing plans.

Challenges to Argentina's Debt Payments. Argentina's payments in connection with a debt offering may be attached, enjoined or otherwise challenged. In recent years, hold-out creditors have used litigation against sovereign debtors, most prominently Peru and Nicaragua, to attach or interrupt payments made by these sovereign debtors to, among others, bondholders who have

agreed to a debt restructuring and accepted new securities in an exchange offer. Argentina has been subjected to suits to collect on amounts due on defaulted bonds, including actions in the United States, the United Kingdom, Italy and Germany. Some of these actions have resulted in judgments against Argentina. There can be no assurance that a creditor will not be able to interfere, through an attachment of assets, injunction, temporary restraining order or otherwise, with payments made in connection with a debt offering.

Pro Rata Payment Litigation. Argentina's defaults with respect to the payment of its foreign debt could prevent the government and the private sector from accessing the international capital markets, which could adversely affect the financial condition of sovereign and corporate issuers in which the Master Fund invests. In September 2014, the Argentine Congress passed a law to restructure foreign-law bonds held by exchange bondholders to allow the payment in Argentina and to appoint a new paying agent. On September 29, 2014, the U.S. District Court for the Southern District of New York held Argentina in contempt of court as a result of this law. The U.S. District Court authorized limited exceptions to the injunction allowing certain custodians of Argentine law-governed bonds to process payments in August 2014, September 2014 and December 2014.

On May 11, 2015, the plaintiffs that obtained pari passu injunctions asked the U.S. district court to amend their complaints to include claims alleging that Argentina's issuance and servicing of its 2024 dollar-denominated bonds, and its external indebtedness in general, would violate the pari passu clause. On June 5, 2015, the Second Circuit granted partial summary judgment to a group of 526 "me-too" plaintiffs in 36 separate lawsuits, finding that, consistent with the previous ruling of such court, Argentina violated a pari passu clause in bonds issued to the "me-too" bondholders. The decision obligates Argentina to pay the plaintiffs $5.4 billion before it can make payments on restructured debt.

In 2016, the Argentine government working under a court appointed mediator, entered into settlement agreements with a large portion of hold-out debt holders contingent on Argentina repealing laws that prevented the country from complying with rulings by U.S. courts. In this context Judge Thomas Griesa ruled he would lift the injunctions preventing Argentina from serving post-2005 exchange debt if these laws are repealed. Argentina's lower chamber approved the repeal of these laws and Argentina's senate voted to approve the same in March 2016. In April 2016, the Second Circuit Court of Appeals in the United States upheld Judge Griesa's ruling, finding that he did not abuse his discretion in lifting the pari passu injunctions.

The repercussions of restructuring Argentina's bond debts are ongoing. The 2016 U.S. court rulings only settled claims of certain bondholders. Argentina reached a $475 million settlement with other bondholders in November 2016. Financial indices have only just started moving Argentina back to "emerging market" status, where it had been before 2009.

Argentina's default with respect to the payment of its foreign debt, its delay in completing the debt restructuring process with creditors that did not participate in the related exchange offers, the complaints filed against Argentina discussed above, the U.S. Supreme Court's decision not to hear Argentina's appeal, the declaration of contempt, and the long-term difficulty of reestablishing itself in the global marketplace could prevent Argentina's government from

obtaining international private financing or receiving direct foreign investment, as well as private sector companies in Argentina from accessing the international capital markets. Without access to international private financing, Argentina may not be able to finance its obligations, and financing from multilateral financial institutions may be limited or not available. Without access to direct foreign investment, the government may not have sufficient financial resources to foster economic growth and the performance of the Master Fund's investments in Argentina could be materially and adversely affected.

GENERAL RISK FACTORS

Overall Investment Risk. All securities investments risk the loss of capital. The nature of the securities to be purchased and traded by the Master Fund and the investment techniques and strategies to be employed in an effort to increase profits may increase this risk. While the Investment Manager will devote its commercially reasonable best efforts to the management of the Master Fund's portfolio, there can be no assurance that the Master Fund, and thus, the Fund will not incur losses. Many unforeseeable events, including actions by various government agencies, and domestic and international political events, may cause sharp market fluctuations.

Limited Operating History. The Fund has limited operating history and the Master Fund and the Master Fund General Partner do not have operating histories upon which prospective investors can evaluate the anticipated performance of the Fund. Although the principals of the Investment Manager have extensive prior experience in Latin America, past performance of the Investment Manager should not be construed as an indication of the future results of an investment in the Fund. The Master Fund's investment program should be evaluated on the basis that there can be no assurance that the Investment Manager's assessment of the short-term or long-term prospects of its investment strategy will prove accurate, or that the Master Fund will achieve its investment objectives.

Illiquidity of Shares. Shares are not transferable without the approval of the Directors, and there will be no secondary market for Shares. Consequently, Shareholders may not be able to dispose of their Shares except by means of the redemption privilege and may receive securities rather than cash in exchange for their Shares.

Possible Effect of Substantial Redemptions. Substantial redemptions of Shares from the Fund could require the Master Fund to liquidate its positions more rapidly than otherwise desired in order to raise the cash necessary to fund the redemptions. Illiquidity in certain securities could make it difficult for the Master Fund to liquidate positions on favorable terms, which could result in losses or a decrease in the Net Asset Value of the Master Fund, and thus, the Fund. The Master Fund is permitted to borrow cash necessary to make payments in connection with redemption of Shares from the Fund when the Investment Manager determines that it would not be advisable to liquidate portfolio assets for that purpose. The Master Fund is also authorized to pledge portfolio assets as collateral security for the repayment of such loans. In these circumstances, the continuing Shareholders will bear the risk of any subsequent decline in the value of the Fund's assets.

Master-Feeder Structure. The Fund will invest all of its investable assets in the Master Fund. The "master-feeder" fund structure presents certain risks to the Shareholders. Smaller feeder funds may be materially affected by the actions of larger feeder funds.

While the Investment Manager, as investment manager of the Master Fund, generally will not consider tax issues applicable to any particular investors, it generally will take into account the tax positions of the Fund and the Domestic Fund that invest in the Master Fund. However, the use of a "master-feeder" structure may create a conflict of interest in that different tax considerations for the Fund and the Domestic Fund may cause or result in the Master Fund structuring or disposing of an investment in a manner or at a time that is more advantageous (or disadvantageous) for tax purposes to one Feeder Fund or its investors.

Absence of Regulatory Oversight. Although the Fund is a regulated mutual fund under the Mutual Funds Law (Revised) of the Cayman Islands, the Fund is not required to, and does not intend to, register under the laws of any other jurisdiction, and, accordingly, the provisions of statutes of certain jurisdictions (which may provide certain regulatory safeguards to investors) are not applicable. For example, neither the Fund nor the Master Fund is required to maintain custody of its securities or place its securities in the custody of a bank or a member of a recognized securities exchange in the manner required under the statutes of certain jurisdictions. A registered investment company that places its securities in the custody of a member of a recognized securities exchange is generally required to have a written custodian agreement, which provides that securities held in custody will be at all times individually segregated from the securities of any other person and marked to clearly identify such securities as the property of such investment company and which contains other provisions complying with applicable regulations. The Master Fund may maintain such accounts at brokerage firms that do not separately segregate such assets as would be required in the case of registered investment companies. The bankruptcy of any such brokerage firms might have a greater adverse effect on the Master Fund and the Fund than would be the case if the accounts were maintained to meet the requirements applicable to registered investment companies.

Handling of Mail. Mail addressed to the Fund and received at its registered office will be forwarded unopened to the forwarding address supplied by the Investment Manager to be dealt with. None of the Fund, its Directors, officers, advisors or service providers (including the organisation which provides registered office services in the Cayman Islands) will bear any responsibility for any delay howsoever caused in mail reaching the forwarding address. In particular, the Directors will only receive, open or deal directly with mail which is addressed to them personally (as opposed to mail which is addressed just to the Fund).

Subscription Monies. Where a subscription for Shares is accepted, the Shares will be treated as having been issued with effect from the relevant Subscription Day notwithstanding that the subscriber for those Shares may not be entered in the Fund's register of members until after the relevant Subscription Day. The subscription monies paid by a subscriber for Shares will accordingly be subject to investment risk in the Fund from the relevant Subscription Day.

Effect of Redemptions. Where a redemption request is accepted, the Shares will be treated as having been redeemed with effect from the relevant Redemption Day irrespective of whether or not such redeeming Shareholder has been removed from the Fund's register of members or the

Redemption Price has been determined or remitted. Accordingly, on and from the relevant Redemption Day, Shareholders in their capacity as such will not be entitled to or be capable of exercising any rights arising under the Articles with respect to Shares being redeemed (including any right to receive notice of, attend or vote at any meeting of the Fund) save the right to receive the Redemption Price and any dividend which has been declared prior to the relevant Redemption Day but not yet paid (in each case with respect to the Shares being redeemed). Such redeemed Shareholders will be creditors of the Fund with respect to the Redemption Price. In an insolvent liquidation, redeemed Shareholders will rank behind ordinary creditors but ahead of Shareholders.

Limited Rights of Shareholders. Shareholders holding Shares will have no right to participate in the day to day operations of the Fund and will not be entitled to receive notice of, nor attend or vote at, general meetings of the Fund other than general meetings to vote upon a variation of the rights of the Shares. Consequently, Shareholders will not have any control over the management of the Fund or the appointment and removal of its Directors and service providers. The Investment Manager, as holder of all the Management Shares, control all of the voting interests in the Fund, except on proposals to vary the rights of the Shares, and may make such changes to the Memorandum of Association and Articles of the Fund as it deems appropriate, including increasing the share capital, consolidating the Shares and sub-dividing the Shares. Accordingly, only the Investment Manager can appoint and remove the Directors of the Fund and only the Directors may terminate the services of the Investment Manager, the Administrator and other agents of the Fund. An investment in the Fund should be regarded as a passive investment.

Valuation of the Master Fund's Investments. Valuation of the Master Fund's securities and other investments may involve uncertainties and judgmental determinations, and if such valuations should prove to be incorrect, the Net Asset Value of the Master Fund and the Fund could be adversely affected. Independent pricing information may not at times be available or otherwise utilized regarding certain of the Master Fund's securities and other investments. Valuation determinations will be made in good faith in accordance with the policies of the Investment Manager in effect from time to time, a copy of which will be made available upon request.

The Master Fund may have some of its assets in investments, which by their very nature may be extremely difficult to accurately value. To the extent that the value assigned by the Administrator to any such investment differs from the actual value, the Net Asset Value of the Master Fund and the Fund may be understated or overstated, as the case may be. In light of the foregoing, there is a risk that a Shareholder who redeems all or part of its Shares while the Master Fund holds such investments will be paid an amount less than it would otherwise be paid if the actual value of such investments is higher than the value designated by the Administrator. Similarly, there is a risk that such Shareholder might, in effect, be overpaid if the actual value of such investments is lower than the value designated by the Administrator. In addition, there is risk that an investment in the Fund by a new Shareholder (or an additional investment by an existing Shareholder) could dilute the value of such investments for the other Shareholders if the designated value of such investments is higher than the value designated by the Administrator. Further, there is risk that a new Shareholder (or an existing Shareholder that makes an additional investment) could pay more than it might otherwise if the actual value of such investments is

lower than the value designated by the Administrator. The Administrator does not intend to adjust the Net Asset Value of the Master Fund and the Fund retroactively.

None of the Directors, the Fund, the Master Fund, the Master Fund General Partner or the Administrator shall have any liability in the event that any price or valuation, used in good faith in connection with the above procedures, proves to be an incorrect or an inaccurate estimate or determination of the price or value of any part of the property of the Master Fund.

In-Kind Distributions. A redeeming Shareholder may, in the discretion of the Directors, receive securities owned by the Fund (through the Master Fund) in lieu of, or in combination with, cash. The value of securities distributed may increase or decrease before the securities can be sold (either by the Shareholder or by the Fund if the Directors establishes a liquidating account on behalf of the Shareholder to sell such assets), and the investor will incur transaction costs in connection with the sale of such securities. Additionally, securities distributed with respect to a redemption by a Shareholder may not be readily marketable. The risk of loss and delay in liquidating these securities will be borne by the investor, with the result that such investor may receive less cash than it would have received on the date of redemption.

Business and Regulatory Risks of Hedge Funds. Legal, tax and regulatory changes could occur during the term of the Fund that may adversely affect the Fund. The regulatory environment for hedge funds is evolving, and changes in the regulation of hedge funds may adversely affect the value of investments held by the Master Fund and the ability of the Master Fund to obtain the leverage it might otherwise obtain or to pursue its trading strategies. In addition, securities and futures markets are subject to comprehensive statutes, regulations and margin requirements. Regulators and self-regulatory organizations and exchanges are authorized to take extraordinary actions in the event of market emergencies. The regulation of derivative transactions and funds that engage in such transactions is an evolving area of law and is subject to modification by government and judicial actions. The effect of any future regulatory change on the Fund could be substantial and adverse.

Side Letters. The Investment Manager, in consultation with the Directors, or the Fund may from time to time enter into letter agreements or other similar agreements (collectively, "Side Letters") with one or more Shareholders which provide such Shareholder(s) with additional and/or different rights (including, without limitation, with respect to access to information, the Management Fee, the Performance Allocation, minimum investment amounts, voting rights and liquidity terms) than such Shareholder(s) have pursuant to this Memorandum. As a result of such Side Letters, certain Shareholders may receive additional benefits (including, but not limited to, reduced fee obligations, the ability to redeem Shares on shorter notice and/or expanded informational rights) which other Shareholders will not receive. For example, a Side Letter may permit a Shareholder to redeem its Shares on less notice and/or at different times than other Shareholders. As a result, should the Fund experience a decline in performance over a period of time, a Shareholder who is party to a Side Letter that permits less notice and/or different redemption times may be able to redeem its Shares prior to other Shareholders. In general, the Fund and/or the Investment Manager will not be required to notify any or all of the other Shareholders of any such Side Letters or any of the rights and/or terms or provisions thereof, nor will the Fund and/or the Investment Manager be required to offer such additional

and/or different rights and/or terms to any or all of the other Shareholders. The Fund and/or the Investment Manager may cause the Fund to enter into such Side Letters with any party as the Fund and/or the Investment Manager may determine in its sole discretion at any time. The other Shareholders will have no recourse against the Fund and/or the Investment Manager in the event certain Shareholders receive additional and/or different rights and/or terms as a result of such Side Letters. A Shareholder will be required to enter into such undertakings with respect to maintaining the confidentiality of any such additional information as the Fund and/or the Investment Manager may in their sole discretion determine.

Competition. The markets in which the Master Fund invests are competitive and some of the opportunities that the Investment Manager may explore may be pursued by better known investors or investment funds. There can be no assurance that the Investment Manager will be able to identify or successfully pursue such opportunities in this environment. The Investment Manager competes with many firms that may have greater financial resources, more extensive development, better marketing and service capabilities, more favorable financing arrangements, larger research staffs and more securities traders than are available to the Investment Manager.

Cybersecurity. Information and technology systems may be vulnerable to damage or interruption from computer viruses, network failures, computer and telecommunication failures, infiltration by unauthorized persons and security breaches, usage errors by their respective professionals, power outages and catastrophic events such as fires, tornadoes, floods, hurricanes and earthquakes. Although the Investment Manager has implemented various measures to manage risks relating to these types of events, if these systems are compromised, become inoperable for extended periods of time or cease to function properly, the Investment Manager, the Master Fund and/or the Fund may have to make a significant investment to fix or replace them, which expense may be borne in whole or in part by the Fund. The failure of these systems and/or of disaster recovery plans for any reason could cause significant interruptions in the Investment Manager's, the Master Fund's and/or the Fund's operations and result in a failure to maintain the security, confidentiality or privacy of sensitive data, including personal information relating to investors. Such interruptions could harm the Investment Manager's, the Master Fund's and/or the Fund's reputation, subject any such entity and their respective affiliates to legal claims and otherwise affect their business and financial performance. The foregoing risks and consequences are also extant at any issuer in which the Master Fund invests and could manifest as adverse performance of such investment.

INVESTMENT AND TRADING RISKS

Derivative Instruments. The Investment Manager may use various derivative instruments, including futures, options, forward contracts, swaps and other derivatives which may be volatile and speculative. Certain positions may be subject to wide and sudden fluctuations in market value, with a resulting fluctuation in the amount of profits and losses. Use of derivative instruments presents various risks, including the following:

- *Tracking* – When used for hedging purposes, an imperfect or variable degree of correlation between price movements of the derivative instrument and the underlying investment sought to be hedged may prevent the Investment Manager

from achieving the intended hedging effect or expose the portfolio to the risk of loss.

- *Liquidity* – Derivative instruments, especially when traded in large amounts, may not be liquid in all circumstances, so that in volatile markets the Investment Manager may not be able to close out a position without incurring a loss. In addition, daily limits on price fluctuations and speculative positions limits on exchanges on which the Investment Manager may conduct its transactions in certain derivative instruments may prevent prompt liquidation of positions, subjecting the portfolio to the potential of greater losses.

- *Leverage* – Trading in derivative instruments can result in large amounts of leverage. Thus, the leverage offered by trading in derivative instruments may magnify the gains and losses experienced by the Master Fund and could cause the Master Fund's net asset value to be subject to wider fluctuations than would be the case if the Investment Manager did not use the leverage feature in derivative instruments.

- *Over-the-Counter-Trading* – Derivative instruments that may be purchased or sold for the portfolio may include instruments not traded on an exchange. Over-the-counter options, unlike exchanged-traded options, are two-party contracts with price and other terms negotiated by the buyer and seller. The risk of non-performance by the obligor on such an instrument may be greater and the ease with which the Investment Manager can dispose of or enter into closing transactions with respect to such an instrument may be less than in the case of an exchange-traded instrument. In addition, significant disparities may exist between "bid" and "asked" prices for derivative instruments that are not traded on an exchange. Derivative instruments not traded on exchanges are also not subject to the same type of government regulation as exchange traded instruments, and many of the protections afforded to participants in a regulated environment may not be available in connection with such transactions.

Short Sales. Short sales by the Master Fund that are not made "against the box" create opportunities to increase the Master Fund's return but, at the same time, involve special risk considerations and may be considered a speculative technique. Since the Master Fund, in effect, profits from a decline in the price of the securities sold short without the need to invest the full purchase price of the securities on the date of the short sale, the value of the Master Fund will tend to increase more when the securities it has sold short decrease in value, and to decrease more when the securities it has sold short increase in value, than otherwise would be the case if it had not engaged in such short sales. Short sales theoretically involve unlimited loss potential, as the market price of securities sold short may increase continuously, although the Master Fund may mitigate such losses by replacing the securities sold short before the market price has increased significantly. Under adverse market conditions the Master Fund might have difficulty purchasing securities to meet its short sale delivery obligations, and might have to sell portfolio securities to raise the capital necessary to meet its short sale obligations at a time when fundamental investment considerations would not favor such sales. Short sales may be used with the intent of hedging against the risk of

declines in the market value of the Master Fund's long portfolio, but there can be no assurance that such hedging operations will be successful.

Risks of Execution of Investment Strategies. The Master Fund will invest in a number of securities and obligations that entail substantial inherent risks. Although the Master Fund will attempt to manage those risks through careful research, ongoing monitoring of investments and appropriate hedging techniques, there can be no assurance that the securities and other instruments purchased by the Master Fund will in fact increase in value or that the Master Fund will not incur significant losses.

Market Risks and Liquidity. The profitability of a significant portion of the Master Fund's investment program depends to a great extent upon correctly assessing the future course of the price movements of securities and other investments. There can be no assurance that the Master Fund will be able to predict accurately these price movements. Although the Master Fund may attempt to mitigate market risk through the use of long and short positions or other methods, there is always some, and occasionally a significant, degree of market risk.

Furthermore, the Master Fund may be adversely affected by a decrease in market liquidity for the instruments in which they invest, which may impair the Master Fund's ability to adjust their position. The size of the Master Fund's positions may magnify the effect of a decrease in market liquidity for such instruments. Changes in overall market leverage, deleveraging as a consequence of a decision by a broker to reduce the level of leverage available, or the liquidation by other market participants of the same or similar positions, may also adversely affect the Master Fund's portfolio. Some of the underlying investments of the Master Fund may not be actively traded and there may be uncertainties involved in the valuation of such investments. Potential investors should be warned that under such circumstances, the Net Asset Value of the Master Fund may be adversely affected.

Hedging. Although the Master Fund will attempt to hedge its exposure to specific arbitrage positions, it will not always be possible fully to hedge risk from such positions or any other position. In addition, the Master Fund may take positions based on the expected future direction of the markets without fully hedging the market risks.

Currency Risks. A portion of the Master Fund's assets may be invested in securities denominated in various currencies and in other financial instruments, the price of which is determined with reference to such currencies. The account of the Master Fund will, however, be valued in U.S. Dollars. To the extent unhedged, the value of the net assets of the Master Fund will fluctuate with U.S. Dollars exchange rates as well as with price changes of their investments in the various local markets and currencies. Forward currency contracts and options may be utilized by the Master Fund to hedge against currency fluctuations, but there can be no assurance that such hedging transactions will be effective.

Counterparty and Settlement Risk. Due to the nature of some of the investments which the Master Fund may make, the Master Fund may rely on the ability of the counterparty to a transaction to perform its obligations. In the event that any such party fails to complete its obligations for any reason, the Master Fund may suffer losses. The Master Fund will therefore be exposed to a credit risk on the counterparties with which it trades. The Master Fund will also

bear the risk of settlement default by clearing houses and exchanges. Any default by a counterparty or on settlement could have a material adverse effect on the Master Fund.

Borrowing. The Master Fund is permitted to finance its operations with secured and unsecured borrowing up to 100% of its net assets, to the extent allowable under applicable credit regulations. Like other forms of leverage, the use of borrowing can enhance the risk of capital loss in the event of adverse changes in the level of market prices of the assets being financed with the borrowings.

Distributions. Since the Fund will not ordinarily make distributions by way of dividends to the Shareholders, all earnings of the Fund are expected to be retained for reinvestment (through the Master Fund).

Discretion of the Investment Manager; Concentration of Investments. The Investment Manager will seek to engage in the investment activities described herein. Nonetheless, the Master Fund's portfolio may be altered at any time in the sole discretion of the Investment Manager and without the approval of any investors in the limited partners of the Master Fund, including the Shareholders. Although the Investment Manager will follow a general policy of seeking to spread the Master Fund's capital among a number of investments, the Investment Manager may depart from such policy from time to time and may hold a few, relatively large securities positions in relation to the Master Fund's capital. The result of such concentration of investments is that a loss in any such position could materially reduce the Master Fund's capital.

Difficult Market for Investment Opportunities. The activity of identifying, completing and realizing on attractive investments involves a high degree of uncertainty. There can be no assurance that the Master Fund will be able to locate and complete investments which satisfy the Master Fund's rate of return objective or realize upon their values or that the Master Fund will be able to invest fully its subscribed capital in a manner consistent with its investment strategy.

TAX RELATED RISKS

Uncertainty and Complexity of Tax Treatment. The tax aspects of an investment in the Fund are complicated and complex and, in many cases, uncertain. Statutory provisions and administrative regulations have been interpreted inconsistently by the courts. Additionally, some statutory provisions remain to be interpreted by administrative regulations. Investors will thus be subject to the risk caused by the uncertainty of the tax consequences with respect to an investment in the Fund. Each prospective investor should have the tax aspects of an investment in the Fund reviewed by professional advisors familiar with such investor's personal tax situation and with the tax laws and regulations applicable to the investor and private investment vehicles. Prospective investors are strongly urged to review the discussion below under "*Taxation*" for a more complete discussion of certain of the tax risks inherent in the acquisition of Shares and to consult their own independent tax advisors.

Risk of Adverse Determination. There can be no assurance that the conclusions set forth in this Memorandum will not be challenged successfully by the U.S. Internal Revenue Service (the "Service") or another applicable taxing authority, or significantly modified by new legislation, changes in the Service's positions, or court decisions. The Fund has not applied for, nor does it expect to apply for, any advance rulings from the Service or any other applicable taxing authority

with respect to any of the tax consequences described in this Memorandum. No representation or warranty of any kind is made by the Fund or the Investment Manager with respect to the tax consequences relating to an investment in the Fund. The Fund may take positions with respect to certain tax issues which depend on legal conclusions not yet resolved by the Service, other applicable taxing authorities or courts. Should any such positions be successfully challenged by the Service or any other applicable taxing authority, there could be a materially adverse effect on the Fund.

Tax Audit. An audit of the Fund by the Service or any other applicable taxing authority could result in adjustments to the tax consequences initially reported by the Fund, which examination could affect the after-tax returns of a shareholder's investment in the Fund. If such audit adjustments result in an increase in the Fund's tax liability for any year, the Fund may also be liable for interest and penalties with respect to the amount of underpayment. The legal and accounting costs incurred in connection with any audit of the Fund's tax returns will be borne by the Fund.

Tax-Exempt Entities. Certain prospective investors may be subject to U.S. federal and state laws, rules and regulations that regulate their participation in the Fund, or their engaging directly or indirectly through an investment in the Fund, in certain investment strategies that the Fund (through the Master Fund) may utilize from time-to-time (e.g., short-sales of securities and the use of leverage, the purchase and sale of options and limited diversification). While the Master Fund believes its investment program is generally appropriate for U.S. tax-exempt organizations for which an investment in the Fund would otherwise be suitable, each type of exempt organization may be subject to different laws, rules and regulations, and prospective investors should consult with their own advisers as to the advisability and tax consequences of an investment in the Fund. Investments in the Fund by entities subject to ERISA (as defined below), and other tax-exempt entities, require special consideration. Trustees or administrators of such entities are urged to review carefully the matters discussed in this Memorandum.

Tax Considerations Taken into Account. The Investment Manager may take tax considerations into account in determining when the Fund's investments should be sold or otherwise disposed of, and may assume certain market risk and incur certain expenses in this regard to achieve favorable tax treatment of a transaction.

Adverse Taxation Events. With respect to certain countries, there is a possibility of expropriation, confiscatory taxation, imposition of withholding or other taxes on dividends, interest, capital gains or other income, limitations on the removal of funds or other assets of the Fund, political or social instability or diplomatic developments that could affect investments in those countries. An issuer of securities may be domiciled in a country other than the country in whose currency the instrument is denominated. The values and relative yields of investments in the securities markets of different countries, and their associated risks, are expected to change independently of each other.

Shareholder Level Taxation. Tax consequences to each shareholder will depend on tax laws in that shareholder's jurisdiction. Shareholders should consult their professional advisors as to the possible tax consequences of subscribing for, buying, holding, selling, transferring or redeeming Shares under the laws of their country of citizenship, residence or domicile.

Possible Law Changes. No assurance can be given that legislative, administrative or judicial changes that could alter, either prospectively or retroactively, the U.S. tax considerations or risk factors discussed in this Memorandum will not occur. Currently, various proposals in the U.S. Congress, possibly with retroactive effect, are pending which, if enacted, could result in changes in U.S. federal income tax laws that may adversely affect the federal income tax consequences of an investment in the Fund. Prospective investors should seek, and must rely on, the advice of their own advisors with respect to the possible impact on its investment of any future proposed legislation or administrative or judicial action.

The foregoing list of risk factors does not purport to be a complete enumeration or explanation of the risks involved in an investment in the Fund. Prospective investors should read this entire Memorandum and consult with their own advisers before deciding to invest in the Fund. In addition, as the investment program of the Master Fund develops and changes over time, an investment in the Fund may be subject to additional and different risk factors. No assurance can be made that profits will be achieved or that substantial losses will not be incurred.

In view of the foregoing considerations, an investment in Shares is suitable only for investors who are capable of bearing the relevant investment risks.

POTENTIAL CONFLICTS OF INTEREST

Highland Group & Highland Accounts

Given the nature and size of Highland Capital Management, L.P.'s ("Highland Capital") operations, various potential conflicts of interest arise in connection with its advisory services and the advisory services provided by its affiliates. Information about Highland Capital and its potential conflicts of interest is provided in Highland Capital's Form ADV Part 2 Brochure that can be found by going to https://adviserinfo.sec.gov/IAPD/Default.aspx, searching by firm name and selecting the Part 2 Brochure to be viewed. The Fund is subject to these conflicts of interest, as well as the other items discussed below.

None of the Investment Manager, its affiliates and their respective officers, directors, shareholders, members, partners, personnel and employees (collectively, the "Highland Group") is precluded from engaging in or owning an interest in other business ventures or investment activities of any kind, whether or not such ventures are competitive with the Fund or the Master Fund. The Investment Manager is permitted to manage other client accounts, and does manage other client accounts, some of which may have objectives similar or identical to those of the Master Fund, including other collective investment vehicles that may be managed by the Highland Group and in which the Investment Manager or any of its affiliates may have an equity interest.

The Fund will be subject to a number of actual and potential conflicts of interest involving the Highland Group including, among other things, the fact that: (i) the Highland Group conducts substantial investment activities for accounts, funds, collateralized debt obligations that invest in leveraged loans (collectively, "CDOs") and other vehicles managed by members of the Highland Group ("Highland Accounts") in which the Fund has no interest; (ii) the Highland Group advises Highland Accounts, which utilize the same, similar or different methodologies as the Fund and may have financial incentives (including, without limitation, as it relates to the composition of

investors in such funds and accounts or to the Highland Group's compensation arrangements) to favor certain Highland Accounts over the Fund and the Master Fund; (iii) the Highland Group may use the strategy described herein in certain Highland Accounts; (iv) the Investment Manager may give advice and recommend securities to, or buy or sell securities for, the Master Fund, which advice or securities may differ from advice given to, or securities recommended or bought or sold for, Highland Accounts; (v) the Investment Manager has the discretion, to the extent permitted under applicable law, to use its affiliates as service providers to the Fund and the Master Fund and the Master Fund's portfolio investments; (vi) certain investors affiliated with the Highland Group may choose to personally invest only in certain funds advised by the Highland Group and the amounts invested by them in such funds is expected to vary significantly; (vii) the Highland Group and Highland Accounts may actively engage in transactions in the same securities sought by the Master Fund and, therefore, may compete with the Master Fund for investment opportunities or may hold positions opposite to positions maintained on behalf of the Master Fund; and (viii) the Investment Manager will devote to the Master Fund and the Fund only as much time as the Investment Manager deems necessary and appropriate to manage the Master Fund's and the Fund's business.

The Investment Manager undertakes to resolve conflicts in a fair and equitable basis, which in some instances may mean a resolution that would not maximize the benefit to the Fund's investors.

Allocation of Trading Opportunities

It is the policy of the Investment Manager to allocate investment opportunities fairly and equitably over time. This means that such opportunities will be allocated among those accounts for which participation in the respective opportunity is considered appropriate, taking into account, among other considerations: (i) fiduciary duties owed to the accounts; (ii) the primary mandate of the accounts; (iii) the capital available to the accounts; (iv) any restrictions on the accounts and the investment opportunity; (v) the sourcing of the investment, size of the investment and amount of follow-on available related to the investment; (vi) whether the risk-return profile of the proposed investment is consistent with the account's objectives and program, whether such objectives are considered in light of the specific investment under consideration or in the context of the portfolio's overall holdings; (vii) the potential for the proposed investment to create an imbalance in the account's portfolio (taking into account expected inflows and outflows of capital); (viii) liquidity requirements of the account; (ix) potentially adverse tax consequences; (x) regulatory and other restrictions that would or could limit an account's ability to participate in a proposed investment; and (xi) the need to re-size risk in the account's portfolio.

The Investment Manager has the authority to allocate trades to multiple Highland Accounts on an average price basis or on another basis it deems fair and equitable. Similarly, if an order on behalf of any accounts cannot be fully allocated under prevailing market conditions, the Investment Manager may allocate the trades among different accounts on a basis it considers fair and equitable over time. One or more of the foregoing considerations may (and are often expected to) result in allocations among the Master Fund and one or more Highland Accounts on other than a *pari passu* basis. The Investment Manager will allocate investment opportunities across its accounts for which the opportunities are appropriate, consistent with (i) its internal conflict of interest and allocation policies and (ii) the requirements of the Investment Advisers Act of 1940, as amended. The Investment Manager will seek to allocate investment opportunities among such entities in a

manner that is fair and equitable over time and consistent with its allocation policy, a copy of which will be provided upon request. However, there is no assurance that such investment opportunities will be allocated to the Master Fund fairly or equitably in the short-term or over time and there can be no assurance that the Master Fund will be able to participate in all investment opportunities that are suitable for it

The Investment Manager may open "average price" accounts with brokers. In an "average price" account, purchase and sale orders placed during a trading day on behalf of the Investment Manager, the Master Fund, and other accounts managed by the Investment Manager are combined, and securities bought and sold pursuant to such orders are allocated among such accounts on an average price basis.

Cross Transactions and Principal Transactions

As further described below, the Investment Manager may effect client cross-transactions where the Investment Manager causes a transaction to be effected between the Master Fund and another client advised by it or any of its affiliates. The Investment Manager may engage in a client cross-transaction involving the Master Fund any time that the Investment Manager believes such transaction to be fair to the Master Fund and such other client. By purchasing Shares, a Shareholder is deemed to have consented to such client cross-transactions between the Master Fund and another client of the Investment Manager or one of its affiliates.

The Investment Manager may direct the Master Fund to acquire or dispose of securities in cross trades between the Master Fund and other clients of the Investment Manager or its affiliates in accordance with applicable legal and regulatory requirements. In addition, the Master Fund may invest in securities of obligors or issuers in which the Investment Manager and/or its affiliates have a debt, equity or participation interest, and the holding and sale of such investments by the Master Fund may enhance the profitability of the Investment Manager's own investments in such companies. Moreover, the Master Fund may invest in assets originated by the Investment Manager or its affiliates. In each such case, the Investment Manager and such affiliates may have a potentially conflicting division of loyalties and responsibilities regarding the Master Fund and the other parties to such trade. Under certain circumstances, the Investment Manager and its affiliates may determine that it is appropriate to avoid such conflicts by selling a security at a fair value that has been calculated pursuant to the Investment Manager's valuation procedures to another client managed or advised by the Investment Manager or such affiliates. In addition, the Investment Manager may enter into agency cross-transactions where it or any of its affiliates acts as broker for the Master Fund and for the other party to the transaction, to the extent permitted under applicable law.

The principal of the Investment Manager, as well as the employees and officers of the Investment Manager and of organizations affiliated with the Investment Manager, may buy and sell securities for their own account or the account of others, but may not buy securities from or sell securities to the Master Fund (such prohibition does not extend to the purchase or sale of Shares of the Fund), unless such purchase or sale is in compliance with the applicable provisions of the Investment Advisers Act of 1940, as amended.

Conflicts Relating to Equity and Debt Ownership by the Master Fund and Affiliates

In certain circumstances, the Master Fund and other client accounts may invest in securities or other instruments of the same issuer (or affiliated group of issuers) having a different seniority in the issuer's capital structure. If the issuer becomes insolvent, restructures or suffers financial distress, there may be a conflict between the interests in the Master Fund and those other accounts insofar as the issuer may be unable (or in the case of a restructuring prior to bankruptcy may be expected to be unable) to satisfy the claims of all classes of its creditors and security holders and the Master Fund and such other accounts may have competing claims for the remaining assets of such issuers. Under these circumstances it may not be feasible for the Investment Manager to reconcile the conflicting interests in the Master Fund and such other accounts in a way that protects the Master Fund's interests. Additionally, the Investment Manager or its nominees may in the future hold board or creditors' committee memberships which may require them to vote or take other actions in such capacities that might be conflicting with respect to certain funds managed by the Investment Manager in that such votes or actions may favor the interests of one account over another account. Furthermore, the Investment Manager's fiduciary responsibilities in these capacities might conflict with the best interests of the investors.

Affiliated Entity Services

Affiliated entities of the Investment Manager may provide services with respect to the Investment Manager, the Master Fund or the Fund. NexBank, SSB ("NexBank SSB") is an affiliate of the Investment Manager and may, from time to time, provide banking and/or agency services to the Investment Manager, clients of the Investment Manager or collective investment vehicles for which the Investment Manager provides investment advisory services (including the Fund, the Master Fund and other vehicles in which the Fund (through the Master Fund) may invest) or third parties engaged in transactions involving the Investment Manager. NexBank SSB may also act as an agent in connection with certain securities transactions involving the Investment Manager's client accounts (including the Master Fund and other vehicles in which the Master Fund may invest). Principals of the Investment Manager own a majority of the equity interests in NexBank SSB and employees or affiliates of the Investment Manager own or may own a substantial equity interest in NexBank SSB. Certain Master Fund investment transactions may be executed through NexBank Securities, Inc., an affiliate of the Investment Manager and a registered broker-dealer.

Additionally, the Investment Manager or affiliates of the Investment Manager, including, without limitation, Nexbank SSB, NexBank Securities, Inc.,NexBank Capital Advisors and Governance Re, Ltd., may provide financial advisory, management, insurance, title insurance or other services for a fee to portfolio companies in which the Master Fund may have an interest. Highland Latin America Consulting, Ltd., an affiliate of the Investment Manager, has been engaged to provide certain administrative and consulting services to the Investment Manager, as more fully described below in "*Management and Administration – Investment Manager*."

Management Fees

A portion of any Management Fee may be paid to broker-dealers, placement agents or independent third parties, other than the Investment Manager, for services provided in connection with the solicitation of subscriptions from investors. Accordingly, investors should recognize that a

placement agent's or distributor's participation in this offering may be influenced by its interest in such current or future fees and compensation. Investors should consider these potential conflicts of interest in making their investment decisions. Each placement agent shall comply with the legal requirements of the jurisdictions within which it offers and sells Interests.

Diverse Membership

The Shareholders are expected to include entities, persons, or entities organized in various jurisdictions and subject to different tax and regulatory regimes. Such diverse investors may thus have conflicting investment, tax and other interests, relating to, among other things, the nature of investments made by the Master Fund, the structuring or the acquisition of investments and the timing of disposition of investments. As a result, conflicts of interest may arise in connection with decisions made by the Investment Manager including as to the nature and structure of investments that may be more beneficial for one type of Shareholder than for another type of Shareholder, including Shareholders affiliated with the Investment Manager. The results of the Fund's activities may affect individual Shareholders differently, depending upon their individual financial and tax situations because, for instance, of the timing of an event of realization of gain or loss and its characterization as long-term or short-term gain or loss. In addition, the Master Fund may make investments that may have a negative impact on related investments made by the Shareholders in separate transactions. In selecting, structuring and managing investments appropriate for the Master Fund, the Investment Manager will consider the investment and tax objectives of the Master Fund and the Feeder Funds as a whole, not the investment, tax, or other objectives of any Shareholder individually. However, there can be no assurance that a result will not be more advantageous to some Shareholders than to others or to the Investment Manager and/or its affiliates than to a particular Shareholder.

Performance Allocation

As described herein, the Master Fund Partnership Agreement provides for the payment of the Management Fee to the Investment Manager and the Performance Allocation to the Investment Manager, in its capacity as the Special Limited Partner. The Performance Allocation may create an incentive for the Investment Manager, as the Special Limited Partner, to make investments that are riskier or more speculative than would be the case in the absence of such Performance Allocation.

Soft Dollars

The Investment Manager's authority to use "soft dollar" credits generated by the Master Fund's securities transactions to pay for expenses that might otherwise have been borne by the Investment Manager or the Master Fund General Partner may give the Investment Manager an incentive to select brokers or dealers for Master Fund transactions, or to negotiate commission rates or other execution terms, in a manner that takes into account the soft dollar benefits received by the Investment Manager rather than giving exclusive consideration to the interests in the Master Fund. See "*Brokerage and Custody*."

No Separate Counsel

Akin Gump Strauss Hauer & Feld LLP ("Akin Gump") serves as counsel to the Fund, the Master Fund, the Investment Manager, the Master Fund General Partner and certain of their Affiliates (the "Clients") in connection with the formation of certain Clients, the offering of Shares as well as certain other matters for which the Clients may engage Akin Gump from time to time. Akin Gump disclaims any obligation to verify the Clients' compliance with their obligations either under applicable law or the governing documents of the Fund. In acting as counsel to the Clients, Akin Gump has not represented and will not represent any shareholders nor does it purport to represent their interests. No independent counsel has been retained to represent the shareholders. In assisting in the preparation of this Memorandum, Akin Gump has relied on information provided by the Fund, the Investment Manager and the Master Fund General Partner and certain of the Fund's other service providers (including, without limitation, biographical data, summaries of market conditions, the planned investment strategy of the Master Fund and the performance of the Master Fund, its investments or any predecessor Fund) without verification and does not express a view as to whether such information is accurate or complete.

Maples and Calder, P.O. Box 309, Ugland House, Grand Cayman, KY1-1104, Cayman Islands, acts as Cayman Islands legal counsel to the Fund, the Master Fund and the Master Fund General Partner. In connection with the Fund's offering of Shares and subsequent advice to the Fund, the Master Fund and the Master Fund General Partner, Maples and Calder will not be representing shareholders and/or limited partners. No independent legal counsel has been retained to represent the shareholders and/or limited partners. Maples and Calder's representation of the Fund is limited to specific matters as to which it has been consulted by the Fund. There may exist other matters that could have a bearing on the Master Fund as to which Maples and Calder has not been consulted. In addition, Maples and Calder does not undertake to monitor compliance by the Investment Manager and its affiliates with the investment program, valuation procedures and other guidelines set forth herein, nor does Maples and Calder monitor ongoing compliance with applicable laws. In connection with the preparation of this Memorandum, Maples and Calder's responsibility is limited to matters of Cayman Islands law and it does not accept responsibility in relation to any other matters referred to or disclosed in this Memorandum. In the course of advising the Fund, there are times when the interests of shareholders/limited partners may differ from those of the Fund, the Master Fund and/or the Master Fund General Partner. Maples and Calder does not represent the shareholders' and/or the limited partners' interests in resolving these issues. In reviewing this Memorandum, Maples and Calder has relied upon information furnished to it by the Fund and has not investigated or verified the accuracy and completeness of information set forth herein concerning the Fund, the Master Fund and/or the Master Fund General Partner.

Non-Public Information

From time to time, the Investment Manager may come into possession of non-public information concerning specific companies although internal structures are in place to prevent the receipt of such information. Under applicable securities laws, this may limit the Investment Manager's flexibility to buy or sell portfolio securities issued by such companies. The Master Fund's investment flexibility may be constrained as a consequence of the Investment Manager's inability to use such information for investment purposes.

Directors

The Directors will at all times have regard to their obligations to act in the best interests of the Fund and its Shareholders so far as practicable. The Directors will seek to ensure that any conflict of interest is resolved fairly and in the interests of the Fund and its Shareholders.

The foregoing list of risk factors does not purport to be a complete enumeration or explanation of the risks involved in an investment in the Fund. Prospective investors should read this entire Memorandum and consult with their own legal, tax and financial advisers before deciding to invest in the Fund.

MANAGEMENT AND ADMINISTRATION

BOARD OF DIRECTORS

The Directors are responsible for the overall management and control of the Fund in accordance with its Memorandum and Articles of Association. However, the Directors are not responsible for the day-to-day operations and administration of the Fund, nor are they responsible for making or approving any investment decisions having delegated such investment responsibilities to the Investment Manager pursuant to the Investment Management Agreement, and the day-to-day administrative functions to the Administrator pursuant to the Administration Agreement in accordance with their powers of delegation as set out in the Articles. The Directors will review, on a periodic basis, the performance of the Investment Manager and the Administrator.

Biographical information for each Director is set forth below.

Claire Kasumba. Claire serves as an independent director on a wide range of investment structures, including hedge funds, private equity funds, fund of funds and segregated portfolio companies. Claire joined Maples Fiduciary Services (Cayman) Limited ("Maples Fiduciary"), a regulated entity in the Cayman Islands, in 2016 and has over 10 years' legal experience. Claire previously worked as an Associate in the Investment Funds team at Maples and Calder from 2011 where she focused on hedge fund and private equity structuring and formation. Prior to joining Maples and Calder, Claire worked at Nabarro LLP in London in the Funds and Indirect Real Estate team for over five years. During Claire's time at Nabarro LLP, she also completed a six month secondment in the legal department at Aviva Investors. Claire received a Bachelor of Arts degree with first class honours majoring in Economics and Law from the University of Leicester, UK and Göteborgs Universitet, Sweden in 2003. She received a Master of Laws in Commercial and Corporate Law from the University College London, UK. Claire completed her Legal Practice Course in 2005 from BPP Law School, UK. She has been admitted to practice law in England and Wales and the Cayman Islands. Claire also holds an Accredited Director designation from the Institute of Chartered Secretaries and Administrators Canada.

Martin Laufer. Martin works at Maples Fiduciary and serves as an independent director on a wide range of alternative investment funds, including fund of funds, hedge funds and unit trusts. Prior to joining Maples Fiduciary, Martin worked for BNY Mellon Fund Management (Cayman) Limited where he was the Financial Fund Manager from 2010 to 2016, providing fiduciary services to a multi-billion dollar portfolio of unit trusts operating as investment funds as well as administration services to a large portfolio of Cayman Islands domiciled hedge funds and fund of funds. Prior to that, Martin worked for CIBC Bank and Trust Company (Cayman) Limited as a Senior Client Accountant. From 2003 to 2007 Martin worked for KPMG Argentina as a Senior Consultant. Martin graduated from Buenos Aires University as a Certified Public Accountant and holds a Master of Business Administration from the International College of the Cayman Islands. He is a CFA Charterholder and a qualified Trust and Estate Practitioner. Martin is a

member of the Society of Trust and Estate Practitioners (STEP), the Cayman Islands CFA Society and the Cayman Islands Institute of Professional Accountants (CIIPA).

Sophia Dilbert. Sophia Dilbert serves as an independent director on a wide range of alternative investment funds, including fund of funds, hedge funds, private equity funds and segregated portfolio companies. Sophia works at Maples Fiduciary, which she joined in 2012. Prior to joining Maples Fiduciary, Sophia was Global Head of Legal at Admiral Administration Ltd. in the Cayman Islands, starting there in 2007, where she was responsible for advising on all legal and regulatory matters. Sophia was also responsible for the implementation of global policies and procedures. Prior to that, Sophia worked for Stuart Walker Hersant as a senior associate in the Cayman Islands, specializing in investment funds and general corporate law. Sophia commenced her career with Maples and Calder where she spent eight years as an associate attorney specializing in capital markets and investment funds. Her area of practice also included general corporate and commercial law, real estate, immigration and employment matters. Sophia graduated from the University of Liverpool with a Bachelor of Laws with Honours. She is an Attorney-at-Law and is a member of the Caymanian Bar Association, the Cayman Islands Law Society and the Honourable Society of Middle Temple in the United Kingdom. Sophia has also received the Accredited Director designation from the Chartered Secretaries Canada and is a member of the Cayman Islands Directors Association and the Council of the Cayman Islands Stock Exchange.

The services of Claire Kasumba, Martin Laufer and Sophia Dilbert will be provided by Maples Fiduciary. Maples Fiduciary is an affiliate of Maples and Calder, who will be engaged as the Fund's legal counsel. Maples Fiduciary will enter into a Director Services Agreement with the Fund which sets out the terms on which it will provide the services of Claire Kasumba, Martin Laufer and Sophia Dilbert.

Maples Fiduciary will be entitled to remuneration from the Fund at its customary rates and for reimbursement of its out-of-pocket expenses, including all travelling, hotel and other expenses properly incurred by the Directors supplied by Maples Fiduciary in attending meetings of the Directors or any shareholders meeting held in connection with the business of the Fund.

The Directors provided by Maples Fiduciary are non-executive Directors of the Fund and are not required to devote their full time and attention to the business of the Fund. They may be engaged in any other business and/or be concerned or interested in or act as directors or officers of any other company or entity. Neither Maples Fiduciary nor any of the Directors supplied by Maples Fiduciary will be responsible for (i) the commercial structuring of the Fund or the Master Fund or the Master Fund's investment strategy, (ii) the purchase or sale of any investment on behalf of the Master Fund (which will be the responsibility solely of the Investment Manager), (iii) the valuation of the assets of the Master Fund and the Fund, or (iv) any loss or damage caused by the acts or omissions of the Investment Manager, the Administrator or any of their delegates or sub-delegates unless any such loss or damage is actually occasioned by the actual fraud, willful default or Gross Negligence (as defined in the Director Services Agreement) of the Directors supplied by Maples Fiduciary.

The Director Services Agreement provides that none of Maples Fiduciary nor any of the Directors provided by the Maples Group shall be liable to the Fund under or in connection with the Director Services Agreement in an amount of more than US$5,000,000, except in circumstances where such liability was caused by the actual fraud of Maples Fiduciary or, as the case may be, any of the Directors provided by the Maples Group.

The Articles do not stipulate a retirement age for the Directors and do not provide for retirement of the Directors by rotation. There is no shareholding qualification for the Directors. The Directors are empowered to exercise all of the borrowing powers of the Fund. The borrowing powers of the Fund may be varied by the Directors or by an amendment to the Articles.

The Articles provide that the Fund may, by Ordinary Resolution, remove a Director from office and may, by Ordinary Resolution, appoint a person who is willing to act to be a Director either to fill a vacancy or as an additional Director. The Directors may appoint any person who is willing to act to be a Director, either to fill a vacancy or as an additional Director, provided that the appointment does not cause the number of Directors to exceed any number fixed by or in accordance with the Articles as the maximum number of Directors.

The Articles further provide that the office of a Director shall be vacated if: (a) he becomes prohibited by law from being a Director; (b) he becomes bankrupt or makes any arrangement or composition with his creditors generally; (c) he dies, or is, in the opinion of all his co-Directors, incapable by reason of mental disorder of discharging his duties as Director; (d) he resigns his office by notice to the Company; (e) he has for more than six consecutive months been absent without permission of the Directors from meetings of Directors held during that period and his alternate Director (if any) has not during such period attended any such meetings instead of him, and the Directors resolve that his office be vacated; or (f) he is removed from office by notice addressed to him at his last known address and signed by all his co-Directors.

The Articles provide that, so long as the nature of their interest is or has been declared at the earliest opportunity, a Director or prospective Director may enter into any contract or arrangement with the Fund and such contract or arrangement shall not be liable to be avoided and the Director concerned shall not be liable to account to the Fund for any profit realized by any such contract or arrangement by reason of his holding of that office or the fiduciary relationship so established and may hold any other office or place of profit with the Fund (except that of auditor) in conjunction with the office of Director on such terms as to tenure of office and otherwise as the Directors may determine. Provided that a Director has disclosed his material interest pursuant to the Articles, a Director may vote at any meeting of Directors or of a committee of Directors on any resolution concerning a matter in which he has, directly or indirectly, an interest or duty. The Director shall be counted in the quorum present at a meeting when any such resolution is under consideration and if he votes his vote shall be counted.

As at the date of this Memorandum, no Director nor any connected person has any interest, beneficial or non-beneficial, in the share capital of the Fund nor any material interest in the Shares of the Fund nor any options in respect of such Shares nor in any agreement or arrangement with the Fund. Other than the Investment Management Agreement, there are no contracts or arrangements subsisting at the date of this Memorandum in which a Director of the

Fund is materially interested and which is significant in relation to the business of the Fund. There are no loans or guarantees provided by the Fund to or for the benefit of the Directors as at the date of this Memorandum.

Other than the Investment Management Agreement, no Director has any direct or indirect interest in any contract or arrangement that was either unusual in its nature or significant to the business of the Fund in previous years and remains outstanding.

The Articles provide certain rights of exculpation and indemnification in favor of Directors and officers of the Fund against legal liability and expenses if such persons did not, in connection with the matter giving rise to a particular claim, engage in gross negligence or willful default in the performance of their duties.

The Directors may change any of the Fund's service providers, including the Fund's auditors, without the consent of the Shareholders. In addition, the remuneration being paid to service providers by the Fund (and any other term of their respective service agreements) may be amended by the mutual consent of the Directors and the relevant service providers. This may be necessary from time to time to keep such remuneration in line with the prevailing market rates being charged.

INVESTMENT MANAGER

The Fund's Investment Manager is Highland Capital Management Latin America, L.P., a Cayman Islands exempted limited partnership formed on April 13, 2017. The Investment Manager is responsible for overseeing the investment of the Fund's assets (through the Master Fund) and the distribution of the Shares, subject to the overall control of the Master Fund General Partner. With the approval of the Master Fund General Partner, the Investment Manager may delegate certain of its duties to other companies and entities, which may be affiliated with, or independent of, the Investment Manager. The Investment Manager has power to terminate such appointments and to make other appointments in place of them.

The Investment Manager is a wholly-owned subsidiary of Highland Capital Management, L.P., a Delaware limited partnership and a registered investment adviser with the U.S. Securities Exchange Commission (CRD# 110126 / SEC# 801-54874). As an advisory affiliate of Highland Capital Management, L.P., the Investment Manager is also subject to compliance with the provisions of the U.S. Investment Advisers Act of 1940, as amended.

The Investment Manager is not required to be licensed in the Cayman Islands because it is providing investment management services exclusively to persons that fall within an exemption under the Securities Investment Business Law (Revised) of the Cayman Islands. Accordingly, the Investment Manager has filed an initial declaration of exemption with the Cayman Islands Monetary Authority and will update that filing on an annual basis. The Investment Manager will not provide investment services to any class of person that would require it to be licensed under the Securities Investment Business Law (Revised) without first obtaining such a license. The Investment Manager does not envisage obtaining such a license.

The Investment Manager engaged Highland Latin America Consulting, Ltd., a Cayman Islands exempted company ("Highland Latin America"), a wholly-owned subsidiary of the Investment Manager, to provide certain administrative and consulting services to the Investment Manager related to its management of the Fund, subject to the Services Agreement. The Fund will not be liable for any consulting services provided by Highland Latin America or any consultants or service providers that Highland Latin America engages.

The key investment professionals of the Investment Manager and Highland Latin America who are responsible for the Master Fund's investment activities are described below:

James Dondero, CFA, CMA, President, Co-Founder. Mr. Dondero is Co-Founder and President of Highland Capital Management, L.P. and a Director of Highland Latin America GP, Ltd., the general partner of the Investment Manager. Mr. Dondero has over 30 years of experience in the credit and equity markets, focused largely on high-yield and distressed investing. Mr. Dondero is the Chairman and President of NexPoint Residential Trust, Inc. (NYSE:NYRT), Chairman of NexBank Capital, Inc., Cornerstone Healthcare Group Holding, Inc., and CCS Medical, Inc., and a board member of Jernigan Capital, Inc. (NYSE:JCAP), and MGM Holdings, Inc. He also serves on the Southern Methodist University Cox School of Business Executive Board. A dedicated philanthropist, Mr. Dondero actively supports initiatives in education, veterans affairs, and public policy. Prior to founding Highland in 1993, Mr. Dondero was involved in creating the GIC subsidiary of Protective Life, where as Chief Investment Officer he helped take the company from inception to over $2 billion between 1989 and 1993. Between 1985 and 1989, Mr. Dondero was a corporate bond analyst and then portfolio manager at American Express. Mr. Dondero began his career in 1984 as an analyst in the JP Morgan training program. Mr. Dondero graduated from the University of Virginia where he earned highest honors (Beta Gamma Sigma, Beta Alpha Psi) from the McIntire School of Commerce with dual majors in accounting and finance. He has received certification as Certified Public Accountant (CPA) and Certified Managerial Accountant (CMA) and has earned the right to use the Chartered Financial Analyst (CFA) designation.

Gustavo Prilick. Mr. Prilick is a Managing Partner at Highland Capital Brasil and a registered asset manager in Brazil, and is a Director of Highland Latin America GP, Ltd., the general partner of the Investment Manager. He has extensively worked in several of Highland Capital Brasil's portfolio companies in the US mainly as CEO. Prior to his involvement with Highland Capital Brasil, he was a Partner at South America Fund, a private equity firm, mainly focused on providing financial services to export companies in Argentina and Uruguay. Prior to South America Fund, he was the Chief Operating Officer of Millicom International Cellular for 7 years, serving Latin America, Asia, Africa and ten operations in Russia. Prior to Millicom, he served as the Director of International Business for Oracle Corporation where he was responsible for the establishment of most of Oracle's International Subsidiaries on several continents, including the Brazilian operation. Later he became President of Oracle South America with oversight of several countries in South America. He also served as CEO of Nacion Factoring, a subsidiary of Banco Nacion in Argentina building its operations to reach one of the leading positions in the country. Mr. Prilick received an MBA from the Stanford University Graduate School of Business and a degree in Electrical Engineering from Universidad de Buenos Aires. He has also held teaching positions as a visiting professor in several leading Business Schools in Argentina.

Highland Latin America will enter into relationships and agreements with Argentine relevant parties and/or individuals to obtain supporting services for the management of the Fund, the Domestic Fund and the Master Fund, and will enter into consulting agreements with Andrés Pitchón, Julieta Prieto and Javier Casabal pursuant to which these consultants will provide investment and related services to the Feeder Funds and the Master Fund. Mr. Pitchón will provide portfolio management services to the Master Fund under the overall supervision of the Investment Manager.

Andrés Pitchón. Mr. Pitchón, through a consulting arrangement with Highland Latin America Consulting, Ltd., provides portfolio management services to the Master Fund. Mr. Pitchón began his career in 1993 as Head of Equity Research for Argentina for MBA-Salomon Brothers and later he also became responsible for Fixed income. As Head of the Research Department his work was recognized by international publications such as Institutional Investor, Latin Finance, The Reuters Survey and The Greenwich Survey. Since 1997 and 1999 he has managed the Fund's equity and fixed income mutual funds. Since 2003 Mr. Pitchón had been Senior Portfolio Manager of the Fund's hedge funds. Mr. Pitchón received a BA degree in IT, focused on Business Administration from the University of Belgrano (1989), together with an academic merit medal for highest GPA in the School of Technology. Mr. Pitchón also received a Master's degree in Business Administration from Anderson Graduate School of Business at UCLA in 1992.

Investment Management Agreement

Under the Investment Management Agreement among the Investment Manager, the Master Fund General Partner, the Feeder Funds and the Master Fund, the Investment Manager has agreed to provide investment management and distribution services to the Feeder Funds and the Master Fund in accordance with the investment objective and strategies of the Master Fund, and the selling restrictions, set forth above. The Directors have delegated the following list of authorities to the Investment Manager under the Investment Management Agreement (to be exercised in consultation with the Directors): (i) authority to approve the rescission of a request for voluntary redemption submitted by a Shareholder; (ii) authority to waive any applicable requirements and restrictions in relation to the redemption of Shares by any Shareholder; (iii) authority to waive certain eligibility requirements with respect to any new subscription for participating shares or the transfer of Shares; (iv) authority to waive any of the subscription requirements as set out in this Memorandum with respect to any new subscription for Shares; (v) authority to permit a Shareholder to redeem its Shares at any time in the event that continuing to hold the Shares becomes impractical or illegal, upon a Shareholder's death or total disability, or in order for a Shareholder to avoid materially adverse tax or regulatory consequences; (vi) authority to make in-kind distributions of Fund assets; (vii) authority to approve the establishment of reserves for contingencies and distribution holdbacks; (viii) authority to approve Side Letters; (ix) authority to accept subscriptions below the minimum subscription amount; and (x) authority to accept redemptions of Shares outside the frequency established by the Memorandum and Articles of the Fund.

Under the terms of the Investment Management Agreement, the Fund pays to the Investment Manager, for its services as Investment Manager, a quarterly "Management Fee" as described below.

Management Fee for Series A Shares

The Management Fee is an amount equal to 1.75% per annum of the Net Asset Value of each Series A Share. The Management Fee is calculated monthly based on the Net Asset Value of each Series A Share on the last day of each calendar month (before issuing new Series A Shares related to subscriptions made as of the first day of the immediately succeeding month and before redemptions, if any, made during such calendar month and before deduction of the Management Fee for such quarter) and is payable quarterly in arrears on the last day of each calendar quarter. The Management Fee is paid at the Master Fund level. The Master Fund will pay the Management Fee in U.S. Dollars promptly following the end of each calendar quarter. The Management Fee will be deducted in computing the net profit or net loss of the Fund attributed to the Series A Shares. In the event that the Investment Manager is not acting as Investment Manager for an entire calendar quarter, the Management Fee payable by the Master Fund for such calendar quarter will be prorated to reflect the portion of such calendar quarter in which the Investment Manager is acting as such under the Investment Management Agreement.

The Master Fund General Partner or the Investment Manager may elect to reduce, waive or calculate differently the Management Fee with respect to any Shareholder. The Investment Manager may assign all or any portion of the Management Fee to any of its affiliates or any other person designated by the Investment Manager in its discretion.

Management Fee for Series B Shares

The Management Fee is an amount equal to 1.25% per annum of the Net Asset Value of each Series B Share. The Management Fee is calculated monthly based on the Net Asset Value of each Series B Share on the last day of each calendar month (before issuing new Series B Shares related to subscriptions made as of the first day of the immediately succeeding month and before redemptions, if any, made during such calendar month and before deduction of the Management Fee for such quarter) and is payable quarterly in arrears on the last day of each calendar quarter. The Management Fee is paid at the Master Fund level. The Master Fund will pay the Management Fee in U.S. Dollars promptly following the end of each calendar quarter. The Management Fee will be deducted in computing the net profit or net loss of the Fund attributed to the Series B Shares. In the event that the Investment Manager is not acting as Investment Manager for an entire calendar quarter, the Management Fee payable by the Master Fund for such calendar quarter will be prorated to reflect the portion of such calendar quarter in which the Investment Manager is acting as such under the Investment Management Agreement.

The Master Fund General Partner or the Investment Manager may elect to reduce, waive or calculate differently the Management Fee with respect to any Shareholder. The Investment Manager may assign all or any portion of the Management Fee to any of its affiliates or any other person designated by the Investment Manager in its discretion.

Performance Allocation for Series A Shares

Generally, as of the close of each fiscal quarter and subject to the limitations described below, the Performance Allocation is debited against each applicable Master Fund capital sub-account relating to a sub-series of Series A Shares attributable to a Shareholder and simultaneously credited to the Master Fund capital account of the Special Limited Partner. The Performance Allocation is calculated and allocated at the Master Fund level, but is effectively equal to 20.0% of the Net Capital Appreciation (as defined below) of each Series A Share for such fiscal quarter.

The "Net Capital Appreciation" applicable to a Series A Share means the amount by which the Net Asset Value of such Series A Share on the last day of the fiscal quarter (or on the Redemption Day, if applicable) exceeds the higher of the following amounts: (i) the highest Net Asset Value of such Series A Share as of the commencement of any fiscal quarter and (ii) the issue price of such Series A Share (the amount set forth in clause (i) or clause (ii), whichever is higher, the "High Water Mark"). All such calculations include realized and unrealized gains and losses and are made before deduction of the Performance Allocation, but after deduction of the accrued applicable expenses of the Fund and the Master Fund for the applicable period, and in each case adjusted for any subscriptions and redemptions made during the quarter.

Once the Performance Allocation is made to the Special Limited Partner, it will not be returned to the Master Fund if the Net Asset Value of the Series A Shares on which a Performance Allocation has previously been made subsequently declines. The Performance Allocation is allocated based on both realized and unrealized appreciation.

Performance Allocation for Series B Shares

Generally, as of the close of each fiscal quarter and subject to the limitations described below, the Performance Allocation is debited against each applicable Master Fund capital sub-account relating to a sub-series of Series B Shares attributable to a Shareholder and simultaneously credited to the Master Fund capital account of the Special Limited Partner. The Performance Allocation is calculated and allocated at the Master Fund level, but is effectively equal to 17.5% of the Net Capital Appreciation (as defined below) of each Series B Share for such fiscal quarter.

The "Net Capital Appreciation" applicable to a Series B Share means the amount by which the Net Asset Value of such Series B Share on the last day of the fiscal quarter (or on the Redemption Day, if applicable) exceeds the higher of the following amounts: (i) the highest Net Asset Value of such Series B Share as of the commencement of any fiscal quarter and (ii) the issue price of such Series B Share (the amount set forth in clause (i) or clause (ii), whichever is higher, the "High Water Mark"). All such calculations include realized and unrealized gains and losses and are made before deduction of the Performance Allocation, but after deduction of the accrued applicable expenses of the Fund and the Master Fund for the applicable period, and in each case adjusted for any subscriptions and redemptions made during the quarter.

Once the Performance Allocation is made to the Special Limited Partner, it will not be returned to the Master Fund if the Net Asset Value of the Series B Shares on which a Performance

Allocation has previously been made subsequently declines. The Performance Allocation is allocated based on both realized and unrealized appreciation.

Performance Allocation – General

The Special Limited Partner may assign all or any portion of the Performance Allocation to any of its affiliates or any other person designated by the Special Limited Partner in its discretion.

The Performance Allocation is calculated and allocated at the Master Fund level through the use of separate memorandum sub-accounts with respect to the Fund's capital account in the Master Fund that correspond to each sub-series of the relevant Series of Shares attributable to a Shareholder. No separate Performance Allocation will be charged at the Fund level.

The Performance Allocation generally will be allocable to the Special Limited Partner after the end of each fiscal quarter and as of any Redemption Day occurring prior to the end of any fiscal quarter. The Performance Allocation allocated with respect to any Series of Shares redeemed prior to the end of a fiscal quarter will be determined solely by reference to such redeemed Shares and will be allocable to the Special Limited Partner on the Redemption Day. The Performance Allocation with respect to any Shareholder may be fully or partially waived or rebated by the Master Fund General Partner in its sole discretion.

The Investment Management Agreement provides that, in the absence of gross negligence (as defined under the laws of the State of Delaware), willful misconduct or fraud, each of the Investment Manager, its members, shareholders, partners, managers, directors, any person who controls the Investment Manager, each of the respective affiliates of the foregoing, and each of their respective executors, heirs, assigns, successors and other legal representatives, will be indemnified by the Fund, the Domestic Fund and/or the Master Fund, to the extent permitted by law, against any loss or liability incurred by any of such persons in performing their duties under the Investment Management Agreement.

The Investment Management Agreement is terminable upon the dissolution of any Feeder Fund or the Master Fund or by the holder of the management shares of the Fund upon at least 90 days' prior notice.

Services Agreement

Under the Services Agreement between Highland Latin America and the Investment Manager, Highland Latin America has agreed to provide certain administrative and consulting services to the Investment Manager related to its management of the Fund, the Domestic Fund and the Master Fund. These services include: back- and middle-office services; credit analysis; investment vehicle management; valuation; execution and documentation; marketing; reporting; administrative services; and other ancillary services.

The Services Agreement provides that in the absence of bad faith, gross negligence, fraud or willful misconduct (as determined by a court of competent jurisdiction in a final non-appealable judgment), the Investment Manager will, to the extent permitted by law, indemnify and hold

harmless Highland Latin America, any of its affiliates, and any of their respective managers, members, principals, partners, directors, officers, shareholders, employees and agents against any and all claims, demands, liabilities, costs, expenses, damages, losses, suits, proceedings, judgments, assessments, actions and other liabilities incurred by such person in performing their duties under the Services Agreement. The Fund will not be liable for any consulting services provided by Highland Latin America or any consultants or service providers that Highland Latin America engages, and the Fund will not bear any costs or expenses related to the services provided by Highland Latin America.

The Services Agreement will terminate (i) automatically upon the dissolution of the Investment Manager or (ii) at the election of either the Investment Manager or Highland Latin America upon 30 days' notice to the other party.

ADMINISTRATOR

Pursuant to an administration agreement ("Administration Agreement"), the Master Fund has appointed MUFG Fund Services (Cayman) Limited as administrator of the Feeder Funds and the Master Fund (the "Administrator").

MUFG Fund Services is a leading, independent administrator for the alternative investment industry. The Administrator is a Cayman Islands company that is licensed as a Mutual Fund Administrator in the Cayman Islands. It is an indirect wholly owned subsidiary of MUFG Fund Services (Bermuda) Group Limited. The registered office of the Administrator is 2nd Floor Strathvale House, 90 North Church Street, P.O. Box 609, George Town, Grand Cayman KY1-1107, Cayman Islands.

Pursuant to the Administration Agreement, the Administrator is responsible, under the overall supervision of the Master Fund General Partner, for certain matters pertaining to the administration for the Fund, including: (i) maintaining the accounts of the Fund and the Master Fund, (ii) calculating the Master Fund's net asset value, (iii) maintaining the principal corporate records of the Fund and the Master Fund, (iv) communicating with Shareholders, (v) accepting the subscriptions of new Shareholders, (vi) making redemptions of Shares, (vii) maintaining the register of sub-fund investments, (viii) executing sub-fund subscriptions and redemptions as instructed by the Fund, and (ix) ensuring compliance with Cayman Islands law and regulation (including anti-money laundering regulations). For its services, the Administrator receives a fee from the Master Fund.

The Administration Agreement is governed by the law of the Cayman Islands and is subject to termination by the Administrator or the Master Fund upon ninety (90) days' written notice or, under certain circumstances, shorter notice. In such event, the Master Fund may enter into a new agreement with a new administrator on behalf of the Master Fund and the Feeder Funds, in its discretion and on such terms as it deems advisable, without prior notice to, or approval of, investors. Under the Administration Agreement, the Master Fund agrees to indemnify and hold harmless the Administrator and its affiliated persons and delegates, as well as their respective officers, directors, employees and agents for, and to defend and hold each such person harmless from, any and all taxes, claims, demands, actions, suits, judgments, liabilities, losses, damages, costs, charges, counsel fees (on a solicitor and his own client basis), fines, assessments, amounts

paid in settlement and expenses imposed on, incurred by, or asserted against the person which may arise out of or in connection with the Administration Agreement. The Administrator or any other indemnified person will not be indemnified for their own gross negligence, wilful default or fraud.

The Administrator is not responsible for valuing the Master Fund's investments, monitoring any investment restrictions of the Master Fund, determining compliance by the Master Fund with its investment restrictions, the Master Fund's trading activities, the management or performance of the Master Fund, or the accuracy or adequacy of this Memorandum. In addition, the Administrator does not assume any liability to any person or entity, including Shareholders, except as specifically provided in the Administration Agreement. The Administrator may delegate certain services and share information concerning the Fund and its Shareholders with its various non-United States affiliates subject to applicable confidentiality provisions.

The Administrator has no responsibility with respect to trading activities, the Investment Manager, the management or performance of the Fund, or the accuracy or adequacy of this Memorandum.

BROKERAGE AND CUSTODY

Brokerage Arrangements

The Investment Manager will be responsible for the placement of the portfolio transactions of the Master Fund and the negotiation of any commissions or spreads paid on such transactions. Portfolio transactions normally will be effected through brokers on securities exchanges or directly with the issuer, or through an underwriter, or market maker or other dealer for the investments. Portfolio transactions through brokers involve a commission to the broker. Portfolio transactions with dealers typically are priced to include a spread between the bid and the asked price to compensate the dealer. Portfolio transactions will be executed by brokers selected solely by the Investment Manager in its absolute discretion. The Investment Manager is not required to weigh any of these factors equally.

Substantially all of the Master Fund's investments in marketable securities, as well as its cash and cash equivalents, are expected to be held at Société Générale and BNP Paribas Prime Brokerage, Inc. or other prime brokers or custodians selected by the Investment Manager. Instruments not constituting marketable securities generally are recorded through book entry by the borrower or by an agent for the borrower or the creditors. Documentary evidence of the acquisition, ownership and disposition of these assets typically will be held by the Administrator.

Société Générale and BNP Paribas Prime Brokerage, Inc. and other prime brokers or their affiliates may provide capital introduction or other placement services to the Fund and the Investment Manager (with or without separate charges for such other services). In determining which broker-dealer generally provides the best available price and most favorable execution, the Investment Manager considers a totality of circumstances, including price quotes, the size of the transaction, the nature of the market for the financial instrument, the timing of the transaction, difficulty of execution, the broker-dealer's expertise in the specific financial instrument or sector in which the Master Fund seeks to trade, the extent to which the broker-dealer makes a market in

the financial instrument involved or has access to such markets, the broker-dealer's skill in positioning the financial instruments involved, the broker-dealer's promptness of execution, the broker-dealer's financial stability, reputation for diligence, fairness and integrity, quality of service rendered by the broker-dealer in other transactions for the Investment Manager and its respective affiliates, confidentiality considerations, the quality and usefulness of research services and investment ideas presented by the broker-dealer, the broker-dealer's willingness to correct errors, the broker-dealer's ability to accommodate any special execution or order handling requirements that may surround the particular transaction, and other factors deemed appropriate by the Investment Manager. The Investment Manager need not solicit competitive bids and does not have an obligation to seek the lowest available commission cost or spread.

Accordingly, if the Investment Manager concludes that the commissions charged by a broker or the spreads applied by a dealer are reasonable in relation to the quality of services rendered by such broker or dealer (including, without limitation, the value of the brokerage and research products or services provided by such broker or dealer), the Master Fund may pay commissions to, or be subject to spreads applied by, such broker-dealer in an amount greater than the amount another broker-dealer might charge or apply.

The Investment Manager may also execute trades with brokers and dealers with whom the Fund, the Master Fund or the Investment Manager has other business relationships, including prime brokerage, credit relationships and capital introduction or investments by affiliates of the broker-dealers in the Fund or other entities managed by the Investment Manager. However, the Investment Manager does not believe that these other relationships will influence the choice of brokers and dealers who execute trades for the Master Fund.

Research-related goods and services provided by brokers and dealers through which portfolio transactions for the Master Fund are executed, settled and cleared may include research reports on particular industries and companies, economic surveys and analyses, recommendations as to specific securities, certain research services, and other goods and services providing lawful and appropriate assistance to the Investment Manager in the performance of investment decision-making responsibilities on behalf of the Master Fund and related accounts (collectively, "***soft dollar items***").

Soft dollar items may be provided directly by brokers and dealers, by third parties at the direction of brokers and dealers or purchased on behalf of the Master Fund with credits or rebates provided by brokers and dealers. Soft dollar items may arise from over-the-counter principal transactions, as well as exchange traded agency transactions. Brokers and dealers sometimes suggest a level of business they would like to receive in return for the various services they provide. Actual business received by any broker or dealer may be less than the suggested allocations, but can (and often does) exceed the suggestions, because total transaction volume is allocated on the basis of all the considerations described above. A broker or dealer will not be excluded from executing transactions for the Master Fund because it has not been identified as providing soft dollar items.

The use of commissions or "soft dollars" if any, generated by the Master Fund through agency and certain riskless principal transactions to pay for research and research-related products or

services, if any, will fall within the safe harbor created by Section 28(e) of the Securities Exchange Act of 1934, as amended. Under Section 28(e), research products or services obtained with soft dollars generated by the Master Fund may be used by the Investment Manager to service accounts other than the Master Fund. Soft dollars generated in respect of futures, currency and derivatives transactions and principal transactions (that are not riskless principal transactions) do not generally fall within the safe harbor created by Section 28(e) and will be utilized only with respect to research-related products and services for the benefit of the account generating such soft dollars.

Research and brokerage products and services may be used by the Investment Manager in servicing some or all of the Investment Manager's clients. In addition, some research and brokerage may not be used by the Investment Manager in servicing the clients whose commission dollars provided for the research or brokerage. Clients may not, in any particular instance, be the direct or indirect beneficiaries of the research or brokerage provided. Certain clients, who are the beneficiaries of research or brokerage, may have an investment style which results in the generation of a small amount of brokerage commissions due to a lack of active trading for their accounts. As a result, clients who generate sizeable commissions subsidize research or brokerage provided to clients whose accounts generate minimal brokerage commissions since the commission dollars generated by transactions for such clients are not sufficient to pay for research or brokerage that may be received by such clients from other brokers.

In selecting broker-dealers on the basis of the foregoing factors, the Investment Manager may pay a brokerage commission in excess of that which another broker might have charged for effecting the same transaction. In connection therewith, the Investment Manager will make a good faith determination that the amount of commission is reasonable in relation to the value of the research or brokerage services received, viewed in terms of either the specific transaction or the Investment Manager's overall responsibility to its clients. The Investment Manager will regularly evaluate the placement of brokerage services and the reasonableness of commissions paid. Research received from brokers will be supplemental to the Investment Manager's own research efforts. While the receipt of research will not reduce the Investment Manager's normal research activities, the Investment Manager's expenses could increase materially if it attempted to generate such additional research or brokerage services through its own staff, and the Management Fee will not be reduced as a consequence of the receipt of such research or brokerage services or products. As such, the Investment Manager's arrangements for the receipt of research and brokerage services from brokers may create a conflict of interest, in that the Investment Manager may have an incentive to choose a broker-dealer that provides research and brokerage services, instead of one that does not but charges a lower commission rate. In some instances, the Investment Manager receives products and services that may be used for both research and non-research purposes. In such instances, the Investment Manager will make a good faith effort to determine the relative proportion of the products and services used to assist the Investment Manager in carrying out its investment decision-making responsibilities or order execution, including research and brokerage, and the relative proportion used for administrative or other non-research purposes. The proportionate amount of the research attributable to assisting the Investment Manager in carrying out its investment decision-making responsibilities or order execution will be paid through brokerage commissions generated by the Master Fund's

and other client's transactions; the proportionate amount attributable to administrative or other non-research purposes will be paid for by the Investment Manager from its own resources. The receipt of "mixed-use" research and the determination of the appropriate allocation may result in a potential conflict of interest between the Investment Manager and its clients, including the Master Fund.

Custody

The majority of the Master Fund's securities are held in the custody of its prime brokers. The Master Fund is eligible for insurance coverage against loss with respect to assets held in the custody of the prime brokers in the event of the bankruptcy or liquidation of either of the prime brokers to the same extent as that broker's other customers. The Master Fund's and the Fund's cash may be held at banks as well as the prime brokers. Ownership interests which are not represented by certificates generally will be recorded through book-entry systems maintained by the issuer or its agent, and the underlying documentation relating to the acquisition and disposition of these assets for the account of the Master Fund will be held at the business offices of the Investment Manager.

PAYMENTS TO SERVICE PROVIDERS OF THE FUND

The Investment Manager may pay (or cause to be paid) fees to persons (whether or not affiliated with the Investment Manager) who are instrumental in the sale of Shares in the Fund. Any such fees will in no event be payable by or chargeable to the Fund or any Shareholder or prospective Shareholder.

EXPENSES

Operating Expenses

The Fund will bear all costs, fees and expenses arising in connection with the Fund's operations. The Fund also bears its *pro rata* share of the cost of the Master Fund's operations and investments as provided in the Master Fund Partnership Agreement. Expenses payable by the Fund in connection with the Master Fund's investment program, include, but are not limited to, brokerage commissions, other expenses related to buying and selling securities (including trading errors that are not the result of the Investment Manager's gross negligence (as such term is defined and interpreted in accordance with the laws of the State of Delaware), willful misconduct or fraud), costs of due diligence regardless of whether a particular transaction is consummated, the costs of attending shareholder meetings, research expenses, and costs related to monitoring investments (collectively, the "investment-related expenses"). Expenses payable by the Fund in connection with its operations include, but are not limited to, fees and expenses of advisers and consultants; the Management Fee; fees and expenses of any custodians, escrow or transfer agents or other investment-related service providers; indemnification expenses and the cost of insurance against potential indemnification liabilities; interest and other borrowing expenses; legal, administrative, accounting, tax, audit and insurance expenses; expenses of preparing and distributing reports, financial statements and notices to Shareholders; litigation or other extraordinary expenses; any withholding, transfer or other taxes payable by the Fund (including

any interest and penalties); and the cost of periodically updating the Memorandum. The Fund will not bear any placement agent fees.

If the Master Fund General Partner or the Investment Manager, as appropriate, incurs any expenses for both the Master Fund and one or more Other Accounts (as defined below), the Master Fund General Partner or the Investment Manager, as appropriate, will allocate such expenses among the Master Fund and each such Other Account in proportion to the size of the investment made by each in the activity or entity to which the expenses relate, or in such other manner as the Master General Partner considers fair and reasonable.

"Other Account" means any assets or investment of the Master Fund General Partner or the Investment Manager, or any assets managed by the Master Fund General Partner, the Investment Manager or any of their respective affiliates for the account of any person or entity (including investment vehicles) other than the Master Fund, which are invested or which are available for investment in securities or other instruments or for trading activities whether or not of the specific type being conducted by the Master Fund.

DESCRIPTION OF THE FUND'S SHARES

GENERAL

The authorized share capital of the Fund is US$50,000 divided into 100 Management Shares and 4,999,900 Shares, which may be issued in Series. Subject to the provisions of the Articles, the unissued Shares of the Fund are under the control of the Directors who may issue, allot and dispose of or grant options over them to such persons, or on such terms and in such manner as they may think fit and no member has any pre-emptive right to purchase such Shares.

MANAGEMENT SHARES

100 Management Shares are in issue, fully paid and held by the Investment Manager. The Management Shares are not transferable without the prior written consent of the Directors, who do not intend to give such consent except in respect of transfers to affiliates of the Investment Manager. The Management Shares have the entire voting power of the Fund except on a variation of rights issue. However, they do not entitle the holder to participate in the Fund's profits and losses and they are not redeemable. Upon the winding up of the Fund, the holders of Management Shares are entitled to receive their paid in capital of US$0.01 per Management Share.

SHARES

The holders of the Shares have no right to receive notice of or to attend or to vote at general meetings of the Fund and have no other voting rights (except on a variation of rights issue – see the Section below entitled "Rights of Shareholders") but they are entitled to receive, to the exclusion of the holders of the Management Shares, any dividends that may be declared by the Fund and, upon the winding up of the Fund, the full amount of the assets of the Fund available for the distribution (after all debts and liabilities of the Fund have been paid) will be distributed to registered holders of Shares other than the paid in capital in respect of the Management Shares of US$0.01 per Management Share. Shares, when issued, will be fully paid. Within each Series, all Shares (excluding Management Shares) of the Fund have equal dividend, distribution and liquidation rights.

Any dividend which cannot be paid to a Shareholder and/or which remains unclaimed after six months from the date of declaration of such dividend may, in the discretion of the Directors, be paid into a separate account in the Fund's name, provided that the Fund shall not be constituted as a trustee in respect of that account and the dividend shall remain as a debt due to the Shareholder. Any dividend which remains unclaimed after a period of six years from the date of declaration of such dividend shall be forfeited and shall revert to the Fund.

The issue of the Series A Shares was authorized by resolution of the Directors passed on May 22, 2006. The Series A Shares each have a par value of US$0.01 per share and carry identical rights.

The issue of the Series B Shares was authorized by resolution of the Directors passed on February 28, 2013. The Series B Shares each have a par value of US$0.01 per share and carry identical rights.

The Directors may designate further Series of Shares in the future that will be attributable to the single underlying portfolio of the Fund (held through the Master Fund). Each additional Series of Shares may be offered on different terms from the Shares being offered pursuant to this Memorandum (including the offering of Shares in a different currency) and any additional Series of Shares may rank in priority to, or equally with, the outstanding Series of Shares, but within each new Series, all Shares will have equal dividend, distribution and liquidation rights. Additionally, the Fund may, for administrative convenience, issue sub-series of Shares, and in this Memorandum, unless the context requires otherwise, references in this Memorandum to the term "Series" shall include any sub-series derived from that Series.

RECORDS

The Fund shall establish in its books a separate record with its own distinct designation for each Series of Shares. The proceeds from the allotment and issue of each Series of Shares shall be applied in the books of the Fund to the record established for that Series of Shares. The assets, profits, gains, income and liabilities, losses and expenses attributable to a particular Series shall be applied to the record relating to such Series at the end of each fiscal period – see the Section headed "Financial Information and Reports – Fiscal Periods" below.

RIGHTS OF SHAREHOLDERS

All shareholders are entitled to the benefit of, are bound by and are deemed to have notice of the provisions of the Memorandum and Articles of the Fund.

Under the terms of the Fund's Memorandum of Association and Articles, the liability of the Shareholders is limited to any amount unpaid on their Shares. As the Shares can only be issued if they are fully paid, the Shareholders will not be liable for any debt, obligation or default of the Fund beyond their interest in the Fund.

The Fund's objects are set out in clause 3 of its Memorandum of Association and are unrestricted.

The Fund's Articles have been drafted in broad and flexible terms to allow the Directors the authority to, in their discretion, determine a number of issues including the period of notice to be given for redemptions and whether or not to charge subscription or redemption fees, generally or in any particular case. In approving the offering of Shares on the terms set out in this Memorandum, the Directors have exercised a number of these discretions in accordance with the Fund's Articles.

As an exempted company, the Fund is not required to hold scheduled annual general meetings of Shareholders. General meetings of the holders of Management Shares may be called by the Directors and will be called at the request of the holders of Management Shares holding a simple

majority of the outstanding Management Shares in issue. All meetings of the holders of Management Shares will be held in the Cayman Islands, or such other location as the Directors will determine. All meetings of the holders of Management Shares require 7 days' prior notice. Notice may be sent by hand, mail, fax or email, or alternatively, where the recipient has agreed, by posting the notice on a secure nominated web-site.

Except where a Special Resolution is otherwise required by the Companies Law, all decisions of the holders of Management Shares will be made by an Ordinary Resolution, provided that a quorum of the holders of one-third of the Management Shares is present by proxy or in person at the meeting. Any matter referred to herein may also be adopted by resolution in writing of all the holders of Management Shares.

The rights attaching to any Series of Shares may, whether or not the Fund is being wound up, be varied with the consent in writing of the holders of two-thirds of the issued Shares of that Series, or with the sanction of a resolution passed by a two-thirds majority of the holders of the issued Shares of that Series, at a separate meeting of the holders of the Shares of that Series.

Any Series of Shares may be converted into a different Series of Shares with the consent in writing of the holders of two-thirds of the issued Shares of that Series, or with the sanction of a resolution passed by a two-thirds majority of the holders of the issued Shares of that Series, at a separate meeting of the holders of the Shares of that Series.

Further, subject to and in so far as permitted by the provisions of the Companies Law, the Fund may from time to time by Ordinary Resolution alter or amend its memorandum of association to: increase its share capital by such sum as the resolution shall prescribe and with such rights, priorities and privileges annexed thereto as set out in such Ordinary Resolution; consolidate and divide all or any of its share capital into shares of larger amounts than its existing shares; convert all or any of its paid-up shares into stock and reconvert that stock into paid-up shares of any denomination; sub-divide its existing shares, or any of them, into shares of smaller amounts than is fixed by the Memorandum; and cancel any shares which, at the date of the passing of the resolution, have not been taken or agreed to be taken by any person, and diminish the amount of its share capital by the amount of the shares so cancelled.

The Shares have no conversion or pre-emptive rights. All Shares of the Fund, when duly issued, will be fully paid and non-assessable.

From time to time, the Fund, by an Ordinary Resolution, may increase its authorized share capital in order to have a substantial number of Shares available at all times for issuance.

The Memorandum of Association and the Articles may be amended, and the Fund may be wound up at any time, upon the passing of a Special Resolution by the holders of the Management Shares.

SUBSCRIPTION, REDEMPTION AND TRANSFER OF SHARES

SUBSCRIPTION FOR SHARES

Offering of Shares

The Fund is conducting an offering of its Series A Shares and Series B Shares to a limited number of experienced and sophisticated investors who are Eligible Investors. The purchase of Series A Shares and Series B Shares is not open to the general public and Series A Shares and Series B Shares will be privately offered only to Eligible Investors. The description of an Eligible Investor is set forth in the Subscription Documents.

The minimum initial and subsequent investment for the Series A Shares and Series B Shares is US$500,000 or, in each case, such other amount as the Investment Manager may in its sole discretion determine in respect of a particular Shareholder or group of Shareholders, subject to the Listing Rules of the Exchange but not below US$100,000 in respect of Series B Shares.

The Series A Shares are to be listed on the Exchange by way of an offer for subscription.

The Fund has not applied for the Series B Shares to be admitted to: (i) the Official List of The International Stock Exchange; or (ii) listing on any other stock exchange, and no such application is proposed or expected to be made.

Offer Price, Initial and Subsequent Issuance

The Series A Shares and Series B Shares offered pursuant to this Memorandum are available for issue to Eligible Investors at a Subscription Price based on the Net Asset Value per Share of such Series on the Valuation Day that occurs after the Subscription Documents are received and approved by the Fund and immediately preceding the relevant Subscription Day, as calculated in accordance with the Articles and described herein.

Shares will be issued on each Subscription Day at the Directors' sole discretion. Applications for Shares must be received by 5 pm (Cayman Islands time) no later than the first Business Day before each Subscription Day and payment for such subscriptions (inclusive of any initial charge) must be received by the Administrator in cleared funds in U.S. Dollars at least no later than the Business Day before each Subscription Day in order for Shares to be issued on such Subscription Day. If any application or payment is received late it will be dealt with on the next Subscription Day.

Payment

Payment for Shares must be made in cash by electronic transfer, net of bank charges, and is due in cleared funds in U.S. Dollars. Payment must be sent to the bank details noted on the Subscription Documents.

The Directors may however accept subscriptions in kind. No subscriptions in kind will be accepted unless the Directors are satisfied that:

(i) the investments to be transferred are valued in accordance with the valuation provisions set out in the Articles and summarized herein; and

(ii) the terms of any such transfer shall not materially prejudice the remaining Shareholders.

In the event that subscription monies are received in any currency other than U.S. Dollars, conversion into U.S. Dollars will be arranged by the Administrator at the risk and expense of the applicant. Any bank charges in respect of electronic transfers will be deducted from subscriptions and the net amount only invested in Shares.

Prevention of Money Laundering

In order to comply with legislation or regulations aimed at the prevention of money laundering, the Fund is required to adopt and maintain anti-money laundering procedures, and may require subscribers to provide evidence to verify their identity and source of funds. Where permitted, and subject to certain conditions, the Fund may also delegate the maintenance of its anti-money laundering procedures (including the acquisition of due diligence information) to a suitable person.

The Fund, and the Administrator on the Fund's behalf, reserve the right to request such information as is necessary to verify the identity of a Shareholder (i.e. a subscriber or a transferee). Where the circumstances permit, the Fund, or the Administrator on the Fund's behalf, may be satisfied that full due diligence may not be required where an exemption applies under the Money Laundering Regulations (Revised) of the Cayman Islands, as amended and revised from time to time or any other applicable law.

In the event of delay or failure on the part of the subscriber in producing any information required for verification purposes, the Fund, or the Administrator on the Fund's behalf, may refuse to accept the application, in which case any funds received will be returned without interest to the account from which they were originally debited.

The Fund, and the Administrator on the Fund's behalf, also reserve the right to refuse to make any redemption or dividend payment to a Shareholder if the Directors or the Administrator suspect or are advised that the payment of redemption or dividend proceeds to such Shareholder may be non-compliant with applicable laws or regulations, or if such refusal is considered necessary or appropriate to ensure the compliance by the Fund or the Administrator with any applicable laws or regulations.

If any person resident in the Cayman Islands knows or suspects or has reasonable grounds for knowing or suspecting that another person is engaged in criminal conduct or money laundering or is involved with terrorism or terrorist financing and property and the information for that knowledge or suspicion came to their attention in the course of business in the regulated sector, or other trade, profession, business or employment, the person will be required to report such knowledge or suspicion to (i) the Financial Reporting Authority of the Cayman Islands, pursuant to the Proceeds of Crime Law (Revised) of the Cayman Islands if the disclosure relates to criminal conduct or money laundering, or (ii) a police officer of the rank of constable or higher, or the Financial Reporting Authority, pursuant to the Terrorism Law (Revised) of the Cayman Islands, if the disclosure relates to involvement with terrorism or terrorist financing and property. Such a report shall not be treated as a breach of confidence or of any restriction upon the disclosure of information imposed by any enactment or otherwise.

Procedure for the Purchase of Shares

Applications are subject to the terms of this Memorandum, the Memorandum of Association and Articles of the Fund, the accompanying Subscription Documents and the Master Fund Partnership Agreement.

Only Eligible Investors may subscribe for Shares. Shares may only be issued in the names of companies, partnerships or individuals. Further, Shares purchased for those under 18 years of age must be registered in the name of the parent or legal guardian.

Application must be made in the form of the accompanying Subscription Documents, which should be sent to the Administrator at the address or facsimile number set forth in the Subscription Documents.

Where applications are made by facsimile, the original written form should be forwarded without delay to the Administrator. Shares will not be issued until the original Subscription Documents and all other relevant due diligence documents have been received by the Administrator.

Shares will be issued to two decimal places and any smaller fractions of a Share that would otherwise arise will be rounded down, with the relevant subscription monies being retained for the benefit of the Fund.

Any application may be rejected or scaled down in the absolute discretion of the Directors. Where applications are scaled down or rejected, subscription monies received by the Fund will be returned to the account from where the monies were initially remitted, without interest.

Form of Shareholding

Shares will be held in registered form. Share certificates will generally not be issued nor will any other documentation be issued, other than confirmation notices. Confirmation notices will include a Shareholder Identification number and details of the Shares that have been allotted. However, confirmation notices will be sent to subscribers only after approval of their

Subscription Documents and satisfactory completion of due diligence. Share certificates will only be issued if an investor can demonstrate to the Directors or any authorised agent of the Fund that he is legally required to hold certificated shares. Certificates will be issued in registered form only. If a valid request for share certificates is made, certificates representing Shares will normally be dispatched at the applicant's risk within 28 days to the address specified in the Subscription Documents. Temporary certificates of title will not be issued.

REDEMPTION OF SHARES

General

Series A Shares and Series B Shares may be redeemed on any Redemption Day at the Redemption Price; provided that partial redemptions may be made only in minimum amounts of US$100,000.

If a holder of Series A Shares or Series B Shares requests a redemption that would cause its total investment in the Series A Shares or Series B Shares to fall below a minimum of US$100,000, such shareholder will be required by the Investment Manager to redeem all of its Series A Shares or Series B Shares.

Shareholders wishing to redeem their Series A Shares or Series B Shares should deliver an executed Redemption Request to the Administrator, at the address specified in the Redemption Request. The completed Redemption Request must be actually received by the Administrator no later than the 30th calendar day before the Redemption Day on which the redemption is to be effected, and if received thereafter will be held over and dealt with on the next Redemption Day. The Directors may provide for a redemption notice period of less than 30 calendar days in a particular case or generally if, in their discretion, they determine that, under the circumstances, to waive such requirement will not have an adverse effect on the Master Fund's portfolio. In no event, however, will redemption requests be accepted for processing as of a particular Redemption Day if the Redemption Form is received by the Administrator after 5 pm (Cayman Islands time) on such Redemption Day.

The Redemption Request may be delivered to the Administrator by facsimile, so long as the original Redemption Request is immediately forwarded to the Administrator. None of the Fund, the Directors, the Administrator or any other agents of the Fund accepts any responsibility for any errors in facsimile transmissions. Where a Redemption Request is forwarded by facsimile, no redemption proceeds will be paid to the Shareholder until the original Redemption Request for the Shares being redeemed has been received by the Administrator.

Cayman Islands law imposes certain restrictions on the redemption of Shares, particularly where the Fund is not funding such redemption out of profits or the proceeds of fresh issues of Shares made for the purposes of redemption. In particular, any redemption payment out of capital will only be possible if the Fund remains able to pay its debts as they fall due in the ordinary course of business after such redemption payment is made out of capital.

The Fund, or the Administrator on its behalf, also reserves the right to refuse to make any redemption payment or distribution to a Shareholder if any of the Directors of the Fund or the

Administrator suspects or is advised that the payment of any redemption or distribution moneys to such Shareholder might result in a breach or violation of any applicable anti-money laundering or other laws or regulations by any person in any relevant jurisdiction, or such refusal is considered necessary or appropriate to ensure the compliance by the Fund, its Directors or the Administrator with any such laws or regulations in any relevant jurisdiction.

Once given, a Redemption Request may not be revoked by the Shareholder save where determination of the Net Asset Value is suspended by the Directors in the circumstances set out below or except as otherwise agreed by the Directors.

Notwithstanding anything herein to the contrary, the Special Limited Partner may, unless prohibited by law, make withdrawals of all or any part of its Performance Allocation and gains thereon from its capital account in the Master Fund as of any Redemption Day.

On giving at least 30 calendar days' notice to Shareholders, the Directors may amend the frequency of redemptions, provided that such change shall only take effect following the Redemption Day next succeeding such notice.

Should any violation of any of the Master Fund's investment limitations fail to be remedied on or before the Remedy Date, any Shareholder may redeem all or part of its Shares on the next Redemption Day and will not be subject to any early redemption fee, provided that such Shareholder has requested such a redemption in writing within 30 Business Days after the Remedy Date. See "Investment Restrictions."

Soft Lock-Up Period and Early Redemption Fee

Any Shareholder who redeems Series B Shares prior to the first anniversary of its purchase of such Series B Shares may be assessed an early redemption fee of up to 3% of the Net Asset Value per Series B Share prevailing at the close of business of such Redemption Day, payable to the Fund. For purposes hereof, an anniversary shall occur on the 365th consecutive day (counting the closing date as the first day) or, if such 365th day is not a Business Day, the immediately preceding Business Day.

Redemption Proceeds

At redemption, Shareholders will be paid the Redemption Price, which is calculated in accordance with the Articles and is based on the Net Asset Value per Share on the applicable Redemption Day.

The Redemption Price will be paid in U.S. Dollars by electronic transfer at the request and expense of the redeeming Shareholder usually within 10 Business Days of the relevant Redemption Day.

The Fund aims to effect the payment of all redemption proceeds in cash. However, the Directors under circumstances of low liquidity or adverse market conditions may elect to effect the payment of the redemptions in assets of the Fund (received from the Master Fund). No Investment will be transferred to a Shareholder unless the Directors are satisfied that:

(i) the value of the investments to be transferred, calculated in accordance with the valuation provisions set out in the Articles and summarized herein, is equal to and does not exceed the Net Asset Value of the Shares to be redeemed less all fiscal duties and charges arising in connection with the vesting of such Investments in the Shareholder; and

(ii) the terms of any such transfer do not materially prejudice the interests of the remaining Shareholders.

Investments may be transferred directly to the redeeming Shareholder or may be transferred to a liquidating account and sold by the Fund for the benefit of the redeeming Shareholder, in which case payment of that proportion of the Redemption Price attributable to such investments will be delayed until such Investments are sold and the amount payable in respect of such Investments will depend on the performance of such Investments through to the date on which they are sold. The cost of operating the liquidating account and selling the Investment(s) will be deducted from the proceeds of sale paid to the redeeming Shareholder.

Compulsory Redemption

Shareholders are required to notify the Fund and the Administrator immediately in the event that they cease to be Eligible Investors whereupon they may be required to, and the Fund shall be entitled to redeem their Shares at the Net Asset Value per Share as at the next Redemption Day succeeding the date of such notification. The Fund reserves the right to redeem any Shares that are or become owned, directly or indirectly, by or for the benefit of any person who is not an Eligible Investor.

Further, the Fund shall be entitled, with or without cause, by notice in writing to the Shareholders being redeemed, to redeem all or any Shares on any day designated by the Directors, provided that any such Redemption Day shall be not less than 7 days from the date of such notice (or immediately if the Fund, in its sole discretion, determines that such Shareholder's continued investment in the Fund may cause the Fund, the Master Fund, the Master Fund General Partner or the Investment Manager to violate any applicable law).

For the avoidance of doubt, no early redemption fee will apply in the event of a compulsory redemption.

DETERMINATION OF NET ASSET VALUE

The Net Asset Value of each Series and the Net Asset Value per Share will be calculated, based on the calculation of the Master Fund's assets, by the Administrator as of the close of business on each Valuation Day in accordance with the valuation policies of the Investment Manager in effect from time to time, as summarized below, a copy of which will be made available upon request. The Net Asset Value of a Share of the relevant Series will be calculated by dividing the assets of the Fund attributable to the Series to which such Share belongs, less the liabilities attributable to such Series, by the number of Shares of such Series in issue.

The value of the assets of the Fund will be determined on the accrual basis of accounting using IFRS (except for amortization of organizational costs) as a guideline, unless otherwise deemed appropriate in the discretion of the Directors, and in accordance with the principles set out in the Articles and summarized below.

Assets

The assets of the Fund shall be deemed to include, without limitation, (1) all cash on hand or on deposit, including any interest accrued thereon, (2) all bills and demand notes and accounts receivable (including proceeds of investments and other assets sold but not delivered), (3) all investments and other assets owned or contracted for by the Fund (through the Master Fund), (4) all dividends and distributions payable in stock, cash or other property receivable by the Fund (through the Master Fund), provided that the Administrator may make adjustments with respect to fluctuations in the market value of investments caused by trading ex-dividend or ex-rights or by similar practices, (5) all interest accrued on any interest-bearing instruments owned by the Fund (through the Master Fund), except to the extent that the same is included or reflected in the valuation of such instruments, and (6) all other assets of every kind and nature, including prepaid expenses (it being understood that goodwill shall be deemed to have no value).

Liabilities

The liabilities of the Fund shall be deemed to include, without limitation, (1) all loans, bills and accounts payable, (2) all accrued or payable expenses and fees chargeable to the Fund including dividends declared but unpaid and amortized organizational expenses (provided that expenses of a regular or recurring nature may be calculated on an estimated figure for yearly or other periods in advance and accrued over any such period) and accrued Management Fees and Performance Allocations (each borne at the Master Fund level), (3) its *pro rata* portion of gross acquisition cost of Investments and other property contracted to be purchased by the Master Fund, (4) such sum (if any) as the Directors consider appropriate to allow for brokerage, stamp duty and any other governmental tax or charges, (5) dividends declared on the Shares, but not yet paid, and (6) all other liabilities, including unknown or unfixed contingencies and such reserves as the Directors may reasonably deem advisable.

Valuations

Positions in Investments held by the Master Fund shall be valued in accordance with the valuation policies of the Investment Manager, as amended from time to time, a copy of which will be provided upon request.

Values of assets expressed in a currency other than U.S. Dollars will be converted into U.S. Dollars at the latest available exchange rate.

The Administrator will notify the Exchange, immediately upon calculation, of the Net Asset Value per Share on each Valuation Day.

TEMPORARY SUSPENSION OF DEALINGS

The Directors may, at any time, suspend (i) the calculation of Net Asset Value of the Shares (and the applicable Valuation Day); (ii) the issuance of Shares; (iii) the redemption by Shareholders of Shares (and the applicable Redemption Day); and/or (iv) the payment of redemption proceeds (even if the Valuation Days and Redemption Days are not postponed) (each, a "Suspension") during any period which:

(a) any stock exchange on which a substantial part of Investments owned by the Fund (through the Master Fund) are traded is closed, other than for ordinary holidays, or dealings thereon are restricted or suspended;

(b) there exists any state of affairs as a result of which (i) disposal of a substantial part of the Investments owned by the Fund (through the Master Fund) would not be reasonably practicable and might seriously prejudice the Shareholders or (ii) it is not reasonably practicable for the Fund fairly to determine the value of its net assets;

(c) none of the Redemption Requests which have been made may lawfully be satisfied by the Fund in U.S. Dollars;

(d) there is a breakdown in the means of communication normally employed in determining the prices of a substantial part of the Investments of the Fund (through the Master Fund);

(e) in the sole discretion of the Directors, it is necessary to preserve the Fund's assets; or

(f) automatically upon any suspension of withdrawals by the Master Fund for similar reasons.

During such period, the valuation, sale, purchase and redemption of Shares will be suspended. The Administrator will promptly notify each Shareholder who has submitted a Redemption Request and to whom payment in full of the amount being redeemed has not yet been remitted of any Suspension of redemptions or Suspension of the payment of redemption proceeds. Any remaining amount of a Redemption Request that is not satisfied due to such a Suspension remains at risk as per other amounts invested in the Fund and subject to the applicable Management Fee until such amount is finally and fully withdrawn. Such Shareholders will not be given any priority with respect to the redemption of Shares after the cause for such Suspension or limitation ceases to exist. The Directors may in their sole discretion, however, permit such Shareholders to withdraw their Redemption Requests to the extent that the relevant Redemption Day has not yet passed. For the avoidance of doubt, where a Suspension of the payment of redemption proceeds is declared between the relevant Redemption Day and the remittance of such payment proceeds, affected Shareholders shall not have any right to withdraw their Redemption Requests. Upon the reasonable determination by the Directors that conditions leading to a Suspension no longer apply, the Administrator will notify the Shareholders of the end of the Suspension. At such time, any such suspended payments shall generally be paid in accordance with the normal process for making such payments, redemption rights shall be promptly reinstated and any pending Redemption Requests which were not withdrawn (or new,

timely Redemption Requests) will be effected as of the first Redemption Day following the removal of the Suspension, subject to the foregoing restrictions on redemptions.

In addition, the Directors have the right to postpone the calculation of the Net Asset Value date up to one Business Day without the requirement to give notice to Shareholders when, in the opinion of the Directors, a significant proportion of the assets (which is five percent or more) of the Fund cannot be valued on an equitable basis and such difficulty is expected by the Directors to be overcome within that period.

TRANSFER OF SHARES

Shares may not be transferred without the prior written consent of the Directors, which consent may be withheld by the Directors in their absolute discretion. Furthermore, transfers of Shares may only be conducted in accordance with the anti-money laundering policies and procedures of the Administrator. A transferee will be required to complete the Subscription Documents and will be subject to the requirements set forth for Eligible Investors in the Fund.

FINANCIAL INFORMATION AND REPORTS

FISCAL YEAR

The fiscal year of the Fund ends on December 31 of each year.

FISCAL PERIODS

Since Shares may be issued and redeemed, and dividends may be declared on Shares, during the course of a fiscal year, the Fund's Articles of Association provide for fiscal periods, which are portions of a fiscal year, for the purpose of allocating net profits and net losses to the records maintained for each Series. A new fiscal period will commence on the date next following the date of any redemption of Shares, the date of any issuance of Shares and the date established by the Directors for determining the record ownership of Shares of any Series for the payment of dividends, and the prior fiscal period will terminate on the date immediately preceding the first day of a new fiscal period.

FINANCIAL STATEMENTS

The Fund's financial statements will be prepared using IFRS as a guideline, unless otherwise deemed appropriate in the sole discretion of the Directors. The books and records of the Fund will be audited at the end of each fiscal year by auditors selected by the Directors.

As a regulated mutual fund, the Fund is required to file copies of its audited financial statements with the Monetary Authority within 180 days of the end of each financial year.

AUDITORS

PricewaterhouseCoopers LLP are the auditors for the Fund and have consented in writing to their appointment as auditors of the Fund and to all references to them as such in this Memorandum. The Directors may replace the auditors without prior notice to the Shareholders.

REPORTS TO SHAREHOLDERS

Each year, Shareholders will be sent audited financial statements of the Fund within 120 days of the end of the year (or as soon as practicable thereafter) including a statement of profit or loss for such fiscal year and of an unaudited status of such Shareholder's holdings in the Fund at such time. Shareholders will also receive, upon making a request to the Administrator, copies of semi-annual financial statements of the Fund. In addition, the Net Asset Value of the Fund's listed Shares will be notified to the Exchange monthly and these net asset valuations are available to subscribers to the Reuters network.

TAXATION

GENERAL

The following is a general discussion of certain of the anticipated income tax considerations relevant to Non-U.S. Shareholders (as defined below) and to certain Tax-Exempt U.S. Shareholders (as defined below) arising from the purchase, ownership and disposition of Shares. Prospective investors should consult their own tax advisors to determine the application and effect of tax laws with respect to their own particular circumstances. This discussion is based on the U.S. Internal Revenue Code of 1986, as amended (the "Code"), Treasury Regulations (the "Treasury Regulations") promulgated thereunder in force on the date of this Memorandum, and administrative and judicial interpretations thereof, all as currently in effect, all of which may change or be subject to different interpretations, possibly with retroactive effect. The Fund does not intend to seek a ruling from the Service, or any similar state or local authority, with respect to any of the tax issues affecting the Fund.

In view of the number of different jurisdictions where local laws may apply to Shareholders, the discussion below does not address all the tax consequences to potential investors of the purchase, ownership, and disposition of Shares. Prospective investors are urged to consult their own tax advisors in determining the possible tax consequences to them under the laws of the jurisdictions of which they are citizens, residents or domiciliaries, jurisdictions in which they conduct business and jurisdictions in which they hold Shares. This discussion does not constitute tax advice.

This summary does not address all of the tax consequences that may be relevant to a particular investor, nor does it address, unless specifically indicated, the tax consequences to, among others (i) persons that may be subject to special treatment under U.S. federal income tax law, including, but not limited to, banks, insurance companies, thrift institutions, regulated investment companies, real estate investment trusts and dealers in securities or currencies, (ii) persons that will hold Shares as part of a position in a "straddle" or as part of a "hedging," "conversion" or other integrated investment transaction for U.S. federal income tax purposes, (iii) persons whose functional currency is not the U.S. Dollar or (iv) persons that do not hold Shares as capital assets within the meaning of Code Section 1221.

If a partnership holds Shares, the tax treatment of a partner in such partnership will generally depend upon the status of the partner and the activities of the partnership. Prospective investors who are partners of a partnership should consult their own tax advisors.

This summary assumes that only persons that are *not* "United States persons" as defined in Code Section 7701(a)(30) (such investors, "Non-U.S. Shareholders") and organizations that are exempt from U.S. federal income tax under Section 501(a) of the Code (such investors, "Tax-Exempt U.S. Shareholders") will invest in the Fund.

The summary assumes that no U.S. taxable investors will invest in the Fund and, therefore, does not address the U.S. tax consequences to such investors. Potential U.S. taxable investors should be aware that the Fund is expected to be a passive foreign investment company for U.S. federal income tax purposes (a "PFIC") and does not intend to provide information to any U.S. person for purposes of such person qualifying to make an election to treat the Fund as a "qualifying electing fund" ("QEF") for U.S. federal income tax purposes. Accordingly, potential U.S. investors are urged to consult their own tax advisors in this regard.

Unless the context indicates otherwise, the activities and tax items of the Fund will include the activities of the Master Fund, and the Fund's distributive share of the Master Fund's tax items, as applicable.

EACH PROSPECTIVE INVESTOR IS URGED TO CONSULT ITS TAX ADVISOR IN ORDER TO FULLY UNDERSTAND THE U.S. FEDERAL, STATE, LOCAL AND/OR NON-U.S. TAX CONSEQUENCES OF AN INVESTMENT IN THE FUND.

UNITED STATES

Classification and Taxation of the Fund and the Master Fund

The Fund is expected to be treated as a non-U.S. corporation for U.S. federal income tax purposes. The Master Fund is expected to be treated as a partnership, and not as an association taxable as a corporation, for U.S. federal income tax purposes. The following discussion assumes that, for U.S. federal income tax purposes, the Fund will be treated as a non-U.S. corporation and the Master Fund will be treated as a partnership.

As a non-U.S. corporation, the U.S. federal income tax treatment of the Fund will vary depending on whether the Fund derives income or gains that are treated as effectively connected with the conduct of a trade or business in the United States. It is intended that the Fund's affairs will generally be conducted in a manner such that no income realized by the Fund is expected to be effectively connected with the conduct of a U.S. trade or business or otherwise subject to regular U.S. federal income taxation on a net basis. As a result, it is anticipated that no gains realized by the Fund (other than gains, if any, realized on the disposition of U.S. real property interests) will be subject to U.S. federal income taxation, but generally dividends, dividend equivalent amounts and certain interest income from U.S. sources will be subject to U.S. federal withholding tax as discussed further below.

In general, under Section 881 of the Code, a non-U.S. corporation which does not conduct a U.S. trade or business is nonetheless subject to withholding tax at a flat rate of 30% (or lower tax treaty rate) on the gross amount of certain U.S. source income which is not effectively connected with a U.S. trade or business. Income subject to such a flat tax rate is of a fixed or determinable annual or periodical nature, including dividends and certain interest income. Therefore, to the extent that the Fund receives dividend income (including "dividend equivalent" income under Section 871(m) of the Code) through the Master Fund from U.S. sources, the Fund will be subject to U.S. withholding tax at a 30% rate. U.S. source interest income received by the Fund through the Master Fund generally will be exempt from U.S. federal income and withholding tax to the extent such interest qualifies as "portfolio interest," or qualifies under another statutory

exemption. Interest on corporate obligations will not qualify as "portfolio interest" to a non-U.S. person that owns (directly and under certain constructive ownership rules) 10% or more of the total combined voting power of the corporation paying the interest, or, with respect to certain obligations issued after April 7, 1993, if and to the extent the interest is determined by reference to certain economic attributes of the debtor (or a person related thereto). In addition, interest on U.S. bank deposits, certificates of deposit and certain obligations with maturities of 183 days or less (from original issuance) will not be subject to withholding tax. Interest (including original issue discount) derived by the Fund or the Master Fund from U.S. sources not qualifying as "portfolio interest" or not otherwise exempt under U.S. law will be subject to U.S. withholding tax at a rate of 30%. Capital gains from the sale of stock or other capital assets such as commodities generally are not subject to U.S. withholding tax.

Taxation of Non-U.S. Shareholders

For U.S. federal income tax purposes, a Non-U.S. Shareholder will not be subject to U.S. federal income taxation on amounts paid by the Fund in respect of the Shares or gains recognized on the sale, exchange or redemption of the Shares, provided that such income and gains are not considered to be effectively connected with the conduct of a trade or business by the Shareholder in the United States. In limited circumstances, an individual Non-U.S. Shareholder who is present in the United States for 183 days or more during a taxable year may be subject to U.S. income tax at a flat rate of 30% on gains realized on a disposition of the Shares in such year. Individual Shareholders who at the time of their death are not citizens, former citizens or residents of the United States should not be subject, by reason of the ownership of the Shares, to any U.S. federal gift or estate taxes.

Special rules may apply in the case of non-U.S. persons that (i) conduct a trade or business in the United States or that have an office or fixed place of business in the United States, (ii) have a tax home in the United States, (iii) are former citizens or long-term residents of the United States or (iv) are controlled foreign corporations, PFICs, foreign insurance companies that hold the Shares in connection with their U.S. business or corporations which accumulate earnings to avoid U.S. federal income tax. Such persons are urged to consult their U.S. tax advisors before investing in the Fund.

In the case of the Shares held in the United States by a custodian or nominee for a non-U.S. person, U.S. "backup" withholding taxes may apply to distributions in respect of the Shares held by such Shareholder unless such Shareholder properly certifies as to its non-U.S. status or otherwise establishes an exemption from "backup" withholding. Backup withholding is not an additional tax. Rather, the U.S. federal income tax liability of non-U.S. persons subject to backup withholding will be reduced by the amount of tax withheld. If backup withholding results in an overpayment of U.S. federal income taxes, a refund may be obtained, provided the required documents are timely filed with the Service.

Taxation of Tax-Exempt U.S. Shareholders

Tax-Exempt U.S. Shareholders are subject to U.S. tax on their "unrelated business taxable income" ("UBTI") as defined in Section 512 of the Code. UBTI is generally the excess of gross income from any unrelated trade or business conducted by a tax-exempt entity over the

deductions attributable to such trade or business, with certain modifications. These modifications provide that UBTI generally does not include interest, dividends or gains from the sale of securities not held as either inventory or primarily for sale to customers in the ordinary course of business, except to the extent that any such item of income is deemed to constitute "unrelated debt financed income" within the meaning of Section 514 of the Code and the Treasury Regulations, and certain other requirements are met. Income that a Tax-Exempt U.S. Shareholder derives from an investment in the Shares generally should not give rise to UBTI, except to the extent that such Shareholder's acquisition of the Shares is debt financed.

The Fund expects to be classified as a PFIC for U.S. federal income tax purposes. Under the Treasury Regulations, a U.S. tax-exempt entity is generally not subject to the PFIC rules, except to the extent that a "dividend" from such PFIC would be taxable as income under subchapter F of the Code, for example, as unrelated debt-financed income. Hence, a tax-exempt entity would be subject to tax under the PFIC regime in respect of an excess distribution from, or any gain realized on the sale of, the interests of a PFIC in only limited circumstances. Additionally, the Treasury Regulations provide that a tax-exempt entity that is not taxable under the PFIC rules may not make a QEF election under Section 1295 of the Code and the Fund will not provide any QEF information to investors. Moreover, different rules may apply to certain types of tax-exempt entities, such as charitable remainder trusts. Accordingly, potential Tax-Exempt U.S. Shareholders are urged to consult their own tax advisors regarding the tax consequences of an investment in the Fund.

Prospective Tax-Exempt U.S. Shareholders are urged to consult their own tax advisors regarding the tax consequences of the purchase, ownership and disposition of the Shares.

Information Reporting Requirements

A U.S. person, within the meaning of the Code, (including in certain circumstances a Tax-Exempt U.S. Shareholder) that transfers property (including cash) to the Fund in exchange for Shares will be required to file a Form 926 or a similar form with the Service. In the event a U.S. Shareholder fails to file any required form, such Shareholder could be subject to a penalty of up to 10% of the value of the property transferred, subject to a $100,000 limit so long as the failure was not due to intentional disregard.

Under the Treasury Regulations, a U.S. person, within the meaning of the Code (including a Tax-Exempt U.S. Shareholder), owning 10% or more (taking certain attribution rules into account) of either the total combined voting power or total value of all classes of the interests of a non-U.S. entity that is treated as a non-U.S. corporation for U.S. federal income tax purposes, such as the Fund, or whose ownership interest changes by a statutorily specified amount, may be required to file an information return with the Service containing certain disclosures concerning the filing shareholder, other U.S. shareholders and the non-U.S. entity. The Fund has not committed to provide all of the information about the Fund or its Shareholders necessary to complete such an information return. Prospective investors should consult their tax advisors about such information return filing requirements.

Certain U.S. Persons are required to file FinCEN Form 114 with the Service with respect to financial interests in foreign financial accounts held by such U.S. Persons during the previous

calendar year if the aggregate value of such accounts exceeds $10,000 at any time during the calendar year. Significant penalties may apply in respect of the failure to file FinCEN Form 114 in respect of foreign financial accounts. Thus, potential Tax-Exempt U.S. Shareholders should consult their tax advisors as to whether to file FinCEN Form 114 in respect of ownership of Shares.

Investor Tax Filings and Record Retention.

The U.S. Department of the Treasury has adopted Treasury Regulations designed to assist the Service in identifying abusive tax shelter transactions. In general, these Treasury Regulations require investors in specified transactions (including certain shareholders in foreign corporations and partners in partnerships that engage in such transactions) to satisfy certain special tax filing and record retention requirements. Significant monetary penalties (in addition to penalties that generally may be applicable as a result of a failure to comply with the applicable Treasury Regulations) may be imposed for failure to comply with these tax filing and record retention rules.

These Treasury Regulations are broad in scope, and it is conceivable that the Fund may enter into transactions that will subject the Fund and certain investors to the special tax filing and record retention rules. Investors should consult their own tax advisors in this regard.

Reporting Under FATCA

Sections 1471 through 1474 of the Code, known as the U.S. Foreign Account Tax Compliance Act (together with any regulations, rules and other guidance implementing such Code sections and any applicable intergovernmental agreement ("IGA") or information exchange agreement and related statutes, regulations, rules and other guidance thereunder, "FATCA") impose a withholding tax of 30% on (i) certain U.S. source interest, dividends and other types of income, and (ii) the gross proceeds from the sale or disposition of certain assets of a type that can produce U.S. source interest and dividends, which are received by a foreign financial institution ("FFI"), unless such FFI enters into an agreement with the Service, and/or complies with an applicable IGA, to obtain certain information as to the identity of the direct and indirect owners of accounts in such institution. In addition, a withholding tax may be imposed on payments to certain non-financial foreign entities that do not obtain and provide information as to their direct and indirect owners. These rules generally apply to payments of U.S. source interest, dividends and certain other types of income from U.S. sources and, after December 31, 2018, are expected to apply to payments of gross proceeds from the sale or disposition of assets of a type that can produce U.S. source interest or dividends.

The Service has released temporary and final Treasury Regulations and other guidance that will be used in implementing FATCA, which contain a number of phase-in dates for FATCA compliance. In addition, the Cayman Islands has entered into a Model 1 IGA with the United States (the "Cayman-U.S. IGA"), which is treated as in effect, and has issued the Tax Information Authority (International Tax Compliance) (United States of America) Regulations 2014, and guidance notes thereunder, each as updated from time to time.

Both the Fund and the Master Fund are likely to be considered FFIs. In order to avoid incurring U.S. withholding under FATCA, the Master Fund and the Fund each are generally required to register with the Service and to comply with the Cayman-U.S. IGA and any guidance thereunder. The Fund has registered with the Service and the Master Fund intends to register with the Service, and expect that they will be required to identify and report on certain direct and indirect U.S. owners in order to comply with the Cayman-U.S. IGA. Therefore, the Fund and the Master Fund generally do not expect to become subject to U.S. withholding under FATCA. An investor may be required to provide to the Fund information which identifies its direct and indirect ownership. Any such information provided to the Fund may ultimately be shared with the Cayman Islands Tax Information Agency ("Cayman TIA") and transmitted to the Service and, potentially, certain other authorities and withholding agents, as applicable.

By investing (or continuing to invest) in the Fund (and indirectly invest in the Master Fund), investors shall be deemed to have acknowledged, and to have given their consent to, the following:

(i) the Fund (or its agent) may be required to disclose to the Cayman TIA and withholding agents certain information (which could otherwise be deemed to be confidential) in relation to the investor or its direct or indirect owners, including the investor's name, address, date of birth, tax identification number (if any), social security or national insurance number (if any) and certain additional information or documentation relating to the investor's investment or identity, and the investor may be required to provide any such information or documentation;

(ii) the Cayman TIA may be required to automatically exchange information with, among other authorities, the Service, and to provide additional information to such authorities, and the Master Fund or the Fund (or its agents) may be required to disclose certain information (including information that could otherwise be deemed to be confidential) when registering with such authorities and in response to a request by any such authority for further information;

(iii) in the event an investor's failure to comply with any FATCA related reporting requirements gives rise to any withholding tax, the Fund reserves the right to ensure that any such withholding tax and any related cost, interest, penalties and other losses or liabilities suffered by the Fund, the Master Fund, the Master Fund General Partner, the Administrator or any other investor, or any agent, delegate, employee, director, officer or affiliate of any of the foregoing persons, arising from such investor's failure to provide information to the Fund, is economically borne by such investor;

(iv) in the event an investor does not provide the information and/or documentation necessary for the Fund's (or the Master Fund's) satisfaction of its FATCA related reporting requirements, whether or not that actually leads to compliance failures by the Fund, or a risk of the Fund (or the Master Fund) or its investors being subject to U.S. withholding under FATCA, the Fund reserves the right to take any action and/or pursue all remedies at its disposal to mitigate the consequences of

the investor's failure to comply with the requirements described above, including compulsory redemption or withdrawal of the investor concerned; and

(v) no investor affected by any such action or remedy shall have any claim against the Fund, the Master Fund, the Master Fund General Partner, the Administrator (or their agents, delegates, employees, directors, officers or affiliates) for any damages or liability as a result of actions taken or remedies pursued by or on behalf of the Fund in order to comply with FATCA.

Investors should consult their tax advisors as to the withholding, filing and information reporting requirements that may be imposed on them in respect of their ownership of Shares.

CAYMAN ISLANDS

Fund Level

The Government of the Cayman Islands will not, under existing legislation, impose any income, corporate or capital gains tax, estate duty, inheritance tax, gift tax or withholding tax upon the Fund or the Shareholders. The Cayman Islands are not party to a double tax treaty with any country that is applicable to any payments made to or by the Fund.

The Fund has received an undertaking from the Governor-in-Cabinet of the Cayman Islands that, in accordance with section 6 of the Tax Concessions Law (Revised) of the Cayman Islands, for a period of 20 years from the date of the undertaking, no law which is enacted in the Cayman Islands imposing any tax to be levied on profits, income, gains or appreciations shall apply to the Fund or its operations and, in addition, that no tax to be levied on profits, income, gains or appreciations or which is in the nature of estate duty or inheritance tax shall be payable (i) on or in respect of the shares, debentures or other obligations of the Fund or (ii) by way of the withholding in whole or in part of a payment of dividend or other distribution of income or capital by the Fund to its members or a payment of principal or interest or other sums due under a debenture or other obligation of the Fund.

Shareholder Level

Shareholders will not be subject to any income, withholding or capital gains taxes in the Cayman Islands, with respect to the Shares owned by them and dividends received on such Shares, nor will they be subject to any estate or inheritance taxes in the Cayman Islands.

OTHER JURISDICTIONS

It is possible that certain dividends, interest and other income received by the Fund from sources within certain countries will be subject to withholding taxes imposed by such countries. In addition, the Fund may also be subject to capital gains taxes or other taxes in some of the countries where it purchases and sells securities or otherwise conducts business. It is impossible to predict the rate of tax that the Fund will pay in advance since the amount of the Fund's assets to be invested in various countries is not known.

ERISA CONSIDERATIONS

GENERAL

Fiduciaries and other persons who are proposing to purchase Shares on behalf of retirement plans, investment retirement accounts ("IRAs") and other employee benefit plans ("Plans") covered by the U.S. Employee Retirement Income Security Act of 1974, as amended ("ERISA"), or the Code, must give appropriate consideration to, among other things, the role that an investment in the Fund plays in the Plan's portfolio, taking into consideration whether the investment is designed to reasonably further the Plan's purposes, the investment's risk and return factors, the portfolio's composition with regard to diversification, the liquidity and current return of the total portfolio relative to the anticipated cash flow needs of the Plan, the projected return of the total portfolio relative to the Plan's objectives, the limited right of Shareholders to redeem all or any part of their Shares or to transfer their Shares and whether investment in the Fund constitutes a direct or indirect transaction with a party in interest (under ERISA) or a disqualified person (under the Code).

PLAN ASSET REGULATIONS AND BENEFIT PLAN INVESTORS

The United States Department of Labor ("DOL") has adopted regulations that treat the assets of certain pooled investment vehicles, such as the Fund, as "plan assets" for purposes of Title I of ERISA and Section 4975 of the Code ("Plan Assets"). Section 3(42) of ERISA defines the term "Plan Assets" to mean plan assets as defined by such regulations as the DOL may prescribe, except that under such regulations the assets of an entity shall not be treated as Plan Assets if, immediately after the most recent acquisition of an equity interest in the entity, less than 25% of the total value of each class of equity interest in the entity is held by "Benefit Plan Investors" (the "significant participation test"). For purposes of this determination, the value of any equity interest held by a person (other than such a Benefit Plan Investor) who has discretionary authority or control with respect to the assets of the entity or any person who provides investment advice for a fee (direct or indirect) with respect to such assets, or any affiliate of such a person, shall be disregarded. An entity shall be considered to hold Plan Assets only to the extent of the percentage of the equity interest held by Benefit Plan Investors. The term "Benefit Plan Investors" means any employee benefit plan subject to part 4 of subtitle B of Title I of ERISA (i.e., plans subject to the fiduciary provisions of ERISA), any plan to which the prohibited transaction provisions of Section 4975 of the Code apply (e.g., IRAs), and any entity whose underlying assets include Plan Assets by reason of a plan's investment in such entity (a "Plan Asset Entity").

In order to prevent the assets of the Master Fund from being considered Plan Assets under ERISA, it is the intention of the Master Fund to monitor the investments in the Master Fund and prohibit the acquisition, withdrawal or transfer of any limited partner interests of the Master Fund by any investor, including a Benefit Plan Investor, unless, after giving effect to such an acquisition, withdrawal or transfer, the total proportion of limited partner interests of each class

of the Master Fund owned by Benefit Plan Investors would be less than 25% of the aggregate value of that class of limited partner interests (determined, as described above, by excluding certain limited partner interests held by the Master Fund General Partner, other fiduciaries and affiliates).

Without limiting the generality of the foregoing, in order to limit equity participation in any class of limited partner interests of the Master Fund by Benefit Plan Investors to less than 25%, the Fund may require the compulsory redemption of Shares. Each Shareholder that is an insurance company acting on behalf of its general account or a Plan Asset Entity will be required to represent and warrant as of the date it acquires Shares the maximum percentage of such general account or Plan Asset Entity (as reasonably determined by such insurance company or Plan Asset Entity) that will constitute Plan Assets (the "Maximum Percentage") so such percentage can be calculated in determining the percentage of Plan Assets invested in the Master Fund. Further, each such insurance company and Plan Asset Entity will be required to covenant that if, after its initial acquisition of Shares, the Maximum Percentage is exceeded at any time, then such insurance company or Plan Asset Entity shall immediately notify the Fund of that occurrence and shall, if and as directed by the Fund, in a manner consistent with the restrictions on transfer set forth herein, redeem or dispose of some or all of the Shares held in its general account or Plan Asset Entity.

It is anticipated that investment in the Fund by benefit plan investors may be "significant" for purposes of the regulations. In such event, the underlying assets of the Fund would be deemed to constitute "plan assets" for purposes of ERISA. As a general rule, if the assets of the Fund were regarded as "plan assets" of a benefit plan investor, the Investment Manager would be deemed a fiduciary with respect to each Plan investing in the Fund. However, the Investment Manager believes that, given the limited purpose and role of the Fund and given the requirement that the Investment Manager follow the directions of the fiduciaries of each benefit plan investor investing in the Fund, as set forth in each such investor's subscription agreement, with respect to the investment by the Fund in the Master Fund, neither the Investment Manager nor any other entity providing services to the Fund would be exercising any discretionary authority or control with respect to the Fund. Accordingly, the Investment Manager believes that neither the Investment Manager nor any other entity providing services to the Fund will act as a fiduciary (as defined in Section 3(21) of ERISA) with respect to the assets of the Fund or any benefit plan investor. Rather, the Investment Manager believes that, given the limited purpose and role of the Fund and given the requirement that the Investment Manager follow the directions of the fiduciaries of each benefit plan investor investing in the Fund, as set forth in each such investor's subscription agreement, with respect to the investment by the Fund in the Master Fund, the fiduciary of each such benefit plan investor has retained the fiduciary authority and responsibility with respect to the investor's initial and continuing investment in the Fund as though the benefit plan investor is investing directly in the Master Fund.

REPRESENTATION BY PLANS

The fiduciaries of each Plan proposing to invest in the Fund will be required to represent that they have been informed of and understand the Fund's investment objectives, policies and strategies and that the decision to invest Plan Assets in the Fund is consistent with the provisions

of ERISA and/or the Code that require diversification of Plan Assets and impose other fiduciary responsibilities. By its purchase, each investor will be deemed to have represented that either (a) it is not a Plan that is subject to the prohibited transaction rules of ERISA or the Code, (b) it is not an entity whose assets include Plan Assets or (c) its investment in the Fund will not constitute a non-exempt prohibited transaction under ERISA or the Code.

INELIGIBLE PURCHASERS

Shares may not be purchased with Plan Assets if the Investment Manager, any selling agent, finder, any of their respective affiliates or any of their respective employees: (a) has investment discretion with respect to the investment of such Plan Assets; (b) has authority or responsibility to give or regularly gives investment advice with respect to such Plan Assets, for a fee, and pursuant to an agreement or understanding that such advice will serve as a primary basis for investment decisions with respect to such Plan Assets and that such advice will be based on the particular investment needs of the Plan; or (c) is an employer maintaining or contributing to such Plan. A party that is described in clause (a) or (b) of the preceding sentence is a fiduciary under ERISA and the Code with respect to the Plan, and any such purchase might result in a "prohibited transaction" under ERISA and the Code.

PLANS' REPORTING OBLIGATIONS

The information contained herein and in the other documentation provided to investors in connection with an investment in the Fund is intended to satisfy the alternative reporting option for "eligible indirect compensation" on Schedule C of the Form 5500, in addition to the other purposes for which such documents were created.

Whether or not the underlying assets of the Fund are deemed Plan Assets, an investment in the Fund by a Plan is subject to ERISA and the Code. Accordingly, Plan fiduciaries should consult their own counsel as to the consequences under ERISA and the Code of an investment in the Fund. Note that similar laws governing the investment and management of the assets of governmental or non-U.S. plans may contain fiduciary and prohibited transaction requirements similar to those under ERISA and the Code. Accordingly, fiduciaries of such governmental or non-U.S. plans, in consultation with their counsel, should consider the impact of their respective laws and regulations on an investment in the Fund.

GENERAL

DIRECTORS' REPORT

As at the date of this Memorandum, the Fund has not, nor has it since its date of incorporation, declared any dividends. The Fund does not have, nor has it had since its incorporation, and is not expected to have, any employees.

The Fund is not, nor has it been, engaged in any legal or arbitration proceedings (including any such proceedings which are pending or threatened of which the Fund is aware) which may have or have had since its incorporation a significant effect on its financial position.

As at the date of this Memorandum, the Fund has not issued any debt securities, incurred any other indebtedness or borrowings or granted any mortgages, charges, guarantees or other contingent liabilities.

MATERIAL CONTRACTS

The following contracts, which are summarized in the Section "Management and Administration" above, have been entered into and are, or may be, material:

(i) Investment Management Agreement among the Feeder Funds, the Master Fund, the Master Fund General Partner and the Investment Manager pursuant to which the Investment Manager was appointed to provide certain investment management services to the Feeder Funds and the Master Fund; and

(ii) Administration Agreement between the Master Fund and the Administrator pursuant to which the Administrator was appointed administrator and registrar and transfer agent of the Feeder Funds and the Master Fund.

(iii) Services Agreement between the Investment Manager and Highland Latin America pursuant to which Highland Latin America was appointed to provide certain administrative and consulting services to the Investment Manager.

DOCUMENTS AVAILABLE FOR INSPECTION

The following documents are available for inspection and copies may be obtained free of charge during the normal business hours, on weekdays (Saturdays, Sundays and public holidays excepted) at the registered office of the Fund:

(a) the Memorandum of Association and Articles of the Fund;

(b) the Companies Law (Revised) and the Mutual Funds Law (Revised) of the Cayman Islands;

(c) the Material Contracts referred to above; and

(d) the Master Fund Partnership Agreement.

The statutory records of the Fund are kept at its registered office, which is located at:

Maples Corporate Services Limited
P.O. Box 309
Ugland House
Grand Cayman KY1-1104
Cayman Islands

The offices of the Sponsor are located at:

Ogier Corporate Finance Limited
44 Esplanade, St. Helier
Jersey JE4 9WG
Channel Islands

INQUIRIES

Inquiries concerning the Fund and this offering (including information concerning subscription procedures) should be directed to:

MUFG Fund Services (Cayman) Limited
2nd Floor Strathvale House
90 North Church Street
P.O. Box 609
Grand Cayman KY1-1107
Cayman Islands
Facsimile: (345) 745 7690
Telephone: (345) 745 7600
Email: investorserviceshalifax@mfsadmin.com

Memorandum Number _____

Confidential Private Placement Memorandum

Series A Interests
Series B Interests
Series C Interests
in

Highland Argentina Regional Opportunity Fund, L.P.

General Partner

Highland Argentina Regional Opportunity Fund GP, LLC

Investment Manager

Highland Capital Management Latin America, L.P.

March 2019

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NOTICE

This Confidential Private Placement Memorandum (this "***Memorandum***") is being furnished on a confidential basis solely to selected qualified investors considering the purchase of limited partner interests (the "***Interests***") in Highland Argentina Regional Opportunity Fund, L.P. (the "***Fund***"). This Memorandum is not to be reproduced or distributed to others, at any time, without the prior written consent of Highland Argentina Regional Opportunity Fund GP, LLC (the "***General Partner***"). Each recipient agrees to keep confidential all information contained herein not already in the public domain and will use this Memorandum for the sole purpose of evaluating a possible investment in the Fund. Notwithstanding anything herein to the contrary, each investor (and each employee, representative, or other agent of the investor) may disclose to any and all persons, without limitation of any kind, the tax treatment and tax structure of an investment in the Fund and all materials of any kind (including opinions or other tax analyses) that are provided to the investor relating to such tax treatment and tax structure. Acceptance of this Memorandum by prospective investors constitutes an agreement to be bound by the foregoing terms.

Prospective investors should not construe the contents of this Memorandum as legal, tax or financial advice. Each prospective investor should consult its own professional advisors as to the legal, financial, tax, ERISA (as defined herein) or other matters relevant to the suitability of an investment in the Fund for such investor.

In making an investment decision, investors must rely on their own examination of the Fund and the terms of the offering contemplated by this Memorandum. The Interests have not been recommended by any U.S. federal or state, or any non-U.S., securities commission or regulatory authority. Furthermore, the foregoing authorities have not confirmed the accuracy or determined the adequacy of this Memorandum. Any representation to the contrary is a criminal offense.

The Interests have not been and will not be registered under the U.S. Securities Act of 1933, as amended (the "***Securities Act***"), or the securities laws of any of the states of the United States. The offering and any potential sale contemplated by this Memorandum will be made in reliance upon an exemption from the registration requirements of the Securities Act for offers and sales of securities which do not involve any public offering and analogous exemptions under state securities laws. There will be no public market for the Interests, and there is no obligation on the part of any person to register the Interests under the Securities Act or any state securities laws.

The Fund has not been and will not be registered under the U.S. Investment Company Act of 1940, as amended (the "***Investment Company Act***"), since Interests will only be sold to persons who are "qualified purchasers," as defined in the Investment Company Act.

Each subscriber for an Interest will be required to certify that it is an "accredited investor" as defined in Regulation D under the Securities Act and a "qualified purchaser," as defined in the Investment Company Act.

Pursuant to an exemption from the Commodity Futures Trading Commission (the "***CFTC***"), Highland Capital Management Latin America, L.P., the investment manager to the Fund (the "***Investment Manager***"), is not registered with the CFTC as a commodity pool operator ("***CPO***") and therefore, unlike a registered CPO, is not required to deliver a disclosure document or a certified annual report to participants in this pool. Among other things, the exemption requires the filing of a claim of exemption with the National Futures Association. It is also required that at all times either: (a) the

aggregate initial margin and premiums required to establish commodity interest positions does not exceed 5% of the liquidation value of the Fund's portfolio; or (b) the aggregate net notional value of the Fund's commodity interest positions does not exceed 100% of the liquidation value of the Fund's portfolio and further that all pool participants are required to be accredited investors or certain other qualified investors. The Investment Manager qualifies for an exemption from registration as a commodity trading advisor pursuant to CFTC Rule 4.14(a)(8).

Interests are suitable only for sophisticated investors who do not require immediate liquidity for their investments, for whom an investment in the Fund does not constitute a complete investment program and who fully understand and are willing to assume the risks involved in the Fund's investment program. The Fund's investment practices, by their nature, may be considered to involve a substantial degree of risk. See "*Risk Factors and Potential Conflicts of Interest*." No assurance can be given that the Fund's investment objectives will be achieved or that investors will receive a return of their capital.

The Interests are subject to restrictions on transferability and resale and may not be transferred or resold except as permitted under the Securities Act and any applicable state or other securities laws, pursuant to registration or an exemption therefrom. The transferability of the Interests will be further restricted by the terms of the limited partnership agreement of the Fund, as amended (the "***Partnership Agreement***"). Investors should be aware that they will be required to bear the financial risks of an investment in the Interests for an extended period of time.

This Memorandum does not constitute an offer to sell, or the solicitation of an offer to buy, any Interests in any state or other jurisdiction where, or to or from any person to or from whom, such offer or solicitation is unlawful or not authorized.

No person has been authorized to give any information or to make any representation concerning the Fund or the offering of the Interests other than the information contained in this Memorandum and, if given or made, such information or representation must not be relied upon as having been authorized by the Fund or the General Partner.

The Interests are offered subject to the right of the General Partner to reject any subscription in whole or in part.

This Memorandum is intended solely for the use of the person to whom it has been delivered by the General Partner or its authorized representative for the purpose of evaluating a possible investment by the recipient in the Interests described herein, and is not to be reproduced or distributed to any other persons (other than professional advisors of the prospective investor receiving this Memorandum from the General Partner or its authorized representative).

This Memorandum does not purport to be, and should not be construed as, a complete description of the Partnership Agreement or the investment management agreement by and among the Investment Manager, the General Partner, the Master Fund, the Offshore Fund (each as defined below) and the Fund (the "***Investment Management Agreement***"). Each prospective investor in the Fund is encouraged to review the Partnership Agreement carefully, in addition to consulting appropriate legal and tax advisors. To the extent of any inconsistency between this Memorandum and the Partnership Agreement, the terms of the Partnership Agreement shall control.

The delivery of this Memorandum does not, under any circumstances, create any implication that there has been no change in the circumstances affecting the Fund or Highland Argentina Regional

Opportunity Master Fund, L.P. (the "***Master Fund***") since the date hereof. An amended or updated Memorandum will be provided to reflect any material changes to the information contained herein.

Certain information contained in this Memorandum constitutes "forward-looking statements," which can be identified by the use of forward-looking terminology such as "may," "will," "should," "expect," "anticipate," "project," "estimate," "intend," or "believe" or the negatives thereof or other variations thereon or comparable terminology. Due to various risks and uncertainties, including those described in "*Risk Factors and Potential Conflicts of Interest*," actual events or results or the actual performance of the Fund may differ materially from those reflected or contemplated in such forward-looking statements.

All references herein to "$" refer to U.S. dollars. Except as the context otherwise requires, references to the term "Fund" in this Memorandum shall be deemed to include the Master Fund.

DIRECTORY

General Partner	Highland Argentina Regional Opportunity Fund GP, LLC 300 Crescent Court, Suite 700 Dallas, TX 75201
Investment Manager	Highland Capital Management Latin America, L.P. c/o Highland Capital Management, L.P. 300 Crescent Court, Suite 700 Dallas, TX 75201
Administrator	MUFG Fund Services (Cayman) Limited 2nd Floor, Strathvale House 90 North Church Street P.O. Box 609 Grand Cayman KY1-1107 Cayman Islands
Auditor	PricewaterhouseCoopers LLP 5th Floor Strathvale House P.O. Box 258 Grand Cayman KY1-1104 Cayman Islands
Prime Brokers	Société Générale 440 S. LaSalle St., Suite 2400 Chicago, IL 60605 BNP Paribas Prime Brokerage, Inc. 787 Seventh Avenue The Equitable Tower New York, NY 10019
Legal Counsel	*In the United States:* Akin Gump Strauss Hauer & Feld LLP 1700 Pacific Avenue Suite 4100 Dallas, TX 75201

EXECUTIVE SUMMARY

Highland Argentina Regional Opportunity Fund, L.P., a Delaware limited partnership (the "***Fund***"), seeks to maximize the total return of its assets through capital appreciation by investing all of its investable assets in Highland Argentina Regional Opportunity Master Fund, L.P., a Cayman Islands exempted limited partnership (the "***Master Fund***"), which intends to hold primarily a portfolio of investments in securities of Latin American corporate and sovereign issuers as well as non-Latin American issuers that derive a portion of their revenues from business activities in Latin America, in each case with a primary focus on Argentina.

Highland Argentina Regional Opportunity Fund GP, LLC, a Delaware limited liability company (the "***General Partner***"), acts as general partner of the Fund and the Master Fund and is registered as a foreign company in the Cayman Islands. Highland Capital Management Latin America, L.P., a Cayman Islands exempted limited partnership (the "***Investment Manager***" and, together with its affiliates, shareholders, directors, members, partners, officers and employees, the "***Advisory Parties***"), serves as investment manager to the Fund, the Offshore Fund (as defined below) and the Master Fund and manages the Master Fund's investment program. Each of the General Partner and the Investment Manager is ultimately controlled by James D. Dondero (the "***Principal***").

In order to facilitate investments by non-U.S. and certain U.S. tax-exempt investors, the Investment Manager and its affiliates recently assumed the management of an existing investment fund, Highland Argentina Regional Opportunity Fund, Ltd., a Cayman Islands exempted company (the "***Offshore Fund***" and, together with the Fund, the "***Feeder Funds***"). The Feeder Funds will place all of their investable assets in, and conduct all of their investment and trading activities in parallel through, the Master Fund. References in this Memorandum to the Fund shall include the Master Fund, unless otherwise specified or the context so requires.

The Fund (but not the Master Fund) is seeking subscriptions from investors who qualify as both "accredited investors" and "qualified purchasers" (each as defined in the Fund's subscription materials). The minimum initial investment is $500,000, and thereafter, the minimum subsequent investment is $500,000, although, in each case, the Fund may accept investments in a lesser amount, but no less than $100,000 with respect to Series B Interests. The Fund generally accepts subscriptions on the first day of each calendar month. A subscriber admitted to the Fund as a limited partner (each, a "***Limited Partner***") will receive, in exchange for its initial capital contribution and any subsequent capital contribution, a limited partner interest representing a proportionate share of the net assets of the Fund at that time.

The Fund intends to issue multiple series of limited partner interests ("***Interests***") over time. Not all series of Interests will be available for subscription at the same time and the terms among the series of Interests will vary. The Fund is currently offering Series A Interests, Series B Interests and Series C Interests pursuant to this Memorandum.

For its services to the Master Fund, the Investment Manager is generally entitled to a management fee (the "***Management Fee***"), which is calculated monthly and paid quarterly in arrears at the Master Fund level. The Management Fee is calculated at an annual rate of (i) 1.75% of each Limited Partner's capital account that is attributable to a Series A Interest, (ii) 1.25% of each Limited Partner's capital account that is attributable to a Series B Interest, and (iii) 1.00% of each Limited Partner's capital account that is attributable to a Series C Interest.

In addition, the Investment Manager, in its capacity as the special limited partner of the Master Fund (the "***Special Limited Partner***"), is entitled to a quarterly performance-based profits allocation (the "***Performance Allocation***") at the end of each fiscal quarter. The Performance Allocation is calculated and allocated at the Master Fund level, but is effectively equal to (i) 20.0% of the amount by which the net asset value of each Series A Interest on the last day of a fiscal quarter exceeds the "high water mark" for such Series A Interest, if any, (ii) 17.5% of the amount by which the net asset value of each Series B Interest on the last day of a fiscal quarter exceeds the "high water mark" for such Series B Interest, if any, and (iii) 15.0% of the amount by which the net asset value of each Series C Interest on the last day of a fiscal quarter exceeds the "high water mark" for such Series C Interest, if any.

Subject to a one-year "soft lock-up" with an early withdrawal reduction attributable to Series B Interests only and a two-year "soft lock-up" with an early withdrawal reduction attributable to Series C Interests only, a Limited Partner is generally permitted to withdraw all or a portion of its Interest on 30 calendar days' prior written notice on the last business day of each calendar month. Withdrawals may be subject to reserves for contingencies and suspension restrictions as discussed further in this Memorandum.

The Fund may agree with certain Limited Partners to a variation of the terms set forth in this Memorandum or establish additional series of Interests that have terms that differ from those described herein, including, without limitation, different management fees, performance allocations and withdrawal rights.

INVESTMENT PROGRAM

INVESTMENT OBJECTIVE

The investment objective of the Fund is to maximize the total return of its assets through capital appreciation by investing all of its investable assets in the Master Fund, which intends to hold primarily a portfolio of investments in securities of Latin American corporate and sovereign issuers as well as non-Latin American issuers that derive a portion of their revenues from business activities in Latin America, in each case with a primary focus on Argentina, and that the Investment Manager believes would provide profitable investment opportunities for the Master Fund. The Master Fund will invest in a single portfolio of assets and does not currently intend to have a separate portfolio of assets for each of its series, each of which will correspond to a series of limited partner interests in the Fund.

INVESTMENT STRATEGY

The Master Fund is a multi-strategy investment fund and there is no limit on the investment strategies that may be utilized. The Investment Manager believes that focusing on a multi-strategy approach will enable the Master Fund to enhance results by compounding returns generated by each strategy and at the same time have the needed flexibility to adjust to potentially changing regulations and market conditions.

The Investment Manager will be focused on identifying assets that are mispriced against similar assets and/or against the Investment Manager's expectations for assets' fair values and market movements, special situations, such as mergers, financial restructurings, hostile takeovers, or leveraged buy-outs. There is no set allocation among these and any other strategies that the Investment Manager may use.

The Master Fund may hold long and short positions in a wide range of liquid or illiquid fixed income securities including, but not limited to, sovereign and private debt, distressed debt, secured and unsecured debt, structured debt, loans, asset-backed securities and collateralized debt obligations. Furthermore, the Master Fund may invest, both long and short, in a wide range of liquid or illiquid equity-related instruments including, but not limited to, equities, convertible bonds, options, equity-linked notes, preferred shares and warrants, whether or not listed or traded on one or more exchanges.

The Master Fund may hold any of these positions indirectly by entering into swaps, options, futures, forward contracts or similar derivative transactions.

The Master Fund may hold both U.S. dollar and non-U.S. dollar denominated securities.

The Master Fund may leverage its investment portfolio by up to 100% of the Master Fund's net asset value (calculated at the time of investment) by borrowing for investment purposes and by using leverage techniques and products. It is anticipated that by doing so the performance of the Master Fund will be enhanced. While the use of the leverage may improve the return on invested capital, leverage may also significantly increase the impact of adverse movement in the value of the Master Fund.

The Master Fund may also utilize hedging strategies in order to maximize returns and reduce the risk to principal or the volatility associated with its holdings. As part of these hedging strategies, the Master Fund may hedge any of its investments with long or short positions in any financial instrument, which the Investment Manager deems appropriate. The Master Fund may utilize U.S. and European securities for hedging purposes.

The Master Fund may invest through one or more subsidiaries established in an appropriate jurisdiction in order to take advantage of applicable tax treaties or increase the tax efficiency of the Master Fund's investments, or in such other circumstances as the General Partner, in its capacity as the general partner of the Master Fund, following consultation with the Investment Manager, deem appropriate, including compliance with local investment laws.

The Master Fund may maintain assets in cash or cash equivalent instruments, money market funds, repurchase agreements, or other cash management vehicles pending investment, for defensive purposes, to fund withdrawals requested by the limited partners of the Master Fund or otherwise at the discretion of the Investment Manager. The Master Fund may hold with no limitation U.S. and European AAA fixed income securities for defensive purposes.

INVESTMENT RESTRICTIONS

In deploying the investment strategy, the Master Fund will observe the following investment restrictions. The Master Fund will not at the time of investment:

1. Invest more than 50 percent of its gross assets in its net holdings of equities;

2. Borrow more than 100 percent of its net assets;

3. Invest more than 20 percent of its gross assets in a single equity position;

4. Invest more than 20 percent of its gross assets in a single corporate issuer position;

5. Invest more than 30 percent of its gross assets in a single GDP-linked warrant position; and

6. Invest more than 30 percent of its gross assets in a single sovereign issuer security position; and

7. Invest more than 30 percent of its gross assets in a single provincial issuer.

If a percentage limitation on investment or use of assets set forth above is adhered to at the time a transaction is effected, later changes in percentage resulting from changing values will not be considered a violation.

In the event that the Investment Manager discovers that a violation of any of the Master Fund's investment limitations has occurred (the date of such discovery being the "***Discovery Date***"), the Investment Manager shall inform the limited partners of the Master Fund, including the Fund, who shall: (i) notify each of their limited partners or shareholders, as applicable, in writing within 30 business days after the Discovery Date of the nature of the violation, the steps taken, or to be taken, to remedy the violation and the reason the violation occurred and (ii) use reasonable commercial efforts to cause the Investment Manager to remedy such violation within 90 business days after the Discovery Date (the "***Remedy Date***"). If such violation has not been remedied on or before the Remedy Date, the limited partners of the Master Fund, including the Fund, shall: (i) notify each of their limited partners or shareholders, as applicable, in writing, 30 business days after the Remedy Date, of the steps taken to remedy the violation and the reason that the violation has not been remedied by the Remedy Date (the "***Remedy Notice***") and (ii) use reasonable commercial efforts to cause the Master Fund's portfolio to be examined by an independent auditor other than PricewaterhouseCoopers LLP and shall request that such independent auditor issue a report to the investors in each of the Master Fund's limited partners as to its

concurrence or disagreement with the statements in the Remedy Notice. The Investment Manager shall pay for the costs of such audit and the costs of the Remedy Notice if the violation that was the subject of the Remedy Notice occurred as a result of the Investment Manager's willful misfeasance, bad faith or gross negligence. In addition, the failure to remedy the violation in a timely manner may give rise to special withdrawal rights. See "*Summary of Terms – Withdrawals; Lock-Ups*."

DISTRIBUTION POLICY

The Fund's objective is to maximize capital appreciation and accordingly it is not envisaged that any income or gains derived from the investments made by the Master Fund will be distributed by way of dividend. This does not preclude the General Partner from declaring a dividend at any time in the future if it considers it appropriate to do so. To the extent that a dividend may be declared, it will be paid in compliance with any applicable laws.

The investment objectives and strategies summarized herein represent the Investment Manager's current intentions. Depending on conditions and trends in the securities markets and the economy in general, the Investment Manager may pursue any strategies, employ any investment techniques or purchase any type of security that it considers appropriate, whether or not described in this section, subject to any applicable law or regulation. The discussion herein includes and is based upon numerous assumptions and opinions of the Investment Manager concerning world financial markets and other matters, the accuracy of which cannot be assured. There can be no assurance that the investment strategy of the Master Fund will achieve the intended investment objective. The Master Fund's investment program is speculative and involves a high degree of risk, including, without limitation, the risk of loss of the entire amount invested.

MANAGEMENT AND ADMINISTRATION

The General Partner and the Investment Manager

Highland Argentina Regional Opportunity Fund GP, LLC, a Delaware limited liability company (the "***General Partner***"), acts as the general partner of the Fund and the Master Fund and is registered as a foreign company in the Cayman Islands.

Highland Capital Management Latin America, L.P., a Cayman Islands exempted limited partnership (the "***Investment Manager***"), serves as the investment manager of the Fund, the Offshore Fund and the Master Fund and has responsibility for the Master Fund's investment program.

Each of the General Partner and the Investment Manager is ultimately controlled by James D. Dondero (the "***Principal***").

The Investment Management Agreement

The Investment Manager was appointed as the investment manager to the Fund, the Offshore Fund and the Master Fund pursuant to an investment management agreement (the "***Investment Management Agreement***"). Under the Investment Management Agreement, the Investment Manager has full discretion to invest the assets of the Master Fund in pursuit of the investment objective and strategy described in this Memorandum. For its services, the Investment Manager is entitled to the Management Fee, as well as reimbursement for any Feeder Fund or Master Fund expenses incurred by the Investment Manager.

The Investment Management Agreement provides that, in the absence of gross negligence, willful misconduct or fraud, each of the Investment Manager, its members, shareholders, partners, managers, directors, any person who controls the Investment Manager, each of the respective affiliates of the foregoing, and each of their respective executors, heirs, assigns, successors and other legal representatives, will be indemnified by the Fund, the Offshore Fund and/or the Master Fund, to the extent permitted by law, against any loss or liability incurred by any of such persons in performing their duties under the Investment Management Agreement.

Services Agreement

The Investment Manager engaged Highland Latin America Consulting, Ltd., a Cayman Islands exempted company and a wholly-owned subsidiary of the Investment Manager ("***Highland Latin America***"), pursuant to a services agreement (the "***Services Agreement***") to provide certain administrative and consulting services to the Investment Manager related to its management of the Fund, the Offshore Fund and the Master Fund, including back- and middle-office services; credit analysis; investment vehicle management; valuation; execution and documentation; marketing; reporting; administrative services; and other ancillary services.

The Services Agreement provides that in the absence of bad faith, gross negligence, fraud or willful misconduct (as determined by a court of competent jurisdiction in a final non-appealable judgment), the Investment Manager will, to the extent permitted by law, indemnify and hold harmless Highland Latin America, any of its affiliates, and any of their respective managers, members, principals, partners, directors, officers, shareholders, employees and agents against any and all claims, demands, liabilities, costs, expenses, damages, losses, suits, proceedings, judgments, assessments, actions and other liabilities incurred by such person in performing their duties under the Services Agreement. The

Fund will not be liable for any consulting services provided by Highland Latin America or any consultants or service providers that Highland Latin America engages, and the Fund will not bear any costs or expenses related to the services provided by Highland Latin America.

Investment Personnel

The key investment professionals of the Investment Manager and Highland Latin America who will be responsible for the Master Fund's investments are described below:

James Dondero, CFA, CMA, President, Co-Founder. Mr. Dondero is Co-Founder and President of Highland Capital Management, L.P. and a Director of Highland Latin America GP, Ltd., the general partner of the Investment Manager. Mr. Dondero has over 30 years of experience in the credit and equity markets, focused largely on high-yield and distressed investing. Mr. Dondero is the Chairman and President of NexPoint Residential Trust, Inc. (NYSE:NYRT), Chairman of NexBank Capital, Inc., Cornerstone Healthcare Group Holding, Inc., and CCS Medical, Inc., and a board member of Jernigan Capital, Inc. (NYSE:JCAP), and MGM Holdings, Inc. He also serves on the Southern Methodist University Cox School of Business Executive Board. A dedicated philanthropist, Mr. Dondero actively supports initiatives in education, veterans affairs, and public policy. Prior to founding Highland in 1993, Mr. Dondero was involved in creating the GIC subsidiary of Protective Life, where as Chief Investment Officer he helped take the company from inception to over $2 billion between 1989 and 1993. Between 1985 and 1989, Mr. Dondero was a corporate bond analyst and then portfolio manager at American Express. Mr. Dondero began his career in 1984 as an analyst in the JP Morgan training program. Mr. Dondero graduated from the University of Virginia where he earned highest honors (Beta Gamma Sigma, Beta Alpha Psi) from the McIntire School of Commerce with dual majors in accounting and finance. He has received certification as Certified Public Accountant (CPA) and Certified Managerial Accountant (CMA) and has earned the right to use the Chartered Financial Analyst (CFA) designation.

Gustavo Prilick. Mr. Prilick is a Managing Partner at Highland Capital Brasil and a registered asset manager in Brazil, and is a Director of Highland Latin America GP, Ltd., the general partner of the Investment Manager. He has extensively worked in several of Highland Capital Brasil's portfolio companies in the US mainly as CEO. Prior to his involvement with Highland Capital Brasil, he was a Partner at South America Fund, a private equity firm, mainly focused on providing financial services to export companies in Argentina and Uruguay. Prior to South America Fund, he was the Chief Operating Officer of Millicom International Cellular for 7 years, serving Latin America, Asia, Africa and ten operations in Russia. Prior to Millicom, he served as the Director of International Business for Oracle Corporation where he was responsible for the establishment of most of Oracle's International Subsidiaries on several continents, including the Brazilian operation. Later he became President of Oracle South America with oversight of several countries in South America. He also served as CEO of Nacion Factoring, a subsidiary of Banco Nacion in Argentina building its operations to reach one of the leading positions in the country. Mr. Prilick received an MBA from the Stanford University Graduate School of Business and a degree in Electrical Engineering from Universidad de Buenos Aires. He has also held teaching positions as a visiting professor in several leading Business Schools in Argentina.

Highland Latin America will enter into relationships and agreements with Argentine relevant parties and/or individuals to obtain supporting services for the management of the Fund, the Offshore Fund and the Master Fund, and will enter into consulting agreements with Andrés Pitchón, Julieta Prieto and Javier Casabal pursuant to which these consultants will provide investment and related services to the Feeder Funds and the Master Fund. Mr. Pitchón will provide portfolio management services to the Master Fund under the overall supervision of the Investment Manager.

Andrés Pitchón. Mr. Pitchón, through a consulting arrangement with Highland Latin America Consulting, Ltd., provides portfolio management services to the Master Fund. Mr. Pitchón began his career in 1993 as Head of Equity Research for Argentina for MBA-Salomon Brothers and later he also became responsible for Fixed income. As Head of the Research Department, his work was recognized by international publications such as Institutional Investor, Latin Finance, The Reuters Survey and The Greenwich Survey. Since 1997 and 1999, he has managed the Offshore Fund's equity and fixed income mutual funds. Since 2003, Mr. Pitchón had been Senior Portfolio Manager of the Offshore Fund's hedge funds. Mr. Pitchón received a BA degree in IT, focused on Business Administration from the University of Belgrano (1989), together with an academic merit medal for highest GPA in the School of Technology. Mr. Pitchón also received a Master's degree in Business Administration from Anderson Graduate School of Business at UCLA in 1992.

The Administrator

The Master Fund has entered into an Administration Agreement (the "***Administration Agreement***") with MUFG Fund Services (Cayman) Limited (the "***Administrator***") pursuant to which the Administrator performs certain administrative and accounting services for the Feeder Funds and the Master Fund, subject to the oversight and control of the General Partner, in its capacity as the general partner of the Master Fund.

Pursuant to the Administration Agreement, the Administrator is responsible, under the overall supervision of the General Partner, in its capacity as the general partner of the Master Fund, for certain matters pertaining to the administration for the Fund, including: (i) maintaining the accounts of the Fund and the Master Fund, (ii) calculating the Master Fund's net asset value, (iii) maintaining the principal corporate records of the Fund and the Master Fund, (iv) communicating with Limited Partners, (v) accepting the subscriptions of new Limited Partners, (vi) effecting withdrawals of Interests, (vii) maintaining the register of sub-fund investments, (viii) executing sub-fund subscriptions and withdrawals as instructed by the Fund, and (ix) ensuring compliance with applicable law and regulation (including anti-money laundering regulations). For its services, the Administrator receives a fee from the Master Fund.

The Administration Agreement may be terminated by the Administrator or the Master Fund upon ninety (90) days' written notice or, under certain circumstances, shorter notice. In such event, the Master Fund may enter into a new agreement with a new administrator on behalf of the Master Fund and the Feeder Funds, in its discretion and on such terms as it deems advisable, without prior notice to, or approval of, investors.

Under the Administration Agreement, the Master Fund agrees to indemnify and hold harmless the Administrator and its affiliated persons and delegates, as well as their respective officers, directors, employees and agents for, and to defend and hold each such person harmless from, any and all taxes, claims, demands, actions, suits, judgments, liabilities, losses, damages, costs, charges, counsel fees (on a solicitor and his own client basis), fines, assessments, amounts paid in settlement and expenses imposed on, incurred by, or asserted against the person which may arise out of or in connection with the Administration Agreement. The Administrator or any other indemnified person will not be indemnified for their own gross negligence, wilful default or fraud.

The Administrator is not responsible for valuing the Master Fund's investments, monitoring any investment restrictions of the Master Fund, determining compliance by the Master Fund with its investment restrictions, the Master Fund's trading activities, the management or performance of the

Master Fund or the accuracy or adequacy of this Memorandum. In addition, the Administrator does not assume any liability to any person or entity, including Limited Partners, except as specifically provided in the Administration Agreement. The Administrator may delegate certain services and share information concerning the Fund and its Limited Partners with its various non-United States affiliates subject to applicable confidentiality provisions.

The Administrator has no responsibility with respect to trading activities, the Investment Manager, the management or performance of the Master Fund, or the accuracy or adequacy of this Memorandum.

SUMMARY OF TERMS

*The following Summary of Terms summarizes the principal terms governing an investment in the Fund, and is subject, and qualified in its entirety by reference, to the Partnership Agreement, the exempted limited partnership agreement of the Master Fund, as amended (the "**Master Fund Partnership Agreement**"), and the Fund's subscription documents (the "**Subscription Documents**"). This summary is intended to be brief and does not purport to provide a comprehensive explanation of the Partnership Agreement, the Master Fund Partnership Agreement and the Subscription Documents. Accordingly, statements made in this Memorandum are subject to the detailed provisions of those agreements. Prospective investors are urged to review those agreements in their entirety prior to determining whether to invest in the Fund.*

The Fund	Highland Argentina Regional Opportunity Fund, L.P., a Delaware limited partnership (the "***Fund***"), primarily seeks to maximize the total return of its assets through capital appreciation by investing all of its investable assets in Highland Argentina Regional Opportunity Master Fund, L.P., a Cayman Islands exempted limited partnership (the "***Master Fund***"), which intends to hold primarily a portfolio of investments in securities of Latin American corporate and sovereign issuers as well as non-Latin American issuers that derive a portion of their revenues from business activities in Latin America, in each case with a primary focus on Argentina.
General Partner	Highland Argentina Regional Opportunity Fund GP, LLC, a Delaware limited liability company (the "***General Partner***"), acts as the general partner of the Fund and the Master Fund and is registered as a foreign company in the Cayman Islands. James D. Dondero (the "***Principal***") ultimately controls the General Partner.
Investment Manager	Highland Capital Management Latin America, L.P., a Cayman Islands exempted limited partnership controlled by the Principal (the "***Investment Manager***"), serves as investment manager to the Feeder Funds (as defined below) and the Master Fund and has responsibility for the Master Fund's investments.
Master-Feeder Structure	In order to facilitate investments by non-U.S. and certain U.S. tax-exempt investors, the Investment Manager and its affiliates recently assumed the management of an existing investment fund, Highland Argentina Regional Opportunity Fund, Ltd., a Cayman Islands exempted company (the "***Offshore Fund***" and, together with the Fund, the "***Feeder Funds***"). The Feeder Funds will place all of their investable assets in, and conduct all of their investment and trading activities in parallel through, the Master Fund. Accordingly, references herein to the investment activity of the Fund should be construed to refer to the Fund's investment activities through the Master Fund. The Feeder Funds share all items of profit, loss, income and expense of the Master Fund on a *pro rata* basis in accordance with their respective capital account balances in the Master Fund. Except as the context otherwise requires, the term "Fund" also includes the Master Fund.

The Investment Manager or an affiliate may also sponsor one or more additional investment funds or accounts.

Eligible Investors

Limited partner interests ("***Interests***") may be purchased only by investors who qualify as both "accredited investors" and "qualified purchasers," each as defined in the Fund's Subscription Documents. Subscribers will be required to complete the Fund's Subscription Documents consisting of the subscription agreement and the subscriber information form to determine their eligibility. The General Partner reserves the right to reject any investor for any reason or for no reason in its sole discretion.

An investment in the Fund is suitable only for persons that have adequate means of providing for their current needs and personal contingencies and have no need for liquidity in their investments. An investment in the Fund should not be made by any person that (a) cannot afford a total loss of its principal, or (b) has not carefully read or does not understand this Memorandum, including the portions concerning the risks and the income tax consequences of an investment in the Fund.

Series of Interests

The Fund intends to issue multiple series of Interests over time. Not all series of Interests will be available for subscription at the same time and the terms among the series of Interests will vary. Each series will have separate rights and preferences, including, without limitation, with respect to fees and withdrawal rights. The Fund is currently offering Series A Interests, Series B Interests and Series C Interests (each, a "***Series***").

New series of Interests may be established by the General Partner without notice to or approval of the Limited Partners (defined below). References herein to "Interests" or "Limited Partners" shall include all Series and Limited Partners unless otherwise specified or context so requires.

Subscriptions

Subscriptions for Interests may be accepted as of the first day of each calendar month and/or such other days as the General Partner may determine in its discretion from time to time, generally subject to the receipt of cleared funds no later than the Business Day immediately preceding the acceptance date. The initial minimum investment is $500,000, and thereafter, a Limited Partner may make additional investments, with the consent of the General Partner, in increments of not less than $500,000; provided that, in each case, the Fund may accept investments in a lesser amount, but no less than $100,000 with respect to Series B Interests.

"***Business Day***" is defined as any day on which banks in the Cayman Islands, Buenos Aires and New York City are authorized to open for

business or such other days as the General Partner may determine generally, or in any particular case.

A subscriber admitted to the Fund (a "***Limited Partner***") receives, in exchange for its initial capital contribution and any subsequent capital contribution, an Interest representing a proportionate share of the net assets of the Fund at that time.

All subscribers will be required to comply with such anti-money laundering procedures as are required by the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001 (Pub. L. No. 107-56) and other applicable anti-money laundering regulations as further described in this Memorandum and the Subscription Documents.

Placement Agents

There will be no sales charge payable by or to the Fund in connection with the offering of Interests. However, the General Partner and/or the Investment Manager may enter into arrangements with placement agents (which may include its affiliates) to solicit investors in the Fund, and such arrangements may provide for the compensation of such placements agents for their services at the General Partner's and/or the Investment Manager's expense or such placement agents may be paid a portion of the Management Fee. For the avoidance of doubt, the Fund will not bear any placement agent fees.

Accordingly, investors should recognize that a placement agent's or distributor's participation in this offering may be influenced by its interest in such current or future fees and compensation. Investors should consider these potential conflicts of interest in making their investment decisions.

Each placement agent shall comply with the legal requirements of the jurisdictions within which it offers and sells Interests.

Capital Accounts

The Fund will maintain a book capital account (a "***Capital Account***"), which may be divided into capital sub-accounts, for the General Partner and each Limited Partner (each, a "***Partner***" and together, the "***Partners***") to reflect contributions, withdrawals, distributions and allocations of net profit and net loss, with each sub-account being maintained as if it were the Capital Account of a separate Partner in order to calculate the Series B Early Withdrawal Reduction and Series C Early Withdrawal Reduction (each as defined below), as applicable, and the Performance Allocation (as defined below) for each capital contribution. The initial balance of each Partner's Capital Account will be equal to the amount of cash or net value of any property contributed to the Fund by such Partner.

If a Partner invests in more than one Series, the Fund will maintain a separate Capital Account on behalf of such Partner with respect to each such Series and each Capital Account will be treated as if it were the

Capital Account of a separate Partner for purposes of determining the Management Fee (as defined below) and Performance Allocation applicable to each Capital Account.

The Master Fund will issue to the Fund a limited partner interest in the Master Fund and will maintain capital accounts and sub-accounts that correspond to Limited Partners' Capital Accounts in the Fund.

Affiliated Investors

The Investment Manager, the General Partner and their respective affiliates, principals, employees, partners, agents, the respective family members of such personnel and trusts and other entities established primarily for their benefit or for charitable purposes ("***Affiliated Investors***") may not be subject to restrictions on withdrawals or be assessed the Management Fee or the Performance Allocation that are applicable to other investors in the Fund, but do share *pro rata* in all other applicable expenses of the Fund; provided that, the Special Limited Partner may, unless prohibited by law, make withdrawals of all or any part of its Performance Allocation and gains thereon from its capital account in the Master Fund as of any Withdrawal Date (as defined below).

Borrowing and Leverage

The Master Fund may buy securities or commodities on margin and arrange with banks, brokers and others to borrow money against a pledge of securities or commodities in order to employ leverage when the Investment Manager deems such action appropriate. The Master Fund may not borrow more than 100% of its net assets as described in "*Investment Program – Investment Restrictions*" above.

Management Fee

For its services to the Master Fund, the Investment Manager is entitled to a management fee (the "***Management Fee***") calculated monthly and payable quarterly in arrears at an annual rate of (i) 1.75% of each Limited Partner's Capital Account balance that is attributable to a Series A Interest, (ii) 1.25% of each Limited Partner's Capital Account balance that is attributable to a Series B Interest, and (iii) 1.00% of each Limited Partner's Capital Account balance that is attributable to a Series C Interest. The Management Fee is paid at the Master Fund level. The Management Fee will be prorated for any period that is less than a full calendar quarter.

The General Partner or the Investment Manager may elect to reduce, waive or calculate differently the Management Fee with respect to any Limited Partner, including, without limitation, Affiliated Investors. To effect such reduction, waiver or difference in calculation, the Fund may issue a separate series of Interests.

The General Partner may delay the timing or alter the structure of fees payable to the Investment Manager so long as such changes are not materially adverse to the Limited Partners. The Investment Manager may also assign all or any portion of fees payable to the Investment Manager,

including the Management Fee and the Performance Allocation, to any affiliate thereof or any third party in its sole discretion.

Performance Allocation

Pursuant to the Master Fund Partnership Agreement, generally, as of the close of each fiscal quarter and subject to the limitations described below, a performance-based profits allocation (the "***Performance Allocation***") is debited against the Master Fund capital sub-account relating to each Series attributable to a Limited Partner and simultaneously credited to the Master Fund capital account of the Special Limited Partner. The Performance Allocation is calculated and allocated at the Master Fund level, but is effectively equal to (i) 20.0% of the Net Capital Appreciation (as defined below) of each Series A Interest for such fiscal quarter, (ii) 17.5% of the Net Capital Appreciation of each Series B Interest for such fiscal quarter, and (iii) 15.0% of the Net Capital Appreciation of each Series C Interest for such fiscal quarter.

The "***Net Capital Appreciation***" applicable to an Interest shall mean the amount by which the net asset value of such Interest on the last day of the fiscal quarter (or on the Withdrawal Date, if applicable) exceeds the higher of the following amounts: (i) the highest net asset value of such Interest as of the commencement of any fiscal quarter and (ii) the issue price of such Interest. All such calculations include realized and unrealized gains and losses and are made before deduction of the Performance Allocation, but after deduction of the accrued applicable expenses of the Fund and the Master Fund for the applicable period, and in each case adjusted for any subscriptions and withdrawals made during the quarter.

The Performance Allocation is calculated and allocated at the Master Fund level through the use of separate memorandum sub-accounts with respect to the Fund's capital account in the Master Fund that correspond to each Series attributable to a Limited Partner. No separate Performance Allocation will be charged at the Fund level.

The Performance Allocation generally will be allocable to the Special Limited Partner after the end of each fiscal quarter and as of any Withdrawal Date occurring prior to the end of any fiscal quarter. The Performance Allocation payable with respect to any Interests withdrawn prior to the end of a fiscal quarter will be determined solely by reference to such withdrawn Interests and will be allocable to the Special Limited Partner on the Withdrawal Date. The Performance Allocation with respect to any Limited Partner may be fully or partially waived or rebated by the General Partner in its sole discretion.

Other Fees and Expenses

The Fund bears all of its own initial organizational expenses and its *pro rata* share of the initial organizational expenses of the Master Fund. In general, the Fund's financial statements will be prepared in accordance with generally accepted accounting principles in the United States ("***GAAP***"). However, the General Partner intends to amortize the Fund's

organizational expenses over a period of 60 calendar months from the date the Fund commenced operations because it believes such treatment is more equitable than expensing the entire amount of the organizational expenses in the Fund's first year of operation, as is required by GAAP. The General Partner may, however, limit the amount of start-up and organizational expenses that the Fund amortizes so that the audit opinion issued with respect to the Fund's financial statements will not be qualified.

The Fund pays all costs, fees and expenses arising in connection with the Fund's operations. The Fund also bears its *pro rata* share of the cost of the Master Fund's operations and investments as provided in the Master Fund Partnership Agreement. Expenses payable by the Fund in connection with the Master Fund's investment program, include, but are not limited to, brokerage commissions, other expenses related to buying and selling securities (including trading errors that are not the result of the Investment Manager's gross negligence, willful misconduct or fraud), costs of due diligence regardless of whether a particular transaction is consummated, the costs of attending shareholder meetings, research expenses and costs related to monitoring investments. Expenses payable by the Fund in connection with its operations include, but are not limited to, fees and expenses of advisers and consultants; the Management Fee; fees and expenses of any custodians, escrow or transfer agents or other investment-related service providers; indemnification expenses and the cost of insurance against potential indemnification liabilities; interest and other borrowing expenses; legal, administrative, accounting, tax, audit and insurance expenses; expenses of preparing and distributing reports, financial statements and notices to Limited Partners; litigation or other extraordinary expenses; any withholding, transfer or other taxes payable by the Fund (including any interest and penalties), and the cost of periodically updating this Memorandum and the Partnership Agreement.

The Investment Manager may retain, in connection with its responsibilities under the Investment Management Agreement, the services of others to assist in the investment advice to be given to the Master Fund, including, but not limited to, any affiliate of the Investment Manager. Payment for any such services will be assumed by the Investment Manager. However, the Investment Manager, in its sole discretion, may retain the services of independent third party professionals on behalf of the Master Fund, including, without limitation, attorneys, accountants and consultants, to advise and assist it in connection with the performance of its activities on behalf of the Master Fund, and the Master Fund will bear full responsibility therefor and the expense of any fees and disbursements arising therefrom.

The Fund and the Master Fund do not have their own separate employees or office, and neither the Fund nor the Master Fund will reimburse the General Partner or the Investment Manager for salaries, office rent and other general overhead costs of the General Partner or the Investment

Manager. A portion of the commissions generated on the Master Fund's brokerage transactions may generate soft dollar credits that the Investment Manager is authorized to use to pay for research and other research-related services and products used by the Investment Manager. It is the current policy of the Investment Manager to limit such use of soft dollars to fall within the safe harbor of Section 28(e) of the Securities Exchange Act of 1934, as amended, or to be otherwise reasonably related to the investment decision-making process or for Master Fund expenses. See "*Brokerage and Custody*."

If the General Partner or the Investment Manager, as appropriate, incurs any expenses for both the Master Fund and one or more Other Accounts (as defined herein), the General Partner or the Investment Manager, as appropriate, will allocate such expenses among the Master Fund and each such Other Account in proportion to the size of the investment made by each in the activity or entity to which the expenses relate, or in such other manner as the General Partner considers fair and reasonable.

Allocation of Net Profit and Loss

Net profit or net loss of the Fund is allocated among the Capital Accounts of the Partners as of the close of each calendar month, at any other time when the Fund receives an additional capital contribution or effects a withdrawal or distribution, or at such other times as the General Partner may determine (each, a "***Fiscal Period***").

The net profit or net loss of the Fund for any calendar month or other valuation period will reflect, with respect to all positions:

(a) the dividends and interest accrued during the period;

(b) the net realized gains or losses from the sale or other disposition of investments during the period allocated by the Fund;

(c) the net change in the unrealized appreciation or depreciation of investments during the period held at the close of the period (*i.e.*, the difference between the fair market value of each investment at the end of the period compared with either the fair market value at the commencement of the period or, in the case of any investment made after the commencement of the period, the cost); and

(d) the expenses of the Fund incurred or accrued during the period (other than the Management Fee and any other items that are charged on a Partner-by-Partner basis).

As of the close of each Fiscal Period, the net profit or net loss (subject to any applicable Performance Allocation paid at the Master Fund level) will be allocated *pro rata* among the Capital Accounts of the Partners in proportion to their percentage interests in the Fund as of the commencement of the period. Each Partner's percentage interest in the Fund as of the commencement of any period is based on the value of the

Partner's Capital Account at such time in relation to the sum of the Capital Accounts of all of the Partners at such time.

The Management Fee will be calculated separately with respect to each Limited Partner and will be debited from the capital sub-account at the Master Fund level corresponding to each Limited Partner's Capital Account.

Distributions

Subject to the monthly withdrawal privilege described below, all earnings of the Fund are ordinarily retained for investment. Limited Partners should not expect the Fund to make any dividend distributions.

Withdrawals; Lock-Up

Subject to certain withdrawal restrictions described below, a Limited Partner is generally permitted to withdraw all or a portion of its Capital Account as of the last Business Day of each calendar month (and/or such other Business Days as the General Partner may determine in its sole discretion) (each, a "***Withdrawal Date***"); provided that, any partial withdrawals may only be made in minimum amounts of $100,000. Notwithstanding the foregoing, any Limited Partner that withdraws all or a portion of its Capital Account with respect to a Series B Interest prior to the one-year anniversary of the date such capital was contributed to the Fund is subject to an early withdrawal reduction of up to 3.0% of the net asset value of the portion of the Series B Interest being withdrawn, as determined at the close of business of such Withdrawal Date (such fee, the "***Series B Early Withdrawal Reduction***"). In addition, any Limited Partner that withdraws all or a portion of its Capital Account with respect to a Series C Interest prior to the:

(i) one-year anniversary of the date such capital was contributed to the Fund is subject to an early withdrawal reduction of 5.0% of the net asset value of the portion of the Series C Interest being withdrawn, as determined at the close of business of such Withdrawal Date, and

(ii) two-year anniversary, but on or after the one-year anniversary, of the date such capital was contributed to the Fund is subject to an early withdrawal reduction of 3.0% of the net asset value of the portion of the Series C Interest being withdrawn, as determined at the close of business of such Withdrawal Date (such fees with respect to Series C Interests, the "***Series C Early Withdrawal Reduction***" and together with the Series B Early Withdrawal Reduction, the "***Early Withdrawal Reduction***").

The Early Withdrawal Reduction is retained by the Fund (and generally invested in the Master Fund) and deducted from the withdrawal proceeds of the withdrawing Limited Partner. The Early Withdrawal Reduction will not apply in the event of a Compulsory Withdrawal (defined below).

Written notice of any withdrawal request must be received in writing by the Administrator at least 30 calendar days prior to the requested Withdrawal Date. The General Partner may waive such notice requirements, or permit withdrawals under such other circumstances, if, in its sole discretion, it determines that, under the circumstances, to waive such requirement will not have an adverse effect on the Master Fund's portfolio.

If the Master Fund violates the investment restrictions and fails to remedy the violation on or before the Remedy Date (as described in "*Investment Program – Investment Restrictions*"), any Limited Partner may withdraw all or part of its Capital Account on the next Withdrawal Date and will not be subject to the Early Withdrawal Reduction; provided that, such Limited Partner has requested such withdrawal in writing within 30 Business Days after the Remedy Date.

Settlement of Withdrawal Proceeds

A withdrawal request is normally settled in cash or, subject to the sole discretion of the General Partner, wholly or partially with securities or other assets of the Fund (received from the Master Fund), whether or not readily marketable, generally within 10 Business Days after the Withdrawal Date; provided that the General Partner may delay such payment if such delay is reasonably necessary to prevent such withdrawal from having a material adverse impact on the Fund. In the event that the General Partner satisfies a withdrawal request with assets in kind, such securities may be transferred to a liquidating account and sold by the Fund for the benefit of the withdrawing Limited Partner, in which case, payment of the withdrawal proceeds attributable to such investments will be delayed until such investments are sold. The amount payable in respect of such investments will depend on the performance of such investments through to the date on which they are sold. The cost of operating the liquidating account and selling the investment(s) will be deducted from the proceeds of sale paid to the withdrawing Limited Partner.

Notwithstanding anything to the contrary herein, the General Partner may establish reserves and holdbacks for estimated accrued expenses, liabilities and contingencies, including, without limitation, general reserves for unspecified contingencies (even if such reserves or holdbacks are not otherwise required by GAAP) or liabilities stemming from tax obligations (as such may be determined in the sole discretion of the General Partner and whether or not incurred directly or indirectly), which could reduce the amount of a distribution upon a Limited Partner's withdrawal. The General Partner may withhold for the benefit of the Fund from any distribution to a withdrawing Limited Partner an amount representing the actual or estimated costs incurred by the Fund with respect to such withdrawal, as well as any Early Withdrawal Reduction described above.

Withdrawal Conditions

The General Partner or the Administrator may refuse to accept a withdrawal request if it is not accompanied by such additional information as the General Partner or the Administrator may reasonably require. This power may, without limitation to the generality of the foregoing, be exercised where proper information has not been provided for money laundering verification purposes. In addition, where withdrawal proceeds are requested to be remitted to an account which is not in the name of the Limited Partner, the General Partner and the Administrator reserve the right to request such information as may be reasonably necessary in order to verify the identity of the Limited Partner and the owner of the account to which the withdrawal proceeds will be paid. The withdrawal proceeds will not be paid to a third-party account if the Limited Partner and/or owner of the account fails to provide such information.

Compulsory Withdrawals

The General Partner reserves the right, in its sole discretion, to compel the withdrawal of a Limited Partner's Interest at any time and for any reason on not less than seven days' prior written notice (or immediately if the General Partner, in its sole discretion, determines that such Limited Partner's continued investment in the Fund may cause the Fund, the Master Fund, the General Partner or the Investment Manager to violate any applicable law) (a "***Compulsory Withdrawal***"). The General Partner will compel the withdrawal of a Limited Partner's Interest in its entirety if a Limited Partner requests a withdrawal that would cause its total investment with respect to a particular Series to fall below a minimum of $100,000 (a "***Minimum Required Withdrawal***"). In either case, settlements are made in the same manner as voluntary withdrawals, except that the Early Withdrawal Reduction will not apply in the event of a Compulsory Withdrawal, but will apply to any Minimum Required Withdrawal.

Suspension of Withdrawals and Withdrawal Payments

The General Partner may, at any time, suspend (a) the calculation of the net asset value of the Interests (and the applicable valuation date); (b) the issuance of Interests, (c) the withdrawal by Limited Partners of Interests (and the applicable Withdrawal Date); and/or (d) the payment of withdrawal proceeds (even if the calculation dates and Withdrawals Dates are not postponed) (each, a "***Suspension***") during any period which: (i) any stock exchange on which a substantial part of investments owned by the Fund (through the Master Fund) are traded is closed, other than for ordinary holidays, or dealings thereon are restricted or suspended; (ii) there exists any state of affairs as a result of which (A) disposal of a substantial part of the investments owned by the Fund (through the Master Fund) would not be reasonably practicable and might seriously prejudice the Limited Partners, or (B) it is not reasonably practicable for the Fund fairly to determine the value of its net assets; (iii) none of the withdrawal requests which have been made may lawfully be satisfied by the Fund; (iv) there is a breakdown in the means of communication normally employed in determining the prices of a substantial part of the

investments of the Fund (through the Master Fund); (v) in the sole discretion of the General Partner, it is necessary to preserve the Fund's assets; or (vi) automatically upon any suspension of withdrawals by the Master Fund for similar reasons as described in "*The Master Fund*," below.

The Administrator will promptly notify each Limited Partner who has submitted a withdrawal request and to whom payment in full of the amount being withdrawn has not yet been remitted of any Suspension of withdrawals or Suspension of the payment of withdrawal proceeds. Any remaining amount of a withdrawal request that is not satisfied due to such a Suspension remains at risk as per other amounts invested in the Fund and subject to the applicable Management Fee until such amount is finally and fully withdrawn. Such Limited Partners will not be given any priority with respect to the withdrawal of Interests after the cause for such Suspension or limitation ceases to exist. The General Partner may in its sole discretion, however, permit such Limited Partners to withdraw their withdrawal requests to the extent that the relevant Withdrawal Date has not yet passed. For the avoidance of doubt, where a suspension of the payment of withdrawal proceeds is declared between the relevant Withdrawal Date and the remittance of such payment proceeds, affected Limited Partners shall not have any right to withdraw their withdrawal requests. Upon the reasonable determination by the General Partner that conditions leading to a Suspension no longer apply, the Administrator will notify the Limited Partners of the end of the Suspension. At such time, any such suspended payments shall generally be paid in accordance with the normal process for making such payments, withdrawal rights shall be promptly reinstated and any pending withdrawal requests which were not withdrawn (or new, timely withdrawal requests) will be effected as of the first Withdrawal Date following the removal of the Suspension, subject to the foregoing restrictions on withdrawals.

Transfers

Interests are not transferable except with the prior written consent of the General Partner, which consent may be withheld in its sole discretion. The General Partner will require any transferee or assignee of any Limited Partner to execute the Subscription Documents.

Duty of Care; Indemnification

Pursuant to the Partnership Agreement, the Master Fund Partnership Agreement and the Investment Management Agreement, the General Partner, the Investment Manager, each member, shareholder, partner, manager and director of, and any person who controls, the General Partner or the Investment Manager, each of the respective affiliates of the foregoing and each of their respective executors, heirs, assigns, successors and other legal representatives (each such person, an "***Indemnified Party***") shall not be liable to the Master Fund, the Fund or the Limited Partners for any loss or damage arising by reason of being or having been an Indemnified Party or from any acts or omissions in the performance of its services as an Indemnified Party in the absence of gross negligence, willful misconduct or fraud, or as otherwise required by

law. In no event shall any Indemnified Party be liable for any consequential damages, special or indirect damages or lost profits.

The Partnership Agreement, the Master Fund Partnership Agreement and the Investment Management Agreement contain provisions for the indemnification of the Indemnified Parties by the Master Fund and the Fund (but not by the Limited Partners individually) against any liabilities arising by reason of being or having been an Indemnified Party or in connection with the Partnership Agreement, the Master Fund Partnership Agreement, the Investment Management Agreement, or the Master Fund's or the Fund's business or affairs to the fullest extent permitted by law in the absence of gross negligence, willful misconduct or fraud. The General Partner is not personally liable to any Limited Partner for the repayment of any withdrawal proceeds or for contributions by such Limited Partner to the capital of the Fund or by reason of any change in the U.S. federal or state income tax laws applicable to the Fund or its investors.

Non-Exclusivity; Allocation of Opportunities

None of the Investment Manager, its affiliates and their respective officers, directors, shareholders, members, partners, personnel and employees is precluded from engaging in or owning an interest in other business ventures or investment activities of any kind, whether or not such ventures are competitive with the Fund or the Master Fund.

The Master Fund Partnership Agreement requires the General Partner, and the Investment Manager as delegatee of the General Partner, to act in a manner that it considers fair and equitable over time in allocating investment opportunities to the Master Fund. Although the General Partner and the Investment Manager consider certain factors set forth in the Investment Manager's policies to determine how to allocate trades, the Investment Manager's policies and the Master Fund Partnership Agreement do not otherwise impose any specific obligations or requirements concerning the allocation of time, effort or investment opportunities to the Master Fund or any restrictions on the nature or timing of investments for the account of the Master Fund and for the General Partner's or the Investment Manager's own accounts or for other accounts that the General Partner, the Investment Manager or their affiliates may manage (each, an "***Other Account***"). The General Partner and the Investment Manager are not obligated to devote any specific amount of time to the affairs of the Master Fund and are not required to accord exclusivity or priority to the Master Fund in the event of limited investment opportunities arising from the application of speculative position limits or other factors.

The Principal, as well as the employees and officers of the Investment Manager and of organizations affiliated with the Investment Manager, may buy and sell securities for their own account or the account of others, but may not buy securities from or sell securities to the Master Fund (such prohibition does not extend to the purchase or sale of interests in the

Fund), unless such purchase or sale is in compliance with the applicable provisions of the Investment Advisers Act of 1940, as amended.

The Investment Manager undertakes to resolve conflicts in a fair and equitable basis, which in some instances may mean a resolution that would not maximize the benefit to the Fund's investors.

It is the policy of the Investment Manager to allocate investment opportunities fairly and equitably over time. This means that such opportunities will be allocated among those accounts for which participation in the respective opportunity is considered appropriate. The Investment Manager has the authority to allocate trades to multiple accounts on an average price basis or on another basis it deems fair and equitable. Similarly, if an order on behalf of any accounts cannot be fully allocated under prevailing market conditions, the Investment Manager may allocate the trades among different accounts on a basis it considers fair and equitable over time. One or more of the foregoing considerations may (and are often expected to) result in allocations among the Master Fund and one or more accounts on other than a *pari passu* basis. See "*Risk Factors and Potential Conflicts of Interest*" below.

Affiliated Service Providers

NexBank, SSB ("***NexBank SSB***") is an affiliate of the Investment Manager and may, from time to time, provide banking and/or agency services to the Investment Manager, clients of the Investment Manager or collective investment vehicles for which the Investment Manager provides investment advisory services (including the Fund and other vehicles in which the Fund, through the Master Fund, may invest) or third parties engaged in transactions involving the Investment Manager. NexBank SSB may also act as an agent in connection with certain securities transactions involving the Investment Manager's client accounts (including the Master Fund and other vehicles in which the Master Fund may invest). Principals of the Investment Manager own a majority of the equity interests in NexBank SSB and employees or affiliates of the Investment Manager own or may own a substantial equity interest in NexBank SSB. Certain Master Fund investment transactions may be executed through NexBank Securities, Inc., an affiliate of the Investment Manager and a registered broker-dealer.

Additionally, the Investment Manager or affiliates of the Investment Manager, including, without limitation, Nexbank SSB, NexBank Securities, Inc.,NexBank Capital Advisors and Governance Re, Ltd., may provide financial advisory, management, insurance, title insurance or other services for a fee to portfolio companies in which the Master Fund may have an interest. Highland Latin America, an affiliate of the Investment Manager, has been engaged to provide certain administrative and consulting services to the Investment Manager. See "*Risk Factors and Potential Conflicts of Interest*" below.

Valuations

In general, the Fund's financial statements will be prepared in accordance with GAAP. The General Partner has delegated the valuation of the Fund's assets, based on the Master Fund's assets, to the Administrator who values the Fund's assets as of the close of each Fiscal Period in accordance with the Investment Manager's valuation policies and procedures.

Reserves

Appropriate reserves may be accrued and charged against net assets and proportionately against the Capital Accounts of the Partners for contingent liabilities, such reserves to be in the amounts (subject to increase or reduction) that the General Partner in its sole discretion deems necessary or appropriate. At the sole discretion of the General Partner, the amount of any such reserve (or any increase or decrease therein) may be charged or credited, as appropriate, to the Capital Accounts of those investors who are Limited Partners at the time when such reserve is created, increased or decreased, as the case may be, or alternatively may be charged or credited to those investors who were Limited Partners at the time of the act or omission giving rise to the contingent liability for which the reserve was established.

If the General Partner determines that it is equitable to treat an amount to be paid or received as being applicable to one or more prior periods, then such amount may be proportionately charged or credited, as appropriate, to those persons who were Limited Partners during any such prior period(s).

Fiscal Year

The Fund has a fiscal year ending on December 31 of each calendar year.

Reports to Limited Partners

The Fund furnishes to its Partners as soon as practicable after the end of each taxable year (or as otherwise required by law) such tax information as is necessary for each Partner to complete U.S. federal and state income tax or information returns, along with any other tax information required by law. Within 120 days of the end of each year (or as soon as practicable thereafter), the Fund distributes to each Partner audited financial statements of the Fund, including a statement of profit or loss for such fiscal year and an unaudited status of each such Partner's holdings in the Fund at such time. Partners will also receive, upon request to the Administrator, copies of semi-annual financial statements of the Fund.

Tax Status

The General Partner believes that the Fund should be treated as a partnership for U.S. federal income tax purposes and should not itself be subject to U.S. federal income taxation. Each Limited Partner otherwise subject to U.S. federal income tax is required to include in such Limited Partner's taxable income such Limited Partner's share of the Fund's income and gains, when realized by the Fund (regardless of cash distributions from the Fund to such investor), and may claim, to the extent allowable, such Limited Partner's share of the Fund's losses and deductions. Due to the nature of the Fund's activities, the Fund's income or loss for U.S. federal income tax purposes for a particular taxable period

may differ from its financial or economic results. The deductibility of a Limited Partner's share of any Fund losses or deductions may be limited. See "*Tax Considerations*."

ERISA

The Investment Manager intends to limit investment in the Master Fund by "benefit plan investors" so that the assets of the Master Fund will not be considered "plan assets" for purposes of the Employee Retirement Income Security Act of 1974, as amended ("***ERISA***"). It is anticipated that the assets of the Fund may constitute "plan assets" for purposes of ERISA. See "*ERISA and Other Regulatory Considerations*."

Amendment of the Limited Partnership Agreement

The Partnership Agreement may be amended by the General Partner with the consent of a majority in interest of the Limited Partners, which consent may be obtained through negative consent. However, the Fund may not: (a) increase the obligation of a Limited Partner to make any contribution to the capital of the Fund; (b) reduce the Capital Account of any Limited Partner other than as contemplated by the Partnership Agreement; or (c) reduce any Limited Partner's right to share in net profits or assets of the Fund, in each case, without the consent of each Limited Partner adversely affected thereby. The above consent may be obtained by negative consent.

Notwithstanding the foregoing, the General Partner may amend the Partnership Agreement at any time without the consent of any Limited Partner: (a) to comply with applicable laws and regulations; (b) to make changes that do not adversely affect the rights or obligations of any Limited Partner; (c) to cure any ambiguity or correct or supplement any conflicting provisions of the Partnership Agreement; or (d) with respect to any other amendment, if any Limited Partner whose contractual rights as a Limited Partner would be materially and adversely changed by such amendment has an opportunity to withdraw from the Fund (without being subject to the Early Withdrawal Reduction) as of a date that is not less than 30 days after the General Partner has furnished written notice of such amendment to each Limited Partner and that is prior to the effective date of the amendment.

Variation of Terms

The General Partner or the Investment Manager, in its sole discretion, may enter into a side letter or similar agreement to or with one or more Limited Partners that has the effect of establishing rights under, or altering or supplementing the terms of, the Partnership Agreement or of any Subscription Documents (including those relating to access to information, the Management Fee, the Performance Allocation, minimum investment amount, voting rights and withdrawal rights) with respect to such Limited Partner(s).

THE MASTER FUND

The Master Fund's Partnership Interests

The Master Fund's partnership interests are currently held exclusively by the Fund and the Offshore Fund as limited partners, the Investment Manager as the special limited partner of the Master Fund, and the General Partner as the general partner of the Master Fund, pursuant to the Master Fund Partnership Agreement. The General Partner is registered as a foreign company in the Cayman Islands pursuant to Part IX of the Companies Law (2016 Revision).

The Master Fund Partnership Agreement

The Master Fund is constituted as a Cayman Islands exempted limited partnership under the Exempted Limited Partnership Law, 2014 (the "***Exempted Limited Partnership Law***"). A Cayman Islands exempted limited partnership is constituted by the signing of the relevant partnership agreement and its registration with the Registrar of Exempted Limited Partnerships in the Cayman Islands.

A Cayman Islands exempted limited partnership is not a separate legal person distinct from its partners. Under the Exempted Limited Partnership Law, any property which is conveyed into or vested in the name of the exempted limited partnership shall be held or deemed to be held by the general partner, and if more than one, then by the general partners jointly upon trust, as an asset of the partnership in accordance with the terms of the partnership agreement. Any debt or obligation incurred by a general partner in the conduct of the business of an exempted limited partnership shall be a debt or obligation of the exempted limited partnership. Registration under the Exempted Limited Partnership Law entails that the partnership becomes subject to, and the limited partners therein are afforded the limited liability and other benefits of, the Exempted Limited Partnership Law (subject to compliance therewith).

Liability of Partners and Indemnification of the General Partner and Others. The business of a Cayman Islands exempted limited partnership will be conducted by its general partner(s) who will be liable for all debts and obligations of the exempted limited partnership to the extent that the partnership has insufficient assets. As a general matter, a limited partner of a Cayman Islands partnership will not be liable for the debts and obligations of the exempted limited partnership, other than:

(i) as expressed in the partnership agreement,

(ii) if such limited partner takes part in the conduct of the business of an exempted limited partnership in its dealings with persons who are not partners, then that limited partner shall be liable, in the event of the insolvency of the exempted limited partnership, for all debts and obligations of that exempted limited partnership incurred during the period that he so participates in the conduct of the business as though he were, for such period, a general partner, provided always that he shall be rendered liable pursuant to the foregoing provision only to a person who transacts business with the exempted limited partnership during such period with actual knowledge of such participation and who then reasonably believed such limited partner to be a general partner, or

(iii) if such limited partner is obligated pursuant to Section 34(1) of the Exempted Limited Partnership Law to return a distribution made to it (with interest at a rate of 10% per annum, unless otherwise specified in the Master Fund Partnership Agreement) when the exempted limited partnership is insolvent or within six months prior to such insolvency.

The Master Fund Partnership Agreement provides that none of the Indemnified Parties will be liable to the Master Fund or any limited partner of the Master Fund (including the Feeder Funds) for any loss or damage arising by reason of being or having been an Indemnified Party or from any acts or omissions in the performance of its services as an Indemnified Party in the absence of gross negligence (as such term is defined and interpreted in accordance with the laws of the State of Delaware), willful misconduct or fraud, or as otherwise required by law. An Indemnified Party may consult with counsel and accountants in respect of the Master Fund's affairs and will be fully protected and justified in any action or inaction which is taken in accordance with the advice or opinion of such counsel or accountants, provided that they were selected in accordance with the standard of care set forth above. In addition, in no event shall any Indemnified Party be liable for any consequential damages, special or indirect damages or lost profits.

The Master Fund Partnership Agreement provides that the Master Fund shall, to the fullest extent permitted by law, indemnify and hold harmless each Indemnified Party from and against any and all liabilities suffered or sustained by an Indemnified Party by reason of the fact that it, he or she is or was an Indemnified Party or in connection with the Master Fund Partnership Agreement or the Master Fund's business or affairs, including, without limitation, any judgment, settlement, reasonable attorneys' fees and other costs or expenses incurred in connection with the defense of any actual or threatened action, suit or proceeding, provided that such liability did not result from the gross negligence (as such term is defined and interpreted in accordance with the laws of the State of Delaware), willful misconduct or fraud of such Indemnified Party. The Master Fund Partnership Agreement also provides that the Master Fund will, in the sole discretion of the General Partner, advance to any Indemnified Party reasonable attorneys' fees and other costs and expenses incurred in connection with the defense of any action, suit or proceeding which arises out of such conduct, subject to receiving a written undertaking from the Indemnified Party to repay such amounts if and to the extent that it is finally determined that the Indemnified Party was not entitled to indemnification in respect thereof.

Notwithstanding any of the foregoing, the provisions of the Master Fund Partnership Agreement do not provide for the exculpation or indemnification of any Indemnified Party for any liability (including liability under U.S. federal securities laws which, under certain circumstances, impose liability even on persons that act in good faith), to the extent (but only to the extent) that such liability may not be waived, modified or limited under applicable law, but shall be construed so as to effectuate the above provisions to the fullest extent permitted by law.

Pursuant to the foregoing indemnification and exculpation provisions applicable to each Indemnified Party, the Master Fund (and not the applicable Indemnified Party) will be responsible for any losses resulting from trading errors and similar human errors, absent gross negligence (as such term is defined and interpreted in accordance with the laws of the State of Delaware), willful misconduct or fraud. Given the volume of transactions executed on behalf of the Master Fund, trading errors (and similar errors) will occur and the Master Fund will be responsible for any resulting losses, even if such losses result from the negligence (but not gross negligence) of any Indemnified Party.

The Indemnified Parties will also be indemnified by each limited partner of the Master Fund for any amounts of tax withheld or required to be withheld with respect to that limited partner, and also for any amounts of interest, additions to tax, penalties and other costs borne by any such persons in connection therewith to the extent that the balance of the limited partner's capital account is insufficient to fully compensate the General Partner and the Investment Manager for such costs.

Contributions and Withdrawals by the Fund. Limited partners of the Master Fund may make contributions at such times and in such amounts as the General Partner determines. As a limited partner of the Master Fund, the Fund may, subject to the consent of the General Partner, voluntarily request a withdrawal of all or part of its capital in the Master Fund at such times and in such amounts as it may determine. The General Partner may, at any time, suspend (a) the calculation of the net asset value of the Master Fund (and the applicable valuation date); (b) the issuance of limited partner interests in the Master Fund; (c) the withdrawal by limited partners of their interests (and the applicable withdrawal date); and/or (d) the payment of withdrawal proceeds (even if the calculation dates and withdrawal dates are not postponed) during any period which: (i) any stock exchange on which a substantial part of investments owned by the Master Fund are traded is closed, other than for ordinary holidays, or dealings thereon are restricted or suspended; (ii) there exists any state of affairs as a result of which (A) disposal of a substantial part of the investments owned by the Master Fund would not be reasonably practicable and might seriously prejudice the limited partners of the Master Fund, or (B) it is not reasonably practicable for the Master Fund fairly to determine the value of its net assets; (iii) none of the withdrawal requests which have been made may lawfully be satisfied by the Master Fund; (iv) there is a breakdown in the means of communication normally employed in determining the prices of a substantial part of the investments of the Master Fund; or (v) in the sole discretion of the General Partner, it is necessary to preserve the Master Fund's assets.

Amendment of the Master Fund Partnership Agreement. The Master Fund Partnership Agreement may be amended by an instrument in writing signed by each of the limited partners of the Master Fund and the General Partner; provided that, the General Partner may amend the Master Fund Partnership Agreement without the consent of the limited partners so long as the amendment does not adversely affect any rights of the limited partners.

Dissolution of the Master Fund. The Master Fund shall be wound up and dissolved upon the first to occur of any of the following liquidating events, and Sections 36(1)(b), 36(9) and 36(12) of the Exempted Limited Partnership Law shall not apply to the Master Fund:

(i) the written election of the General Partner to terminate the Master Fund; or

(ii) if the General Partner is the sole or last remaining general partner, the date (the "***Automatic Dissolution Date***") falling 90 days after the date of the service of a notice by the General Partner (or its legal representative) on all the limited partners informing the limited partners of:

(1) the commencement of liquidation or bankruptcy proceedings in relation to the General Partner; or

(2) the withdrawal, removal or making of a winding up or dissolution order in relation to the General Partner;

provided that, if a majority in number of the limited partners elects one or more new general partners before the Automatic Dissolution Date, the business of the Master Fund shall be resumed and continued. If a new general partner is not elected by the Automatic Dissolution Date, the Master Fund shall be wound up and dissolved in accordance with terms of the Master Fund Partnership Agreement and the Exempted Limited Partnership Law.

Power of Attorney. Each limited partner of the Master Fund shall make, constitute and appoint the General Partner (and each of its successors and permitted assigns) for the time being, with full power of substitution, as its true and lawful agent and attorney-in-fact of, and in the name, place and stead of, such Partner with the power from time to time to make, execute, sign, acknowledge, swear to (and deliver as may be appropriate) on its behalf and file and record in the appropriate public offices and publish (as may in the reasonable judgment of the General Partner be required by law), including the admission of any new partners of the Master Fund and any amendments to the Master Fund Partnership Agreement. Each limited partner of the Master Fund shall authorize the General Partner to take any further action that the General Partner considers necessary or advisable in connection with the foregoing. Such power of attorney granted is intended to secure a proprietary interest of the General Partner and the performance by each limited partner of the Master Fund of its obligations under the Master Fund Partnership Agreement and shall be irrevocable and shall survive and not be affected by the subsequent death, lack of capacity, insolvency, bankruptcy or dissolution of any limited partner of the Master Fund.

Valuation of Assets

The General Partner has delegated the valuation of the Master Fund's assets to the Administrator, which will generally compute the value of the securities and other assets of the Master Fund as of the close of business on the last day of each fiscal period and on any other date selected by the General Partner in its sole discretion. In addition, the Administrator must compute the value of the securities that are being distributed in-kind as of their date of distribution in accordance with the Master Fund Partnership Agreement. In determining the value of the assets of the Master Fund, no value is placed on the goodwill or name of the Master Fund, or the office records, files, statistical data or any similar intangible assets of the Master Fund not normally reflected in the Master Fund's accounting records, but there must be taken into consideration any related items of income earned but not received, expenses incurred but not yet paid, liabilities fixed or contingent, prepaid expenses to the extent not otherwise reflected in the books of account, and the value of options or commitments to purchase or sell securities pursuant to agreements entered into on or prior to such valuation date.

A copy of the Investment Manager's valuation policy is available upon request from the General Partner.

The value of each security and other asset of the Master Fund and the net worth of the Master Fund as a whole determined pursuant Master Fund Partnership Agreement are conclusive and binding on all of the partners of the Master Fund and all persons claiming through or under them.

RISK FACTORS AND POTENTIAL CONFLICTS OF INTEREST

Investment in the Fund is speculative and involves substantial risks, including, but not limited to, those summarized below. The Fund is not suitable for all investors and is intended for sophisticated investors who can accept the risks associated with their investments. Prospective investors should carefully consider the risk factors described in this section, among others, in determining whether an investment in the Fund is suitable for them. There can be no assurance that the Master Fund's program will be successful or that investments purchased by the Master Fund will increase in value. An investor must be prepared to bear capital losses that might result from an investment in the Fund, including a complete loss of the investor's invested capital. All investors in the Fund should consult their own legal, tax and financial advisors prior to investing in the Fund.

For purposes of this section, references to the "Fund" should be understood to mean each of the Fund and the Master Fund, as applicable, and each of the risk factors set forth herein, while not exhaustive, shall apply equally to each of the Fund and the Master Fund, as applicable.

General Risks

Lack of Operating History. The Fund, the Master Fund and the General Partner do not have operating histories upon which investors can evaluate the anticipated performance of the Fund. Although the principals of the Investment Manager have extensive prior experience in Latin America, past performance of the Investment Manager should not be construed as an indication of the future results of an investment in the Fund. The Master Fund's investment program should be evaluated on the basis that there can be no assurance that the Investment Manager's assessment of the short-term or long-term prospects of its investment strategy will prove accurate, or that the Master Fund will achieve its investment objectives.

Risks Associated With Investments in Securities. Any investment in securities carries market risks. An investment in the Fund is highly speculative and involves a high degree of risk due to the nature of the Master Fund's investments and the strategies to be employed. An investment in the Fund should not in itself be considered a balanced investment program, but rather is intended to provide diversification in a more complete investment portfolio.

Investment Judgment; Market Risk. The profitability of a significant portion of the Master Fund's investment program depends to a great extent upon correctly assessing the future course of the price movements of securities and other investments. There can be no assurance that the Investment Manager will be able to predict accurately these price movements. With respect to the investment strategy utilized by the Master Fund, there is always some, and occasionally a significant, degree of market risk.

Limited Liquidity; Additional Information. An investment in the Fund provides limited liquidity since the Interests are not freely transferable and may only be withdrawn at such times as set forth in this Memorandum. The General Partner may suspend withdrawals, in whole or in part, when such a suspension is warranted by extraordinary circumstances described in "*Summary of Terms – Suspension of Withdrawals and Withdrawal Payments*" above. The General Partner may also delay the payment of withdrawal proceeds as more fully described elsewhere in this Memorandum. Investments that remain in the Fund are subject to all risks related to an investment in the Fund as described in this Memorandum.

Also, certain Limited Partners (including, without limitation, the Affiliated Investors), may invest on terms that provide access to information that is not generally available to other Limited Partners and,

as a result, may be able to act on such additional information (e.g., withdraw their Interests) that other Limited Partners do not receive. An investment in the Fund is suitable only for sophisticated investors who have no need for current liquidity.

Effect of Substantial Withdrawals. Substantial withdrawals from the Fund could require the Master Fund to liquidate its positions more rapidly than otherwise desired in order to raise the cash necessary to fund the withdrawals at the Fund level. Illiquidity in certain securities could make it difficult for the Master Fund to liquidate positions on favorable terms, which could result in losses or a decrease in the net asset value of the Master Fund, and thus, the Fund. The Master Fund is permitted to borrow cash necessary to make payments in connection with withdrawals from the Fund when the Investment Manager determines that it would not be advisable to liquidate portfolio assets for that purpose. The Master Fund is also authorized to pledge portfolio assets as collateral security for the repayment of such loans. In these circumstances, the continuing Limited Partners will bear the risk of any subsequent decline in the value of the Fund's assets.

Effect of Withdrawal by Limited Partner on its Investment. Where a withdrawal request is accepted, an Interest will be treated as having been withdrawn effective as of the relevant Withdrawal Date, irrespective of whether or not such withdrawing Limited Partner has been removed from the Fund's books and records or the withdrawal proceeds have been determined or remitted. Accordingly, on and from the relevant Withdrawal Date, Limited Partners in their capacity as such will not be entitled to or be capable of exercising any rights arising under the Partnership Agreement or Subscription Documents with respect to the Interest being withdrawn, save the right to receive the withdrawal proceeds. Such withdrawing Limited Partners will be creditors of the Fund with respect to the withdrawal proceeds. In an insolvent liquidation, withdrawing Limited Partners will rank behind ordinary creditors but ahead of existing Limited Partners.

Master-Feeder Structure. The Fund will invest all of its investable assets in the Master Fund. The "master-feeder" fund structure presents certain risks to the Limited Partners. Smaller feeder funds may be materially affected by the actions of larger feeder funds.

While the Investment Manager, as investment manager of the Master Fund, generally will not consider tax issues applicable to any particular investors, it generally will take into account the tax positions of the Fund and the Offshore Fund that invest in the Master Fund. However, the use of a "master-feeder" structure may create a conflict of interest in that different tax considerations for the Fund and the Offshore Fund may cause or result in the Master Fund structuring or disposing of an investment in a manner or at a time that is more advantageous (or disadvantageous) for tax purposes to one Feeder Fund or its investors.

Management Fee and Performance Allocations. As described above, the Master Fund Partnership Agreement provides for the payment of the Management Fee to the Investment Manager and the Performance Allocation to the Investment Manager, in its capacity as the Special Limited Partner. The Performance Allocation may create an incentive for the Investment Manager, as the Special Limited Partner, to make investments that are riskier or more speculative than would be the case in the absence of such Performance Allocation.

Side Letters. The Investment Manager or the Fund may from time to time enter into letter agreements or other similar agreements (collectively, "***Side Letters***") with one or more Limited Partners which provide such Limited Partner(s) with additional and/or different rights (including, without limitation, with respect to access to information, the Management Fee, the Performance Allocation,

minimum investment amounts, voting rights and withdrawal rights) than such Limited Partner(s) have pursuant to this Memorandum. As a result of such Side Letters, certain Limited Partners may receive additional benefits (including, but not limited to, reduced fee obligations, the ability to withdraw Interests on shorter notice and/or expanded informational rights) which other Limited Partners will not receive. For example, a Side Letter may permit a Limited Partner to withdraw its Interest on less notice and/or at different times than other Limited Partners. As a result, should the Fund experience a decline in performance over a period of time, a Limited Partner who is party to a Side Letter that permits less notice and/or different withdrawal times may be able to withdraw its Interest prior to other Limited Partners. In general, the Fund and/or the Investment Manager will not be required to notify any or all of the other Limited Partners of any such Side Letters or any of the rights and/or terms or provisions thereof, nor will the Fund and/or the Investment Manager be required to offer such additional and/or different rights and/or terms to any or all of the other Limited Partners. The Fund and/or the Investment Manager may cause the Fund to enter into such Side Letters with any party as the Fund and/or the Investment Manager may determine in its sole discretion at any time. The other Limited Partners will have no recourse against the Fund and/or the Investment Manager in the event certain Limited Partners receive additional and/or different rights and/or terms as a result of such Side Letters. A Limited Partner will be required to enter into such undertakings with respect to maintaining the confidentiality of any such additional information as the Fund and/or the Investment Manager may in their sole discretion determine.

Valuation Considerations. Valuation of the Master Fund's securities and other investments may involve uncertainties and judgmental determinations, and if such valuations should prove to be incorrect, the net asset value of the Master Fund and the Fund could be adversely affected. Independent pricing information may not at times be available or otherwise utilized regarding certain of the Master Fund's securities and other investments. Valuation determinations will be made in good faith in accordance with the policies of the Investment Manager in effect from time to time, a copy of which will be made available upon request.

The Master Fund may have some of its assets in investments, which by their very nature may be extremely difficult to accurately value. To the extent that the value assigned by the Administrator to any such investment differs from the actual value, the net asset value of the Master Fund and the Fund may be understated or overstated, as the case may be. In light of the foregoing, there is a risk that a Limited Partner that withdraws all or part of its Interests while the Master Fund holds such investments will be paid an amount less than it would otherwise be paid if the actual value of such investments is higher than the value designated by the Administrator. Similarly, there is a risk that such Limited Partner might, in effect, be overpaid if the actual value of such investments is lower than the value designated by the Administrator. In addition, there is risk that an investment in the Fund by a new Limited Partner (or an additional investment by an existing Limited Partner) could dilute the value of such investments for the other Limited Partners if the designated value of such investments is higher than the value designated by the Administrator. Further, there is risk that a new Limited Partner (or an existing Limited Partner that makes an additional investment) could pay more than it might otherwise if the actual value of such investments is lower than the value designated by the Administrator. The Administrator does not intend to adjust the net asset value of the Master Fund and the Fund retroactively.

None of the Fund, the Master Fund, the General Partner, the Investment Manager or the Administrator shall have any liability in the event that any price or valuation, used in good faith in connection with the above procedures, proves to be an incorrect or an inaccurate estimate or determination of the price or value of any part of the property of the Master Fund, subject to the standard of care set forth in "*Summary of Terms – Duty of Care; Indemnification*" above.

No Participation by Investors. All decisions with respect to the management of the day-to-day affairs of the Fund are made exclusively by the General Partner and the Investment Manager. Limited Partners have no right or power to take part in the management of the Fund. The Investment Manager makes all of the trading and investment decisions of the Master Fund. In the event of the withdrawal of the Investment Manager, generally the Fund will be liquidated.

Investment Strategies. The Investment Manager will seek to engage in the investment activities that have been discussed in "*Investment Program*" herein. There can be no assurance that the Investment Manager will be successful in applying any such strategy and that losses will be avoided.

Competition. The markets in which the Master Fund invests are competitive and some of the opportunities that the Investment Manager may explore may be pursued by better known investors or investment funds. There can be no assurance that the Investment Manager will be able to identify or successfully pursue such opportunities in this environment. The Investment Manager competes with many firms that may have greater financial resources, more extensive development, better marketing and service capabilities, more favorable financing arrangements, larger research staffs and more securities traders than are available to the Investment Manager.

In-Kind Distributions. A withdrawing Limited Partner may, in the discretion of the General Partner and/or Investment Manager, receive securities owned by the Fund (through the Master Fund) in lieu of, or in combination with, cash. The value of securities distributed may increase or decrease before the securities can be sold (either by the Limited Partner or by the Fund if the General Partner establishes a liquidating account on behalf of the Limited Partner to sell such assets), and the Limited Partner will incur transaction costs in connection with the sale of such securities. Additionally, securities distributed with respect to a withdrawal by a Limited Partner may not be readily marketable. The risk of loss and delay in liquidating these securities will be borne by the Limited Partner, with the result that such Limited Partner may receive less cash than it would have received on the date of withdrawal.

No Current Income. Since the Fund does not generally intend to pay distributions, an investment in the Fund is not suitable for investors seeking current income. Moreover, an investor is required to report and pay taxes on his allocable share of income from the Fund, even though no cash is distributed by the Fund.

Cybersecurity. Information and technology systems may be vulnerable to damage or interruption from computer viruses, network failures, computer and telecommunication failures, infiltration by unauthorized persons and security breaches, usage errors by their respective professionals, power outages and catastrophic events such as fires, tornadoes, floods, hurricanes and earthquakes. Although the Investment Manager has implemented various measures to manage risks relating to these types of events, if these systems are compromised, become inoperable for extended periods of time or cease to function properly, the Investment Manager, the Master Fund and/or the Fund may have to make a significant investment to fix or replace them, which expense may be borne in whole or in part by the Fund. The failure of these systems and/or of disaster recovery plans for any reason could cause significant interruptions in the Investment Manager's, the Master Fund's and/or the Fund's operations and result in a failure to maintain the security, confidentiality or privacy of sensitive data, including personal information relating to investors. Such interruptions could harm the Investment Manager's, the Master Fund's and/or the Fund's reputation, subject any such entity and their respective affiliates to legal claims and otherwise affect their business and financial performance. The foregoing risks and consequences are also extant at any issuer in which the Master Fund invests and could manifest as adverse performance of such investment.

Investment Strategy and Investment Risks

Changes in Strategy. The Investment Manager has the power to expand, revise or alter its trading strategies on behalf of the Master Fund without prior approval by, or notice to, the Fund or the Limited Partners. Any such change could result in exposure of the Fund's assets (through the Master Fund) to additional risks, which may be substantial. The Investment Manager may also invest in additional instruments than those specifically identified in the "*Investment Program*" section.

Latin America Investments. The Master Fund invests in securities of companies based in Latin America or issued by Latin American governments, or in the securities of companies which are not incorporated in Latin America, but which derive some of their revenues from business activities conducted in Latin America. Such investment involves certain considerations not usually associated with investing in securities of developed countries or of companies located in developed countries, including political and economic consideration, such as greater risks of expatriation, nationalization and general, political, and economic instability, the small size of the securities markets in such countries and the low volume of trading, resulting in potential lack of liquidity and substantially greater price volatility, fluctuations in the rate of exchange between currencies, and costs associated with currency conversions, certain government policies that may restrict the Master Fund's investment opportunities and problems that may arise in connection with the clearance and settlements of trades. In addition, accounting and financial reporting standards that prevail in such countries are not equivalent to standards in more developed countries, consequently, less information is available to investors in companies located in more developed countries. There is also less regulation, generally, of the securities markets in Latin American countries than there is in more developed countries.

Risks Related to Investing in Argentina. Argentina has experienced high interest rates, economic volatility, inflation, currency devaluations and high unemployment rates. The economy is heavily dependent on exports and commodities. Argentina's default on its debt in 2001, and its past nationalization of private pensions and national oil company YPF, continues to impact the confidence of investors in Argentina, which might adversely impact returns in the Master Fund, and thus, the Fund.

Argentina's Economy. Argentina's economy could grow at a lower rate than in past years, or could contract. Factors that could negatively affect Argentina's rate of economic growth, its public finances and Argentina's ability to service its debt include: the competitiveness of Argentine exports, which are influenced by the peso's value relative to the value of the currencies of Argentina's trading partners and trade competitors; the level of inflation in Argentina; international commodities prices, foreign currency exchange rates and the levels of consumer consumption and foreign and domestic investment; negative economic developments in Argentina's major trading partners, or "contagion" effects more generally; and Argentina's ability to meet its energy requirements.

Uncertainty of Economic Reforms. A runoff election on November 22, 2015 resulted in Mr. Mauricio Macri being elected President of Argentina. The Macri administration assumed office on December 10, 2015. Since assuming office on December 10, 2015, the Macri administration has announced several significant economic and policy reforms, including methodological reforms with respect to the calculation of certain macroeconomic statistics, the loosening of foreign exchange controls, reduction of tariffs, other easing of international trade restrictions, infrastructure reforms and reopened negotiation with holders of debt in default since 2001. The impact that these measures and any future measures taken by the new administration will have on the Argentine economy as a whole and the financial sector in particular cannot be predicted. The Investment Manager believes that the effect of the planned liberalization of the economy and renewed access to capital markets will be positive for the

Master Fund's intended investments by stimulating economic activity, but it is not possible to predict such effect with certainty and such liberalization could also be disruptive to the economy and fail to benefit or harm companies in Argentina. The Investment Manager cannot predict how the Macri administration will address certain other political and economic issues that were central during the 2015 presidential election campaign, such as the financing of public expenditures, public service subsidies and tax reforms, the resolution of holdout debt or the impact that any measures related to these issues that are implemented by the Macri administration will have on the Argentine economy as a whole.

Currency Controls. In the past, Argentina imposed exchange controls and transfer restrictions substantially limiting the ability of companies to retain foreign currency or make payments abroad. Although the Macri government lifted exchange controls and liberalized capital controls, there can be no assurances regarding future modifications to exchange and capital controls. Exchange and capital controls could adversely affect the financial condition or results of operations of issuers in whose securities the Master Fund intends to invest, as well as their ability to meet foreign currency obligations and to execute financing plans.

Challenges to Argentina's Debt Payments. Argentina's payments in connection with a debt offering may be attached, enjoined or otherwise challenged. In recent years, hold-out creditors have used litigation against sovereign debtors, most prominently Peru and Nicaragua, to attach or interrupt payments made by these sovereign debtors to, among others, bondholders who have agreed to a debt restructuring and accepted new securities in an exchange offer. Argentina has been subjected to suits to collect on amounts due on defaulted bonds, including actions in the United States, the United Kingdom, Italy and Germany. Some of these actions have resulted in judgments against Argentina. There can be no assurance that a creditor will not be able to interfere, through an attachment of assets, injunction, temporary restraining order or otherwise, with payments made in connection with a debt offering.

Pro Rata Payment Litigation. Argentina's defaults with respect to the payment of its foreign debt could prevent the government and the private sector from accessing the international capital markets, which could adversely affect the financial condition of sovereign and corporate issuers in which the Master Fund invests. In September 2014, the Argentine Congress passed a law to restructure foreign-law bonds held by exchange bondholders to allow the payment in Argentina and to appoint a new paying agent. On September 29, 2014, the U.S. District Court for the Southern District of New York held Argentina in contempt of court as a result of this law. The U.S. District Court authorized limited exceptions to the injunction allowing certain custodians of Argentine law-governed bonds to process payments in August 2014, September 2014 and December 2014.

On May 11, 2015, the plaintiffs that obtained pari passu injunctions asked the U.S. district court to amend their complaints to include claims alleging that Argentina's issuance and servicing of its 2024 dollar-denominated bonds, and its external indebtedness in general, would violate the pari passu clause. On June 5, 2015, the Second Circuit granted partial summary judgment to a group of 526 "me-too" plaintiffs in 36 separate lawsuits, finding that, consistent with the previous ruling of such court, Argentina violated a pari passu clause in bonds issued to the "me-too" bondholders. The decision obligates Argentina to pay the plaintiffs $5.4 billion before it can make payments on restructured debt.

In 2016, the Argentine government working under a court appointed mediator, entered into settlement agreements with a large portion of hold-out debt holders contingent on Argentina repealing laws that prevented the country from complying with rulings by U.S. courts. In this context Judge Thomas Griesa ruled he would lift the injunctions preventing Argentina from serving post-2005 exchange debt if these laws are repealed. Argentina's lower chamber approved the repeal of these laws

and Argentina's senate voted to approve the same in March 2016. In April 2016, the Second Circuit Court of Appeals in the United States upheld Judge Griesa's ruling, finding that he did not abuse his discretion in lifting the pari passu injunctions.

The repercussions of restructuring Argentina's bond debts are ongoing. The 2016 U.S. court rulings only settled claims of certain bondholders. Argentina reached a $475 million settlement with other bondholders in November 2016. Financial indices have only just started moving Argentina back to "emerging market" status, where it had been before 2009.

Argentina's default with respect to the payment of its foreign debt, its delay in completing the debt restructuring process with creditors that did not participate in the related exchange offers, the complaints filed against Argentina discussed above, the U.S. Supreme Court's decision not to hear Argentina's appeal, the declaration of contempt, and the long-term difficulty of reestablishing itself in the global marketplace could prevent Argentina's government from obtaining international private financing or receiving direct foreign investment, as well as private sector companies in Argentina from accessing the international capital markets. Without access to international private financing, Argentina may not be able to finance its obligations, and financing from multilateral financial institutions may be limited or not available. Without access to direct foreign investment, the government may not have sufficient financial resources to foster economic growth and the performance of the Master Fund's investments in Argentina could be materially and adversely affected.

Derivative Instruments. The Investment Manager may use various derivative instruments, including futures, options, forward contracts, swaps and other derivatives which may be volatile and speculative. Certain positions may be subject to wide and sudden fluctuations in market value, with a resulting fluctuation in the amount of profits and losses. Use of derivative instruments presents various risks, including the following:

- *Tracking* – When used for hedging purposes, an imperfect or variable degree of correlation between price movements of the derivative instrument and the underlying investment sought to be hedged may prevent the Investment Manager from achieving the intended hedging effect or expose the portfolio to the risk of loss.

- *Liquidity* – Derivative instruments, especially when traded in large amounts, may not be liquid in all circumstances, so that in volatile markets the Investment Manager may not be able to close out a position without incurring a loss. In addition, daily limits on price fluctuations and speculative positions limits on exchanges on which the Investment Manager may conduct its transactions in certain derivative instruments may prevent prompt liquidation of positions, subjecting the portfolio to the potential of greater losses.

- *Leverage* – Trading in derivative instruments can result in large amounts of leverage. Thus, the leverage offered by trading in derivative instruments may magnify the gains and losses experienced by the Master Fund and could cause the Master Fund's net asset value to be subject to wider fluctuations than would be the case if the Investment Manager did not use the leverage feature in derivative instruments.

- *Over-the-Counter-Trading* – Derivative instruments that may be purchased or sold for the portfolio may include instruments not traded on an exchange. Over-the-counter options, unlike exchanged-traded options, are two-party contracts with price and other terms negotiated by the buyer and seller. The risk of non-performance by the obligor on such an instrument may be

greater and the ease with which the Investment Manager can dispose of or enter into closing transactions with respect to such an instrument may be less than in the case of an exchange-traded instrument. In addition, significant disparities may exist between "bid" and "asked" prices for derivative instruments that are not traded on an exchange. Derivative instruments not traded on exchanges are also not subject to the same type of government regulation as exchange traded instruments, and many of the protections afforded to participants in a regulated environment may not be available in connection with such transactions.

Short Sales. Short sales by the Master Fund that are not made "against the box" create opportunities to increase the Master Fund's return but, at the same time, involve special risk considerations and may be considered a speculative technique. Since the Master Fund, in effect, profits from a decline in the price of the securities sold short without the need to invest the full purchase price of the securities on the date of the short sale, the value of the Master Fund will tend to increase more when the securities it has sold short decrease in value, and to decrease more when the securities it has sold short increase in value, than otherwise would be the case if it had not engaged in such short sales. Short sales theoretically involve unlimited loss potential, as the market price of securities sold short may increase continuously, although the Master Fund may mitigate such losses by replacing the securities sold short before the market price has increased significantly. Under adverse market conditions the Master Fund might have difficulty purchasing securities to meet its short sale delivery obligations, and might have to sell portfolio securities to raise the capital necessary to meet its short sale obligations at a time when fundamental investment considerations would not favor such sales. Short sales may be used with the intent of hedging against the risk of declines in the market value of the Master Fund's long portfolio, but there can be no assurance that such hedging operations will be successful.

Risks of Execution of Investment Strategies. The Master Fund will invest in a number of securities and obligations that entail substantial inherent risks. Although the Master Fund will attempt to manage those risks through careful research, ongoing monitoring of investments and appropriate hedging techniques, there can be no assurance that the securities and other instruments purchased by the Master Fund will in fact increase in value or that the Master Fund will not incur significant losses.

Market Risks and Liquidity. The profitability of a significant portion of the Master Fund's investment program depends to a great extent upon correctly assessing the future course of the price movements of securities and other investments. There can be no assurance that the Master Fund will be able to predict accurately these price movements. Although the Master Fund may attempt to mitigate market risk through the use of long and short positions or other methods, there is always some, and occasionally a significant, degree of market risk.

Furthermore, the Master Fund may be adversely affected by a decrease in market liquidity for the instruments in which they invest, which may impair the Master Fund's ability to adjust their position. The size of the Master Fund's positions may magnify the effect of a decrease in market liquidity for such instruments. Changes in overall market leverage, deleveraging as a consequence of a decision by a broker to reduce the level of leverage available, or the liquidation by other market participants of the same or similar positions, may also adversely affect the Master Fund's portfolio. Some of the underlying investments of the Master Fund may not be actively traded and there may be uncertainties involved in the valuation of such investments. Potential investors should be warned that under such circumstances, the net asset value of the Master Fund may be adversely affected.

Hedging. Although the Master Fund will attempt to hedge its exposure to specific arbitrage positions, it will not always be possible fully to hedge risk from such positions or any other position. In

addition, the Master Fund may take positions based on the expected future direction of the markets without fully hedging the market risks.

Currency Risks. A portion of the Master Fund's assets may be invested in securities denominated in various currencies and in other financial instruments, the price of which is determined with reference to such currencies. The account of the Master Fund will, however, be valued in U.S. Dollars. To the extent unhedged, the value of the net assets of the Master Fund will fluctuate with U.S. Dollars exchange rates as well as with price changes of their investments in the various local markets and currencies. Forward currency contracts and options may be utilized by the Master Fund to hedge against currency fluctuations, but there can be no assurance that such hedging transactions will be effective.

Counterparty and Settlement Risk. Due to the nature of some of the investments which the Master Fund may make, the Master Fund may rely on the ability of the counterparty to a transaction to perform its obligations. In the event that any such party fails to complete its obligations for any reason, the Master Fund may suffer losses. The Master Fund will therefore be exposed to a credit risk on the counterparties with which it trades. The Master Fund will also bear the risk of settlement default by clearing houses and exchanges. Any default by a counterparty or on settlement could have a material adverse effect on the Master Fund.

Borrowing. The Master Fund is permitted to finance its operations with secured and unsecured borrowing up to 100% of its net assets, to the extent allowable under applicable credit regulations. Like other forms of leverage, the use of borrowing can enhance the risk of capital loss in the event of adverse changes in the level of market prices of the assets being financed with the borrowings.

Concentration of Investments. Although the Investment Manager will follow a general policy of seeking to spread the Master Fund's capital among a number of investments, the Investment Manager may depart from such policy from time to time and may hold a few, relatively large securities positions in relation to the Master Fund's capital. The result of such concentration of investments is that a loss in any such position could materially reduce the Master Fund's capital.

Difficult Market for Investment Opportunities. The activity of identifying, completing and realizing on attractive investments involves a high degree of uncertainty. There can be no assurance that the Master Fund will be able to locate and complete investments which satisfy the Master Fund's rate of return objective or realize upon their values or that the Master Fund will be able to invest fully its subscribed capital in a manner consistent with its investment strategy.

Certain Regulatory Risks

Absence of Regulatory Oversight. While the Fund may be considered similar to an investment company, it is not required and does not intend to register as such under the Investment Company Act of 1940, as amended (the "***Investment Company Act***"), and, accordingly, the provisions of the Investment Company Act (which may provide certain regulatory safeguards to investors) are not applicable to investors in the Fund. Neither the Fund nor the Master Fund will maintain custody of its securities or place its securities in the custody of a bank or a member of a national securities exchange in the manner required of registered investment companies under rules promulgated by the Securities and Exchange Commission (the "***SEC***"). A registered investment company which places its securities in the custody of a member of a national securities exchange is required to have a written custodian agreement, which provides that securities held in custody will be at all times individually segregated from the securities of any other person and marked to clearly identify such securities as the property of such investment

company, and which contains other provisions complying with SEC regulations. The Master Fund generally will maintain such accounts at brokerage firms that do not separately segregate such assets as would be required in the case of registered investment companies. Under the provisions of the Securities Investor Protection Act of 1970, as amended, the bankruptcy of any such brokerage firm might have a greater adverse effect on the Master Fund and the Fund than would be the case if the accounts were maintained to meet the requirements applicable to registered investment companies.

Forward-Looking Statements. Certain statements contained in this Memorandum, including without limitation, statements containing the words "believes," "anticipates," "intends," "expects," and words of similar import constitute "forward-looking statements." Such forward-looking statements involve known and unknown risks, uncertainties and other factors that may cause the actual results, performance or achievements of the Fund to be materially different from any future results, performance or achievements expressed or implied by such forward-looking statements. Certain of these factors are discussed in more detail elsewhere in this Memorandum, including without limitation under "*Summary of Terms*," "*Certain Risk Factors*," and "*Investment Program*." Given these uncertainties, prospective investors are cautioned not to place undue reliance on such forward-looking statements. The Investment Manager and the Fund disclaim any obligation to update any such factors or to announce the result of any revisions to any of the forward-looking statements contained herein to reflect future events or developments.

Impact of U.S. Presidential Election. On January 20, 2017, Donald Trump became President of the United States of America. President Trump and other members of the Republican Party have proposed to reverse some of the recent regulation of the financial industry and to change tax policy. If some of these proposals were enacted, banks could dramatically increase their lending practices and accept additional types of collateral, borrowers could reduce their demand for debt financing, certain investment advisers could de-register with SEC and portfolio companies that are net importers or hold significant assets outside of the United States could be subject to increased tax liability. The effect of any such regulatory or tax changes on the Master Fund and the markets in which it trades and invests is uncertain.

Evolving Regulatory Risks of Private Investment Funds. The regulatory environment for private investment funds is evolving, and changes in the regulation of private investment funds and their advisers may adversely affect the value of investments held by the Master Fund.

The Dodd-Frank Wall Street Reform and Consumer Protection Act ("***Dodd-Frank***"), which was enacted in July 2010, regulates markets, market participants and financial instruments that were historically unregulated and has substantially altered the regulation of many other markets, market participants and financial instruments. Certain provisions of Dodd-Frank subject registered investment advisers to requirements to keep records and to report information to the SEC, which could in turn be supplied to the Board of Governors of the Federal Reserve, a new Financial Services Oversight Council or other U.S. governmental agencies or Congress. Under Dodd-Frank, the information includes, among other things, the amount of assets under management, use of leverage (including off-balance sheet leverage), counterparty credit risk exposures, trading and investment positions, and trading practices. All such records are subject to examination by the SEC at any time. It is anticipated that there may be significant changes to the financial regulatory environment as a result of the outcome of the recent U.S. elections. There is currently pending legislation in U.S. Congress which if enacted would result in the repeal of portions of Dodd-Frank which in turn would have a significant impact on the regulatory environment for private investment funds. In addition, the impact of the legislation on current and future rulemaking by various regulators under Dodd-Frank is difficult to predict. It is possible that rules that

have been proposed by various regulators, which had been anticipated to take effect previously, may no longer be implemented in their proposed form or at all. Further, there may also be substantial changes in the enforcement and interpretation of existing statutes and rules by governmental regulatory authorities or self-regulatory organizations that supervise the financial markets. The effect of future regulatory change on the Fund and the Master Fund and their operations is uncertain. Prospective investors should seek, and must rely on, the advice of their own advisers with respect to the possible impact on its investment of any future proposed legislation or administrative or judicial action.

Tax Related Risks

Uncertainty and Complexity of Tax Treatment. The tax aspects of an investment in a partnership are complicated and complex and, in many cases, uncertain. Statutory provisions and administrative regulations have been interpreted inconsistently by the courts. Additionally, some statutory provisions remain to be interpreted by administrative regulations. Investors will thus be subject to the risk caused by the uncertainty of the tax consequences with respect to an investment in the Fund. Each prospective investor should have the tax aspects of an investment in the Fund reviewed by professional advisors familiar with such investor's personal tax situation and with the tax laws and regulations applicable to the investor and private investment vehicles. Prospective investors are strongly urged to review the discussion below under "*Tax Considerations*" and "*ERISA and Other Regulatory Considerations*" for a more complete discussion of certain of the tax risks inherent in the acquisition of Interests and to consult their own independent tax advisors.

Risk of Adverse Determination. There can be no assurance that the conclusions set forth in this Memorandum will not be challenged successfully by the U.S. Internal Revenue Service (the "***Service***") or other applicable taxing authority, or significantly modified by new legislation, changes in the Service's positions or court decisions. The Fund has not applied for, nor does it expect to apply for, any advance rulings from the Service with respect to any of the federal income tax consequences described in this Memorandum. No representation or warranty of any kind is made by the General Partner with respect to the tax consequences relating to an investment in the Fund. The Fund may take positions with respect to certain tax issues which depend on legal conclusions not yet resolved by the courts. Should any such positions be successfully challenged by the Service or other applicable taxing authority, there could be a materially adverse effect on the Fund, and a Limited Partner might be found to have a different tax liability for that year than that reported on its income tax returns.

Risk of Tax Audit. An audit of the Fund by the Service or another taxing authority could result in adjustments to the tax consequences initially reported by the Fund and may result in an audit of the returns of some or all of the Limited Partners, which examination could affect items not related to a Limited Partner's investment in the Fund. If audit adjustments result in an increase in a Limited Partner's income tax liability for any year, such Limited Partner may also be liable for interest and penalties with respect to the amount of underpayment. The legal and accounting costs incurred in connection with any audit of the Fund's tax returns will be borne by the Fund. The cost of any audit of a Limited Partner's tax return will be borne solely by that Limited Partner.

Entity-Level Audits. Pursuant to the Bipartisan Budget Act of 2015, for taxable years beginning after December 31, 2017, the Service generally will be permitted to determine adjustments to items of income, gain, deduction, loss or credit of the Fund, and assess and collect taxes attributable thereto (including any applicable penalties and interest), at the Fund level. If this new regime applies to the Fund (which depends, among other things, on whether the Fund has more than 100 partners or has any partner that is itself classified as a partnership for U.S. federal income tax purposes), then any person

who is a partner of the Fund in the relevant year of the adjustment may indirectly bear the economic burden of any such taxes assessed or collected (initially determined at the highest rate of tax applicable to an individual or corporation in effect for the reviewed year), regardless of whether such person was a Limited Partner during any reviewed year. It is expected that guidance will be issued that permits the Fund to reduce the underpayment of taxes owed by the Fund, including to the extent that the Fund demonstrates such taxes are allocable to a Limited Partner that would not owe any tax by reason of its status as a "tax-exempt entity" or the character of income is subject to a lower rate of tax. The Fund may under certain circumstances have the ability to avoid such entity-level tax assessment or collection by electing to issue a statement to each partner of any reviewed year with its share of such adjustment, resulting in such partner being required to take into account any such adjustment for the taxable year which includes the date such statement was furnished. In such case, the partners of the reviewed year would also incur a two-percentage point increase on the interest rate that would otherwise have been imposed on any underpayment of taxes. There can be no assurances, however, that the Fund will avoid, or be able to avoid, any entity-level determination, assessment or collection. Limited Partners should note that there is substantial uncertainty regarding the implementation of these rules and the impact on any current or future allocations made or cash available for distributions or withdrawals by the Fund. The Fund may also be exposed to the risk that these rules apply to any lower-tier entity in which the Fund directly or indirectly invests and that is treated as a partnership for U.S. federal income tax purposes. If this new legislation applies to the Fund, the Fund will designate a tax representative, which is expected to be the General Partner, the Investment Manager, or an affiliate thereof, who shall have the sole authority to act on behalf of the Fund with respect to dealings with the Service under these new procedures. Prospective Limited Partners should consult their own tax advisors regarding this new legislation.

Tax Considerations Taken into Account. The General Partner may take tax considerations into account in determining when the Fund's investments should be sold or otherwise disposed of, and may assume certain market risk and incur certain expenses in this regard to achieve favorable tax treatment of a transaction.

Foreign Taxation. With respect to certain countries, there is a possibility of expropriation, confiscatory taxation, and imposition of withholding or other taxes on dividends, interest, capital gains or other income, limitations on the removal of funds or other assets of the Fund, political or social instability or diplomatic developments that could affect investments in those countries. An issuer of securities may be domiciled in a country other than the country in whose currency the instrument is denominated. The values and relative yields of investments in the securities markets of different countries, and their associated risks, are expected to change independently of each other.

Tax Liabilities Without Distributions. If the Fund has taxable income in a fiscal year, each Limited Partner will be taxed on that income in accordance with its allocable share of the Fund's profits, whether or not such profits have been distributed. Because the General Partner anticipates that there will be no cash distributions to the Limited Partners, an investor may incur tax liability with respect to activities of the Fund without receiving sufficient distributions from the Fund to defray such tax liabilities. In order to satisfy its tax liability in such a case, a Limited Partner would need sufficient funds from sources other than the Fund. Furthermore, the Fund may make investments with respect to which the Fund recognizes income for U.S. federal income tax purposes prior to receiving the cash or realizing the income as an economic matter. In addition, the Fund may recognize income for U.S. federal income tax purposes that does not reflect income as an economic matter. Such recognition of income prior to receipt of an economic benefit, if any, may result in increased tax liability for the Partners.

Delayed Schedules K-1. The Fund will provide Schedules K-1 as soon as practicable after receipt of all of the necessary information. However, the Fund may be unable to provide final Schedules K-1 to Limited Partners for any given tax year until significantly after April 15 of the following year. The General Partner will endeavor to provide Limited Partners with estimates of the taxable income or loss allocated to their investment in the Fund on or before such date, but final Schedules K-1 may not be available until completion of the Fund's annual audit. Limited Partners should be prepared to obtain extensions of the filing date for their income tax returns at the federal, state and local levels.

Unrelated Business Taxable Income. The Fund may make investments or engage in activities that will give rise to unrelated business taxable income ("***UBTI***") under Sections 512 and 514 of the U.S. Internal Revenue Code of 1986, as amended (the "***Code***"). Thus, an investment in the Fund may be less desirable for certain tax-exempt investors. For example, the Fund may incur leverage giving rise to UBTI or may participate in investments that give rise to UBTI through entities that are treated as partnerships for U.S. federal income tax purposes. Because of the "flow-through" principles applicable to partnerships, if UBTI is earned by the Fund, a tax-exempt investor in the Fund will realize UBTI. Because of the General Partner's objective of maximizing the pre-tax returns of all the Limited Partners, the General Partner may be required to make certain decisions to maximize pre-tax returns that result in tax-exempt investors recognizing more UBTI than might otherwise be the case. In some cases, the General Partner may forgo actions with regard to the acquisition, financing, management and disposition of assets that would reduce UBTI because such actions would reduce the overall pre-tax returns to all the Limited Partners.

Tax Changes. Investors will be subject to the risk that changes to the tax law may adversely affect the federal income tax consequences of their investment in the Fund. Changes in existing tax laws or regulations and their interpretation may be enacted after the date of this Memorandum, possibly with retroactive effect, and could alter the income tax consequences of an investment in the Fund. Certain provisions of the Code may be further amended or interpreted in a manner adverse to the Fund, in which event any benefits derived from an investment in the Fund may be adversely affected. In addition, significant legislative and budgetary proposals affecting tax laws have been made by the legislative and executive branches of the U.S. federal government. The likelihood of enactment of any such proposals, or any similar proposals, into law is uncertain. The enactment of any such proposals, including subsequent proposals, into law could have material adverse effects on the Fund and/or the Limited Partners. Enactment of such legislation, or similar legislation, could require significant restructuring of the Fund in order to mitigate such effects.

The foregoing list of risk factors does not purport to be a complete enumeration or explanation of the risks involved in an investment in the Fund. Prospective investors should read this entire Memorandum and consult with their own advisers before deciding to invest in the Fund. In addition, as the investment program of the Fund develops and changes over time, an investment in the Fund may be subject to additional and different risk factors. No assurance can be made that profits will be achieved or that substantial losses will not be incurred.

In view of the foregoing considerations, an investment in Interests is suitable only for investors who are capable of bearing the relevant investment risks.

Potential Conflicts of Interest

Given the nature and size of Highland Capital Management, L.P.'s ("***Highland Capital***") operations, various potential conflicts of interest arise in connection with its advisory services and the

advisory services provided by its affiliates. Information about Highland Capital and its potential conflicts of interest is provided in Highland Capital's Form ADV Part 2 Brochure that can be found by going to https://adviserinfo.sec.gov/IAPD/Default.aspx, searching by firm name and selecting the Part 2 Brochure to be viewed. The Fund is subject to these conflicts of interest, as well as the other items discussed below.

None of the Investment Manager, its affiliates and their respective officers, directors, shareholders, members, partners, personnel and employees (collectively, the "***Highland Group***") is precluded from engaging in or owning an interest in other business ventures or investment activities of any kind, whether or not such ventures are competitive with the Fund or the Master Fund. The Investment Manager is permitted to manage other client accounts, and does manage other client accounts, some of which may have objectives similar or identical to those of the Master Fund, including other collective investment vehicles that may be managed by the Highland Group and in which the Investment Manager or any of its affiliates may have an equity interest.

The Fund will be subject to a number of actual and potential conflicts of interest involving the Highland Group including, among other things, the fact that: (i) the Highland Group conducts substantial investment activities for accounts, funds, collateralized debt obligations that invest in leveraged loans (collectively, "***CDOs***") and other vehicles managed by members of the Highland Group ("***Highland Accounts***") in which the Fund has no interest; (ii) the Highland Group advises Highland Accounts, which utilize the same, similar or different methodologies as the Fund and may have financial incentives (including, without limitation, as it relates to the composition of investors in such funds and accounts or to the Highland Group's compensation arrangements) to favor certain Highland Accounts over the Fund and the Master Fund; (iii) the Highland Group may use the strategy described herein in certain Highland Accounts; (iv) the Investment Manager may give advice and recommend securities to, or buy or sell securities for, the Master Fund, which advice or securities may differ from advice given to, or securities recommended or bought or sold for, Highland Accounts; (v) the Investment Manager has the discretion, to the extent permitted under applicable law, to use its affiliates as service providers to the Fund and the Master Fund and the Master Fund's portfolio investments; (vi) certain investors affiliated with the Highland Group may choose to personally invest only in certain funds advised by the Highland Group and the amounts invested by them in such funds is expected to vary significantly; (vii) the Highland Group and Highland Accounts may actively engage in transactions in the same securities sought by the Master Fund and, therefore, may compete with the Master Fund for investment opportunities or may hold positions opposite to positions maintained on behalf of the Master Fund; and (viii) the Investment Manager will devote to the Master Fund and the Fund only as much time as the Investment Manager deems necessary and appropriate to manage the Master Fund's and the Fund's business.

The Investment Manager undertakes to resolve conflicts in a fair and equitable basis, which in some instances may mean a resolution that would not maximize the benefit to the Fund's investors.

Allocation of Trading Opportunities

It is the policy of the Investment Manager to allocate investment opportunities fairly and equitably over time. This means that such opportunities will be allocated among those accounts for which participation in the respective opportunity is considered appropriate, taking into account, among other considerations: (i) fiduciary duties owed to the accounts; (ii) the primary mandate of the accounts; (iii) the capital available to the accounts; (iv) any restrictions on the accounts and the investment opportunity; (v) the sourcing of the investment, size of the investment and amount of follow-on available related to the investment; (vi) whether the risk-return profile of the proposed investment is consistent with the

account's objectives and program, whether such objectives are considered in light of the specific investment under consideration or in the context of the portfolio's overall holdings; (vii) the potential for the proposed investment to create an imbalance in the account's portfolio (taking into account expected inflows and outflows of capital); (viii) liquidity requirements of the account; (ix) potentially adverse tax consequences; (x) regulatory and other restrictions that would or could limit an account's ability to participate in a proposed investment; and (xi) the need to re-size risk in the account's portfolio.

The Investment Manager has the authority to allocate trades to multiple Highland Accounts on an average price basis or on another basis it deems fair and equitable. Similarly, if an order on behalf of any accounts cannot be fully allocated under prevailing market conditions, the Investment Manager may allocate the trades among different accounts on a basis it considers fair and equitable over time. One or more of the foregoing considerations may (and are often expected to) result in allocations among the Master Fund and one or more Highland Accounts on other than a *pari passu* basis. The Investment Manager will allocate investment opportunities across its accounts for which the opportunities are appropriate, consistent with (i) its internal conflict of interest and allocation policies and (ii) the requirements of the Investment Advisers Act of 1940, as amended. The Investment Manager will seek to allocate investment opportunities among such entities in a manner that is fair and equitable over time and consistent with its allocation policy, a copy of which will be provided upon request. However, there is no assurance that such investment opportunities will be allocated to the Master Fund fairly or equitably in the short-term or over time and there can be no assurance that the Master Fund will be able to participate in all investment opportunities that are suitable for it

The Investment Manager may open "average price" accounts with brokers. In an "average price" account, purchase and sale orders placed during a trading day on behalf of the Investment Manager, the Master Fund and other accounts managed by the Investment Manager are combined, and securities bought and sold pursuant to such orders are allocated among such accounts on an average price basis.

Cross Transactions and Principal Transactions

As further described below, the Investment Manager may effect client cross-transactions where the Investment Manager causes a transaction to be effected between the Master Fund and another client advised by it or any of its affiliates. The Investment Manager may engage in a client cross-transaction involving the Master Fund any time that the Investment Manager believes such transaction to be fair to the Master Fund and such other client. By subscribing for an Interest, a Limited Partner is deemed to have consented to such client cross-transactions between the Master Fund and another client of the Investment Manager or one of its affiliates.

The Investment Manager may direct the Master Fund to acquire or dispose of securities in cross trades between the Master Fund and other clients of the Investment Manager or its affiliates in accordance with applicable legal and regulatory requirements. In addition, the Master Fund may invest in securities of obligors or issuers in which the Investment Manager and/or its affiliates have a debt, equity or participation interest, and the holding and sale of such investments by the Master Fund may enhance the profitability of the Investment Manager's own investments in such companies. Moreover, the Master Fund may invest in assets originated by the Investment Manager or its affiliates. In each such case, the Investment Manager and such affiliates may have a potentially conflicting division of loyalties and responsibilities regarding the Master Fund and the other parties to such trade. Under certain circumstances, the Investment Manager and its affiliates may determine that it is appropriate to avoid such conflicts by selling a security at a fair value that has been calculated pursuant to the Investment Manager's valuation procedures to another client managed or advised by the Investment Manager or

such affiliates. In addition, the Investment Manager may enter into agency cross-transactions where it or any of its affiliates acts as broker for the Master Fund and for the other party to the transaction, to the extent permitted under applicable law.

The Principal, as well as the employees and officers of the Investment Manager and of organizations affiliated with the Investment Manager, may buy and sell securities for their own account or the account of others, but may not buy securities from or sell securities to the Master Fund (such prohibition does not extend to the purchase or sale of interests in the Fund), unless such purchase or sale is in compliance with the applicable provisions of the Investment Advisers Act of 1940, as amended.

Conflicts Relating to Equity and Debt Ownership by the Master Fund and Affiliates

In certain circumstances, the Master Fund and other client accounts may invest in securities or other instruments of the same issuer (or affiliated group of issuers) having a different seniority in the issuer's capital structure. If the issuer becomes insolvent, restructures or suffers financial distress, there may be a conflict between the interests in the Master Fund and those other accounts insofar as the issuer may be unable (or in the case of a restructuring prior to bankruptcy may be expected to be unable) to satisfy the claims of all classes of its creditors and security holders and the Master Fund and such other accounts may have competing claims for the remaining assets of such issuers. Under these circumstances it may not be feasible for the Investment Manager to reconcile the conflicting interests in the Master Fund and such other accounts in a way that protects the Master Fund's interests. Additionally, the Investment Manager or its nominees may in the future hold board or creditors' committee memberships which may require them to vote or take other actions in such capacities that might be conflicting with respect to certain funds managed by the Investment Manager in that such votes or actions may favor the interests of one account over another account. Furthermore, the Investment Manager's fiduciary responsibilities in these capacities might conflict with the best interests of the investors.

Affiliated Entity Services

Affiliated entities of the Investment Manager may provide services with respect to the Investment Manager, the Master Fund or the Fund. NexBank, SSB ("***NexBank SSB***") is an affiliate of the Investment Manager and may, from time to time, provide banking and/or agency services to the Investment Manager, clients of the Investment Manager or collective investment vehicles for which the Investment Manager provides investment advisory services (including the Fund, the Master Fund and other vehicles in which the Fund (through the Master Fund) may invest) or third parties engaged in transactions involving the Investment Manager. NexBank SSB may also act as an agent in connection with certain securities transactions involving the Investment Manager's client accounts (including the Master Fund and other vehicles in which the Master Fund may invest). Principals of the Investment Manager own a majority of the equity interests in NexBank SSB and employees or affiliates of the Investment Manager own or may own a substantial equity interest in NexBank SSB. Certain Master Fund investment transactions may be executed through NexBank Securities, Inc., an affiliate of the Investment Manager and a registered broker-dealer.

Additionally, the Investment Manager or affiliates of the Investment Manager, including, without limitation, Nexbank SSB, NexBank Securities, Inc., NexBank Capital Advisors and Governance Re, Ltd., may provide financial advisory, management, insurance, title insurance or other services for a fee to portfolio companies in which the Master Fund may have an interest. Highland Latin America Consulting, Ltd., an affiliate of the Investment Manager, has been engaged to provide certain

administrative and consulting services to the Investment Manager, as more fully described below in "*Management –Services Agreement*."

Management Fee

A portion of any Management Fee may be paid to broker-dealers, placement agents or independent third parties, other than the Investment Manager, for services provided in connection with the solicitation of subscriptions from investors. Accordingly, investors should recognize that a placement agent's or distributor's participation in this offering may be influenced by its interest in such current or future fees and compensation. Investors should consider these potential conflicts of interest in making their investment decisions. Each placement agent shall comply with the legal requirements of the jurisdictions within which it offers and sells Interests.

Diverse Membership

The Limited Partners are expected to include entities, persons, or entities organized in various jurisdictions and subject to different tax and regulatory regimes. Such diverse investors may thus have conflicting investment, tax and other interests, relating to, among other things, the nature of investments made by the Master Fund, the structuring or the acquisition of investments and the timing of disposition of investments. As a result, conflicts of interest may arise in connection with decisions made by the Investment Manager including as to the nature and structure of investments that may be more beneficial for one type of Limited Partner than for another type of Limited Partner, including Limited Partners affiliated with the Investment Manager. The results of the Fund's activities may affect individual Limited Partners differently, depending upon their individual financial and tax situations because, for instance, of the timing of an event of realization of gain or loss and its characterization as long-term or short-term gain or loss. In addition, the Master Fund may make investments that may have a negative impact on related investments made by the Limited Partners in separate transactions. In selecting, structuring and managing investments appropriate for the Master Fund, the Investment Manager will consider the investment and tax objectives of the Master Fund and the Feeder Funds as a whole, not the investment, tax, or other objectives of any Limited Partner individually. However, there can be no assurance that a result will not be more advantageous to some Limited Partners than to others or to the Investment Manager and/or its affiliates than to a particular Limited Partner.

Soft Dollars

The Investment Manager's authority to use "soft dollar" credits generated by the Master Fund's securities transactions to pay for expenses that might otherwise have been borne by the Investment Manager or the General Partner may give the Investment Manager an incentive to select brokers or dealers for Master Fund transactions, or to negotiate commission rates or other execution terms, in a manner that takes into account the soft dollar benefits received by the Investment Manager rather than giving exclusive consideration to the interests in the Master Fund. See "*Brokerage and Custody*."

No Separate Counsel

Akin Gump Strauss Hauer & Feld LLP ("***Akin Gump***") serves as counsel to the Fund, the Master Fund, the Investment Manager, the General Partner and certain of their Affiliates (the "***Clients***") in connection with the formation of the Fund and certain other Clients, the offering of Interests as well as certain other matters for which the Clients may engage Akin Gump from time to time. Akin Gump disclaims any obligation to verify the Clients' compliance with their obligations either under applicable

law or the governing documents of the Fund. In acting as counsel to the Clients, Akin Gump has not represented and will not represent any Limited Partners nor does it purport to represent their interests. No independent counsel has been retained to represent the Limited Partners. In assisting in the preparation of this Memorandum, Akin Gump has relied on information provided by the Fund, the Investment Manager and the General Partner and certain of the Fund's other service providers (including, without limitation, the Principal's biographical data, summaries of market conditions, the planned investment strategy of the Master Fund and the performance of the Master Fund, its investments or any predecessor Fund) without verification and does not express a view as to whether such information is accurate or complete.

Maples and Calder, PO Box 309, Ugland House, Grand Cayman, KY1-1104, Cayman Islands, acts as Cayman Islands legal counsel to the Offshore Fund, the Master Fund and the General Partner. In connection with the offering of interests and subsequent advice to the Offshore Fund, the Master Fund and the General Partner, Maples and Calder will not be representing shareholders and/or limited partners. No independent legal counsel has been retained to represent the shareholders and/or limited partners. Maples and Calder's representation of the General Partner is limited to specific matters as to which it has been consulted by the General Partner. There may exist other matters that could have a bearing on the Master Fund as to which Maples and Calder has not been consulted. In addition, Maples and Calder does not undertake to monitor compliance by the General Partner and its affiliates with the investment program, valuation procedures and other guidelines set forth herein, nor does Maples and Calder monitor ongoing compliance with applicable laws. In connection with the preparation of this Memorandum, Maples and Calder's responsibility is limited to matters of Cayman Islands law and it does not accept responsibility in relation to any other matters referred to or disclosed in this Memorandum. In the course of advising the General Partner, there are times when the interests of the shareholders/limited partners may differ from those of the Offshore Fund, Master Fund and/or the General Partner. Maples and Calder does not represent the shareholders and/or limited partners' interests in resolving these issues. In reviewing this Memorandum, Maples and Calder has relied upon information furnished to it by the General Partner and has not investigated or verified the accuracy and completeness of information set forth herein concerning the Offshore Fund, Master Fund and/or the General Partner.

Non-Public Information

From time to time, the Investment Manager may come into possession of non-public information concerning specific companies although internal structures are in place to prevent the receipt of such information. Under applicable securities laws, this may limit the Investment Manager's flexibility to buy or sell portfolio securities issued by such companies. The Master Fund's investment flexibility may be constrained as a consequence of the Investment Manager's inability to use such information for investment purposes.

The foregoing list of risk factors and potential conflicts of interest do not purport to be a complete enumeration or explanation of the risks involved in an investment in the Fund. Prospective investors should read this entire Memorandum and consult with their own legal, tax and financial advisers before deciding to invest in the Fund.

BROKERAGE AND CUSTODY

Brokerage Arrangements

The Investment Manager will be responsible for the placement of the portfolio transactions of the Master Fund and the negotiation of any commissions or spreads paid on such transactions. Portfolio transactions normally will be effected through brokers on securities exchanges or directly with the issuer, or through an underwriter, or market maker or other dealer for the investments. Portfolio transactions through brokers involve a commission to the broker. Portfolio transactions with dealers typically are priced to include a spread between the bid and the asked price to compensate the dealer. Portfolio transactions will be executed by brokers selected solely by the Investment Manager in its absolute discretion. The Investment Manager is not required to weigh any of these factors equally.

Substantially all of the Master Fund's investments in marketable securities, as well as its cash and cash equivalents, are expected to be held at Société Générale and BNP Paribas Prime Brokerage, Inc. or other prime brokers or custodians selected by the Investment Manager. Instruments not constituting marketable securities generally are recorded through book entry by the borrower or by an agent for the borrower or the creditors. Documentary evidence of the acquisition, ownership and disposition of these assets typically will be held by the Administrator.

Société Générale and BNP Paribas Prime Brokerage, Inc. and other prime brokers or their affiliates may provide capital introduction or other placement services to the Fund and the Investment Manager (with or without separate charges for such other services). In determining which broker-dealer generally provides the best available price and most favorable execution, the Investment Manager considers a totality of circumstances, including price quotes, the size of the transaction, the nature of the market for the financial instrument, the timing of the transaction, difficulty of execution, the broker-dealer's expertise in the specific financial instrument or sector in which the Master Fund seeks to trade, the extent to which the broker-dealer makes a market in the financial instrument involved or has access to such markets, the broker-dealer's skill in positioning the financial instruments involved, the broker-dealer's promptness of execution, the broker-dealer's financial stability, reputation for diligence, fairness and integrity, quality of service rendered by the broker-dealer in other transactions for the Investment Manager and its respective affiliates, confidentiality considerations, the quality and usefulness of research services and investment ideas presented by the broker-dealer, the broker-dealer's willingness to correct errors, the broker-dealer's ability to accommodate any special execution or order handling requirements that may surround the particular transaction, and other factors deemed appropriate by the Investment Manager. The Investment Manager need not solicit competitive bids and does not have an obligation to seek the lowest available commission cost or spread.

Accordingly, if the Investment Manager concludes that the commissions charged by a broker or the spreads applied by a dealer are reasonable in relation to the quality of services rendered by such broker or dealer (including, without limitation, the value of the brokerage and research products or services provided by such broker or dealer), the Master Fund may pay commissions to, or be subject to spreads applied by, such broker-dealer in an amount greater than the amount another broker-dealer might charge or apply.

The Investment Manager may also execute trades with brokers and dealers with whom the Fund, the Master Fund or the Investment Manager has other business relationships, including prime brokerage, credit relationships and capital introduction or investments by affiliates of the broker-dealers in the Fund or other entities managed by the Investment Manager. However, the Investment Manager does not

believe that these other relationships will influence the choice of brokers and dealers who execute trades for the Master Fund.

Research-related goods and services provided by brokers and dealers through which portfolio transactions for the Master Fund are executed, settled and cleared may include research reports on particular industries and companies, economic surveys and analyses, recommendations as to specific securities, certain research services, and other goods and services providing lawful and appropriate assistance to the Investment Manager in the performance of investment decision-making responsibilities on behalf of the Master Fund and related accounts (collectively, "***soft dollar items***").

Soft dollar items may be provided directly by brokers and dealers, by third parties at the direction of brokers and dealers or purchased on behalf of the Master Fund with credits or rebates provided by brokers and dealers. Soft dollar items may arise from over-the-counter principal transactions, as well as exchange traded agency transactions. Brokers and dealers sometimes suggest a level of business they would like to receive in return for the various services they provide. Actual business received by any broker or dealer may be less than the suggested allocations, but can (and often does) exceed the suggestions, because total transaction volume is allocated on the basis of all the considerations described above. A broker or dealer will not be excluded from executing transactions for the Master Fund because it has not been identified as providing soft dollar items.

The use of commissions or "soft dollars" if any, generated by the Master Fund through agency and certain riskless principal transactions to pay for research and research-related products or services, if any, will fall within the safe harbor created by Section 28(e) of the Securities Exchange Act of 1934, as amended. Under Section 28(e), research products or services obtained with soft dollars generated by the Master Fund may be used by the Investment Manager to service accounts other than the Master Fund. Soft dollars generated in respect of futures, currency and derivatives transactions and principal transactions (that are not riskless principal transactions) do not generally fall within the safe harbor created by Section 28(e) and will be utilized only with respect to research-related products and services for the benefit of the account generating such soft dollars.

Research and brokerage products and services may be used by the Investment Manager in servicing some or all of the Investment Manager's clients. In addition, some research and brokerage may not be used by the Investment Manager in servicing the clients whose commission dollars provided for the research or brokerage. Clients may not, in any particular instance, be the direct or indirect beneficiaries of the research or brokerage provided. Certain clients, who are the beneficiaries of research or brokerage, may have an investment style which results in the generation of a small amount of brokerage commissions due to a lack of active trading for their accounts. As a result, clients who generate sizeable commissions subsidize research or brokerage provided to clients whose accounts generate minimal brokerage commissions since the commission dollars generated by transactions for such clients are not sufficient to pay for research or brokerage that may be received by such clients from other brokers.

In selecting broker-dealers on the basis of the foregoing factors, the Investment Manager may pay a brokerage commission in excess of that which another broker might have charged for effecting the same transaction. In connection therewith, the Investment Manager will make a good faith determination that the amount of commission is reasonable in relation to the value of the research or brokerage services received, viewed in terms of either the specific transaction or the Investment Manager's overall responsibility to its clients. The Investment Manager will regularly evaluate the placement of brokerage services and the reasonableness of commissions paid. Research received from brokers will be

supplemental to the Investment Manager's own research efforts. While the receipt of research will not reduce the Investment Manager's normal research activities, the Investment Manager's expenses could increase materially if it attempted to generate such additional research or brokerage services through its own staff, and the Management Fee will not be reduced as a consequence of the receipt of such research or brokerage services or products. As such, the Investment Manager's arrangements for the receipt of research and brokerage services from brokers may create a conflict of interest, in that the Investment Manager may have an incentive to choose a broker-dealer that provides research and brokerage services, instead of one that does not but charges a lower commission rate. In some instances, the Investment Manager receives products and services that may be used for both research and non-research purposes. In such instances, the Investment Manager will make a good faith effort to determine the relative proportion of the products and services used to assist the Investment Manager in carrying out its investment decision-making responsibilities or order execution, including research and brokerage, and the relative proportion used for administrative or other non-research purposes. The proportionate amount of the research attributable to assisting the Investment Manager in carrying out its investment decision-making responsibilities or order execution will be paid through brokerage commissions generated by the Master Fund's and other client's transactions; the proportionate amount attributable to administrative or other non-research purposes will be paid for by the Investment Manager from its own resources. The receipt of "mixed-use" research and the determination of the appropriate allocation may result in a potential conflict of interest between the Investment Manager and its clients, including the Master Fund.

Custody

The majority of the Master Fund's securities are held in the custody of its prime brokers. The Master Fund is eligible for insurance coverage against loss with respect to assets held in the custody of the prime brokers in the event of the bankruptcy or liquidation of either of the prime brokers to the same extent as that broker's other customers. The Master Fund's and the Fund's cash may be held at banks as well as the prime brokers. Ownership interests which are not represented by certificates generally will be recorded through book-entry systems maintained by the issuer or its agent, and the underlying documentation relating to the acquisition and disposition of these assets for the account of the Master Fund will be held at the business offices of the Investment Manager.

TAX CONSIDERATIONS

Introduction

The following is a summary of certain aspects of the U.S. federal income taxation of the Fund and its Limited Partners arising from the purchase, ownership and disposition of an Interest that should be considered by a prospective Limited Partner. The Fund has not sought a ruling from the Service or any similar state, local or foreign authority with respect to any of the tax issues affecting Limited Partners or the Fund, nor has it obtained an opinion of counsel with respect to any U.S. federal, state, local or foreign tax issues.

This summary is based on the Code, the U.S. Treasury regulations promulgated under the Code (the "***Treasury Regulations***"), judicial decisions, administrative rulings, and state and local tax laws in force on the date of this Memorandum, all of which are subject to change (possibly with retroactive effect). Changes in existing laws or regulations and their interpretation may occur after the date of this Memorandum and could alter the income tax consequences of an investment in the Fund. This discussion does not address all of the tax consequences that may be relevant to a particular investor, nor does it address, unless specifically indicated, the tax consequences to, among others (i) persons that may be subject to special treatment under U.S. federal income tax law, including, but not limited to, banks, insurance companies, thrift institutions, regulated investment companies, real estate investment trusts and dealers in securities or currencies, (ii) persons that will hold Interests as part of a position in a "straddle" or as part of a "hedging," "conversion" or other integrated investment transaction for U.S. federal income tax purposes, (iii) persons whose functional currency is not the U.S. dollar or (iv) persons that do not hold Interests as capital assets within the meaning of Code Section 1221.

Further, this summary does not address the tax considerations relevant to an investment in the Fund by a person that is not a "United States person" as defined in Section 7701(a)(30) of the Code because this summary assumes that all such persons will invest in the Offshore Fund.

If a partnership holds an Interest in the Fund, the tax treatment of a partner in such partnership will generally depend upon the status of the partner and the activities of the Fund. Prospective investors who are partners of a partnership should consult their own tax advisors.

Unless otherwise expressly provided herein, this discussion does not address possible state, local or foreign tax consequences of the purchase, ownership or disposition of Interests, some or all of which may be material to particular investors. This discussion also does not address the potential application of the U.S. federal alternative minimum tax ("***AMT***") to the Limited Partners. There is uncertainty concerning certain tax aspects of the Fund, and there can be no assurance that the Service will not challenge the positions taken by the Fund.

THE TAX CONSEQUENCES OF AN INVESTMENT IN THE FUND ARE PARTICULARLY COMPLEX. ACCORDINGLY, PROSPECTIVE INVESTORS SHOULD NOT CONSIDER THIS DISCUSSION AS A SUBSTITUTE FOR CAREFUL TAX PLANNING. PROSPECTIVE INVESTORS SHOULD CONSULT WITH THEIR OWN TAX ADVISORS, ATTORNEYS OR ACCOUNTANTS ON MATTERS RELATING TO AN INVESTMENT IN THE FUND WITH SPECIAL REFERENCE TO SUCH INVESTOR'S PARTICULAR SITUATION.

Certain United States Taxation Matters

U.S. Entity Classification of the Fund

The General Partner believes that, under the provisions of the Code and the Treasury Regulations as currently in effect, each of the Fund and the Master Fund should be treated for U.S. federal income tax purposes as a partnership and not as an association taxable as a corporation.

Certain "publicly traded partnerships" are treated as associations that are taxable as corporations for U.S. federal income tax purposes. A publicly traded partnership is any partnership the interests in which are traded on an established securities market or which are readily tradable on a secondary market (or the substantial equivalent thereof). Interests in the Fund are not and will not be traded on an established securities market. Treasury Regulations concerning the classification of partnerships as publicly traded partnerships provide certain safe harbors under which interests in a partnership will not be considered readily tradable on a secondary market (or the substantial equivalent thereof). The General Partner believes that the Fund may qualify for an exemption from the publicly traded partnership rules, although there is no assurance that the Fund will so qualify.

The remainder of this discussion assumes that the Fund and the Master Fund will each be treated as a partnership for U.S. federal income tax purposes and not as a publicly-traded partnership treated as an association that is taxable as a corporation. Unless the context requires otherwise, references to the Fund in the following discussion include the Master Fund.

Taxation of the Master Fund

The Government of the Cayman Islands will not, under existing legislation, impose any income, corporate or capital gains tax, estate duty, inheritance tax, gift tax or withholding tax upon the Master Fund or the limited partners of the Master Fund. Interest, dividends and gains payable to the Master Fund and all distributions by the Master Fund to its limited partners will be received free of any Cayman Islands income or withholding taxes. The Master Fund has registered as an exempted limited partnership under Cayman Islands law and the Master Fund has received an undertaking from the Governor in Cabinet of the Cayman Islands to the effect that, for a period of 50 years from the date of the undertaking, no law which is enacted in the Cayman Islands imposing any tax to be levied on profits or income or gains or appreciations shall apply to the Master Fund or to any partner thereof in respect of the operations or assets of the Master Fund or the interest of a partner therein; and may further provide that any such taxes or any tax in the nature of estate duty or inheritance tax shall not be payable in respect of the obligations of the Master Fund or the interests of the partners therein. The Cayman Islands are not party to a double tax treaty with any country that is applicable to any payments made to or by the Master Fund.

U.S. Federal Income Taxation of the Fund and Partners Generally

As a partnership, the Fund will not be subject to U.S. federal income tax. Each Limited Partner otherwise subject to tax will be required to report separately on its U.S. federal income tax return its distributive share of the Fund's net long-term capital gain or loss, net short-term capital gain or loss, and net ordinary income and deductions and credits in accordance with the allocations set forth in the Partnership Agreement. Each Limited Partner will be liable for any taxes owed upon its distributive share of the income or gains realized by the Fund, and may claim deductions for its distributive share of the Fund's losses and deductions and credits for its distributive share of the Fund's credits, to the extent allowed under the Code. Each Limited Partner will be taxed on its distributive share of the Fund's

taxable income and gain regardless of whether it has received or will receive a distribution from the Fund. Consequently, a Limited Partner may be subject to tax with respect to its share of the taxable income of the Fund for a taxable year and may not receive a corresponding distribution of cash from the Fund in such year with which to satisfy its tax liability in respect of such taxable income.

The Fund will file an annual partnership information return with the Service that reports the results of its operations for the taxable year, and will distribute annually to each Limited Partner a form showing its distributive share of the Fund's items of income, gain, loss, deduction or credit. The General Partner will have the authority to decide how to report these items on the Fund's tax returns, and all Limited Partners will be required under the Partnership Agreement to treat the items consistently on their own returns. Under current law, an audit by the Service of the tax treatment of the Fund's income and deductions generally will be determined at the Fund level in a single proceeding rather than by individual audits of the Limited Partners. For tax years beginning before January 1, 2018 (and absent an election by the Fund to apply the new partnership tax audit rules described in more detail below), the administrative proceeding is managed by the "***Tax Matters Partner***." For tax years beginning on or after January 1, 2018 (or in the case of an election by the Fund to apply the new partnership tax audit rules), the Fund will be required to appoint one person as the "***Partnership Representative***" to act on its behalf in connection with an audit by the Service and related proceedings. Pursuant to the Partnership Agreement, the General Partner or its delegate will be designated as the Tax Matters Partner and/or the Partnership Representative. The Partnership Representative's actions, including the Partnership Representative's agreement to adjustments of the Fund's income in settlement of an audit by the Service of the Fund, will bind all Limited Partners, and opt-out rights available to certain Limited Partners in connection with certain actions of the Tax Matters Partner under the current partnership tax audit rules for tax years beginning before January 1, 2018 will no longer be available.

In certain cases, the Fund may be required to file a statement with the Service, disclosing one or more positions taken on its tax return, generally where the tax law is uncertain or a position lacks clear authority. All Partners are required under the Code to treat the partnership items consistently on their own returns, unless they file a statement with the Service disclosing the inconsistency. Given the uncertainty and complexity of the tax laws, it is possible that the Service may not agree with the manner in which the Fund's items have been reported.

Under the Partnership Agreement, for U.S. federal income tax purposes, the General Partner has the discretion to allocate specially an amount of the Fund's net gains or net losses (or items of gross income or losses or deduction) to a withdrawing Partner to the extent that the Partner's Capital Account differs either positively or negatively from its U.S. federal income tax basis in its Interest. There can be no assurance that, if the General Partner makes such a special allocation, the Service will accept such allocation. If such allocation is successfully challenged by the Service, the Fund's allocations to the remaining Partners would be affected as well.

The Fund expects to act as a trader or an investor, and not as a dealer, with respect to its securities transactions. Generally, the gains and losses realized by a trader or an investor on the sale of securities are capital gains and losses. Thus, the Fund expects that its gains and losses from its securities transactions typically will be capital gains and capital losses. These capital gains and losses may be long-term or short-term depending, in general, upon the length of time the Fund maintains a particular investment position and, in some cases, upon the nature of the transaction. An investment held for more than one year generally will be eligible for long-term capital gain or loss treatment. The Fund may also realize income from dividends, which will generally be taxed at either ordinary income rates or, if they are eligible for treatment as "qualified dividend income," at applicable long-term capital gains rates.

Dividends from Argentine corporations are generally expected to be treated as "qualified dividend income" only to the extent that the stock for which the dividend is paid is readily tradable on an established securities market in the United States. Limited Partners should consult with their own tax advisors to determine the tax rates applicable to them in their particular tax situations.

In addition, individuals with "modified adjusted gross income" that exceeds certain thresholds (e.g., $250,000 for married individuals filing jointly and $200,000 for single individuals) are subject to a Medicare tax of 3.8% on the lesser of: (i) their investment income, net of deductions properly allocable to such income, and (ii) the excess of their "modified adjusted gross income" above the applicable threshold. It is expected that most or all of the Fund's income will be treated as investment income for this purpose, and as a result Limited Partners receiving allocations of income from the Fund for these taxable years may be subject to this tax. This tax will be in addition to any U.S. federal income tax imposed on Limited Partners with respect to their allocable share of income of the Fund. Trusts and estates also may be subject to this additional tax. Prospective investors should consult their own tax advisors regarding the application of this Medicare tax to their investment in the Fund.

The Fund may be involved in a variety of hedging transactions to reduce the risk of changes in value in the Fund's investments. Special rules may apply to determine the tax treatment of such hedging transactions, which may affect the Fund's holding period attributable to such property, the characterization of gain or loss as ordinary or capital and, if capital, as long-term or short-term, and the timing of the realization of gains or losses on the actual or deemed sale of the property, including, in some cases, property owned by a Limited Partner outside of the Fund. For instance, gain or loss from a short sale of property generally will be considered as capital gain or loss to the extent the property used to close the short sale constitutes a capital asset in the Fund's hands. Except with respect to certain situations where the property used by the Fund to close a short sale has a long-term holding period on the date of the short sale, gains on short sales will be treated as short-term capital gains. These rules also may terminate the running of the holding period of "substantially identical property" held by the Fund. Moreover, a loss on a short sale will be treated as a long-term capital loss if, on the date of the short sale, "substantially identical property" has been held by the Fund for more than one year. Certain hedging transactions also may cause a constructive sale of the Fund's long position that is the subject of the hedge.

Special "mark to market" rules apply to the Fund's investment in "Section 1256 Contracts." Section 1256 Contracts include certain regulated futures contracts, certain foreign currency forward contracts and certain options contracts. Capital gains and losses from qualifying Section 1256 Contracts generally are characterized as short-term capital gains or losses to the extent of 40% thereof and as long-term capital gains or losses to the extent of 60% thereof.

The Fund may derive ordinary interest income and dividends on securities, and may be required to recognize income in respect of certain securities prior to receipt of any payment in respect of such securities. For instance, the Fund may hold debt obligations with "original issue discount." In such case, the Fund will be required to include a portion of such discount in its taxable income on a current basis, and allocate such income to the Limited Partners, even though receipt of such amounts by the Fund may occur in a subsequent tax year. The Fund also may acquire debt obligations with "market discount." Upon disposition of such an obligation, which might include the receipt of securities of the issuer in a recapitalization exchange, the Fund generally will be required to treat any gain realized (and required to be recognized) as ordinary interest income to the extent of the market discount that accrued during the period the debt obligation was held by the Fund. Recapitalization exchanges involving

securities held by the Fund also may result in the recognition of taxable gains prior to the receipt of cash or readily tradable property.

If the Fund is treated as a trader, it may, in its discretion, make an election under Code section 475(f) to apply a mark to market system of recognizing unrealized gains and losses on securities as if the securities were sold for fair market value at the close of any taxable year of the Fund. The amount recognized when gain or loss is subsequently realized would be adjusted for amounts recognized in marking to market. The election would apply with respect to securities held in connection with the Fund's trade or business as a trader in securities. The election would not apply to any securities with respect to which the Fund could demonstrate, to the satisfaction of the Service, that they are held for investment. In the event that the Fund makes such an election, the Fund's gains and losses from marking securities to market (and gain or loss recognized before the end of the taxable year with respect to any security that would have been marked to market) would be treated as ordinary income and losses. The rules relating to appreciated financial positions under Code section 1259 and wash sales under Code section 1091 would not apply to the securities to which the election applies and the Code section 1092 straddle rules would not have any effect where all the offsetting positions of a straddle are marked to market.

The Fund may be required to purchase foreign currency with which to make its investments and may receive foreign currency when a security is sold or when an interest payment is made on a security. These transactions may give rise to gains and losses because of fluctuations in the value of the foreign currency relative to the U.S. dollar during the Fund's holding period of an investment. Foreign currency gain or loss in respect of certain types of transactions must be accounted for separately, apart from any gain or loss on the underlying transaction, and the Code contains special rules which treat, in most circumstances, such gains and losses as ordinary income or losses rather than capital gains or losses.

The U.S. federal income tax treatment of the Fund's investment in swaps or other derivatives is subject to significant uncertainty and depends in large part on the terms of the specific swap or other derivative. In particular, it is possible that the Fund may enter into so-called "bullet swaps" or other swaps that provide for non-periodic payments. In certain circumstances, income from a swap can be treated as ordinary income and not capital gain if the swap is treated as a "constructive ownership transaction" under Code section 1260. The Fund intends to take positions that are reasonable under the law that provide for optimal tax treatment of the Limited Partners. However, there can be no assurance that the Service or a court would agree with the Fund's position. Moreover, the Service might take the contrary position that the Fund is subject to U.S. federal income tax in respect of some or all of the income earned from the swap investments on the theory that the Fund should be treated as the owner for U.S. federal income tax purposes of the property underlying certain swaps, in which case the after-tax return on the swap investments could be significantly reduced.

Pursuant to various "anti-deferral" provisions of the Code (*e.g.*, the "Subpart F" and "passive foreign investment company" provisions), any investments by the Fund in certain foreign corporations may cause a Limited Partner to (i) recognize taxable income prior to the Fund's receipt of distributable proceeds, (ii) pay an interest charge on receipts that are deemed as having been deferred, (iii) recognize ordinary income that, but for the "anti-deferral" provisions, would have been treated as long-term or short-term capital gain, or (iv) become subject to certain reporting requirements with respect to such investments. There can be no assurance that the General Partner or the Fund will mitigate, or be able to mitigate, the application of these provisions, or provide certain information with respect to such foreign corporations or such filing requirements. Potential investors are advised to consult with their own tax

advisors with respect to the application of these "anti-deferral provisions" in their particular circumstances.

Under the Partnership Agreement, the General Partner has the authority to elect on behalf of the Fund, under Code section 754, to adjust the tax basis of the Fund's assets in connection with certain distributions to Limited Partners or certain transfers of Interests. Such an election, if made, could affect the amount of a Limited Partner's distributive share of the gain or loss recognized by the Fund upon the disposition of its assets. Because of the complexity and additional expense involved in making a section 754 election, the General Partner has no present intention to make such election on behalf of the Fund.

Prospective investors that are subject to the AMT should consider the tax consequences of an investment in the Fund in view of their AMT position, taking into account the special rules that apply in computing the AMT.

Taxation of Distributions and Withdrawals

Cash nonliquidating distributions and withdrawals, to the extent they do not exceed a Limited Partner's basis in its Interest, will not result in taxable income to that Limited Partner, but will reduce its tax basis in its Interest by the amount distributed or withdrawn. Cash distributed to a Limited Partner in excess of the basis of its Interest is generally taxable as capital gain. Conversely, if the cash distributed by the Fund to a Partner for any year exceeds the taxable income of the Fund allocated to such Partner for that year, the excess will be treated as a return of capital for U.S. federal income tax purposes to the extent of a Limited Partner's tax basis in its Interest. To the extent that cash distributions are treated as a return of capital and to the extent that any tax losses are allocated to the Limited Partners, the tax bases of the Limited Partners in their Interests will be reduced (but not below zero). Because of such basis adjustments, any tax that is avoided in the early years of a Limited Partner's investment in the Fund may become due later through the realization of gain upon the sale of assets of the Fund, the liquidation of the Fund or the sale of Interests.

Prospective Limited Partners should be aware that a Limited Partner's share of the taxable income of the Fund for any year may exceed the amount of cash distributed to such Limited Partner for that year, which may require that the Limited Partner make an out-of-pocket expenditure to cover its tax liability. Conversely, if the cash distributed by the Fund to a Partner for any year exceeds the taxable income of the Fund allocated to such Partner for that year, the excess will be treated as a return of capital for U.S. federal income tax purposes to the extent of a Limited Partner's tax basis of its Interest. To the extent that cash distributions are treated as a return of capital and to the extent that any tax losses are allocated to the Limited Partners, the tax bases of the Limited Partners in their Interests will be reduced (but not below zero). Because of such basis adjustments, any tax that is avoided in the early years of a Limited Partner's investment in the Fund may become due later through the realization of gain upon the sale of assets of the Fund, the liquidation of the Fund or the sale of Interests.

The Fund's ability to make cash distributions to a withdrawing Limited Partner or to the Partners, if applicable, may be limited by, among other things, the terms of the investment leverage entered into by the Fund for the purpose of making portfolio investments on a leveraged basis.

Upon the withdrawal of a Limited Partner receiving a cash liquidating distribution from the Fund, such Limited Partner generally will recognize capital gain or loss to the extent of the difference between the proceeds received by the withdrawing Limited Partner and such Partner's adjusted tax basis in its Interest. Such capital gain or loss will be short-term or long-term depending upon the Partner's holding

period (or holding periods) for its Interest. However, a withdrawing Limited Partner will recognize ordinary income to the extent such Partner's allocable share of the Fund's "unrealized receivables" exceeds the Partner's basis in such unrealized receivables (as determined pursuant to the Treasury Regulations). For these purposes, accrued but untaxed market discount, if any, on securities held by the Fund will be treated as an unrealized receivable, with respect to which a withdrawing Partner would recognize ordinary income.

Distributions of property other than cash, whether in complete or partial liquidation of a Limited Partner's Interest, generally will not result in the recognition of taxable income or loss to the Limited Partner (except to the extent such distribution is treated as made in exchange for such Limited Partner's share of the Fund's unrealized receivables). However, a distribution of marketable securities will be treated as a distribution of cash (which, as described above, can require the recognition of gain by the recipient Limited Partner), unless the distributing partnership is an "investment partnership" and the recipient is an "eligible partner" as defined in Code section 731(c). Although the General Partner cannot provide any assurances of whether the Fund is an "investment partnership" for these purposes, the General Partner anticipates that the Fund should qualify as an "investment partnership." Thus, if a Limited Partner is an "eligible partner," which term should include a Limited Partner whose sole contributions to the Fund consisted of cash, a distribution of marketable securities to such Limited Partner should not require the recognition of gain by such Limited Partner.

As discussed above, under the Partnership Agreement, the General Partner has the discretion to allocate specially an amount of the Fund's net gains or net losses (or items of gross income or losses or deductions) for U.S. federal income tax purposes to a withdrawing Partner to the extent that the Partner's capital account differs from its U.S. federal income tax basis in its Interest. Such a special allocation may result in the withdrawing Partner recognizing more or less taxable income, which may include short-term gain, in the Partner's last taxable year in the Fund, thereby reducing, or increasing, as applicable, the amount of long-term capital gain recognized during the tax year in which it receives its liquidating distribution upon withdrawal. In certain circumstances, special allocations of net gains (or items of income or gain) to a withdrawing Partner may result in a greater allocation of losses, or a lower allocation of taxable income or gain, to the remaining Partners. Likewise, special allocations of net losses (or items of expense, loss or deduction) to a withdrawing Partner may result in a greater allocation of taxable income or gain, or a lower allocation of losses, to the remaining Partners.

Assuming the Fund has not made an election pursuant to Code Section 754 and the General Partner does not exercise its discretion to specially allocate losses to a withdrawing Limited Partner, distributions of property or cash by the Fund to a Limited Partner in redemption of its Interest in certain circumstances where the Fund has a substantial built-in loss may require the Fund to reduce the tax basis of its remaining property.

Limitations on Losses, Deductions and Credits

Limited Partners who are individuals or which are certain types of corporations may be limited in their ability to deduct expenses or losses of the Fund. For instance, if or to the extent that the Fund's operations do not constitute a "trade or business" within the meaning of Section 162 and other provisions of the Code, an individual Limited Partner's distributive share of the Fund's expenses (including any amounts that are treated for tax purposes as expenses of the Fund, such as the Management Fee) would be deductible only as itemized deductions, subject to the limitations of Sections 67 and 68 of the Code. In this regard, if all or a portion of the Performance Allocation to the Special Limited Partner were re-characterized for tax purposes as an expense of the Fund, each non-corporate Limited Partner's share of

such expense could be subject to such limitations. Itemized deductions are non-deductible in computing such Limited Partner's AMT income and AMT liability.

Further, income, gains and losses of the Fund generally will not be treated as passive income or losses for purposes of the passive activity loss limitations of Section 469 of the Code. Accordingly, individuals, personal service corporations and certain closely-held corporations that have passive activity losses from other activities are restricted in their ability to use such losses to offset income and gains from the Fund, although losses of the Fund will not be subject to the passive activity loss limitation.

For each taxable year, Section 1277 of the Code limits the deduction of the portion of any interest expense on indebtedness incurred by a taxpayer to purchase or carry a security with market discount which exceeds the amount of interest (including original issue discount) includible in the taxpayer's gross income for such taxable year with respect to such security ("***Net Interest Expense***"). Net Interest Expense in any taxable year is deductible only to the extent it exceeds the amount of market discount which accrued on the security during the taxable year or portion of the taxable year during which the taxpayer held the security. Net Interest Expense that is non-deductible under the rules described above is carried forward and deducted in the year in which the taxpayer disposes of the security. Alternatively, at the taxpayer's election, such Net Interest Expense can be carried forward and deducted in a year prior to the disposition of the security, if any, in which the taxpayer has net interest income from the security.

Section 1277 would apply to a Limited Partner's share of the Fund's Net Interest Expense attributable to a security held by the Fund (through the Master Fund) with market discount. In such case, a Limited Partner would be denied a current deduction for all or part of that portion of its distributive share of the Fund's ordinary losses attributable to such Net Interest Expense and such losses would be carried forward to future years, in each case as described above. Although no guidance has been issued regarding the election to deduct previously disallowed Net Interest Expense prior to the year of disposition of the bond, it appears that the election would be made by the Fund rather than by the Limited Partner. Section 1277 would also apply to the portion of interest paid by a Limited Partner on money borrowed to finance its investment in the Fund to the extent such interest was allocable to securities held by the Fund (through the Master Fund) with market discount.

The ability of a non-corporate Limited Partner to deduct its share of the Fund's ordinary losses attributable to interest and certain short sale expenses may be subject to the "investment interest limitation" under Section 163(d) of the Code. In general, a non-corporate taxpayer's investment interest (including interest and certain short sale expenses) in the current year is not deductible to the extent it exceeds its "net investment income", consisting of net gain and ordinary income derived from investments in the current year less certain directly connected expenses (other than interest or short sale expenses). For this purpose, any long-term capital gain is excluded from net investment income unless the taxpayer elects to pay tax on such amount at ordinary income tax rates. The Fund's activities are expected to be treated as giving rise to investment income for a Limited Partner, and the investment interest limitation would apply to a non-corporate Limited Partner's share of the interest and short sale expenses attributable to the Fund's operation. Accordingly, a non-corporate Limited Partner would be denied a deduction for all or a part of its distributive share of the Fund's ordinary losses attributable to interest and short sale expenses unless it has sufficient investment income from all sources, including the Fund. Any amount not deductible as a result of the applicability of Section 163(d) may be carried forward to future years, subject to certain limitations.

Limited Partners may be entitled to a foreign tax credit with respect to creditable foreign taxes paid on the income and gains of the Fund. There are complex rules contained in the Code that may,

depending on each Limited Partner's particular circumstances, limit the availability or use of foreign tax credits. For example, a Limited Partner's share of gain realized by the Fund will generally be treated as U.S. source income. Consequently, a Limited Partner may not be able to use the foreign tax credit relating to foreign taxes, if any, imposed on such gains unless such credit can be applied against the U.S. tax due on other income derived from foreign sources. Limited Partners should contact their own tax advisors with respect to the availability of any foreign tax credits.

The consequences of these limitations will vary depending upon the particular tax situation of each taxpayer. Accordingly, non-corporate Limited Partners should consult their tax advisors with respect to the application of these limitations.

The Fund may incur certain expenses in connection with its organization and the marketing of its Interests. Amounts paid or incurred to organize a partnership are not deductible, but generally may, by election of the Fund, be capitalized and amortized for U.S. federal income tax purposes over a period of not less than 180 months. Amounts paid or incurred to market interests in the Fund that qualify as "syndication expenses" are not deductible or amortizable.

Tax Consequences for Tax-Exempt U.S. Investors

A Limited Partner that is an organization exempt from tax under Code section 501(a) (a "***Tax-Exempt U.S. Investor***") will be subject to tax on its allocable share of the Fund's income that is considered to be "unrelated business taxable income" ("***UBTI***") as defined in Code section 512, and may be subject to the AMT with respect to items of tax preference which enter into the computation of UBTI. Code section 512(b) provides that UBTI generally does not include dividends, interest, and gain or loss from the disposition of property other than stock in trade or property held for sale in the ordinary course of the unrelated trade or business. The Fund may invest in entities that are treated as partnerships or other pass-through entities. UBTI generated by such entities would generally flow up to Tax-Exempt U.S. Investors, causing the realization of UBTI by such investors. A Tax-Exempt U.S. Investor should not realize UBTI to the extent that its distributive share of the Fund's income consists of dividends, interest, capital gains and certain other items which are excluded from UBTI under Code section 512(b) (except to the extent any such income constitutes "UDFI," as discussed in the next paragraph). Prospective Tax-Exempt U.S. Investors should be aware that it is unclear under current law whether income from certain swaps or derivative transactions that the Fund may invest or hold a position in, may be excluded from UBTI.

A Tax-Exempt U.S. Investor is also subject to tax with respect to its, and its allocable share of the Fund's, "unrelated debt-financed income" pursuant to Code section 514 ("***UDFI***"). In general, UDFI consists of (i) income derived by a tax-exempt organization (directly or through a partnership) from income-producing property with respect to which there is "acquisition indebtedness" at any time during the taxable year and (ii) gains derived by a tax-exempt organization (directly or through a partnership) from the disposition of property with respect to which there is "acquisition indebtedness." In addition, a tax-exempt organization that borrows money to finance its investment in the Fund would be subject to tax on the portion of its income that is UDFI. Income and gains derived by a tax-exempt organization from the ownership and sale of debt-financed property is taxable in the proportion to which such property is financed by acquisition indebtedness during the relevant period of time. For these purposes, a Limited Partner is deemed to own a proportionate share of the Fund's debt-financed property and the income attributable thereto, and a short sale of publicly traded stock will not create "acquisition indebtedness" unless the Fund borrows funds to post collateral against such short sale.

The Fund expects to generate income attributable to debt-financed property which will be attributed to the Partners, including any Tax-Exempt U.S. Investors. A Tax-Exempt U.S. Investor's share of the Fund's income that is treated as UBTI may be significant (depending upon the degree of leverage utilized by the Fund). In addition to other relevant considerations, fiduciaries of employee pension trusts and other prospective tax-exempt investors should consider the consequences of realizing UBTI in making a decision whether to invest in the Fund.

We urge prospective Tax-Exempt U.S. Investors that are sensitive to UBTI or UDFI to consult their tax advisors as to the tax consequences of investing in the Fund and as to the comparative tax treatment of an investment in the Offshore Fund.

Investor Tax Filings and Record Retention.

The U.S. Department of the Treasury has adopted Treasury Regulations designed to assist the Service in identifying abusive tax shelter transactions. In general, the Treasury Regulations require investors in specified transactions (including certain investors in partnerships that engage in such transactions) to satisfy certain special tax filing and record retention requirements. Significant monetary penalties may be applicable as a result of a failure to comply with these tax filing and record retention rules.

The Treasury Regulations are broad in scope and it is conceivable that the Fund may enter into transactions that will subject the Fund and certain Limited Partners to the special tax filing and record retention rules. Additionally, a Limited Partner's recognition of a loss on its disposition of its Interest in the Fund could in certain circumstances subject such Limited Partner to these rules.

Reporting Under FATCA.

Sections 1471 through 1474 of the Code, known as the U.S. Foreign Account Tax Compliance Act (together with any regulations, rules and other guidance implementing such Code sections and any applicable intergovernmental agreement ("***IGA***") or information exchange agreement and related statutes, regulations, rules and other guidance thereunder, "***FATCA***") impose a withholding tax of 30% on (i) certain U.S. source interest, dividends and other types of income, and (ii) the gross proceeds from the sale or disposition of certain assets of a type that can produce U.S. source interest and dividends, which are received by a foreign financial institution ("***FFI***"), unless such FFI enters into an agreement with the Service (an "***FFI Agreement***"), and/or complies with an applicable IGA, to obtain certain information as to the identity of the direct and indirect owners of accounts in such institution. In addition, a withholding tax may be imposed on payments to certain non-financial foreign entities that do not obtain and provide information as to their direct and indirect owners. These rules generally apply to payments of U.S. source interest, dividends and certain other types of income from U.S. sources and, after December 31, 2018, are expected to apply to payments of gross proceeds from the sale or disposition of assets of a type that can produce U.S. source interest or dividends.

The Service has released temporary and final Treasury Regulations and other guidance that will be used in implementing FATCA, which contain a number of phase-in dates for FATCA compliance. In addition, the Cayman Islands has entered into a Model 1 IGA with the United States (the "***Cayman-U.S. IGA***"), which is treated as in effect, and has issued the Tax Information Authority (International Tax Compliance) (United States of America) Regulations 2014 and guidance notes thereunder, each as updated from time to time.

The Master Fund is likely to be considered an FFI. In order to avoid incurring U.S. withholding under FATCA, the Master Fund is generally required to register with the Service and to comply with the Cayman-U.S. IGA and any guidance thereunder. The Master Fund expects to register with the Service and expects to comply with the Cayman-U.S. IGA and, therefore, generally does not expect to become subject to U.S. withholding under FATCA.

In addition, the Fund may be required to act as a withholding agent under FATCA and therefore be required to withhold on income and proceeds paid or allocated to an investor that fails to comply with FATCA, which could occur if an investor that is an FFI does not enter into an FFI Agreement, is not otherwise exempt from such withholding, and/or does not provide the appropriate information and documentation to the Fund or its agents showing its exemption from such withholding or compliance with FATCA. The General Partner intends to collect the appropriate documentation from all investors in the Fund in order to determine whether it is required to withhold under FATCA with respect to distributions or allocations made to investors.

The General Partner, the Investment Manager and the Fund reserve the right to take any action and/or pursue all remedies at their disposal to avoid withholding requirements or otherwise to mitigate the consequences of an investor's failure to comply with FATCA, including compulsory redemption or withdrawal of the investor concerned. In this regard, the General Partner, the Investment Manager and the Fund have certain rights to request, and the investors have certain obligations to provide, information and documentation that may be used by the General Partner, the Investment Manager and the Fund in complying with their obligations under FATCA. In addition, no investor affected by any action or remedy by the Fund shall have any claim against the Fund, the Administrator, the Investment Manager, the Master Fund or the General Partner (or their agents, delegates, employees, directors, officers or affiliates) for any form of damages or liability as a result of actions taken or remedies pursued by or on behalf of the Fund in order to comply with FATCA.

The Cayman Islands has also signed, along with over 80 other countries, a multilateral competent authority agreement to implement the OECD Standard for Automatic Exchange of Financial Account Information – Common Reporting Standard ("***CRS***" and together with the Cayman-U.S. IGA, "***AEOI***").

Cayman Islands regulations have been issued to give effect to the Cayman-U.S. IGA and CRS (collectively, the "***AEOI Regulations***"). Pursuant to the AEOI Regulations, the Cayman Islands Tax Information Authority (the "***TIA***") has published guidance notes on the application of the Cayman-U.S. IGA and CRS.

All Cayman Islands "Financial Institutions" are required to comply with the registration, due diligence and reporting requirements of the AEOI Regulations, unless they are able to rely on an exemption that allows them to become a "Non-Reporting Financial Institution" (as defined in the relevant AEOI Regulations) with respect to one or more of the AEOI regimes, in which case only the registration requirement would apply under CRS. The Master Fund does not propose to rely on any Non-Reporting Financial Institution exemption and therefore intends to comply with all of the requirements of the AEOI Regulations.

The AEOI Regulations require the Master Fund and/or the General Partner (as applicable) to, amongst other things (i) register with the Service to obtain a GIIN (in the context of the U.S. IGA only), (ii) register with the TIA, and thereby notify the TIA of its status as a "Reporting Financial Institution", (iii) adopt and implement written policies and procedures setting out how it will address its obligations under CRS, (iv) conduct due diligence on its accounts to identify whether any such accounts are

considered "Reportable Accounts", and (v) report information on such Reportable Accounts to the TIA. The TIA will transmit the information reported to it to the overseas fiscal authority relevant to a reportable account (e.g. the Service in the case of a US Reportable Account) annually on an automatic basis.

Investors should consult their tax advisors as to the withholding, filing and information reporting requirements that may be imposed on them in respect of their ownership of Interests.

State and Local Taxes

In addition to the U.S. federal income tax consequences described above, prospective investors should consider potential state and local tax consequences of an investment in the Fund. State and local laws often differ from U.S. federal income tax laws with respect to the treatment of specific items of income, gain, loss, deduction and credit. A Partner's distributive share of the taxable income or loss of the Fund generally will be required to be included in determining its reportable income for state and local tax purposes in the jurisdiction in which it is a resident.

Limited Partners or the Fund may be subject to state and/or local franchise, withholding, income, capital gain or other tax payment obligations and filing requirements in those jurisdictions where the Fund owns real estate assets or is otherwise regarded as doing business or earning income. Credits for these taxes may not be available (or may be subject to limitations) in the jurisdictions in which Limited Partners, or the Fund, as applicable, are residents. Each potential investor is urged to consult with its own tax advisor in this regard.

Each prospective Limited Partner should consult its own tax advisor with respect to its state and local tax consequences and filing obligations as a result of an investment in the Fund.

Other Taxes

The Fund and its Limited Partners may be subject to other taxes, such as the AMT, and estate, inheritance or intangible property taxes that may be imposed by various domestic jurisdictions, as well as foreign withholding or gains taxes. Each prospective investor should consider the potential consequences of such taxes on an investment in the Fund. It is the responsibility of each prospective investor to satisfy itself as to, among other things, the legal and tax consequences of an investment in the Fund, under the laws of the various jurisdictions of its domicile and its residence, by obtaining advice from its own tax counsel or other advisor, and to file all appropriate tax returns that may be required.

Other Income Taxation

Although there can be no assurance, it is intended that the affairs of the Fund will be conducted such that the Fund will not be subject to regular income taxation in any foreign jurisdiction. However, income and gains from investments held by the Fund may be subject to withholding taxes or taxes in jurisdictions other than those described herein, subject to the possibility of reduction under applicable tax treaties. Limited Partners generally may be entitled, subject to applicable limitations, to a credit against U.S. income tax for creditable foreign income taxes paid on the foreign source income and gains of the Fund (which may not include all of the Fund's gains). The foreign tax credit rules are complex, and may, depending on each Limited Partner's particular circumstances, limit the availability or use of foreign tax credits. Prospective investors are advised to consult their own tax advisors regarding the application of the foreign tax credit rules.

Future Tax Legislation; Necessity of Obtaining Professional Advice

Future amendments to the Code, other legislation, new or amended Treasury Regulations, administrative rulings or decisions by the Service or judicial decisions may adversely affect the U.S. federal income tax aspects of an investment in the Fund, with or without advance notice, retroactively or prospectively. The foregoing analysis is not intended as a substitute for careful tax planning. The tax matters relating to the Fund are complex and are subject to varying interpretations. There can be no assurance that the Service will agree with each position taken by the Fund with respect to the tax treatment of Fund items and transactions. Moreover, the effect of existing income tax laws and of proposed changes in income tax laws on Limited Partners will vary with the particular circumstances of each Limited Partner and, in reviewing this Memorandum and any exhibits hereto, these matters should be considered.

Accordingly, each prospective investor must consult with and rely solely on its professional tax advisors with respect to the tax results of its investment in the Fund. In no event will the Fund, the General Partner, the Investment Manager, or their Affiliates, counsel or other professional advisors be liable to any Limited Partner for any U.S. federal, state, local or foreign tax consequences of an investment in the Fund, whether or not such consequences are as described above.

The foregoing is a summary of some of the important tax rules and considerations affecting the Limited Partners, the Fund, and the Fund's proposed operations. This summary does not purport to be a complete analysis of all relevant tax rules and considerations, which will vary with the particular circumstances of each Limited Partner, nor does it purport to be a complete listing of all potential tax risks inherent in purchasing or holding Interests. Each prospective investor in the Fund is urged to consult its own tax advisor in order to understand fully the U.S. federal, state, local and any non-U.S. tax consequences of such an investment in its particular situation.

ERISA AND OTHER REGULATORY CONSIDERATIONS

ERISA Considerations

General

Fiduciaries and other persons who are proposing to invest in Interests on behalf of retirement plans, IRAs and other employee benefit plans ("***Plans***") covered by the U.S. Employee Retirement Income Security Act of 1974, as amended ("***ERISA***"), or the Code, must give appropriate consideration to, among other things, the role that an investment in the Fund plays in the Plan's portfolio, taking into consideration whether the investment is designed to reasonably further the Plan's purposes, the investment's risk and return factors, the portfolio's composition with regard to diversification, the liquidity and current return of the total portfolio relative to the anticipated cash flow needs of the Plan, the projected return of the total portfolio relative to the Plan's objectives, the limited right of Limited Partners to withdraw all or any part of their Interests or to transfer their Interests and whether investment in the Fund constitutes a direct or indirect transaction with a party in interest (under ERISA) or a disqualified person (under the Code).

Plan Asset Regulations and Benefit Plan Investors

The United States Department of Labor ("***DOL***") has adopted regulations that treat the assets of certain pooled investment vehicles, such as the Fund, as "plan assets" for purposes of Title I of ERISA and Section 4975 of the Code ("***Plan Assets***"). Section 3(42) of ERISA defines the term "Plan Assets" to mean plan assets as defined by such regulations as the DOL may prescribe, except that under such regulations the assets of an entity shall not be treated as Plan Assets if, immediately after the most recent acquisition of an equity interest in the entity, less than 25% of the total value of each class of equity interest in the entity is held by "Benefit Plan Investors" (the "***significant participation test***"). For purposes of this determination, the value of any equity interest held by a person (other than such a Benefit Plan Investor) who has discretionary authority or control with respect to the assets of the entity or any person who provides investment advice for a fee (direct or indirect) with respect to such assets, or any affiliate of such a person, shall be disregarded. An entity shall be considered to hold Plan Assets only to the extent of the percentage of the equity interest held by Benefit Plan Investors. The term "Benefit Plan Investors" means any employee benefit plan subject to part 4 of subtitle B of Title I of ERISA (i.e., plans subject to the fiduciary provisions of ERISA), any plan to which the prohibited transaction provisions of Section 4975 of the Code apply (e.g., IRAs), and any entity whose underlying assets include Plan Assets by reason of a plan's investment in such entity (a "***Plan Asset Entity***").

In order to prevent the assets of the Master Fund from being considered Plan Assets under ERISA, it is the intention of the Master Fund to monitor the investments in the Master Fund and prohibit the acquisition, withdrawal or transfer of any limited partner interests of the Master Fund by any investor, including a Benefit Plan Investor, unless, after giving effect to such an acquisition, withdrawal or transfer, the total proportion of limited partner interests of each class of the Master Fund owned by Benefit Plan Investors would be less than 25% of the aggregate value of that class of limited partner interests (determined, as described above, by excluding certain limited partner interests held by the General Partner, other fiduciaries and affiliates).

Without limiting the generality of the foregoing, in order to limit equity participation in any class of limited partner interests of the Master Fund by Benefit Plan Investors to less than 25%, the Fund may require the Compulsory Withdrawal of Interests. Each Limited Partner that is an insurance company

acting on behalf of its general account or a Plan Asset Entity will be required to represent and warrant as of the date it acquires Interests the maximum percentage of such general account or Plan Asset Entity (as reasonably determined by such insurance company or Plan Asset Entity) that will constitute Plan Assets (the "***Maximum Percentage***") so such percentage can be calculated in determining the percentage of Plan Assets invested in the Master Fund. Further, each such insurance company and Plan Asset Entity will be required to covenant that if, after its initial acquisition of Interests, the Maximum Percentage is exceeded at any time, then such insurance company or Plan Asset Entity shall immediately notify the Fund of that occurrence and shall, if and as directed by the Fund, in a manner consistent with the restrictions on transfer set forth herein, withdraw or dispose of some or all of the Interests held in its general account or Plan Asset Entity.

It is anticipated that investment in the Fund by benefit plan investors may be "significant" for purposes of the regulations. In such event, the underlying assets of the Fund would be deemed to constitute "plan assets" for purposes of ERISA. As a general rule, if the assets of the Fund were regarded as "plan assets" of a benefit plan investor, the Investment Manager would be deemed a fiduciary with respect to each Plan investing in the Fund. However, the Investment Manager believes that, given the limited purpose and role of the Fund and given the requirement that the Investment Manager follow the directions of the fiduciaries of each benefit plan investor investing in the Fund, as set forth in each such investor's subscription agreement, with respect to the investment by the Fund in the Master Fund, neither the Investment Manager nor any other entity providing services to the Fund would be exercising any discretionary authority or control with respect to the Fund. Accordingly, the Investment Manager believes that neither the Investment Manager nor any other entity providing services to the Fund will act as a fiduciary (as defined in Section 3(21) of ERISA) with respect to the assets of the Fund or any benefit plan investor. Rather, the Investment Manager believes that, given the limited purpose and role of the Fund and given the requirement that the Investment Manager follow the directions of the fiduciaries of each benefit plan investor investing in the Fund, as set forth in each such investor's subscription agreement, with respect to the investment by the Fund in the Master Fund, the fiduciary of each such benefit plan investor has retained the fiduciary authority and responsibility with respect to the investor's initial and continuing investment in the Fund as though the benefit plan investor is investing directly in the Master Fund.

Representation by Plans

The fiduciaries of each Plan proposing to invest in the Fund will be required to represent that they have been informed of and understand the Fund's investment objectives, policies and strategies and that the decision to invest Plan Assets in the Fund is consistent with the provisions of ERISA and/or the Code that require diversification of Plan Assets and impose other fiduciary responsibilities. By its purchase, each investor will be deemed to have represented that either (a) it is not a Plan that is subject to the prohibited transaction rules of ERISA or the Code, (b) it is not an entity whose assets include Plan Assets or (c) its investment in the Fund will not constitute a non-exempt prohibited transaction under ERISA or the Code.

Ineligible Purchasers

Limited partner interests may not be purchased with Plan Assets if the Investment Manager, any selling agent, finder, any of their respective affiliates or any of their respective employees: (a) has investment discretion with respect to the investment of such Plan Assets; (b) has authority or responsibility to give or regularly gives investment advice with respect to such Plan Assets, for a fee, and pursuant to an agreement or understanding that such advice will serve as a primary basis for

investment decisions with respect to such Plan Assets and that such advice will be based on the particular investment needs of the Plan; or (c) is an employer maintaining or contributing to such Plan. A party that is described in clause (a) or (b) of the preceding sentence is a fiduciary under ERISA and the Code with respect to the Plan, and any such purchase might result in a "prohibited transaction" under ERISA and the Code.

Plans' Reporting Obligations

The information contained herein and in the other documentation provided to investors in connection with an investment in the Fund is intended to satisfy the alternative reporting option for "eligible indirect compensation" on Schedule C of the Form 5500, in addition to the other purposes for which such documents were created.

Whether or not the underlying assets of the Fund are deemed Plan Assets, an investment in the Fund by a Plan is subject to ERISA and the Code. Accordingly, Plan fiduciaries should consult their own counsel as to the consequences under ERISA and the Code of an investment in the Fund. Note that similar laws governing the investment and management of the assets of governmental or non-U.S. plans may contain fiduciary and prohibited transaction requirements similar to those under ERISA and the Code. Accordingly, fiduciaries of such governmental or non-U.S. plans, in consultation with their counsel, should consider the impact of their respective laws and regulations on an investment in the Fund.

Other Regulatory Matters

Securities Act of 1933

Interests are not registered under the U.S. Securities Act of 1933, as amended (the "***Securities Act***"), or any other securities law, including state securities or blue sky laws. Interests are offered without registration in reliance upon the exemption contained in Regulation D of the Securities Act and/or rules and regulations of the Securities and Exchange Commission applicable to transactions not involving a public offering. Each investor is required, in the Fund's Subscription Documents pursuant to which such investor subscribes for an Interest, to make customary Regulation D representations.

Investment Company Act of 1940

The Fund is not registered under the U.S. Investment Company Act of 1940, as amended (the "***Investment Company Act***"), in reliance upon relief from registration afforded to collective investment vehicles whose outstanding securities are not publicly offered and are beneficially owned exclusively by investors that are considered "qualified purchasers" within the meaning of the Investment Company Act. "Qualified purchasers" generally include individuals and certain family-owned companies owning total investments in excess of $5 million and entities owning total investments in excess of $25 million. Each investor will be required to complete the Fund's Subscription Documents to enable the Fund to determine its eligibility.

Investment Adviser Registration

The Investment Manager is registered as relying adviser to Highland Capital Management, L.P., an investment adviser registered with the Securities and Exchange Commission under the U.S. Investment Advisers Act of 1940, as amended.

Commodity Exchange Act

Neither the General Partner nor the Investment Manager is required to register as a commodity pool operator ("***CPO***") or commodity trading advisor under the U.S. Commodity Exchange Act and each has filed a notice of claim effectuating exemption. As such, the General Partner and the Investment Manager will operate the Fund and the Master Fund pursuant to such exemption. Unlike a registered CPO, the General Partner and the Investment Manager are not required to deliver a disclosure document and a certified annual report to participants in the Fund. Among other things, the exemption requires the General Partner and the Investment Manager to file a claim of exemption with the National Futures Association. The Investment Manager qualifies for an exemption from registration with the CFTC as a commodity trading adviser pursuant to CFTC Rule 4.14(a)(8).

Cayman Islands Mutual Fund Law

The Offshore Fund and the Master Fund are regulated under the Mutual Funds Law (2015 Revision) of the Cayman Islands ("***Mutual Funds Law***"). The Cayman Islands Monetary Authority (the "***Authority***") has supervisory and enforcement powers to ensure compliance with the Mutual Funds Law. Regulation under the Mutual Funds Law entails the filing of prescribed details and audited accounts annually with the Authority. As a regulated mutual fund, the Authority may at any time instruct the Offshore Fund or the Master Fund to have its or their accounts audited and to submit them to the Authority within such time as the Authority specifies. Failure to comply with these requests by the Authority may result in substantial fines on the part of the directors of the Offshore Fund or the Master Fund, as applicable, and may result in the Authority applying to the court to have the Offshore Fund or the Master Fund wound up.

Neither the Offshore Fund nor the Master Fund is, however, subject to supervision in respect of their investment activities or the constitution of the Master Fund's portfolio by the Authority or any other governmental authority in the Cayman Islands, although the Authority does have power to investigate the activities of the Offshore Fund and the Master Fund in certain circumstances. Neither the Authority nor any other governmental authority in the Cayman Islands has commented upon or approved the terms or merits of this document. There is no investment compensation scheme available to investors in the Cayman Islands.

The Authority may take certain actions if it is satisfied that a regulated mutual fund is or is likely to become unable to meet its obligations as they fall due or is carrying on or is attempting to carry on business or is winding up its business voluntarily in a manner that is prejudicial to its investors or creditors. The powers of the Authority include the power to require the substitution of the directors of the Offshore Fund or the Master Fund, to appoint a person to advise the Offshore Fund or the Master Fund on the proper conduct of its affairs or to appoint a person to assume control of the affairs of the Offshore Fund or the Master Fund, as the case may be. There are other remedies available to the Authority including the ability to apply to court for approval of other actions.

The Master Fund and the General Partner or any of its members or agents domiciled in the Cayman Islands may be compelled to provide information, subject to a request for information made by a regulatory or governmental authority or agency under applicable law; e.g. by the Cayman Islands Monetary Authority, either for itself or for a recognised overseas regulatory authority, under the Monetary Authority Law (2016 Revision), or by the Tax Information Authority, under the Tax Information Authority Law (2017 Revision) or Reporting of Savings Income Information (European Union) Law (2014 Revision) and associated regulations, agreements, arrangements and memoranda of

understanding. Disclosure of confidential information under such laws shall not be regarded as a breach of any duty of confidentiality and, in certain circumstances, the Master Fund, and the General Partner or any of its or their directors or agents, may be prohibited from disclosing that the request has been made.

Anti-Money Laundering Regulations

All subscriptions for Interests will be subject to applicable anti-money laundering regulations. Investors will be required to comply with such anti-money laundering procedures as are required by the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT Act) Act of 2001 (Pub. L. No. 107-56).

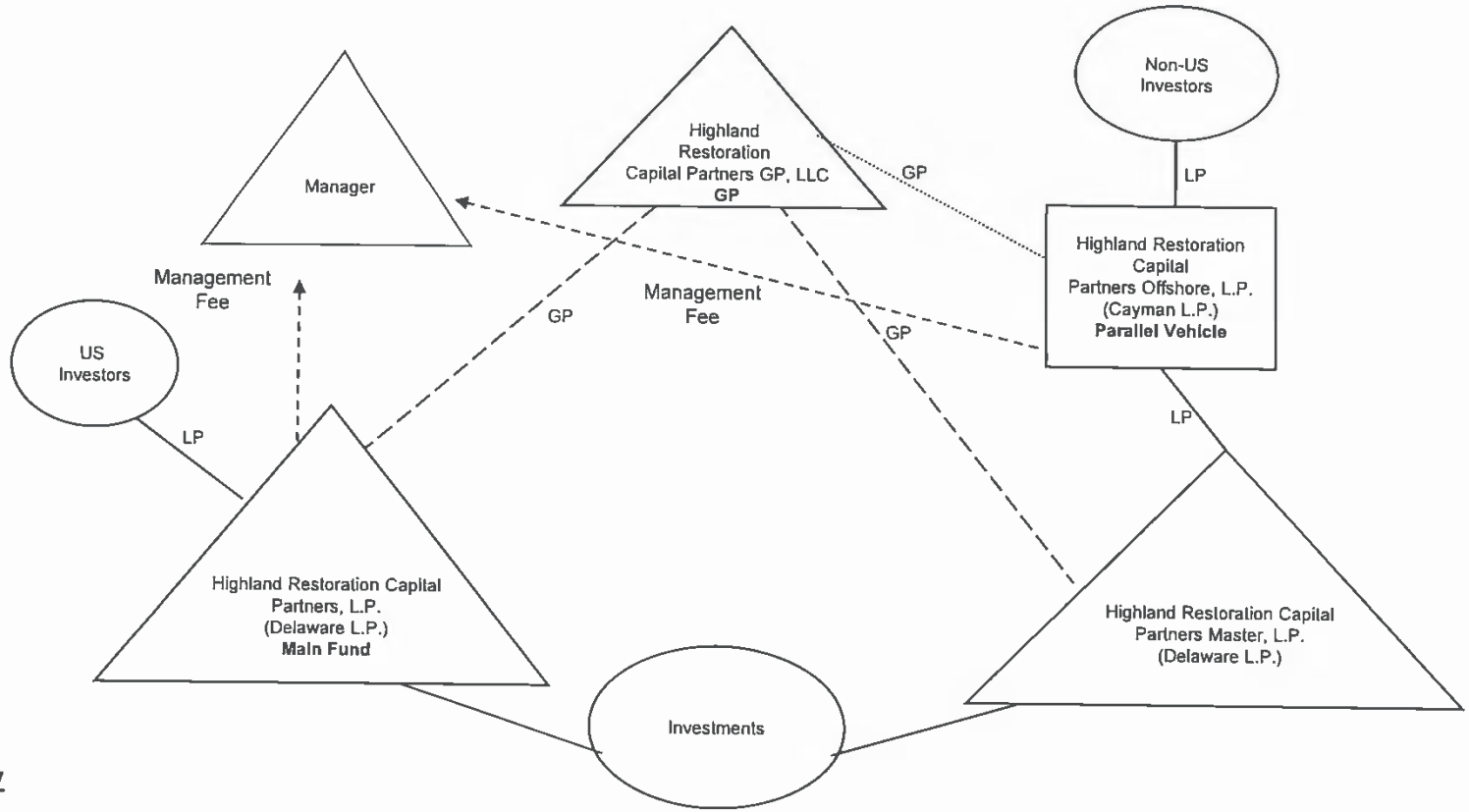
As part of the Fund's responsibility to comply with regulations aimed at the prevention of money laundering, the Fund or its delegate may require verification of identity from all prospective investors. Depending on the circumstances of each subscription, it may not be necessary to obtain full documentary evidence of identity.

The Fund reserves the right to request such information as is necessary to verify the identity of a prospective investor. The Fund also reserves the right to request such identification evidence in respect of a transferee of Interests. In the event of delay or failure by the prospective investor or transferee to produce any information required for verification purposes, the Fund may refuse to accept the application or (as the case may be) to register the relevant transfer and (in the case of a subscription of Interests) any funds received will be returned without interest to the account from which the monies were originally debited.

The Fund also reserves the right to refuse to make any withdrawal payment or distribution to a Limited Partner, if the Fund suspects or is advised that the payment of any withdrawal or distribution moneys to such Limited Partner might result in a breach or violation of any applicable anti-money laundering or other laws or regulations by any person in any relevant jurisdiction, or such refusal is considered necessary or appropriate to ensure the compliance by the Fund and the Investment Manager with any such laws or regulations in any relevant jurisdiction.

EXHIBIT "F"

Highland Restoration Fund Structure with Parallel Vehicle*



Key

Taxed as partnership for US purposes

Taxed as corporation for US purposes

Not a Fund entity

GP Carried/Capital Interest

Management Fee

LP Interest

Control, nominal economics

* Parallel Vehicle will be formed offshore as a limited partnership and will elect to be taxed as a corporation. ECI, if any, generated by portfolio investments will be taxed to the Parallel Vehicle, not to the Limited Partners. Limited Partners may elect to make a commitment to either the Main Fund or the Parallel Vehicle.

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EXHIBIT "G"

SECOND AMENDED AND RESTATED

AGREEMENT OF LIMITED PARTNERSHIP

OF

HIGHLAND RESTORATION CAPITAL PARTNERS OFFSHORE, L.P.

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SECOND AMENDED AND RESTATED AGREEMENT OF LIMITED PARTNERSHIP OF HIGHLAND RESTORATION CAPITAL PARTNERS OFFSHORE, L.P.

THIS SECOND AMENDED AND RESTATED AGREEMENT OF LIMITED PARTNERSHIP (this "Agreement") is dated April 18, 2008 between Highland Restoration Capital Partners GP, LLC, a Delaware limited liability company (in its capacity as general partner of the Partnership, the "General Partner") and the limited partners listed in Schedule 1 attached hereto (in their capacities as limited partners of the Partnership, the "Limited Partners") (the General Partner and the Limited Partners being herein collectively called the "Partners"). Capitalized terms not otherwise defined shall have the meanings ascribed to such terms in Section 2.1(a).

Highland Restoration Capital Partners Offshore, L.P., is an exempted limited partnership (the "Partnership") registered under the Exempted Limited Partnership Law (as amended) of the Cayman Islands (the "ELP Law") on the 12th day of November 2007.

The General Partner and the Initial Limited Partner entered into an Agreement of Limited Partnership, dated as of November 9, 2007 (the "Original Agreement"). The Original Agreement was subsequently amended and restated on November 15, 2007 (the "Amended and Restated Agreement").

The parties hereto wish to amend and restate the Amended and Restated Agreement in the manner set forth herein.

ARTICLE I

GENERAL PROVISIONS

Section 1.1 Formation. The Partners hereby agree to amend and restate the Amended and Restated Agreement which is replaced and superseded in its entirety by this Agreement.

Section 1.2 Name. The name of the Partnership will be "Highland Restoration Capital Partners Offshore, L.P." or such other name or names as the General Partner may from time to time designate. The General Partner will notify Limited Partners in writing of any change to the name of the Partnership.

Section 1.3 Purpose. Subject to the express limitations set forth herein, the Partnership is organized for the object and purpose of (i) investing in senior secured bank loans, debt obligations, trade claims and equity securities of middle market Distressed Companies primarily based in the United States generally consistent with the investment strategy described in the Partnership's Confidential Private Placement Memorandum, including, without limitation, privately placed or publicly traded debt securities and other debt obligations, senior and subordinated debt obligations, secured and unsecured debt obligations, privately placed or

publicly traded equity securities including common stock, preferred stock and warrants (all of which investments will be made through the Master Partnership (other than investments made through a Separate Investment Entity pursuant to Section 5.15)), (ii) managing and monitoring such investments and (iii) engaging in such activities incidental or ancillary thereto and otherwise permitted by the ELP Law as the General Partner deems necessary or advisable.

Section 1.4 Place of Business. The Partnership maintains a registered office at Walker House, 87 Mary Street, George Town, Grand Cayman KY1-9002, Cayman Islands or at such other place in the Cayman Islands as the General Partner may from time to time designate, and its principal place of business is at Two Galleria Tower, 13455 Noel Road, Dallas, TX 75240, or at such other place or places in the United States as the General Partner may from time to time designate; provided, however, that if the General Partner designates different places of business, it shall promptly notify the Limited Partners in writing.

ARTICLE II

DEFINITIONS; DETERMINATIONS; CAPITAL CONTRIBUTIONS; CAPITAL ACCOUNTS

Section 2.1 Definitions; Determinations.

(a) For purposes of this Agreement the following capitalized terms shall have the meanings set forth below:

"Additional Limited Partners" has the meaning set forth in Section 6.5(a).

"Advisory Committee" has the meaning set forth in Section 7.1(a).

"Affiliate" has the meaning set forth in Rule 405 promulgated under the Securities Act.

"Agent" has the meaning set forth in Section 2.4(b).

"Agreement" has the meaning set forth in the introduction.

"Allocated Expenses" means, for any Partner as of any date with respect to any Portfolio Investment, such Partner's Capital Contributions applied to pay Management Fees, Organizational Expenses and Uncapitalized Partnership Expenses that have been allocated pursuant to Section 3.3(b) to such Portfolio Investment as of such date.

"Amended and Restated Agreement" has the meaning set forth in the introduction.

"Basis" of any security means the basis of such security as determined in accordance with the Code less the amount of any write-down pursuant to Section 9.4 and as further adjusted by the General Partner in its reasonable discretion to reverse the effects of any exchange of securities that would result in an increase in tax basis pursuant to the Code.

"Benefit Plan Investor" means any Partner that is a "benefit plan investor" as defined in Section 3(42) of ERISA and any regulations promulgated thereunder.

"BHC Act" means the U.S. Bank Holding Company Act of 1956, as amended.

"BHCA Partner" means a Limited Partner that is a bank holding company, as defined in Section 2(a) of the BHC Act, or a non-bank subsidiary of such bank holding company, provided, that such Limited Partner shall not be a BHC Partner if (i) it is a financial holding company, as defined in Section 2(p) of the BHC Act, or a non-bank subsidiary thereof and is acting pursuant to Section 4(k)(4)(h) or Section 4(k)(4)(i) of the BHC Act as set forth in a notice to such effect to the General Partner; or (ii) it is a small business investment company licensed as such under the Small Business Investment Act of 1958, as amended.

"Bridge Financing" means, with respect to the Partnership's investment in a Portfolio Company, that portion of the investment that the Partnership provides as interim financing (including guarantees of debt financing) in anticipation of, or to support, a permanent investment by the Partnership in such Portfolio Company and that the Partnership intends to cause the Portfolio Company to repay or refinance within 18 months after the date of such investment in the Portfolio Company and which the General Partner designates in the Capital Call Notice therefor. During the first 18 months following a Bridge Financing, such Bridge Financing shall be treated as a Short-Term Investment. A Bridge Financing that is outstanding 18 months following the making of such Bridge Financing, shall be treated by the Partnership as a permanent investment in a Portfolio Company.

"Bridge Leveraging" means indebtedness incurred by the Partnership to fund the acquisition of a Portfolio Investment pending receipt of Capital Contributions (including as a result of any default by any Limited Partner or limited partner of a Parallel Vehicle in the making of Capital Contributions) pursuant to a Capital Call Notice that the Partnership anticipates issuing pursuant to Section 2.2(a), provided that the Capital Contributions made with respect to such Capital Call Notice are applied by the Partnership upon receipt thereof to repay such indebtedness.

"Business Day" means any day other than (i) Saturday or Sunday or (ii) any other day on which banks located in New York City generally are closed for business.

"Capital Account" has the meaning set forth in Section 2.3.

"Capital Call" has the meaning set forth in Section 2.2(a).

"Capital Call Notice" has the meaning set forth in Section 2.2(a).

"Capital Contribution" of any Partner means the amount received by the Partnership from such Partner as an actual contribution.

"Capitalized Partnership Expenses" means Partnership Expenses that are reflected in the Basis of Portfolio Investments.

"Code" means the U.S. Internal Revenue Code of 1986, as amended.

"Co-Investment Opportunity" has the meaning set forth in Section 5.17(a).

"Co-Investment Fund" means any partnership, limited liability company or other entity that is an Affiliate of the General Partner or the Manager, is not a Parallel Vehicle or a Separate Investment Entity, and is organized to invest in Portfolio Investments pursuant to a Co-Investment Opportunity.

"Co-Investor" has the meaning set forth in Section 5.17(a).

"Commitment" (a) with respect to each Limited Partner means the aggregate amount of cash agreed to be contributed as capital to the Partnership by such Limited Partner as specified in Schedule 1 attached hereto as the same may be modified from time to time under the terms of this Agreement, and (b) with respect to the General Partner means the aggregate amount of cash the General Partner has agreed to contribute as capital to the Partnership and Master Partnership as specified in Schedule 1 attached hereto, as the same may be modified from time to time under the terms of this Agreement.

"Commitment Period" has the meaning set forth in Section 2.2(b).

"Continuity Period" has the meaning set forth in Section 2.2(d).

"Credit Support" has the meaning set forth in Section 5.3.

"Crusader" means Highland Crusader Fund, L.P., and its successors.

"Current Cash Income" means all Current Income paid in cash or cash equivalents.

"Current Income" means all interest and dividend income (including from original issue discount, purchases or investments at a market discount, and payment of in-kind income and other non-cash current income) from a Portfolio Company.

"Defaulting Partner" has the meaning set forth in Section 6.11(a).

"Director Fees" means directors, consulting, monitoring or similar fees in respect of a Portfolio Company, including options, warrants or other non-cash compensation received by a director or officer of a Portfolio Company which shall be valued at the earlier of (v) the time of exercise of such instrument, (w) three years after the underlying security of such instrument becomes a Marketable Security, (x) the dissolution of the Partnership, (y) the date the Partnership disposes of the Portfolio Investment that gave rise to such fee or (z) the date such option, warrant or other non-cash compensation was disposed of by the General Partner, the Manager, the Principals or their Affiliates and thereafter credited against Management Fees pursuant to Section 4.1(c), in each such case to the extent actually paid by a Portfolio Company and received by the General Partner, the Manager, the Principals, employees of the Manager or their Affiliates in respect of Portfolio Investments; provided, however, that (A) such fees shall not include, in each case, any such amounts that are applied to cover amounts paid by the General Partner, the Manager, the Principals or their Affiliates that constitute unreimbursed (i) out-of-pocket expenses of such persons incurred in generating such fees, and (ii) Partnership Expenses incurred in generating such fees, and (B) to the extent that the General Partner, the

Manager, the Principals, employees of the Manager or their Affiliates were actually reimbursed by the Partnership for any Partnership Expenses incurred in generating such fees, such fees will first be applied to repay the Partnership for such Partnership Expenses.

"Disposition" or "Disposed of" means, with respect to all or a portion of a Portfolio Investment, (i) except as provided in the next sentence, the sale, exchange or other disposition by the Partnership of all or a portion of the securities or other interests constituting that Portfolio Investment for cash, securities or other property, (ii) the receipt by the Partnership of a distribution of the proceeds of the sale of all or substantially all of the assets of the Portfolio Company in complete liquidation of the Partnership's entire direct or indirect interest in the Portfolio Investment and (iii) an in-kind distribution of all or part of a Portfolio Investment that has not previously been deemed to have been Disposed of, as of the date of and to the extent of such distribution. A "Disposition" does not include (i) a recapitalization that consists of an exchange of a Portfolio Investment for other securities of or claims against the issuing Portfolio Company, (ii) a business combination that consists of an exchange of substantially all of the Partnership's direct or indirect interest in a Portfolio Investment for securities issued by an acquiring entity, (iii) a business combination that consists of the exchange of all or substantially all of the assets of a Portfolio Company or one or more divisions or operating units of a Portfolio Company for securities issued by an acquiring entity or (iv) a sale, exchange or other disposition that does not constitute a pro rata disposition of a portion of each class of securities or other interests constituting such Portfolio Investment.

"Distressed Companies" shall mean persons that, in the opinion of the General Partner, (a) are or have been in financial or other stress; (b) are restructuring, are considered likely to be restructured, or have been restructured in an out-of-court process or in a proceeding under the Federal bankruptcy laws or state insolvency laws or similar laws in or outside of the United States; (c) are being, are considered likely to be or have been reorganized within or outside of a proceeding under federal bankruptcy laws or state insolvency laws or similar laws in or outside of the United States; or (d) are engaged, are considered likely to engage or have been engaged in other extraordinary transactions, such as debt restructurings, reorganizations and liquidations outside of bankruptcy.

"ECI" means income that is effectively connected with a United States trade or business within the meaning of Section 864(c) of the Code and the Treasury Regulations promulgated thereunder, but not including any income or gain attributable to the disposition of a "United States real property interest" as defined for purposes of Section 897(c) of the Code.

"Electing Limited Partner" has the meaning set forth in Section 2.4(b).

"ELP Law" has the meaning set forth in the introduction.

"ERISA" means the U.S. Employee Retirement Income Security Act of 1974, as amended.

"Existing Partners" has the meaning set forth in Section 6.5(c).

"FCC" shall mean the U.S. Federal Communications Commission.

"FCC Attribution Rules" shall mean the ownership attribution rules of the FCC, including, but not limited to, 47 C.F.R. §§ 21.912, Note 1; 24-709; 24.720; 26.101(b), (c); 73.3555, Note 2; 76.501, Note 2; 76.503, Note 2; 76-504, Note 1; Attribution Reconsideration Order, 58 Radio Regulation 2nd 604 (1985); Further Attribution Reconsideration Order, 1 FCC Rcd 802 (1986); Report and Order, 14 FCC Rcd 12559 (1999); Report and Order, 14 FCC Rcd 19014 (1999); Memorandum Opinion and Second Order in Reconsideration, FCC 00-431 (released Jan. 19, 2001); and Memorandum and Opinion and Order on Reconsideration, FCC-00-438 (released Jan. 19, 2001), all as the same may be amended or supplemented from time to time.

"Final Closing" means the final closing of subscriptions by Limited Partners pursuant to Subscription Agreements, which, in any event, shall take place no later than the fourteen month anniversary of the First Closing.

"First Closing" means the first closing of subscriptions by Limited Partners pursuant to Subscription Agreements.

"Follow-on Investment" means investments made after the termination of the Commitment Period in securities of an existing Portfolio Company that are appropriate or necessary in the opinion of the General Partner to preserve, protect or enhance the investment in such Portfolio Company that was made by the Partnership during the Commitment Period.

"Fund Group" means the Partnership, Parallel Vehicles, Separate Investment Entities and their respective Portfolio Investments.

"Funded Commitment" (A) means as to any Limited Partner as of any date, that portion of a Limited Partner's Commitment that has been contributed (or "deemed contributed") to the Partnership to meet a Capital Call (including any amounts contributed pursuant to Section 6.5(b)), reduced by (a) any amounts which are distributed (or "deemed distributed") to such Limited Partner in respect of a proposed Portfolio Investment (or portion thereof) that was not consummated, (b) any amounts which are distributed (or "deemed distributed") to such Limited Partner in respect of a Bridge Financing (or portion thereof) that was sold, refinanced, redeemed or otherwise disposed of within 18 months from the Investment Date of such Bridge Financing in an amount not to exceed the Limited Partner's portion of Funded Commitments used to acquire such Bridge Financing, (c) any amounts paid by such Limited Partner pursuant to subclauses (B) and (C) of the third sentence of Section 6.5(b), (d) any amounts distributed (or "deemed distributed") to such Limited Partner pursuant to Section 6.5 (other than amounts attributable to payments by an Additional Limited Partner pursuant to subclauses (B) and (C) of the third sentence of Section 6.5(b)), and (e) in the sole discretion of the General Partner, any amounts distributed (or "deemed distributed") to such Limited Partner with respect to a Portfolio Investment that was sold, refinanced, redeemed or otherwise disposed of within 48 months after the Investment Date for such Portfolio Investment in an amount not to exceed the portion of such Limited Partner's Funded Commitments used to acquire such Portfolio Investment, all as determined in good faith by the General Partner and (B) as to the General Partner as of any date, that portion of the General Partner's Commitment that has been either (i) contributed (or "deemed contributed") to the Partnership (including any amounts contributed pursuant to Section 6.5(b)) or (ii) contributed (or "deemed contributed") to the Master Partnership (including

the aggregate amount of all Deemed Contributions (as defined in the Master Partnership Agreement treated as made to the Master Partnership on or prior to such date), reduced by (w) any amounts which are distributed (or "deemed distributed") to the General Partner by the Master Partnership in respect of a proposed investment in a Portfolio Company (or portion thereof) that was not consummated, (x) any amounts which are distributed to the General Partner by the Master Partnership in respect of a Bridge Financing (or portion thereof) that was sold, refinanced, redeemed or otherwise disposed of within 18 months after the date such Bridge Financing was made, in an amount not to exceed the General Partner's portion of Funded Commitments used to acquire such Bridge Financing, (y) any amounts distributed (or "deemed distributed") to the General Partner pursuant to Section 6.5 (other than amounts attributable to payments by a Limited Partner pursuant to subclause (B) and (C) of the third sentence of Section 6.5(b)), and (z) in the sole discretion of the General Partner, (A) any amounts distributed (or "deemed distributed") to the General Partner by the Master Partnership with respect to a Portfolio Investment that was sold, refinanced, redeemed or otherwise disposed of within 18 months after the Investment Date for such Portfolio Investment in an amount not to exceed the portion of the General Partner's Funded Commitment used to acquire such Portfolio Investment, all as determined in good faith by the General Partner. For the purposes of this definition, those proceeds otherwise distributable to a Partner that are retained for reinvestment or application to a Capital Call in accordance with the proviso to Section 3.1(b) or the proviso to the second to last sentence in Section 6.5(b) (or, in the case of the General Partner, the corresponding provisions of the Master Partnership Agreement), shall be "deemed distributed" to such Partner by the Partnership (or the Master Partnership, as applicable) and "deemed contributed" by such Partner to the Partnership (or the Master Partnership, as applicable). The General Partner, in its discretion, may reduce the 48 month period referenced above at any time during the Commitment Period.

"GAAP" means U.S. generally accepted accounting principles as in effect from time to time.

"General Partner" has the meaning set forth in the introduction to this Agreement and includes any successor general partner of the Partnership appointed in accordance with this Agreement.

"GP's Counsel" has the meaning set forth in Section 12.5.

"gross negligence" when used in this Agreement shall be interpreted in accordance with the laws of the U.S. State of Delaware.

"Gross-up Percentage" means the percentage determined by dividing (i) the aggregate Commitments of all Partners by (ii) the aggregate Commitments of all Partners with respect to whom the Management Fee is payable pursuant to Section 4.1(b).

"Guaranty Agreement" shall mean the Guaranty Agreement, dated as of the date hereof, by and among the Partnership, the General Partner and the guarantors party thereto, substantially in the form of the agreement set forth in Exhibit A hereto, as amended from time to time in accordance with its terms.

"Highland" shall mean Highland Capital Management, L.P., a Delaware limited partnership.

"Highland Accounts" means collectively funds, accounts and vehicles managed by Highland from time to time.

"Highland Investment Allocation Policy" shall mean the investment allocation policy of Highland described in the Partnership's Confidential Private Placement Memorandum and as in effect or modified from time to time.

"Highland Portfolio Company" means each portfolio company (and each of their subsidiaries) as to which Highland and/or the Principals and/or their respective Affiliates have completed, or are in the process of completing, an investment or acquisition or receipt of a debt or equity ownership position therein, including, without limitation through Crusader and other Highland Accounts, at the time of the First Closing, together with follow-on or other additional investments and acquisitions from time to time after the First Closing in or by such companies so long as such investments and acquisitions are reasonably determined by the Principals to be primarily within the general lines or areas of business of such companies as of the First Closing or incidental or related thereto.

"Indemnifying Partner" has the meaning set forth in Section 6.7(a).

"Initial Fee Period" means the period starting on the First Closing and ending on the earlier of (i) the termination of the Commitment Period, and (ii) the date on which the Manager, the General Partner or an Affiliate thereof closes subscriptions of capital commitments by investors of a Successor Fund.

"Initial Limited Partner" means Virginia Czarnocki an attorney with Walkers, a law firm located in the Cayman Islands.

"Insulated Partner" has the meaning set forth in Section 5.16(a).

"Insulated Partner Affiliate" has the meaning set forth in Section 5.16(a).

"Investment Company Act" means the U.S. Investment Company Act of 1940, as amended.

"Investment Date" means, with respect to any Portfolio Investment, the date such Portfolio Investment was acquired by the Partnership.

"Investment Income and Gain" means, with respect to a Portfolio Investment, (i) the excess, if any, of the proceeds from the Disposition of such Portfolio Investment or portion thereof or Partial Realization with respect to such Portfolio Investment or portion thereof that does not give rise to Current Income over the Basis of such Portfolio Investment or portion thereof, (ii) to the extent all or any portion of such Portfolio Investment is distributed to the Partners in kind as contemplated by Section 2.3, the excess, if any, of the value (as determined pursuant to Article IX) of the portion of such Portfolio Investment distributed to the Partners

over the Basis of such portion of such Portfolio Investment, and (iii) Current Income attributable to such Portfolio Investment.

"Investment Loss" means, with respect to a Portfolio Investment, (i) the deficiency, if any, of the proceeds from the Disposition of such Portfolio Investment or portion thereof or Partial Realization with respect to such Portfolio Investment or portion thereof that does not give rise to Current Income as compared to the Basis of such Portfolio Investment or portion thereof, (ii) to the extent all or any portion of such Portfolio Investment is distributed to the Partners in kind as contemplated by Section 2.4, the deficiency, if any, of the value (as determined pursuant to Article IX) of the portion of such Portfolio Investment distributed to the Partners as compared to the Basis of such portion of such Portfolio Investment, and (iii) the amount, as reasonably determined by the General Partner in accordance with Section 9.4, by which such Portfolio Investment has permanently declined in value below the Basis of such Portfolio Investment immediately prior to such determination.

"Keyman Group" means James Dondero, Pat Daugherty and John Honis; provided, that the Keyman Group will include replacements chosen pursuant to Section 2.2(d) if a Triggering Event occurs pursuant to clauses (ii) or (iii) therein; provided, further, that, if any one of the members of the Keyman Group ceases to be actively involved, including in a supervisory role, on an ongoing basis with respect to the business, operations or investment decisions of Highland, the Manager and General Partner, the Keyman Group will include such replacement person that is proposed by the General Partner to the Advisory Committee and who is approved to serve as a member of the Keyman Group by the consent of a majority of the members of the Advisory Committee.

"Limited Partners" means the persons listed in Schedule 1 hereto in their capacity as limited partners of the Partnership (including each person admitted to the Partnership in accordance with Section 6.5) and each person who is admitted to the Partnership as a substitute limited partner pursuant to Section 6.2 or 6.5, so long as each such person continues to be a limited partner of the Partnership hereunder.

"Main Fund" means Highland Restoration Capital Partners, L.P., a Delaware limited partnership.

"Main Fund Agreement" means the Agreement of Limited Partnership of the Main Fund, as amended from time to time.

"Majority in Interest of the Limited Partners" means Limited Partners with Commitments and limited partners in Parallel Vehicles with capital commitments to Parallel Vehicles totaling more than 50% of the aggregate Commitments of all Limited Partners and capital commitments of limited partners in Parallel Vehicles.

"Management Fee" has the meaning set forth in Section 4.1(a).

"Management Fee Period" has the meaning set forth in Section 4.1(a).

"Manager" means Highland Capital Management, L.P., a Delaware limited partnership, or other entity controlled by James Dondero and Mark Okada, and appointed as Manager by the General Partner on behalf of the Partnership from time to time.

"Marketable Securities" means securities that (A) (i) are (x) listed on a national securities exchange in the United States, (y) quoted on the NMS or (z) listed on a securities exchange or quoted on an established quotation system within or without the United States that in the opinion of the General Partner after consultation with the Advisory Committee supports sufficient trading activity and volume to allow for the orderly disposition of such securities by the Partners following a distribution thereof in accordance with Sections 2.4 and 3.3, and (ii) are not subject to restrictions on transfer as a result of applicable contract provisions, the provisions of the Securities Act or regulations thereunder (other than the volume, manner-of-sale and notice restrictions of Rule 144 promulgated thereunder or any successor rule thereto; provided, that if such securities are subject to volume limitations under Rule 144 and distributed in kind to Limited Partners, each Limited Partner would be able to sell such securities promptly after the distribution thereof in accordance with Sections 2.4 and 3.3 (notwithstanding volume limitations)), or other applicable law, or (B) are immediately convertible, exchangeable or exercisable by the holder thereof into securities that meet the requirements of the foregoing clause (A).

"Master Partnership" means Highland Restoration Capital Partners Master, L.P., a Delaware limited partnership entered into by the General Partner and the Partnership to make and hold Portfolio Investments.

"Master Partnership Agreement" means the Agreement of Limited Partnership of the Master Partnership, as amended from time to time, substantially in the form of Exhibit A hereto.

"Media Company" shall mean any entity in which the Partnership has or acquires an investment and that directly or indirectly owns, controls or operates any: (i) broadcast radio or television station licensed by the FCC; (ii) U.S. cable television system; (iii) daily newspaper (as such term is defined in Section 73.3555 of the Ownership Rules); (iv) multipoint multichannel distribution system licensed by the FCC; (v) other communications facility the ownership or operation of which is subject to regulation by the FCC under (x) the Communications Act of 1934, as amended, (y) the FCC Attribution Rules, or (z) the FCC Ownership Rules; and (vi) other business or activity that is subject to ownership restrictions imposed by the FCC from time to time.

"Net Funded Commitment" means, in respect of any Partner and as of the first day of any Management Fee Period, such Partner's Funded Commitment as of such date less (i) such Partner's Capital Contributions (or portion thereof, in the case of a partial Disposition) applied by the Partnership to make all Portfolio Investments that have been Disposed of on or prior to such date and applied to pay Capitalized Partnership Expenses relating to such Portfolio Investments and Allocated Expenses with respect to such Portfolio Investment as of such date, (ii) all write downs pursuant to Section 9.4 in respect of Portfolio Investments that have not been Disposed of by the Partnership on or prior to such date multiplied by such Partner's Partner Interest in each such Portfolio Investment, and (iii) such Partner's Capital Contributions in

respect of Management Fees and Partnership Expenses allocable to Portfolio Investments that have not been Disposed of on or prior to such date.

"NMS" means the National Market System of the National Association of Securities Dealers, Inc.

"Non-Marketable Securities" means all securities which are not Marketable Securities.

"Non-U.S. Partner" means with respect to any determination hereunder, (i) any Limited Partner that is not a "United States person" within the meaning of Section 7701(a)(30) of the Code, or (ii) any Limited Partner that has a direct or indirect beneficial owner that (x) is not a "United States person" within the meaning of Section 7701(a)(30) of the Code and (y) would be required to report on a United States federal income tax return or report ECI that would be derived from the Partnership if the Partnership were classified as a partnership for U.S. federal income tax purposes, to the extent of such beneficial owner's pro rata share of such income, but in each case, only if such Limited Partner has notified the General Partner of such status at any time prior to such determination, by providing the General Partner an IRS Form W-8BEN or by some other method satisfactory to the General Partner.

"Non-Voting Interest" means any interest of a Limited Partner in the Partnership, and if applicable, any interest of a limited partner in a Parallel Vehicle (or portion thereof) with respect to which a Limited Partner or limited partner in a Parallel Vehicle has, or elects to have, no or limited voting rights pursuant to Section 6.9 or a similar provision in the agreement of limited partnership of the Parallel Vehicles, as the case may be.

"Non-Voting Partnership Interests" has the meaning set forth in Section 6.9(b).

"Operating Company" means an "operating company" within the meaning of the Plan Asset Regulation, including a "venture capital operating company."

"Opinion of the Partnership's Counsel" means an opinion of Mayer Brown LLP or other counsel selected by the General Partner and reasonably acceptable (by reason of experience in the area of law involved) to the Limited Partner affected by such opinion or, if more than one Limited Partner is affected by such opinion, a Majority in Interest of the Limited Partners so affected.

"Organizational Expenses" means the reasonable out-of-pocket expenses (including, without limitation, travel, printing, legal and accounting fees and other expenses) of the General Partner, the Manager, the Principals and their respective Affiliates (but not including any Placement Fees) incurred in the formation of the Partnership, any Parallel Vehicle or any Separate Investment Entity or incurred in connection with the organization and funding of the Partnership, any Parallel Vehicle, Separate Investment Entity and the General Partner.

"Original Agreement" has the meaning set forth in the introduction.

"Other Permitted Investment Activities" means the continuing involvement of the Principals, subject to compliance with the devotion of time covenant in Section 5.1(a), (i) in the full range of their activities in connection with their duties and responsibilities as members,

owners, partners, directors, officers, employees, shareholders, or consultants of the Manager and Highland Accounts, including Crusader, (ii) in acquisitions and follow-on investments by Highland Portfolio Companies reasonably determined by the Principals to be primarily within the general area of business of a Highland Portfolio Company or incidental or related thereto, (iii) as passive owners, stockholders, debtholders and investors in professionally managed hedge funds, fund of funds and other private investment entities and vehicles, (iv) in investments which do not otherwise meet the investment objectives of the Partnership, and (v) in a Successor Fund organized in accordance with Section 5.12; provided, that none of the activities described in clauses (i) through (v) above shall unreasonably affect the ability of the Principals to fulfill their duties to the Limited Partners and to be actively involved in the business of the Fund Group.

"Ownership Rules" means the multiple and cross-ownership rules of the FCC including, but not limited to, 47 C.F.R. §§ 21.912; 24-709; 24.720; 26.101(a); 73.3555; 74.931(h); 76.501; 76.503; 76.504, and other regulations or written policies of the FCC which limit or restrict ownership in Media Companies, all as the same may be amended or supplemented from time to time.

"Parallel Vehicle" means any entity that is organized pursuant to Section 5.14 and designated a Parallel Vehicle by the General Partner, but solely for purposes of this Agreement, the Partnership is not a Parallel Vehicle, and the Main Fund is a Parallel Vehicle.

"Partial Realization" means, with respect to any Portfolio Investment, the realization by the Partnership of Current Income or of proceeds from a recapitalization, extraordinary dividend, sale, redemption or other disposition of less than all of such Portfolio Investment (other than a pro rata disposition of a portion of each class of securities or other interests constituting such Portfolio Investment) or any other similar event that does not constitute a Disposition of such Portfolio Investment.

"Participating Partner" means, with respect to any Portfolio Investment, any Limited Partner who made a Capital Contribution (other than solely a Waiver Contribution) that was applied to such Portfolio Investment.

"Partner Interest" means for any Partner that is a Participating Partner with respect to any Portfolio Investment, the proportion that such Participating Partner's Capital Contributions that were applied to such Portfolio Investment bears to the aggregate Capital Contributions of all Partners that were applied to such Portfolio Investment.

"Partner Share" means, for any Partner, and for any period, the amount of Investment Income and Gain, Investment Loss, Current Cash Income, proceeds from the Disposition of or Partial Realization with respect to a Portfolio Investment for such period or Portfolio Investments distributed in kind, as the case may be, or items of Partnership income or expense (other than Management Fees or Placement Fees, if any), in each case for such period multiplied by such Partner's Partner Interest in the Portfolio Investments giving rise to such items or to which such items are allocable pursuant to Section 3.3(b).

"Partners" means the General Partner and the Limited Partners, collectively.

"Partnership" has the meaning set forth in Section 1.1.

"Partnership Expenses" means all reasonable costs and expenses relating to the Partnership's activities, investments and business (to the extent not borne or reimbursed by a Portfolio Company or proposed Portfolio Company), including, but not limited to, (i) all costs and out-of-pocket fees and expenses attributable to acquiring, investing, holding, monitoring and disposing of the Partnership's investments, (ii) all other out-of-pocket costs and out-of-pocket fees and expenses attributable to unconsummated transactions or investment strategies (but excluding marketing strategies) that do not lead to consummated acquisitions, (iii) legal, accounting, auditing, administrative, consulting and other fees and expenses (including, but not limited to, fees of the administrator of the Partnership and insurance and other out-of-pocket expenses associated with negotiating, consummating, monitoring and disposing of the Partnership's investments and the preparation of Partnership financial statements, tax returns and forms K-1), (iv) expenses of the Advisory Committee incurred in accordance with Article VII, (v) extraordinary expenses, liabilities, indemnities and other obligations of the Partnership (including, but not limited to, litigation and indemnification costs and expenses, judgments and settlements (including, but not limited to, costs and expenses payable under Section 5.11)), and (vi) all debt service obligations, including interest, premium, if any, fees, expenses and other amounts payable in respect of indebtedness of the Partnership incurred in accordance with Section 5.3, but in each case, not including Organizational Expenses in excess of $1,250,000, Management Fees, Placement Fees and those expenses borne by the Manager pursuant to Section 4.3.

"Partnership Legal Matters" has the meaning set forth in Section 12.5.

"Permitted GP Transferee" means, as to any membership or other ownership interest in the General Partner, of or held by any Principal or other member or investor in the General Partner (a) any family member of such person provided the transferor retains all voting control with respect to the interest, (b) any other partner or investor in the General Partner who was a partner or investor in the General Partner as of the Final Closing, and (c) any trust, partnership, foundation corporation or other entity that is either controlled by such person or is primarily for the benefit of such person and/or their family members.

"Person" means an individual, a partnership, a limited liability company, a corporation, an association, a joint stock company, a trust, a joint venture, an unincorporated organization, or a governmental entity (or any department, agency or political subdivision thereof).

"Placement Fees" means the fees and expenses and any interest on any deferred fees and expenses charged by or paid to any placement agency designated by the Partnership or the General Partner for the marketing and sale of interests in the Partnership and the Parallel Vehicles. The Partnership's pro rata share of any Placement Fees shall be the amount of such fees multiplied by a fraction, the numerator of which is the aggregate Commitments of the Limited Partners giving rise to such fees, and the denominator of which is the sum of the aggregate Commitments of the Limited Partners and the aggregate capital commitments of all limited partners in all Parallel Vehicles giving rise to such fees.

"Plan Assets" means "plan assets" as defined in the Plan Asset Regulation.

"Plan Asset Event" has the meaning set forth in Section 5.6(e).

"Plan Asset Regulation" means the U.S. Department of Labor regulation located at 29 C.F.R. Section 2510.3-101, or any successor regulation thereto, as in effect at the time of reference, as modified by Section 3(42) of ERISA.

"Portfolio Company" means any corporation, partnership, limited liability, company or other entity in which the Partnership has directly or indirectly made an investment, other than Short-Term Investments.

"Portfolio Investments" means any investments held directly or indirectly by the Partnership, other than Short-Term Investments. If the Partnership holds multiple classes of securities or other interests that were issued by a Portfolio Company in a single closing or series of related closings, all of such securities or interests in the aggregate shall constitute one Portfolio Investment.

"Principals" means the following senior investment professionals who are partners or members of the General Partner or are employed by the Manager, for so long as such persons have not voluntarily resigned from, or been terminated by, the General Partner or Manager, and any other senior investment professionals from time to time who are designated as such by the General Partner: James Dondero, Mark Okada, Patrick Daugherty and John Honis.

"Qualified Purchaser" has the meaning set forth in Section 2(a)(51) of the Investment Company Act and the regulations promulgated thereunder.

"Redeemed Limited Partner" has the meaning set forth in Section 6.6(c).

"Redemption Effective Date" has the meaning set forth in Section 6.6(c).

"Redemption Value" means, with respect to any interest in the Partnership, or such portion thereof in the case of a partial withdrawal, being redeemed because of a Plan Asset Event or Regulatory Issue, the fair market value of such interest as of the applicable Redemption Effective Date, as determined in good faith by the General Partner; provided that, if the Plan Asset Event or the Regulatory Issue is a result of a breach of a representation, warranty or covenant made by the Redeemed Limited Partner, the Redemption Value shall be (in each case as determined in good faith by the General Partner) the lesser of (i) the fair market value of such Redeemed Limited Partner's interest in the Partnership on the applicable Redemption Effective Date and (ii) the fair market value of the applicable portion of the Redeemed Limited Partner's interest in the Partnership being redeemed on the date on which cash is allocated to make redemption payments. In making such determination of fair market value, the General Partner shall assume that all of the assets of the Partnership will be sold on the applicable date in a commercially reasonable manner and the proceeds of such sale, net of estimated closing costs, as reasonably determined by the General Partner, and all obligations of the Partnership (other than the redemption of the interest or interests in the Partnership being redeemed as of such date), will be distributed to the Partners pursuant to this Agreement. With respect to a Plan Asset Event or Regulatory Issue that is not a result of a breach of a representation or warranty made by the Redeemed Limited Partner, if the majority of such Redeemed Limited Partners disagree with the General Partner's determination of the Redemption Value of the applicable interests in the Partnership, such Redeemed Limited Partners shall negotiate in good faith to resolve such

disagreement, and if such Redeemed Limited Partners continue to disagree after negotiations are held, either side may request that an independent evaluator (who must be reasonably acceptable to the other party) be retained, whose valuation shall be final and binding on the Partnership and all of the Partners. The Partnership will bear the cost of the independent evaluator.

"Registration" has the meaning set forth in Section 11.1.

"Regulated Investor" has the meaning set forth in Section 6.6(b).

"Regulatory Issue" has the meaning set forth in Section 6.6(b).

"Securities Act" means the U.S. Securities Act of 1933, as amended.

"Separate Investment Entity" has the meaning set forth in Section 5.15.

"Seventy-Five Percent in Interest of the Limited Partners" means Limited Partners with Commitments and limited partners in Parallel Vehicles with capital commitments to Parallel Vehicles totaling 75% of the aggregate Commitments of all Limited Partners and capital commitments of limited partners in Parallel Vehicles.

"Short-Term Investment Income" means the income earned on Short-Term Investments including in any event any gains and net of any losses from dispositions of Short-Term Investments and also net of any costs and expenses directly attributable thereto.

"Short-Term Investments" means investments in (a) cash, (b) obligations of, or fully guaranteed as to timely payment of principal and interest by, the United States of America and with a maturity date not in excess of 12 months from the date of purchase by the Partnership, (c) interest-bearing accounts and/or certificates of deposit of any U.S. bank with capital and surplus in excess of $500 million and whose short-term debt securities are rated not lower than P-1 by Moody's Investor Services, Inc. and A-1+ by Standard & Poor's Corporation and whose long term unsecured debt securities, or the long term unsecured debt securities of its affiliated holding company, are rated no lower than A1 by Moody's Investor Services, Inc. and A+ by Standard & Poor's Corporation, (d) reverse repurchase agreements using U.S. Treasury securities and entered into with any U.S. bank with capital and surplus in excess of $500 million and whose short-term debt securities are rated not lower than P-1 by Moody's Investor Services, Inc. and A-1+ by Standard & Poor's Corporation and whose long term unsecured debt securities, or the long term unsecured debt securities of its affiliated holding company, are rated no lower than A1 by Moody's Investor Services, Inc. and A+ by Standard & Poor's Corporation, and (e) money market mutual funds with assets of not less than $500 million, substantially all of which assets are reasonably believed by the General Partner to consist of items described in one or more of the foregoing clauses (b), (c) and (d).

"Subscription Agreement" means the Subscription Agreements (including a Subscriber Information Form) executed and delivered by Partners investing in the Partnership substantially in the form of the Subscription Agreement, dated as of the date hereof.

"Successor Fund" has the meaning set forth in Section 5.12.

"Tax Exempt Partner" means (i) a Limited Partner that is exempt from tax under Section 501 of the Code or (ii) a Limited Partner that has a direct or indirect beneficial owner that (x) is exempt from tax under Section 501 of the Code and (y) would be required to report on a United States federal income tax return or report UBTI that would be derived from the Partnership if the Partnership were classified as a partnership for U.S. federal income tax purposes, to the extent of such beneficial owner's pro rata share of such income, but only in each case if such Limited Partner has notified the General Partner in writing regarding the status of such direct or indirect beneficial owner.

"Topping and Break-up Fees" means topping, break-up or similar fees in connection with prospective Portfolio Investments that are not completed, in each case to the extent actually paid by a prospective Portfolio Company and received by the General Partner, the Manager, the Principals, employees of the Manager or their Affiliates; provided, however, that (A) such fees shall not include, in each case, any such amounts that are applied to cover amounts paid by the General Partner, the Manager, the Principals, employees of the Manager or their Affiliates that constitute unreimbursed (i) out-of-pocket expenses of such persons incurred in generating such fees, and (ii) Partnership Expenses incurred in generating such fees, and (B) to the extent that the General Partner, the Manager, the Principals or their Affiliates were actually reimbursed by the Partnership for any Partnership Expenses incurred in generating such fees, such fees will first be applied to repay the Partnership for such Partnership Expenses.

"Transaction and Monitoring Fees" means commitment, transaction, closing, merger and acquisition, divestiture, financing, monitoring and similar advisory fees in respect of a Portfolio Company, in each case to the extent actually paid by a Portfolio Company and received by the General Partner, the Manager, the Principals, employees of the Manager or their Affiliates; provided, however, that (A) such fees shall not include, in each case, any such amounts that are applied to cover amounts paid by the General Partner, the Manager, the Principals, employees of the Manager or their Affiliates that constitute unreimbursed (i) out-of-pocket expenses of such persons incurred in generating such fees, and (ii) Partnership Expenses incurred in generating such fees, and (B) to the extent that the General Partner, the Manager, the Principals or their Affiliates were actually reimbursed by the Partnership for any Partnership Expenses incurred in generating such fees, such fees will first be applied to repay the Partnership for such Partnership Expenses.

"Triggering Event" has the meaning set forth in Section 2.2(d).

"Two-Thirds in Interest of the Limited Partners" means Limited Partners with Commitments and limited partners in Parallel Vehicles with capital commitments to Parallel Vehicles totaling more than $66^{2/3}$% of the aggregate Commitments of all Limited Partners and capital commitments of limited partners in Parallel Vehicles.

"UBTI" means unrelated business taxable income and unrelated debt financed taxable income, as defined in Sections 512 and 514 of the Code, respectively.

"Unapplied Waived Fee Amounts" has the meaning set forth in the Master Partnership Agreement.

"Uncapitalized Partnership Expenses" means Partnership Expenses that are not Capitalized Partnership Expenses.

"Unfunded Commitment" means that portion of a Partner's Commitment that is not a Funded Commitment.

"U.S." means the United States of America.

"Waived Fee Amount" has the meaning set forth in Section 4.1(d).

"Waived Fee Notice" has the meaning set forth in Section 4.1(d).

"Waiver Contribution" has the meaning set forth in Section 2.2(a)(ii).

Section 2.2 Capital Contribution Commitment; Key Person Provision. Subject to Section 5.6(b):

(a) (i) Each Partner agrees to make contributions in cash to the capital of the Partnership pro rata based upon such Partner's respective Unfunded Commitment in an aggregate amount up to its Unfunded Commitment when and as called by the General Partner ("Capital Call") upon at least ten Business Days written notice (the "Capital Call Notice"); provided, however, that the General Partner shall contribute its share of any contribution to be used to make a Portfolio Investment directly to the Master Partnership in lieu of making a Capital Contribution to the Partnership for such amount. The General Partner shall not be obligated to make Capital Contributions to be used to pay the Management Fee or Placement Fees, and Capital Contributions to pay the Management Fee will be made by each Limited Partner based on the amount of each payment of the Management Fee that is borne by such Limited Partner pursuant to Section 4.1(b). Any Capital Contributions made by the Limited Partners to pay the Partnership's pro rata share of any Placement Fees shall be made by the Limited Partners whose Commitments gave rise to such fees, pro rata in accordance with their respective Commitments. The aggregate Commitments and capital commitments to all Parallel Vehicles of the General Partner, the Principals, Highland and their Affiliates, shall be pro rata and shall equal the lesser of 5.0% of aggregate Commitments and capital commitments to all Parallel Vehicles and $50 million. In the event of the election described in Section 2.2(a)(ii), each Limited Partner required to make a Waiver Contribution pursuant to Section 2.2(a)(ii) shall make the Waiver Contribution specified in the Capital Call Notice. Each Portfolio Investment shall be made through the Master Partnership (other than investments made through a Separate Investment Entity pursuant to Section 5.15), and the Master Partnership shall call capital from the Partnership and the General Partner in the manner set forth in the Master Partnership Agreement for purposes of making such Portfolio Investment. Each Capital Contribution shall be made by Partners in cash either by delivery to the Partnership of a certified check or wire transfer of immediately available funds to an account designated by the General Partner, provided, however, that the Capital Contributions of the General Partner may be made by cash contributions or by Deemed Contributions as set forth in Section 2.2(a)(ii).

A Capital Call Notice shall: (i) specify the purpose for which the Capital Contributions are required to be made (including a breakdown of the amounts called in respect of Portfolio Investments, Partnership Expenses, Organizational Expenses, Management Fees or Placement

Fees); (ii) in the case of a Capital Call Notice with respect to the anticipated making of a Portfolio Investment, include: (A) a brief description of the identity, nature and business of such Portfolio Investment; (B) a statement as to whether the Portfolio Investment might be structured through a Separate Investment Entity; (C) a designation as such of any Bridge Financing to be made as part of such Portfolio Investment, and (D) a statement as to whether the Portfolio Investment is an investment in a Media Company or could, in the reasonable judgment of the General Partner, cause a Limited Partner to recognize UBTI; and (iii) specify a Limited Partner's pro rata share of the Capital Contributions required to be made by such Limited Partner, the portion of the Capital Contribution to be applied towards the payment of Management Fees, and the amount of a Limited Partner's Unfunded Commitment remaining following the funding of such Capital Contribution.

(ii) Notwithstanding Section 2.2(a)(i) above, at such time as the General Partner delivers any Capital Call Notice, the General Partner's required contribution to the Master Partnership in respect of anticipated or actual Portfolio Investment and/or expenses incurred directly in connection with the making, maintaining or disposing of such Portfolio Investment, at the General Partner's election, shall be reduced by an amount up to the lesser of (A) the amount of the contribution to the Master Partnership otherwise required to be made by the General Partner pursuant to Section 2.2(a)(i), or (B) the amount of any existing Unapplied Waived Fee Amounts, and such amount shall instead be funded through Capital Contributions to the Partnership by the Participating Partners with respect to whom the Management Fee is payable pursuant to Section 4.1(b), pro rata according to their respective Commitments (for any Partner, a "Waiver Contribution"). If, as of any date, the aggregate amounts described in clause (i) of the definition of "Deemed Contribution" in the Master Partnership Agreement exceed the sum of the amounts described in clause (i) of the definition of "Unapplied Waived Fee Amounts," in the Master Partnership Agreement, the General Partner shall, within ten Business Days after such date, make a Capital Contribution equal to the amount of such excess. Such amount shall be distributed to the Partners as a return of their Capital Contributions, in proportion to their respective Waiver Contributions.

(b) Each Partner's Commitment will commence on the date of the First Closing and will expire on the earlier of (i) five years from the Final Closing, (ii) the date after the second anniversary of the Final Closing on which the Commitment Period is terminated with the consent of Seventy-Five Percent in Interest of the Limited Partners, (iii) the date on which the General Partner determines that 90% of the aggregate Commitments of the Partners have been funded or are needed for purposes described in clauses (i) through (iii) of the next sentence below, or (iv) the date that the Commitment Period is terminated pursuant to Section 2.2(d), (such period being referred to as the "Commitment Period"). Notwithstanding the expiration or the termination of the Commitment Period, the Partners will remain obligated to make cash contributions throughout the duration of the Partnership pursuant to their respective Unfunded Commitments to the extent needed (i) to make Follow-on Investments; provided, however, that the aggregate of all Follow-on Investments made after the termination of the Commitment Period shall not exceed 15% of the aggregate Commitments, (ii) to make investments that were the subject of written agreements in process or under active consideration prior to or on the date of termination of the Commitment Period and which are consummated within 120 days of the date of termination of the Commitment Period, subject to extension, if necessary, in order to obtain requisite regulatory approvals, and (iii) to pay Partnership Expenses and the Management Fee. The General Partner

shall notify the Limited Partners within 30 days of the termination of the Commitment Period as to all in process investments that were the subject of written agreements in process and investments under active consideration to the extent the General Partner is not bound by confidentiality obligations related thereto.

(c) Subject to the ELP Law, the General Partner shall cause the Partnership to return to the Partners all or any portion of any Capital Contribution to the Partnership which is not invested directly or indirectly in a Portfolio Investment or used to pay Partnership Expenses, Management Fees, Placement Fees or Organizational Expenses or which has been contributed in order to fund a Bridge Financing which is refinanced. Subject to the ELP Law, each such return of Capital Contributions shall be made pro rata among all Partners in the same proportion as the Partners made such Capital Contributions and shall be made on or before the sixtieth (60th) day following the date such Capital Contributions were due (as set forth in the Capital Call Notice pursuant to which such Capital Contributions were made by the Partners to the Partnership), provided, however, that such Capital Contributions may be retained and applied with respect to another outstanding Capital Call Notice and may also be retained if the General Partner determines in good faith that there will be a Capital Call within thirty (30) days after the date that such Capital Contributions would otherwise be required to be returned, and if not so applied and retained, may be called again by the General Partner according to the provisions of this Section 2.2 as if such returned Capital Contributions had not been previously called.

(d) If:

(i) James Dondero and Mark Okada both cease to be actively involved, including in a supervisory role, on an ongoing basis with respect to the business, operations or investment decisions of Highland, the Manager and General Partner,

(ii) the Keyman Group, together with the Principals as of the Final Closing and Permitted GP Transferees thereof, are no longer entitled to receive, directly or indirectly, in the aggregate at least 50% of the Carried Interest (as defined in the Master Partnership Agreement) payable to the General Partner, or

(iii) any two or more of the members of the Keyman Group cease to be actively involved, including in a supervisory role, on an ongoing basis with respect to the business, operations or investment decisions of Highland, the Manager and General Partner,

(the circumstances specified in each of clauses (i), (ii), and (iii), above being referred to herein as a "Triggering Event"), then the Partnership shall automatically enter into a 120 day period (subject to extension for an additional 120 day period as described below) in which the Commitment Period will be suspended (a "Continuity Period").

The Partnership shall not make any new investments during the Continuity Period, except to the extent such investments (a) were the subject of written agreements, (b) were in process or (c) under active consideration prior to the commencement of the Continuity Period, and in each such case, are consummated within 120 days of the commencement of the Continuity Period, subject to extension, if necessary, in order to obtain requisite regulatory approvals for such investments. The pursuit of Other Permitted Investment Activities by the Principals and the

members of the Keyman Group will not give rise to a Triggering Event. The General Partner will promptly notify the Limited Partners of the occurrence of a Triggering Event.

During a Continuity Period, if a Triggering Event described in clause (i) above has occurred, the General Partner, after consultation with the Advisory Committee, will prepare for and provide to the Limited Partners within 60 days of the Triggering Event a program recommended by the General Partner for resumption by the Partnership of its full range of activities at the end of such Continuity Period. Prior to the end of the Continuity Period, but within a reasonable time period following the delivery of a program recommended by the General Partner, the General Partner will arrange for a vote of all Limited Partners. By consent of Two-Thirds in Interest of the Limited Partners, the Limited Partners may cause an early termination of the Commitment Period, such termination to commence on the date such Continuity Period expires. If a Continuity Period expires without the occurrence of an effective consent of the requisite Limited Partners to terminate the Commitment Period, the Partnership, and the General Partner on its behalf, shall be authorized and entitled to resume the Partnership's full range of activities.

During a Continuity Period, if a Triggering Event described in clauses (ii) or (iii) above has occurred, within 90 days of the Triggering Event the General Partner may propose to the Advisory Committee one or more replacements to serve as members of the Keyman Group for purposes of this Section 2.2(d); if a majority of the members of the Advisory Committee approve of such replacement or replacements, such replacement person or persons shall thereafter be members of the Keyman Group and the Partnership, and the General Partner on its behalf, shall be authorized and entitled to resume the Partnership's full range of activities. If the Advisory Committee does not approve of such replacement person or persons within 30 days following the delivery of the General Partner proposal to the Advisory Committee, the Continuity Period shall be extended for an additional 120 day period. The General Partner may propose to the Advisory Committee, within 90 days after the rejection by the Advisory Committee of the initial replacement person or persons, a different replacement or replacements than originally proposed to serve as members of the Keyman Group for purposes of this Section 2.2(d); if a majority of the members of the Advisory Committee approve of such replacement or replacements within 30 days following delivery of the new General Partner proposal, such replacement person or persons shall thereafter be members of the Keyman Group and the Partnership, and the General Partner on its behalf, shall be authorized and entitled to resume the Partnership's full range of activities. If the Advisory Committee does not approve of such replacement person or persons within such thirty day period, the General Partner will arrange for a vote of all Limited Partners. By consent of Two-Thirds in Interest of the Limited Partners, the Limited Partners may cause an early termination of the Commitment Period, such termination to commence on the date the Continuity Period expires.

Section 2.3 Capital Accounts. A capital account ("Capital Account") will be established for each Partner on the books of the Partnership and will be adjusted as follows:

(a) Capital Contributions and Allocations. A Partner's Capital Contribution will be credited to its Capital Account when received by the Partnership.

(b) Short-Term Investment Income. Short-Term Investment Income earned in each quarterly period with respect to Capital Contributions that have not yet been invested in Portfolio Investments or used to pay fees and expenses of the Partnership will be credited to the Capital Accounts of the Partners pro rata according to their respective Partner Capital Contributions to which such Short-Term Investment Income is attributable. Short-Term Investment Income on undistributed proceeds from Portfolio Investments shall be credited to the Capital Accounts of the Partners ratably in proportion to their respective shares of such undistributed amounts.

(c) Investment Income and Gain and Investment Loss. Taking into account Section 6.6(d) and except as otherwise provided in this Section 2.3(c), Investment Income and Gain or Investment Loss shall be allocated among the Partners for each taxable period in such a manner that, as of the end of such taxable period, and to the extent possible, the Capital Account of each Partner shall be equal to the net amount, positive or negative, which would be distributed to each Partner or for which such Partner would be liable to the Partnership under this Agreement, determined as if the Partnership were to liquidate the assets of the Partnership for an amount equal to their Basis, reduced, but not below zero, by the amount of nonrecourse debt, if any, to which such Partnership assets are subject, and distribute the proceeds in liquidation after the payment of all liabilities (other than nonrecourse liabilities) in accordance with Sections 3.2 and 3.3. For purposes of the foregoing determination, any increase in the Basis of a Portfolio Investment shall be taken into account for this purpose in the same manner as proceeds of a Partial Realization.

(d) Organizational Expenses, Management Fee. Organizational Expenses that are borne by the Partnership will be apportioned to the Partners pro rata according to their respective Capital Contributions to pay Organizational Expenses. Organizational Expenses that are described in Section 705(a)(2)(B) of the Code will be debited against the Capital Accounts of the Partners in the fiscal period in which they are incurred, and Organizational Expenses that are described in Section 709(b) of the Code will be debited against the Capital Accounts of the Partners over a 180-month period. The Management Fee for any Management Fee Period shall be debited against the Capital Account of each Limited Partner in the amount that is borne by such Limited Partner pursuant to Section 4.1(b) for such Management Fee Period.

(e) Distributions. Any amounts distributed to the Partners will be debited against their Capital Accounts.

(f) Partnership Expenses. Uncapitalized Partnership Expenses shall be debited against the Capital Accounts of the Partners in proportion to their respective Commitments.

(g) Placement Fees. Placement Fees, shall be debited against the Capital Accounts of the Limited Partners whose Commitments gave rise to such fees, in proportion to their respective Commitments.

Section 2.4 Distributions in Kind.

(a) If any securities are to be distributed in kind to the Partners as provided in Article III, such securities will first be written up or down to their value (as determined pursuant to Article IX as of the date of such distribution), thus creating Investment Income or Gain or

Investment Loss, which shall be allocated in accordance with Section 2.3 to the Capital Accounts of the Partners, and upon the distribution (or deemed distribution pursuant to Section 2.4(b)) of such securities to the Partners, the value of such securities shall be debited, in accordance with Section 2.3(e), against the Capital Accounts of the Partners.

(b) The General Partner shall give at least ten Business Days prior notice to the Limited Partners of any proposed distribution of securities pursuant to this Section 2.4 and the date of such proposed distribution. In connection with any distribution of securities in kind, the General Partner shall offer each Limited Partner the right to elect to receive a distribution of securities or to have the Partnership dispose of all or any portion of such securities for the account of such Limited Partner. At the election of a Limited Partner (an "Electing Limited Partner"), all distributions of securities that otherwise would be made to the Electing Limited Partner by the Partnership shall be made, as determined by the General Partner, to the General Partner or an independent escrow agent or custodian as agent for the Limited Partner (the "Agent") and, unless otherwise specified in writing, an Electing Limited Partner shall be deemed to have chosen to have the Partnership sell its share of securities in full. An Electing Limited Partner shall bear all expenses (including, without limitation, underwriting costs and brokerage commissions) relating to the sale by the Partnership of such securities. The General Partner may require the Electing Limited Partner to make any representations, warranties and covenants as the General Partner shall reasonably determine are necessary or desirable in order to dispose of the securities. For all purposes of this Agreement, the Limited Partner shall be deemed to have received such distribution of securities on the date that such securities are delivered to the Agent. Immediately following a distribution to the Agent pursuant to this Section 2.4(b), the General Partner shall notify the Limited Partner of the type and quantity of securities distributed. The Agent shall thereafter hold such securities for a period of 10 Business Days following which the Agent shall use its reasonable efforts to promptly sell such securities and deliver the net proceeds therefrom to the Limited Partner; provided, however, that the Agent shall not sell such securities and shall instead promptly deliver such securities to the Limited Partner following the conclusion of such 10 Business Day period if, prior to the conclusion of such period, the Limited Partner notifies the Agent that the receipt of such securities would not violate any law, regulation or governmental order applicable to the Limited Partner. The Agent shall use good faith efforts in selling such securities at the highest available price, but shall not be liable to an Electing Limited Partner in any manner in connection with such sale in the absence of gross negligence or willful misconduct, including for any claim that the Agent was unable to effect any such sale (for any reason) or failed to obtain the highest possible sale price for such securities.

(c) An Electing Limited Partner's election pursuant to Section 2.4(b) may be revoked by the Electing Limited Partner at any time upon notice to the General Partner; provided, however, that an election may not be revoked with respect to securities if the Agent has entered into a binding commitment to sell securities on behalf of the Electing Limited Partner.

Section 2.5 Determination of Voting Thresholds. Any vote, approval or consent that is to be based upon a specified proportion of the interests in the Partnership held by the limited partners shall be based upon the Limited Partners' Commitments and the capital commitments of limited partners in Parallel Vehicles, excluding (i) except as specifically provided in Section 6.9, that portion of each Limited Partner's Commitment and the capital commitment of each limited partner in a Parallel Vehicle that represents a Non-Voting Interest, (ii) except as otherwise set

forth in Section 12.1(b), limited partner interests in the Partnership or in any Parallel Vehicle held by a Defaulting Partner or a defaulting partner of a Parallel Vehicle, and (iii) limited partner interests in the Partnership or in any Parallel Vehicle held, directly or indirectly, by the General Partner, Highland, the Principals or any of their respective Affiliates prior to any removal of the General Partner pursuant to Section 5.9, and (iv) in the case of any particular matter that affects or pertains only to the Partners and not to any partner of a Parallel Vehicle, limited partner interests in such Parallel Vehicle held, directly or indirectly, by the General Partner or by any limited partner of such Parallel Vehicle.

ARTICLE III

DISTRIBUTIONS

Section 3.1 Distribution Policy.

(a) The General Partner may in its sole discretion make distributions of cash or Marketable Securities at any time and from time to time subject to the remaining provisions of this Section 3.1; provided, however, that no securities will be distributed in kind to the Partners that are not Marketable Securities until the final distribution of the assets of the Partnership to the Partners pursuant to Section 8.3(b).

(b) The General Partner will cause the Partnership to distribute (i) Current Cash Income at least semi-annually unless reinvested as described in this Section 3.1(b), (ii) Short-Term Investment Income at least quarterly, and (iii) the net cash proceeds received from Dispositions of or Partial Realizations with respect to Portfolio Investments within 60 days of the receipt thereof unless reinvested as described in this Section 3.1(b), after, in each case, the setting aside by the General Partner, in its discretion, of reasonable reserves for anticipated obligations and commitments of the Partnership as well as any required tax withholdings; provided, however, that if the General Partner determines in good faith that there will be a Capital Call within 30 days after the date that an amount that would otherwise be distributed that would be described in clauses (a), (b) and (d) of the definition of Funded Commitment, or if there is an outstanding Capital Call Notice the General Partner may, in its discretion, retain such amount and reduce the amount required to be contributed with respect to such Capital Call.

Section 3.2 Distribution of Short-Term Investment Income. Short-Term Investment Income will be distributed among the Partners in the same proportions as Short-Term Investment Income was credited to the Partners' Capital Accounts.

Section 3.3 Distributions of Current Cash Income and Proceeds From Dispositions of or Partial Realizations with Respect to Investments and In Kind Distributions.

(a) Distributions not attributable to a Portfolio Investment shall be distributed to the Limited Partners in proportion to their Funded Commitments as of the date of such distribution. All distributions of Current Cash Income and all distributions out of net proceeds from Dispositions of or Partial Realizations with respect to Portfolio Investments (in each case, net of Partnership Expenses) and all distributions of Portfolio Investments shall be distributed to the

Participating Partners in proportion to their respective Partner Interests with respect to the Portfolio Investment that gave rise to such Current Cash Income or net proceeds or that is being distributed in kind.

(b) A Partner's Capital Contributions used to pay Organizational Expenses, Management Fees, Placement Fees and Uncapitalized Partnership Expenses that are to be allocated to a Portfolio Investment shall be determined on the date such Portfolio Investment is Disposed of, and shall equal the product of (i) such Capital Contributions not theretofore allocated to Portfolio Investments that have been Disposed of multiplied by (ii) a fraction, the numerator of which shall equal such Partner's Capital Contributions in respect of such Portfolio Investment and the denominator of which shall equal such Partner's Capital Contributions in respect of such Portfolio Investment and all Portfolio Investments that have not been Disposed of on or prior to the date such allocation is effected. For purposes of the determinations described in clause (b)(i) of the definition of "Excess Partial Realization Proceeds" in the Master Partnership Agreement, such Capital Contributions shall be tentatively allocated to the Portfolio Investment giving rise to such Partial Realization proceeds as though such Portfolio Investment had been Disposed of on the date such proceeds were realized.

Section 3.4 Foreign Taxes. The amount of any foreign taxes paid by the Partnership (or by an entity in which the Partnership holds an interest, either directly or indirectly through one or more such entities, that is treated as a partnership or is disregarded for federal income tax purposes) or withheld from receipts of the Partnership or such entity from a Portfolio Investment shall be allocated among the Partners as reasonably determined by the General Partner (taking into account any allocation of taxes under Section 6.7) and, for purposes of Sections 3.3(a)(i) – (iii) of the Master Partnership Agreement, shall be deemed to have been distributed to each Partner as Current Cash Income or proceeds from the Disposition of a Portfolio Investment to the extent that the payment or withholding of such foreign taxes reduced Current Cash Income or the proceeds from the Disposition of a Portfolio Investment, as the case may be, otherwise distributable to such Partner as provided herein (for this purpose taking into account with respect to each Partner any reduction in such foreign taxes that occurs by reason of such Partner's status); provided that the General Partner may deem foreign taxes paid by or withheld from receipts of the Partnership and allocable to a Tax Exempt Partner to have been distributed to such Tax Exempt Partner as described above only to the extent that such Tax Exempt Partner incurs and is subject to tax on UBTI relating to such Tax Exempt Partner's Interest in the Partnership, as determined by the General Partner.

ARTICLE IV

MANAGEMENT FEE AND ORGANIZATIONAL EXPENSES

Section 4.1 Management Fee.

(a) During each quarterly period beginning on each January 1, April 1, July 1 and October 1 from and after the First Closing (each such quarterly period, a "Management Fee Period") until the termination of the Partnership, the Partnership will pay the Manager a

quarterly fee as calculated below (the "Management Fee"), in advance on each January 1, April 1, July 1 and October 1, as compensation for managing the affairs of the Partnership, provided, however, that the initial payment of the Management Fee shall be for the period from the First Closing to December 31, 2007.

(b) The Management Fee payable by the Partnership shall be the sum of the amounts determined for each Limited Partner pursuant to this Section 4.1. No Management Fee shall be payable with respect to the General Partner and their Affiliates. Subject to Sections 4.1(c) and 4.1(d), the quarterly Management Fee payable with respect to a Limited Partner during the Initial Fee Period shall be 0.4375% of the Commitments of such Limited Partner resulting in an aggregate annual Management Fee of 1.75%. Following the expiration of the Initial Fee Period, the quarterly Management Fee payable with respect to a Limited Partner shall be 0.4375% of the aggregate Net Funded Commitment of such Limited Partner as reduced by any writedowns or writeoffs pursuant to Section 9.4 in respect of Portfolio Investments that have not been Disposed of on or prior to such date (resulting in an aggregate annual Management Fee of 1.75%). The Management Fee in any partial quarterly period will be pro rated on a daily basis according to the actual number of days in such period.

(c) The Management Fee payable with respect to any Management Fee Period and with respect to a Limited Partner will be reduced (but not below zero) by such Limited Partner's Partner Share of eighty-five percent (85%) of the Partnership's pro rata share of all Topping and Break-up Fees, Transaction and Monitoring Fees, and Director Fees. The Management Fee shall also be reduced, but not below zero, by such Limited Partner's Capital Contributions used pursuant to Section 2.2(a)(i) to pay (x) any Placement Fees and (y) any Organizational Expenses in excess of $1,250,000, paid or payable by the Partnership. To the extent that such Limited Partner's share of the Management Fee in any Management Fee Period is reduced to zero as a result of the reduction for Placement Fees, Organizational Expenses in excess of $1,250,000, Director Fees, Topping and Break-up Fees and Transaction and Monitoring Fees, the excess shall be carried forward to the next Management Fee Period (and, if necessary, to one or more subsequent Management Fee Periods) and applied as a reduction of the Management Fee, but not below zero, for such succeeding Management Fee Period (or a subsequent Management Fee Period). To the extent that Director Fees, Topping and Break Up Fees and Transaction and Monitoring Fees exceed or cannot be applied as a reduction of Management Fees for succeeding Management Fee Periods, then such excess will first be applied to reimburse the Partnership for any previously unreimbursed Management Fees paid by the Partnership for prior Management Fee Periods (with such amounts being treated for purposes of Section 3.3(a) as distributions in return of the Capital Contributions made to pay such Management Fees), and the remainder of such excess will be paid or contributed to the Partnership and will be distributed pursuant to Section 3.3(a) as if net proceeds from the Disposition of a Portfolio Investment; provided, however, that in the event that any Partner desires not to receive any such excess fee offsets upon the termination of the Partnership, such Partner may elect in writing at any time prior to the termination of the Partnership to waive receipt of any such fee offsets, in which case the amount of fee offsets that would otherwise have been allocated and distributed to such Partner shall instead be allocated and distributed to the other non-waiving Partners on a pro rata basis in accordance with their respective Commitments. The Partnership's pro rata share of all Topping and Break-up Fees, Transaction and Monitoring Fees and Director Fees shall be the amount of such fees multiplied by a fraction, the numerator of which is the Partnership's investment in the

Portfolio Investment (or proposed investment in the proposed Portfolio Investment) giving rise to such fee and the denominator of which is the aggregate investment or proposed investment in such Portfolio Investment or proposed Portfolio Investment by the Partnership, all Parallel Vehicles, all Separate Investment Entities, all Co-investment Funds and all other co-investment arrangements arranged by the Manager with respect to such Portfolio Investment or proposed Portfolio Investment (provided, that for the avoidance of doubt, any such Co-Investment Funds or other co-investment arrangements will not receive any amount of fee offsets).

(d) After taking into account any reduction in the Management Fee payable for any Management Fee Period with respect to a Limited Partner pursuant to Section 4.1(c), the Management Fee payable for any Management Fee Period with respect to such Limited Partner shall be further reduced by an amount (the "Waived Fee Amount") equal to the lesser of (i) the amount of the Management Fee to which the Manager would otherwise be entitled pursuant to this Section 4.1 that the Manager has irrevocably elected to waive in a written notice (a "Waived Fee Notice") delivered to the Partnership with respect to each Management Fee Period, at least 15 days prior to the end of the calendar year immediately preceding the calendar year in which such Management Fee Period begins, and with respect to each Management Fee Period in the first calendar year of the term of the Partnership, such Waived Fee Notice delivered on or prior to the delivery of the first Capital Call Notice in respect of Management Fees and (ii) the amount that would be payable to the Manager on such Management Fee Period pursuant to this Section 4.1 in the absence of this Section 4.1(d). A Limited Partner's share of the Waived Fee Amount for any Management Fee Period is equal to the Waived Fee Amount for such Management Fee Period multiplied by the quotient determined by dividing (i) the Management Fee that would be payable for such Management Fee Period with respect to such Limited Partner in the absence of this Section 4.1(d) by (ii) the total Management Fee that would be payable for such Management Fee Period in the absence of this Section 4.1(d). If the Manager delivers a Waived Fee Notice with respect to any Management Fee Period that begins before the date of the Final Closing, (i) if such Waived Fee Notice specifies that a percentage of the Management Fee otherwise payable for such Management Fee Period be waived, the Manager shall be deemed to have waived a proportionate amount of the Management Fee otherwise payable for such Management Fee Period by all Additional Limited Partners whose subscriptions are accepted after the date of such Waived Fee Notice and (ii) if such Waived Fee Notice specifies that a fixed dollar amount of such Management Fee otherwise payable for such Management Fee Period be waived, the reduction in the Management Fee for such Management Fee Period shall be allocated to all Limited Partners in the same proportion as the Management Fee is borne by the Limited Partners for such Management Fee Period.

(e) For purposes of Section 4.1(c), a Limited Partner's share of Director Fees and Transaction and Monitoring Fees is equal to the amount of the Partnership's pro rata share of such fees multiplied by the Limited Partner's Partner Interest in the Portfolio Investment to which such Director Fees and Transaction and Monitoring Fees are attributable, and a Limited Partner's share of Topping and Break-up Fees is equal to the amount of such fees multiplied by the proportion of such Limited Partner's Commitment to the Commitments of all Partners on the first day of the Management Fee Period in which such Topping and Break-up Fees are paid.

Section 4.2 Organizational and Partnership Expenses. The Partnership will reimburse the General Partner or the Manager for all Organizational Expenses incurred by the General

Partner or the Manager on behalf of the Partnership. The Partnership will pay all Partnership Expenses.

Section 4.3 Ordinary Operating Expenses. The Manager shall pay all ordinary overhead expenses of the Partnership, the General Partner, the Manager, the Separate Investment Entities and the Parallel Vehicles (including salaries, rent, overhead, travel expenses and similar expenses), other than Partnership Expenses, Organizational Expenses and Placement Fees.

ARTICLE V

GENERAL PARTNER

Section 5.1 Investment Opportunities; Devotion of Time; Management Authority.

(a) The Principals shall each be actively involved in the business of the Fund Group and shall devote such amount of their business time and attention in order to fulfill their fiduciary duties to the Limited Partners in accordance with the ELP Law; provided, however, that the Principals may engage and be involved in Other Permitted Investment Activities. Subject to the foregoing and to Section 5.12(a) and the Highland Investment Allocation Policy, during the Commitment Period, the General Partner, the Manager and the Principals will present all investment opportunities to the Partnership which they believe in good faith are suitable for the Partnership and fit the investment objective of the Partnership. However, the Principals and the Manager will not be restricted from pursuing, engaging in and completing acquisitions and investments in, through or by Highland Portfolio Companies in connection with Other Permitted Investment Activities and other investments through other Highland Accounts, in each such case, in accordance with the Highland Investment Allocation Policy.

(b) The General Partner will have full control over the business and affairs of the Partnership consistent with its duties arising under the ELP Law. The General Partner will have the power on behalf and in the name of the Partnership to carry out any and all of the objects and purposes of the Partnership and to perform all acts and enter into and perform all contracts and other undertakings which, in its sole discretion, are necessary or advisable or incidental thereto, including the power to acquire or dispose of any security (including Marketable Securities). Notwithstanding the foregoing, the management of the Partnership will vest in the Manager which will provide the Partnership with portfolio management and administrative services, including investigating, analyzing, structuring and negotiating potential investments, monitoring the performance of Portfolio Companies and advising as to disposition opportunities. In no event shall the Manager, which has been engaged by the Partnership, be treated as an agent or partner of the General Partner.

(c) Except to the extent otherwise provided in this Agreement, all matters concerning (i) the allocation of Short-Term Investment Income, Current Income, Investment Income and Gain, Investment Loss, Partnership Expenses, Organizational Expenses, and the distribution of net proceeds and the return of capital among the Partners, including the taxes thereon, (ii) accounting procedures and determinations, estimates of the amount of Management Fees or Placement Fees payable by any Defaulting Partner, (iii) the calculation of the Management Fee

(including Director Fees, Topping and Break-up Fees and Transaction and Monitoring Fees), and (iv) the reinvestment of any amounts distributed in respect of a Bridge Financing (or portion thereof) that was sold, refinanced or otherwise disposed of within eighteen (18) months from the Investment Date of such Bridge Financing, shall be determined by the General Partner in accordance with its reasonable interpretation of the provisions of this Agreement made in good faith.

Section 5.2 Use of Affiliates. The General Partner shall retain the services of the Manager and any officers, directors or Affiliates thereof in connection with the operation of the Partnership, and the compensation of the Manager and such persons shall be as provided in Section 4.1 hereof; provided, however, that nothing contained in this Section 5.2 shall be construed to relieve the General Partner of its responsibilities under this Agreement or the duties and limitations set forth in this Article V.

Section 5.3 Indebtedness. Subject to Section 5.5 and Section 5.4, the Partnership may incur indebtedness consisting of Bridge Leveraging or the issuance of credit support of the obligations of Portfolio Companies or their subsidiaries, which may be in the form of guarantees, letters of credit or pledges of a portion of the Commitments ("Credit Support"). Any such indebtedness will not be considered as Capital Contributions by the Partners unless, until and to the extent the General Partner calls for Capital Contributions in connection therewith pursuant to a Capital Call Notice pursuant to this Agreement.

Section 5.4 Limitation on Investments.

(a) The Partnership will not invest (including through Credit Support) more than twenty five percent (25%) of the aggregate Commitments in any single Portfolio Company together with any of its Affiliates (valued at original cost). A Bridge Financing, when added to the amount of permanent investment by the Partnership in the Portfolio Investment that is the subject of the Bridge Financing, may not exceed twenty five percent (25%) of the aggregate Commitments.

(b) The aggregate amount of Bridge Financings outstanding at any one time shall not exceed fifteen percent (15%) of the aggregate Commitments.

(c) Subject to Section 5.5, the Partnership may issue Credit Support, which does not at any one time exceed Unfunded Commitments.

(d) The Partnership shall invest cash in Short-Term Investments.

(e) The aggregate investments (valued at cost) by the Partnership in Portfolio Companies organized and with principal executive offices outside the United States shall not exceed thirty percent (30%) of the aggregate Commitments. The Partnership will not invest in Portfolio Companies that are organized or with principal executive offices in countries that are not within the Organization for Economic Cooperation and Development as of the date of the First Closing.

(f) The Partnership will not invest as a partner or member in any pooled investment fund or "fund of funds" in which an investment adviser or manager of such fund (other than the

Partnership) receives management fees or the right to carried interest distributions on the Partnership's investment or interest therein unless the amount of any such management fee is considered part of the Capital Contribution relating to such Portfolio Investment and the amounts distributable to the General Partner under Sections 3.3(a)(ii) and 3.3(a)(iii) of the Master Partnership Agreement are reduced by the amount of any carried interest payable to such sponsor or investment manager.

(g) In connection with a Portfolio Investment in any non-U.S. jurisdiction, the General Partner shall obtain an opinion of counsel with respect to such jurisdiction to the effect that (i) no Limited Partner, solely as a result of the Partnership making such investments, will be required either (x) to file an income tax return in such jurisdiction (other than in connection with an application for a refund of withholding or similar taxes) or (y) to pay income tax in such jurisdiction with respect to income not derived from the Partnership, and (ii) no Limited Partner shall be personally liable for any debts or losses of the Partnership in such jurisdiction in excess of such Limited Partner's Unfunded Commitment. The General Partner shall use commercially reasonable efforts to ensure that any opinion obtained pursuant to this Section 5.4(i) will permit the Limited Partners to rely thereon. The General Partner shall ask local counsel to confirm and/or update periodically as it deems necessary any opinion it obtains pursuant to this Section 5.4(i). The Partnership will use commercially reasonable efforts to prepare all tax rebate, reduction or reclaim forms or other filings or elections that are required to obtain any available exemption from, reduction in, or refund of, any withholding or other taxes required in any taxing jurisdiction on behalf of each Limited Partner, for signature by such Limited Partner, and to assist each Limited Partner, at such Limited Partner's expense, to obtain refunds for taxes withheld or paid with respect to such Limited Partner as to which a refund is obtainable. Each Partner agrees that it will cooperate with the General Partner in making any such filings or elections to the extent the General Partner determines that such cooperation is necessary or desirable.

(h) The Partnership will not invest (including through Credit Support) more than twenty percent (20%) of the aggregate Commitments in Persons that are not Distressed Companies; provided that the General Partner in its good faith discretion believes that an investment in such Persons is consistent with the Partnership's investment objective.

Section 5.5 UBTI; USRPI; ECI. The General Partner shall use commercially reasonable efforts not to (i) structure the Fund's Portfolio Investments in a manner that would result in the realization by a Tax Exempt Partner of a substantial amount of UBTI, (ii) take any action that would cause any Non-U.S. Partner to recognize ECI, (iii) cause the Partnership to acquire a Portfolio Investment that the General Partner reasonably believes at the time of such acquisition is or is likely to become a "United States real property interest" ("USRPI") within the meaning of Section 897(c) of the Code or (iv) take any action that would cause any Non-U.S. Partner to which Section 892 of the Code applies to be considered or deemed to be engaged in a commercial activity for purposes of Section 892 of the Code; provided, however, that the use of Bridge Leveraging and the use of Director Fees, Topping and Break-up Fees, Transaction Fees and Monitoring Fees, and Placement Fees to offset the Management Fee, as described in Section 4.1(c) will not be deemed a violation of this Section 5.5. The General Partner will consider the economic consequences of the manner in which it structures Portfolio Investments, and will use commercially reasonable efforts to make such Portfolio Investments through structures that are

intended to minimize the tax cost that will be economically borne by the Limited Partners as a result of such structures, including, where appropriate, making Portfolio Investments through a "blocker" structure, to the extent consistent with applicable law.

Section 5.6 ERISA Matters.

(a) The General Partner will use reasonable efforts to conduct the affairs and operations of the Partnership in such a manner that the Partnership will qualify as an Operating Company or for another exception from being deemed to hold Plan Assets of any Benefit Plan Investor. As of the initial Capital Contribution date, the General Partner shall deliver to each Benefit Plan Investor either (i) an opinion from the General Partner's counsel to the effect that the Partnership should qualify as an Operating Company as of the initial Capital Contribution date or (ii) a certificate, based on consultation with the General Partner's counsel, to the effect that the Partnership should qualify for another exemption from being deemed to hold Plan Assets of any Benefit Plan Investor as of the initial Capital Contribution date. Annually thereafter, the General Partner will provide a certificate to Benefit Plan Investors confirming that the Partnership continues to qualify for an exception from being deemed to hold Plan Assets of any Benefit Plan Investor and specifying which exception from Plan Assets is available to the Partnership as of the date of the certificate.

(b) Notwithstanding Section 2.2, until such time as the General Partner delivers to each Benefit Plan Investor (and the escrow agent, if any) either the opinion or the certificate described above in Section 5.6(a), the initial Capital Contribution required to be made to the Partnership by a Benefit Plan Investor shall, at the request of the General Partner, instead be deposited directly by such Benefit Plan Investor into an escrow account that is intended to comply with Department of Labor Advisory Opinion 95-04A.

(c) Each Partner that is or will be a Benefit Plan Investor on the Closing Date when it is admitted to the Partnership shall so notify the General Partner in writing prior to such Closing Date. Any Limited Partner which has not indicated in its Subscription Agreement that it is a Benefit Plan Investor hereby represents, warrants and covenants that it is not, it is not acting on behalf of and, so long as it holds an interest in the Partnership, it will not be and will not be acting on behalf of a Benefit Plan Investor.

(d) It is intended that none of the Partnership, the General Partner, the Manager or any of their Affiliates will act as or be deemed to be a fiduciary under ERISA with respect to any Benefit Plan Investor or the assets of the Partnership; provided, however, that this provision is not intended to negate the fiduciary duties imposed upon a general partner under the ELP Law. Notwithstanding any other provision of this Agreement, the General Partner is authorized to take any action or refrain from taking any action which in its judgment is necessary or desirable in order to prevent any Partnership assets from being deemed to constitute Plan Assets of any Benefit Plan Investor.

(e) Should the General Partner reasonably determine that the continued participation of a Benefit Plan Investor would result in the assets of the Partnership being deemed Plan Assets of such Benefit Plan Investor (a "Plan Asset Event"), the General Partner shall so notify, each of the Benefit Plan Investors in writing within 30 days of such determination. Thereafter, the

General Partner shall take reasonable steps to correct or cure the Plan Asset Event and, if the General Partner determines that it is not reasonably likely that the Partnership's Plan Asset Event can be reasonably corrected or cured, taking into account the overall interest of the Partnership, the General Partner shall dissolve the Partnership and wind up its affairs in accordance with Sections 8.2 and 8.3. In connection with the foregoing obligation, in addition to any other powers the General Partner may have, the General Partner shall have the authority to take any of the following actions, in its sole discretion: (i) any action necessary or desirable, in the General Partner's reasonable judgment, to cure the Partnership's failure to qualify as an Operating Company, if applicable; (ii) in accordance with the provisions of Section 12.1, amend this Agreement to cure any illegality or other material adverse consequences to the Partnership; (iii) amend, terminate or restructure any then existing or contemplated arrangements with third parties to cure any illegality or other adverse consequences to the Partnership so long as such action would not have a material adverse effect on the Limited Partners; (iv) redeem any Limited Partner's interest in the Partnership, in whole or in part, in a manner consistent with the procedures in Section 6.6(d); (v) force the sale of all or any portion of any Benefit Plan Investor's interest in the Partnership to one or more Limited Partners at the Redemption Value or (vi) dissolve the Partnership and wind up its affairs in accordance with Sections 8.2 and 8.3.

Section 5.7 Conflicts of Interest.

(a) The Limited Partners hereby acknowledge and agree that the General Partner and its Affiliates currently manage and may in the future manage Highland Accounts that invest in securities that may be eligible for purchase by the Partnership, which presents the potential for conflicts of interest. While the General Partner and the Manager intend to manage potential conflicts of interest, as Highland has in the past, by following certain guidelines, and to avoid where practicable situations involving conflicts of interest in a portfolio company or otherwise, each Limited Partner acknowledges that there may be situations in which the interests of the Partnership in a portfolio company or otherwise may conflict with the interests of other Highland Accounts, the General Partner, the Manager, the Principals or their respective Affiliates. On any matter involving a conflict of interest not otherwise provided for in this Agreement, the General Partner shall be guided by its good faith judgment as to the best interests of the Partnership and shall take such actions as are determined by the General Partner and Highland to be appropriate and in compliance with the Highland Investment Allocation Policy. Each Limited Partner agrees that the activities of any other Highland Account, the General Partner, the Manager, the Principals and their Affiliates, including Other Permitted Investment Activities, authorized by this Agreement or conducted consistently with this Agreement and the Highland Investment Allocation Policy may be engaged in by such other Highland Accounts, the General Partner, the Manager, the Principals and their Affiliates, as the case may be, and will not, in any case or in the aggregate, be deemed a breach of this Agreement or any duty that might be owed by any such person to the Partnership or to any Partner.

(b) Except as permitted by Sections 5.12(a) and 5.17(a), without the prior approval of either (i) a majority of the members of the Advisory Committee or (ii) a Majority in Interest of the Limited Partners, none of the General Partner, the Manager, the Principals, or any of their respective Affiliates will invest in any securities of any company in which the Partnership either is actively considering making a Portfolio Investment or has an investment; provided, that (x) the foregoing will not apply to Other Permitted Investment Activities or investments made in

accordance with the Highland Investment Allocation Policy, (y) each such person will be permitted to hold securities which such person received in a distribution by the Partnership and (z) any Parallel Vehicles or Separate Investment Entities will be permitted to invest in Portfolio Companies in accordance with this Agreement.

(c) Except as permitted by Sections 5.12(a) and 5.17(a), without the prior approval of either (i) a majority of the members of the Advisory Committee or (ii) a Majority in Interest of the Limited Partners, the Partnership will not invest in any securities issued by, acquire investments from, sell investments to, or enter into any transaction with an entity in which the General Partner, the Manager, the Principals, or their respective Affiliates has a material financial interest in respect of such entity; provided that the foregoing will not apply to (w) Other Permitted Investment Activities, (x) investments by the Partnership in Portfolio Companies in which the Parallel Vehicles, Separate Investment Entities or Co-Investment Funds invest in accordance with this Agreement; (y) investments by the Partnership in Portfolio Companies in which the General Partner, the Manager, the Principals or their respective Affiliates have a material interest that have been made in accordance with the Highland Investment Allocation Policy, or (z) investments by the Partnership in publicly traded securities of Portfolio Companies in which a Highland Account has a material financial interest that are made on arms length terms at prevailing market prices; provided, further, that the Partnership will not be precluded from investing in securities of a company in which the General Partner, the Manager, the Principals, or their respective Affiliates either (A) in the case of public companies, owns securities issued by such company representing one percent (1%) or less of the outstanding equity securities, or (B) own only securities which such Persons received in a distribution by the Partnership.

(d) The General Partner will furnish to the Advisory Committee annually at the time annual financial statements of the Partnership are furnished pursuant to Section 10.3(b) a report of each acquisition or investment by the Partnership in Portfolio Companies in which the General Partner, the Manager, the Principals or their respective Affiliates have a material financial interest that have been made in accordance with the Highland Investment Allocation Policy.

Section 5.8 Transfer of General Partnership Interest; No Withdrawal or Loans. The General Partner generally may not sell, assign, pledge, mortgage or otherwise dispose of its General Partner interest in the Partnership; provided, however, that the General Partner may transfer its General Partner interest in the Partnership (or consent to the transfer of an interest in the General Partner) in a derivative transaction if the transferor maintains the economic attributes of the interest and voting control of the interest. The General Partner will not borrow or withdraw any amount from the Partnership or voluntarily withdraw from the Partnership.

Section 5.9 Removal of the General Partner. By consent of Two-Thirds in Interest of the Limited Partners, the General Partner may be removed in the event of (a) the General Partner's or any member of the Keyman Group's conviction of (or plea of nolo contendere (that is, neither admitting nor denying the charges) to), a material violation of U.S. federal or U.S. state securities law or a U.S. felony criminal violation, (b) the General Partner's adjudication in a final judgment by a court of competent jurisdiction as having committed in respect of the Partnership an act or omission of a material nature involving gross negligence, bad faith, willful misconduct or fraud, or (c) the General Partner's violation of this Agreement which has a material and adverse effect on the Partnership and which remains uncured for 30 days. Notwithstanding the foregoing, if an

event described in clause (a) above has occurred and the event relates to a violation or act of a member of the Keyman Group, the Limited Partners may remove the General Partner only if such violation or act (i) relates to the Partnership or a Portfolio Company, (ii) has a material adverse effect on the Partnership, (iii) such member of the Keyman Group is not terminated as a member of the General Partner and the Manager within 45 days, and (iv) such member of the Keyman Group does not cease to own any interest in the future carried interest or voting interests in the General Partner following termination. The General Partner will provide the Limited Partners with written notice of the occurrence of any event described in clauses (a), (b) or (c) above. Concurrently with the removal of the General Partner, the Manager shall be removed as manager of the Partnership unless re-appointed by the successor general partner of the Partnership. Upon removal of the General Partner, the Limited Partners may elect to continue the Partnership and appoint a new duly authorized general partner of the Partnership and all Parallel Vehicles with the consent of all of the Limited Partners of the Partnership and each Parallel Vehicle and such election shall be deemed to have occurred as of the date of the removal of the former General Partner. In such an event, the former General Partner shall be entitled to receive distributions equal to any amounts it would have been entitled to had the Partnership been dissolved and wound up in accordance with Sections 8.3(a) and (b) and distributed in kind all Partnership assets as of the date of the election of the Limited Partners to continue the Partnership. The Partnership shall issue an unsecured non-interest bearing promissory note to the former General Partner in the face amount of the liquidating distribution determined in accordance with this Section 5.9, such note to be payable upon the final liquidation of the Partnership. All such distributions shall be subject to the obligations set forth in Section 8.3(c) and (d) of the Master Partnership Agreement; provided, however, that the General Partner's obligation, if any, to fund Commitments in respect of its obligations in Section 8.3(c) of the Master Partnership Agreement relating to such liquidating distribution shall be satisfied by a reduction to the principal amount of the unsecured non-interest bearing promissory note described in this Section 5.9 in the amount of such obligation. For purposes of determining allocation and distributions pursuant to the preceding sentence, securities and other property held by the Partnership shall be valued pursuant to the procedures set forth in Article IX.

Section 5.10 No Liability to Limited Partners.

(a) None of the General Partner, the Manager, the Principals or their Affiliates, officers, directors, members, partners, shareholders, employees or agents will be liable to any Limited Partner or to the Partnership for any action taken, or omitted to be taken, as General Partner with respect to the Partnership, or for any action taken, or omitted to be taken, by any member, partner, director, officer, employee or agent of the General Partner or Manager in connection with its activities for or on behalf of the Partnership so long as such person (i) acted in good faith, (ii) acted in a manner reasonably believed to be in the best interests of the Partnership, (iii) was neither grossly negligent nor engaged in willful malfeasance, fraud or reckless disregard of fiduciary duties, (iv) did not materially breach this Agreement, and (v) with respect to any criminal action, such person is not finally determined to be and does not admit to be guilty or enter a plea of nolo contendre (including as part of a settlement) by a court of competent jurisdiction.

(b) No member of the Advisory Committee, or any Affiliate or employer of any member of the Advisory Committee or any Limited Partner represented on the Advisory

Committee by any member (as the case may be) will be liable to any Partner or the Partnership for any action taken, or omitted to be taken, in good faith on behalf of the Advisory Committee (as the case may be) with respect to the Partnership and in accordance with the provisions of this Agreement.

(c) If any Limited Partner obtains a final judgment in a court of competent jurisdiction against the General Partner for matters relating to the Partnership, the General Partner shall pursue against its members the remedies (if any) that it has against such member relating to such claim.

Section 5.11 Indemnification of General Partner, the Manager and Advisory Committee. (a) The Partnership will indemnify (A) the Principals, the General Partner, the Manager and each of their respective members, partners, shareholders, directors, officers, employees, agents and Affiliates against any losses, liabilities, damages or expenses (including amounts paid for attorneys' fees, judgments and settlements in connection with any threatened, pending or completed action, suit or proceeding) to which any of such persons may become subject in connection with such person's activities on behalf of the Partnership or in connection with any involvement with a Portfolio Company (including serving as an officer, director, consultant or employee of any Portfolio Company) directly or indirectly on behalf of the Partnership and (B) the members of the Advisory Committee, any Affiliate or employer of any such members and any Limited Partner represented on the Advisory Committee by any member, in connection with any involvement with the Advisory Committee, respectively, but, in the case of members of the Advisory Committee or their Affiliates and employers or any Limited Partner represented on the Advisory Committee by any member, only to the extent that such person acted in good faith and, in the case of the Principals, the General Partner, the manager and each of their respective members, partners, shareholders, directors, officers, employees, agents and Affiliates, only to the extent that such person (i) acted in good faith, (ii) acted in a manner reasonably believed to be in the best interests of the Partnership or the Portfolio Company (as the case may be), (iii) was neither grossly negligent nor engaged in willful malfeasance, fraud or reckless disregard of fiduciary duties, (iv) did not materially breach this Agreement, and (v) with respect to any criminal action, such person is not finally determined to be and does not admit to be guilty or enter a plea of nolo contendre (including as part of a settlement) by a court of competent jurisdiction. Any person described in clause (A) of this Section 5.11(a) entitled to seek indemnification hereunder shall first use reasonable efforts to seek indemnification from other available sources, if any, prior to obtaining indemnification hereunder; provided that any such person may seek and obtain indemnification hereunder if at any time such person reasonably believes that such person will not receive timely indemnification on terms reasonably acceptable to such person from such other sources; and provided, further, that such person shall continue to use reasonable efforts to seek such indemnification from such other sources and, to the extent any such indemnification is obtained, reimburse the Partnership for any such recovery. The Partnership may, in the sole judgment of the General Partner, pay the expenses of any person indemnifiable under this Section 5.11 in advance of the final disposition of any proceeding, so long as (w) with respect to any derivative action brought by any Limited Partner, the person receiving the advance is not the subject of such derivative action, (x) the proceeding is not instituted by a Majority in Interest of the Limited Partners against the General Partner or the Manager, (y) General Partner has a good faith belief such expenses are indemnifiable, and (z) the General Partner receives a written undertaking by such person for the benefit of the Partnership

to repay the full amount advanced if (A) there is a final determination that such person did not satisfy the standards set forth in clauses (i) through (v) immediately above, (B) with respect to any criminal action, such person is finally determined to be or admits to being guilty or enters a plea of nolo contendere (including as part of a settlement) by a court of competent jurisdiction, or (C) such person is not otherwise entitled to indemnification as provided herein. Notwithstanding the foregoing, no person will be exculpated or exonerated from liability or indemnified against loss for violations of federal or state securities laws, or for any other intentional or criminal wrongdoing. No person shall be indemnifiable under this Section 5.11 in respect of losses, liabilities, damages or expenses to which any such person may become subject in connection with (x) such person's activities with any Portfolio Company if such losses arise after the Partnership's final disposition of such Portfolio Company or (y) a dispute among the General Partner, the Manager, their respective members and employees, and the Principals.

(b) No Limited Partner shall have any obligation or liability, including any obligation to make a Capital Contribution to the Partnership, in respect of an indemnity obligation arising from a Portfolio Investment with respect to which such Limited Partner is not a Participating Partner.

(c) The General Partner will use reasonable efforts to cause each Portfolio Company for which any Affiliate of the General Partner serves as an officer or director to adopt organizational documents which provide mandatory indemnification to directors, officers, and managers to the fullest extent permitted by applicable law.

Section 5.12 Formation of New Fund or Business Endeavor. (a) Subject to the other provisions of this Article V, each Partner's interest in the business endeavors of the other Partners is limited to his, her or its interest in the Partnership and no Partner's future business activities are restricted. Notwithstanding the foregoing, unless consented to by Two-Thirds in Interest of the Limited Partners or approved by a majority vote of the Advisory Committee, neither the General Partner, nor the Manager or any of their Affiliates will close and make investments, or act as general partner, managing member, advisor, employee, agent, or the primary source of transactions on behalf of another private equity investment vehicle or pooled investment vehicle (other than Crusader, a Parallel Vehicle or Separate Investment Entity) that has primary investment objectives substantially similar to those of the Partnership (a "Successor Fund") until the earlier of (i) the date on which at least 75% of the Commitments have been invested or committed for investment in Portfolio Companies or otherwise set aside for Follow-on Investments, Partnership Expenses or Management Fees, and (ii) the end of the Commitment Period; provided, however, that this Section 5.12 shall not prohibit the formation of one or more Co-investment Funds, and Co-investment Funds shall not be considered Successor Funds. If a Successor Fund is organized prior to the termination of the Commitment Period of the Partnership, as permitted under the previous sentence, the Successor Fund may only coinvest in investments made by the Partnership alongside the Partnership, on the same terms and conditions in all material respects, with amounts for investment allocated between the Partnership and the Successor Fund, subject to available capital or other investment limitations on the Partnership and the Successor Fund, as determined by the General Partner. Any Successor Fund will dispose of securities of a Portfolio Company that are of the same class as those purchased by the Partnership at the same time as the Partnership, and on the same economic and other terms.

Section 5.13 Interest as a Limited Partner. To the extent that the General Partner acquires the interest of a Defaulting Partner or any other Limited Partner, the General Partner will (subject to Section 2.5) be deemed to be a Limited Partner with respect to such interest for all purposes of this Agreement.

Section 5.14 Parallel Vehicles. The General Partner has organized the Main Fund as a Parallel Vehicle, and may organize additional Parallel Vehicles (or series of related Parallel Vehicles), for purposes of facilitating investments in Portfolio Companies by non-U.S. investors and certain accredited investors that are not qualified purchasers (as defined in the Investment Company Act) in the Fund Group. If any Parallel Vehicles are organized, then the Partnership and each Parallel Vehicle (a) will invest in each Portfolio Company in direct proportion to their respective available capital commitments so that the Partnership will invest in each Portfolio Company an amount equal to the total investment by the Partnership and any Parallel Vehicle multiplied by a fraction, the numerator of which is the aggregate Commitments, and the denominator of which is the sum of the aggregate Commitments plus the aggregate capital commitments by investors in the Parallel Vehicles, provided that such proportion may be modified by the General Partner with the prior approval of the Advisory Committee or a Majority in Interest of the Limited Partners in order to reflect the available commitments and any tax, regulatory or other legal aspects of any Parallel Vehicle and its investors and (b) invest in and dispose of Portfolio Company at the same time and on effectively the same economic terms and conditions. Any item of income, fees, reimbursement or expense that relates to a Portfolio Company in which the Partnership and one or more Parallel Vehicles are investors or to a potential investment that is considered on behalf of the Partnership and any Parallel Vehicles by the General Partner, the Manager or the general partners or managers of any Parallel Vehicles shall, to the extent that any such item is not directly attributable to the Partnership or a Parallel Vehicle, be pro rated among the Partnership and the Parallel Vehicles based on their respective investments in such Portfolio Company or the portions of such potential investment that would have been made available to the Partnership in accordance with the preceding sentence, as applicable. Organizational Expenses shall be borne by the Partnership and each Parallel Vehicle in proportion to their respective aggregate capital commitments, except the Partnership and each Parallel Vehicle shall separately bear the Organizational Expenses that are directly attributed to each such entity. Each Parallel Vehicle shall reimburse the Partnership for such Parallel Vehicle's share of Organizational Expenses that were paid by the Partnership. Investments in Parallel Vehicles by investors shall be on substantially the same terms and conditions as investments in the Partnership by Limited Partners. For the avoidance of doubt, all references to Portfolio Investments shall include investments made by the Partnership, all Parallel Vehicles and all Separate Investment Entities. To the extent that this Agreement provides that the Limited Partners shall vote together with the investors of any Parallel Vehicle, the General Partner agrees (i) that the relevant documentation of any such Parallel Vehicle shall contain comparable voting provisions to the extent applicable, (ii) that any combined vote of the Limited Partners and the investors in any Parallel Vehicle on any such matter for the purposes of this Agreement shall constitute a combined vote on the matter for the purposes of the Parallel Vehicles, and (iii) each such matter shall, if approved by such vote, be equally applicable to the Partnership and all Parallel Vehicles.

Section 5.15 Separate Investment Entities. If the General Partner determines for legal, tax, regulatory or other reasons, in its sole discretion that it is in the best interests of the Partners

to invest in one or more Portfolio Companies through an entity other than the Partnership, such investment or investments shall not be made by the Partnership but shall instead be made, either in lieu of or in conjunction with, the Partnership, by one or more limited partnerships, limited liability companies, corporations or similar entities (each a "Separate Investment Entity") owned in the aggregate by all of the Partners and managed by the General Partner or an Affiliate thereof controlled by the Principals. Each Separate Investment Entity shall receive an opinion of counsel for the benefit of the Limited Partners (x) regarding its classification for United States Federal income tax purposes and the limited liability of the Separate Investment Entity and (y) to the effect that no Limited Partner shall be personally liable for any debts or losses of the Separate Investment Entity in such jurisdiction in excess of such Limited Partner's Unfunded Commitment. The Partnership and each Separate Investment Entity will invest in and dispose of Portfolio Investments at the same time and on effectively the same economic terms and conditions. To the extent that Benefit Plan Investors participate in a Separate Investment Entity, such Separate Investment Entity shall be (i) structured so that it will not be deemed to hold Plan Assets and shall provide the same ERISA protections to those Benefit Plan Investors that are provided under this Agreement, and (ii) established on substantially the same terms and conditions in all material respects as Partners are required to make Capital Contributions to the Partnership, and such capital contributions shall be deemed to reduce the Unfunded Commitment of each Partner to the same extent that it would be reduced if made to the Partnership. The provisions and economic terms of each such Separate Investment Entity shall be substantially the same in all material respects as those of the Partnership, except to the extent such terms are required to differ from the economic and other material arrangements reflected in the terms of this Agreement in order to accomplish the purposes of such Separate Investment Entity (including, for example, different economic treatment of different Partners resulting solely from the consequences of a structure created to minimize the amount of UBTI recognized by a Tax Exempt Partner). The gains and losses of any such Separate Investment Entity shall be treated as having been realized by the Partnership for all economic calculations under this Agreement, and there will be no duplication of the management fees. The Partners having interests in the Separate Investment Entity (including the General Partner and its Affiliates with respect to their Commitments as Partners) shall contribute to each Separate Investment Entity the amounts required to fund such Separate Investment Entity, with each such Partner contributing its pro rata portion of such amounts (based on the relative Unfunded Commitments of the Partners as of the date of such contributions) up to such Partner's remaining Unfunded Commitment and such amounts will reduce such Partner's Unfunded Commitment. Each Limited Partner hereby agrees and consents to the formation of each Separate Investment Entity and hereby covenants and agrees that it will execute and deliver any agreements, documents and certificates as reasonably necessary for, or incidental to, the formation and continuation of each such Separate Investment Entity and its participation as a limited partner, member or participant in each such Separate Investment Entity established in accordance with this Section 5.15.

Section 5.16 Media Company Investments.

(a) In the event and for so long as, and only during periods from time to time in which, the Partnership shall directly or indirectly hold (or otherwise have attributed to it) an ownership or other interest in a Media Company that is "attributed" to the Partnership under the rules and regulations of the FCC relating to the particular FCC service in which the Media Company operates, no Limited Partner (an "Insulated Partner"), or any person that is a director,

officer, equivalent non-corporate official, partner, member or 5% or greater shareholder or other direct or indirect owner of an Insulated Partner such that the ownership interests of the Insulated Partner, are "attributed" to such owner, director, officer, equivalent non-corporate officer, partner or member (an "Insulated Partner Affiliate"), to the extent reasonably determined by the General Partner (with the advice of GP's Counsel) to be necessary to have such ownership or interest not be attributable to the Limited Partners for purposes of the FCC Attribution Rules and the Ownership Rules, shall do any of the following:

(i) act as an employee of the Partnership or any Media Company if such Insulated Partner's or Insulated Partner Affiliate's functions, directly or indirectly, relate to the media or common carrier enterprises of the Partnership or any Media Company;

(ii) serve, in any material capacity, as an independent contractor or agent of the Partnership or any Media Company with respect to the media or common carrier enterprises of the Partnership or any such Media Company;

(iii) communicate with the General Partner or any Portfolio Company on matters pertaining to the day-to-day operations of any Media Company;

(iv) to the extent Partners have the power under this Agreement to admit additional General Partners, vote to admit any additional General Partner to the Partnership unless such addition is subject to the veto of the General Partner;

(v) to the extent Partners have the power under this Agreement, except as permitted under Sections 5.9 and 8.2, vote on the removal of the General Partner;

(vi) perform any services for the Partnership or any Media Company materially relating to the media or common carrier enterprises of the Partnership or such Media Company, with the exception of making loans to, or acting as a surety for, such Media Company or the Partnership to the extent consistent with the "equity or debt plus" component of the FCC Attribution Rules; or

(vii) become actively involved in the management or operation of any Media Company.

(viii) serve as a member or otherwise participate in the activities of the Advisory Committee if, in the determination of the Insulated Partner, such membership or participation would cause the Insulated Partner to lose its insulated status under the Attribution Rules.

(b) An Insulated Partner may, upon five Business Days' prior written notice to the General Partner, relinquish its status as an Insulated Partner, in which case the provisions of this Section 5.16 shall no longer apply to such Limited Partner; provided, that such relinquishment shall not be effective until the General Partner has received an opinion of special counsel to the Partnership on FCC matters stating that such relinquishment will not (1) cause the Partnership or any of its Affiliates to violate any law, regulation, rule or policy applicable to matters currently subject to FCC jurisdiction or (2) in any way limit or restrict the activities of the Partnership or any of its Affiliates. To the extent that issuance of such an opinion requires the filing of any notices with the FCC or the issuance of any approvals by the FCC, the General Partner and the

Insulated Partner seeking to relinquish its insulated status shall reasonably cooperate in making any such filing or obtaining any such approval, and the General Partner shall seek the opinion of special counsel to the Partnership on FCC matters with respect to the making of any such filing or the obtaining of any such approval.

(c) Nothing in this Section 5.16 shall be interpreted to restrict the activities of (A) the Limited Partners or (B) the beneficial interest holders of any Limited Partner during the period that it is an Insulated Partner so long as such Limited Partner's partnership or other governing agreement contains language reasonably designed to insulate such Limited Partner's unaffiliated limited partners or beneficial interest holders, as the case may be, from having the Partnership's interest in any Media Company being attributed under the FCC attribution rules to such beneficial owners, as necessary pursuant to the FCC attribution rules.

(d) Upon written request by an Insulated Partner, the General Partner shall, prior to the Partnership consummating an investment in a Media Company, cause the legal counsel to the Partnership to deliver an opinion reasonably acceptable to such Insulated Partner to the effect that such investment shall not be "attributed" to the Insulated Partner under the rules and regulations of the FCC relating to the particular FCC service in which such Media Company operates.

Section 5.17 Co-investment Funds.

(a) Where possible and appropriate, the General Partner may, in its discretion, provide co-investment opportunities to invest in a Portfolio Company (each a "Co-Investment Opportunity") to one or more Limited Partners, strategic investors, lenders, or members, investors, Affiliates or employees of the General Partner and Manager or, other accounts managed by Highland (each a "Co-Investor"). Notwithstanding the foregoing, investment opportunities allocated to Affiliates of the Manager or the General Partner or client accounts managed by the Manager, in accordance with the Highland Investment Allocation Policy, shall not be deemed Co-Investment Opportunities. The General Partner, the Manager, and their respective Affiliates will not receive any carried interest in any Co-Investment Opportunity provided to Limited Partners or receive management fees from Limited Partners in respect of Co-Investment Opportunities provided to Limited Partners. The General Partner intends to not provide Co-Investment Opportunities to Benefit Plan Investors to the extent necessary to prevent such Co-Investment Opportunity from being deemed to be Plan Assets of the related Benefit Plan Investor.

(b) The General Partner may, as a condition to any Co-Investment Opportunity, (i) require any or all Co-Investors to execute a confidentiality agreement relating to such Co-Investment Opportunity in form and substance acceptable to the General Partner, and (ii) require Co-Investors electing to participate in a Co-Investment Opportunity to coinvest through a Co-Investment Fund, which may have investors other than Limited Partners.

(c) Each Limited Partner shall treat the information provided to it pursuant to this Section 5.17 as confidential, shall use such information solely for the purpose of considering the offer made pursuant to this Section, shall, upon the request of the General Partner, promptly return to the General Partner any written information provided it pursuant to this Section, and

shall not disclose the identity of the securities or issuer to any person other than (i) its employees, counsel or advisors, solely on a need to know and confidential basis, (ii) any governmental authority or regulatory authority which regulates such Limited Partner's ability to engage in any of its businesses under U.S. or foreign law to the extent such information is required by such governmental authority or regulatory authority, as the case may be, and (iii) to the extent such Limited Partner is required by law or regulation to disclose such information.

(d) If Co-Investment Funds or Co-Investors purchase securities of a Portfolio Company that are of the same class as securities of a Portfolio Company purchased by the Partnership, the Co-Investment Funds or Co-Investors shall purchase such securities on terms that are no less advantageous than the terms on which the Partnership purchases such securities. Each Co-Investment Fund and Co-Investor will dispose of securities of a Portfolio Company that are of the same class as securities of a Portfolio Company purchased by the Partnership at the same time and on substantially the same terms (including price) as the Partnership.

Section 5.18 Bridge Leveraging. (a) The Partnership is authorized to enter into one or more credit facilities (each, a "Bridge Leveraging/Credit Support Facility") in order to (i) borrow money for the purpose of (A) Bridge Leveraging, and (B) paying Partnership Expenses; and/or (ii) provide Credit Support for the obligations of Portfolio Companies or their subsidiaries as described in Section 5.4(c); provided, however, that in no event shall the aggregate amount of Bridge Leveraging outstanding at any time under any Bridge Leveraging/Credit Support Facility exceed the aggregate amount of Unfunded Commitments as of such date and provided, further, that in no event shall the maturity date of an individual borrowing under any Bridge Leveraging/Credit Support Facility be later than the 45th day following the incurrence of such debt under a Bridge Leveraging/Credit Support Facility. A Bridge Leveraging/Credit Support Facility may be secured by (x) a pledge by the Partnership of all or a portion of the aggregate Unfunded Commitments of the Partners, and (y) a pledge and assignment by the General Partner of the rights of the General Partner contained herein, including, without limitation, the right to deliver Capital Call Notices and enforce all remedies against Partners that fail to fund their respective Unfunded Commitments pursuant thereto and in accordance with the terms hereof. The Partnership and any Parallel Vehicles may be co-borrowers under any Bridge Leveraging/Credit Support Facility, in which event the Partnership and the Parallel Vehicles may be jointly and severally liable for all obligations under such Bridge Leveraging/Credit Support Facility. In the event such a Bridge Leveraging/Credit Support Facility is so secured by Commitments, and to the extent funds are advanced against the Commitment of a particular Partner or partner of a Parallel Vehicle because such Person is late in funding or defaults on a Capital Call Notice delivered hereunder or by the Parallel Vehicle, each Limited Partner understands, acknowledges and agrees that (i) it may be required to make a Capital Contribution in respect of its pro rata share of such late or defaulted contribution amount, provided, however, that in no event shall any Partner be required to make Capital Contributions in excess of its Unfunded Commitment, and (ii) as a result of such default or late payment, the allocation between the Partnership and each Parallel Vehicle of a Portfolio Investment (together with any item of income, fees, reimbursement or expense that relates to such Portfolio Investment) with respect to which there has occurred a shortfall in contributions made by the Partners or the partners in a Parallel Vehicle shall be made by the General Partner based on the total amount of Capital Contributions of the Partners and the partners in each Parallel Vehicle actually funded to acquire such Portfolio Investment. In addition to the rights and remedies of the General Partner

in respect of a Defaulting Partner pursuant to Section 6.11, any Partner that is late in funding or defaults on a Capital Call Notice shall be responsible for any interest or other expenses incurred in connection with such advance. Any such expenses shall be withheld from distributions otherwise to be made to such Defaulting Partner, and, to the extent such expenses exceed such distributions, such Defaulting Partner shall pay the amount of such excess to the Partnership in the manner and at the time or times required by the General Partner. Any such excess shall not be credited to such Defaulting Partner's Capital Account. For purposes of this Agreement, any amount withheld from a Defaulting Partner and paid to a lender shall be paid to the lender on behalf of such Defaulting Partner and shall be treated as if distributed to such Defaulting Partner.

(b) Each Limited Partner understands, acknowledges and agrees, in connection with any such Bridge Leveraging/Credit Support Facility and for the benefit of any lender thereunder, as follows: (i) that the General Partner may from time to time request a certificate confirming (x) the remaining amount of such Limited Partner's Unfunded Commitment or (y) that the Limited Partner has not and will not pledge, collaterally assign, encumber or otherwise grant a security interest in its limited partnership interest in the Partnership, and (ii) that the General Partner may from time to time request such other information as may be reasonably required by the lender(s) under the terms of the Bridge Leveraging/Credit Support Facility. Each Limited Partner agrees to comply with such requests to the extent they are reasonable.

(c) To induce any such lender to enter into a Bridge Leveraging/Credit Support Facility with the Partnership, each Limited Partner hereby: (i) acknowledges that the Partnership has informed such Limited Partner that the Partnership may pledge to a lender the right to call all Unfunded Commitments to secure all obligations made under the Bridge Leveraging/Credit Support Facility (collectively, the "Obligations"), the terms of which are in accordance with this Agreement, and, in connection therewith, grant to such lender the right to issue Capital Call Notices pursuant to the terms of this Agreement when an event of default under such Bridge Leveraging/Credit Support Facility exists, including an event of default resulting from the failure of a partner of a Parallel Vehicle to fund any capital contributions when required, which each Limited Partner shall fund, in accordance with the terms hereof and its rights and obligations hereunder; and (ii) acknowledges that the Partnership has informed such Limited Partner that for so long as the Bridge Leveraging/Credit Support Facility is in place, the General Partner and the Partnership may agree with the lender not to amend, modify, supplement, cancel, terminate, reduce (other than with respect to Funded Commitments) or suspend any of such Limited Partner's obligations to fund its Unfunded Commitment pursuant hereto, subject to excuse provisions set forth herein, without the lender's prior written consent.

ARTICLE VI

LIMITED PARTNERS

Section 6.1 Limited Liability. The Limited Partners will not be personally liable for any obligations of the Partnership and will have no obligation (including with respect to a deficit balance in their Capital Account) to make contributions to the Partnership in excess of their respective Commitments specified in Schedule 1 attached hereto in accordance with this

Agreement, except to the extent set forth in Section 6.7 or the ELP Law. The Limited Partners will take no part in the conduct of the business, to include, without limitation, the control, direction or operation of the affairs of the Partnership and will have no power to bind the Partnership.

Section 6.2 Transfer of Limited Partnership Interests.

(a) A Limited Partner may not sell, assign, transfer, pledge, mortgage or otherwise dispose of all or any of its interest in the Partnership unless the General Partner has consented to such transfer or assignment in writing; provided, that with regard to an assignment by a Limited Partner to an Affiliate of such Limited Partner, such consent shall not be unreasonably withheld. Any transfer shall be effected in accordance with the provisions of this Agreement, by execution of an assignment in writing and by entry of the name of the new limited partner in the register of limited partners.

(b) A Limited Partner which is a trust under an employee benefit plan may, upon prior written notice to the General Partner, assign a beneficial interest in all or a portion of its interest in the Partnership to any other trust under such employee benefit plan or to any other employee benefit plan having the same sponsor (provided that income and loss allocable to the Limited Partner of the Partnership will continue to be included in the same filings under the same employer identification number with the U.S. Internal Revenue Service). Such assignment to another trust under such employee benefit plan or to any other employee benefit plan having the same sponsor will not be deemed to be an assignment or transfer of a limited partnership interest pursuant to this Agreement (and therefore will not require the General Partner's consent pursuant to Section 6.2(a)). In addition, a change in any trustee or fiduciary of a Limited Partner will not be deemed to be an assignment or transfer of a limited partnership interest pursuant to this Agreement (and therefore not require the General Partner's consent pursuant to Section 6.2(e)), so long as any such replacement trustee or fiduciary is also a fiduciary as defined under applicable law, that income and loss allocable to the Limited Partner of the Partnership will continue to be included in the same filings under the same employer identification number with the Internal Revenue Service, and the General Partner receives prior written notice of such change in trustee or fiduciary. In connection with any assignment of interest or change in trustee or fiduciary under this Section 6.2(b), the Limited Partner shall provide such documentation as the General Partner shall reasonably request.

(c) The voting rights of any Limited Partner's interest shall automatically terminate upon any transfer of such interest to a trust, heir, beneficiary, executor, personal representative, guardian or conservator or upon any other transfer if the transferor no longer retains control over such voting rights and the General Partner has not consented pursuant to Section 6.2(e) to such transferee becoming a substitute Limited Partner. No consent of any other Limited Partner will be required as a condition precedent to any such transfer or substitution.

(d) As a condition to any transfer of a Limited Partner's interest pursuant to Section 6.2(a), the transferor and the transferee shall provide such legal opinions and documentation as the General Partner shall reasonably request; provided that if the transfer is to be made from a Limited Partner to a co-trustee or trustee as contemplated above or to an Affiliate pursuant to Section 6.2(a), an officer's certificate in form reasonably satisfactory to the

General Partner may be delivered by the Limited Partner in lieu of such legal opinions and other documentation.

(e) Notwithstanding anything to the contrary contained in this Section 6.2 or 6.11, a transferee or assignee will not become a substitute Limited Partner (i.e., a transfer other than as described in Section 6.2(b)) without the consent of the General Partner, which consent may be granted or withheld in its sole and absolute discretion (except for a disposition by a Limited Partner to an Affiliate permitted by Section 6.2(a), for which such consent shall not be unreasonably withheld), and without executing (i) a copy of this Agreement or amendment hereto, and (ii) a Subscription Agreement in form and substance satisfactory to the General Partner in its sole discretion. Any substitute Limited Partner admitted to the Partnership with the consent of the General Partner will succeed to all rights and be subject to all the obligations of the transferring or assigning Limited Partner with respect to the interest to which such Limited Partner was substituted, but any transferee or assignee that does not become a substitute Limited Partner shall have the right to receive allocations pursuant to Section 2.3 and distributions pursuant to Article III and Article VIII, but shall have no other rights under this Agreement.

(f) The transferor and transferee of any Limited Partner's interest shall be jointly and severally obligated to reimburse the General Partner and the Partnership for all reasonable expenses (including attorneys' fees and expenses) of any transfer or proposed transfer of a Limited Partner's interest, whether or not consummated.

(g) The transferee of any Limited Partner's interest shall be treated as having made all of the Capital Contributions made by, and received all of the distributions received by, the transferor of such interest.

(h) Anything in this Agreement to the contrary notwithstanding, no admission (or purported admission) of a Partner, and no transfer (or purported transfer) of all or any part of a Partner's interest in the Partnership (or any economic interest therein) whether to another Partner or to a person who is not a Partner, shall be effective, and any such admission or transfer (or purported admission or transfer) shall be void ab initio, and no person shall otherwise become a Partner if after such admission or transfer (or purported admission or transfer) the Partnership would be subject to the registration or reporting requirements of the Investment Company Act or in the General Partner's good faith determination, such transfer would cause the assets of the Partnership to be deemed Plan Assets. Each transferee that is or will be a Benefit Plan Investor as of the transfer effective date shall so notify the General Partner in writing prior to the transfer effective date. Any transferee that has not so indicated in writing its status as a Benefit Plan Investor hereby represents, warrants and covenants that it is not, it is not acting on behalf of and, so long as it holds an interest in the Partnership, it will not be and will not be acting on behalf of a Benefit Plan Investor.

Section 6.3 No Withdrawal. Subject to the provisions of Sections 6.2, 6.6 and 6.11, no Limited Partner may withdraw as a Partner of the Partnership, nor may a Limited Partner be required to withdraw, nor may a Limited Partner borrow or withdraw any portion of its Capital Account from the Partnership.

Section 6.4 No Termination. The substitution, death, insanity, dissolution (whether voluntary or involuntary) or bankruptcy of a Limited Partner will not affect the existence of the Partnership, and the Partnership will continue for the term of this Agreement until its existence is terminated as provided herein.

Section 6.5 Subsequent Limited Partners.

(a) The General Partner may accept additional Limited Partners ("Additional Limited Partners") subsequent to the First Closing of the Partnership up to and including the date fourteen months after the First Closing. Any Additional Limited Partners will be treated as having been a party to this Agreement and have made its Commitment as of the date hereof for all purposes, and such Additional Limited Partners will be required to bear a portion of the Management Fee, Organizational Expenses and Partnership Expenses equivalent to that which would have been borne by such Additional Limited Partner had such Limited Partner been a Limited Partner from the date of the First Closing.

(b) Such Additional Limited Partners shall contribute to the Partnership, on the date of their admission to the Partnership, an amount of their Commitments equal to their portion (based on the Commitments of all Partners) determined pursuant to this Section 6.5(b). The initial drawdown for each Limited Partner will include such Limited Partner's proportionate share of (i) Management Fees retroactive to the First Closing; (ii) Placement Fees, if any, retroactive to the First Closing, (iii) Organizational Expenses (to the extent provided in Section 4.2) and Partnership Expenses attributable to the Partnership; and (iv) Capital Contributions made at or prior to such drawdown to fund any Portfolio Investment, other than Capital Contributions that have been returned prior to such drawdown to the Partners who made such Capital Contributions. In addition, Additional Limited Partners will be required to pay to the Partnership, with respect to the period from the date of the applicable Capital Contributions made by the Partners who were admitted pursuant to the First Closing to the date of their admission to the Partnership: (A) interest at the rate of 10% on their proportionate share of Management Fees retroactive to the First Closing; (B) interest at the rate of 10% on their proportionate share of Organizational Expenses (to the extent provided in Section 4.2), Placement Fees and Partnership Expenses attributable to the Partnership; and (C) interest at the rate of 10% on their proportionate share of the Capital Contributions made prior to such drawdown (other than Capital Contributions that have been returned prior to such drawdown to the Partners who make such Capital Contributions), to fund any Portfolio Investment; provided, however, that interest payable pursuant to sub-clauses (B) and (C) above shall be reduced, but not below zero, by each Additional Limited Partner's pro rata portion (based on Commitments of all Partners) of all distributions made prior to the date of such drawdown to all Partners pursuant to Sections 3.3(a)(i), 3.3(a)(ii)(B) and 3.3(a)(iii)(A) of the Master Partnership Agreement, to the extent such distributions exceed the aggregate amount of Capital Contributions to make Portfolio Investments that have been Disposed of prior to the date of such drawdown. Any amounts paid to the Partnership under clause (i) and subclause (A) above will be paid to the Manager (and to the extent the General Partner has waived all or part of such Management Fees, such Waived Fee Amount shall not be paid to the Manager or the General Partner but will instead increase the Unapplied Waived Fee Amounts). Any amounts paid to the Partnership under clause (ii) above shall be paid to the applicable placement agency if applicable to such Limited Partner. Any amounts paid to the Partnership under clauses (iii) and (iv) above, and subclauses (B) and (C)

above shall be distributed to the Partners that participated in the earlier Capital Contributions based upon their relative shares of each earlier Capital Contribution, and any such returned Capital Contributions (but not amounts referred to in subclauses (B) and (C) above) may be recalled by the General Partner pursuant to Section 2.2(a) above as if such returned Capital Contributions had not previously been called; provided, that if the General Partner determines in good faith that there will be a Capital Call within 30 days after the contribution of such amounts to the Partnership, the General Partner may, in its discretion, retain such amounts and reduce the Capital Call with respect to such other Partners (in which event the Funded Commitments of such other Partners shall be increased by their pro rata share of that portion of such amounts referred to in subclauses (B) and (C) above). For purposes of this Section 6.5, a Limited Partner that increases its Commitment shall be treated as an Additional Limited Partner with respect to the amount by which its Commitment increased.

(c) Each Additional Limited Partner admitted to the Partnership pursuant to this Section 6.5 shall be treated as purchasing a pro rata share of the interests in the Partnership of the Partners to whom amounts are distributed pursuant to this Section 6.5 ("Existing Partners"), and a portion of the Capital Account of each Existing Partner shall be allocated to such Additional Limited Partner so that after such allocation the Capital Accounts and Capital Contributions of such Additional Limited Partner and Existing Partners attributable to each Portfolio Investment and to the payment of Organizational Expenses, Management Fees, Placement Fees and Partnership Expenses are as equal as practicable to what their Capital Accounts and Capital Contributions attributable to each Portfolio Investment and to the payment of Organizational Expenses, Management Fees, Placement Fees and Partnership Expenses would have been if such Additional Limited Partner had been admitted to the Partnership at the First Closing.

Section 6.6 Regulatory Matters.

(a) Each Limited Partner acknowledges that the assets of the Partnership are not intended to constitute plan assets of such Limited Partner for purposes of any applicable non-U.S., state or local law governing the investment and management of the assets of that Limited Partner, and that, as a result, none of the Partnership, the General Partner, the Manager or any of their Affiliates intend to be acting as a fiduciary within the meaning of any applicable non-U.S., state or local law relating to governmental plans or foreign plans with respect to such Limited Partner or the Partnership assets; provided, however, that this provision is not intended to negate the fiduciary duties imposed upon a general partner under the ELP Law.

(b) In the event that the General Partner determines in good faith that (i) the investment in the Partnership by a Limited Partner which is a governmental plan, foreign plan or other regulated entity (each, a "Regulated Investor") is reasonably likely to result in (A) any violation of any provision of law applicable to such Regulated Investor, (B) the treatment of the assets of the Partnership as assets of such Regulated Investor or (C) the treatment of the Partnership, the General Partner or the Manager as a fiduciary under such provisions of law applicable to such Regulated Investor and (ii) if, in the reasonable judgment of the General Partner, any of the foregoing conditions result in or are reasonably likely to result in any material adverse consequences to the Partnership or the General Partner (both of (i) and (ii), a "Regulatory Issue"), then the General Partner shall use its reasonable best efforts to work with the Regulated Investor to cure the Regulatory Issue. The General Partner, in its sole discretion,

may require that such Regulated Investor provide (at such Regulated Investor's expense) an opinion of counsel, reasonably acceptable to the General Partner in form and substance, that no Regulatory Issue exists or, in the event such an opinion is not delivered within a reasonable time after being requested, may cause the Partnership to redeem such Regulated Investor's interest in the Partnership, in whole or in part.

(c) Effective upon the date specified by the General Partner in the notice sent to a Limited Partner, notifying such Limited Partner of the General Partner's determination to completely or partially redeem such Limited Partner's interest in the Partnership pursuant to Section 5.6(e) or Section 6.6(b) (the "Redemption Effective Date"), such Limited Partner (the "Redeemed Limited Partner") shall cease to be a Partner of the Partnership for purposes of the withdrawn portion of its interest only and, in addition to its right to receive payment for its withdrawn interest in the Partnership as provided in Section 6.6(d), shall continue to be entitled, with respect to its remaining interest only, if any, to the rights of a Partner under this Agreement (including, without limitation, the right to have any allocations made to its Capital Account (as such may be adjusted) pursuant to Article II, the right to receive distributions pursuant to Article III and upon dissolution of the Partnership pursuant to Article VIII and the right to vote on matters as provided in this Agreement).

(d) The Redemption Value shall be paid by the Partnership to such Redeemed Limited Partner in cash by paying to such Limited Partner a "pro rata portion" of each distribution payable to the Redeemed Limited Partners until the Redemption Value has been fully paid; provided, that the General Partner shall be under no obligation to sell, finance or refinance any Partnership property or assets or to take any other action to effect such redemption which, in the judgment of the General Partner, may affect adversely the Partnership (taking into account the liquidity needs of the Partnership) or any Partner. For purposes of the preceding sentence, a Redeemed Limited Partner's "pro rata portion" of a distribution shall be an amount equal to the amount such Redeemed Limited Partner would have received in respect of the redeemed interest had such interest not been redeemed.

Section 6.7 Indemnification and Reimbursement for Payments on Behalf of a Partner/Partner Clawback.

(a) If the Partnership is obligated to pay any amount to a governmental agency or to any other person (or otherwise makes a payment) in respect of any tax because of a Partner's status or otherwise specifically attributable to a Partner (including, without limitation, federal withholding taxes with respect to foreign partners, state personal property taxes, state unincorporated business taxes, etc.), then such Partner (the "Indemnifying Partner") shall indemnify the Partnership in full for the entire amount paid (including, without limitation, any interest, and any penalties and expenses associated with such payment to the extent such penalties and expenses are attributable to such Partner's actions or failure to act). At the option of the General Partner, the amount to be indemnified may be charged against the Capital Account of the Indemnifying Partner, and, at the option of the General Partner, either:

(i) promptly upon notification of an obligation to indemnify the Partnership, the Indemnifying Partner shall make a cash payment to the Partnership equal to the full amount

to be indemnified (and the amount paid shall be added to the Indemnifying Partner's Capital Account but shall not be deemed a Capital Contribution hereunder), or

(ii) the Partnership shall reduce subsequent distributions which would otherwise be made to the Indemnifying Partner until the Partnership has recovered the amount to be indemnified (provided, that the amount of such reduction shall be deemed to have been distributed for all purposes of this Agreement, but such deemed distribution shall not further reduce the Indemnifying Partner's Capital Account). If the General Partner reasonably expects that subsequent distributions to such Partner will be sufficient to satisfy such Partner's obligation to pay such amount, the General Partner shall not seek a payment pursuant to clause (i) above, until the General Partner reasonably believes such distributions will not be sufficient.

(b) A Partner's obligation to make contributions to the Partnership under this Section 6.7 shall, subject to the limitations set forth in Section 6.7(c), survive the termination, dissolution, liquidation and winding up of the Partnership until the third (3rd) anniversary of the date of the final distribution made in connection with the complete liquidation of the assets of the Partnership and, for purposes of this Section 6.7, the Partnership shall be treated as continuing in existence. The General Partner may pursue and enforce all rights and remedies the Partnership may have against each Partner under this Section 6.7, including instituting a lawsuit to collect such contribution with interest equal to the prime or base rate then in effect (as announced by Citibank, N.A., New York, New York) plus six percentage points per annum (but not in excess of the highest rate per annum permitted by law).

(c) At any time and from time to time prior to the third (3rd) anniversary of the date of receipt thereof, the General Partner may require each Partner to return distributions (including distributions made in connection with the complete liquidation of the assets of the Partnership) to the Partnership in an amount sufficient to satisfy all or any portion of (i) such Partner's indemnification obligations pursuant to Section 6.7(a), or (ii) any liability which the Partnership would be required by this Agreement or otherwise to pay if it had adequate funds, including but not limited to (A) the expenses of investigating, defending or handling any pending or threatened litigation or claim arising out of the Partnership's activities, investments or business, (B) the amount of any judgment or settlement arising out of such litigation or claim, and (C) the Partnership's obligation to indemnify any Partner or other Person pursuant to Section 5.11 (a "Liability"), whether such obligations arise before or after the last day of the Partnership or, with respect to any Partner, before or after such Partner's withdrawal from the Partnership; provided, that (x) each Partner will return distributions in respect of its share of any such indemnification payment in proportion to the aggregate amount of distributions received by such Partner that have not previously been returned to the Partnership by such Partner pursuant to this Section 6.7(c); and (y) Partner's maximum liability under this Section 6.7 is limited to an amount equal to the lesser of (1) $33^{1/3}$% of such Partner's Commitment, and (2) 50% of the aggregate amount of distributions received by such Partner as of such date. Any distributions returned pursuant to this Section 6.7(c) shall not be treated as Capital Contributions, but shall be treated as returns of distributions in making subsequent distributions pursuant to Section 3.3 and in determining the amount that the General Partner is required to contribute to the Partnership pursuant to Section 8.3(c) of the Master Partnership Agreement. Nothing in this Section 6.7(c), express or implied, is intended or shall be construed to give any person other than the Partnership or the Partners any legal or equitable right, remedy or claim under or in respect of this Section 6.7(c) or any

provision contained herein. If a Limited Partner returns an amount to the Partnership under Section 6.7(c)(ii) after the final distribution of the assets of the Partnership, the amount the General Partner is required to contribute to the Partnership with respect to such Limited Partner pursuant to Section 8.3(c) of the Master Partnership Agreement shall be re-determined, taking into account the return of such amount to the Partnership. The provisions of Section 8.3(c) of the Master Partnership Agreement shall apply, and the payments required thereby shall be made, in the same manner as if the return of such amount to the Partnership had occurred prior to the final distribution of the assets of the Partnership.

Section 6.8 Section 754 Election. Upon the written request of a Majority in Interest of the Limited Partners, that an election provided for in Section 754 of the Code be made, the General Partner shall, if then permitted by applicable law, make such election.

Section 6.9 BHCA Partners.

(a) Any Limited Partner may, upon notice to the General Partner, elect to hold all or any fraction of such Limited Partner's interest in the Partnership as a Non-Voting Interest, in which case such Limited Partner shall not be entitled to vote or otherwise participate in any consent of the Limited Partners with respect to the portion of its interest which is held as a Non-Voting Interest (and such Non-Voting Interest shall not be counted in determining the giving or withholding of any such consent or whether the requisite percentage of the Limited Partners or Partners, as the case may be, have consented to, approved, adopted or taken any other action hereunder). Except as provided in this Section 6.9, an interest held as a Non-Voting Interest shall be identical in all regards to all other interests held by Limited Partners. Any such election shall be irrevocable and shall bind the assignees of such Limited Partner's interest.

(b) Any interest in the Partnership held for its own account by a BHCA Partner, that is determined at the time of admission of such BHCA Partner, the complete or partial withdrawal of another Limited Partner or any other adjustment of the interests of the Partners pursuant to this Agreement to be in excess of 4.99% (or such other amount as may be permitted by applicable regulation to be held by a BHCA Partner as voting securities, but not including Section 4(k) of the BHC Act or any successor provision thereto) of the interests of the Limited Partners, excluding for purposes of calculating this percentage portions of any other interests that are Non-Voting Interests pursuant to this Section 6.9 and any other Section of this Agreement (collectively the "Non-Voting Partnership Interests"), shall be a Non-Voting Partnership Interest (whether or not subsequently transferred in whole or in part to any other person) and shall not be included in determining whether the requisite percentage of the Partners have consented to, approved, adopted or taken any action hereunder; provided, that such Non-Voting Partnership Interest shall be permitted to vote on any proposal to continue the business of the Partnership under Section 8.2(a) but not on the selection of a General Partner pursuant to Section 8.2(a). Each BHCA Partner hereby further irrevocably waives its corresponding right to vote for a successor general partner with respect to any Non-Voting Partnership Interest, which waiver shall be binding upon such BHCA Partner and any entity which succeeds to its interest. Upon the occurrence of a subsequent closing or any event specified in the second preceding sentence, a recalculation of the interest held by all BHC Partners shall be made, and only that portion of the total interest held by each BHC Partner that is determined as of the date of such recalculation to

be in excess of 4.99% (or such other amount) of the interests of the Limited Partners, excluding Non-Voting Partnership Interests as of such date, shall be a Non-Voting Partnership Interest.

Section 6.10 Excused Investments. In the event that (a) the Partnership makes or proposes to make a Portfolio Investment which the General Partner reasonably determines could result in a material violation by any Limited Partner (or any of its Affiliates) of any law, order, decree or judgment of any court or governmental agency applicable to such Limited Partner (or any of its Affiliates), or (b) the General Partner reasonably determines that a Limited Partner's participation in a proposed Portfolio Investment of the Partnership could have a material adverse effect on the Partnership, the entity in which such investment is to be made, such Limited Partner, or the General Partner and its Affiliates, the General Partner may, in its sole discretion, and subject to Section 5.6(a), (x) reduce or eliminate the interest of such Limited Partner with respect to such Portfolio Investment and the distributions with respect thereto (provided that any Capital Contributions made by such Limited Partner with respect to such Portfolio Investment shall be promptly returned to such Limited Partner) and correspondingly increase the interest of the other Limited Partners with respect to such Portfolio Investment and/or (y) increase the interest of such Limited Partner in future Portfolio Investments of the Partnership and such Limited Partner's interest in the distributions with respect thereto and correspondingly decrease the interests of the other Limited Partners in such Portfolio Investments. All determinations necessary to reflect the operation of this Section 6.10 and not otherwise explicitly provided for in this Section 6.10 shall be made on an equitable basis as determined by the General Partner in good faith, whose decision thereon shall be final and binding on all Limited Partners. Determinations by the General Partner pursuant to clauses (a) and (b) above may be made on its own initiative or after considering the request of any Limited Partner, including any supporting legal analysis or other documentation submitted by such Limited Partner.

Section 6.11 Limited Partner's Default on Commitment.

(a) If any Limited Partner fails to make full payment of any portion of its Commitment when due (a "Defaulting Partner") and such failure is not cured within five Business Days after receipt by such Limited Partner of written notice from the General Partner with respect to such failure to pay, the General Partner may in its discretion and subject to Section 5.6(a), undertake any one or more of the following steps:

(i) The General Partner may assist the Defaulting Partner in finding a buyer for the Defaulting Partner's Partnership interest (provided, that the General Partner will have no obligation to contact any particular Limited Partner or other person with regard to such sale).

(ii) The Partnership may pursue and enforce all rights and remedies the Partnership may have against such Defaulting Partner with respect thereto, including a lawsuit to collect the overdue portion of the Commitment and any other amounts due the Partnership or General Partner hereunder, with interest at a rate equal to the prime or base rate then in effect (as announced by Citibank, N.A., New York, New York) plus six percentage points (but not in excess of the highest rate per annum permitted by law).

(iii) The General Partner may offer the Defaulting Partner's interest to the Partners and the partners in the Parallel Vehicles (other than any Defaulting Partners) pro rata in

accordance with their Commitments and their capital commitments to Parallel Vehicles on the terms set forth below. If any Partner or partner in a Parallel Vehicle does not elect to purchase the entire interest offered to it, the remaining interest allocable to the Partners and the partners in the Parallel Vehicles will be reoffered pro rata to the Partners and the partners in Parallel Vehicles who have purchased the entire interest offered to them until either all of such interest is acquired or no Partner or partner in a Parallel Vehicle wishes to make a further investment. At the closing of such purchase (on a date and at a place designated by the General Partner), each purchasing Partner shall (A) deliver a non-interest bearing, non-recourse (except to the extent of the Partnership interest purchased and the proceeds therefrom) ten-year promissory note (in a form approved by the General Partner) payable to the Defaulting Partner in an amount equal to the portion of the Defaulting Partner's Capital Account being purchased by such Partner, (B) assume the portion of the Defaulting Partner's obligation to make both defaulted and further Capital Contributions pursuant to its Commitment which is equal to the portion of the Defaulting Partner's interest being purchased by such Partner, and (C) be entitled to have his name entered in the register of limited partners held by the Partnership. In the case of a purchase of a portion of a Defaulted Partner's Capital Account by one or more partners in a Parallel Vehicle, such Parallel Vehicle shall deliver a note in the same form as the note described above to the Partnership for the aggregate portion of the Defaulted Partner's Capital Account being purchased by the limited partners in such Parallel Vehicle, the Partnership shall make the adjustments described in Section 6.5 of the Master Partnership Agreement with respect to such purchase and the Partnership shall distribute such note to the Defaulting Partner. If a Partner purchases a portion of the interest of a defaulting partner of a Parallel Vehicle, the Partner purchasing such interest shall increase its Commitments as described above with respect to purchases of an interest of a Defaulting Partner, and shall guarantee the note delivered to the Parallel Vehicle, and the Partnership shall make such other adjustments as are required by Section 6.5 of the Master Partnership Agreement. The General Partner will handle the mechanics of making the offers set forth herein and will in its discretion impose time limits for acceptance.

(iv) If the entire Defaulting Partner's interest is not purchased in the manner set forth in (iii) above, the General Partner in its sole discretion may offer the remaining interest either (A) to a third party or parties on the same terms as originally offered to the Partners pursuant to (iii) above (in which case such third party or parties will, as a condition of purchasing such interest, become a party to this Agreement), or (B) to the Partners and the partners in Parallel Vehicles in the manner provided in (iii) above, but with no requirement to assume the Defaulting Partner's obligation to make further capital contributions pursuant to its Commitment, in which case the Defaulting Partner's Commitment shall be deemed reduced (effective on the date of the default) to the amount actually paid in and the aggregate Commitments of the Partnership shall be reduced by the amount of such Defaulting Partner's remaining contributions to be made pursuant to its Commitment.

(v) In addition to, or instead of, the other remedies and undertakings available to the General Partner pursuant to this Section 6.11(a), the General Partner may, in its sole discretion, reduce (effective on the date of the default, after giving effect to the 5-day cure period) any portion of such Defaulting Partner's Commitment (which has not been assumed by another Partner) to the amount of the Capital Contributions (which have not been purchased by another Partner) made by such Defaulting Partner (net of distributions pursuant to Section 6.5(b)) and the aggregate Commitments of the Partnership shall be commensurately reduced.

(vi) Notwithstanding anything contained herein to the contrary, from and after any date on which a Defaulting Partner's Commitment is reduced pursuant to subparagraph (v) above, (A) such Defaulting Partner will have no right to receive any distributions, except for distributions made upon the Partnership's liquidation, (B) such Defaulting Partner's Capital Account will not be credited with any Investment Income and Gain or Short-Term Investment Income which shall instead be allocated to the Partners (other than any Defaulting Partners) in accordance with Section 2.3(b) and (c), as appropriate (and as adjusted to treat the Defaulting Partner's Capital Contribution as equal to zero), (C) until such Defaulting Partner's Capital Account is reduced to zero, (1) such Defaulting Partner's Capital Account shall continue to be debited in accordance with Sections 2.3(c), (d), (f), and (g) for such Defaulting Partner's share of Investment Loss, Organizational Expenses, Placement Fees and Uncapitalized Partnership Expenses as if there had been no reduction in such Defaulting Partner's Commitment or Capital Contributions and (2) the Management Fee payable by the Defaulting Partner shall be calculated as if there had been no reduction in such Defaulting Partner's Commitment, and (D) once such Defaulting Partner's Capital Account is reduced to zero, (1) such Defaulting Partner's Commitment shall be reduced to zero for all purposes of the Agreement, including the calculation of the Partnership's aggregate Commitments and determination of the Management Fee and (2) such Defaulting Partner (and not the Partnership or any other Limited Partner) shall be liable each quarterly period to the General Partner for an amount equal to its portion of the Management Fee for such period as if there had been no reduction in such Defaulting Partner's Commitment.

(vii) No consent of any Limited Partner shall be required as a condition precedent to any transfer, assignment or other disposition of a Defaulting Partner's interest pursuant to this Section 6.11.

(b) Additionally, the Defaulting Partner shall indemnify and hold harmless the General Partner and the Partnership against any losses, damages and expenses (including attorneys' fees) incurred by the General Partner and the Partnership in enforcing or attempting to enforce the provisions of this Section 6.11 or resulting from the Partnership failing to meet its obligations with respect to any Portfolio Investment by reason of any such default.

Section 6.12 Investment Company Act Limitations. Notwithstanding anything to the contrary contained in this Agreement, (i) no person shall be admitted to the Partnership as Limited Partner, an Additional Limited Partner or a substitute Limited Partner unless such person is a Qualified Purchaser, and (ii) no sale, assignment, transfer, pledge, mortgage or other disposition of any or all of a Limited Partner's interest in the Partnership shall be effective unless the assignee of any beneficial interest in the Partnership is a Qualified Purchaser.

ARTICLE VII

ADVISORY COMMITTEE

Section 7.1 Advisory Committee. (a) A committee (an "Advisory Committee") of not fewer than three individuals and not more than seven individuals who are affiliated with or

officers, employees, representatives or designees of Limited Partners or limited partners of Parallel Vehicles (but are not affiliated with the General Partner, the Manager, the Principals or any Affiliates thereof) will be appointed by the General Partner. The General Partner will not appoint to the Advisory Committee any individual who is an officer, employee or representative of a BHC Partner whose Partner Interest in the Partnership is over 4.99%. The Advisory Committee will meet at least semi-annually with the Manager and will perform such duties as is contemplated by this Agreement and provide such advice and counsel, including advice and counsel as to general economic and financial trends, portfolio investments and valuations, as is requested by the General Partner in connection with the investments of the Partnership, the Parallel Vehicles and the Separate Investment Entities, and other matters related thereto; provided, that the General Partner will retain ultimate responsibility for all decisions relating to the operation and management of the Partnership, including all investment decisions. The Advisory Committee will be consulted on potential conflicts involving the Partnership and will perform the duties contemplated by this Agreement and all transactions between the Partnership and the General Partner, the Manager and their Affiliates not specifically contemplated by this Agreement must be approved by the Advisory Committee. Notwithstanding the foregoing, the Advisory Committee will not consult with the General Partner on allocations of investment opportunities to Affiliates of the Manager or client accounts managed by the Manager if such allocations are made in accordance with the Highland Investment Allocation Policy. The Manager shall be entitled to remove a member of the Advisory Committee selected by the Manager from among the Limited Partners (or their representatives) upon at least 15 days prior written notice to the Limited Partners, provided, however, that the Manager may not remove a member of the Advisory Committee designated by a Limited Partner without the consent of 75% of the other members of the Advisory Committee. The Limited Partner that had the right to designate the removed member of the Advisory Committee shall have the right to designate a replacement. The Partnership will reimburse each member of the Advisory Committee for such member's reasonable out-of-pocket expenses incurred in attending meetings of the Advisory Committee. Such reimbursements shall be Partnership Expenses. The Advisory Committee shall act by affirmative vote or written consent of a majority of its members.

(b) Neither the members of the Advisory Committee, nor the Limited Partners on behalf of whom such members act as representatives, shall owe any duties (fiduciary or otherwise) to the Partnership or any other Limited Partner in respect of the activities of the Advisory Committee, other than the duty to act in good faith.

ARTICLE VIII

DURATION AND TERMINATION

Section 8.1 Duration. The General Partner shall cause the Partnership to be dissolved and the Partnership will terminate on the tenth anniversary of the Final Closing and the General Partner will take all necessary steps pursuant to the ELP Law to dissolve the Partnership, except that the term of the Partnership may be extended by the General Partner, with the approval of the Advisory Committee, for up to two consecutive one-year extensions.

Section 8.2 Early Termination.

(a) Subject to the ELP Law, the Partnership shall terminate on:

(i) the bankruptcy of the General Partner or on the happening of any other event that would cause a dissolution of the Partnership under the ELP Law, unless, within 90 days after the occurrence of such event, the Limited Partners and limited partners of all Parallel Vehicles unanimously elect a new general partner pursuant to the ELP Law and resolve to continue the business of the Partnership;

(ii) a good faith determination upon receipt of written legal advice of counsel by the General Partner that dissolution of the Partnership is necessary or desirable (A) as a result of a Plan Asset Event or (B) to avoid any material adverse consequences to the Partnership or the General Partner as a result of any law applicable to a Regulated Investor;

(iii) the removal of the General Partner pursuant to Section 5.9 unless all of the Limited Partners and limited partners of all Parallel Vehicles elect a new General Partner and resolve to continue the business of the Partnership; or

(iv) at any time after the second anniversary of the Final Closing upon the consent of Seventy-Five Percent in Interest of the Limited Partners and the filing of a notice of dissolution by the General Partner.

(b) As promptly as possible following the election by the Limited Partners of a successor General Partner pursuant to Section 8.2(a)(i), there shall be distributed to the former General Partner, in full payment and satisfaction of its interest in the Partnership, a Limited Partnership Interest in the Partnership. The Limited Partnership Interest of the former General Partner shall entitle the former General Partner to the same distributions and allocations in respect of Portfolio Investments made prior to the termination of the former General Partner it would have received had it remained the General Partner, subject to the obligations set forth in Section 8.3(c) of the Master Partnership Agreement, and to the rights of a Limited Partner hereunder with a Commitment equal to the Commitment of the former General Partner, but shall not entitle it to any other rights to participate in the management of the Partnership. After its withdrawal as General Partner, a former General Partner shall only be liable under this Agreement for actions taken and investments in Portfolio Companies made prior to the date of such withdrawal. If the Limited Partners elect to continue the Partnership's business pursuant to Section 8.2(a)(i), an appropriate amendment to this Agreement and to the Registration shall be made within 90 days after the event giving rise to such election.

Section 8.3 Termination and Liquidation of Partnership Interests; Annual Determination of General Partner Give Back.

(a) Liquidation. Upon dissolution, the Partnership will be dissolved and wound up in accordance with the ELP Law.

(b) Final Allocation and Distribution. Upon termination of the Partnership (whether or not an early termination), the General Partner shall approve a plan of dissolution in

accordance with the ELP Law and take all steps necessary to appoint a liquidator and otherwise to dissolve and wind up the Partnership in accordance with the ELP Law.

ARTICLE IX

VALUATION OF PARTNERSHIP ASSETS

Section 9.1 Normal Valuation. For purposes of this Agreement, the value of any security as of any date (or in the event such date is a holiday or other day which is not a Business Day, as of the next preceding Business Day) will be determined as follows:

(a) a Marketable Security which is listed on a recognized securities exchange or the NMS will be valued at the average of the last sales prices (or, if no sale occurred on such date, at the last "bid" price thereon) for the five consecutive trading days before such date and the five consecutive trading days after such date;

(b) a Marketable Security which is traded over-the-counter (other than on the NMS) will be valued at the average of the last "bid" prices for the five consecutive trading days before such date and the five consecutive trading days after such date;

(c) subject to Section 9.3, all Non-Marketable Securities will be valued on such date by the General Partner at fair market value in such manner as it may determine; and

(d) a Marketable Security which meets clause (ii), but not clause (i) of the definition of "Marketable Securities" will be valued as if it had been converted, exchanged or exercised as of such date.

Section 9.2 Restrictions on Transfer or Blockage. Any security which is held under a representation that it has been acquired for investment and not with a view to public sale or distribution, or which is held subject to any other restriction, or where the size of the Partnership's holdings compared to the trading volume would affect its marketability, will, subject to the provisions of Section 9.3, be valued at such discount from the value determined under Section 9.1 above as the General Partner deems necessary to reflect properly the marketability of such security.

Section 9.3 Objection to Valuation. Prior to acting upon its final valuation of any security pursuant to Sections 9.1 or 9.2 or its determination of written down value pursuant to Section 9.4, the General Partner shall provide the members of the Advisory Committee with notice and backup support of the General Partner's valuation of such security. If within 30 days after delivery of such notice a majority of the members of the Advisory Committee delivers written notice to the General Partner objecting to the valuation of such security and if, within 15 days from the date on which the General Partner receives such notice from a majority of the Advisory Committee, the General Partner and the Advisory Committee cannot agree on the valuation of such security, then the General Partner will (at the Partnership's expense) cause an independent securities expert mutually acceptable to the General Partner and the Advisory

Committee to review such valuation, and such expert's determination will be binding on the parties.

Section 9.4 Write-down to Value. Any Portfolio Investment that has permanently declined in value as determined by the General Partner will be written down to its value (or, if applicable, written off) pursuant to the provisions of this Article IX, including the valuation provisions of Section 9.3, as of the date of such determination. The General Partner shall provide the Advisory Committee at least annually with the then current valuation of all Portfolio Investments.

ARTICLE X

BOOKS OF ACCOUNTS; MEETINGS

Section 10.1 Books. The Partnership will maintain complete and accurate books of account of the Partnership's affairs at the Partnership's principal office, which books will be open to inspection by any Partner (or its authorized representative) at any time during ordinary business hours.

Section 10.2 Fiscal Year. The fiscal year of the Partnership will be the calendar year, unless otherwise determined by the General Partner.

Section 10.3 Reports. The General Partner will furnish the Limited Partners:

(a) within 60 days after the end of each of the first three quarters of each fiscal year beginning with fiscal year 2008, and with respect to the fourth quarter in each fiscal year at the time of delivery of the annual financial statements under Section 10.3(c), (i) unaudited quarterly financial statements (including balance sheet and income statement (including additions, dispositions and write-offs)) showing each Partner's Capital Account prepared in accordance with GAAP, applied on a consistent basis (except that, in accordance with GAAP, such quarterly financial reports may omit footnotes and year-end adjustments, accruals and reserves), and (ii) a schedule of investments including the Partnership's cost and the value of such investments prepared in accordance with Article IX;

(b) within 60 days after the end of each of the first three quarters of each fiscal year beginning with fiscal year 2008, and with respect to the fourth quarter in each fiscal year at the time of delivery of the annual financial statements under Section 10.3(c), unaudited quarterly descriptive investment information for each Portfolio Company and narrative summary financial information for each Portfolio Company, including revenues, EBITDA and net debt; and

(c) within 90 days after the end of each fiscal year beginning with fiscal year 2008, (i) financial statements for such year prepared, in accordance with GAAP, applied on a consistent basis (certified by a firm of independent certified public accountants of recognized national standing selected by the General Partner), (ii) valuations of the Partnership's investments as of the end of such year (including a statement of each Partner's closing Capital Account) prepared in accordance with Article IX, and (iii) the certification to Benefit Plan

Investors confirming that the Partnership continues to qualify for an exception from Plan Assets described in the last sentence of Section 5.6(a) and a certification regarding the Partnership's compliance in all material respects with Article III hereof.

Section 10.4 Certain Tax Elections. The Partnership shall file an election effective as of the date of its formation pursuant to U.S. Treasury Regulation §301.7701-3(c) to be treated as an association taxable as a corporation.

Section 10.5 Annual Meeting. The General Partner will hold annual general informational meetings for the Limited Partners until such time, after the termination of the Commitment Period, that substantially all of the Portfolio Investments have been Disposed.

ARTICLE XI

MAINTENANCE OF REGISTRATION OF LIMITED PARTNERSHIP; POWER OF ATTORNEY

Section 11.1 Maintenance of Registration of Limited Partnership. The General Partner has caused to be filed, recorded and published such statements, notices, certificates or other instruments required by any provision of any applicable law which governs the formation of the Partnership or the conduct of its business from time to time (collectively, the "Registration").

Section 11.2 Power of Attorney. Each of the undersigned does hereby constitute and appoint each member of the General Partner and each person who hereafter becomes a member of the General Partner with full power to act without the others, as his, her or its true and lawful representative and attorney-in-fact, in her, his or its name, place and stead, to make, execute, sign, acknowledge and deliver or file (a) the Registration, (b) any amendment to or cancellation of the Registration or any amendment to, or waiver of, this Agreement effected in accordance with Section 12.1, (c) all instruments, documents and certificates which may from time to time be required by any law to effectuate, implement and continue the valid and subsisting existence of the Partnership, (d) all instruments, documents and certificates which may be required to effectuate the dissolution and termination of the Partnership, and (e) in the case of a Defaulting Partner any bills of sale or other appropriate transfer documents necessary to effectuate transfers of such Defaulting Partner's interest pursuant to Section 6.11 above. The powers of attorney granted herein are intended to secure an interest in property and the obligations of each relevant Limited Partner under this Agreement and shall be irrevocable and will survive the death, incompetency, disability or dissolution of a Limited Partner. Without limiting the foregoing, the powers of attorney granted herein will not be deemed to constitute the written consent of any Limited Partner for purposes of Section 12.1. Each Limited Partner hereby agrees not to revoke this power of attorney and further agrees that this power of attorney shall survive and shall not be affected by its dissolution, bankruptcy or legal disability and shall extend to its successors and assigns whomsoever. Any attempted revocation by a Limited Partner of any power of attorney granted herein shall constitute a breach of this Agreement by such Limited Partner. Further, each Limited Partner agrees that at any time, upon request by the General Partner, it will confirm in writing that the power of attorney granted herein has not been revoked. Notwithstanding the

foregoing or anything contained in this Agreement to the contrary, the foregoing power of attorney may not be exercised by the General Partner after the occurrence of an event specified in Section 8.2 or the removal of the General Partner pursuant to Section 5.9.

ARTICLE XII

MISCELLANEOUS

Section 12.1 Amendments.

(a) This Agreement may be amended only by the written consent of the General Partner and, except as otherwise provided in this Section 12.1, a Majority in Interest of the Limited Partners.

(b) Notwithstanding anything in this Section 12.1 to the contrary, no amendment will be valid as to any Limited Partner (including a Defaulting Partner) which (i) increases or decreases such Limited Partner's Commitment without the written consent of such Limited Partner or (ii) amends the provisions of this Section 12.1(b).

(c) Notwithstanding anything in this Section 12.1 to the contrary, no amendment will be valid as to any Limited Partner (including a Defaulting Partner) which alters (i) the provisions of Sections 2.3, 3.3, 4.1, 6.1 or the provisions of this Section 12.1(c), (ii) the provisions of Section 6.7(c) in a manner that increases a Limited Partner's potential obligations, or (iii) any other provision of this Agreement, in a manner adverse to such Limited Partner, without the written consent of such Limited Partner; provided, however, that with respect to clause (iii), if such Limited Partner is not treated differently in any material respect from any other Limited Partner then such amendment will be valid with only the written consent of the General Partner and the Limited Partners representing at least a Majority in Interest of the Limited Partners.

(d) Notwithstanding anything in this Section 12.1 to the contrary, no amendment will be valid as to any Limited Partner (including a Defaulting Partner), which alters the provisions of Sections 1.3, 5.4, 5.10, 5.11, 12.1 or any provision which requires the consent or vote of at least Two-Thirds in Interest of the Limited Partners without the written consent of the General Partner and at least Two-Thirds in Interest of the Limited Partners.

(e) Notwithstanding anything in this Section 12.1 to the contrary, no amendment which would alter the provisions of Sections 5.5, 6.6 and the provisions of this Section 12.1(e), or, with respect to Benefit Plan Investors, Sections 5.6, 12.1(e), and the provisions in Section 5.15 relating to Benefit Plan Investors or the definitions of Benefit Plan Investor or Redemption Value, will be valid without the written consent of at least a Majority in Interest of the Limited Partners that are materially and adversely affected by such amendment (including Limited Partners whose direct or indirect beneficial owners would be so affected).

(f) Notwithstanding anything in this Section 12.1 to the contrary, no amendment will be valid as to any Limited Partner (including a Defaulting Partner), which alters any provision which requires the consent or vote of at least Seventy-Five Percent in Interest of the Limited

Partners or the provisions of this Section 12.1(f) without the written consent of the General Partner and at least Seventy-Five Percent in Interest of the Limited Partners.

(g) Notwithstanding anything in this Section 12.1 to the contrary, no amendment shall be made which would amend the provisions hereof relating to the rights of BHCA Partners without the consent of each BHCA Partner affected thereby.

(h) Notwithstanding anything in this Section 12.1 to the contrary, the General Partner may amend any provisions of this Agreement solely as it relates to a Limited Partner pursuant to one or more side letters with such Limited Partner without the consent of the Limited Partners not party to such side letters.

(i) Subject to Section 12.1 of the Master Partnership Agreement, no amendment or waiver of the provisions of the Master Partnership Agreement shall be made without the written consent of a Majority in Interest of the Limited Partners.

(j) In addition to any amendments or waivers otherwise authorized hereby, this Agreement may be amended from time to time by the General Partner without the consent of any of the Limited Partners (i) to add to the representations, duties or obligations of the General Partner or surrender any right or power (but not responsibilities) granted to the General Partner herein; (ii) to cure any ambiguity or correct any provisions hereof which may be inconsistent with any other provisions hereof, or correct any printing, stenographic or clerical errors or omissions; (iii) to admit one or more Additional Limited Partners, or withdraw one or more Limited Partners, in accordance with the terms of this Agreement, and (iv) with the consent of the Advisory Committee, to take such actions contemplated in Section 5.6(e) or avoid any material adverse consequences to the Partnership or the General Partner as a result of any change in law or interpretation of law applicable to a Regulated Investor. The General Partner shall promptly send each Limited Partner a copy of any amendment adopted pursuant to Section 12.1.

Section 12.2 Successors. Except as otherwise provided herein, this Agreement will inure to the benefit of and be binding upon the Partners and their legal representatives, heirs, successors and assigns.

Section 12.3 Governing Law; Severability. This Agreement will be construed in accordance with the laws of the Cayman Islands and, to the maximum extent possible, in such manner as to comply with all the terms and conditions of the ELP Law. If it is determined by a court of competent jurisdiction that any provision of this Agreement is invalid under applicable law, such provision will be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of this Agreement.

Section 12.4 Notices. All notices, demands and other communications to be given and delivered under or by reason of provisions under this Agreement will be in writing and will be deemed to have been given when personally delivered, sent by telecopy (with hard copy to follow by reputable overnight courier) or sent by reputable overnight courier service (charges prepaid) or mailed by first class mail (with a copy sent by telecopy) to the addresses or telecopy numbers set forth in Schedule 1 hereto or to such other address or telecopy number as has been indicated to all Partners.

Section 12.5 Legal Counsel. Each Partner hereby agrees and acknowledges that:

(a) The law firm retained by the General Partner, the Partnership and any Parallel Vehicle or Separate Investment Entity (the "GP's Counsel") in connection with the formation of the Partnership, the offering of Limited Partner interests and the management and operation of the Partnership does not and will not represent the Limited Partners in connection with any such matter or in connection with any dispute which may arise between the Limited Partners on one hand and the General Partner, the Partnership and any Parallel Vehicle or Separate Investment Entity on the other (the "Partnership Legal Matters").

(b) Each Limited Partner will, if it wishes counsel on a Partnership Legal Matter, retain its own independent counsel with respect to each of the foregoing matters described in Section 12.5(a).

(c) Each Limited Partner hereby agrees that the GP's Counsel may represent (i) the General Partner and the Partnership and any Parallel Vehicle or Separate Investment Entity in connection with any and all Partnership Legal Matters (including any dispute between the General Partner and one or more Limited Partners, but excluding a Limited Partner's derivative action brought against the General Partner).

Section 12.6 Miscellaneous. This document and the schedules, exhibits and side letter agreements between the Partnership and certain of the Limited Partners in connection herewith and the Subscription Agreements contain the entire Agreement among the parties and supersede all prior arrangements or understanding with respect thereto. Descriptive headings are for convenience only and will not control or affect the meaning or construction of any provision of this Agreement. This Agreement may be executed in any number of counterparts, any one of which need not contain the signatures of more than one party, but all of such counterparts together will constitute one agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed as of the date first above written.

Executed as a Deed by:

GENERAL PARTNER:

HIGHLAND RESTORATION CAPITAL PARTNERS GP, LLC

By: _____
Name: James Dondero
Title: President

In the presence of:

_____
Witness

Meredith etheredge
Name

13455 Noel Road, STE 800, Dallas, TX 75240
Address

Notary
Occupation

MEREDITH ETHEREDGE
Notary Public, State of Texas
My Commission Expires
May 20, 2009

Executed as a Deed by:

LIMITED PARTNER:

1397225 ONTARIO LIMITED

By: _____
Name: ASO
Title:

In the presence of:

_____
Witness

CYNTHIA TUCCIARONE
Name

5650 Yonge Street, Toronto, M2N4H5 Canada
Address

Senior Law Clerk - Investments & Contracts
Occupation

LIMITED PARTNERS

Executed as a Deed on behalf of each of the parties named above

By: HIGHLAND RESTORATION CAPITAL PARTNERS GP, LLC as Attorney-in-Fact pursuant to Section 14 of each of the Subscription Agreements, dated April 18, 2008, between each of the above named parties and Highland Restoration Capital Partners GP, LLC as General Partner of Highland Restoration Capital Partners Offshore, L.P.

By: _____
Name: James Dondero
Title: President

In the presence of:

_____
Witness

Meredith Etheredge
Name

13455 Noel Road, STE 800, Dallas, TX 75240
Address

Notary
Occupation

MEREDITH ETHEREDGE
Notary Public, State of Texas
My Commission Expires
May 20, 2009

AGREEMENT OF LIMITED PARTNERSHIP

OF

HIGHLAND RESTORATION CAPITAL PARTNERS, L.P.

17461908

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AGREEMENT OF LIMITED PARTNERSHIP
OF
HIGHLAND RESTORATION CAPITAL PARTNERS, L.P.

THIS AGREEMENT OF LIMITED PARTNERSHIP (this "Agreement") is dated effective as of April 18, 2008 between Highland Restoration Capital Partners GP, LLC, a Delaware limited liability company (in its capacity as general partner of the Partnership, the "General Partner"), and the limited partners listed in Schedule 1 attached hereto (in their capacities as limited partners of the Partnership, the "Limited Partners") (the General Partner and the Limited Partners being herein collectively called the "Partners"). Capitalized terms not otherwise defined shall have the meanings ascribed to such terms in Section 2.1(a).

ARTICLE I

GENERAL PROVISIONS

Section 1.1 Formation. The Partners hereby agree to form a limited partnership (the "Partnership") pursuant to and in accordance with the Delaware Revised Uniform Limited Partnership Act (the "Delaware Partnership Act").

Section 1.2 Name. The name of the Partnership will be "Highland Restoration Capital Partners, L.P." or such other name or names as the General Partner may from time to time designate. The General Partner will notify Limited Partners in writing of any change to the name of the Partnership.

Section 1.3 Purpose. Subject to the express limitations set forth herein, the Partnership is organized for the object and purpose of (i) investing in senior secured bank loans, debt obligations, trade claims and equity securities of middle market Distressed Companies primarily based in the United States generally consistent with the investment strategy described in the Partnership's Confidential Private Placement Memorandum, including, without limitation, privately placed or publicly traded debt securities and other debt obligations, senior and subordinated debt obligations, secured and unsecured debt obligations, privately placed or publicly traded equity securities including common stock, preferred stock and warrants, and (ii) managing and monitoring such investments and engaging in such activities incidental or ancillary thereto and otherwise permitted by the Delaware Partnership Act as the General Partner deems necessary or advisable.

Section 1.4 Place of Business. The Partnership will maintain offices and places of business at Two Galleria Tower, 13455 Noel Road, Dallas, TX 75240, or at such other place or places in the United States as the General Partner may from time to time designate; provided, however, that if the General Partner designates different places of business, it shall promptly notify the Limited Partners in writing.

ARTICLE II

DEFINITIONS; DETERMINATIONS; CAPITAL CONTRIBUTIONS; CAPITAL ACCOUNTS

Section 2.1 Definitions; Determinations.

(a) For purposes of this Agreement the following capitalized terms shall have the meanings set forth below:

"Additional Limited Partners" has the meaning set forth in Section 6.5(a).

"Advisory Committee" has the meaning set forth in Section 7.1(a).

"Affiliate" has the meaning set forth in Rule 405 promulgated under the Securities Act.

"Agent" has the meaning set forth in Section 2.4(b).

"Agreement" has the meaning set forth in the introduction.

"Allocated Expenses" means, for any Partner as of any date with respect to any Portfolio Investment, such Partner's Capital Contributions applied to pay Management Fees, Organizational Expenses and Uncapitalized Partnership Expenses that have been allocated pursuant to Section 3.3(c) to such Portfolio Investment as of such date.

"Available Profits" means, with respect to a Waived Fee Amount, the cumulative amount of items of Partnership income and gain (such items being "Partnership Profits") realized after the Waived Fee Notice giving rise to such Waived Fee Amount. The amount of Partnership Profits realized after a Waived Fee Notice for the purpose of this Available Profits definition shall equal the amount of Partnership income and gain realized after the Waived Fee Notice for purposes of maintaining Capital Accounts; provided, however, the amount of Partnership gain realized after a Waived Fee Notice that is attributable to any Portfolio Investment held by the Partnership at the time of such Waived Fee Notice that is taken into account in calculating Partnership Profits shall equal the excess, if any, of (1) the amount the Partnership realizes on the sale, transfer, or other disposition of such Portfolio Investment or its assets over (2) the fair market value (as determined by the General Partner) of such Portfolio Investment or its assets, as applicable, on the date of such Waived Fee Notice. Notwithstanding the two preceding sentences, the aggregate amount of all items of Partnership Profits for any taxable year included in Available Profits shall not exceed the total amount of the Partnership's net income and gain for such taxable year as determined for federal income tax purposes, except that gain attributable to a Portfolio Investment shall be determined as described in the proviso to the preceding sentence. Notwithstanding the three preceding sentences, to the extent of the amount by which the Special Profit Interest with respect to a Portfolio Investment exceeds the Deemed Contribution with respect to such Portfolio Investment, Available Profits includes an allocable share of all items of income or gain realized by the Partnership with respect to such Portfolio Investment.

"Basis" of any security means the basis of such security as determined in accordance with the Code less the amount of any write-down pursuant to Section 9.4 and as further adjusted by the General Partner in its reasonable discretion to reverse the effects of any exchange of securities that would result in an increase in tax basis pursuant to the Code.

"Benefit Plan Investor" means any Partner that is a "benefit plan investor" as defined in Section 3(42) of ERISA and any regulations promulgated thereunder.

"BHC Act" means the Bank Holding Company Act of 1956, as amended.

"BHCA Partner" means a Limited Partner that is a bank holding company, as defined in Section 2(a) of the BHC Act, or a non-bank subsidiary of such bank holding company, provided, that such Limited Partner shall not be a BHC Partner if (i) it is a financial holding company, as defined in Section 2(p) of the BHC Act, or a non-bank subsidiary thereof and is acting pursuant to Section 4(k)(4)(h) or Section 4(k)(4)(i) of the BHC Act as set forth in a notice to such effect to the General Partner; or (ii) it is a small business investment company licensed as such under the Small Business Investment Act of 1958, as amended.

"Bridge Financing" means, with respect to the Partnership's investment in a Portfolio Company, that portion of the investment that the Partnership provides as interim financing (including guarantees of debt financing) in anticipation of, or to support, a permanent investment by the Partnership in such Portfolio Company and that the Partnership intends to cause the Portfolio Company to repay or refinance within 18 months after the date of such investment in the Portfolio Company and which the General Partner designates in the Capital Call Notice therefor. During the first 18 months following a Bridge Financing, such Bridge Financing shall be treated as a Short-Term Investment. A Bridge Financing that is outstanding 18 months following the making of such Bridge Financing, shall be treated by the Partnership as a permanent investment in a Portfolio Company.

"Bridge Leveraging" means indebtedness incurred by the Partnership to fund the acquisition of a Portfolio Investment pending receipt of Capital Contributions (including as a result of any default by any Limited Partner or limited partner of a Parallel Vehicle in the making of Capital Contributions) pursuant to a Capital Call Notice that the Partnership anticipates issuing pursuant to Section 2.2(a), provided that the Capital Contributions made with respect to such Capital Call Notice are applied by the Partnership upon receipt thereof to repay such indebtedness.

"Built-In Tax Amount" means, with respect to any distribution of securities in-kind received by the General Partner, an amount equal to the taxes that would be payable by the General Partner (and its direct and indirect members), assuming (i) such securities were sold in a taxable transaction immediately after their receipt by the General Partner for an amount equal to their value and (ii) any gains were taxed at the highest marginal rates applicable to any of the General Partner's members or former members, applying the assumptions set forth in Section 3.3(b) in the same manner as if such securities had been sold by the Partnership immediately before such distribution.

"Business Day" means any day other than (i) Saturday or Sunday or (ii) any other day on which banks located in New York City generally are closed for business.

"Capital Account" has the meaning set forth in Section 2.3.

"Capital Call" has the meaning set forth in Section 2.2(a).

"Capital Call Notice" has the meaning set forth in Section 2.2(a).

"Capital Contribution" of any Partner means the amount received by the Partnership from such Partner as an actual contribution.

"Capitalized Partnership Expenses" means Partnership Expenses that are reflected in the Basis of Portfolio Investments.

"Carried Interest" means the General Partner's 20% interest in the Partnership's distributions specified in Section 3.3(a)(ii)(A) and Section 3.3(a)(iii)(B).

"Certificate" has the meaning set forth in Section 11.1.

"Code" means the U.S. Internal Revenue Code of 1986, as amended.

"Co-Investment Opportunity" has the meaning set forth in Section 5.17(a).

"Co-Investment Fund" means any partnership, limited liability company or other entity that is an Affiliate of the General Partner or the Manager, is not a Parallel Vehicle or a Separate Investment Entity, and is organized to invest in Portfolio Investments pursuant to a Co-Investment Opportunity.

"Co-Investor" has the meaning set forth in Section 5.17(a).

"Commitment" with respect to each Partner means the aggregate amount of cash agreed to be contributed as capital to the Partnership by such Partner (as determined with respect to the General Partner without regard to Section 2.2(a)(ii)) as specified in Schedule 1 attached hereto as the same may be modified from time to time under the terms of this Agreement.

"Commitment Period" has the meaning set forth in Section 2.2(b).

"Continuity Period" has the meaning set forth in Section 2.2(d).

"Credit Support" has the meaning set forth in Section 5.3.

"Crusader" means Highland Crusader Fund, L.P., and its successors.

"Current Cash Income" means all Current Income paid in cash or cash equivalents.

"Current Income" means all interest and dividend income (including from original issue discount, purchases or investments at a market discount, and payment of in-kind income and other non-cash current income) from a Portfolio Company.

"Deemed Contribution" means, as of any date, for any Portfolio Investment or the payment of expenses incurred directly in connection with the making, maintaining or disposing of such Portfolio Investment, the Gross-up Percentage multiplied by the product of (i) the amount by which the Capital Contributions required from the General Partner are reduced pursuant to Section 2.2(a)(ii) with respect to such Portfolio Investment or the payment of related expenses, multiplied by (ii) (1) with respect to the General Partner, the quotient determined by dividing (x) the aggregate Commitments of all Partners (including the General Partner) other than Limited Partners as to whom no Management Fee is payable pursuant to Section 4.1(b) by (y) the aggregate Commitments of all Partners, and (2) with respect to each Limited Partner as to whom no Management Fee is payable pursuant to Section 4.1(b), the quotient determined by dividing (x) the Commitment of such Limited Partner by (y) the aggregate Commitments of all Partners.

"Defaulting Partner" has the meaning set forth in Section 6.11(a).

"Delaware Partnership Act" has the meaning set forth in Section 1.1.

"Determination Date" has the meaning set forth in Section 8.3(c).

"Director Fees" means directors, consulting, monitoring or similar fees in respect of a Portfolio Company, including options, warrants or other non-cash compensation received by a director or officer of a Portfolio Company which shall be valued at the earlier of (v) the time of exercise of such instrument, (w) three years after the underlying security of such instrument becomes a Marketable Security, (x) the dissolution of the Partnership, (y) the date the Partnership disposes of the Portfolio Investment that gave rise to such fee or (z) the date such option, warrant or other non-cash compensation was disposed of by the General Partner, the Manager, the Principals or their Affiliates and thereafter credited against Management Fees pursuant to Section 4.1(c), in each such case to the extent actually paid by a Portfolio Company and received by the General Partner, the Manager, the Principals, employees of the Manager or their Affiliates in respect of Portfolio Investments; provided, however, that (A) such fees shall not include, in each case, any such amounts that are applied to cover amounts paid by the General Partner, the Manager, the Principals or their Affiliates that constitute unreimbursed (i) out-of-pocket expenses of such persons incurred in generating such fees, and (ii) Partnership Expenses incurred in generating such fees, and (B) to the extent that the General Partner, the Manager, the Principals, employees of the Manager or their Affiliates were actually reimbursed by the Partnership for any Partnership Expenses incurred in generating such fees, such fees will first be applied to repay the Partnership for such Partnership Expenses.

"Disposition" or "Disposed of" means, with respect to all or a portion of a Portfolio Investment, (i) except as provided in the next sentence, the sale, exchange or other disposition by the Partnership of all or a portion of the securities or other interests constituting that Portfolio Investment for cash, securities or other property, (ii) the receipt by the Partnership of a distribution of the proceeds of the sale of all or substantially all of the assets of the Portfolio Company in complete liquidation of the Partnership's entire interest in the Portfolio Investment and (iii) an in-kind distribution of all or part of a Portfolio Investment that has not previously been deemed to have been Disposed of, as of the date of and to the extent of such distribution. A "Disposition" does not include (i) a recapitalization that consists of an exchange of a Portfolio

Investment for other securities of or claims against the issuing Portfolio Company, (ii) a business combination that consists of an exchange of substantially all of the Partnership's remaining interest in a Portfolio Investment for securities issued by an acquiring entity, (iii) a business combination that consists of the exchange of all or substantially all of the assets of a Portfolio Company or one or more divisions or operating units of a Portfolio Company for securities issued by an acquiring entity or (iv) a sale, exchange or other disposition that does not constitute a pro rata disposition of a portion of each class of securities or other interests constituting such Portfolio Investment.

"Distressed Companies" shall mean persons that, in the opinion of the General Partner, (a) are or have been in financial or other stress; (b) are restructuring, are considered likely to be restructured, or have been restructured in an out-of-court process or in a proceeding under the Federal bankruptcy laws or state insolvency laws or similar laws in or outside of the United States; (c) are being, are considered likely to be or have been reorganized within or outside of a proceeding under federal bankruptcy laws or state insolvency laws or similar laws in or outside of the United States; or (d) are engaged, are considered likely to engage or have been engaged in other extraordinary transactions, such as debt restructurings, reorganizations and liquidations outside of bankruptcy.

"ECI" means income that is effectively connected with a United States trade or business within the meaning of Section 864(c) of the Code and the Treasury Regulations promulgated thereunder, but not including any income or gain attributable to the disposition of a "United States real property interest" as defined for purposes of Section 897(c) of the Code.

"Electing Limited Partner" has the meaning set forth in Section 2.4(b).

"ERISA" means the U.S. Employee Retirement Income Security Act of 1974, as amended.

"Excess Partial Realization Proceeds" means, for any Partner and as of any date, the sum of the positive amounts determined with respect to each Portfolio Investment (or portion thereof) that has not been Disposed of as of such date and as to which there have been proceeds from a Partial Realization as of such date, equal to the excess of (a) such Partner's Partner Share of aggregate proceeds that have been distributed as of such date of all Partial Realizations with respect to such Portfolio Investment or portion thereof over (b) the sum of (i) such Partner's Capital Contributions applied to make such Portfolio Investment or portion thereof, including Capitalized Partnership Expenses attributed to such Portfolio Investment or portion thereof and any Allocated Expenses with respect to such Portfolio Investment as of such date, plus (ii) an amount that would be equal to such Partner's Preferred Amount if such Partner's Preference Base were only the amounts described in clause (i).

"Existing Partners" has the meaning set forth in Section 6.5(c).

"FCC" shall mean the U.S. Federal Communications Commission.

"FCC Attribution Rules" shall mean the ownership attribution rules of the FCC, including, but not limited to, 47 C.F.R. §§ 21.912, Note 1; 24-709; 24.720; 26.101(b), (c);

73.3555, Note 2; 76.501, Note 2; 76.503, Note 2; 76-504, Note 1; Attribution Reconsideration Order, 58 Radio Regulation 2nd 604 (1985); Further Attribution Reconsideration Order, 1 FCC Rcd 802 (1986); Report and Order, 14 FCC Rcd 12559 (1999); Report and Order, 14 FCC Rcd 19014 (1999); Memorandum Opinion and Second Order in Reconsideration, FCC 00-431 (released Jan. 19, 2001); and Memorandum and Opinion and Order on Reconsideration, FCC-00-438 (released Jan. 19, 2001), all as the same may be amended or supplemented from time to time.

"Final Closing" means the final closing of subscriptions by Limited Partners pursuant to Subscription Agreements, which, in any event, shall take place no later than the fourteen month anniversary of the First Closing.

"First Closing" means the first closing of subscriptions by Limited Partners pursuant to Subscription Agreements.

"Follow-on Investment" means investments made after the termination of the Commitment Period in securities of an existing Portfolio Company that are appropriate or necessary in the opinion of the General Partner to preserve, protect or enhance the investment in such Portfolio Company that was made by the Partnership during the Commitment Period.

"Fund Group" means the Partnership, Parallel Vehicles, Separate Investment Entities and their respective Portfolio Investments.

"Funded Commitment" means as to any Partner as of any date, that portion of a Partner's Commitment that has been contributed (or "deemed contributed") to the Partnership to meet a Capital Call (including any amounts contributed pursuant to Section 6.5(b)), reduced by (a) any amounts which are distributed (or "deemed distributed") to such Partner in respect of a proposed Portfolio Investment (or portion thereof) that was not consummated, (b) any amounts which are distributed (or "deemed distributed") to such Partner in respect of a Bridge Financing (or portion thereof) that was sold, refinanced, redeemed or otherwise disposed of within 18 months from the Investment Date of such Portfolio Investment in an amount not to exceed the Partner's portion of Funded Commitments used to acquire such Bridge Financing, (c) any amounts paid by such Partner pursuant to subclauses (A), (B) and (C) of the third sentence of Section 6.5(b), (d) any amounts distributed (or "deemed distributed") to such Partner pursuant to Section 6.5 (other than amounts attributable to payments by an Additional Limited Partner pursuant to subclauses (A), (B) and (C) of the third sentence of Section 6.5(b)), and (e) in the sole discretion of the General Partner, any amounts distributed (or "deemed distributed") to such Partner with respect to a Portfolio Investment that was sold, refinanced, redeemed or otherwise disposed of within 48 months after the Investment Date for such Portfolio Investment in an amount not to exceed the portion of such Partner's Funded Commitments used to acquire such Portfolio Investment, all as determined in good faith by the General Partner. For the purposes of this definition, those proceeds otherwise distributable to a Partner that are retained for reinvestment or application to a Capital Call in accordance with the proviso to Section 3.1(b) or the proviso to the second to last sentence in Section 6.5(b), shall be "deemed distributed" to such Partner by the Partnership and "deemed contributed" by such Partner to the Partnership. The General Partner, in its discretion, may reduce the 48 month period referenced above at any time during the Commitment Period.

"GAAP" means U.S. generally accepted accounting principles as in effect from time to time.

"General Partner" has the meaning set forth in the introduction to this Agreement and includes any successor general partner of the Partnership appointed in accordance with this Agreement.

"GP's Counsel" has the meaning set forth in Section 12.5.

"Gross-up Percentage" means the percentage determined by dividing (i) the aggregate Commitments of all Partners by (ii) the aggregate Commitments of all Partners with respect to whom the Management Fee is payable pursuant to Section 4.1(b).

"Guaranty Agreement" shall mean the Guaranty Agreement, dated as of the date hereof, by and among the Partnership, the General Partner and the guarantors party thereto, substantially in the form of the agreement set forth in Exhibit A hereto, as amended from time to time in accordance with its terms.

"Highland" shall mean Highland Capital Management, L.P., a Delaware limited partnership.

"Highland Accounts" means collectively funds, accounts and vehicles managed by Highland from time to time.

"Highland Investment Allocation Policy" shall mean the investment allocation policy of Highland described in the Partnership's Confidential Private Placement Memorandum and as in effect or modified from time to time.

"Highland Portfolio Company" means each portfolio company (and each of their subsidiaries) as to which Highland and/or the Principals and/or their respective Affiliates have completed, or are in the process of completing, an investment or acquisition or receipt of a debt or equity ownership position therein, including, without limitation through Crusader and other Highland Accounts, at the time of the First Closing, together with follow-on or other additional investments and acquisitions from time to time after the First Closing in or by such companies so long as such investments and acquisitions are reasonably determined by the Principals to be primarily within the general lines or areas of business of such companies as of the First Closing or incidental or related thereto.

"Indemnifying Partner" has the meaning set forth in Section 6.7(a).

"Initial Fee Period" means the period starting on the First Closing and ending on the earlier of (i) the termination of the Commitment Period, and (ii) the date on which the Manager, the General Partner or an Affiliate thereof closes subscriptions of capital commitments by investors of a Successor Fund.

"Insulated Partner" has the meaning set forth in Section 5.16(a).

"Insulated Partner Affiliate" has the meaning set forth in Section 5.16(a).

"Investment Company Act" means the Investment Company Act of 1940, as amended.

"Investment Date" means, with respect to any Portfolio Investment, the date such Portfolio Investment was acquired by the Partnership.

"Investment Income and Gain" means, with respect to a Portfolio Investment, (i) the excess, if any, of the proceeds from the Disposition of such Portfolio Investment or portion thereof or Partial Realization with respect to such Portfolio Investment or portion thereof that does not give rise to Current Income over the Basis of such Portfolio Investment or portion thereof, (ii) to the extent all or any portion of such Portfolio Investment is distributed to the Partners in kind as contemplated by Section 2.3, the excess, if any, of the value (as determined pursuant to Article IX) of the portion of such Portfolio Investment distributed to the Partners over the Basis of such portion of such Portfolio Investment, and (iii) Current Income attributable to such Portfolio Investment.

"Investment Loss" means, with respect to a Portfolio Investment, (i) the deficiency, if any, of the proceeds from the Disposition of such Portfolio Investment or portion thereof or Partial Realization with respect to such Portfolio Investment or portion thereof that does not give rise to Current Income as compared to the Basis of such Portfolio Investment or portion thereof, (ii) to the extent all or any portion of such Portfolio Investment is distributed to the Partners in kind as contemplated by Section 2.4, the deficiency, if any, of the value (as determined pursuant to Article IX) of the portion of such Portfolio Investment distributed to the Partners as compared to the Basis of such portion of such Portfolio Investment, and (iii) the amount, as reasonably determined by the General Partner in accordance with Section 9.4, by which such Portfolio Investment has permanently declined in value below the Basis of such Portfolio Investment immediately prior to such determination.

"Keyman Group" means James Dondero, Pat Daugherty and John Honis; provided, that the Keyman Group will include replacements chosen pursuant to Section 2.2(d) if a Triggering Event occurs pursuant to clauses (ii) or (iii) therein; provided, further, that, if any one of the members of the Keyman Group ceases to be actively involved, including in a supervisory role, on an ongoing basis with respect to the business, operations or investment decisions of Highland, the Manager and General Partner, the Keyman Group will include such replacement person that is proposed by the General Partner to the Advisory Committee and who is approved to serve as a member of the Keyman Group by the consent of a majority of the members of the Advisory Committee.

"Limited Partners" means the persons listed in Schedule 1 hereto in their capacity as limited partners of the Partnership (including each person admitted to the Partnership in accordance with Section 6.5) and each person who is admitted to the Partnership as a substitute limited partner pursuant to Section 6.2 or 6.5, so long as each such person continues to be a limited partner of the Partnership hereunder.

"Majority in Interest of the Limited Partners" means Limited Partners with Commitments and limited partners in Parallel Vehicles with capital commitments to Parallel Vehicles totaling more than 50% of the aggregate Commitments of all Limited Partners and capital commitments of limited partners in Parallel Vehicles.

"Management Fee" has the meaning set forth in Section 4.1(a).

"Management Fee Period" has the meaning set forth in Section 4.1(a).

"Manager" means Highland Capital Management, L.P., a Delaware limited partnership, or other entity controlled by James Dondero and Mark Okada, and appointed as Manager by the General Partner on behalf of the Partnership from time to time.

"Marketable Securities" means securities that (A) (i) are (x) listed on a national securities exchange in the United States, (y) quoted on the NMS or (z) listed on a securities exchange or quoted on an established quotation system within or without the United States that in the opinion of the General Partner after consultation with the Advisory Committee supports sufficient trading activity and volume to allow for the orderly disposition of such securities by the Partners following a distribution thereof in accordance with Sections 2.4 and 3.3, and (ii) are not subject to restrictions on transfer as a result of applicable contract provisions, the provisions of the Securities Act or regulations thereunder (other than the volume, manner-of-sale and notice restrictions of Rule 144 promulgated thereunder or any successor rule thereto; provided, that if such securities are subject to volume limitations under Rule 144 and distributed in kind to Limited Partners, each Limited Partner would be able to sell such securities promptly after the distribution thereof in accordance with Sections 2.4 and 3.3 (notwithstanding volume limitations)), or other applicable law, or (B) are immediately convertible, exchangeable or exercisable by the holder thereof into securities that meet the requirements of the foregoing clause (A).

"Media Company" shall mean any entity in which the Partnership has or acquires an investment and that directly or indirectly owns, controls or operates any: (i) broadcast radio or television station licensed by the FCC; (ii) U.S. cable television system; (iii) daily newspaper (as such term is defined in Section 73.3555 of the Ownership Rules); (iv) multipoint multichannel distribution system licensed by the FCC; (v) other communications facility the ownership or operation of which is subject to regulation by the FCC under (x) the Communications Act of 1934, as amended, (y) the FCC Attribution Rules, or (z) the FCC Ownership Rules; and (vi) other business or activity that is subject to ownership restrictions imposed by the FCC from time to time.

"Net Funded Commitment" means, in respect of any Partner and as of the first day of any Management Fee Period, such Partner's Funded Commitment as of such date less (i) such Partner's Capital Contributions (or portion thereof, in the case of a partial Disposition) applied by the Partnership to make all Portfolio Investments that have been Disposed of on or prior to such date and applied to pay Capitalized Partnership Expenses relating to such Portfolio Investments and Allocated Expenses with respect to such Portfolio Investment as of such date, (ii) all write downs pursuant to Section 9.4 in respect of Portfolio Investments that have not been Disposed of by the Partnership on or prior to such date multiplied by such Partner's Partner Interest in each such Portfolio Investment, and (iii) such Partner's Capital Contributions in respect of Management Fees and Partnership Expenses allocable to Portfolio Investments that have not been Disposed of on or prior to such date.

"NMS" means the National Market System of the National Association of Securities Dealers, Inc.

"Non-Marketable Securities" means all securities which are not Marketable Securities.

"Non-U.S. Partner" means with respect to any determination hereunder, (i) any Limited Partner that is not a "United States person" within the meaning of Section 7701(a)(30) of the Code, or (ii) any Limited Partner that has a direct or indirect beneficial owner that (x) is not a "United States person" within the meaning of Section 7701(a)(30) of the Code and (y) is required to report on a United States federal income tax return or report any taxable income allocated to such Limited Partner pursuant to Section 10.4, to the extent of such beneficial owner's pro rata share of such income, but in each case, only if such Limited Partner has notified the General Partner of such status at any time prior to such determination, by providing the General Partner an IRS Form W-8BEN or by some other method satisfactory to the General Partner.

"Non-Voting Interest" means any interest of a Limited Partner in the Partnership, and if applicable, any interest of a limited partner in a Parallel Vehicle (or portion thereof) with respect to which a Limited Partner or limited partner in a Parallel Vehicle has, or elects to have, no or limited voting rights pursuant to Section 6.9 or a similar provision in the agreement of limited partnership of the Parallel Vehicles, as the case may be.

"Non-Voting Partnership Interests" has the meaning set forth in Section 6.9(b).

"Operating Company" means an "operating company" within the meaning of the Plan Asset Regulation, including a "venture capital operating company."

"Opinion of the Partnership's Counsel" means an opinion of Mayer Brown LLP or other counsel selected by the General Partner and reasonably acceptable (by reason of experience in the area of law involved) to the Limited Partner affected by such opinion or, if more than one Limited Partner is affected by such opinion, a Majority in Interest of the Limited Partners so affected.

"Organizational Expenses" means the reasonable out-of-pocket expenses (including, without limitation, travel, printing, legal and accounting fees and other expenses) of the General Partner, the Manager, the Principals and their respective Affiliates (but not including any Placement Fees) incurred in the formation of the Partnership, any Parallel Vehicle or any Separate Investment Entity or incurred in connection with the organization and funding of the Partnership, any Parallel Vehicle, Separate Investment Entity and the General Partner.

"Other Permitted Investment Activities" means the continuing involvement of the Principals, subject to compliance with the devotion of time covenant in Section 5.1(a), (i) in the full range of their activities in connection with their duties and responsibilities as members, owners, partners, directors, officers, employees, shareholders, or consultants of the Manager and Highland Accounts, including Crusader, (ii) in acquisitions and follow-on investments by Highland Portfolio Companies reasonably determined by the Principals to be primarily within the general area of business of a Highland Portfolio Company or incidental or related thereto, (iii) as passive owners, stockholders, debtholders and investors in professionally managed hedge

funds, fund of funds and other private investment entities and vehicles, (iv) in investments which do not otherwise meet the investment objectives of the Partnership, and (v) in a Successor Fund organized in accordance with Section 5.12; provided, that none of the activities described in clauses (i) through (v) above shall unreasonably affect the ability of the Principals to fulfill their duties to the Limited Partners and to be actively involved in the business of the Fund Group.

"Ownership Rules" means the multiple and cross-ownership rules of the FCC including, but not limited to, 47 C.F.R. §§ 21.912; 24-709; 24.720; 26.101(a); 73.3555; 74.931(h); 76.501; 76.503; 76.504, and other regulations or written policies of the FCC which limit or restrict ownership in Media Companies, all as the same may be amended or supplemented from time to time.

"Parallel Vehicle" means any entity that is organized pursuant to Section 5.14 and designated a Parallel Vehicle by the General Partner, including Highland Restoration Capital Partners Offshore, L.P., a Cayman exempted limited partnership, but solely for purposes of this Agreement, the Partnership is not a Parallel Vehicle.

"Partial Realization" means, with respect to any Portfolio Investment, the realization by the Partnership of Current Income or of proceeds from a recapitalization, extraordinary dividend, sale, redemption or other disposition of less than all of such Portfolio Investment (other than a pro rata disposition of a portion of each class of securities or other interests constituting such Portfolio Investment) or any other similar event that does not constitute a Disposition of such Portfolio Investment.

"Participating Partner" means, with respect to any Portfolio Investment, any Limited Partner who made a Capital Contribution (other than solely a Waiver Contribution) that was applied to such Portfolio Investment.

"Partner Interest" means for any Partner that is a Participating Partner with respect to any Portfolio Investment (i) for each Partner as to which there is a Deemed Contribution, the proportion that the sum of such Partner's Capital Contributions and allocable share of Deemed Contributions that were applied to such Portfolio Investment bears to the aggregate Capital Contributions and Deemed Contributions of all Partners that were applied to such Portfolio Investment, and (ii) for any Partner other than Partners described in clause (i), the proportion that such Partner's Capital Contributions that were applied to such Portfolio Investment bears to the aggregate Capital Contributions and Deemed Contributions of all Partners that were applied to such Portfolio Investment.

"Partner Share" means, for any Partner, and for any period, the amount of Investment Income and Gain, Investment Loss, Current Cash Income, proceeds from the Disposition of or Partial Realization with respect to a Portfolio Investment for such period or Portfolio Investments distributed in kind, as the case may be, or items of Partnership income or expense (other than Management Fees or Placement Fees, if any), in each case for such period multiplied by such Partner's Partner Interest in the Portfolio Investments giving rise to such items or to which such items are allocable pursuant to Section 3.3(c).

"Partners" means the General Partner and the Limited Partners, collectively.

"Partnership" has the meaning set forth in Section 1.1.

"Partnership Expenses" means all reasonable costs and expenses relating to the Partnership's activities, investments and business (to the extent not borne or reimbursed by a Portfolio Company or proposed Portfolio Company), including, but not limited to, (i) all costs and out-of-pocket fees and expenses attributable to acquiring, investing, holding, monitoring and disposing of the Partnership's investments, (ii) all other out-of-pocket costs and out-of-pocket fees and expenses attributable to unconsummated transactions or investment strategies (but excluding marketing strategies) that do not lead to consummated acquisitions, (iii) legal, accounting, auditing, administrative, consulting and other fees and expenses (including, but not limited to, fees of the administrator of the Partnership and insurance and other out-of-pocket expenses associated with negotiating, consummating, monitoring and disposing of the Partnership's investments and the preparation of Partnership financial statements, tax returns and forms K-1), (iv) expenses of the Advisory Committee incurred in accordance with Article VII, (v) extraordinary expenses, liabilities, indemnities and other obligations of the Partnership (including, but not limited to, litigation and indemnification costs and expenses, judgments and settlements (including, but not limited to, costs and expenses payable under Section 5.11)), and (vi) all debt service obligations, including interest, premium, if any, fees, expenses and other amounts payable in respect of indebtedness of the Partnership incurred in accordance with Section 5.3, but in each case, not including Organizational Expenses in excess of $1,250,000, Management Fees, Placement Fees and those expenses borne by the Manager pursuant to Section 4.3.

"Partnership Legal Matters" has the meaning set forth in Section 12.5.

"Permitted GP Transferee" means, as to any membership or other ownership interest in the General Partner, of or held by any Principal or other member or investor in the General Partner (a) any family member of such person provided the transferor retains all voting control with respect to the interest, (b) any other partner or investor in the General Partner who was a partner or investor in the General Partner as of the Final Closing, and (c) any trust, partnership, foundation corporation or other entity that is either controlled by such person or is primarily for the benefit of such person and/or their family members.

"Person" means an individual, a partnership, a limited liability company, a corporation, an association, a joint stock company, a trust, a joint venture, an unincorporated organization, or a governmental entity (or any department, agency or political subdivision thereof).

"Placement Fees" means the fees and expenses and any interest on any deferred fees and expenses charged by or paid to any placement agency designated by the Partnership or the General Partner for the marketing and sale of interests in the Partnership and the Parallel Vehicles. The Partnership's pro rata share of any Placement Fees shall be the amount of such fees multiplied by a fraction, the numerator of which is the aggregate Commitments of the Limited Partners giving rise to such fees, and the denominator of which is the sum of the aggregate Commitments of the Limited Partners and the aggregate capital commitments of all limited partners in all Parallel Vehicles giving rise to such fees.

"Plan Assets" means "plan assets" as defined in the Plan Asset Regulation.

"Plan Asset Event" has the meaning set forth in Section 5.6(e).

"Plan Asset Regulation" means the U.S. Department of Labor regulation located at 29 C.F.R. Section 2510.3-101, or any successor regulation thereto, as in effect at the time of reference, as modified by Section 3(42) of ERISA.

"Portfolio Company" means any corporation, partnership, limited liability, company or other entity in which the Partnership has made an investment, other than Short-Term Investments.

"Portfolio Investments" means any investments held by the Partnership, other than Short-Term Investments. If the Partnership holds multiple classes of securities or other interests that were issued by a Portfolio Company in a single closing or series of related closings, all of such securities or interests in the aggregate shall constitute one Portfolio Investment.

"Preference Base" means for any Partner and as of any date (a) with respect to any distribution of the proceeds of a Disposition, the sum of (i) such Partner's Capital Contributions applied to make Portfolio Investments that have been Disposed of on or prior to such date or applied to pay Capitalized Partnership Expenses with respect to such Portfolio Investments, (ii) such Partner's Partner Share of all writedowns (including write-offs) pursuant to Section 9.4 in respect of Portfolio Investments that have not been Disposed of by the Partnership on or prior to such date and (iii) such Partner's Capital Contributions applied to pay Allocated Expenses with respect to Portfolio Investments that have been Disposed of, written down or written off on or prior to such date, and (b) with respect to any distribution of proceeds of a Partial Realization, the amounts determined pursuant to clause (a), plus such Partner's Capital Contributions applied to make the Portfolio Investment to which such proceeds are attributable, including Capitalized Partnership Expenses attributable to such Portfolio Investment and Allocated Expenses with respect to such Portfolio Investment as of such date. For purposes of determining a Partner's Preferred Amount, a Partner's Preference Base shall not include any Capital Contributions returned to such Partner pursuant to Section 2.2(c).

"Preferred Amount" means, for any Partner and as of any date, the amount, if any, that would be required to be distributed on such date so that the aggregate distributions pursuant to Section 3.3 (including distributions pursuant to Sections 8.3(b) and (c)), to such Partner in excess of such Partner's Preference Base provide a return of 8% per annum (compounded annually) on such Partner's Preference Base. For purposes of determining a Partner's Preferred Amount with respect to a Disposition of a Portfolio Investment, no proceeds of Partial Realizations with respect to Portfolio Investments or portions thereof that have not been Disposed of as of such date shall be taken into account, other than Excess Partial Realization Proceeds realized as of such date. A Partner's Preferred Amount shall be calculated on the basis of the actual number of days elapsed from and including the date on which each Capital Contribution is invested in a Portfolio Company or is contributed to the Partnership for the purpose of paying Management Fees, Organizational Expenses and Partnership Expenses, as applicable, to, but not including, the date that distributions constituting a return of such Capital Contributions were made by the Partnership to the Partners pursuant to Section 3.3(a)(i).

"Principals" means the following senior investment professionals who are partners or members of the General Partner or are employed by the Manager, for so long as such persons have not voluntarily resigned from, or been terminated by, the General Partner or Manager, and any other senior investment professionals from time to time who are designated as such by the General Partner: James Dondero, Mark Okada, Patrick Daugherty and John Honis.

"Qualified Purchaser" has the meaning set forth in Section 2(a)(51) of the Investment Company Act and the regulations promulgated thereunder.

"Redeemed Limited Partner" has the meaning set forth in Section 6.6(c).

"Redemption Effective Date" has the meaning set forth in Section 6.6(c).

"Redemption Value" means, with respect to any interest in the Partnership, or such portion thereof in the case of a partial withdrawal, being redeemed because of a Plan Asset Event or Regulatory Issue, the fair market value of such interest as of the applicable Redemption Effective Date, as determined in good faith by the General Partner; provided that, if the Plan Asset Event or the Regulatory Issue is a result of a breach of a representation, warranty or covenant made by the Redeemed Limited Partner, the Redemption Value shall be (in each case as determined in good faith by the General Partner) the lesser of (i) the fair market value of such Redeemed Limited Partner's interest in the Partnership on the applicable Redemption Effective Date and (ii) the fair market value of the applicable portion of the Redeemed Limited Partner's interest in the Partnership being redeemed on the date on which cash is allocated to make redemption payments. In making such determination of fair market value, the General Partner shall assume that all of the assets of the Partnership will be sold on the applicable date in a commercially reasonable manner and the proceeds of such sale, net of estimated closing costs, as reasonably determined by the General Partner, and all obligations of the Partnership (other than the redemption of the interest or interests in the Partnership being redeemed as of such date), will be distributed to the Partners pursuant to this Agreement. With respect to a Plan Asset Event or Regulatory Issue that is not a result of a breach of a representation or warranty made by the Redeemed Limited Partner, if the majority of such Redeemed Limited Partners disagree with the General Partner's determination of the Redemption Value of the applicable interests in the Partnership, such Redeemed Limited Partners shall negotiate in good faith to resolve such disagreement, and if such Redeemed Limited Partners continue to disagree after negotiations are held, either side may request that an independent evaluator (who must be reasonably acceptable to the other party) be retained, whose valuation shall be final and binding on the Partnership and all of the Partners. The Partnership will bear the cost of the independent evaluator.

"Regulated Investor" has the meaning set forth in Section 6.6(b).

"Regulatory Issue" has the meaning set forth in Section 6.6(b).

"Securities Act" means the Securities Act of 1933, as amended.

"Separate Investment Entity" has the meaning set forth in Section 5.15.

"Seventy-Five Percent in Interest of the Limited Partners" means Limited Partners with Commitments and limited partners in Parallel Vehicles with capital commitments to Parallel

Vehicles totaling 75% of the aggregate Commitments of all Limited Partners and capital commitments of limited partners in Parallel Vehicles.

"Short-Term Investment Income" means the income earned on Short-Term Investments including in any event any gains and net of any losses from dispositions of Short-Term Investments and also net of any costs and expenses directly attributable thereto.

"Short-Term Investments" means investments in (a) cash, (b) obligations of, or fully guaranteed as to timely payment of principal and interest by, the United States of America and with a maturity date not in excess of 12 months from the date of purchase by the Partnership, (c) interest-bearing accounts and/or certificates of deposit of any U.S. bank with capital and surplus in excess of $500 million and whose short-term debt securities are rated not lower than P-1 by Moody's Investor Services, Inc. and A-1+ by Standard & Poor's Corporation and whose long term unsecured debt securities, or the long term unsecured debt securities of its affiliated holding company, are rated no lower than A1 by Moody's Investor Services, Inc. and A+ by Standard & Poor's Corporation, (d) reverse repurchase agreements using U.S. Treasury securities and entered into with any U.S. bank with capital and surplus in excess of $500 million and whose short-term debt securities are rated not lower than P-1 by Moody's Investor Services, Inc. and A-1+ by Standard & Poor's Corporation and whose long term unsecured debt securities, or the long term unsecured debt securities of its affiliated holding company, are rated no lower than A1 by Moody's Investor Services, Inc. and A+ by Standard & Poor's Corporation, and (e) money market mutual funds with assets of not less than $500 million, substantially all of which assets are reasonably believed by the General Partner to consist of items described in one or more of the foregoing clauses (b), (c) and (d).

"Special Profit Interest" means (i) the General Partner's right to receive distributions pursuant to the first two sentences of Section 3.3(a), but only to the extent such distributions exceed the distributions that would have been made to the General Partner pursuant to the first two sentences of Section 3.3(a) if such distributions had been made pro rata according to each Partner's Capital Contributions to the Partnership, and (ii) the General Partner's right to receive distributions pursuant to Section 3.3(e).

"Subscription Agreement" means the Subscription Agreements (including a Subscriber Information Form) executed and delivered by Partners investing in the Partnership substantially in the form of the Subscription Agreement, dated as of the date hereof.

"Successor Fund" has the meaning set forth in Section 5.12.

"Tax Distributions" means the aggregate amount of distributions that would be made to the General Partner if the General Partner received no distributions other than those required pursuant to Section 3.3(b).

"Tax Exempt Partner" means (i) a Limited Partner that is exempt from tax under Section 501 of the Code or (ii) a Limited Partner that has a direct or indirect beneficial owner that (x) is exempt from tax under Section 501 of the Code and (y) is required to report on a United States federal income tax return or report any taxable income allocated to such Limited Partner pursuant to Section 10.4, to the extent of such beneficial owner's pro rata share of such income,

but only in each case if such Limited Partner has notified the General Partner in writing regarding the status of such direct or indirect beneficial owner.

"Topping and Break-up Fees" means topping, break-up or similar fees in connection with prospective Portfolio Investments that are not completed, in each case to the extent actually paid by a prospective Portfolio Company and received by the General Partner, the Manager, the Principals, employees of the Manager or their Affiliates; provided, however, that (A) such fees shall not include, in each case, any such amounts that are applied to cover amounts paid by the General Partner, the Manager, the Principals, employees of the Manager or their Affiliates that constitute unreimbursed (i) out-of-pocket expenses of such persons incurred in generating such fees, and (ii) Partnership Expenses incurred in generating such fees, and (B) to the extent that the General Partner, the Manager, the Principals or their Affiliates were actually reimbursed by the Partnership for any Partnership Expenses incurred in generating such fees, such fees will first be applied to repay the Partnership for such Partnership Expenses.

"Transaction and Monitoring Fees" means commitment, transaction, closing, merger and acquisition, divestiture, financing, monitoring and similar advisory fees in respect of a Portfolio Company, in each case to the extent actually paid by a Portfolio Company and received by the General Partner, the Manager, the Principals, employees of the Manager or their Affiliates; provided, however, that (A) such fees shall not include, in each case, any such amounts that are applied to cover amounts paid by the General Partner, the Manager, the Principals, employees of the Manager or their Affiliates that constitute unreimbursed (i) out-of-pocket expenses of such persons incurred in generating such fees, and (ii) Partnership Expenses incurred in generating such fees, and (B) to the extent that the General Partner, the Manager, the Principals or their Affiliates were actually reimbursed by the Partnership for any Partnership Expenses incurred in generating such fees, such fees will first be applied to repay the Partnership for such Partnership Expenses.

"Triggering Event" has the meaning set forth in Section 2.2(d).

"Two-Thirds in Interest of the Limited Partners" means Limited Partners with Commitments and limited partners in Parallel Vehicles with capital commitments to Parallel Vehicles totaling more than $66^{2/3}$% of the aggregate Commitments of all Limited Partners and capital commitments of limited partners in Parallel Vehicles.

"UBTI" means unrelated business taxable income and unrelated debt financed taxable income, as defined in Sections 512 and 514 of the Code, respectively.

"Unapplied Waived Fee Amounts" means, as of the date of determination, the excess, if any, of (i) the sum of (A) the aggregate Waived Fee Amount for all Management Fee Periods, beginning on or before the date of determination (B) the aggregate amount described in clause (i) of the definition of "Deemed Contribution" relating to the aggregate Capital Contributions previously returned to the Partners pursuant to Section 2.2(c) (including, without limitation, in respect of Bridge Financings) and (C) amounts added to the Unapplied Waived Fee Amounts pursuant to Section 6.5(b) over (ii) the aggregate amount described in clause (i) of the definition of "Deemed Contribution" as of such date.

"Uncapitalized Partnership Expenses" means Partnership Expenses that are not Capitalized Partnership Expenses.

"Unfunded Commitment" means that portion of a Partner's Commitment that is not a Funded Commitment.

"Waived Fee Amount" has the meaning set forth in Section 4.1(d).

"Waived Fee Notice" has the meaning set forth in Section 4.1(d).

"Waiver Contribution" has the meaning set forth in Section 2.2(a)(ii).

Section 2.2 Capital Contribution Commitment; Key Person Provision. Subject to Section 5.6(b):

(a) (i) Each Partner agrees to make contributions in cash to the capital of the Partnership pro rata based upon such Partner's respective Unfunded Commitment in an aggregate amount up to its Unfunded Commitment when and as called by the General Partner ("Capital Call") upon at least ten Business Days written notice (the "Capital Call Notice"); provided, however, that the General Partner shall not be obligated to make Capital Contributions to be used to pay the Management Fee or Placement Fees, and Capital Contributions to pay the Management Fee will be made by each Limited Partner based on the amount of each payment of the Management Fee that is borne by such Limited Partner pursuant to Section 4.1(b). Any Capital Contributions made by the Limited Partners to pay the Partnership's pro rata share of any Placement Fees shall be made by the Limited Partners whose Commitments gave rise to such fees, pro rata in accordance with their respective Commitments. The aggregate Commitments and capital commitments to all Parallel Vehicles of the General Partner, the Principals, Highland and their Affiliates, shall be pro rata and shall equal the lesser of 5.0% of aggregate Commitments and capital commitments to all Parallel Vehicles and $50 million. In the event of the election described in Section 2.2(a)(ii), each Limited Partner required to make a Waiver Contribution pursuant to Section 2.2(a)(ii) shall make the Waiver Contribution specified in the Capital Call Notice. Each Capital Contribution shall be made by Partners in cash either by delivery to the Partnership of a certified check or wire transfer of immediately available funds to an account designated by the General Partner, provided, however, that the Capital Contributions of the General Partner may be made by cash contributions or by Deemed Contributions as set forth in Section 2.2(a)(ii).

A Capital Call Notice shall: (i) specify the purpose for which the Capital Contributions are required to be made (including a breakdown of the amounts called in respect of Portfolio Investments, Partnership Expenses, Organizational Expenses, Management Fees or Placement Fees); (ii) in the case of a Capital Call Notice with respect to the anticipated making of a Portfolio Investment, include: (A) a brief description of the identity, nature and business of such Portfolio Investment; (B) a statement as to whether the Portfolio Investment might be structured through a Separate Investment Entity; (C) a designation as such of any Bridge Financing to be made as part of such Portfolio Investment, and (D) a statement as to whether the Portfolio Investment is an investment in a Media Company or could, in the reasonable judgment of the General Partner, cause a Limited Partner to recognize UBTI; and (iii) specify a Limited Partner's

pro rata share of the Capital Contributions required to be made by such Limited Partner, the portion of the Capital Contribution to be applied towards the payment of Management Fees, and the amount of a Limited Partner's Unfunded Commitment remaining following the funding of such Capital Contribution.

(ii) Notwithstanding Section 2.2(a)(i) above, at such time as the General Partner delivers any Capital Call Notice, the General Partner's required Capital Contributions in respect of anticipated or actual Portfolio Investment and/or expenses incurred directly in connection with the making, maintaining or disposing of such Portfolio Investment, at the General Partner's election, shall be reduced by an amount up to the lesser of (A) the amount of Capital Contributions otherwise required to be made by the General Partner pursuant to Section 2.2(a)(i), or (B) the amount of any existing Unapplied Waived Fee Amounts, and such amount shall instead be funded by the Participating Partners with respect to whom the Management Fee is payable pursuant to Section 4.1(b), pro rata according to their respective Commitments (for any Partner, a "Waiver Contribution"). If, as of any date, the aggregate amounts described in clause (i) of the definition of "Deemed Contribution" exceed the sum of the amounts described in clause (i) of the definition of "Unapplied Waived Fee Amounts," the General Partner shall, within ten Business Days after such date, make a Capital Contribution equal to the amount of such excess. Such amount shall be distributed to the Partners as a return of their Capital Contributions, in proportion to their respective Waiver Contributions. Corresponding adjustments shall be made to the Special Profits Interest.

(b) Each Partner's Commitment will commence on the date of the First Closing and will expire on the earlier of (i) five years from the Final Closing, (ii) the date after the second anniversary of the Final Closing on which the Commitment Period is terminated with the consent of Seventy-Five Percent in Interest of the Limited Partners, (iii) the date on which the General Partner determines that 90% of the aggregate Commitments of the Partners have been funded or are needed for purposes described in clauses (i) through (iii) of the next sentence below, or (iv) the date that the Commitment Period is terminated pursuant to Section 2.2(d), (such period being referred to as the "Commitment Period"). Notwithstanding the expiration or the termination of the Commitment Period, the Partners will remain obligated to make cash contributions throughout the duration of the Partnership pursuant to their respective Unfunded Commitments to the extent needed (i) to make Follow-on Investments; provided, however, that the aggregate of all Follow-on Investments made after the termination of the Commitment Period shall not exceed 15% of the aggregate Commitments, (ii) to make investments that were the subject of written agreements in process or under active consideration prior to or on the date of termination of the Commitment Period and which are consummated within 120 days of the date of termination of the Commitment Period, subject to extension, if necessary, in order to obtain requisite regulatory approvals, and (iii) to pay Partnership Expenses and the Management Fee. The General Partner shall notify the Limited Partners within 30 days of the termination of the Commitment Period as to all in process investments that were the subject of written agreements in process and investments under active consideration to the extent the General Partner is not bound by confidentiality obligations related thereto.

(c) The General Partner shall cause the Partnership to return to the Partners all or any portion of any Capital Contribution to the Partnership which is not invested in a Portfolio Investment or used to pay Partnership Expenses, Management Fees, Placement Fees or

Organizational Expenses or which has been contributed in order to fund a Bridge Financing which is refinanced. Each such return of Capital Contributions shall be made pro rata among all Partners in the same proportion as the Partners made such Capital Contributions and shall be made on or before the sixtieth (60th) day following the date such Capital Contributions were due (as set forth in the Capital Call Notice pursuant to which such Capital Contributions were made by the Partners to the Partnership), provided, however, that such Capital Contributions may be retained and applied with respect to another outstanding Capital Call Notice and may also be retained if the General Partner determines in good faith that there will be a Capital Call within thirty (30) days after the date that such Capital Contributions would otherwise be required to be returned, and if not so applied and retained, may be called again by the General Partner according to the provisions of this Section 2.2 as if such returned Capital Contributions had not been previously called.

(d) If:

(i) James Dondero and Mark Okada both cease to be actively involved, including in a supervisory role, on an ongoing basis with respect to the business, operations or investment decisions of Highland, the Manager and General Partner,

(ii) the Keyman Group, together with the Principals as of the Final Closing and Permitted GP Transferees thereof, are no longer entitled to receive, directly or indirectly, in the aggregate at least 50% of the Carried Interest (as defined in the Master Partnership Agreement) payable to the General Partner, or

(iii) any two or more of the members of the Keyman Group cease to be actively involved, including in a supervisory role, on an ongoing basis with respect to the business, operations or investment decisions of Highland, the Manager and General Partner,

(the circumstances specified in each of clauses (i), (ii), and (iii), above being referred to herein as a "Triggering Event"), then the Partnership shall automatically enter into a 120 day period (subject to extension for an additional 120 day period as described below) in which the Commitment Period will be suspended (a "Continuity Period").

The Partnership shall not make any new investments during the Continuity Period, except to the extent such investments (a) were the subject of written agreements, (b) were in process or (c) under active consideration prior to the commencement of the Continuity Period, and in each such case, are consummated within 120 days of the commencement of the Continuity Period, subject to extension, if necessary, in order to obtain requisite regulatory approvals for such investments. The pursuit of Other Permitted Investment Activities by the Principals and the members of the Keyman Group will not give rise to a Triggering Event. The General Partner will promptly notify the Limited Partners of the occurrence of a Triggering Event.

During a Continuity Period, if a Triggering Event described in clause (i) above has occurred, the General Partner, after consultation with the Advisory Committee, will prepare for and provide to the Limited Partners within 60 days of the Triggering Event a program recommended by the General Partner for resumption by the Partnership of its full range of activities at the end of such Continuity Period. Prior to the end of the Continuity Period, but

within a reasonable time period following the delivery of a program recommended by the General Partner, the General Partner will arrange for a vote of all Limited Partners. By consent of Two-Thirds in Interest of the Limited Partners, the Limited Partners may cause an early termination of the Commitment Period, such termination to commence on the date such Continuity Period expires. If a Continuity Period expires without the occurrence of an effective consent of the requisite Limited Partners to terminate the Commitment Period, the Partnership, and the General Partner on its behalf, shall be authorized and entitled to resume the Partnership's full range of activities.

During a Continuity Period, if a Triggering Event described in clauses (ii) or (iii) above has occurred, within 90 days of the Triggering Event the General Partner may propose to the Advisory Committee one or more replacements to serve as members of the Keyman Group for purposes of this Section 2.2(d); if a majority of the members of the Advisory Committee approve of such replacement or replacements, such replacement person or persons shall thereafter be members of the Keyman Group and the Partnership, and the General Partner on its behalf, shall be authorized and entitled to resume the Partnership's full range of activities. If the Advisory Committee does not approve of such replacement person or persons within 30 days following the delivery of the General Partner proposal to the Advisory Committee, the Continuity Period shall be extended for an additional 120 day period. The General Partner may propose to the Advisory Committee, within 90 days after the rejection by the Advisory Committee of the initial replacement person or persons, a different replacement or replacements than originally proposed to serve as members of the Keyman Group for purposes of this Section 2.2(d); if a majority of the members of the Advisory Committee approve of such replacement or replacements within 30 days following delivery of the new General Partner proposal, such replacement person or persons shall thereafter be members of the Keyman Group and the Partnership, and the General Partner on its behalf, shall be authorized and entitled to resume the Partnership's full range of activities. If the Advisory Committee does not approve of such replacement person or persons within such thirty day period, the General Partner will arrange for a vote of all Limited Partners. By consent of Two-Thirds in Interest of the Limited Partners, the Limited Partners may cause an early termination of the Commitment Period, such termination to commence on the date the Continuity Period expires.

Section 2.3 Capital Accounts. A capital account ("Capital Account") will be established for each Partner on the books of the Partnership and will be adjusted as follows:

(a) Capital Contributions and Allocations. A Partner's Capital Contribution will be credited to its Capital Account when received by the Partnership.

(b) Short-Term Investment Income. Short-Term Investment Income earned in each quarterly period with respect to Capital Contributions that have not yet been invested in Portfolio Investments or used to pay fees and expenses of the Partnership will be credited to the Capital Accounts of the Partners pro rata according to their respective Partner Capital Contributions to which such Short-Term Investment Income is attributable. Short-Term Investment Income on undistributed proceeds from Portfolio Investments shall be credited to the Capital Accounts of the Partners ratably in proportion to their respective shares of such undistributed amounts.

(c) Investment Income and Gain and Investment Loss. Taking into account Section 6.6(d) and except as otherwise provided in this Section 2.3(c), Investment Income and Gain or Investment Loss shall be allocated among the Partners for each taxable period in such a manner that, as of the end of such taxable period, and to the extent possible, the Capital Account of each Partner shall be equal to the net amount, positive or negative, which would be distributed to each Partner or for which such Partner would be liable to the Partnership under this Agreement (including Sections 8.3(c) and (e)), determined as if the Partnership were to liquidate the assets of the Partnership for an amount equal to their Basis, reduced, but not below zero, by the amount of nonrecourse debt, if any, to which such Partnership assets are subject, and distribute the proceeds in liquidation after the payment of all liabilities (other than nonrecourse liabilities) in accordance with Sections 3.2 and 3.3. For purposes of the foregoing determination, no amount shall be treated as distributable pursuant to subclause (z) of clause (A) of Section 3.3(a)(i) by virtue of clause (a)(ii) of the definition of Preference Base or clause (B) of Section 3.3(a)(i) with respect to any Portfolio Investment or portion thereof solely because of the deemed liquidation of such Portfolio Investment; provided, however, that any increase in the Basis of a Portfolio Investment shall be taken into account for this purpose in the same manner as proceeds of a Partial Realization. Investment Income and Gain or Investment Loss attributable to Portfolio Investments retained by the Partnership pursuant to Section 3.3(e)(ii) shall be allocated 100% to the General Partner.

(d) Organizational Expenses, Management Fee. Organizational Expenses that are borne by the Partnership will be apportioned to the Partners pro rata according to their respective Capital Contributions to pay Organizational Expenses. Organizational Expenses that are described in Section 705(a)(2)(B) of the Code will be debited against the Capital Accounts of the Partners in the fiscal period in which they are incurred, and Organizational Expenses that are described in Section 709(b) of the Code will be debited against the Capital Accounts of the Partners over a 180-month period. The Management Fee for any Management Fee Period shall be debited against the Capital Account of each Limited Partner in the amount that is borne by such Limited Partner pursuant to Section 4.1(b) for such Management Fee Period.

(e) Distributions. Any amounts distributed to the Partners will be debited against their Capital Accounts.

(f) Partnership Expenses. Uncapitalized Partnership Expenses shall be debited against the Capital Accounts of the Partners in proportion to their respective Commitments.

(g) Placement Fees. Placement Fees, shall be debited against the Capital Accounts of the Limited Partners whose Commitments gave rise to such fees, in proportion to their respective Commitments.

Section 2.4 Distributions in Kind.

(a) If any securities are to be distributed in kind to the Partners as provided in Article III, such securities will first be written up or down to their value (as determined pursuant to Article IX as of the date of such distribution), thus creating Investment Income or Gain or Investment Loss, which shall be allocated in accordance with Section 2.3 to the Capital Accounts of the Partners, and upon the distribution (or deemed distribution pursuant to Section 2.4(b)) of

such securities to the Partners, the value of such securities shall be debited, in accordance with Section 2.3(e), against the Capital Accounts of the Partners.

(b) The General Partner shall give at least ten Business Days prior notice to the Limited Partners of any proposed distribution of securities pursuant to this Section 2.4 and the date of such proposed distribution. In connection with any distribution of securities in kind, the General Partner shall offer each Limited Partner the right to elect to receive a distribution of securities or to have the Partnership dispose of all or any portion of such securities for the account of such Limited Partner. At the election of a Limited Partner (an "Electing Limited Partner"), all distributions of securities that otherwise would be made to the Electing Limited Partner by the Partnership shall be made, as determined by the General Partner, to the General Partner or an independent escrow agent or custodian as agent for the Limited Partner (the "Agent") and, unless otherwise specified in writing, an Electing Limited Partner shall be deemed to have chosen to have the Partnership sell its share of securities in full. An Electing Limited Partner shall bear all expenses (including, without limitation, underwriting costs and brokerage commissions) relating to the sale by the Partnership of such securities. The General Partner may require the Electing Limited Partner to make any representations, warranties and covenants as the General Partner shall reasonably determine are necessary or desirable in order to dispose of the securities. For all purposes of this Agreement, the Limited Partner shall be deemed to have received such distribution of securities on the date that such securities are delivered to the Agent. Immediately following a distribution to the Agent pursuant to this Section 2.4(b), the General Partner shall notify the Limited Partner of the type and quantity of securities distributed. The Agent shall thereafter hold such securities for a period of 10 Business Days following which the Agent shall use its reasonable efforts to promptly sell such securities and deliver the net proceeds therefrom to the Limited Partner; provided, however, that the Agent shall not sell such securities and shall instead promptly deliver such securities to the Limited Partner following the conclusion of such 10 Business Day period if, prior to the conclusion of such period, the Limited Partner notifies the Agent that the receipt of such securities would not violate any law, regulation or governmental order applicable to the Limited Partner. The Agent shall use good faith efforts in selling such securities at the highest available price, but shall not be liable to an Electing Limited Partner in any manner in connection with such sale in the absence of gross negligence or willful misconduct, including for any claim that the Agent was unable to effect any such sale (for any reason) or failed to obtain the highest possible sale price for such securities.

(c) An Electing Limited Partner's election pursuant to Section 2.4(b) may be revoked by the Electing Limited Partner at any time upon notice to the General Partner; provided, however, that an election may not be revoked with respect to securities if the Agent has entered into a binding commitment to sell securities on behalf of the Electing Limited Partner.

Section 2.5 Determination of Voting Thresholds. Any vote, approval or consent that is to be based upon a specified proportion of the interests in the Partnership held by the limited partners shall be based upon the Limited Partners' Commitments and the capital commitments of limited partners in Parallel Vehicles, excluding (i) except as specifically provided in Section 6.9, that portion of each Limited Partner's Commitment and the capital commitment of each limited partner in a Parallel Vehicle that represents a Non-Voting Interest, (ii) except as otherwise set forth in Section 12.1(b), limited partner interests in the Partnership or in any Parallel Vehicle held by a Defaulting Partner or a defaulting partner of a Parallel Vehicle, (iii) limited partner

interests in the Partnership or in any Parallel Vehicle held, directly or indirectly, by the General Partner, Highland, the Principals or any of their respective Affiliates prior to any removal of the General Partner pursuant to Section 5.9, and (iv) in the case of any particular matter that affects or pertains only to the Partners and not to any partner of a Parallel Vehicle, limited partner interests in such Parallel Vehicle held, directly or indirectly, by the General Partner or by any limited partner of such Parallel Vehicle.

ARTICLE III

DISTRIBUTIONS

Section 3.1 Distribution Policy.

(a) The General Partner may in its sole discretion make distributions of cash or Marketable Securities at any time and from time to time subject to the remaining provisions of this Section 3.1; provided, however, that no securities will be distributed in kind to the Partners that are not Marketable Securities until the final distribution of the assets of the Partnership to the Partners pursuant to Section 8.3(b).

(b) The General Partner will cause the Partnership to distribute (i) Current Cash Income at least semi-annually unless reinvested as described in this Section 3.1(b), (ii) Short-Term Investment Income at least quarterly, and (iii) the net cash proceeds received from Dispositions of or Partial Realizations with respect to Portfolio Investments within 60 days of the receipt thereof unless reinvested as described in this Section 3.1(b), after, in each case, the setting aside by the General Partner, in its discretion, of reasonable reserves for anticipated obligations and commitments of the Partnership as well as any required tax withholdings; provided, however, that if the General Partner determines in good faith that there will be a Capital Call within 30 days after the date that an amount that would otherwise be distributed that would be described in clauses (a), (b) and (d) of the definition of Funded Commitment, or if there is an outstanding Capital Call Notice the General Partner may, in its discretion, retain such amount and reduce the amount required to be contributed with respect to such Capital Call.

Section 3.2 Distribution of Short-Term Investment Income. Short-Term Investment Income will be distributed among the Partners in the same proportions as Short-Term Investment Income was credited to the Partners' Capital Accounts.

Section 3.3 Distributions of Current Cash Income and Proceeds From Dispositions of or Partial Realizations with Respect to Investments and In Kind Distributions.

(a) Distributions not attributable to a Portfolio Investment shall be distributed to the Partners in proportion to their Funded Commitments as of the date of such distribution. All distributions of Current Cash Income and all distributions out of net proceeds from Dispositions of or Partial Realizations with respect to Portfolio Investments (in each case, net of Partnership Expenses) and all distributions of Portfolio Investments shall be apportioned in proportion to their respective Partner Interests among the General Partner and the Participating Partners with respect to the Portfolio Investment that gave rise to such Current Cash Income or net proceeds or

that is being distributed in kind. The General Partner's Partner Share of such distributions shall be distributed 100% to the General Partner. Each Participating Partner's Partner Share shall be distributed to such Participating Partner and the General Partner as follows:

(i) First, 100% to such Participating Partner until (A) the aggregate amount distributed to such Participating Partner in accordance with this Section 3.3(a) equals such Participating Partner's Preference Base as of the date of such distribution and (B) the aggregate amount distributed to such Participating Partner in accordance with this Section 3.3(a) (other than clause (A) of this paragraph) equals such Participating Partner's Preferred Amount as of such date. Solely for purposes of determining how proceeds of a Disposition of a Portfolio Investment are to be distributed pursuant to this Section 3.3(a) no proceeds of Partial Realizations with respect to Portfolio Investments or portions thereof that have not been Disposed of as of such date shall be taken into account, other than Excess Partial Realization Proceeds realized as of such date.

(ii) Second, (A) 50% to the General Partner and (B) 50% to such Participating Partner until the aggregate distributions to the General Partner with respect to such Participating Partner pursuant to this paragraph (ii) and paragraph (iii), reduced by any amounts contributed to the Partnership by the General Partner with respect to such Participating Partner pursuant to Section 8.3(c), equal 20% of the aggregate distributions of such Participating Partner's Partner Share of such amounts to the General Partner, reduced by any amounts contributed to the Partnership by the General Partner with respect to such Participating Partner pursuant to Section 8.3(c), and to such Participating Partner pursuant to this paragraph (ii) and paragraph (iii), and clause (B) of the immediately preceding paragraph.

(iii) Third, (A) 80% to such Participating Partner and (B) 20% to the General Partner.

For purposes of this Section 3.3(a), amounts distributed to a Participating Partner pursuant to Section 8.3(c) shall be treated as having been distributed pursuant to this Section 3.3(a).

(b) Anything contained herein to the contrary notwithstanding, the General Partner shall be entitled to receive cash distributions from the Partnership (after taking into account any other distributions received by the General Partner in such fiscal year pursuant to Sections 3.3(a)(ii)(A) and 3.3(a)(iii)(B)) in amounts sufficient to enable the General Partner and the individual members of the General Partner to discharge any federal, state and local tax liability (excluding penalties) arising as a result of the allocation of Investment Income and Gain pursuant to Section 2.3(c) attributable to the General Partner's Carried Interest in the Partnership, determined by assuming the applicability of the highest combined effective marginal federal, state and local income tax rates applicable to an individual resident in New York, New York. The amount of such tax liability shall be calculated taking into account (i) the deductibility (to the extent allowed) of state and local income taxes for United States Federal income tax purposes, (ii) the amount of net cumulative tax loss previously allocated to the General Partner in prior fiscal years with respect to the Carried Interest and not used in prior fiscal years to reduce taxable income for the purpose of making distributions under this subsection (b) and (iii) the character of any income or gain and the income tax rates applicable thereto. The calculation shall be made on the assumption that taxable income or tax loss from the Partnership with

respect to the Carried Interest is the General Partner's only taxable income or tax loss. Such distributions shall be debited to the General Partner's Capital Account, as provided in Section 2.3(e). Any amounts distributed pursuant to this subsection (b) shall be considered an advance against the next distribution of Carried Interest distributable to the General Partner, and shall offset such distributions.

(c) A Partner's Capital Contributions used to pay Organizational Expenses, Management Fees, Placement Fees and Uncapitalized Partnership Expenses that are to be allocated to a Portfolio Investment shall be determined on the date such Portfolio Investment is Disposed of, and shall equal the product of (i) such Capital Contributions not theretofore allocated to Portfolio Investments that have been Disposed of multiplied by (ii) a fraction, the numerator of which shall equal such Partner's Capital Contributions in respect of such Portfolio Investment and the denominator of which shall equal such Partner's Capital Contributions in respect of such Portfolio Investment and all Portfolio Investments that have not been Disposed of on or prior to the date such allocation is effected. For purposes of the determinations described in clause (b)(i) of the definition of Excess Partial Realization Proceeds, such Capital Contributions shall be tentatively allocated to the Portfolio Investment giving rise to such Partial Realization proceeds as though such Portfolio Investment had been Disposed of on the date such proceeds were realized.

(d) In the event of a partial Disposition of a Portfolio Investment, the unreturned Capital Contributions and remaining Preferred Amount with respect to such Portfolio Investment shall be allocated between the Disposed portion and retained portion of such Portfolio Investment, pro rata, based on the relative amounts that are Disposed of and retained, respectively, of that portion of such Portfolio Investment held by the Partnership immediately prior to such Disposition.

(e) (i) Notwithstanding anything in this Agreement to the contrary, the General Partner may at any time elect not to receive all or any portion of any distribution that otherwise would be made to it with respect to its Carried Interest.

(ii) Any amount of cash which is not distributed to the General Partner pursuant to Section 3.3(e)(i) shall, in the General Partner's sole discretion, either be retained by the Partnership or distributed to the Partners (other than to the General Partner) in accordance with Section 3.3(a). Any amount of securities not distributed in-kind to the General Partner pursuant to Section 3.3(e)(i) shall be retained by the Partnership.

(iii) If the General Partner elects to distribute cash to the other Partners pursuant to Section 3.3(e)(ii), 100% of any or all subsequent cash distributions by the Partnership shall be distributed to the General Partner until the General Partner has received the same aggregate amount of cash distributions it would have received had it not waived receipt of certain distributions pursuant to Section 3.3(e)(i) (without regard to the distribution of any Short-Term Investment Income earned on such retained amounts).

(iv) All Current Cash Income attributable to, and distributions out of net proceeds from the Disposition or Partial Realization of, Portfolio Investments retained by the Partnership pursuant to Section 3.3(e)(ii) and all cash retained by the Partnership pursuant to

Section 3.3(e)(ii) shall be distributed to the General Partner as of the date determined by the General Partner in its sole discretion. The General Partner shall not be entitled to any additional distributions in respect of such retained amounts, other than Short-Term Investment Income earned on such retained amounts.

(f) Notwithstanding anything to the contrary in this Agreement, if at the expiration of the Commitment Period, there are Unapplied Waived Fee Amounts, the General Partner shall, in its sole discretion, prior to any other distribution pursuant to this Article III, be entitled to a distribution of cash equal to the Unapplied Waived Fee Amount.

Section 3.4 Foreign Taxes. The amount of any foreign taxes paid by the Partnership (or by an entity in which the Partnership holds an interest, either directly or indirectly through one or more such entities, that is treated as a partnership or is disregarded for federal income tax purposes) or withheld from receipts of the Partnership or such entity from a Portfolio Investment shall be allocated among the Partners as reasonably determined by the General Partner (taking into account any allocation of taxes under Section 6.7) and, for purposes of Sections 3.3(a)(i) – (iii), shall be deemed to have been distributed to each Partner as Current Cash Income or proceeds from the Disposition of a Portfolio Investment to the extent that the payment or withholding of such foreign taxes reduced Current Cash Income or the proceeds from the Disposition of a Portfolio Investment, as the case may be, otherwise distributable to such Partner as provided herein (for this purpose taking into account with respect to each Partner any reduction in such foreign taxes that occurs by reason of such Partner's status); provided that the General Partner may deem foreign taxes paid by or withheld from receipts of the Partnership and allocable to a Tax Exempt Partner to have been distributed to such Tax Exempt Partner as described above only to the extent that such Tax Exempt Partner incurs and is subject to tax on UBTI relating to such Tax Exempt Partner's Interest in the Partnership, as determined by the General Partner.

ARTICLE IV

MANAGEMENT FEE AND ORGANIZATIONAL EXPENSES

Section 4.1 Management Fee.

(a) During each quarterly period beginning on each January 1, April 1, July 1 and October 1 from and after the First Closing (each such quarterly period, a "Management Fee Period") until the termination of the Partnership, the Partnership will pay the Manager a quarterly fee as calculated below (the "Management Fee"), in advance on each January 1, April 1, July 1 and October 1, as compensation for managing the affairs of the Partnership, provided, however, that the initial payment of the Management Fee shall be for the period from the First Closing to December 31, 2007.

(b) The Management Fee payable by the Partnership shall be the sum of the amounts determined for each Limited Partner pursuant to this Section 4.1. No Management Fee shall be payable with respect to the General Partner and their Affiliates. Subject to Sections 4.1(c) and 4.1(d), the quarterly Management Fee payable with respect to a Limited Partner during the Initial

Fee Period shall be 0.4375% of the Commitments of such Limited Partner resulting in an aggregate annual Management Fee of 1.75%. Following the expiration of the Initial Fee Period, the quarterly Management Fee payable with respect to a Limited Partner shall be 0.4375% of the aggregate Net Funded Commitment of such Limited Partner as reduced by any writedowns or writeoffs pursuant to Section 9.4 in respect of Portfolio Investments that have not been Disposed of on or prior to such date (resulting in an aggregate annual Management Fee of 1.75%). The Management Fee in any partial quarterly period will be pro rated on a daily basis according to the actual number of days in such period.

(c) The Management Fee payable with respect to any Management Fee Period and with respect to a Limited Partner will be reduced (but not below zero) by such Limited Partner's Partner Share of eighty-five percent (85%) of the Partnership's pro rata share of all Topping and Break-up Fees, Transaction and Monitoring Fees, and Director Fees. The Management Fee shall also be reduced, but not below zero, by such Limited Partner's Capital Contributions used pursuant to Section 2.2(a)(i) to pay (x) any Placement Fees and (y) any Organizational Expenses in excess of $1,250,000, paid or payable by the Partnership. To the extent that such Limited Partner's share of the Management Fee in any Management Fee Period is reduced to zero as a result of the reduction for Placement Fees, Organizational Expenses in excess of $1,250,000, Director Fees, Topping and Break-up Fees and Transaction and Monitoring Fees, the excess shall be carried forward to the next Management Fee Period (and, if necessary, to one or more subsequent Management Fee Periods) and applied as a reduction of the Management Fee, but not below zero, for such succeeding Management Fee Period (or a subsequent Management Fee Period). To the extent that Director Fees, Topping and Break Up Fees and Transaction and Monitoring Fees exceed or cannot be applied as a reduction of Management Fees for succeeding Management Fee Periods, then such excess will first be applied to reimburse the Partnership for any previously unreimbursed Management Fees paid by the Partnership for prior Management Fee Periods (with such amounts being treated for purposes of Section 3.3(a) as distributions in return of the Capital Contributions made to pay such Management Fees), and the remainder of such excess will be paid or contributed to the Partnership and will be distributed pursuant to Section 3.3(a) as if net proceeds from the Disposition of a Portfolio Investment; provided, however, that in the event that any Partner desires not to receive any such excess fee offsets upon the termination of the Partnership, such Partner may elect in writing at any time prior to the termination of the Partnership to waive receipt of any such fee offsets, in which case the amount of fee offsets that would otherwise have been allocated and distributed to such Partner shall instead be allocated and distributed to the other non-waiving Partners on a pro rata basis in accordance with their respective Commitments. The Partnership's pro rata share of all Topping and Break-up Fees, Transaction and Monitoring Fees and Director Fees shall be the amount of such fees multiplied by a fraction, the numerator of which is the Partnership's investment in the Portfolio Investment (or proposed investment in the proposed Portfolio Investment) giving rise to such fee and the denominator of which is the aggregate investment or proposed investment in such Portfolio Investment or proposed Portfolio Investment by the Partnership, all Parallel Vehicles, all Separate Investment Entities, all Co-investment Funds and all other co-investment arrangements arranged by the Manager with respect to such Portfolio Investment or proposed Portfolio Investment (provided, that for the avoidance of doubt, any such Co-Investment Funds or other co-investment arrangements will not receive any amount of fee offsets).

(d) After taking into account any reduction in the Management Fee payable for any Management Fee Period with respect to a Limited Partner pursuant to Section 4.1(c), the Management Fee payable for any Management Fee Period with respect to such Limited Partner shall be further reduced by an amount (the "Waived Fee Amount") equal to the lesser of (i) the amount of the Management Fee to which the Manager would otherwise be entitled pursuant to this Section 4.1 that the Manager has irrevocably elected to waive in a written notice (a "Waived Fee Notice") delivered to the Partnership with respect to each Management Fee Period, at least 15 days prior to the end of the calendar year immediately preceding the calendar year in which such Management Fee Period begins, and with respect to each Management Fee Period in the first calendar year of the term of the Partnership, such Waived Fee Notice delivered on or prior to the delivery of the first Capital Call Notice in respect of Management Fees and (ii) the amount that would be payable to the Manager on such Management Fee Period pursuant to this Section 4.1 in the absence of this Section 4.1(d). A Limited Partner's share of the Waived Fee Amount for any Management Fee Period is equal to the Waived Fee Amount for such Management Fee Period multiplied by the quotient determined by dividing (i) the Management Fee that would be payable for such Management Fee Period with respect to such Limited Partner in the absence of this Section 4.1(d) by (ii) the total Management Fee that would be payable for such Management Fee Period in the absence of this Section 4.1(d). If the Manager delivers a Waived Fee Notice with respect to any Management Fee Period that begins before the date of the Final Closing, (i) if such Waived Fee Notice specifies that a percentage of the Management Fee otherwise payable for such Management Fee Period be waived, the Manager shall be deemed to have waived a proportionate amount of the Management Fee otherwise payable for such Management Fee Period by all Additional Limited Partners whose subscriptions are accepted after the date of such Waived Fee Notice and (ii) if such Waived Fee Notice specifies that a fixed dollar amount of such Management Fee otherwise payable for such Management Fee Period be waived, the reduction in the Management Fee for such Management Fee Period shall be allocated to all Limited Partners in the same proportion as the Management Fee is borne by the Limited Partners for such Management Fee Period.

(e) For purposes of Section 4.1(c), a Limited Partner's share of Director Fees and Transaction and Monitoring Fees is equal to the amount of the Partnership's pro rata share of such fees multiplied by the Limited Partner's Partner Interest in the Portfolio Investment to which such Director Fees and Transaction and Monitoring Fees are attributable, and a Limited Partner's share of Topping and Break-up Fees is equal to the amount of such fees multiplied by the proportion of such Limited Partner's Commitment to the Commitments of all Partners on the first day of the Management Fee Period in which such Topping and Break-up Fees are paid.

Section 4.2 Organizational and Partnership Expenses. The Partnership will reimburse the General Partner or the Manager for all Organizational Expenses incurred by the General Partner or the Manager on behalf of the Partnership. The Partnership will pay all Partnership Expenses.

Section 4.3 Ordinary Operating Expenses. The Manager shall pay all ordinary overhead expenses of the Partnership, the General Partner, the Manager, the Separate Investment Entities and the Parallel Vehicles (including salaries, rent, overhead, travel expenses and similar expenses), other than Partnership Expenses, Organizational Expenses and Placement Fees.

ARTICLE V

GENERAL PARTNER

Section 5.1 Investment Opportunities; Devotion of Time; Management Authority.

(a) The Principals shall each be actively involved in the business of the Fund Group and shall devote such amount of their business time and attention in order to fulfill their fiduciary duties to the Limited Partners in accordance with the Delaware Partnership Act; provided, however, that the Principals may engage and be involved in Other Permitted Investment Activities. Subject to the foregoing and to Section 5.12(a) and the Highland Investment Allocation Policy, during the Commitment Period, the General Partner, the Manager and the Principals will present all investment opportunities to the Partnership which they believe in good faith are suitable for the Partnership and fit the investment objective of the Partnership. However, the Principals and the Manager will not be restricted from pursuing, engaging in and completing acquisitions and investments in, through or by Highland Portfolio Companies in connection with Other Permitted Investment Activities and other investments through other Highland Accounts, in each such case, in accordance with the Highland Investment Allocation Policy.

(b) Subject to the retention of the Manager, the General Partner will have full control over the business and affairs of the Partnership consistent with its fiduciary duties arising under the Delaware Partnership Act. The General Partner will have the power on behalf and in the name of the Partnership to carry out any and all of the objects and purposes of the Partnership and to perform all acts and enter into and perform all contracts and other undertakings which, in its sole discretion, are necessary or advisable or incidental thereto, including the power to acquire or dispose of any security (including Marketable Securities). Notwithstanding the foregoing, the management of the Partnership will vest in the Manager which will provide the Partnership with portfolio management and administrative services, including investigating, analyzing, structuring and negotiating potential investments, monitoring the performance of Portfolio Companies and advising as to disposition opportunities. In no event shall the Manager, which has been engaged by the Partnership, be treated as an agent or partner of the General Partner.

(c) Except to the extent otherwise provided in this Agreement, all matters concerning (i) the allocation of Short-Term Investment Income, Current Income, Investment Income and Gain, Investment Loss, Partnership Expenses, Organizational Expenses, Carried Interest, and the distribution of net proceeds and the return of capital among the Partners, including the taxes thereon, (ii) accounting procedures and determinations (including the determination of the Preferred Amount), estimates of the amount of Management Fees or Placement Fees payable by any Defaulting Partner, (iii) the calculation of the Management Fee (including Director Fees, Topping and Break-up Fees and Transaction and Monitoring Fees), and (iv) the reinvestment of any amounts distributed in respect of a Bridge Financing (or portion thereof) that was sold, refinanced or otherwise disposed of within eighteen (18) months from the Investment Date of such Bridge Financing, shall be determined by the General Partner in accordance with its reasonable interpretation of the provisions of this Agreement made in good faith.

Section 5.2 Use of Affiliates. The General Partner shall retain the services of the Manager and any officers, directors or Affiliates thereof in connection with the operation of the Partnership, and the compensation of the Manager and such persons shall be as provided in Section 4.1 hereof; provided, however, that nothing contained in this Section 5.2 shall be construed to relieve the General Partner of its responsibilities under this Agreement or the duties and limitations set forth in this Article V.

Section 5.3 Indebtedness. Subject to Section 5.5 and Section 5.4, the Partnership may incur indebtedness consisting of Bridge Leveraging or the issuance of credit support of the obligations of Portfolio Companies or their subsidiaries, which may be in the form of guarantees, letters of credit or pledges of a portion of the Commitments ("Credit Support"). Any such indebtedness will not be considered as Capital Contributions by the Partners unless, until and to the extent the General Partner calls for Capital Contributions in connection therewith pursuant to a Capital Call Notice pursuant to this Agreement.

Section 5.4 Limitation on Investments.

(a) The Partnership will not invest (including through Credit Support) more than twenty five percent (25%) of the aggregate Commitments in any single Portfolio Company together with any of its Affiliates (valued at original cost). A Bridge Financing, when added to the amount of permanent investment by the Partnership in the Portfolio Investment that is the subject of the Bridge Financing, may not exceed twenty five percent (25%) of the aggregate Commitments.

(b) The aggregate amount of Bridge Financings outstanding at any one time shall not exceed fifteen percent (15%) of the aggregate Commitments.

(c) Subject to Section 5.5, the Partnership may issue Credit Support, which does not at any one time exceed Unfunded Commitments.

(d) The Partnership shall invest cash in Short-Term Investments.

(e) The aggregate investments (valued at cost) by the Partnership in Portfolio Companies organized and with principal executive offices outside the United States shall not exceed thirty percent (30%) of the aggregate Commitments. The Partnership will not invest in Portfolio Companies that are organized or with principal executive offices in countries that are not within the Organization for Economic Cooperation and Development as of the date of the First Closing.

(f) The Partnership will not invest as a partner or member in any pooled investment fund or "fund of funds" in which an investment adviser or manager of such fund (other than the Partnership) receives management fees or the right to carried interest distributions on the Partnership's investment or interest therein unless the amount of any such management fee is considered part of the Capital Contribution relating to such Portfolio Investment and the amounts distributable to the General Partner under Sections 3.3(a)(ii) and 3.3(a)(iii) are reduced by the amount of any carried interest payable to such sponsor or investment manager.

(g) In connection with a Portfolio Investment in any non-U.S. jurisdiction, the General Partner shall obtain an opinion of counsel with respect to such jurisdiction to the effect that (i) no Limited Partner, solely as a result of the Partnership making such investments, will be required either (x) to file an income tax return in such jurisdiction (other than in connection with an application for a refund of withholding or similar taxes) or (y) to pay income tax in such jurisdiction with respect to income not derived from the Partnership, and (ii) no Limited Partner shall be personally liable for any debts or losses of the Partnership in such jurisdiction in excess of such Limited Partner's Unfunded Commitment. The General Partner shall use commercially reasonable efforts to ensure that any opinion obtained pursuant to this Section 5.4(i) will permit the Limited Partners to rely thereon. The General Partner shall ask local counsel to confirm and/or update periodically as it deems necessary any opinion it obtains pursuant to this Section 5.4(i). The Partnership will use commercially reasonable efforts to prepare all tax rebate, reduction or reclaim forms or other filings or elections that are required to obtain any available exemption from, reduction in, or refund of, any withholding or other taxes required in any taxing jurisdiction on behalf of each Limited Partner, for signature by such Limited Partner, and to assist each Limited Partner, at such Limited Partner's expense, to obtain refunds for taxes withheld or paid with respect to such Limited Partner as to which a refund is obtainable. Each Partner agrees that it will cooperate with the General Partner in making any such filings or elections to the extent the General Partner determines that such cooperation is necessary or desirable.

(h) The Partnership will not invest (including through Credit Support) more than twenty percent (20%) of the aggregate Commitments in Persons that are not Distressed Companies; provided that the General Partner in its good faith discretion believes that an investment in such Persons is consistent with the Partnership's investment objective.

Section 5.5 UBTI; USRPI. The General Partner shall use commercially reasonable efforts not to (i) structure the Fund's Portfolio Investments in a manner that would result in the realization by a Tax Exempt Partner of a substantial amount of UBTI or (ii) cause the Partnership to acquire a Portfolio Investment that the General Partner reasonably believes at the time of such acquisition is or is likely to become a "United States real property interest" ("USRPI") within the meaning of Section 897(c) of the Code. In addition, if the Partnership makes an investment in a pass-through entity that could give rise to UBTI or income effectively connected with a U.S. trade or business, the Partnership may make available a "blocker" structure through which Tax-Exempt and non-U.S. Partners can invest. However, the use of Bridge Leveraging and the use of Director Fees, Topping and Break-up Fees, Transaction and Monitoring Fees and Placement Fees to offset the Management Fee, as described in Section 4.1(c), will not be deemed a violation of this Section 5.5.

Section 5.6 ERISA Matters.

(a) The General Partner will use reasonable efforts to conduct the affairs and operations of the Partnership in such a manner that the Partnership will qualify as an Operating Company or for another exception from being deemed to hold Plan Assets of any Benefit Plan Investor. As of the initial Capital Contribution date, the General Partner shall deliver to each Benefit Plan Investor either (i) an opinion from the General Partner's counsel to the effect that the Partnership should qualify as an Operating Company as of the initial Capital Contribution

date or (ii) a certificate, based on consultation with the General Partner's counsel, to the effect that the Partnership should qualify for another exemption from being deemed to hold Plan Assets of any Benefit Plan Investor as of the initial Capital Contribution date. Annually thereafter, the General Partner will provide a certificate to Benefit Plan Investors confirming that the Partnership continues to qualify for an exception from being deemed to hold Plan Assets of any Benefit Plan Investor and specifying which exception from Plan Assets is available to the Partnership as of the date of the certificate.

(b) Notwithstanding Section 2.2, until such time as the General Partner delivers to each Benefit Plan Investor (and the escrow agent, if any) either the opinion or the certificate described above in Section 5.6(a), the initial Capital Contribution required to be made to the Partnership by a Benefit Plan Investor shall, at the request of the General Partner, instead be deposited directly by such Benefit Plan Investor into an escrow account that is intended to comply with Department of Labor Advisory Opinion 95-04A.

(c) Each Partner that is or will be a Benefit Plan Investor on the Closing Date when it is admitted to the Partnership shall so notify the General Partner in writing prior to such Closing Date. Any Limited Partner which has not indicated in its Subscription Agreement that it is a Benefit Plan Investor hereby represents, warrants and covenants that it is not, it is not acting on behalf of and, so long as it holds an interest in the Partnership, it will not be and will not be acting on behalf of a Benefit Plan Investor.

(d) It is intended that none of the Partnership, the General Partner, the Manager or any of their Affiliates will act as or be deemed to be a fiduciary under ERISA with respect to any Benefit Plan Investor or the assets of the Partnership; provided, however, that this provision is not intended to negate the fiduciary duties imposed upon a general partner under the Delaware Partnership Act. Notwithstanding any other provision of this Agreement, the General Partner is authorized to take any action or refrain from taking any action which in its judgment is necessary or desirable in order to prevent any Partnership assets from being deemed to constitute Plan Assets of any Benefit Plan Investor.

(e) Should the General Partner reasonably determine that the continued participation of a Benefit Plan Investor would result in the assets of the Partnership being deemed Plan Assets of such Benefit Plan Investor (a "Plan Asset Event"), the General Partner shall so notify, each of the Benefit Plan Investors in writing within 30 days of such determination. Thereafter, the General Partner shall take reasonable steps to correct or cure the Plan Asset Event and, if the General Partner determines that it is not reasonably likely that the Partnership's Plan Asset Event can be reasonably corrected or cured, taking into account the overall interest of the Partnership, the General Partner shall terminate the Partnership and wind up its affairs in accordance with Sections 8.2 and 8.3. In connection with the foregoing obligation, in addition to any other powers the General Partner may have, the General Partner shall have the authority to take any of the following actions, in its sole discretion: (i) any action necessary or desirable, in the General Partner's reasonable judgment, to cure the Partnership's failure to qualify as an Operating Company, if applicable; (ii) in accordance with the provisions of Section 12.1, amend this Agreement to cure any illegality or other material adverse consequences to the Partnership; (iii) amend, terminate or restructure any then existing or contemplated arrangements with third parties to cure any illegality or other adverse consequences to the Partnership so long as such

action would not have a material adverse effect on the Limited Partners; (iv) redeem any Limited Partner's interest in the Partnership, in whole or in part, in a manner consistent with the procedures in Section 6.6(d); (v) force the sale of all or any portion of any Benefit Plan Investor's interest in the Partnership to one or more Limited Partners at the Redemption Value or (vi) terminate the Partnership and wind up its affairs in accordance with Sections 8.2 and 8.3.

Section 5.7 Conflicts of Interest.

(a) The Limited Partners hereby acknowledge and agree that the General Partner and its Affiliates currently manage and may in the future manage Highland Accounts that invest in securities that may be eligible for purchase by the Partnership, which presents the potential for conflicts of interest. While the General Partner and the Manager intend to manage potential conflicts of interest, as Highland has in the past, by following certain guidelines, and to avoid where practicable situations involving conflicts of interest in a portfolio company or otherwise, each Limited Partner acknowledges that there may be situations in which the interests of the Partnership in a portfolio company or otherwise may conflict with the interests of other Highland Accounts, the General Partner, the Manager, the Principals or their respective Affiliates. On any matter involving a conflict of interest not otherwise provided for in this Agreement, the General Partner shall be guided by its good faith judgment as to the best interests of the Partnership and shall take such actions as are determined by the General Partner and Highland to be appropriate and in compliance with the Highland Investment Allocation Policy. Each Limited Partner agrees that the activities of any other Highland Account, the General Partner, the Manager, the Principals and their Affiliates, including Other Permitted Investment Activities, authorized by this Agreement or conducted consistently with this Agreement and the Highland Investment Allocation Policy may be engaged in by such other Highland Accounts, the General Partner, the Manager, the Principals and their Affiliates, as the case may be, and will not, in any case or in the aggregate, be deemed a breach of this Agreement or any duty that might be owed by any such person to the Partnership or to any Partner.

(b) Except as permitted by Sections 5.12(a) and 5.17(a), without the prior approval of either (i) a majority of the members of the Advisory Committee or (ii) a Majority in Interest of the Limited Partners, none of the General Partner, the Manager, the Principals, or any of their respective Affiliates will invest in any securities of any company in which the Partnership either is actively considering making a Portfolio Investment or has an investment; provided, that (x) the foregoing will not apply to Other Permitted Investment Activities or investments made in accordance with the Highland Investment Allocation Policy, (y) each such person will be permitted to hold securities which such person received in a distribution by the Partnership and (z) any Parallel Vehicles or Separate Investment Entities will be permitted to invest in Portfolio Companies in accordance with this Agreement.

(c) Except as permitted by Sections 5.12(a) and 5.17(a), without the prior approval of either (i) a majority of the members of the Advisory Committee or (ii) a Majority in Interest of the Limited Partners, the Partnership will not invest in any securities issued by, acquire investments from, sell investments to, or enter into any transaction with an entity in which the General Partner, the Manager, the Principals, or their respective Affiliates has a material financial interest in respect of such entity; provided that the foregoing will not apply to (w) Other Permitted Investment Activities, (x) investments by the Partnership in Portfolio Companies in

which the Parallel Vehicles, Separate Investment Entities or Co-Investment Funds invest in accordance with this Agreement; (y) investments by the Partnership in Portfolio Companies in which the General Partner, the Manager, the Principals or their respective Affiliates have a material interest that have been made in accordance with the Highland Investment Allocation Policy, or (z) investments by the Partnership in publicly traded securities of Portfolio Companies in which a Highland Account has a material financial interest that are made on arms length terms at prevailing market prices; provided, further, that the Partnership will not be precluded from investing in securities of a company in which the General Partner, the Manager, the Principals, or their respective Affiliates either (A) in the case of public companies, owns securities issued by such company representing one percent (1%) or less of the outstanding equity securities, or (B) own only securities which such Persons received in a distribution by the Partnership.

(d) The General Partner will furnish to the Advisory Committee annually at the time annual financial statements of the Partnership are furnished pursuant to Section 10.3(b) a report of each acquisition or investment by the Partnership in Portfolio Companies in which the General Partner, the Manager, the Principals or their respective Affiliates have a material financial interest that have been made in accordance with the Highland Investment Allocation Policy.

Section 5.8 Transfer of General Partnership Interest; No Withdrawal or Loans. The General Partner generally may not sell, assign, pledge, mortgage or otherwise dispose of its General Partner interest in the Partnership; provided, however, that the General Partner may transfer its General Partner interest in the Partnership (or consent to the transfer of an interest in the General Partner) in a derivative transaction if the transferor maintains the economic attributes of the interest and voting control of the interest. The General Partner will not borrow or withdraw any amount from the Partnership or voluntarily withdraw from the Partnership.

Section 5.9 Removal of the General Partner. By consent of Two-Thirds in Interest of the Limited Partners, the General Partner may be removed in the event of (a) the General Partner's or any member of the Keyman Group's conviction of (or plea of nolo contendere to), a material violation of federal or state securities law or a felony criminal violation, (b) the General Partner's adjudication in a final judgment by a court of competent jurisdiction as having committed in respect of the Partnership an act or omission of a material nature involving gross negligence, bad faith, willful misconduct or fraud, or (c) the General Partner's violation of this Agreement which has a material and adverse effect on the Partnership and which remains uncured for 30 days. Notwithstanding the foregoing, if an event described in clause (a) above has occurred and the event relates to a violation or act of a member of the Keyman Group, the Limited Partners may remove the General Partner only if such violation or act (i) relates to the Partnership or a Portfolio Company, (ii) has a material adverse effect on the Partnership, (iii) such member of the Keyman Group is not terminated as a member of the General Partner and the Manager within 45 days, and (iv) such member of the Keyman Group does not cease to own any interest in the future carried interest or voting interests in the General Partner following termination. The General Partner will provide the Limited Partners with written notice of the occurrence of any event described in clauses (a), (b) or (c) above. Concurrently with the removal of the General Partner, the Manager shall be removed as manager of the Partnership unless re-appointed by the successor general partner of the Partnership. Upon removal of the General Partner, the Limited Partners may elect to continue the Partnership and appoint a new duly authorized general partner of the Partnership and all Parallel Vehicles with the consent of all of the Limited Partners of the

Partnership and each Parallel Vehicle and such election shall be deemed to have occurred as of the date of the removal of the former General Partner. In such an event, the former General Partner shall be entitled to receive distributions equal to any amounts it would have been entitled to had the Partnership been dissolved and wound up in accordance with Sections 8.3(a) and (b) and distributed in kind all Partnership assets as of the date of the election of the Limited Partners to continue the Partnership. The Partnership shall issue an unsecured non-interest bearing promissory note to the former General Partner in the face amount of the liquidating distribution determined in accordance with this Section 5.9, such note to be payable upon the final liquidation of the Partnership. All such distributions shall be subject to the obligations set forth in Section 8.3(c) and (d); provided, however, that the General Partner's obligation, if any, to fund Commitments in respect of its obligations in Section 8.3(c) relating to such liquidating distribution shall be satisfied by a reduction to the principal amount of the unsecured non-interest bearing promissory note described in this Section 5.9 in the amount of such obligation. For purposes of determining allocation and distributions pursuant to the preceding sentence, securities and other property held by the Partnership shall be valued pursuant to the procedures set forth in Article IX.

Section 5.10 No Liability to Limited Partners.

(a) None of the General Partner, the Manager, the Principals or their Affiliates, officers, directors, members, partners, shareholders, employees or agents will be liable to any Limited Partner or to the Partnership for any action taken, or omitted to be taken, as General Partner with respect to the Partnership, or for any action taken, or omitted to be taken, by any member, partner, director, officer, employee or agent of the General Partner or Manager in connection with its activities for or on behalf of the Partnership so long as such person (i) acted in good faith, (ii) acted in a manner reasonably believed to be in the best interests of the Partnership, (iii) was neither grossly negligent nor engaged in willful malfeasance, fraud or reckless disregard of fiduciary duties, (iv) did not materially breach this Agreement, and (v) with respect to any criminal action, such person is not finally determined to be and does not admit to being guilty or enter a plea of nolo contendere (including as part of a settlement) by a court of competent jurisdiction.

(b) No member of the Advisory Committee, or any Affiliate or employer of any member of the Advisory Committee or any Limited Partner represented on the Advisory Committee by any member (as the case may be) will be liable to any Partner or the Partnership for any action taken, or omitted to be taken, in good faith on behalf of the Advisory Committee (as the case may be) with respect to the Partnership and in accordance with the provisions of this Agreement.

(c) If any Limited Partner obtains a final judgment in a court of competent jurisdiction against the General Partner for matters relating to the Partnership, the General Partner shall pursue against its members the remedies (if any) that it has against such member relating to such claim.

Section 5.11 Indemnification of General Partner, the Manager and Advisory Committee. (a) The Partnership will indemnify (A) the Principals, the General Partner, the Manager and each of their respective members, partners, shareholders, directors, officers, employees, agents and

Affiliates against any losses, liabilities, damages or expenses (including amounts paid for attorneys' fees, judgments and settlements in connection with any threatened, pending or completed action, suit or proceeding) to which any of such persons may become subject in connection with such person's activities on behalf of the Partnership or in connection with any involvement with a Portfolio Company (including serving as an officer, director, consultant or employee of any Portfolio Company) directly or indirectly on behalf of the Partnership and (B) the members of the Advisory Committee, any Affiliate or employer of any such members and any Limited Partner represented on the Advisory Committee by any member, in connection with any involvement with the Advisory Committee, respectively, but, in the case of members of the Advisory Committee or their Affiliates and employers or any Limited Partner represented on the Advisory Committee by any member, only to the extent that such person acted in good faith and, in the case of the Principals, the General Partner, the manager and each of their respective members, partners, shareholders, directors, officers, employees, agents and Affiliates, only to the extent that such person (i) acted in good faith, (ii) acted in a manner reasonably believed to be in the best interests of the Partnership or the Portfolio Company (as the case may be), (iii) was neither grossly negligent nor engaged in willful malfeasance, fraud or reckless disregard of fiduciary duties, (iv) did not materially breach this Agreement, and (v) with respect to any criminal action, such person is not finally determined to be and does not admit to being guilty or enter a plea of nolo contendere (including as part of a settlement) by a court of competent jurisdiction. Any person described in clause (A) of this Section 5.11(a) entitled to seek indemnification hereunder shall first use reasonable efforts to seek indemnification from other available sources, if any, prior to obtaining indemnification hereunder; provided that any such person may seek and obtain indemnification hereunder if at any time such person reasonably believes that such person will not receive timely indemnification on terms reasonably acceptable to such person from such other sources; and provided, further, that such person shall continue to use reasonable efforts to seek such indemnification from such other sources and, to the extent any such indemnification is obtained, reimburse the Partnership for any such recovery. The Partnership may, in the sole judgment of the General Partner, pay the expenses of any person indemnifiable under this Section 5.11 in advance of the final disposition of any proceeding, so long as (w) with respect to any derivative action brought by any Limited Partner, the person receiving the advance is not the subject of such derivative action, (x) the proceeding is not instituted by a Majority in Interest of the Limited Partners against the General Partner or the Manager, (y) General Partner has a good faith belief such expenses are indemnifiable, and (z) the General Partner receives a written undertaking by such person for the benefit of the Partnership to repay the full amount advanced if (A) there is a final determination that such person did not satisfy the standards set forth in clauses (i) through (v) immediately above, (B) with respect to any criminal action, such person is finally determined to be or admits to being guilty or enters a plea of nolo contendere (including as part of a settlement) by a court of competent jurisdiction, or (C) such person is not otherwise entitled to indemnification as provided herein. Notwithstanding the foregoing, no person will be exculpated or exonerated from liability or indemnified against loss for violations of federal or state securities laws, or for any other intentional or criminal wrongdoing. No person shall be indemnifiable under this Section 5.11 in respect of losses, liabilities, damages or expenses to which any such person may become subject in connection with (x) such person's activities with any Portfolio Company if such losses arise after the Partnership's final disposition of such Portfolio Company or (y) a dispute among the General Partner, the Manager, their respective members and employees, and the Principals.

(b) No Limited Partner shall have any obligation or liability, including any obligation to make a Capital Contribution to the Partnership, in respect of an indemnity obligation arising from a Portfolio Investment with respect to which such Limited Partner is not a Participating Partner.

(c) The General Partner will use reasonable efforts to cause each Portfolio Company for which any Affiliate of the General Partner serves as an officer or director to adopt organizational documents which provide mandatory indemnification to directors, officers, and managers to the fullest extent permitted by applicable law.

Section 5.12 Formation of New Fund or Business Endeavor. (a) Subject to the other provisions of this Article V, each Partner's interest in the business endeavors of the other Partners is limited to his, her or its interest in the Partnership and no Partner's future business activities are restricted. Notwithstanding the foregoing, unless consented to by Two-Thirds in Interest of the Limited Partners or approved by a majority vote of the Advisory Committee, neither the General Partner, nor the Manager or any of their Affiliates will close and make investments, or act as general partner, managing member, advisor, employee, agent, or the primary source of transactions on behalf of another private equity investment vehicle or pooled investment vehicle (other than Crusader, a Parallel Vehicle or Separate Investment Entity) that has primary investment objectives substantially similar to those of the Partnership (a "Successor Fund") until the earlier of (i) the date on which at least 75% of the Commitments have been invested or committed for investment in Portfolio Companies or otherwise set aside for Follow-on Investments, Partnership Expenses or Management Fees, and (ii) the end of the Commitment Period; provided, however, that this Section 5.12 shall not prohibit the formation of one or more Co-investment Funds, and Co-investment Funds shall not be considered Successor Funds. If a Successor Fund is organized prior to the termination of the Commitment Period of the Partnership, as permitted under the previous sentence, the Successor Fund may only coinvest in investments made by the Partnership alongside the Partnership, on the same terms and conditions in all material respects, with amounts for investment allocated between the Partnership and the Successor Fund, subject to available capital or other investment limitations on the Partnership and the Successor Fund, as determined by the General Partner. Any Successor Fund will dispose of securities of a Portfolio Company that are of the same class as those purchased by the Partnership at the same time as the Partnership, and on the same economic and other terms.

Section 5.13 Interest as a Limited Partner. To the extent that the General Partner acquires the interest of a Defaulting Partner or any other Limited Partner, the General Partner will (subject to Section 2.5) be deemed to be a Limited Partner with respect to such interest for all purposes of this Agreement.

Section 5.14 Parallel Vehicles. The General Partner and the Manager may organize and capitalize Parallel Vehicles for purposes of facilitating investments in Portfolio Companies by non-U.S. investors and certain accredited investors that are not qualified purchasers (as defined in the Investment Company Act) in the Fund Group. If any Parallel Vehicles are organized, then the Partnership and each Parallel Vehicle (a) will invest in each Portfolio Company in direct proportion to their respective available capital commitments so that the Partnership will invest in each Portfolio Company an amount equal to the total investment by the Partnership and any Parallel Vehicle multiplied by a fraction, the numerator of which is the aggregate Commitments,

and the denominator of which is the sum of the aggregate Commitments plus the aggregate capital commitments by investors in the Parallel Vehicles, provided that such proportion may be modified by the General Partner with the prior approval of the Advisory Committee or a Majority in Interest of the Limited Partners in order to reflect the available commitments and any tax, regulatory or other legal aspects of any Parallel Vehicle and its investors and (b) invest in and dispose of Portfolio Company at the same time and on effectively the same economic terms and conditions. Any item of income, fees, reimbursement or expense that relates to a Portfolio Company in which the Partnership and one or more Parallel Vehicles are investors or to a potential investment that is considered on behalf of the Partnership and any Parallel Vehicles by the General Partner, the Manager or the general partners or managers of any Parallel Vehicles shall, to the extent that any such item is not directly attributable to the Partnership or a Parallel Vehicle, be pro rated among the Partnership and the Parallel Vehicles based on their respective investments in such Portfolio Company or the portions of such potential investment that would have been made available to the Partnership in accordance with the preceding sentence, as applicable. Organizational Expenses shall be borne by the Partnership and each Parallel Vehicle in proportion to their respective aggregate capital commitments, except the Partnership and each Parallel Vehicle shall separately bear the Organizational Expenses that are directly attributed to each such entity. Each Parallel Vehicle shall reimburse the Partnership for such Parallel Vehicle's share of Organizational Expenses that were paid by the Partnership. Investments in Parallel Vehicles by investors shall be on substantially the same terms and conditions as investments in the Partnership by Limited Partners. For the avoidance of doubt, all references to Portfolio Investments shall include investments made by the Partnership, all Parallel Vehicles and all Separate Investment Entities. To the extent that this Agreement provides that the Limited Partners shall vote together with the investors of any Parallel Vehicle, the General Partner agrees (i) that the relevant documentation of any such Parallel Vehicle shall contain comparable voting provisions to the extent applicable, (ii) that any combined vote of the Limited Partners and the investors in any Parallel Vehicle on any such matter for the purposes of this Agreement shall constitute a combined vote on the matter for the purposes of the Parallel Vehicles, and (iii) each such matter shall, if approved by such vote, be equally applicable to the Partnership and all Parallel Vehicles.

Section 5.15 Separate Investment Entities. If the General Partner determines for legal, tax, regulatory or other reasons, in its sole discretion that it is in the best interests of the Partners to invest in one or more Portfolio Companies through an entity other than the Partnership, such investment or investments shall not be made by the Partnership but shall instead be made, either in lieu of or in conjunction with, the Partnership, by one or more limited partnerships, limited liability companies, corporations or similar entities (each a "Separate Investment Entity") owned in the aggregate by all of the Partners and managed by the General Partner or an Affiliate thereof controlled by the Principals. Each Separate Investment Entity shall receive an opinion of counsel for the benefit of the Limited Partners (x) regarding its classification for United States Federal income tax purposes and the limited liability of the Separate Investment Entity and (y) to the effect that no Limited Partner shall be personally liable for any debts or losses of the Separate Investment Entity in such jurisdiction in excess of such Limited Partner's Unfunded Commitment. The Partnership and each Separate Investment Entity will invest in and dispose of Portfolio Investments at the same time and on effectively the same economic terms and conditions. To the extent that Benefit Plan Investors participate in a Separate Investment Entity, such Separate Investment Entity shall be (i) structured so that it will not be deemed to hold Plan

Assets and shall provide the same ERISA protections to those Benefit Plan Investors that are provided under this Agreement, and (ii) established on substantially the same terms and conditions in all material respects as Partners are required to make Capital Contributions to the Partnership, and such capital contributions shall be deemed to reduce the Unfunded Commitment of each Partner to the same extent that it would be reduced if made to the Partnership. The provisions and economic terms of each such Separate Investment Entity shall be substantially the same in all material respects as those of the Partnership, except to the extent such terms are required to differ from the economic and other material arrangements reflected in the terms of this Agreement in order to accomplish the purposes of such Separate Investment Entity (including, for example, different economic treatment of different Partners resulting solely from the consequences of a structure created to minimize the amount of UBTI recognized by a Tax Exempt Partner). The gains and losses of any such Separate Investment Entity shall be treated as having been realized by the Partnership for all economic calculations under this Agreement (including, without limitation, the calculation of the General Partner give back obligation pursuant to Section 8.3(c)), and there will be no duplication of management fees or Carried Interest. The Partners having interests in the Separate Investment Entity (including the General Partner and its Affiliates with respect to their Commitments as Partners) shall contribute to each Separate Investment Entity the amounts required to fund such Separate Investment Entity, with each such Partner contributing its pro rata portion of such amounts (based on the relative Unfunded Commitments of the Partners as of the date of such contributions) up to such Partner's remaining Unfunded Commitment and such amounts will reduce such Partner's Unfunded Commitment. Each Limited Partner hereby agrees and consents to the formation of each Separate Investment Entity and hereby covenants and agrees that it will execute and deliver any agreements, documents and certificates as reasonably necessary for, or incidental to, the formation and continuation of each such Separate Investment Entity and its participation as a limited partner, member or participant in each such Separate Investment Entity established in accordance with this Section 5.15.

Section 5.16 Media Company Investments.

(a) In the event and for so long as, and only during periods from time to time in which, the Partnership shall directly or indirectly hold (or otherwise have attributed to it) an ownership or other interest in a Media Company that is "attributed" to the Partnership under the rules and regulations of the FCC relating to the particular FCC service in which the Media Company operates, no Limited Partner (an "Insulated Partner"), or any person that is a director, officer, equivalent non-corporate official, partner, member or 5% or greater shareholder or other direct or indirect owner of an Insulated Partner such that the ownership interests of the Insulated Partner, are "attributed" to such owner, director, officer, equivalent non-corporate officer, partner or member (an "Insulated Partner Affiliate"), to the extent reasonably determined by the General Partner (with the advice of GP's Counsel) to be necessary to have such ownership or interest not be attributable to the Limited Partners for purposes of the FCC Attribution Rules and the Ownership Rules, shall do any of the following:

(i) act as an employee of the Partnership or any Media Company if such Insulated Partner's or Insulated Partner Affiliate's functions, directly or indirectly, relate to the media or common carrier enterprises of the Partnership or any Media Company;

(ii) serve, in any material capacity, as an independent contractor or agent of the Partnership or any Media Company with respect to the media or common carrier enterprises of the Partnership or any such Media Company;

(iii) communicate with the General Partner or any Portfolio Company on matters pertaining to the day-to-day operations of any Media Company;

(iv) to the extent Partners have the power under this Agreement to admit additional General Partners, vote to admit any additional General Partner to the Partnership unless such addition is subject to the veto of the General Partner;

(v) to the extent Partners have the power under this Agreement, except as permitted under Sections 5.9 and 8.2, vote on the removal of the General Partner;

(vi) perform any services for the Partnership or any Media Company materially relating to the media or common carrier enterprises of the Partnership or such Media Company, with the exception of making loans to, or acting as a surety for, such Media Company or the Partnership to the extent consistent with the "equity or debt plus" component of the FCC Attribution Rules; or

(vii) become actively involved in the management or operation of any Media Company.

(viii) serve as a member or otherwise participate in the activities of the Advisory Committee if, in the determination of the Insulated Partner, such membership or participation would cause the Insulated Partner to lose its insulated status under the Attribution Rules.

(b) An Insulated Partner may, upon five Business Days' prior written notice to the General Partner, relinquish its status as an Insulated Partner, in which case the provisions of this Section 5.16 shall no longer apply to such Limited Partner; provided, that such relinquishment shall not be effective until the General Partner has received an opinion of special counsel to the Partnership on FCC matters stating that such relinquishment will not (1) cause the Partnership or any of its Affiliates to violate any law, regulation, rule or policy applicable to matters currently subject to FCC jurisdiction or (2) in any way limit or restrict the activities of the Partnership or any of its Affiliates. To the extent that issuance of such an opinion requires the filing of any notices with the FCC or the issuance of any approvals by the FCC, the General Partner and the Insulated Partner seeking to relinquish its insulated status shall reasonably cooperate in making any such filing or obtaining any such approval, and the General Partner shall seek the opinion of special counsel to the Partnership on FCC matters with respect to the making of any such filing or the obtaining of any such approval.

(c) Nothing in this Section 5.16 shall be interpreted to restrict the activities of (A) the Limited Partners or (B) the beneficial interest holders of any Limited Partner during the period that it is an Insulated Partner so long as such Limited Partner's partnership or other governing agreement contains language reasonably designed to insulate such Limited Partner's unaffiliated limited partners or beneficial interest holders, as the case may be, from having the Partnership's interest in any Media Company being attributed under the FCC attribution rules to such beneficial owners, as necessary pursuant to the FCC attribution rules.

(d) Upon written request by an Insulated Partner, the General Partner shall, prior to the Partnership consummating an investment in a Media Company, cause the legal counsel to the Partnership to deliver an opinion reasonably acceptable to such Insulated Partner to the effect that such investment shall not be "attributed" to the Insulated Partner under the rules and regulations of the FCC relating to the particular FCC service in which such Media Company operates.

Section 5.17 Co-investment Funds.

(a) Where possible and appropriate, the General Partner may, in its discretion, provide co-investment opportunities to invest in a Portfolio Company (each a "Co-Investment Opportunity") to one or more Limited Partners, strategic investors, lenders, or members, investors, Affiliates or employees of the General Partner and Manager or, other accounts managed by Highland (each a "Co-Investor"). Notwithstanding the foregoing, investment opportunities allocated to Affiliates of the Manager or the General Partner or client accounts managed by the Manager, in accordance with the Highland Investment Allocation Policy, shall not be deemed Co-Investment Opportunities. The General Partner, the Manager, and their respective Affiliates will not receive any carried interest in any Co-Investment Opportunity provided to Limited Partners or receive management fees from Limited Partners in respect of Co-Investment Opportunities provided to Limited Partners. The General Partner intends to not provide Co-Investment Opportunities to Benefit Plan Investors to the extent necessary to prevent such Co-Investment Opportunity from being deemed to be Plan Assets of the related Benefit Plan Investor.

(b) The General Partner may, as a condition to any Co-Investment Opportunity, (i) require any or all Co-Investors to execute a confidentiality agreement relating to such Co-Investment Opportunity in form and substance acceptable to the General Partner, and (ii) require Co-Investors electing to participate in a Co-Investment Opportunity to coinvest through a Co-Investment Fund, which may have investors other than Limited Partners.

(c) Each Limited Partner shall treat the information provided to it pursuant to this Section 5.17 as confidential, shall use such information solely for the purpose of considering the offer made pursuant to this Section, shall, upon the request of the General Partner, promptly return to the General Partner any written information provided it pursuant to this Section, and shall not disclose the identity of the securities or issuer to any person other than (i) its employees, counsel or advisors, solely on a need to know and confidential basis, (ii) any governmental authority or regulatory authority which regulates such Limited Partner's ability to engage in any of its businesses under U.S. or foreign law to the extent such information is required by such governmental authority or regulatory authority, as the case may be, and (iii) to the extent such Limited Partner is required by law or regulation to disclose such information.

(d) If Co-Investment Funds or Co-Investors purchase securities of a Portfolio Company that are of the same class as securities of a Portfolio Company purchased by the Partnership, the Co-Investment Funds or Co-Investors shall purchase such securities on terms that are no less advantageous than the terms on which the Partnership purchases such securities. Each Co-Investment Fund and Co-Investor will dispose of securities of a Portfolio Company that

are of the same class as securities of a Portfolio Company purchased by the Partnership at the same time and on substantially the same terms (including price) as the Partnership.

Section 5.18 Bridge Leveraging. (a) The Partnership is authorized to enter into one or more credit facilities (each, a "Bridge Leveraging/Credit Support Facility") in order to (i) borrow money for the purpose of (A) Bridge Leveraging, and (B) paying Partnership Expenses; and/or (ii) provide Credit Support for the obligations of Portfolio Companies or their subsidiaries as described in Section 5.4(c); provided, however, that in no event shall the aggregate amount of Bridge Leveraging outstanding at any time under any Bridge Leveraging/Credit Support Facility exceed the aggregate amount of Unfunded Commitments as of such date and provided, further, that in no event shall the maturity date of an individual borrowing under any Bridge Leveraging/Credit Support Facility be later than the 45th day following the incurrence of such debt under a Bridge Leveraging/Credit Support Facility. A Bridge Leveraging/Credit Support Facility may be secured by (x) a pledge by the Partnership of all or a portion of the aggregate Unfunded Commitments of the Partners, and (y) a pledge and assignment by the General Partner of the rights of the General Partner contained herein, including, without limitation, the right to deliver Capital Call Notices and enforce all remedies against Partners that fail to fund their respective Unfunded Commitments pursuant thereto and in accordance with the terms hereof. The Partnership and any Parallel Vehicles may be co-borrowers under any Bridge Leveraging/Credit Support Facility, in which event the Partnership and the Parallel Vehicles may be jointly and severally liable for all obligations under such Bridge Leveraging/Credit Support Facility. In the event such a Bridge Leveraging/Credit Support Facility is so secured by Commitments, and to the extent funds are advanced against the Commitment of a particular Partner or partner of a Parallel Vehicle because such Person is late in funding or defaults on a Capital Call Notice delivered hereunder or by the Parallel Vehicle, each Limited Partner understands, acknowledges and agrees that (i) it may be required to make a Capital Contribution in respect of its pro rata share of such late or defaulted contribution amount, provided, however, that in no event shall any Partner be required to make Capital Contributions in excess of its Unfunded Commitment, and (ii) as a result of such default or late payment, the allocation between the Partnership and each Parallel Vehicle of a Portfolio Investment (together with any item of income, fees, reimbursement or expense that relates to such Portfolio Investment) with respect to which there has occurred a shortfall in contributions made by the Partners or the partners in a Parallel Vehicle shall be made by the General Partner based on the total amount of Capital Contributions of the Partners and the partners in each Parallel Vehicle actually funded to acquire such Portfolio Investment. In addition to the rights and remedies of the General Partner in respect of a Defaulting Partner pursuant to Section 6.11, any Partner that is late in funding or defaults on a Capital Call Notice shall be responsible for any interest or other expenses incurred in connection with such advance. Any such expenses shall be withheld from distributions otherwise to be made to such Defaulting Partner, and, to the extent such expenses exceed such distributions, such Defaulting Partner shall pay the amount of such excess to the Partnership in the manner and at the time or times required by the General Partner. Any such excess shall not be credited to such Defaulting Partner's Capital Account. For purposes of this Agreement, any amount withheld from a Defaulting Partner and paid to a lender shall be paid to the lender on behalf of such Defaulting Partner and shall be treated as if distributed to such Defaulting Partner.

(b) Each Limited Partner understands, acknowledges and agrees, in connection with any such Bridge Leveraging/Credit Support Facility and for the benefit of any lender thereunder,

as follows: (i) that the General Partner may from time to time request a certificate confirming (x) the remaining amount of such Limited Partner's Unfunded Commitment or (y) that the Limited Partner has not and will not pledge, collaterally assign, encumber or otherwise grant a security interest in its limited partnership interest in the Partnership, and (ii) that the General Partner may from time to time request such other information as may be reasonably required by the lender(s) under the terms of the Bridge Leveraging/Credit Support Facility. Each Limited Partner agrees to comply with such requests to the extent they are reasonable.

(c) To induce any such lender to enter into a Bridge Leveraging/Credit Support Facility with the Partnership, each Limited Partner hereby: (i) acknowledges that the Partnership has informed such Limited Partner that the Partnership may pledge to a lender the right to call all Unfunded Commitments to secure all obligations made under the Bridge Leveraging/Credit Support Facility (collectively, the "Obligations") the terms of which are in accordance with this Agreement, and, in connection therewith, grant to such lender the right to issue Capital Call Notices pursuant to the terms of this Agreement when an event of default under such Bridge Leveraging/Credit Support Facility exists, including an event of default resulting from the failure of a partner of a Parallel Vehicle to fund any capital contributions when required, which each Limited Partner shall fund, in accordance with the terms hereof and its rights and obligations hereunder; and (ii) acknowledges that the Partnership has informed such Limited Partner that for so long as the Bridge Leveraging/Credit Support Facility is in place, the General Partner and the Partnership may agree with the lender not to amend, modify, supplement, cancel, terminate, reduce (other than with respect to Funded Commitments) or suspend any of such Limited Partner's obligations to fund its Unfunded Commitment pursuant hereto, subject to excuse provisions set forth herein, without the lender's prior written consent.

ARTICLE VI

LIMITED PARTNERS

Section 6.1 Limited Liability. The Limited Partners will not be personally liable for any obligations of the Partnership and will have no obligation (including with respect to a deficit balance in their Capital Account) to make contributions to the Partnership in excess of their respective Commitments specified in Schedule 1 attached hereto in accordance with this Agreement, except to the extent set forth in Section 6.7 or the Delaware Partnership Act. The Limited Partners will take no part in the control, direction or operation of the affairs of the Partnership and will have no power to bind the Partnership.

Section 6.2 Transfer of Limited Partnership Interests.

(a) A Limited Partner may not sell, assign, transfer, pledge, mortgage or otherwise dispose of all or any of its interest in the Partnership unless the General Partner has consented to such transfer or assignment in writing; provided, that with regard to an assignment by a Limited Partner to an Affiliate of such Limited Partner, such consent shall not be unreasonably withheld.

(b) A Limited Partner which is a trust under an employee benefit plan may, upon prior written notice to the General Partner, assign a beneficial interest in all or a portion of its

interest in the Partnership to any other trust under such employee benefit plan or to any other employee benefit plan having the same sponsor (provided that income and loss allocable to the Limited Partner of the Partnership will continue to be included in the same filings under the same employer identification number with the Internal Revenue Service). Such assignment to another trust under such employee benefit plan or to any other employee benefit plan having the same sponsor will not be deemed to be an assignment or transfer of a limited partnership interest pursuant to this Agreement (and therefore will not require the General Partner's consent pursuant to Section 6.2(a)). In addition, a change in any trustee or fiduciary of a Limited Partner will not be deemed to be an assignment or transfer of a limited partnership interest pursuant to this Agreement (and therefore not require the General Partner's consent pursuant to Section 6.2(e)), so long as any such replacement trustee or fiduciary is also a fiduciary as defined under applicable law, that income and loss allocable to the Limited Partner of the Partnership will continue to be included in the same filings under the same employer identification number with the Internal Revenue Service, and the General Partner receives prior written notice of such change in trustee or fiduciary. In connection with any assignment of interest or change in trustee or fiduciary under this Section 6.2(b), the Limited Partner shall provide such documentation as the General Partner shall reasonably request.

(c) The voting rights of any Limited Partner's interest shall automatically terminate upon any transfer of such interest to a trust, heir, beneficiary, executor, personal representative, guardian or conservator or upon any other transfer if the transferor no longer retains control over such voting rights and the General Partner has not consented pursuant to Section 6.2(e) to such transferee becoming a substitute Limited Partner. No consent of any other Limited Partner will be required as a condition precedent to any such transfer or substitution.

(d) As a condition to any transfer of a Limited Partner's interest pursuant to Section 6.2(a), the transferor and the transferee shall provide such legal opinions and documentation as the General Partner shall reasonably request; provided that if the transfer is to be made from a Limited Partner to a co-trustee or trustee as contemplated above or to an Affiliate pursuant to Section 6.2(a), an officer's certificate in form reasonably satisfactory to the General Partner may be delivered by the Limited Partner in lieu of such legal opinions and other documentation.

(e) Notwithstanding anything to the contrary contained in this Section 6.2 or 6.11, a transferee or assignee will not become a substitute Limited Partner (i.e., a transfer other than as described in Section 6.2(b)) without the consent of the General Partner, which consent may be granted or withheld in its sole and absolute discretion (except for a disposition by a Limited Partner to an Affiliate permitted by Section 6.2(a), for which such consent shall not be unreasonably withheld), and without executing (i) a copy of this Agreement or amendment hereto, and (ii) a Subscription Agreement in form and substance satisfactory to the General Partner in its sole discretion. Any substitute Limited Partner admitted to the Partnership with the consent of the General Partner will succeed to all rights and be subject to all the obligations of the transferring or assigning Limited Partner with respect to the interest to which such Limited Partner was substituted, but any transferee or assignee that does not become a substitute Limited Partner shall have the right to receive allocations pursuant to Section 2.3 and distributions pursuant to Article III and Article VIII, but shall have no other rights under this Agreement.

(f) The transferor and transferee of any Limited Partner's interest shall be jointly and severally obligated to reimburse the General Partner and the Partnership for all reasonable expenses (including attorneys' fees and expenses) of any transfer or proposed transfer of a Limited Partner's interest, whether or not consummated.

(g) The transferee of any Limited Partner's interest shall be treated as having made all of the Capital Contributions made by, and received all of the distributions received by, the transferor of such interest.

(h) Anything in this Agreement to the contrary notwithstanding, no admission (or purported admission) of a Partner, and no transfer (or purported transfer) of all or any part of a Partner's interest in the Partnership (or any economic interest therein) whether to another Partner or to a person who is not a Partner, shall be effective, and any such admission or transfer (or purported admission or transfer) shall be void ab initio, and no person shall otherwise become a Partner if after such admission or transfer (or purported admission or transfer) the Partnership would have more than one hundred (100) Partners, unless the General Partner determines in its sole discretion that the Partnership will meet the requirements set forth in Treasury Regulation § 1.7704-1(j)(1) for the taxable year of such transfer and all subsequent taxable years. In determining whether the Partnership will have more than one hundred (100) Partners for purposes of this Section 6.2(h), each person indirectly owning an interest in the Partnership through a partnership (including any entity treated as a partnership for federal income tax purposes), a grantor trust or an S corporation (each such entity a "flow-through entity") shall be treated as a Partner unless the General Partner determines in its sole discretion, after consulting with qualified tax counsel, that less than substantially all of the value of the beneficial owner's interest in the flow-through entity is attributable to the flow-through entity's interest (direct or indirect) in the Partnership.

(i) Anything in this Agreement to the contrary notwithstanding, no admission (or purported admission) of a Partner, and no transfer (or purported transfer) of all or any part of a Partner's interest in the Partnership (or any economic interest therein) whether to another Partner or to a person who is not a Partner, shall be effective, and any such admission or transfer (or purported admission or transfer) shall be void ab initio, and no person shall otherwise become a Partner if after such admission or transfer (or purported admission or transfer) the Partnership would be subject to the registration or reporting requirements of the Investment Company Act or in the General Partner's good faith determination, such transfer would cause the assets of the Partnership to be deemed Plan Assets. Each transferee that is or will be a Benefit Plan Investor as of the transfer effective date shall so notify the General Partner in writing prior to the transfer effective date. Any transferee that has not so indicated in writing its status as a Benefit Plan Investor hereby represents, warrants and covenants that it is not, it is not acting on behalf of and, so long as it holds an interest in the Partnership, it will not be and will not be acting on behalf of a Benefit Plan Investor.

Section 6.3 No Withdrawal. Subject to the provisions of Sections 6.2, 6.6 and 6.11, no Limited Partner may withdraw as a Partner of the Partnership, nor may a Limited Partner be required to withdraw, nor may a Limited Partner borrow or withdraw any portion of its Capital Account from the Partnership.

Section 6.4 No Termination. The substitution, death, insanity, dissolution (whether voluntary or involuntary) or bankruptcy of a Limited Partner will not affect the existence of the Partnership, and the Partnership will continue for the term of this Agreement until its existence is terminated as provided herein.

Section 6.5 Subsequent Limited Partners.

(a) The General Partner may accept additional Limited Partners ("Additional Limited Partners") subsequent to the First Closing of the Partnership up to and including the date fourteen months after the First Closing. Any Additional Limited Partners will be treated as having been a party to this Agreement and have made its Commitment as of the date hereof for all purposes, and such Additional Limited Partners will be required to bear a portion of the Management Fee, Organizational Expenses and Partnership Expenses equivalent to that which would have been borne by such Additional Limited Partner had such Limited Partner been a Limited Partner from the date of the First Closing.

(b) Such Additional Limited Partners shall contribute to the Partnership, on the date of their admission to the Partnership, an amount of their Commitments equal to their portion (based on the Commitments of all Partners) determined pursuant to this Section 6.5(b). The initial drawdown for each Limited Partner will include such Limited Partner's proportionate share of (i) Management Fees retroactive to the First Closing; (ii) Placement Fees, if any, retroactive to the First Closing, (iii) Organizational Expenses (to the extent provided in Section 4.2) and Partnership Expenses attributable to the Partnership; and (iv) Capital Contributions made at or prior to such drawdown to fund any Portfolio Investment, other than Capital Contributions that have been returned prior to such drawdown to the Partners who made such Capital Contributions. In addition, Additional Limited Partners will be required to pay to the Partnership, with respect to the period from the date of the applicable Capital Contributions made by the Partners who were admitted pursuant to the First Closing to the date of their admission to the Partnership: (A) interest at the rate of 10% on their proportionate share of Management Fees retroactive to the First Closing; (B) interest at the rate of 10% on their proportionate share of Organizational Expenses (to the extent provided in Section 4.2), Placement Fees and Partnership Expenses attributable to the Partnership; and (C) interest at the rate of 10% on their proportionate share of the Capital Contributions made prior to such drawdown (other than Capital Contributions that have been returned prior to such drawdown to the Partners who make such Capital Contributions), to fund any Portfolio Investment; provided, however, that interest payable pursuant to sub-clauses (B) and (C) above shall be reduced, but not below zero, by each Additional Limited Partner's pro rata portion (based on Commitments of all Partners) of all distributions made prior to the date of such drawdown to all Partners pursuant to Sections 3.3(a)(i), 3.3(a)(ii)(B) and 3.3(a)(iii)(A), to the extent such distributions exceed the aggregate amount of Capital Contributions to make Portfolio Investments that have been Disposed of prior to the date of such drawdown. Any amounts paid to the Partnership under clause (i) and subclause (A) above will be paid to the Manager (and to the extent the General Partner has waived all or part of such Management Fees, such Waived Fee Amount shall not be paid to the Manager or the General Partner but will instead increase the Unapplied Waived Fee Amounts). Any amounts paid to the Partnership under clause (ii) above shall be paid to the applicable placement agency if applicable to such Limited Partner. Any amounts paid to the Partnership under clauses (iii) and (iv) above, and subclauses (B) and (C) above shall be

distributed to the Partners that participated in the earlier Capital Contributions based upon their relative shares of each earlier Capital Contribution, and any such returned Capital Contributions (but not amounts referred to in subclauses (B) and (C) above) may be recalled by the General Partner pursuant to Section 2.2(a) above as if such returned Capital Contributions had not previously been called; provided, that if the General Partner determines in good faith that there will be a Capital Call within 30 days after the contribution of such amounts to the Partnership, the General Partner may, in its discretion, retain such amounts and reduce the Capital Call with respect to such other Partners (in which event the Funded Commitments of such other Partners shall be increased by their pro rata share of that portion of such amounts referred to in subclauses (B) and (C) above). For purposes of this Section 6.5, a Limited Partner that increases its Commitment shall be treated as an Additional Limited Partner with respect to the amount by which its Commitment increased.

(c) Each Additional Limited Partner admitted to the Partnership pursuant to this Section 6.5 shall be treated as purchasing a pro rata share of the interests in the Partnership of the Partners to whom amounts are distributed pursuant to this Section 6.5 ("Existing Partners"), and a portion of the Capital Account of each Existing Partner shall be allocated to such Additional Limited Partner so that after such allocation the Capital Accounts and Capital Contributions of such Additional Limited Partner and Existing Partners attributable to each Portfolio Investment and to the payment of Organizational Expenses, Management Fees, Placement Fees and Partnership Expenses are as equal as practicable to what their Capital Accounts and Capital Contributions attributable to each Portfolio Investment and to the payment of Organizational Expenses, Management Fees, Placement Fees and Partnership Expenses would have been if such Additional Limited Partner had been admitted to the Partnership at the First Closing.

(d) If the admission of Additional Limited Partners to the Partnership or of investors in Parallel Vehicles or the purchase by a limited partner in a Parallel Vehicle of a portion of the interest of a Defaulting Partner pursuant to Section 6.11 would result in the Partnership and the Parallel Vehicles not having reimbursed the General Partner and its Affiliates for Organizational Expenses in the proportions contemplated by Section 4.2 hereof or would result in the Partnership and the Parallel Vehicles not owning investments in Portfolio Companies in the proportions contemplated by Sections 5.14 or 5.15 hereof, the General Partner shall have the authority:

(i) to effect transfers of funds and of Portfolio Company to Parallel Vehicles and to effect transfers of funds and portfolio investments of Parallel Vehicles to the Partnership for the purpose of reallocating the ownership of investments in Portfolio Companies and the reimbursements of Organizational Expenses by the Partnership and the Parallel Vehicles, and

(ii) to make allocations to, or to reallocate, the Capital Accounts and Capital Contributions attributable to each Portfolio Investment and to the payment of Organizational Expenses, Management Fees, Placement Fees and Partnership Expenses of the Existing Partners and the Additional Limited Partners in the manner contemplated by the previous provisions of this Section 6.5,

in each case to achieve allocations and distributions as close as practicable to those that would have obtained had such Additional Limited Partners or investors been admitted to the Partnership or to Parallel Vehicles, respectively, at the First Closing or had such purchased interest of a Defaulting Partner been issued to the purchaser at the First Closing. Any distribution of cash made by the Partnership in connection with a reallocation under this Section 6.5(d) representing a return of Capital Contributions may be recalled by the General Partner pursuant to Section 2.2(a) as if such returned Capital Contributions had not previously been called.

Section 6.6 Regulatory Matters.

(a) Each Limited Partner acknowledges that the assets of the Partnership are not intended to constitute plan assets of such Limited Partner for purposes of any applicable non-U.S., state or local law governing the investment and management of the assets of that Limited Partner, and that, as a result, none of the Partnership, the General Partner, the Manager or any of their Affiliates intend to be acting as a fiduciary within the meaning of any applicable non-U.S., state or local law relating to governmental plans or foreign plans with respect to such Limited Partner or the Partnership assets; provided, however, that this provision is not intended to negate the fiduciary duties imposed upon a general partner under the Delaware Partnership Act.

(b) In the event that the General Partner determines in good faith that (i) the investment in the Partnership by a Limited Partner which is a governmental plan, foreign plan or other regulated entity (each, a "Regulated Investor") is reasonably likely to result in (A) any violation of any provision of law applicable to such Regulated Investor, (B) the treatment of the assets of the Partnership as assets of such Regulated Investor or (C) the treatment of the Partnership, the General Partner or the Manager as a fiduciary under such provisions of law applicable to such Regulated Investor and (ii) if, in the reasonable judgment of the General Partner, any of the foregoing conditions result in or are reasonably likely to result in any material adverse consequences to the Partnership or the General Partner (both of (i) and (ii), a "Regulatory Issue"), then the General Partner shall use its reasonable best efforts to work with the Regulated Investor to cure the Regulatory Issue. The General Partner, in its sole discretion, may require that such Regulated Investor provide (at such Regulated Investor's expense) an opinion of counsel, reasonably acceptable to the General Partner in form and substance, that no Regulatory Issue exists or, in the event such an opinion is not delivered within a reasonable time after being requested, may cause the Partnership to redeem such Regulated Investor's interest in the Partnership, in whole or in part.

(c) Effective upon the date specified by the General Partner in the notice sent to a Limited Partner, notifying such Limited Partner of the General Partner's determination to completely or partially redeem such Limited Partner's interest in the Partnership pursuant to Section 5.6(e) or Section 6.6(b) (the "Redemption Effective Date"), such Limited Partner (the "Redeemed Limited Partner") shall cease to be a Partner of the Partnership for purposes of the withdrawn portion of its interest only and, in addition to its right to receive payment for its withdrawn interest in the Partnership as provided in Section 6.6(d), shall continue to be entitled, with respect to its remaining interest only, if any, to the rights of a Partner under this Agreement (including, without limitation, the right to have any allocations made to its Capital Account (as such may be adjusted) pursuant to Article II, the right to receive distributions pursuant to Article

III and upon dissolution of the Partnership pursuant to Article VIII and the right to vote on matters as provided in this Agreement).

(d) The Redemption Value shall be paid by the Partnership to such Redeemed Limited Partner in cash by paying to such Limited Partner a "pro rata portion" of each distribution payable to the Redeemed Limited Partners until the Redemption Value has been fully paid; provided, that the General Partner shall be under no obligation to sell, finance or refinance any Partnership property or assets or to take any other action to effect such redemption which, in the judgment of the General Partner, may affect adversely the Partnership (taking into account the liquidity needs of the Partnership) or any Partner. For purposes of the preceding sentence, a Redeemed Limited Partner's "pro rata portion" of a distribution shall be an amount equal to the amount such Redeemed Limited Partner would have received in respect of the redeemed interest had such interest not been redeemed.

Section 6.7 Indemnification and Reimbursement for Payments on Behalf of a Partner/Partner Clawback.

(a) If the Partnership is obligated to pay any amount to a governmental agency or to any other person (or otherwise makes a payment) in respect of any tax because of a Partner's status or otherwise specifically attributable to a Partner (including, without limitation, federal withholding taxes with respect to foreign partners, state personal property taxes, state unincorporated business taxes, etc.), then such Partner (the "Indemnifying Partner") shall indemnify the Partnership in full for the entire amount paid (including, without limitation, any interest, and any penalties and expenses associated with such payment to the extent such penalties and expenses are attributable to such Partner's actions or failure to act). At the option of the General Partner, the amount to be indemnified may be charged against the Capital Account of the Indemnifying Partner, and, at the option of the General Partner, either:

(i) promptly upon notification of an obligation to indemnify the Partnership, the Indemnifying Partner shall make a cash payment to the Partnership equal to the full amount to be indemnified (and the amount paid shall be added to the Indemnifying Partner's Capital Account but shall not be deemed a Capital Contribution hereunder), or

(ii) the Partnership shall reduce subsequent distributions which would otherwise be made to the Indemnifying Partner until the Partnership has recovered the amount to be indemnified (provided, that the amount of such reduction shall be deemed to have been distributed for all purposes of this Agreement, but such deemed distribution shall not further reduce the Indemnifying Partner's Capital Account). If the General Partner reasonably expects that subsequent distributions to such Partner will be sufficient to satisfy such Partner's obligation to pay such amount, the General Partner shall not seek a payment pursuant to clause (i) above, until the General Partner reasonably believes such distributions will not be sufficient.

(b) A Partner's obligation to make contributions to the Partnership under this Section 6.7 shall, subject to the limitations set forth in Section 6.7(c), survive the termination, dissolution, liquidation and winding up of the Partnership until the third (3rd) anniversary of the date of the final distribution made in connection with the complete liquidation of the assets of the Partnership and, for purposes of this Section 6.7, the Partnership shall be treated as continuing in

existence. The Partnership may pursue and enforce all rights and remedies it may have against each Partner under this Section 6.7, including instituting a lawsuit to collect such contribution with interest equal to the prime or base rate then in effect (as announced by Citibank, N.A., New York, New York) plus six percentage points per annum (but not in excess of the highest rate per annum permitted by law).

(c) At any time and from time to time prior to the third (3rd) anniversary of the date of receipt thereof, the General Partner may require each Partner to return distributions (including distributions made in connection with the complete liquidation of the assets of the Partnership) to the Partnership in an amount sufficient to satisfy all or any portion of (i) such Partner's indemnification obligations pursuant to Section 6.7(a), or (ii) any liability which the Partnership would be required by this Agreement or otherwise to pay if it had adequate funds, including but not limited to (A) the expenses of investigating, defending or handling any pending or threatened litigation or claim arising out of the Partnership's activities, investments or business, (B) the amount of any judgment or settlement arising out of such litigation or claim, and (C) the Partnership's obligation to indemnify any Partner or other Person pursuant to Section 5.11 (a "Liability"), whether such obligations arise before or after the last day of the Partnership or, with respect to any Partner, before or after such Partner's withdrawal from the Partnership; provided, that (x) each Partner will return distributions in respect of its share of any such indemnification payment in proportion to the aggregate amount of distributions received by such Partner that have not previously been returned to the Partnership by such Partner pursuant to this Section 6.7(c); and (y) Partner's maximum liability under this Section 6.7 is limited to an amount equal to the lesser of (1) $33^{1/3}$% of such Partner's Commitment, and (2) 50% of the aggregate amount of distributions received by such Partner as of such date. Any distributions returned pursuant to this Section 6.7(c) shall not be treated as Capital Contributions, but shall be treated as returns of distributions in making subsequent distributions pursuant to Section 3.3 and in determining the amount that the General Partner is required to contribute to the Partnership pursuant to Section 8.3(c) (other than for purposes of computing a Partner's Preferred Amount, which shall be computed based on actual Capital Contributions made and distributions received). Nothing in this Section 6.7(c), express or implied, is intended or shall be construed to give any person other than the Partnership or the Partners any legal or equitable right, remedy or claim under or in respect of this Section 6.7(c) or any provision contained herein. If a Limited Partner returns an amount to the Partnership under Section 6.7(c)(ii) after the final distribution of the assets of the Partnership, the amount the General Partner is required to contribute to the Partnership with respect to such Limited Partner pursuant to Section 8.3(c) shall be re-determined, taking into account the return of such amount to the Partnership. The provisions of Section 8.3(c) shall apply, and the payments required thereby shall be made, in the same manner as if the return of such amount to the Partnership had occurred prior to the final distribution of the assets of the Partnership.

Section 6.8 Section 754 Election. Upon the written request of a Majority in Interest of the Limited Partners, that an election provided for in Section 754 of the Code be made, the General Partner shall, if then permitted by applicable law, make such election.

Section 6.9 BHCA Partners.

(a) Any Limited Partner may, upon notice to the General Partner, elect to hold all or any fraction of such Limited Partner's interest in the Partnership as a Non-Voting Interest, in which case such Limited Partner shall not be entitled to vote or otherwise participate in any consent of the Limited Partners with respect to the portion of its interest which is held as a Non-Voting Interest (and such Non-Voting Interest shall not be counted in determining the giving or withholding of any such consent or whether the requisite percentage of the Limited Partners or Partners, as the case may be, have consented to, approved, adopted or taken any other action hereunder). Except as provided in this Section 6.9, an interest held as a Non-Voting Interest shall be identical in all regards to all other interests held by Limited Partners. Any such election shall be irrevocable and shall bind the assignees of such Limited Partner's interest.

(b) Any interest in the Partnership held for its own account by a BHCA Partner, that is determined at the time of admission of such BHCA Partner, the complete or partial withdrawal of another Limited Partner or any other adjustment of the interests of the Partners pursuant to this Agreement to be in excess of 4.99% (or such other amount as may be permitted by applicable regulation to be held by a BHCA Partner as voting securities, but not including Section 4(k) of the BHC Act or any successor provision thereto) of the interests of the Limited Partners, excluding for purposes of calculating this percentage portions of any other interests that are Non-Voting Interests pursuant to this Section 6.9 and any other Section of this Agreement (collectively the "Non-Voting Partnership Interests"), shall be a Non-Voting Partnership Interest (whether or not subsequently transferred in whole or in part to any other person) and shall not be included in determining whether the requisite percentage of the Partners have consented to, approved, adopted or taken any action hereunder; provided, that such Non-Voting Partnership Interest shall be permitted to vote on any proposal to continue the business of the Partnership under Section 8.2(a) but not on the selection of a General Partner pursuant to Section 8.2(a). Each BHCA Partner hereby further irrevocably waives its corresponding right to vote for a successor general partner under Section 17-801 of the Delaware Partnership Act with respect to any Non-Voting Partnership Interest, which waiver shall be binding upon such BHCA Partner and any entity which succeeds to its interest. Upon the occurrence of a subsequent closing or any event specified in the second preceding sentence, a recalculation of the interest held by all BHC Partners shall be made, and only that portion of the total interest held by each BHC Partner that is determined as of the date of such recalculation to be in excess of 4.99% (or such other amount) of the interests of the Limited Partners, excluding Non-Voting Partnership Interests as of such date, shall be a Non-Voting Partnership Interest.

Section 6.10 Excused Investments. In the event that (a) the Partnership makes or proposes to make a Portfolio Investment which the General Partner reasonably determines could result in a material violation by any Limited Partner (or any of its Affiliates) of any law, order, decree or judgment of any court or governmental agency applicable to such Limited Partner (or any of its Affiliates), or (b) the General Partner reasonably determines that a Limited Partner's participation in a proposed Portfolio Investment of the Partnership could have a material adverse effect on the Partnership, the entity in which such investment is to be made, such Limited Partner, or the General Partner and its Affiliates, the General Partner may, in its sole discretion, and subject to Section 5.6(a), (x) reduce or eliminate the interest of the such Limited Partner with respect to such Portfolio Investment and the distributions with respect thereto (provided that any

Capital Contributions made by such Limited Partner with respect to such Portfolio Investment shall be promptly returned to such Limited Partner) and correspondingly increase the interest of the other Limited Partners with respect to such Portfolio Investment and/or (y) increase the interest of such Limited Partner in future Portfolio Investments of the Partnership and such Limited Partner's interest in the distributions with respect thereto and correspondingly decrease the interests of the other Limited Partners in such Portfolio Investments. All determinations necessary to reflect the operation of this Section 6.10 and not otherwise explicitly provided for in this Section 6.10 shall be made on an equitable basis as determined by the General Partner in good faith, whose decision thereon shall be final and binding on all Limited Partners. Determinations by the General Partner pursuant to clauses (a) and (b) above may be made on its own initiative or after considering the request of any Limited Partner, including any supporting legal analysis or other documentation submitted by such Limited Partner.

Section 6.11 Limited Partner's Default on Commitment.

(a) If any Limited Partner fails to make full payment of any portion of its Commitment when due (a "Defaulting Partner") and such failure is not cured within five Business Days after receipt by such Limited Partner of written notice from the General Partner with respect to such failure to pay, the General Partner may in its discretion and subject to Section 5.6(a), undertake any one or more of the following steps:

(i) The General Partner may assist the Defaulting Partner in finding a buyer for the Defaulting Partner's Partnership interest (provided, that the General Partner will have no obligation to contact any particular Limited Partner or other person with regard to such sale).

(ii) The Partnership may pursue and enforce all rights and remedies the Partnership may have against such Defaulting Partner with respect thereto, including a lawsuit to collect the overdue portion of the Commitment and any other amounts due the Partnership or General Partner hereunder, with interest at a rate equal to the prime or base rate then in effect (as announced by Citibank, N.A., New York, New York) plus six percentage points (but not in excess of the highest rate per annum permitted by law).

(iii) The General Partner may offer the Defaulting Partner's interest to the Partners and the partners in the Parallel Vehicles (other than any Defaulting Partners) pro rata in accordance with their Commitments and their capital commitments to Parallel Vehicles on the terms set forth below. If any Partner or partner in a Parallel Vehicle does not elect to purchase the entire interest offered to it, the remaining interest allocable to the Partners and the partners in the Parallel Vehicles will be reoffered pro rata to the Partners and the partners in Parallel Vehicles who have purchased the entire interest offered to them until either all of such interest is acquired or no Partner or partner in a Parallel Vehicle wishes to make a further investment. At the closing of such purchase (on a date and at a place designated by the General Partner), each purchasing Partner shall (A) deliver a non-interest bearing, non-recourse (except to the extent of the Partnership interest purchased and the proceeds therefrom) ten-year promissory note (in a form approved by the General Partner) payable to the Defaulting Partner in an amount equal to the portion of the Defaulting Partner's Capital Account being purchased by such Partner, and (B) assume the portion of the Defaulting Partner's obligation to make both defaulted and further Capital Contributions pursuant to its Commitment which is equal to the portion of the Defaulting

Partner's interest being purchased by such Partner. In the case of a purchase of a portion of a Defaulted Partner's Capital Account by one or more partners in a Parallel Vehicle, such Parallel Vehicle shall deliver a note in the same form as the note described above to the Partnership for the aggregate portion of the Defaulted Partner's Capital Account being purchased by the limited partners in such Parallel Vehicle, the Partnership shall make the adjustments described in Section 6.5(d) with respect to such purchase and the Partnership shall distribute such note to the Defaulting Partner. If a Partner purchases a portion of the interest of a defaulting partner of a Parallel Vehicle, the Partner purchasing such interest shall increase its Commitments as described above with respect to purchases of an interest of a Defaulting Partner, and shall guarantee the note delivered to the Parallel Vehicle, and the Partnership shall make such other adjustments as are required by Section 6.5(d). The General Partner will handle the mechanics of making the offers set forth herein and will in its discretion impose time limits for acceptance.

(iv) If the entire Defaulting Partner's interest is not purchased in the manner set forth in (iii) above, the General Partner in its sole discretion may offer the remaining interest either (A) to a third party or parties on the same terms as originally offered to the Partners pursuant to (iii) above (in which case such third party or parties will, as a condition of purchasing such interest, become a party to this Agreement), or (B) to the Partners and the partners in Parallel Vehicles in the manner provided in (iii) above, but with no requirement to assume the Defaulting Partner's obligation to make further capital contributions pursuant to its Commitment, in which case the Defaulting Partner's Commitment shall be deemed reduced (effective on the date of the default) to the amount actually paid in and the aggregate Commitments of the Partnership shall be reduced by the amount of such Defaulting Partner's remaining contributions to be made pursuant to its Commitment.

(v) In addition to, or instead of, the other remedies and undertakings available to the General Partner pursuant to this Section 6.11(a), the General Partner may, in its sole discretion, reduce (effective on the date of the default, after giving effect to the 5-day cure period) any portion of such Defaulting Partner's Commitment (which has not been assumed by another Partner) to the amount of the Capital Contributions (which have not been purchased by another Partner) made by such Defaulting Partner (net of distributions pursuant to Section 6.5(b)) and the aggregate Commitments of the Partnership shall be commensurately reduced.

(vi) Notwithstanding anything contained herein to the contrary, from and after any date on which a Defaulting Partner's Commitment is reduced pursuant to subparagraph (v) above, (A) such Defaulting Partner will have no right to receive any distributions, except for distributions made upon the Partnership's liquidation, (B) such Defaulting Partner's Capital Account will not be credited with any Investment Income and Gain or Short-Term Investment Income which shall instead be allocated to the Partners (other than any Defaulting Partners) in accordance with Section 2.3(b) and (c), as appropriate (and as adjusted to treat the Defaulting Partner's Capital Contribution as equal to zero), (C) until such Defaulting Partner's Capital Account is reduced to zero, (1) such Defaulting Partner's Capital Account shall continue to be debited in accordance with Sections 2.3(c), (d), (f), and (g) for such Defaulting Partner's share of Investment Loss, Organizational Expenses, Placement Fees and Uncapitalized Partnership Expenses as if there had been no reduction in such Defaulting Partner's Commitment or Capital Contributions and (2) the Management Fee payable by the Defaulting Partner shall be calculated as if there had been no reduction in such Defaulting Partner's Commitment, and (D) once such

Defaulting Partner's Capital Account is reduced to zero, (1) such Defaulting Partner's Commitment shall be reduced to zero for all purposes of the Agreement, including the calculation of the Partnership's aggregate Commitments and determination of the Management Fee and (2) such Defaulting Partner (and not the Partnership or any other Limited Partner) shall be liable each quarterly period to the General Partner for an amount equal to its portion of the Management Fee for such period as if there had been no reduction in such Defaulting Partner's Commitment.

(vii) No consent of any Limited Partner shall be required as a condition precedent to any transfer, assignment or other disposition of a Defaulting Partner's interest pursuant to this Section 6.11.

(b) Additionally, the Defaulting Partner shall indemnify and hold harmless the General Partner and the Partnership against any losses, damages and expenses (including attorneys' fees) incurred by the General Partner and the Partnership in enforcing or attempting to enforce the provisions of this Section 6.11 or resulting from the Partnership failing to meet its obligations with respect to any Portfolio Investment by reason of any such default.

Section 6.12 Investment Company Act Limitations. Notwithstanding anything to the contrary contained in this Agreement, (i) no person shall be admitted to the Partnership as Limited Partner, an Additional Limited Partner or a substitute Limited Partner unless such person is a Qualified Purchaser, and (ii) no sale, assignment, transfer, pledge, mortgage or other disposition of any or all of a Limited Partner's interest in the Partnership shall be effective unless the assignee of any beneficial interest in the Partnership is a Qualified Purchaser.

ARTICLE VII

ADVISORY COMMITTEE

Section 7.1 Advisory Committee. (a) A committee (an "Advisory Committee") of not fewer than three individuals and not more than seven individuals who are affiliated with or officers, employees, representatives or designees of Limited Partners or limited partners of Parallel Vehicles (but are not affiliated with the General Partner, the Manager, the Principals or any Affiliates thereof) will be appointed by the General Partner. The General Partner will not appoint to the Advisory Committee any individual who is an officer, employee or representative of a BHC Partner whose Partner Interest in the Partnership is over 4.99%. The Advisory Committee will meet at least semi-annually with the Manager and will perform such duties as is contemplated by this Agreement and provide such advice and counsel, including advice and counsel as to general economic and financial trends, portfolio investments and valuations, as is requested by the General Partner in connection with the investments of the Partnership, the Parallel Vehicles and the Separate Investment Entities, and other matters related thereto; provided, that the General Partner will retain ultimate responsibility for all decisions relating to the operation and management of the Partnership, including all investment decisions. The Advisory Committee will be consulted on potential conflicts involving the Partnership and will perform the duties contemplated by this Agreement and all transactions between the Partnership

and the General Partner, the Manager and their Affiliates not specifically contemplated by this Agreement must be approved by the Advisory Committee. Notwithstanding the foregoing, the Advisory Committee will not consult with the General Partner on allocations of investment opportunities to Affiliates of the Manager or client accounts managed by the Manager if such allocations are made in accordance with the Highland Investment Allocation Policy. The Manager shall be entitled to remove a member of the Advisory Committee selected by the Manager from among the Limited Partners (or their representatives) upon at least 15 days prior written notice to the Limited Partners, provided, however, that the Manager may not remove a member of the Advisory Committee designated by a Limited Partner without the consent of 75% of the other members of the Advisory Committee. The Limited Partner that had the right to designate the removed member of the Advisory Committee shall have the right to designate a replacement. The Partnership will reimburse each member of the Advisory Committee for such member's reasonable out-of-pocket expenses incurred in attending meetings of the Advisory Committee. Such reimbursements shall be Partnership Expenses. The Advisory Committee shall act by affirmative vote or written consent of a majority of its members.

(b) Neither the members of the Advisory Committee, nor the Limited Partners on behalf of whom such members act as representatives, shall owe any duties (fiduciary or otherwise) to the Partnership or any other Limited Partner in respect of the activities of the Advisory Committee, other than the duty to act in good faith.

ARTICLE VIII

DURATION AND TERMINATION

Section 8.1 Duration. The Partnership will terminate on the tenth anniversary of the Final Closing, except that the term of the Partnership may be extended by the General Partner, with the approval of the Advisory Committee, for up to two consecutive one-year extensions.

Section 8.2 Early Termination.

(a) The Partnership shall terminate on:

(i) the bankruptcy of the General Partner or on the happening of any other event that would cause a dissolution of the Partnership under the Delaware Partnership Act unless, within 90 days after notice is given to the Limited Partners of the occurrence of such event, the Limited Partners and limited partners of all Parallel Vehicles unanimously select a new general partner and resolve to continue the business of the Partnership;

(ii) a good faith determination upon receipt of written legal advice of counsel by the General Partner that dissolution of the Partnership is necessary or desirable (A) as a result of a Plan Asset Event or (B) to avoid any material adverse consequences to the Partnership or the General Partner as a result of any law applicable to a Regulated Investor;

(iii) the removal of the General Partner pursuant to Section 5.9 unless all of the Limited Partners and all limited partners of Parallel Vehicles select a successor general partner and resolve to continue the business of the Partnership pursuant to Section 5.9; or

(iv) at any time after the second anniversary of the Final Closing upon the consent of Seventy-Five Percent in Interest of the Limited Partners.

(b) As promptly as possible following the election by the Limited Partners of a successor General Partner pursuant to Section 8.2(a)(i), there shall be distributed to the former General Partner, in full payment and satisfaction of its interest in the Partnership, a Limited Partnership Interest in the Partnership. The Limited Partnership Interest of the former General Partner shall entitle the former General Partner to the same distributions and allocations in respect of Portfolio Investments made prior to the termination of the former General Partner it would have received had it remained the General Partner, subject to the obligations set forth in Section 8.3(c), and to the rights of a Limited Partner hereunder with a Commitment equal to the Commitment of the former General Partner, but shall not entitle it to any other rights to participate in the management of the Partnership. After its withdrawal as General Partner, a former General Partner shall only be liable under this Agreement for actions taken and investments in Portfolio Companies made prior to the date of such withdrawal. If the Limited Partners elect to continue the Partnership's business pursuant to Section 8.2(a)(i), an appropriate amendment to this Agreement and to the Certificate shall be made within 90 days after the event giving rise to such election.

Section 8.3 Termination and Liquidation of Partnership Interests; Annual Determination of General Partner Give Back.

(a) Liquidation. Upon termination, the Partnership will be liquidated in an orderly manner. The General Partner (or, in the absence, bankruptcy or removal under Section 5.9, of the General Partner, the party selected by a Majority in Interest of the Limited Partners) will be the liquidator to wind up the affairs of the Partnership pursuant to this Agreement.

(b) Final Allocation and Distribution. Upon termination of the Partnership (whether or not an early termination), the General Partner will make a final allocation of all kinds of income, loss and expense in accordance with Article II hereof and the Partnership's liabilities and obligations to its creditors shall be paid or adequately provided for prior to any distributions to the Partners. After payment or provision for payment of all debts of the Partnership, the remaining assets, if any, will be distributed among the Partners as provided in Sections 3.2 and 3.3.

(c) General Partner Give Back. Within 90 days after the termination of the Commitment Period and after the final distribution of the assets of the Partnership among the Partners as provided in Sections 3.2 and 3.3 (each of the termination of the Commitment Period and the final distribution of the assets of the Partnership, a "Determination Date"), the General Partner will make a Capital Contribution to the Partnership with respect to each Limited Partner (and such amount will be distributed to the Limited Partners in proportion to the amounts determined with respect to each Limited Partner pursuant to this Section 8.3(c)), equal to the greater of:

(i) the amount by which (A) (x) the aggregate distributions to the General Partner pursuant to Sections 3.3(a)(ii) and 3.3(a)(iii) (including amounts initially distributed pursuant to Section 3.3(b)) with respect to such Limited Partner's Partner Share of distributions pursuant to Section 3.3(a) as of the applicable Determination Date less (y) all amounts previously contributed by the General Partner pursuant to this Section 8.3(c) with respect to such Limited Partner, exceed (B) 20% of the excess of (x) such Limited Partner's Partner Share of all distributions pursuant to Section 3.3(a) from the Partnership as of the applicable Determination Date (including amounts distributed to the General Partner pursuant to Sections 3.3(a)(ii) and 3.3(a)(iii), but reduced by any amounts previously contributed by the General Partner pursuant to this Section 8.3(c)) over (y) the aggregate Capital Contributions made by such Limited Partner to the Partnership as of the applicable Determination Date; and

(ii) the amount by which all distributions received by such Limited Partner as of the applicable Determination Date are less than the sum of such Limited Partner's Capital Contributions as of the applicable Determination Date, plus such Limited Partner's aggregate Preferred Amount as of the applicable Determination Date; provided, however, that the aggregate General Partner Capital Contributions pursuant to this Section 8.3(c) will not exceed the excess, if any, of (x) an amount equal to 100% of the net amount distributed to the General Partner with respect to such Limited Partner over the entire term of the Partnership (other than Tax Distributions) pursuant to Sections 3.3(a)(ii) and 3.3(a)(iii) over (y) the Built-In Tax Amount with respect to any distribution of securities in-kind received by the General Partner with respect to such Limited Partner.

(d) The General Partner hereby covenants and agrees that each of the members of the General Partner entitled to receive Carried Interest distributions from the General Partner has guaranteed and will guaranty severally, but not jointly, the payment of his, her or its pro rata share of the payments required by Section 8.3(c) to the extent and on the terms set forth in the Guaranty Agreement.

(e) Special Profit Interest Give Back. After the final distribution of the assets of the Partnership among the Partners as provided in this Section 8.3 (and Article III hereof), but prior to the application of Section 8.3(c), the General Partner shall be obligated to make aggregate Capital Contributions to the Partnership, within 30 days after the date of such final distribution, in an amount equal to the sum of the excess, if any, of (i) the distributions received by the General Partner on account of the Special Profit Interest attributable to each Waived Fee Amount over (ii) the Available Profits with respect to such Waived Fee Amount. The distributions described in clause (i) of the preceding sentence with respect to a Waived Fee Amount are the Special Profit Interest distributions attributable to the Portfolio Company with respect to which the General Partner applied such Waived Fee Amount pursuant to Section 2.2(a)(ii), treating the Waived Fee Amounts as having been applied on a "first-in, first-out" basis. Amounts distributed to the General Partner pursuant to Section 3.3(f) shall be treated for this purpose as proceeds from Portfolio Company made on the date of each Waived Fee Notice giving rise to Waived Fee Amounts that are not applied to Portfolio Company pursuant to Section 2.2(a)(ii). For purposes of applying the first sentence of this Section 8.3(e), Partnership Profits shall not be treated as Available Profits with respect to more than one Waived Fee Amount. All such amounts returned to the Partnership shall be distributed to the Partners (other than a Defaulting Partner or the General Partner) in accordance with the provisions of Section 3.3. All determinations and

calculations pursuant to this Section 8.3(e) shall be made by the General Partner in its sole discretion.

ARTICLE IX

VALUATION OF PARTNERSHIP ASSETS

Section 9.1 Normal Valuation. For purposes of this Agreement, the value of any security as of any date (or in the event such date is a holiday or other day which is not a Business Day, as of the next preceding Business Day) will be determined as follows:

(a) a Marketable Security which is listed on a recognized securities exchange or the NMS will be valued at the average of the last sales prices (or, if no sale occurred on such date, at the last "bid" price thereon) for the five consecutive trading days before such date and the five consecutive trading days after such date;

(b) a Marketable Security which is traded over-the-counter (other than on the NMS) will be valued at the average of the last "bid" prices for the five consecutive trading days before such date and the five consecutive trading days after such date;

(c) subject to Section 9.3, all Non-Marketable Securities will be valued on such date by the General Partner at fair market value in such manner as it may determine; and

(d) a Marketable Security which meets clause (ii), but not clause (i) of the definition of "Marketable Securities" will be valued as if it had been converted, exchanged or exercised as of such date.

Section 9.2 Restrictions on Transfer or Blockage. Any security which is held under a representation that it has been acquired for investment and not with a view to public sale or distribution, or which is held subject to any other restriction, or where the size of the Partnership's holdings compared to the trading volume would affect its marketability, will, subject to the provisions of Section 9.3, be valued at such discount from the value determined under Section 9.1 above as the General Partner deems necessary to reflect properly the marketability of such security.

Section 9.3 Objection to Valuation. Prior to acting upon its final valuation of any security pursuant to Sections 9.1 or 9.2 or its determination of written down value pursuant to Section 9.4, the General Partner shall provide the members of the Advisory Committee with notice and backup support of the General Partner's valuation of such security. If within 30 days after delivery of such notice a majority of the members of the Advisory Committee delivers written notice to the General Partner objecting to the valuation of such security and if, within 15 days from the date on which the General Partner receives such notice from a majority of the Advisory Committee, the General Partner and the Advisory Committee cannot agree on the valuation of such security, then the General Partner will (at the Partnership's expense) cause an independent securities expert mutually acceptable to the General Partner and the Advisory

Committee to review such valuation, and such expert's determination will be binding on the parties.

Section 9.4 Write-down to Value. Any Portfolio Investment that has permanently declined in value as determined by the General Partner will be written down to its value (or, if applicable, written off) pursuant to the provisions of this Article IX, including the valuation provisions of Section 9.3, as of the date of such determination. The General Partner shall provide the Advisory Committee at least annually with the then current valuation of all Portfolio Investments.

ARTICLE X

BOOKS OF ACCOUNTS; MEETINGS

Section 10.1 Books. The Partnership will maintain complete and accurate books of account of the Partnership's affairs at the Partnership's principal office, which books will be open to inspection by any Partner (or its authorized representative) at any time during ordinary business hours.

Section 10.2 Fiscal Year. The fiscal year of the Partnership will be the calendar year, unless otherwise determined by the General Partner.

Section 10.3 Reports. The General Partner will furnish the Limited Partners:

(a) within 60 days after the end of each of the first three quarters of each fiscal year beginning with fiscal year 2008, and with respect to the fourth quarter in each fiscal year at the time of delivery of the annual financial statements under Section 10.3(c), (i) unaudited quarterly financial statements (including balance sheet and income statement (including additions, dispositions and write-offs)) showing each Partner's Capital Account prepared in accordance with GAAP, applied on a consistent basis (except that, in accordance with GAAP, such quarterly financial reports may omit footnotes and year-end adjustments, accruals and reserves), and (ii) a schedule of investments including the Partnership's cost and the value of such investments prepared in accordance with Article IX;

(b) within 60 days after the end of each of the first three quarters of each fiscal year beginning with fiscal year 2008, and with respect to the fourth quarter in each fiscal year at the time of delivery of the annual financial statements under Section 10.3(c), unaudited quarterly descriptive investment information for each Portfolio Company and narrative summary financial information for each Portfolio Company, including revenues, EBITDA and net debt;

(c) within 90 days after the end of each fiscal year beginning with fiscal year 2008, (i) financial statements for such year prepared in accordance with GAAP, applied on a consistent basis (certified by a firm of independent certified public accountants of recognized national standing selected by the General Partner), (ii) valuations of the Partnership's investments as of the end of such year (including a statement of each Partner's closing Capital Account) prepared in accordance with Article IX, and (iii) the certification to Benefit Plan Investors confirming that

the Partnership continues to qualify for an exception from Plan Assets described in the last sentence of Section 5.6(a) and a certification regarding the Partnership's compliance in all material respects with Article III hereof; and

(d) within 90 days after the end of each fiscal year beginning with fiscal year 2008, (subject to reasonable delays in the event of late receipt of any necessary financial statements or other information necessary to prepare tax returns in respect of any Portfolio Investment), the Partnership's tax return and the Limited Partners' respective forms K-l.

Section 10.4 Tax Allocation.

(a) Except as otherwise set forth in this Section 10.4(a), the income, gains, losses, deductions and credits of the Partnership will be allocated, for federal, state and local income tax purposes, among the Partners in accordance with the allocation of such income, gains, losses, deductions and credits among the Partners for computing their Capital Accounts, except that if any such allocation is not permitted by the Code or other applicable law, the Partnership's subsequent income, gains, losses, deductions and credits will be allocated among the Partners so as to reflect as nearly as possible the allocation set forth herein in computing their Capital Accounts. Notwithstanding the preceding sentence, in the event the Basis of any asset of the Partnership differs from its adjusted tax basis for federal income tax purposes, subsequent allocations of income, gain, loss, and deduction with respect to such asset shall take account of any variation between the adjusted basis of such asset for federal income tax purposes and its Basis in the same manner as under Section 704(c) of the Code and the Regulations thereunder.

(b) If any Partner is treated for income tax purposes as realizing ordinary income because of receipt of his, her or its Partnership interest (whether under Section 83 of the Code or any similar provisions of any law, rule or regulation or any other applicable law, rule, regulation or doctrine) and the Partnership is entitled to any offsetting deduction, the Partnership's deduction will be allocated among the Partners in such manner as to, as nearly as possible, offset such ordinary income realized by such Partner. If the Internal Revenue Service successfully asserts an adjustment to the taxable income of a Partner and, as a result of such adjustment, the Partnership is entitled to a deduction for federal income tax purposes in excess of any gain recognized by the Partnership, such excess deduction shall be allocated to such Partner. If the Internal Revenue Service successfully asserts an adjustment to the taxable income of the Partnership and, as a result of such adjustment, any Partner is entitled to a deduction for federal income tax purposes in excess of any gain recognized by such Partner, the additional Partnership taxable income shall be allocated to such Partner. If the Internal Revenue Service successfully asserts an adjustment to the taxable income of the Partnership disallowing deductions for any of the fees paid or payable to the General Partner, then additional Partnership taxable income allocable to the Partners as a result of such disallowance shall be reallocated to the General Partner.

(c) Notwithstanding any other provision of this Agreement, if a Partner unexpectedly receives an adjustment, allocation or distribution described in Treasury Regulation § 1.704-1(b)(2)(ii) (d)(4), (5) or (6) which gives rise to a negative Capital Account (or which would give rise to a negative Capital Account when added to expected adjustments, allocations or distributions of the same type), such Partner will be allocated items of income and gain in an

amount and manner sufficient to eliminate such deficit balance as quickly as possible; provided that the Partnership's subsequent income, gains, losses, deductions and credits will be allocated among the Partners so as to achieve as nearly as possible the results that would have been achieved if this Section 10.4(c) had not been in this Agreement, except that no such allocation shall be made which would violate the provisions or purposes of Treasury Regulation § 1.704-1(b).

Section 10.5 Tax Controversies. The General Partner is hereby designated the "Tax Matters Partner" (as defined in Section 6231 of the Code), and is authorized and required to represent the Partnership (at the Partnership's expense) in connection with all examinations of the Partnership's business and affairs by tax authorities, including resulting administrative and judicial proceedings, and to expend Partnership funds for professional services and costs associated therewith. Each Limited Partner agrees to cooperate with the General Partner and to do or refrain from doing any or all things reasonably requested by the General Partner with respect to the conduct of such proceedings. The General Partner shall provide the Limited Partners with all notices required to be provided to them by law in connection with such proceedings, and shall otherwise keep the Limited Partners reasonably informed of the progress thereof.

Section 10.6 Certain Tax Elections. The Partnership shall not, without the consent of all Partners, file an election (i) pursuant to Section 761 of the Code not to be treated as a partnership, or (ii) pursuant to Treasury Regulation §301.7701-3(c) to be treated as an association taxable as a corporation.

Section 10.7 Code Section 83 Safe Harbor Election.

(a) Notice 2005-43. By executing this Agreement, each Partner authorizes and directs the Partnership to elect to have the "Safe Harbor" described in the proposed Revenue Procedure set forth in Internal Revenue Service Notice 2005-43 (the "Notice") apply to any interest in the Partnership transferred to a service provider by the Partnership on or after the effective date of such Revenue Procedure in connection with services provided to the Partnership. For purposes of making such Safe Harbor election, the General Partner is hereby designated as the "partner who has responsibility for federal income tax reporting" by the Partnership and, accordingly, execution of such Safe Harbor election by the General Partner constitutes execution of a "Safe Harbor Election" in accordance with section 3.03(1) of the Notice. The Partnership and each Partner hereby agrees to comply with all requirements of the Safe Harbor described in the Notice, including, without limitation, the requirement that each Partner shall prepare and file all federal income tax returns reporting the income tax effects of each "Safe Harbor Partnership Interest" (as described in Section 3.02 of the Notice) issued by the Partnership in a manner consistent with the requirements of the Notice.

(b) Amendment. Each Partner authorizes the General Partner to amend Section 10.7(a) to the extent necessary to achieve substantially the same tax treatment with respect to any interest in the Partnership transferred to a service provider by the Partnership in connection with services provided to the Partnership as set forth in section 4 of the Notice (e.g., to reflect changes from the rules set forth in the Notice in subsequent Internal Revenue Service guidance), provided that such amendment is not materially adverse to any Partner (as compared with the after-tax

consequences that would result if the provisions of the Notice applied to all interests in the Partnership transferred to a service provider by the Partnership in connection with services provided to the Partnership).

Section 10.8 Tax Basis Elections. Each Limited Partner hereby agrees and covenants that, with respect to such Partner's interest in the Partnership, it shall not make an election under Section 732(d) of the Code without the prior written consent of the General Partner. Each Limited Partner hereby acknowledges and agrees that the Partnership may, but shall not be obligated to, elect to be treated as an electing investment Partnership under Section 743(e) of the Code in the event the Partnership qualifies to do so. In such event, each transferring Limited Partner hereby agrees to provide the Partnership and its transferee with the timely notice required in IRS Notice 2005-32, or any successor guidance or interpretations(s), including such information as is necessary to enable such transferee to compute the amount of losses disallowed under Section 743(e) of the Code. Alternatively, in the event that the Partnership elects or is required to adjust the basis of the Partnership property under Section 743 of the Code, each Limited Partner hereby agrees to promptly provide the General Partner with any information reasonably requested by the General Partner in connection with such adjustment to the basis of Partnership property. In addition, to the extent that the transfer to a Limited Partner (or the transfer of interests in a Limited Partner) results in the Partnership adjusting the basis of Partnership property, each Limited Partner that received an interest in the Partnership by reason of such transfer (or, in the case of the transfer of interest in a Limited Partner, such Limited Partner) hereby agrees to reimburse the Partnership and/or the General Partner within 10 Business Days for any expenses (including without limitation accounting fees) reasonably incurred by the Partnership and/or the General Partner (and their respective affiliates) in connection with effecting such adjustments to the basis of Partnership property as it relates to such transfer. The General Partner is hereby authorized by each Limited Partner, with respect to any distribution to which such Limited Partner might otherwise be entitled, to defer making such distribution to such Limited Partner, if at the time such distribution would otherwise be effected, such Limited Partner has not satisfied its obligation to make the reimbursements provided for in the preceding sentence within the period specified therein.

Section 10.9 Annual Meeting. The General Partner will hold annual general informational meetings for the Limited Partners until such time, after the termination of the Commitment Period, that substantially all of the Portfolio Investments have been Disposed..

ARTICLE XI

CERTIFICATE OF LIMITED PARTNERSHIP; POWER OF ATTORNEY

Section 11.1 Certificate of Partnership. A certificate of Limited Partnership within the meaning of the Delaware Partnership Act (the "Certificate") will be prepared upon the execution and delivery of this Agreement. The General Partner will cause the Certificate to be filed and recorded in the office of the Secretary of State of the State of Delaware and, to the extent required by local law, in the appropriate place in each state in which the Partnership may

hereafter establish a place of business; provided, however, that the Partnership will not be obligated to provide the Limited Partners with a copy of any amendment to or restatement of the Certificate other than any amendment or restatement required to be filed in connection with an amendment of this Agreement pursuant to Section 12.1. The General Partner will also cause to be filed, recorded and published such statements, notices, certificates or other instruments required by any provision of any applicable law which governs the formation of the Partnership or the conduct of its business from time to time.

Section 11.2 Power of Attorney. Each of the undersigned does hereby constitute and appoint each member of the General Partner and each person who hereafter becomes a member of the General Partner with full power to act without the others, as his, her or its true and lawful representative and attorney-in-fact, in her, his or its name, place and stead, to make, execute, sign, acknowledge and deliver or file (a) the Certificate, (b) any amendment to or cancellation of the Certificate or any amendment to, or waiver of, this Agreement effected in accordance with Section 12.1, (c) all instruments, documents and certificates which may from time to time be required by any law to effectuate, implement and continue the valid and subsisting existence of the Partnership, (d) all instruments, documents and certificates which may be required to effectuate the dissolution and termination of the Partnership, and (e) in the case of a Defaulting Partner any bills of sale or other appropriate transfer documents necessary to effectuate transfers of such Defaulting Partner's interest pursuant to Section 6.11 above. The powers of attorney granted herein will be deemed to be coupled with an interest, will be irrevocable and will survive the death, incompetency, disability or dissolution of a Limited Partner. Without limiting the foregoing, the powers of attorney granted herein will not be deemed to constitute the written consent of any Limited Partner for purposes of Section 12.1. Notwithstanding the foregoing or anything contained in this Agreement to the contrary, the foregoing power of attorney may not be exercised by the General Partner after the occurrence of an event specified in Section 8.2 or the removal of the General Partner pursuant to Section 5.9.

ARTICLE XII

MISCELLANEOUS

Section 12.1 Amendments.

(a) This Agreement may be amended only by the written consent of the General Partner and, except as otherwise provided in this Section 12.1, a Majority in Interest of the Limited Partners.

(b) Notwithstanding anything in this Section 12.1 to the contrary, no amendment will be valid as to any Limited Partner (including a Defaulting Partner) which (i) increases or decreases such Limited Partner's Commitment without the written consent of such Limited Partner or (ii) amends the provisions of this Section 12.1(b).

(c) Notwithstanding anything in this Section 12.1 to the contrary, no amendment will be valid as to any Limited Partner (including a Defaulting Partner) which alters (i) the provisions of Sections 2.3, 3.3, 4.1, 6.1, 8.3(c) or the provisions of this Section 12.1(c), (ii) the provisions of

Section 6.7(c) in a manner that increases a Limited Partner's potential obligations, or (iii) any other provision of this Agreement, in a manner adverse to such Limited Partner, without the written consent of such Limited Partner; provided, however, that with respect to clause (iii), if such Limited Partner is not treated differently in any material respect from any other Limited Partner then such amendment will be valid with only the written consent of the General Partner and the Limited Partners representing at least a Majority in Interest of the Limited Partners.

(d) Notwithstanding anything in this Section 12.1 to the contrary, no amendment will be valid as to any Limited Partner (including a Defaulting Partner), which alters the provisions of Sections 1.3, 5.4, 5.10, 5.11, 12.1 or any provision which requires the consent or vote of at least Two-Thirds in Interest of the Limited Partners without the written consent of the General Partner and at least Two-Thirds in Interest of the Limited Partners.

(e) Notwithstanding anything in this Section 12.1 to the contrary, no amendment which would alter the provisions of Sections 5.5, 6.6 and the provisions of this Section 12.1(e), or, with respect to Benefit Plan Investors, Sections 5.6, 12.1(e), and the provisions in Section 5.15 relating to Benefit Plan Investors or the definitions of Benefit Plan Investor or Redemption Value, will be valid without the written consent of at least a Majority in Interest of the Limited Partners that are materially and adversely affected by such amendment (including Limited Partners whose direct or indirect beneficial owners would be so affected).

(f) Notwithstanding anything in this Section 12.1 to the contrary, no amendment will be valid as to any Limited Partner (including a Defaulting Partner), which alters any provision which requires the consent or vote of at least Seventy-Five Percent in Interest of the Limited Partners or the provisions of this Section 12.1(f) without the written consent of the General Partner and at least Seventy-Five Percent in Interest of the Limited Partners.

(g) Notwithstanding anything in this Section 12.1 to the contrary, no amendment shall be made which would amend the provisions hereof relating to the rights of BHCA Partners without the consent of each BHCA Partner affected thereby.

(h) Notwithstanding anything in this Section 12.1 to the contrary, the General Partner may amend any provisions of this Agreement solely as it relates to a Limited Partner pursuant to one or more side letters with such Limited Partner without the consent of the Limited Partners not party to such side letters.

(i) In addition to any amendments or waivers otherwise authorized hereby, this Agreement may be amended from time to time by the General Partner without the consent of any of the Limited Partners (i) to add to the representations, duties or obligations of the General Partner or surrender any right or power (but not responsibilities) granted to the General Partner herein; (ii) to cure any ambiguity or correct any provisions hereof which may be inconsistent with any other provisions hereof, or correct any printing, stenographic or clerical errors or omissions; (iii) to admit one or more Additional Limited Partners, or withdraw one or more Limited Partners, in accordance with the terms of this Agreement, and (iv) with the consent of the Advisory Committee, to take such actions contemplated in Section 5.6(e) or avoid any material adverse consequences to the Partnership or the General Partner as a result of any change

in law or interpretation of law applicable to a Regulated Investor. The General Partner shall promptly send each Limited Partner a copy of any amendment adopted pursuant to Section 12.1.

Section 12.2 Successors. Except as otherwise provided herein, this Agreement will inure to the benefit of and be binding upon the Partners and their legal representatives, heirs, successors and assigns.

Section 12.3 Governing Law; Severability. This Agreement will be construed in accordance with the laws of the State of Delaware and, to the maximum extent possible, in such manner as to comply with all the terms and conditions of the Delaware Partnership Act. If it is determined by a court of competent jurisdiction that any provision of this Agreement is invalid under applicable law, such provision will be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of this Agreement.

Section 12.4 Notices. All notices, demands and other communications to be given and delivered under or by reason of provisions under this Agreement will be in writing and will be deemed to have been given when personally delivered, sent by telecopy (with hard copy to follow by reputable overnight courier) or sent by reputable overnight courier service (charges prepaid) or mailed by first class mail (with a copy sent by telecopy) to the addresses or telecopy numbers set forth in Schedule 1 hereto or to such other address or telecopy number as has been indicated to all Partners.

Section 12.5 Legal Counsel. Each Partner hereby agrees and acknowledges that:

(a) The law firm retained by the General Partner, the Partnership and any Parallel Vehicle or Separate Investment Entity (the "GP's Counsel") in connection with the formation of the Partnership, the offering of Limited Partner interests and the management and operation of the Partnership does not and will not represent the Limited Partners in connection with any such matter or in connection with any dispute which may arise between the Limited Partners on one hand and the General Partner, the Partnership and any Parallel Vehicle or Separate Investment Entity on the other (the "Partnership Legal Matters").

(b) Each Limited Partner will, if it wishes counsel on a Partnership Legal Matter, retain its own independent counsel with respect to each of the foregoing matters described in Section 12.5(a).

(c) Each Limited Partner hereby agrees that the GP's Counsel may represent (i) the General Partner and the Partnership and any Parallel Vehicle or Separate Investment Entity in connection with any and all Partnership Legal Matters (including any dispute between the General Partner and one or more Limited Partners, but excluding a Limited Partner's derivative action brought against the General Partner).

Section 12.6 Miscellaneous. This document and the schedules, exhibits and side letter agreements between the Partnership and certain of the Limited Partners in connection herewith and the Subscription Agreements contain the entire Agreement among the parties and supersede all prior arrangements or understanding with respect thereto. Descriptive headings are for convenience only and will not control or affect the meaning or construction of any provision of this Agreement. This Agreement may be executed in any number of counterparts, any one of

which need not contain the signatures of more than one party, but all of such counterparts together will constitute one agreement.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed as of the date first above written.

GENERAL PARTNER:

HIGHLAND RESTORATION CAPITAL PARTNERS GP, LLC

By: _____

Name: James Dondero
Title: President

LIMITED PARTNERS

On behalf of each of the parties named above

By: HIGHLAND RESTORATION CAPITAL PARTNERS GP, LLC as Attorney-in-Fact pursuant to Section 14 of each of the Subscription Agreements, dated April 18, 2008, between each of the above named parties and Highland Restoration Capital Partners GP, LLC as General Partner of Highland Restoration Capital Partners, L.P.

By: _____
Name: James Dondero
Title: President

AMENDED AND RESTATED

AGREEMENT OF LIMITED PARTNERSHIP

OF

HIGHLAND RESTORATION CAPITAL PARTNERS MASTER, L.P.

17475136

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Schedule 1 Limited Partners/Partnership Percentage Interest/Notice Information

AMENDED AND RESTATED AGREEMENT OF LIMITED PARTNERSHIP OF HIGHLAND RESTORATION CAPITAL PARTNERS MASTER, L.P.

THIS AMENDED AND RESTATED AGREEMENT OF LIMITED PARTNERSHIP (this "Agreement") is dated effective as of April 18, 2008 between Highland Restoration Capital Partners GP, LLC, a Delaware limited liability company (in its capacity as general partner of the Partnership, the "General Partner"), and the limited partners listed in Schedule 1 attached hereto (in their capacities as limited partners of the Partnership, the "Limited Partners") (the General Partner and the Limited Partners being herein collectively called the "Partners"). Capitalized terms not otherwise defined shall have the meanings ascribed to such terms in Section 2.1(a).

The General Partner and certain of the Limited Partners entered into an Agreement of Limited Partnership, dated as of November 15, 2007 (the "Original Agreement"). The parties hereto wish to amend and restate the Original Agreement in the manner set forth herein.

ARTICLE I

GENERAL PROVISIONS

Section 1.1 Formation. The Partners hereby agree to form a limited partnership (the "Partnership") pursuant to and in accordance with the Delaware Revised Uniform Limited Partnership Act (the "Delaware Partnership Act").

Section 1.2 Name. The name of the Partnership will be "Highland Restoration Capital Partners Master, L.P." or such other name or names as the General Partner may from time to time designate. The General Partner will notify Limited Partners in writing of any change to the name of the Partnership.

Section 1.3 Purpose. Subject to the express limitations set forth herein and in the Offshore Fund Agreement, the Partnership is organized for the object and purpose of (i) investing in senior secured bank loans, debt obligations, trade claims and equity securities of middle market Distressed Companies primarily based in the United States generally consistent with the investment strategy described in the Partnership's Confidential Private Placement Memorandum, including, without limitation, privately placed or publicly traded debt securities and other debt obligations, senior and subordinated debt obligations, secured and unsecured debt obligations, privately placed or publicly traded equity securities including common stock, preferred stock and warrants, (ii) managing and monitoring such investments and (iii) engaging in such activities incidental or ancillary thereto and otherwise permitted by the Delaware Partnership Act as the General Partner deems necessary or advisable.

Section 1.4 Place of Business. The Partnership will maintain offices and places of business at Two Galleria Tower, 13455 Noel Road, Dallas, TX 75240, or at such other place or places in the United States as the General Partner may from time to time designate; provided,

however, that if the General Partner designates different places of business, it shall promptly notify the Limited Partners in writing.

ARTICLE II

DEFINITIONS; DETERMINATIONS; CAPITAL CONTRIBUTIONS; CAPITAL ACCOUNTS

Section 2.1 Definitions; Determinations.

(a) For purposes of this Agreement the following capitalized terms shall have the meanings set forth below:

"Affiliate" has the meaning set forth in the Offshore Fund Agreement.

"Agreement" has the meaning set forth in the introduction.

"Allocated Expenses" has the meaning set forth in the Offshore Fund Agreement.

"Available Profits" means, with respect to a Waived Fee Amount, the cumulative amount of items of Partnership income and gain (such items being "Partnership Profits") realized after the Waived Fee Notice giving rise to such Waived Fee Amount. The amount of Partnership Profits realized after a Waived Fee Notice for the purpose of this Available Profits definition shall equal the amount of Partnership income and gain realized after the Waived Fee Notice for purposes of maintaining Capital Accounts; provided, however, the amount of Partnership gain realized after a Waived Fee Notice that is attributable to any Portfolio Investment held by the Partnership at the time of such Waived Fee Notice that is taken into account in calculating Partnership Profits shall equal the excess, if any, of (1) the amount the Partnership realizes on the sale, transfer, or other disposition of such Portfolio Investment or its assets over (2) the fair market value (as determined by the General Partner) of such Portfolio Investment or its assets, as applicable, on the date of such Waived Fee Notice. Notwithstanding the two preceding sentences, the aggregate amount of all items of Partnership Profits for any taxable year included in Available Profits shall not exceed the total amount of the Partnership's net income and gain for such taxable year as determined for federal income tax purposes, except that gain attributable to a Portfolio Investment shall be determined as described in the proviso to the preceding sentence. Notwithstanding the three preceding sentences, to the extent of the amount by which the Special Profit Interest with respect to a Portfolio Investment exceeds the Deemed Contribution with respect to such Portfolio Investment, Available Profits includes an allocable share of all items of income or gain realized by the Partnership with respect to such Portfolio Investment.

"Basis" of any security means the basis of such security as determined in accordance with the Code less the amount of any write-down pursuant to Section 9.4 of the Offshore Fund Agreement and as further adjusted by the General Partner in its reasonable discretion to reverse the effects of any exchange of securities that would result in an increase in tax basis pursuant to the Code.

"Bridge Financing" has the meaning set forth in the Offshore Fund Agreement.

"Built-In Tax Amount" means, with respect to any distribution of securities in-kind received by the General Partner, an amount equal to the taxes that would be payable by the General Partner (and its direct and indirect members), assuming (i) such securities were sold in a taxable transaction immediately after their receipt by the General Partner for an amount equal to their value and (ii) any gains were taxed at the highest marginal rates applicable to any of the General Partner's members or former members, applying the assumptions set forth in Section 3.3(b) in the same manner as if such securities had been sold by the Partnership immediately before such distribution.

"Business Day" means any day other than (i) Saturday or Sunday or (ii) any other day on which banks located in New York City generally are closed for business.

"Capital Account" has the meaning set forth in Section 2.3.

"Capital Contribution" of any Partner means the amount received by the Partnership from such Partner as an actual contribution.

"Capitalized Partnership Expenses" means Partnership Expenses that are reflected in the Basis of Portfolio Investments.

"Carried Interest" means the General Partner's 20% interest in the Partnership's distributions specified in Section 3.3(a)(ii)(A) and Section 3.3(a)(iii)(B).

"Code" means the U.S. Internal Revenue Code of 1986, as amended.

"Commitment" has the meaning set forth in the Offshore Fund Agreement.

"Commitment Period" has the meaning set forth in the Offshore Fund Agreement.

"Current Cash Income" means all Current Income paid in cash or cash equivalents.

"Current Income" means all interest and dividend income (including from original issue discount, purchases or investments at a market discount, and payment of in-kind income and other non-cash current income) from a Portfolio Company.

"Deemed Contribution" means, as of any date, for any Portfolio Investment or the payment of expenses incurred directly in connection with the making, maintaining or disposing of such Portfolio Investment, the Gross-up Percentage multiplied by the product of (i) the amount by which the Capital Contributions required from the General Partner pursuant to the Offshore Fund Agreement are reduced pursuant to Section 2.2(a)(ii) of the Offshore Fund Agreement with respect to such Portfolio Investment or the payment of related expenses, multiplied by (ii) (1) with respect to the General Partner, the quotient determined by dividing (x) the aggregate Commitments of all Partners in the Offshore Fund (including the General Partner) other than Limited Partners as to whom no Management Fee is payable pursuant to Section 4.1(b) by (y) the aggregate Commitments of all Partners in the Offshore Fund, and (2) with respect to each Limited Partner as to whom no Management Fee is payable pursuant to Section

4.1(b), the quotient determined by dividing (x) the Commitment of such Limited Partner by (y) the aggregate Commitments of all Partners.

"Delaware Partnership Act" has the meaning set forth in Section 1.1.

"Determination Date" has the meaning set forth in Section 8.3(c).

"Disposition" or "Disposed of" means, with respect to all or a portion of a Portfolio Investment, (i) except as provided in the next sentence, the sale, exchange or other disposition by the Partnership of all or a portion of the securities or other interests constituting that Portfolio Investment for cash, securities or other property, (ii) the receipt by the Partnership of a distribution of the proceeds of the sale of all or substantially all of the assets of the Portfolio Company in complete liquidation of the Partnership's entire interest in the Portfolio Investment and (iii) an in-kind distribution of all or part of a Portfolio Investment that has not previously been deemed to have been Disposed of, as of the date of and to the extent of such distribution. A "Disposition" does not include (i) a recapitalization that consists of an exchange of a Portfolio Investment for other securities of or claims against the issuing Portfolio Company, (ii) a business combination that consists of an exchange of substantially all of the Partnership's remaining interest in a Portfolio Investment for securities issued by an acquiring entity, (iii) a business combination that consists of the exchange of all or substantially all of the assets of a Portfolio Company or one or more divisions or operating units of a Portfolio Company for securities issued by an acquiring entity or (iv) a sale, exchange or other disposition that does not constitute a pro rata disposition of a portion of each class of securities or other interests constituting such Portfolio Investment.

"Distressed Companies" shall mean persons that, in the opinion of the General Partner, (a) are or have been in financial or other stress; (b) are restructuring, are considered likely to be restructured, or have been restructured in an out-of-court process or in a proceeding under the Federal bankruptcy laws or state insolvency laws or similar laws in or outside of the United States; (c) are being, are considered likely to be or have been reorganized within or outside of a proceeding under federal bankruptcy laws or state insolvency laws or similar laws in or outside of the United States; or (d) are engaged, are considered likely to engage or have been engaged in other extraordinary transactions, such as debt restructurings, reorganizations and liquidations outside of bankruptcy.

"Excess Partial Realization Proceeds" means, for any Partner and as of any date, the sum of the positive amounts determined with respect to each Portfolio Investment (or portion thereof) that has not been Disposed of as of such date and as to which there have been proceeds from a Partial Realization as of such date, equal to the excess of (a) such Partner's Partner Share of aggregate proceeds that have been distributed as of such date of all Partial Realizations with respect to such Portfolio Investment or portion thereof over (b) the sum of (i) such Partner's Capital Contributions applied to make such Portfolio Investment or portion thereof, including Capitalized Partnership Expenses attributed to such Portfolio Investment or portion thereof and any Allocated Expenses with respect to such Portfolio Investment as of such date, plus (ii) an amount that would be equal to such Partner's Preferred Amount if such Partner's Preference Base were only the amounts described in clause (i).

"Final Closing" has the meaning set forth in the Offshore Fund Agreement.

"First Closing" has the meaning set forth in the Offshore Fund Agreement.

"General Partner" has the meaning set forth in the introduction to this Agreement and includes any successor general partner of the Partnership appointed in accordance with this Agreement.

"Guaranty Agreement" shall mean the Guaranty Agreement, dated as of the date hereof, by and among the Partnership, the General Partner and the guarantors party thereto, substantially in the form of the agreement set forth in Exhibit A to the Offshore Fund Agreement, as amended from time to time in accordance with its terms.

"Initial Limited Partner" has the meaning set forth in the introduction.

"Interest" means a partnership interest in the Partnership.

"Investment Company Act" means the Investment Company Act of 1940, as amended.

"Investment Date" means, with respect to any Portfolio Investment, the date such Portfolio Investment was acquired by the Partnership.

"Investment Income and Gain" means, with respect to a Portfolio Investment, (i) the excess, if any, of the proceeds from the Disposition of such Portfolio Investment or portion thereof or Partial Realization with respect to such Portfolio Investment or portion thereof that does not give rise to Current Income over the Basis of such Portfolio Investment or portion thereof, (ii) to the extent all or any portion of such Portfolio Investment is distributed to the Partners in kind as contemplated by Section 2.3, the excess, if any, of the value (as determined pursuant to Article IX) of the portion of such Portfolio Investment distributed to the Partners over the Basis of such portion of such Portfolio Investment, and (iii) Current Income attributable to such Portfolio Investment.

"Investment Loss" means, with respect to a Portfolio Investment, (i) the deficiency, if any, of the proceeds from the Disposition of such Portfolio Investment or portion thereof or Partial Realization with respect to such Portfolio Investment or portion thereof that does not give rise to Current Income as compared to the Basis of such Portfolio Investment or portion thereof, (ii) to the extent all or any portion of such Portfolio Investment is distributed to the Partners in kind as contemplated by Section 2.4, the deficiency, if any, of the value (as determined pursuant to Article IX) of the portion of such Portfolio Investment distributed to the Partners as compared to the Basis of such portion of such Portfolio Investment, and (iii) the amount, as reasonably determined by the General Partner in accordance with Section 9.4 of the Offshore Fund Agreement, by which such Portfolio Investment has permanently declined in value below the Basis of such Portfolio Investment immediately prior to such determination.

"Limited Partners" means the persons listed in Schedule 1 hereto in their capacity as limited partners of the Partnership and each person who is admitted to the Partnership as a substitute limited partner pursuant to Section 6.2, so long as each such person continues to be a limited partner of the Partnership hereunder.

"Majority in Interest of the Offshore Fund Limited Partners" means limited partners of the Offshore Fund with aggregate percentage interests in the Offshore Fund in excess of 50%.

"Manager" has the meaning set forth in the Offshore Fund Agreement.

"Marketable Securities" has the meaning set forth in the Offshore Fund Agreement.

"Notice" has the meaning set forth in Section 10.6(a).

"Offshore Fund" means Highland Restoration Capital Partners Offshore, L.P., a Cayman exempted limited partnership.

"Offshore Fund Agreement" means Amended and Restated Agreement of Limited Partnership of the Offshore Fund, dated as of November 15, 2007, as amended from time to time in accordance with its terms.

"Parallel Vehicle" has the meaning set forth in the Offshore Fund Agreement.

"Partial Realization" means, with respect to any Portfolio Investment, the realization by the Partnership of Current Income or of proceeds from a recapitalization, extraordinary dividend, sale, redemption or other disposition of less than all of such Portfolio Investment (other than a pro rata disposition of a portion of each class of securities or other interests constituting such Portfolio Investment) or any other similar event that does not constitute a Disposition of such Portfolio Investment.

"Participating Partner" means, with respect to any Portfolio Investment, any Limited Partner who made a Capital Contribution (other than solely a Waiver Contribution) that was applied to such Portfolio Investment.

"Partner Interest" means, for any Partner that is a Participating Partner with respect to any Portfolio Investment (i) for each Partner as to which there is a Deemed Contribution, the proportion that the sum of such Partner's Capital Contributions and allocable share of Deemed Contributions that were applied to such Portfolio Investment bears to the aggregate Capital Contributions and Deemed Contributions of all Partners that were applied to such Portfolio Investment, and (ii) for any Partner other than Partners described in clause(i), the proportion that such Partner's Capital Contributions that were applied to such Portfolio Investment bears to the aggregate Capital Contributions and Deemed Contributions of all Partners that were applied to such Portfolio Investment.

"Partner Share" means, for any Partner, and for any period, the amount of Investment Income and Gain, Investment Loss, Current Cash Income, proceeds from the Disposition of or Partial Realization with respect to such Portfolio Investment for such period or distribution in kind with respect to such Portfolio Investment, as the case may be, or items of Partnership income or expense generated by such Portfolio Investment or allocable to such Portfolio Investment pursuant to Section 3.3(b) of the Offshore Fund Agreement, in each case for such period multiplied by such Partner's Partner Interest in such Portfolio Investment.

"Partners" means the General Partner and the Limited Partners, collectively.

"Partnership" has the meaning set forth in Section 1.1.

"Partnership Expenses" means all reasonable costs and expenses relating to the Partnership's activities, investments and business (to the extent not borne or reimbursed by a Portfolio Company or proposed Portfolio Company), including, but not limited to, (i) all costs and out-of-pocket fees and expenses attributable to acquiring, investing, holding, monitoring and disposing of the Partnership's investments, (ii) all other out-of-pocket costs and out-of-pocket fees and expenses attributable to unconsummated transactions or investment strategies (but excluding marketing strategies) that do not lead to consummated acquisitions, (iii) legal, accounting, auditing, administrative, consulting and other fees and expenses (including, but not limited to, fees of the administrator of the Partnership and insurance and other out-of-pocket expenses associated with negotiating, consummating, monitoring and disposing of the Partnership's investments and the preparation of Partnership financial statements, tax returns and forms K-1), (iv) extraordinary expenses, liabilities, indemnities and other obligations of the Partnership (including, but not limited to, litigation and indemnification costs and expenses, judgments and settlements (including, but not limited to, costs and expenses payable under Section 5.6)), and (v) all debt service obligations, including interest, premium, if any, fees, expenses and other amounts payable in respect of indebtedness of the Partnership.

"Partnership Percentage Interest" shall mean in respect of each Partner, the percentage designated as such Partner's Partnership Percentage Interest in Schedule 1 attached hereto, as the same shall be amended from time to time in order to reflect transfers of Interests. The General Partner's Partnership Percentage Interest shall be the percentage determined by dividing the General Partner's Commitment as of the date of determination by the aggregate Commitments of all partners in the Offshore Fund (including the General Partner) as of such date.

"Person" means an individual, a partnership, a limited liability company, a corporation, an association, a joint stock company, a trust, a joint venture, an unincorporated organization, or a governmental entity (or any department, agency or political subdivision thereof).

"Portfolio Company" means any corporation, partnership, limited liability, company or other entity in which the Partnership has made an investment, other than Short-Term Investments.

"Portfolio Investments" means any investments held by the Partnership, other than Short-Term Investments. If the Partnership holds multiple classes of securities or other interests that were issued by a Portfolio Company in a single closing or series of related closings, all of such securities or interests in the aggregate shall constitute one Portfolio Investment.

"Preference Base" means for any Partner and, as of any date, (a) with respect to any distribution of the proceeds of a Disposition, the sum of (i) the Limited Partners' aggregate Capital Contributions applied to make Portfolio Investments that have been Disposed of on or prior to such date or applied to pay Capitalized Partnership Expenses with respect to such Portfolio Investments, (ii) the Limited Partners' aggregate Partner Share of all writedowns (including write-offs) pursuant to Section 9.4 of the Offshore Fund Agreement in respect of Portfolio Investments that have not been Disposed of by the Partnership on or prior to such date and (iii) the Limited Partners' aggregate Capital Contributions applied to pay Allocated

Expenses with respect to Portfolio Investments that have been Disposed of, written down or written off on or prior to such date, and (b) with respect to any distribution of proceeds of a Partial Realization, the amounts determined pursuant to clause (a), plus the Limited Partners' aggregate Capital Contributions applied to make the Portfolio Investment to which such proceeds are attributable, including Capitalized Partnership Expenses attributable to such Portfolio Investment and Allocated Expenses with respect to such Portfolio Investment as of such date. For purposes of determining a Partner's Preferred Amount, a Partner's Preference Base shall not include any Capital Contributions returned to such Partner pursuant to Section 2.2(c).

"Preferred Amount" means, for any Partner and as of any date, the amount, if any, that would be required to be distributed on such date so that the aggregate distributions pursuant to Section 3.3 (including distributions pursuant to Sections 8.3(b) and (c)), to such Partner in excess of such Partner's Preference Base provide a return of 8% per annum (compounded annually) on such Partner's Preference Base. For purposes of determining a Partner's Preferred Amount with respect to a Disposition of a Portfolio Investment, no proceeds of Partial Realizations with respect to Portfolio Investments or portions thereof that have not been Disposed of as of such date shall be taken into account, other than Excess Partial Realization Proceeds realized as of such date. A Partner's Preferred Amount shall be calculated on the basis of the actual number of days elapsed from and including the date on which each Capital Contribution is invested in a Portfolio Company or contributions are made to the Offshore Fund for the purpose of paying Management Fees, Organizational Expenses and Partnership Expenses (as such terms are defined in the Offshore Fund Agreement), as applicable, to, but not including, the date that distributions constituting a return of such Capital Contributions were made by the Offshore Fund to the Partners thereof pursuant to Section 3.3(a)(i).

"Principals" has the meaning set forth in the Offshore Fund Agreement.

"Short-Term Investment Income" means the income earned on Short-Term Investments including in any event any gains and net of any losses from dispositions of Short-Term Investments and also net of any costs and expenses directly attributable thereto.

"Short-Term Investments" means investments in (a) cash, (b) obligations of, or fully guaranteed as to timely payment of principal and interest by, the United States of America and with a maturity date not in excess of 12 months from the date of purchase by the Partnership, (c) interest-bearing accounts and/or certificates of deposit of any U.S. bank with capital and surplus in excess of $500 million and whose short-term debt securities are rated not lower than P-1 by Moody's Investor Services, Inc. and A-1+ by Standard & Poor's Corporation and whose long term unsecured debt securities, or the long term unsecured debt securities of its affiliated holding company, are rated no lower than A1 by Moody's Investor Services, Inc. and A+ by Standard & Poor's Corporation, (d) reverse repurchase agreements using U.S. Treasury securities and entered into with any U.S. bank with capital and surplus in excess of $500 million and whose short-term debt securities are rated not lower than P-1 by Moody's Investor Services, Inc. and A-1+ by Standard & Poor's Corporation and whose long term unsecured debt securities, or the long term unsecured debt securities of its affiliated holding company, are rated no lower than A1 by Moody's Investor Services, Inc. and A+ by Standard & Poor's Corporation, and (e) money market mutual funds with assets of not less than $500 million, substantially all of

which assets are reasonably believed by the General Partner to consist of items described in one or more of the foregoing clauses (b), (c) and (d).

"Special Profit Interest" means (i) the General Partner's right to receive distributions pursuant to the first two sentences of Section 3.3(a), but only to the extent such distributions exceed the distributions that would have been made to the General Partner pursuant to the first two sentences of Section 3.3(a) if such distributions had been made pro rata according to each Partner's Capital Contributions to the Partnership, and (ii) the General Partner's right to receive distributions pursuant to Section 3.3(e).

"Tax Distributions" means the aggregate amount of distributions that would be made to the General Partner if the General Partner received no distributions other than those required pursuant to Section 3.3(b).

"Unapplied Waived Fee Amounts" means, as of the date of determination, the excess, if any, of (i) the sum of (A) the aggregate Waived Fee Amount for all Management Fee Periods (as defined in the Offshore Fund Agreement), beginning on or before the date of determination (B) the aggregate amount described in clause (i) of the definition of "Deemed Contribution" relating to the aggregate Waiver Contributions previously returned to the limited partners of the Offshore Fund pursuant to Section 2.2(c) of the Offshore Fund Agreement (including, without limitation, in respect of Bridge Financings) and (C) amounts added to the Unapplied Waived Fee Amounts pursuant to Section 6.5(b) of the Offshore Fund Agreement over (ii) the aggregate amount described in clause (i) of the definition of "Deemed Contribution" as of such date.

"Uncapitalized Partnership Expenses" means Partnership Expenses that are not Capitalized Partnership Expenses.

"Unfunded Commitment" has the meaning set forth in the Offshore Fund Agreement.

"Waived Fee Amount" has the meaning set forth in the Offshore Fund Agreement.

"Waived Fee Notice" has the meaning set forth in the Offshore Fund Agreement.

"Waiver Contribution" has the meaning set forth in the Offshore Fund Agreement.

Section 2.2 Capital Contribution Commitment. The General Partner shall make Capital Contributions to the Partnership as provided in Section 2.2(a)(i) of the Offshore Fund Agreement, taking into account any reduction in such Capital Contributions as provided in Section 2.2(a)(ii) of the Offshore Fund Agreement. The remaining capital requirements of the Partnership shall be funded through Capital Contributions by the Limited Partners pro rata in accordance with their respective Partnership Percentage Interests. Each Capital Contribution shall be made by the Partners in cash either by delivery to the Partnership of a certified check or wire transfer of immediately available funds to an account designated by the General Partner.

Section 2.3 Capital Accounts. A capital account ("Capital Account") will be established for each Partner on the books of the Partnership and will be adjusted as follows:

(a) Capital Contributions and Allocations. A Partner's Capital Contribution will be credited to its Capital Account when received by the Partnership.

(b) Short-Term Investment Income. Short-Term Investment Income earned in each quarterly period with respect to Capital Contributions that have not yet been invested in Portfolio Investments or used to pay fees and expenses of the Partnership will be credited to the Capital Accounts of the Partners pro rata according to their respective Partner Capital Contributions to which such Short-Term Investment Income is attributable. Short-Term Investment Income on undistributed proceeds from Portfolio Investments shall be credited to the Capital Accounts of the Partners ratably in proportion to their respective shares of such undistributed amounts.

(c) Investment Income and Gain and Investment Loss. Except as otherwise provided in this Section 2.3(c), Investment Income and Gain or Investment Loss shall be allocated among the Partners for each taxable period in such a manner that, as of the end of such taxable period, and to the extent possible, the Capital Account of each Partner shall be equal to the net amount, positive or negative, which would be distributed to each Partner or for which such Partner would be liable to the Partnership under this Agreement (including Sections 8.3(c) and (e)), determined as if the Partnership were to liquidate the assets of the Partnership for an amount equal to their Basis, reduced, but not below zero, by the amount of nonrecourse debt, if any, to which such Partnership assets are subject, and distribute the proceeds in liquidation after the payment of all liabilities (other than nonrecourse liabilities) in accordance with Sections 3.2 and 3.3. For purposes of the foregoing determination, no amount shall be treated as distributable pursuant to clause (A) of Section 3.3(a)(i) by virtue of clause (a)(iii) of the definition of Preference Base or clause (B) of Section 3.3(a)(i) with respect to any Portfolio Investment or portion thereof solely because of the deemed liquidation of such Portfolio Investment; provided, however, that any increase in the Basis of a Portfolio Investment shall be taken into account for this purpose in the same manner as proceeds of a Partial Realization. Investment Income and Gain or Investment Loss attributable to Portfolio Investments retained by the Partnership pursuant to Section 3.3(e)(ii) shall be allocated 100% to the General Partner.

(d) Distributions. Any amounts distributed to the Partners will be debited against their Capital Accounts.

(e) Partnership Expenses. Uncapitalized Partnership Expenses shall be debited against the Capital Accounts of the Partners in proportion to their respective Commitments.

Section 2.4 Distributions in Kind.

(a) If any securities are to be distributed in kind to the Partners as provided in Article III, such securities will first be written up or down to their value (as determined pursuant to Article IX of the Offshore Fund Agreement as of the date of such distribution), thus creating Investment Income or Gain or Investment Loss, which shall be allocated in accordance with Section 2.3 to the Capital Accounts of the Partners, and upon the distribution of such securities to the Partners, the value of such securities shall be debited, in accordance with Section 2.3(e), against the Capital Accounts of the Partners.

ARTICLE III

DISTRIBUTIONS

Section 3.1 Distribution Policy.

(a) The General Partner may in its sole discretion make distributions of cash, property and securities.

(b) The General Partner will cause the Partnership to distribute (i) Current Cash Income at least semi-annually unless reinvested as described in this Section 3.1(b), (ii) Short-Term Investment Income at least quarterly, and (iii) the net cash proceeds received from Dispositions of or Partial Realizations with respect to Portfolio Investments within 60 days of the receipt thereof unless reinvested as described in this Section 3.1(b), after, in each case, the setting aside by the General Partner, in its discretion, of appropriate reserves for anticipated obligations and commitments of the Partnership as well as any required tax withholdings; provided, however, that if the General Partner determines in good faith that the Partnership will require additional capital within 30 days after the date that an amount that would otherwise be distributed that would be described in clauses (a), (b) and (d) of the definition of "Funded Commitment" in the Offshore Fund Agreement, the General Partner may, in its discretion, retain such amount and reduce the amount required to be contributed by the applicable Partners.

(c) If any Marketable Security is distributed in kind, such Marketable Security shall be valued pursuant to Section 9.1 of the Offshore Fund Agreement as of the date of such distribution and shall be distributed in accordance with Section 3.3.

(d) The General Partner may, immediately prior to the Disposition of any Portfolio Investment, cause such Portfolio Investment to be distributed in accordance with Section 3.3 based on the value of the Portfolio Investment at such time, as determined by the consideration to be received in connection with such Disposition.

Section 3.2 Distribution of Short-Term Investment Income. Short-Term Investment Income will be distributed among the Partners in the same proportions as Short-Term Investment Income was credited to the Partners' Capital Accounts.

Section 3.3 Distributions of Current Cash Income and Proceeds From Dispositions of or Partial Realizations with Respect to Investments and In Kind Distributions.

(a) All distributions of Current Cash Income and all distributions out of net proceeds from Dispositions of or Partial Realizations with respect to Portfolio Investments (in each case, net of Partnership Expenses) and all distributions of Portfolio Investments shall be apportioned in proportion to their respective Partner Interests among the General Partner and the Participating Partners with respect to the Portfolio Investment that gave rise to such Current Cash Income or net proceeds or that is being distributed in kind. The General Partner's Partner Share of such distributions shall be distributed 100% to the General Partner. Each Participating Partner's Partner Share shall be distributed to such Participating Partner and the General Partner as follows:

(i) First, 100% to such Participating Partner until (A) the aggregate amount distributed to such Participating Partner in accordance with this Section 3.3(a) equals such Participating Partner's Preference Base as of the date of such distribution and (B) the aggregate amount distributed to such Participating Partner in accordance with this Section 3.3(a) (other than clause (A) of this paragraph) equals such Participating Partner's Preferred Amount as of such date. Solely for purposes of determining how proceeds of a Disposition of a Portfolio Investment are to be distributed pursuant to this Section 3.3(a) no proceeds of Partial Realizations with respect to Portfolio Investments or portions thereof that have not been Disposed of as of such date shall be taken into account, other than Excess Partial Realization Proceeds realized as of such date.

(ii) Second, (A) 50% to the General Partner and (B) 50% to such Participating Partner until the aggregate distributions to the General Partner with respect to such Participating Partner pursuant to this paragraph (ii) and paragraph (iii), reduced by any amounts contributed to the Partnership by the General Partner with respect to such Participating Partner pursuant to Section 8.3(c), equal 20% of the aggregate distributions of such Participating Partner's Partner Share of such amounts to the General Partner, reduced by any amounts contributed to the Partnership by the General Partner with respect to such Participating Partner pursuant to Section 8.3(c), and to such Participating Partner pursuant to this paragraph (ii) and paragraph (iii), and clause (B) of the immediately preceding paragraph.

(iii) Third, (A) 80% to such Participating Partner and (B) 20% to the General Partner.

For purposes of this Section 3.3(a), amounts distributed to a Participating Partner pursuant to Section 8.3(c) shall be treated as having been distributed pursuant to this Section 3.3(a).

(b) Anything contained herein to the contrary notwithstanding, the General Partner shall be entitled to receive cash distributions from the Partnership (after taking into account any other distributions received by the General Partner in such fiscal year pursuant to Sections 3.3(a)(ii)(A) and 3.3(a)(iii)(B)) in amounts sufficient to enable the General Partner and the individual members of the General Partner to discharge any federal, state and local tax liability (excluding penalties) arising as a result of the allocation of Investment Income and Gain pursuant to Section 2.3(c) attributable to the General Partner's Carried Interest in the Partnership,

determined by assuming the applicability of the highest combined effective marginal federal, state and local income tax rates applicable to an individual resident in New York, New York. The amount of such tax liability shall be calculated taking into account (i) the deductibility (to the extent allowed) of state and local income taxes for United States Federal income tax purposes, (ii) the amount of net cumulative tax loss previously allocated to the General Partner in prior fiscal years with respect to the Carried Interest and not used in prior fiscal years to reduce taxable income for the purpose of making distributions under this subsection (b) and (iii) the character of any income or gain and the income tax rates applicable thereto. The calculation shall be made on the assumption that taxable income or tax loss from the Partnership with respect to the Carried Interest is the General Partner's only taxable income or tax loss. Such distributions shall be debited to the General Partner's Capital Account, as provided in Section 2.3(e). Any amounts distributed pursuant to this subsection (b) shall be considered an advance against the next distribution of Carried Interest distributable to the General Partner, and shall offset such distributions.

(c) In the event of a partial Disposition of a Portfolio Investment, the unreturned Capital Contributions and remaining Preferred Amount with respect to such Portfolio Investment shall be allocated between the Disposed portion and retained portion of such Portfolio Investment, pro rata, based on the relative amounts that are Disposed of and retained, respectively, of that portion of such Portfolio Investment held by the Partnership immediately prior to such Disposition.

(d) (i) Notwithstanding anything in this Agreement to the contrary, the General Partner may at any time elect not to receive all or any portion of any distribution that otherwise would be made to it with respect to its Carried Interest.

(ii) Any amount of cash which is not distributed to the General Partner pursuant to Section 3.3(d)(i) shall, in the General Partner's sole discretion, either be retained by the Partnership or distributed to the Partners (other than to the General Partner) in accordance with Section 3.3(a). Any amount of securities not distributed in-kind to the General Partner pursuant to Section 3.3(d)(i) shall be retained by the Partnership.

(iii) If the General Partner elects to distribute cash to the other Partners pursuant to Section 3.3(d)(ii), 100% of any or all subsequent cash distributions by the Partnership shall be distributed to the General Partner until the General Partner has received the same aggregate amount of cash distributions it would have received had it not waived receipt of certain distributions pursuant to Section 3.3(d)(i) (without regard to the distribution of any Short-Term Investment Income earned on such retained amounts).

(iv) All Current Cash Income attributable to, and distributions out of net proceeds from the Disposition or Partial Realization of, Portfolio Investments retained by the Partnership pursuant to Section 3.3(d)(ii) and all cash retained by the Partnership pursuant to Section 3.3(d)(ii) shall be distributed to the General Partner as of the date determined by the General Partner in its sole discretion. The General Partner shall not be entitled to any additional distributions in respect of such retained amounts, other than Short-Term Investment Income earned on such retained amounts.

(e) Notwithstanding anything to the contrary in this Agreement, if at the expiration of the Commitment Period, there are Unapplied Waived Fee Amounts, the General Partner shall, in its sole discretion, prior to any other distribution pursuant to this Article III, be entitled to a distribution of cash equal to the Unapplied Waived Fee Amount.

Section 3.4 Foreign Taxes. The amount of any foreign taxes paid by the Partnership (or by an entity in which the Partnership holds an interest, either directly or indirectly through one or more such entities, that is treated as a partnership or is disregarded for federal income tax purposes) or withheld from receipts of the Partnership or such entity from a Portfolio Investment shall be allocated among the Partners as reasonably determined by the General Partner and, for purposes of Sections 3.3(a)(i) – (iii), shall be deemed to have been distributed to each Partner as Current Cash Income or proceeds from the Disposition of a Portfolio Investment to the extent that the payment or withholding of such foreign taxes reduced Current Cash Income or the proceeds from the Disposition of a Portfolio Investment, as the case may be, otherwise distributable to such Partner as provided herein (for this purpose taking into account with respect to each Partner any reduction in such foreign taxes that occurs by reason of such Partner's status).

ARTICLE IV

PARTNERSHIP EXPENSES

Section 4.1 Partnership Expenses. The Partnership will pay all Partnership Expenses.

ARTICLE V

GENERAL PARTNER

Section 5.1 Management Authority.

(a) Subject to the retention of the Manager, the General Partner will have full control over the business and affairs of the Partnership consistent with its duties arising under the Delaware Partnership Act. The General Partner will have the power on behalf and in the name of the Partnership to carry out any and all of the objects and purposes of the Partnership and to perform all acts and enter into and perform all contracts and other undertakings which, in its sole discretion, are necessary or advisable or incidental thereto, including the power to acquire or dispose of any security. Notwithstanding the foregoing, the management of the Partnership will vest in the Manager which will provide the Partnership with portfolio management and administrative services, including investigating, analyzing, structuring and negotiating potential investments, monitoring the performance of Portfolio Companies and advising as to disposition opportunities. In no event shall the Manager, which has been engaged by the Partnership, be treated as an agent or partner of the General Partner.

(b) Except to the extent otherwise provided in this Agreement, all matters concerning (i) the allocation of Short-Term Investment Income, Current Income, Investment Income and Gain, Investment Loss, Partnership Expenses, and the distribution of net proceeds and the return of capital among the Partners, including the taxes thereon, (ii) accounting procedures and determinations (including the determination of the Preferred Amount and (iii) other determinations not specifically and expressly provided for by the terms of this Agreement, shall be determined by the General Partner in accordance with its reasonable interpretation of the provisions of this Agreement made in good faith.

(c) The General Partner shall have the authority to admit additional Limited Partners in connection with making a Portfolio Investment.

Section 5.2 Use of Affiliates. The General Partner shall retain the services of the Manager and any officers, directors or Affiliates thereof in connection with the operation of the Partnership, and the compensation of the Manager and such persons shall be as provided in Section 4.1 of the Offshore Fund Agreement.

Section 5.3 Transfer of General Partnership Interest; No Withdrawal or Loans. The General Partner generally may not sell, assign, pledge, mortgage or otherwise dispose of its General Partner interest in the Partnership; provided, however, that the General Partner may transfer its General Partner interest in the Partnership (or consent to the transfer of an interest in the General Partner) in a derivative transaction if the transferor maintains the economic attributes of the interest and voting control of the interest. The General Partner will not borrow or withdraw any amount from the Partnership or voluntarily withdraw from the Partnership.

Section 5.4 Removal of the General Partner. In the event that the General Partner is removed as general partner of the Offshore Fund pursuant to Section 5.9 of the Offshore Fund Agreement, the General Partner shall also be removed as general partner of the Partnership. If the Offshore Fund has appointed another Person to act as general partner of the Offshore Fund and the limited partners of the Offshore Fund have consented to continue the Offshore Fund pursuant to Section 5.9 of the Offshore Fund Agreement, such Person shall also be appointed to act as General Partner of the Partnership and the Partnership shall also be continued. In such an event, the former General Partner shall be entitled to receive distributions equal to any amounts it would have been entitled to had the Partnership been dissolved and wound up in accordance with Sections 8.3(a) and (b) and distributed in kind all Partnership assets as of the date of the election of the Limited Partners to continue the Partnership. The Partnership shall issue an unsecured non-interest bearing promissory note to the former General Partner in the face amount of the liquidating distribution determined in accordance with this Section 5.4, such note to be payable upon the final liquidation of the Partnership. All such distributions shall be subject to the obligations set forth in Section 8.3(c) and (d); provided, however, that the General Partner's obligation, if any, to fund Commitments in respect of its obligations in Section 8.3(c) relating to such liquidating distribution shall be satisfied by a reduction to the principal amount of the unsecured non-interest bearing promissory note described in this Section 5.4 in the amount of such obligation. For purposes of determining allocation and distributions pursuant to the preceding sentence, securities and other property held by the Partnership shall be valued pursuant to the procedures set forth in Article IX.

Section 5.5 No Liability to Limited Partners.

(a) None of the General Partner, the Manager, the Principals or their Affiliates, officers, directors, members, partners, shareholders, employees or agents will be liable to any Limited Partner or to the Partnership for any action taken, or omitted to be taken, as General Partner with respect to the Partnership, or for any action taken, or omitted to be taken, by any member, partner, director, officer, employee or agent of the General Partner or Manager in connection with its activities for or on behalf of the Partnership so long as such person (i) acted in good faith, (ii) acted in a manner reasonably believed to be in the best interests of the Partnership, (iii) was neither grossly negligent nor engaged in willful malfeasance, fraud or reckless disregard of fiduciary duties, (iv) did not materially breach this Agreement, and (v) with respect to any criminal action, such person is not finally determined to be and does not admit to be guilty or enter a plea of nolo contendre (including as part of a settlement) by a court of competent jurisdiction.

(b) If any Limited Partner obtains a final judgment in a court of competent jurisdiction against the General Partner for matters relating to the Partnership, the General Partner shall pursue against its members the remedies (if any) that it has against such member relating to such claim.

Section 5.6 Indemnification. The Partnership will indemnify the Principals, the General Partner, the Manager and each of their respective members, partners, shareholders, directors, officers, employees, agents and Affiliates against any losses, liabilities, damages or expenses (including amounts paid for attorneys' fees, judgments and settlements in connection with any threatened, pending or completed action, suit or proceeding) to which any of such persons may become subject in connection with such person's activities on behalf of the Partnership or in connection with any involvement with a Portfolio Company (including serving as an officer, director, consultant or employee of any Portfolio Company) directly or indirectly on behalf of the Partnership, but only to the extent that such person (i) acted in good faith, (ii) acted in a manner reasonably believed to be in the best interests of the Partnership or the Portfolio Company (as the case may be), (iii) was neither grossly negligent nor engaged in willful malfeasance, fraud or reckless disregard of fiduciary duties, (iv) did not materially breach this Agreement, and (v) with respect to any criminal action, such person is not finally determined to be and does not admit to be guilty or enter a plea of nolo contendre (including as part of a settlement) by a court of competent jurisdiction. Any person described in this Section 5.6 entitled to seek indemnification hereunder shall first use reasonable efforts to seek indemnification from other available sources, if any, prior to obtaining indemnification hereunder; provided that any such person may seek and obtain indemnification hereunder if at any time such person reasonably believes that such person will not receive timely indemnification on terms reasonably acceptable to such person from such other sources; and provided, further, that such person shall continue to use reasonable efforts to seek such indemnification from such other sources and, to the extent any such indemnification is obtained, reimburse the Partnership for any such recovery. The Partnership may, in the sole judgment of the General Partner, pay the expenses of any person indemnifiable under this Section 5.6 in advance of the final disposition of any proceeding, so long as (w) with respect to any derivative action brought by any Limited Partner, the person receiving the advance is not the subject of such derivative action, (x) the proceeding is not instituted by a Majority in Interest of the

Offshore Fund Limited Partners against the General Partner or the Manager, (y) General Partner has a good faith belief such expenses are indemnifiable, and (z) the General Partner receives a written undertaking by such person for the benefit of the Partnership to repay the full amount advanced if (A) there is a final determination that such person did not satisfy the standards set forth in clauses (i) through (v) immediately above, (B) with respect to any criminal action, such person is finally determined to be or admits to being guilty or enters a plea of nolo contendere (including as part of a settlement) by a court of competent jurisdiction, or (C) such person is not otherwise entitled to indemnification as provided herein. Notwithstanding the foregoing, no person will be exculpated or exonerated from liability or indemnified against loss for violations of federal or state securities laws, or for any other intentional or criminal wrongdoing. No person shall be indemnifiable under this Section 5.6 in respect of losses, liabilities, damages or expenses to which any such person may become subject in connection with (x) such person's activities with any Portfolio Company if such losses arise after the Partnership's final disposition of such Portfolio Company or (y) a dispute among the General Partner, the Manager, their respective members and employees, and the Principals.

ARTICLE VI

LIMITED PARTNERS

Section 6.1 Limited Liability. The Limited Partners will not be personally liable for any obligations of the Partnership and will have no obligation (including with respect to a deficit balance in their Capital Account) to make contributions to the Partnership in excess of their respective capital commitments to the Partnership, except to the extent set forth under the Delaware Partnership Act. The Limited Partners will take no part in the control, direction or operation of the affairs of the Partnership and will have no power to bind the Partnership.

Section 6.2 Transfer of Limited Partnership Interests.

(a) A Limited Partner may not sell, assign, transfer, pledge, mortgage or otherwise dispose of all or any of its interest in the Partnership unless the General Partner has consented to such transfer or assignment in writing. Any transfer shall be effected in accordance with the provisions of this Agreement, by execution of an assignment in writing and by entry of the name of the new limited partner in the register of limited partners. A transferee or assignee will not become a substitute Limited Partner without the consent of the General Partner in writing, and without executing a copy of this Agreement or amendment hereto.

(b) Anything in this Agreement to the contrary notwithstanding, no admission (or purported admission) of a Partner, and no transfer (or purported transfer) of all or any part of a Partner's interest in the Partnership (or any economic interest therein) whether to another Partner or to a person who is not a Partner, shall be effective, and any such admission or transfer (or purported admission or transfer) shall be void ab initio, and no person shall otherwise become a Partner if after such admission or transfer (or purported admission or transfer) the Partnership would have more than one hundred (100) Partners, unless the General Partner determines in its sole discretion that the Partnership will meet the requirements set forth in Treasury Regulation

§ 1.7704-1(j)(1) for the taxable year of such transfer and all subsequent taxable years. In determining whether the Partnership will have more than one hundred (100) Partners for purposes of this Section 6.2(b), each person indirectly owning an interest in the Partnership through a partnership (including any entity treated as a partnership for federal income tax purposes), a grantor trust or an S corporation (each such entity a "flow-through entity") shall be treated as a Partner unless the General Partner determines in its sole discretion, after consulting with qualified tax counsel, that less than substantially all of the value of the beneficial owner's interest in the flow-through entity is attributable to the flow-through entity's interest (direct or indirect) in the Partnership.

(c) Anything in this Agreement to the contrary notwithstanding, no admission (or purported admission) of a Partner, and no transfer (or purported transfer) of all or any part of a Partner's interest in the Partnership (or any economic interest therein) whether to another Partner or to a person who is not a Partner, shall be effective, and any such admission or transfer (or purported admission or transfer) shall be void ab initio, and no person shall otherwise become a Partner if after such admission or transfer (or purported admission or transfer) the Partnership would be subject to the registration or reporting requirements of the Investment Company Act.

Section 6.3 No Withdrawal. Subject to the provisions of Section 6.2, no Limited Partner may withdraw as a Partner of the Partnership, nor may a Limited Partner be required to withdraw, nor may a Limited Partner borrow or withdraw any portion of its Capital Account from the Partnership.

Section 6.4 No Termination. The substitution, death, insanity, dissolution (whether voluntary or involuntary) or bankruptcy of a Limited Partner will not affect the existence of the Partnership, and the Partnership will continue for the term of this Agreement until its existence is terminated as provided herein.

Section 6.5 Additional Investors. If the admission of investors in Parallel Vehicles or the purchase by a limited partner in a Parallel Vehicle of a portion of the interest of a Defaulting Partner (as defined in the Offshore Fund Agreement) pursuant to Section 6.11 of the Offshore Fund Agreement would result in the Partnership, the Offshore Fund and the Parallel Vehicles not having reimbursed the General Partner and its Affiliates for Organizational Expenses (as defined in the Offshore Fund Agreement) in the proportions contemplated by Section 4.2 of the Offshore Fund Agreement or would result in the Partnership, the Offshore Fund and the Parallel Vehicles not owning investments in Portfolio Companies in the proportions contemplated by Sections 5.14 or 5.15 of the Offshore Fund Agreement, the General Partner shall have the authority to effect transfers of funds and of Portfolio Investments to Parallel Vehicles and to effect transfers of funds and portfolio investments of Parallel Vehicles to the Partnership for the purpose of reallocating the ownership of investments in Portfolio Companies and the reimbursements of Organizational Expenses (as defined in the Offshore Fund Agreement) by the Partnership, the Offshore Fund and the Parallel Vehicles, to achieve allocations and distributions as close as practicable to those that would have obtained had such investors been admitted to the Partnership, the Offshore Fund or to Parallel Vehicles, respectively, at the First Closing or had such purchased interest of a Defaulting Partner (as defined in the Offshore Fund Agreement) been issued to the purchaser at the First Closing.

Section 6.6 Section 754 Election. Upon the written request of a Majority in Interest of the Limited Partners, that an election provided for in Section 754 of the Code be made, the General Partner shall, if then permitted by applicable law, make such election.

ARTICLE VII

[RESERVED]

ARTICLE VIII

DURATION AND TERMINATION

Section 8.1 Duration. The Partnership will terminate on the tenth anniversary of the Final Closing, except that in the event that the term of the Offshore Fund is extended pursuant to Section 8.1 of the Offshore Fund Agreement, the term of the Partnership shall be extended for the same period.

Section 8.2 Early Termination.

(a) The Partnership shall terminate on:

(i) the bankruptcy of the General Partner or on the happening of any other event that would cause a dissolution of the Partnership under the Delaware Partnership Act (other than removal of the General Partner for Cause pursuant to Section 5.4), unless, within 90 days after notice is given to the Offshore Fund Limited Partners of the occurrence of such event, the Offshore Fund Limited Partners and limited partners of all Parallel Vehicles unanimously select a new general partner and resolve to continue the business of the Partnership;

(ii) the removal of the General Partner pursuant to Section 5.4 unless all of the Limited Partners and all limited partners of Parallel Vehicles select a successor general partner and resolve to continue the business of the Partnership pursuant to Section 5.4; or

(iii) the date that the Offshore Fund is terminated.

(b) As promptly as possible following the election by the Limited Partners of a successor General Partner pursuant to Section 8.2(a)(i), there shall be distributed to the former General Partner, in full payment and satisfaction of its interest in the Partnership, a Limited Partnership Interest in the Partnership. The Limited Partnership Interest of the former General Partner shall entitle the former General Partner to the same distributions and allocations in respect of Portfolio Investments made prior to the termination of the former General Partner it would have received had it remained the General Partner, subject to the obligations set forth in Section 8.3(c), and to the rights of a Limited Partner hereunder with a Commitment equal to the Commitment of the former General Partner, but shall not entitle it to any other rights to participate in the management of the Partnership. After its withdrawal as General Partner, a

former General Partner shall only be liable under this Agreement for actions taken and investments in Portfolio Companies made prior to the date of such withdrawal. If the Limited Partners elect to continue the Partnership's business pursuant to Section 8.2(a)(i), an appropriate amendment to this Agreement and to the Certificate shall be made within 90 days after the event giving rise to such election.

Section 8.3 Termination and Liquidation of Partnership Interests; Annual Determination of General Partner Give Back.

(a) Liquidation. Upon termination, the Partnership will be liquidated in an orderly manner. The General Partner (or, in the absence, bankruptcy or removal under Section 5.4, of the General Partner, the party selected by a Majority in Interest of the Offshore Fund Limited Partners) will be the liquidator to wind up the affairs of the Partnership pursuant to this Agreement.

(b) Final Allocation and Distribution. Upon termination of the Partnership (whether or not an early termination), the General Partner will make a final allocation of all kinds of income, loss and expense in accordance with Article II hereof and the Partnership's liabilities and obligations to its creditors shall be paid or adequately provided for prior to any distributions to the Partners. After payment or provision for payment of all debts of the Partnership, the remaining assets, if any, will be distributed among the Partners as provided in Sections 3.2 and 3.3.

(c) General Partner Give Back. Within 90 days after the termination of the Commitment Period and after the final distribution of the assets of the Partnership among the Partners as provided in Sections 3.2 and 3.3 (each of the termination of the Commitment Period and the final distribution of the assets of the Partnership, a "Determination Date"), the General Partner will make a Capital Contribution to the Partnership (and such amount will be distributed to the Offshore Fund), equal to the greater of:

(i) the amount by which (A) (x) the aggregate distributions to the General Partner pursuant to Sections 3.3(a)(ii) and 3.3(a)(iii) (including amounts initially distributed pursuant to Section 3.3(b)) with respect to such Limited Partner's Partner Share of distributions pursuant to Section 3.3(a) as of the applicable Determination Date less (y) all amounts previously contributed by the General Partner pursuant to this Section 8.3(c) with respect to such Limited Partner, exceed (B) 20% of the excess of (x) such Limited Partner's Partner Share of all distributions pursuant to Section 3.3(a) from the Partnership as of the applicable Determination Date (including amounts distributed to the General Partner pursuant to Sections 3.3(a)(ii) and 3.3(a)(iii), but reduced by any amounts previously contributed by the General Partner pursuant to this Section 8.3(c)) over (y) the aggregate Capital Contributions made by such Limited Partner to the Partnership as of the applicable Determination Date; and

(ii) the amount by which all distributions received by such Limited Partner as of the applicable Determination Date are less than the sum of such Limited Partner's Capital Contributions as of the applicable Determination Date, plus such Limited Partner's aggregate Preferred Amount as of the applicable Determination Date; provided, however, that the aggregate General Partner Capital Contributions pursuant to this Section 8.3(c) will not exceed

the excess, if any, of (x) an amount equal to 100% of the net amount distributed to the General Partner with respect to such Limited Partner over the entire term of the Partnership (other than Tax Distributions) pursuant to Sections 3.3(a)(ii) and 3.3(a)(iii) over (y) the Built-In Tax Amount with respect to any distribution of securities in-kind received by the General Partner with respect to such Limited Partner.

(d) The General Partner hereby covenants and agrees that each of the members of the General Partner entitled to receive Carried Interest distributions from the General Partner has guaranteed and will guaranty severally, but not jointly, the payment of his, her or its pro rata share of the payments required by Section 8.3(c) to the extent and on the terms set forth in the Guaranty Agreement.

(e) Special Profit Interest Give Back. After the final distribution of the assets of the Partnership among the Partners as provided in this Section 8.3 (and Article III hereof), but prior to the application of Section 8.3(c), the General Partner shall be obligated to make aggregate Capital Contributions to the Partnership, within 30 days after the date of such final distribution, in an amount equal to the sum of the excess, if any, of (i) the distributions received by the General Partner on account of the Special Profit Interest attributable to each Waived Fee Amount over (ii) the Available Profits with respect to such Waived Fee Amount. The distributions described in clause (i) of the preceding sentence with respect to a Waived Fee Amount are the Special Profit Interest distributions attributable to the Portfolio Company with respect to which the General Partner applied such Waived Fee Amount pursuant to Section 2.2(a)(ii) of the Offshore Fund Agreement, treating the Waived Fee Amounts as having been applied on a "first-in, first-out" basis. Amounts distributed to the General Partner pursuant to Section 3.3(f) shall be treated for this purpose as proceeds from Portfolio Company made on the date of each Waived Fee Notice giving rise to Waived Fee Amounts that are not applied to Portfolio Company pursuant to Section 2.2(a)(ii) of the Offshore Fund Agreement. For purposes of applying the first sentence of this Section 8.3(e), Partnership Profits shall not be treated as Available Profits with respect to more than one Waived Fee Amount. All such amounts returned to the Partnership shall be distributed to the Partners (other than the General Partner) in accordance with the provisions of Section 3.3. All determinations and calculations pursuant to this Section 8.3(e) shall be made by the General Partner in its sole discretion.

ARTICLE IX

[RESERVED]

ARTICLE X

BOOKS OF ACCOUNTS; MEETINGS

Section 10.1 Books. The Partnership will maintain complete and accurate books of account of the Partnership's affairs at the Partnership's principal office, which books will be

open to inspection by any Partner (or its authorized representative) at any time during ordinary business hours.

Section 10.2 Fiscal Year. The fiscal year of the Partnership will be the calendar year, unless otherwise determined by the General Partner.

Section 10.3 Tax Allocation.

(a) Except as otherwise set forth in this Section 10.3(a), the income, gains, losses, deductions and credits of the Partnership will be allocated, for federal, state and local income tax purposes, among the Partners in accordance with the allocation of such income, gains, losses, deductions and credits among the Partners for computing their Capital Accounts, except that if any such allocation is not permitted by the Code or other applicable law, the Partnership's subsequent income, gains, losses, deductions and credits will be allocated among the Partners so as to reflect as nearly as possible the allocation set forth herein in computing their Capital Accounts. Notwithstanding the preceding sentence, in the event the Basis of any asset of the Partnership differs from its adjusted tax basis for federal income tax purposes, subsequent allocations of income, gain, loss, and deduction with respect to such asset shall take account of any variation between the adjusted basis of such asset for federal income tax purposes and its Basis in the same manner as under Section 704(c) of the Code and the Regulations thereunder.

(b) If any Partner is treated for income tax purposes as realizing ordinary income because of receipt of his, her or its Partnership interest (whether under Section 83 of the Code or any similar provisions of any law, rule or regulation or any other applicable law, rule, regulation or doctrine) and the Partnership is entitled to any offsetting deduction, the Partnership's deduction will be allocated among the Partners in such manner as to, as nearly as possible, offset such ordinary income realized by such Partner. If the Internal Revenue Service successfully asserts an adjustment to the taxable income of a Partner and, as a result of such adjustment, the Partnership is entitled to a deduction for federal income tax purposes in excess of any gain recognized by the Partnership, such excess deduction shall be allocated to such Partner. If the Internal Revenue Service successfully asserts an adjustment to the taxable income of the Partnership and, as a result of such adjustment, any Partner is entitled to a deduction for federal income tax purposes in excess of any gain recognized by such Partner, the additional Partnership taxable income shall be allocated to such Partner. If the Internal Revenue Service successfully asserts an adjustment to the taxable income of the Partnership disallowing deductions for any of the fees paid or payable to the General Partner, then additional Partnership taxable income allocable to the Partners as a result of such disallowance shall be reallocated to the General Partner.

(c) Notwithstanding any other provision of this Agreement, if a Partner unexpectedly receives an adjustment, allocation or distribution described in Treasury Regulation § 1.704-1(b)(2)(ii) (d)(4), (5) or (6) which gives rise to a negative Capital Account (or which would give rise to a negative Capital Account when added to expected adjustments, allocations or distributions of the same type), such Partner will be allocated items of income and gain in an amount and manner sufficient to eliminate such deficit balance as quickly as possible; provided that the Partnership's subsequent income, gains, losses, deductions and credits will be allocated among the Partners so as to achieve as nearly as possible the results that would have been

achieved if this Section 10.3(c) had not been in this Agreement, except that no such allocation shall be made which would violate the provisions or purposes of Treasury Regulation § 1.704-1(b).

Section 10.4 Tax Controversies. The General Partner is hereby designated the "Tax Matters Partner" (as defined in Section 6231 of the Code), and is authorized and required to represent the Partnership (at the Partnership's expense) in connection with all examinations of the Partnership's business and affairs by tax authorities, including resulting administrative and judicial proceedings, and to expend Partnership funds for professional services and costs associated therewith. Each Limited Partner agrees to cooperate with the General Partner and to do or refrain from doing any or all things reasonably requested by the General Partner with respect to the conduct of such proceedings. The General Partner shall provide the Limited Partners with all notices required to be provided to them by law in connection with such proceedings, and shall otherwise keep the Limited Partners reasonably informed of the progress thereof.

Section 10.5 Certain Tax Elections. The Partnership shall not, without the consent of all Partners, file an election (i) pursuant to Section 761 of the Code not to be treated as a partnership, or (ii) pursuant to Treasury Regulation §301.7701-3(c) to be treated as an association taxable as a corporation.

Section 10.6 Code Section 83 Safe Harbor Election.

(a) Notice 2005-43. By executing this Agreement, each Partner authorizes and directs the Partnership to elect to have the "Safe Harbor" described in the proposed Revenue Procedure set forth in Internal Revenue Service Notice 2005-43 (the "Notice") apply to any interest in the Partnership transferred to a service provider by the Partnership on or after the effective date of such Revenue Procedure in connection with services provided to the Partnership. For purposes of making such Safe Harbor election, the General Partner is hereby designated as the "partner who has responsibility for federal income tax reporting" by the Partnership and, accordingly, execution of such Safe Harbor election by the General Partner constitutes execution of a "Safe Harbor Election" in accordance with section 3.03(1) of the Notice. The Partnership and each Partner hereby agrees to comply with all requirements of the Safe Harbor described in the Notice, including, without limitation, the requirement that each Partner shall prepare and file all federal income tax returns reporting the income tax effects of each "Safe Harbor Partnership Interest" (as described in Section 3.02 of the Notice) issued by the Partnership in a manner consistent with the requirements of the Notice.

(b) Amendment. Each Partner authorizes the General Partner to amend Section 10.6(a) to the extent necessary to achieve substantially the same tax treatment with respect to any interest in the Partnership transferred to a service provider by the Partnership in connection with services provided to the Partnership as set forth in section 4 of the Notice (e.g., to reflect changes from the rules set forth in the Notice in subsequent Internal Revenue Service guidance), provided that such amendment is not materially adverse to any Partner (as compared with the after-tax consequences that would result if the provisions of the Notice applied to all interests in the Partnership transferred to a service provider by the Partnership in connection with services provided to the Partnership).

ARTICLE XI

REGISTRATION OF LIMITED PARTNERSHIP

Section 11.1 Registration of Limited Partnership. The General Partner will cause to be filed, recorded and published such statements, notices, certificates or other instruments required by any provision of any applicable law which governs the formation of the Partnership or the conduct of its business from time to time.

ARTICLE XII

MISCELLANEOUS

Section 12.1 Amendments. This Agreement may be amended, and waivers hereunder may be given, only by the written consent of the General Partner and a Majority in Interest of the Offshore Fund Limited Partners, provided, however, that nothwithstanding the foregoing, the provisions of this Agreement may be amended or waived from time to time by the General Partner without the consent of a Majority in Interest of the Offshore Fund Limited Partners (i) to add to the representations, duties or obligations of the General Partner or surrender any right or power (but not responsibilities) granted to the General Partner herein; (ii) to cure any ambiguity or correct any provisions hereof which may be inconsistent with any other provisions hereof, or correct any printing, stenographic or clerical errors or omissions; and (iii) to admit one or more additional Limited Partners, or withdraw one or more Limited Partners, in accordance with the terms of this Agreement.

Section 12.2 Successors. Except as otherwise provided herein, this Agreement will inure to the benefit of and be binding upon the Partners and their legal representatives, heirs, successors and assigns.

Section 12.3 Governing Law; Severability. This Agreement will be construed in accordance with the laws of the State of Delaware and, to the maximum extent possible, in such manner as to comply with all the terms and conditions of the Delaware Partnership Act. If it is determined by a court of competent jurisdiction that any provision of this Agreement is invalid under applicable law, such provision will be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of this Agreement.

Section 12.4 Notices. All notices, demands and other communications to be given and delivered under or by reason of provisions under this Agreement will be in writing and will be deemed to have been given when personally delivered, sent by telecopy (with hard copy to follow by reputable overnight courier) or sent by reputable overnight courier service (charges prepaid) or mailed by first class mail (with a copy sent by telecopy) to the addresses or telecopy numbers set forth in Schedule 1 hereto or to such other address or telecopy number as has been indicated to all Partners.

Section 12.5 Miscellaneous. This document and its schedules and exhibits contain the entire Agreement among the parties and supersede all prior arrangements or understanding with

respect thereto. Descriptive headings are for convenience only and will not control or affect the meaning or construction of any provision of this Agreement. This Agreement may be executed in any number of counterparts, any one of which need not contain the signatures of more than one party, but all of such counterparts together will constitute one agreement.

[*Remainder of page intentionally left blank*]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed as of the date first above written.

GENERAL PARTNER:

HIGHLAND RESTORATION CAPITAL PARTNERS GP, LLC

By: _____
Name: James Dondero
Title: President

LIMITED PARTNER:

HIGHLAND RESTORATION CAPITAL PARTNERS OFFSHORE, L.P.

By: Highland Restoration Capital Partners GP, LLC, its general partner

By: _____
Name: James Dondero
Title: President

SCHEDULE 1

Limited Partners/ Partnership Percentage Interest/Notice Information

Limited Partner	Partnership Percentage Interest	Notice Information

17475136

MANAGEMENT AGREEMENT

This Management Agreement (this "Agreement") is made as of November 15, 2007, between Highland Restoration Capital Partners, L.P., a Delaware limited partnership (the "Partnership"), Highland Restoration Capital Partners Offshore, L.P., a Cayman exempted limited partnerships (the "Offshore Partnership"), Highland Restoration Capital Partners Master, L.P., a Delaware limited partnership (the "Master Partnership"), each Parallel Vehicle that may be formed from time to time (the "Parallel Vehicles", and, together with the Partnership, the Offshore Partnership, and the Master Partnership, the "Highland Partnerships"), Highland Restoration Capital Partners GP, LLC, a Delaware limited liability company, the general partner of each of the Highland Partnerships (the "General Partner"), and Highland Capital Management, L.P., a Delaware limited partnership (the "Manager").

W I T N E S S E T H:

WHEREAS, the General Partner desires to engage the Manager on behalf of each of the Highland Partnerships to advise the General Partner and each of the Highland Partnerships with respect to the Highland Partnerships' investments as hereinafter set forth;

WHEREAS, the Manager is willing to render such advice on the terms and conditions hereinafter set forth; and

WHEREAS, capitalized terms used herein and not defined herein have the meanings set forth in the Agreement of Limited Partnership of each of the Highland Partnerships, as amended from time to time (the "Partnership Agreements").

NOW THEREFORE, in consideration of the premises and the mutual covenants herein contained, the parties hereto hereby agree as follows:

1. Services to be Rendered by the Manager. Each of the Highland Partnerships and the General Partner hereby appoint the Manager, and the Manager hereby accepts such appointment, as the Manager for each of the Highland Partnerships on the terms and conditions set forth herein. To the extent requested and determined by the General Partner to be necessary or appropriate, the Manager shall advise and consult with the General Partner concerning the general and day-to-day operations of the Highland Partnerships and the acquisition and disposal of, and dealings with, investments by or for the account of the Highland Partnerships. The provisions of this Agreement shall not, however, confer any power or authority on the Manager to enter into any transaction on behalf of or in any way bind the Highland Partnerships except as expressly conferred upon the Manager by the General Partner and only in accordance with the terms and provisions of the Partnership Agreements. In performing its duties hereunder, the Manager shall act in accordance with the Partnership Agreements. In no event shall the Manager, which has been engaged on behalf of the Highland Partnerships, be treated as an agent or partner of the General Partner.

2. Manager's Fees. As compensation for services to be rendered hereunder, each of the Highland Partnerships shall pay, or cause to be paid, to the Manager the Management Fee (as

defined in Section 4.1 of the Partnership Agreements) on the terms, and subject to the conditions, set forth in Section 4.1 and the other provisions of the Partnership Agreements.

3. Expenses. The Manager shall pay all expenses that the Manager is required to pay under the Partnership Agreements out of the Management Fee received by the Manager. The Highland Partnerships shall bear and pay Partnership Expenses and Organizational Expenses during the term of this Agreement in accordance with the Partnership Agreements.

4. Use of Affiliates. The parties hereto agree that any member, director, officer, employee or agent of the Manager may be a partner, director, officer, employee or agent of the Highland Partnerships or a member, director, officer, employee or agent of the General Partner.

5. Indemnification and Exculpation.

(a) The Manager and any delegate of the Manager shall not be liable and shall be exculpated and indemnified by the Highland Partnerships for any liabilities incurred by the Manager to the full extent provided in Sections 5.10 and 5.11 of the Partnership Agreements.

(b) The term "liability," as used in this Section 5, shall include any losses, liabilities, claims, damages of any kind or expenses (including amounts paid for attorneys' fees, judgments and settlements in connection with any threatened, pending or completed action, suit or proceeding and other reasonable costs and expenses incurred by the Manager or its delegate(s) in the course of defending itself) or other liabilities arising for any reason under this Agreement.

6. Amendments; Termination. No provision of this Agreement may be amended, altered or modified unless in a writing executed by the parties hereto and a Majority in Interest of the Limited Partners. This Agreement shall become effective with respect to each Highland Partnership commencing as of the date set forth on its respective signature page hereto and shall continue until the earlier of (a) the date that such Highland Partnership is finally terminated and its liquidation completed under the applicable Partnership Agreement, (b) the effective date of the removal of the General Partner under the applicable Partnership Agreement, or (c) the effective date of termination of this Agreement by the General Partner, in its sole discretion; provided, however, that the provisions of Section 5 will survive the termination of this Agreement with respect to any actions taken by the Manager prior to any such date.

7. Notice. Any notice under this Agreement shall be given in writing, addressed and delivered by first class mail, postage paid, and shall be deemed to be effective upon receipt, if to the Highland Partnerships, or the Manager:

(i) if to the General Partner or any of the Highland Partnerships:

Highland Restoration Capital Partners GP, LLC
c/o Highland Capital Management, L.P.
Two Galleria Tower
13455 Noel Road
Dallas, Texas 75240

or to such other address specified for this purpose in the Partnership Agreements;

(ii) if to the Manager:

Highland Capital Management, L.P.
Two Galleria Tower
13455 Noel Road
Dallas, Texas 75240

or at such other address as such party shall have specified in writing to the other parties hereto.

8. Assignment. This Agreement may not be assigned by any of the parties hereto, unless agreed to by all other parties, provided, that the Manager may assign this Agreement to an affiliate of the Manager to the extent permitted by the Partnership Agreements.

9. Governing Law. This Agreement shall be construed and interpreted in accordance with the laws of the State of Delaware, without reference to principles of conflicts of law.

10. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same agreement.

11. Entire Agreement. There are no oral agreements or understandings with respect to or affecting this Agreement, and this Agreement and the Partnership Agreements constitute the entire agreement between the parties hereto with regard to the subject hereof.

12. Partnership Agreements. This Agreement will be subject to the terms and provisions of the Partnership Agreements, and in the event of any conflict between this Agreement and the Partnership Agreements, the Partnership Agreements will supersede and control such conflict.

[*Remainder of page intentionally left blank*]

IN WITNESS WHEREOF, the parties hereto have caused this Management Agreement to be duly executed as of the date first above written.

MANAGER:

HIGHLAND CAPITAL MANAGEMENT, L.P.

By: Strand Advisors, Inc., its general partner

By:_____
Name: James Dondero
Title: President

GENERAL PARTNER:

HIGHLAND RESTORATION CAPITAL PARTNERS GP, LLC

By:_____
Name: James Dondero
Title: President

PARTNERSHIP:

HIGHLAND RESTORATION CAPITAL PARTNERS, L.P.

By: Highland Restoration Capital Partners GP, LLC, its general partner

By:_____
Name: James Dondero
Title: President

OFFSHORE PARTNERSHIP:

HIGHLAND RESTORATION CAPITAL PARTNERS OFFSHORE, L.P.

By: Highland Restoration Capital Partners GP, LLC, its general partner

By:_____
Name: James Dondero
Title: President

MASTER PARTNERSHIP:

HIGHLAND RESTORATION CAPITAL PARTNERS MASTER, L.P.

By: Highland Restoration Capital Partners GP, LLC, its general partner

By:_____
Name: James Dondero
Title: President

EXHIBIT 202

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re: HIGHLAND CAPITAL MANAGEMENT, L.P., [1] Debtor.	Chapter 11 Case No. 19-34054-sgj11 **Docket Ref. No. 474**

OBJECTION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS TO THE MOTION OF THE DEBTOR FOR ENTRY OF AN ORDER AUTHORIZING, BUT NOT DIRECTING, THE DEBTOR TO CAUSE DISTRIBUTIONS TO CERTAIN "RELATED ENTITIES"

The official committee of unsecured creditors (the "Committee") of Highland Capital Management, L.P. (the "Debtor"), hereby submits this objection (this "Objection") to the *Motion of the Debtor for Entry of an Order Authorizing, But Not Directing, the Debtor to Cause Distributions to Certain "Related Entities"* [Docket No.474] (the "Distribution Motion").[2] In support of this Objection, the Committee respectfully states as follows:

PRELIMINARY STATEMENT

1. The Committee's objection focuses on a very limited portion of the transaction currently proposed by the Debtor – namely, proposed distributions of approximately $8.6 million (the "Proposed Insider Distributions") to several insiders who not only owe money to the Debtor but also may be the target of avoidance and other litigation brought by the Committee on behalf

[1] The Debtor's last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

[2] All capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Distribution Motion.

of the Debtor's estate - Mark Okada and two entities owned and/or controlled by James Dondero and/or Mark Okada (such entities, together with Messrs. Dondero and Okada, the "Insider Parties"). As this Court is aware, Messrs. Dondero and Okada owned and controlled the Debtor for most of the past 30 years. During that time, the Debtor repeatedly breached fiduciary duties and contractual obligations, leading to hundreds of millions of dollars in judgments against the Debtor and certain affiliates. The Committee is currently investigating a variety of significant potential estate claims against the Insider Parties. For example, certain of the interests held by the Insider Parties, which form the basis for a portion of the Proposed Insider Distributions, were once owned by the Debtor – the Committee is investigating, among other things, the propriety of the transfers of these interests from the Debtor to the Insider Parties. In addition, Messrs. Dondero and Okada currently owe the Debtor over $10.6 million in demand notes and another Insider Party owes the Debtor nearly $7.5 million in notes receivable, some of which also are demand notes. In light of these and other potential claims, which are only now the subject of review by a party other than the Debtor, the Committee believes the Proposed Insider Distributions to the Insider Parties should be reserved in segregated accounts pending resolution of the issues under investigation by the Committee and repayment of all amounts owed to the Debtor by the Insider Parties.

2. This Court's order granting the relief requested by the Committee would shield the Debtor from any purported legal risks associated with withholding the Proposed Insider Distributions. Similarly, the Debtor and Independent Board would not breach their fiduciary duties by complying with this Court's order to withhold the Proposed Insider Distributions.[3]

[3] Even absent court order, the Committee is highly skeptical of the legal merit of any such legal claims by Messrs. Dondero and Okada and related damages for any alleged breach of contract and/or fiduciary duty by the Debtor.

3. Temporarily withholding and segregating the proposed distributions would greatly facilitate the Debtor's interests while causing little harm to the Insider Parties. It would facilitate repayment of over $18 million in notes payable to the Debtor by the Insider Parties. Moreover, delay in the distribution will allow the Committee an adequate opportunity to investigate potential estate claims against the Insider Parties, including claims arising from the very transactions pursuant to which the Debtor transferred certain of the interests at issue to such parties.

4. While the Debtor and Independent Board have taken the position that they cannot affirmatively seek this relief, clearly both should be supportive of this outcome which preserves claims of the Debtor's estate and a ready source of recovery for the outstanding demand notes. Moreover, the Proposed Insider Distributions will be temporarily placed in segregated, interest bearing accounts, compensating the Insider Parties for any material injury from the mere passage of time. To the extent Messrs. Dondero and Okada believe they would incur additional harm of which the Committee is not aware, they – not the Debtor – should bring those concerns directly to this Court.

OBJECTION

5. Through the Distribution Motion, the Debtor seeks authority to make redemption payments and other distributions to investors in certain funds managed by the Debtor. Specifically, as part of the Debtor's plan to distribute (i) approximately $123.25 million to investors of RCP, (ii) $21.8 million to investors of AROF in connection with the wind up of such fund, and (iii) $34.8 million to investors in Dynamic in connection with the wind up of such fund – the Debtor seeks authority for some of the foregoing distributions to be made to the Insider Parties. Of the almost $180 million in distributions, the Committee only objects to the distribution of a total of $8.6 million to be distributed to three Insider Parties. Specifically, the Committee objects to the request

to make distributions to Mark Okada, Highland Capital Management Services, Inc. ("HCM Services," owned by James Dondero, and Mark Okada), and CLO Holdco Ltd. ("CLOH").[4] To be clear, the Committee does not object to the Debtor's orderly liquidation of Dynamic or AROF, or to the distributions from AROF, Dynamic, and RCP to any third-party, non-affiliated investors. However, in light of the significant amounts of money owed to the Debtor by Mr. Okada, Mr. Dondero and HCM Services, the Committee's ongoing investigation of the Debtor's insiders and related entities (including with respect to the propriety of how the Insider Parties obtained the interests which form the basis of the Proposed Insider Distributions (such interests, the "Insider Interests")), and the well-documented fraudulent and improper activities engaged in by the Debtor's insiders, the Committee requests that the Court order the Debtor to hold the Proposed Insider Distributions in a reserve for a limited period of time.

I. The Proposed Insider Distributions Should Be Reserved Pending the Repayment of Insiders Parties' Obligations Owed to the Debtor and the Committee Investigation

6. Through the Distribution Motion, the Debtor seeks to make the following Proposed Insider Distributions:

Investor	Distribution Amount	Fund
CLO HoldCo, Ltd.	$872,000	AROF
CLO HoldCo, Ltd.	$1,521,000	Dynamic
Mark Okada	$4,185,000	Dynamic
Highland Capital Management Services, Inc.	$2,085,000	RCP
Total	**$8,663,000**	

These Proposed Insider Distributions are a small portion of the $180 million to be distributed from Dynamic, AROF and RCP.

[4] The Distribution Motion also seeks authority to make distributions to Highland Dynamic Income Fund GP, LLC. The Committee does not object to such distribution.

The Insider Parties Owe the Debtor Money

7. It is undisputed that James Dondero, Mark Okada, and HCM Services owe the Debtor significant amounts of money. The Debtor's schedule of assets and liabilities [Docket No. 247] discloses that, as of the Petition Date, the Debtor holds notes receivable from (i) James Dondero, in the principle amount of $9,334,012 (the "Dondero Note")[5]; (ii) HCM Services in the aggregate principle amount of $7,482,480.88 (the "HCM Services Notes"), and (iii) Mark Okada, in the principle amount of $1,336,287.84 (the "Okada Note", and with the Dondero Note and the HCM Services Notes, the "Notes"). The Dondero Note, the Okada Note, and four of the five HCM Services Notes are demand notes, payable upon the request of the Debtor. These Notes should be repaid before the Debtor makes any distributions to these insiders.

The Insider Parties Have Engaged in a Pattern of Fraudulent Activities to the Detriment of Creditors

8. Further, as this Court is well-aware, the Debtor has a documented history of engaging in misconduct, breaches of fiduciary duty and fraudulent transactions in multiple settings, which ultimately led to the commencement of this bankruptcy case. At all relevant times, Mr. Dondero and Mr. Okada, as co-founders and executive officers, managed and controlled the Debtor and were ultimately responsible for the Debtor's pattern of misconduct, breaches of fiduciary duty and fraudulent activities.

9. As examples of the extensive misconduct, in 2014, the Securities and Exchange Commission ("SEC") determined (i) that the Debtor knowingly engaged in multiple transactions with its client advisory accounts without disclosing that the Debtor was acting as principal, or obtaining client consent, before the trades were completed, and (ii) that the debtor failed to

[5] The Dondero Note is in addition to $18.3 million owed to the Debtor under a demand note made by The Dugaboy Investment Trust, of which Mr. Dondero is a beneficiary.

maintain sufficient documentation with respect to certain transactions. *See* SEC Order ¶¶ 6-7, *In the Matter of Highland Capital Mgmt., L.P.*, File No. 3-16169 [Docket No. 130. Ex. A]. As established in the Redeemer Committee litigation, the Debtor, under the control of Mr. Dondero and Mr. Okada, was found to have covertly and improperly taken $32.3 million in cash out of the a fund for which the Debtor acted as investment manager (the "Crusader Fund"), and was found to have made decisions with the "willful intent" to benefit itself and not the parties to whom the Debtor owed fiduciary duties. An arbitration panel unanimously found that the Debtor, Mr. Dondero, and Highland's in-house lawyers violated their fiduciary duties to the Crusader Fund, engaged in willful misconduct, self-dealing, and secrecy, and made multiple misrepresentations to the Crusader Fund's investors as well as the Debtor's auditors.

10. In the Acis Capital Management bankruptcy case, this Court found that there was a "legitimate prospect" that the Debtor "would continue dismantling [Acis], to the detriment of [Acis] creditors." *In re Acis Capital Mgmt., L.P.*, 584 B.R. 115, 147, 149 (Bankr. N.D. Tex. 2018). Following an arbitration award against Acis, Mr. Dondero and other members of the Debtor's management transferred tens of millions of dollars in assets out of Acis into newly-formed Cayman Islands-based Highland affiliates. *Id.* at 127-130. This Court ultimately concluded that the "record contain[ed] substantial evidence of both intentional and constructive fraudulent transfers," and "[t]he numerous prepetition transfers that occurred around the time of and after the Terry Arbitration Award appear[ed] more likely than not to have been made to deprive the Debtor-Acis of value and with the actual intent to hinder, delay, or defraud the Debtors' creditors." *See In re Acis Capital Mgmt., L.P.*, No. 18-30264, 2019 WL 417149, at *11 (Bankr. N.D. Tex. Jan. 31, 2019), *aff'd* 604 B.R. 484 (N.D. Tex. 2019). In both the Acis bankruptcy case and the Crusader Fund arbitration, the Debtor's management were found to have manufactured dishonest and

illegitimate defenses and provided unreliable and incredible testimony regarding the Debtor's actions.

11. Each of the Insider Parties are closely affiliated with Mr. Dondero and/or the fraudulent actions that led the Debtor to bankruptcy:

- *Mark Okada*: Mr. Okada is the co-founder of the Debtor, and was the Chief Investment Officer until shortly before the commencement of this chapter 11 case. As Chief Investment Officer, Mr. Okada was responsible for overseeing the Debtor's investment activities across all investment platforms. Mr. Okada was an executive officer of the Debtor (i) when the Debtor was found by the SEC to have engaged in wrongful transactions without disclosing important information to clients, (ii) when the Debtor stripped Acis of its assets – CLO portfolio management contracts – and transferred to them a newly formed Cayman entity, and (iii) when the Debtor engaged in misconduct and breached fiduciary duties with respect to the Crusader Fund. Mr. Okada was the beneficial owner of 25% of Acis Capital Management, L.P. when Mr. Dondero and the Debtor transferred assets away from Acis, and this Court found that Mr. Dondero and Mr. Okada were the individuals making decisions for Highland CLO Funding Ltd. ("HCLOF Guernsey") in connection with the events leading to the Acis bankruptcy litigation.[6]

- *HCM Services* – As the Debtor disclosed, HCM Services is owned 75% by Mr. Dondero and 25% by Mr. Okada. HCM Services appears to have received its interests in RCP from the Debtor, but the circumstances of such transaction have yet to be fully investigated by the Committee. HCM Services owes the Debtor $7,482,481, of which $900,000 is payable on demand. The Committee understands that Mr. Dondero remains in complete control of HCM Services.

- *CLOH* – CLOH is an entity owned by Charitable DAF Fund, LP (the "DAF"), which was seeded with contributions from the Debtor; the consideration for such contributions has yet to be fully investigated by the Committee. The DAF is managed and advised by the Debtor, and its trustee is a long-time friend of Mr. Dondero.[7] The trustee for the DAF has also served as trustee for The Get Good Trust, The Dugaboy Investment Trust, and the SLHC Trust, of which Mr. Dondero

[6] *In re Acis Capital Management, L.P.*, 2019 WL 417149, at *7, *9 (Bankr. N.D. Tex. January 31, 2019) (observing (i) that Mr. Okada owed 25% of Acis until the day after Mr. Terry obtained his arbitration judgement against Acis, at which point Mr. Okada conveyed his interests in Acis to Neutra, Ltd. for no consideration, and that (ii) Mr. Dondero, Mr. Okada, and another Highland employee made decisions for HCLOF Guernsey regarding the optional redemptions of the Acis CLOs).

[7] *See In re Acis Capital Management, L.P.*, 2019 WL 417149, at *6 (Bankr. N.D. Tex. January 31, 2019) (noting that one of the three equity owners of HCLOF Guernsey was the DAF, which was "seeded with contributions from ***Highland***, is managed/advised by ***Highland***, and whose ***independent trustee is a long-time friend of Highland's chief executive officer, Mr. Dondero***" (emphasis in original)).

is a beneficiary. The Distribution Motion discloses that the interests in Dynamic currently held by CLOH were originally held by the Debtor, and were transferred to The Get Good Nonexempt Trust, in exchange for Get Good's interest in a promissory note made by The Dugaboy Investment Trust, and then from Get Good to Mr. Dondero's Highland Dallas Foundation, Inc. and then to CLOH. The Distribution Motion does not disclose how or when CLOH obtained its interests in AROF. The Committee is investigating CLOH's relationship to and transactions with Mr. Dondero and other entities controlled by or otherwise benefitting Mr. Dondero.

The Committee is Investigating Claims Against the Insider Parties, Including Transfers the Transfers of the Insider Interest

12. Pursuant to the Term Sheet outlining the agreement between the Debtor and the Committee, the Committee has standing to pursue any and all estate claims and causes of action against Mr. Dondero, Mr. Okada, other insiders of the Debtor and the Debtor's related entities (which include the DAF and CLOH), "including any promissory notes held by any of the foregoing." [Docket No. 354] This part of the settlement with the Debtor was a critical component of the Committee's agreement to the governance structure in lieu of seeking appointment of a chapter 11 trustee. The Committee has begun its investigation and served document production requests to the Debtor. Among other claims and causes of action, the Committee is investigating potential preferential transfers, fraudulent transfers, breaches of fiduciary duties, usurpation of corporate opportunities, misappropriation of assets, and abuses of the corporate form. The Committee's investigation includes fully exploring the circumstances and transactions through which HCM Services, CLOH and Mr. Okada obtained the Insider Interests.

13. The Debtor's history of self-dealing and improper or fraudulent activities suggests that the Committee's investigation is likely to uncover similar inappropriate activities with respect to the Debtor's assets, including the Insider Interests. The Debtor's statements of financial affairs [Docket No. 248] disclosed that the Debtor made significant payments to affiliates through purported intercompany funding and affiliate loans in the 90 days prior to the filing date, along

with significant other insider transfers in the one year before the filing date (including very large expense reimbursement payments to Mr. Dondero). The Committee must have the opportunity to fully investigate the insider and affiliate transactions, including those that gave rise to the Insider Interests, that may be the subject of valuable estate causes of action before transactions distributing funds to those same insiders and affiliates can be consummated.

14. This is all the more true because the evidence is that, even during this bankruptcy case, Mr. Dondero continues to engage in secretive and potentially improper transactions. The Distribution Motion fails to highlight that the MGM Sale was negotiated by Mr. Dondero without the knowledge or approval of Debtor's counsel or the Debtor's financial advisors. Specifically, at the very same time that the Debtor's counsel and financial advisors were attempting to persuade the Committee to approve certain transactions with respect to RCP, Mr. Dondero, unbeknownst to any Debtor professional, committed the Debtor to executing the MGM Sale. The Independent Directors, the Debtor's counsel and the Debtor's CRO and financial advisors were not made aware of the MGM Sale until ***two months*** after Mr. Dondero allegedly committed to the transaction on behalf of the Debtor. While the Committee has decided not to object to the MGM Sale itself (based, in significant part, on feedback from the Independent Board regarding its concern about the alleged binding nature of Mr. Dondero's secretive agreement with MGM), the circumstances surrounding Mr. Dondero's negotiation of and entry into the transaction are alarming at best, and the Committee has not waived any rights to fully investigate that transaction and any related potential causes of action against Mr. Dondero or others.

15. In addition to its concern that some or all of the Proposed Insider Distributions may be on account of otherwise avoidable transactions, based upon the Interested Parties' long history of transferring assets and taking other actions to hinder, delay, and defraud creditors, the

Committee is also seriously concerned that the Insider Parties will swiftly place these distributions out of reach of the Debtor's estate while refusing to satisfy their obligations to the Debtor. Such actions would jeopardize the estate's ability to recover amounts owed to it and any future judgments against the Insider Parties, and would waste estate resources by forcing the Debtor to incur additional litigation costs to recover such debts and judgments.

II. The Court Has Authority to Direct the Debtor to Withhold the Proposed Insider Distributions

16. The Court "may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code]." 11 U.S.C. § 105(a). "Courts interpret Section 105 liberally." *King Louie Mining, LLC v. Comu (In re Comu)*, Nos. 09-38820-SGJ-7, 10-03269-SGJ, 2014 Bankr. LEXIS 2969, at *264 (Bankr. N.D. Tex. July 8, 2014) (citing *Momentum Mfg. Corp. v. Employee Creditors Committee (In re Momentum Mfg. Corp.)*, 25 F.3d 1132, 1136 (2d Cir. 1994)). While the Supreme Court has found that section 105(a) does not give the bankruptcy court the ability to take any actions explicitly prohibited by another provision of the Bankruptcy Code, it does grant "extensive equitable powers that bankruptcy courts need in order to be able to perform their statutory duties." *Caesars Entm't Operating Co. v. BOKF, N.A. (In re Caesars Entm't Operating Co.)*, 808 F.3d 1186, 1188 (7th Cir. 2015) (citing *Law v. Siegel*, 571 U.S. 415, 420 (2014). Section 105 has been the source of authority for courts to, among other things, enjoin third parties, substantively consolidate non-debtors, and extend the automatic stay. *See e.g., Celotex Corp. v. Edwards*, 514 U.S. 300, 303 (1995) (holding that an injunction issued under § 105 was an appropriate use of the court's powers); *Alexander v. Compton (In re Bonham)*, 229 F.3d 750, 769 (9th Cir. 2000) (holding that the court's power to substantively consolidate non-debtors was found in § 105); *In re DeLorean Motor Co.*, 755 F.2d 1223, 1230

(6th Cir. 1985) (holding that a preliminary injunction issued to bar distributions from a non-debtor to third parties was an appropriate use of the court's equitable power under § 105).

17. Temporarily withholding the Proposed Insider Distributions and placing the corresponding funds in segregated accounts is well within the authority of this Court under section 105 of the Bankruptcy Code. The Insider Parties are current and former affiliates and/or insiders of the Debtor and creditors of the Debtor. The order requested by the Committee will allow full investigation of the claims and causes of action against the Insider Parties that was integral to the settlement approved by this Court in connection with approval of the Term Sheet. Furthermore, the Committee submits (and the Debtor has not asserted otherwise) that the relief sought by the Committee would not violate any explicit or implicit requirements of the Bankruptcy Code. Therefore, the Court need only consider the equitable nature of the relief that the Committee seeks, and its appropriateness in the context of furthering the goals of this bankruptcy. *See In re Caesars Entm't Operating Co.*, 808 F.3d at 1188.

18. The equitable argument for temporarily withholding the Proposed Insider Distributions and segregating such funds is straightforward. These actions merely maintain the status quo. The Committee is not requesting that the Debtor effectuate a set-off or take possession of the Proposed Insider Distribution. No party has asserted that any economic harm (much less any significant harm) will be done to the Insider Parties by holding the Proposed Insider Distributions in segregated interest bearing accounts pending further order of this Court. On the other hand, the withholding of the Proposed Insider Distributions (and the resulting leverage that creates against the Insider Parties) may be the only chance for the Debtor to receive any value for the amounts it is owed (or potentially owed) by the Insider Parties or obtaining redress for fraudulent or improper transactions involving those parties, including with respect to the Insider

Interest. As set forth above, the Insider Parties and the persons controlling them have repeatedly engaged in schemes and other behavior designed to evade creditors. It should not surprise this Court to learn that, after making demand for payment on the demand note from Mr. Okada as of February 13th at the urging of the Committee, the Debtor still has yet to receive any payment from Mr. Okada. Absent approval of the Committee's request, the Debtor's efforts to collect from the Insider Parties may be extremely cost intensive and time-consuming. It is fair and equitable for this Court to temporarily prevent money from flowing to the Insider Parties in order to facilitate the Debtor's efforts to recover amounts owed to it. Furthermore, the Committee should be given the opportunity to investigate the propriety of the Debtor's transfers of its interests in the underlying funds to the Insider Parties, including the Insider Interests. Maintaining the status quo until the Committee has investigated those transfers is fair and equitable and falls well within this Court's authority under section 105.

19. Moreover, the relief sought by the Committee would further the goals of this bankruptcy case and would allow the Debtor to fulfill its duties to creditors by maximizing the value of the estate. The Debtor contends, and the Committee does not disagree, that the Debtor has certain contractual and fiduciary duties to the investors in the funds that it manages. The Debtor asserts that those duties compelled the Debtor to file the Distribution Motion. *Distribution Motion* ¶ 7. The Debtor also has duties to its creditors, however, and the Committee, for the reasons set forth above, asserts that such duties require the Debtor to avoid making the Proposed Insider Distributions at this time. Filing the Distribution Motion should fulfill any duties the Debtor may have to the Insider Parties in respect of the Proposed Insider Distributions. An order from this Court providing that the Proposed Insider Distributions should be temporarily withheld

and segregated fully addresses any conflict of duties the Debtor otherwise may have, and would allow the Debtor to more effectively carry out its duty to maximize the value of the estate.

20. Accordingly, the Committee believes that the Court should order the Debtor to withhold and segregate the Proposed Insider Distributions until (i) the Insider Parties repay the Notes that are currently due and payable and (ii) the Committee has an opportunity to fully investigate estate causes of action against such Insider Parties. The Committee does not propose that the Debtor effectuate a setoff or take possession of the Proposed Insider Distributions; rather the Committee requests that the Court order the Debtor to segregate and hold the Proposed Insider Distributions in reserve for a limited period of time in order to avoid the significant prejudice to the estate in allowing cash distributions to be paid to Insider Parties and beneficiaries that owe the Debtor money, and then forcing the estate to spend resources recovering assets from these parties.

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WHEREFORE, the Committee respectfully requests that the Court deny the Distribution Motion and direct the Debtor to hold the Proposed Insider Distributions in segregated interest bearing accounts pending further order of the Court.

Dated: March 2, 2020
Dallas, Texas

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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

IN RE:	§	
	§	**CASE NO. 19-34054**
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	
	§	
DEBTOR.	§	**Chapter 11**

JOINDER OF ACIS CAPITAL MANAGEMENT, L.P. AND ACIS CAPITAL MANAGEMENT GP, LLC TO THE COMMITTEE'S OBJECTION TO THE MOTION OF THE DEBTOR FOR ENTRY OF AN ORDER AUTHORIZING, BUT NOT DIRECTING, THE DEBTOR TO CAUSE DISTRIBUTIONS TO CERTAIN "RELATED ENTITIES," AND COMMENT TO THE SAME

Acis Capital Management, L.P. ("Acis LP") and Acis Capital Management GP, LLC ("Acis GP," together with Acis LP, "Acis") file this joinder (this "Joinder") to the Committee's objection (the "Objection") to the *Motion of the Debtor for an Order Authorizing, but not Directing, the Debtor to Cause Distributions to Certain "Related Entities"* [Docket No. 474] (the "Distribution Motion") and comment to the Distribution Motion, and respectfully state as follows:[1]

[1] Any capitalized term not otherwise defined in this Joinder shall have the meaning ascribed to such term in the Objection.

I. INTRODUCTION

1. Acis wants the Court to know the whole story. After the Debtor filed for bankruptcy—and after the Debtor filed its initial motion to approve protocols for certain "ordinary course" transactions—James Dondero purportedly entered into a *rogue oral trade* of $123.25 million in thinly-traded stock of MGM, a private company of which Dondero is on the board of directors, and thus privy to unique information. Upon information and belief, Dondero did so unbeknownst to Debtor's bankruptcy counsel or the newly-installed chief restructuring officer and his staff; however, there is a question whether Debtor's in-house legal team was aware of Dondero's actions. Like so many prior transactions, Dondero was on both sides of the deal. To make things worse, after the purported oral trade, MGM's stock price appreciated significantly in value. Moreover, other Dondero-controlled entities have not sold their pro-rata positions in MGM, calling into question why doing so for this Debtor-controlled fund was in the various stakeholders' best interests, and consequently in the estate's best interests.

2. While the Committee did not ultimately object to the underlying transaction, Acis objected in the strongest terms. This was not an "ordinary course" transaction, and much is to be learned about the circumstances surrounding Dondero's purported $123.25 million oral trade. Even if the trade really happened and was proper, it does not reflect sound business judgment for the Debtor to allow millions of dollars go out the door to insiders when those same insiders will likely owe much, much more to the estate. Rather than authorizing the Debtor to reward Dondero and other insiders for his misfeasance, the Court should sustain the Committee's Objection.

II. RELEVANT FACTS

3. On October 16, 2019, the Debtor filed the above-captioned bankruptcy case (this "Bankruptcy Case").

4. On October 24, 2019, the Debtor filed its *Precautionary Motion of the Debtor for Order Approving Protocols for the Debtor to Implement Certain Transactions in the Ordinary Course of Business* [Docket No. 76] (the "Initial Protocols Motion"), whereby the Debtor requested that the Court approve certain protocols with respect to "ordinary course" services and intercompany transactions.

5. Also on October 24, 2019, the U.S. Trustee appointed the Committee, of which Acis is a member. *See* Docket No. 64.

6. In November 2019, as described in the Distribution Motion, prior to the appointment of the Independent Board, "the Debtor requested the Committee's authorization to proceed first with the larger transactions and then solely the MGM Sale, but the Committee rejected both of these transactions." Distribution Motion ¶ 30.

7. Sometime in late November 2019, *after* the Committee rejected the proposed MGM Sale, and without approval of the Debtor's counsel or financial advisors (or their knowledge), Dondero purportedly orally entered into the clandestine, rogue trade of 1.7 million shares of MGM stock for $123.25 million, or for $72.50 per share. *See id.* ¶ 29. While Dondero was still controlling the Debtor, he was also on the board of directors of MGM. Upon information and belief, Dondero engaged in this purported trade just after MGM reported earnings, and most likely before the market absorbed the reported earnings.[2] These

[2] Also disturbing, just prior to the purported trade, the Debtor's CRO, Bradley Sharp, was deposed and testified that, under his engagement letter, Dondero was required to obtain his approval for such related-party transactions.

circumstances reflect the continuation of Dondero's pattern of flouting his duties in connection with the Debtor or this Bankruptcy Case.

8. As explained by the Committee in its Objection, the Independent Board, Debtor's counsel, and the Debtor's CRO and financial advisors were not made aware of the MGM Sale until over two months after Dondero purportedly committed to the transaction on behalf of the Debtor. Likewise, the MGM Sale was not disclosed to the Committee until February 7, 2020. *Id*.

9. On January 14, 2020, the Debtor filed its *Notice of Final Term Sheet* [Docket No. 354] (the "Term Sheet"), which set out proposed terms of a settlement between the Debtor and the Committee related to the Debtor's corporate governance and operating protocols. The next day, on January 15, 2020, the Debtor withdrew the Initial Protocols Motion. *See* Docket No. 360.

10. On February 21, 2020, the Debtor filed its *Notice of Debtor's Amended Operating Protocols* [Docket No. 466] (the "Protocols"). Under the Protocols (amended slightly from the Term Sheet), the operating requirements for "Ordinary Course Transactions" (which do not require Court approval) differ significantly from "Related Entity Transactions," which likely do require Court approval if the Committee objects. *See* Protocols Ex. A at 2-6. Under the Protocols, MGM Holdings, Inc. is specifically defined as a "Related Entity." *Id*. at 1.

III. JOINDER AND COMMENT

11. Acis expressly joins the Committee's Objection and hereby incorporates the Objection as if set forth in full and for all purposes herein.

A. The Court should not allow Dondero and other Insider Parties to benefit from the rogue MGM Sale by allowing the Debtor to make the Proposed Insider Distributions.

12. The MGM Sale is just a continuation of Dondero's self-dealing—even during this Bankruptcy Case—to enrich himself (or other entities he controls), at the expense of the estate. Now the Debtor seeks "authority" to approve Dondero's misfeasance. At a minimum, it is only proper for this Court to sustain the Committee's Objection and prevent distribution of any of the Proposed Insider Distributions.

13. The MGM Sale continues a familiar pattern. Like many prior transactions, Dondero was on both sides of the MGM Sale. While acting as a director on MGM's board, he was also acting on behalf of the Debtor. Further, even though this transaction required CRO oversight under the proposed protocols (which were contemplated at the time of or soon after the bankruptcy filing), Dondero engaged in the purported rogue MGM Sale without knowledge of the Debtor's counsel or the CRO.

14. Since Dondero entered into this clandestine, rogue trade at $72.50 a share, on information and belief, MGM shares have recently traded in the $90s. Moreover, other Dondero-controlled entities have not sold their pro-rata positions in MGM, which calls into question whether this transaction was in the best interest of the Debtor and the various stakeholders in this Debtor-controlled fund.

15. After the Committee learned of the transaction, Acis strenuously objected to its approval. The Committee nevertheless voted to approve it. Still, by its Objection, the Committee requests that the Court direct the Debtor to withhold any Proposed Insider Distributions until the Insider Parties repay Notes that are currently due and payable to the

Debtor and the Committee can fully investigate causes of action against the Insider Parties. Acis joins in this request.

B. The MGM Sale was not in the ordinary course and distributing its proceeds to the Insider Parties is not in the Debtors' sound business judgment.

16. The Debtor first asserts that the Distributions, including those from the MGM Sale, are in the ordinary course pursuant to section 363(c)(1) of the Bankruptcy Code. The Protocols themselves belie this assertion. The Protocols specifically carve out "Related Entity" Transactions," such as the MGM Sale, from "Ordinary Course Transactions," which do not require Court approval. Now arguing that these Related Entity Transactions should simply be rubber stamped because they are ordinary course under section 363(c) defeats the purpose of Court approval and undermines the Protocols.

17. Alternatively, the Debtor argues that if the Distributions are not ordinary course, they are within the exercise of the Debtor's sound business judgment, and therefore allowed under section 363(b)(1) of the Bankruptcy Code. *See* Distribution Motion ¶ 56-57.

18. When exercising its business judgment pursuant to section 363(b), the trustee or debtor in possession has a duty to maximize value for the estate and its creditors. *See Gluckstadt Holdings, L.L.C. v. VCR I, L.L.C. (In re VCR I, L.L.C.)*, 922 F.3d 323, 326-27 (5th Cir. 2019) (noting that, under section 363(b), a "'trustee as a duty to maximize the value of the estate'") (*quoting Cadle Co. v. Mims (In re Moore)*, 608 F.3d 253, 263 (5th Cir. 2010)); *ASARCO, Inc. v. Elliott Mgmt. (In re ASARCO, L.L.C.)*, 650 F.3d 593, 601 (5th Cir. 2011) (affirming the bankruptcy court's finding that the "proposed reimbursement of expenses was designed to maximize the value of [the] estate, and was fair, reasonable, and appropriate").

19. Accordingly, when the Debtor uses property of the estate, which here are the Debtor's contract rights in connection with making the Distributions, outside of the ordinary

course, the Debtor has a duty maximize value for the estate. As expressed by the Committee in its Objection, it does not reflect sound business judgment for the Debtor to pay millions of dollars in cash distributions to insiders when those same insiders likely owe much more to the estate.

20. As a court of equity, and pursuant to sections 105 and 363 of the Bankruptcy Code, at a minimum this Court should prevent the Debtor from making any Proposed Insider Distributions, as set forth in the Objection, until the Committee has the opportunity to fully investigate estate causes of action against Dondero and other Insider Parties.

IV. PRAYER

Acis respectfully requests that this Court sustain the Committee's Objection and grant Acis such other and further relief to which it may show itself to be justly entitled.

DATED: March 2, 2020.

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Respectfully submitted,

By: */s/ Rakhee V. Patel*

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CERTIFICATE OF SERVICE

I hereby certify that on March 2, 2020, notice of this document will be electronically mailed to the parties that are registered or otherwise entitled to receive electronic notices in this case pursuant to the Electronic Filing Procedures in this District.

/s/ Rakhee V. Patel
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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,[1]	§	Case No. 19-34054-sgj11
Debtor.	§	

DEBTOR'S REPLY IN SUPPORT OF MOTION OF THE DEBTOR FOR ENTRY OF AN ORDER AUTHORIZING, BUT NOT DIRECTING, THE DEBTOR TO CAUSE DISTRIBUTIONS TO CERTAIN "RELATED ENTITIES"

[1] The Debtor's last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

The above-captioned debtor and debtor-in-possession (the "Debtor") files this reply (the "Reply") in support of the *Motion of the Debtor for Entry of an Order Authorizing but Not Directing the Debtor to Cause Distributions to Certain "Related Entities"* [Docket No. 474] (the "Motion").[2]

In further support of the Motion, the Debtor respectfully states as follows:

Preliminary Statement

1. In the Motion, the Debtor disclosed that certain "Related Entities" (the "Related Entity Investors") had invested in three funds – Dynamic, AROF, and RCP (collectively, the "Funds") – and that the Debtor was seeking authority from this Court to distribute funds owned by the Funds – not the Debtor – to the Related Entity Investors that they are contractually entitled to receive under the Funds' governing documents. The Committee objected to the relief sought in the Motion,[3] and Acis Capital Management, L.P., and Acis Capital Management GP, LLC (collectively, "Acis," and together with the Committee, the "Objecting Parties") filed a joinder to the Committee Objection.[4] In their objections, the Objecting Parties – citing only to Section 105(a) of the Bankruptcy Code as authority – requested that this Court order the Debtor to "withhold and segregate" the proceeds due to the Related Entity Investors. (Committee Objection, § 20.) That relief amounts to a request for a preliminary injunction and a prejudgment attachment without filing any underlying action or otherwise complying with the procedural and substantive requirements to obtain a prejudgment attachment under applicable law. As set forth below, the

[2] All capitalized terms used but not defined herein shall have the meanings given to them in the Motion.

[3] *Objection of the Official Committee of Unsecured Creditors to the Motion of the Debtor for Entry of an Order Authorizing, but Not Directing, the Debtor to Cause Distributions to Certain "Related Entities."* [Docket No. 487] (the "Committee Objection").

[4] *Joinder of Acis Capital Management, L.P., and Acis Capital Management GP, LLC to the Committee's Objection to the Motion of the Debtor for Entry of an Order Authorizing, but Not Directing, the Debtor to Cause Distributions to Certain "Related Entities," and Comment to the Same* [Docket No. 489] (the "Joinder").

existence of potential claims against the Related Parties are not, in and of themselves, sufficient to justify such extraordinary relief.

2. As the Debtor disclosed in the Motion it, or in the case of AROF, one of its subsidiaries manage the Funds and that the Debtor's Independent Board (after consultation with outside counsel) believes that, as a registered investment adviser, the Debtor has certain duties to the funds that it manages, including the Funds. Those duties exist regardless of whether the investors in those funds are Related Entities or otherwise and are based on contract and on the laws of the United States, Delaware, and the Cayman Islands. Importantly, applicable law prohibits the Debtor from asserting its own interest ahead of those of investors. In the Motion, the Debtor further disclosed that it did not have the contractual or legal authority to withhold or cause the Funds to withhold distributions from the Related Entity Investors or to treat the Related Entity Investors differently than non-Related Entity Investors.

3. Because of those duties – duties which both the Debtor and the Independent Board take seriously – the Debtor sought the relief requested in the Motion. Although the Committee and Acis objected to that relief, notably, neither the Committee nor Acis have alleged that any of the Debtor, the Funds, or any other entity can without violating their contractual and fiduciary obligations elect *not* to distribute to the Related Entity Investors their allocable portion of the distributions being made to the investors in the Funds. Nor has any party alleged that any of the Funds' assets are property of the Debtor's estate or that any of the Funds have claims against their Related Entity Investors. Instead, the Objecting Parties have asked this Court to use its equitable powers under Section 105(a) of the Bankruptcy Code to cause the Debtor to withhold distributions to the Related Entity Investors because of certain alleged bad acts and potential claims that may exist against those Related Entities.

4. The Independent Board respects the Committee's intention to investigate claims against the Related Entity Investors and insiders as contemplated by the Term Sheet, approved by this Court on January 9, 2020, which led to the installation of the Independent Board. The Independent Board intends to cooperate with the Committee in its efforts. At the same time, the Independent Board was installed to revamp the Debtor's prior culture, including to ensure obligations to the investors in the funds managed by the Debtor are being appropriately honored. The Independent Board believes this is essential to rebuilding the Debtor's reputation in the marketplace and the investor community, and to prospectively protect the Debtor from liability. However, neither Section 105(a) nor any other provision of the Bankruptcy Code allows this Court to grant the relief that the Objecting Parties are actually requesting – an injunction and prejudgment attachment against third parties not currently before the Court.

Reply

5. The Debtor, or with respect to AROF, its subsidiary, is the investment adviser to each of the Funds. As the investment adviser, the Debtor has contractual discretion over the selection and disposition of the Funds' investments, but does not serve in a governance role. Rather, the governing body of each Fund is either a board of directors or a general partner. And the terms of each of the Funds is governed by its applicable governing documents, which each investor was furnished and relied upon when subscribing for an interest in the Fund. The Dynamic Fund Documents govern Dynamic; the AROF Fund Documents govern AROF; and the RCP Fund Documents govern RCP (the Dynamic Fund Documents, the AROF Fund Documents, and the RCP Fund Documents, collectively, the "Fund Documents"). Each of the Fund Documents is in turn governed, as applicable, by U.S. and Delaware or Cayman law.

6. As discussed at length in the Motion, each of the Funds is its own separate legal entity which owns its own assets, and none of the Fund Documents allow the Debtor to treat the Related Entity Investors – regardless of who such investors happen to be or by whom they are owned – differently than non-Related Entity Investors. (Motion, ¶¶ 42-47.) Importantly, neither the Committee nor Acis has stated or alleged that: (a) any of the Funds is a debtor in the Bankruptcy Case or subject to this Court's jurisdiction; (b) the assets held by the Funds are property of the Debtor's estate; (c) the Debtor does *not* have contractual and fiduciary obligations to the Funds; or (d) any provision in any of the Fund Documents allows the Debtor to treat the Related Entity Investors in the Funds differently than the non-Related Entity Investors in the manner being requested.

7. Instead, the Objecting Parties rely on alleged bad acts by the Debtor and certain of the Debtor's employees and principals[5] and the Committee's potential, but inchoate, causes of action against such parties to seek what amounts to an injunction from this Court under Section 105(a) and a prejudgment attachment against the proceeds that the Related Entity Investors in the Funds are contractually entitled to receive – not from the Debtor – but from the Funds. However, those alleged bad acts – regardless of whether they occurred pre- or postpetition – and

[5] The Debtor does not believe that the provenance of the $123.25 million in proceeds from the MGM Sale or Mr. Dondero's role in the MGM Sale is relevant to the Motion. What the Debtor does believe is relevant is that (a) RCP is currently in liquidation and is required to liquidate its assets in an orderly manner and (b) RCP's investors, such as the California Public Employees' Retirement System ("CalPERS"), have requested that the Debtor disburse the proceeds of the MGM Sale as quickly as possible in the manner required by the RCP Fund Documents. *See, e.g., Response by CalPERS to Motion by the Debtor for Entry of an Order Authorizing, but Not Directing, the Debtor to Cause Distributions to Certain "Related Entities"* [Docket No. 486].

Whether or not Mr. Mr. Dondero had the authority to bind RCP to sell the MGM common stock is not relevant to the Motion. When the Independent Board and the Debtor's professionals found out that Mr. Dondero had agreed to the MGM Sale, they reviewed the MGM Sale and independently determined that it was in the best interests of the Debtor's estate to close that sale. The Independent Board disclosed their reasoning to the Committee, and the Committee did not object to the MGM Sale. (Committee Objection, § 14.) Consequently, the MGM Sale closed on February 24, 2020. To the extent the Committee seeks to investigate further the circumstances surrounding the MGM Sale, the Independent Board will ensure that the Debtor cooperates with such investigation. However, that issue is not relevant to the relief the Debtor is seeking here.

potential causes of action are *not* the subject of the Motion. And if either the Committee or Acis believe that such claims exist, the Committee, at least, has been granted standing to pursue those claims (and Acis has shown itself more than capable of standing up for its rights). Further, the Committee's and Acis's request is procedurally and substantively improper. To obtain a pre-judgment writ or attachment, they are required to commence an action and seek such remedy in accordance with due process and to prove the substantive elements that support such relief. The Objecting Parties have done neither.

8. First, assuming, *arguendo*, that Texas state law applies to the Related Entity Investors (although the law of other States and the Cayman Islands may also apply), the burden associated with seeking a prejudgment attachment is a significant one, and it is placed on the moving party – in this case the Objecting Parties. *See S.R.S. World Wheels v. Enlow*, 946 S.W.2d 574, 575 (Tex. Civ. App. - Ft. Worth 1997) ("[a]ttachment is a harsh, oppressive remedy; therefore, attachment is not available unless statutory safeguards are strictly observed."). To get a prejudgment attachment, the Objecting Parties would first be required to commence an action articulating the nature and extent of the claims supporting such attachment. Next, the Committee would be required to file and serve a request for a prejudgment attachment with appropriate notice to the defendant. Finally, to obtain that relief under Texas law, the Committee would have to prove the following elements: (a) defendant is justly indebted to the plaintiff; (b) attachment is not sought for purposes of harassment or injury; (c) plaintiff will probably lose his debt if there is no attachment; and (d) specific grounds for the attachment exist.[6] Tex. Civ. Prac. & Rem. Code.

[6] Specific grounds for attachment under Texas law exist if: (a) the defendant is not a resident of this state or is a foreign corporation or is acting as such; (b) the defendant is about to move from this state permanently and has refused to pay or secure the debt due the plaintiff; (c) the defendant is in hiding so that ordinary process of law cannot be served on him; (d) the defendant has hidden or is about to hide his property for the purpose of defrauding his creditors; (e) the defendant is about to remove his property from this state without leaving an amount sufficient to pay his debts; (f) the defendant is about to remove all or part of his property from the county in which the suit is brought with the intent to defraud his creditors; (g) the defendant has disposed of or is about to dispose of all or part of his property

§ 61.001. Neither Objecting Party has pled any of the foregoing statutory elements let alone carried its burden.

9. Second, Section 105(a) of the Bankruptcy Code – which is the only provision cited by the Objecting Parties to justify their position – does not allow this Court to grant the Objecting Parties' request. As a general matter, Section 105(a) does not create a "roving commission" for a court "to do equity." *See, e.g., United States v. Sutton,* 786 F.2d 1305, 1308 (5th Cir. 1986); *see also New England Dairies, Inc. v. Dairy Mart Convenience Stores, Inc. (In re Dairy Mart Convenience Stores, Inc.)*, 351 F.3d 86, 92 (2nd Cir. 2003). Rather, relief under Section 105(a) must be tethered to some provision of the Bankruptcy Code. *See, e.g., Law v. Siegel*, 571 U.S. 415, 421 (2014) ("We have long held that 'whatever equitable powers remain in the bankruptcy courts must and can only be exercised within the confines of' the Bankruptcy Code.") (citing cases); *New England Dairies*, 351 F.3d at 91-92 ("[S]ection 105(a) [confers] the power to exercise equity in carrying out the *provisions* of the Bankruptcy Code. . . This language 'suggests that an exercise of section 105 power be tied to another Bankruptcy Code section and not merely to a general bankruptcy concept or objective.'") (citations omitted) (emphasis in original). Here, the Committee has not cited to any provision under the Bankruptcy Code justifying its request besides the general powers available under Section 105(a).

10. Instead, the Committee has requested that this Court cause the "[temporary] withholding" of distributions to Related Entity Investors in Dynamic, AROF, and RCP. (Committee Objection, ¶¶ 16-20.) As such, the Committee and Acis, through the Joinder, are asking this Court for an injunction only under Section 105(a) ordering "the Debtor to withhold and

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with the intent to defraud his creditors; (h) the defendant is about to convert all or part of his property into money for the purpose of placing it beyond the reach of his creditors; or (i) the defendant owes the plaintiff for property obtained by the defendant under false pretenses. *See* Tex. Civ. Prac. & Rem. Code. § 61.002. There is no factual record before the Court to support any of these required findings.

segregate the Proposed Insider Distributions." (*Id.*, ¶ 20.) However, because the Related Entity Investors in the Funds have a contractual right to their distributions from the Funds – not from the Debtor – any order from this Court enjoining the "Proposed Insider Distributions" would also, by necessity, be an order from this Court enjoining such Related Entity Investors from asserting their contractual rights against the Funds and enjoining the Funds from making distributions to the Related Entity Investors.[7] Such injunction would therefore be an order enjoining third party action and require the Committee to satisfy the standards for a preliminary injunction. *Feld v. Zale Corp. (in Re Zale Corp.)*, 62 F.3d 746, 765 (5th Cir. 1995) (citing *In re Eagle-Picher Industries, Inc.*, 963 F.2d 855, 858 (6th Cir. 1992) ("When issuing a preliminary injunction pursuant to its powers set forth in section 105(a), a bankruptcy court must consider the traditional factors governing preliminary injunctions issued pursuant to Federal Rule of Civil Procedure 65.").

11. Here, however, the Objecting Parties have not followed the procedural or substantive requirements to obtain a pre-judgment remedy: a proper complaint providing the Related Parties with the opportunity to respond as well as a separate application for prejudgment attachment is required. Only then would the Court be in a position to evaluate whether the Committee can establish: (a) substantial likelihood of success on the merits; (b) substantial threat of irreparable injury; (c) the threatened injury outweighs the harm of the injunction; and (d) the injunction will not disserve the public interest. *Id.* The Committee has not carried its burden. Section 105(a) does not allow the Objecting Parties to bootstrap their objections into a prejudgment

[7] CLOH is invested in the AROF Cayman feeder fund. The AROF Cayman feeder fund is managed by an independent board of Cayman-based directors. The Debtor, as a matter of Cayman law, has no ability to compel those independent directors to "withhold and segregate the Proposed Insider Distributions," and while the Cayman directors may have some ability to treat certain investors differently than others, the Debtor has no right to direct the Cayman directors. Consequently, any order from this Court seeking to require the Debtor to withhold distributions made to CLOH by the AROF Cayman feeder fund will be an order with which the Debtor simply cannot comply. As such, any order enjoining payments on account of CLOH's interest in the AROF Cayman feeder fund will need to be an order compelling the Cayman directors to take or not to take action; however, for such an order to be binding in the Cayman Islands, it must first be recognized by a Cayman court of competent jurisdiction.

attachment against assets that are not property of the Debtor's estate and that contractually are owed to parties not currently before this Court, i.e., Mr. Okada, CLOH, and HCM Services. If the Objecting Parties desire such relief, they should bring a procedurally appropriate motion instead of seeking an ex parte injunction and prejudgment attachment.[8]

12. In sum, it is uncontroverted that (a) the Funds are not debtors in this Bankruptcy Case; (b) the Funds' assets are not property of the Debtor; (c) the Fund Documents do not allow the Debtor to cause the Funds to *not* make certain distributions that they would otherwise be required to make to their Related Entity Investors; and (d) there are no provisions in the Fund Documents – or applicable law – that would allow the Debtor to do what the Objecting Parties are demanding. It is also uncontroverted that the Independent Board determined that (i), after seeking advice from U.S. and Cayman-based fund and regulatory counsel, as the parties in control of a registered investment advisor, they have obligations to the Debtor's managed funds and, by extension, the investors in such funds and (ii) those obligations required the Independent Board to file and prosecute the Motion.

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[8] The Committee cannot argue it was unaware of the procedural deficiencies in the Committee Objection as one of the cases cited by the Committee – *In re DeLorean Motors Co.* – lays out the appropriate way to use Section 105(a). 755 F.2.d 1223 (6th Cir. 1985). In *DeLorean*, the unsecured creditors committee (and later the trustee) believed certain assets were property of the debtor's estate. To secure those assets, the committee filed an adversary proceeding seeking a declaration that the assets were estate property and could not be removed from the estate. In reviewing the case, the Sixth Circuit first noted that committee was not seeking an attachment. "The preliminary injunction in the present case is similarly not for the purpose of securing satisfaction of the judgment ultimately to be entered in the action. The trustee does not seek to attach. . . assets in order to satisfy a possible damage award. The relief sought is merely a declaration that the assets are a part of the bankruptcy estate."). *DeLorean*, 755 F.3d at 1227. Because the moving party was not seeking attachment, but rather a preliminary injunction, the Sixth Circuit found that Rule 64 of the Federal Rules of Civil Procedure did not apply but that to get an injunction that the moving party had to satisfy Rule 65 and its traditional four part test. *Id.*

Consequently, *DeLorean* highlights the appropriate way to use Section 105(a). Section 105(a) is to be paired with another section of the Bankruptcy Code (in *DeLorean*, Section 541), and if an injunction and attachment is sought, (a) an adversary proceeding should be filed, (b) the appropriate parties noticed, and (c) the requirements of Rules 64 and 65 of the Federal Rules of Civil Procedure satisfied. The Committee, however, has failed to abide by any of the procedural or statutory requirements laid out in *DeLorean*.

WHEREFORE, for the reasons set forth above and in the Motion, the Committee Objection and the Acis Objection should be overruled in all respects and the relief requested in the Motion should be granted.

Dated: March 4, 2020

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EXHIBIT 205

AMENDED AND RESTATED SHARED SERVICES AGREEMENT

This Amended and Restated Shared Services Agreement (as amended, modified, waived, supplemented or restated from time to time in accordance with the terms hereof, this "Agreement"), dated effective as of January 1, 2018, is entered into by and between NexPoint Advisors, L.P., a Delaware limited partnership, as the management company hereunder (in such capacity, the "Management Company"), and Highland Capital Management, L.P., a Delaware limited partnership ("Highland"), as the staff and services provider hereunder (in such capacity, the "Staff and Services Provider" and together with the Management Company, the "Parties").

RECITALS

WHEREAS, the Staff and Services Provider is a registered investment adviser under the Investment Advisers Act of 1940, as amended (the "Advisers Act");

WHEREAS, the Staff and Services Provider and the Management Company are engaged in the business of providing investment management services;

WHEREAS, the Parties entered into that certain Shared Services Agreement, dated effective as of January 1, 2013 (the "Original Agreement");

WHEREAS, the Parties desire to amend and restated the Original Agreement and the Staff and Services Provider is hereby being retained to provide certain back- and middle-office services and administrative, infrastructure and other services to assist the Management Company in conducting its business, and the Staff and Services Provider is willing to make such services available to the Management Company, in each case, on the terms and conditions hereof;

WHEREAS, the Management Company may employ certain individuals to perform portfolio selection and asset management functions for the Management Company, and certain of these individuals may also be employed simultaneously by the Staff and Services Provider during their employment with the Management Company; and

WHEREAS, each Person employed by both the Management Company and the Staff and Services Provider as described above (each, a "Shared Employee"), if any, is and shall be identified on the books and records of each of the Management Company and the Staff and Services Provider (as amended, modified, supplemented or restated from time to time).

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree, and the Original Agreement is hereby amended, restated and replaced in its entirety as follows.

ARTICLE I

DEFINITIONS

Section 1.01 Certain Defined Terms. As used in this Agreement, the following terms shall have the following meanings:

Exhibit A

"Affiliate" shall mean with respect to a Person, any other Person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with the first Person. The term "control" means (i) the legal or beneficial ownership of securities representing a majority of the voting power of any person or (ii) the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person, whether by contract or otherwise.

"Applicable Asset Criteria and Concentrations" means any applicable eligibility criteria, portfolio concentration limits and other similar criteria or limits which the Management Company instructs in writing to the Staff and Services Provider in respect of the Portfolio or one or more Accounts, as such criteria or limits may be modified, amended or supplemented from time to time in writing by the Management Company;

"Applicable Law" shall mean, with respect to any Person or property of such Person, any action, code, consent decree, constitution, decree, directive, enactment, finding, guideline, law, injunction, interpretation, judgment, order, ordinance, policy statement, proclamation, formal guidance, promulgation, regulation, requirement, rule, rule of law, rule of public policy, settlement agreement, statute, writ, or any particular section, part or provision thereof of any Governmental Authority to which the Person in question is subject or by which it or any of its property is bound.

"Client or Account" shall mean any fund, client or account advised by the Management Company, as applicable.

"Covered Person" shall mean the Staff and Services Provider, any of its Affiliates, and any of their respective managers, members, principals, partners, directors, officers, shareholders, employees and agents (but shall not include the Management Company, its subsidiaries or member(s) and any managers, members, principals, partners, directors, officers, shareholders, employees and agents of the Management Company or its subsidiaries or member(s) (in their capacity as such)).

"Governmental Authority" shall mean (i) any government or quasi-governmental authority or political subdivision thereof, whether national, state, county, municipal or regional, whether U.S. or non-U.S.; (ii) any agency, regulator, arbitrator, board, body, branch, bureau, commission, corporation, department, master, mediator, panel, referee, system or instrumentality of any such government, political subdivision or other government or quasi-government entity, whether non-U.S. or U.S.; and (iii) any court, whether U.S. or non-U.S.

"Indebtedness" shall mean: (a) all indebtedness for borrowed money and all other obligations, contingent or otherwise, with respect to surety bonds, guarantees of borrowed money, letters of credit and bankers' acceptances whether or not matured, and hedges and other derivative contracts and financial instruments; (b) all obligations evidenced by notes, bonds, debentures, or similar instruments, or incurred under bank guaranty or letter of credit facilities or credit agreements; (c) all indebtedness created or arising under any conditional sale or other title retention agreement with respect to any property of the Management Company or any subsidiary; (d) all capital lease obligations; (e) all indebtedness guaranteed by such Person or any of its subsidiaries; and (f) all indebtedness guaranteed by such Person or any of its subsidiaries.

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"Operating Guidelines" means any operating guidelines attached to any portfolio management agreement, investment management agreement or similar agreement entered into between the Management Company and a Client or Account.

"Portfolio" means the portfolio of securities and other assets, including without limitation, financial instruments, equity investments, collateral loan obligations, debt securities, preferred return notes and other similar obligations held directly or indirectly by, or on behalf of, Clients and Accounts from time to time;

"Securities Act" shall mean the Securities Act of 1933, as amended.

Section 1.02 Interpretation. The following rules apply to the use of defined terms and the interpretation of this Agreement: (i) the singular includes the plural and the plural includes the singular; (ii) "or" is not exclusive (unless preceded by "either") and "include" and "including" are not limiting; (iii) unless the context otherwise requires, references to agreements shall be deemed to mean and include such agreements as the same may be amended, supplemented, waived and otherwise modified from time to time; (iv) a reference to a law includes any amendment or modification to such law and any rules or regulations issued thereunder or any law enacted in substitution or replacement therefor; (v) a reference to a Person includes its successors and assigns; (vi) a reference to a Section without further reference is to the relevant Section of this Agreement; (vii) the headings of the Sections and subsections are for convenience and shall not affect the meaning of this Agreement; (viii) "writing", "written" and comparable terms refer to printing, typing, lithography and other shall mean of reproducing words in a visible form (including telefacsimile and electronic mail); (ix) "hereof", "herein", "hereunder" and comparable terms refer to the entire instrument in which such terms are used and not to any particular article, section or other subdivision thereof or attachment thereto; and (x) references to any gender include any other gender, masculine, feminine or neuter, as the context requires.

ARTICLE II

SERVICES

Section 2.01 General Authority. Highland is hereby appointed as Staff and Services Provider for the purpose of providing such services and assistance as the Management Company may request from time to time to, and if applicable, to make available the Shared Employees to, the Management Company in accordance with and subject to the provisions of this Agreement and the Staff and Services Provider hereby accepts such appointment. The Staff and Services Provider hereby agrees to such engagement during the term hereof and to render the services described herein for the compensation provided herein, subject to the limitations contained herein.

Section 2.02 Provision of Services. Without limiting the generality of Section 2.01 and subject to Section 2.04 (Applicable Asset Criteria and Concentrations) below, the Staff and Services Provider hereby agrees, from the date hereof, to provide the following back- and middle-office services and administrative, infrastructure and other services to the Management Company.

(a) *Back- and Middle-Office*: Assistance and advice with respect to back- and middle-office functions including, but not limited to, investment research, trade desk services,

including trade execution and settlement, finance and accounting, payments, operations, book keeping, cash management, cash forecasting, accounts payable, accounts receivable, expense reimbursement, vendor management, and information technology (including, without limitation, general support and maintenance (OMS, development, support), telecom (cellphones, telephones and broadband) and WSO);

(b) *Legal/Compliance/Risk Analysis.* Assistance and advice with respect to legal issues, litigation support, management of outside counsel, compliance support and implementation and general risk analysis;

(c) *Tax.* Assistance and advice with respect to tax audit support, tax planning and tax preparation and filing.

(d) *Management of Clients and Accounts.* Assistance and advice with respect to (i) the adherence to Operating Guidelines by the Management Company, and (ii) performing any obligations of the Management Company under or in connection with any back- and middle-office function set forth in any portfolio management agreement, investment management agreement or similar agreement in effect between the Management Company and any Client or Account from time to time.

(e) *Valuation.* Advice relating to the appointment of suitable third parties to provide valuations on assets comprising the Portfolio and including, but not limited to, such valuations required to facilitate the preparation of financial statements by the Management Company or the provision of valuations in connection with, or preparation of reports otherwise relating to, a Client or Account for which the Management Company serves as portfolio manager or investment manager or in a similar capacity;

(f) *Execution and Documentation.* Assistance relating to the negotiation of the terms of, and the execution and delivery by the Management Company of, any and all documents which the Management Company considers to be necessary in connection with the acquisition and disposition of an asset in the Portfolio by the Management Company or a Client or Account managed by the Management Company, transactions involving the Management Company or a Client or Account managed by the Management Company, and any other rights and obligations of the Management Company or a Client or Account managed by the Management Company;

(g) *Marketing.* Provide access to marketing team representatives to assist with the marketing of the Management Company and any specified Clients or Accounts managed by the Management Company conditional on the Management Company's agreement that any incentive compensation related to such marketing shall be borne by the Management Company;

(h) *Reporting.* Assistance relating to any reporting the Management Company is required to make in relation to the Portfolio or any Client or Account, including reports relating to (i) credit facility reporting and purchases, sales, liquidations, acquisitions, disposals, substitutions and exchanges of assets in the Portfolio, (ii) the requirements of an applicable regulator, or (iii) other type of reporting which the Management Company and Staff and Services Provider may agree from time to time;

(i) *Administrative Services.* The provision of office space, information technology services and equipment, infrastructure, rent and parking and other related services requested or utilized by the Management Company from time to time;

(j) *Shared Employees.* To the extent applicable, the provision of Shared Employees and such additional human capital as may be mutually agreed by the Management Company and the Staff and Services Provider in accordance with the provisions of Section 2.03 hereof;

(k) *Ancillary Services.* Assistance and advice on all things ancillary or incidental to the foregoing; and

(l) *Other.* Assistance and advice relating to such other back- and middle-office services in connection with the day-to-day business of the Management Company as the Management Company and the Staff and Services Provider may from time to time agree.

For the avoidance of doubt, none of the services contemplated hereunder shall constitute investment advisory services, and the Staff & Services Provider shall not provide any advice to the Management Company or perform any duties on behalf of the Management Company, other than the back- and middle-office services contemplated herein, with respect to (a) the general management of the Management Company, its business or activities, (b) the initiation or structuring of any Client or Account or similar securitization, (c) the substantive investment management decisions with respect to any Client or Account or any related collateral obligations or securitization, (d) the actual selection of any collateral obligation or assets by the Management Company, (e) binding recommendations as to any disposal of or amendment to any Collateral Obligation or (f) any similar functions.

Section 2.03 Shared Employees.

(a) The Staff and Services Provider hereby agrees and consents that each Shared Employee, if any, shall be employed by the Management Company, and the Management Company hereby agrees and consents that each Shared Employee shall be employed by the Staff and Services Provider. Except as may otherwise separately be agreed in writing between the applicable Shared Employee and the Management Company and/or the Staff and Services Provider, in each of their discretion, each Shared Employee is an at-will employee and no guaranteed employment or other employment arrangement is agreed or implied by this Agreement with respect to any Shared Employee, and for avoidance of doubt this Agreement shall not amend, limit, constrain or modify in any way the employment arrangements as between any Shared Employee and the Staff and Services Provider or as between any Shared Employee and the Management Company, it being understood that the Management Company may enter into a short-form employment agreement with any Shared Employee memorializing such Shared Employee's status as an employee of the Management Company. To the extent applicable, the Staff and Services Provider shall ensure that the Management Company has sufficient access to the Shared Employees so that the Shared Employees spend adequate time to provide the services required hereunder. The Staff and Services Provider may also employ the services of persons other than the Specified Persons as it deems fit in its sole discretion

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(b) Notwithstanding that the Shared Employees, if any, shall be employed by both the Staff and Services Provider and the Management Company, the Parties acknowledge and agree that any and all salary and benefits of each Shared Employee shall be paid exclusively by the Staff and Services Provider and shall not be paid or borne by the Management Company and no additional amounts in connection therewith shall be due from the Management Company to the Staff and Services Provider.

(c) To the extent that a Shared Employee participates in the rendering of services to the Management Company's clients, the Shared Employee shall be subject to the oversight and control of the Management Company and such services shall be provided by the Shared Employee exclusively in his or her capacity as a "supervised person" of, or "person associated with", the Management Company (as such terms are defined in Sections 202(a)(25) and 202(a)(17), respectively, of the Advisers Act).

(d) Each Party may continue to oversee, supervise and manage the services of each Shared Employee in order to (1) ensure compliance with the Party's compliance policies and procedures, (2) ensure compliance with regulations applicable to the Party and (3) protect the interests of the Party and its clients; *provided* that Staff and Services Provider shall (A) cooperate with the Management Company's supervisory efforts and (B) make periodic reports to the Management Company regarding the adherence of Shared Employees to Applicable Law, including but not limited to the 1940 Act, the Advisers Act and the United States Commodity Exchange Act of 1936, as amended, in performing the services hereunder.

(e) Where a Shared Employee provides services hereunder through both Parties, the Parties shall cooperate to ensure that all such services are performed consistently with Applicable Law and relevant compliance controls and procedures designed to prevent, among other things, breaches in information security or the communication of confidential, proprietary or material non-public information.

(f) The Staff and Services Provider shall ensure that each Shared Employee has any registrations, qualifications and/or licenses necessary to provide the services hereunder.

(g) The Parties will cooperate to ensure that information about the Shared Employees is adequately and appropriately disclosed to clients, investors (and potential investors), investment banks operating as initial purchaser or placement agent with respect to any Client or Account, and regulators, as applicable. To facilitate such disclosure, the Staff and Services Provider agrees to provide, or cause to be provided, to the Management Company such information as is deemed by the Management Company to be necessary or appropriate with respect to the Staff and Services Provider and the Shared Employees (including, but not limited to, biographical information about each Shared Employee).

(h) The Parties shall cooperate to ensure that, when so required, each has adopted a Code of Ethics meeting the requirements of the Advisers Act ("Code of Ethics") that is consistent with applicable law and which is substantially similar to the other Party's Code of Ethics.

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(i) The Staff and Services Provider shall make reasonably available for use by the Management Company, including through Shared Employees providing services pursuant to this Agreement, any relevant intellectual property and systems necessary for the provision of the services hereunder.

(j) The Staff and Services Provider shall require that each Shared Employee:

(i) certify that he or she is subject to, and has been provided with, a copy of each Party's Code of Ethics and will make such reports, and seek prior clearance for such actions and activities, as may be required under the Codes of Ethics;

(ii) be subject to the supervision and oversight of each Party's officers and directors, including without limitation its Chief Compliance Officer ("CCO"), which CCO may be the same Person, with respect to the services provided to that Party or its clients;

(iii) provide services hereunder and take actions hereunder only as approved by the Management Company;

(iv) provide any information requested by a Party, as necessary to comply with applicable disclosure or regulatory obligations;

(v) to the extent authorized to transact on behalf of the Management Company or a Client or Account, take reasonable steps to ensure that any such transaction is consistent with any policies and procedures that may be established by the Parties and all Applicable Asset Criteria and Concentrations; and

(vi) act, at all times, in a manner consistent with the fiduciary duties and standard of care owed by the Management Company to its members and direct or indirect investors or to a Client or Account as well as clients of Staff and Services Provider by seeking to ensure that, among other things, information about any investment advisory or trading activity applicable to a particular client or group of clients is not used to benefit the Shared Employee, any Party or any other client or group of clients in contravention of such fiduciary duties or standard of care.

(k) Unless specifically authorized to do so, or appointed as an officer or authorized person of the Management Company with such authority, no Shared Employee may contract on behalf or in the name of the Management Company, acting as principal.

Section 2.04 Applicable Asset Criteria and Concentrations. The Management Company will promptly inform the Staff and Services Provider in writing of any Applicable Asset Criteria and Concentrations to which it agrees from time to time and the Staff and Services Provider shall take such Applicable Asset Criteria and Concentrations into account when providing assistance and advice in accordance with Section 2.02 above and any other assistance or advice provided in accordance with this Agreement.

Section 2.05 Compliance with Management Company Policies and Procedures. The Management Company will from time to time provide the Staff and Services Provider and the

Shared Employees, if any, with any policy and procedure documentation which it establishes internally and to which it is bound to adhere in conducting its business pursuant to regulation, contract or otherwise. Subject to any other limitations in this Agreement, the Staff and Services Provider will use reasonable efforts to ensure any services it and the Shared Employees provide pursuant to this Agreement complies with or takes account of such internal policies and procedures.

Section 2.06 Authority. The Staff and Services Provider's scope of assistance and advice hereunder is limited to the services specifically provided for in this Agreement. The Staff and Services Provider shall not assume or be deemed to assume any rights or obligations of the Management Company under any other document or agreement to which the Management Company is a party. Notwithstanding any other express or implied provision to the contrary in this Agreement, the activities of the Staff and Services Provider pursuant to this Agreement shall be subject to the overall policies of the Management Company, as notified to the Staff and Services Provider from time to time. The Staff and Services Provider shall not have any duties or obligations to the Management Company unless those duties and obligations are specifically provided for in this Agreement (or in any amendment, modification or novation hereto or hereof to which the Staff and Services Provider is a party).

Section 2.07 Third Parties.

(a) The Staff and Services Provider may employ third parties, including its affiliates, to render advice, provide assistance and to perform any of its duties under this Agreement; *provided* that notwithstanding the employment of third parties for any such purpose, the Staff and Services Provider shall not be relieved of any of its obligations or liabilities under this Agreement.

(b) In providing services hereunder, the Staff and Services Provider may rely in good faith upon and will incur no liability for relying upon advice of nationally recognized counsel (which may be counsel for the Management Company, a Client or Account or any Affiliate of the foregoing), accountants or other advisers as the Staff and Services Provider determines, in its sole discretion, is reasonably appropriate in connection with the services provided by the Staff and Services Provider under this Agreement.

Section 2.08 Management Company to Cooperate with the Staff and Services Provider. In furtherance of the Staff and Services Provider's obligations under this Agreement the Management Company shall cooperate with, provide to, and fully inform the Staff and Services Provider of, any and all documents and information the Staff and Services Provider reasonably requires to perform its obligations under this Agreement.

Section 2.09 Power of Attorney. If the Management Company considers it necessary for the provision by the Staff and Services Provider of the assistance and advice under this Agreement (after consultation with the Staff and Services Provider), it may appoint the Staff and Services Provider as its true and lawful agent and attorney, with full power and authority in its name to sign, execute, certify, swear to, acknowledge, deliver, file, receive and record any and all documents that the Staff and Services Provider reasonably deems appropriate or necessary in connection with the execution and settlement of acquisitions of assets as directed by the Management Company

and the Staff and Services Provider's powers and duties hereunder (which for the avoidance of doubt shall in no way involve the discretion and/or authority of the Management Company with respect to investments). Any such power shall be revocable in the sole discretion of the Management Company.

ARTICLE III

CONSIDERATION AND EXPENSES

Section 3.01 Consideration. As compensation for its performance of its obligations as Staff and Services Provider under this Agreement, the Staff and Services Provider will be entitled to receive a flat fee of $168,000 per month (the "Staff and Services Fee"), payable monthly in advance on the first business day of each month.

Section 3.02 Costs and Expenses. Each party shall bear its own expenses; *provided* that the Management Company shall reimburse the Staff and Services Provider for any and all costs and expenses that may be borne properly by the Management Company.

Section 3.03 Deferral. Notwithstanding anything to the contrary contained herein, if on any date the Management Company determines that it would not have sufficient funds available to it to make a payment of Indebtedness, it shall have the right to defer any all and amounts payable to the Staff and Services Provider pursuant to this Agreement, including any fees and expenses; *provided* that the Management Company shall promptly pay all such amounts on the first date thereafter that sufficient amounts exist to make payment thereof.

ARTICLE IV

REPRESENTATIONS AND COVENANTS

Section 4.01 Representations. Each of the Parties hereto represents and warrants that:

(a) It has full power and authority to execute and deliver, and to perform its obligations under, this Agreement;

(b) this Agreement has been duly authorized, executed and delivered by it and constitutes its valid and binding, obligation, enforceable in accordance with its terms except as the enforceability hereof may be subject to (i) bankruptcy, insolvency, reorganization moratorium, receivership, conservatorship or other similar laws now or hereafter in effect relating to creditors' rights and (ii) general principles of equity (regardless of whether such enforcement is considered in a proceeding, in equity or at law);

(c) no consent, approval, authorization or order of or declaration or filing with any Governmental Authority is required for the execution of this Agreement or the performance by it of its duties hereunder, except such as have been duly made or obtained; and

(d) neither the execution and delivery of this Agreement nor the fulfillment of the terms hereof conflicts with or results in a breach or violation of any of the terms or provisions of, or constitutes a default under, (i) its constituting and organizational documents; or (ii) the terms

of any material indenture, contract, lease, mortgage, deed of trust, note, agreement or other evidence of indebtedness or other material agreement, obligation, condition, covenant or instrument to which it is a party or by which it is bound.

ARTICLE V

COVENANTS

Section 5.01 Compliance; Advisory Restrictions.

(a) The Staff and Services Provider shall reasonably cooperate with the Management Company in connection with the Management Company's compliance with its policies and procedures relating to oversight of the Staff and Services Provider. Specifically, the Staff and Services Provider agrees that it will provide the Management Company with reasonable access to information relating to the performance of Staff and Services Provider's obligations under this Agreement.

(b) This Agreement is not intended to and shall not constitute an assignment, pledge or transfer of any portfolio management agreement or any part thereof. It is the express intention of the parties hereto that this Agreement and all services performed hereunder comply in all respects with all (a) applicable contractual provisions and restrictions contained in each portfolio management agreement, investment management agreement or similar agreement and each document contemplated thereby; and (b) Applicable Laws (collectively, the "Advisory Restrictions"). If any provision of this Agreement is determined to be in violation of any Advisory Restriction, then the services to be provided under this Agreement shall automatically be limited without action by any person or entity, reduced or modified to the extent necessary and appropriate to be enforceable to the maximum extent permitted by such Advisory Restriction.

Section 5.02 Records; Confidentiality.

The Staff and Services Provider shall maintain or cause to be maintained appropriate books of account and records relating to its services performed hereunder, and such books of account and records shall be accessible for inspection by representatives of the Management Company and its accountants and other agents at any time during normal business hours and upon not less than three (3) Business Days' prior notice; *provided* that the Staff and Services Provider shall not be obligated to provide access to any non-public information if it in good faith determines that the disclosure of such information would violate any applicable law, regulation or contractual arrangement.

The Staff and Services Provider shall follow its customary procedures to keep confidential any and all information obtained in connection with the services rendered hereunder that is either (a) of a type that would ordinarily be considered proprietary or confidential, such as information concerning the composition of assets, rates of return, credit quality, structure or ownership of securities, or (b) designated as confidential obtained in connection with the services rendered by the Staff and Services Provider hereunder and shall not disclose any such information to non-affiliated third parties, except (i) with the prior written consent of the Management Company, (ii) such information as a rating agency shall reasonably request in connection with its

rating of notes issued by a CLO or supplying credit estimates on any obligation included in the Portfolio, (iii) in connection with establishing trading or investment accounts or otherwise in connection with effecting transactions on behalf of the Management Company or any Client or Account for which the Management Company serves as portfolio manager or investment manager or in a similar capacity, (iv) as required by (A) Applicable Law or (B) the rules or regulations of any self-regulating organization, body or official having jurisdiction over the Staff and Services Provider or any of its Affiliates, (v) to its professional advisors (including, without limitation, legal, tax and accounting advisors), (vi) such information as shall have been publicly disclosed other than in known violation of this Agreement or shall have been obtained by the Staff and Services Provider on a non-confidential basis, (vii) such information as is necessary or appropriate to disclose so that the Staff and Services Provider may perform its duties hereunder, (viii) as expressly permitted in the final offering memorandum or any definitive transaction documents relating to any Client or Account, (ix) information relating to performance of the Portfolio as may be used by the Staff and Services Provider in the ordinary course of its business or (xx) such information as is routinely disclosed to the trustee, custodian or collateral administrator of any Client or Account in connection with such trustee's, custodian's or collateral administrator's performance of its obligations under the transaction documents related to such Client or Account. Notwithstanding the foregoing, it is agreed that the Staff and Services Provider may disclose without the consent of any Person (1) that it is serving as staff and services provider to the Management Company, (2) the nature, aggregate principal amount and overall performance of the Portfolio, (3) the amount of earnings on the Portfolio, (4) such other information about the Management Company, the Portfolio and the Clients or Accounts as is customarily disclosed by staff and services providers to management vehicles similar to the Management Company, and (5) the United States federal income tax treatment and United States federal income tax structure of the transactions contemplated by this Agreement and the related documents and all materials of any kind (including opinions and other tax analyses) that are provided to them relating to such United States federal income tax treatment and United States income tax structure. This authorization to disclose the U.S. tax treatment and tax structure does not permit disclosure of information identifying the Staff and Services Provider, the Clients or Accounts or any other party to the transactions contemplated by this Agreement (except to the extent such information is relevant to U.S. tax structure or tax treatment of such transactions).

ARTICLE VI

EXCULPATION AND INDEMNIFICATION

Section 6.01 Standard of Care. Except as otherwise expressly provided herein, each Covered Person shall discharge its duties under this Agreement with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims. To the extent not inconsistent with the foregoing, each Covered Person shall follow its customary standards, policies and procedures in performing its duties hereunder. No Covered Person shall deal with the income or assets of the Management Company in such Covered Person's own interest or for its own account. Each Covered Person in its respective sole and absolute discretion may separately engage or invest in any other business ventures, including those that may be in competition with the Management Company, and the Management Company will not have any rights in or to such ventures or the income or profits derived therefrom

Section 6.02 Exculpation. To the fullest extent permitted by law, no Covered Person will be liable to the Management Company, any Member, or any shareholder, partner or member thereof, for (i) any acts or omissions by such Covered Person arising out of or in connection with the conduct of the business of the Management Company or its General Partner, or any investment made or held by the Management Company or its General Partner, unless it is determined ultimately by a court of competent jurisdiction, in a final nonappealable judgment, to be the result of gross negligence or to constitute fraud or willful misconduct (as interpreted under the laws of the State of Delaware) (each, a "Disabling Conduct") on the part of such Covered Person, (ii) any act or omission of any Investor, (iii) any mistake, gross negligence, misconduct or bad faith of any employee, broker, administrator or other agent or representative of such Covered Person, *provided* that such employee, broker, administrator or agent was selected, engaged or retained by or on behalf of such Covered Person with reasonable care, or (iv) any consequential (including loss of profit), indirect, special or punitive damages. To the extent that, at law or in equity, any Covered Person has duties (including fiduciary duties) and liabilities relating thereto to the Management Company or any Member, no Covered Person acting under this Agreement shall be liable to the Management Company or to any such Member for its good-faith reliance on the provisions of this Agreement. The exculpations set forth in this Section 6.02 shall exculpate any Covered Person regardless of such Covered Person's sole, comparative, joint, concurrent, or subsequent negligence.

To the fullest extent permitted by law, no Covered Person shall have any personal liability to the Management Company or any Member solely by reason of any change in U.S. federal, state or local or foreign income tax laws, or in interpretations thereof, as they apply to the Management Company or the Members, whether the change occurs through legislative, judicial or administrative action.

Any Covered Person in its sole and absolute discretion may consult legal counsel, accountants or other advisers selected by it, and any act or omission taken, or made in good faith by such Person on behalf of the Management Company or in furtherance of the business of the Management Company in good-faith reliance on and in accordance with the advice of such counsel, accountants or other advisers shall be full justification for the act or omission, and to the fullest extent permitted by applicable law, no Covered Person shall be liable to the Management Company or any Member in so acting or omitting to act if such counsel, accountants or other advisers were selected, engaged or retained with reasonable care.

Section 6.03 Indemnification by the Management Company. The Management Company shall and hereby does, to the fullest extent permitted by applicable law, indemnify and hold harmless any Covered Person from and against any and all claims, causes of action (including, but not limited to, strict liability, negligence, statutory violation, regulatory violation, breach of contract, and all other torts and claims arising under common law), demands, liabilities, costs, expenses, damages, losses, suits, proceedings, judgments, assessments, actions and other liabilities, whether judicial, administrative, investigative or otherwise, of whatever nature, known or unknown, liquidated or unliquidated ("Claims"), that may accrue to or be incurred by any Covered Person, or in which any Covered Person may become involved, as a party or otherwise, or with which any Covered Person may be threatened, relating to or arising out of the investment or other activities of the Management Company or its General Partner, or activities undertaken in connection with the Management Company or its General Partner, or otherwise relating to or

arising out of this Agreement, including amounts paid in satisfaction of judgments, in compromise or as fines or penalties, and attorneys' fees and expenses incurred in connection with the preparation for or defense or disposition of any investigation, action, suit, arbitration or other proceeding (a "Proceeding"), whether civil or criminal (all of such Claims, amounts and expenses referred to therein are referred to collectively as "Damages"), except to the extent that it shall have been determined ultimately by a court of competent jurisdiction, in a final nonappealable judgment, that such Damages arose primarily from Disabling Conduct of such Covered Person. The termination of any Proceeding by settlement, judgment, order, conviction or upon a plea of nolo contendere or its equivalent shall not, of itself, create a presumption that any Damages relating to such settlement, judgment, order, conviction or plea of nolo contendere or its equivalent or otherwise relating to such Proceeding arose primarily from Disabling Conduct of any Covered Persons. Any Covered Person shall be indemnified under the terms of this Section 6.03 regardless of such Covered Person's sole, comparative, joint, concurrent, or subsequent negligence.

Expenses (including attorneys' fees) incurred by a Covered Person in defense or settlement of any Claim that may be subject to a right of indemnification hereunder shall be advanced by the Management Company prior to the final disposition thereof upon receipt of a written undertaking by or on behalf of the Covered Person to repay the amount advanced to the extent that it shall be determined ultimately by a court of competent jurisdiction that the Covered Person is not entitled to be indemnified hereunder. The right of any Covered Persons to the indemnification provided herein shall be cumulative of, and in addition to, any and all rights to which the Covered Person may otherwise be entitled by contract or as a matter of law or equity and shall be extended to the Covered Person's successors, assigns and legal representatives. Any judgments against the Management Company and/or any Covered Persons in respect of which such Covered Person is entitled to indemnification shall first be satisfied from the assets of the Management Company, including Drawdowns, before such Covered Person is responsible therefor.

Notwithstanding any provision of this Agreement to the contrary, the provisions of this Section 6.03 shall not be construed so as to provide for the indemnification of any Covered Person for any liability (including liability under Federal securities laws which, under certain circumstances, impose liability even on persons that act in good faith), to the extent (but only to the extent) that such indemnification would be in violation of applicable law, but shall be construed so as to effectuate the provisions of this Section 6.03 to the fullest extent permitted by law.

Section 6.04 Other Sources of Recovery etc. The indemnification rights set forth in Section 6.03 are in addition to, and shall not exclude, limit or otherwise adversely affect, any other indemnification or similar rights to which any Covered Person may be entitled. If and to the extent that other sources of recovery (including proceeds of any applicable policies of insurance or indemnification from any Person in which any of the Clients or Accounts has an investment) are available to any Covered Person, such Covered Person shall use reasonable efforts to obtain recovery from such other sources before the Company shall be required to make any payment in respect of its indemnification obligations hereunder; *provided* that, if such other recovery is not available without delay, the Covered Person shall be entitled to such payment by the Management Company and the Management Company shall be entitled to reimbursement out of such other recovery when and if obtained.

Section 6.05 Rights of Heirs, Successors and Assigns. The indemnification rights provided by Section 6.03 shall inure to the benefit of the heirs, executors, administrators, successors and assigns of each Covered Person.

Section 6.06 Reliance. A Covered Person shall incur no liability to the Management Company or any Member in acting upon any signature or writing reasonably believed by him, her or it to be genuine, and may rely in good faith on a certificate signed by an officer of any Person in order to ascertain any fact with respect to such Person or within such Person's knowledge. Each Covered Person may act directly or through his, her or its agents or attorneys.

ARTICLE VII

TERMINATION

Section 7.01 Termination. Either Party may terminate this Agreement at any time upon at least thirty (30) days' written notice to the other.

ARTICLE VIII

MISCELLANEOUS

Section 8.01 Amendments. This Agreement may not be amended or modified except by an instrument in writing signed by each Party.

Section 8.02 Assignment and Delegation.

(a) Neither Party may assign, pledge, grant or otherwise encumber or transfer all or any part of its rights or responsibilities under this Agreement, in whole or in part, except (i) as provided in clauses (b) and (c) of this Section 8.02, without the prior written consent of the other Party and (ii) in accordance with Applicable Law.

(b) Except as otherwise provided in this Section 8.02, the Staff and Services Provider may not assign its rights or responsibilities under this Agreement unless (i) the Management Company consents in writing thereto and (ii) such assignment is made in accordance with Applicable Law.

(c) The Staff and Services Provider may, without satisfying any of the conditions of Section 8.02(a) other than clause (ii) thereof, (1) assign any of its rights or obligations under this Agreement to an Affiliate; *provided* that such Affiliate (i) has demonstrated ability, whether as an entity or by its principals and employees, to professionally and competently perform duties similar to those imposed upon the Staff and Services Provider pursuant to this Agreement and (ii) has the legal right and capacity to act as Staff and Services Provider under this Agreement, or (2) enter into (or have its parent enter into) any consolidation or amalgamation with, or merger with or into, or transfer of all or substantially all of its assets to, another entity; *provided* that, at the time of such consolidation, merger, amalgamation or transfer the resulting, surviving or transferee entity assumes all the obligations of the Staff and Services Provider under this Agreement generally (whether by operation of law or by contract) and the other entity is a continuation of the Staff and Services Provider in another corporate or similar form and has

substantially the same staff; *provided further* that the Staff and Services Provider shall deliver ten (10) Business Days' prior notice to the Management Company of any assignment or combination made pursuant to this sentence. Upon the execution and delivery of any such assignment by the assignee, the Staff and Services Provider will be released from further obligations pursuant to this Agreement except to the extent expressly provided herein.

Section 8.03 Non-Recourse; Non-Petition.

(a) The Staff and Services Provider agrees that the payment of all amounts to which it is entitled pursuant to this Agreement shall be payable by the Management Company only to the extent of assets held in the Portfolio.

(b) Notwithstanding anything to the contrary contained herein, the liability of the Management Company to the Staff and Services Provider hereunder is limited in recourse to the Portfolio, and if the proceeds of the Portfolio following the liquidation thereof are insufficient to meet the obligations of the Management Company hereunder in full, the Management Company shall have no further liability in respect of any such outstanding obligations, and such obligations and all claims of the Staff and Services Provider or any other Person against the Management Company hereunder shall thereupon extinguish and not thereafter revive. The Staff and Services Provider accepts that the obligations of the Management Company hereunder are the corporate obligations of the Management Company and are not the obligations of any employee, member, officer, director or administrator of the Management Company and no action may be taken against any such Person in relation to the obligations of the Management Company hereunder.

(c) Notwithstanding anything to the contrary contained herein, any Staff and Services Provider agrees not to institute against, or join any other Person in instituting against, the Management Company any bankruptcy, reorganization, arrangement, insolvency, moratorium or liquidation proceedings, or other proceedings under United States federal or state bankruptcy laws, or similar laws until at least one year and one day (or, if longer, the then applicable preference period plus one day) after the payment in full all amounts payable in respect of any Indebtedness incurred to finance any portion of the Portfolio; *provided* that nothing in this provision shall preclude, or be deemed to stop, the Staff and Services Provider from taking any action prior to the expiration of the aforementioned one year and one day period (or, if longer, the applicable preference period then in effect plus one day) in (i) any case or proceeding voluntarily filed or commenced by the Management Company, or (ii) any involuntary insolvency proceeding filed or commenced against the Management Company by a Person other than the Staff and Services Provider.

(d) The Management Company hereby acknowledges and agrees that the Staff and Services Provider's obligations hereunder shall be solely the corporate obligations of the Staff and Services Provider, and are not the obligations of any employee, member, officer, director or administrator of the Staff and Services Provider and no action may be taken against any such Person in relation to the obligations of the Staff and Services Provider hereunder.

(e) The provisions of this Section 8.03 shall survive termination of this Agreement for any reason whatsoever.

Section 8.04 Governing Law.

(a) This Agreement shall be governed by, and construed in accordance with, the laws of the State of Texas. The Parties unconditionally and irrevocably consent to the exclusive jurisdiction of the courts located in the State of Texas and waive any objection with respect thereto, for the purpose of any action, suit or proceeding arising out of or relating to this Agreement or the transactions contemplated hereby.

(b) The Parties irrevocably agree for the benefit of each other that the courts of the State of Texas and the United States District Court located in the Northern District of Texas in Dallas are to have exclusive jurisdiction to settle any disputes (whether contractual or non-contractual) which may arise out of or in connection with this Agreement and that accordingly any action arising out of or in connection therewith (together referred to as "Proceedings") may be brought in such courts. The Parties irrevocably submit to the jurisdiction of such courts and waive any objection which they may have now or hereafter to the laying of the venue of any Proceedings in any such court and any claim that any Proceedings have been brought in an inconvenient forum and further irrevocably agree that a judgment in any Proceedings brought in such courts shall be conclusive and binding upon the Parties and may be enforced in the courts of any other jurisdiction.

Section 8.05 WAIVER OF JURY TRIAL. EACH OF THE PARTIES HERETO HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHTS IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH, THIS AGREEMENT. EACH PARTY HERETO ACKNOWLEDGES AND AGREES THAT IT HAS RECEIVED FULL AND SUFFICIENT CONSIDERATION FOR THIS PROVISION AND THAT THIS PROVISION IS A MATERIAL INDUCEMENT FOR ITS ENTERING INTO THIS AGREEMENT.

Section 8.06 Severability. The provisions of this Agreement are independent of and severable from each other, and no provision shall be affected or rendered invalid or unenforceable by virtue of the fact that for any reason any other or others of them may be invalid or unenforceable in whole or in part. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the Parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties.

Section 8.07 No Waiver. The performance of any condition or obligation imposed upon any Party may be waived only upon the written consent of the Parties. Such waiver shall be limited to the terms thereof and shall not constitute a waiver of any other condition or obligation of the other Party. Any failure by any Party to enforce any provision shall not constitute a waiver of that or any other provision or this Agreement.

Section 8.08 Counterparts. This Agreement may be executed in any number of counterparts by facsimile or other written or electronic form of communication, each of which shall be deemed to be an original as against any Party whose signature appears thereon, and all of which shall together constitute one and the same instrument. This Agreement shall become binding when one or more counterparts hereof, individually or taken together, shall bear the signatures of all of the Parties reflected hereon as the signatories.

Section 8.09 Third Party Beneficiaries. This Agreement is for the sole benefit of the Parties hereto and their permitted assigns and nothing herein express or implied shall give or be construed to give to any Person, other than the Parties hereto and such permitted assigns, any legal or equitable rights hereunder. For avoidance of doubt, this Agreement is not for the benefit or and is not enforceable by any Shared Employee, Client or Account or any investor (directly or indirectly) in the Management Company.

Section 8.10 No Partnership or Joint Venture. Nothing set forth in this Agreement shall constitute, or be construed to create, an employment relationship, a partnership or a joint venture between the Parties. Except as expressly provided herein or in any other written agreement between the Parties, no Party has any authority, express or implied, to bind or to incur liabilities on behalf of, or in the name of, any other Party.

Section 8.11 Independent Contractor. Notwithstanding anything to the contrary, the Staff and Services Provider shall be deemed to be an independent contractor and, except as expressly provided or authorized herein, shall have no authority to act for or represent the Management Company or any Client or Account in which the Management Company acts as portfolio manager or investment manager or in a similar capacity in any manner or otherwise be deemed an agent of the Management Company or any Client or Account in which the Management Company acts as portfolio manager or investment manager or in a similar capacity.

Section 8.12 Written Disclosure Statement. The Management Company acknowledges receipt of Part 2 of the Staff and Services Provider's Form ADV, as required by Rule 204-3 under the Advisers Act, on or before the date of execution of this Agreement.

Section 8.13 Headings. The descriptive headings contained in this Agreement are for convenience of reference only and shall not affect in any way the meaning or interpretation of this Agreement.

Section 8.14 Entire Agreement. This Agreement constitutes the entire agreement of the Parties with respect to the subject matter hereof and supersedes all prior agreements and undertakings, both written and oral, between the Parties with respect to such subject matter.

Section 8.15 Notices. Any notice or demand to any Party to be given, made or served for any purposes under this Agreement shall be given, made or served by sending the same by overnight mail or email transmission or by delivering it by hand as follows:

(a) If to the Management Company:

NexPoint Advisors, L.P.
200 Crescent Court
Suite 700
Dallas, TX 75201

(b) If to the Staff and Services Provider:

Highland Capital Management, L.P.
300 Crescent Court
Suite 700
Dallas, TX 75201

or to such other address or email address as shall have been notified to the other Parties.

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Case 21-03082-sgj Doc 48-3 Filed 02/17/21 Entered 02/17/21 13:45:58 Page 20 of 20

IN WITNESS WHEREOF, each Party has caused this Agreement to be executed as of the date hereof by its duly authorized representative.

NEXPOINT ADVISORS, L.P.

By: NexPoint Advisors GP, LLC, its General Partner

By:_____
Name: Frank Waterhouse
Title: Treasurer

HIGHLAND CAPITAL MANAGEMENT, L.P.

By: Strand Advisors, Inc., its General Partner

By:_____
Name: Frank Waterhouse
Title: Treasurer

EXHIBIT 206

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In Re:	**Case No. 19-34054-sgj-11** Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,	Dallas, Texas Tuesday, February 2, 2021 9:30 a.m. Docket
Debtor.	CONFIRMATION HEARING [1808] AGREED MOTION TO ASSUME [1624]

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE STACEY G.C. JERNIGAN,
UNITED STATES BANKRUPTCY JUDGE.

WEBEX APPEARANCES:

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For CLO Holdco, Ltd.:	John J. Kane KANE RUSSELL COLEMAN LOGAN, P.C. 901 Main Street, Suite 5200 Dallas, TX 75202 (214) 777-4261
For Davis Deadman, Todd Travers, and Paul Kauffman:	Jason Patrick Kathman PRONSKE & KATHMAN, P.C. 2701 Dallas Parkway, Suite 590 Plano, TX 75093 (214) 658-6500

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Proceedings recorded by electronic sound recording; transcript produced by transcription service.

DALLAS, TEXAS - FEBRUARY 2, 2021 - 9:38 A.M.

THE COURT: Good morning. Please be seated. All right. We are ready to get started now in Highland Capital. We have a confirmation hearing as well as a motion to assume the non-residential real property lease at the headquarters. All right. This is Case No. 19-34054. I know we're going to have a lot of appearances today. I think we're just down to a handful of objections, but I'm nevertheless going to go ahead and get formal appearances from our key parties that we've had historically in this case.

First, for the Debtor team, do we have Mr. Pomerantz and your crew?

MR. POMERANTZ: Yes. Good morning, Your Honor. Jeff Pomerantz, along with John Morris, Ira Kharasch, and Greg Demo, on behalf of the Debtor-in-Possession, Highland Capital.

THE COURT: All right. Good morning. All right. For the Unsecured Creditors' Committee team, do we have Mr. Clemente and others?

MR. CLEMENTE: Yes. Good morning, Your Honor. Matthew Clements; Sidley Austin; on behalf of the Official Committee of Unsecured Creditors.

THE COURT: All right. I'm actually going to call a roll call for the Committee members who have obviously been very active during this case. For the Redeemer Committee and Crusader Fund, do we have Ms. Mascherin and her team?

(Pause.) Okay. We're -- if -- you must be on mute.

MS. MASCHERIN: Your Honor, I apologize.

THE COURT: Okay. Go ahead.

MS. MASCHERIN: I apologize, Your Honor. I was on mute and could not figure out how to unmute myself quickly. Terri Mascherin; Jenner & Block; on behalf of the Redeemer Committee.

THE COURT: All right. Good morning.

All right. What about Acis? Do we have Ms. Patel and others for the Acis team?

MS. PATEL: Good morning, Your Honor. Rakhee Patel on behalf of Acis Capital Management.

THE COURT: Good morning.

All right. Mr. Clubok, I see you there for the UBS team, correct?

MR. CLUBOK: Yes. Good morning, Your Honor.

THE COURT: Good morning.

All right. For Patrick Daugherty, I think I see Mr. Kathman out there, correct?

MR. KATHMAN: Good morning, Your Honor. Jason Kathman on behalf of Patrick Daugherty.

THE COURT: All right. Good morning.

All right. What about HarbourVest? Anyone on the line for HarbourVest?

MS. WEISGERBER: Good morning, Your Honor. Erica

Weisgerber for HarbourVest.

THE COURT: All right. Very good.

All right. Well, I'll now, I guess, turn to some of the Objectors that I haven't hit yet. Who do we have appearing for Mr. Dondero this morning?

MR. TAYLOR: Good morning, Your Honor. Clay Taylor of the law firm of Bonds Ellis Eppich Schaefer & Jones appearing on behalf of Mr. Dondero. I have with me, of course, Mr. Dondero, who is in the room with me. Dennis Michael Lynn, John Bonds, and Bryan Assink are also appearing on behalf of Mr. Dondero.

THE COURT: All right. Thank you, Mr. Taylor.

All right. For the Dugaboy Trust and Get Good Trust, do we have Mr. Draper and others?

MR. DRAPER: Yes, Your Honor. This is Douglas Draper on the line.

THE COURT: All right. Good morning.

MR. DRAPER: Good morning, Your Honor.

THE COURT: All right. What about what I'll call Highland Fund, the Highland Funds and Advisors? Do we have Mr. Rukavina this morning, or who do we have?

MR. RUKAVINA: Your Honor, good morning. Davor Rukavina and Julian Vasek for the Funds and Advisors. I can make a full appearance, but it's the parties listed on Docket 1670.

THE COURT: All right. Thank you, Mr. Rukavina. All right. What about --

MR. HOGEWOOD: Your Honor?

THE COURT: Go ahead.

MR. HOGEWOOD: Your Honor, Lee Hogewood. I'm sorry, Your Honor. Lee Hogewood is also here on behalf of the same parties.

THE COURT: All right. Thank you, sir. All right. What about NexPoint Real Estate Partners, HCRE Partners?

MS. DRAWHORN: Good morning, Your Honor. Lauren Drawhorn with Wick Phillips on behalf of NexPoint Real Estate Partners, LLC. I'm also here on behalf of the NexPoint Real Estate entities which are listed on Docket 1677, and NexBank, which is -- their objection is 1676.

THE COURT: All right. Thank you. All right. Let's cover some of the employees. I think I see Ms. Smith out there. Are you appearing for Mr. Ellington and Mr. Leventon?

MS. SMITH: Yes, Your Honor. Frances Smith with Ross & Smith, along with Debra Dandeneau of Baker McKenzie, on behalf of Scott Ellington, Isaac Leventon, Thomas Surgent, and Frank Waterhouse.

THE COURT: All right. Could you spell the last name of your co-counsel from Baker McKenzie? I didn't clearly get

that.

MS. SMITH: Yes, Your Honor. It's Debra Dandeneau, D-A-N-D-E-N-N-A-U [sic].

THE COURT: Okay. Thank you.

All right. CLO Holdco, do we have you appearing this morning?

MR. KANE: Your Honor, John Kane on behalf of CLO Holdco.

THE COURT: Thank you, Mr. Kane.

All right. I know we had a different group of current or former employees -- Brad Borud, Jack Yang -- and some joining parties: Kauffman, Travers, Deadman. Who do we have appearing for those? (Pause.) Anyone? If you're appearing, we're not hearing you. Go ahead.

MR. KATHMAN: Good morning, Your Honor. Jason Kathman. I represent Mr. Deadman, Mr. Travers, and Mr. Kauffman as well.

THE COURT: Okay. Thank you. And I can't remember who represents Mr. Borud and Yang. Someone separately.

MR. KATHMAN: It's Mr. Winikka, Your Honor.

THE COURT: Oh, Mr. Winikka.

MR. KATHMAN: And I haven't scrolled through to see whether he's with -- in the 120 people signed in this morning. But I believe that objection has been resolved. I think Mr. Pomerantz will probably address that later. So Mr. Winikka

may not be appearing.

THE COURT: Okay. All right. Well, anyone for the IRS?

MR. ADAMS: Good morning, Your Honor. David Adams, Department of Justice, on behalf of the United States and its agency, the Internal Revenue Service.

THE COURT: Thank you, Mr. Adams.

For the U.S. Trustee, who do we have appearing this morning? (No response.) I'm not hearing you. If you're trying to appear, you must be on mute. (No response.) All right. Well, I suspect at some point we'll hear from the U.S. Trustee, even though I don't hear anyone now.

At this point, I will open it up to anyone else who wishes to appear who I failed to call.

MS. MATSUMURA: Your Honor, this is Rebecca Matsumura from King & Spalding representing Highland CLO Funding, Ltd. Thank you.

THE COURT: All right. Thank you, Ms. Matsumura. HCLOF.

Anyone else?

MR. HELD: Your Honor, this is Michael Held with the law firm of Jackson Walker, LLP on behalf of the office landlord, Crescent TC Investors, LP.

THE COURT: All right. Thank you, Mr. Held.

MR. HELD: Thank you, Your Honor.

1 THE COURT: Okay. Any other lawyer appearances?
2 All right. Well, again, if there's anyone out there who
3 did not get to appear, maybe we'll hear from you at some point
4 as the day goes on.
5 All right. Mr. Pomerantz, this is an important day,
6 obviously. How did you want to begin things?
7 MR. POMERANTZ: So, Your Honor, I have a brief
8 opening to talk about what I plan to do, and a little more
9 lengthy opening, and it'll be come clear. So if I may
10 proceed, Your Honor?
11 THE COURT: You may.
12 MR. POMERANTZ: Your Honor, we're here to request
13 that the Court confirm the Debtor's Fifth Amended Plan of
14 Reorganization, as modified. The operative documents before
15 Your Honor are the Fifth Amended Plan, as modified, that was
16 filed along with our pleadings in support of confirmation on
17 January 22nd and the minor amendments that we filed on
18 February 1st.
19 Here is my proposal on how we can proceed this morning. I
20 would intend to provide the Court with an opening statement
21 that would last approximately 20 minutes. And then after any
22 other party who desires to make an opening statement, I would
23 propose that the Debtor put on its evidence that it intends to
24 rely on in support of confirmation. The evidence consists of
25 the exhibits that the Debtor filed with its witness and

exhibit list on January 22nd and certain amendments that we filed yesterday.

We would also put on the testimony of the following witnesses: Jim Seery, the Debtor's chief executive officer, who Your Honor is very familiar with, and also a member of Strand's board of directors; John Dubel, a member of Strand's board of directors; and Mark Tauber, a vice president with Aon Financial Services, the Debtor's D&O broker.

We have also submitted the declaration of Patrick Leatham, who is with KCC, the Debtor's balloting agent. And we don't intend to put Mr. Leatham on the stand, but he is available on the WebEx for cross-examination, to the extent necessary.

I propose that I would leave the bulk of my argument, which includes going through the Section 1129 requirements for plan confirmation, as well as responding to the remaining outstanding objections, until my closing argument.

With that, Your Honor, I will pause and ask the Court if Your Honor has any questions before I proceed.

THE COURT: I do not have questions, so your method of going forward sounds appropriate. You may go ahead.

MR. POMERANTZ: Thank you, Your Honor.

OPENING STATEMENT ON BEHALF OF THE DEBTOR

MR. POMERANTZ: As I indicated, Your Honor, we stand here side by side with the Creditors' Committee asking that the Court confirm the Debtor's plan of reorganization.

As Your Honor is well aware, this case started in December in -- October 2019, was transferred to Your Honor's court in December 2019, and has been pending for approximately 15 months.

On January 9, 2020, I stood before Your Honor seeking the approval of the independent board of directors of Strand, the general partner of the Debtor, pursuant to a heavily-negotiated agreement with the Committee. And as the Court has remarked on occasions throughout the case, the economic stakeholders in this case believed that the installation of a new board consisting of highly-qualified restructuring professionals and a bankruptcy judge, a former bankruptcy judge, was far more attractive than the alternative, which was appointment of a trustee. And upon approval of the settlement, members of the board -- principally, Mr. Seery -- testified that one of the board's goals was to change the culture of litigation that plagued Highland in the decade before filing and threatened to embroil the Debtor in continued litigation if changes were not made.

And as Your Honor is well aware, the last 14 months have not been easy. The board took its role as an independent fiduciary extremely seriously, much to the consternation of the Committee at times, and more recently, to the consternation of Mr. Dondero and his affiliated entities.

And what has the Debtor, under the leadership of the

1 board, been able to accomplish during this case? The answer
2 is a lot more than many parties believed when the board was
3 installed.
4 The Debtor reached a settlement with the Redeemer
5 Committee, resolving disputes that had been litigated for many
6 years, in many forums, and that resulted in an arbitration
7 award that was the catalyst for the bankruptcy filing.
8 Participating in a court-ordered mediation at the end of
9 August 2020 and September, the Debtor reached agreement with
10 Acis and Josh Terry. The Court is all too familiar with the
11 years of disputes between the Debtor and Acis and Josh Terry,
12 which spanned arbitration proceedings and an extremely
13 combative Chapter 11 that Your Honor presided over.
14 The Debtor next reached an agreement with HarbourVest
15 regarding their assertion of over $300 million of claims
16 against the estate. The HarbourVest litigation stemmed from
17 its investment in the Acis CLOs and would have resulted in
18 complex, fact-intensive litigation which would have forced the
19 Court to revisit many of the issues addressed in the Acis
20 case.
21 And perhaps most significantly, Your Honor, the Debtor was
22 able to resolve disputes with UBS, disputes which took the
23 most time of any claim in this case, through a contested stay
24 relief motion, a hotly-contested summary judgment motion, and
25 a Rule 3018 motion.

While the Debtor and UBS hoped to file a 9019 motion prior to the commencement of the hearing, they were not able to do so. However, I am now in a position to disclose to the Court the terms of the settlement, which is the subject of documentation acceptable to the Debtor and UBS. The settlement provides for, among other things, the following terms:

UBS will receive a $50 million Class 8 general unsecured claim against the Debtor.

UBS will receive a $25 million Class 9 subordinated general unsecured claim against the Debtor.

UBS will receive a cash payment of $18.5 million from Multi-Strat, which was a defendant and the subject of fraudulent transfer claims.

The Debtor will use reasonable efforts to assist UBS to collect its Phase I judgment against CDL Fund and assets CDL Fund may have.

The parties will also agree to mutual and general releases, subject to agreed carve-outs.

And, of course, the parties will not be bound until the Court approves the settlement pursuant to a 9019 motion we would hope to get on file shortly.

I am also pleased to let the Court know -- breaking news -- that this morning we reached an agreement to settle Patrick Daugherty's claims. I would now like to, at the request of

Mr. Kathman, read into the record the Patrick Daugherty settlement.

Under the Patrick Daugherty settlement, Mr. Daugherty will receive a $750,000 cash payment on the effective date. He will receive an $8.25 million general unsecured claim, and he will receive a $2.75 million Class 9 subordinated claim.

The settlement of all claims against the Debtor and its affiliates -- and affiliates will be defined in the documents -- with the exception of the tax claim against the Debtor, Mr. Dondero, and Mr. Okada -- and for the avoidance of doubt, except as I describe below, nothing in the settlement is intended to affect any pending litigation Mr. Daugherty has against Mr. Dondero, Scott Ellington, Isaac Leventon, Marc Katz, Michael Hurst, and Hunton Andrew Kurth.

Mr. Daugherty will release the Debtor and its affiliates and current employees for all claims and causes of action, except for the agreements I identify below, and dismiss all current employees as to pending actions. We believe this only applies to Thomas Surgent and no other employee is implicated.

Mr. Surgent and other employees, including but not limited to David Klos, Frank Waterhouse, Brian Collins, Lucy Bannon, and Matt Diorio, will receive releases similar to the covenant in Paragraph 1D of the Acis settlement agreement, which essentially provided the release would go away if they assisted anyone in pursuing claims against Mr. Daugherty.

1 Highland and the above-mentioned parties will accept
2 service of any subpoenas and acknowledge the jurisdiction of
3 the Delaware Chancery Court for the purposes of accepting any
4 subpoenas. And for the avoidance of doubt, Highland will
5 accept service on behalf of the employees only in their
6 capacity as such.
7 Highland will also use material -- will use reasonable
8 efforts at no material cost to assist Daugherty in vacating a
9 Texas judgment that was issued against him. We've also looked
10 at a form of the motion and believe we have agreed on the form
11 of the motion.
12 Highland, its affiliates, and current employees will
13 covenant and agree they will not pursue or seek to enforce the
14 injunction and the Texas judgment against Daugherty.
15 And lastly, Daugherty will not be able to settle any
16 claims for negligence or other claims that might be subject to
17 indemnification by the Debtor or any successor.
18 Accordingly, Your Honor, other than the claims of Mr.
19 Dondero and his related entities, and the unliquidated claims
20 of certain employees, substantially all claims have been
21 resolved in this case, a truly remarkable achievement.
22 Separate and apart, Your Honor, from the work done
23 resolving the claims, the Debtor, under the direction of the
24 independent board, has worked extremely hard to develop a plan
25 of reorganization.

1 After the independent board got its bearings, it started
2 to work on various plan alternatives. And the board received
3 a lot of pressure from the Committee to go straight to a plan
4 seeking to monetize assets like the one before Your Honor
5 today. However, the board believed that before proceeding to
6 do so and go down an asset monetization path, it should
7 adequately diligence all alternatives, including a
8 continuation of the current business model, a reorganization
9 sponsored by Mr. Dondero and his affiliates, a sale of the
10 Debtor's assets, including a sale to Mr. Dondero.
11 In June 2020, plan negotiations proceeded in earnest, and
12 the Debtor started to negotiate an asset monetization plan
13 with the Committee, while still pursuing other alternatives.
14 Preparation of an asset monetization plan is not typically
15 a complicated process. However, creating the appropriate
16 structure for a business like the Debtor's was extremely
17 complicated, because of the contractual, regulatory, tax, and
18 governance issues that had to be carefully considered.
19 At the same time the Committee negotiations were
20 proceeding down that path, Mr. Seery continued to spend
21 substantial time trying to negotiate a grand bargain plan with
22 Mr. Dondero. It is not an exaggeration to say that over the
23 last several months Mr. Seery has dedicated hundreds of hours
24 towards a potential grand bargain plan.
25 And why did he do it? Because he has always believed that

a global restructuring among all parties was the best opportunity to fully and finally resolve the acrimony that continued to plague the Debtor.

Notwithstanding Mr. Seery's and the independent board's best efforts, they were not able to reach consensus on a grand bargain plan, and the Debtor filed the plan, the initial plan, on August 12th, which ultimately evolved into the plan before the Court today.

The Court conducted an initial hearing on the disclosure statement on October 27th, and then ultimately approved -- the Court approved the disclosure statement at a hearing on November 23rd.

While the Debtor continued to work towards resolving issues with the Committee with the filed plan, Mr. Dondero, beginning to finally see that the train was leaving the station, started to do whatever he could to get in the way of plan confirmation.

He objected to the Acis settlement. When his objection was overruled, he filed an appeal.

He objected to the HarbourVest settlement. When his objection was overruled, he had Dugaboy file an appeal.

He started to interfere with the Debtor's management of its CLOs, stopping trades, refusing to provide support, and threatening Mr. Seery and the Debtor's employees.

He had his Advisors and Funds that he owned and controlled

file motions that Your Honor said was a waste of time.

He had those same Funds and Advisors threaten to terminate the Debtor as a manager, in blatant violation of the Court's January 9, 2020 order.

His conduct was so egregious that it warranted entry of a temporary restraining order and preliminary injunction against him. And of course, he has appealed that ruling as well.

But that was not all. He brazenly threw out his phone, in what the Court has remarked was spoliation of evidence, and he violated the TRO in other ways, actions for which he will answer for at the contempt hearing scheduled later this week.

And, of course, he and his pack of related entities have filed a series of objections. We have received 12 objections to the plan, Your Honor, excluding three joinders. And as I mentioned, we have been pleased to report that we've been able to resolve six of them: those of the Senior Employees, those of Patrick Daugherty, those of CLO Holdco, those of the IRS, those of Texas Taxing Authorities, and those of Jack Young and Brad Borud.

The CLO Holdco objection was withdrawn in connection with the settlement reached with them in connection with the preliminary injunction hearing that the Court heard -- started to hear last week.

The Taxing Authorities' objections have been resolved by the Debtor agreeing to make certain modifications to the plan

1 that were included in our filing yesterday and to include
2 certain provisions in the confirmation order to address other
3 concerns.
4 The group of employees who are referred to as the Senior
5 Employee are comprised of four individuals -- Frank
6 Waterhouse, Thomas Surgent, Scott Ellington, and Isaac
7 Leventon -- although Mr. Ellington and Mr. Leventon are no
8 longer employed by the Debtor.
9 On January 22nd, Your Honor, we filed executed
10 stipulations with Frank Waterhouse and Thomas Surgent. These
11 stipulations were essentially the Senior Employee stipulations
12 that were referred to in the plan and the disclosure
13 statement.
14 And as part of those stipulations, the Debtor, in
15 consultation with and agreement from the Committee, agreed to
16 certain modifications of the prior version of the Senior
17 Employee stipulation with both Mr. Waterhouse and Mr. Surgent
18 that effectively reduced the compensation they needed to
19 provide for the release from 40 percent to five percent of
20 their claims.
21 The Debtor and the Committee believed the resolution with
22 Mr. Surgent and with Mr. Waterhouse was fair, given the
23 importance of these two people to the transition effort and
24 the increased reliance upon them that the Debtor would have
25 with the departure of Mr. Ellington and Mr. Leventon. And as

a result of that agreement, Your Honor, on January 27th, Mr. Waterhouse and Mr. Surgent withdrew from the Senior Employee objection.

Subsequently, we reached agreement with Mr. Ellington and Mr. Leventon to resolve the objections they raised with confirmation. And at Ms. Dandeneau's request, I would like to read into the record the agreement reached with both of them, and I know she will correct me if I get anything wrong.

THE COURT: Okay.

MR. POMERANTZ: Among other things, Mr. Ellington and Mr. Leventon asserted in their objection that they were entitled to have their liquidated bonus claims treated as Class 7 convenience claims under the plan, under their reading of the plan, and their understanding of communications with Mr. Seery. The Debtor disputed the entitlement to elect Class 7 based upon the terms of the plan, the disclosure statement, and applicable law. But as I said, the parties have resolved this dispute.

Mr. Ellington asserts liquidated bonus claims in the aggregate amount of $1,367,197, which, to receive convenience class treatment under anybody's analysis, would have had to be reduced to a million dollars.

Mr. Leventon asserts a liquidated bonus claim in the amount of $598,198.

If Mr. Ellington and Mr. Leventon were entitled to be

1 included in the convenience class, as they claimed, they would
2 be entitled to receive 85 percent of their claim as and when
3 the claims were allowed under the plan.
4 To settle the dispute regarding whether, in fact, they
5 would be entitled to the convenience class treatment, they
6 have agreed to reduce the percentage they would otherwise be
7 entitled to receive from 85 percent to 70.125 percent. And as
8 a result, Mr. Ellington's Class 7 convenience claim would be
9 entitled to receive $701,250 if allowed, and Mr. Leventon's
10 Class 7 convenience claim would be entitled to receive
11 $413,175.10 if allowed.
12 Mr. Ellington and Mr. Leventon would reserve the right to
13 assert that a hundred percent of their liquidated bonus claims
14 are entitled to administrative priority, and the Debtor, the
15 Committee, the estate and their successors, would reserve all
16 rights to object.
17 If anyone did object to the allowance of the liquidated
18 bonus claims and Mr. Ellington and/or Mr. Leventon prevailed
19 in such disputes, then the discount that was previously agreed
20 to -- 85 percent to 70.125 percent -- would go away and they
21 would be entitled to receive the full 85 percent payout as
22 essentially a penalty for litigating against them on their
23 allowed claims and losing.
24 As an alternative to the estate preserving the right to
25 object to the allowance of Mr. Ellington and Mr. Leventon's

1 liquidated bonus claims, the Debtor and the Committee have an
2 option to be exercised before the effective date to just agree
3 that both their claims will be allowed, and allowed as Class 7
4 convenience claims. And if that agreement was reached, then
5 the amount of such liquidated bonus claims, they would receive
6 a payment equal to 60 percent of their allowed convenience
7 class claim.
8 In exchange, Mr. Ellington and Mr. Leventon would waive
9 their right to assert payment of a hundred percent of their
10 liquidated bonus claims as an administrative expense.
11 So, under this circumstance, Mr. Ellington would receive
12 an allowed claim of $600,000, which is 60 percent of a million
13 dollars, and Mr. Leventon will receive a payment on account of
14 his Class 7 claim of $358,918.80.
15 Under both scenarios, Mr. Ellington and Mr. Leventon would
16 preserve their paid time off claims that are treated in Class
17 6, and they would preserve their other claims in Class 8,
18 largely unliquidated indemnification claims, subject to the
19 rights of any party in interest to object to those claims.
20 Mr. Ellington will change his vote in Class 8 from
21 rejecting the plan to accepting the plan, and Mr. Leventon
22 would change his votes in Class 8 and Class 7 from rejecting
23 the plan to accepting the plan. And Mr. Ellington and Mr.
24 Leventon would withdraw any remaining objections to
25 confirmation of the plan, and we intend to put this settlement

in the confirmation order.

Your Honor, six objections to the plan remain outstanding. One objection was filed by the Office of the United States Trustee, and the remaining five objections are from Mr. Dondero and his related entities. And I would like to put up a demonstrative on the screen which shows how all of these objections lead back to Jim Dondero.

THE COURT: All right.

MR. POMERANTZ: You see on the top left, Your Honor, there's a box in white that says A through E, which are the five remaining objections. And you can see how they relate. But all of it goes back to that orange box in the middle, Jim Dondero.

These objections, which I will address in my closing argument in detail, are not really focused on concerns that creditors are being treated unfairly, and that's because Mr. Dondero and his entities don't really have any valid claims. Mr. Dondero owns no equity in the Debtor. He owns the Debtor's general partner, Strand, which in turn owns a quarter percent of the total equity in the Debtor. Mr. Dondero's only other claim is a claim for indemnification. And as Your Honor would expect, the Debtor intends to fight that claim vigorously.

Dugaboy and Get Good have asserted frivolous administrative and unsecured claims, which I will discuss in

more detail later.

Dugaboy does have an equity interest in the Debtor, but it represents eighteen-hundredths of a percent of the Debtor's total equity.

And Mr. Rukavina's clients similarly have no general unsecured claims against the Debtor. Either his clients did not file proofs of claim or filed claims and then agreed to have them expunged. The only claims that his clients assert is a disputed administrative claim filed by NexPoint Advisors.

And the objections aren't legitimately concerned about the post-confirmation operations of the estate, to preserve equity value, how much people are getting, whether Mr. Seery is really the right person to run these estates. That's because Mr. Dondero has repeatedly told the Court that he believes his offer, which doesn't come close to satisfying claims in full in this case, is for fair value and that creditors, who are owed more than $280 million, will not receive anywhere close to the amount of their claims.

Rather, Mr. Dondero and his entities are concerned with one thing and one thing only: how to preserve their rights to continue their frivolous litigation after confirmation against the independent directors, the Claimant Trustee, the Litigation Trustee, the employees, the Claimant Trust Oversight Board, and anyone who will stand in their way. For Mr. Dondero, the decision is binary: Either give him what he

1 wants, or as he has told Mr. Seery, he will burn down the
2 place.
3 Your Honor will hear a lot of argument today about how the
4 -- and tomorrow, in closing -- about how the injunction, the
5 gatekeeper, and the exculpation provisions of the plan are not
6 appropriate under applicable law. The Debtor, of course,
7 disagrees with these arguments, and I will address them in
8 detail in my closing argument.
9 But I do think it's important to focus the Court at the
10 outset on the January 9, 2020 order that the Court entered
11 which addressed some of these issues. This order, which has
12 not been appealed, which was actually agreed to by Mr.
13 Dondero, has no expiration by its terms and will continue
14 post-confirmation, did some things that the Objectors just
15 refuse to recognize and accept.
16 It approved an exculpation for negligence for the
17 independent directors and their agents. It provided that the
18 Court would be the gatekeeper to determine whether any claims
19 asserted for them -- against them for gross negligence and
20 willful misconduct could be pursued, and if so, provided that
21 this Court would have exclusive jurisdiction to adjudicate
22 those claims. And it prevented Mr. Dondero and his related
23 entities from causing any related entity to terminate any
24 agreements with the Debtor.
25 I also note, Your Honor, that the Court's July 16, 2020

order approving Mr. Seery as chief executive officer and chief restructuring officer included the same exculpation and gatekeeping provision as contained in the January 29th -- January 9th order.

Your Honor, we have all come too far to allow Mr. Dondero to make good on his promise to Mr. Seery to burn down the place if he didn't get what he wanted. The Debtor deserves better, the creditors deserve better, and this Court deserves better.

That concludes my opening argument, Your Honor.

THE COURT: All right. Thank you. I had one follow-up question about the Daugherty settlement. You did not mention, is it going to be reflected in the confirmation order, is it going to be the subject of a 9019 motion, or something else?

MR. POMERANTZ: It'll be subject to a -- it'll be subject to a 9019 motion, Your Honor.

THE COURT: All right.

MR. POMERANTZ: I apologize for leaving that out.

THE COURT: All right. Thank you. Well, --

MR. KATHMAN: Your --

THE COURT: -- I appreciate that you stuck closely to your 20-minute time estimate.

As far as other opening statements today, I'm going to start with the objections that were resolved. Mr. Kathman, I

see you there. Who will speak on behalf of Patrick Daugherty and the announced settlement?

OPENING STATEMENT ON BEHALF OF PATRICK DAUGHERTY

MR. KATHMAN: Good morning, Your Honor. Jason Kathman on behalf of Mr. Daugherty.

Mr. Pomerantz correctly recited the bullet points of the settlement that we agreed to in principle this morning. There was one that he did leave off that I do want to make sure that I mention and that it's read into the record. And he read at the top end that Mr. Daugherty does maintain his ability to pursue his 2008 tax refund bonus claim, or tax refund compensation claim. If the Court will recall, there's a contingent liability out there based on how compensation was paid back in 2008 that's the subject of an IRS audit. And so the settlement expressly contemplates that those -- that that claim will be preserved and Mr. Daugherty may pursue that claim. Should the IRS have an adverse ruling and we have to pay money back, we get to preserve that claim.

And so the one thing that is preserved, Your Honor -- and the same way that Mr. Pomerantz read verbatim the words, I'm going to read verbatim the words that we've agreed to: Daugherty maintains and may pursue the 2008 tax refund compensation portion of his claim that is currently a disputed contingent liability. The Debtor and all successors reserve the right to assert any and all defenses to this portion of

1 the Daugherty claim. The litigation of this claim shall be
2 stayed until the IRS makes a final determination, provided,
3 however, Daugherty may file a motion with the Bankruptcy Court
4 seeking to have the amount of his tax claim determined for
5 reservation purposes as a "disputed claim" under the Debtor's
6 plan. The Debtor and all successors reserve the right to
7 assert any and all defenses to any such motion.
8 So the Debtor's plan says that they can make estimations
9 for disputed claims. There is not currently something
10 reserving this particular claim, so we wanted to make sure we
11 reserve our rights to be able to have that amount reserved
12 under the Debtor's plan. And the Debtor obviously preserves
13 their ability to object to that.
14 With that, Your Honor, it is going to be papered up in a
15 9019, and we'll have some further things to say at the 9019
16 hearing, but didn't want to derail the Debtor's confirmation
17 hearing this morning.
18 THE COURT: All right. And --
19 MR. POMERANTZ: And Mr. Kathman is -- Mr. Kathman is
20 correct. I neglected to mention that provision, but he is --
21 he read it, and that's agreed to.
22 THE COURT: All right. And I did not hear anything
23 about Mr. Daugherty's vote on the plan. Is there an agreement
24 to change or a motion to change the vote from no to yes?
25 MR. KATHMAN: Your Honor, that wasn't, I think,

directly -- and Mr. Pomerantz can correct me if I'm wrong, or Mr. Morris, actually, probably more could -- that wasn't directly addressed, but I think the answer to that is probably they don't need our vote.

THE COURT: Okay.

MR. KATHMAN: I think they have enough votes in that class to carry.

THE COURT: Okay.

MR. KATHMAN: But the answer directly is that that wasn't specifically addressed one way or the other.

THE COURT: All right.

MR. POMERANTZ: That is correct, Your Honor. We would, of course, not oppose Mr. Daugherty changing his vote, but as Your Honor saw in the ballot summary, we are way over the amount in dollar amounts of claims. But if they wanted to change their vote, we wouldn't oppose.

THE COURT: All right. Well, --

MR. KATHMAN: Your Honor, I have -- I have the benefit of Mr. Daugherty. He is on -- I should note, Mr. Daugherty is on the hearing this morning. He just let me know that he is willing to change his vote. If the Debtor were to so make a motion, we're fine changing our vote to in favor of the plan.

THE COURT: All right. All right. Well, we'll get the ballot agent declaration or testimony later. At one time

when I had checked, there was a numerosity problem but not a dollar amount problem. And it sounds like that is no longer an issue, perhaps because of the employee votes, or I don't know.

But, all right. Well, thank you.

MR. POMERANTZ: Your Honor, there is still a numerosity problem.

THE COURT: Okay.

MR. POMERANTZ: There's not a dollar amount problem.

THE COURT: Okay.

MR. POMERANTZ: But we'll address that and cram-down in closing.

THE COURT: All right. Very good.

All right. Well, I want to hear from the -- what we've called the Senior Employee group. Is Ms. Dandeneau going to confirm the announcement of Mr. Pomerantz?

MS. DANDENEAU: Yes, Your Honor. I confirm that Mr. Pomerantz's recitation of the terms to which we've agreed is accurate.

THE COURT: All right. Very good.

All right. I suppose I should circle back to UBS. We've, of course, heard in prior hearings the past few weeks that there was a settlement with UBS, but Mr. Clubok, could I get you to confirm what Mr. Pomerantz announced earlier about the UBS settlement?

MR. CLUBOK: Yes. Good morning again, Your Honor. Yes, we have reached a settlement, and it's just -- and it's been approved internally at UBS and obviously by the Debtor. It's just subject to the final documentation. And we are working very closely with the Debtor to try to do that as quickly as possible.

THE COURT: All right. Thank you.

All right. Well, let me go, then, to other opening statements. Is there anyone else who at this time wishes to make an opening statement? And, you know, for the pending objectors, please, no more than 20 minutes.

MR. CLEMENTE: Your Honor? Your Honor, if I may, it's Matt Clemente on behalf of the Committee.

THE COURT: Okay.

MR. CLEMENTE: I'd be very brief, but I would like to make some remarks to Your Honor. It'll be less than five minutes.

THE COURT: All right. Go ahead.

MR. CLEMENTE: Thank you, Your Honor.

OPENING STATEMENT ON BEHALF OF THE UNSECURED CREDITORS' COMMITTEE

MR. CLEMENTE: Again, for the record, Matt Clemente; Sidley Austin; on behalf of the Official Committee of Unsecured Creditors.

Your Honor, to be clear, the Committee fully supports confirmation of the Debtor's plan and believes the plan is

1 confirmable and should be confirmed.
2 Although it has taken us quite some time to get to this
3 point, Your Honor, and as Mr. Pomerantz referred, the Debtor's
4 business is somewhat complex, the plan is remarkably
5 straightforward, Your Honor, and has only been made
6 complicated by the various objections filed by Mr. Dondero's
7 tentacles.
8 At bottom, Your Honor, the plan is designed to recognize
9 the reality of the situation that the Committee has
10 continually been expressing to Your Honor, and that is the
11 overwhelming amount of creditors in terms of dollars are
12 litigation creditors, creditors who are here entirely because
13 of the fraudulent and other conduct of Mr. Dondero and his
14 tentacles.
15 The other third-party creditors, Your Honor, by and large
16 are those collateral to these litigation claims in terms of
17 true trade creditors and service providers.
18 Recognizing this fact, Your Honor, the plan contains an
19 appropriate convenience class, which, in the Committee's view,
20 provides a fair way to capture a large number of claims and
21 appropriately recognizes the distinction between those claims
22 and the large litigation claims. And the holders of these
23 large litigation claims, including now Mr. Daugherty, have
24 voted in favor of allowing this convenience class treatment.
25 Your Honor, after distributions are made to the

1 administrative creditors, the priority creditors, the secured
2 creditors, and the convenience creditors, the remainder goes
3 to general unsecured creditors who will control how this value
4 is realized. These are the large litigation creditors.
5 Additionally, Your Honor, recognizing the possibility of
6 recovery in excess of general unsecured claims plus interest,
7 and to thwart, from the Committee's perspective, what would
8 have undoubtedly been an argument by one of the Dondero
9 tentacles that the general unsecured creditors could be paid
10 more than they are owed, the plan provides for a contingent
11 interest to kick in after payment in full for interests of all
12 prior claims.
13 Your Honor, this is the sum and substance of the plan. At
14 bottom, fairly straightforward. And the true creditors, Your
15 Honor, have voted overwhelmingly in favor of the plan. Class
16 8 has voted to support the plan. Class 7 has voted to accept
17 the plan. And now I believe, with Mr. Daugherty's settlement,
18 one hundred percent in amount of Class 8, non-insider, non-
19 Dondero-controlled or (audio gap) have voted in favor of the
20 plan.
21 To be clear, as Your Honor pointed out and as Mr.
22 Pomerantz referenced, there is not numerosity in Class 8, Your
23 Honor, but that is driven, as Your Honor will see, from
24 approximately 30 no-votes of current employees who the
25 Committee believes are not owed any amounts and therefore they

will not be receiving payments under the plan, yet they voted against the plan. So although we have a technical cram-down plan from the Class 8 perspective, Your Honor, the plan voting reflects the reality that the economic parties in interest overwhelmingly support the plan.

So, Your Honor, cutting through the machinations of the Dondero tentacles, we do have a fairly straightforward plan and a plan that the Committee believes is confirmable and should be confirmed.

Your Honor, since I've been in front of you for over a year now, I've referred to the goals of the Committee in this case, and the goals are straightforward in terms of expressing them but can be difficult in reality to implement them. The Committee's goals have been two-fold: to maximize the value of the estate and therefore the recoveries for its constituency, and to disentangle from the Dondero (audio gap).

As with all things Highland, although these goals are straightforward, they're remarkably difficult to achieve, given the Dondero tentacles. However, the Committee strongly believes the plan achieves these two goals.

First, the plan provides a credible path to maximize recovery with Mr. Seery, who has gotten to know the assets and who has performed skillfully and credibly throughout this very difficult process. It is a difficult set of assets and complex set of assets, as Your Honor knows very well.

To be sure, there is uncertainty associated with the Debtor's projections, but that is inherent in the nature of the assets of the Debtor, and frankly, is inherent in the nature of projections themselves. And Mr. Dondero and his tentacles will point to the downside, potentially, in those projections, but the Court will be reminded that there is also potential upside in those projections, an upside that would inure to the benefit of the general unsecured claims.

Second, Your Honor, although it is seemingly impossible to free yourself from the Dondero web until every single one of the 2,000 barbed tentacles is painfully removed, if that's even possible, Your Honor, the Reorganized Debtor, the Claimant Trust, the Claimant Trustee, the Litigation Sub-Trust, the Litigation Trustee, and the Oversight Board construct and mechanisms is a structure that the Committee believes provides the creditors with the best possibility to do so, and that is to deal with what will undoubtedly be a flurry of attacks from Mr. Dondero and his tentacles.

This is a virtual certainty, Your Honor. The creditors have seen this movie before and Your Honor has seen this movie before. They have seen Mr. Dondero make and break promises. They have seen Mr. Dondero attempt to bludgeon adversaries into submission in order to accept his offerings, and they have heard Mr. Dondero say that which he has said in this court during the preliminary injunction hearing --

specifically, that the Debtor's plan "is going to end up in a myriad of litigation."

The creditors are steeled in their will to be rid of Mr. Dondero, and they're confident in this structure to do so.

To be clear, Your Honor, what is before the Court today for confirmation is the Debtor's plan, not some other plan that no one supports other than Mr. Dondero and his tentacles. The question isn't whether Mr. Dondero has a better proposal -- and footnote, Your Honor, the answer is he does not, both from a qualitative and quantitative perspective -- but whether the plan before the Court is in the best interest of creditors and should be confirmed. The Committee strongly believes it is, and should, and all the Committee members support confirmation of the Debtor's plan.

Recognizing Mr. Dondero's behavior, Your Honor, and threats regarding how he will behave in the future, there are certain provisions in the plan that are of critical importance to the creditors. Of course, all provisions in the plan are extremely important, Your Honor, but as Mr. Pomerantz referenced, the creditors need the gatekeeper, exculpation, and injunction provisions.

The reason is obvious, and is emphasized by the supplemental objection filed just yesterday by some of Mr. Dondero's tentacles -- namely, the Dugaboy and the Get Good Trusts. And I quote, Your Honor: "It is virtually certain

1 that, under the Debtor's plan, there will be years of
2 litigation in multiple adversary proceedings, appeals, and
3 collection activities, all adding substantial uncertainty and
4 delay."
5 Additionally, Your Honor has seen from the proceedings in
6 this case and has expressed frustration at numerous times at
7 the myriad and at times baseless and borderline frivolous and
8 out of touch with reality suits and objections and proceedings
9 that the Dondero tentacles bring. The creditors need the
10 gatekeeper, exculpation, and injunction provisions to preserve
11 and protect value. And the record, I think, to this point is
12 clear, and will be further made clear through the confirmation
13 proceedings, that the protections are appropriate and entirely
14 within this Court's authority to grant.
15 In sum, Your Honor, the Committee fully supports
16 confirmation of the plan. The Committee believes it is
17 confirmable and should be confirmed, and two classes of
18 creditors and the overwhelming amount of creditors in terms of
19 dollars agree.
20 That's it, Your Honor. Unless you have questions for me,
21 I have nothing further at this time.
22 THE COURT: All right. Thank you, Mr. Clemente.
23 MR. CLEMENTE: Thank you, Your Honor.
24 THE COURT: All right. Who else wishes to be heard?
25 MR. DRAPER: Your Honor, this is Douglas Draper. I'd

like to be heard. I have a few -- I'll take five minutes, at most --

THE COURT: All right. Go ahead.

MR. DRAPER: -- and just focus on a few things.

OPENING STATEMENT ON BEHALF OF THE GET GOOD TRUST AND DUGABOY INVESTMENT TRUST

MR. DRAPER: I'm going to focus my opening remarks on the releases, the exculpations, and channeling injunctions in the plan. I'm not waiving my other objections, but, rather, trying not to subject the Court to hearing the same argument from multiple lawyers.

The good thing about the law is that it's absolute in certain respects. It does not matter who is asserting a legal protection, the law applies it. For example, a serial killer is entitled to a *Miranda* warning and a protection against unlawful search and seizure. The law does not allow tainted evidence or an unlawful admission into evidence, notwithstanding the fact that the lack of admission of that evidence may lead to the freeing of that serial killer.

Today, you must make an independent evaluation as to whether the plan complies with 1129 and applicable law. The decision must be made notwithstanding the fact that it is being made by a Dondero entity. It's not being -- it must be applied notwithstanding the fact that it's being made by me.

We contend that the plan does not meet the hurdle and

1 confirmation should be denied, notwithstanding the fact that
2 the infirmity with the plan is asserted by me and
3 notwithstanding the fact that Mr. Pomerantz and the unsecured
4 creditors have overwhelming support.
5 We all know 1141, the Barton Doctrine, and 544 -- 524
6 provide injunctions and protections for certain parties
7 associated with the Debtor. Had the plan merely referenced
8 these sections and stated that the injunction, et cetera,
9 shall not exceed those allowed pursuant to *Pacific Lumber*, I
10 would not be making this argument.
11 Instead, we see a plan that has a definition of Exculpated
12 Parties, Released Parties, Related Parties, that exceed the
13 protections afforded by the Bankruptcy Code, the Barton
14 Doctrine, and 524.
15 We have a grant of jurisdiction and oversight that exceeds
16 that allowed under *Craig's Store*, the *Craig's Store* line of
17 cases.
18 We have releases of claims against non-debtor parties,
19 such as Strand, who is, under the Bankruptcy Code, under 723,
20 liable for the debts of the Debtor.
21 The plan, with its expansive releases, released parties,
22 grant of injunctions, exculpations and channeling injunctions,
23 are impermissible under Fifth Circuit case law. And I would
24 ask the Court to look closely at those definitions, who is --
25 who the law allows to be exculpated and released and who the

1 law specifically prohibits being exculpated and released, and,
2 in fact, apply the *Pacific Lumber* line of -- case, as well as
3 524 and the Bankruptcy Code when you look at these issues.
4 Notwithstanding the overwhelming so-called support by the
5 creditors at issue, the law must be applied, and it must be
6 applied pursuant to what the Fifth Circuit requires.
7 THE COURT: All right. Thank you, Mr. Draper.
8 Other Objectors with opening statements?
9 MR. RUKAVINA: Your Honor, Davor Rukavina. Briefly?
10 THE COURT: Okay.
11 OPENING STATEMENT ON BEHALF OF CERTAIN FUNDS AND ADVISORS
12 MR. RUKAVINA: Your Honor, I represent various funds,
13 including three of which have independent boards. The Debtor
14 manages more than $140 million of those funds, and the Debtor
15 manages around a billion dollars in CLOs.
16 Whether I am a tentacle of Mr. Dondero or not -- I'm not,
17 since there's an independent board -- the fact remains that
18 the Debtor wants to manage these assets and my clients' money
19 post-assumption and post-confirmation with effective judicial
20 immunity. So our fundamental problem with this plan is the
21 assumption of those contracts under 365(c) and (b). I think
22 we'll have to wait for the evidence to see what the Debtor
23 proposes and has, and I will reserve, I guess, the balance of
24 my arguments on that to closing, depending on what the
25 evidence is.

1 But I don't want the Court to lose sight of the fact that
2 what the Debtor wants to do is, in contravention of our
3 desires, continue managing our assets post-confirmation, even
4 as it liquidates, just to make a buck. It's our money, Your
5 Honor, and whether we're Dondero or not, we're a couple
6 hundred million, probably, or more, of third-party investment
7 professionals, pension funds, et cetera, and we should not be
8 all tainted without evidence as a tentacle of someone whom,
9 I'll remind everyone here, built a multi-billion dollar
10 company and made a lot of money for people.
11 The second objection, Your Honor, goes to the Class 8
12 rejection. It sounds like there's still a problem with the
13 number of creditors, even though certain creditors have
14 switched their votes. That raises now the fair and equitable
15 standard, together with the undue discrimination and the
16 absolute priority rule. I think we'll have to let the
17 evidence play out, and I'll reserve the balance of my closing
18 or the balance of my remarks to closing on that issue.
19 The third issue, Your Honor, is the same exculpation and
20 release and injunction provisions that Mr. Draper raised.
21 Those are legal matters that I'll discuss at closing, but I do
22 note that the Debtor purports to prevent my clients from
23 exercising post-assumption post-confirmation rights, period.
24 And that's just inappropriate, because if the Debtor wants the
25 benefits of these agreements, well, then of course it has to

1 comply with the burdens. And to say *a priori* that anything
2 that my clients might do post-confirmation would be the result
3 of a bad-faith Mr. Dondero strategy, there's no basis for that
4 and that's not the basis on which my clients' rights in the
5 future, when there is no bankruptcy estate and there is no
6 bankruptcy jurisdiction, can be enjoined.
7 And the final point, Your Honor, entails this channeling
8 injunction. I'll talk about it during closing. It is
9 inappropriate under 28 U.S.C. 959. This is not a Barton
10 Doctrine trustee issue, this is a debtor-in-possession, and a
11 channeling injunction, the Court will have no jurisdiction
12 post-confirmation.
13 Thank you, Your Honor.
14 THE COURT: All right. Thank you.
15 Does Mr. Dondero's counsel have an opening statement?
16 MR. TAYLOR: I do, Your Honor. I'll keep it brief.
17 This is Clay Taylor on behalf of Mr. Dondero.
18 THE COURT: Okay.
19 OPENING STATEMENT ON BEHALF OF JAMES D. DONDERO
20 MR. TAYLOR: Your Honor, the plan is clear in some
21 respects, and I'm not going to belabor these points, as other
22 objecting counsel have already addressed this. But the plan
23 does provide for non-debtor releases, and it provides for non-
24 debtor releases for parties beyond that which is allowed by
25 *Pacific Lumber* and under the Code.

1 It also provides for exculpations of non-debtor parties in
2 excess of that which is allowed under the Code and applicable
3 case law.
4 Finally -- or, not finally, but third, it requires this
5 Court to keep a broad retention of post-confirmation
6 jurisdiction that could go on for years, and that is improper.
7 Finally, it requires the parties to submit to the
8 jurisdiction of this Court via a channeling injunction, which
9 we believe is beyond that which is allowed under applicable
10 Fifth Circuit precedent.
11 What is clear, what the evidence will show -- and I
12 thought it was interesting that none of the proponents of plan
13 confirmation ever talk about what the evidence is going to
14 show. They testified a lot before Your Honor, but they didn't
15 ever talk about what the evidence would show. What the
16 evidence will show is this plan was solicited via a disclosure
17 statement that told all the unsecured creditors, we project
18 that you're going to receive 87 cents on the dollar on your
19 claim.
20 About two months later, and this was Friday of this past
21 week, they changed those projections, and those projections
22 then showed unsecured creditors, under a plan analysis, that
23 they were going to receive 62 cents on the dollar. That is in
24 contrast to the liquidation analysis that had been prepared
25 just two months prior showing that, under a hypothetical

Chapter 7 liquidation analysis, that the unsecured creditors would receive 65 cents on the dollar. Obviously, 62 cents is less than 65 percent.

Realizing they had a problem, I guess, over the weekend, they changed last night, the night before confirmation, and sent us some new projections that now show that the unsecured creditors under a plan would receive 71 cents on the dollar.

Your Honor, what the evidence will show, and it is Highland's burden to show this, is that -- that they meet the best interests of the creditors. And part of that is that they will do better under a plan rather than under a hypothetical Chapter 7.

Quite simply, they don't have the evidence, nor have they done the analysis to be able to prove that to this Court.

What the evidence will also show is clear is that Mr. Seery, under the plan analysis, is scheduled to receive at least $3.6 million over just the first two years of this plan if it doesn't go any further. And that's just for monthly payouts of $150,000 per month. That's not including a to-be-agreed-upon success fee structure, which hasn't been negotiated yet. And if it hasn't been negotiated yet, it can't be analyzed yet to see if those costs would exceed their benefits and therefore drive the return down such that a hypothetical Chapter 7 trustee could do better.

There is also going to be additional costs for the

1 Litigation Trustee and the fees that they are going to charge.
2 There's going to be an Oversight Committee, and those fees are
3 also to be negotiated. There's also U.S. Trustee fees, which
4 Mr. Seery tells us that he has calculated within the
5 liquidation and plan analysis numbers, albeit both myself and
6 Mr. Draper, as the evidence will show, have asked for the
7 rollups that come behind the liquidation and plan analysis in
8 each instance of the three iterations that have been done in
9 two months, and we have been denied that information. That
10 evidence is not going to come in before this Court, and
11 without that rollup information, this Court can't make an
12 independent verification that this meets the best interests of
13 the creditor and better than a hypothetical Chapter 7 trustee.
14 What the evidence will also show, make an assumption that,
15 under a plan analysis, that Mr. Seery will be able to generate
16 higher returns on the sale of the assets of the Highland
17 debtor and its subsidiaries, to the neighborhood of $60
18 million higher. There is no independent verification of this.
19 There has been no due diligence done. It was merely an
20 assumption done by Mr. Seery and his advisors, and we submit
21 that they will not have the evidence to show that they can
22 beat a Chapter 7 trustee.
23 This Court does have an alternative before it. There is
24 an alternative plan that has been filed under seal. The Court
25 is aware of it. And it guarantees that creditors will receive

at least 65 cents on the dollar. Moreover, those claims are guaranteed -- and they're going to be secured that they will be paid that money.

MR. POMERANTZ: Your Honor, this is under -- this is under seal. And I never interrupt somebody's argument, but this plan is under seal for a reason, Your Honor, and I object to any description of the terms of a plan that's not before Your Honor and is under seal.

THE COURT: Okay. I sustain that objection.

MR. TAYLOR: Your Honor has a means to cut the Gordian knot of the litigation and appeals before it and to ensure that there is certainty for creditors. It would massively reduce the administrative fee burn that is contemplated under the proposed plan before the Court. As I've mentioned, it's at least $3.6 million just in monthly fees for Mr. Seery alone. All of the rest of the fees are yet to be determined and to be negotiated. I don't see how any analysis could have been done regarding the administrative fee burn that is going to happen over the two years and potentially much further as this case draws on.

For those reasons alone, Your Honor, we believe that the plan confirmation should be denied and this Court should look at the alternatives before it.

MR. KATHMAN: Can I say something before --

MR. TAYLOR: Thank you, Your Honor.

THE COURT: All right. Thank you.

All right. Have I missed any Objectors?

MR. KATHMAN: Your Honor?

MS. DRAWHORN: Yes, Your Honor.

THE COURT: Okay. Ms. --

MR. KATHMAN: Your Honor, if I could spend just one minute, and I -- we -- I -- we filed a joinder on behalf of Mr. -- or, Jason Kathman on behalf of Davis Deadman, Todd Travers, and Paul Kauffman.

THE COURT: Uh-huh.

OPENING STATEMENT ON BEHALF OF DAVIS DEADMAN, TODD TRAVERS, AND PAUL KAUFFMAN

MR. KATHMAN: Mr. Pomerantz had noted, I think, at the front end that the Debtor amended their plan that resolved those objections. I just want to say for the record that those had been resolved.

And with that, Your Honor, may I be dismissed?

THE COURT: Yes, you may. Thank you.

MR. KATHMAN: Thank you, Your Honor.

THE COURT: All right. Was Ms. Drawhorn speaking up to make an opening statement?

MS. DRAWHORN: Yes.

THE COURT: Go ahead.

MS. DRAWHORN: Yes, Your Honor.

THE COURT: Go ahead.

1 OPENING STATEMENT ON BEHALF OF THE NEXPOINT PARTIES
2 MS. DRAWHORN: Just very briefly, Lauren Drawhorn on
3 behalf of NexPoint Real Estate Partners, the NexPoint Real
4 Estate entities, and NexBank.
5 Just a very brief opening. Just wanted to note that it
6 seems that the Debtor's and the Committee's position seems to
7 be if there's some way, any way, to connect an entity to Mr.
8 Dondero, then they don't need to perform any true evaluation
9 of potential claims or that party's rights or their concerns,
10 and that results in ignoring not only the merits of many
11 claims but also the basic requirements of due process and the
12 statutes, the Bankruptcy Code, and the case law.
13 We filed objections that were focused largely on the
14 injunctions and the releases, and then also the proposed
15 subordination provisions.
16 Two of my clients, one of them has a proof of claim, and
17 while it is being disputed, that claim is out there and should
18 get -- be entitled to be pursued and defended, and many of the
19 injunctions appear to prevent my client from doing so.
20 Similarly, it was mentioned that NexBank, in the
21 demonstrative, had a terminated service agreement, but there's
22 periods of time for which no services were provided but
23 payment was made, and that's a potential admin claim that has
24 been raised. And the injunction, again, appears to prevent my
25 clients from pursuing these claims.

So I think, despite the general response to any connection to Dondero means there's no merit, that's not what we're here for today. We need to really look at the merits of all potential claims and all -- the rights of all parties and the -- how the injunction and release provisions prevent that and how they don't comply with the required law.

And, of course, we join in with many of the other objections, but that's my main point for the opening today.

THE COURT: All right. Thank you.

All right. I think I have covered all of the at least pending objections except the U.S. Trustee. I'll check again to see if someone is out there for the U.S. Trustee. (No response.) All right. If you're there, we're not hearing you. You're on mute.

Okay. Any other attorneys out there who wish to make an opening statement?

All right. Well, I'll turn back to Mr. Pomerantz. You may call your first witness.

MR. POMERANTZ: Okay. I will turn the virtual podium over to my partner, John Morris, who will be putting on our witnesses.

THE COURT: All right. Mr. Morris, you may call your first witness.

MR. MORRIS: Good morning, Your Honor. John Morris from Pachulski Stang Ziehl & Jones on behalf of the Debtor.

Can you hear me okay?

THE COURT: I can.

MR. MORRIS: Okay. Thank you very much.

The Debtor calls James Seery as its first witness.

THE COURT: All right. Mr. Seery, if you could say, "Testing, one, two," please.

MR. SEERY: Testing, one, two.

THE COURT: All right. Hmm, I've not picked up your video yet. Let's try it again.

MR. SEERY: Testing, one, two. Testing.

MR. MORRIS: We have the audio.

THE COURT: We have the audio.

MR. SEERY: Oh.

MR. MORRIS: There we go.

THE COURT: There you are.

MR. SEERY: The video should be working.

THE COURT: All right.

MR. POMERANTZ: Yeah. Actually, one -- Your Honor, one thing before we start. We have Patrick Leatham from KCC. He is prepared to sit on the line for the whole day until his time comes. I would just like to know if anyone intends to cross-examine him or object to his declaration. Because if they don't, we could excuse Mr. Leatham.

THE COURT: All right. What about that? Anyone want to cross-examine the balloting agent?

MR. RUKAVINA: Your Honor, Davor Rukavina. I do not. If the Debtor would just state, with the change of votes in Class 8, what the final tally is, I see no reason to dispute that, and then we can dismiss this gentleman. But I do think that we should all know, with the change of votes, what it now is.

THE COURT: All right.

MR. POMERANTZ: We will -- we will work on that, Your Honor, with the changes as a result of the settlements today, and including Mr. Daugherty's client. We can get that information sometime today.

THE COURT: All right. So, Mr. Rukavina, do you agree that he can be excused with that representation, or do you want --

MR. RUKAVINA: Yes, Your Honor.

THE COURT: Okay. All right. So, it's Mr. Leatham? You are excused if you want to drop off this video.

All right. Mr. Seery, please raise your right hand.

JAMES P. SEERY, DEBTOR'S WITNESS, SWORN

THE COURT: All right. Thank you. Mr. Morris, go ahead.

MR. MORRIS: Thank you, Your Honor.

If I may, I'd like to just begin by moving my exhibits into evidence so that it'll make this all go a little bit smoother.

1 THE COURT: All right.
2 MR. MORRIS: And if you'll indulge me just a little
3 patience, please, because the Debtor's exhibits are found in
4 three separate places.
5 THE COURT: Uh-huh.
6 MR. MORRIS: And I would just take them one at a
7 time.
8 First, at Docket No. 1822, the Court will find Debtor's
9 Exhibits A through what I'm referring to as 6Z. Six Zs. So
10 the Debtor respectfully moves into evidence Exhibits A through
11 6Z on Docket No. 1822.
12 THE COURT: All right. Are there any objections?
13 MR. RUKAVINA: Your Honor, I have a number of
14 targeted objections to all of the exhibits. Did I hear Mr.
15 Morris say 6Z?
16 THE COURT: Yes.
17 MR. MORRIS: Yes.
18 MR. RUKAVINA: Or six -- then, Your Honor, I can go
19 through my limited objections, if that pleases the Court.
20 THE COURT: All right. Go ahead.
21 MR. RUKAVINA: Your Honor, Exhibit B, a transcript, B
22 as in boy. Exhibit D, an email, D as in dog. Exhibit E as in
23 Edward. Moving on, Your Honor, 4D as in dog. 4E as in
24 Edward.
25 MR. MORRIS: Slow down, please.

THE COURT: Okay.

MR. RUKAVINA: I'm sorry.

THE COURT: You said 4D as in dog, correct?

MR. RUKAVINA: Then -- yes, Your Honor. Then 4E as in Edward.

THE COURT: Okay.

MR. RUKAVINA: 4G as in George. Your Honor, one, two, three, four, five T. 5T as in Tom. And then, Your Honor, one, two -- 6R. 6S. 6T as in Tom. And 6U as in under. That's it.

THE COURT: All right. Well, Mr. Morris, do you want to carve those out for now and just offer them the old-fashioned way and I can rule on the objections then?

MR. MORRIS: Why don't we do that? I may just deal with it at the end of the case. But subject to those objections, the Debtor then moves into evidence the balance of the exhibits on Docket 1822.

THE COURT: All right. So, for the record, the Court will admit all exhibits at Docket No. 1822 at this time except B, D, E, 4D, 4E, 4G, 5T, 6R, 6S, 6T, and 6U.

(Debtor's Docket 1822 exhibits, exclusive of Exhibits B, D, E, 4D, 4E, 4G, 5T, 6R, 6S, 6T, and 6U, are received into evidence.)

THE COURT: All right. Mr. Morris, continue.

MR. MORRIS: Thank you, Your Honor.

Next, at Docket 1866, you'll find Debtor's Exhibits 7A through 7E, and the Debtor respectfully moves those dockets -- documents into evidence.

THE COURT: All right. Any objection? (No response.) Are there any objections?

MR. RUKAVINA: Your Honor, not from -- not from me.

THE COURT: All right. Hearing no objections, the Court will admit all Debtor exhibits appearing at Docket Entry No. 1866.

MR. MORRIS: Thank you, Your Honor.

(Debtor's Docket 1866 exhibits are received into evidence.)

MR. MORRIS: And finally, at Docket 1877, the Court will find Debtor's Exhibits 7F through 7Q, and the Debtor respectfully moves for the admission of those documents into evidence.

THE COURT: All right. Any objection?

MR. RUKAVINA: Your Honor, I might have to talk about this with Mr. Morris, but I have 7F as any document entered in the case, 7G as any document to be filed, et cetera. Mr. Morris, am I wrong about that?

MR. MORRIS: I don't have that list in front of me. So I'll reserve on those documents and we can talk about them at a break, Your Honor.

THE COURT: All right.

MR. DRAPER: Your Honor, this is Douglas Draper. I object, and I don't have the number in front of me, it's the liquidation analysis and the plan summary. It's a summary exhibit, and we've not been given the underlying documentation with respect to them. I'd ask Mr. Morris to deal with that separately also.

MR. MORRIS: All right. Well, we're certainly going to be moving that into evidence, so we can deal with that at the time, Your Honor.

THE COURT: Okay. Which documents are they? Which exhibits are those?

MR. DRAPER: I don't have the number in front -- Mr. Morris, do you have the number for that exhibit?

MR. MORRIS: I do, but why don't we just deal with it when I -- when I get into --

THE COURT: Okay.

MR. MORRIS: -- into the testimony?

THE COURT: I just wanted the record clear what I am admitting at this time at Docket Entry No. 1877. Or do you want to just --

MR. MORRIS: Okay.

THE COURT: -- hold all those --

MR. MORRIS: Mr. Rukavina, other than F and G, which you noted, is there any objection to any of the other documents on that witness and exhibit list?

MR. RUKAVINA: Well, I also have H as impeachment/ rebuttal, I as any document offered by any other party. So I would suggest, Mr. Morris, that I have my associate confirm that I have the right -- the right stuff here, and we can take it up maybe during a break. But I have F, G, H, I as so-called catchalls, not any discrete exhibits.

MR. MORRIS: All right. All right, Your Honor. Let's, let's just proceed. We've got -- we took care of Docket No. 1822 and 1866, and the balance we'll deal with at a break, --

THE COURT: All right.

MR. MORRIS: -- unless they come up through testimony.

THE COURT: All right. That sounds good.

MR. MORRIS: Okay. Thank you very much. May I proceed?

THE COURT: You may.

MR. MORRIS: Okay.

DIRECT EXAMINATION

BY MR. MORRIS:

Q Good morning, Mr. Seery.

A (no response)

Q Can you hear me?

A Apologies. I went on mute. Can you hear me now? I apologize.

Q Yes. Good morning.

MR. MORRIS: So, let's begin, Your Honor, with just a little bit of background of Mr. Seery and how he got involved in the case.

BY MR. MORRIS:

Q Mr. Seery, what's your current position with the Debtor?

A I am the CEO, the CRO -- the chief restructuring officer -- as well as an independent director on the Strand Advisors board of directors.

Q Okay.

MR. MORRIS: Your Honor, I'm going to ask Mr. Seery to describe a bit for his background. For the record, you'll find that Exhibits 6X, 6Y, and 6Z, on the Debtor's exhibit list at Docket 1822, the resumes and *C.V.s* of the three independent members of the board. If Your Honor has any question about their qualifications and their experience, that evidence is already in the record.

THE COURT: Okay.

BY MR. MORRIS:

Q But Mr. Seery, without going into the detail of everything that's on your *C.V.*, can you just describe for the Court generally your professional background, starting, well, with your time as a lawyer?

A I've been involved in the restructuring, finance, investing and managing of assets and banking-type assets for

1 over 30 years.
2 I began in restructuring in real estate. Became a lawyer,
3 and was a lawyer in private practice dealing with
4 restructuring and finance for approximately ten years, in
5 addition to time before that on the real estate side.
6 I joined Lehman Brothers on the business side in 1999,
7 where I immediately began working on the -- with a distress
8 team as a team member investing off the balance sheet, Lehman
9 Brothers assets in various types of distressed financing
10 investments. Bonds, loans, equities. In addition, then I
11 became the head of Lehman's loan business globally. I ran
12 that business for the number of years. Was one of the key
13 players in selling Lehman Brothers to Barclays in a very
14 difficult situation and structure.
15 After that, joined some of my partners, we formed a hedge
16 fund called RiverBirch Capital, about a billion and a half
17 dollar hedge fund in -- operating in -- globally, but mostly
18 U.S. stressed/distressed assets that we invested in.
19 Oftentimes, though, we would run from high-grade assets all
20 the way down to equities, different types of investors,
21 different types of investments.
22 Thereafter, I left -- was -- joined Guggenheim. I left
23 Guggenheim, and shortly thereafter became a director at
24 Strand.
25 Q Prior to acceptance of the positions that you described

earlier, were you at all familiar with Highland or Mr. Dondero?

A Yeah. I was, yes.

Q Can you just describe for the Court how you became familiar with Highland and Mr. Dondero?

A Highland was a customer of Lehman Brothers, and it was -- particularly in the loan business. And the CLO businesses. Highland was run by Mr. Dondero, and I knew of that business through that --

(Interruption.)

MR. MORRIS: Can somebody please put their device on mute?

A VOICE: That's Mr. Taylor.

THE COURT: Mr. Taylor, you were off mute, apparently, for a moment. Make sure you're staying on mute. Thank you.

MR. TAYLOR: Yes. Sorry, Your Honor. I thought we might have a hearsay objection. I wasn't sure what the answer was going to be, so I wanted to be prepared to object.

THE COURT: All right. Thank you.

BY MR. MORRIS:

Q Did you know or meet Mr. Dondero in the course of what you just described?

A Yes, I did. I believe we met once or twice over the years. There was a senior team member who handled the

1 Highland relationship. He was quite good, quite experienced,
2 and he handled most of the Highland relationship issues. But
3 Highland, we came across a number of times, whether it be in
4 -- I came across a number of times, whether it be in specific
5 investments we had where they would be either a competing
6 party or holding a similar interest, whether they were a
7 customer purchasing loans or securities, whether they were a
8 potential CLO customer where we were structuring some assets
9 for them.
10 Q Okay. And who are the two other members of the
11 independent board at Strand?
12 A John Dubel and Russel Nelms.
13 Q And had you had any personal experience with either of
14 those gentleman prior to this case?
15 A I knew of Mr. Nelms and his experience as a bankruptcy
16 judge in the Northern District of Texas, and I had worked on
17 one matter with Mr. Dubel, but very, very briefly, while he
18 was the CEO of FGIC, which is a large insurer in the financial
19 insurance space that he was responsible for reorganizing and
20 ultimately winding down.
21 Q Okay. How did you learn about this particular case? How
22 did you learn about the opportunity or the possibility of
23 becoming an independent director?
24 A Initially, I was contacted by some of the creditors and
25 asked whether I was interested, and I indicated that I was.

Subsequently, I received a call from the Debtor's representatives as well meeting the counsel as well as the financial advisor as well as specific members of the Debtor's senior management.

Q Do you know how long in advance of the January 9th settlement you were first contacted?

A Probably four, four or five days at the most, but started working immediately at that time because it was a pretty complicated matter and the interview process would be quick because of the hearing date that was coming up.

Q Do you recall the names of any of the creditors who reached out to you?

A I spoke to counsel for UBS. Certainly, Committee counsel. I don't recall if I spoke to anybody from Jenner Block in the initial interview. And then I spoke to representatives from your firm as well as Mr. Leventon and ultimately Mr. Ellington.

Q Did you do any due diligence before accepting the appointment?

A I did, yes.

Q Can you describe for the Court the due diligence you did before accepting your appointment as independent director?

A Well, I got the petition, I read the petition, as well as the first day, as well as the venue-changing motion. In addition, I went through the schedules. Ultimately, I took a

1 look at and examined the limited partnership agreement of the
2 Debtor, with particular focus on the indemnity provisions. I
3 then sat down with the Committee to get their views as part of
4 the interview process, as well as the Debtor's counsel and
5 Debtor's representatives.
6 Q Did you -- in the course of your diligence, did you come
7 to an understanding or did you form a view as to why an
8 independent board was being sought at that time?
9 A Yes, I did.
10 Q And what view or understanding did you come to?
11 A There was extreme antipathy from the creditors, as
12 evidenced by the venue motion and the documents around that
13 venue motion.
14 In addition, in the first day order, or affidavit, you
15 could see the issues related to Redeemer and the length of
16 time that litigation has been gone on, going on.
17 The creditors became extremely concern with Mr. Dondero
18 having any control over the operations of the Debtor and
19 wanted to make sure that either he was removed from that or
20 that -- and someone else was brought in, or that the case was
21 somehow taken over by a trustee.
22 Q Did you form any views as to the causes of the Debtor's
23 bankruptcy filing?
24 A The initial cause was the entry or the soon-to-be-entered
25 order related to the arbitration with Redeemer, but it was

pretty clear from looking at the first day that there was a number of litigations. The bulk of the creditor body was made up of -- on the liquidated side was made up of litigation creditors. And then the other creditors, the Committee members, other than Meta-e, were significant litigation creditors.

MR. MORRIS: Your Honor, I think Mr. Seery was sworn in, but unless -- unless you -- if you think there's a need, I'm happy to have you swear Mr. Seery in again just to make sure his testimony is under oath.

THE WITNESS: I was sworn in.

THE COURT: Yes, I swore him in.

MR. MORRIS: That's what I thought. That's what I thought. Somebody had made the suggestion to me, so I was just trying to make sure, because I didn't want any unsworn testimony here today.

THE COURT: We did.

MR. MORRIS: Okay.

THE COURT: We did.

MR. MORRIS: Thank you. Thank you.

BY MR. MORRIS:

Q Ultimately, sir, just to move this along a little bit, do you recall that an agreement was reached with the UCC and Mr. Dondero and the Debtor concerning governance issues?

A Yes, I do.

Q And did you accept your position as an independent director at Strand as part of that corporate governance settlement?

A That, that was part of the appointment. We -- the independent directors were brought in to take -- really, to take control of the company as independent fiduciaries. And the idea, I think, was that there was a Chapter 7 motion that was about to be filed by the Committee, or at least that was the representation, and the Debtor had a choice, they could either accept the independent directors or they could face the motion.

What actually happened was a little bit more complicated. The creditors and the Debtor agreed on the selection of Mr. Dubel and myself. And then because they couldn't agree on the third member of the independent board, they left it to Mr. Dubel and myself to actually come up with a process, interview candidates, and make that selection, which we did, which ultimately became Mr. Nelms.

Q And did all of this take place during that four- or five-day period prior to January 9th?

A It did, yes.

Q Okay. And let's talk about the makeup of the board. You've identified the other individuals. How would you characterize the skillset and the capability of the individual?

A Well, on paper, I think it's a pretty uniquely-constructed board for this type of asset management business with the diversity of these types of assets and the diversity of issues that we had.

So, former Judge Nelms, obviously skilled in bankruptcy and the law around bankruptcy, but also very skilled in mediation, conflict resolution, and in particular his prepetition or maybe pre-judicial experience in litigation and litigation involving fiduciary duties we thought could be very, very important because of the myriad of interrelated issues that we could see that might arise.

John Dubel is an extremely well-known and respected restructuring professional. He has been dealing these kinds of assignments as an independent fiduciary for, gosh, as long as I can recall, but at least going back 15 to 20 years. He had experience in accounting, but he's also been the leader of these kinds of organizations going through restructuring in many operational type roles, and so he was a perfect fit.

And my experience in both restructuring as well as asset management and investment I think dovetailed nicely with the experience that Mr. Nelms and Mr. Dubel have.

Q Okay. Let's talk for just a moment at a high level of the agreement that was reached. Do you remember that there were several documents that embodied the terms of the agreement?

A Yes, I do.

Q And do you remember one of them was an order that the Court entered on January 9th?

A Yes.

MR. MORRIS: All right. Your Honor, just for the record, and we'll be looking at this, but that would be document Exhibit 5Q as in queen, and that's at Docket No. 1822.

BY MR. MORRIS:

Q Do you remember there was a separate term sheet, Mr. Seery, that was also part of the agreement among the constituents?

A Yes. There were -- I think there were a couple of term sheets and stipulations, but I do recall that there was some very specific term sheets with the terms.

MR. MORRIS: All right. And we'll look at that one as well, Your Honor, but that can be found at Exhibit 5O as in Oscar.

BY MR. MORRIS:

Q And then, finally, do you recall that Mr. Dondero signed a stipulation that was also part of the agreement?

A Yes. That was absolutely key to the agreement for the creditors and perhaps the Court. But it was really -- it needed to be clear that he was signed on to this transaction.

MR. MORRIS: Okay. And we'll look at that as well. That's Exhibit 7Q. And remind me, we'll move that one into

evidence.

BY MR. MORRIS:

Q Did you and the other prospective independent directors actually participate in the negotiation of any aspect of this agreement that you've generally described?

A Absolutely. Although we hadn't been appointed yet, these agreements were going to be the structure with which -- or under which we would come in as independent fiduciaries. They would govern a lot of our relationships. They would provide for the protections that we required and that I required. So they were exceedingly important to me.

Q Can you describe for the Court at a general level your understanding of the overall structure of the corporate governance settlement?

A From a very high level, the settlement was -- Highland Capital Partners is a limited partnership. It's managed by its general partner, Strand Advisors. Although Strand is the GP, its effective interest in Highland is minimal, about .25 percent of the effective partnership interest. But it is the general partner. So it does govern the -- the partnership.

We came in as an independent board that would oversee and control Strand Advisors and thereby, through the general partner position, oversee and control HCMLP, the Debtor.

In addition, the Committee then overlaid what we could do with respect to how we operated the business in the ordinary

1 course in Chapter 11 with a specific set of protocols that
2 governed certain transactions that we would have to get
3 permission from either the Committee or the Court to engage
4 in.
5 And in addition, Mr. Dondero, notwithstanding the
6 insertion of the independent board at Strand, also had a set
7 of restrictions around him, because, of course, not only was
8 he the former control entity at Highland and Strand, he also
9 had a hundred percent of the ownership -- indirectly, of
10 course -- of Strand and could have removed the board. So
11 there were restrictions around what he could do with respect
12 to the board. There were also restrictions around what he
13 could do through various entities to terminate contracts and
14 --
15 Q All right. We'll look at some of those in detail. Did,
16 to the best of your recollection, did Mr. Dondero give up his
17 position as president or CEO of the Debtor?
18 A He did, yes.
19 Q And did he nevertheless stay on as an employee of the
20 Debtor and retain a position as portfolio manager?
21 A He did. At the last second, I believe it was the night
22 before, when we were actually in Dallas preparing for the
23 hearing, but Mr. Ellington raised the concern that if Dondero
24 was removed from not only the presidency but also the
25 portfolio management position, potentially there would be some

1 agreements that might or might not be subject to Court
2 approval that could be terminated and value would be lost. So
3 this was a very last-second provision. Obviously, the -- as
4 new estate fiduciaries, we didn't want value to be lost
5 instantly for key man or some other reason. And the Committee
6 ultimately, or I guess you'd say reluctantly, agreed to that
7 because we just didn't have time to look at any of -- any such
8 agreements.
9 MR. MORRIS: All right. Let's -- can we put up on
10 the screen, Ms. Canty, Debtor's Exhibit 5Q?
11 And this is in evidence, Your Honor. This is the January
12 9th order.
13 And can we please go to Paragraph 8?
14 BY MR. MORRIS:
15 Q Mr. Seery, you had mentioned just a few minutes ago that
16 there were certain restrictions that were placed on Mr.
17 Dondero. Does Paragraph 8, to the best of your recollection,
18 provide for the substance of at least some of those
19 restrictions?
20 A It does, yes.
21 Q And can you just describe for the Court your understanding
22 of the restrictions that were imposed on Mr. Dondero pursuant
23 to Paragraph 8?
24 A Well, as I recall, when Mr. Ellington came in with the
25 last-minute request, the Committee was extremely upset about

it. We talked about it. Obviously, we, as an independent board that was going to come in, didn't know the underlying contracts and couldn't really render any judgment as to whether there would be value lost. So, the Committee agreed, but they wanted to make sure that Mr. Dondero still reported to -- directly to the board, and if the board asked Mr. Dondero to leave, he would do so.

Q Okay. Just looking at this paragraph, is it your understanding that the scope and responsibilities of Mr. Dondero would be determined by the board?

A Yes.

Q And was it your understanding that Mr. Dondero would serve without compensation?

A Yes.

MR. DRAPER: Objection. Leading, Your Honor.

THE COURT: Overruled.

BY MR. MORRIS:

Q Was it your understanding that Mr. Dondero's role would be subject to the direct supervision, direction, and authority of the board?

A That's, you know, that's what the order says and that's what the agreement was. In practice, that was really going to have to evolve because we were coming in very cold and obviously he'd been there for --

(Interruption.)

THE COURT: All right. Someone needs to put their phone on mute. I don't know who it is.

BY MR. MORRIS:

Q Was it also part of the agreement that Mr. Dondero would (garbled) upon the board's request?

A I think I got you, but yes, that's contained in this paragraph, and Mr. Dondero agreed to that.

THE COURT: All right. Whoever LC is, your phone needs to be put on mute. Okay. Please be sensitive to keeping your device on mute except for Mr. Morris and Mr. Seery.

All right. Go ahead.

BY MR. MORRIS:

Q Do you recall, Mr. Seery, whether there were any restrictions placed on Mr. Dondero's ability to terminate agreements with the Debtor?

A Yes. That was a very specific provision as well.

Q Can we take a look at Paragraph 9 below? Is that the provision that you're referring to?

A That's the provision in the order. I believe there were other agreements -- certainly, discussion around it -- because it was an important provision because it had been borne out of some experience that Acis and Mr. Terry had had in particular. So it was supposed to be broad and prevent both direct and indirect termination of agreements.

Q Okay. And do you know, do you recall that the definition of related entity is contained within the term sheet that you referred to earlier?

A It's a pretty extensive -- I recall the definition not specifically, but it's a pretty extensive definition. It includes any of the entities that he owns, that Mr. Dondero owns, that Mr. Dondero controls, that Mr. Dondero manages, that Mr. Dondero owns indirectly, that Mr. Dondero manages indirectly, and it really covers a wide swath of those entities in which he has interests and control.

MR. MORRIS: All right. Let's see if we could just look at the definition specifically at Exhibit 5O as in Oscar. And if we could just scroll down to the next page.

Now, this was -- this is part of the term sheet that was filed at Docket 354.

BY MR. MORRIS:

Q At Definition I(d), is that the definition of related entity that you were referring to?

A That's correct.

Q Okay. In addition to what you've described, I think you also mentioned that there was a separate stipulation that Mr. Dondero entered into as part of the corporate governance settlement. Do I have that right?

A That's my recollection, yes. And I believe he signed it, and that was a key gating issue to the hearing that we had on

January 9th.

Q And what do you recall about that document as being a key gating issue?

A The key gating issue that I recall is that it had to be signed. And I don't believe it was signed until that very morning.

MR. MORRIS: All right. Can we call up Exhibit 7Q as in queen?

BY MR. MORRIS:

Q All right. Is this the stipulation that you were referring to? We can scroll down to any portion you want.

A I believe that is, yes.

MR. MORRIS: Okay. Can we just scroll down to see Mr. Dondero's signature? Yeah. That's -- okay.

So, that's dated January 9th. This was filed at Docket 338. It's on the Debtor's exhibit list as Exhibit 7Q. And the Debtor would respectfully move Exhibit 7Q into evidence.

THE COURT: Any objection? All right. 7Q is admitted.

(Debtor's Exhibit 7Q is received into evidence.)

MR. MORRIS: Okay. And if we could just scroll up a page or two to the four bullet points. Yeah, right there. A little more.

BY MR. MORRIS:

Q Okay. So, do you see Paragraph 10 contains the

1 stipulation?
2 A Yes.
3 Q And as you recall, Mr. Seery, in the events leading up to
4 the entry of the order approving the settlement, was this one
5 of the documents that was being negotiated among -- among the
6 parties?
7 A Yes, it was.
8 Q Okay. You mentioned that there were certain provisions of
9 the January 9th order that were important to you and the other
10 independent directors. Do I have that right?
11 A Yes.
12 MR. MORRIS: Let's see if we can back to Exhibit 5Q,
13 please, Paragraph 4.
14 BY MR. MORRIS:
15 Q Okay. Paragraph 4, can you tell me what Paragraph -- what
16 Paragraph 4 is and why it was important to you?
17 A Well, there really were four key, I guess I'll use the
18 term gating items again, for my involvement, and ultimately in
19 discussions with Mr. Nelms and Mr. Dondero -- Mr. Dubel, their
20 involvement in the matter.
21 Because of the litigious nature of the Highland operations
22 and the expectations we had for more litigation after taking a
23 look at the Acis case, we wanted to make sure that, as
24 independents coming into a situation with really no stake in
25 the particular outcome, other than trying to achieve a

1 successful reorganization, that we were protected. So, number
2 one, I looked at the limited partnership agreement. I wanted
3 to make sure that the LPA contained broad and at least
4 standard indemnification provisions and that they would apply
5 to the board.
6 Number two, because -- that then requires you to look at
7 the indemnification provisions at Strand, because you're a
8 director of Strand, the GP. So then we looked at those. I
9 took a close examination of those. They looked okay, except
10 Strand didn't have any assets other than its equity interest
11 in Highland, and if that equity interest turned out to be
12 zero, that indemnity wouldn't be very valuable.
13 So I wanted to make sure that Highland, the Debtor,
14 guaranteed the indemnity (garbled) on a postpetition basis, so
15 that if there were a failure of D&O, which I'll get to in a
16 second, or it wasn't enough, that we would have a senior claim
17 in the case, an admin claim in the case.
18 I then, of course, wanted to make sure that we had D&O
19 insurance. This was very difficult to get, because, frankly,
20 there's a Dondero exclusion in some of the markets, we've been
21 told by our insurance brokers, and so getting the right policy
22 that would cover the independent board was difficult. We did
23 get that.
24 And then ultimately there'll be another provision in the
25 agreement here -- I don't see it off the top of my head -- but

a gatekeeper provision. And that provision --

Q Hold on one second, Mr. Seery, because we'd want to scroll. So Paragraph 4 and Paragraph 5, were those, were those provisions put in there at the insistence of the prospective independent directors?

A Yes. And remember, so the Paragraph 4, as I said, is the guarantee of Strand's obligations for its indemnity. Again, Strand didn't have any money, so the Debtor had to be the one purchasing the D&O for the directors and for Strand. So those are the two provisions that really worked to address my concerns about the indemnities and then the D&O.

MR. MORRIS: Okay. Can we go to Paragraph 10, please? There you go.

BY MR. MORRIS:

Q Is this the other provision that you were referring to?

A This is. It's come to be known as the gatekeeper provision, but it's a provision that I actually got from other cases. Again, another very litigious case that I thought it was appropriate to bring in to this case.

And the concept here is that when you're dealing with parties that seem to be willing to engage in decade-long litigation in multiple forums, not only domestically but even throughout the world, it seemed important and prudent for me and a requirement that I set out that somebody would have to come to this Court, the court with jurisdiction over these

matters, to determine whether there was a colorable claim. And that colorable claim would have to show gross negligence and willful misconduct, *i.e.*, something that would not otherwise be indemnified.

So it basically sets an exculpation standard for negligence. It exculpates the directors from negligence. And if somebody wants to bring a cause against the directors, they have to come to this Court first and get a finding that there's a colorable claim for gross negligence or willful misconduct.

Q Would you have accepted the engagement as an independent director without the Paragraphs 4, 5, and 10 that we just looked at?

A No. These were very specific requests. The language here has been 'smithed, to be sure, but I provided the original language for 10 and insisted on the guaranty provision above to assure that the indemnity would have some support.

Q And ultimately, did the Committee and the Debtor agree to provide all of the protection afforded by Paragraphs 4, 5, and 10?

A Yes.

Q Okay.

MR. MORRIS: Your Honor, we're going to move on now to good faith, Section 1129(e)(3), just to give you a little bit of a roadmap of where we're going.

BY MR. MORRIS:

Q Let's talk about the process that led to the plan that the Debtor is asking the Court to confirm today. Real basic stuff at the beginning. Can you tell me your understanding of the makeup of the UCC, of the Creditors' Committee?

A The Creditors' Committee in this case has four members. It's UBS, the Redeemer Committee, which are former holders of interests in a fund called the Crusader Fund, which was a Highland fund, who had redeemed and then had a dispute with Highland.

And the next creditor is Mr. Terry and Acis. We generally group them as one, but the creditor is Acis.

And the fourth creditor is an entity called Meta-e, and they provide litigation support and technical support and discovery support in litigations for the Debtor, including in this case now.

Q All right. Just focusing really on the early period, the first few months, can you describe the early stages of the negotiations with the UCC as best as you can recall?

A Well, I think the early stage of the case wasn't directly a negotiation; it was really trying to understand as best we could the myriad of assets that we had here, the various businesses that the Debtor either owned, controlled, or managed, as well as the claims.

We went through a process of trying to understand each of

1 the claims that the Debtor -- or against the Debtor that were
2 represented by the Committee, as well as some other claims
3 that were not on the Committee.
4 Q Was the Debtor -- I mean, was the Committee initially
5 pushing the independent board to go to a monetization plan, an
6 asset monetization plan?
7 A Very quickly and early on, the Debtor -- the Committee
8 took a pretty aggressive approach with the Debtor and the
9 independent board. I think the Committee's perspective, as
10 articulated to me, and where -- at least how we took it, was
11 that they'd been litigating for years and they sort of knew
12 the situation and the value of their claims, that the Debtor
13 was insolvent, in their view, and that we should be operating
14 the estate in essence for the benefit of the creditors.
15 Q And what was the board's view in reaction to that?
16 A We disputed it. And the reason we disputed it was very
17 straightforward. Save for the Redeemer claim, which at least
18 had an arbitration award, Acis and Mr. Terry didn't have any
19 specific awards, notwithstanding the results of the Acis
20 bankruptcy, and UBS, while it had a judgment, that judgment
21 was not against the Debtor.
22 So our view was, until we have our hands around these
23 claims and we determine what the validity is in our estate,
24 that we would treat the Debtor as if it were solvent. We also
25 wanted to assess the value of the assets. So, looking at the

1 assets not just from a book value but what they might be
2 really worth in the market.
3 Q And did the board in the early portion of the case
4 consider all strategic alternatives?
5 A I don't know if we considered every strategic alternative,
6 but we certainly considered a lot of alternatives.
7 Q Can you describe for the Court the alternatives that were
8 considered by the board before settling on the asset
9 monetization plan?
10 A Well, early on, you know, we looked at each of the -- what
11 we would think of the large category types of ways to resolve
12 a case. Number one, could we go through a very traditional
13 reorganization with either stretching out claims to creditors
14 after settlement or converting some of those to equity,
15 getting new equity infusions? We considered those
16 alternatives.
17 Number two, we considered whether we should simply sell
18 the assets. That's one of the things that the Committee was
19 pushing for. They could be sold to third parties. They could
20 be sold individually. Mr. Dondero potentially could buy some
21 of the assets. That'd be a reasonable reorganization in this
22 case.
23 We also considered whether that, you know, we would just
24 do a straight liquidation. Is there some value to doing --
25 converting the case to a 7 and doing a straight liquidation?

We also considered a grand bargain plan, and this was something that I worked on quite a bit. The phrase is mine, although no pride of authorship, certainly, since it didn't work out. But that perhaps we could come to an agreement with the major creditors and with Mr. Dondero and then shift some of the expenses in the case out further to litigate some of the other claims while reorganizing around the base business.

And then, finally, we considered the asset monetization plan, and ultimately that evolved into what we have today.

Q Were there guiding principles or factors that the board was focused on as it assessed these different options?

A Well, the number one guiding principle was overall fairness and equitable treatment of the various stakeholders. So, again, at that point, we didn't know exactly what, if anything, we would owe to claimants like UBS or HarbourVest or even Mr. Terry and Acis. We had a good sense of where we would end up with Redeemer, I think, but we still had some options and wanted to negotiate the issues related to potential appeal rights that we had. So I think that was the number one overall concern.

But that did evolve over time. Costs of the case were exceptionally high. And the reason they're so high is that Highland was run for a long time, at least from what we can tell, at an operating deficit. Typically, what it would do is run at a deficit and then sell assets to cover the shortfall,

and it would defer a whole bunch of employee -- potential employee compensation. And because of the way the environment was going, particularly in the first half of the year, it didn't look to us like there was going to be any great asset increase that would somehow save us from the hole that was being dug, the considerable amount of expenses to run the case.

Q Did changing the culture of litigation factor into the path that the board considered?

A Well, we certainly looked at the way the company had run and why it got to where it is in terms of litigating. And not just litigating valid claims, but litigating any claim to the *nth* degree. And stories are legion, I won't talk about them, but of Highland taking outrageous positions and then pursuing them, hoping that the other side caves.

We determined that this estate couldn't bear that kind of expense, and it wasn't fair and equitable to do that anyway. So we wanted to attack the claims that we could -- and I say attack; try to resolve them as swiftly as we could -- protecting the Debtor's interests but trying to find an equitable resolution.

I'm not averse to litigating. And I think when there are claims that are legitimate, the Debtor should pursue them. There's always -- a good settlement is always better than a bad litigation. But if there (indecipherable) to resolve

1 them, we should -- we should pursue those. And if we have
2 defenses, we should pursue those, and not just be held up
3 because someone else is willing to, you know, take a more
4 difficult position than we are.
5 But in this case, it really did cry out for some sort of
6 resolution on many of these cases because they were far beyond
7 -- far beyond the facts and far beyond the dollars. There was
8 personal antipathy involved in virtually every one of the
9 unlitigated or unliquidated Committee cases.
10 Q Did the board, as it was assessing the various strategic
11 alternatives, consider maximization of the value?
12 A Always number one was, can we maximize value? But that
13 has to be done within the context of the risk you're taking
14 and the time it takes. So, not all wine ages well in a cave
15 and not all investments get to be more valuable over time. We
16 wanted to look at each individual asset that the Debtor had,
17 each claim that the Debtor had, each defense that the Debtor
18 had, and consider the time and the costs and then try to find
19 the best way to maximize value with those multiple
20 considerations.
21 Q How about the role and support of the UCC, how did that
22 factor into the decision-making, the Debtor's decision-making
23 as to what plan to pursue?
24 A Well, you know, the decision-making with the UCC was
25 cumbersome and oftentimes difficult. Sometimes our relations

1 were very contentious, and sometimes they continue to be. But
2 the Committee had significant oversight because of the
3 protocols that had been agreed to. Some of the disputes we
4 had with the Committee found their way into the court. Those
5 time and that cost, some of which we won, some of which we
6 lost, but those factored into our analysis.
7 But eventually we knew that we were going to need to get,
8 you know, some significant portion of the Committee to agree,
9 because, at minimum, Meta-e had a liquidated claim, and
10 Redeemer was very close to fully liquidated, so we were going
11 to need support from the Committee with whatever we tried to
12 push through. And so that's how we negotiated with the
13 Committee from that perspective.
14 Q Is it fair to say that the Debtor and the Committee's
15 interests because aligned upon approval of the disclosure
16 statement back at the end of November?
17 A I don't think they became perfectly aligned, because we
18 still have, you know, some disputes around, you know,
19 implementation and things like the employee releases, which
20 were very important to me. But I think we're largely aligned
21 and that the Committee is supportive, as Mr. Clemente said at
22 the start of this hearing, of the plan. We negotiated at
23 arm's length with them about most of the provisions. I would
24 say virtually everything was a relatively significant
25 negotiation, or at least there was a good faith exchange of

1 views on each side and assessment of legal and financial
2 risks. And I think at this point they're largely in support
3 of the plan.
4 Q All right. Let's -- you mentioned the grand bargain, and
5 I just want to spend a few minutes talking about that, how
6 that evolved. Focusing your attention in the kind of late
7 spring/early summer, can you tell me what efforts you and the
8 board made in trying to achieve a grand bargain in that early
9 part of the case?
10 A Well, we had -- at that point, we had reached agreement,
11 at least in principle, with Redeemer. And the thought was --
12 my thought was that we could construct a plan, understanding
13 what the cash flows looked like and what we thought the base
14 value of the asset looked like -- and those are not just the
15 assets that are tangible assets, but the notes that are
16 collectible by the Debtor as well -- and then engage with UBS
17 in particular. Redeemer. To some degree, Mr. Terry. We had
18 not yet reached any agreement with him. But UBS, we thought
19 of as a slightly -- I don't mean this to be disparaging -- but
20 a slightly more commercial player than Acis because of the
21 history that Acis had to deal with and endure.
22 And we were hoping that we could get some sort of
23 coalescence around an agreed distribution that would require
24 those creditors to take a lot less than they might have
25 otherwise agreed, Mr. Dondero to put in more than he otherwise

1 thought he could put in or would be willing to put in, and
2 then we would get out to Acis and the other creditors with a
3 plan.
4 And so I built, with the team at DSI, a detailed model on
5 how the distributions could work and what the potential timing
6 could be, trying to, each time, move in a multidimensional way
7 with UBS, Redeemer, Mr. Dondero, and to some degree Acis,
8 around the respective issues for their claims.
9 Again, UBS and Acis had not been resolved and weren't
10 close, but the thought was if we could get dollar agreements
11 for distribution, perhaps we could then figure out how to
12 construct settlements of their claims.
13 Q During this time period, did you work directly with Mr.
14 Dondero in the formulation of a potential grand bargain?
15 A I did, yes.
16 Q And the model that you described, did that go through a
17 number of iterations?
18 A It went through multiple iterations. I don't believe I
19 ever shared the model with anybody. One of the reasons for
20 that is I didn't want -- I felt I had -- if I was going to
21 share it with Mr. Dondero, for example, I'd have to share it
22 with UBS and I'd have to share it with Redeemer. And I wanted
23 it to be -- I wanted it to be a working model with the team at
24 DSI. In particular, we would make, you know, adjustments on
25 an almost-daily basis.

1 Mr. Dondero had -- remember, he was still portfolio
2 manager at that time. He also had a related-party interest,
3 as people have seen from some of the litigation around the
4 sales of securities. He had access and was receiving emails
5 from the team as well as from the finance team. So he had
6 access to the information at that point and had a view around
7 the value. And this was more trying to adjust what those
8 distributions would look like depending on the amounts that he
9 would be willing to contribute.
10 Q Moving on in time, did there come a time when the Debtor
11 participated in a mediation with certain of the major
12 constituents in the case?
13 A Yes. That was towards the end of the summer.
14 Q And during that mediation, did the concept of a grand
15 bargain, was that put on the table? Without discussing any
16 particulars about it, just as a matter of process, was the
17 grand bargain subject to the mediation discussions?
18 A Well, the mediation had multiple components, so the answer
19 to the question in short is yes, but I'll go longer because I
20 tend to. The grand bargain plan stayed in place, and that was
21 going to be an overall settlement. The mediation was
22 initially, I think, as a main course, focused on Acis, UBS,
23 and then the third piece being the grand bargain. And if you
24 could settle one of those claims, perhaps -- obviously, if you
25 could settle both of them, you could get to then focusing on

the grand bargain.

But even before we got to mediation, the idea of the monetization plan had also been put forth. Notwithstanding that it wasn't my idea, I actually thought that it was a good idea, ultimately. Didn't initially. And the reason for that is that it set a marker for what a base expectation could be for the creditors and just for Mr. Dondero. And knowing that that was out there, at least with them, that could hopefully be a catalyst in the mediation for folks to say, let's see if we can get our claims done and get a grand bargain done, because if we don't we have this Debtor monetization plan. And by that -- at that point, I don't think we had much agreement with the Committee on anything, and certainly with Mr. Dondero, on -- on a monetization plan.

Q All right. And let's just bring it forward from the fall, post-mediation, to the present. Has -- has -- have you and the board continued discussing with Mr. Dondero the possibility of a grand bargain?

A Well, it's shifted. So, the grand bargain discussions really -- you had multiple phases. So, you had pre-mediation. There was the grand bargain discussions that I just described previously that also involved UBS and Redeemer, and to some degree Acis and Mr. Terry. Then you have the mediation, which is much more focused on the claims and whether they can fit into the grand bargain with Mr. Dondero.

1 And the way that was conducted was a little bit more
2 separated, meaning the parties would talk to the mediator, the
3 mediator would then go and talk to other parties and try to
4 work a settlement on each of those components.
5 Subsequent to the mediation where we reached the agreement
6 with Acis and Mr. Terry, and we ultimately in that timeframe
7 banged out the final terms of our agreement with Redeemer, we
8 engaged with Mr. Dondero around -- I wouldn't call it the
9 grand bargain, but a different plan. By that point, the
10 monetization plan had started to gain some traction with the
11 creditor group, and Mr. Dondero and his counsel, I believe,
12 focused on the potential of what was referred to as a pot
13 plan. And while it has the -- it could have the ability of
14 being a resolution plan, it wasn't the grand bargain plan that
15 I had initially envisioned. And pot plan was really a
16 misnomer, because it didn't have a whole pot, so -- so it's a
17 little bit of a hybrid.
18 Q Did the board spend time during its meetings discussing
19 various pot plan proposals that had been put forth by Mr.
20 Dondero?
21 A Oh, absolutely. And not only the board. I mean, we did
22 our own work as an independent board and then brought in our
23 professional advisors, both your firm and the DSI folks, to go
24 through analytics around the pot plan, and even before that,
25 the other plan alternatives, but we had direct discussions

1 with Mr. Dondero and his counsel.
2 Q And in the last couple of months, has the board listened
3 to presentations that were made by Mr. Dondero and his counsel
4 concerning various forms of the pot plan?
5 A Yes. At least two or three.
6 Q And during this time, has the board and the Debtor
7 communicated with the Committee concerning different
8 iterations of the proposed pot plan?
9 A Yes. We've had continual discussions with the Committee
10 regarding the various iterations of the potential grand
11 bargain all the way through the pot plan.
12 Q And during this process, did the Debtor provide Mr.
13 Dondero and his counsel with certain financial information
14 that had been requested?
15 A Yes. As I said, up 'til the point where he resigned and
16 was then ultimately, at the end of the year, removed from the
17 office, he had access to financial information related to the
18 Debtor and even got the information from the financial group.
19 Subsequent to that, we've provided him with requests -- with
20 financial information that was requested by his counsel.
21 Q Okay. Were your efforts at the grand bargain or the
22 pursuit of the pot plan successful?
23 A No, they were not.
24 Q Do you have an understanding as to -- just, again, without
25 going into -- into details about any particular proposal, do

1 you have an understanding as to what the barrier was to
2 success?
3 A The grand bargain, we just never got the traction that we
4 needed to get that going and the sides were just far -- too
5 far apart. And the pot plan, similarly. Our discussions with
6 Mr. Dondero and the Committee, they're -- they're very far
7 apart.
8 Q And is it fair to say that the Committee's lack of support
9 in either the grand bargain or the pot plan is the principal
10 cause as to why we're not talking about that today?
11 A Well, it's -- it -- right now, we've got the plan that's
12 on file, the monetization plan. The monetization plan has
13 gone out for creditor vote and has received support. It
14 distributes, we think, equitably, as well as a significant
15 amount of distributions to unsecured creditors. And there
16 really isn't an alternative that we see, based upon the
17 numbers I've seen, that competes with it or has any traction
18 with the largest creditors.
19 Q All right. So, now we've talked about various proposals
20 or alternatives that were considered by the board, including
21 the grand bargain and the pot plan. Let's spend some time
22 talking about the plan that is before the Court today and how
23 we got here. And I'd like to take you really back to the
24 beginning, if I may.
25 Tell us, tell the Court just what the board was doing in

1 the early months after getting appointed, because I think
2 context is important here. What were you all doing the first
3 few months of the case?
4 A Well, the first few months, we really were drinking from
5 the proverbial fire hose, trying to get an understanding of
6 the business, how it had been managed previously, what the
7 issues related to the different parts of the business were.
8 And then an understanding of each of the employees that were
9 working under us, what their roles were, how they performed
10 them, who sat where with respect to each of the assets, what
11 the contracts looked like, whether they be shared service or
12 management agreements. And then we started looking at the
13 individual assets in terms of value.
14 At the same time, we were trying to get up to speed on the
15 complex nature of the claims that were in the case. The
16 liquidated claims were relatively easy, but there had been a
17 significant amount of transfers in and out of the Debtor, and
18 then there's a myriad of relationships involving related
19 entities that we had to understand, both with respect to the
20 claims as well as with respect to the assets.
21 And so that -- those were the main things we were doing
22 for those first few months in the case.
23 Q Just a couple months into the case, the COVID pandemic
24 reared its head. Do you recall that?
25 A Yes. We had been in Dallas every day working up 'til the

1 time of the COVID and some of the shutdown orders,
2 particularly in the Northeast, and so that changed the dynamic
3 of how we could function every day.
4 Notwithstanding that, we -- we were able to manage from
5 afar, and ultimately, when there were some cases in the office
6 of COVID, we -- on the Highland side, not the related entity
7 side, but on the Highland side -- we determined that the staff
8 and the team should work from home, which they were able to do
9 quite well.
10 Q Okay. In those early months, do you recall that there was
11 a substantial erosion of value, at least as of the time you
12 were appointed in those first three or four months?
13 A There was. And I think we've heard some -- some noise
14 about what that value was and the drop in the asset value as
15 opposed to net value. But the asset value did, did drop
16 significantly.
17 Q Can you describe for the Court your recollection as to the
18 causes of the drop in the value that you just descried?
19 A Yes. The number one drop was a reservation that the board
20 took for a receivable from an entity called Hunter Mountain.
21 The quick version of this is that Hunter Mountain owns
22 Highland. As I mentioned, while Strand is the GP, it only has
23 a quarter-percent interest in Highland. The vast majority of
24 the interests are owned by an entity called the Hunter
25 Mountain Investment Trust in a very complicated, tax-driven

1 structure.
2 Dondero and Okada transferred their interests in Highland
3 at a high valuation to Hunter Mountain. Hunter Mountain then
4 didn't have the money, so it, in essence, borrowed the money
5 from the Debtor in a note to pay for those interests. There's
6 a circular running of the cash, but we were not sure where, if
7 any, where any assets are, if they would be sufficient. So we
8 took a reservation of $58 million for that note.
9 The second biggest piece of the reduction in value was the
10 equity that was lost in the Select Equity account. This is a
11 Debtor trading account that was managed by Mr. Dondero. $54
12 million was lost in that account. Basically, it was really
13 highly margined, very high leverage in that account when the
14 market volatility came in. As it grew through January,
15 February, March, more and more margin calls. Ultimately,
16 Jefferies, which had Safe Harbor protections -- technically,
17 the account was not a Debtor account, but they would have had
18 it anyway -- they seized that account. $54 million in equity
19 was lost in that account.
20 The next highest amount is about $35 million, but it's
21 higher now. That's just the bankruptcy costs, where we have
22 spent cash and Debtor assets in the case. It was about $36 to
23 $40 million through the end of the year. That's now higher.
24 About $30 million was lost in paying back Jefferies on the
25 asset side of the ledger in the Highland internal equity

account. This was similar to the equity -- the Select Equity account, also managed by Mr. Dondero. Extremely highly-levered coming into the market volatility of the first quarter, which was exacerbated, obviously, by the COVID. That was about $30 million that was repaid in margin loan in that account.

In addition, $25 million of equity was lost in that account while Mr. Dondero was managing it. I took over effectively managing it in mid-March and worked with Jefferies to keep them from seizing the account. We've since gotten a bunch of value coming back from that account, but that was the amount that was lost.

About $10 million was lost in the Carey Limousine loan transaction. That is a -- an interesting little company. Has done a nice job -- management did a very good job coming into the year, and it actually had real value, notwithstanding the changeover to Uber in people's preferences. But with the COVID, it really relied on events, airport travel, executive travel, and that really took a bite out of it, although, you know, we're hoping to be able to restructure, we have restructured it to some degree, and we're hoping that there could be value there.

And then about $7 million was lost in equity in an entity called NexPoint Hospitality Trust. This is another extremely highly-levered hospitality REIT that NexPoint manages. It

1 trades on the Toronto Stock Exchange. And I think likely that
2 -- it's got a lot of issues with respect to its mortgage debt.
3 And because it was hospitality, it was really hurt by the
4 COVID.
5 And I think that's probably -- those numbers add up to
6 north of $200 million of the loss.
7 Q All right. Thank you for that recitation, Mr. Seery. So,
8 turning to the spring, after all of those issues were
9 addressed, at the same time you were working on the grand
10 bargain, did the Debtor and its professionals begin
11 formulating the monetization plan that we have today?
12 A I'm sorry, in the spring? I lost that question. I
13 apologize.
14 Q That's okay. After you dealt with everything that you
15 just described, were you doing two things at once? Were you
16 working on the grand bargain and the asset monetization plan
17 at the same time?
18 A Yes, that's correct.
19 Q All right. Can you just describe for the Court kind of,
20 you know, how the asset monetization plan evolved up until the
21 point of the mediation?
22 A Yes. I alluded to it earlier, but because the Debtor was
23 running an operating deficit, we were very concerned about
24 liquidity. Highland typically runs, from a liquidity
25 perspective and a cash perspective, very close to the edge. I

1 don't feel particularly comfortable helping lead an
2 organization that's running that close to the edge. And I was
3 very focused on the burn that we had on an operating basis, as
4 well as the professional cost burn, because for a case this
5 size it was significant.
6 The rest of the board felt similarly, and one of the
7 directors, and I'm not sure if it was Mr. Nelms or Mr. Dubel,
8 came up with the idea that we needed an alternative to
9 continuing to just burn assets while we were in this case.
10 There had to be some sort of catalyst to get the parties, both
11 Mr. Dondero as well as the creditors -- at that point, as I
12 said, we weren't settled with Acis or UBS, and we weren't,
13 frankly, close with either of them. And so we needed what --
14 what I think the -- the idea was that we needed a catalyst to
15 have people focus on what the alternative was. Because
16 continuing to run the case until we ran out of money was not
17 an acceptable alternative.
18 What I didn't like about the plan was it didn't have
19 anybody's support, and so I wasn't sure how we made progress
20 with it without having some Committee member or Mr. Dondero in
21 support of it. I was outvoted, although maybe I came around
22 in the actual vote. But ultimately, I think it was actually a
23 quite smart idea, because it did set the basis for what the
24 case would be. Either there would be some resolution or it
25 would push towards the monetization plan, and parties could

1 then assess whether they liked the monetization plan or not.
2 That if I was going to be the Claimant Trustee or the --
3 defending the, you know, against the claims, they would have
4 the pleasure of litigating with me for some period of time.
5 Or they could come to some either grand bargain or ultimately
6 some other resolution.
7 And as we started to develop a plan and put more of a
8 framework -- more flesh around the framework, it actually
9 started to look more and more like a real viable alternative
10 to either long-term litigation or some other grand bargain if
11 we couldn't get there.
12 Q And ultimately, did the board authorize the Debtor to file
13 its initial version of the asset monetization plan at around
14 the time of the mediation?
15 A Yeah. We developed it over the summer and really fleshed
16 it out in terms of how the structure would work, what the tax
17 issues were, what the governance issues were. We did that
18 largely negotiating with ourselves, so we -- we were extremely
19 successful. And then we filed, we filed that plan right
20 before the mediation.
21 And my recollection is that there was some concern from
22 the mediators that they thought that putting that plan out in
23 the public could upset the possibility of a grand bargain, so
24 we ended up filing that under seal.
25 Q Do you recall what the Committee's initial reaction was to

1 the asset monetization plan that you filed under seal?
2 A Well, initially, they -- the Committee didn't like it.
3 They didn't like the governance. They didn't like the fact
4 that it set up for those creditors who didn't litigate the
5 prospect of litigations to try to resolve their claims. It
6 effectively cut out some of the advisory that the Committee
7 currently had. The -- one of the driving forces behind the
8 asset monetization plan and how we initially started it is we
9 can't continue these costs, as I said. Well, an easy way to
10 get rid of -- to reduce the costs is to get rid of half of
11 them.
12 So if you could get rid of the Committee, effectively, and
13 coalesce around an asset monetization vehicle, then if folks
14 wanted to resolve their claim, you could. If you had to
15 litigate it, you could, but you'd have one set of lawyers that
16 the estate was paying for, one set of financial advisors the
17 estate was paying for, as opposed to multiple sets.
18 Q In addition to the corporate governance issues that you
19 just described, did the Committee and the Debtor quickly reach
20 an agreement on the terms of the treatment of employee claims
21 and the scope of the releases for the employees?
22 A No. Not very quickly at all.
23 Q Yeah.
24 A You know, again, one of the issues in this case that
25 drives perspectives is the history that creditors have in

1 dealing with Highland and in dealing with many of the
2 employees at Highland, you know, who had worked for Mr.
3 Dondero and served at his pleasure for a long time, and how
4 they had been treated in various of their attempts to collect
5 their claims. So the idea of giving any sort of releases to
6 the employees was anathema to -- to many of the Committee
7 members.
8 From my perspective, you know, releases are particularly
9 important because there's a *quid pro quo* leading up to the
10 confirmation of a plan, particularly with a monetization plan
11 where it's clear that the employees are all going to be or
12 largely going to be either transitioned or terminated. If
13 they're going to keep working towards that, we either have to
14 have some sort of financial incentive or some sort of
15 assurance that their actions which are done in good faith to
16 try to pursue this give them the benefit of more than just
17 their paycheck.
18 And so we thought we were setting up the *quid pro quo* in
19 terms of work towards the monetization, bring the case home,
20 and you're entitled to a release, so long as you haven't done
21 something that was grossly negligent or willful misconduct.
22 And the Committee, I think, wanted to have a more aggressive
23 posture.
24 Q And did those disagreements over corporate governance and
25 the employee releases kind of spill out into the public at

that disclosure statement hearing in October?
A I think they spilled out at that hearing as well as in the hearing either the next day or two days later around Mr. Daugherty's claim. And again, it was -- it was contentious. I tend to try to reach resolution, but I tend to hold firm when I think that there's a good reason, an equitable reason to do so, and compromising that issue was very difficult for me.
Q But in the weeks that followed, did the Committee and the Debtor indeed negotiate to resolve to their mutual satisfaction the issues surrounding corporate governance and employee releases?
A We did, yes.
Q And were -- was the Debtor able to get its disclosure statement approved with Committee support in late November?
A We did, yes.
Q Can you describe for the Court generally kind of the process by which the Debtor negotiated with the Committee? I'll ask it as broadly as I can, and I'll focus if I need to.
A Yeah. The process was usually in group settings with the independent directors, professionals, and the Committee members and their professionals. Oftentimes, then, there would be certain one-off conversations if there was a particular issue that was more important to one Committee member or another, or if they were designated by the Committee

1 to be the point on that. And so I negotiated on behalf of the
2 Debtor, both collectively and individually, around these
3 points.
4 The biggest issues related to governance of the Claimant
5 Trust, the separation of the Claimant Trust and the Litigation
6 Trust, which was important to me, the treatment of employees
7 between the filing -- the time we came up with the case and
8 when we were going to exit, and then how that release
9 provision would work.
10 Q Is it fair to say that numerous iterations of the various
11 documents that embodied the plan were exchanged between the
12 Debtor and the Committee?
13 A Yes. There were -- there were dozens.
14 Q Fair to say that the negotiations were arm's length?
15 A Absolutely. Often contentious, always professional, but I
16 do think that there were, you know, well -- good-faith views
17 held by folks on both sides. And I think we were fortunate to
18 be able to get resolution of those, because they were
19 strongly-held views.
20 Q Okay. And ultimately, I think you've already testified,
21 and Mr. Clemente certainly made it clear: Is the Debtor --
22 does the Debtor have the Committee on board for their plan
23 today?
24 A My understanding is again -- and you heard Mr. Clemente --
25 both the Committee and each of the individual members are

supportive of the plan.

Q All right. Let's switch to Mr. Dondero and his reaction to the asset monetization plan. Can you describe for the Court based on your experience and your interaction with him what you interpreted Mr. Dondero's position to be?

A VOICE: Objection, hearsay, or --

MR. DRAPER: Objection, hearsay. Calls for speculation, Your Honor.

THE COURT: Overruled.

THE WITNESS: Yeah. I had direct discussions with Mr. Dondero regarding the plan, the asset monetization plan, as I mentioned, direct discussions regarding a potential grand bargain. The initial view from Mr. Dondero was, and he told me, that if he didn't get a plan that he agreed to, if he didn't have a specific control or agreement around what got paid to Acis and Mr. Terry and what got paid to Redeemer specifically, that he would, quote, burn the place down. I know that because it is, excuse the pun, seared into my mind, but I also wrote it down. And that was, you know, in the early summer.

We had subsequent discussions around the plan, and as we were talking about the -- about the grand bargain or -- the pot plan hadn't come out at that point -- even on a large call -- the plan initially called for a transition, and still does, of employees of the Debtor to a related entity to continue

1 performing services that were under the prior shared service
2 agreements that we were going to terminate.
3 But that transition is wholly dependent on Mr. Dondero.
4 And we had a call with at least five to seven people on it
5 where I said to Mr. Dondero, look, this is going to be in your
6 financial interest to agree to a smooth transition. These
7 people have worked for you for a long time. It's for their
8 benefit. You portfolio-manage these funds. It's to the
9 benefit of those funds to do this smoothly. And if there's
10 litigation between you and the estate later, then those chips
11 will fall where they may.
12 And he told me to be prepared for a much more difficult
13 transition than I envisioned.
14 And I specifically said to him, and this one sticks in my
15 mind because I recall it, I said, don't worry, Mr. Dondero --
16 I think I used Jim -- I will be prepared. I was a Boy Scout
17 and we spend time preparing for these kinds of things. So
18 we're -- we would love to get done the best transition we can,
19 but we will be prepared for a difficult one.
20 So, from the start, the idea of the monetization plan was
21 not something that obviously he supported. We did agree with
22 -- after his inquiry or request with the mediators, to file it
23 under seal while we went into the mediation.
24 BY MR. MORRIS:
25 Q And after, after that was filed in September, early

1 October, did Mr. Dondero start to act in a way that the board
2 perceived to be against the Debtor's interests?
3 A Certainly. I mean, he previously had shown inclinations
4 of that, but that -- it got very aggressive as he interfered
5 with the trades we were trying to do in terms of managing the
6 CLO assets. He took a position that postpetition, which was
7 really one of his entities taking a position, that
8 postposition a sale of life policy assets was somehow not in
9 the best interests of the funds and that we had abused our
10 position, notwithstanding that he turned it over to us with no
11 liquidity to maintain those life policies. There were several
12 other instances. And those led to the decision to, one, have
13 him resign, and then ultimately, after the text to me that I
14 perceived as threatening, and we've had subsequent hearings on
15 it, we asked him to leave the office.
16 Q Okay. Let's move back to the plan here. Can you
17 describe, you know, generally, if you can, the purpose and
18 intent of the asset monetization plan?
19 A Well, very simply, the main purpose is to maximize value.
20 This is not a competition between Mr. Dondero and myself. I
21 have no stake in getting more money out of the maximization
22 other than my duty to do the job that I was hired to do.
23 So our goal is to manage the assets in what we think is
24 the best way to do that over time, and find opportunities
25 where the market is right to monetize the assets, primarily

through sales. There may be other instances, depending on the type of asset, whether a sale makes sense, if we can structure it through some kind of distribution that's more structured.

Q We've used the phrase a bunch of times already. Can you describe in your own words what an asset monetization plan is in the context of the Debtor's proposal?

A Well, it may be slightly an awkward moniker, but I think it's not completely different than what you'd see, in some respects, to a regular plan, where you equitize debt and you operate the business for the benefit of the equitized debt. Here, it's a little different in that we know exactly how we're going to move forward. We've effectively -- we'll effectively turn the debt obligations into trust interests and we will pay those as we sell down assets. So we've got it structured in a way where we can pivot depending on market conditions and we'll be managing certain funds that the assets sit in.

So there's really four assets where the assets sit, and we'll manage those. First are the ones that the Debtor owns directly. Second will be the ones that are in Restoration Capital -- Restoration Capital Partners. Third are the assets in a fund called Multi-Strat. Fourth is the direct ownership interest in Cornerstone, and technically (garbled) would be the -- would be the next one.

So we have the ability to manage these individual assets

and then be able to sell them in what we determine to be the best way to maximize value, depending on the timing.

Q And when you say that you're going to continue to operate the business, do you mean that the Debtor will continue to manage the assets you've just described in the same way that it had prior to the petition date?

A It'll be a smaller team, but that's the Debtor's business. So what we won't be doing are the shared services anymore. That was part of the Debtor's business. But we will be managing the assets. So the 1.0 CLOs, we'll manage those assets. The RCP assets, we'll manage those assets. The Trussway Holdings assets, we'll managing those assets. Each of them is a little bit different. There's things as diverse as operating companies to real estate. We'll operate, subject to final agreement, but the Longhorn A and B, which are separate accounts that are -- were funded and are controlled by the largest -- one of the largest investors in the world. And so they have agreed that we should manage those assets for them.

So we're -- that's the business that the Debtor is in. It won't be doing all of the businesses that the Debtor was in before, like the shared services, but the management of the assets will be very similar.

Q And why do these funds and these assets need continued management? Why aren't you just selling them?

A Well, in some respects, they could just be sold, but the -- we believe that the value would be a lot lower. So, a lot of them are complex. The time to sell them may not be now. Some will require restructuring in some way, whether -- not through a reorganization process, but some sort of structural treatment to how the obligations at the individual asset are treated, or the equity at the individual asset. So we're going to manage each of them and look for market opportunities where we think the value can be maximized.

MR. MORRIS: Your Honor, I'm about to switch to another topic. We have been going for a little bit more than two and a half hours. I'm happy to just continue if you and the witness are, but I just wanted to give you a head's up that I'm about to switch topics. If you wanted to take a short break, we could. If you want me to continue, I'm happy to do that, too.

THE COURT: Well, let me ask you, how much longer do you think you're going to take overall with Mr. Seery?

MR. MORRIS: I think I'll probably have another hour to an hour and a half, Your Honor. We want to make a complete factual record here.

THE COURT: All right. Well, it's 12:07 Central time. Why don't we take a 30-minute lunch break, okay? Can everybody do their lunch snack that fast?

MR. MORRIS: Sure.

THE COURT: I think that would probably be the way to go. So we'll come back -- it's now 12:08. We'll come back at 12:38 Central time and resume --

MR. MORRIS: Okay.

THE COURT: -- resume this direct testimony, okay? So, see you in 30 minutes.

MR. MORRIS: Thank you very much.

THE COURT: Okay.

THE CLERK: All rise.

(A recess ensued from 12:08 p.m. to 12:44 p.m.)

THE COURT: We are going back on the record in the Highland confirmation hearing. It's 12:44 Central time. I took a little bit longer break than I said we would.

Mr. Morris and Mr. Seery, are you ready to resume?

MR. MORRIS: I am, Your Honor.

THE WITNESS: Yes, Your Honor.

THE COURT: Okay, good. A couple of things. I'm required to remind you you're still under oath, Mr. Seery. And also, just for people's planning purposes, what I intend to do is, when the direct examination of Mr. Seery is finished, I'm going to allow cross-examination of the Objectors in the same amount of time in the aggregate that the Debtor got, okay? So, Objectors, in the aggregate, you can spend as long cross-examining as the Debtor spent examining. I can figure out this is the most significant witness, so I'm

assuming that Debtor's other witnesses are going to be a lot shorter than this, but --

MR. MORRIS: Yes, I promise.

THE COURT: -- that's how we'll proceed. And I expect to finish Mr. Seery today.

So, all right. With that, you may proceed, Mr. Morris.

MR. MORRIS: Okay.

DIRECT EXAMINATION, RESUMED

BY MR. MORRIS:

Q Can you hear me okay, Mr. Seery?

A Yes, sir.

Q Okay. Before we move on to the next topic, you spent some time describing the asset monetization plan. Would it be fair to describe that as a long-term going-concern liquidation?

A Long-term is subjective. We anticipate that we'll be able to monetize the assets in two years. We could go out longer to three. There's no absolute restriction that we couldn't take longer, depending on what we see in the market, but the objective would be to find maximization opportunities within that time period.

Q Okay. So let's turn now to the post-confirmation corporate governance structure.

(Interruption.)

THE WITNESS: Mr. Golub (phonetic), you should mute.

THE COURT: Yes. I don't know -- I didn't catch who

that was. But anyway, anyone other than --

A VOICE: It's someone named Garrett Golub.

THE COURT: -- Morris and Seery, please mute. All right. Go ahead.

MR. MORRIS: Okay.

BY MR. MORRIS:

Q At a high level, Mr. Seery, can you please describe for the Court the post-confirmation structure that's envisioned under the proposed plan?

A At a high level, we anticipate reorganizing HCMLP such that the current parties of interest will be extinguished and, in exchange, creditors will get trust interests. There'll be a trust that will sit on top of HCMLP and it will have an overall responsibility for the Claimant Trust, which will be the HCMLP assets plus the assets that we move into the Claimant Trust, depending on structural considerations. And then a Litigation Trust, which will be a separate trust, and that will roll up into the main trust. And the main trust will be where the creditors hold their interests. And those interests take the form of senior interests or junior interests.

Q All right. You mentioned a Claimant Trust. Who is proposed to serve as the Claimant Trustee?

A I am.

Q And you mentioned a Litigation Trust. Is there someone

1 proposed to serve as the Litigation Trustee?
2 A A gentleman named Marc Kirschner. He's been doing these
3 kinds of things for a long time.
4 Q Is there going to be any kind of oversight group or
5 committee?
6 A There is an oversight committee that sits at the main
7 trust. Into it will report Mr. Kirschner and myself. It has
8 oversight responsibilities similar to a board of directors in
9 terms of the operations of the Claimant Trust and the
10 Litigation Trust.
11 Q Do you have an understanding as to who the initial members
12 of the Claimant Oversight Committee?
13 A The initial members will be each of the members of the
14 Creditors' Committee. So, UBS, Acis, Redeemer, a
15 representative from Redeemer, and Meta-e, as well as an
16 independent named David Pauker. So that's the initial
17 structure.
18 Q And can you describe for the Court, how did Mr. Pauker get
19 involved in this?
20 A He was selected by the Committee.
21 Q Okay. Is there -- Meta-e is a convenience class claim
22 holder. Do I have that right?
23 A Yeah. They're -- they -- as I went through earlier, they
24 had a liquidated claim for litigation services. So we
25 expected that they'll be paid off rather early in the process.

At that point, we suspect they wouldn't -- they would no longer be an Oversight Committee member and they would be replaced by an independent.

Q And do you have any understanding as to how that independent will be chosen?

A I believe it's chosen by the other members.

Q Okay. Can you describe your proposed compensation structure as the proposed Claimant Trustee?

A My compensation will be $150,000 a month, which is the same compensation I have now. In addition, we'll negotiate a bonus structure with the Oversight Committee. And that will likely be a bonus not just for myself but for the entire team, depending on performance.

Q Okay. And that -- and who is that negotiation going to be had with?

A The Oversight Committee.

Q Okay. Are you familiar with Mr. Pauker's compensation structure?

A I -- I've seen it. I don't recall specifically. I think his -- from the models, I think he's about 40 or 50 grand a month, something along those lines.

Q Okay. How about Mr. Kirschner? Do you recall -- let me just ask you this. Does it refresh your recollection at all if I said that 250 in year one for Mr. Pauker?

A Yeah. So maybe closer to $20,000 to $25,000 a month. And

1 then Mr. Kirschner is a lower amount, but he would get a
2 contingency fee arrangement somewhere dependent on the
3 recoveries from his litigations.
4 Q Okay. You mentioned earlier that the Debtor intends to
5 continue operations at least for some period of time post-
6 effective date. Do you have a view as to whether the post-
7 confirmation entity will have sufficient personnel to manage
8 the business?
9 A I do, yes.
10 Q And why is that? What makes you believe that the Debtor
11 will have -- the post-confirmation Debtor will have sufficient
12 personnel to manage the business?
13 A Well, we've gone through and looked at each of the assets
14 and what is required to manage those assets. We have a lot of
15 experience doing it during the case. The bulk of the
16 employees, who do a fine job, are really doing shared service
17 arrangements. The direct asset management group is a smaller
18 group, and we'll be able to manage those with the team we're
19 putting together.
20 Q Okay. How does the ten employees compare to the original
21 plan that was set forth in the disclosure statement, if you
22 recall?
23 A Well, we had less, and I believe the number was either two
24 or three, along with me, and then using a lot of outside
25 professional help. But we determined that we wanted to have a

much more robust team, based on the litigation that we're seeing around the case and we expect to continue post-exit, so that the team can manage those assets unfettered.

In addition, we were taking on the CLO management, the 1.0 CLO contracts. These one -- as I've mentioned before, they're not traditional CLOs in the sense that they require the same hands-on management, but they do require an experienced team to help manage the exposures, most of which are cross-holdings in different -- in different entities or different investments that Highland also has exposure to.

Q In addition to the assumption of the CLO management agreements, has the Debtor made any decisions regarding the possibility of hiring a sub-servicer?

A We have, yes.

Q And did that factor into the Debtor's decision to increase the number of personnel it was going to retain?

A Well, we determined we weren't going to hire a sub-servicer. And I'm not sure exactly when we made that determination. We do have a TPA, which is SEI, and that's a third-party administrator, to sift through the funds and provide accounting supporting to those, to those funds. So that -- they will help. We also have an outside consultant that we're using, Experienced Advisory Consultants, who are financial consultants who've worked in the business. So we do have those.

1 But we didn't think that we would get a third-party sub-
2 servicer, as was the case in Acis, and determined that wasn't
3 in the best interest of the estate.
4 Q Can you just shed a little light on what factors the
5 Debtor took into account in deciding not to hire a sub-
6 servicer?
7 A Well, we primarily looked at cost, as well as control of
8 the assets, and determined that that was -- those were in the
9 best interests of the estate, to keep them managed internally.
10 We reviewed that with the Committee, and they agreed.
11 Q Okay.
12 MR. MORRIS: Let's turn now to the best interests of
13 creditors' test, Your Honor, 1129(a)(7), and let's talk about
14 whether the plan is in the best interests of creditors.
15 BY MR. MORRIS:
16 Q Has the Debtor done any analysis to determine the likely
17 value to be realized in a Chapter 7 liquidation?
18 A We have, yes.
19 Q And has the Debtor done any analysis to determine the
20 likely recoveries under the plan?
21 A Yes.
22 Q Okay. Do you recall when these projections were first
23 prepared?
24 A We started working on projections in the fall, as we were
25 developing the monetization plan. We filed projections, I

1 believe, in November. We've subsequently updated those
2 projections based on the claims, market condition, and value
3 of the assets.
4 Q And were those updates provided to plan objectors last
5 week?
6 A Yes, they were.
7 Q Okay. Can we refer to the projections that were in the
8 disclosure statement as the November projections?
9 A That'd be fine.
10 Q And can we refer to the projections that were provided to
11 the objectors last week as the January projections?
12 A Yes.
13 Q And as --
14 A I think they're actually -- I think they're actually dated
15 February 1, is the most recent update.
16 Q Okay. And then was a further update provided yesterday
17 and filed on the docket, to the best of your knowledge?
18 A Yes.
19 Q All right. We'll talk about some of the changes in those
20 projections.
21 MR. MORRIS: Can we call up on the screen Debtor's
22 Exhibit 7D as in dog? And this document is in evidence. Um,
23 --
24 THE COURT: No, this is -- oh, wait. How many Ds is
25 it? Seven?

MR. MORRIS: It's 7D, so that would be on Docket 1866, all of which has been admitted.

THE COURT: Okay. You're right.

MR. MORRIS: Okay.

And if we could just, I'm sorry, go to Page 3.

BY MR. MORRIS:

Q Is there any way to look at this, Mr. Seery? Is this the January projections that were provided last week?

A Yes.

Q Okay. Can you describe for the Court the process by which this set of projections and the November projections were prepared? How did the Debtor go about preparing these projections?

A Yeah. These are prepared what I would call bottoms-up. So what we did was we looked at each of the assets that the Debtor owns or manages or has a direct or indirect interest in, used the values that we have for those assets, because we do keep valuations for each of the assets that the Debtor owns or manages in the ordinary course of business. We then adjusted those depending on what we saw as the outcomes for the case, either a plan outcome or a liquidation outcome, and then rolled those into the -- into the numbers that you see here.

So the 257 and change. And please excuse my eyesight. I'm going to make this bigger. The 257 is the estimated

1 proceeds from monetization. Above that, you see cash. That's
2 our estimated cash at 131. And we monitor those, those values
3 daily.
4 Q And were these projections prepared under your
5 supervision?
6 A They were, yes.
7 Q Okay. And who was involved in the preparation of this
8 document and other iterations of the projections?
9 A The team at DSI. Obviously, myself; the team at DSI; as
10 well as the, at least from a review perspective, counsel.
11 Q All of these contain various assumptions. Do I have that
12 right?
13 A Yes.
14 MR. MORRIS: Can we go to the prior page, please, I
15 think is where the assumptions are? And let's just look at a
16 few of them. Okay. Can we make that a little bigger, La
17 Asia? Okay. Good.
18 BY MR. MORRIS:
19 Q Why does the Debtor's projections and liquidation analysis
20 contain any assumptions? Why, why include assumptions?
21 A Well, all projections contain assumptions. So an
22 assumption -- I was strangely asked the question at
23 deposition, what does that mean? It's a thing or fact that
24 one accepts as true for the purposes of analysis. And so in
25 terms of looking out into the future as to what the potential

1 operation expenses will be and what the potential recoveries
2 will be, one has to make assumptions in order to be able to
3 compare apples to apples.
4 Q And do you believe that these assumptions are reasonable?
5 A Yes. It would make no sense to have assumptions that
6 aren't reasonable. I mean, and we've all seen that with
7 analysis through our respective careers. It really should be
8 grounded in some fact and a reasonable projection on what can
9 happen in the future, based upon experience.
10 Q Okay. And have you personally vetted each of the
11 assumptions on this page?
12 A Yes.
13 Q Okay. Let's just look at a few of them. Let's start with
14 B. It says, All investment assets are sold by December 31,
15 2022. Do you see that?
16 A Yes.
17 Q Why did the Debtor make that assumption?
18 A We looked at a two-year projection horizon. We thought
19 that that was a reasonable amount of time, looking at these
20 assets, to monetize the assets. Remember that we did go
21 through a process of the case over the last year, and we did
22 consider monetization asset events for certain of the assets
23 throughout the case, some of which we were successful on, some
24 of which we weren't, some we just determined to pull back.
25 But we do believe that, based upon our view of the market and

where we think these assets will be positioned, that monetizing them over a two-year period makes sense.

Q And is it possible that it takes longer than that?

A It's possible. The -- you know, we would be wrong about the market. The -- we could go into a full-blown recession. Capital could dry up. The financing markets could turn negative. But they're extremely positive right now. Those things could happen. But we're assuming that they won't.

Q And is it possible that you complete the process on a more accelerated timeframe?

A That's always possible. It's not, in my experience, a good way to plan. Luck really isn't a business strategy. But if good opportunity shows up and folks want to pay full value for an asset, we certainly wouldn't turn them away just so we could stretch out the time period.

Q Is it fair to say that this projected time period is your best estimate on the most likely timeframe needed?

A It's -- I think it's the best estimate that we have based upon our experience with the assets, again, and our projection of the marketplace that we see now. If things change, we'll adjust it, but this is a fair estimate of when we can get the monetization accomplished.

Q Okay. The next assumption relates to certain demand notes. Do you see that?

A Yes.

Q Can you explain to the Court what that assumption is and why the Debtor believed that it was reasonable?

A Well, the Debtor has certain notes that are demand notes. These are all from related entities. Most of the notes, the demand notes, we have demanded, and we've commenced litigation to collect. And we assume that we're going to be able to collect those.

Three notes that were long-term notes -- these were notes with maturities in 2047 that had been stretched out a couple years ago -- were defaulted recently. And we have accelerated those notes and we've asserted demands and we have commenced litigation, I believe, on each of those last week to collect. So we do estimate that we will collect on all of the notes that we've demanded and that we've commenced action on. So the demand notes as well as the accelerated notes.

The next, the next bullet shows there's one Dugaboy note that has not defaulted. That also has a 2047 maturity. I believe it's about $18 million. And we expect that one to stay current, because now I think the relater parties learned that when you don't pay a long-dated note, it accelerates, provided the holder, which is us, wishes to accelerate it, which we did. And so that note we do not expect to be collected in the time period.

Q Okay.

MR. MORRIS: Let's go down to M.

BY MR. MORRIS:

Q M relates to certain claims. Do you see that?

A Yes.

Q Can you just describe at a high level what assumption was made with which -- with respect to which particular claims?

A Well, we've summarized them there. And what we've assumed is that, with respect to Class 8, IFA, which is a derivative litigation claim that seeks to hold, loosely, HCMLP liable for obligations of NexBank, is worth zero. I think that's pretty close to settling. We assumed here $94.8 million for UBS, which was the estimated amount, and $45 million for HarbourVest.

Q And when you say the estimated amount, are you referring to the 3018 order on voting?

A Yes. We just use the estimated amount in this projection based upon the 3018 order.

Q Okay. And finally, let's look at P. P has a payout schedule. Do I have that right?

A That's an estimated payout schedule, yes.

Q And what do you mean by that, that it's estimated?

A Based upon our projections and how we perceive being able to monetize the assets and reach the valuations that we want to reach, we believe we could make these distributions. However, there's no requirement to make them.

So the first and foremost objective we have, as I said

earlier, is to maximize value, and not -- it's not based on a payment schedule, it's based upon the market opportunity. And we've estimated for our purposes here that we'll be able to meet these distribution amounts, but there's no requirement to do so.

Q Okay.

MR. MORRIS: Let's go to Page 3 of the document, please.

BY MR. MORRIS:

Q Can you just describe generally what this page reflects?

A This is a comparison of the plan analysis and what we expect to achieve under the plan and the liquidation analysis if a trustee, a Chapter 7 trustee, were to take over. And it compares those two distribution amounts based upon the assumptions on the prior page.

Q All right. Let's just look at some of the -- some of the data points on here. If we look at the plan analysis, what is -- what is projected to be available for distribution, the value that's available for distribution?

A $222.6 million.

Q Okay. So, 222? And on a claims pool that's estimated to be, for this purpose, how much?

A $313 million.

Q And what is the distribution, the projected distribution to general unsecured creditors on a percentage basis?

A On this analysis, to general unsecured creditors, it's 62.14 percent. But remember, that backs out the payment to the Class 7 creditors of 85 cents above.

Q Okay. And does this plan analysis include any value for litigation claims?

A No, it does not.

Q And is that true for all forms of the Debtor's projections?

A That's correct, yes.

Q Okay. And let's look at the right-hand column for a moment. It says, Liquidation Analysis. What does that column represent?

A That represents our estimate of what a Chapter 7 trustee could achieve if it were to take over the assets, sell them, and make distributions.

Q Okay. And let's just look at the comparable data points there. Under the liquidation analysis, as of -- the January liquidation analysis as of last week, what was projected to be available for distribution?

A A hundred and -- approximately $175 million.

Q Okay. And what was the claims pool?

A The claims pool was $326 million. Recall that that's a slightly larger claims pool because it doesn't back out the Class 7 claims.

Q Okay. The convenience class claims?

A Correct.
Q Okay. And what's the projected recovery for general unsecured claims under the liquidation analysis?
A Based on this analysis and the assumptions, 48 (audio gap).
Q Okay. Based on the Debtor's analysis, are creditors expected to do better under this analysis in the -- under the Debtor's plan versus the hypothetical Chapter 7 liquidation?
A Yes. Both -- both Class 7 and Class 8.
Q Okay. Now, this set of projections differs from the projections that were included in the disclosure statement; is that right?
A That's correct.
Q Okay. Can we just talk about what the differences are between the November projections that were in the disclosure statement and the January projections that are up on the screen? Let's start with the monetization of assets, the second line. Do you recall if there was an increase, a decrease, or did the value from the monetization of assets stay the same between the November projections and the January projections?
A They increased from November 'til -- 'til now.
Q Okay. Can you explain to the judge why the value from the monetization of assets increased from November to January?
A Well, really, it's the composition of the assets and their

value. So there's four main drivers.

The first is HarbourVest. We had a settlement with HarbourVest, which include HarbourVest transferring to the Debtor $22-1/2 million of HCLOF interests. Those have a real value, and we've now included them in the -- in the asset pool. We've also included HarbourVest in the claims pool.

The second was we talked a little bit earlier on the assumptions on the notes. We previously had anticipated that, on the long-dated notes, a collection, we -- we'd receive principal and interest currently, but we wouldn't receive the full amount of the principal that was due well off in the future, and we would sell it a discount.

So the amount of the asset pool has been increased by $24 million, and that reflects the delta between or the change between what was in the prior plan, the notes paying and then being sold at a discount, and what's in the current plan, which include the accelerated notes, which is a $24 million note that Advisors defaulted on that we have accelerated and brought action on, as well as two six -- roughly $6 million notes, one from Highland Capital Real Estate and the other from HCM Services. So that's, that's additional 24.

In addition, Trussway, we've reexamined where Trussway is in the market, both its marketplace and its performance, and reassessed where the value is. So that has increased by about $10.6 million.

1 That doesn't mean that we would sell it today. It means
2 that, when you look at the performance of the company, what we
3 think are the best opportunities in the market. As we see the
4 marketplace with managing the company over time, we think that
5 that asset has appreciated considerably since November.
6 And then, finally, there were additional revenues that
7 flow into the model from the November analysis which would be
8 distributable, and those include revenues from the 1.0 CLOs.
9 Q Okay. So that accounts for the difference and the
10 increase in value from the monetization of assets. Is there
11 also an increase in expenses from the November projections to
12 the January projections?
13 A Yeah. It's -- it's about -- it's around $25 million
14 additional increase.
15 Q And can you explain to the Court what is the driver behind
16 that increase in expenses?
17 A Yeah. There's several drivers to that. The first one is
18 head count. So our head count, we've increased. As I
19 mentioned earlier, we determined that we wanted to have a much
20 more robust management presence. So we've increased the head
21 count, so we have a base comp, compensation, about $5 million
22 more than we initially thought.
23 Secondly, we have bonus comp. So we've back-ended --
24 structured a backend bonus performance bonus for the team, and
25 that will run another $5 million, roughly.

Previously, we had thought about, as you mentioned earlier, the sub-servicing, but we've now talked about and we have engaged a TPA, SEI, as well as experienced advisors. That's another $1 to $2 million.

Operating expenses have increased by about $8 million, based upon our assessment. The biggest driver there is D&O, which is up about $3 million. In addition, we've gotten -- we determined to keep a bunch of agreements related to data collection and operations. Those were requested by the Committee, but they also serve us in performing our functions. That's another couple million dollars.

My comp, my bonus comp was not in the prior model. So I have a bonus that has not been agreed to by the Court for the bankruptcy performance. This is not a future bonus. And we built that into the model. Obviously, it's subject to Court approval and Committee objection, and I suppose anybody else's objection, but we'll -- we'll be before the Court for that. But we wanted to build that into the model so that we had it covered in the event that it was approved.

Q Was there also a change in the assumption from November to January with respect to the size of the general unsecured claim pool?

A Yes. There have been -- there have been several changes that have happened, and we've added those and refined the claim pool numbers.

Q And are those changes reflected in the assumption we looked at earlier, Exhibit -- Assumption M, which went through certain claims that have been liquidated?

A Some, some are. That assumption, I don't believe, was -- it's not in front of me, but wasn't up to date. So, that one, for example, assumed UBS at the 3018 estimated amount. We've since refined that number to reflect the agreed-upon transaction with UBS, which is subject to Court approval.

Q Right. But before we get to that, for purposes of the January model, the one that's up on the page -- and if we need to look at the prior page --

MR. MORRIS: Let's go to the prior page, the assumption. Assumption M.

BY MR. MORRIS:

Q Assume the UBS, the UBS claim at the $94.8 million, the 3018 number. Do you remember that?

A Yeah. That's, that -- that's the assumption in this model. I think back in November we assumed HarbourVest at zero and UBS at zero. So we've since -- we've since refined those numbers, obviously, through both the 3018 process as well as the settlement with HarbourVest.

Q And did the -- did the inclusion -- withdrawn. At the time that you prepared the November model -- withdrawn. At the time the Debtor prepared the November model, did it know what the UBS or the HarbourVest claims would be valued at?

A No. We just had our assumption back then, which was zero. And now, obviously, we know.

Q And so the January model took into account the settlement with HarbourVest and the 3018 motion; do I have that right?

A That's correct. That's in the assumptions.

Q And what was the impact on the projected recoveries to general unsecured creditors from the changes that you've just described, including the increase in the claims amount?

A Well, when -- like any fraction, the distribution will go down if the claimant pool goes up. So, with the denominator going up by the UBS and the UBS amount -- the UBS and the HarbourVest amounts, the distribution percentage went down.

Q Okay. I want to focus your attention on the second line where we've got the monetization of assets under the plan at $258 million but under the liquidation analysis it's $192 million. Do you see that?

A Yes.

Q Can you tell Judge Jernigan why the Debtor believes that under the plan the Debtor or the post-confirmation Debtor is likely to receive or recover more for the --

(Interruption.)

THE COURT: All right. Hang on a minute. Where is that coming from, Mike?

THE CLERK: Someone is calling in.

THE COURT: Okay.

MR. MORRIS: Thank you.

THE COURT: Mr. --

MR. MORRIS: Let me restate the question.

THE COURT: Yes. Restate.

BY MR. MORRIS:

Q Can you explain to Judge Jernigan why the Debtor believes that the -- under the plan corporate structure, the Debtor is likely to recover more from the monetization of assets than a Chapter 7 liquidation trustee would?

A Sure. My experience is that Chapter 7 trustees will generally try to move quickly to monetize assets. They will retain their own professionals, they will examine the assets, and they will look to sell those assets swiftly.

The monetization plan does not plan to do that. I've got a year's of experience -- a year now of experience with these assets, as well as we'll have a team with several years at least each of experience with the assets. We intend to look for market opportunities, and think we'll be able to do it in a much better fashion than a liquidating Chapter 7 trustee.

The nature of these assets is complex. Many of them are private equity investments in operating businesses. Certain of them are complicated real estate structures that need to be dealt with. Some of them are securities that, depending on when you want to sell them, we believe there'll be better times than moving quickly forward to sell them now.

1 So, with each of them, we think that we'll be able to do
2 better than a Chapter 7 trustee based upon our experience.
3 The only thing that we're level-set with a Chapter 7 trustee
4 on is that cash is cash.
5 Q Do you have any concerns that a Chapter 7 trustee might
6 not be able to retain the same personnel that the Debtor is
7 projected to retain?
8 A Well, again, in my experience, it would be very difficult
9 for a Chapter 7 trustee to retain the same professionals, and
10 typically they don't.
11 Secondly, retaining the individuals, I think, would be
12 very difficult for a Chapter 7 trustee, would not have a
13 relationship with them, and that gap of time and the risks
14 that they would have to take to join a Chapter 7 trustee I
15 think would lead most of them to look for different
16 opportunities.
17 Q Okay. One of the other things, one of the other changes I
18 think you mentioned between the November and the January
19 projections was the decision to assume the CLO management
20 contracts. Do I have that right?
21 A That's correct.
22 Q And why has the Debtor decided to assume the CLO
23 management contracts? How does that impact the analysis on
24 the screen?
25 A Well, it does add to the expense, but it also adds to the

1 proceeds.
2 When we did the HarbourVest settlement, we ended up with
3 the first significant interest in HCLOF. HCLOF owns the vast
4 majority of the equity in Acis 7, and also owns significant
5 preferred share interests in the 1.0 CLOs. And we think it's
6 in the best interest of the estate to keep the management of
7 those assets where we have an interest in the outcome of
8 maximizing value with the estate.
9 In addition, we're going to have employees who are going
10 to work with us to manage those specific assets, so we feel
11 like that will be something where we can control the
12 disposition much better.
13 There's also cross-interests that these CLOs have in --
14 the 1.0 CLOs have in a number of other investments that
15 Highland has. As in all things Highland, it's interrelated,
16 and so many of the companies have direct loans from the CLOs.
17 We intend to refinance that, but we feel much more comfortable
18 and feel that there would be value maximization if we're able
19 to work directly with the Issuers as a manager while we seek
20 in those underlying investments to refinance the CLO debt.
21 Q Has the Debtor -- has the Debtor reached an agreement with
22 the Issuers on the assumption of the CLO management
23 agreements?
24 A Yes, we have.
25 Q Can you describe for the Court the terms of the

assumption?

MR. RUKAVINA: Your Honor, this --

THE WITNESS: Yes.

MR. RUKAVINA: Your Honor, this is Davor Rukavina. I would object to this as hearsay.

THE COURT: Well, he has not --

MR. MORRIS: It's --

THE COURT: He's not said an out-of-court statement yet, so I overrule.

Go ahead.

THE WITNESS: Yeah, we -- we are going to assume the CLO contracts. We have had direct discussions with the Issuers. They have agreed.

The basic terms are that we're going to cure them by satisfying about $500,000 of cure costs related to costs that the CLO Issuers have incurred in respect of the case, and we'll be able to pay that over time.

MR. RUKAVINA: Your Honor, this is Davor Rukavina. I would renew my objection and move to strike his answer that they've agreed. That is hearsay, an out-of-court statement offered to prove the truth of the matter asserted.

THE COURT: Okay. Mr. Morris, what is your response?

MR. MORRIS: He's describing an agreement. I actually think it's in the Debtor's plan that's on file already. But he's describing the terms of an agreement. He's

not saying what anybody said. There's no out-of-court statement. It's an agreement that's being described.

THE COURT: All right. Thank you. I overrule the objection.

MR. MORRIS: Okay.

BY MR. MORRIS:

Q Does the Debtor believe that the CLO agreements will be profitable?

A Yes.

Q And why does the Debtor believe that the CLO agreements will be profitable to the post-confirmation estate?

A Well, we don't -- we don't break out profitability on a line-by-line basis. But the simple math is that the revenues from the CLO contracts which will roll in to the Debtor from the management fees are more than what we anticipate the actual direct costs of monitoring and managing those assets would be.

Q Okay. Are you aware that yesterday the Debtor filed a further revised set of projections?

A I am, yes.

Q All right. Let's call those the February projections.

MR. MORRIS: Can we put those on the screen?

It's Exhibit 7P, Your Honor.

THE COURT: Okay.

MR. MORRIS: All right. I think that for some reason

1 -- yeah, okay. There we go. Perfect. Right there.
2 Your Honor, these are the projections that were filed
3 yesterday. I'm going to move for the admission into evidence
4 of these projections.
5 THE COURT: All right.
6 MR. TAYLOR: Your Honor, this is Clay Taylor.
7 THE COURT: Go ahead.
8 MR. TAYLOR: We object. These were -- these were not
9 previously provided. They were provided on the eve of the
10 confirmation hearing, after the Debtors had already revised
11 them once and provided those on -- after close of business on
12 a Friday before Mr. Seery's deposition. And these were
13 provided even later, certainly not within the three days
14 required by the Rule. And therefore we move to -- that these
15 should not be allowed into evidence.
16 THE COURT: Mr. Morris, what is your response to
17 that?
18 MR. MORRIS: Your Honor, first of all, the January
19 projections were provided in advance of Mr. Seery's deposition
20 and he was questioned extensively on it. These projections
21 have been updated since then, I think for the singular purpose
22 of reflecting the UBS settlement.
23 As Your Honor just saw, the prior projections included an
24 assumption based on the 3018 motion. Since Mr. Seery's
25 deposition, UBS and the Debtor have agreed to publicly

1 disclose the terms of the settlement, and that's reflected in
2 these revised numbers. I think there was one other change
3 that Mr. Seery can testify to, but those are the only changes
4 that were made.
5 THE COURT: All right. Mr. Seery, what besides the
6 UBS settlement do you think was put in these overnight ones?
7 THE WITNESS: I believe the only other change, Your
8 Honor, was correcting a mistake. In Assumption M, the second
9 line is assumes RCP claims will offset against HCMLP's
10 interest in the fund and will not be paid from the Debtor's
11 assets. That hasn't changed.
12 Basically, the Debtor got an advance from RCP that was to
13 -- for tax distributions, and did not repay it. The RCP
14 investors are entitled to recovery of that. So we had
15 previously backed that out. It's about four million bucks.
16 What happened was it was just double-counted.
17 THE COURT: Okay.
18 THE WITNESS: So, as an additional claim, it was
19 counted as $8 million. I think that's the only other change.
20 THE COURT: All right. I overrule the objection.
21 You may go forward. I admit 7P.
22 MR. MORRIS: Thank you, Your Honor.
23 (Debtor's Exhibit 7P is received into evidence.)
24 MR. MORRIS: Can you just -- if we can go to the next
25 page, please.

BY MR. MORRIS:

Q So, with -- seeing that the claims pool under the plan previously was $313 million, and what's the claims pool under the projections up on the screen under the plan?

A Two -- well, remember, there's 273 for Class 8, and then you'd add in the Class 7 as well, which is the $10.2 million. So the 273 went from 313 to 273 with that settlement.

Q And is there any -- is there any reason for the decrease other than the change from the 3018 settlement -- order figure to the actual settlement amount?

A For the UBS piece, no. And then, as I mentioned, I believe the other piece would have been that four million -- that additional $4 million that was taken out.

Q And did those two changes have a -- did those two changes have an impact on the projected recoveries under the plan?

A Sure, particularly with respect to -- to the Class 8. Those recoveries went up significantly because the denominator went up.

Q Okay. Does the Debtor believe that its plan is feasible?

A Yes, absolutely.

Q And do you know whether the administrative priority and convenience class claims will be paid in full under the Debtor's plan?

A Yes. We monitor the cash very closely, so we do have additional cash to raise, but we're set to reach or exceed

1 that target, so we do believe we'll be able to pay all the
2 administrative claims when they come in. Obviously, we have
3 to see what they are. We will be able to pay Class 7 on the
4 effective date. Any other distributions, we expect to be able
5 to make as well.
6 So, and then it's -- then it's a question of going forward
7 with a few other claims that we have to pay over time. We
8 have the cash flow to pay those. Frontier, for example, we'll
9 be able to pay that claim over time in accordance with the
10 restructured terms. If the assets that secure that claim are
11 sold, they would be paid when those assets are sold.
12 Q Frontier, will the plan enable the Debtor to pay off the
13 Frontier secured claim?
14 A Yes. That's what I was explaining. The cash flow is
15 sufficient to support the current P&I on that claim. We will
16 be able to satisfy it from other assets if we determine not to
17 sell the asset securing the Frontier claim, or if we sell the
18 asset securing the Frontier claim we could satisfy that claim.
19 The asset far exceeds the value of the claim.
20 Q Has the plan been proposed for the purpose of avoiding the
21 payment of any taxes?
22 A No. We expect all tax claims to be paid in accordance
23 with the Code, and to the extent that there are additional
24 taxes generated, we would pay them.
25 Q Okay. Let's just talk about Mr. Dondero for a moment

1 before we move on. Are you aware that Mr. Dondero's counsel
2 has requested the backup to, you know, these numbers,
3 including the asset values?
4 A It -- I'm not sure if it was his counsel or one of the
5 other related-entity counsels.
6 Q Okay. But you're aware that a request was made for the
7 details regarding the asset values and the other aspects of
8 this?
9 A Yes.
10 Q Those were -- were those formal requests or informal
11 requests?
12 A They were certainly at my deposition.
13 Q Right. But you haven't seen a document request or
14 anything like that, have you?
15 A No.
16 Q Did the Debtor make a decision as to whether or not to
17 provide the rollup, the backup information to Mr. Dondero or
18 the entities acting on his behalf?
19 A Yes.
20 Q And what did the Debtor decide?
21 A We would not do that.
22 Q And why did the Debtor decide that?
23 A Well, I think that's pretty standard. The underlying
24 documentation and the specific terms of the model are very
25 specific, and they are -- they are confidential business

information that runs through what we expect to spend and what we expect to receive and when we expect to sell assets and then receive proceeds, and the prices at which we expect to sell them.

To the extent that any entity wants to have that information as a potential bidder, that would be very detrimental to our ability to maximize value. So, typically, I wouldn't expect that to be given out, and I would not approve it to be given out here.

Q Did the Debtor disclose to Mr. Dondero's counsel or counsel for one of his entities the agreement in principle with UBS before the updated plan analysis was filed last night?

A I believe that disclosure was done a while ago, to Mr. Lynn.

Q So, to the best of your -- so, to the best of your knowledge, the Debtor actually shared the specifics of the agreement with UBS with Mr. Dondero and his counsel before last night?

A Yes. I have specific personal knowledge of it because we had to ask UBS for their permission, and they agreed.

Q Okay.

MR. MORRIS: All right. Let's move on to 1129(b), Your Honor, the cram-down portion.

BY MR. MORRIS:

Q Are you aware, Mr. Seery, how various classes have voted under the plan?
A I am generally, yes.
Q Okay. Did any class vote to reject the plan, to the best of your knowledge?
A I don't -- I guess it depends on how you define the class. I think the answer is that I don't believe that, when you count the full votes of the -- the allowed claims and the votes in any class, I don't believe any of the classes voted to reject the plan.
Q What type of claims are in Class 8?
A General unsecured claims.
Q And what percentage of the dollar amount of Class 8 voted to accept?
A It's -- I think it's near -- now with the Daugherty agreements, it's near a hundred percent of the third-party dollars. I don't know the individual employees' claims off the top of my head.
Q All right. And what about the number in Class 8? Have a majority voted to accept or reject in Class 8?
A If you include the employee claims -- which, again, we think have no dollar amounts -- then I think it's a majority would have rejected. The vast dollar amounts did accept.
Q Okay. Let's talk about those employees claims for a moment. Do you have an understanding as to the basis of the

1 claims?
2 A Yes.
3 Q What's your understanding of the basis of the claims?
4 A Most of the claims are based on deferred compensation, and
5 that's the 2005 Highland Capital Management bonus plan. And
6 that bonus plan provides certain deferred payment amounts to
7 the employees to be paid over multiple-year periods, provided
8 that they are in the seat when the payment is due. That's the
9 vesting date.
10 Q Okay.
11 MR. MORRIS: Your Honor, just as a note-keeping
12 matter, the deferred compensation plan and the annual bonus
13 plan are Exhibits 6F and 6G, respectively, and they're on
14 Docket 1822.
15 THE COURT: All right.
16 BY MR. MORRIS:
17 Q And Mr. Seery, are you generally familiar with those
18 plans?
19 A I am, yes.
20 Q In order to receive benefits under the plans, are the
21 employees required to be employed at the time of vesting?
22 A Yeah. Our counsel refers to them, various terms, but
23 generally -- our outside labor counsel. They're referred to
24 as seat-in-the-seat plans, meaning that your seat has to be in
25 a seat at the office at the day that the payment is due. If

1 you're terminated for cause or if you resign, you're not
2 entitled to any payment.
3 So either you're there and you receive it or you're not
4 and you don't. The only exception to that, I believe, is
5 death and disability. Or disability.
6 Q All right. Did the Debtor terminate the annual bonus
7 plan?
8 A Yes, we did.
9 Q And in what context did the Debtor terminate the annual
10 bonus plan?
11 A Well, we had discussion on it last week. As Mr. Dondero
12 had also testified, the plan was to terminate all the
13 employees prior to the transition. That's well known among
14 the employees. The board terminated the 2005 bonus plan and
15 instead replaced it with a KERP plan that was approved by this
16 Court.
17 Q And what was your understanding of the consequences of the
18 termination of the bonus plan for -- for purposes of the
19 claims that have been asserted by the employees who rejected
20 in Class 8?
21 A It's clear that, under the 2005 HCMLP bonus plan, no
22 amounts are due because the plan has been terminated.
23 Q All right. Do you have an understanding as to when
24 payments become due under the deferred compensation -- under
25 the compensation plan?

A I do, yes.
Q And when are they due?
A The next payments are due in May.
Q And what is the Debtor intending to do with respect to the objecting employees?
A The Debtor will have terminated all those employees before that date.
Q All right. So, what's -- what are the consequences of their termination vis-à-vis their claims under the deferred compensation plan?
A They won't have any claims.
Q Okay. So is it the Debtor's view that the employees who voted to reject in Class 8 have no valid claims under the annual comp -- annual bonus plan or the deferred compensation plan?
MR. RUKAVINA: Your Honor, this is Davor Rukavina. With due respect, Your Honor, these employees have voted. The voting is on file. There has been no claim objections to their claims filed. There's been no motion to designate their votes filed. So Mr. Seery's answer to this is irrelevant. They have votes -- pursuant to this Court's disclosure statement order, they have votes and they have counted, and now Mr. Seery is attempting to basically impeach his own balloting summary.
THE COURT: Mr. Morris, what is your response?

1 MR. MORRIS: The point of cram-down, Your Honor, is
2 it fair and equitable. Does -- does -- is it really fair and
3 equitable to the 99 percent of the economic interests to allow
4 24 employees who have no valid claims to carry the day here?
5 And this is -- that's what cram-down is about, Your Honor.
6 THE COURT: All right. I overrule the objection.
7 BY MR. MORRIS:
8 Q Let's talk about Class 7 for a moment, Mr. Seery. That's
9 the convenience class; is that right?
10 A That's correct.
11 Q How and why was that created?
12 A Well, initially, that was created because we had two types
13 of creditors in the case, broadly speaking. We had liquidated
14 claims, which were primarily trade-type creditors, and we had
15 unliquidated claims, which were the litigation-type creditors.
16 And so that class was created to deal with the liquidated
17 claims, and the Class 8 would deal with the unliquidated
18 claims, which were expected to, as we talked about earlier
19 with respect to the monetization plan, take some time to
20 resolve.
21 Q Was the creation of the convenience class a product of
22 negotiations with the Committee?
23 A The initial discussion on how we set it up I believe was
24 generated by the Debtor's side, but how it evolved and who
25 would be in it and how it was treated in terms of

1 distributions was a product of negotiation with the Committee.
2 Q Okay. So how was the dollar threshold figure arrived at?
3 How did you actually determine to create a convenience class
4 at a million dollars?
5 A It was through negotiation with the Committee. So this
6 was one of those items that moved a fair bit, in my
7 recollection, through the many negotiations we had, heated
8 negotiations on some of these items, with the Committee.
9 Q And are all convenience class -- all holders of
10 convenience class claims holders of claims that were
11 liquidated at the time the decision was made to create the
12 class?
13 A I believe so. I don't think there's been -- other than --
14 well, there -- we just had some settlements today, and I think
15 that relates to the employees, but those would be the only
16 ones that there would be disputes about, and that would roll
17 into the liquidat... the convenience class.
18 Q Okay. Finally, is there any circumstance under which
19 holders of Class 10 or 11, Class 10 or Class 11 claims will be
20 able to obtain a recovery under the plan?
21 A Theoretically, there's a circumstance, and that is if
22 every other creditor in the case were to be paid in full, with
23 interest at the federal judgment rate, including Class 9,
24 which are the subordinated claims. If those all got paid in
25 full, then theoretically the junior interest holders could

1 receive distributions.
2 However, based upon our projections, that would be wholly
3 dependent on a significant recovery in the Litigation -- by
4 the Litigation Trustee.
5 Q Okay. Let's move now to questions of the Debtor release
6 and the plan injunction. Is the Debtor providing a release
7 under the plan?
8 A Yes.
9 Q Is anyone other than the Debtor providing a release under
10 the plan?
11 A No.
12 Q Who is the Debtor proposing to release under the plan?
13 A The release parties are pretty similar to what you
14 typically would see, in my experience, in most plans. You
15 have the independent board, myself as CEO and CRO, the
16 professional -- the Committee members, the professionals in
17 the case, and the employees that we reached agreement with
18 respect to certain of them who have signed on to a
19 stipulation, and others, get a broader release for negligence.
20 Q Okay. Is the Debtor aware of any facts that might give
21 rise to a colorable claim against any of the proposed release
22 parties?
23 A Not with respect to any of the release parties. So the --
24 obviously, I don't think there's any claims against me. But
25 the same is true with respect to the oversight board, the

1 independent board.
2 The Committee has been, you know, working with us hand-in-
3 glove, and I think if they thought we -- there was something
4 there, we would have heard it.
5 With respect to the professionals, we haven't seen
6 anything as an independent board.
7 And with respect to the employees' that -- general
8 negligence release, these are current employees and we have
9 been monitoring them for a year and we don't have any evidence
10 or anything to suggest that there would be a claim against
11 them.
12 Q Are there conditions to the employees' release?
13 A There are. So, the employee release, as we talked about
14 earlier, was highly negotiated with the Committee. It
15 requires that employees assist in the monetization efforts,
16 which is really on the transition and the monetization. They
17 don't have to assist in bringing litigations against anybody,
18 so that's not part of what the provision requires. But it
19 does require that they assist generally in our efforts to
20 monetize assets.
21 We don't think that's going to be significant, but if
22 there are individual questions or help we need, we certainly
23 would reach out to them. If it's significant time, that will
24 be a different discussion.
25 And then with respect to the two senior employees who

1 signed the stipulation, they have to give up a part of their
2 distribution for their release.
3 Q All right. I think you just alluded to this, but has the
4 release been the subject of negotiation with the Creditors'
5 Committee?
6 A Yeah. We've touched on it a bunch of times, and we
7 certainly, unfortunately, let it spill over into the court a
8 couple times. It was a hotly-negotiated piece of the plan.
9 Q Okay. Has the Committee indicated to the Debtor in any
10 way that anybody subject to the release is the subject of a
11 colorable claim?
12 A Anyone subject to the release? No.
13 Q Yeah. All right. Let's talk about the plan injunction
14 for a moment. Are you familiar with the plan injunction?
15 A Broadly, yes.
16 Q And what is your broad understanding of the plan
17 injunction?
18 A Anybody who has a claim or thinks they have a claim will
19 broadly be enjoined from bringing that, other than as it's
20 satisfied under the plan or else ultimately bringing it before
21 this Court. And that's the gatekeeper part, which is a little
22 bit of combining the two pieces.
23 Q And what's your understanding of the purpose of the
24 injunction?
25 A It's really to prevent vexatious litigation. We, as

independent directors, stepped into what I think most people would fairly say is one of the more litigious businesses and enterprises that they've seen. And we have a plan that will allow us to monetize assets for the benefit of the creditor body, provided we're able to do that and not have to put out fires every day on different fronts. So what we're hoping to do with the injunction is ensure that we can actually fulfill the purposes of the plan.

Q All right. Let's talk about some of the litigation that you're referring to.

MR. MORRIS: Can we put up on the screen the demonstrative for the Crusader litigation?

BY MR. MORRIS:

Q And Mr. Seery, I would just ask you to kind of describe your understanding in a general way about the history of the Crusader litigation.

MR. MORRIS: And, Your Honor, just to be clear here, this is a demonstrative exhibit. As you can see in the footnotes, it's heavily footnoted to the documents and to -- and, really, to the court cases themselves. The documents on the exhibit list include the dockets from each of the underlying litigations. And I just want to just have Mr. Seery describe at an extremely high level some of the litigation that the Debtor has confronted over the years, you know, as the driver, as he just testified to, for the decision

to seek this gatekeeper injunction.

THE COURT: All right.

BY MR. MORRIS:

Q So, Mr. Seery, can you just describe kind of in general terms the Crusader litigation?

A Yeah. I apologize to the Redeemer team for maybe not doing this justice. But this is litigation that came out of a financial crisis upheaval related to this fund. Disputes arose with respect to the holders of the interests, which were the -- ultimately became the Redeemers, and Highland as the manager.

That went through initial litigation, and then into the Bermuda courts, where it was subject to a scheme. The scheme required or allowed for the liquidation of the fund and then distributions to the -- to the holders, and then deferred many of the payments to Highland.

At some point, Highland, frustrated that it wasn't able to get the payments, decided to just take them, and I think, you know, fairly -- can be fairly described, at least by the arbitration panel, as coming up with reasons that may not have been wholly anchored in reality as to what its reasons were for taking that money.

That led to further disputes with the Redeemers, who then terminated Highland and brought an arbitration action against Highland. They were successful in that arbitration and

received a $137 arbitration award. And right up to the petition date, that arbitration pursued. When they finally got their -- the arbitration award, they were going to Delaware Chancery Court to file it and perfect it, and the Debtor filed.

Q Okay.

MR. MORRIS: Let's go to the next slide, the Terry/Acis slide. If we could just open that up a little bit. It's -- as you can imagine, Your Honor, it's a little difficult to kind of summarize the Acis/Terry saga in one slide, but we've done the best we can.

BY MR. MORRIS:

Q Mr. Seery, can you describe generally for Judge Jernigan, who is well-versed in the matter, the broad overview of this litigation?

A There's clearly nothing I can tell the Court about the bankruptcy that it doesn't already know. But very quickly, for the record, Mr. Terry was an employee at Highland. He also has a partnership interest in Acis, which was, in essence, the Highland CLO business. He -- and he got into a dispute with Mr. Dondero regarding certain transactions that Mr. Dondero wanted to enter into and Mr. Terry didn't believe were appropriate for the investors.

Strangely, the assets that underlie that dispute are still in the Highland portfolio, both Targa (phonetic) and Trussway.

Mr. Terry was terminated, or quit, depending on whose side of the argument you take. Mr. Terry then sought compensation in the arbitration pursuant to the partnership agreement. Ultimately, he was awarded an arbitration award of roughly $8 million.

When he went to enforce that -- that was against Acis. When he went to enforce that against Acis, which had all the contracts, Highland went about, I think, terribly denuding Acis and moving value. Mr. Terry ultimately was able to file an involuntary against Acis, and after a tremendous amount of litigation had a plan confirmed that gave him certain rights in Acis and any ability to challenge certain transactions with respect to Highland that formed the basis of his claims in the Highland bankruptcy.

That wasn't the end of the saga, because Highland commenced a litigation -- well, not Highland, but HCLOF and others, directed by others -- commenced litigation against Mr. Terry in Guernsey, an island in the English Channel. That litigation wound its way for a couple -- probably close to two years, at least a year and a half, and ultimately was -- it was dismissed in Mr. Terry's favor.

While that was pending, litigation was commenced in New York Supreme Court against Mr. Terry and virtually anybody who had ever associated with him in the business, including -- including some of the rating agencies. That was withdrawn as

1 part of our efforts working with DAF to try to bring a little
2 bit of sanity to the case. But it was withdrawn without
3 prejudice.
4 But ultimately, you know, we've agreed to a claims
5 settlement, which was approved by this Court, with Acis and
6 Mr. Terry.
7 Q All right.
8 MR. MORRIS: How about UBS? Can we get the UBS
9 slide?
10 THE WITNESS: I should mention that there's other
11 litigations involving Mr. Terry and Highland individuals that
12 are outstanding, I believe, in Texas court. We have not yet
13 had to deal with those.
14 BY MR. MORRIS:
15 Q Okay. Can you describe for the Court your general
16 understanding of the UBS litigation?
17 A Again, UBS comes out of the financial crisis. It was a
18 warehouse facility that UBS had established for Highland. It
19 actually was a pre-crisis facility that was restructured in
20 early '08, while the markets were starting to slide but before
21 they really collapsed. That litigation started after Highland
22 failed to make a margin call. UBS foreclosed out -- or it
23 wasn't really a foreclosure, because it's a warehouse
24 facility, but basically closed out all the interest and sought
25 recovery from Highland for the shortfall.

1 Highland was one of the defendants, but there are numerous
2 defendants, including some foreign subsidiaries of Highland.
3 That case wend its way through the New York Supreme Court,
4 up and down between the Supreme and the Appellate Division,
5 which is the intermediate appellate court in New York.
6 Incredibly litigious effort over virtually every single item
7 you could possibly think of.
8 Ultimately, UBS got a judgment for $500-plus million and
9 -- plus prejudgment interest against two of the Highland
10 subsidiaries. It then sought to commence action up -- enforce
11 its judgment through various theories against Highland. That
12 is part of the settlement that we have -- it's been part of
13 the lift stay motion here, the 3019, as well as the 3018, and
14 as well as the ultimate settlement we've discussed today.
15 Q Okay. Moving on to Mr. Daugherty, can you describe for
16 the Court your understanding of the Daugherty litigation?
17 A The Daugherty litigation goes back even further. It did
18 -- I think the original disputes were -- or, again, started to
19 happen between Mr. Daugherty and Mr. Dondero even prior to the
20 crisis, but Mr. Dondero -- Daugherty certainly stayed with
21 Highland post-crisis. And then when Mr. Daugherty was severed
22 or either resigned or terminated from his position, there was
23 various litigations that began between the parties very
24 intensely in state court, one of the more nasty litigations
25 that you can imagine, replete with salacious allegations and

1 press releases.
2 That litigation then led to an award originally for Mr.
3 Daugherty from HERA, which was an entity that had assets that
4 Mr. Daugherty alleges were stripped. Mr. Daugherty had to pay
5 a judgment against Highland. Ultimately, litigations were
6 commenced in both the state court and the Delaware Chancery
7 Court. Those litigations, many of those continue, because
8 they're not just against the entities but specific
9 individuals. Mr. Daugherty got a voting -- a claim allowed
10 for voting purposes in our case of $9.1 million, and we've
11 since reached an agreement with Mr. Daugherty on his claim,
12 save for a tax case which we announced earlier that relates to
13 compensation, claimed compensation with respect to a tax
14 distribution, which we have defenses for and he has claims
15 for.
16 MR. MORRIS: All right. We can take that down,
17 please.
18 BY MR. MORRIS:
19 Q And let's just talk for a few minutes about some of the
20 things that have happened in this case. Did Mr. Dondero
21 engage in conduct that caused the Debtor to seek and obtain a
22 temporary restraining order?
23 A Yes, he did.
24 Q And did the Debtor -- did Mr. Dondero engage in conduct
25 that caused the Debtor to seek and obtain a preliminary

1 injunction against him?
2 A Yes.
3 Q And has the Debtor filed a motion to hold Mr. Dondero in
4 contempt for violation of the TRO?
5 A Yes.
6 Q Are you aware that -- of the CLO-related motion that was
7 filed in mid-December?
8 A It's similar in that these are controlled entities that
9 brought similar types of claims against the Debtor and
10 interfered in similar ways, albeit not as directly threatening
11 with respect to the personnel of the Debtor.
12 Q Okay. And you're aware of how that -- that motion was
13 resolved?
14 A I know we resolved it, and I'm drawing a blank on that.
15 But --
16 Q All right. Are you aware, did Mr. Daugherty also object
17 to the Acis and HarbourVest settlements, or at least either
18 him or entities acting on his behalf?
19 A I think you meant Mr. Dondero. I don't believe Mr.
20 Daugherty did.
21 Q You're right. Thank you. Let me ask the question again.
22 Thank you for the clarification. We're almost done. To the
23 best of your knowledge, did Mr. Dondero or entities that he
24 controls file objections to the Acis and HarbourVest
25 settlements?

A Yes, they did.

Q And we're here today with this long recitation because the remaining objectors are all Mr. Dondero or entities owned or controlled by him; is that right?

A That's correct.

Q All right.

MR. RUKAVINA: Your Honor, I didn't have a chance to object in time. Entities owned or controlled by Mr. Dondero. There's no evidence of that with respect to at least three of my clients, and this witness has not been asked predicate questions to lay a foundation. Mr. Dondero does not own or control the three retail (inaudible). So I move to strike that answer.

MR. MORRIS: Your Honor, I withdraw with respect to the three funds. It's fine.

THE COURT: All right. With that withdrawal, then I think that resolves the objection.

MR. MORRIS: Uh, --

THE COURT: Or I overrule the remaining portion. Okay. Go ahead.

MR. RUKAVINA: That does, Your Honor. Thank you.

BY MR. MORRIS:

Q Are -- are -- is everything that you just described, Mr. Seery, the basis for the Debtor's request for the gatekeeper and injunction features of the plan?

A Well, everything I described are a part of the basis for that. I didn't describe every single basis with respect to why those --

Q So what are -- what are the other reasons that the Debtor is seeking the gatekeeper and injunction provisions in the plan?

A We really do need to be able to operate the business and monetize the assets without direct interference and litigation threats. We didn't go through some of the specifics, and I hesitate to burden the Court again, but the email to me, the email to Mr. Surgent, the testimony threatening -- effectively threatening Mr. Surgent, in my opinion, by Mr. Dondero, in the court in previous weeks, statements by his counsel indicating that Mr. Dondero is going to sue me for hundreds of millions of dollars down the road.

I mean, this is nonstop. I'm an independent fiduciary. I'm trying to maximize value for the estate. I've got some guy who's threatening to sue me? It's absurd.

MR. MORRIS: Your Honor, I have no further questions, but what I would respectfully request is that we take just a short five-minute break. I'd like to just confer with my colleagues before I pass the witness.

THE COURT: All right. Five-minute break.

MR. MORRIS: Thank you, Your Honor.

THE CLERK: All rise.

(A recess ensued from 1:58 p.m. to 2:06 p.m.)

THE CLERK: All rise.

THE COURT: All right. Please be seated. We're back on the record in Highland. Mr. Morris, anything else?

MR. MORRIS: All right, Your Honor. Can you hear me?

THE COURT: I can, uh-huh.

MR. MORRIS: Okay. Mr. Seery, are you there?

THE WITNESS: I am, yes.

MR. MORRIS: I just have a few follow-up questions, Your Honor, if I may.

THE COURT: Okay.

DIRECT EXAMINATION, RESUMED

BY MR. MORRIS:

Q Okay. Mr. Seery, we talked for a bit about the difference between the convenience class and the general unsecured claims. Do you recall that?

A Yes.

Q And that's the difference between Class 7 and 8; do I have that right?

A Yes.

Q And what is the recovery for claimants in Class 7, to the best of your recollection, the convenience class?

A It's 85 cents.

Q And under --

A On the dollar.

Q And under the projections that were filed last night, and we can call them up on the screen if you don't have total recall, do you recall what Class 8 is projected to recover now that we've taken into account the UBS settlement?

A Approximately 71.

Q Okay.

A Percent. 71 cents on the dollar.

THE COURT: Okay. The answer --

BY MR. MORRIS:

Q Okay. Do I this right --

THE COURT: The answer was a little garbled. Can you repeat the answer, Mr. Seery?

THE WITNESS: Approximately 71 cents on the dollar, Your Honor.

THE COURT: Okay. Thank you.

BY MR. MORRIS:

Q Okay. And do I have that right, that that 71 cents includes no value for potential litigation claims?

A That's correct. We didn't even put that in our projections at all.

Q So is it possible, depending on Mr. Kirschner's work, that holders of Class 8 claims could recover an amount in excess of 85 percent?

A It's possible, yes.

Q Okay. Are you aware that Dugaboy has suggested that the

1 Debtor should resolicit because their -- their -- the
2 projections in the November disclosure statement were
3 misleading?
4 A I'm aware that they've made allegations along those lines,
5 yes.
6 Q Okay. Do you think the November projections were
7 misleading in any way?
8 A No, not at all.
9 Q And why not?
10 A Well, the plan was -- the projections are for the plan,
11 and they contain assumptions. And it was clear in the plan
12 that those assumptions could change. So the value of the
13 assets, which aren't static, does change. The costs aren't
14 static. They do change. The amount of the claims, the
15 denominator, was not static and would change.
16 Q Okay. And were the -- were the changes in the claims, for
17 example, changes that were all subject to public viewing, as
18 the Court ruled on 3018, as the settlement with HarbourVest
19 was announced?
20 A Well, the plan -- the terms of the plan made clear that
21 the Class 8 claims would -- would be whatever the final
22 amounts of those claims were going to be. We did resolve the
23 claims of HarbourVest and then ultimately the settlement
24 announced today, but in front of -- in front of the world, in
25 front of the Court, with a 9019 motion.

Q Okay. We had finished up with some questioning about the gatekeeper and the injunction provision. Do you recall that?
A Yes, I do.
Q And you had testified as to the reasons why the Debtor was seeking that particular protection. Do you recall that?
A Yes.
Q In the absence of that protection, does the Debtor have any concerns that interference by Mr. Dondero could adversely impact the timing of the Debtor's plan?
A Well, that's my opinion and what I testified to before. I think the -- the injunction -- the exculpation, the injunction, and the gatekeeper are really critical and essential elements of this plan, because we have to have the ability, unfettered by litigation, particularly vexatious litigation in multiple jurisdictions, we have to be able to avoid that and be able to focus on monetizing the assets and try to maximize value.
Q Is there a concern that that value would erode if resources and time and attention are diverted to the litigation you've just described?
A Absolutely. The focus of the team has to be on the assets' monetization, creative ways to get the most value out of those assets, and not on defending itself, trying to paper up some sort of litigation defense against vexatious litigation, and also spending time actually defending

ourselves in various courts.

Q Okay. Last couple of questions. If there was no gatekeeper provision in the plan, would you accept appointment as the Claimant Trustee?

A You broke up. No which provision?

Q If there was no gatekeeper provision in the -- in the confirmation order, would you accept the position as Claimant Trustee?

A No, I wouldn't. Just -- just like when I came on, there were -- there are some pretty essential elements that I mentioned before. One is indemnification. Two is directors and officers insurance. And three was a gatekeeper function. I want to make sure that we're not at risk, that I'm not at risk, for doing my job.

Q And I think you just said it, but if you were unable to obtain D&O insurance, would you accept the position as Claimant Trustee?

A No, I would not.

MR. MORRIS: I have no further questions, Your Honor.

THE COURT: All right. So, you went two hours and 34 minutes in total with your direct. So we'll now pass the witness for cross. And the Objectors get an aggregate of two hours and 34 minutes.

Who's going to go first?

MR. RUKAVINA: Your Honor, Davor Rukavina. I will.

THE COURT: Okay. Go ahead.

MR. RUKAVINA: Mr. Vasek, if you can pull up Exhibit 6N, the ballot summary, Page 7 of 15 on the top.

MR. POMERANTZ: Mr. Morris, you're not on mute.

MR. MORRIS: Thank you, sir.

MR. RUKAVINA: Mr. Vasek, did you hear me? There it is.

CROSS-EXAMINATION

BY MR. RUKAVINA:

Q Mr. Seery, are you familiar with this ballot tabulation that was filed with the Court and that has been admitted into evidence?

A Yes, I believe I've seen this.

Q Okay. And this says that 31 Class 8 creditors rejected and 12 Class 8 creditors accepted the plan, correct?

A That's correct.

Q And since then, I think we've heard that Mr. Daugherty and maybe two other employees have changed their vote to an accept; is that correct?

A That's correct, yes.

Q Okay. Other than three, those three employees that are changing, do you know of any other Class 8 creditors that are changing their votes?

A Mr. Daugherty is not an employee.

Q I apologize. Other than those three Class 8 creditors

that are changing their votes, do you know of any other ones that are changing their votes?

A No.

Q Okay. You didn't tabulate the ballots, did you?

A No, I did not.

Q Do you have any reason to question the accuracy of this ballot summary that's been filed with the Court?

A No, I do not.

Q Okay. You mentioned that many of the people that rejected the plan are former employees who you don't think will ultimately have allowed claims, correct?

A Not ultimately. I said they don't have them now.

Q Okay. Are you aware that the Court ordered that contingent unliquidated claims be allowed to vote in an estimated amount of one dollar?

A I'm aware of that, yes.

Q Okay. All right. Now, no motion to reconsider that order has been filed, correct?

A Not to my knowledge.

Q Okay. No objection to these rejecting employees' claims have been filed yet, correct?

A Correct.

Q Okay. And no motion to strike or designate their vote has been filed as of now, correct?

A Correct.

MR. RUKAVINA: You can take down that exhibit, Mr. Vasek.

BY MR. RUKAVINA:

Q Mr. Seery, the Debtor itself is a limited partnership; I think you confirmed that earlier, correct?

A Correct.

Q And its sole general partner is Strand Advisors, Inc., correct?

A Correct.

Q And to your understanding, the Debtor, as a limited partnership, is managed by its general partner, correct?

A Correct.

Q Okay. And Strand, that's where the independent board of you, Mr. Nelms, and Mr. Dubel -- or I apologize if I'm misspelling, misstating his name -- that's where the board sits, at Strand, correct?

A Yes.

Q Okay. And that board has been in place since about January 9, 2020?

A Yes.

Q Okay. Strand is not a debtor in bankruptcy, correct?

A No.

Q Okay. Do you have any understanding as to whether, under non-bankruptcy law, a general partner is liable for the debts of the limited partnership that it manages?

A I do.
Q Okay. What's your understanding?
A Typically, a general partner is liable for the debts of the partnership.
Q Okay. And under the plan, Strand itself is an exculpated party and a protected party and a released party for matters arising after January 9, 2020, correct?
A Yes.
Q Okay. You mentioned that you're the chief executive officer and chief restructuring officer in this case for the Debtor, correct?
A For the Debtor, yes.
Q Yeah. You are not a Chapter 11 trustee, right?
A No.
Q Okay. You are one of the principal authors of this plan, correct?
A Consultant.
MR. MORRIS: Objection to the form of the question.
THE COURT: Sustained.
BY MR. RUKAVINA:
Q You are --
THE COURT: Sustained.
BY MR. RUKAVINA:
Q You are --
THE COURT: Rephrase.

BY MR. RUKAVINA:
Q -- one of the principal --
MR. RUKAVINA: I apologize.
BY MR. RUKAVINA:
Q You had input in creating this plan, didn't you?
A I did, yes.
Q Okay. And you're familiar with the plan's provisions, aren't you?
A Yes.
Q Okay. And you, of course, approve of the plan, correct?
A Yes.
Q Okay. And you are, of course, familiar generally with what the property of the estate currently is, correct?
A Yes.
Q Okay. And part of the purpose of the plan, I take it, is to vest that property in the Claimant Trust in some respects and the Reorganized Debtor in some respects, correct?
A I don't -- I don't know if that's a fair characterization. Some property -- maybe some property will stay with the Debtor, some will be transferred directly to the Trust.
Q Okay. All property of the estate as it currently exists will stay with the Debtor or go to the Trust, correct?
A Yes.
Q Okay. And under the plan, the Creditor Trust will be responsible for payment of prepetition claims, correct?

A Yes.
Q And under the plan, the Creditor Trust will be responsible for the payment of postpetition pre-confirmation claims, correct?
A Do you mean admin claims? I don't --
Q Sure.
A I don't understand your question. I'm sorry.
Q Yes. We can call them admin claims.
A Yeah. Those -- they'll be -- they will be paid on the effective date or in and around that time. So I'm not sure if that's actually going to be from the Trust, but I think it's actually from the Debtor, as opposed to from the Trust.
Q Okay. But after the creation of the Claimant Trust, --
A Uh-huh.
Q -- whatever administrative claims are not paid by that time will be assumed by and paid from the Claimant Trust, correct?
A I don't recall that specifically.
Q Is it your testimony that the Reorganized Debtor will be obligated post-effective date of the plan to pay any admin claims that are then unpaid?
MR. MORRIS: Objection to the form of the question.
THE COURT: Sustained. Rephrase.
BY MR. RUKAVINA:
Q Who pays unpaid admin claims under the plan once the plan

goes effective?
A I believe the Debtor does. The Reorganized Debtor.
Q Okay. The Reorganized Debtor also gets a discharge, correct?
A Yes.
Q Okay. And there is no bankruptcy estate left after the plan goes effective, correct?
MR. MORRIS: Objection to the form of the question.
THE COURT: Overruled.
MR. RUKAVINA: Your Honor, I have the right to know what the objection to my question is.
THE COURT: I overruled.
MR. MORRIS: Okay.
THE COURT: I overruled the objection.
MR. RUKAVINA: Thank you.
BY MR. RUKAVINA:
Q Mr. Seery, do you remember my question?
A That whether there was a bankruptcy estate after the effective date?
Q Yes.
A There wouldn't be a bankruptcy estate anymore, no.
Q Okay. Under the plan, the creditors, to the extent that they have their claims allowed, the prepetition creditors, they're the beneficiaries of the Claimant Trust, correct?
A They are some of the beneficiaries, yes.

Q Okay. And you would be the Trustee, I think you said, of the Claimant Trust?
A Of the Claimant Trust, yes.
Q Okay. And you will have fiduciary duties to the beneficiaries of the Claimant Trust, correct?
A I believe I have some, yes.
Q Okay. Well, as the Trustee, you will have some fiduciary duties; you do agree with that?
A That's what I said, yes.
Q Okay. What's your understanding of what those fiduciary duties to the beneficiaries of the Claimant Trust will be?
A I think they'll be -- they are cabined to some degree by the provisions of the agreement, but generally there will be a duty of care and a duty of loyalty.
Q Do you feel like you'll have a duty to try to maximize their recoveries?
A That depends.
Q On what?
A My judgment on what's the -- if I'm exercising my duty of care and my duty of loyalty.
Q Okay. But surely you'd like to, whether you have a duty or not, you'd like to maximize their recoveries as Trustee, wouldn't you?
A Yes.
Q Okay. Now, in addition to the beneficiaries, which I

1 believe are the Class 8 and Class 9 creditors, the plan
2 proposes to give non-vested contingent interests in the Trust
3 to certain holders of limited partnership interests, correct?
4 A Yes.
5 Q Okay. And those non-vested contingent interests would
6 only be paid and would only vest if and when all unsecured
7 creditors and subordinated creditors are paid in full, with
8 interest, correct?
9 A Yes.
10 Q Okay. And those non-vested contingent interests are a
11 property interest, although they're an inchoate property
12 interest, correct?
13 A I don't know. I think I testified in my deposition that I
14 -- I reached for inchoate, but I'm not an expert in the
15 definitions of property interests. I don't know if they're
16 too ethereal to be considered a property interest.
17 Q Okay.
18 MR. RUKAVINA: Mr. Vasek, will you please pull up Mr.
19 Seery's deposition at Page 215? And if you'll go to Page 200
20 -- can you zoom -- can you zoom that in a little bit? Mr.
21 Vasek, can you zoom on that?
22 MR. VASEK: Just a moment. There's some sort of
23 issue here.
24 MR. RUKAVINA: Okay. And then go to Page 216.
25 Scroll down to 216, please.

MR. VASEK: Okay. I can't see it, so --

MR. RUKAVINA: Okay. Stay, stay where you are. Go down one more row.

BY MR. RUKAVINA:

Q Okay. Mr. Seery, can you see this?

A Yes.

Q Okay. So, I ask you on Line 21, "They may be a property interest, but inchoate only, correct?" And you answer, "That is my belief. I don't claim to be an expert on the different types of property interests," --

MR. RUKAVINA: Mr. Vasek, can you go to the next page?

BY MR. RUKAVINA:

Q (continues) "-- whether they be inchoate, reversionary, ethereal. I don't claim to be an expert on the different types of property interests."

Do you see that answer, sir?

A Yes.

Q And do you stand by your answer given on Lines 23 through Line 4 of the next page?

A Yes.

Q Okay. And these non-vested contingency -- contingent interests in the Claimant Trust, they may have some value in the future, correct?

A Yes.

MR. RUKAVINA: Okay. You can take that down, Mr. Vasek.

BY MR. RUKAVINA:

Q Have you tried to see whether anyone outside this case, or anyone at all, would pay anything for those unvested contingent interests to the Claimant Trust?

A No.

Q Okay. Now, the Debtor is a registered investment advisor under the Investment Advisers Act of 1940; is that correct?

A That's correct.

Q And under that Act, the Debtor owes a fiduciary duty to the funds that it manages and to the investors of those funds, correct?

A Clearly to the funds, and generally to the investors more broadly, yes.

Q Okay. And would you agree that that duty compels the Debtor to look for the interests of the funds and the investors of those funds ahead of its own interests?

A Generally, but it's a much more fine line than what you're describing. It means you can't -- the manager can't put its own interests in front of the investors and the funds. It doesn't mean that the manager subordinates its interest in the -- to the investors and the funds.

MR. RUKAVINA: Well, Mr. Vasek, please pull up the October 20th transcript at Page 233.

MR. MORRIS: What transcript is this?

MR. RUKAVINA: October 20, 2019. Mr. Vasek has the docket entry.

MR. MORRIS: Oh, so it's the -- Your Honor, I just do want to point out that Mr. Rukavina objected, in fact, to the use of trial transcripts, but we'll get to that when we put on our evidence, when we finish up.

MR. RUKAVINA: Well, Your Honor, I believe that you're allowed to use a trial transcript to impeach testimony, which is what I'm going to do now.

So, for that purpose, Mr. Vasek, if you could -- are you on Page 233?

THE COURT: And just so the record is clear, this is from October 2020, not October 2019, which is, I think, what I heard. Continue.

MR. MORRIS: Your --

MR. RUKAVINA: Your Honor, I apologize, you did hear that and I did make a mistake. Yes, this is at Docket 1271.

Mr. Vasek, if you'll scroll down, please. Okay. No, stop there.

BY MR. RUKAVINA:

Q And you see on Line 16, sir, you're asked your understanding, and then you answer, "Okay." "And in exercising those duties, the manager, under the Advisers Act, has a duty to subordinate its interests to the interests of

those investors in the CLOs, correct?" And you answer --

MR. RUKAVINA: Go down, Mr. Vasek.

BY MR. RUKAVINA:

Q -- "I think -- I think, generally, when you think about the fiduciary duty, and I think that we -- I want to make sure I'm very specific about this, is that the manager has a duty, fiduciary duties -- there's a whole bunch of legal analysis of what they are, but they are significant -- that the manager owes to the investors. And to the extent" --

MR. RUKAVINA: Scroll down, please.

BY MR. RUKAVINA:

Q "And to the extent that the manager's interests would somehow be -- somehow interfere with the investors' in the CLO, he is supposed to -- he or she is supposed to subordinate those to the benefit of the investors."

Did I read that accurately, Mr. Seery?

A You did.

Q Was that your testimony on October 20th last?

A Yes.

Q Okay. Are you willing to revise your testimony from a few minutes ago that the manager does not have to subordinate its interests to the interests of the investors?

A No. I think that's very similar.

Q Okay.

A You left out the part about garbled up top where I said it

1 was nuanced, almost exactly what I just said. On Line 9, I
2 believe, on the prior page.
3 Q Well, I heard you say a couple of minutes ago, and maybe I
4 misunderstood because of the WebEx nature, that the manager
5 does not have to subordinate its interests to the interests of
6 the investors. Did I misheard you say that a few minutes ago?
7 A I think you misheard it. I said it's a nuanced analysis,
8 and it's -- it's pretty significant. But the manager does
9 subordinate his general interest and assures that the CLO or
10 any of the investors' interests are paramount, but he doesn't
11 subordinate every single interest.
12 For example, and I think it's in this testimony, the
13 manager, if the fund isn't doing well, doesn't just have to
14 take his fee and not get paid. He's allowed -- entitled to
15 take his fee. He doesn't subordinate every single interest of
16 his. He doesn't give up his home and his family. So it's --
17 it's a nuanced analysis. The interests of the manager are
18 subordinated to the interests of the investors and the fund.
19 I don't -- I don't disagree with anything I said there. I
20 think I'm consistent.
21 Q Okay.
22 MR. RUKAVINA: You can take that down, Mr. Vasek.
23 BY MR. RUKAVINA:
24 Q So, how do you describe, sir, the fiduciary duty that the
25 Debtor owes to the funds that it manages and to the investors

in those funds?

MR. MORRIS: Objection to the -- to the extent it calls for a legal conclusion, Your Honor. I just want to make sure we're -- we're asking a witness for his lay views.

THE COURT: Okay. I overrule the objection. He can answer.

THE WITNESS: Yes. As a manager of a fund, the manager is a fiduciary to the fund, and sometimes to the investors, depending on the structure of the fund. Some funds are purposely set up where the investors are actually debt-holders, and their interests are much more cabined by the terms of the contract, as opposed to straight equity holders. But the manager has a duty to seek to maximize value of the assets in the best interests of the underlying -- of the fund and the underlying investors, to the extent that it can, within the confines and structure of the fund.

BY MR. RUKAVINA:

Q Okay. And these duties as you just described them, they would apply to the Reorganized Debtor, correct?

A They would apply to the Reorganized Debtor to the extent that it's a manager for a fund, not, for example, with respect to necessarily interests -- the inchoate interests that we talked about earlier.

Q Sure. And I apologize, I meant just for the fund. And if the manager, the Reorganized Debtor, breaches those duties,

1 then it's possible that there's going to be liability,
2 correct?
3 A It's possible.
4 Q Okay. Now, under the plan, the limited partnership
5 interests in the Reorganized Debtor will be owned by the
6 Claimant Trust, correct?
7 A Yes.
8 Q Okay. And there's a new entity called New GP, LLC that
9 will be created or already has been created, correct?
10 A Yes.
11 Q Okay. And that entity will hold the general partnership
12 interest in the Reorganized Debtor, correct?
13 A I believe that's correct.
14 Q Okay. And that entity -- that being New GP, LLC -- will
15 also be owned by the Claimant Trust, correct?
16 A Yes.
17 Q Okay. Who will manage the Reorganized Debtor?
18 A The G -- the GP will manage the Reorganized Debtor.
19 Q Okay. And will there be an officer or officers of the
20 Reorganized Debtor, or will it all be managed through the GP?
21 A It'll be managed through the GP.
22 Q Okay. And who will manage the GP?
23 A Likely, I will.
24 Q Okay. That's the current plan, that you will?
25 A I'll be the Claimant Trustee, and I believe that I'll be

1 responsible for any assets that remain in the Reorganized
2 Debtor, yes.
3 Q Okay. Right now, the Debtor is managing its own assets as
4 the Debtor-in-Possession, right?
5 A Yes.
6 Q And it is managing various funds and CLOs, right?
7 A Yes.
8 Q Okay. And right now, the Debtor is attempting to reduce
9 some of its assets to money, like the promissory notes that
10 you mentioned earlier that the Debtor filed suit on, correct?
11 A Yes.
12 Q And the Debtor is trying to reduce some of its assets to
13 money, like the promissory notes, to benefit its creditors,
14 correct?
15 A Yes.
16 Q Okay. And correct me if I'm wrong, but the Committee has
17 filed various claims and causes of action against Mr. Dondero,
18 correct?
19 A They -- they've filed some. I haven't -- I haven't looked
20 at their (indecipherable) closely, but --
21 Q Okay.
22 A -- some are preserved in the case.
23 Q You understand --
24 A In the plan. I'm sorry.
25 Q You understand that the Committee is doing that for the

1 benefit of the estate, correct?
2 A Yes.
3 Q And you understand that they're also doing that for the
4 benefit of creditors, correct?
5 A Yes.
6 Q Okay. And under the plan, just so that I'm clear, those
7 claims that the Committee has asserted will be preserved and
8 will vest in either the Claimant Trust or the Litigation Sub-
9 Trust, correct?
10 A Yes.
11 Q Okay. And under the plan, the Reorganized Debtor would
12 continue to manage its assets, correct?
13 A Yes.
14 Q And it would continue to manage the Funds and the CLOs,
15 correct?
16 A Yes.
17 Q And the Claimant Trust would attempt to liquidate and
18 distribute to its beneficiaries the assets that are
19 transferred to it, correct?
20 A Yes.
21 Q Okay. And you mentioned that the Claimant Trust will have
22 an Oversight Board comprised of five members, right?
23 A Yes.
24 Q And four of them will be the people that are currently on
25 the Committee, right?

A Yes.
Q And the fifth is David Pauker, and I think you mentioned that he's independent. David Pauker is the fifth member, right?
A Yes.
Q Who -- who is he?
A David Pauker is a very well-known professional in the restructuring world. He's a long-time financial advisor in -- in reorganizations. He's served on numerous boards in restructuring -- restructurings.
Q Okay. So, other than a different corporate structure and the Claimant Trust, the monetization of assets for the benefit of creditors would continue post-confirmation as now, correct?
A I -- I believe so. I'm not exactly sure what you asked there.
Q No one is putting in any new money under the plan, are they?
A No. No.
Q Okay. There's no exit financing contingent on the plan being confirmed, right?
A You mean no exit -- the plan is not contingent on exit financing. I think you just mixed up your -- your financing and your plan.
Q I apologize. There's no exit financing in place today, correct?

A No.
Q Okay. So, post-confirmation, you are basically going to continue managing the CLOs and funds and trying to monetize assets for creditors the same as you are today, correct?
A Similar, yes.
Q Okay. And just like the Committee has some oversight role in the case, the members of the Oversight Board will have some oversight role post-confirmation, correct?
A Yes.
Q Okay. You don't need anything in the plan itself to enable you to continue managing the Debtor and its assets, correct?
A I don't need anything in the plan?
Q Correct.
A I don't -- I don't understand the question. Can you rephrase it?
Q Well, you are managing the Debtor and its assets today, correct?
A Yes.
Q Okay. Nothing in the plan is going to change that, correct?
A Well, it's going to change it a lot.
Q Okay. Well, with respect to you managing the Funds and the CLOs, you don't need anything in the plan that you don't have today to keep managing them, do you?

A No. The Debtor manages them, and I will -- I'm the CEO and I'll be in a similar position with a different team.
Q Okay. And I believe you told me that you expect the Debtor to administer the CLOs for two or three years, maybe?
A However long it takes, but we expect -- our projections are that we'd be able to monetize most of the assets within two years.
Q Does that include the CLOs?
A It does, yes.
Q Okay. Now, you're going to be the person for the Reorganized Debtor in charge of managing the CLOs, correct?
A I'll be the person responsible for managing the Reorganized Debtor. The Reorganized Debtor will be the manager of the CLOs.
Q Okay. But the buck will stop with you at the Reorganized Debtor, right?
A Yes.
Q Okay. You're going to have a team of employees and outside professionals helping you, but ultimately, on behalf of the Reorganized Debtor, you're going to be the one in charge of managing the CLOs, correct?
A Yes.
Q Okay. That means that you'll also be making decisions as to when to sell assets of the CLOs, correct?
A Yes.

Q Okay. And to be clear, the CLOs, they own their own assets, whatever they are, and the Debtor just manages those assets, right?
A Correct.
Q The Debtor doesn't directly own those assets, right?
A No.
Q And currently there's more than one billion dollars in CLO assets that the Debtor manages?
A Approximately.
Q Yeah. And the Debtor receives fees for its services, correct?
A Yes.
Q Can you generally describe how the amount of those fees is calculated and paid, if you have an understanding?
A How the fees are calculated and paid?
Q Yes, sir.
A It's a percentage of the assets.
Q Assets administered or assets sold in any given time period?
A Administered.
Q Okay. So the sale of CLO assets does not affect the fees that the Reorganized Debtor would receive under these agreements?
MR. MORRIS: Objection to the form of the question.
THE COURT: Over --

THE WITNESS: That's not correct.

THE COURT: Overruled.

BY MR. RUKAVINA:

Q Okay. What is not correct about that?

A When you sell the assets, the amount administered shrinks, so you have less fees.

MR. RUKAVINA: Your Honor, the answer cut out at the very end. You have less--?

THE WITNESS: Fees.

BY MR. RUKAVINA:

Q Fees? I understand. Okay. So are you saying that there is a disincentive to the Reorganized Debtor to sell assets in the CLOs?

A No.

Q Okay. Is there an incentive to the Reorganized Debtor to sell assets in the CLOs?

A To do their job correctly, yes.

Q Okay. And the Debtor wishes to assume those contracts because the Debtor will get those fees going forward and there'll be a profit, even after the expenses of servicing those contracts are taken out, correct?

A They are profitable. That's one of the reasons that we're assuming, yes.

Q Okay. Now, over my objection, you testified that the CLOs have agreed to the assumption of these contracts, right?

A Yes.
Q Okay. Is there anything in the record other than your testimony here today demonstrating that?
A I believe there is, yes.
Q What do you believe there is in the record other than your testimony?
A I believe we filed a notice of assumption.
Q Okay. My question is a little bit different. You testified that the CLOs, over my objection, have agreed to the assumption. You did testify so, right?
A Yes.
Q Okay. What is there in the record, sir, from the CLOs confirming that?
A You mean today's record?
Q Yes, sir.
A I'm the only one who's testified so far.
Q Okay. Are you aware of anything in the exhibits that would confirm your testimony?
A Not that I know of.
Q Has there been an agreement with the CLOs that's been reduced to writing?
A Yes.
Q So there is a written agreement with the CLOs providing for assumption?
A Yes.

Q A signed, written agreement?
A No, it's -- it's email.
Q Okay. When was this email agreement reached?
A Within the last couple weeks. There's a number of back and forths where that was agreed to, and I believe we filed a notice of assumption.
MR. RUKAVINA: Mr. Vasek, if you will please pull up Mr. Seery's January 29th deposition.
BY MR. RUKAVINA:
Q Mr. Seery, you remember me deposing you last Friday, correct?
A Yes.
Q And you remember me asking you if there was a written agreement in place with the CLOs?
A I don't recall specifically.
MR. RUKAVINA: Okay. Mr. Vasek, if you would please scroll to that. Okay. Stop there.
BY MR. RUKAVINA:
Q Sir, you'll recall I also deposed you January 20th, right?
A Yes.
Q Okay. And do you remember that we had some discussion regarding whether the CLOs would consent or not?
A Yes.
Q Okay. And do you remember telling me something like that like you think that they will and that's still in the works on

January 20th?
A I don't recall specifically, but if you say that's what it says.
Q Okay. Well, here I'm asking you on January 29th, Line 17, "I asked you before and you didn't have anything in writing by then, so let me ask now. As of today, do you have anything in writing from the CLOs consenting to the assumption of those management agreements?" I'm sorry. Contracts. Answer, "I don't believe that I do. It could be on my email I opened. I don't recall."
MR. RUKAVINA: Scroll down, Mr. Vasek.
BY MR. RUKAVINA:
Q Okay. Then I ask, "Do you have an understanding of whether those CLOs have consented in writing to the assumption of the management agreements?" And you answer, "I believe they have. The actual final docs haven't been completed, but I believe they have agreed in writing, yes."
Then I ask --
MR. RUKAVINA: Scroll down a little bit more.
BY MR. RUKAVINA:
Q I ask, "Do you expect the final docs to be completed before Tuesday's confirmation hearing?" Answer, "I don't know whether they will be done by Tuesday."
Did I read all of that correctly, sir?
A Other than your misstatement. The word was "unopened."

Q Thank you. So, let me ask you again today. As of today, is there a written agreement that has been signed by the parties providing for the assumption of the CLO agreements?
A When phrased the way you did, is it signed by the parties, no.
Q Okay.
MR. RUKAVINA: You can take that down, Mr. Vasek.
BY MR. RUKAVINA:
Q I think -- I'm not sure if you quantified this earlier, but it might help. I believe that the Reorganized Debtor projects that it will generate revenue of $8.269 million post-reorganization from managing the CLO contracts, correct?
A It's in that neighborhood. I did not testify to that earlier.
Q That's what I meant. And when I asked you at deposition, you were able to give me an estimate of how much it would cost to generate that revenue, correct?
A I was not?
Q You were? I'm sorry. Let me --
A Did you say I wasn't or I was?
Q Let me -- I apologize. Let me ask again. I talk too fast and I have an accent. You have been able to give an estimate of how much the Reorganized Debtor will expend to generate that revenue, correct?
A Yes.

Q Okay. Do you remember what your estimate is?
A I -- I think it was around $2 million a year. It was a portion of our employees plus the contracts.
Q Okay. So, over the life of the projection at $8.2 million, do you remember that you projected costs of about $3.5 to $4 million to generate that revenue?
A If -- if you are representing that to me, I'd accept it. Yes, that sounds about right.
Q Well, suffice it to say you're projecting at least $4 million in net profit over the next two years for the Reorganized Debtor from managing the CLO agreements, correct?
A Net profit is not a fair, fair way to analyze it, no.
Q Okay. Are you projecting any profit for the Reorganized Debtor from managing the CLO agreements post-confirmation?
A Yes.
Q Okay. Do you have an estimate of what that profit is?
A General overview are the contracts are profitable to about the tune of $4 million over that period.
Q Okay. Thank you. If the Reorganized Debtor makes a profit post-confirmation, is it fair to say that that would then be dividended up or distributed up to the partners, ultimately to the Claimant Trust?
A I don't think that's fair to say, no.
Q Okay. So, if the Reorganized Debtor makes a profit post-confirmation, where does that profit go?

A The Reorganized Debtor -- what kind of profit? I don't understand your question.

Q Okay. I apologize if I'm being too simplistic about it. If a business, after it takes account of its expenses to generate revenue, has any money left over, would that be profit to you?

A Yes.

Q Okay. Do you think that the Reorganized Debtor, post-confirmation, will make a profit?

A I don't know.

Q Okay. Do you think that the Reorganized Debtor, post-confirmation, will lose money?

A I think there will be costs, and the costs will exceed the -- the amount that it generates on an income basis, yes.

Q Okay. Thank you.

MR. RUKAVINA: Mr. Vasek, if you'll please pull up the plan, the injunctions, and releases. 9F.

(Pause.)

BY MR. RUKAVINA:

Q I apologize, Mr. Seery.

MR. RUKAVINA: So, Mr. Vasek, if you'll go to the bottom of the Page 51. Stop there.

BY MR. RUKAVINA:

Q So, I'm going to read just the first couple sentences here, Mr. Seery, if you'll read it along with me. Subject --

this is the bottom paragraph: Subject in all respects to Article 12(b), no enjoined party may commence or pursue a claim or cause of action of any kind against any protected party that arose or arises from or is related to the Chapter 11 case, the negotiation of the plan, the administration of the plan, or property to be distributed under the plan, the wind-down of the business of the Debtor or Reorganized Debtor.

I'd like to stop there. Do you see that clause there, Mr. Seery, talking about the wind-down of the business of the Debtor or Reorganized Debtor? Do you see that, sir?

A Yes.

Q Okay. Do I understand correctly that this provision we've just read means that, upon the assumption of these CLO management agreements, if the counterparties to those agreements want to take any action against the Reorganized Debtor, they first have to go through this channeling injunction?

A I believe that's what it says, yes.

Q Okay. Because the wind-down of the business of the Reorganized Debtor will include the management of these CLO portfolio management agreements, correct?

A Yes.

Q Okay. As well as the management of various funds that the Debtor owns, correct?

A Yes.

Q Okay. And would you agree with me that the new general partner, New GP, LLC, is also a protected party under the plan?
A I assume it is. I don't recall specifically.
Q I believe you discussed to some degree postpetition losses. I'd like to visit a little bit about those. Since January 9th, 2020, Mr. Dondero was not an officer of the Debtor, correct?
A Correct.
Q And since January 9th, 2020, he was no longer a director of Strand, correct?
A That's correct.
Q Since January 9th, 2020, until he was asked to resign, he was an employee, correct?
A Yes.
Q And about -- I'm trying to remember. About when did he resign? October something of 2020? Do you remember?
A I don't recall.
Q Okay. Do you recall if it was in October 2020?
A It was in the fall.
Q Okay. And he resigned because the independent board asked him to resign, correct?
A Yes.
Q Okay. And you mentioned that the estate has had a postpetition drop in the value of its assets and the assets

that it manages. Right?

A I believe I went through the estate's assets. The only asset that wasn't a direct estate asset was the hundred percent control of Select Equity Fund. I didn't talk about the Fund assets.

Q Okay. Do you recall that the disclosure statement that the Court approved states that, postpetition, there was a drop from approximately $566 million to $328 million in the value of Debtor assets and assets under Debtor management?

A Yes. That's the $200 million I walked through earlier.

Q Okay. And I believe you mentioned some of it was due to the pandemic, right?

A It certainly impacted the markets. The pandemic didn't cause a specific loss. It impacted the markets and the ability to work within those markets.

Q But you also believe that Mr. Dondero was responsible for something like a hundred million dollars of these losses, right?

A Probably more.

Q Okay. Mr. Dondero is not being released or exculpated for that, is he?

A No.

Q And while Mr. Dondero was an employee during the period of these losses, he answered to you as CEO and CRO, correct?

A Not during that period. I wasn't (audio gap) until later.

Q I'm sorry. As of January 9th, 2020, were you the CEO of the Debtor?
A No.
Q When did you become the CEO of the Debtor?
A I believe the order was July 9th, retroactive to a date in March.
Q July 9th, 2020?
A Correct.
Q Okay. And when did you become the CRO of the Debtor?
A At the same time.
Q Okay. So, between January and July 2020, you were one of the independent directors, correct?
A Yes.
Q Okay. So, during that period of time, would Mr. Dondero have answered to that independent board?
A Yes.
Q Okay. Now, if someone alleges that that independent board has any liability on account of Mr. Dondero's losses, that's released under this plan, isn't it?
A Yes.
Q Okay. And if someone alleges that Strand has any liability on account of Mr. Dondero's losses, that's released under this plan, correct?
A Yes.
Q Okay. And if someone believes that the Debtor -- that the

way that the Debtor has managed the CLOs or its funds postpetition gives rise to a cause of action in negligence, that's also released and exculpated in the plan, correct?

A I believe it would be. I'm not positive, but I believe it would be.

Q Well, let's be clear. The plan does not release or exculpate you or Strand or the board for willful misconduct, gross negligence, fraud, or criminal conduct, correct?

A No, it does not.

Q Okay. And I'm not, just so we're clear, I'm not alleging that, okay? So I want the judge to understand I'm not alleging that. But the plan does release and exculpate for negligence, right?

A Yes.

Q Okay. Where do you have an understanding a cause of action for breach of fiduciary duty lies on the spectrum of negligence all the way to criminal conduct?

A It's -- it's not -- generally not criminal, although I suppose that breach of fiduciary duty could be criminal. Typically, it's negligence, and that you would breach a duty for either duty of care, duty of loyalty. But it could slide to willful. And probably most of the instances where they come up are where someone has done something willfully or grossly negligent.

Q Okay. But -- and I would agree with you. But there are

1 certain breaches of fiduciary duty that are possible based on
2 simple negligence, correct?
3 A They are, and in these instances, they don't -- they don't
4 rise to actionable claims because they're indemnified by the
5 funds.
6 Q Okay. You have to explain that to me. So, the negligence
7 claim is not actionable because someone is indemnifying it?
8 A Typically, there's no way to recover because it's
9 indemnified by the fund that the investor might be in. If it
10 goes beyond that, then it wouldn't be.
11 Q Okay. So there are potential negligence breach of
12 fiduciary duty claims that might be subject to these
13 exculpations and releases that would not be indemnified?
14 A Gross negligence and willful misconduct, certainly.
15 Q Okay. Now, post-confirmation, post-confirmation, if the
16 Debtor, or the Reorganized Debtor, rather, engages in
17 negligence or any actionable conduct, that's when the
18 channeling injunction comes into play, right?
19 A I don't quite understand your question.
20 Q Okay.
21 A Can you repeat that?
22 Q Sure. To your understanding, does the channeling
23 injunction we're looking at right now -- and you can read it
24 if you need to -- does it apply to purely post-confirmation
25 alleged causes of action?

A It does apply to those, yes.
Q Okay. And it says that the Bankruptcy Court will have sole and exclusive jurisdiction to determine whether a claim or cause of action is colorable, and, only to the extent legally permissible and as provided for in Article 11, shall have jurisdiction to adjudicate the underlying colorable claim or cause of action.
Do you see that, sir?
A I do.
Q Okay. And this -- the Bankruptcy Court's exclusive jurisdiction here, that would continue after confirmation? Is that the intent behind the plan?
A It has -- it says what it says. Will have the sole and exclusive jurisdiction to determine whether a claim is colorable, and then, to the extent permissible, it'll have jurisdiction to adjudicate.
Q Okay. Nothing in this plan limits the period of the Bankruptcy Court's inquiry to the pre-confirmation time frame, correct?
A I don't believe it does, no.
Q Okay. Have you taken into account the potential that this bankruptcy case will eventually be closed with a final decree?
A Have I taken that into account?
Q Well, do you know what a final decree in Chapter 11 is?
A I do.

Q Okay. So, help me understand. If there's a final decree and the bankruptcy case is closed, then who do I go to, because the Bankruptcy Court has exclusive jurisdiction, to get this clearing injunction cleared?

MR. MORRIS: Objection to the form of the question, Your Honor.

THE COURT: Sustained. Rephrase.

MR. RUKAVINA: Okay.

BY MR. RUKAVINA:

Q Is it the plan's intent, Mr. Seery, that this channeling injunction that we just looked at would continue to apply even after a point in time in which the bankruptcy case is closed?

A I don't believe so.

MR. RUKAVINA: Again, Your Honor, someone -- I heard someone's phone right when he answered, and I didn't hear his answer, if he could please re-answer.

THE WITNESS: I don't -- I don't think if the case is closed that's the intention.

BY MR. RUKAVINA:

Q Okay. What about if there's a final decree entered?

MR. MORRIS: Objection, Your Honor. You know, the document kind of speaks for itself.

THE COURT: Overruled. He can answer if he knows.

THE WITNESS: Yeah. I don't -- I don't -- I'm not making a distinction between the case being closed and the

final decree. I believe in both instances they'll be pretty close to the same time and we'll make a judgment then as to how to close the case in accordance --

Q Okay.

A -- with the rules.

MR. RUKAVINA: Mr. Vasek, if you'll please scroll up to the beginning of this injunction. A little bit higher. Right there. Right there.

BY MR. RUKAVINA:

Q The very first clause, Mr. Seery, if you'll read with me, says, Upon entry of the confirmation order -- pardon me -- all enjoined parties are and shall be permanently enjoined on and after the effective date from taking any actions to interfere with the implementation or consummation of the plan.

Do you see that, sir?

A I do, yes.

Q What does interfering with the implementation or consummation of the plan mean?

A It means in some way taking actions to upset, distract, stop, or otherwise prohibit or hurt the estate from implementing or consummating the plan.

Q Okay. And is that intended -- is that clause we just read and you described intended to be very broad?

A I -- I think it's -- if the words have meaning, yes, that

it should -- it's pretty broad.

Q Okay. Is the Debtor not able to state with more specificity what it would believe interference with the implementation or consummation of the plan would mean?

MR. MORRIS: Objection to the form of the question.

THE COURT: Sustained.

THE WITNESS: I think it's -- I think it's --

THE COURT: Sustained.

MR. RUKAVINA: Okay.

THE WITNESS: I'm sorry.

BY MR. RUKAVINA:

Q Well, you just gave us four or five examples of what interfering with the implementation or consummation of the plan might be. Why isn't that, those four or five examples, why aren't they listed here?

MR. MORRIS: Object to the form of the question.

MR. RUKAVINA: Well, Your Honor, I'll withdraw it and I'll argue this at closing argument.

THE COURT: Okay.

BY MR. RUKAVINA:

Q When did the Committee agree to you serving as the Claimant Trustee?

A In the late -- in the late fall. I've been contemplated to be the Claimant Trustee. I'm willing to take -- if we can come to an agreement. They have their options open if we

can't come to an agreement on compensation.
Q Okay. And since the Committee agreed to you being the Claimant Trustee, you have reached a resolution with UBS, correct?
A I don't think so. I think that that was before UBS, the UBS resolution was reached.
Q I'm sorry. When did you reach the UBS resolution in principle with UBS?
A I don't recall the exact date, but I do recall specific conversations where some of the Committee members were supportive. I didn't know that UBS wasn't, but I assumed that some meant not all. And that was UBS, because I don't think we had a deal yet.
Q Well, let me ask the question in a little bit of a different way. Whenever the Debtor reached the agreement in principle with UBS that your counsel described this morning, whenever that point in time was, the Committee had already agreed before that point in time to you serving as Claimant Trustee, correct?
A I believe so, yes.
Q And is the answer the same with respect to the HarbourVest settlement?
A I believe so. With HarbourVest, I believe so as well, yes.
Q What about the Acis settlement?

A I don't believe so. I think Acis came first. I don't think we settled on an agreement on Claimant Trustee until after the Acis -- certainly after the Acis agreement, maybe not after the Acis 9019. I just don't recall.

Q Okay. And the million-dollar cutoff for convenience class creditors, that number was a negotiated amount with the Committee, correct?

A Yes.

Q Okay. Thank you, Mr. Seery.

MR. RUKAVINA: Your Honor, I'll pass the witness.

THE COURT: All right. Just for purposes of time, it's 3:00 o'clock, so you went 48 minutes.

Who's next?

MR. DRAPER: Mr. Taylor is.

THE COURT: All right. Mr. Taylor, go ahead.

MR. TAYLOR: Yes, Your Honor. At this time, what we would like the Court to do, we are asking for a brief continuance and to go into tomorrow, and there is a reason for that and I would like to explain it.

Mr. Dondero has communicated an offer which we believe to be a higher and better offer than what the plan analysis, even in its most recent iteration that was just changed last night, will yield significantly higher recoveries. Those are guaranteed recoveries. There is a cash component to that offer. There are some debt components, but they would be

1 secured by substantially all of the assets of Highland.
2 We believe it's a higher and better offer, that the
3 creditors and the Creditors' Committee, Mr. Seery, who
4 obviously has been testifying all day on the stand, may have
5 heard some -- some inkling of it via a text or an email he
6 might have been able to glance at, or maybe not, because he's
7 been too busy, and that's understandable.
8 But we do believe it is a material offer. It is a real
9 offer. And for that reason, we would like to request the
10 Court's indulgence. This has gone rather fast. We believe
11 that in the event that it does not gain any traction, then we
12 could complete this confirmation hearing tomorrow, or it's
13 more than likely that we could. And therefore we would
14 request a continuance until tomorrow morning beginning at
15 9:30 so all the parties can confer, consider that offer, and
16 see if it gains any traction.
17 THE COURT: All right.
18 MR. POMERANTZ: Your -- Your --
19 THE COURT: Go ahead. Mr. Morris? Or who is going
20 to respond --
21 MR. POMERANTZ: Your --
22 THE COURT: -- to that?
23 MR. POMERANTZ: Your Honor, this is Jeff --
24 THE COURT: Mr. Pomerantz?
25 MR. POMERANTZ: This is Jeff Pomerantz. I will

1 respond.
2 I think right at the beginning of the hearing, or
3 slightly after, I did receive an email from Michael Lynn
4 extending this offer. The email was also addressed to Mr.
5 Clemente. As we have told Your Honor before, if the Committee
6 is interested in continuing negotiations with Mr. Dondero, far
7 be it from us to stand in the way.
8 So what I would really ask is for Mr. Clemente to respond
9 to think if -- to see if he thinks that this offer is worthy.
10 If it's worthy and the Committee wants to consider it, we
11 would by all means support a continuance. If it is not, I
12 think this is just a last-minute delay without a reason. And
13 if there is no likelihood of that being acceptable or the
14 Committee wanting to engage, we would want to continue on.
15 THE COURT: All right. Mr. Clemente, what say you?
16 MR. CLEMENTE: Yes. Yes, Your Honor. Matt Clemente
17 on behalf of the Committee.
18 Obviously, I haven't had a chance to confer with my
19 Committee members, but there's no reason to not continue the
20 confirmation hearing today. I will be able to confer with
21 them over email, et cetera, this evening. There's simply no
22 reason to not continue going forward at this particular point
23 in time, Your Honor.
24 So, although I haven't conferred with the Committee
25 members, that would be what I would recommend to them. And so

my view, the Committee's view, I believe, would be let's continue forward and we'll discuss Mr. Dondero's proposal that I know came across after opening statements this morning, you know, in due course. But I do not believe that a continuance here is necessary or appropriate.

THE COURT: All right. Mr. Taylor, that request is denied, so you may cross-examine.

MR. TAYLOR: Yes. (Pause.) I'm sorry, Your Honor. I have a couple people that are in my ear. But yes, I'm ready to proceed.

THE COURT: Okay.

CROSS-EXAMINATION

BY MR. TAYLOR:

Q Mr. Seery, I believe you can probably largely testify from your memory of the various iterations of the plan analysis versus the liquidation analysis. But to the extent that you're unable to, we can certainly pull those up.

Mr. Seery, you put forth or Highland put forth on November 24th of 2020 a plan analysis versus a liquidation analysis, correct?

A I think that's the approximate date, yes.

Q Okay. And do you recall what the plan analysis predicted the recovery to general unsecured creditors in Class 8 would be at that time?

A I believe it was in the 80s.

Q And approximately 87.44 percent?
A That sounds close, yes.
Q Okay. And then just right before -- the evening before your deposition that took place on January 29th, I believe a revised plan analysis versus a liquidation analysis was provided. Do you remember that?
A Yes.
Q Okay. And what was the predicted recovery to general unsecured creditors under that analysis?
A I believe that was --
MR. MORRIS: Object to the form of the question. I just want to make sure that we're talking about the -- and maybe I misunderstood the question -- plan versus liquidation.
THE COURT: Okay. Could you restate --
MR. TAYLOR: I said plan analysis.
THE COURT: Plan.
THE WITNESS: I believe that that initially was in the -- in the high 60s.
BY MR. TAYLOR:
Q It was --
A Might have been --
Q -- 62.14 percent; is that correct?
A Okay. Yeah. That sounds -- I'll take your representation. That's fine.
Q Okay. And going back to the November 28th liquidation

analysis, what did Highland believe that creditors in Class 8 would get under a liquidation analysis?

A I don't recall the -- if you just tell me, I'll -- I'll -- if you're reading it, I'll agree with -- because I -- from my memory.

Q 62.6 percent? Is that correct?

A That sounds about right.

Q You would agree with me, would you not, that 62.6 cents on the dollar is higher than 62.14 cents, correct?

A Yes.

Q And so at least comparing the January 28th versus -- of 2021 versus the November 24th of 2020, the liquidation analysis actually ended up being higher than the plan analysis, correct?

A Yes.

Q But there was -- there was some changes also in the plan analysis. I'm sorry. There were some subsequent changes that were done over the weekend that were provided on February 1st. Is that correct?

A Yes.

Q Okay. And what were -- give us an overview of what those changes were.

A What are -- what are you comparing? What would you like me to compare?

Q Okay. The January to February plan analysis, what were

the changes? Why did it go up from 62.6 to 71.3?
A The main changes, as we discussed earlier, and maybe the only major change, was the UBS claim amount, which went down significantly from the earlier iteration. And then there was the small change related to the RCP recovery, which was a double-count.
Q Okay. And you talked about earlier about what assumptions went into these analyses, correct?
A Yes.
Q And you said these assumptions were always done after careful consideration. Is that a correct summation of what you said?
A I think that's fair.
Q Okay.
MR. TAYLOR: Mr. Assink, could you pull up the November assumptions?
BY MR. TAYLOR:
Q I believe that's coming up, Mr. Seery. The Court.
(Pause.)
MR. TAYLOR: And go down one page, please, Mr. Assink. Roll up. The Assumption L.
BY MR. TAYLOR:
Q So, these are the November assumptions, correct, Mr. Seery?
A I believe so, yes.

Q Okay. And what was the assumption that you made after careful consideration regarding the claims for UBS and HarbourVest?

A The plan assumes zero, that was L, for those claims.

Q Okay. And ultimately what did -- and I believe you just announced this today and made this public today -- what is UBS's claim? What are you proposing that it be allowed at?

A $50 million in Class 8, and then they have a junior claim as well.

Q Okay. And what about HarbourVest? What kind of allowed claim did they end up with?

A $45 million in Class 8 and a $35 million junior claim.

Q So your well-reasoned assumption, carefully considered, was off by $95 million; is that correct?

MR. MORRIS: Objection to the form of the question.

THE COURT: Overruled.

THE WITNESS: The difference between zero and those numbers is $95 million, yes.

BY MR. TAYLOR:

Q You solicited creditors of the Highland estate based upon the November plan analysis and liquidation analysis that was provided and that we're looking at right now, correct?

A It was one of the bases, yes. It's the plan is what -- what we solicited votes for, not the projections.

Q But this was included within the disclosure statement; is

that correct?
A It's one of the bases. It was included, yes.
Q And this is the bases by which you believe that the best interests of the creditors have been met better than a Chapter 7 liquidation, correct?
A I believe this evidences that the best interest test would be satisfied, yes.
Q And so the record is very clear, for this Court and anybody looking at the record, no solicitation was done of the creditor body after the disclosure statement was sent out? No updates were sent, correct?
A Updated projections were filed, but no solicitation was -- was -- there was only one solicitation. We did not resolicit. That's correct.
Q Okay. Mr. Seery, how much are you -- after this plan, or if this plan is confirmed, how much are you going to be paid per month to be the Trustee?
A For the Trustee role, $150,000 per month is the base.
Q It's a base amount? On top of that, you're going to receive some sort of bonus amount, correct?
A There's two bonuses. There's a bonus for the bankruptcy case, which I'd need Court approval for, and then I'm going to seek a bonus for the Trustee work, which would be a combination of myself and the team for a performance bonus. That's to be negotiated.

To be fair, the Committee or the Oversight Group may not agree to any change, in which case we would not have an agreement.

Q And what would happen if you don't come to an agreement, Mr. Seery?

A They would have to get a different Plan Trustee.

Q Okay. So it's certainly going to have to be greater than zero, correct?

A Typically.

Q Is it going to be in the nature of three or four percent of the sales proceeds, or have you considered that?

A Oh, I'm sorry. Yeah, you mean the bonus? No. I've been thinking -- my apologies. I misunderstood. I thought you meant any number. I haven't -- I haven't had negotiation with them. I'm thinking about looking at the full recovery of the team -- for the team, looking at expected performance numbers, and then trying to negotiate a structure of bonus compensation that would be payable to the whole team, and then allocated by the CEO (garbled) which would be made.

Q When predicting the expenses of the Trust going forward in your projections, did you build in an amount for a bonus fee?

A No. It wouldn't be part of the expenses. It would come out at the end.

Q Okay. So those additional expenses are not shown in the plan analysis, correct?

A No, they're not. It's just not going to be an expense. It'll be a -- as an operating expense. It'll be an expenditure at the end out of distributions.

Q Okay. And did you subtract those from the distributions?

A No.

Q Okay. A Chapter 7 trustee is not going to charge $150,000 or more to monetize these assets, is he?

A No.

Q Have you priced how much D&O insurance is going to be on a go-forward basis post-confirmation?

A I'm sorry. I couldn't -- couldn't hear you.

Q Sorry. Let me get closer to my mic. Have you priced what D&O insurance is going to run the Trust on a go-forward basis post-confirmation?

A Yes.

Q Okay. And what are you projecting that to run?

A About $3-1/2 million.

Q And is that per annum for over the two-year life of this plan?

A Well, it's the two-year projection period, not life. But I expect that that's for the two-year projection period.

Q Okay. So approximately one point -- I'm sorry, you said $3.5 million, correct?

A Yes.

Q Okay. So, $1.75 million per year?

A Yes.
Q On top of the minimum $1.8 million per year that you're going to be paid, correct?
A Well, that's -- that's the base compensation. But, again, to be fair to the Oversight Committee, they haven't approved it yet. So the Committee, the Committee reserves their rights to negotiate a total package.
Q And there's going to be a Litigation Trustee, correct?
A Yes.
Q And that Litigation Trustee is going to be paid some amount of compensation, correct?
A Yes.
Q That has not been negotiated yet, correct?
A No, I believe -- I believe the base piece has. But his -- I don't know what the contingency fee or if that's been negotiated yet. I don't know.
Q And what is the base fee for the Litigation Trustee?
A My recollection is it was about $250,000 a year, some number in that area.
Q Thank you. So, at this point, over the two-year period, we're looking at approximately $3.6 million to you, $3.5 million to the D&O insurance, and approximately $500,000 base fee to the Litigation Trustee, plus a contingency. Is that correct?
A That's probably real close, yes.

Q Okay. And how about U.S. Trustee fees? You've estimated of how much those are going to be during the two-year period, correct?
A They're built into the plan up 'til -- I think it's only up until the actual effective date, but I don't recall the specifics.
Q Okay. And U.S. Trustee fees, the case is going to stay open and those are going to continue to have to be paid, even after confirmation, correct?
A Yes.
Q Okay. And do you have an estimate of how much those are going to run per annum or over that two-year period?
A I don't recall, no.
Q Okay. Well, they're provided within your projections, correct?
A Yes.
Q Okay. A Chapter 7 trustee would not have to incur any of these costs, would they?
A I don't think they'll have to incur Chapter -- U.S. Trustee fees. I don't know whether they would bring on a litigation trustee or not. I would assume, since there's -- appear to be valuable claims, they probably would, but perhaps they would do it themselves. So I don't know the specifics of what they would do.
Q In preparing your liquidation analysis, did you ask

Pachulski if they would be willing to work for a Chapter 7 trustee if one was appointed?

A I didn't specifically ask, no.

Q Did you ask DIS, your, for lack of a better word, financial advisors in this case, if they would be willing to work with a Chapter 7 trustee?

A DSI. No, I did not specifically ask them.

Q Okay. All right. Any of the accountants that you're working with, did you ask them if they would be willing to work with a Chapter 7 trustee?

A I didn't specifically ask them, no.

Q Okay. The proposed plan has no requirements that you notice any potential sale of either Highland assets or Highland subsidiary assets; is that correct?

A Do you mean after the effective date?

Q Yes.

A No, it does not.

Q In the SSP sale, which is a subsidiary of Trussway, which is a subsidiary of Highland, or actually it's a sub of a sub of Highland, you conducted the sale of SSP, correct?

A The team did, yes. I was part.

Q All right. That was not noticed to the creditor body; is that correct?

A That's correct.

Q And it is the Debtor's and your position that no notice

was required because this was a sub of a sub and therefore this was in the ordinary course?

A Not exactly, no.

Q Okay. Then what is your position?

A It was in the ordinary course. It was -- I believe it's a sub of a sub of a sub, and a significant portion of the interests are owned by third parties.

Q It is possible, is it not, that had you noticed this to the larger creditor body, that you might have engendered a competitive bidding situation that might have reached a higher return for investors, correct?

A The same possibility is it could have gone lower.

Q But it is possible, correct?

A Certainly possible.

Q In fact, there is normally requirements under the Bankruptcy Code and the Rules that asset sales are noticed out to the creditor body, correct?

A Asset sales that -- property of the estate, yes. Other than in the ordinary course, of course.

Q I believe you have described Mr. Dondero as being very litigious within this case; is that correct?

A I believe so, yes.

Q Okay. Did Mr. Dondero initiate any litigation in this case prior to September 2020?

A Prior to September? I don't believe so. I don't know

when he filed the claim from NexPoint. It certainly indicated that -- I believe it was from NexPoint. My memory is slightly off here. He filed a claim in -- administrative claim, which effectively is like you're bringing a complaint, against HCMLP for the management of Multi-Strat and the sale of the life settlement policies out of Multi-Strat, which was conducted in the spring.

Q And wasn't Mr. Dondero seeking document production related to that sale?

A No.

Q Okay. I believe that the preliminary injunction that you talked about and were questioned earlier, the plan asks to enjoin (garbled) party from allowing the plan to go effective. Is that correct?

A I'm sorry. I didn't understand you question. There was a -- there was a bunch of interference.

Q Okay. Sure. I'm sorry about that. I don't know if that's -- I don't think that's me, but --

A It may not be. It sounded like someone else.

Q The injunction prohibits anybody from interfering with the plan going effective, correct?

A The plan injunction?

Q Yes.

A Yes.

Q Okay. Just so I'm clear, is the plan injunction

1 attempting to strip appellate rights of Mr. Dondero?
2 A No.
3 Q Okay. So, if, for instance, if he were to file any appeal
4 of an order confirming this plan, he wouldn't be in violation
5 of that plan injunction?
6 A I don't think so, because the order wouldn't be final.
7 Q Okay. But it -- it says upon entry of a confirmation
8 order, you're enjoined from doing so. So that's not the
9 intent?
10 A It certainly would not be my intent. I don't think that
11 anybody had that in mind.
12 Q Okay. And if Mr. Dondero were to seek a stay pending
13 appeal either during that 14-day period or afterwards, is that
14 plan injunction attempting to stop that -- that sort of
15 action?
16 A I apologize. You're breaking up. But I think I
17 understood your question. No, it was -- it was your screen as
18 well. No. If either this Court stays its own order or a
19 higher court says that the order is stayed, then there would
20 be no way there could be any allegation that it's interfering
21 with an order if it's not effective.
22 Q Mr. Dondero opposed the Acis sale, correct?
23 A The Acis settlement?
24 Q Correct.
25 A Yes.

Q After he opposed the Acis settlement, the next filing Mr. Dondero made was requesting that the Debtor notice the sale of any assets or any major subsidiary assets. Is that correct?

A I don't recall the sequence of his filings. I think that Judge Lynn at least sent a letter to that effect. I don't recall if there is a filing to that effect.

Q Did Mr. Dondero, through his counsel, attempt to resolve that motion without filing anything further?

A I don't recall the specifics of the motion. I know they asked for some sort of relief that -- that we thought was inappropriate.

Q When the Court postponed any hearing on Mr. Dondero's request for relief until the eve of the confirmation hearing, and Mr. Pomerantz announced that no sales were expected before confirmation, did Mr. Dondero withdraw his motion?

A Again, I don't recall the specifics of the motion. I only recall the letter from Judge Lynn.

Q Did Mr. Dondero do anything more than object to the HarbourVest deal?

A Not that I know of.

Q Did Mr. Dondero do anything more than respond to the Defendants' injunction suit?

MR. MORRIS: Objection to the form of the question. I mean, -- objection to the form.

THE COURT: Overruled.

MR. TAYLOR: I apologize. I should have said the Debtor's injunction suit.

THE WITNESS: Yeah, the -- I'm not sure of the specific order, but certainly the communications with me, which I think are prior to the order. The communications with Mr. Surgent, which I believe are after the order. Certain communications with Mr. Waterhouse, which were oral. Those were all similarly difficult and obstreperous actions.

BY MR. TAYLOR:

Q Has Mr. Dondero commenced any adversary proceeding or litigation in this case other than filing a competing plan?

MR. MORRIS: Objection to the form of the question.

THE COURT: Over --

THE WITNESS: Yeah, I don't --

THE COURT: -- ruled.

THE WITNESS: I don't believe he's commenced an adversary. I'm sorry, Judge. I don't believe he's commenced an adversary proceeding, no.

BY MR. TAYLOR:

Q Mr. Dondero didn't file any opposition to the life settlement sale, did he?

A We didn't do the life settlement (garbled) Court.

Q Right. Again, that wasn't noticed through the -- this Court, was it?

A It was an -- the reason was it was an asset of Multi-Strat

1 Fund. It wasn't an asset of the Debtor's.
2 Q Okay. Mr. Dondero did have concerns regarding the life
3 settlement sale, correct?
4 A Yes.
5 Q In fact, he believed that they were being sold for
6 substantially less than what could have otherwise been
7 received, correct?
8 A He may have.
9 Q And if you conduct any subsequent sales for less than
10 market value that might ultimately prevent the waterfall from
11 ever reaching Mr. Dondero, he would have no recourse under
12 this proposed plan to object to this sale or otherwise have
13 any comment on it. Is that correct?
14 A I clearly object to the thinking that that was less than
15 market value. It was -- it was more than market value. So I
16 don't -- I disagree with the premise of your question.
17 Q So, I don't believe that was the question that was asked.
18 The question that was asked is, as you move forward with your
19 -- what I will characterize as a wind-down plan, not putting
20 that word in your mouth -- but as you execute forward on your
21 plan, as these sales of these assets go through, no notice is
22 going to be provided, correct?
23 A Not necessarily. It depends on the asset and what we
24 think of the, you know, the -- the position of the parties at
25 the time.

If we have a -- if we have a transaction that's pending that wouldn't be hurt by a notice and that we'd be able to get the Court's imprimatur to maybe more better insulate, if you will, against Mr. Dondero's attacks, then we may well come to the Court to seek that.

The problem with noticing sales is that -- that it often depresses value. That's just not the way folks outside of the bankruptcy world (audio gap) sales.

Q So there's no requirement that either public or private notice be provided, correct?

A No. Meaning it is correct.

Q Okay. And if Mr. Dondero had objections either to the pricing of the sale or the manner and means by which the sale was being conducted, he would be prohibited by the plan injunction from bringing any objection to such sale, correct?

A I believe so, yes.

Q Mr. Dondero also had concerns regarding the OmniMax sale, correct?

A Mr. Dondero did not go along with the OmniMax sale with the assets that he managed. I don't know if he had concerns with -- with our sale or OmniMax's interests.

Q Did Mr. Dondero ever express to you any concern that the value wasn't being maximized regarding the sale of those assets?

A He thought he could get more. I don't know that he

thought that he could get more for his assets that he was managing or whether he thought he could get more for all of the assets.

Q Other than voicing those concerns, did Mr. Dondero file any pleading with this Court attempting to block that sale?

A Pleading with the Court? No.

MR. TAYLOR: Your Honor, I would like to confer with my colleagues just very briefly and see if they have anything further. And even if they don't, Mr. Lynn of my firm would like a very brief moment to address the Court prior to me passing the witness.

So, if I may have a literally hopefully one-minute break where I can turn my camera off and my microphone off to confer with my colleagues, and then move forward?

THE COURT: Okay. Well, you can have a one-minute break, but we're going to continue on with cross-examination at this point. Okay? I'm not sure what you meant by Mr. Lynn wants to raise an issue at this point. Could you elaborate?

MR. TAYLOR: I will get some elaboration during our 30-second to one-minute break, Your Honor. I was just passed a note.

THE COURT: All right. So, but I'll just you know, --

A VOICE: Your Honor?

THE COURT: -- I'm inclined to continue with the

cross-examination. You know, this isn't a time for, you know, arguments or anything like that. All right?

So, we'll take a one-minute break. You can turn off your audio and video for one minute, and come back.

(Off the record, 3:33 p.m. to 3:34 p.m.)

THE WITNESS: Your Honor?

THE COURT: Yes?

THE WITNESS: It's Jim Seery. Can I turn it into just a two-minute break, since I've sat in my seat, and it would be better for him to just continue straight through. I could use one or two minutes.

THE COURT: Okay.

THE WITNESS: I apologize.

THE COURT: All right. Well, it's been more than minute. Let's just say a five-minute break for everyone, and we'll come back at 3:39 Central time. Okay.

THE WITNESS: Okay. Thank you, Your Honor. I appreciate that.

(A recess ensued from 3:35 p.m. until 3:40 p.m.)

THE CLERK: All rise.

THE COURT: Please be seated. All right. We are back on the record. Mr. Taylor, are you there?

MR. TAYLOR: I am, Your Honor. My video is not wanting to start, but my -- I believe my audio is on.

THE COURT: Okay. After you went offline for your

one-minute break, Mr. Seery asked for a five-minute bathroom break, or a couple-minute. Anyway, we've been gone on a bathroom break. We're back now.

MR. TAYLOR: Thank you. I was actually -- I was still listening with one ear, --

THE COURT: Okay.

MR. TAYLOR: -- Your Honor, so I understand.

THE COURT: All right.

MR. TAYLOR: So, thank you.

THE COURT: Are you finished with cross, or no?

MR. TAYLOR: Just a little bit of a follow-up.

CROSS-EXAMINATION, RESUMED

BY MR. TAYLOR:

Q Mr. Seery, you had previously testified that Mr. Dondero's counsel had threatened you and/or the independent board, I was not exactly sure who you were referring to, with suits, and I believe you said a hundred million dollars' worth of suits and getting dragged into litigation.

Is that still your testimony today, that you were -- you were threatened with suit by this firm of a suit of over a hundred million dollars?

A I believe what I was told by my counsel was that, not Mr. Dondero's, but one of the other counsel, who I can name, said specifically that Dondero will sue Seery for hundreds of millions of dollars. We're going to take it up to the Fifth

Circuit, get it reversed, and he'll go after him.

Q Okay. So it was not Mr. Dondero's counsel, and you were not -- is that correct?

A No. It was one of the other counsel on the phone today.

Q Okay. And you base that not upon your own personal knowledge but based on some -- something else that you were told, correct?

A Yes. By my counsel.

Q Thank you.

MR. TAYLOR: Yes, Your Honor. We can pass the witness.

THE COURT: Okay. So, you've gone, or you and Mr. Rukavina collectively have gone one hour and 17 minutes. Mr. Draper, you're next.

MR. DRAPER: Yes, Your Honor. Thank you. I basically have no more than ten questions, so I gather the Court will welcome that.

THE COURT: Okay.

CROSS-EXAMINATION

BY MR. DRAPER:

Q Mr. Seery, has the new general partner been formed yet?

A I don't know if they've been -- we've actually done the formation, but it -- it would be in process.

Q So it either has been formed or has not been formed?

A I don't -- I don't know the answer.

Q Okay. Now, going forward, Judge Nelms and Mr. Dubel will have nothing to do with the Reorganized Debtor, correct?
A Not necessarily, but they don't have a specific role at this time.
Q They won't be officers or directors of the new general partner or the Reorganized Debtor, correct?
A I don't -- I don't believe so, but it's not set in stone.
Q All right. Has any finance -- has any party who is the beneficiary of an exculpation, a release, or the channeling injunction contributed anything to this plan of reorganization in terms of money?
A No.
Q Have you ever interviewed a trustee as to how they would liquidate the assets or monetize the assets in this case?
A No.
Q And last question is, is there any bankruptcy prohibition that you're aware of that a Chapter 7 trustee could not do what you're doing?
A Which -- which -- what do you mean, under the plan?
Q No. Could not monetize the assets of the estate in the manner that you're attempting to monetize them.
A I don't think there's a specific rule, but I just haven't -- I haven't seen that before, no. So I don't think there's a specific rule that I know of.
Q Okay.

MR. DRAPER: I have nothing further for this witness.

THE COURT: All right. I should have asked, we had a couple of other objectors. Ms. Drawhorn, did you have any questions?

MS. DRAWHORN: I have no questions, Your Honor.

THE COURT: All right. Were there any other objectors out there that I missed that might have questions? All right. Any redirect?

MR. MORRIS: Your Honor, if I may, can I -- can I just take a short minute to confer with my colleagues?

THE COURT: Sure. You can --

MR. MORRIS: Thank you.

THE COURT: -- put you --

MR. MORRIS: Two -- two minutes, Your Honor.

THE COURT: Okay.

(Pause, 3:45 p.m. until 3:48 p.m.)

THE COURT: All right. We've been a couple of minutes. Mr. Morris?

MR. MORRIS: Yes, Your Honor.

THE COURT: What are --

MR. MORRIS: Just, just a few points, Your Honor.

THE COURT: Okay.

MR. MORRIS: Hold on a sec. You ready, Mr. Seery?

THE WITNESS: I am, yes.

REDIRECT EXAMINATION

BY MR. MORRIS:

Q You were asked a number of questions about your compensation. Do you recall all that?

A Yes, I do.

Q And you testified to the $150,000 a month. Do you recall that?

A Yes.

Q Under the -- under the documentation right now, your compensation is still subject to negotiation with the Committee; is that right?

A Yes, it is.

Q Okay. You were asked a couple of questions about the conduct of Mr. Dondero. Earlier, you testified that the monetization plan was filed under seal at around the time of the mediation. Do I have that right?

A Yes. Right at the start of the mediation.

Q Okay. And is that the first time that the Debtor made the constituents aware, including Mr. Dondero, that it intended to use that as a catalyst towards getting to a plan?

A That's the first time that we filed it, but that plan had been discussed prior to that.

Q And do you recall that there came a point in time where you -- when the Debtor gave notice that it intended to terminate the shared services agreements with the Dondero-related entities?

A Yes.
Q And when did that happen?
A That was about 60 -- now it's like 62 days ago.
Q Uh-huh. And you know, from your perspective, from the filing of the monetization plan in August through the notice of shared services, is that what you believe has contributed to the resistance by Mr. Dondero to the Debtor's pursuit of this plan?
A Well, I think there's a number of factors that contributed, but the evidence that I've seen is that when we started talking about a transition, if there wasn't going to be a deal, if Mr. Dondero couldn't reach a deal with the creditors, we were going to push forward with the monetization plan. And the monetization plan required the transition of the employees. And indeed, it called specifically, and we had testimony regarding it all through the case, about the employees being terminated or transferred.

In order to transfer them over to an entity that's related, Mr. Dondero pulls all of those strings. And he refused to engage on that. We started in the fall. We specifically told employees of the Debtor not to engage. They couldn't spend his money, which made sense --

MR. TAYLOR: Objection, Your Honor.

THE WITNESS: So, very -- that --

THE COURT: Just -- there's an objection.

MR. MORRIS: There's an objection.

THE WITNESS: I'm sorry.

THE COURT: There was an objection.

MR. TAYLOR: Yes, Your Honor. Object --

THE COURT: Go ahead.

MR. TAYLOR: Yes, Your Honor. This is Clay, Clay Taylor. Objection. He's directly said Mr. Dondero told other employees *x*, and that is purely hearsay, not based upon his personal opinion, or his personal knowledge, and therefore that part of the answer should be struck.

MR. MORRIS: Your Honor, it's a statement against interest.

THE COURT: Overrule the objection. Go ahead.

THE WITNESS: Yeah. The difficulty of transitioning this business, I've equated it to doing a corporate carve-out transaction on an M&A side. It's hard, and you need counterparties on the other side willing to engage. And what we went through over the weekend, on Friday, was seemingly that the Funds, you know, directed by Mr. Dondero, just haven't engaged.

We actually gave them an extra two weeks to engage, because it's -- they've really been unable to do anything. I mean, hopefully, we've got the employees working in a way that can -- that can foster and get around some of this obstreperousness, and I've used that word before, but that's

1 what it is. It's really an attempt to just prevent the plan
2 from going forward.
3 And at some point, the plan will go forward. And if we
4 are unable to transition people, we will simply have to
5 terminate them. And that is not a good outcome for those
6 employees, but it's not a good outcome for the Funds, either.
7 And the Funds, Mr. Dondero, the Advisors, the boards, nobody
8 wants to do anything except come in this court.
9 BY MR. MORRIS:
10 Q Do you recall being asked about Mr. Dondero and certain
11 things that he didn't do and certain actions that he hadn't
12 taken?
13 A Yes.
14 Q By Mr. Taylor? To the best of your recollection, did Mr.
15 Dondero personally object to the HarbourVest settlement?
16 A I -- I don't recall if he did or if it was one of the
17 entities.
18 Q It was Dugaboy. Does that refresh your recollection?
19 A Dugaboy certainly objected, yes.
20 Q And do you understand that Dugaboy has appealed the
21 granting of the 9019 order in the HarbourVest settlement?
22 A Yes.
23 Q And Mr. Taylor asked you to confirm that Mr. Dondero
24 hadn't taken any action with respect to the life settlement
25 deal. Do you remember that?

A I do.
Q But are you aware that Dugaboy actually filed an administrative claim relating to the alleged mismanagement of the life settlement sale?
A Yes, I did, I did allude to that. I wasn't sure it was Dugaboy, but -- but that was very --
Q Uh-huh.
A -- very early on, an objection filed in the form of an administrative claim or complaint against, if you will, against Highland for the management of Multi-Strat.
Q Uh-huh. And Mr. Dondero didn't personally file any motion seeking to inhibit the Debtor from managing the CLO assets; is that right?
A No, not the CLO assets, no.
Q Yeah. But the Funds and the Advisors did. That was the hearing on December 16th. Do you recall that?
A Yeah. That was the -- the Funds. K&L Gates, the Funds, and the various Advisors.
Q All right. Do you recall Mr. Rukavina asking you whether there was any evidence in the record to support your testimony that there was an agreement in place to assume the CLO management agreements?
A I recall the question, yes.
Q Okay.
MR. MORRIS: Your Honor, I'm going to ask Ms. Canty

to put up on the screen the Debtor's omnibus reply to the plan objections.

THE COURT: Okay.

MR. MORRIS: It was filed -- it was filed on January 22nd. And if we can go, I think, to -- I think it's Paragraph -- I think it's Paragraph 135 on Page 71. Yeah. Okay.

BY MR. MORRIS:

Q Take a look at that, Mr. Seery. Does that -- does that statement in Paragraph 135 accurately reflect the understanding that's been reached between the Debtor and the CLO Issuers with respect to the Debtor's assumption of the CLO management agreements?

A Yes. I think that's consistent with what I testified to earlier, the substance of the agreement.

MR. MORRIS: And if we can just scroll to the top, just to see the date. Or the bottom. I guess the top.

THE WITNESS: Do you mean the date of this pleading?

BY MR. MORRIS:

Q Yeah. So, it was filed on January 22nd, right, ten days ago? Okay.

A That's correct.

MR. MORRIS: I'd like to put up on the screen an email, Your Honor, that I'd like to mark as Debtor's Exhibit 10A. And this is --

BY MR. MORRIS:

Q Do you recall, Mr. Seery, you testified that the agreement was reflected in an email?
A Yes.
Q Is this the email that you're referring to?
MR. MORRIS: If we could scroll down. Right there.
THE WITNESS: Yes.
MR. MORRIS: Okay. One -- the email below. Okay. Right there.
BY MR. MORRIS:
Q Is that the -- is that the email you had in mind?
A It was the series of emails. We -- we had a -- I think I testified in the prior testimony, or my -- one of my depositions, that we had had a number of conversations with the Issuers and their counsel, and this was the summary of the agreement that was contained in these emails.
Q Okay. And this is, this is the same date as the omnibus reply that we just looked at, right, January 22nd?
A That's correct.
Q Okay. You were asked a question, I think, late in your cross-examination about a Chapter 7 trustee's ability to sell the assets in the same way as you are proposing to do. Do you recall that testimony?
A Yes.
Q And I think, if I understood correctly, the question was narrowly tailored to whether there was any legal impediment to

1 a trustee doing -- performing the same functions as you. Do I
2 have that right?
3 A That's the question I was asked, whether the Bankruptcy
4 Code had a specific prohibition.
5 Q Okay. And I think, I think you testified that you weren't
6 aware of anything. Is that right?
7 A That's correct.
8 Q All right. But let's talk about practice. Do you think a
9 Chapter 7 trustee will realize the same value as you and the
10 team that you're assembling will, in terms of maximizing value
11 and getting the maximum recovery for the assets?
12 A No. As I testified earlier, you know, I've been working
13 with these assets now for a year. It's a complicated
14 structure. The assets are all slightly different. And
15 sometimes much more than slightly. And the team that we're
16 going to have helping managing is familiar with the assets as
17 well. We believe we'll be able to execute very well in the
18 markets that we (garbled).
19 Q Do you think a Chapter 7 trustee will have a steep
20 learning curve in trying to even begin to understand the
21 nature of the assets and how to market and sell them?
22 A I think anybody coming into this, the way this company is
23 set up, as an asset manager, and the diversity of the assets,
24 would have a steep learning curve, yes.
25 Q Do you have any view as to whether the perception in the

1 marketplace of a Chapter 7 trustee taking over to sell the
2 assets will have an impact on value as compared to a post-
3 confirmation estate of the type that's being proposed under
4 the plan?
5 A Yes, I do, and it certainly would be negative, in my
6 experience. Typically, assets are not conducted -- asset
7 sales are not conducted through a bankruptcy court, and
8 certainly not with a Chapter 7 trustee that has to sell them,
9 and generally is viewed as having to sell them quickly. So we
10 -- we approach each asset differently, but certainly in a way
11 that would be much more conducive to maximizing value than a
12 Chapter 7 trustee could, just by the nature of their role.
13 Q Is it -- is it your understanding that, under the proposed
14 plan and under the proposed corporate governance structure,
15 that the Claims Oversight Committee will -- will manage you?
16 That you'll report to that Committee and that they'll have the
17 opportunity to make their assessment as to the quality of your
18 work?
19 A Yeah, absolutely. And that's consistent with what we've
20 done before in this case. Even where it wasn't an asset of
21 the estate or was being sold in the ordinary course, we spent
22 time with the Committee and the Committee professionals before
23 selling assets.
24 Q And you've worked with the Committee for over -- for a
25 year now, right?

A It's over a year.
Q And the Committee is comfortable with you taking this role; is that right?
A I think they're supportive of it. Comfortable might be not the right word choice.
Q Okay. I appreciate the clarification. And do you have any reason to believe that the -- that the Oversight Committee is going to allow you the unfettered discretion to do whatever you want with the assets of the Trust?
A Not a chance. Not with this group. Nor would I want to. There's no right or wrong answer for most of these things, and the collaborative views from professionals and people who have an economic stake in the outcome will be helpful.
Q Okay. You were asked some questions about the November projections and the -- and the assumption that was made that valued the HarbourVest and the UBS claims at zero. Do you recall that?
A Yes.
Q As of that time, was the Debtor still in active litigation with both of those claim holders?
A Very much so.
Q And after the disclosure statement was issued, do you recall that the Court entered its order on UBS's Rule 3018 motion?
A Yes.

Q And do you recall what the -- what the claims estimate was for voting purposes under that order?
A It was about $95 million. That was -- it was together with the summary judgment orders of that date. They were separate orders, but that was the lone hearing.
Q And was that public information, that order was publicly filed on the docket; isn't that right?
A Yes, it was.
Q Is there anything in the world that you can think of that would have prevented any claim holder from doing the math to try to figure out the impact on the estimated recoveries from the -- by using that 3018 claims estimate?
A No. It would have -- it would have been quite easy to do.
Q And, in fact, that's what you wound up doing with respect to the January projections, right?
A That's correct.
Q And do you recall when the HarbourVest settlement, when the 9019 motion was filed?
A I don't recall the actual filing. It was subsequent to the UBS, though.
MR. MORRIS: Ms. Canty, if you have it, can we just put it on the screen, to see if we can refresh Mr. Seery's recollection? If we could just look at the very top.
BY MR. MORRIS:
Q Does that refresh your recollection that the 9019 motion

1 was filed on December 23rd?
2 A Yes, it does. The agreement was reached before that, but
3 it took a little bit of time to document the particulars and
4 then to -- to get it filed.
5 Q And this wasn't filed under seal, to the best of your
6 recollection, was it?
7 A No, no. This was -- this was open, and we had a very open
8 hearing about it, because it was a related-party objection.
9 Q And to the best of your recollection, did this 9019 motion
10 publicly disclose all of the material terms of the proposed
11 settlement?
12 A Yes, it did.
13 Q Can you think of anything in the world that would have
14 prevented any interested party from doing the math to figure
15 out how this particular settlement would impact the claim
16 recoveries set forth in the Debtor's disclosure statement?
17 A No. And just again, to be clear, the plan and the
18 projections had assumptions, but the plan was very clear that
19 the denominator was going to be determined by the total amount
20 of allowed claims.
21 Q And, again, at the time that that was filed, you hadn't
22 reached a settlement with HarbourVest, had you?
23 A No.
24 Q And the order on the 3018 motion hadn't yet been filed; is
25 that right?

A That's correct.
Q Okay. Has -- are you aware of any creditor expressing any interest in trying to change their vote as a result of the updates of the forecasts?
A Only Mr. Daugherty. And actually, they have a stipulation with the two -- the two former employees.
Q All right. But to be fair, that wasn't -- had nothing to do with the revisions to the projections? That was just in connection with their settlement; is that right?
A That's correct. As was, I suspect, Mr. Daugherty's, but he'd been aware of the settlements, just like everyone else.
Q Okay. You were asked a couple of questions, I think, by Mr. Rukavina about whether there is anything that you need to do your job on a go-forward basis. And I think you said no. Do I -- do I have that right? Nothing further that you need?
A I -- I'm not really sure what your question means, to be honest.
Q Okay. Fair enough. To be clear, is there any chance that you would accept the position as the Claimant Trustee if the gatekeeper and injunction provisions of the proposed plan were extracted from those documents?
A No. As I said earlier, they're integral in my view to the entire plan, but they're absolutely essential to my bottom.
Q Okay. And through -- through the date of the effective date, are you relying on the exculpation clause of the -- have

you been relying on the exculpation clause in the January 9th order that you testified to at the beginning of this hearing?

A Yeah. Both the January 9th order as well as the July order with respect to my CEO/CRO positions.

Q Okay.

MR. MORRIS: I've got nothing further, Your Honor.

THE COURT: All right. Any recross on that redirect?

A VOICE: I believe Mr. Rukavina is speaking but is muted, Your Honor.

THE COURT: Mr. Rukavina, do you have any recross?

MR. RUKAVINA: Your Honor, I do, yes. Thank you. I apologize.

THE COURT: Okay.

MR. RUKAVINA: Can you hear me now?

THE COURT: Yes.

THE WITNESS: Yes.

MR. RUKAVINA: Thank you.

Mr. Vasek, if you'll please pull up the Debtor's Omnibus Reply, Docket 1807. And if you'll go to Exhibit C. Do a word search for Exhibit C. It's attached to it. Okay. Now scroll down. Stop there.

RECROSS-EXAMINATION

BY MR. RUKAVINA:

Q Mr. Seery, do you see what's attached as Exhibit C to the Omnibus Reply, which is proposed language in the confirmation

order?
A I see the exhibit. I didn't know if this was -- I don't know exactly what it's for. If it's proposed language, I'll accept your representation.
MR. RUKAVINA: Well, scroll back up to Exhibit C, Mr. Vasek. I want to make sure that I understand what you're saying. Scroll back up. Do the word search for where Exhibit C appears first. Start again. Okay. So scroll up.
BY MR. RUKAVINA:
Q So, you'll recall Mr. Morris was asking you about the paragraph in here where you outlined the terms of the agreement with the CLOs. Do you recall that testimony?
A Yes.
Q Okay. And then you see it says, The Debtor and the CLOs agreed to seek approval of this compromise by adding language to the confirmation order. A copy of that language is attached hereto as Exhibit C and will be included in the confirmation order.
Do you see that, sir?
A I do.
Q Okay.
MR. RUKAVINA: Mr. Vasek, go back to Exhibit C.
BY MR. RUKAVINA:
Q So it's correct that this Exhibit C is the referenced agreement that the Debtor and the CLOs will seek approval of,

correct?
A The -- the -- it may be word-splitting, but I believe it says that they've reached agreement and this is the language that will evidence that agreement or embody that agreement.
Q Okay.
MR. RUKAVINA: Scroll down, Ms. Vasek, to the next page, please.
BY MR. RUKAVINA:
Q Real quick, do the CLOs owe the Debtor any money for the management fees?
A I don't -- well, the answer is there are accrued fees that haven't been paid, but when they have cash they run through the waterfall and pay them.
Q And I believe you mentioned to me those accrued fees before. They're several million dollars, correct?
A It -- I don't know right off the top of my head. They can aggregate and then they get paid down in the quarter depending on the waterfall. And it's -- it's not a fair statement by either of us to say the CLOs, as if they're all the same. Each one is different.
Q I understand. But as of today, you agree that the CLOs collectively owe some amount of money to the Debtor in accrued and unpaid management fees?
A I believe that's the case.
Q Okay. And do you believe it's north of a million dollars?

A I don't recall.
Q Okay.
MR. RUKAVINA: Well, scroll down a couple of more lines, Mr. Vasek. Stay there.
BY MR. RUKAVINA:
Q Sir, if you'll read with me, isn't the Debtor releasing each Issuer, which is the CLOs, for and from any and all claims, debts, et cetera, by this provision?
A Claims. Not -- not fees, but claims. I don't believe there's any release of fees that the CLOs might owe and would run through the waterfall here.
Q Okay. For and from any and all claims, debts, liabilities, demands, obligations, promises, acts, agreements, liens, losses, costs, and expenses, including without limitation attorneys' fees and related costs, damages, injuries, suits, actions, and causes of action, of whatever kind or nature, whether known or unknown, suspected or unsuspected, matured or unmatured, liquidated or unliquidated, contingent or fixed.
Are you saying that that does not release whatever fees have accrued and the CLOs owe?
A I don't believe it would. If it did, your client should be ecstatic. But I don't believe it does that.
Q And you don't believe that it releases the CLOs of any and all other obligations that they may have to the Debtor and the

1 estate?
2 A I -- again, I don't believe there are any, but I think
3 it's a broad release of claims away from the actual fees that
4 are generated by the Debtor. I don't believe there's an
5 intention to release fees that have accrued.
6 Q Have you seen this language before I showed it to you
7 right now?
8 A I believe I have, yes.
9 Q Okay. Take a minute. Can you point the Court to anywhere
10 where present or future fees under the CLO agreements are
11 excepted from the release?
12 A I could go through, I'll take your representation, but I
13 don't believe that that's what it -- it's supposed to release
14 fees. Again, if the fees are owed, they get paid, if there
15 are assets there to pay them.
16 Q Okay. This release and this settlement was never noticed
17 out as part of a 9019, was it?
18 A I don't believe so, no.
19 Q Okay. So, other than bringing it up here today, this is
20 the first that the Court, at least, has heard of this,
21 correct?
22 A Yeah, again, I don't --
23 MR. MORRIS: Objection to the form of the question.
24 THE WITNESS: Yeah. I just stated before that I
25 don't think this is a -- that there claims.

THE COURT: Wait. Slow down. I think --

MR. SEERY: Oh, I'm sorry, Your Honor.

THE COURT: -- there was an objection. Go ahead, Mr. Morris.

MR. MORRIS: The notion that this is the first time the Court has heard of this is just factually incorrect. First of all, it's in the document from January 22nd. Second of all, Mr. Seery testified to it last week at the preliminary injunction hearing. I mean, --

THE COURT: I -- I --

MR. MORRIS: -- I don't know what the point of the inquiry is, but there's -- this is not new news.

THE COURT: Okay. I sustain the objection.

BY MR. RUKAVINA:

Q And Mr. Seery, can you point me to any document where counsel for the CLOs has signed this particular confirmation order or any other document agreeing to this language in the confirmation order?

A I don't think there's any document that's signed. I think we already went over that. I think the email is evidence their agreement to the general terms. I don't see any agreement with respect to this particular language.

Q Well, you have no personal information? You're going on what your lawyers told you that the CLOs agreed to, correct?

A That's correct.

Q Okay. You didn't personally --
A Excuse me. That's correct with respect to this language, not with respect to the agreement. I was on the phone when they agreed.
Q Okay. And they agreed orally, you're saying, to basically the assumption of the CLO management agreements?
A Correct.
Q Okay.
MR. RUKAVINA: Thank you, Your Honor. I'll pass the witness.
THE COURT: All right. Other recross?
MR. TAYLOR: Yes, Your Honor, I do.
THE COURT: Go ahead.

RECROSS-EXAMINATION

BY MR. TAYLOR:
Q Mr. Seery, Clay Taylor again. You worked -- I'm sorry, let me restart. I believe you testified earlier, in response to questions by Mr. Morris, that you didn't believe a Chapter 7 trustee would be very effective in monetizing these assets, correct?
A I think I said I didn't believe that the Chapter 7 trustee would be as effective at monetizing the assets as the Reorganized Debtor would be, and me in the role as Claimant Trustee.
Q And one of the reasons that you gave is you believe that

1 the Chapter 7 trustee had to liquidate assets so quickly that
2 it could not be effective; is that correct?
3 A Typically, that's the case, yes.
4 Q You worked for the Lehman trustee, correct?
5 A That's incorrect.
6 Q Okay. Did you work on the Lehman case?
7 A Did I work in the case? No.
8 Q Okay. Did you -- how were you involved within -- within
9 the Lehman case?
10 A It's a long history, but I was a relatively senior person,
11 not senior level, not senior management level person at
12 Lehman. I ran the loan businesses and I helped a number of
13 other places and I -- in the organization. I helped construct
14 the sale of Lehman to Barclays out of the broker-dealer and
15 then helped consummate that sale.
16 Q Okay. I believe, in that case, it was a SIPC -- the
17 trustee was a SIPC trustee, correct?
18 A With respect to the broker-dealer.
19 Q Okay. And you believe that a SIPC trustee is very -- has
20 very similar rules with respect to asset sales; is that
21 correct?
22 A There are some similarities, absolutely.
23 Q Okay. And so in that case, the trustee was in place for
24 seven years, yet you believe -- you want this Court to believe
25 that a Chapter 7 trustee has to liquidate assets in a very

short time frame, is that correct?

MR. MORRIS: Objection to the form of the question.

THE WITNESS: Yeah, in the Lehman case, --

THE COURT: Overruled.

THE WITNESS: I'm sorry, Judge.

THE COURT: Go ahead.

THE WITNESS: In the Lehman case, the SIPC trustee spent years litigating, not liquidating. The broker-dealer was sold in our structured deal to Barclays, and then the SIPC trustee liquidated the remainder of the estate, which was the broker-dealer, but most of it had been sold to Barclays. It was really a litigation case.

BY MR. TAYLOR:

Q But it did -- that trustee did sell off subsequent assets after the initial sale, correct?

A That trustee, I don't think, managed -- I don't know about that. The trustee didn't really manage any assets. Other than litigations.

Q You've also testified that you didn't believe or that you would not take on this role without the gatekeeper and injunction -- gatekeeper role and injunction being in place; is that correct?

A Yes.

Q And you're also familiar with the Barton Doctrine, correct?

A I'm not.
Q Okay. Do you believe that a Chapter 7 trustee could be sued by third parties without obtaining either relief from this Court -- let me just stop there. Do you believe that a Chapter 7 trustee could be sued without seeking leave of this Court?
A I think it would be difficult. I know that Chapter 7 trustees have qualified immunity, so I think, whether it would be leave of this Court or it's just that there's a very high bar to suing them, I'm not exactly sure. It's not something I've spent time on.
Q Okay. So a hypothetical Chapter 7 trustee would have no need of the gatekeeper role or injunction if this case were converted to one under Chapter 7, correct?
A That's probably true.
Q Thank you.
MR. TAYLOR: No further questions.
THE COURT: All right. Any other recross?
MR. DRAPER: Your Honor, I have nothing --
THE COURT: All right.
MR. DRAPER: -- further.
THE COURT: All right. I think we're done, but anyone I've missed?
All right. Mr. Seery, it's been a long day. You are excused from the virtual witness stand.

THE WITNESS: Thank you, Your Honor.

THE COURT: All right. Mr. Morris, let's see if there's anything else we can accomplish today. It's 4:18 Central time. Who would be your next witness?

MR. MORRIS: My next witness would be John Dubel, Your Honor.

THE COURT: All right. Can you give us a time estimate for direct?

MR. MORRIS: I wouldn't expect Mr. Dubel to be more than 20 minutes or so, but I would offer the Court, if you think it would be helpful, counsel for the CLO Issuers is on the call, and I believe that they would be prepared to just confirm for Your Honor that there is an agreement in principle, just as Mr. Seery has testified to, and maybe you want to hear from her. I know she's not really a witness, but she might be able to make some representations to give the Court some comfort that everything Mr. Seery has said is true.

THE COURT: I think that would be useful. Is it Ms. Anderson or who is it?

MS. ANDERSON: That is -- it is, Your Honor. And you know, I appreciate the testimony given. I certainly do not want to testify, but thought it might be useful for the Court to hear from us.

Amy Anderson on behalf of the Issuers from Jones Walker. Schulte Roth also represents the Issuers. And I can represent

to the Court that the agreement as it's represented on Docket 1807, as more particularly described in Exhibit C, which Your Honor has seen, is the agreement reached between the Issuers and the Debtor.

There was some testimony about fees owed, accrued fees owed to the Debtor. I certainly cannot speak to the substance of each particular management agreement with each CLO. They are all distinct and unique and very lengthy documents. I will -- I can represent to the Court that any accrued fees that are owed were not intended to be included in the release. It is -- it is not meant to release fees owed to Highland under the particular management agreements.

Of course, if the Court has any questions or if I can provide anything further, I'm happy to. And I will be on the hearing today and tomorrow, but I thought it might be useful, given the topic of the testimony this afternoon.

THE COURT: All right. That was useful. Thank you, Ms. Anderson.

All right. Well, Mr. Morris, shall we go ahead and hear from Mr. Dubel today, perhaps finish up a second witness?

MR. MORRIS: Yeah. I think we have the time. I think Mr. Dubel is here. Are you here, Mr. Dubel?

MR. DUBEL: I am. Can you hear me, Your Honor?

THE COURT: I can hear you, but I cannot see you. Oh, now I can see you. Please raise your right hand.

JOHN S. DUBEL, DEBTOR'S WITNESS, SWORN

THE COURT: All right. Thank you. Mr. Morris, go ahead.

MR. MORRIS: Thank you very much, Your Honor.

DIRECT EXAMINATION

BY MR. MORRIS:

Q Mr. Dubel, can you hear me?

A I can, Mr. Morris.

Q Okay. Do you have a position today with the Debtor, sir?

A I am a director of Strand Advisors, Inc., which is the general partner of the Debtor.

Q Okay. And can you --

MR. MORRIS: Your Honor, just as a reminder, I'm going to ask Mr. Dubel to describe his professional experience in some detail, to put into context his testimony, but his *C.V.* can be found at Exhibit 6Y as in yellow on Docket No. 1822.

THE COURT: All right.

BY MR. MORRIS:

Q Mr. Dubel, can you describe your professional background?

A Yes. I have approximately, almost, and I hate to say it because it's making me feel old, but I have almost 40 years of experience working in the restructuring industry.

I have served in many roles in that, both as an advisor, an investor in distressed debt, and also a member of

1 management teams, and as a director, both an independent
2 director and a non-independent director.
3 My executive roles have included the -- both an executive
4 director, chief executive officer, president, chief
5 restructuring officer, chief financial officer. And I have
6 been involved in some of the largest Chapter 11 cases over the
7 last several decades, including cases like *WorldCom* and
8 *SunEdison*.
9 Q Let's focus your attention for a moment just on the
10 position of independent director. Have you served in that
11 capacity before this case?
12 A I have.
13 Q Can you describe for the Court some of the cases in which
14 you've served as an independent director?
15 A Sure. I've served as an independent director in several
16 cases that were I'll call post-reorg cases. *Werner Company*,
17 which was the largest climbing equipment manufacturer in the
18 world, manufacturer of ladders, Werner Ladders. You'll see
19 them on every pickup truck running around the countryside.
20 *FXI Corporation*, which is a -- one of the largest foam
21 manufacturers. Everybody's probably slept or sat on one of
22 their products.
23 *Barneys New York*, back in 2012, when they did an out-of-
24 court restructuring. I had previously been involved with
25 Barneys 15 years before that, and so I was called upon because

of my knowledge to be an independent director in that situation. Have had no relationship with Barneys since it emerged from Chapter 11 back in 1998.

I have been the independent director in *WMC Mortgage*, which was a mortgage company owned by General Electric.

And I am currently serving as an independent director in a company -- in two companies. One, *Alpha Media*, which is a large radio station chain that recently filed Chapter 11, I believe it was late Sunday night, and I am also an independent director in the *Purdue Pharma* bankruptcy, and have served prior to the bankruptcy and am the chair of the special independent committee of directors -- special committee of independent directors in that particular situation.

Q That sounds like a lot. In terms of other fiduciary capacities, I think your *C.V.* refers to Leslie Fay. Were you involved in that case, and if so, how?

A I was. That was -- for those people who may remember it, that goes back into the 1993 era. *Leslie Fay* was a large apparel manufacturer, and at the time was one of the largest companies that had gone through an extensive fraud. I say at the time because it was about a $180 million fraud, which pales by some of the ones that have followed it.

I was brought in as the executive vice president in charge of restructuring, chief financial officer, and was also added to the board of directors. Even though I wasn't independent,

I was added to the board of directors to have the fresh face on the board in that particular situation because of the fraud that had taken place.

Q And --

A *Sun* --

Q Go ahead.

A *SunEdison*, I was brought in as the CEO. Actually, initially, as the chief restructuring officer, with a mandate to replace the CEO, which took place shortly after I was brought on board and -- because of various issues surrounding investigations by the SEC, DOJ, and allegations by the creditors of fraud. And so I was brought in to run the company through its Chapter 11 process.

As I'd mentioned earlier, *WorldCom*, I was brought in at the beginning of the case as the fresh chief financial officer. And I think everybody is familiar with what happened in the *WorldCom* situation.

Q All right. Based on that experience, do you have a view as to whether the appointment of independent directors is unusual?

A It is not. More recently, it has -- it had been in the past. Usually, you know, they would try and take the existing directors and form a special committee of the existing directors. But I think the state of the art has become more where independent directors are brought in, mainly because the

1 cases have become a lot more complex in nature, and larger,
2 and the transactions themselves are much more sophisticated.
3 And so having somebody independent has been important for
4 analyzing the various transactions. And also, quite often,
5 it's just bringing a fresh, independent voice to the company
6 on the board.
7 Q Do you have an understanding as to the purpose and the
8 role of independent directors generally in restructuring and
9 bankruptcy cases?
10 A Sure. As I kind of alluded to a little bit earlier, the
11 -- probably the most critical thing is for restoring
12 confidence in the company and in the management in terms of
13 corporate governance, especially when there have been troubled
14 situations, where -- whether it's been fraud or allegations
15 made against the company and its prior management or when
16 management has left under difficult situations.
17 Also, you know, independent thought process being brought
18 to the board is very important for helping guide companies.
19 It's quite often the existing management team or the existing
20 board may get stuck in a rut, as you can say, you know, in
21 terms of their thinking on how to manage it, and having
22 somebody with restructuring experience who provides that
23 independent voice is very important to the operations.
24 In addition, having someone who can look at conflicts that
25 might arise between shareholders or shareholders and the board

1 members is important. As I mentioned earlier, the *WMC*
2 *Mortgage* situation was one where I was brought on to -- as an
3 independent member of the board to effectively negotiate an
4 agreement or a settlement between WMC and its parent, General
5 Electric. That entity was being -- WMC was being sued for
6 billions of dollars, and there were issues as to whether or
7 not General Electric should fund those obligations. And so
8 that was a role that is quite often occurring in today's day
9 and age.
10 In addition, evaluating transactions for companies is
11 important, whereby either the shareholders who sit on the
12 board or board members may be involved in those transactions,
13 needing an independent voice to review it. And, you know, I
14 have served in situations. Again, *Barneys New York* and *Alpha*
15 *Media* is another example where, as an independent director, I
16 am one of the parties responsible for evaluating those
17 transactions and making recommendations to the entire board.
18 And then, again, you know, situations where it's just
19 highly-contentious and having, as I said, having that
20 independent view brought to the table is something that is
21 very helpful in these cases.
22 Q I appreciate the fulsomeness of the answer. During the
23 time that you served in these various fiduciary capacities, is
24 it fair to say you spent a lot of time considering and
25 addressing issues relating to D&O and other executive

1 liability issues?
2 A It's usually one of the things that you get involved with
3 thinking about prior to taking on the role because you want to
4 make sure that there are the appropriate protections for the
5 director.
6 Q Can you describe for the Court some of the protections
7 that you've sought or that you've seen employed in some of the
8 cases you've worked on, including this one, by the way?
9 A Sure. I mean, one of the first things you look to is does
10 the company -- will the company indemnify the director for
11 serving in that capacity? And if the company will not
12 indemnify, then there's always a question as to why not, and
13 it's probably something you don't want to get involved with.
14 Generally, that is something that I don't think I've ever
15 seen a case where there has not been indemnification.
16 Obviously, it would, you know, cause great pause or concern if
17 they weren't willing to indemnify. But that is important.
18 Providing D&O insurance is very important. And in most
19 situations, you know, over the last 10-15 years, if there's
20 not adequate D&O insurance -- quite often, the D&O insurance
21 has been tapped out because of claims that will -- have been
22 brought or are anticipated to be brought -- new D&O insurance
23 is something that's front and center for the minds of
24 independent directors such as myself.
25 As you -- that gets you into the case and gets you moving.

1 As you start to look towards the confirmation and exit from
2 the case, things that would be appropriate, that, you know,
3 would always be something you would want to look at would be
4 exculpation language, releases. And in this particular case,
5 the injunction, or what Mr. Seery earlier referred to as the
6 gatekeeper clause, is something that is very important for
7 directors, both, you know, as they're thinking through it and
8 as they emerge.
9 Q All right. Let's shift now to this case, with that
10 background. How did you learn about this case?
11 A I had a party who was involved in the case reach out to me
12 in early part of December of 2019 to see if I would be
13 interested in getting involved. I think that was about the
14 time -- it was after -- as I recall, it was after the case had
15 been moved to Dallas and when there was a -- consideration of
16 either a Chapter 11 or a Chapter 7 trustee. I can't remember
17 exactly which it was. But there was talk about a motion to
18 bring on a trustee and get rid of all the management and the
19 like and such.
20 Q Can you describe in as much detail as you can recall the
21 facts and circumstances that led to your appointment as an
22 independent director?
23 A Sure. I, as I said, I had -- early December, I had an --
24 one of the parties involved -- had, probably within the next
25 week, probably two or three others -- that reached out to see

if I would be interested in participating. I met with the Creditors' Committee or -- I'm not sure if it was all the members, but representatives of the Creditors' Committee, along with counsel, and I believe financial advisors were involved. They walked me through the issues. They wanted to hear about my *C.V*. Quite a few of them knew me, knew me well, but others wanted to hear about my background and how I would look at things as an independent director.

That went through into the latter part of December. I knew that they were talking to other parties. I think it was probably right around the first of the year or so that I was informed, maybe a little bit earlier than that, that I was informed that Mr. Seery was one of the other parties that they were talking to, and Mr. Seery and I were put in touch with each other. I had worked with Mr. Seery back probably nine years earlier when I was the CEO of FGIC. He was involved in a matter that we were restructuring, and so knew him a little bit and was comfortable working with him as a, you know, another independent director.

Then we took the time that we had to to -- or, I took the time to -- from the beginning, you know, the early part of December, look at the docket, understand what was taking place. I -- in addition, I met with the company and its advisors, in-house counsel, the folks at DSI who were at the time the CRO and the company's counsel to better understand

1 some of the issues.
2 Mr. Seery and I, as I said, were both selected, and we
3 went through the process of, I guess, breaking the tie, I
4 think, if I could say it that way, amongst the creditors and
5 the Debtor as to who would be the third member of the board.
6 And we were given the opportunity to go out, interview, and
7 select the third member, which resulted in Russell Nelms'
8 appointment to the board. And also during that time, we were
9 given the opportunity to have some input -- not a hundred
10 percent input, but some input -- on the January 9th order that
11 -- the January 9, 2020 order that was put in place appointing
12 us and giving us some of the protections that we felt were
13 appropriate and necessary in this case.
14 Q All right. We'll get to that in a moment, but during this
15 diligence period, did you form an understanding as to why an
16 independent board was being formed, why it was being sought?
17 A Yes. There was, my words, there was a lot of distrust
18 between the creditors and the management -- not the CRO, but
19 the prior management of the company -- and there had been a
20 motion brought both to obviously bring the case back to Dallas
21 from I think it was originally in Delaware and then there was
22 a motion to seek, you know, to remove management and put in a
23 trustee.
24 There had been a dozen years of litigation with one party,
25 about eight or nine years with another major party, and

1 several other of the major creditors were litigants. The
2 other, as I understood, the other creditors, main creditors in
3 the case were all lawyers who had not yet gotten paid for the
4 litigation work that they had done. And so it was obvious
5 that this was a very -- a highly-litigious situation.
6 Q In addition to speaking with the various constituents, did
7 you do any diligence on your own to try to understand the case
8 before you accepted the appointment?
9 A Yes. I went to the docket to look at all the -- not every
10 single thing that had been filed, but to try and look at all
11 the key, relevant items that had been filed, get a better
12 understanding of what was out there. Looked at some of the
13 initial filings of the company in terms of the, you know, the
14 creditors, to understand who the creditor base was per the
15 schedules that had been filed. Looked at the -- some of the
16 various pleadings that had been put in place.
17 Q Did you form a view as to the causes of the bankruptcy
18 filing?
19 A Litigation. That was my clear view. This company had
20 been in litigation with multiple parties, various different
21 parties, since around 2008. Generally, you would see
22 litigation like the types that were, you know, that were here,
23 you know, you'd litigate for a while, then you'd try and
24 settle it.
25 It did not appear to me that there was any intention on

1 the -- the Debtor to settle these litigations, but would
2 rather just continue the process and proceed forward on the
3 litigation until the very last minute. And so it was obvious
4 that this was going to -- that the Debtor was a, as I said, a
5 highly-litigious shop, and that was one of the causes,
6 obviously, the cause of the filing, along with the fact that
7 judgments were about to be entered against the Debtor.
8 Q All right. And in January 2020, do you recall that's when
9 the agreement was reached between the Debtor, the Committee,
10 and Mr. Dondero?
11 A Yeah, it was the first week or so, which resulted in a
12 hearing on I believe it was January 9th in front of Judge
13 Jernigan.
14 Q And as a part of that -- I think you testified at that
15 hearing. Do I have that right?
16 A I don't recall if I did. I might have. I might have
17 testified at a subsequent hearing. But --
18 Q But was --
19 A -- I was in the courtroom for that hearing, yes.
20 Q Was it part of that process by which you accepted the
21 appointment as independent director?
22 A I accepted it based upon the order that had been
23 negotiated amongst the parties, the creditors, the Debtor, Mr.
24 Dondero, and others. And that was the key thing that was --
25 and approved by the Court on that date. And that was key for

my acceptance of the role as an independent director.

Q And did you and the other prospective independent directors participate in the negotiation of the substance of the agreement?

A We did. We didn't have a hundred percent say over it, but we were able to get our voices heard. As Mr. Seery testified earlier, he was instrumental in coming up with an idea about how to put in place the injunction, you know, the -- I think he referred to it as the gatekeeper injunction, which was obviously in this case very critical to all three of us: Mr. Seery, Mr. Nelms, and myself.

Q Can you describe for the Court kind of the issues of concern to you and the other prospective board members? What was it that you were focused on in terms of the negotiations?

A Well, obviously, indemnification was important, but that was something that was going to be granted. Having the right to obtain separate D&O insurance just for the three directors was important. We were concerned that Strand Advisors, Inc. really had no assets, and so we wanted to make sure that the Debtor was going to get -- was going to basically guarantee the indemnification.

The -- because of the litigious nature and what we had heard from all of the various parties involved, including people inside the Debtor who we had talked with, that it would be something that was important for us to make sure that the

1 injunction, the gatekeeper injunction was put in place.
2 Q And can you elaborate a little bit on I think you said you
3 had done some diligence and you had formed a view as to the
4 causes of the bankruptcy filing, but did this case present any
5 specific concerns or issues that you and the board members had
6 to address perhaps above and beyond what you experienced in
7 some of the other cases you described?
8 A Well, as I said earlier, the fact that the litigation --
9 the various litigations with the creditors have been going on
10 for what I viewed as an inordinate amount of years, and that
11 it was clear from my diligence that I had done that this had
12 been directed by Mr. Dondero, to keep this moving forward in
13 the litigation, and to, in essence, just, you know, never give
14 up on the litigation.
15 It was important that the types of protections that we
16 were afforded in the January 9th order were put in place,
17 because we -- none of us -- none of the three of us, and
18 myself in particular, did not want to be in a position where
19 we would be sued and harassed through lawsuits for the next,
20 you know, ten years or so. That's not something anybody would
21 want to sign up for.
22 Q All right. Let's look at the January 9th order and the
23 specific provisions I think that you're alluding to.
24 MR. MORRIS: Can we call up Exhibit 5Q, please?
25 THE WITNESS: Pardon me while I put my glasses on to

1 read this.
2 MR. MORRIS: All right. And if we can go to
3 Paragraph 4.
4 BY MR. MORRIS:
5 Q Is that the paragraph, sir, that was intended to address
6 the concern that you just articulated about Strand not having
7 any assets of its own?
8 A Yes, it is.
9 Q And can you just describe for the Court how that
10 particular provision addressed that concern?
11 A Sure. Since we were directors of Strand, which is the
12 general partner of the Debtor, we felt it was important that
13 the general -- that Highland, the Debtor, would provide the
14 guaranty on indemnification, because Highland had the assets
15 to back up the indemnification.
16 It was also pretty clear, from my experience in having
17 placed D&O insurance, you know, over the last 25-30 years,
18 that if there was no, you know, opportunity for
19 indemnification, putting in place insurance would be very
20 difficult or exorbitantly expensive. So having this
21 indemnification by Highland was a very important piece of the
22 order that we were seeking.
23 Q And the next piece is the insurance piece in Paragraph 5.
24 Do you see that?
25 A I do.

Q Did you have any involvement in the Debtor's efforts to obtain D&O insurance for the independent board?
A I did.
Q Can you just describe for the Court what role you played and what issues came up as the Debtor sought to obtain that insurance?
A Sure. The Debtors had been looking to get an insurance policy in place. They were not able to do that. I happen to have worked with an insurance broker on D&O situations in some very difficult situations over the years and brought them into the mix. They were able to go out to the market and find a policy that would cover us, the -- kind of the key components of that policy, though, were, number one, the guaranty that HCMLP would give -- I'm sorry, the guaranty that HCMLP would give to Strand's obligations, and also the -- I'll call it the gatekeeper provision was very important because these parties did not want to have -- they wanted to have what was referred to, commonly referred to as the Dondero Exclusion.
So while we were -- we purchased a policy that covered us, it did have an exclusion, unless there were no assets left, and then the what I'll call -- we refer to as kind of a Side A policy would kick in.
Q Okay. What do you mean by the Dondero Exclusion?
A The insurers did not want to cover the -- any litigation that Mr. Dondero would bring against directors. It was pretty

1 commonly known in the marketplace that Mr. Dondero was very
2 litigious, and insurers were not willing to write the
3 insurance without the protections that this order afforded
4 because they did not want to be hit with frivolous -- hit with
5 claims on the policy for frivolous litigation that might be
6 brought.
7 MR. TAYLOR: Your Honor, this is Mr. Taylor. I've
8 got to object to the last answer. He testified as to what the
9 insurers' belief was and what they would or would not do based
10 upon their own knowledge. It's not within his personal
11 knowledge. And therefore we'd move to strike.
12 THE COURT: I overrule that objection.
13 MR. MORRIS: Your Honor?
14 THE COURT: I overrule the objection.
15 MR. MORRIS: Thank you. Thank you, Your Honor.
16 BY MR. MORRIS:
17 Q Mr. Dubel, can you explain to the Court, in your work in
18 trying to secure the D&O insurance, what rule the gatekeeper
19 provision played in the Debtor's ability to get that?
20 A Based upon my discussions with the insurance broker, who I
21 have worked with for 25-plus years, had that gatekeeper
22 provision not been put in place, we would not have been able
23 to get insurance.
24 Q All right. Let's look at the gatekeeper provision.
25 MR. MORRIS: Can we go down to Paragraph 10, please?

Perfect. Right there.

BY MR. MORRIS:

Q Is this gatekeeper provision, is this also the source of the exculpation that you referred to?

A Yes.

Q And what's your understanding of how the exculpation and gatekeeper functions together?

A Well, my apologies, I'm not an attorney, so just from a business point of view, the way I look at this is that, you know, obviously, we're -- you know, the directors are not protected from willful misconduct or gross negligence, but any negligence -- you know, claims brought under negligence and the likes of such, and things that might be considered frivolous, would have to first go to Your Honor in the Bankruptcy Court for a review to determine if they were claims that should be entitled to be brought.

Q If you take a look at the provision, right, do you understand that nobody can bring a claim without -- in little i, it says, first determining -- without the Court first determining, after notice, that such claim or cause of action represents a colorable claim of willful misconduct or gross negligence against an indirect -- independent director. Do you see that?

A I do.

Q Is it your understanding that parties can only bring

1 claims for gross negligence or willful misconduct if the Court
2 makes a determination that there is a colorable claim?
3 A That's my understanding.
4 Q And the second --
5 A I think they have the right -- I think they have the right
6 to go to the Court to ask if they can bring the claim, but the
7 Court has to make the determination that it's a colorable
8 claim for willful misconduct or gross negligence.
9 Q And if the Court -- is it your understanding that if the
10 Court doesn't find that there is a colorable claim of willful
11 misconduct or gross negligence, then the claim can't be
12 brought against the independent directors?
13 A That is my understanding, yes.
14 Q And was -- taken together, Paragraphs 4, 5, and 10, were
15 they of importance to you and the other independent directors
16 before accepting the position?
17 A They were absolutely critical to me and definitely
18 critical to the other directors, because we all negotiated
19 that together, and it would -- I don't -- I don't think any of
20 the three of us would have taken on this role if those
21 paragraphs had not been included in the order.
22 Q Okay. Just speaking for yourself personally, is there any
23 chance you would have accepted the appointment without all
24 three of those provisions?
25 A I would not have.

Q And why is that? In this particular case, why did you personally believe that you needed all three of those provisions?

A Well, you know, people like myself, you know, someone who's coming in as an independent director, come in in a fiduciary capacity. And, you know, we take on risks. Now, granted, in a Chapter 11 case, as the saying goes, you know, it's a lot safer because everything has to be approved by the Court, but there are still opportunities for parties to, in essence, have mischief going on and bring nuisance lawsuits that would take a lot of time and effort away from either the role of our job of restructuring the entity or post-restructuring, would just be nuisance things that would cost us money. And we, you know, I did not want to be involved in that situation, knowing the litigious nature of Mr. Dondero from the research that I had done, you know, the diligence that I had done. I did not want to subject myself to that. And it has proven an appropriate and very solid order because of the conduct of Mr. Dondero, as Mr. Seery has testified to earlier.

Q Do you have a view as to what the likely effect would be on future corporate restructurings if you and your fellow directors weren't able to obtain the type of protection afforded in the January 9th order?

A I think it would be very difficult to find qualified

1 people who would be willing to serve in these types of
2 positions if they knew they had a target on their backs. You
3 know, it was something that was clear to us, to Mr. Seery, Mr.
4 Nelms, myself at the time, that if we had a target -- we felt
5 like we would have a target on our back if we didn't have
6 these protections.
7 It just wasn't worth the risk, the stress, the
8 uncertainty, the potential cost to us. And so I don't think
9 anybody else would be, you know, willing to take on the roles
10 as an independent director with the facts and circumstances
11 and the players involved in this particular case.
12 MR. MORRIS: I have no further questions, Your Honor.
13 THE COURT: All right. Pass the witness. Let's see.
14 You went -- I'm going to give a time. You went 32 minutes.
15 So, for cross of this witness, I'm going to limit it to an
16 aggregate of 32 minutes. Who wants to go first?
17 MR. DRAPER: Your Honor, this is Douglas Draper.
18 I'll be happy to go first.
19 THE COURT: All right.
20 CROSS-EXAMINATION
21 BY MR. DRAPER:
22 Q Mr. Dubel, prior to your engagement, did you happen to
23 read the case of *Pacific Lumber*?
24 A I did not.
25 Q And were you advised about *Pacific Lumber* by somebody

other than a -- your lawyer?
A I'm not familiar with the case at all, Mr. Draper.
Q Are you aware, and you've been around a long time, that different circuits have different rules for liabilities of officers, directors, and people like that?
A I am aware that there are different, I don't know what the right term is, but precedents, I guess, in different circuits for any number of things, whether it's a sale motion or protections of officers and directors or anything. So each circuit has its own unique situations.
Q And one last question. On a go-forward, after -- if this plan is confirmed and on the effective date, you will not have any role whatsoever as an officer or director of the new general partner, correct?
A I have not been asked to. As Mr. Seery testified, he may ask for assistance or just -- in most situations that I'm involved with, I may have a continuing role just as a -- I'll call it an advisor or somebody to provide a history. But at this point in time, I have not been asked to have any involvement.
Q And based on your experience, you know that there's a different liability for a director and an officer versus somebody who is an advisor?
MR. MORRIS: Objection to the form of the question. No foundation.

THE COURT: Overruled.

MR. DRAPER: Mr. Dubel has shown --

THE COURT: Mr. Dubel, you can answer if you know.

MR. DRAPER: Mr. Dubel, you can answer.

THE WITNESS: I'm sorry, Your Honor, I didn't hear you say overruled. Thank you.

Mr. Draper, I apologize, could you repeat the question?

BY MR. DRAPER:

Q The question is you know from your experience that there's a different liability for somebody who is an officer or director versus somebody who's an advisor?

A Yes, that's my experience, which is why in several situations post-reorganization, while I have not been involved *per se*, and I use the term involved meaning, you know, on a day-to-day basis, if someone asks me to assist, I'll usually ask them to bring me in as a non -- an unpaid employee or a, you know, a nominally-amount-paid employee, so that I would be protected by whatever protections the company might provide.

MR. DRAPER: I have nothing further for this witness, Your Honor.

THE COURT: All right. Other cross?

MR. TAYLOR: Yes, Your Honor.

MR. RUKAVINA: Yes, Your Honor.

MR. TAYLOR: Oh, go ahead, Davor.

MR. RUKAVINA: No, Clay, go ahead.

CROSS-EXAMINATION

BY MR. TAYLOR:

Q Mr. Dubel, this is Clay Taylor here on behalf on Mr. Dondero. I believe you had previously testified in response to questions from Mr. Morris that Mr. Dondero had engaged in a pattern of litigious behavior; is that correct?

A I believe that's the testimony I gave, yes.

Q Okay. And please give me the specific examples of which cases you believe he has engaged in overly-litigious behavior.

A Well, all of the cases that resulted in creditors, large creditors in our bankruptcy. That would be the UBS situation, the Crusader situation which became the Redeemer Committee, litigation with Mr. Daugherty, with Acis and Mr. Terry. And as I mentioned earlier, I'd, you know, been informed by members of the management team that it was Mr. Dondero's style to just litigate until the very end to try and grind people down.

Q Okay. Was Mr. Dondero or a Highland entity the plaintiff in the UBS case?

A No, but what was referred -- what I was referring to was the nature in which he defended it and went overboard and refused to ever, you know, try and settle things in a manner that would have gotten things done. And just looking at, having been involved in the restructuring industry for the last 40 years, as I said, almost 40 years, and been involved

in many, many litigious situations, it's obvious when someone is litigious, whether they're the plaintiff or the defendant.

Q So are you personally familiar with the settlement negotiations in the UBS case that happened pre-bankruptcy, then?

A I have been informed that there were settlement negotiations, and subsequently determined, through discussions with the parties, that they weren't really close to -- to a settlement.

Q But are you aware of --

A Mr. Dondero might have thought they were, but they were not.

Q Okay. Would you be surprised to learn if UBS had offered to settle pre-bankruptcy for $7 million?

A As I understand, settlements -- settlement offers pre-bankruptcy had a tremendous number of -- I don't know what the right term is -- things tied to it and that clearly were never going to get done.

Q Okay. When you say things were tied to it, what things were tied to it?

A I don't know all of the settlement discussions that took place, but what I was informed was that there were a lot of conditions that were included in that. And it's -- if it had been an offer of $7 million and Mr. Dondero didn't settle for that, there must have been a reason why. So, you know, since

the entities -- all of the entities within the Highland Capital empire, if you'd call it that, were being sued for almost a billion dollars.

Q Okay. And you say there was lots of conditions that were tied to that. What were the conditions?

A As I said earlier, I wasn't informed of them on all the prepetition settlements. That's just what I was told, there was conditions.

Q Okay. And who were you told these things by?

A Both external counsel and internal counsel. Mr. Ellington, Scott Ellington, and Isaac -- the litigation counsel.

Q Okay. So --

A That's -- sorry.

Q Okay. In each of these cases, you were informed by your views by statements that were made to you by other people?

A Yes.

Q Okay.

A Made -- and particularly made by members of management of the Debtor, which is pretty informed.

Q Okay. Which members of management were those?

A As I just testified, it was Mr. Ellington, who was the general -- the Debtor's general counsel, and Mr. Leventon, Isaac Leventon, who was the -- I believe his title was associate general counsel in charge of litigation.

Q Okay. Thank you.

MR. TAYLOR: No further questions.

THE COURT: All right. Mr. Rukavina?

CROSS-EXAMINATION

BY MR. RUKAVINA:

Q Mr. Dubel, we've never met, although I think we were on the phone once together. I know you're a director, so you're at the top, but having been in this case for more than a year, you probably have some understanding of the assets that the Debtor has, don't you?

A I do, but I'm not as facile with it as Mr. Seery, obviously.

Q Sure. Is it true, to your understanding, that the Debtor owns various equity interests in third-party companies?

A Either directly or indirectly. That's my understanding, yes.

Q Okay. Have you heard of an entity called Highland Select Equity Fund, LP?

A I have.

Q And is that a publicly-traded company?

A I'm not familiar with its nature there, no.

Q Do you know how much of the equity of that entity the Debtor owns?

A I don't know off the top of my head, no.

Q And again, these may be unfair questions because you're at

the top, so I'm not trying to make you look foolish. I'm just trying to see. Let me ask one more. Have you heard of Wright, W-R-I-G-H-T, Limited?

MR. MORRIS: Objection, Your Honor. Beyond the scope.

MR. RUKAVINA: Your Honor, I can recall him on my direct, then.

THE COURT: Yeah. I'll --

MR. RUKAVINA: But I'd just rather get it over with.

THE COURT: I'll allow it.

MR. MORRIS: All right. If we're going to get rid of --

THE COURT: Overruled.

MR. MORRIS: No, that's fine.

BY MR. RUKAVINA:

Q Have you heard of Wright, W-R-I-G-H-T, Limited?

A I think I have, but I just don't recall it, Mr. Rukavina. I'm sorry, Rukavina. Sorry.

Q It's okay. It's a --

A I'm looking at your chart here, at your name here, and it looks like Drukavina, so I really apologize.

Q Believe it or not, it's actually a very famous name in Croatia, although it means nothing here.

So, all of the entities that the Debtor owns equity in, I guess you probably, just because, again, you're not in the

1 weeds, you can't tell us how much of that equity the Debtor
2 owns, can you?
3 A I can't individually, no. You know, Mr. Seery is our CEO
4 and he's responsible for the day-to-day, you know, issues. So
5 usually we look at it more on a consolidated basis and not in
6 the, you know, down in the weeds, as you refer to it, unless
7 something specific came up.
8 Q Well, would you remember whether, when Mr. Seery or the
9 prior CRO would provide you, as the board member, financial
10 reports, whether that included P&Ls and balance sheets and
11 financial reports for the entities that the Debtor owned
12 interests in?
13 A We might -- we would have seen certain consolidating
14 reports that might -- that would be, you know, consolidating
15 financial statements that would be P&Ls. Where we didn't
16 consolidate them, I'm not sure we saw the actual individual-
17 entity P&Ls on a regular basis. We might have seen them if
18 there was a transaction taking place. But again, you know, I
19 don't have -- I don't remember every single one of them, no.
20 Q And you would agree with me, sir, that the Pachulski law
21 firm is an excellent restructuring, reorganization, insolvency
22 law firm, wouldn't you?
23 A Yes, I would agree with you there.
24 Q Okay. And you would expect them to ensure that anything
25 that has to be filed with Her Honor is timely filed, wouldn't

you?
A I would expect that they would follow the rules.
Q Okay. And you have the utmost of confidence, I take it, in your CRO, don't you?
A I have a tremendous amount of confidence in our CEO, who also happens to hold the title of CRO, yes, if that's what you're referring to as, Mr. Seery.
(Interruption.)
MR. RUKAVINA: John.
BY MR. RUKAVINA:
Q Okay, I think -- yeah, I think I heard that you have tremendous confidence in the CEO, who happens to be the CRO, right?
A Yes, that's the case.
MR. RUKAVINA: Thank you, Your Honor. I'll pass the witness.
THE COURT: All right. Any other cross of Mr. Dubel? All right. Mr. Morris, redirect?
MR. MORRIS: Yeah, just very briefly, Your Honor.
REDIRECT EXAMINATION
BY MR. MORRIS:
Q You were asked about that *Pacific Lumber* case, Mr. Dubel; do you remember that?
A I do remember being asked about it.
Q And you weren't familiar with that case, right?

A I'm not familiar with the name of the case, no.
Q But you did know that the exculpation and gatekeeping provisions were going to be included in the order; is that fair?
A I did.
Q And did you testify that you wouldn't have accepted the position without it?
A I did testify that way.
Q And if you knew that you couldn't get those provisions in the Fifth Circuit, would you ever accept a position as an independent director in the Fifth Circuit on a go-forward basis?
A Not in a situation such as this, no.
Q Okay. Okay.
MR. MORRIS: No further questions, Your Honor.
THE COURT: All right. Any recross on that narrow redirect?
All right. Well, Mr. Dubel, you are excused from the virtual witness stand.
THE WITNESS: Thank you, Your Honor.
THE COURT: All right. I want to go ahead and --
MR. DUBEL: Do you mind if I turn my video off?
THE COURT: I'm sorry, what?
MR. DUBEL: I said, do you mind if I turn my video off?

THE COURT: No, you may. That's fine.

MR. DUBEL: Thank you, Your Honor.

THE COURT: All right. I want to break now, unless there's any quick housekeeping matter. Anything?

MR. MORRIS: No, Your Honor, but I would just ask all parties to let me know by email if they have any objections to any of the exhibits on the witness list that was filed at Docket No. 1877, because I want to begin tomorrow by putting into evidence the balance of our exhibits.

MR. RUKAVINA: And Your Honor, I was responsible for this due to an internal mistake. The only ones I have an objection to are -- is that 7? John, is that 7, right, 7OO --

MR. MORRIS: Yes.

MR. RUKAVINA: Your Honor, I only have an objection to 7O and 7P, although I think -- think the Court has already admitted 7P, so my objection is moot.

THE COURT: I have.

MR. RUKAVINA: Okay.

THE COURT: So, what --

MR. RUKAVINA: Then it would just be --

THE COURT: Go ahead.

MR. RUKAVINA: I'm sorry. It would just be 7O. Septuple O or whatever the word is.

THE COURT: All right. So I will go ahead and admit 7F through 7Q, with the exception of 7O. Again, these appear

at Docket Entry 1877. And Mr. Morris, you can try to get in 7O the old-fashioned way if you want to.

MR. MORRIS: Yeah, I'll deal with 7O and the very limited number of other objections at the beginning of tomorrow's hearing.

THE COURT: All right.

(Debtor's Exhibits 7F through 7Q, with the exception of 7O, are received into evidence.)

THE COURT: So we will reconvene at 9:30 Central time tomorrow. I think we're going to hear from the Aon, the D&O broker, Mr. Tauber; is that correct?

MR. MORRIS: That's right. And that should be shorter than even Mr. Dubel.

THE COURT: All right. Well, we will see you at 9:30 in the morning. We are in recess.

MR. MORRIS: Thank you so much.

THE CLERK: All rise.

(Proceedings concluded at 5:09 p.m.)

--oOo--

CERTIFICATE

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

/s/ Kathy Rehling **02/04/2021**

Kathy Rehling, CETD-444 Date
Certified Electronic Court Transcriber

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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In Re: HIGHLAND CAPITAL MANAGEMENT, L.P., Debtor.	**Case No. 19-34054-sgj-11** Chapter 11 Dallas, Texas Wednesday, February 3, 2021 9:30 a.m. Docket CONFIRMATION HEARING [1808] AGREED MOTION TO ASSUME [1624] *Continued from 02/02/2021*

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE STACEY G.C. JERNIGAN,
UNITED STATES BANKRUPTCY JUDGE.

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Proceedings recorded by electronic sound recording;
transcript produced by transcription service.

DALLAS, TEXAS - FEBRUARY 3, 2021 - 9:38 A.M.

THE CLERK: All rise. The United States Bankruptcy Court for the Northern District of Texas, Dallas Division, is now in session, the Honorable Stacey Jernigan presiding.

THE COURT: Good morning. Please be seated. All right. We are ready for Day Two of the confirmation hearing in Highland Capital Management, LP, Case No. 19-34054. I'll just make sure we've got the key parties at the moment. Do we have Mr. Pomerantz, Mr. Morris, for the Debtor team?

MR. POMERANTZ: Yes. Good morning, Your Honor. Jeff Pomerantz for the Debtors.

MR. MORRIS: And I'm here as well, Your Honor.

THE COURT: All right. Good.

All right. For our objecting parties, do we have Mr. Taylor and your crew for Mr. Dondero?

MR. TAYLOR: Yes, Your Honor.

THE COURT: Good morning.

All right. For Dugaboy Trust and Get Good Trust, do we have Mr. Draper? (No response.) All right. I do see Mr. Draper. I didn't hear an appearance. You must be on mute.

MR. DRAPER: I'm present, --

THE COURT: Okay.

MR. DRAPER: -- Your Honor.

THE COURT: Okay. Good morning.

MR. DRAPER: I'm present, Your Honor.

THE COURT: Good morning. I heard you that time. Thank you.

All right. And now for what I'll call the Funds and Advisors Objectors, do we have Ms. Rukavina present?

MR. RUKAVINA: Yes, Your Honor. Good morning.

THE COURT: Good morning. All right. And I will check. Do we have Mr. Clemente or your team there?

MR. CLEMENTE: Yes. Good morning, Your Honor. Matt Clemente from Sidley Austin on behalf of the Committee.

THE COURT: All right. Ms. Drawhorn, do we have you there for the NexPoint Real Estate Partners and related funds?

MS. DRAWHORN: Yes, Your Honor. Good morning.

THE COURT: Good morning. All right. Did I miss -- I think that captured all of our Objectors. Anyone who I've missed?

All right. Well, when we recessed yesterday, Mr. Morris, I think you were about to call your third witness; is that correct?

MR. MORRIS: It is, Your Honor. But if I may, I'd like to just address the objections to the remaining exhibits, since I hope that won't take too long.

THE COURT: All right. You may.

MR. POMERANTZ: Actually, Your Honor, before we go there, we filed the supplemental declaration of Patrick Leatham, as we indicated we would do yesterday. We just

wanted to get confirmation again that nobody intends to cross-examine him, so that he doesn't have to sit through the festivities today.

THE COURT: All right. Well, I did see that you filed that.

Does anyone anticipate wanting to cross-examine Mr. Leatham, the balloting agent?

MR. RUKAVINA: Your Honor, I take it that that declaration is part of the record. As long as the Court confirms that, I do not intend to call the gentlemen.

THE COURT: All right. Well, I will take judicial notice of it and make it part of the record. It appears at Docket Entry No. 1887. Again, it was filed -- well, it was actually filed early this morning, I think. So, all right. So, with --

MR. MORRIS: And to avoid --

THE COURT: Go ahead.

MR. MORRIS: To -- I was just going to say, to avoid any ambiguity, Your Honor, the Debtor respectfully moves that document into the evidentiary record.

THE COURT: All right. The Court will --

(Interruption.)

THE COURT: Someone needs to put their phone on mute, perhaps. Unless someone was intentionally speaking.

All right. So, I will grant that request. Docket Entry

No. 1887 will be part of the confirmation evidence of this hearing.

(Debtor's Patrick Leatham Declaration at Docket 1887 is received into evidence.)

THE COURT: All right. Anything else? There were other exhibits I think you were going to talk about?

MR. MORRIS: Yeah. Let me just go through them one at a time, if I may, Your Honor.

THE COURT: Okay.

MR. MORRIS: All right. So, I'm going to deal with the transcripts that have been objected to one at a time. And I'll just take them in order. The first one can be found at Exhibit B. It is on Docket No. 1822.

THE COURT: Okay.

MR. MORRIS: Exhibit B is the deposition transcript from the December 16, 2020 hearing on the Advisor and the Funds' motion for an order restricting the Debtor from engaging in certain CLO-related transactions.

During that hearing, the Court heard the testimony of Dustin Norris. Mr. Norris is an executive vice president for each of the Funds and each of the Advisors.

We would be offering the transcript for the limited purposes of establishing Mr. Dondero's ownership and control over the Advisors.

Mr. Norris also gave some pretty substantial testimony

1 concerning the so-called independent board of the Funds.
2 And as a general matter, Your Honor, to the extent that
3 the objection is on hearsay grounds, the transcript -- at
4 least the portions relating to Mr. Norris's testimony --
5 simply are not hearsay under Evidentiary Rule 801(d)(2).
6 These are statements of an opposing party, and I think we fall
7 well within that.
8 So, we would respectfully request that the Court admit
9 into the record the transcript from December 16th, at least
10 the portions of which are Mr. Norris's testimony.
11 THE COURT: All right. And, again, these appear at
12 -- I think I heard you say B and then E. Is that correct?
13 MR. MORRIS: Just B. Just B at the moment. B as in
14 boy.
15 THE COURT: Okay. Just B at the moment?
16 All right. Any objections to that?
17 MR. RUKAVINA: Your Honor, I had objected, but now
18 that it's offered for that limited purpose, I withdraw my
19 objection.
20 THE COURT: All right. Then B -- I'm sorry. Was
21 there anyone else speaking?
22 B will be admitted. And, again, it appears at Docket
23 Entry 1822.
24 (Debtor's Exhibit B, Docket Entry 1822, is received into
25 evidence.)

1 MR. MORRIS: Okay. Next, the next transcript can be
2 found at Exhibit 6R, and that's Docket 1866. Exhibit 6R is
3 the transcript of the January 9, 2020 hearing where the Court
4 approved the corporate governance settlement. We think that
5 that transcript is highly relevant, Your Honor, because it
6 reflects not only Mr. Dondero's notice and active
7 participation in the consummation of the corporate governance
8 agreement, but it also reflects the Court and the parties'
9 views and expectations that were established at that time,
10 such that if anybody contends that there's any ambiguity about
11 any aspect of the order, I believe that that would be the best
12 evidence to resolve any such disputes.
13 So, for the purpose of establishing Mr. Dondero's notice,
14 Mr. Dondero's participation, and the parties' discussions and
15 expectations with regard to every aspect of the corporate
16 governance settlement, including Mr. Dondero's stipulation,
17 the order that emerged from it, and the term sheet, we think
18 that that's properly into evidence.
19 THE COURT: Any objection?
20 All right. 6R will be admitted. Again, at Docket Entry
21 1822.
22 (Debtor's Exhibit 6R, Docket Entry 1822, is received into
23 evidence.)
24 MR. MORRIS: Next, Your Honor, we've got Exhibits 6S
25 as in Sam and 6T as in Thomas. They're companions. And they

can be found at Docket 1866. And those are the transcripts. The first one is from the October 27th disclosure statement hearing, and the second one actually is from the Patrick Daugherty, I believe, lift stay motion.

I'll deal with the first one first, Your Honor. We believe that the transcript of the October 27th hearing goes to the good faith nature of the Debtor's proposed plan. It shows that the Debtor and the Committee were not always aligned on every interest. It shows that the Committee, in fact, strenuously objected to certain aspects of the then-proposed plan by the Debtors. And we just think it goes to the heart of the good faith argument.

The transcript for the 28th, we would propose to offer for the limited purpose of the commentary that you offered at the end of that hearing, where Your Honor made it clear that employee releases would not be -- would not likely be acceptable to the Court unless there was some consideration paid.

And it was really, frankly, Your Honor's comments that helped spur the Committee and the Debtor to discuss over the next few weeks the resolution of the issues concerning the employee releases.

So we're not offering Exhibit 6T for anything having to do with Mr. Daugherty or his claim, but just the latter portion relating to the discussion about the employee releases. And,

with that, we'd move those transcripts into evidence.

THE COURT: Any objection?

MR. RUKAVINA: Your Honor, yes, I do object. 6S is hearsay, and under Rule 804(b)(1) it's admissible only if the witnesses are unavailable to be called. There's been no suggestion that they're not.

As far as 6T, what Your Honor says is not hearsay, so as long as it's just what Your Honor was saying, I do not object to 6T. I object to the balance of it.

THE COURT: Okay. What about that objection on 6S?

MR. MORRIS: Yeah. One second, Your Honor. I would go to the residual exception to the hearsay rule under 807. 807 specifically applies if the statement being offered is supported by sufficient guarantees of trustworthiness and it's more probative on the point -- and the point here is simply to help buttress the Debtor's good faith argument -- and it's more probative on the point than any other evidence. And I'm not sure what better evidence there would be than an on-the-record discussion between the Debtor and the Committee as to the disputes they were having on the disclosure statement.

THE COURT: All right. I'm going to overrule the objection and accept that 807 exception as being valid here. So, I am admitting both 6S and 6T. And for the record, I think you said they appeared at 1866. They actually appear at 1822.

1 MR. MORRIS: Okay, Your Honor. I am corrected. It
2 is 6S and 6T, and they are indeed at 1822. Forgive me.
3 THE COURT: Okay.
4 (Debtor's Exhibits 6S and 6T, Docket Entry 1822, is
5 received into evidence.)
6 MR. MORRIS: The next transcript and the last one is
7 6U, which is also at 1822. 6U is the transcript from the
8 December 10th hearing on the Debtor's motion for a TRO against
9 Mr. Dondero. We believe the entirety of that transcript is
10 highly relevant, and it relates specifically to the Debtor's
11 request for the exculpation, gatekeeper, and injunction
12 provisions of their plan. And on that basis, we would offer
13 that into evidence.
14 THE COURT: Any objection?
15 MR. TAYLOR: Yes, Your Honor. This is Clay Taylor on
16 behalf of Mr. Dondero.
17 We do object, on the same basis that it is hearsay. There
18 has certainly been plenty of testimony before this Court and
19 on the record as to why the Debtor believes that its plan
20 provisions are appropriate and allowable, and there's no need
21 to allow hearsay in for that. All of the witnesses were
22 available to be called by the Debtor. The Debtor is in the
23 midst of its case and can call whoever else it needs to call
24 to get these into evidence or to get those docs into evidence.
25 And therefore, we don't believe that any residual exception

should apply.

THE COURT: Mr. Morris, your response?

MR. MORRIS: First, Your Honor, any statements made by or on behalf of Mr. Dondero would not be hearsay under 801(d)(2).

And secondly, there is no other evidence of the Debtor's motion of the -- of the argument that was had. There is no other evidence, let alone better evidence, than the transcript itself. And I believe 807 is certainly the best rule to capture that.

It is a statement that's supported by sufficient guarantees of trustworthiness. Again, these are the litigants appearing before Your Honor. It may not be sworn testimony, but I would hope that everybody is doing their best to comply with the guarantee of trustworthiness in that regard, putting aside advocacy.

And it is more probative on the point for which we're offering -- and that is on the very issues of exculpation, gatekeeper, and injunction -- than anything else we can offer in that regard.

THE COURT: All right. I overrule the objection and I will admit 6U. Okay.

(Debtor's Exhibit 6U, Docket Entry 1822, is received into evidence.)

MR. MORRIS: All right. Going back to the top, Your

1 Honor, Companions Exhibit D as in David and E as in Edward,
2 which are at Docket 1822.
3 Exhibit D is an email string that relates to the Debtor's
4 communications with the Creditors' Committee concerning a
5 transaction known as SSP, which stands for Steel Products --
6 Structural and Steel Products. So that was an asset that the
7 Debtor was selling, trying to sell at a particular point in
8 time. And Exhibit E is a deck that the Debtor had prepared
9 for the benefit of the UCC.
10 And if we looked that those documents, Your Honor, you'd
11 see that the Debtor was properly following the protocols that
12 were put in place in connection with the January 9th corporate
13 governance settlement. And the Committee is being informed by
14 the Debtor of what the Debtor intends to do with that
15 particular asset.
16 And the reason that it's particularly relevant here, Your
17 Honor, is Dustin Norris had submitted a declaration in support
18 of their motion that was heard on September -- on December
19 16th. That declaration is an exhibit to what is Exhibit A on
20 Docket 1822. Exhibit A on the docket is the Advisor and the
21 Funds' motion. Okay? So, Exhibit A is the motion. Attached
22 to that Exhibit A is an exhibit, which is Mr. Norris's
23 declaration.
24 At Paragraph 9 of Mr. Norris's declaration, he takes issue
25 with the Debtor's process for the sale of that particular

1 asset.

2 And so, having admitted already into the record Mr.

3 Norris's declaration, we believe that these documents rebut

4 the statements made in Mr. Norris's declaration, and indeed,

5 were part of the transcript that has now already been admitted

6 into evidence. So we think the documents are needed because

7 they were exhibits during that hearing.

8 THE COURT: All right. Any objection?

9 MR. RUKAVINA: Your Honor, yes, I object based on

10 authenticity. This document has not been authenticated, nor

11 has the attachment. And on hearsay. And I don't think that

12 the Debtor can introduce one exhibit just to introduce another

13 to rebut the first.

14 THE COURT: Your response?

15 MR. MORRIS: You know, in all honesty, I wish that

16 the authenticity objection had been made yesterday and I might

17 have been able to deal with that.

18 These documents have already been admitted by the Court

19 against these very same parties. I think it would be a little

20 unfair for them now to exclude the document that they had no

21 objection to the first time around. They clearly relate to

22 Paragraph 9 of Mr. Norris's declaration, which was admitted

23 into evidence in this case without objection.

24 THE COURT: All right. I overrule the objection. D

25 and E are admitted.

(Debtor's Exhibits D and E, Docket Entry 1822, is received into evidence.)

MR. MORRIS: Next, Your Honor, we have Exhibits 4D as in David, 4E as in Edward, and 4G as in Gregory. And those can all be found on Docket 1822. And to just cut to the chase, Your Honor, these are the K&L Gates letter that were sent in late December and my firm's responses to those letters.

Those letters are being offered, again, to support -- well, the Debtor contends that, in the context of this case, and at the time and under the circumstances, the letters constituted interference and evinces a disregard for the January 9th order, for Mr. Dondero's TRO, and for the Court's comments at the December 16th hearing. And they go specifically to the Debtor's request for the gatekeeper, exculpation, and injunction provisions.

To the extent that those exhibits contain the letters that were sent on behalf of the Funds and on behalf of the Advisors, they would simply not be hearsay under 801(d)(2). And to the extent the objection goes to my firm's response, I think just as a matter of completeness the Court -- I won't offer them for the truth of the matter asserted. I'll simply offer the Pachulski responses at those exhibits for the purpose of stating the Debtor's position, without regard to the truth of the matter asserted.

THE COURT: All right. Any objection?

MR. RUKAVINA: Your Honor, with that understanding, I'll withdraw my objection to these exhibits.

THE COURT: All right. So, 4D, 4E, and 4G are admitted.

(Debtor's Exhibits 4D, 4E, and 4G, Docket Entry 1822, are received into evidence.)

MR. MORRIS: Next, Your Honor, we've got Exhibit 5T as in Thomas. That document can be found at Docket No. 1822. Your Honor, that document is a schedule of a long list of promissory notes that are owed to the Debtor by the Advisors, Dugaboy, and Mr. Dondero. But I think that, upon reflection, I'll withdraw that exhibit.

THE COURT: All right.

(Debtor's Exhibit 5T is withdrawn.)

MR. MORRIS: And then, finally, just one last one. I think Mr. Rukavina objected to Exhibit 7O as in Oscar, which can be found at Docket No. 1877. Exhibit 7O are the documents that were admitted in the January 21st hearing, and I believe that they all go -- they're being offered to support the Debtor's application for the gatekeeper, exculpation, and injunction provisions.

THE COURT: All right. 7O is being offered. Any objection?

MR. RUKAVINA: Yes, Your Honor. I do object. Those

are exhibits from a separate adversary proceeding that has not been concluded. In fact, my witness is still on the stand in that.

And I'll note that that's another 20,000 pages that's very duplicative of the current record, and we already are going to have an unwieldy record. So I question why Mr. Norris -- why Mr. Morris would even need this.

So that's my objection, Your Honor.

MR. MORRIS: You know what? That's a fair point, Your Honor. And -- that is a fair point, and I guess what I'd like to do is at some point this morning see if I can single out documents that are not duplicative and come back to you with very specific documents. I think that's a very fair point.

THE COURT: All right.

MR. MORRIS: And with that, Your Honor, I think we've now addressed every single document that the Debtor has offered into evidence, and I believe, other than the withdrawal of --

THE COURT: 5T.

MR. MORRIS: -- 5T --

THE COURT: Uh-huh.

MR. MORRIS: -- and the open question on 7O, I believe every single document at Docket 1822, 1866, and 1877 has been admitted. Do I have that right?

THE COURT: All right. Yes, because I did admit yesterday 7F through 7Q, minus 7O, at 1877. So, yes, I agree with what you just said.

MR. RUKAVINA: Your Honor, I apologize. And Mr. Morris. I have that 5S -- or six -- that 5S and 6C, Legal Entities List, have not been admitted. But if I'm wrong on that, then I apologize.

THE COURT: Okay. 5S was part of 1866, which I admitted entirely.

And what was the other thing?

MR. RUKAVINA: I'm counting letters, Your Honor. One, two, three, four. 6D, Legal Entities List, Redacted.

THE COURT: Okay. 6B would have been --

MR. RUKAVINA: D, Your Honor, as in dog. I'm sorry. 6-dog.

THE COURT: Okay. 6D, yeah, that was part of 1822 that I admitted *en masse* yesterday.

MR. MORRIS: Yeah, I didn't hear an objection to that one yesterday, and I agree, Your Honor. My records show that it was already admitted.

MR. RUKAVINA: Then I apologize to the Court.

THE COURT: All right. Any --

MR. MORRIS: No worries. Let's get --

THE COURT: Any other housekeeping matters before we go to the next witness?

MR. MORRIS: No, Your Honor. Not from the Debtor.

THE COURT: Anyone else?

All right. Well, let's hear from the next witness.

MR. MORRIS: All right, Your Honor. The Debtor calls as its next and last witness Marc Tauber.

THE COURT: All right. Mr. --

MR. MORRIS: Mr. Tauber, if you're on the phone, please identify yourself.

(No response.)

THE COURT: Mr. Tauber, we're not hearing you. Perhaps you are on mute. Could you unmute your device?

(No response.)

THE COURT: All right. If it's a phone, you need to hit *6.

Hmm. Any -- do you know which caller he is?

THE CLERK: I'm trying to find out.

THE COURT: All right. We've got well over a hundred people, so we can't easily identify where he is at the moment.

All right. Mr. Tauber, Marc Tauber? This is Judge Jernigan. We cannot hear you, so -- all right. Well, maybe we can --

MR. MORRIS: Can we just take a three-minute break and let me see if I can track him down?

THE COURT: Yes. Why don't you do that? So let's take a three-minute break.

MR. MORRIS: Thank you, Your Honor.

THE COURT: Okay.

(A recess ensued from 10:02 a.m. until 10:04 a.m.)

MR. MORRIS: Your Honor, if we may, he'll be dialing in in a moment. But I've been reminded that there is one more exhibit. It's the exhibit I used on rebuttal yesterday with Mr. Seery. There was the one document that was on the docket, and that was the Debtor's omnibus reply to the plan objections, where we looked at Paragraph 135, I believe. And we would offer that into evidence for the purpose of just establishing that the Debtor had given notice no later than January 22nd of its agreement in principle to assume the CLO management contracts.

And then the second exhibit that we had offered that I think I suggested could be marked as Exhibit 10A was the email string between my firm and counsel for the CLO Issuers where they agreed to the agreement in principle for the Debtor's assumption of the CLO management contracts.

And we would offer both of those documents into evidence as well.

THE COURT: All right. Any objections?

All right. Well, I will admit them.

As far as this email string with the CLO Issuers that you called 10A, does that appear on the docket? I remember you putting it on the screen, but, if not, you'll need to file a

supplement to the record, a supplemental exhibit.

MR. MORRIS: We will, Your Honor. We'll do that for both of those exhibits.

THE COURT: And then as -- okay, for both? Because I -- I've read that reply, and I could reference the docket number if we need to.

MR. MORRIS: We'll clean that up, Your Honor.

THE COURT: Okay.

(Debtor's Exhibit 10A is received into evidence.)

(Clerk advises Court re new caller.)

THE COURT: Oh, okay. Just a minute. I was looking up something.

(Pause.)

THE COURT: All right. Well, you're going to file -- hmm, I really wanted to just reference where that reply brief appears on the record. There were a heck of a lot of things filed on January 22nd.

(Interruption.)

THE COURT: Okay. We'll --

MR. MORRIS: All right. We're just going to need one more minute with Mr. Tauber. It's my fault, Your Honor.

THE COURT: Okay.

MR. MORRIS: I didn't send him easily-digestible dial-in instructions. He'll be just a moment.

THE COURT: Okay.

(Court confers with Clerk regarding exhibit.)

THE COURT: Oh, it's at 1807? Okay. So, the reply brief that we talked about Paragraph 35, that is at Docket No. 1807. Okay? All right.

(Debtor's Omnibus Reply to Plan Objections, Docket 1807, is received into evidence.)

(Pause.)

MR. TAUBER: Hi. It's Marc Tauber.

THE COURT: All right.

MR. MORRIS: Excellent.

THE COURT: Mr. Tauber, this is Judge Jernigan. I can hear you, but I can't see you. Do you have a video --

MR. TAUBER: Yeah, I don't know why it's not working.

THE COURT: Hmm.

MR. TAUBER: I'm on WebEx all day. Usually it works no problem.

THE COURT: Okay. Well, do you want to give it another try or two?

MR. TAUBER: Yeah. It looks like it's starting to come up. It's all -- pictures, so --

THE COURT: Okay.

MR. TAUBER: -- hopefully you'll be able to see me in a second.

THE COURT: Okay. The first thing I'm going to need to do is swear you in, so we'll see if the video comes up here

in a minute.

MR. TAUBER: Okay.

THE COURT: Can you see us, Mr. Tauber?

MR. TAUBER: I can see four people. The rest are just names still.

THE COURT: Okay.

MR. TAUBER: I can go out and try to come back in, if you think that's --

THE COURT: I'm afraid of losing you. So, your audio, is it on your phone or is it on --

MR. TAUBER: No.

THE COURT: -- a computer?

MR. TAUBER: On the computer. Yeah.

THE COURT: Okay. So you're coming through loud and clear on your computer.

MR. TAUBER: Yeah. Like I said, we use WebEx for work, so I have them on all day long without any issues, typically.

THE COURT: Okay.

(Court confers with Clerk.)

THE COURT: Okay. Our court reporter thinks it's a bandwidth issue on your end, so I don't --

MR. TAUBER: There's only two of us here at home on the line right now, so I don't know why. It looks like it's trying to come in, and then just keeps --

THE COURT: I at least see your name on the screen now, which I did not before.

MR. TAUBER: Yeah.

THE COURT: So hopefully we're going to -- ah. We got you.

MR. TAUBER: There it is.

THE COURT: All right.

MR. TAUBER: Yeah.

MR. MORRIS: There we go.

MR. TAUBER: I might lose you, though. Give me one second, because I have a thing saying the WebEx meeting has stopped working. Let me close that.

THE COURT: Okay. We've still got you. Please raise your right hand.

MR. TAUBER: Okay.

MARC TAUBER, DEBTOR'S WITNESS, SWORN

THE COURT: All right. Thank you. Mr. Morris?

MR. MORRIS: Thank you, Your Honor.

DIRECT EXAMINATION

BY MR. MORRIS:

Q Good morning, Mr. Tauber.

A Good morning.

Q I apologize for the delay in getting you the information. Are you currently employed, sir?

A Yes, sir.

Q By whom?
A Aon Financial Services.
Q And does Aon Financial Services provide insurance brokerage services among its services?
A Yes.
Q And what position do you currently hold?
A Vice president.
Q How long have you been a vice president at Aon?
A Since October of 2019.
Q Can you just describe for the Court generally your professional background?
A Sure. I spent about 20 years on Wall Street, working in a variety of jobs, in research, trading, and as the COO of a hedge fund. And then in 2010 I switched to the insurance world. I was an underwriter for ten-plus years for Zurich and QBE. And then in 2019 switched to the brokering side for Aon.
Q And what are your duties and responsibilities as a vice president at Aon?
A Well, we're responsible or my team and I are responsible for creating bespoke insurance programs, focusing on D&O and E&O insurance for our insureds.
Q And what is, for the benefit of the record, what do you mean by bespoke insurance program?
A Well, each client is different, so the programs and the policies that we put in place might be off-the-shelf policies,

1 but we endorse and amend them as needed to meet the needs of
2 the individual client.
3 Q And during your work, both as an underwriter and now as a
4 broker, have you familiarized yourself with the market for D&O
5 and E&O insurance policies?
6 A Yes.
7 Q All right. Let's talk about the early part of this case.
8 Did there come a time in early 2020 when Aon was asked to
9 place insurance on behalf of the board of Strand Advisors?
10 A Yes.
11 Q Can you describe for the Court how that came about?
12 A Sure. One of our account executives, a man by the name of
13 Jim O'Neill, had a relationship with a man named John Dubel,
14 who was one of the appointees to serve on -- as a member of
15 Strand, which was being appointed, as we understood it, to be
16 the general partner of Highland Capital Management by the
17 Bankruptcy Court. And they -- we had done -- or, Jim and John
18 had a longstanding relationship. I had actually underwritten
19 an account for a previous appointment of John's when I was an
20 underwriter, so I had some familiarity with John as well, and
21 actually brokered a subsequent deal for John at Aon.
22 So I had, again, some familiarity with John, and we were,
23 you know, tasked with going out and finding a program for
24 Strand.
25 Q Can you describe what happened next? How did you go about

1 accomplishing that task?
2 A So, there are a number of markets or insurance companies
3 that provide management liability insurance, which this was a
4 management liability-type policy. D&O is a synonym for
5 management liability, I guess you'd say. And we approached
6 the, I think, 14 or 15 markets that we knew to provide
7 insurance in this space and that would be willing to buy the
8 type of policy we were seeking and have interest in a risk
9 like this, which had a little hair on it. Obviously, there
10 was the Dondero involvement, as well as the bankruptcy.
11 Q As part of that process, did you and your firm put
12 together a package of information for prospective interested
13 parties?
14 A Yes.
15 Q Can you describe for the Court what was contained in the
16 package?
17 A Had the *C.V.s*, some relevant pleadings from the case,
18 court order. I'd have to go back and look exactly. But sort
19 of just general, you know, general information that was
20 available about the situation at hand and Strand's
21 appointment.
22 Q And the court order that you just mentioned, is that the
23 one that had that gatekeeper provision in it?
24 A Correct.
25 Q And can you explain to the Court why you and your team

1 decided to include the order with the gatekeeper provision in
2 the package that you were delivering to prospective carriers?
3 A Sure. In our initial conversations to discuss our
4 engagement, the gatekeeper function was explained to us by
5 John. And I'm not sure who else was on the initial call.
6 And, but it was explained to us that I guess Judge Jernigan
7 would sit as the gatekeeper between any potential claimant
8 against the insureds and, you know, would basically have to
9 approve any claim that would be made against (indecipherable),
10 which would thereby prevent any frivolous claims from
11 happening.
12 Q All right. Let's just talk for a moment. How did you and
13 your firm decide which underwriters to present the package to?
14 A Again, you know, I -- my background, or my Wall Street
15 background, obviously, sort of made me have a -- it was very
16 unique for the insurance world when I switched over, so I had
17 sort of risen to a certain level of expertise within the
18 space. And, you know, our team also is very experienced, and
19 decades of experience in the insurance world. So we're very
20 familiar with the markets that are willing to provide these
21 types of policies and the markets that would be likely to take
22 a look at a risk such as this.
23 Q Okay. You mentioned that there was -- I think your words
24 were a little hair on this, and one of the things you
25 mentioned was bankruptcy. How did the fact that Strand was

1 the general partner of a debtor in bankruptcy impact your
2 ability to solicit D&O insurance?
3 A Well, it's just not a plain vanilla situation, so people
4 are somewhat, you know, are -- I think -- so, the type of
5 insurance, D&O insurance, that we write is very different from
6 auto insurance, as an example. Auto insurance, people expect
7 there to be a certain amount of claims, and they expect the
8 premiums to cover the claims plus the expenses and then
9 provide them a reasonable profit on top of that.
10 Our insurance is really much more by binary. The
11 expectation for underwriters is that they will be completing
12 ignoring -- or, avoiding risk at all costs, wherever possible.
13 So anytime there is a situation that looks a little risky, so
14 the premium might be a little higher, the deductible might be
15 a little higher, but, again, the underwriters are really
16 making a bet that they will not have a claim. Because the
17 premiums pale in comparison to the limits that are available
18 to the policyholder.
19 Q And so --
20 A So, -- I'm sorry. What were you going to say?
21 Q I didn't mean to interrupt.
22 A Yeah.
23 Q Have you finished your answer?
24 A Sure.
25 Q Okay. So, were some of the 14 or 15 markets that you

1 contacted reluctant to underwrite because there was a
2 bankruptcy ongoing?
3 A Well, I think that probably -- I mean, there are certain
4 markets that we didn't go to in the beginning because they
5 would be very reluctant to write a risk that had that kind of
6 hair on it, based on our experience from dealing with them.
7 And, you know, I think the bankruptcy was certainly a little
8 bit of an issue. And then, obviously, as people did their
9 research and -- or if they weren't already familiar with
10 Highland and got to know, you know, got -- I will just say for
11 a simple Google search and learned a little bit about Mr.
12 Dondero, I think there was definitely some significant
13 reluctance to write this program.
14 Q Was the fact that the Debtor -- was the fact that the
15 Debtor is a partnership an issue that came up, in your -- in
16 your process?
17 A There are certainly some carriers who won't write what's
18 known as general partnership liability insurance. So, yes,
19 that is part of that. It was part of the limiting factor in
20 terms of who we went to.
21 Q Okay. And, finally, you mentioned Mr. Dondero. What role
22 did he play in your ability to obtain insurance for the Strand
23 board?
24 A Well, that's a very significant role. As, you know, as
25 mentioned, the underwriters are very risk-averse, so the

1 litigiousness of Mr. Dondero is a very strong red flag
2 prohibiting a number of people from writing the insurance at
3 all. And the ones that were writing, that were willing to
4 provide options, were looking for protections from Mr.
5 Dondero.
6 Q And what kind of protections were they looking for?
7 A Well, the gatekeeper function was a key factor. That was
8 really the only way we could even start a conversation with
9 any of the people that we were able to engage. And in
10 addition, they wanted a, you know, sort of a belts and
11 suspenders additional protection of having an exclusion
12 preventing any litigation brought by or on behalf of Mr.
13 Dondero.
14 Q Were you able to identify any carrier who was prepared to
15 underwrite D&O insurance for Strand without the gatekeeper
16 provision or without a Dondero exclusion?
17 A We were not.
18 Q Okay. Let's fast-forward now. Has your firm been
19 requested to obtain professional management insurance for the
20 contemplated post-confirmation debtor entities and individuals
21 associated with those entities?
22 A Yes.
23 Q Okay. So let's just talk about the entities first, the
24 Claimant Trust and the Litigation Trust. In response to that
25 request, have you and your team gone out into the marketplace

1 to try to find an underwriter willing to underwrite a policy
2 for those entities?
3 A Yes.
4 Q And have you been able to find any carrier who's willing
5 to provide coverage for the Claimant Trust and the Litigation
6 Trust?
7 A Yes.
8 Q And how many -- how many have expressed a willingness to
9 do that?
10 A Two.
11 Q And have those two carriers indicated that there would be
12 conditions to coverage for the entities?
13 A Both will require a -- the continuation of the gatekeeper
14 function, as well as a Dondero exclusion.
15 Q Okay. Have you also been tasked with the responsibility
16 of trying to find coverage for the individuals associated with
17 the Claimant Trust and the Litigation Trust, meaning the
18 Claimant Trustee, the Litigation Trustee, and the Oversight
19 Board?
20 A Yes. So we did it concurrently.
21 Q Okay. So, are the two firms that you just mentioned
22 willing to provide insurance for the individuals as well as
23 the entities?
24 A Correct. With the same stipulations.
25 Q They require -- they both require the gatekeeper and the

1 Dondero exclusion?
2 A That's correct.
3 Q Is there any other firm who has indicated a willingness to
4 consider providing D&O insurance for the individuals?
5 A There is one that is willing to do so, as long as the
6 gatekeeper function remains in place. They have indicated
7 that if the gatekeeper function was to be removed, that they
8 would then add a Dondero exclusion to their coverage.
9 Q So is there any insurance carrier that you're aware of who
10 is prepared to insure either the individuals or the entities
11 without a gatekeeper provision?
12 A No.
13 Q And that last company, I just want to make sure the record
14 is clear: If the gatekeeper provision is overturned on appeal
15 or is otherwise not effective, do you have an understanding as
16 to what happens to the insurance coverage?
17 A They will either add an exclusion for any claims brought
18 by or on behalf of Mr. Dondero or cancel the coverage
19 altogether.
20 MR. MORRIS: I have no further questions, Your Honor.
21 THE COURT: All right. Cross of this witness?
22 CROSS-EXAMINATION
23 BY MR. RUKAVINA:
24 Q Mr. Tauber, I'm a little confused. So, the insurance
25 that's being written now for the post-bankruptcy entities, did

I hear you say that there is one carrier that would give that insurance subject to having a Dondero exclusion?

A So, first of all, there's nothing currently being written. We have solicited quotes. So, just to make sure that that -- I want to make sure that's clear.

We have three carriers that are willing to provide varying levels of coverage. All three will only do so with the existence of the gatekeeper function continuing to be in place. One of the three has -- two of those three will also provide the coverage with -- even with the gatekeeper function and the Dondero exclusion. The third one was not requiring a Dondero exclusion unless the gatekeeper function goes away.

Q Okay. So the third one, you believe, will, whatever the term is, write the insurance or provide the coverage without a gatekeeper, as long as there is a strong Dondero exclusion?

A No. Their initial requirement is that the gatekeeper function remains in place. That is their preferred option. If the gatekeeper function is removed, then they will add a Dondero exclusion in place of the gatekeeper exclusion. In addition, that carrier is only willing to provide coverage for the individuals, not for the entities.

Q Okay. Thank you.

MR. RUKAVINA: I'll pass the witness, Your Honor.

THE COURT: All right. Other cross?

MR. TAYLOR: Clay Taylor on behalf of Mr. Dondero.

1 THE COURT: Okay.
2 CROSS-EXAMINATION
3 BY MR. TAYLOR:
4 Q Good morning, Mr. Tauber.
5 A Good morning.
6 Q Are you generally familiar with placing D&O insurance at
7 distressed debt level private equity firms?
8 A I am familiar with it probably more from the underwriting
9 side, and I also worked at a fund that was distressed and had
10 to be liquidated, so I -- as the COO, so I have a fair amount
11 of familiarity, yes.
12 Q Okay. Before taking this to market for the first time for
13 the pre-confirmation policies that you have in place, did your
14 firm conduct any due diligence or analysis of comparing the
15 amount of litigation the Highland entities and Mr. Dondero
16 were involved in as compared to other comparable firms in the
17 marketplace? Say, you know, Apollo, Fortress, Cerberus, other
18 similar market participants?
19 A Well, it wouldn't really be our role as the broker.
20 That's the role of the underwriter.
21 Q Are you familiar if any of the underwriters undertook any
22 such analysis?
23 A I would assume that they did, since they all had concerns
24 about Mr. Dondero almost immediately.
25 Q Do you have any -- you didn't conduct any personal due

1 diligence on comparing the amount of litigation that the
2 Highland entities were involved in as compared to, say,
3 Fortress, do you?
4 A Well, again, that wouldn't really be my role as the
5 broker. But I will say that I used to write the primary
6 insurance for Fortress Investment Group when I was at Zurich.
7 So I'm extremely familiar with Fortress, to use your example,
8 and I would say that the level of litigation at Fortress was
9 much, just out of personal knowledge, was significantly less
10 than I had encountered or than I had read about at Highland.
11 Q That you have read about? Is that based upon a number of
12 cases where Fortress was a plaintiff as compared to Highland
13 was a plaintiff? Over what time period?
14 A Again, not my role. Not something that I've done. I'm
15 just generally familiar with Fortress and I'm generally
16 familiar with Highland.
17 Q All right. So you're generally familiar and you say that
18 -- you're telling me and this Court that Fortress is involved
19 in less litigation. Could you quantify that for me, please?
20 A No, but it's really irrelevant to the situation at hand.
21 The issue is not my feelings whatsoever. The issue is the
22 underwriters' feelings and their concern with Mr. Dondero, not
23 mine or anybody else's.
24 Q So, I appreciate your answer and thank you for that, but I
25 believe the question that was before you is, have you

quantitatively -- do you have any quantitative analysis by which you can back up the statement that Fortress is less litigious than Highland?

A I wouldn't even try, no.

Q Okay. Do you have any quantitative analysis for -- that Cerberus is any less litigious than Highland?

A I don't have any real knowledge of Cerberus's litigiousness.

Q Same question as to Apollo.

A Again, the Fortress, you just happened to mention Fortress, which was a special case because I used to be their primary underwriter. I don't have any specific -- I'm not a claims attorney. I don't have any specific knowledge of the level of litigiousness.

And, again, it's not up to me, my decision. It's the underwriters' decision of whether or not they're willing to write the coverage, not mine.

Q You mentioned that the -- when you took this out to market, it had a little hair on it. Correct?

A Correct.

Q And you put together a package of materials that you sent out to 14 or 15 market participants; is -- did I get that correct?

A Yes.

Q And in that package, you had certain pleadings, including

the court order, correct?
A Yes. I believe that's correct.
Q And that was after your initial conversation with John and -- where he pointed out the gatekeeper role. Correct?
A Correct.
Q And so when you went out to market, presumably you highlighted the gatekeeper role to all the people you solicited offers from because you thought it included less risk, correct?
A It offered a level of protection that was not -- that's not common. So it's, yes, it's a huge selling point for the risk.
Q Okay. So, to be clear, you never went out to the market to even see if you could get underwriting the first time without the gatekeeper function; is that correct?
A Well, it's my job as a broker to present the risk in the best possible light. So if we have a fact that makes the risk a better write for the underwriters, we, of course, will highlight it. So, no, I did not do that.
Q Okay. So, the quick answer to the question is no, you did not go out and solicit any bids without the gatekeeper function?
A Correct.
Q When you have approached the market for the post-confirmation potential coverage, did you approach the same 14

or 15 parties that you did before?
A I don't have the two lists in front of me. They would have been vastly similar, yes.
Q Okay. And so, again, all of the 14 or 15 parties or the lists that you solicited were already familiar with the gatekeeper function, correct?
A Yes.
Q And so therefore they already had that right; they're not going to trade against themselves and therefore say that, without it, we'll go ahead and write coverage. Correct?
A I -- I -- it'd be hard to answer that question. I don't know.
Q Okay. Because you didn't try that, did you?
A I would have had no reason to, no.
Q Okay. So you don't know if a market exists without the gatekeeper function because you haven't asked, have you?
A I guess that's fair, yeah.
MR. TAYLOR: I have no further questions.
THE COURT: All right. Any other Objectors with cross-examination?
MR. DRAPER: I have no questions for the witness, Your Honor.
THE COURT: All right. Anyone else? Mr. Morris, redirect?
MR. MORRIS: Just one.

REDIRECT EXAMINATION

BY MR. MORRIS:

Q One question, Mr. Tauber. Is there any -- do all underwriters -- any underwriters for Fortress require, as a condition to underwriting the D&O insurance, require a gatekeeping provision?

A In my, you know, 11, 12 years of experience in this industry, in this space, I have never seen that gatekeeper function be available, as an underwriter or as a broker. So, no.

MR. MORRIS: No further questions, Your Honor.

THE COURT: Any recross on that redirect?

All right. Well, Mr. Tauber, you are excused. We thank you for your testimony today. So you can log off.

THE WITNESS: Thank you.

THE COURT: Okay.

(The witness is excused.)

THE COURT: Mr. Morris, does the Debtor rest?

MR. MORRIS: The Debtor does rest, Your Honor.

THE COURT: All right. Well, what are we going to have from the Objectors as far as evidence?

MR. RUKAVINA: Your Honor, I will be very short. I will call Mr. Seery for less than ten minutes. I will call Mr. Post for less than ten minutes. I will have one exhibit. And I think that that's it for all the Objectors, unless I'm

mistaken, gentlemen.

MR. TAYLOR: Your Honor, I had one witness, Mr. Sevilla, under subpoena to testify, and needed a brief moment to discuss with my colleagues whether we're going to call him, and if so, put him on notice that he would be coming up probably about -- I don't know your schedule, Your Honor, but probably, I'm guessing, either before lunch or after, and I need to let him know that also.

So I do need a brief three to five minutes to confer with my colleagues and some direction from the Court to, if we decide to call him, as to when we would tell him to be available.

THE COURT: All right. Well, before I get to that, Mr. Draper, do you have any witnesses?

MR. DRAPER: I do not.

THE COURT: All right. Well, let's see. It's 10:34. We're making good time this morning. If Seery is truly ten minutes of direct, and Post is truly ten minutes of direct, and I don't know how long the documentary exhibits are going to take, it sounds to me like we are very likely to get to Mr. Sevilla before a lunch break.

So if you want to -- you know, I don't know what that involves, you sending text messages or making a quick phone call. Do you need a five-minute break for that?

MR. TAYLOR: Yes, Your Honor. It involves a phone

call and an email. Just a confirmatory phone call just to make sure that the guy -- just so you know who he is, he is actually a Highland employee, but he's represented by separate counsel, and so we do need to go through him just because that's the right thing to do.

THE COURT: All right. Well, again, I mean, I never know how long cross is going to take, but I'm guessing, you know, we're going to get to him in an hour or so, if not sooner, it sounds like. So, all right. So, do we need a five-minute break?

MR. RUKAVINA: And Your Honor, it might make more sense to make it a ten-minute break. I suspect that Mr. Taylor will be able to release his witness if he and I will just be able to talk. So I would ask the Court's indulgence for a ten-minuter.

THE COURT: Okay. We'll take a ten-minute break. We'll come back at 10:46 Central time.

THE CLERK: All rise.

(A recess ensued from 10:36 a.m. until 10:46 a.m.)

THE CLERK: All rise.

THE COURT: Please be seated. We're going back on the record in the Highland confirmation hearing. Are the Objectors ready to proceed?

MR. RUKAVINA: Your Honor, Davor Rukavina. We are.

THE COURT: All right. Well, Mr. Rukavina, are you

1 going to call your witnesses first?
2 MR. RUKAVINA: Yes, I will. Before that, if it might
3 help the Court and Mr. Morris: Mr. Morris, with respect to
4 that last exhibit, I do not object to the admission of any of
5 the exhibits that were admitted at that PI hearing.
6 But I do think, Your Honor, for the record, that -- and I
7 would ask Mr. Morris that he should refile those exhibits here
8 in this case, except for those that are duplicative. Because,
9 again, there's 10,000 pages of indentures, et cetera.
10 MR. MORRIS: Thank you very much, sir.
11 Your Honor, if that's acceptable to you, we'll do that as
12 soon as possible.
13 THE COURT: All right. And let me make sure the
14 record is clear. Are we talking about what you've described
15 as 7O? I'm getting mixed up now. Am I --
16 MR. MORRIS: Yes, Your Honor.
17 THE COURT: Okay.
18 MR. MORRIS: It's 7O, which is the documents that
19 were introduced into evidence in the prior hearing. And Mr.
20 Rukavina is exactly right, that there is substantial overlap
21 between that and other documents that have already been
22 admitted in the record in this case. So we'll just file an
23 abridged version of Exhibit O that only includes non-
24 duplicative documents.
25 THE COURT: All right. So that will be admitted, and

we'll look for your filed abridged version to show up on the docket. 7O.

(Debtor's Exhibit 7O is received into evidence as specified.)

THE COURT: All right. What's next?

MR. RUKAVINA: Your Honor, Jim Seery, please. Mr. James Seery.

THE COURT: All right. Mr. Seery, welcome back. Please raise your right hand.

MR. SEERY: Can you -- can you hear me, Your Honor?

THE COURT: I can now.

JAMES P. SEERY, CERTAIN FUNDS AND ADVISORS' WITNESS, SWORN

THE COURT: All right. Thank you.

Mr. Rukavina, go ahead.

DIRECT EXAMINATION

BY MR. RUKAVINA:

Q Mr. Seery, --

MR. RUKAVINA: Thank you.

BY MR. RUKAVINA:

Q Mr. Seery, good morning.

MR. RUKAVINA: Mr. Vasek, if you'll please pull up the schedules.

What we have here, Your Honor, is Docket 247, the Debtor's schedules. I'd ask the Court to take judicial notice of it.

THE COURT: All right. The Court will do so.

BY MR. RUKAVINA:

Q Mr. Seery, are you familiar with these entities listed here on the Debtor's schedules?

A Generally. Each one a little bit different.

Q Okay. Do you agree that the Debtor still owns equity interests in these entities?

A I believe it does, yes.

Q Okay. Is it true that none of these entities are publicly traded?

A I don't believe any of these are publicly-traded entities, no.

Q Okay. And none of these, to your knowledge, are debtors in this bankruptcy case, right?

A No. We only have one debtor in the case.

Q Okay. So, Highland Select Equity Fund, LP, the Debtor owns more than 20 percent of the equity in that entity, right?

A I believe the Debtor owns the majority of that entity. That is a fund with an on- and offshore feeder. And I, off the top of my head, don't recall exactly how the allocations of equity work. But I believe we do.

Q Does 67 percent refresh your memory? Are you prepared to say that the Debtor owns 67 percent of that equity?

A I'm not prepared to say that, no.

Q Okay. Wright, Ltd. Does the Debtor own more than 20 percent of that equity?

A There's about -- I don't recall. There's about at least 25 artist, designers, or designs. Wright, AMES, Hockney, Rothco, all own in different places, and they all own in turn some other thing. So I don't know what each of them, off the top of my head, own. There's -- they're part of a myriad of corporate structures here.

Q Strak, Ltd. Do you know whether the Debtor owns more than 20 percent of the equity of that entity?

A Stark? I don't know.

Q Okay. I don't know how to pronounce the next one. Eamis (phonetic) Ltd. Do you know whether the Debtor owns more than 20 percent of that equity?

A Off the top of my head, I don't recall.

Q What about Maple Avenue Holdings, LLC?

A I believe, I don't know if it's directly or indirectly, that we own a hundred percent of that entity. But I'm not sure.

Q What about Highland Capital Management Korea, Ltd.?

A Effectively, Highland Capital Management is owned a hundred percent.

Q What about Highland Capital Management Singapore Pte. Ltd.?

A We are in the process of shutting it down, so I don't know that -- what the equity percentages are. It's really just a question -- it's -- it's dissolved save for a signature from a

Singaporean.

Q Okay. But did the Debtor own more than 20 percent of that entity?

A I don't know the specific allocations of equity ownership.

Q Okay. What about Pennant (phonetic) Management, LP? Do you know whether the Debtor owns or owned more than 20 percent of that entity?

A I don't recall, no.

MR. RUKAVINA: You can take that exhibit down, Mr. Vasek.

BY MR. RUKAVINA:

Q Mr. Seery, very quick, are you familiar with Bankruptcy Rule 2015.3?

A I am, yes.

Q Okay. Has the Debtor filed any Rule 2015.3 statements in this case?

A I don't believe we have.

Q Okay.

MR. RUKAVINA: Thank you, Your Honor. I'll pass the witness.

THE COURT: All right. Any other Objector questioning? None from Mr. Taylor, none from Mr. Draper, none from Ms. Drawhorn?

All right. Any cross -- any examination from you, Mr. Morris?

MR. MORRIS: Just one question.

THE COURT: Go ahead.

CROSS-EXAMINATION

BY MR. MORRIS:

Q Mr. Seery, do you know why the Debtor has not yet filed the 2015.3 statement?

A I have a recollection of it, yes.

Q Can you just describe that for the Court?

A When we -- when we initially filed, when the Debtor filed and it was transferred over, we started trying to get all the various rules completed. There are, as the Court is aware, at least a thousand and maybe more, more like three thousand, entities in the total corporate structure.

We pushed our internal counsel to try to get that done, and were never able to really get it completed. We did not have -- we were told we didn't have separate consolidating statements for every entity, and it would be difficult. And just in the rush of things that happened from the first quarter into the COVID into the year, we just didn't complete that filing. There was no reason for it other than we didn't get it done initially and I think it fell through the cracks.

MR. MORRIS: Nothing further, Your Honor.

THE COURT: All right. Anything further, Mr. Rukavina?

REDIRECT EXAMINATION

BY MR. RUKAVINA:

Q Mr. Seery, I appreciate that answer. But you never sought leave from the Bankruptcy Court to postpone the deadlines for filing 2015.3, did you?

A No. If it hadn't fallen through the cracks, it would have been something we recalled and we would have done something with it. But, frankly, it just fell off the -- through the cracks. We didn't deal with it.

Q Okay.

MR. RUKAVINA: Thank you, Your Honor. Thank you, Mr. Seery.

THE COURT: All right. Any other Objector examination?

Mr. Morris, anything further on that point?

MR. MORRIS: No, thank you, Your Honor. No further questions.

THE COURT: All right. Mr. Seery, thank you. You're excused once again from the witness stand.

(The witness is excused.)

THE COURT: Your next witness?

MR. SEERY: Thank you, Your Honor.

THE COURT: Uh-huh.

MR. RUKAVINA: Your Honor, I'll call Jason Post. Mr. Post, if you're listening, which I believe you are, if you'll please activate your camera.

THE COURT: Mr. Post, we do not see or hear you yet.

MR. RUKAVINA: Talk, Mr. Post, and I think it'll focus on you.

MR. POST: Yes. Can you hear me now?

THE COURT: We can hear you. We cannot see you yet. Could you say, "Testing, one, two; testing, one, two"?

MR. POST: Testing, one, two. Testing, one, two.

THE COURT: There you are. Okay. Please raise your right hand.

JASON POST, CERTAIN FUNDS AND ADVISORS' WITNESS, SWORN

THE COURT: All right. Thank you. You may proceed.

DIRECT EXAMINATION

BY MR. RUKAVINA:

Q Mr. Post, good morning. State your name for the record, please.

A Robert Jason Post.

Q How are you employed?

A I'm employed by NexPoint Advisors, LP.

Q What is your title?

A Chief compliance officer.

Q Were you ever employed by the Debtor here?

A Yes.

Q Between when and when? Approximately?

A I believe it was July of '08 through October of 2020.

Q What was your last title while you were employed at the

Debtor?
A Still chief compliance officer. For the retail funds.
Q Okay. Very, very quickly, what does a chief compliance officer do? Or what do you do?
A It's multiple things. Interaction with the regulators. Adherence to prospectus and SAI limitations for the funds. And then establishment of written policies and procedures to prevent and detect violations of the federal securities laws and then testing those on a frequent basis.
Q And I believe you mentioned you're the CCO for NexPoint Advisors and Highland Capital Management Fund Advisors. Are you also the CCO for any funds that they advise?
A Yes. For all the funds that they advise.
Q Okay. Does that include so-called retail funds?
A Yes. They're all retail funds.
Q What is a retail fund?
A It typically constitutes funds that are subject to the Investment Company Act of 1940, such as open-end mutual funds, closed-end funds, ETFs.
Q Obviously, you know who my clients are. Are any of my clients so-called retail funds that you just described?
A Yes.
Q Name them, please.
A You've got NexPoint Capital, Inc., Highland Income Fund, and NexPoint Strategic Opportunities Fund.

Q Do those three retails funds hold any voting preference shares in the CLOs that the Debtor manages?

A Yes.

MR. RUKAVINA: Mr. Vasek, if you'll please pull up Exhibit 2.

Your Honor, I believe I have a stipulation with Mr. Morris that this exhibit can be admitted, so I'll move for its admission.

MR. MORRIS: No objection, Your Honor.

THE COURT: All right. Exhibit 2 will be admitted. And let's be clear. That appears at -- is it Docket No. -- let's see. Is it 1673 that you have your -- no, no, no, no. 1670? Is that where your exhibits are?

MR. RUKAVINA: No, Your Honor. It's 1863. I think we did an amended one because we numbered our exhibits instead of having seventeen Os and Ps. So it's 1863.

THE COURT: 1863? Okay. All right. There it is. Okay. Again, this is -- I'm sorry. I got sidetracked. What exhibit? It's Exhibit 2, is admitted. Okay.

MR. RUKAVINA: Thank you, Your Honor.

(Certain Funds and Advisors' Exhibit 2 is received into evidence.)

BY MR. RUKAVINA:

Q Real quick, Mr. Seery. What do these HIF, NSOF, NC, what do they stand for? Do they stand for the retail funds you

just named?

MR. SEERY: I don't think he meant me.

THE WITNESS: Yeah.

BY MR. RUKAVINA:

Q I'm sorry, Mr. Post. I didn't hear you.

A You addressed me as Mr. Seery.

Q Oh. I apologize. What do those initials stand for?

A The names of the funds that I mentioned.

Q Okay. And what do these percentages show?

A The percentages show the amount of shares outstanding and the preference shares that each of the respective funds hold of the named CLOs.

Q And those CLOs on the left there, those are the CLOs that the Debtor manages pursuant to agreements, correct?

A Yes. Those are some of them, correct.

Q Yes. The ones that the retail funds you mentioned have interests in, correct?

A Correct.

Q And what does the far-right column summarize or show?

A That would be the aggregate across the three retail funds.

Q In each of those CLOs?

A Correct.

Q Thank you.

MR. RUKAVINA: Mr. Vasek, you may pull this down.

BY MR. RUKAVINA:

Q Mr. Post, in the aggregate, how much do those three retail funds have invested in those CLOs, ballpark?
A I believe it's approximately $130 million, give or take.
Q Is it closer to 140 or 130?
A A hundred -- I think it's 140, actually.
Q Okay. Thank you. Who controls those three retail funds?
A Ultimately, the board --
Q And what --
A -- of the funds.
Q What is -- what do you mean by the board? Do they have independent boards?
A Yes. They have a majority independent board, the funds do.
Q Do you report to that board?
A Yes.
Q Does Mr. Dondero sit on those boards?
A He does not.
Q Okay.
MR. RUKAVINA: I'll pass the witness, Your Honor. Thank you, Mr. Post.
THE COURT: All right. Any other Objector examination of Mr. Post?
All right. Mr. Morris, do you have cross?
MR. MORRIS: Yes, Your Honor, I do.
THE COURT: Okay.

CROSS-EXAMINATION

BY MR. MORRIS:

Q Mr. Post, can you hear me okay, sir?

A Yes, I can hear you.

Q Okay. Nice to see you again. When did you first join Highland?

A I believe it was July of '08.

Q So you've worked with the Highland family of companies for about a dozen years now; is that right?

A Yes.

Q And you were actually employed by the Debtor from 2008 until October 2020; is that right?

A Correct.

Q And you left at that time and went to join Mr. Dondero as the chief compliance office of the Advisors; do I have that right?

A Yes. I transitioned to NexPoint Advisors shortly, I believe, after Mr. Dondero left, but I was already the named CCO for that entity.

Q Right, but your employment status changed from being an employee of the Debtor to being an employee of NexPoint; is that right?

A Correct.

Q And that happened shortly after Mr. Dondero resigned from the Debtor and went to NexPoint Advisors, correct?

A Correct.
Q Okay. You mentioned that the funds are controlled by independent boards; do I have that right?
A It's a majority independent board, correct.
Q Okay. There's no independent board member testifying in this hearing, is there?
A I --
MR. RUKAVINA: Your Honor, Mr. Post wouldn't know that, but I'll stipulate to that as a fact.
THE COURT: All right.
MR. MORRIS: Okay.
BY MR. MORRIS:
Q Did you -- do you speak with the board members from time to time?
A Yes.
Q Did you tell them that it might be best if they came and identified themselves and helped persuade the Court that they were, in fact, independent?
A They have counsel to assist them with that determination. I never mentioned anything along those line to them.
Q Okay. Can you tell me who the board members are?
A Yes. Ethan Powell, Bryan Ward, Dr. Bob Froehlich, John Honis, and then Ed Constantino. He is only a board member, though, for NSOF. NexPoint Strategic Opportunities Fund.
Q All right. Mr. Honis, is he -- has he been determined to

be an interested director, for purposes of the securities laws?

A Yes.

Q Okay. Mr. Froeh..., do you know much about his background?

A I believe he worked at Deutsche Bank and a couple of the other -- or maybe a couple of other investment firms in the past. And he also owns a minor league baseball team.

Q Do you know how long he served as a director of the funds?

A I don't know, approximately. I think maybe seven -- six, seven years.

Q Okay. How about Mr. Ward? Did Mr. Froehlich ever work for Highland?

A Not that I can recall.

Q Did Mr. Ward ever work for Highland?

A Not that I can recall.

Q Do you recall how long he's been serving as a director of the funds?

A Mr. Ward?

Q Yes.

A I believe -- I'd be -- I don't recall specifically. I think it's been, you know, 10 to 12 years, give or take.

Q He was a director when you got to Highland; isn't that right?

A He was on the board of directors.

Q Yeah. So fair to say that Mr. Ward has been a director since at least the mid to late oughts? 2005 to 2008?
A I'm sorry, you cut out. Late what?
Q The late oughts. Withdrawn. Is it fair to say that Mr. Ward's been a director of the funds since somewhere between 2005 and 2008?
A Again, I don't recall specifically. You know, I joined the complex, the retail complex as the named CCO in 2015, and he had been serving in that role prior to that, and I believe it was for probably a period of five to seven years, so that sounds in line.
Q Did you have a chance to review Dustin Norris's testimony from the December 16th hearing?
A I did not.
Q Do you know -- are you aware that he testified at some length regarding the relationship of each of these directors to Mr. Dondero and Highland?
A I didn't review anything, so I don't know what he said or how long it took.
Q Do you know if Mr. Powell's ever worked for Highland?
A He has.
Q Do you know in what capacity and during what time periods?
A He was -- I think his last title was -- I believe was chief product strategist, I believe. And he was also the named PM for one of -- or, a suite of ETF funds. I think he

was last employed maybe --from my recollection, 2014, possibly. Or 2015. Somewhere around in there.

Q Okay. And to the best of your knowledge, did Mr. Dondero appoint Mr. Powell to be the chief product strategist?

A I don't -- I don't know. I wasn't involved in the decision for his appointment. I don't know how he attained that role.

Q To the best of your knowledge, did Mr. Dondero appoint Mr. Powell as the PM of the ETF funds?

A Again, I wasn't involved in that determination, but he probably would have had a role in making the determination on who was the PM, along with probably some other investment professionals.

Q Okay. And did Mr. Powell join the board of the funds before or after he left Highland around 2015?

A I can't recall specifically if he was already on the board or was an interested member, but I believe he, you know, I believe he joined shortly after he left.

Q Okay. So he went from being an employee and being a portfolio manager at Highland to being on the board of these funds. Do I have that right?

A Again, I can't recall specifically. He may have already been on the board as an interested board member. But, you know, I believe, you know, if that wasn't the case, he would have joined the board shortly after leaving.

Q And Mr. Ward, I think you said, has been on the funds' board since somewhere between 2005 and 2008. Does that sound right?

A I think that was a time frame you referenced, and I think that was kind of in line, walking it back. But I don't recall specifically when he joined.

Q And to the best of your knowledge, have the Advisors for which you serve as the chief compliance officer managed the Funds for which Mr. Ward has served as a director since the time he became a director?

A I'm sorry. Can you repeat the question?

Q Yeah. I'm just trying to understand if the advisors -- withdrawn. The Advisors manage the Funds; do I have that right?

A They provide investment advice on behalf of the Funds.

Q And they do that pursuant to written agreements; do I have that right?

A Correct.

Q And is it your understanding that, for the entire time that Mr. Ward has served as a member of the board of the Funds, the Advisors have provided the investment advice to each of those Funds?

A Yes, in one form or fashion. I believe at one period in time, historically, the Advisor may have changed its name, but it would have been, you know, at the end of the day, one or

more -- one of either NexPoint Advisors or Highland Capital Management Fund Advisors would have advised those Funds.

Q Is it fair to say that each of the Advisors for which you serve as the chief compliance officer has always been managed by an Advisor owned and controlled by Mr. Dondero?

A I believe so, yes.

MR. MORRIS: I have no further questions, Your Honor.

THE COURT: All right. Any redirect?

MR. RUKAVINA: Yes.

THE COURT: Okay. Mr. Rukavina?

MR. RUKAVINA: Your Honor, was I on mute? I apologize.

THE COURT: Yes.

REDIRECT EXAMINATION

BY MR. RUKAVINA:

Q Mr. Post, why did you leave Highland?

A It -- because I was a HCMLP employee and it was -- basically, there was conflicts that were created by being an employee of the Debtor and by also serving as the CCO to the named Funds and the Advisors, and it coincided with Jim toggling over from HCMLP to NexPoint. It just made sense more functionally and from a silo perspective for me to be the named CCO for that entity since he was no longer an employee of HCMLP.

Q And by Jim, you mean Jim Dondero?

A Yes, sorry. Jim Dondero.

Q You're not some kind of lackey for Mr. Dondero, where you go wherever he goes, are you?

MR. MORRIS: Objection to the question.

THE WITNESS: No.

THE COURT: Overruled. He can answer.

MR. RUKAVINA: Okay.

THE WITNESS: No.

MR. RUKAVINA: Okay. Thank you, Your Honor. I'll pass the witness.

THE COURT: Any other Objector examination?

All right. Any recross, Mr. Morris?

RECROSS-EXAMINATION

BY MR. MORRIS:

Q Just one question, sir. The conflicts that you just mentioned, they were in existence for the one-year period between the petition date and the date you left; isn't that right?

A I think -- I believe so, and I think they became more evident as, you know, time progressed.

Q Okay. But they existed on day one of the bankruptcy proceeding; isn't that right?

A Yes, I believe so.

Q All right.

MR. MORRIS: No further questions, Your Honor.

THE COURT: All right. Thank you, Mr. Post. You're excused from the virtual witness stand.

(The witness is excused.)

THE COURT: All right. Your next witness?

MR. RUKAVINA: Your Honor, my exhibit has been admitted, I promised I'd be short, and my evidentiary presentation is done. Thank you.

THE COURT: All right. Well, Mr. Taylor, your evidence?

MR. TAYLOR: First of all, given the testimony that we have received just recently, we have released Mr. Sevilla from his subpoena and are not going to call him.

With that being said, we do have some documents that we would like to get into evidence. We filed our witness and exhibit list at Docket No. 1874. I don't believe any of these are controversial. I'm trying to keep from duplicating those that are already into evidence by the Debtor. And therefore I would like to offer into evidence Exhibits No. 6 through 12 and 17. And that is it, Your Honor.

THE COURT: Okay. Is there any objection to Dondero Exhibits 6 through 12 and 17, appearing at Docket 1874?

MR. MORRIS: I just want to be clear that Exhibits 6 and 7, which are letters, I believe, from Mr. Lee (phonetic) are not being offered for the truth of the matter asserted in either letter.

MR. TAYLOR: That is correct, Your Honor. Just merely that those requests and the words that were stated in there were indeed sent on those dates.

MR. MORRIS: And the same comment, Your Honor, with respect to Exhibits 9 through 12, that those documents are not being offered for the truth of the matter asserted.

MR. TAYLOR: Again, just that those requests were sent and those responses as stated were sent.

And I apologize. I missed one, Your Honor. Also No. 15. 6 through 12, 15, and 17.

MR. MORRIS: Your Honor, the Debtor has no objection to Exhibits 15, 16, and 17.

THE COURT: All right. So, so they are all admitted with the representation that 6 and 9 through 12 are not being offered for the truth of the matter asserted. With that representation, you have no objection, Mr. Morris?

MR. MORRIS: That's right. I do just want to get confirmation that Exhibits 1 through 5 and 13 through 16 -- 13 and 14 are not being offered at all.

THE COURT: Mr. Taylor?

MR. TAYLOR: So, that -- that is correct. 1 through 5 would be duplicative of what has already been introduced into the record by Mr. Morris, so I am not offering those. And do not believe that 13 and 14 are relevant anymore, and so therefore did not offer those.

THE COURT: Okay. So, with that, I have admitted 6 through 12, 15, 16, and 17 at Docket Entry 1874.

(Dondero Exhibits 6 through 12 and 15 through 17 are received into evidence.)

THE COURT: All right. Anything else, Mr. Taylor?

MR. TAYLOR: No, Your Honor. We are not calling any witnesses.

THE COURT: All right. Mr. Draper, what about you? Any evidence?

MR. DRAPER: No evidence or witnesses. The evidence that's been introduced by Mr. Taylor and Mr. Rukavina are sufficient for me.

THE COURT: All right. Ms. Drawhorn, anything from you?

MS. DRAWHORN: No additional evidence, Your Honor.

THE COURT: All right. Well, then, Mr. Morris, did you have anything in rebuttal?

MR. MORRIS: No, Your Honor. I think we can proceed to closing statements. I would just appreciate confirmation by the Objecting Parties that they rest.

THE COURT: All right. Well, I guess we'll get that clear if it is isn't clear. All of the Objectors rest. Confirm, yes, Mr. Rukavina?

MR. RUKAVINA: Confirm.

THE COURT: And Mr. Taylor?

MR. TAYLOR: Confirmed, Your Honor.

THE COURT: Okay. And Draper and Drawhorn?

MR. DRAPER: Yes, Your Honor.

MS. DRAWHORN: Confirmed, Your Honor.

THE COURT: All right. By the way, I assume Mr. Dondero has been participating this morning. I didn't actually get that clarification before we started. Mr. Taylor, is he there with you this morning?

MR. TAYLOR: Your Honor, he is. He has been participating. He is sitting directly to my left about slightly more than six feet apart.

THE COURT: Okay. All right. Good.

All right. Well, let's talk about our closing arguments and let me figure out, do we have -- should we break a bit before starting? I have an idea in my brain about a time limitation, but before I do that, let me ask. Mr. Morris, first I'll ask you. How much time do you think you need for a closing argument?

MR. MORRIS: Your Honor, --

MR. POMERANTZ: Your Honor?

MR. MORRIS: -- I'll defer to Mr. Pomerantz, who's going to deliver that portion of our presentation today.

THE COURT: All right. Mr. Pomerantz?

MR. POMERANTZ: Your Honor, I will be making -- yes, Your Honor. I will be making the majority portion of the

argument. Mr. Kharasch will be making the portion of the argument dealing with the Advisor and Funds' objection. But I expect my closing to be quite lengthy, given the 1129 requirements, all the legal issues, which I plan to spend a fair amount of time. So I would anticipate a range of an hour and 45 minutes.

THE COURT: An hour and 45 minutes? All right. Well, --

MR. POMERANTZ: Correct.

THE COURT: I'm getting an echo.

MR. CLEMENTE: Your Honor, it's Matt Clemente on behalf on the Committee. I'll have 15 minutes or less, Your Honor. Just some things I would like to touch on.

THE COURT: All right. So, two hours. If I were to --

MR. POMERANTZ: And then you need, Your Honor, to add Mr. Kharasch. I think he's on. He can indicate how long his part of the closing will be.

THE COURT: Mr. Kharasch?

MR. KHARASCH: Yes. I would figure my argument would probably be about 20 minutes to 30 minutes.

THE COURT: Okay.

MR. RUKAVINA: Your Honor, let me interject something that I think will help everyone out. With the CLOs having consented through their counsel to the assumption, the bulk of

my objection is now moot. We no longer can and will argue that the contracts are unassignable under 365(b) or (c) because we do have now their consent. So that will hopefully help the Debtor on that issue.

MR. KHARASCH: Your Honor, Ira Kharasch again. I was not anticipating that. I believe that that will take away the bulk of my argument. I'm still going to be dealing with some of the other non-assumption-type arguments raised by the CLO Objectors, kind of dovetailing with Mr. Pomerantz's arguments on the injunction. But that will greatly reduce, Your Honor, my argument.

THE COURT: All right. So if I say two hours of argument for the Debtor and Creditors' Committee, Rukavina, Taylor and Draper and Drawhorn, can you collectively manage to share that two hours? Have a two-hour argument in the aggregate? That seems fair to me.

MR. RUKAVINA: Your Honor, I think -- I think that's fine, Your Honor.

THE COURT: All right. And I guess I'll --

MR. TAYLOR: This is Mr. Taylor. And yes, I agree.

THE COURT: Okay. And Mr. Draper?

MR. DRAPER: This is Douglas Draper. I agree. I agree also, Your Honor.

THE COURT: All right. And I'm going to ask --

MR. POMERANTZ: Your Honor, I --

THE COURT: Go ahead.

MR. POMERANTZ: Your Honor, we -- I think we may need like two hours and ten minutes, because mine was 1:45, Mr. Clemente was 15, and then Mr. Kharasch. But we'll be around that. And I tend to speak fast, so I might even shorten mine.

THE COURT: Okay. You negotiated me up to two hours and ten minutes, Debtors/Objectors, each.

I'm going to ask one more time. The U.S. Trustee lobbed a written objection, but we've not heard anything from the U.S. Trustee. Are you out there wanting to make an oral argument?

MS. LAMBERT: Yes, Your Honor. The United States Trustee is on the line. And we've been listening to the hearing. I can turn my video on. I think you're --

THE COURT: Yes. I can hear you. I can't see you.

MS. LAMBERT: Okay. All right. And so the U.S. Trustee feels that the issues about the releases have been adequately joined and raised by the other parties and that it's an issue of law. The U.S. Trustee does not feel that we can add to that dialogue by, you know, wasting more of the Court's time. I think it's been adequately briefed and it's been adequately argued here today.

THE COURT: Okay.

MS. LAMBERT: And we do have an agreement to include governmental release language in the order. I understand that agreement is still being honored. That's a separate agreement

than the issue of whether the releases are precluded. But we're going to let the other people carry the water on that.

THE COURT: Okay.

MR. POMERANTZ: Yeah. And that is correct. That is correct, Your Honor. They asked for some information -- a provision on government releases. They also asked for a provision regarding joint and several liability for Trustee fees.

As I mentioned previously, the IRS has asked for a provision in the confirmation order, as have the Texas Taxing Authorities.

We have not uploaded a proposed confirmation order, but I will state right now on the record that, before we do so, we will, of course, give Ms. Lambert, Mr. Adams, and the Texas Taxing Authorities the opportunity to review. We expect there won't be any issue because the language has already been agreed to.

THE COURT: All right. Well, how about this. It's 11:23 Central time. Let's break until 12:00 noon Central time, okay, so that gives everyone a little over 30 minutes to have a snack and get their notes together, and we'll start with closing arguments at 12:00 noon. All right? So we're in recess until then.

THE CLERK: All rise.

(A recess ensued from 11:24 a.m. until 12:05 p.m.)

THE COURT: All right. Please be seated. All right. This is Judge Jernigan. We are back on the record in Highland. Let me make sure we have the people we need. Do we have the Pachulski team there? Mr. Pomerantz, Mr. Kharasch?

MR. POMERANTZ: Yes, you do, Your Honor.

THE COURT: All right. For our Objectors, Mr. Taylor, are you there?

MR. TAYLOR: Yes, Your Honor, I am.

THE COURT: All right. I see Mr. Draper there on the video. You're there.

MR. DRAPER: I'm here. Can you hear me?

THE COURT: I can hear you loud and clear, yes.

MR. DRAPER: Great, because I didn't -- I'm not hearing, something so I apologize.

THE COURT: All right. So we have Mr. Rukavina, and I think I see Mr. Hogewood there as well. Is that correct? You're ready to go forward?

MR. RUKAVINA: Yes, Your Honor.

THE COURT: All right.

MR. RUKAVINA: Yes, Your Honor. Good afternoon.

THE COURT: All right. And Ms. Drawhorn, you're there?

MS. DRAWHORN: Yes, Your Honor.

THE COURT: Okay. Committee. Mr. Clemente, are you there?

MR. CLEMENTE: Yes, Your Honor. I'm here, Your Honor.

THE COURT: Okay. Very good. All right. So, let me reiterate. We've given two-hour and 10-minute time limitations for the Debtor, and that'll be both any time you reserve for rebuttal and your closing, initial closing argument. Mr. Clemente, you're going to be in that time frame as well. Okay?

MR. CLEMENTE: Yes, Your Honor.

THE COURT: And so, as supporters of the plan.

And then, of course, the Objectors, they have collectively two hours and ten minutes.

A couple of things. I'm going to have my law clerk, Nate, who you can't see but he's to my right, he's going to keep time. I promise I won't be a jerk and cut anyone off midsentence, but please don't push the limit if I say, you know, "Time."

The other thing I will tell you is I'll probably have some questions here or there. And I've told Nate, cut off the timer if we're in a question-answer session. I won't count that as part of the two hours and ten minutes.

All right. So, with that, Mr. Pomerantz, you may begin.

CLOSING STATEMENT ON BEHALF OF THE DEBTOR

MR. POMERANTZ: Thank you, Your Honor. As Your Honor is aware, the Debtor has been able to resolve all objections

to confirmation other than the objection by Mr. Dondero or his entities and the United States Trustee.

Your Honor, I have a very lengthy closing argument, given the number of issues that are raised in the objections, and I want to make a complete record, since I understand that there's a good likelihood that (garbled) appeal.

With that in mind, Your Honor, I'm prepared to go through each and every confirmation requirement in Section 1129. However, as an alternative, I might propose that I can go through each of the Section 1129 requirements that are the subject of pending objections or otherwise depend upon evidence that Your Honor has heard.

THE COURT: Okay.

MR. POMERANTZ: And of course, I'll be happy to answer any questions that you have in the process.

THE COURT: Okay.

MR. POMERANTZ: And after my closing argument, I will turn it over to Mr. Kharasch to address the Advisor and Funds' objections.

THE COURT: Okay.

MR. POMERANTZ: Before I walk the Court through the confirmation requirements, I did want to note for the Court, as I did previously, that we filed an updated ballot summary at Docket No. 1887. And as reflected in the summary, Classes 2 and 7 have voted to accept the plan with the respective

1 numerosity and amounts required. In fact, the votes are a
2 hundred percent.
3 Class 8, however, has voted to reject the plan. Seventeen
4 creditors in Class 8 voted yes and 24 objectors, which are, I
5 think, all but one the employees with one-dollar claims for
6 voting purposes, voted against.
7 In dollar amount, Class 8 has accepted the plan by 99.8
8 percent of the claims. And I will address the issues of the
9 cram-down over that class a little bit later on.
10 Lastly, during the course of my presentation, I will
11 identify for the Court certain modifications we have made to
12 address the objections that were filed on January 22nd and
13 then also on February 1st. And at the end of my presentation,
14 I will raise a couple of other modifications that I won't get
15 to during my presentation and will explain to the Court why
16 all the modifications do not require resolicitation and are
17 otherwise appropriate under Section 1127.
18 Your Honor, as Your Honor is aware, Section 1129 requires
19 the Debtors to demonstrate to the court that the plan
20 satisfies a number of statutory requirements. 1129(a)(1)
21 provides that the plan requires -- complies with all statutory
22 provisions of Title 11, and courts interpreted this provision
23 as requiring the debtor to demonstrate it complies with
24 Section 1122 and 1123.
25 With respect to classification, Your Honor, there has been

one objection that was raised to essentially a classification, and that was raised by Mr. Dondero to Article 3C of the plan on the grounds that it purports to eliminate a class that did not have any claims in it as of the effective date but which may later have a claim in that class.

I think he was primarily concerned about Class 9 subordinated claims. But Mr. Dondero misunderstands the provision. It only eliminates a claim for voting purposes, and if there's later a claim in that class, it will be treated as the plan provides the treatment.

In any event, Class 9, as we know now, will be populated by the HarbourVest claims, as well as the UBS claims and the Patrick Daugherty claims, if the Court approves the settlement approving those claims.

Next, Your Honor, Section 1123(a) contains seven mandatory requirements that a plan must include. Sections 1, 2, and 3 of 1123(a) apply to the classification of claims and where they're impaired and treatment. The plan does that.

There has been an objection to 1123(a)(3) raised by several parties with respect to the classification and treatment of subordinated claims. The concerns stem from the mistaken belief that the Debtor reserved the right to subordinate claims without providing parties with notice and without obtaining a court order.

The Debtor never intended to have unilateral ability to

1 subordinate claims without affording parties due process
2 rights, and we've added some clarificatory language to so
3 provide.
4 We made changes to the plan on January 22nd, and then on
5 February 1st, and the plan addresses all those issues in
6 Article 3(j) and it talks about when a claim is going to be
7 subordinated as a non-creditor. We've also redefined the
8 definition of subordinated claims to make clear that a claim
9 is only subordinated upon entry of an order subordinating that
10 claim.
11 Mr. Dondero also objected on the grounds that the plan did
12 not contain a deadline pursuant to which the Debtor would be
13 required to seek any subordination, and we have revised
14 Article 7(b) of the plan to provide that any request to
15 subordinate a claim would have to be made on or before the
16 claim objection deadline, which is 180 days after the
17 effective date.
18 Lastly, certain former employees, Mr. Yang and Borud,
19 objection also joined by Mr. Deadman, Travers, and Kauffman,
20 objected to the inclusion of language in the definition of
21 "Subordinated Claims" that a claims arising from a Class A, B,
22 or C limited partnership is deemed automatically subordinated.
23 The concerns were that the language could broadly apply to any
24 potential claims by a former partner, and could be also read
25 to encompass claims outside the statutory scope of 510(b) or

otherwise relating to limited partnership interests.

While the Debtor does reserve the right to seek to subordinate the claims on any basis, we have modified the plan to address that concern and to address the concern that we're not attempting to create any new causes of action for subordination that don't otherwise exist under applicable law, but it just preserves the parties' rights with respect to subordination and deals with that at a later date.

Next, Your Honor, Section 1123(a)(5). I skipped over 1123(a)(4) because there are no objections to that provision.

THE COURT: Okay.

MR. POMERANTZ: Section 1123(a)(5), a plan must provide for adequate means of implementation. And the plan provides a detailed structure and blueprint how the Debtor's operations will continue, how the assets will be monetized, including the establishment of the Claimant Trust, establishment of the Litigation Sub-Trust, the Reorganized Debtor, the Claimant Trust Oversight Board. And the documents precisely describing how this will occur were filed as part of the various plan supplements.

1123(a)(7), Your Honor, requires that the plan only contain provisions that are consistent with the interest of equity holders and creditors with respect to the manner, selection, and -- of any director, officer, or trustee under the plan. And as discussed in the plan, at the disclosure

statement, and as testified to by Mr. Seery, the Committee and the Debtor had arm's-length negotiations regarding the post-effective date corporate governance and believe that the selection of the claimant Trustee, the Litigation Sub-Trustee, and the Claimant Trust Oversight Board are in the best interest of stakeholders.

HCMFA has raised a particular objection, I think, to these issues, but I will address it in the context of the requirement under Section 1129(a)(5).

Your Honor, Section 1129(a)(2) requires that the plan comply with the disclosure and solicitation requirements under the plan. Section 1125 requires that the Debtor only solicit with a court-approved disclosure statement. The Court approved the disclosure statement on November 23rd, and pursuant to the proofs of service on file, the plan and disclosure statement were mailed, along with solicitation materials that the court approved.

Now, there has been an objection raised by Dugaboy, and also alluded to by Mr. Taylor in some of his comments before, that the plan does violate 1129(a)(2) because the Debtor's disclosure statement was deficient.

In support of that argument, Dugaboy points to the reduction in the anticipated distribution to creditors from the November plan analysis to the January plan analysis, and argues that that reduction requires resolicitation. However,

1 those arguments are not well-taken.
2 First, none of the people making these objections were
3 solicited for their vote on the plan, or if they had been,
4 they didn't vote or decided to reject the plan. And to the
5 extent that Class 8 creditors, the distribution has gone down
6 -- that's the class that Mr. Taylor and Mr. Draper are
7 concerned about -- you don't hear the Committee, Acis,
8 Redeemer, UBS, HarbourVest, Daugherty, or the Senior Employees
9 making their argument, this argument, and they represent over
10 99 percent of the claims in that class. And in fact, of the
11 17 Class 8 creditors that have accepted the plan, 15 are
12 represented by the parties I just mentioned.
13 So who are the two creditors that they're so concerned
14 about? One is Contrarian, which is a claims trader that
15 actually elected to be treated in Class 7, and one is one of
16 the employees who voted to accept the plan.
17 Second, Your Honor, the argument conflates the difference
18 between adverse change to the treatment of a claim or interest
19 that would require a resolicitation under Section 1127 and a
20 change to the distribution that would not.
21 More importantly, Your Honor, the argument is specious.
22 As Mr. Seery testified yesterday, the material differences
23 between the analysis contained on November and late January
24 and the one we filed on February 1st were based on three types
25 of changes: an update regarding the increased value of assets

1 based upon events that had transpired during this period,
2 which included an increase in asset value, no recoveries, and
3 revenues expected to be generated by the CLO management
4 agreements; an update to the expected costs of the Reorganized
5 Debtor and the Claimant Trust as a result of the continued
6 evaluation of staffing needs, operational expenses, and
7 professional fees; and an update to reflect resolution of the
8 HarbourVest and UBS claims.
9 In the filing Monday, Your Honor, we updated the plan
10 projection, a liquidation analysis which revised the unsecured
11 claims based upon the UBS settlement that I was able to
12 disclose to Your Honor. And in the filing, the distribution
13 now revised to Class 8 creditors is now 71 percent, compared
14 to the 87 percent that was in the disclosure statement that
15 went out for solicitation.
16 Your Honor, there can be no serious argument that the
17 creditors in this case were not fully aware of the potential
18 for the UBS and HarbourVest creditors receiving claims. Your
19 Honor's UBS 3018 order granting its claim for voting purposes
20 was entered right around the time that the disclosure
21 statement was approved. And, in fact, a last-minute addition
22 to the disclosure statement disclosed the 3018 amount,
23 although the amount did not make it to the attachment to the
24 disclosure statement. And that reference, Your Honor, to the
25 UBS claim being allowed for voting purposes can be found at

1 Page 41 of Docket No. 1473.
2 And the HarbourVest settlement was filed on about December
3 23, two weeks before the voting deadline, sufficient time for
4 people to take that into consideration.
5 And as Your Honor surely knows, the hearings in this case
6 have been very well-attended by the major parties, and I
7 believe that if we went back and looked at the records of who
8 was on the WebEx system during the HarbourVest and UBS
9 hearings, you would find that representatives of basically
10 every creditor, every major creditor in this case in Class 8
11 participated.
12 Moreover, Your Honor, creditors were not guaranteed any
13 percentage recovery under the plan and disclosure statement,
14 which clearly identified the size of the claims pool as a
15 material risk.
16 Article 4(a)(7) of the disclosure statement, which is at
17 Docket 1473, is entitled "Claims Estimation" and warns
18 creditors that there can be no assurances that the Debtor's
19 claims estimates will prove correct, and that the actual
20 amount of the allowed claims may vary materially.
21 And if Dugaboy is arguing it was misled as the holder of a
22 disputed administrative claim and general unsecured claim,
23 that argument is simply preposterous.
24 Dugaboy cites several cases for the proposition that
25 deficient disclosure may warrant resolicitation, and the

1 Debtor agrees with the proposition as a general matter. But
2 if one looks at the cases that were filed -- that Dugaboy
3 cited to, it will see that they are clearly inapposite and
4 distinguishable.
5 *In re Michaelson*, the Bankruptcy Court for the Eastern
6 District of California, revoked confirmation because the
7 debtor failed to disclose in the disclosure statement a mail
8 fraud indictment of the turnaround specialist who was to lead
9 the reorganization effort and a prior Chapter 7 company he
10 drove into the ground.
11 In *In re Brotby*, the Ninth Circuit BAP affirmed a decision
12 of the Bankruptcy Court that the individual debtor's decision
13 to modify its financial projections on the eve of confirmation
14 did not require a resolicitation. And there, the financial
15 projections were off by 75 percent.
16 And in *Renegade Holdings*, the Bankruptcy Court granted a
17 motion by a group of states to revoke confirmation by the
18 debtors, who manufactured and distributed tobacco products,
19 because the debtors failed to disclose in its disclosure
20 statement that the debtor and its principals were under
21 criminal investigation for unlawful trafficking in cigarettes,
22 which was not disclosed to creditors.
23 Your Honor, none of these cases are remotely analogous to
24 this case, and they certainly do not stand for the proposition
25 that the Debtor was required to resolicit.

1 Next, Your Honor, the next requirement is 1129(a)(3),
2 which requires that any plan be proposed in good faith. As
3 Mr. Seery testified at length, and the Court has personal
4 knowledge of, having presided over this case for a year, the
5 plan is the result of substantial arm's-length negotiations
6 with the Committee over a period of several months.
7 Mr. Seery testified yesterday that, soon after the board
8 was appointed, the Committee wanted to immediately pursue down
9 the path of an asset monetization plan. However, as Mr. Seery
10 testified, the board decided that it was inappropriate to rush
11 to judgment and that it should consider all potential
12 restructuring alternatives for the Debtor. And Mr. Seery
13 testified what those alternatives were: a traditional
14 restructuring and continuation of the Debtor's business; a
15 potential sale of the Debtor's assets in one or more
16 transactions; an asset monetization plan like the one before
17 the Court today; and, last but not least, a grand bargain plan
18 that would involve Mr. Dondero sponsoring the plan with a
19 substantial equity infusion.
20 As Mr. Seery testified, by the early summer of 2020, the
21 Debtor decided that it was appropriate to start moving down
22 the path of an asset monetization plan while it continued to
23 work on the grand bargain plan. Accordingly, Mr. Seery
24 testified that the Debtor commenced good-faith negotiations
25 with the Committee regarding the asset monetization plan, and

1 that those negotiations took several months, were hard-fought
2 and at arm's-length, and involved substantial analysis of the
3 appropriate post-confirmation corporate structure, governance,
4 operational, regulatory, and tax issues. And on August 12th,
5 Your Honor, the plan was filed with the Court.
6 And although the Debtor at that time had not reached an
7 agreement with the Committee on some of the most significant
8 issues, Mr. Seery testified that the independent board
9 believed that it was important to file that plan at that time,
10 a proverbial stake in the ground to act as a catalyst for
11 reaching a consensual plan with the Committee or others, which
12 it has done.
13 As Mr. Seery testified, he continued to work with Mr.
14 Dondero to try to achieve a grand bargain plan, while at the
15 same time proceeding down the path of the filed plan.
16 He testified that the parties participated in mediation at
17 the end of August and early September to try to reach an
18 agreement on a grand bargain plan, but were unsuccessful. And
19 the Debtor proceeded on the path of the August 12th plan and
20 sought approval of its disclosure statement on August 27th,
21 2020.
22 Mr. Seery testified that, at that time, the Debtor still
23 had not reached an agreement with the Committee on certain
24 significant issues involving post-confirmation governance and
25 the scope of releases. And as a result, after a contested

1 hearing, Your Honor, Your Honor did not approve the disclosure
2 statement on October 27th, but asked us to go back again to
3 try to work out the issues, and we came back on November 23rd.
4 Mr. Seery testified that the Debtor continued to negotiate
5 with the Committee to resolve the material disputes leading --
6 which led up to the November 23rd hearing, where we came in
7 with the support of the Committee. But as Mr. Seery has also
8 testified, he has continued to try to reach a consensus on a
9 global plan, notwithstanding the approval of the disclosure
10 statement. And he spent personally several hundred hours
11 since his appointment trying to build consensus.
12 As part of this process, Mr. Seery testified that Mr.
13 Dondero received access to substantial information regarding
14 the Debtor's assets and liabilities, most recently in
15 connection with a series of informal document requests which
16 were made at the end of December.
17 And after the Court asked the parties to again reengage in
18 efforts to try to reach a global hearing after the Debtor's
19 preliminary injunction motion, Mr. Seery testified that he and
20 the board participated in calls with Mr. Dondero and his
21 advisors and the Committee to see if common ground could be
22 attained.
23 Unfortunately, as Mr. Seery testified, the Committee and
24 Mr. Dondero were not able to reach an agreement.
25 Accordingly, Your Honor, the testimony unequivocally and

1 overwhelmingly demonstrates that the plan was proposed in good
2 faith.
3 I expect the Objectors may argue in closing that they have
4 filed a plan under seal that is a better alternative than that
5 being proposed by the plan that the Debtor seeks to confirm.
6 Your Honor, as a threshold matter, yesterday I said any
7 mention of the specifics of the recent plan would be
8 inappropriate. We are not here today to debate the merits of
9 Mr. Dondero's plan, which the Court permitted him to file
10 under seal. He had ample opportunity to file this plan after
11 exclusivity was terminated, seek approval of a disclosure
12 statement, and, if approved, solicit votes in connection with
13 a confirmation hearing, but he failed to do so.
14 What matters today, Your Honor, is whether the Debtor's
15 plan, the plan that has been accepted by 99.8 percent of the
16 amount of creditors, and opposed only by Mr. Dondero, his
17 related entities, and certain employees, meets the
18 confirmation requirements of Section 1129, which we most
19 certainly argue it does.
20 And perhaps most importantly, Your Honor, the Court
21 remarked at the last hearing that, without the Committee's
22 support for a competing plan, Mr. Dondero's plan would be dead
23 on arrival. And as you have heard from Mr. Clemente, Mr.
24 Dondero does not yet have the Committee's support.
25 Next, Your Honor, is Section 1129(a)(5). That requires

that the plan disclose the identity of any director, affiliate, officer, or insider of the debtor, and such appointment be consistent with the best interest of creditors and equity holders. Courts have held that this section requires the disclosure of the post-confirmation governance of the reorganized entity.

HCMFA objects to the plan, arguing that it did not comply with Section 1129(a)(5) because it didn't disclose the people who would control and manage the Reorganized Debtor and who might be a sub-servicer. HCMFA's objection is off-base. Under the plan, Mr. Seery will be the claimant Trustee and Marc Kirschner will be the Litigation Trustee. Mr. Seery testified extensively about his background, and he has appeared before the Court many times and the Court is familiar with him. We have also introduced his *C.V.* into evidence.

As he testified, he will be paid $150,000 per month, subject to further negotiations with the Claimant Trust Oversight Committee regarding the monthly amount and any success fee and severance fee, which negotiation is expected to be completed within the 45 days following the effective date.

Mr. Seery also testified regarding the names of the members of the Claimant Trust Oversight Committee, which information was also contained in the plan supplement and it generally includes the four members of the Committee and David

Pauker, a restructuring professional with decades of restructuring experience.

The members of the Oversight Committee will serve without compensation, except for Mr. Pauker, who Mr. Seery testified will receive $250,000 in the first year and $150,000 for subsequent years.

As set forth in the Claimant Trust agreement, if at any time there is a vacant seat to be filled by another independent member, their compensation will be negotiated by and between the Claimant Trust Oversight Board and them.

Mr. Seery has also testified that he believed the Claimant Trust will have sufficient personnel to manage its business. Specifically, he has testified that he intends to employ approximately ten of the Debtor's employees, who will be sufficient to enable him to continue to operate the Debtor's business, including as an advisor to the managed funds and the CLOs, until the Claimant Trust is able to effectively and efficiently monetize its assets for fair value, whether that takes two years or whether that takes 18 months or whether that takes longer.

Mr. Seery further testified that he believes that the operations can be best conducted by the Debtor's employees. And while he did consider the retention of a sub-servicer, he ultimately decided, in consultation with the Committee, that the monetization would be a lot more effective if done with a

subset of the Debtor's current employees.

The proposed corporate governance is also consistent with the interests of the Debtor and its stakeholders. The Court is very familiar with Mr. Seery and the Debtor, and I believe that Mr. Clemente, when he comments, will say the Committee can think of no better person to continue managing the Claimant Trust than Mr. Seery.

Mr. Kirschner is also well qualified to be the Litigation Trustee. His *C.V.* is part of the evidence that's been admitted and contains additional information regarding his background. And he will receive $40,000 a month for the first three months and $20,000 a month thereafter, plus a to-be-negotiated success fee.

There just simply can be no challenge to Mr. Seery's or Mr. Kirschner's qualifications or abilities to act in a manner contemplated by the plan or that their involvement is not in the best interest of the estate and its creditors.

Your Honor, the next requirement that is objected to is Section 1129(a)(7). That, of course, requires the Debtor to demonstrate that creditors will receive not less under the plan than they would receive if the Debtor was to be liquidated in Chapter 7. And on February 1st, Your Honor, we filed our updated liquidation analysis, which contains the latest-and-greatest evidence to support that.

These documents, the updated documents, in connection with

the prior analysis, was provided to objecting parties in advance of the January 29th deposition, and Your Honor has heard the differences between the January 29th and the February 1st documents being very minimal.

The Court heard extensive evidence and testimony from Mr. Seery regarding the assumptions that went into the preparation of the liquidation analysis and the differences of what creditors are projected to receive under the plan as compared to what they are projected to receive in a Chapter 7.

Such testimony also included a comparison between the liquidation analysis that was filed with the plan in November, the updated liquidation analysis filed on the -- or, provided to parties on January 28th, and the last version, filed on February 1st.

Mr. Seery testified that, on the revenue side, the liquidation analysis was updated to include the HCLOF interest, which was required as part of the settlement with HarbourVest; the increase in value of certain assets, including Trussway; revenue expected to be generated from continued management of the CLOs; and increased recovery on notes as a result of the acceleration of certain related notes.

On the expense side, Mr. Seery testified regarding his best estimate of the likely expenses to be incurred by a Chapter 7 trustee -- by the Claimant Trust, including

1 personnel costs; professional costs, which increase because of
2 the litigious nature this case has become; and operating
3 expenses.
4 And lastly, on the claim side, Your Honor, Mr. Seery
5 testified that the claims numbers have been updated to include
6 the settlement from HarbourVest and initially the amount
7 approved to UBS pursuant to the 3018 order and then the
8 reduction at $50 million based upon the settlement announced.
9 And like the prior liquidation analysis, the current analysis
10 demonstrates that creditors will fare substantially better
11 under in Chapter -- under the plan than in Chapter 7. In
12 fact, the projected recovery under the plan is 85 percent for
13 Class 7 creditors and 71.32 percent for Class 8 creditors, as
14 compared to 54.96 percent for all unsecured creditors in a
15 Chapter 7.
16 Mr. Seery also testified that expenses are expected to be
17 more under Chapter 11 than under Chapter 7, but he also
18 testified that the tens of millions of dollars in greater
19 revenue and asset recoveries under the plan will more than
20 offset the additional expenses.
21 As a result, the Court has more than sufficient
22 evidentiary basis to conclude that the Debtor has carried its
23 burden to prove that it meets the best interest of creditors
24 best.
25 But Mr. Dondero's counsel spent a lot of time crossing --

1 cross-examining Mr. Seery, in a vain attempt to demonstrate to
2 the Court that a Chapter 7 actually would be much better for
3 creditors. And this argument has also been made by Dugaboy
4 and the Advisors and the Funds.
5 Before I address these arguments on its merits, Your
6 Honor, I just wanted to remind the Court of the Objectors --
7 these Objectors' interest in this case. Mr. Dondero owns no
8 equity in the Debtor. He owns a general partner. Strand, in
9 turn, owns a quarter-percent -- a quarter of one percent of
10 the total equity in the Debtor. And Mr. Dondero's claim, it's
11 only a claim for indemnification. Dugaboy asserts two claims:
12 a frivolous administrative claim relating to the postpetition
13 management of a Multi-Strat, which, as an administrative
14 claim, if it's valid, would not even be affected by the best
15 interest of creditors test, because it would have to be paid
16 in full. And he also asserts a claim that the Debtor's
17 subsidiary -- against the Debtor's subsidiary for which it
18 tries to pierce the corporate veil.
19 Just think about it. Dugaboy, Mr. Dondero's entity, is
20 arguing that he should be able to pierce the corporate veil to
21 get at the entity that was his before the bankruptcy.
22 Dugaboy's only other interest in this case relates to a --
23 a one -- point eighteen and several-hundredths percent of the
24 equity interest of the Debtor, and that is out of the money.
25 And as I mentioned previously, Your Honor, Mr. Rukavina's

1 clients either didn't file any general unsecured claims or
2 filed them and withdrew them. Their only claim is a disputed
3 administrative claim against the Debtor that was filed a week
4 ago and which, at the appropriate time, the Debtor will
5 demonstrate is without merit.
6 And I understand that, just today, NexPoint Advisors also
7 filed administrative claim.
8 So I'm not going to argue to Your Honor that these parties
9 do not have standing, although their standing is tenuous, at
10 best, to assert this argument. The Court should keep their
11 relative interests in mind when evaluating the merits and the
12 good faith of this objection.
13 The principal objection, as I said, is that creditors will
14 do better in a Chapter 7. Essentially, they argue that a
15 Chapter 7 trustee can liquidate the assets just as well as Mr.
16 Seery can and not require the cost structure that is included
17 in the Debtor's plan projections. Yes, they argue that a
18 Chapter 7 will be more efficient.
19 Mr. Seery's testimony, the only testimony on the topic,
20 however, establishes that this preposterous proposition has no
21 basis in reality. Mr. Seery testified that a Chapter 7
22 trustee's mandate would be to reduce Debtor's assets as fast
23 as possible, while he will monetize assets as and when
24 appropriate to maximize the value.
25 But even if you can assume that the Chapter 7 trustee

could get court authority in a Chapter 7 to operate, there are several reasons Mr. Seery testified why a liquidation by a Chapter 7 trustee would be far worse than the plan.

First, Your Honor, no matter how competent the Chapter 7 trustee is -- and Mr. Seery did not say he is more competent than anyone else out there -- the lack of a learning curve that Mr. Seery established through the 13 months in this case puts Mr. Seery at such a major advantage compared to a Chapter 7 trustee.

Second, Mr. Seery questioned whether the Chapter 7 trustee would be able to retain the Debtor's existing professionals, even assuming they were willing to be retained. I'm not sure what's the Court's practice or the practice in the Northern District, but in many districts around the country debtor's counsel and professionals cannot be retained by Chapter 7 trustee, as general counsel, at least.

And I could just imagine, Your Honor, Mr. Dondero's position if the Chapter 7 trustee actually sought to hire Pachulski Stang and DSI.

Third, Your Honor, regardless of whether the Chapter 7 trustee obtained some operating authority, the market perception will be that a Chapter 7 trustee will sell assets for less value than would Mr. Seery as claimant Trustee. Mr. Seery testified to that.

The argument that the Objectors make that a Chapter 7

1 process, whereby the trustee would seek court approval of
2 assets, is better for value than a process overseen by the
3 Claimant Trust Board lacks any evidentiary basis and also is
4 contradicted by Mr. Seery's testimony.
5 In fact, Mr. Seery testified that the Chapter 7 process,
6 the public process of it, would very likely result in less
7 recovery than a sale conducted in the Claimant Trust.
8 And lastly, Mr. Seery testified that it's unlikely that
9 the ten or so valuable employees who Mr. Seery is planning to
10 heavily rely on to assist him with post-confirmation would
11 agree to a work for Chapter 7 trustee. Your Honor is all too
12 familiar with the fights in the *Acis* case and Chapter 7
13 trustee, and it's just hard to believe that any of the
14 Highland employees would go work for the Chapter 7 trustee.
15 So why is Mr. Dugaboy -- why is Dugaboy and Mr. Dondero
16 actually making this objection and advocating for a Chapter 7?
17 It's because they would expect to buy the Debtor's assets on
18 the cheap from a Chapter 7 trustee, exactly what they've been
19 trying to do in this case.
20 Your Honor, moving right now to Section 1129(a)(11), that
21 requires the debtor to demonstrate that the plan is feasible.
22 In other words, it's not likely to be followed by a further
23 liquidation or restructuring. Under the Fifth Circuit law,
24 the debtor need only demonstrate that the plan will have a
25 reasonable probability of success to satisfy the feasibility

1 requirement, and the Debtor has easily met this standard.
2 As Mr. Seery testified, the Debtor's plan contemplates
3 continued operations through which time the assets will be
4 monetized for the benefit of creditors. The plan contemplates
5 that Class 7 creditors will be paid off shortly after the
6 effective date. Class 8 creditors are not guaranteed any
7 recovery but will receive pro rata distributions over a period
8 of time. Class 2, Frontier secured claim, will be paid off
9 over time, and the projections demonstrate that it will -- the
10 Debtor will have money to do so.
11 Mr. Seery testified at length regarding the assumptions
12 that went into the preparation of the projections most
13 recently filed on February 1, and based on that testimony, the
14 Debtor has clearly demonstrated that the plan is feasible.
15 Your Honor, I think that brings us to Section 1129(b). Of
16 course, again, Your Honor, if Your Honor has any other
17 questions with the sections I'm skipping over. I believe
18 we've adequately covered them in the briefs and I don't think
19 there's any objection.
20 But as I mentioned before, we have three classes that have
21 voted to reject the plan. Class 8 is the general unsecured
22 claims. They voted to reject the plan. Yes. Even though,
23 based upon the ballot summary, 99 percent of the amount of
24 claims in that class voted to accept the plan, approximately
25 24 employees voted to reject the plan. And accordingly, the

1 Debtor cannot satisfy the numerosity requirement of Section
2 1126(c).
3 I do want to briefly recount for Your Honor Mr. Seery's
4 testimony regarding the nature of the claims of the 24
5 employees who voted to reject the plan. And I'm not doing
6 this to argue that the votes from these contingent creditors
7 are not valid or that the Debtor doesn't need to satisfy the
8 cram-down requirements. The Debtor understands it needs to
9 demonstrate to the Court that Section 1129(b) is satisfied for
10 the Court to confirm the plan.
11 Rather, why I do this, Your Honor, is to provide the Court
12 with context about the nature and extent of the creditors in
13 this class as the Court determines whether the plan is, in
14 fact, fair and equitable and can be crammed down to a
15 dissenting vote.
16 Mr. Seery testified that these employees originally had
17 claims under the annual bonus plan and the deferred
18 compensation plan. And as he testified, in order for claims
19 under each of those plans to vest -- I think he referred to
20 them as be-in-the-seat plans -- the employee was required to
21 remain employed as of that date.
22 Mr. Seery testified that the Debtor terminated the annual
23 bonus plan in the middle of January and replaced it with the
24 key employee retention plan that the Court previously
25 approved.

Accordingly, Mr. Seery testified that no employee who voted to reject the plan anymore has a claim on the annual bonus plan. He also testified that, with respect to the deferred compensation plan, people have contingent claims under that plan and that no payments are due until May 20 -- 2021.

As Mr. Seery testified, if the employees who would be entitled to receive payments under the deferred compensation plan do not agree to enter into a separation agreement that was approved by the Court, they will be terminated before May and there will no -- not longer be any deferred compensation due.

Accordingly, while the 24 employees who voted to reject the plan do technically have claims at this time they have voted, Mr. Seery testified the claims will go away soon.

I do want to point out something that's obviously painfully obvious at this point, that while Class 8 voted to reject the plan, the Committee, the statutory fiduciary for all unsecured creditors, supports the plan enthusiastically and I believe it does so unanimously.

The other classes to reject the plan, Your Honor, are Class 11, the A limited partnerships, and none of the holders in Class B and C limited partnerships voted on the plan, so cram-down is required over those classes as well. So Your Honor is able to confirm the plan pursuant to the cram-down

1 procedures under 1129(b) if the Court determines that the plan
2 is fair and equitable and does not discriminate unfairly
3 against the rejecting classes.
4 Let's first turn to the fair and equitable requirement. A
5 plan is fair and equitable if it follows the absolute priority
6 rule, meaning that if a class does not receive payment in
7 full, no junior class will receive anything under the plan.
8 With respect to Class 8, no junior class -- junior class to
9 Class 8 will receive payment, and here is the key point,
10 unless Class 8 is paid in full, with appropriate interest.
11 NPA and Dugaboy -- Dugaboy in a brief filed on Monday -- argue
12 that the plan does not satisfy the absolute priority rule
13 because Class 10 and Class Equity Interests have a contingent
14 right to receive property under the plan.
15 Your Honor, this argument misunderstands the absolute
16 priority rule. Class 10 and Class Creditors will only receive
17 payment after distribution to 8 and 9, the unsecured claims
18 and the subordinated claims, are all paid in full, plus
19 interest.
20 And, in fact, Dugaboy, in its brief, to its credit, admits
21 that the argument is contrary to the Bankruptcy Court's
22 decision of Judge Gargotta in the Western District case of *In*
23 *re Introgen Therapeutics*. There, the Court was faced with a
24 similar argument by a group of unsecured creditors who argued
25 that the debtor's plan violated the absolute priority rule

because equity was retaining a contingent interest that would only be payable if general unsecured claims were paid in full.

In rejecting the argument, the Court reasoned, and I quote, "The only way Class 4 will receive anything is if Class 3, in fact, gets paid in full, in satisfaction of 1129(b)(2)(B)(i)," meaning that the absolute priority rule would not be an issue. If Class 3 is not paid in full, Class 4's property interest is not -- is just -- is not just valueless, it just doesn't exist.

Your Honor, this is precisely the situation in this case. Equity interests will only receive a recovery if Class 8 and 9 are paid in full.

But Dugaboy attempts to escape the logical reading of the absolute priority rule by claiming that *Introgen* was wrongly decided and goes against the Supreme Court's decision in *Ellers* (phonetic). Dugaboy argues that because the Supreme Court decided that property given to a junior class without paying a senior class in full is property, even if it's worthless.

But Dugaboy misses the point. Like the debtor in the *Introgen*, the Debtor here is not arguing that the property -- the absolute priority rule is not violated because the contingent trust is worthless. Rather, the argument is that the absolute priority rule is not violated; it's, in order to receive anything on account of the junior -- of the equity,

the senior creditors have to be paid a hundred percent plus interest.

In fact, Your Honor, if the plan just didn't give any recovery to the equity Class 10 and 11, I bet you Dugaboy and Mr. Dondero would be arguing that it violated the absolute priority rule because senior classes, unsecured creditors, could potentially receive more than a hundred percent of their interest. And there's a case in the Southern District of Texas, *In re MCorp*, where the Bankruptcy Court said that for a plan to be confirmed, its stockholders eliminated, creditors must not receive more than payment in full.

Excess proceeds, Your Honor, if any, have to go somewhere. They can't go to creditors, so they have to go to equity. And the absolute priority rule is not violated.

And how is Dugaboy harmed? They say they may want to buy the contingent interests, and the lack of a marketing effort violates the *LaSalle* opinion as well. And who holds the Class B and Class C partnership interests that come before Dugaboy that Dugaboy is concerned may have this opportunity rather than them? Yes, it's Hunter Mountain, Your Honor, an entity, like Dugaboy, that's owned and controlled by Mr. Dondero.

Accordingly, the argument that the plan violates the absolute priority rule is actually a frivolous argument.

Turning now to unfair discrimination, Your Honor, Dugaboy argued in its brief Monday that because the projected

1 distribution to unsecured creditors has gone down in the
2 recent plan projections, the discrepancy between Class 7 and
3 Class 8 is so large that that amounts to unfair
4 discrimination.
5 Again, the Court should first ask why is Dugaboy even the
6 right party to be making the objection. Its claim against the
7 Debtor to pierce the corporate veil, as I mentioned, is
8 frivolous. It's subject to objection. It didn't even bother
9 to have the claim temporarily allowed for voting purposes, as
10 did other creditors who thought they had a valid claim. Yet
11 this is another example of Mr. Dondero, through Dugaboy,
12 trying to throw as many roadblocks in front of confirmation as
13 he can.
14 But this argument, like the other ones, fails as well.
15 Class 8 contains the general unsecured creditor claims,
16 predominately litigation claims that have been pending against
17 the Debtor for years. The Debtor was justified in treating
18 the other unsecured creditors differently.
19 Class 6 consists of the PTO claims in excess of the cap,
20 which are of different quality and nature than the other
21 claims.
22 Class 7 consists of the convenience class. And it's
23 appropriate to bribe convenience class creditors with a
24 discount option for smaller claims to be cashed out for
25 administrative convenience.

1 Mr. Seery testified that when the plan was formulated, the
2 concept was to separately classify liquidated claims in small
3 amounts in Class 7 and unliquidated claims in Class 8. Mr.
4 Seery also testified that there's a valid business
5 justification to treat the -- hold business 7 -- Class 7
6 claims differently. These creditors had a reasonable
7 expectation of getting paid promptly, as compared to
8 litigation creditors, who would expect to be paid over time.
9 As the Court is aware, the litigation claims in Class 8
10 involve litigation that has been pending for several years in
11 the case of Acis, Daugherty, Redeemer, and more than a decade
12 in UBS.
13 And most importantly, as Mr. Seery testified, the
14 Committee and the Debtor had significant negotiation regarding
15 the classification and treatment provisions of the plan for
16 Class 7.
17 The Committee does have one constituent who is a Class 7
18 creditor. However, the other three creditors are all in Class
19 8 and hold claims in excess of $200 million and supported the
20 separate classification and the different treatment.
21 So, Your Honor, discrimination, different treatment among
22 Class 7 and 8 is appropriate, and the different treatment is
23 not unfair. In the February 1 projections, the Class 8
24 creditors are estimated to receive 71.32 percent of their
25 claims, but that's just an estimate. As Mr. Seery testified,

the number can go up based upon the value he can generate from the assets and, importantly, from litigation claims. Class 8 creditors could up end up receiving a hundred percent on account of their claims. Class 7 creditors are fixed at 85 percent.

Giving Class 8 creditors the opportunity to roll the dice and potentially get more or less than the 85 percent offered to Class 7 is not at all unfair.

For these reasons, Your Honor, the Court has the ability and should confirm the plan pursuant to the cram-down provisions of 1129(b).

Your Honor, I'm now going to switch from the statutory requirements to all the issues raised by the release, injunction, and exculpation provisions.

I'd just like to take a brief sip of water.

Dugaboy -- I will first deal with the Debtor release provided in Article 9(f) of the plan, which we claim is appropriate. Dugaboy and the U.S. Trustee have objected to the release contained in Article 9(f). Dugaboy objects because it believes that the Debtor release releases claims that the Claimant Trust or Litigation Trust have that have not yet arisen, and the U.S. Trustee objects because it believes that the release is a third-party release.

These objections have no merit, and they should be overruled.

I would like to ask Ms. Canty to put up a demonstrative which contains the provision Article 9(f) of the plan.

Your Honor, as set forth in this Article 9(f), only the Debtor is granting any release. While that --

THE COURT: And for the record, it's 9(d)? 9(d), right?

MR. POMERANTZ: 9(d)? 9(d), correct, Your Honor.

THE COURT: Yes. Okay.

MR. POMERANTZ: Sorry about that.

THE COURT: Uh-huh.

MR. POMERANTZ: While the release is broad, it does not purport to release the claims of any third party. The Claimant Trust and the Litigation Trust are only included in the release as successors of the Debtor. The release is specifically only for claims that the Debtor or the estate would have been legally entitled to assert in their own right.

Section 1123(b)(3)(A) of the Bankruptcy Code provides that a plan may provide for the settlement or adjustment of any claims or interests belonging to the debtor or the estate, and that's exactly what the Debtor release provides.

Accordingly, Dugaboy is wrong that the release effects a release of claims that the Claimant Trust or the Litigation Sub-Trust have that won't arise until after the effective date. And the U.S. Trustee is simply wrong; there's no third-party release aspect under the release.

The last point I will address on the release, Your Honor, is who is being released and why and what does the evidence show. The Debtor release extends to release parties which include the independent directors, Strand, for actions after January 9th, Jim Seery as the CEO and CRO, the Committee, members of the Committee, professionals, and employees.

You have heard Mr. Seery's testimony that the Debtor does not believe that any claims against the parties that are proposed to be released actually exist. You have heard Mr. Seery's testimony that he worked closely with the employees and believes that not only have they all been instrumental in getting the Debtor to the -- be on the cusp of plan confirmation, but that also Mr. Seery is not aware of any claims against them.

Moreover, as Mr. Seery testified, the release for the employees is only conditional. He testified that the employees are required to assist in the monetization of assets and the resolution of claims, and if they do not like -- if they do not lose their release, then any Debtor claims are tolled, such that could be pursued by the Litigation Trustee at a future time.

Lastly, I'm sure that the Dondero entities will argue that someone needs to investigate claims against Mr. Seery for mismanagement or for, God forbid, having failed to file the 2015.3 statements. Such claims are part of the continuing

harassment of Mr. Seery that the Dondero entities have embarked on after it was apparent that nobody would support their plan.

There is no evidence of any claims that exist, Your Honor. In fact, the Committee and its professionals have watched the Debtor through this case like a hawk. They have not been afraid to challenge the Debtor's actions in general and Mr. Seery's in particular. FTI has worked on a daily basis with DSI and the company, had access to information. When COVID was happening, they were looking at trades going on on a daily basis.

So if the Committee, whose members hold approximately $200 million of claims against the estate, are okay with the release against the independent directors and Mr. Seery, that should provide the Court with comfort to approve the releases as part of the plan.

In summary, Your Honor, the Debtor release is entirely appropriate and does not affect the release of third-party claims that have not yet arisen.

Next, Your Honor, I want to go to the discharge. There's been objections to the discharge. Dugaboy and NexPoint have objected that the Debtor receiving a discharge under the plan -- argue a debtor is liquidating. The objection is not well taken based upon Mr. Seery's testimony regarding what it is the Claimant Trust and the Reorganized Debtor plan to do after

the effective date, as compared to what the limitations of a discharge are under 1141(d)(3).

Your Honor, Article 9 of the -- 9(b) of the plan provides that as -- except as otherwise expressly provided in the plan or the confirmation order, upon the effective date, the Debtor and its estate will be discharged or released under and to the fullest extent provided under 1141(d)(A) [sic] and other applicable provisions of the Bankruptcy Court. Bankruptcy Code.

Section 1141(d)(3) provides an exception to the discharge, and I'd like to have that section put up for Your Honor at this point. Ms. Canty?

As this -- as the section reflects, and as the Fifth Circuit has ruled in the *TH-New Orleans Limited Partnership* case cited in our materials, in order to deny the debtor a discharge under 1141(d)(3), three things must be true: (1) the plan provides for the liquidation of all or substantially all of the property in the estate; (2) the debtor does not engage in business after consummation of the plan; and (3) the debtor would be denied a discharge under 727(a) of this title if the case was converted to Chapter 7. Here, only C applies.

With respect to A, Your Honor, while the plan does project that it will take approximately two years to monetize the Debtor's assets for fair value, the Debtor is just not liquidating within the meaning of Section A.

As Mr. Seery testified, during the post-confirmation period, post-effective date period, the Debtor will continue to manage its funds and conduct the same type of business it conducted prior to the effective date. It'll manage the CLOs. It'll manage Multi-Strat. It'll manage Restoration Capital. It'll manage the Select Fund, and it'll manage the Korea Fund.

The Bankruptcy Court for the Southern District of New York's 2000 opinion in *Enron*, cited in our materials, is on point. There, the Court found that a debtor liquidating its assets over an indefinite period of time that is likely to take years is not liquidating within the meaning of Section 1141(b)(3)(A), justifying a denial of discharge.

But even if we failed A, based upon Mr. Seery's testimony, we would not fail B. The Debtor will be continuing to do what it has done during the case, as it did before, as I said, managing its business. B says the debtor does not engage in the business after management. So while Mr. Seery testified that it would take approximately two years, it could take more, it could take less, and there is no requirement to liquidate assets over a period of time.

Accordingly, Your Honor, the Debtor is conducting the type of business contemplated by Section B so as not to just deny a discharge.

As the Fifth Circuit said in the *TH-New Orleans* case, the court granted a discharge there because it was likely that the

1 debtor would be liquidating its assets and conducting business
2 (indecipherable) years following a confirmation date. And
3 this result makes sense, Your Honor, because the Debtor will
4 need the discharge and the tenant injunctions, which I'll get
5 to in a moment, in order to prevent interference with the
6 Debtor's ability to implement the terms of the plan and make
7 distributions to creditors.
8 I would now like, Your Honor, to turn to the exculpation
9 provisions, which there's been -- there's been a lot of
10 briefing on it, and I know Your Honor is very aware of the
11 exculpation provisions and the *Pacific Lumber* case. And
12 several parties have objected to the exculpation contained in
13 the plan, based primarily on the Fifth Circuit ruling in
14 *Pacific Lumber*.
15 The exculpation provision, which is not dissimilar to what
16 is found in many plans around the country, including in plans
17 confirmed in bankruptcy courts in the Fifth Circuit, acts to
18 exculpate the exculpated parties for negligent-only acts as it
19 contains the standard carve-outs for gross negligence,
20 intentional conduct, and willful misconduct.
21 I do want to bring to the Court's attention a deletion we
22 made to the parties protected by the exculpation in the plan
23 and now -- were filed on February 1st. The definition of
24 exculpated parties included, before February 1, not only the
25 Debtor but its direct and indirect majority-owned subsidiaries

1 and the managed funds. In the plan amendment, we have deleted
2 the Debtor's direct and indirect majority-owned subsidiaries
3 and managed funds from the definition and are not seeking
4 exculpation for those entities.
5 But before, Your Honor, I address *Pacific Lumber* and why
6 the Debtor believes it does not preclude the Court from
7 approving the exculpation in this case, I do want to focus on
8 something that the Objectors conveniently ignore from their
9 argument.
10 As I mentioned in my opening argument, Your Honor, the
11 independent directors were appointed pursuant to the Court's
12 order on January 9, 2020. They have resolved many issues
13 between the Debtor and the Committee, and avoided the
14 appointment of a Chapter 11 trustee.
15 The January 9th order was specifically approved by Mr.
16 Dondero, who was in control of the Debtor at the time, and I
17 believe the transcripts that are admitted into evidence will
18 demonstrate that he was fully behind the approval of the
19 January 9th order.
20 In addition to appointing the independent directors into
21 what was sure to be a contentiously litigious case, the
22 January 9th order set the standard of care for the independent
23 directors, and specifically exculpated them from negligence.
24 You have heard Mr. Seery and Mr. Dubel testify that they
25 had input into what the order said and would have not agreed

to be appointed as independent directors if it did not include Paragraph 10, as well as the provisions regarding indemnification and D&O insurance.

I would like to put a demonstrative on the screen, which is actually Paragraph 10 of that order. Your Honor, Paragraph 10, there's two concepts embedded here. First, it requires any parties wishing to sue the independent directors or their agents to first seek such approval from the Bankruptcy Court. Secondly, and importantly for purposes of the independent directors and their agents, who would include the employees, it set the standard of care for them during the Chapter 11 and entitled them to exculpation for negligence. Paragraph 10 says the Court will only permit a suit to go forward if such claim represents a colorable claim for willful misconduct or gross negligence.

And Your Honor, Paragraph 10 does not expire by its terms.

By not including negligence in the definition of what a colorable claim might be, the Court has already exculpated the independent directors and their agents, which include the employees acting at their direction.

And because the independent directors and their agents are exculpated under Paragraph 10, Strand needs to be exculpated as well for actions occurring after January 9th. This is because a suit against Strand for conduct after the independent board was appointed is effectively a suit against

1 the independent directors, who were the only people in control
2 of Strand at that time.
3 After the effective date, Mr. Dondero will regain control
4 of Strand, as the independent directors will be discharged.
5 And for parties able to sue Strand essentially for negligence
6 for conduct conducted by the independent directors after
7 January 9th, Strand will then be able to seek indemnification
8 from the Debtor under the Debtor's partnership agreement
9 because the partnership agreement does provide the general
10 partner is entitled to indemnification.
11 Accordingly, an exculpation for Strand is really the
12 functional equivalent of an exculpation for the independent
13 directors and the Debtor.
14 The January 9th order was not appealed, and an objection
15 to exculpation at this point as it relates to the independent
16 directors, their agents, and Strand is a collateral attack on
17 this order. So, Your Honor, Your Honor does not even need to
18 get to the thorny issues addressed by *Pacific Lumber*.
19 However, even in the absence of the January 9th order,
20 exculpation of the independent directors and their employees,
21 as well as the other exculpated parties, is not prohibited by
22 *Pacific Lumber*. In *Pacific Lumber*, the Fifth Circuit reversed
23 a bankruptcy court order confirming a plan because the
24 exculpation provision was too broad and included parties that
25 the Fifth Circuit thought could not be exculpated under

1 Section 524(e) of the Code.
2 A close look at the issue before the Court, Your Honor,
3 the reasoning for the Court's ruling and why certain parties
4 like Committee and its members were entitled to exculpation,
5 reflects that this case does not prevent the Court from
6 approving exculpation of this case.
7 A careful read of the underlying briefs and opinions in
8 *Pacific Lumber* reveals that the concern that the Appellants
9 had in that case was the application of exculpation to non-
10 fiduciary sponsors. There were two competing plans in the
11 case. The first was filed by the indenture trustee. The
12 second was filed by the debtor's parent and lender, and was
13 deemed -- called the Marathon Plan. The Court confirmed the
14 Marathon Plan, and the indenture trustee appealed, and the
15 indenture trustee argued that the plan sponsors could not be
16 exculpated.
17 After determining that the appeal of the exculpation
18 provisions were not equitably moot, the Fifth Circuit
19 determined that exculpation was not authorized under 524(e) of
20 the Code because that section provides a discharge of the
21 debtor does not affect the liability of any other entity on
22 such debt.
23 However, and here's the important part, Your Honor: The
24 Fifth Circuit did not say that all exculpations are prohibited
25 under the Code and authorized the exculpation of the Committee

and its members. And why did the Court do that? Because it looked at the Committee's qualified immunity under 1103 and also reasoned that Committee members are essentially disinterested volunteers that should be entitled to exculpation on negligence.

The Court also cited approvingly *Colliers* for the proposition that if Committee members were not exculpated for negligence and subject to suit by people who are unhappy with them, they just would not serve.

Accordingly, the Fifth Circuit based its willingness to exculpate Committee members on the strong public policy that supports exculpation for those parties under those circumstances. And against this backdrop, Your Honor, there are several reasons why the Court should authorize exculpation in this case, notwithstanding *Pacific Lumber*.

First, Your Honor, the independent directors in this case are analogous -- much more analogous to the Committee members that the Fifth Circuit ruled were entitled to than the incumbent officer and directors.

Your Honor has the following facts before the Court, based upon the testimony of Mr. Seery and Mr. Dubel and other evidence in the record. The independent board members were not part of the Highland enterprise before the Court appointed them on January 9th. The Court appointed the independent directors in lieu of a Chapter 11 trustee to address what the

Court perceived as the serious conflicts of interest and fiduciary duty concerns with current management, as identified by the Committee.

The independent directors would not have agreed to accept their role without indemnification, insurance, exculpation, and the gatekeeper function provided by the January 9th order.

And Mr. Dubel testified regarding the significant experience he has as an independent director during his 30-plus years in the restructuring community, including several engagements as an independent director in Chapter 11 cases. And he testified that independent directors have become commonplace in complex restructurings over the last several years and have been appointed in many cases, including high-profile cases. We've cited to just a few of those cases in our brief, but we could go on and on.

Mr. Dubel testified that the independent directors are a critical tool in proper corporate governance and restoring creditor confidence in management in modern-day restructurings, and he testified that, based upon his experience, independent directors expect to be indemnified by the company, expect to obtain directors and officers insurance, and expect to be exculpated from claims of negligence when they agree to be appointed.

He further testified that if independent directors cannot be assured that they will be exculpated for simple negligence,

he believes they will be unwilling to serve in contentious cases like the one we have here, which will have a material adverse effect on the Chapter 11 restructuring process as we know it.

Based upon the foregoing testimony, Your Honor, which is uncontroverted, the Court should have no problem finding that the independent directors are much more analogous to the Committee members in *Pacific Lumber* who the Fifth Circuit said could be exculpated.

The facts, these facts also distinguish this case from the *Dropbox v. Thru* case which Your Honor decided and which was reversed on this issue by the District Court. In neither *Pacific Lumber* or *Thru* was there an argument that the policy reasons that supported exculpation of Committee members also supported the exculpation of the parties sought to be exculpated.

Moreover, Your Honor, the independent directors in this case were pointed as essentially as substitute for a Chapter 11 trustee. There was a Chapter 11 trustee motion filed a few days before, I believe, and the Court, in approving this, said that you -- better than a Chapter 11 trustee. And Chapter 11 Trustees are entitled to qualified immunity. So, while, yes, the independent directors aren't truly Chapter 11 trustees, they are analogous.

Second, Your Honor, while there is language in *Pacific*

1 *Lumber* that says that the directors and officers of the debtor
2 are not entitled to exculpation, the issue before the Court
3 really on appeal was the plan sponsors and whether they were.
4 So I would argue that any discussion of the exculpation not
5 being available for directors and officers in the Fifth
6 Circuit opinion in *Palco* is actually dicta.
7 Third, Your Honor, as I discussed before, the *Pacific*
8 *Lumber* decision was based solely on 524(e) of the Bankruptcy
9 Code, which only says that the discharge of a claim against
10 the debtor does not affect the discharge of a third party.
11 However, the Debtor is not relying on 524(e) as the basis of
12 their exculpation. As we outline in our brief, Your Honor, we
13 believe that the exculpation is appropriate under Section 105
14 and 1123(b)(6) as a means -- part of an implementation of the
15 plan.
16 Importantly, Your Honor, as other courts hostile to third-
17 party releases have determined, exculpation only sets a
18 standard of care for parties and is not an effort to relieve
19 fiduciaries of liability.
20 Other courts that have aligned with the Fifth Circuit and
21 rejected third-party releases, like the Ninth Circuit, have
22 recently determined exculpation has nothing to do with 524(e).
23 In *In re Blixseth*, a Ninth Circuit case decided at the end of
24 2020 cited in our materials, they examined several of their
25 circuit cases that had strongly prohibited non-consensual

1 third-party releases under 524(e). But again, the Court
2 concluded that 524(e) only prohibits third parties from being
3 released from liability of a prepetition claim for which the
4 debtor receives a discharge. The Court reasoned that the
5 exculpation clause, however, protects parties from negligence
6 claims relating to matters that occurred during the Chapter 11
7 case and has nothing to do with 524(e).
8 The Ninth Circuit, which along with the Fifth Circuit has
9 been notorious for prohibiting third-party releases, issued
10 its ruling against this backdrop and said that exculpations
11 are appropriate.
12 Your Honor, the Objectors made a point yesterday of
13 pointing out that Strand, as the Debtor's general partner, is
14 liable for the debts under applicable law. To the extent they
15 intend to argue that the exculpation is seeking to discharge
16 any such prepetition liability, they would be wrong. The
17 exculpation only applies to postpetition matters. And to the
18 extent they argue that the exculpation seeks to discharge
19 Strand's potential postpetition liability, for the reasons I
20 discussed, a claim against Strand will essentially be a claim
21 against the Debtor because the Debtor will be obligated to
22 indemnify them.
23 Accordingly, Your Honor, we submit that if this matter
24 goes up to appeal to the Fifth Circuit, which it may very well
25 do, that the Fifth Circuit may very well come out the same way

as the Ninth Circuit and start relaxing the standard or otherwise provide that the independent directors are much more like Committee members.

Lastly, Your Honor, if the Court does confirm the plan, which we certainly hope it will do, it will have made a finding that the plan has been proposed in good faith, and in doing so, the Court essentially finds that the independent directors and their agents have acted appropriately and consistent with their fiduciary duties, and it makes -- exculpation for negligence naturally flows from that finding.

Your Honor, I would now like to go to the injunction provisions, and my argument is that the injunction provisions as amended are appropriate.

THE COURT: Can I stop you?

MR. POMERANTZ: We received several of -- yes.

THE COURT: I want to just recap a couple of things I think I heard you say. You're not asking this Court, you say, to go contrary to *Pacific Lumber* per se. You have thrown out there the possibility that *Pacific Lumber* mistakenly relied on 524(e) in rejecting exculpations of plan sponsors. You're saying, eh, as a technical matter, I think they were wrong in focusing on that statute because that statute seems to deal with prepetition liability. Okay? Its actual wording, 524(e) states, discharge of a debt of a debtor does not affect the liability of any other entity on such debts.

1 And reading between the lines, I think you're saying --
2 well, maybe this isn't what you're saying, but here's what I
3 inferred -- "debt" is defined in 101(12) to mean liability on
4 a claim, and then "claim" is defined in 101(5) of the
5 Bankruptcy Code as meaning right to payment. It doesn't say
6 as of the petition date, but I think if you look at, then,
7 Section 502 of the Bankruptcy Code that addresses claims and
8 interests, clearly, it seems to be referring to the
9 prepetition time period, you know, claims and interest as of
10 the petition date. And then -- that's 502. And then 503
11 speaks of, for the most part, postpetition administrative
12 expenses.
13 So that was my rambling way of saying I'm understanding
14 you to say, eh, as a technical matter, we think the Fifth
15 Circuit was wrong to focus on 524(e) because when you're
16 talking about exculpation you're talking about postpetition
17 liability, not prepetition liability. And 524(e) is talking
18 more about prepetition liability.
19 But I think what I also hear you saying is, at bottom,
20 *Pacific Lumber* was sort of a policy-driven holding where, you
21 know, we're worried about no one would ever sign up for being
22 on an unsecured creditors' committee if they could be exposed
23 to lawsuits. They're fiduciaries, we think, for policy
24 reasons. Exculpation is appropriate for this one group. And
25 you're saying, well, they didn't have an independent board

that they were considering. They were just considering non-fiduciary plan sponsors. And so the rationale presented by *Pacific Lumber* applies equally here, and just they didn't make a holding in this factual context.

Have I recapped what you're saying?

MR. POMERANTZ: Your Honor, that's generally -- generally correct, with a couple of nuances. So, yes, first, I think, on a policy basis, Your Honor -- again, putting aside the January 9th order, because we don't see --

THE COURT: Right. Right.

MR. POMERANTZ: -- Your Honor even needs to get to this issue.

THE COURT: I understand.

MR. POMERANTZ: But if Your Honor does get to this issue, we think, as a first point, Your Honor could be totally consistent with *Pacific Lumber* because there's policy reasons and there was not a categorical rejection of exculpation. Okay. So if there was a categorical rejection, then it wouldn't have been okay for committee members. Okay.

Second argument, yes, we don't think -- we think it's part of dicta. It's not part of the holding. We understand that other courts may have not agreed, maybe your *Thru* case, which Your Honor was appealed on.

But the third issue, our argument is all they looked at was 524(e). They said 523 -- 4(e) does not authorize it.

They did not say 524(e) prohibits it.

We think there's other provisions in the Code. And then when you basically add in the analysis that Your Honor provided, which we agree with, and what 524 was -- to do, 524(e) just says that discharge doesn't affect. It doesn't say that under another provision of the Code or for another reason you are authorized to give an exculpation. I think it's a nuance and it's a difference there.

And my point of bringing up the *Blixseth* case -- which, of course, is Ninth Circuit and it's not binding on Your Honor, it's not binding on the Fifth Circuit -- is to say, when that was presented to them, they saw the distinction that 524(e) has nothing to do with an exculpation. And while, yes, the Fifth Circuit hasn't ruled on that, and if the Fifth -- if that argument is made to the Fifth Circuit, we don't know how they would rule, I think that, based upon their analysis -- which, again, Your Honor, is no more than a page and a half of their opinion, right, of a long, lengthy opinion on the confirmation issues. So I think, Your Honor, with the Fifth Circuit, there is a good chance that based upon the developing case law of exculpation, based upon the sister circuit in *Blixseth* making that distinction, that there is a very good chance that the Fifth Circuit would change.

But look, I recognize that argument requires Your Honor to say, okay, this is outside and -- and what *Pacific Lumber* did

or didn't do. But I think, Your Honor, there's several potential reasons, there's several potential arguments that you can get to the same place.

THE COURT: Okay. Thank you.

MR. POMERANTZ: Okay. If I may just get another glass of -- sip of water before my time starts?

THE COURT: Okay.

MR. POMERANTZ: Okay, Your Honor. We're now turning to the injunction provision. The Debtor received several objections to the injunction provisions in -- I think I have it right now -- Article 9(f) to the plan. And we've modified Article 9(f) to address certain of those concerns, and we believe that, as modified, that the injunction provision implements and enforces the plan's discharge, release, and exculpation provisions to prevent parties from pursuing claims in interest that are addressed by the plan and otherwise interfering with consummation and implementation of the plan.

I'd like to put up the first paragraph of the injunction on the screen now.

Okay, Your Honor. The first paragraph, all it does is prohibits the enjoined parties from taking action to interfere with consummation or implementation of the plan. I suspect a sentence like that is probably in hundreds of plans in the Fifth Circuit and elsewhere.

Initially, to address a concern that it applied to too

many parties, the Debtor added a definition in the revised plan that defines "enjoined parties," which I'd like to now put that definition up on the screen.

The changes -- it's a little hard to read there, but you have it in the -- oh, there you go. The changes made clear that only parties who have a relationship to this case, either holding a claim or interest, having appeared in the case, be a -- or be a party in interest, Jim Dondero, or related entity, or related person of the foregoing are covered. The claim objectors argue that the word "implementation and consummation" is vague, or vague and unclear. Your Honor, these terms are both defined in the Bankruptcy Code and under the case law, and they're, as I said, common features of many plans.

Section 1123(a)(5) of the Code provides that a plan shall provide for its implementation, and identifies a list of items that the plan can include. Article 4 of our plan is defined as "Means of Implementation of This Plan," and describes the various corporate steps required to implement the provisions of the plan, including canceling equity interests, creation of new general partners and a limited part of the Reorganized Debtor, the restatement of the limited partnership agreement, and the establishment of the various trusts.

Paragraph 1 rightly and appropriately enjoins efforts to interfere with these steps.

1 Nor is the term "consummation of the plan" vague.
2 "Consummation" also is a commonly-used term and has been
3 defined by the Fifth Circuit and the Code. 1102 -- 1101(2)
4 defines "Substantial Consummation" to be the transfer of
5 assets to be transferred under the plan, the assumption by the
6 debtor of the management of all the property dealt with by the
7 plan, and the commencement of distributions under the plan.
8 Section 1142 gives the Court authority to direct a party
9 to perform any act necessary for consummation of a plan. And
10 as the Fifth Circuit, in *United States Brass Corp.*, which is
11 said in our material, states, said the Bankruptcy Court had
12 post-confirmation jurisdiction to enforce the unperformed
13 terms of a plan with respect to a matter that could affect the
14 parties' post-confirmation rights because the plan had not
15 been fully consummated.
16 And Your Honor just wrote on this issue last year in the
17 *Senior* -- the *Texas* -- the *TXMS Real Estate v. Senior Care*
18 case, and you cited to *U.S. Brass* to find that, in that case,
19 post-confirmation jurisdiction existed to resolve a dispute
20 relating to an assumed contract because the matter related to
21 interpretation, implementation, and execution of the plan.
22 Accordingly, Your Honor, neither implementation or
23 consummation are vague, and the first paragraph of the
24 injunction is necessary and appropriate to enforce the
25 Debtor's discharge.

As I said before, I will leave it to Mr. Kharasch to address specifically the concerns that the Advisor and the Funds have with the injunction.

The second and third paragraphs of the injunction, Your Honor, certain parties have objected to them on the ground that they constitute an improper release of the independent directors as well as the release of claims against the Reorganized Debtor, the Claimant Trust, and the Litigation Sub-Trust, entities that will not have come into existence until after the effective date.

We believe we have addressed these concerns by modifications to the second and third paragraphs of the injunction, which I would now like to put the second and third paragraphs on the screen.

(Pause.)

MR. POMERANTZ: As that is happening, Your Honor, I will -- there we go.

We believe that the changes that were made to these paragraphs should address the Objectors' concerns.

First, as with the first paragraph, we have created a defined term of "Enjoined Parties" who are subject to the injunction which is narrower than all persons, I believe, or all entities that was included in the prior plan. So we've narrowed that.

"Enjoined Parties" are generally defined, as I mentioned

before, as entities involved in this case or related to Jim Dondero, or have appeared in this case.

Second, we have removed independent directors from these paragraphs to address the concern that the injunction was a disguised third-party release.

Third, we have removed the Reorganized Debtor and the Claimant Trust from the second paragraph and moved them to the third paragraph. We did this to make clear that the Reorganized Debtor and Claimant Trust were only getting the benefit of the injunction as the successors to the Debtor. As the Reorganized Debtor and the Claimant Trust receives the property from the Debtor free and clear of all claims and interests and equity holders under 1141(c), they are entitled to the benefit of the injunction.

Fourth, we have addressed the concern that the injunction improperly affected set-off rights. We added language to make clear that the injunction would only affect the parties' set-off of an obligation owed to the Debtor to the extent that that was permissible under 553 and 1141 of the Bankruptcy Code.

In other words, we are punting the issue for another day, and there's nothing in the plan that gives the Debtor any more set-off rights than it otherwise has under the Bankruptcy Code.

Lastly, Your Honor, certain Objectors have argued that the

1 injunction somehow prevents them from enforcing the rights
2 they have under the plan or the confirmation order. We don't
3 really understand this concern, as the language leading into
4 the second paragraph of the injunction says, except as
5 expressly provided in the plan, the confirmation order, or a
6 separate order of the Bankruptcy Court.
7 With these modifications, Your Honor, the provisions do
8 nothing more than implement 1123(b)(6) and 1141 by preventing
9 parties from taking actions to interfere with the Debtor's
10 plan.
11 The Court has also heard testimony from Mr. Seery
12 regarding the importance of the injunction to implementation
13 of the plan. He testified that he intends to monetize assets
14 in a way that will maximize value. And to effectively do
15 that, he has testified that the Claimant Trust needs to be
16 able to pursue its objectives without interference and
17 continued harassment from Mr. Dondero and his related
18 entities.
19 In fact, Mr. Seery testified that if the Claimant Trust
20 were subject to interference by Mr. Dondero, it would take him
21 more time to monetize assets, they would be monetized for less
22 money, and creditors would be harmed.
23 If Your Honor doesn't have any questions for me on the
24 injunction provisions, I'd like to turn to the last part of
25 the injunction, which is really the gatekeeper provision.

1 THE COURT: All right. You may.
2 MR. POMERANTZ: Your Honor, the last paragraph in
3 Article 9(f) is really not an injunction but is rather a
4 gatekeeper provision. And as originally drafted, it'd do two
5 things: first, it'd require that before any entity, which is
6 defined very broadly, could file an action against a protected
7 party relating to certain specified matters, the entity would
8 have to seek a determination from this Court that the claim
9 represented are colorable claim of bad faith, criminal
10 conduct, willful misconduct, fraud, or gross negligence. The
11 specified matters to which the gatekeeper provision would
12 apply included the Chapter 11 case, negotiations regarding the
13 plan, the administration of the plan, the property to be
14 distributed under the plan, the wind-down of the Debtor's
15 business, the administration of the Claimant Trust, or
16 transactions related to the foregoing.
17 Subject to certain exceptions for Dondero-related parties,
18 protected parties were defined to include the Debtor, its
19 successors and assigns, indirect and direct, majority-owned
20 subsidiaries and managed funds, employees, Strand, Reorganized
21 Debtor, the independent directors, the Committee and its
22 members, the Claimant Trust, the Claimant Trustee, the
23 Litigation Trust, the Litigation Sub-Trustee, the members of
24 the Oversight Committee, retained professionals, the CEO and
25 CRO, and persons related to the foregoing. Essentially,

1 parties related to the pre-effective-date administration of
2 the estate or the post-confirmation implementation of the
3 plan.
4 Second, the gatekeeper provision as originally presented
5 gave the Bankruptcy Court exclusive jurisdiction to adjudicate
6 any cause of action that it determined would pass through the
7 gate. The gatekeeper provision, Your Honor, is not a release
8 in any way. Rather, it permits enjoined parties who believe
9 they have a claim against the protected parties to pursue such
10 a claim, provided they first make a showing that the claim is
11 colorable to the Bankruptcy Court.
12 Several parties, Your Honor, objected to the Bankruptcy
13 Court having exclusive jurisdiction to adjudicate the claims
14 that pass through the gate. The Debtor believes that the
15 Bankruptcy Court would ultimately have jurisdiction of any of
16 those claims that pass through the gate. However, the Debtor
17 did, upon reflection, appreciate the concern that if the Court
18 agreed to that now, it would essentially be determining its
19 jurisdiction before a claim was filed.
20 Accordingly, in the January 22nd plan, Your Honor, we
21 amended the provision to provide that the Bankruptcy Court
22 will only have jurisdiction over such claims to the extent it
23 was legally permissible to do so, essentially deferring the
24 issue to a later time.
25 And as Your Honor, I believe, in one of cases called the

1 *Icing on the Cake*, the retention and jurisdiction provisions
2 in the plan only are to the extent under applicable law and
3 are quite broad and include the things that we would have the
4 Court -- have jurisdiction for the Court, otherwise
5 determined.
6 The Court made some other changes to the gatekeeper
7 provision, and I would like to place the amended gatekeeper
8 provision on the screen right now. In addition to the change
9 I mentioned, the Debtor made the following changes: the
10 provision is limited now to apply only to enjoined parties,
11 rather than any entity. Than any entity. Much narrower. The
12 provision added the administration of the Litigation Sub-Trust
13 to the matters to which the provision would apply. The
14 provision makes clear now that any claim, including
15 negligence, is a claim that could be sought and pursued
16 through the gatekeeper function. And the provision made some
17 other syntax changes.
18 We believe, Your Honor, with these changes, we believe
19 that the gatekeeper provision is within the Court's
20 jurisdiction and it's appropriate to include under the plan.
21 But certain parties have argued that the Court does not
22 have the authority, the jurisdictional authority to perform
23 the gatekeeper function, separate and apart from whether it
24 has jurisdiction to adjudicate the claims that pass through
25 the gate.

1 Your Honor, we submit that these arguments represent a
2 fundamental misunderstanding of Bankruptcy Court jurisdiction
3 and the Court's authority to make sure the Debtor is free of
4 interference in carrying out the plan which I'll get to in a
5 couple moments.
6 As a preliminary matter, Your Honor, it is important for
7 the Court to remember that Paragraph 10 of the January 9 order
8 already contains a gatekeeper provision as it relates to the
9 independent directors and their agents. And as I mentioned on
10 a couple of occasions, that order is not going away, it
11 doesn't expire by its terms, and it cannot be collaterally
12 attacked in this forum.
13 The Debtor does acknowledge, though, that the gatekeeper
14 provision in the plan is broader in terms of the people it
15 protects and it applies to post-confirmation matters.
16 Before I address the Court's authority to approve the
17 gatekeeper provision, I want to summarize the evidence that it
18 has heard from Mr. Seery and Mr. Tauber regarding why the
19 gatekeeper is so important a provision to the success of the
20 plan.
21 Although the Court is all too familiar with the history of
22 litigation initiated by and filed against Mr. Dondero and his
23 related affiliates, Mr. Seery spent some time on the stand
24 testifying about the litigation so the Court would have a
25 complete record for this hearing. He testified that prior to

1 the petition date, the Debtor faced years of litigation from
2 Mr. Terry and Acis that led to the *Acis* bankruptcy case, which
3 Your Honor has said many times it's still in your mind. Years
4 of litigation with the Redeemer Committee which precipitated
5 the filing of a bankruptcy case and resulted in an award very
6 critical of the Debtor's conduct. Years of litigation with
7 UBS. Years of litigation with Patrick Daugherty. And we
8 placed all the dockets for all these matters before the Court.
9 Also, during the bankruptcy and after the Committee
10 essentially rejected the Debtor's pot plan proposal and
11 indicated -- and the Debtor indicated it would be terminating
12 the shared service agreements with Mr. Dondero and his related
13 entities, the Debtor was the subject of harassment from Mr.
14 Dondero and related entities which resulted in the temporary
15 restraining order against him, a preliminary injunction
16 against him, a contempt motion, which Your Honor is scheduled
17 to hear Friday, a motion by the Debtor's controlled -- by the
18 Dondero-controlled investors and funds in CLO managed --
19 managed by the Debtor, which the Court referred to that motion
20 as being frivolous and a waste of the Court's time. Multiple
21 plan objections, most of which are focused on allowing the
22 Debtors to continue their litigation crusade against the
23 Debtor and its successors post-confirmation. An objection to
24 the Debtor approval of the Acis order and a subsequent appeal.
25 An objection to the HarbourVest settlement and subsequent

appeal. A complaint and injunction against the Advisors and the Funds to prevent them from violating Paragraph 9 of the January 9th order. And a temporary restraining order against those parties, which was by consent.

Mr. Dondero's counsel tends to argue that he is the victim here and that the litigation is being commenced against him and -- instead of by him. That response does not even deserve a response, Your Honor. It is disingenuous.

Mr. Tauber testified that he was part of the team at Aon that sourced coverage for the independent directors after their appointment in January 2020 and that he has over 20 years of underwriting experience. He testified that at Aon he builds bespoke insurance programs which are not cookie-cutter programs for his clients, with an emphasis on D&O and E&O. And he was asked by the independent board to obtain D&O and E&O insurance after the board's appointment on January 9th.

Based upon the process Aon conducted in reaching out to insurance carriers, Mr. Tauber testified that Aon was only able to obtain D&O insurance based upon the inclusion of Paragraph 10 of the January 9 order, the gatekeeper provision. I know Mr. Taylor said that that was spoon-fed to the insurers, but Mr. Tauber's testimony is they knew about Mr. Dondero and they knew about his litigation tactics, so it is not a good inference to be made from the testimony that they would not have required something. They probably would have

1 just said no.
2 Aon has now been -- Mr. Tauber testified that Aon has now
3 been asked to obtain D&O coverage for the Claimant Trustee,
4 the Litigation Trustee, the Oversight Committee, the members,
5 the Claimant Trust, and the Litigation Sub-Trust. He
6 testified that he and Aon have approached the insurance
7 carriers that they believe might be interested in underwriting
8 coverage.
9 And no, he hasn't approached every D&O and E&O carrier out
10 there, and there may be, just like an investment banker
11 doesn't have to approach everyone. They are experts in the
12 field, and he testified they approached the people they
13 thought would likely be willing or interested and potentially
14 be willing to extend coverage. And as a result of Aon's
15 efforts, Mr. Tauber has determined that there's a continued
16 resistance to provide any coverage that does not contain an
17 exclusion for actions relating to Mr. Dondero or his related
18 entities. And he further believes that all carriers that will
19 -- that have discussed a willingness to provide coverage will
20 only do so if there is a gatekeeper provision, and only one
21 carrier will agree to provide coverage without a Dondero
22 exclusion.
23 Mr. Tauber testified that he believes that any ultimate
24 policy will provide that if at any time the gatekeeper
25 provision is not in place, either the carrier will not cover

any actions related to Mr. Dondero or his affiliates or that the coverage will be vacated or voided.

Based upon the foregoing record, Your Honor, which is uncontroverted, there's ample justification on a factual basis for approval of the gatekeeper provision.

I will now turn to the Court's authority to approve the gatekeeper provision.

There are three alternative bases upon which the Court can approve the gatekeeper provision. First, several provisions of the Bankruptcy Code give broad authority to approve a provision like the gatekeeper provision.

Second, the Court can analogize to the Barton Doctrine the facts and circumstances in this case and authorize the Court to act as a gatekeeper to prevent frivolous litigation from being filed against court-appointed officers and directors and those that will lead the post-confirmation monetization of the estate's assets.

And third, Your Honor, the Court can find that Mr. Dondero and his entities are vexatious litigants, and use the gatekeeper provision as a sanction to prevent the filing of baseless litigation designed merely to harass those in charge of the estate post-confirmation.

So, Bankruptcy Court authority. Your Honor, there are several provisions in the Bankruptcy Code which we rely on to support the Court's authority. First, Section 1123(a)(5)

1 permits the plan to approve adequate means of implementation,
2 and contains a long, non-exclusive list. Mr. Seery's
3 testimony is uncontroverted that a gatekeeper provision is
4 necessary for the adequate implementation of the plan.
5 Second, Your Honor, 1123(b)(6) authorizes a plan to
6 include any appropriate provision in a plan not inconsistent
7 with any other provision in this Code. There are not any
8 provisions and none have been cited by the Objectors that
9 would prohibit a gatekeeper provision. Section 1141
10 effectively holds that the terms of a plan bind the debtor and
11 its creditors and vest property in a reorganized debtor, free
12 and clear of the interests of third parties.
13 If nothing else, Your Honor, the spirit of 1141 allows the
14 Court to prevent, in appropriate cases, vexatious litigation
15 by unhappy creditors and parties in interest from torpedoing
16 the plan.
17 1142(b), Your Honor, provides that the confirmation --
18 that, after confirmation, the Court may direct any parties to
19 perform any act necessary for the consummation of the plan,
20 and requiring the party to seek court-approval before filing
21 an action is certainly an act.
22 And lastly, Your Honor, Section 105 allows the Court to
23 enter orders necessary to order other things, enforce orders
24 of the Court like the confirmation order, and prevent an abuse
25 of process which would certainly occur if baseless litigation

1 were filed against the parties in charge of the Reorganized
2 Debtor and the trust vehicles entrusted with carrying out the
3 plan.
4 Your Honor, gatekeepers are not a novel concept and have
5 been approved by courts in appropriate circumstances. In the
6 *Madoff* cases, the Court has been the gatekeeper post-
7 confirmation to determine whether investor claims are
8 derivative or direct claims.
9 In *General Motors*, the Court has been the gatekeeper post-
10 confirmation to determine whether product liability claims are
11 proper claims against the reorganized debtor.
12 Closer to home, Judge Lynn, Mr. Dondero's counsel,
13 approved a gatekeeper provision, arguably even more far-
14 reaching than the provision here, in the *Pilgrim's Pride* case.
15 In that case, Judge Lynn held that *Pacific Lumber* prevented
16 him -- prevented the Court from approving the exculpation
17 provision in the plan. However, he did hold that it was
18 appropriate for the Court to ensure that debtor
19 representatives are not improperly pursued for their good-
20 faith actions by requiring that any actions against the debtor
21 or its representatives, and further, on the performance of
22 their obligations as debtor-in-possession, be heard
23 exclusively before the Bankruptcy Court.
24 And *Pilgrim's Pride* is not the only case in this district
25 to include a gatekeeper provision, as Judge Houser approved

one in the *CHC Group* in 2016, which is cited in our materials.

The theme in all these cases, Your Honor, is that there are circumstances where it is necessary and appropriate for the Bankruptcy Court to act as a gatekeeper as a means of reducing litigation that could interfere with a confirmed plan and that a Court has the authority to approve such provisions.

The Objectors argue that the Bankruptcy Court does not have jurisdiction to approve that provision. The Debtor understands the argument as it related to the prior provision, which gave the Court exclusive jurisdiction over any claim it found colorable, and we've amended the plan to address that issue. The jurisdiction to deal with those claims could be left to a later day.

But to the extent the Objectors still pursue the jurisdiction argument in light of the current provision, they're really conflating two very different things: the ability to determine whether a claim is colorable and the ability to adjudicate that claim if the Court determines it's colorable.

None of the authorities cited by the Objectors hold that the Court is without jurisdiction to approve a gatekeeper provision like the one here. So, rather, what they do is they try to -- they argue, based upon the *Craig's Stores* case, which is narrower than other circuits of post-confirmation jurisdiction in the Bankruptcy Court, and argue that the

gatekeeper provision doesn't fall within that. But that -- such reliance is misplaced, Your Honor.

Craig held that the Bankruptcy Court did not have jurisdiction to adjudicate a post-confirmation dispute over a private-label credit card agreement between the debtor and the bank. In declining to find jurisdiction, the Fifth Circuit remarked that there was no antagonism or claim pending between the parties as of the reorganization and no facts or law deriving from the reorganization or the plan was necessary to the claim asserted by the debtor.

However, in so ruling, Your Honor, the Fifth Circuit did reason that post-confirmation jurisdiction in the Bankruptcy Court continues to exist for matters pertaining to implementation and execution of the plan. Requiring parties to seek Bankruptcy Court determination the claim is colorable before embarking on litigation that will impact indemnification rights and affect distributions to creditors is not an expansion of jurisdiction and fits well within the *Craig* reasoning.

Unlike the credit card agreement dispute in *Craig*, Mr. Dondero and his entities have demonstrated tremendous antagonism towards the Debtor. And while the Debtor's plan may be confirmed, further litigation has been threatened by Mr. Dondero. It's in the pleadings. That's one of the reasons Mr. Dondero says his plan is better. It'll avoid

1 tremendous amount of litigation.
2 After *Craig*, the Fifth Circuit again examined the
3 bankruptcy court's post-confirmation jurisdiction in the
4 *Stoneridge* case in 2005. In that case, the Fifth Circuit
5 ruled that a bankruptcy court has post-confirmation
6 jurisdiction to resolve a dispute between two nondebtors that
7 could trigger indemnification claims against a liquidating
8 trust formed as a result of a confirmed plan.
9 And lastly, as I mentioned Your Honor's decision before,
10 the *TXMS Real Estate* case, I think just a couple of months
11 ago, it stands for the proposition that post-confirmation
12 jurisdiction exists for matters bearing on the implementation,
13 interpretation, and execution of a plan. In that case, Your
14 Honor ruled that Your Honor had jurisdiction to resolve a
15 post-confirmation dispute between a liquidating trust formed
16 under a plan and a landlord, the result of which could
17 significantly and adversely affect the value of the
18 liquidating trust and monies available for unsecured
19 creditors.
20 And you have heard Mr. Seery testify that litigation will
21 have an adverse effect on the ability to make distributions to
22 creditors.
23 So, Your Honor, under these authorities, the Court
24 undoubtedly would have jurisdiction to act as the gatekeeper
25 for the litigation.

There's also an independent basis for the gatekeeper provision, Your Honor, the Barton Doctrine, which the Court is very familiar from your opinion in the *In re Ondova* case in 2017 and which provides that before a suit may be brought against a trustee, leave of Court is required. In *Ondova*, the Court reviewed the history of the doctrine in connection with litigation brought by a highly-litigious debtor against a trustee and his professionals. This Court noted that there are several important policies followed by the doctrine, including a concern for the overall integrity of the bankruptcy process and the threat of trustees being distracted from or intimidated from doing their jobs. And Your Honor's language still: For example, losers in the bankruptcy process might turn to other courts to try to become winners there by alleging the trustee did a negligent job.

Your Honor, this is precisely what the Debtor is trying to prevent here, Mr. Dondero and his entities from putting the bad experience before Your Honor in this case behind it and going to try to find better luck in a more hospitable court.

Your Honor, the Barton Doctrine originally only applied to receivers, and over the course of time has been extended to apply to various court-appointed fiduciaries, as we have cited in our materials: trustees, debtors-in-possession, officers and directors, employees, and attorneys representing the debtor.

And I expect the Objectors to argue that there is a statutory exception to the Barton Doctrine under 28 U.S.C. 959 and it does not apply to acts or transactions in carrying out business conducted with a property. The exception, Your Honor, is very narrow and was meant to apply for things like slip-and-fall cases. In fact, the Eleventh Circuit in the *Carter v. Rodgers* case, 220 F.3d 1249 in 2000, held that Section 11 -- 28 U.S.C. 959(a) does not apply to suits against trustees for administering or liquidating the bankruptcy estate.

The Objectors also argue that the gatekeeper provision violates *Stern v. Marshal*. However, as the Court acknowledged in *Ondova*, the Fifth Circuit in *Villegas v. Schmidt* has recognized that the Barton Doctrine remains viable post-*Stern v. Marshal*. The Fifth Circuit reasoned that while Barton Doctrine is jurisdictional in that a court does not have jurisdiction of an action if preapproval has not been obtained, it does not implicate the extent of a bankruptcy court's jurisdiction to adjudicate the underlying claim, precisely the distinction we're making here. The bankruptcy court would be the gatekeeper for deciding whether the claim passes through the gate, and then after will decide if it has jurisdiction to rule on the underlying claim.

And this is important especially in a case like this, Your Honor, where Your Honor has had extensive experience with the

1 parties and is in the best position to determine whether the
2 claims are valid or attempted to be used as harassment.
3 The Objectors will complain about the open-ended nature of
4 the gatekeeper provision, whether it will or won't apply after
5 the case is closed or a final decree is issued, and the unfair
6 burden of their rights.
7 Your Honor has a previous reported opinion where basically
8 jurisdiction does extend after a case is closed or a final
9 decree is entered, so that issue is a red herring.
10 As Your Honor is well aware, it's a decade-long -- a
11 decade of litigation against the Dondero-controlled entities
12 that caused the Highland bankruptcy. And the Court is very
13 well aware of the litigation that occurred in *Acis*, very well
14 aware of the litigation that's occurred here that I mentioned
15 a few minutes ago. Your Honor, it is not over, you'll be
16 presiding over the contempt hearing.
17 And if the Court needs yet another ground to approve the
18 gatekeeper provision, the Debtor submits that the procedure is
19 an appropriate sanction for Dondero's vexatious litigation
20 activities. We cited the *In re Carroll* case in the Fifth
21 Circuit of 2017 that held that a bankruptcy court has the
22 authority to enjoin a litigant from filing any pleading in any
23 action without the prior authority from the bankruptcy court.
24 And in affirming the decision of the bankruptcy court, the
25 Fifth Circuit commented on the reasons the bankruptcy court

gave for its ruling. After recounting the bad faith of appellants, the bankruptcy court determined that the Carrolls' true motives were to harass the trustee and thereby delay the proper administration of the estate, in the hope that they would be able to retain their assets or make pursuit of the assets so unappealing that the trustee would be compelled to settle on terms favorable to appellants.

Sounds familiar, Your Honor. The same can certainly be said about what Mr. Dondero is doing in this case.

And to make a showing that a party is vexatious litigant, the Court must find that the party has a history of vexatious and harassing litigation, whether the party has a good faith -- the litigation or has filed it as a means to harass, the burden to the Court and other parties, and the adequacy of alternative sanctions.

And as Your Honor is well aware from all the litigation, Your Honor is well, well able to make the finding required for the vexatious litigation finding.

But here, we don't ask for the drastic sanction of enjoining from any further filings. Rather, we just ask for a less-severe sanction, requiring Mr. Dondero and his entities to first make a showing that he has a colorable claim.

The Fifth Circuit in *Baum v. Blue Moon*, 2007, did exactly that. In *Baum*, the district court barred a vexatious litigant from initiating litigation without first obtaining the

approval of the district court. Ultimately, the matter reached the Fifth Circuit after the district court had modified the pre-filing injunction to limit it to a certain case, and then broadened it again based upon continued bad faith conduct.

On appeal, the Fifth Circuit, citing several prior cases, noted that a district court has the authority to impose a pre-filing injunction to defer vexatious, abusive, and harassing litigation.

And for those reasons, Your Honor, the Debtor asks the Court to overrule any objections to the gatekeeper provision.

Your Honor, I was just going to then go to the plan modification provisions, but I wanted to stop and see if you had any questions at this point.

THE COURT: I do not. Let's give him a time estimate, Nate. About how --

THE CLERK: Twenty.

MR. POMERANTZ: I have another five or six minutes, I think, based upon --

THE COURT: Okay.

MR. POMERANTZ: And then I'll be ready to turn it over to --

THE COURT: Okay.

MR. POMERANTZ: -- to Mr. Kharasch.

THE COURT: All right. Yes. You've got -- you've

done an hour and 33 minutes. So you have about, I guess, 37 minutes left. Okay. Go ahead.

MR. POMERANTZ: Thank you, Your Honor.

I would like to address the modifications of the plan that were contained in our January 22nd plan and the additional changes filed on February 1, several of which I have referred.

As a preliminary matter, Your Honor, under 1127(b), the Debtor can modify a plan at any time prior to confirmation if -- and not require resolicitation if there's no adverse change in the treatment of claim or interest of any equity holder.

With that background, I won't go through the changes we made that I've already discussed, but I will point out a couple, Your Honor, that I would like to point out now. We have modified the plan with respect to conditions of the effective date in Article 8. First, a condition to the effective date will now be entry of a final order confirming a plan, as opposed just to entry of order. And final order is defined as the exhaustion of all appeals.

In addition, the ability to obtain directors and officers insurance coverage on terms acceptable to the Debtor, the Committee, the Claimant Trustee, the Claimant Trustee Oversight Board, and the Litigation Trustee is now a condition to the effective date.

The Court heard testimony today and has experienced firsthand the litigiousness of Mr. Dondero and his related

1 entities. And the Court heard testimony from Mr. Tauber and
2 Aon that the D&O insurance will not be available post-
3 effective date without assurances that the gatekeeper
4 provision will be in effect for the duration of the policy and
5 any run-off period.
6 Mr. Tauber further testified that he expected the final
7 terms from the insurance carrier to provide that if the
8 confirmation order was reversed on appeal and the gatekeeper
9 was removed, it would void -- it would either void the
10 directors and officers coverage or it'd result in a Dondero
11 exclusion.
12 Mr. Dondero and his entities are no strangers to the
13 appellate process, as Your Honor knows. They appealed several
14 of your orders, and continue the tack in this case, having
15 appealed the Acis and the HarbourVest orders and the
16 preliminary injunction. It would not surprise the Debtor if
17 Mr. Dondero and his entities appealed your confirmation order,
18 if Your Honor decides to confirm the plan.
19 The Debtor is confident that it will prevail on any appeal
20 in the confirmation order, as we believe the Debtor has made a
21 compelling case for confirmation.
22 The Debtor also believes a compelling case exists that if
23 the plan went effective without a stay pending appeal, that
24 the appeal would be equitably moot, but we understand we are
25 facing headwinds from the courts, bankruptcy court have

1 addressed that issue before.
2 However, given the effect a reversal would have on the
3 availability of insurance coverage, the Claimant Trustee, the
4 Claimant Oversight Committee, and the Litigation Trustee are
5 just not willing to take that risk.
6 We are hopeful that Mr. Dondero and his entities will
7 recognize that any appeal is futile and step aside and let the
8 plan proceed and become effective.
9 If Mr. Dondero and his related entities do appeal the
10 confirmation order, preventing it from becoming final and
11 preventing the effective date from the occurring, the Debtor
12 intends to work closely with the Committee to ratchet down
13 costs substantially and proceed to operate and monetize assets
14 as appropriate until an order becomes final.
15 None of these modifications adversely affect the treatment
16 of claims or interests under the plan, Your Honor, and for
17 those reasons, Your Honor, we request that the Court approve
18 those modifications.
19 And with that, I would like to turn the podium over to Mr.
20 Kharasch to briefly address the remaining CLO objections.
21 THE COURT: All right. Mr. Kharasch?
22 CLOSING ARGUMENT ON BEHALF OF THE DEBTOR
23 MR. KHARASCH: Good afternoon, Your Honor. I'll be
24 as brief as possible. I know we're under a deadline.
25 As you've heard yesterday, you've heard before in other

1 proceedings, Your Honor, the CLO Objecting Parties, the so-
2 called investors, do have rights under the CLO management
3 agreements and indentures, including contractual rights to
4 terminate the management agreements under certain
5 circumstances.
6 What they complain about today, Your Honor, is that the
7 injunction language in the plan, including the language
8 preventing actions to interfere with the implementation and
9 consummation of the plan, is so broad and ambiguous that their
10 rights are or may be improperly impacted, especially any
11 rights to remove the manager for acts of malfeasance.
12 But the Debtor is primarily relying, Your Honor, not so
13 much on the plan injunctions but on the clear provisions of
14 the January 9 order, to which Mr. Dondero consented and which
15 provides that Mr. Dondero shall not cause any of his related
16 entities to terminate any agreements with the Debtor.
17 Yes, that is a broad provision, but it is very clear, and
18 it does not even allow the CLO Objecting Parties to come to
19 court under a gatekeeper-type provision. But that is what Mr.
20 Dondero consented to on behalf of himself and his related
21 entities.
22 Important to note, Your Honor, we are not here today to
23 litigate who is and who is not a related entity. That will be
24 left for another day. However, Your Honor, we have considered
25 these issues, including last night and this morning, and we

are going to propose -- well, we will modify our plan through a provision in the confirmation order to provide the following: Notwithstanding anything in the plan or the January 9 order, the CLO Objecting Parties will not be precluded from exercising their contractual or statutory rights in the CLOs based on negligence, malfeasance, or any wrongdoing, but before exercising such rights shall come to this Court to determine whether those rights are colorable and to also determine whether they are a related entity. If the Court has jurisdiction, the Court can determine the underlying colorable rights or claims.

This does not impact the separate settlement we have with CLO Holdco, Your Honor.

We think that such modification addresses some of the concerns raised yesterday by the objecting parties by providing more clarity as to what the plan is doing and not doing with respect to the plan and the January 9 order, and we think it is also a fair resolution of some legitimate concerns.

So, with that, Your Honor, we think that, with that clarification that we did not have to make but are willing to make, that this should fully satisfy the CLO Objecting Parties with regard to their objections to the injunction and the gatekeeper.

Thank you, Your Honor.

THE COURT: All right. Mr. Clemente?

CLOSING ARGUMENT ON BEHALF OF THE CREDITORS' COMMITTEE

MR. CLEMENTE: Yes, Your Honor. And I actually am going to be brief. Mr. Pomerantz's discussion, obviously, was very, very thorough, so I'm able to cut out a lot of stuff.

Thank you, Your Honor. Matt Clemente, Sidley Austin, on behalf of the Committee.

The plan, Your Honor, meets the confirmation standards and should be confirmed. Mr. Pomerantz covered a lot of ground, and I will endeavor not to repeat that, but there are a few points that I think the Committee wishes to emphasize.

Your Honor, since I first appeared in front of you, I have maintained consistently that no plan can or should be confirmed without the consent of the Committee. Your Honor, in her wisdom, understood this immediately, as it was obvious -- it was the obvious conclusion, given the makeup of the creditor body, the asset pool, and the impetus for the filing of the case.

Unfortunately, not everyone came to this conclusion so easily, and it took much hard-fought negotiations as well as a defeated disclosure statement, among other things, and tireless dedication and commitment by each individual Committee member to drive for a value-maximizing plan that is in the best interests of its constituencies and for us to get to where we are today.

1 And where we are today, Your Honor, is at confirmation for
2 a plan that the Committee unanimously supports, which was the
3 inevitable outcome for this case from the very beginning.
4 I've also said, Your Honor, that context is critical in
5 this case. It has been from the beginning, and it remains so
6 now. Mr. Draper, interestingly, began his comments yesterday
7 by saying that even a serial killer is entitled to *Miranda*
8 rights. While I will admit that at times the rhetoric in this
9 case has been heated, I have never certainly likened Mr.
10 Dondero to a serial killer. But the record shows, and Mr.
11 Dondero's own words and actions show, that he is, in fact, a
12 serial litigator who has no hesitation at all to take any
13 position in an attempt to leverage an outcome that suits his
14 self-interest. And he has no hesitation at all to use his
15 many tentacles in a similar fashion.
16 That is a very important context in which the Court should
17 view the remaining objections of the Dondero tentacles and
18 weigh confirmation of the Debtor's plan.
19 Against this context of a serial litigator, Your Honor, we
20 have a plan supported by each member of the Official Committee
21 of Unsecured Creditors, accepted by two classes of claims,
22 Class 2 and Class 7, and holders of almost one hundred percent
23 in amount of non-insider claims in Class 8.
24 The parties that have voted against the plan are either
25 employees who are not receiving distributions under the plan

or are insiders or parties related to Mr. Dondero.

The overwhelming number and amount of creditors who are receiving distributions under this plan, therefore, have accepted the plan. The true creditors and economic parties in interest have spoken, they have spoken loudly, and they have spoken in favor of confirming the plan.

Your Honor, I'm not going to address the technical requirements, as Mr. Pomerantz did that. So I'm going to skip over my remarks in that regard, except I do want to emphasize the remarks regarding the gatekeeper, exculpation, and injunction provisions as they're of critical importance to the plan.

The testimony has shown and the proceedings of this case has shown, again, Mr. Dondero is a serial litigator with a stated goal of causing destruction and delay through litigation.

The testimony has further shown that none of the independent board members would have signed onto the role without the gatekeeper and injunction provisions and the indemnity from the Debtor.

Therefore, it follows that such provisions are necessary to entice parties to serve in the Claimant Trustee and other roles under the plan, which, as I remarked in my opening comments, are integral to providing the structure that the creditors believe is necessary to unlocking the value and

1 unlocking themselves from the Dondero web.
2 Regarding the exculpation and injunction provisions
3 specifically, Your Honor, the Court will recall that the
4 Committee raised objections to them in connection with the
5 first disclosure statement hearing. In response, the Debtor
6 narrowed the provisions, and the Committee believes they
7 comply with the Fifth Circuit precedent, as Mr. Pomerantz ably
8 walked Your Honor through.
9 And to be clear, Your Honor, not only does the Committee
10 believe the exculpation and injunction provisions comply with
11 Fifth Circuit law, the Committee does not believe the estate
12 is harmed by such provisions, as the Committee does not
13 believe there are any cognizable claims that could or should
14 be raised that would otherwise be affected by the exculpation
15 or injunction, and, frankly, with respect to the release that
16 Mr. Pomerantz walked Your Honor through with respect to the
17 directors and the officers.
18 Regarding the gatekeeper, Your Honor, Your Honor
19 presciently approved it in her January 9th order, and the
20 developments since then only serve as further justification
21 for including it in the plan and confirmation order. Mr.
22 Dondero is a serial and vexatious litigator, and the
23 instruments put in place under the plan to maximize value for
24 the creditors and to oversee that value-maximizing process
25 must be protected, and the gatekeeper function serves that

protection while also, importantly, as Mr. Pomerantz pointed out, providing Mr. Dondero with a forum to advance any legitimate claims he and his tentacles may have.

In short, Your Honor, the gatekeeper provision is necessary to the implementation to the plan, is fair under the circumstances of the case, and is therefore within this Court's authority, and it is appropriate to approve.

Your Honor, in sum, it has been a long road to get here today, but we are finally here. And we are here, Your Honor, I believe in large part as a result of the tireless efforts of the individual members of my Committee, and for that I thank them.

The Committee fully supports and unanimously supports confirmation of the plan. As demonstrated by the evidence, the plan meets all the requirements of the Bankruptcy Code. The Committee believes the plan is in the best interests of its constituencies. And therefore the Committee, along with two classes of creditors and the overwhelming amount of creditors in terms of dollars, urge you to confirm the plan.

That's all I have, Your Honor, but I'm happy to answer any questions you may have for me.

THE COURT: Okay. Not at this time.

Nate, how much time --

(Clerk advises.)

THE COURT: Twenty-five minutes remaining? All

right. Just so you know, you've got a collective Debtor's counsel/Committee's counsel 25 minutes remaining for any rebuttal, if you choose to make it.

Let's take a five-minute break, and then we'll hear the Objectors' closing arguments. Okay.

THE CLERK: All rise.

(A recess ensued from 2:00 p.m. until 2:06 p.m.)

THE COURT: All right. Please be seated. We're going back on the record in Highland. We're ready to hear the Objectors' closing arguments. Who wants to go first?

MR. DRAPER: Your Honor, this -- this is Douglas Draper. I get the joy of going first.

THE COURT: Okay.

CLOSING ARGUMENT ON BEHALF OF THE GET GOOD AND DUGABOY TRUSTS

MR. DRAPER: We've heard a great deal of testimony about the Debtor's belief that the circumstances in this case warrant an exception to existing Fifth Circuit case law, the Bankruptcy Code, and Court's post-confirmation jurisdiction.

I would not be standing here today objecting to the plan if the Debtor didn't attempt to extend, move past and beyond the Barton Doctrine, move beyond 1141, move beyond *Pacific Lumber*. In fact, I think I heard an argument that *Pacific Lumber* is not applicable and this Court should disregard Fifth Circuit case law.

Let's start with the exculpation provision. And the focus

of this case has been, and what we've heard over the last few days, is about the independent directors. I understand there was an order entered earlier, the order stands, and the order is applicable in this case. It cuts off, however, when we have a Reorganized Debtor, because these independent directors are no longer independent directors. It cuts off when we have a new general partner.

And so the protections that were afforded by that order do not need to be afforded to the new officers and new directors of the new general partner. And in fact, the protections that they're entitled to are completely different than the protections that were entitled -- that are covered by the order that the Court has looked at.

Let's first focus on, however, the exculpation provision. And I wanted to ask the Court to look at the exculpated parties. Have to be very careful and very interest -- and focus solely on the independent directors. But if you look at the parties covered by exculpation provision, it includes the professionals retained by the Debtor. My reading of *Pacific Lumber* is that neither the Creditors' Committee counsel nor the Debtor can be covered by an exculpation provision. This in and of itself makes the plan non-confirmable. This exculpation provision is unwarranted and unnecessary.

Two, --

THE COURT: Well, let's drill down on that.

MR. DRAPER: -- we have --

THE COURT: Let's drill down on that. Mr. Pomerantz says that this wasn't what they considered one way or another by *Pacific Lumber*. Debtor, debtor professionals. Okay? Do you disagree with that?

MR. DRAPER: I disagree with that. *Pacific Lumber* said you could only have releases and exculpations for the Creditors' Committee members. And the rationale behind that was that those people volunteered to be part and parcel of the bankruptcy process, that those parties did not get paid. Here, we have two professionals who both volunteered and are being paid, and are not entitled to an exculpation under *Pacific Lumber*. They're not entitled to a --

THE COURT: Okay. So you say *Pacific* --

MR. DRAPER: -- release. Now, ultimately, they --

THE COURT: -- *Pacific Lumber* categorically rejected all exculpations except to Creditors' Committee and its members. That's your --

MR. DRAPER: I agree. That's --

THE COURT: -- interpretation of *Pacific Lumber*?

MR. DRAPER: Yes.

THE COURT: Okay. All right. So you just absolutely disagree, one by one, with every one of the arguments, that it was really -- the only thing before the Fifth Circuit was plan sponsors, okay? A plan proponent that I think was like a

1 competitor previously of the debtor, and I think a large
2 creditor or secured creditor. I think those were the two plan
3 proponents.
4 So you disagree -- I'm going to, obviously, go back and
5 line-by-line pour through *Pacific Lumber*, but you disagree
6 with Mr. Pomerantz's notion that, look, it was really a page
7 and a half or two of a multipage opinion where the Fifth
8 Circuit said, no, I don't think 524(e) is authority to give
9 exculpation from postpetition liability for negligence as to
10 these two plan sponsors. And I guess it was also -- I don't
11 know. They say, Pachulski's briefing says it was really only
12 looking at these two plan sponsors and the Committee and its
13 members on appeal, you know, going through the briefing, and
14 in such, you can see that these were all that was presented
15 and addressed by the Fifth Circuit. You disagree with that?
16 MR. DRAPER: Look, I know the facts of *Pacific Lumber*
17 and they -- I know what the posture of the case was. However,
18 the literal language by the opinion in it, it transcends just
19 a dispute in the case. And I think the U.S. Trustee's
20 position that this exculpation provision is correct as a
21 matter of law support -- is further evidence of the fact that
22 the U.S. Trustee, as watchdog of this process, and *Pacific*
23 *Lumber* say this cannot be done, period, end of story.
24 THE COURT: Okay. So you, at bottom, just totally
25 disagree with Mr. Pomerantz? You say *Pacific Lumber* is

1 actually a very broad holding, and I guess, if such, there's a
2 conflict among the Circuits, right?
3 MR. DRAPER: Well, that's okay.
4 THE COURT: So, --
5 MR. DRAPER: I mean, quite frankly, *Pacific Lumber* is
6 binding on you.
7 THE COURT: Understood.
8 MR. DRAPER: There may be a conflict in the Circuits,
9 and ultimately the Supreme Court may make a decision and
10 decide who's right and who's wrong.
11 But for purposes of today and for purposes of this
12 exculpation provision and for purposes of this confirmation,
13 *Pacific Lumber* is the applicable law.
14 THE COURT: Okay. Well, again, this is a hugely
15 important issue, although in many ways I don't understand why
16 it is, because we're just talking about postpetition acts and
17 negligence, okay? You know, many might say it's much ado
18 about nothing, but it's front and center of your objection.
19 So I guess I'm just thinking through, if the Fifth Circuit was
20 presented these exact facts and was presented with the
21 argument, you know, the *Blixseth* case says 524(e) has nothing
22 to do with exculpation because exculpation is a postpetition
23 concept, and it's just talking about standard liability --
24 these people aren't going to be liable for negligence; they
25 can be liable for anything and everything else -- if presented

with that *Blixseth* case, you know, there are several arguments that Mr. Pomerantz has made why, if you accept that 524(e) might not apply here, let's look at the reasoning, the little bit of reasoning we had of *Pacific Lumber*, that it was really a policy rationale, right? These independent fiduciaries, strangers to the company and case, they'd never want to do this if they knew they were vulnerable for getting sued for negligence. Mr. Pomerantz's argument is that these independent board members are exactly analogous to a Committee, more than prepetition officers and directors. What do you have to say about that policy argument?

MR. DRAPER: Well, I think there's a huge distinction between the members of a Creditors' Committee who are volunteers and are not paid versus a paid independent director. And more importantly, I think there's a huge difference between a member of a Creditors' Committee who's not paid and counsel for a Debtor and counsel for a Creditors' Committee.

THE COURT: Okay.

MR. DRAPER: Look, you have -- you've --

THE COURT: So, at bottom, it was all about compensation to the Fifth Circuit?

MR. DRAPER: Well, no. The Fifth Circuit policy decision was we want to protect a party who wants to serve and do their civic duty to serve on a Creditors' Committee for no

compensation. I agree with that. I think it's a laudable policy decision. I think it makes sense.

However, the Fifth Circuit in its language basically said, nobody else gets it. It didn't say, look, you know, if there are circumstances that are different, we may look at it differently. The language is absolute in the opinion. And that's what I think is binding and I think that's what the case stands for.

And look, just so the Court is very clear, when Pachulski files its fee application and the Court grants the fee application, any claim against them is res judicata. So, in fact, they do have -- they do have protection. They do have the ability to get out from under. The Court -- they're just not -- they just can't get out from under through an exculpation provision. And the same goes for Mr. Clemente and his firm.

THE COURT: Which, --

MR. DRAPER: And the same goes for DSI.

THE COURT: Which, by the way, that's one reason I think sometimes this is much ado about nothing. It goes both ways. The Debtor professionals, the Committee professionals, estate professionals, they're going to get cleared on the day any fee app is approved, right? I mean, there's Fifth Circuit law that says --

MR. DRAPER: I -- I --

1 THE COURT: -- says that's res judicata as to any
2 future claims.
3 But I guess I'm really trying to understand, you know, at
4 bottom, I feel like the Fifth Circuit was making a holding
5 based on policy more than any directly applicable Code
6 provision.
7 I mean, it's been said, for example, that Committee
8 members, they're entitled to exculpation because of, what,
9 1103, some people argue, 1103, which subsection, (c)? That's
10 been quoted as giving, quote, qualified immunity to
11 Committees. But it doesn't really say that, right? It's just
12 something you infer.
13 MR. DRAPER: No. Look, what I think, if you really
14 want to put the two concepts together, I think what the Fifth
15 Circuit, when they told lawyers and professionals that you
16 can't get an exculpation, was very mindful of the fact that
17 you can get released once your fee app is approved. So, as a
18 policy, they didn't need to do it in a exculpation provision.
19 There was another methodology in which it could be done.
20 THE COURT: Uh-huh.
21 MR. DRAPER: And so that's -- you have to look at it
22 as holistic and not just focus on the exculpation provision.
23 Because, in fact, they recognize and they -- I'm sure they
24 knew their existing case law on res judicata, and that's why
25 they read it out.

1 So, honestly, there's no reason for Pachulski to be in
2 here. There's no reason for Mr. Clemente to be in here.
3 There's no reason for the professionals employed by the Debtor
4 to be in here. They have an exit not by virtue of the plan.
5 THE COURT: But so then it boils down to the
6 independent directors and Strand post January 9th?
7 MR. DRAPER: It boils down somewhat to them, but
8 quite frankly, there are two parts to this. One is you have
9 an order that's in place. I am not asking the Court to
10 overturn the order. And quite frankly, this provision could
11 have been written to the effect that the order that was in
12 place on -- that's been presented to the Court is applicable
13 and applied.
14 However, let's parse that down. Let's look at Mr. Seery.
15 The order that's in place solely protects the independent
16 directors acting in their capacities as independent directors.
17 If somebody's acting as -- and if you want to liken it to a
18 trustee, their protection is afforded by the Barton Doctrine,
19 and that's how the protection arises.
20 What's going on here is they're extending the provisions,
21 first of all, of the Court's order, and number two, of the
22 Barton Doctrine, which are -- which cannot be -- which should
23 not be extended. The law limits what protections you have and
24 what protections you don't have. And we, as lawyers -- look,
25 I'll give you the best example. Think of all the times you

had somebody write in the concept of superpriority in a cash collateral order. And how many times have you had a lawyer rewrite the concept of the issue as to diminution in value? The Code says diminution in value, and quite frankly, a cash collateral order should just say if, to the extent there's diminution in value, just apply the Code section. It's written there. Smart people put it in, and Congress approved it. And once you start getting beyond that, those things should be limited.

And what we have are lawyers trying to extend out by definitions things that the Code limits by its reach. That goes for post-confirmation jurisdiction. That goes for the injunction. That goes for the so-called gatekeeper provision.

And so, again, I would not be here if, in fact, they had said, we have an injunction to the full extent allowed by the Bankruptcy Code and *Pacific Lumber*. We have an exculpation provision that's allowed by virtue of the Court's order. We have the full extent and full reach of the Barton Doctrine. Those are legitimate. Once you start expanding upon that, you're reaching into matters that are not authorized and not allowed.

And then you get into 105 territory, which is always very dangerous. And that's really what's going on here. And that's the tenor of my argument and what I'm trying to say. The Code gives protections. It is not for us to extend the

1 protections. It's not for us to enlarge them, even under a,
2 gee, the other party's litigious.
3 And so that's -- let's take *Craig's Store*. Attempted to
4 limit its reach. *Craig's Store* says once you have a confirmed
5 plan, any dispute between the parties, for -- let's take an
6 executory contract. If there's a breach of the executory
7 contract, that's a matter to be handled aft... by another
8 court. It's not a matter to be handled by this Court. This
9 Court lets the parties out.
10 And in this case, it's even worse, because you basically
11 have a new general partner coming in, you have an assumption
12 of various executory contracts, and you have a -- Strand is no
13 longer present.
14 If you adopted Mr. Seery's argument, anybody who appeals a
15 decision, questions what he does or how he does it, is a
16 vexatious litigator. That's not the case. And the fact that
17 we are appealing a decision is a right that we have. It
18 shouldn't be limited, and it shouldn't be held against us.
19 Courts can rule against us. That's fine.
20 And so that's really what the focus is here and that's why
21 I gave the opening that I had. We are willing to be bound by
22 applicable law. And quite frankly, the concept that the
23 exigencies of a case allow a court to change what applicable
24 law is is problematic. I gave the criminal example as a
25 reason. And the reason was that, in certain instances, the

application of law may allow a criminal to go free. It's a problem with our system and how we work, but that's what the law does, and it is absolute in its application.

Let me address the so-called gatekeeper provision. The gatekeeper provision, in a certain sense, is recognized in the Barton Doctrine. It's jurisdictional, and it says, to the extent you're going to litigate with somebody who served during the bankruptcy, who was a trustee, then you have to come to the bankruptcy court and pass through a gate. It doesn't say you have to pass through a gate for a reorganized debtor who does something after a plan is confirmed and going forward. And so that's -- there's a distinction.

And if you look at Judge Summerhays' decision, which I will be happy to send to the Court, in *WRT* involving -- it's kind of (indecipherable) and Mr. Pauker, where, in that case, the trustee, the litigation trustee, spent more litigating than it had in recoveries, and Baker Hughes filed suit. Judge Summerhays said, look, the Barton Doctrine only applies to a certain extent. It is limited once you get into post-confirmation matters and related-to jurisdiction.

And so, again, the Barton Doctrine is what it stands for. We agree with it, we recognize it, and it should be applied. The Barton Doctrine, however, should not be extended, should not go past its reach, and should not go past the grant of jurisdiction for this Court.

1 And so you have in here, though they have -- they have
2 tried to hide it in a limited fashion, this gatekeeper
3 provision. The gatekeeper provision, as currently written,
4 covers post-confirmation claims that somebody has to come
5 before this Court to the extent there's a breach of a
6 contract. That's not proper, and it's not covered by your
7 post-confirmation jurisdiction. To the extent there's an
8 interpretation of an existing contract and an interpretation
9 of the order, you do have authority, and I don't question
10 that.
11 THE COURT: But address Mr. Pomerantz's statement
12 that there's a difference between saying you have to go to the
13 bankruptcy court and make an argument, we have a colorable
14 claim that we would like to pursue, and having that
15 jurisdictional step required. There's a difference between
16 that and the bankruptcy court adjudicating the claim.
17 MR. DRAPER: Well, there are two parts to that.
18 Number one is there's an injunction in place from an action
19 taken post-confirmation against property of the estate. We
20 all agree at that, correct? And we believe that the
21 injunction applies to post-confirmation action against
22 property of the pre-confirmation estate. We all agree to
23 that.
24 However, if in fact there's a breach of a contract
25 postpetition that the parties have a dispute about, that

contract is now no longer under your purview once the contract has been assumed. And so they shouldn't have to make a colorable claim to you that a breach of the contract has occurred. That should be the determining factor for another court.

That's, in essence, what *Craig's Store* says. Your jurisdiction and the jurisdiction of a bankruptcy court is limited. It's limited by *Stern vs. Marshall*. It's limited by your ability to render findings of fact and conclusions of law versus render a final decision. That decision has been made not by us, it's been made by Congress and it's been made by the United States Constitution.

THE COURT: All right. And I think we all agree with you regarding the holding of *Craig's Stores* and some of the other post-confirmation bankruptcy subject matter jurisdiction holdings. But Mr. Pomerantz is arguing that this gatekeeping function is warranted by, among other things, you know, there was a district court holding, *Baum v. Blue Moon*, or a Fifth Circuit case, that upheld a district court having the ability to impose pre-filing injunctions in the context of a vexatious litigator. So, you know, that's a strong analogy he makes to what's sought here. What is your response to that?

MR. DRAPER: My response to that is a district court can do that. A district court has jurisdiction to make that decision. And quite frankly, a district court can sanction a

1 vexatious litigator under Rule 11.
2 So, in fact -- again, you have to bifurcate your power
3 versus the power that a district court has. And that
4 gatekeeper provision is allowed by a district court because
5 they had authority over the case. You may not have authority
6 over being the gatekeeper for a post-confirmation matter that
7 you had no jurisdiction over to start with.
8 THE COURT: Okay.
9 MR. DRAPER: That, that's the distinction between
10 here. That's -- what's going on here is they are -- they are
11 mashing together a whole load of concepts under the vexatious
12 litigator and the anti-Dondero function that fundamentally
13 abrogate the distinction between what your jurisdiction is
14 pre-confirmation versus your jurisdiction post-confirmation.
15 And that --
16 THE COURT: Do you think --
17 MR. DRAPER: -- is sacrosanct.
18 THE COURT: Do you think Judge Lynn got it wrong in
19 *Pilgrim's Pride*? Do you think Judge Houser got it wrong in
20 *CHC*? Or do you think this situation is different?
21 MR. DRAPER: There are two parts to that. I have
22 told Judge Lynn, since I have been working with him, that I
23 think *Pilgrim's Pride* is wrongfully decided. However, having
24 said that, *Pilgrim's Pride* and those cases dealt with claims
25 against the -- the channeling injunction affected actions

during the bankruptcy. It did not serve as a post-jurisdictional grant of jurisdiction to the bankruptcy court. It did not pose as an ability -- as a limitation on a post-confirmation litigator or a post-effective date litigator to address a wrong done to them by an independent director of a general partner.

In a sense, Judge Lynn's determination, and Judge Houser, is consistent somewhat with the Barton Doctrine. Now, do I agree that they're right? No. But I understand the decision and I understand the context in which it was rendered and I don't have a huge problem with it.

So, again, let's parse what we're trying to do here. Number one, we are -- we have to bifurcate post-confirmation jurisdiction or post-effective date jurisdiction and what you can do as a post-effective date arbiter versus what you could do pre-effective date and pre-effective date claims. And again, that's the problem with what's written here. It is designed one hundred percent to expand your post-effective date jurisdiction through both the gatekeeper provision and the jurisdictional grant that's here from your pre-effective date capability, your pre-effective date jurisdiction, and your pre-effective date ability to either curb a claim or not to curb a claim. And that, that's the issue.

And again, let's start talking about the independent directors. I recognize, again, that there's an order there.

1 But if Mr. Seery -- let's take Mr. Seery -- is acting as a
2 director of Strand but is also an accountant for the Debtor
3 and makes a mistake, he would be sued in his capacity as the
4 accountant for the Debtor, not as an independent director of
5 Strand. That distinction needs to be made.
6 What we are doing here under this plan, and what's been
7 argued by Mr. Pomerantz, is too broad a brush. It needs to be
8 cut back. The Court needs to take a very hard look at what's
9 being presented here.
10 And again, the Court's order is very clear. And this is
11 binding. I recognize that. But the protection they got was
12 serving as an independent director. The protection they
13 didn't get was -- let's take Mr. Seery, if Mr. Seery was
14 serving as an accountant and blew a tax return. Those are
15 distinctions that warrant analysis and warrant looking at
16 here. And again, it is too broad a brush that's touted here,
17 and that is why this plan on its face is not confirmable with
18 respect to both the post-confirmation jurisdiction, the
19 gatekeeper provision, the exculpation provisions.
20 And so let me address a few other things, just to address
21 them. Number one, the argument has been made with respect to
22 the creditors and the resolicitation issue and that creditors
23 could have come in looking, seen, followed the case, and
24 basically calculated and made the same calculation that the
25 Debtor made when they filed this and put forth the new plan

analysis versus liquidation analysis. And then they've also made the argument, well, nobody came and complained. Well, two parts to that.

Number one, as you know, a disclosure statement needs to be on its face and should not require a creditor to go back in and monitor the record -- and quite frankly, in this record, there are thousands of pages -- and do the calculation himself. This was incumbent upon the Debtor to possibly resolicit when these material changes took place.

Number two, the recalculation has not been subject to the entire creditor body seeing it. And anybody who wanted to call them would have had to have seen the document they filed on February 1st and made a telephone call basically contemporaneous with seeing it.

Those are two things. The argument that they didn't call me is just nonsensical. There's nobody -- you, you are sitting here -- and I've had a number of battles over the years with Judge (indecipherable), who was -- who -- and her view was, I'm here to protect the little guy who's not -- didn't hire counsel, who's not represented by Mr. Clemente and his huge clients who have voted in favor of the plan. It's the little person, *i.e.*, the employees who would vote against a plan that they so -- so desperately tried to get out from under.

THE COURT: Well, --

MR. DRAPER: It's really a function --

THE COURT: -- Mr. Pomerantz argues it's not as though there was a materially adverse change in treatment; it was the disbursement estimate. And doesn't every Chapter 11 plan -- most Chapter 11 plans, not every -- they make an estimate. I mean, and it's, frankly, it's very often a big range of recovery, right, a big range of recovery, because we don't know what the allowed claims are going to compute to at the end of the day. There's obviously liquidation of assets. We don't know. Isn't this sort of like every -- not, again, not every other plan, but most other plans -- where there's a big range of possible estimated distributions? I mean, this wasn't a change in treatment, right?

MR. DRAPER: Well, let me address that. There are two parts to that. Most plans I see that contain some sort of analysis have a range. This one doesn't have a range. What they've done is they've buried in a footnote or assumption that these numbers may change. So had they said, look, your recovery can go from 60 cents to 85 cents, God bless, they probably would have been right.

Number two, which is more problematic to me, to be honest with you, is the fact that, number one, the operating expenses have increased over a hundred percent. And number two, the Debtor has made a determination post-disclosure statement and pre-hearing that they're going to change their model of

1 business.
2 The original disclosure statement said we're not going to
3 get into the managing CLO part of the business and we're going
4 to let these contracts go. However, at some point along the
5 way, they made a change. I don't know to this day, because I
6 was never furnished the backup to the expense side. I
7 understand what they said why they didn't give me the asset
8 side, but the expense side, they should have given me, and I
9 did ask for.
10 But, you know, what we have now is a more fundamental
11 problem with the execution of the plan and the expectation
12 that creditors -- what they're going to get, because, in fact,
13 the expense items have doubled.
14 I think creditors were entitled to know that, rather than
15 it having been sprung upon everybody, when I got it the day
16 before a deposition. And so those are things that I think
17 warranted a change in solicitation. Now, the result may have
18 been the same. I don't know. More people may have voted
19 against the plan. More people may have opted in from Class 8
20 to Class 7, I mean, based upon that information. That
21 information was not provided to them.
22 And so I look at two -- three things. One is a range
23 could have been given, and they probably would have been a
24 whole lot better off. Two, you have a material change in
25 expenses. And three, you have a material change in business

model. Three things that occurred between November and this confirmation hearing. Three things that were not known by the creditor body and not told to them.

THE COURT: Mr. Draper, I --

MR. DRAPER: Now, it may have been told --

THE COURT: I don't want to belabor this any more than I think we need to, but I've got a Creditors' Committee with very sophisticated professionals, very sophisticated members. They're fiduciaries to this constituency. You know, you mentioned the little guy. I'm not quite sure who is the little guy in this case. I think it's a case of all big guys. But, I mean, they're fine with what's happened here. Meanwhile, you -- I mean, clarify your standing here for Dugaboy and Get Good. I mean, --

MR. DRAPER: I have --

THE COURT: -- I know you have standing. Mr. Pomerantz did not say you don't have standing. But in pointing out the economic interests here, I think he said your clients only have asserted a postpetition administrative expense. Is that correct?

MR. DRAPER: No. I have a post -- I have an -- I have a claim that's been objected to. I don't think my economic --

THE COURT: A claim of what amount?

MR. DRAPER: I think it's $10 million. But Mr.

1 Pomerantz is right, it requires a looking through the --
2 through the entity that I had a loan relationship with.
3 I recognize all of those things. I don't think that's
4 relevant to whether my argument is correct or incorrect. I
5 have standing to do it. I don't think whether my claim is 50
6 cents or $50 million should change the Court's view of whether
7 the claim is good or bad.
8 THE COURT: Well, I do want to understand, though.
9 Okay. So you have not asserted an administrative expense,
10 correct?
11 MR. DRAPER: No. There's been an administrative
12 expense that's been asserted, --
13 THE COURT: For what?
14 MR. DRAPER: -- but that --
15 THE COURT: For what?
16 MR. DRAPER: I don't have the number in front of me,
17 Your Honor. I don't -- I don't have those numbers --
18 THE COURT: Okay. Well, then, --
19 MR. DRAPER: -- in front of me. I have asserted --
20 THE COURT: -- what is the concept? What is the
21 basis for it?
22 MR. DRAPER: It deals with -- Mr. Pomerantz is
23 absolutely right as to how he's articulated it.
24 THE COURT: I can't remember what he said.
25 MR. DRAPER: It deals with -- it deals with a

1 transaction that's unrelated to the Debtor that deals with
2 Multi-Strat. I agree with that.
3 THE COURT: Okay. So I remember him saying piercing
4 the corporate veil. Your trusts -- both of them, one of them,
5 I don't know -- engaged in a transaction with Multi-Strat that
6 you say --
7 MR. DRAPER: No, that --
8 THE COURT: -- gave -- okay. Well, you say Multi-
9 Strat is liable and the Debtor is also liable?
10 MR. DRAPER: No. Let me make two things. The
11 administrative claim deals with a Multi-Strat transaction that
12 took place during the bankruptcy. My unsecured claim deals
13 with a transaction that took place prior to the bankruptcy,
14 where we lent money to another entity that then funneled money
15 out into the Debtor. We're -- our contention is that the
16 Debtor is liable for that loan.
17 THE COURT: All right. So both the administrative
18 expense as well as the prepetition claim require veil-piercing
19 to establish liability of the Debtor?
20 MR. DRAPER: Or single business enterprise. I don't
21 necessarily have to veil-pierce.
22 THE COURT: Okay. I'm not even sure that single
23 business enterprise is completely available anymore in Texas,
24 by the Texas legislature doing different things, assuming
25 Texas law applies. I don't know, maybe Delaware does. But I

-- sorry. Just let me let that sink in a little bit. You're -- okay. Okay. Let me let it --

MR. DRAPER: Your Honor, I --

THE COURT: -- sink in a little bit.

MR. DRAPER: Okay.

THE COURT: These trusts -- of which Mr. Dondero is the beneficiary ultimately, right?

MR. DRAPER: Yes. Well, and to --

THE COURT: So, your --

MR. DRAPER: Again, I have not gone up --

THE COURT: The beneficiary of your client --

MR. DRAPER: Mr. Dondero is --

THE COURT: The beneficiary of your client is ultimately hoping to succeed on the administrative expense and the claim on the basis that you should disregard the separateness of Highland and these other entities?

MR. DRAPER: Well, let's take the --

THE COURT: When he's resisted that --

MR. DRAPER: -- unsecured claim. The --

THE COURT: -- in multiple pieces of litigation? Right? I'm sorry. I'm just trying to let this sink in. Okay. If you could elaborate. I'm sorry. I'm talking too much. You answer me.

MR. DRAPER: Okay. What we are saying is that, in essence, the party we lent the money to was a conduit for the

Debtor.

THE COURT: Okay. And who was that entity that either --

MR. DRAPER: Highland Select.

THE COURT: -- Dugaboy or Get Good lent money to?

MR. DRAPER: The Get Good claim is completely different. The Get Good claim is written as a tax claim. Honestly, I haven't taken a hard look at it. I will, once we get through this, and it may be withdrawn. The Dugaboy claim is a claim that arises through a conduit loan.

THE COURT: Okay. But to which entity?

MR. DRAPER: Highland Select.

THE COURT: Okay. All right. Well, continue with your argument. I'll get my flow chart out and --

MR. DRAPER: Well, let me -- again, I think I've made the points that I needed to make. I think I've done it in a sense that you -- what I think the Court needs to do is take a very hard look at the jurisdictional extension that's being granted here. I think the exculpation provision, in and of itself, just by the mere inclusion of Pachulski and the Debtor's professionals and the Committee professionals, is just unconfirmable. It has to be stricken.

And I think the injunction and the juris... the gatekeeper provision are not allowed by applicable law. If this plan merely said, we will enforce the Barton Doctrine, we will

abide -- and this order the Court has entered stands, the injunction that's provided and the rights that we have under 1141 stand, nobody would be objecting. That's why the U.S. Trustee has objected, because of the expansive nature of what the -- what's been done in this plan.

And with that, I'll turn it over to Mr. Taylor or Davor.

THE COURT: All right. Who's next?

MR. RUKAVINA: Your Honor, Davor Rukavina. Can you hear me?

THE COURT: I can.

CLOSING ARGUMENT ON BEHALF OF CERTAIN FUNDS AND ADVISORS

MR. RUKAVINA: Your Honor, thank you. I'll try not to repeat the arguments from Mr. Draper, but I do want to point out a couple bigger-picture issues, I think.

One, the issue today is not Mr. Dondero, what he has been alleged to have done, what he is alleged to do in the future. The Debtor has gone out of its way to create the impression that we're all tentacles, we're vexatious litigants, we're frivolous litigants. The issue today is whether this plan is confirmable under 1129(a) and 1129(b). And I think that that has to be the focus.

Nor is the issue, I think, today any motivation behind my objection or Mr. Draper's or anything else.

And I do take issue that my motivation or my client's motivation has some ulterior motive for a competing plan or

burning down the house or anything like that. It's very, very simple. My clients do not want $140 million of their money and their investors' money, to whom they owe fiduciary duties, to be managed by a liquidating debtor under new management without proper staffing and with an obvious conflict of interest in the form of Mr. Seery wearing two hats.

I respect very much that Mr. Seery wants to monetize estate assets for the benefit of the estate creditors. That's his job. That's incompatible with his job under the Advisers Act and, as he said, to maximize value to my clients and over a billion dollars of investments in these CLOs.

That should not be, Your Honor, a controversial proposition. I should not be described as a tentacle or vexatious because my clients don't want their money managed by someone that they, in effect, did not contract with. I may be -- I may lose that argument. The CLOs have obviously consented to the assumption. But my argument should not be controversial. It should not be painted with a broad brush of somehow being done in bad faith by Mr. Dondero.

And in fact, Mr. Seery has admitted that the Debtor and he are fiduciaries to us. The fact that today they call us things like tentacles and serial litigants and vexatious litigants -- we all know what a vexatious litigant is. We've all dealt with those. The fact that our fiduciary would call us that just reconfirms that it should have no business

managing our or other people's money.

And then for what? Mr. Seery has basically said that the Debtor will make some $8.5 million in revenue from these contracts, net out $4 million of expenses. That's net profit of $4.5 million. But then they have to pay $3.5 million for D&O insurance and $525,000 in cure claims. But it's the Debtor's business decision, not ours.

Your Honor, the second issue is the cram-down of Class 8. There are two problems here: the disparate treatment between Class 7 and Class 8, which also raises classification, and then the absolute priority rule. Class 7 is a convenience class claim -- is a convenience claim, Your Honor, with a $1 million threshold. Objectively, that is not for administrative convenience, as the Code allows. And the only evidence as to how that million dollars was arrived at was, oh, it was a negotiation of the Committee.

There is no evidence justifying administrative convenience. Therefore, there is no evidence justifying separate classification. And on cram-down, the treatment has to be fair and equitable, which *per se* it is not if there is unfair discrimination. And there is unfair discrimination, because Class 8 will be paid less.

On the absolute priority rule, Your Honor, I think that it's very simple. I think that the Code is very clear that equity cannot retain anything -- I'm sorry, equity cannot

1 retain any property or be given any property. Property is the
2 key word in 1129(b), not value. It doesn't matter that this
3 property may not have any value, although Mr. Seery said that
4 it might. What matters is whether these unvested contingent
5 interests in the trust are property. And Your Honor, they are
6 property. They have to be property. They are trust
7 interests.
8 So the absolute priority rule is violated on its face.
9 There is no evidence that unsecured creditors in Class 8 will
10 receive hundred-cent dollars. The only evidence is that
11 they'll receive 71 cents. Mr. Seery said there's a potential
12 upside from litigation. He never quantified that upside. And
13 there is zero evidence that Class 8 creditors are likely to be
14 paid hundred-cent dollars. So, again, you have the absolute
15 priority rule issue.
16 And this construct where, okay, well, equity won't be in
17 the money unless everyone higher above is paid in full, that
18 is just a way to try to get around the dictate of the absolute
19 priority rule. If that logic flies, then the next time I have
20 a hotel client or a Chapter 11 debtor-in-possession client
21 where my equity wants to retain ownership, I'll just create
22 something like, well, here's a trust, creditors own the trust,
23 I won't distribute any money to equity, and equity can just
24 stay in control.
25 The point again is that this is property and it's being

received on account of prepetition equity.

And there's also the control issue. The absolute priority rule, the Supreme Court is clear that control of the post-confirmation equity is also subject to the absolute priority rule. Here you have the same prepetition management postpetition controlling the Debtor and the assets.

Your Honor, the Rule 2015.3 issue, someone's going to say that it's trivial. Someone's going to accuse me of pulling out nothing to make something. Your Honor, it's not trivial. That's part of the problem in this case, that this Debtor owns other entities that own assets, and there's been precious little window given into that during the case, during this confirmation hearing, and in the disclosure statement.

Rule 2015.3 is mandatory. It's a shall. I respect very much Mr. Seery's explanation that there was a lot going on with the COVID and with everything and that it just fell through the cracks. That's an honest explanation. But the Rule has not been complied with. And 1107(a) requires that the debtor-in-possession comply with a trustee's duties under 704(a)(8). Those duties include filing reports required by the Rules.

So we have an 1129(a)(3) problem, Your Honor, because this plan proponent has not complied with Chapter 11 and Title 11. I'll leave it at that, because I suspect, again, someone will accuse me of being trivial on that. It is not trivial. It is

a very important rule.

On the releases and exculpations, Your Honor, I'm not going to try -- I'm not going to hopefully repeat Mr. Draper. But there's a couple of huge things here with this exculpation that takes it outside of any possible universe of *Pacific Lumber*.

First, you have a nondebtor entity that is being exculpated. I understand the proposition that, during a bankruptcy case, the professionals of a bankruptcy case might be afforded some protection. I understand that proposition. But here you have Strand and its board that's a nondebtor.

The other thing you have that takes this outside of any plausible case law is that the Debtor is exculpated from business decisions, including post-confirmation. I understand that professionals in a case make decisions, and professionals, at the end of the case, especially if the Court is making findings about a plan's good faith, that professionals making decisions on how to administer an estate ought to have some protection.

That does not hold true for whether a debtor and its professionals should have protection for how they manage their business. GM cannot be exculpated for having manufactured a defective product and sold it during its bankruptcy case.

Here, I asked Mr. Seery whether this language in these provisions, talking about whether the administration of the

1 estate and the implementation of the plan includes the
2 Debtor's management of those contracts and funds. He said
3 yes. He said yes. So if you look at the exculpation
4 provision, it is not limited in time. It affects, Your Honor,
5 I'm quoting, it affects the implementation of the plan.
6 That's going forward.
7 So you are exculpating the Debtor and its professionals
8 from business decisions, including post-confirmation, from
9 negligence. Well, isn't negligence the number one protection
10 that people that have invested a billion dollars with the
11 Debtor have? It's cold comfort to hear, well, you can come
12 after us for gross negligence or theft. I get that. What
13 about negligence? Isn't that what professionals do? Isn't
14 that why professionals have insurance, liability insurance?
15 It's called professional negligence for malpractice.
16 So this exculpation, let there be no mistake -- I heard
17 Your Honor's view and discussion -- this is a different
18 universe, both in space and in time.
19 And we don't have to worry about *Pacific Lumber* too much
20 because we have the *Dropbox* opinion in *Thru, Inc.* We have
21 that opinion. Whether it's sound law or not, I don't wear the
22 robe. But the exculpation provision in that case was
23 virtually identical. And Your Honor, that's a 2018 U.S. Dist.
24 LEXIS 179769. In that opinion, Judge Fish -- I don't think
25 anyone could say that Judge Fish was not a very experienced

district court judge -- Judge Fish found that the exculpation violated Fifth Circuit precedent. That exculpation covered the debtor's attorneys, the debtor, the very people that Mr. Pomerantz is now saying, well, maybe the Fifth Circuit would allow an exculpation for.

THE COURT: Well, I think he is relying heavily on the analogy of independent directors to Creditors' Committee members, saying that's a different animal, if you will, than prepetition officers and directors. And he thinks, given the little bit of policy analysis put out there by the Fifth Circuit, they might agree that that's analogous and worthy of an exculpation.

MR. RUKAVINA: And they might. And they might. And again, I usually do debtor cases. You know that. I'd love to be exculpated.

THE COURT: But --

MR. RUKAVINA: And I think, again, I do -- I do --

THE COURT: -- I really want people to give me their best argument of why, you know, that's just flat wrong. And Mr. Draper just said it's, you know, there's a categorical --

MR. RUKAVINA: Yeah.

THE COURT: -- rejection of exculpations except for Committee members and Committee in *Pacific Lumber*. And I'm scratching my head on that one. And partly the reason I am, while 524(e) was thrown out there, the fact is there's nothing

1 explicitly in the Bankruptcy Code, right, that explicitly
2 permits exculpation to a Committee or Committee members.
3 There's just sort of this notion, you know, allegedly embodied
4 in 1103(c), or maybe there are cases you want to cite to me,
5 that they're fiduciaries, they're voluntary fiduciaries, they
6 ought to have qualified immunity.
7 And again, I see it as more of a policy rationale the
8 Fifth Circuit gave than pointing to a certain statute. So if
9 it's really a policy rationale, then I think the analogy given
10 here to a newly-appointed independent board is pretty darn
11 good.
12 So tell me why I'm all wrong, why Mr. Pomerantz is all
13 wrong.
14 MR. RUKAVINA: I am not going to tell you that you're
15 all wrong. I'm not going to tell Mr. Pomerantz that he's all
16 wrong. Although I am, I guess, a Dondero tentacle, I am not a
17 Mr. Draper tentacle, and I happen to disagree with him.
18 That's my right. I respect the man very much. I thought he
19 did a very honorable and ethical job explaining his position
20 to Your Honor. I believe that the Fifth Circuit would approve
21 exculpations for postpetition pre-confirmation matters taken
22 by estate fiduciaries. I do believe that they would. And I
23 do believe that that should be the case.
24 But again, I'm telling you that this one is different.
25 It's -- Mr. Pomerantz is misdirecting you. The estate

1 professionals manage the estate. The Debtor manages its
2 business. It goes out into the world and it manages business.
3 And as Your Honor knows, under that 1969 Supreme Court case,
4 of course I blanked, and under 28 U.S. 959, a debtor must
5 comply, when it's out there, with all applicable law.
6 So if the Debtor -- and I'm making this up, okay? I am
7 making this up. I'm not alleging anything. But if the
8 Debtor, through actionable neglect, lost $500 million of its
9 clients' or its investor clients' money, I'm telling you that
10 under no theory can that be exculpated, and I'm telling you
11 that that's what this provision does.
12 The estate and the Debtor can release their claims. It
13 happens all the time. Whatever -- whatever claims the estate
14 may have against professionals, those can be released. It's a
15 9019. I'm not complaining about that. Although I do think
16 that it's premature in this case, because we don't know
17 whether there's any liability for the $100 million that Mr.
18 Seery told you Mr. Dondero lost. But in no event can business
19 -- business --
20 THE COURT: I don't understand what you just said.
21 MR. RUKAVINA: Your Honor, I --
22 THE COURT: Mr. Dondero is not released --
23 MR. RUKAVINA: -- went through Mr. Seery's --
24 THE COURT: -- by the estate.
25 MR. RUKAVINA: I understand. I understand. But we

all have to also understand that a board of directors and officers can be liable, breaches of fiduciary duty by not properly managing an employee. So I'm not suggesting -- I mean, I know that there's been an examiner motion filed. I'm not suggesting that we have a mini-trial. I'm not suggesting there's actionable conduct. What I'm telling you is that the evidence shows that there's a large postpetition loss. And it's premature to prevent third parties that might have claims from bringing those.

And then I think -- I'm not sure that Your Honor understood my point. Let me try to make it again. This exculpation is not limited in time. This exculpation is expressly not limited in time and applies to the administration of the plan post-confirmation. I don't think under any theory would the Fifth Circuit or any court at the appellate level allow an exculpation for purely post-reorganization post-bankruptcy matters. I have nothing more to tell Your Honor on exculpation.

THE COURT: Well, again, I -- perhaps I go down some roads I really don't need to go down here, but I'm not sure I read it the way you did. I thought we were just talking about pre -- postpetition, pre-confirmation. Or pre-effective date.

MR. RUKAVINA: Your Honor, Page --

THE COURT: The --

MR. RUKAVINA: Page 48 of the plan, Section C,

1 Exculpation. Romanette (iv). The implementation of the plan.
2 And I -- and that's -- that's part of why I asked Mr. Seery
3 that yesterday. Does the implementation of the plan, in his
4 understanding, include the Reorganized Debtor's management and
5 wind-down of the Funds, and he said yes.
6 THE COURT: Okay.
7 MR. RUKAVINA: So that's right there in black and
8 white.
9 It also includes the administration of the Chapter 11
10 case. If that is defined broadly, as Mr. Seery wants it to
11 be, to define business decisions, then that also exceeds any
12 permissible exculpation.
13 So, again, I'm telling Your Honor, with due respect to you
14 and to Mr. Pomerantz, that the focus of Your Honor's
15 questioning is wrong. The focus of Your Honor's questioning
16 should be on exculpation from what? From business -- *i.e.*, GM
17 manufacturing and selling the car -- or from management of the
18 bankruptcy case? Management of the bankruptcy case? Okay.
19 Postpetition pre-confirmation managing business, never okay.
20 Your Honor, on the channeling -- and let me add, I think
21 it's very clear, there is no Barton Doctrine here. This is
22 not a Chapter 11 trustee. The Barton Doctrine does not
23 extend to debtors-in-possession. And I can cite you to a
24 recent case, *In re Zaman*, 2020 Bankr. LEXIS 2361, that
25 confirms that the Barton Doctrine does not apply to a debtor-

in-possession.

I want to --

THE COURT: Remind me of that --

MR. RUKAVINA: -- discuss, Your Honor, the --

THE COURT: Remind me of the facts of that case. I feel like I read it, but -- or saw it in the advance sheets, maybe.

MR. RUKAVINA: I honestly do not recall. I read it a few days ago, and since then, I hope Your Honor can appreciate, I've been up very late trying to negotiate something good in this case.

THE COURT: I'd like to know --

MR. RUKAVINA: So, I mean, I have the case in front of me.

THE COURT: I'd like to know about a holding that says Barton Doctrine can't be applied in a Chapter 11 post-confirmation context, if that's --

MR. RUKAVINA: Well, I have it --

THE COURT: -- indeed the holding.

MR. RUKAVINA: I have it right in front of me here, Your Honor, and I can certainly -- all I know is that this case held that -- it rejected the notion that the Barton Doctrine applies to a debtor-in-possession.

THE COURT: Okay.

MR. RUKAVINA: And maybe --

THE COURT: That --

MR. RUKAVINA: There it is, right there.

THE COURT: What judge?

MR. RUKAVINA: Your Honor, it is the Southern District of Florida, and it is the Honorable -- Your Honor, it is the Honorable Mindy Mora.

THE COURT: Okay.

MR. RUKAVINA: M-O-R-A.

THE COURT: Okay.

MR. RUKAVINA: I have not had the pleasure of being in front of that judge.

Your Honor, let me discuss the channeling injunction. This is the big one for me. This is the big one. And I think we have to begin -- and it's the big one, as I'll get to, because Your Honor knows that the CLO management agreements give my clients certain rights, and this injunction would prevent those rights from being exercised post-confirmation. It's not dissimilar from the PI hearing that we're in the middle of in an adversary.

But I begin my analysis, again, with 28 U.S.C. 959. Your Honor, that -- the first sentence of that statute makes it very clear that when it comes to carrying on a business, a debtor-in-possession may be sued without leave of the court appointing them.

So the first thing that this channel -- gatekeeper,

1 channeling, I don't mean to miscall it -- the first thing that
2 this gatekeeping injunction does is it stands directly
3 opposite to 28 U.S.C. 959.
4 28 U.S.C. 959 also says that jury rights must be
5 preserved. As I'll argue in a moment, this injunction also
6 affects those rights.
7 In addition to 959, we have the fundamental issue of post-
8 confirmation jurisdiction. As Mr. Draper said, here, this
9 channeling injunction applies to post-confirmation matters.
10 Similar to my answer to you on exculpation, I can see there
11 being a place for a channeling injunction during the pendency
12 of a case or for claims that might have arisen during the
13 pendency of a case. I cannot see that, and I don't know of
14 any court that, at least at a circuit level, that would agree
15 that this can apply post-confirmation.
16 It is, again, the equivalent of GM manufacturing a car
17 post-confirmation and having to go to bankruptcy court because
18 someone's wanting to sue it for product negligence or
19 liability. It's unthinkable. The reason why a debtor exits
20 bankruptcy is to go back out into the community. It's no
21 longer under the protection of the bankruptcy court. That's
22 what the media calls Chapter 11, it calls it the protection of
23 the court. There's no such protection post-reorganization.
24 So, --
25 THE COURT: Is that really analogous, Mr. Rukavina?

Let's get real. Is this really analogous --

MR. RUKAVINA: It is.

THE COURT: -- to GM --

MR. RUKAVINA: It is.

THE COURT: -- manufacturing thousands of cars?

MR. RUKAVINA: It absolutely is analogous. Because this Debtor is going to assume these contracts and it is going to go out there and it is going to make daily decisions affecting a billion dollars of other people's money. Each of those decisions hopefully will be done correctly and make everyone a lot of money, but each of those decisions is the potential for claims and causes of action.

So it is analogous, Your Honor. They want my clients and others to come to you for purely post-confirmation matters. The Court will not have that jurisdiction. There will be no bankruptcy estate, nor can the Court's limited jurisdiction to ensure the implementation of the plan go to and affect a post-confirmation business decision.

That's the distinction. The Debtor's post-confirmation business is not the implementation of a plan. As Mr. Draper said, there's a new entity. There's a new general partner. There's a new structure. Go out there and do business, Debtor. That's what they're telling you. They're telling you this is not a liquidation because they're going to be in business. Okay. Well, the consequence of that is that

there's no post-confirmation jurisdiction.

Now, Mr. Pomerantz says, and I think you asked Mr. Draper, well, the jurisdiction to adjudicate whether something is colorable is different from the jurisdiction to adjudicate the underlying matter. Your Honor, I don't understand that argument, and I don't see a distinction. If the Court has no jurisdiction to decide the underlying matter, then how can the Court have any jurisdiction to pass on any aspect of that underlying matter?

And whether something is colorable is a fundamental issue in every matter. That's the thing that courts look at in a 12(b)(6), in a Rule 11 issue, in a 1927 issue. So they're going to come -- or someone is going to have to come to Your Honor and present evidence and law that something is colorable. Let's say that we've said there's a breach of contract. Aren't we going to have to show you, here's the contract, here's the language, here's the facts giving rise to the breach, here's the elements? And Your Honor is going to have to pass on that. And if Your Honor decides that something is not colorable, then there ain't no step two.

And if Your Honor decides that something is colorable, then isn't that going to be binding on the future proceeding? And if it's going to be binding on the future proceeding, then of course you're exercising jurisdiction to adjudicate an aspect of that lawsuit.

1 I don't think that that -- I don't know I can be clearer
2 than that, Your Honor, unless the Debtor has some other
3 understanding of what a colorable claim or cause of action is
4 that I'm misunderstanding.
5 And Your Honor, I would ask, when Your Honor is in
6 chambers, to look at one of these CLO management agreements.
7 I'm sure Your Honor has already. I just pulled one out of the
8 Debtor's exhibits, Exhibit J as in Jason. And Section 14, 14
9 talks about termination for cause. Most of these contracts
10 are for cause. So, Your Honor, cause includes willfully
11 breaching the agreement or violating the law, cause includes
12 fraud, cause includes a criminal matter, such as indictment.
13 So let's imagine, Your Honor, that I come to you a year
14 from now and I say, I would like to terminate this agreement
15 because I don't want the Debtor managing my $140 million
16 because of one of these causes. What am I going to argue to
17 Your Honor? I'm going to argue to Your Honor that those
18 causes exist. And Your Honor is going to have to pass on
19 that.
20 And if Your Honor says they don't exist, again, I'm done.
21 I just got an effective final ruling from a federal judge that
22 my claim is without merit. I'm done. Your Honor has decided
23 the matter effectively, legally, and finally.
24 That's why, when Mr. Pomerantz says that the jurisdiction
25 to adjudicate the colorableness of a claim is different from

1 adjudicating that claim, it's not correct. They're part of
2 the same thing, Your Honor.
3 We strenuously object to that injunction, we think it's
4 unprecedented, and we strenuously object to that injunction
5 because we are not Mr. Dondero.
6 I understand the January 9th order. I'll let Mr.
7 Dondero's counsel talk about why that was never intended to be
8 a perpetual order. I'll let Mr. Dondero's counsel argue as to
9 why the extension of that order *ad infinitum* in the plan is
10 illegal.
11 But even if Mr. Dondero is enjoined in perpetuity from
12 causing the related parties to terminate these agreements,
13 Your Honor, the related parties themselves are not subject to
14 that injunction. That's why you have the preliminary
15 injunction proceeding impending in front of you on ridiculous
16 allegations of tortious interference.
17 So whether the Court enjoins Mr. Dondero or not in
18 perpetuity is a separate matter. The question is, as you've
19 heard, at least my retail clients, they have boards. Those
20 boards are the final decision-makers. Mr. Dondero is not on
21 those boards.
22 In other words, it is wrong to conclude *a priori* that
23 anything that my clients do has to be at the direction of Mr.
24 Dondero. There is no evidence of that. The evidence is to
25 the contrary.

1 Yes, a couple of my clients, the Advisors are controlled
2 by Mr. Dondero. Mr. Norris testified to that. You'll not
3 find Mr. Norris anywhere testifying in that transcript that
4 Your Honor allowed into evidence that the funds, my retail
5 fund clients are controlled by Mr. Dondero. You won't find
6 that evidence. There was no evidence yesterday or today that
7 Mr. Dondero controls those retail funds. The only evidence is
8 that they have independent boards.
9 So I ask the Court to see that it's a little bit of a
10 sleight of hand by the Debtor. If I am to be enjoined or if I
11 am to have to come to Your Honor in the future as a vexatious
12 litigant or a tentacle or a frivolous litigant, whatever else
13 I've been called today, then let it be because of something
14 that I've done or failed to do, something that my client has
15 done to warrant such a serious remedy, not something that Mr.
16 Dondero is alleged to have done.
17 And what have my clients done, Your Honor? What have we
18 done to be called vexatious litigants and serial litigants?
19 We've done nothing in this case, pretty much, until December
20 16th, when we filed a motion that was a poor motion,
21 unfortunately, the Court found it to be frivolous, and the
22 Court read us the riot act.
23 We refused, on December 22nd, we, my clients' employees,
24 to execute two trades that Mr. Dondero wanted us to execute.
25 We had no obligation to execute them. We knew nothing about

1 them. And Mr. Seery -- I'm sorry. Not Mr. Dondero, that Mr.
2 Seery wanted to execute. And Mr. Seery closed those
3 transactions that same day. And then a professional lawyer at
4 K&L Gates, a seasoned bankruptcy lawyer, sent three letters to
5 a seasoned professional lawyer at Pachulski, and the letters
6 were basically ignored.
7 Okay. Those are the things that we've done. Other than
8 that, we've defended ourselves against a TRO, we've defended
9 ourselves against a preliminary injunction, we will continue
10 to defend ourselves against a preliminary injunction, and we
11 defend ourselves against this plan because it takes away our
12 rights. Is that vexatious litigation? Is that, other than
13 the frivolous motion, is that frivolous litigation?
14 And we heard you loud and clear when you read us the riot
15 act on December 16th. And I will challenge any of these
16 colleagues here today to point me to something that we have
17 filed since then that is in any way, shape, or form arguably
18 meritless.
19 So where is the evidence that my retail funds are
20 tentacles or vexatious litigants or anything else? There is
21 no evidence, Your Honor, and the Debtor is doing its best to
22 give you smoke and mirrors to just make that mental jump from
23 Mr. Dondero to my clients, effectively an alter ego, without a
24 trial on alter ego.
25 Once these contracts are assumed, the Debtor must live

with their consequences. It's as simple as that. Your Honor has so held. Your Honor has so held forcefully in the *Texas Ballpark* case. And the Court, I submit respectfully, cannot excise by an injunction a provision of a contract.

Also, this injunction will -- is a permanent injunction. We know from *Zale* and other cases the Fifth Circuit does permit certain limited plan injunctions that are temporary in hundred-cent plans. This is a permanent one. It doesn't even pretend to be a temporary one.

It's also a permanent one because the Debtor knows and I think the Debtor is banking on me being unable to get relief in the Fifth Circuit before Mr. Seery is finished liquidating these CLOs.

So what we are talking about today is effectively excising valuable and important negotiated provisions of these contracts, provisions that, although my clients are not counterparties to these contracts, you've heard from at least three of them we do control the requisite vote, the voting percentages, to cause a termination, to remove the Debtor, or to seek to enforce the Debtor's obligations under those contracts.

And again, Your Honor, it's very simple. Where those contracts require cause, there either is cause or is not cause. If there is not cause, the Debtor has its remedies. If there is cause, I'll have my remedies. But it's not for

1 this Court post-confirmation to be making that determination.
2 That's not my decision. That's Congress's decision.
3 So, Your Honor, for those reasons, we object, and we
4 continue to object, and we'd ask that the Court not confirm
5 this plan because it is patently unconfirmable. Or if the
6 Court does confirm the plan, that it excise those provisions
7 of the releases, exculpations, and injunction that I just
8 mentioned as being not in line with the Fifth Circuit or
9 Supreme Court precedent.
10 Thank you.
11 THE COURT: All right. Can I -- I meant to ask Mr.
12 Draper this. Can we all agree that we do not have third-party
13 releases *per se* in this plan? Can we all agree on that?
14 MR. DRAPER: I don't know. I have to look at that.
15 I think what you have are exculpations and channeling
16 injunctions for third parties who have not paid for those
17 channeling injunctions or those exculpations.
18 THE COURT: All right.
19 MR. RUKAVINA: Your Honor, was that question -- was
20 that question solely to Mr. Draper?
21 THE COURT: Well, no, it was to all of you. I
22 thought we could all agree that we don't have third party
23 releases *per se*. Okay. There was --
24 MR. RUKAVINA: Your Honor, we --
25 THE COURT: -- a little bit of glossing over that in

1 some of the briefing, I can't remember whose. But we have
2 Debtor releases, we have --
3 MR. RUKAVINA: Yes.
4 THE COURT: -- exculpations that deal with
5 postpetition negligence only, we have injunctions, which I
6 guess the Debtor would say merely serve to implement the plan
7 provisions and are commonplace, but Mr. Draper would say maybe
8 are tantamount to third-party releases. Is that --
9 MR. RUKAVINA: Your Honor, I don't think --
10 THE COURT: -- where we are?
11 MR. RUKAVINA: -- there's any question -- I don't
12 think there's any question that the exculpation is a third-
13 party release, and that that's also what Judge Fish held in
14 the *Dropbox* case. It says that none of the exculpated parties
15 shall have any liability on any claim. So, --
16 THE COURT: All right.
17 MR. RUKAVINA: -- that necessarily --
18 THE COURT: I get what you're saying, but I just
19 think, in common bankruptcy lingo, most people regard a third-
20 party release as when third parties are releasing -- third
21 parties meaning, for example, creditors, interest holders --
22 are releasing officers and directors and other third parties
23 for anything and everything.
24 Exculpation, I get it, it's worded in a passive voice, but
25 it is third parties releasing third parties, but for a narrow

1 thing, postpetition conduct that is negligent. Okay. So I
2 think -- while there's technically something like a third-
3 party release there, it's not in bankruptcy lingo what we call
4 a third-party release. It's an exculpation means no liability
5 of the exculpated parties for postpetition conduct that's
6 negligent. So I -- anyway, I think we all agree that, I mean,
7 can we all agree there aren't any *per se* third-party releases
8 as that term is typically used in bankruptcy parlance?
9 MR. RUKAVINA: I apologize, Your Honor, and I'm not
10 trying to try your patience, but I cannot agree to that.
11 Whatever claims my client, a nondebtor, has against Strand, a
12 nondebtor, are gone. Whether it's a release or exculpations,
13 they're gone. So I apologize, I cannot agree to that, Your
14 Honor.
15 MR. DRAPER: Your Honor, this is Douglas Draper. I
16 can't agree, either. I think it's definitional. And quite
17 frankly, I think I'm looking at the functional effect of
18 what's here, and they appear to be third-party releases.
19 THE COURT: Okay. All right. Who is making the
20 argument for Mr. Dondero?
21 MR. TAYLOR: Your Honor, Clay Taylor appearing on
22 behalf of Mr. Dondero.
23 THE COURT: Okay.
24 CLOSING ARGUMENT ON BEHALF OF JAMES D. DONDERO
25 MR. TAYLOR: Your Honor, first of all, as this Court

is well aware, this Court sits, as a bankruptcy court, as a court of equity. It has many different tools available to it. One of those, of course, is denying confirmation of this plan because of the laws that we have discussed today and that we believe the evidence has shown, and I won't go into those. Of course, of course, Your Honor could confirm that plan. Yet another tool available to this Court is it can take it under advisement.

To the extent that this Court decides to confirm this plan and decides to confirm it today, it certainly takes a lot of options off the table for all parties. There are ongoing discussions, I'm not going to go into any of the particulars of those discussions, but a ruling on confirmation today would effectively end that, because, absent, then, an order vacating confirmation, there's a lot of eggs that can't become unscrambled after a confirmation order is entered.

So we would respectively ask that, to the extent that the Court is even considering confirmation, we don't believe it to be appropriate, but at least take it under advisement for 30 days, or at least, in the very alternative, that it announce some date which it is going to give a ruling, so that we kind of know when that is going to come down, to see if any positive ongoing discussions can result in more of a global resolution that all parties can agree upon.

Addressing more the merits of the case, Your Honor, Mr.

1 Dondero does indeed object to the nondebtor releases, the
2 exculpations, the injunction. I believe those have been
3 covered rather extensively in the prior argument, so I wasn't
4 going to go into those here because they've been addressed.
5 Of course, I will endeavor to answer any questions that Your
6 Honor may have on those.
7 I will say I think Your Honor asked for everybody's best
8 shot as to why this is different for a Committee member versus
9 the independent trustees here. I will say my best shot is,
10 first of all, *Pacific Lumber* says what it says. I believe Mr.
11 Pomerantz has indicated their position that that language is
12 dicta and therefore not binding upon this Court. I
13 respectfully disagree with that. But to the extent, more
14 directly answering Your Honor's question, to me, the
15 difference is clear. Chapter 7 trustees are a creature of
16 statute. So are Chapter 11 trustees. And -- as are members
17 of a Committee that are seated pursuant to the Bankruptcy
18 Code. Those are all creatures of statute. And the
19 independent board of trustees, while there are certainly --
20 there are some analogies that can be made, undoubtedly, but
21 they are not a creature of statute. There is no provision for
22 them under the Bankruptcy Code. And therefore I don't believe
23 that they should and can receive the same protections under
24 *Pacific Lumber*.
25 And so hopefully that -- that is my best shot at

1 answering, directly answering the question that Your Honor
2 posed.
3 THE COURT: Okay.
4 MR. DRAPER: Mr. Dondero also has issue with the
5 overbroad continuing jurisdiction of this Court. I believe
6 Mr. Rukavina has stated that rather succinctly, too. Merely
7 ruling upon whatever claim is colorable or not certainly has
8 definite impacts. If this Court has jurisdiction to do that
9 when it otherwise wouldn't have jurisdiction, it enacts an
10 expansion, a potentially impermissible expansion of this
11 Court's jurisdiction. And for that reason, the plan should --
12 confirmation should be denied.
13 Getting into the particulars of 1129, Your Honor, there is
14 problems under 1129(a)(2). Those are the solicitation
15 problems. Let's just kind of look at what the evidence
16 showed. On November 28th, there was a disclosure statement,
17 it was published to all creditors, and it said, under this
18 plan, you're going to get 87 cents. It wasn't a range. Now,
19 there was some assumptions that went in there, but they said,
20 under a liquidation of all these assets, you're going to get
21 62 cents.
22 The Debtors came back approximately two months later, on
23 January 28th, and said, oh, wait, we missed the boat here, and
24 actually, under the plan, you're going to get 61 cents. And
25 under a liquidation, though, you'd only get 48.

1 Well, the problem is, already, two months later, they've
2 already told you they missed the boat on what the liquidation
3 analysis was just two months ago. And two months ago, they
4 told you under a liquidation you'd get 62 cents, and now we're
5 telling you you're going to get less. That's at least some
6 very good evidence that the best interests of the creditors
7 isn't being met, and potentially a liquidation is much better.
8 They then came back, potentially maybe realizing that
9 problem, also because some new information came in with the
10 employees, and also with UBS, which adjusted the overall
11 general unsecured claims pool, and said, well, under the plan
12 you're going to get 71 cents, and under a liquidation you're
13 going to get 55 cents.
14 In between those iterations from November to February,
15 they found $67 million more in assets. So Mr. Seery testified
16 he believed some of that's as to market increases in values,
17 and some (garbling) investment, market -- securities. And
18 some were just in these private equity investments.
19 There are indeed some rollups behind all of these numbers.
20 I do understand why they wouldn't want to make some of these
21 numbers public, because they might not be able to get --
22 create the upside for any particular asset class that they're
23 seeking to monetize.
24 However, we and others, including Mr. Draper, asked for
25 those rollups to be provided, and we certainly could have

1 taken those under seal or a confidentiality agreement, could
2 have also put those before this Court under seal and the
3 Debtor could have put those rollups before this Court under
4 seal. It elected not to do so.
5 So, rather, what you have is the naked assumptions of this
6 is what we think we can monetize the assets, or we're not
7 going to tell you what it is, but trust me, Creditors, and
8 cool, we found $67 million worth of value in the past two
9 months, so therefore we're going to beat the liquidation
10 analysis that we previously told you just two months ago.
11 They also acknowledge that, in those two months, that
12 there was going to be about $26 million in increased costs
13 from their November analysis to their February analysis. And
14 they included that in their projections.
15 Finally, they acknowledged, in those two months, that we
16 had previously estimated -- and they even have it in their
17 assumptions in November liquidation and plan analysis -- that
18 UBS, HarbourVest, and I believe it was Acis, were all going to
19 be valued at zero dollars, and that's what the claims were
20 going to be. Well, they kind of missed the boat on those, and
21 they missed it by a lot. They -- it increased all the claims
22 in the pool from $195 million to $273 million, or sorry, I
23 don't -- look at that again, but it was an increase of $95
24 million. I'm sorry, 190 -- the claims pool increased from
25 $194 million to -- I'm sorry, Your Honor, I have too many

1 papers in front of me -- on November, the claims pool was 176
2 and it increased by February 1st to 273. Therefore,
3 approximately $95, almost $100 million worth of claims that
4 they weren't anticipating that actually came in.
5 That tells you about the quality of the assumptions that
6 went into the analysis to begin with. They missed it by 50
7 percent on what the overall claims pool was going to be.
8 That's significant. It's material.
9 There is a lot of other assumptions that could go into
10 this document, and one of those assumptions are how much are
11 we going to be able to monetize these assets for? One other
12 assumption is, well, how much is it going to cost during the
13 two-year life of this wind-down? Another assumption is going
14 to be, are we actually going to be able to wind down in two
15 years? Because if we're not, well, guess what, all those
16 costs are going to go up. Another assumption is, well, how
17 much are those fee claims going to be over the two-year
18 period? Again, if it goes over two years, they're going to be
19 significantly higher. Moreover, you might have just missed
20 what the burn rate is.
21 So I think it's rather telling that the assumptions made
22 of -- all the way back of over two -- of only two months ago
23 were off by $100 million, and therefore it skewed all of the
24 plan-versus-liquidation analysis all over the board.
25 That's the only evidence that the Debtor has put forth as

1 to why it's in the best interest of the creditors. And quite
2 frankly, we don't believe they have met their burden. And it
3 is their burden to prove to Your Honor that the plan is better
4 than what a Chapter 7 trustee will -- can do.
5 What the evidence does show, as far as what the plan would
6 do as compared to a hypothetical Chapter 7 trustee, is that we
7 know for sure that the Claimant Trust base fee, just over the
8 two years, is going to be $3.6 million.
9 (Interruption.)
10 MR. TAYLOR: I'm sorry.
11 THE COURT: Someone needs to put their device on
12 mute. I don't know who that was.
13 MR. TAYLOR: Oh, I'm sorry. I thought you said
14 something, Your Honor.
15 THE COURT: No.
16 MR. TAYLOR: So what we do know is the Claimant
17 Trustee base fee is going to be $3.6 million. What we don't
18 know and what was not put into evidence because they are still
19 negotiating it is there's going to be a bonus fee on top of
20 that that's going to be paid to Mr. Seery. Is that $2
21 million? Is that $4 million? Is that $10 million? Well, we
22 don't know. We can't perform that analysis as compared to
23 what a hypothetical Chapter 7 trustee could be. Nor can Your
24 Honor, based upon the evidence presented.
25 And quite frankly, I don't see how one could ever conclude

-- and there are some other unknowns that we're about to go over, including the Litigation Trust base fee and there are collection fees, contingency fees. Those are also to be negotiated. To be negotiated and unknown. You can't perform the analysis. The Debtor couldn't perform the analysis because those are to be negotiated, so you can't tell whether a Chapter -- hypothetical Chapter 7 trustee might come out better because he's not going to incur all these costs. We know that they're going to incur D&O costs.

THE COURT: Let me interject right now.

MR. TAYLOR: Sure.

THE COURT: Again, I'm going to go back to understanding who your client is arguing for. Okay? Again, as we've said before, Mr. Pomerantz did not technically say no standing, but he thought it was important to point out the economic interests that our Objectors either have or don't have. Okay?

So I'm looking through my notes to see exactly what the Dondero economic interest is. I have something written in my notes, but I'm going to let you tell me. Tell me what his economic interests are with regard to this Debtor, this reorganization.

MR. TAYLOR: Your Honor, I believe he has been placed into Class 9, Subordinated Claims. So to the extent that there is recovery available to Class 9, he can recover on

1 those claims.
2 THE COURT: But what proof of claim --
3 MR. TAYLOR: We also have --
4 THE COURT: What proof of claim does he have pending
5 at this juncture?
6 MR. TAYLOR: Your Honor, I would have to go back and
7 look. I don't have the proofs of claim register in front of
8 me. And I'm sorry, if I tried to speculate, I would be doing
9 a disservice to my client and this Court by trying to
10 speculate. I did not prepare those proofs of claim. People
11 in my firm did. But I would be merely speculating if I tried
12 to give you an answer off the spot. And I apologize. I'm
13 happy to submit a post-confirmation hearing letter --
14 THE COURT: No, no, no.
15 MR. TAYLOR: -- as to that.
16 THE COURT: I'm not going to allow one more piece of
17 paper in connection with confirmation. I thought you would be
18 able to answer that.
19 MR. TAYLOR: I'm sorry. I just don't want to lie to
20 Your Honor.
21 THE COURT: What about his -- what would be an
22 indirect equity interest?
23 MR. TAYLOR: Well, again, there are a lot of people
24 that know this org chart a lot better than me. This is me
25 going on hearsay myself. But I understand he also owns a lot

of indirect interests in subsidiaries, some of which are majority, some of which are minority, and some of which he owns maybe directly, some of which through other entities. So the way in which these assets could be monetized at the sub-debtor level could certainly impact his economic rights and could impact him greatly. For instance, if the --

THE COURT: I really wanted an exact answer.

MR. TAYLOR: Mr. Seery --

THE COURT: I really wanted an exact answer, not just he has an indirect interest in, you know, some of the 2,000 -- I'm not going to say tentacles, but --

I'm going to interrupt briefly, because I really want to nail down the answer as best I can. Mr. Pomerantz, can you just remind me of what your answer was or statement was regarding Mr. Dondero, individually, his economic stake in all this?

MR. POMERANTZ: He has an indemnification claim that's been objected to, --

THE COURT: That's the one and only --

MR. POMERANTZ: -- although it's not before --

THE COURT: That's the one and only pending proof of claim, right?

MR. POMERANTZ: That's my understanding. And while it's not before the Court, we could all imagine whether Mr. Dondero's going to be entitled to indemnification.

He has an interest in Strand, which is the general partner.

THE COURT: Right.

MR. POMERANTZ: And Strand owns a quarter-percent -- a quarter of one percent of the equity. I believe that is all of Mr. Dondero's economic interest in the Debtor.

THE COURT: Okay. So, again, I'm just trying to, you know, understand who he's looking out for, for lack of a better way of saying it, Mr. Taylor, in making these arguments.

MR. TAYLOR: So, there is also, and this is -- I'm not involved in what are these going to be filed collection suits, or some of which have been filed, some of which have not been filed, none of which I believe the answer date has been -- has passed or come to be yet.

But he is also a defendant in collection suits on these notes, as you are undoubtedly aware.

THE COURT: Okay. He's a defendant in adversary proceedings. Okay? That makes him a party in interest to -- well, I keep -- that makes him have standing to make an 1129(a)(7) argument? That's why I'm going down this trail. Because you've spent the last five minutes talking about, you know, creditors could do better in a Chapter 7 liquidation. I'm not sure he has standing to make that argument, so I'm wanting you to address that squarely.

MR. TAYLOR: Your Honor, I believe he has economic interests up and down the capital structure. And I cannot describe to you, without wildly speculating and potentially lying to this Court, which I'm not going to do, without some time to have looked at that, because I was -- I was not involved in the proofs of claim and I am not his accountant. So I could not do that without wildly speculating, so I just -- I would like to more directly answer your question, Your Honor. I am not trying to avoid the question. But I can't honestly answer your question with true facts as we sit here right now.

THE COURT: All right. But do you agree or disagree with me that only parties -- the only parties that really can make an 1129(a)(7) argument are holders of claims or interests in impaired classes?

MR. TAYLOR: Your Honor, I believe that Mr. Dondero has standing to do so by virtue of claims for indemnification --

THE COURT: Okay.

MR. TAYLOR: -- if these -- if these -- if this Debtor (indecipherable) able to meet its obligations to indemnify him. And some of those are significant claims that are being brought against him that could total millions, if not tens of millions of dollars, just in defense costs alone, that I do believe give some standing.

1 THE COURT: Okay. So, assuming you're right, you
2 think the evidence does not show this is better than a Chapter
3 7 liquidation where we would have a stranger trustee come in
4 and just, yeah, I guess, cold-turkey liquidate it all.
5 MR. TAYLOR: Your Honor, I do believe that the
6 evidence shows that the Debtor hasn't met its burden as to
7 this. A Chapter 7 trustee doesn't necessarily have to
8 liquidate immediately. It can run these -- these assets. I
9 mean, Mr. Seery is going to do it with ten people. At one
10 time, just two months ago, he said he was going to do it with
11 three people. A Chapter 7 trustee could certainly have a
12 limited runway, or even an extended runway, if it so asked for
13 it, to liquate these Debtors.
14 Moreover, there would be at least the requirements that
15 the Chapter 7 trustee would request the sale, tell creditors
16 about it. And, as many courts have said, the competitive
17 bidding process is the best way to make sure that you ensure
18 the highest and best offer that you can get.
19 Mr. Seery has not committed to providing notice of sales
20 to creditors and other parties in interest, potentially
21 bringing them in as bidders. They -- he could name a stalking
22 horse, but he has not indicated any desire to do so. A
23 Chapter 7 trustee would endeavor to do so.
24 So I do believe that there are some advantages. And
25 you've heard no testimony that they've performed any analysis

or conducted any interviews with any Chapter 7 trustees as to whether or not this was possible or not. They just made the naked assumption that they would do work based upon what they said was their experience. And Mr. Seery's deposition, when it was taken and noticed as a 30(b)(6) deposition, and I believe it has been entered into evidence here, he said the last time he dealt with a Chapter 7 trustee was 11 or 13 years ago, and it was the *Lehman* case, and that was the -- a SIPC trustee. So --

THE COURT: Well, --

MR. TAYLOR: -- that's the last time he had any experience with it.

THE COURT: -- again, I don't mean to belabor this point, just like I didn't mean to belabor a few others. But, you know, there is a mechanism, yes, in Chapter 7, Section 704, for a trustee to seek court authority to operate a business. But it's not a statute that contemplates long-term operation. Okay? It's just, oh, we've got a little bit of -- you know, we have some assets here that really require a short-term operation here.

If it's long-term, then you convert to Chapter 11. Okay? It's just a temporary tool, Section 704. Right? Would you agree with me?

MR. TAYLOR: That's typically how it has been used.

THE COURT: Okay.

1 MR. TAYLOR: But that's not to say that it's limited
2 in time by the statute itself. It doesn't say that it can't
3 go for one year or two years. That can be a short wind-down
4 period.
5 THE COURT: But hasn't your client's argument been
6 this past several weeks that Mr. Seery is moving too fast,
7 he's wanting to sell things and he needs to hold them longer?
8 I mean, these two argument seem inconsistent to me.
9 MR. TAYLOR: So, just because a Chapter 7 trustee has
10 been appointed doesn't mean that he has to sell them any
11 faster than Mr. Seery.
12 I think what the -- the problem with the process that has
13 been going on with Mr. Seery, my client's problem with it, is
14 not necessarily the timing but the process that Mr. Seery is
15 going through with these sales. Provide notice, allow more
16 bidders to come in, make sure that he's getting the highest
17 and best price. And if that happens to be Mr. Dondero who
18 offers the highest and best price, great. And if Mr. Dondero
19 gets outbid by somebody, well, that's all the more better for
20 the estate.
21 THE COURT: Okay. Continue your argument.
22 MR. TAYLOR: I believe we covered a lot of it, Your
23 Honor, and the plan analysis is all based upon their
24 assumptions that there's $257 million worth of value. Again,
25 there's no rollup provided as to how that asset allocation is

1 broken out, but they consist of a couple of items.
2 First, there's the notes; and second, there's the assets.
3 The notes are either long-term or demand notes. Those long-
4 term notes, Mr. Seery will tell you some have been validly
5 accelerated and therefore are now due and payable. I think
6 there's arguments to the contrary. But those long-term notes
7 probably have some both time value of money and collection
8 costs. And then, of course, you have to discount them by
9 collectability issues, too.
10 I don't believe any analysis went into it, or at least the
11 Court was not provided any data or analysis as to what
12 discounts were applied to those notes. And, therefore, I
13 don't think that this Court can make any determination that
14 the best interests of the creditors have been met.
15 As far as the assets that are to be monetized, again,
16 there's two sub-buckets of those assets. There's securities
17 that are to be sold. Some of those are semi-public securities
18 that have markets. Those are somewhat more readily
19 ascertained. The others are holdings in private equity
20 companies, and sometimes holdings in companies that own other
21 companies.
22 There's no evidence of the value -- empirical evidence of
23 the value of those companies, nor of the assumptions that went
24 into as to when they should be sold, how much they'd be sold
25 for.

1 Again, I do realize the sensitive nature of such
2 information, but that could have been placed under seal. And
3 without that information, I don't believe that the Court can
4 conduct the due diligence it's necessary to say the best
5 interest of the creditors have been met.
6 To sum up, Your Honor -- oh, I'm sorry. One other point
7 that I did want to talk about before I summed up is, you know,
8 Mr. Pomerantz and I were listening to a different record or I
9 was totally confused as to the testimony that was put forth
10 regarding the directors and officers. I believe the testimony
11 in the record is extremely clear that the Debtor made no
12 effort to go out and find out if it could obtain directors and
13 officers insurance without a gatekeeping injunction or a
14 channeling injunction, whatever you want to call it. I
15 believe that his testimony was extremely clear. He didn't
16 shop it. He doesn't know. And that's what the record is
17 before this Court.
18 To the extent that the Debtor wants to rely upon we can't
19 get Debtor -- or, directors and officers insurance because
20 without this gatekeeping function we just can't get it, I
21 believe the record just wholly does not support that. The
22 testimony was at least extremely clear, as how I heard it.
23 Your Honor will have to review the record herself, but I don't
24 believe that there was much argument about it.
25 I'm sure -- as I stated in the beginning, Your Honor, this

is a court of equity. It could deny confirmation, as I believe Your Honor should, based upon the flaws in the plan.

If Your Honor finds that the plan as written is impermissible because of any of the exculpation or the gatekeeping functions that they're asking, the testimony is equally clear that the independent directors would not serve in -- as officers of the Reorganized Debtor. Any plan that is put forth by the Debtor has to tell the people who are going to be officers going forward. And with that naked testimony before the Court, that it's simply not feasible, and I don't think it is one of the possible -- where the Court can come back and say, well, I can't confirm this plan as written, but if you change it and rewrite it to get rid of the certain offensive parts of the exculpation or the gatekeeping functions, then we can confirm this plan. And I think the evidence before this Court is it's not feasible because none of the directors will serve in that capacity, and therefore this plan should be dead on arrival if Your Honor agrees the proposed provisions do not meet *Pacific Lumber*.

We would ask the Court to deny confirmation, but in the alternative, to at least take this under advisement. Give us a time frame -- we'd ask for 30 days -- but give us a time frame of when the Court is going to rule, to allow the positive conversations to move forward.

To that end, Your Honor, there is, indeed, a hearing on

1 the extension of a temporary injunction and contempt that is
2 scheduled for Friday. I understand that the parties, at least
3 the joint parties, will not -- will agree to, I'm sorry, will
4 agree to the extension of the temporary injunction until such
5 time as the Court can rule on confirmation. I do see that
6 there could be a lot of harm done at the Friday hearing. We
7 would ask that the Court additionally continue that hearing on
8 that motion and on the injunction, and contempt, until such
9 time as confirmation has been ruled upon. It will be both
10 efficient and allow discussions to continue regarding
11 potential global resolution.
12 And so that is the end of my argument, Your Honor.
13 THE COURT: All right. Thank you. All right. Mr.
14 Pomerantz, do you have any rebuttal?
15 REBUTTAL CLOSING ARGUMENT ON BEHALF OF THE DEBTOR
16 MR. POMERANTZ: Yes, I do, Your Honor. I want to
17 address a couple of comments that Mr. Taylor made towards the
18 end. First of all -- and, actually, the beginning.
19 We think Your Honor should rule on confirmation. Ruling
20 on confirmation and having an entered confirmation order are
21 two separate things. We understand that a new offer was made.
22 Whether that's acceptable to the Committee -- I actually think
23 it will enhance the ability of the parties to see if they
24 could reach a deal if there's (audio gap) that Your Honor is
25 going to confirm the plan.

Again, doesn't mean a confirmation order has to be entered, but I think, based upon my personal experience in negotiating with Mr. Dondero, that your clear communication to the parties that, unless something happens, you will enter a confirmation order, I think will change things. Okay? Without getting into settlement discussions, things have changed over the last several days, and we wish you would have -- wish things would have happened sooner. But we totally disagree that Your Honor should hold your ruling for 30 days or any other period of time.

Part of the reason I think they are making that argument is because they have an examiner motion and they recognize that, upon confirmation, the examiner motion is moot. So I think there's strategic reasons as well.

We don't think there should be a continuance of the TRO hearing and of the contempt hearing. As Your Honor recalls, the contempt motion was specifically set for this time to give Mr. Dondero enough time to prepare. Your Honor was sensitive to his due process concerns. We set the TRO, the preliminary injunction hearing against the Advisors and the Funds, we set that, again, knowing that it would be after confirmation.

So we do not agree that either should be continued. Again, we think the more direct, unequivocal answers Your Honor can give to the parties, the better off we'll be.

I guess -- Mr. Taylor and I do agree that the record was

1 clear. I guess we just disagree on the clarity of it. I
2 heard Mr. Tauber testify that when he went out to people, to
3 insurance carriers, after he and Aon were engaged, they all
4 talked about a Dondero exclusion. Okay? They weren't
5 convinced into a gatekeeper provision because it was provided
6 as part of the normal materials you would provide in a
7 bankruptcy court and trying to get D&O liability in the
8 context of a bankruptcy case. Mr. Tauber's testimony was
9 pretty clear, that carriers wanted to have a Dondero
10 exclusion. And, in fact, the only reason we were able to get
11 any coverage was because of the gatekeeper.
12 So, yes, the record was clear. We just disagree.
13 I'd like to go back to Mr. Draper's comments going -- and
14 a couple of things, obviously, overlap. I guess one of the
15 things here, it's great that everyone is coming in here as
16 different interests and different parties or whatnot. But as
17 I mentioned, Your Honor, at the outset, and I've repeated a
18 few times, these are all -- the only people we have not been
19 able to resolve issues with are the Dondero parties and the
20 related parties. And I recall the tentacles. Mr. Davor
21 questioned that. Mr. Clemente, his comments. But the fact of
22 the matter is, Your Honor, Your Honor has heard testimony.
23 Your Honor has had hearings. Mr. Rukavina represents the
24 Advisors and the Funds. Your Honor has never seen the
25 independent board member testify in this case to demonstrate

1 how these entities are really different. So while Mr.
2 Rukavina does -- you know, tries his best, and I think he has
3 limited stuff to work with, but I give him credit for doing
4 the best he can, these are all Dondero-related entities and
5 Your Honor has seen that.
6 So, Your Honor, going to the resolicitation argument, it
7 actually has taken up a lot more time than the argument is
8 worth, for one very simple reason. As I said in my argument,
9 and as Mr. Taylor and Mr. Draper totally ignored, there were
10 17 creditors who voted yes, 17 creditors who were apparently
11 misled, that Mr. Draper is looking out for the little guy and
12 Mr. Taylor is fumbling over his reason for why that's
13 important to Dondero. And of those 17 creditors that voted
14 yes, Your Honor, they were either the employees related to
15 HarbourVest, UBS, Redeemer, or Acis, except for two. And you
16 know the other two? One was Contrarian, a claim buyer, who,
17 yeah, elected to be in Class 7, and the other was an employee
18 with a dollar claim.
19 So the whole argument that there should be a
20 resolicitation is preposterous, Your Honor. But to go to some
21 of the specifics in what they argued, we didn't require
22 creditors to monitor recovery. The footnote -- as I
23 indicated, the UBS 3018 was in the disclosure statement that
24 went out. It didn't make it to the projections. It was
25 clearly -- and they characterize it, I think Mr. Draper

1 characterized it as buried in the document. There is a
2 section that every disclosure statement is required to have
3 called Risk Factors. This disclosure statement had that. And
4 in the disclosure statement, it talked about the amount of
5 claims being a risk factor.
6 Mr. Draper also said that the Debtor totally changed its
7 business model from the first to the second analysis. That is
8 incorrect. The Debtor was always going to manage funds. Yes,
9 did they add the CLOs? But before, they were going to manage
10 Multi-Strat, they were going to manage Restoration Capital,
11 they were going to oversee Korea, they were going to be doing
12 the management of the funds. So there wasn't a big change in
13 the business model, Your Honor.
14 Mr. Taylor, on the solicitation issue, says we found $67
15 million in assets. You know, that's a disingenuous statement.
16 I think over $20 million was found because his client and
17 related entities didn't make a payment on notes and they got
18 accelerated. So while before we would have had to wait over
19 time if they were paid, it's not surprising that Mr. Dondero
20 and his related entities just failed to basically pay the
21 notes.
22 So that was, I think, over $20 million. And then there
23 was the HCLOF asset. That was acquired in the HarbourVest
24 settlement. And then there was basically an increase in some
25 value to some assets.

1 So there wasn't anything mysterious here. There wasn't
2 anything that the Debtor was trying to hide. There weren't
3 any found assets. It was based upon different circumstances.
4 Mr. Taylor complains about the lack of rollup of assets,
5 the lack of evidence on the best interests of creditors test.
6 Your Honor, you've had extensive testimony from Mr. Seery
7 about what would happen in a Chapter 7 and what would happen
8 in a Chapter 11. And you know why we didn't provide the
9 information to Mr. Taylor and his client on what the rollup of
10 the assets would be, and do you know why he wants them? He
11 wants to know what the assets are so he can try to bid.
12 And there also was the allegation that the failure to
13 allow them to bid means we're going to get less in a Chapter
14 11 than a 7. Two comments to that, Your Honor. Number one,
15 if that was the case, a debtor would never be able to satisfy
16 the best interests of creditors test. If the existence of a
17 public process *de facto* meant you would get more value than
18 outside, you would never be able to satisfy that. And, quite
19 honestly, that's just not the law, Your Honor.
20 You have an Oversight Committee with over $200 million of
21 creditors who are going to watch Mr. Seery like a hawk, like
22 they have watched him during the case. And the concern that
23 somehow, because these assets are not put into full view to
24 sell, that they will get less value, it's just not -- it's not
25 supported by the evidence at all, Your Honor. And Mr. Seery

1 will make the determination. If it makes sense to notice up
2 and provide Mr. Dondero with notice, he will. If he doesn't,
3 he won't.
4 Your Honor, going -- oh, and then the last comment on the
5 -- that I'll make on the resolicitation and the liquidation
6 analysis is Mr. Taylor chides us and we've been criticized for
7 not disclosing more about the HarbourVest and the UBS
8 settlements and that we were off substantially. Your Honor,
9 you've heard testimony that we were in pending litigation with
10 HarbourVest and UBS at the time. What kind of litigant would
11 we be if we came in and said, you know, Your Honor, you know,
12 Creditors, we think the UBS claim is going to be allowed at
13 $60 million and we think the HarbourVest claim is going to be
14 allowed at $30 million? Would that really have benefited
15 creditors and this estate, to basically, after we took the
16 position, hard negotiations and hard pleadings that we
17 prepared, and in some cases filed, that we didn't have any
18 liability? It would have made no sense, and it would have
19 been a dereliction of our duty to actually come out and say
20 what the claims -- the claims were, or what we thought they
21 could be settled for.
22 Your Honor, going back to Mr. Draper's comments. He
23 started with the exculpation. First he made a comment that I
24 don't think he intended what he said, but he said that the
25 exculpation order, the January 9th order, cuts off when the

1 independent directors go away. I think what he meant to say
2 is that since the three people are not going to be independent
3 directors anymore, that basically any actions going forward by
4 any of those three are not covered. But let's be clear. The
5 January 9th order is in effect, and if at some point in the
6 future somebody has a claim against those three gentleman, or
7 their agents, for what they did as independent directors or
8 their agents, that order will apply.
9 Your Honor, we next had a discussion, or Mr. Draper and
10 you had a discussion on professionals. I'm aware of the Fifth
11 Circuit law that says res judicata, fee applications. I think
12 that only applies to claims that the Debtor and estate would
13 have. It doesn't really apply to an exculpation. But there's
14 Texas state law that I identified in our brief and we cited to
15 that limits third parties' ability to go after professionals.
16 But the bottom line is the Fifth Circuit, in *Pacific*
17 *Lumber*, didn't deal with professionals. Your Honor was
18 correct in pushing both Mr. Taylor and Mr. Rukavina. What
19 really that was was a policy case. And professionals have
20 nothing to do with 524(e). So the *Palco* and the *Pacific*
21 *Lumber* reference and explanation of 524(e) doesn't have
22 anything to do with professionals. And we would submit, Your
23 Honor, that an exculpation, especially in a case like this, is
24 important for professionals.
25 I understand Your Honor's comments that maybe it's much

ado about nothing, but I'm not really sure it's much ado about nothing when we have Mr. Dondero and his affiliates who, notwithstanding their efforts to just claim that all they are doing is trying to get a fair shake, Your Honor knows better. Your Honor knows better from the years you've been litigating with them, and we know better and the Debtor knows better from what the independent directors have been dealing with.

THE COURT: Let me ask you this, though. I came into the hearing with the impression we were just talking about postpetition pre-confirmation, or pre-effective date maybe I should say, was the expanse of time covered by exculpation. And Mr. Rukavina said no, no, no, go back, look at, I don't know, Subsection 4 of something. It is a post-confirmation concept. What is your response to that?

MR. POMERANTZ: I believe it's implementation. And, again, --

THE COURT: Implementation? Yes.

MR. POMERANTZ: -- I think Mr. Rukavina -- right. I think Mr. Rukavina and Mr. Taylor and Mr. Draper have done a great job trying to muddy the issues. They talk about our sleight of hand and how we're trying to do things that are way beyond the bankruptcy court's jurisdiction. We are not. I think they are trying -- what they have done throughout the case is throw up enough mud. And here's, here's the answer to that question, Your Honor. Implementation. Okay? We know

1 what implementation means. The plan says implementation is
2 cancelation of the equity interests, creation of new general
3 partners, restatement of the limited partners, establishment
4 of the Claimant Trust and Litigation Sub-Trust. That's the
5 implementation.
6 We are not trying to get exculpation for post-confirmation
7 activity. Actually, my partner, Mr. Kharasch, in specifically
8 addressing Mr. Rukavina's concern, said, look, if you have a
9 problem with cause, if you have a problem, want to exercise
10 your rights, we're only asking you to come back to the Court.
11 We are not stopping you.
12 So the whole argument that the exculpation is really broad
13 and is not really -- does not really cover just the plan, the
14 approved plan, I think is a red herring. Implementation is
15 implementation in the context of the plan.
16 And also Mr. Rukavina tries to argue that, well, it's
17 administration, it's not really you acting any operation of
18 business. I just don't think there's any support in the case
19 law. Your Honor has overseen this case, overseen this
20 Debtor's activities, overseen the independent directors'
21 activities, overseen Strand's activities, overseen the
22 employees' activities. And those activities have been
23 (indecipherable) administration of the case. And his attempt
24 to create a different category for, well, it's not
25 administration, it's operation and so it doesn't apply, I just

1 think is wrong.
2 Your Honor made a couple of comments about what was
3 *Pacific Lumber* doing. It was a policy decision. If there was
4 a bright-line rule, then nobody would be entitled to
5 exculpation. The very fact that the Fifth Circuit said that
6 Committee members are different made -- makes it clear it was
7 -- it was policy.
8 And Mr. Taylor's comments that, well, their creation of
9 statute, Chapter 11 trustees and Committee members, that's not
10 what basically the case said. If you look at the citation to
11 touters in the case, it was we want people to volunteer and
12 who are needed for the process. Committee members are needed
13 for the process. We don't want to discourage them from coming
14 in. And the only testimony you have on the independent
15 directors is from Mr. Dubel, and he testified the importance
16 of independent directors to modern-day Chapter 11 practice,
17 the importance of exculpation, indemnification, and D&O
18 insurance. And his testimony: uncontroverted. The Objectors
19 could have brought in someone to say something different, but
20 the only testimony before Your Honor is, if Your Honor does
21 not approve exculpations in cases like this, you will not get
22 independent directors and it will have an adverse effect on
23 the Chapter 11 process.
24 So, while I appreciate all the Objectors trying to say
25 bright line, trying to say *Pacific Lumber*, that is the gut

1 reaction, right? That's -- it's easy to say. But Your Honor
2 will know better, from reading the cases, that's not what
3 *Pacific Lumber* says. And for the several reasons I gave, it's
4 the reason why *Pacific Lumber* does not govern the decision in
5 this case.
6 Your Honor, Mr. Draper then started to talk about *Craig*.
7 And everyone cites *Craig* as this, you know, limiting
8 jurisdiction. Now, we acknowledge that *Craig* and the Fifth
9 Circuit has a more limited post-confirmation jurisdiction
10 approach than the other Circuits, but it's not nonexistent.
11 And just because the Debtor is going out post-confirmation and
12 acting does not mean that the conduct that they are engaging
13 in is not -- and disputes that arise, doesn't come within the
14 Court's jurisdiction. If that was the case, and I think Your
15 Honor recognized this, in your case it was the *TXMS* case,
16 while it's limited, more limited after confirmation, and I
17 think you even, in the case -- or, in one case of yours, said
18 that even after the case is closed there could be
19 jurisdiction. So their just trying to argue *Craig* is just --
20 is just too much.
21 Going out of the gatekeeper, Mr. Draper tried to say we
22 are *Barton*, and that's it, and *Barton* has its limitations, et
23 cetera. First of all, with respect to *Barton*, it is not
24 limited and doesn't include debtors-in-possession. We have
25 cited cases in our materials where it has been applied to

1 debtors-in-possession.
2 So, you know, look, maybe this is a provision -- this is a
3 proposition like many in bankruptcy, you could find a
4 bankruptcy court to agree with a proposition, but there's
5 cases all over the place on that. There's cases applying to
6 post-confirmation. The trend has been to expand *Barton*. But
7 the beauty of it is, Your Honor, you don't have to rely on
8 *Barton*. *Barton* was one of our arguments. We gave *Barton* as,
9 you know, somewhat of an analogy but somehow applying because
10 in the -- because the independent directors were like the
11 trustees.
12 But we recognize it may be going farther than *Barton* has
13 previously gone. But the case law is clear, it is being
14 extended. But we -- I gave you several provisions of the
15 Bankruptcy Code that authorized you to enter a gatekeeper
16 order. None of the Objectors objected on any of those
17 grounds. They didn't say the statutes that I cited. And it
18 wasn't only 105, I know bankruptcy practitioners love to cite
19 105, but there were three or four others that I mentioned, and
20 they're in our brief. There's no case that they cited that
21 said that there is no authority on the gatekeeper.
22 But what was the argument that was raised? And I think
23 Mr. Rukavina raised it, saying, you know, look, I don't
24 understand the argument of no jurisdiction, of jurisdiction
25 for a gatekeeper but no jurisdiction for underlying cause of

1 action. Well, Mr. Rukavina should read and Your Honor should
2 read, when you're considering the plan, the case, the *Villegas*
3 case in the Fifth Circuit as it dealt with *Stern*. That was
4 particularly a case. Does *Barton* -- is *Barton* impacted from
5 *Stern*? By *Stern*? And *Stern*, we know, limits the bankruptcy
6 court's jurisdiction. But, no, the Fifth Circuit said, in
7 that case, no. Even though the bankruptcy court's
8 jurisdiction is limited to hear the claim, there is nothing
9 inconsistent with that and allowing the bankruptcy court to
10 act as a gatekeeper.
11 So Mr. Rukavina's argument that, well, he'll present to
12 you that there's cause and you'll find there's no cause and
13 then he will be without a remedy by someone that had
14 jurisdiction, that really sounds good but it just doesn't
15 withstand analytic scrutiny. There is a distinction. They
16 are glossing over the distinction. They don't like the
17 distinction.
18 And why is that distinction -- and why is it important in
19 this case? Again, we're not talking about garden-variety
20 people who are just involved with a debtor and will get caught
21 up in a bankruptcy. We narrowly tailored the gatekeeper to
22 enjoined parties. Enjoined parties are the people before Your
23 Honor, some of the people that have made the Debtor's life
24 miserable over the last few months.
25 We have every interest and desire, as does the Committee,

1 to go out post-confirmation and monetize these assets. But we
2 see the clouds on the horizon. We see all the pleadings that
3 have been filed by the Objectors saying how, if there's no
4 deal, there will be an unending amount of costs and appeals.
5 It's, you know, the point, not too subtle. It wasn't lost on
6 us.
7 Your Honor, going to Mr. Rukavina's arguments on Class 8
8 cram down, again, it's really a hard argument to understand,
9 but first I want to make a point. He sort of mentioned -- and
10 I'm not sure if he intends to preserve this on appeal, but it
11 was not objected to and I'll ask for a ruling on it, Your
12 Honor -- he said that there was inappropriate separate
13 classification. That was not raised in any of the objections.
14 We don't think it was properly before the Court. We
15 understand there's a component of that in unfair
16 discrimination in connection with a cram down, but there is no
17 objection, there was no filed objection, to the separate
18 classification of the deficiency claims and the Class 8
19 unsecured claims.
20 And if you look at the voting, you realize it wasn't done
21 for gerrymandering, because if you put both claims together,
22 both classes together, you would have had one class that voted
23 yes.
24 So I don't believe the separate classification under the
25 1129 standards is appropriate for Your Honor to consider,

1 other than in connection with the cram down.
2 Now, Mr. Rukavina complains that the only way the
3 convenience class was decided was by way of negotiation. Your
4 Honor, how else do provisions like that get decided? And who
5 was the negotiation between? It was between the Committee.
6 And one of the benefits of a Committee process, and I
7 represent a lot of Committees, you put people in a Committee
8 that have diverse interests and they can come up with an
9 appropriate result. And here you have that. You had one
10 creditor who was a convenience creditor. You have three other
11 creditors who would lose liquidity if convenience payments are
12 made.
13 Do you think that UBS, Acis and Redeemer, do you think
14 they had a desire just to pay people off? No. It was part of
15 a collaborative process. So to say that there was no basis
16 and no testimony on the appropriateness to have -- and how the
17 convenience class was put together just would be wrong.
18 And with respect to the absolute priority rule, Your
19 Honor, again, there's a missing link here, okay? These are
20 contingent interests. They are property. No doubt they are
21 property. But if I did not allow those creditors or those
22 equity to have a contingent interest, the argument would have
23 been made that the plan violates the absolute priority rule.
24 And I said that in my argument. And why would it have
25 violated the absolute priority rule? Because there's a

1 potential that creditors could get over a hundred cents on the
2 dollar, plus interest. So it's a game of gotcha, right?
3 And why do they really care? Mr. Dugaboy said in his --
4 Mr. Draper said in his brief that Dugaboy cares because they
5 may have wanted to buy the interest. Well, I'm sure they can
6 go to Hunter Mountain, you know, Mr. Dondero's left hand can
7 go to his right hand, and I'm sure he'd be happy to sell the
8 contingent interests.
9 And with respect to the argument that Mr. Rukavina made
10 about control, equity be in control, yeah, control is a right.
11 No doubt. You've got -- if you're giving control to the post-
12 confirmation Debtor, that could be a right and implicate the
13 absolute priority rule. But what is the control here? Equity
14 is not given any rights. Your Honor heard how the post-
15 confirmation entity is structured. It's going to be Mr.
16 Seery, overseen by an Oversight Board. So I really don't
17 understand the concept of control. There just is no violation
18 of the absolute priority rule.
19 Your Honor, Mr. Rukavina then took us to task for 2000 --
20 or, for not filing the 2015.3 statement. And if you take his
21 argument to the logical conclusion -- well, we didn't file it,
22 we didn't comply with that Rule, so we're not in compliance
23 with the Bankruptcy Code, so we can never basically get our
24 plan confirmed, right, because it's a violation and we didn't
25 file and seek an extension.

1 That's just a preposterous argument, Your Honor. Mr.
2 Seery poignantly told the Court, in the rush of things that
3 were going on, it wasn't filed. Did Mr. Rukavina, before
4 yesterday, having Mr. Dubel on the stand, did he ever ask
5 where is our 2015.3 report? He probably didn't ask it because
6 the answer -- when I told him the reason why it wasn't filed
7 before January 9 was because I don't think Mr. Dondero wanted
8 it filed, and I think that's why, as Mr. Seery testified, we
9 were having a challenging time getting that information from
10 the in-house -- in-house.
11 But, yes, should it have been filed? Yes. But if that is
12 all they could point to through the course of the case that
13 Mr. Seery or Mr. -- or the rest of the board did wrong, you
14 know, I think that just demonstrates they did a fine job.
15 THE COURT: All right.
16 MR. POMERANTZ: Your Honor?
17 THE COURT: You've got four minutes left.
18 MR. POMERANTZ: Oh. Okay. Your Honor, going to Mr.
19 Rukavina and the Strand argument that it's a nondebtor entity,
20 as I explained in my argument, the Strand -- Strand needs to
21 get exculpation or else that's a backdoor way to the Debtor.
22 Forget about the independent directors, it's a backdoor way to
23 the Debtor. Because Mr. Dondero will be in control. If
24 Strand is sued for post-January 9th activities, he will assert
25 an administrative claim. And one thing from *Pacific Lumber* is

1 clear, the Debtor is entitled to an exculpation as part of the
2 injunction and the -- and the discharge.
3 Your Honor, Mr. Kharasch adequately addressed Mr.
4 Rukavina's comments with the gatekeeper and the gatekeeper
5 problem. We are not seeking to stop his clients, however
6 related they may be, from exercising their rights. We are
7 seeking a process that will not embroil the Debtor in
8 litigation going forward. There is no problem with Your Honor
9 acting as the gatekeeper to do so. And to the extent that
10 they are bound by the January 9th order is not really an issue
11 for today. That'll be an issue at the temporary -- the
12 temporary -- at the preliminary injunction hearing.
13 I -- just one minute, Your Honor.
14 (Pause.)
15 MR. POMERANTZ: Your Honor, I think I covered a lot.
16 If there's anything that any of the Objectors have mentioned
17 that I failed to respond to, I'd be happy to answer questions
18 Your Honor has.
19 THE COURT: All right. I guess there's, what, about
20 two minutes left, if Mr. Clemente had anything.
21 Mr. Clemente, have you drifted off? I doubt it. But
22 anything else from you, Mr. Clemente?
23 MR. TAYLOR: Your Honor, I show him talking -- this
24 is Clay Taylor -- but no one's hearing him.
25 THE COURT: Okay. Mr. Clemente, we are not hearing

you, or I'm not seeing you. Make sure you're not on mute.

THE CLERK: He's not on mute, Judge.

THE COURT: He's not on mute? So we must have a bandwidth issue or something else.

All right. Mr. Clemente, still not hearing or seeing you. We'll give him another 30 seconds.

THE CLERK: He's coming up.

THE COURT: He's coming up? Ah, I see his name now.

MR. CLEMENTE: Your Honor, can you hear me?

THE COURT: I can hear you now.

MR. CLEMENTE: Okay, Your Honor. I don't know what happened. I just switched another camera, so you may not be able to see me, but can you hear me? I'll be very quick.

THE COURT: Okay. I can hear you.

MR. CLEMENTE: Can you hear me?

THE COURT: Yes.

MR. CLEMENTE: Okay. Thank you, Your Honor.

CLOSING ARGUMENT ON BEHALF OF THE UNSECURED CREDITORS' COMMITTEE

MR. CLEMENTE: Two things I want to say. First, just on Class 8, I think what's important, as my comments emphasized earlier, the structure of Class 8. We must remember what it is. It's really designed so that Class 8 holders receive their pro rata share of what's left after prior claims are paid. That's really what Class 8 creditors voted on. That's what the disclosure provided. They did not

1 vote on receiving a specific dollar or a specific recovery
2 percentage.
3 And regarding the projections and estimates, Your Honor,
4 we're talking about large litigation claims that were asserted
5 and then settled. And given the nature of these assets, the
6 values fluctuate. It's perfectly expected, Your Honor, and
7 indeed disclosed, that there could be wide swings in the
8 amount of claims. That does not lead to the conclusion that
9 the plan needs to be resolicited.
10 And then, finally, Your Honor, again, Mr. Pomerantz
11 adequately addressed all the points, as he did with his
12 earlier presentation, so I'm not going to touch on them, but I
13 did want to respond to one thing that Mr. Taylor said. And I,
14 of course, agree with Mr. Pomerantz. The Committee believes
15 there's no reason for you to delay a ruling and would in fact
16 urge you to rule as soon as Your Honor is ready to rule.
17 Confirmation of the plan, to the extent that there are
18 conversations occurring, is not going to prevent those
19 conversations from taking place, and they can continue after
20 the plan is confirmed. There's simply nothing inherent in
21 Your Honor confirming the plan that would prevent those
22 conversations from occurring or would ultimately prevent
23 parties from pivoting to a deal on the off-chance that one
24 should be reached.
25 So I just wanted to emphasize, Your Honor, again, Your

Honor is going to rule when Your Honor rules, but the Committee would urge you to rule, and certainly the idea that there may or may not be discussions with Mr. Dondero should not at all in any way lead you to the conclusion that you shouldn't rule or that those conversations cannot continue after plan confirmation.

Thank you, Your Honor. Unless you have questions for me. And my apologies with the technology.

THE COURT: No problem. All right. Here's what I'm going to do. We can see you now, Mr. Clemente.

MR. CLEMENTE: Oh. I'm sorry, Your Honor. I switched to another camera again because it wasn't working. So, I apologize.

THE COURT: All right. I am going to call you back Monday. What day of the week will that be? Is that -- I mean, Monday, what date, I should say. That'll be the 8th, right? I am going to call you back Monday, this coming Monday, February 8th, at 9:30 Central time, and I am going to give you my ruling. It will be a detailed oral bench ruling. And I'm not going to leave you hanging on the edge of your seat over the next few days. I will tell you I'm inclined to confirm this plan. I think it meets all of the requirements of 1129 and 1123 and 1122.

The thing that I am going to spend some time thinking about between now and Monday morning is, no surprise, the

propriety of the exculpations, the propriety of the plan injunctions, the propriety of the gatekeeper provisions. I certainly am duty-bound to go back and reread *Pacific Lumber*, to go back and read *Thru, Inc.*, and to really think hard about what is happening here.

So, I'm pretty much down, I think, to just those three issues here. I'll talk to my law clerk. He may remind me of something else that I'm not articulating right now. But I think I'm just down to those issues. Okay? So it's not going to be a mystery very long. We will come back Monday, 9:30. My courtroom deputy will post on the docket the WebEx connection instructions as usual, and we'll go from there. Now, --

MR. POMERANTZ: Your Honor? Your Honor, this is Jeff Pomerantz. I have a question, and it's going to sound odd coming from someone on the West Coast, but I was wondering if you could do it earlier. And the only reason I say that is, the night before, I have to call in to see if I'm on jury duty on Monday, and it would be helpful to me -- I assume your reading the ruling would be within a half hour, 45 minutes. That if you started at 9:00, if that was possible, I could then get in a car, and if I'm actually called to jury duty, I can get there. Of course, I don't know if I will be called, but I'd hate to miss it.

THE COURT: Okay. Well, I don't want to make you

1 miss jury duty. Okay. We will do 9:00 o'clock.
2 MR. POMERANTZ: Thank you, Your Honor.
3 THE COURT: Hopefully no one will be, you know, hung
4 over from watching the Super Bowl. Personally, I don't like
5 Tom Brady, so I may be boycotting the Super Bowl. But maybe
6 I'll watch it. Maybe I'll -- I'll watch it. So we'll do it
7 9:00 o'clock. So 9:00 o'clock next Monday.
8 Now, let's talk about next the currently-set hearing this
9 Friday, February 5th, on the injunction and contempt of court
10 motion as to Mr. Dondero and the other entities. I want to
11 continue that, and here is what I am struggling with. The
12 only day I have next week is Friday, the 12th, and I would
13 rather not use that date because I'm pretty jam-packed Monday
14 through Thursday, unless stuff has been settled that I haven't
15 become aware of. So let me ask two things. First, when is
16 the examiner motion set? I'm just wondering if there's a
17 block of time we have coming up that --
18 MR. POMERANTZ: I believe that's March 2nd, Your
19 Honor, so that's not for another month.
20 THE COURT: Oh, that's not for another month? All
21 right.
22 Traci, are you on the line? I want to ask you --
23 THE CLERK: Yes, I am.
24 THE COURT: What about the following week? I know
25 Monday, the 15th, is a federal holiday, but do we have

availability for -- I fear a full day is going to be needed for continuing this Friday setting.

THE CLERK: Wednesday, February 17th, is available.

THE COURT: We've got all day on Wednesday, February 17th?

THE CLERK: Yes.

THE COURT: All right. What about that? I think I heard Mr. Rukavina, I think he's the one who threw it out there -- or maybe it was Mr. Taylor; I'm getting mixed up -- the possibility that they would agree to a continuation of the preliminary injunction through -- well, I think you said through confirmation. Until the Court enters a confirmation order. And if I were to rule and approve confirmation Monday, then we're talking about an order that might be entered sooner than the 17th. So, do you all have any --

MR. RUKAVINA: Your Honor?

THE COURT: -- mutually-agreeable suggestions? If not, I'm just going to set it the 12th and I'll, you know, I'm killing myself, but I'll --

MR. TAYLOR: Your Honor?

MR. RUKAVINA: No, Your Honor. I think Your Honor is wise to do what's she's proposing. The agreed TRO against my clients expires on the 15th of February.

THE COURT: Uh-huh.

MR. RUKAVINA: We can easily move that back a week or

a sufficient amount of time so that there's no prejudice by going on the 17th, if that would be acceptable to the Debtor, and then we can just pick a date that's sufficiently after the PI hearing so that there's protection for everyone.

THE COURT: All right. Mr. Taylor, do you agree?

MR. TAYLOR: Yes, Your Honor. That is acceptable to Mr. Dondero.

THE COURT: Okay.

MR. TAYLOR: We can also push it back. Can you hear me?

THE COURT: Yes, I can. Uh-huh.

MR. TAYLOR: Okay.

THE COURT: All right.

MR. POMERANTZ: I just want to make -- I just want to make sure Mr. Morris, John Morris, is on, since he's taking the lead in those matters. I don't see his picture.

MR. MORRIS: I am, Jeff, and I appreciate that. I'm available, Your Honor. We were supposed to take the depositions of Mr. Leventon and Mr. Ellington tomorrow. I don't know if their counsel is on the phone. But given Your Honor's decision to adjourn the hearing from Friday, I would respectfully request at this time that counsel for those two individuals work with me to find a date next week in order to take those depositions.

THE COURT: All right. That's --

MS. DANDENEAU: Debra Dandeneau from --

THE COURT: Go ahead.

MS. DANDENEAU: This is Debra Dandeneau from Baker McKenzie. We agree, and we're happy to work with you on a rescheduled time.

MR. MORRIS: Thank you very much.

THE COURT: All right. All right. So, someone had filed a motion to continue Friday's hearing. I think it was your firm, Mr. Taylor. I already had a motion pending for a few days now. So I'm going to direct you to upload an order, Mr. Taylor, or someone at your firm, continuing the hearing to the 17th at 9:30, with language in there that your -- the injunction is continuing at least through that date. And, again, it's a continuance of the motion for contempt as well as the setting on the preliminary injunction. And, of course, run that by Mr. Morris and Mr. Rukavina.

MR. TAYLOR: Sure. Your Honor, this is -- I'm not handling the injunction hearing, or at least I don't think I am. But just so that I'm clear, should maybe the injunction continue through the next day or something, so depending on how Your Honor rules, there's not a rush to try and get an order to you?

MR. RUKAVINA: Your Honor, I think that Mr. Morris and I can work this out. Mr. Taylor is not involved in that adversary, that's true, but Mr. Morris and I will be able to

very quickly enter a proposed agreed order that extends that TRO for some period of time.

THE COURT: Okay.

MR. RUKAVINA: I'm not going to be difficult.

THE COURT: Okay. So we'll shift to you and Mr. Morris to be the scriveners. I just -- I suggested that because I thought there was a motion to link the order to that had been filed by Bonds Ellis. I may be --

MR. MORRIS: There was, Your Honor. There was an emergency motion to continue. We filed an opposition, and Your Honor has not yet ruled on that motion. You're exactly right.

THE COURT: Okay. All right.

MR. TAYLOR: Your Honor, this is Clay Taylor. I will make sure the right people confer with Davor and John, and we'll get -- we'll link it to that motion, because that makes sense, to have something to link it to.

THE COURT: Okay. Yes. And it can be a two-paragraph order, I would think.

All right. And then so I'm going to see you Monday at 9:00 o'clock Central time with the ruling.

Please, don't anyone file anymore paper. I threw that out earlier today. I've got all the paper I need. And I will see you Monday at 9:00 o'clock. Okay? We're adjourned.

MR. POMERANTZ: Thank you, Your Honor.

THE CLERK: All rise.

MR. MORRIS: Thank you, Your Honor.

(Proceedings concluded at 4:34 p.m.)

--oOo--

CERTIFICATE

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

/s/ Kathy Rehling **02/05/2021**

Kathy Rehling, CETD-444 Date
Certified Electronic Court Transcriber

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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

HIGHLAND CAPITAL MANAGEMENT, L.P., Plaintiff, vs. JAMES DONDERO, NANCY DONDERO, AND THE DUGABOY INVESTMENT TRUST, Defendants.	§ § § § § § § § § § § §	Adv. Proc. No. 21-03003-sgj Case No. 3:21-cv-01010-E

HIGHLAND CAPITAL MANAGEMENT, L.P., Plaintiff, vs. HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, L.P., Defendant.	§ § § § § § § § § § § § § §	Adv. Proc. No. 21-3004 Case No. 3:21-cv-00881-X
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HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	
	§	Adv. Proc. No. 21-3007
Plaintiff,	§	
	§	
vs.	§	
	§	Case No. 3:21-cv-01379-X
HCRE PARTNERS, LLC (n/k/a NexPoint Real Estate Partners, LLC), JAMES DONDERO, NANCY DONDERO, AND THE DUGABOY INVESTMENT TRUST,	§	
	§	
	§	
	§	
	§	
	§	
Defendants.	§	

DECLARATION OF DAVID KLOS IN SUPPORT OF HIGHLAND CAPITAL MANAGEMENT L.P.'S MOTION FOR PARTIAL SUMMARY JUDGMENT IN NOTES ACTIONS

I, David Klos, pursuant to 28 U.S.C. § 1746, under penalty of perjury, declare as follows:

1. I am the Chief Financial Officer ("CFO") of the reorganized Highland Capital Management, L.P. ("Highland"), and I submit this Declaration in support of *Highland Capital Management, L.P.'s Motion for Partial Summary Judgment in Notes Actions* (the "Motion"). This Declaration is based on my personal knowledge. I could and would testify to the facts and statements set forth herein if asked or required to do so.

2. I joined Highland in 2009 and served as Controller from 2017 to 2020 and Chief Accounting Officer from 2020 to February 2021. At all relevant times, I reported to Frank Waterhouse until he left the company in February 2021. I was appointed CFO in March 2021 following confirmation of Highland's Plan.[1]

[1] Capitalized terms not defined herein shall have the meanings ascribed in the Motion.

A. <u>NexPoint Advisors, LP's ("NexPoint") Prepayment Defense</u>

3. I understand that NexPoint contends that it had no obligation to make the Annual Installment payment due on December 31, 2020 under the NexPoint Note because it "pre-paid." Two documents show that NexPoint is mistaken.

4. The first document is the NexPoint Note, a true and correct copy of which is attached hereto as **Exhibit A**.[2] Under the NexPoint Note, NexPoint was required to make "Annual Installment" payments on December 31 of each year equal to (i) all unpaid accrued interest, *plus* (ii) 1/30th of the outstanding principal amount of the NexPoint Note. **Exhibit A** ¶2.1.

5. NexPoint was permitted to make "prepayments" under the NexPoint Note. Section 3 of the NexPoint Note sets forth NexPoint's agreement concerning the treatment of "prepayments" and provides:

> 3. <u>Prepayment Allowed; Renegotiation Discretionary</u>. Maker may prepay in whole or in part the unpaid principal or accrued interest of this Note. **Any payments on this Note shall be applied first to unpaid accrued interest hereon, and then to unpaid principal hereof.**

Exhibit A ¶ 3 (emphasis added).

6. The second relevant document is an amortization schedule (the "<u>Amortization Schedule</u>") that was prepared and maintained in the ordinary course of Highland's business, a true and correct copy of which is attached hereto as **Exhibit B**.[3] I understand that the Amortization Schedule is the only document that NexPoint relies upon to support its "prepayment defense."

7. The Amortization Schedule shows, among other things, the following:

---

[2] The NexPoint Note is also included as Highland's Ex. 2 (Exhibit 1),

[3] The Amortization Schedule is also included as Highland's Ex. 200.

- The "Interest Accrual" column shows the periodic interest that accrued under the NexPoint Note between the dates described in the "Date" column;
- The "Total Paid" column shows the amount NexPoint paid against the NexPoint Note[4]; and
- The "Interest Paid" and "Principal Paid" columns show how each payment was applied.

8. As the Amortization Schedule shows, (a) between October 20, 2017 and August 13, 2019, NexPoint made twelve (12) payments that could broadly be characterized as unscheduled "prepayments" of principal and/or interest (the "Prepayments")[5], and (b) with one exception, each of the Prepayments was applied first to reduce or eliminate all accrued and outstanding interest and then to unpaid principal, as required by Section 3 of the NexPoint Note.[6]

9. As can also be seen on the Amortization Schedule, ***notwithstanding the Prepayments***, NexPoint was still required to make additional payments against the NexPoint Note in December of 2017, 2018, and 2019, in order to reduce "Accrued Interest" to $0 as of December 31 in each year[7] as required by Section 2.1 of the NexPoint Note, which it did in each instance.

10. Indeed, even though NexPoint made six (6) Prepayments totaling $6.38 million between March 29 and August 13, 2019, NexPoint was still required to pay $530,112.36 to fully

---

[4] Note that for the interest payment made December 30, 2019, interest of $530,112.36 was paid in cash and is reflected on the "Interest Paid" column. The amount is omitted from the "Total Paid" column but has no bearing on the actual calculations contained in the Amortization Schedule. For avoidance of doubt, $530,112.36 of interest was paid to Highland from NexPoint on December 30, 2019.

[5] For the avoidance of doubt, NexPoint made the Prepayments on October 20, 2017, April 10, 2018, May 1, 2018, May 9, 2018, September 5, 2019, September 21, 2019, March 29, 2019, April 16, 2019, June 4, 2019, June 19, 2019, July 9, 2019, and August 13, 2019. *See generally* Ex. B.

[6] The exception is the Prepayment made on May 9, 2018, which prepaid approximately six (6) months of future interest.

[7] NexPoint made payments against the NexPoint Note on December 5, 2017, December 18, 2018, and December 30, 2019, respectively, which reduced "Accrued Interest" to $0 as of December 31 in each of those years in order to comply with Section 2.1 of the NexPoint Note.

satisfy its obligation to make the unpaid interest portion of the Annual Installment payment due as of December 31, 2019, which it did.

11. As the Amortization Schedule shows, NexPoint did not make any Prepayments on account of the NexPoint Note in 2020. Thus, as of December 31, 2020, NexPoint was required to make an Annual Installment payment on December 31 equal to (i) all unpaid accrued interest, *plus* (ii) 1/30th of the outstanding principal amount of the NexPoint Note (the "2020 Annual Installment"). Exhibit A ¶2.1.

12. NexPoint knew the 2020 Annual Installment was due on December 31, 2020 because it was included in a 13-week forecast that Highland's Corporate Accounting Group updated on a weekly basis and that was provided to (among others) Frank Waterhouse, NexPoint's Treasurer and then Highland's CFO. *See*, *e.g.*, **Exhibit C** (a true and correct copy of a 13-week forecast prepared for the 13-week period commencing December 14, 2020) Exhibit C shows that Operating Receipts of $2.051 million was due on December 28, 2020 in connection with "Interest Receipts on notes receivable," an amount that included the Required Payment).[8]

13. NexPoint failed to make the 2020 Annual Installment due on December 31, 2020 as required under Section 2.1 of the NexPoint Note.

14. On January 14, 2021, after Highland sent notice of default, NexPoint paid Highland $1,406,111.92. **Exhibit B** (entry dated 1/14/21).

B. Highland's Loan Summaries

15. Highland's accounting group has a regular practice of creating and maintaining "loan summaries" in the ordinary course of business (the "Loan Summaries"). The Loan

[8] This 13-week forecast is also included as Highland's Ex. 58 and is just an example. For years, the accounting group prepared a 13-week forecast that was updated weekly so that everyone knew what payments and receipts were anticipated.

Summaries identify amounts owed to Highland under affiliate notes and are created by updating underlying schedules for activity and reconciling with Highland's general ledger. Ex. 199 is an example of a Loan Summary. The Loan Summaries identify each Obligor by reference to the "GL" number used in the general ledger. *See* Ex. 199 (HCMS ("GL 14530"), HCMFA ("GL 14531"), NexPoint ("GL 14532"), HCRE ("GL 14533"), and Mr. Dondero ("GL 14565")).

16. The Loan Summaries were used in connection with the PwC audits and to support accounting entries and year-end balances in the ordinary course of Highland's business. For example, Ex. 199 ties exactly into Ex. 198, the "back up" to the "Due from affiliates" entry in the January 2021 MOR. Docket No. 2020.[9]

C. <u>The Notes</u>

17. In the ordinary course of business, Highland had (and continues to have) a regular practice of maintaining electronic copies of all promissory notes issued by any officer, employee, or corporate affiliate.

18. Attached as **Exhibit D** is a true and correct copy of a promissory note dated February 2, 2018, executed by James Dondero, as the maker, in the original principal amount of $3,825,000 in favor of Highland that was and is maintained in Highland's books and records in the ordinary course of business and that was provided to PwC in connection with its annual audits (the "<u>First Dondero Note</u>").

[9] Colloquially, the Loan Summaries are the "back up" to the "back up." To illustrate, and working backwards, the January 2021 MOR reported that $152,538,000 was "Due from affiliates." Docket No. 2030 (balance sheet). Ex. 198 is the "back up" to the January 2021 MOR and it shows that $152,537,622 was the "Total Due from Affiliates" (the January 2021 MOR rounded up to the nearest thousand). Ex. 199, the Loan Summary, is the "back up" to the "back up," and is reconciled with Highland's general ledger. As can be seen, the Loan Summary specifies the outstanding principal amounts due under each Note. Interest on these notes is accrued in a single account (general ledger account 14010).

19. Attached as **Exhibit E** is a true and correct copy of a promissory note dated August 1, 2018, executed by James Dondero, as the maker, in the original principal amount of $2,500,000 in favor of Highland that was and is maintained in Highland's books and records in the ordinary course of business and that was provided to PwC in connection with its annual audits (the "Second Dondero Note").

20. Attached as **Exhibit F** is a true and correct copy of a promissory note dated August 13, 2018, executed by James Dondero, as the maker, in the original principal amount of $2,500,000 in favor of Highland that was and is maintained in Highland's books and records in the ordinary course of business and that was provided to PwC in connection with its annual audits (the "Third Dondero Note," and together with the First Dondero Note and Second Dondero Note, the "Dondero Notes").

21. Attached as **Exhibit G** is a true and correct copy of a promissory note dated May 2, 2019, executed by HCMFA, as the maker, in the original principal amount of $2,400,000 in favor of Highland that was and is maintained in Highland's books and records in the ordinary course of business and that was provided to PwC in connection with its annual audits (the "First HCMFA Demand Note").

22. Attached as **Exhibit H** is a true and correct copy of a promissory note dated May 3, 2019, executed by HCMFA, as the maker, in the original principal amount of $5,000,000 in favor of Highland that was and is maintained in Highland's books and records in the ordinary course of business and that was provided to PwC in connection with its annual audits (the "Second HCMFA Demand Note," and together with the First HCMFA Note, the "HCMFA Demand Notes").

23. Attached as **Exhibit I** is a true and correct copy of a promissory note dated March 28, 2018, executed by HCMS, as the maker, in the original principal amount of $150,000 in favor of Highland that was and is maintained in Highland's books and records in the ordinary course of business and that was provided to PwC in connection with its annual audits (the "First HCMS Demand Note").

24. Attached as **Exhibit J** is a true and correct copy of a promissory note dated June 25, 2018, executed by HCMS, as the maker, in the original principal amount of $200,000 in favor of Highland that was and is maintained in Highland's books and records in the ordinary course of business and that was provided to PwC in connection with its annual audits (the "Second HCMS Demand Note").

25. Attached as **Exhibit K** is a true and correct copy of a promissory note dated May 29, 2019, executed by HCMS, as the maker, in the original principal amount of $400,000 in favor of Highland that was and is maintained in Highland's books and records in the ordinary course of business (the "Third HCMS Demand Note").

26. Attached as **Exhibit L** is a true and correct copy of a promissory note dated June 26, 2019, executed by HCMS, as the maker, in the original principal amount of $150,000 in favor of Highland that was and is maintained in Highland's books and records in the ordinary course of business (the "Fourth HCMS Demand Note," and collectively with the First HCMS Demand Note, the Second HCMS Demand Note, and Third HCMS Demand Notes, the "HCMS Demand Notes").

27. Attached as **Exhibit M** is a true and correct copy of a promissory note dated November 27, 2013, executed by HCRE, as the maker, in the original principal amount of $100,000 in favor of Highland that was and is maintained in Highland's books and records in the

ordinary course of business and that was provided to PwC in connection with its annual audits (the "First HCRE Demand Note").

28. Attached as **Exhibit N** is a true and correct copy of a promissory note dated October 12, 2017, executed by HCRE, as the maker, in the original principal amount of $2,500,000 in favor of Highland that was and is maintained in Highland's books and records in the ordinary course of business and that was provided to PwC in connection with its annual audits (the "Second HCRE Demand Note").

29. Attached as **Exhibit O** is a true and correct copy of a promissory note dated October 15, 2018, executed by HCRE, as the maker, in the original principal amount of $750,000 in favor of Highland that was and is maintained in Highland's books and records in the ordinary course of business and that was provided to PwC in connection with its annual audits (the "Third HCRE Demand Note").

30. Attached as **Exhibit P** is a true and correct copy of a promissory note dated September 25, 2019, executed by HCRE, as the maker, in the original principal amount of $900,000 in favor of Highland that was and is maintained in Highland's books and records in the ordinary course of business (the "Fourth HCRE Demand Note," and collectively with the First HCRE Demand Note, the Second HCRE Demand Note, and Third HCRE Demand Notes, the "HCRE Demand Notes," and together with the Dondero Demand Notes and the HCMS Demand Notes, the "Demand Notes").

31. Attached as **Exhibit A** is a true and correct copy of a promissory note dated May 31, 2017, executed by NexPoint, as the maker, in the original principal amount of $30,746,812.23 in favor of Highland that was and is maintained in Highland's books and records in the ordinary

course of business and that was provided to PwC in connection with its annual audits (the "NexPoint Note").

32. Attached as **Exhibit Q** is a true and correct copy of a promissory note dated May 31, 2017, executed by HCMS, as the maker, in the original principal amount of $20,247,628.02 in favor of Highland that was and is maintained in Highland's books and records in the ordinary course of business and that was provided to PwC in connection with its annual audits (the "HCMS Term Note").

33. Attached as **Exhibit R** is a true and correct copy of a promissory note dated May 31, 2017, executed by HCRE, as the maker, in the original principal amount of $6,059,831.51 in favor of Highland that was and is maintained in Highland's books and records in the ordinary course of business and that was provided to PwC in connection with its annual audits (the "HCRE Term Note," and together with the NexPoint Term Note and the HCMS Term Note, the "Term Notes").

34. As of (a) December 11, 2020, the unpaid principal and accrued interest due under the First Dondero Note was $3,708,273.71, and (b) as of December 17, 2021, the unpaid principal and accrued interest due under the First Dondero Note was $3,808,783.89.

35. As of (a) December 11, 2020, the unpaid principal and accrued interest due under the Second Dondero Note was $2,647,880.12, and (b) as of December 17, 2021, the unpaid principal and accrued interest due under the Second Dondero Note was $2,727,300.55.

36. As of (a) December 11, 2020, the unpaid principal and accrued interest due under the Third Dondero Note was $2,647,859.55, and as of (b) December 17, 2021, the unpaid principal and accrued interest due under the Third Dondero Note was $2,727,280.61.

37. Thus, (a) as of December 11, 2020, the unpaid principal and accrued interest due under the Dondero Notes was $9,004,013.07, and (b) as of December 17, 2021, the unpaid principal and accrued interest due under the Dondero Notes was $9,263,365.05.

38. As of (a) December 11, 2020, the unpaid principal and accrued interest due under the First HCMFA Note was $2,493,401.61, and (b) as of December 17, 2021, the unpaid principal and accrued interest due under the First Dondero Note was $2,553,982.49.

39. As of (a) December 11, 2020, the unpaid principal and accrued interest due under the Second HCMFA Note was $5,194,251.45, and (b) as of December 17, 2021, the unpaid principal and accrued interest due under the Second HCMFA Note was $5,320,453.60.

40. Thus, as of (a) December 11, 2020, the unpaid principal and accrued interest due under the HCMFA Notes was $7,687,653.06, and as of (b) December 17, 2020, the unpaid principal and accrued interest due under the HCMFA Notes was $7,874,436.09.

41. As of (a) December 11, 2020, the unpaid principal and accrued interest due under the First HCMS Demand Note was $162,033.91, and as of (b) December 17, 2021, the unpaid principal and accrued interest due under the First HCMS Demand Note was $166,777.82.

42. As of (a) December 11, 2020, the unpaid principal and accrued interest due under the Second HCMS Demand Note was $215,402.81, and as of (b) December 17, 2021, the unpaid principal and accrued interest due under the Second HCMS Demand Note was $222,082.34.

43. As of (a) December 11, 2020, the unpaid principal and accrued interest due under the Third HCMS Demand Note was $414,842.81, and as of (b) December 17, 2021, the unpaid principal and accrued interest due under the Third HCMS Demand Note was $424,922.32.

44. As of (a) December 11, 2020, the unpaid principal and accrued interest due under the Fourth HCMS Demand Note was $155,239.90, and as of (b) December 17, 2021, the unpaid principal and accrued interest due under the Fourth HCMS Demand Note was $158,980.33.

45. Thus, as of (a) December 11, 2020, the unpaid principal and accrued interest due under the HCMS Demand Notes was $947,519.43, and as of (b) December 17, 2021, the unpaid principal and accrued interest due under the HCMS Demand Notes was $972,762.81.

46. As of (a) December 11, 2020, the unpaid principal and accrued interest due under the First HCRE Demand Note was $171,978.10, and as of (b) December 17, 2021, the unpaid principal and accrued interest due under the First HCRE Demand Note was $185,979.85.

47. As of (a) December 11, 2020, the unpaid principal and accrued interest due under the Second HCRE Demand Note was $3,191,342.72, and as of (b) December 17, 2021, the unpaid principal and accrued interest due under the Second HCRE Demand Note was $3,380,385.47.

48. As of (a) December 11, 2020, the unpaid principal and accrued interest due under the Third HCRE Demand Note was $885,908.76, and as of (b) December 17, 2021, the unpaid principal and accrued interest due under the Third HCRE Demand Note was $938,970.62.

49. As of (a) December 11, 2020, the unpaid principal and accrued interest due under the Fourth HCRE Demand Note was $762,941.38, and as of (b) December 17, 2021, the unpaid principal and accrued interest due under the Fourth HCRE Demand Note was $825,042.29.

50. Thus, as of (a) December 11, 2020, the unpaid principal and accrued interest due under the HCRE Demand Notes was $5,012,170.96, and as of (b) December 17, 2021, the unpaid principal and accrued interest due under the HCRE Demand Notes was $5,330,378.23.

51. As of (a) January 8, 2021, the unpaid principal and accrued interest due under the NexPoint Term Note was $24,471,804.98, and as of (b) December 17, 2021, the unpaid principal and accrued interest due under the NexPoint Term Note was $24,383,877.27.[10]

52. As of (a) January 8, 2021, the unpaid principal and accrued interest due under the HCMS Term Note was $6,758,507.81, and as of (b) December 17, 2021, the unpaid principal and accrued interest due under the HCMS Term Note was $6,748,456.31[11].

53. As of (a) January 8, 2021, the unpaid principal and accrued interest due under the HCRE Term Note was $6,145,466.84, and as of (b) December 17, 2021, the unpaid principal and accrued interest due under the HCRE Term Note was $5,899,962.22.[12]

I declare under penalty of perjury that the forgoing is true and correct.

Dated: December 17, 2021

/s/ David Klos
David Klos

[10] Total unpaid principal and interest due actually decreased from January 8, 2021 to December 17, 2021 because a payment of $1,406,111.92 made January 14, 2021, which reduced the total principal and interest then-outstanding.

[11] Total unpaid outstanding principal and interest due actually decreased from January 8, 2021 to December 17, 2021 because a payment of $181,226.83 made January 21, 2021, which reduced the total principal and interest then-outstanding.

[12] Total unpaid principal and interest due actually decreased from January 8, 2021 to December 17, 2021 because a payment of $665,811.09 made January 21, 2021, which reduced the total principal and interest then-outstanding.

EXHIBIT A

PROMISSORY NOTE

$30,746,812.33 **May 31, 2017**

THIS PROMISSORY NOTE (this "**Note**") is in substitution for and supersedes in their entirety each of those certain promissory notes described in Exhibit A hereto, from NexPoint Advisors, L.P., as Maker, and Highland Capital Management, L.P. as Payee (collectively, the "**Prior Notes**"), together with the aggregate outstanding principal and accrued and unpaid interested represented thereby.

FOR VALUE RECEIVED, NEXPOINT ADVISORS, L.P. ("**Maker**") promises to pay to the order of HIGHLAND CAPITAL MANAGEMENT, L.P. ("**Payee**"), in legal and lawful tender of the United States of America, the principal sum of THIRTY MILLION, SEVEN HUNDRED FORTY SIX THOUSAND, EIGHT HUNDRED TWELVE AND 33/100 DOLLARS ($30,746,812.33), together with interest, on the terms set forth below. All sums hereunder are payable to Payee at 300 Crescent Court, Suite 700, Dallas, Texas 75201, or such other address as Payee may specify to Maker in writing from time to time.

1. Interest Rate. The unpaid principal balance of this Note from time to time outstanding shall bear interest at the rate of six percent (6.00%) per annum from the date hereof until Maturity Date (hereinafter defined), compounded annually on the anniversary of the date of this Note. Interest shall be calculated at a daily rate equal to 1/365th (1/366 in a leap year) of the rate per annum, shall be charged and collected on the actual number of days elapsed, and shall be payable annually.

2. Payment of Principal and Interest. Principal and interest under this Note shall be payable as follows:

2.1 Annual Payment Dates. During the term of this Note, Borrower shall pay the outstanding principal amount of the Note (and all unpaid accrued interest through the date of each such payment) in thirty (30) equal annual payments (the "**Annual Installment**") until the Note is paid in full. Borrower shall pay the Annual Installment on the 31st day of December of each calendar year during the term of this Note, commencing on the first such date to occur after the date of execution of this Note.

2.2 Final Payment Date. The final payment in the aggregate amount of the then outstanding and unpaid Note, together with all accrued and unpaid interest thereon, shall become immediately due and payable in full on December 31, 2047 (the "**Maturity Date**").

3. Prepayment Allowed; Renegotiation Discretionary. Maker may prepay in whole or in part the unpaid principal or accrued interest of this Note. Any payments on this Note shall be applied first to unpaid accrued interest hereon, and then to unpaid principal hereof.

4. Acceleration Upon Default. Failure to pay this Note or any installment hereunder as it becomes due shall, at the election of the holder hereof, without notice, demand, presentment, notice of intent to accelerate, notice of acceleration, or any other notice of any kind which are hereby waived, mature the principal of this Note and all interest then accrued, if any, and the same

shall at once become due and payable and subject to those remedies of the holder hereof. No failure or delay on the part of Payee in exercising any right, power or privilege hereunder shall operate as a waiver thereof.

5. Waiver. Maker hereby waives grace, demand, presentment for payment, notice of nonpayment, protest, notice of protest, notice of intent to accelerate, notice of acceleration and all other notices of any kind hereunder.

6. Attorneys' Fees. If this Note is not paid at maturity (whether by acceleration or otherwise) and is placed in the hands of an attorney for collection, or if it is collected through a bankruptcy court or any other court after maturity, the Maker shall pay, in addition to all other amounts owing hereunder, all actual expenses of collection, all court costs and reasonable attorneys' fees and expenses incurred by the holder hereof.

7. Limitation on Agreements. All agreements between Maker and Payee, whether now existing or hereafter arising, are hereby limited so that in no event shall the amount paid, or agreed to be paid to Payee for the use, forbearance, or detention of money or for the payment or performance of any covenant or obligation contained herein or in any other document evidencing, securing or pertaining to this Note, exceed the maximum interest rate allowed by law. The terms and provisions of this paragraph shall control and supersede every other provision of all agreements between Payee and Maker in conflict herewith.

8. Governing Law. This Note and the rights and obligations of the parties hereunder shall be governed by the laws of the United States of America and by the laws of the State of Texas, and is performable in Dallas County, Texas.

9. Prior Notes. The original of each of the Prior Notes superseded hereby shall be marked "VOID" by Payee.

MAKER:

NEXPOINT ADVISORS, L.P.
By: NexPoint Advisors GP, LLC, its general partner

By:_____
Name:
Title:

EXHIBIT A

PRIOR NOTES

Loan Date	Initial Note Amount	Interest Rate	Principal and Interest Outstanding as of May 31, 2017
8/21/14	$4,000,000	6.00%	$4,616,739.73
10/1/14	$6,000,000	6.00%	$6,959,671.23
11/14/14	$2,500,000	6.00%	$2,881,780.82
1/29/15	$3,100,000	6.00%	$3,534,679.45
7/22/15	$12,075,000	6.00%	$12,753,941.10
	$27,675,000		**$30,746,812.33**

EXHIBIT B

NPA $30.7M

Closing Date		5/31/2017
Total Commitment	$	30,746,812
Rate		6.000%
Maturity:		12/31/2047

Date	Interest Accrual	Interest Paid	Accrued Interest	Beg Prin Bal	Principal Paid	Ending Prin Bal	Total Paid
5/31/2017						$ 30,746,812	
6/30/2017	151,628.12		151,628.12	30,746,812.33		30,746,812.33	
7/31/2017	156,682.39		308,310.50	30,746,812.33		30,746,812.33	
8/31/2017	156,682.39		464,992.89	30,746,812.33		30,746,812.33	
9/30/2017	151,628.12		616,621.00	30,746,812.33		30,746,812.33	
10/20/2017	101,085.41	(717,706.41)	-	30,746,812.33	(82,293.59)	30,664,518.74	(800,000.00)
10/31/2017	55,448.17		55,448.17	30,664,518.74		30,664,518.74	
11/30/2017	151,222.28		206,670.46	30,664,518.74		30,664,518.74	
12/5/2017	25,203.71	(358,904.83)	(127,030.67)	30,664,518.74	(942,600.16)	29,721,918.58	(1,301,504.99)
12/31/2017	127,030.67		(0.00)	29,721,918.58		29,721,918.58	
1/31/2018	151,459.64		151,459.64	29,721,918.58		29,721,918.58	
2/28/2018	136,802.26		288,261.90	29,721,918.58		29,721,918.58	
3/31/2018	151,459.64		439,721.54	29,721,918.58		29,721,918.58	
4/10/2018	48,857.95	(439,721.54)	48,857.95	29,721,918.58		29,721,918.58	(439,721.54)
4/30/2018	97,715.90		146,573.85	29,721,918.58		29,721,918.58	
5/1/2018	4,885.79	(146,573.85)	4,885.79	29,721,918.58		29,721,918.58	(146,573.85)
5/9/2018	39,086.36	(879,927.65)	(835,955.50)	29,721,918.58		29,721,918.58	(879,927.65)
5/31/2018	107,487.49		(728,468.01)	29,721,918.58		29,721,918.58	
6/30/2018	146,573.85		(581,894.17)	29,721,918.58		29,721,918.58	
7/31/2018	151,459.64		(430,434.53)	29,721,918.58		29,721,918.58	
8/31/2018	151,459.64		(278,974.89)	29,721,918.58		29,721,918.58	
9/5/2018	24,428.97		(254,545.91)	29,721,918.58	(280,765.40)	29,441,153.18	(280,765.40)
9/21/2018	77,434.27		(177,111.65)	29,441,153.18	(1,023,750.00)	28,417,403.18	(1,023,750.00)
9/30/2018	42,042.19		(135,069.46)	28,417,403.18		28,417,403.18	
10/31/2018	144,811.97		9,742.51	28,417,403.18		28,417,403.18	
11/30/2018	140,140.62		149,883.13	28,417,403.18		28,417,403.18	
12/18/2018	84,084.37	(294,695.10)	(60,727.60)	28,417,403.18		28,417,403.18	(294,695.10)
12/31/2018	60,727.60		(0.00)	28,417,403.18		28,417,403.18	

1/31/2019	144,811.97		144,811.97	28,417,403.18		28,417,403.18	
2/28/2019	130,797.91		275,609.88	28,417,403.18		28,417,403.18	
3/29/2019	135,469.26	(411,079.15)	(0.00)	28,417,403.18	(338,920.85)	28,078,482.33	(750,000.00)
3/31/2019	9,231.28		9,231.28	28,078,482.33		28,078,482.33	
4/16/2019	73,850.25	(83,081.53)	0.00	28,078,482.33	(1,216,918.47)	26,861,563.86	(1,300,000.00)
4/30/2019	61,818.39		61,818.40	26,861,563.86		26,861,563.86	
5/31/2019	136,883.59	(198,701.98)	0.00	26,861,563.86	198,701.98	27,060,265.84	-
6/4/2019	17,793.05	(17,793.05)	0.00	27,060,265.84	(282,206.95)	26,778,058.89	(300,000.00)
6/19/2019	66,028.09	(66,028.10)	(0.00)	26,778,058.89	(2,033,971.90)	24,744,086.99	(2,100,000.00)
6/30/2019	44,742.73		44,742.73	24,744,086.99		24,744,086.99	
7/9/2019	36,607.69	(81,350.42)	(0.00)	24,744,086.99	(548,649.58)	24,195,437.41	(630,000.00)
7/31/2019	87,501.31		87,501.31	24,195,437.41		24,195,437.41	
8/13/2019	51,705.32	(139,206.62)	0.00	24,195,437.41	(1,160,793.38)	23,034,644.03	(1,300,000.00)
8/31/2019	68,157.30		68,157.31	23,034,644.03		23,034,644.03	
9/30/2019	113,595.50		181,752.81	23,034,644.03		23,034,644.03	
10/15/2019	56,797.75		238,550.56	23,034,644.03		23,034,644.03	
10/31/2019	60,584.27		299,134.83	23,034,644.03		23,034,644.03	
11/30/2019	113,595.50		412,730.34	23,034,644.03		23,034,644.03	
12/30/2019	113,595.50	-530,112.36	(3,786.52)	23,034,644.03		23,034,644.03	(530,112.36)
12/31/2019	3,786.52		0.00	23,034,644.03		23,034,644.03	
1/31/2020	117,382.02		117,382.02	23,034,644.03		23,034,644.03	
2/29/2020	109,808.99		227,191.01	23,034,644.03		23,034,644.03	
3/31/2020	117,382.02		344,573.03	23,034,644.03		23,034,644.03	
4/30/2020	113,595.50		458,168.54	23,034,644.03		23,034,644.03	
5/31/2020	117,382.02	(575,550.56)	(0.00)	23,034,644.03	575,550.56	23,610,194.59	
6/30/2020	116,433.84		116,433.83	23,610,194.59		23,610,194.59	
7/31/2020	120,314.96		236,748.80	23,610,194.59		23,610,194.59	
8/31/2020	120,314.96		357,063.76	23,610,194.59		23,610,194.59	
9/30/2020	116,433.84		473,497.60	23,610,194.59		23,610,194.59	
10/31/2020	120,314.96		593,812.56	23,610,194.59		23,610,194.59	
11/30/2020	116,433.84		710,246.40	23,610,194.59		23,610,194.59	
12/31/2020	120,314.96		830,561.36	23,610,194.59		23,610,194.59	
1/14/2021	54,335.79	(830,561.36)	54,335.79	23,610,194.59	(575,550.56)	23,034,644.03	(1,406,111.92)
1/31/2021	64,370.79		118,706.58	23,034,644.03		23,034,644.03	
2/28/2021	106,022.47		224,729.05	23,034,644.03		23,034,644.03	
3/31/2021	117,382.02		342,111.07	23,034,644.03		23,034,644.03	
4/30/2021	113,595.50		455,706.58	23,034,644.03		23,034,644.03	
5/31/2021	117,382.02		573,088.60	23,034,644.03		23,034,644.03	

6/30/2021	113,595.50	686,684.10	23,034,644.03	23,034,644.03
7/31/2021	117,382.02	804,066.13	23,034,644.03	23,034,644.03
8/31/2021	117,382.02	921,448.15	23,034,644.03	23,034,644.03
9/30/2021	113,595.50	1,035,043.65	23,034,644.03	23,034,644.03
10/31/2021	117,382.02	1,152,425.67	23,034,644.03	23,034,644.03
11/30/2021	113,595.50	1,266,021.18	23,034,644.03	23,034,644.03
12/31/2021	117,382.02	1,383,403.20	23,034,644.03	23,034,644.03
1/31/2022	117,382.02	1,500,785.22	23,034,644.03	23,034,644.03
2/28/2022	106,022.47	1,606,807.69	23,034,644.03	23,034,644.03
3/31/2022	117,382.02	1,724,189.72	23,034,644.03	23,034,644.03
4/30/2022	113,595.50	1,837,785.22	23,034,644.03	23,034,644.03
5/31/2022	117,382.02	1,955,167.24	23,034,644.03	23,034,644.03
6/30/2022	113,595.50	2,068,762.75	23,034,644.03	23,034,644.03
7/31/2022	117,382.02	2,186,144.77	23,034,644.03	23,034,644.03
8/31/2022	117,382.02	2,303,526.79	23,034,644.03	23,034,644.03
9/30/2022	113,595.50	2,417,122.29	23,034,644.03	23,034,644.03
10/31/2022	117,382.02	2,534,504.32	23,034,644.03	23,034,644.03
11/30/2022	113,595.50	2,648,099.82	23,034,644.03	23,034,644.03
12/31/2022	117,382.02	2,765,481.84	23,034,644.03	23,034,644.03
1/31/2023	117,382.02	2,882,863.86	23,034,644.03	23,034,644.03
2/28/2023	106,022.47	2,988,886.34	23,034,644.03	23,034,644.03
3/31/2023	117,382.02	3,106,268.36	23,034,644.03	23,034,644.03
4/30/2023	113,595.50	3,219,863.86	23,034,644.03	23,034,644.03
5/31/2023	117,382.02	3,337,245.88	23,034,644.03	23,034,644.03
6/30/2023	113,595.50	3,450,841.39	23,034,644.03	23,034,644.03
7/31/2023	117,382.02	3,568,223.41	23,034,644.03	23,034,644.03
8/31/2023	117,382.02	3,685,605.43	23,034,644.03	23,034,644.03
9/30/2023	113,595.50	3,799,200.94	23,034,644.03	23,034,644.03
10/31/2023	117,382.02	3,916,582.96	23,034,644.03	23,034,644.03
11/30/2023	113,595.50	4,030,178.46	23,034,644.03	23,034,644.03
12/31/2023	117,382.02	4,147,560.48	23,034,644.03	23,034,644.03
1/31/2024	117,382.02	4,264,942.51	23,034,644.03	23,034,644.03
2/29/2024	109,808.99	4,374,751.49	23,034,644.03	23,034,644.03
3/31/2024	117,382.02	4,492,133.52	23,034,644.03	23,034,644.03
4/30/2024	113,595.50	4,605,729.02	23,034,644.03	23,034,644.03
5/31/2024	117,382.02	4,723,111.04	23,034,644.03	23,034,644.03
6/30/2024	113,595.50	4,836,706.55	23,034,644.03	23,034,644.03
7/31/2024	117,382.02	4,954,088.57	23,034,644.03	23,034,644.03

8/31/2024	117,382.02	5,071,470.59	23,034,644.03	23,034,644.03
9/30/2024	113,595.50	5,185,066.10	23,034,644.03	23,034,644.03
10/31/2024	117,382.02	5,302,448.12	23,034,644.03	23,034,644.03
11/30/2024	113,595.50	5,416,043.62	23,034,644.03	23,034,644.03
12/31/2024	117,382.02	5,533,425.64	23,034,644.03	23,034,644.03
1/31/2025	117,382.02	5,650,807.67	23,034,644.03	23,034,644.03
2/28/2025	106,022.47	5,756,830.14	23,034,644.03	23,034,644.03
3/31/2025	117,382.02	5,874,212.16	23,034,644.03	23,034,644.03
4/30/2025	113,595.50	5,987,807.66	23,034,644.03	23,034,644.03
5/31/2025	117,382.02	6,105,189.68	23,034,644.03	23,034,644.03
6/30/2025	113,595.50	6,218,785.19	23,034,644.03	23,034,644.03
7/31/2025	117,382.02	6,336,167.21	23,034,644.03	23,034,644.03
8/31/2025	117,382.02	6,453,549.23	23,034,644.03	23,034,644.03
9/30/2025	113,595.50	6,567,144.74	23,034,644.03	23,034,644.03
10/31/2025	117,382.02	6,684,526.76	23,034,644.03	23,034,644.03
11/30/2025	113,595.50	6,798,122.26	23,034,644.03	23,034,644.03
12/31/2025	117,382.02	6,915,504.29	23,034,644.03	23,034,644.03
1/31/2026	117,382.02	7,032,886.31	23,034,644.03	23,034,644.03
2/28/2026	106,022.47	7,138,908.78	23,034,644.03	23,034,644.03
3/31/2026	117,382.02	7,256,290.80	23,034,644.03	23,034,644.03
4/30/2026	113,595.50	7,369,886.31	23,034,644.03	23,034,644.03
5/31/2026	117,382.02	7,487,268.33	23,034,644.03	23,034,644.03
6/30/2026	113,595.50	7,600,863.83	23,034,644.03	23,034,644.03
7/31/2026	117,382.02	7,718,245.85	23,034,644.03	23,034,644.03
8/31/2026	117,382.02	7,835,627.87	23,034,644.03	23,034,644.03
9/30/2026	113,595.50	7,949,223.38	23,034,644.03	23,034,644.03
10/31/2026	117,382.02	8,066,605.40	23,034,644.03	23,034,644.03
11/30/2026	113,595.50	8,180,200.91	23,034,644.03	23,034,644.03
12/31/2026	117,382.02	8,297,582.93	23,034,644.03	23,034,644.03
1/31/2027	117,382.02	8,414,964.95	23,034,644.03	23,034,644.03
2/28/2027	106,022.47	8,520,987.42	23,034,644.03	23,034,644.03
3/31/2027	117,382.02	8,638,369.44	23,034,644.03	23,034,644.03
4/30/2027	113,595.50	8,751,964.95	23,034,644.03	23,034,644.03
5/31/2027	117,382.02	8,869,346.97	23,034,644.03	23,034,644.03
6/30/2027	113,595.50	8,982,942.47	23,034,644.03	23,034,644.03
7/31/2027	117,382.02	9,100,324.50	23,034,644.03	23,034,644.03
8/31/2027	117,382.02	9,217,706.52	23,034,644.03	23,034,644.03
9/30/2027	113,595.50	9,331,302.02	23,034,644.03	23,034,644.03

10/31/2027	117,382.02	9,448,684.04	23,034,644.03	23,034,644.03
11/30/2027	113,595.50	9,562,279.55	23,034,644.03	23,034,644.03
12/31/2027	117,382.02	9,679,661.57	23,034,644.03	23,034,644.03
1/31/2028	117,382.02	9,797,043.59	23,034,644.03	23,034,644.03
2/29/2028	109,808.99	9,906,852.58	23,034,644.03	23,034,644.03
3/31/2028	117,382.02	10,024,234.60	23,034,644.03	23,034,644.03
4/30/2028	113,595.50	10,137,830.11	23,034,644.03	23,034,644.03
5/31/2028	117,382.02	10,255,212.13	23,034,644.03	23,034,644.03
6/30/2028	113,595.50	10,368,807.63	23,034,644.03	23,034,644.03
7/31/2028	117,382.02	10,486,189.65	23,034,644.03	23,034,644.03
8/31/2028	117,382.02	10,603,571.68	23,034,644.03	23,034,644.03
9/30/2028	113,595.50	10,717,167.18	23,034,644.03	23,034,644.03
10/31/2028	117,382.02	10,834,549.20	23,034,644.03	23,034,644.03
11/30/2028	113,595.50	10,948,144.71	23,034,644.03	23,034,644.03
12/31/2028	117,382.02	11,065,526.73	23,034,644.03	23,034,644.03
1/31/2029	117,382.02	11,182,908.75	23,034,644.03	23,034,644.03
2/28/2029	106,022.47	11,288,931.22	23,034,644.03	23,034,644.03
3/31/2029	117,382.02	11,406,313.24	23,034,644.03	23,034,644.03
4/30/2029	113,595.50	11,519,908.75	23,034,644.03	23,034,644.03
5/31/2029	117,382.02	11,637,290.77	23,034,644.03	23,034,644.03
6/30/2029	113,595.50	11,750,886.27	23,034,644.03	23,034,644.03
7/31/2029	117,382.02	11,868,268.30	23,034,644.03	23,034,644.03
8/31/2029	117,382.02	11,985,650.32	23,034,644.03	23,034,644.03
9/30/2029	113,595.50	12,099,245.82	23,034,644.03	23,034,644.03
10/31/2029	117,382.02	12,216,627.84	23,034,644.03	23,034,644.03
11/30/2029	113,595.50	12,330,223.35	23,034,644.03	23,034,644.03
12/31/2029	117,382.02	12,447,605.37	23,034,644.03	23,034,644.03
1/31/2030	117,382.02	12,564,987.39	23,034,644.03	23,034,644.03
2/28/2030	106,022.47	12,671,009.86	23,034,644.03	23,034,644.03
3/31/2030	117,382.02	12,788,391.89	23,034,644.03	23,034,644.03
4/30/2030	113,595.50	12,901,987.39	23,034,644.03	23,034,644.03
5/31/2030	117,382.02	13,019,369.41	23,034,644.03	23,034,644.03
6/30/2030	113,595.50	13,132,964.92	23,034,644.03	23,034,644.03
7/31/2030	117,382.02	13,250,346.94	23,034,644.03	23,034,644.03
8/31/2030	117,382.02	13,367,728.96	23,034,644.03	23,034,644.03
9/30/2030	113,595.50	13,481,324.46	23,034,644.03	23,034,644.03
10/31/2030	117,382.02	13,598,706.49	23,034,644.03	23,034,644.03
11/30/2030	113,595.50	13,712,301.99	23,034,644.03	23,034,644.03

12/31/2030	117,382.02	13,829,684.01	23,034,644.03	23,034,644.03
1/31/2031	117,382.02	13,947,066.03	23,034,644.03	23,034,644.03
2/28/2031	106,022.47	14,053,088.51	23,034,644.03	23,034,644.03
3/31/2031	117,382.02	14,170,470.53	23,034,644.03	23,034,644.03
4/30/2031	113,595.50	14,284,066.03	23,034,644.03	23,034,644.03
5/31/2031	117,382.02	14,401,448.05	23,034,644.03	23,034,644.03
6/30/2031	113,595.50	14,515,043.56	23,034,644.03	23,034,644.03
7/31/2031	117,382.02	14,632,425.58	23,034,644.03	23,034,644.03
8/31/2031	117,382.02	14,749,807.60	23,034,644.03	23,034,644.03
9/30/2031	113,595.50	14,863,403.11	23,034,644.03	23,034,644.03
10/31/2031	117,382.02	14,980,785.13	23,034,644.03	23,034,644.03
11/30/2031	113,595.50	15,094,380.63	23,034,644.03	23,034,644.03
12/31/2031	117,382.02	15,211,762.65	23,034,644.03	23,034,644.03
1/31/2032	117,382.02	15,329,144.68	23,034,644.03	23,034,644.03
2/29/2032	109,808.99	15,438,953.66	23,034,644.03	23,034,644.03
3/31/2032	117,382.02	15,556,335.69	23,034,644.03	23,034,644.03
4/30/2032	113,595.50	15,669,931.19	23,034,644.03	23,034,644.03
5/31/2032	117,382.02	15,787,313.21	23,034,644.03	23,034,644.03
6/30/2032	113,595.50	15,900,908.72	23,034,644.03	23,034,644.03
7/31/2032	117,382.02	16,018,290.74	23,034,644.03	23,034,644.03
8/31/2032	117,382.02	16,135,672.76	23,034,644.03	23,034,644.03
9/30/2032	113,595.50	16,249,268.27	23,034,644.03	23,034,644.03
10/31/2032	117,382.02	16,366,650.29	23,034,644.03	23,034,644.03
11/30/2032	113,595.50	16,480,245.79	23,034,644.03	23,034,644.03
12/31/2032	117,382.02	16,597,627.81	23,034,644.03	23,034,644.03
1/31/2033	117,382.02	16,715,009.84	23,034,644.03	23,034,644.03
2/28/2033	106,022.47	16,821,032.31	23,034,644.03	23,034,644.03
3/31/2033	117,382.02	16,938,414.33	23,034,644.03	23,034,644.03
4/30/2033	113,595.50	17,052,009.83	23,034,644.03	23,034,644.03
5/31/2033	117,382.02	17,169,391.85	23,034,644.03	23,034,644.03
6/30/2033	113,595.50	17,282,987.36	23,034,644.03	23,034,644.03
7/31/2033	117,382.02	17,400,369.38	23,034,644.03	23,034,644.03
8/31/2033	117,382.02	17,517,751.40	23,034,644.03	23,034,644.03
9/30/2033	113,595.50	17,631,346.91	23,034,644.03	23,034,644.03
10/31/2033	117,382.02	17,748,728.93	23,034,644.03	23,034,644.03
11/30/2033	113,595.50	17,862,324.43	23,034,644.03	23,034,644.03
12/31/2033	117,382.02	17,979,706.46	23,034,644.03	23,034,644.03
1/31/2034	117,382.02	18,097,088.48	23,034,644.03	23,034,644.03

2/28/2034	106,022.47	18,203,110.95	23,034,644.03	23,034,644.03
3/31/2034	117,382.02	18,320,492.97	23,034,644.03	23,034,644.03
4/30/2034	113,595.50	18,434,088.47	23,034,644.03	23,034,644.03
5/31/2034	117,382.02	18,551,470.50	23,034,644.03	23,034,644.03
6/30/2034	113,595.50	18,665,066.00	23,034,644.03	23,034,644.03
7/31/2034	117,382.02	18,782,448.02	23,034,644.03	23,034,644.03
8/31/2034	117,382.02	18,899,830.04	23,034,644.03	23,034,644.03
9/30/2034	113,595.50	19,013,425.55	23,034,644.03	23,034,644.03
10/31/2034	117,382.02	19,130,807.57	23,034,644.03	23,034,644.03
11/30/2034	113,595.50	19,244,403.08	23,034,644.03	23,034,644.03
12/31/2034	117,382.02	19,361,785.10	23,034,644.03	23,034,644.03
1/31/2035	117,382.02	19,479,167.12	23,034,644.03	23,034,644.03
2/28/2035	106,022.47	19,585,189.59	23,034,644.03	23,034,644.03
3/31/2035	117,382.02	19,702,571.61	23,034,644.03	23,034,644.03
4/30/2035	113,595.50	19,816,167.12	23,034,644.03	23,034,644.03
5/31/2035	117,382.02	19,933,549.14	23,034,644.03	23,034,644.03
6/30/2035	113,595.50	20,047,144.64	23,034,644.03	23,034,644.03
7/31/2035	117,382.02	20,164,526.67	23,034,644.03	23,034,644.03
8/31/2035	117,382.02	20,281,908.69	23,034,644.03	23,034,644.03
9/30/2035	113,595.50	20,395,504.19	23,034,644.03	23,034,644.03
10/31/2035	117,382.02	20,512,886.21	23,034,644.03	23,034,644.03
11/30/2035	113,595.50	20,626,481.72	23,034,644.03	23,034,644.03
12/31/2035	117,382.02	20,743,863.74	23,034,644.03	23,034,644.03
1/31/2036	117,382.02	20,861,245.76	23,034,644.03	23,034,644.03
2/29/2036	109,808.99	20,971,054.75	23,034,644.03	23,034,644.03
3/31/2036	117,382.02	21,088,436.77	23,034,644.03	23,034,644.03
4/30/2036	113,595.50	21,202,032.28	23,034,644.03	23,034,644.03
5/31/2036	117,382.02	21,319,414.30	23,034,644.03	23,034,644.03
6/30/2036	113,595.50	21,433,009.80	23,034,644.03	23,034,644.03
7/31/2036	117,382.02	21,550,391.82	23,034,644.03	23,034,644.03
8/31/2036	117,382.02	21,667,773.85	23,034,644.03	23,034,644.03
9/30/2036	113,595.50	21,781,369.35	23,034,644.03	23,034,644.03
10/31/2036	117,382.02	21,898,751.37	23,034,644.03	23,034,644.03
11/30/2036	113,595.50	22,012,346.88	23,034,644.03	23,034,644.03
12/31/2036	117,382.02	22,129,728.90	23,034,644.03	23,034,644.03
1/31/2037	117,382.02	22,247,110.92	23,034,644.03	23,034,644.03
2/28/2037	106,022.47	22,353,133.39	23,034,644.03	23,034,644.03
3/31/2037	117,382.02	22,470,515.41	23,034,644.03	23,034,644.03

4/30/2037	113,595.50	22,584,110.92	23,034,644.03	23,034,644.03
5/31/2037	117,382.02	22,701,492.94	23,034,644.03	23,034,644.03
6/30/2037	113,595.50	22,815,088.44	23,034,644.03	23,034,644.03
7/31/2037	117,382.02	22,932,470.47	23,034,644.03	23,034,644.03
8/31/2037	117,382.02	23,049,852.49	23,034,644.03	23,034,644.03
9/30/2037	113,595.50	23,163,447.99	23,034,644.03	23,034,644.03
10/31/2037	117,382.02	23,280,830.01	23,034,644.03	23,034,644.03
11/30/2037	113,595.50	23,394,425.52	23,034,644.03	23,034,644.03
12/31/2037	117,382.02	23,511,807.54	23,034,644.03	23,034,644.03
1/31/2038	117,382.02	23,629,189.56	23,034,644.03	23,034,644.03
2/28/2038	106,022.47	23,735,212.03	23,034,644.03	23,034,644.03
3/31/2038	117,382.02	23,852,594.06	23,034,644.03	23,034,644.03
4/30/2038	113,595.50	23,966,189.56	23,034,644.03	23,034,644.03
5/31/2038	117,382.02	24,083,571.58	23,034,644.03	23,034,644.03
6/30/2038	113,595.50	24,197,167.09	23,034,644.03	23,034,644.03
7/31/2038	117,382.02	24,314,549.11	23,034,644.03	23,034,644.03
8/31/2038	117,382.02	24,431,931.13	23,034,644.03	23,034,644.03
9/30/2038	113,595.50	24,545,526.63	23,034,644.03	23,034,644.03
10/31/2038	117,382.02	24,662,908.66	23,034,644.03	23,034,644.03
11/30/2038	113,595.50	24,776,504.16	23,034,644.03	23,034,644.03
12/31/2038	117,382.02	24,893,886.18	23,034,644.03	23,034,644.03
1/31/2039	117,382.02	25,011,268.20	23,034,644.03	23,034,644.03
2/28/2039	106,022.47	25,117,290.68	23,034,644.03	23,034,644.03
3/31/2039	117,382.02	25,234,672.70	23,034,644.03	23,034,644.03
4/30/2039	113,595.50	25,348,268.20	23,034,644.03	23,034,644.03
5/31/2039	117,382.02	25,465,650.22	23,034,644.03	23,034,644.03
6/30/2039	113,595.50	25,579,245.73	23,034,644.03	23,034,644.03
7/31/2039	117,382.02	25,696,627.75	23,034,644.03	23,034,644.03
8/31/2039	117,382.02	25,814,009.77	23,034,644.03	23,034,644.03
9/30/2039	113,595.50	25,927,605.28	23,034,644.03	23,034,644.03
10/31/2039	117,382.02	26,044,987.30	23,034,644.03	23,034,644.03
11/30/2039	113,595.50	26,158,582.80	23,034,644.03	23,034,644.03
12/31/2039	117,382.02	26,275,964.82	23,034,644.03	23,034,644.03
1/31/2040	117,382.02	26,393,346.85	23,034,644.03	23,034,644.03
2/29/2040	109,808.99	26,503,155.83	23,034,644.03	23,034,644.03
3/31/2040	117,382.02	26,620,537.86	23,034,644.03	23,034,644.03
4/30/2040	113,595.50	26,734,133.36	23,034,644.03	23,034,644.03
5/31/2040	117,382.02	26,851,515.38	23,034,644.03	23,034,644.03

6/30/2040	113,595.50	26,965,110.89	23,034,644.03	23,034,644.03
7/31/2040	117,382.02	27,082,492.91	23,034,644.03	23,034,644.03
8/31/2040	117,382.02	27,199,874.93	23,034,644.03	23,034,644.03
9/30/2040	113,595.50	27,313,470.44	23,034,644.03	23,034,644.03
10/31/2040	117,382.02	27,430,852.46	23,034,644.03	23,034,644.03
11/30/2040	113,595.50	27,544,447.96	23,034,644.03	23,034,644.03
12/31/2040	117,382.02	27,661,829.98	23,034,644.03	23,034,644.03
1/31/2041	117,382.02	27,779,212.01	23,034,644.03	23,034,644.03
2/28/2041	106,022.47	27,885,234.48	23,034,644.03	23,034,644.03
3/31/2041	117,382.02	28,002,616.50	23,034,644.03	23,034,644.03
4/30/2041	113,595.50	28,116,212.00	23,034,644.03	23,034,644.03
5/31/2041	117,382.02	28,233,594.02	23,034,644.03	23,034,644.03
6/30/2041	113,595.50	28,347,189.53	23,034,644.03	23,034,644.03
7/31/2041	117,382.02	28,464,571.55	23,034,644.03	23,034,644.03
8/31/2041	117,382.02	28,581,953.57	23,034,644.03	23,034,644.03
9/30/2041	113,595.50	28,695,549.08	23,034,644.03	23,034,644.03
10/31/2041	117,382.02	28,812,931.10	23,034,644.03	23,034,644.03
11/30/2041	113,595.50	28,926,526.60	23,034,644.03	23,034,644.03
12/31/2041	117,382.02	29,043,908.63	23,034,644.03	23,034,644.03
1/31/2042	117,382.02	29,161,290.65	23,034,644.03	23,034,644.03
2/28/2042	106,022.47	29,267,313.12	23,034,644.03	23,034,644.03
3/31/2042	117,382.02	29,384,695.14	23,034,644.03	23,034,644.03
4/30/2042	113,595.50	29,498,290.64	23,034,644.03	23,034,644.03
5/31/2042	117,382.02	29,615,672.67	23,034,644.03	23,034,644.03
6/30/2042	113,595.50	29,729,268.17	23,034,644.03	23,034,644.03
7/31/2042	117,382.02	29,846,650.19	23,034,644.03	23,034,644.03
8/31/2042	117,382.02	29,964,032.21	23,034,644.03	23,034,644.03
9/30/2042	113,595.50	30,077,627.72	23,034,644.03	23,034,644.03
10/31/2042	117,382.02	30,195,009.74	23,034,644.03	23,034,644.03
11/30/2042	113,595.50	30,308,605.25	23,034,644.03	23,034,644.03
12/31/2042	117,382.02	30,425,987.27	23,034,644.03	23,034,644.03
1/31/2043	117,382.02	30,543,369.29	23,034,644.03	23,034,644.03
2/28/2043	106,022.47	30,649,391.76	23,034,644.03	23,034,644.03
3/31/2043	117,382.02	30,766,773.78	23,034,644.03	23,034,644.03
4/30/2043	113,595.50	30,880,369.29	23,034,644.03	23,034,644.03
5/31/2043	117,382.02	30,997,751.31	23,034,644.03	23,034,644.03
6/30/2043	113,595.50	31,111,346.81	23,034,644.03	23,034,644.03
7/31/2043	117,382.02	31,228,728.84	23,034,644.03	23,034,644.03

8/31/2043	117,382.02	31,346,110.86	23,034,644.03	23,034,644.03
9/30/2043	113,595.50	31,459,706.36	23,034,644.03	23,034,644.03
10/31/2043	117,382.02	31,577,088.38	23,034,644.03	23,034,644.03
11/30/2043	113,595.50	31,690,683.89	23,034,644.03	23,034,644.03
12/31/2043	117,382.02	31,808,065.91	23,034,644.03	23,034,644.03
1/31/2044	117,382.02	31,925,447.93	23,034,644.03	23,034,644.03
2/29/2044	109,808.99	32,035,256.92	23,034,644.03	23,034,644.03
3/31/2044	117,382.02	32,152,638.94	23,034,644.03	23,034,644.03
4/30/2044	113,595.50	32,266,234.45	23,034,644.03	23,034,644.03
5/31/2044	117,382.02	32,383,616.47	23,034,644.03	23,034,644.03
6/30/2044	113,595.50	32,497,211.97	23,034,644.03	23,034,644.03
7/31/2044	117,382.02	32,614,593.99	23,034,644.03	23,034,644.03
8/31/2044	117,382.02	32,731,976.02	23,034,644.03	23,034,644.03
9/30/2044	113,595.50	32,845,571.52	23,034,644.03	23,034,644.03
10/31/2044	117,382.02	32,962,953.54	23,034,644.03	23,034,644.03
11/30/2044	113,595.50	33,076,549.05	23,034,644.03	23,034,644.03
12/31/2044	117,382.02	33,193,931.07	23,034,644.03	23,034,644.03
1/31/2045	117,382.02	33,311,313.09	23,034,644.03	23,034,644.03
2/28/2045	106,022.47	33,417,335.56	23,034,644.03	23,034,644.03
3/31/2045	117,382.02	33,534,717.58	23,034,644.03	23,034,644.03
4/30/2045	113,595.50	33,648,313.09	23,034,644.03	23,034,644.03
5/31/2045	117,382.02	33,765,695.11	23,034,644.03	23,034,644.03
6/30/2045	113,595.50	33,879,290.61	23,034,644.03	23,034,644.03
7/31/2045	117,382.02	33,996,672.64	23,034,644.03	23,034,644.03
8/31/2045	117,382.02	34,114,054.66	23,034,644.03	23,034,644.03
9/30/2045	113,595.50	34,227,650.16	23,034,644.03	23,034,644.03
10/31/2045	117,382.02	34,345,032.18	23,034,644.03	23,034,644.03
11/30/2045	113,595.50	34,458,627.69	23,034,644.03	23,034,644.03
12/31/2045	117,382.02	34,576,009.71	23,034,644.03	23,034,644.03
1/31/2046	117,382.02	34,693,391.73	23,034,644.03	23,034,644.03
2/28/2046	106,022.47	34,799,414.20	23,034,644.03	23,034,644.03
3/31/2046	117,382.02	34,916,796.23	23,034,644.03	23,034,644.03
4/30/2046	113,595.50	35,030,391.73	23,034,644.03	23,034,644.03
5/31/2046	117,382.02	35,147,773.75	23,034,644.03	23,034,644.03
6/30/2046	113,595.50	35,261,369.26	23,034,644.03	23,034,644.03
7/31/2046	117,382.02	35,378,751.28	23,034,644.03	23,034,644.03
8/31/2046	117,382.02	35,496,133.30	23,034,644.03	23,034,644.03
9/30/2046	113,595.50	35,609,728.80	23,034,644.03	23,034,644.03

10/31/2046	117,382.02	35,727,110.83	23,034,644.03	23,034,644.03
11/30/2046	113,595.50	35,840,706.33	23,034,644.03	23,034,644.03
12/31/2046	117,382.02	35,958,088.35	23,034,644.03	23,034,644.03
1/31/2047	117,382.02	36,075,470.37	23,034,644.03	23,034,644.03
2/28/2047	106,022.47	36,181,492.85	23,034,644.03	23,034,644.03
3/31/2047	117,382.02	36,298,874.87	23,034,644.03	23,034,644.03
4/30/2047	113,595.50	36,412,470.37	23,034,644.03	23,034,644.03
5/31/2047	117,382.02	36,529,852.39	23,034,644.03	23,034,644.03
6/30/2047	113,595.50	36,643,447.90	23,034,644.03	23,034,644.03
7/31/2047	117,382.02	36,760,829.92	23,034,644.03	23,034,644.03
8/31/2047	117,382.02	36,878,211.94	23,034,644.03	23,034,644.03
9/30/2047	113,595.50	36,991,807.45	23,034,644.03	23,034,644.03
10/31/2047	117,382.02	37,109,189.47	23,034,644.03	23,034,644.03

EXHIBIT C

Highland Capital Management, L.P. - Cash
Next 13 Weeks Commencing December 14, 2020
(in thousands)
CONFIDENTIAL DRAFT FOR ILLUSTRATIVE PURPOSES ONLY - NOT FINAL OR APPROVED FOR FURTHER DISTRIBUTION

	Actual	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast
Week beginning	**12/7**	**12/14**	**12/21**	**12/28**	**1/4**	**1/11**	**1/18**	**1/25**	**2/1**	**2/8**	**2/15**	**2/22**	**3/1**	**3/8**
Beginning unrestricted operating cash	$ 12,537	$ 11,948	$ 10,684	$ 11,051	$ 11,771	$ 11,048	$ 11,188	$ 11,353	$ 10,486	$ 11,445	$ 10,860	$ 10,279	$ 8,145	$ 8,381
Operating Receipts														
Management fees														
CLOs	-	-	-	-	-	-	-	-	676	-	-	-	-	-
Hedge funds	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Private Equity, PetroCap, Port Co's	-	-	-	-	63	-	-	-	-	-	270	-	-	-
Separate accounts	-	-	776	-	-	-	-	750	165	-	579	-	-	-
Management fees - managed funds	$ -	$ -	$ 776	$ -	$ 63	$ -	$ -	$ 750	$ 841	$ -	$ 849	$ -	$ -	$ -
HCMFA / NPA investment support	-	-	668	-	-	668	-	-	668	-	-	-	668	-
Shared services receipts	39	-	168	385	-	168	290	135	-	290	60	15	-	-
Intercompany and shared services revenue	39	$ -	$ 836	$ 385	$ -	$ 836	$ 290	$ 135	$ 668	$ 290	$ 60	$ 15	$ 668	$ -
Fund reimbursements	-	-	60	-	-	-	100	-	-	-	100	-	-	-
Interest receipts on notes receivable	-	-	-	2,051	-	-	-	-	-	-	-	-	-	-
Dividend receipts (unencumbered)	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Other miscellaneous receipts	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Total other receipts	$ -	$ -	$ 60	$ 2,051	$ -	$ -	$ 100	$ -	$ -	$ -	$ 100	$ -	$ -	$ -
Total operating receipts	**$ 39**	**$ -**	**$ 1,672**	**$ 2,436**	**$ 63**	**$ 836**	**$ 390**	**$ 885**	**$ 1,509**	**$ 290**	**$ 1,009**	**$ 15**	**$ 668**	**$ -**
Compensation and benefits														
Payroll, benefits, and taxes + exp reimb	(408)	(31)	-	(556)	-	(471)	-	(561)	-	(535)	-	(625)	-	(460)
Cash bonuses	-	-	-	-	-	-	-	-	-	-	-	(3,394)	-	-
Total compensation and benefits	$ (408)	$ (31)	$ -	$ (556)	$ -	$ (471)	$ -	$ (561)	$ -	$ (535)	$ -	$ (4,019)	$ -	$ (460)
General overhead														
Outside legal (ordinary course)	(62)	-	(499)	-	(560)	-	-	(560)	-	-	-	(560)	-	-
Independent director fees	-	-	-	(210)	-	-	-	-	(210)	-	-	-	(210)	-
General overhead - critical vendors (pre-petition)	-	-	-	-	-	-	-	-	-	-	-	-	-	-
General overhead - post-petition vendors	(158)	(1,233)	(275)	(275)	(225)	(225)	(225)	(225)	(340)	(340)	(340)	(340)	(222)	(222)
Total general overhead	$ (220)	$ (1,233)	$ (774)	$ (485)	$ (785)	$ (225)	$ (225)	$ (785)	$ (550)	$ (340)	$ (340)	$ (900)	$ (432)	$ (222)
Net change in cash due to operating activity	**(589)**	**(1,264)**	**898**	**1,395**	**(723)**	**140**	**165**	**(461)**	**959**	**(585)**	**669**	**(4,904)**	**236**	**(682)**
Re-org related - payments direct to professionals														
Debtor bankruptcy counsel	-	-	-	(300)	-	-	-	(720)	-	-	-	(720)	-	-
Debtor FA/CRO	-	-	-	-	-	-	-	(300)	-	-	-	(300)	-	-
Compensation consultant	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Committee counsel	-	-	(359)	(339)	-	-	-	(600)	-	-	-	(600)	-	-
Committee FA	-	-	(172)	(138)	-	-	-	(480)	-	-	-	(480)	-	-
Claims / noticing agent	-	-	-	-	-	-	-	(30)	-	-	-	(30)	-	-
Regulatory & compliance counsel	-	-	-	(100)	-	-	-	(100)	-	-	-	(100)	-	-
Mediation	-	-	-	-	-	-	-	-	-	-	-	-	-	-
US Trustee	-	-	-	-	-	-	-	(175)	-	-	-	-	-	-
Total re-org related	$ -	$ -	$ (531)	$ (877)	$ -	$ -	$ -	$ (2,405)	$ -	$ -	$ -	$ (2,230)	$ -	$ -
Net change in cash from ops + reorg costs	**(589)**	**(1,264)**	**367**	**518**	**(723)**	**140**	**165**	**(2,866)**	**959**	**(585)**	**669**	**(7,134)**	**236**	**(682)**
Investing cash flows (principal only on notes)														
Jefferies prime brokerage, net or Select Equity Fund funding	-	-	-	-	-	-	-	2,000	-	-	-	5,000	-	-
Third party fund capital call obligations	-	-	-	-	-	-	-	-	-	-	(1,650)	-	-	-
Third party fund expected distributions	-	-	-	-	-	-	-	-	-	-	400	-	-	-
Highland Capital Management Korea (capital call funding)	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Multi Strategy Credit Fund	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Highland Capital Management Latin America	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Proceeds from outstanding notes	-	-	-	202	-	-	-	-	-	-	-	-	-	-
Divs, paydowns, misc from non-PB assets	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Purchases of other investments (non-PB)	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Proceeds from other investments (non-PB)	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Net change in cash due to investing activities	**-**	**-**	**-**	**202**	**-**	**-**	**-**	**2,000**	**-**	**-**	**(1,250)**	**5,000**	**-**	**-**
Financing cash flows														
Required equity distributions	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Equity contributions	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Existing debt paydowns	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Net change in cash due to financing activities	**-**	**-**	**-**	**-**	**-**	**-**	**-**	**-**	**-**	**-**	**-**	**-**	**-**	**-**
Ending unrestricted operating cash	**$ 11,948**	**$ 10,684**	**$ 11,051**	**$ 11,771**	**$ 11,048**	**$ 11,188**	**$ 11,353**	**$ 10,486**	**$ 11,445**	**$ 10,860**	**$ 10,279**	**$ 8,145**	**$ 8,381**	**$ 7,699**

EXHIBIT D

PROMISSORY NOTE

$3,825,000 February 2, 2018

FOR VALUE RECEIVED, JAMES DONDERO ("***Maker***") promises to pay to the order of HIGHLAND CAPITAL MANAGEMENT LP ("***Payee***"), in legal and lawful tender of the United States of America, the principal sum of THREE MILLION, EIGHT HUNDRED AND TWENTY-FIVE THOUSAND and 00/100 Dollars ($3,825,000.00), together with interest, on the terms set forth below (the "***Note***"). All sums hereunder are payable to Payee at 300 Crescent Court, Dallas, TX 75201, or such other address as Payee may specify to Maker in writing from time to time.

1. Interest Rate. The unpaid principal balance of this Note from time to time outstanding shall bear interest at a rate equal to the long-term "***applicable federal rate***" (2.66%) in effect on the date hereof for loans of such maturity as determined by Section 1274(d) of the Internal Revenue Code, per annum from the date hereof until maturity, compounded annually on the anniversary of the date of this Note. Interest shall be calculated at a daily rate equal to 1/365th (1/366 in a leap year) of the rate per annum, shall be charged and collected on the actual number of days elapsed, and shall be payable on demand of the Payee.

2. Payment of Principal and Interest. The accrued interest and principal of this Note shall be due and payable on demand of the Payee.

3. Prepayment Allowed; Renegotiation Discretionary. Maker may prepay in whole or in part the unpaid principal or accrued interest of this Note. Any payments on this Note shall be applied first to unpaid accrued interest hereon, and then to unpaid principal hereof.

4. Tax Loan. This Note is paid to the Maker to help satisfy any current tax obligations of a former partner or current partner.

5. Acceleration Upon Default. Failure to pay this Note or any installment hereunder as it becomes due shall, at the election of the holder hereof, without notice, demand, presentment, notice of intent to accelerate, notice of acceleration, or any other notice of any kind which are hereby waived, mature the principal of this Note and all interest then accrued, if any, and the same shall at once become due and payable and subject to those remedies of the holder hereof. No failure or delay on the part of Payee in exercising any right, power or privilege hereunder shall operate as a waiver thereof.

6. Waiver. Maker hereby waives grace, demand, presentment for payment, notice of nonpayment, protest, notice of protest, notice of intent to accelerate, notice of acceleration and all other notices of any kind hereunder.

7. Attorneys' Fees. If this Note is not paid at maturity (whether by acceleration or otherwise) and is placed in the hands of an attorney for collection, or if it is collected through a bankruptcy court or any other court after maturity, the Maker shall pay, in addition to all other

Exhibit 1

amounts owing hereunder, all actual expenses of collection, all court costs and reasonable attorneys' fees and expenses incurred by the holder hereof.

8. Limitation on Agreements. All agreements between Maker and Payee, whether now existing or hereafter arising, are hereby limited so that in no event shall the amount paid, or agreed to be paid to Payee for the use, forbearance, or detention of money or for the payment or performance of any covenant or obligation contained herein or in any other document evidencing, securing or pertaining to this Note, exceed the maximum interest rate allowed by law. The terms and provisions of this paragraph shall control and supersede every other provision of all agreements between Payee and Maker in conflict herewith.

9. Governing Law. This Note and the rights and obligations of the parties hereunder shall be governed by the laws of the United States of America and by the laws of the State of Texas, and is performable in Dallas County, Texas.

MAKER:

JAMES DONDERO

EXHIBIT E

PROMISSORY NOTE

$2,500,000 August 1, 2018

FOR VALUE RECEIVED, JAMES DONDERO ("***Maker***") promises to pay to the order of HIGHLAND CAPITAL MANAGEMENT LP ("***Payee***"), in legal and lawful tender of the United States of America, the principal sum of TWO MILLION, FIVE HUNDRED THOUSAND and 00/100 Dollars ($2,500,000.00), together with interest, on the terms set forth below (the "***Note***"). All sums hereunder are payable to Payee at 300 Crescent Court, Dallas, TX 75201, or such other address as Payee may specify to Maker in writing from time to time.

1. Interest Rate. The unpaid principal balance of this Note from time to time outstanding shall bear interest at a rate equal to the long-term "***applicable federal rate***" (2.95%) in effect on the date hereof for loans of such maturity as determined by Section 1274(d) of the Internal Revenue Code, per annum from the date hereof until maturity, compounded annually on the anniversary of the date of this Note. Interest shall be calculated at a daily rate equal to 1/365th (1/366 in a leap year) of the rate per annum, shall be charged and collected on the actual number of days elapsed, and shall be payable on demand of the Payee.

2. Payment of Principal and Interest. The accrued interest and principal of this Note shall be due and payable on demand of the Payee.

3. Prepayment Allowed: Renegotiation Discretionary. Maker may prepay in whole or in part the unpaid principal or accrued interest of this Note. Any payments on this Note shall be applied first to unpaid accrued interest hereon, and then to unpaid principal hereof.

4. Acceleration Upon Default. Failure to pay this Note or any installment hereunder as it becomes due shall, at the election of the holder hereof, without notice, demand, presentment, notice of intent to accelerate, notice of acceleration, or any other notice of any kind which are hereby waived, mature the principal of this Note and all interest then accrued, if any, and the same shall at once become due and payable and subject to those remedies of the holder hereof. No failure or delay on the part of Payee in exercising any right, power or privilege hereunder shall operate as a waiver thereof.

5. Waiver. Maker hereby waives grace, demand, presentment for payment, notice of nonpayment, protest, notice of protest, notice of intent to accelerate, notice of acceleration and all other notices of any kind hereunder.

6. Attorneys' Fees. If this Note is not paid at maturity (whether by acceleration or otherwise) and is placed in the hands of an attorney for collection, or if it is collected through a bankruptcy court or any other court after maturity, the Maker shall pay, in addition to all other amounts owing hereunder, all actual expenses of collection, all court costs and reasonable attorneys' fees and expenses incurred by the holder hereof.

Exhibit 3

7. Limitation on Agreements. All agreements between Maker and Payee, whether now existing or hereafter arising, are hereby limited so that in no event shall the amount paid, or agreed to be paid to Payee for the use, forbearance, or detention of money or for the payment or performance of any covenant or obligation contained herein or in any other document evidencing, securing or pertaining to this Note, exceed the maximum interest rate allowed by law. The terms and provisions of this paragraph shall control and supersede every other provision of all agreements between Payee and Maker in conflict herewith.

8. Governing Law. This Note and the rights and obligations of the parties hereunder shall be governed by the laws of the United States of America and by the laws of the State of Texas, and is performable in Dallas County, Texas.

MAKER:

JAMES DONDERO

EXHIBIT F

PROMISSORY NOTE

$2,500,000 August 13, 2018

FOR VALUE RECEIVED, JAMES DONDERO ("***Maker***") promises to pay to the order of HIGHLAND CAPITAL MANAGEMENT LP ("***Payee***"), in legal and lawful tender of the United States of America, the principal sum of TWO MILLION, FIVE HUNDRED THOUSAND and 00/100 Dollars ($2,500,000.00), together with interest, on the terms set forth below (the "***Note***"). All sums hereunder are payable to Payee at 300 Crescent Court, Dallas, TX 75201, or such other address as Payee may specify to Maker in writing from time to time.

1. Interest Rate. The unpaid principal balance of this Note from time to time outstanding shall bear interest at a rate equal to the long-term "***applicable federal rate***" (2.95%) in effect on the date hereof for loans of such maturity as determined by Section 1274(d) of the Internal Revenue Code, per annum from the date hereof until maturity, compounded annually on the anniversary of the date of this Note. Interest shall be calculated at a daily rate equal to 1/365th (1/366 in a leap year) of the rate per annum, shall be charged and collected on the actual number of days elapsed, and shall be payable on demand of the Payee.

2. Payment of Principal and Interest. The accrued interest and principal of this Note shall be due and payable on demand of the Payee.

3. Prepayment Allowed; Renegotiation Discretionary. Maker may prepay in whole or in part the unpaid principal or accrued interest of this Note. Any payments on this Note shall be applied first to unpaid accrued interest hereon, and then to unpaid principal hereof.

4. Acceleration Upon Default. Failure to pay this Note or any installment hereunder as it becomes due shall, at the election of the holder hereof, without notice, demand, presentment, notice of intent to accelerate, notice of acceleration, or any other notice of any kind which are hereby waived, mature the principal of this Note and all interest then accrued, if any, and the same shall at once become due and payable and subject to those remedies of the holder hereof. No failure or delay on the part of Payee in exercising any right, power or privilege hereunder shall operate as a waiver thereof.

5. Waiver. Maker hereby waives grace, demand, presentment for payment, notice of nonpayment, protest, notice of protest, notice of intent to accelerate, notice of acceleration and all other notices of any kind hereunder.

6. Attorneys' Fees. If this Note is not paid at maturity (whether by acceleration or otherwise) and is placed in the hands of an attorney for collection, or if it is collected through a bankruptcy court or any other court after maturity, the Maker shall pay, in addition to all other amounts owing hereunder, all actual expenses of collection, all court costs and reasonable attorneys' fees and expenses incurred by the holder hereof.

Exhibit 4

7. Limitation on Agreements. All agreements between Maker and Payee, whether now existing or hereafter arising, are hereby limited so that in no event shall the amount paid, or agreed to be paid to Payee for the use, forbearance, or detention of money or for the payment or performance of any covenant or obligation contained herein or in any other document evidencing, securing or pertaining to this Note, exceed the maximum interest rate allowed by law. The terms and provisions of this paragraph shall control and supersede every other provision of all agreements between Payee and Maker in conflict herewith.

8. Governing Law. This Note and the rights and obligations of the parties hereunder shall be governed by the laws of the United States of America and by the laws of the State of Texas, and is performable in Dallas County, Texas.

MAKER:

JAMES DONDERO

EXHIBIT G

PROMISSORY NOTE

$2,400,000.00 May 2, 2019

FOR VALUE RECEIVED, HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, LP. ("***Maker***") promises to pay to the order of HIGHLAND CAPITAL MANAGEMENT, LP ("***Payee***"), in legal and lawful tender of the United States of America, the principal sum of TWO MILLION FOUR HUNDRED THOUSAND and 00/100 Dollars ($2,400,000.00), together with interest, on the terms set forth below (the "***Note***"). All sums hereunder are payable to Payee at 300 Crescent Court, Dallas, TX 75201, or such other address as Payee may specify to Maker in writing from time to time.

1. Interest Rate. The unpaid principal balance of this Note from time to time outstanding shall bear interest at a rate equal to the short-term "***applicable federal rate***" (2.39%) in effect on the date hereof for loans of such maturity as determined by Section 1274(d) of the Internal Revenue Code, per annum from the date hereof until maturity, compounded annually on the anniversary of the date of this Note. Interest shall be calculated at a daily rate equal to 1/365th (1/366 in a leap year) of the rate per annum, shall be charged and collected on the actual number of days elapsed, and shall be payable on demand of the Payee.

2. Payment of Principal and Interest. The accrued interest and principal of this Note shall be due and payable on demand.

3. Prepayment Allowed; Renegotiation Discretionary. Maker may prepay in whole or in part the unpaid principal or accrued interest of this Note. Any payments on this Note shall be applied first to unpaid accrued interest hereon, and then to unpaid principal hereof.

4. Acceleration Upon Default. Failure to pay this Note or any installment hereunder as it becomes due shall, at the election of the holder hereof, without notice, demand, presentment, notice of intent to accelerate, notice of acceleration, or any other notice of any kind which are hereby waived, mature the principal of this Note and all interest then accrued, if any, and the same shall at once become due and payable and subject to those remedies of the holder hereof. No failure or delay on the part of Payee in exercising any right, power or privilege hereunder shall operate as a waiver thereof.

5. Waiver. Maker hereby waives grace, demand, presentment for payment, notice of nonpayment, protest, notice of protest, notice of intent to accelerate, notice of acceleration and all other notices of any kind hereunder.

6. Attorneys' Fees. If this Note is not paid at maturity (whether by acceleration or otherwise) and is placed in the hands of an attorney for collection, or if it is collected through a bankruptcy court or any other court after maturity, the Maker shall pay, in addition to all other amounts owing hereunder, all actual expenses of collection, all court costs and reasonable attorneys' fees and expenses incurred by the holder hereof.

7. Limitation on Agreements. All agreements between Maker and Payee, whether now existing or hereafter arising, are hereby limited so that in no event shall the amount paid, or agreed to be paid to Payee for the use, forbearance, or detention of money or for the payment or performance of any covenant or obligation contained herein or in any other document evidencing, securing or pertaining to this Note, exceed the maximum interest rate allowed by law. The terms and provisions of this paragraph shall control and supersede every other provision of all agreements between Payee and Maker in conflict herewith.

8. Governing Law. This Note and the rights and obligations of the parties hereunder shall be governed by the laws of the United States of America and by the laws of the State of Texas, and is performable in Dallas County, Texas.

MAKER:

FRANK WATERHOUSE

EXHIBIT H

PROMISSORY NOTE

$5,000,000.00 May 3, 2019

FOR VALUE RECEIVED, HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, LP. ("***Maker***") promises to pay to the order of HIGHLAND CAPITAL MANAGEMENT, LP ("***Payee***"), in legal and lawful tender of the United States of America, the principal sum of FIVE MILLION and 00/100 Dollars ($5,000,000.00), together with interest, on the terms set forth below (the "***Note***"). All sums hereunder are payable to Payee at 300 Crescent Court, Dallas, TX 75201, or such other address as Payee may specify to Maker in writing from time to time.

1. Interest Rate. The unpaid principal balance of this Note from time to time outstanding shall bear interest at a rate equal to the short-term "***applicable federal rate***" (2.39%) in effect on the date hereof for loans of such maturity as determined by Section 1274(d) of the Internal Revenue Code, per annum from the date hereof until maturity, compounded annually on the anniversary of the date of this Note. Interest shall be calculated at a daily rate equal to 1/365th (1/366 in a leap year) of the rate per annum, shall be charged and collected on the actual number of days elapsed, and shall be payable on demand of the Payee.

2. Payment of Principal and Interest. The accrued interest and principal of this Note shall be due and payable on demand.

3. Prepayment Allowed; Renegotiation Discretionary. Maker may prepay in whole or in part the unpaid principal or accrued interest of this Note. Any payments on this Note shall be applied first to unpaid accrued interest hereon, and then to unpaid principal hereof.

4. Acceleration Upon Default. Failure to pay this Note or any installment hereunder as it becomes due shall, at the election of the holder hereof, without notice, demand, presentment, notice of intent to accelerate, notice of acceleration, or any other notice of any kind which are hereby waived, mature the principal of this Note and all interest then accrued, if any, and the same shall at once become due and payable and subject to those remedies of the holder hereof. No failure or delay on the part of Payee in exercising any right, power or privilege hereunder shall operate as a waiver thereof.

5. Waiver. Maker hereby waives grace, demand, presentment for payment, notice of nonpayment, protest, notice of protest, notice of intent to accelerate, notice of acceleration and all other notices of any kind hereunder.

6. Attorneys' Fees. If this Note is not paid at maturity (whether by acceleration or otherwise) and is placed in the hands of an attorney for collection, or if it is collected through a bankruptcy court or any other court after maturity, the Maker shall pay, in addition to all other amounts owing hereunder, all actual expenses of collection, all court costs and reasonable attorneys' fees and expenses incurred by the holder hereof.

7. Limitation on Agreements. All agreements between Maker and Payee, whether now existing or hereafter arising, are hereby limited so that in no event shall the amount paid, or agreed to be paid to Payee for the use, forbearance, or detention of money or for the payment or performance of any covenant or obligation contained herein or in any other document evidencing, securing or pertaining to this Note, exceed the maximum interest rate allowed by law. The terms and provisions of this paragraph shall control and supersede every other provision of all agreements between Payee and Maker in conflict herewith.

8. Governing Law. This Note and the rights and obligations of the parties hereunder shall be governed by the laws of the United States of America and by the laws of the State of Texas, and is performable in Dallas County, Texas.

MAKER:

FRANK WATERHOUSE

EXHIBIT I

PROMISSORY NOTE

$150,000.00 March 28, 2018

FOR VALUE RECEIVED, HIGHLAND CAPITAL MANAGEMENT SERVICES, INC. ("***Maker***") promises to pay to the order of HIGHLAND CAPITAL MANAGEMENT, LP. ("***Payee***"), in legal and lawful tender of the United States of America, the principal sum of ONE HUNDRED AND FIFTY THOUSAND and 00/100 Dollars ($150,000.00), together with interest, on the terms set forth below (the "***Note***"). All sums hereunder are payable to Payee at 300 Crescent Court, Dallas, TX 75201, or such other address as Payee may specify to Maker in writing from time to time.

1. Interest Rate. The unpaid principal balance of this Note from time to time outstanding shall bear interest at a rate equal to the long-term "***applicable federal rate***" (2.88 %) in effect on the date hereof for loans of such maturity as determined by Section 1274(d) of the Internal Revenue Code, per annum from the date hereof until maturity, compounded annually on the anniversary of the date of this Note. Interest shall be calculated at a daily rate equal to 1/365th (1/366 in a leap year) of the rate per annum, shall be charged and collected on the actual number of days elapsed, and shall be payable on demand of the Payee.

2. Payment of Principal and Interest. The accrued interest and principal of this Note shall be due and payable on demand of the Payee.

3. Prepayment Allowed; Renegotiation Discretionary. Maker may prepay in whole or in part the unpaid principal or accrued interest of this Note. Any payments on this Note shall be applied first to unpaid accrued interest hereon, and then to unpaid principal hereof.

4. Acceleration Upon Default. Failure to pay this Note or any installment hereunder as it becomes due shall, at the election of the holder hereof, without notice, demand, presentment, notice of intent to accelerate, notice of acceleration, or any other notice of any kind which are hereby waived, mature the principal of this Note and all interest then accrued, if any, and the same shall at once become due and payable and subject to those remedies of the holder hereof. No failure or delay on the part of Payee in exercising any right, power or privilege hereunder shall operate as a waiver thereof.

5. Waiver. Maker hereby waives grace, demand, presentment for payment, notice of nonpayment, protest, notice of protest, notice of intent to accelerate, notice of acceleration and all other notices of any kind hereunder.

6. Attorneys' Fees. If this Note is not paid at maturity (whether by acceleration or otherwise) and is placed in the hands of an attorney for collection, or if it is collected through a bankruptcy court or any other court after maturity, the Maker shall pay, in addition to all other amounts owing hereunder, all actual expenses of collection, all court costs and reasonable attorneys' fees and expenses incurred by the holder hereof.

7. Limitation on Agreements. All agreements between Maker and Payee, whether now existing or hereafter arising, are hereby limited so that in no event shall the amount paid, or agreed to be paid to Payee for the use, forbearance, or detention of money or for the payment or performance of any covenant or obligation contained herein or in any other document evidencing, securing or pertaining to this Note, exceed the maximum interest rate allowed by law. The terms and provisions of this paragraph shall control and supersede every other provision of all agreements between Payee and Maker in conflict herewith.

8. Governing Law. This Note and the rights and obligations of the parties hereunder shall be governed by the laws of the United States of America and by the laws of the State of Texas, and is performable in Dallas County, Texas.

MAKER:

HIGHLAND CAPITAL MANAGEMENT SERVICES, INC.

EXHIBIT J

PROMISSORY NOTE

$200,000.00 June 25, 2018

FOR VALUE RECEIVED, HIGHLAND CAPITAL MANAGEMENT SERVICES, INC. ("***Maker***") promises to pay to the order of HIGHLAND CAPITAL MANAGEMENT, LP. ("***Payee***"), in legal and lawful tender of the United States of America, the principal sum of TWO HUNDRED THOUSAND and 00/100 Dollars ($200,000.00), together with interest, on the terms set forth below (the "***Note***"). All sums hereunder are payable to Payee at 300 Crescent Court, Dallas, TX 75201, or such other address as Payee may specify to Maker in writing from time to time.

1. Interest Rate. The unpaid principal balance of this Note from time to time outstanding shall bear interest at a rate equal to the long-term "***applicable federal rate***" (3.05 %) in effect on the date hereof for loans of such maturity as determined by Section 1274(d) of the Internal Revenue Code, per annum from the date hereof until maturity, compounded annually on the anniversary of the date of this Note. Interest shall be calculated at a daily rate equal to 1/365th (1/366 in a leap year) of the rate per annum, shall be charged and collected on the actual number of days elapsed, and shall be payable on demand of the Payee.

2. Payment of Principal and Interest. The accrued interest and principal of this Note shall be due and payable on demand of the Payee.

3. Prepayment Allowed; Renegotiation Discretionary. Maker may prepay in whole or in part the unpaid principal or accrued interest of this Note. Any payments on this Note shall be applied first to unpaid accrued interest hereon, and then to unpaid principal hereof.

4. Acceleration Upon Default. Failure to pay this Note or any installment hereunder as it becomes due shall, at the election of the holder hereof, without notice, demand, presentment, notice of intent to accelerate, notice of acceleration, or any other notice of any kind which are hereby waived, mature the principal of this Note and all interest then accrued, if any, and the same shall at once become due and payable and subject to those remedies of the holder hereof. No failure or delay on the part of Payee in exercising any right, power or privilege hereunder shall operate as a waiver thereof.

5. Waiver. Maker hereby waives grace, demand, presentment for payment, notice of nonpayment, protest, notice of protest, notice of intent to accelerate, notice of acceleration and all other notices of any kind hereunder.

6. Attorneys' Fees. If this Note is not paid at maturity (whether by acceleration or otherwise) and is placed in the hands of an attorney for collection, or if it is collected through a bankruptcy court or any other court after maturity, the Maker shall pay, in addition to all other amounts owing hereunder, all actual expenses of collection, all court costs and reasonable attorneys' fees and expenses incurred by the holder hereof.

7. Limitation on Agreements. All agreements between Maker and Payee, whether now existing or hereafter arising, are hereby limited so that in no event shall the amount paid, or agreed to be paid to Payee for the use, forbearance, or detention of money or for the payment or performance of any covenant or obligation contained herein or in any other document evidencing, securing or pertaining to this Note, exceed the maximum interest rate allowed by law. The terms and provisions of this paragraph shall control and supersede every other provision of all agreements between Payee and Maker in conflict herewith.

8. Governing Law. This Note and the rights and obligations of the parties hereunder shall be governed by the laws of the United States of America and by the laws of the State of Texas, and is performable in Dallas County, Texas.

MAKER:

HIGHLAND CAPITAL MANAGEMENT SERVICES, INC.

EXHIBIT K

PROMISSORY NOTE

$400,000 May 29, 2019

FOR VALUE RECEIVED, HIGHLAND CAPITAL MANAGEMENT SERVICES, INC. ("***Maker***") promises to pay to the order of HIGHLAND CAPITAL MANAGEMENT, LP ("***Payee***"), in legal and lawful tender of the United States of America, the principal sum of FOUR HUNDRED THOUSAND and 00/100 Dollars ($400,000.00), together with interest, on the terms set forth below (the "***Note***"). All sums hereunder are payable to Payee at 300 Crescent Court, Dallas, TX 75201, or such other address as Payee may specify to Maker in writing from time to time.

1. Interest Rate. The unpaid principal balance of this Note from time to time outstanding shall bear interest at a rate equal to the short-term "***applicable federal rate***" (2.39%) in effect on the date hereof for loans of such maturity as determined by Section 1274(d) of the Internal Revenue Code, per annum from the date hereof until maturity, compounded annually on the anniversary of the date of this Note. Interest shall be calculated at a daily rate equal to 1/365th (1/366 in a leap year) of the rate per annum, shall be charged and collected on the actual number of days elapsed, and shall be payable on demand of the Payee.

2. Payment of Principal and Interest. The accrued interest and principal of this Note shall be due and payable on demand.

3. Prepayment Allowed; Renegotiation Discretionary. Maker may prepay in whole or in part the unpaid principal or accrued interest of this Note. Any payments on this Note shall be applied first to unpaid accrued interest hereon, and then to unpaid principal hereof.

4. Acceleration Upon Default. Failure to pay this Note or any installment hereunder as it becomes due shall, at the election of the holder hereof, without notice, demand, presentment, notice of intent to accelerate, notice of acceleration, or any other notice of any kind which are hereby waived, mature the principal of this Note and all interest then accrued, if any, and the same shall at once become due and payable and subject to those remedies of the holder hereof. No failure or delay on the part of Payee in exercising any right, power or privilege hereunder shall operate as a waiver thereof.

5. Waiver. Maker hereby waives grace, demand, presentment for payment, notice of nonpayment, protest, notice of protest, notice of intent to accelerate, notice of acceleration and all other notices of any kind hereunder.

6. Attorneys' Fees. If this Note is not paid at maturity (whether by acceleration or otherwise) and is placed in the hands of an attorney for collection, or if it is collected through a bankruptcy court or any other court after maturity, the Maker shall pay, in addition to all other amounts owing hereunder, all actual expenses of collection, all court costs and reasonable attorneys' fees and expenses incurred by the holder hereof.

7. Limitation on Agreements. All agreements between Maker and Payee, whether now existing or hereafter arising, are hereby limited so that in no event shall the amount paid, or agreed to be paid to Payee for the use, forbearance, or detention of money or for the payment or performance of any covenant or obligation contained herein or in any other document evidencing, securing or pertaining to this Note, exceed the maximum interest rate allowed by law. The terms and provisions of this paragraph shall control and supersede every other provision of all agreements between Payee and Maker in conflict herewith.

8. Governing Law. This Note and the rights and obligations of the parties hereunder shall be governed by the laws of the United States of America and by the laws of the State of Texas, and is performable in Dallas County, Texas.

MAKER:

FRANK WATERHOUSE

EXHIBIT L

PROMISSORY NOTE

$150,000 June 26, 2019

FOR VALUE RECEIVED, HIGHLAND CAPITAL MANAGEMENT SERVICES, INC. ("***Maker***") promises to pay to the order of HIGHLAND CAPITAL MANAGEMENT, LP ("***Payee***"), in legal and lawful tender of the United States of America, the principal sum of ONE HUNDRED AND FIFTY THOUSAND and 00/100 Dollars ($150,000.00), together with interest, on the terms set forth below (the "***Note***"). All sums hereunder are payable to Payee at 300 Crescent Court, Dallas, TX 75201, or such other address as Payee may specify to Maker in writing from time to time.

1. Interest Rate. The unpaid principal balance of this Note from time to time outstanding shall bear interest at a rate equal to the short-term "***applicable federal rate***" (2.37%) in effect on the date hereof for loans of such maturity as determined by Section 1274(d) of the Internal Revenue Code, per annum from the date hereof until maturity, compounded annually on the anniversary of the date of this Note. Interest shall be calculated at a daily rate equal to 1/365th (1/366 in a leap year) of the rate per annum, shall be charged and collected on the actual number of days elapsed, and shall be payable on demand of the Payee.

2. Payment of Principal and Interest. The accrued interest and principal of this Note shall be due and payable on demand.

3. Prepayment Allowed; Renegotiation Discretionary. Maker may prepay in whole or in part the unpaid principal or accrued interest of this Note. Any payments on this Note shall be applied first to unpaid accrued interest hereon, and then to unpaid principal hereof.

4. Acceleration Upon Default. Failure to pay this Note or any installment hereunder as it becomes due shall, at the election of the holder hereof, without notice, demand, presentment, notice of intent to accelerate, notice of acceleration, or any other notice of any kind which are hereby waived, mature the principal of this Note and all interest then accrued, if any, and the same shall at once become due and payable and subject to those remedies of the holder hereof. No failure or delay on the part of Payee in exercising any right, power or privilege hereunder shall operate as a waiver thereof.

5. Waiver. Maker hereby waives grace, demand, presentment for payment, notice of nonpayment, protest, notice of protest, notice of intent to accelerate, notice of acceleration and all other notices of any kind hereunder.

6. Attorneys' Fees. If this Note is not paid at maturity (whether by acceleration or otherwise) and is placed in the hands of an attorney for collection, or if it is collected through a bankruptcy court or any other court after maturity, the Maker shall pay, in addition to all other amounts owing hereunder, all actual expenses of collection, all court costs and reasonable attorneys' fees and expenses incurred by the holder hereof.

7. Limitation on Agreements. All agreements between Maker and Payee, whether now existing or hereafter arising, are hereby limited so that in no event shall the amount paid, or agreed to be paid to Payee for the use, forbearance, or detention of money or for the payment or performance of any covenant or obligation contained herein or in any other document evidencing, securing or pertaining to this Note, exceed the maximum interest rate allowed by law. The terms and provisions of this paragraph shall control and supersede every other provision of all agreements between Payee and Maker in conflict herewith.

8. Governing Law. This Note and the rights and obligations of the parties hereunder shall be governed by the laws of the United States of America and by the laws of the State of Texas, and is performable in Dallas County, Texas.

MAKER:

FRANK WATERHOUSE

EXHIBIT M

PROMISSORY NOTE

$100,000 November 27, 2013

FOR VALUE RECEIVED, HCRE PARTNERS, LLC ("***Maker***") promises to pay to the order of HIGHLAND CAPITAL MANAGEMENT, LP. ("***Payee***"), in legal and lawful tender of the United States of America, the principal sum of ONE HUNDRED THOUSAND and 00/100 Dollars ($100,000.00), together with interest, on the terms set forth below (the "***Note***"). All sums hereunder are payable to Payee at 300 Crescent Court, Dallas, TX 75201, or such other address as Payee may specify to Maker in writing from time to time.

1. Interest Rate. The unpaid principal balance of this Note from time to time outstanding shall bear interest at a rate equal to 8.00% per annum from the date hereof until maturity, compounded annually on the anniversary of the date of this Note. Interest shall be calculated at a daily rate equal to 1/365th (1/366 in a leap year) of the rate per annum, shall be charged and collected on the actual number of days elapsed, and shall be payable on demand of the Payee.

2. Payment of Principal and Interest. The accrued interest and principal of this Note shall be due and payable on demand of the Payee.

3. Prepayment Allowed; Renegotiation Discretionary. Maker may prepay in whole or in part the unpaid principal or accrued interest of this Note. Any payments on this Note shall be applied first to unpaid accrued interest hereon, and then to unpaid principal hereof.

4. Acceleration Upon Default. Failure to pay this Note or any installment hereunder as it becomes due shall, at the election of the holder hereof, without notice, demand, presentment, notice of intent to accelerate, notice of acceleration, or any other notice of any kind which are hereby waived, mature the principal of this Note and all interest then accrued, if any, and the same shall at once become due and payable and subject to those remedies of the holder hereof. No failure or delay on the part of Payee in exercising any right, power or privilege hereunder shall operate as a waiver thereof.

5. Waiver. Maker hereby waives grace, demand, presentment for payment, notice of nonpayment, protest, notice of protest, notice of intent to accelerate, notice of acceleration and all other notices of any kind hereunder.

6. Attorneys' Fees. If this Note is not paid at maturity (whether by acceleration or otherwise) and is placed in the hands of an attorney for collection, or if it is collected through a bankruptcy court or any other court after maturity, the Maker shall pay, in addition to all other amounts owing hereunder, all actual expenses of collection, all court costs and reasonable attorneys' fees and expenses incurred by the holder hereof.

7. Limitation on Agreements. All agreements between Maker and Payee, whether now existing or hereafter arising, are hereby limited so that in no event shall the amount paid, or agreed to be paid to Payee for the use, forbearance, or detention of money or for the payment or

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performance of any covenant or obligation contained herein or in any other document evidencing, securing or pertaining to this Note, exceed the maximum interest rate allowed by law. The terms and provisions of this paragraph shall control and supersede every other provision of all agreements between Payee and Maker in conflict herewith.

8. Governing Law. This Note and the rights and obligations of the parties hereunder shall be governed by the laws of the United States of America and by the laws of the State of Texas, and is performable in Dallas County, Texas.

MAKER:

HCRE PARTNERS, LLC

EXHIBIT N

PROMISSORY NOTE

$2,500,000 October 12, 2017

FOR VALUE RECEIVED, HCRE PARTNERS, LLC ("***Maker***") promises to pay to the order of HIGHLAND CAPITAL MANAGEMENT, LP. ("***Payee***"), in legal and lawful tender of the United States of America, the principal sum of TWO MILLION, FIVE HUNDRED THOUSAND and 00/100 Dollars ($2,500,000.00), together with interest, on the terms set forth below (the "***Note***"). All sums hereunder are payable to Payee at 300 Crescent Court, Dallas, TX 75201, or such other address as Payee may specify to Maker in writing from time to time.

1. Interest Rate. The unpaid principal balance of this Note from time to time outstanding shall bear interest at a rate equal to 8.00% per annum from the date hereof until maturity, compounded annually on the anniversary of the date of this Note. Interest shall be calculated at a daily rate equal to 1/365th (1/366 in a leap year) of the rate per annum, shall be charged and collected on the actual number of days elapsed, and shall be payable on demand of the Payee.

2. Payment of Principal and Interest. The accrued interest and principal of this Note shall be due and payable on demand of the Payee.

3. Prepayment Allowed; Renegotiation Discretionary. Maker may prepay in whole or in part the unpaid principal or accrued interest of this Note. Any payments on this Note shall be applied first to unpaid accrued interest hereon, and then to unpaid principal hereof.

4. Acceleration Upon Default. Failure to pay this Note or any installment hereunder as it becomes due shall, at the election of the holder hereof, without notice, demand, presentment, notice of intent to accelerate, notice of acceleration, or any other notice of any kind which are hereby waived, mature the principal of this Note and all interest then accrued, if any, and the same shall at once become due and payable and subject to those remedies of the holder hereof. No failure or delay on the part of Payee in exercising any right, power or privilege hereunder shall operate as a waiver thereof.

5. Waiver. Maker hereby waives grace, demand, presentment for payment, notice of nonpayment, protest, notice of protest, notice of intent to accelerate, notice of acceleration and all other notices of any kind hereunder.

6. Attorneys' Fees. If this Note is not paid at maturity (whether by acceleration or otherwise) and is placed in the hands of an attorney for collection, or if it is collected through a bankruptcy court or any other court after maturity, the Maker shall pay, in addition to all other amounts owing hereunder, all actual expenses of collection, all court costs and reasonable attorneys' fees and expenses incurred by the holder hereof.

7. Limitation on Agreements. All agreements between Maker and Payee, whether now existing or hereafter arising, are hereby limited so that in no event shall the amount paid, or agreed to be paid to Payee for the use, forbearance, or detention of money or for the payment or

performance of any covenant or obligation contained herein or in any other document evidencing, securing or pertaining to this Note, exceed the maximum interest rate allowed by law. The terms and provisions of this paragraph shall control and supersede every other provision of all agreements between Payee and Maker in conflict herewith.

8. Governing Law. This Note and the rights and obligations of the parties hereunder shall be governed by the laws of the United States of America and by the laws of the State of Texas, and is performable in Dallas County, Texas.

MAKER:

HCRE PARTNERS, LLC

EXHIBIT O

PROMISSORY NOTE

$750,000 October 15, 2018

FOR VALUE RECEIVED, HCRE PARTNERS, LLC ("***Maker***") promises to pay to the order of HIGHLAND CAPITAL MANAGEMENT, LP. ("***Payee***"), in legal and lawful tender of the United States of America, the principal sum of SEVEN HUNDRED FIFTY THOUSAND and 00/100 Dollars ($750,000.00), together with interest, on the terms set forth below (the "***Note***"). All sums hereunder are payable to Payee at 300 Crescent Court, Dallas, TX 75201, or such other address as Payee may specify to Maker in writing from time to time.

1. Interest Rate. The unpaid principal balance of this Note from time to time outstanding shall bear interest at a rate equal to 8.00% per annum from the date hereof until maturity, compounded annually on the anniversary of the date of this Note. Interest shall be calculated at a daily rate equal to 1/365th (1/366 in a leap year) of the rate per annum, shall be charged and collected on the actual number of days elapsed, and shall be payable on demand of the Payee.

2. Payment of Principal and Interest. The accrued interest and principal of this Note shall be due and payable on demand of the Payee.

3. Prepayment Allowed; Renegotiation Discretionary. Maker may prepay in whole or in part the unpaid principal or accrued interest of this Note. Any payments on this Note shall be applied first to unpaid accrued interest hereon, and then to unpaid principal hereof.

4. Acceleration Upon Default. Failure to pay this Note or any installment hereunder as it becomes due shall, at the election of the holder hereof, without notice, demand, presentment, notice of intent to accelerate, notice of acceleration, or any other notice of any kind which are hereby waived, mature the principal of this Note and all interest then accrued, if any, and the same shall at once become due and payable and subject to those remedies of the holder hereof. No failure or delay on the part of Payee in exercising any right, power or privilege hereunder shall operate as a waiver thereof.

5. Waiver. Maker hereby waives grace, demand, presentment for payment, notice of nonpayment, protest, notice of protest, notice of intent to accelerate, notice of acceleration and all other notices of any kind hereunder.

6. Attorneys' Fees. If this Note is not paid at maturity (whether by acceleration or otherwise) and is placed in the hands of an attorney for collection, or if it is collected through a bankruptcy court or any other court after maturity, the Maker shall pay, in addition to all other amounts owing hereunder, all actual expenses of collection, all court costs and reasonable attorneys' fees and expenses incurred by the holder hereof.

7. Limitation on Agreements. All agreements between Maker and Payee, whether now existing or hereafter arising, are hereby limited so that in no event shall the amount paid, or agreed to be paid to Payee for the use, forbearance, or detention of money or for the payment or

performance of any covenant or obligation contained herein or in any other document evidencing, securing or pertaining to this Note, exceed the maximum interest rate allowed by law. The terms and provisions of this paragraph shall control and supersede every other provision of all agreements between Payee and Maker in conflict herewith.

8. Governing Law. This Note and the rights and obligations of the parties hereunder shall be governed by the laws of the United States of America and by the laws of the State of Texas, and is performable in Dallas County, Texas.

MAKER:

HCRE PARTNERS, LLC

EXHIBIT P

PROMISSORY NOTE

$900,000 September 25, 2019

FOR VALUE RECEIVED, HCRE PARTNERS, LLC ("***Maker***") promises to pay to the order of HIGHLAND CAPITAL MANAGEMENT, LP. ("***Payee***"), in legal and lawful tender of the United States of America, the principal sum of NINE HUNDRED THOUSAND and 00/100 Dollars ($900,000.00), together with interest, on the terms set forth below (the "***Note***"). All sums hereunder are payable to Payee at 300 Crescent Court, Dallas, TX 75201, or such other address as Payee may specify to Maker in writing from time to time.

1. Interest Rate. The unpaid principal balance of this Note from time to time outstanding shall bear interest at a rate equal to 8.00% per annum from the date hereof until maturity, compounded annually on the anniversary of the date of this Note. Interest shall be calculated at a daily rate equal to 1/365th (1/366 in a leap year) of the rate per annum, shall be charged and collected on the actual number of days elapsed, and shall be payable on demand of the Payee.

2. Payment of Principal and Interest. The accrued interest and principal of this Note shall be due and payable on demand of the Payee.

3. Prepayment Allowed; Renegotiation Discretionary. Maker may prepay in whole or in part the unpaid principal or accrued interest of this Note. Any payments on this Note shall be applied first to unpaid accrued interest hereon, and then to unpaid principal hereof.

4. Acceleration Upon Default. Failure to pay this Note or any installment hereunder as it becomes due shall, at the election of the holder hereof, without notice, demand, presentment, notice of intent to accelerate, notice of acceleration, or any other notice of any kind which are hereby waived, mature the principal of this Note and all interest then accrued, if any, and the same shall at once become due and payable and subject to those remedies of the holder hereof. No failure or delay on the part of Payee in exercising any right, power or privilege hereunder shall operate as a waiver thereof.

5. Waiver. Maker hereby waives grace, demand, presentment for payment, notice of nonpayment, protest, notice of protest, notice of intent to accelerate, notice of acceleration and all other notices of any kind hereunder.

6. Attorneys' Fees. If this Note is not paid at maturity (whether by acceleration or otherwise) and is placed in the hands of an attorney for collection, or if it is collected through a bankruptcy court or any other court after maturity, the Maker shall pay, in addition to all other amounts owing hereunder, all actual expenses of collection, all court costs and reasonable attorneys' fees and expenses incurred by the holder hereof.

7. Limitation on Agreements. All agreements between Maker and Payee, whether now existing or hereafter arising, are hereby limited so that in no event shall the amount paid, or agreed to be paid to Payee for the use, forbearance, or detention of money or for the payment or

performance of any covenant or obligation contained herein or in any other document evidencing, securing or pertaining to this Note, exceed the maximum interest rate allowed by law. The terms and provisions of this paragraph shall control and supersede every other provision of all agreements between Payee and Maker in conflict herewith.

8. Governing Law. This Note and the rights and obligations of the parties hereunder shall be governed by the laws of the United States of America and by the laws of the State of Texas, and is performable in Dallas County, Texas.

MAKER:

HCRE PARTNERS, LLC

EXHIBIT Q

PROMISSORY NOTE

$20,247,628.02 **May 31, 2017**

THIS PROMISSORY NOTE (this "**Note**") is in substitution for and supersedes in their entirety each of those certain promissory notes described in Exhibit A hereto, from Highland Capital Management Services, Inc., as Maker, and Highland Capital Management, L.P. as Payee (collectively, the "**Prior Notes**"), together with the aggregate outstanding principal and accrued and unpaid interested represented thereby.

FOR VALUE RECEIVED, HIGHLAND CAPITAL MANAGEMENT SERVICES, INC. ("**Maker**") promises to pay to the order of HIGHLAND CAPITAL MANAGEMENT, L.P. ("**Payee**"), in legal and lawful tender of the United States of America, the principal sum of TWENTY MILLION, TWO HUNDRED FORTY SEVEN THOUSAND, SIX HUNDRED TWENTY EIGHT AND 02/100 DOLLARS ($20,247,628.02), together with interest, on the terms set forth below. All sums hereunder are payable to Payee at 300 Crescent Court, Suite 700, Dallas, Texas 75201, or such other address as Payee may specify to Maker in writing from time to time.

1. Interest Rate. The unpaid principal balance of this Note from time to time outstanding shall bear interest at the rate of two and seventy-five hundredths percent (2.75%) per annum from the date hereof until Maturity Date (hereinafter defined), compounded annually on the anniversary of the date of this Note. Interest shall be calculated at a daily rate equal to 1/365th (1/366 in a leap year) of the rate per annum, shall be charged and collected on the actual number of days elapsed, and shall be payable annually.

2. Payment of Principal and Interest. Principal and interest under this Note shall be payable as follows:

2.1 Annual Payment Dates. During the term of this Note, Borrower shall pay the outstanding principal amount of the Note (and all unpaid accrued interest through the date of each such payment) in thirty (30) equal annual payments (the "**Annual Installment**") until the Note is paid in full. Borrower shall pay the Annual Installment on the 31st day of December of each calendar year during the term of this Note, commencing on the first such date to occur after the date of execution of this Note.

2.2 Final Payment Date. The final payment in the aggregate amount of the then outstanding and unpaid Note, together with all accrued and unpaid interest thereon, shall become immediately due and payable in full on December 31, 2047 (the "**Maturity Date**").

3. Prepayment Allowed; Renegotiation Discretionary. Maker may prepay in whole or in part the unpaid principal or accrued interest of this Note. Any payments on this Note shall be applied first to unpaid accrued interest hereon, and then to unpaid principal hereof.

4. Acceleration Upon Default. Failure to pay this Note or any installment hereunder as it becomes due shall, at the election of the holder hereof, without notice, demand, presentment, notice of intent to accelerate, notice of acceleration, or any other notice of any kind which are hereby waived, mature the principal of this Note and all interest then accrued, if any, and the same shall at once become due and payable and subject to those remedies of the holder hereof. No

failure or delay on the part of Payee in exercising any right, power or privilege hereunder shall operate as a waiver thereof.

5. Waiver. Maker hereby waives grace, demand, presentment for payment, notice of nonpayment, protest, notice of protest, notice of intent to accelerate, notice of acceleration and all other notices of any kind hereunder.

6. Attorneys' Fees. If this Note is not paid at maturity (whether by acceleration or otherwise) and is placed in the hands of an attorney for collection, or if it is collected through a bankruptcy court or any other court after maturity, the Maker shall pay, in addition to all other amounts owing hereunder, all actual expenses of collection, all court costs and reasonable attorneys' fees and expenses incurred by the holder hereof.

7. Limitation on Agreements. All agreements between Maker and Payee, whether now existing or hereafter arising, are hereby limited so that in no event shall the amount paid, or agreed to be paid to Payee for the use, forbearance, or detention of money or for the payment or performance of any covenant or obligation contained herein or in any other document evidencing, securing or pertaining to this Note, exceed the maximum interest rate allowed by law. The terms and provisions of this paragraph shall control and supersede every other provision of all agreements between Payee and Maker in conflict herewith.

8. Governing Law. This Note and the rights and obligations of the parties hereunder shall be governed by the laws of the United States of America and by the laws of the State of Texas, and is performable in Dallas County, Texas.

9. Prior Notes. The original of each of the Prior Notes superseded hereby shall be marked "VOID" by Payee.

MAKER:

HIGHLAND CAPITAL MANAGEMENT SERVICES, INC.

By:_____
Name:
Title:

EXHIBIT A

PRIOR NOTES

Loan Date	Initial Note Amount	Interest Rate	Principal and Interest Outstanding as of May 31, 2017
5/29/15	$500,000	2.30%	$523,095
10/1/15	$350,000	2.58%	$315,500
10/2/15	$310,000	2.58%	$323,301
10/27/15	$200,000	2.58%	$208,228
10/28/15	$200,000	2.58%	$208,214
10/30/15	$100,000	2.58%	$104,093
11/23/15	$100,000	2.57%	$103,908
11/24/15	$250,000	2.57%	$259,752
2/10/16	$2,000,000	2.62%	$ 83,390
2/11/16	$250,000	2.62%	$258,524
4/5/16	$6,000,000	2.25%	$6,155,712
5/4/16	$2,700,000	2.24%	$2,764,954
7/1/16	$30,000	2.18%	$30,598
8/5/16	$525,000	2.18%	$534,375
8/22/16	$250,000	2.18%	$254,465
9/22/16	$185,000	2.18%	$187,773
12/12/16	$7,700,000	2.26%	$7,781,050
3/31/17	$150,000	2.78%	$150,697
	$21,800,000		**$20,247,628.02**

EXHIBIT R

PROMISSORY NOTE

$6,059,831.51 **May 31, 2017**

THIS PROMISSORY NOTE (this "**Note**") is in substitution for and supersedes in their entirety each of those certain promissory notes described in Exhibit A hereto, from HCRE Partners, LLC, as Maker, and Highland Capital Management, L.P. as Payee (collectively, the "**Prior Notes**"), together with the aggregate outstanding principal and accrued and unpaid interested represented thereby.

FOR VALUE RECEIVED, HCREA PARTNERS, LLC ("**Maker**") promises to pay to the order of HIGHLAND CAPITAL MANAGEMENT, L.P. ("**Payee**"), in legal and lawful tender of the United States of America, the principal sum of SIX MILLION, FIFTY NINE THOUSAND, EIGHT HUNDRED THIRTY ONE AND 51/100 DOLLARS ($6,059,831.51), together with interest, on the terms set forth below. All sums hereunder are payable to Payee at 300 Crescent Court, Suite 700, Dallas, Texas 75201, or such other address as Payee may specify to Maker in writing from time to time.

1. Interest Rate. The unpaid principal balance of this Note from time to time outstanding shall bear interest at the rate of eight percent (8.00%) per annum from the date hereof until Maturity Date (hereinafter defined), compounded annually on the anniversary of the date of this Note. Interest shall be calculated at a daily rate equal to 1/365th (1/366 in a leap year) of the rate per annum, shall be charged and collected on the actual number of days elapsed, and shall be payable annually.

2. Payment of Principal and Interest. Principal and interest under this Note shall be payable as follows:

2.1 Annual Payment Dates. During the term of this Note, Borrower shall pay the outstanding principal amount of the Note (and all unpaid accrued interest through the date of each such payment) in thirty (30) equal annual payments (the "**Annual Installment**") until the Note is paid in full. Borrower shall pay the Annual Installment on the 31st day of December of each calendar year during the term of this Note, commencing on the first such date to occur after the date of execution of this Note.

2.2 Final Payment Date. The final payment in the aggregate amount of the then outstanding and unpaid Note, together with all accrued and unpaid interest thereon, shall become immediately due and payable in full on December 31, 2047 (the "**Maturity Date**").

3. Prepayment Allowed; Renegotiation Discretionary. Maker may prepay in whole or in part the unpaid principal or accrued interest of this Note. Any payments on this Note shall be applied first to unpaid accrued interest hereon, and then to unpaid principal hereof.

4. Acceleration Upon Default. Failure to pay this Note or any installment hereunder as it becomes due shall, at the election of the holder hereof, without notice, demand, presentment, notice of intent to accelerate, notice of acceleration, or any other notice of any kind which are hereby waived, mature the principal of this Note and all interest then accrued, if any, and the same

shall at once become due and payable and subject to those remedies of the holder hereof. No failure or delay on the part of Payee in exercising any right, power or privilege hereunder shall operate as a waiver thereof.

5. Waiver. Maker hereby waives grace, demand, presentment for payment, notice of nonpayment, protest, notice of protest, notice of intent to accelerate, notice of acceleration and all other notices of any kind hereunder.

6. Attorneys' Fees. If this Note is not paid at maturity (whether by acceleration or otherwise) and is placed in the hands of an attorney for collection, or if it is collected through a bankruptcy court or any other court after maturity, the Maker shall pay, in addition to all other amounts owing hereunder, all actual expenses of collection, all court costs and reasonable attorneys' fees and expenses incurred by the holder hereof.

7. Limitation on Agreements. All agreements between Maker and Payee, whether now existing or hereafter arising, are hereby limited so that in no event shall the amount paid, or agreed to be paid to Payee for the use, forbearance, or detention of money or for the payment or performance of any covenant or obligation contained herein or in any other document evidencing, securing or pertaining to this Note, exceed the maximum interest rate allowed by law. The terms and provisions of this paragraph shall control and supersede every other provision of all agreements between Payee and Maker in conflict herewith.

8. Governing Law. This Note and the rights and obligations of the parties hereunder shall be governed by the laws of the United States of America and by the laws of the State of Texas, and is performable in Dallas County, Texas.

9. Prior Notes. The original of each of the Prior Notes superseded hereby shall be marked "VOID" by Payee.

MAKER:

HCRE PARTNERS, LLC

By:_____
Name: James Dondero
Title:

EXHIBIT A

PRIOR NOTES

Loan Date	Initial Note Amount	Interest Rate	Principal and Interest Outstanding as of May 31, 2017
1/9/14	$100,000.00	8.00%	$108,000.00
1/29/14	$600,000.00	8.00%	$648,000.00
3/10/14	$2,000,000.00	8.00%	$2,009,643.84
3/28/14	$50,000.00	8.00%	$54,000.00
1/26/15	$1,500,000.00	8.00%	$1,545,356.16
4/2/15	$1,500,000.00	8.00%	$1,545,356
	$5,750,000.00		**$6,059,831.51**

EXHIBIT 209

PACHULSKI STANG ZIEHL & JONES LLP
Jeffrey N. Pomerantz (CA Bar No. 143717)
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-and-

HAYWARD PLLC
Melissa S. Hayward (Texas Bar No. 24044908)
Zachery Z. Annable (Texas Bar No. 24053075)
10501 N. Central Expy., Ste. 106
Dallas, Texas 75231
Telephone: (972) 755-7100
Facsimile: (972) 755-7110
Email: MHayward@HaywardFirm.com
ZAnnable@HaywardFirm.com

Counsel for Highland Capital Management, L.P.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
Plaintiff,	§	
	§	
vs.	§	Adv. Proc. No. 21-03003-sgj
	§	
JAMES DONDERO, NANCY DONDERO, AND THE DUGABOY INVESTMENT TRUST,	§	
	§	Case No. 3:21-cv-01010-E
Defendants.	§	

HIGHLAND CAPITAL MANAGEMENT, L.P., Plaintiff, vs. HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, L.P., Defendant.	§	Adv. Proc. No. 21-3004 Case No. 3:21-cv-00881-X
HIGHLAND CAPITAL MANAGEMENT, L.P., Plaintiff, vs. NEXPOINT ADVISORS, L.P., JAMES DONDERO, NANCY DONDERO, AND THE DUGABOY INVESTMENT TRUST, Defendants.	§	Adv. Proc. No. 21-3005 Case No. 3:21-cv-00880-C
HIGHLAND CAPITAL MANAGEMENT, L.P., Plaintiff, vs. HIGHLAND CAPITAL MANAGEMENT SERVICES, INC., JAMES DONDERO, NANCY DONDERO, AND THE DUGABOY INVESTMENT TRUST, Defendants.	§	Adv. Proc. No. 21-3006 Case No. 3:21-cv-01378-N

HIGHLAND CAPITAL MANAGEMENT, L.P., Plaintiff, vs. HCRE PARTNERS, LLC (n/k/a NexPoint Real Estate Partners, LLC), JAMES DONDERO, NANCY DONDERO, AND THE DUGABOY INVESTMENT TRUST, Defendants.	§ § § § § § § § § § § § § § §	Adv. Proc. No. 21-3007 Case No. 3:21-cv-01379-X

STIPULATION GOVERNING THE ADMISSIBILITY OF EVIDENCE IN CONNECTION WITH PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT

This Stipulation is entered into between and among Highland Capital Management, L.P., the plaintiff (the "Plaintiff") in the above-referenced adversary proceedings (the "Adversary Proceedings"), on the one hand, and James Dondero ("Mr. Dondero"), Highland Capital Management Fund Advisors, L.P. ("HCMFA"), NexPoint Advisors, L.P. ("NexPoint"), Highland Capital Management Services, Inc. ("HCMS"), and HCRE Partners, LLC (n/k/a NexPoint Real Estate Partners, LLC) ("HCRE" and together with Mr. Dondero, NexPoint, and HCMS, the "Defendants," and Plaintiff and Defendants together, the "Parties") on the other hand.

RECITALS

WHEREAS, on January 22, 2021, Plaintiff commenced the Adversary Proceedings against each respective Defendant; and

WHEREAS, Plaintiff subsequently amended its pleading to add additional claims and parties (collectively, the "Amended Complaints"); and

WHEREAS, on December 17, 2021, Plaintiff will move for partial summary judgment against each of the Defendants on the First and Second Claims for Relief set forth in the Amended Complaints (the "Motion"); and

WHEREAS, the Parties have conferred concerning the admissibility of certain documents that Plaintiff intends to offer into evidence in support of its Motion, and counsel to the Parties pledge to continue to confer in good faith on all evidentiary issues that may arise in connection with Defendants' opposition to the Motion and Plaintiff's reply.

STIPULATION

NOW, THEREFORE, in consideration of the foregoing, the parties agree and stipulate as follows:

1. Attached as **Exhibit A** is Plaintiff's Exhibit List that identifies each document that Plaintiff intends to offer into evidence in support of the Motion (collectively, the "Exhibits").

2. The Parties agree that all Parties, and not just the Plaintiff, can use the Exhibits that are agreed to in this Stipulation with respect to admissibility.

3. The Defendants, individually and collectively, have no objection to the admission into evidence of any of the Exhibits, except Exhibits 38, 73, 78, 94-101, 105, and 192-195.

Dated: December 17, 2021

CONSENTED AND AGREED TO BY:

/s/ John A. Morris
John A. Morris *(pro hac vice)*
(NY Bar No. 266326)
PACHULSKI STANG ZIEHL & JONES LLP
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067
Telephone: (310) 277-6910
Email: jmorris@pszjlaw.com

Attorneys for Debtor Highland Capital Management, LP

/s/ Davor Rukavina
Davor Rukavina (TX Bar No. 24030781)
Julian P. Vasek (TX Bar No. 24070790)
MUNSCH HARDT KOPE & HARR, P.C.
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jvasek@munsch.com

Attorneys for Defendant NexPoint Advisors, L.P.

/s/ Michael P. Aigen
Deborah Deitsch-Perez (TX Bar No. 24036072)
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Michael.aigen@stinson.com

Attorneys for NexPoint Advisors, L.P., Highland Capital Management Services, Inc., and HCRE LLC (n/k/a NexPoint Real Estate Partners, LLC)

CERTIFICATE OF SERVICE

I certify that on December 17, 2021, a true and correct copy of the foregoing document was served via the Court's Electronic Case Filing system to the parties that are registered or otherwise entitled to receive electronic notices in this adversary proceeding.

/s/ Zachery Annable
Zachery Annable

EXHIBIT A

Highland Capital Management, L.P. Consolidated Notes Litigation

SUMMARY JUDGMENT EXHIBITS

Tab	Document	Docket No(s).	Bates
1.	Complaint against HCMFA **(Adv. Pro. No. 21-3004)**	1	D-CNL002795 - 814
2.	Amended Complaint against NPA et al. **(Adv. Pro. No. 21-3005)**	63	D-CNL002935 - 3007
3.	Amended Complaint against HCMS **(Adv. Pro. No. 21-3006)**	68	D-CNL003083 - 3165
4.	Amended Complaint against HCRE et al **(Adv. Pro. No. 21-3007)**	63	D-CNL003241 - 3323
5.	HCMFA's Original Answer **(Adv. Pro. No. 21-3004)**	6	D-CNL002868 - 2874
6.	HCMS's Answer to Plaintiff's Complaint **(Adv. Pro. No. 21-3006)**	6	N/A
7.	HCRE's Answer to Plaintiff's Complaint **(Adv. Pro. No. 21-3007)**	7	N/A
8.	HCMS's Motion For Leave to File Amended Answer and Brief In Support **(Adv. Pro. No. 21-3006)**	15	N/A
9.	HCRE's Motion For Leave to File Amended Answer and Brief In Support **(Adv. Pro. No. 21-3007)**	16	N/A
10.	HCMFA's Motion For Leave to Amend Answer **(Adv. Pro. No. 21-3004)**	32	N/A
11.	NexPoint's Motion For Leave to Amend Answer **(Adv. Pro. No. 21-3005)**	35	N/A
12.	HCMS's First Amended Answer to Plaintiff's Complaint **(Adv. Pro. No. 21-3006)**	34	N/A
13.	HCMFA's Amended Answer **(Adv. Pro. No. 21-3004)**	48	N/A
14.	NexPoint's First Amended Answer **(Adv. Pro. No. 21-3005)**	50	N/A
15.	NexPoint's Answer to Amended Complaint **(Adv. Pro. No. 21-3005)**	64	N/A
16.	HCMS's Answer to Amended Complaint **(Adv. Pro. No. 21-3006)**	73	N/A
17.	HCRE's Answer to Amended Complaint **(Adv. Pro. No. 21-3007)**	68	N/A
18.	HCMFA's Objections and Responses to Plaintiff's Requests For Admissions, Interrogatories, and Requests For Production **(Adv. Pro. No. 21-3004)**	N/A	N/A

Tab	Document	Docket No(s).	Bates
19.	NexPoint's Objections and Responses to Plaintiff's Requests For Admissions, Interrogatories, and Requests For Production **(Adv. Pro. No. 21-3005)**	N/A	N/A
20.	HCMS's Responses to Highland Capital Management, L.P.'s First Requests For Admissions **(Adv. Pro. No. 21-3006)**	N/A	D-CNL003076 - 79
21.	HCMS's Answers to Highland Capital Management, L.P.'s First Set of Interrogatories **(Adv. Pro. No. 21-3006)**	N/A	D-CNL003071 - 75
22.	HCRE's Responses to Debtor Highland Capital Management, L.P.'s Requests For Admissions **(Adv. Pro. No. 21-3007)**	N/A	N/A
23.	HCRE's Answers to Debtor Highland Capital Management, L.P.'s First Set of Interrogatories **(Adv. Pro. No. 21-3007)**	N/A	N/A
24.	James Dondero's Objections and Responses to Plaintiff's Requests For Admission, Interrogatories, and Requests For Production **(Adv. Pro. No. 21-3003)**	N/A	N/A
25.	Nancy Dondero's Objections and Responses to Plaintiff's Requests For Admission, Interrogatories, and Requests For Production **(Adv. Pro. No. 21-3003)**	N/A	N/A
26.	The Dugaboy Investment Trust's Objections and Responses to Plaintiff's Requests For Admission, Interrogatories, and Requests For Production **(Adv. Pro. No. 21-3003)**	N/A	N/A
27.	NexPoint's Objections and Responses to Plaintiff's Requests For Admission, Interrogatories, and Requests For Production **(Adv. Pro. No. 21-3005)**	N/A	N/A
28.	HCMS's Objections and Responses to Plaintiff's Requests For Admission, Interrogatories, and Requests For Production **(Adv. Pro. No. 21-3006)**	N/A	N/A
29.	HCRE's Objections and Responses to Plaintiff's Requests For Admission, Interrogatories, and Requests For Production **(Adv. Pro. No. 21-3007)**	N/A	N/A
30.	Fourth Amended and Restated Agreement of Limited Partnership of Highland Capital Management, L.P.	N/A	D-CNL002970 – 3005
31.	James Dondero's Answer to Amended Complaint **(Adv. Pro. No. 21-3003)**	83	D-CNL002045 - 59
32.	Amended Complaint against James Dondero, et. al **(Adv. Pro. No. 21-3003)**	79	D-CNL001975 - 2044
33.	June 3, 2019 Management Representation Letter **(J. Dondero 5/8/21 Depo., Ex. 16) (P. Burger 7/30/21 Depo., Ex. 1)**	N/A	D-JDNL-033411 - 21
34.	Highland's Consolidated Financial Statements, dated December 31, 2018 **(J. Dondero 5/8/21 Depo., Ex. 15) (P. Burger 7/30/21 Depo., Ex. 4)**	N/A	D-CNL-000212 - 257

Tab	Document	Docket No(s).	Bates
35.	HCMFA's Incumbency Certificate, April 2019	N/A	D-CNL003578
36.	Email string re 15(c) Follow up (10/2/21 – 10/6/21)	N/A	D-HCMFA290880 – 83
37.	NexPoint's Incumbency Certificate	N/A	D-CNL003590
38.	Schedule of HCMLP receipts from other Dondero-related notes	N/A	D-CNL003683
39.	HCMLP Operating Results (February 2018) **(Adv. Pro. No. 21-3003)**	11-13	N/A
40.	Summary of Assets and Liabilities for Non-Individuals **(Adv. Pro. No. 21-3003) (J. Dondero 5/8/21 Depo., Ex. 17)**	11-15	N/A
41.	December 2019 Monthly Operating Report **(Adv. Pro. No. 21-3003) (J. Dondero 5/8/21 Depo., Ex. 22)**	11-16	N/A
42.	September 2020 Monthly Operating Report **(Adv. Pro. No. 21-3003)**	11-18	N/A
43.	Dondero Promissory Note in the amount of $7.9m dated January 18, 2018	N/A	D-CNL000550 - 51
44.	**INTENTIONALLY OMITTED**		
45.	HCMFA's Consolidated Financial Statements and Supplemental Information (December 31, 2018) **(Adv. Pro. No. 21-3004)**	35	D-CNL002273 - 96
46.	NexPoint's 2019 Audited Financial Statements	N/A	N/A
47.	Plaintiff's Amended Notice of Rule 30(b)(6) Deposition to NexPoint Advisors, L.P. **(Adv. Pro. No. 21-3005)**	82	N/A
48.	Plaintiff's Amended Notice of Rule 30(b)(6) Deposition to HCMS **(Adv. Pro. No. 21-3006)**	87	N/A
49.	Plaintiff's Amended Notice of Rule 30(b)(6) Deposition to HCRE **(Adv. Pro. No. 21-3007)**	82	N/A
50.	Jim Dondero 2017 PY Comp Statement	N/A	D-CNL003587
51.	Jim Dondero 2018 PY Comp Statement	N/A	D-CNL003588
52.	Jim Dondero 2019 PY Comp Statement	N/A	D-CNL003589
53.	5/2/19 e-mail and attachment (spreadsheet)	N/A	D-CNL003768-70
54.	5/2/19 e-mail and attachment (Promissory Note)	N/A	D-CNL003777-79
55.	List of Wire Transfers (5/2/19)	N/A	D-CNL003772
56.	5/3/19 e-mail	N/A	D-CNL003763

Tab	Document	Docket No(s).	Bates
57.	5/3/19 Promissory Note	N/A	D-CNL003764-65
58.	13 Week Cash Flows 12.14.20	N/A	D-CNL003810
59.	Supplemental 15(c) Information Request 10.23.20	N/A	HCMFAS 25-31
60.	7.31.20 HCMLP Requests	N/A	D-CNL003795-98
61.	**INTENTIONALLY OMITTED**		
62.	**INTENTIONALLY OMITTED**		
63.	HCMLP Audited Financial Statements for 2008	N/A	D-CNL000001-56
64.	HCMLP Audited Financial Statements for 2009	N/A	D-CNL000258-304
65.	HCMLP Audited Financial Statements for 2010	N/A	D-CNL000305-351
66.	HCMLP Audited Financial Statements for 2011	N/A	D-CNL000352 - 400
67.	James Dondero 2019 Form W-2 (NexPoint Residential Trust Inc.) **(REDACTED)**	N/A	EXPERT 0000001 - 02
67-2.	James Dondero 2017 Form W-2 (NexPoint Residential Trust Inc.) **(REDACTED)**	N/A	EXPERT 0000937 - 39
67-3.	James Dondero 2013 Form 1040 (pdf page 279 of 335) **(REDACTED)**	N/A	EXPERT 0000031; 308
67-4.	James Dondero 2014 Form 1040 (pdf page 235 of 290) **(REDACTED)**	N/A	EXPERT 0000390; 623
67-5.	James Dondero 2015 Form 1040 (pdf page 200 of 254) **(REDACTED)**	N/A	EXPERT 0001325; 1523
67-6.	James Dondero 2016 Form 1040 (pdf page 182 of 235) **(REDACTED)**	N/A	EXPERT 0001999; 2179
67-7.	James Dondero 2017 Form 1040 (pdf page 170 of 225) **(REDACTED)**	N/A	EXPERT 0000704; 872
67-8.	James Dondero 2018 Form 1040 (pdf page 248 of 300) **(REDACTED)**	N/A	EXPERT 0001581; 1828
67-9.	James Dondero 2019 Form 1040 (pdf page 242 of 301) **(REDACTED)**	N/A	EXPERT 0001023; 1264

Tab	Document	Docket No(s).	Bates
68.	Jim Dondero 2016 PY Comp Statement	N/A	D-CNL003585
69.	HCMLP Audited Financial Statements for 2014	N/A	D-CNL000109-157
70.	HCMLP Audited Financial Statements for 2015	N/A	D-CNL000158-211
71.	HCMLP Audited Financial Statements for 2016	N/A	D-CNL000452-501
72.	Highland's Audited Financial Statements for 2017 **(J. Dondero 5/8/21 Depo., Ex. 13) (P. Burger 7/30/21 Depo., Ex. 2)**	N/A	D-CNL000502-549
73.	Schedule of HCMLP receipts from Dondero notes	N/A	D-CNL003591
74.	Dondero Promissory Note in the amount of $3.825m dated February 2, 2020 **(J. Dondero 5/8/21 Depo., Ex. 1)**	N/A	N/A
75.	HCMLP Operating Results (February 2018) **(J. Dondero 5/8/21 Depo., Ex. 2)**	N/A	N/A
76.	Dondero Promissory Note in the amount of $2.5m dated August 1, 2018 **(Adv. Pro. No. 21-3003) (J. Dondero 5/8/21 Depo., Ex. 3)**	1-2	N/A
77.	Dondero Promissory Note in the amount of $2.5m dated August 13, 2018 **(J. Dondero 5/8/21 Depo., Ex. 4)**	N/A	N/A
78.	HCMLP Operating Results (August 2018) **(J. Dondero 5/8/21 Depo., Ex. 5)**	N/A	N/A
79.	December 3, 2020 Demand Letter **(J. Dondero 5/8/21 Depo., Ex. 6)**	N/A	N/A
80.	James Dondero's Original Answer **(Adv. Pro. No. 21-3003) (J. Dondero 5/8/21 Depo., Ex. 7)**	6	N/A
81.	James Dondero's Objections and Responses to Highland Capital Management, L.P.'s First Request For Admissions **(Adv. Pro. No. 21-3003) (J. Dondero 5/8/21 Depo., Ex. 8)**	N/A	N/A
82.	James Dondero's Objections and Responses to Highland Capital Management, L.P.'s First Set of Interrogatories **(Adv. Pro. No. 21-3003) (J. Dondero 5/8/21 Depo., Ex. 9)**	N/A	N/A
83.	James Dondero's Amended Answer **(Adv. Pro. No. 21-3003) (J. Dondero 5/8/21 Depo., Ex. 10)**	16	N/A
84.	James Dondero's Objections and Responses to Highland Capital Management, L.P.'s Second Request For Admissions **(Adv. Pro. No. 21-3003) (J. Dondero 5/8/21 Depo., Ex. 11)**	N/A	N/A
85.	James Dondero's Objections and Responses to Highland Capital Management, L.P.'s Second Set of Interrogatories **(Adv. Pro. No. 21-3003) (J. Dondero 5/8/21 Depo., Ex. 12)**	N/A	N/A
86.	May 18, 2018 Management Representation Letter **(J. Dondero 5/8/21 Depo., Ex. 14)**	N/A	D-JDNL-033400-10
87.	Statement of Financial Affairs For Nonindividuals Filing Bankruptcy **(Case No. 19-34054) (J. Dondero 5/8/21 Depo., Ex. 19)**	248	N/A

Tab	Document	Docket No(s).	Bates
88.	October 2019 Monthly Operating Report **(Case No. 19-34054) (J. Dondero 5/8/21 Depo., Ex. 20)**	405	N/A
89.	November 2019 Monthly Operating Report **(Case No. 19-34054) (J. Dondero 5/8/21 Depo., Ex. 21)**	289	N/A
90.	Exhibit C, Liquidation Analysis/Financial Projections **(Case No. 19-34054) (J. Dondero 5/8/21 Depo., Ex. 23)**	1473	N/A
91.	Highland Capital Management LP Financial Projections (1/28/21) **(J. Dondero 5/8/21 Depo., Ex. 24)**	N/A	N/A
92.	2017 Workpapers **(P. Burger 7/30/21 Depo., Ex. 3)**	N/A	N/A
93.	2018 Workpapers **(P. Burger 7/30/21 Depo., Ex. 5)**	N/A	N/A
94.	Peet Burger 7/30/21 Deposition Transcript	N/A	N/A
95.	James Dondero 1/5/21 Deposition Transcript	N/A	N/A
96.	James Dondero 5/28/21 Deposition Transcript	N/A	N/A
97.	James Dondero 6/1/21 Deposition Transcript	N/A	N/A
98.	James Dondero 10/29/21 Deposition Transcript	N/A	N/A
99.	James Dondero 11/4/21 Deposition Transcript	N/A	N/A
100.	Nancy Dondero 10/18/21 Deposition Transcript	N/A	N/A
101.	Alan Johnson (Expert)11_02_21 Deposition Transcript	N/A	N/A
102.	**INTENTIONALLY OMITTED**		
103.	**INTENTIONALLY OMITTED**		
104.	**INTENTIONALLY OMITTED**		
105.	Frank Waterhouse 10/19/21 Deposition Transcript	N/A	N/A
106.	Payment from James Dondero dated 12/08/17	N/A	D-CNL003542-45
107.	Payment from James Dondero dated 12/18/17	N/A	D-CNL003546-55
108.	Payment from James Dondero dated 02/14/19	N/A	D-CNL003490-500
109.	Payment from James Dondero dated 03/13/2019	N/A	D-CNL003503-12
110.	Payments from James Dondero dated 05/02/19, 05/03/19, 05/07/19, 05/23/19	N/A	D-CNL003515-27
111.	Payment from James Dondero dated 06/17/19	N/A	D-CNL003528-32

Tab	Document	Docket No(s).	Bates
112.	Payment from James Dondero dated 12/23/19	N/A	D-CNL003556-62
113.	Payment from HCMFA dated 05/29/19	N/A	D-CNL003617-29
114.	Payment from HCMFA dated 09/05/19	N/A	D-CNL003663-65
115.	Payment from HCMFA dated 10/03/19	N/A	D-CNL003666-75
116.	Payment from HCRE dated 09/30/19	N/A	D-CNL003655-62
117.	Payment from NPA dated 04/16/2019	N/A	D-CNL003608-16
118.	Payment from NPA dated 06/19/19	N/A	D-CNL003639-43
119.	Payment from NPA dated 07/09/19	N/A	D-CNL003644-51
120.	Payments from HCMSI and NPA dated 03/05/19 and 03/29/19	N/A	D-CNL003598-607
121.	Payments from HCMSI and NPA dated 08/09/19, 08/13/19, 08/21/19	N/A	D-CNL003652-54
122.	Payments from HCRE, HCMSI, NPA dated 12/09/19, 12/30/19	N/A	D-CNL003676-82
123.	Payments from HCMFA and NPA dated 06/04/19	N/A	D-CNL003630-38
124.	Payment from NPA, HCMSI, HCRE dated 01/14/21 and 01/21/21	N/A	D-CNL003593-97
125.	Payment to James Dondero dated 02/02/18	N/A	D-JDNL-033060-74
126.	Payments to James Dondero dated 08/01/18 and 08/13/18	N/A	D-JDNL-033057-59
127.	Payment to HCMSI dated 05/29/15	N/A	HCMS000094-96
128.	Payment to HCMSI dated 10/01/15, 10/02/15, and 10/30/15	N/A	HCMS000156-62
129.	Payment to HCMSI dated 10/27/15	N/A	HCMS000166-68
130.	Payment to HCMSI dated 10/28/15	N/A	HCMS000163-65
131.	Payment to HCMSI dated 11/23/15	N/A	HCMS000172-76
132.	Payment to HCMSI dated 11/24/15	N/A	HCMS000169-71
133.	Payment to HCMSI dated 02/10/16	N/A	HCMS000072-77
134.	Payment to HCMSI dated 02/11/16	N/A	HCMS000056-71
135.	Payment to HCMSI dated 04/05/16	N/A	HCMS000082-93

Tab	Document	Docket No(s).	Bates
136.	Payment to HCMSI dated 05/04/16	N/A	HCMS000097-99
137.	Payment to HCMSI dated 07/01/16	N/A	HCMS000122-125
138.	Payment to HCMSI dated 08/05/16	N/A	HCMS000126-39
139.	Payment to HCMSI dated 08/19/16	N/A	HCMS000140-43
140.	Payment to HCMSI dated 09/22/16	N/A	HCMS000144-55
141.	Payment to HCMSI dated 12/12/16	N/A	HCMS000177-80
142.	Payment to HCMSI dated 03/31/17	N/A	HCMS000078-81
143.	Payment to HCMSI dated 03/26/18	N/A	HCMS000181-83
144.	Payment to HCMSI dated 06/25/18	N/A	HCMS000184-86
145.	Payment to HCMSI dated 05/29/19	N/A	HCMS000100-12
146.	Payment to HCMSI dated 06/26/19	N/A	HCMS000113-21
147.	Payments to HCMFA dated 05/02/19 and 05/03/19	N/A	N/A
148.	Payment to HCRE dated 11/27/13	N/A	D-HCRE-000114-16
149.	Payment to HCRE dated 01/09/14	N/A	D-HCRE-000100-06
150.	Payment to HCRE dated 01/30/14	N/A	D-HCRE-000060-62
151.	Payment to HCRE dated 03/28/14	N/A	D-HCRE-000107-13
152.	Payment to HCRE dated 01/26/15	N/A	D-HCRE-000063-65
153.	Payment to HCRE dated 04/02/15	N/A	D-HCRE-000066-71
154.	Payment to HCRE dated 10/12/17	N/A	D-HCRE-000080-90
155.	Payment to HCRE dated 10/15/18	N/A	D-HCRE-000091-99
156.	Payment to HCRE dated 09/25/19	N/A	D-HCRE-000072-79
157.	Payment to NPA dated 08/21/14	N/A	D-NNL-029156-59
158.	Payment to NPA dated 10/01/14	N/A	D-NNL-029160-66
159.	Payment to NPA dated 11/14/14	N/A	D-NNL-029167-69

Tab	Document	Docket No(s).	Bates
160.	Payment to NPA dated 01/29/15	N/A	D-NNL-029152-55
161.	Payment to NPA dated 07/22/15	N/A	D-NNL-029171-85
162.	Robert Half Legal Invoices dated 05/06/21 and 5/20/21	N/A	D-CNL003821-23
163.	Robert Half Legal Invoice dated 06/17/21	N/A	D-CNL003824-25
164.	Robert Half Legal Invoice dated 07/01/21	N/A	D-CNL003826-27
165.	Robert Half Legal Invoice dated 07/15/21	N/A	D-CNL003828-29
166.	Robert Half Legal Invoice dated 08/19/21	N/A	D-CNL003830-31
167.	Robert Half Legal Invoice dated 09/16/21	N/A	D-CNL003832-33
168.	Robert Half Legal Invoices dated 09/02/21 and 09/30/21	N/A	D-CNL003834-36
169.	Highland December 2020 Billing Detail	N/A	D-CNL000979-89
170.	Highland January 2021 Billing Detail	N/A	D-CNL000995-1016
171.	Highland February 2021 Billing Detail	N/A	D-CNL000990-94
172.	Highland March 2021 Billing Detail	N/A	D-CNL001080-1105
173.	Highland April 2021 Billing Detail	N/A	D-CNL000923-58
174.	Highland May 2021 Billing Detail	N/A	D-CNL001106-53
175.	Highland June 2021 Billing Detail	N/A	D-CNL001042-79
176.	Highland July 2021 Billing Detail	N/A	D-CNL001017-41
177.	Highland August 2021 Billing Detail	N/A	D-CNL001154-57
178.	Highland Supplemental August 2021 Billing Detail	N/A	D-CNL000959-78
179.	Highland September 2021 Billing Detail	N/A	D-CNL003812-20
180.	Highland October 2021 Billing Detail	N/A	D-CNL003837-66
181.	Declaration of Dennis C. Sauter, Jr. **(Adv. Pro. No. 21-3004)**	32-1	N/A
182.	GAF Resolution Memo dated May 28, 2019	N/A	N/A
183.	**INTENTIONALLY OMITTED**		

Tab	Document	Docket No(s).	Bates
184.	Defendant James Dondero's Rule 26 Initial Disclosures	N/A	N/A
185.	Plaintiff's Third Amended Notice of Rule 30(b)(6) Deposition to HCMFA **(Adv. Pro. No. 21-3004)**	84	N/A
186.	**INTENTIONALLY OMITTED**		
187.	**INTENTIONALLY OMITTED**		
188.	Email from David Klos to the Debtor's Corporate Accounting group, with a copy to Melissa Schroth, dated February 2, 2018 **(Adv. Pro. No. 21-3003)**	11-1	N/A
189.	Email dated February 2, 2018 confirming a wire transfer in the amount of $3,825,000 from the Debtor to James Dondero **(Adv. Pro. No. 21-3003)**	11-2	N/A
190.	(a) Email from Blair Hillis to David Klos and the Debtor's Corporate Accounting group, with a copy to Melissa Schroth, dated August 1, 2018 and (b) an email from David Klos to the Debtor's Corporate Accounting group, with a copy to Melissa Schroth, dated August 1, 2018 **(Adv. Pro. No. 21-3003)**	11-4	N/A
191.	Email chain re Objections to Rule 30(b)(6) Notices (October 7 – 15, 2021)	N/A	N/A
192.	Dustin Norris 12/1/21 Deposition Transcript	N/A	N/A
193.	Dennis C. Sauter 11/17/21 Deposition Transcript	N/A	N/A
194.	Kristin Hendrix 10/27/21 Deposition Transcript	N/A	N/A
195.	David Klos 10/27/21 Deposition Transcript	N/A	N/A
196.	Debtor's back-up for the December Monthly Operating Report, titled "December 2019 Due From Affiliates" **(Adv. Pro. No. 21-3003)**	11-17	N/A
197.	Debtor's back-up for the September Monthly Operating Report, titled "September 2020 Due From Affiliates" **(Adv. Pro. No. 21-3003)**	11-19	N/A
198.	Debtor's back-up for the January 2021 Monthly Operating Report, titled "January 2021 Due From Affiliates" **(Adv. Pro. No. 21-3003)**	11-21	N/A
199.	Debtor's January 2021 Affiliates Loan Receivables Summary **(Adv. Pro. No. 21-3003)**	11-22	N/A
200.	Amortization Schedule **(K. Hendrix 10/27/21 Depo., Ex. 14)**	N/A	D-NNL-029141-51
201.	Debtor's Motion to Cause Distributions to Certain "Related Entities" **(Case No. 19-34054)**	474	N/A
202.	Committee's Objection to Debtor's Motion to Cause Distributions to Certain "Related Entities" **(Case No. 19-34054)**	487	N/A

Tab	Document	Docket No(s).	Bates
203.	Joinder of Acis Capital Management, L.P. and Acis Capital Management GP, LLC to Committee's Objection to Debtor's Motion to Cause Distributions to Certain "Related Entities" **(Case No. 19-34054)**	489	N/A
204.	Debtor's Reply in Support of Motion to Cause Distributions to Certain "Related Entities" **(Case No. 19-34054)**	499	N/A
205.	NexPoint's Amended and Restated Shared Services Agreement as of January 1, 2018 **(Adv. Pro. No. 21-3005)**	86-2	N/A
206.	Transcript of February 2, 2021 Hearing	N/A	N/A
207.	Transcript of February 3, 2021 Hearing	N/A	N/A

Appendix Part 7 of 8

PACHULSKI STANG ZIEHL & JONES
LAW OFFICES
LIMITED LIABILITY PARTNERSHIP

IN RE: HIGHLAND CAPITAL MANAGEMENT, L.P. CONSOLIDATED NOTES LITIGATION

SUMMARY JUDGMENT EXHIBITS

EXHIBIT 210

N. Dondero - Dugaboy

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	)	
	)	
HIGHLAND CAPITAL MANAGEMENT, LP,	)	Case No. 19-34054-SGJ-11
	)	Chapter 11
Debtor,	)	
----------	)	
HIGHLAND CAPITAL MANAGEMENT, LP,	)	
	)	Advisory Proceeding No. 21-03082-sgj
Plaintiff,	)	
vs.	)	
	)	
HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, LP.	)	
	)	
	)	
Defendants.	)	

REMOTE DEPOSITION OF
NANCY DONDERO
Individually and as
Corporate Representative of DUGABOY
Dallas, Texas
Friday, 29th day of April, 2022

Reported by:

Daniel J. Skur, Notary Public and CSR

Job No. 209980

N. Dondero - Dugaboy

29th day of April, 2022

9:33 a.m. - 10:14 a.m.

Remote Deposition of NANCY DONDERO, Individually and as Corporate Representative of Dugaboy, located in at the offices of Stinson LLP, 3102 Oak Lawn Avenue, Suite 777, Dallas, Texas, before Daniel J. Skur, Notary Public and Certified Shorthand Reporter in and for the State of Texas located in Waxahachie, Texas.

N. Dondero - Dugaboy

A P P E A R A N C E S:

Pachulski Stang Ziehl & Jones
Attorney(s) for Debtor
780 Third Avenue
New York, New York 10017
BY: Hayley Winograd, Esq.
John Morris, Esq.

Stinson
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Michael Aigen, Esq.

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2200 Ross Avenue
Dallas, Texas 75201
By: Daniel Elms, Esq.

Heller, Draper, Hayden, Patrick, & Horn
Attorney(s) for Dugaboy
650 Poydras Street
New Orleans, Louisiana 70130
By: Douglas Draper, Esq.

ALSO PRESENT:

La Asia Canty, Paralegal

N. Dondero - Dugaboy

IT IS HEREBY STIPULATED AND AGREED by and between the attorneys for the respective parties herein, that filing and sealing be and the same are hereby waived.

IT IS FURTHER STIPULATED AND AGREED that all objections, except as to the form of the question, shall be reserved to the time of the trial.

IT IS FURTHER STIPULATED AND AGREED that the within deposition may be sworn to and signed before any officer authorized to administer an oath, with the same force and effect as if signed and sworn to before the Court.

- oOo -

N. Dondero - Dugaboy

P R O C E E D I N G S

NANCY DONDERO,

having been duly cautioned and sworn to tell the truth, the whole truth and nothing but the truth, testified as follows:

(9:33 a.m.)

EXAMINATION

BY MS. WINOGRAD:

Q. Good morning, Ms. Dondero. My name is Hayley Winograd. I'm an attorney at Pachulski Stang Ziehl & Jones representing Highland Capital Management, L.P., as the reorganized debtor; and I'll be taking your deposition today.

Do you understand that?

A. I do. Good morning, Hayley.

Q. Do you understand that you're being deposed today in both your individual capacity and also in your capacity as what's called a 30(b)(6) witness on behalf of the Dugaboy Investment Trust?

A. I do.

Q. Can we refer to the Dugaboy Investment Trust as "Dugaboy"?

N. Dondero - Dugaboy

A. Yes.

Q. And can we refer to Highland Capital Management, L.P., as "Highland"?

A. Yes.

Q. If I refer to "your brother" or "Mr. Dondero," do you understand that I'm referring to James Dondero?

A. Yes.

Q. We'll be putting up documents on the screen from time to time, and if you need to see any other portion of this -- of the document that is not being shown at any given moment, just -- you can just let us know; and if you need me to repeat any questions, also, please, let me know; and if you don't understand a question, please let me know. And, also, if you need to take a break to use the restroom, you can let me know; but if we do take a break, it just can't be in the middle of a question.

MS. WINOGRAD: I want to start with a stipulation we entered into with -- with Mr. Aigen.

Mr. Aigen, we entered into our email

N. Dondero - Dugaboy

exchange from April 26th to April 28th of 2022, in which we agreed that the deposition transcripts for any witness that was deposed in connection with the main notes litigation can be used in this adversary proceeding.

Can you please confirm this agreement for the record?

MR. AIGEN: Confirmed.

BY MS. WINOGRAD:

Q. And, Ms. Dondero, just to make sure you understand, as I'm sure you remember, my colleague, Mr. Morris, deposed you on October 18th of 2021 in connection with the main notes litigation; and so I will not be asking you about a number of topics that he covered during that deposition relating to the other notes, subject to that litigation.

Do you understand that?

A. I do.

Q. Okay.

MS. WINOGRAD: I'm going to ask my colleague, Ms. La Asia Canty, to please show Exhibit 1.

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(Exhibit 1 introduced.)

MS. WINOGRAD: Okay. If we could just scroll down a little bit.

BY MS. WINOGRAD:

Q. Have you seen this document before?

A. I think so.

Q. Okay. This is the subpoena that was served on the Dugaboy Investment Trust, right?

A. Yes.

Q. Okay. And you understand that you've been designated as the corporate representative of Dugaboy, right?

A. Correct.

Q. Okay. You understand that your answers of Dugaboy's corporate representative will be binding on Dugaboy?

A. Yeah.

MS. WINOGRAD: Okay. La Asia, if we can please scroll to the topics.

BY MS. WINOGRAD:

Q. Can you confirm that you're prepared to testify on these topics?

MS. DEITSCH-PEREZ: Obviously subject to the objections that we filed.

N. Dondero - Dugaboy

A. Yes.

BY MS. WINOGRAD:

Q. Okay.

MS. WINOGRAD: Okay. We can take that down for now.

BY MS. WINOGRAD:

Q. Did you do anything to prepare for today's deposition?

A. I met with my lawyers yesterday.

Q. Okay. What -- did you review any documents?

A. I did.

Q. What documents did you review?

A. The trust agreement, the partnership agreement, some of the documents that went back and forth regarding the subpoenas and the complaint.

Q. Did you speak with anybody other than your lawyers?

A. I did not.

Q. Since November 9th of 2021, have you communicated with your brother, Mr. Dondero, at any time about the promissory notes that are the subject of this litigation?

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A. I have not.

Q. Okay. And since November 9th of 2021, have you communicated with your brother at any time about the defenses HCMFA is asserting in this litigation?

A. I have not.

Q. Okay. And I just want to clarify that when I say "HCMFA," I'm referring to Highland Capital Management Fund Advisors.

A. Okay.

Q. Have you reviewed the transcript of your earlier deposition --

A. I have.

Q. -- from October of 2021?

Are you aware of anything in that transcript that should be corrected or modified to make it more accurate?

A. There was -- there -- I don't know the exact page. It's towards the end where Mr. Morris asked me a question, and I thought I made it pretty clear throughout the deposition that the questions were only pertaining to those 13 notes and those three agreements, and I thought it was a little ambiguous. I'm not

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exactly sure on the page. I can probably find it for you. But that's the only thing that comes to mind.

Q. Okay. So just to make sure I understand, so you wanted to just clarify that there was -- there was a portion in the transcript where you wanted to make sure it was clear that you were only talking about the 13 notes at issue in that litigation?

A. Correct. There was just one question that seemed a little vague from Mr. Morris, that it could have seemed that it was broader than I thought it was, where I thought it was just pertaining to the 13 and the three agreements.

Q. Okay. So other than that, can you think of anything that you forgot to testify about during that deposition?

MS. DEITSCH-PEREZ: Object to the form.

THE WITNESS: Do I still answer?

MS. WINOGRAD: You can --

A. No, Hayley, not -- like I said, that deposition, to me, was just the 13 and the

N. Dondero - Dugaboy

three agreements; so to answer your question, no.

BY MS. WINOGRAD:

Q. Okay. And are you familiar with Highland Capital Management Fund Advisors, L.P., which I referred to as HCMFA a couple minutes ago?

A. (Witness nods head.)

Q. Okay.

A. Yes.

Q. So I'm going to refer to them as HCMFA moving forward.

A. Okay.

Q. Is it your understanding that HCMFA was an affiliate of Highland?

A. Yes.

Q. What's the basis of that understanding?

A. Because it was under Highland's umbrella. Jim was the beneficiary, or owner.

Q. Is it your understanding that Mr. Dondero owns and controls HCMFA?

MS. DEITSCH-PEREZ: Object to the form.

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You can still answer.

THE WITNESS: Oh.

A. That was my understanding.

BY MS. WINOGRAD:

Q. And what is the basis of that understanding?

A. I believe Jim told me.

Q. Okay. Are you aware that Highland filed an action against HCMFA on November 9th of 2021 to collect on two promissory notes?

A. I am.

MS. WINOGRAD: La Asia, can you please pull up Exhibit 3?

(Exhibit 3 introduced.)

BY MS. WINOGRAD:

Q. Okay. Do you see this promissory note dated February 26th of 2014?

A. I do.

Q. Have you seen it before?

A. Yes.

Q. When did you see it for the first time?

A. Just recently.

Q. Okay.

N. Dondero - Dugaboy

MS. WINOGRAD: Can we scroll to the second page, please?

BY MS. WINOGRAD:

Q. Do you see that this promissory note is signed by your brother?

A. Yes.

Q. And can we refer to this as "the first HCMFA note"?

A. Certainly.

MS. WINOGRAD: La Asia, can we now pull up Exhibit 4?

(Exhibit 4 introduced.)

BY MS. WINOGRAD:

Q. Okay. And do you see -- do you see this promissory note dated February 26th of 2016?

A. I do.

Q. And have you seen this before?

A. I have.

Q. When did you see this for the first time?

A. Recently.

Q. Okay. Within the last couple months?

1 N. Dondero - Dugaboy
2 A. I'm -- certainly, sure.
3 Q. Okay.
4 MS. WINOGRAD: Can we go to the
5 second page, please?
6 BY MS. WINOGRAD:
7 Q. Do you see this is also signed by
8 your brother?
9 A. Yes.
10 Q. Okay. Can we refer to this as "the
11 second HCMFA note"?
12 A. Certainly.
13 Q. And can we refer to the first HCMFA
14 note and the second HCMFA note collectively as
15 "the notes"?
16 A. Certainly.
17 Q. Okay. And are you aware that these
18 notes are the subject of the action Highland
19 commenced against HCMFA in November of 2021?
20 A. I am.
21 MS. WINOGRAD: La Asia, can we
22 please pull up Exhibit 5 now?
23 (Exhibit 5 introduced.)
24 BY MS. WINOGRAD:
25 Q. Okay. Have you seen this document

N. Dondero - Dugaboy

before?

A. Yes.

Q. When did you first see it?

A. Just recently.

Q. Are you aware that this is the original answer filed by HCMFA on December 10th of 2021?

MS. DEITSCH-PEREZ: Object to the form.

A. Yes.

BY MS. WINOGRAD:

Q. Okay.

A. If it's dated, correct?

Q. Uh-huh.

A. Okay.

MS. WINOGRAD: Can we scroll to paragraph 41?

Okay. Perfect.

BY MS. WINOGRAD:

Q. It says, among other things, here: Prior to -- "prior to the demands for payment, Plaintiff agreed that it would not collect the Notes upon fulfillment of conditions subsequent. Specifically, sometime between

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December of the year in which each Note was made and February of the following year, Nancy Dondero, as representative for a majority of the Class A shareholders of Plaintiff agreed that Plaintiff would forgive the Notes if certain portfolio companies were sold for greater than cost or on a basis outside of Mr. Dondero's control."

Have I read that correctly?

A. You read it correctly. It's just not stated correctly.

Q. Okay. How -- how should it be correctly stated?

A. Well, I wasn't the trustee in 2014, so instead of "Nancy," it really should be "Trustee," correct? I'm not a lawyer, but --

Q. Okay. So it's your testimony that you were not the trustee in -- at the time that one of these notes...

A. That's correct. I didn't become trustee until October of '15.

Q. Okay. So does the statement in paragraph 41 apply to the two notes that are the subject of the action that Highland

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commenced against HCMFA?

MS. DEITSCH-PEREZ: Object to the form.

A. I'm assuming that was the intent, Hayley. I just have a problem with my name being there for both of them. I just think that it should be, I guess, "slash Trustee" for the trustee for '14, but I'm assuming that's legally correct. I don't know.

BY MS. WINOGRAD:

Q. Okay. So is it your testimony, then, that you entered into -- let me phrase it this way: How would you -- how would you restate the statement of paragraph 41 that I just read?

I just want to make sure I'm clear.

A. It's a little out of my scope with the legal part of it, but I guess what I'd be a little more comfortable with is me as the trustee for the '16 note and trustee for whoever was trustee for the note in '14, just to separate that out, I guess, if that could be possible, Hayley.

Q. Okay. So for the 2016 note, then,

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when you're -- when you're saying you were the trustee, I'm going to refer to that -- to the agreement that applies to the 2016 note as the agreement moving forward in this deposition.

A. Okay.

Q. Let's see.

You -- do you remember --

MS. DEITSCH-PEREZ: Can I -- Hayley, can I just ask a question? Are you asking her -- and I should have done this at the beginning, and I apologize.

Are you asking her questions throughout the deposition as both Nancy Dondero and as the Dugaboy representative, or are we breaking it -- can she assume when you say "you," you're asking -- you're asking both as Nancy and as the 30(b)(6) representative of Dugaboy? That might be causing a little of the confusion.

MS. WINOGRAD: When I say "you," I just mean Ms. Dondero in her individual capacity. When I include Dugaboy, I'm going to be referring to both Nancy Dondero in her individual capacity and Dugaboy.

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MS. DEITSCH-PEREZ: Okay. Thank you.

BY MS. WINOGRAD:

Q. Do you remember when you testified regarding the terms of the agreements covering the 13 notes subject to the main notes litigations back in October of 2021?

A. Do I remember the deposition?

Q. Do you remember when you testified regarding the terms of the agreements covering those 13 notes?

A. Yeah.

Q. Okay. Is there any term or provision of the agreement covering the 20 -- the February 2016 note at issue in this lawsuit that differs from the agreements covering the 13 notes you previously testified about?

A. No.

Q. Okay. So is it fair to say, then, that the terms and the provisions of the agreement covering the February 2016 note is the same as the terms covering the agreements for the 13 notes in the main notes litigation?

A. That's fair, Hayley, yes.

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Q. Okay. So, then, going back to paragraph 41 of the answer.

MS. WINOGRAD: La Asia, could we go back to paragraph 41, please?

BY MS. WINOGRAD:

Q. So, then, it's fair to say that you and your brother, as it pertains to the agreement covering the February 2016 note, you didn't -- you didn't agree to anything not covered in this paragraph, correct?

A. I'm sorry, Hayley. Could you repeat the question?

Q. Sure. So as it pertains to the February of 2016 note subject to this litigation, you and your brother didn't agree to anything not covered in this paragraph; is that correct?

MS. DEITSCH-PEREZ: Object to the form.

A. Yes. I just wanted to reread it, Hayley.

Yes.

BY MS. WINOGRAD:

Q. Okay. Are the -- are the portfolio

N. Dondero - Dugaboy

companies referenced in this paragraph the same portfolio companies subject to the agreement covering the notes in the main notes litigation?

A. Yes, Trussway, Cornerstone, MGM. The same -- the same three, yes.

Q. Okay. And moving forward, can we refer to these three portfolio companies as "the portfolio companies"?

A. Certainly.

Q. Was there anything substantively different about the conversations you had with your brother regarding the agreement covering the February of 2016 note that was different than the conversations you had with your brother as it pertains to the other agreement?

A. We're going back a long time, Hayley, obviously, so the memory is a little fuzzy. The only difference that I would imagine, that I think was he would have referenced the note from '14 in the '16 conversation.

Q. What do you mean by "he would have referenced" that note in the conversation?

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A. I -- he -- when we had a conversation in '16, he would have brought up the note in '14 that was also forgiven.

Q. When he brought it up, was he referring to the '14 note that was subject to a previous agreement?

A. Yes.

Q. Okay. And why did he bring that up?

MS. DEITSCH-PEREZ: Object to the form.

A. The 2016 was my first involvement as trustee, so it would have come up, I'm sure, and it did in conversation that Jim had forgiven a note in '14.

BY MS. WINOGRAD:

Q. That Jim had forgiven a note or that Highland had forgiven the note?

A. Well, I believe he was trustee at the time, so he would have caused Dugaboy to cause Highland to forgive the note.

Q. And when you say "Jim," are we referring to Mr. Dondero, your brother?

A. Correct.

Q. Okay -- so -- okay. And so do you

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remember what he told you about that?

A. Again, Hayley, it's going back a while. I don't remember details. I'm sorry.

Q. That's fine. So the agreement covering the February of 2016 note -- let me rephrase that.

Did you push back on any terms of the agreement covering the February of 2016 note?

A. I don't remember any pushback, Hayley.

Q. Okay. So the agreement covering the 2016 note was not subject to negotiation, correct?

MS. DEITSCH-PEREZ: Object to the form.

A. Not that I recall.

BY MS. WINOGRAD:

Q. Can you think of anything relating to the agreement covering the February of 2016 note that is different in any way from the agreement covering the other 13 notes in the main notes litigation?

A. No, not at this time.

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Q. Okay.

MS. DEITSCH-PEREZ: La Asia, we can take that down for now, thank you.

BY MS. WINOGRAD:

Q. Okay. Prior to January 1st of 2021, did you ever disclose the existence of the agreement covering the February of 2016 note to anyone in the world other than your brother?

A. I'm sorry, Hayley. Can you say it again, please?

Q. Sure. Prior to January 1st of 2021, did you ever disclose the existence of the agreement covering the note from February of 2016 to anyone in the world other than your brother?

A. No, I did not.

Q. Prior to January 1st of 2021, did you ever disclose the terms of the agreement covering the February of 2016 note to anyone in the world other than your brother?

A. Not that I recall.

Q. Are the terms of the agreement covering the February of 2016 note memorialized anywhere in writing?

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MS. DEITSCH-PEREZ: Object to the form.

A. Not that I'm aware of.

BY MS. WINOGRAD:

Q. Is the existence of the agreement memorialized anywhere in writing?

MS. DEITSCH-PEREZ: Object to the form.

A. Not that I know of, Hayley.

BY MS. WINOGRAD:

Q. Do you know if the terms of the agreement were ever written down anywhere?

A. They weren't by me.

Q. Have you ever seen the terms of the agreement written down anywhere?

A. I'm sorry, did I ever what?

Q. Have you ever seen the terms of the agreement written down anywhere?

MS. DEITSCH-PEREZ: Form.

A. I have not.

BY MS. WINOGRAD:

Q. Okay. And I just want to clarify that when I'm referencing "the agreement," I am referring to the agreement covering the

N. Dondero - Dugaboy

February of 2016 note, unless I say otherwise.

A. Okay.

Q. Did anyone ever tell you that the terms of the agreement was ever written done anywhere?

A. Not that I recall.

Q. Did you ever ask anyone if the terms of the agreement were ever written down anywhere?

A. I don't think so.

Q. Did it ever occur to you to write the terms of the agreement down anywhere?

A. No.

Q. Did you ever discuss with your brother, Mr. Dondero, whether you should write down the terms of the agreement anywhere?

A. Not that I remember, huh-uh.

Q. Was anyone present at the time you entered into the agreement with your brother?

A. I don't think so, Hayley.

Q. Can you think of anyone in the world other than you and your brother who knows about the existence of the agreement?

MS. DEITSCH-PEREZ: Object to the

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form.

A. I'm not aware of anyone that he would have told, Hayley.

BY MS. WINOGRAD:

Q. Before entering into the agreement, did you or Dugaboy know the value of Highland's interest in each portfolio company?

A. No.

Q. Did you or Dugaboy ever ask anyone for this information before entering into the agreement?

A. No.

Q. Before entering into the agreement, did you or Dugaboy know the cost that Highland paid to acquire its interest in each of the portfolio companies?

A. No.

Q. Did you or Dugaboy ever ask anybody for this information?

A. No.

Q. So at the time you entered into the agreement -- the agreement, neither you nor Dugaboy knew whether Highland's cost to acquire its interest in each of the portfolio companies

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exceeded the value of Highland's interest in the portfolio companies?

A. That's correct.

Q. Okay. Was Highland's benefit from the agreement the same as Highland's benefit from the agreement covering the 13 notes in the other litigation?

A. Yes.

Q. So is it fair to say that there's nothing different about -- let me rephrase that.

So is it fair to say that Highland didn't receive anything in exchange for its agreement that it did not receive in exchange for the agreement to cover the 13 notes in the other litigation?

MS. DEITSCH-PEREZ: Object to the form.

You mean the same type of thing?

BY MS. WINOGRAD:

Q. Did Highland receive anything in exchange for its agreement to forgive the February 2016 note that it did not receive in exchange for its agreement to forgive the other

N. Dondero - Dugaboy

13 notes?

MS. DEITSCH-PEREZ: Object to the form.

A. No, I don't believe so, Hayley.

BY MS. WINOGRAD:

MS. WINOGRAD: Okay. Let's take a five-minute break and come back at 11:08, if that works for everybody.

THE WITNESS: That would be great. I'd love to get a water.

(Recess held.)

BY MS. WINOGRAD:

Q. So just a few more questions for you. You testified earlier that when you entered into -- that when you caused Dugaboy to enter into the agreement as it relates to the February 2016 note, you said your brother, Mr. Dondero, referenced the agreement pertaining to the February of 2014 note, correct?

A. I believe so, yes. It's a little fuzzy, Hayley. It was a long time ago, but yes, I believe he did.

Q. Okay. Did he tell you that an

N. Dondero - Dugaboy

agreement was in place with respect to the 2014 note?

A. Yes.

Q. Okay. Did your brother tell you who entered into that agreement pertaining to the 2014 note?

A. That he did.

Q. Okay. So he told you that he did, and did he tell you who else did?

A. I don't remember, Hayley.

Q. Okay. So you don't -- so you do remember that he told you that he entered into the agreement and was that -- was that correct?

A. Yes, I believe so, uh-huh.

Q. Did he say that he entered into it on behalf of Dugaboy?

A. (No response.)

Q. I'm sorry. Let me rephrase that.

Did he say that he caused Dugaboy to enter into the agreement?

A. He caused Dugaboy to cause Highland to enter into the agreement, correct.

Q. Okay. Did your brother tell you what the terms of the 2014 -- of the agreement

N. Dondero - Dugaboy

pertaining to the 2014 notes were?

A. Of the note?

Q. Of the -- of the agreement covering the 2014 note.

A. It was very -- it was the same as the agreements from the ones we've discussed already and the ones we're discussing now.

Q. Okay. Okay. Did he tell you anything about the agreement covering the February 2014 note other than that one -- other than that one existed?

MS. DEITSCH-PEREZ: Object to the form.

A. Hayley, you mean the terms --

BY MS. WINOGRAD:

Q. The terms --

A. -- of the agreement?

Q. Other than the fact that one existed, did he tell you anything about that 2014 -- the agreement covering the 2014 note?

A. The agreement was -- is the same as the ones that we've discussed for 17, 18, 19, and now the second note in '16 -- the second note of the party we're talking about today.

N. Dondero - Dugaboy

Q. But he didn't tell you anything about the term -- he didn't disclose anything about the terms of the agreement pertaining to the 2014 --

MS. DEITSCH-PEREZ: Object to the form.

BY MS. WINOGRAD:

Q. -- note, correct?

MS. DEITSCH-PEREZ: Object to the form.

A. Well, he -- I'm sorry, Hayley, maybe I'm misunderstanding. He did. The terms that we know and have discussed on all the other agreements were the same for '14.

BY MS. WINOGRAD:

Q. Okay. I'm just trying to --

A. Does that answer --

Q. -- find out if he told you that, though?

A. Yes.

Q. Okay.

MS. WINOGRAD: I might be done. Just give me a second.

THE WITNESS: Certainly. Thank you,

N. Dondero - Dugaboy

Hayley.

MS. WINOGRAD: Okay. I'm actually all finished. So thank you very much, Ms. Dondero.

THE WITNESS: Thank you, Hayley. You have a great day.

MS. WINOGRAD: You, too. Nice meeting you.

THE WITNESS: Nice meeting you. Bye-bye now.

(Time Noted: 10:14 a.m.)

N. Dondero - Dugaboy

C E R T I F I C A T E

STATE OF TEXAS)
)
COUNTY OF ELLIS)

I, Daniel J. Skur, a Notary Public within and for the State of Texas, do hereby certify:

That NANCY DONDERO, Individually and as Corporate Representative of Dugaboy, the witness whose deposition is hereinbefore set forth, was duly sworn by me and that such deposition is a true record of the testimony given by such witness.

That pursuant to Rule 30 of the Federal Rules of Civil Procedure, signature of the witness was not reserved by the witness or other party before the conclusion of the deposition;

I further certify that I am not related to any of the parties to this action by blood or marriage; and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 29th day of April, 2022.

_____

Daniel J. Skur
Notary Public, State of Texas.
My Commission Expires 7/7/2022
TSG Reporting, Inc.
228 East 45th Street, Suite 810
New York, New York
(877) 702-9580

NAME OF CASE:

DATE OF DEPOSITION:

NAME OF WITNESS:

Reason Codes:

1. To clarify the record.
2. To conform to the facts.
3. To correct transcription errors.

Page _____ Line _____ Reason _____

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J U R A T

I, , do hereby certify under penalty of perjury that I have read the foregoing transcript of my deposition taken on ; that I have made such corrections as appear noted herein in ink, initialed by me; that my testimony as contained herein, as corrected, is true and correct.

DATED this ____ day of _____, 20 ,
at _____, .

_____
SIGNATURE OF WITNESS

-------I N D E X-------

WITNESS:	EXAMINATION BY	PAGE:
NANCY DONDERO, Individually and as Corporate Representative of Dugaboy		
	By Ms. Winograd	5

*****

----------EXHIBITS----------

Debtor Exhibits		PAGE/LINE
Exhibit 1	Highland Capital Management, L.P.'s Notice of Second Amended Subpoena to the Dugaboy Investment Trust 9 pages	8/2
Exhibit 3	2/26/2014 Promissory Note Bates No. D-HCMFA2-017575 through 0175676	13/15
Exhibit 4	2/26/2016 Promissory Note Bates No. D HCMFA 2017573 through 017574	14/13
Exhibit 5	Defendant's Original Answer 8 pages	15/23

EXHIBIT 211

PACHULSKI STANG ZIEHL & JONES LLP
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Counsel for Highland Capital Management, L.P.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re: HIGHLAND CAPITAL MANAGEMENT, L.P.,[1] Reorganized Debtor.	§ § § § § §	Chapter 11 Case No. 19-34054-sgj11
HIGHLAND CAPITAL MANAGEMENT, L.P., Plaintiff, vs. HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, L.P., Defendant.	§ § § § § § § §	Adversary Proceeding No. 21-03082-sgj

Exhibit 1

HIGHLAND CAPITAL MANAGEMENT L.P.'S NOTICE OF
SECOND AMENDED SUBPOENA TO THE DUGABOY INVESTMENT TRUST

[1] The Reorganized Debtor's last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Reorganized Debtor is 100 Cresce

PLEASE TAKE NOTICE that, pursuant to Rule 45 of the Federal Rules of Civil Procedure, made applicable herein by Rule 9016 of the Federal Rules of Bankruptcy Procedure, Highland Capital Management, L.P., the reorganized debtor ("Highland" or the "Reorganized Debtor") in the above-captioned chapter 11 case (the "Bankruptcy Case") and plaintiff in the above-captioned adversary proceeding (the "Adversary Proceeding"), by and through its undersigned counsel, caused the *Second Amended Subpoena to Testify at a Deposition in a Bankruptcy Case (or Adversary Proceeding)* (the "Subpoena"), a copy of which is attached hereto as **Exhibit A**, to be served upon The Dugaboy Investment Trust for a virtual appearance at a deposition on **April 29, 2022** commencing at 9:30 a.m. Central Time, or at such other day and time as Highland may agree in writing. The deposition will be taken under oath before a notary public or other person authorized by law to administer oaths and may be visually recorded by video or otherwise.

The deposition will be taken remotely via an online platform due to the coronavirus pandemic such that no one will need to be in the same location as anyone else in order to participate in the deposition. Parties who wish to participate in the deposition should contact John A. Morris, Pachulski Stang Ziehl & Jones LLP, at jmorris@pszjlaw.com **no fewer than 72 hours before the start of the deposition** for more information regarding participating in this deposition remotely.

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Dated: April 27, 2022.

PACHULSKI STANG ZIEHL & JONES LLP

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-and-

HAYWARD PLLC

/s/ Zachery Z. Annable

Melissa S. Hayward
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Counsel for Highland Capital Management, L.P.

EXHIBIT A

UNITED STATES BANKRUPTCY COURT

NORTHERN District of TEXAS

In re HIGHLAND CAPITAL MANAGEMENT, L.P.
Debtor

Case No. 19-34054-sgj11

(Complete if issued in an adversary proceeding)

Chapter 11

Highland Capital Management, L.P.,
Plaintiff
v.
Highland Capital Management Fund Advisors, L.P.,
Defendant

Adv. Proc. No. 21-3082-sgj

SECOND AMENDED SUBPOENA TO TESTIFY AT A DEPOSITION IN A BANKRUPTCY CASE (OR ADVERSARY PROCEEDING)

To: The Dugaboy Investment Trust, c/o Douglas Draper, Heller, Draper & Horn, 650 Poydras Street, Suite 2500, New Orleans, LA 70130

(Name of person to whom the subpoena is directed)

☒ *Testimony*: **YOU ARE COMMANDED** to appear at the time, date, and place set forth below to testify at a deposition to be taken in this bankruptcy case (or adversary proceeding). If you are an organization, you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about the following matters: the claims and affirmative defenses asserted in the above-referenced adversary proceeding. **See Exhibit A**

PLACE	DATE AND TIME
Deposition will be conducted virtually through Zoom	April 29, 2022 at 9:30 a.m. (CT)

The deposition will take place before a court reporter and will be recorded by stenographic means, may be videotaped, and shall continue from day to day until it has been completed.

☒ *Production*: **YOU ARE COMMANDED** to produce and permit inspection and copying of the following documents or object at the place, date and time specified below: **All Documents and Communications Concerning the Alleged Agreement described in paragraph 41 of Defendant's Original Answer [Docket No. 5] filed on December 10, 2021.**

The following provisions of Fed. R. Civ. P. 45, made applicable in bankruptcy cases by Fed. R. Bankr. P. 9016, are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and 45(g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: April 26, 2022

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

/s/ John A. Morris
Attorney's signature
John A. Morris, Esq.

The name, address, email address, and telephone number of the attorney representing *(name of party)* Highland Capital Management, L.P. , who issues or requests this subpoena, are:

John A. Morris, Esq., Pachulski Stang Ziehl & Jones LLP, 780 Third Ave., 34th Fl, New York, NY 10017

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things, or the inspection of premises before trial, a notice and a copy of this subpoena must be served on each party before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

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PROOF OF SERVICE
(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any):* _____
on *(date)* _____.

☐ I served the subpoena by delivering a copy to the named person as follows: _____

The Dugaboy Investment Trust, c/o Douglas Draper, Heller, Draper & Horn, 650 Poydras Street, Suite 2500, New Orleans, LA 70130

_____

_____ on *(date)* _____; or

☐ I returned the subpoena unexecuted because: _____

_____

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of $ _____.

My fees are $ _____ for travel and $ _____ for services, for a total of $ _____.

I declare under penalty of perjury that this information is true and correct.

Date: _____

_____
Server's signature

_____
Printed name and title

_____
Server's address

Additional information concerning attempted service, etc.:

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Federal Rule of Civil Procedure 45(c), (d), (e), and (g) (Effective 12/1/13)

(made applicable in bankruptcy cases by Rule 9016, Federal Rules of Bankruptcy Procedure)

(c) Place of compliance.

(1) For a Trial, Hearing, or Deposition. A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

(A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or

(B) within the state where the person resides, is employed, or regularly transacts business in person, if the person

(i) is a party or a party's officer; or

(ii) is commanded to attend a trial and would not incur substantial expense.

(2)For Other Discovery. A subpoena may command:

(A) production of documents, or electronically stored information, or things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and

(B) inspection of premises, at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) Appearance Not Required. A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) Objections. A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) When Required. On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

(i) fails to allow a reasonable time to comply;

(ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) When Permitted. To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) Specifying Conditions as an Alternative. In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:

(A) Documents. A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) Form for Producing Electronically Stored Information Not Specified. If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) Electronically Stored Information Produced in Only One Form. The person responding need not produce the same electronically stored information in more than one form.

(D) Inaccessible Electronically Stored Information. The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) Information Withheld. A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

(i) expressly make the claim; and

(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B)Information Produced. If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

…

(g) Contempt. The court for the district where compliance is required – and also, after a motion is transferred, the issuing court – may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

For access to subpoena materials, see Fed. R. Civ. P. 45(a) Committee Note (2013)

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EXHIBIT A
DEFINITIONS

1. "Answer" means *Defendant's Original Answer*, filed by HCMFA, in Adv. Proc. 21-3082, at Docket No. 5.

2. "Alleged Agreement" refers to the alleged oral agreement between James Dondero and "Nancy Dondero, as representative for a majority of the Class A shareholders of Plaintiff," described in paragraph 41 of the Answer.

3. "Communications" means the transmittal of information (in the form of facts, ideas, inquiries, or otherwise) and includes all oral and written communications of any nature, type or kind including, but not limited to, any ESI (and any attachments thereto), Documents, telephone conversations, text messages, discussions, meetings, facsimiles, e-mails, pagers, memoranda, and any other medium through which any information is conveyed or transmitted.

4. "Concerning" means and includes relating to, constituting, defining, evidencing, mentioning, containing, describing, discussing, embodying, reflecting, edifying, analyzing, stating, referring to, dealing with, or in any way pertaining to the subject matter.

5. "Document" means and includes all written, recorded, transcribed or graphic matter of every nature, type and kind, however and by whoever produced, reproduced, disseminated or made. This includes, but is not limited to, Communications, ESI, "writings" as defined by Rule 1001 of the Federal Rules of Evidence, copies or drafts, and any tangible or intangible thing or item that contains any information. Any Document that contains any comment, notation, addition, insertion or marking of any type or kind which is not part of another Document, is to be considered a separate Document.

6. "Notes" shall have the meaning ascribed to that term in paragraphs 14-16 of the *Complaint for (I) Breach of Contract, (II) Turnover of Property of Highland's Estate*, filed at Adv. Proc. 21-3082, at Docket No. 1.

7. "You" or "Your" refers to Dugaboy, and anyone person or entity authorized to act on behalf of Dugaboy.

Rule 30(b)6) Topics

Topic No. 1:

The Alleged Agreement, including but not limited to all facts and circumstances, Communications, and Documents Concerning the Alleged Agreement.

Topic No. 2:

Ownership, beneficial ownership, and control of Dugaboy.

Topic No. 3:

All agreements that You have ever entered into "as a representative for a majority of the Class A shareholders" of Highland.

Topic No. 4:

All agreements that You have ever entered into on behalf of Highland or that You believe bind Highland.

Topic No. 5:

All agreements between You and Highland.

EXHIBIT 212

PROMISSORY NOTE

$4,000,000.00 February 26, 2014

FOR VALUE RECEIVED, HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, LP. ("***Maker***") promises to pay to the order of HIGHLAND CAPITAL MANAGEMENT, LP ("***Payee***"), in legal and lawful tender of the United States of America, the principal sum of FOUR MILLION and 00/100 Dollars ($4,000,000.00), together with interest, on the terms set forth below (the "***Note***"). All sums hereunder are payable to Payee at 300 Crescent Court, Dallas, TX 75201, or such other address as Payee may specify to Maker in writing from time to time.

1. Interest Rate. The unpaid principal balance of this Note from time to time outstanding shall bear interest at a rate equal to the mid-term "***applicable federal rate***" (1.97%) in effect on the date hereof for loans of such maturity as determined by Section 1274(d) of the Internal Revenue Code, per annum from the date hereof until maturity, compounded annually on the anniversary of the date of this Note. Interest shall be calculated at a daily rate equal to 1/365th (1/366 in a leap year) of the rate per annum, shall be charged and collected on the actual number of days elapsed, and shall be payable on demand of the Payee.

2. Payment of Principal and Interest. The accrued interest and principal of this Note shall be due and payable on demand of the Payee.

3. Prepayment Allowed; Renegotiation Discretionary. Maker may prepay in whole or in part the unpaid principal or accrued interest of this Note. Any payments on this Note shall be applied first to unpaid accrued interest hereon, and then to unpaid principal hereof.

4. Acceleration Upon Default. Failure to pay this Note or any installment hereunder as it becomes due shall, at the election of the holder hereof, without notice, demand, presentment, notice of intent to accelerate, notice of acceleration, or any other notice of any kind which are hereby waived, mature the principal of this Note and all interest then accrued, if any, and the same shall at once become due and payable and subject to those remedies of the holder hereof. No failure or delay on the part of Payee in exercising any right, power or privilege hereunder shall operate as a waiver thereof.

5. Waiver. Maker hereby waives grace, demand, presentment for payment, notice of nonpayment, protest, notice of protest, notice of intent to accelerate, notice of acceleration and all other notices of any kind hereunder.

6. Attorneys' Fees. If this Note is not paid at maturity (whether by acceleration or otherwise) and is placed in the hands of an attorney for collection, or if it is collected through a bankruptcy court or any other court after maturity, the Maker shall pay, in addition to all other amounts owing hereunder, all actual expenses of collection, all court costs and reasonable attorneys' fees and expenses incurred by the holder hereof.

Exhibit 3

7. Limitation on Agreements. All agreements between Maker and Payee, whether now existing or hereafter arising, are hereby limited so that in no event shall the amount paid, or agreed to be paid to Payee for the use, forbearance, or detention of money or for the payment or performance of any covenant or obligation contained herein or in any other document evidencing, securing or pertaining to this Note, exceed the maximum interest rate allowed by law. The terms and provisions of this paragraph shall control and supersede every other provision of all agreements between Payee and Maker in conflict herewith.

8. Governing Law. This Note and the rights and obligations of the parties hereunder shall be governed by the laws of the United States of America and by the laws of the State of Texas, and is performable in Dallas County, Texas.

MAKER:

JAMES DONDERO

EXHIBIT 213

PROMISSORY NOTE

$2,300,000.00

February 26, 2016

FOR VALUE RECEIVED, HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, LP. ("***Maker***") promises to pay to the order of HIGHLAND CAPITAL MANAGEMENT, LP ("***Payee***"), in legal and lawful tender of the United States of America, the principal sum of TWO MILLION, THREE HUNDRED THOUSAND and 00/100 Dollars ($2,300,000.00), together with interest, on the terms set forth below (the "***Note***"). All sums hereunder are payable to Payee at 300 Crescent Court, Dallas, TX 75201, or such other address as Payee may specify to Maker in writing from time to time.

1. Interest Rate. The unpaid principal balance of this Note from time to time outstanding shall bear interest at a rate equal to the mid-term "***applicable federal rate***" (2.62%) in effect on the date hereof for loans of such maturity as determined by Section 1274(d) of the Internal Revenue Code, per annum from the date hereof until maturity, compounded annually on the anniversary of the date of this Note. Interest shall be calculated at a daily rate equal to 1/365th (1/366 in a leap year) of the rate per annum, shall be charged and collected on the actual number of days elapsed, and shall be payable on demand of the Payee.

2. Payment of Principal and Interest. The accrued interest and principal of this Note shall be due and payable on demand of the Payee.

3. Prepayment Allowed; Renegotiation Discretionary. Maker may prepay in whole or in part the unpaid principal or accrued interest of this Note. Any payments on this Note shall be applied first to unpaid accrued interest hereon, and then to unpaid principal hereof.

4. Acceleration Upon Default. Failure to pay this Note or any installment hereunder as it becomes due shall, at the election of the holder hereof, without notice, demand, presentment, notice of intent to accelerate, notice of acceleration, or any other notice of any kind which are hereby waived, mature the principal of this Note and all interest then accrued, if any, and the same shall at once become due and payable and subject to those remedies of the holder hereof. No failure or delay on the part of Payee in exercising any right, power or privilege hereunder shall operate as a waiver thereof.

5. Waiver. Maker hereby waives grace, demand, presentment for payment, notice of nonpayment, protest, notice of protest, notice of intent to accelerate, notice of acceleration and all other notices of any kind hereunder.

6. Attorneys' Fees. If this Note is not paid at maturity (whether by acceleration or otherwise) and is placed in the hands of an attorney for collection, or if it is collected through a bankruptcy court or any other court after maturity, the Maker shall pay, in addition to all other amounts owing hereunder, all actual expenses of collection, all court costs and reasonable attorneys' fees and expenses incurred by the holder hereof.

Exhibit 4

7. Limitation on Agreements. All agreements between Maker and Payee, whether now existing or hereafter arising, are hereby limited so that in no event shall the amount paid, or agreed to be paid to Payee for the use, forbearance, or detention of money or for the payment or performance of any covenant or obligation contained herein or in any other document evidencing, securing or pertaining to this Note, exceed the maximum interest rate allowed by law. The terms and provisions of this paragraph shall control and supersede every other provision of all agreements between Payee and Maker in conflict herewith.

8. Governing Law. This Note and the rights and obligations of the parties hereunder shall be governed by the laws of the United States of America and by the laws of the State of Texas, and is performable in Dallas County, Texas.

MAKER:

JAMES DONDERO

EXHIBIT 214

Deborah Deitsch-Perez
Michael P. Aigen
STINSON LLP
3102 Oak Lawn Avenue, Suite 777
Dallas, Texas 75219-4259
Telephone: (214) 560-2201
Facsimile: (214) 560-2203

Counsel for Defendant Highland Capital Management Fund Advisors, L.P.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re	§	
	§	**Case No. 19-34054-sgj11**
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	**Chapter 11**
	§	
Debtor.	§	
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	
Plaintiff,	§	
	§	
v.	§	**Adversary No. 21-03082**
	§	
HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, L.P.	§	
	§	
Defendant.	§	

DEFENDANT'S ORIGINAL ANSWER

COMES NOW Highland Capital Management Fund Advisors, L.P. ("HCMFA" or "Defendant"), the defendant in the above-styled and numbered adversary proceeding (the "Adversary Proceeding") filed by Highland Capital Management, L.P. ("HCMLP" or "Plaintiff"), and files this its *Defendant's Original Answer* (the "Answer"), responding to the *Complaint for (I)*

Exhibit 5

Breach of Contract and (II) Turnover of Property of Highland's Estate (the "Complaint"). Where an allegation in the Complaint is not expressly admitted in this Answer, it is denied.

PRELIMINARY STATEMENT

1. The first sentence of ¶ 1 sets forth the Plaintiff's objective in bringing the Complaint and does not require a response. To the extent it contains factual allegations, they are denied. The second sentence contains a legal conclusion that does not require a response. To the extent it contains factual allegations, they are denied.

2. Paragraph 2 contains a summary of the relief the Plaintiff seeks and does not require a response. To the extent it contains factual allegations, they are denied.

JURISDICTION AND VENUE

3. The Defendant admits that this Adversary Proceeding relates to the Plaintiff's bankruptcy case but denies any implication that this fact confers Constitutional or statutory authority on the Bankruptcy Court to adjudicate this dispute. Any allegations in ¶ 3 not expressly admitted are denied.

4. The Defendant admits that the Court has jurisdiction of this Adversary Proceeding but not authority to enter final orders or judgment. Any allegations in ¶ 4 not expressly admitted are denied.

5. The Defendant denies that a breach of contract claim is core. The Defendant denies that a § 542(b) turnover proceeding is the appropriate mechanism to collect a contested debt. The Defendant admits that a § 542(b) turnover proceeding is statutorily core but denies that it is Constitutionally core under *Stern v. Marshall*. The Defendant does not consent to the Bankruptcy Court entering final orders or judgment in this Adversary Proceeding. Any allegations in ¶ 5 not expressly admitted are denied.

6. The Defendant admits ¶ 6 of the Complaint.

THE PARTIES

7. The Defendant admits ¶ 7 of the Complaint.

8. The Defendant admits ¶ 8 of the Complaint.

CASE BACKGROUND

9. The Defendant admits ¶ 9 of the Complaint.

10. The Defendant admits ¶ 10 of the Complaint.

11. The Defendant admits ¶ 11 of the Complaint, subject to the ongoing appeal of the Confirmation Order. In the event the Confirmation Order is reversed, ¶ 11 is denied.

12. The Defendant admits ¶ 12 of the Complaint, subject to the ongoing appeal of the Confirmation Order. In the event the Confirmation Order is reversed, ¶ 12 is denied.

STATEMENT OF FACTS

A. The HCMFA Notes

13. The Defendant admits that it has executed at least one promissory note under which the Debtor is the payee. Any allegations in ¶ 13 not expressly admitted are denied.

14. The Defendant admits the allegations in ¶ 14 of the Complaint. The Defendant admits that the attached document appears to be a copy of the referenced note.

15. The Defendant admits the allegations in ¶ 15 of the Complaint.

16. The Defendant admits the allegations in ¶ 16 of the Complaint. The Defendant admits that the attached document appears to be a copy of the referenced note.

17. The Defendant admits the allegations in ¶ 17 of the Complaint.

18. The Defendant admits ¶ 18 of the Complaint.

19. The Defendant denies ¶ 19 of the Complaint. The document speaks for itself and the quote set forth in ¶ 19 is not verbatim.

20. The Defendant admits ¶ 20 of the Complaint.

B. Highland Agrees Not to Demand Payment Under the Notes Prior to May 31, 2021

21. The Defendant admits that James Dondero executed the document attached to the Complaint as Exhibit 3 and the Exhibit 3 is a true and correct copy. The Defendant admits that the Plaintiff has accurately quoted the second sentence of the letter, which provides, "HCMF expects that it may be unable to repay such amounts should they become due, for the period commencing today and continuing through May 31, 2021." The Defendant admits that the letter also provides, "HCMLP hereby agrees to not demand payment on amounts owed by HCMF prior to May 31, 2021. To the extent not expressly admitted, ¶ 21 of the Complaint is denied.

C. HCMFA's Default under Each Note

22. The Defendant admits that Exhibit 4 to the Complaint (the "Demand Letter") is a true and correct copy of what it purports to be and that the document speaks for itself. To the extent ¶ 22 of the Complaint asserts a legal conclusion, no response is required, and it is denied. To the extent not expressly admitted, ¶ 22 of the Complaint is denied.

23. To the extent ¶ 23 of the Complaint asserts a legal conclusion, no response is necessary, and it is denied. The Defendant otherwise admits ¶ 23 of the Complaint.

24. The Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in ¶ 24 of the Complaint and therefore denies the same.

25. The Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in ¶ 25 of the Complaint and therefore denies the same.

26. The Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in ¶ 26 of the Complaint and therefore denies the same.

27. The Defendant denies ¶ 27 of the Complaint.

FIRST CLAIM FOR RELIEF
(For Breach of Contract)

28. Paragraph 28 of the Complaint is a sentence of incorporation that does not require a response. All prior denials are incorporated herein by reference.

29. Paragraph 29 of the Complaint states a legal conclusion that does not require a response. To the extent it alleges facts, the Defendant denies the allegations in ¶ 29 of the Complaint.

30. Paragraph 30 of the Complaint states a legal conclusion that does not require a response. To the extent it alleges facts, the Defendant denies the allegations in ¶ 30 of the Complaint.

31. Paragraph 31 of the Complaint states a legal conclusion that does not require a response. To the extent it alleges facts, the Defendant denies the allegations in ¶ 31 of the Complaint.

32. The Defendant denies ¶ 32 of the Complaint.

SECOND CLAIM FOR RELIEF
(Turnover by HCMFA Pursuant to 11 U.S.C. § 542(b))

33. Paragraph 33 of the Complaint is a sentence of incorporation that does not require a response. All prior denials are incorporated herein by reference.

34. Paragraph 34 of the Complaint states a legal conclusion that does not require a response. To the extent it alleges facts, the Defendant denies the allegations in ¶ 34 of the Complaint.

35. Paragraph 35 of the Complaint states a legal conclusion that does not require a response. To the extent it alleges facts, the Defendant denies the allegations in ¶ 35 of the Complaint.

36. The Defendant denies ¶ 36 of the Complaint.

37. Paragraph 37 of the Complaint states a legal conclusion that does not require a response. The Defendant admits that the Plaintiff transmitted the Demand Letter. To the extent ¶ 37 alleges other facts, the Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in ¶ 37 of the Complaint and therefore denies the same.

38. The Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in ¶ 38 of the Complaint and therefore denies the same.

39. Paragraph 39 of the Complaint states a legal conclusion that does not require a response. To the extent it alleges facts, the Defendant denies the allegations in ¶ 39 of the Complaint.

40. The Defendant denies that the Plaintiff is entitled to the relief requested in the prayer, including parts (i), (ii), and (iii).

AFFIRMATIVE DEFENSES

41. Plaintiff's claims are barred in whole or in part because, prior to the demands for payment, Plaintiff agreed that it would not collect the Notes upon fulfilment of conditions subsequent. Specifically, sometime between December of the year in which each Note was made and February of the following year, Nancy Dondero, as representative for a majority of the Class A shareholders of Plaintiff agreed that Plaintiff would forgive the Notes if certain portfolio companies were sold for greater than cost or on a basis outside of Mr. Dondero's control. The purpose of this agreement was to provide compensation to Mr. Dondero, who was otherwise underpaid compared to reasonable compensation levels in the industry, through the use of forgivable loans, a practice that was standard at HCMLP and in the industry. This agreement setting forth the conditions subsequent to demands for payment on the Notes was an oral agreement; however, Defendant believes there may be testimony or email correspondence that

discusses the existence of this agreement that may be uncovered through discovery in this Adversary Proceeding.

42. Plaintiff pleads ambiguity with respect to the Notes.

43. Due to the fact that the Plaintiff is in control of documents and information relevant to the Notes, Defendant is unable to complete its investigation into potential affirmative defenses. Out of an abundance of caution, Defendant conditionally pleads the following affirmative defenses subject to Defendant's ability to obtain and review relevant documents and information from the Plaintiff: waiver, estoppel, failure of consideration, and prepayment.

JURY DEMAND

44. The Defendant demands a trial by jury of all issues so triable pursuant to Rule 38 of the Federal Rules of Civil Procedure and Rule 9015 of the Federal Rules of Bankruptcy Procedure.

45. The Defendant does not consent to the Bankruptcy Court conducting a jury trial and therefore demands a jury trial in the District Court.

PRAYER

WHEREFORE, PREMISES CONSIDERED, the Defendant respectfully requests that, following a trial on the merits, the Court enter a judgment that the Plaintiff take nothing on the Complaint and provide the Defendant such other relief to which it is entitled.

Dated: December 10, 2021

Respectfully submitted,

STINSON LLP

/s/ Deborah Deitsch-Perez
Deborah Deitsch-Perez
Texas State Bar No. 24036072
Michael P. Aigen
Texas State Bar No. 24012196
3102 Oak Lawn Avenue, Suite 777
Dallas, Texas 75219-4259
Telephone: (214) 560-2201
Email: deborah.deitschperez@stinson.com
Email: michael.aigen@stinson.com

ATTORNEYS FOR DEFENDANT HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, L.P.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that, on the 10th day of December, 2021, a true and correct copy of this document was served electronically via the Court's CM/ECF system on the following recipients:

Zachery Z. Annable
Hayward PLLC
10501 N. Central Expressway
Suite 106
Dallas, TX 75231
Email: zannable@haywardfirm.com

/s/Deborah Deitsch-Perez
Deborah Deitsch-Perez

EXHIBIT 215

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

IN RE: HIGHLAND CAPITAL MANAGEMENT, LP, Debtor.	CHAPTER 11 CASE NO. 19-34054-SGJ11
HIGHLAND CAPITAL MANAGEMENT, LP, Plaintiff, v. HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, LP, Defendant.	Adversary Proceeding No. 21-03082-SGJ

REMOTE VIDEO-RECORDED FRCP 30(b)(6) DEPOSITION OF

HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, LP

BY AND THROUGH ITS DESIGNEE

JAMES D. DONDERO

THURSDAY, MAY 5, 2022

REPORTED BY:

MICHAEL E. MILLER, FAPR, RDR, CRR, NOTARY PUBLIC

JOB NO. 209977

Thursday, May 5, 2022

10:15 a.m. CDT

REMOTE ORAL VIDEO-RECORDED FRCP 30(b)(6) DEPOSITION OF HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, LP, BY AND THROUGH ITS DESIGNEE, JAMES D. DONDERO, held via Zoom conference pursuant to the Federal Rules of Civil Procedure before Michael E. Miller, Fellow of the Academy of Professional Reporters, Registered Diplomate Reporter, Certified Realtime Reporter and Notary Public in and for the State of Texas.

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2 REMOTE APPEARANCES:

3 Pachulski Stang Ziehl & Jones

4 Attorneys for Highland Capital Management, LP

5 780 Third Avenue

6 New York, NY 10017

7 BY: John Morris, Esq.

8 Hayley Winograd, Esq.

9

10 Stinson

11 Attorneys for Highland Capital Management

12 Fund Advisors, LP and the Witness

13 3102 Oak Lawn Avenue

14 Dallas, TX 75219

15 BY: Deborah Deitsch-Perez, Esq. (With Witness)

16 Michael Aigen, Esq.

17

18 ALSO PRESENT:

19 La Asia Canty, Paralegal

20 Pachulski Stang Ziehl & Jones LLP

21

22 VIDEOGRAPHER:

23 Brent Jordan, TSG Reporting Inc.

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3 P R O C E E D I N G S

4 May 5, 2022, 10:15 a.m. CDT

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6 THE VIDEOGRAPHER: Good morning,

7 counselors. My name is Brent Jordan. I'm the

8 certified legal videographer in association with

9 TSG Reporting Inc.

10 Due to the severity of the COVID-19

11 and following the practice of social distancing,

12 I will not be in the same room with the witness.

13 Instead, I will record this videotaped deposition

14 remotely. The reporter, Mike Miller, also will

15 not be in the same room and will swear the

16 witness remotely.

17 Do all parties stipulate to the

18 validity of this video recording and remote

19 swearing and that it will be admissible in the

20 courtroom as if it had been taken following

21 Rule 30 of the Federal Rules of Civil Procedures

22 and the state's rules where this case is pending?

23 MR. MORRIS: John Morris, Pachulski

24 Stang Ziehl & Jones, on behalf of Highland

25 Capital Management LP, consents.

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2 MS. DEITSCH-PEREZ: Deborah
3 Deitsch-Perez from Stinson, on behalf of HCMFA
4 and the witness, consent.
5 THE VIDEOGRAPHER: Thank you. This
6 is the start of Media No. 1, the videotaped
7 deposition of Highland Capital Management Fund
8 Advisors LP 30(b)(6) witness, James Dondero,
9 taken In re Highland Capital Management LP, filed
10 in the United States Bankruptcy Court for the
11 Northern District of Texas, Dallas Division, Case
12 No. 19-34054-sgj11.
13 This deposition is taken on May 5th,
14 2022 at approximately 10:17 a.m. My name is
15 Brent Jordan. I'm the legal video specialist
16 from TSG Reporting Inc., headquartered at 228
17 East 45th Street, New York, New York.
18 The court reporter is Mike Miller, in
19 association with TSG Reporting.
20 Will counsel please introduce
21 yourselves for the record.
22 MR. MORRIS: John Morris, Pachulski
23 Stang Ziehl & Jones for Highland Capital
24 Management LP. I'm joined by my colleagues
25 Hayley Winograd and La Asia Canty.

HCMFA - J. DONDERO

MS. DEITSCH-PEREZ: Deborah Deitsch-Perez from Stinson. I'm here with my partner, Mike Aigen, for HCMFA and the witness.

THE VIDEOGRAPHER: Will the court reporter please swear in the witness.

JAMES D. DONDERO,

having been duly sworn,

testified as follows:

EXAMINATION

BY MR. MORRIS:

Q. Good morning, Mr. Dondero.

A. Good morning.

Q. Can you hear me?

A. Yes.

Q. Do you understand that you're here today in both your individual capacity and in your capacity as the 30(b)(6) witness for HCMFA?

A. Yes.

Q. Are you aware that your counsel and my firm have reached an agreement that will allow us to use the transcript from the main notes

HCMFA - J. DONDERO

litigation in connection with this particular litigation?

A. Yes.

MS. DEITSCH-PEREZ: And that means that it should make the deposition shorter because Mr. Morris will not need to reask you the questions he asked you before and -- and we'll proceed accordingly.

MR. MORRIS: Are you done?

MS. DEITSCH-PEREZ: Yes.

MR. MORRIS: Okay.

BY MR. MORRIS:

Q. Can we put up Exhibit 1, please. Exhibit 1, Mr. Dondero, is the Rule 30(b)(6) notice.

(HCMFA/Dondero Deposition Exhibit 1 marked.)

THE WITNESS: Yeah, on my screen there's "This meeting is being recorded." Do I have to delete this or --

(Technical comments off the stenographic record.)

THE WITNESS: Okay.

///

1 HCMFA - J. DONDERO
2 BY MR. MORRIS:
3 Q. All right. As always, Mr. Dondero,
4 if there's something in the document that you
5 think you need to review in order to have a full
6 understanding of what I'm asking, will you let me
7 know that?
8 A. Sure.
9 Q. Have you seen the Rule 30(b)(6)
10 deposition notice before?
11 A. Not that I recall.
12 Q. Why don't we just --
13 MS. DEITSCH-PEREZ: Why don't you
14 scroll through to the topics, Jim.
15 MR. MORRIS: Are you done?
16 MS. DEITSCH-PEREZ: Yes, thank you.
17 MR. MORRIS: Okay. Can you scroll
18 down, La Asia, to the topics?
19 BY MR. MORRIS:
20 Q. Looking at the tapes now,
21 Mr. Dondero, and I'm going to ask Ms. Canty to
22 just very slowly scroll down, my only question to
23 you is whether you're familiar with the topics
24 that are listed on this document. And if you
25 need --

HCMFA - J. DONDERO

A. Yes.

Q. -- us to stop at any point, just say no -- just say so.

A. Yes, I'm familiar with the topics.

Q. Okay. Did you do anything to prepare for today's deposition?

A. I met with my lawyer for about half an hour yesterday.

Q. Did you review any documents?

A. No.

Q. Have you ever reviewed any documents in connection with this particular litigation? And this litigation, I'm referring to the litigation that HCMLP has brought against HCMFA for the two notes, one of which was dated 2014 and the second was dated 2016.

Have you ever seen any documents in connection with this --

MS. DEITSCH-PEREZ: I'm going to object on the grounds of privilege, and so exclude from your answer any review you've done with or at the direction of counsel.

A. No.

///

1 HCMFA - J. DONDERO
2 BY MR. MORRIS:
3 Q. Did you ever review any documents
4 with counsel? Just yes or no.
5 A. I guess I don't recall -- I don't
6 recall prior.
7 Q. Okay. Is there a person who's
8 responsible for maintaining HCMFA's books and
9 records?
10 A. (Audio malfunction.)
11 (Clarification requested by the
12 stenographer.)
13 A. Highland Capital.
14 BY MR. MORRIS:
15 Q. Okay. I appreciate that,
16 Mr. Dondero. Let me rephrase the question.
17 Since March 1st, 2021, has HCMFA
18 maintained books and records?
19 A. Yes.
20 Q. And can you tell me who at HCMFA is
21 responsible for maintaining the books and
22 records?
23 A. I think HCMFA has its books and
24 records done by Skyview.
25 Q. Okay. And do you know whether those

1 HCMFA - J. DONDERO
2 books and records include financial statements?
3 A. I believe so.
4 Q. Okay. And in connection with the
5 preparation of today's deposition, did you speak
6 with anybody at Skyview concerning the financial
7 statements as they relate to the notes at issue?
8 A. No.
9 Q. Do you recall ever discussing with
10 anybody at Skyview at any time the books and
11 records as they relate to the notes at issue in
12 this lawsuit?
13 A. No.
14 Q. Okay. Other than your counsel, have
15 you spoken with anybody at any time in connection
16 with your preparation for today's deposition?
17 A. No.
18 Q. Have you ever spoken with Nancy
19 Dondero about the claims that HCMLP has brought
20 in this particular lawsuit?
21 A. Just generally.
22 Q. And what do you recall about your
23 conversations with Nancy about the claims that
24 HCMLP has made in this lawsuit?
25 A. Again, I can't remember specifically.

1 HCMFA - J. DONDERO
2 Generally, it just would have been that they were
3 disputing the forgiveness based on performance,
4 and they were not -- not acknowledging the
5 overall compensation program.
6 Q. And do you recall when this
7 conversation took place?
8 A. It's more than once, more than once
9 from -- I guess the first time we thought it was
10 an issue in the bankruptcy -- we didn't think it
11 was going to be an issue in the bankruptcy
12 initially.
13 Q. Was anybody else present for this
14 conversation?
15 A. I don't believe so.
16 Q. Do you recall if it took place in
17 person or on the phone or in some other medium?
18 A. I don't recall.
19 Q. Did you have any conversations with
20 Nancy after the time this action was commenced
21 about the claims that are being asserted by
22 HCMLP?
23 A. Not -- not that I recall, but if you
24 have any specific requests, let me know -- or any
25 specific questions, let me know.

HCMFA - J. DONDERO

Q. I'm just asking you if you recall. If you don't, that's fine.

Are you aware that she's been deposed in connection with this lawsuit?

A. Yes.

Q. And have you obtained a copy of her transcript?

A. No, I have not.

Q. Have you -- has the substance of her testimony -- withdrawn.

Are you aware of the substance of her testimony?

A. No.

Q. So you don't know what it is she testified to; do I have that right?

A. Not -- not specifically. I haven't seen the transcripts and we didn't discuss it.

Q. Okay. Do you have any general understanding as to what she testified to?

A. I believe the process by which the notes would be forgiven.

Q. Do you have any other information as to the substance of Ms. Dondero's testimony in this case?

1 HCMFA - J. DONDERO
2 A. Not specifically.
3 Q. Do you have it generally?
4 A. I just gave it.
5 Q. Okay. We did reach the stipulation
6 that we referred to earlier about the use of the
7 prior transcripts.
8 As you sit here now, are you aware of
9 anything in any of your prior testimony in
10 this -- in the notes litigation that you believe
11 was either incomplete or inaccurate?
12 A. You know, I believe there's been some
13 changes to the deposition transcripts. I don't
14 know if I reviewed them all or reviewed them all
15 timely, and I don't know if there will be more,
16 but there have been some.
17 Q. I appreciate that.
18 I'm just asking you: As you sit here
19 right now and taking into account the declaration
20 that you submitted in opposition to summary
21 judgment, is there anything in the transcripts
22 that you're aware of that is inaccurate or needs
23 to be corrected that wasn't addressed in your
24 declaration?
25 MS. DEITSCH-PEREZ: Or the errata.

HCMFA - J. DONDERO

MR. MORRIS: Or the errata. That's fair.

A. Not that I can think of at this moment.

BY MR. MORRIS:

Q. Okay. Is there -- I did receive from Mr. Aigen just prior to the deposition some objections, and he's reserved his rights -- Highland will reserve its rights to contest the objections.

But subject to the objections that your counsel has tendered, are you prepared to answer questions on the topics that were identified in Exhibit 1?

A. I believe so. I'll do the best I can.

Q. Okay. Let's put up Exhibit 2, which is the first of the two notes.

(HCMFA/Dondero Deposition Exhibit 2 marked.)

BY MR. MORRIS:

Q. I just have a series of questions on each of the two notes that are at issue. And this is the first one, and if we could just

HCMFA - J. DONDERO

scroll down. It's pretty short.

Have you seen this document before, sir?

A. Yes.

Q. And is that your signature?

A. Yes.

Q. And do you know whether you signed this document? If we can scroll back to the top -- did you sign this document on or about February 26th, 2014?

A. Yes.

Q. And do you see that the very first line defines the maker as Highland Capital Management Fund Advisors LP?

A. Yes.

Q. When we go to the signature block, if we can scroll down, do you see that in the signature block your name and signature appear under the word "Maker"?

A. Yes.

Q. Did you intend to sign this note in your personal individual capacity as the maker of this note?

A. No, that's not what it says.

1 HCMFA - J. DONDERO
2 Q. And is it your -- I just want you to
3 confirm, if you can, that your intent when you
4 signed this note was to sign it on behalf of
5 HCMFA as the maker; is that correct?
6 A. Yes.
7 Q. Okay. To the best of your knowledge,
8 you never intended to have any personal liability
9 for this note, even though your name and
10 signature appear under the word "Maker," correct?
11 A. Yes.
12 Q. Does -- does HCMFA admit and
13 acknowledge that on or about February 26th, 2014
14 Highland loaned it the principal amount of
15 $4 million in exchange for this promissory note?
16 A. Can you repeat that question, please.
17 Q. Sure.
18 Does HCMFA admit and acknowledge that
19 on or about February 26th, 2014 Highland loaned
20 HCMFA the principal amount of $4 million in
21 exchange for this promissory note?
22 A. I believe so.
23 Q. Okay. Do you know why HCMFA borrowed
24 $4 million from Highland at this time?
25 A. I do not specifically.

1 HCMFA - J. DONDERO
2 Q. Do you recall that the money was
3 borrowed to enable HCMFA to pay bonuses at the
4 end of the fiscal year 2014?
5 A. It could be, but I don't recall.
6 Q. If someone testified that the loan
7 was made to enable HCMFA to pay bonuses on
8 February 28th, 2014, would HCMFA have any reason
9 to dispute that?
10 A. It could be, but I -- it could be,
11 again, but I don't know.
12 Q. Okay. Do you know who drafted this
13 note?
14 A. Would have been accounting at
15 Highland.
16 Q. Do you know if this note was the
17 subject of any negotiation between Highland and
18 HCMFA?
19 A. I don't know.
20 Q. You mentioned that you thought it
21 would have been someone in accounting.
22 What's the basis for your belief that
23 someone in accounting would have prepared this
24 note?
25 A. There was -- I believe there was a

1 HCMFA - J. DONDERO
2 template that accounting used on almost all the
3 notes, and this looks like that template.
4 Q. Okay. Do you recall whether you
5 personally -- and I mentioned at the beginning,
6 or if I didn't, I'll mention it now: All of my
7 questions are in your capacity as the 30(b)(6)
8 representative of HCMFA, unless I specifically
9 ask you otherwise; is that fair?
10 A. Okay.
11 Q. Okay. Did you personally -- so this
12 one is in your individual capacity.
13 Did you personally ask someone to
14 cause Highland to loan HCMFA $4 million in
15 February 2014?
16 A. Not that I recall.
17 Q. Do you know who authorized this loan?
18 A. I don't know.
19 Q. All right. Is it fair to say that
20 because you signed the note on behalf of HCMFA
21 that you were aware of and approved of HCMFA's
22 borrowing as reflected in this note?
23 A. Yes.
24 Q. Did you read the note before you
25 signed it?

HCMFA - J. DONDERO

A. No.

Q. Did you obtain any legal advice before you signed it?

A. No.

Q. Did you seek any legal advice before you signed it?

A. No.

Q. Is there anything in the note that you don't understand today? And we can scroll through it, if that's helpful.

MR. MORRIS: In fact, please do, and make sure that Mr. Dondero can see the whole note.

(Document review.)

A. I understand that generally.

BY MR. MORRIS:

Q. Okay. Is there anything that HCMFA -- now I'm switching back to the 30(b)(6) topics.

Is there anything in this note that HCMFA contends today is ambiguous?

A. I don't know.

Q. Okay. All right. Now, I'm just going to -- sorry to burden you, but I just have

HCMFA - J. DONDERO

to ask the same questions with respect to the second note.

MR. MORRIS: If we can put the second note on the screen, please.

(HCMFA/Dondero Deposition Exhibit 3 marked.)

BY MR. MORRIS:

Q. And you can see, Mr. Dondero, that this is a second note marked as Exhibit 2 [sic]. It's in the original principal amount of $2.3 million and it's dated February 26th, 2016.

Do you see that?

A. Yes.

Q. If we can scroll down to the bottom of this document, is that your signature?

A. I don't know. It is or somebody signed for me.

Q. Does HCMFA contend that this note is not enforceable because it doesn't bear your signature or a signature that was placed on this document by somebody you specifically authorized?

A. I don't -- I don't know. I don't believe so.

Q. Okay. You're familiar with HCMFA's

1 HCMFA - J. DONDERO
2 affirmative defenses in this case, right?
3 A. Generally.
4 Q. Okay. And you're not aware of any
5 affirmative defense that suggests that the note
6 is unenforceable because it bears a signature of
7 yours that you didn't authorize; is that fair?
8 A. I'm not aware.
9 Q. Okay. So let's go back to the top of
10 the document, and you'll see that this is also --
11 the maker is again defined as HCMFA.
12 Do you see that in the first line?
13 A. Yep.
14 Q. Is it HCMFA's -- withdrawn.
15 Does HCMFA acknowledge that it's the
16 maker on this particular note?
17 A. Yes.
18 Q. And you're not personally liable
19 under this note, are you, just because your name
20 appears under the word "Maker"?
21 If we can scroll down.
22 A. Correct.
23 Q. You intended to sign this note in
24 your capacity as an authorized representative of
25 HCMFA -- withdrawn.

1 HCMFA - J. DONDERO
2 HCMFA intended that your -- that your
3 signature would bind HCMFA to the obligations
4 under this note, correct?
5 A. Yes.
6 Q. And if we can go back to the top,
7 HCMFA acknowledges that on or about
8 February 26th, 2016, Highland transferred
9 $2.3 million to HCMFA in exchange for this note,
10 correct?
11 A. Yes.
12 Q. Do you know why HCMFA borrowed
13 $2.3 million from Highland on or around
14 February 26th, 2016?
15 A. No.
16 Q. Do you recall that the money was
17 loaned by Highland to HCMFA to enable HCMFA to
18 pay bonuses at the end of February 2016?
19 A. Could be. I don't have specific
20 knowledge. Bonuses or operating expenses,
21 something in that regard, would have been
22 logical.
23 Q. Okay. Do you know who drafted this
24 particular note?
25 A. Again, accounting, I believe.

HCMFA - J. DONDERO

Q. And your basis for that is your understanding that accounting had a template that it used on the intercompany notes, demand notes; do I have that right?

A. Yes.

Q. Was this particular note the subject of any negotiations?

A. Not that I recall.

Q. Did you read this particular note before you signed it?

A. No.

Q. Did you obtain any legal advice before you signed it?

A. No.

Q. Did you seek any legal advice before you signed it?

A. No.

Q. Is there anything about this note that you don't -- you personally, Jim Dondero, don't understand today?

A. Not off the top of my head.

Q. As HCMFA's 30(b)(6) witness, are you aware of anything in this note today that HCMFA contends is ambiguous?

1 HCMFA - J. DONDERO
2 And again, let's please scroll down.
3 (Document review.)
4 A. Reading this line by line, Section 7
5 is I think largely referring to usury and
6 interest limitations, but it kind of, I think,
7 hints that there could be additional agreements
8 or other agreements going forward.
9 BY MR. MORRIS:
10 Q. Okay. Anything else?
11 A. Not off the top of my head.
12 Q. Okay. I want to shift gears to
13 communications with HCMFA's outside auditors,
14 which are Topics 4(e) and (f), and I appreciate
15 the fact that this topic was covered with respect
16 to other notes, and I'm going to try to just ask
17 a few questions into these notes.
18 The two notes that we just looked at
19 I'm going to collectively refer to as "the
20 notes"; is that fair?
21 A. Sure.
22 Q. And just to complete the record, from
23 at least 2014 until at least 2018,
24 PricewaterhouseCoopers served as HCMFA's outside
25 auditors, correct?

HCMFA - J. DONDERO

A. Yes.

Q. And you're a certified public accountant, correct?

A. Yes.

Q. And to the best of your recollection, you signed management representation letters on behalf of HCMFA in connection with PricewaterhouseCoopers' annual audits, correct?

A. Yes.

Q. Okay. And as part the audit process, HCMFA provided the notes to PwC, correct?

A. Yes.

Q. And you were aware that the notes were recorded as liabilities on HCMFA's audited financial statements, correct?

A. Yes.

Q. Are they still carried on HCMFA's financial statement -- withdrawn.

Are the notes carried as liabilities on HCMFA's balance sheet today?

A. I don't know.

Q. Are you aware of the notes ever being removed from the liability section of HCMFA's balance sheet?

1 HCMFA - J. DONDERO
2 A. I don't know.
3 Q. Do you recall ever having -- and this
4 is in your individual capacity.
5 Do you recall ever participating in
6 any discussion at any time with anybody about
7 whether the notes should be carried as
8 liabilities on HCMFA's balance sheet?
9 A. Not that I recall.
10 Q. Okay. And now in your capacity as
11 HCMFA's 30(b)(6) witness, are you aware of any
12 change in the treatment of the notes as
13 liabilities on HCMFA's balance sheet?
14 A. I'm not aware.
15 Q. Is it fair to say that from the time
16 they were executed until at least the
17 commencement of this litigation, HCMFA carried
18 the notes as liabilities without discount of any
19 kind?
20 A. I don't know.
21 Q. You're not aware of any discount that
22 was ever applied to the value of the notes, at
23 least as it concerns HCMFA's balance sheet; is
24 that fair?
25 A. I'm not aware of a discount. I'm not

HCMFA - J. DONDERO

aware if they've been forgiven on the financials. I don't know how the accountants have handled that.

Q. Okay. Does HCMFA contend that its audited financial statements for any year from 2014 to 2018 were inaccurate in any way with respect to the notes?

A. Not that I'm aware of.

Q. Okay. Let's shift gears now to the -- we can go to the next exhibit, which I think we've marked as Exhibit 4, which is HCMFA's answer.

(HCMFA/Dondero Deposition Exhibit 4 marked.)

BY MR. MORRIS:

Q. This covers, I think, Topics 1, 2 and 3 on the deposition notice, subject to HCMFA's objections.

Have you ever seen HCMFA's answer in this case before, Mr. Dondero?

A. Probably. I just don't remember this specifically yet, but refresh me, please.

Q. Okay. Well, let's scroll down slowly. It's not a terribly long document. And

HCMFA - J. DONDERO

stop when you get to paragraph 41.

(Document review.)

MR. MORRIS: Okay. Just stop there.

BY MR. MORRIS:

Q. Having seen -- having scrolled through at least the portion of the answer prior to the affirmative defenses, are you aware of anything that is inaccurate in any way in HCMFA's answer?

MS. DEITSCH-PEREZ: Object to the form.

A. I -- not specifically.

BY MR. MORRIS:

Q. Okay. Was there somebody at HCMFA who was responsible for reviewing this answer before it was filed by HCMFA's lawyers?

A. Let me read it here for a second.

Q. Yeah. Take your time. And again, if there's some other portion of the document that you want to read, just let La Asia know.

(Document review.)

THE WITNESS: Can you scroll a little bit to the next page, please.

(Document review.)

1 HCMFA - J. DONDERO
2 A. Okay. I understand this paragraph.
3 What was the question, again?
4 BY MR. MORRIS:
5 Q. Is there somebody at HCMFA --
6 withdrawn.
7 So you're aware that the Stinson firm
8 served and filed this answer on behalf of HCMFA,
9 correct?
10 A. Yes.
11 Q. Was there somebody other than counsel
12 who reviewed this document to make sure it was
13 accurate and complete before it was served and
14 filed?
15 A. I mean, I know I did. I don't know
16 if anybody else at HCMFA did.
17 Q. Okay. So you personally reviewed
18 this document to make sure it was complete and
19 accurate before the Stinson firm served and filed
20 the document; is that correct?
21 A. Well, particularly this paragraph,
22 yes.
23 Q. Okay. And did you personally
24 authorize the Stinson firm to file this document
25 when they did?

HCMFA - J. DONDERO

A. Yes.

Q. Okay. And as you sit here right now -- again, happy to let you look at the document if you think you need to -- but as HCMFA's 30(b)(6) witness, are you aware of anything that is incomplete or inaccurate in this answer?

A. Can you scroll down further --

Q. Sure.

A. -- like to the next page? Is that the end of it? Okay. Can you go back up, please. Now go back up a little bit further, please. I just want to see if...

Okay. Go back to paragraph 41, please, and we'll just sit there.

The -- there was a period of time when I was a trustee, there was a period of time -- I think it was only a couple of months -- where Grant Scott was the trustee preceding when my sister was the trustee, so the -- I don't know if that's a clarification worth noting, but I think I was the trustee around the 2014 note, and I think my sister was the trustee around the 2016 note.

1 HCMFA - J. DONDERO
2 Q. All right. Let's just -- I
3 appreciate that, and let's just take them one at
4 a time.
5 Do you believe this paragraph 41 is
6 true and accurate as it relates solely to the
7 2016 note?
8 A. I think it's true and accurate
9 regarding all the notes, so...
10 Q. Well, did Nancy -- is it your
11 testimony that -- withdrawn.
12 MR. MORRIS: I'm going to move to
13 strike and just ask you, because I really want to
14 try and get this done quickly.
15 BY MR. MORRIS:
16 Q. Is paragraph 41 true and accurate
17 with respect to the 2016 note at issue in this
18 lawsuit?
19 Did Nancy Dondero enter into the
20 agreement that's described in this paragraph with
21 respect to the 2016 note?
22 A. Yes.
23 Q. Did Nancy Dondero enter into the
24 agreement as a representative for a majority of
25 the Class A shareholders of plaintiff with

1 HCMFA - J. DONDERO
2 respect to the 2014 note?
3 A. I don't believe she was the trustee
4 then, so...
5 Q. Okay. So is it fair to say that
6 paragraph 41 is not accurate to the extent that
7 it states or suggests that Nancy Dondero entered
8 into the agreement with respect to the 2014 note?
9 A. I don't want to specifically commit
10 to that. Let Nancy's testimony, whatever it is,
11 be the recollection there.
12 I can't recall the 2014 note being
13 prior to the 2016 discussion or not or if -- this
14 2014 was a small note; so was 2016 for that
15 matter. I can't -- I can't remember if she would
16 have been involved in the '14 or if it was just
17 me as trustee around the '14 note or the '14 note
18 was part of the 2016 conversation. Let her --
19 let her testimony stand for that, please.
20 Q. Okay. Her testimony will stand for
21 whatever it is it stands for, but I'm just asking
22 you: Do you know -- and I'm asking you now in
23 your individual capacity.
24 Do you know which individuals entered
25 into any agreement relating to the 2014 note?

1 HCMFA - J. DONDERO
2 Can you identify the individuals?
3 A. It would have been me as the trustee
4 at that point in time, and potentially Nancy as
5 trustee in 2016 could have adjusted the '14 note.
6 I just can't remember specifically the
7 conversations back then, and she may have a
8 better recollection.
9 Q. All right. I'm going to represent to
10 you -- and if the representation is wrong, I hope
11 I'm corrected.
12 I'm going to represent to you that
13 Nancy testified that she entered into the
14 agreement described in paragraph 41 with respect
15 to the 2016 note but not with respect to the 2014
16 note. And assuming that that --
17 MS. DEITSCH-PEREZ: John -- John, you
18 haven't completely reflected her testimony. She
19 also said she talked with Jim about the 2014 note
20 when she talked to him about the 2016.
21 MR. MORRIS: That's right.
22 MS. DEITSCH-PEREZ: Are we agreed on
23 that?
24 MR. MORRIS: We are. We are. And
25 we're also agreed that she testified that she

HCMFA - J. DONDERO

didn't enter into an agreement with respect to the 2014 note, but that Jim told her about it. Is that fair?

MS. DEITSCH-PEREZ: That's fair. Mr. Morris is more or less correctly reflecting Nancy's testimony.

THE WITNESS: Okay.

BY MR. MORRIS:

Q. So with that, you know, general common understanding -- her testimony at the end of the day will speak for itself -- my only question for you, Mr. Dondero, is whether you can identify the individuals or the individual who entered into any agreement that concerns the 2014 note.

MS. DEITSCH-PEREZ: Asked and answered.

A. Myself as trustee at that point in time -- and I heard what you said about Nancy's testimony, but, you know, some of the conversation in 2016 may have appropriately covered the '14 note also, but...

BY MR. MORRIS:

Q. Did you enter into the agreement with

1 HCMFA - J. DONDERO
2 respect to the 2014 note both in your capacity as
3 the president of Highland and simultaneously in
4 your capacity as the trustee of The Dugaboy
5 Trust?
6 A. Yes.
7 Q. Thank you. I appreciate that.
8 Other than what we've talked about,
9 is there anything in paragraph 41 -- withdrawn.
10 And were the terms of the agreement
11 that you entered into in that dual capacity --
12 were they the same terms that are set forth in
13 paragraph 41, or were they different in any way?
14 MS. DEITSCH-PEREZ: Object to the
15 form.
16 A. I'm sorry. I read it again. Can you
17 repeat that question, please.
18 BY MR. MORRIS:
19 Q. Sure. It's just whether the terms of
20 the agreement that you entered into with respect
21 to the 2014 note were the same as the terms of
22 the agreement that you entered into with Nancy
23 once she became the Dugaboy trustee.
24 A. Yes. I mean, essentially yes.
25 Q. Okay. And I appreciate the word

1 HCMFA - J. DONDERO
2 "essentially," and I'll just ask you if there's
3 any difference at all between the terms of the
4 agreement that you entered into with respect to
5 the 2014 note than the terms of the agreement
6 that you entered into with Nancy concerning the
7 2016 note.
8 A. Not that I recall at this time.
9 Q. Okay. Can we go to paragraph 42,
10 please.
11 I think we addressed paragraph 42.
12 Do you have anything further to add as to HCMFA's
13 defense that the notes were ambiguous, anything
14 to what you've already testified to?
15 A. Yes, I think I said this in my last
16 deposition, but these notes were structured not
17 to be senior secured, not to be guaranteed, not
18 to be amortizing, not to be what you would do
19 with a third party. They were meant to be soft
20 notes that could and would and likely be
21 forgiven.
22 They were bona fide in terms of their
23 terms, but they were purposely, you know, not
24 filed, not perfected, not notarized, and subject
25 to change and prepayment, et cetera, over time.

1 HCMFA - J. DONDERO
2 In the way that they were operated,
3 they were meant to be loose and flexible notes,
4 and that's what they are.
5 MR. MORRIS: Okay. I move to strike,
6 and I'm just going to ask you to -- and if we
7 need to go back to the notes, I'm happy to do
8 that.
9 BY MR. MORRIS:
10 Q. I'm focused on paragraph 42 and the
11 question of ambiguity. Is there anything about
12 the notes that HCMFA contends is ambiguous?
13 MS. DEITSCH-PEREZ: Asked and
14 answered.
15 A. I think I answered that. And I'd
16 like my answer to stand because it specifically
17 addressed your open-ended question, was there
18 anything else. And that is the "anything else."
19 BY MR. MORRIS:
20 Q. But it's anything else with respect
21 to ambiguity. Did you understand that?
22 A. Yes, and those are the ambiguity in
23 its construct, the ambiguity in what it has and
24 what it doesn't have compared to the more
25 industry standard arm's-length note. And my

HCMFA - J. DONDERO

answer was fair and correct.

MR. MORRIS: Okay. I move to strike that as well. And the judge will do what she does.

BY MR. MORRIS:

Q. Mr. Dondero, was it your intent when you signed the notes that they would be bona fide notes?

A. They have to be -- they have to hit -- they have to be bona fide and hit minimal terms in terms of construct to be bona fide for financial and for tax purposes, and they were bona fide for those purposes.

Q. Okay. Thank you very much.

So let's go to paragraph 43, please, and if you could just read that first sentence to yourself. And let me know when you've done that.

(Document review.)

A. Yes, I've read it.

BY MR. MORRIS:

Q. Can HCMFA identify any documents or information that it contends is relevant to the notes that Highland has not produced in discovery?

HCMFA - J. DONDERO

A. I'm not aware of anything Highland has produced. I haven't seen HCMFA financials. We've never gotten 2015's. We've never been allowed to have an examiner in here. We've never even got Highland financials on a current basis. We've never gotten asset reviews. We've never -- as far as I know, we've gotten nothing, so...

Q. So it's your testimony that you've gotten nothing? That's HCMFA's testimony today?

A. That's my testimony.

Q. Okay. I'm asking you in your capacity as HCMFA's 30(b)(6) witness who was asked to be prepared about the affirmative defenses. Is it HCMFA's testimony that Highland has produced nothing in discovery?

A. Nothing of relevance that I've seen.

Q. Before signing -- before authorizing the Stinson firm to file this answer on behalf of HCMFA, did you review Highland's document production?

MS. DEITSCH-PEREZ: Object to the form.

A. Not specifically.

///

HCMFA - J. DONDERO

BY MR. MORRIS:

Q. Have you ever reviewed Highland's document production?

MS. DEITSCH-PEREZ: Object to the form.

A. Not specifically.

BY MR. MORRIS:

Q. You ever review it generally?

MS. DEITSCH-PEREZ: Object to the form.

A. No, I -- I've just -- it's just been relayed to me verbally.

BY MR. MORRIS:

Q. Do you have any idea how many pages of documents Highland produced in this litigation?

A. No.

Q. Do you have any idea the volume of documents that Highland has produced in this litigation?

A. I just -- that it's been inadequate and insufficient, but I don't know the volume.

Q. Have you authorized your attorneys to make a motion to compel of any kind for

1 HCMFA - J. DONDERO
2 Highland's failure to produce responsive
3 documents?
4 A. I believe they have several times.
5 Q. What's the basis for that belief?
6 MS. DEITSCH-PEREZ: I'm -- I'm
7 actually going to direct you not to answer to the
8 extent Mr. Morris is trying to inquire into
9 privileged communications.
10 John, you know very well there was a
11 motion to compel previously.
12 MR. MORRIS: This --
13 MS. DEITSCH-PEREZ: You don't need
14 the witness to --
15 MR. MORRIS: In this lawsuit?
16 MS. DEITSCH-PEREZ: No, in the
17 overall notes lawsuit.
18 MR. MORRIS: And can you inform your
19 client that Highland has produced every single
20 unredacted audited financial statement from 2008
21 to 2018? Because that's what the subject was, I
22 believe.
23 MS. DEITSCH-PEREZ: No, that wasn't
24 the sole subject of the motion to compel. It was
25 not. And you did not produce them in response to

1 HCMFA - J. DONDERO
2 that motion. You didn't produce them until we
3 went out and subpoenaed the accountants, the
4 auditors.
5 MR. MORRIS: Okay. But you have them
6 now, right? Can you inform your client that you
7 have all of the audited financial statements from
8 2008?
9 MS. DEITSCH-PEREZ: Are you done,
10 Mr. Morris?
11 MR. MORRIS: I'm just trying to get
12 testimony with respect to the affirmative --
13 MS. DEITSCH-PEREZ: You're not trying
14 to get testimony. You're trying to have a
15 conversation, and this is not the appropriate
16 place. Do you want to talk to me? Call me after
17 the deposition.
18 MR. MORRIS: I'm just trying to get
19 testimony as to the basis for the statement in
20 paragraph 43. So I'll try one last time.
21 BY MR. MORRIS:
22 Q. Can you identify any documents or
23 information relevant -- actually, withdrawn. I
24 think I've got enough here.
25 Let's look at the affirmative

1 HCMFA - J. DONDERO
2 defenses at the end of paragraph 43. Do you see
3 that there's a list there, Mr. Dondero?
4 A. Yes.
5 Q. Can you identify all facts that HCMFA
6 is aware of that concern or relate to the
7 affirmative defense of waiver?
8 MS. DEITSCH-PEREZ: Why don't you let
9 him read all of 43 first --
10 MR. MORRIS: I didn't prevent him --
11 MS. DEITSCH-PEREZ: -- and then he
12 can answer.
13 MR. MORRIS: I didn't prevent him
14 from doing anything.
15 THE WITNESS: Okay. What's the
16 question?
17 BY MR. MORRIS:
18 Q. My question, Mr. Dondero, is if you
19 can identify as HCMFA's 30(b)(6) witness all
20 facts that concern or relate to the affirmative
21 defense of waiver.
22 A. Well, I don't want to do legal
23 analysis or conclusions on --
24 Q. I'm not -- I'm not -- I appreciate
25 that. And I'm not asking you for that. I'm

HCMFA - J. DONDERO

asking for facts.

What facts is HCMFA aware of that concern or relate to the defense of waiver?

A. The sale of MGM.

Q. Okay. Anything else?

A. I don't know at this moment.

Q. And how does HCMFA contend that the sale of MGM constitute Highland's waiver of its right to collect under the notes?

A. That would be the trigger of forgiveness in the notes.

Q. Okay. Anything else?

A. No.

Q. Okay. The next --

A. Not at the moment.

Q. -- defense -- I'm sorry, I didn't mean to step on your words.

A. That's okay.

Q. Okay. The next defense you see there is estoppel.

Can you tell me, as HCMFA's 30(b)(6) witness, all facts that concern or relate to the affirmative defense of estoppel?

A. Forgiveness, would that apply there

HCMFA - J. DONDERO

too?

Q. That's -- that's your answer. If that's your answer, I'll take it. I'll try and restate it for you.

Is it HCMFA's position that Highland should be estopped from collecting on the notes because the condition subsequent with respect to the sale of MGM has occurred?

A. Yes.

Q. Okay. Are you aware of any other facts that would support HCMFA's affirmative defense of waiver?

(Clarification requested by the stenographer.)

MS. DEITSCH-PEREZ: Do you mean estoppel?

MR. MORRIS: Yes, thank you, Deborah. Let me restate the question.

BY MR. MORRIS:

Q. Are you aware of any other facts that concern or relate to HCMFA's affirmative defense of estoppel?

A. I think the forgiveness around MGM, if not the agreement itself, is until the

HCMFA - J. DONDERO

monetization of -- including Trussway and Cornerstone of the three assets, so that would push off collection.

Q. Okay. Anything else?

A. Not at this moment.

Q. The next affirmative defense is failure of consideration.

Do you see that?

A. Yes.

Q. And HCMFA has admitted that Highland transferred to HCMFA the principal amount reflected in each note, correct?

A. Yes.

Q. And that it did so specifically in exchange for each note, correct?

A. Yes.

Q. Okay. So are you aware of any facts or circumstances that concern or relate to HCMFA's affirmative defense of failure of consideration?

A. I don't know, and I don't know if that includes other cross-claims or other netting of other payments would fall into that. I don't know.

HCMFA - J. DONDERO

Q. Prepayment is the last one.

Are you aware of any facts or circumstances that concern or relate to HCMFA's affirmative defense of prepayment?

A. So, no, I don't know. I don't know. I don't know how the MGM sale affects amounts that were prepaid. I don't know. I don't know if those should be argued to be disgorged by the -- by Highland. I don't know.

Q. Okay. Let's take this down and let's move to the next exhibit. You may be happy to know that I only have a seven-page outline, and I'm on page 5.

(Recess requested by the stenographer.)

MR. MORRIS: Sure. This will hopefully be our only break. It's, I guess, 11:17 your time. Let's come back at 11:25, eight-minute break.

THE WITNESS: Yeah, okay.

THE VIDEOGRAPHER: Off video at 11:17 a.m.

(Recess taken, 11:17 a.m. to 11:32 a.m. CDT)

HCMFA - J. DONDERO

THE VIDEOGRAPHER: Back on video at 11:32 a.m.

BY MR. MORRIS:

Q. Mr. Dondero, did you communicate with anybody about this deposition during the break?

A. No.

MR. MORRIS: Can we please put up Exhibit 5.

(HCMFA/Dondero Deposition Exhibit 5 marked.)

BY MR. MORRIS:

Q. And if you could just scroll down a little bit to show both signatures. Okay.

Mr. Dondero, are you familiar with this document?

We can go back to the top.

A. Generally.

Q. Do you know what it is?

A. It was something we were required to do I think for the benefit of the auditors or for the benefit of the audit.

Q. Okay. And is that your signature on the document?

A. Yes.

1 HCMFA - J. DONDERO
2 Q. And is it your understanding that
3 pursuant to this document, HCMLP -- and I'm
4 looking at the last sentence -- agreed not to
5 demand payment on amounts owed by HCMFA prior to
6 May 31st, 2021?
7 A. Yes.
8 Q. Do you know what HCMLP received in
9 return for its agreement not to demand payment on
10 amounts owed by HCMF prior to May 31st, 2021?
11 A. I think it was an inconsiderate
12 accomodation -- I mean insignificant
13 accommodation. I don't think there was a need or
14 a request for a consideration. No one -- I don't
15 know; no one thought that at the time, I can tell
16 you that.
17 Q. Okay. So at the time, you can't
18 identify any consideration that was given to
19 Highland in exchange for its agreement not to
20 demand payment on amounts owed by HCMF prior to
21 May 31, 2021, correct?
22 A. Correct.
23 Q. And if we go to the top of the
24 document, it says, quote: Reference is hereby
25 made to certain outstanding amounts loaned.

1 HCMFA - J. DONDERO
2 Do you see that part of the document?
3 A. Yes.
4 Q. Is it your understanding that the
5 reference to certain outstanding amounts loaned
6 is a reference to the outstanding principal that
7 was due under the notes that are at issue in this
8 lawsuit?
9 MS. DEITSCH-PEREZ: Object to the
10 form.
11 A. It says what it says. I don't know
12 if it was meant to be just these notes or if
13 there were other notes. I don't know.
14 BY MR. MORRIS:
15 Q. Do you recall if you made any inquiry
16 at the time you signed this document as to what
17 outstanding amounts loaned referred to?
18 A. I didn't believe it was necessary, so
19 I did not.
20 Q. Okay. But HCMFA does acknowledge
21 that as of April 15, 2019 at least the two notes
22 that are at issue in this -- are at issue in this
23 lawsuit were outstanding, correct?
24 A. Again, I don't know if we got the
25 accounting. I think at much reduced size, there

HCMFA - J. DONDERO

was still some of the notes outstanding, but I don't know if there were other notes.

Q. Okay. And I just ask for your patience.

HCMS -- withdrawn.

HCMFA acknowledges that as of April 15th, 2019 there were still outstanding amounts loaned under the two notes that are at issue, putting aside what the principal amount was at that particular moment in time, correct?

A. Yes, I believe, yes, they were outstanding at that point in time.

Q. Okay. And do you see after that clause, after the identification of the parties, it specifically refers to -- and I'm paraphrasing here -- certain amounts -- withdrawn -- certain outstanding amounts loaned from Highland to HCMFA, quote: For funding of HCMF, apostrophe S, ongoing operations.

Do you see that?

A. Yes.

Q. And when you signed this document, did you understand that the purpose of the outstanding amounts was to fund HCMF, apostrophe

1 HCMFA - J. DONDERO
2 S, ongoing operations?
3 A. Yeah, I think we covered this before
4 where it could have been for bonuses and it could
5 have been for ongoing operating expenses.
6 Q. And then in the next paragraph it
7 says that HCMFA expects that it, quote: may be
8 unable to repay such amounts should they become
9 due.
10 Do you see that?
11 A. Yes.
12 Q. And would you agree that the term
13 "such amounts" refers to the outstanding amounts
14 loaned from Highland to HCMFA as of April 15,
15 2019?
16 A. Yes.
17 Q. Okay. And then the reference at the
18 end of that sentence, where it says, quote,
19 should they become due.
20 Do you see that part?
21 A. Yes.
22 Q. Do you have an understanding based on
23 the notes that you signed as to how such amounts
24 might, quote, become due?
25 A. If Highland demanded payment.

HCMFA - J. DONDERO

Q. Okay. And you recall -- just a question or two on background.

Do you recall that in January of 2020 you entered into the corporate governance agreement, where you stepped down as president and an independent board was put in place?

A. Yes.

Q. Okay. From that time until the present, does HCMFA contend that Highland breached this agreement in any way?

A. I don't think so.

Q. Okay. Are you aware as HCMFA's corporate representative as to whether or not HCMLP ever demanded payment on amounts that were outstanding as of April 15, 2019 prior to May 31st, 2021?

A. I don't -- I don't know and -- I don't know. I don't think so.

Q. Okay. If we can go to -- so if we can go to the next document. I think it's Exhibit 6.

(HCMFA/Dondero Deposition Exhibit 6 marked.)

///

1 HCMFA - J. DONDERO
2 BY MR. MORRIS:
3 Q. And do you see this is a letter dated
4 June 2nd, 2021?
5 A. Yep.
6 Q. So does that refresh your
7 recollection that Highland didn't make a demand
8 for payment of the amounts that were outstanding
9 as of April 2019 until June of 2021?
10 A. Okay. Yeah, that's what this letter
11 says, so --
12 Q. And --
13 A. If this was the first time, then
14 that's true.
15 Q. Right. You're generally aware that
16 the reason we have this follow-up litigation, the
17 reason why these notes weren't part of the main
18 notes litigation, is because of the exhibit that
19 we just looked at that you signed that said HCMLP
20 wouldn't make a demand until after May 31st,
21 2021, right?
22 A. Right.
23 Q. Okay. So now, just looking at this
24 demand letter, do you recall whether you saw this
25 at or around the time that it was sent in early

HCMFA - J. DONDERO

June 2021?

A. I was aware of it.

Q. Okay. Do you know, did HCMFA ever attempt to determine whether HCMLP's calculation of the outstanding principal amount as of June 4th, 2021 was accurate?

A. I think that's why we were seeking discovery.

Q. Okay. I'm going to just step back.

Do you see that there's a column there, Outstanding Principal Amount, 6/4/21, and it's got two entries for each of those notes?

A. Yes.

Q. Do you know if HCMFA ever attempted to determine if those figures were accurate?

A. I -- I believe it did as part of this litigation through discovery.

Q. Okay. And as you sit here today, does HCMFA dispute in any way the listing of the outstanding principal amount set forth on this document as of June 4th, 2021?

A. I don't know.

Q. Okay. The next column is marked Accrued But Unpaid Interest.

HCMFA - J. DONDERO

Do you see that?

A. Yes.

Q. Has HCMFA ever attempted to validate the figures that are set forth in that column?

A. The same answer as before: I think through discovery in this litigation, they tried.

Q. Okay. And as of today, does HCMFA have any factual basis for disputing the amounts that are set forth in that column?

A. I don't know.

Q. Looking at the last column, the Total Amount Outstanding, do you see that there's set forth in the letter total amounts outstanding as of June 4th, 2021?

A. Yes.

Q. Did HCMFA ever attempt to validate the numbers that are in that column?

A. It would be the same answer for the prior two columns. I believe it's part of this litigation.

Q. Okay. And as you sit here today as HCMFA's 30(b)(6) witness, do you have any facts that would call into question the accuracy of the total amount outstanding as reflected in this

HCMFA - J. DONDERO

letter, at least as of June 4th, 2021?

A. I do not.

Q. Okay. Do you know, did HCMFA respond to this letter in any way?

A. I don't believe so.

Q. Okay. Do you know if HCMFA ever paid any amounts in response to this letter?

A. I don't believe it did.

Q. Let's go to Exhibit 7, please.

(HCMFA/Dondero Deposition Exhibit 7 marked.)

BY MR. MORRIS:

Q. Okay. Have you ever seen this document before, sir?

A. I'm looking -- I'm looking at it in detail now. I don't remember seeing this before.

Q. Okay. I'm going to represent to you that the top box relates to the 2014 note and the bottom box relates to the 2016 note, and that each of the boxes summarizes payments that were made against each particular note, and it shows how the payments were applied.

And I'll represent to you that Highland has produced in discovery the bank

1 HCMFA - J. DONDERO
2 statements that support each of the receipts and
3 the payments -- each of the payments and receipts
4 set forth on this document.
5 I appreciate that you haven't seen
6 this before, but let me just ask generally: Is
7 HCMFA aware that certain payments were applied
8 against the notes prior to the petition date?
9 A. Prior to the petition date? Yes.
10 Q. Okay. And do you see -- let's start
11 with the bottom box, the 2016 box.
12 Do you see that there's three
13 receipts? One is -- refers to a bank statement
14 from September 9, 2016, another refers to a bank
15 statement from April 12th, 2017, and then a third
16 bank statement is referred to with respect to
17 December 28th, 2021.
18 Do you see those three receipt lines?
19 A. Sure.
20 Q. Okay. Do you have any knowledge as
21 the 30(b)(6) representative as to, you know, the
22 process by which payments were made on HCMFA's
23 behalf against the 2016 or the 2014 note?
24 A. Not specifically. It just -- it
25 looks like when there was -- yeah, no, it looks

1 HCMFA - J. DONDERO
2 like -- like I can't see a pattern to it
3 specifically.
4 Q. Okay. And then the top box has five
5 separate receipts with respect to the 2014 note.
6 Do you see that?
7 A. Yes.
8 Q. Did you -- did you approve each of
9 the payments on each of the notes that are
10 reflected on this page?
11 A. I -- I don't know.
12 Q. Were you aware before this deposition
13 that payments had been made against the HCMFA
14 notes that are at issue?
15 A. Yes.
16 Q. Okay. Does HCMFA contend that there
17 was anything improper with respect to the
18 payments that were applied against the two notes
19 that are at issue in this lawsuit?
20 A. Not that I'm aware of.
21 Q. Okay. Are you aware of any
22 contention by HCMFA that the payments were
23 improperly applied to outstanding principal and
24 interest due under these two notes and the other
25 notes referred to in the footnotes?

1 HCMFA - J. DONDERO
2 MS. DEITSCH-PEREZ: Object to the
3 form.
4 A. You know, I see the footnotes.
5 The -- I'm not aware of the application or if
6 that was proper or not, to apply it to some --
7 split some of it and apply it to other loans,
8 I -- and I don't know whether we're contesting
9 that. But I don't know if we have enough
10 information to contest it. I don't know the
11 answer.
12 BY MR. MORRIS:
13 Q. Well, did you check with Skyview to
14 see what HCMFA's books and records show with
15 respect to these two loans?
16 A. No.
17 Q. Do you know whether the payments
18 reflected on this exhibit are also reflected in
19 HCMFA's books and records?
20 A. I don't, but I imagine they are.
21 Q. Okay. And why do you imagine that
22 they are?
23 A. We run a highly compliant GAAP
24 institution. Always have.
25 Q. And so how does -- why does that lead

1 HCMFA - J. DONDERO
2 you to conclude that the payments reflected on
3 this document would also be reflected in HCMFA's
4 books and records?
5 A. Generally accepted accounting
6 principles are to reflect the economics of
7 transactions and cash flow movements, and if
8 it -- it would have to be reflected on the
9 financials either directly in the notes or if
10 they had some litigation contingency reserve or
11 something, but one way or another, it would have
12 to foot in terms of the money coming in or being
13 paid out, you know, the asset or liability
14 would -- it would have to be accounted, and
15 that's what dual-entry accounting is.
16 Q. All right. So as the person who was
17 in control of both Highland and HCMFA prior to
18 the petition date, would it be your expectation
19 that the application of payments to principal and
20 interest reflected on this document, at least
21 prior to the petition date, would be the same on
22 HCMFA's books as it is on Highland's books?
23 A. Prior to the petition date, yes.
24 Q. Okay. And so the only -- the only
25 question that you might have relates to the

1 HCMFA - J. DONDERO
2 December 2021 payments, correct?
3 A. Yes.
4 Q. Okay. Fair enough.
5 Do you know whether HCMFA has done
6 any calculation of its own to determine what it
7 contends is the outstanding principal and
8 interest due on either one of the notes?
9 MS. DEITSCH-PEREZ: Asked and
10 answered.
11 A. I don't know.
12 BY MR. MORRIS:
13 Q. Okay. Let's just go, last document,
14 Exhibit 8, please, which are the discovery
15 responses.
16 (HCMFA/Dondero Deposition Exhibit 8
17 marked.)
18 BY MR. MORRIS:
19 Q. And I forgot what topic this was, but
20 I just have a few questions.
21 Have you seen HCMFA's written
22 responses to discovery before, Mr. Dondero?
23 A. I believe so.
24 Q. Okay. Can we go first to Request for
25 Admissions 9 and 10? I think you passed it.

1 HCMFA - J. DONDERO
2 There you go.
3 Okay. So these two requests for
4 admission ask HCMFA to admit that they didn't
5 disclose the terms and existence of the agreement
6 to Frank Waterhouse before February 1st, 2021.
7 Do you see that?
8 A. Yes.
9 Q. Okay. And this is where it really
10 becomes beneficial to have our agreement that all
11 of the prior transcripts can be admissible in
12 this case.
13 Do you believe that you've fully
14 testified as to the factual basis for the denials
15 in response to Requests for Admission No. 9 and
16 10, or is there some other part of a conversation
17 that you had with Mr. Waterhouse with respect to
18 these specific notes?
19 MS. DEITSCH-PEREZ: Object to the
20 form.
21 A. I'm sorry, so what's the question
22 again?
23 BY MR. MORRIS:
24 Q. Did you have a conversation with
25 Mr. Waterhouse that you haven't already testified

HCMFA - J. DONDERO

to as it relates to these two notes at issue, or was it all part of the same conversation that you've already testified to?

A. Yeah, the testimony I'd like to make clear is on the record that accurately reflects is there was definitely a conversation from...

We filed for bankruptcy in '19, right? It was October of '19, correct?

Q. Yes, sir.

A. In the spring of '20, it was clearly discussed numerous times with Seery and Frank and whatever that the notes were compensation. We -- you've seen in our US trustee letters, you've seen it in our other allegations or presentations to the court.

We made 35 different proposals to settle the estate when, you know, we -- it became clear that, you know, Seery wasn't and he was moving for his own purposes.

So what we ended up doing, every one of those, every one of those PowerPoints, we specifically excluded the notes as an asset of Highland's starting in -- I would say the December meeting up in Grosvenor's offices, but

1 HCMFA - J. DONDERO
2 in 19- -- in 2019 and there forward, we always
3 had the notes excluded as assets.
4 So there were conversations with
5 Frank, Seery, the UCC members, numerous people
6 that the notes were loose, unsecured notes that
7 were part of compensation. So that's got to be
8 reflected somewhere in either my testimony or
9 these admissions here.
10 MR. MORRIS: I'm going to move to
11 strike, and I'm just going to ask you to focus
12 personally on the request for admission.
13 BY MR. MORRIS:
14 Q. And that is whether you had any
15 further conversation other than what you've
16 already testified to with Frank Waterhouse
17 concerning the existence or the terms of the
18 alleged agreements.
19 And the alleged agreements are
20 defined as the agreements in HCMFA's answer, the
21 one with Nancy Dondero.
22 So just to be clear, Mr. Dondero, I'm
23 not asking about negotiations over the notes.
24 I'm asking if you have anything to add with
25 respect to your communications with

1 HCMFA - J. DONDERO
2 Mr. Waterhouse concerning the existence and terms
3 of the alleged agreement.
4 MS. DEITSCH-PEREZ: Object, asked and
5 answered.
6 A. Yeah, I'd like what I said a minute
7 ago to not be struck. If you want me to answer
8 it differently or more specifically, let me say
9 it as follow-up.
10 There were numerous conversations
11 with Frank and at least a half dozen other people
12 that there was a compensation agreement in place
13 or that those notes were agreed to be
14 compensation.
15 There wasn't a discussion of the
16 specific terms that I can recall with Frank or
17 Seery or the UCC members or the Grosvenor general
18 counsel or all those other people, but they were
19 well aware that there was a compensation
20 agreement in place.
21 BY MR. MORRIS:
22 Q. Okay. I appreciate that.
23 Did you ever tell them that Nancy
24 Dondero, acting as the Dugaboy trustee, is the
25 party who entered into the agreement on behalf of

HCMFA - J. DONDERO

Highland Capital Management LP?

A. No.

Q. Did you ever tell them that the agreement was that the notes would be forgiven if you sold any of the three portfolio companies at a price above cost?

A. Again, the terms and the mechanisms weren't discussed. Nobody viewed the notes as material to the value of the estate at the time or today.

MR. MORRIS: Okay. I move to strike the last portion, and I would ask you just this. I want to finish this up.

BY MR. MORRIS:

Q. So the question was simply whether you ever told anybody any of the terms of the agreement that you entered into with Nancy Dondero as the trustee of The Dugaboy Trust on behalf of Highland.

MS. DEITSCH-PEREZ: Asked and answered.

A. Yeah, not the terms. The terms weren't material. But the awareness of the agreement was broadly discussed.

HCMFA - J. DONDERO

BY MR. MORRIS:

Q. Okay. And -- that's fine.

Let's go to Request for Admission No. 15 and 16. This talks about disclosure of the existence in terms of the alleged agreement to any creditor of Highland.

Can you identify every creditor of Highland to whom you disclosed the terms of the alleged agreement prior to February 1st, 2021?

A. There were no creditors prior to February 1st, 2021, other than -- I'm trying to think -- Grosvenor --

Well, the answer is no. The answer is no, but there were very few creditors. And the answer is no, didn't believe it was necessary.

Q. Okay.

A. The amounts weren't material.

Q. Okay. How about with respect to No. 16, can you identify a creditor to whom you disclosed the existence of the alleged agreement prior to February 1st, 2021?

MS. DEITSCH-PEREZ: Object, asked and answered.

1 HCMFA - J. DONDERO
2 A. Wait a minute. I need to correct. I
3 wasn't paying attention to the dates. Okay.
4 Prior to February 2021 is all the
5 things that I rambled on about earlier that you
6 wanted to strike. There were written proposals
7 delivered to the independent board, the UCC, all
8 the creditors, including Grosvenor, UBS, Acis,
9 Pat Dougherty, all the smaller creditors,
10 et cetera, that showed the notes treated as
11 compensation, and the notes not considered as
12 part of the balance sheet of Highland.
13 And the balance sheet of Highland at
14 that point in time and today overwhelmingly
15 covered all liabilities such that it wasn't
16 material, and it wasn't anything that anybody
17 objected to in any of the proposals going back
18 and forth.
19 MR. MORRIS: I move to strike.
20 BY MR. MORRIS:
21 Q. And my question is simply: Can you
22 identify every creditor to whom you disclosed the
23 terms of the alleged agreement prior to
24 February 1st, 2021? I'm not asking for notes.
25 I'm not asking for negotiating position.

1 HCMFA - J. DONDERO
2 The terms of the alleged agreement,
3 can you please identify if there are any
4 creditors to whom you disclosed the terms of the
5 alleged agreement before February 1st, 2021?
6 MS. DEITSCH-PEREZ: Asked and
7 answered.
8 A. Well, all right. Let me succinctly
9 say it again.
10 The agreement was discussed with all
11 the creditors, all the professionals, all the
12 management team at Highland and NexPoint. The
13 terms were not specifically discussed.
14 BY MR. MORRIS:
15 Q. Okay. Were any of the terms
16 discussed with any creditor prior to
17 February 1st, 2021?
18 A. Well, the term -- the term that it
19 would be forgiven as part of compensation was
20 discussed as part of the overall agreement, but
21 the specific mechanisms were not discussed.
22 Q. Okay. Did you ever tell anybody --
23 withdrawn.
24 Did you ever tell any creditor prior
25 to February 1st, 2021 that you had entered into

HCMFA - J. DONDERO

an agreement on behalf of HCMFA with your sister, Nancy Dondero, acting in her capacity as the trustee of The Dugaboy Trust, to forgive the notes?

A. There was no specific conversations such as that --

Q. Thank you.

A. -- that I remember.

Q. Let's go to Interrogatory No. 1 and 2, please. Okay.

So in paragraph 41 of the answer -- and we can get it back if it's helpful to you -- there's a reference to testimony that HCMFA believes, quote, discusses the existence of the agreement that may be uncovered through discovery.

Is that a reference to any testimony other than Nancy Dondero or you?

A. Yeah. I mean, again, there's 35 different offers to sell, pot plans, you know, good faith efforts that all describe the notes as subject to a compensation agreement and forgiveness that are all on the debtor's servers that ideally would be discovered as part of this

HCMFA - J. DONDERO

process, ideally would be brought forward by the debtor, but I don't know if we have those.

Q. All right. You understand there's a difference between testimony and documents, right?

A. Everybody involved -- and there were a lot of people involved -- would give corroborating testimony to those documents.

Q. Okay. Interrogatory No. 4 -- you know what, I'll skip that.

Let's go to Interrogatory No. 8, please.

Do you see that it says -- it asks HCMFA to identify every loan that Highland extended to one or more of its current or former affiliates that Highland forgave in whole or in part.

Do you see that was the interrogatory?

A. Yes.

Q. Okay. And then in response there's a list of human beings, right?

A. Yes.

Q. Are those human beings affiliates,

HCMFA - J. DONDERO

current or former affiliates, of Highland?

MS. DEITSCH-PEREZ: Object to the form.

A. In all fairness, employees and consultants are affiliates, right?

BY MR. MORRIS:

Q. Okay. I just wanted to get the testimony.

And is that, to the best of your knowledge, a complete and accurate list of all current or former affiliates of Highland who had a loan forgiven by Highland, in whole or in part?

A. Within sufficient discovery, that was the list we could come up with from collective memory. There may be a few more, but that's the best knowledge we have at the moment.

Q. Okay. Let's just go back to the top of the requests for admission, and my question for you, Mr. Dondero, and it could be the last question, is whether there's any -- actually, I'm not even going to do it that way.

I'm just going to ask you here because this has been a 30(b)(6) topic for a very long time: Are you aware of any of HCMFA's

1 HCMFA - J. DONDERO
2 discovery responses in this document that are
3 incomplete or inaccurate?
4 A. Only generally from counsel.
5 Q. Okay. Can you identify any
6 inaccuracy or incomplete response to any request
7 for admission or interrogatory -- and we can
8 scroll through them if you'd like -- that you can
9 share with --
10 MS. DEITSCH-PEREZ: Yeah, but
11 before -- before he answers, actually give him a
12 context that that came up in, I would need a
13 break to make sure he's not going to disclose
14 privileged information.
15 Or ask it differently, John. There's
16 a way to get at that that would be different.
17 MR. MORRIS: Okay. I'll ask him.
18 BY MR. MORRIS:
19 Q. You're here as the 30(b)(6) witness.
20 Is there anything inaccurate or incomplete about
21 any response that HCMFA gave?
22 A. That HCMFA gave or that the debtor
23 gave as part of discovery? I'm sorry.
24 Q. MFA -- okay. I appreciate that,
25 Mr. Dondero.

HCMFA - J. DONDERO

These are HCMFA's responses to Highland's requests for discovery, and my question for you as HCMFA's 30(b)(6) witness is whether you're aware of anything in here that is inaccurate or incomplete from HCMFA's perspective as the responding party.

A. Not besides what we've already covered.

Q. Okay. I appreciate that.

MR. MORRIS: Can we just take a two-minute break and let me confer with Ms. Winograd and see if I've got anything further?

THE VIDEOGRAPHER: Off video at 12:11 p.m.

(Recess taken, 12:11 p.m. to 12:13 p.m. CDT)

THE VIDEOGRAPHER: Back on video at 12:13 p.m.

MR. MORRIS: I have no further questions, Mr. Dondero. Thank you for your patience.

THE WITNESS: Thank you.

MR. MORRIS: Take care.

HCMFA - J. DONDERO

THE VIDEOGRAPHER: This concludes today's deposition. Off video at 12:13 p.m.

(Time noted: 12:13 p.m. CDT)

_____

JAMES D. DONDERO

Subscribed and sworn to before me this _____ day of _____, 20____.

C E R T I F I C A T E

I, MICHAEL E. MILLER, FAPR, RDR, CRR, Notary Public in and for the State of Texas, do hereby certify:

That JAMES D. DONDERO, the witness whose deposition is hereinbefore set forth, was duly sworn by me and that such deposition is a true record of the testimony given by such witness;

That pursuant to FRCP Rule 30, signature of the witness was not requested by the witness or other party before the conclusion of the deposition;

I further certify that I am not related to any of the parties to this action by blood or marriage; and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand on May 5, 2022.

MICHAEL E. MILLER, FAPR, RDR, CRR
NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS

1

2 ---------- I N D E X ----------

3

4 WITNESS: JAMES D. DONDERO

5 EXAMINATION: PAGE

6 BY MR. MORRIS 6

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8

9 ---- LITIGATION SUPPORT INDEX ---- PAGE

10 Instruction Not To Answer 42

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13 ---- E X H I B I T S ----

14 EXHIBIT PAGE

15 Exhibit 1 Highland?s Third Amended Notice 7

16 of Rule 30(b)(6) Deposition to

17 Highland Capital Management

18 Fund Advisors, L.P.

19 Exhibit 2 2/26/14 Promissory Note 15

20 Exhibit 3 2/26/16 Promissory Note 21

21 Exhibit 4 Defendant?s Original Answer 28

22 Exhibit 5 4/15/19 Acknowledgment from 49

23 HCMLP

24 Exhibit 6 6/2/21 Demand Letter 54

25 Exhibit 7 2/26/14 & 2/26/16 Loan Summary 58

1

2 ---- E X H I B I T S ----

3 Exhibit 8 Highland Capital Management 63
4 Fund Advisors, L.P.?s
5 Objections and Responses to
6 Plaintiff?s Requests for
7 Admission, Interrogatories and
8 Requests for Production

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1 ERRATA SHEET

2 Case Name:

3 Deposition Date:

4 Deponent:

5 Pg.	No.	Now Reads	Should Read	Reason
6 ___	___	_____	_____	_____
7 ___	___	_____	_____	_____
8 ___	___	_____	_____	_____
9 ___	___	_____	_____	_____
10 ___	___	_____	_____	_____
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19 ___	___	_____	_____	_____

20 _____

21 Signature of Deponent

22 SUBSCRIBED AND SWORN BEFORE ME

23 THIS ____ DAY OF _____, 2022.

24 _____

25 (Notary Public) MY COMMISSION EXPIRES:_____

EXHIBIT 216

PACHULSKI STANG ZIEHL & JONES LLP
Jeffrey N. Pomerantz (CA Bar No.143717) (*admitted pro hac vice*)
John A. Morris (NY Bar No. 2405397) (*admitted pro hac vice*)
Gregory V. Demo (NY Bar No. 5371992) (*admitted pro hac vice*)
Hayley R. Winograd (NY Bar No. 5612569) (*admitted pro hac vice*)
10100 Santa Monica Blvd., 13th Floor
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Counsel for Highland Capital Management, L.P.

EXHIBIT
1
HCMFA/Dondero
5/5/2022
Michael E. Miller, FAPR, RDR, CRR

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re: HIGHLAND CAPITAL MANAGEMENT, L.P.,[1] Reorganized Debtor.	§ § § § § §	Chapter 11 Case No. 19-34054-sgj11
HIGHLAND CAPITAL MANAGEMENT, L.P., Plaintiff, vs. HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, L.P., Defendant.	§ § § § § § § §	Adversary Proceeding No. 21-03082-sgj

[1] The Reorganized Debtor's last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Reorganized Debtor is 100 Cresce

HIGHLAND'S THIRD AMENDED NOTICE OF RULE 30(b)(6) DEPOSITION TO HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, L.P.

PLEASE TAKE NOTICE that, pursuant to Rule 30(b)(6) of the Federal Rules of Civil Procedure, made applicable herein pursuant to Rules 7030 and 9014 of the Federal Rules of Bankruptcy Procedure, Highland Capital Management, L.P., the reorganized debtor[2] ("Highland" or the "Reorganized Debtor") in the above-captioned chapter 11 case (the "Bankruptcy Case") and plaintiff in the above-captioned adversary proceeding (the "Adversary Proceeding"), shall take the deposition of Highland Capital Management Fund Advisors, L.P. ("HCMFA") by the person(s) most qualified to testify on HCMFA's behalf with respect to the topics described in **Exhibit A** attached hereto on **May 5, 2022**, commencing at **10:00 a.m. Central Time** or at such other day and time as Highland may agree in writing. The deposition will be taken under oath before a notary public or other person authorized by law to administer oaths and will be visually recorded by video or otherwise.

The deposition will be taken remotely via an online platform due to the coronavirus pandemic such that no one will need to be in the same location as anyone else in order to participate in the deposition and by use of Interactive Realtime.

[2] On February 22, 2021, the Bankruptcy Court entered the *Order (i) Confirming the Fifth Amended Plan of Reorganization (as Modified) and (ii) Granting Related Relief* [Bankr. Docket No. 1943] (the "Confirmation Order") which confirmed the *Fifth Amended Plan of Reorganization of Highland Capital* Management, *L.P.*, as modified (the "Plan"). The Plan went Effective (as defined in the Plan) on August 11, 2021, and Highland is the Reorganized Debtor (as defined in the Plan) since the Effective Date. *See Notice of Occurrence of Effective Date of Confirmed Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Bankr. Docket No. 2700].

Dated: May 3, 2022.

PACHULSKI STANG ZIEHL & JONES LLP

/s/ John A. Morris

Jeffrey N. Pomerantz (CA Bar No. 143717)
John A. Morris (NY Bar No. 2405397)
Gregory V. Demo (NY Bar No. 5371992)
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-and-

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Counsel for Highland Capital Management, L.P.

EXHIBIT A

DEFINITIONS

1. "Answer" means *Defendant's Original Answer*, filed by HCMFA, in Adv. Proc. 21-3082, at Docket No. 5.

2. "Agreement" refers to any agreement or understanding (whether written or oral, whether implied or express, and regardless of who entered such agreement or understanding on behalf of HCMFA or Highland) Concerning either or both of the Notes, including but not limited to the alleged oral agreement(s) between James Dondero and "Nancy Dondero, as representative for a majority of the Class A shareholders of Plaintiff," described in paragraph 41 of the Answer.

3. "Communications" means the transmittal of information (in the form of facts, ideas, inquiries, or otherwise) and includes all oral and written communications of any nature, type or kind including, but not limited to, any ESI (and any attachments thereto), Documents, telephone conversations, text messages, discussions, meetings, facsimiles, e-mails, pagers, memoranda, and any other medium through which any information is conveyed or transmitted.

4. "Concerning" means and includes relating to, constituting, defining, evidencing, mentioning, containing, describing, discussing, embodying, reflecting, edifying, analyzing, stating, referring to, dealing with, or in any way pertaining to the subject matter.

5. "Complaint" refers to the *Complaint for (I) Breach of Contract and (II) Turnover of Property of Highland's Estate*, filed at Docket No. 1 in the Adversary Proceeding.

6. "Discovery Requests" means *Plaintiff's Requests for Admission, Interrogatories, and Requests for Production Directed to Highland Capital Management Fund Advisors, L.P.*, served on Your counsel by e-mail on January 31, 2022.

7. "Document" means and includes all written, recorded, transcribed or graphic matter of every nature, type and kind, however and by whoever produced, reproduced,

disseminated or made. This includes, but is not limited to, Communications, ESI, "writings" as defined by Rule 1001 of the Federal Rules of Evidence, copies or drafts, and any tangible or intangible thing or item that contains any information. Any Document that contains any comment, notation, addition, insertion or marking of any type or kind which is not part of another Document, is to be considered a separate Document.

8. "Letter" refers to the document dated April 15, 2019 and attached as Exhibit 3 to the Complaint.

9. "Notes" shall have the meaning ascribed to that term in paragraphs 14-16 of the Complaint.

10. "Summary" refers to the document previously produced by Highland to HCMFA in discovery that ends in bates number 017584 and that HCMFA used during Mr. Seery's deposition.

11. "You" or "Your" refers to HCMFA, and anyone person or entity authorized to act on behalf of HCMFA.

Rule 30(b)6) Topics

Topic No. 1:

Your Answer.

Topic No. 2:

All facts and circumstances, Communications, and Documents Concerning any Agreement, including the alleged oral agreement(s) between James Dondero and "Nancy Dondero, as representative for a majority of the Class A shareholders of Plaintiff," described in paragraph 41 of the Answer.

Topic No. 3:

Each Affirmative Defense asserted in Your Answer, including but not limited to all facts and circumstances, Communications, and Documents Concerning the Affirmative Defenses. *See* Answer ¶¶ 41-43.

Topic No. 4:

The Notes, including but not limited to (a) the negotiation of the Notes; (b) the terms of the Notes; (c) Your Communications Concerning the Notes; (d) any payments of principal or interest made by You or on Your behalf with respect to the Notes; (e) Your communications with Your outside auditors Concerning the Notes and the obligations thereunder; (f) Your treatment of the Notes in Your audited financial statements; (g) Your treatment of the Notes in Your books and records; and (h) all agreements Concerning the Note.

Topic No. 5:

Your responses to the Discovery Requests.

Topic No. 6:

All facts and circumstances, Communications, and Documents Concerning the Letter, including but not limited to its purpose, intent, and the reason(s) for its existence.

Topics No. 7:

Whether HCMFA contends that the application of the payments set forth in the Summary was inaccurate or improper or is disputed in any way.

Topic No. 8:

The total principal and interest due under each the Notes as of the (i) date the Adversary Proceeding was commenced, and (ii) at the present time (in each case, exclusive of the cost of collection).

EXHIBIT 217

EXHIBIT
5
HCMFA/Dondero
5/5/2022
Michael E. Miller, FAPR, RDR, CRR

Acknowledgement from HCMLP

April 15, 2019

Reference is hereby made to certain outstanding amounts loaned from HIGHLAND CAPITAL MANAGEMENT, L.P. ("HCMLP") to HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, L.P. ("HCMF") for funding of HCMF's ongoing operations, which are payable on demand and remained outstanding on December 31, 2018 and as of the date hereof.

HCMF expects that it may be unable to repay such amounts should they become due, for the period commencing today and continuing through May 31, 2021.

HCMLP hereby agrees to not demand payment on amounts owed by HCMF prior to May 31, 2021.

Highland Capital Management, L.P.
By: Strand Advisors, Inc., its general partner

By: _____

Acknowledged By:

Highland Capital Management Fund Advisors, L.P.
By: Strand XVI, Inc., its general partner

By: _____

EXHIBIT 218

HIGHLAND CAPITAL MANAGEMENT, L.P.

EXHIBIT
6
HCMFA/Dondero
5/5/2022
Michael E. Miller, FAPR, RDR, CRR

June 2, 2021

Highland Capital Management Fund Advisors, LP
2515 McKinney Avenue, Suite 1100
Dallas, Texas 75201
Attention: Frank Waterhouse

Re: Demand on Promissory Notes:

Dear Mr. Waterhouse,

Highland Capital Management Fund Advisors, LP ("Maker") entered into the following promissory notes (collectively, the "Notes"), among others,[1] in favor of Highland Capital Management, L.P. ("Payee"):

Date Issued	Original Principal Amount	Outstanding Principal Amount (6/4/21)	Accrued But Unpaid Interest (6/4/21)	Total Amount Outstanding (6/4/21)
2/26/2014	$4,000,000	$2,134,166.53	$11,288.28	$2,145,454.81
2/26/2016	$2,300,000	$990,757.62	$6,969.50	$997,727.12
TOTALS	**$6,300,000**	**$3,124,924.14**	**$18,257.78**	**$3,143,181.93**

Copies of the notes are attached hereto as **Appendix A**.

As set forth in Section 2 of each of the Notes, accrued interest and principal is due and payable upon the demand of Payee. By this letter, Payee is demanding payment of the accrued interest and principal due and payable on the Notes in the aggregate amount of $3,143,181.93, which represents all accrued and unpaid interest and principal through and including June 4, 2021.

Payment is due on June 4, 2021, and failure to make payment in full on such date will constitute an event of default under the Notes.

Payments on the Notes must be made in immediately available funds. Payee's wire information is attached hereto as **Appendix B**.

Nothing contained herein constitutes a waiver of any rights or remedies of Payee under the Notes or otherwise and all such rights and remedies, whether at law, equity, contract, or otherwise, are

[1] Maker is also obligated to pay amounts due under promissory notes issued in favor of Payee on May 2, 2019, and May 3, 2019 (the "May Notes"). Payee sent a demand letter to Maker with respect to the May Notes on December 3, 2020. A copy of such letter is attached hereto as **Appendix C**. Payee reserves all rights with respect the May Notes.

expressly reserved. Interest, including default interest if applicable, on the Notes will continue to accrue until the Notes are paid in full. Any such interest will remain the obligation of Maker.

Sincerely,

/s/ James P. Seery, Jr.

James P. Seery, Jr.
Highland Capital Management, L.P.
Chief Executive Officer/Chief Restructuring Officer

cc: Jeffrey Pomerantz
John Morris
Gregory Demo
DC Sauter
Davor Rukavina

Appendix A

PROMISSORY NOTE

$2,300,000.00

February 26, 2016

FOR VALUE RECEIVED, HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, LP. ("***Maker***") promises to pay to the order of HIGHLAND CAPITAL MANAGEMENT, LP ("***Payee***"), in legal and lawful tender of the United States of America, the principal sum of TWO MILLION, THREE HUNDRED THOUSAND and 00/100 Dollars ($2,300,000.00), together with interest, on the terms set forth below (the "***Note***"). All sums hereunder are payable to Payee at 300 Crescent Court, Dallas, TX 75201, or such other address as Payee may specify to Maker in writing from time to time.

1. Interest Rate. The unpaid principal balance of this Note from time to time outstanding shall bear interest at a rate equal to the mid-term "***applicable federal rate***" (2.62%) in effect on the date hereof for loans of such maturity as determined by Section 1274(d) of the Internal Revenue Code, per annum from the date hereof until maturity, compounded annually on the anniversary of the date of this Note. Interest shall be calculated at a daily rate equal to 1/365th (1/366 in a leap year) of the rate per annum, shall be charged and collected on the actual number of days elapsed, and shall be payable on demand of the Payee.

2. Payment of Principal and Interest. The accrued interest and principal of this Note shall be due and payable on demand of the Payee.

3. Prepayment Allowed; Renegotiation Discretionary. Maker may prepay in whole or in part the unpaid principal or accrued interest of this Note. Any payments on this Note shall be applied first to unpaid accrued interest hereon, and then to unpaid principal hereof.

4. Acceleration Upon Default. Failure to pay this Note or any installment hereunder as it becomes due shall, at the election of the holder hereof, without notice, demand, presentment, notice of intent to accelerate, notice of acceleration, or any other notice of any kind which are hereby waived, mature the principal of this Note and all interest then accrued, if any, and the same shall at once become due and payable and subject to those remedies of the holder hereof. No failure or delay on the part of Payee in exercising any right, power or privilege hereunder shall operate as a waiver thereof.

5. Waiver. Maker hereby waives grace, demand, presentment for payment, notice of nonpayment, protest, notice of protest, notice of intent to accelerate, notice of acceleration and all other notices of any kind hereunder.

6. Attorneys' Fees. If this Note is not paid at maturity (whether by acceleration or otherwise) and is placed in the hands of an attorney for collection, or if it is collected through a bankruptcy court or any other court after maturity, the Maker shall pay, in addition to all other amounts owing hereunder, all actual expenses of collection, all court costs and reasonable attorneys' fees and expenses incurred by the holder hereof.

7. Limitation on Agreements. All agreements between Maker and Payee, whether now existing or hereafter arising, are hereby limited so that in no event shall the amount paid, or agreed to be paid to Payee for the use, forbearance, or detention of money or for the payment or performance of any covenant or obligation contained herein or in any other document evidencing, securing or pertaining to this Note, exceed the maximum interest rate allowed by law. The terms and provisions of this paragraph shall control and supersede every other provision of all agreements between Payee and Maker in conflict herewith.

8. Governing Law. This Note and the rights and obligations of the parties hereunder shall be governed by the laws of the United States of America and by the laws of the State of Texas, and is performable in Dallas County, Texas.

MAKER:

JAMES DONDERO

PROMISSORY NOTE

$4,000,000.00 February 26, 2014

FOR VALUE RECEIVED, HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, LP. ("***Maker***") promises to pay to the order of HIGHLAND CAPITAL MANAGEMENT, LP ("***Payee***"), in legal and lawful tender of the United States of America, the principal sum of FOUR MILLION and 00/100 Dollars ($4,000,000.00), together with interest, on the terms set forth below (the "***Note***"). All sums hereunder are payable to Payee at 300 Crescent Court, Dallas, TX 75201, or such other address as Payee may specify to Maker in writing from time to time.

1. Interest Rate. The unpaid principal balance of this Note from time to time outstanding shall bear interest at a rate equal to the mid-term "***applicable federal rate***" (1.97%) in effect on the date hereof for loans of such maturity as determined by Section 1274(d) of the Internal Revenue Code, per annum from the date hereof until maturity, compounded annually on the anniversary of the date of this Note. Interest shall be calculated at a daily rate equal to 1/365th (1/366 in a leap year) of the rate per annum, shall be charged and collected on the actual number of days elapsed, and shall be payable on demand of the Payee.

2. Payment of Principal and Interest. The accrued interest and principal of this Note shall be due and payable on demand of the Payee.

3. Prepayment Allowed; Renegotiation Discretionary. Maker may prepay in whole or in part the unpaid principal or accrued interest of this Note. Any payments on this Note shall be applied first to unpaid accrued interest hereon, and then to unpaid principal hereof.

4. Acceleration Upon Default. Failure to pay this Note or any installment hereunder as it becomes due shall, at the election of the holder hereof, without notice, demand, presentment, notice of intent to accelerate, notice of acceleration, or any other notice of any kind which are hereby waived, mature the principal of this Note and all interest then accrued, if any, and the same shall at once become due and payable and subject to those remedies of the holder hereof. No failure or delay on the part of Payee in exercising any right, power or privilege hereunder shall operate as a waiver thereof.

5. Waiver. Maker hereby waives grace, demand, presentment for payment, notice of nonpayment, protest, notice of protest, notice of intent to accelerate, notice of acceleration and all other notices of any kind hereunder.

6. Attorneys' Fees. If this Note is not paid at maturity (whether by acceleration or otherwise) and is placed in the hands of an attorney for collection, or if it is collected through a bankruptcy court or any other court after maturity, the Maker shall pay, in addition to all other amounts owing hereunder, all actual expenses of collection, all court costs and reasonable attorneys' fees and expenses incurred by the holder hereof.

7. Limitation on Agreements. All agreements between Maker and Payee, whether now existing or hereafter arising, are hereby limited so that in no event shall the amount paid, or agreed to be paid to Payee for the use, forbearance, or detention of money or for the payment or performance of any covenant or obligation contained herein or in any other document evidencing, securing or pertaining to this Note, exceed the maximum interest rate allowed by law. The terms and provisions of this paragraph shall control and supersede every other provision of all agreements between Payee and Maker in conflict herewith.

8. Governing Law. This Note and the rights and obligations of the parties hereunder shall be governed by the laws of the United States of America and by the laws of the State of Texas, and is performable in Dallas County, Texas.

MAKER:

JAMES DONDERO

Appendix B

Appendix B

ABA #:	322070381
Bank Name:	East West Bank
Account Name:	Highland Capital Management, LP
Account #:	5500014686

Appendix C

HIGHLAND CAPITAL MANAGEMENT, L.P.

December 3, 2020

Highland Capital Management Fund Advisors, LP
c/o Highland Capital Management, L.P.
300 Crescent Court, Suite 700
Dallas, Texas 75201
Attention: Frank Waterhouse, CFO

Re: Demand on Promissory Notes:

Dear Mr. Waterhouse,

Highland Capital Management Fund Advisors, LP ("Maker") entered into the following promissory notes (collectively, the "Notes"), among others,[1] in favor of Highland Capital Management, L.P. ("Payee"):

Date Issued	Original Principal Amount	Outstanding Principal Amount (12/11/20)	Accrued But Unpaid Interest (12/11/20)	Total Amount Outstanding (12/11/20)
5/2/2019	$2,400,000	$2,457,517.15	$35,884.46	$2,493,401.61
5/3/2019	$5,000,000	$5,119,827.40	$74,424.05	$5,194,251.45
TOTALS	**$7,400,000**	**$7,577,344.55**	**$110,308.52**	**$7,687,653.07**

As set forth in Section 2 of each of the Notes, accrued interest and principal is due and payable upon the demand of Payee. By this letter, Payee is demanding payment of the accrued interest and principal due and payable on the Notes in the aggregate amount of $7,687,653.07, which represents all accrued and unpaid interest and principal through and including December 11, 2020.

Payment is due on December 11, 2020, and failure to make payment in full on such date will constitute an event of default under the Notes.

Payments on the Notes must be made in immediately available funds. Payee's wire information is attached hereto as **Appendix A**.

Nothing contained herein constitutes a waiver of any rights or remedies of Payee under the Notes or otherwise and all such rights and remedies, whether at law, equity, contract, or otherwise, are

[1] Maker is also obligated to pay amounts due under promissory notes issued in favor of Payee prior to April 15, 2019. Pursuant to that certain *Acknowledgment from HCMLP*, dated as of April 15, 2019, Payee agreed not to demand payment on such amounts until May 31, 2021. Payee reserves all rights with respect to such amounts.

expressly reserved. Interest, including default interest if applicable, on the Notes will continue to accrue until the Notes are paid in full. Any such interest will remain the obligation of Maker.

Sincerely,

/s/ James P. Seery, Jr.

James P. Seery, Jr.
Highland Capital Management, L.P.
Chief Executive Officer/Chief Restructuring Officer

cc: Fred Caruso
James Romey
Jeffrey Pomerantz
Ira Kharasch
Gregory Demo
DC Sauter

Appendix A

ABA #:	322070381
Bank Name:	East West Bank
Account Name:	Highland Capital Management, LP
Account #:	5500014686

EXHIBIT 219

EXHIBIT
7
HCMFA/Dondero
5/5/2022
Michael E. Miller, FAPR, RDR, CRR

Summary of loans dated February 26, 2014 and February 26, 2016
Privileged and confidential - prepared at direction of counsel
Prepared February 28, 2022

Loan dated 2/26/14 $ 4,000,000.00

Description	Type	Cash amount	Bank statement date	Bank statement ref	Application: Principal	Application: Interest	Application: Total	Total Applied to other loans	
Initial loan	Payment	$ (4,000,000.00)	2/26/2014	P. 2 of 3	$ (4,000,000.00)	$ -	$ (4,000,000.00)	$ -	
May 2019 receipt	Receipt	1,000,000.00	5/29/2019	P. 6 of 13	978,101.91	21,898.09	1,000,000.00	-	
June 2019 receipt	Receipt	500,000.00	6/4/2019	P. 2 of 9	500,000.00	-	500,000.00	-	
September 2019 receipt	Receipt	500,000.00	9/5/2019	P. 1 of 3	484,171.75	15,828.25	500,000.00	-	
October 2019 receipt	Receipt	375,000.00	10/3/2019	P. 2 of 10	375,000.00	-	375,000.00	-	
December 2021 receipt [1]	Receipt	180,472.81	12/28/2021	P. 1 of 4	-	35,477.45	35,477.45	144,995	See notes
Total cash receipts					$ 2,337,273.66	$ 73,203.79	$ 2,410,477.45		
Non-cash PIK interest (cumulative 2014-2021)					(471,440.19)	471,440.19			
Total principal outstanding 12/31/21					**$ 2,134,166.53**	Original principal less principal repayments plus PIK'd interest			
Total interest outstanding 12/31/21					-				

Loan dated 2/26/16 $ 2,300,000.00

Description	Type	Cash amount	Bank statement date	Bank statement ref	Application: Principal	Application: Interest	Application: Total	Total Applied to other loans	
Initial loan	Payment	$ (2,300,000.00)	2/26/2016	P. 2 of 3	$ (2,300,000.00)	$ -	$ (2,300,000.00)	$ -	
September 2016 receipt [2]	Receipt	1,000,000.00	9/1/2016	P. 1 of 3	434,394.68	31,038.03	465,432.71	534,567	See notes
April 2017 receipt	Receipt	1,000,000.00	4/12/2017	P. 1 of 3	970,137.03	29,862.97	1,000,000.00	-	
December 2021 receipt [1]	Receipt	180,472.81	12/28/2021	P. 1 of 4	-	21,904.16	21,904.16	158,569	See notes
Total cash receipts					$ 1,404,531.71	$ 82,805.16	$ 1,487,336.87		
Non-cash PIK interest (cumulative 2016-2021)					(95,289.33)	95,289.33			
Total principal outstanding 12/31/21					**$ 990,757.62**	Original principal less principal repayments plus PIK'd interest			
Total interest outstanding 12/31/21					-				

Notes:
[1] Total receipt in December 2021 was $180,472.81. Application of payment was $35,477.45 to the loan dated 2/26/14; $21,904.16 to the loan dated 2/26/16; $123,091.20 to loans from May 2019 that are part of a separate litigat
[2] Total receipt in September 2016 was $1,000,000.00. Application of payment was $465,432.71 to the loan dated 2/26/16; $534,567.29 was applied to the loan dated 8/28/2015, which fully retired that loan.

ion.

EXHIBIT 220

EXHIBIT
8
HCMFA/Dondero
5/5/2022
Michael E. Miller, FAPR, RDR, CRR

Deborah Deitsch-Perez
Michael P. Aigen
STINSON LLP
3102 Oak Lawn Avenue, Suite 777
Dallas, Texas 75219-4259
Telephone: (214) 560-2201
Facsimile: (214) 560-2203

Counsel for Defendant Highland Capital Management Fund Advisors, L.P.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re	§	
	§	**Case No. 19-34054-sgj11**
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	**Chapter 11**
	§	
Debtor.	§	
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	
Plaintiff,	§	
	§	
v.	§	**Adversary No. 21-03082**
	§	
HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, L.P.,	§	
	§	
Defendant.	§	

HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, L.P.'S OBJECTIONS AND RESPONSES TO PLAINTIFF'S REQUESTS FOR ADMISSION, INTERROGATORIES AND REQUESTS FOR PRODUCTION

TO: Plaintiff Highland Capital Management, L.P., by and through its attorneys of record, John Morris, Pachulski Stang Ziehl & Jones LLP, 10100 Santa Monica Blvd., 13th Floor, Los Angeles, CA 90067.

Defendant Highland Capital Management Fund Advisors, L.P. ("HCMFA" or "Defendant") serves its Objections and Responses to Plaintiff Highland Capital Management,

L.P.'s ("Plaintiff" or "Debtor") Requests for Admission, Interrogatories, and Requests for Production (the "Requests").

Dated: February 28, 2022

Respectfully submitted,

STINSON LLP

/s/ Deborah Deitsch-Perez

Deborah Deitsch-Perez
Texas State Bar No. 24036072
Michael P. Aigen
Texas State Bar No. 24012196
3102 Oak Lawn Avenue, Suite 777
Dallas, Texas 75219-4259
Telephone: (214) 560-2201
Telecopier: (214) 560-2203
Email: deborah.deitschperez@stinson.com
Email: michael.aigen@stinson.com

ATTORNEYS FOR DEFENDANT HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, L.P.

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that, on February 28, 2022, a true and correct copy of the foregoing document was served via email on counsel for the Debtor.

/s/ Deborah Deitsch-Perez
Deborah Deitsch-Perez

OBJECTIONS AND RESPONSES

REQUEST FOR PRODUCTION OF DOCUMENTS

REQUEST FOR PRODUCTION NO. 1: All Documents and Communications Concerning the existence of the Alleged Agreement.

RESPONSE:

Subject to any restrictions imposed by the Debtor and/or the Bankruptcy Court impeding the collection of responsive documents, Defendant will produce all responsive documents, if any, at a mutually agreeable place and time.

REQUEST FOR PRODUCTION NO. 2: All Documents and Communications Concerning the negotiation of the Alleged Agreement.

RESPONSE:

Subject to any restrictions imposed by the Debtor and/or the Bankruptcy Court impeding the collection of responsive documents, Defendant will produce all responsive documents, if any, at a mutually agreeable place and time.

REQUEST FOR PRODUCTION NO. 3: All Documents and Communications Concerning the terms of the Alleged Agreement.

RESPONSE:

Subject to any restrictions imposed by the Debtor and/or the Bankruptcy Court impeding the collection of responsive documents, Defendant will produce all responsive documents, if any, at a mutually agreeable place and time.

REQUEST FOR PRODUCTION NO. 4: All Communications Concerning the Alleged Agreement, including all Communications between You and (a) Nancy Dondero, or (b) Mark Okada, or (c) Frank Waterhouse, or (d) PricewaterhouseCoopers LLP or (d) any Class A shareholders of Highland for the period January 1, 2014 to the present. *See* paragraph 41 of the Original Answer.

RESPONSE:

Subject to any restrictions imposed by the Debtor and/or the Bankruptcy Court impeding the collection of responsive documents, Defendant will produce all responsive documents, if any, at a mutually agreeable place and time.

REQUEST FOR PRODUCTION NO. 5: All Documents and Communications Concerning the cost of the "portfolio companies," as referred to in paragraph 41 of the Original Answer, including Documents and Communications sufficient to identify the (a) portfolio company, (b) the

date Highland acquired its interest in each portfolio company, and (c) the consideration paid by Highland to acquire its interest in each portfolio company.

RESPONSE:

Subject to any restrictions imposed by the Debtor and/or the Bankruptcy Court impeding the collection of responsive documents, Defendant will produce all responsive documents, if any, at a mutually agreeable place and time.

REQUEST FOR PRODUCTION NO. 6: All Documents and Communications Concerning the value of each of the "portfolio companies" at or around the time the Alleged Agreement was entered into.

RESPONSE:

Subject to any restrictions imposed by the Debtor and/or the Bankruptcy Court impeding the collection of responsive documents, Defendant will produce all responsive documents, if any, at a mutually agreeable place and time.

REQUEST FOR PRODUCTION NO. 7: All Documents and Communications Concerning Your affirmative defense of "waiver," as alleged in paragraph 43 of the Original Answer.

RESPONSE:

Subject to any restrictions imposed by the Debtor and/or the Bankruptcy Court impeding the collection of responsive documents, Defendant will produce all responsive documents, if any, at a mutually agreeable place and time.

REQUEST FOR PRODUCTION NO. 8: All Documents and Communications Concerning Your affirmative defense of "estoppel," as alleged in paragraph 43 of the Original Answer.

RESPONSE:

Subject to any restrictions imposed by the Debtor and/or the Bankruptcy Court impeding the collection of responsive documents, Defendant will produce all responsive documents, if any, at a mutually agreeable place and time.

REQUEST FOR PRODUCTION NO. 9: All Documents and Communications Concerning Your affirmative defense of "failure of consideration," as alleged in paragraph 43 of the Original Answer.

RESPONSE:

Subject to any restrictions imposed by the Debtor and/or the Bankruptcy Court impeding the collection of responsive documents, Defendant will produce all responsive documents, if any, at a mutually agreeable place and time.

REQUEST FOR PRODUCTION NO. 10: All Documents and Communications Concerning Your affirmative defense of "prepayment," as alleged in paragraph 43 of the Original Answer.

RESPONSE:

Subject to any restrictions imposed by the Debtor and/or the Bankruptcy Court impeding the collection of responsive documents, Defendant will produce all responsive documents, if any, at a mutually agreeable place and time.

REQUEST FOR PRODUCTION NO. 11: All Documents and Communications Concerning Your allegation that the use of "forgivable loans [was] a practice that was standard at [Highland]," as alleged in paragraph 41 of the Original Answer.

RESPONSE:

Subject to any restrictions imposed by the Debtor and/or the Bankruptcy Court impeding the collection of responsive documents, Defendant will produce all responsive documents, if any, at a mutually agreeable place and time.

REQUEST FOR PRODUCTION NO. 12: Your audited financial statements for the period January 1, 2014 to the present.

RESPONSE:

Defendant objects to this Request because it is not reasonably calculated to lead to the discovery of admissible evidence. Subject to any restrictions imposed by the Debtor and/or the Bankruptcy Court impeding the collection of responsive documents, Defendant will produce all responsive documents, if any, at a mutually agreeable place and time.

REQUEST FOR PRODUCTION NO. 13: All Documents Concerning the Notes, including general ledgers or other accounting entries showing how You treated the Notes in Your books and records.

RESPONSE:

Subject to any restrictions imposed by the Debtor and/or the Bankruptcy Court impeding the collection of responsive documents, Defendant will produce all responsive documents, if any, at a mutually agreeable place and time.

REQUEST FOR PRODUCTION NO. 14: For the Period January 1, 2014 through the present, all Communications between You and Your outside auditor(s) Concerning the Notes.

RESPONSE:

Defendant objects to this Request because it is not reasonably calculated to lead to the discovery of admissible evidence. Subject to any restrictions imposed by the Debtor and/or the

Bankruptcy Court impeding the collection of responsive documents, Defendant will produce all responsive documents, if any, at a mutually agreeable place and time.

REQUEST FOR PRODUCTION NO. 15: For the Period January 1, 2014 through the present, all management representation letters signed on Your behalf and provided to Your outside auditors.

RESPONSE:

Defendant objects to this Request because it is not reasonably calculated to lead to the discovery of admissible evidence. Subject to any restrictions imposed by the Debtor and/or the Bankruptcy Court impeding the collection of responsive documents, Defendant will produce all responsive documents, if any, at a mutually agreeable place and time.

REQUEST FOR PRODUCTION NO. 16: All Documents and Communications Concerning any loan that You ever made to or for the benefit of James Dondero.

RESPONSE:

Defendant objects to this Request because it is not reasonably calculated to lead to the discovery of admissible evidence. Subject to any restrictions imposed by the Debtor and/or the Bankruptcy Court impeding the collection of responsive documents, Defendant will produce all responsive documents, if any, at a mutually agreeable place and time.

REQUEST FOR PRODUCTION NO. 17: All Documents and Communications Concerning any compensation that You paid to James Dondero for each of Your fiscal years 2016, 2017, 2018, and 2019, and 2020.

RESPONSE:

Defendant objects to this Request because it is not reasonably calculated to lead to the discovery of admissible evidence. Subject to any restrictions imposed by the Debtor and/or the Bankruptcy Court impeding the collection of responsive documents, Defendant will produce all responsive documents, if any, at a mutually agreeable place and time.

REQUEST FOR PRODUCTION NO. 18: All Documents and Communications Concerning any Loan that You ever made to or for the benefit of James Dondero that You forgave.

RESPONSE:

Defendant objects to this Request because it is not reasonably calculated to lead to the discovery of admissible evidence. Subject to any restrictions imposed by the Debtor and/or the Bankruptcy Court impeding the collection of responsive documents, Defendant will produce all responsive documents, if any, at a mutually agreeable place and time.

REQUEST FOR PRODUCTION NO. 19: To the extent not responsive to the prior Requests, all Documents and Communications Concerning each of Your responses to the Interrogatories.

RESPONSE:

Defendant objects to this Request because it is vague and not specifically tailored. Subject to any restrictions imposed by the Debtor and/or the Bankruptcy Court impeding the collection of responsive documents, Defendant will produce all responsive documents, if any, at a mutually agreeable place and time.

REQUEST FOR PRODUCTION NO. 20: To the extent not responsive to the prior Requests, all Documents and Communications Concerning any affirmative, legal, or equitable defense that You are raising in response to Plaintiff's claims.

RESPONSE

Subject to any restrictions imposed by the Debtor and/or the Bankruptcy Court impeding the collection of responsive documents, Defendant will produce all responsive documents, if any, at a mutually agreeable place and time.

REQUEST FOR PRODUCTION NO. 21: All Documents You intend to introduce at trial in this Adversary Proceeding.

RESPONSE:

Subject to any scheduling order agreed to by the parties or entered by the Court, Defendant will produce all responsive documents, if any, at a mutually agreeable place and time.

REQUESTS FOR ADMISSION

REQUEST FOR ADMISSION NO. 1: Admit that attached as **Exhibit A** is a true and correct copy of a demand note (a) executed by HCMFA, as maker, in favor of Highland, as payee, (b) dated February 26, 2014, (c) in the original face amount of $4,000,000 (the "First Note").

RESPONSE:

Admit.

REQUEST FOR ADMISSION NO. 2: Admit that on or about February 26, 2014, Highland paid $4,000,000 to HCMFA (or for its benefit) in exchange for the First Note.

RESPONSE:

Admit.

REQUEST FOR ADMISSION NO. 3: Admit that attached as **Exhibit B** is a true and correct copy of a demand note (a) executed by HCMFA, as maker, in favor of Highland, as payee, (b) dated February 26, 2016, (c) in the original face amount of $2,300,000 (the "Second Note").

RESPONSE:

Admit.

REQUEST FOR ADMISSION NO. 4: Admit that on or about February 26, 2016, Highland paid $2,300,000 to HCMFA (or for its benefit) in exchange for the Second Note.

RESPONSE:

Admit.

REQUEST FOR ADMISSION NO. 5: Admit that attached as **Exhibit C** is a true and correct copy of a letter dated April 15, 2019, signed by James Dondero, on behalf of both Highland and HCMFA, pursuant to which Highland agreed not to demand payment under the Notes prior to May 31, 2021 (the "Acknowledgment Letter").

RESPONSE:

Admit.

REQUEST FOR ADMISSION NO. 6: Admit that attached as **Exhibit D** is a true and correct copy of Highland's June 2, 2021 demand letter (the "Demand Letter") to HCMFA demanding payment of the accrued interest and principal due and payable on the Notes, in the aggregate amount of $3,143,181.93 as of June 4, 2021.

RESPONSE:

Defendant admits that Exhibit D is a true and correct copy of a letter the Debtor sent to Defendant on or about June 2, 2021. Defendant denies that the letter had any legal effect. To the extent not expressly admitted, this request is denied.

REQUEST FOR ADMISSION NO. 7: Admit that You never disclosed the terms of the Alleged Agreement to Your outside auditors.

RESPONSE:

Admit.

REQUEST FOR ADMISSION NO. 8: Admit that You never disclosed the existence of the Alleged Agreement to Your outside auditors.

RESPONSE:

Admit.

REQUEST FOR ADMISSION NO. 9: Admit that You did not disclose the terms of the Alleged Agreement to Frank Waterhouse before February 1, 2021.

RESPONSE:

Deny.

REQUEST FOR ADMISSION NO. 10: Admit that You did not disclose the existence of the Alleged Agreement to Frank Waterhouse before February 1, 2021.

RESPONSE:

Deny.

REQUEST FOR ADMISSION NO. 11: Admit that You never disclosed the terms of the Alleged Agreement to Mark Okada.

RESPONSE:

Admit.

REQUEST FOR ADMISSION NO. 12: Admit that You never disclosed the existence of the Alleged Agreement to Mark Okada.

RESPONSE:

Admit.

REQUEST FOR ADMISSION NO. 13: Admit that no Document was created prior to February 1, 2021 that reflects or memorializes the terms of the Alleged Agreement.

RESPONSE:

Admit.

REQUEST FOR ADMISSION NO. 14: Admit that no Document was created prior to February 1, 2021 that reflects or memorializes the existence of the Alleged Agreement.

RESPONSE:

Admit.

REQUEST FOR ADMISSION NO. 15: Admit that You did not disclose the terms of the Alleged Agreement to any creditor of Highland prior to February 1, 2021.

RESPONSE:

Deny.

REQUEST FOR ADMISSION NO. 16: Admit that You did not disclose the existence of the Alleged Agreement to any creditor of Highland prior to February 1, 2021.

RESPONSE:

Deny.

REQUEST FOR ADMISSION NO. 17: Admit that You did not disclose the terms of the Alleged Agreement to the Bankruptcy Court prior to February 1, 2021.

RESPONSE:

Admit.

REQUEST FOR ADMISSION NO. 18: Admit that You did not disclose the existence of the Alleged Agreement to the Bankruptcy Court prior to February 1, 2021.

RESPONSE:

Admit.

REQUEST FOR ADMISSION NO. 20 [sic]: Admit that You did not disclose the terms of the Alleged Agreement in connection with the Bankruptcy Case at any time prior to February 1, 2021, including in connection with any objection to the Plan or Disclosure Statement.

RESPONSE:

Admit.

REQUEST FOR ADMISSION NO. 21: Admit that You did not disclose the existence of the Alleged Agreement in connection with the Bankruptcy Case at any time prior to February 1, 2021, including in connection with any objection to the Plan or Disclosure Statement.

RESPONSE:

Admit.

REQUEST FOR ADMISSION NO. 22: Admit that Highland has never forgiven all or any part of any loan that Highland extended to You.

RESPONSE:

Admit.

REQUEST FOR ADMISSION NO. 23: Admit that You are unaware of any loan that Highland has ever extended to any of Highland's current or former affiliates that Highland forgave in whole or in part.

RESPONSE:

Deny.

INTERROGATORIES

INTERROGATORY NO. 1: Identify the "testimony" that You believe "discusses the existence of [the Agreement] that may be uncovered through discovery in this Adversary Proceeding," as alleged in paragraph 41 of the Original Answer, including the (a) name of the witness, (b) the substance of the anticipated testimony, and (c) the basis for Your belief.

RESPONSE:

Defendant objects to this Interrogatory because discovery is ongoing and because the Interrogatory seeks privileged information.

INTERROGATORY NO. 2: Identify the "email correspondence" that You believe "discusses the existence of [the Alleged Agreement] that may be uncovered through discovery in this Adversary Proceeding," as alleged in paragraph 41 of the Original Answer, including the (a) name(s) of the sender(s) and recipient(s) of such email correspondence, (b) the date of any such email correspondence, and (c) the substance of any such e-mail correspondence.

RESPONSE:

Defendant objects to this Interrogatory because discovery is ongoing and because the Interrogatory seeks privileged information.

INTERROGATORY NO. 3: Identify the "portfolio companies" referred to in paragraph 41 of the Amended Answer.

RESPONSE:

Defendant objects to this interrogatory because there is no Amended Answer as of the date of these discovery responses. Subject to this objection, Defendant responds, as follows: MGM, Cornerstone and Trussway.

INTERROGATORY NO. 4: Identify each of Your employees, officers, representatives, and agents who knew of the terms and existence of the Alleged Agreement prior to February 1, 2021, and for each such person, identify (a) the name of the person, (b) the person's title or connection to You, (c) the date on which the person first learned of the terms and existence of the Alleged Agreement, and (d) how and from whom the person first learned of the terms and existence of the Alleged Agreement.

RESPONSE:

Defendant objects to this Interrogatory to the extent that it seeks privileged information. Subject to this objection, Defendant states that James Dondero and Frank Waterhouse knew of the terms and existence of the Agreement prior to February 1, 2021.

INTERROGATORY NO. 5: Identify ever person that You believe has personal knowledge of the facts and circumstances Concerning the Alleged Agreement.

RESPONSE:

Defendant objects to this Interrogatory (1) to the extent it seeks privileged information, (2) because it requires Defendant to speculate as to what other people know and believe, and (3) because the phrase "personal knowledge" is not defined. Subject to these objections, Defendant believes the following individuals may have personal knowledge of the facts and circumstances concerning the Alleged Agreement.

James Dondero

Frank Waterhouse

Mark Okada

John Honis

Scott Ellington

Nancy Dondero

INTERROGATORY NO. 6: Identify which part or parts of the Notes are "ambiguous," as alleged in paragraph 42 of the Original Answer, and state the basis for Your belief.

RESPONSE:

Defendant contends that each note as a whole is ambiguous because it refers to additional agreements without specifying them.

INTERROGATORY NO. 7: Identify every loan that Highland extended to You that Highland forgave, in whole or in part.

RESPONSE:

None.

INTERROGATORY NO. 8: Identify every loan that Highland extended to one of its current or former affiliates that Highland forgave, in whole or in part.

RESPONSE:

Defendant objects to this Interrogatory because this information is in the possession of Plaintiff and Plaintiff has refused to provide this information in discovery. Therefore, Defendant is unable to fully respond to this Interrogatory. Subject to these objections, Defendant believes the following individuals may have received loans made by Highland that were forgiven in whole or in part: Mike Hurley, Tim Lawler, Pat Daugherty, Jack Yang, Paul Adkins, Gibran Mahmud, Jean Luc-Eberlin and Appu Mundassery.

INTERROGATORY NO. 9: Identify every loan Concerning Your allegation in paragraph 41 of the Original Answer that "forgivable loans [was] a practice that was standard at [Highland]," including (a) the identity of the borrower, (b) the original principal amount of the loan, (c) the principal amount actually forgiven, and (d) the date the loan (or part of the loan) was actually forgiven.

RESPONSE:

Defendant objects to this Interrogatory because this information is in the possession of Plaintiff and Plaintiff has refused to provide this information in discovery. Therefore, Defendant is unable to fully respond to this Interrogatory. Subject to these objections, Defendant believes the following individuals may have received loans made by Highland that were forgiven in whole or in part: Mike Hurley, Tim Lawler, Pat Daugherty, Jack Yang, Paul Adkins, Gibran Mahmud, Jean Luc-Eberlin and Appu Mundassery.

INTERROGATORY NO. 10: Identify all witnesses You intend to call at trial for the Adversary Proceeding.

RESPONSE:

Defendant objects to this Interrogatory because it is premature. Defendant will identify any witnesses in accordance with any scheduling order entered by the Court.

EXHIBIT 221

TO BE FILED

UNDER SEAL

EXHIBIT 222

TO BE FILED

UNDER SEAL

EXHIBIT 223

TO BE FILED

UNDER SEAL

EXHIBIT 224

TO BE FILED

UNDER SEAL

EXHIBIT 225

TO BE FILED

UNDER SEAL

EXHIBIT 226

PROMISSORY NOTE

$4,000,000.00 February 26, 2014

FOR VALUE RECEIVED, HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, LP. ("***Maker***") promises to pay to the order of HIGHLAND CAPITAL MANAGEMENT, LP ("***Payee***"), in legal and lawful tender of the United States of America, the principal sum of FOUR MILLION and 00/100 Dollars ($4,000,000.00), together with interest, on the terms set forth below (the "***Note***"). All sums hereunder are payable to Payee at 300 Crescent Court, Dallas, TX 75201, or such other address as Payee may specify to Maker in writing from time to time.

1. Interest Rate. The unpaid principal balance of this Note from time to time outstanding shall bear interest at a rate equal to the mid-term "***applicable federal rate***" (1.97%) in effect on the date hereof for loans of such maturity as determined by Section 1274(d) of the Internal Revenue Code, per annum from the date hereof until maturity, compounded annually on the anniversary of the date of this Note. Interest shall be calculated at a daily rate equal to 1/365th (1/366 in a leap year) of the rate per annum, shall be charged and collected on the actual number of days elapsed, and shall be payable on demand of the Payee.

2. Payment of Principal and Interest. The accrued interest and principal of this Note shall be due and payable on demand of the Payee.

3. Prepayment Allowed; Renegotiation Discretionary. Maker may prepay in whole or in part the unpaid principal or accrued interest of this Note. Any payments on this Note shall be applied first to unpaid accrued interest hereon, and then to unpaid principal hereof.

4. Acceleration Upon Default. Failure to pay this Note or any installment hereunder as it becomes due shall, at the election of the holder hereof, without notice, demand, presentment, notice of intent to accelerate, notice of acceleration, or any other notice of any kind which are hereby waived, mature the principal of this Note and all interest then accrued, if any, and the same shall at once become due and payable and subject to those remedies of the holder hereof. No failure or delay on the part of Payee in exercising any right, power or privilege hereunder shall operate as a waiver thereof.

5. Waiver. Maker hereby waives grace, demand, presentment for payment, notice of nonpayment, protest, notice of protest, notice of intent to accelerate, notice of acceleration and all other notices of any kind hereunder.

6. Attorneys' Fees. If this Note is not paid at maturity (whether by acceleration or otherwise) and is placed in the hands of an attorney for collection, or if it is collected through a bankruptcy court or any other court after maturity, the Maker shall pay, in addition to all other amounts owing hereunder, all actual expenses of collection, all court costs and reasonable attorneys' fees and expenses incurred by the holder hereof.

7. Limitation on Agreements. All agreements between Maker and Payee, whether now existing or hereafter arising, are hereby limited so that in no event shall the amount paid, or agreed to be paid to Payee for the use, forbearance, or detention of money or for the payment or performance of any covenant or obligation contained herein or in any other document evidencing, securing or pertaining to this Note, exceed the maximum interest rate allowed by law. The terms and provisions of this paragraph shall control and supersede every other provision of all agreements between Payee and Maker in conflict herewith.

8. Governing Law. This Note and the rights and obligations of the parties hereunder shall be governed by the laws of the United States of America and by the laws of the State of Texas, and is performable in Dallas County, Texas.

MAKER:

JAMES DONDERO

EXHIBIT 227

PROMISSORY NOTE

$2,300,000.00

February 26, 2016

FOR VALUE RECEIVED, HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, LP. ("***Maker***") promises to pay to the order of HIGHLAND CAPITAL MANAGEMENT, LP ("***Payee***"), in legal and lawful tender of the United States of America, the principal sum of TWO MILLION, THREE HUNDRED THOUSAND and 00/100 Dollars ($2,300,000.00), together with interest, on the terms set forth below (the "***Note***"). All sums hereunder are payable to Payee at 300 Crescent Court, Dallas, TX 75201, or such other address as Payee may specify to Maker in writing from time to time.

1. Interest Rate. The unpaid principal balance of this Note from time to time outstanding shall bear interest at a rate equal to the mid-term "***applicable federal rate***" (2.62%) in effect on the date hereof for loans of such maturity as determined by Section 1274(d) of the Internal Revenue Code, per annum from the date hereof until maturity, compounded annually on the anniversary of the date of this Note. Interest shall be calculated at a daily rate equal to 1/365th (1/366 in a leap year) of the rate per annum, shall be charged and collected on the actual number of days elapsed, and shall be payable on demand of the Payee.

2. Payment of Principal and Interest. The accrued interest and principal of this Note shall be due and payable on demand of the Payee.

3. Prepayment Allowed; Renegotiation Discretionary. Maker may prepay in whole or in part the unpaid principal or accrued interest of this Note. Any payments on this Note shall be applied first to unpaid accrued interest hereon, and then to unpaid principal hereof.

4. Acceleration Upon Default. Failure to pay this Note or any installment hereunder as it becomes due shall, at the election of the holder hereof, without notice, demand, presentment, notice of intent to accelerate, notice of acceleration, or any other notice of any kind which are hereby waived, mature the principal of this Note and all interest then accrued, if any, and the same shall at once become due and payable and subject to those remedies of the holder hereof. No failure or delay on the part of Payee in exercising any right, power or privilege hereunder shall operate as a waiver thereof.

5. Waiver. Maker hereby waives grace, demand, presentment for payment, notice of nonpayment, protest, notice of protest, notice of intent to accelerate, notice of acceleration and all other notices of any kind hereunder.

6. Attorneys' Fees. If this Note is not paid at maturity (whether by acceleration or otherwise) and is placed in the hands of an attorney for collection, or if it is collected through a bankruptcy court or any other court after maturity, the Maker shall pay, in addition to all other amounts owing hereunder, all actual expenses of collection, all court costs and reasonable attorneys' fees and expenses incurred by the holder hereof.

7. Limitation on Agreements. All agreements between Maker and Payee, whether now existing or hereafter arising, are hereby limited so that in no event shall the amount paid, or agreed to be paid to Payee for the use, forbearance, or detention of money or for the payment or performance of any covenant or obligation contained herein or in any other document evidencing, securing or pertaining to this Note, exceed the maximum interest rate allowed by law. The terms and provisions of this paragraph shall control and supersede every other provision of all agreements between Payee and Maker in conflict herewith.

8. Governing Law. This Note and the rights and obligations of the parties hereunder shall be governed by the laws of the United States of America and by the laws of the State of Texas, and is performable in Dallas County, Texas.

MAKER:

JAMES DONDERO

EXHIBIT 228

EASTWESTBANK Your financial bridge®

9300 Flair Dr., 1St FL
El Monte, CA. 91731

Direct inquiries to:
888 761 3967

ACCOUNT STATEMENT
Page 1 of 3
STARTING DATE: December 01, 2021
ENDING DATE: December 31, 2021
Total days in statement period: 31
[redacted]
(0)

HIGHLAND CAPITAL MANAGEMENT LP
CHAPTER 11 DEBTOR IN POSSESSION
CASE #19 12239
OPERATING ACCOUNT
300 CRESCENT CT SUITE 700
DALLAS TX 75201 0000

Protecting the security of your account and personal information is our top priority. Learn about online security practices and ways to protect yourself from cybercrime at eastwestbank.com in the "Privacy & Security" section.

Commercial Analysis Checking

Account number	[redacted]	Beginning balance		[redacted]
Low balance	[redacted]	Total additions	(9)	[redacted]
Average balance	[redacted]	Total subtractions	(75)	[redacted]
		Ending balance		[redacted]

CREDITS

Number	Date	Transaction Description		Additions
	[redacted]	[redacted]	[redacted]	[redacted]
	12 28	Wire Trans-IN	HIGHLAND CAPITAL M GMT FUND ADV	180,472.81
	[redacted]	[redacted]	[redacted]	[redacted]

DEBITS

Date	Transaction Description		Subtractions
[redacted]	[redacted]	[redacted]	[redacted]

3409 rev 05-16

EAST WEST BANK Your financial bridge®

9300 Flair Dr., 1St FL
El Monte, CA. 91731

HIGHLAND CAPITAL MANAGEMENT LP

ACCOUNT STATEMENT
Page 2 of 3
STARTING DATE: December 01, 2021
ENDING DATE: December 31, 2021
[redacted]

Date	Transaction Description	Subtractions
[redacted]	[redacted]	[redacted]

EAST WEST BANK Your financial bridge®

9300 Flair Dr., 1St FL
El Monte, CA. 91731

HIGHLAND CAPITAL MANAGEMENT LP

ACCOUNT STATEMENT
Page 3 of 3
STARTING DATE: December 01, 2021
ENDING DATE: December 31, 2021
[redacted]

Date	Transaction Description	Subtractions
[redacted]	[redacted]	[redacted]

DAILY BALANCES

Date	Amount	Date	Amount	Date	Amount
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]

OVERDRAFT/RETURN ITEM FEES

[redacted]	[redacted]	[redacted]

STATEMENT BALANCING

Fill in the amounts below from the front of this statement and your checkbook.

ENTER
Ending Balance of this Statement..... $_____

Add Deposits not shown on this Statement $_____

Sub Total..... $_____

Subtract Checks Issued but not on Statement

CHECK NUMBER OR DATE	AMOUNT	CHECK NUMBER OR DATE	AMOUNT
TOTAL		TOTAL	

Total amount of outstanding checks..... $_____

Balance.....** $_____

ENTER
Present Balance in your checkbook..... $_____

Subtract any service charges, finance or any other charges..... $_____

Sub Total ..... $_____

Add Monthly Interest Earned ..... $_____

Add any deposits not yet entered in checkbook (Reverse Advances)..... $_____

Subtract any checks not yet entered in checkbook (Reverse Payments)..... $_____

Balance..... $_____

IN CASE OF ERRORS OR QUESTIONS REGARDING YOUR CHECKING ACCOUNT

You must examine your statement carefully and promptly. You are in the best position to discover errors and unauthorized transactions on your account. If you fail to notify us in writing of suspected problems or unauthorized transactions within the time periods as specified in the Deposit Agreement (which periods are no more than 60 days after we make the statement available to you and in some cases 30 days or less), we are not liable to you for, and you agree not to make a claim against us for problems or unauthorized transactions.

IN CASE OF ERRORS OR QUESTIONS ABOUT YOUR ELECTRONIC FUNDS TRANSFERS

Telephone or write your local branch of account, listed on the statement front, as soon as you can if you think your statement or receipt is wrong or if you need more information about a transfer on the statement or receipt. We must hear from you no later than 60 days after we send you the FIRST statement on which the error or problem appeared.

1. Tell us your name and account number.
2. Describe the error or the transfer you are unsure about and explain as clearly as you can why you believe there is an error or why you need more information.
3. Tell us the dollar amount of the suspected error.

We will investigate your complaint and will correct any error promptly. If our investigation takes longer than 10 business days from the date we received your notification, we will provisionally credit your account for the disputed amount until our investigation has been completed. If the disputed amount involves an electronic funds transfer to or from an account within 30 days after the first deposit to the account was made, we will provisionally credit your account within 20 business days from the date we receive your notification.

ACCOUNTS WITH CHECK STORAGE

Upon your request, we will provide you, without charge, legible copies of two checks from each account statement. Additional copies of canceled checks are subject to our service charges. You can make a request for these copies by contacting the branch listed on the front of this statement.

CHANGE OF ADDRESS

Please notify us immediately for change of address by phoning or writing your local branch of account, listed on the front of this statement.

MEMBER FDIC

(REV 11/07)

EXHIBIT 229

NEXBANK

2515 McKinney Avenue, 11th Floor
Dallas, Texas 75201
972.934.4700
www.NexBank.com

Date 9/30/16 Page 1
Primary Account [redacted]
Enclosures

Highland Capital Management LP
300 Crescent Court Suite 700
Dallas TX 75201

NexBank's Privacy Notice, which has not changed, is available on our website at www.NexBank.com/files/privacynotice.pdf. If you would like a copy of our Privacy Notice mailed to you, please call us at 972-934-4700.

Checking Account/s

Account Type: Highland Capital Management LP

Analysis Checking w/ Interest
Account Number [redacted] Statement Dates 9/01/16 thru 10/02/16

[redacted]

Deposits and Additions

Date	Description	Amount
9/01	IB Transfer from D ****415 to D ****130	1,000,000.00

[redacted]

MEMBER FDIC

NOTICE: SEE LAST PAGE FOR IMPORTANT INFORMATION
Payments received at the address indicated on this statement by 3:00 pm. Central Standard Time each banking day will be credited as of that date.

NexBank

2515 McKinney Avenue, 11th Floor
Dallas, Texas 75201
972.934.4700
www.NexBank.com

FDIC

Date 9/30/16 Page 2
Primary Account 1614130
Enclosures

Analysis Checking w/ Interest 1614130 (Continued)

Checks and Withdrawals

Date	Description	Amount
[redacted]		

Daily Balance Information

Date	Balance	Date	Balance	Date	Balance
[redacted]					

Interest Rate Summary

Date	Rate
[redacted]	

End of Statement

OUTSTANDING CHECKS

Reconciliation of Account

CHECKS WRITTEN BUT NOT PAID			
NUMBER	AMOUNT		

EXHIBIT 230

NEXBANK

2515 McKinney Avenue, 11th Floor
Dallas, Texas 75201
972.934.4700
www.NexBank.com

EQUAL HOUSING LENDER

FDIC

Date 4/28/17 Page 1
Primary Account [redacted]
Enclosures

Highland Capital Management LP
300 Crescent Court Suite 700
Dallas TX 75201

NexBank's Privacy Notice, which has not changed, is available on our website at www.NexBank.com/files/privacynotice.pdf. If you would like a copy of our Privacy Notice mailed to you, please call us at 972-934-4700.

Checking Account/s

Account Type: Highland Capital Management LP

Analysis Checking w/ Interest
Account Number [redacted] Statement Dates 4/03/17 thru 4/30/17

[redacted]

Deposits and Additions

Date	Description	Amount
[redacted]		
4/12	IB Transfer from D ****415 to D ****130	1,000,000.00
[redacted]		

MEMBER FDIC

NOTICE: SEE LAST PAGE FOR IMPORTANT INFORMATION
Payments received at the address indicated on this statement by 3:00 pm. Central Standard Time each banking day will be credited as of that date.

NexBank

2515 McKinney Avenue, 11th Floor
Dallas, Texas 75201
972.934.4700
www.NexBank.com

FDIC

Date 4/28/17 Page 2
Primary Account [redacted]
Enclosures

Analysis Checking w/ Interest [redacted] (Continued)

Deposits and Additions

Date	Description	Amount
[redacted]		

Checks and Withdrawals

Date	Description	Amount
[redacted]		

Daily Balance Information

Date	Balance	Date	Balance	Date	Balance
[redacted]					

MEMBER FDIC

NOTICE: SEE LAST PAGE FOR IMPORTANT INFORMATION
Payments received at the address indicated on this statement by 3:00 pm. Central Standard Time each banking day will be credited as of that date.

NexBank
2515 McKinney Avenue, 11th Floor
Dallas, Texas 75201
972.934.4700
www.NexBank.com

FDIC

Date 4/28/17 Page 3
Primary Account [redacted]
Enclosures

Analysis Checking w/ Interest [redacted] (Continued)

Interest Rate Summary

Date	Rate
[redacted]	

End of Statement

OUTSTANDING CHECKS

Reconciliation of Account

CHECKS WRITTEN BUT NOT PAID			
NUMBER	AMOUNT		

EXHIBIT 231

HIGHLAND CAPITAL
MANAGEMENT

May 21, 2015

PricewaterhouseCoopers LLP
2001 Ross Avenue, Suite 1800
Dallas, TX 75201

We are providing this letter in connection with your audit of the consolidated financial statements for Highland Capital Management, L.P. and its subsidiaries (Appendix 1) (collectively the "Partnership") as of December 31, 2014 (hereinafter referred to as the "balance sheet date") and for the year then ended (hereinafter referred to as the "period"), (hereinafter collectively referred to as the "consolidated financial statements"), for the purpose of expressing an opinion as to whether such consolidated financial statements present fairly, in all material respects, the financial position, results of operations, changes in partners' capital and of cash flows of the Partnership in conformity with accounting principles generally accepted in the United States of America. We acknowledge and confirm that we have fulfilled our responsibility, as set out in our engagement letter of May 14, 2015, for the preparation and fair presentation in the consolidated financial statements of financial position, results of operations, changes in partners' capital and of cash flows in conformity with accounting principles generally accepted in the United States of America, including the appropriate selection of accounting policies.

Certain representations in this letter are described as being limited to those matters that are material. Items are considered material, regardless of size, if they involve an omission or misstatement of accounting information that, in the light of surrounding circumstances, makes it probable that the judgment of a reasonable person relying on the information would have been changed or influenced by the omission or misstatement. Materiality used for purposes of this letter is $1,000,000.

We confirm, to the best of our knowledge and belief, as of May 21, 2015, the date of your report, the following representations made to you during your audit:

1. The consolidated financial statements referred to above are fairly presented in conformity with accounting principles generally accepted in the United States of America (GAAP), and include all disclosures necessary for such fair presentation and disclosures otherwise required to be included therein by the laws and regulations to which the Partnership is subject. We have prepared the Partnership's consolidated financial statements on the basis that the Partnership is able to continue as a going concern, including to meet its obligations in the ordinary course of business, and we are not aware of any significant information to the contrary.

2. We have made available to you:

   a. All financial records and related data.

   b. Unconditional access to persons within the entity from whom you have requested audit evidence.

   c. All minutes of the meetings of committees or other governing bodies applicable to the Partnership, including but not limited to, investors, Partners and committees of Partners, including summaries of actions of recent meetings for which minutes have not yet been prepared. The most recent meetings held were: Pricing Committee, May 11, 2015.

d. Partnership agreements, Memoranda and Articles of Association, Confidential Offering Memoranda, amendments thereto (individually or collectively referred to hereinafter as the "Governing Documents"), and all other agreements to which the Partnership is subject.

e. Contracts or other agreements with the Partnership's service providers.

f. Reports, findings, recommendations and communications (whether written or oral) from specialists or professional advisors engaged to review investments, systems, processes, operations, or compliance programs of the Partnership that are material to the Partnership individually or in the aggregate.

g. Side letter arrangements, whether written or oral, with any investors entered into or cancelled during the period for which noncompliance would have a material effect on the Partnership's consolidated financial statements. These side letters are allowed under the terms of the Governing Documents.

3. We have appropriately reconciled our books and records (e.g., general ledger accounts) underlying the consolidated financial statements to their related supporting information (e.g., sub ledger or third-party data). All related reconciling items considered to be material were identified and included on the reconciliations and were appropriately adjusted in the consolidated financial statements, as necessary. There were no material un-reconciled differences or material general ledger suspense account items that should have been adjusted or reclassified to another account balance. There were no material general ledger suspense account items written off to a balance sheet account, which should have been written off to an income statement account and vice versa. All consolidating entries have been properly recorded. All intra-entity accounts have been eliminated or appropriately measured and considered for disclosure in the consolidated financial statements.

4. There have been no communications from regulatory agencies concerning noncompliance with or deficiencies in financial reporting practices.

5. There are no material transactions, agreements or accounts that have not been properly recorded in the accounting records underlying the consolidated financial statements.

6. The effects of the out of period adjustments summarized in the accompanying schedule are immaterial, both individually and in the aggregate, to the consolidated financial statements taken as a whole.

7. We acknowledge and confirm that we have fulfilled our responsibility, as set out in our engagement letter of May 14, 2015, for the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error and we are not aware of any deficiencies in the design or operation of internal control over financial reporting.

8. We acknowledge our responsibility for the design and implementation of programs and controls to provide reasonable assurance that fraud is prevented and detected.

9. We have discussed with you the results of our assessment of the risk that the consolidated financial statements may be materially misstated as a result of fraud and we have no knowledge of any fraud or suspected fraud affecting the Partnership involving:

a. Management,

b. Employees who have significant roles in internal control over financial reporting, or
c. Others where the fraud could have a material effect on the consolidated financial statements.

10. We have no knowledge of any allegations of fraud or suspected fraud affecting the Partnership received in communications from employees, former employees, analysts, regulators, short sellers, or others, except as you are aware.

(As to items 8, 9 and 10, we understand the term "fraud" to mean those matters described in Auditing Standards No. 99)

11. There have been no violations or possible violations of laws or regulations whose effects should be considered for disclosure in the consolidated financial statements or as a basis for recording a loss contingency.

12. The Partnership has no plans or intentions that may materially affect the carrying value or classification of assets and liabilities. We have no plans or intentions to liquidate the Partnership or to cease operations.

13. The following, if material, have been properly recorded or disclosed in the consolidated financial statements:

a. All pertinent rights and privileges of both general partner and limited partner interests in the Partnership.

b. Relationships and transactions with related-parties, as described in Accounting Standards Codification (ASC) 850, *Related Party Disclosures*, including sales, purchases, loans, transfers, leasing arrangements, and guarantees, and amounts receivable from or payable to related parties.

c. Guarantees, whether written or oral, under which the Partnership is contingently liable.

d. Significant estimates and material concentrations known to management that are required to be disclosed in accordance with ASC 275, *Risks and Uncertainties*, 275-10-50. (Significant estimates are estimates at the balance sheet date that could change materially within the next year. Concentrations refer to volumes of business, revenues, available sources of supply, or markets or geographic areas for which events could occur that would significantly disrupt normal finances within the next year.)

e. Commitments to purchase or sell financial instruments, commitments on certain debt instruments such as revolving credit facilities and obligations to fund capital calls.

f. Transactions made on margin or selling short.

g. Fee income and expenses associated with stock lending and borrowing arrangements.

h. Transactions made in foreign currencies.

i. All financial instruments, including those with off-balance-sheet risk (including, but not limited to, swaps, forwards and futures), as required under GAAP. This includes the following information with respect to the off-balance-sheet risks and the concentrations of credit risk:

a. The extent, nature, and terms of financial instruments with off-balance-sheet risk.

b. The amount of credit risk of financial instruments with off-balance-sheet risk and information about the collateral supporting such financial instruments.

j. Each significant concentration of credit risk arising from all financial instruments, and information about the collateral supporting such financial instruments, whether from an individual counterparty/prime broker or group of counterparties/prime brokers in accordance with ASC 825, Financial Instruments and ASC 815, Derivatives and Hedging (ASC 815), 815-10-65.

14. The Partnership has satisfactory title to all owned assets, and there are no liens or encumbrances on such assets nor has any asset been pledged as collateral, except as disclosed in the consolidated financial statements.

15. The Partnership has complied with all aspects of contractual agreements that would have a material effect on the consolidated financial statements in the event of noncompliance.

16. Receivables recorded in the consolidated financial statements represent bona fide claims against debtors for sales or other charges arising on or before the balance sheet dates and are not subject to discount except for normal cash discounts. All receivables have been appropriately reduced to their estimated net realizable value.

17. All liabilities of the Partnership of which we are aware are included in the consolidated financial statements at the balance sheet dates. There are no other liabilities or gain or loss contingencies that are required to be accrued or disclosed by ASC 450, *Contingencies*, and no unasserted claims or assessments that our legal counsel has advised us are probable of assertion and required to be disclosed in accordance with that Topic.

18. We are responsible for all significant estimates and judgments affecting the consolidated financial statements. Significant estimates and judgments and their underlying assumptions, methods, procedures and the source and reliability of supporting data are reasonable and based on applicable guidance, are completely and appropriately disclosed in the consolidated financial statements, and appropriately reflect management's intent and ability to carry out specific courses of action, where relevant. The procedures and methods utilized in developing assumptions, estimates and judgments are appropriate and have been consistently applied in the periods presented. There have been no subsequent events which would require the adjustment of any significant estimate and related disclosures.

19. We have notified you of (i) our current or planned offerings of securities on a regulated market in a non-U.S. country or (ii) when we have provided or plan to provide audited financial statements to a non-U.S. regulator or government in connection with our access to its public capital markets, whether or not we include or refer to your report or include reference to your Firm.

20. With respect to Partnership investments:

a. Portfolio investments included in the Partnership's consolidated financial statements have been stated at values as determined by management in accordance with the valuation methods set forth in the Partnership's policies and procedures. Such policies are in accordance with GAAP (e.g., fair value of an investment is that price which would be received to sell or paid to transfer, respectively, those assets or liabilities in orderly transactions between market participants).

b. The valuation policies used for securities or investments whose fair values have been estimated by management are appropriate and have been consistently applied and documented. The policies for fair value measurement are appropriately disclosed in the Partnership's consolidated financial statements. The methods, assumptions, and inputs used are appropriate and result in a fair value appropriate for financial statement measurement and disclosure purposes. As of the balance sheet date, the investments for which fair value were determined by estimates made by the Partnership's management are appropriately disclosed in the Partnership's consolidated financial statements.

c. We have informed you of any securities as of December 31, 2014 which are restricted in any way as to their resale or are otherwise not marketable, and have appropriately considered such restrictions in our fair value determinations.

d. The cost of portfolio securities was determined on the basis of FIFO.

e. All Partnership investments made during the year ended December 31, 2014 were in accordance with the investment policies of the Partnership.

21. The Partnership has not made any commitments during the year as underwriter, nor did it engage in joint trading or a joint investment account.

22. All material expenses charged to the Partnership are permissible under the terms of the Governing Documents. All directed brokerage and other expense reimbursement agreements have been properly disclosed in the consolidated financial statements.

23. Partner capital balances, including the allocation of income, gains and losses and the calculation of management fees and performance fees/allocations have been properly calculated throughout the period in accordance with the Governing Documents, after giving consideration to the terms identified in each investor's subscription document. The methodology was consistently applied throughout the period and was correctly applied in the computation of contribution and withdrawal transactions during the period.

24. The Partnership has netted certain balances within the consolidated financial statements. All netting has been performed in accordance with the specific requirements of ASC 815-10-45-5 and ASC 210, Balance Sheet, 210-20-45-11 through 45-13, as appropriate.

25. The Partnership has properly recorded, classified and disclosed the prime broker margin collateral requirements in the consolidated financial statements in accordance with ASC 860, Transfers and Servicing, as to the recognition and reclassification of collateral and disclosures relating to securitization transactions and collateral.

26. The Partnership is not an "SEC registrant" as that term is used in ASC 480, Distinguishing Liabilities from Equity, 480-10-65-1. The Partnership has properly classified and disclosed as liabilities its mandatorily redeemable securities and other financial instruments (e.g., redemptions payable) that are within the scope of ASC 480-10-65, Effective Date, Disclosures, and Transition for Mandatorily Redeemable Financial Instruments of Certain Nonpublic Entities and Certain Mandatorily Redeemable Noncontrolling Interests, in the consolidated financial statements.

27. All cash and deposit accounts and all other properties and assets of the Partnership are included in the consolidated financial statements. Arrangements with financial institutions involving compensating balances or other arrangements involving restrictions on cash balances, lines of credit,

collateral posted or similar arrangements have been properly disclosed in the consolidated financial statements.

28. We consistently applied our policy regarding classification of cash and cash equivalents, which are short-term, highly liquid investments that are readily convertible to known amounts of cash and are so near their maturity that there is insignificant risk of changes in value due to interest rate or other credit risk changes.

29. All borrowings and financial obligations of the Partnership have been disclosed to you and are properly recorded and disclosed in the consolidated financial statements.

30. We evaluated all contracts and financial instruments to determine whether they meet the definition of a derivative under ASC 815, Derivatives and Hedging (ASC 815).

31. We classified as liabilities (or as assets in some circumstances) all mandatorily redeemable securities and other financial instruments (e.g., written put options, forward purchase contracts and warrants on mezzanine securities) in accordance with ASC 480, Distinguishing Liabilities from Equity.

32. The actuarial valuation of pension benefit obligations was determined using an acceptable methodology applied on a consistent basis and taking into account the individual characteristics of the plan and reasonable assumptions, including those for the discount rate, rate of return on plan assets, mortality rate and other demographic assumptions.

33. We accurately described the processes used by management to make investment decisions, including the target allocation percentages or range of percentages for each major category of plan assets, and to determine the overall expected long-term rate of return on assets.

34. The amounts of expected employer contributions to the benefit plan during the next fiscal year represent our best estimate.

35. We do not intend to compensate for the reduction of postretirement benefits by granting an increase in pension or other benefits.

36. We applied the recognition, disclosure and measurement date provisions of ASC 715, Compensation-Retirement Benefits (ASC 715). The resulting benefit asset represents the overfunded status of the plan, and accumulated other comprehensive income (AOCI) includes all previously unrecognized prior service costs and credits, net gains/losses and transition assets and obligations, net of taxes.

37. We measured and recognized all plan assets as of the plan's measurement date at fair value in accordance with ASC 715, Compensation- Retirement Benefits (ASC 715).

38. We assume responsibility for the findings of specialists. We did not give or cause any instructions to be given to specialists with respect to the values or amounts derived in an attempt to bias their work, and we are not aware of any matters that have had an impact on the independence or objectivity of the specialists. We adequately considered qualifications of the specialists in determining the amounts and disclosures used in the consolidated financial statements and underlying accounting records related to employee benefit plans and financial instruments.

39. We evaluated, recorded and disclosed in the consolidated financial statements transfers of financial assets to determine that control over the transferred financial assets has been surrendered and that all of the conditions in accordance with ASC 860-10-40-4 and 40-5 have been met to be accounted

for as a sale, including but not limited to (1) transactions involving qualifying special purpose entities to determine that all of the conditions in accordance with but not limited to ASC 860-40-15-3 have been met and (2) agreements to repurchase assets previously sold, including contingent removal of accounts provisions and clean-up calls.

40. The Partnership has properly disclosed in the current litigation summary letter provided by the Partnership's general counsel, all litigation or pending litigation that could materially impact the consolidated financial statements. With respect to the suit filed by UBS related to the Knox Warehouse in CDO Opportunity Master Fund LP, Management is unable to conclude on the impact to Highland Capital Management, L.P. Management and has recorded the potential liability in CDO Opportunity Master Fund LP (a Consolidated Fund).

41. We disclosed the fair values of financial assets and liabilities in the consolidated financial statements in accordance with ASC 825, Financial Instruments and ASC 820, even though the valuation of these assets and liabilities recorded in the consolidated financial statements are not subject to the fair value provisions of ASC 820.

42. We are responsible for all significant estimates and judgments affecting derivative financial instruments and commodity derivatives valuation. Significant estimates and judgments and their underlying assumptions, methods, procedures and the source and reliability of supporting data are reasonable and are disclosed in the consolidated financial statements. The procedures and methods utilized in developing assumptions, estimates and judgments are appropriate and have been consistently applied in the period presented.

43. We disclosed in the consolidated financial statements and advised you of all significant tax positions for which it is reasonably possible the amount of unrecognized tax benefit will either increase or decrease in the next twelve months. We recognized changes in recognition and measurement of uncertain tax positions in the period to which they relate, including the interim period, and disclosed in the consolidated financial statements all individually significant changes in uncertain tax positions, even if the net amount of all such changes was insignificant. We recognized and measured all uncertain tax positions in accordance with ASC 740.

44. We provided you with all information related to material significant income tax uncertainties of which we are aware could result in an ASC 740 liability. We also provided you with access to all opinions and analyses that relate to material positions we have taken regarding significant income tax matters that could result in an ASC 740 liability. The Partnership is currently under an IRS audit for the tax year 2008 and 2009. The IRS audit for the 2005 tax year was settled in 2014.

45. No contracts were executed outside of Texas or the U.S. on behalf of the Partnership during 2014.

46. We have no plans or intentions that may materially affect the consolidated funds' carrying value or classification of assets and liabilities. We have no plans or intentions to liquidate the consolidated funds or to cease operations.

47. We are responsible for the determination of the fair value of investments.

48. On April 14, 2011, the Supreme Court of Bermuda Commercial Court sanctioned a Scheme of Arrangement (the "Credit Strategies Scheme") for the Highland Credit Strategies Funds that facilitates the winding-down of the investments of the Highland Credit Strategies Master Partnership and the distribution of its assets. A substantial majority of the investors consented to the plan of distribution as outlined in the Credit Strategies Scheme. The Credit Strategies Scheme became

effective as of May 1, 2011 and required a shift of capital among limited partners, resulting in a transfer amongst the Highland Credit Strategies Funds.

We have provided you with all documents governing the Credit Strategies Scheme that have an effect on the Highland Credit Strategies Funds. The consolidated financial statements appropriately reflect the actions required under the Credit Strategies Scheme and the related effects on the capital balances. The consolidated financial statements also include all applicable disclosure which we believe are required under US GAAP.

49. On July 15, 2011, the Supreme Court of Bermuda Commercial Court sanctioned a Scheme of Arrangement (the "Crusader Scheme") for the Highland Crusader Funds that facilitates the winding-down of the investments of the Highland Crusader Master Partnership and the distribution of its assets. A substantial majority of the investors consented to the plan of distribution as outlined in the Crusader Scheme. The Crusader Scheme became effective as of August 1, 2011 and required a shift of capital among limited partners, resulting in a transfer amongst the Highland Crusader Funds.

    We have provided you with all documents governing the Scheme that have an effect on the Highland Crusader Funds. The consolidated financial statements appropriately reflect the actions required under the Crusader Scheme and the related effects on the capital balances. The consolidated financial statements also include all applicable disclosure which we believe are required under US GAAP.

    Additionally, with respect to the schedule of distributions set forth in the Crusader Scheme, we do not believe they meet the requirements under US GAAP to be recorded as withdrawal payables at the balance sheet date; however, we have made the appropriate disclosure of these scheduled distributions in the notes to the Highland Crusader Funds' financial statements.

50. Other than the litigation described in the Current Litigation Memo dated May 21, 2015 and disclosed in the consolidated financial statements, there is no other litigation that would materially impact the Partnership and the Fund's.

51. We identified all variable interests, determined whether each variable interest in an entity was a variable interest entity (VIE), consolidated the VIEs for which the Company was the primary beneficiary, considered reconsideration events and complied with the consolidated financial statement disclosure requirements, including those VIEs that were not consolidated, in accordance with the guidance of ASC 810, Consolidation (ASC 810), which was applicable to the period presented.

52. The Partnership, as general partner of limited partnerships (which are not subject to the consolidation guidance under the variable interest entity model), has evaluated consolidation in accordance with ASC 810-20-25-4 through 25-7, Evaluating Presumption of General Partner Control and has determined that the entities listed in Note 3 of the consolidated financial statements have been properly consolidated. For entities that have not been consolidated by the Partnership, as general partner, the Partnership has adequately overcome the presumption of consolidation by the general partner based on the guidance noted above.

53. The consolidated financial statements disclose all matters of which we are aware that are relevant to the Partnership's ability to continue as a going concern, including all significant conditions and events and management's plans. We have the intent and ability to take actions necessary for the Partnership to continue as a going concern and accordingly the Partnership's consolidated financial statements are prepared on a going concern basis. We made available to you all relevant information

on the Partnership's ability to continue as a going concern that could affect the consolidated financial statements. We derecognize liabilities if and only if it has been extinguished. A liability has been extinguished when the debtor pays the creditor and is relieved from its obligation or when the debtor has been legally released from being the primary obligor under the liability, either judicially or by the creditor.

54. We acknowledge responsibility for the presentation of the Supplemental Consolidating Balance Sheet, Supplemental Consolidating Statement of Income, Supplemental Unconsolidated Balance Sheet, and Supplemental Unconsolidated Statement of Income in accordance with US GAAP and we believe such information, including its form and content, is fairly presented in accordance with US GAAP. We have communicated to you all changes in measurement or presentation from those used in the prior period. We have informed you about any significant assumptions or interpretations underlying the measurement or presentation of the information.

To the best of our knowledge and belief, no events have occurred subsequent to the balance sheet date and through the date of this letter that would require adjustment to or disclosure in the aforementioned consolidated financial statements.

James Dondero, President

Highland Capital Management, L.P.

Frank Waterhouse, Chief Financial Officer

Highland Capital Management, L.P.

Appendix 1

Highland Crusader Offshore Partners, L.P. ("Crusader Master")

Highland CDO Opportunity Master Fund, L.P. ("CDO Master Fund")

Highland Credit Strategies Master Fund, L.P. ("Credit Strategies Master")

Highland Multi Strategy Credit Fund, L.P. ("Multi Strategy Master"), formerly Highland Credit Opportunities CDO, L.P. Highland Multi-Strategy Master Fund, L.P. ("Multi-Strat Master")

Highland Multi-Strategy Fund, L.P. ("Multi-Strat Domestic Feeder")

Canopy Timberlands, L.P.

Highland Restoration Capital Partners Offshore, L.P. ("Restoration Offshore")

Highland Restoration Capital Partners, L.P. ("Restoration Onshore")

BB Votorantim, Highland Infastructure LLC ("BB Votorantim")

HCM Europe, Ltd. ("HCM Europe")

Highland Capital Special Allocation, LLC ("HCSA")

HFP GP, LLC

Highland Receivables Finance 1, LLC

Highland Capital Management (Singapore) Pte, Ltd.

Highland Capital Management Korea, Ltd.

HE Capital, LLC

De Kooning, Ltd.

Hirst, Ltd.

Hockney, Ltd.

Oldenburg, Ltd.

Penant Management, L.P.

Semence, LLC

SK Shareholder Service, LLC

Pollack, Ltd.

Warhol, Ltd.

HCREF-1 Holding Corp.

HCREF-X Holding Corp.

HCREF-XI Holding Corp.

HCREF-XII Holding Corp.

Highland Employee Retention Assets, LLC

Highland Diversified Credit Fund, L.P.

Highland Select Equity Fund, L.P.

Highland Equity Partners, L.P.

Highland Equity Focus Fund, L.P.

Highland Merger Arbitrage Fund, L.P.

Summay of Out-of-Period Adjustments for Entities Consolidated by Highland Capital Management, L.P.

PRICEWATERHOUSECOOPERS

Client: Highland Capital Management, L.P.

Period: 12/31/14

Summary of Out-of-period Adjustments Recorded by Management

[PwC Audit Section 6275]

Out-of-period Adjustments (1)			Net Investment Income	Real/Unreal Gain/Loss	Partners' Capital
W/P Ref.	Out-of-period Adj.#	Description			
	1	Crusader Offshore Partners			
		Cr. Interest Income	(391,749)		
		Cr. Dividend Income	(803,409)		
		Cr. Other Expense	(212,124)		
		Dr. Partners' Capital			1,407,283
		To reflect the tax withholding true-up that should have been booked against income in the prior period.			
	2	Multi Strategy Credit Fund			
		Cr. Net realized loss on investment transactions		829,031	
		Cr. Other expense	2,765		
		Dr. Partners' Capital			(831,796)
		To reflect the tax withholding true-up that should have been booked against the net impact in partners' capital resulting from operations			
Total Out-of-period Adjustments - Pretax			(1,404,518)	829,031	575,487

Out-of-period Adjustments as a % of FS Amounts	FS Amount	% of FS Amount
Net Increase in Partners' Capital	527,113,000	-0.27%

EXHIBIT 232

HIGHLAND CAPITAL
MANAGEMENT

May 19, 2017

PricewaterhouseCoopers LLP
2001 Ross Avenue, Suite 1800
Dallas, TX 75201

We are providing this letter in connection with your audit of the consolidated financial statements for Highland Capital Management, L.P. and its subsidiaries (Appendix 1) (collectively the "Partnership") as of December 31, 2016 (hereinafter referred to as the "balance sheet date") and for the year then ended (hereinafter referred to as the "period"), (hereinafter collectively referred to as the "consolidated financial statements"), for the purpose of expressing an opinion as to whether such consolidated financial statements present fairly, in all material respects, the financial position, results of operations, changes in partners' capital and of cash flows of the Partnership in conformity with accounting principles generally accepted in the United States of America. We acknowledge and confirm that we have fulfilled our responsibility, as set out in our engagement letter of March 6, 2017 for the preparation and fair presentation in the consolidated financial statements of financial position, results of operations, changes in partners' capital and of cash flows in conformity with accounting principles generally accepted in the United States of America, including the appropriate selection of accounting policies.

Certain representations in this letter are described as being limited to those matters that are material. Items are considered material, regardless of size, if they involve an omission or misstatement of accounting information that, in the light of surrounding circumstances, makes it probable that the judgment of a reasonable person relying on the information would have been changed or influenced by the omission or misstatement. Materiality used for purposes of this letter is $ 2,000,000

We confirm, to the best of our knowledge and belief, as of May 19, 2017, the date of your report, the following representations made to you during your audit:

1. The consolidated financial statements referred to above are fairly presented in conformity with accounting principles generally accepted in the United States of America (US GAAP), and include all disclosures necessary for such fair presentation and disclosures otherwise required to be included therein by the laws and regulations to which the Partnership is subject. We have prepared the Partnership's consolidated financial statements on the basis that the Partnership is able to continue as a going concern including to meet its obligations in the ordinary course of business, and we are not aware of any significant information to the contrary.

2. We have made available to you:

   a. All financial records and related data.

   b. Unconditional access to persons within the entity from whom you have requested audit evidence.

   c. All minutes of the meetings of committees or other governing bodies applicable to the Partnership, including but not limited to, investors, Partners, and committees of Partners including summaries of actions of recent meetings for which minutes have not yet been prepared. The most recent meetings held were Pricing Committee, May 13, 2016.

d. Partnership agreements, Memoranda and Articles of Association, Confidential Offering Memoranda, and amendments thereto (individually or collectively referred to hereinafter as the "Governing Documents"), and all other agreements to which the Partnership is subject.

e. Contracts or other agreements with the Partnership's service providers.

f. All official written reports, findings, recommendations and communications from specialists or professional advisors engaged to review investments, systems, processes, operations, or compliance programs of the Partnership that are material to the Partnership, individual or in aggregate.

g. All side letter arrangements, whether written or oral, with any investors entered into or cancelled during the period for which noncompliance would have a material effect on the Partnership's consolidated financial statements. These side letters are allowed under the terms of the Governing Documents.

3. We have appropriately reconciled our books and records (e.g., general ledger accounts) underlying the consolidated financial statements to their related supporting information (e.g., sub ledger or third-party data). All related reconciling items considered to be material were identified and included on the reconciliations and were appropriately adjusted in the consolidated financial statements, as necessary. There were no material unreconciled differences or material general ledger suspense account items that should have been adjusted or reclassified to another account balance. There were no material general ledger suspense account items written off to a balance sheet account, which should have been written off to an income statement account and vice versa. All consolidating entries have been properly recorded. All intra-entity accounts have been eliminated or appropriately measured and considered for disclosure in the consolidated financial statements.

4. There have been no communications from regulatory agencies concerning noncompliance with or deficiencies in financial reporting practices.

5. There are no material transactions, agreements or accounts that have not been properly recorded in the accounting records underlying the consolidated financial statements.

6. We acknowledge and confirm that we have fulfilled our responsibility, as set out in our engagement letter of March 6, 2017, for the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of consolidated financial statements that are free from material misstatement, whether due to fraud or error and we are not aware of any deficiencies in the design or operation of internal control over financial reporting.

7. We acknowledge our responsibility for the design and implementation of programs and controls to provide reasonable assurance that fraud is prevented and detected.

8. We have disclosed to you the results of our assessment of the risk that the consolidated financial statements may be materially misstated as a result of fraud and except with respect to the Partnership's allegations against Joshua Terry as disclosed in Highland Capital Management, L.P. v. Joshua Terry, Cause No. DC-16-11396 pending in the 162nd Judicial District of Dallas County, Texas (the "Terry Action"), we have no knowledge of any fraud or suspected fraud affecting the Partnership involving:

   a. Management,
   b. Employees who have significant roles in internal control over financial reporting, or

c. Others where the fraud could have a material effect on the consolidated financial statements.

9. Except as disclosed in the Terry Action, we have no knowledge of any allegations of fraud or suspected fraud affecting the Partnership received in communications from employees, former employees, analysts, regulators, short sellers, or others.

(As to items 7, 8 and 9, we understand the term "fraud" to mean those matters described in AICPA AU-C 240.)

10. There have been no violations or possible violations of laws or regulations whose effects should be considered for disclosure in the consolidated financial statements or as a basis for recording a loss contingency.

11. The Partnership has no plans or intentions that may materially affect the carrying value or classification of assets and liabilities. We have no plans or intentions to liquidate the Partnership or to cease operations.

12. We have disclosed to you the identity of the Partnership's related parties and all the related party relationships and transactions of which we are aware.

13. The following, if material, have been properly recorded or disclosed in the consolidated financial statements:

a. All pertinent rights and privileges of both general partner and limited partner interests in the Partnership.

b. Relationships and transactions with related-parties, as described in Accounting Standards Codification (ASC) 850, *Related Party Disclosures*, including sales, purchases, loans, transfers, leasing arrangements, and guarantees, and amounts receivable from or payable to related parties.

c. Guarantees, whether written or oral, under which the Partnership is contingently liable.

d. Significant estimates and material concentrations known to management that are required to be disclosed in accordance with ASC 275, *Risks and Uncertainties*, 275-10-50. (Significant estimates are estimates at the balance sheet date that could change materially within the next year. Concentrations refer to volumes of business, revenues, available sources of supply, or markets or geographic areas for which events could occur that would significantly disrupt normal finances within the next year.)

e. Commitments to purchase or sell financial instruments, commitments on certain debt instruments such as revolving credit facilities and obligations to fund capital calls.

f. Transactions made on margin or selling short.

g. Fee income and expenses associated with stock lending and borrowing arrangements.

h. Transactions made in foreign currencies.

i. All financial instruments, including those with off-balance-sheet risk (including, but not limited to, swaps, forwards and futures), as required under US GAAP. This includes the following information with respect to the off-balance-sheet risks and the concentrations of credit risk:

a. The extent, nature, and terms of financial instruments with off-balance-sheet risk.

b. The amount of credit risk of financial instruments with off-balance-sheet risk and information about the collateral supporting such financial instruments.

j. Each significant concentration of credit risk arising from all financial instruments, and information about the collateral supporting such financial instruments, whether from an individual counterparty/prime broker or group of counterparties/prime brokers in accordance with ASC 825, Financial Instruments and ASC 815, Derivatives and Hedging (ASC 815), 815-10-65.

14. The Partnership has satisfactory title to all owned assets, and there are no liens or encumbrances on such assets nor has any asset been pledged as collateral, except as disclosed in the consolidated financial statements.

15. The Partnership has complied with all aspects of contractual agreements that would have a material effect on the consolidated financial statements in the event of noncompliance.

16. Receivables recorded in the consolidated financial statements represent bona fide claims against debtors for sales or other charges arising on or before the balance sheet date and are not subject to discount except for normal cash discounts. All receivables have been appropriately reduced to their estimated net realizable value.

17. All liabilities of the Partnership of which we are aware are included in the consolidated financial statements at the balance sheet date. There are no other liabilities or gain or loss contingencies that are required to be accrued or disclosed by ASC 450, *Contingencies*, and no unasserted claims or assessments that our legal counsel has advised us are probable of assertion and required to be disclosed in accordance with that Topic.

18. We are responsible for all significant estimates and judgments affecting the consolidated financial statements. Significant estimates and judgments and their underlying assumptions, methods, procedures and the source and reliability of supporting data are reasonable and based on applicable guidance, are completely and appropriately disclosed in the consolidated financial statements, and appropriately reflect management's intent and ability to carry out specific courses of action, where relevant. The procedures and methods utilized in developing assumptions, estimates and judgments are appropriate and have been consistently applied in the period presented. There have been no subsequent events which would require the adjustment of any significant estimate and related disclosures.

19. We have notified you of (i) our current or planned offerings of securities on a regulated market in a non-U.S. country or (ii) when we have provided or plan to provide audited consolidated financial statements to a non-U.S. regulator or government in connection with our access to its public capital markets, whether or not we include or refer to your report or include reference to your Firm.

20. With respect to Partnership investments:

a. Portfolio investments included in the Partnership's consolidated financial statements have been stated at fair values as determined by management in accordance with the valuation methods set forth in the Partnership's policies and procedures. Such policies are in accordance with US GAAP (e.g., fair value of an investment is that price which would be received to sell or paid to transfer, respectively, those assets or liabilities in orderly transactions between market participants).

b. The valuation policies used for securities or investments whose fair values have been estimated by management are appropriate and have been consistently applied and documented. The policies for fair value measurement are appropriately disclosed in the Partnership's consolidated financial statements. The methods, assumptions, and inputs used are appropriate and result in a fair value appropriate for financial statement measurement and disclosure purposes. As of the balance sheet date, the investments for which fair value were determined by estimates made by the Partnership's management are appropriately disclosed in the Partnership's consolidated financial statements.

c. We have informed you of any securities as of December 31, 2016 which are restricted in any way as to their resale or are otherwise not marketable, and have appropriately considered such restrictions in our fair value determinations.

d. The cost of portfolio securities was determined on the basis of FIFO.

e. All Partnership investments made during the year ended December 31, 2016 were in accordance with the investment policies of the Partnership.

21. The Partnership has not made any commitments during the year as underwriter, nor did it engage in joint trading or a joint investment account.

22. All material expenses charged to the Partnership are permissible under the terms of the Governing Documents. All directed brokerage and other expense reimbursement agreements have been properly disclosed in the consolidated financial statements.

23. Partner capital balances, including the allocation of income, gains and losses and the calculation of management fees and performance fees/allocations have been properly calculated throughout the period in accordance with the Governing Documents, after giving consideration to the terms identified in each investor's subscription document. The methodology was consistently applied throughout the period and was correctly applied in the computation of contribution and withdrawal transactions during the period.

24. The Partnership has netted certain balances within the consolidated financial statements. All netting has been performed in accordance with the specific requirements of ASC 815-10-45-5 and ASC 210, Balance Sheet, 210-20-45-11 through 45-13, as appropriate.

25. The Partnership has properly recorded, classified and disclosed the prime broker margin collateral requirements in the consolidated financial statements in accordance with ASC 860, Transfers and Servicing, as to the recognition and reclassification of collateral and disclosures relating to securitization transactions and collateral.

26. The Partnership is not an "SEC registrant" as that term is used in ASC 480, Distinguishing Liabilities from Equity, 480-10-65-1. The Partnership has properly classified and disclosed as liabilities its mandatorily redeemable securities and other financial instruments (e.g., redemptions payable) that are within the scope of ASC 480-10-65, Effective Date, Disclosures, and Transition for Mandatorily Redeemable Financial Instruments of Certain Nonpublic Entities and Certain Mandatorily Redeemable Noncontrolling Interests, in the consolidated financial statements.

27. All cash and deposit accounts and all other properties and assets of the Partnership are included in the consolidated financial statements. Arrangements with financial institutions involving compensating balances or other arrangements involving restrictions on cash balances, lines of credit,

collateral posted or similar arrangements have been properly disclosed in the consolidated financial statements.

28. We consistently applied our policy regarding classification of cash and cash equivalents, which are short-term, highly liquid investments that are readily convertible to known amounts of cash and are so near their maturity that there is insignificant risk of changes in value due to interest rate or other credit risk changes.

29. All borrowings and financial obligations of the Partnership have been disclosed to you and are properly recorded and disclosed in the consolidated financial statements.

30. We evaluated all contracts and financial instruments to determine whether they meet the definition of a derivative under ASC 815, Derivatives and Hedging (ASC 815).

31. We classified as liabilities (or as assets in some circumstances) all mandatorily redeemable securities and other financial instruments (e.g., written put options, forward purchase contracts and warrants on mezzanine securities) in accordance with ASC 480, Distinguishing Liabilities from Equity.

32. The actuarial valuation of pension benefit obligations was determined using an acceptable methodology applied on a consistent basis and taking into account the individual characteristics of the plan and reasonable assumptions, including those for the discount rate, rate of return on plan assets, mortality rate and other demographic assumptions.

33. We accurately described the processes used by management to make investment decisions, including the target allocation percentages or range of percentages for each major category of plan assets, and to determine the overall expected long-term rate of return on assets.

34. The amounts of expected employer contributions to the benefit plan during the next fiscal year represent our best estimate.

35. We do not intend to compensate for the reduction of postretirement benefits by granting an increase in pension or other benefits.

36. We applied the recognition, disclosure and measurement date provisions of ASC 715, Compensation-Retirement Benefits (ASC 715). The resulting benefit asset represents the overfunded status of the plan, and accumulated other comprehensive income (AOCI) includes all previously unrecognized prior service costs and credits, net gains/losses and transition assets and obligations, net of taxes.

37. We measured and recognized all plan assets as of the plan's measurement date at fair value in accordance with ASC 715, Compensation- Retirement Benefits (ASC 715).

38. We assume responsibility for the findings of specialists. We did not give or cause any instructions to be given to specialists with respect to the values or amounts derived in an attempt to bias their work, and we are not aware of any matters that have had an impact on the independence or objectivity of the specialists. We adequately considered qualifications of the specialists in determining the amounts and disclosures used in the consolidated financial statements and underlying accounting records related to employee benefit plans and financial instruments.

39. We evaluated, recorded and disclosed in the consolidated financial statements transfers of financial assets to determine that control over the transferred financial assets has been surrendered and that all of the conditions in accordance with ASC 860-10-40-4 and 40-5 have been met to be accounted

for as a sale, including but not limited to (1) transactions involving qualifying special purpose entities to determine that all of the conditions in accordance with but not limited to ASC 860-40-15-3 have been met and (2) agreements to repurchase assets previously sold, including contingent removal of accounts provisions and clean-up calls.

40. The Partnership has properly disclosed in the current litigation summary letter provided by the Partnership's general counsel, all litigation or pending litigation that could materially impact the consolidated financial statements.

41. We disclosed the fair values of financial assets and liabilities in the consolidated financial statements in accordance with ASC 825, Financial Instruments and ASC 820, even though the valuation of these assets and liabilities recorded in the consolidated financial statements are not subject to the fair value provisions of ASC 820.

42. We are responsible for all significant estimates and judgments affecting derivative financial instruments and commodity derivatives valuation. Significant estimates and judgments and their underlying assumptions, methods, procedures and the source and reliability of supporting data are reasonable and are disclosed in the consolidated financial statements. The procedures and methods utilized in developing assumptions, estimates and judgments are appropriate and have been consistently applied in the period presented.

43. We disclosed in the consolidated financial statements and advised you of all significant tax positions for which it is reasonably possible the amount of unrecognized tax benefit will either increase or decrease in the next twelve months. We recognized changes in recognition and measurement of uncertain tax positions in the period to which they relate, including the interim period, and disclosed in the consolidated financial statements all individually significant changes in uncertain tax positions, even if the net amount of all such changes was insignificant. We recognized and measured all uncertain tax positions in accordance with ASC 740.

44. We provided you with all information related to material significant income tax uncertainties of which we are aware could result in an ASC 740 liability. We also provided you with access to all opinions and analyses that relate to material positions we have taken regarding significant income tax matters that could result in an ASC 740 liability.

45. No contracts were executed outside of Texas or the U.S. on behalf of the Partnership during 2016.

46. We have no plans or intentions that may materially affect the consolidated funds' carrying value or classification of assets and liabilities. We have no plans or intentions to liquidate the consolidated funds or to cease operations.

47. We are responsible for the determination of the fair value of investments.

48. Other than the litigation described in the Current Litigation Memo dated May 19, 2017 and disclosed in the consolidated financial statements, there is no other litigation that would materially impact the Partnership and the consolidated funds.

49. We identified all variable interests, determined whether each variable interest in an entity was a variable interest entity (VIE), consolidated the VIEs for which the Partnership was the primary beneficiary, considered reconsideration events and complied with the consolidated financial statement disclosure requirements, including those VIEs that were not consolidated, in accordance

with the guidance of ASC 810, Consolidation (ASC 810), which was applicable to the period presented.

50. The Partnership, as general partner of limited partnerships (which are not subject to the consolidation guidance under the variable interest entity model), has evaluated consolidation in accordance with ASC 810-20-25-4 through 25-7, Evaluating Presumption of General Partner Control and has determined that the entities listed in Note 3 of the consolidated financial statements have been properly consolidated. For entities that have not been consolidated by the Partnership, as general partner, the Partnership has adequately overcome the presumption of consolidation by the general partner based on the guidance noted above.

51. The consolidated financial statements disclose all matters of which we are aware that are relevant to the Partnership's ability to continue as a going concern, including all significant conditions and events and management's plans. We have the intent and ability to take actions necessary for the Partnership to continue as a going concern and accordingly the Partnership's consolidated financial statements are prepared on a going concern basis. We made available to you all relevant information on the Partnership's ability to continue as a going concern that could affect the consolidated financial statements. We derecognize liabilities if and only if it has been extinguished. A liability has been extinguished when the debtor pays the creditor and is relieved from its obligation or when the debtor has been legally released from being the primary obligor under the liability, either judicially or by the creditor.

52. We acknowledge responsibility for the presentation of the Supplemental Consolidating Balance Sheet, Supplemental Consolidating Statement of Income, Supplemental Unconsolidated Balance Sheet and Supplemental Unconsolidated Statement of Income in accordance with US GAAP and we believe such information, including its form and content, is fairly presented in accordance with US GAAP. We have communicated to you all changes in measurement or presentation from those used in the prior period. We have informed you about any significant assumptions or interpretations underlying the measurement or presentation of the information.

To the best of our knowledge and belief, no events have occurred subsequent to the balance sheet date and through the date of this letter that would require adjustments to, or disclosure in, the aforementioned consolidated financial statements.

James Dondero, President
Highland Capital Management, L.P.
By: Strand Advisors, Inc., its general partner

Frank Waterhouse, Treasurer
Highland Capital Management, L.P.
By: Strand Advisors, Inc., its general partner

Appendix 1

Highland Multi Strategy Credit Fund, L.P.

Highland Multi-Strategy Master Fund, L.P.

Highland Multi-Strategy Fund, L.P.

Highland Restoration Capital Partners Offshore, L.P.

Highland Restoration Capital Partners, L.P.

BB Votorantim, Highland Infrastructure LLC

Highland Capital Special Allocation, LLC

Highland Receivables Finance 1, LLC

Highland Brasil, LLC

Highland Capital Management Partners Charitable Trust #1

Highland Capital Management (Singapore) Pte, Ltd.

Highland Capital Management Korea, Ltd.

HE Capital, LLC

De Kooning, Ltd.

Hirst, Ltd.

Hockney, Ltd.

Oldenburg, Ltd.

Penant Management, L.P.

Pollack, Ltd.

Warhol, Ltd.

HCREF- I Holding Corp.

HCREF-X Holding Corp.

HCREF-XI Holding Corp.

HCREF-XII Holding Corp.

Highland ERA Management, LLC

The Dondero Insurance Rabbi Trust

The Okada Insurance Rabbi Trust

Highland Employee Retention Assets, LLC

Highland Diversified Credit Fund, L.P.

Highland Select Equity Master Fund, L.P.

Highland Select Equity Fund, L.P.

Bandera Strategic Credit Partners I SLP, L.P.

Highland Fund Holdings, LLC

HCM Holdco, LLC

Maple Avenue Holdings, LLC

Neutra, Ltd.

Eames, Ltd.

EXHIBIT 233

PACHULSKI STANG ZIEHL & JONES LLP
Jeffrey N. Pomerantz (CA Bar No.143717) (*admitted pro hac vice*)
Ira D. Kharasch (CA Bar No. 109084) (*admitted pro hac vice*)
John A. Morris (NY Bar No. 2405397) (*admitted pro hac vice*)
Gregory V. Demo (NY Bar No. 5371992) (*admitted pro hac vice*)
Hayley R. Winograd (NY Bar No. 5612569) (*admitted pro hac vice*)
10100 Santa Monica Blvd., 13th Floor
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Fax: (972) 755-7110

Counsel for Highland Capital Management, L.P.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re: HIGHLAND CAPITAL MANAGEMENT, L.P., Reorganized Debtor.	§ § § § § §	Chapter 11 Case No. 19-34054-sgj11
HIGHLAND CAPITAL MANAGEMENT, L.P., Plaintiff, vs. HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, L.P., Defendant.	§ § § § § § § § § §	Adversary Proceeding No. _____

COMPLAINT FOR (I) BREACH OF CONTRACT AND
(II) TURNOVER OF PROPERTY OF HIGHLAND'S ESTATE

Plaintiff Highland Capital Management, L.P., the reorganized debtor ("Highland") in the above-captioned chapter 11 case (the "Bankruptcy Case") and the plaintiff (the "Plaintiff") in the above-captioned adversary proceeding (the "Adversary Proceeding"), by its undersigned counsel, files this complaint (the "Complaint") against defendant Highland Capital Management Fund Advisors, L.P. ("HCMFA" or "Defendant") and alleges upon knowledge of its own actions and upon information and belief as to other matters as follows:

PRELIMINARY STATEMENT[1]

1. Highland brings this action against HCMFA as a result of HCMFA's defaults under two promissory notes executed by HCMFA in favor of Highland in the aggregate original principal amount of $6,300,000 and payable upon Highland's demand. Despite demand having been made, HCMFA has failed to pay amounts due and owing under the Notes and the accrued but unpaid interest thereon.

2. As remedies, Highland seeks (a) damages from HCMFA in an amount equal to (i) the aggregate outstanding principal due under the Notes, plus (ii) all accrued and unpaid interest thereon until the date of payment, plus (iii) an amount equal to Highland's costs of collection (including all court costs and reasonable attorneys' fees and expenses, as provided for in the Notes) and (b) turnover by HCMFA to Highland of the foregoing amounts.

JURISDICTION AND VENUE

3. This Adversary Proceeding arises under and relates to Highland's Bankruptcy Case pending before the United States Bankruptcy Court for the Northern District of Texas, Dallas Division (the "Court") under chapter 11 of the Bankruptcy Code.

4. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334.

[1] Capitalized terms shall take on the meanings ascribed to them below.

5. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b), and, pursuant to Rule 7008 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), Highland consents to the entry of a final order by the Court in the event that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution.

6. Venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

THE PARTIES

7. Highland is a limited liability partnership formed under the laws of Delaware with a business address at 100 Crescent Court, Suite 1850, Dallas, Texas 75201.

8. Upon information and belief, HCMFA is a limited partnership with offices located in Dallas, Texas, and is organized under the laws of the state of Delaware.

CASE BACKGROUND

9. On October 16, 2019, Highland filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the District of Delaware (the "Delaware Court"), Case No. 19-12239 (CSS) (the "Highland Bankruptcy Case").

10. On December 4, 2019, the Delaware Court entered an order transferring venue of the Highland Bankruptcy Case to this Court [Docket No. 186].[2]

11. On February 22, 2021, the Court entered the *Order (i) Confirming the Fifth Amended Plan of Reorganization (as Modified) and (ii) Granting Related Relief* [Docket No. 1943] (the "Confirmation Order") confirming the *Fifth Amended Plan of Reorganization of Highland Capital Management, L.P., as Modified* [Docket No. 1808] (the "Plan").

[2] All docket numbers refer to the main docket for the Highland Bankruptcy Case maintained by this Court.

12. The Plan went Effective (as defined in the Plan) on August 11, 2021, and Highland is the Reorganized Debtor (as defined in the Plan) since the Effective Date. *See Notice of Occurrence of Effective Date of Confirmed Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 2700].

STATEMENT OF FACTS

A. The HCMFA Notes

13. HCMFA is the maker under a series of promissory notes in favor of Highland.

14. Specifically, on February 26, 2014, HCMFA executed a promissory note in favor of Highland, as payee, in the original principal amount of $4,000,000 ("HCMFA's First Note"). A true and correct copy of HCMFA's First Note is attached hereto as **Exhibit 1**.

15. HCMFA's First Note was executed in exchange for a contemporaneous transfer from Highland to HCMFA in the amount of $4,000,000 (the "First Payment").

16. On February 26, 2016, HCMFA executed a promissory note in favor of Highland, as payee, in the original principal amount of $2,300,000 ("HCMFA's Second Note", and together with HCMFA's First Note, the "Notes"). A true and correct copy of HCMFA's Second Note is attached hereto as **Exhibit 2.**

17. HCMFA's Second Note was executed in exchange for a contemporaneous transfer from Highland to HCMFA in the amount of $2,300,000 (the "Second Payment", and together with the First Payment, the "Payments").

18. Section 2 of each Note provides: "**Payment of Principal and Interest**. The accrued interest and principal of this Note shall be due and payable on demand of the Payee."

19. Section 4 of each Note provides:

> **Acceleration Upon Default**. Failure to pay this Note or any installment hereunder as it becomes due shall, at the election of the holder hereof, without notice, demand, presentment, notice of intent to accelerate, notice of acceleration, or any other

> notice of any kind which are hereby waived, mature the principal of this Note and all interest then accrued, if any, and the same shall at once become due and payable and subject to those remedies of the holder hereof. No failure or delay on the part of the Payee in exercising any right, power, or privilege hereunder shall operate as a waiver hereof.

20. Section 6 of each Note provides:

> **Attorneys' Fees**. If this Note is not paid at maturity (whether by acceleration or otherwise) and is placed in the hands of an attorney for collection, or if it is collected through a bankruptcy court or any other court after maturity, the Maker shall pay, in addition to all other amounts owing hereunder, all actual expenses of collection, all court costs and reasonable attorneys' fees and expenses incurred by the holder hereof.

B. Highland Agrees Not to Demand Payment under the Notes Prior to May 31, 2021

21. On April 15, 2019, James Dondero signed a letter on behalf of both Highland and HCMFA pursuant to which Highland agreed not to demand payment under the Notes prior to May 31, 2021 (the "Acknowledgement Letter") on the ground that "HCMFA expects that it may be unable to repay such amounts should they become due, for the period commencing today and continuing through May 31, 2021." A true and correct copy of the Acknowledgement Letter is attached hereto as **Exhibit 3**.[3]

C. HCMFA's Default under Each Note

22. By letter dated June 2, 2021, Highland made demand on HCMFA for payment under the Notes by June 4, 2021 (the "Demand Letter"). A true and correct copy of the Demand Letter is attached hereto as **Exhibit 4**. The Demand Letter provides:

> By this letter, Payee is demanding payment of the accrued interest and principal due and payable on the Notes in the aggregate amount of $3,143,181.93, which represents all accrued interest and principal through and including June 4, 2021.

[3] On January 22, 2021, Highland commenced a similar adversary proceeding against HCMFA for its default under two other promissory notes. [*See* Adv. Proc. 21-3004, *Complaint for (I) Breach of Contract and (II) Turnover of Property of the Debtor's Estate*, Docket No. 1] (the "First Complaint"). The Notes that are the subject of this Complaint were not included in the First Complaint because of the Acknowledgement Letter.

Payment is due on June 4, 2021, and failure to make payment in full on such date will constitute an event of default under the Notes.

23. Despite Highland's demand, HCMFA did not pay all or any portion of the amounts demanded by Highland on June 4, 2021, or at any time thereafter.

24. As of June 4, 2021, there was an outstanding principal amount of $2,134,166.53 on HCMFA's First Note and accrued but unpaid interest in the amount of $11,288.28, resulting in a total outstanding amount as of that date of $2,145,454.81.

25. As of June 4, 2021, there was an outstanding principal balance of $990,757.62 on HCMFA's Second Note and accrued but unpaid interest in the amount of $6,969.50, resulting in a total outstanding amount as of that date of $997,727.12.

26. Thus, as of June 4, 2021, the total outstanding principal and accrued but unpaid interest due under the Notes was $3,143,181.93

27. Pursuant to Section 4 of each Note, each Note is in default and is currently due and payable.

FIRST CLAIM FOR RELIEF
(For Breach of Contract)

28. Highland repeats and re-alleges the allegations in each of the foregoing paragraphs as though fully set forth herein.

29. Each Note is a binding and enforceable contract.

30. HCMFA breached each Note by failing to pay all amounts due to Highland upon Highland's demand.

31. Pursuant to each Note, Highland is entitled to damages from HCMFA in an amount equal to (i) the aggregate outstanding principal due under each Note, plus (ii) all accrued and unpaid interest thereon until the date of payment, plus (iii) an amount equal to Highland's costs of

collection (including all court costs and reasonable attorneys' fees and expenses) for HCMFA's breach of its obligations under each of the Notes.

32. As a direct and proximate cause of HCMFA's breach of each Note, Highland has suffered damages in the total amount of at least $3,143,181.93 as of June 4, 2021, plus an amount equal to all accrued but unpaid interest from that date, plus Highland's costs of collection.

SECOND CLAIM FOR RELIEF
(Turnover by HCMFA Pursuant to 11 U.S.C. § 542(b))

33. Highland repeats and re-alleges the allegations in each of the foregoing paragraphs as though fully set forth herein.

34. HCMFA owes Highland an amount equal to (i) the aggregate outstanding principal due under each Note, plus (ii) all accrued and unpaid interest thereon until the date of payment, plus (iii) an amount equal to Highland's costs of collection (including all court costs and reasonable attorneys' fees and expenses) for HCMFA's breach of its obligations under each of the Notes.

35. Each Note is property of Highland's estate, and the amounts due under each Note are matured and payable upon demand.

36. HCMFA has not paid the amounts due under the Notes to Highland.

37. Highland has made demand for the turnover of the amounts due under each Note.

38. As of the date of filing of this Complaint, HCMFA has not turned over to Highland all or any of the amounts due under the Notes.

39. Highland is entitled to the turnover of all amounts due under the Notes.

WHEREFORE, Highland prays for judgment as follows:

(i) On its First Claim for Relief, damages in an amount to be determined at trial but including (a) the aggregate outstanding principal due under each Note, plus (b) all accrued and unpaid interest thereon until the date of payment, plus (c) an amount equal to Highland's costs of collection (including all court costs and reasonable attorneys' fees and expenses);

(ii) On its Second Claim for Relief, ordering turnover by HCMFA to Highland of an amount equal to (a) the aggregate outstanding principal due under each Note, plus (b) all accrued and unpaid interest thereon until the date of payment, plus (c) an amount equal to Highland's costs of collection (including all court costs and reasonable attorneys' fees and expenses); and

(iii) Such other and further relief as this Court deems just and proper.

Dated: November 9, 2021

PACHULSKI STANG ZIEHL & JONES LLP
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Ira D. Kharasch (CA Bar No. 109084)
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-and-

HAYWARD PLLC

/s/ Zachery Z. Annable
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Counsel for Highland Capital Management, L.P.

EXHIBIT 1

PROMISSORY NOTE

$4,000,000.00 February 26, 2014

FOR VALUE RECEIVED, HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, LP. ("***Maker***") promises to pay to the order of HIGHLAND CAPITAL MANAGEMENT, LP ("***Payee***"), in legal and lawful tender of the United States of America, the principal sum of FOUR MILLION and 00/100 Dollars ($4,000,000.00), together with interest, on the terms set forth below (the "***Note***"). All sums hereunder are payable to Payee at 300 Crescent Court, Dallas, TX 75201, or such other address as Payee may specify to Maker in writing from time to time.

1. Interest Rate. The unpaid principal balance of this Note from time to time outstanding shall bear interest at a rate equal to the mid-term "***applicable federal rate***" (1.97%) in effect on the date hereof for loans of such maturity as determined by Section 1274(d) of the Internal Revenue Code, per annum from the date hereof until maturity, compounded annually on the anniversary of the date of this Note. Interest shall be calculated at a daily rate equal to 1/365th (1/366 in a leap year) of the rate per annum, shall be charged and collected on the actual number of days elapsed, and shall be payable on demand of the Payee.

2. Payment of Principal and Interest. The accrued interest and principal of this Note shall be due and payable on demand of the Payee.

3. Prepayment Allowed; Renegotiation Discretionary. Maker may prepay in whole or in part the unpaid principal or accrued interest of this Note. Any payments on this Note shall be applied first to unpaid accrued interest hereon, and then to unpaid principal hereof.

4. Acceleration Upon Default. Failure to pay this Note or any installment hereunder as it becomes due shall, at the election of the holder hereof, without notice, demand, presentment, notice of intent to accelerate, notice of acceleration, or any other notice of any kind which are hereby waived, mature the principal of this Note and all interest then accrued, if any, and the same shall at once become due and payable and subject to those remedies of the holder hereof. No failure or delay on the part of Payee in exercising any right, power or privilege hereunder shall operate as a waiver thereof.

5. Waiver. Maker hereby waives grace, demand, presentment for payment, notice of nonpayment, protest, notice of protest, notice of intent to accelerate, notice of acceleration and all other notices of any kind hereunder.

6. Attorneys' Fees. If this Note is not paid at maturity (whether by acceleration or otherwise) and is placed in the hands of an attorney for collection, or if it is collected through a bankruptcy court or any other court after maturity, the Maker shall pay, in addition to all other amounts owing hereunder, all actual expenses of collection, all court costs and reasonable attorneys' fees and expenses incurred by the holder hereof.

7. Limitation on Agreements. All agreements between Maker and Payee, whether now existing or hereafter arising, are hereby limited so that in no event shall the amount paid, or agreed to be paid to Payee for the use, forbearance, or detention of money or for the payment or performance of any covenant or obligation contained herein or in any other document evidencing, securing or pertaining to this Note, exceed the maximum interest rate allowed by law. The terms and provisions of this paragraph shall control and supersede every other provision of all agreements between Payee and Maker in conflict herewith.

8. Governing Law. This Note and the rights and obligations of the parties hereunder shall be governed by the laws of the United States of America and by the laws of the State of Texas, and is performable in Dallas County, Texas.

MAKER:

JAMES DONDERO

EXHIBIT 2

PROMISSORY NOTE

$2,300,000.00

February 26, 2016

FOR VALUE RECEIVED, HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, LP. ("***Maker***") promises to pay to the order of HIGHLAND CAPITAL MANAGEMENT, LP ("***Payee***"), in legal and lawful tender of the United States of America, the principal sum of TWO MILLION, THREE HUNDRED THOUSAND and 00/100 Dollars ($2,300,000.00), together with interest, on the terms set forth below (the "***Note***"). All sums hereunder are payable to Payee at 300 Crescent Court, Dallas, TX 75201, or such other address as Payee may specify to Maker in writing from time to time.

1. Interest Rate. The unpaid principal balance of this Note from time to time outstanding shall bear interest at a rate equal to the mid-term "***applicable federal rate***" (2.62%) in effect on the date hereof for loans of such maturity as determined by Section 1274(d) of the Internal Revenue Code, per annum from the date hereof until maturity, compounded annually on the anniversary of the date of this Note. Interest shall be calculated at a daily rate equal to 1/365th (1/366 in a leap year) of the rate per annum, shall be charged and collected on the actual number of days elapsed, and shall be payable on demand of the Payee.

2. Payment of Principal and Interest. The accrued interest and principal of this Note shall be due and payable on demand of the Payee.

3. Prepayment Allowed; Renegotiation Discretionary. Maker may prepay in whole or in part the unpaid principal or accrued interest of this Note. Any payments on this Note shall be applied first to unpaid accrued interest hereon, and then to unpaid principal hereof.

4. Acceleration Upon Default. Failure to pay this Note or any installment hereunder as it becomes due shall, at the election of the holder hereof, without notice, demand, presentment, notice of intent to accelerate, notice of acceleration, or any other notice of any kind which are hereby waived, mature the principal of this Note and all interest then accrued, if any, and the same shall at once become due and payable and subject to those remedies of the holder hereof. No failure or delay on the part of Payee in exercising any right, power or privilege hereunder shall operate as a waiver thereof.

5. Waiver. Maker hereby waives grace, demand, presentment for payment, notice of nonpayment, protest, notice of protest, notice of intent to accelerate, notice of acceleration and all other notices of any kind hereunder.

6. Attorneys' Fees. If this Note is not paid at maturity (whether by acceleration or otherwise) and is placed in the hands of an attorney for collection, or if it is collected through a bankruptcy court or any other court after maturity, the Maker shall pay, in addition to all other amounts owing hereunder, all actual expenses of collection, all court costs and reasonable attorneys' fees and expenses incurred by the holder hereof.

7. Limitation on Agreements. All agreements between Maker and Payee, whether now existing or hereafter arising, are hereby limited so that in no event shall the amount paid, or agreed to be paid to Payee for the use, forbearance, or detention of money or for the payment or performance of any covenant or obligation contained herein or in any other document evidencing, securing or pertaining to this Note, exceed the maximum interest rate allowed by law. The terms and provisions of this paragraph shall control and supersede every other provision of all agreements between Payee and Maker in conflict herewith.

8. Governing Law. This Note and the rights and obligations of the parties hereunder shall be governed by the laws of the United States of America and by the laws of the State of Texas, and is performable in Dallas County, Texas.

MAKER:

JAMES DONDERO

EXHIBIT 3

Acknowledgement from HCMLP

April 15, 2019

Reference is hereby made to certain outstanding amounts loaned from HIGHLAND CAPITAL MANAGEMENT, L.P. ("HCMLP") to HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, L.P. ("HCMF") for funding of HCMF's ongoing operations, which are payable on demand and remained outstanding on December 31, 2018 and as of the date hereof.

HCMF expects that it may be unable to repay such amounts should they become due, for the period commencing today and continuing through May 31, 2021.

HCMLP hereby agrees to not demand payment on amounts owed by HCMF prior to May 31, 2021.

Highland Capital Management, L.P.
By: Strand Advisors, Inc., its general partner

By: _____

Acknowledged By:

Highland Capital Management Fund Advisors, L.P.
By: Strand XVI, Inc., its general partner

By: _____

EXHIBIT 4

HIGHLAND CAPITAL MANAGEMENT, L.P.

June 2, 2021

Highland Capital Management Fund Advisors, LP
2515 McKinney Avenue, Suite 1100
Dallas, Texas 75201
Attention: Frank Waterhouse

Re: Demand on Promissory Notes:

Dear Mr. Waterhouse,

Highland Capital Management Fund Advisors, LP ("Maker") entered into the following promissory notes (collectively, the "Notes"), among others,[1] in favor of Highland Capital Management, L.P. ("Payee"):

Date Issued	Original Principal Amount	Outstanding Principal Amount (6/4/21)	Accrued But Unpaid Interest (6/4/21)	Total Amount Outstanding (6/4/21)
2/26/2014	$4,000,000	$2,134,166.53	$11,288.28	$2,145,454.81
2/26/2016	$2,300,000	$990,757.62	$6,969.50	$997,727.12
TOTALS	**$6,300,000**	**$3,124,924.14**	**$18,257.78**	**$3,143,181.93**

Copies of the notes are attached hereto as **Appendix A**.

As set forth in Section 2 of each of the Notes, accrued interest and principal is due and payable upon the demand of Payee. By this letter, Payee is demanding payment of the accrued interest and principal due and payable on the Notes in the aggregate amount of $3,143,181.93, which represents all accrued and unpaid interest and principal through and including June 4, 2021.

Payment is due on June 4, 2021, and failure to make payment in full on such date will constitute an event of default under the Notes.

Payments on the Notes must be made in immediately available funds. Payee's wire information is attached hereto as **Appendix B**.

Nothing contained herein constitutes a waiver of any rights or remedies of Payee under the Notes or otherwise and all such rights and remedies, whether at law, equity, contract, or otherwise, are

[1] Maker is also obligated to pay amounts due under promissory notes issued in favor of Payee on May 2, 2019, and May 3, 2019 (the "May Notes"). Payee sent a demand letter to Maker with respect to the May Notes on December 3, 2020. A copy of such letter is attached hereto as **Appendix C**. Payee reserves all rights with respect the May Notes.

expressly reserved. Interest, including default interest if applicable, on the Notes will continue to accrue until the Notes are paid in full. Any such interest will remain the obligation of Maker.

Sincerely,

/s/ James P. Seery, Jr.

James P. Seery, Jr.
Highland Capital Management, L.P.
Chief Executive Officer/Chief Restructuring Officer

cc: Jeffrey Pomerantz
John Morris
Gregory Demo
DC Sauter
Davor Rukavina

Appendix A

PROMISSORY NOTE

$2,300,000.00

February 26, 2016

FOR VALUE RECEIVED, HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, LP. ("***Maker***") promises to pay to the order of HIGHLAND CAPITAL MANAGEMENT, LP ("***Payee***"), in legal and lawful tender of the United States of America, the principal sum of TWO MILLION, THREE HUNDRED THOUSAND and 00/100 Dollars ($2,300,000.00), together with interest, on the terms set forth below (the "***Note***"). All sums hereunder are payable to Payee at 300 Crescent Court, Dallas, TX 75201, or such other address as Payee may specify to Maker in writing from time to time.

1. Interest Rate. The unpaid principal balance of this Note from time to time outstanding shall bear interest at a rate equal to the mid-term "***applicable federal rate***" (2.62%) in effect on the date hereof for loans of such maturity as determined by Section 1274(d) of the Internal Revenue Code, per annum from the date hereof until maturity, compounded annually on the anniversary of the date of this Note. Interest shall be calculated at a daily rate equal to 1/365th (1/366 in a leap year) of the rate per annum, shall be charged and collected on the actual number of days elapsed, and shall be payable on demand of the Payee.

2. Payment of Principal and Interest. The accrued interest and principal of this Note shall be due and payable on demand of the Payee.

3. Prepayment Allowed; Renegotiation Discretionary. Maker may prepay in whole or in part the unpaid principal or accrued interest of this Note. Any payments on this Note shall be applied first to unpaid accrued interest hereon, and then to unpaid principal hereof.

4. Acceleration Upon Default. Failure to pay this Note or any installment hereunder as it becomes due shall, at the election of the holder hereof, without notice, demand, presentment, notice of intent to accelerate, notice of acceleration, or any other notice of any kind which are hereby waived, mature the principal of this Note and all interest then accrued, if any, and the same shall at once become due and payable and subject to those remedies of the holder hereof. No failure or delay on the part of Payee in exercising any right, power or privilege hereunder shall operate as a waiver thereof.

5. Waiver. Maker hereby waives grace, demand, presentment for payment, notice of nonpayment, protest, notice of protest, notice of intent to accelerate, notice of acceleration and all other notices of any kind hereunder.

6. Attorneys' Fees. If this Note is not paid at maturity (whether by acceleration or otherwise) and is placed in the hands of an attorney for collection, or if it is collected through a bankruptcy court or any other court after maturity, the Maker shall pay, in addition to all other amounts owing hereunder, all actual expenses of collection, all court costs and reasonable attorneys' fees and expenses incurred by the holder hereof.

7. Limitation on Agreements. All agreements between Maker and Payee, whether now existing or hereafter arising, are hereby limited so that in no event shall the amount paid, or agreed to be paid to Payee for the use, forbearance, or detention of money or for the payment or performance of any covenant or obligation contained herein or in any other document evidencing, securing or pertaining to this Note, exceed the maximum interest rate allowed by law. The terms and provisions of this paragraph shall control and supersede every other provision of all agreements between Payee and Maker in conflict herewith.

8. Governing Law. This Note and the rights and obligations of the parties hereunder shall be governed by the laws of the United States of America and by the laws of the State of Texas, and is performable in Dallas County, Texas.

MAKER:

JAMES DONDERO

PROMISSORY NOTE

$4,000,000.00 February 26, 2014

FOR VALUE RECEIVED, HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, LP. ("***Maker***") promises to pay to the order of HIGHLAND CAPITAL MANAGEMENT, LP ("***Payee***"), in legal and lawful tender of the United States of America, the principal sum of FOUR MILLION and 00/100 Dollars ($4,000,000.00), together with interest, on the terms set forth below (the "***Note***"). All sums hereunder are payable to Payee at 300 Crescent Court, Dallas, TX 75201, or such other address as Payee may specify to Maker in writing from time to time.

1. Interest Rate. The unpaid principal balance of this Note from time to time outstanding shall bear interest at a rate equal to the mid-term "***applicable federal rate***" (1.97%) in effect on the date hereof for loans of such maturity as determined by Section 1274(d) of the Internal Revenue Code, per annum from the date hereof until maturity, compounded annually on the anniversary of the date of this Note. Interest shall be calculated at a daily rate equal to 1/365th (1/366 in a leap year) of the rate per annum, shall be charged and collected on the actual number of days elapsed, and shall be payable on demand of the Payee.

2. Payment of Principal and Interest. The accrued interest and principal of this Note shall be due and payable on demand of the Payee.

3. Prepayment Allowed; Renegotiation Discretionary. Maker may prepay in whole or in part the unpaid principal or accrued interest of this Note. Any payments on this Note shall be applied first to unpaid accrued interest hereon, and then to unpaid principal hereof.

4. Acceleration Upon Default. Failure to pay this Note or any installment hereunder as it becomes due shall, at the election of the holder hereof, without notice, demand, presentment, notice of intent to accelerate, notice of acceleration, or any other notice of any kind which are hereby waived, mature the principal of this Note and all interest then accrued, if any, and the same shall at once become due and payable and subject to those remedies of the holder hereof. No failure or delay on the part of Payee in exercising any right, power or privilege hereunder shall operate as a waiver thereof.

5. Waiver. Maker hereby waives grace, demand, presentment for payment, notice of nonpayment, protest, notice of protest, notice of intent to accelerate, notice of acceleration and all other notices of any kind hereunder.

6. Attorneys' Fees. If this Note is not paid at maturity (whether by acceleration or otherwise) and is placed in the hands of an attorney for collection, or if it is collected through a bankruptcy court or any other court after maturity, the Maker shall pay, in addition to all other amounts owing hereunder, all actual expenses of collection, all court costs and reasonable attorneys' fees and expenses incurred by the holder hereof.

7. Limitation on Agreements. All agreements between Maker and Payee, whether now existing or hereafter arising, are hereby limited so that in no event shall the amount paid, or agreed to be paid to Payee for the use, forbearance, or detention of money or for the payment or performance of any covenant or obligation contained herein or in any other document evidencing, securing or pertaining to this Note, exceed the maximum interest rate allowed by law. The terms and provisions of this paragraph shall control and supersede every other provision of all agreements between Payee and Maker in conflict herewith.

8. Governing Law. This Note and the rights and obligations of the parties hereunder shall be governed by the laws of the United States of America and by the laws of the State of Texas, and is performable in Dallas County, Texas.

MAKER:

JAMES DONDERO

Appendix B

Appendix B

ABA #:	322070381
Bank Name:	East West Bank
Account Name:	Highland Capital Management, LP
Account #:	5500014686

Appendix C

HIGHLAND CAPITAL MANAGEMENT, L.P.

December 3, 2020

Highland Capital Management Fund Advisors, LP
c/o Highland Capital Management, L.P.
300 Crescent Court, Suite 700
Dallas, Texas 75201
Attention: Frank Waterhouse, CFO

Re: Demand on Promissory Notes:

Dear Mr. Waterhouse,

Highland Capital Management Fund Advisors, LP ("Maker") entered into the following promissory notes (collectively, the "Notes"), among others,[1] in favor of Highland Capital Management, L.P. ("Payee"):

Date Issued	Original Principal Amount	Outstanding Principal Amount (12/11/20)	Accrued But Unpaid Interest (12/11/20)	Total Amount Outstanding (12/11/20)
5/2/2019	$2,400,000	$2,457,517.15	$35,884.46	$2,493,401.61
5/3/2019	$5,000,000	$5,119,827.40	$74,424.05	$5,194,251.45
TOTALS	**$7,400,000**	**$7,577,344.55**	**$110,308.52**	**$7,687,653.07**

As set forth in Section 2 of each of the Notes, accrued interest and principal is due and payable upon the demand of Payee. By this letter, Payee is demanding payment of the accrued interest and principal due and payable on the Notes in the aggregate amount of $7,687,653.07, which represents all accrued and unpaid interest and principal through and including December 11, 2020.

Payment is due on December 11, 2020, and failure to make payment in full on such date will constitute an event of default under the Notes.

Payments on the Notes must be made in immediately available funds. Payee's wire information is attached hereto as **Appendix A**.

Nothing contained herein constitutes a waiver of any rights or remedies of Payee under the Notes or otherwise and all such rights and remedies, whether at law, equity, contract, or otherwise, are

[1] Maker is also obligated to pay amounts due under promissory notes issued in favor of Payee prior to April 15, 2019. Pursuant to that certain *Acknowledgment from HCMLP*, dated as of April 15, 2019, Payee agreed not to demand payment on such amounts until May 31, 2021. Payee reserves all rights with respect to such amounts.

expressly reserved. Interest, including default interest if applicable, on the Notes will continue to accrue until the Notes are paid in full. Any such interest will remain the obligation of Maker.

Sincerely,

/s/ James P. Seery, Jr.

James P. Seery, Jr.
Highland Capital Management, L.P.
Chief Executive Officer/Chief Restructuring Officer

cc: Fred Caruso
James Romey
Jeffrey Pomerantz
Ira Kharasch
Gregory Demo
DC Sauter

Appendix A

ABA #:	322070381
Bank Name:	East West Bank
Account Name:	Highland Capital Management, LP
Account #:	5500014686

B1040 (FORM 1040) (12/15)

ADVERSARY PROCEEDING COVER SHEET (Instructions on Reverse)	**ADVERSARY PROCEEDING NUMBER** (Court Use Only)
PLAINTIFFS Highland Capital Management, L.P.	**DEFENDANTS** Highland Capital Management Fund Advisors, L.P.
ATTORNEYS (Firm Name, Address, and Telephone No.) Hayward PLLC 10501 N. Central Expressway, Suite 106 Dallas, Texas 75231 Tel.: (972) 755-7100	**ATTORNEYS** (If Known) Munsch Hardt Kopf & Harr, P.C. 500 N. Akard Street, Suite 3800 Dallas, Texas 75201 Tel.: (214) 855-7500
PARTY (Check One Box Only) ☑ Debtor ☐ U.S. Trustee/Bankruptcy Admin ☐ Creditor ☐ Other ☐ Trustee	**PARTY** (Check One Box Only) ☐ Debtor ☐ U.S. Trustee/Bankruptcy Admin ☐ Creditor ☑ Other ☐ Trustee

CAUSE OF ACTION (WRITE A BRIEF STATEMENT OF CAUSE OF ACTION, INCLUDING ALL U.S. STATUTES INVOLVED)
Count 1: Breach of contract; Count 2: Turnover pursuant to 11 U.S.C. 542

NATURE OF SUIT

(Number up to five (5) boxes starting with lead cause of action as 1, first alternative cause as 2, second alternative cause as 3, etc.)

FRBP 7001(1) – Recovery of Money/Property
☒ 11-Recovery of money/property - §542 turnover of property
☐ 12-Recovery of money/property - §547 preference
☐ 13-Recovery of money/property - §548 fraudulent transfer
☐ 14-Recovery of money/property - other

FRBP 7001(2) – Validity, Priority or Extent of Lien
☐ 21-Validity, priority or extent of lien or other interest in property

FRBP 7001(3) – Approval of Sale of Property
☐ 31-Approval of sale of property of estate and of a co-owner - §363(h)

FRBP 7001(4) – Objection/Revocation of Discharge
☐ 41-Objection / revocation of discharge - §727(c),(d),(e)

FRBP 7001(5) – Revocation of Confirmation
☐ 51-Revocation of confirmation

FRBP 7001(6) – Dischargeability
☐ 66-Dischargeability - §523(a)(1),(14),(14A) priority tax claims
☐ 62-Dischargeability - §523(a)(2), false pretenses, false representation, actual fraud
☐ 67-Dischargeability - §523(a)(4), fraud as fiduciary, embezzlement, larceny

(continued next column)

FRBP 7001(6) – Dischargeability (continued)
☐ 61-Dischargeability - §523(a)(5), domestic support
☐ 68-Dischargeability - §523(a)(6), willful and malicious injury
☐ 63-Dischargeability - §523(a)(8), student loan
☐ 64-Dischargeability - §523(a)(15), divorce or separation obligation (other than domestic support)
☐ 65-Dischargeability - other

FRBP 7001(7) – Injunctive Relief
☐ 71-Injunctive relief – imposition of stay
☐ 72-Injunctive relief – other

FRBP 7001(8) Subordination of Claim or Interest
☐ 81-Subordination of claim or interest

FRBP 7001(9) Declaratory Judgment
☐ 91-Declaratory judgment

FRBP 7001(10) Determination of Removed Action
☐ 01-Determination of removed claim or cause

Other
☐ SS-SIPA Case – 15 U.S.C. §§78aaa *et.seq.*
☒ 02-Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case)

☑ Check if this case involves a substantive issue of state law	☐ Check if this is asserted to be a class action under FRCP 23
☐ Check if a jury trial is demanded in complaint	Demand $ 3,143,181.93 plus interest, fees, and expenses

Other Relief Sought

B1040 (FORM 1040) (12/15)

BANKRUPTCY CASE IN WHICH THIS ADVERSARY PROCEEDING ARISES		
NAME OF DEBTOR Highland Capital Management, L.P.	BANKRUPTCY CASE NO. 19-34054-sgj11	
DISTRICT IN WHICH CASE IS PENDING Northern District of Texas	DIVISION OFFICE Dallas	NAME OF JUDGE Stacey G. C. Jernigan
RELATED ADVERSARY PROCEEDING (IF ANY)		
PLAINTIFF	DEFENDANT	ADVERSARY PROCEEDING NO.
DISTRICT IN WHICH ADVERSARY IS PENDING	DIVISION OFFICE	NAME OF JUDGE
SIGNATURE OF ATTORNEY (OR PLAINTIFF)		
DATE November 9, 2021	PRINT NAME OF ATTORNEY (OR PLAINTIFF) Zachery Z. Annable	

INSTRUCTIONS

The filing of a bankruptcy case creates an "estate" under the jurisdiction of the bankruptcy court which consists of all of the property of the debtor, wherever that property is located. Because the bankruptcy estate is so extensive and the jurisdiction of the court so broad, there may be lawsuits over the property or property rights of the estate. There also may be lawsuits concerning the debtor's discharge. If such a lawsuit is filed in a bankruptcy court, it is called an adversary proceeding.

A party filing an adversary proceeding must also must complete and file Form 1040, the Adversary Proceeding Cover Sheet, unless the party files the adversary proceeding electronically through the court's Case Management/Electronic Case Filing system (CM/ECF). (CM/ECF captures the information on Form 1040 as part of the filing process.) When completed, the cover sheet summarizes basic information on the adversary proceeding. The clerk of court needs the information to process the adversary proceeding and prepare required statistical reports on court activity.

The cover sheet and the information contained on it do not replace or supplement the filing and service of pleadings or other papers as required by law, the Bankruptcy Rules, or the local rules of court. The cover sheet, which is largely self-explanatory, must be completed by the plaintiff's attorney (or by the plaintiff if the plaintiff is not represented by an attorney). A separate cover sheet must be submitted to the clerk for each complaint filed.

Plaintiffs and **Defendants.** Give the names of the plaintiffs and defendants exactly as they appear on the complaint.

Attorneys. Give the names and addresses of the attorneys, if known.

Party. Check the most appropriate box in the first column for the plaintiffs and the second column for the defendants.

Demand. Enter the dollar amount being demanded in the complaint.

Signature. This cover sheet must be signed by the attorney of record in the box on the second page of the form. If the plaintiff is represented by a law firm, a member of the firm must sign. If the plaintiff is pro se, that is, not represented by an attorney, the plaintiff must sign.

EXHIBIT 234

Deborah Deitsch-Perez
Michael P. Aigen
STINSON LLP
3102 Oak Lawn Avenue, Suite 777
Dallas, Texas 75219-4259
Telephone: (214) 560-2201
Facsimile: (214) 560-2203

Counsel for Defendant Highland Capital Management Fund Advisors, L.P.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re	§	
	§	**Case No. 19-34054-sgj11**
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	**Chapter 11**
	§	
Debtor.	§	
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	
Plaintiff,	§	
	§	
v.	§	**Adversary No. 21-03082**
	§	
HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, L.P.	§	
	§	
Defendant.	§	

DEFENDANT'S ORIGINAL ANSWER

COMES NOW Highland Capital Management Fund Advisors, L.P. ("HCMFA" or "Defendant"), the defendant in the above-styled and numbered adversary proceeding (the "Adversary Proceeding") filed by Highland Capital Management, L.P. ("HCMLP" or "Plaintiff"), and files this its *Defendant's Original Answer* (the "Answer"), responding to the *Complaint for (I)*

Breach of Contract and (II) Turnover of Property of Highland's Estate (the "Complaint"). Where an allegation in the Complaint is not expressly admitted in this Answer, it is denied.

PRELIMINARY STATEMENT

1. The first sentence of ¶ 1 sets forth the Plaintiff's objective in bringing the Complaint and does not require a response. To the extent it contains factual allegations, they are denied. The second sentence contains a legal conclusion that does not require a response. To the extent it contains factual allegations, they are denied.

2. Paragraph 2 contains a summary of the relief the Plaintiff seeks and does not require a response. To the extent it contains factual allegations, they are denied.

JURISDICTION AND VENUE

3. The Defendant admits that this Adversary Proceeding relates to the Plaintiff's bankruptcy case but denies any implication that this fact confers Constitutional or statutory authority on the Bankruptcy Court to adjudicate this dispute. Any allegations in ¶ 3 not expressly admitted are denied.

4. The Defendant admits that the Court has jurisdiction of this Adversary Proceeding but not authority to enter final orders or judgment. Any allegations in ¶ 4 not expressly admitted are denied.

5. The Defendant denies that a breach of contract claim is core. The Defendant denies that a § 542(b) turnover proceeding is the appropriate mechanism to collect a contested debt. The Defendant admits that a § 542(b) turnover proceeding is statutorily core but denies that it is Constitutionally core under *Stern v. Marshall*. The Defendant does not consent to the Bankruptcy Court entering final orders or judgment in this Adversary Proceeding. Any allegations in ¶ 5 not expressly admitted are denied.

6. The Defendant admits ¶ 6 of the Complaint.

THE PARTIES

7. The Defendant admits ¶ 7 of the Complaint.

8. The Defendant admits ¶ 8 of the Complaint.

CASE BACKGROUND

9. The Defendant admits ¶ 9 of the Complaint.

10. The Defendant admits ¶ 10 of the Complaint.

11. The Defendant admits ¶ 11 of the Complaint, subject to the ongoing appeal of the Confirmation Order. In the event the Confirmation Order is reversed, ¶ 11 is denied.

12. The Defendant admits ¶ 12 of the Complaint, subject to the ongoing appeal of the Confirmation Order. In the event the Confirmation Order is reversed, ¶ 12 is denied.

STATEMENT OF FACTS

A. The HCMFA Notes

13. The Defendant admits that it has executed at least one promissory note under which the Debtor is the payee. Any allegations in ¶ 13 not expressly admitted are denied.

14. The Defendant admits the allegations in ¶ 14 of the Complaint. The Defendant admits that the attached document appears to be a copy of the referenced note.

15. The Defendant admits the allegations in ¶ 15 of the Complaint.

16. The Defendant admits the allegations in ¶ 16 of the Complaint. The Defendant admits that the attached document appears to be a copy of the referenced note.

17. The Defendant admits the allegations in ¶ 17 of the Complaint.

18. The Defendant admits ¶ 18 of the Complaint.

19. The Defendant denies ¶ 19 of the Complaint. The document speaks for itself and the quote set forth in ¶ 19 is not verbatim.

20. The Defendant admits ¶ 20 of the Complaint.

B. Highland Agrees Not to Demand Payment Under the Notes Prior to May 31, 2021

21. The Defendant admits that James Dondero executed the document attached to the Complaint as Exhibit 3 and the Exhibit 3 is a true and correct copy. The Defendant admits that the Plaintiff has accurately quoted the second sentence of the letter, which provides, "HCMF expects that it may be unable to repay such amounts should they become due, for the period commencing today and continuing through May 31, 2021." The Defendant admits that the letter also provides, "HCMLP hereby agrees to not demand payment on amounts owed by HCMF prior to May 31, 2021. To the extent not expressly admitted, ¶ 21 of the Complaint is denied.

C. HCMFA's Default under Each Note

22. The Defendant admits that Exhibit 4 to the Complaint (the "Demand Letter") is a true and correct copy of what it purports to be and that the document speaks for itself. To the extent ¶ 22 of the Complaint asserts a legal conclusion, no response is required, and it is denied. To the extent not expressly admitted, ¶ 22 of the Complaint is denied.

23. To the extent ¶ 23 of the Complaint asserts a legal conclusion, no response is necessary, and it is denied. The Defendant otherwise admits ¶ 23 of the Complaint.

24. The Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in ¶ 24 of the Complaint and therefore denies the same.

25. The Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in ¶ 25 of the Complaint and therefore denies the same.

26. The Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in ¶ 26 of the Complaint and therefore denies the same.

27. The Defendant denies ¶ 27 of the Complaint.

FIRST CLAIM FOR RELIEF
(For Breach of Contract)

28. Paragraph 28 of the Complaint is a sentence of incorporation that does not require a response. All prior denials are incorporated herein by reference.

29. Paragraph 29 of the Complaint states a legal conclusion that does not require a response. To the extent it alleges facts, the Defendant denies the allegations in ¶ 29 of the Complaint.

30. Paragraph 30 of the Complaint states a legal conclusion that does not require a response. To the extent it alleges facts, the Defendant denies the allegations in ¶ 30 of the Complaint.

31. Paragraph 31 of the Complaint states a legal conclusion that does not require a response. To the extent it alleges facts, the Defendant denies the allegations in ¶ 31 of the Complaint.

32. The Defendant denies ¶ 32 of the Complaint.

SECOND CLAIM FOR RELIEF
(Turnover by HCMFA Pursuant to 11 U.S.C. § 542(b))

33. Paragraph 33 of the Complaint is a sentence of incorporation that does not require a response. All prior denials are incorporated herein by reference.

34. Paragraph 34 of the Complaint states a legal conclusion that does not require a response. To the extent it alleges facts, the Defendant denies the allegations in ¶ 34 of the Complaint.

35. Paragraph 35 of the Complaint states a legal conclusion that does not require a response. To the extent it alleges facts, the Defendant denies the allegations in ¶ 35 of the Complaint.

36. The Defendant denies ¶ 36 of the Complaint.

37. Paragraph 37 of the Complaint states a legal conclusion that does not require a response. The Defendant admits that the Plaintiff transmitted the Demand Letter. To the extent ¶ 37 alleges other facts, the Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in ¶ 37 of the Complaint and therefore denies the same.

38. The Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in ¶ 38 of the Complaint and therefore denies the same.

39. Paragraph 39 of the Complaint states a legal conclusion that does not require a response. To the extent it alleges facts, the Defendant denies the allegations in ¶ 39 of the Complaint.

40. The Defendant denies that the Plaintiff is entitled to the relief requested in the prayer, including parts (i), (ii), and (iii).

AFFIRMATIVE DEFENSES

41. Plaintiff's claims are barred in whole or in part because, prior to the demands for payment, Plaintiff agreed that it would not collect the Notes upon fulfilment of conditions subsequent. Specifically, sometime between December of the year in which each Note was made and February of the following year, Nancy Dondero, as representative for a majority of the Class A shareholders of Plaintiff agreed that Plaintiff would forgive the Notes if certain portfolio companies were sold for greater than cost or on a basis outside of Mr. Dondero's control. The purpose of this agreement was to provide compensation to Mr. Dondero, who was otherwise underpaid compared to reasonable compensation levels in the industry, through the use of forgivable loans, a practice that was standard at HCMLP and in the industry. This agreement setting forth the conditions subsequent to demands for payment on the Notes was an oral agreement; however, Defendant believes there may be testimony or email correspondence that

discusses the existence of this agreement that may be uncovered through discovery in this Adversary Proceeding.

42. Plaintiff pleads ambiguity with respect to the Notes.

43. Due to the fact that the Plaintiff is in control of documents and information relevant to the Notes, Defendant is unable to complete its investigation into potential affirmative defenses. Out of an abundance of caution, Defendant conditionally pleads the following affirmative defenses subject to Defendant's ability to obtain and review relevant documents and information from the Plaintiff: waiver, estoppel, failure of consideration, and prepayment.

JURY DEMAND

44. The Defendant demands a trial by jury of all issues so triable pursuant to Rule 38 of the Federal Rules of Civil Procedure and Rule 9015 of the Federal Rules of Bankruptcy Procedure.

45. The Defendant does not consent to the Bankruptcy Court conducting a jury trial and therefore demands a jury trial in the District Court.

PRAYER

WHEREFORE, PREMISES CONSIDERED, the Defendant respectfully requests that, following a trial on the merits, the Court enter a judgment that the Plaintiff take nothing on the Complaint and provide the Defendant such other relief to which it is entitled.

Dated: December 10, 2021

Respectfully submitted,

STINSON LLP

/s/ Deborah Deitsch-Perez

Deborah Deitsch-Perez
Texas State Bar No. 24036072
Michael P. Aigen
Texas State Bar No. 24012196
3102 Oak Lawn Avenue, Suite 777
Dallas, Texas 75219-4259
Telephone: (214) 560-2201
Email: deborah.deitschperez@stinson.com
Email: michael.aigen@stinson.com

ATTORNEYS FOR DEFENDANT HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, L.P.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that, on the 10th day of December, 2021, a true and correct copy of this document was served electronically via the Court's CM/ECF system on the following recipients:

Zachery Z. Annable
Hayward PLLC
10501 N. Central Expressway
Suite 106
Dallas, TX 75231
Email: zannable@haywardfirm.com

/s/Deborah Deitsch-Perez
Deborah Deitsch-Perez

EXHIBIT 235

NEXBANK

2515 McKinney Avenue, 11th Floor
Dallas, Texas 75201
972.934.4700
www.NexBank.com

EQUAL HOUSING LENDER

MEMBER FDIC

HIGHLAND CAPITAL MANAGEMENT LP
300 CRESCENT COURT SUITE 700
DALLAS TX 75201

Date 2/28/14 Page 1
Account Number [redacted]
Enclosures

---- CHECKING ACCOUNT ----

For 24-hour service please
call our telephone banking
number 877-538-BANK (2265)

BUSINESS ANALYSIS W/ INTEREST Item Truncation
Account Number [redacted] Statement Dates 2/01/14 thru 2/28/14

[redacted]

Deposits and Additions

Date	Description	Amount
[redacted]		

Checks and Withdrawals

Date	Description	Amount
[redacted]		

NOTICE: SEE LAST PAGE FOR IMPORTANT INFORMATION
Payments received at the address indicated on this statement by 3:00 pm. Central Standard Time each banking day will be credited as of that date.

NEXBANK
2515 McKinney Avenue, 11th Floor
Dallas, Texas 75201
972.384.4700
www.NexBank.com

FDIC

HIGHLAND CAPITAL MANAGEMENT LP
300 CRESCENT COURT SUITE 700
DALLAS TX 75201

Date 2/28/14
Account Number [redacted]
Enclosures

Page 2

BUSINESS ANALYSIS W/ INTEREST [redacted] (Continued)

Checks and Withdrawals

Date	Description	Amount
[redacted]		
2/26	IB Transfer from D ****130 to D ****415	4,000,000.00
[redacted]		

Daily Balance Information

Date	Balance	Date	Balance	Date	Balance
[redacted]					

Interest Rate Summary

[redacted]

MEMBER FDIC

NOTICE: SEE LAST PAGE FOR IMPORTANT INFORMATION
Payments received at the address indicated on this statement by 3:00 pm. Central Standard Time each banking day will be credited as of that date.

OUTSTANDING CHECKS

Reconciliation of Account

CHECKS WRITTEN BUT NOT PAID			
NUMBER	AMOUNT		

EXHIBIT 236

NEXBANK

2515 McKinney Avenue, 11th Floor
Dallas, Texas 75201
972.934.4700
www.NexBank.com

Date 2/29/16 Page 1
Primary Account [redacted]
Enclosures

Highland Capital Management LP
300 Crescent Court Suite 700
Dallas TX 75201

NexBank's Privacy Policy is accessible at www.NexBank.com

Checking Account/s

Account Type: Highland Capital Management LP

Analysis Checking w/ Interest
Account Number [redacted] Statement Dates 2/01/16 thru 2/29/16

[redacted]

Deposits and Additions

Date	Description	Amount
[redacted]		

MEMBER FDIC NOTICE: SEE LAST PAGE FOR IMPORTANT INFORMATION
Payments received at the address indicated on this statement by 3:00 pm. Central Standard Time each banking day will be credited as of that date.

NEXBANK

2515 McKinney Avenue, 11th Floor
Dallas, Texas 75201
972.934.4700
www.NexBank.com

FDIC

Date 2/29/16 Page 2
Primary Account [redacted]
Enclosures

Analysis Checking w/ Interest [redacted] (Continued)

Deposits and Additions

Date	Description	Amount
[redacted]		

Checks and Withdrawals

Date	Description	Amount
[redacted]		
2/26	IB Transfer from D ****130 to D ****415	2,300,000.00-
[redacted]		

MEMBER FDIC

NOTICE: SEE LAST PAGE FOR IMPORTANT INFORMATION
Payments received at the address indicated on this statement by 3:00 pm. Central Standard Time each banking day will be credited as of that date.

NEXBANK

2515 McKinney Avenue, 11th Floor
Dallas, Texas 75201
972.934.4700
www.NexBank.com

FDIC

Date 2/29/16 Page 3
Primary Account [redacted]
Enclosures

Analysis Checking w/ Interest [redacted] (Continued)

Checks and Withdrawals

Date	Description	Amount
[redacted]		

MEMBER FDIC

NOTICE: SEE LAST PAGE FOR IMPORTANT INFORMATION
Payments received at the address indicated on this statement by 3:00 pm. Central Standard Time each banking day will be credited as of that date.

NexBank
2515 McKinney Avenue, 11th Floor
Dallas, Texas 75201
972.934.4700
www.NexBank.com

FDIC

Date 2/29/16 Page 4
Primary Account [redacted]
Enclosures

Analysis Checking w/ Interest [redacted] (Continued)

Checks and Withdrawals

Date	Description	Amount
[redacted]		

NEXBANK

2515 McKinney Avenue, 11th Floor
Dallas, Texas 75201
972.934.4700
www.NexBank.com

FDIC

Date 2/29/16 Page 5
Primary Account [redacted]
Enclosures

Analysis Checking w/ Interest [redacted] (Continued)

Daily Balance Information

Date	Balance	Date	Balance	Date	Balance
[redacted]					

Interest Rate Summary

Date	Rate
[redacted]	

End of Statement

MEMBER FDIC

NOTICE: SEE LAST PAGE FOR IMPORTANT INFORMATION
Payments received at the address indicated on this statement by 3:00 pm. Central Standard Time each banking day will be credited as of that date.

OUTSTANDING CHECKS

Reconciliation of Account

CHECKS WRITTEN BUT NOT PAID			
NUMBER	AMOUNT		

EXHIBIT 237

THE DUGABOY INVESTMENT TRUST
James D. Dondero, Primary Beneficiary

October 12, 2015

Dana Scott Breault
5207 Scarborough Lane
Dallas, Texas 75287

Cynthia D. M. Brown, President
Commonwealth Trust Company
29 Bancroft Mills Road #2
Wilmington, Delaware 19806

Re: The Dugaboy Investment Trust

Dear Ms. Breault,

I, James D. Dondero, am writing to inform you that on October 12, 2015, I received notice from Grant James Scott that he will cease to serve as Family Trustee of The Dugaboy Investment Trust (the "**Trust**") and shall stop performing all duties and responsibilities undertaken as Family Trustee of the Trust.

Pursuant to the attached Resignation of Family Trustee from Grant James Scott, I appoint Nancy Marie Dondero as the successor Family Trustee of the Trust.

This letter and the attached Resignation of Family Trustee shall satisfy my obligations under Section 5.2 of that Trust Agreement entered into on November 15, 2010 to provide you, Settlor, with notice of my appointment of a successor Family Trustee.

Very truly yours,

James D. Dondero

THE DUGABOY INVESTMENT TRUST
Grant James Scott, Family Trustee

October 12, 2015

Dana Scott Breault
5207 Scarborough Lane
Dallas, Texas 75287

Cynthia D. M. Brown, President
Commonwealth Trust Company
29 Bancroft Mills Road #2
Wilmington, Delaware 19806

Re: The Dugaboy Investment Trust

Dear Ms. Breault,

I, Grant James Scott, am writing to inform you that as of October 12, 2015, I will cease to serve as Family Trustee of The Dugaboy Investment Trust (the "**Trust**") and shall stop performing all duties and responsibilities undertaken as Family Trustee of the Trust pursuant to the attached Resignation of Family Trustee.

This letter and the attached Resignation of Family Trustee shall satisfy my obligations under Section 5.1 of that Trust Agreement entered into on November 15, 2010 to provide you, Settlor, with written notice of my resignation.

Very truly yours,

Grant James Scott

RESIGNATION OF FAMILY TRUSTEE

I, **GRANT JAMES SCOTT**, do hereby acknowledge that I voluntarily tender my resignation as Family Trustee of The Dugaboy Investment Trust pursuant to that Trust Agreement, dated November 15, 2010 by, between and among Dana Scott Breault, as Settlor, and Common Wealth Trust Company, as Administrative Trustee.

This resignation shall take effect immediately upon the execution hereof and delivery of a written acknowledged instrument wherein NANCY MARIE DONDERO accepts the trust and the position of Family Trustee.

IN WITNESS WHEREOF, I hereby sign my Resignation as Family Trustee of the above trust.

Signed, sealed and delivered in the presence of:

Family Trustee

Date 10/12/2015

STATE OF TEXAS §
COUNTY OF DALLAS §

Before me, a notary public, on this day personally appeared **GRANT JAMES SCOTT** known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this 14th day of October, 2015.

MICAELA SUE ALLEN
Notary Public, State of Texas
My Commission Expires
January 15, 2019

Notary Public's Signature

[SEAL]

Expiration: January 15, 2019

ACCEPTANCE OF APPOINTMENT OF FAMILY TRUSTEE

I, **NANCY MARIE DONDERO**, appointed as Family Trustee under Article V, Section 5.2(a)(i) of The Dugaboy Investment Trust, dated November 15, 2010 (the "**Trust**"), hereby acknowledge and accept the position of Family Trustee of the Trust and hereby agree to faithfully perform all the duties and adopt all of the obligations imposed.

Signed this 13th day of October, 2015.

Nancy Marie Dondero
NANCY MARIE DONDERO
Family Trustee

STATE OF TEXAS §
COUNTY OF DALLAS §

Before me, a notary public, on this day personally appeared **NANCY MARIE DONDERO** known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that she executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this 14th day of October, 2015.

MICAELA SUE ALLEN
Notary Public, State of Texas
My Commission Expires
January 15, 2019

[SEAL]

Micaela Sue Allen
Notary Public's Signature

Expiration: January 15, 2019

ACKNOWLEDGEMENT OF DELIVERY

I, JAMES D. DONDERO, acknowledge that this Acceptance of Appointment of Family Trustee by NANCY MARIE DONDERO was delivered to and received by me on October __, 2015.

James D. Dondero

EXHIBIT 238

PACHULSKI STANG ZIEHL & JONES LLP
Jeffrey N. Pomerantz (CA Bar No. 143717)
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Counsel for Highland Capital Management, L.P.

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Attorneys for defendant Highland Capital Management Fund Advisors, L.P.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	
Plaintiff,	§	Adv. Proc. No. 21-03082-sgj
	§	
vs.	§	
	§	Case No. 3:21-cv-00881-X
HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, L.P.,	§	
	§	
Defendant.	§	

STIPULATION CONCERNING THE APPLICATION OF CERTAIN PAYMENTS TO PRINCIPAL AND INTEREST UNDER THE PRE-2019 NOTES

This Stipulation is entered into between Highland Capital Management, L.P. (the "Plaintiff") and Highland Capital Management Fund Advisors, L.P. ("HCMFA" and together with Plaintiff, the "Parties"), the parties in the above-referenced adversary proceeding (the "Adversary Proceeding").

RECITALS

WHEREAS, on February 26, 2014, Plaintiff loaned HCMFA $4 million in exchange for a demand note, a copy of which is attached hereto as **Exhibit A** (the "2014 Note").

WHEREAS, on February 26, 2016, Plaintiff loaned HCMFA $2.3 million in exchange for a demand note, a copy of which is attached hereto as **Exhibit B** (the "2016 Note" and together with the 2014 Note, the "Pre-2019 Notes");

WHEREAS, from time to time, HCMFA made payments against the then-outstanding principal and interest due under the Pre-2019 Notes (collectively, the "Payments");

WHEREAS, attached as **Exhibit C** is a spreadsheet that Plaintiff produced in discovery showing the application of the Payments to the then-outstanding principal and interest due under the Pre-2019 Notes; and

WHEREAS, as part of its discovery demands, Plaintiff requested information from HCMFA's books and records concerning the treatment of the Payments against the Pre-2019 Notes (the "Books and Records Requests"); and

WHEREAS, the Parties have conferred concerning the Books and Records Requests and desire to enter into this Stipulation to avoid motion practice.

STIPULATION

NOW, THEREFORE, in consideration of the foregoing, the Parties agree and stipulate as follows:

1. **Exhibit C** is a document prepared by HCMLP's accounting group showing how each of the Payments made against the Pre-2019 Notes were applied against then-outstanding principal and interest then due.

2. The Parties stipulate and agree that **Exhibit C** (a) may be admitted into evidence in this Adversary Proceeding without objection, (b) accurately sets forth the dates and amounts of each Payment made against each of the Pre-2019 Notes, and (c) accurately sets forth the application of the Payments against outstanding principal and interest.

Dated: May 27, 2022

CONSENTED AND AGREED TO BY:

/s/ John A. Morris
John A. Morris *(pro hac vice)*
(NY Bar No. 266326)
PACHULSKI STANG ZIEHL & JONES LLP
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067
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Email: jmorris@pszjlaw.com

Attorneys for Highland Capital Management, LP

/s/ Michael P. Aigen
Deborah Deitsch-Perez (TX Bar No. 24036072)
Michael P. Aigen (TX Bar No. 24012196)
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Email: Deborah.deitschperez@stinson.com
Michael.aigen@stinson.com

Attorneys for Highland Capital Management Fund Advisors, L.P.

CERTIFICATE OF SERVICE

I certify that on May 27, 2022, a true and correct copy of the foregoing document was served via the Court's Electronic Case Filing system to the parties that are registered or otherwise entitled to receive electronic notices in this case.

/s/ Zachary Annable
Zachary Annable

EXHIBIT A

PROMISSORY NOTE

$4,000,000.00 February 26, 2014

FOR VALUE RECEIVED, HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, LP. ("***Maker***") promises to pay to the order of HIGHLAND CAPITAL MANAGEMENT, LP ("***Payee***"), in legal and lawful tender of the United States of America, the principal sum of FOUR MILLION and 00/100 Dollars ($4,000,000.00), together with interest, on the terms set forth below (the "***Note***"). All sums hereunder are payable to Payee at 300 Crescent Court, Dallas, TX 75201, or such other address as Payee may specify to Maker in writing from time to time.

1. Interest Rate. The unpaid principal balance of this Note from time to time outstanding shall bear interest at a rate equal to the mid-term "***applicable federal rate***" (1.97%) in effect on the date hereof for loans of such maturity as determined by Section 1274(d) of the Internal Revenue Code, per annum from the date hereof until maturity, compounded annually on the anniversary of the date of this Note. Interest shall be calculated at a daily rate equal to 1/365th (1/366 in a leap year) of the rate per annum, shall be charged and collected on the actual number of days elapsed, and shall be payable on demand of the Payee.

2. Payment of Principal and Interest. The accrued interest and principal of this Note shall be due and payable on demand of the Payee.

3. Prepayment Allowed; Renegotiation Discretionary. Maker may prepay in whole or in part the unpaid principal or accrued interest of this Note. Any payments on this Note shall be applied first to unpaid accrued interest hereon, and then to unpaid principal hereof.

4. Acceleration Upon Default. Failure to pay this Note or any installment hereunder as it becomes due shall, at the election of the holder hereof, without notice, demand, presentment, notice of intent to accelerate, notice of acceleration, or any other notice of any kind which are hereby waived, mature the principal of this Note and all interest then accrued, if any, and the same shall at once become due and payable and subject to those remedies of the holder hereof. No failure or delay on the part of Payee in exercising any right, power or privilege hereunder shall operate as a waiver thereof.

5. Waiver. Maker hereby waives grace, demand, presentment for payment, notice of nonpayment, protest, notice of protest, notice of intent to accelerate, notice of acceleration and all other notices of any kind hereunder.

6. Attorneys' Fees. If this Note is not paid at maturity (whether by acceleration or otherwise) and is placed in the hands of an attorney for collection, or if it is collected through a bankruptcy court or any other court after maturity, the Maker shall pay, in addition to all other amounts owing hereunder, all actual expenses of collection, all court costs and reasonable attorneys' fees and expenses incurred by the holder hereof.

7. Limitation on Agreements. All agreements between Maker and Payee, whether now existing or hereafter arising, are hereby limited so that in no event shall the amount paid, or agreed to be paid to Payee for the use, forbearance, or detention of money or for the payment or performance of any covenant or obligation contained herein or in any other document evidencing, securing or pertaining to this Note, exceed the maximum interest rate allowed by law. The terms and provisions of this paragraph shall control and supersede every other provision of all agreements between Payee and Maker in conflict herewith.

8. Governing Law. This Note and the rights and obligations of the parties hereunder shall be governed by the laws of the United States of America and by the laws of the State of Texas, and is performable in Dallas County, Texas.

MAKER:

JAMES DONDERO

EXHIBIT B

PROMISSORY NOTE

$2,300,000.00

February 26, 2016

FOR VALUE RECEIVED, HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, LP. ("***Maker***") promises to pay to the order of HIGHLAND CAPITAL MANAGEMENT, LP ("***Payee***"), in legal and lawful tender of the United States of America, the principal sum of TWO MILLION, THREE HUNDRED THOUSAND and 00/100 Dollars ($2,300,000.00), together with interest, on the terms set forth below (the "***Note***"). All sums hereunder are payable to Payee at 300 Crescent Court, Dallas, TX 75201, or such other address as Payee may specify to Maker in writing from time to time.

1. Interest Rate. The unpaid principal balance of this Note from time to time outstanding shall bear interest at a rate equal to the mid-term "***applicable federal rate***" (2.62%) in effect on the date hereof for loans of such maturity as determined by Section 1274(d) of the Internal Revenue Code, per annum from the date hereof until maturity, compounded annually on the anniversary of the date of this Note. Interest shall be calculated at a daily rate equal to 1/365th (1/366 in a leap year) of the rate per annum, shall be charged and collected on the actual number of days elapsed, and shall be payable on demand of the Payee.

2. Payment of Principal and Interest. The accrued interest and principal of this Note shall be due and payable on demand of the Payee.

3. Prepayment Allowed; Renegotiation Discretionary. Maker may prepay in whole or in part the unpaid principal or accrued interest of this Note. Any payments on this Note shall be applied first to unpaid accrued interest hereon, and then to unpaid principal hereof.

4. Acceleration Upon Default. Failure to pay this Note or any installment hereunder as it becomes due shall, at the election of the holder hereof, without notice, demand, presentment, notice of intent to accelerate, notice of acceleration, or any other notice of any kind which are hereby waived, mature the principal of this Note and all interest then accrued, if any, and the same shall at once become due and payable and subject to those remedies of the holder hereof. No failure or delay on the part of Payee in exercising any right, power or privilege hereunder shall operate as a waiver thereof.

5. Waiver. Maker hereby waives grace, demand, presentment for payment, notice of nonpayment, protest, notice of protest, notice of intent to accelerate, notice of acceleration and all other notices of any kind hereunder.

6. Attorneys' Fees. If this Note is not paid at maturity (whether by acceleration or otherwise) and is placed in the hands of an attorney for collection, or if it is collected through a bankruptcy court or any other court after maturity, the Maker shall pay, in addition to all other amounts owing hereunder, all actual expenses of collection, all court costs and reasonable attorneys' fees and expenses incurred by the holder hereof.

7. Limitation on Agreements. All agreements between Maker and Payee, whether now existing or hereafter arising, are hereby limited so that in no event shall the amount paid, or agreed to be paid to Payee for the use, forbearance, or detention of money or for the payment or performance of any covenant or obligation contained herein or in any other document evidencing, securing or pertaining to this Note, exceed the maximum interest rate allowed by law. The terms and provisions of this paragraph shall control and supersede every other provision of all agreements between Payee and Maker in conflict herewith.

8. Governing Law. This Note and the rights and obligations of the parties hereunder shall be governed by the laws of the United States of America and by the laws of the State of Texas, and is performable in Dallas County, Texas.

MAKER:

JAMES DONDERO

EXHIBIT C

EXHIBIT
7
HCMFA/Dondero
5/5/2022
Michael E. Miller, FAPR, RDR, CRR

Summary of loans dated February 26, 2014 and February 26, 2016
Privileged and confidential - prepared at direction of counsel
Prepared February 28, 2022

Loan dated 2/26/14		$ 4,000,000.00							
						Application			
Description	Type	Cash amount	Bank statement date	Bank statement ref	Principal	Interest	Total	Total Applied to other loans	
Initial loan	Payment	$ (4,000,000.00)	2/26/2014	P. 2 of 3	$ (4,000,000.00)	$ -	$ (4,000,000.00)	$ -	
May 2019 receipt	Receipt	1,000,000.00	5/29/2019	P. 6 of 13	978,101.91	21,898.09	1,000,000.00	-	
June 2019 receipt	Receipt	500,000.00	6/4/2019	P. 2 of 9	500,000.00	-	500,000.00	-	
September 2019 receipt	Receipt	500,000.00	9/5/2019	P. 1 of 3	484,171.75	15,828.25	500,000.00	-	
October 2019 receipt	Receipt	375,000.00	10/3/2019	P. 2 of 10	375,000.00	-	375,000.00	-	
December 2021 receipt [1]	Receipt	180,472.81	12/28/2021	P. 1 of 4	-	35,477.45	35,477.45	144,995	See notes
Total cash receipts					$ 2,337,273.66	$ 73,203.79	$ 2,410,477.45		
Non-cash PIK interest (cumulative 2014-2021)					(471,440.19)	471,440.19			
Total principal outstanding 12/31/21					**$ 2,134,166.53**	Original principal less principal repayments plus PIK'd interest			
Total interest outstanding 12/31/21					-				

Loan dated 2/26/16		$ 2,300,000.00							
						Application			
Description	Type	Cash amount	Bank statement date	Bank statement ref	Principal	Interest	Total	Total Applied to other loans	
Initial loan	Payment	$ (2,300,000.00)	2/26/2016	P. 2 of 3	$ (2,300,000.00)	$ -	$ (2,300,000.00)	$ -	
September 2016 receipt [2]	Receipt	1,000,000.00	9/1/2016	P. 1 of 3	434,394.68	31,038.03	465,432.71	534,567	See notes
April 2017 receipt	Receipt	1,000,000.00	4/12/2017	P. 1 of 3	970,137.03	29,862.97	1,000,000.00	-	
December 2021 receipt [1]	Receipt	180,472.81	12/28/2021	P. 1 of 4	-	21,904.16	21,904.16	158,569	See notes
Total cash receipts					$ 1,404,531.71	$ 82,805.16	$ 1,487,336.87		
Non-cash PIK interest (cumulative 2016-2021)					(95,289.33)	95,289.33			
Total principal outstanding 12/31/21					**$ 990,757.62**	Original principal less principal repayments plus PIK'd interest			
Total interest outstanding 12/31/21					-				

Notes:
[1] Total receipt in December 2021 was $180,472.81. Application of payment was $35,477.45 to the loan dated 2/26/14; $21,904.16 to the loan dated 2/26/16; $123,091.20 to loans from May 2019 that are part of a separate litigat
[2] Total receipt in September 2016 was $1,000,000.00. Application of payment was $465,432.71 to the loan dated 2/26/16; $534,567.29 was applied to the loan dated 8/28/2015, which fully retired that loan.

ion.

EXHIBIT 239

PACHULSKI STANG ZIEHL & JONES LLP
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Counsel for Highland Capital Management, L.P.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	
Plaintiff,	§	
	§	
vs.	§	Adv. Proc. No. 21-03082-sgj
	§	
HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, L.P.,	§	Case No. 3:21-cv-00881-X
	§	
Defendant.	§	

DECLARATION OF DAVID KLOS IN SUPPORT OF HIGHLAND CAPITAL MANAGEMENT L.P.'S MOTION FOR SUMMARY JUDGMENT

I, David Klos, pursuant to 28 U.S.C. § 1746(a), under penalty of perjury, declare as follows:

1. I am the Chief Financial Officer ("CFO") of the reorganized Highland Capital Management, L.P. ("Highland" or "HCMLP"), and I submit this Declaration in support of *Highland Capital Management, L.P.'s Motion for Summary Judgment* in the above-referenced action (the "Motion"). This Declaration is based on my personal knowledge. I could and would testify to the facts and statements set forth herein if asked or required to do so.

2. I joined Highland in 2009 and served as Controller from 2017 to 2020 and Chief Accounting Officer from 2020 to February 2021. At all relevant times, I reported to Frank Waterhouse until he left the company in February 2021. I was appointed CFO in March 2021 following confirmation of Highland's Plan.[1]

B. The Notes

3. In the ordinary course of business, Highland had (and continues to have) a regular practice of maintaining electronic copies of all promissory notes issued by any officer, employee, or corporate affiliate.

4. Attached as **Exhibit A** is a true and correct copy of a promissory note dated February 26, 2014, executed by Mr. James Dondero ("Mr. Dondero") on behalf of Highland Capital Management Fund Advisor, L.P. ("HCMFA"), as the maker, in the original principal amount of $4,000,000 in favor of Highland (the "2014 Note"). A copy of the 2014 Note was and is maintained in Highland's books and records in the ordinary course of business and was provided to PricewaterhouseCoopers ("PwC"), the long-standing outside auditors for HCMFA and HCMLP, in connection with its annual audits.

[1] Capitalized terms not defined herein shall have the meanings ascribed in the Motion.

5. Attached as **Exhibit B** is a true and correct copy of a promissory note dated February 26, 2016, executed by Mr. James Dondero ("Mr. Dondero") on behalf of Highland Capital Management Fund Advisor, L.P. ("HCMFA"), as the maker, in the original principal amount of $2,300,000 in favor of Highland (the "2016 Note" and together with the 2016 Note, and "Pre-2019 Notes"). A copy of the 2016 Note was and is maintained in Highland's books and records in the ordinary course of business and was provided to PwC in connection with its annual audits.

C. Highland's Loan Summaries

6. Highland's accounting group has a regular practice of creating and maintaining "loan summaries" in the ordinary course of business (the "Loan Summaries"). The Loan Summaries identify amounts owed to Highland under affiliate notes and are created by updating underlying schedules for activity and reconciling with Highland's general ledger. Exhibit 199 is an example of a Loan Summary. The Loan Summaries identify each obligor by reference to the "GL" number used in Highland's general ledger. *See* Ex. 199 (HCMS ("GL 14530"), HCMFA ("GL 14531"), NexPoint ("GL 14532"), HCRE ("GL 14533"), and Mr. Dondero ("GL 14565")).

7. The Loan Summaries were used in connection with the PwC audits and to support accounting entries and year-end balances in the ordinary course of Highland's business. For example, Exhibit 199 ties exactly into Exhibit 198, the "back up" to the "Due from affiliates" entry in the January 2021 MOR. Docket No. 2020.[2]

[2] Colloquially, the Loan Summaries are the "back up" to the "back up." To illustrate, and working backwards, the January 2021 MOR reported that $152,538,000 was "Due from affiliates." Docket No. 2030 (balance sheet). Exhibit 198 is the "back up" to the January 2021 MOR and it shows that $152,537,622 was the "Total Due from Affiliates" (the January 2021 MOR rounded up to the nearest thousand). Exhibit 199, the Loan Summary, is the "back up" to the "back up," and is reconciled with Highland's general ledger. As can be seen, the Loan Summary specifies

8. The 2014 Note is shown on the Loan Summary marked as Exhibit 199 as "HCMFA #2" and the 2016 Note is shown on the Loan Summary as "HCMFA #5." Ex. 199, Appx. at 3246.

9. The Pre-2019 Notes were identified on the Loan Summary as "HCMFA #2" and "HCMFA #5," respectively, because, in exchange for loans, HCMFA also issued (i) one note to Highland before issuing the 2014 Note, and (ii) two notes to Highland after issuing the 2014 but before issuing the 2016 Note (collectively, the "Paid Off Notes"). The Paid Off Notes were referred to on prior versions of Loan Summaries as "HCMFA #1," "HCMFA #3," and "HCMFA #4," respectively, but are not included on Exhibit 199 because HCMFA paid off all principal and interest due under the Paid Off Notes before the version of the Loan Summary marked as Exhibit 199 was created.

A. The Application of Payments to the Obligations Under the Pre-2019 Notes

10. By their plain and unambiguous terms, the Pre-2019 Notes were payable on demand. However, HCMFA was permitted to make "prepayments" under each of the Pre-2019 Notes; in other words, HCMFA had the right to pay down its obligations under the Pre-2019 Notes before Highland made a demand for payment. Section 3 sets forth HCMFA's agreement concerning the treatment of "prepayments" and provides:

> 3. Prepayment Allowed; Renegotiation Discretionary. Maker may prepay in whole or in part the unpaid principal or accrued interest of this Note. **Any payments on this Note shall be applied first to unpaid accrued interest hereon, and then to unpaid principal hereof.**

Exhibit A ¶ 3; **Exhibit B** ¶ 3 (emphasis added).

11. After issuing the Pre-2019 Notes, HCMFA made certain payments against

---

the outstanding principal amounts due under each Note. Interest on these Notes is accrued in a single account (general ledger account 14010).

its obligations under the Pre-2019 Notes (collectively, the "Payments").

12. Bank statements showing the date and amount of each of the Payments are attached hereto as **Exhibits D through J**, respectively.

13. In accordance with section 3 of the Pre-2019 Notes, HCMLP's accounting group applied the Payments first to unpaid accrued interest thereon, and then to unpaid principal[3].

14. Attached as **Exhibit C** is a document prepared by HCMLP's accounting group showing how each of the Payments made against the Pre-2019 Notes were applied.

15. I understand that HCMFA does not dispute the propriety of the application of the Payments to the obligations under each of the Pre-2019 Notes, as shown on **Exhibit C**. Exhibit 238, Appx. 5134-5147.

B. The Amounts Due and Owing Under the Pre-2019 Notes

16. On April 15, 2019, Mr. Dondero signed the Acknowledgment Letter in which he agreed on behalf of HCMLP not to demand payment on amounts then owed by HCMFA prior to May 31, 2021. Exhibit 217, Appx. at 4990.[4] Highland received no consideration in exchange for agreement contained in the Acknowledgment Letter.

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[3] There were three *de minimus* exceptions to this treatment. In June 2019 and October 2019, two Payments were applied entirely to principal on the 2014 Note. In each instance, the Payment occurred shortly after a separate Payment had been made and applied first to all accrued and outstanding interest and second to principal. As a result, in these two instances, *de minimus* accrued interest remained outstanding when the June and October 2019 Payments were made and applied entirely to principal. A separate payment on the 2016 Note in April 2017 was applied to interest first, then principal at the time of the Payment. However, following the application of the Payment, it was identified that the accrued interest should have been capitalized on the anniversary of the 2016 Note, so the loan schedule was updated to reflect the capitalization of the interest. The application of the Payment was unchanged, leaving interest in a "pre-paid" position until further interest accrued and exhausted the Prepayment. The combined effect of these exceptions is *de minimus* (cumulatively less than $650.00) with respect to total current outstanding principal and interest. Moreover, regardless of the application of the Payments, Highland always had the unquestionable and unfettered right to demand payment for all remaining amounts due and owing under the Pre-2019 Notes, subject only to the Acknowledgement Letter.

[4] In May 2019, HCMFA issued two other Notes to Highland in exchange for loans that are the subject of one of the adversary proceedings in the Main Notes Litigation. *See* Adv. Pro. No. 21-03004. Because those Notes were issued in May 2019, they were not subject to the Acknowledgment Letter.

17. HCMLP's complied with Acknowledgment Letter in this regard and did not demand payment of the outstanding obligations due under the Pre-2019 Notes until June 2, 2021. *See* Complaint, Exhibit 4.

18. As of May 27, 2022, after giving effect to the Payments, the unpaid principal and accrued interest due under the 2014 Note is $2,151,130.84, and the unpaid principal and accrued interest due under the 2016 Note is $1,001,238.06.

19. I declare under penalty of perjury that the forgoing is true and correct.

Dated: May 27, 2022

/s/ David Klos
David Klos

EXHIBIT A

PROMISSORY NOTE

$4,000,000.00 February 26, 2014

FOR VALUE RECEIVED, HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, LP. ("***Maker***") promises to pay to the order of HIGHLAND CAPITAL MANAGEMENT, LP ("***Payee***"), in legal and lawful tender of the United States of America, the principal sum of FOUR MILLION and 00/100 Dollars ($4,000,000.00), together with interest, on the terms set forth below (the "***Note***"). All sums hereunder are payable to Payee at 300 Crescent Court, Dallas, TX 75201, or such other address as Payee may specify to Maker in writing from time to time.

1. Interest Rate. The unpaid principal balance of this Note from time to time outstanding shall bear interest at a rate equal to the mid-term "***applicable federal rate***" (1.97%) in effect on the date hereof for loans of such maturity as determined by Section 1274(d) of the Internal Revenue Code, per annum from the date hereof until maturity, compounded annually on the anniversary of the date of this Note. Interest shall be calculated at a daily rate equal to 1/365th (1/366 in a leap year) of the rate per annum, shall be charged and collected on the actual number of days elapsed, and shall be payable on demand of the Payee.

2. Payment of Principal and Interest. The accrued interest and principal of this Note shall be due and payable on demand of the Payee.

3. Prepayment Allowed; Renegotiation Discretionary. Maker may prepay in whole or in part the unpaid principal or accrued interest of this Note. Any payments on this Note shall be applied first to unpaid accrued interest hereon, and then to unpaid principal hereof.

4. Acceleration Upon Default. Failure to pay this Note or any installment hereunder as it becomes due shall, at the election of the holder hereof, without notice, demand, presentment, notice of intent to accelerate, notice of acceleration, or any other notice of any kind which are hereby waived, mature the principal of this Note and all interest then accrued, if any, and the same shall at once become due and payable and subject to those remedies of the holder hereof. No failure or delay on the part of Payee in exercising any right, power or privilege hereunder shall operate as a waiver thereof.

5. Waiver. Maker hereby waives grace, demand, presentment for payment, notice of nonpayment, protest, notice of protest, notice of intent to accelerate, notice of acceleration and all other notices of any kind hereunder.

6. Attorneys' Fees. If this Note is not paid at maturity (whether by acceleration or otherwise) and is placed in the hands of an attorney for collection, or if it is collected through a bankruptcy court or any other court after maturity, the Maker shall pay, in addition to all other amounts owing hereunder, all actual expenses of collection, all court costs and reasonable attorneys' fees and expenses incurred by the holder hereof.

7. Limitation on Agreements. All agreements between Maker and Payee, whether now existing or hereafter arising, are hereby limited so that in no event shall the amount paid, or agreed to be paid to Payee for the use, forbearance, or detention of money or for the payment or performance of any covenant or obligation contained herein or in any other document evidencing, securing or pertaining to this Note, exceed the maximum interest rate allowed by law. The terms and provisions of this paragraph shall control and supersede every other provision of all agreements between Payee and Maker in conflict herewith.

8. Governing Law. This Note and the rights and obligations of the parties hereunder shall be governed by the laws of the United States of America and by the laws of the State of Texas, and is performable in Dallas County, Texas.

MAKER:

JAMES DONDERO

EXHIBIT B

PROMISSORY NOTE

$2,300,000.00

February 26, 2016

FOR VALUE RECEIVED, HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, LP. ("***Maker***") promises to pay to the order of HIGHLAND CAPITAL MANAGEMENT, LP ("***Payee***"), in legal and lawful tender of the United States of America, the principal sum of TWO MILLION, THREE HUNDRED THOUSAND and 00/100 Dollars ($2,300,000.00), together with interest, on the terms set forth below (the "***Note***"). All sums hereunder are payable to Payee at 300 Crescent Court, Dallas, TX 75201, or such other address as Payee may specify to Maker in writing from time to time.

1. Interest Rate. The unpaid principal balance of this Note from time to time outstanding shall bear interest at a rate equal to the mid-term "***applicable federal rate***" (2.62%) in effect on the date hereof for loans of such maturity as determined by Section 1274(d) of the Internal Revenue Code, per annum from the date hereof until maturity, compounded annually on the anniversary of the date of this Note. Interest shall be calculated at a daily rate equal to 1/365th (1/366 in a leap year) of the rate per annum, shall be charged and collected on the actual number of days elapsed, and shall be payable on demand of the Payee.

2. Payment of Principal and Interest. The accrued interest and principal of this Note shall be due and payable on demand of the Payee.

3. Prepayment Allowed; Renegotiation Discretionary. Maker may prepay in whole or in part the unpaid principal or accrued interest of this Note. Any payments on this Note shall be applied first to unpaid accrued interest hereon, and then to unpaid principal hereof.

4. Acceleration Upon Default. Failure to pay this Note or any installment hereunder as it becomes due shall, at the election of the holder hereof, without notice, demand, presentment, notice of intent to accelerate, notice of acceleration, or any other notice of any kind which are hereby waived, mature the principal of this Note and all interest then accrued, if any, and the same shall at once become due and payable and subject to those remedies of the holder hereof. No failure or delay on the part of Payee in exercising any right, power or privilege hereunder shall operate as a waiver thereof.

5. Waiver. Maker hereby waives grace, demand, presentment for payment, notice of nonpayment, protest, notice of protest, notice of intent to accelerate, notice of acceleration and all other notices of any kind hereunder.

6. Attorneys' Fees. If this Note is not paid at maturity (whether by acceleration or otherwise) and is placed in the hands of an attorney for collection, or if it is collected through a bankruptcy court or any other court after maturity, the Maker shall pay, in addition to all other amounts owing hereunder, all actual expenses of collection, all court costs and reasonable attorneys' fees and expenses incurred by the holder hereof.

7. Limitation on Agreements. All agreements between Maker and Payee, whether now existing or hereafter arising, are hereby limited so that in no event shall the amount paid, or agreed to be paid to Payee for the use, forbearance, or detention of money or for the payment or performance of any covenant or obligation contained herein or in any other document evidencing, securing or pertaining to this Note, exceed the maximum interest rate allowed by law. The terms and provisions of this paragraph shall control and supersede every other provision of all agreements between Payee and Maker in conflict herewith.

8. Governing Law. This Note and the rights and obligations of the parties hereunder shall be governed by the laws of the United States of America and by the laws of the State of Texas, and is performable in Dallas County, Texas.

MAKER:

JAMES DONDERO

EXHIBIT C

Summary of loans dated February 26, 2014 and February 26, 2016
Privileged and confidential - prepared at direction of counsel
Prepared February 28, 2022

Loan dated 2/26/14		$ 4,000,000.00								
						Application				
Description	Type	Cash amount	Bank statement date	Bank statement ref		Principal	Interest	Total	Total Applied to other loans	
Initial loan	Payment	$ (4,000,000.00)	2/26/2014	P. 2 of 3	$	(4,000,000.00)	$ -	$ (4,000,000.00)	$ -	
May 2019 receipt	Receipt	1,000,000.00	5/29/2019	P. 6 of 13		978,101.91	21,898.09	1,000,000.00	-	
June 2019 receipt	Receipt	500,000.00	6/4/2019	P. 2 of 9		500,000.00	-	500,000.00	-	
September 2019 receipt	Receipt	500,000.00	9/5/2019	P. 1 of 3		484,171.75	15,828.25	500,000.00	-	
October 2019 receipt	Receipt	375,000.00	10/3/2019	P. 2 of 10		375,000.00	-	375,000.00	-	
December 2021 receipt [1]	Receipt	180,472.81	12/28/2021	P. 1 of 4		-	35,477.45	35,477.45	144,995	See notes
Total cash receipts					$	2,337,273.66	$ 73,203.79	$ 2,410,477.45		
Non-cash PIK interest (cumulative 2014-2021)						(471,440.19)	471,440.19			
Total principal outstanding 12/31/21					**$**	**2,134,166.53**	Original principal less principal repayments plus PIK'd interest			
Total interest outstanding 12/31/21						-				

Loan dated 2/26/16		$ 2,300,000.00								
						Application				
Description	Type	Cash amount	Bank statement date	Bank statement ref		Principal	Interest	Total	Total Applied to other loans	
Initial loan	Payment	$ (2,300,000.00)	2/26/2016	P. 2 of 3	$	(2,300,000.00)	$ -	$ (2,300,000.00)	$ -	
September 2016 receipt [2]	Receipt	1,000,000.00	9/1/2016	P. 1 of 3		434,394.68	31,038.03	465,432.71	534,567	See notes
April 2017 receipt	Receipt	1,000,000.00	4/12/2017	P. 1 of 3		970,137.03	29,862.97	1,000,000.00	-	
December 2021 receipt [1]	Receipt	180,472.81	12/28/2021	P. 1 of 4		-	21,904.16	21,904.16	158,569	See notes
Total cash receipts					$	1,404,531.71	$ 82,805.16	$ 1,487,336.87		
Non-cash PIK interest (cumulative 2016-2021)						(95,289.33)	95,289.33			
Total principal outstanding 12/31/21					**$**	**990,757.62**	Original principal less principal repayments plus PIK'd interest			
Total interest outstanding 12/31/21						-				

Notes:
[1] Total receipt in December 2021 was $180,472.81. Application of payment was $35,477.45 to the loan dated 2/26/14; $21,904.16 to the loan dated 2/26/16; $123,091.20 to loans from May 2019 that are part of a separate litigat
[2] Total receipt in September 2016 was $1,000,000.00. Application of payment was $465,432.71 to the loan dated 2/26/16; $534,567.29 was applied to the loan dated 8/28/2015, which fully retired that loan.

EXHIBIT D

Primary Account: [redacted]
Beginning May 1, 2019 - Ending May 31, 2019 31

BBVA Compass

21 HIGHLAND CAPITAL MANAGEMENT LP
MASTER OPERATING ACCOUNT
300 CRESCENT CT STE 700
DALLAS TX 75201-7849

Contacting Us

Available by phone 24/7

Phone 1-800-266-7277

Online bbvacompass.com

Write BBVA Compass
Customer Service
P.O. Box 10566
Birmingham, AL 35296

Summary of Accounts

Deposit Accounts/ Other Products

Account	Account number	Ending balance last statement	Ending balance this statement
TREASURY MANAGEMENT ANALYSIS CHECKING	[redacted]	[redacted]	[redacted]
[redacted]		[redacted]	[redacted]

BBVA Compass

TREASURY MANAGEMENT ANALYSIS CHECKING

Account Number: [redacted]

Activity Summary

[redacted]	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]

Deposits and Other Credits

Date *	Check/ Serial #	Description	Deposits/ Credits
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
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[redacted]		[redacted]	[redacted]

Primary Account: [redacted]
Beginning May 1, 2019 - Ending May 31, 2019 31

BBVA Compass

Date *	Check/ Serial #	Description	Deposits/ Credits
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]

BBVA Compass

Date *	Check/ Serial #	Description	Deposits/ Credits
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BBVA Compass

Date *	Check/ Serial #	Description	Deposits/ Credits
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BBVA Compass

Date *	Check/ Serial #	Description	Deposits/ Credits
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5/29		INCOMING WIRE W/ADVICE REF 20190529F2QCZ60C00298805291425FT03 ORG HIGHLAND CAPITAL M	$1,000,000.00
[redacted]		[redacted]	[redacted]

BBVA Compass

Date *	Check/ Serial #	Description	Deposits/ Credits
[redacted]		[redacted]	[redacted]

[redacted]

Withdrawals and Other Debits

Date *	Check/ Serial #	Description	Withdrawals/ Debits
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BBVA Compass

Date *	Check/ Serial #	Description	Withdrawals/ Debits
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BBVA Compass

Date *	Check/ Serial #	Description	Withdrawals/ Debits
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BBVA Compass

Date *	Check/ Serial #	Description	Withdrawals/ Debits
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BBVA Compass

Date *	Check/ Serial #	Description	Withdrawals/ Debits
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BBVA Compass

Date *	Check/ Serial #	Description	Withdrawals/ Debits
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BBVA Compass

How to Balance Your Account

Step 1
- Enter all checks, deposits, and other automated teller card (ATM) transactions in your register.
- Record all automated deductions, debit card transactions and electronic bill payments.
- Record and deduct service charges, check printing charges, or other bank fees.
- If you have an interest bearing account, add any interest earned shown on this statement.

Step 2
- If applicable, sort checks in numerical order and mark in your register each check or other transaction that is listed on this statement.

Step 3
- List any deposits or credits your have made that do not appear on this statement (see space provided below).

Step 4
- List any checks you have written, debit card transactions, electronic payments and other deductions that do not appear on this statement (see space provided below).

Date/Description	Amount
Step 3 Total	$

Date/Description	Check #	Amount
	Step 4 Total	$

Balancing Your Register to this Statement

Step 5	• Enter the "current balance" shown on this statement	
	• Add total from Step 3	
	• Subtotal	
	• Subtract total from Step 4	
	• This balance should equal your register balance	
	If it does not agree, see steps below	$

If your account does not balance, review the following:
- Check all your addition and subtraction above in your register.
- Make sure you remembered to subtract service charges listed on this statement and add any interest earned to your register.
- Amounts of deposits and withdrawals on this statement should match your register entries.
- If you have questions or need assistance, please refer to the phone number on the front of this statement.

Change of Address
Please call us at the telephone number listed on the front of this statement to tell us about a change of address.

Electronic Transfers *(for consumer accounts only)*
In case of errors or questions about your Electronic Transfers, write to BBVA Compass Bank, Operations Compliance Support, P.O. Box 10566, Birmingham, AL 35296. Or simply call your local customer service number printed on he front of this statement. Call or write as soon as you can, if you think your statement or receipt is wrong or if you need more information about a transfer on the statement or receipt. We must hear from you no later than 60 days after we sent the first statement on which the error or problem appeared.

- Tell us your name and account number (if any).
- Describe the error or he transfer you are unsure about, and explain as clearly as you can why you believe it is an error or why you need more information.
- Tell us the dollar amount of the suspected error.

We will investigate your complaint and will correct any error promptly. If we take more than 10 business days (20 on claims on accounts opened less than 30 calendar days) to do this, we will credit your account for the amount you think is in error, so hat you will have the use of the money during the time it takes us to complete our inves igation.

*For Non-Consumer Account customers, please refer to your current Non-Consumer Account Agreement for details regarding Electronic Fund Transfers.

Overdraft Protection
Calculation of Interest Charge and Balance Subject to Interest Rate. The interest charge is computed using your annual percentage rate divided by 365 or, in he case of a leap year, 366, which gives you the "Applicable Rate." Although we calculate the interest charge by applying the Applicable Rate to each daily balance, the interest charge can also be calculated by multiplying the Applicable Rate by the "average daily balance"(Balance Subject to Interest Rate) shown on this statement, hen multiplying that sum by the number of days in the billing cycle. To get the "Balance Subject to Interest Rate" shown on this statement we take the beginning balance of your account less any unpaid finance charges each day, add any new advances or debits, and subtract any payments or credits. This gives us the daily balance. Then we add all the daily balances for the billing cycle and divide by the number of days in the billing cycle. This give us the "average daily balance" shown on the statement as "Balance Subject to Interest Rate". Payments. Payments to your overdraft protec ion loan account made through our tellers or deposited at our automated teller machines (ATM s) Monday through Friday before he posted cut-off time will be posted to your account on the date they are accepted. Otherwise, they will be posted on the next business day. Payments made through our ATM s via a funds transfer will be posted on the date they are received or on the next business day if made after 6pm CT (6pm MT for Arizona accounts and 6pm PT for California accounts) Monday through Friday or any ime Saturday, Sunday or bank holidays. BBVA Compass Bank business days are Monday through Friday, excluding holidays.

In Case of Errors or Questions About Your Statement (Overdraft Protection Only)
If you think your statement is wrong, or if you need more information about a transaction on your statement, write your issue on a separate document and send it to Bankcard Center, P.O. Box 2210, Decatur, AL 35699-0001. Telephone inquires may be made by calling your local BBVA Compass branch listed on the front of this statement to speak with a Customer Service Representative. Please note: a telephone inquiry will not preserve your rights under federal law. We must hear from you no later than sixty (60) days after we sent you the first statement on which the error or problem appeared.

- Tell us your name and account number (if any).
- Describe the error or he transfer you are unsure about, and explain as clearly as you can why you believe it is an error or what you need more information.
- Tell us the dollar amount of the suspected error.

You can stop the automatic deduction of the Minimum Payment from you checking account if you think your statement is wrong. To stop the payment, your letter must reach us three (3) business days before the automatic deduction is scheduled to occur.

Reporting Other Problems
Please review your statement carefully. It is essential that any account errors or any improper transactions on your account be reported to us as soon as reasonably possible. If you fail to notify us of any suspected problems, errors or unauthorized transactions within the time periods specified in the deposit account agreement, we are not liable to you for any loss related to the problem, error or unauthorized transaction.

BBVA Compass is a trade name of Compass Bank, a member of the BBVA Group.
Compass Bank, Member FDIC.

EXHIBIT E

Primary Account: [redacted]
Beginning June 1, 2019 - Ending June 30, 2019 30

BBVA

21 HIGHLAND CAPITAL MANAGEMENT LP
MASTER OPERATING ACCOUNT
300 CRESCENT CT STE 700
DALLAS TX 75201-7849

Your BBVA Account(s)

Please see important message regarding your TREASURY MANAGEMENT ANALYSIS CHECKING account

Contacting Us

Available by phone 24/7

Phone 1-800-266-7277

Online bbvausa.com

Write BBVA
Customer Service
P.O. Box 10566
Birmingham, AL 35296

Summary of Accounts

Deposit Accounts/ Other Products

Account	Account number	Ending balance last statement	Ending balance this statement
TREASURY MANAGEMENT ANALYSIS CHECKING	[redacted]	[redacted]	[redacted]
[redacted]		[redacted]	[redacted]

BBVA Compass is now BBVA. Transforming banking to put the world's opportunities in your hands.

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TREASURY MANAGEMENT ANALYSIS CHECKING

Account Number: [redacted]

Account Information

We have updated the Treasury Management Service Agreement. These terms and conditions will become effective as of August 1, 2019. You can find a current version of the agreement by going to:
http://www.bbvausa.com/commercial/treasury-management/resource-central/
The user ID is "treasury" and the password is "management."

Activity Summary

[redacted]

Deposits and Other Credits

Date *	Check/ Serial #	Description	Deposits/ Credits
[redacted]		[redacted]	[redacted]
6/4		INCOMING WIRE W/ADVICE REF 20190604F2QCZ60C00344906041614FT03 ORG HIGHLAND CAPITAL M	$500,000.00
[redacted]		[redacted]	[redacted]
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Date *	Check/ Serial #	Description	Deposits/ Credits
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Withdrawals and Other Debits

Date *	Check/ Serial #	Description	Withdrawals/ Debits
[redacted]		[redacted]	[redacted]
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Date *	Check/ Serial #	Description	Withdrawals/ Debits
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How to Balance Your Account

Step 1
- Enter all checks, deposits, and other automated teller card (ATM) transactions in your register.
- Record all automated deductions, debit card transactions and electronic bill payments.
- Record and deduct service charges, check printing charges, or other bank fees.
- If you have an interest bearing account, add any interest earned shown on this statement.

Step 2
- If applicable, sort checks in numerical order and mark in your register each check or other transaction that is listed on this statement.

Step 3
- List any deposits or credits your have made that do not appear on this statement (see space provided below).

Step 4
- List any checks you have written, debit card transactions, electronic payments and other deductions that do not appear on this statement (see space provided below).

Date/Description	Amount
Step 3 Total	$

Date/Description	Check #	Amount
	Step 4 Total	$

Balancing Your Register to this Statement

Step 5	• Enter the "current balance" shown on this statement	
	• Add total from Step 3	
	• Subtotal	
	• Subtract total from Step 4	
	• This balance should equal your register balance	
	If it does not agree, see steps below	$

If your account does not balance, review the following:
- Check all your addition and subtraction above in your register.
- Make sure you remembered to subtract service charges listed on this statement and add any interest earned to your register.
- Amounts of deposits and withdrawals on this statement should match your register entries.
- If you have questions or need assistance, please refer to the phone number on the front of this statement.

Change of Address
Please call us at the telephone number listed on he front of this statement to tell us about a change of address.

Electronic Transfers *(for consumer accounts only)*
In case of errors or questions about your Electronic Transfers, write to BBVA, Operations Compliance Support, P.O. Box 10566, Birmingham, AL 35296. Or simply call your local customer service number printed on he front of this statement. Call or write as soon as you can, if you think your statement or receipt is wrong or if you need more information about a transfer on the statement or receipt. We must hear from you no later than 60 days after we sent the first statement on which the error or problem appeared.

- Tell us your name and account number (if any).
- Describe the error or he transfer you are unsure about, and explain as clearly as you can why you believe it is an error or why you need more information.
- Tell us the dollar amount of the suspected error.

We will investigate your complaint and will correct any error promptly. If we take more than 10 business days (20 on claims on accounts opened less than 30 calendar days) to do this, we will credit your account for the amount you think is in error, so hat you will have the use of the money during the time it takes us to complete our inves igation.

*For Non-Consumer Account customers, please refer to your current Non-Consumer Account Agreement for details regarding Electronic Fund Transfers.

Overdraft Protection
Calculation of Interest Charge and Balance Subject to Interest Rate. The interest charge is computed using your annual percentage rate divided by 365 or, in he case of a leap year, 366, which gives you he "Applicable Rate." Although we calculate the interest charge by applying the Applicable Rate to each daily balance, the interest charge can also be calculated by multiplying the Applicable Rate by the "average daily balance"(Balance Subject to Interest Rate) shown on this statement, hen multiplying that sum by the number of days in the billing cycle. To get the "Balance Subject to Interest Rate" shown on this statement we take the beginning balance of your account less any unpaid finance charges each day, add any new advances or debits, and subtract any payments or credits. This gives us the daily balance. Then we add all the daily balances for the billing cycle and divide by the number of days in the billing cycle. This give us the "average daily balance" shown on the statement as "Balance Subject to Interest Rate". Payments. Payments to your overdraft protec ion loan account made hrough our tellers or deposited at our automated teller machines (ATM s) Monday through Friday before he posted cut-off time will be posted to your account on the date they are accepted. Otherwise, they will be posted on the next business day. Payments made through our ATM s via a funds transfer will be posted on the date they are received or on the next business day if made after 6pm CT (6pm MT for Arizona accounts and 6pm PT for California accounts) Monday through Friday or any ime Saturday, Sunday or bank holidays. BBVA business days are Monday hrough Friday, excluding holidays.

In Case of Errors or Questions About Your Statement (Overdraft Protection Only)
If you think your statement is wrong, or if you need more information about a transaction on your statement, write your issue on a separate document and send it to Bankcard Center, P.O. Box 2210, Decatur, AL 35699-0001. Telephone inquires may be made by calling your local BBVA branch listed on the front of this statement to speak with a Customer Service Representative. Please note: a telephone inquiry will not preserve your rights under federal law. We must hear from you no later than sixty (60) days after we sent you the first statement on which the error or problem appeared.

- Tell us your name and account number (if any).
- Describe the error or he transfer you are unsure about, and explain as clearly as you can why you believe it is an error or what you need more information.
- Tell us the dollar amount of the suspected error.

You can stop he automatic deduction of the Minimum Payment from you checking account if you think your statement is wrong. To stop the payment, your letter must reach us three (3) business days before he automatic deduction is scheduled to occur.

Reporting Other Problems
Please review your statement carefully. It is essential that any account errors or any improper transactions on your account be reported to us as soon as reasonably possible. If you fail to notify us of any suspected problems, errors or unauthorized transactions within the time periods specified in the deposit account agreement, we are not liable to you for any loss related to the problem, error or unauthorized transaction.

BBVA and BBVA Compass are trade names of BBVA USA, a member of the BBVA Group. BBVA USA, Member FDIC.

EXHIBIT F

NEXBANK™

Welcome HAYLEY ELIASON Log Out Contact Us 2 Messages Alerts

Accounts

NEXBANK™
2515 McKinney Avenue, 11th Floor
Dallas, Texas 75201
972.934.4700
www.NexBank.com

FDIC

Date 9/30/19 Page 1
Primary Account [redacted]
Enclosures

Highland Capital Management LP
300 Crescent Court Suite 700
Dallas TX 75201

NexBank's Privacy Notice, which has not changed, is available on our website at www.NexBank.com/files/privacynotice.pdf. If you would like a copy of our Privacy Notice mailed to you, please call us at 972-934-4700.

Checking Account/s

Account Type: Highland Capital Management LP

Analysis Checking w/ Interest
Account Number [redacted] Statement Dates 9/03/19 thru 9/30/19

Deposits and Additions

Date	Description	Amount
[redacted]	[redacted]	[redacted]
9/05	IB Transfer from D ****415 to D ****130	500,000.00
[redacted]	[redacted]	[redacted]

MEMBER FDIC NOTICE: SEE LAST PAGE FOR IMPORTANT INFORMATION
Payments received at the address indicated on this statement by 3 00 pm. Central Standard Time each banking day will be credited as of that date.

NEXBANK™
2515 McKinney Avenue, 11th Floor
Dallas, Texas 75201
972.934.4700
www.NexBank.com

FDIC

Date 9/30/19 Page 2
Primary Account [redacted]
Enclosures

Analysis Checking w/ Interest [redacted] (Continued)

Checks and Withdrawals

Date	Description	Amount
[redacted]	[redacted]	[redacted]

End of Statement

MEMBER FDIC

NOTICE: SEE LAST PAGE FOR IMPORTANT INFORMATION
Payments received at the address indicated on this statement by 3 00 pm. Central Standard Time each banking day will be credited as of that date.

OUTSTANDING CHECKS

Reconciliation of Account

CHECKS WRITTEN BUT NOT PAID

NUMBER	AMOUNT		

- Description of Problem: If you think there is an error on your bill, describe what you believe is wrong and why you believe it is a mistake.

You must contact us within 60 days after the error appeared on your statement.
You must notify us of any potential errors in writing or electronically. You may call us, but if you do we are not required to investigate any potential errors and you may have to pay the amount in question.
While we investigate whether or not there has been an error, the following are true:

- We cannot try to collect the amount in question, or report you as delinquent on that amount.
- The charge in question may remain on your statement, and we may continue to charge you interest on that amount. But, if we determine that we made a mistake, you will not have to pay the amount in question or any interest or other fees related to that amount.
- While you do not have to pay the amount in question, you are responsible for the remainder of your balance.
- We can apply any unpaid amount against your credit limit.

IN CASE OF ERRORS OR QUESTIONS ABOUT YOUR ELECTRONIC TRANSFERS

In Case of Errors or Questions About Your Electronic Transfers, Telephone us at 972.934.4700 or Write us at NexBank, 2515 McKinney Avenue, 11th Floor, Dallas, Texas 75201 as soon as you can, if you think your statement or receipt is wrong or if you need more information about a transfer on the statement or receipt. We must hear from you no later than 60 days after we sent you the FIRST statement on which the error or problem appeared.

(1) Tell us your name and account number (if any).
(2) Describe the error or transfer you are unsure about, and explain as clearly as you can why you believe it is an error or why you need more information.
(3) Tell us the dollar amount of the suspected error.

We will investigate your complaint and will correct any error promptly. If we take more than 10 business days to do this, we will credit your account for the amount you think is in error, so that you will have use of the money during the time it takes us to complete our investigation.

EXHIBIT G

BBVA

21 HIGHLAND CAPITAL MANAGEMENT LP
MASTER OPERATING ACCOUNT
300 CRESCENT CT STE 700
DALLAS TX 75201-7849

Contacting Us

Available by phone 24/7

Phone 1-800-266-7277

Online bbvausa.com

Write BBVA
Customer Service
P.O. Box 10566
Birmingham, AL 35296

Summary of Accounts

Deposit Accounts/ Other Products

Account	Account number	Ending balance last statement	Ending balance this statement
TREASURY MANAGEMENT ANALYSIS CHECKING	[redacted]	[redacted]	[redacted]
[redacted]		[redacted]	[redacted]

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TREASURY MANAGEMENT ANALYSIS CHECKING

Account Number: [redacted]

Activity Summary

[redacted]	[redacted]
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Deposits and Other Credits

Date *	Check/ Serial #	Description	Deposits/ Credits
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[redacted]		[redacted]	[redacted]
10/3		INCOMING WIRE W/ADVICE REF 20191003F2QCZ60C00240510031400FT03 ORG HIGHLAND CAPITAL M	$375,000.00
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Date *	Check/ Serial #	Description	Deposits/ Credits
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Withdrawals and Other Debits

Date *	Check/ Serial #	Description	Withdrawals/ Debits
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BBVA

Date *	Check/ Serial #	Description	Withdrawals/ Debits
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
[redacted]		[redacted]	[redacted]
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BBVA

Date	Balance	Date	Balance	Date	Balance
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]				
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[redacted]	[redacted]				
[redacted]					

BBVA

How to Balance Your Account

Step 1
- Enter all checks, deposits, and other automated teller card (ATM) transactions in your register.
- Record all automated deductions, debit card transactions and electronic bill payments.
- Record and deduct service charges, check printing charges, or other bank fees.
- If you have an interest bearing account, add any interest earned shown on this statement.

Step 2
- If applicable, sort checks in numerical order and mark in your register each check or other transaction that is listed on this statement.

Step 3
- List any deposits or credits your have made that do not appear on this statement (see space provided below).

Step 4
- List any checks you have written, debit card transactions, electronic payments and other deductions that do not appear on this statement (see space provided below).

Date/Description	Amount
Step 3 Total	$

Date/Description	Check #	Amount
	Step 4 Total	$

Balancing Your Register to this Statement

Step 5	• Enter the "current balance" shown on this statement	
	• Add total from Step 3	
	• Subtotal	
	• Subtract total from Step 4	
	• This balance should equal your register balance	
	If it does not agree, see steps below	$

If your account does not balance, review the following:
- Check all your addition and subtraction above in your register.
- Make sure you remembered to subtract service charges listed on this statement and add any interest earned to your register.
- Amounts of deposits and withdrawals on this statement should match your register entries.
- If you have questions or need assistance, please refer to the phone number on the front of this statement.

Change of Address
Please call us at the telephone number listed on the front of this statement to tell us about a change of address.

Electronic Transfers *(for consumer accounts only)*
In case of errors or questions about your Electronic Transfers, write to BBVA, Operations Compliance Support, P.O. Box 10566, Birmingham, AL 35296. Or simply call your local customer service number printed on he front of this statement. Call or write as soon as you can, if you think your statement or receipt is wrong or if you need more information about a transfer on the statement or receipt. We must hear from you no later than 60 days after we sent the first statement on which the error or problem appeared.

- Tell us your name and account number (if any).
- Describe the error or he transfer you are unsure about, and explain as clearly as you can why you believe it is an error or why you need more information.
- Tell us the dollar amount of the suspected error.

We will investigate your complaint and will correct any error promptly. If we take more than 10 business days (20 on claims on accounts opened less than 30 calendar days) to do this, we will credit your account for the amount you think is in error, so hat you will have the use of the money during the time it takes us to complete our inves igation.

*For Non-Consumer Account customers, please refer to your current Non-Consumer Account Agreement for details regarding Electronic Fund Transfers.

Overdraft Protection
Calculation of Interest Charge and Balance Subject to Interest Rate. The interest charge is computed using your annual percentage rate divided by 365 or, in he case of a leap year, 366, which gives you the "Applicable Rate." Although we calculate the interest charge by applying the Applicable Rate to each daily balance, the interest charge can also be calculated by multiplying the Applicable Rate by the "average daily balance"(Balance Subject to Interest Rate) shown on this statement, hen multiplying that sum by the number of days in the billing cycle. To get the "Balance Subject to Interest Rate" shown on this statement we take the beginning balance of your account less any unpaid finance charges each day, add any new advances or debits, and subtract any payments or credits. This gives us the daily balance. Then we add all the daily balances for the billing cycle and divide by the number of days in the billing cycle. This give us the "average daily balance" shown on the statement as "Balance Subject to Interest Rate". Payments. Payments to your overdraft protec ion loan account made through our tellers or deposited at our automated teller machines (ATM s) Monday through Friday before he posted cut-off time will be posted to your account on the date they are accepted. Otherwise, they will be posted on the next business day. Payments made through our ATM s via a funds transfer will be posted on the date they are received or on the next business day if made after 6pm CT (6pm MT for Arizona accounts and 6pm PT for California accounts) Monday through Friday or any ime Saturday, Sunday or bank holidays. BBVA business days are Monday hrough Friday, excluding holidays.

In Case of Errors or Questions About Your Statement (Overdraft Protection Only)
If you think your statement is wrong, or if you need more information about a transaction on your statement, write your issue on a separate document and send it to Bankcard Center, P.O. Box 2210, Decatur, AL 35699-0001. Telephone inquires may be made by calling your local BBVA branch listed on the front of this statement to speak with a Customer Service Representative. Please note: a telephone inquiry will not preserve your rights under federal law. We must hear from you no later than sixty (60) days after we sent you the first statement on which the error or problem appeared.

- Tell us your name and account number (if any).
- Describe the error or he transfer you are unsure about, and explain as clearly as you can why you believe it is an error or what you need more information.
- Tell us the dollar amount of the suspected error.

You can stop the automatic deduction of the Minimum Payment from you checking account if you think your statement is wrong. To stop the payment, your letter must reach us three (3) business days before the automatic deduction is scheduled to occur.

Reporting Other Problems
Please review your statement carefully. It is essential that any account errors or any improper transactions on your account be reported to us as soon as reasonably possible. If you fail to notify us of any suspected problems, errors or unauthorized transactions within the time periods specified in the deposit account agreement, we are not liable to you for any loss related to the problem, error or unauthorized transaction.

BBVA and BBVA Compass are trade names of BBVA USA, a member of the BBVA Group. BBVA USA, Member FDIC.

EXHIBIT H

EAST WEST BANK Your financial bridge®

9300 Flair Dr., 1St FL
El Monte, CA. 91731

Direct inquiries to:
888 761 3967

ACCOUNT STATEMENT
Page 1 of 3
STARTING DATE: December 01, 2021
ENDING DATE: December 31, 2021
Total days in statement period: 31
[redacted]
(0)

HIGHLAND CAPITAL MANAGEMENT LP
CHAPTER 11 DEBTOR IN POSSESSION
CASE #19 12239
OPERATING ACCOUNT
300 CRESCENT CT SUITE 700
DALLAS TX 75201 0000

Protecting the security of your account and personal information is our top priority. Learn about online security practices and ways to protect yourself from cybercrime at eastwestbank.com in the "Privacy & Security" section.

Commercial Analysis Checking

Account number	[redacted]	Beginning balance		[redacted]
Low balance	[redacted]	Total additions	(9)	[redacted]
Average balance	[redacted]	Total subtractions	(75)	[redacted]
		Ending balance		[redacted]

CREDITS

Number	Date	Transaction Description		Additions
	[redacted]	[redacted]	[redacted]	[redacted]
	12 28	Wire Trans-IN	HIGHLAND CAPITAL M GMT FUND ADV	180,472.81
	[redacted]	[redacted]	[redacted]	[redacted]

DEBITS

Date	Transaction Description	Subtractions
[redacted]	[redacted]	[redacted]

3409 rev 05-16

EAST WEST BANK Your financial bridge®

9300 Flair Dr., 1St FL
El Monte, CA. 91731

HIGHLAND CAPITAL MANAGEMENT LP

ACCOUNT STATEMENT

STARTING DATE: December 01, 2021
ENDING DATE: December 31, 2021
[redacted]

Date	Transaction Description	Subtractions
[redacted]	[redacted]	[redacted]

EAST WEST BANK Your financial bridge®

9300 Flair Dr., 1St FL
El Monte, CA. 91731

HIGHLAND CAPITAL MANAGEMENT LP

ACCOUNT STATEMENT
Page 3 of 3
STARTING DATE: December 01, 2021
ENDING DATE: December 31, 2021
[redacted]

Date	Transaction Description	Subtractions
[redacted]	[redacted]	[redacted]

DAILY BALANCES

Date	Amount	Date	Amount	Date	Amount
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]

OVERDRAFT/RETURN ITEM FEES

[redacted]

STATEMENT BALANCING

Fill in the amounts below from the front of this statement and your checkbook.

ENTER
Ending Balance of this Statement..... $_____

Add Deposits not shown on this Statement $_____

Sub Total..... $_____

Subtract Checks Issued but not on Statement

CHECK NUMBER OR DATE	AMOUNT	CHECK NUMBER OR DATE	AMOUNT
TOTAL		TOTAL	

Total amount of outstanding checks..... $_____

Balance.....** $_____

ENTER
Present Balance in your checkbook..... $_____

Subtract any service charges, finance or any other charges..... $_____

Sub Total ..... $_____

Add Monthly Interest Earned ..... $_____

Add any deposits not yet entered in checkbook (Reverse Advances)..... $_____

Subtract any checks not yet entered in checkbook (Reverse Payments)..... $_____

Balance..... $_____

IN CASE OF ERRORS OR QUESTIONS REGARDING YOUR CHECKING ACCOUNT

You must examine your statement carefully and promptly. You are in the best position to discover errors and unauthorized transactions on your account. If you fail to notify us in writing of suspected problems or unauthorized transactions within the time periods as specified in the Deposit Agreement (which periods are no more than 60 days after we make the statement available to you and in some cases 30 days or less), we are not liable to you for, and you agree not to make a claim against us for problems or unauthorized transactions.

IN CASE OF ERRORS OR QUESTIONS ABOUT YOUR ELECTRONIC FUNDS TRANSFERS

Telephone or write your local branch of account, listed on the statement front, as soon as you can if you think your statement or receipt is wrong or if you need more information about a transfer on the statement or receipt. We must hear from you no later than 60 days after we send you the FIRST statement on which the error or problem appeared.

1. Tell us your name and account number.
2. Describe the error or the transfer you are unsure about and explain as clearly as you can why you believe there is an error or why you need more information.
3. Tell us the dollar amount of the suspected error.

We will investigate your complaint and will correct any error promptly. If our investigation takes longer than 10 business days from the date we received your notification, we will provisionally credit your account for the disputed amount until our investigation has been completed. If the disputed amount involves an electronic funds transfer to or from an account within 30 days after the first deposit to the account was made, we will provisionally credit your account within 20 business days from the date we receive your notification.

ACCOUNTS WITH CHECK STORAGE

Upon your request, we will provide you, without charge, legible copies of two checks from each account statement. Additional copies of canceled checks are subject to our service charges. You can make a request for these copies by contacting the branch listed on the front of this statement.

CHANGE OF ADDRESS

Please notify us immediately for change of address by phoning or writing your local branch of account, listed on the front of this statement.

MEMBER FDIC

(REV 11/07)

EXHIBIT I

NEXBANK

2515 McKinney Avenue, 11th Floor
Dallas, Texas 75201
972.934.4700
www.NexBank.com

Date 9/30/16 Page 1
Primary Account [redacted]
Enclosures

Highland Capital Management LP
300 Crescent Court Suite 700
Dallas TX 75201

NexBank's Privacy Notice, which has not changed, is available on our website at www.NexBank.com/files/privacynotice.pdf. If you would like a copy of our Privacy Notice mailed to you, please call us at 972-934-4700.

Checking Account/s

Account Type: Highland Capital Management LP

Analysis Checking w/ Interest
Account Number [redacted] Statement Dates 9/01/16 thru 10/02/16

[redacted]

Deposits and Additions

Date	Description	Amount
9/01	IB Transfer from D ****415 to D ****130	1,000,000.00

[redacted]

MEMBER FDIC

NOTICE: SEE LAST PAGE FOR IMPORTANT INFORMATION
Payments received at the address indicated on this statement by 3:00 pm. Central Standard Time each banking day will be credited as of that date.

NexBank

2515 McKinney Avenue, 11th Floor
Dallas, Texas 75201
972.934.4700
www.NexBank.com

FDIC

Date 9/30/16 Page 2
Primary Account 1614130
Enclosures

Analysis Checking w/ Interest 1614130 (Continued)

Checks and Withdrawals

Date	Description	Amount
[redacted]		

Daily Balance Information

Date	Balance	Date	Balance	Date	Balance
[redacted]					

Interest Rate Summary

Date	Rate
[redacted]	

End of Statement

MEMBER FDIC

NOTICE: SEE LAST PAGE FOR IMPORTANT INFORMATION
Payments received at the address indicated on this statement by 3:00 pm. Central Standard Time each banking day will be credited as of that date.

OUTSTANDING CHECKS

Reconciliation of Account

CHECKS WRITTEN BUT NOT PAID			
NUMBER	AMOUNT		

EXHIBIT J

NEXBANK

2515 McKinney Avenue, 11th Floor
Dallas, Texas 75201
972.934.4700
www.NexBank.com

Date 4/28/17 Page 1
Primary Account [redacted]
Enclosures

Highland Capital Management LP
300 Crescent Court Suite 700
Dallas TX 75201

NexBank's Privacy Notice, which has not changed, is available on our website at www.NexBank.com/files/privacynotice.pdf. If you would like a copy of our Privacy Notice mailed to you, please call us at 972-934-4700.

Checking Account/s

Account Type: Highland Capital Management LP

Analysis Checking w/ Interest
Account Number [redacted] Statement Dates 4/03/17 thru 4/30/17

[redacted]

Deposits and Additions

Date	Description	Amount
[redacted]		
4/12	IB Transfer from D ****415 to D ****130	1,000,000.00
[redacted]		

MEMBER FDIC

NOTICE: SEE LAST PAGE FOR IMPORTANT INFORMATION
Payments received at the address indicated on this statement by 3:00 pm. Central Standard Time each banking day will be credited as of that date.

NEXBANK

2515 McKinney Avenue, 11th Floor
Dallas, Texas 75201
972.934.4700
www.NexBank.com

FDIC

Date 4/28/17 Page 2
Primary Account [redacted]
Enclosures

Analysis Checking w/ Interest [redacted] (Continued)

Deposits and Additions

Date	Description	Amount
[redacted]		

Checks and Withdrawals

Date	Description	Amount
[redacted]		

Daily Balance Information

Date	Balance	Date	Balance	Date	Balance
[redacted]					

MEMBER FDIC

NOTICE: SEE LAST PAGE FOR IMPORTANT INFORMATION
Payments received at the address indicated on this statement by 3:00 pm. Central Standard Time each banking day will be credited as of that date.

NexBank
2515 McKinney Avenue, 11th Floor
Dallas, Texas 75201
972.934.4700
www.NexBank.com

FDIC

Date 4/28/17 Page 3
Primary Account [redacted]
Enclosures

Analysis Checking w/ Interest [redacted] (Continued)

Interest Rate Summary

Date	Rate
[redacted]	

End of Statement

OUTSTANDING CHECKS

Reconciliation of Account

CHECKS WRITTEN BUT NOT PAID			
NUMBER	AMOUNT		

EXHIBIT 240

1

2 IN THE UNITED STATES BANKRUPTCY COURT

3 FOR THE NORTHERN DISTRICT OF TEXAS

4 DALLAS DIVISION

5 ----------X

6 IN RE: Chapter 11

7 Case No. 19-34054-SGJ-11

8 HIGHLAND CAPITAL

9 MANAGEMENT, L.P.,

10 Debtor.

11 ----------X

12 HIGHLAND CAPITAL
MANAGEMENT, L.P.,
13 Plaintiff, Adversary Proceeding No.

14 -vs- 21-03004

15 NEXPOINT ADVISORS, L.P.,
JAMES DONDERO, NANCY
16 DONDERO, and the
DUGABOY INVESTMENT
17 TRUST,

18 Defendants.

19 ----------X

20 REMOTE DEPOSITION OF ALAN JOHNSON
Montclair, New Jersey
21 May 27, 2022

22

23

24 Reported by: BONNIE PRUSZYNSKI, RMR, RPR, CLR

25 JOB NO. 210473

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9 May 27, 2022
10 10:40 A.M.
11
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13
14 REMOTE VIDEOTAPED DEPOSITION OF
15 ALAN JOHNSON, held remotely from Montclair, New
16 Jersey, before Bonnie Pruszynski, a Registered
17 Professional Reporter, Registered Merit Reporter,
18 Certified Livenote Reporter, and Notary Public of
19 the State of New York.
20
21
22
23
24
25

1

2 R E M O T E· ·A P P E A R A N C E S:

3

4 PACHULSKI STANG ZIEHL & JONES LLP

5 Attorneys for Highland Capital Management, L.P.

6 780 Third Avenue

7 New York, NY 10017

8 BY: JOHN MORRIS, ESQ.

9

10 STINSON LLP

11 Attorneys for James Dondero, HCRE, HCMS

12 3102 Oak Lawn Avenue

13 Dallas, TX 75219

14 BY: MICHAEL AIGEN, ESQ.

15

16 Also Present:

17 La Asia Canty, Senior Paralegal

18

19

20

21

22

23

24

25

A. Johnson

THE REPORTER: Do all parties stipulate to the validity of this remote swearing and that it will be admissible in the courtroom as if it had been taken following Rule 30 of the Federal Rules of Civil Procedure and the state's rules where this case is pending?

MR. MORRIS: Yes.

MR. AIGEN: Yes.

(Witness sworn.)

ALAN JOHNSON,

called as a witness, having been first duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. MORRIS:

Q. Can you hear me okay, Mr. Johnson?

A. Yes, you are clear.

Q. Okay. We are on the record now, Mr. Johnson. This is the second time that I have deposed you in connection with the Highland matter, and I just want to go over a little bit of background briefly to make sure we are all on the same page.

A. Johnson

You previously issued an expert report in support of Mr. Dondero in connection with the notes litigation. Do I have that right?

A. Yes.

Q. And I took your deposition in connection with that particular report. Do I have that right?

A. Yes.

Q. Okay. Are you aware that the parties to this litigation have agreed that we can use the transcript from your first deposition in connection with this second lawsuit?

A. Yes.

Q. Okay. Have you had an opportunity to review that transcript?

A. I reviewed it when it was originally given to me. I haven't looked at it since.

Q. Okay. As you sit here today, can you think of anything in the, in the -- in the transcript, as opposed to the report, can you think of anything in the transcript that

A. Johnson

was wrong or inaccurate that you want to correct?

A. I can't think of anything, no.

Q. And so, then you prepared a second report for use in the second lawsuit. Do I have that right?

A. Yes.

Q. And is it fair to say that your second report -- withdrawn.

Is it fair to say that you prepared your second report by beginning and then modifying your first report in certain respects?

A. Yes. I updated my first report. Started there, yes.

Q. Can you tell me in broad strokes what changes were made to the first report that are reflected in the second report? I know, for example -- I will just put out an example -- you have included an analysis of the founder's premium. Do I have that right?

A. Yes.

Q. And you have made adjustments to Mr. Dondero's compensation to take into

A. Johnson

account some of the issues that we discussed during your first deposition. Do I have that right?

A. Yes.

Q. Okay. Other than those two changes, can you share with me any other substantive changes that you made in the second report from the first report?

A. I think those would be the two. There are some wording changes, but I think that those are the substantive changes.

Q. Okay. I appreciate that, and that will make this go as I had expected.

With respect to the work that you did in -- let's focus on the founder's premium first. You didn't include an analysis of the founder's premium in your first report; correct?

A. Right.

Q. Can you describe for me what information you relied upon to do the analysis of the founder's premium? And if it's helpful to you -- do you have your report in front of you?

A. Johnson

A. Yes, I do.

Q. Okay. I know that the founder's premium discussion can be found on page 13. I'm happy to put it on the screen if that's helpful.

My question is kind of simple. Can you tell me what information you relied upon to determine -- to conduct the analysis of the founder's premium?

A. Looked in the -- the public domain and found an academic article that addressed founder's premiums. Also in the public domain, there is examples of founders in financial services that are unusually well paid, and that's documented. And then my own client experience, working with founders in, you know, mainly private financial services firms.

Q. Okay. Was any of that information unavailable to you at the time you prepared your first analysis?

A. I hadn't done the research when I prepared first report, but all of that would have likely been available.

A. Johnson

Q. Okay. Can you identify any piece of information that you relied upon in your founder's premium analysis that you do not believe would have been available to you at the time you prepared your first report?

A. I don't -- I can't think of anything.

Q. How much time did you spend preparing the analysis on the founder's premium? Do you recall?

A. Between me and my colleague, probably 30, 40 hours, probably.

Q. Is that on the whole report, or is that on the founder's premium analysis?

A. Primarily on the founder's premium.

Q. Did you speak with Mr. Dondero or anybody at Highland in connection with the preparation of your founder's premium analysis?

A. I don't believe so.

Q. Okay. So, you didn't rely upon any new factual information to support your founder's premium analysis; is that fair?

A. I did the analysis, which I had not

A. Johnson

done at first, but I did not -- I'm confused on the question. I'm sorry.

Q. And that's fair. Maybe it's the use of the word "fact."

I want to distinguish between the facts that relate to the founder's premium, meaning Mr. Dondero's status and the work he did, as opposed to the research that you did where you found articles in the field. And with that distinc- -- do you understand the distinction that I am making?

A. Yes.

Q. Okay. So, with that distinction in mind, did you -- did you learn of any facts in connection with the founder's premium analysis that you didn't have at the time you prepared the first report?

A. No, I don't believe so.

Q. And let's talk about the facts for a minute. Are you aware of any -- any person in the world who is also referred to from time to time as one of the founders of Highland besides Mr. Dondero?

A. Mr. Okada. I think he was

A. Johnson

considered a founder as well, I believe.

Q. Did you do any analysis to determine how work was allocated -- withdrawn.

Do you know whether Mr. Okada is still affiliated with Highland today?

A. I do not know.

Q. Do you know how work was allocated between Mr. Okada and Mr. Dondero during the period 2013 to 2019?

A. No.

Q. Did you do any analysis to try to determine how work was allocated between those two individuals?

A. No.

Q. Do you know if there is anybody in the world who is considered to be a founder of Highland other than Mr. Okada and Mr. Dondero?

A. I do not know.

Q. Would it be relevant to your analysis if there were more than two co-founders?

A. Not from the work I did, no.

A. Johnson

Q. So, regardless of how many founders there were and the work that those other co-founders had done, you believe that Mr. Dondero would be entitled to a founder's premium of 15 to 50 percent?

A. Yes. Considering his role during this period, yes.

Q. Okay. But that doesn't take into account -- I just want to make sure we're clear about this. That doesn't take into account in any way any role played by any other founder in connection with the business; correct?

A. It does not, no.

Q. And you didn't do any work to try to determine the role played by Mr. Okada or any other founder of Highland, other than Mr. Dondero; correct?

A. That's right.

Q. Do you have an opinion as to where between 15 and 50 percent Mr. -- Mr. Dondero's premium should fall?

A. I do not.

Q. Okay. It's somewhere within that

A. Johnson

band of 15 to 50 percent. Do I have that right?

A. Yes.

Q. Is there any information that you would need to determine where within that band the founder's premium should properly lie?

A. I think I would probably need to do an additional analysis of, as you mentioned, the roles of other people within the organization to get -- to have an opinion within that range.

Q. Okay. But that's not work that you did in connection with this report; correct?

A. No, I did not.

Q. Now, again -- do you have both reports in front of you?

A. I do not.

Q. Okay. Let's see if I can -- if I can do this easily.

Do you recall that in the first report, you concluded that based on an analysis of the compensation you believed Mr. Dondero had received from 2013 to 2019,

A. Johnson

there was approximately a $21 million shortfall between the compensation he received and what you believed a reasonable executive of his type would have received during that period?

A. I don't recall the exact figure, but that sounds about right, yes.

Q. And now that figure has increased to a range of 22 to 37 million dollars, even though you've added $5 million of compensation, and the reason for that is the founder's premium; fair?

A. Yes.

Q. Okay. So, if we accept your analysis as true and accurate, without debate, and we find that Mr. Dondero was undercompensated by a magnitude of 22 to 37 million dollars for the seven-year period that you've analyzed, your report doesn't provide any justification for the forgiveness of any loans beyond the $37 million; is that fair?

MR. AIGEN: Objection, form.

A. Well, I looked at a couple of

A. Johnson

different things. One is the -- the compensation, what the market compensation, but I also addressed the issue of loans and the issue of loan forgiveness. So, I think from a compensation perspective, the range you mentioned I believe is accurate, but it -- I think the other substantive thing is the -- you know, the use of loans and the potential forgiveness of loans.

Q. So, is it your expert opinion that because loans are forgiven for executives, that it would be reasonable for Highland to have forgiven loans in excess of $37 million, even though $37 million is the maximum amount of undercompensation that you've -- that you've analyzed?

MR. AIGEN: Objection, form.

A. Well, I think it ties into the fact that Mr. Okada and Mr. Dondero didn't take as much compensation or earnings out of the business over time. These loans were -- I think the term "delayed gratification" in the business. So, I think it's all tangled up or tied up with the issue of them not taking

A. Johnson

money out of the business, but from a compensation perspective, I think the range is as you described it.

Q. So that if -- withdrawn.

If I asked you to assume that a substantial portion of the loans at issue were made to corporate affiliates in order to fund the operations of the corporate affiliates, and the corporate affiliates carried those loans as liabilities on their balance sheet, do you have any experience where loans of that type, operational loans, were forgiven for purposes of compensating an executive?

A. That I can't recall. I can't recall any.

Q. Right.

Have you ever seen any analysis anywhere that suggests it would be appropriate to forgive corporate compensation as part of -- withdrawn.

Have you ever seen any analysis anywhere that suggests it would be appropriate to forgive corporate loans as

A. Johnson

part of an executive's personal compensation package?

A. I apologize. I lost your train of thought on the question. I'm sorry.

Q. Have you ever seen any analysis that suggests it's either appropriate or -- withdrawn.

Have you ever seen any study that suggests it's appropriate to forgive a corporate loan that was used -- that was used and obtained for operational purposes, to forgive that loan as part of the personal compensation package of an executive?

A. With those specific facts, I'm not familiar with any, no.

Q. Okay. Do you understand that a substantial portion of the loans at issue were given to corporate affiliates owned or controlled by Mr. Dondero and not to Mr. Dondero personally?

A. Yes, I'm aware of that.

Q. Okay. And do you have any understanding as to what the purpose of those loans were?

A. Johnson

A. I -- at least I -- it was unclear to me.

Q. Did you ask anybody why Highland made loans to affiliates owned and controlled by Mr. Dondero?

A. No, I did not.

Q. So, that's not a factor that you took into your account in your analysis; correct?

A. No.

Q. And do you understand that it's those very loans -- withdrawn.

Do you understand that there are corporate loans that were made for operational purposes that Mr. Dondero now contends should be forgiven as part of his personal compensation package?

A. In reading Mr. Dondero's deposition, at least my reading of it, the exact use of those loans was not clear. So, I know that loans were made at the entities, but at least reading the deposition, the purpose, it was not clear, at least reading his deposition.

A. Johnson

Q. Okay. Have you ever advised a company to forgive a corporate loan as part of an executive's personal compensation package?

A. Yes, I have.

Q. Can you identify -- and did you tell them that it would be appropriate to do that?

A. Yes, I have.

Q. And is that in a case other than Highland?

A. It would be other clients, yes.

Q. And so, you've done that, but you haven't seen any study or any analysis anywhere that says that's appropriate; right?

A. I don't -- I don't -- I have never seen that study, no.

Q. Okay. Can you identify -- how many times have you advised companies to forgive corporate obligations as part of an executive's personal compensation package?

A. I must have misunderstood your question. I thought you had asked the loans directly to the executive.

A. Johnson

Q. No. So let me start again, and I appreciate that, and this is not -- not the easiest topic to inquire about, so, forgive me.

So, the question is: Have you ever advised a company to forgive loans that it had made to a corporate affiliate for the purpose of compensating one of the corporation's executives?

A. Those specific facts, I don't believe so.

Q. Okay. Are you aware of any company that has ever forgiven a loan that it made to a corporate affiliate for the purpose of providing compensation to one of its executives?

A. I don't recall any, no.

MR. MORRIS: Okay. I have no further questions.

MR. AIGEN: I have nothing.

MR. MORRIS: Okay. Mr. Johnson, thanks again. Have a great weekend.

MR. AIGEN: Thank you, everyone.

oOo

A. Johnson

I, ALAN JOHNSON, the witness herein, do hereby certify that the foregoing testimony of the pages of this deposition to be a true and correct transcript, subject to the corrections, if any, shown on the attached page.

_____

Subscribed and sworn to before me this

_____day of _____,_____.

_____

NOTARY PUBLIC

A. Johnson

C E R T I F I C A T E

I, Bonnie Pruszynski, RPR, RMR, do hereby certify that on May 27, 2022, appeared telephonically before me, ALAN JOHNSON.

I further certify that the said witness was first duly sworn to testify to the truth in the cause aforesaid.

I further certify that the signature of the witness to the foregoing deposition was not specified by counsel.

I further certify that I am not counsel for nor in any way related to any of the parties to this suit, nor financially interested in the action.

IN WITNESS WHEREOF, I have hereunto set my hand this 27TH of May, 2022.

Bonnie A Pruszynski

_____

Bonnie Pruszynski

ERRATA SHEET

Case Name:

Deposition Date:

Deponent:

Pg.	No.	Now Reads	Should Read	Reason
___	___	_____	_____	_____
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_____
Signature of Deponent

SUBSCRIBED AND SWORN BEFORE ME

THIS ____ DAY OF _____, 2022.

_____

(Notary Public) MY COMMISSION EXPIRES:_____

I N D E X

WITNESS PAGE

ALAN JOHNSON

Examination by Mr. Morris 5

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re: HIGHLAND CAPITAL MANAGEMENT, L.P.,[1] Reorganized Debtor.	Chapter 11 Case No. 19-34054 (SGJ)
HIGHLAND CAPITAL MANAGEMENT, L.P., Plaintiff, vs. HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, L.P. Defendant.	Adv. Pro. No. 21-03082 (SGJ)

CERTIFICATE OF SERVICE

I, Aljaira Duarte, depose and say that I am employed by Kurtzman Carson Consultants LLC ("KCC"), the claims and noticing agent for the Reorganized Debtor in the above-captioned case.

On June 1, 2022, at my direction and under my supervision, employees of KCC caused the following document to be served via Electronic Mail upon the service list attached hereto as **Exhibit A**:

- **Notice of Hearing re: Highland Capital Management, L.P.'s Motion for Summary Judgment** [Docket No. 49]

Dated: June 3, 2022

/s/ Aljaira Duarte
Aljaira Duarte
KCC
222 N Pacific Coast Highway, Suite 300
El Segundo, CA 90245

[1] The Reorganized Debtor's last four digits of its taxpayer identification number are (8357). The headquarters and service address for the above-captioned Reorganized Debtor is 100 Crescent Court, Suite 1850, Dallas, TX 75201.

Document Page 2 of 24

EXHIBIT A

Exhibit A
Adversary Service List
Served via Electronic Mail

Description	CreditorName	CreditorNoticeName	Email
Financial Advisor to Official Committee of Unsecured Creditors	FTI Consulting	Earnestiena Cheng, Daniel H O'Brien	Earnestiena.Cheng@fticonsulting.com; Daniel.H.O'Brien@fticonsulting.com
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Counsel for James Dondero, Nancy Dondero, Highland Capital Management Services, Inc. and HCRE Partners, LLC (n/k/a NexPoint Real Estate Partners, LLC)	Stinson LLP	Deborah Deitsch-Perez, Michael P. Aigen	deborah.deitschperez@stinson.com; michael.aigen@stinson.com

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Counsel for Defendant Highland Capital Management Fund Advisors, L.P.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re	§	
	§	**Case No. 19-34054-sgj11**
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	**Chapter 11**
	§	
Debtor.	§	
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	
Plaintiff,	§	
	§	
v.	§	**Adversary No. 21-03082**
	§	
HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, L.P.	§	
	§	
Defendant.	§	

DEFENDANT'S MEMORANDUM OF LAW IN RESPONSE TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

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Defendant Highland Capital Management Fund Advisors, L.P. ("HCMFA" or "Defendant") files this Memorandum of Law in Response to Highland Capital Management, L.P.'s ("Highland Capital" or "Plaintiff") *Motion for Summary Judgment* (the "Motion").

I. Preliminary Statement

1. Once again, Plaintiff submits an almost entirely fact-based Motion in which it daftly attempts to maneuver around the record's evidentiary support for HCMFA's defenses. Plaintiff's central argument is that it does not believe – and therefore, this Court should not believe – Defendant's and other uncontroverted witness testimony that the loans at issue are subject to agreements providing for forgiveness upon the occurrence of certain circumstances. Plaintiff has failed to meet its initial burden of pointing out the absence of evidence supporting HCMFA's case, and thus, Plaintiff's Motion must be denied. Plaintiff's assertion that "there is a complete absence of evidence to support HCMFA's conjured affirmative defenses" is demonstrably false and misleading.[1] Indeed, the very fact that Plaintiff's principal argument is that "HCMFA's assertions are so weak that the Court must grant [Plaintiff's] Motion" is a concession that the case turns on disputed genuine issues of material fact, regardless of how loudly or snidely Plaintiff avows disbelief. Plaintiff's disdain for Defendant's defenses does not equate to an absence of evidence. Defendant's affirmative defenses are supported by facts and evidence in both Plaintiff and Defendant's Appendices, and the Court – when viewing the evidence in the light most favorable to the Defendants – must deny Plaintiff's Motion. Plaintiff's Motion is essentially its closing argument at trial – arguing that Plaintiff's version of the facts should be accepted over Defendant's version – rather than a motion for summary judgment, as it is based almost entirely on the credibility of disputed facts and lacks authorities addressing the legal sufficiency of Defendant's

[1] Motion, ¶ 3.

evidence. In this Response, Defendant directs the Court to summary judgment evidence supporting its defenses that create genuine issues of material fact requiring the Court to deny Plaintiff's Motion.

II. Statement of Facts

A. Procedural Background.

2. Defendants generally agree with Plaintiff's recitation of procedural background recited in its Motion.[2] The procedural history, however, is not relevant to this Response.

B. The Promissory Notes.

3. Plaintiff issued two demand promissory notes to HCMFA, one in 2014 and one in 2016 (the "2014 Note" and the "2016 Note" respectively, and collectively, the "Notes").[3] Defendant does not dispute the amounts or the existence of the Notes as Plaintiff has recited and referenced them.[4]

C. Plaintiff Agreed to Forgive the Notes Upon Fulfilment of Conditions Subsequent.

1. The Agreements to Forgive the Notes.

4. The Highland Capital Limited Partnership Agreement (the "LPA") authorized the Dugaboy Family Trust ("Dugaboy") to approve compensation for the General Partner and Affiliates of the General Partner. Specifically, the LPA provides, in pertinent part:

> (a) "Compensation. The General Partner and any Affiliate of the General Partner shall receive no compensation from the Partnership for services rendered pursuant to this Agreement or any other agreements *unless approved by a Majority Interest*."[5]

The LPA defines the relevant actors in the Compensation provision as follows:

---

[2] Motion, ¶¶ 6-20.
[3] Def. Ex. 4, Declaration of James Dondero, dated June 30, 2022 ("J Dondero Dec."), ¶¶ 5-6, Def. Appx. 304-305.
[4] Motion, ¶ 21.
[5] Pl. Ex. 30, 4th LPA, § 3.10(a) (emphasis added), Pl. Appx. 00622 (emphasis added).

> **"'Majority Interest'** means the owners of more than fifty percent (50%) of the Percentage Interests of Class A Limited Partners."[6]
>
> ***"'Class A Limited Partners'*** means those Partners holding a Class A Limited Partnership Interest, as shown on Exhibit A."[7]
>
> **Exhibit A** reflects "The Dugaboy Investment Trust" as a Class A Limited Partner owning 74.4426% of the Class A Limited Partnership Interests.[8]

Jim Dondero served as the Dugaboy Trustee from October, 2010 to August 26, 2015, and Nancy Dondero has been the Dugaboy Trustee from October 14, 2015 to present day.[9] Thus, Jim Dondero represented the "Majority Interest," and was the individual entitled to approve compensation under the LPA at the time the 2014 Agreement (defined below) was made, and Nancy Dondero was the individual entitled to approve compensation under the LPA at the time the 2016 Agreement (defined below) was made.

5. In December of 2014 or January of 2015, Jim Dondero – on behalf of Defendant and on behalf of Plaintiff as representative for a majority of Class A shareholders at that time – entered into an agreement that Plaintiff would forgive the 2014 Note upon the fulfilment of certain conditions subsequent (the "2014 Agreement").[10] Specifically, if certain portfolio companies were sold for greater than cost – namely, Trussway, Cornerstone, or MGM – the Notes would be forgiven.[11] Nancy Dondero was subsequently appointed the Dugaboy Trustee on October 14, 2015, making her the majority of Class A shareholders from that point to present day.[12] In either December of 2016 or January of 2017, Jim Dondero on behalf of Defendant and Nancy Dondero

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[6] *Id.*, § 2.1, Pl. Appx. 00612.
[7] *Id.*, § 2.1, Pl. Appx. 00610.
[8] *Id.*, Exhibit A, line 5, Pl. Appx. 00639.
[9] Def. Ex. 4, J. Dondero Dec. ¶ 9, Def. Appx. 305-306; Def. Ex. 4-A, Nancy Dondero's Acceptance of Appointment of Family Trustee for the Dugaboy Family Trust effective October 14, 2015, Def. Appx. 313-318.
[10] Def. Ex. 4, J. Dondero Dec. ¶ 13, Def. Appx. 307..
[11] *Id.*
[12] *Id.*, ¶ 9, Def. Appx. 305-306.

in her capacity as Dugaboy Trustee entered into an identical Agreement subsequent to the issuance of the 2016 Note (the "2016 Agreement," and together, the "Agreements").[13]

6. The Agreements benefitted Plaintiff on two fronts. First, Jim Dondero forwent opting to increase his own salary with cash compensation in accordance with § 3.10 of the LPA, as he would have been allowed to do.[14] Instead, Jim Dondero elected to make his potential compensation conditional upon his own successful performance, and Plaintiff benefitted from the Agreements by not paying Jim Dondero higher base compensation, something Jim Dondero thought was "great for the [Plaintiff] at the time," and "reduces other compensation [that he would have otherwise taken]."[15] Second, the Agreements served as an incentive for Jim Dondero to work particularly diligently on the sale of the portfolio companies and to make sure they were successful.[16] This incentive benefitted Plaintiff by maintaining its profitability and reputation across the industry for successful performance as a private equity firm.[17] The Agreements acted to motivate and retain Jim Dondero as Plaintiff's employee.[18] In sum, Plaintiff benefited from the Agreements by: (i) not paying Jim Dondero a higher base compensation, and (ii) receiving more focused and dedicated work from Jim Dondero in his efforts to make the portfolio companies more profitable.

2. Forgivable Loans as Compensation.

7. Contrary to Plaintiff's assertion that "[Plaintiff] did not have a 'practice' of forgiving loans," it was not uncommon for Plaintiff to provide executives with forgivable loans as

[13] Def. Ex. 4, J Dondero Dec., ¶ 15, Def. Appx. 308.
[14] Def. Ex. 4, J Dondero Dec., ¶ 13, Def. Appx. 307.
[15] Pl. Ex. 96, James Dondero 5/28/21 Tr. 182:2-18, Pl. Appx. 01660; Def. Ex. 4, J Dondero Dec., ¶13, Def. Appx. 307.
[16] *Id.*
[17] Def. Ex. 4, J Dondero Dec., ¶ 13, Def. Appx. 307.
[18] *Id.*

compensation.[19] Along with Jim Dondero, several of Plaintiff's executives received loans that were forgiven, including Mike Hurley, Tim Lawler, Pat Daugherty, Jack Yang, Paul Adkins, Gibran Mahmud, Jean-Luc Eberlin, and Appu Mundassery.[20] Defendant provides this Court with a sworn declaration from Michiel Hurley – an executive who founded Incline Capital ("Incline") – who personally benefitted from a loan forgiven by HCMFA:

> 5. As part of this [advisory] relationship [with HCMFA], Incline and HCMFA had a fee sharing arrangement, which is usual and customary in relationships such as these. Due to a loss of assets under management ("AUM") in the Fund, the level of fee income generated was materially less than when Incline and HCMFA initially entered into the agreement.
>
> 6. When this unexpectedly occurred, Incline was advanced funds from HCMFA as an advance on fees that we believed would be earned in the future. It was both parties' expectation that these advances would eventually be paid back by Incline once the Fund regained its AUM.
>
> 7. In 2013, Jim Dondero, on behalf of HCMFA, agreed to forgive this debt, which was owed by Incline to HCMFA. At that time, approximately $435,000 was owed to HCMFA and forgiven. Because I was the founder and owner of Incline and because it was a pass-through entity for tax purposes, I would have been personally responsible for this debt. Therefore, the forgiveness of this debt benefitted me individually.[21]

8. Plaintiff's corporate representative, James Seery, confirmed that several of the above-named individuals (including Michiel Hurley) received loans that were forgiven in the past.[22] Using forgivable loans to compensate Jim Dondero made sense for Plaintiff, as Jim

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[19] Motion, ¶ 95; Def. Ex. 4, J Dondero Dec., ¶ 11, Def. Appx. 306; Pl. Ex. 98, Jim Dondero 10/29/21 Tr. 424:4-8, Pl. Appx. 01777.

[20] Def. Ex. 4, J Dondero Dec., ¶ 11, Def. Appx. 306; Pl. Ex. 24, Jim Dondero's Objections and Responses to Plaintiff's Requests for Admission, Interrogatories, and Requests for Production, Pl. Appx. 00526; Pl. Ex. 194, Kristin Hendrix 10/27/21 Tr. 109:7-22, Pl. Appx. 03154; Pl. Ex. 195, David Klos 10/27/21 Tr. 106:6-22, Pl. Appx. 03208; Pl. Ex. 101, Alan Johnson (Expert) 11/2/21 Tr. 212:4-25, Pl. Appx. 02011.

[21] Def. Ex. 6, Declaration of Michiel Hurley ("Hurley Dec.") ¶¶ 5-7, Def. Appx. 383.

[22] Pl. Ex. 101, Alan Johnson (Expert) 11/2/21 Tr. 94:21-96:22, Pl. Appx. 01982; Def. Ex. 3-A, Deposition of James P. Seery, Jr. (177:19-178:5), Def. Appx. 141-142.

Dondero was undercompensated in his position compared to other similarly-situated contemporaries at comparable investment firms.[23]

3. The LPA Does Not Prohibit the Agreements.

9. Plaintiff's assertion that "[t]he [] Agreements were not authorized under the [LPA]" is an inaccurate representation of the LPA, and is a last ditch attempt to conjure another meritless new argument that was never once raised throughout the Notes Litigation.[24] Plaintiff claims, without any analysis or explanation, that "the Limited Partners only have authority to approve agreements for compensation, not to execute them[,]" citing to Article 3.10(a) of the LPA, which is dictated *supra*, C.1.[25] Even from the most scrutinous reading of Article 3.10(a)'s plain language, no restriction exists on Limited Partners to "execute" any agreements as Plaintiff would have this Court believe. Rather, the LPA simply requires the Majority Interest to approve compensation agreements.[26] Not the Limited Partners, not the General Partner, but only the Majority Interest's approval is required under the LPA. Thus, Plaintiff's claim that "Dugaboy was not authorized to enter into [the Agreements] on behalf of HCMLP" has no support in the language of the LPA.[27]

10. Plaintiff misconstrues the plain language of the LPA in another way, asserting that the Agreements "have to be in writing,"[28] pointing only to the LPA's Notice provision in Article 6.2, which contains no such requirement. Rather, Article 6.2 concerns only certain notices under the LPA:

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[23] Def. Ex. 4, J Dondero Dec., ¶ 11, Def. Appx. 306; Pl. Ex. 101, Alan Johnson (Expert) 11/2/21 Tr. 160:10-161:3; 218:12-222:14, Pl. Appx. 02013-02014; Def. Ex. 3-B, Deposition of Bruce McGovern Tr. 24:7-25:4, Def. Appx. 193 (providing expert testimony that the Agreements did not create taxable income for Jim Dondero).
[24] Motion, ¶ 89.
[25] *Id*.
[26] Pl. Ex. 30, 4th LPA, § 3.10(a), Pl. Appx. 00622.
[27] Motion, ¶ 89.
[28] *Id*.

> **"6.2. Addresses and Notices.** Any notice, demand, request, or report required or permitted to be given or made to a Partner under this Agreement shall be in writing. . . ."[29]

When Articles 3.10(a) and 6.2 are read together, it is clear that there is no requirement that an agreement to increase compensation or agreement by the Majority Interest to approve such an increase be in writing.[30] Plaintiff has not pointed to any provision in the LPA demonstrating otherwise and has not and cannot plausibly contend that the Agreements are "notices, demands, requests or reports required or permitted to be given or made to a Partner under the LPA." Plaintiff's assertion that the LPA's Notice provision requires an adjustment to compensation to be in writing (when the plain language demonstrates otherwise) shows that Plaintiff is willing to say just about anything in its effort to win summary judgment. That speaks volumes about Plaintiff's credibility, not Defendant's.

11. Finally, Plaintiff raises Article 4.1(e)(ii) of the LPA as a basis for summary judgment. Article 4.1(e)(ii) provides:

> **"[Article 4.1] (e)(ii).** The General Partner or any of its Affiliates may enter into an agreement with the Partnership to render services, including management services, for the Partnership. Any *service rendered* for the Partnership by the General Partner or any Affiliate thereof shall be on terms that are fair and reasonable to the Partnership."[31]

12. As a preliminary matter, Plaintiff's contention that that the Agreements were not "fair by any objective standard," citing Article 4.1(e)(ii) of the LPA, does not say anything one way or the other about whether the Agreements were made.[32]

13. To the extent Plaintiff is asking the Court not to enforce the Agreements because they are "not fair," that is ***not*** a claim plead in Plaintiff's complaint and the LPA does not define

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[29] Pl. Ex. 30, 4th LPA, § 6.2, Pl. Appx. 00633.
[30] *See* Pl. Ex. 30, 4th LPA, Pl. Appx. 00605-641.
[31] *Id.* (emphasis added).
[32] Motion, ¶ 89.

fairness, making the issue one of fact,[33] even if it was plead, which it was not. In any event, as "fairness" was not plead as a basis to enforce the loans, it cannot be a basis to grant summary judgment.

4. Dugaboy Was Entitled to Make the 2014 Agreement Regardless of Who Was Trustee.

14. Jim Dondero was not "forced to change his tale again" when he recalled during live testimony that he entered into the 2014 Agreement as the Dugaboy Trustee.[34] While opposing counsel questioned Jim Dondero about an Agreement that occurred more than seven years ago, Plaintiff points to Jim Dondero's testimony that:

> Q: Okay. So is it fair to say that paragraph 41 [of Defendant's Original Answer] is not accurate to the extent that it states or suggests that Nancy Dondero entered into the [2014 Agreement]?
>
> A: . . . . .
>
> I can't recall the 2014 note being prior to the 2016 discussion or not or if – this 2014 [note] was a small note; so was [the] 2016 [note] for that matter. I can't – I can't remember if she would have been involved in the '14 note or [if] the '14 note was part of the 2016 conversation.[35]

Opposing counsel's contrived efforts to portray Jim Dondero as changing his narrative for the 2014 Agreement "at the last second" fail because Jim Dondero had already clarified the identity of the parties to the 2014 Agreement just minutes earlier at the same deposition:

> Q: Having seen – having scrolled through at least the portion of the answer prior to the affirmative defenses, are you aware of anything that is inaccurate in any way in HCMFA's answer?

[33] *See Zell Ins. Agency, Inc. v. Guar. Sec. Ins. Co.*, 399 F.2d 147, 149 (5th Cir. 1968) (holding that, where an interpretation of the understanding of the terms of an agreement are at issue, such an interpretation "is always a question of fact") (citing *Dobson v. Masonite Corporation*, 359 F.2d 921, 923 (C.A.4, 1966)).
[34] Motion, ¶ 97.
[35] Def. Ex. 7-A, J. Dondero Tr. 33:5-18., Def. Appx. 396.

A: I – not specifically other than, as I note below, I was the Dugaboy Trustee in 2014, not Nancy, and so I spoke for Highland re the agreement regarding the 2014 note.[36]

Here, Jim Dondero recalled that it was himself, not Nancy Dondero, that served as Dugaboy Trustee in 2014 just moments prior to the quote Plaintiff relies on for its Motion. Throughout both this litigation and the Main Notes Litigation,[37] Jim Dondero has never once varied from his position that it was the Dugaboy Trustee who entered into the Agreements.[38] Thus, the adequacy of Jim Dondero's recollection of who served as Dugaboy Trustee seven years ago does not affect the existence of the 2014 Agreement, especially because Nancy Dondero not only recalled the 2016 Agreement, but also that Jim told her about 2014 Agreement when they discussed the 2016 Agreement, explaining why Mr. Dondero's recollections about events so many years ago would not be as sharp.[39]

15. Further, Jim Dondero provides the Court with declaration testimony disputing Plaintiff's characterization of Jim Dondero's refreshed memory as some type of contrived ruse devised to mislead the Court:

> 14. I understand that Plaintiff takes issue with the fact that I recently remembered that I was actually the Dugaboy Trustee when the 2014 Agreement was made, characterizing my recollection as some kind of last-second surprise revelation. I simply did not think about the exact time frame during which I was the Dugaboy Trustee until around the time of my deposition on May 5, 2022 – about seven years after the 2014 Agreement was made.[40]

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[36] *Id*., 29:6-13, Def. Appx. 395.
[37] "Main Notes Litigation" is a defined term in Plaintiff's Motion, ¶ 13.
[38] Main Notes Litigation, throughout.
[39] Def. Ex. 7-B, N. Dondero Tr. 4/29/22, 22:12-23:4, Def. Appx. 426:
Q: Was there anything substantively different about the conversations you had with your brother regarding the agreement covering the February of 2016 note that was different than the conversations you had with your brother as it pertains to the other [2016] agreement?
A: We're going back a long time, Hayley, obviously, so the memory is a little fuzzy. The only difference that I would imagine, that I think was he would have referenced the note from '14 in the '16 conversation.
Q: What do you mean by "he would have referenced" that note in the conversation?
A: I – he – when we had a conversation in '16, he would have brought up the note in '14 that was also to be forgiven upon the condition subsequent.
[40] Def. Ex. 4, J Dondero Dec., ¶ 14, Def. Appx. 307.

This fact was no surprise to Plaintiff because it possessed the documents – that were on the Highland server – and produced in litigation, showing who was the Dugaboy Trustee in each time period.[41] Plaintiff's attempt to bolster its Motion based on small conflicts in recollections of events many years prior is unavailing because Jim Dondero testified in both his deposition and declaration that he was, in fact, the Dugaboy Trustee for the 2014 Agreement and Nancy Dondero corroborates the occurrence of the 2014 Agreement based upon her recollection of her communications with Jim Dondero about the 2016 Agreement.

5. The Agreements Were Not "Secret."

16. Plaintiff's assertion that the Agreements were "kept secret" and "never disclosed by Mr. Dondero" is inaccurate and does not serve as proof that the Agreements do not exist..[42] Not only did Jim Dondero file in the Bankruptcy Court – in May of 2020, long before any of the litigation over the notes started – a document disclosing the potential foregivability of all of the Notes, but Jim Dondero also indicated to both Frank Waterhouse and Plaintiff's counsel that the Notes were forgivable.[43] In light of this evidence, Plaintiff simply cannot continue to repeatedly claim that it was entirely unaware of the Agreements or that they were "secret."

17. Specifically, Jim Dondero publicly filed a pleading in this Bankruptcy Court on May 26, 2020 – well before this litigation began – specifically explaining to the Court, as well as any creditors or other parties to the bankruptcy, that the Notes in this adversary proceeding as well as the prior adversary proceedings "were issued by him for funds advanced in lieu of compensation," and that he was providing this notice "in the event that collection efforts are made

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[41] Def. Ex. 4-A, Nancy Dondero's Acceptance of Appointment of Family Trustee for the Dugaboy Family Trust Effective October 14, 2015, Def. Appx. 313-318; *Id.*, Def. Appx. 88-89 (letter indicating Grant Scott's retirement as Dugaboy Family Trustee; Def. Ex. 1-C, Documents showing J. Dondero proof of service as Family Trustee for the Dugaboy Family Trust and subsequent resignation, Def. Appx. 32-72;; Pl. Ex. 100, Nancy Dondero 10/18/21 Tr. 22:13-15, Pl. Appx. 01880; Pl. Ex. 98, Jim Dondero 10/29/21 Tr. 400:8-19, Pl. Appx. 01771.
[42] Motion, ¶ 98.
[43] Def. Ex. 4, J Dondero Dec., ¶ 19 Def. Appx. 309.

to collect the Notes."[44] This pleading (specifically Schedule A thereof) put Plaintiff (as well as everyone else in the world) on notice that Jim Dondero believed that the funds provided pursuant to the Notes were potentially forgivable as compensation and thus he did not expect any effort to collect on the notes unless and until it became impossible for the conditions subsequent to be satisfied. The language in this pleading is entirely inconsistent with Plaintiff's conspiracy-based theory that the Agreements were kept secret. That Schedule A does not detail the agreements or the nature of the triggering events does not diminish its value as notice of the most extreme case for Plaintiff-Debtor – that the Notes could in fact be forgiven in their entirety.

18. Further, well before these proceedings, Jim Dondero told Frank Waterhouse, the Debtor's Chief Financial Officer, that there were "mechanisms in place for forgiving the Notes, or for having them considered as compensation and not being an asset to the Debtor's estate."[45] Further, on February 1, 2021, counsel for Jim Dondero – the late Judge Michael Lynn – informed opposing counsel that "[a]s you are aware, in addition to other defenses, Mr. Dondero views the notes in question as *having been given in exchange for loans by Highland made in lieu of compensation to Mr. Dondero*."[46] Although that correspondence did not detail every facet of the Agreements, it alerted Debtor to Defendants' position that the Notes were potentially forgivable, which Debtor did not question. Therefore, because Jim Dondero: (i) filed a pleading (prior to any demand) putting the Debtor on notice that the Notes were potentially forgivable as compensation and that he did not expect any effort to collect on the note until such forgiveness could not happen,

[44] Def. Ex. 4-D, Proof of Claim No. 188, dated May 26, 2020, Ex. A, Def. Appx. 367. While the Proof of Claim was withdrawn, the information contained in Schedule A remained part of the Bankruptcy Record.
[45] Pl. Ex. 99, James Dondero 11/4/21 Tr. 167:10-16, Pl. Appx. 01854; Def. Ex. 4, J Dondero Dec., ¶ 17, Def. Appx. 308.
[46] Def. Ex. 1-D, Letter to Pachulski Stang Ziehl & Jones, LLP, Def. Appx. 74 (emphasis added).

and (ii) told Frank Waterhouse about their potential forgiveness, Plaintiff cannot argue that it was unaware of the Agreements' existence or that it was "kept secret."

19. Jim Dondero did not disclose the Agreements to the financial auditors at Highland Capital because such disclosure was unnecessary.[47] Plaintiff's claim that "[t]here were no 'material' transactions or agreements that were not recorded in the [Plaintiff's] financial statements," regarding the Notes is – contrary to Plaintiff's argument – consistent with HCMFA's position that the Agreements were not material enough to be disclosed.[48] Indeed, in light of Highland Capital's sizable financial assets, potential Note forgiveness under the Agreements was *de minimis.*[49] Such a disclosure was not considered material, and would have been unwarranted.[50] And, of course, whether the Agreements were disclosed to the financial auditors – or anyone else for that matter – has no bearing on whether the Agreements are legally enforceable.

20. Plaintiff's claim in ¶ 37 of its Motion that: "[i]f PwC had learned before June 3, 2019, at any of the Notes (a) might not be collectible, or (b) might be forgiven, or (c) was amended, or (d) would be extinguished based on the fulfillment of certain conditions subsequent, it would have required that fact to be disclosed," is demonstrably untrue, as cross-examination testimony from Peet Burger of PwC – the testimonial basis for Plaintiff's position – concedes.[51] On cross examination, Burger confirmed that disclosure of the Agreements would only have been required when the Notes were *actually forgiven*, not that they *might* be forgivable.[52] Thus, Peet Burger

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[47] Def. Ex. 4, J Dondero Dec., ¶ 16, Def. Appx. 308.
[48] Motion, ¶ 34.
[49] Def. Ex. 4, J Dondero Dec., ¶ 16, Def. Appx. 308.
[50] *Id.*
[51] Motion, ¶ 47, citing the Deposition of Peet Burger (74:19-76:12), Pl. Appx. 1571.
[52] Pl. Ex. 94 Peet Burger 7/30/21 Tr. 78:11-79:13, Pl. Appx. 01572:

Q: And I want to focus on this. I know these are [Plaintiff's counsel's] questions, so it may not have been your language, but you were asked if it [the loans] might be forgiven. What does that mean to you? Are we talking about is there a difference for you if there was a 1 percent chance that something would be forgiven or a 90 percent chance of it being forgiven?

very quickly changed his position and conceded that he misunderstood Plaintiff's counsel's question when he gave the quote that forms the basis of Plaintiff's Motion, ¶ 37. Plaintiff is fully aware of the recantation, making its use of a demonstrably false statement in its Motion a concession of the Motion's lack of merit.

6. HCMFA Was Entitled to and Did Make Prepayments.

21. Plaintiff's lengthy discussion about whether and how much of the Notes' principal or interest was prepaid is not proof that the Agreements do not exist, but is rather an issue of fact for the jury.[53] Indeed, the Notes each allowed for HCMFA to make prepayments at its own discretion,[54] and HCMFA did make prepayments to reduce the overall potentially forgivable obligation.[55] However, because the Agreements made the Notes *potentially* forgivable, no guarantee existed that the conditions subsequent would ever occur forgiving the Notes. If none of the assets were ever sold for above cost, HCMFA would have been liable for the original balance of the Notes. Therefore, the simple fact that HCMFA made some prepayments on the Notes bears no relevance on whether or not the Agreements existed, and Plaintiff cites no authority to the contrary. This is all the more so given Mr. Dondero's testimony that he was always watchful of HCM's financial picture and would pay down (or cause to be paid down) loans when HCM needed cash, regardless of whether the loan paid down was actually due:

> 21. . . . . In addition, I was always watchful that HCM had the funds it needed for its operations and obligations. Therefore, even when certain Notes were not

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A: If we learned about something, let's say, we learned [it] might be forgiven, that would have resulted in additional audit work. *The question I understood to be and the answer I gave was if something happened where there was an event that actually occurred before or on June 3rd, we would have required disclosure.*

Q: Got it. So is it fair to say that in response to all of [Plaintiff's counsel's] questions about what would have been required to be disclosed, in your mind he was referring those events or items have *actually occurred* and the notes being *actually forgiven* at that point in time; is that correct?

Q: I didn't hear your answer.

A: Correct.

[53] Motion, ¶¶ 69-74, 98.

[54] Pl. Ex. 226, HCMFA Promissory Note in the amount of $4m dated February 26, 2014, Pl. Appx. 5029-5031; Pl. Ex. 227, HCMFA Promissory Note in the amount of $2.3m dated February 26, 2016, Pl. Appx. 5032-5034.

[55] Motion, ¶ 98 ("HCMFA paid almost $4 million dollars against the obligations due under the [Notes]").

required by their terms to be paid down, I caused payments to be made for HCM's benefit.[56]

7. Jim and Nancy Dondero Provide Sworn Deposition Testimony and Declarations Evidencing the Agreements.

22. Throughout this litigation, Plaintiff has taken the position that the Agreements are fabricated and lack any evidence of their existence.[57] However, Jim and Nancy Dondero have consistently testified under oath that the Agreements took place, exist, and are valid.[58] Further, both Jim and Nancy Dondero have provided this Court with declarations swearing to the Agreements' factual existence:

> 13. At either the end of 2014 or the beginning of 2015, I – acting on behalf of Dugaboy for HCM and also on behalf of HCMFA – entered into an agreement (the "2014 Agreement") that HCM would not collect on the 2014 Note if certain events occurred. Specifically, if one of three portfolio companies – either MGM, Cornerstone, or Trussway – were sold for above cost, or sold in a circumstance outside of my control, HCM agreed that the 2014 Note would be forgiven.[59]
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> 7. In either December of 2016 or January of 2017, I caused Dugaboy (solely in my capacity as Dugaboy's Family Trustee) to cause HCM to enter into an agreement with HCMFA that provided that the repayment obligation on the 2016 Note would be forgiven if HCM sold any of Trussway, Cornerstone, or MGM for a price greater than its cost, or if any of those portfolio companies were sold in a circumstances that was outside of Jim Dondero's control (the "2016 Agreement"). I fully understood the implications and terms of the 2016 Agreement. At the time we made the 2016 Agreement, Jim told me about the substantially the same agreement Dugaboy made with respect to the 2014 Note.[60]

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[56] Def. Ex. 4, J. Dondero Dec., ¶ 21, Def. Appx. 310; *see also* Declaration of David Klos in Support of [Plaintiff's Motion], Ex. C (showing Note payments made by HCMFA); Pl. Ex. 113, Payment from HCMFA dated 05/29/19, Pl. Appx. 2246-2259; Pl. Ex. 114, Payment HCMFA dated 09/05/19, Pl. Appx. 2260-2263; Pl. Ex. 115, Payment from HCMFA dated 10/03/19, Pl. Appx. 2264-2274; Pl. Ex. 123, Payments from HCMFA and NPA dated 06/04/19, Pl. Appx. 2332-2341; Pl. Ex. 228, Payment from HCMFA dated 12/28/21, Pl. Appx. 5035-5039; Pl. Ex. 229, Payment from HCMFA dated 09/01/16, Pl. Appx. 5040-5043; Pl. Ex. 230, Payment from HCMFA dated 04/12/17, Pl. Appx. 5044-5048.

[57] Motion, ¶¶ 76-78.

[58] Pl. Ex. 100, Nancy Dondero 10/18/21 Tr. 162:22-163:8, Pl. Appx. 01915; Pl. Ex. 96, James Dondero 5/28/21 Tr. 176:20-177:5, Pl. Appx. 01659; Def. Ex. 4, J Dondero Dec., ¶¶ 13-15, Def. Appx. 306-307; Def. Ex. 2, N Dondero Dec., throughout, Def. Appx. 77-85.

[59] Def. Ex. 4, J Dondero Dec., ¶ 13, Def. Appx. 307.

[60] Def. Ex. 5, N. Dondero Dec., ¶ 7, Def. Appx. 373.

Defendants refer the Court to the declarations and deposition testimony of Jim Dondero and Nancy Dondero to demonstrate that the Agreements exist, and Plaintiff's assertion that "no reasonable trier of fact can find that the [] Agreement[] existed" is simply inconsistent with the summary judgment evidence.

III. Argument and Authorities

A. Legal Standard.

23. Plaintiff suggests that there is a separate or independent summary judgment standard for promissory notes.[61] The fact that the elements of breach of promissory note differ slightly from breach of contract in no way lessens Plaintiff's burden of proving there are no genuine issues of material fact.[62] *Looney v. Irvine Sensors Corp*, CIV.A.309-CV-0840-G, 2010 WL 532431 at 2 (N.D. Tex. Feb. 15, 2010) (noting that, although the elements for breach of a promissory note differs from traditional breach of contract, "[s]ummary judgment is proper when the pleadings, depositions, admissions, disclosure materials on file, and affidavits, if any, what that there is no genuine issue as to any material facts and that the moving party is entitled to judgment as a matter of law").

24. Plaintiff's Motion is a "no-evidence" motion, arguing that "there is a complete absence of evidence to support HCMFA's. . .affirmative defenses."[63] Therefore, the Court may only grant Plaintiff's Motion if: ". . . (1) there is a complete absence of evidence of a vital fact, (2) the court is barred by rules of law or of evidence from giving weight to the only evidence offered to prove a vital fact, (3) the evidence offered to prove a vital fact is no more than a mere scintilla,

[61] Compare, Motion, III. A. 1: "Summary Judgment Standard" with III. A. 2: "Summary Judgment Standard for Promissory Notes."
[62] Motion, ¶ 132 (under the heading: "Summary Judgment Standard for Promissory Notes").
[63] Motion, ¶ 3.

or (4) the evidence conclusively establishes the opposite of the vital fact."[64] *Dorsett v. Hispanic Hous. & Educ. Corp.*, 389 S.W.3d 609, 613 (Tex. App.—Houston [14th Dist.] 2012, no pet.) (citing *City of Keller v. Wilson*, 168 S.W.3d 802, 816 (Tex. 2005)). In *Dorsett*, the plaintiff responded to defendant's no-evidence motion for summary judgment to dismiss a breach of promissory note case with only her own affidavit and a document prepared on defendant's letterhead titled "Promissory Note." *Id.* On appeal, the court found that plaintiff's affidavit and exhibit alone were "sufficient to raise a question of fact as to each element of her cause of action [challenged by the defendant]," and reversed the lower court's decision granting defendant's no-evidence motion for summary judgment. *Id.* at 614.

25. When considering a motion for summary judgment, the court must view the evidence in the light most favorable to the non-movant and draw all reasonable inferences in favor of the non-movant.[65] To determine whether a genuine dispute exists such that the case must be submitted to a jury, not only must courts consider all of the evidence in the light most favorable to the non-moving party, and draw all reasonable inferences in favor of the non-moving party, it must also refuse to make credibility determinations or weigh the relative strength of the evidence, and disregard all evidence favorable to the movant that the jury would not be required to believe.[66] *Al-Saud v. Youtoo Media, L.P.*, 3:15-CV-3074-C, 2017 WL 3841197, at *2 (N.D. Tex. Mar. 15, 2017) (citing *Haverda v. Hays County*, 723 F.3d 586, 591 (5th Cir. 2013)).

26. In *Al-Saud*, plaintiff moved for summary judgment for – among other issues – breach of contract concerning the refund of a $3,000,000 down payment made on a loan pursuant

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[64] *Dorsett v. Hispanic Hous. & Educ. Corp.*, 389 S.W.3d 609, 613 (Tex. App.—Houston [14th Dist.] 2012, no pet.) (citing *City of Keller v. Wilson*, 168 S.W.3d 802, 816 (Tex. 2005)).
[65] *Envtl. Conservation Org. v. City of Dallas, Tex.*, 529 F.3d 519, 524 (5th Cir. 2008); *Yaquinto v. Segerstrom (In re Segerstrom)*, 247 F.3d 218, 223 (5th Cir. 2001); *Samuel v. Holmes*, 138 F.3d 173, 176 (5th Cir. 1998).
[66] *Al-Saud v. Youtoo Media, L.P.*, 3:15-CV-3074-C, 2017 WL 3841197, at 2 (N.D. Tex. Mar. 15, 2017) (citing *Haverda v. Hays County*, 723 F.3d 586, 591 (5th Cir. 2013)).

to a letter of intent. *Al-Saud*, 3:15-CV-3074-C, 2017 WL 3841197 at *4. Defendant responded by "pointing out that the Letter of Intent allows for [repayment of the down payment] 'through a mechanism which is to be agreed upon between the Parties. . .[,]'" and that defendant and plaintiff "agreed to a mechanism that would repay [plaintiff]" by means other than a payment in cash, although the agreement to repay the plaintiff "does not clearly require repayment in cash, or even full repayment by a specified date." *Id*. The court noted that "[contrary to plaintiff's claims that there exists no genuine issue of material fact], it appears that there is a fact question concerning whether the parties agreed to an alternative payment mechanism, and whether [defendant] has complied with its repayment obligations[,]" and that "[t]hese questions [of fact] *must be decided by a jury*." *Id*. (emphasis added). The court denied plaintiff's motion for summary judgment on this issue, finding issues regarding the vague terms and mechanisms of repayment under an agreement – when contested by the parties thereto – raise genuine issues of material fact that must be decided by a jury.

27. "The duty of the Court hearing [a] motion for summary judgment is to determine if there are any issues of fact to be tried, and *not* to weigh the evidence or determine its credibility," and "[a]ll doubts as to the existence of a genuine issue as to a material facts *must be resolved against the party moving for a summary judgment*."[67] "The general rule is that if a motion involves

[67] *Gulbenkian v. Penn.*, 151 Tex. 412, 416, 252 S.W.2d 929, 931 (1952) (emphasis added); s*ee also Reeves v. Sanderson Plumbing Prod., Inc*., 530 U.S. 133, 148, 120 S. Ct. 2097, 2109 (2000) (Supreme Court reversed judgment because the Court of Appeals concluded that certain circumstances so overwhelmed the evidence favoring petitioner that no rational trier of fact could have found that petitioner was fired because of his age in employment discrimination case. The Court of Appeals impermissibly substituted its judgment concerning the weight of the evidence for the jury's);
LegacyRG, Inc. v. Harter, 705 F. App'x 223, 230 (5th Cir. 2017) (Fifth Circuit remanded the case because there was a genuine issue of material fact as the district court erred by crediting plaintiff's affidavit and rejecting defendant's. Because the facts contained in each affidavit were critical in each claim, the grant of summary judgment was improper, and a genuine issue of material fact existed); *Porter v. Houma Terrebonne Hous. Auth. Bd. of Comm'rs*, 810 F.3d 940, 942-43 (5th Cir. 2015) (Fifth Circuit reversed district court's grant of summary judgment because the nonmovant presented a substantial conflict of competent summary judgment evidence); *Science Spectrum, Inc. v. Martinez*, 941 S.W.2d 910, 911 (Tex. 1997) (Texas Supreme Court affirmed and remanded Court of Appeals finding of genuine issue of material fact on the grounds that movant did not address all allegations in its motion).

the credibility of affiants or deponents, or the weight of the showings [of fact] or, it is said, a mere ground of inference, *the motion will not be granted*."[68] The Fifth Circuit adheres to the high standard that "[t]he burden [at summary judgment] is on the moving party [], to show that there is '*not the slightest doubt* as to the facts and that only the legal conclusion remains to be resolved."[69]

B. Plaintiff is Not Entitled to Summary Judgment because Defendant Raises Genuine Issues of Material Fact with its Defenses.

1. The Evidence Shows that the Agreements Exist.

28. Plaintiff once again levies a laundry list of factual contentions against Defendant – most of which are irrelevant – that it tries to pass of as conclusive proof requiring summary judgment. Plaintiff argues that ". . .no reasonable trier of fact can find that the [] Agreements ever existed[,]" because: (a) Jim Dondero "failed to declare the Notes forgiven" when MGM stock was sold in November 2019, (b) "Ms. Dondero was not competent to enter into the 2016 [] Agreement[s], (c) "[t]he [] Agreements were not authorized under the [LPA]," (d) the Agreements were "kept secret and were never disclosed," (e) "[n]o document exists that reflects the existence or terms of the [] Agreements," (f) the Agreements are "unenforceable for lack of consideration," (g) Jim Dondero "fixed the terms of the [] Agreements without negotiation," (h) "Highland did not have a 'practice' of forgiving loans," (i) Jim Dondero's contention that he entered into the 2014 Agreement "contradicts HCMFA's Answer and was contrived at the last second," (j) HCMFA made prepayments under the Notes, and (k) "HCMFA's expert [Alan Johnson] never advised a company to forgive an affiliate loan [as compensation]."[70] These are simply closing

[68] *Gulbenkian v. Penn.*, 151 Tex. 412 at 417, 252 S.W.2d 929 at 932 (emphasis added).
[69] *Clark v. W. Chem. Products, Inc.*, 557 F.2d 1155, 1157 (5th Cir. 1977) (quoting *Insurance Co. of North America v. Bosworth Const. Co.*, 469 F.2d 166, 1267 (5th Cir. 1972)) (emphasis added).
[70] Motion, ¶ 100.

arguments that address credibility of evidence and are properly made at trial, not at summary judgment.

a. Jim Dondero Not Declaring the Notes "Forgiven" upon the Sale of a Small portion of HCM's MGM Shares is Not Probative of Whether the Agreements Exist.

29. Plaintiff provides no legal authority (nor have Defendants located any) supporting its peculiar argument that the fact that Mr. Dondero did not declare the Notes forgiven when, in late 2019, HCM sold a small amount of MGM shares under what was effectively duress is somehow evidence that the Agreements do not exist. Its argument simply makes no sense.

30. Moreover, Plaintiff is estopped from arguing that Jim Dondero should have declared forgiveness after the November 2019 sale of some shares of MGM because that argument is contradicted by Plaintiff's sworn interrogatory answers. When Defendant requested Plaintiff "[i]dentify any sale or potential sale of any portfolio companies (or a portion of such portfolio companies) owned (wholly or partially) by the [Plaintiff], including, but not limited to, Trussway, MGM and Cornerstone…," Plaintiff responded (after November of 2019) that it "ha[d] not sold Trussway, MGM or Cornerstone.…"[71]

31. With respect to the later sale of all of MGM to Amazon, HCMFA did "declare" forgiveness. As Mr. Dondero testified:

> Q: You're not aware of any discount that was ever applied to the value of the [HCMFA] notes, at least as it concerns HCMFA's balance sheet; is that fair?
>
> A: . . . . I have learned that the financials reflect the sale of MGM to Amazon as of the time it occurred and the dispute between HCMFA and [HCM] over whether that effected forgiveness.[72]

[71] Def. Ex. 1-H, Highland Capital Management, L.P.'s Responses and Objections to Defendants' Joint Discovery Requests, Interrogatory 14, Def. Appx. 299.
[72] Def. Ex. 7-A, J. Dondero Tr. 27:21-28:4, Def. Appx. 395, 409.

32. That is, after the complete sale of MGM to Amazon, liquidating all of HCM's interest in MGM, that event was recorded in HCMFA's books with Defendant's April 2022 vs. March 2022 balance sheet including a footnote stating:

> As of 3/17/2022, the 2/26/2014 and 2/26/2016 notes were discharged due to a portfolio company sale, however, due to active litigation with HCMLP, the note(s) are still reflected on the balance sheet.[73]

33. More importantly, Plaintiff is estopped from arguing that Jim Dondero should have declared forgiveness after the November 2019 small sale of MGM because that argument is contradicted by HCM's sworn interrogatory answers. When – well after November 2019 – Defendant requested Plaintiff "[i]dentify any sale or potential sale of any portfolio companies (or a portion of such portfolio companies) owned (wholly or partially) by the [Plaintiff], including, but not limited to, Trussway, MGM and Cornerstone…," Plaintiff responded that it "ha[d] not sold Trussway, MGM or Cornerstone.…"[74]

b. Nancy Dondero was Competent to Enter into the 2016 Agreement.

34. Plaintiff argues that Nancy Dondero was not "competent" to enter into the 2016 Agreement.[75] The cited evidence has nothing to do with Nancy Dondero's competency to contract (as "competency" is normally understood under Texas law), but instead references various bits of information that Nancy Dondero allegedly lacked when she caused Plaintiff to enter into the 2016 Agreement. Although mislabeled, the Debtor's argument appears to be that the Agreements are unenforceable because they were the product of a unilateral mistake by Nancy Dondero.

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[73] Def. Ex. 4-E, HCMFA's April 2022 vs. March 2022 Balance Sheet, Def. Appx. 368-369.
[74] Def. Ex. 1-H, Highland Capital Management, L.P.'s Responses and Objections to Defendants' Joint Discovery Requests, Interrogatory 14, Def. Appx. 299.
[75] Motion ¶ 87.

35. This argument fails for several reasons. First, Texas law provides that Nancy Dondero gets to determine the information she needed to decide whether to cause Plaintiff to enter into the 2016 Agreement, and the evidence confirms that she had what she needed, as explained below.[76] Second, Plaintiff does not argue or submit any evidence suggesting that Plaintiff – the actual party to the Agreements – lacked any relevant information.[77] Third, a unilateral mistake can invalidate a contract only when it goes to a material term, when enforcement of the contract would be unreasonable, and when the mistake is made despite the exercise of due care.[78] Plaintiff does not even allege any of these elements, much less submit any evidence to support them.

(i) Nancy Dondero Lacking Certain Information Has No Bearing on her Competency to Enter into the 2016 Agreement.

36. The evidence shows that Nancy Dondero had the information she considered necessary and appropriate to cause Plaintiff to enter into the Agreements, and Texas law requires nothing more, as discussed further *infra*, III.B.1.(b)(iii). Plaintiff's assertion that Nancy Dondero should have had more and different information before entering into those Agreements has no legal effect on their validity or enforceability.

(ii) Nancy Dondero Had the Information She Needed to Justify Entering into the 2016 Agreement.

37. Plaintiff's allegation that Nancy Dondero was ignorant of the facts and circumstances giving rise to the 2016 Agreement is not accurate.[79] Specifically, at the time Nancy Dondero caused Plaintiff to enter into the 2016 Agreement, she knew Plaintiff was in the private equity business which included buying and selling portfolio companies, and she knew that it owned

[76] See Section III.B.1.(b)(iii).
[77] See Section III.B.1.(b)(ii).
[78] See Section III.B.1.(b)(iii).
[79] Motion, ¶ 87; Plaintiff also ignores Nancy Dondero's business experience outlined in Def. Ex. 5, N Dondero Dec., ¶ 2 , Def. Appx. 372.

an interest in each of Cornerstone, MGM and Trussway, the portfolio companies involved in the Agreements.[80] She knew that Jim Dondero's annual salary had historically been around $500,000 to $700,000 in the years preceding the 2016 Agreement, and she understood that Jim Dondero was undercompensated as compared to other senior executives in the financial services industry.[81] She also knew that executives in the financial services industry tend to be paid on a bonus or incentive basis.[82] Nancy Dondero knew that potentially increasing Jim Dondero's compensation through contingent loan forgiveness would have less of an impact on Plaintiff's financial condition than requiring it to pay him additional cash in salary or bonus at the time the 2016 Agreement was made.[83]

38. Nancy Dondero was aware that Plaintiff owned an interest in Cornerstone, MGM, and Trussway, the portfolio companies that were involved in the Agreements.[84] Nancy Dondero knew that Plaintiff's business included, among other things, buying and selling portfolio companies or interests in them for a profit.[85] Nancy Dondero also knew that Jim Dondero would the person most involved in, and responsible for, Plaintiff's marketing and eventual sale of Cornerstone, MGM, and Trussway.[86] And Nancy Dondero knew and believed that the Agreements would operate to further motivate and incentivize Jim Dondero to maximize Plaintiff's return on its investments in Cornerstone, MGM, and Trussway.[87] That Nancy Dondero may not have known

[80] *Id.* at ¶ 8, Def. Appx. 373.
[81] *Id.* at ¶ 4, Def. Appx. 372.
[82] *Id.* at ¶ 8, Def. Appx. 373.
[83] *Id.* at ¶ 9, Def. Appx. 373-374.
[84] *Id.* at ¶ 8, Def. Appx. 373.
[85] *Id.*
[86] *Id.*
[87] *Id.* at ¶ 10, Def. Appx. 374.

every detail identified by the Plaintiff has no bearing on whether she had sufficient information to cause Plaintiff to enter into the valid and binding 2016 Agreement.[88]

(iii) Whether Nancy Dondero's Had Detailed Knowledge of HCM's Financials Has No Bearing on the Validity or Enforceability of the 2016 Agreement.

39. Under Texas law, the parties to a contract determine what they need to know before entering into an agreement.[89] The summary judgment evidence confirms that Nancy Dondero knew and understood the nature of the 2016 Agreement, and had all of the information she believed she needed to cause Plaintiff to enter into it.[90] Nancy Dondero did not investigate the additional specifics identified by the Plaintiff because she did not believe she needed that information in order to make an informed and reasonable decision regarding the 2016 Agreement.[91]

40. Nevertheless, Plaintiff seems to argue that the 2016 Agreement should be invalidated under the doctrine of unilateral mistake, arguing that Nancy Dondero was mistaken about, or unaware of, certain facts. Under Texas law, a unilateral mistake is generally not grounds for voiding a contract, and can do so only when (i) the mistake relates to a material term, (ii) the mistake makes enforcement of the contract unreasonable, and (iii) the mistake is made despite the exercise of due care.[92] Plaintiff does not allege the existence of any (much less all) of these conditions, or offer any supporting evidence.

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[88] Plaintiff ignores the fact that Plaintiff was the actual party to the Agreements, and, even if Nancy Dondero lacked specific information, Plaintiff cannot credibly claim that it too lacked that information.

[89] *Ginther-Davis Ctr., Ltd. v. Houston Nat. Bank*, 600 S.W.2d 856, 861 (Tex. Civ. App.—Houston [1st Dist.] 1980, writ ref'd n.r.e) (recognizing that it is presumed that a contracting party has sufficient information to enter into an agreement in Texas).

[90] Def. Ex. 5, N. Dondero Dec. ¶ 10, Def. Appx. 374.

[91] *Id.* The Debtor's claim that Alan Johnson, Jim Dondero's executive compensation expert, would deem Nancy Dondero incompetent to enter into the Agreements is absurd. Mr. Johnson never said this or anything like it. Rather, he testified that he had no awareness of the Agreements and had never ever heard Nancy Dondero's name, other than that she was represented by legal counsel. Pl. Ex. 101, Alan Johnson (Expert) 11/2/21 Tr. 99:5-100:5, Pl. Appx. 01983.

[92] *Armstrong v. Assocs. Int'l Holding Corp.*, No. 3:05-CV-02006-K, 2006 U.S. Dist. LEXIS 70043, **9-10 (N.D. Tex. Sept. 20, 2006) (*citing Ibarra v. Texas Employment Commission*, 823 F.2d 873, 879 (5th Cir. 1987)).

41. Unsurprisingly, Texas law does not permit a party to avoid a contractual obligation when it could have conducted further investigation into the facts and circumstances underlying the contract, but chose not to do so.

> It has been stated that 'though a court of equity will relieve against mistake, it will not assist a man whose condition is attributable to the want of due diligence which may be fairly expected from a reasonable person.' This is consistent with the general rule of equity that when a person does not avail himself of an opportunity to gain knowledge of the facts, he will not be relieved of the consequences of acting on supposition.

Anderson Bros. Corp. v. O'Meara, 306 F.3d 672, 677 (5th Cir. 1962) (internal citation omitted).

42. Nancy Dondero had all of the information she considered necessary to decide whether to cause Plaintiff to enter into the 2016 Agreement.[93] Plaintiff apparently disagrees, listing numerous details and specifics that it believes she should have investigated further.[94] But Texas law does not permit a party to avoid a contract by claiming unilateral mistake when that party has conducted the due diligence it considered appropriate and necessary prior to entering into that contract. *Id.* This is exactly what happened here, and these facts cannot support a finding that the 2016 Agreement was – as a matter of law – the result of any "mistake" by Nancy Dondero.

(iv) Nancy Dondero Was Personally "Competent" to Cause Plaintiff to Enter into the 2016 Agreement.

43. The only other possible construction of Plaintiff's "competency" argument is that Nancy Dondero lacked the personal capacity to cause Plaintiff to contract. Texas law presumes that every party to a legal contract has sufficient capacity to understand the transaction involved, and the burden of proof to overcome this presumption is on the party challenging it.[95] "A person

[93] Def. Ex. 5, N Dondero Dec., ¶ 10, Def. Appx. 374.
[94] Motion, ¶ 87.
[95] *Corsaro v. Columbia Hosp. at Med. City Dallas Subsidiary, LP*, No. 3:21-CV-01748-N, 2021 LEXIS 247218, 9 (N.D. Tex., Dec. 29, 2021).

has the mental capacity to contract under Texas law 'if she appreciated the effect of what she was doing and understood the nature and consequences of her acts.'"[96]

44. A party lacks capacity to contract only when he or she is a minor, under a guardianship, mentally ill, or intoxicated.[97] The summary judgment evidence reflects that at the time she caused Highland Capital to enter into the 2016 Agreement, Nancy Dondero appreciated the effect of what she was doing and understood the nature and consequences of those acts.[98] Ms. Dondero was not mentally incompetent, under a legal guardianship, intoxicated, or under any other mental impairment at the time she caused Highland Capital to enter into the 2016 Agreement.[99]

c. The LPA Does Not Preclude the Agreements.

45. Plaintiff's efforts to twist the wording of the LPA to convince the Court that the Agreements were precluded not only lacks supporting legal authority, but is also an inaccurate reading of the LPA. The LPA's written notice and fairness provisions simply do not apply to potential deferred compensation arrangements. Plaintiff grasps at straws by relying on sections of the LPA that are patently irrelevant to compensation agreements.

46. Plaintiff wants this Court to believe that Dugaboy – as a Limited Partner – can somehow approve an agreement regarding compensation, but not "execute" such an agreement under the LPA, § 3.10(a).[100] While Plaintiff's argument is unclear regarding what it means by "executing" an agreement – especially here, because the Agreements are verbal and obviously have no signed document to "execute" – as discussed *supra* C.1., § 3.10(a) places absolutely ***no restrictions*** on Dugaboy "executing" the same agreements it approves, nor does it distinguish

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[96] *Id.* (*quoting Mandell & Wright v. Thomas*, 441 S.W.2d 841, 845 (Tex. 1969)).
[97] *Del Bosque v. AT&T Adver., L.P.*, 441 Fed. Appx. 258, 262 (5th Cir. Sept. 16, 2011) (*citing* RESTATEMENT (SECOND) OF THE LAW OF CONTRACTS § 12(2) (1981)).
[98] Def. Ex. 5, N Dondero Dec. at ¶ 11, Def. Appx. 374.
[99] *Id.*
[100] Motion, ¶ 89 ("Specifically, pursuant to the LP Agreement, the Limited Partners only have authority to approve agreements for compensation, not to execute them.").

between approving compensation and executing compensation. Plaintiff's attempt to convince this Court that LPA § 6.2 requires all agreements authorized by the LPA must be written is wholly without merit. As also discussed in Section II.C.3 *supra*, the LPA contains no such provision requiring any compensation agreement to be in writing, and Plaintiff's reliance on an "Addresses and Notice" provision in the LPA is inherently indicative of the weakness of its argument.

47. Texas law is clear on the interpretation of plain language in a contract such as the LPA, and is certainly controlling here. The Supreme Court of Texas has plainly held that:

> Courts may not rewrite the parties' contract, nor should courts add to its language. [A Court] cannot make new contracts between the parties, and must enforce the contract as written. When the terms are *plain, definite, and unambiguous*, as they are here, the court cannot very these terms.

In re Davenport, 552 S.W.3d 452, 458 (Tex. 2017) (emphasis). Indeed, Plaintiff's newest argument against the Agreements is a thinly-veiled attempt to pull this Court's attention away from the fact that Defendant has shown evidence of these Agreements' existence, and asks this Court to alter or add to the plain language of the LPA, contrary to Texas law. Because Defendants have shown more than a mere scintilla of evidence in support of its defenses, summary judgment must be denied.

d. Publication is Not a Prerequisite to the Existence or Validity of an Agreement.

48. Plaintiff argues – without any supporting legal authority – that since the Agreements were "never disclosed . . . to anyone," there is no evidence supporting their existence.[101] However, Plaintiff overlooks the fact that Jim Dondero alerted Frank Waterhouse that there were mechanisms in place for forgiving the Notes,[102] that Jim Dondero's counsel sent a letter to Plaintiff's counsel indicating that Jim Dondero planned on citing the Agreements as an

[101] Motion, ¶¶ 90.
[102] Response, ¶¶ 18, 20.

affirmative defense,[103] and that Jim Dondero filed a pleading in the Bankruptcy Court explaining that the funds provided pursuant to the Notes would potentially be compensation and thus he did not expect any effort to collect on the Notes.[104] Moreover, Plaintiff cites no authority for its proposition that a failure to broadly disclose an agreement has any bearing on whether the agreement does or does not exist. Plaintiff's lack of authority is especially telling in a case that is not a "he said, she said" debate on whether an agreement was made: rather both sides to the Agreements (Dugaboy for HCM and Jim Dondero) agree ***that the Agreements were made***. Therefore, again, Plaintiff's argument does not support its motion for summary judgment.

e. The Agreements Are Not Required to be in Writing.

49. Plaintiff argues that, because there is no written documentation evidencing the oral Agreements, the existence of the oral Agreements cannot be believed.[105] The fact that the oral Agreements lack written documentation should not be surprising, as they were reached through verbal communication. In Texas, other than agreements governed by the statute of frauds, which these are not, oral contracts have the same validity and enforceability as written contracts. "The elements of written and oral contracts are the same and must be present for a contract to be binding." *Critchfield v. Smith*, 151 S.W.3d 225, 233 (Tex. App.—Tyler 2004, pet. denied). Plaintiff cites no authority to the contrary, and summary judgment on this issue must be denied.

f. The Evidence Shows the Agreements Were Supported by Consideration.

50. Plaintiff also argues that the Agreements are unenforceable due to a lack of consideration.[106] Specifically, Plaintiff asserts that "[n]o reasonable trier of fact could conclude"

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[103] *Id.*
[104] Def. Ex. 4-D, Proof of Claim #188, Def. Appx. 362-367.
[105] Motion, ¶ 91.
[106] Motion, ¶¶ 92-93.

that Plaintiff needed to retain or motivate Jim Dondero or that Plaintiff received anything of value for the Agreements, going into no more detail than repeating their broad assertion that "Highland received no benefit in exchange [for the Agreements].[107] Despite Plaintiff's lack of any relevant supporting facts or analogous legal authority behind their blanket assertion, the Agreements were supported by adequate consideration.

51. Consideration is a present exchange bargained for in return for a promise that may consist of ***some*** right, interest, or profit, or benefit that accrues to one party or of ***some*** forbearance, loss, or responsibility that is undertaken or incurred by the other party.[108] Consideration consists of ***either*** a benefit to the promisor ***or*** a detriment to the promisee and thus, there is valid consideration when "when a party gives up a pre-existing legal right."[109]

52. Here, Jim Dondero's forbearance from increasing his own compensation—a legal right he possessed prior to entering into the Agreements—as well as his contribution to increasing the value of all of the portfolio companies in efforts to sell the companies above cost, is adequate consideration for the Agreements. At the time the Agreements were formed, Jim Dondero was authorized as General Partner of the Plaintiff to set his own compensation subject to approval by

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[107] Motion, ¶ 117.

[108] *Katy Int'l, Inc. v. Jinchun Jiang*, 451 S.W.3d 74, 85 (Tex. App. 2014) (emphasis added) (citing *WCW Int'l, Inc. v. Broussard*, No. 14–12–00940–CV, 2014 WL 2700892, at *9 (Tex. App.-Houston [14th Dist.] Mar. 4, 2014, pet. filed) (sub. mem. op.).

[109] *See, e.g., 1320/1390 Don Haskins, Ltd. v. Xerox Com. Sols., LLC*, 584 S.W.3d 53, 65–66 (Tex. App. 2018); *Marx v. FDP, LP*, 474 S.W.3d 368, 378–79 (Tex. App. 2015) (cleaned up) (relinquishment of disputed claims against each other adequate consideration agreement granting purchaser option to purchase vendors' homestead); *First Com. Bank v. Palmer*, 226 S.W.3d 396, 398–99 (Tex. 2007) (guaranties executed in connection with renewal of promissory note to prevent payee from accelerating debt supported by consideration consisting of the payee's forbearance on prior guaranties and agreement to renew and extend the original debt); *Southern Equip. Sales, Inc. v. Ready Mix Sols., LLC*, No. 05-17-01176-CV, 2018 WL 3454801, at *5 (Tex. App. July 18, 2018) (extending time for payment of note or debt suffices as consideration); *Hoard v. McFarland*, 229 S.W. 687 (Tex. Civ. App. 1921) (cancellation of vendor's lien note before expiration of limitations period was sufficient consideration for reconveyance), writ refused (June 7, 1922); *Brown v. Jackson*, 40 S.W. 162 (Tex. Civ. App. 1897) (agreement by execution debtor with agent of execution creditor not to bid at execution sale was sufficient consideration for agent's promise to allow the debtor to redeem). *See also* 3 Williston on Contracts § 7:44 (4th ed.) ("Just as a promisor may make an agreement for acts or promises to act, so too may it bargain for forbearances or promises to forbear."); 14 Tex. Jur. 3d Contracts § 157 ("Generally, forbearance from exercising a legal right, or the outright surrender of a legal right that one is not bound to surrender, is sufficient consideration for a contract or promise.").

the Majority Interest.[110] Therefore, Jim Dondero had a legal right to increase his own salary that existed before the Agreements were formed.[111] Accordingly, his decision to make part of his compensation conditional upon his own performance instead of exercising his right under the LPA to increase the immediate cash component of his compensation provided adequate consideration in exchange for the Agreements. Jim Dondero's testimony was clear that the Agreements served both to motivate his performance with heightened focus and to reduce other compensation Plaintiff would have otherwise had to pay him through an increased salary.[112]

53. At the time of the 2016 Agreement, Nancy Dondero believed that Jim Dondero was undercompensated for the work that he did for the Debtor and that he was also undercompensated in comparison to other asset managers in similar industry roles.[113] In addition, Nancy Dondero agreed that Jim Dondero's efforts to increase the value of any of the portfolio companies would cause them to be sold for the highest value possible; if she did not believe that to be true, the 2016 Agreement would not have been made.[114] Plaintiff's Motion fails to cite to any relevant authority to support failed or inadequate consideration. Therefore, Nancy Dondero understood Jim Dondero's forbearance from taking a pay increase and his added attention to maximizing the value of the illiquid assets as a fair exchange – and legally sufficient consideration – for the 2016 Agreement.

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[110] Pl. Ex. 30, 4th LPA, § 3.10(a), Pl. Appx. 00622.
[111] *Id.*
[112] Pl. Ex. 96, James Dondero 5/28/21 Tr. 182:2-19, Pl. Appx. 01660; Def. Ex. 4, J Dondero Dec., ¶ 13, Def. Appx. 307.
[113] Pl. Ex. 100, Nancy Dondero 10/18/21 Tr. 193:19-25-194:1-19, 206:17-25-207:1-17, 211:12-23, Pl. Appx. 01922-01923, 01926-01927; Pl. Ex. 99, James Dondero 11/4/21 Tr. 51:8-13, 52:19-25-53:1-4, Pl. Appx. 01825-01826; Pl. Ex. 98, James Dondero 10/29/21 Tr. 421:4-17, Pl. Appx. 01776; Pl. Ex. 101, Alan Johnson (Expert) 11/2/21 Tr. 94:21-96:22, Pl. Appx. 01982.
[114] Pl. Ex. 100, Nancy Dondero 10/18/21 Tr. 194:20-25-195:1-10, 206:17-25-207:1-17, Pl. Appx. 01926.

54. Furthermore, "[i]n order for the consideration to be deemed inadequate, it must be *so grossly inadequate as to shock the conscience*, being tantamount to fraud."[115] Even if this Court finds that the Agreements were not made for precisely equal value, Jim Dondero's conditional forbearance to increase his own pay and his specific dedication to increase his focus on the profitable sale of the portfolio companies is ***not so inadequate as to shock the conscience***, particularly given that it is common practice in private companies to forgive bona fide debt in order to manage compensation and provide incentives to managers.[116] Simply because Plaintiff disagrees with Mr. Dondero's assessment does not make the consideration "grossly inadequate;" it is an issue of fact for a jury precluding summary judgment.[117] Thus, summary judgment on this issue of consideration must be denied.

g. Agreements Need Not Be Hotly or Even Gently Negotiated to Exist and be Valid and Enforceable.

55. Plaintiff's argument that, because the Agreements were reached "without negotiation," then the Agreements must not be valid is absurd and without supporting legal authority. Defendant also has not located any requirement under Texas law that a contract must be negotiated (that is, that there needs to be back and forth, rather than acquiescence to suggested terms) to exist. Rather, Texas simply requires that all elements of a contract be present to support its existence.[118] Negotiation is not included as an element of contract formation anywhere in Texas law. The concept that a contract requires "negotiation" – whatever Plaintiff is trying to make the

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[115] *Garcia v. Lumacorp, Inc.*, No. CIV.A. 3:02-CV-2426-, 2004 WL 1686635, at *11 (N.D. Tex. July 27, 2004), aff'd, 429 F.3d 549 (5th Cir. 2005) (emphasis added, citations omitted).

[116] It was common practice in private companies to loan money that is bona fide debt and then forgive it over time to manage compensation and as incentives to managers of private companies. Pl. Ex. 98, James Dondero 10/29/21 Tr. 421:18-25, Pl. Appx. 1776; Alan Johnson Expert Report p. 14-15.

[117] *Roark v. Stallworth Oil and Gas, Inc.*, 813 S.W.2d 492, 496 (Tex. 1991) (determining that adequacy of consideration is a question of fact for the jury).

[118] *Corsaro v. Columbia Hosp. at Med. City Dallas Subsidiary, LP*, No. 3:21-CV-01748-N, 2021 LEXIS 247218, 9 (N.D. Tex., Dec. 29, 2021).

Court believe that means – is absent from Texas authority. Just imagine what havoc that would wreck in this hot real estate market. Is the contract of every buyer who accepted the seller's terms "as is" invalid? Surely not. Therefore, summary judgment on the issue of "negotiation" must be denied.

h. Defendant's Summary Judgment Evidence Shows that Plaintiff Does Have a History of Forgiving Loans as Compensation.

56. Plaintiff's argument that "Highland did not have a 'practice' of forgiving loans" is rebutted by the record.[119] As demonstrated *supra*, Defendant presents evidence that Plaintiff has forgiven loans to several executives in the past.[120] Regardless, while Defendant's evidence showing the history of forgiven loans bolsters and makes more credible the existence of these loans, even if such loans had not been made (which they were) the absence of such loans would not prove that ***these*** loans were not subject to the Agreements made.

i. Any Minor Inconsistency Between the Answer and Testimony is Simply Fodder for Cross Examination, Not a Basis for Summary Judgment.

57. Plaintiff argues that HCMFA "cannot recite a credible defense" because Jim Dondero recalled at his deposition that he was actually the Dugaboy Trustee when the 2014 Agreement was made, not Nancy Dondero, which is inconsistent with Defendant's Answer.[121] Plaintiff's argument on its face is not a basis for summary judgment because the Court cannot weigh the credibility of evidence at summary judgment.[122] The fact that Jim Dondero recalled that

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[119] Motion, ¶¶ 95-96.
[120] Response, ¶¶ 7,8; Pl. Ex. 24, Jim Dondero's Objections and Responses to Plaintiff's Requests for Admission, Interrogatories, and Requests for Production, Pl. Appx. 00526; Pl. Ex. 194, Kristen Hendrix 10/27/21 Tr. 109:7-22, Pl. Appx. 03154; Pl. Ex. 195, David Klos 10/27/21 Tr. 106:6-22, Pl. Appx. 03208; Pl. Ex. 101 Alan Johnson (Expert) 11/2/21 Tr. 212:4-25, Pl. Appx. 02011; Def. Ex. 6, Hurley Dec., ¶ 7 (explaining that a loan to his company was forgiven and became compensation to him in 2013), Def. Appx. 383; Pl. Ex. 98, Jim Dondero 10/29/21 Tr. 424:4-8, Pl. Appx. 01777.
[121] Motion, D.1.i.
[122] *See Gulbenkian v. Penn.*, 252 S.W.2d 929, 931.

he was the Dugaboy Trustee when the 2014 Agreement was made is immaterial to the 2014 Agreement's existence, and simply because his memory was refreshed at deposition does not change his narrative. Jim Dondero has always asserted that it was the Dugaboy Trustee that entered the Agreements on behalf of Plaintiff. He (as well as Nancy) recalled that when they discussed the 2016 Note and made the 2016 Agreement, they also discussed the 2014 Note and Agreement,[123] leading to some confusion, but ultimately giving additional evidentiary support for the 2014 Agreement. Plaintiff's proclamation that "the Answer is facially and materially inaccurate" is an issue only for cross-examination, not summary judgment, as it attacks the credibility of a defense. This is another attempt by Plaintiff to draw the Court's attention away from the inescapable fact that Defendant's affirmative defense of the Agreements is supported by much more than a scintilla of evidence, and summary judgment must be denied.

j. HCMFA's Prepayments on the Notes Do Not Undermine the Existence of the Agreements.

58. As discussed *supra*, the Agreements provide a mechanism for the Notes to *potentially* be forgiven, but in no way *guarantee* their forgiveness.[124] Plaintiff ignores this distinction when it implies that because Defendant made prepayments on the Notes, then the Notes must not have been subject to the Agreements.[125] This logical fallacy ignores the fact that if MGM, Cornerstone, or Trussway were *not* sold for above cost, then Defendant would indeed be responsible for the balance of the Notes. Plaintiff**'s** argument that because Defendant made prepayments on the Notes then the Agreements must not exist completely ignores basic business sense, and Plaintiff's conjecture as to what *might* happen if the Notes were forgiven does not speak

[123] Def. Ex. 7-B, N. Dondero Tr. 4/29/22, 22:12-23:4, Def. Appx. 426; Def. Ex. 7-A, Deposition of J. Dondero (33:5-19), Def. Appx. 396.
[124] Response, ¶¶ 18, 20, 23.
[125] *See* Motion, ¶¶ 69-74.

to whether or not the Agreements exist. It also ignores Mr. Dondero's testimony that he would cause his and related party note payments to be made when Highland needed money, even if such payments were not required.[126] Plaintiff cites no authority to the contrary, but again relies on a red-herring factual argument to support its Motion. Therefore, summary judgment on this issue must be denied.

k. Plaintiff Miscites Alan Johnson's Testimony Which in Fact Supports Defendant's Position.

59. Plaintiff suggests that Defendant's compensation expert Alan Johnson has not advised a company to forgive a loan for purposes of compensation.[127] As a preliminary matter, this is just false:

> Q (Morris): Okay. Have you ever advised a company to forgive a corporate loan as part of an executive's personal compensation package?
>
> A(Johnson): Yes, I have.
>
> Q (Morris): Can you identify – and did you tell them that it would be appropriate to do that?
>
> A (Johnson): Yes, I have.
>
> Q (Morris): And is that in a case other than Highland?
>
> A (Johnson): It would be other clients, yes.[128]

Having not received the favorable answer it was seeking, Plaintiff later moved to much narrower question in an effort to limit the damage caused by its prior questions:

> Q: No. So let me start again, and I appreciate that, and this is not – not the easiest topic to inquire about, so, forgive me. So, the question is [now]: Have you ever advised a company to forgive loans that it had made to a corporate affiliate for the purpose of compensating one of the corporation's executives?

[126] Def. Ex. 4, J Dondero Dec., ¶ 26, Def. Appx. 312.
[127] Motion, ¶ 2.
[128] Pl. Ex. 240, Deposition of Alan Johnson, 19:2-13, Pl. Appx. 05235.

A: Those specific facts, I don't believe so.[129]

That Johnson has not in his advisory capacity encountered the exact circumstances here does not undermine the fact that forgiveness of loans is a commonplace part of executive compensation.

60. As noted above, Michiel Hurley testifies in his sworn declaration that he was the beneficiary of forgiveness of debt to a company affiliated with HCM in which he was an owner in the amount of $435,000.[130] Hurley added "I believe this [forgiveness] was done in recognition of the value of my services and was a fair and generous gesture[,]" demonstrating an example of a loan to a company forgiven as a benefit to an executive.[131]

61. Plaintiff's characterization of Johnson's testimony as an "admission" is inaccurate and unfair. He did not say that forgiving the loan of a company owned in whole or in part by an executive could or should not be compensation. In fact he said the opposite.[132] As Johnson testified, he has advised companies to forgive corporate loans as part of an executive's compensation package.[133] Finally, Plaintiff provides no legal authority supporting its argument that the fact that Jonson had not previously provided advice on the exact circumstances here is relevant to the issue ***on this motion*** of whether there is a material issue of fact whether the subsequent agreements were made.

---

[129] *Id*., 20:2-12.
[130] Def. Ex. 6, Hurley Dec., ¶ 7, Def. Appx. 383.
[131] *Id*., ¶ 8.
[132] Pl. Ex. 240, Deposition of Alan Johnson (expert) 05/27/2022 19:2-13, Pl. Appx. 05235:
Q: Okay. Have you ever advised a company to forgive a corporate loan as part of an executive's personal compensation package?
A: Yes, I have.
Q: Can you identify – and did you tell them that it would be appropriate to do that?
A: Yes, I have.
Q: And is that in a case other than Highland?
A: It would be other clients, yes.
[133] *Id*.

2. Both Sides to the Agreements Provide Summary Judgment Evidence Attesting to the Agreements' Existence.

62. Plaintiff's representation that "there is a complete absence of ***any*** credible evidence supporting the existence" of the Agreements is simply wrong, and easily refuted by Texas law. Jim and Nancy Dondero's testimony alone is sufficient under Texas law to show that the Agreements exist and defeat Plaintiff's Motion. Plaintiff's lack of legal authority supporting the proposition that when ***both sides*** to an agreement testify to that same agreement's existence, there is somehow still a material issue of fact regarding that agreement's existence, should not come as a surprise. Only ***one*** side to an oral agreement is required to testify as to its existence to survive a motion for summary judgment. "Where there is no written contract in evidence, and ***one party*** attests to a contractual agreement while the other vigorously denies any meeting of the minds, determining the existence of a contract is a question of fact under Texas law."[134]

63. For example, in *Al-Saud*, plaintiff and defendant each provided conflicting summary judgment evidence regarding whether or not conditions existed that would allow the repayment and refund of a down payment to a loan at issue.[135] Because the summary judgment evidence – in that case, deposition testimony – was conflicting regarding whether or not those conditions (i.e.: an agreement) existed, summary judgment was denied.[136] Here, Defendants' summary judgment evidence is more than sufficient to provide proof that the Agreements exist and create a genuine issue of material fact, since they present testimony from ***both*** sides to the Agreements while Texas law only requires testimony from ***one***.

---

[134] *In re Palms at Water's Edge, L.P.*, 334 B.R. 853, 857 (Bankr. W.D. Tex. 2005) (citing *Runnells v. Firestone*, 746 S.W.2d 845, 849 (Tex. App.—Houston [14th Dist.] 1988, writ denied) (emphasis added); *Haws & Garrett General Contractors, Inc. v. Gorbett Bros. Welding*, 480 S.W.2d 607, 610 (Tex. 1972); *Buxani v. Nussbaum*, 940 S.W.2d 350, 352 (Tex. App.—San Antonio 1997, no writ)).
[135] *Al-Saud v. Youtoo Media, L.P.*, 3:15-CV-3074-C, 2017 WL 3841197, at *4.
[136] *Id.*, at *6.

64. Further, "whether the parties had a meeting of the minds or common understanding is better suited for the trier of fact and cannot be determined by the court at this [summary judgment] juncture."[137] In *Fisher*, the movant argued on summary judgment that no implied contract with the non-movant existed. However, the court denied summary judgment on the existence of an implied contract where the non-movant produced evidence of a course of conduct that "raised a genuine dispute of material fact as to whether the parties had an implied contract…"[138]

65. Of course, unlike the case cites above, here, ***both sides*** that made the Agreements attest the Agreements exist. Jim and Nancy Dondero – the only two individuals who have firsthand knowledge of the Agreements – have testified numerous times that the Agreements occurred and do exist. Nancy Dondero testified to the Agreements' existence at her deposition:

> Q: Is it your testimony that you, as the trustee of The Dugaboy Investment Trust, entered into oral agreements with your brother between December and the year each note was made and February of the following year, pursuant to which plaintiff agreed that plaintiff would forgive the notes if certain portfolio companies were sold for greater than cost or on a basis outside of James Dondero's control?
>
> A: That is correct.[139]

Jim Dondero also testified to the Agreements' existence at his deposition on May 28, 2021:

> Q: Okay. And in the first sentence to your answer in Interrogatory 1, you wrote, or somebody wrote on your behalf, quote: "The agreements were entered into on behalf of the debtor by James Dondero, subsequent to the time each note was executed." Is that an accurate statement, or is it an inaccurate statement?"

---

[137] *Fisher v. Blue Cross and Blue Shield of Tex., Inc.*, 3:10-CV-2652-L, 2015 WL 5603711 at 10 (N.D. Tex. Sept. 23, 2015) (analogizing the *In re Palms* in a summary judgment context: "[s]imply alleging there was no meeting of the minds is not a legitimate basis for summary judgment because "[w]here there is no written contract in evidence, and ***one party*** attests to a contractual agreement while the other vigorously denies any meeting of the minds, determining the existence of a contract is a question of fact.").
[138] *Id*. at 10.
[139] Pl. Ex. 100, Nancy Dondero 10/18/21 Tr. 164:13-23, Pl. Appx. 1915.

A: Again, it was between me and the Class A, the majority of the Class A members. It was a Class A – the Class A members were representing Highland, never the debtor, because the debtor didn't exist yet.[140]

And again at his deposition on May 5, 2022:

Q: Did you enter into the agreement with respect to the 2014 note both in your capacity as the president of Highland and simultaneously in your capacity as the trustee of the Dugaboy Trust?

A: Yes.

66. Plaintiff ignores this testimony in its Motion, likely because it is consistent with Jim Dondero's unchanging narrative that it was the "the majority of the Class A members [Dugaboy]" that entered into the Agreements. Again, Jim Dondero has always contended that it was the Dugaboy Trustee that entered the Agreements on behalf of Plaintiff. Moreover, both Jim and Nancy Dondero also provide this Court with sworn Declarations explicitly asserting that the Agreements exist, *supra*, II.C.7. Based on the evidence above, Defendant Jim Dondero provides evidence that the Agreements exist, and creates a genuine issue of material fact. *See, Fisher* at 10.

67. Plaintiff seems to suggest that testimony from Jim and Nancy Dondero attesting to the Agreements' existence is insufficient to create an issue of material fact that the Agreements exist. While this may be the case in one state with markedly different law than other states (*see Franklin v. Regions Bank*, CV 5:16-1152, 2021 WL 867261 (W.D. La. Mar. 8, 2021) (statutorily requiring corroborating evidence in addition to testimony from one party to prove an oral contract in excess of $500.00 in Louisiana)), this is not the case in Texas. In Texas, "[t]he existence of an oral contract may be proved by circumstantial evidence as well as by direct evidence."[141] The circumstantial evidence supports the existence of the Agreements. Plaintiff never demanded any

[140] Pl. Ex. 96, James Dondero 5/28/21 Tr. 165:8-20, Pl. Appx. 01656.
[141] *271 Truck Repair & Parts, Inc. v. First Air Express, Inc.*, 03-07-00498-CV, 2008 WL 2387630 at 4 (Tex. App.—Austin June 11, 2008, no pet.) (citing *PGP Gas Products, Inc. v. Reserve Equip., Inc.*, 667 S.W.2d 604, 607 (Tex. App.—Austin 1984, writ ref'd n.r.e.)).

of demand notes at issue in this case (nor did it declare any Term Notes to be in default) until James Seery assumed control of Plaintiff. Actually, it was not until Plaintiff was in bankruptcy that Plaintiff decided to conspicuously call all the demand notes for payment.[142] Prior to the bankruptcy, Plaintiff made no attempt to demand the Notes. Circumstantially, it appears that Plaintiff was operating from 2014 to 2020 as if the Agreements were valid and in effect.

68. Plaintiff's argument that the evidence of the Agreements' existence is factually insufficient flies in the face of black letter law that the court cannot "weigh evidence, assess credibility, or determine the most reasonable inference to be drawn from the evidence."[143] Because Jim and Nancy Dondero have sworn to the existence and validity of the Agreements, Plaintiff's arguments amount to nothing more than factual attacks that impermissibly require this Court to opine on the credibility of Defendants' evidence. Thus, summary judgement must be denied.

IV. Conclusion

WHEREFORE, Defendant respectfully requests this Court Deny Plaintiff's Motion for Partial Summary Judgment and grant such other and further relief as the Court deems just and proper.

[142] Motion, ¶ 22 (referencing Plaintiff's demand on the Demand Notes); Pl. Ex. 2, Amended Complaint against NPA et al., ¶ 27, Pl. Appx. 00029; Pl. Ex. 3, Amended Complaint against HCMS, ¶ 43, Pl. Appx. 00189; Pl. Ex. 4, Amended Complaint against HCRE et al., ¶ 43, Pl. Appx. 00189.
[143] *Honore v. Douglas,* 833 F.2d 565, 567 (5th Cir. 1987).

Dated: July 1, 2022

Respectfully submitted,

STINSON LLP

/s/ Deborah Deitsch-Perez

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ATTORNEYS FOR DEFENDANT HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, L.P.

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that, on July 1, 2022, a true and correct copy of the foregoing document was served via the Court's CM/ECF system on counsel for Plaintiff Highland Capital Management, L.P. and on all other parties requesting or consenting to such service in this case.

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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re	§	
	§	**Case No. 19-34054-sgj11**
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	**Chapter 11**
	§	
Debtor.	§	
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	
	§	
Plaintiff,	§	
	§	
v.	§	**Adversary No. 21-03082**
	§	
HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, L.P.	§	
	§	
	§	
Defendant.	§	

APPENDIX IN SUPPORT OF DEFENDANT'S OPPOSITION TO
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

Defendant Highland Capital Management Fund Advisors, L.P. files this Appendix in Support of its Opposition to Plaintiff Highland Capital Management, L.P.'s Motion for Summary Judgment, and requests the Court take judicial notice of the documents contained herein.

Exhibit	Document	Appendix Page(s)
1	**Declaration of James Dondero, dated January 20, 2022**	App. 1-23
A	HCMS Payment Ledger	App. 24-25
B	Nancy Dondero's Acceptance of Appointment of Family Trustee for the Dugaboy Family Trust effective October 14, 2015	App. 26-31
C	Documents showing J. Dondero proof of service as Family Trustee for the Dugaboy Family Trust and subsequent resignation	App. 32-72
D	Letter to J. Pomerantz from D. Lynn, dated February 1, 2021	App. 73-74
E	Termination of Amended and Restated Shared Services Agreement, among Highland Capital Management, L.P. and NexPoint Advisors, L.P., dated November 30, 2020	App. 75-76
2	**Declaration of Nancy M. Dondero, dated January 20, 2022**	App. 77-85
A	Nancy Dondero's Acceptance of Appointment of Family Trustee for the Dugaboy Family Trust effective October 14, 2015	App. 86-91
3	**Declaration of Michael Aigen, dated January 20, 2022**	App. 92-95
A	Transcript of the Video Deposition of James P. Seery, Jr. on October 21, 2021, Adv. Proc. No. 21-03005	App. 96-185
B	Transcript of the Remote Deposition of Bruce McGovern on November 9, 2021, Adv. Proc. No 21-03003	App. 186-200
C	List of Promissory Notes	App. 201-202
D	Email from F. Waterhouse to K. Hendrix, dated November 25, 2020	App. 203-208
E	Email from F. Waterhouse to K. Hendrix, dated December 31, 2020	App. 209-210
F	INTENTIONALLY LEFT BLANK	App. 211-235
G	Expert Report of Alan M. Johnson	App. 236-262
H	Highland Capital Management, L.P.'s Responses and Objections to Defendants' Joint Discovery Requests, dated September 27, 2021	App. 263-300
4	**Declaration of James Dondero, dated June 30, 2022**	App. 301-312
A	Nancy Dondero's Acceptance of Appointment of Family Trustee for the Dugaboy Family Trust effective October 14, 2015	App. 313-318
B	Documents showing J. Dondero proof of service as Family Trustee for the Dugaboy Family Trust and subsequent resignation	App. 319-359
C	Letter to J. Pomerantz from D. Lynn, dated February 1, 2021	App. 360-361
D	Proof of Claim No. 188, dated May 26, 2020	App. 362-367
E	HCMFA's April 2022 vs. March 2022 balance sheet	App. 368-369

5	**Declaration of Nancy M. Dondero, dated June 30, 2022**	App. 370-374
A	Nancy Dondero's Acceptance of Appointment of Family Trustee for the Dugaboy Family Trust effective October 14, 2015	App. 375-380
6	**Declaration of Michiel Hurley, dated June 29, 2022**	App. 381-383
7	**Declaration of Michael Aigen, dated July 1, 2022**	App. 384-386
A	Transcript of the Remote Deposition of James D. Dondero taken on May 5, 2022 in Adv. Proc. No. 21-03082	App. 387-418
B	Transcript of the Remote Deposition of Nancy Dondero taken on April 29, 2022 in Adv. Proc. No. 21-03082	App. 419-436

Dated: July 1, 2022

Respectfully submitted,

/s/ Deborah Deitsch-Perez

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ATTORNEYS FOR HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, L.P.

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that, on July 1, 2022, a true and correct copy of the foregoing document was served via the Court's CM/ECF system on counsel for Plaintiff Highland Capital Management, L.P. and on all other parties requesting or consenting to such service in this case.

/s/ Deborah Deitsch-Perez
Deborah Deitsch-Perez

EXHIBIT 1

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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	**Case No. 19-34054**
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.	§	**Chapter 11**
	§	
Debtor.	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	
Plaintiff,	§	**Adv. Proc. No. 21-03003-sgj**
	§	
vs.	§	
	§	
JAMES DONDERO, NANCY DONDERO, AND THE DUGABOY INVESTMENT TRUST,	§	
	§	
	§	
Defendants.	§	

HIGHLAND CAPITAL MANAGEMENT, L.P., **Plaintiff,** **vs.** **HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, L.P.,** **Defendant.**	§ § § § § § § § § §	**Adv. Proc. No. 21-03004-sgj**
HIGHLAND CAPITAL MANAGEMENT, L.P., **Plaintiff,** **vs.** **NEXPOINT ADVISORS, L.P., JAMES DONDERO, NANCY DONDERO, AND THE DUGABOY INVESTMENT TRUST,** **Defendants.**	§ § § § § § § § § § §	**Adv. Proc. No. 21-03005-sgj**
HIGHLAND CAPITAL MANAGEMENT, L.P., **Plaintiff,** **vs.** **HIGHLAND CAPITAL MANAGEMENT SERVICES, INC., JAMES DONDERO, NANCY DONDERO, AND THE DUGABOY INVESTMENT TRUST,** **Defendants.**	§ § § § § § § § § § § § §	**Adv. Proc. No. 21-03006-sgj**
HIGHLAND CAPITAL MANAGEMENT, L.P., **Plaintiff,** **vs.** **HCRE PARTNERS, LLC (n/k/a NexPoint Real Estate Partners, LLC), JAMES DONDERO, NANCY DONDERO, AND THE DUGABOY INVESTMENT TRUST,** **Defendants.**	§ § § § § § § § § § § § § §	**Adv. Proc. No. 21-03007-sgj**

DECLARATION OF JAMES DONDERO

I, James Dondero, hereby swear under oath and penalty of perjury pursuant to the laws of the United States of America that the following is true and correct to the best of my knowledge and belief:

1. My name is James Dondero. I am over the age of 21, have never been convicted of a felony or crime of moral turpitude, and am otherwise qualified to give this Declaration. I have personal knowledge of the facts stated in this Declaration.

A. Background.

2. I am currently a named Defendant in Adversary Proceedings No. 21-03003-sgj, 21-03005-sgj, 21-03006-sgj, and 21-03007-sgj. I have personal knowledge of the facts contained in this declaration, and if called as a witness to testify, I could and would do so competently.

3. I co-founded Highland Capital Management, L.P. ("HCM") in the year 2000, and have been working in the financial services industry for over thirty (30) years. I served as HCM's President and Chief Executive Officer until my resignation on January 9, 2020.

4. Along with having served as CEO for HCM, I have also served as a high-level executive and controlling portfolio manager for NexPoint Advisors, L.P. ("NexPoint"), HCRE Partners, LLC ("HCRE"), Highland Capital Management Services, Inc. ("HCMS"), and Highland Capital Management Fund Advisors, L.P. ("HCMFA"). I have spent years of service to these companies as a chief executive, and am familiar with each company's internal management and operational structures and procedures.

B. The Promissory Notes.

1. HCM Issued Three (3) Notes to Me.

5. On February 2, 2018, I borrowed money from HCM and entered into a promissory note with HCM in the amount of $3,825,000.00 (the "February 2018 Note").[1] The February 2018 Note bore an interest rate equal to the long-term applicable federal interest rate at the time of 2.66%, to be calculated at a daily rate equal to 1/365th per annum. On its original terms, the February 2018 Note was a payable on demand by HCM, and was subject to an acceleration clause. This promissory note, unlike typical promissory notes, was a soft note that was made between friendly affiliates, was subject to renegotiation per its own terms, was not collateralized, and was ambiguous, taken as whole, because it referred to other agreements that were not specified in the promissory note, and was made, as indicated in the promissory note, to help satisfy personal tax obligations.

6. On August 1, 2018, I borrowed money from HCM and entered into a promissory note with HCM in the amount of $2,500,000 (the "August 1, 2018 Note").[2] The August 1, 2018 Note bore an interest rate equal to the long-term applicable federal interest rate at the time of 2.95%, to be calculated at a daily rate equal to 1/365th per annum. On its original terms, the August 2018 Note was payable upon demand by HCM, and was subject to an acceleration clause. This promissory note, unlike typical promissory notes, was a soft note, which was made between friendly affiliates, was subject to renegotiation per its own terms, was not collateralized, and was ambiguous, taken as whole, because it referred to other agreements that were not specified in the promissory note.

7. On August 13, 2018, I borrowed money from HCM and entered into a promissory note with HCM in the amount of $2,500,000 (the "August 13, 2018 Note").[3] The August 13, 2018

[1] Pl. Appx. 00678-679.
[2] *Id.* at 00681-682.
[3] *Id.* at 00684-685.

Note bore an interest rate equal to the long-term applicable federal interest rate at the time of 2.95%, to be calculated at a daily rate equal to 1/365th per annum. On its original terms, the August 2018 Note was payable upon demand by HCM and was subject to an acceleration clause. This promissory note, unlike typical promissory notes, was a soft note that was made between friendly affiliates, was subject to renegotiation per its own terms, was not collateralized, and was ambiguous, taken as whole, because it referred to other agreements that were not specified in the promissory note.

2. HCM Issued one (1) Term Note to NexPoint.

8. On May 31, 2017, NexPoint borrowed money from HCM and entered into a promissory note with HCM in the amount of $30,746,812.33 (the "NexPoint Term Note").[4] The NexPoint Term Note bore an interest rate of 6%, to be calculated at a daily rate equal to 1/365th per annum. The NexPoint Term Note was due in thirty (30) equal annual payments, due by the 31st day of December of each calendar year, with the final payment being due on December 31, 2047. This Term Note is paid current. The NexPoint Term Note allowed for prepayment, and was also subject to an acceleration clause upon failure to pay any installment as it became due. The purpose of the NexPoint Term Note was in-part to consolidate several prior notes made between NexPoint Advisors, L.P. and HCM. This promissory note, unlike typical promissory notes, was a soft note that was made between friendly affiliates, was subject to renegotiation per its own terms, was not collateralized, and was ambiguous, taken as whole, because it referred to other agreements that were not specified in the promissory note. Additionally, unlike typical promissory notes of this nature, there was no personal guaranty supporting this promissory note. This promissory note was also ambiguous with respect to the prepayment of future interest and the application of any

[4] *Id.* at 00042-43.

prepayment between accrued interest, future interest, and principal, and it did not contain any provision concerning what the impact of prepayments would be on future scheduled payments.

3. HCM Issued Five (5) Notes to HCRE.

9. On November 27, 2013, HCRE borrowed money from HCM and entered into a promissory note with HCM in the amount of $100,000 (the "November 27, 2013 Note").[5] The November 27, 2013 Note bore an interest rate of 8%, to be calculated at a daily rate equal to 1/365th per annum. On its original terms, the November 27, 2013 Note was payable on demand by HCM, and was subject to an acceleration clause. This promissory note, unlike typical promissory notes, was a soft note that was made between friendly affiliates, was subject to renegotiation per its own terms, was not collateralized, and was ambiguous, taken as whole, because it referred to other agreements that were not specified in the promissory note. Additionally, unlike typical promissory notes of this nature, there was no personal guaranty supporting this promissory note.

10. On May 31, 2017, HCRE borrowed money from HCM and entered into a promissory note with HCM in the amount of $6,059,831.51 (the "HCRE Term Note").[6] The HCRE Term Note bore an interest rate of 8%, to be calculated at a daily rate equal to 1/365th per annum. The HCRE Term Note was due in thirty (30) equal annual payments, due the 31st day of December of each calendar year, with the final payment being due on December 31, 2047. The HCRE Term Note allowed for prepayment, and was also subject to an acceleration clause upon failure to pay any installment as it became due. The purpose of the HCRE Term Note was made in-part to consolidate several prior notes made between HCRE Partners, LLC, and HCM. This promissory note, unlike typical promissory notes, was a soft note that was made between friendly affiliates, was subject to renegotiation per its own terms, was not collateralized, and was

[5] *Id.* at 00202-203.
[6] *Id.* at 00218-219.

ambiguous, taken as whole, because it referred to other agreements that were not specified in the promissory note. Additionally, unlike typical promissory notes of this nature, there was no personal guaranty supporting this promissory note.

11. On October 12, 2017, HCRE borrowed money from HCM and entered into a promissory note with HCM in the amount of $2,500,000 (the "October 12, 2017 Note").[7] The October 12, 2017 Note bore an interest rate of 8%, to be calculated at a daily rate equal to 1/365th per annum. On its original terms, the October 12, 2017 Note was payable on demand by HCM, and was subject to an acceleration clause. This promissory note, unlike typical promissory notes, was a soft note that was made between friendly affiliates, was subject to renegotiation per its own terms, was not collateralized, and was ambiguous, taken as whole, because it referred to other agreements that were not specified in the promissory note. Additionally, unlike typical promissory notes of this nature, there was no personal guaranty supporting this promissory note.

12. On October 15, 2018, HCRE borrowed money from HCM and entered into a promissory note with HCM in the amount of $750,000 (the "October 15, 2018 Note").[8] The October 15, 2018 Note bore an interest rate of 8%, to be calculated at a daily rate equal to 1/365th per annum. On its original terms, the October 15, 2018 Note was payable on demand by HCM, and was subject to an acceleration clause. This promissory note, unlike typical promissory notes, was a soft note that was made between friendly affiliates, was subject to renegotiation per its own terms, was not collateralized, and was ambiguous, taken as whole, because it referred to other agreements that were not specified in the promissory note. Additionally, unlike typical promissory notes of this nature, there was no personal guaranty supporting this promissory note.

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[7] *Id.* at 00205-206.
[8] *Id.* at 00208-209.

13. On September 25, 2019, HCRE borrowed money from HCM and entered into a promissory note with HCM in the amount of $900,000 (the "September 25, 2019 Note").[9] The September 25, 2019 Note bore an interest rate of 8%, to be calculated at a daily rate equal to 1/365th per annum. On its original terms, the September 25, 2019 Note was payable on demand by HCM, and was subject to an acceleration clause. This promissory note, unlike typical promissory notes, was a soft note that was made between friendly affiliates, was subject to renegotiation per its own terms, was not collateralized, and was ambiguous, taken as whole, because it referred to other agreements that were not specified in the promissory note. Additionally, unlike typical promissory notes of this nature, there was no personal guaranty supporting this promissory note.

4. HCM Issued five (5) Notes to HCMS.

14. On March 28, 2018, HCMS borrowed money from HCM and entered into a promissory note with HCM in the amount of $150,000.00 (the "March 28, 2018 Note").[10] The March 28, 2018 Note bore an interest rate equal to the long-term applicable federal interest rate at the time of 2.88%, to be calculated at a daily rate equal to 1/365th per annum. On its original terms, the March 28, 2018 Note was payable upon demand by HCM, and was subject to an acceleration clause. This promissory note, unlike typical promissory notes, was a soft note that was made between friendly affiliates, was subject to renegotiation per its own terms, was not collateralized, and was ambiguous, taken as whole, because it referred to other agreements that were not specified in the promissory note. Additionally, unlike typical promissory notes of this nature, there was no personal guaranty supporting this promissory note.

[9] *Id.* at 00211-212.
[10] *Id.* at 00118-119.

15. On June 25, 2018, HCMS borrowed money from HCM and entered into a promissory note with HCM in the amount of $200,000.00 (the "June 25, 2018 Note").[11] The June 25, 2018 Note bore an interest rate equal to the long-term applicable federal interest rate at the time of 3.05%, to be calculated at a daily rate equal to 1/365th per annum. On its original terms, the June 25, 2018 Note was payable upon demand by HCM, and was subject to an acceleration clause. This promissory note, unlike typical promissory notes, was a soft note that was made between friendly affiliates, was subject to renegotiation per its own terms, was not collateralized, and was ambiguous, taken as whole, because it referred to other agreements that were not specified in the promissory note. Additionally, unlike typical promissory notes of this nature, there was no personal guaranty supporting this promissory note.

16. On May 29, 2019, HCMS borrowed money from HCM and entered into a promissory note with HCM in the amount of $400,000.00 (the "May 29, 2019 Note").[12] The May 29, 2019 Note bore an interest rate equal to the long-term applicable federal interest rate at the time of 2.39%, to be calculated at a daily rate equal to 1/365th per annum. On its original terms, the June 25, 2018 Note was payable upon demand by HCM, and was subject to an acceleration clause. This promissory note, unlike typical promissory notes, was a soft note that was made between friendly affiliates, was subject to renegotiation per its own terms, was not collateralized, and was ambiguous, taken as whole, because it referred to other agreements that were not specified in the promissory note. Additionally, unlike typical promissory notes of this nature, there was no personal guaranty supporting this promissory note.

[11] *Id.* at 00121-122.
[12] *Id.* at 00124-125.

17. On June 26, 2019, HCMS borrowed money from HCM and entered into a promissory note with HCM in the amount of $150,000.00 (the "June 26, 2019 Note").[13] The June 26, 2019 Note bore an interest rate equal to the long-term applicable federal interest rate at the time of 2.37%, to be calculated at a daily rate equal to 1/365th per annum. On its original terms, the June 26, 2019 Note was payable upon demand by HCM, and was subject to an acceleration clause. This promissory note, unlike typical promissory notes, was a soft note that was made between friendly affiliates, was subject to renegotiation per its own terms, was not collateralized, and was ambiguous, taken as whole, because it referred to other agreements that were not specified in the promissory note. Additionally, unlike typical promissory notes of this nature, there was no personal guaranty supporting this promissory note.

18. On May 31, 2017, HCMS borrowed money from HCM and entered into a promissory note with HCM in the amount of $20,247,628.02 (the "HCMS Term Note").[14] The HCMS Term Note bore an interest rate of 8%, to be calculated at a daily rate equal to 1/365th per annum. The HCMS Term Note was due in thirty (30) equal annual payments, due the 31st day of December of each calendar year, with the final payment being due on December 31, 2047. This Term Note has been paid current. This promissory note, unlike typical promissory notes, was a soft note that was made between friendly affiliates, was subject to renegotiation per its own terms, was not collateralized, and was ambiguous, taken as whole, because it referred to other agreements that were not specified in the promissory note. Additionally, unlike typical promissory notes of this nature, there was no personal guaranty supporting this promissory note. This promissory note was also ambiguous with respect to the prepayment of future interest and the application of any prepayment between accrued interest, future interest, and principal, and it did not contain any

[13] *Id*. at 00127-128.
[14] *Id*. at 00134-135.

provision concerning what the impact of prepayments would be on future scheduled payments. Attached to this Declaration as "Exhibit A" is an amortization table showing payments made on the HCMS Term Note, which was kept in the normal and ordinary course of business and made by someone with knowledge of the payments at the time it was created.

C. Dugaboy, as the "Majority Interest" Approved Compensation.

19. HCM was formed as a limited partnership under the laws of the State of Delaware, and was governed by a Limited Partnership Agreement ("LPA").[15] The LPA was entered into on December 24, 2015, between Strand Advisors, Inc. (the General Partner), and the following Limited Partners:

(1) The Dugaboy Investment Trust ("Dugaboy"),

(2) The Mark and Pamela Okada Family Trust – Exempt Trust #1,

(3) The Mark and Pamela Okada Family Trust – Exempt Trust #2, and

(4) Mark Okada.[16]

20. Pursuant to the LPA – specifically in Section 3.10(a) –HCM's "Majority Interest[-holder]" was entitled to approve the compensation of HCM's General Partner and any "Affiliate" of the General Partner.[17] The LPA defines the Majority Interest as "the owners of more than fifty percent (50%) of the Percentage Interests of Class A Limited Partners."[18] The Dugaboy Family Trust ("Dugaboy") represented the Majority Interest of the Limited Partners, owning a 74.4426% interest of the Limited Partners Class A Interest.[19]

[15] *Id*. at 00606-641.
[16] *Id*. at 00636-638.
[17] *Id*. at 00622.
[18] *Id*. at 00612.
[19] *Id*. at 00639.

21. My sister Nancy Dondero has served as the Dugaboy Family Trustee since her appointment in 2015. Attached as "Exhibit B" is a copy of Nancy Dondero's Acceptance of Appointment of Family Trustee for the Dugaboy Family Trust effective October 14, 2015, a record which was kept in the ordinary course of business and made by someone with knowledge of the appointment. Prior to Nancy Dondero's service, Grant Scott served as Dugaboy Family Trustee until October 12, 2015. Grant Scott's resignation letter is contained within Exhibit B. Prior to Grant Scott's service as Dugaboy Family Trustee, I personally served as Dugaboy Family Trustee until my resignation on August 26, 2015. Attached as "Exhibit C" is proof of my service as Family Trustee for the Dugaboy Family Trust and my subsequent resignation prior to Grant Scott's appointment, a record which was kept in the ordinary course of business and made by someone with knowledge of the document.. .

D. Dugaboy Agreed That HCM Would Not Collect on the Notes Upon Fulfillment of Conditions Subsequent, Making the Notes Potentially Deferred Compensation.

22. Based on my years of experience in working in Private Equity, I am familiar with the compensation structure of similarly situated Private Equity firms. Based on this experience, I am also very familiar with the compensation structure of other similarly situated executives like myself.

23. At HCM, as at other comparable capital investment firms, it was common practice to compensate executives with forgivable loans. My compensation was no exception to this practice. In fact, I was undercompensated in my position compared to similarly-situated contemporaries in my field. I know that several other individuals may have received loans by HCM that were forgiven. These individuals include Mike Hurley, Tim Lawler, Pat Daugherty, Jack Yang, Paul Adkins, Gibran Mahmud, Jean-Luc Eberlin, and Appu Mundassery and this was also a common practice and another company in which I have an interest, NexBank Capital, Inc.

24. At either the end of 2017 or the beginning of 2018, Dugaboy – through Nancy Dondero – entered into a verbal agreement (the "2017 Agreement") with myself that HCM would not collect on any of the aforementioned Notes issued in 2017 if certain events occurred. Specifically, if one of specific portfolio companies – either MGM, Cornerstone, or Trussway – were sold for above cost, or sold in a circumstance outside of my control, HCM agreed that the Notes would be forgiven. In late 2013 or early 2014, the Dugaboy Family Trustee had made an identical agreement that applied to the November 27, 2013 Note. The Agreement assured HCM that the monetization of these portfolio companies would have my utmost focus and attention, and served as an incentive for me to work particularly hard to make sure these assets were successful. Further, this agreement provided the additional benefit to HCM of not increasing my base salary, which I normally would have requested and obtained. However, reaching this agreement made my compensation conditional on performance, and ensured that HCM would not immediately realize a change in its financial position through an increase in my salary, something I had the right to increase.

25. At either the end of 2018 or the beginning of 2019, Dugaboy and I entered into another agreement that was identical to the Agreement made in the preceding year (the "2018 Agreement"). This 2018 Agreement covered all the Notes at issue in this litigation that were issued in 2018. The 2018 Agreement provided the same benefits to the HCM as the 2017 Agreement.

26. At either the end of 2019 or the beginning of 2020 (prior to January 9, 2020), Dugaboy and I entered into another agreement that was identical to the 2018 Agreement (the "2019 Agreement"). Again, the 2019 Agreement applied to all the Notes at issue in this litigation that were issued in 2019. The 2019 Agreement provided the same benefits to HCM as the 2018 and 2017 Agreements. Collectively, the 2017, 2018, and 2019 Agreements are referred to herein as

the "Agreements." I understand that Plaintiff claims in its Motion that Nancy Dondero and I do not agree about whether I identified the Notes subject to the Agreements. Despite unclear questioning at my deposition, I testified that I identified the Notes that were subject to the Agreements when entering into the Agreements (which is how Nancy Dondero was aware that they involved the different companies) and I specifically remember discussing and identifying the Notes to Nancy Dondero.

27. In my years of experience in this industry, and experience working with financial auditors, although the Agreements were not disclosed to the financial auditors at HCM, such a disclosure was not necessary since it would not be considered material. When compared to the considerable size of HCM's assets, the Agreement on such small comparative Notes was *de minimus* when viewed in light of such large assets. Therefore, the Agreement was non-material and did not require disclosure.

28. Prior to the commencement of any Adversary Proceedings concerning the Notes, I mentioned to Frank Waterhouse that there were mechanisms in place for forgiving the Notes, or for having them considered as compensation and not being an asset to the Debtor's estate. This came up in the context of discussing what we called the "Pot Plan" discussion for resolving the bankruptcy. I did not discuss every detail of the Agreements, because the important point was that he was made aware that the Notes should be considered as part of my compensation in connection with a resolution of the bankruptcy. By that time there was a great likelihood that some or all of the portfolio companies would be able to be sold for far more that their acquisition price.

29. Further, opposing counsel was alerted on February 1, 2021 that one of the defenses in this litigation was that the Notes were subject to forgiveness as potential compensation. In a letter from my one of my attorneys– to opposing counsel at Pachulski Stang Ziehl & Jones, LLP,

the late retired Bankruptcy Judge Lynn, my lead counsel, made that disclosure. A true and correct copy of this letter is attached to this Declaration as "Exhibit D."

E. The Agreements Were Made in Good Faith.

30. The Agreements made between myself and Dugaboy were all entered into in good faith. At no point in time were any of these Agreements made with the intent to hinder or defraud HCM as payee. Dugaboy had the right to approve my compensation under the LPA, and it was exercising that right when it agreed to make the Notes forgivable as compensation, provided that I performed successfully as a HCM executive and made sure that the aforementioned illiquid assets were sold for at-or-above cost.

F. HCM Waived Any Rights to Collect on the Notes When Dugaboy Made the Agreements.

31. When the Agreements were made, HCM waived any rights it had to demand repayment of the demand Notes until it became impossible for the condition subsequent to be met. However, I still intended to make periodic interest payments because I understood that until forgiveness actually occurred, the notes were still bona fide notes. Also, making periodic payments kept the Notes from becoming unreasonably large in the event the conditions for forgiveness did not come to pass. The term loans had requirements for interest payments to be made until the conditions for forgiveness were met, which, as discussed below, were met.

G. Under its Shared Services Agreement with NexPoint, HCM was Responsible for the NexPoint Term Note Payments Being Made.

32. NexPoint and HCM entered into a written Shared Services Agreement (the "NexPoint SSA") on January 1, 2018, in which HCM provided a broad array of services to NexPoint, and essentially covered all functional areas of NexPoint's business other than executive

and investment functions.[20] In my experience, these types of shared services agreements are common in my industry, and exist to help consolidate function and manpower between a large entity (like HCM) and smaller entities (like NexPoint) that share overlapping ownership structures.

33. The NexPoint SSA outlined multiple areas in which HCM would provide services for NexPoint, which resulted in HCM providing virtually the entire workforce for NexPoint's business. Among the areas of services provided under the NexPoint SSA, HCM provided services for NexPoint's back- and middle-office divisions, legal compliance and risk divisions, tax division, administrative services division, management of NexPoint's clients and accounts, and many other divisions.[21] Again, this type of shared services agreement covering these types of services is common in the private equity market where ownership overlaps.

34. The result of this shared services agreement was that HCM was responsible for making debt payments on behalf of NexPoint – considered a "back and middle office" task – which included making payments on the NexPoint Term Note. In fact, HCM made the NexPoint Term Note payments – consistent with the SSA, which specifically provided that HCM would make payments to creditors – on December 31 of 2017, 2018, and 2019, without any specific authorization or permission from any of the makers.

35. Although HCM sought to provide notice of termination of the NexPoint SSA in November of 2020, that termination date was subsequently extended and the SSA was still active and in full effect as of December 31, 2020, the date on which the 2020 annual installment payment was due. The letters providing for the subsequent extension of the NexPoint SSA is attached to this Declaration as "Exhibit E"[22] Because HCM was still responsible for making these types of

[20] *Id.* at 04163-04181.
[21] *Id.* at 04165-04167, NexPoint SSA, Section 2.02 "Provision of Services" (a-l).
[22] See attached Exhibit B, (Letters confirming Jim Dondero's resignation as Dugaboy Family Trustee, and the appointment of Nancy Dondero as Dugaboy Family Trustee)

payments for NexPoint at that time under the active SSA, HCM was responsible for missing that payment. The fact that HCM did not make that payment – as it had done in previous years – was surprising to me, since I never at any point directed Frank Waterhouse to cease making term payments on any Note. In fact, I fully expected HCM's accounting staff to continue making scheduled payments on the NexPoint Note, since the SSA was still in place. The only thing I instructed Frank Waterhouse to do was to pause payment to HCM regarding the NexPoint SSA because it came to light that NexPoint was being substantially overcharged and had already substantially overpaid. I would not have instructed Frank Waterhouse to not make a $1.4 million installment payment on the NexPoint Term Note – which could result in a default – as the $1.4 million payment would be trivial compared to a note acceleration.

H. Under its Oral Shared Services Agreement with HCRE, HCM was also Responsible for the HCRE Term Note Payments Being Made.

36. HCRE had a similar shared services agreement (the "HCRE SSA") with HCM that was established by oral agreement. In my experience, shared services agreements are not always in written form, but established by oral agreement and patterns of conduct. HCM provided the same type of services to HCRE as it did to NexPoint, and orally agreed to do so. Similar to NexPoint, HCRE simply did not have the infrastructure or manpower to run its business without the HCRE SSA. As such, HCM provided a comprehensive array of services to HCRE that included back- and middle-office tasks like making sure HCRE's bills and loans were timely paid. This HCRE SSA was long-standing, as HCM had provided these comprehensive services to HCRE for years, and HCRE relied heavily on HCM to provide these services.

37. HCM – despite having routinely paid on bills and notes for HCRE – did not make the December 31, 2020 payment on the HCRE Term Note. At no point prior to that missed payment did I ever direct any person to terminate the HCRE SSA. Further, at no point prior to

that missed payment did I ever direct anyone at HCM to miss or skip any payment on the HCRE Term Note. I fully expected HCM's accounting staff to continue providing these services and making the scheduled payments on the HCRE Term Note.

I. Under its Oral Shared Services Agreement with HCMS, HCM was also Responsible for the HCMS Term Note Payments Being Made.

38. HCMS also had a similar shared services agreement (the "HCMS SSA") with HCM that was established by oral agreement. In my experience, shared services agreements are not always in written form, but established by oral agreement and patterns of conduct. HCM provided the same type of services to HCMS as it did to NexPoint and HCRE, and orally agreed to do so. Similar to NexPoint and HCRE, HCMS simply did not have the infrastructure or manpower to run its business without the HCMS SSA. As such, HCM provided a comprehensive array of services to HCMS that included back- and middle-office tasks like making sure HCMS's bills and loans were timely paid. This HCMS SSA was long-standing, as HCM had provided these comprehensive services to HCMS for years, and HCMS relied heavily on HCM to provide these services.

39. HCM – despite having routinely paid on bills and notes for HCMS – did not make the December 31, 2020 payment on the HCMS Term Note. At no point prior to that missed payment did I ever direct any person to terminate the HCMS SSA. Further, at no point prior to that missed payment did I ever direct anyone at HCM to miss or skip any payment on the HCMS Term Note. I fully expected HCM's accounting staff to continue providing these services and making the scheduled payments on the HCMS Term Note.

J. Payments Were Made on the NexPoint, HCRE, and HCMS Term Notes to Cure Any Defaults.

40. I did not know that the NexPoint, HCRE, and HCMS Term Notes were in default until I called Frank Waterhouse from an in-person hearing in January 2021. I was surprised,

angered, and annoyed to learn that such *de minimis* amounts had not been paid on the Term Notes to keep them current. After asking Frank Waterhouse what it would take to cure them and make them current, he informed me of the amounts required, and I instructed him to make sure the payments got made and that the Term Notes were cured. Much later I learned, discussed further below, that the NexPoint and HCMS loans had been substantially prepaid so that no payment was actually due in December 2021. HCM, which was responsible for keeping track of the status of the loan, did not remind me of the prepayments in December of 2020 or January of 2021. So I pressed Frank Waterhouse, who was HCM's CFO and had the ability and authority to speak on behalf of and bind HCM, to make the payments HCM should have made if it believed that end of year payments on the Term Notes were due in 2020, and he told me the amounts needed and proceeded to make the payments. I would not have caused these payments to be made if Frank Waterhouse disagreed and told me that the payments would not cure and reinstate the loans.

41. As a result of my conversation with Frank Waterhouse, I therefore believed that the Term Notes would be cured by the payments I directed Frank Waterhouse to make. Surely if the payments would not have cured the loans, he -- the lender's CFO -- would have told me that before making the payments. I could not have been clearer that I was flabbergasted that the payments had not been made and wanted the payment to be made as soon as possible to bring the loans current. I specifically discussed with Frank Waterhouse – HCM's CFO at the time – that I wanted these payments to act as cure payments for all three Term Notes. Waterhouse did not disagree with me that the payments would cure the missed payments, and he agreed to make the cure payments. However, HCM refused to accept the payments as cure for the defaults.

K. Prepayments by NexPoint and HCMS.

42. The HCMS and NexPoint Term Notes called for annual payments to be made by December 31 of every calendar year. Not only did HCM make the required term payments, but I also instructed several prepayments to be made on these Notes throughout the years whenever HCM needed liquidity. I understood that the prepayments I caused to be made on the Term Notes, when cash flow required, would be applied to the next scheduled annual payments if payments were not otherwise able to be made, and any reconciliations would be conducted by the HCM so that the borrowers would not be in default as a result of their voluntary prepayments for HCM's benefit. I know that both NexPoint and HCMS made substantial prepayments on their term loans.

43. Between March and August of 2019, the following prepayments were made on the NexPoint Term Note: (i) $750,000.00 on March 29, 2019; (ii) $1,300,000.00 on April 16, 2019; (iii) $300,000.00 on June 4, 2019; (iv) $2,100,000.00 on June 19, 2019; (v) $630,000.00 on July 9, 2019; and (vi) $1,300,000.00 on August 13, 2019. These payments totaled $6,380,000.00 in 2019. Setting aside all issues of prepayment, the normal December, 2019 payment of principal and interest on the NexPoint Term Note would have been $2,273,970.54, leaving $4,106,029.46 remaining to apply as prepayments on the Note.

44. I know that none of the payments listed above were scheduled payments, but rather, they were payments made upon request from HCM because it needed the liquid funds. Both NexPoint and HCM intended for these payments to count as prepayments on the NexPoint Note to be applied to the December 31, 2020 annual installment payment.

45. Similar to NexPoint, HCMS made substantial prepayments towards the HCMS Term Note between May of 2017 and December of 2020. In fact, the prepayments were so large that the HCMS Term Note's principal was paid down by almost $14,000,000. In that timeframe, the following prepayments were made on the HCMS Term Note: (i) $985,216.44 on June 23, 2017;

(ii) $907,296.25 on July 6, 2017; (iii) $1,031,463.70 on July 18, 2017; (iv) $1,971,260.13 on August 25, 2017; (v) $1,500,000.00 on December 21, 2017; (vi) $160,665.94 on May 31, 2018; (vii) $1,000,000.00 on October 8, 2018; (viii) $1,015,000.00 on May 5, 2019; (ix) $550,000.00 on August 9, 2019; (x) $5,600,000.00 on August 21, 2019; and (xi) $65,360.49 on December 30, 2019.

46. Similar to the NexPoint Term Note prepayments, none of these payments were made on December 31 of any given year, nor were any of these payments made on arrears. Instead, these payments were intended by HCMS to be applied to the annual installment payments, and were believed to be accepted as such, since HCM never declared the HCMS Term Note to be in default in either 2017, 2018, or 2019.

L. Sale of Shares of MGM.

47. I understand that Plaintiff raises the issue of a sale of Plaintiff's interest in MGM in its Motion. This sale of a small portion of Plaintiff's interest in MGM would not have implicated the Agreements because it was for a *de minimis* amount of MGM stock and was only necessitated as a result of the UCC not being willing to cooperate in a transaction as part of the bankruptcy process that was agreed to by all of the other participants.

Pursuant to 28 U.S.C. § 1746(2), I declare under penalty of perjury that the foregoing is true and correct.

Dated: January 20, 2022

JAMES DONDERO

Exhibit A

HCM Services
Exhibit A

Closing Date		5/31/2017
Total Commitment	$	20,247,628
Rate		2.750%

Date	Interest Accrual	Interest Paid	Accrued Interest	Beg Prin Bal	Principal Paid	Ending Prin Bal
5/31/2017						20,247,628.02
5/31/2017	-		-	20,247,628.02		20,247,628.02
6/23/2017	35,086.64	(35,086.64)	-	20,247,628.02	(950,129.80)	19,297,498.22
6/30/2017	10,177.45		10,177.45	19,297,498.22		19,297,498.22
7/6/2017	8,723.53	(18,900.97)	-	19,297,498.22	(888,395.28)	18,409,102.95
7/18/2017	16,643.85	(16,643.85)	0.00	18,409,102.95	(1,014,819.85)	17,394,283.10
7/31/2017	17,036.87		17,036.87	17,394,283.10		17,394,283.10
8/25/2017	32,763.20	(199,329.33)	(149,529.26)	17,394,283.10	(1,771,930.80)	15,622,352.30
8/31/2017	7,062.16		(142,467.10)	15,622,352.30		15,622,352.30
9/30/2017	35,310.80		(107,156.30)	15,622,352.30		15,622,352.30
10/31/2017	36,487.82		(70,668.48)	15,622,352.30		15,622,352.30
11/30/2017	35,310.80		(35,357.68)	15,622,352.30		15,622,352.30
12/21/2017	24,717.56		(10,640.13)	15,622,352.30	(1,500,000.00)	14,122,352.30
12/31/2017	10,640.13		0.00	14,122,352.30		14,122,352.30
1/31/2018	32,984.40		32,984.40	14,122,352.30		14,122,352.30
2/28/2018	29,792.36		62,776.76	14,122,352.30		14,122,352.30
3/31/2018	32,984.40		95,761.16	14,122,352.30		14,122,352.30
4/30/2018	31,920.39		127,681.54	14,122,352.30		14,122,352.30
5/31/2018	32,984.40	(160,665.94)	0.00	14,122,352.30	160,665.94	14,283,018.24
6/30/2018	32,283.53		32,283.54	14,283,018.24		14,283,018.24
7/31/2018	33,359.65		65,643.19	14,283,018.24		14,283,018.24
8/31/2018	33,359.65		99,002.84	14,283,018.24		14,283,018.24
9/30/2018	32,283.53		131,286.37	14,283,018.24		14,283,018.24
10/8/2018	8,608.94	(412,000.00)	(272,104.68)	14,283,018.24	(588,000.00)	13,695,018.24
10/31/2018	23,731.78		(248,372.91)	13,695,018.24		13,695,018.24
11/30/2018	30,954.49		(217,418.41)	13,695,018.24		13,695,018.24
12/31/2018	31,986.31		(185,432.10)	13,695,018.24		13,695,018.24
1/31/2019	31,986.31		(153,445.79)	13,695,018.24		13,695,018.24
2/28/2019	28,890.86		(124,554.93)	13,695,018.24		13,695,018.24
3/5/2019	5,159.08	(37,904.91)	(157,300.76)	13,695,018.24	(977,095.09)	12,717,923.15
3/31/2019	24,913.19		(132,387.57)	12,717,923.15		12,717,923.15
4/30/2019	28,745.99		(103,641.58)	12,717,923.15		12,717,923.15
5/31/2019	29,704.19		(73,937.39)	12,717,923.15		12,717,923.15
6/30/2019	28,745.99		(45,191.40)	12,717,923.15		12,717,923.15
7/31/2019	29,704.19		(15,487.21)	12,717,923.15		12,717,923.15
8/9/2019	8,623.80		(6,863.41)	12,717,923.15	(550,000.00)	12,167,923.15
8/21/2019	11,001.14	(4,137.73)	(0.00)	12,167,923.15	(5,595,862.27)	6,572,060.88
8/31/2019	4,951.55		4,951.55	6,572,060.88		6,572,060.88
9/30/2019	14,854.66		19,806.21	6,572,060.88		6,572,060.88
10/15/2019	7,427.33		27,233.54	6,572,060.88		6,572,060.88
10/31/2019	7,922.48		35,156.02	6,572,060.88		6,572,060.88
11/30/2019	14,854.66		50,010.68	6,572,060.88		6,572,060.88
12/30/2019	14,854.66	(65,360.49)	(495.15)	6,572,060.88		6,572,060.88
12/31/2019	495.16		0.00	6,572,060.88		6,572,060.88
1/31/2020	15,349.81		15,349.82	6,572,060.88		6,572,060.88
2/29/2020	14,359.50		29,709.32	6,572,060.88		6,572,060.88
3/31/2020	15,349.81		45,059.13	6,572,060.88		6,572,060.88
4/30/2020	14,854.66		59,913.79	6,572,060.88		6,572,060.88
5/31/2020	15,349.81		75,263.60	6,572,060.88	-	6,572,060.88
6/30/2020	14,854.66		90,118.26	6,572,060.88		6,572,060.88
7/31/2020	15,349.81		105,468.08	6,572,060.88		6,572,060.88
8/31/2020	15,349.81		120,817.89	6,572,060.88		6,572,060.88
9/30/2020	14,854.66		135,672.55	6,572,060.88		6,572,060.88
10/31/2020	15,349.81		151,022.36	6,572,060.88		6,572,060.88
11/30/2020	14,854.66		165,877.02	6,572,060.88		6,572,060.88
12/31/2020	15,349.81		181,226.83	6,572,060.88		6,572,060.88
1/21/2021	10,398.26	(181,226.83)	10,398.26	6,572,060.88		6,572,060.88

Exhibit B

THE DUGABOY INVESTMENT TRUST
James D. Dondero, Primary Beneficiary

October 12, 2015

Dana Scott Breault
5207 Scarborough Lane
Dallas, Texas 75287

Cynthia D. M. Brown, President
Commonwealth Trust Company
29 Bancroft Mills Road #2
Wilmington, Delaware 19806

Re: The Dugaboy Investment Trust

Dear Ms. Breault,

I, James D. Dondero, am writing to inform you that on October 12, 2015, I received notice from Grant James Scott that he will cease to serve as Family Trustee of The Dugaboy Investment Trust (the "**Trust**") and shall stop performing all duties and responsibilities undertaken as Family Trustee of the Trust.

Pursuant to the attached Resignation of Family Trustee from Grant James Scott, I appoint Nancy Marie Dondero as the successor Family Trustee of the Trust.

This letter and the attached Resignation of Family Trustee shall satisfy my obligations under Section 5.2 of that Trust Agreement entered into on November 15, 2010 to provide you, Settlor, with notice of my appointment of a successor Family Trustee.

Very truly yours,

James D. Dondero

THE DUGABOY INVESTMENT TRUST
Grant James Scott, Family Trustee

October 12, 2015

Dana Scott Breault
5207 Scarborough Lane
Dallas, Texas 75287

Cynthia D. M. Brown, President
Commonwealth Trust Company
29 Bancroft Mills Road #2
Wilmington, Delaware 19806

Re: The Dugaboy Investment Trust

Dear Ms. Breault,

I, Grant James Scott, am writing to inform you that as of October 12, 2015, I will cease to serve as Family Trustee of The Dugaboy Investment Trust (the "**Trust**") and shall stop performing all duties and responsibilities undertaken as Family Trustee of the Trust pursuant to the attached Resignation of Family Trustee.

This letter and the attached Resignation of Family Trustee shall satisfy my obligations under Section 5.1 of that Trust Agreement entered into on November 15, 2010 to provide you, Settlor, with written notice of my resignation.

Very truly yours,

Grant James Scott

RESIGNATION OF FAMILY TRUSTEE

I, **GRANT JAMES SCOTT**, do hereby acknowledge that I voluntarily tender my resignation as Family Trustee of The Dugaboy Investment Trust pursuant to that Trust Agreement, dated November 15, 2010 by, between and among Dana Scott Breault, as Settlor, and Common Wealth Trust Company, as Administrative Trustee.

This resignation shall take effect immediately upon the execution hereof and delivery of a written acknowledged instrument wherein NANCY MARIE DONDERO accepts the trust and the position of Family Trustee.

IN WITNESS WHEREOF, I hereby sign my Resignation as Family Trustee of the above trust.

Signed, sealed and delivered in the presence of:

Family Trustee

10/12/2015
Date

STATE OF TEXAS §
COUNTY OF DALLAS §

Before me, a notary public, on this day personally appeared **GRANT JAMES SCOTT** known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this 14th day of October, 2015.

MICAELA SUE ALLEN
Notary Public, State of Texas
My Commission Expires
January 15, 2019

[SEAL]

Notary Public's Signature

Expiration: January 15, 2019

ACCEPTANCE OF APPOINTMENT OF FAMILY TRUSTEE

I, **NANCY MARIE DONDERO**, appointed as Family Trustee under Article V, Section 5.2(a)(i) of The Dugaboy Investment Trust, dated November 15, 2010 (the "**Trust**"), hereby acknowledge and accept the position of Family Trustee of the Trust and hereby agree to faithfully perform all the duties and adopt all of the obligations imposed.

Signed this 13th day of October, 2015.

Nancy Marie Dondero
NANCY MARIE DONDERO
Family Trustee

STATE OF TEXAS §
COUNTY OF DALLAS §

Before me, a notary public, on this day personally appeared **NANCY MARIE DONDERO** known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that she executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this 14th day of October, 2015.

MICAELA SUE ALLEN
Notary Public, State of Texas
My Commission Expires
January 15, 2019

[SEAL]

Micaela Sue Allen
Notary Public's Signature

Expiration: January 15, 2019

ACKNOWLEDGEMENT OF DELIVERY

I, JAMES D. DONDERO, acknowledge that this Acceptance of Appointment of Family Trustee by NANCY MARIE DONDERO was delivered to and received by me on October __, 2015.

James D. Dondero

Exhibit C

TRUST AGREEMENT

Between

DANA SCOTT BREAULT,
Settlor

and

JAMES D. DONDERO and
COMMONWEALTH TRUST COMPANY,
Trustees

THE DUGABOY INVESTMENT TRUST

WINSTEAD PC
DALLAS, TEXAS

THE DUGABOY INVESTMENT TRUST

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THE DUGABOY INVESTMENT TRUST

AGREEMENT OF TRUST made and entered into at Dallas, Texas, this ____ day of October, 2010, by and between DANA SCOTT BREAULT, as Settlor, and JAMES D. DONDERO, and COMMONWEALTH TRUST COMPANY, as Trustees.

ARTICLE I

DEFINITIONS

The following terms, as used in this Trust Agreement, have the meanings set forth below, unless another meaning is clearly indicated by context or circumstances:

1.1 Settlor. "Settlor" means DANA SCOTT BREAULT.

1.2 Jim. "Jim" means JAMES D. DONDERO.

1.3 Trustees. The initial Trustee of each trust created hereunder is JAMES D. DONDERO. "Trustee" means any person or entity serving as Trustee, whether original or successor and whether one or more in number. "Administrative Trustee" means COMMONWEALTH TRUST COMPANY in its capacity as Administrative Trustee, and any successor Administrative Trustee appointed in accordance with Section 5.2(c). "Independent Trustee" means GRANT JAMES SCOTT, III, (upon his acceptance as set forth in Section 5.2(b)) in his capacity as Trustee, and any successor Independent Trustee appointed in accordance with Section 5.2(b). "Family Trustee" means JAMES D. DONDERO in his capacity as Trustee, and any successor Family Trustee appointed in accordance with Section 5.2(a). The rights, powers, duties, and obligations, of the Family Trustee, Independent Trustee and Administrative Trustee are to be exercised and allocated pursuant to Section 6.2 of this Trust Agreement.

1.4 Children. "Children" means REESE AVRY DONDERO, JAMESON DRUE DONDERO, and any other child born to or adopted by Jim after the date of this Trust Agreement. "Child" means one of the Children.

1.5 Descendants. "Descendants" means the legitimate children of the person designated and the legitimate lineal descendants of such children, and includes any person adopted before attaining age fifteen (15) and the adopted person's legitimate lineal descendants. A posthumous child shall be considered as living at the death of his parent.

1.6 Code. "Code" means the Internal Revenue Code of 1986, as amended, and corresponding provisions of future federal tax law.

1.7 Per Stirpes. "Per Stirpes," when used with respect to a distribution of property among a class of beneficiaries, shall mean by representation; that is, the Descendants of a deceased ancestor take the share such ancestor would have received had he or she been living, and the issue of a living ascendant would not take in competition with such ascendant. The per

stirpital allocation shall commence with the most senior generation that has a living representative.

ARTICLE II

FUNDING

Settlor has transferred to the Trustee, without consideration, One Thousand and No/100 Dollars ($1,000.00) which shall be administered and distributed in accordance with the terms of this Trust Agreement. Settlor and others may transfer to the Trustee properties acceptable to them, to be added to the trust estate. The Trustee shall administer the initial trust estate pursuant to the terms of Section 3.1.

ARTICLE III

DISTRIBUTION OF PRINCIPAL AND INCOME

3.1 Trust for Jim. The trust for the benefit of Jim shall be administered and distributed upon the following terms:

(a) Distributions to Jim. The Family Trustee may distribute to Jim so much of the net income and principal of the trust as the Family Trustee deems necessary to provide for Jim's maintenance, support and health. Undistributed income shall be accumulated and added to principal. In exercising its discretion, the Family Trustee shall take into account the following factors:

(i) Jim is the primary beneficiary of the trust.

(ii) The Family Trustee shall take into consideration in determining Jim's needs any other income or resources known upon reasonable inquiry by the Family Trustee to be available to Jim for these purposes.

(iii) Settlor's intention to assist or enable Jim to obtain and furnish a home commensurate with his standard of living.

(iv) Settlor's intention to assist or enable Jim to obtain capital to enter a business or profession.

(v) Any federal, state or local income taxes imposed on Jim as a result of the income and/or gains from the trust

(b) Distributions by Independent Trustee. The Independent Trustee may, in its sole and absolute discretion, distribute to Jim so much of the income and principal of the trust as the Independent Trustee shall deem appropriate or advisable. It is Settlor's intention to give the Independent Trustee the broadest discretion possible in determining the amount and timing of distributions of income and principal hereunder and Settlor recognizes that the Independent Trustee may, in the exercise of its discretion, determine

to distribute the entire trust estate to Jim or to make no distributions to Jim during Jim's disability or for so long as Jim shall have a judgment outstanding, or for so long as any distribution might be lost to Jim's creditors. It is also Settlor's intention and desire for the Independent Trustee to consider any federal, state or local income taxes imposed on Jim as a result of the income and/or gains from the trust in determining the amount of distributions to be made to Jim under this subsection (b).

(c) Inter Vivos Special Power of Appointment. During Jim's lifetime, he shall have a special power to appoint any part or all of the trust estate to any individual or entity, except that no appointment shall be made to Jim, his creditors, his estate, or the creditors of his estate. Valid appointments may be in such amounts and proportions and upon such terms and conditions as Jim shall determine and evidence by written instrument delivered to the Trustee which specifically refers to this power of appointment and expresses the intention to exercise it; provided that such power of appointment shall not extend to any life insurance policies insuring Jim's life that constitute a part of the trust estate; and provided further that Jim shall not have a power to appoint by deed to or for the benefit of Jim or any individual or entity if such appointment has the effect of satisfying Jim's contractual or legal obligations. Any exercise of this power of appointment must be made in an executed and acknowledged written instrument delivered to the Trustee which to be effective must refer specifically to the power granted under this Section 3.1(c).

(d) Independent Trustee's Power to Grant Testamentary General Power of Appointment. Except as otherwise provided herein, the Independent Trustee, by signed acknowledged instrument delivered to Jim, may grant Jim a testamentary general power of appointment (as defined in Sections 2041 of the Code) over part or all of the trust estate, provided, however, that such power of appointment shall only be effective in an amount up to but not in excess of the amount, if any, above which any further addition to the amount subject to the power of appointment would increase the Net Death Taxes (as hereinafter defined) by an amount equal to or greater than the decrease in the generation-skipping transfer tax that would result from such further addition. Unless Jim's will provides otherwise by express reference to this Trust Agreement and the above power of appointment, the increase in the Net Death Taxes resulting from such power shall be paid from that amount of the principal of the trust estate over which the power is exercisable. As used in this section, the term "Net Death Taxes" shall mean the aggregate death taxes (including, without limitation, Federal, state, local and other estate taxes and inheritance taxes but exclusive of interest and penalties), after taking into account all applicable credits, payable with respect to Jim's estate.

(i) If Jim has one or more other general powers of appointment exercisable and measured substantially as provided in subsection (d) above, the amount that Jim may appoint under subsection (d) shall be reduced proportionally, based on the net fair market values of the principal of the trusts with respect to which such powers are exercisable as of the date of Jim's death, so that the aggregate of the amount so appointable under this Trust Agreement and the amount or amounts so appointable pursuant to such other power or powers

together shall be no greater than the amount otherwise appointable under subsection (d) above.

(ii) The scope and terms of the power shall be defined in the instrument. Before such a power is exercised by Jim and the exercise becomes effective, the Independent Trustee may, in a similar manner, revoke or alter the power which was granted. This power shall not apply if the trust has an inclusion ratio of zero for generation-skipping transfer tax purposes. Jim shall not have a general power of appointment over any part of the trust estate unless such power is specifically granted to Jim by the Independent Trustee pursuant to this subsection.

(e) Termination. If not earlier terminated by distribution of the entire trust estate under the foregoing provisions, the trust shall terminate upon Jim's death. Upon termination of the trust, the Trustee shall distribute the balance of the trust estate as follows:

(i) Pursuant to General Testamentary Power of Appointment. This paragraph (i) shall apply if, but only if, the Independent Trustee grants Jim a general testamentary power of appointment pursuant to subsection (d) above and the Independent Trustee has not revoked the grant of that general power prior to the date of Jim's death. In that event, if Jim validly exercises such general testamentary power of appointment, the Trustee shall distribute so much of the trust estate then remaining as is validly appointed by Jim pursuant to such power in accordance with the terms of such appointment.

(ii) Special Testamentary Power of Appointment. This paragraph (ii) shall apply to so much of the trust estate then remaining as is not distributed pursuant to paragraph (i) above. The Trustee shall distribute the trust estate to such one or more individuals and entities, in such amounts and proportions and upon such terms and conditions, as Jim appoints by will or codicil which specifically refers to this power of appointment and expresses the intention to exercise it. However, Jim may not appoint to Jim, Jim's estate, Jim's creditors, or creditors of Jim's estate.

(iii) Alternative Disposition. The remaining and unappointed trust estate shall be held in trust or distributed as follows:

(1) If one or more of Jim's Descendants are then living, the Trustee shall divide the trust estate into separate equal shares, one for each then living Child and one for the then living Descendants, collectively, of each deceased Child with one or more Descendants then living. The Trustee shall administer a share for each Child in a separate trust for the primary benefit of the Child and for the Child's Descendants pursuant to Section 3.2 hereof. The Trustee shall administer a share for the Descendants of each deceased Child pursuant to Section 3.3 hereof.

(2) If none of Jim's Descendants is then living, the trust estate shall be administered or distributed in accordance with Section 3.4 hereof.

3.2 Trust for Child. All property directed to be administered in a separate trust for a Child under this Section 3.2 shall be administered and distributed for the Child's benefit upon the following terms:

(a) Distributions to Child. The Trustee may distribute to the Child so much of the net income and principal of the trust as the Trustee deems necessary to provide for the Child's reasonable maintenance, support, health and education. In exercising its discretion, the Trustee shall take into account the following factors:

(i) The Child's standard of living at the creation of the trust.

(ii) The Child is the primary beneficiary of the trust.

(iii) The Trustee shall take into consideration, in determining the Child's needs, any other income or resources known upon reasonable inquiry by it to be available to the Child for these purposes.

(iv) Settlor's intention to enable or assist each Child to pursue vocational, college, graduate, and/or professional education as long as in the Trustee's judgment it is pursued to the Child's advantage and to receive an excellent earlier education.

(v) Settlor's intention that the trust distributions not serve as a disincentive to the Child's motivation to provide for her own needs in life.

(b) Distributions to Child's Descendants. The Trustee may distribute to the Child's Descendants so much of the net income and principal of the trust as the Trustee, in its discretion, deems necessary to provide for their reasonable maintenance, support, health and education. In exercising its discretion, the Trustee shall take into account the following factors:

(i) The primary purpose of the trust.

(ii) The respective needs of each Descendant.

(iii) The Trustee shall take into consideration, in determining a Descendant's needs, any other income or resources known upon reasonable inquiry by it to be available to the Descendant for these purposes.

(iv) Settlor's intention to enable or assist each Descendant to pursue vocational, college, graduate, and/or professional education as long as in the Trustee's judgment it is pursued to the Descendant's advantage and to receive an excellent earlier education.

(v) Settlor's intention that the trust distributions not serve as a disincentive to a Descendant's motivation to provide for his or her own needs in life, and Settlor's instruction to the Trustee to terminate or lessen distributions to a Descendant if that objective, in the judgment of the Trustee, would thereby be served.

Distributions hereunder need not be equal among the Descendants, and the Trustee may make distributions to one or more Descendants to the exclusion of others. Distributions shall be charged against the trust estate as a whole, and not against the distributive share of any Descendant upon termination of the trust.

(c) Inter Vivos Special Power of Appointment. The Child, acting in the Child's individual capacity, shall have a special power to appoint the income and principal of the trust to or for the benefit of one or more members of the limited class consisting of the Descendants of the Children, in such amounts and proportions and upon such terms and conditions, as the Child shall direct; provided that the Child shall not have a power to appoint by deed to or for the benefit of any individual if such appointment has the effect of satisfying a contractual obligation or legal support obligation of the Child. This power of appointment may be exercised subject to such terms and conditions as the Child shall direct, including an appointment in further trust, but no trust created by the exercise of such power may extend beyond the maximum term allowable with respect to any trust created under this Trust Agreement. Any exercise of this power of appointment must be made in an executed and acknowledged written instrument delivered to the Trustee which to be effective must refer specifically to the power granted under this Section 3.2(c).

(d) Termination. If not earlier terminated by distribution of the entire trust estate under the foregoing provisions, the trust shall terminate upon the death of the Child. Upon termination, the Trustee shall distribute the trust estate then remaining, or any part thereof, to such one or more members of the limited class consisting of Jim's Descendants, in such amounts and proportions and upon such terms and conditions, as the Child shall appoint by will or codicil which specifically refers to this power of appointment and expresses the intention to exercise it. However, the Child may not appoint to the Child, the Child's creditors, estate, or creditors of the Child's estate. The trust property not appointed by the Child in accordance with this special power of appointment shall be administered by the Trustees for the Child's then living Descendants pursuant to Section 3.3 hereof. If there are no Descendants of the Child then living, the Trustee shall distribute the remaining trust estate to Jim's then living Descendants, Per Stirpes. If any property is distributable to a person for whose benefit a trust which was established under this Trust Agreement is then being administered, the property shall be added to that trust and administered according to its terms. If no Descendant of Jim is then living, the Trustee shall administer or distribute the remaining trust estate pursuant to Section 3.4 hereof.

3.3 Trusts for Descendants. The Trustee shall divide property which is to be administered under this Section 3.3 for the Descendants of a deceased Child, among such

Descendants, Per Stirpes. The Trustee shall administer each share created for a Descendant of a deceased Child (the "Beneficiary") in a separate trust for the Beneficiary's benefit upon the following terms:

(a) Distributions. The Trustee shall distribute to the Beneficiary so much of the net income and principal of the trust as the Trustee deems necessary for the Beneficiary's reasonable maintenance, support, health and education. In exercising its discretion, the Trustee shall take into account the following factors:

(i) The Beneficiary's standard of living at the creation of the trust.

(ii) The Beneficiary is the primary beneficiary of the trust.

(iii) The Trustee shall take into consideration, in determining the Beneficiary's needs, any other income or resources known upon reasonable inquiry by it to be available to the Beneficiary for these purposes.

(iv) Settlor's intention to enable or assist each Beneficiary to pursue vocational, college, graduate, and/or professional education as long as in the Trustee's judgment it is pursued to the Beneficiary's advantage and to receive an excellent earlier education.

(v) Settlor's intention that the trust distributions not serve as a disincentive to the Beneficiary's motivation to provide for his or her own needs in life.

(b) Distributions to Beneficiary's Descendants. The Trustee may distribute to the Beneficiary's Descendants so much of the net income and principal of the trust as the Trustee, in its discretion, deems necessary to provide for their reasonable maintenance, support, health and education. In exercising its discretion, the Trustee shall take into account the following factors:

(i) The primary purpose of the trust.

(ii) The respective needs of each Descendant.

(iii) The Trustee shall take into consideration, in determining a Descendant's needs, any other income or resources known upon reasonable inquiry by it to be available to the Descendant for these purposes.

(iv) Settlor's intention to enable or assist each Descendant to pursue vocational, college, graduate, and/or professional education as long as in the Trustee's judgment it is pursued to the Descendant's advantage and to receive an excellent earlier education.

(v) Settlor's intention that the trust distributions not serve as a disincentive to a Descendant's motivation to provide for his or her own needs in

life, and Settlor's instruction to the Trustee to terminate or lessen distributions to a Descendant if that objective, in the judgment of the Trustee, would thereby be served.

Distributions hereunder need not be equal among the Descendants, and the Trustee may make distributions to one or more Descendants to the exclusion of others. Distributions shall be charged against the trust estate as a whole, and not against the distributive share of any Descendant upon termination of the trust.

(c) Inter Vivos Special Power of Appointment. The Beneficiary, acting in the Beneficiary's individual capacity, shall have a special power to appoint the income and principal of the trust to or for the benefit of one or more members of the limited class consisting of Jim's Descendants in such amounts and proportions and upon such terms and conditions, as the Beneficiary shall direct; provided that the Beneficiary shall not have a power to appoint by deed to or for the benefit of any individual if such appointment has the effect of satisfying a contractual obligation or legal support obligation of the Beneficiary. Furthermore, the Beneficiary may not appoint to the Beneficiary, the Beneficiary's creditors, estate or creditors of the Beneficiary's estate. This power of appointment may be exercised subject to such terms and conditions as the Beneficiary shall direct, including an appointment in further trust, but no trust created by the exercise of such power may extend beyond the maximum term allowable with respect to any trust created under this Trust Agreement. Any exercise of this power of appointment must be made in an executed and acknowledged written instrument delivered to the Trustee which to be effective must refer specifically to the power granted under this Section 3.3(c).

(d) Termination. If not earlier terminated by distribution of the entire trust estate under the foregoing provisions, the trust shall terminate at the death of the Beneficiary. Upon termination, and except as otherwise provided pursuant to Section 3.5 hereof, the Trustee shall distribute the trust estate then remaining, or any part thereof to such one or more members of the limited class consisting of Jim's Descendants, in such amounts and proportions and upon such terms and conditions, as the Beneficiary shall appoint by will or codicil which specifically refers to this power of appointment and expresses the intention to exercise it. However, the Beneficiary may not appoint to the Beneficiary, the Beneficiary's creditors, estate or creditors of the Beneficiary's estate. The trust property not effectively appointed by the Beneficiary in accordance with this special power of appointment or pursuant to Section 3.5 hereof shall be distributed, Per Stirpes, to: the Beneficiary's Descendants living at the termination of the trust; or if there are no such Descendants then living, to the then living Descendants of the Child who was the parent of the Beneficiary; or if there are no such Descendants then living, to Jim's then living Descendants. If any property is distributable under this subsection to a Child, such property shall be added to the Child's Trust and administered pursuant to the terms of Section 3.2. If any property is distributable under this subsection to a Descendant of Jim (other than a Child), such property shall be administered in trust for such Descendant's benefit pursuant to the terms of this Section 3.3. If no Descendant of Jim is then living,

the Trustee shall administer or distribute the remaining trust estate pursuant to Section 3.4 hereof.

3.4 Contingent Distribution. If Jim and Jim's Descendants are all are deceased and no other disposition of the trust estate is called for in this Trust Agreement, the trust estate then remaining shall be distributed to those persons other than creditors and Settlor who, under the laws of Texas in force at that time, would have taken the personal property of Jim had he died intestate, a single person without Descendants, domiciled in the State of Texas, the moment after the event causing the distribution hereunder, the shares and proportions of taking to be determined by Texas laws.

3.5 General Power of Appointment for Certain Beneficiaries.

(a) Except as provided in subsection (c) below, any provision of this Trust Agreement to the contrary notwithstanding, at the death of any individual ("such beneficiary") at whose death the generation-skipping transfer tax would, but for the provisions of this section, be applicable with respect to any trust created under this Trust Agreement, the Trustees shall pay out of the principal of such trust such amount as such beneficiary, by express provision referring to this Trust Agreement and this power of appointment in his or her will, appoints, to or among such beneficiary's creditors, up to but not in excess of the amount, if any, above which any further addition to the amount subject to the power of appointment would increase the Net Death Taxes (as hereinafter defined) by an amount equal to or greater than the decrease in the generation-skipping transfer tax that would result from such further addition. Unless such beneficiary's will otherwise provides by express reference to this Trust Agreement and the above power of appointment, the increase in the Net Death Taxes resulting from such power shall be paid from that amount of the principal of such trust over which such power is exercisable. The foregoing provisions of this section shall be effective only if the Trustees make a determination that the generation-skipping transfer tax would not be applicable with respect to the amount of such trust over which such power is exercisable. As used in this section, the term "Net Death Taxes" shall mean "the aggregate death taxes (including, without limitation, federal, state, local and other estate taxes and inheritance taxes but exclusive of interest and penalties), after taking into account all applicable credits, payable with respect to the estate of such beneficiary."

(b) If under the will of any individual or individuals and/or any other trust instrument or instruments, such beneficiary has one or more other general powers of appointment exercisable and measured substantially as provided in subsection (a) above, the amount such beneficiary may appoint under subsection (a) shall be reduced proportionally, based on the net fair market values of the principal of the trusts with respect to which such powers are exercisable as of the date of death of such beneficiary, so that the aggregate of the amount so appointable under this Trust Agreement and the amount or amounts so appointable pursuant to such other power or powers together shall be no greater than the amount otherwise appointable under subsection (a) above.

(c) The provisions of this section shall not apply to the trust administered for Jim under Section 3.1.

3.6 Postponement of Distribution. Upon termination of any trust established hereunder, if any property is distributable to a beneficiary who is then under age twenty-five (25), or who, because of age, physical or mental weakness, or for any other reason is, in the sole discretion of the Trustee, unable to manage the property, the Trustee shall retain such property in a separate trust for the benefit of that beneficiary, until he or she attains age twenty-five (25) and in the sole discretion of the Trustee becomes able to manage the property. At that time, the remaining trust property shall be distributed to the beneficiary and the separate trust shall terminate. During the term of the trust, the Trustee shall distribute to the beneficiary so much of the net income and principal as the Trustee deems necessary to provide for the beneficiary's health, support, maintenance and education. If the beneficiary dies before the termination of the trust, the then remaining trust estate shall be distributed to the beneficiary's estate.

ARTICLE IV

PROVISIONS AFFECTING DISTRIBUTION

4.1 Withdrawal Right. Jim shall have the right, following a contribution to Jim's trust, to make a withdrawal in accordance with the provisions of this section unless the transferor indicates otherwise when making the transfer. A separate withdrawal right shall attach to each separate contribution of properties to Jim's trust. If a transferor is married at the time of contribution to the Trustee, then solely for purposes of the withdrawal rights granted in this Section 4.1, unless the transferor notifies the Trustee in writing to the contrary, such contribution shall be treated as two separate contributions having been made one-half (1/2) by the transferor and one-half (1/2) by the transferor's spouse, regardless of whether the property contributed is community property and regardless of whether they elect to treat such contribution as having been made one-half by each of them for Federal gift tax purposes. Any person making a contribution to Jim's trust may give the Trustee written instructions that no withdrawal right is to be granted, or that alternative withdrawal rights are to be granted with respect to the contribution being made.

(a) Amount That May Be Withdrawn. When a contribution is made, Jim may withdraw the lesser of the following amounts:

(i) the maximum present interest exclusion amount permitted, under Section 2503(b) of the Code, or any similar succeeding statute (such amount being $12,000 at the date of execution of this Trust Agreement), less the cumulative value of all previous known gifts to or for the benefit of Jim by the same transferor during the same calendar year which would qualify for the present interest exclusion; or

(ii) the remainder determined by subtracting Jim's cumulative rights of withdrawal with respect to any other gifts from any transferor that are either

currently outstanding or that have previously lapsed (but not including the present right of withdrawal) during the same calendar year from the greater of (1) Five Thousand Dollars ($5,000), or (2) Five Percent (5%) of the total value of Jim's trust determined as of the date the current withdrawal power is to lapse (such value may be estimated by the Trustee), or (3) any greater withdrawal power, the lapse of which would not constitute a release of such power under Sections 2041(b)(2) and 2514(e) of the Code or any similar subsequent statute; or

(iii) the value of the contribution that is subject to the withdrawal right.

(b) Withdrawal Period and Notice. Unless directed to the contrary by the transferor, the Trustee shall promptly provide Jim with written notice of the date of the contribution, the name of the transferor, the value of the properties contributed, and the value of Jim's withdrawal right. Withdrawals may be made at any time for a period of thirty (30) days following Jim's receipt of the notice of the existence of the withdrawal right. During any period that Jim lacks legal capacity, Jim's guardian or other legal representative, other than Settlor, may exercise Jim's withdrawal right on Jim's behalf. If Jim does not exercise the withdrawal right before the expiration of that period, the unexercised right shall lapse. For purposes of this section, the term "contribution" means any cash or other property which is transferred to the Trustee as part of the trust estate. The value of any contribution to the trust estate shall be its value for federal gift tax purposes.

(c) Payment of Withdrawal Amount. If Jim exercises his withdrawal right, payment of the amount due shall be made in cash immediately upon receipt by the Trustee of a demand in writing from Jim or his guardian or other legal representative, other than Settlor. Upon the exercise of a withdrawal right, payment shall be made, first, from any gifts made to Jim's trust prior to the exercise of such withdrawal right, but during the same calendar year in which the withdrawal right is exercised, and shall be charged against the trust. Should such gift or gifts not consist of sufficient cash to satisfy the exercised withdrawal right, the Trustee shall use other liquid assets of Jim's trust for such purpose. Should Jim's trust not contain sufficient liquid assets to satisfy an exercised withdrawal right when made, the Trustee shall borrow funds in order to satisfy the demand and shall, if necessary, pledge trust property to secure the loan.

(d) Distributions During Withdrawal Period. If any contribution is made subject to a withdrawal right, the Trustee shall not make any distributions under any other provision of the Trust Agreement which would prevent the Trustee from being able to satisfy fully any unexpired right of withdrawal.

(e) Lapse of Withdrawal Right. In the event Jim allows a withdrawal right granted under this Section 4.1 to lapse with respect to a contribution, or any portion thereof, the Trustee is authorized to characterize such lapse as a "release" for purposes of Section 678(a) of the Code.

4.2 Restriction Upon Alienation. No beneficiary may anticipate, by assignment or otherwise, his beneficial interest in the principal or income of the trust estate; nor may any beneficiary sell, transfer, encumber, or in any way charge his interest in trust income or principal prior to actually receiving it. Neither the income nor the principal of any trust established hereunder shall be subject to any execution, garnishment, attachment, bankruptcy, claims for alimony or support, other legal proceeding of any character, legal sequestration, levy or sale, or in any other event or manner be applicable or subject, voluntarily or involuntarily, to the payment of a beneficiary's debts. The Trustee shall make distributions to or for each beneficiary according to the terms hereof, notwithstanding any purported sale, assignment, hypothecation, transfer, attachment, or judicial process. The provisions of this section shall not limit or detract from any power of appointment or withdrawal right granted to any beneficiary herein.

4.3 Distributions Constitute Separate Property. Settlor intends to make a gift to each beneficiary hereunder of only that portion of the income and principal of each trust that is in fact distributed to such beneficiary. Inasmuch as the amounts actually distributed to a beneficiary hereunder constitute the gift Settlor contemplated making, such distributions, whether they be income or principal, shall constitute the separate property of such beneficiary and not the community property of such beneficiary. Furthermore, it is Settlor's intention that no beneficiary shall have any interest in any undistributed income or principal until the distribution of such income or principal and, accordingly, such undistributed income and principal shall not be deemed the community property of any such beneficiary and that beneficiary's spouse.

4.4 Method of Payment. The Trustee, in its discretion, may make distributions to any beneficiary, including a beneficiary who is under a physical, mental, or legal disability (minority or other), in any one or more of the following ways: directly to the beneficiary without the intervention of any legal guardian or other legal representative; as expenditures in the beneficiary's behalf; to the guardian, committee, conservator, or other similar official acting for the beneficiary; to a custodian for the beneficiary under a Uniform Transfers to Minors Act or Uniform Gifts to Minors Act; to a relative of the beneficiary or to any suitable person with whom the beneficiary resides or who has care or custody of the beneficiary; and in all ways provided by law for gifts or other transfers to or for minors or other persons under disability. In each case, receipt by the beneficiary or other person to whom payment is made or a distribution entrusted shall be a complete discharge of the Trustee with respect thereto. The Trustee may act upon such evidence as it deems appropriate and reliable in determining a beneficiary's ability to manage property and identifying a proper recipient of trust funds hereunder.

4.5 Evidence of Need. In exercising its discretion under this Trust Agreement, the Trustee shall be entitled to rely upon the written certification of a beneficiary or of another as to the nature and extent of a beneficiary's needs, and the adequacy of the beneficiary's resources apart from the trust to meet those needs. The Trustee may, but shall not be required to, make inquiry into the accuracy of the information it receives

4.6 Termination of Small Trust. Notwithstanding any provision of this Trust Agreement to the contrary, the Trustee may at any time terminate any trust when in its judgment the trust is so small that it would be inadvisable or uneconomical to continue the trust administration. In the event of termination, the Trustee shall distribute the trust to the income

beneficiaries of the trust determined at the time of distribution in the proportions to which they are entitled to receive income. If at that time rights to income are not fixed by the terms of the trust, distribution shall be made to the persons to whom the Trustee may then distribute income, in proportions determined in the Trustee's discretion, exercised consistently with the trust's purposes. Distribution of trust funds in the manner herein provided shall relieve the Trustee of any further responsibility with respect to such funds. This section shall not apply to a Trustee with respect to any trust of which such Trustee is a beneficiary, or if Trustee has duty to support the beneficiary or to any Trustee who may be removed and replaced by a beneficiary of the trust unless the successor trustee must be a corporate fiduciary or someone who is not related or subordinate to the beneficiary within the meaning of Section 672(c) of the Code. The provisions of this section shall not limit or detract from any withdrawal right granted to any beneficiary herein.

4.7 Generation-Skipping Transfer Taxes and Payment. It is Settlor's intent that the trusts created hereunder be exempt from Generation-Skipping Transfer Taxes. If, however, the Trustee considers any distribution or termination of an interest or power in a trust to be a taxable distribution (a "Distribution") or a taxable termination (a "Termination"), or a direct skip (a "Direct Skip") for generation-skipping transfer tax purposes, the Trustee may exercise the following authorities with respect to any such Distribution, Termination or Direct Skip. In the case of a Distribution, the Trustee may increase the amount to be distributed by an amount estimated to be sufficient to permit the beneficiary receiving such Distribution to pay the estimated generation-skipping tax attributable to such Distribution. Generally, the Trustee would not be expected to augment any partial terminating distribution in order to pay generation-skipping transfer taxes attributable to such partial terminating distribution from a trust. In the case of a Termination or Direct Skip, the Trustee shall pay the generation-skipping transfer tax attributable to such Termination or Direct Skip, and may postpone final termination of any trust or the complete funding of any Direct Skip, and may withhold all or any portion of the trust property, until the Trustee is satisfied it no longer has any liability to pay any generation-skipping transfer tax with reference to the Termination or Direct Skip. If a generation-skipping transfer tax is imposed in part by reason of property held in trust under a Settlor's will or codicil, and in part by reason of other property, the Trustee shall pay only the portion of such tax that is fairly attributable to the Distribution, Termination, or Direct Skip hereunder, taking into consideration deductions, exemptions, credits and other factors which the Trustee deems appropriate. The Trustee may, but need not make any equitable adjustments among beneficiaries of a trust as a consequence of additional distributions or generation-skipping transfer tax payments made with respect to Distributions or Terminations or Direct Skips.

ARTICLE V

THE TRUSTEE

5.1 Resignation of Trustee. The Trustee may resign as to any one or more of the trusts created hereunder by giving written notice to Settlor, if living; otherwise to the current income beneficiary of the trust.

5.2 Appointment and Succession of Trustees.

(a) Generally.

(i) Family Trustee. Jim is the initial Family Trustee of all trusts created hereunder. If Jim ceases to act as Family Trustee, or if any successor Family Trustee fails or ceases to act, Jim may appoint a successor Family Trustee within thirty (30) days of a vacancy arising. If Jim is deceased or if Jim otherwise fails to appoint a successor, GRANT JAMES SCOTT, III is appointed as successor Family Trustee. If GRANT JAMES SCOTT, III fails or ceases to act as Family Trustee, or if any other Family Trustee fails or ceases to act, and a successor is not appointed by Jim as provided above, JOHN WILLIAM HONIS is appointed as successor Family Trustee. If JOHN WILLIAM HONIS fails or ceases to act as Family Trustee, and a successor is not appointed by Jim as provided above, the Family Trustee last serving shall appoint a successor Family Trustee. If a successor Family Trustee is not appointed within sixty (60) days of a vacancy arising, the successor Family Trustee shall be appointed pursuant to the provisions of subsection (b) hereof.

(ii) Independent Trustee. GRANT JAMES SCOTT, III is appointed as the initial Independent Trustee and shall begin serving as such upon delivery of a written acknowledged instrument to the Family Trustee wherein GRANT JAMES SCOTT, III accepts the trust and the position of Independent Trustee. If GRANT JAMES SCOTT, III, fails or ceases to act, or if any other Independent Trustee fails or ceases to act, Jim may appoint a successor within thirty days (30) of the vacancy arising; provided that Jim shall not serve as Independent Trustee and a successor Independent Trustee appointed by Jim may not be related or subordinate to Jim within the meaning of Section 672(c) of the Code. If a successor is not so appointed, JOHN WILLIAM HONIS is appointed Independent Trustee. If JOHN WILLIAM HONIS fails or ceases to act as Independent Trustee, and a successor is not appointed by Jim as provided above, the Independent Trustee last serving may appoint the successor Independent Trustee. If a successor Independent Trustee is not so appointed within sixty (60) days of a vacancy arising, a successor Independent Trustee shall be appointed pursuant to the provisions of subsection (b) hereof.

(iii) Administrative Trustee. COMMONWEALTH TRUST COMPANY is the initial Administrative Trustee. If COMMONWEALTH TRUST COMPANY fails or ceases to serve, Jim may appoint a successor Administrative Trustee within thirty days (30) of the vacancy arising. If a successor is not so appointed, the Family Trustee may appoint a successor Administrative Trustee within sixty (60) days of the vacancy arising. If a successor is not so appointed, a successor shall be appointed in the same manner as provided for the Family Trustee under subsection (a) above. The selection of the Administrative Trustee can have a substantial impact on the situs of the trust, which should be considered in appointing a successor Administrative Trustee.

Notwithstanding any other provision in the Trust Agreement to the contrary, no Administrative Trustee may be appointed under this paragraph if the appointment of such Administrative Trustee would change the situs of the trust to a jurisdiction that has a rule against perpetuities or similar rule which limits the period during which property can be held in trust

The Administrative Trustee shall act in a fiduciary capacity but shall not be a Trustee or co-Trustee except to the extent and for the limited purposes described in Section 6.2. Accordingly, no reference in this Trust Agreement to the "Trustee" or "co-Trustee" shall include, or be deemed to refer to, the Administrative Trustee. Notwithstanding the foregoing, the same individual or bank or trust company may serve simultaneously as both a Trustee or co-Trustee and as Administrative Trustee for any trust created hereunder. The initial Administrative Trustee and each successor may resign at any time and may be removed at any time by the Family Trustee.

For services rendered as Administrative Trustee under this Agreement, any Administrative Trustee shall be entitled to reasonable compensation for his, her or its services, as well as be entitled to reimbursement for all expenses reasonably incurred in performing his, her or its duties hereunder. Any Administrative Trustee may receive (or retain) payment in accordance with its schedule or rates as published from time to time and as in effect at the time such compensation becomes payable, unless otherwise agreed in writing with the Family Trustee.

No termination fee shall be charged upon removal or resignation of an Administrative Trustee. However, such Administrative Trustee shall be entitled to reasonable compensation for time and materials for additional services over and above Administrative Trustee's normal duties in transferring trust assets and administration of the trust to the new Administrative Trustee.

(b) Successor Trustee. If a named or appointed successor Trustee fails or ceases to serve and no other successor is named or appointed pursuant to subsection (a) hereof, a majority in number of the beneficiaries to whom the Trustee is to or may distribute income at that time may appoint the successor Trustee, and each shall have a reasonable time in which to act. If a successor Trustee is not so appointed, any beneficiary of a trust may secure the appointment of a successor Trustee by a court of competent jurisdiction at the expense of the trust estate.

(c) Manner of Appointment; Permissible Trustees. Appointment, other than by a court, shall be by a signed, acknowledged instrument delivered to the appointed Trustee. An appointment may be made before a vacancy arises, to become effective in the event of the vacancy with the last such instrument to control. The successor Trustee appointed by Jim or a Trustee may be one or more persons and/or entities; provided that neither Settlor nor Jim shall serve as Independent Trustee and a successor Independent Trustee appointed by Jim may not be related or subordinate to Jim within the meaning of

Section 672(c) of the Code. Any other successor Trustee shall be a trust company or a bank in the United States having trust powers with not less than Fifty Million Dollars unimpaired capital and surplus. A successor Trustee shall have a reasonable time after a vacancy occurs in which to accept the office by signed, acknowledged instrument delivered to those making the appointment, if living, or to the then current beneficiaries to whom the Trustees are to or may make distributions.

5.3 Removal of Trustee. Jim shall have the power to remove the Trustee of any trust created hereunder, without cause. If Jim is deceased or if Jim is incapacitated within the meaning of Section 5.11 hereof, the primary beneficiary (or, if more than one, a majority of the primary beneficiaries) of a trust may remove any Trustee without cause. Removal shall be effected by delivering to the Trustee a signed acknowledged instrument which is effective thirty (30) days from its receipt (unless a shorter period is agreed to by the Trustee).

5.4 Succession of Corporate Trustee. If any corporate Trustee before or after qualification changes its name, becomes consolidated or merged with another corporation, or otherwise reorganizes, any resulting corporation which succeeds to the fiduciary business of such corporate Trustee shall become a Trustee hereunder in lieu of such corporate Trustee.

5.5 Trustee's Fees. Jim and Jim's Descendants shall not receive a fee for serving as Trustee. Any other Trustee shall be entitled to reasonable fees commensurate with its duties and responsibilities, taking into account the value and nature of the trust estate and the time and work involved. The Trustee shall be reimbursed for reasonable costs and expenses incurred in connection with its fiduciary duties hereunder.

5.6 Bond. The Trustee shall not be required to furnish bond or other security.

5.7 Liability of Trustee.

(a) Generally. A Trustee other than a corporate trustee shall only be liable for willful misconduct or gross negligence, and shall not be liable for breach of fiduciary duty by virtue of mistake or error in judgment.

(b) Administrative Trustee. Every act done, power exercised or obligation assumed by the Administrative Trustee pursuant to the provisions of this Agreement shall be held to be done, exercised or assumed, as the case may be, by the Administrative Trustee acting in a fiduciary capacity and not otherwise, and every person, firm, corporation or other entity contracting or otherwise dealing with the Administrative Trustee shall look only to the funds and property of the trust fund for payment under such contract or payment of any money that may become due or payable under any obligation arising under this Agreement, in whole or in part, and the Administrative Trustee shall not be individually liable therefor even though the Administrative Trustee did not exempt himself, herself or itself from individual liability when entering into any contract, obligation or transaction in connection with or growing out of the trust fund.

The decision of the Administrative Trustee hereunder with respect to the exercise or nonexercise by such Administrative Trustee of any power hereunder, or the time or

manner of the exercise thereof, made in good faith, shall fully protect such Administrative Trustee and shall be final, conclusive and binding upon all persons interested in the Trust or the income therefrom. To the extent permitted under applicable law, the Administrative Trustee acting hereunder shall not be responsible for any error of judgment or mistake of fact or law, absent bad faith or willful misconduct.

The Administrative Trustee shall be liable hereunder only for the Administrative Trustee's bad faith or willful misconduct proved by clear and convincing evidence in the court then having primary jurisdiction over the trust. The Administrative Trustee shall not be personally liable for making any delegation that is authorized under this Agreement, nor for any action taken without the Administrative Trustee's express agreement, nor for any failure to act absent willful misconduct. The Administrative Trustee shall not be liable for relying absolutely on (i) any apparently valid documents and certifications including, but not limited to, tax reports and other tax information provided to the Administrative Trustee by any entity in which the trust fund holds an ownership interest; and (ii) the opinions of counsel or any accountant to any trust.

Prior to the death of Settlor, the Administrative Trustee shall be under no duty to inform any person having a beneficial interest in any trust created hereunder of the existence of any such trust or the nature and extent of that person's beneficial interest in, or rights with respect to, any such trust. Following the death of Settlor, the Administrative Trustee shall be under no duty to inform any person, other than the primary beneficiary of each trust hereunder, having a beneficial interest in any trust created hereunder of the existence of such trust or the nature and extent of that person's beneficial interest in, or rights with respect to, any such trust.

While not required, the same procedure used to settle the Administrative Trustee's accounts may also be employed to obtain the conclusive consent by the beneficiaries to the Administrative Trustee's specific conduct of any other particular matter. The Administrative Trustee and each former Administrative Trustee shall be indemnified and held harmless by each trust created hereunder against any threatened, pending or completed action, claim, demand, suit or proceeding, whether civil, criminal, administrative or investigative, falling within the exculpatory provisions of this Section or to which the Administrative Trustee is made a party, or threatened to be made a party, by reason of serving as Administrative Trustee if the Administrative Trustee acted in good faith, subject to the limitations set forth above. Such indemnification shall include expenses, including attorneys' fees, judgments, fines and amounts paid in settlement actually incurred by the Administrative Trustee in connection with such action, claim, demand, suit or proceeding. The cost of indemnification shall be apportioned against the various trusts created hereunder as the Administrative Trustee reasonably considers appropriate, taking into account the nature of the claims involved.

The Administrative Trustee shall not have any fiduciary responsibility to observe, monitor or evaluate the actions of any Trustee or other fiduciary and shall not be liable to any party for the failure to seek to attempt to prevent a breach of trust, or failure to remedy a breach of trust, or in a recurring situation to request instructions from a court

having jurisdiction over the trust. In no event shall any Administrative Trustee hereunder be liable for any matter with respect to which he, she or it is not authorized to participate hereunder (including the duty to review or monitor trust investments).

Any Successor Administrative Trustee shall be deemed vested with all the duties, rights, titles and powers, whether discretionary or otherwise, as if originally named as Administrative Trustee. No Successor Administrative Trustee shall be personally liable for any act or failure to act of any predecessor Administrative Trustee or any other Trustee. The Successor Administrative Trustee may accept the account rendered and the property delivered by the predecessor Administrative Trustee as a full and complete discharge to the predecessor Administrative Trustee, without incurring any liability for so doing.

5.8 Predecessor Fiduciary. No successor Trustee shall be obligated or required to inquire into the acts, omissions, or accounts of any prior trustee or to bring any action against any prior trustee to compel redress of any breach of trust or for any other reason. In no event shall a successor Trustee be liable for any act or omission of any prior Trustee. A successor Trustee may accept the account rendered and the property received from a prior Trustee as a full and complete discharge to the prior Trustee without incurring any liability for doing so. A successor Trustee shall have all of the powers and discretions conferred in the governing instrument upon the original trustee.

5.9 Periodic Accounting. The Trustee may from time to time render an informal account, statement or report of its administration of each separate trust hereunder to each beneficiary who during the period covered by the account was entitled absolutely to a current payment of income or principal from the trust, or, if there is no such beneficiary, to such beneficiaries who are entitled absolutely or in the discretion of the Trustee to a payment of income or principal from the trust. If any beneficiary or legal representative or parent of a beneficiary who is not of full age or legal capacity to whom any such account is rendered shall not, within ninety (90) days after the mailing of such statement, have notified the Trustee in writing of its disapproval of the same, such statement shall be deemed to be approved

No Administrative Trustee shall be required to file or render periodic accounts in or to any court other than for good cause shown. No Administrative Trustee shall be required to give any bond.

Within 90 days following the close of each calendar year, if information is available, and if not within 30 days after it is delivered to the Administrative Trustee, and within 90 days after the removal or resignation of the Administrative Trustee, the Administrative Trustee may deliver an accounting to each primary beneficiary. The accounting shall be a written accounting of the trusts hereunder during such year or during the period from the close of the last preceding year to the date of such removal or resignation and shall set forth all investments, receipts, distributions, expenses and other transactions of each such trust and show all cash, securities, and other property held as a part of each such trust at the end of such year or as of the date of such removal or resignation, as the case may be. The accountings referred to in this Section shall be deemed to be an account stated, accepted and approved by all of the beneficiaries of each trust for which an

accounting is rendered, and the Administrative Trustee shall be relieved and discharged, as if such accounting had been settled and allowed by a final judgment or decree of a court of competent jurisdiction, unless protested by written notice to the Administrative Trustee, within 60 days of mailing thereof, by the person designated to receive such accounting. The Administrative Trustee shall have the right, at the expense of the trust, to apply at any time to a court of competent jurisdiction for judicial settlement of any account of the Administrative Trustee whether or not previously settled as herein provided or for the determination of any question of construction or for instructions. In any such action or proceeding it shall be necessary to join as parties solely the Administrative Trustee and the Settlor (although the Administrative Trustee may also join such other parties as it may deem appropriate), and any judgment or decree entered therein shall be conclusive and binding on all persons at any time interested in the trust.

5.10 Beneficiary under Disability. A parent, custodian, or guardian of any beneficiary who is under the disability of minority or, in the Trustee's opinion, any other legal, physical, or mental disability, may, in carrying out the provisions of this Trust Agreement, act and receive notice in the beneficiary's stead, and sign any instrument for the beneficiary.

5.11 Incapacity of Individual Trustee. In the event a Trustee other than a corporate Trustee becomes unable to discharge his duties as Trustee hereunder by reason of accident, physical or mental illness or deterioration, or other cause, and does not resign, then upon certification by two medical doctors affirming that each has examined the Trustee and that each has concluded, based on such examination, that he is unable to discharge his duties hereunder, the Trustee shall cease to serve, as if he had resigned, effective the date of the certification.

ARTICLE VI

TRUST ADMINISTRATION

6.1 General Powers. Subject to any limitation stated elsewhere in this Trust Agreement, and the division of powers contained in Section 6.2, the Trustee shall have, in addition to all powers granted to trustees by the common law and by Delaware statutes, as amended from time to time, the following powers with respect to each trust established hereunder:

(a) Retain Property. To retain any property received from any source, including any corporate Trustee's securities, regardless of lack of diversification, risk, or nonproductivity.

(b) Invest. To invest the trust estate in any kind of property, including common trust funds administered by a corporate Trustee or by others, without being limited by any statute or any rule of law dealing with the character, risk, productivity, diversification of, or otherwise concerning, investments by trustees.

(c) Sell. By public offering or private negotiation, to sell, exchange, assign, transfer, or otherwise dispose of all or any real or personal trust property and give options

for these purposes, for such price and on such terms, with such covenants of warranty and such security for deferred payment as the Trustee deems proper. To partition between the trust and any other owner, as the Trustee deems proper, any property in which the trust owns an undivided interest.

(d) Lease. To lease trust property for terms within or extending beyond the term of the trust, for any purpose.

(e) Real Estate. To operate, maintain, repair, rehabilitate, alter, erect, improve, or remove any improvements on real estate; to subdivide real estate; to grant easements, give consents, and enter into contracts relating to real estate or its use; and to release or dedicate any interest in real estate.

(f) Borrow. To borrow money for any purpose either from the banking department of any corporate Trustee or from others; to encumber or hypothecate trust property by mortgage, deed of trust, or otherwise; and to maintain, renew, or extend any indebtedness upon such terms as the Trustee deems appropriate.

(g) Loans. To lend money to any person or entity, including, but not limited to, a beneficiary hereunder, but not including a Settlor or a Trustee (other than a beneficiary serving as Trustee) hereunder, or a spouse of theirs, upon such terms and with such security as the Trustee deems advisable.

(h) Conserve Estate. To take any action to conserve the trust estate.

(i) Litigation. To commence or defend at the expense of the trust such litigation with respect to the trust estate as the Trustee deems advisable.

(j) Claims. To collect, pay, contest, compromise, settle, renew, or abandon any claims or demands of or against the trust estate without court authority on whatever terms the Trustee deems advisable.

(k) Abandon Property. To abandon any property or interest in property belonging to the trust when, in the Trustee's discretion, such abandonment is in the best interest of the trust and its beneficiaries.

(l) Documents. To execute contracts, notes, conveyances, and other instruments containing covenants, representations, or warranties binding upon and creating a charge against the trust estate or containing provisions excluding personal liability, or any other written instrument of any character appropriate to any of the powers or duties conferred upon the Trustee.

(m) Agents. To employ attorneys, auditors, investment advisors, depositaries, and agents with or without discretionary powers, to employ a bank with trust powers as agent for the purpose of performing any ministerial duties incident to the administration, and to pay all expenses and fees so incurred.

(n) Securities. To engage in all actions necessary to the effective administration of securities including, but not limited to, the authority to: vote securities in person or by proxy; engage in a voting trust or voting agreement; and consent to or participate in mergers, consolidations, sales of assets, recapitalizations, reorganizations, dissolutions, or other alterations of corporate structure affecting securities held in the trust.

(o) Nominee. To hold securities and other property in bearer form or in the name of a trustee or nominee with or without disclosure of any fiduciary relationship.

(p) Additional Property. To receive additional property from any source and add it to the trust estate.

(q) Insurance. To carry insurance of such kinds and in such amounts as the Trustee deems advisable, except for insurance on the life of a Settlor, the Trustee, or a spouse of theirs. The Trustee shall not apply trust property to the payment of premiums on an insurance policy on the life of Settlor, the Trustee, or a spouse of theirs.

(r) Business Powers.

(i) In General. To engage in any lawful business including, but not limited to, the power to continue at the risk of the trust estate the operation of any business which may become a part of the trust estate, and to sell, liquidate, or otherwise terminate any business interest, including, but not limited to, the fulfillment of any agreement for the disposition of any such business interest.

(ii) Closely Held Businesses. This trust may be funded with, or subsequently purchase or otherwise acquire, securities or other financial interests in one or more closely held businesses (each of which is hereinafter referred to as the "business").

(1) Exoneration from Liability. It is realized that the business may not be the type of investment in which fiduciaries would normally invest estate or trust funds. Nonetheless, the Trustees shall incur no liability for any loss which may be sustained by reason of the retention, operation or sale of the business or the exercise of any power conferred upon the Trustees with respect to the business.

(2) Management Powers. The Family Trustee shall have the exclusive duty to deal with and manage the business. In addition to any power granted by law or elsewhere in this document, the Family Trustee shall have the following powers:

(A) To retain and continue the business or any interest therein for such time as the Family Trustee considers advisable;

(B) To operate or participate in the operation of the business in the form of a corporation, limited liability company, partnership or proprietorship;

(C) To direct, control, supervise, manage, operate or participate in the operation of the business; to serve as an officer and director of the business; and to receive from the business compensation for his services in addition to his compensation as a Family Trustee;

(D) To delegate all or any part of his power to supervise, manage or operate the business to such persons as he may select, including any director, officer or employee of the business;

(E) To engage, compensate and discharge such managers, employees, agents, attorneys, accountants, consultants or other representatives as he considers advisable, including anyone who may be a beneficiary or fiduciary of this Trust;

(F) To invest or employ in the business, or to use as collateral for loans to the business, such other estate or trust funds as he considers advisable;

(G) To sell, liquidate or otherwise dispose of all or any part of the business at such time or times, for such prices and upon such terms and conditions as he considers advisable, and to sell the business to anyone who is a beneficiary or a fiduciary of this Trust; and

(3) Exclusion from Powers. Neither Commonwealth Trust Company nor any successor Administrative Trustee shall have any power, duty and/or responsibility in connection with the operation, control, supervision, management and participation of the business.

(s) Income and Principal. To determine, in accordance with the provisions of Delaware law, what constitutes income and principal of the trust estate, the manner in which expenses and other charges shall be allocated between these accounts, and whether or not to establish reserves for depreciation or depletion, and to add undistributed income to principal.

(t) Tax Elections. To exercise any tax option or election permitted by law as the Trustee determines, in its sole discretion, even though the effect is to treat beneficiaries hereunder differently, or to favor some at the expense of others. The Trustee may, but need not, make such compensating adjustments among beneficiaries with respect thereof as it deems appropriate considering the nature of the tax election and the amounts involved.

(u) Reliance. To rely upon any notice, certificate, affidavit, or other document or evidence believed by the Trustee to be genuine and accurate, in making any payment or distribution. The Trustee shall incur no liability for a disbursement or distribution made in good faith and without actual notice or knowledge of a changed condition or status affecting any person's interest in the trust or any other matter.

(v) Commingling. To commingle and invest as one fund, or make joint investments with, the principal of two or more separate trusts established hereunder, with each trust having an undivided interest therein.

(w) Division and Distribution. To make all allocations, distributions, or divisions contemplated by this Trust Agreement; to allocate, distribute and divide different kinds or disproportionate shares of property or undivided interests in property among the beneficiaries or trusts, in cash or in kind, or both, without regard to the income tax basis of specific property allocated to any beneficiary or trust, even though shares may as a result be composed differently, and to determine the value of any property so allocated, divided or distributed.

(x) Withholding of Distribution. To withhold from distribution all or any part of the trust property as long as the Trustee, in its discretion, determines that such property may be subject to conflicting claims, to tax deficiencies, or to liabilities, contingent or otherwise, properly incurred in the administration of the trust.

(y) Mineral Powers. To retain or acquire interests in oil, gas, or other mineral resources; to execute as to those interests any agreements, assignments, contracts, deeds, grants or leases for any term (even though the term may extend beyond the termination of the trust); to manage, control, operate, explore, mine, develop, or take any action for the production, recovery, sale, treatment, storage, or transportation of any such interest; to drill, rework, or recomplete wells of any type; to conduct or participate in secondary recovery operations; to enter into agreements for pooling or unitization; and to install, operate, or participate in the operation of any plant, mine, or other facility.

(z) Environmental Hazards. To use and expend the trust income and principal to (i) take all appropriate action to prevent, identify, or respond to actual or threatened violations of any environmental law or regulation for which the Trustee may have responsibility, including the authority to conduct environmental assessments, audits, and site monitoring to determine compliance with any environmental law or regulation; (ii) take all appropriate remedial action to contain, cleanup, or remove any environmental hazard including a spill, release, discharge, or contamination, either on its own accord or in response to an actual or threatened violation of any environmental law or regulation; (iii) institute legal proceedings concerning environmental hazards or contest or settle legal proceedings brought by any local, state, or federal agency concerned with environmental compliance, or by a private litigant; and (iv) comply with any local, state, or federal agency order or court order directing an assessment, abatement, or cleanup of any environmental hazards.

(aa) Miscellaneous Powers. Generally to do and perform any and all acts, things, or deeds which, in the discretion of the Trustee, may be necessary or proper for the protection, preservation, and promotion of the trust properties and estate.

6.2 Division of Powers. The powers and duties granted under this Trust Agreement shall be divided among the Trustees as follows:

(a) Administrative Trustee. The Administrative Trustee shall have the following exclusive duties, which shall all be carried out in the State of Delaware or such other jurisdiction as the Trustee shall, from time to time, select as the situs of the trust:

(i) To maintain bank accounts, brokerage accounts and other custody accounts which receive trust income and contributions and from which trust expenditures and distributions are disbursed.

(ii) To maintain storage of tangible personalty and evidence of intangible trust property.

(iii) To maintain trust records.

(iv) To maintain an office for Trustee meetings and other trust business.

(v) To originate, facilitate and review trust accountings, reports and other communications with the Settlor, any co-Trustees, beneficiaries and unrelated third parties.

(vi) To respond to inquiries concerning the trust from the Settlor, any co-Trustees, beneficiaries and unrelated third parties.

(vii) To execute documents with respect to trust account transactions.

(viii) To retain accountants, attorneys, investment counsel, agents and other advisers in connection with the performance of its duties under this Section 6.2.

(b) Independent Trustee. The Independent Trustee shall have all of the powers and duties specifically assigned to the Independent Trustee under this Trust Agreement. These powers may only be exercised by the Independent Trustee.

(c) Family Trustee. The Family Trustee shall possess and exercise all of the powers and duties of the Trustee not specifically granted to the Administrative Trustee or the Independent Trustee under this Trust Agreement, including those specifically assigned to the Family Trustee. Without limiting the generality of the foregoing, the Family Trustee shall exercise all Trustee authority and have all Trustee responsibility with respect to the investment of the trust estate. If there is no Family Trustee serving,

however, all of the powers and duties of the Trustee, including those assigned to the Family Trustee, shall be exercised and discharged by the Independent Trustee.

6.3 Merger of Trusts. If at any time a Trustee of any trust created pursuant to this Trust Agreement shall also be acting as Trustee of any other trust created by trust instrument or by will for the benefit of the same beneficiary or beneficiaries and upon substantially the same terms and conditions, the Trustee is authorized and empowered, if in the Trustee's discretion such action is in the best interest of the beneficiary or beneficiaries of the trust created hereunder, to transfer and merge all of the assets then held under such trust created pursuant to this Trust Agreement to and with such other trust and thereupon and thereby to terminate the trust created pursuant to this Trust Agreement. The Trustee is further authorized to accept the assets of the other trust which may be transferred to the Trustee of the trust created hereunder and to administer and distribute such assets and properties so transferred in accordance with the provisions of this Trust Agreement. If the component trusts differ as to contingent beneficiaries and the contingency occurs, the funds may be distributed in such shares as the Trustee, in the Trustee's sole discretion, shall deem necessary to create a fair ratio between the various sets of remaindermen. If any trust created in this Trust Agreement is merged with any trust created under any other instrument, such merged trust shall not continue beyond the date on which the earliest maximum term of the trusts so merged would, without regard to such merger, have been required to expire. Settlor further directs that, as to any property at any time a part of any trust estate (including a merged trust) as to which under the laws of any state applicable to said property that trust is required to be terminated at any time prior to its normal termination date, the trust as to that particular property shall terminate at the time required by the laws of said state.

6.4 Certain Powers and Rights Limited. Settlor intends that the trust created under Section 3.1 hereof shall not be included in Jim's gross estate for estate tax purposes unless the Independent Trustee grants Jim a general power of appointment pursuant to paragraph 3.1(d). All issues applicable to the trust shall be resolved accordingly.

6.5 GST Inclusion Ratio. If property not having an inclusion ratio for purposes of the generation-skipping transfer tax equal to zero is directed to be added to a trust which has an inclusion ratio equal to zero, the Trustee may decline to make the addition and may, instead, administer the property as a separate trust with provisions identical to the trust having an inclusion ratio equal to zero. If property having an inclusion ratio for purposes of the generation-skipping transfer tax equal to zero is directed to be added to a trust which has an inclusion ratio not equal to zero, the Trustee may decline to make the addition and may, instead, administer the property as a separate trust with provisions identical to the trust having an inclusion ratio not equal to zero.

6.6 Out-of-State Properties. If any trust property is situated in a jurisdiction in which the Trustee is unable or unwilling to act, the Trustee may appoint an ancillary trustee for such jurisdiction and may confer upon the ancillary trustee such powers and discretions, exercisable without court order, to act with respect to such property as the Trustee deems proper. The ancillary trustee shall be responsible to the Trustee for all property it administers. The Trustee

may pay the ancillary trustee reasonable compensation for its services and may absolve it from any requirement to furnish bond or other security.

6.7 Management of Real Property. The Family Trustee (or the Independent Trustee pursuant to Section 6.2(c) hereof), acting alone, shall make any and all decisions regarding: (i) the acquisition, retention and disposal of real estate; (ii) the operation, maintenance, repair, rehabilitation, alteration, construction, erection, improvement, or removal of any improvements on real estate; (iii) the subdivision of real estate; (iv) the granting of easements, giving of consents, and entering into contracts relating to real estate or its use; (v) the release or dedication of any interest in real estate; and (vi) the payment of taxes, utilities, and maintenance expenses attributable to real estate owned by any trust created hereunder. The Family Trustee (or the Independent Trustee pursuant to Section 6.2(c) hereof) may, in its discretion, either exercise such powers or appoint an ancillary trustee to exercise such powers. The Trustee may pay the ancillary trustee reasonable compensation for its services and may absolve it from any requirement to furnish bond or other security.

6.8 No Court Supervision. The Trustee shall not be required to qualify before or be appointed by any court; nor shall the Trustee be required to obtain the order or approval of any court in the exercise of any power or discretion.

6.9 Division of Trusts. The Trustee may divide any trust established by this Trust Agreement into two or more separate trusts as provided in this section. Settlor exonerates the Trustee from any liability arising from the exercise or failure to exercise any powers granted herein, provided the Trustee acts in good faith.

(a) Division and Funding of Separate Trusts. The Trustee may divide any trust established by this Trust Agreement, at any time, into two or more separate trusts so that the generation-skipping transfer tax inclusion ratio as defined in Section 2642(a) of the Code for each trust shall be either zero or one. Any such division shall be accomplished in accordance with applicable regulations under Chapter 13 of the Code.

(b) Administration of Separate Trusts. Such separate trusts shall have the identical provisions as the original trust. However, with respect to each separate trust, the Trustee may: (1) make different tax elections, (2) expend principal and exercise any other discretionary powers with respect to such separate trusts differently, (3) invest such separate trusts differently, and (4) take all other actions consistent with such trusts being separate trusts.

(c) Powers of Appointment. The donee of any power of appointment with respect to a trust so divided may exercise such power of appointment differently with respect to the separate trusts created by the division.

6.10 Limitation of Powers. The following limitations, affecting the administration of the trusts created hereunder, apply notwithstanding any other provision of this Trust Agreement. For purposes of this Section 6.10, the term "Settlor" shall include any individual who contributes property to the Trustee to be added to the trust estate.

(a) Support Duty. Distributions from the trust estate shall not be made which discharge, in whole or in part, the personal legal obligations of a Settlor or a Trustee from time to time existing, to support or educate any of the trust beneficiaries. When determining these legal obligations, the existence of this trust and funds made available by it shall not be taken into consideration.

(b) Adequacy of Consideration. No party may, through purchase, exchange, or otherwise, deal with or dispose of the corpus or the income of the trust estate for less than adequate consideration in money or money's worth.

(c) Insurance. The Trustee shall not apply trust property to the payment of premiums on an insurance policy on the life of a Settlor, the Trustee or a spouse of either of them.

(d) Borrow. The Trustee shall not allow a Settlor to borrow trust principal or income, directly or indirectly, without adequate interest or security.

(e) Substitute Property. The Trustee shall not allow a Settlor to reacquire or exchange any property of the trust estate by substituting other property with an equivalent value.

(f) Vote. A Settlor, acting as a Trustee, shall not be entitled to vote, directly or indirectly, shares of stock of a controlled corporation, as defined under Section 2036 of the Code, which is held as part of the trust estate.

6.11 Dealing with Fiduciaries. The Trustee may enter into any transaction with the Trustee or beneficiaries of the trusts created hereunder, acting in their individual or in another fiduciary capacity, or with any person or entity related to the Trustee or a beneficiary in any manner, if such transaction is otherwise authorized under this Trust Agreement. Without limiting the generality of the foregoing authorization, the Trustee may enter into any transaction otherwise authorized hereunder on behalf of any trust created hereunder even though the other party to the transaction is: a trust of which a beneficiary or Trustee under this Trust Agreement is a beneficiary or trustee, including, but not limited to, any trust established by this Trust Agreement; an estate of which a beneficiary or Trustee under this Trust Agreement is a representative or beneficiary; or a business or charitable corporation of which a beneficiary or Trustee under this Trust Agreement is a director, officer, employee, or owner.

ARTICLE VII

IRREVOCABILITY

This Trust Agreement and each of its provisions may not be revoked, amended, or modified.

ARTICLE VIII

MISCELLANEOUS PROVISIONS

8.1 Applicable Law. The trust created under this Trust Agreement shall be deemed a Delaware trust and all matters pertaining to the validity, construction, and application of this Trust Agreement or to the administration of the trust created hereunder shall, in all respects, be governed by the laws of the State of Delaware. However, if the Trustee, in its sole discretion, determines that a change of situs would be beneficial to the purposes of the trust established by this Trust Agreement, the Trustee shall have the discretion and authority to change the situs of any such trust to another state. No change of situs shall be authorized herein, however, which would result in a termination of the trust for federal tax purposes. Furthermore, the Trustee shall not be entitled to change the situs of the trust to a jurisdiction that has a rule against perpetuities or similar rule which limits the period during which property can be held in trust. Any proceeding involving the Trust must be brought in the State of Delaware for so long as the situs of the Trust shall be the State of Delaware.

8.2 Perpetuities Provision. The trust created hereunder shall be perpetual to the fullest extent permitted by Delaware law. If the trust created hereunder is deemed to be subject to the law of a jurisdiction that has a rule against perpetuities or similar rule which limits the period during which property can be held in trust, then such trust shall terminate in all events upon the expiration of the longest period the property may be held in trust under this Agreement under the law of such jurisdiction (including any application periods in gross, such as 110 years, 360 years, or 1,000 years); provided, however, that if the jurisdiction has a rule against perpetuities or similar rule which applies only to certain types of property, such as real property, the provisions of this Section shall apply only to such property. If under the law of such jurisdiction the longest period that property may be held in trust is determined with reference to the death of the last survivor of a group of individuals in being upon the date of this Trust Agreement, those individuals shall consist of Jim and Jim's Descendants who are in being on the date of this Trust Agreement. Upon termination of a trust pursuant to the provisions of this Section 8.2, the Trustee shall distribute such trust to its income beneficiaries determined at the time of distribution. If at that time rights to income are not fixed by the terms of the trust, distribution shall be made to the persons to whom the Trustee may then distribute income, in proportions determined in the Trustee's discretion, exercised consistently with the trust's purposes.

In the event any trust created hereunder owns real property, and if such real property is subject to a rule against perpetuities or similar rule which limits the period during which property can be held in trust, then the Trustee shall take such action as is necessary to avoid termination of the trust with respect to that real property interest including, without limitation, selling the real property or contributing the real property to a business entity in exchange for ownership interests in such entity to be owned by the trust.

8.3 Gestation. A child in gestation who is born alive shall be considered a child in being throughout the period of gestation.

8.4 Survivorship. Any person must survive by thirty (30) days for a gift made in this Trust Agreement which directly or indirectly requires such person's survival of another to be effective.

8.5 Release of Powers and Interests. Any person, including a beneficiary and a Trustee, shall have the power to disclaim, release, or restrict, irrevocably, in whole or in part, any interest, right, power, or discretion granted to such person with respect to any trust by signed instrument delivered to the Trustee, or in any other manner permitted by law. Any person designated or appointed as a Trustee may, prior to accepting the trust, by written instrument decline to accept any right, power, or discretion with respect to the trust and may accept the trust without such right, power, or discretion.

8.6 Powers of Appointment.

(a) Capacity in Which Exercisable. Every power of appointment granted to a beneficiary under this Trust Agreement is exercisable by that beneficiary in the beneficiary's individual capacity, notwithstanding the fact that the beneficiary may also be serving as a Trustee of the trust.

(b) Manner of Appointment. Every power of appointment granted herein: (i) shall be personal to the donee of such power and may not be exercised on behalf of the donee by any other person, including an attorney-in-fact, a guardian, or any other court appointed representative, and (ii) may be exercised in whole or in part and in favor of one or more potential beneficiaries to the exclusion of others. Appointment may be outright or in further trust, with all provisions determined by the donee of the power, and may confer a power of appointment upon the beneficiary or others, if within the constraints imposed by any applicable rule against perpetuities and any other law which is applicable to the appointment.

(c) Exercise of Inter Vivos Power. An inter vivos power of appointment granted in this Trust Agreement may be exercised only by a written instrument, executed and acknowledged by the donee and delivered to the Trustee during the donee's lifetime, which specifically refers to the power of appointment and expresses the intention to exercise it. If no such instrument is delivered to the Trustee during the donee's lifetime, upon the donee's death the Trustee may distribute the property subject to the power in the manner provided in this Trust Agreement for distribution in default of exercise.

(d) Determination of the Exercise of a Testamentary Power. The Trustee may rely upon any instrument admitted to probate as a will or codicil in determining whether a testamentary power of appointment granted herein has been exercised. If no will or codicil is brought to the Trustee's attention within ninety (90) days of a death to indicate the exercise of a testamentary power, the Trustee may distribute the property subject to the power according to the terms herein provided for distribution in default of exercise. The Trustee will be protected from liability for its actions as authorized in this subsection (d), but this subsection does not affect a beneficiary's rights in the property subject to the power of appointment.

(e) Tax Consequences. The exercise of a power of appointment may have important tax consequences. The donee of any power of appointment should consult with counsel before exercising such power of appointment.

8.7 Liability of Third Party. No person paying money or delivering property to the Trustee need see to the application of such money or property. No person dealing with the Trustee need inquire into the propriety of any transaction or the Trustee's authority to enter into and consummate the same.

8.8 Use of Words. As used in this Trust Agreement, the masculine, feminine, and neuter gender, and the singular or plural of any word each includes the others unless the context indicates otherwise.

8.9 Unenforceable Provision. If any provision of this Trust Agreement is unenforceable, the remaining provisions shall be given effect, unless to do so would produce an unreasonable result.

8.10 Titles, Headings, and Captions. All titles, headings, and captions used in this Trust Agreement have been included for administrative convenience only and should not be construed in interpreting this Trust Agreement.

8.11 Counterpart Signatures. This document may be executed in counterparts, and all counterparts so executed shall constitute a single document, notwithstanding that the interested parties are not or may not be signatories to the original or to the same counterpart.

8.12 Trust Name. The trusts established under Article II of this Trust Agreement, collectively, shall be known as the "The Dugaboy Investment Trust".

IN WITNESS WHEREOF, the Settlor, the Family Trustee and the Administrative Trustee have hereunto set their hands on the day and year first above written in multiple originals. The Trustees agree to administer the trust estate in accordance with the terms of this Trust Agreement. The Independent Trustee shall begin serving as such upon delivery of a written acknowledged instrument to the Family Trustee in accordance with Section 5.2 hereof.

Dana Scott Breault 23 Oct 10
DANA SCOTT BREAULT, Settlor

STATE OF TEXAS §
§
COUNTY OF DALLAS §

BEFORE ME, the undersigned authority, on this day personally appeared DANA SCOTT BREAULT, as Settlor, known to me to be the person whose name is subscribed to the foregoing Trust Agreement and acknowledged to me that she executed the same for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 23rd day of October, 2010.

Ravi Iyer
Notary Public

RAVI IYER
Notary Public, State of Texas
My Commission Expires
June 12, 2013

JAMES D. DONDERO, Family Trustee

STATE OF TEXAS §
§
COUNTY OF DALLAS §

BEFORE ME, the undersigned authority, on this day personally appeared JAMES D. DONDERO, as Family Trustee, known to me to be the person whose name is subscribed to the foregoing Trust Agreement and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 28th day of October, 2010.

Notary Public

MELINDA SLOANE
Notary Public, State of Texas
My Commission Expires
October 19, 2011

COMMONWEALTH TRUST COMPANY,
Administrative Trustee

By: Cynthia D M Brown
Name: Cynthia D. M. Brown
Title: President

STATE OF DELAWARE §
§
COUNTY OF NEW CASTLE §

BEFORE ME, the undersigned authority on this day personally appeared Cynthia D. M. Brown, President, known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that he/she executed the same for the purposes and consideration therein expressed as the act of COMMONWEALTH TRUST COMPANY and in the capacity therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 15th day of ~~October~~ November LMO, 2010.

Laura M Owens
Notary Public

LAURA M. OWENS
MY COMMISSION EXPIRES MAY 30, 2014
NOTARY PUBLIC STATE OF DELAWARE

5480300v.6 47609/1

THE DUGABOY INVESTMENT TRUST
James D. Dondero, Family Trustee

August 26, 2015

Dana Scott Breault
5207 Scarborough Lane
Dallas, Texas 75287

Cynthia D. M. Brown, President
Commonwealth Trust Company
29 Bancroft Mills Road #2
Wilmington, Delaware 19806

Re: The Dugaboy Investment Trust

Dear Ms. Breault,

I, James D. Dondero, am writing to inform you that on August 26, 2015, I will cease to serve as Family Trustee of The Dugaboy Investment Trust (the "Trust") and shall stop performing all duties and responsibilities undertaken as Family Trustee of the Trust.

Pursuant to the attached Resignation of Family Trustee, I appoint Grant James Scott as the successor Family Trustee of the Trust.

This letter and the attached Resignation of Family Trustee shall satisfy my obligations under Section 5.1 of that Trust Agreement entered into on November 15, 2010 to provide you, Settlor, with written notice of my resignation.

Very truly yours,

James D. Dondero

RESIGNATION OF FAMILY TRUSTEE

I, **JAMES D. DONDERO**, do hereby acknowledge that I voluntarily tender my resignation as Family Trustee of The Dugaboy Investment Trust pursuant to that Trust Agreement, dated November 15, 2010 by, between and among Dana Scott Breault, as Settlor, and Common Wealth Trust Company, as Administrative Trustee.

I appoint **GRANT JAMES SCOTT** as the successor Family Trustee. This resignation shall take effect immediately upon the execution hereof and delivery of a written acknowledged instrument wherein Grant James Scott accepts the trust and the position of Family Trustee.

IN WITNESS WHEREOF, I hereby sign my Resignation as Family Trustee of the above trust.

Signed, sealed and delivered in the presence of:

Family Trustee

8.26.15
Date

STATE OF TEXAS §
COUNTY OF DALLAS §

Before me, a notary public, on this day personally appeared **JAMES D. DONDERO** known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this 26th day of August, 2015.

Notary Public's Signature

MICAELA SUE ALLEN
Notary Public, State of Texas
My Commission Expires
January 15, 2019

[SEAL]

Expiration: 1-15-2019

ACCEPTANCE OF APPOINTMENT OF FAMILY TRUSTEE

I, **GRANT JAMES SCOTT**, appointed as Family Trustee under Article V, Section 5.2(a)(i) of The Dugaboy Investment Trust, dated November 15, 2010 (the "**Trust**"), hereby acknowledge and accept the position of Family Trustee of the Trust and hereby agree to faithfully perform all the duties and adopt all of the obligations imposed.

Signed this 26th day of August, 2015.

GRANT JAMES SCOTT
Family Trustee

STATE OF ~~TEXAS~~ NC §
COUNTY OF ~~DALLAS~~ WAKE §

Before me, a notary public, on this day personally appeared **GRANT JAMES SCOTT** known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this 26th day of August, 2015.

[SEAL]

DIANNA DEES NOTARY PUBLIC WAKE COUNTY, NC

Dianna Dees
Notary Public's Signature

Expiration: MY COMMISSION EXPIRES MAY 17, 2018

ACKNOWLEDGEMENT OF DELIVERY

I, JAMES D. DONDERO, acknowledge that this Acceptance of Appointment of Family Trustee was delivered to and received by me on August 26 2015.

James D. Dondero

Exhibit D

BONDS ELLIS EPPICH SCHAFER JONES LLP
ATTORNEYS & COUNSELORS

D. MICHAEL LYNN | D: 817.405.6915 | MICHAEL.LYNN@BONDSELLIS.COM

February 1, 2021

Via Email and First Class Mail:
Jeffrey Pomerantz
Pachulski Stang Ziehl & Jones LLP
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067
Email: jpomerantz@pszjlaw.com

Re: Highland Capital Management, L.P.: notes receivable from Dondero et al.

Dear Jeff:

The Debtor recently commenced suit to collect on certain notes payable to it executed by Mr. Dondero and certain of his affiliates. As you are aware, in addition to other defenses, Mr. Dondero views the notes in question as having been given in exchange for loans by Highland made in lieu of compensation to Mr. Dondero.

Please ensure that any transferee of any of the notes is made aware of Mr. Dondero's position and that the Independent Board receives copies of this letter. I thank you in advance for your cooperation in this matter.

Sincerely,

D. Michael Lynn

Cc: Jim Dondero
John Bonds
Douglas Draper
Davor Rukavina
Lee Hogewood
John Kane
Jason Rudd
Lauren Drawhorn

Exhibit E

November 30, 2020

NexPoint Advisors, L.P.
200 Crescent Court, Suite 700
Dallas, Texas 75201

RE: Termination of Amended and Restated Shared Services Agreement, dated January 1, 2018, and among Highland Capital Management, L.P. ("HCMLP"), and NexPoint Advisors, L.P. (the "Agreement").

To Whom It May Concern:

As set forth in Section 7.01 of the Agreement, the Agreement is terminable at will upon at least 30 days advance written notice.

By this letter, HCMLP is notifying you that it is terminating the Agreement. Such termination will be effective January 31, 2021. HCMLP reserves the right to rescind this notice of termination.

Please feel free to contact me with any questions.

Sincerely,

HIGHLAND CAPITAL MANAGEMENT, L.P.

/s/ James P. Seery, Jr.

James P. Seery, Jr.
Chief Executive Officer
Chief Restructuring Officer

EXHIBIT 2

Clay M. Taylor
Bryan C. Assink
BONDS ELLIS EPPICH SCHAFER JONES LLP
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Attorneys for NexPoint Advisors, L.P. and Highland Capital Management Fund Advisors, L.P.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	**Case No. 19-34054**
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.	§	**Chapter 11**
	§	
Debtor.	§	
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	
Plaintiff,	§	**Adv. Proc. No. 21-03003-sgj**
	§	
vs.	§	
	§	
JAMES DONDERO, NANCY DONDERO, AND THE DUGABOY INVESTMENT TRUST,	§	
	§	
	§	
Defendants.	§	

HIGHLAND CAPITAL MANAGEMENT, L.P., **Plaintiff,** **vs.** **HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, L.P.,** **Defendant.**	§ § § § § § § § § §	**Adv. Proc. No. 21-03004-sgj**
HIGHLAND CAPITAL MANAGEMENT, L.P., **Plaintiff,** **vs.** **NEXPOINT ADVISORS, L.P., JAMES DONDERO, NANCY DONDERO, AND THE DUGABOY INVESTMENT TRUST,** **Defendants.**	§ § § § § § § § § §	**Adv. Proc. No. 21-03005-sgj**
HIGHLAND CAPITAL MANAGEMENT, L.P., **Plaintiff,** **vs.** **HIGHLAND CAPITAL MANAGEMENT SERVICES, INC., JAMES DONDERO, NANCY DONDERO, AND THE DUGABOY INVESTMENT TRUST,** **Defendants.**	§ § § § § § § § § §	**Adv. Proc. No. 21-03006-sgj**
HIGHLAND CAPITAL MANAGEMENT, L.P., **Plaintiff,** **vs.** **HCRE PARTNERS, LLC (n/k/a NexPoint Real Estate Partners, LLC), JAMES DONDERO, NANCY DONDERO, AND THE DUGABOY INVESTMENT TRUST,** **Defendants.**	§ § § § § § § § § §	**Adv. Proc. No. 21-03007-sgj**

DECLARATION OF NANCY M. DONDERO

I, Nancy Marie Dondero, declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the following is true and correct:

1. I reside in Vero Beach, Florida and am over the age of 21. The following facts are based on my personal knowledge and are all true and correct. I am willing and able to testify about these matters if and when called upon to do so.

2. I have successfully owned and operated my own private investigation services business for over 30 years. I also have an undergraduate college degree from Pennsylvania State University, which included the study of basic business operations and management.

3. I am also the Family Trustee of The Dugaboy Investment Trust ("Dugaboy"), and I have held that position since October 2015. A true and correct copy of the document appointing me as Family Trustee is attached to this Declaration as Exhibit A. At the times that the notes discussed below were entered into, Dugaboy owned and represented a majority of the Class A shareholders in Highland Capital Management, L.P. ("Highland Capital"). Jim Dondero is my brother and was, at that time, the President and CEO of Highland Capital. I understood that he was one of the founders of Highland Capital and, through The Dugaboy Investment Trust, a majority interest holder.

4. Jim Dondero told me about his current and previous annual salaries at Highland Capital and explained that he was substantially underpaid as compared to other senior executives in the financial services industry. He told me that his annual salary from Highland Capital had been around $500,000 to $700,000 during the preceding several years. I had no reason to doubt the accuracy of what he told me about his compensation from Highland Capital or how that compared unfavorably to the compensation of others in similar positions with other companies in

the industry.

5. Jim Dondero also advised me that he and certain of his affiliated companies had, on several occasions between 2013 and 2019, borrowed money from Highland Capital and had issued demand and term promissory notes in favor of Highland Capital regarding those loans. He proposed that Highland Capital enter into an agreement with him and the other borrowers to forgive the Notes upon the occurrence of certain conditions subsequent, as a form of additional contingent compensation to him.

6. In either December of 2017 or January of 2018, I caused Dugaboy (solely in my capacity as Dugaboy's Family Trustee) to cause Highland Capital to enter into the first of a series of verbal agreements with Jim Dondero that provided that the repayment obligation on the notes made in 2017 involved in this litigation would be forgiven if Highland Capital sold any of Trussway, Cornerstone, or MGM for a price greater than its cost, or if any of those portfolio companies were sold in a circumstance that was outside of Jim Dondero's control. I fully understood the implications and terms of this Agreement.

7. At either the end of 2018 or the beginning of 2019, Jim Dondero and I later entered into the same Agreement to apply to subsequent notes that were issued by him or one of his affiliated companies to Highland Capital in 2018. I also fully understood the implications and terms of this Agreement.

8. At either the end of 2019 or the beginning of 2020, Jim Dondero and I again entered into the same agreement to cover and apply to the notes at issue in this litigation that were issued in 2019. All the Notes referenced herein are collectively referred to as the "Notes," and the agreements between Highland Capital and Jim regarding all of the Notes are collectively referred to herein as the "Agreements." I also fully understood the implications and terms of these

Agreements. The Notes are as follows:

i. A demand note executed on February 2, 2018, between Highland Capital and Jim Dondero in the amount of $3,825,000.[1]

ii. A demand note executed on August 1, 2018, between Highland Capital and Jim Dondero in the amount of $2,500,000.[2]

iii. A demand note executed on August 13, 2018, between Highland Capital and Jim Dondero in the amount of $2,500,000.[3]

iv. A demand note executed on March 28, 2018, between Highland Capital and Highland Capital Management Services, Inc. ("HCMS") in the amount of $150,000.[4]

v. A demand note executed on June 25, 2018, between Highland Capital and HCMS in the amount of $200,000.[5]

vi. A demand note executed on May 29, 2019, between Highland Capital and HCMS in the amount of $400,000.[6]

vii. A demand note executed on June 26, 2019, between Highland Capital and HCMS in the amount of $150,000.[7]

viii. A demand note executed on October 12, 2017, between Highland Capital and HCRE Partners, LLC ("HCRE") in the amount of $2,500,000.[8]

ix. A demand note executed on October 15, 2018, between Highland Capital and

[1] Pl. Appx. 00678-679.
[2] Pl. Appx. 00681-682.
[3] Pl. Appx. 00684-685.
[4] Pl. Appx. 00118-119.
[5] Pl. Appx. 00121-122.
[6] Pl. Appx. 00124-125.
[7] Pl. Appx. 00127-128.
[8] Pl. Appx. 00205-206.

HCRE in the amount of $750,000.[9]

x. A demand note executed on September 25, 2019, between Highland Capital and HCRE in the amount of $900,000.[10]

xi. A term note executed on May 31, 2017, between Highland Capital and NexPoint Advisors, L.P. ("NexPoint"), in the amount of $30,746,812.33.[11]

xii. A term note executed on May 31, 2017, between Highland Capital and HCMS in the amount of $20,247,628.02.[12]

xiii. A term note executed on May 31, 2017, between Highland Capital and HCRE in the amount of $6,059,831.51.[13]

9. At the time I caused Highland Capital to enter into each of the Agreements, I knew that Highland Capital was a hedge fund and that its general partner was Strand Advisors, Inc. I also knew that Highland Capital owned an interest in each of Cornerstone, MGM, and Trussway, the portfolio companies that were involved in the Agreements. I also knew that Highland Capital's business included buying and selling portfolio companies at a profit. I also knew and believed that Jim would be the person most involved in, and responsible for, the marketing and eventual sale of Cornerstone, MGM, and Trussway by Highland Capital. I also knew and believed that executives in the financial services industry tend to be paid more when the companies they work for perform better.

10. The Agreements had two primary purposes, both of which would benefit Highland Capital's performance and reputation. First, the Agreements would provide additional incentive

[9] Pl. Appx. 00208-209.
[10] Pl. Appx. 00211-212.
[11] Pl. Appx. 00042-43.
[12] Pl. Appx. 00134-135.
[13] Pl. Appx. 00218-219.

and motivation to Jim Dondero to attempt to maximize the value and return to Highland Capital on Trussway, Cornerstone, and MGM, and to remain in Plaintiff's employment. Second, the Agreements would allow Highland Capital to contingently increase Jim Dondero's compensation without requiring additional cash or salary to be paid to him and the consequential effect of such an increase on Highland Capital's financial position.

11. At the time I caused Highland Capital to enter into each of the Agreements, I did not know every detail about every aspect of Highland Capital's business or the Notes. However, I did have all of the facts and information I considered necessary, appropriate, and reasonable for my decision (solely in my capacity as Dugaboy's Family Trustee) to cause Highland Capital to enter into each of the Agreements. I do not believe that Highland Capital, Dugaboy, or I were deceived or mislead in any manner by Jim Dondero or anyone else regarding the Notes or any of the Agreements.

12. At the time I caused Highland to enter into each of the Agreements, I appreciated the effect of what I was doing and I understood the nature and consequences of those acts. I was not mentally incompetent, under a legal guardianship, intoxicated, or under any other mental impairment.

13. At the time I caused Highland Capital to enter into each of the Agreements, I believed I had the authority, as the Dugaboy Family Trustee, to cause Dugaboy to cause Highland Capital to enter into the Agreements. I also intended, believed, and expected that each of the Agreements would be a binding and enforceable agreement between Highland Capital and Jim Dondero.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on January 20, 2022.

Nancy M. Dondero

Nancy M. Dondero

Exhibit A

THE DUGABOY INVESTMENT TRUST
James D. Dondero, Primary Beneficiary

October 12, 2015

Dana Scott Breault
5207 Scarborough Lane
Dallas, Texas 75287

Cynthia D. M. Brown, President
Commonwealth Trust Company
29 Bancroft Mills Road #2
Wilmington, Delaware 19806

Re: The Dugaboy Investment Trust

Dear Ms. Breault,

I, James D. Dondero, am writing to inform you that on October 12, 2015, I received notice from Grant James Scott that he will cease to serve as Family Trustee of The Dugaboy Investment Trust (the "**Trust**") and shall stop performing all duties and responsibilities undertaken as Family Trustee of the Trust.

Pursuant to the attached Resignation of Family Trustee from Grant James Scott, I appoint Nancy Marie Dondero as the successor Family Trustee of the Trust.

This letter and the attached Resignation of Family Trustee shall satisfy my obligations under Section 5.2 of that Trust Agreement entered into on November 15, 2010 to provide you, Settlor, with notice of my appointment of a successor Family Trustee.

Very truly yours,

James D. Dondero

THE DUGABOY INVESTMENT TRUST
Grant James Scott, Family Trustee

October 12, 2015

Dana Scott Breault
5207 Scarborough Lane
Dallas, Texas 75287

Cynthia D. M. Brown, President
Commonwealth Trust Company
29 Bancroft Mills Road #2
Wilmington, Delaware 19806

Re: The Dugaboy Investment Trust

Dear Ms. Breault,

I, Grant James Scott, am writing to inform you that as of October 12, 2015, I will cease to serve as Family Trustee of The Dugaboy Investment Trust (the "**Trust**") and shall stop performing all duties and responsibilities undertaken as Family Trustee of the Trust pursuant to the attached Resignation of Family Trustee.

This letter and the attached Resignation of Family Trustee shall satisfy my obligations under Section 5.1 of that Trust Agreement entered into on November 15, 2010 to provide you, Settlor, with written notice of my resignation.

Very truly yours,

Grant James Scott

RESIGNATION OF FAMILY TRUSTEE

I, **GRANT JAMES SCOTT**, do hereby acknowledge that I voluntarily tender my resignation as Family Trustee of The Dugaboy Investment Trust pursuant to that Trust Agreement, dated November 15, 2010 by, between and among Dana Scott Breault, as Settlor, and Common Wealth Trust Company, as Administrative Trustee.

This resignation shall take effect immediately upon the execution hereof and delivery of a written acknowledged instrument wherein NANCY MARIE DONDERO accepts the trust and the position of Family Trustee.

IN WITNESS WHEREOF, I hereby sign my Resignation as Family Trustee of the above trust.

Signed, sealed and delivered in the presence of:

Family Trustee

10/12/2015
Date

STATE OF TEXAS §
COUNTY OF DALLAS §

Before me, a notary public, on this day personally appeared **GRANT JAMES SCOTT** known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this 14th day of October, 2015.

MICAELA SUE ALLEN
Notary Public, State of Texas
My Commission Expires
January 15, 2019

[SEAL]

Notary Public's Signature

Expiration: January 15, 2019

ACCEPTANCE OF APPOINTMENT OF FAMILY TRUSTEE

I, **NANCY MARIE DONDERO**, appointed as Family Trustee under Article V, Section 5.2(a)(i) of The Dugaboy Investment Trust, dated November 15, 2010 (the "**Trust**"), hereby acknowledge and accept the position of Family Trustee of the Trust and hereby agree to faithfully perform all the duties and adopt all of the obligations imposed.

Signed this 13th day of October, 2015.

Nancy Marie Dondero
NANCY MARIE DONDERO
Family Trustee

STATE OF TEXAS §
COUNTY OF DALLAS §

Before me, a notary public, on this day personally appeared **NANCY MARIE DONDERO** known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that she executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this 14th day of October, 2015.

MICAELA SUE ALLEN
Notary Public, State of Texas
My Commission Expires
January 15, 2019

[SEAL]

Micaela Sue Allen
Notary Public's Signature

Expiration: January 15, 2019

ACKNOWLEDGEMENT OF DELIVERY

I, JAMES D. DONDERO, acknowledge that this Acceptance of Appointment of Family Trustee by NANCY MARIE DONDERO was delivered to and received by me on October __, 2015.

James D. Dondero

EXHIBIT 3

Clay M. Taylor
Bryan C. Assink
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Attorneys for NexPoint Advisors, L.P. and Highland Capital Management Fund Advisors, L.P.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	**Case No. 19-34054**
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.	§	**Chapter 11**
	§	
Debtor.	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	
Plaintiff,	§	**Adv. Proc. No. 21-03003-sgj**
	§	
vs.	§	
	§	
JAMES DONDERO, NANCY DONDERO, AND THE DUGABOY INVESTMENT TRUST,	§	
	§	
	§	
Defendants.	§	

HIGHLAND CAPITAL MANAGEMENT, L.P., **Plaintiff,** **vs.** **NEXPOINT ADVISORS, L.P., JAMES DONDERO, NANCY DONDERO, AND THE DUGABOY INVESTMENT TRUST,** **Defendants.**	§ § § § § § § § § § §	**Adv. Proc. No. 21-03005-sgj**
HIGHLAND CAPITAL MANAGEMENT, L.P., **Plaintiff,** **vs.** **HIGHLAND CAPITAL MANAGEMENT SERVICES, INC., JAMES DONDERO, NANCY DONDERO, AND THE DUGABOY INVESTMENT TRUST,** **Defendants.**	§ § § § § § § § § § § §	**Adv. Proc. No. 21-03006-sgj**
HIGHLAND CAPITAL MANAGEMENT, L.P., **Plaintiff,** **vs.** **HCRE PARTNERS, LLC (n/k/a NexPoint Real Estate Partners, LLC), JAMES DONDERO, NANCY DONDERO, AND THE DUGABOY INVESTMENT TRUST,** **Defendants.**	§ § § § § § § § § § § § §	**Adv. Proc. No. 21-03007-sgj**

DECLARATION OF MICHAEL P. AIGEN IN SUPPORT OF DEFENDANTS' OPPOSITION TO PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT

Michael P. Aigen, pursuant to 28 U.S.C. § 1746(a), under penalty of perjury, declares as follows:

1. I am a member of the law firm of Stinson LLP, counsel to Defendant James Dondero, Highland Capital Management Services, Inc. and HCRE Partners, LLC n/k/a NexPoint Real Estate Partners, LLC, and I submit this Declaration in support of the *Defendants' Opposition to Plaintiff Highland Capital Management, L.P.'s Motion for Partial Summary Judgment*, which

is being filed concurrently with this Declaration. I submit this Declaration based on my personal knowledge and the documents listed below.

2. Attached as **Exhibit A** is a true and correct copy of the Transcript of the Video Deposition of James P. Seery, Jr. taken on October 21, 2021 in Adv. Proc. No. 21-03005.

3. Attached as **Exhibit** B is a true and correct copy of the Transcript of the Remote Deposition of Bruce McGovern taken on November 9, 2021 in Adv. Proc. No 21-03003.

4. Attached as **Exhibit C** is a true and correct copy of a List of Promissory Notes, bates labeled DEFENDANTS-0000434, that was used by Mr. Dondero at his deposition and produced to Plaintiff.

5. Attached as **Exhibit D** is a true and correct copy of an email from F. Waterhouse to K. Hendrix, dated November 25, 2020.

6. Attached as **Exhibit E** is a true and correct copy of an email from F. Waterhouse to K. Hendrix, dated December 31, 2020.

7. [redacted]

8. Attached as **Exhibit G** is a true and correct copy of the Expert Report of Alan M. Johnson, dated May 28, 2021.

9. Attached as **Exhibit H** is a true and correct copy of Highland Capital Management, L.P.'s Responses and Objections to Defendants' Joint Discovery Requests, dated September 27, 2021.

Dated: January 20, 2022

/s/Michael P. Aigen
Michael P. Aigen

Exhibit A

1

2 IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
3 DALLAS DIVISION

4 In re:)
) Chapter 11
5 HIGHLAND CAPITAL MANAGEMENT, L.P.) Case No.
) 19-34054-sqj11
6 Debtor.)
----------)
7)
HIGHLAND CAPITAL MANAGEMENT, L.P.)
8)
Plaintiff,)
9)
-vs-) Adversary
10) Proceeding No.
NEXPOINT ADVISORS, L.P., JAMES) 21-03005-sgj
11 DONDERO, NANCY DONDERO, AND THE)
DUGABOY INVESTMENT TRUST,)
12)
Defendants.)
13 ----------

14

15

16 VIDEO DEPOSITION OF JAMES P. SEERY, JR.

17 New York, New York

18 Thursday, October 21, 2021

19

20

21

22

23

24 Reported by:
MARIANNE WITKOWSKI-SMITH
25 JOB NO. 201192

October 21, 2021

2:02 p.m.

Video Deposition of JAMES P. SEERY, JR., individually and on behalf of HIGHLAND CAPITAL MANAGEMENT LP, held at the offices of Pachulski Stang Ziehl & Jones LLP, 780 Third Avenue, New York, New York, before Marianne Witkowski-Smith, a Shorthand Reporter and Notary Public of the State of New York.

A P P E A R A N C E S:

PACHULSKI STANG ZIEHL & JONES
Attorneys for Highland Capital Management LP and the Witness

780 Third Avenue

New York, New York 10017

BY: JOHN MORRIS, ESQ.

GREGORY DEMO, ESQ.

HAYLEY WINOGRAD, ESQ.

MUNSCH HARDT KOPF & HARR

Attorneys for NexPoint Advisors LP

500 North Akard Street

Dallas, Texas 75201

BY: DAVOR RUKAVINA, ESQ.

THOMAS BERGHMAN, ESQ.

(Continued on Next Page)

A P P E A R A N C E S (Cont'd):

STINSON
Attorneys for James Dondero, Nancy Dondero, HCRE, HCMS

3102 Oak Lawn Avenue

Dallas, Texas 75219

BY: DEBORAH DEITSCH-PEREZ, ESQ.

MICHAEL AIGEN, ESQ.

HELLER, DRAPER, HAYDEN, PATRICK, & HORN

Attorneys for The Dugaboy Investment Trust

650 Poydras Street

New Orleans, Louisiana 70130

BY: WARREN HORN, ESQ.

ALSO PRESENT:
MANUEL GARCIA, Legal Video Specialist
THANHAN NGUYEN, ESQ. (Via Zoom)
AARON LAWRENCE, ESQ. (Via Zoom)
LA ASIA CANTY (Via Zoom)

J. Seery

VIDEO TECHNICIAN: This is the start of Media Label No. 1 in the video-recorded deposition of James P. Seery Jr., in the matter of Highland Capital Management LP vs. NexPoint Advisors LP, et al., on October the 21st, 2021, at approximately 2:02 p.m.

My name is Manuel Garcia. I'm the certified legal videographer from TSG Reporting Inc. The court reporter is Marianne Smith, in association with TSG Reporting.

Counsel, please introduce yourselves.

MR. RUKAVINA: My name is Davor Rukavina. I represent NexPoint Advisors LP.

MR. MORRIS: My name is John Morris from Pachulski Stang Ziehl & Jones, on behalf of Capital -- Highland Capital Management LP, and I'm representing the witness, James P. Seery, Jr., today.

MS. DEITSCH-PEREZ: Hi. This is

Deborah Deitsch-Perez from Stinson LLP. I'm on with my partner, Michael Aigen, also from Stinson. We're representing James Dondero, Nancy Dondero, HCRE and HCMS.

MR. HORN: Warren Horn [inaudible].

(Reporter clarification.)

MR. HORN: Warren Horn, H-O-R-N, with Heller, Draper & Horn, representing The Dugaboy Investment Trust.

VIDEO TECHNICIAN: Will the court reporter please swear in the witness.

J A M E S P. S E E R Y, J R.,
the witness herein, was thereupon duly sworn by the Notary Public and was examined and testified as follows:

EXAMINATION
BY MR. RUKAVINA:

Q. Sir, good afternoon. State your name, please.

A. James P. Seery, Jr.

Q. And just so we're clear, you have a

laptop in front of you because this is being done remotely as well, but you're not reviewing any material or taking any information or texts or emails like that, are you?

A. No.

Q. Okay. It's fair to say you've been --

A. I -- I have a phone in front of me, but I don't intend to use it.

Q. Okay. Fair to say that you've been deposed before?

A. I have.

Q. Approximately how many times?

A. More -- more than twenty-five.

Q. Okay. And quite a number in this case as well, correct?

A. More than -- probably more than fifteen.

Q. Okay. The only thing I'd ask - you're -- you're a veteran - is I have an accent and sometimes I talk fast, so don't -- don't hesitate to tell me that you didn't understand or ask me to rephrase, please.

Please don't hesitate to do that.

A. Thank you.

Q. Sir, just for the record, where do you live?

A. I live in New York City, Upper West Side.

Q. Do you have any real estate or property that -- where you live periodically in the State of Texas?

A. No.

Q. Okay. Other than your work for Highland here, do you have any business calling that takes you to the State of Texas on a regular basis?

A. No.

MR. RUKAVINA: Okay. We'll mark as Exhibit 1 the Notice of 30(b)(6).

(Brief off-record discussion.)

(Exhibit 1, Notice of Deposition/Seery, marked for identification, as of this date.)

Q. Mr. Seery, you've been handed Exhibit 1.

Have you seen this document?

A. I believe I have, yes.

Q. Okay. And are you familiar with the topics I've designated in here?

MR. MORRIS: I think this is missing a page.

THE WITNESS: Going to 1 to 2 to --

MR. MORRIS: The topics aren't in this version.

MR. RUKAVINA: Oh, I gave you the wrong one; I apologize --

(Simultaneous speaking.)

MR. RUKAVINA: I apologize, I apologize. Sir, that -- that's the one that, that -- that Notices you personally here today. Let me try again, and -- and Exhibit 2 will be the 30(b)(6).

(Exhibit 2, Notice of Deposition/30(b)(6), marked for identification, as of this date.)

Q. Sir, have you seen Exhibit 2 before?

A. I believe I have, yes.

J. Seery

Q. Okay. And subject to your counsel's objections, which he sent to me by email, are you prepared to testify on the topics that are designated in here today?

A. Yes.

Q. Okay. And have you reasonably informed yourself on those topics prior to sitting here today?

A. Yes.

Q. Okay. Now, some background, and we don't need to go into excruciating detail.

What is your educational background?

A. I have a BA in history. I have a law degree, JD. And I've taken lots and lots of courses.

Q. And what university or college is your history BA from?

A. Colgate University.

Q. Okay. And what university is your JD from?

A. New York Law School.

Q. And when did you graduate New York Law School and get your JD?

J. Seery

A. 1990.

Q. Okay. And what states have you been licensed in as a lawyer?

A. New York and Connecticut.

Q. Are you currently licensed as a lawyer?

A. I believe I am.

Q. Okay. Have you ever faced any disciplinary proceedings as a lawyer?

A. No.

Q. With respect to bankruptcy cases, can you give us a brief recitation of -- of your relevant experience in administering Chapter 11 or other bankruptcy estates?

A. Administering, I -- I've been involved or been an active player - either as a lawyer, senior lawyer, investor, and in this case an independent director and CRO - in really my entire career, so I would say hundreds.

Q. Okay. Do you consider yourself an expert on bankruptcy law?

A. I'm pretty good.

Q. Okay. And with respect to the

J. Seery

Highland Capital Management LP bankruptcy case, obviously the plan has been confirmed and it's gone effective.

Before the plan went effective, what was your role with the debtor?

A. I was an independent director, and subsequently I was appointed as the CRO and CEO of Highland.

Q. And approximately when did you become an independent director?

A. January 9, 2020.

Q. And just to be clear, what entity were you an independent director of?

A. I was an independent director of Strand Advisors, which was the GP of Highland Capital Management LP and had control of Highland Capital Management LP, which became the debtor - or was the debtor.

Q. And there were two other independent directors, correct?

A. There were, yes.

Q. What were their names, sir?

A. Russell Nelms and John Dubel.

Q. Okay. And did the three of you --

J. Seery

were the three of you independent directors since January 9, 2020, until the plan became effective?

A. That's correct.

Q. Were there any other people who, during that time frame, were ever independent directors?

A. No.

Q. Okay. And, sir, when did you become the CEO and/or CRO?

A. In July of 2020.

Q. Okay. Prior to July of 2020, was your role with Highland and Strand solely that of an independent director?

A. It -- it was. I effectively was, I guess, probably the lead independent director, just spent the most time -- I shouldn't say the most time.

I spent a significant amount of time on it, as did my fellow directors, but I spent a significant amount of time.

Q. And -- and Mr. Nelms, he was a former bankruptcy judge?

A. Yes.

J. Seery

Q. Okay. And Mr. Duval [ph], what was, just briefly, his background to your understanding?

A. Dubel --

Q. I'm sorry, Dubel.

A. -- and he was a -- he's a very experienced practitioner in distressed corporate management and bankruptcy corporate management.

Q. Okay. After the bankruptcy plan became effective, what happened to the debtor?

In other words, as a corporate entity, what happened to the debtor?

A. The debtor was reconstituted with a new GP and new limited partnership units.

Q. Okay. And do you have any role with respect to authority at the debtor today?

A. I do.

Q. What is your role, sir?

A. I'm the CEO.

Q. The -- I'm sorry, the CEO?

A. Yes.

J. Seery

Q. Okay. And you're also a post-confirmation trustee, are you not?

A. I am, yes.

Q. And what are you the trustee of?

A. The Claimant trustee.

Q. Okay. And what role does the Claimant trustee, if any, have with the reorganized debtor?

A. The Claimant trustee is the claimant -- is the trustee for the Claimant Trust, which holds the limited partnership units for the reorganized debtor.

Q. Okay. And does it also hold any general partnership units for the reorganized debtor?

A. It holds the ownership interest in the GP.

Q. Okay. Is it fair to say that -- that all economic value in the reorganized debtor one way or the other inures to the benefit of the Claimant Trust under the plan?

A. It does effectively run up to the Claimant Trust, yes.

Q. And is it fair to say that you are

J. Seery

in charge of the reorganized debtor?

A. I'm in charge of the reorganized debtor and I'm in charge of the Claimant Trust, but not all of the value runs through me directly.

Q. Because there's also a Litigation Sub-Trust?

A. That's correct, and that doesn't report to me.

Q. As far, sir -- let's just limit it now to the debtor's post effective date operations.

Are you the person in charge of those operations?

A. Yes.

Q. Okay. Are you -- and you said that you're the CEO of the debtor.

Are there any other officers, either at the debtor or its new GP, in addition to you?

A. Yes.

Q. Who -- who, sir?

A. Thomas Surgent is the general counsel and David Klos is the CFO.

J. Seery

Q. Okay. And both Mr. Surgeon -- I'm sorry, Surgent and Mr. Klos were previously employed with the debtor prior to the effective date?

A. They were.

Q. Okay. So in July 2020, you mentioned you became the CEO and CRO of the debtor, correct?

A. That's correct.

Q. Okay. And prior to that -- well, obviously, you know who Mr. James Dondero is, correct?

A. I do.

Q. Okay. And part of what happened on January 9, 2020, in summary, was that Mr. Dondero, pursuant to his agreement and Court order, was removed from controlling the debtor.

Is that a fair summary?

A. Certain --

MR. MORRIS: Objection to the form of the question.

A. Certain -- certainly with respect to the -- the corporate delegation of

J. Seery

authority, yes.

Q. Okay. He stayed on as an employee, but whatever he did - is it fair to say - after January 9, 2020 would be subject to the new independent board?

A. I don't think that would be fair to say. I think from a corporate rule perspective it would be. I think he -- he, subsequently, we learned, did quite a few things without --

(Reporter clarification.)

THE WITNESS: Subsequently we learned he did quite a few things without oversight by the independent board.

BY MR. RUKAVINA:

Q. Okay. Can you give me an example of what he did without oversight by the independent board?

A. He traded -- traded assets; he managed the Select account on his own; he didn't meet margins calls at direction that the -- that the board, independent board, had said to -- to meet; he tried to overrule me

J. Seery

subsequently and later in the year on asset sales that were being conducted out of certain of the CLOs --

(Reporter clarification.)

THE WITNESS: Asset sales -- I'm sorry, asset sales out of certain of the CLOs.

So there, there -- if we take time, we can go through dozens.

BY MR. RUKAVINA:

Q. Well, I get the general gist. And is it fair to say that those things that he was doing, amongst others, is why the independent board made you the CEO and CRO?

MR. MORRIS: Objection to the form of the question.

Q. Let me rephrase the question.

Why, in July -- first of all, who made you CEO and CRO in July of 2020?

A. The independent board approved it and then the Court approved it.

Q. And you were on that independent board, so you were one of the people that approved it?

J. Seery

MR. MORRIS: Objection to the form of the question.

A. No, I would have abstained.

Q. I apologize.

So the other two board members approved it?

A. Correct.

Q. Okay. Do you have an understanding as to why they approved you becoming CEO and CRO?

A. We felt like the organization needed a specific leader and a specific direction. Mr. Dondero's activities were pulling many of the people in the business multiple ways, and we felt that it was both dangerous for the organization and dangerous for the individuals.

Q. Okay. Between January 9, 2020 and July 2020, when you became CEO and CRO, what should have, pursuant to the settlement and Court agreement, Mr. Dondero's role at the debtor have been?

MR. MORRIS: Objection to the form of the question --

J. Seery

A. He was --

MR. MORRIS: -- and I just -- I just want to note that I, I -- I don't see how this is connected in any way to the issues in the lawsuits.

I'll allow you to ask a few more questions for background purposes, but I -- I just want to note my concern that we're running a little far afield.

But you can answer the question.

A. Can you read back the question --

(Simultaneous speaking and reporter interjection.)

Q. Between January 9, 2020 and July 2020, whenever you became the CEO and CRO, pursuant to the court approved settlement, what should Mr. Dondero's role at the debtor have been?

MR. MORRIS: Objection to the form of the question.

A. I think you have to understand the -- the settlement. Mr. Dondero initially agreed to be removed from all roles at the debtor. At the very last second he changed

J. Seery

that and wanted to be put back in. I think it probably had to do with -- with press reports that he didn't like reading. So he maintained an unpaid role as the portfolio manager. The portfolio that he really managed was the Select account.

What he should have done is he should have taken direction. He should have honored the margin calls that -- that Jefferies had made, he should have sold assets, he should have reported to the board. He did none of those things.

He independently, then, ran roughshod over certain parts of the organization. He should not have done that. And it was very difficult, with the existing employees, to manage them with Mr. Dondero there because they'd worked for him for a number of years.

Q. That was going to be my next question.

Did you feel, prior to July 2020, that some employees, some key employees, were basically doing his bidding instead of what

J. Seery

the independent board expected them to be doing?

A. I think we had -- we certainly had concerns about that, yes.

Q. And we'll round this off pretty quickly.

Did there come a time when you asked Mr. Dondero for his resignation?

A. There did, yes.

Q. And -- and did he give it?

A. He did, yes.

Q. And do you recall the date?

A. It was in October of 2020.

MR. RUKAVINA: I have it in here somewhere. I'm not sure that it's -- well, let's just put it in the record, see if this will refresh your memory.

This is going to be 3, right?

(Exhibit 3, Email Chain Re: HCMLP Roles, marked for identification, as of this date.)

(Brief off-record discussion.)

BY MR. RUKAVINA:

Q. Do you recall this email chain,

J. Seery

sir?

A. Vague -- vaguely. I'm -- I'm familiar with it, yes.

Q. And does this refresh your memory that Mr. Dondero resigned on October the 9th, 2020?

A. I -- I would say it confirms my memory since I said it was in October.

Q. Okay. But can you now confirm that it was October 9, 2020?

A. Yes.

Q. Okay. Thank you. Now, just to put it in the record here because of Mr. Morris' objection, it is -- and I apologize, we're going to talk about the debtor's contentions today in this lawsuit against NexPoint.

Is it okay if I say debtor or you want me to say reorganized debtor or --

A. Whatever you're more comfortable, I'm okay.

Q. It is -- well, the -- the debtor the reorganized debtor under the plan, retained interest in this lawsuit; is that accurate?

J. Seery

A. That's correct.

Q. Okay. So it -- it's -- is it the debtor's contention that NexPoint failed to make a payment due, let's say on or before December 31, 2020, on this $30.7 million promissory note?

A. That's correct.

Q. Okay. And we'll go further in detail, but ultimately, on or about January 7, the debtor sent notice that the note was immediately due and payable, correct?

A. That's correct.

Q. And did you make that decision to say that the note is immediately due and payable?

A. I did, yes.

Q. Okay. Thank you. Now -- and you were aware, when you made that decision, that -- that NexPoint was affiliated to some degree with Mr. Dondero?

MR. MORRIS: Objection to the form of the question.

A. Yes, I was.

Q. What was your understanding then or

J. Seery

what is your understanding now - you answer it how ever you can - as to what Mr. Dondero's role with NexPoint Advisors LP was in December 2020?

A. I believe it was and continues to be complete ownership control and domination of NexPoint Advisors.

Q. Between January 9, 2020, when you became an independent director, and October 9, 2020, when Mr. Dondero resigned, did you form an opinion as to Mr. Dondero's honesty?

A. Between which dates?

Q. January 9 and October 9, 2020.

A. January 9 and October -- yes.

Q. Yes.

And did you form an opinion as to his business acumen?

A. To some degree, yes.

Q. Okay. Did you form an opinion as to his management skills?

A. Yes.

Q. Okay. What was your opinion with -- pardon me, strike that.

What opinion did you form during

J. Seery

that time as to Mr. Dondero's honesty?

A. I think he's dishonest.

Q. Okay. What opinion did you form as to his business acumen?

A. I think it's challenged.

Q. Can you elaborate?

A. I -- the Select account we've talked about is a -- is a great example.

Shorting Zoom in the pandemic and holding it, shorting Netflix for long periods of time, moving money all around without any thought of the corporate form, moving money in and out of different entities.

The litigations that he was involved in; Acis alone he could have settled for $2 million and probably burned nearly $200 million of value.

So those are just beginning examples.

Q. Given the opinions that you formed as to Mr. Dondero, did you believe that that's also how he was running NexPoint at that time in late 2020?

A. I didn't make any judgments about

J. Seery

NexPoint.

Q. Okay. Now, are you familiar with the concepts, in bankruptcy, of solvency or insolvency?

A. Yes.

Q. Okay. Are you familiar with one or more metrics or definitions --

A. Yes.

Q. -- for solvency -- okay.

A. Yes.

Q. Can you tell me how you understand solvency to be.

A. In which context?

Q. Well, under the Bankruptcy Code.

A. There's no --

MR. MORRIS: Objection to the form of the question.

A. There's no definition of solvency in the bankruptcy code.

Q. Sir, there is.

MR. MORRIS: Well --

A. Failure to pay debts as they come due, balance sheet insolvency --

Q. That's what I'm --

J. Seery

(Simultaneous speaking.)

A. -- depends on the context.

(Reporter interjection.)

Q. I'm sorry.

So you agree with me -- you agree with me, again, depending on the context, that one definition of insolvency is balance sheet, meaning that your liabilities exceed your assets?

A. That is one definition of insolvency.

Q. And you agree with me that another definition is when you're basically unable to pay your debts as they become due?

A. That's another definition.

Q. Okay. And I'm going to ask you, when you became -- or after you became an independent director on January 9, 2020, did you form an opinion as to the debtor's solvency?

A. On January 9?

Q. Well, or after that -- after, after --

(Simultaneous speaking.)

J. Seery

Q. -- January 9, 2020.
A. It's a -- it's a long period. So if you want to break it down --
Q. Yeah.
A. -- in the early part of the case I did not form an opinion as to solvency.
I had to determine what the asset values were and what the -- what the claims were.
Q. Did you ever form an opinion -- and the reason why I'm -- I want to separate the debtor from the reorganized debtor. That's why I'm trying to be sensitive on the dates.
So I'm going to say debtor. Did you ever form an opinion as to the debtor's solvency?
MR. MORRIS: Objection to the form of the question.
A. That's -- that's what I answered.
Q. So you did?
MR. MORRIS: Objection to the form of the question.
A. The -- the debtor's solvency depends on when.

J. Seery

Q. Okay.
A. I think early in the case, as I said, I didn't form any opinion as to solvency.
Q. But at some point did you form an opinion as to solvency?
A. Yeah, I don't know exactly when it was, but at -- at some point it became clear to me that the claims exceeded the asset value.
Q. So is it fair to say that at some point you concluded that the debtor was insolvent based on the balance sheet test?
MR. MORRIS: Objection to the form of the question.
A. Certainly on -- on the balance sheet test, yeah.
Q. What about on the inability to pay debts as they become due; did you ever form an opinion on that test?
A. Well, it was in bankruptcy, so that had already been met.
Q. Okay. Did you ever form an opinion or have one provided by non-lawyers to you as

J. Seery

to whether the debtor was insolvent prior to the petition date?
A. Did I, I -- I do now.
Q. Okay. What is your opinion?
A. I think the debtor was insolvent and very much insolvent well before the filing.
Q. Into 2018?
A. Certainly.
Q. 2017?
A. Certainly.
Q. 2016?
A. Yes.
Q. Okay. And when you say that the debtor was well insolvent before filing, are you applying one or both of the definitions we discussed for insolvency?
MR. MORRIS: Davor, I'm just going to express the same concern I did earlier. For the life of me, I don't know -- I mean, I know why you're doing this, but it's certainly not related to any of the claims that are at issue in this lawsuit. So I'm just -- I just --

J. Seery

MR. RUKAVINA: With due respect, John, you've sued my client for fraudulent transfer. That requires insolvency as an element. I'm entitled to explore insolvency.
MR. MORRIS: Sure, for -- for 2019, go right ahead. That's when the transfer was made, right?
MR. RUKAVINA: The note --
MR. MORRIS: The note is 2000 -- the, the note is -- is May 2, 2019, so --
MR. RUKAVINA: No, sir, you're -- I'm sorry, you're confusing this with the HCMA case. Let's put the note into evidence.
MR. MORRIS: Okay.
MR. RUKAVINA: It's -- I'm not trying to be --
(Simultaneous speaking.)
MR. MORRIS: No, no, no, no, no. Let me, let me -- let me restate this.
MR. RUKAVINA: Yeah.
MR. MORRIS: It's for actual

J. Seery

fraudulent transfer.

MR. RUKAVINA: Yes.

MR. MORRIS: Solvency is not an issue. Solvency is not an issue. We have no burden of proving solvency. It's only -- that's exactly why we didn't put constructive fraudulent transfer in the complaint, so we wouldn't do this.

MR. RUKAVINA: We can -- we can debate the law on that, but I think -- I think you have answered it.

BY MR. RUKAVINA:

Q. To your view, the debtor was insolvent certainly as of 2016?

A. Yeah.

Q. Okay. And I asked you, and before counsel objected, what definition or, or -- or both definitions were you using when you told me that the debtor was insolvent in 2019, 2018, 2017 and 2016?

A. I think --

MR. MORRIS: Object to the form of the question.

J. Seery

A. I -- I think both. I think you'd have to go through each, but when you properly look at the balance sheet and you add the contingent liabilities, it was pretty clear that the debtor didn't have the -- the wherewithal from the balance sheet perspective to satisfy those ultimate liabilities.

In addition, the debtor continually borrowed money when it needed it. The debtor was -- was always on a very tight leash with respect to liquidity, as money kept getting sucked out at different times.

Q. Okay. After October 9, 2020, when Mr. Dondero resigned, should Mr. Dondero have had any ability to instruct the debtor's employees as to what to do, if that question makes sense?

MR. MORRIS: Yeah, objection to the form of the question.

A. The -- the answer is with respect -- he was permitted, I believe, after the -- the dates will get a little bit confusing, but with respect to the shared

J. Seery

services, he could make certain direction to the employees and even after the contempt finding could make certain directions with respect to shared services.

With respect to operations of HCMLP, no.

Q. Okay. And that was my question.

So if it was an HCMLP operational issue, Mr. Dondero had no ability to instruct anyone else?

A. Or, or -- or any issue --

Q. Any issue --

A. -- but with respect to shared services, he certainly could communicate with them, and if there were shared services that needed to be performed, he could request those.

Q. Now, as of October 9, 2020, is it true that Frank Waterhouse was the chief financial officer of the debtor?

A. That's correct.

Q. And that he was the chief financial officer of the debtor through January 2021?

A. I don't remember the exact date,

J. Seery

but yes, right around there.

Q. Okay. Was he the chief financial officer of the debtor on January 12, 2021?

A. I -- I believe he was. I don't recall the exact dates that we did the -- the cutover.

Q. Okay. Well, let's -- let's try to pin that down.

You recall that there was a shared services agreement in place between the debtor and NexPoint?

A. Yes.

Q. Okay. And you recall that the debtor exercised its opt -- or right to terminate that agreement?

A. That's correct.

Q. Okay. And do you recall the date, after several extensions, on which that agreement was actually terminated?

A. I don't recall the initial -- I think the notice was in -- in November, late November or December, and it was a -- I believe it was a sixty-day notice for --

(Reporter clarification.)

J. Seery

THE WITNESS: Sixty-day for NPA, I'm sorry, NPA.

And -- there was some sixty days and some thirty days, so I don't recall the exact date that there -- that it was effectively terminated.

BY MR. RUKAVINA:

Q. Well, by NPA, you mean NexPoint Advisors?

A. Correct.

Q. Okay.

A. Isn't that who you asked me about?

Q. I know. I'm just -- for the record, the jury might not know who NPA is.

A. Okay.

Q. Do you recall that we -- you and I had a trial in -- sometime in mid February 2021 about the shared services agreements?

A. I know we had a hearing. I don't recall if you'd call it a trial. It was a hearing on termination.

Q. Okay. And -- and do you recall that the debtor had agreed to extend termination until February the 28th, 2021 of

J. Seery

the shared services agreement?

A. There -- there were extensions; I don't recall the specific dates.

Q. Okay. Was -- to your recollection, was -- was Mr. Waterhouse the chief financial officer until the termination of that shared services agreement or did he cease being the chief financial officer at some period prior to that?

A. I -- I believe it was to the end, but I'm not -- I'm not absolutely certain about that.

Q. So in December of 2021 -- I'm sorry, strike that.

In December of 2020, you were the chief restructuring officer, you were the chief executive officer of the debtor, correct?

A. Yes.

Q. Mr. Waterhouse was the chief financial officer, correct?

A. Yes.

Q. Who else would have been an officer of the debtor in December of 2020?

J. Seery

A. In December of 2020?

Scott Ellington was still the general counsel.

Q. Okay.

A. And I don't believe that we had any other corporate officers.

Q. Mr. Surgent wasn't an officer, to your recollection?

A. He was the CCO --

Q. Okay.

A. -- so I don't believe that's actually a corporate officer.

Q. Was there a COO, do you know?

A. I don't believe so at the time.

Q. Okay. Now, in the latter half of 2020, Mr. Dondero was trying to float some -- what we've all called pot plan.

Do you recall that?

MR. MORRIS: Objection to the form of the question.

A. The latter half, I -- I guess starting in probably around August --

Q. Okay.

A. -- in -- in connection with the

J. Seery

mediation.

Q. You've heard the term "pot plan" that Mr. Dondero has talked about before, correct?

A. I have, yes.

Q. Okay. And what did you understand a pot plan, as he was proposing it starting in August of 2020, to be?

A. Yeah, it's not a novel term. Certainly he didn't invent it or -- or probably didn't get it in this case. He probably got it from his lawyer.

But the idea of a pot plan is to put a bunch of money into the middle and create a pot that then the creditors can determine how to divide, and the reorganized debtor moves on with its existence away from the creditor claims.

Q. There was a creditors' committee in the Highland bankruptcy case, correct?

A. Yes.

Q. And how many committee members were there?

A. Four.

J. Seery

Q. Okay. And is it fair to say that as part of this pot plan, Mr. Dondero was trying to propose something that might be palatable to that creditor's committee?

A. I think it's fair to say it would have to be palatable to that creditor's committee.

Q. And is it fair to say that -- that starting in August of 2020, you were trying to see if you might facilitate or bridge that gap?

A. I wouldn't say bridge but certainly facilitate --

Q. Okay. What --

A. -- or if you want to say I did as a bridge between Mr. Dondero and his counsel and -- and the committee and their counsel, that -- that would be fair.

Q. Okay. Well, let me -- let me look at your prior -- we're saying the same thing, we're just having --

(Simultaneous speaking.)

A. I don't think we're having a definitional problem. I just don't want it

J. Seery

to sound like I was going to bridge it with any sort of finances.

Q. Yeah, that's true, the word "bridge" could be construed to mean that. You're correct.

MR. RUKAVINA: Are we on 4?

THE WITNESS: Yes.

(Exhibit 4, Seery Declaration in Support of Motion for TRO, marked for identification, as of this date.)

(Brief off-record discussion.)

Q. Do you recall this declaration, sir?

A. Not -- not specifically.

Q. Okay. But if I represent to you that I pulled this from the docket as your counsel filed it, and assuming that I'm telling the truth, would it -- would this have been a declaration that you caused to be filed?

A. Yeah, I have no -- no reason to challenge it, yes.

Q. Okay. And we might come back to this a little bit later. I don't want to

J. Seery

waste your time right now. But I've lost my place, so we'll come back to it later, after a break.

Going back --

(Simultaneous speaking.)

A. -- see if there was a bridge quote in here?

Q. No, no, you were -- you were describing that you had been trying to facilitate a settlement, and I was just going to try to use your words so that I wouldn't misstate it.

But, but going back, so -- so in August -- starting in August of 2020, Mr. Dondero was trying to propose some pot plan, and it had to have been acceptable to the committee for there to be any settlement.

So far I'm correct, right?

A. Yes.

Q. And you as the COO was trying to do what you could to see if you could facilitate the two of them coming to an under -- understanding.

Is that generally accurate?

J. Seery

A. That's correct.

Q. Okay. And did you continue doing so for a period of months after that?

A. Certainly into early November.

Q. Okay. Would you say that there was a point in time at which you stopped personally - you, Mr. Seery - personally stopped trying to facilitate some settlement between Mr. Dondero and the committee vis-a-vis a pot plan?

A. I think at some point it became very clear to me that it was futile, that -- that Mr. Dondero was never going to come up with any real value that would be anywhere close to what the committee would accept.

And his structure of his -- his pot plan was always more notes, and the basic assumption was, well, if you're not paying on these notes how -- how do we trust new notes?

Q. And when -- when did that view crystalize in your mind?

A. Probably some -- it probably developed - so crystallized is a fair word - over a period of time. I think in the -- the

J. Seery

mediation, through the negotiations in September and October or the -- the multiple re-trades on -- on very specific prior agreements, by November it was clear to me that -- that there was little hope.

Q. Okay. So we can say by December 1, certainly by December 1, there was very little hope?

A. Yeah, I think that that's probably -- at least in my mind. I don't know if others felt the same, and there was certainly opportunities for settlement beyond that, but it seemed pretty clear to me that we were moving towards a monetization plan and we started negotiating the separation, not with Mr. Dondero but with the team, of -- of the various business and the termination of the --

(Reporter clarification.)

THE WITNESS: Businesses and the termination of the shared services, sorry.

BY MR. RUKAVINA:

Q. Did you convey that to

J. Seery

Mr. Waterhouse at any point in time, basically that you believed that Mr. Dondero's pot plan was -- was not going to happen?

A. I -- I don't recall if I did or not.

Q. Did you -- strike that.

In -- in the course of these discussions between the committee and Mr. Dondero and -- and maybe your trying to facilitate something, was Mr. Waterhouse even involved directly, to your knowledge?

A. He was certainly involved, assisting Mr. Dondero --

Q. Okay.

A. -- and he certainly provided or his team provided data to me, which ultimately went to the committee.

So I would -- I would think he's involved to some degree. I don't recall that he would ever have been involved in -- in specific discussions --

Q. Okay.

A. -- at least not with me.

J. Seery

I think it was pretty clear he was involved with discussions with Mr. Dondero.

Q. You -- not you, pardon me.

The debtor had an outside financial advisor, correct?

A. That's correct.

Q. And what was that entity's name?

A. DSI.

Q. Is it fair to say that you relied on DSI to some degree in the course of these discussions and negotiations?

A. To some degree, but I don't think it's a fair characterization that they were sort of a hands-on financial advisor around the -- these negotiations.

Q. I just want to -- I just want to understand that, that -- it sounds like, to me, at least on the debtor's side, Mr. Waterhouse was not one of the key individuals trying to facilitate an agreement between the debtor and the committee?

A. I, I --

MR. MORRIS: Objection to the form of the question.

J. Seery

A. I don't think that's fair. I think that I -- I and my professionals, lawyers and -- and DSI, were in the middle between Mr. Dondero and his counsel and the committee. The committee had their own financial advisors.

I drew on Mr. Waterhouse and his team for financial information regarding the debtor's assets throughout the case, certainly since I took the position as CEO.

Q. Okay.

A. Mr. Dondero also drew on that information quite a bit.

Q. At that point in time, let's say in December of 2020, did you understand that Mr. Waterhouse had a role with my client, NexPoint Advisors?

A. Did you say December of 2020?

Q. Yes, sir.

A. Did he have a --

(Simultaneous speaking.)

A. -- he was -- I think he was treasurer and he was an executive officer of some -- one of the funds.

J. Seery

Q. Now, you mentioned the debtor's monetization plan that the debtor filed.

I think that's the word you used, right, monetization plan?

A. Correct.

Q. Okay. And in, in -- in a nutshell amongst other things, that plan -- well, you, you tell the -- the Court.

What was the monetization plan intended to do?

A. It was aptly named. It was intended to monetize the assets of the debtor over a period of time that we thought was legitimate to run the businesses in a way that would maximize value for the estate.

Q. And some of the assets of the debtor, at least in the latter half of 2020, included promissory notes from Mr. Dondero and other entities affiliated with Mr. Dondero; is that correct?

A. That's correct.

Q. And some of those promissory notes were demand notes; is that correct?

A. That's correct.

J. Seery

Q. And some of those promissory notes were term notes, at least as of that time; is that correct?

A. That's correct.

Q. Okay. And I think, actually, it's in this declaration which we marked 4, did we?

A. Yes.

Q. Yes. So you filed -- or, I'm sorry, sir, you -- this was filed on December 7, 2020.

And I think if you go to paragraph 26 and 27, you'll see that you're discussing demand notes.

A. That's correct.

Q. And in paragraph 29 it says that on December 30 -- I'm sorry, strike that.

In paragraph 29 it says (as read):

On December 3, 2020, at my instruction, the debtor's counsel sent letters to representatives of Mr. Dondero and each of the corporate obligors, demanding payment of all unpaid principal

J. Seery

and accrued interest due under the demand notes by December 11, 2020.

Was that a true statement?

A. Yes.

Q. Why did you decide to make demand of the demand notes at that time?

A. Well, it was pretty -- this will be a long answer, but it's pretty clear that I made a mistake, that I should have demanded payment from Mr. Dondero earlier in the case.

The demand notes were due and owing, they could be called at any time, and I thought that leaving them outstanding would provide a way to facilitate a grand bargain, or a pot plan.

And by the time -- the beginning of December, when we knew we were moving forward with the monetization plan, it was time to start to collect the assets of the debtor, so I made a decision that we should demand payment on each of the notes.

Q. At that time, on December the 3rd, 2020, were you aware of the $30.7 million NexPoint note?

J. Seery

A. Yes.

Q. Okay. And did you understand that at that point in time that was a term note?

A. Yes.

Q. Okay. And, and did you have a -- a plan at that point in time as to -- and did you -- pardon me. Strike all that.

Did you understand that -- that that had a thirty-year term originally when it was executed?

A. Yeah, you should understand that -- and maybe you do, and that's -- so we'll make sure the record is clear.

Each of the -- the term notes were not term notes. They were -- they became term notes because they were roll-up of demand notes, and they were roll-up of demand notes in 27 -- 2017, when things at the debtor and for Mr. Dondero became very precarious.

Certain lawsuits had been filed, the asset stripping in the Cayman Islands had begun. It was a difficult time. So without any consideration whatsoever, Mr. Dondero, on

J. Seery

both sides, extended the terms -- rolled up those notes and extended the terms of those notes for thirty years and generally - although not all - very low interest rate and very easy terms, no -- no security, no covenants.

So those became the term notes, but they were always potentially subject to other litigation demands.

Q. You weren't around with the debtor or NexPoint in 2017, were you?

A. No.

Q. Okay. So you have no personal knowledge about the execution of any notes at that time?

A. I, I would differ and say I do -- I wasn't in the room, but I have the evidence by the virtue of the fact that I've seen the backup to the notes, and they actually contain the schedule with the roll -- the notes that are being rolled up.

Q. So you're -- you're making an educated deduction, based on your professional experience, but you aren't

J. Seery

either the maker or the lender in 2017, when these notes -- when this note was executed, were you?

MR. MORRIS: Objection to the form of the question.

A. I haven't been the maker or the, or the -- or the lender on any of these notes.

MR. RUKAVINA: Well, this is going to be Exhibit 5. This is the note that we're here on today.

(Exhibit 5, Promissory Note Dated May 31, 2017, marked for identification, as of this date.)

(Brief off-record discussion.)

BY MR. RUKAVINA:

Q. So if we go to the last page of this exhibit, this references prior notes, and the body of this basically says that each of the prior notes are superseded by the new note, correct?

MR. MORRIS: Objection to the form of the question. Can you just point that to Mr. Seery so --

Q. Sure. So, Mr. Seery, if you see

J. Seery

Section 9, (as read):

The original of each of the prior notes superseded hereby shall be marked void.

A. Yes, so --

Q. And then you see the prior notes in the preamble?

A. Uh-huh.

Q. So is this what you were just talking about, that this promissory note was a roll-up of these five prior demand notes?

A. That's correct.

Q. Okay. Now, if -- if we look at this -- I'm looking at the last page here, sir.

A. Uh-huh.

Q. The initial note amount of the original five was 27,675,000; is that correct?

A. That's correct.

Q. And -- and as of May 31, 2017, this says that principal and interest outstanding was 30,746,812.33; is that correct?

A. That's what it says, yes.

J. Seery

Q. Okay. Is -- is the logical conclusion that -- that on those five promissory notes, not even all the interest had been kept current?

A. I, I --

MR. MORRIS: Objection to the form of the question.

A. Yeah, I'd have to do the math on each of them. You're talking about three years, 240 -- yeah, it looks roughly but not all of the -- it looks like some payments were made, but -- but certainly on -- it doesn't look like it completely kept current, at least on some of these.

Q. Well, can you think of a reason -- other than the failure to pay interest, can you think of reason as to why the initial note amount increased by at least $3 million in that time frame?

MR. MORRIS: Objection to the form of the question.

A. No, I -- I would think it would be an accrual. And it's just unclear to me on each of them whether there were pay-downs,

J. Seery

whether there were times where it didn't pay down, but certainly in the -- in the aggregate, they didn't pay down. And so I just don't know if it was -- if there was some payments or not; I don't recall.

Q. Okay. And -- and we're not here on the HCMFA note, but are you general -- generally familiar that in April of 2019, Mr. Dondero executed a document that took two promissory notes that HCMFA had issued that were demand notes and extended them until May 31, 2021?

A. That's not what it did, no.

Q. What do you understand happened?

A. It, it -- they were -- they were demand notes without maturity, and the -- the obligor was given the statement from the holder, HCMLP, that it wouldn't collect on those notes until May 31, 2021.

And that was done because HCMFA did not have the money to pay, and because it was an advisor, it had to make representations that it could support itself.

Q. So is it fair to say that, at least

J. Seery

prior to the time that you became CEO/CRO, the debtor was lax in its enforcement of its rights as the payee under promissory notes from the advisors?

A. That's --

MR. MORRIS: Objection to form of the question.

A. That's completely unfair.

(Simultaneous speaking.)

A. -- virtually no basis for you to say something like that.

It's a demand note that hadn't been demanded, and then -- then it was to a third party, so they could rely on the fact that HCMFA would have -- wouldn't have to have outflows to payoff demands that could happen at any time; that gave an agreement to extend the term, which is not really a term, it's just we won't demand it.

So how -- how you call that lax, I -- that doesn't have -- has nothing to do with being lax.

Q. Well, I thought you testified a few minutes ago that, at least in 2017, the

J. Seery

debtor was facing serious problems and that Mr. Dondero was rolling up these notes for -- for some ulterior purpose?

A. Not ulterior purpose. The purpose is really, really obvious. He wanted to extend out the term so that they wouldn't become due, couldn't be demanded at any time.

Q. Okay. So that -- that goes back to my question, which you said was not a fair question --

A. No, I said your characterization was unfair. You can't call that being lax. It's a demand note. You can either demand it or not demand it, but if you don't demand it, it doesn't mean you're being lax.

Q. Okay. Fair enough. But if, if -- so we're still on Exhibit 5.

If the debtor had allowed for these five notes' accrued interest to go unpaid for a period of one or more years, wouldn't that suggest to you that the debtor was, as -- as a payee, not strictly enforcing its rights?

A. I believe the underlying terms allowed it to accrue.

J. Seery

Q. Okay. Okay. So is it your testimony, sir, that prior to you becoming CEO/CRO, the debtor did or did not enforce its rights as the payee under various promissory notes according to industry standards, as you would understand them to be?

MR. MORRIS: Objection to the form of the question.

A. I think industry standards are -- are a bit nebulous, particularly when you're talking about the payee and the payor being controlled by the same person. But I think there's nothing uncommon about letting a note accrue when it's permitted to accrue.

Q. Do you believe that there -- strike that.

Do you believe that the debtor, prior to you becoming CEO/CRO, had acted inappropriately with permitting the roll-up of these five notes into Exhibit 5 or -- or changing the -- the HCMFA notes from demand to May 31, 2021?

MR. MORRIS: Objection to the

J. Seery

form of the question.

A. Yeah, with -- with respect to the HCMFA, I don't know -- I don't think that's inappropriate, based on the shared services and a tangential relationship between the affiliates, although clearly it was aggrandizing to Mr. Dondero and his interests, which it syphoned off tons of value from the debtor as opposed to HCMLP.

With respect to the roll-up of these notes for thirty years, without -- without real consideration, I think that that was --

(Reporter clarification.)

THE WITNESS: Inappropriate, yes.

BY MR. RUKAVINA:

Q. So if we go back now to December of 2020, early December of 2020, you've made demand - as we've just read in your declaration - on demand notes, and you've testified that you were aware of the existence of this note.

Did you, at that point in time, have any plans as to how to monetize this

J. Seery

note, number -- Exhibit 5 --

A. Yes.

Q. -- on December 3, 2020?

A. Yes.

Q. Okay. What was the plan back then?

A. It depended on what happened to the note, but ultimately we would seek to sell the note because of its long tenor, but likely we would end up suing Mr. -- or NPA, the -- the maker of the note, for fraudulent conveyance in 2017.

Q. On account of the roll-up?

A. Correct.

Q. Okay. Did the debtor ever actually solicit any offers of -- whereby someone might buy this note, No. 5, Exhibit 5?

A. No.

Q. Okay. Did you form an opinion or were -- were you given an opinion from a non-lawyer as to what the monetization value of this note, Exhibit 5, might have been in early December of 2020?

A. I -- we did form an opinion, and -- and we discounted it substantially.

J. Seery

Q. Can you tell the Court approximately what amount?

A. Off the top of my head, I don't recall.

Q. Okay. But -- but substantially?

A. Substantially. The reason is pretty obvious. This is a -- if you don't win the fraudulent conveyance suit, you've got a long-dated note with Mr. Dondero on the other side.

He's not generally viewed as a creditworthy counter-party and he controls the inflows that go into NPA. So the chances you are ever going to be paid early are extremely low, and the chances that it's going to default are probably pretty high.

Q. And this was an unsecured note, correct?

A. That's correct.

Q. Okay. So you -- going into December 31, 2020, were you hoping that NexPoint would default on this note?

MR. MORRIS: Objection to the form of the question.

J. Seery

A. I -- I think hoping is -- is not the right term. I think I -- I assumed that they wouldn't, because you'd have to not understand, you know, what happens when you default on a term note and it gets accelerated.

But if it happened, if I had that -- if that fortune befell the estate, I thought that would be a good thing.

Q. Let's look at the -- some of the terms of this note, sir. So we're on Exhibit 5. And in particular, Section 2.1, sir, the second sentence says (as read):

Borrower shall pay the annual installment on the 31st day of December of each calendar year.

Do you see that sentence, sir?

A. I do.

Q. Do you believe that that means that the payment must be on the 31st of December or is it -- should it be read as on or before the 31st day of December?

A. It's -- it says on, but typically there's no issue about prepayment and that

J. Seery

paragraph 3 says you can prepay.

Q. Well, so you see how -- how this Section 2.1 uses the word "borrower," right?

A. Yes.

Q. And borrower isn't defined here, but logically it's maker, right?

A. Correct.

Q. Okay. So that's just probably sloppiness, right?

MR. MORRIS: Objection to the form of the question.

A. Appears to be.

Q. Okay. And then you, you actually -- you saw Section 3, that talks about the -- the prepayment (as read):

Maker may prepay in whole or in part the unpaid principal or accrued interest of this note.

Do you see that, sir?

A. Yes.

Q. Okay. (As read):

Any payments on this note shall be applied first to unpaid accrued interest hereon and then

J. Seery

to unpaid principal hereof - correct?

A. Correct.

Q. Okay. So that, that goes -- that ties back to your prior answer, that even though Section 2.1 says on the 31st day of December, it's logical to read it on or before the 31st day of December?

MR. MORRIS: Objection to the form of the question.

A. It, it -- it would be. Your -- your interest amounts would be different but yes.

Q. Okay. Well, can -- so going back to Section 3, it says prepay accrued interest.

How does one prepay accrued interest?

A. Interest accrues on this note. How you prepay it is you send the money before the accrual date.

Q. Okay. Fair enough. And going back to Section 3, the -- the style of that section - whatever the word is - it says

J. Seery

prepayment allowed, renegotiation discretionary.

You see where it says renegotiation discretionary?

A. Yes.

Q. Can you -- can you see anything actually in that paragraph that talks about a renegotiation?

A. Nope.

Q. Okay. And just to -- to be clear, do you see anything in here that talks about that headings are for stylistic purposes only and have no meaning?

A. I -- I don't see anything --

Q. Okay.

A. -- that says that.

I just think that, one, the headings are probably appropriate; two, renegotiation is always discretionary.

Q. Okay. Well, but nothing in here suggests to you, does it, sir, that -- that the debtor was prohibited from renegotiating anything about this note?

A. No, the -- the holder of the note,

J. Seery

the payee, could negotiate/renegotiate or not.

In fact, it says that. Because it says it as a waiver, that the maker hereby waives any grace, demand, presentment -- it's got a very clear, broad waiver of any kind of implication that there might be some courtesy that the payee would have to give to the maker.

MR. RUKAVINA: Are we on 6?

Okay. Sir, I'm going to hand you what's -- what's going to be marked as Exhibit 6, which is your January 7, 2021 letter.

(Exhibit 6, Correspondence Dated January 7, 2021, marked for identification, as of this date.)

(Brief off-record discussion.)

THE WITNESS: By the way, who's -- who's Aaron Lawrence? I didn't see that person earlier.

MR. MORRIS: That is, I think, a paralegal with Quinn.

THE WITNESS: Oh, okay.

J. Seery

MR. MORRIS: Or an assistant, maybe an associate.

I apologize if you're an attorney. I apologize. In any event, but -- but, Mr. Lawrence you're with Quinn, right?

MR. LAWRENCE: Yes, I am.

MR. MORRIS: Yeah, thank you.

MR. LAWRENCE: I -- I've -- I've taken the bar.

MR. MORRIS: Yeah. Oh, okay. Thank you.

MS. DEITSCH-PEREZ: Does that imply you've just taken the bar?

MR. LAWRENCE: Yes.

MS. DEITSCH-PEREZ: Okay. Thank you.

(Simultaneous speaking.)

BY MR. RUKAVINA:

Q. Mr. Seery, you have Exhibit 6.

Do you recognize this document?

A. I do, yes.

Q. Okay. And -- and that's your electronic signature there?

A. That is.

J. Seery

Q. And you authorized this document to be issued to NexPoint Advisors?

A. I did, yes.

Q. Okay. Did you discuss this document, prior to you sending it, with the independent board?

A. Yes.

Q. Okay. And what do you recall about that discussion? Who was there; how did it happen?

A. I don't recall it specifically. That would be at regular meetings and we talked about the case. This came shortly after -- as we were moving towards -- I don't remember the exact confirmation date, but it was, you know, in and around that time. And this was a material asset of the estate, so talking to them about that would have been normal course of action.

Q. Part of what you discussed with them, was it how the debtor should respond to the missed December 31 payment?

A. I don't -- I don't think that's a fair characterization. I would have said

J. Seery

that they missed the payment, we're going to accelerate it unless you have some objection. They didn't object. This would have been standard for anyone I know who's a holder of a note.

Q. So there was no discussion with the board about maybe giving NexPoint a chance to fix that default before sending this note?

A. No.

Q. Okay. Same question: Did you discuss the substance of this letter, before you sent it, with the committee?

A. I doubt it and I don't recall. I don't think so. It wouldn't -- it wouldn't have been -- if there had been a committee call, we would have told them about it, but I wouldn't have been seeking permission.

Q. Okay. Did you keep notes of your meetings or discussions with the other board members generally?

A. Sometimes. Not -- not always. It depends.

Q. I've heard tell that you're a copious note -- note-taker; is that

J. Seery

incorrect?

A. I don't -- I don't think that's fair.

Q. Okay.

A. I take -- I take notes but not always.

Q. Do you have any memory, not that you should, as to whether you took any notes of the -- the meeting with the other board members we just discussed, about where the substance of this letter was discussed?

A. I don't recall. It would have been unusual for me to put the substance of that kind of board meeting - if it was a board meeting or if it was just a call - into notes, because I would have -- if it's a board meeting, we would have had minutes, and if it was just a call for something like this, it wouldn't have risen to the level of we're taking notes and writing it down.

Q. Okay.

A. I didn't have any reason to record every single thing I said with them because our collective memories are good and

J. Seery

they're -- they're pretty honest folks.

Q. Okay. Did -- did either you or anyone video-record or audio-record any of the discussions that you had with the other board members ever?

A. No.

Q. Okay. Were any of those meetings with the other board members by Zoom or Webex?

A. Very few, I mean, typically not.

Q. Okay. The very few that might have taken place, do you recall if -- if anyone pressed a record button on Zoom or Webex?

A. Nobody would have.

Q. Okay.

A. I can't imagine anyone would have recorded it without requesting permission from the other participants.

We didn't do much in that group by Zoom or Webex, we just -- it wasn't standard operating procedure for the group.

Q. Do you recall any of the other board members, or anyone else on any board, discussing -- seeking permission to record

J. Seery

any of those meetings?

A. No, never.

Q. Did you keep any calendar or logbook where you might be able to find the dates on which you had any call or meeting with the other board members?

A. If it was an official board meeting, certainly it would have been in Outlook.

Q. Okay. And if it was an official board meeting, would there have been an agenda circulated prior to the meeting?

A. Not always, because these were always done - particularly at this time, where we were in litigation - with counsel.

Q. And I take it that they would have been done more or less sometimes on an ad-hoc basis because of developments that might happen?

A. They -- they could, yes.

Q. Okay. Did you -- in responding to my discovery requests in this NexPoint lawsuit, did you consult any of your handwritten notes, as to whether there was

J. Seery

anything in there responsive?

A. I believe I looked -- I want to make sure I don't -- I don't know if I can distinguish between your requests and the other requests around these notes, but I certainly looked through some of my notes to see if I had any specific items that might have been requested. I don't recall if there was something about whether I had a conversation with John --

(Reporter clarification.)

THE WITNESS: John Dubel and Russ Nelms, the other directors.

BY MR. RUKAVINA:

Q. But you do recall, in response to discovery requests, looking at your handwritten notes to see if there was something responsive?

A. Yes, and I just don't recall the specific topics, because there were some that were specific topics particularly around the, the -- the made-up story about a subsequent event and things like that kind of nonsense.

Q. Do you recall whether you provided

J. Seery

to the debtor's or the reorganized debtor's counsel any handwritten notes for potential review and production?

A. I don't believe I did, because if I -- if I found something, I would have but I -- but I didn't find something specifically, I didn't -- wouldn't have given notes that were nonresponsive.

Q. Similar question: Did you -- you have a Gmail account by email, right?

A. I do, yes.

Q. Okay. And -- and I'm not an expert, but that wouldn't be on the debtor's or reorganized debtor's server, would it?

A. It would not.

Q. Okay. Did you review your personal emails with respect to whether there was anything responsive there to the discovery requests in this NexPoint lawsuit?

A. Yes.

Q. Okay. And if you found something, did you send it to counsel for potential review for privilege and potential production to me?

J. Seery

A. Yes.

Q. Okay. Did you, on your own, withhold anything believing -- well, strike that.

Is it fair to say that anything you thought might be responsive you provided to counsel?

A. I did, and I provided them complete access to my email.

Q. And you didn't intentionally withhold anything that might be -- strike that.

Other than privileged material, did you intentionally withhold anything that you believed was responsive to my discovery requests?

A. I -- I didn't withhold anything. If there was -- determined to be privileged, then it would have been determined by counsel.

Q. Understood.

MR. MORRIS: And if it was -- just to be clear, Davor, if it was determined to be duplicative of other

J. Seery

emails that we produced --

(Simultaneous speaking.)

MR. RUKAVINA: I'm totally fine with that.

Q. I just want to make sure that you, Mr. Seery, did not --

A. No, I didn't --

Q. -- intentionally -- intentionally withhold anything just because you didn't want it produced?

A. No, certainly not, nor -- neither intentionally nor accidentally, because I turned everything over.

Q. Understood. Going back to Exhibit 6, I've asked you about the board, I've asked you about the committee.

And you -- you said, I believe, that you don't remember having a discussion about the substance of Exhibit 6 with the committee, right?

A. I don't think I -- certainly not in advance of it, I would not -- it wouldn't have been standard to -- to do that, unless there had been a meeting right around then,

J. Seery

and I would have mentioned that I had done this.

Q. Did -- similar to the -- the prior answer, would you have recorded in Outlook or some other means any meetings that you had with the committee in the January 2021 time frame?

A. Yeah, it would have -- any meetings with the committee would have been official.

Q. Okay. You could -- you could find out what days those would have been had on?

A. I believe so, yes.

Q. And prior to these meetings, and I'm talking about January 2021 now, were there -- was there an agenda shared in advance either by the debtor or by the committee?

A. I believe oftentimes there was with the committee.

Q. Do you recall - and I think I know your answer - whether there was any such agenda related to whether the debtor should declare the NexPoint note, Exhibit 5, immediately due and payable?

J. Seery

A. Well, I don't recall a meeting around this, so I -- I certainly wouldn't recall an agenda.

Q. Now I'm going to ask about Mr. Waterhouse.

Before you authorized this letter, Exhibit 6, to go out, did you discuss the substance of this letter with Mr. Waterhouse?

A. I don't believe so.

Q. How did you find out that the December 31, 2020 payment had not been made by NexPoint?

A. I believe I was told during the cash-flow meetings that we had weekly.

Q. Okay. What -- was that like a certain set day of the week or --

A. Yeah.

Q. What day of the week was --

A. -- was either Tuesday or Wednesday.

Q. Okay. Do you recall who told you that this payment had not been made?

A. I don't recall specifically, no.

Q. Okay. Would you have received a report from which that would have been

J. Seery

evident?

A. I would get a cash flow, thirteen-week --

(Reporter clarification.)

THE WITNESS: Thirteen-week cash flow. I'm sorry.

Q. So -- so to the best of your recollection, do you recall, on the one hand, whether someone told you, Mr. Seery, NexPoint didn't pay or, on the other hand, whether you said where is NexPoint's payment?

MR. MORRIS: Objection to the form of the question.

A. I -- I don't recall. It could have -- it could have easily been either, because it certainly would have been something I would have asked about. NexPoint and others had already failed to pay their shared service payments, so it was a question as to whether any other payments would be coming.

Q. Okay. And who would have logically been, pursuant to your course of practice, on these weekly cash flow meetings?

J. Seery

A. Typically it would be sometimes Frank Waterhouse, Kristin Hendrix, Dave Klos - not always but most of the time - and Jack Donohue from DSI --

Q. Okay.

A. Fred Caruso as well, I believe --

Q. So in --

A. -- DSI.

Q. -- in early January 2021, do you have any reason to believe that any of those meetings would have been recorded visually or audio-recorded?

A. No, I would think they would not have been.

Q. Would any meetings -- I'm sorry, strike that -- any minutes of those discussions have been kept?

A. No, no minutes would have been kept.

Q. So you would get the, the -- the thirteen-week report you mentioned.

Would you get any other documents in the nature of an agenda or an update to you as the chief executive?

J. Seery

A. I don't --

MR. MORRIS: Objection to the form of the question.

A. I -- I don't believe so with respect to the thirteen-week cash flow discussion.

Q. So what -- what do you remember saying or doing right then, when you learned that NexPoint did not make a December 31 payment?

A. I don't recall the specific date, but as soon as I knew that the payment was late, I would have accelerated the note and told counsel to draft the acceleration and demand.

Q. And you don't recall discussing that with Mr. Waterhouse?

A. I don't recall it.

Q. What about with Mr. Klos?

A. I don't recall it.

Q. And obviously I don't want to hear about your discussion with counsel.

Other than counsel and DS -- or DSI, do you -- do you recall discussing with

J. Seery

anyone at the debtor the fact that NexPoint hadn't made the payment and that you were going to do something about that payment?

A. I would have only discussed it -- I think I would only have discussed it with counsel and with DSI, had DSI get the outstanding full amount up to whatever date we were going to set in the demand notice, and then send out the demand notice.

I wasn't going to advertise to anybody exactly what I was doing, because HCMLP had the right to do what it could do.

Q. Okay. And I'm going to struggle to ask the next question, so it's going to take me several questions and counsel will object.

Prior to the December 31 missed payment, did you issue any instructions to employees of the debtor to do anything differently with respect to facilitating NexPoint making that payment than they had done in the past?

MR. MORRIS: Objection to --

(Simultaneous speaking.)

A. -- payment or any other payment?

J. Seery

Q. This payment.
A. No.
(Reporter clarification.)
MR. MORRIS: I'm sorry, objection to form.
THE WITNESS: And I said -- I think my answer was no.
BY MR. RUKAVINA:
Q. So we've -- we've learned that in early December of 2020, the debtor was going to be able to -- strike that.
You agree with me that in December of 2020, it would have been to the debtor's economic advantage for NexPoint to miss the annual payment?
MR. MORRIS: Objection to the form of the question.
A. I -- I don't know if that's fair, because right now we're having to deal with what I would say are completely nonsensical defenses and spend millions of dollars to collect what are obviously true and owing amounts that are due to the debtor. So I don't know that it was necessarily in our

J. Seery

best interest to have this happen.
Overall, I think we will collect it, and it will be in our interest rather than having a thirty-year note to -- owed by NPA, to have a collected amount, which I expect to collect in full.
Q. As opposed to selling the note at a substantial discount, correct?
A. That would have been one of the options, yes, or suing on a fraudulent conveyance.
(Reporter clarification.)
THE WITNESS: On a fraudulent conveyance.
BY MR. RUKAVINA:
Q. So again, without ascribing any mal-intent here, it turned out for the debtor to be better, in December of 2020, that NexPoint missed its payment, correct?
MR. MORRIS: Objection to the form of the question.
A. Again, we'll -- we'll find out after we collect.
Q. Okay. So I just want to again

J. Seery

round off --
A. Quite -- quite clearly, though, just so -- so it's -- there's no ambiguity, it's far better to collect the full amount of the note than wait to be paid on an unsecured basis over the next twenty-plus years.
Q. And again, just to round off this topic, you did not instruct anyone at the debtor to do anything or fail to do anything to try to ensure that NexPoint misses that payment, did you?
A. No.
Q. Okay. Did you, to the best of your recollection, issue any instructions to employees of the debtor having anything to do with NexPoint making the December 31, 2020 payment?
A. None at all.
Q. Okay. So we go back to Exhibit 6, and you'll see in the middle there it talks about the amount due and payable is $24,471,000 and change.
Do you see that, sir?
A. Yes.

J. Seery

Q. Do you recall who calculated that amount?
A. I believe I got that from DSI.
Q. Okay. Did you ever ask yourself or ask anyone why the amount was more than $6 million less than the principal amount of the note?
A. I knew the answer.
Q. What's the answer?
A. That there were payments made on the note.
MR. RUKAVINA: Okay. In fact -- Mr. Nguyen, pull up the exhibit that I don't have here.
You're going to have to bear with me; I forgot to bring one exhibit, and I apologize to everyone involved.
MR. MORRIS: No apology needed.
BY MR. RUKAVINA:
Q. Okay. So -- so this was -- so, Mr. Seery, this is a document produced by the debtor. Please scroll up and down.
I want to ask you first, do you have any idea who created this document or

J. Seery

when or why? Because I'll represent to you that it was just produced to us like this, without any kind of context.

A. I -- I don't know specifically, no.

Q. You don't know specifically, but could it be DSI?

Is this the kind of -- does it look like the kind of report that DSI would have made?

MR. MORRIS: Objection to the form of the question.

A. I don't think so. I would think this would have been produced by NPA or -- or HCMLP's accounting group.

Q. Well, scroll down to the next page Mr. Nguyen.

So you see, sir, on 5/31/2020, a --

(Reporter clarification.)

MR. RUKAVINA: I'm sorry.

Q. A $575,550.56 payment made?

A. Yes.

Q. Okay. And prior to that, there had been advanced payments, or -- or payments on more than just the principal and interest,

J. Seery

right?

A. There --

MR. MORRIS: Objection to the form of the question.

A. -- there were but there's a very odd entry above that, on 12/30/19 with a -- instead of having parentheses, having a negative sign.

I'm not sure if that's a payment or what that is.

Q. Well, let's scroll back to the first page and see what these headings are.

So if we look in the far right column, total paid, do you see that, sir?

A. Yes, I do.

Q. And principal paid.

So scroll back to the next page, Mr. Nguyen.

Do you see those now, the payments?

A. I do. I just -- I'm just pointing out that that's --

Q. Okay.

A. -- not a correct way to do it, but it could have just -- maybe they did it as a

J. Seery

negative number as opposed to having it negative in the -- in the Excel file --

Q. Well, sir --

A. -- automatically.

Q. -- how do you know that the note hadn't be been prepaid, that the December 31, 2020 payment hadn't been prepaid?

A. Well, I know there was a payment due.

Q. Okay. But you didn't ask Mr. Waterhouse or anyone else whether the note had been prepaid or that payment had been prepaid, did you?

A. In the cash-flow discussions, the fact that NPA owed the money on 12/31 was a common discussion. So if it had been prepaid, it wouldn't have been owed.

Q. And who prepared those cash-flow discussion reports?

A. Waterhouse's team.

Q. Okay. When you learned that the December 31, 2020 payment had not been -- been made, did you ask anyone as to whether that payment had hypothetically been prepaid

J. Seery

at some point in the -- previous to that?

MR. MORRIS: Objection to the form of the question.

A. I don't believe that I did.

Q. Okay.

A. We certainly had discussions on other notes, whether there had been prepayments. And it would have come up around this note, but I don't have a specific recollection of, around December 20, asking whether something had been prepaid. There was an amount due - it was listed as due and owing - and I expected to get it paid.

Q. And I apologize, the $24 million figure in Exhibit 6, DSI supplied that?

A. I believe so.

Q. And do you know whether DSI consulted employees of the debtor to calculate that amount?

A. I assume they did. I don't -- I don't know the answer.

Q. Why didn't you -- strike that.

Before you sent this letter on -- that's Exhibit 6 -- well, first of all, did

J. Seery

you understand at that point in time, on or before January 7, 2021, why NexPoint didn't make the December 31 payment?

A. I don't recall if I knew before that --

Q. Okay.

A. -- or right around that time --

Q. Okay.

A. -- but I -- I came to know --

(Simultaneous speaking.)

Q. You came to know it?

A. Uh-huh.

Q. Do you recall if you asked anyone, prior to sending this letter, why that payment hadn't been made or did someone volunteer that information to you?

(Simultaneous speaking and reporter interjection.)

MR. MORRIS: Objection to the form of the question.

A. I -- I think you asked me that already. I'm not sure if I asked about it being made or someone pointed it out to me.

It was certainly a -- a topic I was

J. Seery

anticipating, as to -- because they had not made the payment in -- on the shared services, as with all the other related entities, because Dondero had directed that those payments not be made. So I was curious as to whether they were going to make the payments that were due on the term notes.

Q. So let's, let's -- let's break that down.

I had asked you before, I believe, as to how you learned of the lack of payment. Now I'm asking you, once you learned about the lack of payment, did you ask why didn't the payment get made?

MR. MORRIS: Objection to the form of the question.

A. No, I -- I don't think I would have asked why the payment didn't get made. Either -- as I said, either right before this, at this time or shortly thereafter, I learned -- I knew that the other payments hadn't been made. I believe that I knew that Dondero had directed that. I just don't know exactly, around these notes, about all of the

J. Seery

payments; if it was before or right around thereafter.

Q. And when you say before or right around thereafter, are you referring to January 7, 2021?

A. Correct.

Q. Okay. And -- and so you can't tell me right now the exact date, but whenever you learned about why the payment -- the NexPoint payment hadn't been made, what did you learn?

A. I learned that the NexPoint payment hadn't been made.

Q. Okay. I'm sorry. What did you learn about why it hadn't been made?

MR. MORRIS: Objection to the form of --

A. I was told that Mr. Dondero directed that no payments be made to the debtor.

Q. Who told you that?

A. I believe it was Kristin Hendrix who had heard it from Frank Waterhouse, was directed by Frank Waterhouse.

Q. So to the best of your

J. Seery

recollection, Dondero told Waterhouse, who told Hendrix, who told you?

A. Correct.

Q. Okay. So do you agree with me that before you sent this Exhibit 6, this letter, the debtor could have undertaken some action in the nature of trying to get NexPoint to cure its default?

MR. MORRIS: Objection to the --

A. The debtor could have, yes.

Q. And you made the decision ultimately to -- let's just say call the note immediately due and payable?

A. That's correct.

Q. Why did you make that decision as opposed to seeing, with NexPoint, if something could be worked out?

A. Number one, I'm a fiduciary. I'm a fiduciary to HCMLP. It's my job to maximize the value of the estate and to collect the assets of the estate, including this note.

Number two, in furtherance of that duty, the note specifically provides that it's due on a specific date and that there is

J. Seery

waived any notice of presentment, any demand. Once the payment is missed, the entire amount is due and owing.

Q. And I believe you've called my defenses nonsensical, right?

A. There -- there's so many different ones, but most of them, yeah.

Q. Okay. And did you take any steps, prior to sending Exhibit 6, to see if NexPoint had any defenses as to why that payment hadn't been made?

A. No.

Q. Okay. And again, you didn't ask anyone whether that note had been prepaid?

A. We had discussed the note and what was due and owing, so it had never been volunteered to me that it otherwise had been prepaid in a way that would have obviated the need to make this payment, so it's pretty clear that this payment had to be made.

MR. RUKAVINA: Okay. I need a restroom break. Five or ten minutes?

(Simultaneous speaking.)

VIDEO TECHNICIAN: The time is

J. Seery

3:18. We're going off the record.

(Recess taken.)

VIDEO TECHNICIAN: The time is 3:29. We're back on the record.

MR. RUKAVINA: So, just for the record, the document that my associate showed to Mr. Seery during questioning a few moments ago is going to be emailed to Mr. Morris and the court reporter, and it will be marked as Exhibit 7.

(Exhibit 7, Loan Document D-NNL-029141, marked for identification, as of this date.)

BY MR. RUKAVINA:

Q. Mr. Seery, before the break you mentioned that Ms. Hendrix told you that Mr. Waterhouse told her that Mr. Dondero said that there'll be no payments -- whatever words you used; that's not my question.

My question is, do you have that in any email or any writing or any recording?

A. I don't believe so.

One thing that I just wanted to add

J. Seery

is that I was admonished by the court reporter during the break that I was speaking a little too quickly, and so I will try to slow down quite a bit. And I'll try to be a little bit more clear. I've been bouncing between the camera and the court reporter.

Q. I think you should look at this one.

A. Okay.

Q. So, again, you said you don't think that there is any email or recording of what Mr. Dondero said, correct?

A. Not to my recollection, no. He didn't -- he didn't say it to me.

Q. Okay. And -- and during the break, did you have any more of a recollection as to the time, whether it's prior to or before Exhibit 6, that you learned that?

A. I, I, I -- I do not have any additional recollection, no.

Q. Okay. Are you aware that Mr. Waterhouse was deposed a couple days ago, a couple/three days ago?

A. I am, yes.

J. Seery

Q. Okay. Did you read all or part of his deposition?

A. Yes.

Q. Okay. All of it?

A. It was rather lengthy so no, not all of it.

Q. Okay. Did you see any of the video of it?

A. No.

Q. Okay. Did you read any of my examination of him?

A. Yes.

Q. Okay. Do you recall if you read the whole of my examination of him?

A. I certainly read the last part of your examination of him.

Q. Including where Mr. Waterhouse testified about what Mr. Dondero told him with respect to these payments?

A. Yes.

Q. Okay. But it's your testimony that you had heard that well before you read that deposition transcript?

A. Oh, absolutely.

J. Seery

Q. Okay. And when you read Mr. Waterhouse's -- parts of his transcript, did it include Ms. Deborah Deitsch-Perez's questions?

A. There was a section at the end that it was unclear to me who was asking the question, because I think there was also a -- another attorney --

Q. Okay.

A. -- Debra Dandeneau.

(Simultaneous speaking.)

A. -- so I wasn't sure who was -- who was asking -- I didn't know who represented whom and who was asking the questions.

Q. Did you ever discuss with Mr. Waterhouse the substance of what Mr. Dondero told him vis-a-vis not making any more payments?

A. I don't believe so, no.

Q. Did you ever -- other than legal counsel, did you ever discuss that with anyone at Highland, to your recollection?

A. Yes.

Q. Okay. With whom?

J. Seery

A. Ms. Hendrix and Mr. Klos.

Q. Why Mr. Klos?

A. He's my CFO.

Q. To your knowledge, did he overhear Mr. Waterhouse or Mr. Dondero say something to that same effect?

A. I don't believe he did, no.

Q. Is it fair to say that other than Mr. Waterhouse's deposition from a few days ago, the universe of what you heard about what Mr. Dondero instructed came from Ms. Hendrix?

A. I don't think that's fair. I might have heard it from Mr. Klos, who heard it from Mr. Hendrix -- from Ms. Hendrix, I'm sorry.

Q. Okay.

A. So around this time it was clear that the payment wasn't made, the shared services payments had -- had not been made, none of the payments from related entities had been made, and it was clear Mr. Dondero had directed that no payments be made. And even around the negotiations for any kind of

J. Seery

transition, it was very difficult to agree on any payments because Mr. Dondero had this edict of no payments.

And I just don't recall if it was before January 7, at January 7 or immediately thereafter. I just -- it -- I don't recall. It may have even been as far back as December. I don't know the exact answer.

Q. Did Highland, prior to the plan becoming effective, have any written policies or procedures in place with respect to how it would operate any aspect of its business practices?

A. Certainly.

Q. Okay. Do you recall whether any of those policies or -- or procedures related to enforcing debt obligations due and payable to Highland?

A. I -- I don't recall seeing anything like that.

Q. Do you recall whether you ever tried to consult any policies and procedures before your letter of January the 6th?

A. I, I did not nor -- nor would I

J. Seery

have.

Q. Because, again, you made the determination that the payment hadn't been made, the note says what it says, and it was the fiduciary obligation that you felt to the estate to call the note?

A. That's correct.

MR. MORRIS: Objection to the form of the question.

Q. Did any part of your motivation involve trying to stick it to Mr. Dondero?

A. Not at all.

Q. Okay. Did you consider any alternatives to the January 6 letter before you sent it?

MR. MORRIS: Objection to the form of the question.

Q. And I think -- let's exclude discussions you might have had with counsel.

MR. MORRIS: Same objection.

A. No, I -- I think I just considered that the note was due and we would accelerate it. It wasn't paid, we'd accelerate it and try to collect the whole.

J. Seery

Q. After you sent your letter of January 7, did you issue any instructions to Mr. Waterhouse or anyone else at the debtor with respect to anything having to do with the NexPoint note or missed payment?

A. I don't believe so, no.

Q. Are you aware that on or about January 12, 2021, Mr. Waterhouse and Mr. Dondero had a telephone conversation, at least one, regarding the missed payment?

A. I am aware of that from your -- Mr. Waterhouse's deposition. I had no knowledge of that before the --

Q. Mr. Waterhouse never talked to you about that prior to you seeing it in his deposition?

A. No.

Q. Okay. You're aware that on or about January the 14th, 2021, NexPoint did make a $1.4 million and change payment?

A. Yes, I am.

MR. RUKAVINA: Okay.

(Brief off-record discussion.)

MR. RUKAVINA: Sir, this is going

J. Seery

to be marked Exhibit 8. This is your letter of January 15, 2021.

(Exhibit 8, Correspondence Dated January 15, 2021, marked for identification, as of this date.)

(Brief off-record discussion.).

THE WITNESS: Oh, 7 is to come?

MR. RUKAVINA: Yes, sir.

Q. Do you recognize Exhibit 8?

A. I do, yes.

Q. Okay. Do you recall authorizing this to be sent under your electronic signature?

A. Yes.

Q. Okay. Do you recall what prompted you to send Exhibit 8?

A. Yes.

Q. What was it?

A. I believe the -- I think it's the day before I was on the stand in a court hearing, and I testified that I'd accelerated this note. Mr. Dondero was there.

It appears to me that he immediately learned or realized, oh, my gosh,

J. Seery

my edict caused the acceleration of note. I don't know if he paid attention to the prior demand -- acceleration and demand note.

So a payment was received on the 14th for $1.4 million. And under the terms of the note, my understanding of the law, we applied the payment to the balance and reiterated our demand.

Q. When you were just now putting words in Mr. Dondero's mouth, were you speculating as to his mental process or did he say anything like that to you?

A. He wasn't allowed to talk to me and I didn't -- so I was speculating, but part of it is that -- I believe the colloquy you had yesterday with Frank had -- or two days ago, had a reference to Mr. Dondero being in court. I don't remember if that was on an email or if it was in the -- the colloquy that you had.

Q. But at least as of January the 15th, 2021, your then mental impression was that it was an event that occurred on January the 14th, 2021 that prompted that

J. Seery

$1.4 million payment?

A. I -- I think so, either the 14th or the 13th. I know -- I recall testifying to the acceleration and that the note -- the payment had been missed and we had accelerated it.

Q. Do you recall what -- was that like the Dondero PI -- do you recall what proceeding that was?

A. I don't -- I don't recall --

(Simultaneous speaking.)

A. -- at least two that week, I believe.

Q. Sitting here today, you think it was January 13 or January 14?

A. Yes.

Q. Okay. Did you ask Mr. Waterhouse anything about that $1.4 million payment before you sent Exhibit 8?

A. No.

Q. Okay. Did you ask anyone else at the debtor -- again, we're excluding legal counsel.

Did you ask anyone else at the

J. Seery

debtor as to anything having to do with why that $1.4 million payment had come in?

A. I did not. I don't -- well, I don't recall doing that.

Q. Why didn't you return -- I'm sorry, strike that.

Why didn't the debtor return the payment?

A. Because I would apply it on account and reduce the total amount owed and make the demand again.

Q. Why wouldn't you have applied it to the amounts owing under the shared services agreement and payroll reimbursement agreement?

A. I believe because it was on account of the note, and the note had already been accelerated, so any payments are on account of the note.

Q. What led you to believe that the payment was on account of the note?

A. I don't recall.

Q. So until you read Mr. Waterhouse's transcript, you had no knowledge of his -

J. Seery

let's just say January 12, whatever day it was - conference with Mr. Dondero, correct?

A. None.

Q. And no knowledge of what they may have discussed?

A. No.

Q. Okay. Can you think of a reason why Dondero would have caused that $1.4 million payment to have been made?

MR. MORRIS: Objection to the form of the question.

A. Can I speculate?

Q. If you're speculating, tell me you're speculating, sure.

A. I -- I can speculate, yeah.

Q. Speculate.

A. He realized that the note had been accelerated and that he was going to try to decelerate it.

You know, one thing sort of interesting that -- well, maybe there's a question on it.

MR. RUKAVINA: Let's go off the record for a second.

J. Seery

(Brief off-record discussion.)

VIDEO TECHNICIAN: The time is 3:40. We're going off the record.

(Recess taken.)

VIDEO TECHNICIAN: The time is 3:42. We're back on the record.

(Brief off-record discussion.)

MR. RUKAVINA: So during -- during the break, Mr. Morris was kind enough to print out exhibit -- the -- the prior report that we had seen that is now marked as Exhibit 7.

And I will represent to you, Mr. Seery, and to the Court that Exhibit 7 is a true and correct copy of what was previously on the Zoom, care of my associate.

Okay. Sir, we're going to now go to 9, Exhibit 9, which is going to be the shared services agreement.

(Exhibit 9, Amended and Restated Shared Services Agreement, marked for identification, as of this date.)

Q. Now, sir, I've handed you

J. Seery

Exhibit 9, and you're certainly free to read it. This purports to be the amended and restated shared services agreement between NexPoint and the debtor.

I'll represent to you that it is a true and correct copy, as filed by your attorneys. And if I'm wrong about that, then certainly you're not going to be held to your answers.

But just sitting here today, do you have any reason to suspect the authenticity of Exhibit 9?

A. No.

Q. Okay. All right. So this is called the "Amended and Restated Shared Services Agreement" as of January 1, 2018.

To the best of your knowledge, was this the latest iteration prior to its termination or were there any subsequent amendments?

MR. MORRIS: Objection to the form of the question.

A. I don't recall.

Q. And obviously the document speaks

J. Seery

for itself, but as the CRO/CEO, what was your understanding of what this contract effectuated as between the debtor and NexPoint?

A. Part of the way the debtor was set up and the way it was run was that the debtor would provide certain services to certain of the affiliated entities. And those would be, to some degree, embodied in this agreement.

Oftentimes the debtor provided services to affiliates without any agreement, oftentimes they provided additional services that may not have been in the agreement, and that was because they were such closely related parties.

Q. As of December 2020, do you agree with me -- as of December 31, 2020, do you agree with me that this agreement had not yet been terminated?

A. As of December 20?

Q. I'm sorry.

As of December 31, 2020, do you agree with me that this agreement had not yet been terminated?

J. Seery

A. Yeah, I think the termination notice had gone out but it had not yet become effective.

Q. Okay. And we see here what -- some of the services that the debtor was providing. We see it on the top of page 4, if you want to flip there.

It says, amongst other things, finance and accounting, payments, bookkeeping, cash management.

Do you see all that, sir?

A. Yes.

Q. Okay. Do you have an understanding of what those terms under this agreement meant?

MR. MORRIS: Objection to the form of the question.

A. Yes, I do.

Q. Okay. Give me your understanding, please, sir.

A. The debtor provided back office support for -- under those terms, for the affiliated entity and received some form of remuneration in exchange for that and other

J. Seery

services.

Q. And when you said affiliated entity, in this instance, are you referring to NexPoint?

A. Uh-huh. Yes, I am.

Q. Okay. When you say back office services, would that have included, as of December 2020, helping NexPoint ensure that NexPoint pays from its own funds its obligations coming due?

A. I -- I think as part of back office services -- that's the heading of the section, and so part of it is to assist in preparing payments and calculating what those should be.

Q. So obviously the debtor wasn't responsible for paying NexPoint's obligations, right?

A. That's correct.

Q. But the debtor had some level of responsibility to help NexPoint pay its accounts payable on a timely basis, correct?

A. Yes.

Q. And that would have been from

J. Seery

NexPoint's funds?

A. Correct.

Q. And is the same true for NexPoint's loan obligations?

A. I believe so, yes.

Q. So if Mr. Waterhouse testified that it was reasonable for NexPoint, in December 2020, to rely on the debtor to facilitate the December 31 note payment, would you have reason to disagree with that?

MR. MORRIS: Objection to the form of the question.

A. I would, yes.

Q. Okay. And what's your disagreement and your reason for the disagreement?

A. Because the debtor does work to figure out how much payments are, whether they be on notes or whether they be for some other service that the affiliated entity has gotten.

The debtor's accounting team puts together that schedule, and then the debtor needs direction from an officer at NexPoint to make the payment. If the debtor has

J. Seery

already been told don't make the payment, it wouldn't be scheduled.

Q. So, to summarize, it's ultimately up to NexPoint to specifically approve or disapprove any potentially scheduled payments?

A. Correct.

Q. Okay. And in this instance, what you've learned is that Mr. Waterhouse was told by Dondero, don't make the payment?

A. Correct.

Q. Okay. And that -- that is the sum of your understanding as to why the December 31 payment wasn't made?

A. I don't think that's the sum of it. There's -- there's emails that show that Ms. Hendrix prepared and requested from Mr. Waterhouse payment of these amounts okayed and he approves them. So they -- they are the amounts that are permitted to be approved, and they're all to third parties. None of them are to HCMLP.

Q. Are you aware of any email where Ms. Hendrix prepared the December 31 note

J. Seery

payment by NexPoint for Mr. Waterhouse's approval?

A. No, I'm not.

Q. If there is no such email, do you have any explanation or understanding for why there wouldn't be such an email?

A. Sure.

Q. Okay. What is it?

A. She was told not to make the payment.

Q. So, consequently, she did not include it in any upcoming payment list?

A. Correct.

Q. And that goes back to what you tell -- told me before, that Waterhouse told her what Dondero told him, right?

A. That's correct.

Q. Okay. And are you aware that Mr. Waterhouse said -- testified that that instruction had come sometime in early December of 2020?

A. I don't recall.

This was in the testimony yesterday?

J. Seery

Q. From a couple days ago.

A. Yeah, two days ago, I'm sorry.

I don't recall the specific dates that he said that.

Q. Well, whatever the -- whatever the dates that he testified about were with respect to the Dondero discussion, would you have any reason to dispute those dates?

A. No.

Q. Okay. So, sir, is it your understanding that having been given that instruction by Mr. Dondero, that employees of the debtor, including Mr. Waterhouse, had no further obligation with respect to that December 31 payment?

MR. MORRIS: Objection to the form of the question.

A. I think they -- I think they took the direction of Mr. Dondero to heart and followed his direction.

Q. Is it your belief that they had no obligation to subsequently ask Mr. Dondero whether he meant it?

MR. MORRIS: Objection to the

J. Seery

form of the question.

A. Absolutely.

Q. Did they have no such obligation?

A. No.

Q. Is it your understanding that they had no obligation to communicate with Mr. Dondero and inform him of the consequences that would happen if that payment wasn't made?

MR. MORRIS: Objection to the form.

(Simultaneous speaking and reporter interjection.)

A. I -- I don't think it would be appropriate for the employees of the debtor to go to the founder of the organization, who owns and controls all of the entities, after he's given them a direction, to go challenge his direction. And that's just not the way Highland ever worked, from what I could see.

Q. Did you believe, in December of 2020, that employees of Highland had a conflict of interest with respect to their dual role as employees of NexPoint with

J. Seery

respect to that promissory note?

A. Not specifically with respect to the promissory note, but generally it was a concern of mine throughout the case.

Q. Well, we can -- can we agree on this; that when Mr. Dondero gave Mr. Waterhouse that instruction, Mr. Waterhouse should have known that that instruction was not on behalf of Highland because Mr. Dondero no longer had any management role with Highland?

MR. MORRIS: Objection to the form of the question.

A. I think he should have known that, yes.

Q. And can we therefore agree that Mr. Waterhouse should have known that that instruction from Dondero was coming from NexPoint --

MR. MORRIS: Objection --

(Simultaneous speaking.)

Q. -- Dondero wearing his NexPoint hat?

A. I -- I think you're trying to parse

J. Seery

something that doesn't exist. There's no hats. There's one hat for Mr. Dondero. He controls all of the entities other than HCMLP.

And his edicts, whether they be from prior to our taking over HCMLP as independent directors or with respect to any of the other entities, are final.

Q. Mr. Dondero might not have had two hats, but in December of 2020, would you agree that Mr. Waterhouse wore two hats?

A. Yes, he did.

Q. The CFO of the debtor and the treasurer of NexPoint?

A. That's correct.

Q. And both being executive officer positions, correct?

A. Correct.

Q. Pardon me. With, to your understanding, under Delaware law, fiduciary duties to his respective principals, correct?

A. I believe these are both Delaware but I'm not positive.

Q. Certainly you would have expected

J. Seery

Mr. Waterhouse to have fiduciary duties, in December of 2020, to the debtor?

A. Yes.

Q. Okay. That's the role that I'm asking about, sir.

Mr. Waterhouse simultaneously being the CFO of the debtor, the payee on a large promissory note, and the treasurer of NexPoint, the maker on that same promissory note, did you not perceive there to be any conflict of interest?

MR. MORRIS: Objection to the form of the question.

A. No, no more than -- I -- I perceived a concern throughout the case, but no more than there had been at any other time with any of these related entities.

Q. Except, sir, that at this time, Mr. Waterhouse had a fiduciary duty to the bankruptcy estate.

Would you agree with that?

A. Yes.

Q. Okay. And do you agree that his fiduciary duty to the bankruptcy estate, in

J. Seery

December of 2020 with respect to this promissory note, might have conflicted with his duties - whatever they were - to NexPoint?

(Simultaneously speaking.)

(Reporter interjection.)

A. I'm sorry.

MR. MORRIS: Objection to the form of the question.

A. Potentially but not necessarily. Mr. Waterhouse took direction from the man in control of NexPoint. That man directs his inferiors, which would include the treasurer. So following that direction doesn't cause any conflict with respect to NexPoint.

Q. On the debtor's side, you mentioned before, for example, that -- that you believed after the payment was made, that your fiduciary duties necessitated the calling of the note, right?

A. I don't know if they necessitated it. They certainly informed it.

Q. Informed it.

But -- so they certainly informed

J. Seery

it, correct?
A. Yes.
Q. Okay. And would you expect Mr. Waterhouse to have had similar duties to the bankruptcy estate?
MR. MORRIS: Objection to the form of the question.
A. No, I believe that would be my direction, if I had -- I would be his superior at HCMLP. If I directed that we collect it, we collect it. If I direct that we don't, then we don't.
Q. Is it fair to say, from your prior testimony, that at no time prior to January 1, 2021 did Mr. Waterhouse, Mr. Klos or Ms. Hendrix tell you about the Dondero instruction not to make any more payments?
MR. MORRIS: Objection to the form of the question.
A. Prior to when?
Q. January 1, 2021.
A. I -- I don't -- as I said, I don't recall if it was right around the time of the -- the payment had been failed to be made

J. Seery

on the 31st, and we sent it, or if it was in December. I believe I testified to that before. And the shared service payments hadn't been made, so there may have been some discussion that Dondero's cut it off.
Q. Well, I -- I think I asked you before about the timing in reference to the January 7 letter, when --
A. Correct.
Q. -- you said it might have been right around there.
Am, am I understanding -- or strike all that.
Is it your testimony that maybe you learned about the Dondero instruction on or before December 31, 2020?
MR. MORRIS: Objection, asked and answered.
A. That -- that's correct. I don't recall when I learned but, factually, I know that the payments on shared services hadn't been made. I could not have known that the December 31 payment wouldn't have been made on December 31 until after December 31.

J. Seery

Q. Well, but you could have learned that Mr. Dondero had instructed that the December 31 payment not be made ahead of time, could you not have?
A. I -- I could have, but I did not learn that.
Q. Okay. That's -- that's what I'm trying -- that's what I'm trying to ascertain. I'm trying to refresh your memory.
So you can now testify that prior to the payment not being made, you did not know about the Dondero instruction not to make the payment?
A. With respect to the -- the note payment, that's correct.
Q. Okay. So what -- that's what I mean.
It would have had to have been January 1 or after -- January 1, 2021 or after that you learned about that?
A. I would have to have learned of the effect of it. If the -- if the actual statement was don't make any payments

J. Seery

irrespective of when they're due, that could have been made in early December. I wouldn't have known the effect of it.
I knew the effect with respect to the shared service because it wouldn't be paid. He might have changed his mind and I didn't know that.
Q. Okay. I'm going to -- I'm going to try again.
On or about January 31, 2020 --
A. December 31.
Q. Thank you.
On or before December 31, 2020, sitting here today, do you remember being informed of the Dondero instruction not to make payments?
MR. MORRIS: Objection, asked and answered.
A. Again, I don't recall the exact date I learned. I believe I certainly knew that the shared service payments had not been made. I believe I knew that that related to a Dondero edict.
Q. So you're saying shared services in

J. Seery

response to my answer.

Why, why does -- why is that relevant? Because from that you deduced that all payments were to cease?

A. No, they were due before.

Q. That's -- okay, I apologize.

So this shared services contract required periodic payments, right?

A. Correct.

Q. And, and -- and are you saying that before December 31, 2020, NexPoint had already failed to make at least one of those periodic payments?

A. I believe so, yes.

Q. Okay. Did you, at that point in time, inquire as to why that payment hadn't been made?

A. I don't recall, but I loosely recall - but I don't know exactly when I learned it - that there had been this edict.

Q. Okay. I'll use that word "edict." That's the one -- we're both saying the same thing, right --

A. Correct.

J. Seery

Q. -- where Dondero tells Waterhouse no more payments, right?

A. Fair enough.

Q. So sitting here today, it is possible that before December 31, 2020, you had heard vis-a-vis Ms. Hendrix that NexPoint would not be making its scheduled payment because of the Dondero edict?

A. Scheduled payment on the note?

Q. On the note.

A. No, I don't think that's fair.

Q. That's all I'm -- okay. So I'm -- I'm asking just about the note.

As of December 31, 2020, sitting here today, do you remember having heard that NexPoint would not be making its December 31 payment because of the Dondero edict?

A. I pretty clearly recall that the payments had not been made, and I had heard that there had been an edict.

The full implication of that edict and whether it extended to the note I did not know until the payment was missed.

Q. Understood. I think that -- I

J. Seery

think -- thank you. I understand now.

So you knew that there had been an edict not to make payments, you just didn't realize definitively that that edict also applied to the promissory note payment?

A. Correct.

Q. Okay. By December 31, 2020, had the debtor laid off certain people, certain employees, let's just say for cost-cutting purposes as opposed to regular terminations, you know -- you know what I'm trying to say? Had there been just --

A. Had there been a RIF?

Q. A reduction --

(Simultaneous speaking.)

Q. Yes, yes.

A. No, there had not been.

Q. So to your understanding, the debtor personnel that would have had any involvement with these treasury and payment services, helping affiliated companies make their payments, all those personnel were still there?

A. Largely the same.

J. Seery

Q. Okay. When you say largely, can you think of anyone right now that was no longer there or changed?

A. Not specifically. There were -- there was some attrition during 2020 and we didn't specifically replace some of those, but some -- some people we did replace. We actually hired people in 2020.

Q. But as with respect -- pardon me. As it respects -- strike that.

With respect only to the payment we're talking about, i.e. scheduling future permission to pay them, all those personnel that would have had a role in -- on that for the debtor were still there in December 2020?

A. I -- I believe that group was largely the same.

Q. Waterhouse, Klos and Hendrix?

A. Ellison Rober -- I can't remember her last name. So there -- there were a couple others in that group as well, and then there were some other junior people that would have assisted them.

Q. I'm going to ask you a hypothetical

J. Seery

question. Let's say that on December the 10th, 2020, Hendrix tells you that Dondero has instructed that the note payment by NexPoint will not be made.

Would you have issued any instructions to employees of the debtor following up on that, what you just learned?

MR. MORRIS: Objection to the form of the question.

A. I, I don't know -- know if -- knowing what I know now and that they hadn't made the shared service payments at that time and that it seemed to be going towards litigation, I would not have done anything, I don't think.

Q. Okay. So, again, to round off this topic, you do not believe that employees of the debtor had any obligation, after Dondero's edict, to follow up with NexPoint about its upcoming note payment?

A. No.

Q. Okay. Did you consult this shared services agreement, to your recollection, before your January 7, 2021 letter?

J. Seery

A. I certainly --

MR. MORRIS: Objection to the --

(Simultaneous speaking and reporter interjection.)

A. I certainly was familiar with the agreement and had consulted it numerous times.

If your question is did I consult this agreement with respect to that demand letter, the answer's no.

Q. Okay. If you'll turn to Section 2.06 of this agreement for me, sir.

And certainly you can look at the definitions, but the staff and services provider, that's the debtor, right?

A. Yes.

Q. And management company, that's NexPoint, right?

A. Yes.

Q. Okay. So Section 2.06, the last sentence, sir, that basically says that the debtor will not have any duties or obligations to NexPoint unless those duties and obligations are specifically provided for

J. Seery

in this agreement.

Did I paraphrase that correctly?

A. Roughly, yes.

Q. Okay. And if we flip to Section 6.01, sir, and -- and take a second, please, to read that section.

A. (Document review.)

Okay.

Q. And -- and you might want to look at the definition of covered person real quick. I believe you'll find it includes the debtor.

A. Okay.

Q. So I read this and, and -- and it says (as read):

Except as otherwise expressly provided herein, each covered person shall discharge its duties under this agreement with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters

J. Seery

would use in the conduct of an enterprise of a like character and with like aims.

Did I read that correctly?

A. Roughly.

Q. Okay. Do you have any understanding of that section, sitting here today?

A. I know what every one of those words mean.

Q. Okay. Reading that, do you still believe that Mr. Waterhouse and Mr. Klos and Ms. Hendrix had no duty to go back to Mr. Dondero and advise him of the ramifications of his edict and try to persuade him otherwise?

MR. MORRIS: Objection to the form of the question.

A. Yes, I do.

Q. Okay.

A. I believe that they didn't have any further duty.

Q. If you had issued an edict in the heat of the moment or based on bad advice,

J. Seery

would you expect your officers to come to you and say, Mr. Seery, just so you know, there's going to be consequences, please reconsider?

MR. MORRIS: Objection to the --

A. Me personally?

Q. Yes.

MR. MORRIS: -- form of the question.

(Simultaneous speaking and reporter interjection.)

A. My relationship with people who work with or for me is very different than I understand Mr. Dondero's. But as a professional and someone who's been doing this for thirty years, if I give my direction, I expect it to be followed. And I know, from what I have heard and seen, Mr. Dondero is that to the nth degree.

Q. So, again, I understand that you expect your instructions, Mr. Seery's instructions, to be followed.

A. Yes.

Q. But from your officers, do you believe that they have an obligation to come

J. Seery

to you, after you issue an instruction and if they believe it's bad for the company, to dissuade you of that instruction?

A. I, I --

MR. MORRIS: Objection to the form of the question.

A. I would prefer that they did, yes.

Q. Okay. NexPoint was paying the debtor's employees in this -- including Mr. Waterhouse, Mr. Klos and Ms. Hendrix, for services under this contract, correct?

A. Correct.

Q. And other than amounts in controversy that are not insignificant, NexPoint paid millions of dollars to the debtor under this contract, did it not?

A. I don't believe it paid millions --

Q. Okay.

A. -- of dollars.

MR. MORRIS: Yeah, objection.

Q. Okay. But it paid -- it paid some amount under this contract?

A. I would say for the services, one would easily say a paltry amount. And the

J. Seery

vehicle, NPA, was used largely to strip assets and value out of Highland.

Q. But the same Mr. Waterhouse that has a duty to you, as the chief executive officer, to tell you that one of your courses of action is going to be detrimental has no such duty to Mr. Dondero, because Mr. Dondero's a tyrant?

MR. MORRIS: Objection to the form of the question.

A. I said I would prefer that a Mr. Waterhouse or anyone else who works for or with me advise me if they think the course of action I'm taking is incorrect. If I listen to their advice and make my decision, then we live with my decision. I don't want to revisit it ten times.

So I don't know whether Mr. Waterhouse told Mr. Dondero that that course might have ramifications. One would think that a man who's run these businesses for this long and had put this company into bankruptcy and had left hundreds of millions of dollars strewn across the street of

J. Seery

losses, that one would have some understanding of what those ramifications might be, and maybe Mr. Waterhouse didn't. I don't know; I wasn't there.

Q. Do you agree, sir, that Section 601 also applied to you with respect to -- as a covered person, with respect to how you conducted business under this contract?

Do you --

A. Could I -- no, I think it -- well, I can --

Q. Take a second -- take a second to read the definition of covered person.

A. Uh-huh.

Q. And, look, we can agree that you're not making any legal conclusions here. I'm just...

A. (Document review.)

I believe it does, yes.

Q. Yet before you sent your January 7 letter, you did not check to see whether NexPoint had made any prepayments on the note, correct?

A. I think I testified that I didn't

J. Seery

check, but our -- my understanding, based upon the work of the accounting group, was that the payment was due and scheduled. It had to be paid.

If it had not been due, it had been prepaid, it would not have been scheduled. So there was no need for me to go doublecheck that.

Q. And you did not separately inquire of anyone at the debtor as to whether NexPoint had a defense to your January 7 letter, correct?

MR. MORRIS: Objection to the form of the question.

A. No, I did not.

Q. Is that not, sir, something that would have been prudent to do pursuant to Section 601, check as to whether NexPoint had made a prepayment or had a defense?

MR. MORRIS: Objection --

A. I --

(Simultaneous speaking.)

A. -- I don't believe that's something that would have been required by this or any

J. Seery

other provision.

Q. Do you believe that Section 601 played any role at all, now that you're reading it, with respect to your decision to call the note as opposed to call NexPoint and say, hey, what happened?

A. I don't -- I don't believe it governs it at all.

Q. Do you believe it governed in any respect whatever Mr. Waterhouse and Mr. Dondero discussed on or about January -- January 12, 2021?

A. I don't know the substance of their discussion, other than that the -- what we've referred to as the edict, at least that's as it's been reported. So I don't know what colloquy they had with respect to ramifications of making a payment or not.

Clearly, there should have been more ramifications for not making the shared services payments, but Mr. Dondero issued a similar edict or --

(Simultaneous speaking.)

Q. Mr. Dondero didn't issue a similar

J. Seery

edict?

A. I said he did.

Q. He did.

So why didn't you terminate the services agreement immediately upon NexPoint's failure to pay?

A. Well, we would have, I think, if we thought we could. We also had an issue that both NexPoint and HCMFA were providing services to retail funds and had no ability to provide any of those services without Highland. They literally had left themselves completely exposed, while just stripping out fees.

Q. Do you believe with respect to Section 601, standard of care, that the parties prior course of dealing, i.e. rolling up prior notes, had any role on January 7, 2021?

MR. MORRIS: Objection to the form of the question.

A. No, I don't.

Q. Okay. Did you take any prior course of action between the parties into

J. Seery

account when you executed and issued your January 27, 2021 letter?

A. Certainly. The payments are typically made on time, and if they're not paid, then it's prudent and required to accelerate the note.

Q. But five times before, you -- you knew by then that five times before, demand notes were rolled up into a term note, which you said before, I believe, was for an improper purpose?

MR. MORRIS: Objection to the form --

A. At least three of them that are sub -- subject to the current litigation. I don't recall if it was five, but this one contained five notes, if -- three term notes that were rolled notes. But those were done prior to bankruptcy and they were done with Mr. Dondero on both sides of the transaction.

Q. So your borrower, who owes you 24 million and change that you're under a contract with that the borrower is paying you, where you provide employees to the

J. Seery

borrower, and your affiliate entity misses a scheduled payment, you believe that you have no obligation to do anything before you called the note immediately due?

A. That -- that's absolutely correct.

MR. RUKAVINA: Okay. Do you mind if we take another restroom break?

MR. MORRIS: Sure.

MR. RUKAVINA: I'm getting near -- near the end. Five minutes, please.

(Brief off-record discussion.)

VIDEO TECHNICIAN: The time is 4:16. We're off the record.

(Recess taken.)

VIDEO TECHNICIAN: The time is 4:21. We're back on the record.

BY MR. RUKAVINA:

Q. Did you have a view, as of December 2020 or January 2021, as to whether the debtor owed any fiduciary duties to NexPoint?

MR. MORRIS: Objection to the form of the question.

A. I -- I believe I did.

J. Seery

Q. And what was your view?

A. I don't think -- certainly by that time, if there ever had been, I don't think by that time there were any fiduciary duties owed.

Q. Okay. Real quick, we're still on this shared services agreement, sir, page 4. This is a list of services to be provided. I'm just -- you can read it in detail, but I just have a very simple question. 4B talks about legal compliance risk analysis.

In December of 2020, was the debtor providing legal services to NexPoint?

A. I don't believe so, or at least not any -- there might have been some assistance. I'm trying to think what would have been done at that time in terms of support, but there certainly -- compliance was probably transferred pretty fully by then.

I don't think NexPoint was involved in any litigation at that point, certainly not that the debtor was supporting, so I -- I don't think very much, if anything.

Q. Okay. Do you know whether NexPoint

J. Seery

had written policies and procedures in place with respect to how it conducted its business?

A. I'm not sure.

MR. RUKAVINA: Okay. You can put that down, sir.

(Brief off-record discussion.)

MR. RUKAVINA: So this is going to be Exhibit 10.

(Exhibit 10, Email Chain D-NNL-007578 - D-NNL-007579, marked for identification, as of this date.)

BY MR. RUKAVINA:

Q. Sir, you are not on this email chain, so I don't expect to authenticate it.

But have you seen this email chain before, between Mr. Waterhouse and Ms. Hendrix on January 12, 2021?

A. I believe I have, yes.

Q. Okay. Was it in preparation for this deposition or had you seen it before?

A. Only in preparation for the deposition.

Q. Were you aware that Mr. Waterhouse

J. Seery

was asking Ms. -- asking Ms. Hendrix for the total principal on this note on January 12, 2021?

I'm sorry, were you aware of it at about that point in time?

A. No, not until I saw this email.

Q. Okay. Did you ever discuss -- so I think -- I think you've -- you've said it earlier, that you did not know until Mr. Waterhouse's deposition that Mr. Waterhouse and James Dondero had a communication on January 12, 2021, right?

A. I did not know.

Q. Did, did -- did you know from Ms. Hendrix that she had had any communications with Mr. Waterhouse on or about January 12, 2021, about how much the missed payment was?

A. No, I did not.

Q. Okay. Have you asked her about what this email was in reference to since you've seen this email?

A. No, I have not.

MR. RUKAVINA: Okay. This is

J. Seery

going to be Exhibit 11, sir.

(Exhibit 11, Email Chain D-NNL-028514 - D-NNL-028515, marked for identification, as of this date.)

Q. So, Mr. Seery, this -- you're not on this email chain, but this email begins on December 10, 2020, from Ms. Hendrix to Mr. Romey -- I'm sorry, from Mr. Romey to Ms. Hendrix, where he writes (as read):

Can you tell me the original maturity date for the NPA loan before it was restructured? Sorry for the hustle. Seery is asking for this ASAP for today's court hearing.

Do you see that, sir?

A. I do see it.

Q. Do you recall asking Mr. Romey anything about that loan or anything about this on or about January -- December 10, 2020?

MR. MORRIS: Objection to the --

A. Not specifically.

Q. Okay. It says that you were --

J. Seery

there was a court hearing.

Do you remember what that court hearing might have been?

A. I -- I don't.

Q. Okay. Do you have any recollection as to why you would have been asking about the original maturity date of the NPA loan before it was restructured?

A. I think it's a mistake, that there were -- there were five notes --

Q. Okay.

A. -- that were rolled into this one.

I may have just been checking whether they were all demand or if any of them have had a maturity. I don't -- I don't know why I would have been asking for it. I don't recall what the hearing was about.

Q. Fair enough. You testified before that -- and I'm not trying to put words in your mouth, sir.

You testified before that there was something maybe inappropriate or shady about the roll-up of the five notes into the one NexPoint note.

J. Seery

Whatever -- whatever words you used, was that your speculation as to why it happened, was that your logical deduction, or did someone tell you that that's why the notes were rolled up?

MR. MORRIS: Objection --

(Simultaneous speaking.)

A. -- logical deduction.

(Reporter clarification.)

BY MR. RUKAVINA:

Q. Excluding lawyers, sir, and excluding now in litigation, that back when -- when the debtor existed and you were the CEO/CRO, did you ask anyone at the debtor or did you ask Mr. Dondero why those notes had been rolled up into the $30.7 million note?

A. I don't believe I asked Mr. Dondero.

I know I inquired as to whether the debtor got anything for the extension of the maturity.

Q. Who did you inquire of?

A. I don't recall specifically.

J. Seery

Q. Mr. Surgent?

A. I don't recall specifically. He wouldn't, he wouldn't have -- it would either have been Frank Waterhouse or someone else in accounting; was anything paid? And -- because there were a number of notes that were rolled up in a similar fashion, and it all happened around the same thing; a number of things were happening to the debtor at that time.

Q. Why did the debtor or the reorganized debtor not retain Mr. Waterhouse after the termination of the shared services agreements?

A. I didn't need him.

Q. Okay. Mr. Klos was promoted to CFO?

A. Correct.

Q. Okay. Did you have any personal dislike of Mr. Waterhouse ever?

A. No.

Q. Did you have any personal views that his services as CFO were not up to par --

J. Seery

MR. MORRIS: Objection --

Q. -- not up to what you expected them to be?

A. No, I just preferred, for what we were doing, Mr. Klos.

Q. Did you ever form the opinion that Mr. Waterhouse was -- I don't know what word to use -- Mr. Dondero's stooge or tentacle?

A. No.

Q. Okay. Did you have any opinion as to whether he was -- again, I don't know what word to use -- whether he was a responsible, proper CFO when he was the CFO of Highland and you were the CRO?

A. While he was CFO, I -- I think he was adequate, but I think the challenge that the employees had at Highland was the pull that Dondero had, the go-betweens that he had.

And it's hard to say at a specific time, because I know a lot more now, including to do with payments, including tens of millions of dollars offshore, with respect to Ellington.

J. Seery

So I -- I know way more now, so it's hard to separate those things. But with respect to Mr. Waterhouse, I think he was -- he was adequate. I think the team was very good. And I think that the -- I was always concerned about loyalties.

Q. Did you ever, when you were the CRO, discipline, censure, caution Mr. Waterhouse about anything?

MR. MORRIS: Objection to the form of the question.

A. I actually gave him a raise on his base salary because he couldn't get bonuses because of the Court order structure. I did caution him and many employees about loyalties and their duties to the debtor.

Q. And you remember cautioning him specifically about that or as part of larger group?

A. As part -- I -- I believe it was part of the larger group. I certainly did it with both legal and accounting, particularly after Judge Jernigan's expressed -- expression of concern in -- in and around

J. Seery

July of 2020.

Q. After you learned about the NexPoint missed December 31, 2020 payment, did you give any instructions to Mr. Waterhouse or anyone else to the effect of don't negotiate any settlement or cure or anything on that default without talking to me first?

A. I don't believe that I had any discussion like that with anybody, but it would have been clear, I think, that once the demand letter went out and I had been responsible for initiating it, that the full amount was due, and if anybody wanted to negotiate anything, they would have to do it through me.

And certainly no one had the ability to negotiate any monetary settlements with respect to the debtor's assets without talking to me and the board.

Q. Okay. Why is that?

A. Because we were in bankruptcy and I was the CEO, and I told everybody on the team that they had to come through me. Any

J. Seery

material decisions had to go through me.

Q. And you told that to Mr. Waterhouse?

A. The whole accounting team as well as the legal team.

Q. Do you recall if that's in writing anywhere?

A. I don't think so.

Q. Did you define materiality to them; do you recall?

A. I don't think so.

Q. Okay. So you never expressly prohibited Mr. Waterhouse from hypothetically accepting any cure to reinstate that note, but you would have expected him to know that he had no authority to do so on behalf of the debtor?

A. Oh, I --

MR. MORRIS: Object -- objection to the form of the question.

A. -- I -- I think it would have been beyond obvious that he had no authority to do that for the debtor.

Q. Do you think that would have been

J. Seery

beyond obvious to Mr. Dondero?

A. Yes, I do, well --

Q. Why --

A. -- beyond -- well beyond obvious.

Q. Why is that?

A. Because the shared services had already been terminated. We were heading towards a confirmation of a monetization plan. He had already failed to pay shared service amounts. He had already been found in contempt of court.

The idea that he could cut a deal with a former employee over material asset of the debtor is nonsensical.

Q. Okay. Mr. Waterhouse wasn't a former employee on January 12, 2021, was he?

A. No, he was not, correct.

Q. And although the notice of termination had gone out for the shared services agreement, it had not been terminated as of January 12, 2021, correct?

A. That's correct.

Are you -- are you implying that -- that there was such a deal and you're going

J. Seery

to make up a new story?

Q. Well, sir, I object to you saying I'm going to make anything up. I'll let Mr. Waterhouse and Mr. Dondero testify as they did.

But certainly you would -- you would not be aware of any deal that Frank or James Dondero might have made, right?

A. I -- I would not be aware of any such deal.

Q. Certainly you would have never, ahead of time or after the fact, authorized any such deal?

A. No, I would not.

Q. Okay. Why not? Why not accept a cure and reinstate the note?

A. Because the full amount of the note was due. We're in a monetization plan. This is an opportunity to monetize an asset.

MR. RUKAVINA: Just a moment, please.

THE WITNESS: Sure.

MR. RUKAVINA: It's 4:30 local, right?

J. Seery

Mr. Seery, allow me just five minutes to consult with my co-counsel. I believe that I'm done, but before I make that decision, I just want to have a few minutes.

THE WITNESS: Certainly.

VIDEO TECHNICIAN: The time is 4:34. We're going off the record.

(Recess taken.)

VIDEO TECHNICIAN: The time is 4:40. We're back on the record.

(Brief off-record discussion.)

MR. MORRIS: Pass the witness.

Mr. Seery, thank you for doing this in person in your beautiful city.

THE WITNESS: Thank you. It's coming back, slowly.

MS. DEITSCH-PEREZ: Okay. Good afternoon, Mr. Seery.

THE WITNESS: Good afternoon.

EXAMINATION

BY MS. DEITSCH-PEREZ:

Q. When Mr. Rukavina started questioning you, and you were describing your

J. Seery

background, you mentioned that you had been involved in hundreds of bankruptcies.

Could you tell us, just by listing them, the -- the most substantial companies that you were involved with bankruptcies for?

A. United Airlines, TWA, Columbia Gas, Lehman Brothers. It, it -- it's a thirty-year career, so...

Q. I'm just asking for the highlights.

A. Those aren't bad.

Q. Okay. Were there any other financial services companies that you were involved in the bankruptcy or restructuring of?

A. Lehman Brothers would be considered a financial services company.

Q. Okay. And what kind of company would you consider Highland?

A. Highland is a financial advisor.

Q. Okay. Were there any other financial advisors that you were involved in the restructuring or bankruptcy of?

A. I guess technically MF Global, in some of its places, would fall into that

J. Seery

category. Madoff would fall into that category.

Q. Any others?

A. There may be. Off the top of my head, I don't recall.

Q. Okay. And in the course of those engagements, were you generally aware of the top-level executive compensation for the top-level executives prior to the -- the bankruptcies?

A. Not specifically. It just depends on each -- each company.

Q. Generally, were you -- were you aware? Is that the kind of thing you took note of?

A. Not -- it -- I was more concerned with the particular issue that I was dealing with as opposed to whether somebody -- what somebody made.

Q. In the bankruptcies that you were involved with, with the -- with the larger companies and all of the financial services or financial advisory companies, can you -- can you tell me generally the range of

J. Seery

compensation for the CEOs --

A. I, I --

(Simultaneous speaking.)

A. -- no, I wouldn't be able to tell you that.

Q. Even a ballpark you couldn't -- couldn't say?

A. They're all different kinds of companies.

Q. I understand, but can you -- for any of those companies, can you give me a ballpark of what the compensation was?

A. It could be anywhere in any particular year from zero to $25 million.

Q. Okay. And is there a general pattern that founder CEOs have higher compensation than hired-off-the-street CEOs?

MR. MORRIS: Objection to the form of the question.

A. No, there's not. In fact, it could sometimes go the other way.

Q. But -- but is it sometimes the case, in your experience, that founder CEO compensation is on the high end?

J. Seery

MR. MORRIS: Objection to the form of the question.

A. I, I -- I don't have any basis to say that. It really depends upon the company and it depends on the performance of the company. Just because you founded something and you sit on a log doesn't mean you get paid a lot of money.

Q. Do you know what the CEO compensation was for the CEO of Lehman prior to the bankruptcy?

A. In which year?

Q. The, the year prior -- the years prior to the bankruptcy.

A. I -- I don't know.

Q. Does it -- does it refresh your recollection that it was in the range of $70 million?

A. There's no chance it was in the range of $70 million. He would have gotten stock awards and it would depend on what those were worth.

(Simultaneous speaking.)

A. Obviously -- obviously, they ended

J. Seery

up being worth -- I think the number is -- I think it's zero.

You're aware of that, correct?

Q. Prior to the bankruptcy.

A. Oh, prior to it being worth zero, it -- it was worth a lot more.

Q. But as you sit here today, you don't know what any of the CEOs of the companies you advised made --

MR. MORRIS: Objection --

Q. -- that's what you're telling us?

MR. MORRIS: Objection to the form of the question.

A. I didn't say I advised those companies.

MR. MORRIS: Thank you.

Q. But you were involved in the -- in the bankruptcy or reorganization --

A. No --

(Simultaneous speaking.)

A. -- I -- I don't have at my fingertips the amount that the CEOs of various companies made in various industries over the last thirty years.

J. Seery

Q. And -- and not even in a general way, other than zero to 25 million?

A. That's a pretty good range.

Q. Okay. Do you have an understanding of what the typical compensation is -- for a financial advisory CEO is for a company that has a billion or more under management?

A. It depends on the type of assets that are under management, it tends -- it depends on the performance of the assets and it depends on the cost structure of the business.

Q. And taking those things into account, can you describe for us what the compensation for a CEO of a financial advisor firm is, where there are assets under management of a billion or more?

A. When you [mean] a financial advisor, do you mean an FA type firm or do you -- financial advisor, or do you mean somebody who advises investors?

Q. I -- I'm talking about a company similar to Highland.

A. So high -- Highland is a -- is a

J. Seery

combination of types of businesses. It's basically, in the last five years, at best a melting ice cube. It receives certain management fees and then it gives away services at below cost.

So Highland was run at a loss. Typically people who run businesses that operate at an operating loss don't get paid a lot of money.

Q. Let me -- let me ask you, you're now -- you've been the CEO of Highland for a while, right?

A. That's correct.

Q. And you're going to remain the CEO for a while longer?

A. Perhaps.

Q. And do you have an expectation of how many years in total you'll likely be the CEO of Highland?

A. The less the better.

Q. But aside from that, do you have an expectation of how many years you will likely be the CEO of Highland?

A. I don't. I hope we complete the

J. Seery

monetization by 2022. Whether I'm the CEO or not that will depend on the oversight board and whether I want to continue to do it.

Q. Okay. And if you are as -- as successful as you hope to be, whatever that is, how much do you expect to make as the CEO of Highland on average for each year that you will have been the CEO of Highland?

MR. MORRIS: Objection to the form of the question.

A. I -- I don't have a particular expectation right now. I have to negotiate that, but I would expect to make a few million dollars a year.

Q. Have you not negotiated your potential contingent compensation yet?

A. I have not.

Q. What -- what do you intend to ask for?

MR. MORRIS: Objection to the form of the question.

A. I'd like to get a significant amount of money, as much as I can get and treat my team fairly, but it has to be fair

J. Seery

based on the returns that we get for the investors.

Q. So based on, if you were as -- as successful as you hope to be, what do you think that number would be on an annual basis?

(Simultaneous speaking and reporter interjection.)

MR. MORRIS: Objection to the form of the question.

A. I would expect it to be at least a few million dollars a year. If I was as successful as I think we will be, it should be significantly more than that.

Q. Okay. And so what does -- what is -- because I don't know you very well, Mr. Seery.

To you, what is significantly more than a few million a year?

A. Just to be clear, you don't know me at all. We've never met, so we'll -- we'll make sure that that's clear so we don't -- there's no implication that there's some prior relationship or that we've ever worked

J. Seery

in any matter, in any connection whatsoever other than this one.

Now, your question was?

MS. DEITSCH-PEREZ: Can you read it back?

(As read by the reporter):

"QUESTION: And so what does -- what is -- because I don't know you very well, Mr. Seery. To you, what is significantly more than a few million a year?"

A. It will depend on -- on the cost. It depends on the overall performance, and -- and that will dictate whether there's upside to a performance bonus.

Q. Is significantly -- let -- let's break this down to little pieces.

A few million, is that two, three, four, five? What is a few million?

A. Typically I think of two as a couple, three as a few.

Q. Okay. Is four also a few?

A. Four is a little more than a few, but it could be in that neighborhood.

J. Seery

Q. Okay. So what is significantly more than 3 to 4 million?

Is that twenty?

A. That would be --

MR. MORRIS: Objection --

(Simultaneous speaking and reporter interjection.)

A. Twenty is significantly more than a few, but it's -- it's not any -- there's no prospect of $20 million of a bonus in this type of arrangement. There's simply not enough assets here.

Q. Okay. So when you say significantly more than a few, do you mean something like ten, 10 million a year?

MR. MORRIS: Objection to the form of the question.

A. Again, I -- I don't have a specific number in mind. I think that's -- that there's no chance of that either.

Q. So can you tell me what you mean by significantly more than a few million?

A. Five is significantly more than three.

J. Seery

Q. Okay. Does that mean you're hoping for compensation of 8 million a year or 5 million a year, just so I understand you?

MR. MORRIS: Objection to the form of the question. Come on.

A. There's no chance of $8 million a year here. There's not enough assets. There's not enough value in the estate to pay anybody that amount, which is why Highland would never pay anybody that amount anyway, because when you have a melting ice cube and you don't get any performance fees because your performance is terrible, you don't pay somebody that much money.

MO* MS. DEITSCH-PEREZ: Move to strike.

Q. In your experience with the various companies you've mentioned, have you seen executives given loans as part of their executive compensation?

A. You know, I don't --

MR. MORRIS: Objection to the form of the question.

A. I don't know. I don't -- I don't

J. Seery

recall. I've certainly seen loans be given as part of compensation.

Typically senior executives, in my experience, don't get loans because loans either have to be paid back or structured in an odd way.

If they're structured just to avoid taxes, most legitimate companies don't want to do that, so most companies will either pay somebody a -- a base salary and deferred amounts or will pay them with stock.

Q. But you have seen loans given as part of compensation?

A. I -- I don't think I've seen it. I know that it exists. I -- I don't recall any senior executives in any companies that I've worked around where a loan to a senior executive was a -- was a material issue in a case.

Q. Have you also seen circumstances where executives or just high-level employees are given loans that are eventually forgiven as part of their compensation?

A. I -- I know it exists. Again, I

J. Seery

don't think it's been something or -- or characteristic in any case either that I've been involved with, invested in, worked on.

Q. Given the nature of your work in bankruptcies, does that simply mean that the issue of loans and the forgiveness of the loans has not been materially challenged in the various engagements that you've undertaken?

A. No, I don't think -- I think it's because it's not a material issue, and so you don't -- you don't see very many companies that I have been around where significant amounts of the assets are company -- intercompany related loans or -- or loans to the senior executives, where it's all controlled by the same executive. It's a --

Q. Have you --

A. -- it's a rare item.

Q. Have you made any investigation, as part of your role in this case, into whether there are other companies that -- that have similar loan programs, where executives or senior officers receive loans that have the

J. Seery

potential to be forgiven?

MR. MORRIS: Objection to the form of the question.

A. Yeah, again, I don't -- I don't -- I don't think there's a program involved in this situation, and I don't think there's any potential for loans to be forgiven, so I -- it's not something that I've seen elsewhere, although forgivable loans can be used for certain types of compensation to employees to retain them, certainly would be -- be humorous to do that with respect to a founder, but I don't -- in my experience, I haven't seen this as a -- as a material issue like it is in this case.

Q. And I was asking whether you had investigated, so that you could -- currently, whether or not there are other companies in which there was a practice like the one you just described.

MR. MORRIS: Objection, asked and answered.

A. I haven't done any other investigation, other than -- than my

J. Seery

experience.

Q. Okay. Did you investigate whether or not any of the following people - mike Hurley, Tim Lawlor, Pat Daugherty, Jack Yang, Paul Adkins, Labraya Mamoud [ph], Jean Luc Everland [ph] or Appou Landoseri [ph] received loans that were potentially forgivable and then that were, in whole or in part, forgiven?

MR. MORRIS: Objection to the form of the question.

A. I have looked at that, yes.

Q. Okay. And what did you determine?

A. I determined that Highland, I don't believe, has made a loan to any employee other than Okada and Dondero in about twelve years; that no loans were forgiven, notes -- so they were -- actually, I don't believe they got any before 2014, maybe '13.

No senior executive got it except with respect to Yang, but he was employed by New York, not by HCMLP. That was part -- effectively, was part of a severance when he left. And I don't think there's been any

J. Seery

that have been north of $500,000, so nothing like this.

And I did determine that Okada's -- I believe he only had one loan. I could be wrong on that, but that's the only one I recollect, and he paid it back.

Q. And did he pay it back in connection with this bankruptcy, a demand of the bankruptcy?

A. He did, yes.

Q. Under threat of lawsuit?

A. No. I spoke to Mark and I said you should go talk to your counsel, you have a very good counsel, Sullivan & Cromwell.

He went and talked to them and he said you're right, they said I have to pay it back. And he did, and we structured it.

Q. So did you determine that the -- you mentioned Yang.

But the others that I listed, did you determine whether they had or had not received loans that had been forgiven in whole or in part?

A. It looks like they had, and that

J. Seery

was about more than ten or twelve years ago and it had not been done since. None of those were obviously a founder, none of them were more than $500,000.

Q. Okay. And did you learn that all of the notes that existed in relation to those loans for the people that I listed -- none of the notes actually contained the forgiveness term?

MR. MORRIS: Objection to the form of the question.

A. I -- I do not know that, no.

Q. Well, did you search for the notes at issue?

A. I did not look at the notes, I just looked at the dollar amounts.

Q. Did you talk to anyone who had been involved in the -- the issuance of the notes to the people that I listed that were eventually forgiven?

A. No.

Q. Okay. Are -- are you aware that it's generally the case, when companies use potentially forgivable loans as a part of

J. Seery

compensation, that the notes are bona fide notes from the start that don't have a forgiveness term and that the forgiveness term, for tax purposes, is subsequent and that taxes then are only paid when the note is actually forgiven?

MR. MORRIS: Objection to the form of the question.

A. My experience and understanding of that is actually different. When an employee receives a forgivable loan as part of either their retention, and often it happens as a -- a way to either retain somebody or to employ someone, that it's very clear that it's forgivable up front. Otherwise, it would be a trust-me loan.

Now, certainly the founder who controls everything can make his own trust-me loan because he can trust himself, but -- but to structure it to avoid taxes, my experience is that that's actually illegal.

Q. If you make payments on the loan and it's only forgivable if certain conditions occur in the future that are not

J. Seery

certain --

MR. MORRIS: Objection to the form.

Q. -- doesn't that -- does -- in your understanding, isn't that a -- a loan that, until it's forgiven, is a bona fide loan of which no taxes are owed?

MR. MORRIS: Objection to the form of the question.

A. I think you've described -- I apologize.

I think you've described what I'd call a scam.

Q. Let's step -- step back a second, Mr. Seery.

If I use the term "tax efficient transaction," what do you understand that to mean?

MR. MORRIS: Objection to the --

(Simultaneous speaking.)

Q. -- something is tax efficient, what does that mean to you, so I just make sure we're -- we're talking the same language?

MR. MORRIS: Objection to the

J. Seery

form of the question.

A. It -- it means a transaction that's -- that's structured in a way to minimize the -- the tax cost.

Q. Okay. And is your impression of Mr. Dondero that, if he has a choice between doing a transaction in a tax efficient way and a non-tax efficient way, that he would pick the tax efficient way?

A. I believe he would, yes.

Q. Okay. And are you condemning of that --

A. No.

Q. -- is it a bad thing?

A. Tax -- tax avoidance is a --

Q. Taxi efficiency.

A. I said tax avoidance is a duty, taxi evasion is a crime.

Q. Okay. So when you say "duty," what do you mean?

Remember, a jury is listening to this so I want it to be clear.

A. I believe --

MR. MORRIS: That's not entirely

J. Seery

clear, just to be -- just to be certain. You may never get to a jury, but go ahead.

A. I don't recall if that was a -- a quote from Learned Hand or one of the other well known --

Q. It had that sound to you?

A. -- judges, but I -- I think that structuring a transaction that has legitimate purposes in a tax efficient way is not necessarily problematic.

Structuring a transaction to avoid taxes, and -- and mainly or solely to avoid taxes, is actually a -- a violation of the Internal Revenue Code.

Q. And looking at the various loans to Mr. Dondero and the related company loans that are the subject of the notes litigation that you are here today to testify about, was it the case that annual payments both on the term loans and interest payments on the demand loans were made?

A. Oftentimes, yes.

Q. Okay. And is that a characteristic

J. Seery

of a bona fide loan, that --

MR. MORRIS: Objection to the form of the question.

(Technical disruption.)

Q. -- later, but as long as that hasn't happened, interest payments should be made, and if it's a --

MR. RUKAVINA: We lost you, Deborah. Deborah, we lost you.

MS. DEITSCH-PEREZ: Can you -- did you hear me?

MR. RUKAVINA: No.

MS. DEITSCH-PEREZ: Okay. I'll, I'll -- I'll start over then.

Q. In your experience, is it a characteristic of a bona fide loan, whether demand or a term loan, that until it is actually forgiven -- until and unless it is forgiven, that annual interest payments should be made on a demand loan, and whatever is due pursuant to the terms of the note on the term loan should also be made annually?

MR. MORRIS: Objection to the form of the question.

J. Seery

A. I -- I think that's a characteristic of a bona fide loan, but I think that you can have an accruing loan that doesn't have those payments that is also a bona fide loan. And so I -- I do think these are bona fide loans. The money was given, a note was signed, the amounts are owed.

Q. And do you have a reason to believe that if it was in Mr. Dondero's power to attempt to have these loans subject to a condition under which there would be forgiveness of the loan, is that something that is -- that surprises you?

MR. MORRIS: Objection to the form of the question.

A. It -- it shocks me.

Q. So you don't think that if Mr. Dondero had the opportunity to -- to have contingent compensation rather than compensation in 2017, 2018 or '19, but move it out into the future, it surprises you that -- that he would want to do that?

MR. MORRIS: Objection to the form of the question.

J. Seery

A. Can -- can you read that question back --

(Simultaneous speaking.)

A. -- I didn't understand it.

MS. DEITSCH-PEREZ: The court reporter can read it back.

(As read by the reporter):

"QUESTION: So you don't think that if Mr. Dondero had the opportunity to have contingent compensation rather than compensation in 2017, 2018 or '19, but move it out into the future, it surprises you that -- that he would want to do that?"

MR. MORRIS: Objection to the form of the question.

A. I -- I don't see any evidence whatsoever that that's what he did. And in fact, the way the business was run and the monies he took out from various different places connected to the business shows that that wasn't the case.

MO* MS. DEITSCH-PEREZ: Move to strike because you didn't answer --

J. Seery

MR. MORRIS: And, and -- and I -- and I object, you asked him if -- I just -- I, I --

MS. DEITSCH-PEREZ: Well, John --

MR. MORRIS: -- it's not -- the judge will rule.

Go ahead.

BY MS. DEITSCH-PEREZ:

Q. You've heard of -- Highland has interests in Cornerstone, Trussway and MGM, that's correct?

MR. MORRIS: Objection to the form of the question.

A. You should be precise. Highland owns certain equity interests in Cornerstone, approximately 4 percent. Highland owns, indirectly, all of the interests -- almost all of the interests in Trussway. Highland owns a small piece of MGM.

Q. Okay. And have you made any inquiry into whether employees at Highland referred to these colloquially as portfolio companies?

A. I --

J. Seery

MR. MORRIS: Object --

A. I -- I know that cornerstone is sometimes referred to as a portfolio company. I know that Trussway is referred to as a portfolio company.

It would be -- I've never heard anyone refer to as -- MGM as a portfolio company.

Q. Have you ever made an inquiry as to whether sometimes it was colloquially called a portfolio company?

A. I -- I haven't made an inquiry as to it, no. I've been around the business for a year-and-a-half, nineteen months.

Q. Have you ever heard Mr. Dondero refer to MGM as one of the portfolio companies?

A. No, I haven't. It would be very odd if he would.

Q. When you -- in the early days, when you communicated with Mr. Dondero about the prospects for the assets at Highland, did he appear to have high hopes for the monetization and increase in value of

J. Seery

Cornerstone, Trussway and MGM?

MR. MORRIS: Objection to the form of the question.

A. I don't recall him ever talking to me very much about Cornerstone and potential upside or Trussway.

He did have high hopes, or expressed high hopes, of upside value in MGM. But at the same time, he sold 1.7 million shares after the filing for 7250. So that sort of belied that optimism, but he expressed some optimism that MGM would have upside. And of course he sat on the board, so he'd have some insight into it.

Q. And it looks like, hopefully, he was right to -- in that optimism?

MR. MORRIS: Objection to the form of the question.

Q. Is that right?

A. We'll find out.

Q. So far it appears that his optimism may be justified; is that right?

A. There's -- there's a transaction. It's subject to approval and closure.

J. Seery

Q. Okay.

A. Certainly hope so.

Q. If in fact all three of those companies, MGM -- or Highland's interest in those three companies are successfully monetized, will the assets of Highland exceed its liabilities?

MR. MORRIS: Objection to the form of the question.

A. Extremely unlikely.

Q. Possible though?

MR. MORRIS: Objection to the form of the question.

Q. In your educated opinion --

(Simultaneous speaking.)

A. Can I -- can I answer your question --

Q. Yes.

A. -- unless "possible though" is just a quip, because then I won't answer it.

Q. No --

A. Is that a question?

Q. -- it's not a quip --

A. Oh, okay.

J. Seery

Q. -- it is a question.

A. It's -- we know what the -- at least now what the potential upside is to MGM. We don't know what the upside is for Cornerstone or Trussway, but we understand the performance of the companies and the framework with which somebody would value them.

So it would be extremely unlikely, not impossible but extremely unlikely, for those two companies - with MGM capped - to have a performance that exceeded the total amount of claims.

Q. How close a matter is it?

MR. MORRIS: Objection --

(Simultaneous speaking and reporter interjection.)

Q. How -- how close -- how close -- let me -- let me strike that and start again.

What would MGM, Trussway and Cornerstone need to be monetized for in order for the overall assets of Highland to exceed its liabilities?

MR. MORRIS: Objection to the

J. Seery

form of the question.

A. I'm not in a position to answer that, but all of the assets minus the expenses to get there would need to exceed $400 million.

Q. And right now, what do you think the assets are worth?

MR. MORRIS: Objection to the form of the question.

A. Again, I don't -- I know what MGM is potentially worth, but it's hard to -- I can't count that until it's done.

Q. I know but --

(Simultaneous speaking.)

MR. MORRIS: Let him finish, please let him finish.

A. You don't -- can't count that until it's done. And then the other -- the other businesses we have to put through a process, to see what they're worth. And they're, they're, they're -- they've got potential upside but they have challenges as well.

Q. Okay. Assuming you are as successful as you hope to be, and crediting

J. Seery

for the moment the potential value of the MGM transaction, what do you think the assets of Highland are likely to be worth?

MR. MORRIS: Objection to the form of the question.

A. I -- I don't know. Part of it depends on -- again, it's the costs. It's collection of $63 million notes in these litigations, and then it's the ultimate value of those assets.

But I would hope that we would be very successful in the asset monetization, where we would be able to get at lease $300 million with those -- those assets and others.

Q. Do you think that if you're as successful as you hope to be, that the assets will be worth more than 400 million net of the collection costs?

A. I --

MR. MORRIS: Objection to the form of the question.

A. I believe I already said I believe that's unlikely, but I'm an optimistic

J. Seery

fellow.

Q. So then you hope it is likely?

A. I certainly hope so.

And, again, that -- that hope counts on $63 million of note collections that I do expect to collect.

MR. MORRIS: Deborah?

MS. DEITSCH-PEREZ: Yes.

MR. MORRIS: I apologize for interrupting, but sometime between now and 6:00 I'm going to have to take about a ten or a twelve-minute break. I have no idea how much you have.

If you're going to finish in twenty minutes, then let's do that. If you're going to take more than an hour, I just -- just please stop at some point by, you know, 5:30, 5:35, so I can take that break.

I just have to attend to something that -- it won't take too long, but I just wanted to let you know that so you weren't surprised.

MS. DEITSCH-PEREZ: Okay. If

J. Seery

you're okay, let me do one more segment and then I'll let you -- I'll excuse you to -- to do your errands and we'll come back?

MR. MORRIS: Sure.

(Brief off-record discussion.)

MS. DEITSCH-PEREZ: He needs -- he needs his ten or twelve minutes before 6:00 --

THE WITNESS: Got it, got it.

MS. DEITSCH-PEREZ: -- is that right?

MR. MORRIS: Yep.

BY MS. DEITSCH-PEREZ:

Q. Okay. When Mr. Rukavina was questioning you, he was questioning you about the nonpayment of the NexPoint Advisors loan. Remember that?

And you -- were you only talking about NexPoint, that -- that loan not the HCMS term loan and not the HCRE term loan?

A. He was only asking me about the NexPoint, as I understood it.

Q. Okay. So let me ask you, are you

J. Seery

aware that there were what -- at issue in these litigations, a term loan between Highland and HCMS?

A. Yes.

Q. And a term loan between Highland and HCRE?

A. Yes.

Q. Okay. And when was the last payment due on the HCMS term loan and the HCRE term loan?

MR. MORRIS: Objection to the form of the question.

A. I -- I don't recall exactly. I thought they were -- they were all in and around the same time. If they weren't the 31st, they were right there.

Q. All right. And were the annual payments for the HCMS and HCRE term loans made by December 31, 2020?

A. They were not.

Q. And were the annual -- and was a payment made on each of those loans in January of 2021?

A. I believe a payment was made after

J. Seery

they were accelerated for each of those loans, similar to the situation with the NPA loan.

Q. Let me show you - hang on, let me pull it up - what I have marked as -- I marked it as exhibit -- premarked it as Exhibit 111, just to make sure I cleared Mr. Rukavina's exhibits. But it's an arbitrary number, we're not missing 100-odd exhibits.

Okay. Can you see the exhibit?

And I did email it to Mr. Morris prior to the deposition. Do you have it there?

MR. MORRIS: No, I didn't see your email.

A. I see it on the screen.

Q. Okay. You have them in your email. If there are any of them that you need to break for a moment and have the exhibits printed so that you can look at the whole thing, please let me know and we can stop, okay?

So have you seen what I've marked

J. Seery

as Exhibit 111 before?

A. I believe I have.

Q. Okay. And did you cause the letter to be sent out?

A. I did, yes.

Q. And did you write the letter?

A. I don't believe I wrote it. I would have marked it up to some degree.

Q. Who wrote Exhibit 111, which is the letter to Mr. Dondero from you, dated January 7, entitled "Demand on Promissory Note"?

MR. MORRIS: Objection to the form of the question.

A. My counsel.

Q. Okay. Do you know in particular who wrote it?

DI* MR. MORRIS: I'm going to direct the witness not to answer.

MS. DEITSCH-PEREZ: Just he can answer that, whether he knows who wrote it?

MR. MORRIS: Sure, he can answer that question.

J. Seery

A. Yes, I know.

Q. Okay. And can you tell me who wrote it?

MR. MORRIS: No.

Q. And that's because your counsel has directed you not to answer --

MR. MORRIS: That's right.

Q. -- or because you don't know?

MR. MORRIS: It's because I'm directing him not to answer. We're not going to even find out whether he knows or not because it's privileged.

Q. Okay. Is this the only letter that you caused to be sent to Highland Capital Management Services with regard to the term loan in the original principal amount of 20,247,628?

A. I don't recall. I would expect there to have been a follow-up letter as well, but I don't recall specifically.

Perhaps you have it.

Q. I do not. That's why I'm asking, I don't see a letter like the one that we saw earlier that was to NexPoint.

J. Seery

A. I don't recall specifically; I would have to look. If we had it, we would have produced it.

Q. Okay. And if you had it, would you also have attached it to the complaint --

MR. MORRIS: Objection to the form --

Q. -- the way the NexPoint letter was attached to the complaint?

MR. MORRIS: Objection to the form of the question.

A. I -- I don't know if we would have or not. I think the demand is sufficient on its own.

Q. Other than the possibility that there was a -- let me back up.

Was there a payment made in January on the HCMS term loan?

A. I thought there was, but I don't recall specifically. I'd have to look at the -- it would be in the complaint, I would think.

Q. Okay. And if the complaint says there was, then there -- then that would be

J. Seery

the case?

A. If there was, it would have -- similar to the NPA, it would have been applied on account.

Q. Other than the letter that's been marked as Exhibit 111, did you have any communications with anyone at Highland Capital Management Services about the note or the payment or the nonpayment other than this possible post-payment letter and the -- that was similar to the NexPoint one that we looked at earlier?

MR. MORRIS: Objection to the form of the question.

A. I would only have communicated through the demands.

Q. Okay. So just to make it very clear, did you talk with Mr. Dondero about the HCMS note payment, nonpayment or status of the -- of the demand?

A. No.

Q. And did you talk with Mr. Waterhouse about the note, the payment, the nonpayment or the status of the demand?

J. Seery

A. Not that I recall.

Q. Okay. What about Ms. Hendrix and Mr. Klos; did you talk with either of them about the note, the nonpayment, the payment or the status of the -- of -- of the loan?

A. Do you mean at the time this demand note was sent?

Q. Yes, in -- in December of 2020 or January/February of 2021, that time frame.

A. Not that I recall specifically, no.

Q. And was it your understanding that Highland provided shared services to Highland Capital Management Services?

MR. MORRIS: Objection to the form of the question.

A. It did not have a shared service arrangement --

Q. That wasn't -- wasn't my question.

A. I'm answering your question .

But lots of free services were given to lots of Dondero entities by lots of Highland employees, who were never paid, over the years.

Q. Was it your understanding that

J. Seery

Highland provided shared services to Highland Capital Management Services?

A. No.

MR. MORRIS: Objection to the form --

A. Sorry.

MR. MORRIS: -- of the question.

A. No, shared -- shared services refer to a specific agreement. There was no -- there was no agreement or other arrangement.

Highland employees did things wherever Dondero asked them to do.

Q. I, I -- I assume, when you say there was no agreement, you're talking about no formal written agreement like the one we've looked at for NexPoint earlier today --

MR. MORRIS: Objection to --

Q. -- is that what you're referring to?

MR. MORRIS: Objection to the form of the question.

A. No, I'm referring to any type of agreement.

You, you -- you refer to these

J. Seery

companies as if they're standalone operating entities that actually do things. These are entries on paper that move money around.

So when Dondero asks an employee to do work on behalf of himself, whether that's closing his own house loans, whether that's coming over and doing work at his house or whether it's working for Highland Capital Management Services, they -- they did it and Highland was not compensated.

Q. Have you -- have you investigated whether there was effective compensation for the services that Highland provided to Highland Capital Management Services?

MR. MORRIS: Objection to the form of the question.

A. I -- I don't know what effective compensation means, but I have investigated whether Highland Capital Management received anything from HCM Services.

Q. And who did you ask?

A. It's been part of the ongoing review of the business throughout the second half of this case and into the spring of this

J. Seery

year.

Q. And did you determine, in the course of that investigation, that there was a pattern and practice of Highland providing services like the ones in the NexPoint shared services agreement to Highland Capital Management Services?

A. I think you asked me if we got some sort of -- I think you said either indirect or some other form of compensation.

The answer was no. There were things that Highland employees did at different times at Mr. Dondero's directions for these various entities, none of which were paid for.

Q. Was it generally the case that Highland provided the back office services for Highland Capital Management Services, such as bill paying?

A. Sometimes. I don't know that it was generally the case. It depended. And Highland Capital --

(Simultaneous speaking.)

A. -- and Highland Capital Management

J. Seery

Services really just owned certain things and took money out of Highland.

The fact of the matter is, Highland Capital Services' main business is that it gives money to Jim Dondero. I think he owes around a hundred million to services.

MO* MS. DEITSCH-PEREZ: Move to strike. That wasn't my question.

Q. I asked you whether or not you noticed, in the course of your various investigations, that Highland Capital Management provided back office services like bill paying for cap -- for Highland Capital Management Services?

A. I --

MR. MORRIS: Objection to the form of the question.

A. And I -- and I answered that I don't think you can think of this company -- this entity - or company, Highland Capital Services Inc. - in that manner.

It didn't -- it didn't have, for example, advisory services that anybody there was performing for third parties like NPA.

J. Seery

So there wasn't doing work for a fund, et cetera, so I don't -- there were certain things that were done. Whether they were ad hoc or specific, I didn't see any true pattern that this was similar to an agreement where third -- true third-party services were being continually performed.

Q. Did Highland Capital Management Services have employees that you knew of?

A. No.

Q. Okay. So if it wanted to pay a bill, it was using employees at Highland Capital Management to do that, correct?

A. If it had a bill, yeah.

Q. Okay. And in fact, did -- did Highland Capital Management charge Highland Capital Management Services for shared services?

A. I don't believe so.

MS. DEITSCH-PEREZ: Let me show you another document that I'll -- has been premarked as Exhibit 110.

MR. MORRIS: Are we going to be able to take that break shortly?

J. Seery

MS. DEITSCH-PEREZ: If you want to take it now, that's fine.

MR. MORRIS: Yeah, I would appreciate it.

MS. DEITSCH-PEREZ: Well, actually, why don't -- if you don't mind, let me just finish 110.

MR. MORRIS: Okay.

MS. DEITSCH-PEREZ: I think that will be pretty quick and then --

MR. MORRIS: Okay.

MS. DEITSCH-PEREZ: -- then we can break.

Is that all right?

MR. MORRIS: Sure.

BY MS. DEITSCH-PEREZ:

Q. Okay. Okay. Can you see Exhibit 110?

A. I can, yes.

Q. Okay. And I'm going to scroll down because what I'm going to ask you about is the email from Fred Caruso to Brian Collins, JP Sevilla, Frank Waterhouse, Dave Klos, with a copy to you.

J. Seery

Do you recall Exhibit 110?

A. Not specifically, no.

Q. Do you generally -- well, first, who's Fred Caruso?

A. He is a partner at DSI.

Q. Okay. And were Brian -- and who are Brian Collins, JP Sevilla -- the other -- the others we've spoken about.

So who are Collins and Sevilla?

A. Brian Collins -- at this time Collins, I believe, was still head of HR at HCMLP and Sevilla was a counsel at HCMLP, but they were really working for the transition, which I don't know if it had a name at that point, whether it was Highgate or Skyview.

But that's what they were working on, and this had to do with transition of the business, the service part of the business, from Highland to other entities.

Q. But am I correct that this is a demand from HCMLP to the companies listed in Exhibit 110 for money?

A. It looks to be that, yes.

Q. Okay. And the email says there are

J. Seery

outstanding fees and cost reimbursements.

What kind of fees were these?

A. I believe some of these were fees related to shared services and others were reimbursements for costs.

Q. Okay. And do you see that there is a line item for HCM Services and a -- and the amount 116,531 is listed?

A. Yes.

Q. And so was that HCMLP demanding money from HCM Services for services that HCMLP had provided to HCM Services?

A. I don't --

MR. MORRIS: Objection to the form of the question.

A. I don't think so.

Q. Why not?

A. I think it's for cost reimbursement.

Q. What, what cost was -- was it seeking to be reimbursed for?

A. I -- I don't recall. This is not a -- something I recall specifically.

Q. But in any event, this Exhibit 110

J. Seery

confirms that HCMLP was either providing services or advancing costs for HCM Services and then billing HCM Services?

THE WITNESS: Objection to the form of the question.

A. I -- I believe it was the latter.

Q. Can you exclude the possibility that this was an instance of HCMLP billing HCM Services for services performed by HCMLP?

A. Well, there was no agreement, so I don't know the basis of it, but we could look for it. I don't -- I don't think that's the case.

Q. Do you know whether or not there was an oral agreement with respect to HCM providing services to HCM Services?

A. Not that I ever heard of.

Q. Did you ever specifically make an inquiry --

A. I, I have made --

(Simultaneous speaking.)

A. You're not finished? I'm sorry.

Q. You can -- you can answer.

A. I, I have --

J. Seery

Q. I take it you got the gist.

A. I have made inquiry regarding whether there was any arrangement for -- to provide services and pay back for those services, and I was told there wasn't.

Q. Who did you make --

A. That's my recollection.

Q. Who did you -- who did you make an inquiry to?

A. Our -- our accounting team.

Q. And any -- which people?

A. That would be Waterhouse and Klos and Hendrix.

It's not a specific inquiry that I made. There was -- this was over the time during the case.

Q. You actually have a specific recollection of speaking to any of the people that you just listed, like to Surgent, Klos and --

A. I didn't mention Surgent.

Q. Okay. Klos, Hendrix and Waterhouse?

A. Yes.

J. Seery

Q. Okay. Do you have a specific recollection of asking any or -- any of them whether there was an unwritten agreement between HCM and HCM Services for HCM to provide shared services, back office services, to HCM Services?

A. No, I never would have asked that question.

Q. Did -- do you have a specific recollection of what question you did ask?

A. Yes.

Q. What was it?

A. Do we have a shared services agreement.

Q. Did you make it clear that you were asking for a written or unwritten agreement?

A. No. As I said, if I asked if there was an agreement, I would have assumed it was a formal written agreement because that's the way the business was run.

And I didn't ask if there was some unwritten, secret, hidden or not so secret but not shared with anybody agreement. I don't -- it's not something I inquired about.

J. Seery

Q. Did you ask whether there was an agreement caused by a pattern and practice of conduct?

A. No.

MR. MORRIS: Hey, Deborah, I'd really like to take that break now. That's why I started giving a --

MS. DEITSCH-PEREZ: Okay.

MR. MORRIS: -- a warning quite some time ago.

Thank you.

MS. DEITSCH-PEREZ: Okay, okay.

MR. MORRIS: Yep, let -- let's come back --

VIDEO TECHNICIAN: The time is 5:37. We're going off the record.

(Recess taken.)

VIDEO TECHNICIAN: The time is 5:58. We're back on the record.

BY MS. DEITSCH-PEREZ:

Q. Mr. Seery, I'm showing you what's been premarked as Exhibit 112. I don't know if you have it there, but if not, let me scroll through it.

J. Seery

Have you seen it before?

A. It -- it looks familiar, yes.

Q. Okay. This is a letter dated January 7, from you to Mr. Dondero at HCR -- HCRE Partners.

Did you cause this letter to be sent?

A. Yes.

Q. And like Exhibit 1 -- I think 111, was this written by your counsel?

A. It -- it certainly had my counsel's input and my input, so how --

Q. Okay.

A. -- I probably got a base and marked it up, and they finished it.

Q. Okay. And --

A. Same as the other.

Q. Okay. And was there any communication, other than Exhibit 112, between you and HCRE Partners about the HCRE term loan?

A. No.

Q. Do you know whether -- was there a payment due on the HCRE term loan, in your

J. Seery

view, by December 31, 2020?

A. I believe there was, yes.

Q. And was it made?

A. No.

Q. And was the payment made in January of 2021?

A. A payment was made in January of 2021 on account that -- the full amount that was demanded.

Q. Well, when high -- when HCM received the payment from HCRE Partners, who facilitated the -- the making of the payment, as far as you know?

A. I don't know.

Q. Do you know if anyone from Highland Capital Management was involved in the making of HCRE's payment to HCM?

A. I don't know.

Q. Do you know whether HCRE had employees?

A. I don't believe it did.

Q. And so was it your understanding, generally, that HCM employees provided services like paying bills for HCRE Partners?

J. Seery

MR. MORRIS: Objection to the form of the question.

A. It was similar to HCM Services, but that doesn't mean they were the only people to do anything for HCRE; I just don't know.

Q. Well, when HCM received the payments in January of 2021 from HCRE and HCM Services, was there any communication that these payments were being made to pay down the term loan generally as opposed to -- to making the payment otherwise to be made on December 31, 2020?

MR. MORRIS: Objection to the form of the question.

A. I -- I'm not sure I understand your question, but I -- I don't recall any specific communication. Certainly if there was a payment made, we would have applied it on the total balance due, as you described.

Q. But did anyone on behalf of the HCRE or HCMS communicate that the payments were to be applied to the total balance due as opposed to fulfilling the payment that otherwise was typically made at the end of

J. Seery

the -- of the year?

MR. MORRIS: Objection to the form of the question.

A. Again, I -- I don't think I understand your question, but I don't know if there was any communication at all. I just don't recall.

Q. You don't recall one?

A. No.

Q. Did you look, in the course of responding to the discovery, at the -- what the -- the means by which HCM received the payments from HCRE and HCMS?

MR. MORRIS: Objection to the form of the question.

A. I -- I believe I did. I certainly looked at the total payments that came in from various entities and how we applied them, but I don't recall any specifics around communication.

Q. Well, did you look for the wire transfer information?

MR. MORRIS: Objection to the form of the question.

J. Seery

A. I, I --
Q. Was there -- let me rephrase.
Was -- did the payments come in by wire?
A. I don't recall.
Q. Did you look for any communication that would accompany the payment?
For example, a check can have a note on the note line, a wire can have a note on the re line, an ACH payment can have a note on a re line. Did you attempt, in responding to the discovery in these notes cases, to find any such communications?
MR. MORRIS: Objection to the form of the question.
A. I'm relatively certain it didn't come in as a check, because I would have known that. I just don't recall if it came in by wire or ACH, and I didn't look for any specific communication that accompanied the wire or the ACH payment.
Q. Okay. And with respect to HCRE, did you send a letter like the one we looked at earlier for NexPoint, contending that the

J. Seery

payment had been applied to the principal balance as opposed to satisfying and curing any default on the note?
MR. MORRIS: Objection to the form of the question.
A. If -- if we did send it, it would have been in the -- the production. It certainly would have -- there was no cure provision in the notes, so we would have applied it in the same way as we did the NPA payment and the services payment.
Q. If there are in fact no post-payment letters for the HCRE term loan and the HCMS term loan, was there a reason for that?
A. No, no reason if there are none. They're not required. The notes are very clear with respect to the waiver of demand, presentment.
So there's no requirement of it. I thought there would be, that I would have sent it, but I don't -- don't recall specifically.
Q. Did anyone on behalf of HCRE ever

J. Seery

communicate an acknowledgment or acceptance that the loan was in default and that the payment would be applied to the principal -- to the balance?
A. Other than the terms of the note, no.
Q. And do you have an understanding of why -- strike that.
Do you have an understanding, based on personal knowledge, of why the HCRE and HCMS payments were not made in December of 2020?
MR. MORRIS: Objection to the form of the question.
A. I -- I believe I do.
Q. And what is that knowledge based on?
A. The same edict that we discussed with Mr. Rukavina earlier in the day.
Q. So tell me the actual words that you contend Ms. Hendrix said to you that caused you to believe whatever it is you believe about what Mr. Dondero said.
MR. MORRIS: Objection to the

J. Seery

form of the question, and -- asked and answered.
A. I -- I don't recall the specific words.
Q. Now, at -- in -- and -- and you don't recall when the words were sent to you either; you can't say whether it was December or January or some other time?
MR. MORRIS: Objection to the form of the question --
A. No, I --
MR. MORRIS: -- mischaracterizes the testimony.
A. -- I'm pretty clear that it -- I learned of the action in December.
I may have learned of the words in December. It could have been in January, on or about the time I sent the demand note. But it wouldn't have been, as you phrased it, some other time.
Q. Now, in -- in or around December of 2020, you understood there was a dispute between Mr. Dondero and -- and affiliated companies and the debtor about whether the

J. Seery

affiliated companies had overpaid shared service fees to Highland, correct?

A. Absolutely not.

Q. Are you not aware that Mr. Dondero contended that NexPoint, for example, had overpaid Highland by many millions of dollars for shared service fees?

A. I'm quite aware that Mr. Dondero has fabricated a story as part of the negotiations for a pot plan. In fact, he included it in one of the term sheets, to fabricate a claim about additional services.

I'm also quite aware of other evidence that shows that's not the case.

Q. Let's take this in pieces.

How much did Mr. Dondero contend shared services had been overpaid --

A. I don't recall --

Q. -- what amount?

A. I don't recall the exact amount.

Q. More than 10 million?

A. I think he claimed 14, some number like that, but it doesn't have any connection to reality.

J. Seery

Q. Mr. Seery, what did you do to investigate whether or not there had been overpayments of shared service fees by NexPoint to Highland?

MR. MORRIS: I'm just going to caution the -- the questioner not to go too far down this path. These are topics that are related to a completely separate contested matter, actually --

(Simultaneous speaking.)

MR. MORRIS: Okay. So I just -- okay, that's fine.

MR. RUKAVINA: Yeah, I'm not trying to litigate that, it's --

MR. MORRIS: Yep.

MS. DEITSCH-PEREZ: -- it's relevant to this whole incident that Mr. Seery is --

MR. MORRIS: I don't think so, but --

MS. DEITSCH-PEREZ: -- is --

MR. MORRIS: -- but go ahead, I'm not directing him not to answer.

MS. DEITSCH-PEREZ: I -- I'm not

J. Seery

going to call him a liar like he's been calling everybody else, so I'll be polite about it, but it is relevant --

THE WITNESS: Well, the reason for that is because I don't lie, and I just -- I just don't do it. I don't fabricate testimony. So you can call me whatever you like. It doesn't matter. I -- I tell the truth.

I have a very good memory. To the extent I can't remember the specific words of something from months ago, I -- I'm unable to remember those specific words, but I have a pretty darn good memory.

BY MS. DEITSCH-PEREZ:

Q. Okay. But -- but it would be in your interest -- interest to -- to take something that was said about a clear dispute about the shared services payments and try to apply it to some other payments, wouldn't it, Mr. Seery?

A. Not -- not in any way whatsoever.

Q. Well, that's why I'm asking,

J. Seery

Mr. Seery. You were aware of the dispute, whether -- regardless of your belief as to the bona fides of it, you were aware of an actual dispute about whether NexPoint had overpaid shared services fees, correct?

A. I --

MR. MORRIS: Objection to the form of the question.

A. I -- I would not concede that there's a dispute, because there is no legitimate disagreement among what was performed and what was paid.

I will -- I will agree that Mr. Dondero came up with a story, or we can say a -- an idea, that NexPoint had somehow overpaid for the services that it received.

Q. Ms. -- Mr. Seery, I -- I understand that you're -- you are anxious to be an advocate for your side. I'm asking you for strictly factual testimony.

Was there a dispute, meaning one side said one thing and the other side said the other, about whether shared services fees had been overpaid?

J. Seery

MR. MORRIS: Objection, asked and answered.

A. I -- I will concede that Mr. Dondero claimed that shared services by NexPoint were overpaid for.

Q. Okay. And will you also concede that you disagreed with that?

A. I don't need to concede that. I do disagree with that.

Q. Okay. Hence, we have a dispute, okay.

MR. MORRIS: Objection to the form of the question.

Q. Mr. Seery, if you don't recall the words that Ms. Hendrix said to you, how do you know that whatever this edict was that you have mentioned did not relate simply to don't pay any more shared services because they have been overpaid?

MR. MORRIS: Objection to the form of the question, "ans" and answered -- asked and answered.

A. Again, I believe that it was Ms. Hendrix. It could have been Mr. Klos.

J. Seery

Over time it could be both. We've certainly had discussions about it. I believe that it related to the shared services. I believe it also related to the notes, because the notes weren't paid.

Q. Okay. And am I correct that the only reason you believe it also applied to the notes was because the notes weren't paid --

MR. MORRIS: Objection --

Q. -- not because of the words used?

A. The -- the words were not limiting to -- that I recall in any way.

Q. Were the words -- did the words specifically include don't pay the notes?

A. I believe I testified that I don't recall the specific words, so I can't --

Q. Okay.

A. -- say what the specific words were.

Q. And -- and, Mr. Seery, I recognize that you're a smart guy and a cagey witness, so you have said several times that the reason you believe the edict applied to the

J. Seery

notes was because they weren't paid.

And I'm just asking you to answer, honestly, whether your belief that the edict concerned the notes was simp -- happenstance of what happened, not because of what was said to you?

MR. MORRIS: Objection to the form of the question, asked and answered.

A. The idea that you're calling me cagey is -- is insulting and rude, so you should please withdraw that. No one's ever called me cagey, and I always am honest.

I said very specifically to Mr. Rukavina how I heard what I heard, how I came to understand it. I don't recall the specific words or the exact time. It is clear what the facts are and what happened, so that supports my interpretation of what I heard and my recollection of it.

Q. You -- you can't admit, as you sit here today, you're not sure whether or not the edict concerned the notes?

A. I didn't hear the edict. All I

J. Seery

know is that we didn't get the shared service payments and we didn't get the -- we didn't get the -- the note payments, and I read Mr. Waterhouse's testimony from two days ago, which seemed to confirm everything I just said.

So it -- I think it makes sense, but I don't have a specific recollection of what was told to me and I do recollect that the shared service payments were not made, but that was before the amounts on the notes were due, so there wouldn't have been a discussion about the notes.

Q. Now, did you look at the payment history on all of the term loan notes that -- that payments had been made prior to December 31, 2020 in excess of the amounts due, if you -- if -- if the obligor was paying the minimums for the number of years the notes had been outstanding?

A. Which -- which notes?

Q. All of the note -- did you do that exercise for all of the notes, all of the term loan notes?

J. Seery

MR. MORRIS: Objection to the form of the question.

A. We -- we looked at the payments on each of the notes, yes.

Q. And did you determine whether or not the amounts paid in total prior to December 31, 2020 exceeded the total amount due of principal and interest on the minimum principal and interest payments due on those notes --

(Simultaneous speaking.)

A. I --

Q. -- outstanding?

A. We certainly looked at that. I don't believe that's the case for each of them, but I don't have a specific recollection of how they each balance out.

Q. Did any of the loans have payments that were made that, in total, exceeded the total amount of minimum principal and interest payments due on the loans for the number of years they had been outstanding?

A. One of them may have; I don't recall. I don't recall specifically which

J. Seery

one.

Q. And were there documents that you looked at in connection with that inquiry?

A. There would be a payment ledger.

Q. And have you produced that payment ledger?

A. Yes.

MR. MORRIS: Yes, we have.

Q. Is there anyone from HCRE that you contend -- and I apologize if I asked that, because I'm -- I'm maybe mixing up HC -- HCMS and HCRE.

But is there anyone from HCRE that -- that acknowledged to you or said something to you, admitting that the payment that was made in January of 2021 was a payment towards the overall principal and not the payment that was due at the end of 2020?

A. No, I don't believe I had discussion with anybody who claimed to represent HCRE; which, as you said, had no employees.

Q. Have you -- strike that.

Earlier I couldn't tell if it was

J. Seery

Mr. Morris talking or you, and I apologize for that, but somebody said something like constructive fraud is not an issue in any of the note cases and therefore, you know, we shouldn't be looking at -- at solvency.

MR. MORRIS: That would have --

MS. DEITSCH-PEREZ: Was that you?

MR. MORRIS: -- that would -- that would have been me.

There is no claim for constructive fraudulent transfer.

BY MS. DEITSCH-PEREZ:

Q. And so let me ask Mr. Seery, as the 30(b)(6) witness for HCM, is it your position that constructive fraud and therefore solvency has no bearing on any of the note cases?

MR. MORRIS: Objection to the form of the question.

A. With respect to these claims, I think that the -- the allegations are pretty clear that there is no agreement, there's no subsequent agreement. That's nonsense. If there is one --

J. Seery

Q. Mr. -- Mr. Seery --

A. Well, I'm answering your question.

(Simultaneous speaking.)

MR. MORRIS: Please let him finish.

A. So when -- if, in some world, that story is bought, then we think it's clearly an actual fraud.

MO* MS. DEITSCH-PEREZ: Move to strike.

Q. I'm asking a simple question, Mr. Seery. As HCM's 30(b)(6) witness, do you agree with the assertion of your counsel that constructive fraud is not an issue, is not something HCM is asserting in the note cases?

A. That's correct.

Q. Okay. And therefore, is it also your position, as the 30(b)(6) witness for HCM, that whether Highland was or was not solvent at the time the notes were made or at the time the forgiveness condition was agreed upon, that the solvency of Highland is irrelevant to those issues?

MR. MORRIS: Objection, it's not

J. Seery

a 30(b)(6) topic, and I object to the extent it calls for a legal conclusion.

MS. DEITSCH-PEREZ: I'm -- I'm just -- can you read it back and have the witness answer.

MR. MORRIS: Okay.

(As read by the reporter):

"QUESTION: And therefore, is it also your position, as the 30(b)(6) witness for HCM, that whether Highland was or was not solvent at the time the notes were made or at the time the forgiveness condition was agreed upon, that the solvency of Highland is irrelevant to those issues?"

A. I -- I don't think it's irrelevant. It's not a precondition to a case for an actual fraud. But when these things are done in the face of solve -- insolvency, when they're -- when -- when the supposed agreements are done on the eve or after bankruptcy, that sure adds to the badges of fraud.

MS. DEITSCH-PEREZ: Then, John,

J. Seery

we -- we may have an issue about picking up this deposition. Let me -- let me ask another question.

Q. Do you have a solvency analysis done for these note cases?

A. Not for these note cases, no.

Q. And are you prepared to explain right now, in this deposition, how -- what Highland's solvency was at any of the time periods, either when the notes were made or when the alleged agreement regarding forgiveness -- potential forgiveness of the notes was entered into?

Are you prepared today to tell us what you think about Highland's solvency and why?

MR. MORRIS: Objection to the form of the question.

A. I -- I believe I already did, but I can do it again, if you'd like. Mr. Rukavina asked me very specific questions about where I thought solvency was, and I gave my very specific answers.

Q. For each -- for the dates of each

J. Seery

of -- each of the notes and when the forgiveness condition arose, what is your answer as to whether Highland was solvent and why?

MR. MORRIS: Objection to the form of the question.

A. There's -- there's about twelve different dates in there, but why don't I make it easy.

In '17, I think Highland was insolvent. Highland had significant exposure to litigation claims that it had not properly put on its balance sheet, and I think the actions of the principals show that they understood the risks with respect to those claims. And that's why you have a number of actions, including taking money offshore, including rolling out these notes thirty years. That's 2017.

'18 is similar, because the -- because the actions get more and more developed and the claims against Highland get bigger and bigger.

In '19 it comes crumbling down and

J. Seery

Redeemer gets a very large arbitration award that it's about to win and Highland files for bankruptcy.

I don't -- the -- the idea that there are these subsequent agreements, we don't even agree that that exists. We think it's completely fabricated and false. But to the extent it incurred -- occurred during '17 '18, December/January. '18, '19, December/January. '19, '20 after the bankruptcy, yeah, I think that -- that pretty much shows that they fall into insolvency.

Again, with an actual fraud, we don't need it. But it certainly helps with the badges of fraud.

Q. Is that your complete answer?

A. To -- to your question, yes.

Q. And do you have -- Highland has made breach of fiduciary duty claims against Dugaboy and then aiding and abetting claims against Nancy Dondero and Jim Dondero?

A. That's correct.

Q. Can you tell me from whence those fiduciary duties come?

J. Seery

A. Yes.
Q. Where are -- where can we find them?
MR. MORRIS: Objection to the form of the question.
A. They're -- they're in the amended complaint.
Q. No, no, no, where -- where do the duties come from? What are the duties based on?
A. With respect to both Dugaboy and Nancy Dondero, Nancy Dondero is the trustee of Dugaboy. Dugaboy was a limited partner. Limited partners are not permitted to run the affairs of the partnership.
She has testified that she made agreements on behalf of Highland. So she stepped into the role of a general partner, as did Dugaboy. Her testimony was very clear on these points, that she cut the agreements on behalf of Highland.
Q. Okay. So it is -- are you saying that it is the HCMLP partnership agreement that gives rise to the fiduciary duties?

J. Seery

MR. MORRIS: Objection to the form of the question, asked and answered, mischaracterizes the testimony. It calls for a legal conclusion.
A. It -- it's -- in my opinion, it's the law, and our position is it's the law, that when a limited partner takes over the operation and running of the partnership and takes on those duties, they step into the role of a general partner.
And that is the -- we don't believe this agreement exists, but if it were to somehow metastasize into something of an agreement, then clearly we believe that it breached the fiduciary duties that those persons and entities who took on those duties would have to the partnership.
Q. Okay. And I'm -- I'm just -- I'm just trying to understand your testimony.
You're talking about duties under the -- the HCM fourth amended limited partnership agreement?
MR. MORRIS: Objection to the

J. Seery

form of the question, mischaracterizes the testimony.
A. The duties are under Delaware law related to partnerships.
Q. Yes. And the partnership duties that you're talking about are the HCMLP -- the fourth amended partnership agreement; is that right?
MR. MORRIS: Objection to the form of the question, calls for a legal conclusion.
A. That's the partnership agreement, yes.
Q. Okay. And you're not saying these duties just arise out of the air?
MR. MORRIS: Objection to the form of the question, mischaracterizes the testimony.
A. I didn't say they arise out of the air, no.
Q. Okay. I mean, you are the witness designated to talk about these -- these breach of fiduciary duty claims, correct?
A. That is correct.

J. Seery

Q. Is there anything other than law, generally, and the fourth amended limited partnership agreement of Highland Capital Management that gives rise to the duties that you are contending Dugaboy breached and Nancy Dondero and Jim Dondero allegedly aided in the breaching of?
MR. MORRIS: Objection, asked and answered.
A. There's also facts.
Q. Okay. And the, the facts -- the fact that you said underlaid the claim was their -- the supposed stepping into the shoes of the general partner, is --
MR. MORRIS: Objection to --
Q. -- anything else?
MR. MORRIS: Objection to the form of the question, mischaracterizes the testimony, asked and answered.
A. Stepping into --
Q. Mr. Seery, correct me if I'm wrong. If there's some other fact that you are pointing to, let me know.
MR. MORRIS: Objection to the

J. Seery

form of the question, asked and answered.

A. I -- I believe I gave a pretty good, concise summary, but is there more that you want to know?

When it -- our position is that when a limited partner takes over the management or any of the management roles of the partnership and enters into an agreement on behalf of the partnership, they stepped into the general partner role.

When they're in the general partner role they have fiduciary duties to the partnership and all of the partners. When they breach those duties, which we argue is the case if this supposed agreement were actually something, then they should be liable for the damages caused by those breaches.

Q. You've said, a couple times now, if a limited partner steps in and manages the partnership.

Can you tell me every way in which you contend Dugaboy or Nancy Dondero as the

J. Seery

trustee of Dugaboy took a management step?

A. Nancy Dondero and Jim Dondero claim that Nancy Dondero and Dugaboy entered into an agreement on behalf of the partnership and gave away 63 million -- or maybe that's the total amount of the notes, but some 50 million-ish amount of notes for virtually nothing - and in most instances could actually be nothing - with no investigation, no discussion, no analysis and really no authority.

But they -- they assert that that was the agreement. And without any consideration received by this entity, nothing, they claim that they did this.

Now we don't -- we don't believe this agreement exists, again, to be clear. We think it's fabricated. We think that that's really beyond any kind of dispute. We think you all know that too, but we'll play along.

Q. Is there any other action that you contend is management that you contend Dugaboy or Nancy undertook with respect to

J. Seery

Highland?

A. No. Taking control of the payment to an affiliate of the general partner for no consideration and claiming that you are able to do that, we think that is sufficient.

MO* MR. DEITSCH-PEREZ: Move to strike everything after "No."

Q. Let me just get it clear. There is no other action, other than entering into this agreement, that you contend is management by Dugaboy or Nancy Dondero; is that correct?

A. No, that's not correct. It's everything around the supposed agreement. So, so it -- it can't be cabined to just what the supposed agreement is, it's all of the other -- lack of -- of -- if it were a real agreement, the lack of any sort of care, the lack of any sort of loyalty, it all permeates from this supposed agreement --

(Simultaneous speaking.)

A. -- these folks haven't thought through --

MR. MORRIS: Just let him finish.

J. Seery

A. -- the full implications of what they are arguing.

Q. Okay. Other than the things that you have testified to in the last ten or fifteen minutes, there are no other acts of supposed management that you contend Dugaboy or Nancy undertook that form the basis for the breach of fiduciary duty claims, correct?

MR. MORRIS: Objection to the form of the question.

A. I -- I think I've touched on all of them.

Q. Okay. Thank you. Okay. I'm going to show you what has been marked as -- premarked as Exhibit 109.

Is this a document that you have seen before?

A. I -- I believe I have, but you're literally just showing me a slice of the heading.

Q. I know. It's the -- it's the Notice of Filing of Debtor's Amended Schedules, and then annexed to it - let me get to that - are the Global Notes and

J. Seery

Statement of Limitations, Methods and Disclaimers Regarding Debtor's Amended Schedules of Assets and Liabilities.

Is that a document that you have seen before?

A. I -- I don't recall it specifically.

Q. Well, let me ask a different way. In -- this was filed in September of 2020.

What was your role with respect to filings of the debtor in September of 2020?

A. Depending on the filing, I executed many of them. So if I executed this one, please let me know.

I certainly was around and consulted with respect to all the filings. I was the CEO of the company.

That's my signature, so I've seen this.

Q. Okay, okay.

(Simultaneous speaking.)

A. I may not have seen the -- I don't know if I -- I just don't recall the, the -- the piece at the top.

J. Seery

Q. Okay. But, generally, if you signed a declaration under penalty of perjury for non-individual debtors that was then annexed to a filing, you would have looked through the filing and assured yourself that it was correct, to the best of your knowledge and belief?

A. I would have either looked through the filing or I would have reviewed it with my team, whomever prepared it.

Q. And so as you sit here today, do you have any reason to believe that there are inaccuracies in docket 1082?

MR. MORRIS: Do you want to give -- do you need to read the document?

A. I have no --

Q. Yeah. And I -- and I emailed it to John, so if you want to sit down and take a look at it, please --

(Simultaneous speaking.)

A. No, I -- I don't need to review it.

No one's brought anything to my attention. I don't -- I have no reason to

J. Seery

believe it wasn't accurate at the time.

MS. DEITSCH-PEREZ: Okay. Thank you.

Okay. Why don't we take a few minutes and I'm going to have a look at my notes and -- and I'll have a better idea of how much longer I have then.

VIDEO TECHNICIAN: The time is 6:36. We're going off the record.

(Recess taken.)

VIDEO TECHNICIAN: The time is 6:41. We're back on the record.

MS. DEITSCH-PEREZ: Okay. Thank you.

Thank you very much, Mr. Seery. I'm going to pass back to whomever might want to ask you anything more.

MR. RUKAVINA: Well, I think Mr. Horn is busy. I have one more question for you, Mr. Seery.

MR. HORN: I -- I have no questions, so I'll defer to Davor if he has --

MR. RUKAVINA: Thank you, thank

J. Seery

you.

EXAMINATION

BY MR. RUKAVINA:

Q. My only question was as follows: When you were answering counsel's questions, you mentioned something about a payment ledger on the notes.

Do you recall that?

A. Not a specific -- I would have looked at a payment ledger. I don't have a -- I'm not thinking of one particular payment ledger.

The one that -- that was one of the exhibits --

Q. That's where I'm going --

A. -- is a type of payment ledger.

That one, it looks like it was -- that's actually the actual schedule of payment, because it shows as if the payments had made -- it doesn't show what's been made, but it actually shows you the schedule of -- all the way to maturity, I believe, and so --

Q. Well, here's -- here's where I'm going with this.

J. Seery

A. Okay.

Q. For the $30.7 million note, to the best of your knowledge, did the debtor maintain a payment ledger showing any historical payments on that $30.7 million note?

A. Yes, we would have -- we would have.

Q. And to the best of your knowledge, would that have been produced in this litigation?

A. Yes.

Q. Okay. To the best of your knowledge, is Exhibit 7 that or is Exhibit 7 something else?

A. I think Exhibit 7 is something else. It's just because I hadn't seen this one. It may be that this was -- I think it's -- I think it's something else.

RQ* MR. RUKAVINA: Okay. Mr. Morris, I'll just ask the debtor, I've -- I've asked and we only got this in PDF, there's no metadata.

I would just ask if the debtor

J. Seery

would be willing to please check to see what the native of this Exhibit 7 is and please send it to me, along with any metadata.

MR. MORRIS: Email that exhibit to me --

MR. RUKAVINA: I will.

MR. MORRIS: -- and I'll be able to do that, but I do know that if you look -- I'm certain it was in one of the supplemental productions.

MR. RUKAVINA: Yes, we received it recently.

MR. MORRIS: Right. So in one of the supplemental productions I know that we produced schedules showing all payments made against all notes at issue, and I think we even gave you the backup with the bank statements, you know, fully redacted -- yeah.

MR. MORRIS: -- to show only the payments --

MR. RUKAVINA: Let's talk offline --

J. Seery

(Simultaneous speaking.)

MR. MORRIS: -- you've got all of that.

MR. RUKAVINA: Let's talk offline, because I'm not sure that I agree we have that --

MR. MORRIS: Yeah.

MR. RUKAVINA: -- but if the debtors produced it, then we'll --

MR. MORRIS: I know I instructed my team to produce it, so I -- I'm --

MR. RUKAVINA: Okay.

MR. MORRIS: -- I'm pretty confident they did what I asked.

MR. RUKAVINA: That was all I had. Thank you, sir.

THE WITNESS: Thank you.

MS. DEITSCH-PEREZ: Okay. Let me follow up with that -- with the witness. And then if it's really a conversation with counsel, we could move it on to that.

EXAMINATION

BY MS. DEITSCH-PEREZ:

J. Seery

Q. But to your knowledge, were the native files such as spreadsheets and emails provided to counsel to produce them, such that we should be able to see the Word versions of the notes, any emails about the notes and about the payments, so --

MR. MORRIS: You -- you've got that. That's not for this witness. We can talk about that offline. He doesn't know anything about like the actual --

Q. Well, let -- let me just ask him.

Did he provide the native files to counsel?

A. I'm not quite sure what you mean by native files, but counsel had access to -- we did full -- had access to the systems, and we did full data review of the systems and produced everything responsive.

So I'm not sure exactly what you mean by that, but -- but certainly counsel had access to -- to those --

(Simultaneous speaking.)

Q. -- understand that -- that native

J. Seery

files means a document, if it's in Excel, providing it in Excel; or if it's in email, providing it as a -- in a -- in email format, a PST format or something that will show the metadata; or if it's a Word document, in -- in Word, with its properties showing.

That's -- that's what I mean. Do you know if that was done?

A. Counsel certainly had access to all of that. We didn't just PDF things and send them to counsel. It was done electronically. So anything on the system responsive was -- was accessible.

Q. Okay. And just who is the person who conducted the searches to respond to discovery requests?

A. It would have been through the Pachulski firm, you know, working in -- with outside -- either DSI or one of the outside providers, to go through and -- and find certain -- whatever the terms they came up with to find the data.

Q. And do you know who the actual people were that -- that did the -- the

J. Seery

searching?

A. At Pachulski? I don't -- I should know, but I worked mostly through John.

Q. Okay. And then what about the non-lawyers; who were the non-lawyers who worked on collecting materials responsive to the discovery requests?

A. I believe -- at third parties or at --

(Simultaneous speaking.)

Q. -- you just mentioned DSI or I mean --

A. DSI --

Q. -- anyone other than the lawyer -- outside lawyers.

A. Yeah, DSI. The outside firm, ISI. I don't know if Robert Half was involved in some of this production as well. He's been on --

MR. MORRIS: Robert Half does document review.

A. -- the payroll for a long time now during this case.

MR. MORRIS: They do -- they do

J. Seery

the document review.

I mean, I could just -- I could just represent to you that -- that we came up with search terms, my firm ran the searches. There may have been certain financial data that we had to get from DSI, but we produced whatever came up with the search terms to -- to Robert Half.

They -- they did their review, they sent the documents to us. We did a little quality control and we produced it.

Q. Okay. And are -- are you confident, Mr. Seery, that you have looked for and produced whatever documents there are that concern the -- the loan payments due and made at the end of 2020, beginning of 2021?

A. I -- I am. It was done in the same -- same manner that -- that Mr. Morris just described.

MR. MORRIS: Yeah. And I would again encourage you guys -- I've asked

J. Seery

probably five different ways in interrogatories, in emails, if you actually think there's something out there, instead of just fishing, you should let me know if you think that there's --

MR. RUKAVINA: Oh, oh, no, and I do think --

MR. MORRIS: Yeah, I mean --

(Simultaneous speaking.)

MR. MORRIS: I've asked so many times and -- and I --

MR. RUKAVINA: There's no -- there's no need to have this on the record --

MS. DEITSCH-PEREZ: Yeah, and Mr. Seery mentioned in -- in the course of the examination that they had not looked at the actual transfer documents, the -- I think the -- if there was a wire or an ACH, to see if there were notations on them and that --

MR. MORRIS: He said he didn't.

J. Seery

THE WITNESS: I said I didn't.
MR. MORRIS: He said he didn't.
THE WITNESS: I said I didn't.
BY MS. DEITSCH-PEREZ:
Q. Well, do you know if anybody did?
A. I don't know, but certainly that's something that accounting would see rather easily.
RQ* MS. DEITSCH-PEREZ: Okay. So I would like confirmation that that was looked for, and -- and the same as I requested previously, the Word versions of -- of the notes.
MR. MORRIS: Okay.
THE WITNESS: I, I -- I think that the materials that Mr. Morris described has all that with bank statements.
MR. MORRIS: It's okay, thank you.
Are we done?
MS. DEITSCH-PEREZ: Thank you.
MR. MORRIS: Yep.
MS. DEITSCH-PEREZ: Yes.

J. Seery

VIDEO TECHNICIAN: The time is 6:49. This concludes today's deposition, Thursday, October 21, 2021.

I, , do hereby certify under penalty of perjury that I have read the foregoing transcript of my deposition taken on ; that I have made such corrections as appear noted herein in ink, initialed by me; that my testimony as contained herein, as corrected, is true and correct.

DATED this ____ day of _____, 20 ,
at _____, .

_____
JAMES P. SEERY, JR.

C E R T I F I C A T E

STATE OF NEW YORK)
)ss.:
COUNTY OF NEW YORK)

I, MARIANNE WITKOWSKI-SMITH, a Notary Public within and for the State of New York, do hereby certify:

That JAMES P. SEERY, JR., the witness whose deposition is hereinbefore set forth, was duly sworn by me and that such deposition is a true record of the testimony given by the witness.

I further certify that I am not related to any of the parties to this action by blood or marriage, and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 22nd day of October, 2021.

MARIANNE WITKOWSKI-SMITH

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ERRATA SHEET

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Exhibit B

McGovern - 11-9-2021

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	)
HIGHLAND CAPITAL MANAGEMENT, LP,	) Case No. 19-34054 L.P.
Debtor,	) Chapter 11
HIGHLAND CAPITAL MANAGEMENT, LP,	)
Plaintiff,	) Adversary No. 21-03003-sgi
vs.	)
JAMES D. DONDERO,	)
Defendant.	)

REMOTE DEPOSITION OF

BRUCE McGOVERN

Houston, Texas

Tuesday, 9th day of November, 2021

Reported by:

Daniel J. Skur, Notary Public and CSR

Job No. 202067

9th day of November, 2021
10:01 a.m. - 10:34 a.m.

Remote Deposition of BRUCE McGOVERN, located in Houston, Texas, before Daniel J. Skur, Notary Public and Certified Shorthand Reporter in and for the State of Texas located in Waxahachie, Texas.

A P P E A R A N C E S:

Pachulski Stang Ziehl & Jones
Attorney(s) for Debtor
780 Third Avenue
New York, New York 10017
By: John Morris, Esq.

Stinson
Attorney(s)for James Dondero, HCMS and HCRE
3102 Oak Lawn Avenue
Dallas, Texas 75219
By: Michael Aigen, Esq.

ALSO PRESENT:
La Asia Canty, Paralegal
Haley Winograd

IT IS HEREBY STIPULATED AND AGREED by and between the attorneys for the respective parties herein, that filing and sealing be and the same are hereby waived.

IT IS FURTHER STIPULATED AND AGREED that all objections, except as to the form of the question, shall be reserved to the time of the trial.

IT IS FURTHER STIPULATED AND AGREED that the within deposition may be sworn to and signed before any officer authorized to administer an oath, with the same force and effect as if signed and sworn to before the Court.

- oOo -

P R O C E E D I N G S

REMOTE ORAL DEPOSITION OF
BRUCE McGOVERN

(REPORTER NOTE: This deposition is being conducted remotely in accordance with the Current Emergency Order regarding the COVID-19 State of Disaster.

Today's date is the 9th day of November, 2021. The time is 10:01 a.m. Daylight Savings Time. The witness is located in Houston, Texas.)

BRUCE ALLEN MCGOVERN,
having been duly cautioned sworn to tell the truth, the whole truth and nothing but the truth, testified as follows:

(10:01 a.m.)

EXAMINATION

BY MR. MORRIS:

Q. Could you please state your name for the record?

A. My name is Bruce Allen McGovern.

Q. Good morning, Mr. McGovern. My name is John Morris. I'm an attorney at Pachulski Stang Ziehl & Jones. We are counsel to

Highland Capital Management, LP, a company that has been reorganized following its bankruptcy in Texas.

Are you aware of the bankruptcy?

A. Yes, I am.

Q. Okay. And we're here today for your deposition; is that right?

A. Yes, that's correct.

Q. And you've been deposed on a number of occasions in your professional capacity.

Do I have that right?

A. I believe there have been three occasions, yes.

Q. Okay. So I'm not going to ask you about those occasions. I want to try to get this done as quickly as we can.

I'll just tell you that -- I don't know if any of those occasions were remote depositions, but remote depositions are particularly difficult, only because we're not in the same room.

From time to time, we'll put documents on the screen. If there's anything that you need to see, will you please let me

know that? And we'll scroll down to the portions that you think you need to see.

Is that okay?

A. Yes, I will.

Q. And if there's anything that I ask that you don't understand, will you let me know that?

A. Yes, I will.

Q. Okay. You were retained by the Stinson firm to provide expert testimony on behalf of James Dondero; is that correct?

A. Yes, that's correct.

Q. Okay. And when were you retained?

A. I was retained sometime at the beginning of 2021, I believe. I don't recall the exact date, but it was in the first few months of 2021.

Q. How did it come -- how did your retention come about?

A. I received a phone call, I believe, from Michael Aigen, who is here today; and he discussed with me the general nature of the underlying litigation and the issue on which he and his firm were seeking expert testimony.

And after discussing that with him, I agreed to serve as an expert witness.

Q. And what exactly were you asked to do?

A. I was asked to prepare a report on a specific legal issue that has to do with the structure of some loans from Highland Capital Management, LP, to Mr. Dondero and subsequently to -- I understand there were similar loans to entities controlled by Mr. Dondero.

Q. When we use the phrase "Highland" today, can we agree that we're specifically referring to Highland Capital Management, LP?

A. Yes, that's fine.

Q. Okay. When you were told about the nature of the litigation, do you recall whether you were informed that Mr. Dondero had already filed an answer to the complaint?

A. Yes. I was informed of that, and I was provided with copies -- at least at that time, copies of the promissory notes that he had signed and also the complaint by Highland Capital against Mr. Dondero as well as the copy of the amended answer in the litigation.

Q. Okay. So -- so you were given a copy of the amended answer that he filed at the time that you were retained? Do I have that right?

A. That's correct.

Q. So you couldn't have been retained before the time the amended answer was filed; is that fair?

A. I'm just thinking through your question, so... That's correct. That's correct.

Q. Okay. Have you ever been retained by the Stinson firm before your engagement in this case?

A. No, I have not.

Q. Okay. Have you ever provided any services to Highland before?

A. No, I have not.

Q. Have you ever met James Dondero?

A. No, I have never met him.

Q. Have you ever spoken with him?

A. No, I have not.

Q. So your report is not based in any way on anything Mr. Dondero has told you; is

that fair?
A. That's correct.
Q. Okay. And I want to go a little bit broader. I think I used the words whether you -- I'd asked whether you had spoken with him.
So let me ask a different question: Have you ever communicated with Mr. Dondero by email or otherwise?
A. No. I've never had any communications with him.
Q. Is it fair to say that all of your communications relating to the work that you've done in this lawsuit have been exclusively with one or more lawyers from the Stinson firm?
A. Yes, that's correct.
Q. Okay. Have you ever communicated with anybody else regarding any of the work that you've done in connection with this engagement other than lawyers from the Stinson firm?
A. No. I have not.
Q. Okay. I'm going to ask you --
MR. AIGEN: John.

MR. MORRIS: Yes.
MR. AIGEN: I just want to point something out. The witness may not be aware that one of our conversations, Dan Elms was listening, I believe.
Actually, I apologize. I may be convincing -- confusing this with other witnesses. Dan Elms is not a lawyer at our firm. Now that I'm saying that, I actually may be confusing it with conversations with our other expert, so...
A. I don't recall him being in any of our discussions.
MR. AIGEN: I apologize. I probably should just be quiet.
BY MR. MORRIS:
Q. I'm going to ask my colleague, La Asia Canty, to put on the screen a copy of your report, which has been premarked as Exhibit 61.
(Exhibit 61 introduced.)
BY MR. MORRIS:
Q. And can you see that, sir?
A. Yes, I can.
Q. Okay.

MR. MORRIS: And if we could just scroll to the last page, the signature line.
BY MR. MORRIS:
Q. And that's your signature, sir?
A. Yes, it is.
Q. And did you sign this on or around May 28th, 2021?
A. Yes, I did.
MR. MORRIS: You can go back to the top.
BY MR. MORRIS:
Q. As you sit here today, is there anything that you believe is inaccurate about your report?
A. No.
Q. Is there anything that you believe should be modified to state more clearly the opinions and the bases for them, as set forth in this report?
A. No.
Q. Your report has not been amended or supplemented in any way, correct?
A. That is correct.

MR. MORRIS: If we can scroll down a little bit.
BY MR. MORRIS:
Q. You reviewed five documents for purposes of preparing your report. Do I have that right?
A. Yes, that's correct.
Q. Okay. And it's those five documents that are listed in the first page of your report, right?
A. Yes, that's correct.
Q. Okay. Since signing this report on May 28th, 2021, have you been provided with any additional documents that relate in any way to your opinions?
A. I've been provided with copies of the promissory notes that were executed on behalf of some of the entities controlled by Mr. Dondero in favor of Highland Capital, and I believe I also have a copy of the complaint in the adversary proceeding filed against the entities.
Q. When were you given those documents?
A. I was provided those documents, I

believe, sometime last week.
Q. And to confirm, those documents haven't caused you to change your opinions as set forth in your report in any way, correct?
A. That's correct.
Q. Did you have any discussion with anybody about why you weren't given those documents before you completed your report on May 28th?
A. No. I was not provided any explanation of that. What did occur is that I met with attorneys from the Stinson law firm to discuss the deposition today; and following that conversation, I was sent by email copies of the additional documents.
Q. Okay. But you don't recall having any discussion about why you hadn't been given copies of those documents before you completed your report on May 28th, 2021, correct?
A. That's correct.
Q. Okay. Were you ever given any information concerning Highland's treatment of the loans on Highland's books and records?
A. No, I was not.

Q. Did you ever ask for any information concerning Highland's treatment of the loans in its books and records?
A. No, I did not.
Q. Is Highland's treatment of the loans in its books and records relevant at all to your opinions as set forth in Exhibit 61?
A. No, I don't believe it is.
Q. Were you given copies of Highland's audited financial statements?
A. No, I was not. I've discussed already all of the documents that I was provided to you, both to prepare the report and that I was provided subsequent to the report.
Q. Did you ask to see Highland's audited financial statements?
A. No, I did not.
Q. Is it fair to say that the treatment of the loans in Highland's audited financial statements is irrelevant to your opinions as set forth in Exhibit 61?
A. Yes. I think that's a fair assessment.
Q. Did you ask for any documents that

are not listed in your report?
A. No, I did not.
Q. So is it fair to say that you never looked at any documents that were filed in Highland's bankruptcy case?
A. The only documents I've looked at that were filed in the bankruptcy case are the complaint and the amended answer.
Q. And you never asked for any documents that were filed in the bankruptcy case other than the documents set forth in your report, correct?
A. That's correct.
Q. As a general matter, is Highland's treatment of the loans relevant at all to your opinions?
A. No, it's not, because I was asked to make certain assumptions in connection with preparing my report.
Q. Okay. Can you identify any of the promissory notes that you were given in the last week or so?
A. Off the top of my head, I can't. I'd have to look in my files, but I recall, for

example, that there were promissory notes signed by a few different entities controlled by Mr. Dondero that were organized in different forms.
One, I believe, was HCE, but I can't recall off the top of my head if that was a limited partnership or a corporation.
Q. I take it that you have never seen any of Mr. Dondero's written responses to Highland's discovery requests?
A. That is correct.
Q. Have you ever seen any transcripts from any depositions that have been given in these adversary proceedings?
A. No, I have not.
Q. Have you ever asked to see any transcripts of any depositions that were given in these adversary proceedings?
A. No, I have not.
Q. Okay. So your opinions don't take into account any of the testimony that was adduced in any depositions that were given in these adversary proceedings, correct?
A. That's correct.

1 McGovern - 11-9-2021
2 Q. Okay.
3 MR. MORRIS: If we could turn to the
4 assumptions.
5 Okay. Right there is fine.
6 BY MR. MORRIS:
7 Q. So you were asked to assume the
8 facts that are set forth in the five numbered
9 paragraphs on this page, correct?
10 A. Yes, that's correct.
11 Q. Okay. And, in fact, you satisfied
12 yourself, have you not, that Assumed Fact
13 Number 1 is actually true, correct?
14 A. That is an assumption.
15 MR. AIGEN: Objection, form.
16 A. I don't have any basis for -- for
17 example, identifying that that's actually
18 Mr. Dondero's signature; but I was asked to
19 assume that for purposes of the report, that he
20 had signed these promissory notes.
21 BY MR. MORRIS:
22 Q. Did anybody tell you that
23 Mr. Dondero disputed his execution of the three
24 promissory notes that were given to you?
25 A. No.

1 McGovern - 11-9-2021
2 Q. Okay. Let's look at the second
3 assumed fact.
4 It says, quote: Subsequent to
5 Mr. Dondero's execution of the notes, but
6 before Highland Capital made demand for payment
7 of the notes, Highland Capital and Mr. Dondero
8 entered into an oral agreement, which I think
9 you're defining there as "the subsequent
10 agreement."
11 Have I read that correctly?
12 A. Yes, that is correct.
13 Q. Have you been given any document --
14 withdrawn.
15 Have you been given any documentary
16 evidence concerning the subsequent agreement?
17 A. No, I have not.
18 Q. Do you know whether -- has anybody
19 ever informed you whether such documentation
20 exists?
21 A. Nobody has ever suggested that to
22 me.
23 Q. Okay. Did you ask to see any
24 documents concerning the existence of the
25 subsequent agreement?

1 McGovern - 11-9-2021
2 A. No, I did not.
3 Q. And that's because you were just
4 asked to assume that the subsequent agreement
5 existed, correct?
6 A. It's because I was asked to assume
7 that there was an oral agreement, and normally
8 there would be no documentation of an oral
9 agreement.
10 Q. Okay. It's possible that after
11 somebody enters into an oral agreement,
12 somebody makes a note to -- to write down the
13 terms that were agreed to; isn't that fair?
14 A. Yes, that's possible.
15 Q. Okay. And in your expertise, would
16 you expect somebody to -- withdrawn.
17 Do you know when the subsequent --
18 withdrawn.
19 I'm going to use the phrase
20 "subsequent agreement" to refer to the
21 agreement that's described in Assumption Number
22 2. Is that okay?
23 A. Yes, that's fine.
24 Q. Okay. Do you know when the
25 subsequent agreement was entered into?

1 McGovern - 11-9-2021
2 A. I don't know the exact date. I was
3 asked to assume only that it had occurred after
4 the execution of the original promissory notes.
5 Q. Were you asked to make any
6 assumptions concerning the number of subsequent
7 agreements that were entered into between
8 Mr. Dondero and Highland Capital?
9 A. I'm sorry, could you -- could you
10 restate that?
11 Q. Were you asked to assume that there
12 was one subsequent agreement between Highland
13 Capital and Mr. Dondero or more than one
14 subsequent agreement between Highland Capital
15 and Mr. Dondero?
16 A. My assumption has been that there
17 was only a single oral agreement; however,
18 given that there were multiple promissory
19 notes, it's conceivable that there could have
20 been separate oral agreements for each note.
21 But, in general, I've been assuming a single
22 oral agreement that applied to all of the
23 notes.
24 Q. And you don't have any personal
25 knowledge regarding the number of subsequent

agreements that may exist, correct?
A. That's correct.
Q. And you weren't asked to assume that more than one subsequent agreement existed, correct?
A. That's correct.
Q. And when you prepared your report, the assumption that you made was that there was only one subsequent agreement, correct?
A. Yes, the subsequent agreement to which I refer in my report.
Q. Okay. Do you know who entered the subsequent agreement on behalf of Highland Capital?
A. No, I do not.
Q. Do you know if the subsequent agreement was ever disclosed to Highland Capital's outside auditors?
A. No, I do not.
Q. Is it fair to say that the circumstances surrounding the entry into the subsequent agreement are not relevant to your opinions as set forth in Exhibit 61?
A. Yes, that's correct, because I'm

assuming only that there was a subsequent agreement that occurred after the execution of the notes, but before demand for payment on the notes had been made.
Q. So you're not offering any opinion that the subsequent agreement actually exists, correct?
A. That's correct.
Q. And you're not offering any opinion that the terms of the subsequent agreement were reasonable, correct?
A. That's correct.
Q. You're not offering any opinion that the subsequent agreement was fair to both parties, correct?
A. That's correct.
Q. And you're not offering any opinion that the person who entered into the subsequent agreement on behalf of Highland Capital fulfilled his or her or its duties, correct?
A. That's correct.
Q. Are you offering any opinion at all about the subsequent agreement?
MR. AIGEN: Objection, form.

A. I'm offering an opinion only about the effect of the subsequent agreement, assuming that the subs- -- subsequent agreement is as I described in my report.
BY MR. MORRIS:
Q. Okay. What if I asked you to assume that there was no subsequent agreement? Would that change your opinions?
MR. AIGEN: Objection, form.
A. It -- it would not change my ultimate opinion, which is that there is no cancellation of indebtedness income for Mr. Dondero.
BY MR. MORRIS:
Q. And your opinion today is that there's no taxable income to Mr. Dondero because the conditions subsequent that you were asked to assume have not yet been satisfied; is that fair?
A. That's correct. My opinion is that there was no income for him at the time of the original loans because of his obligation to repay, and that assuming the subsequent agreement occurred, that the subsequent

agreement did not change the outcome for him, that it -- it would not cause him to have income from the -- the loans.
Q. And so if there is no subs- -- if I ask you to assume that there is no subsequent agreement, would your opinion be that Mr. Dondero therefore owes any unpaid principal and interest due under each of the notes that you've reviewed?
A. Based on the -- my review of the promissory notes, yes, that the notes are demand notes in favor of Highland Capital.
Q. Okay. Let's go to Assumed Fact Number 3. It states, quote: In the subsequent agreement between Highland Capital and Mr. Dondero, Highland Capital agreed that it would not collect on the notes unless certain conditions defined as "the conditions," could not be satisfied. In other words, Highland Capital agreed that the loans will be forgiven only if the conditions are satisfied.
Do I have that right?
A. Yes, that's correct.
Q. Okay. And -- and -- and that -- all

of that -- everything in Number 3 is -- is an assumption that you were asked to make in rendering your opinion, correct?

A. Yes, that's correct.

Q. Do you know what the conditions were?

A. I don't know the details of the conditions. I was asked to assume only that the conditions related to things beyond Mr. Dondero's control, such as the sale of certain assets above cost.

Q. Okay. That bleeds into the fourth assumption, but I just want to stick with Number 3 for the moment. Do you have any other information about what the conditions were, other than the sale of an asset above cost?

A. No, I do not.

Q. Did you ask any questions about the nature, extent, and scope of the conditions?

A. Only if whether the conditions were things beyond his control, but other than that, I did not ask for details.

Q. Were you given any information concerning the likelihood that the conditions

would be satisfied?

A. No, I was not.

Q. Did you ask any -- did you ask for any information concerning the likelihood that the conditions would be satisfied?

A. No, I did not.

Q. Is it fair to say that the opinions set forth in Exhibit 61 do not take into account the likelihood that the conditions would be satisfied?

A. I think that's an accurate statement. The -- the only assumption is that these conditions are things that will be beyond Mr. Dondero's control and subject to influences, such as market values.

Q. So the likelihood that the conditions would be satisfied was not relevant to your analysis, correct?

A. As far as probability, that's correct.

Q. Okay. And you're not offering any opinion as to the likelihood that any of the conditions would be satisfied, correct?

A. That's correct.

Q. Okay. Let's move on to the fourth assumed fact. It states, quote: Whether the conditions are satisfied was not and is not within Mr. Dondero's control because they included the condition that certain portfolio company assets be sold above cost or in a manner outside of Mr. Dondero's control.

Have I read that correctly?

A. Yes, you did.

Q. What if the satisfaction of the conditions was within Mr. Dondero's control? If you make that assumption, how does your -- how do your opinions change, if at all?

A. I'm just thinking through your question. If the conditions are within his control, then that could potentially change the outcome as to whether there was income from the discharge of indebtedness, but in order to provide an opinion on that, I would have to know the details of the conditions; that is, exactly what they are and how it is that he has control over them.

Q. Okay. So are you aware that Mr. Dondero controlled Highland prior to the

bankruptcy?

A. Yes, I am.

Q. Are you aware that he had -- I'll -- I'll ask you to assume that he had the authority to buy and sell assets on behalf of Highland. Can you -- can you accept that assumption?

A. Yes.

Q. Okay. If you -- if you accept that assumption for purposes of my hypothetical, and you also assume that the portfolio company assets that are the subject of the conditions were valued above cost at the time the subsequent agreement was entered into, would that impact your opinions if you assumed -- so I'm asking you to really make just two assumptions: Number one, Mr. Dondero had the ability to sell the portfolio company assets any time he wanted, and number two, that at the time he entered into the subsequent agreement, the value of the portfolio company assets was above cost. How did those two assumptions, if you -- if you accept them, how do they change your analysis, if -- if at all?

A. Assuming those two facts, they could change the analysis of the issue of whether Mr. Dondero had income from the cancellation of indebtedness. The key question really is whether Highland Capital, at the time of the subsequent agreement, was actually agreeing to cancel the loans at that time, or was it agreeing in the future to cancel the loans if certain conditions occurred?

If those conditions are within the control of Mr. Dondero and in effect already in place, then it's quite possible that he would have had income from the discharge of indebtedness at that time because the loans in fact had been forgiven.

Q. But you weren't ass- -- you weren't asked to assume that Highland placed any condition on the timing of the forgiveness, correct?

A. That's correct.

Q. And -- and you, in fact, were asked to assume that if the portfolio company assets were sold above cost, the loans would be forgiven, correct?

A. That's correct. Although in -- in fairness, as I've said, I don't know the details of all the conditions, but was asked to assume that they included the condition that these assets be sold above cost.

Q. Yeah, I just want to focus on -- on the assumptions that you were asked to make, so let me give you a hypothetical. Let's say one of the company assets was valued at $50 million on the date the subsequent agreement was entered into, but that Highland's cost for acquiring its interest in that asset was only $10 million, and Mr. Dondero had the ability to sell that asset at -- at any time prior to the bankruptcy filing.

Under that hypothetical, would Mr. Dondero have to realize the income?

A. If he actually sold the assets, then -- then yes.

Q. And what about if he didn't sell the assets, but that it was within his control to do so at any time?

A. It's possible that that could change the outcome, as far as whether he had income

from the cancellation of indebtedness, but if that's true, that means that the loans actually had been forgiven at that time.

MR. MORRIS: I have no further questions.

MR. AIGEN: I have one thing to clear up, I think.

EXAMINATION

BY MR. AIGEN:

Q. Early on in the deposition, when asked what your assignment was, you mentioned that you were providing an opinion on a legal issue. I just want to make sure, you we- -- you're not sitting here today opining on the law. You're applying certain facts to the law; is that correct?

A. That's correct. I am taking an assumed set of facts, and I've been asked to provide an opinion on what is the outcome on a particular legal issue as app- -- applying the law to those facts, that's correct.

MR. AIGEN: Okay. That's all I have, John.

MR. MORRIS: Okay. Thank you,

professor. I appreciate your time and -- and -- and your attention.

THE WITNESS: All right. Thank you so much.

MR. MORRIS: Okay. Have a good day.

THE WITNESS: Thank you.

MR. MORRIS: Bye, now.

THE REPORTER: Mr. Aigen, do you need a copy of this deposition?

MR. AIGEN: If we can just get a rough when one's available, and then we'll take the original whenever it's due.

(Time Noted: 10:34 a.m.)

BRUCE McGOVERN

Subscribed and sworn to before me this _____ day of _____, 2021.

McGovern - 11-9-2021

C E R T I F I C A T E

STATE OF TEXAS)
)
COUNTY OF ELLIS)

I, Daniel J. Skur, a Notary Public within and for the State of Texas, do hereby certify:

That BRUCE McGOVERN, the witness whose deposition is hereinbefore set forth, was duly sworn by me and that such deposition is a true record of the testimony given by such witness.

That pursuant to Rule 30 of the Federal Rules of Civil Procedure, signature of the witness was not reserved by the witness or other party before the conclusion of the deposition;

I further certify that I am not related to any of the parties to this action by blood or marriage; and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 9th day of November, 2021.

_____

Daniel J. Skur
Notary Public, State of Texas.
My Commission Expires 7/7/2022
TSG Reporting, Inc.
228 East 45th Street, Suite 810
New York, New York
(877) 702-9580

ERRATA SHEET

Case Name:

Deposition Date:

Deponent:

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Signature of Deponent

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(Notary Public) MY COMMISSION EXPIRES:_____

McGovern - 11-9-2021

-------I N D E X-------

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	Mr. Aigen	32

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week 14:2 16:23
withdrawn 19:14 20:16,18
witnesses 11:9
words 10:5 25:20
work 10:14,19
write 20:12
written 17:10

Z

Ziehl 5:25

Exhibit C

Privileged and Confidential - Work Product

Notes Payable to Highland

8-Apr-21

Maker	Term	Amount Owed Per Lawsuit	Original Loan Amount	Loan Date	Adversary Proceeding
Nexpoint Advisors	30 yr	23,071,195	$30,746,812	5/31/2017	21-3005
HCM Services	30 yr	6,757,249	$20,247,628	5/31/2017	21-3006
HCM Services	Demand	947,519	150,000.00	3/26/2018	21-3006
			200,000.00	6/25/2018	21-3006
			400,000.00	5/29/2019	21-3006
			150,000.00	6/26/2019	21-3006
JD	Demand	9,004,013	$3,825,000	2/2/2018	21-3003
			$2,500,000	8/1/2018	21-3003
			$2,500,000	8/13/2018	21-3003
HCRE	30 yr	6,145,467	$6,059,832	5/31/2017	21-3007
HCRE	Demand	5,012,261	100,000.00	11/27/2013	21-3007
			2,500,000.00	10/12/2017	21-3007
			750,000.00	10/15/2018	21-3007
			900,000.00	9/25/2019	21-3007
		50,937,704			

Exhibit D

From: Frank Waterhouse <FWaterhouse@HighlandCapital.com>
To: Kristin Hendrix <KHendrix@HighlandCapital.com>
Subject: RE: Wires for today
Date: Wed, 25 Nov 2020 10:01:23 -0600
Importance: Normal
Inline-Images: image001.jpg

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ok

From: Kristin Hendrix
Sent: Wednesday, November 25, 2020 10:01 AM
To: Frank Waterhouse
Subject: Wires for today

HCM			
AT&T	USD	2,845.06	
Grubhub	USD	1,422.24	
HCMFA			
HCM Insurance Acct	USD	17,373.85	Dec premiums
NPA			
HCM Insurance Acct	USD	38,453.01	Dec premiums
UMB Bank	USD	355.31	
HCFD Operating			
HCMFA	USD	61,691.00	Shared Services
HCM Insurance Acct	USD	51,779.84	Dec premiums
Eagle Equity			
HCM Insurance Acct	USD	2,323.63	Dec premiums

Okay to release?

Kristin Hendrix, CPA | Assistant Controller

HIGHLAND CAPITAL MANAGEMENT

300 Crescent Court | Suite 700 | Dallas, Texas 75201

O: 972.628.4127 | F: 972.628.4147

khendrix@highlandcapital.com | www.highlandcapital.com

Exhibit A1

From: Frank Waterhouse <FWaterhouse@HighlandCapital.com>
To: Kristin Hendrix <KHendrix@HighlandCapital.com>
Subject: RE: Wires for today
Date: Mon, 30 Nov 2020 10:45:44 -0600
Importance: Normal
Inline-Images: image001.jpg

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ok

From: Kristin Hendrix
Sent: Monday, November 30, 2020 10:46 AM
To: Frank Waterhouse
Subject: Wires for today

HCM			
Arris Western	USD	11,000.00	
HCMFA			
HCM	USD	308,374.00	Shared Services
HCFD Oper	USD	250,000.00	Equity Contribution
NPA			
HCMFA	USD	325,000.00	one day loan
HCFD Oper	USD	120,762.09	Transfer Pricing
HCFD Oper			
Sea Island	USD	23,511.90	Final Presidents Club bill
HCFD 12B-1			
HCMFA	USD	37,822.00	12B-1 Reimbursement
Falcon GP			
HCM	USD	15,000.00	Shared Services
NREA			
HCM	USD	80,000.00	Shared Services

Okay to release?

Kristin Hendrix, CPA | Assistant Controller

HIGHLAND CAPITAL MANAGEMENT

300 Crescent Court | Suite 700 | Dallas, Texas 75201

O: 972.628.4127 | F: 972.628.4147

From: Frank Waterhouse <FWaterhouse@HighlandCapital.com>
To: Kristin Hendrix <KHendrix@HighlandCapital.com>
Subject: RE: Wires for today
Date: Tue, 1 Dec 2020 12:04:49 -0600
Importance: Normal
Inline-Images: image001.jpg

---

ok

From: Kristin Hendrix
Sent: Tuesday, December 1, 2020 12:00 PM
To: Frank Waterhouse
Subject: Wires for today

HCM			
Crescent TC	USD	158,695.74	
Seery	USD	150,000.00	
Nelms	USD	30,000.00	
Dubel	USD	30,000.00	
Simek	USD	42,598.52	
HCMNY			
Times Sq	USD	27,454.67	
HCMFA			
NPA	USD	325,000.00	11/30/2020 Loan Repayment
HIGHLAND TOTAL RETURN	USD	72,912.75	Advisory Fees
HIGHLAND FIXED INCOME	USD	55,287.79	Advisory Fees
HIGHLAND/IBOXX SRLOAN ETF	USD	25,004.95	Advisory Fees
HIGHLAND SMALL CAP EQUITY	USD	19,293.59	Advisory Fees
HCFD			
Paul DeMaio	USD	2,000.00	Return of IT Holdback

Okay to send?

Kristin Hendrix, CPA | Assistant Controller

HIGHLAND CAPITAL MANAGEMENT

300 Crescent Court | Suite 700 | Dallas, Texas 75201

From: Kristin Hendrix <KHendrix@HighlandCapital.com>
To: Frank Waterhouse <FWaterhouse@HighlandCapital.com>
Cc: David Klos <DKlos@HighlandCapital.com>
Subject: FW: HCM - HCMFA/NPA
Date: Mon, 21 Dec 2020 12:30:25 -0600
Importance: Normal

FYI

From: Jack Donohue
Sent: Monday, December 21, 2020 12:15 PM
To: Kristin Hendrix
Cc: Fred Caruso
Subject: HCM - HCMFA/NPA

Kristin,

Has NPA paid the December payments $168k and 252k payments for shared service and subadvisor? The last payment I see was 11/2/2020. Has HCMFA paid the December payment of $416k? The last payment I see was on 11/2/2020.

Thanks,

Jack

Jack M. Donohue, CPA

Development Specialists, Inc.

10 South LaSalle Street, Suite 3300| Chicago, Illinois 60603

Phone: (312) 263-4141| **Fax:** (312) 263-1180

http://DSIconsulting.com/

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From: Frank Waterhouse <FWaterhouse@HighlandCapital.com>
To: Kristin Hendrix <KHendrix@HighlandCapital.com>
Subject: Re: Wires for today
Date: Wed, 23 Dec 2020 11:05:46 -0600
Importance: Normal
Inline-Images: image001.jpg

Ok

On Dec 23, 2020, at 11:00 AM, Kristin Hendrix wrote:

HCM			
HCM Ins	USD	49,213.01	health insurance premium funding
EAC	USD	36,000.00	Retainer Invoice; approved by Seery
HCMFA			
HCM Ins	USD	8,686.93	health insurance premium funding
ACA	USD	375.00	
Principal Life	USD	71.53	
NPA			
HCM Ins	USD	20,079.46	health insurance premium funding
HCFD Oper			
HCM Ins	USD	26,339.40	health insurance premium funding
EEA			
HCM Ins	USD	1,161.82	health insurance premium funding

Okay to release?

Kristin Hendrix, CPA | Assistant Controller

300 Crescent Court | Suite 700 | Dallas, Texas 75201

O: 972.628 4127 | F: 972.628 4147

khendrix@highlandcapital.com | www.highlandcapital.com

HIGHLAND CAPITAL MANAGEMENT

Exhibit E

From: Frank Waterhouse <FWaterhouse@HighlandCapital.com>
To: Kristin Hendrix <KHendrix@HighlandCapital.com>
Subject: Re: Wires for today
Date: Thu, 31 Dec 2020 12:13:42 -0600
Importance: Normal

Ok

On Dec 31, 2020, at 12:11 PM, Kristin Hendrix wrote:

HCM			
Meta-e	USD	360,384.10	approved by Seery
Houlihan Lokey	USD	41,460.00	approved by Seery
Bloomberg Finance LP	USD	16,491.04	approved by Seery
Arris Western Corp.	USD	11,000.00	approved by Seery
TW Telecom Holdings, llc	USD	6,182.17	approved by Seery
Mauro Staltari	USD	3,299.50	final Garden leave payment (processed outside of payroll)
Canteen Vending Services	USD	2,243.84	approved by Seery
Shawn Raver	USD	1,984.95	approved by Seery
Four Seasons Plantscaping	USD	481.71	approved by Seery
Action Shred of Texas	USD	450.00	approved by Seery
ProStar Services, Inc	USD	367.38	approved by Seery
UPS Supply Chain Solutions	USD	164.31	approved by Seery
HCMFA			
Shawn Raver	USD	4,631.55	
DTCC ITP LLC	USD	892.88	
NPA			
Bloomberg Finance LP	USD	26,177.78	
DST Asset Manager Solutions	USD	17,152.20	
Dallas Zoological Society	USD	9,404.00	
AnchorsGordan, PA	USD	1,605.75	
Dow Jones & Company, Inc.	USD	1,599.00	
UPS Supply Chain Solutions	USD	521.37	
CHASE COURIERS, INC	USD	24.48	
HCFD Oper			
Highland Capital Management Fund Advisors	USD	64,562.00	Nov shared services
DST Technologies, Inc.	USD	5,741.59	
UPS Supply Chain Solutions	USD	114.68	
Falcon E&P			
HCM	USD	15,000.00	Dec shared services

Exhibit A2

Exhibit F

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Exhibit G

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RE: *Highland Capital Management, L.P.* :
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EXPERT REPORT OF ALAN M. JOHNSON

MAY 28, 2021

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INTRODUCTION

I have been retained by Stinson LLP ("Stinson"), counsel to Mr. James Dondero, to provide expert opinions based on my knowledge and experience advising asset management and other financial service firms on compensation over the period 2013 to 2019. Specifically, I have been asked to independently analyze the competitiveness of compensation provided to Mr. Dondero compared to compensation received by executives and senior employees with similar experience and roles. In addition, I was asked to opine on and provide information on the use of loans in the marketplace as a form of compensation. Mr. Dondero is the Founder and, throughout the period, was the CEO, and head portfolio manager of Highland Capital Management LP ("HCM") and in that role, performed the same services for related companies and companies managed by HCM, including Highland Capital Management Financial Advisors ("HCMFA") and NexPoint Advisors ("NPA"). Market competitive compensation for Mr. Dondero during this period is relevant based on the apparent shortfall in annual compensation to Mr. Dondero. Throughout this period, he received loans in lieu of additional current compensation. Consistent with company practice, the loans were considered a form of deferred compensation that could be realized over time as the loans were forgiven and the income recognized by the individuals.

My opinions in this report are based on my experience consulting on executive compensation since 1980, my review of certain materials produced on Highland and its affiliates, and my perspectives on compensation programs for comparable senior executives and key employees in the industry.

BACKGROUND

Professional Experience

The issues I have been asked to provide opinions on are topics I have regularly encountered during many years of advising financial services firms, including asset management firms. I am an executive compensation consultant, and my firm, Johnson Associates, is a prominent boutique compensation consulting firm. My firm has specialized for many years in analyzing and advising the financial services industry, including major investment and asset management firms, hedge funds and other alternative investment firms, advisory firms, commercial banks, insurance companies, and brokerage firms.

I have extensive experience reviewing and assessing appropriate market levels of compensation for clients. I have worked as a compensation consultant since 1980. In 1992, I founded my own compensation consulting firm, Johnson Associates in New York City. Johnson Associates, where I am currently Managing Director, is a boutique firm specializing in compensation consulting for the financial services industry. We routinely consult on and have a strong understanding of market compensation levels for senior professionals and executives. Prior to founding my own firm, I was a consultant at several leading compensation advisory firms.

Our clients have included many of the world's most significant financial institutions, asset managers and alternative investment firms across a broad range of issues. A summary of my work history and education is attached as Exhibit A. I am regularly quoted on compensation issues in major publications, including *The Wall Street Journal*, *Business Week*, *The New York Times*, *Fortune*, *The Washington Post*, *Bloomberg* and many others.

Over the past 20 years, I have provided expert testimony in more than 40 cases and have been qualified as an expert in the field of executive compensation 30+ times since founding my firm in 1992 (both on the employee and employer side). A list of cases in which I have rendered expert testimony since 2016 is attached as Exhibit B.

Compensation

I am being compensated at my normal hourly rate of $715 per hour for preparing this report. My compensation is not contingent on the content of my opinions. I have been assisted in this engagement by my associate, Michael Perniciaro. Michael's normal hourly rate is $225 per hour. All opinions in this report are my own.

Facts and Data Considered

In preparing this report, I considered certain documents provided to me, interviews with Mr. Dondero and former Highland or affiliate employees. The documents include information about Highland and its related entities, Mr. Dondero's compensation history, and financial statements over the period. Importantly, given the state of document production in this case, I did not receive all the documents typical for an assessment of compensation. The result of which could lead to a conservative bias in my assessment of market competitive compensation. I have evaluated publicly disclosed proxy statements of a select group of Highland peer firms, as well as information from news sources. The information is consistent with the data and outcomes across our client studies.

SUMMARY OF OPINIONS

Based on my experience as an executive compensation consultant and my review of the compensation and other documents, it is my opinion that:

- Reasonable compensation for Mr. Dondero's role is positioned well above the market median, toward the market high end. Based on analysis and market research, it is apparent that Mr. Dondero was the key leader of the firm and deeply involved in all its operations, with contributions well beyond the traditional CEO / Chief Investment Officer role at comparators. Competitive market high-end for Mr. Dondero's role is about $6.0M per year while his actual compensation over the period was an average of about $3.0M per year. Therefore, the aggregate shortfall in compensation provided to Mr. Dondero against reasonable compensation levels in the market is at least $21M over the period I examined. Market compensation figures strictly represent Mr. Dondero's managerial responsibilities and does not include any premium as a Founder. Founders are often paid significantly more in the market.
- I understand from Mr. Dondero that the 2018 loans that are the subject of this suit were modified by an agreement in late 2018 or early 2019 under which the loans would be forgiven upon the sale at over cost of substantially all of any of three portfolio company assets held in the Highland platform, MGM, Cornerstone and/or Trussway. Based on interviews from prior employees, the use of forgivable loans was a known business practice at Highland and there was a clear expectation similar loans would be forgiven. Loans are often used both in private firms and more broadly in the market, both as a perk without forgiveness and also with forgiveness as deferred compensation.

- While I do not have sufficient data to know the capital in the firm at year end 2018,[1] the substantial amount of capital remaining in the firm at the time of bankruptcy (i.e., ≅ $399.6M) includes undistributed earnings to its Founders and primary shareholders, Mr. Dondero and Mr. Okada. For asset management firms, it is market practice to distribute most earnings annually to the firm's equity holders. The retention of the earnings in the business, further illustrate the shortfall in payments made to Mr. Dondero over the period.

[1]I have been told that the Debtor has not produced much of what was requested by Mr. Dondero and that Mr. Dondero no longer has access to the Highland server. Therefore, I understand, what information he provided was from his own accountants, recollections, and/or from companies over which he still has control.

STATEMENT OF OPINIONS

Factual Background

From my review and analysis of available materials and research, I understand the consolidated Highland business ("Highland") is a multi-strategy asset management firm focused on CLOs, hedge funds, and several private investments. Prior to the financial crisis, in 2008, Highland was very successful, reaching its peak revenue and assets under management levels. Looking at the post financial crisis period from 2013 to 2019, Highland continued to operate under the leadership of Mr. Dondero. During this period, several loans were made to Mr. Dondero. Part of my mandate was to assess market compensation levels during this period relative to firms with similar size and earnings. To do so, an assessment of Highland's financial information is necessary. I did not receive all of the financial information for HCM that I would have liked to have had because, I was told, HCM refused to produce most of the documentation requested from it. However, I was able to review the actual financials of HCMFA and NPA, and to obtain information Mr. Dondero possessed and/or recollected. The revenues for HCMFA and NPA ranged from $30.5M to $65.9M over the period with assets under management of $4.7B to $7.5B. To complete my analysis, Mr. Dondero provided his best recollection of the size and structure of the consolidated three entities stating assets under management from 2013 to 2019 ranging from $10.0B to $20.0B, with a primary focus on CLOs and an average of about $1.0B being in hedge funds. Based on the incomplete nature of my data review, there is a possibility that the market figures provided in this report could be understated based on my conservative approach, relying primarily on the documented data for HCMFA and NPA but only the recollection of Mr. Dondero for HCM, not the actual documentation, such as audited financial statements.

When examining Mr. Dondero's role at Highland relative to others in the market, it is apparent that his contributions and responsibilities exceeded the traditional duties of executive officers and lead investors who are paid significant amounts elsewhere. Mr. Dondero was the key man running daily business and operations, attracting clients, and overall investments. Given his outsized role, it would be reasonable to expect his compensation to be well above the market median. The sources utilized to ascertain specifics of his role and arrive at this conclusion include interviews with former Highland or Highland affiliate employees, as well as articles in the public domain and discussions with Mr. Dondero.

The total annual compensation for Mr. Dondero from 2013 - 2019 was $3.0M on average and the aggregate compensation over the period was $21.0M (source: W-2 filings). To assess the compensation in the market and determine the final market range, I utilized three methodologies including: (1) proxy analysis of CEOs at similarly sized, publicly traded asset management firms, (2) market research on Portfolio Manager compensation, (3) top-down analysis of typical percent of revenue allocated to CEO and/or top portfolio managers. Market compensation figures provided in this report strictly represent Mr. Dondero's managerial responsibilities and does not include any premium as a Founder.

To opine on the use of the loans as a form of compensation, I relied on market research, industry expertise, and interviews. My findings from this assessment are the use of forgivable loans was a normal business practice for Highland and there was a clear expectation they would be forgiven over time, based on varying performance criteria, depending on the employee.

An important additional consideration is the Founders, Mr. Dondero and Mr. Okada, did not receive the typical amount of distribution payments from their equity ownership. Based on the financials filed in connection with the bankruptcy, there was a significant amount of capital

in the business amounting to $399.6M. This amount includes undistributed earnings to the original equity shareholders, primarily Mr. Dondero.

Market Assessment of Executive and Investor Compensation

During my career as a compensation expert, I have had significant experience assessing and designing annual compensation awards across the financial services industry, including comparable asset management firms. Accordingly, I am familiar with typical annual compensation levels for senior executives and senior portfolio managers at comparable asset management firms. I would expect pay levels for a key individual such as Mr. Dondero to be substantial, given his contributions, responsibilities, and the competitive market for investment management pay.

To assess reasonable compensation across the competitive market range, it is important to determine Mr. Dondero's responsibilities and contributions relative to others in the industry. It is my understanding that Mr. Dondero worked tremendously long hours, was involved in all aspects of the business including investment decisions, fundraising, business management / administration and the operation of portfolio companies. An article published in the *Dallas Morning News* states, "Mr. Dondero works 70 hours weeks… his days are filled with board and investor meetings, company strategy sessions and constant monitoring and adjusting of the firm's portfolios."[2] In my opinion, Mr. Dondero's role as CEO and head portfolio manager clearly exceeds the traditional duties of executive officers who are paid significant amounts elsewhere. Based on his significant responsibilities and key man status for the firm, it would be reasonable to expect annual compensation significantly above the market median.

[2] "High Intensity Pays Off For Highland," The Dallas Morning News, September 3, 2003, https://www.pressreader.com/usa/the-dallas-morning-news/20060903/283218733648003.

The appropriate positioning for Mr. Dondero is further accentuated by the assessment of "replacement cost". If Mr. Dondero departed Highland in the period of 2013 to 2019, the cost of replacing him as CEO / head investor with a similar level of contribution across all functions would be multiples of his annual compensation. In assessing and providing market compensation for Mr. Dondero's role, I considered how his skillsets and contributions are valued in the market. My assessment of market compensation considers the cost of replacing Mr. Dondero with an outside hire.

The final market range provided in Exhibit C reflects my industry experience and expertise as well as three methodologies for determining competitive compensation magnitudes. These methodologies include: (1) proxy analysis of CEOs at similarly sized, publicly traded asset management firms over the period, (2) market research on Portfolio Manager compensation, (3) top-down analysis of typical percent of revenue allocated to CEO and/or top Portfolio Managers. Several methodologies utilized to capture Mr. Dondero's specific role as CEO and head portfolio manager. The market figures do not include any premium for being a Founder. In the market, Founders can be, and generally are, paid substantially more.

As shown below and in Exhibit E, the average annual compensation of public company asset management CEOs from 2013 to 2019 ranges from $2.1M - $4.1M. Importantly, in the market it is common for some senior investment professionals to earn more than the CEO or other corporate officers. Incorporating firm leadership functions into the investment role is a savings of sorts, as someone must still do this job.

Proxy Analysis CEO Total Compensation (Asset Management)								
	2013	2014	2015	2016	2017	2018	2019	Average
25th Percentile	$1,515	$1,680	$2,405	$1,845	$2,370	$2,310	$2,220	**$2,049**
Median	$2,600	$2,490	$2,600	$2,080	$3,380	$3,080	$2,670	**$2,700**
75th Percentile	$3,210	$2,805	$3,130	$3,815	$3,945	$3,285	$3,435	**$3,375**
90th Percentile	$4,510	$3,760	$3,840	$4,690	$4,125	$3,720	$3,990	**$4,091**

While we examined the disclosed compensation of a select group of public peers (Exhibit D), few of Highland's direct competitors are public and disclose the pay of their top investment professionals (see Exhibit F for some discussions about investment management compensation in the public domain). Instead, firms are either 1) private, or 2) if public, disclosed officers most often are not highly paid portfolio management professionals.

Specifics of individual portfolio management pay are closely guarded for competitive reasons. That said, there are some articles quoting portfolio manager pay in the public domain showing compensation for portfolio managers can be well above the competitive range for public asset management CEOs (see Exhibit F). For example, according to an article published by "efinancialcareers" top performing portfolio managers at the average Hedge Funds with greater than $4.0B assets under management earned $6.8M in total compensation.[3] While Highland's structure differs from a pure hedge fund, the skills and role responsibilities are comparable to Mr. Dondero. Another example is the CEO of the Harvard Endowment, Mr. Narvekar, earned $6.25M in 2019.[4] The McLagan "Highland Capital CEO Compensation Analysis" (April 2020) produced by HCM, shows 2018 total compensation for the Head of Alternative Credit Strategy / CIO of $4.1M at the 75th percentile and 2018 total compensation for CEO With/Without CIO Responsibilities making $5.4M at the market median and $9.6M at the market 75th percentile.

The final method for assessing compensation in the market is a top-down analysis of competitive percentages of revenue attributed to portfolio managers or their teams in the market. Based on competitive market research and industry knowledge, 10% to 12% of revenue would

[3] Dan Butcher, "Here Are the Salaries and Bonuses at Hedge Funds in the U.S.," eFinancialCareers, May 5, 2018, https://www.efinancialcareers.com/news/finance/the-salaries-and-bonuses-of-investment-professionals-at-large-hedge-fund-compensation.

[4] Janet Lorin, "Harvard Endowment Chief Narvekar $6.25 Million for 2019," Bloomberg.com (Bloomberg, May 14, 2021), https://www.bloomberg.com/news/articles/2021-05-14/harvard-paid-endowment-chief-narvekar-6-25-million-for-2019.

be within the competitive market range for someone in Mr. Dondero's role. One public example of a dual CEO and CIO sharing directly in profitability is Mario Gabelli; he earns a fixed 10% of aggregate pre-tax profit every year per his employment agreement.[5]

The final competitive range below (Exhibit C) reflects the market competitive annual total compensation range. This competitive range was determined based on my interactions with asset management firms and over 30 years of industry experience and the insights gained from the three methodologies for determining competitive market compensation outlined above. Market compensation figures strictly represent Mr. Dondero's managerial responsibilities and does not include any premium as a Founder.

Figures in 000s	**2013 - 2019 Total Annual Market Range**		
Market Match	Market Median	Market 75th Percentile	Market 90th Percentile / High-End
CEO / Portfolio Manager	$3,000	$4,250	**$6,000**

Based on the market research and the insights gained through my extensive experience advising on compensation in the industry, reasonable annual compensation for Mr. Dondero's extensive role as CEO and portfolio manager is positioned at the market high-end at **$6.0M per year**. This figure takes into account firm size, profitability, asset class, and both the investment functions, as well as responsibilities for running the firm. In summary, given his outsized role, his compensation should be positioned toward the market high-end. If the comparison was directly to hedge fund portfolio managers, the figures would be far higher (i.e., often $10M+

[5] "Schedule 14A GAMCO INVESTORS, INC.," SEC.gov, April 29, 2020, https://www.sec.gov/Archives/edgar/data/0001060349/000106034920000009/gblproxyfinal2020.htm

annually). Additionally, market figures do not include any premium for being a Founder. In the market, Founders are often paid substantially more than the market figures shown.

Mr. Dondero's aggregate compensation during the period of 2013 to 2019 is well below the reasonable market compensation level. Mr. Dondero's aggregate actual compensation from 2013 - 2019 was $21.0M (source: W-2 filings). Reasonable competitive compensation for Mr. Dondero based on our analysis of his role is $6.0M per year or $42.0M in aggregate over the period. The shortfall in actual compensation to Mr. Dondero versus reasonably expected competitive compensation levels over the period is about **$21.0M** (Exhibit C). Market figures provided do not include any premium as a Founder, which further broadens the shortfall to market. An important additional consideration is the relative lack of typical equity distributions to Mr. Dondero for his historic ownership of the firm.

Use of Loans as Compensation

In my expert opinion, the use of loans from a company to its senior professionals continues to be a common practice for private businesses. At Highland, the use of loans was a common practice with the clear expectation among senior professionals that the loans would be forgiven over time based on performance, particularly of success in specified projects. I heard from former Highland or Highland affiliate employees that similar loans were used at Highland as deferred incentive compensation and intended to be forgiven over time or on the occurrence of particular achievements.

While, for public companies, Sarbanes Oxley Section 402 explicitly prohibits publicly traded companies from making loans to executive officers it is still a common practice at private

companies.[6] The use of these loans at private companies is beneficial for retention by allowing the firm to provide annual or periodic or other forgiveness for a portion the loan and eventually forgiving the full amount. The amount of loan forgiveness is considered income to the professionals and is taxable when forgiven. This was the case at Highland as well. In a publicly available article for the *Dow Jones Private Equity Analyst – Global Compensation Study*, two Proskauer partners outline the tax regulations for similar loans to professionals.[7]

Market Practices on Equity Distributions

It is the standard practice in the market to distribute the majority of earnings to equity owners each year for asset management businesses. Based on the financials filed in connection with the bankruptcy, there was a significant amount of capital in the business equaling $399.6M. This amount included undistributed earnings to the primary equity holders, Mr. Dondero and Mr. Okada. Highland did not distribute these earnings based on their philosophy of "delayed gratification". This policy has been in place since the inception of the firm, including the peak years prior to the financial crisis. Very recently, the "delayed gratification" approach paid off in connection with Highland's private direct investment in MGM which was announced to be acquired by Amazon with significant economics attached.[8]

[6] Sarbanes-Oxley Act (2002).

[7] Michael J Album and James E Gregory, "Human Capital Considerations For Maturing Private Equity Firms," Dow Jones Private Equity Analyst-Global Compensation Study, 2012, pp. 84-96, https://www.proskauer.com/insights/download-pdf/1930.

[8] Annie Palmer, "Amazon to Buy MGM Studios for $8.45 Billion," CNBC (CNBC, May 26, 2021), https://www.cnbc.com/2021/05/26/amazon-to-buy-mgm-studios-for-8point45-billion.html.

CONCLUSION

It is my opinion that Mr. Dondero's aggregate compensation from 2013 to 2019 is significantly below the reasonable competitive compensation level for his role relative to similarly situated firms. In aggregate, the total shortfall in Mr. Dondero's actual compensation versus reasonable competitive compensation is at least $21.0M. This shortfall does not include any premium as a Founder, which could be considerable. Additionally, it is my opinion that the loans provided to Mr. Dondero should be considered potential deferred compensation as they were similar to loans given to other professionals at the firm. Lastly, the significant amount of capital in the business at the time of bankruptcy is at least partially attributable to Mr. Dondero as un-recognized payments as a prior equity holder, and indicates the rationale for having the potential for considerable deferred compensation.

* * *

I reserve the right to supplement this report and/or to supplement or modify my opinions in light of any additional facts or data that may come to my attention.

Dated: May 28, 2021

Respectfully submitted,

Alan Johnson
Johnson Associates, Inc.
19 West 44th Street, Suite 511
New York, NY 10036
Phone: (212) 221-740

Exhibit A: Work History and Education

Alan M. Johnson
Johnson Associates, Inc.
19 West 44th Street, Suite 511
New York, NY 10036
(212) 221-7400

Professional Experience

- Entire career as executive compensation consultant

Years	Firm	Title or Equivalent	Duties
1980 – 1983	Hewitt Associates	Consultant	Executive Compensation Consultant
1983 – 1986	Sibson & Company	Principal	Executive Compensation Consultant
1986 – 1989	Frederic W. Cook & Co.	Partner/Shareholder	Executive Compensation Consultant
1989 – 1990	Handy Associates	Managing Director	Executive Compensation Consultant
1990 – 1992	GKR	Managing Director	Executive Compensation Consultant
1992 – Present	Johnson Associates, Inc.	Managing Director	Executive Compensation Consultant

Education

1973 – 1975	U.S. Naval Academy
1975 – 1977	University of Florida, B.A. (History/Economics)
1977 – 1978	University of Virginia, Graduate Economics
1978 – 1980	University of Chicago, M.B.A. (Finance)

Consulting focus:

- Since about 1990 the bulk of my consulting efforts have involved advising major financial and professional service firms. I consult on the design and magnitudes of compensation programs for senior executives on a regular basis. I am quoted extensively in the press on compensation issues related to major financial service firms.

Exhibit B: Alan M. Johnson Prior Expert Testimony for Previous Five Years

LAW FIRM:	CASE:	COURT:	
Schulte Roth & Zabel LLP	Mark Rohman and Sean Cunningham v. Capstone Advisory Group, LLC.	Arbitration	(April 2016)
Gibson Dunn & Crutcher LLP	United States v. Greebel	Eastern District of NY	(December 2017)
Cohen Tauber Spievack & Wagner P.C.	Jeffry Brown v. Neuberger Berman Group LLC, and NB Alternatives Advisers LLC	Arbitration	(January 2018)
Gibson Dunn & Crutcher LLP	Robert Emerson Mulholland v. UBS Financial Services Inc.	FINRA Dispute Resolution Arbitration	(December 2018)
Proskauer Rose LLP	Damian Dalla-Longa v. Magnetar Capital LLC	Arbitration	(September 2019)
Skadden, Arps, Slate, Meagher & Flom LLP	Isaly v. OrbiMed	Arbitration	(January 2020)
Pachulski Stang Ziehl & Jones LLP	RTI Holding Company vs. Debtors	Delaware Bankruptcy Court	(December 2020)

Exhibit C: Actual Compensation vs. Estimated Market Compensation Range

Mr. Dondero Actual Compensation (2013 - 2019)

Notes: Mr. Dondero's compensation reflects amounts disclosed in W-2 filings for 2013 to 2019

- Does not include equity distributions over the period; typically, not included in competitive assessments of compensation.

James Dondero Compensation									
Income	**2013**	**2014**	**2015**	**2016**	**2017**	**2018**	**2019**	**Total**	**Average**
Highland Capital Management W-2 Income	$1,911,538	$3,282,693	$2,875,058	$772,904	$566,370	$566,370	$568,542	$10,543,475	$1,506,211
Nexpoint Residential Trust W-2 Income	--	--	--	--	--	$893,262	--	$893,262	--
NextPoint Advisors W-2 Income	--	--	--	$1,628,736	$3,118,250	$2,870,278	$1,953,455	$9,570,718	$2,392,679
Total W-2 Income (Source: W-2)	**$1,911,538**	**$3,282,693**	**$2,875,058**	**$2,401,639**	**$3,684,620**	**$4,329,910**	**$2,521,996**	**$21,007,455**	**$3,001,065**

Estimated Market Compensation Range

Notes: Market annual total compensation range reflecting my direct interactions with asset management firms and over 30 years of industry experience

- We have factored in Mr. Dondero's out-sized role / contributions on both the investment management and firm-stewardship responsibilities where applicable.
- Greater than findings from public proxy analysis reflecting higher compensation to portfolio managers in the market / alternatives space.
- Represents finding from the 3 methodologies outlined for determining market compensation.
- Market compensation figures strictly represent Mr. Dondero's managerial responsibilities and does not include any premium as a Founder

Figures in 000s	**2013 - 2019 Total Annual Market Range**		
Market Match	Market Median	Market 75th Percentile	Market 90th Percentile / High-End
CEO / Portfolio Manager	$3,000	$4,250	**$6,000**

Compensation Shortfall

Notes: In my opinion, reasonable competitive annual compensation for Mr. Dondero over the period is $6.0M, positioning him toward the market high-end to reflect his out-sized role and contribution to the firm

Aggregate Reasonable Competitive Compensation	$42,000,000
Less: Actual Total Compensation	$21,007,455
Shortfall in Compensation	**$20,992,545**

Exhibit D: Select Public Peer Comparators

Notes:

- Industry consolidation continues to shrink pool of publicly available compensation data for the asset management industry, even at much larger firms than Highland
- Group intended to represent a range of firms that are relevant but not perfectly similar
- Disclosure of Portfolio Manager positions limited as typically not included in publicly filed data (no compulsion to disclose as with executive officers)
- Highland data includes good faith estimate of consolidated entities assets under management during the period. Actual financials not assessed due to the non-disclosure of Highland Capital Management ("HCM") information. Data for "HCMFA" and "NPA" reviewed.

	Assets Under Management ($B)							Revenue ($M)						
Peers	**2019**	**2018**	**2017**	**2016**	**2015**	**2014**	**2013**	**2019**	**2018**	**2017**	**2016**	**2015**	**2014**	**2013**
Asset Management														
Cohen & Steers	$72	$55	$62	$60	$53	$53	--	$411	$381	$378	$350	$329	$314	$298
Pzena Investment	$41	$33	$39	$30	$26	$28	$25	$151	$154	$141	$108	$117	$113	$96
Silvercrest	$25	$19	$21	$19	$18	$18	$16	$102	$99	$91	$80	$75	$69	$60
Diamond Hill	$23	$19	$22	$19	$17	$16	$12	$137	$146	$145	$136	$124	$105	$81
Manning & Napier	$19	$20	$25	$32	$35	$48	$51	$136	$161	$202	$249	$328	$405	$376
Westwood Holdings	$15	$17	$24	$21	$21	$20	$19	$84	$122	$134	$123	$131	$113	$92
Hennessy Advisors	$5	$6	$7	$7	$6	$6	$4	$43	$55	$53	$51	$45	$35	$24
Main Street Capital	$4	$3	$3	--	--	--	--	$173	$214	$235	--	--	--	--
Consolidated Highland*	--	$10.0	$14.0	$15.0	$18.0	$20.0	$19.0	--	--	--	--	--	--	--
Highland Hedge Fund*		$1.9	$1.0	$0.9	$1.3	$1.0	$0.7	--	--	--	--	--	--	--
HCMFA & NP (only)	$7.5	$6.1	$5.1	$4.8	$5.2	$5.7	$4.7	$66	$52	$42	$41	$50	$31	$31

*Represents estimated for the consolidated three entities. Financial for Highland Capital Management ("HCM") not provided by the debtor

Exhibit E: Proxy Analysis Disclosed Public Peer CEO Compensation (2013 - 2019)

Notes:

- Reflects disclosed senior executive officer compensation in $ thousands
- CEO not necessarily the highest paid employee at any given firm
- Senior investment professionals' pay often not disclosed and can be greater than CEO
- GAMCO not included; Mr. Gabelli receives 10% of aggregate pre-tax profit annually
- Indicates awards granted for performance each, not outstanding or fully vested compensation
- Where applicable, partial year salaries annualized. One-time awards annualized over appropriate vesting periods. Performance share values reflects target award values; does not reflect payouts from past cycles

Summary of Proxy Analysis

Proxy Analysis CEO Total Compensation (Asset Management)								
	2013	2014	2015	2016	2017	2018	2019	Average
25th Percentile	$1,515	$1,680	$2,405	$1,845	$2,370	$2,310	$2,220	**$2,049**
Median	$2,600	$2,490	$2,600	$2,080	$3,380	$3,080	$2,670	**$2,700**
75th Percentile	$3,210	$2,805	$3,130	$3,815	$3,945	$3,285	$3,435	**$3,375**
90th Percentile	$4,510	$3,760	$3,840	$4,690	$4,125	$3,720	$3,990	**$4,091**

Proxy Analysis by Year and Individual

Chief Executive Officer - 2019											
Company	Executive	Position	Base Salary	Cash Bonus	Total Cash	Stock Options	Restricted Shares	Perf Shares	Total Long Term	One-Time (Annualized)	Total Comp
Cohen & Steers	Steers, R.	CEO	$750	$835	**$1,585**	$0	$2,915	$0	**$2,915**	$0	**$4,500**
Manning & Napier	Mayer, M.	CEO	$500	$2,250	**$2,750**	$145	$755	$0	**$900**	$0	**$3,650**
Silvercrest	Hough, R.	Pres & CEO	$700	$1,000	**$1,700**	$800	$475	$0	**$1,275**	$240	**$3,215**
Main Street Capital	Hyzak, D.	CEO	$625	$650	**$1,275**	$0	$1,395	$0	**$1,395**	$0	**$2,670**
Pzena Investment	Pzena, R.	Chairman, CEO, & Co-CIO	$365	$685	**$1,055**	$0	$1,425	$0	**$1,425**	$0	**$2,480**
Hennessy Advisors	Hennessy, N.	Chairman & CEO	$350	$1,455	**$1,805**	$0	$155	$0	**$155**	$0	**$1,960**
Westwood Holdings	Casey, B.	President & CEO	$650	$0	**$650**	$0	$0	$0	**$0**	$0	**$650**
25th Percentile			$435	$670	$1,165	$0	$315	$0	$530	$0	$2,220
50th Percentile			$625	$835	$1,585	$0	$755	$0	$1,275	$0	$2,670
75th Percentile			$675	$1,230	$1,755	$75	$1,410	$0	$1,410	$0	$3,435
90th Percentile			$720	$1,775	$2,185	$405	$2,020	$0	$2,020	$95	$3,990

Exhibit E: Proxy Analysis Disclosed Public Peer CEO Compensation (2013 - 2019)

Chief Executive Officer - 2018

Company	Executive	Position	Base Salary	Cash Bonus	Total Cash	Stock Options	Restricted Shares	Perf Shares	Total Long Term	One-Time (Annualized)	Total Comp
Cohen & Steers	Steers, R.	CEO	$750	$650	**$1,400**	$0	$2,355	$0	**$2,355**	$0	**$3,755**
Westwood Holdings	Casey, B.	President & CEO	$650	$1,065	**$1,715**	$0	$0	$1,995	**$1,995**	$0	**$3,710**
Pzena Investment	Pzena, R.	Chairman, CEO, & CIO	$365	$995	**$1,360**	$0	$1,925	$0	**$1,925**	$0	**$3,285**
Main Street Capital	Hyzak, D.	CEO	$555	$1,400	**$1,955**	$0	$1,275	$0	**$1,275**	$0	**$3,230**
Silvercrest	Hough, R.	CEO	$700	$1,600	**$2,300**	$500	$40	$0	**$540**	$240	**$3,080**
Hennessy Advisors	Hennessy, N.	CEO	$350	$2,420	**$2,770**	$0	$220	$0	**$220**	$0	**$2,990**
Diamond Hill	Bingaman, C.	President & CEO	$300	$500	**$800**	$0	$1,000	$0	**$1,000**	$510	**$2,310**
Manning & Napier	Coons, J.	Co-CEO & President	$400	$520	**$920**	$0	$0	$0	**$0**	$0	**$920**
Manning & Napier	Goldberg, R.	Co-CEO & Director	$750	$0	**$750**	$0	$155	$0	**$155**	$0	**$905**
25th Percentile			**$365**	**$520**	**$920**	**$0**	**$40**	**$0**	**$220**	**$0**	**$2,310**
50th Percentile			**$555**	**$995**	**$1,400**	**$0**	**$220**	**$0**	**$1,000**	**$0**	**$3,080**
75th Percentile			**$700**	**$1,400**	**$1,955**	**$0**	**$1,275**	**$0**	**$1,925**	**$0**	**$3,285**
90th Percentile			**$750**	**$1,765**	**$2,395**	**$100**	**$2,010**	**$400**	**$2,065**	**$295**	**$3,720**

Chief Executive Officer - 2017

Company	Executive	Position	Base Salary	Cash Bonus	Total Cash	Stock Options	Restricted Shares	Perf Shares	Total Long Term	One-Time (Annualized)	Total Comp
Westwood Holdings	Casey, B.	CEO	$650	$1,540	**$2,190**	$0	$0	$1,995	**$1,995**	$0	**$4,185**
Cohen & Steers	Steers, R.	CEO	$750	$735	**$1,485**	$0	$2,615	$0	**$2,615**	$0	**$4,100**
Main Street Capital	Foster, V.	Chairman, CEO	$610	$1,500	**$2,110**	$0	$1,780	$0	**$1,780**	$0	**$3,890**
Hennessy Advisors	Hennessy, N.	President & CEO	$350	$3,240	**$3,590**	$0	$245	$0	**$245**	$0	**$3,835**
Pzena Investment	Pzena, R.	CEO, Co-CIO	$365	$2,560	**$2,925**	$0	$0	$0	**$0**	$0	**$2,925**
Silvercrest	Hough, R.	CEO	$700	$1,500	**$2,200**	$0	$40	$0	**$40**	$240	**$2,480**
Diamond Hill	Bingaman, C.	President & CEO	$300	$550	**$850**	$0	$0	$0	**$0**	$1,180	**$2,030**
Manning & Napier	Stamey, C.	Co-CEO, Sales / Distribution	$300	$1,140	**$1,440**	$0	$135	$0	**$135**	$0	**$1,575**
25th Percentile			**$340**	**$1,040**	**$1,475**	**$0**	**$0**	**$0**	**$30**	**$0**	**$2,370**
50th Percentile			**$490**	**$1,500**	**$2,150**	**$0**	**$90**	**$0**	**$190**	**$0**	**$3,380**
75th Percentile			**$665**	**$1,795**	**$2,380**	**$0**	**$630**	**$0**	**$1,835**	**$60**	**$3,945**
90th Percentile			**$715**	**$2,765**	**$3,125**	**$0**	**$2,030**	**$600**	**$2,180**	**$520**	**$4,125**

Chief Executive Officer - 2016

Company	Executive	Position	Base Salary	Cash Bonus	Total Cash	Stock Options	Restricted Shares	Perf Shares	Total Long Term	One-Time (Annualized)	Total Comp
Westwood Holdings	Casey, B.	CEO	$650	$1,350	**$2,000**	$0	$0	$3,955	**$3,955**	$0	**$5,955**
Cohen & Steers	Steers, R.	CEO	$750	$675	**$1,425**	$0	$2,425	$0	**$2,425**	$0	**$3,850**
Hennessy Advisors	Hennessy, N.	President & CEO	$350	$3,075	**$3,425**	$0	$350	$0	**$350**	$0	**$3,775**
Diamond Hill	Bingaman, C.	President & CEO	$300	$600	**$900**	$0	$0	$0	**$0**	$1,180	**$2,080**
Pzena Investment	Pzena, R.	CEO, Co-CIO	$365	$1,600	**$1,965**	$0	$0	$0	**$0**	$0	**$1,965**
Silvercrest	Hough, R.	CEO	$700	$725	**$1,425**	$0	$55	$0	**$55**	$240	**$1,720**
Manning & Napier	Manning, W.	CEO	$1,400	$0	**$1,400**	$0	$0	$0	**$0**	$0	**$1,400**
25th Percentile			**$360**	**$640**	**$1,415**	**$0**	**$0**	**$0**	**$0**	**$0**	**$1,845**
50th Percentile			**$650**	**$725**	**$1,425**	**$0**	**$0**	**$0**	**$55**	**$0**	**$2,080**
75th Percentile			**$725**	**$1,475**	**$1,985**	**$0**	**$205**	**$0**	**$1,390**	**$120**	**$3,815**
90th Percentile			**$1,010**	**$2,190**	**$2,570**	**$0**	**$1,180**	**$1,580**	**$3,035**	**$615**	**$4,690**

Exhibit E: Proxy Analysis Disclosed Public Peer CEO Compensation (2013 - 2019)

Chief Executive Officer - 2015

Company	Executive	Position	Base Salary	Cash Bonus	Total Cash	Stock Options	Restricted Shares	Perf Shares	Total Long Term	One-Time (Annualized)	Total Comp
Westwood Holdings	Casey, B.	President, CEO	$600	$2,065	**$2,665**	$0	$0	$2,090	**$2,090**	$0	**$4,755**
Hennessy Advisors	Hennessy, N.	President & CEO	$350	$2,515	**$2,865**	$0	$370	$0	**$370**	$0	**$3,230**
Cohen & Steers	Steers, R.	CEO	$750	$485	**$1,235**	$0	$1,790	$0	**$1,790**	$0	**$3,025**
Diamond Hill	Dillon, R.	CEO	$360	$640	**$1,000**	$0	$0	$1,600	**$1,600**	$0	**$2,600**
Manning & Napier	Cunningham, P.	CEO	$500	$0	**$500**	$0	$0	$2,000	**$2,000**	$0	**$2,500**
Pzena Investment	Pzena, R.	CEO, Co-CIO	$380	$605	**$980**	$0	$0	$1,330	**$1,330**	$0	**$2,310**
Silvercrest	Hough, R.	CEO	$700	$725	**$1,425**	$0	$240	$0	**$240**	$0	**$1,665**
25th Percentile			**$370**	**$545**	**$990**	**$0**	**$0**	**$0**	**$850**	**$0**	**$2,405**
50th Percentile			**$500**	**$640**	**$1,235**	**$0**	**$0**	**$1,330**	**$1,600**	**$0**	**$2,600**
75th Percentile			**$650**	**$1,395**	**$2,045**	**$0**	**$305**	**$1,800**	**$1,895**	**$0**	**$3,130**
90th Percentile			**$720**	**$2,245**	**$2,745**	**$0**	**$940**	**$2,035**	**$2,035**	**$0**	**$3,840**

Chief Executive Officer - 2014

Company	Executive	Position	Base Salary	Cash Bonus	Total Cash	Stock Options	Restricted Shares	Perf Shares	Total Long Term	One-Time (Annualized)	Total Comp
Westwood Holdings	Casey, B.	President, CEO	$600	$1,995	**$2,595**	$0	$0	$2,060	**$2,060**	$0	**$4,650**
Cohen & Steers	Steers, R.	CEO	$750	$460	**$1,210**	$0	$1,660	$0	**$1,660**	$0	**$2,870**
Diamond Hill	Dillon, R.	CEO	$360	$640	**$1,000**	$0	$0	$1,600	**$1,600**	$0	**$2,600**
Hennessy Advisors	Hennessy, N.	President & CEO	$350	$1,750	**$2,100**	$0	$280	$0	**$280**	$0	**$2,380**
Silvercrest	Hough, R.	CEO	$650	$725	**$1,375**	$0	$70	$0	**$70**	$0	**$1,445**
Manning & Napier	Cunningham, P.	CEO	$500	$495	**$995**	$0	$0	$0	**$0**	$0	**$995**
25th Percentile			**$395**	**$530**	**$1,055**	**$0**	**$0**	**$0**	**$125**	**$0**	**$1,680**
50th Percentile			**$550**	**$685**	**$1,295**	**$0**	**$35**	**$0**	**$940**	**$0**	**$2,490**
75th Percentile			**$640**	**$1,495**	**$1,920**	**$0**	**$230**	**$1,200**	**$1,645**	**$0**	**$2,805**
90th Percentile			**$700**	**$1,875**	**$2,350**	**$0**	**$970**	**$1,830**	**$1,860**	**$0**	**$3,760**

Chief Executive Officer - 2013

Company	Executive	Position	Base Salary	Cash Bonus	Total Cash	Stock Options	Restricted Shares	Perf Shares	Total Long Term	One-Time (Annualized)	Total Comp
Manning & Napier	Cunningham, P.	CEO	$500	$1,500	**$2,000**	$0	$4,020	$0	**$4,020**	$0	**$6,020**
Westwood Holdings	Casey, B.	President, CEO	$600	$1,505	**$2,105**	$0	$0	$1,395	**$1,395**	$0	**$3,500**
Cohen & Steers	Steers, R.	CEO	$750	$365	**$1,115**	$0	$1,800	$0	**$1,800**	$0	**$2,915**
Diamond Hill	Dillon, R.	CEO	$360	$640	**$1,000**	$0	$0	$1,600	**$1,600**	$0	**$2,600**
Hennessy Advisors	Hennessy, N.	President & CEO	$350	$1,170	**$1,520**	$0	$90	$0	**$90**	$0	**$1,610**
Pzena Investment	Pzena, R.	CEO, Co-CIO	$280	$1,145	**$1,420**	$0	$0	$0	**$0**	$0	**$1,420**
Silvercrest	Hough, R.	CEO	$500	$600	**$1,100**	$0	$70	$0	**$70**	$0	**$1,170**
25th Percentile			**$355**	**$620**	**$1,110**	**$0**	**$0**	**$0**	**$80**	**$0**	**$1,515**
50th Percentile			**$500**	**$1,145**	**$1,420**	**$0**	**$70**	**$0**	**$1,395**	**$0**	**$2,600**
75th Percentile			**$550**	**$1,335**	**$1,760**	**$0**	**$945**	**$700**	**$1,700**	**$0**	**$3,210**
90th Percentile			**$660**	**$1,500**	**$2,040**	**$0**	**$2,690**	**$1,475**	**$2,690**	**$0**	**$4,510**

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Documents Reviewed

Data Items Reviewed from Debtor

- Bates Label Range: D-JDNL-017439 to D-JDNL-017441

Data Items Reviewed:

- Bates Label Range: EXPERT 0000001 to EXPERT 0002316

Individual Documents - Starting Bates Label

- Expert 1 – EXPERT 0000001
- Expert 1 – EXPERT 0000003
- Expert 1 – EXPERT 0000004
- Expert 1 – EXPERT 0000024
- Expert 1 – EXPERT 0000026
- Expert 1 – EXPERT 0000028
- Expert 1 – EXPERT 0000030
- Expert 1 – EXPERT 0000365
- Expert 1 – EXPERT 0000367
- Expert 1 – EXPERT 0000372
- Expert 1 – EXPERT 0000383
- Expert 1 – EXPERT 0000384
- Expert 1 – EXPERT 0000385
- Expert 1 – EXPERT 0000387
- Expert 1 – EXPERT 0000389
- Expert 1 – EXPERT 0000679
- Expert 1 – EXPERT 0000703
- Expert 1 – EXPERT 0000928
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- Expert 1 – EXPERT 0000970
- Expert 1 – EXPERT 0000972
- Expert 1 – EXPERT 0000974
- Expert 1 – EXPERT 0000979
- Expert 1 – EXPERT 0001003
- Expert 1 – EXPERT 0001021
- Expert 1 – EXPERT 0001023
- Expert 1 – EXPERT 0001324
- Expert 1 – EXPERT 0001578
- Expert 1 – EXPERT 0001579
- Expert 1 – EXPERT 0001580
- Expert 1 – EXPERT 0001581
- Expert 1 – EXPERT 0001881
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- Expert 1 – EXPERT 0001935
- Expert 1 – EXPERT 0001957
- Expert 1 – EXPERT 0001975
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- Expert 1 – EXPERT 0002233
- Expert 1 – EXPERT 0002234
- Expert 1 – EXPERT 0002253
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Exhibit H

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Ira D. Kharasch (CA Bar No. 109084) (*admitted pro hac vice*)
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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re: HIGHLAND CAPITAL MANAGEMENT, L.P. Debtor.	§ § § § §	Case No. 19-34054 Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P., Plaintiff. v. JAMES D. DONDERO, NANCY DONDERO, AND THE DUGABOY INVESTMENT TRUST, Defendants.	§ § § § § § § § §	Adversary No. 21-03003-sgj
HIGHLAND CAPITAL MANAGEMENT, L.P., Plaintiff. v. NEXPOINT ADVISORS, L.P., JAMES DONDERO, NANCY DONDERO, AND THE DUGABOY INVESTMENT TRUST, Defendants.	§ § § § § § § § § §	Adversary No.: 21-03005-sgj

HIGHLAND CAPITAL MANAGEMENT, L.P., Plaintiff. v. HIGHLAND CAPITAL MANAGEMENT SERVICES, INC., JAMES DONDERO, NANCY DONDERO, AND THE DUGABOY INVESTMENT TRUST, Defendants.	§ § § § § § § § § § § §	Adversary No.: 21-03006-sgj
HIGHLAND CAPITAL MANAGEMENT, L.P., Plaintiff. v. HCRE PARTNERS, LLC (n/k/a NEXPOINT REAL ESTATE PARTNERS, LLC), JAMES DONDERO, NANCY DONDERO AND THE DUGABOY INVESTMENT TRUST, Defendants.	§ § § § § § § § § § § §	Adversary No.: 21-03007-sgj

HIGHLAND'S RESPONSES AND OBJECTIONS TO
DEFENDANTS' JOINT DISCOVERY REQUESTS

Highland Capital Management, L.P., the reorganized debtor[1] ("Highland" or, as may be temporally required, the "Debtor") in the above-captioned chapter 11 case (the "Bankruptcy Case") and plaintiff in the above-captioned adversary proceedings (the "Adversary Proceedings"), hereby responds to *Defendants' Joint Discovery Requests To Highland Capital Management, L.P.* (the "Requests")[2] served by defendants James Dondero ("Mr. Dondero"), Nancy Dondero, ("Ms.

[1] On February 22, 2021, the Bankruptcy Court entered the *Order (i) Confirming the Fifth Amended Plan of Reorganization (as Modified) and (ii) Granting Related Relief* [Docket No. 1943] (the "Confirmation Order") which confirmed the *Fifth Amended Plan of Reorganization of Highland Capital* Management, *L.P.*, as modified (the "Plan"). The Plan went Effective (as defined in the Plan) on August 11, 2021, and Highland is the Reorganized Debtor (as defined in the Plan) since the Effective Date. *See Notice of Occurrence of Effective Date of Confirmed Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 2700].

[2] Capitalized terms not defined herein shall have the meanings ascribed to them in the Requests.

Dondero"), The Dugaboy Investment Trust ("Dugaboy"), NexPoint Advisors, L.P. ("NexPoint"), Highland Capital Management Services, Inc. ("HCMS"), and NexPoint Real Estate Partners, LLC ("NREP") (collectively, "Defendants"). Highland's responses and objections to the Requests (the "Responses") are made pursuant to Federal Rules of Civil Procedure ("FRCP") 26, 33, and 34 as made applicable in bankruptcy cases pursuant to Federal Rules of Bankruptcy Procedure 7026, 7033, and 7034.

GENERAL OBJECTIONS

Unless otherwise specified, the following general objections and caveats are applicable to each and every Response and are incorporated into each Response as though set forth in full:

1. The Responses contained herein are based upon information presently known and ascertained by the Highland and Highland reserves the right to amend, supplement, or modify these Responses during depositions or otherwise.

2. Highland objects to the Requests to the extent they seek information or documents that are protected from discovery by the attorney-client privilege, the attorney work product doctrine or any other privilege or immunity. The inadvertent disclosure or production of any document that is protected from discovery by any privilege or immunity shall not constitute a waiver of any such privilege or immunity. All references in these objections and responses to Highland's agreement to produce documents shall be construed to mean non-privileged documents.

3. Highland objects to the Requests to the extent they request information that is not reasonably or readily available to it, in its possession, custody or control, or is more readily available to the Defendants from another source or for which the burden of obtaining such information is not substantially greater for the Defendants than it is for Highland.

4. Highland objects to the Requests to the extent they call for legal conclusions and/or analyses.

5. All specific responses to the Requests are provided without waiver of, and with express reservation of (a) all objections as to competency, relevancy, materiality, and admissibility of the responses and the subject matter thereof as evidence for any purpose in any further proceedings in this matter; (b) all privileges, including the attorney-client privilege and work product doctrine; (c) the right to object to the use of such responses, or the subject matter thereof, on any ground in any further proceeding in this action; and (d) the right to object on any ground at any time to a demand or request for further responses to these or any other discovery requests or other discovery proceedings.

6. Highland objects to the Requests to the extent they seek to expand on or conflict with Federal Rules of Civil Procedure, the Federal Rules of Bankruptcy Procedure and/or the Local Rules of the Bankruptcy Court for the Northern District of Texas.

7. Highland's agreement to produce documents with respect to a specific Request shall not be construed as a representation that such documents actually exist or are within Plaintiff's possession, custody or control.

8. Notwithstanding Highland's production of certain documents that were lodged on the main docket or in one or more of the Adversary Proceedings, Highland has not reviewed all documents lodged therein and reserves the right to use, reply upon, or offer into evidence any such documents.

9. Unless indicated otherwise, Highland's search for responsive documents and communications covers the period December 1, 2018 to the present.

10. These General Objections and Responses shall be deemed to be incorporated by reference into the Specific Responses and Objections set forth below.

SPECIFIC OBJECTIONS AND RESPONSES TO DOCUMENT REQUESTS

REQUEST FOR PRODUCTION NO. 1:

Produce all documents and communications supporting or related to the allegation in the Amended Complaints that "Debtor believes that the Alleged Agreement is a fiction created after the commencement of this Adversary Proceeding for the purpose of avoiding or at least delaying paying the obligations due under the notes."

RESPONSE:

Subject to the General Objections, Highland will conduct a reasonable search for, and produce, documents responsive to Request for Production No. 1, including using search terms and identifying custodians that the Debtor believes are most likely to yield responsive information.

REQUEST FOR PRODUCTION NO. 2:

Produce all documents and communications supporting or related to your Avoidance and Recovery of Actual Fraudulent Transfer claims (Counts 3 and 4 of the Amended Complaint) made against James Dondero.

RESPONSE:

Subject to the General Objections, Highland will conduct a reasonable search for, and produce, documents responsive to Request for Production No. 2, including using search terms and identifying custodians that the Debtor believes are most likely to yield responsive information.

REQUEST FOR PRODUCTION NO. 3:

Produce all documents and communications supporting or related to your Declaratory Relief claims (Count 5 of the Amended Complaint) made against Dugaboy and Nancy Dondero.

RESPONSE:

Subject to the General Objections, Highland will conduct a reasonable search for, and produce, documents responsive to Request for Production No. 3, including using search terms and identifying custodians that the Debtor believes are most likely to yield responsive information.

REQUEST FOR PRODUCTION NO. 4:

Produce all documents and communications supporting or related to your Breach of Fiduciary Duty claims (Count 6 of the Amended Complaint) made against Dugaboy and Nancy Dondero.

RESPONSE:

Subject to the General Objections, Highland will conduct a reasonable search for, and produce, documents responsive to Request for Production No. 4, including using search terms and identifying custodians that the Debtor believes are most likely to yield responsive information.

REQUEST FOR PRODUCTION NO. 5:

Produce all documents and communications supporting or related to your Aiding and Abetting a Breach of Fiduciary Duty claims (Count 7 of the Amended Complaint) against James Dondero and Nancy Dondero.

RESPONSE:

Subject to the General Objections, Highland will conduct a reasonable search for, and produce, documents responsive to Request for Production No. 5, including using search terms and identifying custodians that the Debtor believes are most likely to yield responsive information.

REQUEST FOR PRODUCTION NO. 6:

Produce all documents and communications supporting or related to your Avoidance and Recovery of Actual Fraudulent Transfer claims (Counts 3 and 4 of the Amended Complaint) made against NPA.

RESPONSE:

Subject to the General Objections, Highland will conduct a reasonable search for, and produce, documents responsive to Request for Production No. 6, including using search terms and identifying custodians that the Debtor believes are most likely to yield responsive information.

REQUEST FOR PRODUCTION NO. 7:

Produce all documents and communications supporting or related to your Avoidance and Recovery of Actual Fraudulent Transfer claims (Counts 3 and 4 of the Amended Complaint) made against HCMS.

RESPONSE:

Subject to the General Objections, Highland will conduct a reasonable search for, and produce, documents responsive to Request for Production No. 7, including using search terms and identifying custodians that the Debtor believes are most likely to yield responsive information.

REQUEST FOR PRODUCTION NO. 8:

Produce all documents and communications supporting or related to your Avoidance and Recovery of Actual Fraudulent Transfer claims (Counts 3 and 4 of the Amended Complaint) made against HCRE.

RESPONSE:

Subject to the General Objections and this specific objection, Highland will conduct a reasonable search for, and produce, documents responsive to Request for Production No. 8, including using search terms and identifying custodians that the Debtor believes are most likely to yield responsive information. Highland reserves its right to supplement its Response to this Request in light of ongoing discovery.

REQUEST FOR PRODUCTION NO. 9:

Produce all documents and communications supporting or related to your Avoidance and Recovery of Actual Fraudulent Transfer claims (Counts 3 and 4 of the Amended Complaint) made against James Dondero.

RESPONSE:

Subject to the General Objections, Highland will conduct a reasonable search for, and produce, documents responsive to Request for Production No. 9, including using search terms and identifying custodians that the Debtor believes are most likely to yield responsive information.

REQUEST FOR PRODUCTION NO. 10:

Produce all documents and communications supporting or related to any damages that you are seeking pursuant to your Amended Complaints.

RESPONSE:

Subject to the General Objections, Highland will conduct a reasonable search for, and produce, documents responsive to Request for Production No. 10, including using search terms and identifying custodians that the Debtor believes are most likely to yield responsive information.

REQUEST FOR PRODUCTION NO. 11:

Produce all documents and communications supporting or related to the allegation in the Amended Complaints that, "At all relevant times, Mr. Dondero controlled the Debtor."

RESPONSE:

Subject to the General Objections, Highland will conduct a reasonable search for, and produce, documents responsive to Request for Production No. 11, including using search terms and identifying custodians that the Debtor believes are most likely to yield responsive information.

REQUEST FOR PRODUCTION NO. 12:

Produce all documents and communications related to the Alleged Agreement referenced in the Amended Complaints.

RESPONSE:

In response to Request for Production No. 12, Highland states that it is not aware of any documents responsive to this Request.

REQUEST FOR PRODUCTION NO. 13:

Produce all documents and communications supporting or related to the allegation in the Amended Complaints that "the Debtor's books and records do not reflect the Alleged Agreement."

RESPONSE:

Subject to the General Objections, Highland will conduct a reasonable search for, and produce, documents responsive to Request for Production No. 13, including using search terms and identifying custodians that the Debtor believes are most likely to yield responsive information.

REQUEST FOR PRODUCTION NO. 14:

Produce all documents and communications supporting or related to the allegation in the Amended Complaints that "Dugaboy was not authorized to enter into the Alleged Agreement on behalf of the Partnership or otherwise bind the Partnership (as "Partnership" is defined in the Limited Partnership Agreement.)"

RESPONSE:

Subject to the General Objections, Highland will conduct a reasonable search for, and produce, documents responsive to Request for Production No. 14, including using search terms and identifying custodians that the Debtor believes are most likely to yield responsive information.

REQUEST FOR PRODUCTION NO. 15:

Produce all documents and communications supporting or related to the allegation in the Amended Complaints that "Mr. Dondero did not inform the Debtor's CFO or outside auditor's about the Alleged Agreement."

RESPONSE:

Subject to the General Objections, Highland will conduct a reasonable search for, and produce, documents responsive to Request for Production No. 15, including using search terms and identifying custodians that the Debtor believes are most likely to yield responsive information.

REQUEST FOR PRODUCTION NO. 16:

Produce all communications between the Debtor and Debtor's outside auditor.

RESPONSE:

Highland objects to Request for Production No. 16 on the grounds that it is overly broad, unduly burdensome, and not proportional to the needs of the case. *See* Fed. R. Civ. P. 26(b)(1). Subject to the General Objections and these specific objections, Highland will conduct a reasonable search for, and produce, documents responsive to Request for Production No. 16, including using search terms and identifying custodians that the Debtor believes are most likely to yield responsive information concerning or relating to the Notes.

REQUEST FOR PRODUCTION NO. 17:

Produce all communications between the Debtor and Debtor's outside auditor related to any allegations in the Amended Complaints.

RESPONSE:

Subject to the General Objections, Highland will conduct a reasonable search for, and produce, documents responsive to Request for Production No. 17, including using search terms and identifying custodians that the Debtor believes are most likely to yield responsive information.

REQUEST FOR PRODUCTION NO. 18:

Produce all communications between Mr. Dondero and Debtor's CFO (as that term is used in the Amended Complaints) related to the Notes.

RESPONSE:

Subject to the General Objections, Highland will conduct a reasonable search for, and produce, documents responsive to Request for Production No. 18, including using search terms and identifying custodians that the Debtor believes are most likely to yield responsive information.

REQUEST FOR PRODUCTION NO. 19:

Produce all documents and communications supporting or related to the allegation in the Amended Complaints that "Nancy Dondero also lacked the authority to enter into the Alleged Agreement or to otherwise bind the Debtor."

RESPONSE:

Subject to the General Objections, Highland will conduct a reasonable search for, and produce, documents responsive to Request for Production No. 19, including using search terms and identifying custodians that the Debtor believes are most likely to yield responsive information.

REQUEST FOR PRODUCTION NO. 20:

Produce all communications between Nancy Dondero and James Dondero.

RESPONSE:

Highland objects to Request for Production No. 20 on the grounds that it is overly broad, unduly burdensome, and not proportional to the needs of the case to the extent it asks for "all" communications between Nancy Dondero and James Dondero. *See* Fed. R. Civ. P. 26(b)(1). Subject to the General Objections and these specific objections, Highland will conduct a reasonable search for, and produce, documents responsive to Request for Production No. 20, including using search terms and identifying custodians that the Debtor believes are most likely to yield responsive information concerning or relating to the allegations in the Amended Complaint or the Notes or the Amended Answer.

REQUEST FOR PRODUCTION NO. 21:

Produce all communications between Nancy Dondero and James Dondero related to the allegations in the Amended Complaints.

RESPONSE:

Subject to the General Objections, Highland will conduct a reasonable search for, and produce, documents responsive to Request for Production No. 21, including using search terms and identifying custodians that the Debtor believes are most likely to yield responsive information.

REQUEST FOR PRODUCTION NO. 22:

Produce all communications between Nancy Dondero and James Dondero related to James Dondero's compensation from the Debtor.

RESPONSE:

Subject to the General Objections, Highland will conduct a reasonable search for, and produce, documents responsive to Request for Production No. 22, including using search terms and identifying custodians that the Debtor believes are most likely to yield responsive information.

REQUEST FOR PRODUCTION NO. 23:

Produce all documents and communications supporting or related to the allegations in the Amended Complaints that each of the Defendants entered into the "Alleged Agreement with actual intent to hinder, delay, or defraud a present or future creditor."

RESPONSE:

Subject to the General Objections, Highland will conduct a reasonable search for, and produce, documents responsive to Request for Production No. 23, including using search terms and identifying custodians that the Debtor believes are most likely to yield responsive information.

REQUEST FOR PRODUCTION NO. 24:

Produce all documents and communications supporting or related to the allegation in the Amended Complaints that the "Alleged Agreement was not subject to negotiation."

RESPONSE:

Subject to the General Objections, Highland will conduct a reasonable search for, and produce, documents responsive to Request for Production No. 24, including using search terms and identifying custodians that the Debtor believes are most likely to yield responsive information.

REQUEST FOR PRODUCTION NO. 25:

Produce all documents and communications supporting or related to the allegation in the Amended Complaints that "the value of the consideration received by the Debtor for the transfers was not reasonably equivalent value."

RESPONSE:

Subject to the General Objections, Highland will conduct a reasonable search for, and produce, documents responsive to Request for Production No. 25, including using search terms and identifying custodians that the Debtor believes are most likely to yield responsive information.

REQUEST FOR PRODUCTION NO. 26:

Produce all documents and communications evidencing the value of the Notes.

RESPONSE:

Subject to the General Objections, Highland will conduct a reasonable search for, and produce, documents responsive to Request for Production No. 26.

REQUEST FOR PRODUCTION NO. 27:

Produce all documents and communications evidencing the value of the consideration received by the Debtor related to the Notes.

RESPONSE:

Subject to the General Objections, Highland will conduct a reasonable search for, and produce, documents responsive to Request for Production No. 27, including using search terms and identifying custodians that the Debtor believes are most likely to yield responsive information.

REQUEST FOR PRODUCTION NO. 28:

Produce all documents and communications supporting or related to the allegation in the Amended Complaints that James Dondero and Nancy Dondero "were aware that Dugaboy would have fiduciary duties to the Debtor if it acted to bind the Debtor."

RESPONSE:

Subject to the General Objections, Highland will conduct a reasonable search for, and produce, documents responsive to Request for Production No. 28, including using search terms and identifying custodians that the Debtor believes are most likely to yield responsive information.

REQUEST FOR PRODUCTION NO. 29:

Produce all documents and communications supporting any damages you are seeking related to the Amended Complaints.

RESPONSE:

Highland objects to Request for Production No. 29 on the ground that it is duplicative of Request for Production No. 10. Subject to the General Objections and this specific objection, Highland incorporates by reference its Response to Request for Production No. 10.

REQUEST FOR PRODUCTION NO. 30:

Produce all documents and communications relating to the solvency and financial condition of the Debtor.

RESPONSE:

Highland objects to Request for Production No. 30 on the grounds that it is overly broad, unduly burdensome, and not proportional to the needs of the case. *See* Fed. R. Civ. P. 26(b)(1). Subject to the General Objections, Highland will conduct a reasonable search for, and produce, documents responsive to Request for Production No. 30.

REQUEST FOR PRODUCTION NO. 31:

Produce all monthly balance sheets of the Debtor for the period from January 1, 2013 to the present.

RESPONSE:

Highland objects to Request for Production No. 31 on the grounds that it is overly broad, unduly burdensome, and not proportional to the needs of the case. *See* Fed. R. Civ. P. 26(b)(1). Subject to the General Objections, Highland will conduct a reasonable search for, and produce, documents responsive to Request for Production No. 31.

REQUEST FOR PRODUCTION NO. 32:

Produce all of the Debtor's internal monthly reporting packages for the period from January 1, 2013 to the present.

RESPONSE:

Highland objects to Request for Production No. 32 on the grounds that it is overly broad, unduly burdensome, and not proportional to the needs of the case. *See* Fed. R. Civ. P. 26(b)(1). Subject to the General Objections, Highland will conduct a reasonable search for, and produce, documents responsive to Request for Production No. 32.

REQUEST FOR PRODUCTION NO. 33:

Produce all of the Debtor's financial statements for the period from January 1, 2013 to the present.

RESPONSE:

Highland objects to Request for Production No. 33 on the grounds that it is overly broad, unduly burdensome, and not proportional to the needs of the case. *See* Fed. R. Civ. P. 26(b)(1). Subject to the General Objections, Highland will conduct a reasonable search for, and produce, documents responsive to Request for Production No. 33.

REQUEST FOR PRODUCTION NO. 34:

Produce all "loan summaries" of the Debtor for the period from January 1, 2013 to the present.

RESPONSE:

Highland objects to Request for Production No. 34 on the grounds that it is overly broad, unduly burdensome, and not proportional to the needs of the case. *See* Fed. R. Civ. P. 26(b)(1). Subject to the General Objections, Highland will conduct a reasonable search for, and produce, documents responsive to Request for Production No. 34.

REQUEST FOR PRODUCTION NO. 35:

Produce all of the Debtor's audited financial statements for the period from January 1, 2013 to the present.

RESPONSE:

Highland objects to Request for Production No. 35 on the ground that Highland has previously produced documents responsive to this Request and does not intend to produce all such documents again.

REQUEST FOR PRODUCTION NO. 36:

Produce all valuation reports, including all annual and/or periodic valuation reports, and all other documents reflecting the enterprise value and/or asset value of the following entities:

Trussway Holdings, LLC, Trussway Industries, LLC, MGM Holdings, and Cornerstone Healthcare for the period from January 1, 2013 to the present.

RESPONSE:

Highland objects to Request for Production No. 36 on the grounds that it is overly broad, unduly burdensome, and not proportional to the needs of the case. *See* Fed. R. Civ. P. 26(b)(1). Subject to the General Objections, Highland will conduct a reasonable search for, and produce, documents responsive to Request for Production No. 36.

REQUEST FOR PRODUCTION NO. 37:

Produce all valuation reports, including all annual and/or periodic valuation reports, and all other documents reflecting the enterprise value and/or asset value of all entities and assets owned, directly or indirectly, by the following entities and in which the Debtor has an interest: Highland Select Equity Fund, L.P., Highland Restoration Capital Partners, L.P., Highland CLO Funding, Ltd., Highland Multi Strategy Credit Fund, L.P., Highland Capital Management Korea Limited, and Cornerstone Healthcare.

RESPONSE:

Highland objects to Request for Production No. 37 on the grounds that it is overly broad, unduly burdensome, not proportional to the needs of the case, and not relevant to the parties' claims or defense. *See* Fed. R. Civ. P. 26(b)(1). .

REQUEST FOR PRODUCTION NO. 38:

Produce all documents showing the financial performance of the following entities for the period from January 1, 2013 to the present: (i) the Debtor; (ii) all of the Debtor's Managed Funds; (iii) all of the Debtor's subsidiaries, both direct and indirect majority-owned; (iv) all Affiliates of the Debtor; and (v) any other entity owned, controlled, and/or managed by the Debtor.

RESPONSE:

Highland objects to Request for Production No. 38 on the grounds that it is overly broad, unduly burdensome, not proportional to the needs of the case, and not relevant to the parties' claims or defense. *See* Fed. R. Civ. P. 26(b)(1).

REQUEST FOR PRODUCTION NO. 39:

Produce all financial statements for the following entities for the period from January 1, 2013 to the present: (i) the Debtor; (ii) all of the Debtor's Managed Funds; (iii) all of the Debtor's subsidiaries, both direct and indirect majority-owned; (iv) all Affiliates of the Debtor; and (v) any other entity owned, controlled, and/or managed by the Debtor.

RESPONSE:

Highland objects to Request for Production No. 39 on the grounds that it is overly broad, unduly burdensome, not proportional to the needs of the case, and not relevant to the parties' claims or defense. *See* Fed. R. Civ. P. 26(b)(1).

REQUEST FOR PRODUCTION NO. 40:

Produce all monthly balance sheets for the following entities for the period from January 1, 2013 to the present: (i) the Debtor; (ii) all of the Debtor's Managed Funds; (iii) all of the Debtor's subsidiaries, both direct and indirect majority-owned; (iv) all Affiliates of the Debtor; and (v) any other entity owned, controlled, and/or managed by the Debtor.

RESPONSE:

Highland objects to Request for Production No. 40 on the grounds that it is overly broad, unduly burdensome, not proportional to the needs of the case, and not relevant to the parties' claims or defense. *See* Fed. R. Civ. P. 26(b)(1).

REQUEST FOR PRODUCTION NO. 41:

Produce all internal monthly reporting packages for the following entities for the period from January 1, 2013 to the present: (i) the Debtor; (ii) all of the Debtor's Managed Funds; (iii) all of the Debtor's subsidiaries, both direct and indirect majority-owned; (iv) all Affiliates of the Debtor; and (v) any other entity owned, controlled, and/or managed by the Debtor.

RESPONSE:

Highland objects to Request for Production No. 41 on the grounds that it is overly broad, unduly burdensome, not proportional to the needs of the case, and not relevant to the parties' claims or defense. *See* Fed. R. Civ. P. 26(b)(1).

REQUEST FOR PRODUCTION NO. 42:

Produce all documents reflecting the assets under management for the following entities for the period from January 1, 2013 to the present: (i) the Debtor; (ii) all of the Debtor's Managed Funds; (iii) all of the Debtor's subsidiaries, both direct and indirect majority-owned; (iv) all Affiliates of the Debtor; and (v) any other entity owned, controlled, and/or managed by the Debtor.

RESPONSE:

Highland objects to Request for Production No. 42 on the grounds that it is overly broad, unduly burdensome, not proportional to the needs of the case, and not relevant to the parties' claims or defense. *See* Fed. R. Civ. P. 26(b)(1).

REQUEST FOR PRODUCTION NO. 43:

Produce all documents reflecting the investment results and/or performance for the following entities for the period from January 1, 2013 to the present: (i) the Debtor; (ii) all of the Debtor's Managed Funds; (iii) all of the Debtor's subsidiaries, both direct and indirect majority-owned; (iv) all Affiliates of the Debtor; and (v) any other entity owned, controlled, and/or managed by the Debtor.

RESPONSE:

Highland objects to Request for Production No. 43 on the grounds that it is overly broad, unduly burdensome, not proportional to the needs of the case, and not relevant to the parties' claims or defense. *See* Fed. R. Civ. P. 26(b)(1).

REQUEST FOR PRODUCTION NO. 44:

Produce all documents reflecting marketing materials for the following entities for the period from January 1, 2013 to the present: (i) the Debtor; (ii) all of the Debtor's Managed Funds; (iii) all of the Debtor's subsidiaries, both direct and indirect majority-owned; (iv) all Affiliates of the Debtor; and (v) any other entity owned, controlled, and/or managed by the Debtor.

RESPONSE:

Highland objects to Request for Production No. 44 on the grounds that it is overly broad, unduly burdensome, not proportional to the needs of the case, and not relevant to the parties' claims or defense. *See* Fed. R. Civ. P. 26(b)(1).

REQUEST FOR PRODUCTION NO. 45:

Produce all documents related to any employment and/or shareholder or partnership agreement between Dondero, on the one hand, and any of the following entities on the other hand, for the period from January 1, 2013 to the present: (i) the Debtor; (ii) all of the Debtor's Managed Funds; (iii) all of the Debtor's subsidiaries, both direct and indirect majority-owned; (iv) all Affiliates of the Debtor; (v) any other entity owned, controlled, and/or managed by the Debtor; and (vi) Strand Advisors, Inc.

RESPONSE:

Highland objects to Request for Production No. 45 on the grounds that it is overly broad, unduly burdensome, not proportional to the needs of the case, and not relevant to the parties' claims or defense. *See* Fed. R. Civ. P. 26(b)(1).

REQUEST FOR PRODUCTION NO. 46:

Produce all documents related to any compensation (including, without limitation, base salary, annual bonus, long-term incentives, equity distributions, equity interests, perks, long-term awards, loans, forgiveness of debt, or otherwise) received by Dondero from any of the following entities for the period from January 1, 2010 to the present: (i) the Debtor; (ii) all of the Debtor's Managed Funds; (iii) all of the Debtor's subsidiaries, both direct and indirect majority-owned; (iv) all Affiliates of the Debtor; (v) any other entity owned, controlled, and/or managed by the Debtor; and (vi) Strand Advisors, Inc.

RESPONSE:

Highland objects to Request for Production No. 46 on the grounds that it is overly broad, unduly burdensome, not proportional to the needs of the case, and not relevant to the parties' claims or defense. *See* Fed. R. Civ. P. 26(b)(1). Subject to the General Objections and these specific objections, Highland will conduct a reasonable search for, and produce, documents responsive to this Request to the extent they relate to (i) the Debtor.

REQUEST FOR PRODUCTION NO. 47:

Produce all documents related to any compensation (including, without limitation, base salary, annual bonus, long-term incentives, equity distributions, equity interests, perks, long-term awards, loans, forgiveness of debt, or otherwise) received by any Related Entity for Dondero or on Dondero's behalf, from any of the following entities for the period from January 1, 2010 to the present: (i) the Debtor; (ii) all of the Debtor's Managed Funds; (iii) all of the Debtor's subsidiaries,

both direct and indirect majority-owned; (iv) all Affiliates of the Debtor; (v) any other entity owned, controlled, and/or managed by the Debtor; and (vi) Strand Advisors, Inc.

RESPONSE:

Highland objects to Request for Production No. 47 on the grounds that it is overly broad, unduly burdensome, not proportional to the needs of the case, and not relevant to the parties' claims or defense. *See* Fed. R. Civ. P. 26(b)(1).

REQUEST FOR PRODUCTION NO. 48:

Produce all documents reflecting and/or relating to any organizational charts for any of the following entities for the period from January 1, 2013 to the present: (i) the Debtor; (ii) all of the Debtor's Managed Funds; (iii) all of the Debtor's subsidiaries, both direct and indirect majority-owned; (iv) all Affiliates of the Debtor; (v) any other entity owned, controlled, and/or managed by the Debtor; and (vi) Strand Advisors, Inc.

RESPONSE:

Highland objects to Request for Production No. 48 on the grounds that it is overly broad, unduly burdensome, not proportional to the needs of the case, and not relevant to the parties' claims or defense. *See* Fed. R. Civ. P. 26(b)(1). Subject to the forgoing objection, Highland refers the Defendants to documents filed on this main docket in the above-referenced bankruptcy case.

REQUEST FOR PRODUCTION NO. 49:

Produce all documents reflecting and/or relating to Dondero's employment, investment, and/or managerial role(s) in any of the following entities for the period from January 1, 2013 to the present: (i) the Debtor; (ii) all of the Debtor's Managed Funds; (iii) all of the Debtor's subsidiaries, both direct and indirect majority-owned; (iv) all Affiliates of the Debtor; (v) any other entity owned, controlled, and/or managed by the Debtor; and (vi) Strand Advisors, Inc.

RESPONSE:

Highland objects to Request for Production No. 49 on the grounds that it is overly broad, unduly burdensome, not proportional to the needs of the case, and not relevant to the parties' claims or defense. *See* Fed. R. Civ. P. 26(b)(1).

REQUEST FOR PRODUCTION NO. 50:

Produce the Debtor's "books and records" referred to in paragraph 66(j) of the Amended Complaint filed against Defendant James Dondero.

RESPONSE:

Subject to the General Objections, Highland will conduct a reasonable search for, and produce, documents responsive to Request for Production No. 50.

REQUEST FOR PRODUCTION NO. 51:

Produce all documents and communications evidencing any action taken by any limited partner of the Debtor to (i) take part in the control (within the meaning of the Delaware Act) of the Partnership's business; (ii) transact any business in the Partnership's name; and/or (iii) sign any documents or otherwise bind the Partnership in accordance with the LPA.

RESPONSE:

Highland objects to Request for Production No. 51 on the grounds that it is overly broad, unduly burdensome, not proportional to the needs of the case, and not relevant to the parties' claims or defense. *See* Fed. R. Civ. P. 26(b)(1).

REQUEST FOR PRODUCTION NO. 52:

Produce all documents and communications evidencing the value of the HCRE Notes.

RESPONSE:

Subject to the General Objections and these specific objections, Highland will conduct a reasonable search for, and produce, documents responsive to Request for Production No. 52.

REQUEST FOR PRODUCTION NO. 53:

Produce all documents and communications evidencing the value of the HCMS Notes.

RESPONSE:

Subject to the General Objections and these specific objections, Highland will conduct a reasonable search for, and produce, documents responsive to Request for Production No. 53.

REQUEST FOR PRODUCTION NO. 54:

Produce all documents and communications evidencing the value of the NPA Note.

RESPONSE:

Subject to the General Objections and these specific objections, Highland will conduct a reasonable search for, and produce, documents responsive to Request for Production No. 54.

REQUEST FOR PRODUCTION NO. 55:

Produce all documents and communications evidencing the value of the Dondero Notes.

RESPONSE:

Subject to the General Objections and these specific objections, Highland will conduct a reasonable search for, and produce, documents responsive to Request for Production No. 55.

REQUEST FOR PRODUCTION NO. 56:

Produce the loan documentation for all loans made by Debtor to any then-current executive, consultant, or employee of Debtor or any related Person.

RESPONSE:

Highland objects to Request for Production No. 56 on the grounds that (a) it is overly broad, unduly burdensome, not proportional to the needs of the case, and not relevant to the parties' claims or defense, *see* Fed. R. Civ. P. 26(b)(1), and (b) the phrases "loan documentation," "consultant," and "any related Person" are vague and ambiguous. Subject to the General Objections and these specific objections, Highland states that loans made by Debtor to any then-current executive, employee, or related party are identified and described in Highland's audited financial statements previously produced to James Dondero.

REQUEST FOR PRODUCTION NO. 57:

Produce all documents reflecting the payment status of all loans identified in response to the above (No. 56) Request for Production, and if forgiven, all documents reflecting the conditions for forgiveness.

RESPONSE:

Highland objects to Request for Production No. 57 on the grounds that (a) it is overly broad, unduly burdensome, not proportional to the needs of the case, and not relevant to the parties' claims or defenses, *see* Fed. R. Civ. P. 26(b)(1), and (b) the phrases "loan documentation," "consultant," and "any related Person" in Request for Production No. 56 are vague and ambiguous. Subject to the General Objections and these specific objections, Highland states that loans made by Debtor to any then-current executive, employee, or related party are identified and described in Highland's audited financial statements previously produced to James Dondero.

REQUEST FOR PRODUCTION NO. 58:

Produce all documents related to any audits of the Debtor from 2013 forward, including, but not limited to, any management letters, audit notes, and audit files.

RESPONSE:

Highland objects to Request for Production No. 58 on the grounds that it is overly broad, unduly burdensome, not proportional to the needs of the case, and not relevant to the parties' claims or defense. *See* Fed. R. Civ. P. 26(b)(1). Subject to the General Objections and these specific objections, Highland and PricewaterhouseCoopers previously produced documents responsive to Request for Production No. 58.

REQUEST FOR PRODUCTION NO. 59:

Produce all documents related to the sale or potential sale of any portfolio companies of the Debtor or interests in any portfolio companies owned by the Debtor, including, but not limited to, MGM, Trussway, and Cornerstone.

RESPONSE:

Highland objects to Request for Production No. 59 on the grounds that (a) it is overly broad, unduly burdensome, not proportional to the needs of the case, and not relevant to the parties' claims or defenses, *see* Fed. R. Civ. P. 26(b)(1), and (b) the phrase "potential sale" is vague and

ambiguous. Subject to the General Objections and these specific objections, Highland states that it has no documents responsive to Request for Production No. 59.

RESPONSES TO REQUESTS FOR ADMISSIONS

REQUEST FOR ADMISSION NO. 1:

Admit that Highland Capital Management, L.P. entered into the Fourth Amended and Restated Agreement of Limited Partnership of Highland Capital Management, L.P. (the "LPA"), on or about December 24, 2015.

RESPONSE:

Deny. Highland Capital Management, L.P. did not enter into, and is not a party to, the LPA.

REQUEST FOR ADMISSION NO. 2:

Admit that the LPA provided that the Majority Interest of Highland Capital Management, L.P. could approve compensation for the General Partner and its Affiliates (as those terms are defined in the LPA).

RESPONSE:

Deny. Request for Admission No. 2 inaccurately summarizes Section 3.10 of the LPA, which speaks for itself.

REQUEST FOR ADMISSION NO. 3:

Admit that James Dondero was an Affiliate of the General Partner in 2017 (as those terms are defined in the LPA).

RESPONSE:

Admit.

REQUEST FOR ADMISSION NO. 4:

Admit that James Dondero was an Affiliate of the General Partner in 2018 (as those terms are defined in the LPA).

RESPONSE:

Admit.

REQUEST FOR ADMISSION NO. 5:

Admit that James Dondero was an Affiliate of the General Partner in 2019 (as those terms are defined in the LPA).

RESPONSE:

Admit.

REQUEST FOR ADMISSION NO. 6:

Admit that James Dondero was an Affiliate of the General Partner in 2020 (as those terms are defined in the LPA).

RESPONSE:

Admit that James Dondero was an Affiliate of the General Partner from January 1 through January 9, 2020, and otherwise deny Request for Admission No. 6 on the basis of the corporate governance settlement that Mr. Dondero entered into and that was approved by the Court. See Docket Nos. 338 and 339.

REQUEST FOR ADMISSION NO. 7:

Admit that the Dugaboy Family Trust held a Majority Interest in Highland Capital Management, L.P. in 2017 (as those terms are defined in the LPA).

RESPONSE:

Deny. "Dugaboy Family Trust" is neither a defined term nor a party to the LPA.

REQUEST FOR ADMISSION NO. 8:

Admit that the Dugaboy Family Trust held a Majority Interest in Highland Capital Management, L.P. in 2018 (as those terms are defined in the LPA).

RESPONSE:

Deny. "Dugaboy Family Trust" is neither a defined term nor a party to the LPA.

REQUEST FOR ADMISSION NO. 9:

Admit that the Dugaboy Family Trust held a Majority Interest in Highland Capital Management, L.P. in 2019 (as those terms are defined in the LPA).

RESPONSE:

Deny. "Dugaboy Family Trust" is neither a defined term nor a party to the LPA.

REQUEST FOR ADMISSION NO. 10:

Admit that the Dugaboy Family Trust held a Majority Interest in Highland Capital Management, L.P. in 2020 (as those terms are defined in the LPA).

RESPONSE:

Deny. "Dugaboy Family Trust" is neither a defined term nor a party to the LPA.

REQUEST FOR ADMISSION NO. 11:

Admit that Nancy Dondero was the Dugaboy Family Trustee (as defined in the LPA) in 2017.

RESPONSE:

HCMLP objects to Request for Admission No. 11 on the ground that "Dugaboy Family Trust" is not defined in the LPA. HCMLP denies knowledge or information sufficient to form a belief as to the truth of the matter asserted in Request for Admission No. 11. HCMLP acknowledges that the Defendants apparently contend that Nancy Dondero was the Dugaboy Family Trustee in 2017.

REQUEST FOR ADMISSION NO. 12:

Admit that Nancy Dondero was the Dugaboy Family Trustee (as defined in the LPA) in 2018.

RESPONSE:

HCMLP objects to Request for Admission No. 12 on the ground that "Dugaboy Family Trust" is not defined in the LPA. HCMLP denies knowledge or information sufficient to form a belief as to the truth of the matter asserted in Request for Admission No. 12. HCMLP acknowledges that the Defendants apparently contend that Nancy Dondero was the Dugaboy Family Trustee in 2018.

REQUEST FOR ADMISSION NO. 13:

Admit that Nancy Dondero was the Dugaboy Family Trustee (as defined in the LPA) in 2019.

RESPONSE:

HCMLP objects to Request for Admission No. 13 on the ground that "Dugaboy Family Trust" is not defined in the LPA. HCMLP denies knowledge or information sufficient to form a belief as to the truth of the matter asserted in Request for Admission No. 13. HCMLP acknowledges that the Defendants apparently contend that Nancy Dondero was the Dugaboy Family Trustee in 2019.

REQUEST FOR ADMISSION NO. 14:

Admit that Nancy Dondero was the Dugaboy Family Trustee (as defined in the LPA) in 2020.

RESPONSE:

HCMLP objects to Request for Admission No. 14 on the ground that "Dugaboy Family Trust" is not defined in the LPA. HCMLP denies knowledge or information sufficient to form a belief as to the truth of the matter asserted in Request for Admission No. 14. HCMLP acknowledges that the Defendants apparently contend that Nancy Dondero was the Dugaboy Family Trustee in 2020.

REQUEST FOR ADMISSION NO. 15:

Admit that James Dondero was the primary beneficiary and the lifetime beneficiary of Dugaboy in 2017.

RESPONSE:

HCMLP denies knowledge or information sufficient to form a belief as to the truth of the matters asserted in Request for Admission No. 15. HCMLP acknowledges that Mr. Dondero contends that he is the primary beneficiary and the lifetime beneficiary of Dugaboy and that HCMLP has relied on such contentions in other aspects of the Bankruptcy Case.

REQUEST FOR ADMISSION NO. 16:

Admit that James Dondero was the primary beneficiary and the lifetime beneficiary of Dugaboy in 2018.

RESPONSE:

HCMLP denies knowledge or information sufficient to form a belief as to the truth of the matters asserted in Request for Admission No. 16. HCMLP acknowledges that Mr. Dondero contends that he is the primary beneficiary and the lifetime beneficiary of Dugaboy and that HCMLP has relied on such contentions in other aspects of the Bankruptcy Case.

REQUEST FOR ADMISSION NO. 17:

Admit that James Dondero was the primary beneficiary and the lifetime beneficiary of Dugaboy in 2019.

RESPONSE:

HCMLP denies knowledge or information sufficient to form a belief as to the truth of the matters asserted in Request for Admission No. 17. HCMLP acknowledges that Mr. Dondero contends that he is the primary beneficiary and the lifetime beneficiary of Dugaboy and that HCMLP has relied on such contentions in other aspects of the Bankruptcy Case.

REQUEST FOR ADMISSION NO. 18:

Admit that James Dondero was the primary beneficiary and the lifetime beneficiary of Dugaboy in 2020.

RESPONSE:

HCMLP denies knowledge or information sufficient to form a belief as to the truth of the matters asserted in Request for Admission No. 18. HCMLP acknowledges that Mr. Dondero contends that he is the primary beneficiary and the lifetime beneficiary of Dugaboy and that HCMLP has relied on such contentions in other aspects of the Bankruptcy Case.

REQUEST FOR ADMISSION NO. 19:

Admit that the Debtor's assets (including assets held through direct or indirect subsidiaries) exceeded its liabilities as of December 31, 2017.

RESPONSE:

Deny because the Debtor's assets (including assets held through direct or indirect subsidiaries) did not exceed its liabilities as of December 31, 2017.

REQUEST FOR ADMISSION NO. 20:

Admit that the Debtor's assets (including assets held through direct or indirect subsidiaries) exceeded its liabilities in January 2018.

RESPONSE:

Deny because the Debtor's assets (including assets held through direct or indirect subsidiaries) did not exceed its liabilities as of December 31, 2018.

REQUEST FOR ADMISSION NO. 21:

Admit that the Debtor's assets (including assets held through direct or indirect subsidiaries) exceeded its liabilities as of December 31, 2018.

RESPONSE:

Deny because the Debtor's assets (including assets held through direct or indirect subsidiaries) did not exceed its liabilities as of December 31, 2018.

REQUEST FOR ADMISSION NO. 22:

Admit that the Debtor's assets (including assets held through direct or indirect subsidiaries) exceeded its liabilities as of December 31, 2019.

RESPONSE:

Deny because the Debtor's assets (including assets held through direct or indirect subsidiaries) did not exceed its liabilities as of December 31, 2019.

REQUEST FOR ADMISSION NO. 23:

Admit that within Highland each of MGM, Cornerstone and Trussway were referred to as "Portfolio Companies."

RESPONSE:

Highland objects to Request for Admission No. 24 on the ground that the phrase "within Highland" is vague and ambiguous.

OBJECTIONS AND RESPONSES TO INTERROGATORIES

INTERROGATORY NO. 1:

Identify all damages that you are seeking against each of the Defendants, including, how those damages are calculated.

RESPONSE:

Against each maker of each Notes, HCMLP seeks damages in an amount equal to (a) all unpaid principal under each Note, (b) all accrued and unpaid interest under each Note, and (c) all actual expenses of collection, including court costs, and reasonable attorneys' fees in connection with each of the Adversary Proceedings. HCMLP incorporates by reference its prior written responses to discovery and refers the defendants to the Notes and the invoices of Pachulski Stang Ziehl & Jones, LLP other documents being produced in this adversary proceeding.

Against Nancy Dondero and Dugaboy, HCMLP seeks damages in an amount equal to (a) all unpaid principal under each Note, and (b) all accrued and unpaid interest under each Note.

Against James Dondero for aiding and abetting Nancy Dondero's and Dugaboy's breach of fiduciary duty, HCMLP seeks damages in an amount equal to (a) all unpaid principal under each Note, and (b) all accrued and unpaid interest under each Note.

Damages will continue to increase as interest continues to accrue and Highland continues to incur additional costs of collection.

INTERROGATORY NO. 2:

Provide the factual basis for your allegation in the Amended Complaints that Dugaboy owed a fiduciary duty to the Debtor.

RESPONSE:

Assuming that a court of competent jurisdiction finds that Dugaboy entered into an agreement on behalf of HCMLP pursuant to which HCMLP agreed to forgive collection on all or any of the Notes, then Dugaboy will have owed a fiduciary duty to the Debtor because, among

other things, (a) Dugaboy would have been acting on the Debtor's behalf, (b) Dugaboy would have bound the Debtor, and (c) Dugaboy would have been required to act reasonably under the circumstances.

INTERROGATORY NO. 3:

Provide the factual basis for your allegation in the Amended Complaints that Nancy Dondero owed a fiduciary duty to the Debtor.

RESPONSE:

HCMLP incorporates by reference its response to Interrogatory No. 3 and further notes that Ms. Dondero would have caused Dugaboy to enter into the Alleged Agreement.

INTERROGATORY NO. 4:

Identify all acts or omissions by each of the Defendants that breached any alleged fiduciary duties owed to the Debtor.

RESPONSE:

Assuming that a court of competent jurisdiction finds that Dugaboy entered into an agreement pursuant to which HCMLP agreed to forgive collection on the Notes, then Dugaboy and Nancy would have breached their fiduciary duties by acting unreasonably by (a) agreeing to forgive Notes with an aggregate principal amount in excess of $70 million for $1 in value, (b) agreeing to forgive Notes with an aggregate principal amount in excess of $70 million at a time when they had no obligation to do so and received woefully inadequate consideration in return, and (c) otherwise acting unreasonably under the circumstances, including failing to perform reasonable diligence, failing to document and otherwise disclose the "agreement" to the Debtor's management and auditors, and by failing to disclose the "agreement" to the Bankruptcy Court at any time.

INTERROGATORY NO. 5:

Identify all acts or omissions by each of the Defendants that aided and abetted the breach of any alleged fiduciary duties owed to the Debtor.

RESPONSE:

Highland incorporates by reference its response to Interrogatory No. 5 and further states - that James Dondero would have further aided and abetted in the breach of fiduciary duties by using undue influence to persuade Ms. Dondero to enter into the Alleged Agreement on behalf of Dugaboy.

INTERROGATORY NO. 6:

Provide the factual basis for your allegation in the Amended Complaints that "At all relevant times, Mr. Dondero controlled the Debtor."

RESPONSE:

The evidence that Mr. Dondero controlled the Debtor is extensive and HCMLP objects to Interrogatory No. 6 on the grounds that it is overly broad, unduly burdensome, and has been admitted to at various points in the Bankruptcy Case. Subject to the General Objections, the evidence that Mr. Dondero controlled the Debtor through at least January 9, 2020, includes his admissions, his control of Strand Advisors, Inc., his role as President of HCMLP, his authorization of the commencement of the Bankruptcy Case on behalf of HCMLP, and his agreement to the corporate governance settlement as embodied in Docket Nos. 338 and 339.

INTERROGATORY NO. 7:

Provide the factual basis for your allegations in the Amended Complaint that James Dondero controlled NPA.

RESPONSE:

The evidence that Mr. Dondero controlled NPA is extensive and HCMLP objects to Interrogatory No. 7 on the grounds that it is overly broad, unduly burdensome, and has been admitted to at various points in the Bankruptcy Case. Subject to the forgoing objection, the

evidence that Mr. Dondero controls NPA includes, among other things, his admissions, the admissions of DC Sauter and Jason Post at various points in this case, and prior judicial findings, holdings, rulings, and orders.

INTERROGATORY NO. 8:

Provide the factual basis for your allegations in the Amended Complaint that James Dondero controlled HCRE.

RESPONSE:

The evidence that Mr. Dondero controlled HCRE is extensive and HCMLP objects to Interrogatory No. 8 on the grounds that it is overly broad, unduly burdensome, and has been admitted to at various points in the Bankruptcy Case. Subject to the forgoing objection, the evidence that Mr. Dondero controls HCRE includes, among other things, his own admissions, his direct or indirect ownership interest in HCRE, and the positions he holds and has with respect to HCRE..

INTERROGATORY NO. 9:

Provide the factual basis for your allegations in the Amended Complaint that James Dondero controlled HCMS.

RESPONSE:

The evidence that Mr. Dondero controlled HCMS is extensive and HCMLP objects to Interrogatory No. 9 on the grounds that it is overly broad, unduly burdensome, and has been admitted to at various points in the Bankruptcy Case. Subject to the forgoing objection, the evidence that Mr. Dondero controls HCMS includes, among other things, his own admissions, his direct or indirect ownership interest in HCMS, and the positions he holds and has with respect to HCMS.

INTERROGATORY NO. 10:

Provide the factual basis for your allegation in the Amended Complaints that "the Alleged Agreement is a fiction."

RESPONSE:

Highland incorporates by reference and refers the Defendants to (a) the purported terms of the Alleged Agreement, (b) the purported purpose of the Alleged Agreement, (c) Mr. Dondero's prior sworn testimony in Adv. Pro. 21-03003; (d) documents identified on Docket Nos. 31 and 35, respectively, in Adv. Pro. 21-3004; (e) Mr. Dondero's Rule 26 disclosures in Adv. Pro. 21-03003; (f) the deposition testimony of PricewaterhouseCoopers and the exhibits marked during that deposition; (g) the lack of any documentation memorializing the terms of the Alleged Agreement, and (h) the lack of disclosure of the alleged "agreement" to the Bankruptcy Court .at any time prior to confirmation, including in connection with that objection to the Debtor's Plan.

INTERROGATORY NO. 11:

Provide the factual basis for your allegation in the Amended Complaints that "Mr. Dondero entered into the Alleged Agreement with actual intent to hinder, delay, or defraud a present or future creditor."

RESPONSE:

Highland contends that the evidence will prove that the Alleged Agreement is a fiction but if a court of competent jurisdiction finds otherwise, that the evidence will prove that Mr. Dondero entered into the Alleged Agreement when he knew that certain creditors, including the Redeemer Committee and Joshua Terry, were on the verge of obtaining substantial judgments against Highland and as he had at various times in the face of adverse litigation, sought to fraudulently transfer assets to limit (if not eliminate) judgment creditors' ability to collect.

INTERROGATORY NO. 12:

Identify the "value of the consideration received by the Debtor for the transfers," as that term is used in the Amended Complaint, and provide the basis for how that value was calculated.

RESPONSE:

Highland made the payments reflected in each Note in exchange for a promise by each maker that payment would be made on the terms set forth therein, including the payment of all principal and interest and all costs of collection, including attorneys' fees.

INTERROGATORY NO. 13:

Identify any portfolio companies that Debtor owns (wholly or partially).

RESPONSE:

Highland objects to Interrogatory No. 13 on the grounds that (a) "portfolio companies" is undefined, and (b) it is overly broad, unduly burdensome and is not relevant to any party's claim or defense nor is it proportional to the needs of this case.

INTERROGATORY NO. 14:

Identify any sale or potential sale of any portfolio companies (or a portion of such portfolio companies) owned (wholly or partially) by the Debtor, including, but not limited to, Trussway, MGM and Cornerstone, including the date of the sale, the buyer, and the amount paid.

RESPONSE:

Highland objects to Interrogatory No. 14 on the grounds that (a) "portfolio companies" is undefined, (b) the phrase "potential sale" is vague and ambiguous, (c) it is overly broad, unduly burdensome and is not relevant to any party's claim or defense nor is it proportional to the needs of this case, and (d) "potential sales" are not a term of the Alleged Agreement and otherwise constitute proprietary and confidential information. Subject to the forgoing objections, Highland has not sold Trussway, MGM or Cornerstone as of this time.

Dated: September 27, 2021

PACHULSKI STANG ZIEHL & JONES LLP
Jeffrey N. Pomerantz (CA Bar No. 143717)
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Counsel for Defendant Highland Capital Management Fund Advisors, L.P.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re	§	
	§	**Case No. 19-34054-sgj11**
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	**Chapter 11**
	§	
Debtor.	§	
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	
Plaintiff,	§	
	§	
v.	§	**Adversary No. 21-03082**
	§	
HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, L.P.	§	
	§	
Defendant.	§	

DECLARATION OF JAMES DONDERO

I, James Dondero, hereby swear under oath and penalty of perjury pursuant to the laws of the United States of America that the following is true and correct to the best of my knowledge and belief:

1. My name is James Dondero. I am over the age of 21, have never been convicted of a felony or crime of moral turpitude, and am otherwise qualified to give this Declaration. I have personal knowledge of the facts stated in this Declaration.

A. Background.

2. I am currently a named Defendant in Adversary Proceedings No. 21-03003-sgj, 21-03005-sgj, 21-03006-sgj, and 21-03007-sgj, and am a fact witness in this particular Adversary Proceeding. I have personal knowledge of the facts contained in this Declaration, and if called as a witness to testify, I could and would do so competently.

3. I co-founded Highland Capital Management, L.P. ("HCM") in the year 1993, and have been working in the financial services industry ("Private Equity") for over thirty (30) years. I served as HCM's President and Chief Executive Officer until my resignation on January 9, 2020.

4. Along with having served as CEO for HCM, I have also served as a high-level executive and controlling portfolio manager for NexPoint Advisors, L.P. ("NexPoint"), HCRE Partners, LLC ("HCRE"), Highland Capital Management Services, Inc. ("HCMS"), and the named Defendant in this particular Adversary Proceeding, Highland Capital Management Fund Advisors, L.P. ("HCMFA"). I have spent years of service to these companies as a chief executive, and am familiar with each company's internal management and operational structures and procedures.

B. The 2014 and 2016 Promissory Notes.

1. HCM Issued One (1) Promissory Note to HCMFA in 2014.

5. On February 26, 2014, HCMFA borrowed money from HCM and entered into a promissory note with HCM in the amount of $4,000,000.00 (the "2014 Note").[1] The 2014 Note bore an interest rate equal to the long-term applicable federal interest rate at the time of 1.97%, to be calculated at a daily rate equal to 1/365th per annum. On its original terms, the 2014 Note was payable on demand by HCM, and was subject to an acceleration clause. This promissory note, unlike typical promissory notes, was a soft note that was made between friendly affiliates, was subject to renegotiation per its own terms, was not collateralized, and was ambiguous, taken as whole, because it referred to other agreements that were not specified in the promissory note. Additionally, unlike typical promissory notes of this nature, there was no personal guaranty supporting this promissory note.

2. HCM Issued One (1) Note to HCMFA in 2016.

6. On February 26, 2016, HCMFA borrowed money from HCM and entered into a promissory note with HCM in the amount of $2,300,000.00 (the "2016 Note," and together with the 2014 Note, the "Notes").[2] The 2016 Note bore an interest rate equal to the long-term applicable federal interest rate at the time of 2.64%, to be calculated at a daily rate equal to 1/365th per annum. On its original terms, the 2014 Note was payable on demand by HCM, and was subject to an acceleration clause. This promissory note, unlike typical promissory notes, was a soft note that was made between friendly affiliates, was subject to renegotiation per its own terms, was not collateralized, and was ambiguous, taken as whole, because it referred to other agreements that

[1] Pl. Appx. 05029-31.
[2] *Id.* at 05032-34.

were not specified in the promissory note. Additionally, unlike typical promissory notes of this nature, there was no personal guaranty supporting this promissory note.

C. Dugaboy, as the "Majority Interest" Approved Compensation.

7. HCM was formed as a limited partnership under the laws of the State of Delaware, and was governed by a Limited Partnership Agreement ("LPA").[3] The LPA was entered into on December 24, 2015, between Strand Advisors, Inc. (the General Partner), and the following Class A Limited Partners:

(1) The Dugaboy Investment Trust ("Dugaboy"),

(2) The Mark and Pamela Okada Family Trust – Exempt Trust #1,

(3) The Mark and Pamela Okada Family Trust – Exempt Trust #2, and

(4) Mark Okada.[4]

8. Pursuant to the LPA – specifically in Section 3.10(a) –HCM's "Majority Interest[-holder]" was entitled to approve the compensation of HCM's General Partner and any "Affiliate" of the General Partner.[5] The LPA defines the Majority Interest as "the owners of more than fifty percent (50%) of the Percentage Interests of Class A Limited Partners."[6] The Dugaboy Family Trust ("Dugaboy") represented the Majority Interest of the Limited Partners, owning a 74.4426% interest of the Limited Partners Class A Interest.[7]

9. My sister Nancy Dondero has served as the Dugaboy Family Trustee since her appointment in 2015. Attached as "Exhibit A" is a copy of Nancy Dondero's Acceptance of Appointment of Family Trustee for the Dugaboy Family Trust effective October 14, 2015, a record

[3] *Id.* at 00606-641.
[4] *Id.* at 00636-638.
[5] *Id.* at 00622.
[6] *Id.* at 00612.
[7] *Id.* at 00639.

which was kept in the ordinary course of business and made by someone with knowledge of the appointment. Prior to Nancy Dondero's service, Grant Scott served as Dugaboy Family Trustee until October 12, 2015. Grant Scott's resignation letter is contained within Exhibit A. Prior to Grant Scott's service as Dugaboy Family Trustee, I personally served as Dugaboy Family Trustee until my resignation on August 26, 2015. Attached as "Exhibit B" is proof of my service as Family Trustee for the Dugaboy Family Trust and my subsequent resignation prior to Grant Scott's appointment, a record which was kept in the ordinary course of business and made by someone with knowledge of the document.

D. Dugaboy Agreed That HCM Would Not Collect on the Notes Upon Fulfillment of Conditions Subsequent, Making the Notes Potentially Deferred Compensation.

10. Based on my years of experience in working in private equity, I am familiar with the compensation structure of similarly situated private equity firms. Based on this experience, I am also very familiar with the compensation structure of similarly situated executives.

11. At HCM, as at other comparable firms, it was common practice to compensate executives with forgivable loans. My compensation was no exception to this practice. In fact, I was undercompensated in my position compared to similarly-situated contemporaries in my field. I know that several other individuals may have received loans by HCM that were forgiven. These individuals include Michiel Hurley, Tim Lawler, Pat Daugherty, Jack Yang, Paul Adkins, Gibran Mahmud, Jean-Luc Eberlin, and Appu Mundassery and this was also a common practice and another company in which I have an interest, NexBank Capital, Inc.

12. Regarding the loan forgiven to Michiel Hurley, Hurley founded and was an executive employee of Incline Capital, LLC ("Incline"), which was the advisor for a 1940 Act Mutual Fund (the "Fund"). In May of 2011, Incline agreed to transfer its advisory contract for the Fund to HCMFA and stay on to sub-advise the Fund for HCMFA. Incline was ultimately advanced

funds from HCMFA as an advance on fees that I believed would be earned by Incline in the future. In 2013, I – on behalf of HCMFA – agreed to forgive this debt that was owed by Incline to HCMFA. At that time, the debt owed to HCMFA by Incline was approximately $435,000. This debt was forgiven with the intent to benefit Hurley personally for the value of the services he provided through Incline.

13. At either the end of 2014 or the beginning of 2015, I – acting on behalf of Dugaboy for HCM and also on behalf of HCMFA – entered into an agreement (the "2014 Agreement") that HCM would not collect on the 2014 Note if certain events occurred. Specifically, if one of three portfolio companies – either MGM, Cornerstone, or Trussway – were sold for above cost, or sold in a circumstance outside of my control, HCM agreed that the 2014 Note would be forgiven. The Agreement assured HCM that the monetization of these portfolio companies would have my utmost focus and attention, and served as an incentive for me to work particularly hard to make sure these assets were successful. Further, this agreement provided the additional benefit to HCM of not increasing my base salary, which I normally would have requested and obtained. However, reaching this agreement made my compensation conditional on performance, and ensured that HCM would not immediately realize a change in its financial position through an increase in my salary, something I had the right to increase.

14. I understand that Plaintiff takes issue with the fact that I recently remembered that I was actually the Dugaboy Trustee when the 2014 Agreement was made, characterizing my recollection as some kind of last-second surprise revelation. I simply did not think about the exact time frame during which I was the Dugaboy Trustee until around the time of my deposition on May 5, 2022 – about seven years after the 2014 Agreement was made.

15. At either the end of 2016 or the beginning of 2017, Nancy Dondero – on behalf of HCM because she was the Dugaboy Trustee at that time – and myself on behalf of HCMFA, entered into another agreement that was identical to the 2014 Agreement, and applied to the 2016 Note (the "2016 Agreement," and together with the 2014 Agreement, the "Agreements"). The 2016 Agreement provided the same benefits to the HCM as the 2014 Agreement. I described the 2014 Agreement to Nancy when we discussed the 2016 Agreement.

16. In my years of experience in this industry, and experience working with financial auditors, although the Agreements were not disclosed to the financial auditors at HCM, such a disclosure was not necessary since it would not be considered material. When compared to the considerable size of HCM's assets, the Agreements regarding such small obligations would have a *de minimus* impact when viewed in light of such large assets. Therefore, the Agreements were non-material and did not require disclosure. Once HCMFA was aware that an event triggering forgiveness had occurred, in March of 2022, the HCMFA financials were modified to note the sale of MGM to Amazon, its impact, and the dispute with Plaintiff-Debtor over the forgiveness.

E. The Agreements Were Never Kept Secret.

17. Prior to the commencement of any Adversary Proceedings concerning the Notes, I mentioned to Frank Waterhouse that there were mechanisms in place for forgiving the Notes, or for having them considered as compensation and not being an asset to the Debtor's estate. This came up in the context of discussing what we called the "Pot Plan" discussion for resolving the bankruptcy. I did not discuss every detail of the Agreements, because the important point was that he was made aware that the Notes should be considered as part of my compensation in connection with a resolution of the bankruptcy. By that time there was a great likelihood that some or all of the portfolio companies would be able to be sold for far more that their acquisition price.

18. Further, opposing counsel was alerted on February 1, 2021 that one of the defenses in this litigation was that the Notes were subject to forgiveness as potential compensation. In a letter from my one of my attorneys– to opposing counsel at Pachulski Stang Ziehl & Jones, LLP, the late retired Bankruptcy Judge Lynn, my lead counsel, made that disclosure. A true and correct copy of this letter is attached to this Declaration as "Exhibit C."

19. Finally, I filed Proof of Claim #188 on May 26, 2020 – well before this or any other Adversary Proceeding regarding promissory notes was initiated – that provided in "Schedule A" notice to the world that the Notes at issue in this and the other adversary proceedings concerning notes were potentially forgivable as compensation to me. Schedule A is attached to this Declaration as "Exhibit D." While POC #188 was eventually withdrawn, I understand that it and Schedule A remains to this day publicly available to the Plaintiff-Debtor, the Court, and really, to anyone.

E. The Agreements Were Made in Good Faith.

20. The Agreements made between myself and Dugaboy were all entered into in good faith. At no point in time were any of these Agreements made with the intent to hinder or defraud HCM as payee. Dugaboy had the right to approve my compensation under the LPA, and it was exercising that right when it agreed to make the Notes forgivable as compensation, provided that I performed successfully as a HCM executive and made sure that the illiquid portfolio company assets were sold for at-or-above cost.

F. HCM Waived Any Rights to Collect on the Notes When Dugaboy Made the Agreements.

21. When the Agreements were made, HCM waived any rights it had to demand repayment of the demand Notes until it became impossible for the condition subsequent to be met. However, I still intended to make periodic interest payments because I understood that until

forgiveness actually occurred, the notes were still bona fide notes. Also, making periodic payments kept the Notes from becoming unreasonably large in the event the conditions for forgiveness did not come to pass. In addition, I was always watchful that HCM had the funds it needed for its operations and obligations. Therefore, even when it was not necessary for payments to be made, I would cause payments to be made on the Notes for HCM's benefit.

G. Sale of Shares of MGM.

22. I understand that Plaintiff raises in its Motion one or more issues concerning sales of Plaintiff's interests in MGM. Initially, a small portion of HCM's interest in MGM was sold in November or 2019. I understand that Plaintiff complains that I did not declare the Notes forgiven after this small sale was made. However, this sale of a small portion of Plaintiff's interest in MGM would not have implicated the Agreements because it was for a *de minimis* amount of MGM stock and was only necessitated as a result of the UCC not being willing to cooperate in a transaction as part of the bankruptcy process that was agreed to by all of the other participants.

23. Later, in March of 2022, the MGM was sold to Amazon, monetizing the entirety of HCM's interest in MGM. As opposed to the previous 2019 sale of HCM's interest in MGM, as noted above, I considered this sale in 2022 to trigger forgiveness of the Notes. The forgiveness of the Notes is reflected on HCMFA's April 2022 vs. March 2022 balance sheet, attached to my Declaration as "Exhibit E." In fact, the balance sheet contains a footnote relating to the alleged amount owed to HCM – the value of the Notes – reading "[a]s of 3/17/2022, the 2/26/2014 and 2/26/2016 notes were discharged due to a portfolio company sale, however, due to active litigation with HCMLP, the note(s) are still reflected on the balance sheet." I considered this to be an acknowledgment by HCMFA that a triggering event had occurred – the sale of MGM – and that the Notes should now be considered forgiven.

H. The LPA Did Not Prohibit the Agreements.

24. I understand that Plaintiff also argues that the LPA prohibits deferred compensation agreements like the Agreements at issue here. Specifically, I understand Plaintiff argues that the Agreements were not authorized under the LPA because (1) Dugaboy was not authorized to "execute" the Agreements, (2) the Agreements were not in writing, and (3) the Agreements were not objectively fair.[8]

25. I understand that Plaintiff cites to LPA Articles 3.10(a), 6.2, and 4.1(e)(ii) for its argument. However, I have never understood § 3.10(a) to prohibit the Majority Interest from executing any compensation agreements it makes. Further, § 6.2 of the LPA only requires that "[a]ny notice, demand, request, or report required or permitted to be given or made to a Partner under this [LPA] shall be in writing. . ."[9] I have never understood § 6.2 to require any compensation agreements like the Agreements at issue to be in writing, as they are not "notice[s], demand[s], request[s], or report[s]" as contemplated by the LPA. Also, Plaintiff cites to § 4.1(e)(ii) to support its fairness argument, but the LPA only requires "[a]ny service rendered for the Partnership. . . shall be on terms that are fair and reasonable for the Partnership."[10] However, as discussed previously in this Declaration, I understand that the Agreements were fair and reasonable to HCM, because they were given in lieu of additional cash compensation and since the three portfolio companies received my utmost attention and efforts to maximize their performance. According to my understanding of the LPA, it in no way prohibits the Agreements.

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[8] Amended Complaint, ¶ 89.
[9] Pl. Ex. 30, 4th LPA, § 6.2, Pl. Appx. 00633.
[10] Pl. Ex. 30, 4th LPA, § 4.1(e)(ii), Pl. Appx. 00625.

I. Any Prepayments Were Made for HCM's Benefit.

26. Even though neither the 2014 or the 2016 Notes required payment to be made before demand, I occasionally caused prepayments to be made on the Notes throughout the years whenever HCM needed liquidity. I made these voluntary prepayments to aid HCM so that HCM's liquidity could be maintained.

Pursuant to 28 U.S.C. § 1746(2), I declare under penalty of perjury that the foregoing is true and correct.

Dated: June 30, 2022

JAMES DONDERO

Exhibit A

THE DUGABOY INVESTMENT TRUST
James D. Dondero, Primary Beneficiary

October 12, 2015

Dana Scott Breault
5207 Scarborough Lane
Dallas, Texas 75287

Cynthia D. M. Brown, President
Commonwealth Trust Company
29 Bancroft Mills Road #2
Wilmington, Delaware 19806

Re: The Dugaboy Investment Trust

Dear Ms. Breault,

I, James D. Dondero, am writing to inform you that on October 12, 2015, I received notice from Grant James Scott that he will cease to serve as Family Trustee of The Dugaboy Investment Trust (the "**Trust**") and shall stop performing all duties and responsibilities undertaken as Family Trustee of the Trust.

Pursuant to the attached Resignation of Family Trustee from Grant James Scott, I appoint Nancy Marie Dondero as the successor Family Trustee of the Trust.

This letter and the attached Resignation of Family Trustee shall satisfy my obligations under Section 5.2 of that Trust Agreement entered into on November 15, 2010 to provide you, Settlor, with notice of my appointment of a successor Family Trustee.

Very truly yours,

James D. Dondero

THE DUGABOY INVESTMENT TRUST
Grant James Scott, Family Trustee

October 12, 2015

Dana Scott Breault
5207 Scarborough Lane
Dallas, Texas 75287

Cynthia D. M. Brown, President
Commonwealth Trust Company
29 Bancroft Mills Road #2
Wilmington, Delaware 19806

Re: The Dugaboy Investment Trust

Dear Ms. Breault,

I, Grant James Scott, am writing to inform you that as of October 12, 2015, I will cease to serve as Family Trustee of The Dugaboy Investment Trust (the "**Trust**") and shall stop performing all duties and responsibilities undertaken as Family Trustee of the Trust pursuant to the attached Resignation of Family Trustee.

This letter and the attached Resignation of Family Trustee shall satisfy my obligations under Section 5.1 of that Trust Agreement entered into on November 15, 2010 to provide you, Settlor, with written notice of my resignation.

Very truly yours,

Grant James Scott

RESIGNATION OF FAMILY TRUSTEE

I, **GRANT JAMES SCOTT**, do hereby acknowledge that I voluntarily tender my resignation as Family Trustee of The Dugaboy Investment Trust pursuant to that Trust Agreement, dated November 15, 2010 by, between and among Dana Scott Breault, as Settlor, and Common Wealth Trust Company, as Administrative Trustee.

This resignation shall take effect immediately upon the execution hereof and delivery of a written acknowledged instrument wherein NANCY MARIE DONDERO accepts the trust and the position of Family Trustee.

IN WITNESS WHEREOF, I hereby sign my Resignation as Family Trustee of the above trust.

Signed, sealed and delivered in the presence of:

Family Trustee

10/12/2015
Date

STATE OF TEXAS §
COUNTY OF DALLAS §

Before me, a notary public, on this day personally appeared **GRANT JAMES SCOTT** known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this 14th day of October, 2015.

MICAELA SUE ALLEN
Notary Public, State of Texas
My Commission Expires
January 15, 2019

[SEAL]

Notary Public's Signature

Expiration: January 15, 2019

ACCEPTANCE OF APPOINTMENT OF FAMILY TRUSTEE

I, **NANCY MARIE DONDERO**, appointed as Family Trustee under Article V, Section 5.2(a)(i) of The Dugaboy Investment Trust, dated November 15, 2010 (the "**Trust**"), hereby acknowledge and accept the position of Family Trustee of the Trust and hereby agree to faithfully perform all the duties and adopt all of the obligations imposed.

Signed this 13th day of October, 2015.

Nancy Marie Dondero
NANCY MARIE DONDERO
Family Trustee

STATE OF TEXAS §
COUNTY OF DALLAS §

Before me, a notary public, on this day personally appeared **NANCY MARIE DONDERO** known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that she executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this 14th day of October, 2015.

MICAELA SUE ALLEN
Notary Public, State of Texas
My Commission Expires
January 15, 2019

[SEAL]

Micaela Sue Allen
Notary Public's Signature

Expiration: January 15, 2019

ACKNOWLEDGEMENT OF DELIVERY

I, JAMES D. DONDERO, acknowledge that this Acceptance of Appointment of Family Trustee by NANCY MARIE DONDERO was delivered to and received by me on October __, 2015.

James D. Dondero

Exhibit B

TRUST AGREEMENT

Between

DANA SCOTT BREAULT,
Settlor

and

JAMES D. DONDERO and
COMMONWEALTH TRUST COMPANY,
Trustees

THE DUGABOY INVESTMENT TRUST

WINSTEAD PC
DALLAS, TEXAS

THE DUGABOY INVESTMENT TRUST

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THE DUGABOY INVESTMENT TRUST

AGREEMENT OF TRUST made and entered into at Dallas, Texas, this ____ day of October, 2010, by and between DANA SCOTT BREAULT, as Settlor, and JAMES D. DONDERO, and COMMONWEALTH TRUST COMPANY, as Trustees.

ARTICLE I

DEFINITIONS

The following terms, as used in this Trust Agreement, have the meanings set forth below, unless another meaning is clearly indicated by context or circumstances:

1.1 Settlor. "Settlor" means DANA SCOTT BREAULT.

1.2 Jim. "Jim" means JAMES D. DONDERO.

1.3 Trustees. The initial Trustee of each trust created hereunder is JAMES D. DONDERO. "Trustee" means any person or entity serving as Trustee, whether original or successor and whether one or more in number. "Administrative Trustee" means COMMONWEALTH TRUST COMPANY in its capacity as Administrative Trustee, and any successor Administrative Trustee appointed in accordance with Section 5.2(c). "Independent Trustee" means GRANT JAMES SCOTT, III, (upon his acceptance as set forth in Section 5.2(b)) in his capacity as Trustee, and any successor Independent Trustee appointed in accordance with Section 5.2(b). "Family Trustee" means JAMES D. DONDERO in his capacity as Trustee, and any successor Family Trustee appointed in accordance with Section 5.2(a). The rights, powers, duties, and obligations, of the Family Trustee, Independent Trustee and Administrative Trustee are to be exercised and allocated pursuant to Section 6.2 of this Trust Agreement.

1.4 Children. "Children" means REESE AVRY DONDERO, JAMESON DRUE DONDERO, and any other child born to or adopted by Jim after the date of this Trust Agreement. "Child" means one of the Children.

1.5 Descendants. "Descendants" means the legitimate children of the person designated and the legitimate lineal descendants of such children, and includes any person adopted before attaining age fifteen (15) and the adopted person's legitimate lineal descendants. A posthumous child shall be considered as living at the death of his parent.

1.6 Code. "Code" means the Internal Revenue Code of 1986, as amended, and corresponding provisions of future federal tax law.

1.7 Per Stirpes. "Per Stirpes," when used with respect to a distribution of property among a class of beneficiaries, shall mean by representation; that is, the Descendants of a deceased ancestor take the share such ancestor would have received had he or she been living, and the issue of a living ascendant would not take in competition with such ascendant. The per

stirpital allocation shall commence with the most senior generation that has a living representative.

ARTICLE II

FUNDING

Settlor has transferred to the Trustee, without consideration, One Thousand and No/100 Dollars ($1,000.00) which shall be administered and distributed in accordance with the terms of this Trust Agreement. Settlor and others may transfer to the Trustee properties acceptable to them, to be added to the trust estate. The Trustee shall administer the initial trust estate pursuant to the terms of Section 3.1.

ARTICLE III

DISTRIBUTION OF PRINCIPAL AND INCOME

3.1 Trust for Jim. The trust for the benefit of Jim shall be administered and distributed upon the following terms:

(a) Distributions to Jim. The Family Trustee may distribute to Jim so much of the net income and principal of the trust as the Family Trustee deems necessary to provide for Jim's maintenance, support and health. Undistributed income shall be accumulated and added to principal. In exercising its discretion, the Family Trustee shall take into account the following factors:

(i) Jim is the primary beneficiary of the trust.

(ii) The Family Trustee shall take into consideration in determining Jim's needs any other income or resources known upon reasonable inquiry by the Family Trustee to be available to Jim for these purposes.

(iii) Settlor's intention to assist or enable Jim to obtain and furnish a home commensurate with his standard of living.

(iv) Settlor's intention to assist or enable Jim to obtain capital to enter a business or profession.

(v) Any federal, state or local income taxes imposed on Jim as a result of the income and/or gains from the trust

(b) Distributions by Independent Trustee. The Independent Trustee may, in its sole and absolute discretion, distribute to Jim so much of the income and principal of the trust as the Independent Trustee shall deem appropriate or advisable. It is Settlor's intention to give the Independent Trustee the broadest discretion possible in determining the amount and timing of distributions of income and principal hereunder and Settlor recognizes that the Independent Trustee may, in the exercise of its discretion, determine

to distribute the entire trust estate to Jim or to make no distributions to Jim during Jim's disability or for so long as Jim shall have a judgment outstanding, or for so long as any distribution might be lost to Jim's creditors. It is also Settlor's intention and desire for the Independent Trustee to consider any federal, state or local income taxes imposed on Jim as a result of the income and/or gains from the trust in determining the amount of distributions to be made to Jim under this subsection (b).

(c) Inter Vivos Special Power of Appointment. During Jim's lifetime, he shall have a special power to appoint any part or all of the trust estate to any individual or entity, except that no appointment shall be made to Jim, his creditors, his estate, or the creditors of his estate. Valid appointments may be in such amounts and proportions and upon such terms and conditions as Jim shall determine and evidence by written instrument delivered to the Trustee which specifically refers to this power of appointment and expresses the intention to exercise it; provided that such power of appointment shall not extend to any life insurance policies insuring Jim's life that constitute a part of the trust estate; and provided further that Jim shall not have a power to appoint by deed to or for the benefit of Jim or any individual or entity if such appointment has the effect of satisfying Jim's contractual or legal obligations. Any exercise of this power of appointment must be made in an executed and acknowledged written instrument delivered to the Trustee which to be effective must refer specifically to the power granted under this Section 3.1(c).

(d) Independent Trustee's Power to Grant Testamentary General Power of Appointment. Except as otherwise provided herein, the Independent Trustee, by signed acknowledged instrument delivered to Jim, may grant Jim a testamentary general power of appointment (as defined in Sections 2041 of the Code) over part or all of the trust estate, provided, however, that such power of appointment shall only be effective in an amount up to but not in excess of the amount, if any, above which any further addition to the amount subject to the power of appointment would increase the Net Death Taxes (as hereinafter defined) by an amount equal to or greater than the decrease in the generation-skipping transfer tax that would result from such further addition. Unless Jim's will provides otherwise by express reference to this Trust Agreement and the above power of appointment, the increase in the Net Death Taxes resulting from such power shall be paid from that amount of the principal of the trust estate over which the power is exercisable. As used in this section, the term "Net Death Taxes" shall mean the aggregate death taxes (including, without limitation, Federal, state, local and other estate taxes and inheritance taxes but exclusive of interest and penalties), after taking into account all applicable credits, payable with respect to Jim's estate.

(i) If Jim has one or more other general powers of appointment exercisable and measured substantially as provided in subsection (d) above, the amount that Jim may appoint under subsection (d) shall be reduced proportionally, based on the net fair market values of the principal of the trusts with respect to which such powers are exercisable as of the date of Jim's death, so that the aggregate of the amount so appointable under this Trust Agreement and the amount or amounts so appointable pursuant to such other power or powers

together shall be no greater than the amount otherwise appointable under subsection (d) above.

(ii) The scope and terms of the power shall be defined in the instrument. Before such a power is exercised by Jim and the exercise becomes effective, the Independent Trustee may, in a similar manner, revoke or alter the power which was granted. This power shall not apply if the trust has an inclusion ratio of zero for generation-skipping transfer tax purposes. Jim shall not have a general power of appointment over any part of the trust estate unless such power is specifically granted to Jim by the Independent Trustee pursuant to this subsection.

(e) Termination. If not earlier terminated by distribution of the entire trust estate under the foregoing provisions, the trust shall terminate upon Jim's death. Upon termination of the trust, the Trustee shall distribute the balance of the trust estate as follows:

(i) Pursuant to General Testamentary Power of Appointment. This paragraph (i) shall apply if, but only if, the Independent Trustee grants Jim a general testamentary power of appointment pursuant to subsection (d) above and the Independent Trustee has not revoked the grant of that general power prior to the date of Jim's death. In that event, if Jim validly exercises such general testamentary power of appointment, the Trustee shall distribute so much of the trust estate then remaining as is validly appointed by Jim pursuant to such power in accordance with the terms of such appointment.

(ii) Special Testamentary Power of Appointment. This paragraph (ii) shall apply to so much of the trust estate then remaining as is not distributed pursuant to paragraph (i) above. The Trustee shall distribute the trust estate to such one or more individuals and entities, in such amounts and proportions and upon such terms and conditions, as Jim appoints by will or codicil which specifically refers to this power of appointment and expresses the intention to exercise it. However, Jim may not appoint to Jim, Jim's estate, Jim's creditors, or creditors of Jim's estate.

(iii) Alternative Disposition. The remaining and unappointed trust estate shall be held in trust or distributed as follows:

(1) If one or more of Jim's Descendants are then living, the Trustee shall divide the trust estate into separate equal shares, one for each then living Child and one for the then living Descendants, collectively, of each deceased Child with one or more Descendants then living. The Trustee shall administer a share for each Child in a separate trust for the primary benefit of the Child and for the Child's Descendants pursuant to Section 3.2 hereof. The Trustee shall administer a share for the Descendants of each deceased Child pursuant to Section 3.3 hereof.

(2) If none of Jim's Descendants is then living, the trust estate shall be administered or distributed in accordance with Section 3.4 hereof.

3.2 Trust for Child. All property directed to be administered in a separate trust for a Child under this Section 3.2 shall be administered and distributed for the Child's benefit upon the following terms:

(a) Distributions to Child. The Trustee may distribute to the Child so much of the net income and principal of the trust as the Trustee deems necessary to provide for the Child's reasonable maintenance, support, health and education. In exercising its discretion, the Trustee shall take into account the following factors:

(i) The Child's standard of living at the creation of the trust.

(ii) The Child is the primary beneficiary of the trust.

(iii) The Trustee shall take into consideration, in determining the Child's needs, any other income or resources known upon reasonable inquiry by it to be available to the Child for these purposes.

(iv) Settlor's intention to enable or assist each Child to pursue vocational, college, graduate, and/or professional education as long as in the Trustee's judgment it is pursued to the Child's advantage and to receive an excellent earlier education.

(v) Settlor's intention that the trust distributions not serve as a disincentive to the Child's motivation to provide for her own needs in life.

(b) Distributions to Child's Descendants. The Trustee may distribute to the Child's Descendants so much of the net income and principal of the trust as the Trustee, in its discretion, deems necessary to provide for their reasonable maintenance, support, health and education. In exercising its discretion, the Trustee shall take into account the following factors:

(i) The primary purpose of the trust.

(ii) The respective needs of each Descendant.

(iii) The Trustee shall take into consideration, in determining a Descendant's needs, any other income or resources known upon reasonable inquiry by it to be available to the Descendant for these purposes.

(iv) Settlor's intention to enable or assist each Descendant to pursue vocational, college, graduate, and/or professional education as long as in the Trustee's judgment it is pursued to the Descendant's advantage and to receive an excellent earlier education.

(v) Settlor's intention that the trust distributions not serve as a disincentive to a Descendant's motivation to provide for his or her own needs in life, and Settlor's instruction to the Trustee to terminate or lessen distributions to a Descendant if that objective, in the judgment of the Trustee, would thereby be served.

Distributions hereunder need not be equal among the Descendants, and the Trustee may make distributions to one or more Descendants to the exclusion of others. Distributions shall be charged against the trust estate as a whole, and not against the distributive share of any Descendant upon termination of the trust.

(c) Inter Vivos Special Power of Appointment. The Child, acting in the Child's individual capacity, shall have a special power to appoint the income and principal of the trust to or for the benefit of one or more members of the limited class consisting of the Descendants of the Children, in such amounts and proportions and upon such terms and conditions, as the Child shall direct; provided that the Child shall not have a power to appoint by deed to or for the benefit of any individual if such appointment has the effect of satisfying a contractual obligation or legal support obligation of the Child. This power of appointment may be exercised subject to such terms and conditions as the Child shall direct, including an appointment in further trust, but no trust created by the exercise of such power may extend beyond the maximum term allowable with respect to any trust created under this Trust Agreement. Any exercise of this power of appointment must be made in an executed and acknowledged written instrument delivered to the Trustee which to be effective must refer specifically to the power granted under this Section 3.2(c).

(d) Termination. If not earlier terminated by distribution of the entire trust estate under the foregoing provisions, the trust shall terminate upon the death of the Child. Upon termination, the Trustee shall distribute the trust estate then remaining, or any part thereof, to such one or more members of the limited class consisting of Jim's Descendants, in such amounts and proportions and upon such terms and conditions, as the Child shall appoint by will or codicil which specifically refers to this power of appointment and expresses the intention to exercise it. However, the Child may not appoint to the Child, the Child's creditors, estate, or creditors of the Child's estate. The trust property not appointed by the Child in accordance with this special power of appointment shall be administered by the Trustees for the Child's then living Descendants pursuant to Section 3.3 hereof. If there are no Descendants of the Child then living, the Trustee shall distribute the remaining trust estate to Jim's then living Descendants, Per Stirpes. If any property is distributable to a person for whose benefit a trust which was established under this Trust Agreement is then being administered, the property shall be added to that trust and administered according to its terms. If no Descendant of Jim is then living, the Trustee shall administer or distribute the remaining trust estate pursuant to Section 3.4 hereof.

3.3 Trusts for Descendants. The Trustee shall divide property which is to be administered under this Section 3.3 for the Descendants of a deceased Child, among such

Descendants, Per Stirpes. The Trustee shall administer each share created for a Descendant of a deceased Child (the "Beneficiary") in a separate trust for the Beneficiary's benefit upon the following terms:

(a) Distributions. The Trustee shall distribute to the Beneficiary so much of the net income and principal of the trust as the Trustee deems necessary for the Beneficiary's reasonable maintenance, support, health and education. In exercising its discretion, the Trustee shall take into account the following factors:

(i) The Beneficiary's standard of living at the creation of the trust.

(ii) The Beneficiary is the primary beneficiary of the trust.

(iii) The Trustee shall take into consideration, in determining the Beneficiary's needs, any other income or resources known upon reasonable inquiry by it to be available to the Beneficiary for these purposes.

(iv) Settlor's intention to enable or assist each Beneficiary to pursue vocational, college, graduate, and/or professional education as long as in the Trustee's judgment it is pursued to the Beneficiary's advantage and to receive an excellent earlier education.

(v) Settlor's intention that the trust distributions not serve as a disincentive to the Beneficiary's motivation to provide for his or her own needs in life.

(b) Distributions to Beneficiary's Descendants. The Trustee may distribute to the Beneficiary's Descendants so much of the net income and principal of the trust as the Trustee, in its discretion, deems necessary to provide for their reasonable maintenance, support, health and education. In exercising its discretion, the Trustee shall take into account the following factors:

(i) The primary purpose of the trust.

(ii) The respective needs of each Descendant.

(iii) The Trustee shall take into consideration, in determining a Descendant's needs, any other income or resources known upon reasonable inquiry by it to be available to the Descendant for these purposes.

(iv) Settlor's intention to enable or assist each Descendant to pursue vocational, college, graduate, and/or professional education as long as in the Trustee's judgment it is pursued to the Descendant's advantage and to receive an excellent earlier education.

(v) Settlor's intention that the trust distributions not serve as a disincentive to a Descendant's motivation to provide for his or her own needs in

life, and Settlor's instruction to the Trustee to terminate or lessen distributions to a Descendant if that objective, in the judgment of the Trustee, would thereby be served.

Distributions hereunder need not be equal among the Descendants, and the Trustee may make distributions to one or more Descendants to the exclusion of others. Distributions shall be charged against the trust estate as a whole, and not against the distributive share of any Descendant upon termination of the trust.

(c) Inter Vivos Special Power of Appointment. The Beneficiary, acting in the Beneficiary's individual capacity, shall have a special power to appoint the income and principal of the trust to or for the benefit of one or more members of the limited class consisting of Jim's Descendants in such amounts and proportions and upon such terms and conditions, as the Beneficiary shall direct; provided that the Beneficiary shall not have a power to appoint by deed to or for the benefit of any individual if such appointment has the effect of satisfying a contractual obligation or legal support obligation of the Beneficiary. Furthermore, the Beneficiary may not appoint to the Beneficiary, the Beneficiary's creditors, estate or creditors of the Beneficiary's estate. This power of appointment may be exercised subject to such terms and conditions as the Beneficiary shall direct, including an appointment in further trust, but no trust created by the exercise of such power may extend beyond the maximum term allowable with respect to any trust created under this Trust Agreement. Any exercise of this power of appointment must be made in an executed and acknowledged written instrument delivered to the Trustee which to be effective must refer specifically to the power granted under this Section 3.3(c).

(d) Termination. If not earlier terminated by distribution of the entire trust estate under the foregoing provisions, the trust shall terminate at the death of the Beneficiary. Upon termination, and except as otherwise provided pursuant to Section 3.5 hereof, the Trustee shall distribute the trust estate then remaining, or any part thereof to such one or more members of the limited class consisting of Jim's Descendants, in such amounts and proportions and upon such terms and conditions, as the Beneficiary shall appoint by will or codicil which specifically refers to this power of appointment and expresses the intention to exercise it. However, the Beneficiary may not appoint to the Beneficiary, the Beneficiary's creditors, estate or creditors of the Beneficiary's estate. The trust property not effectively appointed by the Beneficiary in accordance with this special power of appointment or pursuant to Section 3.5 hereof shall be distributed, Per Stirpes, to: the Beneficiary's Descendants living at the termination of the trust; or if there are no such Descendants then living, to the then living Descendants of the Child who was the parent of the Beneficiary; or if there are no such Descendants then living, to Jim's then living Descendants. If any property is distributable under this subsection to a Child, such property shall be added to the Child's Trust and administered pursuant to the terms of Section 3.2. If any property is distributable under this subsection to a Descendant of Jim (other than a Child), such property shall be administered in trust for such Descendant's benefit pursuant to the terms of this Section 3.3. If no Descendant of Jim is then living,

the Trustee shall administer or distribute the remaining trust estate pursuant to Section 3.4 hereof.

3.4 Contingent Distribution. If Jim and Jim's Descendants are all are deceased and no other disposition of the trust estate is called for in this Trust Agreement, the trust estate then remaining shall be distributed to those persons other than creditors and Settlor who, under the laws of Texas in force at that time, would have taken the personal property of Jim had he died intestate, a single person without Descendants, domiciled in the State of Texas, the moment after the event causing the distribution hereunder, the shares and proportions of taking to be determined by Texas laws.

3.5 General Power of Appointment for Certain Beneficiaries.

(a) Except as provided in subsection (c) below, any provision of this Trust Agreement to the contrary notwithstanding, at the death of any individual ("such beneficiary") at whose death the generation-skipping transfer tax would, but for the provisions of this section, be applicable with respect to any trust created under this Trust Agreement, the Trustees shall pay out of the principal of such trust such amount as such beneficiary, by express provision referring to this Trust Agreement and this power of appointment in his or her will, appoints, to or among such beneficiary's creditors, up to but not in excess of the amount, if any, above which any further addition to the amount subject to the power of appointment would increase the Net Death Taxes (as hereinafter defined) by an amount equal to or greater than the decrease in the generation-skipping transfer tax that would result from such further addition. Unless such beneficiary's will otherwise provides by express reference to this Trust Agreement and the above power of appointment, the increase in the Net Death Taxes resulting from such power shall be paid from that amount of the principal of such trust over which such power is exercisable. The foregoing provisions of this section shall be effective only if the Trustees make a determination that the generation-skipping transfer tax would not be applicable with respect to the amount of such trust over which such power is exercisable. As used in this section, the term "Net Death Taxes" shall mean "the aggregate death taxes (including, without limitation, federal, state, local and other estate taxes and inheritance taxes but exclusive of interest and penalties), after taking into account all applicable credits, payable with respect to the estate of such beneficiary."

(b) If under the will of any individual or individuals and/or any other trust instrument or instruments, such beneficiary has one or more other general powers of appointment exercisable and measured substantially as provided in subsection (a) above, the amount such beneficiary may appoint under subsection (a) shall be reduced proportionally, based on the net fair market values of the principal of the trusts with respect to which such powers are exercisable as of the date of death of such beneficiary, so that the aggregate of the amount so appointable under this Trust Agreement and the amount or amounts so appointable pursuant to such other power or powers together shall be no greater than the amount otherwise appointable under subsection (a) above.

(c) The provisions of this section shall not apply to the trust administered for Jim under Section 3.1.

3.6 Postponement of Distribution. Upon termination of any trust established hereunder, if any property is distributable to a beneficiary who is then under age twenty-five (25), or who, because of age, physical or mental weakness, or for any other reason is, in the sole discretion of the Trustee, unable to manage the property, the Trustee shall retain such property in a separate trust for the benefit of that beneficiary, until he or she attains age twenty-five (25) and in the sole discretion of the Trustee becomes able to manage the property. At that time, the remaining trust property shall be distributed to the beneficiary and the separate trust shall terminate. During the term of the trust, the Trustee shall distribute to the beneficiary so much of the net income and principal as the Trustee deems necessary to provide for the beneficiary's health, support, maintenance and education. If the beneficiary dies before the termination of the trust, the then remaining trust estate shall be distributed to the beneficiary's estate.

ARTICLE IV

PROVISIONS AFFECTING DISTRIBUTION

4.1 Withdrawal Right. Jim shall have the right, following a contribution to Jim's trust, to make a withdrawal in accordance with the provisions of this section unless the transferor indicates otherwise when making the transfer. A separate withdrawal right shall attach to each separate contribution of properties to Jim's trust. If a transferor is married at the time of contribution to the Trustee, then solely for purposes of the withdrawal rights granted in this Section 4.1, unless the transferor notifies the Trustee in writing to the contrary, such contribution shall be treated as two separate contributions having been made one-half (1/2) by the transferor and one-half (1/2) by the transferor's spouse, regardless of whether the property contributed is community property and regardless of whether they elect to treat such contribution as having been made one-half by each of them for Federal gift tax purposes. Any person making a contribution to Jim's trust may give the Trustee written instructions that no withdrawal right is to be granted, or that alternative withdrawal rights are to be granted with respect to the contribution being made.

(a) Amount That May Be Withdrawn. When a contribution is made, Jim may withdraw the lesser of the following amounts:

(i) the maximum present interest exclusion amount permitted, under Section 2503(b) of the Code, or any similar succeeding statute (such amount being $12,000 at the date of execution of this Trust Agreement), less the cumulative value of all previous known gifts to or for the benefit of Jim by the same transferor during the same calendar year which would qualify for the present interest exclusion; or

(ii) the remainder determined by subtracting Jim's cumulative rights of withdrawal with respect to any other gifts from any transferor that are either

currently outstanding or that have previously lapsed (but not including the present right of withdrawal) during the same calendar year from the greater of (1) Five Thousand Dollars ($5,000), or (2) Five Percent (5%) of the total value of Jim's trust determined as of the date the current withdrawal power is to lapse (such value may be estimated by the Trustee), or (3) any greater withdrawal power, the lapse of which would not constitute a release of such power under Sections 2041(b)(2) and 2514(e) of the Code or any similar subsequent statute; or

(iii) the value of the contribution that is subject to the withdrawal right.

(b) Withdrawal Period and Notice. Unless directed to the contrary by the transferor, the Trustee shall promptly provide Jim with written notice of the date of the contribution, the name of the transferor, the value of the properties contributed, and the value of Jim's withdrawal right. Withdrawals may be made at any time for a period of thirty (30) days following Jim's receipt of the notice of the existence of the withdrawal right. During any period that Jim lacks legal capacity, Jim's guardian or other legal representative, other than Settlor, may exercise Jim's withdrawal right on Jim's behalf. If Jim does not exercise the withdrawal right before the expiration of that period, the unexercised right shall lapse. For purposes of this section, the term "contribution" means any cash or other property which is transferred to the Trustee as part of the trust estate. The value of any contribution to the trust estate shall be its value for federal gift tax purposes.

(c) Payment of Withdrawal Amount. If Jim exercises his withdrawal right, payment of the amount due shall be made in cash immediately upon receipt by the Trustee of a demand in writing from Jim or his guardian or other legal representative, other than Settlor. Upon the exercise of a withdrawal right, payment shall be made, first, from any gifts made to Jim's trust prior to the exercise of such withdrawal right, but during the same calendar year in which the withdrawal right is exercised, and shall be charged against the trust. Should such gift or gifts not consist of sufficient cash to satisfy the exercised withdrawal right, the Trustee shall use other liquid assets of Jim's trust for such purpose. Should Jim's trust not contain sufficient liquid assets to satisfy an exercised withdrawal right when made, the Trustee shall borrow funds in order to satisfy the demand and shall, if necessary, pledge trust property to secure the loan.

(d) Distributions During Withdrawal Period. If any contribution is made subject to a withdrawal right, the Trustee shall not make any distributions under any other provision of the Trust Agreement which would prevent the Trustee from being able to satisfy fully any unexpired right of withdrawal.

(e) Lapse of Withdrawal Right. In the event Jim allows a withdrawal right granted under this Section 4.1 to lapse with respect to a contribution, or any portion thereof, the Trustee is authorized to characterize such lapse as a "release" for purposes of Section 678(a) of the Code.

4.2 Restriction Upon Alienation. No beneficiary may anticipate, by assignment or otherwise, his beneficial interest in the principal or income of the trust estate; nor may any beneficiary sell, transfer, encumber, or in any way charge his interest in trust income or principal prior to actually receiving it. Neither the income nor the principal of any trust established hereunder shall be subject to any execution, garnishment, attachment, bankruptcy, claims for alimony or support, other legal proceeding of any character, legal sequestration, levy or sale, or in any other event or manner be applicable or subject, voluntarily or involuntarily, to the payment of a beneficiary's debts. The Trustee shall make distributions to or for each beneficiary according to the terms hereof, notwithstanding any purported sale, assignment, hypothecation, transfer, attachment, or judicial process. The provisions of this section shall not limit or detract from any power of appointment or withdrawal right granted to any beneficiary herein.

4.3 Distributions Constitute Separate Property. Settlor intends to make a gift to each beneficiary hereunder of only that portion of the income and principal of each trust that is in fact distributed to such beneficiary. Inasmuch as the amounts actually distributed to a beneficiary hereunder constitute the gift Settlor contemplated making, such distributions, whether they be income or principal, shall constitute the separate property of such beneficiary and not the community property of such beneficiary. Furthermore, it is Settlor's intention that no beneficiary shall have any interest in any undistributed income or principal until the distribution of such income or principal and, accordingly, such undistributed income and principal shall not be deemed the community property of any such beneficiary and that beneficiary's spouse.

4.4 Method of Payment. The Trustee, in its discretion, may make distributions to any beneficiary, including a beneficiary who is under a physical, mental, or legal disability (minority or other), in any one or more of the following ways: directly to the beneficiary without the intervention of any legal guardian or other legal representative; as expenditures in the beneficiary's behalf; to the guardian, committee, conservator, or other similar official acting for the beneficiary; to a custodian for the beneficiary under a Uniform Transfers to Minors Act or Uniform Gifts to Minors Act; to a relative of the beneficiary or to any suitable person with whom the beneficiary resides or who has care or custody of the beneficiary; and in all ways provided by law for gifts or other transfers to or for minors or other persons under disability. In each case, receipt by the beneficiary or other person to whom payment is made or a distribution entrusted shall be a complete discharge of the Trustee with respect thereto. The Trustee may act upon such evidence as it deems appropriate and reliable in determining a beneficiary's ability to manage property and identifying a proper recipient of trust funds hereunder.

4.5 Evidence of Need. In exercising its discretion under this Trust Agreement, the Trustee shall be entitled to rely upon the written certification of a beneficiary or of another as to the nature and extent of a beneficiary's needs, and the adequacy of the beneficiary's resources apart from the trust to meet those needs. The Trustee may, but shall not be required to, make inquiry into the accuracy of the information it receives

4.6 Termination of Small Trust. Notwithstanding any provision of this Trust Agreement to the contrary, the Trustee may at any time terminate any trust when in its judgment the trust is so small that it would be inadvisable or uneconomical to continue the trust administration. In the event of termination, the Trustee shall distribute the trust to the income

beneficiaries of the trust determined at the time of distribution in the proportions to which they are entitled to receive income. If at that time rights to income are not fixed by the terms of the trust, distribution shall be made to the persons to whom the Trustee may then distribute income, in proportions determined in the Trustee's discretion, exercised consistently with the trust's purposes. Distribution of trust funds in the manner herein provided shall relieve the Trustee of any further responsibility with respect to such funds. This section shall not apply to a Trustee with respect to any trust of which such Trustee is a beneficiary, or if Trustee has duty to support the beneficiary or to any Trustee who may be removed and replaced by a beneficiary of the trust unless the successor trustee must be a corporate fiduciary or someone who is not related or subordinate to the beneficiary within the meaning of Section 672(c) of the Code. The provisions of this section shall not limit or detract from any withdrawal right granted to any beneficiary herein.

4.7 Generation-Skipping Transfer Taxes and Payment. It is Settlor's intent that the trusts created hereunder be exempt from Generation-Skipping Transfer Taxes. If, however, the Trustee considers any distribution or termination of an interest or power in a trust to be a taxable distribution (a "Distribution") or a taxable termination (a "Termination"), or a direct skip (a "Direct Skip") for generation-skipping transfer tax purposes, the Trustee may exercise the following authorities with respect to any such Distribution, Termination or Direct Skip. In the case of a Distribution, the Trustee may increase the amount to be distributed by an amount estimated to be sufficient to permit the beneficiary receiving such Distribution to pay the estimated generation-skipping tax attributable to such Distribution. Generally, the Trustee would not be expected to augment any partial terminating distribution in order to pay generation-skipping transfer taxes attributable to such partial terminating distribution from a trust. In the case of a Termination or Direct Skip, the Trustee shall pay the generation-skipping transfer tax attributable to such Termination or Direct Skip, and may postpone final termination of any trust or the complete funding of any Direct Skip, and may withhold all or any portion of the trust property, until the Trustee is satisfied it no longer has any liability to pay any generation-skipping transfer tax with reference to the Termination or Direct Skip. If a generation-skipping transfer tax is imposed in part by reason of property held in trust under a Settlor's will or codicil, and in part by reason of other property, the Trustee shall pay only the portion of such tax that is fairly attributable to the Distribution, Termination, or Direct Skip hereunder, taking into consideration deductions, exemptions, credits and other factors which the Trustee deems appropriate. The Trustee may, but need not make any equitable adjustments among beneficiaries of a trust as a consequence of additional distributions or generation-skipping transfer tax payments made with respect to Distributions or Terminations or Direct Skips.

ARTICLE V

THE TRUSTEE

5.1 Resignation of Trustee. The Trustee may resign as to any one or more of the trusts created hereunder by giving written notice to Settlor, if living; otherwise to the current income beneficiary of the trust.

5.2 Appointment and Succession of Trustees.

(a) Generally.

(i) Family Trustee. Jim is the initial Family Trustee of all trusts created hereunder. If Jim ceases to act as Family Trustee, or if any successor Family Trustee fails or ceases to act, Jim may appoint a successor Family Trustee within thirty (30) days of a vacancy arising. If Jim is deceased or if Jim otherwise fails to appoint a successor, GRANT JAMES SCOTT, III is appointed as successor Family Trustee. If GRANT JAMES SCOTT, III fails or ceases to act as Family Trustee, or if any other Family Trustee fails or ceases to act, and a successor is not appointed by Jim as provided above, JOHN WILLIAM HONIS is appointed as successor Family Trustee. If JOHN WILLIAM HONIS fails or ceases to act as Family Trustee, and a successor is not appointed by Jim as provided above, the Family Trustee last serving shall appoint a successor Family Trustee. If a successor Family Trustee is not appointed within sixty (60) days of a vacancy arising, the successor Family Trustee shall be appointed pursuant to the provisions of subsection (b) hereof.

(ii) Independent Trustee. GRANT JAMES SCOTT, III is appointed as the initial Independent Trustee and shall begin serving as such upon delivery of a written acknowledged instrument to the Family Trustee wherein GRANT JAMES SCOTT, III accepts the trust and the position of Independent Trustee. If GRANT JAMES SCOTT, III, fails or ceases to act, or if any other Independent Trustee fails or ceases to act, Jim may appoint a successor within thirty days (30) of the vacancy arising; provided that Jim shall not serve as Independent Trustee and a successor Independent Trustee appointed by Jim may not be related or subordinate to Jim within the meaning of Section 672(c) of the Code. If a successor is not so appointed, JOHN WILLIAM HONIS is appointed Independent Trustee. If JOHN WILLIAM HONIS fails or ceases to act as Independent Trustee, and a successor is not appointed by Jim as provided above, the Independent Trustee last serving may appoint the successor Independent Trustee. If a successor Independent Trustee is not so appointed within sixty (60) days of a vacancy arising, a successor Independent Trustee shall be appointed pursuant to the provisions of subsection (b) hereof.

(iii) Administrative Trustee. COMMONWEALTH TRUST COMPANY is the initial Administrative Trustee. If COMMONWEALTH TRUST COMPANY fails or ceases to serve, Jim may appoint a successor Administrative Trustee within thirty days (30) of the vacancy arising. If a successor is not so appointed, the Family Trustee may appoint a successor Administrative Trustee within sixty (60) days of the vacancy arising. If a successor is not so appointed, a successor shall be appointed in the same manner as provided for the Family Trustee under subsection (a) above. The selection of the Administrative Trustee can have a substantial impact on the situs of the trust, which should be considered in appointing a successor Administrative Trustee.

Notwithstanding any other provision in the Trust Agreement to the contrary, no Administrative Trustee may be appointed under this paragraph if the appointment of such Administrative Trustee would change the situs of the trust to a jurisdiction that has a rule against perpetuities or similar rule which limits the period during which property can be held in trust

The Administrative Trustee shall act in a fiduciary capacity but shall not be a Trustee or co-Trustee except to the extent and for the limited purposes described in Section 6.2. Accordingly, no reference in this Trust Agreement to the "Trustee" or "co-Trustee" shall include, or be deemed to refer to, the Administrative Trustee. Notwithstanding the foregoing, the same individual or bank or trust company may serve simultaneously as both a Trustee or co-Trustee and as Administrative Trustee for any trust created hereunder. The initial Administrative Trustee and each successor may resign at any time and may be removed at any time by the Family Trustee.

For services rendered as Administrative Trustee under this Agreement, any Administrative Trustee shall be entitled to reasonable compensation for his, her or its services, as well as be entitled to reimbursement for all expenses reasonably incurred in performing his, her or its duties hereunder. Any Administrative Trustee may receive (or retain) payment in accordance with its schedule or rates as published from time to time and as in effect at the time such compensation becomes payable, unless otherwise agreed in writing with the Family Trustee.

No termination fee shall be charged upon removal or resignation of an Administrative Trustee. However, such Administrative Trustee shall be entitled to reasonable compensation for time and materials for additional services over and above Administrative Trustee's normal duties in transferring trust assets and administration of the trust to the new Administrative Trustee.

(b) Successor Trustee. If a named or appointed successor Trustee fails or ceases to serve and no other successor is named or appointed pursuant to subsection (a) hereof, a majority in number of the beneficiaries to whom the Trustee is to or may distribute income at that time may appoint the successor Trustee, and each shall have a reasonable time in which to act. If a successor Trustee is not so appointed, any beneficiary of a trust may secure the appointment of a successor Trustee by a court of competent jurisdiction at the expense of the trust estate.

(c) Manner of Appointment; Permissible Trustees. Appointment, other than by a court, shall be by a signed, acknowledged instrument delivered to the appointed Trustee. An appointment may be made before a vacancy arises, to become effective in the event of the vacancy with the last such instrument to control. The successor Trustee appointed by Jim or a Trustee may be one or more persons and/or entities; provided that neither Settlor nor Jim shall serve as Independent Trustee and a successor Independent Trustee appointed by Jim may not be related or subordinate to Jim within the meaning of

Section 672(c) of the Code. Any other successor Trustee shall be a trust company or a bank in the United States having trust powers with not less than Fifty Million Dollars unimpaired capital and surplus. A successor Trustee shall have a reasonable time after a vacancy occurs in which to accept the office by signed, acknowledged instrument delivered to those making the appointment, if living, or to the then current beneficiaries to whom the Trustees are to or may make distributions.

5.3 Removal of Trustee. Jim shall have the power to remove the Trustee of any trust created hereunder, without cause. If Jim is deceased or if Jim is incapacitated within the meaning of Section 5.11 hereof, the primary beneficiary (or, if more than one, a majority of the primary beneficiaries) of a trust may remove any Trustee without cause. Removal shall be effected by delivering to the Trustee a signed acknowledged instrument which is effective thirty (30) days from its receipt (unless a shorter period is agreed to by the Trustee).

5.4 Succession of Corporate Trustee. If any corporate Trustee before or after qualification changes its name, becomes consolidated or merged with another corporation, or otherwise reorganizes, any resulting corporation which succeeds to the fiduciary business of such corporate Trustee shall become a Trustee hereunder in lieu of such corporate Trustee.

5.5 Trustee's Fees. Jim and Jim's Descendants shall not receive a fee for serving as Trustee. Any other Trustee shall be entitled to reasonable fees commensurate with its duties and responsibilities, taking into account the value and nature of the trust estate and the time and work involved. The Trustee shall be reimbursed for reasonable costs and expenses incurred in connection with its fiduciary duties hereunder.

5.6 Bond. The Trustee shall not be required to furnish bond or other security.

5.7 Liability of Trustee.

(a) Generally. A Trustee other than a corporate trustee shall only be liable for willful misconduct or gross negligence, and shall not be liable for breach of fiduciary duty by virtue of mistake or error in judgment.

(b) Administrative Trustee. Every act done, power exercised or obligation assumed by the Administrative Trustee pursuant to the provisions of this Agreement shall be held to be done, exercised or assumed, as the case may be, by the Administrative Trustee acting in a fiduciary capacity and not otherwise, and every person, firm, corporation or other entity contracting or otherwise dealing with the Administrative Trustee shall look only to the funds and property of the trust fund for payment under such contract or payment of any money that may become due or payable under any obligation arising under this Agreement, in whole or in part, and the Administrative Trustee shall not be individually liable therefor even though the Administrative Trustee did not exempt himself, herself or itself from individual liability when entering into any contract, obligation or transaction in connection with or growing out of the trust fund.

The decision of the Administrative Trustee hereunder with respect to the exercise or nonexercise by such Administrative Trustee of any power hereunder, or the time or

manner of the exercise thereof, made in good faith, shall fully protect such Administrative Trustee and shall be final, conclusive and binding upon all persons interested in the Trust or the income therefrom. To the extent permitted under applicable law, the Administrative Trustee acting hereunder shall not be responsible for any error of judgment or mistake of fact or law, absent bad faith or willful misconduct.

The Administrative Trustee shall be liable hereunder only for the Administrative Trustee's bad faith or willful misconduct proved by clear and convincing evidence in the court then having primary jurisdiction over the trust. The Administrative Trustee shall not be personally liable for making any delegation that is authorized under this Agreement, nor for any action taken without the Administrative Trustee's express agreement, nor for any failure to act absent willful misconduct. The Administrative Trustee shall not be liable for relying absolutely on (i) any apparently valid documents and certifications including, but not limited to, tax reports and other tax information provided to the Administrative Trustee by any entity in which the trust fund holds an ownership interest; and (ii) the opinions of counsel or any accountant to any trust.

Prior to the death of Settlor, the Administrative Trustee shall be under no duty to inform any person having a beneficial interest in any trust created hereunder of the existence of any such trust or the nature and extent of that person's beneficial interest in, or rights with respect to, any such trust. Following the death of Settlor, the Administrative Trustee shall be under no duty to inform any person, other than the primary beneficiary of each trust hereunder, having a beneficial interest in any trust created hereunder of the existence of such trust or the nature and extent of that person's beneficial interest in, or rights with respect to, any such trust.

While not required, the same procedure used to settle the Administrative Trustee's accounts may also be employed to obtain the conclusive consent by the beneficiaries to the Administrative Trustee's specific conduct of any other particular matter. The Administrative Trustee and each former Administrative Trustee shall be indemnified and held harmless by each trust created hereunder against any threatened, pending or completed action, claim, demand, suit or proceeding, whether civil, criminal, administrative or investigative, falling within the exculpatory provisions of this Section or to which the Administrative Trustee is made a party, or threatened to be made a party, by reason of serving as Administrative Trustee if the Administrative Trustee acted in good faith, subject to the limitations set forth above. Such indemnification shall include expenses, including attorneys' fees, judgments, fines and amounts paid in settlement actually incurred by the Administrative Trustee in connection with such action, claim, demand, suit or proceeding. The cost of indemnification shall be apportioned against the various trusts created hereunder as the Administrative Trustee reasonably considers appropriate, taking into account the nature of the claims involved.

The Administrative Trustee shall not have any fiduciary responsibility to observe, monitor or evaluate the actions of any Trustee or other fiduciary and shall not be liable to any party for the failure to seek to attempt to prevent a breach of trust, or failure to remedy a breach of trust, or in a recurring situation to request instructions from a court

having jurisdiction over the trust. In no event shall any Administrative Trustee hereunder be liable for any matter with respect to which he, she or it is not authorized to participate hereunder (including the duty to review or monitor trust investments).

Any Successor Administrative Trustee shall be deemed vested with all the duties, rights, titles and powers, whether discretionary or otherwise, as if originally named as Administrative Trustee. No Successor Administrative Trustee shall be personally liable for any act or failure to act of any predecessor Administrative Trustee or any other Trustee. The Successor Administrative Trustee may accept the account rendered and the property delivered by the predecessor Administrative Trustee as a full and complete discharge to the predecessor Administrative Trustee, without incurring any liability for so doing.

5.8 Predecessor Fiduciary. No successor Trustee shall be obligated or required to inquire into the acts, omissions, or accounts of any prior trustee or to bring any action against any prior trustee to compel redress of any breach of trust or for any other reason. In no event shall a successor Trustee be liable for any act or omission of any prior Trustee. A successor Trustee may accept the account rendered and the property received from a prior Trustee as a full and complete discharge to the prior Trustee without incurring any liability for doing so. A successor Trustee shall have all of the powers and discretions conferred in the governing instrument upon the original trustee.

5.9 Periodic Accounting. The Trustee may from time to time render an informal account, statement or report of its administration of each separate trust hereunder to each beneficiary who during the period covered by the account was entitled absolutely to a current payment of income or principal from the trust, or, if there is no such beneficiary, to such beneficiaries who are entitled absolutely or in the discretion of the Trustee to a payment of income or principal from the trust. If any beneficiary or legal representative or parent of a beneficiary who is not of full age or legal capacity to whom any such account is rendered shall not, within ninety (90) days after the mailing of such statement, have notified the Trustee in writing of its disapproval of the same, such statement shall be deemed to be approved

No Administrative Trustee shall be required to file or render periodic accounts in or to any court other than for good cause shown. No Administrative Trustee shall be required to give any bond.

Within 90 days following the close of each calendar year, if information is available, and if not within 30 days after it is delivered to the Administrative Trustee, and within 90 days after the removal or resignation of the Administrative Trustee, the Administrative Trustee may deliver an accounting to each primary beneficiary. The accounting shall be a written accounting of the trusts hereunder during such year or during the period from the close of the last preceding year to the date of such removal or resignation and shall set forth all investments, receipts, distributions, expenses and other transactions of each such trust and show all cash, securities, and other property held as a part of each such trust at the end of such year or as of the date of such removal or resignation, as the case may be. The accountings referred to in this Section shall be deemed to be an account stated, accepted and approved by all of the beneficiaries of each trust for which an

accounting is rendered, and the Administrative Trustee shall be relieved and discharged, as if such accounting had been settled and allowed by a final judgment or decree of a court of competent jurisdiction, unless protested by written notice to the Administrative Trustee, within 60 days of mailing thereof, by the person designated to receive such accounting. The Administrative Trustee shall have the right, at the expense of the trust, to apply at any time to a court of competent jurisdiction for judicial settlement of any account of the Administrative Trustee whether or not previously settled as herein provided or for the determination of any question of construction or for instructions. In any such action or proceeding it shall be necessary to join as parties solely the Administrative Trustee and the Settlor (although the Administrative Trustee may also join such other parties as it may deem appropriate), and any judgment or decree entered therein shall be conclusive and binding on all persons at any time interested in the trust.

5.10 Beneficiary under Disability. A parent, custodian, or guardian of any beneficiary who is under the disability of minority or, in the Trustee's opinion, any other legal, physical, or mental disability, may, in carrying out the provisions of this Trust Agreement, act and receive notice in the beneficiary's stead, and sign any instrument for the beneficiary.

5.11 Incapacity of Individual Trustee. In the event a Trustee other than a corporate Trustee becomes unable to discharge his duties as Trustee hereunder by reason of accident, physical or mental illness or deterioration, or other cause, and does not resign, then upon certification by two medical doctors affirming that each has examined the Trustee and that each has concluded, based on such examination, that he is unable to discharge his duties hereunder, the Trustee shall cease to serve, as if he had resigned, effective the date of the certification.

ARTICLE VI

TRUST ADMINISTRATION

6.1 General Powers. Subject to any limitation stated elsewhere in this Trust Agreement, and the division of powers contained in Section 6.2, the Trustee shall have, in addition to all powers granted to trustees by the common law and by Delaware statutes, as amended from time to time, the following powers with respect to each trust established hereunder:

(a) Retain Property. To retain any property received from any source, including any corporate Trustee's securities, regardless of lack of diversification, risk, or nonproductivity.

(b) Invest. To invest the trust estate in any kind of property, including common trust funds administered by a corporate Trustee or by others, without being limited by any statute or any rule of law dealing with the character, risk, productivity, diversification of, or otherwise concerning, investments by trustees.

(c) Sell. By public offering or private negotiation, to sell, exchange, assign, transfer, or otherwise dispose of all or any real or personal trust property and give options

for these purposes, for such price and on such terms, with such covenants of warranty and such security for deferred payment as the Trustee deems proper. To partition between the trust and any other owner, as the Trustee deems proper, any property in which the trust owns an undivided interest.

(d) Lease. To lease trust property for terms within or extending beyond the term of the trust, for any purpose.

(e) Real Estate. To operate, maintain, repair, rehabilitate, alter, erect, improve, or remove any improvements on real estate; to subdivide real estate; to grant easements, give consents, and enter into contracts relating to real estate or its use; and to release or dedicate any interest in real estate.

(f) Borrow. To borrow money for any purpose either from the banking department of any corporate Trustee or from others; to encumber or hypothecate trust property by mortgage, deed of trust, or otherwise; and to maintain, renew, or extend any indebtedness upon such terms as the Trustee deems appropriate.

(g) Loans. To lend money to any person or entity, including, but not limited to, a beneficiary hereunder, but not including a Settlor or a Trustee (other than a beneficiary serving as Trustee) hereunder, or a spouse of theirs, upon such terms and with such security as the Trustee deems advisable.

(h) Conserve Estate. To take any action to conserve the trust estate.

(i) Litigation. To commence or defend at the expense of the trust such litigation with respect to the trust estate as the Trustee deems advisable.

(j) Claims. To collect, pay, contest, compromise, settle, renew, or abandon any claims or demands of or against the trust estate without court authority on whatever terms the Trustee deems advisable.

(k) Abandon Property. To abandon any property or interest in property belonging to the trust when, in the Trustee's discretion, such abandonment is in the best interest of the trust and its beneficiaries.

(l) Documents. To execute contracts, notes, conveyances, and other instruments containing covenants, representations, or warranties binding upon and creating a charge against the trust estate or containing provisions excluding personal liability, or any other written instrument of any character appropriate to any of the powers or duties conferred upon the Trustee.

(m) Agents. To employ attorneys, auditors, investment advisors, depositaries, and agents with or without discretionary powers, to employ a bank with trust powers as agent for the purpose of performing any ministerial duties incident to the administration, and to pay all expenses and fees so incurred.

(n) Securities. To engage in all actions necessary to the effective administration of securities including, but not limited to, the authority to: vote securities in person or by proxy; engage in a voting trust or voting agreement; and consent to or participate in mergers, consolidations, sales of assets, recapitalizations, reorganizations, dissolutions, or other alterations of corporate structure affecting securities held in the trust.

(o) Nominee. To hold securities and other property in bearer form or in the name of a trustee or nominee with or without disclosure of any fiduciary relationship.

(p) Additional Property. To receive additional property from any source and add it to the trust estate.

(q) Insurance. To carry insurance of such kinds and in such amounts as the Trustee deems advisable, except for insurance on the life of a Settlor, the Trustee, or a spouse of theirs. The Trustee shall not apply trust property to the payment of premiums on an insurance policy on the life of Settlor, the Trustee, or a spouse of theirs.

(r) Business Powers.

(i) In General. To engage in any lawful business including, but not limited to, the power to continue at the risk of the trust estate the operation of any business which may become a part of the trust estate, and to sell, liquidate, or otherwise terminate any business interest, including, but not limited to, the fulfillment of any agreement for the disposition of any such business interest.

(ii) Closely Held Businesses. This trust may be funded with, or subsequently purchase or otherwise acquire, securities or other financial interests in one or more closely held businesses (each of which is hereinafter referred to as the "business").

(1) Exoneration from Liability. It is realized that the business may not be the type of investment in which fiduciaries would normally invest estate or trust funds. Nonetheless, the Trustees shall incur no liability for any loss which may be sustained by reason of the retention, operation or sale of the business or the exercise of any power conferred upon the Trustees with respect to the business.

(2) Management Powers. The Family Trustee shall have the exclusive duty to deal with and manage the business. In addition to any power granted by law or elsewhere in this document, the Family Trustee shall have the following powers:

(A) To retain and continue the business or any interest therein for such time as the Family Trustee considers advisable;

(B) To operate or participate in the operation of the business in the form of a corporation, limited liability company, partnership or proprietorship;

(C) To direct, control, supervise, manage, operate or participate in the operation of the business; to serve as an officer and director of the business; and to receive from the business compensation for his services in addition to his compensation as a Family Trustee;

(D) To delegate all or any part of his power to supervise, manage or operate the business to such persons as he may select, including any director, officer or employee of the business;

(E) To engage, compensate and discharge such managers, employees, agents, attorneys, accountants, consultants or other representatives as he considers advisable, including anyone who may be a beneficiary or fiduciary of this Trust;

(F) To invest or employ in the business, or to use as collateral for loans to the business, such other estate or trust funds as he considers advisable;

(G) To sell, liquidate or otherwise dispose of all or any part of the business at such time or times, for such prices and upon such terms and conditions as he considers advisable, and to sell the business to anyone who is a beneficiary or a fiduciary of this Trust; and

(3) Exclusion from Powers. Neither Commonwealth Trust Company nor any successor Administrative Trustee shall have any power, duty and/or responsibility in connection with the operation, control, supervision, management and participation of the business.

(s) Income and Principal. To determine, in accordance with the provisions of Delaware law, what constitutes income and principal of the trust estate, the manner in which expenses and other charges shall be allocated between these accounts, and whether or not to establish reserves for depreciation or depletion, and to add undistributed income to principal.

(t) Tax Elections. To exercise any tax option or election permitted by law as the Trustee determines, in its sole discretion, even though the effect is to treat beneficiaries hereunder differently, or to favor some at the expense of others. The Trustee may, but need not, make such compensating adjustments among beneficiaries with respect thereof as it deems appropriate considering the nature of the tax election and the amounts involved.

(u) Reliance. To rely upon any notice, certificate, affidavit, or other document or evidence believed by the Trustee to be genuine and accurate, in making any payment or distribution. The Trustee shall incur no liability for a disbursement or distribution made in good faith and without actual notice or knowledge of a changed condition or status affecting any person's interest in the trust or any other matter.

(v) Commingling. To commingle and invest as one fund, or make joint investments with, the principal of two or more separate trusts established hereunder, with each trust having an undivided interest therein.

(w) Division and Distribution. To make all allocations, distributions, or divisions contemplated by this Trust Agreement; to allocate, distribute and divide different kinds or disproportionate shares of property or undivided interests in property among the beneficiaries or trusts, in cash or in kind, or both, without regard to the income tax basis of specific property allocated to any beneficiary or trust, even though shares may as a result be composed differently, and to determine the value of any property so allocated, divided or distributed.

(x) Withholding of Distribution. To withhold from distribution all or any part of the trust property as long as the Trustee, in its discretion, determines that such property may be subject to conflicting claims, to tax deficiencies, or to liabilities, contingent or otherwise, properly incurred in the administration of the trust.

(y) Mineral Powers. To retain or acquire interests in oil, gas, or other mineral resources; to execute as to those interests any agreements, assignments, contracts, deeds, grants or leases for any term (even though the term may extend beyond the termination of the trust); to manage, control, operate, explore, mine, develop, or take any action for the production, recovery, sale, treatment, storage, or transportation of any such interest; to drill, rework, or recomplete wells of any type; to conduct or participate in secondary recovery operations; to enter into agreements for pooling or unitization; and to install, operate, or participate in the operation of any plant, mine, or other facility.

(z) Environmental Hazards. To use and expend the trust income and principal to (i) take all appropriate action to prevent, identify, or respond to actual or threatened violations of any environmental law or regulation for which the Trustee may have responsibility, including the authority to conduct environmental assessments, audits, and site monitoring to determine compliance with any environmental law or regulation; (ii) take all appropriate remedial action to contain, cleanup, or remove any environmental hazard including a spill, release, discharge, or contamination, either on its own accord or in response to an actual or threatened violation of any environmental law or regulation; (iii) institute legal proceedings concerning environmental hazards or contest or settle legal proceedings brought by any local, state, or federal agency concerned with environmental compliance, or by a private litigant; and (iv) comply with any local, state, or federal agency order or court order directing an assessment, abatement, or cleanup of any environmental hazards.

(aa) Miscellaneous Powers. Generally to do and perform any and all acts, things, or deeds which, in the discretion of the Trustee, may be necessary or proper for the protection, preservation, and promotion of the trust properties and estate.

6.2 Division of Powers. The powers and duties granted under this Trust Agreement shall be divided among the Trustees as follows:

(a) Administrative Trustee. The Administrative Trustee shall have the following exclusive duties, which shall all be carried out in the State of Delaware or such other jurisdiction as the Trustee shall, from time to time, select as the situs of the trust:

(i) To maintain bank accounts, brokerage accounts and other custody accounts which receive trust income and contributions and from which trust expenditures and distributions are disbursed.

(ii) To maintain storage of tangible personalty and evidence of intangible trust property.

(iii) To maintain trust records.

(iv) To maintain an office for Trustee meetings and other trust business.

(v) To originate, facilitate and review trust accountings, reports and other communications with the Settlor, any co-Trustees, beneficiaries and unrelated third parties.

(vi) To respond to inquiries concerning the trust from the Settlor, any co-Trustees, beneficiaries and unrelated third parties.

(vii) To execute documents with respect to trust account transactions.

(viii) To retain accountants, attorneys, investment counsel, agents and other advisers in connection with the performance of its duties under this Section 6.2.

(b) Independent Trustee. The Independent Trustee shall have all of the powers and duties specifically assigned to the Independent Trustee under this Trust Agreement. These powers may only be exercised by the Independent Trustee.

(c) Family Trustee. The Family Trustee shall possess and exercise all of the powers and duties of the Trustee not specifically granted to the Administrative Trustee or the Independent Trustee under this Trust Agreement, including those specifically assigned to the Family Trustee. Without limiting the generality of the foregoing, the Family Trustee shall exercise all Trustee authority and have all Trustee responsibility with respect to the investment of the trust estate. If there is no Family Trustee serving,

however, all of the powers and duties of the Trustee, including those assigned to the Family Trustee, shall be exercised and discharged by the Independent Trustee.

6.3 Merger of Trusts. If at any time a Trustee of any trust created pursuant to this Trust Agreement shall also be acting as Trustee of any other trust created by trust instrument or by will for the benefit of the same beneficiary or beneficiaries and upon substantially the same terms and conditions, the Trustee is authorized and empowered, if in the Trustee's discretion such action is in the best interest of the beneficiary or beneficiaries of the trust created hereunder, to transfer and merge all of the assets then held under such trust created pursuant to this Trust Agreement to and with such other trust and thereupon and thereby to terminate the trust created pursuant to this Trust Agreement. The Trustee is further authorized to accept the assets of the other trust which may be transferred to the Trustee of the trust created hereunder and to administer and distribute such assets and properties so transferred in accordance with the provisions of this Trust Agreement. If the component trusts differ as to contingent beneficiaries and the contingency occurs, the funds may be distributed in such shares as the Trustee, in the Trustee's sole discretion, shall deem necessary to create a fair ratio between the various sets of remaindermen. If any trust created in this Trust Agreement is merged with any trust created under any other instrument, such merged trust shall not continue beyond the date on which the earliest maximum term of the trusts so merged would, without regard to such merger, have been required to expire. Settlor further directs that, as to any property at any time a part of any trust estate (including a merged trust) as to which under the laws of any state applicable to said property that trust is required to be terminated at any time prior to its normal termination date, the trust as to that particular property shall terminate at the time required by the laws of said state.

6.4 Certain Powers and Rights Limited. Settlor intends that the trust created under Section 3.1 hereof shall not be included in Jim's gross estate for estate tax purposes unless the Independent Trustee grants Jim a general power of appointment pursuant to paragraph 3.1(d). All issues applicable to the trust shall be resolved accordingly.

6.5 GST Inclusion Ratio. If property not having an inclusion ratio for purposes of the generation-skipping transfer tax equal to zero is directed to be added to a trust which has an inclusion ratio equal to zero, the Trustee may decline to make the addition and may, instead, administer the property as a separate trust with provisions identical to the trust having an inclusion ratio equal to zero. If property having an inclusion ratio for purposes of the generation-skipping transfer tax equal to zero is directed to be added to a trust which has an inclusion ratio not equal to zero, the Trustee may decline to make the addition and may, instead, administer the property as a separate trust with provisions identical to the trust having an inclusion ratio not equal to zero.

6.6 Out-of-State Properties. If any trust property is situated in a jurisdiction in which the Trustee is unable or unwilling to act, the Trustee may appoint an ancillary trustee for such jurisdiction and may confer upon the ancillary trustee such powers and discretions, exercisable without court order, to act with respect to such property as the Trustee deems proper. The ancillary trustee shall be responsible to the Trustee for all property it administers. The Trustee

may pay the ancillary trustee reasonable compensation for its services and may absolve it from any requirement to furnish bond or other security.

6.7 Management of Real Property. The Family Trustee (or the Independent Trustee pursuant to Section 6.2(c) hereof), acting alone, shall make any and all decisions regarding: (i) the acquisition, retention and disposal of real estate; (ii) the operation, maintenance, repair, rehabilitation, alteration, construction, erection, improvement, or removal of any improvements on real estate; (iii) the subdivision of real estate; (iv) the granting of easements, giving of consents, and entering into contracts relating to real estate or its use; (v) the release or dedication of any interest in real estate; and (vi) the payment of taxes, utilities, and maintenance expenses attributable to real estate owned by any trust created hereunder. The Family Trustee (or the Independent Trustee pursuant to Section 6.2(c) hereof) may, in its discretion, either exercise such powers or appoint an ancillary trustee to exercise such powers. The Trustee may pay the ancillary trustee reasonable compensation for its services and may absolve it from any requirement to furnish bond or other security.

6.8 No Court Supervision. The Trustee shall not be required to qualify before or be appointed by any court; nor shall the Trustee be required to obtain the order or approval of any court in the exercise of any power or discretion.

6.9 Division of Trusts. The Trustee may divide any trust established by this Trust Agreement into two or more separate trusts as provided in this section. Settlor exonerates the Trustee from any liability arising from the exercise or failure to exercise any powers granted herein, provided the Trustee acts in good faith.

(a) Division and Funding of Separate Trusts. The Trustee may divide any trust established by this Trust Agreement, at any time, into two or more separate trusts so that the generation-skipping transfer tax inclusion ratio as defined in Section 2642(a) of the Code for each trust shall be either zero or one. Any such division shall be accomplished in accordance with applicable regulations under Chapter 13 of the Code.

(b) Administration of Separate Trusts. Such separate trusts shall have the identical provisions as the original trust. However, with respect to each separate trust, the Trustee may: (1) make different tax elections, (2) expend principal and exercise any other discretionary powers with respect to such separate trusts differently, (3) invest such separate trusts differently, and (4) take all other actions consistent with such trusts being separate trusts.

(c) Powers of Appointment. The donee of any power of appointment with respect to a trust so divided may exercise such power of appointment differently with respect to the separate trusts created by the division.

6.10 Limitation of Powers. The following limitations, affecting the administration of the trusts created hereunder, apply notwithstanding any other provision of this Trust Agreement. For purposes of this Section 6.10, the term "Settlor" shall include any individual who contributes property to the Trustee to be added to the trust estate.

(a) Support Duty. Distributions from the trust estate shall not be made which discharge, in whole or in part, the personal legal obligations of a Settlor or a Trustee from time to time existing, to support or educate any of the trust beneficiaries. When determining these legal obligations, the existence of this trust and funds made available by it shall not be taken into consideration.

(b) Adequacy of Consideration. No party may, through purchase, exchange, or otherwise, deal with or dispose of the corpus or the income of the trust estate for less than adequate consideration in money or money's worth.

(c) Insurance. The Trustee shall not apply trust property to the payment of premiums on an insurance policy on the life of a Settlor, the Trustee or a spouse of either of them.

(d) Borrow. The Trustee shall not allow a Settlor to borrow trust principal or income, directly or indirectly, without adequate interest or security.

(e) Substitute Property. The Trustee shall not allow a Settlor to reacquire or exchange any property of the trust estate by substituting other property with an equivalent value.

(f) Vote. A Settlor, acting as a Trustee, shall not be entitled to vote, directly or indirectly, shares of stock of a controlled corporation, as defined under Section 2036 of the Code, which is held as part of the trust estate.

6.11 Dealing with Fiduciaries. The Trustee may enter into any transaction with the Trustee or beneficiaries of the trusts created hereunder, acting in their individual or in another fiduciary capacity, or with any person or entity related to the Trustee or a beneficiary in any manner, if such transaction is otherwise authorized under this Trust Agreement. Without limiting the generality of the foregoing authorization, the Trustee may enter into any transaction otherwise authorized hereunder on behalf of any trust created hereunder even though the other party to the transaction is: a trust of which a beneficiary or Trustee under this Trust Agreement is a beneficiary or trustee, including, but not limited to, any trust established by this Trust Agreement; an estate of which a beneficiary or Trustee under this Trust Agreement is a representative or beneficiary; or a business or charitable corporation of which a beneficiary or Trustee under this Trust Agreement is a director, officer, employee, or owner.

ARTICLE VII

IRREVOCABILITY

This Trust Agreement and each of its provisions may not be revoked, amended, or modified.

ARTICLE VIII

MISCELLANEOUS PROVISIONS

8.1 Applicable Law. The trust created under this Trust Agreement shall be deemed a Delaware trust and all matters pertaining to the validity, construction, and application of this Trust Agreement or to the administration of the trust created hereunder shall, in all respects, be governed by the laws of the State of Delaware. However, if the Trustee, in its sole discretion, determines that a change of situs would be beneficial to the purposes of the trust established by this Trust Agreement, the Trustee shall have the discretion and authority to change the situs of any such trust to another state. No change of situs shall be authorized herein, however, which would result in a termination of the trust for federal tax purposes. Furthermore, the Trustee shall not be entitled to change the situs of the trust to a jurisdiction that has a rule against perpetuities or similar rule which limits the period during which property can be held in trust. Any proceeding involving the Trust must be brought in the State of Delaware for so long as the situs of the Trust shall be the State of Delaware.

8.2 Perpetuities Provision. The trust created hereunder shall be perpetual to the fullest extent permitted by Delaware law. If the trust created hereunder is deemed to be subject to the law of a jurisdiction that has a rule against perpetuities or similar rule which limits the period during which property can be held in trust, then such trust shall terminate in all events upon the expiration of the longest period the property may be held in trust under this Agreement under the law of such jurisdiction (including any application periods in gross, such as 110 years, 360 years, or 1,000 years); provided, however, that if the jurisdiction has a rule against perpetuities or similar rule which applies only to certain types of property, such as real property, the provisions of this Section shall apply only to such property. If under the law of such jurisdiction the longest period that property may be held in trust is determined with reference to the death of the last survivor of a group of individuals in being upon the date of this Trust Agreement, those individuals shall consist of Jim and Jim's Descendants who are in being on the date of this Trust Agreement. Upon termination of a trust pursuant to the provisions of this Section 8.2, the Trustee shall distribute such trust to its income beneficiaries determined at the time of distribution. If at that time rights to income are not fixed by the terms of the trust, distribution shall be made to the persons to whom the Trustee may then distribute income, in proportions determined in the Trustee's discretion, exercised consistently with the trust's purposes.

In the event any trust created hereunder owns real property, and if such real property is subject to a rule against perpetuities or similar rule which limits the period during which property can be held in trust, then the Trustee shall take such action as is necessary to avoid termination of the trust with respect to that real property interest including, without limitation, selling the real property or contributing the real property to a business entity in exchange for ownership interests in such entity to be owned by the trust.

8.3 Gestation. A child in gestation who is born alive shall be considered a child in being throughout the period of gestation.

8.4 Survivorship. Any person must survive by thirty (30) days for a gift made in this Trust Agreement which directly or indirectly requires such person's survival of another to be effective.

8.5 Release of Powers and Interests. Any person, including a beneficiary and a Trustee, shall have the power to disclaim, release, or restrict, irrevocably, in whole or in part, any interest, right, power, or discretion granted to such person with respect to any trust by signed instrument delivered to the Trustee, or in any other manner permitted by law. Any person designated or appointed as a Trustee may, prior to accepting the trust, by written instrument decline to accept any right, power, or discretion with respect to the trust and may accept the trust without such right, power, or discretion.

8.6 Powers of Appointment.

(a) Capacity in Which Exercisable. Every power of appointment granted to a beneficiary under this Trust Agreement is exercisable by that beneficiary in the beneficiary's individual capacity, notwithstanding the fact that the beneficiary may also be serving as a Trustee of the trust.

(b) Manner of Appointment. Every power of appointment granted herein: (i) shall be personal to the donee of such power and may not be exercised on behalf of the donee by any other person, including an attorney-in-fact, a guardian, or any other court appointed representative, and (ii) may be exercised in whole or in part and in favor of one or more potential beneficiaries to the exclusion of others. Appointment may be outright or in further trust, with all provisions determined by the donee of the power, and may confer a power of appointment upon the beneficiary or others, if within the constraints imposed by any applicable rule against perpetuities and any other law which is applicable to the appointment.

(c) Exercise of Inter Vivos Power. An inter vivos power of appointment granted in this Trust Agreement may be exercised only by a written instrument, executed and acknowledged by the donee and delivered to the Trustee during the donee's lifetime, which specifically refers to the power of appointment and expresses the intention to exercise it. If no such instrument is delivered to the Trustee during the donee's lifetime, upon the donee's death the Trustee may distribute the property subject to the power in the manner provided in this Trust Agreement for distribution in default of exercise.

(d) Determination of the Exercise of a Testamentary Power. The Trustee may rely upon any instrument admitted to probate as a will or codicil in determining whether a testamentary power of appointment granted herein has been exercised. If no will or codicil is brought to the Trustee's attention within ninety (90) days of a death to indicate the exercise of a testamentary power, the Trustee may distribute the property subject to the power according to the terms herein provided for distribution in default of exercise. The Trustee will be protected from liability for its actions as authorized in this subsection (d), but this subsection does not affect a beneficiary's rights in the property subject to the power of appointment.

(e) Tax Consequences. The exercise of a power of appointment may have important tax consequences. The donee of any power of appointment should consult with counsel before exercising such power of appointment.

8.7 Liability of Third Party. No person paying money or delivering property to the Trustee need see to the application of such money or property. No person dealing with the Trustee need inquire into the propriety of any transaction or the Trustee's authority to enter into and consummate the same.

8.8 Use of Words. As used in this Trust Agreement, the masculine, feminine, and neuter gender, and the singular or plural of any word each includes the others unless the context indicates otherwise.

8.9 Unenforceable Provision. If any provision of this Trust Agreement is unenforceable, the remaining provisions shall be given effect, unless to do so would produce an unreasonable result.

8.10 Titles, Headings, and Captions. All titles, headings, and captions used in this Trust Agreement have been included for administrative convenience only and should not be construed in interpreting this Trust Agreement.

8.11 Counterpart Signatures. This document may be executed in counterparts, and all counterparts so executed shall constitute a single document, notwithstanding that the interested parties are not or may not be signatories to the original or to the same counterpart.

8.12 Trust Name. The trusts established under Article II of this Trust Agreement, collectively, shall be known as the "The Dugaboy Investment Trust".

IN WITNESS WHEREOF, the Settlor, the Family Trustee and the Administrative Trustee have hereunto set their hands on the day and year first above written in multiple originals. The Trustees agree to administer the trust estate in accordance with the terms of this Trust Agreement. The Independent Trustee shall begin serving as such upon delivery of a written acknowledged instrument to the Family Trustee in accordance with Section 5.2 hereof.

Dana Scott Breault 23 Oct 10
DANA SCOTT BREAULT, Settlor

STATE OF TEXAS §
§
COUNTY OF DALLAS §

BEFORE ME, the undersigned authority, on this day personally appeared DANA SCOTT BREAULT, as Settlor, known to me to be the person whose name is subscribed to the foregoing Trust Agreement and acknowledged to me that she executed the same for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 23rd day of October, 2010.

Ravi Iyer
Notary Public

RAVI IYER
Notary Public, State of Texas
My Commission Expires
June 12, 2013

JAMES D. DONDERO, Family Trustee

STATE OF TEXAS §
§
COUNTY OF DALLAS §

BEFORE ME, the undersigned authority, on this day personally appeared JAMES D. DONDERO, as Family Trustee, known to me to be the person whose name is subscribed to the foregoing Trust Agreement and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 28th day of October, 2010.

Notary Public

MELINDA SLOANE
Notary Public, State of Texas
My Commission Expires
October 19, 2011

COMMONWEALTH TRUST COMPANY,
Administrative Trustee

By: Cynthia D M Brown
Name: Cynthia D. M. Brown
Title: President

STATE OF DELAWARE §
§
COUNTY OF NEW CASTLE §

BEFORE ME, the undersigned authority on this day personally appeared Cynthia D. M. Brown, President, known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that he/she executed the same for the purposes and consideration therein expressed as the act of COMMONWEALTH TRUST COMPANY and in the capacity therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 15th day of ~~October~~ November LMO, 2010.

Laura M Owens
Notary Public

LAURA M. OWENS
MY COMMISSION EXPIRES MAY 30, 2014
NOTARY PUBLIC
STATE OF DELAWARE

5480300v.6 47609/1

THE DUGABOY INVESTMENT TRUST
James D. Dondero, Family Trustee

August 26, 2015

Dana Scott Breault
5207 Scarborough Lane
Dallas, Texas 75287

Cynthia D. M. Brown, President
Commonwealth Trust Company
29 Bancroft Mills Road #2
Wilmington, Delaware 19806

Re: The Dugaboy Investment Trust

Dear Ms. Breault,

I, James D. Dondero, am writing to inform you that on August 26, 2015, I will cease to serve as Family Trustee of The Dugaboy Investment Trust (the "Trust") and shall stop performing all duties and responsibilities undertaken as Family Trustee of the Trust.

Pursuant to the attached Resignation of Family Trustee, I appoint Grant James Scott as the successor Family Trustee of the Trust.

This letter and the attached Resignation of Family Trustee shall satisfy my obligations under Section 5.1 of that Trust Agreement entered into on November 15, 2010 to provide you, Settlor, with written notice of my resignation.

Very truly yours,

James D. Dondero

RESIGNATION OF FAMILY TRUSTEE

I, **JAMES D. DONDERO**, do hereby acknowledge that I voluntarily tender my resignation as Family Trustee of The Dugaboy Investment Trust pursuant to that Trust Agreement, dated November 15, 2010 by, between and among Dana Scott Breault, as Settlor, and Common Wealth Trust Company, as Administrative Trustee.

I appoint **GRANT JAMES SCOTT** as the successor Family Trustee. This resignation shall take effect immediately upon the execution hereof and delivery of a written acknowledged instrument wherein Grant James Scott accepts the trust and the position of Family Trustee.

IN WITNESS WHEREOF, I hereby sign my Resignation as Family Trustee of the above trust.

Signed, sealed and delivered in the presence of:

Family Trustee

8.26.15
Date

STATE OF TEXAS §
COUNTY OF DALLAS §

Before me, a notary public, on this day personally appeared **JAMES D. DONDERO** known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this 26th day of August, 2015.

Notary Public's Signature

MICAELA SUE ALLEN
Notary Public, State of Texas
My Commission Expires
January 15, 2019

[SEAL]

Expiration: 1-15-2019

ACCEPTANCE OF APPOINTMENT OF FAMILY TRUSTEE

I, **GRANT JAMES SCOTT**, appointed as Family Trustee under Article V, Section 5.2(a)(i) of The Dugaboy Investment Trust, dated November 15, 2010 (the "**Trust**"), hereby acknowledge and accept the position of Family Trustee of the Trust and hereby agree to faithfully perform all the duties and adopt all of the obligations imposed.

Signed this 26th day of August, 2015.

GRANT JAMES SCOTT
Family Trustee

STATE OF ~~TEXAS~~ NC §
COUNTY OF ~~DALLAS~~ WAKE §

Before me, a notary public, on this day personally appeared **GRANT JAMES SCOTT** known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this 26th day of August, 2015.

[SEAL]

DIANNA DEES NOTARY PUBLIC WAKE COUNTY, NC

Dianna Dees
Notary Public's Signature

Expiration: MY COMMISSION EXPIRES MAY 17, 2018

ACKNOWLEDGEMENT OF DELIVERY

I, JAMES D. DONDERO, acknowledge that this Acceptance of Appointment of Family Trustee was delivered to and received by me on August 26 2015.

James D. Dondero

Exhibit C

BONDS ELLIS EPPICH SCHAFER JONES LLP
ATTORNEYS & COUNSELORS

D. MICHAEL LYNN | D: 817.405.6915 | MICHAEL.LYNN@BONDSELLIS.COM

February 1, 2021

Via Email and First Class Mail:
Jeffrey Pomerantz
Pachulski Stang Ziehl & Jones LLP
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067
Email: jpomerantz@pszjlaw.com

Re: Highland Capital Management, L.P.: notes receivable from Dondero et al.

Dear Jeff:

The Debtor recently commenced suit to collect on certain notes payable to it executed by Mr. Dondero and certain of his affiliates. As you are aware, in addition to other defenses, Mr. Dondero views the notes in question as having been given in exchange for loans by Highland made in lieu of compensation to Mr. Dondero.

Please ensure that any transferee of any of the notes is made aware of Mr. Dondero's position and that the Independent Board receives copies of this letter. I thank you in advance for your cooperation in this matter.

Sincerely,

D. Michael Lynn

Cc: Jim Dondero
John Bonds
Douglas Draper
Davor Rukavina
Lee Hogewood
John Kane
Jason Rudd
Lauren Drawhorn

Exhibit D

Fill in this information to identify the case:

Debtor: Highland Capital Management, L.P.

United States Bankruptcy Court for the: Northern District of Texas (State)

Case number: 19-34054

Official Form 410

Proof of Claim

04/19

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies or any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. **Do not send original documents;** they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) **that you received.**

Part 1: Identify the Claim

1. **Who is the current creditor?**

James D. Dondero
Name of the current creditor (the person or entity to be paid for this claim)

Other names the creditor used with the debtor _____

2. **Has this claim been acquired from someone else?**

☑ No
☐ Yes. From whom? _____

3. **Where should notices and payments to the creditor be sent?**

Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)

Where should notices to the creditor be sent?	Where should payments to the creditor be sent? (if different)
James D. Dondero c/o D. Michael Lynn 420 Throckmorton St., Suite 1000 Fort Worth, TX 76102	James D. Dondero 300 Crescent Court, Ste. 700 Dallas, TX 75201
Contact phone 8174056900	Contact phone _____
Contact email michael.lynn@bondsellis.com	Contact email _____

Uniform claim identifier for electronic payments in chapter 13 (if you use one):

___ ___

4. **Does this claim amend one already filed?**

☑ No
☐ Yes. Claim number on court claims registry (if known) _____ Filed on _____ MM / DD / YYYY

5. **Do you know if anyone else has filed a proof of claim for this claim?**

☑ No
☐ Yes. Who made the earlier filing? _____

Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. **Do you have any number you use to identify the debtor?**
   - ☑ No
   - ☐ Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: ___ ___ ___ ___

7. **How much is the claim?** $ See attached Exhibit "A". **Does this amount include interest or other charges?**
   - ☑ No
   - ☐ Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. **What is the basis of the claim?**

   Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.

   Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).

   Limit disclosing information that is entitled to privacy, such as health care information.

   See attached Exhibit "A"

9. **Is all or part of the claim secured?**
   - ☑ No
   - ☐ Yes. The claim is secured by a lien on property.

   Nature or property:
   - ☐ Real estate: If the claim is secured by the debtor's principle residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.
   - ☐ Motor vehicle
   - ☐ Other. Describe: _____

   Basis for perfection: _____

   Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)

   Value of property: $_____

   Amount of the claim that is secured: $_____

   Amount of the claim that is unsecured: $_____(The sum of the secured and unsecured amount should match the amount in line 7.)

   Amount necessary to cure any default as of the date of the petition: $_____

   Annual Interest Rate (when case was filed)_____%
   - ☐ Fixed
   - ☐ Variable

10. **Is this claim based on a lease?**
    - ☑ No
    - ☐ Yes. **Amount necessary to cure any default as of the date of the petition.** $_____

11. **Is this claim subject to a right of setoff?**
    - ☑ No
    - ☐ Yes. Identify the property: _____

12. **Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?**

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

☑ No

☐ Yes. *Check all that apply:*

	Amount entitled to priority
☐ Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).	$
☐ Up to $3,025* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).	$
☐ Wages, salaries, or commissions (up to $13,650*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).	$
☐ Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).	$
☐ Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).	$
☐ Other. Specify subsection of 11 U.S.C. § 507(a)(__) that applies.	$

* Amounts are subject to adjustment on 4/01/22 and every 3 years after that for cases begun on or after the date of adjustment.

13. **Is all or part of the claim pursuant to 11 U.S.C. § 503(b)(9)?**

☑ No

☐ Yes. Indicate the amount of your claim arising from the value of any goods received by the debtor within 20 days before the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim.

$_____

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

☑ I am the creditor.

☐ I am the creditor's attorney or authorized agent.

☐ I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.

☐ I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgement that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 05/26/2020
MM / DD / YYYY

/s/James D. Dondero
Signature

Print the name of the person who is completing and signing this claim:

Name James D. Dondero
First name Middle name Last name

Title _____

Company _____
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address _____

Contact phone _____ Email _____

KCC - eBOC Electronic Claim Filing Summary

For phone assistance: Domestic (877) 573-3984 | International (310) 751-1829

Debtor:
19-34054 - Highland Capital Management, L.P.
District:
Northern District of Texas, Dallas Division

Creditor:
James D. Dondero
c/o D. Michael Lynn
420 Throckmorton St., Suite 1000

Fort Worth, TX, 76102

Phone:
8174056900
Phone 2:

Fax:

Email:
michael.lynn@bondsellis.com

Has Supporting Documentation:
Yes, supporting documentation successfully uploaded
Related Document Statement:

Has Related Claim:
No
Related Claim Filed By:

Filing Party:
Creditor

Disbursement/Notice Parties:
James D. Dondero

300 Crescent Court, Ste. 700

Dallas, TX, 75201

Phone:

Phone 2:

Fax:

E-mail:

DISBURSEMENT ADDRESS

Other Names Used with Debtor:

Amends Claim:
No
Acquired Claim:
No

Basis of Claim:
See attached Exhibit "A"

Last 4 Digits:
No

Uniform Claim Identifier:

Total Amount of Claim:
See attached Exhibit "A"

Includes Interest or Charges:
No

Has Priority Claim:
No

Priority Under:

Has Secured Claim:
No
Amount of 503(b)(9):
No
Based on Lease:
No
Subject to Right of Setoff:
No

Nature of Secured Amount:
Value of Property:
Annual Interest Rate:
Arrearage Amount:
Basis for Perfection:
Amount Unsecured:

Submitted By:
James D. Dondero on 26-May-2020 5:17:16 p.m. Eastern Time
Title:

Company:

VN: 20BE04C65B3A01C11B30E84BA5AFF790

Exhibit A

This claim is a contingent claim asserted by James Dondero and is subject to any effort to collect on certain notes (the "Notes") identified on Schedule "A" hereto. In the event that collection efforts are made to collect the Notes, James Dondero asserts that the Notes were issued by him for funds advanced in lieu of compensation.

Schedule A (as of March 31, 2020)

Entity	Amount	Note
NexPoint Advisors	$23,034,644.034	30 yr Amort (issued 2017)
Dugaboy	$18,286,268.159	30 yr Amort (issued 2017)
Highland Capital Management Fund Advisors	$10,458,219.887	Demand
James Dondero	$8,834,769.71	Demand
Highland Capital Management Services	$6,572,061	30 yr Amort (issued 2017)
HCRE	$5,671,419	30 yr Amort (issued 2017)
HCRE	$4,521,267	Demand
Highland Capital Management Services	$927,177	Demand

Confidential

Exhibit E

Highland Capital Management Fund Advisors, LP
Balance Sheet
April 2022 vs. March 2022
(in thousands)

	April 2022	March 2022	Increase/ (Decrease) $	Increase/ (Decrease) %
Assets				
Cash and cash equivalents	$ 4,967	$ 3,996	$ 971	24%
Management and admin fee receivable	1,663	1,686	(23)	(1%)
Investment in Highland Capital Funds Distributor, Inc.	4,991	4,240	751	18%
Prepaids	901	836	66	8%
Reimbursable expenses	2,920	2,920	-	NM
Investment management contracts	4,275	4,275	-	NM
Other assets	29	30	(1)	(4%)
Total assets	**$ 19,746**	**$ 17,982**	**$ 1,764**	**10%**
Liabilities and partners' capital				
Due to Highland Capital Management, L.P.[2]	10,894	10,894	-	NM
Due to affiliates	11,353	9,219	2,134	23%
Accrued compensation	1,953	1,870	83	4%
Accounts payable[1]	1,425	1,609	(184)	(11%)
Accrued expenses and other liabilities	521	825	(303)	(37%)
Partners' capital/(deficit)	(6,400)	(6,434)	34	(1%)
Total liabilities and partners' capital	**$ 19,746**	**$ 17,982**	**$ 1,764**	**10%**

[1] A large portion of this balance, ≈70%, is currently in legal dispute.

[2] As of 3/17/2022, the 2/26/2014 and 2/26/2016 notes were discharged due to a portfolio company sale, however, due to active litigation with HCMLP, the note(s) are still reflected on the balance sheet.

EXHIBIT 5

Deborah Deitsch-Perez
Michael P. Aigen
STINSON LLP
3102 Oak Lawn Avenue, Suite 777
Dallas, Texas 75219-4259
Telephone: (214) 560-2201
Facsimile: (214) 560-2203

Counsel for Defendant Highland Capital Management Fund Advisors, L.P.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re	§	
	§	**Case No. 19-34054-sgj11**
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	**Chapter 11**
Debtor.	§	
	§	
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	
Plaintiff,	§	
	§	
v.	§	
	§	**Adversary No. 21-03082**
HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, L.P.	§	
	§	
Defendant.	§	
	§	

DECLARATION OF NANCY M. DONDERO

I, Nancy Marie Dondero, declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the following is true and correct:

1. I reside in Vero Beach, Florida and am over the age of 21. The following facts are based on my personal knowledge and are all true and correct. I am willing and able to testify about these matters if and when called upon to do so.

2. I have successfully owned and operated my own private investigation services business for over 30 years. I also have an undergraduate college degree from Pennsylvania State University, which included the study of basic business operations and management.

3. I am also the Family Trustee of The Dugaboy Investment Trust ("Dugaboy"), and I have held that position since October 2015. A true and correct copy of the document appointing me as Family Trustee is attached to this Declaration as "Exhibit A." At the times that the notes discussed below were entered into, Dugaboy owned and represented a majority of the Class A shareholders in Highland Capital Management, L.P. ("HCM"). Jim Dondero is my brother and was, at that time, the President and CEO of HCM. I understood that he was one of the founders of HCM and, through The Dugaboy Investment Trust, a majority interest holder.

4. In late 2016 or early 2017, Jim Dondero told me about his current and previous annual salaries at HCM and explained that he was substantially underpaid as compared to other senior executives in the financial services industry. He told me that his annual salary from HCM had been around $500,000 to $700,000 during the preceding several years. I had no reason to doubt the accuracy of what he told me about his compensation from HCM or how that compared unfavorably to the compensation of others in similar positions with other companies in the industry.

5. I understand that, on February 26, 2016, Highland Capital Management Fund Advisors, L.P. ("HCMFA") borrowed money from HCM and entered into a promissory note with HCM in the amount of $2,300,000.00 (the "2016 Note"). I also understand that the 2016 Note was payable on demand by HCM, and was made between related companies.

6. Jim Dondero also advised me that he and certain of his affiliated companies had, on several occasions, borrowed money from HCM and had issued demand and term promissory

notes in favor of HCM regarding those loans. He proposed that HCM enter into an agreement with him to forgive the 2016 Note upon the occurrence of certain conditions subsequent, as a form of additional contingent compensation to him.

7. In either December of 2016 or January of 2017, I caused Dugaboy (solely in my capacity as Dugaboy's Family Trustee) to cause HCM to enter into an agreement with HCMFA that provided that the repayment obligation on the 2016 Note would be forgiven if HCM sold any of Trussway, Cornerstone, or MGM for a price greater than its cost, or if any of those portfolio companies were sold in a circumstance that was outside of Jim Dondero's control (the "2016 Agreement"). I fully understood the implications and terms of the 2016 Agreement. At the time we made the 2016 Agreement, Jim told me about the substantially the same agreement Dugaboy made with respect to the 2014 Note.

8. At the time I caused HCM to enter into the 2016 Agreement, I knew that HCM was a hedge and private equity fund and that its general partner was Strand Advisors, Inc. I also knew that HCM owned an interest in each of Cornerstone, MGM, and Trussway, the portfolio companies whose sale could trigger the forgiveness at issue in the 2016 Agreement. I also knew that HCM's business included buying and selling portfolio companies at a profit. I also knew and believed that Jim Dondero would be the person most involved in, and responsible for, the marketing and eventual sale of Cornerstone, MGM, and Trussway by HCM. I also knew and believed that executives in the financial services industry tend to be paid more when the companies they work for perform better.

9. The 2016 Agreement had two primary purposes, both of which I understood would benefit HCM's performance and reputation. First, the 2016 Agreement would provide additional incentive and motivation to Jim Dondero to attempt to maximize the value and return to HCM on

Trussway, Cornerstone, and MGM, and to remain in HCM's employment. Second, the 2016 Agreement would allow HCM to make part of Jim's compensation contingent on performance, instead of paying him additional cash in 2016 or 2017, which he could have sought.

10. At the time I caused HCM to enter into the 2016 Agreement, I did not know every detail about every aspect of HCM's business or the 2016 Note. However, I did have all of the facts and information I considered necessary, appropriate, and reasonable for my decision (solely in my capacity as Dugaboy's Family Trustee) to cause HCM to enter into the 2016 Agreement. I do not believe that HCM, Dugaboy, or I were deceived or mislead in any manner by Jim Dondero or anyone else regarding the 2016 Note or the 2016 Agreement.

11. At the time I caused HCM to enter into the 2016 Agreement, I appreciated the effect of what I was doing and I understood the nature and consequences of those acts. I was not mentally incompetent, under a legal guardianship, intoxicated, or under any other mental impairment.

12. At the time I caused HCM to enter into the 2016 Agreement, I believed I had the authority, as the Dugaboy Family Trustee, to cause Dugaboy to cause HCM to enter into the 2016 Agreement. I also intended, believed, and expected that the 2016 Agreement would be a binding and enforceable agreement between HCM and Jim Dondero.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on June 30, 2022.

Nancy M. Dondero

Nancy M. Dondero

Exhibit A

THE DUGABOY INVESTMENT TRUST
James D. Dondero, Primary Beneficiary

October 12, 2015

Dana Scott Breault
5207 Scarborough Lane
Dallas, Texas 75287

Cynthia D. M. Brown, President
Commonwealth Trust Company
29 Bancroft Mills Road #2
Wilmington, Delaware 19806

Re: The Dugaboy Investment Trust

Dear Ms. Breault,

I, James D. Dondero, am writing to inform you that on October 12, 2015, I received notice from Grant James Scott that he will cease to serve as Family Trustee of The Dugaboy Investment Trust (the "**Trust**") and shall stop performing all duties and responsibilities undertaken as Family Trustee of the Trust.

Pursuant to the attached Resignation of Family Trustee from Grant James Scott, I appoint Nancy Marie Dondero as the successor Family Trustee of the Trust.

This letter and the attached Resignation of Family Trustee shall satisfy my obligations under Section 5.2 of that Trust Agreement entered into on November 15, 2010 to provide you, Settlor, with notice of my appointment of a successor Family Trustee.

Very truly yours,

James D. Dondero

THE DUGABOY INVESTMENT TRUST
Grant James Scott, Family Trustee

October 12, 2015

Dana Scott Breault
5207 Scarborough Lane
Dallas, Texas 75287

Cynthia D. M. Brown, President
Commonwealth Trust Company
29 Bancroft Mills Road #2
Wilmington, Delaware 19806

Re: The Dugaboy Investment Trust

Dear Ms. Breault,

I, Grant James Scott, am writing to inform you that as of October 12, 2015, I will cease to serve as Family Trustee of The Dugaboy Investment Trust (the "**Trust**") and shall stop performing all duties and responsibilities undertaken as Family Trustee of the Trust pursuant to the attached Resignation of Family Trustee.

This letter and the attached Resignation of Family Trustee shall satisfy my obligations under Section 5.1 of that Trust Agreement entered into on November 15, 2010 to provide you, Settlor, with written notice of my resignation.

Very truly yours,

Grant James Scott

RESIGNATION OF FAMILY TRUSTEE

I, **GRANT JAMES SCOTT**, do hereby acknowledge that I voluntarily tender my resignation as Family Trustee of The Dugaboy Investment Trust pursuant to that Trust Agreement, dated November 15, 2010 by, between and among Dana Scott Breault, as Settlor, and Common Wealth Trust Company, as Administrative Trustee.

This resignation shall take effect immediately upon the execution hereof and delivery of a written acknowledged instrument wherein NANCY MARIE DONDERO accepts the trust and the position of Family Trustee.

IN WITNESS WHEREOF, I hereby sign my Resignation as Family Trustee of the above trust.

Signed, sealed and delivered in the presence of:

Family Trustee

10/12/2015
Date

STATE OF TEXAS §
COUNTY OF DALLAS §

Before me, a notary public, on this day personally appeared **GRANT JAMES SCOTT** known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this 14th day of October, 2015.

MICAELA SUE ALLEN
Notary Public, State of Texas
My Commission Expires
January 15, 2019

[SEAL]

Notary Public's Signature

Expiration: January 15, 2019

ACCEPTANCE OF APPOINTMENT OF FAMILY TRUSTEE

I, **NANCY MARIE DONDERO**, appointed as Family Trustee under Article V, Section 5.2(a)(i) of The Dugaboy Investment Trust, dated November 15, 2010 (the "**Trust**"), hereby acknowledge and accept the position of Family Trustee of the Trust and hereby agree to faithfully perform all the duties and adopt all of the obligations imposed.

Signed this 13th day of October, 2015.

Nancy Marie Dondero
NANCY MARIE DONDERO
Family Trustee

STATE OF TEXAS §
COUNTY OF DALLAS §

Before me, a notary public, on this day personally appeared **NANCY MARIE DONDERO** known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that she executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this 14th day of October, 2015.

MICAELA SUE ALLEN
Notary Public, State of Texas
My Commission Expires
January 15, 2019

[SEAL]

Micaela Sue Allen
Notary Public's Signature

Expiration: January 15, 2019

ACKNOWLEDGEMENT OF DELIVERY

I, JAMES D. DONDERO, acknowledge that this Acceptance of Appointment of Family Trustee by NANCY MARIE DONDERO was delivered to and received by me on October __, 2015.

James D. Dondero

EXHIBIT 6

Deborah Deitsch-Perez
Michael P. Aigen
STINSON LLP
3102 Oak Lawn Avenue, Suite 777
Dallas, Texas 75219-4259
Telephone: (214) 560-2201
Facsimile: (214) 560-2203

Counsel for Defendant Highland Capital Management Fund Advisors, L.P.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re	§	
	§	**Case No. 19-34054-sgj11**
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	**Chapter 11**
	§	
Debtor.	§	
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	
Plaintiff,	§	
	§	
v.	§	**Adversary No. 21-03082**
	§	
HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, L.P.	§	
	§	
Defendant.	§	

DECLARATION OF MICHIEL HURLEY

I, Michiel Hurley, declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the following is true and correct:

1. I reside in Dallas, Texas and am over the age of 21. The following facts are based on my personal knowledge and are all true and correct. I am willing and able to testify about these matters if and when called upon to do so.

2. I am currently the Chief Market Strategist at NexPoint Advisors, L.P.

3. I previously founded and worked at Incline Capital, LLC ("Incline"), a company that was the advisor for a 1940 Act Mutual Fund (the "Fund").

4. In May of 2011, Incline entered into an agreement that would transfer the advisory contract for the Fund to Highland Capital Management Fund Advisors, L.P. ("HCMFA") and agreed to stay on and sub-advise the Fund.

5. As part of this relationship, Incline and HCMFA had a fee sharing arrangement, which is usual and customary in relationships such as these. Due to a loss of assets under management ("AUM") in the Fund, the level of fee income generated was materially less than when Incline and HCMFA initially entered into the agreement.

6. When this unexpectedly occurred, Incline was advanced funds from HCMFA as an advance on fees that we believed would be earned in the future. It was both parties' expectation that these advances would eventually be paid back by Incline once the Fund regained its AUM.

7. In 2013, Jim Dondero, on behalf of HCMFA, agreed to forgive this debt, which was owed by Incline to HCMFA. At that time, approximately $435,000 was owed to HCMFA and forgiven. Because I was the founder and owner of Incline and because it was a pass-through entity for tax purposes, I may have been personally responsible for this debt. Therefore, the forgiveness of this debt benefitted me individually.

8. I believe this was done in recognition of the value of my services and was a fair and generous gesture.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on June 29, 2022.

Michiel Hurley

EXHIBIT 7

Deborah Deitsch-Perez
Michael P. Aigen
STINSON LLP
3102 Oak Lawn Avenue, Suite 777
Dallas, Texas 75219-4259
Telephone: (214) 560-2201
Facsimile: (214) 560-2203

Counsel for Defendant Highland Capital Management Fund Advisors, L.P.

IN THE UNITED STATES BANKRUPTCY COURT
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	§	
Debtor.	§	
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	§	
Plaintiff,	§	
	§	
v.	§	**Adversary No. 21-03082**
	§	
HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, L.P.	§	
	§	
Defendant.	§	

DECLARATION OF MICHAEL P. AIGEN IN SUPPORT OF DEFENDANT'S OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

Michael P. Aigen, pursuant to 28 U.S.C. § 1746(a), under penalty of perjury, declares as follows:

1. I am a member of the law firm of Stinson LLP, counsel to Defendant Highland Capital Management Fund Advisors, L.P., and I submit this Declaration in support of the *Defendant's Opposition to Plaintiff Highland Capital Management, L.P.'s Motion for Summary*

Judgment, which is being filed concurrently with this Declaration. I submit this Declaration based on my personal knowledge and the documents listed below.

2. Attached as **Exhibit A** is a true and correct copy of the Transcript of the Remote Deposition of James D. Dondero taken on May 5, 2022 in Adv. Proc. No. 21-03082.

3. Attached as **Exhibit B** is a true and correct copy of the Transcript of the Remote Deposition of Nancy Dondero taken on April 29, 2022 in Adv. Proc. No. 21-03082.

Dated: July 1, 2022

/s/Michael P. Aigen
Michael P. Aigen

Exhibit A

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

IN RE: HIGHLAND CAPITAL MANAGEMENT, LP, Debtor.	) CHAPTER 11)) CASE NO. 19-34054-SGJ11
HIGHLAND CAPITAL MANAGEMENT, LP, Plaintiff, v. HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, LP, Defendant.	) Adversary Proceeding) No. 21-03082-SGJ

REMOTE VIDEO-RECORDED FRCP 30(b)(6) DEPOSITION OF

HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, LP

BY AND THROUGH ITS DESIGNEE

JAMES D. DONDERO

THURSDAY, MAY 5, 2022

REPORTED BY:

MICHAEL E. MILLER, FAPR, RDR, CRR, NOTARY PUBLIC

JOB NO. 209977

Thursday, May 5, 2022
10:15 a.m. CDT

REMOTE ORAL VIDEO-RECORDED FRCP 30(b)(6) DEPOSITION OF HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, LP, BY AND THROUGH ITS DESIGNEE, JAMES D. DONDERO, held via Zoom conference pursuant to the Federal Rules of Civil Procedure before Michael E. Miller, Fellow of the Academy of Professional Reporters, Registered Diplomate Reporter, Certified Realtime Reporter and Notary Public in and for the State of Texas.

REMOTE APPEARANCES:

Pachulski Stang Ziehl & Jones
Attorneys for Highland Capital Management, LP
780 Third Avenue
New York, NY 10017
BY: John Morris, Esq.
Hayley Winograd, Esq.

Stinson
Attorneys for Highland Capital Management Fund Advisors, LP and the Witness
3102 Oak Lawn Avenue
Dallas, TX 75219
BY: Deborah Deitsch-Perez, Esq. (With Witness)
Michael Aigen, Esq.

ALSO PRESENT:
La Asia Canty, Paralegal
Pachulski Stang Ziehl & Jones LLP

VIDEOGRAPHER:
Brent Jordan, TSG Reporting Inc.

P R O C E E D I N G S
May 5, 2022, 10:15 a.m. CDT

THE VIDEOGRAPHER: Good morning, counselors. My name is Brent Jordan. I'm the certified legal videographer in association with TSG Reporting Inc.

Due to the severity of the COVID-19 and following the practice of social distancing, I will not be in the same room with the witness. Instead, I will record this videotaped deposition remotely. The reporter, Mike Miller, also will not be in the same room and will swear the witness remotely.

Do all parties stipulate to the validity of this video recording and remote swearing and that it will be admissible in the courtroom as if it had been taken following Rule 30 of the Federal Rules of Civil Procedures and the state's rules where this case is pending?

MR. MORRIS: John Morris, Pachulski Stang Ziehl & Jones, on behalf of Highland Capital Management LP, consents.

MS. DEITSCH-PEREZ: Deborah Deitsch-Perez from Stinson, on behalf of HCMFA and the witness, consent.

THE VIDEOGRAPHER: Thank you. This is the start of Media No. 1, the videotaped deposition of Highland Capital Management Fund Advisors LP 30(b)(6) witness, James Dondero, taken In re Highland Capital Management LP, filed in the United States Bankruptcy Court for the Northern District of Texas, Dallas Division, Case No. 19-34054-sgj11.

This deposition is taken on May 5th, 2022 at approximately 10:17 a.m. My name is Brent Jordan. I'm the legal video specialist from TSG Reporting Inc., headquartered at 228 East 45th Street, New York, New York.

The court reporter is Mike Miller, in association with TSG Reporting.

Will counsel please introduce yourselves for the record.

MR. MORRIS: John Morris, Pachulski Stang Ziehl & Jones for Highland Capital Management LP. I'm joined by my colleagues Hayley Winograd and La Asia Canty.

HCMFA - J. DONDERO

MS. DEITSCH-PEREZ: Deborah Deitsch-Perez from Stinson. I'm here with my partner, Mike Aigen, for HCMFA and the witness.

THE VIDEOGRAPHER: Will the court reporter please swear in the witness.

JAMES D. DONDERO,
having been duly sworn,
testified as follows:

EXAMINATION

BY MR. MORRIS:

Q. Good morning, Mr. Dondero.
A. Good morning.
Q. Can you hear me?
A. Yes.
Q. Do you understand that you're here today in both your individual capacity and in your capacity as the 30(b)(6) witness for HCMFA?
A. Yes.
Q. Are you aware that your counsel and my firm have reached an agreement that will allow us to use the transcript from the main notes

HCMFA - J. DONDERO

litigation in connection with this particular litigation?
A. Yes.
MS. DEITSCH-PEREZ: And that means that it should make the deposition shorter because Mr. Morris will not need to reask you the questions he asked you before and -- and we'll proceed accordingly.
MR. MORRIS: Are you done?
MS. DEITSCH-PEREZ: Yes.
MR. MORRIS: Okay.
BY MR. MORRIS:
Q. Can we put up Exhibit 1, please. Exhibit 1, Mr. Dondero, is the Rule 30(b)(6) notice.
(HCMFA/Dondero Deposition Exhibit 1 marked.)
THE WITNESS: Yeah, on my screen there's "This meeting is being recorded." Do I have to delete this or --
(Technical comments off the stenographic record.)
THE WITNESS: Okay.
///

HCMFA - J. DONDERO

BY MR. MORRIS:
Q. All right. As always, Mr. Dondero, if there's something in the document that you think you need to review in order to have a full understanding of what I'm asking, will you let me know that?
A. Sure.
Q. Have you seen the Rule 30(b)(6) deposition notice before?
A. Not that I recall.
Q. Why don't we just --
MS. DEITSCH-PEREZ: Why don't you scroll through to the topics, Jim.
MR. MORRIS: Are you done?
MS. DEITSCH-PEREZ: Yes, thank you.
MR. MORRIS: Okay. Can you scroll down, La Asia, to the topics?
BY MR. MORRIS:
Q. Looking at the tapes now, Mr. Dondero, and I'm going to ask Ms. Canty to just very slowly scroll down, my only question to you is whether you're familiar with the topics that are listed on this document. And if you need --

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A. Yes.
Q. -- us to stop at any point, just say no -- just say so.
A. Yes, I'm familiar with the topics.
Q. Okay. Did you do anything to prepare for today's deposition?
A. I met with my lawyer for about half an hour yesterday.
Q. Did you review any documents?
A. No.
Q. Have you ever reviewed any documents in connection with this particular litigation? And this litigation, I'm referring to the litigation that HCMLP has brought against HCMFA for the two notes, one of which was dated 2014 and the second was dated 2016.
Have you ever seen any documents in connection with this --
MS. DEITSCH-PEREZ: I'm going to object on the grounds of privilege, and so exclude from your answer any review you've done with or at the direction of counsel.
A. No.
///

HCMFA - J. DONDERO

BY MR. MORRIS:

Q. Did you ever review any documents with counsel? Just yes or no.

A. I guess I don't recall -- I don't recall prior.

Q. Okay. Is there a person who's responsible for maintaining HCMFA's books and records?

A. (Audio malfunction.)

(Clarification requested by the stenographer.)

A. Highland Capital.

BY MR. MORRIS:

Q. Okay. I appreciate that, Mr. Dondero. Let me rephrase the question.

Since March 1st, 2021, has HCMFA maintained books and records?

A. Yes.

Q. And can you tell me who at HCMFA is responsible for maintaining the books and records?

A. I think HCMFA has its books and records done by Skyview.

Q. Okay. And do you know whether those

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books and records include financial statements?

A. I believe so.

Q. Okay. And in connection with the preparation of today's deposition, did you speak with anybody at Skyview concerning the financial statements as they relate to the notes at issue?

A. No.

Q. Do you recall ever discussing with anybody at Skyview at any time the books and records as they relate to the notes at issue in this lawsuit?

A. No.

Q. Okay. Other than your counsel, have you spoken with anybody at any time in connection with your preparation for today's deposition?

A. No.

Q. Have you ever spoken with Nancy Dondero about the claims that HCMLP has brought in this particular lawsuit?

A. Just generally.

Q. And what do you recall about your conversations with Nancy about the claims that HCMLP has made in this lawsuit?

A. Again, I can't remember specifically.

HCMFA - J. DONDERO

Generally, it just would have been that they were disputing the forgiveness based on performance, and they were not -- not acknowledging the overall compensation program.

Q. And do you recall when this conversation took place?

A. It's more than once, more than once from -- I guess the first time we thought it was an issue in the bankruptcy -- we didn't think it was going to be an issue in the bankruptcy initially.

Q. Was anybody else present for this conversation?

A. I don't believe so.

Q. Do you recall if it took place in person or on the phone or in some other medium?

A. I don't recall.

Q. Did you have any conversations with Nancy after the time this action was commenced about the claims that are being asserted by HCMLP?

A. Not -- not that I recall, but if you have any specific requests, let me know -- or any specific questions, let me know.

HCMFA - J. DONDERO

Q. I'm just asking you if you recall. If you don't, that's fine.

Are you aware that she's been deposed in connection with this lawsuit?

A. Yes.

Q. And have you obtained a copy of her transcript?

A. No, I have not.

Q. Have you -- has the substance of her testimony -- withdrawn.

Are you aware of the substance of her testimony?

A. No.

Q. So you don't know what it is she testified to; do I have that right?

A. Not -- not specifically. I haven't seen the transcripts and we didn't discuss it.

Q. Okay. Do you have any general understanding as to what she testified to?

A. I believe the process by which the notes would be forgiven.

Q. Do you have any other information as to the substance of Ms. Dondero's testimony in this case?

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A. Not specifically.
Q. Do you have it generally?
A. I just gave it.
Q. Okay. We did reach the stipulation that we referred to earlier about the use of the prior transcripts.
As you sit here now, are you aware of anything in any of your prior testimony in this -- in the notes litigation that you believe was either incomplete or inaccurate?
A. You know, I believe there's been some changes to the deposition transcripts. I don't know if I reviewed them all or reviewed them all timely, and I don't know if there will be more, but there have been some.
Q. I appreciate that.
I'm just asking you: As you sit here right now and taking into account the declaration that you submitted in opposition to summary judgment, is there anything in the transcripts that you're aware of that is inaccurate or needs to be corrected that wasn't addressed in your declaration?
MS. DEITSCH-PEREZ: Or the errata.

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MR. MORRIS: Or the errata. That's fair.
A. Not that I can think of at this moment.
BY MR. MORRIS:
Q. Okay. Is there -- I did receive from Mr. Aigen just prior to the deposition some objections, and he's reserved his rights -- Highland will reserve its rights to contest the objections.
But subject to the objections that your counsel has tendered, are you prepared to answer questions on the topics that were identified in Exhibit 1?
A. I believe so. I'll do the best I can.
Q. Okay. Let's put up Exhibit 2, which is the first of the two notes.
(HCMFA/Dondero Deposition Exhibit 2 marked.)
BY MR. MORRIS:
Q. I just have a series of questions on each of the two notes that are at issue. And this is the first one, and if we could just

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scroll down. It's pretty short.
Have you seen this document before, sir?
A. Yes.
Q. And is that your signature?
A. Yes.
Q. And do you know whether you signed this document? If we can scroll back to the top -- did you sign this document on or about February 26th, 2014?
A. Yes.
Q. And do you see that the very first line defines the maker as Highland Capital Management Fund Advisors LP?
A. Yes.
Q. When we go to the signature block, if we can scroll down, do you see that in the signature block your name and signature appear under the word "Maker"?
A. Yes.
Q. Did you intend to sign this note in your personal individual capacity as the maker of this note?
A. No, that's not what it says.

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Q. And is it your -- I just want you to confirm, if you can, that your intent when you signed this note was to sign it on behalf of HCMFA as the maker; is that correct?
A. Yes.
Q. Okay. To the best of your knowledge, you never intended to have any personal liability for this note, even though your name and signature appear under the word "Maker," correct?
A. Yes.
Q. Does -- does HCMFA admit and acknowledge that on or about February 26th, 2014 Highland loaned it the principal amount of $4 million in exchange for this promissory note?
A. Can you repeat that question, please.
Q. Sure.
Does HCMFA admit and acknowledge that on or about February 26th, 2014 Highland loaned HCMFA the principal amount of $4 million in exchange for this promissory note?
A. I believe so.
Q. Okay. Do you know why HCMFA borrowed $4 million from Highland at this time?
A. I do not specifically.

HCMFA - J. DONDERO

Q. Do you recall that the money was borrowed to enable HCMFA to pay bonuses at the end of the fiscal year 2014?

A. It could be, but I don't recall.

Q. If someone testified that the loan was made to enable HCMFA to pay bonuses on February 28th, 2014, would HCMFA have any reason to dispute that?

A. It could be, but I -- it could be, again, but I don't know.

Q. Okay. Do you know who drafted this note?

A. Would have been accounting at Highland.

Q. Do you know if this note was the subject of any negotiation between Highland and HCMFA?

A. I don't know.

Q. You mentioned that you thought it would have been someone in accounting.

What's the basis for your belief that someone in accounting would have prepared this note?

A. There was -- I believe there was a

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template that accounting used on almost all the notes, and this looks like that template.

Q. Okay. Do you recall whether you personally -- and I mentioned at the beginning, or if I didn't, I'll mention it now: All of my questions are in your capacity as the 30(b)(6) representative of HCMFA, unless I specifically ask you otherwise; is that fair?

A. Okay.

Q. Okay. Did you personally -- so this one is in your individual capacity.

Did you personally ask someone to cause Highland to loan HCMFA $4 million in February 2014?

A. Not that I recall.

Q. Do you know who authorized this loan?

A. I don't know.

Q. All right. Is it fair to say that because you signed the note on behalf of HCMFA that you were aware of and approved of HCMFA's borrowing as reflected in this note?

A. Yes.

Q. Did you read the note before you signed it?

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A. No.

Q. Did you obtain any legal advice before you signed it?

A. No.

Q. Did you seek any legal advice before you signed it?

A. No.

Q. Is there anything in the note that you don't understand today? And we can scroll through it, if that's helpful.

MR. MORRIS: In fact, please do, and make sure that Mr. Dondero can see the whole note.

(Document review.)

A. I understand that generally.

BY MR. MORRIS:

Q. Okay. Is there anything that HCMFA -- now I'm switching back to the 30(b)(6) topics.

Is there anything in this note that HCMFA contends today is ambiguous?

A. I don't know.

Q. Okay. All right. Now, I'm just going to -- sorry to burden you, but I just have

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to ask the same questions with respect to the second note.

MR. MORRIS: If we can put the second note on the screen, please.

(HCMFA/Dondero Deposition Exhibit 3 marked.)

BY MR. MORRIS:

Q. And you can see, Mr. Dondero, that this is a second note marked as Exhibit 2 [sic]. It's in the original principal amount of $2.3 million and it's dated February 26th, 2016.

Do you see that?

A. Yes.

Q. If we can scroll down to the bottom of this document, is that your signature?

A. I don't know. It is or somebody signed for me.

Q. Does HCMFA contend that this note is not enforceable because it doesn't bear your signature or a signature that was placed on this document by somebody you specifically authorized?

A. I don't -- I don't know. I don't believe so.

Q. Okay. You're familiar with HCMFA's

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affirmative defenses in this case, right?

A. Generally.

Q. Okay. And you're not aware of any affirmative defense that suggests that the note is unenforceable because it bears a signature of yours that you didn't authorize; is that fair?

A. I'm not aware.

Q. Okay. So let's go back to the top of the document, and you'll see that this is also -- the maker is again defined as HCMFA.

Do you see that in the first line?

A. Yep.

Q. Is it HCMFA's -- withdrawn.

Does HCMFA acknowledge that it's the maker on this particular note?

A. Yes.

Q. And you're not personally liable under this note, are you, just because your name appears under the word "Maker"?

If we can scroll down.

A. Correct.

Q. You intended to sign this note in your capacity as an authorized representative of HCMFA -- withdrawn.

HCMFA - J. DONDERO

HCMFA intended that your -- that your signature would bind HCMFA to the obligations under this note, correct?

A. Yes.

Q. And if we can go back to the top, HCMFA acknowledges that on or about February 26th, 2016, Highland transferred $2.3 million to HCMFA in exchange for this note, correct?

A. Yes.

Q. Do you know why HCMFA borrowed $2.3 million from Highland on or around February 26th, 2016?

A. No.

Q. Do you recall that the money was loaned by Highland to HCMFA to enable HCMFA to pay bonuses at the end of February 2016?

A. Could be. I don't have specific knowledge. Bonuses or operating expenses, something in that regard, would have been logical.

Q. Okay. Do you know who drafted this particular note?

A. Again, accounting, I believe.

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Q. And your basis for that is your understanding that accounting had a template that it used on the intercompany notes, demand notes; do I have that right?

A. Yes.

Q. Was this particular note the subject of any negotiations?

A. Not that I recall.

Q. Did you read this particular note before you signed it?

A. No.

Q. Did you obtain any legal advice before you signed it?

A. No.

Q. Did you seek any legal advice before you signed it?

A. No.

Q. Is there anything about this note that you don't -- you personally, Jim Dondero, don't understand today?

A. Not off the top of my head.

Q. As HCMFA's 30(b)(6) witness, are you aware of anything in this note today that HCMFA contends is ambiguous?

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And again, let's please scroll down.

(Document review.)

A. Reading this line by line, Section 7 is I think largely referring to usury and interest limitations, but it kind of, I think, hints that there could be additional agreements or other agreements going forward.

BY MR. MORRIS:

Q. Okay. Anything else?

A. Not off the top of my head.

Q. Okay. I want to shift gears to communications with HCMFA's outside auditors, which are Topics 4(e) and (f), and I appreciate the fact that this topic was covered with respect to other notes, and I'm going to try to just ask a few questions into these notes.

The two notes that we just looked at I'm going to collectively refer to as "the notes"; is that fair?

A. Sure.

Q. And just to complete the record, from at least 2014 until at least 2018, PricewaterhouseCoopers served as HCMFA's outside auditors, correct?

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A. Yes.
Q. And you're a certified public accountant, correct?
A. Yes.
Q. And to the best of your recollection, you signed management representation letters on behalf of HCMFA in connection with PricewaterhouseCoopers' annual audits, correct?
A. Yes.
Q. Okay. And as part the audit process, HCMFA provided the notes to PwC, correct?
A. Yes.
Q. And you were aware that the notes were recorded as liabilities on HCMFA's audited financial statements, correct?
A. Yes.
Q. Are they still carried on HCMFA's financial statement -- withdrawn.
Are the notes carried as liabilities on HCMFA's balance sheet today?
A. I don't know.
Q. Are you aware of the notes ever being removed from the liability section of HCMFA's balance sheet?

HCMFA - J. DONDERO

A. I don't know.
Q. Do you recall ever having -- and this is in your individual capacity.
Do you recall ever participating in any discussion at any time with anybody about whether the notes should be carried as liabilities on HCMFA's balance sheet?
A. Not that I recall.
Q. Okay. And now in your capacity as HCMFA's 30(b)(6) witness, are you aware of any change in the treatment of the notes as liabilities on HCMFA's balance sheet?
A. I'm not aware.
Q. Is it fair to say that from the time they were executed until at least the commencement of this litigation, HCMFA carried the notes as liabilities without discount of any kind?
A. I don't know.
Q. You're not aware of any discount that was ever applied to the value of the notes, at least as it concerns HCMFA's balance sheet; is that fair?
A. I'm not aware of a discount. I'm not

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aware if they've been forgiven on the financials. I don't know how the accountants have handled that.
Q. Okay. Does HCMFA contend that its audited financial statements for any year from 2014 to 2018 were inaccurate in any way with respect to the notes?
A. Not that I'm aware of.
Q. Okay. Let's shift gears now to the -- we can go to the next exhibit, which I think we've marked as Exhibit 4, which is HCMFA's answer.
(HCMFA/Dondero Deposition Exhibit 4 marked.)
BY MR. MORRIS:
Q. This covers, I think, Topics 1, 2 and 3 on the deposition notice, subject to HCMFA's objections.
Have you ever seen HCMFA's answer in this case before, Mr. Dondero?
A. Probably. I just don't remember this specifically yet, but refresh me, please.
Q. Okay. Well, let's scroll down slowly. It's not a terribly long document. And

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stop when you get to paragraph 41.
(Document review.)
MR. MORRIS: Okay. Just stop there.
BY MR. MORRIS:
Q. Having seen -- having scrolled through at least the portion of the answer prior to the affirmative defenses, are you aware of anything that is inaccurate in any way in HCMFA's answer?
MS. DEITSCH-PEREZ: Object to the form.
A. I -- not specifically.
BY MR. MORRIS:
Q. Okay. Was there somebody at HCMFA who was responsible for reviewing this answer before it was filed by HCMFA's lawyers?
A. Let me read it here for a second.
Q. Yeah. Take your time. And again, if there's some other portion of the document that you want to read, just let La Asia know.
(Document review.)
THE WITNESS: Can you scroll a little bit to the next page, please.
(Document review.)

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A. Okay. I understand this paragraph. What was the question, again?

BY MR. MORRIS:

Q. Is there somebody at HCMFA -- withdrawn.

So you're aware that the Stinson firm served and filed this answer on behalf of HCMFA, correct?

A. Yes.

Q. Was there somebody other than counsel who reviewed this document to make sure it was accurate and complete before it was served and filed?

A. I mean, I know I did. I don't know if anybody else at HCMFA did.

Q. Okay. So you personally reviewed this document to make sure it was complete and accurate before the Stinson firm served and filed the document; is that correct?

A. Well, particularly this paragraph, yes.

Q. Okay. And did you personally authorize the Stinson firm to file this document when they did?

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A. Yes.

Q. Okay. And as you sit here right now -- again, happy to let you look at the document if you think you need to -- but as HCMFA's 30(b)(6) witness, are you aware of anything that is incomplete or inaccurate in this answer?

A. Can you scroll down further --

Q. Sure.

A. -- like to the next page? Is that the end of it? Okay. Can you go back up, please. Now go back up a little bit further, please. I just want to see if...

Okay. Go back to paragraph 41, please, and we'll just sit there.

The -- there was a period of time when I was a trustee, there was a period of time -- I think it was only a couple of months -- where Grant Scott was the trustee preceding when my sister was the trustee, so the -- I don't know if that's a clarification worth noting, but I think I was the trustee around the 2014 note, and I think my sister was the trustee around the 2016 note.

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Q. All right. Let's just -- I appreciate that, and let's just take them one at a time.

Do you believe this paragraph 41 is true and accurate as it relates solely to the 2016 note?

A. I think it's true and accurate regarding all the notes, so...

Q. Well, did Nancy -- is it your testimony that -- withdrawn.

MR. MORRIS: I'm going to move to strike and just ask you, because I really want to try and get this done quickly.

BY MR. MORRIS:

Q. Is paragraph 41 true and accurate with respect to the 2016 note at issue in this lawsuit?

Did Nancy Dondero enter into the agreement that's described in this paragraph with respect to the 2016 note?

A. Yes.

Q. Did Nancy Dondero enter into the agreement as a representative for a majority of the Class A shareholders of plaintiff with

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respect to the 2014 note?

A. I don't believe she was the trustee then, so...

Q. Okay. So is it fair to say that paragraph 41 is not accurate to the extent that it states or suggests that Nancy Dondero entered into the agreement with respect to the 2014 note?

A. I don't want to specifically commit to that. Let Nancy's testimony, whatever it is, be the recollection there.

I can't recall the 2014 note being prior to the 2016 discussion or not or if -- this 2014 was a small note; so was 2016 for that matter. I can't -- I can't remember if she would have been involved in the '14 or if it was just me as trustee around the '14 note or the '14 note was part of the 2016 conversation. Let her -- let her testimony stand for that, please.

Q. Okay. Her testimony will stand for whatever it is it stands for, but I'm just asking you: Do you know -- and I'm asking you now in your individual capacity.

Do you know which individuals entered into any agreement relating to the 2014 note?

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Can you identify the individuals?

A. It would have been me as the trustee at that point in time, and potentially Nancy as trustee in 2016 could have adjusted the '14 note. I just can't remember specifically the conversations back then, and she may have a better recollection.

Q. All right. I'm going to represent to you -- and if the representation is wrong, I hope I'm corrected.

I'm going to represent to you that Nancy testified that she entered into the agreement described in paragraph 41 with respect to the 2016 note but not with respect to the 2014 note. And assuming that that --

MS. DEITSCH-PEREZ: John -- John, you haven't completely reflected her testimony. She also said she talked with Jim about the 2014 note when she talked to him about the 2016.

MR. MORRIS: That's right.

MS. DEITSCH-PEREZ: Are we agreed on that?

MR. MORRIS: We are. We are. And we're also agreed that she testified that she

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didn't enter into an agreement with respect to the 2014 note, but that Jim told her about it. Is that fair?

MS. DEITSCH-PEREZ: That's fair. Mr. Morris is more or less correctly reflecting Nancy's testimony.

THE WITNESS: Okay.

BY MR. MORRIS:

Q. So with that, you know, general common understanding -- her testimony at the end of the day will speak for itself -- my only question for you, Mr. Dondero, is whether you can identify the individuals or the individual who entered into any agreement that concerns the 2014 note.

MS. DEITSCH-PEREZ: Asked and answered.

A. Myself as trustee at that point in time -- and I heard what you said about Nancy's testimony, but, you know, some of the conversation in 2016 may have appropriately covered the '14 note also, but...

BY MR. MORRIS:

Q. Did you enter into the agreement with

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respect to the 2014 note both in your capacity as the president of Highland and simultaneously in your capacity as the trustee of The Dugaboy Trust?

A. Yes.

Q. Thank you. I appreciate that.

Other than what we've talked about, is there anything in paragraph 41 -- withdrawn.

And were the terms of the agreement that you entered into in that dual capacity -- were they the same terms that are set forth in paragraph 41, or were they different in any way?

MS. DEITSCH-PEREZ: Object to the form.

A. I'm sorry. I read it again. Can you repeat that question, please.

BY MR. MORRIS:

Q. Sure. It's just whether the terms of the agreement that you entered into with respect to the 2014 note were the same as the terms of the agreement that you entered into with Nancy once she became the Dugaboy trustee.

A. Yes. I mean, essentially yes.

Q. Okay. And I appreciate the word

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"essentially," and I'll just ask you if there's any difference at all between the terms of the agreement that you entered into with respect to the 2014 note than the terms of the agreement that you entered into with Nancy concerning the 2016 note.

A. Not that I recall at this time.

Q. Okay. Can we go to paragraph 42, please.

I think we addressed paragraph 42. Do you have anything further to add as to HCMFA's defense that the notes were ambiguous, anything to what you've already testified to?

A. Yes, I think I said this in my last deposition, but these notes were structured not to be senior secured, not to be guaranteed, not to be amortizing, not to be what you would do with a third party. They were meant to be soft notes that could and would and likely be forgiven.

They were bona fide in terms of their terms, but they were purposely, you know, not filed, not perfected, not notarized, and subject to change and prepayment, et cetera, over time.

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In the way that they were operated, they were meant to be loose and flexible notes, and that's what they are.

MR. MORRIS: Okay. I move to strike, and I'm just going to ask you to -- and if we need to go back to the notes, I'm happy to do that.

BY MR. MORRIS:

Q. I'm focused on paragraph 42 and the question of ambiguity. Is there anything about the notes that HCMFA contends is ambiguous?

MS. DEITSCH-PEREZ: Asked and answered.

A. I think I answered that. And I'd like my answer to stand because it specifically addressed your open-ended question, was there anything else. And that is the "anything else."

BY MR. MORRIS:

Q. But it's anything else with respect to ambiguity. Did you understand that?

A. Yes, and those are the ambiguity in its construct, the ambiguity in what it has and what it doesn't have compared to the more industry standard arm's-length note. And my

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answer was fair and correct.

MR. MORRIS: Okay. I move to strike that as well. And the judge will do what she does.

BY MR. MORRIS:

Q. Mr. Dondero, was it your intent when you signed the notes that they would be bona fide notes?

A. They have to be -- they have to hit -- they have to be bona fide and hit minimal terms in terms of construct to be bona fide for financial and for tax purposes, and they were bona fide for those purposes.

Q. Okay. Thank you very much.

So let's go to paragraph 43, please, and if you could just read that first sentence to yourself. And let me know when you've done that.

(Document review.)

A. Yes, I've read it.

BY MR. MORRIS:

Q. Can HCMFA identify any documents or information that it contends is relevant to the notes that Highland has not produced in discovery?

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A. I'm not aware of anything Highland has produced. I haven't seen HCMFA financials. We've never gotten 2015's. We've never been allowed to have an examiner in here. We've never even got Highland financials on a current basis. We've never gotten asset reviews. We've never -- as far as I know, we've gotten nothing, so...

Q. So it's your testimony that you've gotten nothing? That's HCMFA's testimony today?

A. That's my testimony.

Q. Okay. I'm asking you in your capacity as HCMFA's 30(b)(6) witness who was asked to be prepared about the affirmative defenses. Is it HCMFA's testimony that Highland has produced nothing in discovery?

A. Nothing of relevance that I've seen.

Q. Before signing -- before authorizing the Stinson firm to file this answer on behalf of HCMFA, did you review Highland's document production?

MS. DEITSCH-PEREZ: Object to the form.

A. Not specifically.

///

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BY MR. MORRIS:

Q. Have you ever reviewed Highland's document production?

MS. DEITSCH-PEREZ: Object to the form.

A. Not specifically.

BY MR. MORRIS:

Q. You ever review it generally?

MS. DEITSCH-PEREZ: Object to the form.

A. No, I -- I've just -- it's just been relayed to me verbally.

BY MR. MORRIS:

Q. Do you have any idea how many pages of documents Highland produced in this litigation?

A. No.

Q. Do you have any idea the volume of documents that Highland has produced in this litigation?

A. I just -- that it's been inadequate and insufficient, but I don't know the volume.

Q. Have you authorized your attorneys to make a motion to compel of any kind for

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Highland's failure to produce responsive documents?

A. I believe they have several times.

Q. What's the basis for that belief?

MS. DEITSCH-PEREZ: I'm -- I'm actually going to direct you not to answer to the extent Mr. Morris is trying to inquire into privileged communications.

John, you know very well there was a motion to compel previously.

MR. MORRIS: This --

MS. DEITSCH-PEREZ: You don't need the witness to --

MR. MORRIS: In this lawsuit?

MS. DEITSCH-PEREZ: No, in the overall notes lawsuit.

MR. MORRIS: And can you inform your client that Highland has produced every single unredacted audited financial statement from 2008 to 2018? Because that's what the subject was, I believe.

MS. DEITSCH-PEREZ: No, that wasn't the sole subject of the motion to compel. It was not. And you did not produce them in response to

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that motion. You didn't produce them until we went out and subpoenaed the accountants, the auditors.

MR. MORRIS: Okay. But you have them now, right? Can you inform your client that you have all of the audited financial statements from 2008?

MS. DEITSCH-PEREZ: Are you done, Mr. Morris?

MR. MORRIS: I'm just trying to get testimony with respect to the affirmative --

MS. DEITSCH-PEREZ: You're not trying to get testimony. You're trying to have a conversation, and this is not the appropriate place. Do you want to talk to me? Call me after the deposition.

MR. MORRIS: I'm just trying to get testimony as to the basis for the statement in paragraph 43. So I'll try one last time.

BY MR. MORRIS:

Q. Can you identify any documents or information relevant -- actually, withdrawn. I think I've got enough here.

Let's look at the affirmative

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defenses at the end of paragraph 43. Do you see that there's a list there, Mr. Dondero?

A. Yes.

Q. Can you identify all facts that HCMFA is aware of that concern or relate to the affirmative defense of waiver?

MS. DEITSCH-PEREZ: Why don't you let him read all of 43 first --

MR. MORRIS: I didn't prevent him --

MS. DEITSCH-PEREZ: -- and then he can answer.

MR. MORRIS: I didn't prevent him from doing anything.

THE WITNESS: Okay. What's the question?

BY MR. MORRIS:

Q. My question, Mr. Dondero, is if you can identify as HCMFA's 30(b)(6) witness all facts that concern or relate to the affirmative defense of waiver.

A. Well, I don't want to do legal analysis or conclusions on --

Q. I'm not -- I'm not -- I appreciate that. And I'm not asking you for that. I'm

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asking for facts.

What facts is HCMFA aware of that concern or relate to the defense of waiver?

A. The sale of MGM.

Q. Okay. Anything else?

A. I don't know at this moment.

Q. And how does HCMFA contend that the sale of MGM constitute Highland's waiver of its right to collect under the notes?

A. That would be the trigger of forgiveness in the notes.

Q. Okay. Anything else?

A. No.

Q. Okay. The next --

A. Not at the moment.

Q. -- defense -- I'm sorry, I didn't mean to step on your words.

A. That's okay.

Q. Okay. The next defense you see there is estoppel.

Can you tell me, as HCMFA's 30(b)(6) witness, all facts that concern or relate to the affirmative defense of estoppel?

A. Forgiveness, would that apply there

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too?

Q. That's -- that's your answer. If that's your answer, I'll take it. I'll try and restate it for you.

Is it HCMFA's position that Highland should be estopped from collecting on the notes because the condition subsequent with respect to the sale of MGM has occurred?

A. Yes.

Q. Okay. Are you aware of any other facts that would support HCMFA's affirmative defense of waiver?

(Clarification requested by the stenographer.)

MS. DEITSCH-PEREZ: Do you mean estoppel?

MR. MORRIS: Yes, thank you, Deborah. Let me restate the question.

BY MR. MORRIS:

Q. Are you aware of any other facts that concern or relate to HCMFA's affirmative defense of estoppel?

A. I think the forgiveness around MGM, if not the agreement itself, is until the

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monetization of -- including Trussway and Cornerstone of the three assets, so that would push off collection.

Q. Okay. Anything else?

A. Not at this moment.

Q. The next affirmative defense is failure of consideration.

Do you see that?

A. Yes.

Q. And HCMFA has admitted that Highland transferred to HCMFA the principal amount reflected in each note, correct?

A. Yes.

Q. And that it did so specifically in exchange for each note, correct?

A. Yes.

Q. Okay. So are you aware of any facts or circumstances that concern or relate to HCMFA's affirmative defense of failure of consideration?

A. I don't know, and I don't know if that includes other cross-claims or other netting of other payments would fall into that. I don't know.

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Q. Prepayment is the last one.

Are you aware of any facts or circumstances that concern or relate to HCMFA's affirmative defense of prepayment?

A. So, no, I don't know. I don't know. I don't know how the MGM sale affects amounts that were prepaid. I don't know. I don't know if those should be argued to be disgorged by the -- by Highland. I don't know.

Q. Okay. Let's take this down and let's move to the next exhibit. You may be happy to know that I only have a seven-page outline, and I'm on page 5.

(Recess requested by the stenographer.)

MR. MORRIS: Sure. This will hopefully be our only break. It's, I guess, 11:17 your time. Let's come back at 11:25, eight-minute break.

THE WITNESS: Yeah, okay.

THE VIDEOGRAPHER: Off video at 11:17 a.m.

(Recess taken, 11:17 a.m. to 11:32 a.m. CDT)

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THE VIDEOGRAPHER: Back on video at 11:32 a.m.

BY MR. MORRIS:

Q. Mr. Dondero, did you communicate with anybody about this deposition during the break?

A. No.

MR. MORRIS: Can we please put up Exhibit 5.

(HCMFA/Dondero Deposition Exhibit 5 marked.)

BY MR. MORRIS:

Q. And if you could just scroll down a little bit to show both signatures. Okay.

Mr. Dondero, are you familiar with this document?

We can go back to the top.

A. Generally.

Q. Do you know what it is?

A. It was something we were required to do I think for the benefit of the auditors or for the benefit of the audit.

Q. Okay. And is that your signature on the document?

A. Yes.

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Q. And is it your understanding that pursuant to this document, HCMLP -- and I'm looking at the last sentence -- agreed not to demand payment on amounts owed by HCMFA prior to May 31st, 2021?

A. Yes.

Q. Do you know what HCMLP received in return for its agreement not to demand payment on amounts owed by HCMF prior to May 31st, 2021?

A. I think it was an inconsiderate accomodation -- I mean insignificant accommodation. I don't think there was a need or a request for a consideration. No one -- I don't know; no one thought that at the time, I can tell you that.

Q. Okay. So at the time, you can't identify any consideration that was given to Highland in exchange for its agreement not to demand payment on amounts owed by HCMF prior to May 31, 2021, correct?

A. Correct.

Q. And if we go to the top of the document, it says, quote: Reference is hereby made to certain outstanding amounts loaned.

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Do you see that part of the document?

A. Yes.

Q. Is it your understanding that the reference to certain outstanding amounts loaned is a reference to the outstanding principal that was due under the notes that are at issue in this lawsuit?

MS. DEITSCH-PEREZ: Object to the form.

A. It says what it says. I don't know if it was meant to be just these notes or if there were other notes. I don't know.

BY MR. MORRIS:

Q. Do you recall if you made any inquiry at the time you signed this document as to what outstanding amounts loaned referred to?

A. I didn't believe it was necessary, so I did not.

Q. Okay. But HCMFA does acknowledge that as of April 15, 2019 at least the two notes that are at issue in this -- are at issue in this lawsuit were outstanding, correct?

A. Again, I don't know if we got the accounting. I think at much reduced size, there

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was still some of the notes outstanding, but I don't know if there were other notes.

Q. Okay. And I just ask for your patience.

HCMS -- withdrawn.

HCMFA acknowledges that as of April 15th, 2019 there were still outstanding amounts loaned under the two notes that are at issue, putting aside what the principal amount was at that particular moment in time, correct?

A. Yes, I believe, yes, they were outstanding at that point in time.

Q. Okay. And do you see after that clause, after the identification of the parties, it specifically refers to -- and I'm paraphrasing here -- certain amounts -- withdrawn -- certain outstanding amounts loaned from Highland to HCMFA, quote: For funding of HCMF, apostrophe S, ongoing operations.

Do you see that?

A. Yes.

Q. And when you signed this document, did you understand that the purpose of the outstanding amounts was to fund HCMF, apostrophe

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S, ongoing operations?

A. Yeah, I think we covered this before where it could have been for bonuses and it could have been for ongoing operating expenses.

Q. And then in the next paragraph it says that HCMFA expects that it, quote: may be unable to repay such amounts should they become due.

Do you see that?

A. Yes.

Q. And would you agree that the term "such amounts" refers to the outstanding amounts loaned from Highland to HCMFA as of April 15, 2019?

A. Yes.

Q. Okay. And then the reference at the end of that sentence, where it says, quote, should they become due.

Do you see that part?

A. Yes.

Q. Do you have an understanding based on the notes that you signed as to how such amounts might, quote, become due?

A. If Highland demanded payment.

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Q. Okay. And you recall -- just a question or two on background.

Do you recall that in January of 2020 you entered into the corporate governance agreement, where you stepped down as president and an independent board was put in place?

A. Yes.

Q. Okay. From that time until the present, does HCMFA contend that Highland breached this agreement in any way?

A. I don't think so.

Q. Okay. Are you aware as HCMFA's corporate representative as to whether or not HCMLP ever demanded payment on amounts that were outstanding as of April 15, 2019 prior to May 31st, 2021?

A. I don't -- I don't know and -- I don't know. I don't think so.

Q. Okay. If we can go to -- so if we can go to the next document. I think it's Exhibit 6.

(HCMFA/Dondero Deposition Exhibit 6 marked.)

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BY MR. MORRIS:

Q. And do you see this is a letter dated June 2nd, 2021?

A. Yep.

Q. So does that refresh your recollection that Highland didn't make a demand for payment of the amounts that were outstanding as of April 2019 until June of 2021?

A. Okay. Yeah, that's what this letter says, so --

Q. And --

A. If this was the first time, then that's true.

Q. Right. You're generally aware that the reason we have this follow-up litigation, the reason why these notes weren't part of the main notes litigation, is because of the exhibit that we just looked at that you signed that said HCMLP wouldn't make a demand until after May 31st, 2021, right?

A. Right.

Q. Okay. So now, just looking at this demand letter, do you recall whether you saw this at or around the time that it was sent in early

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June 2021?

A. I was aware of it.

Q. Okay. Do you know, did HCMFA ever attempt to determine whether HCMLP's calculation of the outstanding principal amount as of June 4th, 2021 was accurate?

A. I think that's why we were seeking discovery.

Q. Okay. I'm going to just step back.

Do you see that there's a column there, Outstanding Principal Amount, 6/4/21, and it's got two entries for each of those notes?

A. Yes.

Q. Do you know if HCMFA ever attempted to determine if those figures were accurate?

A. I -- I believe it did as part of this litigation through discovery.

Q. Okay. And as you sit here today, does HCMFA dispute in any way the listing of the outstanding principal amount set forth on this document as of June 4th, 2021?

A. I don't know.

Q. Okay. The next column is marked Accrued But Unpaid Interest.

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Do you see that?

A. Yes.

Q. Has HCMFA ever attempted to validate the figures that are set forth in that column?

A. The same answer as before: I think through discovery in this litigation, they tried.

Q. Okay. And as of today, does HCMFA have any factual basis for disputing the amounts that are set forth in that column?

A. I don't know.

Q. Looking at the last column, the Total Amount Outstanding, do you see that there's set forth in the letter total amounts outstanding as of June 4th, 2021?

A. Yes.

Q. Did HCMFA ever attempt to validate the numbers that are in that column?

A. It would be the same answer for the prior two columns. I believe it's part of this litigation.

Q. Okay. And as you sit here today as HCMFA's 30(b)(6) witness, do you have any facts that would call into question the accuracy of the total amount outstanding as reflected in this

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letter, at least as of June 4th, 2021?

A. I do not.

Q. Okay. Do you know, did HCMFA respond to this letter in any way?

A. I don't believe so.

Q. Okay. Do you know if HCMFA ever paid any amounts in response to this letter?

A. I don't believe it did.

Q. Let's go to Exhibit 7, please.

(HCMFA/Dondero Deposition Exhibit 7 marked.)

BY MR. MORRIS:

Q. Okay. Have you ever seen this document before, sir?

A. I'm looking -- I'm looking at it in detail now. I don't remember seeing this before.

Q. Okay. I'm going to represent to you that the top box relates to the 2014 note and the bottom box relates to the 2016 note, and that each of the boxes summarizes payments that were made against each particular note, and it shows how the payments were applied.

And I'll represent to you that Highland has produced in discovery the bank

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statements that support each of the receipts and the payments -- each of the payments and receipts set forth on this document.

I appreciate that you haven't seen this before, but let me just ask generally: Is HCMFA aware that certain payments were applied against the notes prior to the petition date?

A. Prior to the petition date? Yes.

Q. Okay. And do you see -- let's start with the bottom box, the 2016 box.

Do you see that there's three receipts? One is -- refers to a bank statement from September 9, 2016, another refers to a bank statement from April 12th, 2017, and then a third bank statement is referred to with respect to December 28th, 2021.

Do you see those three receipt lines?

A. Sure.

Q. Okay. Do you have any knowledge as the 30(b)(6) representative as to, you know, the process by which payments were made on HCMFA's behalf against the 2016 or the 2014 note?

A. Not specifically. It just -- it looks like when there was -- yeah, no, it looks

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like -- like I can't see a pattern to it specifically.

Q. Okay. And then the top box has five separate receipts with respect to the 2014 note.

Do you see that?

A. Yes.

Q. Did you -- did you approve each of the payments on each of the notes that are reflected on this page?

A. I -- I don't know.

Q. Were you aware before this deposition that payments had been made against the HCMFA notes that are at issue?

A. Yes.

Q. Okay. Does HCMFA contend that there was anything improper with respect to the payments that were applied against the two notes that are at issue in this lawsuit?

A. Not that I'm aware of.

Q. Okay. Are you aware of any contention by HCMFA that the payments were improperly applied to outstanding principal and interest due under these two notes and the other notes referred to in the footnotes?

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MS. DEITSCH-PEREZ: Object to the form.

A. You know, I see the footnotes. The -- I'm not aware of the application or if that was proper or not, to apply it to some -- split some of it and apply it to other loans, I -- and I don't know whether we're contesting that. But I don't know if we have enough information to contest it. I don't know the answer.

BY MR. MORRIS:

Q. Well, did you check with Skyview to see what HCMFA's books and records show with respect to these two loans?

A. No.

Q. Do you know whether the payments reflected on this exhibit are also reflected in HCMFA's books and records?

A. I don't, but I imagine they are.

Q. Okay. And why do you imagine that they are?

A. We run a highly compliant GAAP institution. Always have.

Q. And so how does -- why does that lead

HCMFA - J. DONDERO

you to conclude that the payments reflected on this document would also be reflected in HCMFA's books and records?

A. Generally accepted accounting principles are to reflect the economics of transactions and cash flow movements, and if it -- it would have to be reflected on the financials either directly in the notes or if they had some litigation contingency reserve or something, but one way or another, it would have to foot in terms of the money coming in or being paid out, you know, the asset or liability would -- it would have to be accounted, and that's what dual-entry accounting is.

Q. All right. So as the person who was in control of both Highland and HCMFA prior to the petition date, would it be your expectation that the application of payments to principal and interest reflected on this document, at least prior to the petition date, would be the same on HCMFA's books as it is on Highland's books?

A. Prior to the petition date, yes.

Q. Okay. And so the only -- the only question that you might have relates to the

HCMFA - J. DONDERO

December 2021 payments, correct?

A. Yes.

Q. Okay. Fair enough.

Do you know whether HCMFA has done any calculation of its own to determine what it contends is the outstanding principal and interest due on either one of the notes?

MS. DEITSCH-PEREZ: Asked and answered.

A. I don't know.

BY MR. MORRIS:

Q. Okay. Let's just go, last document, Exhibit 8, please, which are the discovery responses.

(HCMFA/Dondero Deposition Exhibit 8 marked.)

BY MR. MORRIS:

Q. And I forgot what topic this was, but I just have a few questions.

Have you seen HCMFA's written responses to discovery before, Mr. Dondero?

A. I believe so.

Q. Okay. Can we go first to Request for Admissions 9 and 10? I think you passed it.

HCMFA - J. DONDERO

There you go.

Okay. So these two requests for admission ask HCMFA to admit that they didn't disclose the terms and existence of the agreement to Frank Waterhouse before February 1st, 2021.

Do you see that?

A. Yes.

Q. Okay. And this is where it really becomes beneficial to have our agreement that all of the prior transcripts can be admissible in this case.

Do you believe that you've fully testified as to the factual basis for the denials in response to Requests for Admission No. 9 and 10, or is there some other part of a conversation that you had with Mr. Waterhouse with respect to these specific notes?

MS. DEITSCH-PEREZ: Object to the form.

A. I'm sorry, so what's the question again?

BY MR. MORRIS:

Q. Did you have a conversation with Mr. Waterhouse that you haven't already testified

HCMFA - J. DONDERO

to as it relates to these two notes at issue, or was it all part of the same conversation that you've already testified to?

A. Yeah, the testimony I'd like to make clear is on the record that accurately reflects is there was definitely a conversation from...

We filed for bankruptcy in '19, right? It was October of '19, correct?

Q. Yes, sir.

A. In the spring of '20, it was clearly discussed numerous times with Seery and Frank and whatever that the notes were compensation. We -- you've seen in our US trustee letters, you've seen it in our other allegations or presentations to the court.

We made 35 different proposals to settle the estate when, you know, we -- it became clear that, you know, Seery wasn't and he was moving for his own purposes.

So what we ended up doing, every one of those, every one of those PowerPoints, we specifically excluded the notes as an asset of Highland's starting in -- I would say the December meeting up in Grosvenor's offices, but

HCMFA - J. DONDERO

in 19- -- in 2019 and there forward, we always had the notes excluded as assets.

So there were conversations with Frank, Seery, the UCC members, numerous people that the notes were loose, unsecured notes that were part of compensation. So that's got to be reflected somewhere in either my testimony or these admissions here.

MR. MORRIS: I'm going to move to strike, and I'm just going to ask you to focus personally on the request for admission.

BY MR. MORRIS:

Q. And that is whether you had any further conversation other than what you've already testified to with Frank Waterhouse concerning the existence or the terms of the alleged agreements.

And the alleged agreements are defined as the agreements in HCMFA's answer, the one with Nancy Dondero.

So just to be clear, Mr. Dondero, I'm not asking about negotiations over the notes. I'm asking if you have anything to add with respect to your communications with

HCMFA - J. DONDERO

Mr. Waterhouse concerning the existence and terms of the alleged agreement.

MS. DEITSCH-PEREZ: Object, asked and answered.

A. Yeah, I'd like what I said a minute ago to not be struck. If you want me to answer it differently or more specifically, let me say it as follow-up.

There were numerous conversations with Frank and at least a half dozen other people that there was a compensation agreement in place or that those notes were agreed to be compensation.

There wasn't a discussion of the specific terms that I can recall with Frank or Seery or the UCC members or the Grosvenor general counsel or all those other people, but they were well aware that there was a compensation agreement in place.

BY MR. MORRIS:

Q. Okay. I appreciate that.

Did you ever tell them that Nancy Dondero, acting as the Dugaboy trustee, is the party who entered into the agreement on behalf of

HCMFA - J. DONDERO

Highland Capital Management LP?

A. No.

Q. Did you ever tell them that the agreement was that the notes would be forgiven if you sold any of the three portfolio companies at a price above cost?

A. Again, the terms and the mechanisms weren't discussed. Nobody viewed the notes as material to the value of the estate at the time or today.

MR. MORRIS: Okay. I move to strike the last portion, and I would ask you just this. I want to finish this up.

BY MR. MORRIS:

Q. So the question was simply whether you ever told anybody any of the terms of the agreement that you entered into with Nancy Dondero as the trustee of The Dugaboy Trust on behalf of Highland.

MS. DEITSCH-PEREZ: Asked and answered.

A. Yeah, not the terms. The terms weren't material. But the awareness of the agreement was broadly discussed.

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BY MR. MORRIS:

Q. Okay. And -- that's fine.

Let's go to Request for Admission No. 15 and 16. This talks about disclosure of the existence in terms of the alleged agreement to any creditor of Highland.

Can you identify every creditor of Highland to whom you disclosed the terms of the alleged agreement prior to February 1st, 2021?

A. There were no creditors prior to February 1st, 2021, other than -- I'm trying to think -- Grosvenor --

Well, the answer is no. The answer is no, but there were very few creditors. And the answer is no, didn't believe it was necessary.

Q. Okay.

A. The amounts weren't material.

Q. Okay. How about with respect to No. 16, can you identify a creditor to whom you disclosed the existence of the alleged agreement prior to February 1st, 2021?

MS. DEITSCH-PEREZ: Object, asked and answered.

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A. Wait a minute. I need to correct. I wasn't paying attention to the dates. Okay.

Prior to February 2021 is all the things that I rambled on about earlier that you wanted to strike. There were written proposals delivered to the independent board, the UCC, all the creditors, including Grosvenor, UBS, Acis, Pat Dougherty, all the smaller creditors, et cetera, that showed the notes treated as compensation, and the notes not considered as part of the balance sheet of Highland.

And the balance sheet of Highland at that point in time and today overwhelmingly covered all liabilities such that it wasn't material, and it wasn't anything that anybody objected to in any of the proposals going back and forth.

MR. MORRIS: I move to strike.

BY MR. MORRIS:

Q. And my question is simply: Can you identify every creditor to whom you disclosed the terms of the alleged agreement prior to February 1st, 2021? I'm not asking for notes. I'm not asking for negotiating position.

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The terms of the alleged agreement, can you please identify if there are any creditors to whom you disclosed the terms of the alleged agreement before February 1st, 2021?

MS. DEITSCH-PEREZ: Asked and answered.

A. Well, all right. Let me succinctly say it again.

The agreement was discussed with all the creditors, all the professionals, all the management team at Highland and NexPoint. The terms were not specifically discussed.

BY MR. MORRIS:

Q. Okay. Were any of the terms discussed with any creditor prior to February 1st, 2021?

A. Well, the term -- the term that it would be forgiven as part of compensation was discussed as part of the overall agreement, but the specific mechanisms were not discussed.

Q. Okay. Did you ever tell anybody -- withdrawn.

Did you ever tell any creditor prior to February 1st, 2021 that you had entered into

HCMFA - J. DONDERO

an agreement on behalf of HCMFA with your sister, Nancy Dondero, acting in her capacity as the trustee of The Dugaboy Trust, to forgive the notes?

A. There was no specific conversations such as that --

Q. Thank you.

A. -- that I remember.

Q. Let's go to Interrogatory No. 1 and 2, please. Okay.

So in paragraph 41 of the answer -- and we can get it back if it's helpful to you -- there's a reference to testimony that HCMFA believes, quote, discusses the existence of the agreement that may be uncovered through discovery.

Is that a reference to any testimony other than Nancy Dondero or you?

A. Yeah. I mean, again, there's 35 different offers to sell, pot plans, you know, good faith efforts that all describe the notes as subject to a compensation agreement and forgiveness that are all on the debtor's servers that ideally would be discovered as part of this

HCMFA - J. DONDERO

process, ideally would be brought forward by the debtor, but I don't know if we have those.

Q. All right. You understand there's a difference between testimony and documents, right?

A. Everybody involved -- and there were a lot of people involved -- would give corroborating testimony to those documents.

Q. Okay. Interrogatory No. 4 -- you know what, I'll skip that.

Let's go to Interrogatory No. 8, please.

Do you see that it says -- it asks HCMFA to identify every loan that Highland extended to one or more of its current or former affiliates that Highland forgave in whole or in part.

Do you see that was the interrogatory?

A. Yes.

Q. Okay. And then in response there's a list of human beings, right?

A. Yes.

Q. Are those human beings affiliates,

HCMFA - J. DONDERO

current or former affiliates, of Highland?

MS. DEITSCH-PEREZ: Object to the form.

A. In all fairness, employees and consultants are affiliates, right?

BY MR. MORRIS:

Q. Okay. I just wanted to get the testimony.

And is that, to the best of your knowledge, a complete and accurate list of all current or former affiliates of Highland who had a loan forgiven by Highland, in whole or in part?

A. Within sufficient discovery, that was the list we could come up with from collective memory. There may be a few more, but that's the best knowledge we have at the moment.

Q. Okay. Let's just go back to the top of the requests for admission, and my question for you, Mr. Dondero, and it could be the last question, is whether there's any -- actually, I'm not even going to do it that way.

I'm just going to ask you here because this has been a 30(b)(6) topic for a very long time: Are you aware of any of HCMFA's

HCMFA - J. DONDERO

discovery responses in this document that are incomplete or inaccurate?

A. Only generally from counsel.

Q. Okay. Can you identify any inaccuracy or incomplete response to any request for admission or interrogatory -- and we can scroll through them if you'd like -- that you can share with --

MS. DEITSCH-PEREZ: Yeah, but before -- before he answers, actually give him a context that that came up in, I would need a break to make sure he's not going to disclose privileged information.

Or ask it differently, John. There's a way to get at that that would be different.

MR. MORRIS: Okay. I'll ask him.

BY MR. MORRIS:

Q. You're here as the 30(b)(6) witness. Is there anything inaccurate or incomplete about any response that HCMFA gave?

A. That HCMFA gave or that the debtor gave as part of discovery? I'm sorry.

Q. MFA -- okay. I appreciate that, Mr. Dondero.

HCMFA - J. DONDERO

These are HCMFA's responses to Highland's requests for discovery, and my question for you as HCMFA's 30(b)(6) witness is whether you're aware of anything in here that is inaccurate or incomplete from HCMFA's perspective as the responding party.

A. Not besides what we've already covered.

Q. Okay. I appreciate that.

MR. MORRIS: Can we just take a two-minute break and let me confer with Ms. Winograd and see if I've got anything further?

THE VIDEOGRAPHER: Off video at 12:11 p.m.

(Recess taken, 12:11 p.m. to 12:13 p.m. CDT)

THE VIDEOGRAPHER: Back on video at 12:13 p.m.

MR. MORRIS: I have no further questions, Mr. Dondero. Thank you for your patience.

THE WITNESS: Thank you.

MR. MORRIS: Take care.

HCMFA - J. DONDERO

THE VIDEOGRAPHER: This concludes today's deposition. Off video at 12:13 p.m.

(Time noted: 12:13 p.m. CDT)

_____

JAMES D. DONDERO

Subscribed and sworn to before me this _____ day of _____, 20____.

C E R T I F I C A T E

I, MICHAEL E. MILLER, FAPR, RDR, CRR, Notary Public in and for the State of Texas, do hereby certify:

That JAMES D. DONDERO, the witness whose deposition is hereinbefore set forth, was duly sworn by me and that such deposition is a true record of the testimony given by such witness;

That pursuant to FRCP Rule 30, signature of the witness was not requested by the witness or other party before the conclusion of the deposition;

I further certify that I am not related to any of the parties to this action by blood or marriage; and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand on May 5, 2022.

MICHAEL E. MILLER, FAPR, RDR, CRR
NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS

---------- I N D E X ----------

WITNESS: JAMES D. DONDERO
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ERRATA SHEET

Case Name:
Deposition Date:
Deponent:

Pg.	No.	Now Reads	Should Read	Reason
___	___	_____	_____	_____
___	___	_____	_____	_____
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_____
Signature of Deponent

SUBSCRIBED AND SWORN BEFORE ME
THIS ____ DAY OF _____, 2022.
_____
(Notary Public) MY COMMISSION EXPIRES:_____

1 ERRATA SHEET

2 CASE NAME: HIGHLAND CAPITAL MANAGEMENT v. HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS LP (21-03082-SGJ)USBC-NDTX

3 DATE: MAY 5, 2022

4 DEPONENT: JAMES DONDERO

	Pg.	Ln.	Now Reads	Should Read	Reason
5					
6	28	4		[Add at end:] I have learned that the financials reflect the sale of MGM to Amazon as of the time it occurred and the dispute between HCMFA and HCMLP over whether that effected forgiveness.	Clarification
7	29	13		[Add at end:] Other than, as I note below, I was the Dugaboy Trustee in 2014, not Nancy, and so I spoke for Highland re the agreement regarding the 2014 note.	Clarification
8	35	23		[Add at end:] I understood that the 2016 conversation with Nancy also approved the 2014 agreement whether or not any additional agreement was needed after mine.	Letting witness finish where questioner cut him off
9	37	20	could and would and likely	could and would likely	mistranscription
10	40	4	2015's	Rule 2015 reports.	Clarification
11	50	16	that.	that, but in any event none was needed because of the agreements concerning forgiveness of the notes.	Clarification
12	65	13	whatever	whoever	mistranscription
13	74	14	Within sufficient	With insufficient	mistranscription
14					

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21 Signature of Deponent
22 SUBSCRIBED AND SWORN BEFORE ME
23 THIS 6th DAY OF June, 2022.
24 Robin Morrison
25 (Notary Public) MY COMMISSION EXPIRES: 12.9.2025

Robin Morrison
My Commission Expires
12/9/2025
Notary ID
133483390

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Exhibit B

N. Dondero - Dugaboy

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	)
HIGHLAND CAPITAL MANAGEMENT, LP,	) Case No. 19-34054-SGJ-11
Debtor,	) Chapter 11
HIGHLAND CAPITAL MANAGEMENT, LP,	)
Plaintiff,	) Advisory Proceeding No. 21-03082-sgj
vs.	)
HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, LP.	)
Defendants.	)

REMOTE DEPOSITION OF
NANCY DONDERO
Individually and as
Corporate Representative of DUGABOY
Dallas, Texas
Friday, 29th day of April, 2022

Reported by:

Daniel J. Skur, Notary Public and CSR

Job No. 209980

29th day of April, 2022
9:33 a.m. - 10:14 a.m.

Remote Deposition of NANCY DONDERO, Individually and as Corporate Representative of Dugaboy, located in at the offices of Stinson LLP, 3102 Oak Lawn Avenue, Suite 777, Dallas, Texas, before Daniel J. Skur, Notary Public and Certified Shorthand Reporter in and for the State of Texas located in Waxahachie, Texas.

A P P E A R A N C E S:

Pachulski Stang Ziehl & Jones
Attorney(s) for Debtor
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Heller, Draper, Hayden, Patrick, & Horn
Attorney(s) for Dugaboy
650 Poydras Street
New Orleans, Louisiana 70130
By: Douglas Draper, Esq.

ALSO PRESENT:
La Asia Canty, Paralegal

IT IS HEREBY STIPULATED AND AGREED by and between the attorneys for the respective parties herein, that filing and sealing be and the same are hereby waived.

IT IS FURTHER STIPULATED AND AGREED that all objections, except as to the form of the question, shall be reserved to the time of the trial.

IT IS FURTHER STIPULATED AND AGREED that the within deposition may be sworn to and signed before any officer authorized to administer an oath, with the same force and effect as if signed and sworn to before the Court.

- oOo -

P R O C E E D I N G S

NANCY DONDERO,
having been duly cautioned and sworn to tell the truth, the whole truth and nothing but the truth, testified as follows:

(9:33 a.m.)

EXAMINATION

BY MS. WINOGRAD:

Q. Good morning, Ms. Dondero. My name is Hayley Winograd. I'm an attorney at Pachulski Stang Ziehl & Jones representing Highland Capital Management, L.P., as the reorganized debtor; and I'll be taking your deposition today.

Do you understand that?

A. I do. Good morning, Hayley.

Q. Do you understand that you're being deposed today in both your individual capacity and also in your capacity as what's called a 30(b)(6) witness on behalf of the Dugaboy Investment Trust?

A. I do.

Q. Can we refer to the Dugaboy Investment Trust as "Dugaboy"?

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A. Yes.

Q. And can we refer to Highland Capital Management, L.P., as "Highland"?

A. Yes.

Q. If I refer to "your brother" or "Mr. Dondero," do you understand that I'm referring to James Dondero?

A. Yes.

Q. We'll be putting up documents on the screen from time to time, and if you need to see any other portion of this -- of the document that is not being shown at any given moment, just -- you can just let us know; and if you need me to repeat any questions, also, please, let me know; and if you don't understand a question, please let me know. And, also, if you need to take a break to use the restroom, you can let me know; but if we do take a break, it just can't be in the middle of a question.

MS. WINOGRAD: I want to start with a stipulation we entered into with -- with Mr. Aigen.

Mr. Aigen, we entered into our email

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exchange from April 26th to April 28th of 2022, in which we agreed that the deposition transcripts for any witness that was deposed in connection with the main notes litigation can be used in this adversary proceeding.

Can you please confirm this agreement for the record?

MR. AIGEN: Confirmed.

BY MS. WINOGRAD:

Q. And, Ms. Dondero, just to make sure you understand, as I'm sure you remember, my colleague, Mr. Morris, deposed you on October 18th of 2021 in connection with the main notes litigation; and so I will not be asking you about a number of topics that he covered during that deposition relating to the other notes, subject to that litigation.

Do you understand that?

A. I do.

Q. Okay.

MS. WINOGRAD: I'm going to ask my colleague, Ms. La Asia Canty, to please show Exhibit 1.

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(Exhibit 1 introduced.)

MS. WINOGRAD: Okay. If we could just scroll down a little bit.

BY MS. WINOGRAD:

Q. Have you seen this document before?

A. I think so.

Q. Okay. This is the subpoena that was served on the Dugaboy Investment Trust, right?

A. Yes.

Q. Okay. And you understand that you've been designated as the corporate representative of Dugaboy, right?

A. Correct.

Q. Okay. You understand that your answers of Dugaboy's corporate representative will be binding on Dugaboy?

A. Yeah.

MS. WINOGRAD: Okay. La Asia, if we can please scroll to the topics.

BY MS. WINOGRAD:

Q. Can you confirm that you're prepared to testify on these topics?

MS. DEITSCH-PEREZ: Obviously subject to the objections that we filed.

N. Dondero - Dugaboy

A. Yes.

BY MS. WINOGRAD:

Q. Okay.

MS. WINOGRAD: Okay. We can take that down for now.

BY MS. WINOGRAD:

Q. Did you do anything to prepare for today's deposition?

A. I met with my lawyers yesterday.

Q. Okay. What -- did you review any documents?

A. I did.

Q. What documents did you review?

A. The trust agreement, the partnership agreement, some of the documents that went back and forth regarding the subpoenas and the complaint.

Q. Did you speak with anybody other than your lawyers?

A. I did not.

Q. Since November 9th of 2021, have you communicated with your brother, Mr. Dondero, at any time about the promissory notes that are the subject of this litigation?

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A. I have not.

Q. Okay. And since November 9th of 2021, have you communicated with your brother at any time about the defenses HCMFA is asserting in this litigation?

A. I have not.

Q. Okay. And I just want to clarify that when I say "HCMFA," I'm referring to Highland Capital Management Fund Advisors.

A. Okay.

Q. Have you reviewed the transcript of your earlier deposition --

A. I have.

Q. -- from October of 2021?

Are you aware of anything in that transcript that should be corrected or modified to make it more accurate?

A. There was -- there -- I don't know the exact page. It's towards the end where Mr. Morris asked me a question, and I thought I made it pretty clear throughout the deposition that the questions were only pertaining to those 13 notes and those three agreements, and I thought it was a little ambiguous. I'm not

N. Dondero - Dugaboy

exactly sure on the page. I can probably find it for you. But that's the only thing that comes to mind.

Q. Okay. So just to make sure I understand, so you wanted to just clarify that there was -- there was a portion in the transcript where you wanted to make sure it was clear that you were only talking about the 13 notes at issue in that litigation?

A. Correct. There was just one question that seemed a little vague from Mr. Morris, that it could have seemed that it was broader than I thought it was, where I thought it was just pertaining to the 13 and the three agreements.

Q. Okay. So other than that, can you think of anything that you forgot to testify about during that deposition?

MS. DEITSCH-PEREZ: Object to the form.

THE WITNESS: Do I still answer?

MS. WINOGRAD: You can --

A. No, Hayley, not -- like I said, that deposition, to me, was just the 13 and the

N. Dondero - Dugaboy

three agreements; so to answer your question, no.

BY MS. WINOGRAD:

Q. Okay. And are you familiar with Highland Capital Management Fund Advisors, L.P., which I referred to as HCMFA a couple minutes ago?

A. (Witness nods head.)

Q. Okay.

A. Yes.

Q. So I'm going to refer to them as HCMFA moving forward.

A. Okay.

Q. Is it your understanding that HCMFA was an affiliate of Highland?

A. Yes.

Q. What's the basis of that understanding?

A. Because it was under Highland's umbrella. Jim was the beneficiary, or owner.

Q. Is it your understanding that Mr. Dondero owns and controls HCMFA?

MS. DEITSCH-PEREZ: Object to the form.

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You can still answer.

THE WITNESS: Oh.

A. That was my understanding.

BY MS. WINOGRAD:

Q. And what is the basis of that understanding?

A. I believe Jim told me.

Q. Okay. Are you aware that Highland filed an action against HCMFA on November 9th of 2021 to collect on two promissory notes?

A. I am.

MS. WINOGRAD: La Asia, can you please pull up Exhibit 3?

(Exhibit 3 introduced.)

BY MS. WINOGRAD:

Q. Okay. Do you see this promissory note dated February 26th of 2014?

A. I do.

Q. Have you seen it before?

A. Yes.

Q. When did you see it for the first time?

A. Just recently.

Q. Okay.

1 N. Dondero - Dugaboy
2 MS. WINOGRAD: Can we scroll to the
3 second page, please?
4 BY MS. WINOGRAD:
5 Q. Do you see that this promissory note
6 is signed by your brother?
7 A. Yes.
8 Q. And can we refer to this as "the
9 first HCMFA note"?
10 A. Certainly.
11 MS. WINOGRAD: La Asia, can we now
12 pull up Exhibit 4?
13 (Exhibit 4 introduced.)
14 BY MS. WINOGRAD:
15 Q. Okay. And do you see -- do you see
16 this promissory note dated February 26th of
17 2016?
18 A. I do.
19 Q. And have you seen this before?
20 A. I have.
21 Q. When did you see this for the first
22 time?
23 A. Recently.
24 Q. Okay. Within the last couple
25 months?

1 N. Dondero - Dugaboy
2 A. I'm -- certainly, sure.
3 Q. Okay.
4 MS. WINOGRAD: Can we go to the
5 second page, please?
6 BY MS. WINOGRAD:
7 Q. Do you see this is also signed by
8 your brother?
9 A. Yes.
10 Q. Okay. Can we refer to this as "the
11 second HCMFA note"?
12 A. Certainly.
13 Q. And can we refer to the first HCMFA
14 note and the second HCMFA note collectively as
15 "the notes"?
16 A. Certainly.
17 Q. Okay. And are you aware that these
18 notes are the subject of the action Highland
19 commenced against HCMFA in November of 2021?
20 A. I am.
21 MS. WINOGRAD: La Asia, can we
22 please pull up Exhibit 5 now?
23 (Exhibit 5 introduced.)
24 BY MS. WINOGRAD:
25 Q. Okay. Have you seen this document

1 N. Dondero - Dugaboy
2 before?
3 A. Yes.
4 Q. When did you first see it?
5 A. Just recently.
6 Q. Are you aware that this is the
7 original answer filed by HCMFA on December 10th
8 of 2021?
9 MS. DEITSCH-PEREZ: Object to the
10 form.
11 A. Yes.
12 BY MS. WINOGRAD:
13 Q. Okay.
14 A. If it's dated, correct?
15 Q. Uh-huh.
16 A. Okay.
17 MS. WINOGRAD: Can we scroll to
18 paragraph 41?
19 Okay. Perfect.
20 BY MS. WINOGRAD:
21 Q. It says, among other things, here:
22 Prior to -- "prior to the demands for payment,
23 Plaintiff agreed that it would not collect the
24 Notes upon fulfillment of conditions
25 subsequent. Specifically, sometime between

1 N. Dondero - Dugaboy
2 December of the year in which each Note was
3 made and February of the following year, Nancy
4 Dondero, as representative for a majority of
5 the Class A shareholders of Plaintiff agreed
6 that Plaintiff would forgive the Notes if
7 certain portfolio companies were sold for
8 greater than cost or on a basis outside of
9 Mr. Dondero's control."
10 Have I read that correctly?
11 A. You read it correctly. It's just
12 not stated correctly.
13 Q. Okay. How -- how should it be
14 correctly stated?
15 A. Well, I wasn't the trustee in 2014,
16 so instead of "Nancy," it really should be
17 "Trustee," correct? I'm not a lawyer, but --
18 Q. Okay. So it's your testimony that
19 you were not the trustee in -- at the time that
20 one of these notes...
21 A. That's correct. I didn't become
22 trustee until October of '15.
23 Q. Okay. So does the statement in
24 paragraph 41 apply to the two notes that are
25 the subject of the action that Highland

N. Dondero - Dugaboy

commenced against HCMFA?

MS. DEITSCH-PEREZ: Object to the form.

A. I'm assuming that was the intent, Hayley. I just have a problem with my name being there for both of them. I just think that it should be, I guess, "slash Trustee" for the trustee for '14, but I'm assuming that's legally correct. I don't know.

BY MS. WINOGRAD:

Q. Okay. So is it your testimony, then, that you entered into -- let me phrase it this way: How would you -- how would you restate the statement of paragraph 41 that I just read?

I just want to make sure I'm clear.

A. It's a little out of my scope with the legal part of it, but I guess what I'd be a little more comfortable with is me as the trustee for the '16 note and trustee for whoever was trustee for the note in '14, just to separate that out, I guess, if that could be possible, Hayley.

Q. Okay. So for the 2016 note, then,

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when you're -- when you're saying you were the trustee, I'm going to refer to that -- to the agreement that applies to the 2016 note as the agreement moving forward in this deposition.

A. Okay.

Q. Let's see.

You -- do you remember --

MS. DEITSCH-PEREZ: Can I -- Hayley, can I just ask a question? Are you asking her -- and I should have done this at the beginning, and I apologize.

Are you asking her questions throughout the deposition as both Nancy Dondero and as the Dugaboy representative, or are we breaking it -- can she assume when you say "you," you're asking -- you're asking both as Nancy and as the 30(b)(6) representative of Dugaboy? That might be causing a little of the confusion.

MS. WINOGRAD: When I say "you," I just mean Ms. Dondero in her individual capacity. When I include Dugaboy, I'm going to be referring to both Nancy Dondero in her individual capacity and Dugaboy.

N. Dondero - Dugaboy

MS. DEITSCH-PEREZ: Okay. Thank you.

BY MS. WINOGRAD:

Q. Do you remember when you testified regarding the terms of the agreements covering the 13 notes subject to the main notes litigations back in October of 2021?

A. Do I remember the deposition?

Q. Do you remember when you testified regarding the terms of the agreements covering those 13 notes?

A. Yeah.

Q. Okay. Is there any term or provision of the agreement covering the 20 -- the February 2016 note at issue in this lawsuit that differs from the agreements covering the 13 notes you previously testified about?

A. No.

Q. Okay. So is it fair to say, then, that the terms and the provisions of the agreement covering the February 2016 note is the same as the terms covering the agreements for the 13 notes in the main notes litigation?

A. That's fair, Hayley, yes.

N. Dondero - Dugaboy

Q. Okay. So, then, going back to paragraph 41 of the answer.

MS. WINOGRAD: La Asia, could we go back to paragraph 41, please?

BY MS. WINOGRAD:

Q. So, then, it's fair to say that you and your brother, as it pertains to the agreement covering the February 2016 note, you didn't -- you didn't agree to anything not covered in this paragraph, correct?

A. I'm sorry, Hayley. Could you repeat the question?

Q. Sure. So as it pertains to the February of 2016 note subject to this litigation, you and your brother didn't agree to anything not covered in this paragraph; is that correct?

MS. DEITSCH-PEREZ: Object to the form.

A. Yes. I just wanted to reread it, Hayley.

Yes.

BY MS. WINOGRAD:

Q. Okay. Are the -- are the portfolio

N. Dondero - Dugaboy

companies referenced in this paragraph the same portfolio companies subject to the agreement covering the notes in the main notes litigation?

A. Yes, Trussway, Cornerstone, MGM. The same -- the same three, yes.

Q. Okay. And moving forward, can we refer to these three portfolio companies as "the portfolio companies"?

A. Certainly.

Q. Was there anything substantively different about the conversations you had with your brother regarding the agreement covering the February of 2016 note that was different than the conversations you had with your brother as it pertains to the other agreement?

A. We're going back a long time, Hayley, obviously, so the memory is a little fuzzy. The only difference that I would imagine, that I think was he would have referenced the note from '14 in the '16 conversation.

Q. What do you mean by "he would have referenced" that note in the conversation?

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A. I -- he -- when we had a conversation in '16, he would have brought up the note in '14 that was also forgiven.

Q. When he brought it up, was he referring to the '14 note that was subject to a previous agreement?

A. Yes.

Q. Okay. And why did he bring that up?

MS. DEITSCH-PEREZ: Object to the form.

A. The 2016 was my first involvement as trustee, so it would have come up, I'm sure, and it did in conversation that Jim had forgiven a note in '14.

BY MS. WINOGRAD:

Q. That Jim had forgiven a note or that Highland had forgiven the note?

A. Well, I believe he was trustee at the time, so he would have caused Dugaboy to cause Highland to forgive the note.

Q. And when you say "Jim," are we referring to Mr. Dondero, your brother?

A. Correct.

Q. Okay -- so -- okay. And so do you

N. Dondero - Dugaboy

remember what he told you about that?

A. Again, Hayley, it's going back a while. I don't remember details. I'm sorry.

Q. That's fine. So the agreement covering the February of 2016 note -- let me rephrase that.

Did you push back on any terms of the agreement covering the February of 2016 note?

A. I don't remember any pushback, Hayley.

Q. Okay. So the agreement covering the 2016 note was not subject to negotiation, correct?

MS. DEITSCH-PEREZ: Object to the form.

A. Not that I recall.

BY MS. WINOGRAD:

Q. Can you think of anything relating to the agreement covering the February of 2016 note that is different in any way from the agreement covering the other 13 notes in the main notes litigation?

A. No, not at this time.

N. Dondero - Dugaboy

Q. Okay.

MS. DEITSCH-PEREZ: La Asia, we can take that down for now, thank you.

BY MS. WINOGRAD:

Q. Okay. Prior to January 1st of 2021, did you ever disclose the existence of the agreement covering the February of 2016 note to anyone in the world other than your brother?

A. I'm sorry, Hayley. Can you say it again, please?

Q. Sure. Prior to January 1st of 2021, did you ever disclose the existence of the agreement covering the note from February of 2016 to anyone in the world other than your brother?

A. No, I did not.

Q. Prior to January 1st of 2021, did you ever disclose the terms of the agreement covering the February of 2016 note to anyone in the world other than your brother?

A. Not that I recall.

Q. Are the terms of the agreement covering the February of 2016 note memorialized anywhere in writing?

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MS. DEITSCH-PEREZ: Object to the form.

A. Not that I'm aware of.

BY MS. WINOGRAD:

Q. Is the existence of the agreement memorialized anywhere in writing?

MS. DEITSCH-PEREZ: Object to the form.

A. Not that I know of, Hayley.

BY MS. WINOGRAD:

Q. Do you know if the terms of the agreement were ever written down anywhere?

A. They weren't by me.

Q. Have you ever seen the terms of the agreement written down anywhere?

A. I'm sorry, did I ever what?

Q. Have you ever seen the terms of the agreement written down anywhere?

MS. DEITSCH-PEREZ: Form.

A. I have not.

BY MS. WINOGRAD:

Q. Okay. And I just want to clarify that when I'm referencing "the agreement," I am referring to the agreement covering the

N. Dondero - Dugaboy

February of 2016 note, unless I say otherwise.

A. Okay.

Q. Did anyone ever tell you that the terms of the agreement was ever written done anywhere?

A. Not that I recall.

Q. Did you ever ask anyone if the terms of the agreement were ever written down anywhere?

A. I don't think so.

Q. Did it ever occur to you to write the terms of the agreement down anywhere?

A. No.

Q. Did you ever discuss with your brother, Mr. Dondero, whether you should write down the terms of the agreement anywhere?

A. Not that I remember, huh-uh.

Q. Was anyone present at the time you entered into the agreement with your brother?

A. I don't think so, Hayley.

Q. Can you think of anyone in the world other than you and your brother who knows about the existence of the agreement?

MS. DEITSCH-PEREZ: Object to the

N. Dondero - Dugaboy

form.

A. I'm not aware of anyone that he would have told, Hayley.

BY MS. WINOGRAD:

Q. Before entering into the agreement, did you or Dugaboy know the value of Highland's interest in each portfolio company?

A. No.

Q. Did you or Dugaboy ever ask anyone for this information before entering into the agreement?

A. No.

Q. Before entering into the agreement, did you or Dugaboy know the cost that Highland paid to acquire its interest in each of the portfolio companies?

A. No.

Q. Did you or Dugaboy ever ask anybody for this information?

A. No.

Q. So at the time you entered into the agreement -- the agreement, neither you nor Dugaboy knew whether Highland's cost to acquire its interest in each of the portfolio companies

N. Dondero - Dugaboy

exceeded the value of Highland's interest in the portfolio companies?

A. That's correct.

Q. Okay. Was Highland's benefit from the agreement the same as Highland's benefit from the agreement covering the 13 notes in the other litigation?

A. Yes.

Q. So is it fair to say that there's nothing different about -- let me rephrase that.

So is it fair to say that Highland didn't receive anything in exchange for its agreement that it did not receive in exchange for the agreement to cover the 13 notes in the other litigation?

MS. DEITSCH-PEREZ: Object to the form.

You mean the same type of thing?

BY MS. WINOGRAD:

Q. Did Highland receive anything in exchange for its agreement to forgive the February 2016 note that it did not receive in exchange for its agreement to forgive the other

N. Dondero - Dugaboy

13 notes?

MS. DEITSCH-PEREZ: Object to the form.

A. No, I don't believe so, Hayley.

BY MS. WINOGRAD:

MS. WINOGRAD: Okay. Let's take a five-minute break and come back at 11:08, if that works for everybody.

THE WITNESS: That would be great. I'd love to get a water.

(Recess held.)

BY MS. WINOGRAD:

Q. So just a few more questions for you. You testified earlier that when you entered into -- that when you caused Dugaboy to enter into the agreement as it relates to the February 2016 note, you said your brother, Mr. Dondero, referenced the agreement pertaining to the February of 2014 note, correct?

A. I believe so, yes. It's a little fuzzy, Hayley. It was a long time ago, but yes, I believe he did.

Q. Okay. Did he tell you that an

N. Dondero - Dugaboy

agreement was in place with respect to the 2014 note?

A. Yes.

Q. Okay. Did your brother tell you who entered into that agreement pertaining to the 2014 note?

A. That he did.

Q. Okay. So he told you that he did, and did he tell you who else did?

A. I don't remember, Hayley.

Q. Okay. So you don't -- so you do remember that he told you that he entered into the agreement and was that -- was that correct?

A. Yes, I believe so, uh-huh.

Q. Did he say that he entered into it on behalf of Dugaboy?

A. (No response.)

Q. I'm sorry. Let me rephrase that. Did he say that he caused Dugaboy to enter into the agreement?

A. He caused Dugaboy to cause Highland to enter into the agreement, correct.

Q. Okay. Did your brother tell you what the terms of the 2014 -- of the agreement

N. Dondero - Dugaboy

pertaining to the 2014 notes were?

A. Of the note?

Q. Of the -- of the agreement covering the 2014 note.

A. It was very -- it was the same as the agreements from the ones we've discussed already and the ones we're discussing now.

Q. Okay. Okay. Did he tell you anything about the agreement covering the February 2014 note other than that one -- other than that one existed?

MS. DEITSCH-PEREZ: Object to the form.

A. Hayley, you mean the terms --

BY MS. WINOGRAD:

Q. The terms --

A. -- of the agreement?

Q. Other than the fact that one existed, did he tell you anything about that 2014 -- the agreement covering the 2014 note?

A. The agreement was -- is the same as the ones that we've discussed for 17, 18, 19, and now the second note in '16 -- the second note of the party we're talking about today.

N. Dondero - Dugaboy

Q. But he didn't tell you anything about the term -- he didn't disclose anything about the terms of the agreement pertaining to the 2014 --

MS. DEITSCH-PEREZ: Object to the form.

BY MS. WINOGRAD:

Q. -- note, correct?

MS. DEITSCH-PEREZ: Object to the form.

A. Well, he -- I'm sorry, Hayley, maybe I'm misunderstanding. He did. The terms that we know and have discussed on all the other agreements were the same for '14.

BY MS. WINOGRAD:

Q. Okay. I'm just trying to --

A. Does that answer --

Q. -- find out if he told you that, though?

A. Yes.

Q. Okay.

MS. WINOGRAD: I might be done. Just give me a second.

THE WITNESS: Certainly. Thank you,

N. Dondero - Dugaboy

Hayley.

MS. WINOGRAD: Okay. I'm actually all finished. So thank you very much, Ms. Dondero.

THE WITNESS: Thank you, Hayley. You have a great day.

MS. WINOGRAD: You, too. Nice meeting you.

THE WITNESS: Nice meeting you. Bye-bye now.

(Time Noted: 10:14 a.m.)

N. Dondero - Dugaboy

C E R T I F I C A T E

STATE OF TEXAS)
)
COUNTY OF ELLIS)

I, Daniel J. Skur, a Notary Public within and for the State of Texas, do hereby certify:

That NANCY DONDERO, Individually and as Corporate Representative of Dugaboy, the witness whose deposition is hereinbefore set forth, was duly sworn by me and that such deposition is a true record of the testimony given by such witness.

That pursuant to Rule 30 of the Federal Rules of Civil Procedure, signature of the witness was not reserved by the witness or other party before the conclusion of the deposition;

I further certify that I am not related to any of the parties to this action by blood or marriage; and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 29th day of April, 2022.

_____

Daniel J. Skur
Notary Public, State of Texas.
My Commission Expires 7/7/2022
TSG Reporting, Inc.
228 East 45th Street, Suite 810
New York, New York
(877) 702-9580

NAME OF CASE:

DATE OF DEPOSITION:

NAME OF WITNESS:

Reason Codes:

1. To clarify the record.
2. To conform to the facts.
3. To correct transcription errors.

Page _____ Line _____ Reason _____
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J U R A T

I, , do hereby certify under penalty of perjury that I have read the foregoing transcript of my deposition taken on ; that I have made such corrections as appear noted herein in ink, initialed by me; that my testimony as contained herein, as corrected, is true and correct.

DATED this ____ day of _____, 20 ,
at _____, .

_____

SIGNATURE OF WITNESS

-------I N D E X-------

WITNESS:	EXAMINATION BY	PAGE:
NANCY DONDERO, Individually and as Corporate Representative of Dugaboy		
	By Ms. Winograd	5

*****

----------EXHIBITS----------

Debtor Exhibits		PAGE/LINE
Exhibit 1	Highland Capital Management, L.P.'s Notice of Second Amended Subpoena to the Dugaboy Investment Trust 9 pages	8/2
Exhibit 3	2/26/2014 Promissory Note Bates No. D-HCMFA2-017575 through 0175676	13/15
Exhibit 4	2/26/2016 Promissory Note Bates No. D HCMFA 2017573 through 017574	14/13
Exhibit 5	Defendant's Original Answer 8 pages	15/23

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NAME OF CASE: Highand Capital Management LP v. Highland Capital Management Fund Advisors LP (21-03082-sgj, USBC-NDTX)

DATE OF DEPOSITION: 4/29/22

NAME OF WITNESS: Nancy Dondero

Reason Codes:

1. To clarify the record.
2. To conform to the facts.
3. To correct transcription errors.

Page **10** Line **23** Reason **1**

From **the questions were only** to **the questions and my answers were only**

Page **18** Line **21** Reason **1**

From _____ to **delete second "trustee for"**

Page **23** Line **4** Reason **1**

From **that was also forgiven.** to **that was also to be forgiven upon the condition subsequent.**

Page **23** Line **14-15** Reason **1**

From **Jim had forgiven a note** to **Jim had entered into an agreement potentially to forgive**

Page **23** Line **21** Reason **1**

From **cause Highland to forgive the note.** to **cause Highland to agree potentially to forgive the note upon the occurrence of the condition subsequent.**

_____

JURAT

I, **Nancy Dondero** , do hereby certify under penalty of perjury that I have read the foregoing transcript of my deposition taken on **April 29, 2022**; that I have made such corrections as appear noted herein in ink, initialed by me; that my testimony as contained

//

herein, as corrected, is true and correct.

DATED this 14th day of June, 2022,

At Chase Bank - 6160 Beachland Blvd Ste 102, Vero Beach, FL 32963

NOELLE L SOTOMAYOR
Notary Public - State of Florida
Commission # HH 226716
My Comm. Expires Feb 9, 2026

Nancy Bandero

SIGNATURE OF WITNESS

Deborah Deitsch-Perez
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STINSON LLP
3102 Oak Lawn Avenue, Suite 777
Dallas, Texas 75219-4259
Telephone: (214) 560-2201
Facsimile: (214) 560-2203

Counsel for Defendant Highland Capital Management Fund Advisors, L.P.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re	§	
	§	**Case No. 19-34054-sgj11**
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	**Chapter 11**
	§	
Debtor.	§	
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	
Plaintiff,	§	
	§	
v.	§	**Adversary No. 21-03082**
	§	
HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, L.P.	§	
	§	
Defendant.	§	

DEFENDANT'S OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

COMES NOW, Defendant Highland Capital Management Fund Advisors, L.P., Defendant in the above-captioned and related adversary proceeding, and hereby submits this *Opposition to Highland Capital Management, L.P.'s Motion for Summary Judgment* (the "Opposition"). Defendant fully incorporates by reference its brief in response filed contemporaneously with this Opposition and would show the Court as follows:

RELIEF REQUESTED

1. By this Opposition, Defendant respectfully requests that the Court enter an order denying Plaintiff's Motion for Summary Judgment.

2. Pursuant to Rule 7056(d) of the Local Bankruptcy Rules of the United States Bankruptcy Court for the Northern District of Texas and Rule 56.4(b) of the Local Rules of the Northern District of Texas, a separate memorandum of law is being filed contemporaneously with this Opposition that will state why Defendant opposes the Motion for Summary Judgment and is incorporated by reference.

PRAYER

WHEREFORE, Defendant respectfully requests that the Court deny the relief requested in Plaintiff's Motion for Summary Judgment and grant Defendant such further and other relief to which it is entitled.

Dated: July 1, 2022

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that, on July 1, 2022, a true and correct copy of the foregoing document was served via the Court's CM/ECF system on counsel for Plaintiff Highland Capital Management, L.P. and on all other parties requesting or consenting to such service in this case.

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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
Plaintiff,	§	
vs.	§	Adv. Proc. No. 21-03082-sgj
HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, L.P.,	§	Case No. 3:21-cv-881-X
Defendant.	§	

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HIGHLAND CAPITAL MANAGEMENT, L.P.'S REPLY MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

Highland Capital Management, L.P., the reorganized debtor and the plaintiff ("Highland" or "Plaintiff") in the above-captioned adversary proceeding, hereby files this reply memorandum of law (the "Reply") in further support of its *Motion for Summary Judgment* (the "Motion"). In further support of its Motion, Highland states as follows:

I. PRELIMINARY STATEMENT[1]

1. In its Report and Recommendation issued on July 19, 2022, the Court rejected the "Alleged Agreement" defense that HCMFA adopted with respect to the Pre-2019 Notes. This Reply is therefore limited to the evidence that the Court did not previously consider but that HCMFA has now offered in an attempt to rebut Highland's *prima facie* case for summary judgment. HCMFA's new evidence does not move the needle at all.[2] The Motion should be granted with respect to the Pre-2019 Notes.

2. In its Response, HCMFA attempts to create a genuine dispute of fact by introducing evidence concerning HCMFA's contention that the Alleged Agreements were not "secret" because their existence was disclosed prior to the Adversary Proceeding. This evidence does not rebut Highland's *prima facie* case.

3. For example, Proof of Claim 188, in which Mr. Dondero states that the Notes (including the Pre-2019 Notes) were advanced to him "in lieu of compensation," (a) does not refer to or concern the Alleged Agreements and (b) directly conflicts with purpose of the

[1] Capitalized terms in this Preliminary Statement shall have the meanings ascribed to them below or in *Highland Capital Management, L.P.'s Memorandum of Law in Support of Motion for Summary Judgment* [Docket No. 46] (the "Brief").

[2] As discussed in Section II.C below, the exception is that Proof of Claim 188 proves that ***HCMFA's "Mutual Mistake" defense was completely fabricated*** because it shows that Mr. Dondero knew more than six months before any demand was made that the HCMFA Notes were valid and enforceable obligations, and that he was conjuring up a defense to any collection action on those Notes.

Alleged Agreement. Moreover, HCMFA's last-second reliance on Proof of Claim 188 as "evidence" that "the world" was on notice of the existence of the Alleged Agreements is directly contradicted by the unconditional admissions made by HCMFA and Mr. Dondero that neither the terms nor the existence of the Alleged Agreements were ever disclosed to the Bankruptcy Court or in connection with the Bankruptcy Case and were never memorialized in a writing.

4. Similarly, Mr. Dondero's statements to Mr. Waterhouse and Mr. Lynn's letter (sent after the commencement of litigation) do not create genuine disputes of material fact regarding the non-existence of the Alleged Agreement. Like Proof of Claim 188, those communications do not refer to or concern the Alleged Agreements.

5. In the end, HCMFA has not presented any additional evidence or arguments in support of the Alleged Agreement defense that should cause the Court to deviate from its findings in the Report and Recommendation. The Motion should be granted.

II. ARGUMENT

A. Highland Makes Its *Prima Facie* Case for Summary Judgment

6. Highland has established its *prima facie* case that it is entitled to summary judgment on HCMFA's breach of the Pre-2019 Notes because the undisputed evidence proves (i) the existence of the Notes in question; (ii) that they were signed by an authorized representative of HCMFA; (iii) that Highland is the legal owner and holder thereof; and (iv) that a certain balance is currently due and owing thereunder. *See* Brief ¶¶ 21-22 (citing evidence); *Park Cities Bank v. Lee*, 3:10-CV-1584-K, 2012 WL 833189, at *2 (N.D. Tex. Mar. 12, 2012) (plaintiff has "established that there is no genuine issue of material fact regarding its claim for recovery on a promissory note" where it established "the note in question, that the defendant signed it, that the plaintiff was the legal owner and holder thereof, and that a certain balance is due and owing on the note"); *Resolution Tr. Corp. v. Starkey*, 41 F.3d 1018, 1023 (5th Cir. 1995) (holding that where

affidavit "describes the date of execution, maker, payee, principal amount, balance due, amount of accrued interest owed, and the date of default for each of the two promissory notes," movant "presented a prima facie case of default on the notes"); *Looney v. Irvine Sensors Corp.*, CIV.A.309-CV-0840-G, 2010 WL 532431, at *2-3 (N.D. Tex. Feb. 15, 2010) (where movant "has attached a copy of the note ... to a sworn affidavit in which he states that the photocopy is a true and correct copy of the note, that he is the owner and holder of the note, and that there is a balance due on the note ... [movant] has made a prima facie case that he is entitled to summary judgment on the note").

7. HCMFA does not dispute any of the foregoing facts. In fact, HCMFA admits that the Pre-2019 Notes are valid and binding agreements and that "HCMFA borrowed money" from Highland in exchange for the Pre-2019 Notes. *See* Def. Ex. 4 ¶¶ 5-6, Def. Appx. 304-05.[3] Accordingly, Highland has proven its *prima facie* case for HCMFA's breach of the Pre-2019 Notes.

B. <u>HCMFA Fails to Rebut Highland's *Prima Face* Case</u>

8. In an attempt to rebut Highland's *prima facie* case for breach of the Pre-2019 Notes, HCMFA introduces: (a) a proof of claim that HCMFA contends put "the world" on notice of the "Alleged Agreement" defense; (b) largely cumulative, self-serving, and conclusory statements from Mr. Dondero and his sister that each of them entered into the Alleged Agreements; and (c) a declaration by a non-Highland employee who apparently had a modest loan forgiven by HCMFA (not Highland) nearly a decade ago, in an attempt to buttress its contention that Highland had a "practice" of forgiving loans.

[3] Citations to "Def. Ex. __, Def. Appx. __" refer to documents included in HCMFA's *Appendix in Support of Defendant's Opposition to Plaintiff's Motion for Summary Judgment* [Docket No. 53].

9. As explained below, this "evidence" is insufficient to create a "genuine" dispute of "material" fact for trial. *See Nat'l Ass'n of Gov't Emps. v. City Pub. Serv. Bd. of San Antonio, Tex.*, 40 F.3d 698, 712 (5th Cir. 1994) (to defeat a *prima facie* case for summary judgment, the nonmovant "must come forward with evidence to support the essential elements of its claim on which it bears the burden of proof at trial"); *Alton v. Tex. A&M Univ.*, 168 F.3d 196, 199 (5th Cir. 1999) (a dispute about a material fact is "genuine" only where "the evidence is such that a *reasonable jury* could return a verdict in favor of the nonmoving party"); *Latimer v. Smithkline & French Laboratories*, 919 F.2d 301, 303 (5th Cir.1990) (there is no "genuine" issue for trial where there is an "absence of evidence supporting the nonmoving party's case"); *In re Magna Cum Latte, Inc.*, 07-31814, 2007 WL 3231633, at *3 (Bankr. S.D. Tex. Oct. 30, 2007) ("A party seeking summary judgment may demonstrate: (i) an absence of evidence to support the non-moving party's claims or (ii) the absence of a genuine issue of material fact"). HCMFA fails to come forward with any evidence sufficient to support the essential elements of its Alleged Agreement defense and thus fails to defeat Highland's *prima facie* case.

1. <u>No Reasonable Jury Could Find that HCMFA or Mr. Dondero Ever Disclosed the Terms or Existence of the Alleged Agreements</u>

10. If the Alleged Agreements actually existed (which they did not), each of the Corporate Obligors (including HCMFA), Mr. Dondero, Ms. Dondero, and Dugaboy would have been highly motivated to disclose and memorialize the Alleged Agreements because (a) they represented more than $50 million in potential compensation to Mr. Dondero; (b) if forgiven, would have wiped tens of millions of dollars of liabilities off of the Corporate Obligors' balance sheets; and (c) it would have prevented any accusation that the Alleged Agreements were fabricated for litigation purposes or entered into in violation of any agreement or duty.

11. Yet, relying primarily on Defendants' own written responses to discovery and depositions, Highland has established that neither the terms nor the existence of the Alleged Agreements were (a) disclosed to anyone or (b) memorialized in any writing prior to the commencement of this Adversary Proceeding. S*ee* Brief ¶¶ 90-91 (citing evidence).[4]

12. HCMFA attempts to manufacture a dispute on this issue by offering a couple of irrelevant documents and repeating certain statements that Mr. Dondero claims to have made to Mr. Waterhouse after the Petition Date. Such evidence fails to support HCMFA's contention that it disclosed or memorialized the terms or existence of the Alleged Agreements or otherwise put anyone on "notice" thereof.

i. Proof of Claim 188 Did Not Disclose the Terms or Existence of the Alleged Agreements

13. HCMFA insists that the Alleged Agreements were not "secret" because, among other reasons, Mr. Dondero filed a personal proof of claim more than two years ago that supposedly "disclos[ed] the potential foregivability of all of the Notes" to "the world." Response[5] ¶¶ 16-17.[6] HMCFA's reliance on this proof of claim evinces an understandable state of desperation.

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[4] *See also, e.g.*, *Highland Capital Management, L.P.'s Amended Memorandum of Law in Support of Motion for Partial Summary Judgment*, Adv. Pro. No. 21-03004, Docket No. 95 ("Highland's Main Br.") ¶¶ 98-99 (same, citing additional evidence).

[5] Citations to "Response __" are to *Defendant's Memorandum of Law in Response to Plaintiff's Motion for Summary Judgment* [Docket No. 52].

[6] HCMFA produced the proof of claim on July 1, 2022, as part of a "supplemental production" made months after the deadline for the completion of fact discovery and just hours before the deadline to oppose the Motion. Rather than engage in motion practice, the Parties entered into a Stipulation, approved by the Court, in which (a) Highland waived any objection to HCMFA's tardy and last-second "supplemental production" of documents, and (b) HCMFA consented to the inclusion of certain documents in a *Reply Appendix of Exhibits in Support of Highland Capital Management, L.P.'s Motion for Summary Judgment* (the "Reply Appendix"). [Docket No. 56]. *See* Ex. 1, Reply Appx. 1-8.

14. Before deciding whether the proof of claim creates a "genuine dispute of material fact," as HCMFA now contends, the Court should ask HCMFA's counsel why (a) neither Mr. Dondero nor any Obligor under any of the Notes at issue relied upon, or included in any way, the proof of claim as "evidence" when opposing Highland's motion for partial summary judgment in the Main Notes Litigation; (b) both HCMFA and Mr. Dondero tendered written discovery responses in which they each unconditionally admitted that, prior to the commencement of the Adversary Proceedings, (i) no document was created that concerned the Alleged Agreements or reflected or memorialized their terms, (ii) neither the terms nor the existence of the Alleged Agreements were disclosed to the Court, and (iii) neither the terms nor the existence of the Alleged Agreements were disclosed during the Bankruptcy Case; and (c) no witness—including Mr. Dondero and HCMFA's Rule 30(b)(6) witness—ever mentioned or referred to the proof of claim during any deposition. The answer to these questions is obvious: none of the Main Note Defendants believed the proof of claim related to the "Alleged Agreement" defense.

15. On May 26, 2020, Mr. Dondero filed a proof of claim that was denoted by the Debtor's claims agent as claim number 188 ("Proof of Claim 188").[7] Proof of Claim 188 (a) included a Schedule that listed the types of Notes issued by Mr. Dondero and his affiliates to Highland, (b) disclosed the aggregate principal amount owed by each Maker to Highland, as of March 31, 2020, and (c) contained the following statement:

> This claim is a contingent claim asserted by James Dondero and is subject to any effort to collect on certain notes (the "Notes") identified as Schedule "A" hereto. In the event that collection efforts are made to collect the Notes, James Dondero asserts that ***the Notes were issued by him for funds advanced in lieu of compensation***."

Def. Ex. 4D, Def. Appx. 367 (emphasis added).

[7] Mr. Dondero filed Proof of Claim 188 about seven weeks after the bar date for general unsecured claims.

16. Relying on this language, HCMFA contends that Proof of Claim 188 somehow disclosed the "potential foregivability of all of the Notes" and that "the world" was "on notice that Jim Dondero believed that the funds provided pursuant to the Notes were potentially forgivable as compensation and thus he did not expect any effort to collect on the notes unless and until it became impossible for the conditions subsequent to be satisfied." Response ¶¶ 16-17.

17. Nothing in Proof of Claim 188 supports HCMFA's contention that it put anyone on notice of the terms or existence of the Alleged Agreements. HCMFA's Alleged Agreement defense was copied verbatim from the Main Notes Defendants who asserted it:

> Plaintiff's claims are barred in whole or in part because, prior to any alleged breach or acceleration, the Plaintiff ***agreed*** that it would not collect on the note upon ***fulfilment of certain conditions subsequent***. Specifically, sometime between December of the year in which each Note was made and February of the following year, ***Nancy Dondero, as representative for a majority of the Class A shareholders of Plaintiff*** agreed with Mr. James Dondero, acting for Defendant, that Plaintiff would ***forgive*** the Notes if certain ***portfolio companies were sold for greater than cost or on a basis outside of Mr. Dondero's control***. This agreement setting forth the conditions subsequent to demands for payment on the Notes was an ***oral agreement*** . . . .

Ex. 234 ¶ 41, Appx. 5114 (emphases added).[8]

18. <u>Proof of Claim 188 does not refer to or concern the Alleged Agreements</u>. While Mr. Dondero may have put "the world" on notice of his contention that "the Notes were issued by him for funds advanced in lieu of compensation," Proof of Claim 188 did not put *anyone* on notice that the Notes (including the Pre-2019 Notes) were subject to an "oral agreement," nor did it (a) disclose the existence of any agreement relating to the Notes; (b) refer to Nancy Dondero or Dugaboy in any way, let alone as the parties who supposedly bound Highland to any agreement;

[8] *See* Ex. 31 ¶ 82, Appx. 665 (Mr. Dondero asserted the exact same defense); Ex. 15 ¶ 83, Appx. 435-36 (NexPoint asserted the exact same defense); Ex. 16 ¶ 99, Appx. 451-52 (HCMS asserted the exact same defense); Ex. 17 ¶ 99, Appx. 468 (HCRE asserted the exact same defense).

(c) state that the Notes were "potentially forgivable" (as HCMFA now contends) or even use the word "forgive" (or any derivation thereof); or (d) disclose the existence or terms of any "conditions subsequent." Simply put, Proof of Claim 188 does not relate to the Alleged Agreements, the actual affirmative defense asserted by HCMFA and all of the other Main Notes Defendants subject to the Main Notes Litigation, and HCMFA and Mr. Dondero know that. *See supra* ¶ 14.

19. Proof of Claim 188 conflicts with the Alleged Agreements. In Proof of Claim 188, Mr. Dondero asserted that the "***Notes were issued by him for funds advanced in lieu of compensation***." But Mr. Dondero and the Corporate Obligors have already admitted that the Notes (including the Pre-2019 Notes) were issued in exchange for loans made to each of them rather than being issued "in lieu of compensation."[9] Indeed, if the Notes were issued "in lieu of compensation," as HCMFA and Mr. Dondero now contend, then the Alleged Agreements would have been unnecessary. Stated another way, why would Mr. Dondero have needed to enlist his sister to enter into any subsequent agreement for the forgiveness of the Notes (including the Pre-2019 Notes) if the Notes were, in the first instance, "issued by [Mr. Dondero] for funds advanced in lieu of compensation"? This conflict cannot be reconciled.

20. HCMFA's current contention concerning Proof of Claim 188 conflicts with numerous prior sworn statements and contentions made by HCMFA and Mr. Dondero. HCMFA's last-second contention that the Alleged Agreements were not "secret" because Proof of Claim 188 put "the world" on notice of their existence is contradicted by HCMFA's and Mr. Dondero's prior admissions, including the following:

[9] *See, e.g.*, Def. Ex. 1 ¶¶ 5-18, Def. Appx. 5-12 (Mr. Dondero admits that the Corporate Obligors of each Note in the Main Notes litigation "borrowed money from [Highland] and entered into" the respective Note); Def. Ex. 4 ¶¶5-6, Def. Appx. 304 (Mr. Dondero admits that "HCMFA borrowed money from [Highland] and entered into" the Pre-2019 Notes); *Defendants' Memorandum of Law in Response to Plaintiff's Motion for Partial Summary Judgment*, Adv. Pro. No. 21-03003, Docket No. 154 ¶¶ 3-6 (admitting that the Makers "do[] not dispute the initial amount[] loaned").

- HCMFA unconditionally admitted that ***no document was created*** prior to February 1, 2021, that reflects or memorializes the terms or existence of the Alleged Agreements (Ex. 220, Appx. 5019 (Responses to Requests for Admission 13 and 14));

- HCMFA unconditionally admitted that ***it never disclosed*** the terms or existence of the Alleged Agreements to the Bankruptcy Court prior to February 1, 2021 (Ex. 220, Appx. 5019) (Responses to Requests for Admission 17 and 18));

- HCMFA unconditionally admitted that ***it never disclosed*** the terms or existence of the Alleged Agreements in connection with the Bankruptcy Case prior to February 1, 2021 (Ex. 220, Appx. 5019-20) (Responses to Requests for Admission 20 and 21));

- Mr. Dondero unconditionally admitted that ***no document was created*** prior to the commencement of the Adversary Proceeding concerning the existence of the Alleged Agreements or that reflects or memorializes the terms of the Alleged Agreements (Ex. 24, Appx. 522) (Responses to Requests for Admission 7 and 8));[10]

- Mr. Dondero unconditionally admitted that ***he never disclosed*** the terms or existence of the Alleged Agreements to the Bankruptcy Court prior to the commencement of the Adversary Proceeding (Ex. 24, Appx. 523) (Responses to Requests for Admission 11 and 12)); and

- Mr. Dondero unconditionally admitted that ***he never caused Highland to disclose*** the terms or existence of the Alleged Agreements in connection with the Bankruptcy Case (Ex. 24, Appx. 523) (Responses to Requests for Admission 13 and 14)).

21. These unconditional admissions directly contradict HCMFA's latest version of its defense[11] that Proof of Claim 188 put the "world" on notice of the existence of the Alleged Agreements. In light of the unqualified and undisputed admissions above, the Court

[10] Mr. Dondero was specifically asked under oath to identify any documents created prior to the commencement of the Adversary Proceedings concerning the existence of the Alleged Agreements, and he failed to mention Proof of Claim 188 (Ex. 99 at 168:10-169:17, Appx. 1854).

[11] *See* HCMLP's Main Br. ¶¶ 81-88 (citing to undisputed evidence proving how the allegations concerning the Main Note Defendants' Alleged Agreement defense materially changed over time in response to litigation developments).

should reject HCMFA's last-second attempt to muddy the record through the introduction of a document completely unrelated to the Alleged Agreement defense.[12]

22. In sum, Proof of Claim 188 (a) does not refer to or concern the Alleged Agreements; and (b) asserts a defense (that the Notes were issued "in lieu of compensation") that directly conflicts with (i) the "Alleged Agreement" defense, and (ii) a litany of unconditional admissions made by HCMFA and Mr. Dondero. Proof of Claim 188 is not evidence that HCMFA or Mr. Dondero disclosed the terms or existence of the Alleged Agreements.

ii. Neither Mr. Dondero nor Mr. Lynn Disclosed the Terms or Existence of the Alleged Agreements to Mr. Waterhouse, Highland's Counsel, or Anyone Else

23. HCMFA contends that the Alleged Agreements were not "secret" because (a) Mr. Dondero supposedly told Mr. Waterhouse that there were "mechanisms in place for forgiving the Notes, or for having them considered as compensation and not being an asset to the Debtor's estate";[13] and (b) Michael Lynn, then Mr. Dondero's lawyer, sent a letter ***after*** the commencement of litigation stating simply that "Mr. Dondero views the notes in question as having been given in exchange for loans by Highland made in lieu of compensation to Mr. Dondero." (Response ¶ 18) (citing Ex. 99 at 167:10-16, Appx. 1854; Def. Ex. 4 ¶ 17, Appx. 308; Def. Ex. 1-D, Def. Appx. 74).

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[12] Notably, if HCMFA is correct that Proof of Claim 188 concerned the Alleged Agreements, then Mr. Dondero and all of the Corporate Obligors (including HCMFA) should be estopped from asserting this defense because Mr. Dondero withdrew Proof of Claim 188 "with prejudice to refiling" after Highland objected to it. (Ex. 2 (Highland's objection to Proof of Claim 188), Reply Appx. 9-26; Ex. 3 (stipulation pursuant to which Mr. Dondero withdrew Proof of Claim 188 "with prejudice to refiling"), Reply Appx. 27-29; Ex. 4 (order approving stipulation), Reply Appx. 30-34). *See Derr v. Swarek*, 766 F.3d 430, 441 (5th Cir. 2014) (a party's "voluntary dismissal with prejudice" barred "any attempt" by that party from later re-asserting "the dismissed claims"); *Schwarz v. Folloder*, 767 F.2d 125, 129 (5th Cir. 1985) ("Dismissal of an action with prejudice is a complete adjudication of the issues presented by the pleadings and is a bar to a further action between the parties").

[13] Mr. Waterhouse, Highland's former Chief Financial Officer who also served as an officer of HCMFA, could not corroborate Mr. Dondero's assertions. Ex. 105 at 65:5-72:14, Appx. 2065-2067; 82:19-84:7, Appx. 2070.

24. While these *post hoc* statements may be consistent with Proof of Claim 188, they are insufficient to create a genuine dispute of material fact because they do not refer to or concern the Alleged Agreements. Like Proof of Claim 188, Mr. Dondero's comments to Mr. Waterhouse and Mr. Lynn's letter omitted the words "agreement," "contingency," "conditions subsequent," "Nancy," and "Dugaboy".[14]

25. If anything, these statements are further evidence that the entire "Alleged Agreement" defense is completely contrived. Mr. Dondero was obviously (and rightfully) concerned that he and his affiliates would be called upon to satisfy their respective obligations under the Notes given that those obligations exceeded $50 million. Yet, despite 18 months of litigation and two separate motions for summary judgment, Mr. Dondero and his affiliates have failed to offer ***any*** evidence proving that they disclosed the terms or the existence of the Alleged Agreements to anyone before the Adversary Proceedings were commenced.

2. <u>No Reasonable Jury Could Find that the Alleged Agreements Exist Based on the Donderos' Self-Serving Statements</u>

26. HCMFA argues that James and Nancy Dondero's deposition testimony and declarations provide evidence of the Alleged Agreements since both "have consistently testified under oath that the Agreements took place, exist, and are valid" and "have provided this Court with declarations swearing to the Agreements' factual existence." (Response ¶ 22) (citing evidence).

[14] Mr. Dondero's self-serving assertion that he "did not discuss every detail of the Agreements" with Mr. Waterhouse has no basis in fact; Mr. Dondero admittedly did not discuss ***any*** detail of the Alleged Agreements with Mr. Waterhouse or even mention their existence. *See* Ex. 99 at 167:10-168:3, Appx. 1854. The same is true of Mr. Lynn's letter, sent ***after*** the commencement of litigation. *Compare* Def. Ex. 1D, Def. Appx. 435 (letter from Mr. Lynn stating that "Mr. Dondero views the notes in question as having been given in exchange for loans by Highland made in lieu of compensation to Mr. Dondero") *with* Response ¶ 18 (contending that Mr. Lynn "did not detail every facet of the Agreement").

27. These self-serving and uncorroborated statements are not the type of "probative evidence required" to defeat summary judgment, especially "in the face of conflicting probative evidence." *Kariuki v. Tarango*, 709 F.3d 495, 505 (5th Cir. 2013); *see also BMG Music v. Martinez*, 74 F.3d 87, 91 (5th Cir. 1996) (affirming summary judgment for plaintiffs where "the only evidence in support of the defendants' theory is a conclusory, self-serving statement by the defendant"); *United States v. Lawrence*, 276 F.3d 193, 197 (5th Cir. 2001) (affirming summary judgment for recovery of promissory note, where defendant's only evidence to rebut plaintiff's *prima facie* case consisted of "self-serving allegations," which "are not the type of significant probative evidence required to defeat summary judgment") (internal quotations omitted).

28. HCMFA argues that its "summary judgment evidence is more than sufficient to provide proof that the Agreements exist" since it "present[s] testimony from both sides to the Agreement while Texas law only requires testimony from one." (Response ¶ 63). The cases HCMFA relies on in support of this argument are easily distinguishable from the present facts.[15] Here, unlike in those cases, neither HCMFA nor Mr. Dondero offers any probative evidence, other than the Donderos' self-serving statements, to corroborate the existence of the Alleged Agreements. In other words, HCMFA fails to adduce *any* evidence from which the

[15] *See In re Palms at Water's Edge, L.P.*, 334 B.R. 853, 858 (Bankr. W.D. Tex. 2005) (a meeting of the minds "can be inferred from the parties' conduct and their course of dealing"); *Haws & Garrett Gen. Contractors, Inc. v. Gorbett Bros. Welding*, 480 S.W.2d 607 (Tex. 1972) (existence of contract can be "inferred from the circumstances" based on the "conduct of one party"); *Al-Saud v. Youtoo Media, L.P.*, 3:15-CV-3074-C, 2017 WL 3841197 (N.D. Tex. March 15, 2017) (corroborating evidence offered to support defense to breach of contract claim); *Fisher v. Blue Cross and Blue Shield of Tex., Inc.*, 3:10-CV-2652-L, 2015 WL 5603711 at 10 (N.D. Tex. Sept. 23, 2015) (denying summary judgment where evidence of the parties' course of dealing might enable a find-finder to infer the existence of an implied contract); *Honore v. Douglas*, 833 F.2d 565 (5th Cir. 1987) (denying summary judgment where non-movant offered corroborating evidence including party admissions and other testimonial evidence).

existence of the Alleged Agreements can be "inferred from the circumstances" or the parties' "course of dealing."[16] For example, the undisputed facts establish that:

- No contemporaneous writing exists that reflects the existence (let alone terms) of the Alleged Agreements;
- Neither Mr. Dondero nor his sister ever sent a written communication at any time prior to the commencement of the Adversary Proceedings that reflected the existence (let alone terms) of the Alleged Agreements;
- Nothing in Highland's books and records reflects the existence (let alone terms) of the Alleged Agreements;
- Nothing in HCMFA's books and records reflects the existence (let alone terms) of the Alleged Agreements;
- Neither Mr. Dondero nor any of his affiliates disclosed the existence (let alone terms) of the Alleged Agreements to PwC, the outside auditors for Highland and HCMFA;
- Neither Mr. Dondero nor any of his affiliates disclosed the existence (let alone terms) of the Alleged Agreements to the Bankruptcy Court in connection with confirmation, even though Highland's projections assumed full recovery on all of the Notes; and
- No one without the last name "Dondero" (including Mr. Waterhouse) has ever testified to knowing about the existence (let alone terms) of the Alleged Agreements prior to the commencement of the Adversary Proceedings.

See Brief ¶¶ 29-68; 90-91 (citing evidence).

29. Thus, there is a complete absence of evidence supporting HCMFA's Alleged Agreement defense. By contrast, the undisputed documentary evidence overwhelmingly demonstrates the enforceability of the Notes (including the Pre-2019 Notes) and HCMFA's breach thereunder. By way of example only, (a) Mr. Dondero and his affiliates paid tens of millions of

[16] HCMFA's other case cites in support of this argument are also inapplicable because the relevant issue here is not about the terms of the alleged contract, *see 271 Truck Repair & Parts, Inc. v. First Air Express, Inc.*, 03-07-00498-CV, 2008 WL 2387630 (Tex. App.— Austin June 11, 2008, no pet.), or whether the "meeting of the minds" element is satisfied, *see Buxani v. Nussbaum*, 940 S.W.2d 350 (Tex. App.—San Antonio 1997, no writ)).

dollars in principal on the Notes prior to the Petition Date; (b) Highland consistently carried the Notes as assets in its audited financial statements, on its balance sheet, and in its books and records without qualification or discount (before ***and*** after Mr. Dondero was forced to cede control of Highland), while also providing multiple written representations, signed by Mr. Dondero, that all related party relationships and transactions had been disclosed to its auditors; and (c) Highland continuously represented to this Court and Highland's creditors (before ***and*** after Mr. Dondero was forced to cede control of Highland) that all of the Notes were assets of the estate without qualification or discount. *See* Brief ¶¶ 29-74 (citing evidence).

30. HCMFA has not cited to any case where a court has denied summary judgment based on the self-serving, conclusory, and uncorroborated testimony of two family members, one of whom (*i.e.*, Ms. Dondero) has no pecuniary interest in the subject matter but who is aligned with the non-movant. As discussed *supra*, these self-serving statements are insufficient to defeat summary judgment in the face of the substantial, undisputed, and conflicting probative evidence. *See Tyler v. Cedar Hill Indep. Sch. Dist.*, 426 Fed. Appx. 306, 309 (5th Cir. 2011) (affirming summary judgment, where "[a]fter closely reviewing the record ... the only document [party] provides to support her claim" is her conclusory, self-serving affidavit, noting "[w]e have repeatedly held that self- serving affidavits, without more, will not defeat a motion for summary judgment"); *Sanchez v. Dallas/Fort Worth Int'l Airport Bd.*, 438 Fed. Appx. 343, 346–47 (5th Cir. 2011) (affirming summary judgment where party attempting to rebut summary judgment relies on "her own self- serving affidavit," noting "a self-serving affidavit, without more evidence, will not defeat summary judgment"); *Lavergne v. Jefferson Cnty., Tex.*, 164 F.R.D. 441, 443 (E.D. Tex. 1995) ("When an affidavit in response to a summary judgment motion contains "nothing more than a recital of unsupported allegations, conclusory in nature," the motion for summary judgment

should be granted"); *DIRECTV, Inc. v. Budden*, 420 F.3d 521, 531 (5th Cir. 2005) (affirming summary judgment where defendant's "attempt to create a fact issue ... by relying on a conclusory and self-serving affidavit is on unsteady ground"); *In re Hinsley*, 201 F.3d 638, 643 (5th Cir. 2000) (affirming summary judgment, and finding that "party's self-serving and unsupported" affidavit regarding her "intent" is "not sufficient to defeat summary judgment where the evidence otherwise supports a finding of fraud").

31. HCMFA's "Alleged Agreement" defense is a fabricated story blatantly contradicted by the summary judgment record, and no reasonable jury could believe it. *See Salama v. W. Wind Energy Corp.*, 2013 WL 6079548, at *5, No. 4:12–cv–03535 (S.D. Tex. Nov. 19, 2013) ("As the Supreme Court has noted, '[w]hen opposing parties tell two different stories, one of which is blatantly contradicted by the record, so that no reasonable jury could believe it, a court should not adopt that version of the facts for purposes of ruling on a motion for summary judgment'") (quoting *Scott v. Harris*, 550 U.S. 372, 380 (2007)); *Eason v. Thaler*, 73 F.3d 1322, 1325 (5th Cir. 1996) (mere conclusory allegations are not competent summary judgment evidence, and such allegations are insufficient, therefore, to defeat a motion for summary judgment); *Main St. Bank v. Unisen, Inc.*, No. H-06-3776, 2008 WL 11483415, at *7 (S.D. Tex. Feb. 15, 2008) ("The non-movant's bare assertions, standing alone, are insufficient to create a material issue of fact and defeat a motion for summary judgment"). The Donderos' self-serving statements attached to HCMFA's Response are insufficient to defeat Highland's *prima facie* case for summary judgment.

3. Mr. Hurley's Declaration Does Not Create a Genuine Dispute of Material Fact that Highland Had a "Practice" of Forgiving Loans

32. Mr. Dondero admitted less than a year ago that Highland ***never*** forgave ***any*** loan that it ***ever*** extended to him, Mr. Okada, or "any entity directly or indirectly owned or controlled" by Mr. Dondero. Ex. 24 (Responses to Requests for Admission 15-17), Appx. 524.

Nevertheless, in a feeble attempt to create a "genuine dispute of material fact," HCMFA and Mr. Dondero cling to the notion that Highland had a "practice" of forgiving loans.[17]

33. In support of its contention that Highland had a "practice" of forgiving loans, HCMFA offers the declaration of Michiel Hurley, currently an employee of NexPoint Advisors, L.P., an entity owned and controlled by Mr. Dondero. *See* Def. Ex. 6 ¶ 2, Def. Appx. 383.[18] In its Rule 26 Disclosures, HCMFA asserted that Mr. Hurley was a "former employee" who "may have knowledge regarding the Debtor's prior use of forgivable loans," (Ex. 5, Reply Appx. 40), but both assertions are contradicted by Mr. Hurley's declaration.

34. Mr. Hurley declared that in 2013, Mr. Dondero forgave a $435,000 debt that was owed by Mr. Hurley's then-employer (Incline Capital LLC) to HCMFA. Def. Ex. 6 ¶ 3-7, Def. Appx. 383. Mr. Hurley's declaration is irrelevant because: (a) Mr. Hurley does ***not*** declare that he was ever employed by Highland; (b) the obligation that was apparently forgiven was due from a third-party (*i.e.*, Incline Capital LLC), ***not*** from a Highland employee or affiliate; (c) HCMFA apparently forgave the obligation, ***not*** Highland; (d) the obligation forgiven was for $435,000, ***not*** (tens of) millions of dollars; and (e) the obligation was forgiven nearly a decade ago.

35. Based on Mr. Hurley's declaration, the Court can and should only conclude that in 2013, Mr. Dondero agreed to write off $435,000 in uncollectible debt owed to HCMFA by a third party – facts that do nothing to change a statement that "appears to have been false" (*i.e.*,

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[17] The Court has already observed that this notion "appears to have been false." *See Report and Recommendation to District Court: Court Should Grant Plaintiff's Motion for Partial Summary Judgment Against All Five Note Maker Defendants (With Respect to All Sixteen Promissory Notes) in the Above-Referenced Consolidated Notes Actions* the "Report and Recommendation"), Adv. Pro. 21-03005, Docket No. 207 at 24, n. 23. Consequently, Highland limits this Reply to HCMFA's newly-submitted evidence on this issue—namely, the Declaration of Michiel Hurley.

[18] Like Proof of Claim 188, neither HCMFA nor Mr. Dondero offer any explanation why Mr. Hurley's declaration was not offered in the Main Notes Litigation.

Highland had a "practice" of forgiving loans made to its employees and affiliates) to one that might plausibly be true.[19]

4. HCMFA's Remaining Assertions Fail to Create Genuine Issues of Material Fact

i. HCMFA's Right to Pay Down Its Obligations under the Pre-2019 Notes Does Not Rebut Highland's *Prima Facie* Case

36. In addition to the undisputed evidence proving Highland's *prima facie* case for summary judgment, Highland cites ample undisputed evidence to dispel any notion that the Alleged Agreements actually existed, including, among other things, HCMFA's voluntary payment of roughly half of the principal amount due under the Pre-2019 Notes years after the Alleged Agreements were purportedly entered into. *See* Motion ¶¶ 69-74 (citing Second Klos Dec. Exhibits D through J, showing that between September 2016 and December 2021, HCMFA paid a total of nearly $4 million in principal and interest on the Pre-2019 Notes).

37. HCMFA attempts to dismiss the import of this undisputed fact by asserting that "the Notes each allowed for HCMFA to make prepayments," and that "the simple fact that HCMFA made some prepayments on the Notes bears no relevance on whether or not the [Alleged] Agreements existed." (Response ¶ 21). HCMFA misses the point.

38. Contrary to HCMFA's suggestion, Highland does not contend that HCMFA was not permitted to make the Payments under the Pre-2019 Notes. Rather, Highland cites to the undisputed evidence proving that HCMFA made substantial payments on the Pre-2019 Notes to demonstrate that Mr. Dondero's conduct was inconsistent with the existence of the Alleged

[19] For the sake of completeness, Highland notes that it has never "suggest[ed] that Defendant's compensation expert Alan Johnson has not advised a company to forgive a loan for purposes of compensation." (Response ¶ 59). Rather, Highland relies on Mr. Johnson's candid admission that he has never advised a company to forgive an affiliate loan for the purposes of compensating an executive, (Motion ¶ 100) (citing Ex. 240, at 20:6-18, Appx. 5236), to show there is no evidence of any "industry practice" of forgiving loans made to corporate affiliates for compensation purposes.

Agreements. The fact that HCMFA was allowed to make the Payments under the Pre-2019 Notes, and HCMFA's alleged reason for doing so, does not support the essential elements of its Alleged Agreement Defense on which HCMFA bears the burden of proof. *See Nat'l Ass'n of Gov't Emps. v. City Pub. Serv. Bd. of San Antonio, Tex.*, 40 F.3d 698, 712 (5th Cir. 1994).

ii. Highland's Demand on the Pre-2019 Notes Post-Petition Is Not "Circumstantial Evidence" of the Existence of the Alleged Agreement

39. HCMFA contends that Highland's demand on the Pre-2019 Notes post-petition somehow serves as "circumstantial evidence support[ing] the existence of the [Alleged] Agreements," because Highland was "operating from 2014 to 2020 as if the Agreements were valid and in effect." (Response ¶ 67). This contention is absurd and is directly contradicted by documents signed by Mr. Dondero

40. There is no dispute that Mr. Dondero controlled the lender (*i.e.*, Highland) and the Corporate Obligors prior to the Petition Date. While at the helm, Mr. Dondero authorized the payment of approximately ***$44 million*** in principal owed under Notes issued by him and his affiliates. *See Plaintiff's Reply Memorandum of Law in Further Support of Its Motion for Partial Summary Judgment Against the Alleged Agreement Defendants*, Adv. Pro. No. 21-03003, Docket No. 159 ¶ 30 (citing to evidence showing approximately $40 million in payments made to satisfy obligations under certain Notes, including some notes that were paid off in full); Brief ¶¶ 69-74 (citing to evidence showing that HCMFA paid Highland nearly $4 million in principal and interest due under the Pre-2019 Notes); *see also* Exs. 228-230, Appx. 5035-5048 (bank statements showing the payment by HCMFA to Highland under the Pre-2019 Notes).

41. Moreover, the Pre-2019 Notes (like all of the other Notes) that Mr. Dondero signed expressly stated that "[n]o failure or delay on the part of [Highland] in exercising any right, power or privilege hereunder shall operate as a waiver thereof." Ex. 226 (2014 Note) ¶ 4, Appx.

5030; Ex. 227 (2016 Note) ¶ 4, Appx. 5033. Further, Mr. Dondero ***personally*** agreed in writing, on behalf of Highland, "***not to demand payment*** on amounts owed by HCMF prior to May 31, 2021." Ex. 217 (Acknowledgement from HCMLP dated April 15, 2019), Appx. 4990 (emphasis added) (the "Forbearance Agreement").

42. Thus, the undisputed evidence proves that (a) HCMFA and Mr. Dondero operated as if the Alleged Agreements did not exist by (i) paying down approximately 50% of the principal amount of the Pre-2019 Notes, and (ii) entering into the Forbearance Agreement; and (b) Highland had the clear and unequivocal contractual right to demand payment on the Notes at all times.

C. Proof of Claim 188 Is Conclusive, Direct Evidence that HCMFA's Mistake Defense in the Main Notes Litigation Was Fabricated

43. The Court has already rejected HCMFA's "Mutual Mistake" defense asserted in connection with the HCMFA Notes. *See* Report and Recommendation at 29-33, 40-42. In doing so, the Court observed that the foundation of this defense is that "Mr. Dondero (as the person in charge of both Highland and HCMFA) ***did not intend*** for $7.4 million of funds that were transferred from the Debtor to HCMFA in May 2019 to be loans—rather the money was intended to be ***compensation to HCMA from Highland***" to account for errors Highland allegedly made. *Id*. at 29-30 (emphasis in original).

44. Proof of Claim 188 is conclusive, direct evidence that the "Mutual Mistake" defense was completely fabricated because it proves that Mr. Dondero knew that the $7.4 million Highland transferred to HCMFA in May 2019 was in the form of a loan and not as "compensation" for anything.

45. Specifically, in Schedule A to Proof of Claim 188, ***Mr. Dondero admitted that HCMFA owed Highland $10,458,219.89 as of March 31, 2020***. Def. Ex. 4D, Def. Appx.

367. Mr. Dondero could not have made that admission without including the outstanding principal then due under ***both*** the HCMFA Notes issued in 2019 (which had an original face amount of $7.4M in the aggregate) ***and*** the Pre-2019 Notes (which were for an aggregate, original principal amount of $6.3 million, but for which only about $3 million remained outstanding when this action was commenced). There cannot be a genuine dispute of material fact that $7.4 million + $3 million = $10.4 million, roughly the amount that Mr. Dondero included in Proof of Claim 188. Basic arithmetic proves that there is no conceivable way to show that Proof of Claim 188 *excluded* the amounts owed by HCMFA to Highland under the HCMFA Notes issued in 2019.

46. By voluntarily including the HCMFA Notes executed in 2019 in Proof of Claim 188 (as HCMFA points out, before any litigation was commenced), Mr. Dondero (a) baldly admitted that he knew those Notes existed and were valid and enforceable obligations of HCMFA, (b) tried to avoid collection on those Notes by asserting that they "***were issued by him for funds advanced in lieu of compensation,***" and (c) therefore completely contradicted ***all*** of HCMFA's affirmative defenses in the Main Notes litigation.

47. There is no way to reconcile the "Mutual Mistake" defense where HCMFA and Mr. Dondero contend that the HCMFA Notes were issued by mistake, without authority, and contrary to Mr. Dondero's intent with Mr. Dondero's voluntary decision to include the HCMFA Notes in Proof of Claim 188 and assert as a defense to collection that they were issued "in lieu of compensation."

CONCLUSION

WHEREFORE, Highland respectfully requests that the Court (i) grant the Motion; (ii) hold HCMFA liable for (a) breach of contract and (b) turnover for all amounts due under the Pre-2019 Notes, including the costs of collection and reasonable attorneys' fees in an amount to be determined; and (iii) grant such other and further relief as the Court deems just and proper.

Dated: July 20, 2022

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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
Plaintiff,	§	
vs.	§	Adv. Proc. No. 21-03082-sgj
HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, L.P.,	§	Case No. 3:21-cv-00881-X
Defendant.	§	

REPLY APPENDIX OF EXHIBITS IN SUPPORT OF HIGHLAND CAPITAL MANAGEMENT, L.P.'S MOTION FOR SUMMARY JUDGMENT

Ex.	Description	Appx.#
1.	Stipulation Concerning Record with Respect to Plaintiff's Summary Judgment Motion **(Docket No. 56)**	1-8
2.	Debtor's Second Omnibus Objection to Certain (A) Claims to be Reclassified and (B) No Liability Claims **(Case No. 19-34054, Docket No. 1179)**	9-26
3.	Stipulation and Agreed Order Authorizing Withdrawal of Proofs of Claim 138 and 188 Filed by James Dondero **(Case No. 19-34054, Docket No. 1502)**	27-29
4.	Order Approving Stipulation and Agreed Order Authorizing Withdrawal of Proofs of Claim 138 and 188 Filed by James Dondero **(Case No. 19-34054, Docket No. 1510)**	30-34
5.	Highland Capital Management Fund Advisors, L.P.'s Rule 26 Initial Disclosures	35-45

Dated: July 20, 2022

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CERTIFICATE OF SERVICE

I hereby certify that, on July 20, 2022, a true and correct copy of the foregoing Reply Appendix was served electronically upon all parties registered to receive electronic notice in this case via the Court's CM/ECF system.

/s/ Zachery Z. Annable
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EXHIBIT 1

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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re: HIGHLAND CAPITAL MANAGEMENT, L.P.,[1] Reorganized Debtor.	§ § § § § §	Chapter 11 Case No. 19-34054-sgj11
HIGHLAND CAPITAL MANAGEMENT, L.P., Plaintiff, vs. HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, L.P., Defendant.	§ § § § § § § §	Adversary Proceeding No. 21-03082-sgj

[1] The Reorganized Debtor's last four digits of its taxpayer identification number are (8357). The headquarters and service address for the above-captioned Reorganized Debtor is 100 Crescent Court, Suite 1850, Dallas, TX 75201.

STIPULATION CONCERNING RECORD
WITH RESPECT TO PLAINTIFF'S SUMMARY JUDGMENT MOTION

This stipulation (the "Stipulation") is made and entered into by and between Highland Capital Management, L.P., as the reorganized debtor and the above-referenced plaintiff ("Highland" or "Plaintiff"), and Highland Capital Management Fund Advisors, L.P. ("HCMFA" or "Defendant", and together with Highland, the "Parties"), by and through their respective undersigned counsel.

RECITALS

WHEREAS, on October 16, 2019 (the "Petition Date"), Highland filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") in the Bankruptcy Court for the District of Delaware, Case No. 19-12239 (CSS) (the "Delaware Court");

WHEREAS, on December 4, 2019, the Delaware Court entered an order transferring venue of Highland's bankruptcy case (the "Bankruptcy Case") to this Court;

WHEREAS, on January 22, 2021, Highland filed its *Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified)* [Bankr. Docket No. 1808] (the "Plan");

WHEREAS, on February 22, 2021, the Bankruptcy Court entered the *Order Confirming the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified) and (ii) Granting Related Relief* [Bankr. Docket No. 1943] (the "Confirmation Order") which confirmed Highland's Plan;

WHEREAS, on August 11, 2021, the Plan became Effective (as defined in the Plan), and Highland became the Reorganized Debtor (as defined in the Plan). *See Notice of Occurrence of*

Effective Date of Confirmed Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. [Bankr. Docket No. 2700];

WHEREAS, on November 9, 2021, Highland commenced the above-captioned adversary proceeding (the "Adversary Proceeding") against HCMFA by filing its complaint [Docket No. 1][2] (the "Complaint");

WHEREAS, the Court previously entered an *Order Approving Amended Stipulation Regarding Scheduling Order* in the Adversary Proceeding [Docket No. 18] (the "Amended Scheduling Order");

WHEREAS, pursuant to the Amended Scheduling Order, (a) fact discovery was to be completed by March 28, 2022, and (b) dispositive motions were to be filed by May 27, 2022;

WHEREAS, on May 27, 2022, Highland filed and served its *Motion for Summary Judgment* and supporting documents [Docket Nos. 45, 46, 47, and 48] (collectively, the "Summary Judgment Motion");

WHEREAS, Parties subsequently agreed that the deadline for HCMFA to oppose the Summary Judgment Motion would be extended to July 1, 2022, and Highland would file its reply by July 20, 2022;

WHEREAS, on July 1, 2022, HCMFA made a "supplemental production" of two (2) documents (the "Supplemental Production"), a proof of claim filed by James Dondero and a financial record that HCMFA contends was created in April 2022, after the close of discovery in this Adversary Proceeding;

WHEREAS, HCMFA relied on the Supplemental Production in opposing the Summary Judgment Motion, and included the documents in the Supplemental Production as part of its

[2] Refers to the docket number maintained in the Adversary Proceeding.

Appendix [*See* Docket No. 53, Exhibit 4D (Appx. 362-67), and 4E (Appx. 368-69)]; and

WHEREAS, Highland seeks to offer certain documents (described below) into evidence as part of its Reply in further support of its Summary Judgment Motion that were not included in the original Summary Judgment Motion, contending that such documents are needed to respond to the Supplemental Production;

WHEREAS, by agreeing to the terms and conditions set forth herein, the Parties desire to avoid motion practice concerning the propriety of HCMFA's Supplemental Production and the propriety of Highland's use in its Reply of documents not submitted with its Summary Judgment Motion.

NOW, THEREFORE, subject to the Court's approval, it is hereby stipulated and agreed that:

1. Highland waives any objection to the timing and propriety of the Supplemental Production of documents, and the inclusion of such documents in HCMFA's Appendix in opposition to the Summary Judgment Motion.

2. HCMFA (A) consents to Highland's inclusion of the following documents in a Reply Appendix to be filed in further support of the Summary Judgment Motion (together, the "Reply Documents"): (i) this Stipulation; (ii) Bankr. Docket No. 1179 (Highland's objection to Proof of Claim No. 188); (iii) Bankr. Docket No. 1502 (stipulation concerning Proof of Claim No. 188); (iv) Bankr. Docket No. 1510 (order concerning Proof of Claim No. 188); and (v) HCMFA's Rule 26 disclosures, and (B) waives any objection to the timing and propriety of Highland's inclusion of the Reply Documents in a Reply Appendix, including without limitation any objection that Highland did not comply with Local District Court Rule 56.7 and/or Local Bankruptcy Rule 7056-1(g), as applicable.

3. The Court shall retain jurisdiction over all disputes arising out of or otherwise concerning the interpretation and enforcement of this Stipulation.

[*Remainder of Page Intentionally Blank*]

Dated: July 14, 2022.

STINSON LLP

/s/ Michael P. Aigen

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Counsel for Highland Capital Management Fund Advisors, L.P.

- and -

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- and -

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Counsel for Highland Capital Management, L.P.

EXHIBIT 2

PACHULSKI STANG ZIEHL & JONES LLP
Jeffrey N. Pomerantz (CA Bar No.143717) (*admitted pro hac vice*)
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Counsel for the Debtor and Debtor-in-Possession

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	)	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,[1]	)	Case No. 19-34054-sgj11
Debtor.	)	

DEBTOR'S SECOND OMNIBUS OBJECTION TO CERTAIN (A) CLAIMS TO BE RECLASSIFIED AND (B) NO LIABILITY CLAIMS

*****CLAIMANTS RECEIVING THIS OBJECTION SHOULD LOCATE THEIR NAMES AND CLAIMS IN THE SCHEDULES ATTACHED TO THE PROPOSED ORDER ON THIS OBJECTION*****
A COPY OF YOUR CLAIM IS AVAILABLE ONLINE AT
HTTP://WWW.KCCLLC.NET/HCMLP/CREDITOR/SEARCH

[1] The Debtor's last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

OR BY EMAIL REQUEST TO JONEILL@PSZJLAW.COM

A HEARING WILL BE CONDUCTED ON THIS MATTER ON DECEMBER 14, 2020 AT 2:30 P.M. CENTRAL TIME.

IF YOU OBJECT TO THE RELIEF REQUESTED, YOU MUST RESPOND IN WRITING. UNLESS OTHERWISE DIRECTED BY THE COURT, YOU MUST FILE YOUR RESPONSE WITH THE CLERK OF THE UNITED STATES BANKRUPTCY COURT AT 1100 COMMERCE STREET, RM. 1254, DALLAS, TEXAS 75242-1496 BEFORE CLOSE OF BUSINESS ON NOVEMBER 18, 2020 WHICH IS AT LEAST THIRTY-THREE (33) DAYS FROM THE DATE OF SERVICE HEREOF. YOU MUST SERVE A COPY OF YOUR RESPONSE ON THE PERSON WHO SENT YOU THIS NOTICE; OTHERWISE THE COURT MAY TREAT THE PLEADING AS UNOPPOSED AND GRANT THE RELIEF REQUESTED.

Highland Capital Management, L.P. (the "Debtor"), by and through its undersigned counsel, hereby files this omnibus objection (the "Objection"), seeking entry of an order, substantially in the form attached hereto as **Exhibit A** (the "Order"), (i) reclassifying the claim listed on **Schedule 1** to the Order (the "Reclassified Claim"), and (iii) disallowing certain no liability claims listed on **Schedule 2** to the Order (the "No Liability Claims," and together with the Reclassified Claim, the "Disputed Claims"). In support of this Objection, the Debtor respectfully represents as follows:

I. JURISDICTION

1. The Court has jurisdiction to consider and determine this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. §§ 157(b)(1) and (b)(2)(A), (B) and (O). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The statutory bases for the relief requested herein are sections 105(a) and 502(b) of title 11 of the United States Code (the "Bankruptcy Code"), Rules 3007 and 9014 of the

Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and Rules 3007-1 and 3007-2 of the Local Bankruptcy Rules of the United States Bankruptcy Court for the Northern District of Texas (the "Local Rules").

II. BACKGROUND

3. On October 16, 2019 (the "Petition Date"), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code in the Bankruptcy Court for the District of Delaware, Case No. 19-12239 (CSS) (the "Delaware Court").

4. On October 29, 2019, the Official Committee of Unsecured Creditors (the "Committee") was appointed by the United States Trustee in the Delaware Court.

5. On December 4, 2019, the Delaware Court entered an order transferring venue of the Debtor's bankruptcy case to this Court [Docket No. 186].[2]

6. The Debtor has continued in the possession of its property and has continued to operate and manage its business as a debtor-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in this chapter 11 case.

7. On March 2, 2020, the Court entered its *Order (I) Establishing Bar Dates for Filing Claims and (II) Approving the Form and Manner of Notice Thereof* [Docket No. 488] (the "Bar Date Order"). The Bar Date Order fixed April 8, 2020 at 5:00 p.m. (prevailing Central Time) as the deadline for any person or entity, other than Governmental Units (as such term is defined in section 101(27) of the Bankruptcy Code), to file proofs of claim against the Debtor (the "General Bar Date"). For Governmental Units, the Bar Date Order fixed the deadline to file proofs of claim as April 13, 2020 at 5:00 p.m. (prevailing Central Time). The Bar Date Order also set April 23, 2020 as the deadline to file claims for investors in funds managed by the

[2] All docket numbers refer to the docket maintained by this Court.

Debtor (the "Fund Investor Bar Date"). The Debtor also sought and obtained the extended employee bar date of May 26, 2020 per the *Order Granting Debtor's Emergency Motion and Extending Bar Date Deadline for Employees to File Claims* [Docket No. 560].

8. On March 3, 2020, the Debtor filed the *Notice of Bar Dates for Filing Claims* [Docket No. 498] (the "Bar Date Notice"). The Bar Date Notice was mailed to all known creditors and equity holders on March 5, 2020. *See* Certificate of Service [Docket No. 530].

9. The Debtor caused the Bar Date Notice to be published on two occasions each in *The New York Times* and *The Dallas Morning News*—once on March 12, 2020, and once on March 13, 2020. *See Debtor's Notice of Affidavit of Publication of the Notice of Bar Dates for Filing Claims in The New York Times* [Docket No. 533] and *Debtor's Notice of Affidavit of Publication of the Notice of Bar Dates for Filing Claims in The Dallas Morning News* [Docket No. 534].

The Claims Resolution Process

10. In the ordinary course of business, the Debtor maintains books and records (the "Books and Records") that reflect, *inter alia*, the Debtor's liabilities and the amounts owed to its creditors.

11. The Debtor's register of claims (the "Claims Register"), prepared and maintained by Kurtzman Carson Consultants LLC ("KCC")—the court-appointed notice and claims agent in this case—reflects that, as of the date of this Objection, 194 proofs of claim have been filed in the Debtor's chapter 11 case.

12. The Debtor and its professionals have been reviewing and analyzing claims. This process includes identifying categories of claims that may be targeted for disallowance and expungement, reduction, and/or reclassification.

III. RELIEF REQUESTED

13. The Debtor seeks entry of an order, pursuant to section 502 of the Bankruptcy Code and Bankruptcy Rule 3007, (i) reclassifying the Reclassified Claim listed on Schedule 1 to the Order so that it is a general unsecured claim and (ii) disallowing the No Liability Claims listed on Schedule 2 to the Order.

IV. OBJECTIONS

14. Section 502(a) of the Bankruptcy Code provides that "[a] claim or interest, proof of which is filed under section 501 of this title, is deemed allowed, unless a party in interest . . . objects." 11 U.S.C. § 502(a). A chapter 11 debtor has the duty to object to the allowance of any claim that is improper. 11 U.S.C. §§ 704(a)(5), 1106(a)(1), 1107(a); *see also Int'l Yacht & Tennis, Inc. v. Wasserman Tennis, Inc. (In re Int'l Yacht & Tennis, Inc.)*, 922 F.2d 659, 661-62 (11th Cir. 1991).

15. As set forth in Bankruptcy Rule 3001(f), a properly executed and filed proof of claim constitutes *prima facie* evidence of the validity and amount of the claim under section 502(a) of the Bankruptcy Code. *See In re O'Connor*, 153 F.3d 258, 260 (5th Cir. 1998); *In re Tex. Rangers Baseball Partners*, 10-43400 (DML), 2012 WL 4464550, at *2 (Bankr. N.D. Tex. Sept. 25, 2012). To receive the benefit of *prima fac*ie validity, however, "[i]t is elemental that a proof of claim must assert facts or allegations . . . which would entitle the claimant to a recovery." *In re Heritage Org., L.L.C.*, 04-35574 (BJH), 2006 WL 6508477, at *8 (Bankr. N.D. Tex. Jan. 27, 2006), *aff'd sub nom., Wilferth v. Faulkner*, 3:06 CV 510 K, 2006 WL 2913456 (N.D. Tex. Oct 11, 2006). Additionally, a claimant's proof of claim is entitled to the presumption of *prima facie* validity under Bankruptcy Rule 3001(f) only until an objecting party refutes "at least one of the allegations that is essential to the claim's legal sufficiency." *In re Am.*

Reit, Inc., 07-40308, 2008 WL 1771914, at *3 (Bankr. E.D. Tex. Apr. 15, 2008); *In re Starnes*, 231 B.R. 903, 912 (N.D. Tex. May 14, 2008). "The ultimate burden of proof always lies with the claimant." *In re Armstrong*, 347 B.R. 581, 583 (Bankr. N.D. Tex. 2006).

16. Section 502(b)(1) of the Bankruptcy Code requires disallowance of a claim if "such claim is unenforceable against the debtor and property of the debtor, under any agreement or applicable law . . . ." 11 U.S.C. § 502(b)(1).

The Disputed Claims Should Be Reclassified or Disallowed and Expunged

17. For the reasons set forth below, the Disputed Claims are not enforceable and should be disallowed, expunged, or reduced as set forth herein.

A. Reclassified Claim

18. The Debtor has identified 1 proof of claim listed on Schedule 1 to the Order which should be reclassified so that it is a general unsecured claim. This claim asserts that a portion of the claim, $300.00, is entitled to priority under section 503(b)(9) of the Bankruptcy Code. A review of the claim indicates that the claim is for services provided to the Debtor and, therefore, is not entitled to priority under section 503(b)(9) of the Bankruptcy Code. The Debtor is requesting that the listed Reclassified Claim be reclassified so that it is a general unsecured claim. The Debtor reserves the right to object to the Reclassified Claim for any other reason.

B. No Liability Claims

19. The Debtor has identified 4 proofs of claim listed on Schedule 2 to the Order that can be characterized as "No Liability Claims"—*i.e.*, claims that erroneously assert a liability that is not reflected in the Debtor's books and records for the reasons stated on Schedule 2.

V. RESPONSES TO OBJECTIONS

20. To contest an objection, a claimant must file and serve a written response to this Objection (each, a "Response") so that it is received no later than **November 18, 2020 at 5:00 p.m. (Central Time)** (the "Response Deadline"). Every Response must be filed with the Office of the Clerk of the United States Bankruptcy Court for the Northern District of Texas (Dallas Division), Earle Cabell Federal Building, 1100 Commerce Street, Room 1254, Dallas, TX 75242-1496 and served upon the following entities, so that the Response is received no later than the Response Deadline, at the following addresses:

Pachulski Stang Ziehl & Jones LLP
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Ira D. Kharasch
James E. O'Neill
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-and-

Hayward & Associates PLLC
Melissa S. Hayward
Zachery Z. Annable
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zannable@haywardfirm.com

21. Every Response to this Objection must contain, at a minimum, the following information:

i. A caption setting forth the name of the Court, the name of the Debtor, the case number, and the title of the objection to which the Response is directed;

ii. The name of the claimant, his/her/its claim number, and a description of the basis for the amount of the claim;

iii. The specific factual basis and supporting legal argument upon which the party will rely in opposing this Objection;

iv. Any supporting documentation (to the extent it was not included with the proof of claim previously filed with the clerk of the Court or KCC) upon which the party will rely to support the basis for and amounts asserted in the proof of claim; and

v. The name, address, telephone number, email address, and fax number of the person(s) (which may be the claimant or the claimant's legal representative) with whom counsel for the Debtor should communicate with respect to the claim or the Objection and who possesses authority to reconcile, settle, or otherwise resolve the objection to the disputed claim on behalf of the claimant.

22. If a claimant fails to file and serve a timely Response by the Response Deadline, the Debtor will present to the Court an appropriate order disallowing such claimant's claim, as set forth in **Exhibit A**, without further notice to the claimant.

VI. REPLIES TO RESPONSES

23. Consistent with the Local Rules, the Debtor may, at its option, file and serve a reply to a Response by no later than 5:00 p.m. (prevailing Central Time) three (3) days prior to the hearing to consider the Objection.

VII. SEPARATE CONTESTED MATTERS

24. To the extent that a Response is filed regarding any claim listed in this Objection and the Debtor is unable to resolve the Response, the objection by the Debtor to each such claim asserted herein shall constitute a separate contested matter as contemplated by Bankruptcy Rule 9014. Any order entered by the Court regarding an objection asserted in the Objection shall be deemed a separate order with respect to each claim.

VIII. RESERVATION OF RIGHTS

25. The Debtor hereby reserves the right to object in the future to any of the claims that are the subject of this Objection on any ground, including, but not limited to, 11 U.S.C. § 502(d), and to amend, modify, and/or supplement this Objection, including, without limitation, to object to amended or newly filed claims. The Debtor also reserves the right to object in the future to any other claim filed by a claimant whose claim is subject to this Objection.

26. Notwithstanding anything contained in this Objection or the attached exhibits, nothing herein shall be construed as a waiver of any rights that the Debtor may have to exercise rights of setoff against the holders of such claims.

IX. NOTICE

27. Notice of this Objection shall be provided to (i) the Office of the United States Trustee for the Northern District of Texas; (ii) each of the claimants whose claim is subject to this Objection; and (iii) all entities requesting notice pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested, the Debtor submits that no further notice is required.

X. COMPLIANCE WITH LOCAL RULES

28. This Objection includes citations to the applicable rules and statutory authorities upon which the relief requested herein is predicated and a discussion of their application to this Objection. The Debtor objects to no more than 100 proofs of claim herein. The Debtor has served notice of this Objection on those persons whose names appear in the signature blocks on the proofs of claim and in accordance with Bankruptcy Rule 7004. Moreover, the Debtor has notified claimants that a copy of their claim may be obtained from the Debtor upon request. Accordingly, the Debtor submits that this Objection satisfies Local Rule 3007-2.

WHEREFORE, the Debtor respectfully requests the entry of the proposed Order, substantially in the form attached hereto as **Exhibit A**, granting the relief requested and granting such other and further relief as the Court deems just and proper.

[Remainder of Page Intentionally Blank]

Dated: October 16, 2020.

PACHULSKI STANG ZIEHL & JONES LLP

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Ira D. Kharasch (CA Bar No. 109084)
Gregory V. Demo (NY Bar No. 5371992)
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-and-

HAYWARD & ASSOCIATES PLLC

/s/ Zachery Z. Annable

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Counsel for the Debtor and Debtor-in-Possession

EXHIBIT A
(Proposed Order)

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	)	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,[1]	)	Case No. 19-34054-sgj11
Debtor.	)	**Re: Docket No. ____**

ORDER SUSTAINING DEBTOR'S SECOND OMNIBUS OBJECTION TO CERTAIN (A) CLAIMS TO BE RECLASSIFIED AND (B) NO LIABILITY CLAIMS

Having considered the *Debtor's Second Omnibus Objection to Certain (A) Claims to be Reclassified and (B) No Liability Claims* (the "Objection"),[2] the claims listed on Schedules 1-2 attached hereto, any responses thereto, and the arguments of counsel, the Court finds that (i) notice of the Objection was good and sufficient upon the particular circumstances and that no other or further notice need be given; (ii) the Objection is a core proceeding under 28 U.S.C.

[1] The Debtor's last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

[2] Capitalized terms used but not defined in this Order shall have the meanings ascribed to them in the Objection.

§ 157(b)(2); (iii) each holder of a claim listed on Schedules 1–2 attached hereto was properly and timely served with a copy of the Objection, the proposed form of this Order, the accompanying schedules, and the notice of hearing on the Objection; (iv) any entity known to have an interest in the claims subject to the Objection has been afforded reasonable opportunity to respond to, or be heard regarding, the relief requested in the Objection; and (v) the relief requested in the Objection is in the best interests of the Debtor's creditors, its estate, and other parties-in-interest. Accordingly, the Court finds and concludes that there is good and sufficient cause to grant the relief set forth in this Order. It is therefore **ORDERED THAT:**

1. The Objection is **SUSTAINED** as set forth herein.

2. The Reclassified Claim listed on **Schedule 1** hereto is reclassified so that it is a general unsecured claim in its entirety with no portion of the claim entitled to priority. .

3. Each of the claims listed as a No Liability Claim on **Schedule 2** hereto is disallowed and expunged in its entirety.

4. The official claims register in the Debtor's chapter 11 case shall be modified in accordance with this Order.

5. The Debtor's rights to amend, modify, or supplement the Objection, to file additional objections to the Disputed Claims and any other claims (filed or not, including any other claims filed by holders of Disputed Claims), which may be asserted against the Debtor, and to seek further reduction of any claim to the extent such claim has been paid, are preserved. Additionally, should one or more of the grounds of objection stated in the Objection be overruled, the Debtor's rights to object on other stated grounds or any other grounds that the Debtor may discover are further preserved.

6. Each claim and the objections by the Debtor to such claim, as addressed in the Objection and set forth on **Schedule 1** and **Schedule 2** attached hereto, shall constitute a separate contested matter as contemplated by Bankruptcy Rule 9014. This Order shall be deemed a separate Order with respect to each claim. Any stay of this Order pending appeal by any claimant whose claims are subject to this Order shall only apply to the contested matter which involves such claimant and shall not act to stay the applicability and/or finality of this Order with respect to the other contested matters listed in the Objection or this Order.

7. The Debtor is authorized and empowered to take any action necessary to implement and effectuate the terms of this Order.

8. The terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

9. The Court shall retain jurisdiction over all matters arising from or related to the interpretation and implementation of this Order.

###END OF ORDER###

Highland Capital Management, L.P.
Case No. 19-34054-sgj11
Schedule 1 - Reclassified Claim

Sequence No.	Claimant's Name	Claim No. to be Disallowed	Date Filed	Claim Amount	Notes	Objection Page No. Reference
1	Crescent Research	64	3/27/2020	$ 300.00	Claims is for services and not entitled to priority under 503(b)(9).	6

Highland Capital Management, L.P.
Case No. 19-34054-sgj11
Schedule 2 - No liability on the Debtor's books and records

Sequence No.	Claimant's Name	Claim No. to be Disallowed	Date Filed	Claim Amount	Notes	Objection Page No. Reference
1	Hedgeye Risk Management, LLC	48	3/18/2020	$ 8,380.08	Paid on 7/28/2020; check no. 1265898	7
2	James D. Dondero	138	4/8/2020	Unliquidated	No liability on the Debtor's books and records; amounts asserted are against other entities	7
3	NexVest, LLC	151	4/8/2020	Unliquidated	No liability on the Debtor's books and records; no amount is asserted with respect to this claim	7
4	James D. Dondero	188	5/26/2020	Unliquidated	No liability on the Debtor's books and records; no claim asserted against the estate	7

EXHIBIT 3

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

IN RE:	§	
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	**Case No. 19-34054**
	§	
	§	
Debtor.	§	**Chapter 11**

STIPULATION AND AGREED ORDER AUTHORIZING WITHDRAWAL OF PROOFS OF CLAIM 138 AND 188 FILED BY JAMES DONDERO

This stipulation and agreed order is entered into between Highland Capital Management, L.P. (the "Debtor") and James Dondero ("Dondero"). The Debtor and Dondero are collectively referred to herein as the "Parties."

RECITALS

WHEREAS, on April 8, 2020, Dondero filed proof of claim number 138 ("Claim 138").

WHEREAS, on May 26, 2020, Dondero filed proof of claim number 188 ("Claim 188", and collectively with Claim 138, the "Claims").

WHEREAS, on October 16, 2020, the Debtor filed *Debtor's Second Omnibus Objection to Certain (A) Claims to be Reclassified and (B) No Liability Claims* [Docket No. 1179] (the "Claim Objection"), which included an objection to the Claims.

WHEREAS, Dondero now desires to withdraw Claim 138 and Claim 188 with prejudice to refiling such proofs of claim.

STIPULATION

NOW, THEREFORE, IN CONSIDERATION OF THE FOREGOING, THE PARTIES HEREBY AGREE AND STIPULATE AS FOLLOWS:

1. Claim 138 and Claim 188 filed by Dondero are hereby withdrawn with prejudice to refiling such proofs of claim.

IT IS SO STIPULATED.

Dated: December 3, 2020

CONSENTED AND AGREED TO BY:

/s/ Gregory V. Demo
Jeffrey N. Pomerantz (CA Bar No.143717)
(*pro hac vice*)
Ira D. Kharasch (CA Bar No. 109084)
(*pro hac vice*)
John A. Morris (NY Bar No. 266326)
(*pro hac vice*)
Gregory V. Demo (NY Bar No. 5371992)
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and

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ATTORNEYS FOR JAMES DONDERO

EXHIBIT 4

Docket #1510 Date Filed: 12/04/2020

CLERK, U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS

ENTERED

THE DATE OF ENTRY IS ON
THE COURT'S DOCKET

The following constitutes the ruling of the court and has the force and effect therein described.

Signed December 4, 2020

United States Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

IN RE:	§	
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	**Case No. 19-34054**
	§	
	§	
Debtor.	§	**Chapter 11**

ORDER APPROVING STIPULATION AND AGREED ORDER AUTHORIZING WITHDRAWAL OF PROOFS OF CLAIM 138 AND 188 FILED BY JAMES DONDERO

Upon consideration of the *Stipulation and Agreed Order Authorizing Withdrawal of Proofs of Claim 138 and 188 filed by James Dondero* [Docket No. 1502] (the "Stipulation") between Highland Capital Management, L.P. (the "Debtor") and James Dondero ("Dondero") in the above-captioned case, it is **HEREBY ORDERED THAT**:

1. The Stipulation, a copy of which is attached hereto as **Exhibit A**, is approved.

2. The withdrawal of Claim 138 and Claim 188 with prejudice to refiling such proofs of claim is approved.

END OF ORDER

EXHIBIT A

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

IN RE:	§	
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	**Case No. 19-34054**
	§	
	§	
Debtor.	§	**Chapter 11**

STIPULATION AND AGREED ORDER AUTHORIZING WITHDRAWAL OF PROOFS OF CLAIM 138 AND 188 FILED BY JAMES DONDERO

This stipulation and agreed order is entered into between Highland Capital Management, L.P. (the "Debtor") and James Dondero ("Dondero"). The Debtor and Dondero are collectively referred to herein as the "Parties."

RECITALS

WHEREAS, on April 8, 2020, Dondero filed proof of claim number 138 ("Claim 138").

WHEREAS, on May 26, 2020, Dondero filed proof of claim number 188 ("Claim 188", and collectively with Claim 138, the "Claims").

WHEREAS, on October 16, 2020, the Debtor filed *Debtor's Second Omnibus Objection to Certain (A) Claims to be Reclassified and (B) No Liability Claims* [Docket No. 1179] (the "Claim Objection"), which included an objection to the Claims.

WHEREAS, Dondero now desires to withdraw Claim 138 and Claim 188 with prejudice to refiling such proofs of claim.

STIPULATION

NOW, THEREFORE, IN CONSIDERATION OF THE FOREGOING, THE PARTIES HEREBY AGREE AND STIPULATE AS FOLLOWS:

1. Claim 138 and Claim 188 filed by Dondero are hereby withdrawn with prejudice to refiling such proofs of claim.

IT IS SO STIPULATED.

Dated: December 3, 2020

CONSENTED AND AGREED TO BY:

/s/ Gregory V. Demo
Jeffrey N. Pomerantz (CA Bar No.143717) (*pro hac vice*)
Ira D. Kharasch (CA Bar No. 109084) (*pro hac vice*)
John A. Morris (NY Bar No. 266326) (*pro hac vice*)
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ATTORNEYS FOR JAMES DONDERO

EXHIBIT 5

Deborah Deitsch-Perez
Michael P. Aigen
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Facsimile: (214) 560-2203

Counsel for Defendant Highland Capital Management Fund Advisors, L.P.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re	§	
	§	**Case No. 19-34054-sgj11**
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	**Chapter 11**
	§	
Debtor.	§	
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	
Plaintiff,	§	
	§	
v.	§	**Adversary No. 21-03082**
	§	
HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, L.P.,	§	
	§	
Defendant.	§	

HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, L.P.'S
RULE 26 INITIAL DISCLOSURES

TO: Plaintiff Highland Capital Management, L.P., by and through its attorneys of record, John Morris, Pachulski Stang Ziehl & Jones LLP, 10100 Santa Monica Blvd., 13th Floor, Los Angeles, CA 90067.

Pursuant to Rule 26(a)(1) of the Federal Rules of Civil Procedure, made applicable to this proceeding through Rule 7026 of the Federal Rules of Bankruptcy Procedure, Defendant Highland

Capital Management Fund Advisors, L.P. ("HCMFA" or "Defendant") makes the following initial disclosures to Plaintiff Highland Capital Management, L.P. ("Plaintiff" or "Debtor")[1].

1. The names, and, if known, the addresses, and telephone numbers of individuals likely to have discoverable information, along with the subjects of that information are listed below. Defendant reserves the right to amend and/or supplement these disclosures.

ANSWER:

James D. Dondero
c/o Deborah Deitsch-Perez
Michael P. Aigen
STINSON LLP
3102 Oak Lawn Avenue, Suite 777
Dallas, Texas 75219
Attorneys for Defendant

Dondero may have knowledge regarding the claims, defenses, and factual circumstances at issue in the Debtor's complaint and this adversary proceeding, including, without limitation, the terms of the promissory notes, the drafting and execution of the notes, the agreement of the Debtor to not collect on the notes upon fulfillment of conditions subsequent, the purpose and intent of the notes, the Debtor's prior use of forgivable loans, and Dondero's compensation from the Debtor during his employment.

Highland Capital Management, L.P. and certain of its current employees
c/o John Morris
PACHULSKI STANG ZIEHL & JONES LLP
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067
Attorneys for Plaintiff

Debtor and certain of its current employees, including potentially Thomas Surgent, David Klos, and Kristen Hendrix, may have knowledge regarding the claims, defenses, and factual circumstances at issue in the Debtor's complaint and Defendant's defenses to the allegations in the complaint, including the circumstances surrounding the execution of the notes and related transfers, the agreement of the Debtor to not collect on the notes upon fulfillment of conditions subsequent, the Debtor's prior use of forgivable loans, and Dondero's compensation from the Debtor during his employment.

[1] Defendant makes these disclosures subject in all respects to its Motion for Withdrawal of the Reference. Defendant does not waive, but instead hereby preserves, its right to a jury trial and all rights and requests for relief asserted in the motions. Defendant does not consent to the Bankruptcy Court determining this proceeding or entering final orders or judgments in this proceeding. Instead, Defendant requests that the reference be withdrawn and that the District Court adjudicate this proceeding.

Brian Collins, former employee of the Debtor
Tel: 213-550-4538

As a former employee, he may have knowledge regarding the claims, defenses, and factual circumstances at issue in the Debtor's complaint and this adversary proceeding, including, without limitation, the promissory notes, the circumstances surrounding the preparation and/or execution of the notes and related transfers, the agreement of the Debtor to not collect on the notes upon fulfillment of conditions subsequent, the Debtor's prior use of forgivable loans, compensation of Debtor employees, and Dondero's compensation from the Debtor during his employment.

Amy Theriot, former employee of the Debtor
Tel: 214-893-5352

As a former employee, she may have knowledge regarding the claims, defenses, and factual circumstances at issue in the Debtor's complaint and this adversary proceeding, including, without limitation, the promissory notes, the circumstances surrounding the preparation and/or execution of the notes and related transfers, the agreement of the Debtor to not collect on the notes upon fulfillment of conditions subsequent, the Debtor's prior use of forgivable loans, compensation of Debtor employees, and Dondero's compensation from the Debtor during his employment.

Mark Okada, former employee of the Debtor
Tel: 975-989-1000

As a former employee, he may have knowledge regarding the claims, defenses, and factual circumstances at issue in the Debtor's complaint and this adversary proceeding, including, without limitation, the promissory notes, the circumstances surrounding the preparation and/or execution of the notes and related transfers, the agreement of the Debtor to not collect on the notes upon fulfillment of conditions subsequent, the Debtor's prior use of forgivable loans, compensation of Debtor employees, and Dondero's compensation from the Debtor during his employment.

Scott Ellington, former employee of the Debtor
c/o Frances Smith
Ross & Smith PC
700 N. Pearl Street, Suite 1610
Dallas, TX 75201

As a former employee, he may have knowledge regarding the claims, defenses, and factual circumstances at issue in the Debtor's complaint and this adversary proceeding, including, without limitation, the promissory notes, the circumstances surrounding the preparation and/or execution of the notes and related transfers, the agreement of the Debtor to not collect on the notes upon fulfillment of conditions subsequent, the Debtor's prior use of forgivable loans, compensation of Debtor employees, and Dondero's compensation from the Debtor during his employment.

Frank Waterhouse, former employee of the Debtor
c/o Frances Smith
Ross & Smith PC
700 N. Pearl Street, Suite 1610
Dallas, TX 75201

As a former employee, he may have knowledge regarding the promissory notes, the circumstances surrounding the execution of the notes and related transfers, the agreement of the Debtor to not collect on the notes upon fulfillment of conditions subsequent, the Debtor's prior use of forgivable loans, compensation of Debtor employees, and Dondero's compensation from the Debtor during his employment.

John Honis, employee of Rand Advisors
Tel: 214-335-7969

As an employee of Rand Advisors, he may have knowledge regarding the Debtor's prior use of forgivable loans.

Jack Yang, former employee of the Debtor
Tel: 646-387-2351

As a former employee, he may have knowledge regarding the Debtor's prior use of forgivable loans.

Paul Adkins, former employee of the Debtor
Tel: +65 9728 0599

As a former employee, he may have knowledge regarding the Debtor's prior use of forgivable loans.

Pat Daugherty, former employee of the Debtor
c/o Jason Kathman
Spencer Fane LLP
2200 Ross Avenue, Suite 4800
Dallas, TX 75201

As a former employee, he may have knowledge regarding the Debtor's prior use of forgivable loans.

Tim Lawler, former employee of the Debtor
Tel: 847-305-3013

As a former employee, he may have knowledge regarding the Debtor's prior use of forgivable loans.

Appu Mundassery, former employee of the Debtor

As a former employee, he may have knowledge regarding the Debtor's prior use of forgivable loans.

Mike Hurley, former employee of the Debtor
Tel: 775-750-8921

As a former employee, he may have knowledge regarding the Debtor's prior use of forgivable loans.

Gibran Mahmud, former employee of the Debtor
Tel: 972-740-0018

As a former employee, he may have knowledge regarding the Debtor's prior use of forgivable loans.

Louis Koven, former employee of the Debtor
Tel: 213-704-0310

As a former employee, he may have knowledge regarding the Debtor's prior use of forgivable loans.

Mike Rossi, former employee of the Debtor
Whitefish Tax & Consulting PC
309 Central Avenue, Suite 204
Whitefish, MT 59937
Tel: 214-668-6693

As a former employee, he may have knowledge regarding the Debtor's prior use of forgivable loans.

David Walls, former employee of the Debtor
U.S. Small Business Administration
Dallas, Texas

As a former employee, he may have knowledge regarding the Debtor's prior use of forgivable loans.

Nancy Dondero
c/o Deborah Deitsch-Perez
Michael P. Aigen
STINSON LLP
3102 Oak Lawn Avenue, Suite 777
Dallas, Texas 75219

She may have knowledge regarding the claims, defenses, and factual circumstances at issue in the Debtor's complaint and this adversary proceeding, including, without limitation, the promissory notes, the circumstances surrounding the preparation and/or execution of the notes and related transfers, the agreement of the Debtor to not collect on the notes upon fulfillment of conditions subsequent, the Debtor's prior use of forgivable loans, compensation of Debtor employees, and Dondero's compensation from the Debtor during his employment.

Melissa Schroth
c/o Deborah Deitsch-Perez
Michael P. Aigen
STINSON LLP
3102 Oak Lawn Avenue, Suite 777
Dallas, Texas 75219

She may have knowledge regarding the claims, defenses, and factual circumstances at issue in the Debtor's complaint and this adversary proceeding, including, without limitation, the promissory notes, the circumstances surrounding the preparation and/or execution of the notes and related transfers, the agreement of the Debtor to not collect on the notes upon fulfillment of conditions subsequent, the Debtor's prior use of forgivable loans, compensation of Debtor employees, and Dondero's compensation from the Debtor during his employment.

Todd Crawford
Tim Simpson
Maria Trinidad Salme "Trini" Garcia
Rinda Corbin
Jennifer Blumer
Deloitte
2200 Ross Ave #1600
Dallas, TX 75201

Tel: 214-840-7000

These individuals may have knowledge related to the tax issues raised by the transactions at issue in this adversary proceeding, Mr. Dondero's compensation and Highland-related financial information generally.

2. A copy or a description by category and location, of all documents, electronically stored information, and tangible things that the disclosing party has in its possession, custody, or control and may use to support its claims or defenses.

ANSWER: Defendant may have documents and communications related to the following matters in its possession, custody, or control that it may use to support its claims or defenses. The inclusion of a general category of documents below does not mean that specific documents necessarily exist or that Defendant has such documents in its possession, custody, or control.

1. Documents and communications related to the allegations in the complaint and Defendant's defenses to the allegations in the complaint, including, without limitation, documents related to the terms of the promissory notes, the drafting and execution of the notes, the agreement of the Debtor to not collect on the notes upon fulfillment of conditions subsequent, the purpose and intent of the notes, the Debtor's prior use of forgivable loans, and Dondero's compensation from the Debtor during his employment.
2. Documents related to Dondero's personal tax returns.
3. Documents related to tax loan(s) made by the Debtor to Dondero and such tax amounts incurred related to federal partnership tax.
4. Documents and/or communications related to Dondero's compensation during his employment at Highland.
5. Any and all pleadings filed in this matter and the main bankruptcy case.

3. A computation of each category of damages claimed by the disclosing party, who must also make available for inspection and copying as under Rule 34 the documents or other evidentiary material, unless privileged or protected from disclosure, on which each computation is based, including materials bearing on the nature and extent of injuries suffered.

ANSWER:

Defendant is not seeking actual damages at this time.

4. For inspection and copying as under Rule 34, any insurance agreement under which an insurance business may be liable to satisfy all or part of a possible judgment in the action or to indemnify or reimburse for payments made to satisfy the judgment.

ANSWER:

No such insurance agreements known.

Reservation of Rights

Defendant makes these disclosures subject in all respects to its Motion for Withdrawal of the Reference. Defendant does not waive, but hereby preserves, its right to a jury trial and all additional rights and relief available as asserted in its motion.

The Defendant's investigation is ongoing, and it reserves the right to further amend, modify and/or supplement these initial disclosures as provided in Federal Rule of Civil Procedure 26(e) if warranted and to the extent additional disclosures are not mooted or made redundant by information made known during the discovery process or in writing. In addition, the Defendant makes these initial disclosures without waiving but expressly preserving: (a) its right to a jury trial; (b) its right to have this proceeding determined by the District Court; (c) its right to object to the entry of any final orders or final judgments by the Bankruptcy Court in this proceeding; (d) the right to object to any discovery requests or to the admissibility of evidence on the grounds of privilege, work product, relevance, materiality, or any other proper ground; and (e) the right to object to the use of any information provided in or derived from these initial disclosures for any purpose in this action.

Dated: January 10, 2022

Respectfully submitted,

STINSON LLP

/s/ Deborah Deitsch-Perez

Deborah Deitsch-Perez
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ATTORNEYS FOR DEFENDANT HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, L.P.

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that, on January 10, 2022, a true and correct copy of the foregoing document was served via email on counsel for the Debtor.

/s/ Deborah Deitsch-Perez
Deborah Deitsch-Perez

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In Re: HIGHLAND CAPITAL MANAGEMENT, L.P., Reorganized Debtor.	**Case No. 19-34054-sgj-11** Chapter 11 Dallas, Texas July 27, 2022 1:30 p.m. Docket
HIGHLAND CAPITAL MANAGEMENT, L.P., Plaintiff, v. HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, L.P., Defendant.	**Adversary Proceeding 21-3082-sgj** MOTION FOR SUMMARY JUDGMENT [45]

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE STACEY G.C. JERNIGAN,
UNITED STATES BANKRUPTCY JUDGE.

APPEARANCES:

For the Plaintiff: John Morris
PACHULSKI STANG ZIEHL & JONES, LLP
780 Third Avenue, 34th Floor
New York, NY 10017-2024
(212) 561-7700

For the Defendant: Deborah Rose Deitsch-Perez
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Proceedings recorded by electronic sound recording;
transcript produced by transcription service.

DALLAS, TEXAS - JULY 27, 2022 - 1:40 P.M.

THE COURT: All right. We have an oral argument in Highland versus HCMFA, Adversary 21-3082, Motion of Plaintiff for Summary Judgment.

Mr. Morris, I see you out there. You're appearing for the Plaintiff today?

MR. MORRIS: Yes, I am. Good afternoon, Your Honor. John Morris; Pachulski Stang Ziehl & Jones; for the reorganized Highland.

THE COURT: All right. Thank you.

Ms. Deitsch-Perez, are you going to be the one appearing for HCMFA?

MS. DEITSCH-PEREZ: I am, Your Honor. Good afternoon.

THE COURT: All right. Good afternoon.

Any other lawyer appearances?

(No response.)

THE COURT: All right. Well, as I said, we're here on Plaintiff's Motion for Summary Judgment. This is more note litigation, not to be confused with the five adversaries that involved I guess 16 different notes. We're now here with a more recently filed adversary against HCMFA regarding two demand notes.

Mr. Morris, you may proceed.

MR. MORRIS: All right, Your Honor. I just, I want

to be mindful of the Court's time. I think we had agreed to limit each side to 30 minutes. I don't know if it was 35 or 45. I just want to be clear because I don't want to --

MS. DEITSCH-PEREZ: I believe we had limited each side to 45 minutes.

MR. MORRIS: Okay. If that's okay with the Court, I'm happy with that, too.

THE COURT: All right. Forty-five minutes each side is fine. And Courtney, I'll ask you to monitor that. And I assume, Mr. Morris, you'll want to reserve some of that for rebuttal, just so we know in advance.

MR. MORRIS: I think that's right. I don't expect to use 45 minutes.

THE COURT: Okay. Well, it's 1:42. You may proceed.

MR. MORRIS: Good afternoon, Your Honor. John Morris. I've got a small deck that I'd like to use in my presentation, and I'd ask Ms. Canty to put it up on the screen.

We're here, Your Honor, --

THE COURT: All right. Mr. --

MR. MORRIS: -- this is a --

THE COURT: Mr. Morris, I'm going to let you know, your voice is more faint than we're used to with you. So I don't know if it's your volume on your computer or where you're sitting in relation to the microphone, but we could use

a little louder volume here.

MR. MORRIS: Okay. I will -- I will try to speak loudly, and --

THE COURT: That's better.

MR. MORRIS: -- and if you can't hear me, I'll just -- okay. Fine. Thank you, Your Honor.

So, this is a follow-up companion litigation where Highland is suing HCMFA to collect on two notes that HCMFA issued, the first one in 2014, the second in 2016.

THE COURT: Yes. We're having a little trouble hearing you once again. I thought it was better, and now it's still a little faint, so --

MR. MORRIS: I'm going to switch devices, if you could just bear with me for just a moment.

THE COURT: Okay.

(Pause.)

MR. MORRIS: Okay. Can you hear me now, Your Honor?

THE COURT: Much better.

MR. MORRIS: Okay. Super.

THE COURT: Okay.

MR. MORRIS: So, this is a follow-up litigation where Highland is suing on two additional notes against HCMFA. And as we explained in our papers, the reason that these two notes were not part of the main notes litigation is because they were subject to a prepetition -- I'll just call it, for ease

here, a forbearance agreement. And Highland has honored that agreement and didn't make a demand on these notes until that agreement expired.

As Your Honor knows as well as anybody, the Court just last week issued a Report and Recommendation on the notes litigation, and I think that that's particularly relevant for this matter, because the primary defense is the same, the same oral agreement that was asserted by the Defendants in the main notes litigation.

This action was commenced in November of 2021. And as the Court may be aware, the District Court *sua sponte* consolidated this particular action with the other five notes litigations that were already consolidated in the District Court.

As I mentioned, the defense here is substantively the same. The notes are substantively the same except for the identity of the maker, the principal amount, the interest rate, and the dates.

And the record is the same, with the exception of certain new evidence, some of which we believe further supports Highland's case and some of which we believe doesn't do anything to move the needle on behalf of the Defendant. And I want to spend, you know, much of my time here this afternoon just talking about the new evidence.

But before we do that, if we can go to the next slide.

We have, as Your Honor may have seen in our moving brief,

largely adopted the predicate facts in support of our motion for summary judgment. Specifically, we believe that the evidence is beyond dispute that there were valid notes, they were signed by the Defendant in this case, there is an amount due, a demand was made, and no action was taken to meet that demand.

As this slide shows, Your Honor -- if we can go to the next slide, please -- the evidence of the existence, the validity, and enforceability of the notes is and remains overwhelming. My citations here are to our moving brief or to specific evidence. But just as the Court found in its recent Report and Recommendation, the evidence here shows that the pre-2019 notes were carried as assets in Highland's audited financial statements. Again, those audited financial statements were based on management representation letters from Mr. Dondero and Mr. Waterhouse.

The HCMFA notes were also carried on liabilities -- as liabilities on HCMFA's own balance sheet and financial statements. And that can be found at Exhibit 80 -- 45, at Pages 2, which is the balance sheet, and Pages 13 and 14, which specifically describe each of the notes at issue.

These notes were also part of the presentation that HCMFA made to the Retail Board in October 2020. Highland's books and records again carried these notes as assets, without exception and without discount.

Highland told the world in the fall of 2020 that it intended to pay creditors in part with the proceeds from the collection on these notes, and yet HCMFA and Mr. Dondero remained silent.

We believe additional evidence shows the existence, validity, and enforceability of the notes by the fact that HCMFA actually paid off just over 50 percent of the principal amount, again, proving the existence, validity, and enforcement of the notes.

And finally, in the acknowledgement form, Mr. Dondero admitted both that the loans were made to finance HCMFA's ongoing operations and that Highland would not demand payment until May of 2021.

I just want to put a couple of exhibits up on the screen, Your Honor. Exhibit 238 is a stipulation that goes (audio gap) Number 6 that I just made. And in that stipulation, if we can go down to Paragraphs 1 and 2, you'll see, Your Honor, that the parties agreed that Exhibit C was prepared by Highland's accounting group and it showed how each of the payments on the relevant notes were made and that the parties stipulated and agreed that Exhibit C would be admissible into evidence.

It accurately set forth the date -- dates and amounts of the payments that were made on the applicable notes, and it accurately set forth the application of the payments against

the outstanding principal and interest.

And if we could just drop down to Exhibit C, because it's really -- it's pretty interesting. Your Honor, you can see just from this document that the box on top addresses the 2014 note, and you can see the substantial payments that were made in the six months prior to the petition date. In 2019, I think $2.375 million was paid on the first note, and over $2 million had been paid on the 2016 note.

And so we think that this just corroborates the overwhelming evidence that already exists that HCMFA knew the notes existed, they knew the notes were valid, they knew the notes were enforceable, and indeed they made payments against those notes.

So all of that, I think, goes to prove beyond any genuine dispute of fact that Highland has met its *prima facie* case.

HCMFA here is pressing the conditions subsequent agreement, the oral agreement that HCMFA contends was made. And if we could just go to the next slide, you'll see, Your Honor, in Paragraphs 84 through 96 we provide again the evidence that we relied upon in the main notes litigation to prove that no reasonable trier of fact could conclude that the alleged agreements existed.

But I did want to highlight for the Court some of the new facts that relate to these particular notes, because it's not -- I appreciate that it wasn't -- it may not have been easy to

see what was new in our brief from what was old. The new material is found in Paragraphs 76 through 83, and then again in 97, 98, 99, and 100. And they relate to four additional facts that we believe make it even, you know, not just less likely, but make it clear that no reasonable trier of fact could conclude that the alleged agreements existed.

The first one, Your Honor, which is Point 2 on the chart, is that Mr. Dondero's testimony in his deposition actually conflicts with HCMFA's answer. The answer was adopted verbatim from the answer that has been the subject of litigation for more than a year now, and it's really -- it's just, it's pretty surprising that they still can't get the answer right. And the reason that the answer is wrong is that -- because it parrots the original affirmative defense, or not the original affirmative defense, the final version of the affirmative defense that was asserted in the main litigation. They forgot to take into account that Ms. Dondero, Nancy Dondero, wasn't even the Trustee of Dugaboy at the time the first alleged oral agreement was entered into. So in the depositions, and we've cited to all of this -- it's in Paragraphs 76 through 83, and again in 97 -- we cite to the evidence that proves that the testimony differs from even the answer that they have. And I think, I think that's -- would just be another piece of evidence that we would put into -- in front of the jury to establish that these -- this defense is

completely fabricated.

The second piece, Your Honor, as I already mentioned, is that HCMFA paid 50 -- more than 50 percent of the principal amount -- again, something that is completely inconsistent with an agreement for compensation.

The next one is really, really important, Your Honor. The undisputed evidence in the record now is that HCMFA actually paid off three other promissory notes. And neither Mr. Dondero nor HCMFA provides any explanation for why they did that.

And we believe that that fact is critical, because as Your Honor has already found in the Report and Recommendations, Mr. Dondero was unable to identify the notes that were the subject of each particular oral agreement. And now that there is undisputed evidence that there were notes that were fully paid off, it makes his inability to identify the notes that much more problematic. So he can't simply say, All of the notes that I had were subject to the oral agreement, because some of them were paid off. And so we think that's a very critical factor, and it's something that, you know, no reasonable jury would ignore in trying to assess whether these agreements existed.

And finally, Your Honor, in a very short deposition, I followed up with a deposition of Alan Johnson, who is Mr. Dondero and HCMFA's expert. You'll see at the very end I just

shut the deposition down after I got such clean answers. He testified that, notwithstanding the fact that he is a compensation expert and that he has spent his whole career giving advice in the area of executive compensation, he has never advised a company to forgive a loan that was made to a corporate affiliate for the purpose of compensating an executive, and he's not aware of any company that has ever done so.

I think in their opposition papers, you know, they take me to task for asking confusing questions. I would respectfully disagree. I would encourage the Court, if it's inclined to do so, to look at Page 19, Line 2, to Page 20, Line 18. I think my questions were very clear. I think you'll see that it was Mr. Johnson who was a bit confused. And when he made that known to me, we clarified it, and the testimony on this point could not be clearer. He has never advised a company to do what Mr. Dondero and HCMFA are asking this Court to approve, and he is not aware of any company that's ever done so.

So, let's just finish up here with the new evidence that HCMFA is relying upon, if we can go to the next slide. You know, we believe that we proved that neither HCMFA nor any other party to the alleged oral agreement ever disclosed the terms or the existence of that agreement to anybody. And HCMFA has cited to certain new evidence and certain old evidence that they contend somehow constitutes disclosure.

I do, before I get to the evidence, I skipped over one document that I think is worth putting on the screen, and that's Exhibit 220. Exhibit 220 is HCMFA's written responses to discovery.

And Ms. Canty, if you could just put that up. And if we could go to responses to the requests for admission, beginning with No. 13.

You'll see -- that's requests for production. Just scroll down another page or two. There you go.

So, in Requests 13 and 14, HCMFA has admitted that no document was created prior to February 1, 2021 that memorializes the terms or existence of the alleged agreement. That's 13 and 14. And then if you go down to 17 and 18, you'll see that HCMFA admitted that HCMFA did not disclose the terms or the existence of the alleged agreement to the Bankruptcy Court prior to February 1, 2021. And then if you see Requests for Admission I guess it's No. 20 -- I may have made a mistake -- but 20 and 21, you'll see that HCMFA gave their unqualified admission that they did not disclose the terms of the alleged agreement or the existence of the alleged agreement in connection with the bankruptcy case. So, never did it. And yet -- and yet they try to rebut the undisputed fact that it was never disclosed by relying on a proof of claim.

And if we can go to Defendants' Exhibit 4-D, let's take a

look at that proof of claim. Because, you know, okay, so this is a proof of claim that was filed by Mr. Dondero. It was filed on his behalf by the Bonds Ellis firm. I don't know if you're aware of this, Your Honor, but I believe a week or two ago Mr. Dondero and Dugaboy sued Bonds Ellis and John Bonds and others for malpractice in this case.

But that's the firm that prepared this proof of claim. And HCMFA now contends that this proof of claim somehow divulged the terms or the existence of the alleged agreements, even though the written responses to the requests for admission that they tendered just months before said no document existed, said nothing was ever disclosed to the Bankruptcy Court, and said nothing was ever disclosed in the bankruptcy case.

I would also note, Your Honor, that neither Mr. Dondero nor any defendant in the main notes litigation saw fit to identify this document as somehow proof of the disclosure of the defense that they're now pressing.

So, you have to start with that. You have to start with the fact that they -- that they said there was nothing in writing, that they said they never told the Bankruptcy Court, that they said there was nothing in the bankruptcy case, that no other defendant has identified this document, but this is a document that they produced two hours before the deadline for filing their opposition.

And let's take a look at what the substance of it says. If we can go to Exhibit A, I think it's the last page of the proof of claim.

You'll see, Your Honor, the proof of claim here in Exhibit A says simply that in the event collection efforts are made to collect on the notes, James Dondero asserts that the notes were issued by him for funds advanced in lieu of compensation. Nancy Dondero is not mentioned. Dugaboy. Agreement. Oral agreement. Conditions subsequent. Trust res. MGM. Cornerstone. There is nothing in the affirmative defense that's set forth in the answer that is reflected on this Exhibit A. And there is nothing in this Exhibit A that even says that the notes might be forgiven, because that's the way it characterized in the opposition papers that this proof of claim put the world on notice that the notes might be forgiven. Even the word forgiven doesn't appear here.

I will concede that this exhibit shows that Mr. Dondero was aware of these notes, that he knew that they were in existence, that he knew that they were part of Debtor's assets, and he was trying to come up with a defense. I agree that Mr. Dondero put the world on notice that he didn't want to pay.

But the point here is not whether he put the world on notice that he didn't want to pay. The point here is did he put the world on notice of the existence of the alleged

agreements? And that, the answer I think is easily and categorically no.

But this document is very important for another reason. As Your Honor will recall in the main notes litigation, Highland sued to collect on two notes that were signed by HCMFA in May of 2019, so after the date of the acknowledgement that we looked at.

MS. DEITSCH-PEREZ: Excuse me, Your Honor. I hate to interrupt Mr. Morris, and I generally would not, but he's going into a case for which the counsel is not present, and I don't think that's fair. He's going into the old HCMFA case that Your Honor has already ruled on, and Mr. Rukavina is not here to respond to any comments that Mr. Morris may be making.

So if he wants to reopen that case and make an argument, I ask that he do it on notice to Mr. Rukavina, who can then be available to respond.

MR. MORRIS: If I may, Your Honor?

THE COURT: You may.

MR. MORRIS: Number one, it's the same defendant.

Number two, Mr. Rukavina was on notice of the argument that I'm making because it was in our papers.

Number three, the argument is based on the document that they produced, it's in their exhibit, and that they relied upon.

Number four, the cases have all been consolidated.

So, so I don't see for the life of me how anybody could be prejudiced here. It is their document. It is their defense. The cases are consolidated. They've had notice. And I would respectfully ask the Court to allow me to proceed.

THE COURT: Okay. Objection --

MS. DEITSCH-PEREZ: Your Honor, it would be --

THE COURT: Objection is overruled. You may proceed.

MR. MORRIS: Okay. So, Your Honor, if you recall, the 2019 notes had an original face amount, I think it was $7.4 or $7.5 million. And these pre-2019 notes had an original face amount of approximately $6 million. We just saw from the evidence, we saw from the stipulation, frankly, that the parties agreed that the pre-2019 notes were paid down to about $3 million.

This document shows that every defense that was asserted in the main notes litigation was fabricated. And I'm not accusing Mr. Rukavina of doing anything wrong or Ms. Deitsch-Perez. There's three law firms that were involved. Right? The only person who actually knows everything is Mr. Dondero. This is his proof of claim, and he wrote a proof of claim trying to defend against collections against HCMFA for notes in excess of $10 million. You cannot get to that $10 million number without including the May 2019 notes. It is inconceivable. There is just no way to do it.

So, as a matter of undisputed fact, Mr. Dondero asserted a

defense to the May 2019 notes that HCMFA contended were issued by mistake and without authority and contrary to Mr. Dondero's intent. You cannot reconcile those two positions.

The entire defense in the main notes litigation with respect to those notes was fabricated, and this document proves it. HCMFA --

MS. DEITSCH-PEREZ: I would ask Your Honor, --

MR. MORRIS: HCMFA --

MS. DEITSCH-PEREZ: -- that's a different --

MR. MORRIS: Please. Please.

MS. DEITSCH-PEREZ: Because this is not -- this is -- that is a different case than -- what was noticed was a motion for summary judgment on the complaint on the two notes, and Mr. Morris has now vastly exceeded that. I understand Your Honor has overruled my objection, but it is terribly unfair to Mr. Rukavina and to HCMFA.

THE COURT: Let me just ask. I really don't understand your objection, because this is an attachment to the proof of claim. I think it's No. 188. Right? The --

MR. MORRIS: Yes.

THE COURT: The new evidence, if you will, that HCMFA has put in the summary judgment record. And the way I view this, it's just a comment on HCMFA's own summary judgment evidence. Why is it anything more than that?

MS. DEITSCH-PEREZ: I can explain. Because this was

filed back in March of 2020. And Mr. Rukavina's -- one of Mr. Rukavina's main points in the argument was that a mistake was made. These amounts that were transferred were recorded as notes. And so everybody, until they looked into it in connection with the litigation, was under the mistaken belief that these were loans. And Mr. Morris is taking advantage of Mr. Rukavina's absence to make an argument in a case that is not presently before Your Honor on this argument.

THE COURT: Okay.

MR. MORRIS: Your Honor, with all due respect, I had no idea whether Mr. Rukavina was going to be here or not, nor do I think it's relevant. They can divide the arguments however they want. This is their document.

MS. DEITSCH-PEREZ: It's not a document in this case.

THE COURT: Okay.

MR. MORRIS: Okay. I'll wait for Your Honor.

THE COURT: I over --

MR. MORRIS: Yeah.

THE COURT: I overrule the objection. I don't think there is any sort of unfair lack of notice, bringing in arguments from other litigation. It's, in this Court's view, merely commenting -- making a comment on the summary judgment evidence of HCMFA.

All right. You may proceed.

MR. MORRIS: The next piece of evidence that HCMFA

cites to in order to rebut what we believe is the undisputed fact that the alleged agreements were kept secret -- and they weren't kept secret, because they didn't exist -- but they point to Mr. Dondero's discussions with Mr. Waterhouse. And we would -- we would just encourage the Court to look at that the deposition testimony, because, again, even Mr. Dondero doesn't claim that he told Mr. Waterhouse about an agreement, about Nancy, about Dugaboy, about conditions subsequent. Nothing of that nature appears in Mr. Dondero's own description of what he told Mr. Waterhouse. And of course, Mr. Waterhouse says that he didn't have any conversation of this type until after the lawsuit was filed.

And then, finally, we get to Mr. Lynn's letter, Your Honor. They cite to that. If we can just put that up on the screen. It's, again, Defendant's exhibit. It's Defendant's Exhibit 4-C.

And, you know, the entirety of the substance of the letter is at the end of the first paragraph, where Mr. Lynn writes, in addition to other unidentified offenses, "Mr. Dondero views the notes in question as having been given in exchange for loans by Highland made in lieu of compensation to Mr. Dondero."

And it's not surprising that Mr. Lynn would use language consistent with the proof of claim that he prepared on behalf of his client. But what's more important here is that, again,

there is nothing on this document, of course prepared after the litigation began, that suggests or would cause any reader to conclude that an oral agreement was entered into pursuant to which the notes might be forgiven pursuant to, you know, some fulfillment of conditions subsequent. It's just, it relates to a different defense that was never pursued, is the way I would characterize it.

So, in short, Your Honor, we don't believe that they've come forth with any evidence to change the Court's conclusion that the notes were never disclosed or recorded in any way.

The next piece that they try to attack is this notion that Highland had a practice of forgiving loans. Again, I'm not even sure that this is a material fact, but I still don't believe that there's a genuine dispute. They have put forth the declaration of Mr. Hurley. That can be found as Defendant's Exhibit No. 6. Mr. Hurley was identified in the Rule 26 disclosures as some -- a former employee who might have knowledge about Highland's forgiving loans.

If you just look at the declaration, Your Honor, you'll see Mr. Hurley was never a Highland employee. He worked for somebody else. And that the loan was forgiven not by Highland but by HCMFA.

So I have no objection to the declaration coming into evidence, but the Court should afford it no weight because it has nothing to do with whether or not Highland ever forgave a

1 loan to anybody, let alone a former employee, because Mr.
2 Hurley was neither a former employee nor did he have a loan
3 forgiven by Highland.
4 So, you know, the record otherwise stands as it was.
5 And, finally, you know, we pointed out in the summary
6 judgment papers, and I think the Court found as a matter of
7 fact in the Report and Recommendation, that HCMFA had carried
8 the notes as liabilities on its balance sheet. And the other
9 document that they produced a few minutes before filing their
10 motion for summary judgment was Exhibit 4-E, and I think we
11 ought to just take a look at it so the Court can see, you
12 know, what they're doing here.
13 4-E purports to be a balance sheet for HCMFA that was
14 prepared in April of 2022. And if you look down in the
15 footnote, it says that, as of 3/17, the notes were discharged
16 due to a portfolio company sale. However, due to active
17 litigation with HCMLP, the notes are still reflected on the
18 balance sheet.
19 I don't know what it means to discharge it, but this is
20 just self-serving postpetition machinations that we believe
21 the Court should afford zero weight and the Court should
22 maintain its conclusion that, prior to the commencement of
23 litigation, HCMFA carried these notes as liabilities on its
24 own audited balance sheet and financial statements, and that
25 should be the end of it.

I've really got nothing further, Your Honor, unless the Court has any questions. I just don't think that there is anything new here. And to the extent there is new evidence, it just, it just helps us further. It just helps us further.

THE COURT: All right. No questions at this time. Ms. Deitsch-Perez?

MS. DEITSCH-PEREZ: Okay. Mr. Aigen is going to pull up a PowerPoint.

THE COURT: And by the way, I'm going to request that each of you send by email attachment to my courtroom deputy your PowerPoints after the hearing.

MS. DEITSCH-PEREZ: Yes, Your Honor. It'll take us --

MR. MORRIS: Will do, Your Honor.

MS. DEITSCH-PEREZ: -- a couple minutes to get rid of our notes that are embedded --

THE COURT: Okay. That's fine.

MS. DEITSCH-PEREZ: -- in the notes and comment section.

THE COURT: That's fine.

MS. DEITSCH-PEREZ: But then we'll -- we will do that.

Okay. So, Michael, you can flip through the -- there we go.

So, I'm going to first give you a summary, and then we'll

go through some of the -- we'll go quickly through the evidence that is the same as in the prior case, and then we'll spend a little more time with the new evidence, and then we'll spend a lot of time with the cases that have been cited, because it's really important.

And the thing to keep in mind throughout this entire argument is that, in a summary judgment, the Court is not entitled to weigh credibility and to decide who's right or who makes more sense or who's more credible. There's no balancing involved. If there's a genuine issue of fact raised, even if the Court doesn't believe the witness, thinks the witness is full of it, that's not for a court to decide, it's for the ultimate fact finder, the jury, to decide.

And that you will see there are many, many, many cases where summary judgments are granted where the court is saying, oh, that's a conclusory, self-serving declaration, which is like what Your Honor said about the declarations here. But the Fifth Circuit very -- as recently as 2019, and we'll look at this, has said, you know, that's not fair, because every declaration that a party puts in evidence to support its position is, by its nature, self-serving. That's the point. They're putting it in to support their position. And so that is not enough to condemn evidence and have it not considered.

And then we'll also look at what's conclusory -- at what

conclusory means and what it doesn't mean.

But just to summarize what we're going to look at, there is deposition and declaration testimony that supports the agreements. Mr. Morris makes a big deal about -- in the papers about Mr. Dondero not having immediately declared the notes forgiven when a little bit of MGM stock was forgiven. He didn't because, one, that transaction was not something that he was a part of, and it was a tiny bit of the stock. It was not the same event that happened in March of this year. And when the sale of MGM, the big sale of MGM happened, HCMFA did reflect that in its books.

So it's not something *post hac* for the litigation. It's because the triggering event happened in March of 2022. That's why it turns up in the change in the balance sheet from March to April.

We'll spend only a little time talking about Nancy Dondero's competence. The Debtor's argument that she was not competent is just plain silly. In order to not be competent, someone has to not be -- you have to be a minor or a drunk or someone who is mentally deficient. She is none of those things. And the fact that she is not as sophisticated as perhaps the most sophisticated person, or even as an average, she's not investment banker, but she also doesn't have to be one in order to make the agreement.

The arguments, Mr. Morris jumps up and down about -- about

the Defendant having raised some new things in this case. Well, the Debtor has raised completely new arguments about the limited partnership agreement, contending that certain provisions in it preclude the agreements. And we'll show you that that's not true. And also the limited partnership agreement hasn't changed over the last year. And so if anything is to be considered an eleventh-hour argument, it is that.

Mr. Morris makes a big deal about the supposed -- about the difference between the interrogatory answers and the requests for admissions, saying they admit that all of the details of the agreements were not given to the Court. Well, that was true, but it's also true that the idea here, which is that these notes were potentially compensation for Mr. Dondero, that was not a secret. And the reason that we point out the proof of claim, you know, addendum in the back and the letter from Judge Lynn is because it is inconsistent with the Debtor's contention that this was all a secret.

So, yes, it's true, the two -- the discovery responses and those pieces of evidence can easily coexist. The nitty-gritty details were not disclosed, but the notion that these notes might never be repaid because they were potentially compensation to Mr. Dondero, that was disclosed. And so if anybody had a question about that, they just had to raise their hand and say, uh, Mr. Dondero or Judge Lynn, what do you

mean by that? And they didn't.

The Debtor makes a new argument that the agreements were required to be in writing. That's just not true. There's -- they support -- they cite nothing in support.

They argue that the agreements were not supported by consideration. Given how little is required to be consideration, if anything, the Defendant should be able to get summary judgment on that point. But at least there is an issue of fact, given the substantial consideration that is mentioned in the testimony.

The Debtor says the agreements must not exist because Nancy didn't negotiate very hard. Well, agreements don't have to be hotly negotiated to be valid.

Despite what Mr. Morris just presented, you will see that the Plaintiff has a history of forgiving loans as executive compensation. Even Mr. Seery admitted that, and we'll show you his testimony.

You know, the Debtor went from, oh, they've never done it, to, well, they haven't done it in a decade. And most recently, when we -- in response to the Debtor saying, well, they haven't done it in a decade, we asked Mr. Hurley to do a declaration because the forgiveness of his loan was in 2013. So now the Debtor is, well, they haven't done it in something close to a decade, for whatever that's worth.

It should be no surprise that Mr. Dondero would try and

structure his compensation in a way that was tax-efficient. And you've seen the testimony of the tax expert who explained how you would structure a loan and its potential for forgiveness to be an appropriate tax structure. And you've seen Mr. Johnson's testimony that said that Mr. Dondero did not have market compensation.

And then, finally, Mr. Morris puts a lot of weight on the fact that these loans, particularly these HCMFA 2014 and 2016 loans, were substantially paid off. Well, there's an explanation for that. If that were true with no explanation, maybe he would have a point. But Mr. Dondero testified that even though he might not have to pay or his companies might not have to pay these loans off if the condition in fact was met, as long as it was uncertain, there was some utility in paying them down.

And in addition, he cared about Highland, and so he was -- if Highland needed money, he would pay down these loans so that Highland wouldn't have to go borrow money elsewhere. This was an efficient way of putting cash in for Highland.

And so because these payments are explained, they are in no way evidence that the agreements did not exist.

So let's move on, Mike.

Okay. I'm not going to beat this dead horse, but we have -- there's deposition and declaration testimony that the same agreement that was at issue in the first set of cases were

used for the 2014 note and the 2016 note.

And in both cases, it's the Dugaboy trustee that's making the agreement for Highland, and that has not changed throughout.

Okay. So, as I said when we started, the nonmovant in a summary judgment motion always gets the benefit of the doubt. And so we cite many, many cases citing the standards, but it's not just as many of the Debtor -- the Debtor cites many cases that have nice language, but they don't help the Debtor because the Court may do something different than what the Debtor is hoping to achieve here.

Every single one of the cases on Slide 7, every single one of these are cases reversing improper grounds of summary judgment. And I ask the Court to go look at them. But we'll take a closer look at a couple on Slide 8.

Okay. The first that I want to point to is *Al-Saud*, because this is actually a loan case, and so it is the closest of any of the cases cited by either party. Although I will also discuss the *In re Heritage* case that the Court cited in its Report and Recommendation, which also has something to do with a loan and which is helpful to the Defendants here.

But in *Al-Saud*, plaintiff moved for summary judgment on a loan, and the defendant provided testimony that the parties had agreed to a schedule for repayment that was different than what was contained in the loan documents. Very similar to

1 this case. And the plaintiff denied having reached an
2 alternative repayment agreement with the defendant. And the
3 court held that whether or not the parties actually agreed to
4 the alternative payment arrangement, that the declaration and
5 the testimony to that effect created an issue of fact that had
6 to be decided by a jury. This is no different.
7 And then you have *Reeves*. That's the U.S. Supreme Court
8 case. It's a discrimination case, so it's not a loan case.
9 But, again, the Supreme Court overturned a lower court
10 granting summary judgment, holding that the lower court had
11 impermissibly substituted its own judgment concerning the
12 weight and credibility of the evidence.
13 And with all due respect, that is what is happening here,
14 with declarations and deposition testimony being disregarded
15 in favor of events that have multiple explanations.
16 So, for example, if the Court says, I'm not going to
17 believe Mr. Dondero and Ms. Dondero because in all of the
18 financial statements there was no mention of the potential
19 forgiveness of the loan, well, if that was utterly
20 unexplained, Your Honor, I still think that it would not be
21 proper to weigh those. But in fact, it is explained. Mr.
22 Dondero explained that he did not consider the subsequent
23 agreement material, one, in light of the size of Highland and
24 its operations, and also in light of the fact that it was a
25 contingency that might never happen.

And there was some -- Mr. Morris asked PWC about this, and at first got him to say something like, gee, I would have liked to have known that. But when Mr. Aigen cross-examined the PWC witness, he said, no, no, no, no, I would want to know if the forgiveness event happened, not that it was a possibility.

So whether Mr. Dondero was right or wrong about whether or not the information should have been in the financials is irrelevant if in fact that's what he thought and it's an explanation for them not being there.

The same thing with the much-touted evidence of paydowns of the loan. If it were utterly unexplained, then, I don't know, maybe it would have more weight. But, here, there is an explanation for it, and a good explanation, and so it's not a basis to ignore other testimony.

Finally, the last case that we have here, the *Legacy RG* case, and this was a he-said/he-said dispute over whether particular compensation was agreed upon. And that's also somewhat like this case. And the Fifth Circuit said the court was not free to credit plaintiff's affidavits and reject defendant's, potentially making a credibility determination.

Let's move to the next slide, Mike. Next one. I'm going to go quickly here. There is -- there are declarations in support of the agreement.

Next slide. And there's deposition testimony from Mr.

Dondero.

Next slide. And there is Nancy Dondero declaration.

Next slide. And there is also Nancy Dondero testimony.

So now we go to the Debtor's arguments. So, one I mentioned in the summary, which was the fact that Mr. Dondero didn't immediately declare the notes forgiven when the little bit of MGM was sold is irrelevant, especially since the Debtor -- it was so small and so negligible an event the Debtor in its interrogatory answer denied that any MGM has been sold. So that can't be evidence of anything.

Fifteenth. Okay. And then Mr. Morris showed you HCMFA's March to April balance sheet. Well, of course it's after the fact that -- that the balance sheet has changed. That's because the event didn't happen until March of -- March 17th of 2022. So of course that's when the balance sheet would show that the forgiveness event had occurred.

Go to 16. This is the capacity argument. I argued that before, and I think it's plain.

Let's go to 17. This is more on the capacity. I ask Your Honor to look at this and then look at the cases on capacity. Nancy does not need to be an expert in order to have the authority to act within the confines of an agreement that gave her power to do certain things. And we'll get to that in a minute.

Next. Next page, Mike. Okay. Here's what is

1 indisputable. The LPA gives Dugaboy the right to approve
2 compensation for the general partner and affiliates of the
3 general partner. It's in the document. If you read the
4 words, you can see the general partner and the affiliates, and
5 any affiliates would include Strand and Mr. Dondero, and they
6 -- their compensation, they shall receive no compensation
7 unless approved by a majority interest. Majority interest is
8 defined as the owners of more than 50 percent of the Class A
9 limited partners. Class A limited partners are shown on an
10 exhibit to the LPA. There's no question that it's the Dugaboy
11 Investment Trust. So when Mr. Morris says the LPA doesn't
12 authorize the agreement, that's flatly contrary to the
13 agreement itself.
14 And I recognize that, Your Honor, in a footnote in the
15 Report and Recommendation said that -- something like
16 Defendant's argument is bizarre, that Nancy, through Dugaboy,
17 could approve the compensation. But that's how the agreement
18 was structured.
19 Maybe Your Honor thinks they shouldn't have structured it
20 that way, that someone should have poked up their head at the
21 beginning and say, boy, is this a sensible way to do this?
22 Yeah or nay on that, it doesn't matter. That is the agreement
23 that the parties struck. And the Debtor isn't seeking to have
24 this -- to have this stricken or disregarded as
25 unconscionable, but the Debtor is just saying, oh, well, it

doesn't authorize the agreement, and that -- the agreements, and that's just not true. Nancy was the Dugaboy trustee in 2016, and Mr. Dondero was the Dugaboy trustee in -- in -- for the 2014 agreement.

Let's go on to the next one. Okay. So this is the argument that the Debtor is making, as best I could tell. The Debtor says Article 6.2, 3 -- 310(a), which was the compensation paragraph, and 4.1(e)(2), when strung together, somehow means that the agreements have to be in writing, that Dugaboy does not have the authority to execute an agreement, and must be fair by an objective standard.

So, let's actually look at those sections to see if they say any such thing.

Okay. 6.2 is about notices having to be in writing. There's no requirement in 6.2 -- let's go back -- there's no requirement in 6.2 that an agreement to potentially increase compensation has to be in writing. It's only about notices in writing and certified mail. So there is nothing here that supports the Debtor.

Let's go to the next one. Okay. And I had to quote what Plaintiff says about this, because otherwise it's hard to even rebut it. The Plaintiff argues, Pursuant to the LP agreement, the limited partners only have the authority to approve agreements for compensation, not to execute them. And the Debtor cites Article 310(a). And we've put 310(a) here down

on the slide, and the word execute does not -- or any synonym for execute is not present in this paragraph. So I don't know whether that was maybe a typo in the -- in the Plaintiff's brief, but there is absolutely nothing here to support its contention.

Let's go to the next one. Okay. And then the Debtor also relies on Article 4.1(e)(2), saying the GP or its affiliates may enter into an agreement with the partnership to render services, and any service rendered shall be on terms that are fair and reasonable to the partnership.

Well, okay. Whether agreements are fair and reasonable is undoubtedly a question for a jury, but that's not what the complaint in this case says. There's nothing about whether the agreements were fair or unfair. It's Debtor's contention that they just don't exist. So, Article 4 doesn't help Debtor, either.

Let's go on. And I would ask Your Honor to consider how silly those arguments are in deciding whether or not the Debtor's complaints are well founded.

Now moving on to the argument that the agreements must not exist because they were kept secret. First of all, the Debtor has no authority for the fact that, if an agreement is secret, it must not exist. I think I gave an example before. If I agree to sell Mr. Aigen my car and we don't tell anybody about it, that's not evidence as against a creditor later that that

agreement didn't exist. It either exists or it doesn't. The fact that it was a secret is neither here nor there.

And the point of showing Your Honor the proof of claim and the letter is to say the notion that these notes were potentially compensation was not something that was a secret, and that is some evidence -- I'm not saying to you that is the strongest evidence that the Defendant has -- but that is some evidence that what Mr. Dondero and Ms. Dondero said happened happened. And Mr. Dondero also indicated to Mr. Waterhouse, in a context having nothing to do with litigation, that the notes were forgivable.

So let's go to the next page. Okay. And here we have the testimony that Mr. Morris said you should go look at. And let me read this. Did there come a time when you were proposing some potential numbers? And this was in connection with the pot plan. And Mr. Dondero said something to you like, well, why are you including payment for the related-party notes? Those, you know, were likely to be forgiven as part of my deferred executive compensation. And Mr. Waterhouse said, yes, we did have that conversation. And he agreed that it was part of the discussion about the pot plan. And then, because he had -- Mr. Morris had previously gotten him to say it was in 2021, because he didn't -- Mr. Waterhouse wasn't sitting there with a calendar, Mr. Waterhouse said, yes, remembering -- recalling that context reminded him that those discussions

were in 2020, so before there was litigation on the horizon that someone might have been, you know, according to the defense, according to the Debtor, making something up. So this happened pre-litigation.

Next slide. Okay. We've talked about the proofs of claim. Enough said. It's not meant to say, as the discovery responses said, that this was -- this gave chapter and verse. It's meant to show that the issue that the notes were potentially going to be forgiven as compensation, the threat of that was out there in the world.

26. Okay. And, again, the letter. This wasn't a secret. If it was a secret, there wouldn't have been a letter saying something about the loans potentially being compensation.

27. The Debtor says the agreements were required to be in writing. I'm sure Your Honor will have noticed they don't cite anything in support of that, and that's because in Texas, except for certain kinds of contracts, the elements of written and oral contracts are the same, and oral contracts, you know, are rather famously enforceable in Texas.

28. Consideration. There are many, many, many cases saying consideration is a question of fact for the jury. And if you'll remember the old adage, a peppercorn is good consideration, even if -- even if the promisee doesn't like pepper and even if he's going to throw away the corn. It doesn't take very much for there to be consideration.

And here, Jim Dondero forewent seeking additional cash compensation at the comp period of each year and made the agreements instead. And so there is testimony to that, and I -- you'll have this deck and it will remind you where to look for the testimony on that.

In addition, the Debtor positively makes fun of the other part of the consideration, which is the increased focus by Mr. Dondero because he had some -- some consideration on the come, some contingent consideration. But if you are going to make light of that and disregard it, you are disregarding the practice of an entire industry. Are they all wrong?

And not only one industry. Famously, the securities, the Wall Street, people are compensated on the basis of success. And that is true in many, many industries. And so does that mean they're all wrong, that those -- that all those people who are getting bonuses at the end of the year shouldn't be getting them because they should be working hard anyway? Of course not. People believe, Mr. Dondero believed, that incentive compensation works. And I -- and there's no evidence in this case, no expert evidence that that is not true. And so that is a factor that should be considered in denying summary judgment.

The Debtor continues to insist there's no history of forgiven loans. There is deposition and declaration testimony that various executives had loans forgiven. The Debtor said,

oh, well, those are smaller. It doesn't matter. There's a practice that this forgiveness of loans is part of incentive compensation. And even Mr. Seery acknowledges that, which we'll get to in a slide or two.

Now, then Mr. Hurley. Mr. Hurley's forgiveness is particularly apt because initially he worked for a separate company, and that was brought into the Highland family of companies, and eventually the debt of his that was brought into Highland, and then instead he ended up working for NexPoint, the debt of his company was forgiven basically, as Mr. Hurley says, to compensate him. And that was in 2013.

So that rebuts the Debtor on a number of bases. One, this is much more recent. Two, it was forgiving the debt of a company, not a debt of a person. And three, it was for the benefit of the then-employee. And it -- the fact that it was HCMFA and not Highland is really of no moment, given how the Debtor says, well, you have to -- you look at all of these as a group. So, looking at all of these as a group and considering the practices and whether that would be something in Mr. Dondero's mind, you have to consider what happened with Mr. Hurley.

And then 35. There's the testimony of Mr. Johnson. So let's look at what he actually said. And they told you about the -- he's talking about he interviewed a number of employees. And Mr. Morris asked him, They told you about the

four loans that were forgiven in whole or in part? And he said, I would answer that yes, they said it, and Mr. Dondero mentioned it as well. And they told you there was a use of forgivable loans as a non-business practice at Highland, right? And he said yes.

I'm not sure what Mr. Morris meant by non-business practice, but it was a practice at Highland.

And he said -- and then another part was he -- have you ever advised a company to forgive a forfeit loan as part of an executive's personal compensation package? He said, yes, I have. And did you tell them it would be appropriate to do that? Yes, I have. Is that a case other than Highland? It would be other clients, yes.

So Mr. Johnson generally talked about forgiveness of loans being part of executive compensation. Did he see circumstances exactly like the ones here? Perhaps not, but similar enough so that it is a practice in the industry.

Let's go on to 36. And so this was I think Mr. Aigen taking a deposition of Mr. Seery, and Mr. Seery was required to admit that he did see in the records that there had been executive loans forgiven in whole or in part. He says, It looks like they had, but it was more than 10 or 12 years ago, and they had not been to a founder or more than five hundred. But that's just those particular loans.

So, despite the Debtor saying over and over it didn't

happen, when push came to shove they had to admit it.

37. Okay. And I have covered this, but Mr. Dondero testified that he prepaid many of the loans because Highland needed the money. And so Mr. Morris's point is not much of a point at all. He says, well, look, there were some loans that were -- that were paid in full. How could there be -- how can Mr. Dondero keep track?

Well, it was very easy to keep track and he didn't need a list because what happened was, if there were loans that, by the time of the compensation period were still outstanding, they became part of this -- of these, the ones in the prior case or the ones here, agreements that they would be potentially forgivable on the occurrence of a -- the conditions subsequent.

So he didn't need a list. He could at any time call his CFO and say, okay, what loans are outstanding as of the, you know, the end of the year or the start, the start of the next year, and those would be the loans. It wasn't something random. It was he would pay down loans if they needed -- if Highland needed money. And if it -- and if Highland didn't, then he didn't have to. If a -- if one of these agreements was made in the comp period at the end of that year, it would become a potentially forgiven loan. It wasn't hard to keep track of at all.

And so Mr. Morris's point that there wasn't a list really

has no weight.

Next. Okay. And here again, in Texas, even if only one side to an agreement testifies to it, that's enough to create an issue for summary judgment.

Let's go to the next page. Okay. And here we have -- I talked about these in the last hearing so I'm not going to do it again, but in each of these cases, even if one side says, yes, we agreed on *x*, and the other side says, we didn't agree on *x*, that's enough to defeat summary judgment.

Next. Next slide, Mike. Okay. So let's talk a little bit about all of the --

THE COURT: Let me just ask you a question about that. Is it your position that, as long as a party submits an affidavit saying, you're wrong, there's no way a court can ever grant summary judgment?

MS. DEITSCH-PEREZ: No. I'm not saying that. And, actually, this slide was designed to answer exactly that question. Okay. Because the cases -- and we'll get -- we'll look at them specifically. The cases where there is an issue about that is where the affidavit is purely conclusory. So if Mr. Dondero put in a declaration that said, the Debtor is wrong, you're absolutely right, Your Honor, that would not be enough.

So, and here's a -- here's a good definition. A statement is conclusory if it does not provide the underlying facts to

support the conclusion. And that's a Texas case. And we are talking about Texas law here.

So let's look at some examples. The first two we just made up, you know, to give examples. And the third one is really out of the case. But, so, on the one hand, if somebody says the condition for the agreement was sufficient, that's all that was in their declaration and the issue was consideration, consideration, that would probably be considered conclusory. That might not be enough.

On the other hand, if the declaration says the consideration for the agreement was $100 and a can of Dr. Pepper, that would be enough. No question.

On the conclusory side, if the -- if the declarations had said, we agreed I would work for him, that might not be enough. But if it said, I said that I wanted to be hired as his general counsel for $400,000 a year for five years, and he said, I agree to your terms, that would be enough.

If you had a declaration that simply said, he breached the agreement, that would probably be conclusory. On the other hand, if it said, he did not make the payments on the notes, that would be not conclusory.

And how do I know that one? That's because there is a case where a no-summary-judgment summary judgment was reversed and the Court held that a statement that a party did not make the payments on a note is not conclusory but is instead

1 competent summary judgment evidence that there's an
2 outstanding balance.
3 So what -- what -- the dividing line between conclusory
4 and not conclusory is are there facts to support the position?
5 And we'll -- in a minute, we'll get to the other sort of
6 often-misused phrase, which is self-serving, and we'll get to
7 some court cases on that.
8 Next slide. Okay. So, here is -- here is one of the
9 cases cited in the Plaintiff's reply. And this is a *pro se*
10 plaintiff. Brought a suit against the defendant. And this
11 suit breached the plaintiff's own termination settlement
12 agreement, because in that settlement agreement she released
13 the plaintiff for all causes of action related to her
14 employment and promised not to sue the plaintiff. She was
15 represented by counsel and received $32,000. And defendant
16 won summary judgment because the plaintiff provided only a
17 conclusory unsworn statement, so not like the declarations and
18 deposition testimony here. It was all unsworn and didn't say,
19 you know, it had no appropriate (indecipherable), no
20 appropriate under penalty of perjury, saying she did not sign
21 the release and argued that her signature was forged, and
22 apparently not explaining away her acceptance of the
23 settlement proceeds. And the Fifth Circuit granted -- granted
24 summary judgment and characterized the plaintiff's statement
25 as conclusory and self-serving and insufficient.

But here, HCMFA has put in non-conclusory sworn declarations from two, actually three witnesses, which are supported by other evidence in the record, and so this is an inapposite case.

But let's -- it's important for another reason, because *Tyler*, if you look at the *Tyler* case, on the top left-hand corner of the first page it has a warning for negative treatment. That's because it was criticized by the Fifth Circuit in *Bargher v. White* in 2019. And *Bargher* reversed the District Court that had relied upon *Tyler* to grant summary judgment and particularly criticized the very language that the Debtor quotes about a self-serving, conclusory declaration.

The court says, Simply being self-serving does not permit a party's assertions from creating a dispute of fact, noting that evidence proffered by one side or the other is basically always self-serving.

And the court gave a great example. It said, A plaintiff in a car wreck case who asserts that she had a green light and the defendant ran a red light is also making a highly self-serving -- highly self-serving statements, but no one would say that a District Court can ignore them.

But that's what this Court would be doing if it grants summary judgment by disregarding the Donderos' allegedly, you know, self-serving testimony, meaning that the Debtor says,

well, this is self-serving. Of course it's self-serving. It's proffered in support of a particular side. And so 2019 --

THE COURT: Okay. This is your five-minute warning, okay? Go ahead.

MS. DEITSCH-PEREZ: Okay. We're close.

Next slide. Okay. Another case that the Plaintiff relies on -- and I'll just get to the point. The problem with this case -- with this case was not simply a vague, self-serving, conclusory affidavits, affidavit, which is not what we have anywhere, but with the fact that the plaintiff in that very case made a sworn statement that he hadn't made false representations, but he had been convicted for those very statements, and so he was collaterally estopped from contending otherwise. So this case is not authority for summary judgment here.

Next. *BMG* is -- is also another similar case where there was an admission that property was transferred for no consideration, and the defendants' defense was an interrogatory answer. They transferred property to appease his father. Long story. But there was no statement from the father. This would be as if Jim had put in a declaration and Nancy was conspicuously silent. That's not what happened here. So, again, this is not an apt case. It actually shows the opposite.

Next. Next slide. *United States v. Lawrence* is a case in which the one party said that somebody else had paid his loans for him and he didn't put any evidence in about the loans and there was absolutely no other evidence in the case. And here, the difference is, as we've shown you, HCMFA has many pieces of evidence. Its balance sheet. The proof of claim. The letter. The deposition testimony of three witnesses. Declarations. The existence of other forgiven loans. The tax expert who says how to structure compensation using loan forgiveness. The inadequacy of Mr. Dondero's compensation without the potentially-forgiven loans. The course of dealing in the plan. And the disclosure of the potential forgiveness to Mr. Waterhouse. So, again, nothing like the *Lawrence* case.

Next slide. I'm going to ask Your Honor to read these because I want to get to the last case, so go on to the next one.

I mean, again, this is a *pro se* case that the Plaintiff relies on where the sole defense was a single sentence saying, Defendant must use exercise force as Defendant Warner was not properly trained, all in the scope of his employment. That was the sole defense, and summary judgment was granted. That's nothing like this case.

Next slide. *DIRECTV*. This is another case where there is a declaration, and the problem wasn't that it was supposedly conclusory and self-serving, is that it didn't go to the issue

in the case, which was constructive knowledge. All the affidavit did was rebut specific intent to commit piracy. So it was no evidence, is all, so not applicable.

Hinsley was very much like the *DIRECTV* in that the affidavit that was put in didn't go to the issue in the case, and so it was no evidence at all. Also inapt.

You know, like a -- like a lawsuit, which, really, the Debtor should know better, citing words in a case that cite a standard, when the case doesn't do what you're aiming to have the Court do, really doesn't help you.

Let's go on to the next. I ask you to read *Salama* because it really -- it suggests -- it's in favor of the Defendant on the issue of consideration. Even if it's not the consideration that it should have been, any little consideration is enough.

Go on to the next one. I'd ask Your Honor to read this. But go on to the next one, Mike.

Okay. This is one of the Report and Rec -- the -- I have a couple of cases from the Report and Recommendation, and I think this is really important.

THE COURT: Okay. Time. So let's wrap it up in a few seconds.

MS. DEITSCH-PEREZ: Okay. Then let me go -- I will ask you to please look at *Scott*, *Scott v. Woolney*, because the issue here is that while there was a declaration, it wasn't on

the issue that was important, which is that the defendants would pay.

And let's go to the last one, Mike. Okay. *In re Heritage*, which is one of the cases that Your Honor cites in the Report and Recommendation at some length because it is a promissory note case. So I thought it was important to look at that.

And that was a promissory note case where the defendant argued that a promissory note was subsequently modified by an oral agreement. Again, pretty interesting to us. And the Court did reject that argument, but in a way that validates HCMFA's position here. And this is what the Court, Judge Houser said: Moreover, while the summary judgment evidence does raise a genuine issue of material fact about what might have happened if the appraisal process resulted in a higher determination of value than the value implicitly agreed upon by the parties when the fee was liquidated in the note, there is no evidence that supports a finding that the parties agreed after the note's execution to reduce the amount due under the note, the triggering event that occurred, which is the substance of the oral agreement defendant now seeks to enforce.

So, look at that. The Court said, yes, there is an argument that an oral agreement changed the terms of the note, and there was testimony that they did agree, they -- that if

1 the appraisal process --
2 THE COURT: All right. You need to wrap it up. I've
3 let you go over.
4 MS. DEITSCH-PEREZ: Okay. I'm just about done. The
5 Court said, the testimony that -- that there was an agreement
6 that if the appraisal process resulted in a higher
7 determination of value, that would prevent a finding of
8 summary judgment because that would create an issue of fact.
9 The problem in the case is they were trying to argue that a
10 lower valuation entitled them to lower the note, and the Court
11 said, well, there's no evidence of that because that's not
12 what you raised in your declaration.
13 If they had done what was done here and put in evidence in
14 support of the agreement, that would create an issue of fact.
15 THE COURT: All right.
16 MS. DEITSCH-PEREZ: Thank you, Your Honor.
17 THE COURT: Thank you.
18 MS. DEITSCH-PEREZ: So, *Heritage* helps. Helps the
19 Defendant.
20 THE COURT: Okay. Before I allow the rebuttal, let
21 me just make sure I understand the summary judgment evidence
22 from HCMFA that creates a genuine dispute here. You've got
23 the declarations of James Dondero, of Nancy Dondero.
24 Deposition testimony of each of them. The withdrawn Proof of
25 Claim No. 188 of James Dondero, with the language about the

notes were issued by him for funds advanced in lieu of compensation. And then the Michael or Micheal Hurley declaration.

MS. DEITSCH-PEREZ: Okay. There's also the evidence of the expert that Mr. Dondero's compensation was below market. The evidence that giving loans that could be potentially forgiven is a thing, as Mr. Morris would say, is a thing that happens.

THE COURT: Okay. Just the pieces of evidence, not, you know, describing them, but --

MS. DEITSCH-PEREZ: Those are pieces of evidence.

THE COURT: The expert --

MS. DEITSCH-PEREZ: That's -- that's evidence.

THE COURT: -- declaration. Or deposition. Anything else?

MS. DEITSCH-PEREZ: Yes. The other expert, which said that this is what you have to do to create tax-efficient compensation, this is how you would do it. The fact that that's a thing that you can do that. The fact that --

THE COURT: Who's the other expert?

MS. DEITSCH-PEREZ: Bruce -- I'm sorry, Michael. Help me out. I've forgotten his name.

THE COURT: Okay. I'll find it. I remember Alan Johnson, but I don't remember who the other one is.

MS. DEITSCH-PEREZ: Yes.

MR. AIGEN: Sorry. I was on mute. McGovern. That's --

MS. DEITSCH-PEREZ: Bruce McGovern. Bruce McGovern.

THE COURT: Okay. Any other summary judgment you think creates a genuine dispute?

MS. DEITSCH-PEREZ: Well, there -- and there's also the summary judgment evidence that undermines the Debtor's contentions. The LPA itself. The --

THE COURT: Okay.

MS. DEITSCH-PEREZ: The fact that Mr. Dondero sought to make sure Highland always had sufficient funds. And Your Honor, there's -- there's much summary judgment --

THE COURT: Okay. I just wanted a succinct list of here is the summary judgment evidence.

MS. DEITSCH-PEREZ: Yeah, those are the main things, but I would urge you to look at our brief and our appendix --

THE COURT: Okay.

MS. DEITSCH-PEREZ: -- for the full complement.

THE COURT: Yes. I've looked at that. I just -- all right. Mr. Morris, your rebuttal?

MR. MORRIS: Thank you, Your Honor. I just want to begin by saying that I really regret the way that presentation was personalized. I don't appreciate the personal attacks, and I hope that in the future Counsel can find a way to make an argument without coming after me.

Having said that, I think she completely misunderstands and mischaracterized our position in numerous respects. We're not saying that the failure to disclose or memorialize the agreement in writing or to disclose it to other people in and of itself renders the agreement nonexistent. Your Honor is probably familiar with the phrase badges of fraud. I won't go that far. I'm going to use indicia of fabrication. And the indicia of fabrication is overwhelming. And it begins, frankly, with the proof of claim that they rely upon that says nothing about an agreement. It begins -- it continues with whatever conversation that Mr. Dondero claims he had with Mr. Waterhouse postpetition, any settlement discussions where he's saying, I don't want to pay on the notes. Never uses the word agreement. Never uses the word Nancy Dondero. Never uses the word Dugaboy. Never uses the words conditions subsequent. It's -- all he's saying is, I don't want to pay, I thought it was compensation. No disclosure of this agreement.

Same thing with Mr. Lynn's letter. Done after the fact. This is the stuff that they're relying on? Their balance sheet created three months ago? That's not self-serving? Mr. Lynn's letter is not self-serving? Mr. Dondero's proof of claim is not self-serving?

The indicia of fabrication begins with how they crafted this defense. It was all laid out in our papers in the original summary judgment motion. It's all part of the record

here. Your Honor will recall that in his original answer Mr. Dondero said that the loans were forgiven. And then when we asked him if he paid taxes, he had to admit that he didn't. So he said it's a condition subsequent. When we asked him who entered into the agreement, he said he did. And when we came and mocked that story in open court, then they brought in Nancy Dondero. And then all of the other corporate defendants, who had never asserted this defense at all, jumped on board. That is indicia of fabrication.

Putting the notes in your balance sheet and representing to your auditors that they're valid and enforceable, and now claiming that they're not. That's indicia of fabrication.

Everything that's there, Your Honor, on Slide 3 is indicia of fabrication.

I'm told that Mr. Seery and I deny that a loan was ever forgiven. We have never said that. Your Honor can read our papers. What we are is very clear, and that is relying on Mr. Dondero's own testimony when he says any loan that was ever forgiven was in the audited financial statements. We've put the audited financial statements in the record. And Mr. Johnson, upon reviewing them, concluded that no loan had ever been forgiven for almost a decade prior to the petition date by Highland. That no loan had ever been forgiven for more than $500,000. Right?

And I would also point the Court, I think it's Exhibit 24,

which is Mr. Dondero's written responses to requests for admit early in the case, where he says at Appendix Page 524, I think it's Page 11 of the written responses, where he specifically admits that no loan to him has ever been forgiven and no loan made to any entity owned or controlled by him has ever been forgiven.

They point -- I mean, you know, other than Mr. Dondero's and Ms. Dondero's declarations and testimony, there literally is not a scintilla of evidence to support them. Not a scintilla of evidence. There's no disclosure. There is nothing that's consistent with it. How do you not tell your CEO, your CFO, about these agreements in real time? How is that possible? How do you not tell your auditors in real time?

This is indicia of fabrication. And I think that that is -- that it's just overwhelming. Again, how the whole defense was created and crafted, and it took months, and amendments and amendments and motions to get to this point, is the best evidence there is of fabrication.

(Pause.)

MR. MORRIS: Just looking at my notes here, Your Honor. Just one moment.

You know, you can't just say stuff, say we now have a dispute of fact. And I want to give a couple of examples. You can't just say, I didn't disclose it because I didn't

think it was material, and say, see, we've got a genuine issue of fact, because that's what HCMFA is saying. Yes, Mr. Dondero responded to every argument we made. That doesn't make it a genuine dispute of fact at all. He says it wasn't material, and on that basis the Court should say we've got a dispute here that's worthy of going to the jury?

PricewaterhouseCoopers defined materiality for purposes of the audit. Mr. Dondero is an accountant. $70 million is about $68-1/2 million above the materiality threshold for PricewaterhouseCoopers.

And I would point out, Your Honor, that $70 million of notes is a very substantial portion of the Debtor's asset base. It's not one percent. It's not two percent. It's a substantial portion of the Debtor's asset -- how does Mr. Dondero's flippant remark that he didn't disclose this to anybody at any time because he didn't think it was material, how does that create a new dispute of fact? It cannot. It cannot. It cannot go to the jury on the basis of those types of self-serving statements.

Yes, he has an answer for everything because he always does. The job for the Court is to decide whether there is a genuine dispute of fact. And I'm sorry to say part of the job of the Court, based on the case law that we've cited, is to see whether or not a reasonable jury can reach the finding that's being urged by the Defendant. And we don't think

there's any basis to do that, Your Honor. We don't think there's any basis at all.

The evidence -- they've done nothing to rebut our case. The evidence in support of our case on Page 2 is overwhelming. And the very, very limited evidence that they rely upon doesn't do anything to change -- to move the needle. The proof of claim doesn't.

And I do have to point out, Your Honor, that if the proof of claim is what they say it is, an assertion of a defense, they withdrew it with prejudice. Why do they even get to assert the defense now?

And that's part of the evidentiary record. There is exhibits towards the end of our appendix where there's a stipulation where Mr. Dondero withdrew the proof of claim with prejudice to refiling. Why is he even permitted to assert this defense now, if, as they contend -- if, as they contend, that proof of claim somehow disclosed a defense? If that defense -- if that proof of claim disclosed a defense, then Mr. Dondero has withdrawn it with prejudice. And he ought to be held to that.

This is a case to sue on promissory notes, Your Honor. Just because he and his sister respond to every argument that we make doesn't make it a genuine dispute of fact. And we believe, Your Honor, based on our pleadings, based on the evidence, based on the lack of evidence that corroborates

anything they say, we think summary judgment should be granted for the Plaintiff.

Thank you, Your Honor.

THE COURT: All right. Thank you.

All right. A couple of things. I hadn't really focused on this before coming out, but you all mentioned this. This adversary proceeding, it was *sua sponte* consolidated with the other five by Judge Starr?

MR. MORRIS: Yes.

MS. DEITSCH-PEREZ: Yes, Your Honor.

MR. MORRIS: And that's -- that's at Docket 44 of the adversary proceeding. There was a *sua sponte* order issued on April 20, 2022 that consolidated this with the -- with the main adversary -- with the main notes litigation.

THE COURT: Okay. I had just not focused on that. Okay. So that's important information.

So you're both going to send to me, or send to Traci, your PowerPoints.

And I'll let you know that the last time you all were here before me and I took something under advisement I think was the HCMFA administrative expense claim, and I committed we'll try to get you an answer and not make you wait too long. And I probably overpromised on that. I think I had five or six matters under advisement in the queue when I said that.

But we're finally almost caught up. And in fact, the only

thing I have in our under-advisement queue is that very matter, the HCMFA administrative expense, and now this.

So we're going to try to get on these as fast as we can, especially this one. Now that I know it's administratively consolidated with the others, I'd like Judge Starr to have these close together in time to make it more efficient for him.

So, --

MS. DEITSCH-PEREZ: In fact, Your Honor, we had thought that you were -- when it took a while to get the Report and Recommendation, our suspicion -- obviously wrong -- was that you were waiting to do it all at once. But --

THE COURT: Yes.

MS. DEITSCH-PEREZ: -- I guess that was not the case.

THE COURT: Well, we just had -- we've had a very busy year, and we just had a lot of things ahead in the queue that we were working on getting out. So, yes, I really want Judge Starr to have this one pretty soon so he can maybe look at them all at the same time. So, that is my commitment to you.

Anything else as far as housekeeping matters? I guess we haven't heard anything from the Fifth Circuit in the big appeal. I'm not always any ahead of the parties in getting word on that kind of thing, but I know you all had oral argument in March or something like that. So, still waiting

on that?

MR. MORRIS: That is correct, Your Honor.

THE COURT: Okay. All right. Well, if there's nothing further, we'll have this under advisement, and we're adjourned. Thank you.

(Proceedings concluded at 3:17 p.m.)

--oOo--

CERTIFICATE

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

/s/ Kathy Rehling **08/08/2022**

_____ _____

Kathy Rehling, CETD-444 Date
Certified Electronic Court Transcriber

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CLERK, U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS

ENTERED

THE DATE OF ENTRY IS ON
THE COURT'S DOCKET

The following constitutes the ruling of the court and has the force and effect therein described.

Signed October 11, 2022

United States Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re: HIGHLAND CAPITAL MANAGEMENT, L.P. Reorganized Debtor.	Case No. 19-34054-sgj11 Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P., Plaintiff. v. HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, L.P., Defendant.	Adversary No. 21-03082-sgj Civ. Act. No. 3:22-cv-00789 **(Consolidated Under Civ. Act. No. 3:21-cv-00881)**

REPORT AND RECOMMENDATION TO DISTRICT COURT REGARDING HIGHLAND CAPITAL MANAGEMENT, L.P.'S MOTION FOR SUMMARY JUDGMENT AGAINST HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, L.P.

I. Introduction

This court submits this report and recommendation to the district court ("District Court") with respect to *Highland Capital Management, L.P.'s Motion for Summary Judgment* ("MSJ")[DE

#45][1] filed on May 27, 2022, in the above-referenced adversary proceeding ("Action"). The Action is yet another lawsuit regarding promissory notes issued by the defendant, Highland Capital Management Fund Advisors, L.P. ("HCMFA" or "Defendant") in favor of Highland Capital Management, L.P. This Action emanates from the above-referenced bankruptcy case (the "Bankruptcy Case") of Highland Capital Management, L.P. ("Highland," "Plaintiff," or sometimes "Debtor" or "Reorganized Debtor"). For the reasons set forth herein, this court recommends that the District Court grant the MSJ and enter judgment against HCMFA.

II. Background and Procedural History

A. Highland and its Bankruptcy Case

Highland, a Dallas-based investment firm that managed billion-dollar investment portfolios and assets, was co-founded in 1993 by James D. Dondero ("Mr. Dondero") and Mark Okada ("Okada"). Highland's equity interest holders included Hunter Mountain Investment Trust (99.5%), The Dugaboy Investment Trust, Dondero's family trust ("Dugaboy") (0.1866%), Okada, personally and through trusts (0.0627%), and Strand Advisors, Inc. ("Strand"), which was wholly owned by Dondero (0.25%), the only general partner of Highland. Highland also managed assets and portfolios for other investment advisers and funds through two Dondero-controlled entities – HCMFA and NexPoint Advisors, L.P., pursuant to a Shared Services Agreement and Payroll Reimbursement Agreement. HCMFA had no employees of its own that provided investment advisory services to its clients or managed portfolios. Dondero was the President and Chief Executive Officer of Highland and also served as a high-level executive and controlling portfolio manager for HCMFA.

[1] Citations to docket entries in the instant adversary proceeding shall be notated as follows: [DE # __]. Citations to docket entries in the main bankruptcy case shall be notated as follows: [Bankr. DE # __].

On October 16, 2019 (the "Petition Date"), with Mr. Dondero in control[2] and acting as Highland's CEO, president, and portfolio manager, facing a myriad of massive, business litigation claims – many of which had finally become liquidated (or were about to become liquidated) after a decade or more of contentious litigation in multiple forums all over the world, Highland filed for relief under chapter 11 of the United States Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware, Case No. 19-12239 (CSS). Neither HCMFA nor any of the other Dondero-controlled Highland affiliates joined in the bankruptcy filing as joint debtors.

On October 29, 2019, an official committee of unsecured creditors (the "Committee") was appointed in the bankruptcy case. Almost immediately from its appointment, the Committee's relationship with Highland, with Mr. Dondero in control, was contentious. First, the Committee moved for a change of venue to Dallas, which was granted over Highland's objections.[3] Second, the Committee (and later, the United States Trustee) expressed its then-desire for the appointment of a chapter 11 trustee due to its concerns over and distrust of Mr. Dondero, his numerous conflicts of interest, and his history of alleged mismanagement (and perhaps worse).

After many weeks under the threat of the appointment of a trustee, Highland and the Committee engaged in substantial and lengthy negotiations, resulting in a corporate governance settlement approved by this court on January 9, 2020.[4] As a result of this settlement, Mr. Dondero relinquished control of Highland and resigned his positions as officer or director of Highland and its general partner, Strand,[5] and three independent directors ("Independent Directors") were

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[2] Mark Okada resigned from his role with Highland prior to the Petition Date.

[3] The bankruptcy case was transferred to the Dallas Division of the Bankruptcy Court for the Northern District of Texas in December 2019.

[4] Bankr. DE #339.

[5] Mr. Dondero agreed to this settlement pursuant to a stipulation he executed and that was filed in connection with Highland's motion to approve the settlement. *See Stipulation in Support of Motion of the Debtor for Approval of*

chosen to lead Highland through its chapter 11 case. James P. Seery, Jr. ("Mr. Seery"), one of the Independent Directors, was later appointed as Highland's Chief Executive Officer, Chief Restructuring Officer, and Foreign Representative.[6] Mr. Dondero agreed to remain with Highland as an unpaid portfolio manager following his resignation.

Throughout the summer of 2020, Mr. Dondero informally proposed several reorganization plans, none of which were embraced by the Committee or the Independent Directors. When Mr. Dondero's plans failed to gain traction, he and some of the related entities under his control, including HCMFA, engaged in a "scorched earth" policy in the Bankruptcy Case that has resulted in substantial, costly, and time-consuming litigation for Highland.[7]

During this time, the Independent Directors and the Committee negotiated their own plan of reorganization which culminated in the filing by Highland of its *Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified)* (the "Plan") [Bankr. DE #1808] on January 22, 2021. In its *Disclosure Statement for the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* filed on November 24, 2020 ("Disclosure Statement") [Bankr. DE 1473], Highland included the Debtor's Liquidation Analysis/Financial Projections (the "Projections") in support of the Plan. Pl. Ex. 90, Appx. 1497-1505. Among the assumptions supporting the Projections was that "[a]ll demand notes are collected in the year 2021." *Id.* at 173 of 178, Appx. 1500 (Assumption C). Thus, even though Highland had not yet

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Settlement With the Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in Ordinary Course [Bankr. DE #338].

[6] See the June 16, 2020 order approving the retention by Highland of Mr. Seery as Chief Executive Officer, Chief Restructuring Officer, and Foreign Representative, *nunc pro tunc*, to March 15, 2020. [Bankr. DE #854].

[7] According to Mr. Seery's credible testimony during the hearing on confirmation of the chapter 11 plan ultimately filed by Highland that had been negotiated between the Committee and the Independent Directors, Mr. Dondero had threatened to "burn the place down" if his proposed plan was not accepted. *See* Transcript of Confirmation Hearing dated February 3, 2021 at 105:10-20 [Bankr. DE #1894].

demanded payment under the notes that are the subject of this Action, HCMFA was notified on November 24, 2020 that the Projections assumed that all demand notes that Highland was holding would be collected the following year. Yet, while HCMFA, specifically, joined with other Dondero-controlled funds (the "Funds") in the filing of an objection to confirmation of the Plan ("Funds Objection") [Bankr. DE #1670], it did not object to the Projections or the assumptions that the notes that are the subject of this Action would be collected in 2021, and it did not disclose the existence of its alleged "oral agreement" defense to Highland's collection on the notes or suggest that the Projections were unreasonable in any way. *See* Bankr. DE #1670.

Although there were other objections to confirmation of the Plan, Highland had made certain amendments and modifications to the Plan that addressed those objections so that, by the time of the confirmation hearing that was held in February of 2021, the only remaining objections to confirmation of the Plan were those by Mr. Dondero and the Dondero-related entities (including HCMFA).[8] This court entered its order ("Confirmation Order")[Bankr. DE #1943] confirming the Plan, over the objections by Mr. Dondero and his related entities (including HCMFA), on February 22, 2021. The effective date of the Plan occurred on August 11, 2021, and Highland became the Reorganized Debtor under the Plan. On August 19, 2022, on direct appeal from this bankruptcy court by Mr. Dondero and his related entities, the Fifth Circuit entered its original order in which it "affirm[ed] the confirmation order in large part" and "revers[ed] only insofar as the plan exculpates certain non-debtors in violation of 11 U.S.C. § 524(e), strik[ing] those few parties from the plan's exculpation, and affirm[ed] on all remaining grounds."[9]

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[8] In addition to the Funds Objection, objections to confirmation were filed by Mr. Dondero [Bankr. DE #1661] and entities controlled by him. [Bankr. DE ##1667, 1673, 1676, and 1677]

[9] *In re Highland Capital Management, L.P.*, No. 21-10449, 2021 WL 3571094, at *1 (5th Cir. Aug, 19, 2022). On September 7, 2022, following a petition for limited panel rehearing filed by certain appellants on September 2, 2022 "for the limited purpose of clarifying and confirming one part of its August 19, 2022, opinion," the Fifth Circuit

B. This Action and the Other, Earlier-Filed Note Actions

The instant Action was initiated by Highland on November 9, 2021, by the filing of a complaint ("Complaint")[DE #1] in the bankruptcy court against HCMFA, seeking damages for HCMFA's breach of contract in failing to pay, upon demand, amounts due and owing under two demand promissory notes issued by HCMFA in favor of Highland and seeking turnover to the reorganized estate of amounts due and owing under those promissory notes equal to (i) the aggregate outstanding principal due under each note, (ii) all accrued and unpaid interest thereon until the date of payment, plus (iii) Highland's costs of collection (including all court costs and reasonable attorneys' fees and expenses as provided for under the Pre-2019 Notes) for HCMFA's breach of its obligations under each of the Pre-2019 Notes. Complaint, ¶¶ 31 and 39.

The instant Action is a companion case to five earlier-filed note actions – each filed on January 22, 2021 – against Mr. Dondero and certain Dondero-controlled corporate affiliates of Highland that were makers of one or more of sixteen promissory notes in favor of Highland with more than $60 million of unpaid principal and interest alleged to be due and owing at the time the suits were filed ("Note Maker Defendants").[10] *See* Adv. Proc. No. 21-3004-sgj ("First HCMFA Note Action"); Adv. Proc. No. 21-3003 ("Dondero Note Action"); Adv. Proc. No. 21-3005 ("NexPoint Note Action"); Adv. Proc. No. 21-3006 ("HCMS Note Action"); Adv. Proc. No. 21-

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withdrew its original opinion and replaced it with its opinion reported at *In re Highland Capital Management, L.P.*, No. 21-10449, 2021 WL 4093167 (5th Cir. Sept. 7, 2022). The substituted opinion differed from the original opinion only by the replacement of one sentence from section "IV(E)(2) – *Injunction and Gatekeeper Provisions*" of the original opinion: "The injunction and gatekeeper provisions are, on the other hand, perfectly lawful." was replaced with "We now turn to the Plan's injunction and gatekeeper provisions." In all other respects, the Fifth Circuit panel's original ruling remained unchanged.

[10] The Note Maker Defendants and their notes are as follows: (i) Dondero, in his individual capacity, is maker on three demand notes; (ii) HCMFA is maker on two demand notes; (iii) NexPoint Advisors, L.P. ("NexPoint") is maker on one term note; (iv) Highland Capital Management Services, Inc ("HCMS") is maker on five notes (four demand notes and one term note); and (v) HCRE Partners, LLC, n/k/a NexPoint Real Estate Partners, LLC ("HCRE") is maker on five notes (four demand notes and one term note).

3007 ("HCRE Note Action") (collectively, the "Five Earlier-Filed Note Actions").[11] Highland did not bring this current Action against HCMFA as part of the Five Earlier-Filed Note Actions because Highland had agreed, prior to the Petition Date, that it would not demand payment under the notes in this Action before May 31, 2021.

C. The Alleged Oral Agreement Defense

As noted above, HCMFA is one of many entities affiliated with Highland and owned or controlled by Mr. Dondero. In Defendant's Original Answer ("Answer")[DE #5] filed on December 10, 2021, HCMFA asserted as its primary affirmative defense[12] that oral agreements ("Alleged Oral Agreements") exist pursuant to which Highland agreed that it would not collect the Pre-2019 Notes upon the fulfillment of certain "conditions subsequent" ("Alleged Oral Agreement Defense"). Answer, ¶ 41. HCMFA specifically represents in its Answer that:

> Plaintiff agreed that it would not collect the Notes upon fulfilment [sic] of conditions subsequent. Specifically, sometime between December of the year in which each Note was made and February of the following year, Nancy Dondero, as representative for a majority of the Class A shareholders of Plaintiff agreed that Plaintiff would forgive the Notes if certain portfolio companies were sold for greater than cost or on a basis outside of Mr. Dondero's control. The purpose of this agreement was to provide compensation to Mr. Dondero, who was otherwise underpaid compared to reasonable compensation levels in the industry, through the use of forgivable loans, a practice that was standard at [Highland] and in the industry. This agreement setting forth the conditions subsequent to demands for payment on the Notes was an oral agreement; however, Defendant believes there may be testimony or email correspondence that discusses the existence of this agreement that may be uncovered through discovery in this Adversary Proceeding.

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[11] The defendants in these five Note Actions are: Mr. Dondero, Nancy Dondero ("Ms. Dondero"), and Dugaboy (Adv. No. 21-3003); HCMFA (Adv. No. 21-3004); NexPoint Advisors, L.P., Mr. Dondero, Ms. Dondero, and Dugaboy (Adv. No. 21-3005); Highland Capital Management Services, Inc. ("HCMS"), Mr. Dondero, Ms. Dondero, and Dugaboy (Adv. No. 21-3006); and HCRE Partners, LLC, n/k/a NexPoint Real Estate Partners, LLC ("HCRE"), Mr. Dondero, Ms. Dondero, and Dugaboy (Adv. No. 21-3007).

[12] HCMFA also pleaded the affirmative defenses of ambiguity, waiver, estoppel, failure of consideration, and prepayment. Answer, ¶¶ 42 and 43.

Answer, ¶ 41 (emphasis added).

The Alleged Oral Agreement Defense appears to be a "cut-and-paste" of the same alleged "oral agreement" defense that was ultimately asserted in the Five Earlier-Filed Note Actions by four of the five Note Maker Defendants (all but HCMFA). To be clear, the defense morphed as the Five Earlier-Filed Note Actions progressed. Only Mr. Dondero originally asserted that defense (somewhat vaguely, in his original answer—merely stating that "it was previously agreed that Plaintiff would not collect the Notes"),[13] and thereafter all of the Note Maker Defendants (except HCMFA) amended their pleadings to adopt the same affirmative defense. First, it was simply an alleged agreement by Highland not to collect on ***Mr. Dondero's*** Notes. Then, there were amended answers by each of the other Note Maker Defendants (except HCMFA) that obliquely referred to alleged agreements by Highland not to collect on the Notes upon fulfillment of undisclosed conditions subsequent. Finally, the Alleged Oral Agreement Defense in the Five Earlier-Filed Note Actions was set up as follows:

> Plaintiff's claims are barred . . . because prior to the demands for payment Plaintiff agreed that it would not collect the Notes upon fulfillment of conditions subsequent. Specifically, sometime between December of the year in which each note was made and February of the following year, [] Nancy Dondero, as representative for a majority of the Class A shareholders of Plaintiff agreed that Plaintiff would forgive the Notes if certain portfolio companies were sold for greater than cost or on a basis outside of James Dondero's control. The purpose of this agreement was to provide compensation to James Dondero, who was otherwise underpaid compared to reasonable compensation levels in the industry, through the use of forgivable loans, a practice that was standard at HCMLP [Highland] and in the industry.[14] This agreement setting forth the conditions subsequent to demands for payment on the

[13] Pl. Ex. 80, ¶ 40.

[14] This statement in the amended answers appears to have been inaccurate according to Mr. Dondero's own executive compensation expert, Alan Johnson. During the deposition of Mr. Johnson, he testified that he reviewed Highland's audited financial statements for each year from 2008 through 2018 (Pl. Ex. 101 at 119:14-189:21, Appx. 1988-2005) and concluded that (a) Highland did not have a standard practice of forgiving loans and had not forgiven a loan to anyone in the world since 2009, (b) Highland had never forgiven a loan of more than $500,000, (c) Highland had not forgiven any loan to Mr. Dondero since at least 2008, and (d) since at least 2008, Highland had never forgiven in whole or in part any loan that it extended to any affiliate. *Id.* at 189:24-192:10, Appx. 2005-2006. *See also* Pl. Ex. 98 at 422:18-428:14, Appx. 1776-1778.

> Notes was an oral agreement; however, Defendant [ ] believes there may be testimony or email correspondence that discusses the existence of this agreement that may be uncovered through discovery in this Adversary Proceeding.

Pl. Ex. 31 ¶ 82, Appx. 655 ("Dondero's Answer"). *See also* Pl. Ex. 15 ¶ 83, Appx. 435-436 ("NexPoint's Answer"); Pl. Ex. 16 ¶ 97, Appx. 451-452 ("HCMS's Answer"); and Pl. Ex. 17 ¶ 99, Appx. 468 ("HCRE's Answer"). The factual allegations pleaded by HCMFA in its Answer with respect to its Alleged Oral Agreement Defense in the instant Action were pleaded with nearly identical language as were pleaded in the Five Earlier-Filed Note Actions by Dondero and the other Note Maker Defendants (except HCMFA).

D. Posture Before District Court

On January 18, 2022, the parties filed an agreed motion to withdraw the reference ("Agreed Motion to Withdraw Reference") in the instant Action. The bankruptcy clerk transmitted the motion to withdraw the reference to the District Court on April 6, 2022, resulting in the assignment of Civ. Action No. 3:22-cv-0789 before Judge Kinkeade, and, on April 7, 2022, the notice of this court's Report and Recommendation to the District Court with respect to the Agreed Motion to Withdraw Reference, recommending that the District Court grant the Agreed Motion to Withdraw Reference, "***but only at such time as the Bankruptcy Court certifies to the District Court that the lawsuit is trial ready***" and further recommending that the District Court "***defer to the Bankruptcy Court the handling of all pretrial matters***." Judge Kinkeade thereafter entered an order reassigning this Action to this District Court (Judge Starr) on April 8, 2022.

On April 20, 2022, this District Court, *sua sponte*, issued an Order Consolidating Cases, consolidating this Action into District Court Civ. Act. No. 3:21-cv-881, such that this Action and the Five Earlier-Filed Note Actions are now consolidated into one action (the "Consolidated Notes

Action").[15] Perhaps due to oversight, the District Court had not accepted the Report and Recommendation on the Agreed Motion to Withdraw Reference in this Action prior to consolidating it into the Consolidated Notes Action, and there are no indications on the docket of the consolidated case, after consolidation, that the District Court has accepted or adopted it.[16]

E. The Current Motion for Summary Judgment

Highland filed its MSJ and supporting brief on May 27, 2022, seeking the entry of a judgment on its two claims for relief (breach of contract and turnover pursuant to Bankruptcy Code §542) that are set forth in its Complaint. [DE ## 45 and 46]. In support of its MSJ, Highland contemporaneously filed (1) a declaration of David Klos [DE #47],[17] the CFO of Highland, and (2) a 5,257-page appendix [DE #48].[18]

On July 1, 2022, HCMFA filed its *Opposition to Plaintiff's Motion For Summary Judgment* and *Memorandum of Law in Response to Plaintiff's Motion for Summary Judgment* ("Opposition")[DE ## 54 and 52] and a 441-page appendix in support of its Opposition. [DE #53].[19] In its Opposition, HCMFA argues that is has submitted summary judgment evidence in

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[15] The District Court entered its *Order Granting Defendant's Motion to Consolidate the Note Cases* [Consolidated Notes Action DE #24]. There also happen to be four appeal actions consolidated within the Consolidated Notes Action, regarding this bankruptcy court's orders denying motions to compel arbitration in four of the Note Actions.

[16] A motion to withdraw the reference was also filed in each of the Five Earlier-Filed Note Actions, and notices of transmittal of this court's Report and Recommendation thereon were transmitted to the District Court on July 7, 2021, with respect to Adv. No. 21-3003, on July 9, 2021, with respect to Adv. Nos. 21-3004 and 21-3005, and on July 15, 2021, with respect to Adv. No. 21-3006 and 21-3007, resulting in the assignment of civil action numbers in the District Court of 3:21-cv-1010, 3:21-cv-0881, 3:21-cv-0880, 3:21-cv-1378, and 3:21-cv-1379, respectively. Prior to ordering the consolidation of the Five Earlier-Filed Note Actions, the District Court accepted this court's recommendations that the District Court withdraw the reference when this bankruptcy court certifies the actions as trial-ready, in all but one of the Five Earlier-Filed Note Actions: Adv. Proceeding No. 21-3003/Civ. Action No. 3:21-cv-1010 in which Dondero, N. Dondero, and Dugaboy Trust are defendants. The parties recently notified the District Court that the pending Report and Recommendation in Civ. Action No. 3:21-cv-1010 remains outstanding.

[17] When citing to this declaration in its briefing, Highland refers to it as the "Second Klos Dec." to distinguish it from the declaration of David Klos filed in each of the Five Earlier-Filed Note Actions. The court will do the same.

[18] Citations to Highland's MSJ appendix are notated as follows: Pl. Ex. #, Appx. #.

[19] Citations to HCMFA's Opposition appendix are notated as follows: Def. Ex. #, Appx. #.

support of its Alleged Oral Agreement Defense that creates a genuine dispute of a material fact that would require a denial of Highland's MSJ.[20]

Notably, in the middle of this current MSJ litigation, on July 19, 2022, this court issued, in the Five Earlier-Filed Note Actions, a *Report and Recommendation to District Court: Court Should Grant Plaintiff's Motion for Partial Summary Judgment Against All Five Note Maker Defendants (With Respect to all Sixteen Promissory Notes) in the Above-Referenced Consolidated Note Actions* ("MPSJ R&R"), which was docketed in each of the five earlier-filed underlying adversary proceedings.[21] On July 20, 2022, the clerk of the Bankruptcy Court transmitted a copy of the MPSJ R&R to the District Court for filing in the Consolidated Notes Action.[22] In the MPSJ R&R, this court recommended that the District Court grant Highland's motions for partial summary judgment against each of the Note Maker Defendants, holding them liable for (a) breach of contract and (b) turnover for all amounts due under the promissory notes pursuant to Bankruptcy Code Section 542, including costs of collection and reasonable attorneys' fees in an amount to be determined. In so recommending, this court found that Highland had made its *prima facie* case for summary judgment for the Note Maker Defendants' breach of the promissory notes and for turnover and that the Note Maker Defendants failed to rebut Highland's *prima facie* case because they failed to show that there was a genuine dispute over a material fact with respect to their alleged defenses to the enforcement of the Notes, including, specifically, as to their Alleged Oral Agreement Defense.[23] This court found (in the MPSJ R&R) that, having considered the record as

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[20] HCMFA does not present any summary judgment evidence or argument with respect to the other affirmative defenses asserted by it in its Answer.

[21] Adv. Proceeding No. 21-3003 (DE #191); Adv. Proceeding No. 21-3004 (DE#163); Adv. Proceeding No. 21-3005 (DE #207); Adv. Proceeding No. 21-3006 (DE #213); Adv. Proceeding No. 21-3007 (DE #208).

[22] Civ. Act. No. 3:21-cv-0881 (DE #50).

[23] Although HCMFA was a Note Maker Defendant in one of the Five Earlier-Filed Note Actions, Highland brought the instant Note Action against HCMFA based on two demand promissory notes (defined, together, below as the "Pre-

a whole, ***including*** the declarations of Mr. Dondero and his sister, Ms. Dondero, submitted in support of the Alleged Oral Agreement Defense, that (i) there was a "complete lack of evidence" supporting the Alleged Oral Agreement Defense other than the self-serving, conclusory, and uncorroborated Dondero declarations; and (ii) that the Note Maker Defendants' Alleged Oral Agreement Defense blatantly contradicted the summary judgment record; accordingly, "***no reasonable jury could find that there was truly an "oral agreement" to forgive these loans to the Alleged [Oral] Agreement Defendants***." MPSJ R&R at 25.

The next day, on July 20, 2022, Highland filed its *Reply Memorandum of Law in Support of Motion for Summary Judgment* ("Reply")[DE #62] and a 49-page appendix in support of its Reply [DE #63][24], in which it argues that HCMFA has not submitted summary judgment evidence showing the existence of a genuine dispute of a material fact in this Action with respect to the Alleged Oral Agreement Defense or any other defenses, and, thus, Highland is entitled to judgment as a matter of law pursuant to Rule 56 of the Federal Rules of Civil Procedure.

On July 27, 2022, the court heard oral argument on the MSJ.

For the reasons set forth below, this court agrees with Highland that it is entitled to summary judgment pursuant to Rule 56(a) of the Federal Rules of Civil Procedure and recommends that the District Court grant the MSJ and enter judgment in favor of Highland and against HCMFA as to the Pre-2019 Notes.

2019 Notes") different and distinct from the HCMFA Notes sued upon in the earlier Note Action against HCMFA. To be clear, HCMFA was the only one of the Note Maker Defendants in the Five Earlier-Filed Note Actions that did not raise the same Alleged Oral Agreement Defense as a defense to Highland's suit on the two demand notes issued by HCMFA in 2019 as it has raised in the instant Action.

[24] Citations to Highland's Reply appendix are notated as follows: Pl. Rep. Ex. #, Rep. Appx. #.

III. Undisputed Material Facts

A. The Pre-2019 Notes

On February 26, 2014, in exchange for a contemporaneous loan in the amount of $4,000,000 from Highland to HCMFA,[25] Mr. Dondero, on behalf of HCMFA, as maker, executed a demand promissory note in favor of Highland, as payee, in the original principal amount of $4,000,000 (the "2014 Note"). Second Klos Dec.[26] ¶ 4, Exhibit A; *see also* Pl. Ex. 226, Appx. 5029-5031; Pl. Ex. 219, Appx. 5005-5007; Pl. Ex. 235, Appx. 5117-5120; Pl. Ex. 215 at 15:20-17:11, 17:18-22, Appx. 4915-4917, 39:7-14, Appx. 4939; Pl. Ex. 234 ¶¶ 14-15, Appx. 5111; Pl. Ex. 220 (Responses to RFAs 1-2), Appx. 5017.

On February 26, 2016, in exchange for a contemporaneous loan in the amount of $2,300,000 from Highland to HCMFA,[27] Mr. Dondero, on behalf of HCMFA, as maker, executed a demand promissory note in favor of Highland, as payee, in the original principal amount of $2,300,000 (the "2016 Note" and together with the 2014 Note, the "Pre-2019 Notes").[28] Second Klos Dec. ¶ 5, Exhibit B; *see also* Pl. Ex. 227, Appx. 5032-5034; Pl. Ex. 219, Appx. 5005-5007; Pl. Ex. 236, Appx. 5121-5127; Pl. Ex. 215 at 21:6-22:8, 22:9-23:11, Appx. 4921-4923; Pl. Ex. 234 ¶¶ 16-17, Appx. 5111; Pl. Ex. 220 (Responses to RFAs 3-4), Appx. 5017.

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[25] It is undisputed that this note was tendered to Highland in exchange for a contemporaneous loan from Highland to HCMFA in the amount of $4,000,000. Def. Ex. 4 at p.2, ¶ 5 (Declaration of James Dondero dated June 30, 2022); Appx. 304.

[26] Citations to "Second Klos Dec." refer to the *Declaration of David Klos in Support of Highland Capital Management, L.P.'s Motion for Summary Judgment* filed by Highland in support of the MSJ in this adversary proceeding and are intended to distinguish it from the *Declaration of David Klos in Support of Highland Capital Management, L.P.'s Motion for Partial Summary Judgment in Notes Action* ("Klos Dec.") submitted in the Main Notes Action.

[27] It is undisputed that this note was tendered to Highland in exchange for a contemporaneous loan from Highland to HCMFA in the amount of $2,300,000. Def. Ex. 4 at p.2, ¶ 6; Appx. 304.

[28] The court uses the defined term "Pre-2019 Notes" (which was also used by Highland in its briefing) to refer to both of the two demand promissory notes issued by HCMFA that are the subject of this Action, together, as distinguished from the two promissory notes issued by HCMFA in 2019 that were the subject of the First HCMFA Note Action that was one of the Five Earlier-Filed Note Actions.

Except for the date, the amount, and the interest rate, the Pre-2019 Notes are identical and include the following relevant provisions:

> 2. Payment of Principal and Interest. The accrued interest and principal of this Note shall be due and payable on demand of the Payee.
>
> 3. Prepayment Allowed; Renegotiation Discretionary. Maker may prepay in whole or in part the unpaid principal or accrued interest of this Note. Any payments on this Note shall be applied first to unpaid accrued interest hereon, and then to unpaid principal hereof.
>
> 5. Acceleration Upon Default. Failure to pay this Note or any installment hereunder as it becomes due shall, at the election of the holder hereof, without notice, demand, presentment, notice of intent to accelerate, notice of acceleration, or any other notice of any kind which are hereby waived, mature the principal of this Note and all interest then accrued, if any, and the same shall at once become due and payable and subject to those remedies of the holder hereof. No failure or delay on the part of Payee in exercising any right, power or privilege hereunder shall operate as a waiver thereof.
>
> 6. Waiver. Maker hereby waives grace, demand, presentment for payment, notice of nonpayment, protest, notice of protest, notice of intent to accelerate, notice of acceleration and all other notices of any kind hereunder.
>
> 7. Attorneys' Fees. If this Note is not paid at maturity (whether by acceleration or otherwise) and is placed in the hands of an attorney for collection, or if it is collected through a bankruptcy court or any other court after maturity, the Maker shall pay, in addition to all other amounts owing hereunder, all actual expenses of collection, all court costs and reasonable attorneys' fees and expenses incurred by the holder hereof.

Pl. Ex. 226, Appx. 5029-5031; Pl. Ex. 227, Appx. 5032-5034.

B. The April 2019 Acknowledgement Letter

In a document titled "Acknowledgement from HCMLP" ("Acknowledgement Letter") dated April 15, 2019 (which was prior to the Petition Date), with reference being made to "certain outstanding amounts loaned from HIGHLAND CAPITAL MANAGEMENT, L.P. ("HCMLP") to HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, L.P. ("HCMF") for funding of

HCMF's ongoing operations, which are payable on demand and remained outstanding on December 31, 2018 and as of the date hereof," Highland acknowledged that "HCMF expects that it may be unable to repay such amounts should they become due, for the period commencing today and continuing through May 31, 2021" and agreed "to not demand payment on amounts owed by HCMF prior to May 31, 2021." Pl. Ex. 217, Appx. 4989-4990; *see also* Second Klos Dec. ¶ 16; Pl. Ex. 215 49:8-50:7, Appx. 4949-4950, 55:15-22, Appx. 4955. Mr. Dondero executed the Acknowledgement Letter on behalf of both parties – for Highland, on behalf of "Strand Advisors, Inc., its general partner" and for HCMFA, on behalf of "Strand XVI, Inc., its general partner." Pl. Ex. 217, Appx. 4989-4990. Highland received no consideration in exchange for agreeing not to demand payment from HCMFA until May 31, 2021. Pl. Ex. 215 at 50:8-22, Appx. 4950. No reference was made in the Acknowledgement Letter to the Alleged Oral Agreements. Pl. Ex. 217, Appx. 4989-4990.

C. Demand for Payment by Highland and Non-payment by HCMFA

Highland did not demand payment of the outstanding obligations due under the Pre-2019 Notes until June 2, 2021. Second Klos Dec. ¶ 17; Pl. Ex. 218, Appx. 4991-5004 (the "Demand Letter"). In the Demand Letter, Highland made demand on HCMFA for payment, by June 4, 2021, of all principal and accrued interest due under the Pre-2019 Notes in the aggregate amount of $3,143,181.93, which represented all accrued and unpaid interest and principal through and including June 4, 2021.

Between May 2019 and December 2021, HCMFA made five separate payments against the 2014 Note, in the aggregate amount of approximately $2.4 million. Second Klos Dec., Exs. D-H.

Between September 2016 and December 2021, HCMFA made three separate payments against the 2016 Note in the aggregate amount of approximately $1.5 million. Second Klos Dec., Exs. H-J.

After demand was made, other than the payments made by HCMFA in December 2021, HCMFA made no further payments against its obligations due under the Pre-2019 Notes and otherwise failed to satisfy its obligations under the Pre-2019 Notes. Pl. Ex. 215 at 58:4-6, Appx. 4958.

As of May 27, 2022, after giving effect to the payments made in December 2021 as well as the payments made against the Pre-2019 Notes prior to the Petition Date, the unpaid principal and accrued interest due under the 2014 Note is $2,151,130.84, and the unpaid principal and accrued interest due under the 2016 Note is $1,001,238.06. Second Klos. Dec. ¶ 18.

D. Undisputed Corroborating Evidence Regarding Validity and Enforceability of the Pre-2019 Notes

1. The Pre-2019 Notes Were Both Disclosed on Highland's Financial Statements Audited by the Outside Accounting Firm PwC

As set forth below, the undisputed evidence establishes that (a) both of the Pre-2019 Notes were provided to the accounting firm PwC, Highland's long-time outside auditors, and were described in Highland's audited financial statements; (b) both of the Pre-2019 Notes were carried as assets on Highland's balance sheet and were valued in amounts equal to the accrued and unpaid principal and interest without any offset or reservation whatsoever; and (c) neither Highland nor Mr. Dondero disclosed to PwC the existence of an Alleged Oral Agreement that would provide HCMFA with a defense to the enforcement or collection of the Pre-2019 Notes, despite having an affirmative obligation to do so under generally accepted accounting principles ("GAAP").

Specifically, copies of the Pre-2019 Notes were and are maintained in Highland's books and records in the ordinary course of business and were provided to PwC in connection with its annual audits. Second Klos Dec. ¶¶ 3-5; Pl. Ex. 215 at 25:22-26:13, Appx. 4925-4926.

PwC's audit process was extensive and took months to complete. Pl. Ex. 94 at 9:24-12:14, Appx. 1554-1555. As part of the PwC audit process, Highland drafted the financial statements and accompanying notes, and management provided the information that PwC needed to conduct its audits. Pl. Ex 94 at 14:8-15:14, Appx. 1556; *see also* Pl. Ex. 94 at 49:11-50:22, Appx. 1564-1565.

All of Highland's employees who worked on the audit reported to Mr. Waterhouse (Highland's former CFO), and Mr. Waterhouse was ultimately responsible for making sure the audit was accurate before it was finalized. Pl. Ex. 105 at 87:25-89:10, Appx. 2071.

In connection with its audit, PwC required Highland to deliver "management representation letters" that included specific representations upon which PwC relied. Pl. Ex. 94 at 16:18-17:20, Appx. 1556, 23:4-9, Appx. 1558; s*ee also* Pl. Ex. 105 at 96:24-98:6, Appx. 2073-2074 (according to Mr. Waterhouse, management representation letters are "required in an audit to help verify completeness."). For at least the fiscal years 2014, 2016, 2017 and 2018, Mr. Dondero and Mr. Waterhouse signed Highland's management representation letters; their representations were applicable through the date of the audit's completion so that all "material" subsequent events could be included and disclosed. Pl. Ex. 33, Appx. 729-740; Pl. Ex. 86, Appx. 1420-1431; Pl. Ex. 231, Appx. 5049-5062; Pl. Ex. 232, Appx. 5063-5073; Pl. Ex. 94 at 17:21-25, Appx. 1556, 19:2-22:6, Appx. 1557-1558; *see also* Pl. Ex. 105 at 92:4-8, Appx. 2072, 94:20-95:12, Appx. 2073.

Mr. Dondero and Mr. Waterhouse made the following representations to PwC, on May 19, 2016, in connection with PwC's audit of Highland's financial statements for the period ending December 31, 2016:

- The Affiliated Party Notes[29] represented bona fide claims against the makers, and all Affiliated Party Notes were current as of May 19, 2017. Pl. Ex. 232 ¶ 16, Appx. 5067.
- There were no "material" transactions or agreements that were not recorded in the financial statements. Pl. Ex. 232 ¶ 5, Appx. 5065.
- All relationships and transactions with, and amounts receivable or payable to or from, related parties were properly reported and disclosed in the consolidated financial statements. Pl. Ex. 232 ¶ 13(b), Appx. 5066.
- All related party relationships and transactions known to Mr. Dondero and Mr. Waterhouse were disclosed. Pl. Ex. 232 ¶ 12, Appx. 5066.
- All subsequent events were disclosed. Pl. Ex. 232 (signature page), Appx. 5071.

Under GAAP, Highland was required to disclose to PwC: (a) all "material" related party transactions; and (b) any circumstances that would call into question the collectability of any notes. Pl. Ex. 94 at 34:17-35:2, Appx. 1561, 51:17-52:5, Appx. 1565, 70:20-71:3, Appx. 1570. For purposes of the 2016 audit, the "materiality" threshold was $2 million. Pl. Ex. 232 at 1, Appx. 5064.[30]

Neither Mr. Dondero nor anyone at Highland ever disclosed to PwC the existence or terms of the Alleged Oral Agreements. Pl. Ex. 220 (Responses to RFAs 7-8), Appx. 5018.

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[29] "Affiliated Party Notes" is the term used by PwC to refer to any and all notes payable to Highland and made by officers, employees, or affiliates of Highland. *See generally* Pl. Ex. 33, Appx. 729-740; Pl. Ex. 94, Appx. 1551-1585.

[30] For purposes of the 2018 audit, the "materiality" threshold was $1.7 million. Pl. Ex. 33 at 1, Appx. 730; Pl. Ex. 94 at 22:11-23:3, Appx. 1558. *See also* Pl. Ex. 105 at 91:14-93:6, Appx. 2072.

For purposes of PwC's audit, "affiliate notes" were considered receivables of Highland and were carried on Highland's balance sheet under "Notes and other amounts due from affiliates." Pl. Ex. 34 at p. 2, Appx. 745; Pl. Ex. 72 at p. 2, Appx. 1291; Pl. Ex. 94 at 23:10-22, Appx. 1558, 31:11-33:20, Appx. 1560; Pl. Ex. 105 at 106:20-109:12, Appx. 2076.

For the 2016 fiscal year, Highland valued "Notes and other amounts due from affiliates" in the aggregate amount of approximately $172.6 million, which then constituted more than 12% of Highland's total assets. Pl. Ex. 71 at 2, Appx. 1240. For the 2017 fiscal year, Highland valued "Notes and other amounts due from affiliates" in the aggregate amount of approximately $163.4 million, which then constituted more than 10% of Highland's total assets; and, for the 2018 fiscal year, Highland valued "Notes and other amounts due from affiliates" in the aggregate amount of approximately $173.4 million, which then constituted more than 15% of Highland's total assets. Pl. Ex. 72 at 2, Appx. 1291; Pl. Ex. 34 at 2, Appx. 745; Pl. Ex. 94 at 33:21-34:2, Appx. 1560-1561, 51:2-16, Appx. 1565.

The notes to the financial statements described the "Affiliate Notes" that were carried on Highland's balance sheet; management calculated the amounts due and owing to Highland from each Affiliate. Pl. Ex. 72 at 30-31, Appx.1319-1320; Pl. Ex. 34 at 28-29, Appx. 771-772; Pl. Ex. 94 at 34:17-36:25, Appx. 1561, 51:17-53:12, Appx. 1565; Pl. Ex. 105 at 110:22-112:21, Appx. 2077.

The "fair value" of the Affiliate Notes was "equal to the principal and interest due under the notes." Pl. Ex. 72 at 30-31, Appx. 1319-1320; Pl. Ex. 34 at p. 28-29, Appx. 771-772; Pl. Ex. 94 at 37:11-39:12, Appx. 1561-1562; 53:19-25, Appx. 1565. No discounts were given to the Affiliate Notes, and PwC concluded that the obligors under each of the Affiliate Notes had the

ability to pay all amounts outstanding. Pl. Ex. 92, Appx. 1514-1530; Pl. Ex. 93, Appx. 1531-1550; Pl. Ex. 94 at 41:2-45:6, Appx. 1562-1563, 55:17-60:22, Appx. 1566-1567, 68:20-25, Appx. 1569.

Note 17 to Highland's 2015 audited financial statements disclosed the issuance of the 2016 Note as a "subsequent event" (*i.e.*, an event occurring after the December 31, 2015 end of Highland's fiscal year). Pl. Ex. 70 at 46, Appx. 1229; *see also*, Pl. Ex. 94 at 54:9-55:7, Appx. 1566.

2. In October 2020, HCMFA Informed Its Retail Board of Its Obligations Under the Pre-2019 Notes

HCMFA has contracts to manage certain funds (the "Fund Agreements"), which are among the most important contracts HCMFA has and are largely the reason for HCMFA's existence. Pl. Ex. 192 at 66:3-66:23, Appx. 3031. The funds themselves, in turn, are overseen to an extent by a board known as the "Retail Board," which must determine, on an annual basis, whether to renew the Fund Agreements with HCMFA, a process referred to as a "15(c) Review." As part of the 15(c) Review, the Retail Board requests information from HCMFA. Pl. Ex. 99 at 129:17-130:3, Appx. 1844-1845, Pl. Ex. 105 at 32:17-33:6, Appx. 2057, 168:9-12, Appx. 2091, 169:9-170:16, Appx. 2091-2092. Mr. Waterhouse, the Treasurer of HCMFA (in addition to being Highland's CFO) and Mr. Norris, HCMFA's Executive Vice President, participated in the annual 15(c) Review process with the Retail Board. Pl. Ex. 192 at 67:7-68:19, Appx. 3031; Pl. Ex. 105 at 168:13-169:8, Appx. 2091.

In October 2020, the Retail Board, as part of the annual 15(c) Review, asked HCMFA to provide information regarding whether there were "any outstanding amounts currently payable or due in the future (e.g., notes) to [Highland] by HCMFA or . . . any other affiliate that provides services to the Funds." Pl. Ex. 36 at 3, Appx. 793.

The Pre-2019 Notes were recorded as liabilities in HCMFA's audited financial statements from the fiscal years 2014-2018. Pl. Exs. 221, 222, 224, and 225 at 2.[31]

HCMFA does not contend that its audited financial statements for the fiscal years 2014-2018 were inaccurate in any way with respect to the Pre-2019 Notes. *See* Pl. Ex. 215 at 28:5-9, Appx. 4928.

On October 23, 2020, HCMFA provided its formal responses to the questions posed by the Retail Board as to the issue of outstanding amounts currently payable or due by HCMFA to Highland or its affiliates:

> As of June 30, 2020, . . . $12,286,000 remains outstanding to HCMLP [Highland] from HCMFA. . . . The earliest the Note between HCMLP [Highland] and HCMFA could come due is in May 2021. All amounts owed by . . . HCMFA pursuant to the shared services arrangement with HCMLP [Highland] have been paid as of the date of this letter. The Advisor notes that both entities have the full faith and support of James Dondero.

Pl. Ex. 59 at p. 2, Appx. 885. The $12,286,000 amount included the amounts due under the Pre-2019 Notes. Pl. Ex. 215 at 26:14-17, Appx. 4926; 27:3-28:4, Appx. 4927-4928; Pl. Ex. 192 at 54:6-9, 54:22-55:8, 55:23-56:3, Appx. 3028-3029; Pl. Ex. 194 at 117:16-122:15, Appx. 3156-3157; Pl. Ex. 195 at 120:23-122:13, Appx. 3211-3212.

3. Before and During the Bankruptcy Case, the Pre-2019 Notes Were Reflected on Highland's Books, Records, and In Its Bankruptcy Filings as Assets Owed to Highland, without Discounts

In addition to its PwC-audited financial statements, Highland's contemporaneous books and records—before and after the Petition Date—recorded the Pre-2019 Notes as valid debts due and owing by HCMFA to Highland, without discount.

[31] HCMFA's audited financial statements were filed under seal and therefore do not have "Appx." numbers.

After the Petition Date, but while Mr. Dondero was still in control, Highland, as the debtor-in-possession, filed its *Schedules of Assets and Liabilities* [Bankr. DE #247] (the "Debtor's Schedules"). The Debtor's Schedules included the Pre-2019 Notes among Highland's assets. Pl. Ex. 40, Appx. 812-815 (excerpts of the Debtor's Schedules showing that Highland (a) disclosed as assets of the estate "Notes Receivable" in the approximate amount of $150 million (Item 71), and (b) provided a description of the Pre-2019 Notes (Exhibit D)).

In every one of the Debtor's Monthly Operating Reports filed during the Highland Bankruptcy Case (including those filed while Mr. Dondero was still in control of the Debtor), Highland included as assets of the estate amounts "Due from affiliates" that included the Pre-2019 Notes. *See, e.g.*, Pl. Ex. 41, Appx. 816-825; Pl. Ex. 42, Appx. 826-835; Pl. Ex. 88, Appx. 1475-1486; Pl. Ex. 89, Appx. 1487-1496. *See also* Bankr. DE # 405 (October 2019); Bankr. DE # 289 (November 2019); Bankr. DE # 418 (December 2019); Bankr. DE # 497 (January 2020); Bankr. DE # 558 (February 2020); Bankr. DE # 634 (March 2020); Bankr. DE # 686 (April 2020); Bankr. DE # 800 (May 2020), as amended in Bankr. DE # 905; Bankr. DE # 913 (June 2020); Bankr. DE # 1014 (July 2020); Bankr. DE # 1115 (August 2020); Bankr. DE # 1329 (September 2020); Bankr. DE # 1493 (October 2020); Bankr. DE # 1710 (November 2020); Bankr. DE # 1949 (December 2020); and Bankr. DE # 2030 (January 2021).

Highland's accounting group had a regular practice of creating, maintaining, and updating, on a monthly basis, "loan summaries" in the ordinary course of business (the "Loan Summaries"). Second Klos Dec. ¶ 6. The Loan Summaries identified amounts owed to Highland under affiliate notes and were created by updating underlying schedules for activity and reconciling with Highland's general ledger. *Id.*; Pl. Ex. 199, Appx. 3245-3246. The Loan Summaries identified each obligor under certain notes by reference to the "GL" number used in the general ledger. *See*

Pl. Ex. 199, Appx. 3246 (HCMS ("GL 14530"), HCMFA ("GL 14531"), NexPoint ("GL 14532"), HCRE ("GL 14533"), and Mr. Dondero ("GL 14565")). *See* Second Klos Dec. ¶ 6. The 2014 Note is shown on the Loan Summary marked as Plaintiff's Exhibit 199 as "HCMFA #2," and the 2016 Note is shown on the Loan Summary as "HCMFA #5." Pl. Ex. 199, Appx. At 3246. Second Klos Dec. ¶ 8.

E. Undisputed Facts That Point to the Non-Existence of the Alleged Oral Agreements With Respect to the Pre-2019 Notes

No document was ever uncovered or produced in discovery to establish, memorialize, reflect, or recognize the existence or terms of the Alleged Oral Agreements. Neither Dugaboy nor Ms. Dondero (who were allegedly the ones who entered into the Alleged Oral Agreements, indirectly, on behalf of Highland) is aware of anything in writing that identifies the existence or terms of the Alleged Oral Agreements. Pl. Ex. 210 at 25:23-27:18, Appx. 4861-4863. HCMFA has admitted that the terms or existence of the Alleged Oral Agreements were never reduced to writing. Pl. Ex. 220 (Responses to RFAs 13-14), Appx. 5019.

Other than Mr. Dondero and Ms. Dondero, no one is alleged to have participated in the discussions that led to the Alleged Oral Agreement regarding the 2016 Note (the "2016 Alleged Oral Agreement"). Pl. Ex. 210 at 27:19-21, Appx. 4863. Ms. Dondero and Dugaboy have admitted that, prior to January 1, 2021, neither ever disclosed the existence or terms of the 2016 Alleged Oral Agreement to *anyone* at Highland or HCMFA (including Highland's auditors), other than Mr. Dondero. Pl. Ex. 210 at 25:6-22, Appx. 4861, 27:22-28:4, Appx. 4863-4864. HCMFA has admitted that, prior to February 1, 2021, it never disclosed the existence or terms of any of the Alleged Oral Agreements to PwC, Mr. Okada, the Bankruptcy Court, or any creditor of Highland,

including in connection with any objection to the Plan or Disclosure Statement.[32] Ex. 220 (Responses to RFAs 7-12, 15-21), Appx. 5018.

Between May 2019 and December 2021, HCMFA made five separate pre-payments in the aggregate amount of $2,410,477.45 against amounts due under the 2014 Note, and between September 2016 and December 2021, HCMFA made three (3) separate pre-payments in the aggregate amount of $1,487,336.87 against amounts due under the 2016 Note. Second Klos Dec. ¶¶ 10-14; Pl. Ex. 219, Appx. 5005-5007.

In addition to the Pre-2019 Notes, and the Notes at issue in the First HCMFA Action, HCMFA issued at least three other notes to Highland in exchange for loans – one before issuing the 2014 Note and two after issuing the 2014 Note but before issuing the 2016 Note (collectively, the "Paid-Off Notes") – as to which HCMFA, prior to the Petition Date, paid all principal and interest due in full. Second Klos Dec. ¶ 9.

In November 2019, Mr. Dondero (while still in control of Highland) caused the sale of a substantial interest in the company Metro Goldwyn Mayer, Inc. ("MGM") for $123.25 million, a portion of which was for the Debtor's interest in a fund (and which sale price was well above its original cost), but he (whether on behalf of himself, personally, or on behalf of HCMFA or any of the Note Maker Defendants) and Highland failed to declare all of the promissory notes forgiven and remained silent about the alleged "oral agreements" altogether. *See* Pl. Ex. 201 ¶¶ 29-30,

[32] As noted above, HCMFA filed an objection to confirmation of Highland's chapter 11 Plan (which Plan was based on the assumption that the Pre-2019 Notes would be collected in 2021), yet it failed to make any mention of the existence of the Alleged Oral Agreements or any claim HCMFA had against Highland relating to the potential forgiveness of the debt arising under the Pre-2019 Notes. HCMFA similarly failed to mention the existence of the Alleged Oral Agreements or any claim HCMFA had against Highland relating to the potential forgiveness of the debt arising under the Pre-2019 Notes in its two proofs of claim filed in the Bankruptcy Case on April 8, 2020. [Bankr. Claim ## 95 and 119].

Appx. 3270-3271; Pl. Ex. 202 ¶ 14, Appx. 4135; Pl. Ex. 203 ¶ 1, Appx. 4143; Pl. Ex. 204 at p. 5 n.5, Appx. 4156.

The use of "forgiveable loans" to a corporate affiliate as compensation to individual officers or employees of Highland was not a practice that was standard at Highland or in the industry. Mr. Alan Johnson, Mr. Dondero's own executive compensation expert, reviewed Highland's audited financial statements for each year from 2008 through 2018, Pl. Ex. 101 at 119:14-189:21, and concluded that (a) Highland has not forgiven a loan to anyone in the world since 2009, (b) the largest loan Highland has forgiven since 2008 was $500,000, (c) Highland has not forgiven any loan to Mr. Dondero since at least 2008, and (d) at least since 2008, ***Highland has never forgiven in whole or in part any loan that it extended to any affiliate***.[33] Pl. Ex. 101 at 189:24-192-10, Appx. 2005-2006.

F. Undisputed Facts Relating to HCMFA's Defenses of Waiver, Estoppel, Failure of Consideration, Prepayment, and Ambiguity

Mr. Dondero, HCMFA's Rule 30(b)(6) witness, could not identify any relevant facts to support HCMFA's affirmative defenses of waiver (*see* Pl. Ex. 215 at 44:18-45:14, Appx. 4944-4945), estoppel (*id.* at 45:20-46:10, Appx. 4945-4946), lack of consideration (*id.* at 47:7-25, Appx. 4947), or prepayment (*id.* at 48:2-10, Appx. 4948). Mr. Dondero also could not identify a material provision of either of the Pre-2019 Notes that he believed was ambiguous. *Id.* at 20:9-23, Appx. 4920, 24:19-25:11, Appx. 4924-4925. Indeed, there is undisputed evidence contradicting these

[33] In his Expert Report dated May 28, 2021, Mr. Johnson stated that loans provided ***to Mr. Dondero – not loans provided to corporate affiliates*** – should be considered "potential deferred compensation as they were similar to loans given to ***other professionals*** at the firm" Def. Ex. G to Def. Ex. 3 (Declaration of Michael P. Aigen dated January 20, 2022) at 16, Appx. 252 (emphasis added). Mr. Johnson further notes in his report that, between 2013 and 2019, (a) "[s]everal loans were made [by Highland] ***to Mr. Dondero***," Def. Ex. 3 at 8, Appx. 244, (b) "***[Mr. Dondero]*** received loans in lieu of additional current compensation," Def. Ex. 3 at 3, Appx. 239, and (c) "[c]onsistent with company practice, the loans were considered a form of deferred compensation that could be realized over time as the loans were forgiven and the income ***recognized by the individuals***." *Id.* (emphasis added).

purported defenses. *See, e.g.*, Pl. Ex. 217, Appx. 4989-4990 (Acknowledgement Letter where HCMFA admits that loans from Highland were outstanding and payable on demand); Pl. Ex. 220, Appx. 5017 (responses to RFAs 1 through 4 in which HCMFA admits to tendering the Pre-2019 Notes in exchange for loans from Highland equal to the principal amount of the Pre-2019 Notes).

IV. Summary Judgment Standard

Rule 56(a) of the Federal Rules of Civil Procedure provides, "The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." FED. R. CIV. P. 56(a). Although summary judgment used to be viewed in the Fifth Circuit as a "'disfavored procedural short cut,' applicable to a limited class of cases," that view was upended, beginning with the Supreme Court's trilogy of summary judgment opinions issued in 1986, that "made it clear that our earlier approach to Rule 56 was wrong-headed because it was simply inconsistent with the plain language of the rule." *Little v. Liquid Air Corp.,* 37 F.3d 1069, 1075 (5th Cir. 1994)(en banc) (quoting *Armstrong v. City of Dallas*, 997 F.2d 62, 66 (5th Cir.1993) and citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986);[34] *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986); *Matsushita Electric Industrial Co. v. Zenith Radio Corp.*, 475 U.S. 574, 106 S.Ct. 1348, 89 L.Ed.2d 538 (1986)). Rather than being a disfavored rule, the Supreme Court instructs that Rule 56 "*mandates* the entry of summary judgment, after an adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." *Id.* (quoting *Celotex*, 477 U.S. at 322, 106 S.Ct. at 2552 (emphasis added in

[34] The Court in *Celotex* opined, "Summary judgment procedure is properly regarded not as a disfavored procedural shortcut, but rather as an integral part of the Federal Rules as a whole, which are designed 'to secure the just, speedy and inexpensive determination of every action.'" 477 U.S. at 327, 106 S.Ct. at 2555 (quoting Fed. R. Civ. P. 1)(other citations omitted).

original)). The Supreme Court explained that "[i]n such a situation, there can be 'no genuine issue as to any material fact,' since a complete failure of proof concerning an essential element of the nonmoving party's case necessarily renders all other facts immaterial." *Celotex*, 477 U.S. at 322-23, 106 S.Ct. at 2552.

Under Rule 56, a movant meets its initial burden of showing there is no genuine issue for trial by "point[ing] out the absence of evidence supporting the nonmoving party's case." *Latimer v. Smithkline & French Lab'ys*, 919 F.2d 301, 303 (5th Cir.1990); *see also In re Magna Cum Latte, Inc.,* Bankr. No. 07-31814, 2007 WL 3231633, at *3 (Bankr. S.D. Tex. Oct. 30, 2007) ("A party seeking summary judgment may demonstrate: (i) an absence of evidence to support the non-moving party's claims or (ii) the absence of a genuine issue of material fact."). The movant "need not 'negate' the elements of the nonmovant's case." *Little*, 37 F.3d at 1075.

"If the moving party carries [its] initial burden, the burden then falls upon the nonmoving party to demonstrate the existence of genuine issue of material fact." *Latimer*, 919 F.2d at 303; *see also Nat'l Ass'n of Gov't Emps. v. City Pub. Serv. Bd. of San Antonio, Tex.*, 40 F.3d 698, 712 (5th Cir. 1994) ("To withstand a properly supported motion for summary judgment, the nonmoving party must come forward with evidence to support the essential elements of its claim on which it bears the burden of proof at trial."). "[T]he nonmovant must go beyond the pleadings and designate specific facts showing there is a genuine issue for trial." *Little*, 37 F.3d at 1075; *see also Hall v. Branch Banking*, No. H-13-328, 2014 WL 12539728, at *1 (S.D. Tex. Apr. 30, 2014) ("[T]he nonmoving party's bare allegations, standing alone, are insufficient to create a material dispute of fact and defeat a motion for summary judgment."). The court must view the facts "in the light most favorable to the nonmoving party" but "only if there is a 'genuine' dispute as to those facts." *Scott v. Harris*, 550 U.S. 372, 380, 127 S.Ct. 1769, 1776, 167 L.Ed.2d 686 (2007);

see also Hacienda Records, L.P. v. Ramos, 718 F.App'x 223, 234 (5th Cir. 2018)("The court considers the record as a whole, and draws all justifiable inferences in favor of the non-movant[, b]ut the non-movant bears 'the burden of demonstrating by competent summary judgment proof that there is [a genuine dispute] of material fact warranting trial.'")(internal citations omitted). "[T]he mere existence of *some* alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no *genuine* issue of *material* fact." *Id.* (quoting *Anderson*, 477 U.S. at 247-248, 106 S.Ct. at 2510). "When the moving party has carried its burden under Rule 56(c), its opponent must do more than simply show that there is some metaphysical doubt as to the material facts . . . . Where the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party, there is no 'genuine issue for trial.'" *Id.* (citing *Matsushita*, 475 U.S. at 586-587 (footnote omitted)). "In considering the summary-judgment record, and although the court may not weigh the evidence or make credibility determinations, it must, of course, decide what evidence may be considered." *Hacienda Records*, 718 F.App'x at 234.

"[A] party cannot defeat summary judgment with conclusory allegations, unsubstantiated assertions, or only a scintilla of evidence." *Turner v. Baylor Richardson Med. Ctr.*, 476 F.3d 337, 343 (5th Cir. 2007) (internal quotations omitted); *see also Kennedy v. Allstate Texas Lloyd's*, 2020 WL 8300511, at *1 (N.D. Tex. Dec. 14, 2020)("Conclusory allegations and denials, speculation, improbable inferences, unsubstantiated assertions, and legalistic argumentation are not adequate substitutes for specific facts showing that there is a genuine issue for trial.")(*citing Douglass v. United Servs. Auto. Ass'n*, 79 F.3d 1415, 1429 (5th Cir. 1996)(en banc); *SEC v. Recile*, 10 F.3d 1093, 1097 (5th Cir. 1993)). Nor may a party "present evidence contradicting admissions made in his pleadings for the purpose of defeating a summary judgment," *Jonibach Management Trust v.*

Wartburg Enterprises, Inc., 136 F.Supp. 792, 821 n.29 (S.D. Tex. 2015),[35] declaration evidence that contradicts or impeaches, without a valid explanation, sworn deposition testimony, *Hacienda Records, L.P. v. Ramos*, 718 F. App'x at 234 ("[A party] is not entitled to use a declaration 'that impeaches, without explanation, sworn testimony' to defeat summary judgment.")(quoting *S.W.S. Erectors, Inc. v. Infax, Inc.*, 72 F.3d 489, 495 (5th Cir. 1996)),[36] or declaration evidence that is internally inconsistent and self-contradictory. *Cooper Cameron Corp. v. United States Dep't of Labor*, 280 F.3d 539, 550 (5th Cir. 2002)("[A party] cannot meet its [summary judgment] burden with an internally inconsistent, self-contradictory affidavit."); *see also Freeman v. City of Fort Worth, Texas*, 2011 WL 2669111, at *3 (N.D. Tex. July 7, 2001)(where the district court concluded that the non-movant's internally inconsistent and self-contradictory affidavit was "insufficient to create a dispute of fact as to any material issues.")(citations omitted).

The Supreme Court admonishes that "[w]hen opposing parties tell two different stories, one of which is blatantly contradicted by the record, so that no reasonable jury could believe it, a

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[35] The court in *Jonibach* cites *Davis v. A.G. Edwards and Sons, Inc.*, 823 F.2d 105, 107-108 (1987), where plaintiffs, in attempting to defeat a summary judgment motion by showing that there was a genuine issue of material fact, submitted an affidavit that clearly conflicted with earlier statements the plaintiffs had made in their complaints. The Fifth Circuit stated that "the factual dispute d[id] not render summary judgment inappropriate," because "[i]rrespective of which document contains the more accurate account, the [plaintiffs] are bound by the admissions in their pleadings, and thus no factual issue can be evoked by comparing their pleadings with [the] affidavit." *Id.* The court noted that the prohibition against the submission of affidavits or declarations that contradict the party's pleadings for the purposes of defeating summary judgment is based on the proposition that "Factual assertions in pleadings . . . are considered to be judicial admissions conclusively binding on the party who made them," *Jonibach*, 136 F.Supp. at 821 n.29 (quoting *White v. ARCO/Polymers, Inc.*, 720 F.2d 1391, 1396 (5th Cir. 1983)), while also noting that "[a]lthough facts in pleadings are not by themselves evidence, a judicial admission has the effect of withdrawing it from contention." *Id.* (citing *Martinez v. Bally's Louisiana, Inc.*, 244 F.3d 474, 476 (5th Cir. 2001)).

[36] This rule is known as the "sham-affidavit" rule, which provides a "party may not manufacture a dispute of fact merely to defeat a motion for summary judgment," *Hacienda Records*, 718 F. App'x at 235 (quoting *Doe ex rel. Doe v. Dallas Indep.. Sch. Dist.*, 220 F3d 380, 386 (5th Cir. 2000)). The Fifth Circuit, in *Hacienda Records*, noted that "so long as inconsistent statements were 'made by [the party] the deponent and [the party] the affiant,' the court may refuse to consider his declaration as competent evidence." *Id.*; *see also Free v. Wal-Mart Louisiana, L.L.C.,* 815 F.App'x 765, 767 (5th Cir. 2020)(where the Fifth Circuit concluded that the district court had not abused its discretion and "reasonably applied the sham affidavit doctrine" when it struck an affidavit that, without explanation, conflicted with prior deposition testimony).

court should not adopt that version of the facts for purposes of ruling on a motion for summary judgment." *Scott*, 550 U.S. at 380, 127 S.Ct. at 1776. "Summary judgment is appropriate where critical evidence is so weak or tenuous on an essential fact that it could not support a judgment in favor of the nonmovant, or where it is so overwhelming that it mandates judgment in favor of the movant." *Armstrong v. City of Dallas*, 997 F.2d 62, 66 n.12 (5th Cir.1993) ("We no longer ask whether literally little evidence, i.e., a scintilla or less, exists but, whether the nonmovant could, on the strength of the record evidence, carry the burden of persuasion with a reasonable jury."); *see also*, *Anderson*, 477 U.S. at 251-252, 106 S.Ct. at 2512 (where the Court stated that the inquiry under a motion for summary judgment is "whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law."), If the nomoving party fails to meet its burden of submitting competent summary judgment evidence that there is a genuine dispute as to a material fact, "the motion for summary judgment ***must*** be granted." *Little*, 37 F.3d at 1076 (emphasis added)("A plaintiff should not be required to wait indefinitely for a trial when the defendant has a meritless defense that can be resolved on motion for summary judgment.").

V. <u>Legal Conclusions</u>

A. Highland Has Met Its Burden of Showing Its Prima Facie Case That It Is Entitled to Summary Judgment

It has often been said that "suits on promissory notes provide 'fit grist for the summary judgment mill.'" *Resolution Tr. Corp. v. Starkey*, 41 F.3d 1018, 1023 (5th Cir. 1995) (quoting *FDIC v. Cardinal Oil Well Servicing Co.*, 837 F.2d 1369, 1371 (5th Cir. 1988)); *see also Looney v. Irvine Sensors Corp.*, Civ. Action No. 3:09-CV-0840-G, 2010 WL 532431, at *2 (N.D. Tex. Feb. 15, 2010) ("Suits on promissory notes are typically well-suited for resolution via summary judgment."). To prevail on summary judgment for breach of a promissory note under Texas law,

the movant need not prove all essential elements of a breach of contract, but only must establish (i) the note in question, (ii) that the non-movant signed the note, (iii) that the movant was the legal owner and holder thereof, and (iv) that a certain balance was due and owing on the note. *See Resolution*, 41 F.3d at 1023; *Looney*, 2010 WL 532431, at *2-3; *Magna Cum Latte*, 2007 WL 3231633, at *15.

With regard to the Pre-2019 Notes, the evidence is that they are valid, signed by Mr. Dondero on behalf of HCMFA in Highland's favor, and, as of May 27, 2022, the total outstanding principal and accrued but unpaid interest due under the 2014 Note was $2,151,130.84, and the unpaid principal and accrued interest due under the 2016 Note was $1,001,238.06. Second Klos. Dec. ¶ 18. HCMFA breached its obligations under the Pre-2019 Notes by failing to pay Highland all amounts due and owing upon Highland's demand. Highland has been damaged by HCMFA's breaches in the amounts set forth above, plus the interest that has accrued under the Pre-2019 Notes since those calculations, plus collection costs and attorneys' fees. Thus, Highland has made its prima facie showing that it's entitled to summary judgment on HCMFA's breach of each of the Pre-2019 Notes. *See Resolution*, 41 F.3d at 1023 (holding that where affidavit "describes the date of execution, maker, payee, principal amount, balance due, amount of accrued interest owed, and the date of default for each of the two promissory notes," movant "presented a prima facie case of default on the notes."); *Looney,* 2010 WL 532431, at *2-3 (where movant "has attached a copy of the note … to a sworn affidavit in which he states that the photocopy is a true and correct copy of the note, that he is the owner and holder of the note, and that there is a balance due on the note … [movant] has made a prima facie case that he is entitled to summary judgment on the note.").

B. HCMFA Has Failed to Rebut Highland's Prima Facie Case

Highland having met its initial burden, the burden shifts to HCMFA to demonstrate the existence of a genuine dispute of a material fact that would defeat the MSJ. *Latimer*, 919 F.2d at 303; *see also Nat'l Ass'n of Gov't Emps*, 40 F.3d at 712. HCMFA has failed its burden here.

With regard to HCMFA's Alleged Oral Agreement Defense,[37] HCMFA has failed to point to a genuine dispute of material fact such that a reasonable jury would find that the Alleged Oral Agreements existed and that the Alleged Oral Agreements, if they existed, would be valid and enforceable agreements under state law. The only summary judgment evidence submitted by HCMFA in support of its Alleged Oral Agreement Defense is the conclusory, self-serving, unsubstantiated declarations of Mr. Dondero and his sister, Ms. Dondero, regarding the existence of the Alleged Oral Agreements. *See* Declaration of James Dondero, dated June 30, 2022, Def. Ex. 4, Appx. 301-369; Declaration of Nancy Dondero, dated June 30, 2022, Def. Ex. 5, Appx. 370-380.[38] The court will not consider the Dondero declarations, which contradict HCMFA's pleaded facts and prior deposition testimony, and which are internally inconsistent and self-contradictory, as providing competent summary judgment evidence regarding the existence of the Alleged Oral Agreements. Therefore, HCMFA has failed to present any genuine dispute of material fact that could defeat the MSJ.

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[37] HCMFA has failed to present any evidence whatsoever of a genuine dispute of a material fact with respect to its other affirmative defenses. *See infra* note 20.

[38] As noted above, HCMFA can point to no document or writing that was ever uncovered or produced in discovery to establish, memorialize, or reflect the existence or terms of the Alleged Oral Agreements.

1. The Dondero Declarations Contradict the Pleaded Facts in HCMFA's Answer

The Dondero declarations submitted by HCMFA in opposition to the MSJ contradict the pleaded facts in HCMFA's assertion of the Alleged Oral Agreement Defense in its Answer with respect to the 2014 Note,[39] and, therefore will not be considered as competent summary judgment evidence to defeat Highland's claims on the 2014 Note. *See Jonibach Management Trust v. Wartburg Enterprises, Inc.*, 136 F.Supp. at 821 n.29 ("A party cannot present evidence contradicting admissions made in his pleadings for the purpose of defeating a summary judgment). A review of the stated Alleged Oral Agreement Defense reveals that HCMFA claims that Highland is barred from collecting on the Pre-2019 Notes because "sometime between December of the year in which each Note was made and February of the following year" Highland, through the person of Ms. Dondero, as a representative for a majority of the Class A shareholders of Highland, entered into an oral agreement (without naming the other party to the oral agreement), whereby Highland "agreed that [it] would forgive the Notes if certain portfolio companies were sold for greater than cost or on a basis outside of Mr. Dondero's control" and that "[t]he purpose of this agreement was to provide compensation to Mr. Dondero, who was otherwise underpaid compared to reasonable compensation levels in the industry, through the use of forgivable loans" -- loans to whom, again, HCMFA does not say. Answer, ¶ 41. What is clear is that HCMFA alleges that Ms. Dondero is the person who entered into the Alleged Oral Agreement ten to twelve months ***after*** each of the Pre-2019 Notes were issued in exchange for hard-cash loans from Highland to HCMFA, and that the

[39] As noted, the Alleged Oral Agreement Defense is pleaded with nearly identical language to the same Alleged Oral Agreement Defense asserted in four of the Five Earlier-Filed Note Actions that significantly that morphed over time after the commencement of the Five Earlier-Filed Note Actions.

Alleged Oral Agreement was entered into for the purpose of providing compensation ***to Mr. Dondero***. Answer, ¶¶ 1-2, 41.

Despite (a) having litigated the circumstances concerning the Alleged Oral Agreement Defense for over a year in the Consolidated Notes Action, and (b) reviewing and authorizing HCMFA's Answer before it was filed,[40] it was only under questioning that Mr. Dondero and Ms. Dondero realized that she could not have entered into the 2014 Alleged Oral Agreement because she had not been appointed the trustee of Dugaboy until October of 2015.[41] As a result, Mr. Dondero was forced to change HCMFA's assertions in its Answer regarding the formation of the 2014 Alleged Oral Agreement to assert that it was ***he who entered into the 2014 Alleged Oral Agreement with himself***. Dondero Declaration, ¶ 13 ("I – acting on behalf of Dugaboy for [Highland] and also on behalf of HCMFA – entered into an agreement (the "2014 Agreement") that [Highland] would not collect on the 2014 Note if certain events occurred.").[42] HCMFA has not sought leave to amend its Answer in this Action, even though Mr. Dondero's declaration clearly contradicts the factual contentions in the Answer as to who allegedly entered into the 2014 Alleged Oral Agreement.

Mr. Dondero's declaration also contradicts the allegation in the Answer as to ***when*** the agreement was made to potentially forgive the indebtedness under the Pre-2019 Notes as a means of deferred compensation to Mr. Dondero. In the Answer, HCMFA states that the Alleged Oral Agreements were entered into "sometime between December of the year in which each Note was made and February of the following year." Answer, ¶41. Both of the Pre-2019 Notes were issued

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[40] *See* Pl. Ex. 215 at 30:7-31:2, Appx. 4930-4931.

[41] *See* Pl. Ex. 210 at 16:6-18:24, Appx. 4852-4854; *see also*, Pl. Ex. 237, Appx. 5128-5133.

[42] *See* Pl. Ex. 215 at 31:3-25, 32:19-36:6, Appx. 4931-4936.

in February of the year in which they were made, which means HCMFA alleges that the Alleged Oral Agreements were entered into ten to twelve months ***after*** each of the Pre-2019 Notes were issued in exchange for loans from Highland. Yet, Mr. Dondero, in his declaration,[43] points to, and incorporates as exhibits to his declaration, two documents that state that the agreements to potentially forgive the loans as compensation to Mr. Dondero were actually made ***contemporaneously*** with the making of the loans and the issuance of the notes:[44]

- A letter from his counsel dated February 1, 2021 to opposing counsel (the "Letter") that Mr. Dondero alleges discloses "that one of the defenses in this litigation was that the Notes were subject to forgiveness as potential compensation," Dondero Declaration ¶18 (attaching a copy of the letter as Exhibit C to the declaration). The letter references the Debtor's "recently commenced suit to collect on certain notes payable to it executed by Mr. Dondero and certain of his affiliates," and states, "As you are aware, in addition to other defenses, Mr. Dondero views the notes in question as ***having been given in exchange for loans by Highland made in lieu of compensation to Mr. Dondero***." Def. Ex. 4 at Ex. C., Appx. 361 (emphasis added).

- Proof of Claim #188 filed by Mr. Dondero, individually, on May 26, 2020 ("Dondero POC") that Mr. Dondero avers "provided in 'Schedule A' [to the proof of claim] notice to the world that the Notes at issue in this and the other adversary proceedings concerning notes were potentially forgivable as compensation to me." Def. Ex. 4 at ¶19, Appx. 309. Exhibit A to the proof of claim included a table labeled "Schedule A (as of March 31, 2020)" that listed various notes issued by Mr. Dondero and various affiliates (including HCMFA) to Highland, and stated that the claim was "a contingent claim asserted by James Dondero and is subject to any effort to collect on [the notes listed on Schedule]" and that "[i]n the event that collection efforts are made to collect the Notes, James Dondero asserts that ***the Notes were issued by him for funds advanced in lieu of compensation***." Def. Ex. 4 at Ex. D, Appx. 367.

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[43] Def. Ex. 4 at ¶¶ 18-19, Appx. 309.

[44] If the Alleged Oral Agreements were made contemporaneously with the issuance of the notes, HCMFA would be barred from submitting evidence of such agreements by the parole evidence rule. *See Faulkner v. Mikron Indus., Inc. (In re Heritage Organization, L.L.C.)*, 354 B.R. 407, 430 (N.D. Tex. Bankr. 2006)(where the court stated that "extrinsic evidence of a condition subsequent is not admissible to vary the terms of a valid and binding written agreement.")(citing, *Litton v. Hanley*, 823 S.W.2d 428, 430-31 (Tex.App.—Houston [1st Dist.] 1992), for its holding that "evidence of an alleged oral agreement that the note would only be due if the business subsequently turned a profit was inadmissible.")

Because these allegations in Mr. Dondero's declaration clearly contradict the allegations pleaded in the Answer – as to when the agreement to forgive the loans upon the occurrence of a condition subsequent -- the court will not consider his declaration in connection with its analysis of the MSJ.[45]

2. *Mr. Dondero's Declaration Contradicts His Prior Sworn Testimony Regarding the Alleged Oral Agreements*

Mr. Dondero's declaration evidence (the Letter and the Dondero POC) that state that the Pre-2019 Notes were issued "in lieu of compensation" contradicts the prior deposition testimony of Mr. Dondero that (a) the Pre-2019 Notes were issued in exchange for loans made to HCMFA, and (b) the Alleged Oral Agreements were entered into ten to twelve months after each of the Pre-2019 Notes were issued. *See, e.g.*, Pl. Ex. 215 at 15:20-17:11, 17:18-22, Appx. 4915-4917, 39:7-14, Appx. 4939; Pl. Ex. 215 at 21:6-22:8, 22:9-23:11, Appx. 4921-4923; Pl. Ex. 215 at 29:15-37:8, Appx. 4929-4937.

In addition, Mr. Dondero's declaration – wherein Mr. Dondero recollects that the Alleged Oral Agreements were entered into specifically with respect to the 2014 Note and the 2016 Note – is inconsistent with and contradicts his November 4, 2022 and May 5, 2022 deposition testimony as to whether the Pre-2019 Notes were subject to an Alleged Oral Agreement. First, during his November 4, 2021 deposition, Mr. Dondero could not describe any material terms of the alleged "oral agreements" as relating to the notes that were the subject of the Consolidated Notes Action. Without a list prepared by counsel, Mr. Dondero could not identify any of the Notes subject to the

[45] Similarly, Ms. Dondero's declaration that, in late 2016 to early 2017, she caused Dugaboy Trust to cause Highland to enter into the 2016 Alleged Oral Agreement and that she was only told by her brother, Mr. Dondero, that "about the substantially the [sic] same agreement Dugaboy made with respect to the 2014 Note," contradicts the pleaded facts in the Answer that it was ***she*** who entered into both the 2014 and 2016 Alleged Oral Agreements, and, thus, will not be considered competent summary judgment evidence of a genuine issue of material fact regarding the existence of the 2014 Alleged Oral Agreement.

alleged "oral agreement" nor could he recall (i) the number of Notes subject to each alleged "oral agreement," (ii) the maker of each Note subject to each alleged "oral agreement," (iii) the date of each Note subject to each alleged "oral agreement," or (iv) the principal amount of any Note subject to the alleged "oral agreement." Pl. Ex. 99 at 13:4-28:22, Appx. 1815-1819. When asked about the existence or terms of any promissory note, other than the promissory notes that were the subject of the Consolidated Notes Action, that was the subject of an agreement with the Dugaboy trustee, Mr. Dondero could not identify a single promissory note or any terms of such a promissory note, such as the maker, the date, or the principal amount. Pl. Ex. 99 at 28:6-31:14, Appx. 1818-1820, 33:22-34-12, Appx. 1820-1821. When asked if he "was aware of any other Promissory Notes [other than the Promissory Notes that are the subject of the Consolidated Notes Action] that are the subject of any agreement that the Dugaboy trustee ever entered into as a representative of the majority of Class A shareholders," Mr. Dondero answered, "Not as I sit here today." Pl. Ex. 99 at 39:4-14, Appx. 1822. During his deposition taken on May 5, 2022 (less than two months prior to his July 1, 2022 declaration), Mr. Dondero could not recall the details of the 2016 Alleged Oral Agreement, including whether the 2016 Alleged Oral Agreement was with respect to both the 2014 Note and the 2016 Note or whether he had entered into an oral agreement with himself in 2014, when he was the Dugaboy trustee, with respect to the 2014 Note. Pl. Ex. 215 at 33:12-34:8.

Yet, just five days after the November deposition, after Mr. Dondero reviewed HCMFA's Answer before authorizing HCMFA's attorneys to file it, Pl. Ex. 215 at 30:7-31:2, Appx. 4930-4931, HCMFA was able to allege that both of the Pre-2019 Notes were specifically the subject of a separate Alleged Oral Agreement, and, less than two months after the May deposition, Mr. Dondero filed his declaration in which he suddenly recollects the specifics of oral agreements that

occurred: (a) with respect to the 2014 Note, at the end of 2014, beginning of 2015 (apparently between himself, as the Dugaboy trustee, acting on behalf of Highland, and himself, as a representative of HCMFA) and, (2) with respect to the 2016 Note, at the end of 2016, beginning of 2017 (between Ms. Dondero, as the Dugaboy trustee, acting on behalf of Highland, and himself, as a representative of HCMFA). This goes to the heart of the issue of whether the alleged conversations occurred in 2014/2015 and 2016/2017 or whether they happened at all because the ***only*** evidence submitted by HCMFA regarding the existence of these conversations are the Dondero declarations. Because Mr. Dondero's declaration contradicts Mr. Dondero's deposition testimony, the court will not consider his declaration as competent summary judgment evidence on the issue of the existence of the Alleged Oral Agreements. *See Hacienda Records*, 718 F. App'x at 234 ("[A party] is not entitled to use a declaration 'that impeaches, without explanation, sworn testimony' to defeat summary judgment.")(quoting *S.W.S. Erectors, Inc.*, 72 F.3d at 495).

3. *The Dondero Declarations Are Internally Inconsistent and Self-Contradictory*

Furthermore, both of the Dondero declarations are internally inconsistent and self-contradictory and, therefore, will not be considered as competent summary judgment evidence present by HCMFA that could defeat the MSJ. *See Cooper Cameron Corp.*, 280 F.3d at 550 ("[A party] cannot meet its [summary judgment] burden with an internally inconsistent, self-contradictory affidavit."). Mr. Dondero's declaration is self-contradictory in several ways, beginning with the statement that the Alleged Oral Agreements were entered into ten to twelve months after each of the Pre-2019 Notes were issued in exchange for loans, which contradicts the statement in the declaration (incorporating the Letter and Dondero POC) that the Pre-2019 Notes were issued "in lieu of compensation." *Compare* Def. Ex. 4 at ¶¶ 5-6, 13-15, Appx. 304-305, 307-

308 *with id.*, Exhibits C and D, Appx. 361, 363-367. Mr. Dondero's declaration is also self-contradictory on the issue of exactly who were the parties to the Alleged Oral Agreements – were the Alleged Oral Agreements entered into between Highland and HCMFA or between Highland and Mr. Dondero, in his individual capacity? Mr. Dondero, essentially, alleges that the 2014 Alleged Oral Agreement was entered into between "[himself] – acting on behalf of Dugaboy for [Highland] and also on behalf of HCMFA." Def. Ex. 4 at ¶ 13, Appx. 307. However, in describing the Alleged Oral Agreement, he alleges that the purpose of the agreement was for ***Highland*** to provide ***him, personally,*** with deferred compensation as a means of ***Highland*** incentivizing ***Mr. Dondero, personally***, to give his "utmost focus and attention [to the monetization of the portfolio companies and to "serve[ ] as an incentive for ***me*** to work particularly hard to make sure these assets were successful," providing ***Highland*** "the additional benefit . . . of not increasing ***my*** base salary" but instead making "***my compensation*** conditional on performance." Def. Ex. 4 at ¶ 13, Appx. 307 (emphasis added). Mr. Dondero further alleges that the Alleged Oral Agreement was in line with Highland's "common practice to compensate ***executives*** with forgivable loans" as supported by his professed knowledge that "several other ***individuals*** may have received loans by [Highland] that were forgiven." Def. Ex. 4 at ¶ 11, Appx. 306 (emphasis added). If the conversations that led to the Alleged Oral Agreements happened at all, the conversations are alleged to have been between Highland and Mr. Dondero, personally, regarding his personal deferred compensation (which contradicts Mr. Dondero's allegation that he was acting on behalf of, and purporting to bind, HCMFA) when these alleged conversations occurred.

Ms. Dondero's declaration is similarly internally inconsistent and self-contradictory with respect to the issue of who the parties were to the Alleged Oral Agreements with respect to the Pre-2019 Notes. Ms. Dondero alleges in her declaration that she, as the family trustee of Dugaboy,

"caused Dugaboy . . . to cause [Highland] to enter into [the Alleged Oral Agreement] with HCMFA." Def. Ex. 5 at ¶ 7, Appx. 373. But, like Mr. Dondero, she goes on to describe the circumstances surrounding the Alleged Oral Agreement," stating that she "knew and believed that ***Jim Dondero would be the person*** most involved in, and responsible for, the marketing and eventual sale of [the portfolio companies] ***by Highland***" and that "[t]he 2016 Agreement had two primary purposes . . . . First, the 2016 Agreement would provide additional incentive and motivation ***to Jim Dondero*** to attempt to maximize the value and return to [***Highland***] . . . and to remain in [***Highland's***] employment," and "[s]econd, the 2016 Agreement would allow [***Highland***] to make part of ***Jim's*** compensation contingent on performance, instead of paying ***him*** additional cash in 2016 or 2017 . . . ." *Id.* at ¶ 9, Appx. 373-374. Finally, Ms. Dondero alleges, "At the time I caused [Highland] to enter into the 2016 Agreement, I believed I had the authority, as the Dugaboy Family Trustee, to cause Dugaboy to cause [Highland] to enter into the 2016 Agreement" and that "I also intended, believed, and expected that the 2016 Agreement ***would be a binding and enforceable agreement between Highland and Jim Dondero***" – not between Highland and HCMFA. *Id.* at ¶ 12, Appx. 374. The court will not consider the internally inconsistent and self-contradictory declaration of Mr. Dondero as competent summary judgment evidence.

The Dondero declarations are the only summary judgment evidence presented by HCMFA in support of its Opposition to the MSJ. Thus, the court's finding that neither constitutes competent summary judgment evidence results in the conclusion that HCMFA has failed to meet its burden of rebutting Highland's *prima facie* case for summary judgment. Highland's MSJ should be granted.

4. Even If the Court Were to Consider the Dondero Declarations, HCMFA Has Failed to Point to a Genuine Dispute With Respect to a Material Fact That Would Defeat Highland's MSJ

Even if the court were to consider the Dondero declarations, when reviewed with the summary judgment record as a whole, HCMFA has not raised a genuine issue of material fact such that a reasonable jury might find the existence of the Alleged Oral Agreements. We have here a case of "opposing parties tell[ing] two different stories, one of which is blatantly contradicted by the record, so that no reasonable jury could believe it," such that "[the] court should not adopt that version of the facts for purposes of ruling on a motion for summary judgment." *Scott*, 550 U.S. at 380, 127 S.Ct. at 1776. HCMFA's version of the facts is "blatantly contradicted by the record, so that no reasonable jury could believe it" and so the court should adhere to the Supreme Court's admonition and not accept HCMFA's allegations of a fact for purposes of ruling on the MSJ.

a) Could the Alleged Oral Agreements, If Made, Even Be Valid?

HCMFA's opposition to the MSJ depends on HCMFA being able to submit competent summary judgment evidence that the Alleged Oral Agreements not only existed but are valid, binding contracts between Highland and HCMFA under Texas law. HCMFA cannot meet that burden here.

First, Ms. Dondero did not have authority to bind Highland to the Alleged Oral Agreements. HCMFA alleges that the Alleged Oral Agreements were between: (a) Mr. Dondero, acting on behalf of HCMFA; and (b) ***his sister, Ms. Dondero***, of Vero Beach, Florida, acting on behalf of Highland. Notably, Ms. Dondero was never an officer, manager, or held any role with Highland. but, HCMFA's position is that she nevertheless had authority to act for Highland, in connection with agreeing not to collect on the Pre-2019 Notes, because she was/is the Family

Trustee of the Dugaboy Investment Trust,[46] which was the holder of a majority of the ***limited partnership interests of Highland***. This, according to HCMFA, meant Dugaboy had authority, under the terms of Highland's limited partnership agreement (the "LPA"), to exert control over Highland and do things like release millions of dollars' worth of debt owed to Highland by a corporate affiliate, in order to provide compensation to Mr. Dondero as CEO, president, and controlling portfolio manager of Highland. Specifically, HCMFA makes the bizarre argument that the holder of a majority of the limited partnership interests of Highland "was entitled to approve the compensation of [Highland's] General Partner and any 'Affiliate' of the General Partner" and, thus, Ms. Dondero could cause Highland to release obligations on the Pre-2019 Notes as a form of "compensation" to Mr. Dondero. Def. Ex. 4 at ¶ 8, Appx. 305 (citing Pl. Ex. 30, Appx. 612, 622, 639, the Fourth Amended and Restated Agreement of Limited Partnership of Highland Capital Management, L.P.). HCMFA, through Mr. Dondero's declaration, points specifically to Section 3.10(a) as the section of the LPA that gave Dugaboy the authority to bind Highland to the Alleged Oral Agreements. *Id.*, Appx. 622. But Section 3.10(a) provides no such authority.

Section 3.10(a) is entitled "**Compensation and Reimbursement of the General Partner**." Note that the General Partner of Highland was Strand. Section 3.10(a) provides, in relevant part, "The General Partner and any Affiliate of the General Partner shall receive no compensation from the Partnership for services rendered pursuant to this Agreement or any other agreements unless approved by a Majority Interest." *Id.* The argument of HCMFA is that, since Mr. Dondero was an affiliate of Strand, this provision was relevant to his compensation. Even if one assumes that this provision pertains to compensation of Mr. Dondero, as CEO and president

[46] Mr. Dondero was himself the trustee of Dugaboy until his resignation as such on August 26, 2015. Def. Ex. 4 at ¶ 9, Appx. 305-306.

of Highland (as opposed to compensation while acting for Strand), the provision says nothing about the Majority Interest having the ***authority*** to act on behalf of Highland to enter into agreements with third parties regarding compensation. *Id.* Approval and authority are different concepts. In fact, Ms. Dondero testified that she had no meaningful knowledge, experience, or understanding of (a) Highland or its business, (b) the financial industry, (c) executive compensation matters, or (d) Mr. Dondero's compensation or whether he was "underpaid compared to reasonable compensation levels in the industry." Pl. Ex. 100 at 42:22-43:8, Appx. 1885, 48:7-61:9, Appx. 1886-1889; 211:8-216:21, Appx. 1927-1928.

The further undisputed evidence shows that Ms. Dondero never reviewed Highland's financial statements (including balance sheets, bank statements, profit and loss statements, and statements of operations), never asked to see them, and knew nothing about Highland's financial condition prior to the Petition Date. *Id.* at 61:25-63:13, Appx. 1889-1890. Ms. Dondero did not know of Highland's "portfolio companies" except for those her brother identified, and as to those, she did not know the nature of Highland's interests in the portfolio companies, the price Highland paid to acquire those interests, or the value of the portfolio companies. *Id.* at 63:18-80-22, Appx. 1890-1894; 208:24-210:13, Appx. 1926-1927. Ms. Dondero never saw a promissory note signed by Mr. Dondero, nor any other officer or employee of Highland, nor any "affiliate" of Highland. *Id.* at 83:14-84:8, Appx. 1895; 95:3-16, Appx. 1898; 99:20-100:10, Appx. 1899; 115:11-116:4, Appx. 1903; 127:13-128:4, Appx. 1906; 140:15-141:22, Appx. 1909, 180:18-23, Appx. 1919. Ms. Dondero purportedly learned from her brother that Highland allegedly had a "common practice" of forgiving loans but had no actual knowledge or information concerning any loan that Highland made to an officer, employee, or affiliate that was actually forgiven and made no effort to verify her brother's statement. *Id.* 84:9-92:3, Appx. 1895-1897, 100:11-103:8, Appx. 1899-1900.

In summary, the undisputed evidence shows that Ms. Dondero's "approval" of any compensation to Mr. Dondero as an officer and employee of Highland had never been sought by Highland prior to the Alleged Oral Agreements. Moreover, Ms. Dondero, as the Family Trustee of Dugaboy, the holder of the majority limited partnership interests in Highland, did not have "authority," under Section 3.10(a) of the LPA or otherwise, to enter into any agreement with a third party regarding any compensation from Highland to anyone.

b) The Alleged Oral Agreements, If Any Were Made, Would Lack Enforceability Under Basic Contract Principles

Next, the Alleged Oral Agreements would be unenforceable as a matter of law for lack of: (a) consideration, (b) definiteness, and (c) a meeting of the minds. To be legally enforceable, a contract "must address all of its essential and material terms with a reasonable degree of certainty and definiteness." *Scott v. Wollney*, No. 3:20-CV-2825-M-BH, 2021 WL 4202169, at * 7 (N.D. Tex Aug. 28, 2021) (internal quotations omitted); *In re Heritage Org., L.L.C.*, 354 B.R. 407, 431–32 (Bankr. N.D. Tex. 2006) (In order to prove existence of a valid and binding subsequent oral agreement binding upon parties, a party must prove that there was "(1) a meeting of the minds" and "(2) consideration to support such a subsequent oral agreement.") "Whether a contract contains all of the essential terms for it to be enforceable is a question of law." *Id.* (internal quotations omitted). "A contract must also be based on valid consideration." *Id.* "In determining the existence of an oral contract, courts look at the communications between the parties and the acts and circumstances surrounding those communications." *Melanson v. Navistar, Inc.*, 3:13-CV-2018-D, 2014 WL 4375715, at *5 (N.D. Tex. Sept. 4, 2014). *See also id.* at *6 (finding that a reasonable trier of fact could not find that based on the oral conversation between the plaintiff and the defendant that there was an offer, an acceptance, and a meeting of the minds because the conversation did not contain all essential terms); *Wollney*, 2021 WL 4202169, at *8 (finding that

"[w]hen, as here, 'an alleged agreement is so indefinite as to make it impossible for a court to 'fix' the legal obligations and liabilities of the parties, a court will not find an enforceable contract,'" finding that party "has not identified evidence of record that would allow a reasonable trier of fact to find that there was an offer, an acceptance, and a meeting of the minds between Plaintiff and Defendant.") (quoting *Crisalli v. ARX Holding Corp.*, 177 F. App'x 417, 419 (5th Cir. 2006) (citation omitted)); *Heritage*, 354 B.R. at 431–32 (finding a "subsequent oral amendment" defense fails where the summary judgment record does not support the existence of a subsequent agreement).

Here, HCMFA has not submitted competent summary judgment evidence of any of the essential elements for the formation of a valid and binding contract. Mr. Dondero could not identify any material terms of the Alleged Oral Agreements, such as: (a) when the Alleged Oral Agreements were entered into; (b) who – HCMFA or Mr. Dondero – was a party to the Alleged Oral Agreements; (c) whether the Pre-2019 Notes were the subject of an Alleged Oral Agreement (and whether the alleged oral conversations even occurred), (d) the number of notes subject to an Alleged Oral Agreement; or (e) the maker, the date, or the principal amount of any note that was subject to an Alleged Oral Agreement. HCMFA alleges, through Mr. Dondero's declaration, that the Alleged Oral Agreements were agreements between Highland and HCMFA while, at the same time, it alleges, through both Dondero declarations, that the oral conversations were between Highland and Mr. Dondero, personally. HCMFA does not even allege that ***HCMFA*** gave any consideration to Highland in exchange for Highland's alleged agreement to forgive HCMFA's indebtedness under the Pre-2019 Notes upon the occurrence of a condition subsequent. Thus, the Alleged Oral Agreements would be unenforceable for lack of consideration. The record evidence clearly shows, as well, that HCMFA has failed to provide evidence of the essential and material

terms of the Alleged Oral Agreements with any degree of certainty and definiteness that would allow a reasonable trier of fact to find that the Alleged Oral Agreements were valid, binding agreements between Highland and HCMFA. And, finally, the summary judgment record, as a whole, shows that there certainly was not a "meeting of the minds" between Highland and HCMFA with respect to the Alleged Oral Agreements.

c) Most Importantly, HCMFA Has Not Raised a Genuine Issue of Fact Regarding the Existence of the Alleged Oral Agreements That Would Defeat the MSJ

Finally, the court finds that HCMFA has simply failed to present any summary judgment evidence that would allow a reasonable jury to find that the Alleged Oral Agreements existed. Beyond the fact that there are only self-serving, uncorroborated, and contradictory declarations and testimony of the Donderos submitted on this defense, it is simply not credible that a multi-billion-dollar enterprise, with sophisticated officers and directors, that was audited by one of the largest and most iconic public accounting firms in the world (PwC), would have entered into Alleged Oral Agreements to forgive millions of dollars of debt unbeknownst to any of those officers, directors, or PwC and, further, not disclose the existence of the Alleged Oral Agreements to any of those officers, directors, or PwC in the years leading up to the bankruptcy filing or to the bankruptcy court after the Petition Date until the Alleged Oral Agreement Defense was first raised in the Condolidated Notes Action. No reasonable trier of fact would believe that Mr. Dondero entered into an "oral agreement" between himself, as a representative of Highland, and himself, as a representative of HCMFA – that he had a verbal conversation with himself – with respect to the 2014 Alleged Oral Agreement. One would have to wonder just how that conversation would have played out.

HCMFA's (and Mr. Dondero's and Ms. Dondero's) actions before and after the Petition Date belie the existence of any Alleged Oral Agreement. The Alleged Oral Agreements were never disclosed to anyone by Mr. Dondero or Ms. Dondero. Other than Mr. Dondero and Ms. Dondero, no one participated in the discussions that led to the Alleged Oral Agreements (and, again, with respect to the 2014 Alleged Oral Agreement, HCMFA has alleged that Mr. Dondero had this discussion with himself). Pl. Ex. 210 at 27:19-21, Appx. 4863. Ms. Dondero and Dugaboy have admitted that neither ever disclosed the existence or terms of the 2016 Alleged Oral Agreement to ***anyone***, including PwC, Mr. Waterhouse (again, Highland's former CFO), or Highland's co-founder, Mark Okada. *Id.* at 25:6-22, Appx. 4861, 27:22-28:4, Appx. 4863-4864. Mr. Dondero has admitted that he: (1) never disclosed the existence or terms of the alleged "oral agreement" to PwC, Mr. Okada, or the bankruptcy court prior to the commencement of this Action, Pl. Ex. 24 (Responses to RFAs 11 and 12), Appx. 523; and (2) never caused Highland to disclose the existence or terms of any Alleged Oral Agreement to the bankruptcy court in connection with the Bankruptcy Case. Pl. Ex. 24 (Responses to RFAs 13 and 14), Appx. 523. To be clear, Mr. Dondero represented that he did, indeed, inform Mr. Waterhouse about the Alleged Oral Agreements. Pl. Ex. 24 (Responses to RFAs 3 & 4), Appx. 21. However, Mr. Waterhouse—again, the CFO of Highland ***and an officer of HCMFA***—testified that he did not learn of the Alleged Oral Agreements until recently and only believes that they were subject to "milestones" that he cannot identify. Pl. Ex. 105 at 65:5-72:14, Appx. 2065-2067, 82:19-84:7, Appx. 2070.

More importantly in connection with HCMFA's assertion of its Alleged Oral Agreement Defense in this Action, HCMFA, itself, did not disclose the existence of the Alleged Oral Agreements when it was in its financial interests to do so during the Bankruptcy Case – either in its proofs of claim filed in the Bankruptcy Case or in its objection to confirmation of the Plan, even

though the Plan's financial projections were based on the stated assumption that all of the affiliate notes payable to Highland (including the Pre-2019 Notes) would be collected in 2021.[47] In addition, Mr. Dondero sold MGM stock in November 2019—an event that would trigger the alleged "condition subsequent" under the Alleged Oral Agreements—but failed to declare the notes forgiven, and otherwise remained silent about the alleged agreement. Ms. Dondero, the counter-party to the Alleged Oral Agreements (or, just to the 2016 Alleged Oral Agreement, depending upon which of the contradictory allegations of fact between HCMFA's pleadings and the Dondero declarations and testimony is to be believed), never saw a note signed by Mr. Dondero or any affiliate of Highland and ***had no authority to bind Highland to the Alleged Oral Agreements***. No document exists memorializing or otherwise reflecting the existence or terms of the Alleged Oral Agreements. There is no history of loans to affiliates being forgiven by Highland as a means of providing deferred compensation to Mr. Dondero. Thus, even if the court were to consider the Dondero declarations as competent summary judgment evidence, no reasonable finder of fact could conclude that the Alleged Oral Agreements exist.

In conclusion, the summary judgment evidence shows that the Pre-2019 Notes: (i) are valid, (ii) were executed by HCMFA in favor of Highland; and (iii) there is a balance due and owing under each of the Pre-2019 Notes. HCMFA failed to rebut Highland's prima facie case because it failed to present competent summary judgment evidence of a ***genuine*** dispute of material fact in connection with any of its affirmative defenses that would defeat Highland's MSJ. Where, as here, two versions of the story collide and the non-movant's version of the facts is "blatantly contradicted by the record, so that no reasonable jury could believe it," *Scott*, 550 U.S.

[47] HCMFA has admitted that, prior to February 21, 2021, it never disclosed the existence or terms of the Alleged Oral Agreements to PwC, Mr. Okada, the bankruptcy court, or any creditor of Highland, including in connection with any objection to the Plan or Disclosure Statement. Pl. Ex. 220 (Responses to RFAs 7-12, 15-21), Appx. 5018).

at 380, 127 S.Ct. at 1776, and "where critical evidence is so weak or tenuous on an essential fact that it could not support a judgment in favor of the nonmovant, or where it is so overwhelming," Rule 56 mandates judgment in favor of the movant. *Armstrong*, 997 F.2d at 66 n.12.

For the reasons set forth above, the bankruptcy court hereby recommends that the District Court grant summary judgment in favor of the Highland.

VI. Conclusion: Summary Judgment Recommended

Accordingly, summary judgment should be entered holding HCMFA liable for: (a) breach of contract with respect to the Pre-2019 Notes; and (b) turnover of all amounts due under the Pre-2019 Notes, pursuant to Bankruptcy Code Section 542, including the costs of collection and reasonable attorneys' fees as provided for in the Pre-2019 Notes in an amount to be determined. Specifically:

With regard to the 2014 Note, HCMFA should be liable on a Judgment for breach of contract and turnover in the amount of: (a) **$2,151,130.84**, the total outstanding principal and accrued but unpaid interest due under the 2014 Note as of May 27, 2022; plus (b) interest accrued since May 27, 2022; plus (c) the costs of collection and reasonable attorneys' fees in an amount to be determined.

With regard to the 2016 Note, HCMFA should be liable on a Judgment for breach of contract and turnover in the amount of: (a) **$1,001,238.06**, the total outstanding principal and accrued but unpaid interest due under the HCMFA Notes as of May 27, 2022; plus (b) interest accrued since May 27, 2022; plus (c) the costs of collection and reasonable attorneys' fees in an amount to be determined.

Submission of Judgment. The bankruptcy court directs Plaintiff to promptly submit a form of Judgment that calculates proper amounts due pursuant to this Report and Recommendation, including interest accrued to date (and continuing to accrue per diem), as well as costs and attorneys' fees incurred. The costs and attorneys' fees calculation shall be separately filed as a Notice with backup documentation attached. HCMFA shall have 21 days after the filing of such Notice to file an objection to the reasonableness of the attorneys' fees and costs. The bankruptcy court will thereafter determine the reasonableness in Chambers (unless the bankruptcy court determines that a hearing is necessary) and will promptly submit the form Judgment, along with appropriate attorneys' fees and costs amounts inserted into the form Judgment, to the District Court, to consider along with this Report and Recommendation. This Report and Recommendation is immediately being sent to the District Court.

End of Report and Recommendation

BTXN 221 (rev. 09/22)

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS

In Re:	§	
Highland Capital Management, L.P.	§	
	§	Case No.: 19−34054−sgj11
Debtor(s)	§	Chapter No.: 11
Highland Capital Management, L.P.	§	
Plaintiff(s)	§	Adversary No.: 21−03082−sgj
vs.	§	
Highland Capital Management Fund Advisors, L.P.	§	Civil Case No.: 3:21−cv−00881
Defendant(s)	§	
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
Plaintiff(s)	§	
vs.	§	
HIGHLAND CAPITAL MANAGEMENT FUND	§	
ADVISORS, L.P.,	§	
Defendant(s)	§	
	§	

NOTICE OF TRANSMITTAL OF REPORT AND RECOMMENDATION

I am transmitting:

One copy of: Report and Recommendation to District Court regarding Highland Capital Management, L.P.'s motion for summary judgment against Highland Capital Management Fund Advisors, L.P. .

DATED: 10/12/22

FOR THE COURT:
Robert P. Colwell, Clerk of Court

by: /s/Sheniqua Whitaker, Deputy Clerk

CLERK, U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS

ENTERED

THE DATE OF ENTRY IS ON
THE COURT'S DOCKET

The following constitutes the ruling of the court and has the force and effect therein described.

Signed October 11, 2022

United States Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re: HIGHLAND CAPITAL MANAGEMENT, L.P. Reorganized Debtor.	Case No. 19-34054-sgj11 Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P., Plaintiff. v. HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, L.P., Defendant.	Adversary No. 21-03082-sgj Civ. Act. No. 3:22-cv-00789 **(Consolidated Under Civ. Act. No. 3:21-cv-00881)**

REPORT AND RECOMMENDATION TO DISTRICT COURT REGARDING HIGHLAND CAPITAL MANAGEMENT, L.P.'S MOTION FOR SUMMARY JUDGMENT AGAINST HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, L.P.

I. Introduction

This court submits this report and recommendation to the district court ("District Court") with respect to *Highland Capital Management, L.P.'s Motion for Summary Judgment* ("MSJ")[DE

#45][1] filed on May 27, 2022, in the above-referenced adversary proceeding ("Action"). The Action is yet another lawsuit regarding promissory notes issued by the defendant, Highland Capital Management Fund Advisors, L.P. ("HCMFA" or "Defendant") in favor of Highland Capital Management, L.P. This Action emanates from the above-referenced bankruptcy case (the "Bankruptcy Case") of Highland Capital Management, L.P. ("Highland," "Plaintiff," or sometimes "Debtor" or "Reorganized Debtor"). For the reasons set forth herein, this court recommends that the District Court grant the MSJ and enter judgment against HCMFA.

II. Background and Procedural History

A. Highland and its Bankruptcy Case

Highland, a Dallas-based investment firm that managed billion-dollar investment portfolios and assets, was co-founded in 1993 by James D. Dondero ("Mr. Dondero") and Mark Okada ("Okada"). Highland's equity interest holders included Hunter Mountain Investment Trust (99.5%), The Dugaboy Investment Trust, Dondero's family trust ("Dugaboy") (0.1866%), Okada, personally and through trusts (0.0627%), and Strand Advisors, Inc. ("Strand"), which was wholly owned by Dondero (0.25%), the only general partner of Highland. Highland also managed assets and portfolios for other investment advisers and funds through two Dondero-controlled entities – HCMFA and NexPoint Advisors, L.P., pursuant to a Shared Services Agreement and Payroll Reimbursement Agreement. HCMFA had no employees of its own that provided investment advisory services to its clients or managed portfolios. Dondero was the President and Chief Executive Officer of Highland and also served as a high-level executive and controlling portfolio manager for HCMFA.

[1] Citations to docket entries in the instant adversary proceeding shall be notated as follows: [DE # __]. Citations to docket entries in the main bankruptcy case shall be notated as follows: [Bankr. DE # __].

On October 16, 2019 (the "Petition Date"), with Mr. Dondero in control[2] and acting as Highland's CEO, president, and portfolio manager, facing a myriad of massive, business litigation claims – many of which had finally become liquidated (or were about to become liquidated) after a decade or more of contentious litigation in multiple forums all over the world, Highland filed for relief under chapter 11 of the United States Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware, Case No. 19-12239 (CSS). Neither HCMFA nor any of the other Dondero-controlled Highland affiliates joined in the bankruptcy filing as joint debtors.

On October 29, 2019, an official committee of unsecured creditors (the "Committee") was appointed in the bankruptcy case. Almost immediately from its appointment, the Committee's relationship with Highland, with Mr. Dondero in control, was contentious. First, the Committee moved for a change of venue to Dallas, which was granted over Highland's objections.[3] Second, the Committee (and later, the United States Trustee) expressed its then-desire for the appointment of a chapter 11 trustee due to its concerns over and distrust of Mr. Dondero, his numerous conflicts of interest, and his history of alleged mismanagement (and perhaps worse).

After many weeks under the threat of the appointment of a trustee, Highland and the Committee engaged in substantial and lengthy negotiations, resulting in a corporate governance settlement approved by this court on January 9, 2020.[4] As a result of this settlement, Mr. Dondero relinquished control of Highland and resigned his positions as officer or director of Highland and its general partner, Strand,[5] and three independent directors ("Independent Directors") were

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[2] Mark Okada resigned from his role with Highland prior to the Petition Date.

[3] The bankruptcy case was transferred to the Dallas Division of the Bankruptcy Court for the Northern District of Texas in December 2019.

[4] Bankr. DE #339.

[5] Mr. Dondero agreed to this settlement pursuant to a stipulation he executed and that was filed in connection with Highland's motion to approve the settlement. *See Stipulation in Support of Motion of the Debtor for Approval of*

chosen to lead Highland through its chapter 11 case. James P. Seery, Jr. ("Mr. Seery"), one of the Independent Directors, was later appointed as Highland's Chief Executive Officer, Chief Restructuring Officer, and Foreign Representative.[6] Mr. Dondero agreed to remain with Highland as an unpaid portfolio manager following his resignation.

Throughout the summer of 2020, Mr. Dondero informally proposed several reorganization plans, none of which were embraced by the Committee or the Independent Directors. When Mr. Dondero's plans failed to gain traction, he and some of the related entities under his control, including HCMFA, engaged in a "scorched earth" policy in the Bankruptcy Case that has resulted in substantial, costly, and time-consuming litigation for Highland.[7]

During this time, the Independent Directors and the Committee negotiated their own plan of reorganization which culminated in the filing by Highland of its *Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified)* (the "Plan") [Bankr. DE #1808] on January 22, 2021. In its *Disclosure Statement for the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* filed on November 24, 2020 ("Disclosure Statement") [Bankr. DE 1473], Highland included the Debtor's Liquidation Analysis/Financial Projections (the "Projections") in support of the Plan. Pl. Ex. 90, Appx. 1497-1505. Among the assumptions supporting the Projections was that "[a]ll demand notes are collected in the year 2021." *Id.* at 173 of 178, Appx. 1500 (Assumption C). Thus, even though Highland had not yet

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Settlement With the Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in Ordinary Course [Bankr. DE #338].

[6] See the June 16, 2020 order approving the retention by Highland of Mr. Seery as Chief Executive Officer, Chief Restructuring Officer, and Foreign Representative, *nunc pro tunc*, to March 15, 2020. [Bankr. DE #854].

[7] According to Mr. Seery's credible testimony during the hearing on confirmation of the chapter 11 plan ultimately filed by Highland that had been negotiated between the Committee and the Independent Directors, Mr. Dondero had threatened to "burn the place down" if his proposed plan was not accepted. *See* Transcript of Confirmation Hearing dated February 3, 2021 at 105:10-20 [Bankr. DE #1894].

demanded payment under the notes that are the subject of this Action, HCMFA was notified on November 24, 2020 that the Projections assumed that all demand notes that Highland was holding would be collected the following year. Yet, while HCMFA, specifically, joined with other Dondero-controlled funds (the "Funds") in the filing of an objection to confirmation of the Plan ("Funds Objection") [Bankr. DE #1670], it did not object to the Projections or the assumptions that the notes that are the subject of this Action would be collected in 2021, and it did not disclose the existence of its alleged "oral agreement" defense to Highland's collection on the notes or suggest that the Projections were unreasonable in any way. *See* Bankr. DE #1670.

Although there were other objections to confirmation of the Plan, Highland had made certain amendments and modifications to the Plan that addressed those objections so that, by the time of the confirmation hearing that was held in February of 2021, the only remaining objections to confirmation of the Plan were those by Mr. Dondero and the Dondero-related entities (including HCMFA).[8] This court entered its order ("Confirmation Order")[Bankr. DE #1943] confirming the Plan, over the objections by Mr. Dondero and his related entities (including HCMFA), on February 22, 2021. The effective date of the Plan occurred on August 11, 2021, and Highland became the Reorganized Debtor under the Plan. On August 19, 2022, on direct appeal from this bankruptcy court by Mr. Dondero and his related entities, the Fifth Circuit entered its original order in which it "affirm[ed] the confirmation order in large part" and "revers[ed] only insofar as the plan exculpates certain non-debtors in violation of 11 U.S.C. § 524(e), strik[ing] those few parties from the plan's exculpation, and affirm[ed] on all remaining grounds."[9]

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[8] In addition to the Funds Objection, objections to confirmation were filed by Mr. Dondero [Bankr. DE #1661] and entities controlled by him. [Bankr. DE ##1667, 1673, 1676, and 1677]

[9] *In re Highland Capital Management, L.P.*, No. 21-10449, 2021 WL 3571094, at *1 (5th Cir. Aug, 19, 2022). On September 7, 2022, following a petition for limited panel rehearing filed by certain appellants on September 2, 2022 "for the limited purpose of clarifying and confirming one part of its August 19, 2022, opinion," the Fifth Circuit

B. This Action and the Other, Earlier-Filed Note Actions

The instant Action was initiated by Highland on November 9, 2021, by the filing of a complaint ("Complaint")[DE #1] in the bankruptcy court against HCMFA, seeking damages for HCMFA's breach of contract in failing to pay, upon demand, amounts due and owing under two demand promissory notes issued by HCMFA in favor of Highland and seeking turnover to the reorganized estate of amounts due and owing under those promissory notes equal to (i) the aggregate outstanding principal due under each note, (ii) all accrued and unpaid interest thereon until the date of payment, plus (iii) Highland's costs of collection (including all court costs and reasonable attorneys' fees and expenses as provided for under the Pre-2019 Notes) for HCMFA's breach of its obligations under each of the Pre-2019 Notes. Complaint, ¶¶ 31 and 39.

The instant Action is a companion case to five earlier-filed note actions – each filed on January 22, 2021 – against Mr. Dondero and certain Dondero-controlled corporate affiliates of Highland that were makers of one or more of sixteen promissory notes in favor of Highland with more than $60 million of unpaid principal and interest alleged to be due and owing at the time the suits were filed ("Note Maker Defendants").[10] *See* Adv. Proc. No. 21-3004-sgj ("First HCMFA Note Action"); Adv. Proc. No. 21-3003 ("Dondero Note Action"); Adv. Proc. No. 21-3005 ("NexPoint Note Action"); Adv. Proc. No. 21-3006 ("HCMS Note Action"); Adv. Proc. No. 21-

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withdrew its original opinion and replaced it with its opinion reported at *In re Highland Capital Management, L.P.*, No. 21-10449, 2021 WL 4093167 (5th Cir. Sept. 7, 2022). The substituted opinion differed from the original opinion only by the replacement of one sentence from section "IV(E)(2) – *Injunction and Gatekeeper Provisions*" of the original opinion: "The injunction and gatekeeper provisions are, on the other hand, perfectly lawful." was replaced with "We now turn to the Plan's injunction and gatekeeper provisions." In all other respects, the Fifth Circuit panel's original ruling remained unchanged.

[10] The Note Maker Defendants and their notes are as follows: (i) Dondero, in his individual capacity, is maker on three demand notes; (ii) HCMFA is maker on two demand notes; (iii) NexPoint Advisors, L.P. ("NexPoint") is maker on one term note; (iv) Highland Capital Management Services, Inc ("HCMS") is maker on five notes (four demand notes and one term note); and (v) HCRE Partners, LLC, n/k/a NexPoint Real Estate Partners, LLC ("HCRE") is maker on five notes (four demand notes and one term note).

3007 ("HCRE Note Action") (collectively, the "Five Earlier-Filed Note Actions").[11] Highland did not bring this current Action against HCMFA as part of the Five Earlier-Filed Note Actions because Highland had agreed, prior to the Petition Date, that it would not demand payment under the notes in this Action before May 31, 2021.

C. The Alleged Oral Agreement Defense

As noted above, HCMFA is one of many entities affiliated with Highland and owned or controlled by Mr. Dondero. In Defendant's Original Answer ("Answer")[DE #5] filed on December 10, 2021, HCMFA asserted as its primary affirmative defense[12] that oral agreements ("Alleged Oral Agreements") exist pursuant to which Highland agreed that it would not collect the Pre-2019 Notes upon the fulfillment of certain "conditions subsequent" ("Alleged Oral Agreement Defense"). Answer, ¶ 41. HCMFA specifically represents in its Answer that:

> Plaintiff agreed that it would not collect the Notes upon fulfilment [sic] of conditions subsequent. Specifically, sometime between December of the year in which each Note was made and February of the following year, Nancy Dondero, as representative for a majority of the Class A shareholders of Plaintiff agreed that Plaintiff would forgive the Notes if certain portfolio companies were sold for greater than cost or on a basis outside of Mr. Dondero's control. The purpose of this agreement was to provide compensation to Mr. Dondero, who was otherwise underpaid compared to reasonable compensation levels in the industry, through the use of forgivable loans, a practice that was standard at [Highland] and in the industry. This agreement setting forth the conditions subsequent to demands for payment on the Notes was an oral agreement; however, Defendant believes there may be testimony or email correspondence that discusses the existence of this agreement that may be uncovered through discovery in this Adversary Proceeding.

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[11] The defendants in these five Note Actions are: Mr. Dondero, Nancy Dondero ("Ms. Dondero"), and Dugaboy (Adv. No. 21-3003); HCMFA (Adv. No. 21-3004); NexPoint Advisors, L.P., Mr. Dondero, Ms. Dondero, and Dugaboy (Adv. No. 21-3005); Highland Capital Management Services, Inc. ("HCMS"), Mr. Dondero, Ms. Dondero, and Dugaboy (Adv. No. 21-3006); and HCRE Partners, LLC, n/k/a NexPoint Real Estate Partners, LLC ("HCRE"), Mr. Dondero, Ms. Dondero, and Dugaboy (Adv. No. 21-3007).

[12] HCMFA also pleaded the affirmative defenses of ambiguity, waiver, estoppel, failure of consideration, and prepayment. Answer, ¶¶ 42 and 43.

Answer, ¶ 41 (emphasis added).

The Alleged Oral Agreement Defense appears to be a "cut-and-paste" of the same alleged "oral agreement" defense that was ultimately asserted in the Five Earlier-Filed Note Actions by four of the five Note Maker Defendants (all but HCMFA). To be clear, the defense morphed as the Five Earlier-Filed Note Actions progressed. Only Mr. Dondero originally asserted that defense (somewhat vaguely, in his original answer—merely stating that "it was previously agreed that Plaintiff would not collect the Notes"),[13] and thereafter all of the Note Maker Defendants (except HCMFA) amended their pleadings to adopt the same affirmative defense. First, it was simply an alleged agreement by Highland not to collect on ***Mr. Dondero's*** Notes. Then, there were amended answers by each of the other Note Maker Defendants (except HCMFA) that obliquely referred to alleged agreements by Highland not to collect on the Notes upon fulfillment of undisclosed conditions subsequent. Finally, the Alleged Oral Agreement Defense in the Five Earlier-Filed Note Actions was set up as follows:

> Plaintiff's claims are barred . . . because prior to the demands for payment Plaintiff agreed that it would not collect the Notes upon fulfillment of conditions subsequent. Specifically, sometime between December of the year in which each note was made and February of the following year, [] Nancy Dondero, as representative for a majority of the Class A shareholders of Plaintiff agreed that Plaintiff would forgive the Notes if certain portfolio companies were sold for greater than cost or on a basis outside of James Dondero's control. The purpose of this agreement was to provide compensation to James Dondero, who was otherwise underpaid compared to reasonable compensation levels in the industry, through the use of forgivable loans, a practice that was standard at HCMLP [Highland] and in the industry.[14] This agreement setting forth the conditions subsequent to demands for payment on the

[13] Pl. Ex. 80, ¶ 40.

[14] This statement in the amended answers appears to have been inaccurate according to Mr. Dondero's own executive compensation expert, Alan Johnson. During the deposition of Mr. Johnson, he testified that he reviewed Highland's audited financial statements for each year from 2008 through 2018 (Pl. Ex. 101 at 119:14-189:21, Appx. 1988-2005) and concluded that (a) Highland did not have a standard practice of forgiving loans and had not forgiven a loan to anyone in the world since 2009, (b) Highland had never forgiven a loan of more than $500,000, (c) Highland had not forgiven any loan to Mr. Dondero since at least 2008, and (d) since at least 2008, Highland had never forgiven in whole or in part any loan that it extended to any affiliate. *Id.* at 189:24-192:10, Appx. 2005-2006. *See also* Pl. Ex. 98 at 422:18-428:14, Appx. 1776-1778.

> Notes was an oral agreement; however, Defendant [ ] believes there may be testimony or email correspondence that discusses the existence of this agreement that may be uncovered through discovery in this Adversary Proceeding.

Pl. Ex. 31 ¶ 82, Appx. 655 ("Dondero's Answer"). *See also* Pl. Ex. 15 ¶ 83, Appx. 435-436 ("NexPoint's Answer"); Pl. Ex. 16 ¶ 97, Appx. 451-452 ("HCMS's Answer"); and Pl. Ex. 17 ¶ 99, Appx. 468 ("HCRE's Answer"). The factual allegations pleaded by HCMFA in its Answer with respect to its Alleged Oral Agreement Defense in the instant Action were pleaded with nearly identical language as were pleaded in the Five Earlier-Filed Note Actions by Dondero and the other Note Maker Defendants (except HCMFA).

D. Posture Before District Court

On January 18, 2022, the parties filed an agreed motion to withdraw the reference ("Agreed Motion to Withdraw Reference") in the instant Action. The bankruptcy clerk transmitted the motion to withdraw the reference to the District Court on April 6, 2022, resulting in the assignment of Civ. Action No. 3:22-cv-0789 before Judge Kinkeade, and, on April 7, 2022, the notice of this court's Report and Recommendation to the District Court with respect to the Agreed Motion to Withdraw Reference, recommending that the District Court grant the Agreed Motion to Withdraw Reference, "***but only at such time as the Bankruptcy Court certifies to the District Court that the lawsuit is trial ready***" and further recommending that the District Court "***defer to the Bankruptcy Court the handling of all pretrial matters***." Judge Kinkeade thereafter entered an order reassigning this Action to this District Court (Judge Starr) on April 8, 2022.

On April 20, 2022, this District Court, *sua sponte*, issued an Order Consolidating Cases, consolidating this Action into District Court Civ. Act. No. 3:21-cv-881, such that this Action and the Five Earlier-Filed Note Actions are now consolidated into one action (the "Consolidated Notes

Action").[15] Perhaps due to oversight, the District Court had not accepted the Report and Recommendation on the Agreed Motion to Withdraw Reference in this Action prior to consolidating it into the Consolidated Notes Action, and there are no indications on the docket of the consolidated case, after consolidation, that the District Court has accepted or adopted it.[16]

E. The Current Motion for Summary Judgment

Highland filed its MSJ and supporting brief on May 27, 2022, seeking the entry of a judgment on its two claims for relief (breach of contract and turnover pursuant to Bankruptcy Code §542) that are set forth in its Complaint. [DE ## 45 and 46]. In support of its MSJ, Highland contemporaneously filed (1) a declaration of David Klos [DE #47],[17] the CFO of Highland, and (2) a 5,257-page appendix [DE #48].[18]

On July 1, 2022, HCMFA filed its *Opposition to Plaintiff's Motion For Summary Judgment* and *Memorandum of Law in Response to Plaintiff's Motion for Summary Judgment* ("Opposition")[DE ## 54 and 52] and a 441-page appendix in support of its Opposition. [DE #53].[19] In its Opposition, HCMFA argues that is has submitted summary judgment evidence in

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[15] The District Court entered its *Order Granting Defendant's Motion to Consolidate the Note Cases* [Consolidated Notes Action DE #24]. There also happen to be four appeal actions consolidated within the Consolidated Notes Action, regarding this bankruptcy court's orders denying motions to compel arbitration in four of the Note Actions.

[16] A motion to withdraw the reference was also filed in each of the Five Earlier-Filed Note Actions, and notices of transmittal of this court's Report and Recommendation thereon were transmitted to the District Court on July 7, 2021, with respect to Adv. No. 21-3003, on July 9, 2021, with respect to Adv. Nos. 21-3004 and 21-3005, and on July 15, 2021, with respect to Adv. No. 21-3006 and 21-3007, resulting in the assignment of civil action numbers in the District Court of 3:21-cv-1010, 3:21-cv-0881, 3:21-cv-0880, 3:21-cv-1378, and 3:21-cv-1379, respectively. Prior to ordering the consolidation of the Five Earlier-Filed Note Actions, the District Court accepted this court's recommendations that the District Court withdraw the reference when this bankruptcy court certifies the actions as trial-ready, in all but one of the Five Earlier-Filed Note Actions: Adv. Proceeding No. 21-3003/Civ. Action No. 3:21-cv-1010 in which Dondero, N. Dondero, and Dugaboy Trust are defendants. The parties recently notified the District Court that the pending Report and Recommendation in Civ. Action No. 3:21-cv-1010 remains outstanding.

[17] When citing to this declaration in its briefing, Highland refers to it as the "Second Klos Dec." to distinguish it from the declaration of David Klos filed in each of the Five Earlier-Filed Note Actions. The court will do the same.

[18] Citations to Highland's MSJ appendix are notated as follows: Pl. Ex. #, Appx. #.

[19] Citations to HCMFA's Opposition appendix are notated as follows: Def. Ex. #, Appx. #.

support of its Alleged Oral Agreement Defense that creates a genuine dispute of a material fact that would require a denial of Highland's MSJ.[20]

Notably, in the middle of this current MSJ litigation, on July 19, 2022, this court issued, in the Five Earlier-Filed Note Actions, a *Report and Recommendation to District Court: Court Should Grant Plaintiff's Motion for Partial Summary Judgment Against All Five Note Maker Defendants (With Respect to all Sixteen Promissory Notes) in the Above-Referenced Consolidated Note Actions* ("MPSJ R&R"), which was docketed in each of the five earlier-filed underlying adversary proceedings.[21] On July 20, 2022, the clerk of the Bankruptcy Court transmitted a copy of the MPSJ R&R to the District Court for filing in the Consolidated Notes Action.[22] In the MPSJ R&R, this court recommended that the District Court grant Highland's motions for partial summary judgment against each of the Note Maker Defendants, holding them liable for (a) breach of contract and (b) turnover for all amounts due under the promissory notes pursuant to Bankruptcy Code Section 542, including costs of collection and reasonable attorneys' fees in an amount to be determined. In so recommending, this court found that Highland had made its *prima facie* case for summary judgment for the Note Maker Defendants' breach of the promissory notes and for turnover and that the Note Maker Defendants failed to rebut Highland's *prima facie* case because they failed to show that there was a genuine dispute over a material fact with respect to their alleged defenses to the enforcement of the Notes, including, specifically, as to their Alleged Oral Agreement Defense.[23] This court found (in the MPSJ R&R) that, having considered the record as

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[20] HCMFA does not present any summary judgment evidence or argument with respect to the other affirmative defenses asserted by it in its Answer.

[21] Adv. Proceeding No. 21-3003 (DE #191); Adv. Proceeding No. 21-3004 (DE#163); Adv. Proceeding No. 21-3005 (DE #207); Adv. Proceeding No. 21-3006 (DE #213); Adv. Proceeding No. 21-3007 (DE #208).

[22] Civ. Act. No. 3:21-cv-0881 (DE #50).

[23] Although HCMFA was a Note Maker Defendant in one of the Five Earlier-Filed Note Actions, Highland brought the instant Note Action against HCMFA based on two demand promissory notes (defined, together, below as the "Pre-

a whole, ***including*** the declarations of Mr. Dondero and his sister, Ms. Dondero, submitted in support of the Alleged Oral Agreement Defense, that (i) there was a "complete lack of evidence" supporting the Alleged Oral Agreement Defense other than the self-serving, conclusory, and uncorroborated Dondero declarations; and (ii) that the Note Maker Defendants' Alleged Oral Agreement Defense blatantly contradicted the summary judgment record; accordingly, "***no reasonable jury could find that there was truly an "oral agreement" to forgive these loans to the Alleged [Oral] Agreement Defendants***." MPSJ R&R at 25.

The next day, on July 20, 2022, Highland filed its *Reply Memorandum of Law in Support of Motion for Summary Judgment* ("Reply")[DE #62] and a 49-page appendix in support of its Reply [DE #63][24], in which it argues that HCMFA has not submitted summary judgment evidence showing the existence of a genuine dispute of a material fact in this Action with respect to the Alleged Oral Agreement Defense or any other defenses, and, thus, Highland is entitled to judgment as a matter of law pursuant to Rule 56 of the Federal Rules of Civil Procedure.

On July 27, 2022, the court heard oral argument on the MSJ.

For the reasons set forth below, this court agrees with Highland that it is entitled to summary judgment pursuant to Rule 56(a) of the Federal Rules of Civil Procedure and recommends that the District Court grant the MSJ and enter judgment in favor of Highland and against HCMFA as to the Pre-2019 Notes.

2019 Notes") different and distinct from the HCMFA Notes sued upon in the earlier Note Action against HCMFA. To be clear, HCMFA was the only one of the Note Maker Defendants in the Five Earlier-Filed Note Actions that did not raise the same Alleged Oral Agreement Defense as a defense to Highland's suit on the two demand notes issued by HCMFA in 2019 as it has raised in the instant Action.

[24] Citations to Highland's Reply appendix are notated as follows: Pl. Rep. Ex. #, Rep. Appx. #.

III. Undisputed Material Facts

A. The Pre-2019 Notes

On February 26, 2014, in exchange for a contemporaneous loan in the amount of $4,000,000 from Highland to HCMFA,[25] Mr. Dondero, on behalf of HCMFA, as maker, executed a demand promissory note in favor of Highland, as payee, in the original principal amount of $4,000,000 (the "2014 Note"). Second Klos Dec.[26] ¶ 4, Exhibit A; *see also* Pl. Ex. 226, Appx. 5029-5031; Pl. Ex. 219, Appx. 5005-5007; Pl. Ex. 235, Appx. 5117-5120; Pl. Ex. 215 at 15:20-17:11, 17:18-22, Appx. 4915-4917, 39:7-14, Appx. 4939; Pl. Ex. 234 ¶¶ 14-15, Appx. 5111; Pl. Ex. 220 (Responses to RFAs 1-2), Appx. 5017.

On February 26, 2016, in exchange for a contemporaneous loan in the amount of $2,300,000 from Highland to HCMFA,[27] Mr. Dondero, on behalf of HCMFA, as maker, executed a demand promissory note in favor of Highland, as payee, in the original principal amount of $2,300,000 (the "2016 Note" and together with the 2014 Note, the "Pre-2019 Notes").[28] Second Klos Dec. ¶ 5, Exhibit B; *see also* Pl. Ex. 227, Appx. 5032-5034; Pl. Ex. 219, Appx. 5005-5007; Pl. Ex. 236, Appx. 5121-5127; Pl. Ex. 215 at 21:6-22:8, 22:9-23:11, Appx. 4921-4923; Pl. Ex. 234 ¶¶ 16-17, Appx. 5111; Pl. Ex. 220 (Responses to RFAs 3-4), Appx. 5017.

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[25] It is undisputed that this note was tendered to Highland in exchange for a contemporaneous loan from Highland to HCMFA in the amount of $4,000,000. Def. Ex. 4 at p.2, ¶ 5 (Declaration of James Dondero dated June 30, 2022); Appx. 304.

[26] Citations to "Second Klos Dec." refer to the *Declaration of David Klos in Support of Highland Capital Management, L.P.'s Motion for Summary Judgment* filed by Highland in support of the MSJ in this adversary proceeding and are intended to distinguish it from the *Declaration of David Klos in Support of Highland Capital Management, L.P.'s Motion for Partial Summary Judgment in Notes Action* ("Klos Dec.") submitted in the Main Notes Action.

[27] It is undisputed that this note was tendered to Highland in exchange for a contemporaneous loan from Highland to HCMFA in the amount of $2,300,000. Def. Ex. 4 at p.2, ¶ 6; Appx. 304.

[28] The court uses the defined term "Pre-2019 Notes" (which was also used by Highland in its briefing) to refer to both of the two demand promissory notes issued by HCMFA that are the subject of this Action, together, as distinguished from the two promissory notes issued by HCMFA in 2019 that were the subject of the First HCMFA Note Action that was one of the Five Earlier-Filed Note Actions.

Except for the date, the amount, and the interest rate, the Pre-2019 Notes are identical and include the following relevant provisions:

> 2. Payment of Principal and Interest. The accrued interest and principal of this Note shall be due and payable on demand of the Payee.
>
> 3. Prepayment Allowed; Renegotiation Discretionary. Maker may prepay in whole or in part the unpaid principal or accrued interest of this Note. Any payments on this Note shall be applied first to unpaid accrued interest hereon, and then to unpaid principal hereof.
>
> 5. Acceleration Upon Default. Failure to pay this Note or any installment hereunder as it becomes due shall, at the election of the holder hereof, without notice, demand, presentment, notice of intent to accelerate, notice of acceleration, or any other notice of any kind which are hereby waived, mature the principal of this Note and all interest then accrued, if any, and the same shall at once become due and payable and subject to those remedies of the holder hereof. No failure or delay on the part of Payee in exercising any right, power or privilege hereunder shall operate as a waiver thereof.
>
> 6. Waiver. Maker hereby waives grace, demand, presentment for payment, notice of nonpayment, protest, notice of protest, notice of intent to accelerate, notice of acceleration and all other notices of any kind hereunder.
>
> 7. Attorneys' Fees. If this Note is not paid at maturity (whether by acceleration or otherwise) and is placed in the hands of an attorney for collection, or if it is collected through a bankruptcy court or any other court after maturity, the Maker shall pay, in addition to all other amounts owing hereunder, all actual expenses of collection, all court costs and reasonable attorneys' fees and expenses incurred by the holder hereof.

Pl. Ex. 226, Appx. 5029-5031; Pl. Ex. 227, Appx. 5032-5034.

B. The April 2019 Acknowledgement Letter

In a document titled "Acknowledgement from HCMLP" ("Acknowledgement Letter") dated April 15, 2019 (which was prior to the Petition Date), with reference being made to "certain outstanding amounts loaned from HIGHLAND CAPITAL MANAGEMENT, L.P. ("HCMLP") to HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, L.P. ("HCMF") for funding of

HCMF's ongoing operations, which are payable on demand and remained outstanding on December 31, 2018 and as of the date hereof," Highland acknowledged that "HCMF expects that it may be unable to repay such amounts should they become due, for the period commencing today and continuing through May 31, 2021" and agreed "to not demand payment on amounts owed by HCMF prior to May 31, 2021." Pl. Ex. 217, Appx. 4989-4990; *see also* Second Klos Dec. ¶ 16; Pl. Ex. 215 49:8-50:7, Appx. 4949-4950, 55:15-22, Appx. 4955. Mr. Dondero executed the Acknowledgement Letter on behalf of both parties – for Highland, on behalf of "Strand Advisors, Inc., its general partner" and for HCMFA, on behalf of "Strand XVI, Inc., its general partner." Pl. Ex. 217, Appx. 4989-4990. Highland received no consideration in exchange for agreeing not to demand payment from HCMFA until May 31, 2021. Pl. Ex. 215 at 50:8-22, Appx. 4950. No reference was made in the Acknowledgement Letter to the Alleged Oral Agreements. Pl. Ex. 217, Appx. 4989-4990.

C. Demand for Payment by Highland and Non-payment by HCMFA

Highland did not demand payment of the outstanding obligations due under the Pre-2019 Notes until June 2, 2021. Second Klos Dec. ¶ 17; Pl. Ex. 218, Appx. 4991-5004 (the "Demand Letter"). In the Demand Letter, Highland made demand on HCMFA for payment, by June 4, 2021, of all principal and accrued interest due under the Pre-2019 Notes in the aggregate amount of $3,143,181.93, which represented all accrued and unpaid interest and principal through and including June 4, 2021.

Between May 2019 and December 2021, HCMFA made five separate payments against the 2014 Note, in the aggregate amount of approximately $2.4 million. Second Klos Dec., Exs. D-H.

Between September 2016 and December 2021, HCMFA made three separate payments against the 2016 Note in the aggregate amount of approximately $1.5 million. Second Klos Dec., Exs. H-J.

After demand was made, other than the payments made by HCMFA in December 2021, HCMFA made no further payments against its obligations due under the Pre-2019 Notes and otherwise failed to satisfy its obligations under the Pre-2019 Notes. Pl. Ex. 215 at 58:4-6, Appx. 4958.

As of May 27, 2022, after giving effect to the payments made in December 2021 as well as the payments made against the Pre-2019 Notes prior to the Petition Date, the unpaid principal and accrued interest due under the 2014 Note is $2,151,130.84, and the unpaid principal and accrued interest due under the 2016 Note is $1,001,238.06. Second Klos. Dec. ¶ 18.

D. Undisputed Corroborating Evidence Regarding Validity and Enforceability of the Pre-2019 Notes

1. The Pre-2019 Notes Were Both Disclosed on Highland's Financial Statements Audited by the Outside Accounting Firm PwC

As set forth below, the undisputed evidence establishes that (a) both of the Pre-2019 Notes were provided to the accounting firm PwC, Highland's long-time outside auditors, and were described in Highland's audited financial statements; (b) both of the Pre-2019 Notes were carried as assets on Highland's balance sheet and were valued in amounts equal to the accrued and unpaid principal and interest without any offset or reservation whatsoever; and (c) neither Highland nor Mr. Dondero disclosed to PwC the existence of an Alleged Oral Agreement that would provide HCMFA with a defense to the enforcement or collection of the Pre-2019 Notes, despite having an affirmative obligation to do so under generally accepted accounting principles ("GAAP").

Specifically, copies of the Pre-2019 Notes were and are maintained in Highland's books and records in the ordinary course of business and were provided to PwC in connection with its annual audits. Second Klos Dec. ¶¶ 3-5; Pl. Ex. 215 at 25:22-26:13, Appx. 4925-4926.

PwC's audit process was extensive and took months to complete. Pl. Ex. 94 at 9:24-12:14, Appx. 1554-1555. As part of the PwC audit process, Highland drafted the financial statements and accompanying notes, and management provided the information that PwC needed to conduct its audits. Pl. Ex 94 at 14:8-15:14, Appx. 1556; *see also* Pl. Ex. 94 at 49:11-50:22, Appx. 1564-1565.

All of Highland's employees who worked on the audit reported to Mr. Waterhouse (Highland's former CFO), and Mr. Waterhouse was ultimately responsible for making sure the audit was accurate before it was finalized. Pl. Ex. 105 at 87:25-89:10, Appx. 2071.

In connection with its audit, PwC required Highland to deliver "management representation letters" that included specific representations upon which PwC relied. Pl. Ex. 94 at 16:18-17:20, Appx. 1556, 23:4-9, Appx. 1558; s*ee also* Pl. Ex. 105 at 96:24-98:6, Appx. 2073-2074 (according to Mr. Waterhouse, management representation letters are "required in an audit to help verify completeness."). For at least the fiscal years 2014, 2016, 2017 and 2018, Mr. Dondero and Mr. Waterhouse signed Highland's management representation letters; their representations were applicable through the date of the audit's completion so that all "material" subsequent events could be included and disclosed. Pl. Ex. 33, Appx. 729-740; Pl. Ex. 86, Appx. 1420-1431; Pl. Ex. 231, Appx. 5049-5062; Pl. Ex. 232, Appx. 5063-5073; Pl. Ex. 94 at 17:21-25, Appx. 1556, 19:2-22:6, Appx. 1557-1558; *see also* Pl. Ex. 105 at 92:4-8, Appx. 2072, 94:20-95:12, Appx. 2073.

Mr. Dondero and Mr. Waterhouse made the following representations to PwC, on May 19, 2016, in connection with PwC's audit of Highland's financial statements for the period ending December 31, 2016:

- The Affiliated Party Notes[29] represented bona fide claims against the makers, and all Affiliated Party Notes were current as of May 19, 2017. Pl. Ex. 232 ¶ 16, Appx. 5067.
- There were no "material" transactions or agreements that were not recorded in the financial statements. Pl. Ex. 232 ¶ 5, Appx. 5065.
- All relationships and transactions with, and amounts receivable or payable to or from, related parties were properly reported and disclosed in the consolidated financial statements. Pl. Ex. 232 ¶ 13(b), Appx. 5066.
- All related party relationships and transactions known to Mr. Dondero and Mr. Waterhouse were disclosed. Pl. Ex. 232 ¶ 12, Appx. 5066.
- All subsequent events were disclosed. Pl. Ex. 232 (signature page), Appx. 5071.

Under GAAP, Highland was required to disclose to PwC: (a) all "material" related party transactions; and (b) any circumstances that would call into question the collectability of any notes. Pl. Ex. 94 at 34:17-35:2, Appx. 1561, 51:17-52:5, Appx. 1565, 70:20-71:3, Appx. 1570. For purposes of the 2016 audit, the "materiality" threshold was $2 million. Pl. Ex. 232 at 1, Appx. 5064.[30]

Neither Mr. Dondero nor anyone at Highland ever disclosed to PwC the existence or terms of the Alleged Oral Agreements. Pl. Ex. 220 (Responses to RFAs 7-8), Appx. 5018.

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[29] "Affiliated Party Notes" is the term used by PwC to refer to any and all notes payable to Highland and made by officers, employees, or affiliates of Highland. *See generally* Pl. Ex. 33, Appx. 729-740; Pl. Ex. 94, Appx. 1551-1585.

[30] For purposes of the 2018 audit, the "materiality" threshold was $1.7 million. Pl. Ex. 33 at 1, Appx. 730; Pl. Ex. 94 at 22:11-23:3, Appx. 1558. *See also* Pl. Ex. 105 at 91:14-93:6, Appx. 2072.

For purposes of PwC's audit, "affiliate notes" were considered receivables of Highland and were carried on Highland's balance sheet under "Notes and other amounts due from affiliates." Pl. Ex. 34 at p. 2, Appx. 745; Pl. Ex. 72 at p. 2, Appx. 1291; Pl. Ex. 94 at 23:10-22, Appx. 1558, 31:11-33:20, Appx. 1560; Pl. Ex. 105 at 106:20-109:12, Appx. 2076.

For the 2016 fiscal year, Highland valued "Notes and other amounts due from affiliates" in the aggregate amount of approximately $172.6 million, which then constituted more than 12% of Highland's total assets. Pl. Ex. 71 at 2, Appx. 1240. For the 2017 fiscal year, Highland valued "Notes and other amounts due from affiliates" in the aggregate amount of approximately $163.4 million, which then constituted more than 10% of Highland's total assets; and, for the 2018 fiscal year, Highland valued "Notes and other amounts due from affiliates" in the aggregate amount of approximately $173.4 million, which then constituted more than 15% of Highland's total assets. Pl. Ex. 72 at 2, Appx. 1291; Pl. Ex. 34 at 2, Appx. 745; Pl. Ex. 94 at 33:21-34:2, Appx. 1560-1561, 51:2-16, Appx. 1565.

The notes to the financial statements described the "Affiliate Notes" that were carried on Highland's balance sheet; management calculated the amounts due and owing to Highland from each Affiliate. Pl. Ex. 72 at 30-31, Appx.1319-1320; Pl. Ex. 34 at 28-29, Appx. 771-772; Pl. Ex. 94 at 34:17-36:25, Appx. 1561, 51:17-53:12, Appx. 1565; Pl. Ex. 105 at 110:22-112:21, Appx. 2077.

The "fair value" of the Affiliate Notes was "equal to the principal and interest due under the notes." Pl. Ex. 72 at 30-31, Appx. 1319-1320; Pl. Ex. 34 at p. 28-29, Appx. 771-772; Pl. Ex. 94 at 37:11-39:12, Appx. 1561-1562; 53:19-25, Appx. 1565. No discounts were given to the Affiliate Notes, and PwC concluded that the obligors under each of the Affiliate Notes had the

ability to pay all amounts outstanding. Pl. Ex. 92, Appx. 1514-1530; Pl. Ex. 93, Appx. 1531-1550; Pl. Ex. 94 at 41:2-45:6, Appx. 1562-1563, 55:17-60:22, Appx. 1566-1567, 68:20-25, Appx. 1569.

Note 17 to Highland's 2015 audited financial statements disclosed the issuance of the 2016 Note as a "subsequent event" (*i.e.*, an event occurring after the December 31, 2015 end of Highland's fiscal year). Pl. Ex. 70 at 46, Appx. 1229; *see also*, Pl. Ex. 94 at 54:9-55:7, Appx. 1566.

2. In October 2020, HCMFA Informed Its Retail Board of Its Obligations Under the Pre-2019 Notes

HCMFA has contracts to manage certain funds (the "Fund Agreements"), which are among the most important contracts HCMFA has and are largely the reason for HCMFA's existence. Pl. Ex. 192 at 66:3-66:23, Appx. 3031. The funds themselves, in turn, are overseen to an extent by a board known as the "Retail Board," which must determine, on an annual basis, whether to renew the Fund Agreements with HCMFA, a process referred to as a "15(c) Review." As part of the 15(c) Review, the Retail Board requests information from HCMFA. Pl. Ex. 99 at 129:17-130:3, Appx. 1844-1845, Pl. Ex. 105 at 32:17-33:6, Appx. 2057, 168:9-12, Appx. 2091, 169:9-170:16, Appx. 2091-2092. Mr. Waterhouse, the Treasurer of HCMFA (in addition to being Highland's CFO) and Mr. Norris, HCMFA's Executive Vice President, participated in the annual 15(c) Review process with the Retail Board. Pl. Ex. 192 at 67:7-68:19, Appx. 3031; Pl. Ex. 105 at 168:13-169:8, Appx. 2091.

In October 2020, the Retail Board, as part of the annual 15(c) Review, asked HCMFA to provide information regarding whether there were "any outstanding amounts currently payable or due in the future (e.g., notes) to [Highland] by HCMFA or . . . any other affiliate that provides services to the Funds." Pl. Ex. 36 at 3, Appx. 793.

The Pre-2019 Notes were recorded as liabilities in HCMFA's audited financial statements from the fiscal years 2014-2018. Pl. Exs. 221, 222, 224, and 225 at 2.[31]

HCMFA does not contend that its audited financial statements for the fiscal years 2014-2018 were inaccurate in any way with respect to the Pre-2019 Notes. *See* Pl. Ex. 215 at 28:5-9, Appx. 4928.

On October 23, 2020, HCMFA provided its formal responses to the questions posed by the Retail Board as to the issue of outstanding amounts currently payable or due by HCMFA to Highland or its affiliates:

> As of June 30, 2020, . . . $12,286,000 remains outstanding to HCMLP [Highland] from HCMFA. . . . The earliest the Note between HCMLP [Highland] and HCMFA could come due is in May 2021. All amounts owed by . . . HCMFA pursuant to the shared services arrangement with HCMLP [Highland] have been paid as of the date of this letter. The Advisor notes that both entities have the full faith and support of James Dondero.

Pl. Ex. 59 at p. 2, Appx. 885. The $12,286,000 amount included the amounts due under the Pre-2019 Notes. Pl. Ex. 215 at 26:14-17, Appx. 4926; 27:3-28:4, Appx. 4927-4928; Pl. Ex. 192 at 54:6-9, 54:22-55:8, 55:23-56:3, Appx. 3028-3029; Pl. Ex. 194 at 117:16-122:15, Appx. 3156-3157; Pl. Ex. 195 at 120:23-122:13, Appx. 3211-3212.

3. Before and During the Bankruptcy Case, the Pre-2019 Notes Were Reflected on Highland's Books, Records, and In Its Bankruptcy Filings as Assets Owed to Highland, without Discounts

In addition to its PwC-audited financial statements, Highland's contemporaneous books and records—before and after the Petition Date—recorded the Pre-2019 Notes as valid debts due and owing by HCMFA to Highland, without discount.

[31] HCMFA's audited financial statements were filed under seal and therefore do not have "Appx." numbers.

After the Petition Date, but while Mr. Dondero was still in control, Highland, as the debtor-in-possession, filed its *Schedules of Assets and Liabilities* [Bankr. DE #247] (the "Debtor's Schedules"). The Debtor's Schedules included the Pre-2019 Notes among Highland's assets. Pl. Ex. 40, Appx. 812-815 (excerpts of the Debtor's Schedules showing that Highland (a) disclosed as assets of the estate "Notes Receivable" in the approximate amount of $150 million (Item 71), and (b) provided a description of the Pre-2019 Notes (Exhibit D)).

In every one of the Debtor's Monthly Operating Reports filed during the Highland Bankruptcy Case (including those filed while Mr. Dondero was still in control of the Debtor), Highland included as assets of the estate amounts "Due from affiliates" that included the Pre-2019 Notes. *See, e.g.*, Pl. Ex. 41, Appx. 816-825; Pl. Ex. 42, Appx. 826-835; Pl. Ex. 88, Appx. 1475-1486; Pl. Ex. 89, Appx. 1487-1496. *See also* Bankr. DE # 405 (October 2019); Bankr. DE # 289 (November 2019); Bankr. DE # 418 (December 2019); Bankr. DE # 497 (January 2020); Bankr. DE # 558 (February 2020); Bankr. DE # 634 (March 2020); Bankr. DE # 686 (April 2020); Bankr. DE # 800 (May 2020), as amended in Bankr. DE # 905; Bankr. DE # 913 (June 2020); Bankr. DE # 1014 (July 2020); Bankr. DE # 1115 (August 2020); Bankr. DE # 1329 (September 2020); Bankr. DE # 1493 (October 2020); Bankr. DE # 1710 (November 2020); Bankr. DE # 1949 (December 2020); and Bankr. DE # 2030 (January 2021).

Highland's accounting group had a regular practice of creating, maintaining, and updating, on a monthly basis, "loan summaries" in the ordinary course of business (the "Loan Summaries"). Second Klos Dec. ¶ 6. The Loan Summaries identified amounts owed to Highland under affiliate notes and were created by updating underlying schedules for activity and reconciling with Highland's general ledger. *Id.*; Pl. Ex. 199, Appx. 3245-3246. The Loan Summaries identified each obligor under certain notes by reference to the "GL" number used in the general ledger. *See*

Pl. Ex. 199, Appx. 3246 (HCMS ("GL 14530"), HCMFA ("GL 14531"), NexPoint ("GL 14532"), HCRE ("GL 14533"), and Mr. Dondero ("GL 14565")). *See* Second Klos Dec. ¶ 6. The 2014 Note is shown on the Loan Summary marked as Plaintiff's Exhibit 199 as "HCMFA #2," and the 2016 Note is shown on the Loan Summary as "HCMFA #5." Pl. Ex. 199, Appx. At 3246. Second Klos Dec. ¶ 8.

E. Undisputed Facts That Point to the Non-Existence of the Alleged Oral Agreements With Respect to the Pre-2019 Notes

No document was ever uncovered or produced in discovery to establish, memorialize, reflect, or recognize the existence or terms of the Alleged Oral Agreements. Neither Dugaboy nor Ms. Dondero (who were allegedly the ones who entered into the Alleged Oral Agreements, indirectly, on behalf of Highland) is aware of anything in writing that identifies the existence or terms of the Alleged Oral Agreements. Pl. Ex. 210 at 25:23-27:18, Appx. 4861-4863. HCMFA has admitted that the terms or existence of the Alleged Oral Agreements were never reduced to writing. Pl. Ex. 220 (Responses to RFAs 13-14), Appx. 5019.

Other than Mr. Dondero and Ms. Dondero, no one is alleged to have participated in the discussions that led to the Alleged Oral Agreement regarding the 2016 Note (the "2016 Alleged Oral Agreement"). Pl. Ex. 210 at 27:19-21, Appx. 4863. Ms. Dondero and Dugaboy have admitted that, prior to January 1, 2021, neither ever disclosed the existence or terms of the 2016 Alleged Oral Agreement to *anyone* at Highland or HCMFA (including Highland's auditors), other than Mr. Dondero. Pl. Ex. 210 at 25:6-22, Appx. 4861, 27:22-28:4, Appx. 4863-4864. HCMFA has admitted that, prior to February 1, 2021, it never disclosed the existence or terms of any of the Alleged Oral Agreements to PwC, Mr. Okada, the Bankruptcy Court, or any creditor of Highland,

including in connection with any objection to the Plan or Disclosure Statement.[32] Ex. 220 (Responses to RFAs 7-12, 15-21), Appx. 5018.

Between May 2019 and December 2021, HCMFA made five separate pre-payments in the aggregate amount of $2,410,477.45 against amounts due under the 2014 Note, and between September 2016 and December 2021, HCMFA made three (3) separate pre-payments in the aggregate amount of $1,487,336.87 against amounts due under the 2016 Note. Second Klos Dec. ¶¶ 10-14; Pl. Ex. 219, Appx. 5005-5007.

In addition to the Pre-2019 Notes, and the Notes at issue in the First HCMFA Action, HCMFA issued at least three other notes to Highland in exchange for loans – one before issuing the 2014 Note and two after issuing the 2014 Note but before issuing the 2016 Note (collectively, the "Paid-Off Notes") – as to which HCMFA, prior to the Petition Date, paid all principal and interest due in full. Second Klos Dec. ¶ 9.

In November 2019, Mr. Dondero (while still in control of Highland) caused the sale of a substantial interest in the company Metro Goldwyn Mayer, Inc. ("MGM") for $123.25 million, a portion of which was for the Debtor's interest in a fund (and which sale price was well above its original cost), but he (whether on behalf of himself, personally, or on behalf of HCMFA or any of the Note Maker Defendants) and Highland failed to declare all of the promissory notes forgiven and remained silent about the alleged "oral agreements" altogether. *See* Pl. Ex. 201 ¶¶ 29-30,

[32] As noted above, HCMFA filed an objection to confirmation of Highland's chapter 11 Plan (which Plan was based on the assumption that the Pre-2019 Notes would be collected in 2021), yet it failed to make any mention of the existence of the Alleged Oral Agreements or any claim HCMFA had against Highland relating to the potential forgiveness of the debt arising under the Pre-2019 Notes. HCMFA similarly failed to mention the existence of the Alleged Oral Agreements or any claim HCMFA had against Highland relating to the potential forgiveness of the debt arising under the Pre-2019 Notes in its two proofs of claim filed in the Bankruptcy Case on April 8, 2020. [Bankr. Claim ## 95 and 119].

Appx. 3270-3271; Pl. Ex. 202 ¶ 14, Appx. 4135; Pl. Ex. 203 ¶ 1, Appx. 4143; Pl. Ex. 204 at p. 5 n.5, Appx. 4156.

The use of "forgiveable loans" to a corporate affiliate as compensation to individual officers or employees of Highland was not a practice that was standard at Highland or in the industry. Mr. Alan Johnson, Mr. Dondero's own executive compensation expert, reviewed Highland's audited financial statements for each year from 2008 through 2018, Pl. Ex. 101 at 119:14-189:21, and concluded that (a) Highland has not forgiven a loan to anyone in the world since 2009, (b) the largest loan Highland has forgiven since 2008 was $500,000, (c) Highland has not forgiven any loan to Mr. Dondero since at least 2008, and (d) at least since 2008, ***Highland has never forgiven in whole or in part any loan that it extended to any affiliate***.[33] Pl. Ex. 101 at 189:24-192-10, Appx. 2005-2006.

F. Undisputed Facts Relating to HCMFA's Defenses of Waiver, Estoppel, Failure of Consideration, Prepayment, and Ambiguity

Mr. Dondero, HCMFA's Rule 30(b)(6) witness, could not identify any relevant facts to support HCMFA's affirmative defenses of waiver (*see* Pl. Ex. 215 at 44:18-45:14, Appx. 4944-4945), estoppel (*id.* at 45:20-46:10, Appx. 4945-4946), lack of consideration (*id.* at 47:7-25, Appx. 4947), or prepayment (*id.* at 48:2-10, Appx. 4948). Mr. Dondero also could not identify a material provision of either of the Pre-2019 Notes that he believed was ambiguous. *Id.* at 20:9-23, Appx. 4920, 24:19-25:11, Appx. 4924-4925. Indeed, there is undisputed evidence contradicting these

[33] In his Expert Report dated May 28, 2021, Mr. Johnson stated that loans provided ***to Mr. Dondero – not loans provided to corporate affiliates*** – should be considered "potential deferred compensation as they were similar to loans given to ***other professionals*** at the firm" Def. Ex. G to Def. Ex. 3 (Declaration of Michael P. Aigen dated January 20, 2022) at 16, Appx. 252 (emphasis added). Mr. Johnson further notes in his report that, between 2013 and 2019, (a) "[s]everal loans were made [by Highland] ***to Mr. Dondero***," Def. Ex. 3 at 8, Appx. 244, (b) "***[Mr. Dondero]*** received loans in lieu of additional current compensation," Def. Ex. 3 at 3, Appx. 239, and (c) "[c]onsistent with company practice, the loans were considered a form of deferred compensation that could be realized over time as the loans were forgiven and the income ***recognized by the individuals***." *Id.* (emphasis added).

purported defenses. *See, e.g.*, Pl. Ex. 217, Appx. 4989-4990 (Acknowledgement Letter where HCMFA admits that loans from Highland were outstanding and payable on demand); Pl. Ex. 220, Appx. 5017 (responses to RFAs 1 through 4 in which HCMFA admits to tendering the Pre-2019 Notes in exchange for loans from Highland equal to the principal amount of the Pre-2019 Notes).

IV. Summary Judgment Standard

Rule 56(a) of the Federal Rules of Civil Procedure provides, "The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." FED. R. CIV. P. 56(a). Although summary judgment used to be viewed in the Fifth Circuit as a "'disfavored procedural short cut,' applicable to a limited class of cases," that view was upended, beginning with the Supreme Court's trilogy of summary judgment opinions issued in 1986, that "made it clear that our earlier approach to Rule 56 was wrong-headed because it was simply inconsistent with the plain language of the rule." *Little v. Liquid Air Corp.,* 37 F.3d 1069, 1075 (5th Cir. 1994)(en banc) (quoting *Armstrong v. City of Dallas*, 997 F.2d 62, 66 (5th Cir.1993) and citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986);[34] *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986); *Matsushita Electric Industrial Co. v. Zenith Radio Corp.*, 475 U.S. 574, 106 S.Ct. 1348, 89 L.Ed.2d 538 (1986)). Rather than being a disfavored rule, the Supreme Court instructs that Rule 56 "*mandates* the entry of summary judgment, after an adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." *Id.* (quoting *Celotex*, 477 U.S. at 322, 106 S.Ct. at 2552 (emphasis added in

[34] The Court in *Celotex* opined, "Summary judgment procedure is properly regarded not as a disfavored procedural shortcut, but rather as an integral part of the Federal Rules as a whole, which are designed 'to secure the just, speedy and inexpensive determination of every action.'" 477 U.S. at 327, 106 S.Ct. at 2555 (quoting Fed. R. Civ. P. 1)(other citations omitted).

original)). The Supreme Court explained that "[i]n such a situation, there can be 'no genuine issue as to any material fact,' since a complete failure of proof concerning an essential element of the nonmoving party's case necessarily renders all other facts immaterial." *Celotex*, 477 U.S. at 322-23, 106 S.Ct. at 2552.

Under Rule 56, a movant meets its initial burden of showing there is no genuine issue for trial by "point[ing] out the absence of evidence supporting the nonmoving party's case." *Latimer v. Smithkline & French Lab'ys*, 919 F.2d 301, 303 (5th Cir.1990); *see also In re Magna Cum Latte, Inc.,* Bankr. No. 07-31814, 2007 WL 3231633, at *3 (Bankr. S.D. Tex. Oct. 30, 2007) ("A party seeking summary judgment may demonstrate: (i) an absence of evidence to support the non-moving party's claims or (ii) the absence of a genuine issue of material fact."). The movant "need not 'negate' the elements of the nonmovant's case." *Little*, 37 F.3d at 1075.

"If the moving party carries [its] initial burden, the burden then falls upon the nonmoving party to demonstrate the existence of genuine issue of material fact." *Latimer*, 919 F.2d at 303; *see also Nat'l Ass'n of Gov't Emps. v. City Pub. Serv. Bd. of San Antonio, Tex.*, 40 F.3d 698, 712 (5th Cir. 1994) ("To withstand a properly supported motion for summary judgment, the nonmoving party must come forward with evidence to support the essential elements of its claim on which it bears the burden of proof at trial."). "[T]he nonmovant must go beyond the pleadings and designate specific facts showing there is a genuine issue for trial." *Little*, 37 F.3d at 1075; *see also Hall v. Branch Banking*, No. H-13-328, 2014 WL 12539728, at *1 (S.D. Tex. Apr. 30, 2014) ("[T]he nonmoving party's bare allegations, standing alone, are insufficient to create a material dispute of fact and defeat a motion for summary judgment."). The court must view the facts "in the light most favorable to the nonmoving party" but "only if there is a 'genuine' dispute as to those facts." *Scott v. Harris*, 550 U.S. 372, 380, 127 S.Ct. 1769, 1776, 167 L.Ed.2d 686 (2007);

see also Hacienda Records, L.P. v. Ramos, 718 F.App'x 223, 234 (5th Cir. 2018)("The court considers the record as a whole, and draws all justifiable inferences in favor of the non-movant[, b]ut the non-movant bears 'the burden of demonstrating by competent summary judgment proof that there is [a genuine dispute] of material fact warranting trial.'")(internal citations omitted). "[T]he mere existence of *some* alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no *genuine* issue of *material* fact." *Id.* (quoting *Anderson*, 477 U.S. at 247-248, 106 S.Ct. at 2510). "When the moving party has carried its burden under Rule 56(c), its opponent must do more than simply show that there is some metaphysical doubt as to the material facts . . . . Where the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party, there is no 'genuine issue for trial.'" *Id.* (citing *Matsushita*, 475 U.S. at 586-587 (footnote omitted)). "In considering the summary-judgment record, and although the court may not weigh the evidence or make credibility determinations, it must, of course, decide what evidence may be considered." *Hacienda Records*, 718 F.App'x at 234.

"[A] party cannot defeat summary judgment with conclusory allegations, unsubstantiated assertions, or only a scintilla of evidence." *Turner v. Baylor Richardson Med. Ctr.*, 476 F.3d 337, 343 (5th Cir. 2007) (internal quotations omitted); *see also Kennedy v. Allstate Texas Lloyd's*, 2020 WL 8300511, at *1 (N.D. Tex. Dec. 14, 2020)("Conclusory allegations and denials, speculation, improbable inferences, unsubstantiated assertions, and legalistic argumentation are not adequate substitutes for specific facts showing that there is a genuine issue for trial.")(*citing Douglass v. United Servs. Auto. Ass'n*, 79 F.3d 1415, 1429 (5th Cir. 1996)(en banc); *SEC v. Recile*, 10 F.3d 1093, 1097 (5th Cir. 1993)). Nor may a party "present evidence contradicting admissions made in his pleadings for the purpose of defeating a summary judgment," *Jonibach Management Trust v.*

Wartburg Enterprises, Inc., 136 F.Supp. 792, 821 n.29 (S.D. Tex. 2015),[35] declaration evidence that contradicts or impeaches, without a valid explanation, sworn deposition testimony, *Hacienda Records, L.P. v. Ramos*, 718 F. App'x at 234 ("[A party] is not entitled to use a declaration 'that impeaches, without explanation, sworn testimony' to defeat summary judgment.")(quoting *S.W.S. Erectors, Inc. v. Infax, Inc.*, 72 F.3d 489, 495 (5th Cir. 1996)),[36] or declaration evidence that is internally inconsistent and self-contradictory. *Cooper Cameron Corp. v. United States Dep't of Labor*, 280 F.3d 539, 550 (5th Cir. 2002)("[A party] cannot meet its [summary judgment] burden with an internally inconsistent, self-contradictory affidavit."); *see also Freeman v. City of Fort Worth, Texas*, 2011 WL 2669111, at *3 (N.D. Tex. July 7, 2001)(where the district court concluded that the non-movant's internally inconsistent and self-contradictory affidavit was "insufficient to create a dispute of fact as to any material issues.")(citations omitted).

The Supreme Court admonishes that "[w]hen opposing parties tell two different stories, one of which is blatantly contradicted by the record, so that no reasonable jury could believe it, a

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[35] The court in *Jonibach* cites *Davis v. A.G. Edwards and Sons, Inc.*, 823 F.2d 105, 107-108 (1987), where plaintiffs, in attempting to defeat a summary judgment motion by showing that there was a genuine issue of material fact, submitted an affidavit that clearly conflicted with earlier statements the plaintiffs had made in their complaints. The Fifth Circuit stated that "the factual dispute d[id] not render summary judgment inappropriate," because "[i]rrespective of which document contains the more accurate account, the [plaintiffs] are bound by the admissions in their pleadings, and thus no factual issue can be evoked by comparing their pleadings with [the] affidavit." *Id.* The court noted that the prohibition against the submission of affidavits or declarations that contradict the party's pleadings for the purposes of defeating summary judgment is based on the proposition that "Factual assertions in pleadings . . . are considered to be judicial admissions conclusively binding on the party who made them," *Jonibach*, 136 F.Supp. at 821 n.29 (quoting *White v. ARCO/Polymers, Inc.*, 720 F.2d 1391, 1396 (5th Cir. 1983)), while also noting that "[a]lthough facts in pleadings are not by themselves evidence, a judicial admission has the effect of withdrawing it from contention." *Id.* (citing *Martinez v. Bally's Louisiana, Inc.*, 244 F.3d 474, 476 (5th Cir. 2001)).

[36] This rule is known as the "sham-affidavit" rule, which provides a "party may not manufacture a dispute of fact merely to defeat a motion for summary judgment," *Hacienda Records*, 718 F. App'x at 235 (quoting *Doe ex rel. Doe v. Dallas Indep.. Sch. Dist.*, 220 F3d 380, 386 (5th Cir. 2000)). The Fifth Circuit, in *Hacienda Records*, noted that "so long as inconsistent statements were 'made by [the party] the deponent and [the party] the affiant,' the court may refuse to consider his declaration as competent evidence." *Id.*; *see also Free v. Wal-Mart Louisiana, L.L.C.,* 815 F.App'x 765, 767 (5th Cir. 2020)(where the Fifth Circuit concluded that the district court had not abused its discretion and "reasonably applied the sham affidavit doctrine" when it struck an affidavit that, without explanation, conflicted with prior deposition testimony).

court should not adopt that version of the facts for purposes of ruling on a motion for summary judgment." *Scott*, 550 U.S. at 380, 127 S.Ct. at 1776. "Summary judgment is appropriate where critical evidence is so weak or tenuous on an essential fact that it could not support a judgment in favor of the nonmovant, or where it is so overwhelming that it mandates judgment in favor of the movant." *Armstrong v. City of Dallas*, 997 F.2d 62, 66 n.12 (5th Cir.1993) ("We no longer ask whether literally little evidence, i.e., a scintilla or less, exists but, whether the nonmovant could, on the strength of the record evidence, carry the burden of persuasion with a reasonable jury."); *see also*, *Anderson*, 477 U.S. at 251-252, 106 S.Ct. at 2512 (where the Court stated that the inquiry under a motion for summary judgment is "whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law."), If the nomoving party fails to meet its burden of submitting competent summary judgment evidence that there is a genuine dispute as to a material fact, "the motion for summary judgment ***must*** be granted." *Little*, 37 F.3d at 1076 (emphasis added)("A plaintiff should not be required to wait indefinitely for a trial when the defendant has a meritless defense that can be resolved on motion for summary judgment.").

V. <u>Legal Conclusions</u>

A. Highland Has Met Its Burden of Showing Its Prima Facie Case That It Is Entitled to Summary Judgment

It has often been said that "suits on promissory notes provide 'fit grist for the summary judgment mill.'" *Resolution Tr. Corp. v. Starkey*, 41 F.3d 1018, 1023 (5th Cir. 1995) (quoting *FDIC v. Cardinal Oil Well Servicing Co.*, 837 F.2d 1369, 1371 (5th Cir. 1988)); *see also Looney v. Irvine Sensors Corp.*, Civ. Action No. 3:09-CV-0840-G, 2010 WL 532431, at *2 (N.D. Tex. Feb. 15, 2010) ("Suits on promissory notes are typically well-suited for resolution via summary judgment."). To prevail on summary judgment for breach of a promissory note under Texas law,

the movant need not prove all essential elements of a breach of contract, but only must establish (i) the note in question, (ii) that the non-movant signed the note, (iii) that the movant was the legal owner and holder thereof, and (iv) that a certain balance was due and owing on the note. *See Resolution*, 41 F.3d at 1023; *Looney*, 2010 WL 532431, at *2-3; *Magna Cum Latte*, 2007 WL 3231633, at *15.

With regard to the Pre-2019 Notes, the evidence is that they are valid, signed by Mr. Dondero on behalf of HCMFA in Highland's favor, and, as of May 27, 2022, the total outstanding principal and accrued but unpaid interest due under the 2014 Note was $2,151,130.84, and the unpaid principal and accrued interest due under the 2016 Note was $1,001,238.06. Second Klos. Dec. ¶ 18. HCMFA breached its obligations under the Pre-2019 Notes by failing to pay Highland all amounts due and owing upon Highland's demand. Highland has been damaged by HCMFA's breaches in the amounts set forth above, plus the interest that has accrued under the Pre-2019 Notes since those calculations, plus collection costs and attorneys' fees. Thus, Highland has made its prima facie showing that it's entitled to summary judgment on HCMFA's breach of each of the Pre-2019 Notes. *See Resolution*, 41 F.3d at 1023 (holding that where affidavit "describes the date of execution, maker, payee, principal amount, balance due, amount of accrued interest owed, and the date of default for each of the two promissory notes," movant "presented a prima facie case of default on the notes."); *Looney,* 2010 WL 532431, at *2-3 (where movant "has attached a copy of the note … to a sworn affidavit in which he states that the photocopy is a true and correct copy of the note, that he is the owner and holder of the note, and that there is a balance due on the note … [movant] has made a prima facie case that he is entitled to summary judgment on the note.").

B. HCMFA Has Failed to Rebut Highland's Prima Facie Case

Highland having met its initial burden, the burden shifts to HCMFA to demonstrate the existence of a genuine dispute of a material fact that would defeat the MSJ. *Latimer*, 919 F.2d at 303; *see also Nat'l Ass'n of Gov't Emps*, 40 F.3d at 712. HCMFA has failed its burden here.

With regard to HCMFA's Alleged Oral Agreement Defense,[37] HCMFA has failed to point to a genuine dispute of material fact such that a reasonable jury would find that the Alleged Oral Agreements existed and that the Alleged Oral Agreements, if they existed, would be valid and enforceable agreements under state law. The only summary judgment evidence submitted by HCMFA in support of its Alleged Oral Agreement Defense is the conclusory, self-serving, unsubstantiated declarations of Mr. Dondero and his sister, Ms. Dondero, regarding the existence of the Alleged Oral Agreements. *See* Declaration of James Dondero, dated June 30, 2022, Def. Ex. 4, Appx. 301-369; Declaration of Nancy Dondero, dated June 30, 2022, Def. Ex. 5, Appx. 370-380.[38] The court will not consider the Dondero declarations, which contradict HCMFA's pleaded facts and prior deposition testimony, and which are internally inconsistent and self-contradictory, as providing competent summary judgment evidence regarding the existence of the Alleged Oral Agreements. Therefore, HCMFA has failed to present any genuine dispute of material fact that could defeat the MSJ.

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[37] HCMFA has failed to present any evidence whatsoever of a genuine dispute of a material fact with respect to its other affirmative defenses. *See infra* note 20.

[38] As noted above, HCMFA can point to no document or writing that was ever uncovered or produced in discovery to establish, memorialize, or reflect the existence or terms of the Alleged Oral Agreements.

1. The Dondero Declarations Contradict the Pleaded Facts in HCMFA's Answer

The Dondero declarations submitted by HCMFA in opposition to the MSJ contradict the pleaded facts in HCMFA's assertion of the Alleged Oral Agreement Defense in its Answer with respect to the 2014 Note,[39] and, therefore will not be considered as competent summary judgment evidence to defeat Highland's claims on the 2014 Note. *See Jonibach Management Trust v. Wartburg Enterprises, Inc.*, 136 F.Supp. at 821 n.29 ("A party cannot present evidence contradicting admissions made in his pleadings for the purpose of defeating a summary judgment). A review of the stated Alleged Oral Agreement Defense reveals that HCMFA claims that Highland is barred from collecting on the Pre-2019 Notes because "sometime between December of the year in which each Note was made and February of the following year" Highland, through the person of Ms. Dondero, as a representative for a majority of the Class A shareholders of Highland, entered into an oral agreement (without naming the other party to the oral agreement), whereby Highland "agreed that [it] would forgive the Notes if certain portfolio companies were sold for greater than cost or on a basis outside of Mr. Dondero's control" and that "[t]he purpose of this agreement was to provide compensation to Mr. Dondero, who was otherwise underpaid compared to reasonable compensation levels in the industry, through the use of forgivable loans" -- loans to whom, again, HCMFA does not say. Answer, ¶ 41. What is clear is that HCMFA alleges that Ms. Dondero is the person who entered into the Alleged Oral Agreement ten to twelve months ***after*** each of the Pre-2019 Notes were issued in exchange for hard-cash loans from Highland to HCMFA, and that the

[39] As noted, the Alleged Oral Agreement Defense is pleaded with nearly identical language to the same Alleged Oral Agreement Defense asserted in four of the Five Earlier-Filed Note Actions that significantly that morphed over time after the commencement of the Five Earlier-Filed Note Actions.

Alleged Oral Agreement was entered into for the purpose of providing compensation ***to Mr. Dondero***. Answer, ¶¶ 1-2, 41.

Despite (a) having litigated the circumstances concerning the Alleged Oral Agreement Defense for over a year in the Consolidated Notes Action, and (b) reviewing and authorizing HCMFA's Answer before it was filed,[40] it was only under questioning that Mr. Dondero and Ms. Dondero realized that she could not have entered into the 2014 Alleged Oral Agreement because she had not been appointed the trustee of Dugaboy until October of 2015.[41] As a result, Mr. Dondero was forced to change HCMFA's assertions in its Answer regarding the formation of the 2014 Alleged Oral Agreement to assert that it was ***he who entered into the 2014 Alleged Oral Agreement with himself***. Dondero Declaration, ¶ 13 ("I – acting on behalf of Dugaboy for [Highland] and also on behalf of HCMFA – entered into an agreement (the "2014 Agreement") that [Highland] would not collect on the 2014 Note if certain events occurred.").[42] HCMFA has not sought leave to amend its Answer in this Action, even though Mr. Dondero's declaration clearly contradicts the factual contentions in the Answer as to who allegedly entered into the 2014 Alleged Oral Agreement.

Mr. Dondero's declaration also contradicts the allegation in the Answer as to ***when*** the agreement was made to potentially forgive the indebtedness under the Pre-2019 Notes as a means of deferred compensation to Mr. Dondero. In the Answer, HCMFA states that the Alleged Oral Agreements were entered into "sometime between December of the year in which each Note was made and February of the following year." Answer, ¶41. Both of the Pre-2019 Notes were issued

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[40] *See* Pl. Ex. 215 at 30:7-31:2, Appx. 4930-4931.

[41] *See* Pl. Ex. 210 at 16:6-18:24, Appx. 4852-4854; *see also*, Pl. Ex. 237, Appx. 5128-5133.

[42] *See* Pl. Ex. 215 at 31:3-25, 32:19-36:6, Appx. 4931-4936.

in February of the year in which they were made, which means HCMFA alleges that the Alleged Oral Agreements were entered into ten to twelve months ***after*** each of the Pre-2019 Notes were issued in exchange for loans from Highland. Yet, Mr. Dondero, in his declaration,[43] points to, and incorporates as exhibits to his declaration, two documents that state that the agreements to potentially forgive the loans as compensation to Mr. Dondero were actually made ***contemporaneously*** with the making of the loans and the issuance of the notes:[44]

- A letter from his counsel dated February 1, 2021 to opposing counsel (the "Letter") that Mr. Dondero alleges discloses "that one of the defenses in this litigation was that the Notes were subject to forgiveness as potential compensation," Dondero Declaration ¶18 (attaching a copy of the letter as Exhibit C to the declaration). The letter references the Debtor's "recently commenced suit to collect on certain notes payable to it executed by Mr. Dondero and certain of his affiliates," and states, "As you are aware, in addition to other defenses, Mr. Dondero views the notes in question as ***having been given in exchange for loans by Highland made in lieu of compensation to Mr. Dondero***." Def. Ex. 4 at Ex. C., Appx. 361 (emphasis added).

- Proof of Claim #188 filed by Mr. Dondero, individually, on May 26, 2020 ("Dondero POC") that Mr. Dondero avers "provided in 'Schedule A' [to the proof of claim] notice to the world that the Notes at issue in this and the other adversary proceedings concerning notes were potentially forgivable as compensation to me." Def. Ex. 4 at ¶19, Appx. 309. Exhibit A to the proof of claim included a table labeled "Schedule A (as of March 31, 2020)" that listed various notes issued by Mr. Dondero and various affiliates (including HCMFA) to Highland, and stated that the claim was "a contingent claim asserted by James Dondero and is subject to any effort to collect on [the notes listed on Schedule]" and that "[i]n the event that collection efforts are made to collect the Notes, James Dondero asserts that ***the Notes were issued by him for funds advanced in lieu of compensation***." Def. Ex. 4 at Ex. D, Appx. 367.

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[43] Def. Ex. 4 at ¶¶ 18-19, Appx. 309.

[44] If the Alleged Oral Agreements were made contemporaneously with the issuance of the notes, HCMFA would be barred from submitting evidence of such agreements by the parole evidence rule. *See Faulkner v. Mikron Indus., Inc. (In re Heritage Organization, L.L.C.)*, 354 B.R. 407, 430 (N.D. Tex. Bankr. 2006)(where the court stated that "extrinsic evidence of a condition subsequent is not admissible to vary the terms of a valid and binding written agreement.")(citing, *Litton v. Hanley*, 823 S.W.2d 428, 430-31 (Tex.App.—Houston [1st Dist.] 1992), for its holding that "evidence of an alleged oral agreement that the note would only be due if the business subsequently turned a profit was inadmissible.")

Because these allegations in Mr. Dondero's declaration clearly contradict the allegations pleaded in the Answer – as to when the agreement to forgive the loans upon the occurrence of a condition subsequent -- the court will not consider his declaration in connection with its analysis of the MSJ.[45]

2. *Mr. Dondero's Declaration Contradicts His Prior Sworn Testimony Regarding the Alleged Oral Agreements*

Mr. Dondero's declaration evidence (the Letter and the Dondero POC) that state that the Pre-2019 Notes were issued "in lieu of compensation" contradicts the prior deposition testimony of Mr. Dondero that (a) the Pre-2019 Notes were issued in exchange for loans made to HCMFA, and (b) the Alleged Oral Agreements were entered into ten to twelve months after each of the Pre-2019 Notes were issued. *See, e.g.*, Pl. Ex. 215 at 15:20-17:11, 17:18-22, Appx. 4915-4917, 39:7-14, Appx. 4939; Pl. Ex. 215 at 21:6-22:8, 22:9-23:11, Appx. 4921-4923; Pl. Ex. 215 at 29:15-37:8, Appx. 4929-4937.

In addition, Mr. Dondero's declaration – wherein Mr. Dondero recollects that the Alleged Oral Agreements were entered into specifically with respect to the 2014 Note and the 2016 Note – is inconsistent with and contradicts his November 4, 2022 and May 5, 2022 deposition testimony as to whether the Pre-2019 Notes were subject to an Alleged Oral Agreement. First, during his November 4, 2021 deposition, Mr. Dondero could not describe any material terms of the alleged "oral agreements" as relating to the notes that were the subject of the Consolidated Notes Action. Without a list prepared by counsel, Mr. Dondero could not identify any of the Notes subject to the

[45] Similarly, Ms. Dondero's declaration that, in late 2016 to early 2017, she caused Dugaboy Trust to cause Highland to enter into the 2016 Alleged Oral Agreement and that she was only told by her brother, Mr. Dondero, that "about the substantially the [sic] same agreement Dugaboy made with respect to the 2014 Note," contradicts the pleaded facts in the Answer that it was ***she*** who entered into both the 2014 and 2016 Alleged Oral Agreements, and, thus, will not be considered competent summary judgment evidence of a genuine issue of material fact regarding the existence of the 2014 Alleged Oral Agreement.

alleged "oral agreement" nor could he recall (i) the number of Notes subject to each alleged "oral agreement," (ii) the maker of each Note subject to each alleged "oral agreement," (iii) the date of each Note subject to each alleged "oral agreement," or (iv) the principal amount of any Note subject to the alleged "oral agreement." Pl. Ex. 99 at 13:4-28:22, Appx. 1815-1819. When asked about the existence or terms of any promissory note, other than the promissory notes that were the subject of the Consolidated Notes Action, that was the subject of an agreement with the Dugaboy trustee, Mr. Dondero could not identify a single promissory note or any terms of such a promissory note, such as the maker, the date, or the principal amount. Pl. Ex. 99 at 28:6-31:14, Appx. 1818-1820, 33:22-34-12, Appx. 1820-1821. When asked if he "was aware of any other Promissory Notes [other than the Promissory Notes that are the subject of the Consolidated Notes Action] that are the subject of any agreement that the Dugaboy trustee ever entered into as a representative of the majority of Class A shareholders," Mr. Dondero answered, "Not as I sit here today." Pl. Ex. 99 at 39:4-14, Appx. 1822. During his deposition taken on May 5, 2022 (less than two months prior to his July 1, 2022 declaration), Mr. Dondero could not recall the details of the 2016 Alleged Oral Agreement, including whether the 2016 Alleged Oral Agreement was with respect to both the 2014 Note and the 2016 Note or whether he had entered into an oral agreement with himself in 2014, when he was the Dugaboy trustee, with respect to the 2014 Note. Pl. Ex. 215 at 33:12-34:8.

Yet, just five days after the November deposition, after Mr. Dondero reviewed HCMFA's Answer before authorizing HCMFA's attorneys to file it, Pl. Ex. 215 at 30:7-31:2, Appx. 4930-4931, HCMFA was able to allege that both of the Pre-2019 Notes were specifically the subject of a separate Alleged Oral Agreement, and, less than two months after the May deposition, Mr. Dondero filed his declaration in which he suddenly recollects the specifics of oral agreements that

occurred: (a) with respect to the 2014 Note, at the end of 2014, beginning of 2015 (apparently between himself, as the Dugaboy trustee, acting on behalf of Highland, and himself, as a representative of HCMFA) and, (2) with respect to the 2016 Note, at the end of 2016, beginning of 2017 (between Ms. Dondero, as the Dugaboy trustee, acting on behalf of Highland, and himself, as a representative of HCMFA). This goes to the heart of the issue of whether the alleged conversations occurred in 2014/2015 and 2016/2017 or whether they happened at all because the ***only*** evidence submitted by HCMFA regarding the existence of these conversations are the Dondero declarations. Because Mr. Dondero's declaration contradicts Mr. Dondero's deposition testimony, the court will not consider his declaration as competent summary judgment evidence on the issue of the existence of the Alleged Oral Agreements. *See Hacienda Records*, 718 F. App'x at 234 ("[A party] is not entitled to use a declaration 'that impeaches, without explanation, sworn testimony' to defeat summary judgment.")(quoting *S.W.S. Erectors, Inc.*, 72 F.3d at 495).

3. *The Dondero Declarations Are Internally Inconsistent and Self-Contradictory*

Furthermore, both of the Dondero declarations are internally inconsistent and self-contradictory and, therefore, will not be considered as competent summary judgment evidence present by HCMFA that could defeat the MSJ. *See Cooper Cameron Corp.*, 280 F.3d at 550 ("[A party] cannot meet its [summary judgment] burden with an internally inconsistent, self-contradictory affidavit."). Mr. Dondero's declaration is self-contradictory in several ways, beginning with the statement that the Alleged Oral Agreements were entered into ten to twelve months after each of the Pre-2019 Notes were issued in exchange for loans, which contradicts the statement in the declaration (incorporating the Letter and Dondero POC) that the Pre-2019 Notes were issued "in lieu of compensation." *Compare* Def. Ex. 4 at ¶¶ 5-6, 13-15, Appx. 304-305, 307-

308 *with id.*, Exhibits C and D, Appx. 361, 363-367. Mr. Dondero's declaration is also self-contradictory on the issue of exactly who were the parties to the Alleged Oral Agreements – were the Alleged Oral Agreements entered into between Highland and HCMFA or between Highland and Mr. Dondero, in his individual capacity? Mr. Dondero, essentially, alleges that the 2014 Alleged Oral Agreement was entered into between "[himself] – acting on behalf of Dugaboy for [Highland] and also on behalf of HCMFA." Def. Ex. 4 at ¶ 13, Appx. 307. However, in describing the Alleged Oral Agreement, he alleges that the purpose of the agreement was for ***Highland*** to provide ***him, personally,*** with deferred compensation as a means of ***Highland*** incentivizing ***Mr. Dondero, personally***, to give his "utmost focus and attention [to the monetization of the portfolio companies and to "serve[ ] as an incentive for ***me*** to work particularly hard to make sure these assets were successful," providing ***Highland*** "the additional benefit . . . of not increasing ***my*** base salary" but instead making "***my compensation*** conditional on performance." Def. Ex. 4 at ¶ 13, Appx. 307 (emphasis added). Mr. Dondero further alleges that the Alleged Oral Agreement was in line with Highland's "common practice to compensate ***executives*** with forgivable loans" as supported by his professed knowledge that "several other ***individuals*** may have received loans by [Highland] that were forgiven." Def. Ex. 4 at ¶ 11, Appx. 306 (emphasis added). If the conversations that led to the Alleged Oral Agreements happened at all, the conversations are alleged to have been between Highland and Mr. Dondero, personally, regarding his personal deferred compensation (which contradicts Mr. Dondero's allegation that he was acting on behalf of, and purporting to bind, HCMFA) when these alleged conversations occurred.

Ms. Dondero's declaration is similarly internally inconsistent and self-contradictory with respect to the issue of who the parties were to the Alleged Oral Agreements with respect to the Pre-2019 Notes. Ms. Dondero alleges in her declaration that she, as the family trustee of Dugaboy,

"caused Dugaboy . . . to cause [Highland] to enter into [the Alleged Oral Agreement] with HCMFA." Def. Ex. 5 at ¶ 7, Appx. 373. But, like Mr. Dondero, she goes on to describe the circumstances surrounding the Alleged Oral Agreement," stating that she "knew and believed that ***Jim Dondero would be the person*** most involved in, and responsible for, the marketing and eventual sale of [the portfolio companies] ***by Highland***" and that "[t]he 2016 Agreement had two primary purposes . . . . First, the 2016 Agreement would provide additional incentive and motivation ***to Jim Dondero*** to attempt to maximize the value and return to [***Highland***] . . . and to remain in [***Highland's***] employment," and "[s]econd, the 2016 Agreement would allow [***Highland***] to make part of ***Jim's*** compensation contingent on performance, instead of paying ***him*** additional cash in 2016 or 2017 . . . ." *Id.* at ¶ 9, Appx. 373-374. Finally, Ms. Dondero alleges, "At the time I caused [Highland] to enter into the 2016 Agreement, I believed I had the authority, as the Dugaboy Family Trustee, to cause Dugaboy to cause [Highland] to enter into the 2016 Agreement" and that "I also intended, believed, and expected that the 2016 Agreement ***would be a binding and enforceable agreement between Highland and Jim Dondero***" – not between Highland and HCMFA. *Id.* at ¶ 12, Appx. 374. The court will not consider the internally inconsistent and self-contradictory declaration of Mr. Dondero as competent summary judgment evidence.

The Dondero declarations are the only summary judgment evidence presented by HCMFA in support of its Opposition to the MSJ. Thus, the court's finding that neither constitutes competent summary judgment evidence results in the conclusion that HCMFA has failed to meet its burden of rebutting Highland's *prima facie* case for summary judgment. Highland's MSJ should be granted.

4. Even If the Court Were to Consider the Dondero Declarations, HCMFA Has Failed to Point to a Genuine Dispute With Respect to a Material Fact That Would Defeat Highland's MSJ

Even if the court were to consider the Dondero declarations, when reviewed with the summary judgment record as a whole, HCMFA has not raised a genuine issue of material fact such that a reasonable jury might find the existence of the Alleged Oral Agreements. We have here a case of "opposing parties tell[ing] two different stories, one of which is blatantly contradicted by the record, so that no reasonable jury could believe it," such that "[the] court should not adopt that version of the facts for purposes of ruling on a motion for summary judgment." *Scott*, 550 U.S. at 380, 127 S.Ct. at 1776. HCMFA's version of the facts is "blatantly contradicted by the record, so that no reasonable jury could believe it" and so the court should adhere to the Supreme Court's admonition and not accept HCMFA's allegations of a fact for purposes of ruling on the MSJ.

a) Could the Alleged Oral Agreements, If Made, Even Be Valid?

HCMFA's opposition to the MSJ depends on HCMFA being able to submit competent summary judgment evidence that the Alleged Oral Agreements not only existed but are valid, binding contracts between Highland and HCMFA under Texas law. HCMFA cannot meet that burden here.

First, Ms. Dondero did not have authority to bind Highland to the Alleged Oral Agreements. HCMFA alleges that the Alleged Oral Agreements were between: (a) Mr. Dondero, acting on behalf of HCMFA; and (b) ***his sister, Ms. Dondero***, of Vero Beach, Florida, acting on behalf of Highland. Notably, Ms. Dondero was never an officer, manager, or held any role with Highland. but, HCMFA's position is that she nevertheless had authority to act for Highland, in connection with agreeing not to collect on the Pre-2019 Notes, because she was/is the Family

Trustee of the Dugaboy Investment Trust,[46] which was the holder of a majority of the ***limited partnership interests of Highland***. This, according to HCMFA, meant Dugaboy had authority, under the terms of Highland's limited partnership agreement (the "LPA"), to exert control over Highland and do things like release millions of dollars' worth of debt owed to Highland by a corporate affiliate, in order to provide compensation to Mr. Dondero as CEO, president, and controlling portfolio manager of Highland. Specifically, HCMFA makes the bizarre argument that the holder of a majority of the limited partnership interests of Highland "was entitled to approve the compensation of [Highland's] General Partner and any 'Affiliate' of the General Partner" and, thus, Ms. Dondero could cause Highland to release obligations on the Pre-2019 Notes as a form of "compensation" to Mr. Dondero. Def. Ex. 4 at ¶ 8, Appx. 305 (citing Pl. Ex. 30, Appx. 612, 622, 639, the Fourth Amended and Restated Agreement of Limited Partnership of Highland Capital Management, L.P.). HCMFA, through Mr. Dondero's declaration, points specifically to Section 3.10(a) as the section of the LPA that gave Dugaboy the authority to bind Highland to the Alleged Oral Agreements. *Id.*, Appx. 622. But Section 3.10(a) provides no such authority.

Section 3.10(a) is entitled "**Compensation and Reimbursement of the General Partner**." Note that the General Partner of Highland was Strand. Section 3.10(a) provides, in relevant part, "The General Partner and any Affiliate of the General Partner shall receive no compensation from the Partnership for services rendered pursuant to this Agreement or any other agreements unless approved by a Majority Interest." *Id.* The argument of HCMFA is that, since Mr. Dondero was an affiliate of Strand, this provision was relevant to his compensation. Even if one assumes that this provision pertains to compensation of Mr. Dondero, as CEO and president

[46] Mr. Dondero was himself the trustee of Dugaboy until his resignation as such on August 26, 2015. Def. Ex. 4 at ¶ 9, Appx. 305-306.

of Highland (as opposed to compensation while acting for Strand), the provision says nothing about the Majority Interest having the ***authority*** to act on behalf of Highland to enter into agreements with third parties regarding compensation. *Id.* Approval and authority are different concepts. In fact, Ms. Dondero testified that she had no meaningful knowledge, experience, or understanding of (a) Highland or its business, (b) the financial industry, (c) executive compensation matters, or (d) Mr. Dondero's compensation or whether he was "underpaid compared to reasonable compensation levels in the industry." Pl. Ex. 100 at 42:22-43:8, Appx. 1885, 48:7-61:9, Appx. 1886-1889; 211:8-216:21, Appx. 1927-1928.

The further undisputed evidence shows that Ms. Dondero never reviewed Highland's financial statements (including balance sheets, bank statements, profit and loss statements, and statements of operations), never asked to see them, and knew nothing about Highland's financial condition prior to the Petition Date. *Id.* at 61:25-63:13, Appx. 1889-1890. Ms. Dondero did not know of Highland's "portfolio companies" except for those her brother identified, and as to those, she did not know the nature of Highland's interests in the portfolio companies, the price Highland paid to acquire those interests, or the value of the portfolio companies. *Id.* at 63:18-80-22, Appx. 1890-1894; 208:24-210:13, Appx. 1926-1927. Ms. Dondero never saw a promissory note signed by Mr. Dondero, nor any other officer or employee of Highland, nor any "affiliate" of Highland. *Id.* at 83:14-84:8, Appx. 1895; 95:3-16, Appx. 1898; 99:20-100:10, Appx. 1899; 115:11-116:4, Appx. 1903; 127:13-128:4, Appx. 1906; 140:15-141:22, Appx. 1909, 180:18-23, Appx. 1919. Ms. Dondero purportedly learned from her brother that Highland allegedly had a "common practice" of forgiving loans but had no actual knowledge or information concerning any loan that Highland made to an officer, employee, or affiliate that was actually forgiven and made no effort to verify her brother's statement. *Id.* 84:9-92:3, Appx. 1895-1897, 100:11-103:8, Appx. 1899-1900.

In summary, the undisputed evidence shows that Ms. Dondero's "approval" of any compensation to Mr. Dondero as an officer and employee of Highland had never been sought by Highland prior to the Alleged Oral Agreements. Moreover, Ms. Dondero, as the Family Trustee of Dugaboy, the holder of the majority limited partnership interests in Highland, did not have "authority," under Section 3.10(a) of the LPA or otherwise, to enter into any agreement with a third party regarding any compensation from Highland to anyone.

b) The Alleged Oral Agreements, If Any Were Made, Would Lack Enforceability Under Basic Contract Principles

Next, the Alleged Oral Agreements would be unenforceable as a matter of law for lack of: (a) consideration, (b) definiteness, and (c) a meeting of the minds. To be legally enforceable, a contract "must address all of its essential and material terms with a reasonable degree of certainty and definiteness." *Scott v. Wollney*, No. 3:20-CV-2825-M-BH, 2021 WL 4202169, at * 7 (N.D. Tex Aug. 28, 2021) (internal quotations omitted); *In re Heritage Org., L.L.C.*, 354 B.R. 407, 431–32 (Bankr. N.D. Tex. 2006) (In order to prove existence of a valid and binding subsequent oral agreement binding upon parties, a party must prove that there was "(1) a meeting of the minds" and "(2) consideration to support such a subsequent oral agreement.") "Whether a contract contains all of the essential terms for it to be enforceable is a question of law." *Id.* (internal quotations omitted). "A contract must also be based on valid consideration." *Id.* "In determining the existence of an oral contract, courts look at the communications between the parties and the acts and circumstances surrounding those communications." *Melanson v. Navistar, Inc.*, 3:13-CV-2018-D, 2014 WL 4375715, at *5 (N.D. Tex. Sept. 4, 2014). *See also id.* at *6 (finding that a reasonable trier of fact could not find that based on the oral conversation between the plaintiff and the defendant that there was an offer, an acceptance, and a meeting of the minds because the conversation did not contain all essential terms); *Wollney*, 2021 WL 4202169, at *8 (finding that

"[w]hen, as here, 'an alleged agreement is so indefinite as to make it impossible for a court to 'fix' the legal obligations and liabilities of the parties, a court will not find an enforceable contract,'" finding that party "has not identified evidence of record that would allow a reasonable trier of fact to find that there was an offer, an acceptance, and a meeting of the minds between Plaintiff and Defendant.") (quoting *Crisalli v. ARX Holding Corp.*, 177 F. App'x 417, 419 (5th Cir. 2006) (citation omitted)); *Heritage*, 354 B.R. at 431–32 (finding a "subsequent oral amendment" defense fails where the summary judgment record does not support the existence of a subsequent agreement).

Here, HCMFA has not submitted competent summary judgment evidence of any of the essential elements for the formation of a valid and binding contract. Mr. Dondero could not identify any material terms of the Alleged Oral Agreements, such as: (a) when the Alleged Oral Agreements were entered into; (b) who – HCMFA or Mr. Dondero – was a party to the Alleged Oral Agreements; (c) whether the Pre-2019 Notes were the subject of an Alleged Oral Agreement (and whether the alleged oral conversations even occurred), (d) the number of notes subject to an Alleged Oral Agreement; or (e) the maker, the date, or the principal amount of any note that was subject to an Alleged Oral Agreement. HCMFA alleges, through Mr. Dondero's declaration, that the Alleged Oral Agreements were agreements between Highland and HCMFA while, at the same time, it alleges, through both Dondero declarations, that the oral conversations were between Highland and Mr. Dondero, personally. HCMFA does not even allege that ***HCMFA*** gave any consideration to Highland in exchange for Highland's alleged agreement to forgive HCMFA's indebtedness under the Pre-2019 Notes upon the occurrence of a condition subsequent. Thus, the Alleged Oral Agreements would be unenforceable for lack of consideration. The record evidence clearly shows, as well, that HCMFA has failed to provide evidence of the essential and material

terms of the Alleged Oral Agreements with any degree of certainty and definiteness that would allow a reasonable trier of fact to find that the Alleged Oral Agreements were valid, binding agreements between Highland and HCMFA. And, finally, the summary judgment record, as a whole, shows that there certainly was not a "meeting of the minds" between Highland and HCMFA with respect to the Alleged Oral Agreements.

c) Most Importantly, HCMFA Has Not Raised a Genuine Issue of Fact Regarding the Existence of the Alleged Oral Agreements That Would Defeat the MSJ

Finally, the court finds that HCMFA has simply failed to present any summary judgment evidence that would allow a reasonable jury to find that the Alleged Oral Agreements existed. Beyond the fact that there are only self-serving, uncorroborated, and contradictory declarations and testimony of the Donderos submitted on this defense, it is simply not credible that a multi-billion-dollar enterprise, with sophisticated officers and directors, that was audited by one of the largest and most iconic public accounting firms in the world (PwC), would have entered into Alleged Oral Agreements to forgive millions of dollars of debt unbeknownst to any of those officers, directors, or PwC and, further, not disclose the existence of the Alleged Oral Agreements to any of those officers, directors, or PwC in the years leading up to the bankruptcy filing or to the bankruptcy court after the Petition Date until the Alleged Oral Agreement Defense was first raised in the Condolidated Notes Action. No reasonable trier of fact would believe that Mr. Dondero entered into an "oral agreement" between himself, as a representative of Highland, and himself, as a representative of HCMFA – that he had a verbal conversation with himself – with respect to the 2014 Alleged Oral Agreement. One would have to wonder just how that conversation would have played out.

HCMFA's (and Mr. Dondero's and Ms. Dondero's) actions before and after the Petition Date belie the existence of any Alleged Oral Agreement. The Alleged Oral Agreements were never disclosed to anyone by Mr. Dondero or Ms. Dondero. Other than Mr. Dondero and Ms. Dondero, no one participated in the discussions that led to the Alleged Oral Agreements (and, again, with respect to the 2014 Alleged Oral Agreement, HCMFA has alleged that Mr. Dondero had this discussion with himself). Pl. Ex. 210 at 27:19-21, Appx. 4863. Ms. Dondero and Dugaboy have admitted that neither ever disclosed the existence or terms of the 2016 Alleged Oral Agreement to ***anyone***, including PwC, Mr. Waterhouse (again, Highland's former CFO), or Highland's co-founder, Mark Okada. *Id.* at 25:6-22, Appx. 4861, 27:22-28:4, Appx. 4863-4864. Mr. Dondero has admitted that he: (1) never disclosed the existence or terms of the alleged "oral agreement" to PwC, Mr. Okada, or the bankruptcy court prior to the commencement of this Action, Pl. Ex. 24 (Responses to RFAs 11 and 12), Appx. 523; and (2) never caused Highland to disclose the existence or terms of any Alleged Oral Agreement to the bankruptcy court in connection with the Bankruptcy Case. Pl. Ex. 24 (Responses to RFAs 13 and 14), Appx. 523. To be clear, Mr. Dondero represented that he did, indeed, inform Mr. Waterhouse about the Alleged Oral Agreements. Pl. Ex. 24 (Responses to RFAs 3 & 4), Appx. 21. However, Mr. Waterhouse—again, the CFO of Highland ***and an officer of HCMFA***—testified that he did not learn of the Alleged Oral Agreements until recently and only believes that they were subject to "milestones" that he cannot identify. Pl. Ex. 105 at 65:5-72:14, Appx. 2065-2067, 82:19-84:7, Appx. 2070.

More importantly in connection with HCMFA's assertion of its Alleged Oral Agreement Defense in this Action, HCMFA, itself, did not disclose the existence of the Alleged Oral Agreements when it was in its financial interests to do so during the Bankruptcy Case – either in its proofs of claim filed in the Bankruptcy Case or in its objection to confirmation of the Plan, even

though the Plan's financial projections were based on the stated assumption that all of the affiliate notes payable to Highland (including the Pre-2019 Notes) would be collected in 2021.[47] In addition, Mr. Dondero sold MGM stock in November 2019—an event that would trigger the alleged "condition subsequent" under the Alleged Oral Agreements—but failed to declare the notes forgiven, and otherwise remained silent about the alleged agreement. Ms. Dondero, the counter-party to the Alleged Oral Agreements (or, just to the 2016 Alleged Oral Agreement, depending upon which of the contradictory allegations of fact between HCMFA's pleadings and the Dondero declarations and testimony is to be believed), never saw a note signed by Mr. Dondero or any affiliate of Highland and ***had no authority to bind Highland to the Alleged Oral Agreements***. No document exists memorializing or otherwise reflecting the existence or terms of the Alleged Oral Agreements. There is no history of loans to affiliates being forgiven by Highland as a means of providing deferred compensation to Mr. Dondero. Thus, even if the court were to consider the Dondero declarations as competent summary judgment evidence, no reasonable finder of fact could conclude that the Alleged Oral Agreements exist.

In conclusion, the summary judgment evidence shows that the Pre-2019 Notes: (i) are valid, (ii) were executed by HCMFA in favor of Highland; and (iii) there is a balance due and owing under each of the Pre-2019 Notes. HCMFA failed to rebut Highland's prima facie case because it failed to present competent summary judgment evidence of a ***genuine*** dispute of material fact in connection with any of its affirmative defenses that would defeat Highland's MSJ. Where, as here, two versions of the story collide and the non-movant's version of the facts is "blatantly contradicted by the record, so that no reasonable jury could believe it," *Scott*, 550 U.S.

[47] HCMFA has admitted that, prior to February 21, 2021, it never disclosed the existence or terms of the Alleged Oral Agreements to PwC, Mr. Okada, the bankruptcy court, or any creditor of Highland, including in connection with any objection to the Plan or Disclosure Statement. Pl. Ex. 220 (Responses to RFAs 7-12, 15-21), Appx. 5018).

at 380, 127 S.Ct. at 1776, and "where critical evidence is so weak or tenuous on an essential fact that it could not support a judgment in favor of the nonmovant, or where it is so overwhelming," Rule 56 mandates judgment in favor of the movant. *Armstrong*, 997 F.2d at 66 n.12.

For the reasons set forth above, the bankruptcy court hereby recommends that the District Court grant summary judgment in favor of the Highland.

VI. Conclusion: Summary Judgment Recommended

Accordingly, summary judgment should be entered holding HCMFA liable for: (a) breach of contract with respect to the Pre-2019 Notes; and (b) turnover of all amounts due under the Pre-2019 Notes, pursuant to Bankruptcy Code Section 542, including the costs of collection and reasonable attorneys' fees as provided for in the Pre-2019 Notes in an amount to be determined. Specifically:

With regard to the 2014 Note, HCMFA should be liable on a Judgment for breach of contract and turnover in the amount of: (a) **$2,151,130.84**, the total outstanding principal and accrued but unpaid interest due under the 2014 Note as of May 27, 2022; plus (b) interest accrued since May 27, 2022; plus (c) the costs of collection and reasonable attorneys' fees in an amount to be determined.

With regard to the 2016 Note, HCMFA should be liable on a Judgment for breach of contract and turnover in the amount of: (a) **$1,001,238.06**, the total outstanding principal and accrued but unpaid interest due under the HCMFA Notes as of May 27, 2022; plus (b) interest accrued since May 27, 2022; plus (c) the costs of collection and reasonable attorneys' fees in an amount to be determined.

Submission of Judgment. The bankruptcy court directs Plaintiff to promptly submit a form of Judgment that calculates proper amounts due pursuant to this Report and Recommendation, including interest accrued to date (and continuing to accrue per diem), as well as costs and attorneys' fees incurred. The costs and attorneys' fees calculation shall be separately filed as a Notice with backup documentation attached. HCMFA shall have 21 days after the filing of such Notice to file an objection to the reasonableness of the attorneys' fees and costs. The bankruptcy court will thereafter determine the reasonableness in Chambers (unless the bankruptcy court determines that a hearing is necessary) and will promptly submit the form Judgment, along with appropriate attorneys' fees and costs amounts inserted into the form Judgment, to the District Court, to consider along with this Report and Recommendation. This Report and Recommendation is immediately being sent to the District Court.

End of Report and Recommendation

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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	
Plaintiff,	§	
	§	
vs.	§	Adv. Proc. No. 21-03082-sgj
	§	
HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, L.P.,	§	
	§	
	§	Case No. 3:21-cv-00881-X
Defendant.	§	
	§	
	§	

NOTICE OF ATTORNEYS' FEES CALCULATION
AND BACKUP DOCUMENTATION

PLEASE TAKE NOTICE that Highland Capital Management, L.P. ("Highland" or "Plaintiff"), the reorganized debtor in the above-captioned chapter 11 case (the "Bankruptcy Case") and plaintiff in the above-referenced adversary proceeding (the "Action"), hereby files this *Notice of Attorney's Fees Calculation and Backup Documentation* (the "Notice") in support of its *Proposed Form of Judgment*, in accordance with the Court's directive in its *Report and Recommendation to District Court Regarding Highland Capital Management, L.P.'s Motion for Summary Judgment Against Highland Capital Management Fund Advisors, L.P.* [Docket No. 73] (the "R&R"), filed on October 12, 2022.

1. Attached as **Exhibit 1** is the *Declaration of John A. Morris in Support of Highland Capital Management, L.P.'s Proposed Form of Judgment* (the "Morris Declaration"), and backup documentation supporting the calculation of attorneys' fees.

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Dated: November 2, 2022

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10501 N. Central Expy, Ste. 106
Dallas, Texas 75231
Tel: (972) 755-7100
Fax: (972) 755-7110

Counsel for Highland Capital Management, L.P.

EXHIBIT 1

DECLARATION OF JOHN A. MORRIS IN SUPPORT OF HIGHLAND CAPITAL MANAGEMENT L.P.'S PROPOSED FORM OF JUDGMENT

I, John A. Morris, pursuant to 28 U.S.C. § 1746, under penalty of perjury, declare as follows:

1. I am a partner in the law firm Pachulski, Stang, Ziehl & Jones LLP (the "Firm"), counsel to Highland Capital Management, L.P. ("Highland" or "Plaintiff"), the Reorganized Debtor in the above-captioned chapter 11 case (the "Bankruptcy Case") and the plaintiff in the above-referenced adversary proceeding (the "Action"). I submit this Declaration in support of *Highland Capital Management, L.P.'s Proposed Form of Judgment* (the "Proposed Judgment").

2. I have overseen my Firm's representation of Plaintiff in all aspects of the Action. This Declaration is based on my personal knowledge and review of the documents listed below.

3. On October 12, 2022, the Bankruptcy Court rendered a *Report and Recommendation to District Court Regarding Highland Capital Management, L.P.'s Motion for Summary Judgment Against Highland Capital Management Fund Advisors, L.P.* [Docket No. 73] (the "R&R").

4. In the R&R, the Court directed Highland to "submit a form of Judgment that calculates proper amounts due pursuant to th[e] Report and Recommendation, including interest accrued to date (and continuing to accrue per diem), as well as costs and attorneys' fees incurred." R&R at 50.

5. As set forth below, and in accordance with the Court's direction in the R&R, I and others working at my direction have reviewed invoices related to the attorneys' fees and

expenses charged to Highland in the Action and calculated the amount of attorneys' fees and expenses incurred in connection therewith.

A. Attorneys' Fees Charged by Pachulski Stang Ziehl & Jones LLP

6. In the ordinary course of business, timekeepers (including attorneys and legal assistants) at my Firm record billable time in increments of one-tenth of an hour. Timekeepers are also required to classify their work by task codes and/or matter numbers to differentiate between individual tasks conducted for the same client.

7. In sum, Highland seeks to recover the aggregate amount of $368,057.75 (the "Fees") on account of fees charged by my Firm for prosecuting the Action during the nine-month period from November 1, 2021 through July 31, 2022. Attached as **Exhibit A** is a summary of the aggregate and monthly amounts charged by my Firm. The details follow.

8. For the two-month period November 1, 2021 until December 31, 2021, the Firm's timekeepers recorded their time entries relating to the Action under matter number ".003" and task code "NL" (short for "Notes Litigation"). Attached as **Exhibit B** are the Firms' invoices for the period November 1, 2021 through December 31, 2021 that reflect all of the Firm's time billed to the Action.[1]

9. On January 1, 2022, the Firm created a new matter number (".004") for timekeepers to record their time entries relating to the Action. Attached as **Exhibit C** is the Firm's invoice for the period January 1, 2022 through January 31, 2022 that reflect all of the Firm's time billed to the Notes Litigation.[2]

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[1] Highland does not seek to recover any amounts concerning any time entry that is redacted. For the avoidance of doubt, Highland has copied from Exhibit B only those time entries for which compensation is sought in connection with the Action and compiled them on the page preceding each invoice in Exhibit B.

[2] Highland does not seek to recover any amounts concerning any time entry that is redacted. For the avoidance of doubt, Highland has copied from Exhibit C only those time entries for which compensation is sought in connection with the Action and compiled them on the first page of Exhibit C.

10. On February 1, 2022, the Firm created a new matter number (".005") for timekeepers to record their time entries relating to the Action. Attached as **Exhibit D** are the Firm's invoices for the period February 1, 2022 through July 31, 2022 that reflect all of the Firm's time billed to the Notes Litigation.[3]

11. As reflected in the footnotes, we have reviewed the attached invoices and redacted all entries that we concluded were not related to the Action (the "Unrelated Time"). Based on that review, we believe the attached invoices capture and reflect fees properly charged by my Firm to Highland with respect to the Action.

B. Third-Party Expenses Incurred in Connection with the Action

12. Highland took and defended several depositions in connection with the Action.

13. In sum, Highland seeks to recover the aggregate amount of $5,331.65 (the "Expenses") on account of court reporting expenses paid by Highland in connection with the Action. Attached as **Exhibit E** is a summary of the aggregate Expenses incurred.

14. Attached as **Exhibit F** are the specific invoices rendered by TSG Reporting, Inc. for court reporting services rendered in connection with the Action for the period April 29, 2022 through May 27, 2022.

C. Summary of All Fees and Expenses Incurred by Highland in the Action[4]

15. Attached as **Exhibit G** is chart showing that the aggregate amount of all Fees and Expenses charged to Highland in connection with the Action is $387,007.90.

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[3] Highland does not seek to recover any amounts concerning any time entry that is redacted. For the avoidance of doubt, Highland has copied from Exhibit D only those time entries for which compensation is sought in connection with the Action and compiled them on the page preceding each invoice in Exhibit D.

[4] These amounts include fees charged by Hayward PLLC although the invoices rendered by that firm will be filed under a separate notice.

16. I declare under penalty of perjury that the forgoing is true and correct.

Dated: November 2, 2022

/s/ John A. Morris
John A. Morris

EXHIBIT A

Pachulski Stang Ziehl & Jones LLP Summary of Invoices				
Month	**Invoice #**	**Total Invoice**	**Unrelated Fees (If any)**	**Adjusted Invoice**
November 2021	129043	$325,888.50	($322,667.50)	$3,221.00
December 2021	129324	$345,649.00	($343,106.50)	$2,542.50
January 2022	129683	$140,045.50	($134,911.00)	$5,134.50
February 2022 (Matter 005)	129793	$10,431.00	$0.00	$10,431.00
March 2022 (Matter 005)	129887	$27,117.00	$0.00	$27,117.00
April 2022 (Matter 005)	130116	$49,279.50	$0.00	$49,279.50
May 2022 (Matter 005)	130339	$137,535.35	$0.00	$137,535.35
June 2022 (Matter 005)	130402	$1,053.00	$0.00	$1,053.00
July 2022 (Matter 005)	130623	$132,022.90	($279.00)	$131,743.90
TOTAL DUE				**$368,057.75**

EXHIBIT B

NOVEMBER 2021

DATE	TKPR	TASK	DESCRIPTION	HOURS	RATE	AMOUNT
11/6/2021	JAM	NL	Review/revise draft Complaint against HCMFA for second set of notes (0.7); e-mail J. Pomerantz, G. Demo, H. Winograd re: draft Complaint against HCMFA for second set of notes (0.1).	0.80	$1,245.00	$996.00
11/6/2021	GVD	NL	Review new HCMFA complaint	0.20	$950.00	$190.00
11/6/2021	HRW	NL	Review second HCMFA notes complaint (0.2).	0.20	$695.00	$139.00
11/7/2021	JAM	NL	e-mail to J. Seery, others, re: second complaint against HCMFA for breach of notes (0.1)	0.10	$1,245.00	$124.50
11/8/2021	HRW	NL	Email J. Morris re: second HCMFA notes complaint (0.1)	0.10	$695.00	$69.50
11/8/2021	HRW	NL	Review second HCMFA notes complaint (0.2).	0.20	$695.00	$139.00
11/9/2021	JAM	NL	tel c. w/ H. Winograd re: new Complaint against HCMFA (0.4)	0.40	$1,245.00	$498.00
11/9/2021	LSC	NL	Prepare exhibits for second complaint against HCMFA.	0.20	$460.00	$92.00
11/9/2021	HRW	NL	Call with J. Morris re: second HCMFA notes complaint (0.1).	0.10	$695.00	$69.50
11/9/2021	HRW	NL	Prepare second HCMFA notes complaint (0.8).	0.80	$695.00	$556.00
11/9/2021	HRW	NL	Email local counsel re: second HCMFA notes complaint (0.2).	0.20	$695.00	$139.00
11/9/2021	HRW	NL	Email client re: second HCMFA notes complaint (0.1).	0.10	$695.00	$69.50
11/9/2021	HRW	NL	Review client email re: second HCMFA notes complaint (0.1).	0.10	$695.00	$69.50
11/9/2021	HRW	NL	Email J. Pomerantz, G. Demo, J. Morris re: second HCMFA notes complaint (0.1).	0.10	$695.00	$69.50
			TOTAL			**$3,221.00**

Doc 180-33 Page 1 of 10

Pachulski Stang Ziehl & Jones LLP

10100 Santa Monica Blvd.
13th Floor
Los Angeles, CA 90067

November 30, 2021

Board of Directors
Highland Capital Management LP
100 Crescent Court, Suite 1850
Dallas, TX 75201

Invoice	129043
Client	36027
Matter	00003
	JNP

RE: Post-Effective Date

STATEMENT OF PROFESSIONAL SERVICES RENDERED THROUGH 11/30/2021

Pachulski Stang Ziehl & Jones LLP
Highland Capital Management LP
36027 - 00003

Page: 43
Invoice 129043
November 30, 2021

				Hours	Rate	Amount
[redacted]						
11/06/2021	JAM	NL	Review/revise draft Complaint against HCMFA for second set of notes (0.7 [redacted]	[redacted]	1245.00	[redacted]

Pachulski Stang Ziehl & Jones LLP
Highland Capital Management LP
36027 - 00003

Page: 44
Invoice 129043
November 30, 2021

				Hours	Rate	Amount
			[redacted] e-mail J. Pomerantz, G. Demo, H. Winograd re: draft Complaint against HCMFA for second set of notes (0.1).			
11/06/2021	GVD	NL	Review new HCMFA complaint	0.20	950.00	$190.00
11/06/2021	HRW	NL	Review second HCMFA notes complaint (0.2).	0.20	695.00	$139.00
[redacted]						
11/07/2021	JAM	NL	[redacted] e-mail to J. Seery, others, re: second complaint against HCMFA for breach of notes (0.1 [redacted]		1245.00	[redacted]

Pachulski Stang Ziehl & Jones LLP
Highland Capital Management LP
36027 - 00003

Page: 45
Invoice 129043
November 30, 2021

				Hours	Rate	Amount
[redacted]						
[redacted]						
[redacted]						
[redacted]						
[redacted]						
[redacted]						
[redacted]						
[redacted]						
[redacted]						
[redacted]						
11/08/2021	HRW	NL	Email J. Morris re: second HCMFA notes complaint (0.1).	0.10	695.00	$69.50
11/08/2021	HRW	NL	Review second HCMFA notes complaint (0.2).	0.20	695.00	$139.00
[redacted]						

Pachulski Stang Ziehl & Jones LLP
Highland Capital Management LP
36027 - 00003

Invoice 129043
November 30, 2021

				Hours	Rate	Amount
			[redacted]			
[redacted]			[redacted]	[redacted]	[redacted]	[redacted]
[redacted]			[redacted]	[redacted]	[redacted]	[redacted]
[redacted]			[redacted]	[redacted]	[redacted]	[redacted]
[redacted]			[redacted]	[redacted]	[redacted]	[redacted]
11/09/2021	JAM	NL	[redacted] tel c. w/ H. Winograd re: new Complaint against HCMFA (0.4); [redacted]	[redacted]	1245.00	[redacted]
[redacted]			[redacted]	[redacted]	[redacted]	[redacted]
[redacted]			[redacted]	[redacted]	[redacted]	[redacted]
11/09/2021	LSC	NL	Prepare exhibits for second complaint against HCMFA.	0.20	460.00	$92.00
[redacted]			[redacted]	[redacted]	[redacted]	[redacted]
[redacted]			[redacted]	[redacted]	[redacted]	[redacted]
[redacted]			[redacted]	[redacted]	[redacted]	[redacted]
[redacted]			[redacted]	[redacted]	[redacted]	[redacted]
[redacted]			[redacted]	[redacted]	[redacted]	[redacted]
[redacted]			[redacted]	[redacted]	[redacted]	[redacted]
[redacted]			[redacted]	[redacted]	[redacted]	[redacted]

Pachulski Stang Ziehl & Jones LLP
Highland Capital Management LP
36027 - 00003

Page: 47
Invoice 129043
November 30, 2021

				Hours	Rate	Amount
			[redacted]			
11/09/2021	HRW	NL	Call with J. Morris re: second HCMFA notes complaint (0.1).	0.10	695.00	$69.50
[redacted]						
11/09/2021	HRW	NL	Prepare second HCMFA notes complaint (0.8).	0.80	695.00	$556.00
11/09/2021	HRW	NL	Email local counsel re: second HCMFA notes complaint (0.2).	0.20	695.00	$139.00
11/09/2021	HRW	NL	Email client re: second HCMFA notes complaint (0.1).	0.10	695.00	$69.50
11/09/2021	HRW	NL	Review client email re: second HCMFA notes complaint (0.1).	0.10	695.00	$69.50
11/09/2021	HRW	NL	Email J. Pomerantz, G. Demo, J. Morris re: second HCMFA notes complaint (0.1).	0.10	695.00	$69.50
[redacted]						

DECEMBER 2021

DATE	TKPR	TASK	DESCRIPTION	HOURS	RATE	AMOUNT
12/9/2021	JAM	NL	e-mails w/ H. Winograd, D. Rukavina re: schedule for second suit against HCMFA (0.2).	0.20	$1,245.00	$249.00
12/9/2021	HRW	NL	Draft scheduling stipulation for HCMFA second adversary proceeding (1.0).	1.00	$695.00	$695.00
12/9/2021	HRW	NL	Email J. Morris re: scheduling stipulation for HCMFA second adversary proceeding (0.2).	0.20	$695.00	$139.00
12/9/2021	HRW	NL	Email opposing counsel re: scheduling stipulation for HCMFA second adversary proceeding (0.2).	0.20	$695.00	$139.00
12/10/2021	HRW	NL	Email M. Aigen re: scheduling stipulation for HCMFA second adversary proceeding (0.5).	0.50	$695.00	$347.50
12/10/2021	HRW	NL	Email Z. Annable re: scheduling stipulation for HCMFA second adversary proceeding (0.2).	0.20	$695.00	$139.00
12/10/2021	HRW	NL	Email J. Morris re: scheduling stipulation for HCMFA second adversary proceeding (0.2).	0.20	$695.00	$139.00
12/10/2021	HRW	NL	Call with J. Morris re: scheduling stipulation for HCMFA second adversary proceeding (0.2).	0.20	$695.00	$139.00
12/10/2021	HRW	NL	Review and edit scheduling stipulation for HCMFA second adversary proceeding (0.8).	0.80	$695.00	$556.00
			TOTAL			**$2,542.50**

Pachulski Stang Ziehl & Jones LLP

10100 Santa Monica Blvd.
13th Floor
Los Angeles, CA 90067

December 31, 2021

Board of Directors
Highland Capital Management LP
100 Crescent Court, Suite 1850
Dallas, TX 75201

Invoice	129324
Client	36027
Matter	00003
	JNP

RE: Post-Effective Date

STATEMENT OF PROFESSIONAL SERVICES RENDERED THROUGH 12/31/2021

Pachulski Stang Ziehl & Jones LLP
Highland Capital Management LP
36027 - 00003

Page: 51
Invoice 129324
December 31, 2021

				Hours	Rate	Amount
[redacted]						
[redacted]						
[redacted]						
[redacted]						
[redacted]						
[redacted]						
[redacted]						
[redacted]						
[redacted]						
[redacted]						
[redacted]						
[redacted]						
[redacted]						
[redacted]						
[redacted]						
12/09/2021	JAM	NL	[redacted] e-mails w/ H. Winograd, D. Rukavina re: schedule for second suit against HCMFA (0.2).	[redacted]	1245.00	[redacted]
[redacted]						
[redacted]						
[redacted]						
[redacted]						
12/09/2021	HRW	NL	Draft scheduling stipulation for HCMFA second	1.00	695.00	$695.00

Pachulski Stang Ziehl & Jones LLP
Highland Capital Management LP
36027 - 00003

Page: 52
Invoice 129324
December 31, 2021

				Hours	Rate	Amount
			adversary proceeding (1.0).			
12/09/2021	HRW	NL	Email J. Morris re: scheduling stipulation for HCMFA second adversary proceeding (0.2).	0.20	695.00	$139.00
12/09/2021	HRW	NL	Email opposing counsel re: scheduling stipulation for HCMFA second adversary proceeding (0.2).	0.20	695.00	$139.00
[redacted]						
12/10/2021	HRW	NL	Email M. Aigen re: scheduling stipulation for HCMFA second adversary proceeding (0.5).	0.50	695.00	$347.50
12/10/2021	HRW	NL	Email Z. Annable re: scheduling stipulation for HCMFA second adversary proceeding (0.2).	0.20	695.00	$139.00
12/10/2021	HRW	NL	Email J. Morris re: scheduling stipulation for HCMFA second adversary proceeding (0.2).	0.20	695.00	$139.00
12/10/2021	HRW	NL	Call with J. Morris re: scheduling stipulation for HCMFA second adversary proceeding (0.2).	0.20	695.00	$139.00
12/10/2021	HRW	NL	Review and edit scheduling stipulation for HCMFA second adversary proceeding (0.8).	0.80	695.00	$556.00
[redacted]						

EXHIBIT C

JANUARY 2022

DATE	TKPR	TASK	DESCRIPTION	HOURS	RATE	AMOUNT
1/27/2022	HRW		Draft HCMFA discovery requests for second notes adversary (3.0).	3.00	$750.00	$2,250.00
1/28/2022	HRW		Email J. Morris re: HCMFA discovery requests (0.1).	0.10	$750.00	$75.00
1/28/2022	HRW		Draft HCMFA discovery requests (1.0).	1.00	$750.00	$750.00
1/30/2022	JAM		Review/revise discovery demands for second notes suit against HCMFA (0.8); e-mail to H. Winograd re: discovery in HCMFA notes II (0.1)	0.90	$1,395.00	$1,255.50
1/31/2022	JAM		communications w/ H. Winograd re: discovery requests in HCMFA, part II (0.2).	0.20	$1,395.00	$279.00
1/31/2022	HRW		Prepare discovery requests to HCMFA (0.5).	0.50	$750.00	$375.00
1/31/2022	HRW		Call with J. Morris re: HCMFA discovery requests (0.1).	0.10	$750.00	$75.00
1/31/2022	HRW		Email M. Aigen re: discovery requests to HCMFA (0.1).	0.10	$750.00	$75.00
			TOTAL			**$5,134.50**

Pachulski Stang Ziehl & Jones LLP

10100 Santa Monica Blvd.
13th Floor
Los Angeles, CA 90067

January 31, 2022
Invoice 129683
Client 36027
Matter 00004
JNP

Board of Directors
Highland Capital Management LP
100 Crescent Court, Suite 1850
Dallas, TX 75201

RE: Notes Litigation

STATEMENT OF PROFESSIONAL SERVICES RENDERED THROUGH 01/31/2022

[redacted]

Pachulski Stang Ziehl & Jones LLP
Highland Capital Management LP
36027 - 00004

Page: 10
Invoice 129683
January 31, 2022

			Hours	Rate	Amount
[redacted]					
01/27/2022	HRW	Draft HCMFA discovery requests for second notes adversary (3.0).	3.00	750.00	$2,250.00
[redacted]					
01/28/2022	HRW	Email J. Morris re: HCMFA discovery requests (0.1).	0.10	750.00	$75.00
01/28/2022	HRW	Draft HCMFA discovery requests (1.0).	1.00	750.00	$750.00

Pachulski Stang Ziehl & Jones LLP
Highland Capital Management LP
36027 - 00004

Page: 11
Invoice 129683
January 31, 2022

			Hours	Rate	Amount
[redacted]					
01/30/2022	JAM	Review/revise discovery demands for second notes suit against HCMFA (0.8); e-mail to H. Winograd re: discovery in HCMFA notes II (0.1); [redacted]		1395.00	
[redacted]					
[redacted]					
[redacted]					
[redacted]					
[redacted]					
[redacted]					
[redacted]					
01/31/2022	JAM	[redacted] communications w/ H. Winograd re: discovery requests in HCMFA, part II (0.2).		1395.00	
[redacted]					
[redacted]					
[redacted]					
01/31/2022	HRW	Prepare discovery requests to HCMFA (0.5).	0.50	750.00	$375.00
[redacted]					
[redacted]					

Pachulski Stang Ziehl & Jones LLP
Highland Capital Management LP
36027 - 00004

Invoice 129683
January 31, 2022

			Hours	Rate	Amount
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
01/31/2022	HRW	Call with J. Morris re: HCMFA discovery requests (0.1).	0.10	750.00	$75.00
01/31/2022	HRW	Email M. Aigen re: discovery requests to HCMFA (0.1).	0.10	750.00	$75.00
			[redacted]		[redacted]

[redacted]

EXHIBIT D

FEBRUARY 2022

FEBRUARY 2022

DATE	TKPR	TASK	DESCRIPTION	HOURS	RATE	AMOUNT
2/18/2022	HRW		Email DSI re: HCMFA discovery requests for AP 21-3082 (0.2).	0.2	750	$150.00
2/18/2022	HRW		Prepare responses and objections re: HCMFA discovery requests for AP 21-3082 (0.8).	0.8	750	$600.00
2/22/2022	HRW		Draft responses and objections to HCMFA discovery requests in AP 21-3082 (3.5).	3.5	750	$2,625.00
2/23/2022	HRW		Draft responses and objections to HCMFA discovery requests in AP 21-3082 (1.5).	1.5	750	$1,125.00
2/23/2022	HRW		Email J. Morris re: responses and objections to HCMFA discovery requests in AP 21-3082 (0.1).	0.1	750	$75.00
2/25/2022	HRW		Email DSI re: discovery responses for HCMFA, AP 21-3082 (0.1).	0.1	750	$75.00
2/25/2022	HRW		Email J. Morris re: re: discovery responses for HCMFA, AP 21-3082 (0.1).	0.1	750	$75.00
2/27/2022	HRW		Review email from DSI re: HCMFA discovery AP 21-3082 (0.1).	0.1	750	$75.00
2/27/2022	HRW		Draft responses and objections to HCMFA discovery AP 21-3082 (0.5).	0.5	750	$375.00
2/27/2022	HRW		Email DSI re: HCMFA discovery AP 21-3082 (0.1).	0.1	750	$75.00
2/27/2022	HRW		Email J. Morris re: HCMFA discovery AP 21-3082 (0.1).	0.1	750	$75.00
2/28/2022	JAM		Review draft written responses to discovery (0.5); tel c. w/ D. Klos, K. Hendrix, H. Winograd re: HCMFA payments on notes (0.3); tel c. w/ J. Seery re: background facts (0.2); revise draft written responses to discovery (1.1); further revisions to written responses to discovery (0.2); e-mails w/ D. Klos, K. Hendrix, H. Winograd re: written responses to discovery (0.1); review HCMFA written responses (0.1); e-mail to M. Aigen, H. Winograd re: HCMLP's written responses (0.1); review of HCMFA's written responses to discovery (0.2).	2.8	1395	$3,906.00
2/28/2022	HRW		Review and edit responses and objections to HCMFA discovery and related tasks (0.5).	0.5	750	$375.00
2/28/2022	HRW		Call with J. Morris, D. Klos, K. Hendrix re: responses and objections to HCMFA discovery (0.3).	0.3	750	$225.00
2/28/2022	HRW		Email J. Morris re: responses and objections to HCMFA discovery (0.3).	0.3	750	$225.00
2/28/2022	HRW		Email J. Seery re: responses and objections to HCMFA discovery (0.1).	0.1	750	$75.00
2/28/2022	HRW		Review email from DSI re: responses and objections to HCMFA discovery (0.2).	0.2	750	$150.00
2/28/2022	HRW		Review HCMFA responses to discovery (0.2).	0.2	750	$150.00
			TOTAL			**$10,431.00**

Pachulski Stang Ziehl & Jones LLP

10100 Santa Monica Blvd.
13th Floor
Los Angeles, CA 90067

February 28, 2022
Invoice 129793
Client 36027
Matter 00005
JNP

James P. Secry, Jr.
Highland Capital Management LP
100 Crescent Court, Suite 1850
Dallas, TX 75201

RE: HCMFA Notes Litigation

STATEMENT OF PROFESSIONAL SERVICES RENDERED THROUGH 02/28/2022

FEES	$10,431.00
TOTAL CURRENT CHARGES	**$10,431.00**
TOTAL BALANCE DUE	**$10,431.00**

Pachulski Stang Ziehl & Jones LLP
Highland Capital Management LP
36027 - 00005

Invoice 129793
February 28, 2022

Summary of Services by Professional

ID	Name	Title	Rate	Hours	Amount
HRW	Winograd , Hayley R.	Associate	750.00	8.70	$6,525.00
JAM	Morris, John A.	Partner	1395.00	2.80	$3,906.00
				11.50	$10,431.00

Pachulski Stang Ziehl & Jones LLP
Highland Capital Management LP
36027 - 00005

Invoice 129793
February 28, 2022

Summary of Services by Task Code

Task Code	Description	Hours	Amount
		11.50	$10,431.00
		11.50	$10,431.00

Pachulski Stang Ziehl & Jones LLP
Highland Capital Management LP
36027 - 00005

Invoice 129793
February 28, 2022

			Hours	Rate	Amount
02/18/2022	HRW	Email DSI re: HCMFA discovery requests for AP 21-3082 (0.2).	0.20	750.00	$150.00
02/18/2022	HRW	Prepare responses and objections re: HCMFA discovery requests for AP 21-3082 (0.8).	0.80	750.00	$600.00
02/22/2022	HRW	Draft responses and objections to HCMFA discovery requests in AP 21-3082 (3.5).	3.50	750.00	$2,625.00
02/23/2022	HRW	Draft responses and objections to HCMFA discovery requests in AP 21-3082 (1.5).	1.50	750.00	$1,125.00
02/23/2022	HRW	Email J. Morris re: responses and objections to HCMFA discovery requests in AP 21-3082 (0.1).	0.10	750.00	$75.00
02/25/2022	HRW	Email DSI re: discovery responses for HCMFA, AP 21-3082 (0.1).	0.10	750.00	$75.00
02/25/2022	HRW	Email J. Morris re: re: discovery responses for HCMFA, AP 21-3082 (0.1).	0.10	750.00	$75.00
02/27/2022	HRW	Review email from DSI re: HCMFA discovery AP 21-3082 (0.1).	0.10	750.00	$75.00
02/27/2022	HRW	Draft responses and objections to HCMFA discovery AP 21-3082 (0.5).	0.50	750.00	$375.00
02/27/2022	HRW	Email DSI re: HCMFA discovery AP 21-3082 (0.1).	0.10	750.00	$75.00
02/27/2022	HRW	Email J. Morris re: HCMFA discovery AP 21-3082 (0.1).	0.10	750.00	$75.00
02/28/2022	JAM	Review draft written responses to discovery (0.5); tel c. w/ D. Klos, K. Hendrix, H. Winograd re: HCMFA payments on notes (0.3); tel c. w/ J. Seery re: background facts (0.2); revise draft written responses to discovery (1.1); further revisions to written responses to discovery (0.2); e-mails w/ D. Klos, K. Hendrix, H. Winograd re: written responses to discovery (0.1); review HCMFA written responses (0.1); e-mail to M. Aigen, H. Winograd re: HCMLP's written responses (0.1); review of HCMFA's written responses to discovery (0.2).	2.80	1395.00	$3,906.00
02/28/2022	HRW	Review and edit responses and objections to HCMFA discovery and related tasks (0.5).	0.50	750.00	$375.00
02/28/2022	HRW	Call with J. Morris, D. Klos, K. Hendrix re: responses and objections to HCMFA discovery (0.3).	0.30	750.00	$225.00
02/28/2022	HRW	Email J. Morris re: responses and objections to HCMFA discovery (0.3).	0.30	750.00	$225.00

Pachulski Stang Ziehl & Jones LLP
Highland Capital Management LP
36027 - 00005

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February 28, 2022

			Hours	Rate	Amount
02/28/2022	HRW	Email J. Seery re: responses and objections to HCMFA discovery (0.1).	0.10	750.00	$75.00
02/28/2022	HRW	Review email from DSI re: responses and objections to HCMFA discovery (0.2).	0.20	750.00	$150.00
02/28/2022	HRW	Review HCMFA responses to discovery (0.2).	0.20	750.00	$150.00
			11.50		**$10,431.00**

TOTAL SERVICES FOR THIS MATTER: $10,431.00

Pachulski Stang Ziehl & Jones LLP
Highland Capital Management LP
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February 28, 2022

REMITTANCE ADVICE

Please inlcude this Remittance with your payment

For current services rendered through: 02/28/2022

Total Fees	**$10,431.00**
Total Due on Current Invoice	**$10,431.00**

Outstanding Balance from prior invoices as of 02/28/2022 (May not include recent payments)

A/R Bill Number	Invoice Date	Fees Billed	Expenses Billed	Balance Due

Total Amount Due on Current and Prior Invoices: $10,431.00

MARCH 2022

MARCH 2022

DATE	TKPR	TASK	DESCRIPTION	HOURS	RATE	AMOUNT
3/1/2022	HRW		Email M. Aigen re: HCMFA ROG verification (0.1).	0.10	$750.00	$75.00
3/1/2022	HRW		Email J. Morris re: HCMFA ROG verification (0.1).	0.10	$750.00	$75.00
3/1/2022	HRW		Call with J. Seery re: HCMFA ROG verification (0.1).	0.10	$750.00	$75.00
3/7/2022	HRW		Email J. Morris re: HCMFA scheduling order (0.2).	0.20	$750.00	$150.00
3/7/2022	HRW		Call with J. Morris re: HCMFA scheduling order (0.2).	0.20	$750.00	$150.00
3/8/2022	HRW		Email M. Aigen re: HCMFA scheduling order (0.2).	0.20	$750.00	$150.00
3/8/2022	HRW		Call with J. Morris re: HCMFA scheduling order (0.3).	0.30	$750.00	$225.00
3/8/2022	HRW		Review email from J. Morris re: HCMFA scheduling order (0.1).	0.10	$750.00	$75.00
3/10/2022	JAM		E-mails w/ M. Aigen re: scheduling (0.3).	0.30	$1,395.00	$418.50
3/10/2022	HRW		Call with J. Morris re: HCMFA scheduling order and related matters (0.3).	0.30	$750.00	$225.00
3/10/2022	HRW		Review email from J. Morris re: HCMFA scheduling order (0.1).	0.10	$750.00	$75.00
3/10/2022	HRW		Review email from M. Aigen re: HCMFA scheduling order (0.1).	0.10	$750.00	$75.00
3/15/2022	HRW		Call with L. Canty re: HCMFA scheduling issues (0.1).	0.10	$750.00	$75.00
3/15/2022	HRW		Draft stipulation re: HCMFA scheduling order (0.3).	0.30	$750.00	$225.00
3/17/2022	HRW		Email C. Mackle and J. Morris re: HCMFA discovery (0.2).	0.20	$750.00	$150.00
3/17/2022	HRW		Draft search terms re: HCMFA discovery and related tasks (0.8).	0.80	$750.00	$600.00
3/17/2022	HRW		Draft stipulation re: HCMFA scheduling order (0.5).	0.50	$750.00	$375.00
3/17/2022	HRW		Email J. Morris re: HCMFA scheduling order (0.1).	0.10	$750.00	$75.00
3/17/2022	HRW		Email M. Aigen re: HCMFA scheduling order (0.1).	0.10	$750.00	$75.00
3/17/2022	HRW		Email L. Canty re: HCMFA deposition notices (0.1).	0.10	$750.00	$75.00
3/21/2022	LSC		Prepare notices of HCMFA 30(b)(6), James Dondero, and Nancy Dondero depositions.	0.50	$495.00	$247.50
3/21/2022	LSC		Review documents and prepare list of potential documents responsive to discovery requests for H. Winograd.	2.60	$495.00	$1,287.00
3/21/2022	HRW		Communicate with L. Canty regarding HCMFA discovery (0.2).	0.20	$750.00	$150.00
3/21/2022	HRW		Email J. Morris regarding HCMFA discovery (0.1).	0.10	$750.00	$75.00
3/21/2022	HRW		Review email from J. Morris regarding HCMFA discovery (0.1).	0.10	$750.00	$75.00
3/21/2022	HRW		Email C. Mackle regarding HCMFA discovery (0.1).	0.10	$750.00	$75.00
3/21/2022	HRW		Draft search terms for HCMFA discovery requests (0.3).	0.30	$750.00	$225.00
3/21/2022	HRW		Review HCMFA discovery requests (0.3).	0.30	$750.00	$225.00
3/21/2022	HRW		Email M. Aigen regarding HCMFA scheduling order (0.1).	0.10	$750.00	$75.00
3/22/2022	JAM		Communications w/ Z. Annable, H. Winograd re: revised schedule/order (0.2).	0.20	$1,395.00	$279.00
3/22/2022	HRW		Email C. Mackle regarding HCMFA discovery (0.1).	0.10	$750.00	$75.00
3/22/2022	HRW		Call with L. Canty regarding HCMFA discovery (0.1).	0.10	$750.00	$75.00
3/22/2022	HRW		Draft stipulation and related documents regarding HCMFA scheduling order (0.5).	0.50	$750.00	$375.00
3/22/2022	HRW		Review email from Z. Annable regarding HCMFA scheduling order (0.1).	0.10	$750.00	$75.00
3/22/2022	HRW		Email Z. Annable regarding HCMFA scheduling order (0.1).	0.10	$750.00	$75.00
3/22/2022	HRW		Email J. Seery regarding HCMFA interrogatories (0.1).	0.10	$750.00	$75.00

MARCH 2022

DATE	TKPR	TASK	DESCRIPTION	HOURS	RATE	AMOUNT
3/22/2022	HRW		Review email from L. Canty regarding HCMFA discovery (0.1).	0.10	$750.00	$75.00
3/22/2022	HRW		Gather documents for HCMFA discovery requests (0.5).	0.50	$750.00	$375.00
3/22/2022	HRW		Call with C. Mackle regarding HCMFA discovery (0.1).	0.10	$750.00	$75.00
3/23/2022	LSC		Review documents, redacts as necessary, and preparation of HCMFA II document production (2.3); confer with H. Winograd regarding the same (.6).	2.90	$495.00	$1,435.50
3/23/2022	HRW		Call with L. Canty regarding HCMFA discovery (0.6).	0.60	$750.00	$450.00
3/23/2022	HRW		Email C. Mackle regarding HCMFA discovery (0.1).	0.10	$750.00	$75.00
3/23/2022	HRW		Review email from C. Mackle regarding HCMFA discovery (0.1).	0.10	$750.00	$75.00
3/23/2022	HRW		Gather and review documents responsive to HCMFA discovery requests (1.2).	1.20	$750.00	$900.00
3/23/2022	HRW		Email J. Morris regarding HCMFA discovery (0.4).	0.40	$750.00	$300.00
3/23/2022	HRW		Email J. Seery regarding HCMFA interrogatories (0.1).	0.10	$750.00	$75.00
3/24/2022	HRW		Communicate with C. Mackle re: HCMFA discovery (0.1).	0.10	$750.00	$75.00
3/25/2022	JAM		E-mails w/ H. Winograd, L. Canty, C. Mackle re: document production (0.3).	0.30	$1,395.00	$418.50
3/25/2022	LSC		Preparation of additional production documents (2.9); confer with H. Winograd regarding the same (.5)	3.40	$495.00	$1,683.00
3/25/2022	HRW		Communicate with K. Hendrix re: HCMFA discovery (0.5).	0.50	$750.00	$375.00
3/25/2022	HRW		Communicate with L. Canty re: HCMFA discovery (0.6).	0.60	$750.00	$450.00
3/25/2022	HRW		Call with J. Morris and L. Canty re: HCMFA discovery (0.1).	0.10	$750.00	$75.00
3/25/2022	HRW		Email J. Morris and L. Canty re: HCMFA discovery (0.1).	0.10	$750.00	$75.00
3/25/2022	HRW		Review email from J. Morris and L. Canty re: HCMFA discovery (0.2).	0.20	$750.00	$150.00
3/25/2022	HRW		Review HCMFA production (1.0).	1.00	$750.00	$750.00
3/25/2022	HRW		Communicate with C. Mackle re: HCMFA discovery (0.2).	0.20	$750.00	$150.00
3/25/2022	HRW		Email M. Aigen re: HCMFA interrogatories (0.1).	0.10	$750.00	$75.00
3/26/2022	JAM		E-mails w/ C. Mackle, H. Winograd re: document production (0.3).	0.30	$1,395.00	$418.50
3/26/2022	HRW		Review email from C. Mackle re: HCMFA discovery (0.1).	0.10	$750.00	$75.00
3/26/2022	HRW		Review email from J. Morris re: HCMFA discovery (0.1).	0.10	$750.00	$75.00
3/26/2022	HRW		Email J. Morris and C. Mackle re: HCMFA discovery (0.1).	0.10	$750.00	$75.00
3/27/2022	HRW		Review email from C. Mackle re: HCMFA discovery (0.1).	0.10	$750.00	$75.00
3/27/2022	HRW		Email C. Mackle re: HCMFA discovery (0.1).	0.10	$750.00	$75.00
3/27/2022	HRW		Review email from L. Canty re: HCMFA discovery (0.1).	0.10	$750.00	$75.00
3/27/2022	HRW		Email L. Canty re: HCMFA discovery (0.1).	0.10	$750.00	$75.00
3/27/2022	HRW		Review HCMFA production (0.5).	0.50	$750.00	$375.00
3/28/2022	LSC		Preparation of supplemental document production, including research, review, and redaction of documents.	3.40	$495.00	$1,683.00
3/28/2022	HRW		Communicate with C. Mackle re: HCMFA discovery (0.6).	0.60	$750.00	$450.00
3/28/2022	HRW		Review and gather production for HCMFA discovery requests (2.5).	2.50	$750.00	$1,875.00
3/28/2022	HRW		Communicate with L. Canty re: HCMFA production (0.6).	0.60	$750.00	$450.00
3/28/2022	HRW		Email M. Aigen re: HCMFA discovery (0.2).	0.20	$750.00	$150.00
3/28/2022	HRW		Review email from M. Aigen re: HCMFA discovery (0.1).	0.10	$750.00	$75.00

MARCH 2022

DATE	TKPR	TASK	DESCRIPTION	HOURS	RATE	AMOUNT
3/29/2022	JAM		E-mails w/ H. Winograd re: depositions (0.2); review HCMFA document production (1.1); e-mail to H. Winograd, L. Canty re: HCMFA document production (0.1); tel c. w/ H. Winograd re: depositions, discovery (0.3).	1.70	$1,395.00	$2,371.50
3/29/2022	HRW		Call with C. Mackle re: HCMFA discovery (0.2).	0.20	$750.00	$150.00
3/29/2022	HRW		Email C. Mackle re: HCMFA discovery (0.1).	0.10	$750.00	$75.00
3/29/2022	HRW		Review email from C. Mackle re: HCMFA discovery (0.1).	0.10	$750.00	$75.00
3/29/2022	HRW		Email M. Aigen re: HCMFA discovery (0.1).	0.10	$750.00	$75.00
3/29/2022	HRW		Draft deposition notices (1.0).	1.00	$750.00	$750.00
3/29/2022	HRW		Email J. Morris re: deposition notices (0.1).	0.10	$750.00	$75.00
3/29/2022	HRW		Prepare for Nancy Dondero deposition (1.5).	1.50	$750.00	$1,125.00
3/29/2022	HRW		Review email from J. Morris re: HCMFA production (0.1).	0.10	$750.00	$75.00
3/29/2022	HRW		Call with J. Morris re: HCMFA depositions (0.3).	0.30	$750.00	$225.00
3/30/2022	HRW		Draft deposition notices (1.0).	1.00	$750.00	$750.00
3/30/2022	HRW		Email J. Morris re: HCMFA depositions (0.1).	0.10	$750.00	$75.00
3/30/2022	HRW		Call with L. Canty re: HCMFA depositions (0.1).	0.10	$750.00	$75.00
3/31/2022	HRW		Call with J. Morris re: strategy for HCMFA litigation (0.1).	0.10	$750.00	$75.00
3/31/2022	HRW		Email M. Aigen re: HCMFA discovery (0.1).	0.10	$750.00	$75.00
3/31/2022	HRW		Email J. Morris re: HCMFA discovery (0.1).	0.10	$750.00	$75.00
			TOTAL			**$27,117.00**

Pachulski Stang Ziehl & Jones LLP

10100 Santa Monica Blvd.
13th Floor
Los Angeles, CA 90067

March 31, 2022

James P. Secry, Jr.
Highland Capital Management LP
100 Crescent Court, Suite 1850
Dallas, TX 75201

Invoice 129887
Client 36027
Matter 00005
JNP

RE: HCMFA Notes Litigation

STATEMENT OF PROFESSIONAL SERVICES RENDERED THROUGH 03/31/2022

FEES	$27,117.00
TOTAL CURRENT CHARGES	**$27,117.00**
BALANCE FORWARD	**$10,431.00**
LAST PAYMENT	**$10,431.00**
TOTAL BALANCE DUE	**$27,117.00**

Pachulski Stang Ziehl & Jones LLP
Highland Capital Management LP
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Summary of Services by Professional

ID	Name	Title	Rate	Hours	Amount
HRW	Winograd , Hayley R.	Associate	750.00	22.50	$16,875.00
JAM	Morris, John A.	Partner	1395.00	2.80	$3,906.00
LSC	Canty, La Asia S.	Paralegal	495.00	12.80	$6,336.00
				38.10	$27,117.00

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Summary of Services by Task Code

Task Code	Description	Hours	Amount
		38.10	$27,117.00
		38.10	$27,117.00

Pachulski Stang Ziehl & Jones LLP
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March 31, 2022

			Hours	Rate	Amount
03/01/2022	HRW	Email M. Aigen re: HCMFA ROG verification (0.1).	0.10	750.00	$75.00
03/01/2022	HRW	Email J. Morris re: HCMFA ROG verification (0.1).	0.10	750.00	$75.00
03/01/2022	HRW	Call with J. Seery re: HCMFA ROG verification (0.1).	0.10	750.00	$75.00
03/07/2022	HRW	Email J. Morris re: HCMFA scheduling order (0.2).	0.20	750.00	$150.00
03/07/2022	HRW	Call with J. Morris re: HCMFA scheduling order (0.2).	0.20	750.00	$150.00
03/08/2022	HRW	Email M. Aigen re: HCMFA scheduling order (0.2).	0.20	750.00	$150.00
03/08/2022	HRW	Call with J. Morris re: HCMFA scheduling order (0.3).	0.30	750.00	$225.00
03/08/2022	HRW	Review email from J. Morris re: HCMFA scheduling order (0.1).	0.10	750.00	$75.00
03/10/2022	JAM	E-mails w/ M. Aigen re: scheduling (0.3).	0.30	1395.00	$418.50
03/10/2022	HRW	Call with J. Morris re: HCMFA scheduling order and related matters (0.3).	0.30	750.00	$225.00
03/10/2022	HRW	Review email from J. Morris re: HCMFA scheduling order (0.1).	0.10	750.00	$75.00
03/10/2022	HRW	Review email from M. Aigen re: HCMFA scheduling order (0.1).	0.10	750.00	$75.00
03/15/2022	HRW	Call with L. Canty re: HCMFA scheduling issues (0.1).	0.10	750.00	$75.00
03/15/2022	HRW	Draft stipulation re: HCMFA scheduling order (0.3).	0.30	750.00	$225.00
03/17/2022	HRW	Email C. Mackle and J. Morris re: HCMFA discovery (0.2).	0.20	750.00	$150.00
03/17/2022	HRW	Draft search terms re: HCMFA discovery and related tasks (0.8).	0.80	750.00	$600.00
03/17/2022	HRW	Draft stipulation re: HCMFA scheduling order (0.5).	0.50	750.00	$375.00
03/17/2022	HRW	Email J. Morris re: HCMFA scheduling order (0.1).	0.10	750.00	$75.00
03/17/2022	HRW	Email M. Aigen re: HCMFA scheduling order (0.1).	0.10	750.00	$75.00
03/17/2022	HRW	Email L. Canty re: HCMFA deposition notices (0.1).	0.10	750.00	$75.00
03/21/2022	LSC	Prepare notices of HCMFA 30(b)(6), James Dondero, and Nancy Dondero depositions.	0.50	495.00	$247.50
03/21/2022	LSC	Review documents and prepare list of potential documents responsive to discovery requests for H. Winograd.	2.60	495.00	$1,287.00

			Hours	Rate	Amount
03/21/2022	HRW	Communicate with L. Canty regarding HCMFA discovery (0.2).	0.20	750.00	$150.00
03/21/2022	HRW	Email J. Morris regarding HCMFA discovery (0.1).	0.10	750.00	$75.00
03/21/2022	HRW	Review email from J. Morris regarding HCMFA discovery (0.1).	0.10	750.00	$75.00
03/21/2022	HRW	Email C. Mackle regarding HCMFA discovery (0.1).	0.10	750.00	$75.00
03/21/2022	HRW	Draft search terms for HCMFA discovery requests (0.3).	0.30	750.00	$225.00
03/21/2022	HRW	Review HCMFA discovery requests (0.3).	0.30	750.00	$225.00
03/21/2022	HRW	Email M. Aigen regarding HCMFA scheduling order (0.1).	0.10	750.00	$75.00
03/22/2022	JAM	Communications w/ Z. Annable, H. Winograd re: revised schedule/order (0.2).	0.20	1395.00	$279.00
03/22/2022	HRW	Email C. Mackle regarding HCMFA discovery (0.1).	0.10	750.00	$75.00
03/22/2022	HRW	Call with L. Canty regarding HCMFA discovery (0.1).	0.10	750.00	$75.00
03/22/2022	HRW	Draft stipulation and related documents regarding HCMFA scheduling order (0.5).	0.50	750.00	$375.00
03/22/2022	HRW	Review email from Z. Annable regarding HCMFA scheduling order (0.1).	0.10	750.00	$75.00
03/22/2022	HRW	Email Z. Annable regarding HCMFA scheduling order (0.1).	0.10	750.00	$75.00
03/22/2022	HRW	Email J. Seery regarding HCMFA interrogatories (0.1).	0.10	750.00	$75.00
03/22/2022	HRW	Review email from L. Canty regarding HCMFA discovery (0.1).	0.10	750.00	$75.00
03/22/2022	HRW	Gather documents for HCMFA discovery requests (0.5).	0.50	750.00	$375.00
03/22/2022	HRW	Call with C. Mackle regarding HCMFA discovery (0.1).	0.10	750.00	$75.00
03/23/2022	LSC	Review documents, redacts as necessary, and preparation of HCMFA II document production (2.3); confer with H. Winograd regarding the same (.6).	2.90	495.00	$1,435.50
03/23/2022	HRW	Call with L. Canty regarding HCMFA discovery (0.6).	0.60	750.00	$450.00
03/23/2022	HRW	Email C. Mackle regarding HCMFA discovery (0.1).	0.10	750.00	$75.00
03/23/2022	HRW	Review email from C. Mackle regarding HCMFA discovery (0.1).	0.10	750.00	$75.00

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March 31, 2022

			Hours	Rate	Amount
03/23/2022	HRW	Gather and review documents responsive to HCMFA discovery requests (1.2).	1.20	750.00	$900.00
03/23/2022	HRW	Email J. Morris regarding HCMFA discovery (0.4).	0.40	750.00	$300.00
03/23/2022	HRW	Email J. Seery regarding HCMFA interrogatories (0.1).	0.10	750.00	$75.00
03/24/2022	HRW	Communicate with C. Mackle re: HCMFA discovery (0.1).	0.10	750.00	$75.00
03/25/2022	JAM	E-mails w/ H. Winograd, L. Canty, C. Mackle re: document production (0.3).	0.30	1395.00	$418.50
03/25/2022	LSC	Preparation of additional production documents (2.9); confer with H. Winograd regarding the same (.5)	3.40	495.00	$1,683.00
03/25/2022	HRW	Communicate with K. Hendrix re: HCMFA discovery (0.5).	0.50	750.00	$375.00
03/25/2022	HRW	Communicate with L. Canty re: HCMFA discovery (0.6).	0.60	750.00	$450.00
03/25/2022	HRW	Call with J. Morris and L. Canty re: HCMFA discovery (0.1).	0.10	750.00	$75.00
03/25/2022	HRW	Email J. Morris and L. Canty re: HCMFA discovery (0.1).	0.10	750.00	$75.00
03/25/2022	HRW	Review email from J. Morris and L. Canty re: HCMFA discovery (0.2).	0.20	750.00	$150.00
03/25/2022	HRW	Review HCMFA production (1.0).	1.00	750.00	$750.00
03/25/2022	HRW	Communicate with C. Mackle re: HCMFA discovery (0.2).	0.20	750.00	$150.00
03/25/2022	HRW	Email M. Aigen re: HCMFA interrogatories (0.1).	0.10	750.00	$75.00
03/26/2022	JAM	E-mails w/ C. Mackle, H. Winograd re: document production (0.3).	0.30	1395.00	$418.50
03/26/2022	HRW	Review email from C. Mackle re: HCMFA discovery (0.1).	0.10	750.00	$75.00
03/26/2022	HRW	Review email from J. Morris re: HCMFA discovery (0.1).	0.10	750.00	$75.00
03/26/2022	HRW	Email J. Morris and C. Mackle re: HCMFA discovery (0.1).	0.10	750.00	$75.00
03/27/2022	HRW	Review email from C. Mackle re: HCMFA discovery (0.1).	0.10	750.00	$75.00
03/27/2022	HRW	Email C. Mackle re: HCMFA discovery (0.1).	0.10	750.00	$75.00
03/27/2022	HRW	Review email from L. Canty re: HCMFA discovery (0.1).	0.10	750.00	$75.00

			Hours	Rate	Amount
03/27/2022	HRW	Email L. Canty re: HCMFA discovery (0.1).	0.10	750.00	$75.00
03/27/2022	HRW	Review HCMFA production (0.5).	0.50	750.00	$375.00
03/28/2022	LSC	Preparation of supplemental document production, including research, review, and redaction of documents.	3.40	495.00	$1,683.00
03/28/2022	HRW	Communicate with C. Mackle re: HCMFA discovery (0.6).	0.60	750.00	$450.00
03/28/2022	HRW	Review and gather production for HCMFA discovery requests (2.5).	2.50	750.00	$1,875.00
03/28/2022	HRW	Communicate with L. Canty re: HCMFA production (0.6).	0.60	750.00	$450.00
03/28/2022	HRW	Email M. Aigen re: HCMFA discovery (0.2).	0.20	750.00	$150.00
03/28/2022	HRW	Review email from M. Aigen re: HCMFA discovery (0.1).	0.10	750.00	$75.00
03/29/2022	JAM	E-mails w/ H. Winograd re: depositions (0.2); review HCMFA document production (1.1); e-mail to H. Winograd, L. Canty re: HCMFA document production (0.1); tel c. w/ H. Winograd re: depositions, discovery (0.3).	1.70	1395.00	$2,371.50
03/29/2022	HRW	Call with C. Mackle re: HCMFA discovery (0.2).	0.20	750.00	$150.00
03/29/2022	HRW	Email C. Mackle re: HCMFA discovery (0.1).	0.10	750.00	$75.00
03/29/2022	HRW	Review email from C. Mackle re: HCMFA discovery (0.1).	0.10	750.00	$75.00
03/29/2022	HRW	Email M. Aigen re: HCMFA discovery (0.1).	0.10	750.00	$75.00
03/29/2022	HRW	Draft deposition notices (1.0).	1.00	750.00	$750.00
03/29/2022	HRW	Email J. Morris re: deposition notices (0.1).	0.10	750.00	$75.00
03/29/2022	HRW	Prepare for Nancy Dondero deposition (1.5).	1.50	750.00	$1,125.00
03/29/2022	HRW	Review email from J. Morris re: HCMFA production (0.1).	0.10	750.00	$75.00
03/29/2022	HRW	Call with J. Morris re: HCMFA depositions (0.3).	0.30	750.00	$225.00
03/30/2022	HRW	Draft deposition notices (1.0).	1.00	750.00	$750.00
03/30/2022	HRW	Email J. Morris re: HCMFA depositions (0.1).	0.10	750.00	$75.00
03/30/2022	HRW	Call with L. Canty re: HCMFA depositions (0.1).	0.10	750.00	$75.00
03/31/2022	HRW	Call with J. Morris re: strategy for HCMFA litigation (0.1).	0.10	750.00	$75.00
03/31/2022	HRW	Email M. Aigen re: HCMFA discovery (0.1).	0.10	750.00	$75.00
03/31/2022	HRW	Email J. Morris re: HCMFA discovery (0.1).	0.10	750.00	$75.00

	38.10	**$27,117.00**

TOTAL SERVICES FOR THIS MATTER: $27,117.00

Pachulski Stang Ziehl & Jones LLP
Highland Capital Management LP
36027 - 00005

Page: 9
Invoice 129887
March 31, 2022

REMITTANCE ADVICE

Please inlcude this Remittance with your payment

For current services rendered through: 03/31/2022

Total Fees	**$27,117.00**
Total Due on Current Invoice	**$27,117.00**

Outstanding Balance from prior invoices as of 03/31/2022 (May not include recent payments)

A/R Bill Number	Invoice Date	Fees Billed	Expenses Billed	Balance Due

Total Amount Due on Current and Prior Invoices: $27,117.00

APRIL 2022

APRIL 2022

DATE	TKPR	TASK	DESCRIPTION	HOURS	RATE	AMOUNT
3/21/2022	CHM		Review email from H. Winograd re document production and reply.	0.10	$875.00	$87.50
3/22/2022	CHM		Telephone conference with H. Winograd re HCMFA discovery.	0.10	$875.00	$87.50
3/22/2022	CHM		Email H. Winograd re HCMFA discovery.	0.10	$875.00	$87.50
3/23/2022	CHM		Emails with PSZJ and Meta-E regarding access and begin review and searches per H. WInograd request.	1.40	$875.00	$1,225.00
3/24/2022	CHM		Review search results and correspond with Meta-e and H. Winograd re same.	0.80	$875.00	$700.00
3/25/2022	CHM		Upload documents to Everlaw and work to narrow search terms with H. Winograd.	2.10	$875.00	$1,837.50
3/25/2022	CHM		Review and reply to emails from H. Winograd and follow up with N. Mericnyak at Meta-e.	0.30	$875.00	$262.50
3/26/2022	CHM		Upload modified search documents to Everlaw, run various privilege filters and review results of searches in consultation with H. Winograd.	2.80	$875.00	$2,450.00
3/27/2022	LSC		Preparation of additional production documents.	1.70	$495.00	$841.50
3/28/2022	CHM		Review documents and correspond with H. Winograd re same (1.2); run modified searches and correspond with H. Winograd re same (.6); finalize production contents with privilege review, review for privilege and produce (2.0)	3.80	$875.00	$3,325.00
3/29/2022	CHM		Upload and review documents based on modified relativity searches, run and filter for privilege and review of same and run production.	3.00	$875.00	$2,625.00
3/30/2022	LSC		Retrieve and process Advisors' document production (.7); retrieve and prepare electronic file folders for attorney review (.2).	0.90	$495.00	$445.50
4/1/2022	JAM		Review/revise deposition notices and Rule 30(b)(6) topics for HCMFA, James Dondero, Nancy Dondero, and Dugaboy (0.6); communications w/ H. Winograd re: same (0.2); e-mail to counsel re: same (0.1).	0.90	$1,395.00	$1,255.50
4/1/2022	LSC		Coordinate scheduling of Court Reporters in connection with HCMFA 2 litigation and correspondence regarding the same.	0.40	$495.00	$198.00
4/1/2022	HRW		Review and edit deposition notices (0.6).	0.60	$750.00	$450.00
4/1/2022	HRW		Email Zach Annable re: deposition notices (0.1).	0.10	$750.00	$75.00
4/1/2022	HRW		Email J. Morris re: deposition notices (0.1).	0.10	$750.00	$75.00
4/7/2022	HRW		Email J. Morris re: HCMFA deposition schedule (0.1).	0.10	$750.00	$75.00
4/7/2022	HRW		Review email from J. Morris to M. Aigen re: HCMFA deposition schedule (0.1).	0.10	$750.00	$75.00
4/8/2022	HRW		Review email from Z. Annable re: HCMFA withdrawal of reference (0.1).	0.10	$750.00	$75.00
4/14/2022	LSC		Confer with H. Winograd regarding new HCMFA dates (.2); draft correspondence to TSG re amended dates (.2).	0.40	$495.00	$198.00
4/14/2022	HRW		Review emails from J. Morris and M. Aigen re: deposition scheduling (0.1).	0.10	$750.00	$75.00
4/14/2022	HRW		Review emails from L. Canty re: deposition scheduling (0.1).	0.10	$750.00	$75.00
4/14/2022	HRW		Email L. Canty re: deposition scheduling (0.1).	0.10	$750.00	$75.00
4/14/2022	HRW		Email J. Morris re: deposition scheduling (0.1).	0.10	$750.00	$75.00
4/15/2022	LSC		Prepare amended notices and subpoenas and revise same per H. Winograd's comments.	0.70	$495.00	$346.50
4/15/2022	HRW		Communicate with L. Canty re: deposition subpoenas (0.1).	0.10	$750.00	$75.00
4/15/2022	HRW		Review deposition subpoenas (0.1).	0.10	$750.00	$75.00

APRIL 2022

DATE	TKPR	TASK	DESCRIPTION	HOURS	RATE	AMOUNT
4/18/2022	JAM		E-mails w/ H. Winograd, L. Canty re: subpoenas for J. Dondero, N. Dondero, Dugaboy (0.1).	0.10	$1,395.00	$139.50
4/18/2022	LSC		Research and retrieve caselaw in connection with motions to strike for J. Morris.	0.60	$495.00	$297.00
4/18/2022	LSC		Revise and update subpoenas and notices.	0.50	$495.00	$247.50
4/18/2022	HRW		Prepare and review deposition notices and subpoenas (0.6).	0.60	$750.00	$450.00
4/18/2022	HRW		Communicate with L. Canty re: deposition notices and subpoenas (0.2).	0.20	$750.00	$150.00
4/18/2022	HRW		Review email from J. Morris re: deposition notices and subpoenas (0.1).	0.10	$750.00	$75.00
4/18/2022	HRW		Email J. Morris re: deposition notices and subpoenas (0.1).	0.10	$750.00	$75.00
4/18/2022	HRW		Email counsel re: deposition notices and subpoenas (0.1).	0.10	$750.00	$75.00
4/25/2022	JAM		E-mails w/ M. Aigen re: payments on HCMFA notes (including review of documents) (0.5); tel c. w/ D. Klos re: payments on HCMFA notes (0.1).	0.60	$1,395.00	$837.00
4/25/2022	LSC		Retrieve and transmit production documents at the request of J. Morris.	1.10	$495.00	$544.50
4/25/2022	LSC		Coordinate scheduling of Court Reporters for deposition of experts.	0.30	$495.00	$148.50
4/26/2022	JAM		Tel c. w/ H. Winograd re: N. Dondero/Dugaboy deposition (0.1); e-mails w/ D. Dietz-Perez, M. Aigen, H. Winograd re: depositions (0.1); tel c. w/H. Winograd re: N. Dondero/Dugaboy deposition (0.1).	0.30	$1,395.00	$418.50
4/26/2022	HRW		Call with J. Morris re: Nancy Dondero deposition prep (0.3).	0.30	$750.00	$225.00
4/26/2022	HRW		Prep for deposition of Nancy Dondero (5.5).	5.50	$750.00	$4,125.00
4/26/2022	HRW		Communicate with L. Canty and Z. Annable re: Dugaboy deposition subpoena (0.3).	0.30	$750.00	$225.00
4/26/2022	HRW		Email D. Draper re: Dugaboy deposition subpoena (0.1).	0.10	$750.00	$75.00
4/26/2022	HRW		Review Dugaboy deposition subpoena and related documents (0.3).	0.30	$750.00	$225.00
4/26/2022	HRW		Review email from D. Perez and J. Morris re: HCMFA depositions (0.1).	0.10	$750.00	$75.00
4/26/2022	HRW		Review email from M. Aigen re: HCMFA depositions (0.1).	0.10	$750.00	$75.00
4/27/2022	JAM		Tel c. w/ J. Seery re: depositions, strategy (0.1); communications w/ M. Aigen, L. Canty re: deposition schedule (0.1).	0.20	$1,395.00	$279.00
4/27/2022	LSC		Retrieve and review potential exhibits in connection with upcoming depositions.	1.70	$495.00	$841.50
4/27/2022	HRW		Review email from Z. Annable re: deposition subpoenas (0.1).	0.10	$750.00	$75.00
4/27/2022	HRW		Prepare for Nancy Dondero deposition (8.0).	8.00	$750.00	$6,000.00
4/28/2022	JAM		Review H. Winograd outline for Nancy Dondero/Dugaboy deposition (0.3); tel c. w/ H. Winograd re: deposition of Nancy Dondero, Dugaboy (0.6); communications w/ H. Winograd, L. Canty re: Nancy Dondero/Dugaboy deposition (0.2).	1.10	$1,395.00	$1,534.50
4/28/2022	LSC		Continued preparation of materials for 4/29/22 deposition.	0.60	$495.00	$297.00
4/28/2022	LSC		Address issues with Court Reporter regarding 4/29 deposition and correspondence with counsel regarding the same.	0.60	$495.00	$297.00
4/28/2022	HRW		Prepare for deposition of Nancy Dondero (8.0).	8.00	$750.00	$6,000.00
4/28/2022	HRW		Calls with J. Morris re: deposition of Nancy Dondero (0.6).	0.60	$750.00	$450.00
4/28/2022	HRW		Call with G. Demo re: deposition of Nancy Dondero (0.3).	0.30	$750.00	$225.00
4/29/2022	JNP		Conference with John A. Morris regarding N. dondero deposition.	0.20	$1,445.00	$289.00

APRIL 2022

DATE	TKPR	TASK	DESCRIPTION	HOURS	RATE	AMOUNT
4/29/2022	JAM		Review/revise outline for N. Dondero/Dugaboy deposition (0.7); communications/w H. Winograd re: N. Dondero/Dugaboy deposition (0.1); N. Dondero/Dugaboy deposition (0.8); tel c. w/ H. Winograd re: N. Dondero/Dugaboy deposition (0.2); tel c. w/ J. Seery, D. Klos, H. Winograd re: N. Dondero/Dugaboy deposition (0.4); tel c. w/ G. Demo, H. Winograd re: N. Dondero/Dugaboy deposition (0.2).	2.40	$1,395.00	$3,348.00
4/29/2022	LSC		Prepare for and assist at deposition of Nancy Dondero.	1.00	$495.00	$495.00
4/29/2022	HRW		Deposition of Nancy Dondero (1.0).	1.00	$750.00	$750.00
4/29/2022	HRW		Prepare for deposition of Nancy Dondero (2.5).	2.50	$750.00	$1,875.00
4/29/2022	HRW		Call with J. Morris and G. Demo re: deposition of Nancy Dondero (0.2).	0.20	$750.00	$150.00
4/29/2022	HRW		Call with J. Morris, J. Seery, and D. Klos re: deposition of Nancy Dondero (0.3).	0.30	$750.00	$225.00
4/30/2022	JAM		Revise Rule 30(b)(6) notice for HCMFA (0.2); e-mails w/ H. Winograd, Z. Annable re: revised Rule 30(b)(6) notice for HCMFA (0.1).	0.30	$1,395.00	$418.50
			TOTAL			**$49,279.50**

Pachulski Stang Ziehl & Jones LLP

10100 Santa Monica Blvd.
13th Floor
Los Angeles, CA 90067

April 30, 2022
Invoice 130116
Client 36027
Matter 00005
JNP

James P. Secry, Jr.
Highland Capital Management LP
100 Crescent Court, Suite 1850
Dallas, TX 75201

RE: HCMFA Notes Litigation

STATEMENT OF PROFESSIONAL SERVICES RENDERED THROUGH 04/30/2022

FEES	$49,279.50
TOTAL CURRENT CHARGES	**$49,279.50**
BALANCE FORWARD	**$27,117.00**
TOTAL BALANCE DUE	**$76,396.50**

Pachulski Stang Ziehl & Jones LLP
Highland Capital Management LP
36027 - 00005

Invoice 130116
April 30, 2022

Summary of Services by Professional

ID	Name	Title	Rate	Hours	Amount
CHM	Mackle, Cia H.	Counsel	875.00	14.50	$12,687.50
HRW	Winograd , Hayley R.	Associate	750.00	30.50	$22,875.00
JAM	Morris, John A.	Partner	1395.00	5.90	$8,230.50
JNP	Pomerantz, Jeffrey N.	Partner	1445.00	0.20	$289.00
LSC	Canty, La Asia S.	Paralegal	495.00	10.50	$5,197.50
				61.60	$49,279.50

Summary of Services by Task Code

Task Code	Description	Hours	Amount
		61.60	$49,279.50
		61.60	$49,279.50

Pachulski Stang Ziehl & Jones LLP
Highland Capital Management LP
36027 - 00005

Invoice 130116
April 30, 2022

			Hours	Rate	Amount
03/21/2022	CHM	Review email from H. Winograd re document production and reply.	0.10	875.00	$87.50
03/22/2022	CHM	Telephone conference with H. Winograd re HCMFA discovery.	0.10	875.00	$87.50
03/22/2022	CHM	Email H. Winograd re HCMFA discovery.	0.10	875.00	$87.50
03/23/2022	CHM	Emails with PSZJ and Meta-E regarding access and begin review and searches per H. WInograd request.	1.40	875.00	$1,225.00
03/24/2022	CHM	Review search results and correspond with Meta-e and H. Winograd re same.	0.80	875.00	$700.00
03/25/2022	CHM	Upload documents to Everlaw and work to narrow search terms with H. Winograd.	2.10	875.00	$1,837.50
03/25/2022	CHM	Review and reply to emails from H. Winograd and follow up with N. Mericnyak at Meta-e.	0.30	875.00	$262.50
03/26/2022	CHM	Upload modified search documents to Everlaw, run various privilege filters and review results of searches in consultation with H. Winograd.	2.80	875.00	$2,450.00
03/27/2022	LSC	Preparation of additional production documents.	1.70	495.00	$841.50
03/28/2022	CHM	Review documents and correspond with H. Winograd re same (1.2); run modified searches and correspond with H. Winograd re same (.6); finalize production contents with privilege review, review for privilege and produce (2.0)	3.80	875.00	$3,325.00
03/29/2022	CHM	Upload and review documents based on modified relativity searches, run and filter for privilege and review of same and run production.	3.00	875.00	$2,625.00
03/30/2022	LSC	Retrieve and process Advisors' document production (.7); retrieve and prepare electronic file folders for attorney review (.2).	0.90	495.00	$445.50
04/01/2022	JAM	Review/revise deposition notices and Rule 30(b)(6) topics for HCMFA, James Dondero, Nancy Dondero, and Dugaboy (0.6); communications w/ H. Winograd re: same (0.2); e-mail to counsel re: same (0.1).	0.90	1395.00	$1,255.50
04/01/2022	LSC	Coordinate scheduling of Court Reporters in connection with HCMFA 2 litigation and correspondence regarding the same.	0.40	495.00	$198.00
04/01/2022	HRW	Review and edit deposition notices (0.6).	0.60	750.00	$450.00
04/01/2022	HRW	Email Zach Annable re: deposition notices (0.1).	0.10	750.00	$75.00

			Hours	Rate	Amount
04/01/2022	HRW	Email J. Morris re: deposition notices (0.1).	0.10	750.00	$75.00
04/07/2022	HRW	Email J. Morris re: HCMFA deposition schedule (0.1).	0.10	750.00	$75.00
04/07/2022	HRW	Review email from J. Morris to M. Aigen re: HCMFA deposition schedule (0.1).	0.10	750.00	$75.00
04/08/2022	HRW	Review email from Z. Annable re: HCMFA withdrawal of reference (0.1).	0.10	750.00	$75.00
04/14/2022	LSC	Confer with H. Winograd regarding new HCMFA dates (.2); draft correspondence to TSG re amended dates (.2).	0.40	495.00	$198.00
04/14/2022	HRW	Review emails from J. Morris and M. Aigen re: deposition scheduling (0.1).	0.10	750.00	$75.00
04/14/2022	HRW	Review emails from L. Canty re: deposition scheduling (0.1).	0.10	750.00	$75.00
04/14/2022	HRW	Email L. Canty re: deposition scheduling (0.1).	0.10	750.00	$75.00
04/14/2022	HRW	Email J. Morris re: deposition scheduling (0.1).	0.10	750.00	$75.00
04/15/2022	LSC	Prepare amended notices and subpoenas and revise same per H. Winograd's comments.	0.70	495.00	$346.50
04/15/2022	HRW	Communicate with L. Canty re: deposition subpoenas (0.1).	0.10	750.00	$75.00
04/15/2022	HRW	Review deposition subpoenas (0.1).	0.10	750.00	$75.00
04/18/2022	JAM	E-mails w/ H. Winograd, L. Canty re: subpoenas for J. Dondero, N. Dondero, Dugaboy (0.1).	0.10	1395.00	$139.50
04/18/2022	LSC	Research and retrieve caselaw in connection with motions to strike for J. Morris.	0.60	495.00	$297.00
04/18/2022	LSC	Revise and update subpoenas and notices.	0.50	495.00	$247.50
04/18/2022	HRW	Prepare and review deposition notices and subpoenas (0.6).	0.60	750.00	$450.00
04/18/2022	HRW	Communicate with L. Canty re: deposition notices and subpoenas (0.2).	0.20	750.00	$150.00
04/18/2022	HRW	Review email from J. Morris re: deposition notices and subpoenas (0.1).	0.10	750.00	$75.00
04/18/2022	HRW	Email J. Morris re: deposition notices and subpoenas (0.1).	0.10	750.00	$75.00
04/18/2022	HRW	Email counsel re: deposition notices and subpoenas (0.1).	0.10	750.00	$75.00
04/25/2022	JAM	E-mails w/ M. Aigen re: payments on HCMFA notes (including review of documents) (0.5); tel c. w/ D. Klos re: payments on HCMFA notes (0.1).	0.60	1395.00	$837.00

Pachulski Stang Ziehl & Jones LLP
Highland Capital Management LP
36027 - 00005

Invoice 130116
April 30, 2022

			Hours	Rate	Amount
04/25/2022	LSC	Retrieve and transmit production documents at the request of J. Morris.	1.10	495.00	$544.50
04/25/2022	LSC	Coordinate scheduling of Court Reporters for deposition of experts.	0.30	495.00	$148.50
04/26/2022	JAM	Tel c. w/ H. Winograd re: N. Dondero/Dugaboy deposition (0.1); e-mails w/ D. Dietz-Perez, M. Aigen, H. Winograd re: depositions (0.1); tel c. w/ H. Winograd re: N. Dondero/Dugaboy deposition (0.1).	0.30	1395.00	$418.50
04/26/2022	HRW	Call with J. Morris re: Nancy Dondero deposition prep (0.3).	0.30	750.00	$225.00
04/26/2022	HRW	Prep for deposition of Nancy Dondero (5.5).	5.50	750.00	$4,125.00
04/26/2022	HRW	Communicate with L. Canty and Z. Annable re: Dugaboy deposition subpoena (0.3).	0.30	750.00	$225.00
04/26/2022	HRW	Email D. Draper re: Dugaboy deposition subpoena (0.1).	0.10	750.00	$75.00
04/26/2022	HRW	Review Dugaboy deposition subpoena and related documents (0.3).	0.30	750.00	$225.00
04/26/2022	HRW	Review email from D. Perez and J. Morris re: HCMFA depositions (0.1).	0.10	750.00	$75.00
04/26/2022	HRW	Review email from M. Aigen re: HCMFA depositions (0.1).	0.10	750.00	$75.00
04/27/2022	JAM	Tel c. w/ J. Seery re: depositions, strategy (0.1); communications w/ M. Aigen, L. Canty re: deposition schedule (0.1).	0.20	1395.00	$279.00
04/27/2022	LSC	Retrieve and review potential exhibits in connection with upcoming depositions.	1.70	495.00	$841.50
04/27/2022	HRW	Review email from Z. Annable re: deposition subpoenas (0.1).	0.10	750.00	$75.00
04/27/2022	HRW	Prepare for Nancy Dondero deposition (8.0).	8.00	750.00	$6,000.00
04/28/2022	JAM	Review H. Winograd outline for Nancy Dondero/Dugaboy deposition (0.3); tel c. w/ H. Winograd re: deposition of Nancy Dondero, Dugaboy (0.6); communications w/ H. Winograd, L. Canty re: Nancy Dondero/Dugaboy deposition (0.2).	1.10	1395.00	$1,534.50
04/28/2022	LSC	Continued preparation of materials for 4/29/22 deposition.	0.60	495.00	$297.00
04/28/2022	LSC	Address issues with Court Reporter regarding 4/29 deposition and correspondence with counsel regarding the same.	0.60	495.00	$297.00

Pachulski Stang Ziehl & Jones LLP
Highland Capital Management LP
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Invoice 130116
April 30, 2022

			Hours	Rate	Amount
04/28/2022	HRW	Prepare for deposition of Nancy Dondero (8.0).	8.00	750.00	$6,000.00
04/28/2022	HRW	Calls with J. Morris re: deposition of Nancy Dondero (0.6).	0.60	750.00	$450.00
04/28/2022	HRW	Call with G. Demo re: deposition of Nancy Dondero (0.3).	0.30	750.00	$225.00
04/29/2022	JNP	Conference with John A. Morris regarding N. dondero deposition.	0.20	1445.00	$289.00
04/29/2022	JAM	Review/revise outline for N. Dondero/Dugaboy deposition (0.7); communications/w H. Winograd re: N. Dondero/Dugaboy deposition (0.1); N. Dondero/Dugaboy deposition (0.8); tel c. w/ H. Winograd re: N. Dondero/Dugaboy deposition (0.2); tel c. w/ J. Seery, D. Klos, H. Winograd re: N. Dondero/Dugaboy deposition (0.4); tel c. w/ G. Demo, H. Winograd re: N. Dondero/Dugaboy deposition (0.2).	2.40	1395.00	$3,348.00
04/29/2022	LSC	Prepare for and assist at deposition of Nancy Dondero.	1.00	495.00	$495.00
04/29/2022	HRW	Deposition of Nancy Dondero (1.0).	1.00	750.00	$750.00
04/29/2022	HRW	Prepare for deposition of Nancy Dondero (2.5).	2.50	750.00	$1,875.00
04/29/2022	HRW	Call with J. Morris and G. Demo re: deposition of Nancy Dondero (0.2).	0.20	750.00	$150.00
04/29/2022	HRW	Call with J. Morris, J. Seery, and D. Klos re: deposition of Nancy Dondero (0.3).	0.30	750.00	$225.00
04/30/2022	JAM	Revise Rule 30(b)(6) notice for HCMFA (0.2); e-mails w/ H. Winograd, Z. Annable re: revised Rule 30(b)(6) notice for HCMFA (0.1).	0.30	1395.00	$418.50
			61.60		**$49,279.50**

TOTAL SERVICES FOR THIS MATTER: $49,279.50

Pachulski Stang Ziehl & Jones LLP
Highland Capital Management LP
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Invoice 130116
April 30, 2022

REMITTANCE ADVICE

Please inlcude this Remittance with your payment

For current services rendered through: 04/30/2022

Total Fees **$49,279.50**

Total Due on Current Invoice **$49,279.50**

Outstanding Balance from prior invoices as of 04/30/2022 (May not include recent payments)

A/R Bill Number	Invoice Date	Fees Billed	Expenses Billed	Balance Due
129887	03/31/2022	$27,117.00	$0.00	$27,117.00

Total Amount Due on Current and Prior Invoices: $76,396.50

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MAY 2022

MAY 2022

DATE	TKPR	TASK	DESCRIPTION	HOURS	RATE	AMOUNT
5/1/2022	JAM		E-mails w/ M. Aigen, Z. Annable, H. Winograd, L. Canty re: amended deposition notices for Dondero and HCMFA (0.2).	0.20	$1,395.00	$279.00
5/2/2022	JAM		Draft/send objections to Rule 30(b)(6) deposition notice for Highland (0.6); prepare J. Seery (with H. Winograd) for deposition (0.7).	1.30	$1,395.00	$1,813.50
5/2/2022	HRW		Call with J. Seery and J. Morris re: HCMFA 30(b)(6) deposition of Highland (0.7).	0.70	$750.00	$525.00
5/2/2022	HRW		Review email from J. Morris re: HCMFA 30(b)(6) deposition of Highland (0.2).	0.20	$750.00	$150.00
5/2/2022	HRW		Review pleadings and relevant documents re: HCMFA 30(b)(6) deposition of Highland (0.2).	0.20	$750.00	$150.00
5/2/2022	HRW		Review email from Z. Annable re: HCMFA subpoenas (0.1).	0.10	$750.00	$75.00
5/3/2022	JAM		Seery deposition (1.4); tel c. w/ J. Seery, H. Winograd re: Seery deposition (0.3); tel c. w/ H. Winograd re: Seery deposition (0.1); further revisions to HCMFA Rule 30(b)(6) deposition notice (0.2); communications w/ Z. Annable, H. Winograd re: revised HCMFA Rule 30(b)(6) deposition notice (0.1).	2.10	$1,395.00	$2,929.50
5/3/2022	HRW		Attend deposition of J. Seery (2.0).	2.00	$750.00	$1,500.00
5/3/2022	HRW		Call with J. Morris re: deposition of J. Seery (0.1).	0.10	$750.00	$75.00
5/3/2022	HRW		Call with J. Morris and J. Seery re: deposition of J. Seery (0.1).	0.10	$750.00	$75.00
5/3/2022	HRW		Review deposition notice (0.2).	0.20	$750.00	$150.00
5/3/2022	HRW		Email J. Morris and Z. Annable re: deposition notice (0.1).	0.10	$750.00	$75.00
5/3/2022	HRW		Review email from Z. Annable re: deposition notice (0.1).	0.10	$750.00	$75.00
5/4/2022	JAM		Tel c. w/ H. Winograd re; Dondero deposition (0.3); review documents for Dondero deposition (0.3); e-mail to L. Canty re: documents for Dondero deposition (0.1).	0.70	$1,395.00	$976.50
5/4/2022	HRW		Review exhibits for Dondero deposition (0.2.	0.20	$750.00	$150.00
5/4/2022	HRW		Call with J. Morris re: Dondero deposition (0.2).	0.20	$750.00	$150.00
5/5/2022	JNP		Conference with John A. Morris regarding J. Dondero deposition	0.10	$1,445.00	$144.50
5/5/2022	JAM		Prepare for deposition of J. Dondero/HCMFA (2.8);			
5/5/2022	LSC		J. Dondero/HCMFA deposition (including intermittent calls w/ H. Winograd) (2.4); tel c. w/ G. Demo re: deposition (0.1); tel c. w/ J. Seery re: deposition (0.1).	5.40	$1,395.00	$7,533.00
5/5/2022	HRW		Prepare for and assist at the deposition of J. Dondero and HCMFA.	2.50	$495.00	$1,237.50
5/5/2022	HRW		Attend deposition of J. Dondero (2.2).	2.20	$750.00	$1,650.00
5/5/2022	HRW		Calls with J. Morris re: deposition of J. Dondero (0.1).	0.10	$750.00	$75.00
5/5/2022	HRW		Review email from J. Morris re: deposition of J. Dondero (0.1).	0.10	$750.00	$75.00
5/5/2022	HRW		Email J. Morris re: deposition of J. Dondero (0.1).	0.10	$750.00	$75.00
5/6/2022	JAM		Review email from M. Aigen re: objections to 30(b)(6) topics (0.2).	0.20	$750.00	$150.00
5/7/2022	JAM		Review documents re: defenses (0.5).	0.50	$1,395.00	$697.50
5/7/2022	LSC		Review documents and draft e-mail to Stinson re: books and records and application of payments (0.8).	0.80	$1,395.00	$1,116.00
5/7/2022	HRW		Research and correspondence regarding HCMFAII document production.	0.60	$495.00	$297.00
5/7/2022	HRW		Review HCMFA discovery (1.3).	1.30	$750.00	$975.00
5/7/2022	HRW		Email L. Canty re: HCMFA discovery (0.2).	0.20	$750.00	$150.00
5/7/2022	HRW		Email J. Morris re: HCMFA discovery (0.2).	0.20	$750.00	$150.00

MAY 2022

DATE	TKPR	TASK	DESCRIPTION	HOURS	RATE	AMOUNT
5/9/2022	JAM		Review email from J. Morris re: HCMFA discovery (0.2).	0.20	$750.00	$150.00
5/9/2022	HRW		E-mail to HCMFA's counsel re: Dondero transcript (0.1); review/revise e-mail to Dondero counsel re: application of payments to outstanding principal and interest (0.3); tel c. w/ G. Demo re: litigation matters (0.2); tel c. w/ J. Seery, G, Demo re: litigation matters (0.2); tel c. w/ G. Demo re: litigation matters (0.1).	0.90	$1,395.00	$1,255.50
5/9/2022	HRW		Review email from J. Morris re: meet and confer (0.2).	0.20	$750.00	$150.00
5/12/2022	JAM		Email J. Morris re: meet and confer (0.1).	0.10	$750.00	$75.00
5/16/2022	HRW		Begin analyzing issues for motion for summary judgment (1.6).	1.60	$1,395.00	$2,232.00
5/18/2022	HRW		Email J. Morris re: HCMFA discovery (0.1).	0.10	$750.00	$75.00
5/18/2022	HRW		Review HCMFA expert disclosures (0.3).	0.30	$750.00	$225.00
5/18/2022	HRW		Email J. Morris re: HCMFA deadlines (0.2).	0.20	$750.00	$150.00
5/18/2022	HRW		Review email J. Morris re: HCMFA experts (0.1).	0.10	$750.00	$75.00
5/19/2022	JAM		E-mails w/ J. Seery, H. Winograd re: stipulation concerning damages (0.2); tel c. w/ H. Winograd re: motion for summary judgment (0.5); tel c. w/ L. Canty re: Appendix for motion for summary judgment (0.2).	0.90	$1,395.00	$1,255.50
5/19/2022	LSC		Begin preparation of appendix for MSJ.	0.60	$495.00	$297.00
5/19/2022	HRW		Call with J. Morris re: MSJ (0.6).	0.60	$750.00	$450.00
5/19/2022	HRW		Draft motion for summary judgment (2.0).	2.00	$750.00	$1,500.00
5/19/2022	HRW		Review email from M. Aigen re: meet and confer (0.1).	0.10	$750.00	$75.00
5/20/2022	HRW		Draft motion for summary judgment (8.0).	8.00	$750.00	$6,000.00
5/21/2022	JAM		Review documents and draft Klos Declaration in support of summary judgment (1.6); e-mails w/ H. Winograd, L. Canty re: Klos declaration and exhibits (0.2).	1.80	$1,395.00	$2,511.00
5/21/2022	HRW		Review email from J. Morris re: summary judgment (0.1).	0.10	$750.00	$75.00
5/21/2022	HRW		Draft motion for summary judgment (2.0).	2.00	$750.00	$1,500.00
5/22/2022	LSC		Continued preparation of appendix for HCMFA2 MSJ (4.7); revise Klos Declaration and retrieve and prepare exhibits to same (.8).	5.50	$495.00	$2,722.50
5/22/2022	HRW		Draft motion for summary judgment (7.5).	7.50	$750.00	$5,625.00
5/23/2022	JAM		Revise Klos Declaration in support of summary judgment (0.4); e-mails w/ H. Winograd, L. Canty re: appendix, facts (0.4); draft Stipulation concerning application of payments to outstanding principal and interest (1.2); e-mails w/ M. Aigen, H. Winograd re: draft Stipulation (0.1).	2.10	$1,395.00	$2,929.50
5/23/2022	LSC		Continued preparation of appendix for HCMFA2 MSJ, including research, retrieval, and preparation of additional exhibits to same.	4.70	$495.00	$2,326.50
5/23/2022	HRW		Draft motion for summary judgment (13.0).	13.00	$750.00	$9,750.00
5/23/2022	HRW		Communicate with L. Canty re: motion for summary judgment (0.6).	0.60	$750.00	$450.00
5/24/2022	JAM		Begin work on motion for summary judgment (1.8).	1.80	$1,395.00	$2,511.00
5/24/2022	HRW		Draft motion for summary judgment (9.0).	9.00	$750.00	$6,750.00
5/24/2022	HRW		Email J. Morris re: motion for summary judgment (0.2).	0.20	$750.00	$150.00
5/24/2022	HRW		Review emails from J. Morris re: motion for summary judgment (0.1).	0.10	$750.00	$75.00
5/24/2022	HRW		Review email from J. Morris to M. Aigen re: HCMFA stipulation concerning payments (0.1).	0.10	$750.00	$75.00

MAY 2022

DATE	TKPR	TASK	DESCRIPTION	HOURS	RATE	AMOUNT
5/24/2022	HRW		Email Z. Annable re: motion for summary judgment (0.1).	0.10	$750.00	$75.00
5/24/2022	HRW		Communicate with L. Canty re: summary judgment (0.3).	0.30	$750.00	$225.00
5/24/2022	HRW		Review email from J. Morris re: deposition (0.1).	0.10	$750.00	$75.00
5/24/2022	HRW		Review email from M. Aigen re: deposition (0.1).	0.10	$750.00	$75.00
5/24/2022	HRW		Email court reporter re: deposition (0.1).	0.10	$750.00	$75.00
5/24/2022	HRW		Call with L. Canty re: deposition scheduling (0.1).	0.10	$750.00	$75.00
5/25/2022	JAM		Review/revised draft Memorandum of Law in support of summary judgment motion (7.1); tel c. w/H. Winograd re: summary judgment motion (0.1); tel c. w/ J. Seery re: summary judgment motion and related matters (0.2); e-mail to J. Seery, D. Klos, J. Pomerantz, G. Demo, H. Winograd re: summary judgment motion (0.1); tel c. w/ H. Winograd re: summary judgment motion (0.1).	7.60	$1,395.00	$10,602.00
5/25/2022	HRW		Draft motion for summary judgment (8.5).	8.50	$750.00	$6,375.00
5/25/2022	HRW		Calls with J. Morris re: summary judgment (0.2).	0.20	$750.00	$150.00
5/25/2022	HRW		Email J. Morris re: summary judgment (0.3).	0.30	$750.00	$225.00
5/26/2022	JAM		Review/revise Klos Declaration, brief in support of motion for summary judgment, proposed order, and motion for summary judgment (5.5); communications w/ H. Winograd, L .Canty, re: motion for summary judgment, exhibits, and related matters (0.4); e-mails w/ J. Seery, D. Klos, J. Pomerantz, G. Demo, H. Winograd re: motion for summary judgment and related matters (0.2).	6.10	$1,395.00	$8,509.50
5/26/2022	LSC		Continued preparation of exhibits, including marking with Appx. references and finalizing of same.	3.90	$495.00	$1,930.50
5/26/2022	HRW		Draft motion for summary judgment and all ancillary documents (11.0).	11.00	$750.00	$8,250.00
5/26/2022	HRW		Calls with L. Canty re: summary judgment (0.3).	0.30	$750.00	$225.00
5/26/2022	HRW		Calls with J. Morris re: summary judgment (0.6).	0.60	$750.00	$450.00
5/27/2022	JAM		Prepare for Johnson deposition (0.3); Johnson deposition (0.3); continued work reviewing/revising summary judgment motion papers (brief, motion, Klos declaration) (5.0); tel c. w/ H. Winograd, L. Canty re: Johnson deposition (0.1); numerous e-mails to J. Seery, D. Klos, J. Pomerantz, G. Demo, H. Winograd, L. Canty, Z. Annable re: revisions to summary judgment papers and service and filing issues (0.5).	6.20	$1,395.00	$8,649.00
5/27/2022	LSC		Review, revise, and insert appendix references in summary judgment brief (4.1); draft correspondence to J. Morris and H. Winograd regarding same (.3); further review and revise appendix and exhibits (2.1); review and revise brief (1.1); finalize and revise Second Klos Declaration (.4); finalize appendix and exhibits and forward to lpacal counsel for filing (1.4).	9.40	$495.00	$4,653.00
5/27/2022	LSC		Prepare for (.2) and assist at deposition of Alan Johnson (.2); telephone call with Court reporter and correspondence regarding the same (.1).	0.50	$495.00	$247.50
5/27/2022	HRW		Draft and file motion for summary judgment and all ancillary documents (8.5).	8.50	$750.00	$6,375.00
5/31/2022	JAM		Communications w/ M. Aigen, Court, H. Winograd re: briefing schedule and setting date for oral argument on motion to dismiss (0.3).	0.30	$1,395.00	$418.50
5/31/2022	HRW		Review emails from J. Morris and M. Aigen re: HCMFA MSJ briefing schedule (0.1).	0.10	$750.00	$75.00

MAY 2022

DATE	TKPR	TASK	DESCRIPTION	HOURS	RATE	AMOUNT
5/31/2022	HRW		Review emails from J. Morris to the Court re: HCMFA MSJ briefing schedule (0.1).	0.10	$750.00	$75.00
5/31/2022	HRW		Review email from the Court re: HCMFA MSJ scheduling (0.1).	0.10	$750.00	$75.00
5/31/2022	HRW		Draft notice of hearing (0.3).	0.30	$750.00	$225.00
5/31/2022	HRW		Email J. Morris re: notice of hearing (0.1).	0.10	$750.00	$75.00
			TOTAL			**$133,074.50**

EXPENSES

4/29/2022	TR	Transcript [E116] TSG Reporting, Inv. 2080587, HRW	$1,170.65
5/5/2022	TR	Transcript [E116] TSG Reporting, Inv. 2081851, JAM	$1,414.80
5/5/2022	TR	Transcript [E116] TSG Reporting, Inv. 2081852, JAM	$687.50
5/13/2022	TR	Transcript [E116]TSG Reporting, Inc., Inv. 2081507, JAM	$1,187.90
		TOTAL EXPENSES	**$4,460.85**

TOTAL FEES AND EXPENSES **$137,535.35**

Pachulski Stang Ziehl & Jones LLP

10100 Santa Monica Blvd.
13th Floor
Los Angeles, CA 90067

May 31, 2022

James P. Secry, Jr.
Highland Capital Management LP
100 Crescent Court, Suite 1850
Dallas, TX 75201

Invoice 130339
Client 36027
Matter 00005
JNP

RE: HCMFA Notes Litigation

STATEMENT OF PROFESSIONAL SERVICES RENDERED THROUGH 05/31/2022

FEES	$133,074.50
EXPENSES	$4,460.85
TOTAL CURRENT CHARGES	**$137,535.35**
BALANCE FORWARD	**$49,279.50**
LAST PAYMENT	**$49,279.50**
TOTAL BALANCE DUE	**$137,535.35**

Summary of Services by Professional

ID	Name	Title	Rate	Hours	Amount
HRW	Winograd , Hayley R.	Associate	750.00	84.00	$63,000.00
JAM	Morris, John A.	Partner	1395.00	40.30	$56,218.50
JNP	Pomerantz, Jeffrey N.	Partner	1445.00	0.10	$144.50
LSC	Canty, La Asia S.	Paralegal	495.00	27.70	$13,711.50
				152.10	$133,074.50

Pachulski Stang Ziehl & Jones LLP
Highland Capital Management LP
36027 - 00005

Invoice 130339
May 31, 2022

Summary of Services by Task Code

Task Code	Description	Hours	Amount
		152.10	$133,074.50
		152.10	$133,074.50

Pachulski Stang Ziehl & Jones LLP
Highland Capital Management LP
36027 - 00005

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Invoice 130339
May 31, 2022

Summary of Expenses

Description	Amount
Transcript [E116]	$4,460.85
	$4,460.85

Pachulski Stang Ziehl & Jones LLP
Highland Capital Management LP
36027 - 00005

Page: 5
Invoice 130339
May 31, 2022

			Hours	Rate	Amount
05/01/2022	JAM	E-mails w/ M. Aigen, Z. Annable, H. Winograd, L. Canty re: amended deposition notices for Dondero and HCMFA (0.2).	0.20	1395.00	$279.00
05/02/2022	JAM	Draft/send objections to Rule 30(b)(6) deposition notice for Highland (0.6); prepare J. Seery (with H. Winograd) for deposition (0.7).	1.30	1395.00	$1,813.50
05/02/2022	HRW	Call with J. Seery and J. Morris re: HCMFA 30(b)(6) deposition of Highland (0.7).	0.70	750.00	$525.00
05/02/2022	HRW	Review email from J. Morris re: HCMFA 30(b)(6) deposition of Highland (0.2).	0.20	750.00	$150.00
05/02/2022	HRW	Review pleadings and relevant documents re: HCMFA 30(b)(6) deposition of Highland (0.2).	0.20	750.00	$150.00
05/02/2022	HRW	Review email from Z. Annable re: HCMFA subpoenas (0.1).	0.10	750.00	$75.00
05/03/2022	JAM	Seery deposition (1.4); tel c. w/ J. Seery, H. Winograd re: Seery deposition (0.3); tel c. w/ H. Winograd re: Seery deposition (0.1); further revisions to HCMFA Rule 30(b)(6) deposition notice (0.2); communications w/ Z. Annable, H. Winograd re: revised HCMFA Rule 30(b)(6) deposition notice (0.1).	2.10	1395.00	$2,929.50
05/03/2022	HRW	Attend deposition of J. Seery (2.0).	2.00	750.00	$1,500.00
05/03/2022	HRW	Call with J. Morris re: deposition of J. Seery (0.1).	0.10	750.00	$75.00
05/03/2022	HRW	Call with J. Morris and J. Seery re: deposition of J. Seery (0.1).	0.10	750.00	$75.00
05/03/2022	HRW	Review deposition notice (0.2).	0.20	750.00	$150.00
05/03/2022	HRW	Email J. Morris and Z. Annable re: deposition notice (0.1).	0.10	750.00	$75.00
05/03/2022	HRW	Review email from Z. Annable re: deposition notice (0.1).	0.10	750.00	$75.00
05/04/2022	JAM	Tel c. w/ H. Winograd re; Dondero deposition (0.3); review documents for Dondero deposition (0.3); e-mail to L. Canty re: documents for Dondero deposition (0.1).	0.70	1395.00	$976.50
05/04/2022	HRW	Review exhibits for Dondero deposition (0.2.	0.20	750.00	$150.00
05/04/2022	HRW	Call with J. Morris re: Dondero deposition (0.2).	0.20	750.00	$150.00
05/05/2022	JNP	Conference with John A. Morris regarding J. Dondero deposition	0.10	1445.00	$144.50

			Hours	Rate	Amount
05/05/2022	JAM	Prepare for deposition of J. Dondero/HCMFA (2.8); J. Dondero/HCMFA deposition (including intermittent calls w/ H. Winograd) (2.4); tel c. w/ G. Demo re: deposition (0.1); tel c. w/ J. Seery re: deposition (0.1).	5.40	1395.00	$7,533.00
05/05/2022	LSC	Prepare for and assist at the deposition of J. Dondero and HCMFA.	2.50	495.00	$1,237.50
05/05/2022	HRW	Attend deposition of J. Dondero (2.2).	2.20	750.00	$1,650.00
05/05/2022	HRW	Calls with J. Morris re: deposition of J. Dondero (0.1).	0.10	750.00	$75.00
05/05/2022	HRW	Review email from J. Morris re: deposition of J. Dondero (0.1).	0.10	750.00	$75.00
05/05/2022	HRW	Email J. Morris re: deposition of J. Dondero (0.1).	0.10	750.00	$75.00
05/05/2022	HRW	Review email from M. Aigen re: objections to 30(b)(6) topics (0.2).	0.20	750.00	$150.00
05/06/2022	JAM	Review documents re: defenses (0.5).	0.50	1395.00	$697.50
05/07/2022	JAM	Review documents and draft e-mail to Stinson re: books and records and application of payments (0.8).	0.80	1395.00	$1,116.00
05/07/2022	LSC	Research and correspondence regarding HCMFAII document production.	0.60	495.00	$297.00
05/07/2022	HRW	Review HCMFA discovery (1.3).	1.30	750.00	$975.00
05/07/2022	HRW	Email L. Canty re: HCMFA discovery (0.2).	0.20	750.00	$150.00
05/07/2022	HRW	Email J. Morris re: HCMFA discovery (0.2).	0.20	750.00	$150.00
05/07/2022	HRW	Review email from J. Morris re: HCMFA discovery (0.2).	0.20	750.00	$150.00
05/09/2022	JAM	E-mail to HCMFA's counsel re: Dondero transcript (0.1); review/revise e-mail to Dondero counsel re: application of payments to outstanding principal and interest (0.3); tel c. w/ G. Demo re: litigation matters (0.2); tel c. w/ J. Seery, G, Demo re: litigation matters (0.2); tel c. w/ G. Demo re: litigation matters (0.1).	0.90	1395.00	$1,255.50
05/09/2022	HRW	Review email from J. Morris re: meet and confer (0.2).	0.20	750.00	$150.00
05/09/2022	HRW	Email J. Morris re: meet and confer (0.1).	0.10	750.00	$75.00
05/12/2022	JAM	Begin analyzing issues for motion for summary judgment (1.6).	1.60	1395.00	$2,232.00
05/16/2022	HRW	Email J. Morris re: HCMFA discovery (0.1).	0.10	750.00	$75.00
05/18/2022	HRW	Review HCMFA expert disclosures (0.3).	0.30	750.00	$225.00

			Hours	Rate	Amount
05/18/2022	HRW	Email J. Morris re: HCMFA deadlines (0.2).	0.20	750.00	$150.00
05/18/2022	HRW	Review email J. Morris re: HCMFA experts (0.1).	0.10	750.00	$75.00
05/19/2022	JAM	E-mails w/ J. Seery, H. Winograd re: stipulation concerning damages (0.2); tel c. w/ H. Winograd re: motion for summary judgment (0.5); tel c. w/ L. Canty re: Appendix for motion for summary judgment (0.2).	0.90	1395.00	$1,255.50
05/19/2022	LSC	Begin preparation of appendix for MSJ.	0.60	495.00	$297.00
05/19/2022	HRW	Call with J. Morris re: MSJ (0.6).	0.60	750.00	$450.00
05/19/2022	HRW	Draft motion for summary judgment (2.0).	2.00	750.00	$1,500.00
05/19/2022	HRW	Review email from M. Aigen re: meet and confer (0.1).	0.10	750.00	$75.00
05/20/2022	HRW	Draft motion for summary judgment (8.0).	8.00	750.00	$6,000.00
05/21/2022	JAM	Review documents and draft Klos Declaration in support of summary judgment (1.6); e-mails w/ H. Winograd, L. Canty re: Klos declaration and exhibits (0.2).	1.80	1395.00	$2,511.00
05/21/2022	HRW	Review email from J. Morris re: summary judgment (0.1).	0.10	750.00	$75.00
05/21/2022	HRW	Draft motion for summary judgment (2.0).	2.00	750.00	$1,500.00
05/22/2022	LSC	Continued preparation of appendix for HCMFA2 MSJ (4.7); revise Klos Declaration and retrieve and prepare exhibits to same (.8).	5.50	495.00	$2,722.50
05/22/2022	HRW	Draft motion for summary judgment (7.5).	7.50	750.00	$5,625.00
05/23/2022	JAM	Revise Klos Declaration in support of summary judgment (0.4); e-mails w/ H. Winograd, L. Canty re: appendix, facts (0.4); draft Stipulation concerning application of payments to outstanding principal and interest (1.2); e-mails w/ M. Aigen, H. Winograd re: draft Stipulation (0.1).	2.10	1395.00	$2,929.50
05/23/2022	LSC	Continued preparation of appendix for HCMFA2 MSJ, including research, retrieval, and preparation of additional exhibits to same.	4.70	495.00	$2,326.50
05/23/2022	HRW	Draft motion for summary judgment (13.0).	13.00	750.00	$9,750.00
05/23/2022	HRW	Communicate with L. Canty re: motion for summary judgment (0.6).	0.60	750.00	$450.00
05/24/2022	JAM	Begin work on motion for summary judgment (1.8).	1.80	1395.00	$2,511.00
05/24/2022	HRW	Draft motion for summary judgment (9.0).	9.00	750.00	$6,750.00
05/24/2022	HRW	Email J. Morris re: motion for summary judgment	0.20	750.00	$150.00

			Hours	Rate	Amount
		(0.2).			
05/24/2022	HRW	Review emails from J. Morris re: motion for summary judgment (0.1).	0.10	750.00	$75.00
05/24/2022	HRW	Review email from J. Morris to M. Aigen re: HCMFA stipulation concerning payments (0.1).	0.10	750.00	$75.00
05/24/2022	HRW	Email Z. Annable re: motion for summary judgment (0.1).	0.10	750.00	$75.00
05/24/2022	HRW	Communicate with L. Canty re: summary judgment (0.3).	0.30	750.00	$225.00
05/24/2022	HRW	Review email from J. Morris re: deposition (0.1).	0.10	750.00	$75.00
05/24/2022	HRW	Review email from M. Aigen re: deposition (0.1).	0.10	750.00	$75.00
05/24/2022	HRW	Email court reporter re: deposition (0.1).	0.10	750.00	$75.00
05/24/2022	HRW	Call with L. Canty re: deposition scheduling (0.1).	0.10	750.00	$75.00
05/25/2022	JAM	Review/revised draft Memorandum of Law in support of summary judgment motion (7.1); tel c. w/ H. Winograd re: summary judgment motion (0.1); tel c. w/ J. Seery re: summary judgment motion and related matters (0.2); e-mail to J. Seery, D. Klos, J. Pomerantz, G. Demo, H. Winograd re: summary judgment motion (0.1); tel c. w/ H. Winograd re: summary judgment motion (0.1).	7.60	1395.00	$10,602.00
05/25/2022	HRW	Draft motion for summary judgment (8.5).	8.50	750.00	$6,375.00
05/25/2022	HRW	Calls with J. Morris re: summary judgment (0.2).	0.20	750.00	$150.00
05/25/2022	HRW	Email J. Morris re: summary judgment (0.3).	0.30	750.00	$225.00
05/26/2022	JAM	Review/revise Klos Declaration, brief in support of motion for summary judgment, proposed order, and motion for summary judgment (5.5); communications w/ H. Winograd, L .Canty, re: motion for summary judgment, exhibits, and related matters (0.4); e-mails w/ J. Seery, D. Klos, J. Pomerantz, G. Demo, H. Winograd re: motion for summary judgment and related matters (0.2).	6.10	1395.00	$8,509.50
05/26/2022	LSC	Continued preparation of exhibits, including marking with Appx. references and finalizing of same.	3.90	495.00	$1,930.50
05/26/2022	HRW	Draft motion for summary judgment and all ancillary documents (11.0).	11.00	750.00	$8,250.00
05/26/2022	HRW	Calls with L. Canty re: summary judgment (0.3).	0.30	750.00	$225.00
05/26/2022	HRW	Calls with J. Morris re: summary judgment (0.6).	0.60	750.00	$450.00
05/27/2022	JAM	Prepare for Johnson deposition (0.3); Johnson	6.20	1395.00	$8,649.00

			Hours	Rate	Amount
		deposition (0.3); continued work reviewing/revising summary judgment motion papers (brief, motion, Klos declaration) (5.0); tel c. w/ H. Winograd, L. Canty re: Johnson deposition (0.1); numerous e-mails to J. Seery, D. Klos, J. Pomerantz, G. Demo, H. Winograd, L. Canty, Z. Annable re: revisions to summary judgment papers and service and filing issues (0.5).			
05/27/2022	LSC	Review, revise, and insert appendix references in summary judgment brief (4.1); draft correspondence to J. Morris and H. Winograd regarding same (.3); further review and revise appendix and exhibits (2.1); review and revise brief (1.1); finalize and revise Second Klos Declaration (.4); finalize appendix and exhibits and forward to lpacal counsel for filing (1.4).	9.40	495.00	$4,653.00
05/27/2022	LSC	Prepare for (.2) and assist at deposition of Alan Johnson (.2); telephone call with Court reporter and correspondence regarding the same (.1).	0.50	495.00	$247.50
05/27/2022	HRW	Draft and file motion for summary judgment and all ancillary documents (8.5).	8.50	750.00	$6,375.00
05/31/2022	JAM	Communications w/ M. Aigen, Court, H. Winograd re: briefing schedule and setting date for oral argument on motion to dismiss (0.3).	0.30	1395.00	$418.50
05/31/2022	HRW	Review emails from J. Morris and M. Aigen re: HCMFA MSJ briefing schedule (0.1).	0.10	750.00	$75.00
05/31/2022	HRW	Review emails from J. Morris to the Court re: HCMFA MSJ briefing schedule (0.1).	0.10	750.00	$75.00
05/31/2022	HRW	Review email from the Court re: HCMFA MSJ scheduling (0.1).	0.10	750.00	$75.00
05/31/2022	HRW	Draft notice of hearing (0.3).	0.30	750.00	$225.00
05/31/2022	HRW	Email J. Morris re: notice of hearing (0.1).	0.10	750.00	$75.00
			152.10		**$133,074.50**

TOTAL SERVICES FOR THIS MATTER: $133,074.50

Expenses

04/29/2022	TR	Transcript [E116] TSG Reporting, Inv. 2080587, HRW	1,170.65
05/05/2022	TR	Transcript [E116] TSG Reporting, Inv. 2081851, JAM	1,414.80
05/05/2022	TR	Transcript [E116] TSG Reporting, Inv. 2081852, JAM	687.50
05/13/2022	TR	Transcript [E116]TSG Reporting, Inc., Inv. 2081507, JAM	1,187.90
Total Expenses for this Matter			**$4,460.85**

Pachulski Stang Ziehl & Jones LLP
Highland Capital Management LP
36027 - 00005

Page: 11
Invoice 130339
May 31, 2022

REMITTANCE ADVICE

Please inlcude this Remittance with your payment

For current services rendered through: 05/31/2022

Total Fees	**$133,074.50**
Total Expenses	**4,460.85**
Total Due on Current Invoice	**$137,535.35**

Outstanding Balance from prior invoices as of 05/31/2022 (May not include recent payments)

A/R Bill Number	Invoice Date	Fees Billed	Expenses Billed	Balance Due

Total Amount Due on Current and Prior Invoices: $137,535.35

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JUNE 2022

JUNE 2022

DATE	TKPR	TASK	DESCRIPTION	HOURS	RATE	AMOUNT
6/1/2022	LSC		Revise notice of hearing for H. Winograd.	0.20	495.00	$99.00
6/1/2022	HRW		Draft notice of hearing (0.1).	0.10	750.00	$75.00
6/1/2022	HRW		Review email from J. Morris re: notice of hearing (0.1).	0.10	750.00	$75.00
6/1/2022	HRW		Email Z. Annable and M. Hayward re: notice of hearing (0.2).	0.20	750.00	$150.00
6/1/2022	HRW		Email L. Canty re: notice of hearing (0.2).	0.20	750.00	$150.00
6/14/2022	JAM		Tel c. w/ H. Winograd re: briefing schedule and related matters (0.1); e-mails w/ M. Aigen re: briefing schedule (0.1).	0.20	1,395.00	$279.00
6/14/2022	HRW		Call with J. Morris re: HCMFA MSJ scheduling (0.1).	0.10	750.00	$75.00
6/14/2022	HRW		Review emails from M. Aigen and J. Morris re: HCMFA scheduling (0.1).	0.10	750.00	$75.00
6/14/2022	HRW		Review email from J. Morris to Court re: HCMFA scheduling (0.1).	0.10	750.00	$75.00
			TOTAL			**$1,053.00**

Pachulski Stang Ziehl & Jones LLP

10100 Santa Monica Blvd.
13th Floor
Los Angeles, CA 90067

June 30, 2022

James P. Secry, Jr.
Highland Capital Management LP
100 Crescent Court, Suite 1850
Dallas, TX 75201

Invoice 130402
Client 36027
Matter 00005
JNP

RE: HCMFA Notes Litigation

STATEMENT OF PROFESSIONAL SERVICES RENDERED THROUGH 06/30/2022

FEES	$1,053.00
TOTAL CURRENT CHARGES	**$1,053.00**
BALANCE FORWARD	**$137,535.35**
LAST PAYMENT	**$137,535.35**
TOTAL BALANCE DUE	**$1,053.00**

Pachulski Stang Ziehl & Jones LLP
Highland Capital Management LP
36027 - 00005

Invoice 130402
June 30, 2022

Summary of Services by Professional

ID	Name	Title	Rate	Hours	Amount
HRW	Winograd , Hayley R.	Associate	750.00	0.90	$675.00
JAM	Morris, John A.	Partner	1395.00	0.20	$279.00
LSC	Canty, La Asia S.	Paralegal	495.00	0.20	$99.00
				1.30	$1,053.00

Pachulski Stang Ziehl & Jones LLP
Highland Capital Management LP
36027 - 00005

Page: 3
Invoice 130402
June 30, 2022

Summary of Services by Task Code

Task Code	Description	Hours		Amount
		1.30		$1,053.00
			1.30	$1,053.00

Pachulski Stang Ziehl & Jones LLP
Highland Capital Management LP
36027 - 00005

Page: 4
Invoice 130402
June 30, 2022

			Hours	Rate	Amount
06/01/2022	LSC	Revise notice of hearing for H. Winograd.	0.20	495.00	$99.00
06/01/2022	HRW	Draft notice of hearing (0.1).	0.10	750.00	$75.00
06/01/2022	HRW	Review email from J. Morris re: notice of hearing (0.1).	0.10	750.00	$75.00
06/01/2022	HRW	Email Z. Annable and M. Hayward re: notice of hearing (0.2).	0.20	750.00	$150.00
06/01/2022	HRW	Email L. Canty re: notice of hearing (0.2).	0.20	750.00	$150.00
06/14/2022	JAM	Tel c. w/ H. Winograd re: briefing schedule and related matters (0.1); e-mails w/ M. Aigen re: briefing schedule (0.1).	0.20	1395.00	$279.00
06/14/2022	HRW	Call with J. Morris re: HCMFA MSJ scheduling (0.1).	0.10	750.00	$75.00
06/14/2022	HRW	Review emails from M. Aigen and J. Morris re: HCMFA scheduling (0.1).	0.10	750.00	$75.00
06/14/2022	HRW	Review email from J. Morris to Court re: HCMFA scheduling (0.1).	0.10	750.00	$75.00
			1.30		**$1,053.00**

TOTAL SERVICES FOR THIS MATTER: $1,053.00

Pachulski Stang Ziehl & Jones LLP
Highland Capital Management LP
36027 - 00005

Page: 5
Invoice 130402
June 30, 2022

REMITTANCE ADVICE

Please inlcude this Remittance with your payment

For current services rendered through: 06/30/2022

Total Fees	**$1,053.00**
Total Due on Current Invoice	**$1,053.00**

Outstanding Balance from prior invoices as of 06/30/2022 (May not include recent payments)

A/R Bill Number	Invoice Date	Fees Billed	Expenses Billed	Balance Due

Total Amount Due on Current and Prior Invoices: $1,053.00

JULY 2022

JULY 2022

DATE	TKPR	TASK	DESCRIPTION	HOURS	RATE	AMOUNT
7/1/2022	HRW		Call with J. Morris re: HCMFA supplemental production (0.1).	0.10	$750.00	$75.00
7/1/2022	HRW		Email G. Demo re: HCMFA supplemental production (0.1).	0.10	$750.00	$75.00
7/1/2022	HRW		Review HCMFA supplemental production (0.2).	0.20	$750.00	$150.00
7/1/2022	HRW		Review email from G. Demo re: HCMFA supplemental production (0.1).	0.10	$750.00	$75.00
7/5/2022	GVD		Review HCMFA MSJ response	0.20	$1,095.00	$219.00
7/6/2022	GVD		Conference with J. Morris re HCMFA response	0.20	$1,095.00	$219.00
7/6/2022	HRW		Call with J. Morris re: reply ISO MSJ (0.7).	0.70	$750.00	$525.00
7/6/2022	HRW		Review MSJ response brief (1.0).	1.00	$750.00	$750.00
7/7/2022	HRW		Email J. Morris re: reply ISO MSJ (0.1).	0.10	$750.00	$75.00
7/7/2022	HRW		Research re: motion to file reply appendix (1.0).	1.00	$750.00	$750.00
7/7/2022	HRW		Review HCMFA response to MSJ and related documents (1.0).	1.00	$750.00	$750.00
7/7/2022	HRW		Draft reply ISO MSJ (1.0).	1.00	$750.00	$750.00
7/7/2022	HRW		Draft motion to file reply appendix (1.0).	1.00	$750.00	$750.00
7/8/2022	HRW		Call with J. Morris re: reply ISO MSJ (0.6).	0.60	$750.00	$450.00
7/8/2022	HRW		Call with J. Morris re: stipulation on reply appendix (0.1).	0.10	$750.00	$75.00
7/8/2022	HRW		Review email from J. Morris re: stipulation on reply appendix (0.1).	0.10	$750.00	$75.00
7/8/2022	HRW		Review MSJ pleadings (0.5).	0.50	$750.00	$375.00
7/11/2022	HRW		Call with J. Morris re: trial docket call (0.1).	0.10	$750.00	$75.00
7/11/2022	HRW		Review email from Court re: trial docket call (0.1).	0.10	$750.00	$75.00
7/11/2022	HRW		Review email from Z. Annable re: trial docket call (0.1).	0.10	$750.00	$75.00
7/11/2022	HRW		Email G. Demo, J. Pomerantz, Z. Annable re: trial docket call (0.1).	0.10	$750.00	$75.00
7/11/2022	HRW		Prepare for trial docket call appearance (0.2).	0.20	$750.00	$150.00
7/11/2022	HRW		Appear at Court for trial docket call (0.5).	0.50	$750.00	$375.00
7/11/2022	HRW		Review email from Z. Annable re: order adjourning docket call (0.1).	0.10	$750.00	$75.00
7/11/2022	HRW		Email Z. Annable re: order adjourning docket call (0.1).	0.10	$750.00	$75.00
7/11/2022	HRW		Draft order adjourning docket call (0.5).	0.50	$750.00	$375.00
7/11/2022	HRW		Review email from Court re: order adjourning docket call (0.1).	0.10	$750.00	$75.00
7/11/2022	HRW		Research and draft reply ISO MSJ (6.0).	6.00	$750.00	$4,500.00
7/11/2022	HRW		Review email from M. Aigen re: stipulation on reply appendix (0.1).	0.10	$750.00	$75.00
7/11/2022	HRW		Communicate with L. Canty re: appearance for trial docket call (0.1).	0.10	$750.00	$75.00
7/12/2022	HRW		Review draft stipulation concerning appendix (0.2).	0.20	$750.00	$150.00
7/12/2022	HRW		Review email from Z. Annable re: stipulation concerning appendix (0.1).	0.10	$750.00	$75.00
7/12/2022	HRW		Review emails from J. Morris re: stipulation concerning appendix (0.1).	0.10	$750.00	$75.00
7/12/2022	HRW		Review email from J. Morris to M. Aigen re: stipulation concerning appendix (0.1).	0.10	$750.00	$75.00
7/12/2022	HRW		Draft reply ISO MSJ (8.0).	8.00	$750.00	$6,000.00
7/12/2022	HRW		Email J. Morris re: reply ISO MSJ (0.2).	0.20	$750.00	$150.00
7/13/2022	HRW		Review stipulation concerning appendix (0.2).	0.20	$750.00	$150.00

JULY 2022

DATE	TKPR	TASK	DESCRIPTION	HOURS	RATE	AMOUNT
7/13/2022	HRW		Review email from M. Aigen re: stipulation concerning appendix (0.1).	0.10	$750.00	$75.00
7/13/2022	HRW		Draft and research re: reply ISO MSJ (5.5).	5.50	$750.00	$4,125.00
7/13/2022	HRW		Meet with J. Morris re: reply ISO MSJ (0.1).	0.10	$750.00	$75.00
7/14/2022	HRW		Review stipulation re: reply appendix (0.2).	0.20	$750.00	$150.00
7/14/2022	HRW		Review email from J. Morris to M. Aigen re: reply appendix (0.1).	0.10	$750.00	$75.00
7/14/2022	HRW		Review emails from J. Morris and Z. Annable re: reply appendix (0.1).	0.10	$750.00	$75.00
7/14/2022	HRW		Draft reply ISO MSJ (6.0).	6.00	$750.00	$4,500.00
7/15/2022	HRW		Draft reply ISO MSJ (4.5).	4.50	$750.00	$3,375.00
7/17/2022	HRW		Review and edit reply ISO MSJ (1.0).	1.00	$750.00	$750.00
7/18/2022	HRW		Research and draft re: reply ISO MSJ (9.0).	9.00	$750.00	$6,750.00
7/19/2022	JNP		Review reply regarding motion for summary judgment.	0.40	$1,445.00	$578.00
7/19/2022	JNP		Conference with John A. Morris regarding comments to HCFA reply brief.	0.20	$1,445.00	$289.00
7/19/2022	LSC		Preparation of reply appendix and correspondence with H. Winograd regarding the same.	1.70	$495.00	$841.50
7/19/2022	HRW		Draft reply ISO MSJ and supporting documents (10.0).	10.00	$750.00	$7,500.00
7/19/2022	HRW		Calls with J. Morris re: reply ISO MSJ (0.2).	0.20	$750.00	$150.00
7/19/2022	HRW		Communicate with L. Canty re: reply appendix (0.3).	0.30	$750.00	$225.00
7/19/2022	HRW		Review R&R on MSJ (0.3).	0.30	$750.00	$225.00
7/20/2022	JNP		Review revised reply regarding summary judgment on HCFMA notes.	0.30	$1,445.00	$433.50
7/20/2022	JNP		Conference with John A. Morris regarding reply regarding summary judgment on HCFMA notes.	0.10	$1,445.00	$144.50
7/20/2022	HRW		Review and edit reply ISO MSJ and supporting documents (2.5).	2.50	$750.00	$1,875.00
7/20/2022	HRW		Communicate with Z. Annable re: filing reply ISO MSJ (0.2).	2.50	$750.00	$1,875.00
7/24/2022	HRW		Review email from J. Morris re: MSJ hearing exhibits (0.1).	0.10	$750.00	$75.00
7/25/2022	LSC		Retrieval of materials in preparation of upcoming MSJ hearing for J. Morris.	0.50	$495.00	$247.50
7/25/2022	HRW		Highland 36027.005 Call with J. Morris re: MSJ hearing (0.1).	0.10	$750.00	$75.00
7/25/2022	HRW		Email J. Morris re: MSJ hearing (0.1).	0.10	$750.00	$75.00
7/25/2022	HRW		Prepare for MSJ hearing (0.5).	0.50	$750.00	$375.00
7/26/2022	HRW		Review email from Z. Annable re: hearing on MSJ (0.1).	0.10	$750.00	$75.00
7/27/2022	JNP		Conference with John A. Morris regarding summary judgment hearing.	0.20	$1,445.00	$289.00
7/27/2022	LSC		Prepare for (.7) and assist at oral argument on the Motion for Summary Judgment (1.8).	2.50	$495.00	$1,237.50
7/27/2022	GVD		Attend summary judgment hearing	1.80	$1,095.00	$1,971.00
7/27/2022	HRW		Attend hearing on MSJ (1.7).	1.70	$750.00	$1,275.00
7/27/2022	HRW		Review email from M. Aigen to Court re: presentation from oral argument (0.1).	0.10	$750.00	$75.00
7/27/2022	HRW		Review email from J. Morris to Court re: presentation from oral argument (0.1).	0.10	$750.00	$75.00
7/27/2022	HRW		Review materials for hearing (0.3).	0.30	$750.00	$225.00

DATE	TKPR	TASK	DESCRIPTION	HOURS	RATE	AMOUNT
Bankruptcy Litigation [L430]						
7/5/2022	JAM	BL	Preliminary review of HCMFA's reply to summary judgment motion (0.3).	0.30	$1,395.00	$418.50
7/6/2022	JAM	BL	Review Declarations in Support of Opposition to SJM (and exhibits) (1.2); tel c. w/ H. Winograd re: opposition to SJM (0.8).	2.00	$1,395.00	$2,790.00
7/7/2022	JAM	BL	Tel c. w/ J. Seery re: opposition to SJM (0.2).	0.20	$1,395.00	$279.00
7/8/2022	JAM	BL	Review opposition to SJM (0.8); tel c. w/ H. Winograd re: opposition to SJM (0.7); e-mail to HCMFA's counsel re: Reply Appendix and related matters (0.4).	1.90	$1,395.00	$2,650.50
7/12/2022	JAM	BL	Draft Stipulation concerning evidence/appendixes for SJM (0.8); e-mail to H. Winograd, Z. Annable re: draft Stipulation (0.1); revisions to stipulation (0.2); e-mail to HCMFA's counsel re: stipulation (0.1).	1.20	$1,395.00	$1,674.00
7/13/2022	JAM	BL	Review HCMFA's proposed revisions to stipulation (0.1); work on reply memorandum in support of summary judgment (0.8).	0.90	$1,395.00	$1,255.50
7/14/2022	JAM	BL	Review objection to summary judgment and related documents (1.5).	1.50	$1,395.00	$2,092.50
7/16/2022	JAM	BL	Work on reply in further support of motion for summary judgment (3.8).	3.80	$1,395.00	$5,301.00
7/18/2022	JAM	BL	Work on reply in further support of summary judgment (2.2).	2.20	$1,395.00	$3,069.00
7/18/2022	JAM	BL	Review/revise Reply brief in support of motion for summary judgment (6.6); tel c. w/ H. Winograd re: reply brief (0.3).	6.90	$1,395.00	$9,625.50
7/19/2022	JAM	BL	Work on reply brief (5.2); tel c. w/ J. Pomerantz re: reply brief (0.2); numerous e-mails w/ J. Seery, T. Surgent, D. Klos, J. Pomerantz, H. Winograd re: revisions to reply brief (0.5).	5.90	$1,395.00	$8,230.50
7/19/2022	JAM	BL	Review/revise reply brief (7.0); tel c. w/ J. Seery re: reply brief (0.1); communications w/ J. Seery, H. Winograd, Z. Annable re: reply brief (0.5).	7.60	$1,395.00	$10,602.00
7/20/2022	JAM	BL	Review/revise reply brief (7.0); tel c. w/ J. Seery re: reply brief (0.1); communications w/ J. Seery, H. Winograd, Z. Annable re: reply brief (0.5).	7.60	$1,395.00	$10,602.00
7/21/2022	JAM	BL	E-mails w/ Z. Annable, L. Canty re: time records and related matters for form of judgment (0.3); e-mails w/ D. Klos re: calculation of principal and interest owed on notes for purposes of preparing form of judgment (0.2)	0.50	$1,395.00	$697.50
7/24/2022	JAM	BL	Begin preparing for oral argument on summary judgment motion (1.8); review appendixes and send e-mail to L. Canty, H. Winograd re: exhibits for use in oral argument (0.8).	2.60	$1,395.00	$3,627.00
7/25/2022	JAM	BL	Work on oral argument, including multiple revisions to deck (0.7).	0.70	$1,395.00	$976.50
7/27/2022	JAM	BL	Prepare for oral argument (1.6); e-mails w/ L. Canty, H. Winograd re: oral argument, deck (0.2); continued prep for oral argument (2.1); tel c. w/ L. Canty re: exhibits, slide deck (0.2); oral argument on motion for summary judgment (1.6); e-mail to T. Ellison, H. Winograd, M. Aigen re: slide deck (0.1); tel c. w/ J. Pomerantz re: hearing (0.2); tel c. w/ J. Seery re: hearing (0.3).	6.30	$1,395.00	$8,788.50
			FEES TOTAL			**$131,724.00**
EXPENSES			Reproduction/ Scan Copy			**$19.90**
			TOTAL FEES AND EXPENSES			**$131,743.90**

JULY 2022

DATE	TKPR	TASK	DESCRIPTION	HOURS	RATE	AMOUNT
7/1/2022	HRW		Call with J. Morris re: HCMFA supplemental production (0.1).	0.10	$750.00	$75.00
7/1/2022	HRW		Email G. Demo re: HCMFA supplemental production (0.1).	0.10	$750.00	$75.00
7/1/2022	HRW		Review HCMFA supplemental production (0.2).	0.20	$750.00	$150.00
7/1/2022	HRW		Review email from G. Demo re: HCMFA supplemental production (0.1).	0.10	$750.00	$75.00
7/5/2022	GVD		Review HCMFA MSJ response	0.20	$1,095.00	$219.00
7/6/2022	GVD		Conference with J. Morris re HCMFA response	0.20	$1,095.00	$219.00
7/6/2022	HRW		Call with J. Morris re: reply ISO MSJ (0.7).	0.70	$750.00	$525.00
7/6/2022	HRW		Review MSJ response brief (1.0).	1.00	$750.00	$750.00
7/7/2022	HRW		Email J. Morris re: reply ISO MSJ (0.1).	0.10	$750.00	$75.00
7/7/2022	HRW		Research re: motion to file reply appendix (1.0).	1.00	$750.00	$750.00
7/7/2022	HRW		Review HCMFA response to MSJ and related documents (1.0).	1.00	$750.00	$750.00
7/7/2022	HRW		Draft reply ISO MSJ (1.0).	1.00	$750.00	$750.00
7/7/2022	HRW		Draft motion to file reply appendix (1.0).	1.00	$750.00	$750.00
7/8/2022	HRW		Call with J. Morris re: reply ISO MSJ (0.6).	0.60	$750.00	$450.00
7/8/2022	HRW		Call with J. Morris re: stipulation on reply appendix (0.1).	0.10	$750.00	$75.00
7/8/2022	HRW		Review email from J. Morris re: stipulation on reply appendix (0.1).	0.10	$750.00	$75.00
7/8/2022	HRW		Review MSJ pleadings (0.5).	0.50	$750.00	$375.00
7/11/2022	HRW		Call with J. Morris re: trial docket call (0.1).	0.10	$750.00	$75.00
7/11/2022	HRW		Review email from Court re: trial docket call (0.1).	0.10	$750.00	$75.00
7/11/2022	HRW		Review email from Z. Annable re: trial docket call (0.1).	0.10	$750.00	$75.00
7/11/2022	HRW		Email G. Demo, J. Pomerantz, Z. Annable re: trial docket call (0.1).	0.10	$750.00	$75.00
7/11/2022	HRW		Prepare for trial docket call appearance (0.2).	0.20	$750.00	$150.00
7/11/2022	HRW		Appear at Court for trial docket call (0.5).	0.50	$750.00	$375.00
7/11/2022	HRW		Review email from Z. Annable re: order adjourning docket call (0.1).	0.10	$750.00	$75.00
7/11/2022	HRW		Email Z. Annable re: order adjourning docket call (0.1).	0.10	$750.00	$75.00
7/11/2022	HRW		Draft order adjourning docket call (0.5).	0.50	$750.00	$375.00
7/11/2022	HRW		Review email from Court re: order adjourning docket call (0.1).	0.10	$750.00	$75.00
7/11/2022	HRW		Research and draft reply ISO MSJ (6.0).	6.00	$750.00	$4,500.00
7/11/2022	HRW		Review email from M. Aigen re: stipulation on reply appendix (0.1).	0.10	$750.00	$75.00
7/11/2022	HRW		Communicate with L. Canty re: appearance for trial docket call (0.1).	0.10	$750.00	$75.00
7/12/2022	HRW		Review draft stipulation concerning appendix (0.2).	0.20	$750.00	$150.00
7/12/2022	HRW		Review email from Z. Annable re: stipulation concerning appendix (0.1).	0.10	$750.00	$75.00
7/12/2022	HRW		Review emails from J. Morris re: stipulation concerning appendix (0.1).	0.10	$750.00	$75.00
7/12/2022	HRW		Review email from J. Morris to M. Aigen re: stipulation concerning appendix (0.1).	0.10	$750.00	$75.00
7/12/2022	HRW		Draft reply ISO MSJ (8.0).	8.00	$750.00	$6,000.00
7/12/2022	HRW		Email J. Morris re: reply ISO MSJ (0.2).	0.20	$750.00	$150.00
7/13/2022	HRW		Review stipulation concerning appendix (0.2).	0.20	$750.00	$150.00

JULY 2022

DATE	TKPR	TASK	DESCRIPTION	HOURS	RATE	AMOUNT
7/13/2022	HRW		Review email from M. Aigen re: stipulation concerning appendix (0.1).	0.10	$750.00	$75.00
7/13/2022	HRW		Draft and research re: reply ISO MSJ (5.5).	5.50	$750.00	$4,125.00
7/13/2022	HRW		Meet with J. Morris re: reply ISO MSJ (0.1).	0.10	$750.00	$75.00
7/14/2022	HRW		Review stipulation re: reply appendix (0.2).	0.20	$750.00	$150.00
7/14/2022	HRW		Review email from J. Morris to M. Aigen re: reply appendix (0.1).	0.10	$750.00	$75.00
7/14/2022	HRW		Review emails from J. Morris and Z. Annable re: reply appendix (0.1).	0.10	$750.00	$75.00
7/14/2022	HRW		Draft reply ISO MSJ (6.0).	6.00	$750.00	$4,500.00
7/15/2022	HRW		Draft reply ISO MSJ (4.5).	4.50	$750.00	$3,375.00
7/17/2022	HRW		Review and edit reply ISO MSJ (1.0).	1.00	$750.00	$750.00
7/18/2022	HRW		Research and draft re: reply ISO MSJ (9.0).	9.00	$750.00	$6,750.00
7/19/2022	JNP		Review reply regarding motion for summary judgment.	0.40	$1,445.00	$578.00
7/19/2022	JNP		Conference with John A. Morris regarding comments to HCFA reply brief.	0.20	$1,445.00	$289.00
7/19/2022	LSC		Preparation of reply appendix and correspondence with H. Winograd regarding the same.	1.70	$495.00	$841.50
7/19/2022	HRW		Draft reply ISO MSJ and supporting documents (10.0).	10.00	$750.00	$7,500.00
7/19/2022	HRW		Calls with J. Morris re: reply ISO MSJ (0.2).	0.20	$750.00	$150.00
7/19/2022	HRW		Communicate with L. Canty re: reply appendix (0.3).	0.30	$750.00	$225.00
7/19/2022	HRW		Review R&R on MSJ (0.3).	0.30	$750.00	$225.00
7/20/2022	JNP		Review revised reply regarding summary judgment on HCFMA notes.	0.30	$1,445.00	$433.50
7/20/2022	JNP		Conference with John A. Morris regarding reply regarding summary judgment on HCFMA notes.	0.10	$1,445.00	$144.50
7/20/2022	HRW		Review and edit reply ISO MSJ and supporting documents (2.5).	2.50	$750.00	$1,875.00
7/20/2022	HRW		Communicate with Z. Annable re: filing reply ISO MSJ (0.2).	2.50	$750.00	$1,875.00
7/24/2022	HRW		Review email from J. Morris re: MSJ hearing exhibits (0.1).	0.10	$750.00	$75.00
7/25/2022	LSC		Retrieval of materials in preparation of upcoming MSJ hearing for J. Morris.	0.50	$495.00	$247.50
7/25/2022	HRW		Highland 36027.005 Call with J. Morris re: MSJ hearing (0.1).	0.10	$750.00	$75.00
7/25/2022	HRW		Email J. Morris re: MSJ hearing (0.1).	0.10	$750.00	$75.00
7/25/2022	HRW		Prepare for MSJ hearing (0.5).	0.50	$750.00	$375.00
7/26/2022	HRW		Review email from Z. Annable re: hearing on MSJ (0.1).	0.10	$750.00	$75.00
7/27/2022	JNP		Conference with John A. Morris regarding summary judgment hearing.	0.20	$1,445.00	$289.00
7/27/2022	LSC		Prepare for (.7) and assist at oral argument on the Motion for Summary Judgment (1.8).	2.50	$495.00	$1,237.50
7/27/2022	GVD		Attend summary judgment hearing	1.80	$1,095.00	$1,971.00
7/27/2022	HRW		Attend hearing on MSJ (1.7).	1.70	$750.00	$1,275.00
7/27/2022	HRW		Review email from M. Aigen to Court re: presentation from oral argument (0.1).	0.10	$750.00	$75.00
7/27/2022	HRW		Review email from J. Morris to Court re: presentation from oral argument (0.1).	0.10	$750.00	$75.00
7/27/2022	HRW		Review materials for hearing (0.3).	0.30	$750.00	$225.00

JULY 2022

DATE	TKPR	TASK	DESCRIPTION	HOURS	RATE	AMOUNT
Bankruptcy Litigation [L430]						
7/5/2022	JAM	BL	Preliminary review of HCMFA's reply to summary judgment motion (0.3).	0.30	$1,395.00	$418.50
7/6/2022	JAM	BL	Review Declarations in Support of Opposition to SJM (and exhibits) (1.2); tel c. w/ H. Winograd re: opposition to SJM (0.8).	2.00	$1,395.00	$2,790.00
7/7/2022	JAM	BL	Tel c. w/ J. Seery re: opposition to SJM (0.2).	0.20	$1,395.00	$279.00
7/8/2022	JAM	BL	Review opposition to SJM (0.8); tel c. w/ H. Winograd re: opposition to SJM (0.7); e-mail to HCMFA's counsel re: Reply Appendix and related matters (0.4).	1.90	$1,395.00	$2,650.50
7/12/2022	JAM	BL	Draft Stipulation concerning evidence/appendixes for SJM (0.8); e-mail to H. Winograd, Z. Annable re: draft Stipulation (0.1); revisions to stipulation (0.2); e-mail to HCMFA's counsel re: stipulation (0.1).	1.20	$1,395.00	$1,674.00
7/13/2022	JAM	BL	Review HCMFA's proposed revisions to stipulation (0.1); work on reply memorandum in support of summary judgment (0.8).	0.90	$1,395.00	$1,255.50
7/14/2022	JAM	BL	Review objection to summary judgment and related documents (1.5).	1.50	$1,395.00	$2,092.50
7/16/2022	JAM	BL	Work on reply in further support of motion for summary judgment (3.8).	3.80	$1,395.00	$5,301.00
7/18/2022	JAM	BL	Work on reply in further support of summary judgment (2.2).	2.20	$1,395.00	$3,069.00
7/18/2022	JAM	BL	Review/revise Reply brief in support of motion for summary judgment (6.6); tel c. w/ H. Winograd re: reply brief (0.3).	6.90	$1,395.00	$9,625.50
7/19/2022	JAM	BL	Work on reply brief (5.2); tel c. w/ J. Pomerantz re: reply brief (0.2); numerous e-mails w/ J. Seery, T. Surgent, D. Klos, J. Pomerantz, H. Winograd re: revisions to reply brief (0.5).	5.90	$1,395.00	$8,230.50
7/19/2022	JAM	BL	Review/revise reply brief (7.0); tel c. w/ J. Seery re: reply brief (0.1); communications w/ J. Seery, H. Winograd, Z. Annable re: reply brief (0.5).	7.60	$1,395.00	$10,602.00
7/20/2022	JAM	BL	Review/revise reply brief (7.0); tel c. w/ J. Seery re: reply brief (0.1); communications w/ J. Seery, H. Winograd, Z. Annable re: reply brief (0.5).	7.60	$1,395.00	$10,602.00
7/21/2022	JAM	BL	E-mails w/ Z. Annable, L. Canty re: time records and related matters for form of judgment (0.3); e-mails w/ D. Klos re: calculation of principal and interest owed on notes for purposes of preparing form of judgment (0.2)	0.50	$1,395.00	$697.50
7/24/2022	JAM	BL	Begin preparing for oral argument on summary judgment motion (1.8); review appendixes and send e-mail to L. Canty, H. Winograd re: exhibits for use in oral argument (0.8).	2.60	$1,395.00	$3,627.00
7/25/2022	JAM	BL	Work on oral argument, including multiple revisions to deck (0.7).	0.70	$1,395.00	$976.50
7/27/2022	JAM	BL	Prepare for oral argument (1.6); e-mails w/ L. Canty, H. Winograd re: oral argument, deck (0.2); continued prep for oral argument (2.1); tel c. w/ L. Canty re: exhibits, slide deck (0.2); oral argument on motion for summary judgment (1.6); e-mail to T. Ellison, H. Winograd, M. Aigen re: slide deck (0.1); tel c. w/ J. Pomerantz re: hearing (0.2); tel c. w/ J. Seery re: hearing (0.3).	6.30	$1,395.00	$8,788.50
			FEES TOTAL			**$131,724.00**
EXPENSES			Reproduction/ Scan Copy			**$19.90**
			TOTAL FEES AND EXPENSES			**$131,743.90**

Pachulski Stang Ziehl & Jones LLP

10100 Santa Monica Blvd.
13th Floor
Los Angeles, CA 90067

July 31, 2022
Invoice 130623
Client 36027
Matter 00005
JNP

James P. Seery, Jr.
Highland Capital Management LP
100 Crescent Court, Suite 1850
Dallas, TX 75201

RE: HCMFA Notes Litigation

STATEMENT OF PROFESSIONAL SERVICES RENDERED THROUGH 07/31/2022

FEES	[redacted]
EXPENSES	[redacted]
TOTAL CURRENT CHARGES	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]

Pachulski Stang Ziehl & Jones LLP
Highland Capital Management LP
36027 - 00005

Page: 4
Invoice 130623
July 31, 2022

Summary of Expenses

Description	Amount
Reproduction/ Scan Copy	$19.90
	$19.90

Pachulski Stang Ziehl & Jones LLP
Highland Capital Management LP
36027 - 00005

Page: 5
Invoice 130623
July 31, 2022

			Hours	Rate	Amount
07/01/2022	HRW	Call with J. Morris re: HCMFA supplemental production (0.1).	0.10	750.00	$75.00
07/01/2022	HRW	Email G. Demo re: HCMFA supplemental production (0.1).	0.10	750.00	$75.00
07/01/2022	HRW	Review HCMFA supplemental production (0.2).	0.20	750.00	$150.00
07/01/2022	HRW	Review email from G. Demo re: HCMFA supplemental production (0.1).	0.10	750.00	$75.00
07/05/2022	GVD	Review HCMFA MSJ response	0.20	1095.00	$219.00
07/06/2022	GVD	Conference with J. Morris re HCMFA response	0.20	1095.00	$219.00
07/06/2022	HRW	Call with J. Morris re: reply ISO MSJ (0.7).	0.70	750.00	$525.00
07/06/2022	HRW	Review MSJ response brief (1.0).	1.00	750.00	$750.00
07/07/2022	HRW	Email J. Morris re: reply ISO MSJ (0.1).	0.10	750.00	$75.00
07/07/2022	HRW	Research re: motion to file reply appendix (1.0).	1.00	750.00	$750.00
07/07/2022	HRW	Review HCMFA response to MSJ and related documents (1.0).	1.00	750.00	$750.00
07/07/2022	HRW	Draft reply ISO MSJ (1.0).	1.00	750.00	$750.00
07/07/2022	HRW	Draft motion to file reply appendix (1.0).	1.00	750.00	$750.00
07/08/2022	HRW	Call with J. Morris re: reply ISO MSJ (0.6).	0.60	750.00	$450.00
07/08/2022	HRW	Call with J. Morris re: stipulation on reply appendix (0.1).	0.10	750.00	$75.00
07/08/2022	HRW	Review email from J. Morris re: stipulation on reply appendix (0.1).	0.10	750.00	$75.00
07/08/2022	HRW	Review MSJ pleadings (0.5).	0.50	750.00	$375.00
07/11/2022	HRW	Call with J. Morris re: trial docket call (0.1).	0.10	750.00	$75.00
07/11/2022	HRW	Review email from Court re: trial docket call (0.1).	0.10	750.00	$75.00
07/11/2022	HRW	Review email from Z. Annable re: trial docket call (0.1).	0.10	750.00	$75.00
07/11/2022	HRW	Email G. Demo, J. Pomerantz, Z. Annable re: trial docket call (0.1).	0.10	750.00	$75.00
07/11/2022	HRW	Prepare for trial docket call appearance (0.2).	0.20	750.00	$150.00
07/11/2022	HRW	Appear at Court for trial docket call (0.5).	0.50	750.00	$375.00
07/11/2022	HRW	Review email from Z. Annable re: order adjourning docket call (0.1).	0.10	750.00	$75.00
07/11/2022	HRW	Email Z. Annable re: order adjourning docket call (0.1).	0.10	750.00	$75.00

			Hours	Rate	Amount
07/11/2022	HRW	Draft order adjourning docket call (0.5).	0.50	750.00	$375.00
07/11/2022	HRW	Review email from Court re: order adjourning docket call (0.1).	0.10	750.00	$75.00
07/11/2022	HRW	Research and draft reply ISO MSJ (6.0).	6.00	750.00	$4,500.00
07/11/2022	HRW	Review email from M. Aigen re: stipulation on reply appendix (0.1).	0.10	750.00	$75.00
07/11/2022	HRW	Communicate with L. Canty re: appearance for trial docket call (0.1).	0.10	750.00	$75.00
07/12/2022	HRW	Review draft stipulation concerning appendix (0.2).	0.20	750.00	$150.00
07/12/2022	HRW	Review email from Z. Annable re: stipulation concerning appendix (0.1).	0.10	750.00	$75.00
07/12/2022	HRW	Review emails from J. Morris re: stipulation concerning appendix (0.1).	0.10	750.00	$75.00
07/12/2022	HRW	Review email from J. Morris to M. Aigen re: stipulation concerning appendix (0.1).	0.10	750.00	$75.00
07/12/2022	HRW	Draft reply ISO MSJ (8.0).	8.00	750.00	$6,000.00
07/12/2022	HRW	Email J. Morris re: reply ISO MSJ (0.2).	0.20	750.00	$150.00
07/13/2022	HRW	Review stipulation concerning appendix (0.2).	0.20	750.00	$150.00
07/13/2022	HRW	Review email from M. Aigen re: stipulation concerning appendix (0.1).	0.10	750.00	$75.00
07/13/2022	HRW	Draft and research re: reply ISO MSJ (5.5).	5.50	750.00	$4,125.00
07/13/2022	HRW	Meet with J. Morris re: reply ISO MSJ (0.1).	0.10	750.00	$75.00
07/14/2022	HRW	Review stipulation re: reply appendix (0.2).	0.20	750.00	$150.00
07/14/2022	HRW	Review email from J. Morris to M. Aigen re: reply appendix (0.1).	0.10	750.00	$75.00
07/14/2022	HRW	Review emails from J. Morris and Z. Annable re: reply appendix (0.1).	0.10	750.00	$75.00
07/14/2022	HRW	Draft reply ISO MSJ (6.0).	6.00	750.00	$4,500.00
07/15/2022	HRW	Draft reply ISO MSJ (4.5).	4.50	750.00	$3,375.00
07/17/2022	HRW	Review and edit reply ISO MSJ (1.0).	1.00	750.00	$750.00
07/18/2022	HRW	Research and draft re: reply ISO MSJ (9.0).	9.00	750.00	$6,750.00
07/19/2022	JNP	Review reply regarding motion for summary judgment.	0.40	1445.00	$578.00
07/19/2022	JNP	Conference with John A. Morris regarding comments to HCFA reply brief.	0.20	1445.00	$289.00
07/19/2022	LSC	Preparation of reply appendix and correspondence with H. Winograd regarding the same.	1.70	495.00	$841.50

Pachulski Stang Ziehl & Jones LLP
Highland Capital Management LP
36027 - 00005

Invoice 130623
July 31, 2022

			Hours	Rate	Amount
07/19/2022	HRW	Draft reply ISO MSJ and supporting documents (10.0).	10.00	750.00	$7,500.00
07/19/2022	HRW	Calls with J. Morris re: reply ISO MSJ (0.2).	0.20	750.00	$150.00
07/19/2022	HRW	Communicate with L. Canty re: reply appendix (0.3).	0.30	750.00	$225.00
07/19/2022	HRW	Review R&R on MSJ (0.3).	0.30	750.00	$225.00
07/20/2022	JNP	Review revised reply regarding summary judgment on HCFMA notes.	0.30	1445.00	$433.50
07/20/2022	JNP	Conference with John A. Morris regarding reply regarding summary judgment on HCFMA notes.	0.10	1445.00	$144.50
07/20/2022	HRW	Review and edit reply ISO MSJ and supporting documents (2.5).	2.50	750.00	$1,875.00
07/20/2022	HRW	Communicate with Z. Annable re: filing reply ISO MSJ (0.2).	2.50	750.00	$1,875.00
07/24/2022	HRW	Review email from J. Morris re: MSJ hearing exhibits (0.1).	0.10	750.00	$75.00
07/25/2022	LSC	Retrieval of materials in preparation of upcoming MSJ hearing for J. Morris.	0.50	495.00	$247.50
07/25/2022	HRW	Highland 36027.005 Call with J. Morris re: MSJ hearing (0.1).	0.10	750.00	$75.00
07/25/2022	HRW	Email J. Morris re: MSJ hearing (0.1).	0.10	750.00	$75.00
07/25/2022	HRW	Prepare for MSJ hearing (0.5).	0.50	750.00	$375.00
07/26/2022	HRW	Review email from Z. Annable re: hearing on MSJ (0.1).	0.10	750.00	$75.00
07/27/2022	JNP	Conference with John A. Morris regarding summary judgment hearing.	0.20	1445.00	$289.00
07/27/2022	LSC	Prepare for (.7) and assist at oral argument on the Motion for Summary Judgment (1.8).	2.50	495.00	$1,237.50
07/27/2022	GVD	Attend summary judgment hearing	1.80	1095.00	$1,971.00
07/27/2022	HRW	Attend hearing on MSJ (1.7).	1.70	750.00	$1,275.00
07/27/2022	HRW	Review email from M. Aigen to Court re: presentation from oral argument (0.1).	0.10	750.00	$75.00
07/27/2022	HRW	Review email from J. Morris to Court re: presentation from oral argument (0.1).	0.10	750.00	$75.00
07/27/2022	HRW	Review materials for hearing (0.3).	0.30	750.00	$225.00
			78.20		**$59,044.50**

Pachulski Stang Ziehl & Jones LLP
Highland Capital Management LP
36027 - 00005

Invoice 130623
July 31, 2022

				Hours	Rate	Amount
[redacted]						
[redacted]						

Bankruptcy Litigation [L430]

07/05/2022	JAM	BL	Preliminary review of HCMFA's reply to summary judgment motion (0.3).	0.30	1395.00	$418.50
07/06/2022	JAM	BL	Review Declarations in Support of Opposition to SJM (and exhibits) (1.2); tel c. w/ H. Winograd re: opposition to SJM (0.8).	2.00	1395.00	$2,790.00
07/07/2022	JAM	BL	Tel c. w/ J. Seery re: opposition to SJM (0.2).	0.20	1395.00	$279.00
07/08/2022	JAM	BL	Review opposition to SJM (0.8); tel c. w/ H. Winograd re: opposition to SJM (0.7); e-mail to HCMFA's counsel re: Reply Appendix and related matters (0.4).	1.90	1395.00	$2,650.50
07/12/2022	JAM	BL	Draft Stipulation concerning evidence/appendixes for SJM (0.8); e-mail to H. Winograd, Z. Annable re: draft Stipulation (0.1); revisions to stipulation (0.2); e-mail to HCMFA's counsel re: stipulation (0.1).	1.20	1395.00	$1,674.00
07/13/2022	JAM	BL	Review HCMFA's proposed revisions to stipulation (0.1); work on reply memorandum in support of summary judgment (0.8).	0.90	1395.00	$1,255.50
07/14/2022	JAM	BL	Review objection to summary judgment and related documents (1.5).	1.50	1395.00	$2,092.50
07/16/2022	JAM	BL	Work on reply in further support of motion for summary judgment (3.8).	3.80	1395.00	$5,301.00
07/18/2022	JAM	BL	Work on reply in further support of summary judgment (2.2).	2.20	1395.00	$3,069.00
07/18/2022	JAM	BL	Review/revise Reply brief in support of motion for summary judgment (6.6); tel c. w/ H. Winograd re: reply brief (0.3).	6.90	1395.00	$9,625.50
07/19/2022	JAM	BL	Work on reply brief (5.2); tel c. w/ J. Pomerantz re: reply brief (0.2); numerous e-mails w/ J. Seery, T. Surgent, D. Klos, J. Pomerantz, H. Winograd re: revisions to reply brief (0.5).	5.90	1395.00	$8,230.50
07/19/2022	JAM	BL	Review/revise reply brief (7.0); tel c. w/ J. Seery re: reply brief (0.1); communications w/ J. Seery, H. Winograd, Z. Annable re: reply brief (0.5).	7.60	1395.00	$10,602.00

Pachulski Stang Ziehl & Jones LLP
Highland Capital Management LP
36027 - 00005

Page: 9
Invoice 130623
July 31, 2022

				Hours	Rate	Amount
07/20/2022	JAM	BL	Review/revise reply brief (7.0); tel c. w/ J. Seery re: reply brief (0.1); communications w/ J. Seery, H. Winograd, Z. Annable re: reply brief (0.5).	7.60	1395.00	$10,602.00
07/21/2022	JAM	BL	E-mails w/ Z. Annable, L. Canty re: time records and related matters for form of judgment (0.3); e-mails w/ D. Klos re: calculation of principal and interest owed on notes for purposes of preparing form of judgment (0.2).	0.50	1395.00	$697.50
07/24/2022	JAM	BL	Begin preparing for oral argument on summary judgment motion (1.8); review appendixes and send e-mail to L. Canty, H. Winograd re: exhibits for use in oral argument (0.8).	2.60	1395.00	$3,627.00
07/25/2022	JAM	BL	Work on oral argument, including multiple revisions to deck (0.7).	0.70	1395.00	$976.50
07/27/2022	JAM	BL	Prepare for oral argument (1.6); e-mails w/ L. Canty, H. Winograd re: oral argument, deck (0.2); continued prep for oral argument (2.1); tel c. w/ L. Canty re: exhibits, slide deck (0.2); oral argument on motion for summary judgment (1.6); e-mail to T. Ellison, H. Winograd, M. Aigen re: slide deck (0.1); tel c. w/ J. Pomerantz re: hearing (0.2); tel c. w/ J. Seery re: hearing (0.3).	6.30	1395.00	$8,788.50
				[redacted]		[redacted]

[redacted] [redacted]

Pachulski Stang Ziehl & Jones LLP
Highland Capital Management LP
36027 - 00005

Invoice 130623
July 31, 2022

Expenses

07/13/2022	RE2	SCAN/COPY (17 @0.10 PER PG)	1.70
07/19/2022	RE2	SCAN/COPY (26 @0.10 PER PG)	2.60
07/19/2022	RE2	SCAN/COPY (27 @0.10 PER PG)	2.70
07/19/2022	RE2	SCAN/COPY (26 @0.10 PER PG)	2.60
07/19/2022	RE2	SCAN/COPY (31 @0.10 PER PG)	3.10
07/19/2022	RE2	SCAN/COPY (27 @0.10 PER PG)	2.70
07/20/2022	RE2	SCAN/COPY (26 @0.10 PER PG)	2.60
07/20/2022	RE2	SCAN/COPY (19 @0.10 PER PG)	1.90
Total Expenses for this Matter			**$19.90**

EXHIBIT E

TSG Summary of Invoices			
Name	**Invoice Date**	**Invoice #**	**Invoice Amount**
TSG (N. Dondero_Dugaboy 4_29_22	5/4/2022	2080587	$1,170.65
TSG (J. Seery_HCMLP 5_3_22)	5/13/2022	2081507	$1,187.90
TSG (J. Dondero_HCMFA 5_5_22)	5/17/2022	2081851	$1,414.80
TSG (J. Dondero_HCMFA 5_5_22)	5/17/2022	2081852	$687.50
TSG (A. Johnson 5_27_22)	6/1/2022	2083130	$870.80
TOTAL			**$5,331.65**

EXHIBIT F

TSG REPORTING

Worldwide - 24 Hours
(877) 702-9580
www.tsgreporting.com

Invoice Issued by TSG Reporting, Inc.

INVOICE DATE: 5/4/2022
INVOICE #: 2080587
JOB #: 209980

BILL TO: Pachulski Stang Ziehl & Jones LLP
c/o Hayley Winograd
780 Third Avenue, 34th Floor
New York, NY 10017-2024 US

SHIP TO: Pachulski Stang Ziehl & Jones LLP
c/o Hayley Winograd
780 Third Avenue, 34th Floor
New York, NY 10017-2024 US

CASE: In re: Highland Capital Management, L.P.
WITNESS: Nancy Dondero
JOB DATE: 4/29/2022
LOCATION: TELEPHONIC, Dallas, TX, 75001, US

NOTES:

SHIP VIA	-	**TERMS**	Net 30

Services	Qty	Pages	Rate	Amount
Nancy Dondero				
Original & 1 Certified Transcript - Complimentary	1	38	$5.25	$0.00
Compressed / ASCII / Word Index - Complimentary	1		$55.00	$0.00
Original Transcript - Immediate Delivery	1	38	$5.80	$220.40
Exhibit Processing - Scanned & Hyperlinked - B&W	1	21	$0.25	$5.25
File Creation Fee - Hyperlinked Exhibits - Complimentary	1		$45.00	$0.00
Other Services				
Reporter Appearance Fee / Session - Remote - Complimentary	1		$225.00	$0.00
Reporter Deposition Scheduling Fee - Minimum	1		$795.00	$795.00
Remote Video Stream / Zoom	1		$150.00	$150.00
			SUBTOTAL	$1,170.65
			TOTAL	$1,170.65
			AMOUNT PAID	In Full

THANK YOU FOR YOUR BUSINESS!
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Remit by Mail to: TSG Reporting Inc. PO Box 95568 Grapevine, TX 76099-9708
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(877) 702-9580
www.tsgreporting.com

Invoice Issued by TSG Reporting, Inc.

INVOICE DATE: 5/13/2022
INVOICE #: 2081507
JOB #: 209337

BILL TO: Pachulski Stang Ziehl & Jones LLP
c/o John Morris
780 Third Avenue, 34th Floor
New York, NY 10017-2024 US

SHIP TO: Pachulski Stang Ziehl & Jones LLP
c/o John Morris
780 Third Avenue, 34th Floor
New York, NY 10017-2024 US

CASE: In re: Highland Capital Management, L.P.
WITNESS: James P. Seery, Jr.
JOB DATE: 5/3/2022
LOCATION: TELEPHONIC, New York, NY, 10017, US

NOTES:

SHIP VIA	-	**TERMS**	Net 30

Services	Qty	Pages	Rate	Amount
James P. Seery, Jr.				
Certified Transcript	1	114	$3.65	$416.10
Compressed / ASCII / Word Index - Complimentary	1		$55.00	$0.00
Certified Transcript - Immediate Delivery	1	114	$5.45	$621.30
Exhibit Processing - Scanned & Hyperlinked - B&W	1	2	$0.25	$0.50
File Creation Fee - Hyperlinked Exhibits - Complimentary	1		$45.00	$0.00
Other Services				
Remote Video Stream / Zoom	1		$150.00	$150.00
			SUBTOTAL	$1,187.90
			TOTAL	$1,187.90
			AMOUNT PAID	In Full

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Remit by Mail to: TSG Reporting Inc. PO Box 95568 Grapevine, TX 76099-9708
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Invoice Issued by TSG Reporting, Inc.

INVOICE DATE: 5/17/2022
INVOICE #: 2081851
JOB #: 209977

BILL TO: Pachulski Stang Ziehl & Jones LLP
c/o John Morris
780 Third Avenue, 34th Floor
New York, NY 10017-2024 US

SHIP TO: Pachulski Stang Ziehl & Jones LLP
c/o John Morris
780 Third Avenue, 34th Floor
New York, NY 10017-2024 US

CASE: In re: Highland Capital Management, L.P.
WITNESS: James D. Dondero 30(b)(6) Highland Capital Management Fund Advisors, L.P.
JOB DATE: 5/5/2022
LOCATION: TELEPHONIC, Dallas, TX, 75001, US

NOTES:

SHIP VIA	-	**TERMS**	Net 30

Services	Qty	Pages	Rate	Amount
James D. Dondero 30(b)(6) Highland Capital Management Fund Advisors, L.P.				
Original & 1 Certified Transcript - Complimentary	1	81	$5.25	$0.00
Compressed / ASCII / Word Index - Complimentary	1		$55.00	$0.00
Original Transcript - Immediate Delivery	1	81	$5.80	$469.80
Exhibit Processing - Scanned & Hyperlinked - B&W - Complimentary	1	49	$0.25	$0.00
File Creation Fee - Hyperlinked Exhibits - Complimentary	1		$45.00	$0.00
Other Services				
Reporter Appearance Fee / Session - Video Recorded, Remote - Complimentary	1		$260.00	$0.00
Reporter Deposition Scheduling Fee - Minimum	1		$795.00	$795.00
Remote Video Stream / Zoom	1		$150.00	$150.00
			SUBTOTAL	$1,414.80
			TOTAL	$1,414.80
			AMOUNT PAID	In Full

THANK YOU FOR YOUR BUSINESS!
Please make all checks payable to: TSG Reporting Inc.
Remit by Mail to: TSG Reporting Inc. PO Box 95568 Grapevine, TX 76099-9708
Federal ID # 41-2085745
For prompt payment processing, please include the invoice # with your check.
All balances in arrears will be assigned a late fee of 1.5% per month, not exceeded the legal limit.
If you have any questions, please call TSG.

TSG REPORTING

Worldwide - 24 Hours
(877) 702-9580
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Invoice Issued by TSG Reporting, Inc.

INVOICE DATE: 5/17/2022
INVOICE #: 2081852
JOB #: 209977

BILL TO: Pachulski Stang Ziehl & Jones LLP
c/o John Morris
780 Third Avenue, 34th Floor
New York, NY 10017-2024 US

SHIP TO: Pachulski Stang Ziehl & Jones LLP
c/o John Morris
780 Third Avenue, 34th Floor
New York, NY 10017-2024 US

CASE: In re: Highland Capital Management, L.P.
WITNESS: James D. Dondero 30(b)(6) Highland Capital Management Fund Advisors, L.P.
JOB DATE: 5/5/2022
LOCATION: TELEPHONIC, Dallas, TX, 75001, US

NOTES:

SHIP VIA	-	**TERMS**	Net 30

Services	Qty	Media	Rate	Amount
James D. Dondero 30(b)(6) Highland Capital Management Fund Advisors, L.P.				
Video Sync / Tape	1	2	$75.00	$150.00
Certified - MPEG - Complimentary	1	2	$50.00	$0.00
Other Services				
Videographer - Set Up & 1st Hour of Job	1		$350.00	$350.00
Videographer - Additional Hours	1.5		$125.00	$187.50
			SUBTOTAL	$687.50
			TOTAL	$687.50
			AMOUNT PAID	In Full

THANK YOU FOR YOUR BUSINESS!
Please make all checks payable to: TSG Reporting Inc.
Remit by Mail to: TSG Reporting Inc. PO Box 95568 Grapevine, TX 76099-9708
Federal ID # 41-2085745
For prompt payment processing, please include the invoice # with your check.
All balances in arrears will be assigned a late fee of 1.5% per month, not exceeded the legal limit.
If you have any questions, please call TSG.

TSG REPORTING

Worldwide - 24 Hours
(877) 702-9580
www.tsgreporting.com

Invoice Issued by TSG Reporting, Inc.

INVOICE DATE: 6/1/2022
INVOICE #: 2083130
JOB #: 210473

BILL TO: Pachulski Stang Ziehl & Jones LLP
c/o John Morris
780 Third Avenue, 34th Floor
New York, NY 10017-2024 US

SHIP TO: Pachulski Stang Ziehl & Jones LLP
c/o John Morris
780 Third Avenue, 34th Floor
New York, NY 10017-2024 US

CASE: In re: Highland Capital Management, L.P.
WITNESS: Alan Johnson
JOB DATE: 5/27/2022
LOCATION: TELEPHONIC, New York, NY, 10017, US

NOTES:

SHIP VIA	Overnight	**TERMS**	Net 30

Services	Qty	Pages	Rate	Amount
Alan Johnson				
Original & 1 Certified Transcript - Complimentary	1	24	$4.95	$0.00
Compressed / ASCII / Word Index - Complimentary	1		$55.00	$0.00
Original Transcript - Immediate Delivery	1	24	$5.45	$130.80
Other Services				
Reporter Appearance Fee / Session - Remote - Complimentary	1		$145.00	$0.00
Reporter Deposition Scheduling Fee - Minimum	1		$575.00	$575.00
Remote Video Stream / Zoom	1		$150.00	$150.00
			SUBTOTAL	$855.80
			SHIPPING & HANDLING	$15.00
			TOTAL	$870.80
			AMOUNT PAID	In Full

THE SHIPPING CHARGE REFLECTS THE TOTAL COST OF ALL SHIPMENTS FOR YOUR ORDER ON THIS JOB.

THANK YOU FOR YOUR BUSINESS!
Please make all checks payable to: TSG Reporting Inc.
Remit by Mail to: TSG Reporting Inc. PO Box 95568 Grapevine, TX 76099-9708
Federal ID # 41-2085745
For prompt payment processing, please include the invoice # with your check.
All balances in arrears will be assigned a late fee of 1.5% per month, not exceeded the legal limit.
If you have any questions, please call TSG.

EXHIBIT G

SUMMARY OF ALL FEES AND EXPENSES INCURRED		
PSZJ Total Fees and Expenses	$368,057.75	
Hayward PLLC Total Fees and Expenses	$13,618.50	
TOTAL FEES	**$381,676.25**	
TSG	$5,331.65	
TOTAL EXPENSES	**$5,331.65**	
TOTAL FEES & EXPENSES		**$387,007.90**

PACHULSKI STANG ZIEHL & JONES LLP
Jeffrey N. Pomerantz (CA Bar No. 143717)
John A. Morris (NY Bar No. 2405397)
Gregory V. Demo (NY Bar No. 5371992)
Hayley R. Winograd (NY Bar No. 5612569)
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067
Telephone: (310) 277-6910
Facsimile: (310) 201-0760
Email: jpomerantz@pszjlaw.com
jmorris@pszjlaw.com
gdemo@pszjlaw.com
hwinograd@pszjlaw.com
-and-

HAYWARD PLLC
Melissa S. Hayward (Texas Bar No. 24044908)
Zachery Z. Annable (Texas Bar No. 24053075)
10501 N. Central Expy., Ste. 106
Dallas, Texas 75231
Telephone: (972) 755-7100
Facsimile: (972) 755-7110
Email: MHayward@HaywardFirm.com
ZAnnable@HaywardFirm.com

Counsel for Highland Capital Management, L.P.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
Plaintiff,	§	
vs.	§	Adv. Proc. No. 21-03082-sgj
HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, L.P.,	§	Case No. 3:21-cv-881-X
Defendant.	§	

NOTICE OF ATTORNEYS' FEES AND EXPENSES
CALCULATION AND BACKUP DOCUMENTATION OF HAYWARD PLLC

PLEASE TAKE NOTICE that Highland Capital Management, L.P. ("Highland" or "Plaintiff"), the reorganized debtor in the above-captioned chapter 11 case (the "Bankruptcy

Case") and plaintiff in the above-referenced adversary proceeding (the "Adversary Proceeding"), hereby files this *Notice of Attorneys' Fees and Expenses Calculation and Backup Documentation of Hayward PLLC* (the "Notice") in support of its *Proposed Form of Judgment*, in accordance with the Court's directive in its *Report and Recommendation to District Court Regarding Highland Capital Management, L.P.'s Motion for Summary Judgment Against Highland Capital Management Fund Advisors, L.P.* [Docket No. 73] (the "R&R") entered on October 11, 2022.

1. Attached as **Exhibit 1** is the *Declaration of Zachery Z. Annable in Support of Highland Capital Management, L.P.'s Proposed Form of Judgment* (the "Annable Declaration") and backup documentation supporting the calculation of attorneys' fees and expenses of Hayward PLLC.

[*Remainder of Page Intentionally Blank*]

Dated: November 2, 2022

PACHULSKI STANG ZIEHL & JONES LLP

Jeffrey N. Pomerantz (CA Bar No. 143717)
John A. Morris (NY Bar No. 2405397)
Gregory V. Demo (NY Bar No. 5371992)
Hayley R. Winograd (NY Bar No. 5612569)
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jmorris@pszjlaw.com
gdemo@pszjlaw.com
hwinograd@pszjlaw.com

-and-

HAYWARD PLLC

/s/ Zachery Z. Annable

Melissa S. Hayward (Texas Bar No. 24044908)
Zachery Z. Annable (Texas Bar No. 24053075)
10501 N. Central Expy, Ste. 106
Dallas, Texas 75231
Telephone: (972) 755-7100
Facsimile: (972) 755-7110
Email: MHayward@HaywardFirm.com
ZAnnable@HaywardFirm.com

Counsel for Highland Capital Management, L.P.

EXHIBIT 1

PACHULSKI STANG ZIEHL & JONES LLP
Jeffrey N. Pomerantz (CA Bar No. 143717)
John A. Morris (NY Bar No. 2405397)
Gregory V. Demo (NY Bar No. 5371992)
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10100 Santa Monica Blvd., 13th Floor
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Email: jpomerantz@pszjlaw.com
jmorris@pszjlaw.com
gdemo@pszjlaw.com
hwinograd@pszjlaw.com
-and-

HAYWARD PLLC
Melissa S. Hayward (Texas Bar No. 24044908)
Zachery Z. Annable (Texas Bar No. 24053075)
10501 N. Central Expy., Ste. 106
Dallas, Texas 75231
Telephone: (972) 755-7100
Facsimile: (972) 755-7110
Email: MHayward@HaywardFirm.com
ZAnnable@HaywardFirm.com

Counsel for Highland Capital Management, L.P.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
Plaintiff,	§	
vs.	§	Adv. Proc. No. 21-03082-sgj
HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, L.P.,	§	Case No. 3:21-cv-881-X
Defendant.	§	

DECLARATION OF ZACHERY Z. ANNABLE IN SUPPORT OF HIGHLAND CAPITAL MANAGEMENT, L.P.'S PROPOSED FORM OF JUDGMENT

I, Zachery Z. Annable, pursuant to 28 U.S.C. § 1746, under penalty of perjury, declare as follows:

1. I am a partner in the law firm of Hayward PLLC (the "Firm"), local counsel to Highland Capital Management, L.P. ("Highland" or "Plaintiff"), the reorganized debtor in the above-captioned chapter 11 case (the "Bankruptcy Case") and the plaintiff in the above-referenced adversary proceeding (the "Adversary Proceeding"). I submit this Declaration in support of *Highland Capital Management, L.P.'s Proposed Form of Judgment* (the "Proposed Judgment").

2. I have overseen my Firm's representation of Plaintiff in all aspects of the Adversary Proceeding. This Declaration is based on my personal knowledge and review of the documents described below.

3. On October 11, 2022, the United States Bankruptcy Court for the Northern District of Texas, Dallas Division (the "Bankruptcy Court"), rendered its *Report and Recommendation to District Court Regarding Highland Capital Management, L.P.'s Motion for Summary Judgment Against Highland Capital Management Fund Advisors, L.P.* [Docket No. 73] (the "R&R"). In the R&R, the Bankruptcy Court directed Highland to "submit a form of Judgment that calculates proper amounts due pursuant to th[e] Report and Recommendation, including interest accrued to date (and continuing to accrue per diem), as well as costs and attorneys' fees incurred." R&R at 50.

4. As set forth below, and in accordance with the Bankruptcy Court's direction in the R&R, I and others working at my direction have reviewed my Firm's time and expense entries as they relate to the Adversary Proceeding and calculated the amounts of attorneys' fees and expenses incurred in connection therewith.

5. In the ordinary course of business, timekeepers (including attorneys and legal assistants) at my Firm record billable time in increments of one-tenth of an hour.

6. Attached as **Exhibit A** are the Firm's time and expense entries for the period November 9, 2021, through October 12, 2022, that reflect the Firm's time and expenses billed to the Adversary Proceeding. Three Firm professionals billed time to the Adversary Proceeding: (i) Melissa S. Hayward, attorney, at the rate of $450/hour; (ii) Zachery Z. Annable, attorney, at the rate of $400/hour; and (iii) Melanie Holmes, paralegal, at the rate of $195/hour.

7. I have reviewed the attached time and expense entries and, based on that review, believe the attached time and expense entries capture and reflect fees and expenses properly charged to the Adversary Proceeding.

8. For the period November 9, 2021, through October 12, 2022, the fees billed by the Firm's timekeepers with respect to Adversary Proceeding total $13,268.50 (the "Fees"). The hours billed by the Firm's timekeepers with respect to the Adversary Proceeding total 33.2 hours. The average hourly rate for work done by the Firm's professionals with respect to the Adversary Proceeding was $399.65.

9. For the period November 9, 2021, through October 12, 2022, the expenses incurred by the Firm with respect to Adversary Proceeding total $350.00 (the "Expenses").

10. The Fees and Expenses for the Firm's work in the Adversary Proceeding total $13,618.50 (the "Total Fees and Expenses").

11. I declare under penalty of perjury that the forgoing is true and correct.

Dated: November 2, 2022

/s/ Zachery Z. Annable
Zachery Z. Annable

EXHIBIT A

Date	TK	Description	Hrs	Rate	Amount
11/9/2021	ZZA	Review correspondence from H. Winograd regarding issues for handling related to new complaint to be filed against HCMFA (.1); exchange multiple correspondence with H. Winograd regarding issues to be addressed related to forthcoming complaint against HCMFA (.2); revise draft complaint against HCMFA, prepare adversary proceeding cover sheet on same, and correspond with H. Winograd regarding both (.6); exchange correspondence with H. Winograd and L. Canty regarding exhibits to complaint against HCMFA (.2); finalize and file complaint against HCMFA initiating AP 21-3082 (.2); exchange correspondence with J. Morris and H. Winograd regarding filing of complaint and issuance of summons thereon (.2); correspond with J. Morris providing file-stamped copy of complaint as requested (.1).	1.60	$400	$640.00
11/9/2021	MSH	Review complaint against HCMFA for note (.10).	0.10	$450	$45.00
11/10/2021	ZZA	Review summons and scheduling order and correspondence from M. Edmond regarding issuance of same in AP 21-3082 (.2); correspond with J. Morris regarding issuance of summons and scheduling order in AP 21-3082 (.1); review correspondence from J. Morris regarding service of summons and complaint in AP 21-3082 (.1); correspond with D. Rukavina, counsel for HCMFA, asking for confirmation that he'll accept summons and complaint on behalf of client (.1).	0.50	$400	$200.00
11/11/2021	ZZA	Review correspondence from D. Rukavina, counsel for HCMFA, agreeing to accept service of summons and complaint in AP 21-3082 (.1).	0.10	$400	$40.00
11/29/2021	ZZA	Prepare summons service executed in AP 21-3082 and correspond with J. Morris regarding same (.4).	0.40	$400	$160.00
12/1/2021	ZZA	Exchange correspondence with J. Morris regarding summons service executed in AP 21-3082 (.1); finalize and file summons service executed in AP 21-3082 (.1).	0.20	$400	$80.00
12/10/2021	ZZA	Review correspondence from H. Winograd regarding proposed joint scheduling order to be filed in AP 21-3082 (.1); review HCMFA's answer filed in 21-3082 (.2); review and revise joint proposed scheduling order in AP 21-3082 and correspond with H. Winograd regarding revisions (.3); correspond with PSZJ team regarding answer filed in AP 21-3082 (.1); finalize and file stipulation regarding scheduling order in AP 21-3082 (.2); correspond with A. Duarte providing instructions for service of stipulation (.1); submit proposed order approving joint scheduling order and correspond with T. Ellison advising of submission of proposed order in AP 21-3082 (.2).	1.20	$400	$480.00

12/10/2021	MSH	Exchange email regarding stipulation and scheduling order in HCMFA litigation (.10).	0.10	$450	$45.00
12/15/2021	ZZA	Review correspondence from T. Ellison regarding scheduling order submitted in AP 21-3082 (.1).	0.10	$400	$40.00
12/17/2021	ZZA	Review order approving stipulation and scheduling order in AP 21-3082 (.1).	0.10	$400	$40.00
1/13/2022	ZZA	Calendar pretrial deadlines in AP 21-3082 and correspond with PSZJ team regarding same (.4).	0.40	$400	$160.00
1/18/2022	ZZA	Review motion for issuance of report and recommendation in AP 21-3082 and correspond with PSZJ team regarding same (.4).	0.40	$400	$160.00
1/18/2022	MSH	Review motion to withdraw reference in HCMFA action (.10).	0.10	$450	$45.00
1/20/2022	ZZA	Review clerk's notice requesting status conference in AP 21-3082 (.1); exchange correspondence with T. Ellison regarding issues related to mislabeled correspondence from clerk in AP 21-3082 (.2).	0.30	$400	$120.00
2/24/2022	ZZA	Review clerk's correspondence requesting status conference in AP 21-3082 (.1).	0.10	$400	$40.00
3/22/2022	ZZA	Review and revise proposed stipulation regarding amended scheduling order in AP 21-3082 and correspond with H. Winograd regarding issues related to same (.4); review correspondence from J. Morris regarding issues related to amended scheduling order in AP 21-3082 (.1); finalize and file stipulation regarding amended scheduling order, upload proposed order on same, and correspond with T. Ellison regarding same (.4); correspond with A. Duarte providing instructions for service of stipulation (.1).	1.00	$400	$400.00
3/28/2022	ZZA	Review court's order approving amended scheduling order in AP 21-3082 (.1); correspond with A. Duarte providing instructions for service of order (.1).	0.20	$400	$80.00
4/1/2022	ZZA	Finalize and file notices of subpoena on N. Dondero, J. Dondero, and Dugaboy (.3); correspond with A. Raddatz providing instructions for service of notices (.1); exchange correspondence with H. Winograd and J. Morris regarding notice of 30(b)(6) deposition of HCMFA (.2); finalize and file notice of 30(b)(6) deposition of HCMFA (.2); correspond with A. Raddatz providing instructions for service of notice (.1).	0.90	$400	$360.00
4/6/2022	ZZA	Review notices of transmittal regarding withdrawal of reference related to AP 21-3082 and correspond with PSZJ team regarding same (.2).	0.20	$400	$80.00

4/7/2022	ZZA	Review court's report and recommendation with respect to withdrawal of reference in AP 21-3082 (.3); review notices of transmission of report and recommendation opening district court case 3:22-cv-789 (.1); correspond with PSZJ team regarding report and recommendation issued in AP 21-3082 and opening of district court case 3:22-cv-789 (.2).	0.60	$400	$240.00
4/18/2022	ZZA	Review correspondence from H. Winograd regarding amended notices of subpoena for Dugaboy, James Dondero, and Nancy Dondero, as well as amended deposition notice of HCMFA in AP 21-3082 (.1); review and revise amended subpoenas and notices of subpoena of Dugaboy, James Dondero, and Nancy Dondero, as well as amended deposition notice of HCMFA, and correspond with H. Winograd regarding revisions (.5); exchange additional correspondence with H. Winograd regarding service of amended subpoenas and filing of notice of amended subpoenas (.2); finalize and file amended notice of deposition of HCMFA (.2); correspond with A. Duarte providing instructions for service of deposition notice (.1); finalize and file amended notices of subpoenas to Dugaboy, J. Dondero, and N. Dondero (.3); correspond with A. Duarte providing instructions for service of amended notices of subpoenas (.1).	1.50	$400	$600.00
4/20/2022	ZZA	Review district court's order consolidating district court case 3:22-cv-789 with case 3:21-cv-881 (.1).	0.10	$400	$40.00
4/26/2022	ZZA	Exchange multiple correspondence with H. Winograd regarding issues related to amended subpoena served on Dugaboy and need for filing of second amended subpoena in AP 21-3082 (.3); prepare second amended subpoena to Dugaboy and notice of same and exchange multiple correspondence with H. Winograd and L. Canty regarding completion and service of same (.7).	1.00	$400	$400.00
4/27/2022	ZZA	Finalize and file notice of second amended subpoena to Dugaboy in AP 21-3082 (.2); correspond with A. Duarte of KCC providing instructions for service of notice of subpoena (.1); correspond with H. Winograd regarding filing of second amended notice of subpoena and providing file-stamped copy of same (.1).	0.40	$400	$160.00
4/29/2022	ZZA	Review HCMFA's notice of deposition of corporate representative of HCM in AP 21-3082 and correspond with J. Morris regarding same (.3).	0.30	$400	$120.00
5/1/2022	ZZA	Exchange correspondence with J. Morris regarding preparation of amended deposition notice for HCMFA in AP 21-3082 (.2); prepare notice of second amended subpoena to J. Dondero and exchange correspondence with J. Morris and H. Winograd regarding same (.3); review	0.60	$400	$240.00

		correspondence from L. Canty regarding subpoena for J. Dondero in AP 21-3082 (.1).			
5/2/2022	ZZA	Correspond with J. Morris and H. Winograd regarding issues related to service of second amended subpoena to J. Dondero in AP 21-3082 (.2); finalize and file amended deposition notice of HCMFA (.2); correspond with A. Duarte of KCC providing instructions for service of deposition notice (.1); exchange multiple correspondence with M. Holmes regarding formatting issues with second amended subpoena to J. Dondero (.2); correspond with J. Morris and H. Winograd regarding need for service of second amended subpoena to J. Dondero (.1); review correspondence from J. Morris regarding service of second amended subpoena to J. Dondero (.1); finalize and file notice of second amended subpoena to J. Dondero (.2); correspond with A. Duarte providing instructions for service of notice (.1); correspond with J. Morris providing file-stamped copies of amended depo notice of HCMFA and notice of second amended subpoena to J. Dondero (.1).	1.30	$400	$520.00
5/3/2022	ZZA	Review third amended notice of deposition of HCMFA in AP 21-3082 and correspond with J. Morris regarding my review of same (.2); review correspondence from H. Winograd regarding revision to amended notice of deposition (.1); review correspondence from J. Morris regarding revision to and filing of third amended notice of deposition of HCMFA (.1); finalize and file third amended notice of deposition of HCMFA (.2); correspond with A. Duarte providing instruction for service of notice (.1); correspond with J. Morris and H. Winograd regarding filing of notice of deposition of HCMFA and providing file-stamped copy of same (.1).	0.80	$400	$320.00
5/24/2022	ZZA	Exchange correspondence with H. Winograd regarding forthcoming motion for summary judgment to be filed in AP 21-3082 (.2); exchange multiple correspondence with A. Duarte of KCC regarding issues related to service of forthcoming motion for summary judgment in AP 21-3082 (.2).	0.40	$400	$160.00
5/25/2022	ZZA	Review correspondence from J. Morris regarding draft brief in support of msj in AP 21-3082 (.1); review correspondence and proposed revisions to msj brief received from D. Klos (.3).	0.40	$400	$160.00
5/26/2022	ZZA	Multiple correspondence with A. Duarte of KCC and J. Morris regarding issues related to service of forthcoming motion for summary judgment in AP 21-3082 (.2); review proposed revisions to msj brief received from J. Seery (.2); review multiple correspondence from D. Klos and J. Morris	2.50	$400	$1,000.00

		regarding substantive issues in msj brief in AP 21-3082 (.2); review and revise brief in support of msj in AP 21-3082 and correspond with J. Morris regarding proposed revisions (1.9).			
5/27/2022	ZZA	Review correspondence from H. Winograd regarding draft motion for summary judgment and proposed order thereon in AP 21-3082 (.1); review and revise draft motion for summary judgment and proposed order thereon and correspond with H. Winograd and J. Morris regarding revisions (.3); review correspondence from H. Winograd regarding further revisions to msj in AP 21-3082 (.1); review multiple correspondence from J. Morris regarding revisions to proposed order on msj in AP 21-3082 (.1); exchange multiple follow-up correspondence with J. Morris and H. Winograd regarding issues related to forthcoming msj (.3); work on finalizing and filing motion for summary judgment, brief in support, Klos declaration in support, and appendix in support in AP 21-3082 (1.0); multiple correspondence with T. Buckingham regarding instructions for service of msj documents in AP 21-3082 (.3); exchange correspondence with H. Winograd regarding filing and service of msj in AP 21-3082 (.1).	2.30	$400	$920.00
5/27/2022	MSH	Review MSJ and brief in HCMFA AP (.20).	0.20	$450	$90.00
5/31/2022	ZZA	Review correspondence from J. Morris regarding proposed briefing schedule for msj in AP 21-3082 (.1); review multiple correspondence from T. Ellison and J. Morris setting msj in AP 21-3082 for hearing on 7/27 (.1).	0.20	$400	$80.00
6/1/2022	ZZA	Exchange correspondence with H. Winograd regarding preparation and filing of notice of hearing of msj in AP 21-3082 (.1); review multiple correspondence from H. Winograd and M. Hayward regarding notice of hearing of msj to be filed (.1); review notice of hearing of msj in AP 21-3082 (.1).	0.30	$400	$120.00
6/1/2022	MSH	Exchange email with H. Winograd, G. Demo, and KCC regarding NOHs and service issues, attend to filing same (.40).	0.40	$450	$180.00
6/1/2022	MHOL	Finalize and e-file NOH in HCMFA adversary (0.3).	0.30	$195	$58.50
6/9/2022	ZZA	Calendar hearing on msj in AP 21-3082 and correspond with PSZJ team regarding same (.1).	0.10	$400	$40.00
6/14/2022	ZZA	Review correspondence from J. Morris regarding proposed briefing schedule for msj in AP 21-3082 (.1); review multiple correspondence from T. Ellison and J. Morris	0.20	$400	$80.00

		setting msj in AP 21-3082 for hearing on 7/27 (.1).			
7/1/2022	MSH	Review HCMFA response to MSJ in note proceeding (.10).	0.10	$400	$45.00
7/4/2022	ZZA	Review HCMFA's response and related documents in opposition to msj in AP 21-3082 and provide file-stamped copies of same to PSZJ team (1.2).	1.20	$400	$480.00
7/11/2022	ZZA	Review court's docket sheet and exchange correspondence with T. Ellison regarding scheduled trial docket call in AP 21-3082 and need for attendance at same (.3); exchange multiple correspondence with J. Morris, G. Demo, and H. Winograd regarding need for appearance of counsel and trial docket call in AP 21-3082 and handling of same (.3); attend trial docket call in AP 21-3082 (.5); review and revise proposed order adjourning trial docket call in AP 21-3082 and exchange correspondence with H. Winograd regarding same (.2); finalize and file proposed order adjourning trial docket call (.2); exchange correspondence with T. Ellison regarding filing of proposed order adjourning trial docket call in AP 21-3082 (.1).	1.60	$400	$640.00
7/12/2022	ZZA	Review multiple correspondence and background information received from J. Morris related to forthcoming stipulation regarding evidence in AP 21-3082 (.2); review and revise stipulation regarding evidentiary record for msj in AP 21-3082 and correspond with J. Morris regarding revisions and issues related thereto (.6); review correspondence from J. Morris regarding stipulation on record and forthcoming reply in support of msj in AP 21-3082 (.1); correspond with J. Morris regarding preparation of proposed order approving stipulation on record in AP 21-3082 (.1).	1.00	$400	$400.00
7/13/2022	ZZA	Prepare draft order approving stipulation regarding record in AP 21-3082 and correspond with J. Morris regarding same (.4).	0.40	$400	$160.00
7/14/2022	ZZA	Review correspondence from J. Morris regarding revised form of stipulation and order in AP 21-3082 (.1); review correspondence from M. Aigen approving form of stipulation in AP 21-3082 (.1); exchange correspondence with J. Morris regarding finalization and filing of stipulation (.1); finalize and file stipulation regarding record in AP 21-3082 (.2); correspond with A. Duarte providing instructions for service of stipulation (.1); finalize and file proposed order approving stipulation and correspond with T. Ellison advising of same (.2); correspond with J. Morris regarding filing of stipulation and providing file-stamped	1.00	$400	$400.00

		copy of same (.1); review court's order continuing trial docket call in AP 21-3082 (.1).			
7/15/2022	ZZA	Correspond with A. Duarte providing instructions for service of order continuing trial docket call in AP 21-3082 (.1).	0.10	$400	$40.00
7/18/2022	ZZA	Review court's order approving stipulation regarding msj record in AP 21-3082 (.1); correspond with A. Duarte providing instructions for service of order (.1).	0.20	$400	$80.00
7/20/2022	ZZA	Exchange multiple correspondence with J. Morris and H. Winograd regarding issues related to forthcoming reply brief in support of msj in AP 21-3082 (.4); review and revise reply brief in support of msj in AP 21-3082 and correspond with H. Winograd regarding proposed revisions (.9); finalize and file reply brief and appendix in support of msj in AP 21-3082 (.3); exchange multiple correspondence with A. Duarte providing instructions for service of reply and appendix (.2); correspond with H. Winograd advising of filing of reply and appendix in AP 21-3082 and providing copies of same (.1).	1.90	$400	$760.00
7/26/2022	ZZA	Exchange multiple correspondence with J. Morris regarding tomorrow's hearing on msj in AP 21-3082 (.2).	0.20	$400	$80.00
7/27/2022	ZZA	Attend hearing on HCM's motion for summary judgment in AP 21-3082 (2.0); review correspondence from J. Morris regarding HCM powerpoint presentation used at hearing on msj in AP 21-3082 (.1); review correspondence from M. Aigen regarding HCMFA's powerpoint presentation used at hearing on msj in AP 21-3082 and review powerpoint slides (.3).	2.40	$400	$960.00
9/8/2022	ZZA	Review court's order continuing trial docket call in AP 21-3082 (.1).	0.10	$400	$40.00
9/9/2022	ZZA	Calendar new trial docket call date in AP 21-3082 and correspond with PSZJ team regarding same (.1).	0.10	$400	$40.00
10/12/2022	ZZA	Review court's report and recommendation regarding HCM's request for summary judgment in AP 21-3082 (1.0).	1.00	$400	$400.00
Subtotal			**33.20**		**$13,268.50**
11/9/2021		Adversary Filing Fee			$350.00
TOTAL			**33.20**		**$13,618.50**

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Counsel for Highland Capital Management, L.P.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
Plaintiff,	§	
vs.	§	Adv. Proc. No. 21-03082-sgj
HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, L.P.,	§	Case No. 3:21-cv-00881-X
Defendants.	§	

DECLARATION OF DAVID KLOS IN SUPPORT OF HIGHLAND CAPITAL MANAGEMENT L.P.'S PROPOSED FORM OF JUDGMENT

I, David Klos, pursuant to 28 U.S.C. § 1746, under penalty of perjury, declare as follows:

1. I am the Chief Financial Officer ("CFO") of the reorganized Highland Capital Management, L.P. ("Highland"), and I submit this Declaration in support of *Highland Capital Management, L.P.'s Proposed Form of Judgment* (the "Proposed Judgment"). I have personal knowledge of the work and arithmetic calculations described below.

2. I joined Highland in 2009 and served as Controller from 2017 to 2020 and Chief Accounting Officer from 2020 to February 2021. At all relevant times, I reported to Frank Waterhouse until he left the company in February 2021. I was appointed CFO in March 2021 following confirmation of Highland's Plan.[1]

3. I understand that on October 12, 2022, the Bankruptcy Court rendered a *Report and Recommendation to District Court Regarding Highland Capital Management, L.P.'s Motion for Summary Judgment Against Highland Capital Management Fund Advisors, L.P.* [Docket No. 73] (the "R&R"), and that in the R&R, the Court directed Highland to "submit a form of Judgment that calculates proper amounts due pursuant to th[e] Report and Recommendation, including interest accrued to date (and continuing to accrue per diem), as well as costs and attorneys' fees incurred." R&R at 50.

4. As set forth below, and in accordance with the Court's directive in the R&R, I and others working at my direction have calculated the proper amounts due under each of the Pre-2019 Notes, including (a) unpaid principal and interest due as of October 31, 2022 and (b) the applicable per diem rate of interest at different points in time.

A. SUMMARY OF PRINCIPAL AND INTERST DUE AS OF OCTOBER 31, 2022

[1] Capitalized terms not defined herein shall have the meanings ascribed in *Highland Capital Management, L.P.'s Memorandum of Law in Support of Motion for Summary Judgment* [Docket No. 46].

5. Attached as **Exhibit A** is a summary of the amount of principal and unpaid interest due and owing to Highland as of October 31, 2022, on each Note.

6. **Exhibit A** sets forth (a) an informal name identifier for each Note; (b) the original date of each Note (which is the same day that HCMFA borrowed the principal amount of each Note from Highland); (c) the amount of principal and unpaid interest due and owing as of May 27, 2022 (the date of the calculations used for the Motion), under each Note; (d) the amount of principal and unpaid interest due and owing as of October 31, 2022, under each Note; (e) the amount of interest accruing per day as of October 31, 2022, under each Note (*i.e.*, the "per diem" interest); (f) the future date upon which the per diem interest will change (see further discussion below); and (g) the amount of interest accruing on each Note per day upon the next date that interest is capitalized into principal.

7. As shown on **Exhibit A**, the aggregate principal and interest due and owing as of October 31, 2022 is **$3,181,719.94**, with per diem interest of **$186.95** as of the same date.

B. METHODOLOGY FOR CALCULATING PRINCIPAL AND INTEREST DUE

8. In the ordinary course of business, accounting personnel at Highland working under my direction maintain a schedule of promissory notes issued in exchange for loans made by Highland, including the Notes at issue in these cases (the "Note Schedule"). The Note Schedule is updated monthly to calculate interest due under outstanding promissory notes (again, including each of the Notes at issue) and reconciled to Highland's general ledger.

9. Using the Note Schedule as applicable to each Note, interest was calculated through October 31, 2022, based on actual days elapsed at the applicable interest rate for each note, based on a 365-day year.

10. To calculate a per diem interest amount for each of the Notes, the outstanding principal balance of each Note as of October 31, 2022, was multiplied by the stated interest rate for that Note and then divided by 365 to determine a per diem amount.

11. Additionally, and in accordance with the terms of each Note, accrued and unpaid interest is capitalized on the anniversary of the original date of the applicable Note (for example, for a Note dated February 26, 2014, unpaid and outstanding interest is added to the outstanding principal balance on February 26 of each year, and outstanding interest is reduced to zero). On these anniversary dates, the per diem amount increases because the outstanding principal amount has increased (in other words, interest is compounding annually).

12. Accordingly, in addition to providing the per diem amount for each of the Notes as of October 31, 2022, an additional calculation has been included to denote (a) the next date after October 31, 2022, that interest will be capitalized and (b) the new per diem amount from that date until the next anniversary of the original date of the Note.[2] The calculation of the new per diem amount is identical to the calculation of the current per diem amount, except that rather than using the outstanding principal balance as of October 31, 2022, it uses the outstanding principal balance as of the next date that outstanding interest is scheduled to be capitalized into the principal balance.

C. CALCULATION OF PRINCIPAL AND INTEREST DUE UNDER EACH NOTE AS OF OCTOBER 31, 2022, AND THE APPLICABLE PER DIEM RATES THEREAFTER

13. Following the methodology described above, attached as **Exhibit B** is a spreadsheet showing that HCMFA will owe Highland **$2,169,270.76** in accrued but unpaid

[2] These calculations assume that HCMFA will not make any future payments under the Pre-2019 Notes until any judgment that may be entered is satisfied.

principal and interest due under the 2014 Note (issued on February 26, 2014) as of October 31, 2022, after application of all payments to outstanding principal and interest. As of October 31, 2022, interest will continue to accrue on the 2014 Note at the rate of **$115.54** per day and will increase to **$117.82** per day on **February 26, 2023**.

14. Following the methodology described above, attached as **Exhibit C** is a spreadsheet showing that HCMFA will owe Highland **$1,012,449.18** in accrued but unpaid principal and interest due under the 2016 Note (issued on February 26, 2016) as of October 31, 2022, after application of all payments to outstanding principal and interest. As of October 31, 2022, interest will continue to accrue on the 2016 Note at the rate of **$71.41** per day and will increase to **$73.28** per day on **February 26, 2023**.

15. I declare under penalty of perjury that the forgoing is true and correct.

Dated: November 2, 2022

/s/ David Klos
David Klos

EXHIBIT A

Summary

Principal and interest due on various notes as of specific dates, along with per diem amounts and the dates of changes in per diem

	Original Date of Note	As of May 27, 2022	As of October 31, 2022	Per Diem as of October 31, 2022	Next date of change in per diem (from capitalization of interest)	Per Diem for next year following date of change in per diem	
Highland Capital Management Fund Advisors, LP (HCMFA)							
2014 Note	2/26/2014	2,151,130.84	2,169,270.76	$ 115.54	2/26/2023	$ 117.82	
2016 Note	2/26/2016	1,001,238.06	1,012,449.18	$ 71.41	2/26/2023	$ 73.28	
2014 Note + 2016 Note *		$ 3,152,368.90	**$ 3,181,719.94**	**$ 186.95**	Current per diem	$ 191.10	Future per diem, post-PIK

**** Amounts described herein relate solely to principal and interest of the two notes described. Neither collection of costs of recovery and attorneys' fees nor other amounts owed from Highland Capital Management Fund Advisors, LP beyond these specific notes are included.***

EXHIBIT B

HCMFA 2014 NOTE

Closing Date		2/26/2014
Total Commitment	$	4,000,000
Rate		1.970%

Date	Interest Accrual	Interest Paid	Accrued Interest	Beg Prin Bal	Principal Paid	Ending Prin Bal	Total of Outstanding Principal and Interest (selected dates)	Total Paid	
2/26/2014						4,000,000.00			
2/28/2014	431.78		431.78	4,000,000.00		4,000,000.00			
3/31/2014	6,692.60		7,124.38	4,000,000.00		4,000,000.00			
4/30/2014	6,476.71		13,601.10	4,000,000.00		4,000,000.00			
5/31/2014	6,692.60		20,293.70	4,000,000.00		4,000,000.00			
6/30/2014	6,476.71		26,770.41	4,000,000.00		4,000,000.00			
7/31/2014	6,692.60		33,463.01	4,000,000.00		4,000,000.00			
8/31/2014	6,692.60		40,155.62	4,000,000.00		4,000,000.00			
9/30/2014	6,476.71		46,632.33	4,000,000.00		4,000,000.00			
10/31/2014	6,692.60		53,324.93	4,000,000.00		4,000,000.00			
11/30/2014	6,476.71		59,801.64	4,000,000.00		4,000,000.00			
12/31/2014	6,692.60		66,494.25	4,000,000.00		4,000,000.00			
1/31/2015	6,692.60		73,186.85	4,000,000.00		4,000,000.00			
2/26/2015	5,613.15	(78,800.00)	-	4,000,000.00	78,800.00	4,078,800.00		-	**Annual Compound Interest*
2/28/2015	440.29		440.29	4,078,800.00		4,078,800.00			
3/31/2015	6,824.45		7,264.73	4,078,800.00		4,078,800.00			
4/30/2015	6,604.30		13,869.04	4,078,800.00		4,078,800.00			
5/31/2015	6,824.45		20,693.48	4,078,800.00		4,078,800.00			
6/30/2015	6,604.30		27,297.79	4,078,800.00		4,078,800.00			
7/31/2015	6,824.45		34,122.24	4,078,800.00		4,078,800.00			
8/31/2015	6,824.45		40,946.68	4,078,800.00		4,078,800.00			
9/30/2015	6,604.30		47,550.99	4,078,800.00		4,078,800.00			
10/31/2015	6,824.45		54,375.43	4,078,800.00		4,078,800.00			
11/30/2015	6,604.30		60,979.74	4,078,800.00		4,078,800.00			
12/31/2015	6,824.45		67,804.18	4,078,800.00		4,078,800.00			
1/31/2016	6,824.45		74,628.63	4,078,800.00		4,078,800.00			
2/26/2016	5,723.73	(80,352.36)	-	4,078,800.00	80,352.36	4,159,152.36		-	**Annual Compound Interest*
2/29/2016	673.44		673.44	4,159,152.36		4,159,152.36			
3/31/2016	6,958.89		7,632.33	4,159,152.36		4,159,152.36			
4/30/2016	6,734.41		14,366.74	4,159,152.36		4,159,152.36			
5/31/2016	6,958.89		21,325.63	4,159,152.36		4,159,152.36			
6/30/2016	6,734.41		28,060.03	4,159,152.36		4,159,152.36			
7/31/2016	6,958.89		35,018.92	4,159,152.36		4,159,152.36			
8/31/2016	6,958.89		41,977.81	4,159,152.36		4,159,152.36			
9/30/2016	6,734.41		48,712.22	4,159,152.36		4,159,152.36			
10/31/2016	6,958.89		55,671.11	4,159,152.36		4,159,152.36			
11/30/2016	6,734.41		62,405.52	4,159,152.36		4,159,152.36			
12/31/2016	6,958.89		69,364.41	4,159,152.36		4,159,152.36			
1/31/2017	6,958.89		76,323.29	4,159,152.36		4,159,152.36			
2/26/2017	5,836.49	(82,159.78)	0.00	4,159,152.36	82,159.78	4,241,312.14		-	**Annual Compound Interest*
2/28/2017	457.83		457.83	4,241,312.14		4,241,312.14			
3/31/2017	7,096.35		7,554.19	4,241,312.14		4,241,312.14			
4/30/2017	6,867.44		14,421.63	4,241,312.14		4,241,312.14			
5/31/2017	7,096.35		21,517.98	4,241,312.14		4,241,312.14			
6/30/2017	6,867.44		28,385.42	4,241,312.14		4,241,312.14			
7/31/2017	7,096.35		35,481.77	4,241,312.14		4,241,312.14			
8/31/2017	7,096.35		42,578.13	4,241,312.14		4,241,312.14			
9/30/2017	6,867.44		49,445.57	4,241,312.14		4,241,312.14			
10/31/2017	7,096.35		56,541.92	4,241,312.14		4,241,312.14			
11/30/2017	6,867.44		63,409.36	4,241,312.14		4,241,312.14			
12/31/2017	7,096.35		70,505.72	4,241,312.14		4,241,312.14			
1/31/2018	7,096.35		77,602.07	4,241,312.14		4,241,312.14			
2/26/2018	5,951.78		83,553.85	4,241,312.14		4,241,312.14			
2/28/2018	457.83	(84,011.68)	0.00	4,241,312.14	84,011.68	4,325,323.82		-	**Annual Compound Interest*
3/31/2018	7,236.92		7,236.92	4,325,323.82		4,325,323.82			
4/30/2018	7,003.47		14,240.39	4,325,323.82		4,325,323.82			
5/31/2018	7,236.92		21,477.31	4,325,323.82		4,325,323.82			
6/30/2018	7,003.47		28,480.78	4,325,323.82		4,325,323.82			
7/31/2018	7,236.92		35,717.69	4,325,323.82		4,325,323.82			
8/31/2018	7,236.92		42,954.61	4,325,323.82		4,325,323.82			
9/30/2018	7,003.47		49,958.08	4,325,323.82		4,325,323.82			
10/31/2018	7,236.92		57,195.00	4,325,323.82		4,325,323.82			
11/30/2018	7,003.47		64,198.47	4,325,323.82		4,325,323.82			
12/31/2018	7,236.92		71,435.39	4,325,323.82		4,325,323.82			
1/31/2019	7,236.92		78,672.31	4,325,323.82		4,325,323.82			
2/26/2019	6,069.67	(84,741.98)	0.00	4,325,323.82	84,741.98	4,410,065.80		-	**Annual Compound Interest*
2/28/2019	476.05		476.05	4,410,065.80		4,410,065.80			
3/31/2019	7,378.70		7,854.75	4,410,065.80		4,410,065.80			
4/30/2019	7,140.68		14,995.43	4,410,065.80		4,410,065.80			
5/29/2019	6,902.66	(21,898.09)	0.00	4,410,065.80	(978,101.91)	3,431,963.89		(1,000,000.00)	*Principal and interest*
5/31/2019	370.46		370.47	3,431,963.89		3,431,963.89			
6/4/2019	740.93		1,111.39	3,431,963.89	(500,000.00)	2,931,963.89		(500,000.00)	*Principal*
6/30/2019	4,114.39		5,225.78	2,931,963.89		2,931,963.89			
7/31/2019	4,905.62		10,131.40	2,931,963.89		2,931,963.89			
8/31/2019	4,905.62		15,037.02	2,931,963.89		2,931,963.89			
9/5/2019	791.23	(15,828.25)	(0.00)	2,931,963.89	(484,171.75)	2,447,792.14		(500,000.00)	*Principal and interest*
9/30/2019	3,302.84		3,302.84	2,447,792.14		2,447,792.14			

HCMFA 2014 NOTE

Closing Date		2/26/2014
Total Commitment	$	4,000,000
Rate		1.970%

Date	Interest Accrual	Interest Paid	Accrued Interest	Beg Prin Bal	Principal Paid	Ending Prin Bal	Total of Outstanding Principal and Interest (selected dates)	Total Paid	
10/3/2019	396.34		3,699.18	2,447,792.14	(375,000.00)	2,072,792.14		(375,000.00)	*Principal*
10/15/2019	1,342.49		5,041.67	2,072,792.14		2,072,792.14			
10/31/2019	1,789.98		6,831.65	2,072,792.14		2,072,792.14			
11/30/2019	3,356.22		10,187.87	2,072,792.14		2,072,792.14			
12/31/2019	3,468.09		13,655.97	2,072,792.14		2,072,792.14			
1/31/2020	3,468.09		17,124.06	2,072,792.14		2,072,792.14			
2/26/2020	2,908.72	(20,032.78)	0.00	2,072,792.14	20,032.78	2,092,824.92		-	**Annual Compound Interest*
2/29/2020	338.87		338.87	2,092,824.92		2,092,824.92			
3/31/2020	3,501.61		3,840.48	2,092,824.92		2,092,824.92			
4/30/2020	3,388.66		7,229.14	2,092,824.92		2,092,824.92			
5/31/2020	3,501.61		10,730.75	2,092,824.92		2,092,824.92			
6/30/2020	3,388.66		14,119.40	2,092,824.92		2,092,824.92			
7/31/2020	3,501.61		17,621.02	2,092,824.92		2,092,824.92			
8/31/2020	3,501.61		21,122.63	2,092,824.92		2,092,824.92			
9/30/2020	3,388.66		24,511.28	2,092,824.92		2,092,824.92			
10/31/2020	3,501.61		28,012.89	2,092,824.92		2,092,824.92			
11/30/2020	3,388.66		31,401.55	2,092,824.92		2,092,824.92			
12/31/2020	3,501.61		34,903.16	2,092,824.92		2,092,824.92			
1/31/2021	3,501.61		38,404.77	2,092,824.92		2,092,824.92			
2/26/2021	2,936.84	(41,341.61)	-	2,092,824.92	41,341.61	2,134,166.53		-	**Annual Compound Interest*
2/28/2021	230.37		230.37	2,134,166.53		2,134,166.53			
3/31/2021	3,570.78		3,801.16	2,134,166.53		2,134,166.53			
4/30/2021	3,455.60		7,256.75	2,134,166.53		2,134,166.53			
5/31/2021	3,570.78		10,827.53	2,134,166.53		2,134,166.53			
6/30/2021	3,455.60		14,283.13	2,134,166.53		2,134,166.53			
7/31/2021	3,570.78		17,853.91	2,134,166.53		2,134,166.53			
8/31/2021	3,570.78		21,424.69	2,134,166.53		2,134,166.53			
9/30/2021	3,455.60		24,880.29	2,134,166.53		2,134,166.53			
10/31/2021	3,570.78		28,451.07	2,134,166.53		2,134,166.53			
11/30/2021	3,455.60		31,906.67	2,134,166.53		2,134,166.53			
12/31/2021	3,570.78	(35,477.45)	-	2,134,166.53		2,134,166.53		(35,477.45)	*Interest*
1/31/2022	3,570.78		3,570.78	2,134,166.53		2,134,166.53			
2/26/2022	2,994.85	(6,565.63)	-	2,134,166.53	6,565.63	2,140,732.16		-	**Annual Compound Interest*
2/28/2022	231.08		231.08	2,140,732.16		2,140,732.16			
3/31/2022	3,581.77		3,812.85	2,140,732.16		2,140,732.16			
4/30/2022	3,466.23		7,279.08	2,140,732.16		2,140,732.16			
5/27/2022	3,119.60		10,398.68	2,140,732.16		2,140,732.16	**2,151,130.84**		
6/30/2022	3,928.39		14,327.07	2,140,732.16		2,140,732.16			
7/31/2022	3,581.77		17,908.84	2,140,732.16		2,140,732.16			
8/31/2022	3,581.77		21,490.60	2,140,732.16		2,140,732.16			
9/30/2022	3,466.23		24,956.83	2,140,732.16		2,140,732.16			
10/31/2022	3,581.77		28,538.60	2,140,732.16		2,140,732.16	**2,169,270.76**		
11/30/2022	3,466.23		32,004.83	2,140,732.16		2,140,732.16			
12/31/2022	3,581.77		35,586.59	2,140,732.16		2,140,732.16			
1/31/2023	3,581.77		39,168.36	2,140,732.16		2,140,732.16			
2/26/2023	3,004.06	(42,172.42)	-	2,140,732.16	42,172.42	2,182,904.58		-	**Annual Compound Interest*

EXHIBIT C

HCMFA 2016 NOTE

Closing Date	2/26/2016
Total Commitment	$ 2,300,000
Rate	2.620%

Date	Interest Accrual	Interest Paid	Accrued Interest	Beg Prin Bal	Principal Paid	Ending Prin Bal	Total of Outstanding Principal and Interest (selected dates)	Total Paid	
2/26/2016						2,300,000.00			
2/29/2016	495.29		495.29	2,300,000.00		2,300,000.00			
3/31/2016	5,117.97		5,613.26	2,300,000.00		2,300,000.00			
4/30/2016	4,952.88		10,566.14	2,300,000.00		2,300,000.00			
5/31/2016	5,117.97		15,684.11	2,300,000.00		2,300,000.00			
6/30/2016	4,952.88		20,636.99	2,300,000.00		2,300,000.00			
7/31/2016	5,117.97		25,754.96	2,300,000.00		2,300,000.00			
8/31/2016	5,117.97		30,872.93	2,300,000.00		2,300,000.00			
9/1/2016	165.10	(31,038.03)	-	2,300,000.00	(434,394.68)	1,865,605.32		(465,432.71)	*Principal and interest*
9/30/2016	3,883.53		3,883.53	1,865,605.32		1,865,605.32			
10/31/2016	4,151.36		8,034.88	1,865,605.32		1,865,605.32			
11/30/2016	4,017.44		12,052.32	1,865,605.32		1,865,605.32			
12/31/2016	4,151.36		16,203.68	1,865,605.32		1,865,605.32			
1/31/2017	4,151.36		20,355.03	1,865,605.32		1,865,605.32			
2/26/2017	3,481.78	(23,836.81)	0.00	1,865,605.32	23,836.81	1,889,442.13		-	**Annual Compound Interest*
2/28/2017	271.25		271.26	1,889,442.13		1,889,442.13			
3/31/2017	4,204.40		4,475.65	1,889,442.13		1,889,442.13			
4/12/2017	1,627.51	(29,862.97)	(23,759.81)	1,889,442.13	(970,137.03)	919,305.10		(1,000,000.00)	*Principal and interest*
4/30/2017	1,187.79		(22,572.02)	919,305.10		919,305.10			
5/31/2017	2,045.64		(20,526.38)	919,305.10		919,305.10			
6/30/2017	1,979.65		(18,546.72)	919,305.10		919,305.10			
7/31/2017	2,045.64		(16,501.08)	919,305.10		919,305.10			
8/31/2017	2,045.64		(14,455.44)	919,305.10		919,305.10			
9/30/2017	1,979.65		(12,475.78)	919,305.10		919,305.10			
10/31/2017	2,045.64		(10,430.14)	919,305.10		919,305.10			
11/30/2017	1,979.65		(8,450.49)	919,305.10		919,305.10			
12/31/2017	2,045.64		(6,404.84)	919,305.10		919,305.10			
1/31/2018	2,045.64		(4,359.20)	919,305.10		919,305.10			
2/26/2018	1,715.70		(2,643.50)	919,305.10		919,305.10			
2/28/2018	131.98		(2,511.52)	919,305.10		919,305.10			
3/31/2018	2,045.64		(465.88)	919,305.10		919,305.10			
4/30/2018	1,979.65		1,513.77	919,305.10		919,305.10			
5/31/2018	2,045.64		3,559.42	919,305.10		919,305.10			
6/30/2018	1,979.65		5,539.07	919,305.10		919,305.10			
7/31/2018	2,045.64		7,584.71	919,305.10		919,305.10			
8/31/2018	2,045.64		9,630.35	919,305.10		919,305.10			
9/30/2018	1,979.65		11,610.01	919,305.10		919,305.10			
10/31/2018	2,045.64		13,655.65	919,305.10		919,305.10			
11/30/2018	1,979.65		15,635.31	919,305.10		919,305.10			
12/31/2018	2,045.64		17,680.95	919,305.10		919,305.10			
1/31/2019	2,045.64		19,726.59	919,305.10		919,305.10			
2/26/2019	1,715.70	(21,442.29)	0.00	919,305.10	21,442.29	940,747.39		-	**Annual Compound Interest*
2/28/2019	135.06		135.06	940,747.39		940,747.39			
3/31/2019	2,093.36		2,228.41	940,747.39		940,747.39			
4/30/2019	2,025.83		4,254.24	940,747.39		940,747.39			
5/31/2019	2,093.36		6,347.60	940,747.39		940,747.39			
6/30/2019	2,025.83		8,373.43	940,747.39		940,747.39			
7/31/2019	2,093.36		10,466.78	940,747.39		940,747.39			
8/31/2019	2,093.36		12,560.14	940,747.39		940,747.39			
9/30/2019	2,025.83		14,585.97	940,747.39		940,747.39			
10/15/2019	1,012.91		15,598.88	940,747.39		940,747.39			
10/31/2019	1,080.44		16,679.32	940,747.39		940,747.39			
11/30/2019	2,025.83		18,705.15	940,747.39		940,747.39			
12/31/2019	2,093.36		20,798.51	940,747.39		940,747.39			
1/31/2020	2,093.36		22,891.87	940,747.39		940,747.39			
2/26/2020	1,755.72	(24,647.58)	0.00	940,747.39	24,647.58	965,394.97		-	**Annual Compound Interest*
2/29/2020	207.89		207.89	965,394.97		965,394.97			
3/31/2020	2,148.20		2,356.10	965,394.97		965,394.97			
4/30/2020	2,078.91		4,435.00	965,394.97		965,394.97			
5/31/2020	2,148.20		6,583.20	965,394.97		965,394.97			
6/30/2020	2,078.91		8,662.11	965,394.97		965,394.97			
7/31/2020	2,148.20		10,810.31	965,394.97		965,394.97			
8/31/2020	2,148.20		12,958.51	965,394.97		965,394.97			
9/30/2020	2,078.91		15,037.42	965,394.97		965,394.97			
10/31/2020	2,148.20		17,185.62	965,394.97		965,394.97			
11/30/2020	2,078.91		19,264.53	965,394.97		965,394.97			
12/31/2020	2,148.20		21,412.73	965,394.97		965,394.97			
1/31/2021	2,148.20		23,560.93	965,394.97		965,394.97			
2/26/2021	1,801.72	(25,362.65)	-	965,394.97	25,362.65	990,757.62		-	**Annual Compound Interest*
2/28/2021	142.23		142.23	990,757.62		990,757.62			
3/31/2021	2,204.64		2,346.87	990,757.62		990,757.62			
4/30/2021	2,133.52		4,480.40	990,757.62		990,757.62			
5/31/2021	2,204.64		6,685.04	990,757.62		990,757.62			
6/30/2021	2,133.52		8,818.56	990,757.62		990,757.62			
7/31/2021	2,204.64		11,023.20	990,757.62		990,757.62			
8/31/2021	2,204.64		13,227.84	990,757.62		990,757.62			
9/30/2021	2,133.52		15,361.36	990,757.62		990,757.62			

HCMFA 2016 NOTE

Closing Date	2/26/2016
Total Commitment	$ 2,300,000
Rate	2.620%

Date	Interest Accrual	Interest Paid	Accrued Interest	Beg Prin Bal	Principal Paid	Ending Prin Bal	Total of Outstanding Principal and Interest (selected dates)	Total Paid	
10/31/2021	2,204.64		17,566.00	990,757.62		990,757.62			
11/30/2021	2,133.52		19,699.52	990,757.62		990,757.62			
12/31/2021	2,204.64	(21,904.16)	-	990,757.62		990,757.62		(21,904.16)	*Interest*
1/31/2022	2,204.64		2,204.64	990,757.62		990,757.62			
2/26/2022	1,849.05	(4,053.69)	-	990,757.62	4,053.69	994,811.31		-	**Annual Compound Interest*
2/28/2022	142.82		142.82	994,811.31		994,811.31			
3/31/2022	2,213.66		2,356.48	994,811.31		994,811.31			
4/30/2022	2,142.25		4,498.73	994,811.31		994,811.31			
5/27/2022	1,928.03		6,426.75	994,811.31		994,811.31	**1,001,238.06**		
6/30/2022	2,427.88		8,854.64	994,811.31		994,811.31			
7/31/2022	2,213.66		11,068.30	994,811.31		994,811.31			
8/31/2022	2,213.66		13,281.96	994,811.31		994,811.31			
9/30/2022	2,142.25		15,424.21	994,811.31		994,811.31			
10/31/2022	2,213.66		17,637.87	994,811.31		994,811.31	**1,012,449.18**		
11/30/2022	2,142.25		19,780.12	994,811.31		994,811.31			
12/31/2022	2,213.66		21,993.78	994,811.31		994,811.31			
1/31/2023	2,213.66		24,207.44	994,811.31		994,811.31			
2/26/2023	1,856.62	(26,064.06)	-	994,811.31	26,064.06	1,020,875.36		-	**Annual Compound Interest*

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Attorneys for Highland Capital Management Fund Advisors, L.P.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	**Case No. 19-34054**
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.	§	**Chapter 11**
	§	
Debtor.	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	
Plaintiff,	§	
	§	**Adv. Proc. No. 21-03082-sgj**
vs.	§	
	§	
HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, L.P.,	§	
	§	
Defendant.	§	
	§	

DEFENDANT'S OBJECTIONS TO PLAINTIFF'S PROPOSED FORM OF JUDGMENT AWARDING ATTORNEYS' FEES AND COSTS

Plaintiff Highland Capital Management, L.P. ("Plaintiff") requests an excessive award of attorneys' fees and costs in its Notice of Attorneys' Fees Calculation and Backup Documentation (the "PSZJ Notice"), totaling $381,676.25.[1] Specifically, 96% of Plaintiff's fees ($368,057.75) was billed by counsel at Pachulski, Stang, Ziehl & Jones ("PSZJ").

[1] Case No. 21-03082-sgj, *Notice of Attorneys' Fees Calculation and Backup Documentation*, Dkt. 79.

Defendant Highland Capital Management Fund Advisors, L.P. ("HCMFA" or "Defendant"), objects to Plaintiff's proposed fee award. The Court should reject the proposed award and reduce any award by the amount of any fees (1) incurred in other cases, (2) for which Plaintiff fails to clearly indicate were incurred in this case, (3) that are excessive for the work performed, (4) for which PSZJ exercised no billing judgment, and (5) that exceed customary rates in Dallas, Texas.

I. STATEMENT OF FACTS

The HCMFA Notes permit their holders to only collect from the Maker "actual expenses of collection, all court costs and ***reasonable*** attorneys' fees and expenses incurred by the holder hereof [,]" as stated in the Court's Report and Recommendation (the "R&R"). R&R at 14 (emphasis added). The R&R proposes awarding judgment to Plaintiff on all the Notes, including "reasonable attorneys' fees" and costs. In a separate consolidated case involving the parties to this case (referred to herein as the "Separate Notes Case"), the Court recommended overruling the Defendants' objections to Plaintiff's proposed award of attorneys' fees[2] based on Plaintiff's documentation of such fees.[3]

II. ARGUMENTS AND OBJECTIONS

Courts generally determine reasonableness of an award of attorneys' fees based on the two-step lodestar method:

> Courts must apply a two-step method for determining a reasonable fee award. First, they calculate the lodestar, which is equal to the numbers of hours reasonably expended multiplied by the prevailing hourly rate in the community for similar work. In calculating the lodestar, the court should ***exclude all time that is excessive, duplicative, or inadequately documented***. Second, the court should consider whether to decrease or enhance the lodestar based on the *Johnson* factors. The court must provide a reasonably specific explanation for all aspects of a fee determination.
>
> The *Johnson* factors are: (1) the time and labor required; (2) the novelty and difficulty of the issues in the case; (3) the skill requisite to perform the legal services properly; (4) the preclusion of other employment by the attorney due to acceptance of the case; (5) the customary fee charged for those services in the relevant community; (6) whether the fee is fixed or contingent; (7) time limitations imposed by the client or the circumstances; (8) the amount involved and the results obtained; (9) the experience, reputation, and ability of the

[2] See, e.g., Case No. 21-03003-sgj, *Supplement to Report and Recommendation Dated July 19, 2022, Transmitting Proposed Forms of Judgment*, Dkt. 217.
[3] See, e.g., Case No. 21-03005-sgj, *Notice of Attorneys' Fees Calculation and Backup Documentation*, Dkt. 214.

> attorneys; (10) the undesirability of the case; (11) the nature and length of the professional relationship with the client; and (12) awards in similar cases.

Combs v. City of Huntington, Texas, 829 F.3d 388, 391 n.1 (5th Cir. 2016) (citations and internal marks omitted) (emphasis added); *see also In re Texans CUSO Inc. Grp., LLC*, 426 B.R. 194, 222–23 (Bankr. N.D. Tex. 2010) (citing *Arthur Andersen & Co. v. Perry Equipment Corp.*, 945 S.W.2d 812, 818 (Tex. 1997)).

A. The Court Cannot Award Entries That Fail to Clearly Indicate They Were Incurred in This Case.

"When a plaintiff seeks to charge a defendant with its attorneys' fees, the plaintiff must prove that the fees were incurred while suing the defendant sought to be charged with the fees on a claim which allows recovery of such fees." *In re Mud King Products, Inc.*, 525 B.R. 43, 55 (Bankr. S.D. Tex. 2015) (internal marks omitted) (quoting *Stewart Title Guar. Co. v. Sterling*, 822 S.W.2d 1 (Tex. 1991)). Here, Plaintiff has not clearly shown that it incurred certain claimed fees while litigating against Defendant in this case. As an example, most of the fees on pages 87 to 89 of Plaintiff's documentation do not identify the defendant in the case for which the time was entered.

7/25/2022	JAM	BL	Work on oral argument, including multiple revisions to deck (0.7).	0.70	$1,395.00	$976.50
	JAM	BL	Prepare for oral argument (1.6); e-mails w/ L. Canty, H. Winograd re: oral argument, deck (0.2); continued prep for oral argument (2.1); tel c. w/ L. Canty re: exhibits, slide deck (0.2); oral argument on motion for summary judgment (1.6); e-mail to T. Ellison, H. Winograd, M. Aigen re: slide deck (0.1); tel c. w/ J. Pomerantz re: hearing (0.2); tel c. w/ J. Seery re:			
7/27/2022			hearing (0.3).	6.30	$1,395.00	$8,788.50
			FEES TOTAL			**$131,724.00**
PENSES			Reproduction/ Scan Copy			**$19.90**
			TOTAL FEES AND EXPENSES			**$131,743.90**

Only 14 of the approximately 100 entries on pages 87 to 89 identify HCMFA as a party, and none of the 14 entries specify that the time was entered for this HCMFA case rather than the Separate Notes Case (in which HCMFA is a party defendant), while other entries in the PSZJ Notice do indicate that they pertain to this particular case involving HCMFA rather than the Separate Notes Case.[4] The Court should not award entries that fail to clearly indicate they were incurred in this case.

[4] *See, e.g.*, Case No. 21-03082-sgj, *Notice of Attorneys' Fees Calculation and Backup Documentation*, Dkt. 79, at 12, 19, 24, 40, 46, 64, 73.

B. The Court Cannot Award Excessive Fees for Drafting a Motion for Summary Judgment that was Substantively Identical to One From a Companion Adversary Proceeding.

Plaintiff spent $104,817.00 in May of 2022 for drafting a motion for summary judgment.[5] Then, Plaintiff spent $90,894.50 in July of 2022 for drafting a 15-page reply in support of that summary judgment motion.[6] Notably, Plaintiff's motion for summary judgment in this case (the "HCMFA MSJ") is ***substantially similar*** in both substance and form to Plaintiff's motion for summary judgment in the companion adversary proceedings (the "Notes MSJ", and together the "MSJs"). Specifically, the HCMFA MSJ arguments almost identically mirror those of the Notes MSJ arguments and utilize the same appendix.[7] Because both MSJs utilized the same framework and almost identical legal arguments, Plaintiff's attorneys should not benefit from duplicative billing when the HCMFA MSJ was effectually a "copy-and-paste" version of the Notes MSJ, save two insignificant additional arguments. Plaintiff's attorneys' fees are clearly excessive and should be reduced in any award given to Plaintiff.

C. Plaintiff's Attorneys Exercised No Billing Judgment, and Therefore the Court Must Reduce the Award.

"Billing judgment refers to the usual practice of law firms in writing off unproductive, excessive, or redundant hours." *Mauricio v. Phillip Galyen, P.C.*, 174 F. Supp. 3d 944, 950 (N.D. Tex. 2016) (citing *Walker v. U.S. Dept. of Hous. & Urban Dev.*, 99 F.3d 761, 770 (5th Cir.1996)). "Ideally, billing judgment is reflected in the fee application, showing not only hours claimed, but hours written off." *Id.* (citation omitted). "The proper remedy when there is no evidence of billing judgment is to reduce the hours awarded by a percentage intended to substitute for the exercise of billing judgment." *Id.* (internal marks and citation omitted). Where no billing judgment is exercised, a reduction in the range of 10% to 20% is appropriate.

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[5] Case No. 21-03082-sgj, *Notice of Attorneys' Fees Calculation and Backup Documentation*, Dkt. 79, at 64–67.
[6] Case No. 21-03082-sgj, *Notice of Attorneys' Fees Calculation and Backup Documentation*, Dkt. 79, at 87–89.
[7] Compare [*Plaintiff's*] *Memorand[a] of Law in Support of Motion for Partial Summary Judgment*, Case 21-03003-sgj [Dkt. 134], Case 21-03004-sgj [Dkt. 93], Case 21-03005-sgj [Dkt. 133], Case 21-03006-sgj [Dkt. 131], Case 21-03007-sgj [Dkt. 126], with [*Plaintiff's*] *Memorandum of Law in Support of Motion for Summary Judgment*, Case 21-03082-sgj [Dkt. 56] (making the same arguments for why the Court should not believe the Agreements defense and why Nancy Dondero did not have the capacity to enter into the Agreements).

Id. Here, Plaintiff exercised no billing judgment, therefore the Court should reduce the aggregate claimed amount in any award by 10% to 20%.

D. Plaintiff's Attorneys Charged Rates Far in Excess of the Customary Rates in the Northern District of Texas.

The "relevant market for purposes of determining the prevailing rate to be paid in a fee award is the community in which the district court sits." *Tollett v. City of Kemah*, 285 F.3d 357, 369 (5th Cir. 2002) (citations and internal marks omitted). Here, the relevant market is Dallas, Texas. "Generally, the reasonable hourly rate for a particular community is established through affidavits of other attorneys practicing there." *Tollett v. City of Kemah*, 285 F.3d 357, 368–69 (5th Cir. 2002) (citation omitted). Here, Plaintiff offered no such affidavits.

Plaintiff's local counsel, Hayward PLLC, with its office in Dallas, Texas, charged $400.00 to $450.00 per hour. PSZJ, on the other hand, with its office in Los Angeles, California, and with its billing attorneys being licensed in California and New York, charged rates from $460 to **$1,445** per hour.

For example, the Fifth Circuit conducted a fee analysis where it did "not perceive [the case] to have been extraordinarily difficult[,]" and determined the type of matter "has been the subject of legal discourse for many years[.]" *Hopwood v. State of Texas*, 236 F.3d 256, 281 (5th Cir. 2000). There, the Fifth Circuit held that the trial court's decision to cut the billing attorney's Washington D.C. rate in half to conform to Dallas rates was not an abuse of discretion. *Id.* Here, this breach of contract case is based on several Notes. This Court should follow the Fifth Circuit's example in *Hopwood* and reduce PSZJ's Los Angeles and New York rates by half to conform with Dallas rates.

There is no exception supporting an award using out-of-district rates here. "Courts have found the use of out-of-district prevailing rates proper where a case is transferred for the convenience of the parties and witnesses," and the party wishes to retain previously retained counsel from the initial district. *Midkiff v. Prudential Ins. Co. of Am.*, 571 F. Supp. 3d 660, 667 (W.D. Tex. 2021) (citations omitted). Here, the bankruptcy was originally filed in Delaware and transferred to the Northern District of Texas. Plaintiff's attorneys of PSZJ appear to be located in Los Angeles and New York. They also have not pled that their

out-of-district rates should apply. Plaintiff shows no reason to award fees at Los Angeles or New York rates.

Regarding similar issues in the Separate Notes Case, the Court ruled that "[t]his court has already approved PSZJ's rates as reasonable under § 330 and under the applicable standard originally announced by the Fifth Circuit in *Johnson*," citing PSZJ's application for its fees in that case.[8] In PSZJ's application for fees in that case (that the Court relied on), regarding the "customary fee" *Johnson* factor, PSZJ stated that "[t]he hourly rates charged by each PSZ&J professional who performed services for the Debtor are PSZ&J's normal rates for services of this kind and are comparable to those being charged by other professionals with similar qualifications and experience."[9] Nowhere in the Court's order on the application, and nowhere in PSZJ's application, did either the Court or PSZJ make a representation as to or provide evidence of the prevailing rate in "the community in which the district court sits," Dallas, Texas, and therefore PSZJ's rates should be reduced in this case to meet Dallas rates. *See Tollett v. City of Kemah*, 285 F.3d 357, 369 (5th Cir. 2002).

This Court also held in the Separate Notes Case that the fee was reasonable because Mr. Dondero hired PSZJ when he controlled Plaintiff. This fact, assuming it is true, clearly would support Plaintiff paying PSZJ's fees because it would be evidence that Plaintiff has agreed to pay such fees. However, any such fee agreement Mr. Dondero entered into on behalf of Plaintiff to pay PSZJ's fees did not bind Defendant to pay PSZJ's fees. Plaintiff and Defendant are separate legal entities. Mr. Dondero's actions on behalf of each separate legal entity do not bind the other entity. The argument that Mr. Dondero's actions on behalf of Plaintiff should bind Defendant lacks authority, and is irrelevant under a *Johnson* analysis, and therefore should be disregarded.

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[8] Case No. 21-03003-sgj, *Supplement to Report and Recommendation Dated July 19, 2022, Transmitting Proposed Forms of Judgment*, Dkt. 217, at 16.

[9] Case No. 19-34054-sgj11, *Summary of Fifth and Final Application for Compensation and Reimbursement of Expenses of Pachulski, Stang, Ziehl & Jones LLP, as Counsel for the Debtor and Debtor in Possession, for the Period From October 16, 2019 through August 10, 2021*, Dkt. 2906, at 38.

Plaintiff recently filed an objection to Defendant's motion in the Separate Notes Case, where Plaintiff alleged that its rates are reasonable simply because the rates are similar to those of the law firm Sidley Austin.[10] Plaintiff still has provided the Court no "affidavits of other attorneys practicing [in Dallas]" that would show PSZJ's rates are customary in Dallas. *See Tollett v. City of Kemah*, 285 F.3d 357, 368–69 (5th Cir. 2002).

III. CONCLUSION

The Court should reject the proposed award and reduce any award by the amount of any fees (1) incurred in a different case than this one, (2) for which Plaintiff fails to clearly indicate were incurred in this case, (3) that are excessive for the work performed, (4) for which PSZJ exercised no billing judgment, and (5) that exceed customary rates in Dallas, Texas.

Respectfully submitted,

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Attorneys for Highland Capital Management Fund Advisors, L.P.

[10] Case No. 21-03003-sgj, *Highland Capital Management, L.P.'s Objection to Defendants' Motion for Leave to Supplement Their Argument Against Plaintiffs' Supplemented Notice of Attorneys' Fees*, Dkt. 221, at 5.

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CERTIFICATE OF SERVICE

I certify that on November 23, 2022, a true and correct copy of the foregoing document was served via the Court's Electronic Case Filing system to the parties that are registered or otherwise entitled to receive electronic notices in this adversary proceeding.

/s/ Michael P. Aigen
Michael P. Aigen

CLERK, U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS

ENTERED

THE DATE OF ENTRY IS ON
THE COURT'S DOCKET

The following constitutes the ruling of the court and has the force and effect therein described.

Signed January 17, 2023

United States Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re: **HIGHLAND CAPITAL MANAGEMENT, L.P.** **Reorganized Debtor.**	**Case No. 19-34054-sgj11** **Chapter 11**
HIGHLAND CAPITAL MANAGEMENT, L.P., **Plaintiff.** **v.** **HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, L.P.,** **Defendant.**	**Adversary No. 21-03082-sgj** **Civ. Act. No. 3:22-cv-00789** **(Consolidated Under Civ. Act. No. 3:21-cv-00881)**

SUPPLEMENT TO THE OCTOBER 12, 2022 REPORT AND RECOMMENDATION: REGARDING ATTORNEYS' FEES AND TRANSMITTING PROPOSED FORM OF JUDGMENT

I. Introduction and Background

On October 12, 2022, the bankruptcy clerk transmitted this court's *Report and Recommendation to District Court Regarding Highland Capital Management, L.P.'s Motion for*

Summary Judgment Against Highland Capital Management Fund Advisors, L.P. ("R&R MSJ") [DCT DE # 71][1] for filing in the above-referenced consolidated Civ. Act. No. 3:21-cv-881. In the R&R MSJ, this court recommended that the District Court enter summary judgment in favor of plaintiff, Highland Capital Management, L.P. ("Plaintiff" or "Highland"), and against defendant, Highland Capital Management Fund Advisors, L.P. ("Defendant" or "HCMFA"), "holding HCMFA liable for: (a) breach of contract with respect to the Pre-2019 Notes;[2] and (b) turnover of all amounts due under the Pre-2019 Notes, pursuant to Bankruptcy Code Section 542, including the costs of collection and reasonable attorneys' fees as provided for in the Pre-2019 Notes in an amount to be determined." R&R MSJ, at 49.[3] In the last paragraph of the R&R MSJ, this court directed Plaintiff (Highland) "to promptly submit a form of Judgment that calculates proper amounts due pursuant to this Report and Recommendation, including interest accrued to date (and continuing to accrue per diem), as well as costs and attorneys' fees incurred." *Id.* at 50. The court further set forth the procedures for the submission of the proposed form of judgment ("Proposed Judgment") and this court's transmittal of such to the District Court for its consideration in connection with the R&R MSJ:

> The costs and attorneys' fees calculation shall be separately filed as a Notice with backup documentation attached. HCMFA shall have 21 days after the filing of such Notice to file an objection to the reasonableness of the attorneys' fees and costs. The bankruptcy court will thereafter determine the reasonableness in Chambers (unless the bankruptcy court determines that a hearing is necessary) and will promptly submit the form Judgment, along with appropriate attorneys' fees and costs amounts inserted into the form Judgment, to the District Court, to consider along with this Report and Recommendation. This Report and Recommendation is immediately being sent to the District Court.

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[1] The R&R MSJ was entered separately in the underlying adversary proceeding on October 12, 2022, prior to transmittal to the District Court. *See* Adv. Pro. 21-3082 [DE #73].

[2] Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the R&R MSJ.

[3] Section 6 of each of the Pre-2019 Notes provided for the recovery by Plaintiff of "all actual expenses of collection, all court costs and reasonable attorneys' fees and expenses incurred by the holder hereof."

Id.

On October 18, 2022, the parties filed, in both the adversary proceeding[4] and in the District Court,[5] a stipulation (the "Stipulation") regarding the procedures for objecting to the R&R MSJ in the District Court and for the submission of the proposed form of judgment and attorneys' fees and costs to the bankruptcy court pursuant to the directive in the R&R MSJ. In the Stipulation, the parties agreed and stipulated to a briefing schedule as follows:[6]

> 1. On or before November 2, 2022, (a) Plaintiff shall file its Proposed Judgment and Notice; and (b) pursuant to Federal Rule of Bankruptcy Procedure 9033 ("Rule 9033"), Defendant shall file any objections to the R&R (the "Objection");
>
> 2. On or before November 23, 2022, (a) Plaintiff shall file any response to any Objection (the "Response"), and (b) Defendant shall file any objections to the Proposed Judgment and/or Notice; [and,]
>
> 3. Defendant shall not file a reply to Plaintiff's Response under Rule 9033 or otherwise.

II. Proposed Form of Judgment and Notices of Attorneys' Fees and Costs

A. Plaintiff Submits Proposed Form of Judgment and Notices of Attorneys' Fees and Costs to Be Included Therein

On November 2, 2022, Plaintiff filed its *Notice of Attorneys' Fees Calculation and Backup Documentation* regarding the fees and costs of Pachulski, Stang, Ziehl & Jones, L.L.P. ("PSZJ"),[7] a separate *Notice of Attorneys' Fees Calculation and Backup Documentation of Hayward PLLC*,[8]

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[4] DE #77.

[5] DCT DE #75.

[6] Stipulation at 3.

[7] DE #79. Plaintiff attached as "Exhibit 1" to the PSZJ Notice a *Declaration of John A. Morris in Support of Highland Capital Management, L.P.'s Proposed Form of Judgment* ("Morris Declaration") regarding the fees and expenses for which Plaintiff seeks recovery under the Proposed Judgment, including Backup Documentation for attorneys' fees charged by PSZJ in this matter attached to the Morris Declaration as **Exhibits A-D**. Exhibit A contained a summary of the fees being requested, and Exhibits B-D were invoices (the "PSZJ Invoices") that included detailed time records maintained in the ordinary course of business of PSZJ.

[8] DE #80.

(together, the "Notices," and, separately, the "PSZJ Notice" and the "Hayward Notice," respectively) and a *Declaration of David Klos in Support of Highland Capital Management, L.P.'s Proposed Form of Judgment* ("Klos Declaration")[9] in support of the calculation of the amount of principal, accrued interest, and per diem interest to be included in the Proposed Judgment. Plaintiff separately uploaded the Proposed Judgment to the bankruptcy court's order processing system in the adversary proceeding.

B. Defendant Objects to (1) Recommendation in the R&R MSJ Pending in the District Court and (2) Highland's Proposed Judgment Awarding Attorneys' Fees and Costs in the Bankruptcy Court

On November 2, 2022, Defendant filed in the District Court *Highland Capital Management Fund Advisors, L.P.'s Objection to the Bankruptcy Court's Report and Recommendation to the District Court Proposing That It Grant Summary Judgment in Favor of the Plaintiff* ("Objection to R&R MSJ"),[10] and on November 23, 2022, Defendant filed in the bankruptcy court *Defendant's Objection to Plaintiff's Proposed Form of Judgment Awarding Attorneys' Fees and Costs* ("Objection to Fees"),[11] objecting to the reasonableness of the attorneys' fees identified in the PSZJ Notice and suggesting that

> [t]he court should reject the proposed award and reduce any award by the amount of any fees (1) incurred in other cases, (2) for which Plaintiff fails to clearly indicate were incurred in this case, (3) that are excessive for the work performed, (4) for which PSZJ exercised no billing judgment, and (5) that exceed customary rates in Dallas, Texas.

Objection to Fees, at 2. In its Objection to Fees, the Defendant did not object to the reasonableness of the attorneys' fees identified in the Hayward Notice.

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[9] DE #81.

[10] *See* DCT DE #78.

[11] *See* DE #83.

C. This Court Recommends That the District Court Overrule Defendant's Objections to PSZJ's Fees

The bankruptcy court conducted an in-chambers review of the Plaintiff's Notices and Backup Documentation and the Klos Declaration and Defendant's Objection to Fees and, for the reasons set forth below, recommends to the District Court that it overrule Defendant's objections to the reasonableness of PSZJ's fees that Plaintiff seeks to recover in the Proposed Judgment that is attached hereto as **Exhibit A**.

1. Law Governing Award of Attorneys' Fees in This Case

Defendant does not dispute Plaintiff's right to recover its ***reasonable*** attorneys' fees in the Proposed Judgment pursuant to Texas law and the terms of the Pre-2019 Notes. Under Texas law, "A person may recover reasonable attorney's fees from an individual or organization . . . in addition to the amount of a valid claim and costs, if the claim is for . . . (8) an oral or written contract."[12] In addition, both Pre-2019 Notes provide for the recovery of reasonable attorneys' fees by Plaintiff. Specifically, Section 6 of each Note provides:

> **Attorneys' Fees.** If this Note is not paid at maturity (whether by acceleration or otherwise) and is placed in the hands of an attorney for collection, or if it is collected through a bankruptcy court or any other court after maturity, the Maker shall pay, in addition to all other amounts owing hereunder, all actual expenses of collection, all court costs and reasonable attorneys' fees and expenses incurred by the holder hereof.

Thus, the issue before the court is whether the attorneys' fees Plaintiff seeks to recover in connection with the Proposed Judgment are reasonable under Texas law.[13] As noted by the Fifth Circuit in *Mathis*, the trial court's discretion in awarding reasonable fees under Texas law

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[12] Tex. Civ. Prac. & Rem. Code § 38.001(b)(8).

[13] *See Mathis v. Exxon Corp.*, 302 F.3d 448, 461 (5th Cir. 2002)("State law controls both the award of and the reasonableness of fees awarded where state law supplies the rule of decision."); *see also US Foods, Inc. v. Picasso's Pizza, Inc.*, 2021 WL 9385157 *4 (N.D. Tex., Aug. 26, 2021)("[S]tate law controls the reasonableness of attorney's fees awarded where state law supplies the rule of decision.")(citing *Mathis*).

is "guided by two presumptions."[14] "First, there is a rebuttable presumption of reasonableness for fees that are 'usual' or 'customary,'"[15] and, "[s]econd, where the fees are tried to the court . . . the statute authorizes the judge to take judicial notice of the 'usual and customary fees' and the contents of the case file."[16]

2. *Objections ## 1 and 2: Argument That Award Should Be Reduced by the Amount of Fees Incurred in Other Cases, or for which Highland Fails to Clearly Indicate Were Incurred in This Case*

Defendant argues that the majority of PSZJ's time entries fail to clearly identify HCMFA as the particular defendant and that none of them distinguish between this action ("Action"), in which HCMFA is the sole defendant, and the action against HCMFA that was one of the Five Earlier-Filed Note Actions against five Note Maker Defendants (the "First HCMFA Note Action").[17] Thus, Defendant argues that because "Plaintiff has not clearly shown [in its time entries] that it incurred certain claimed fees while litigating against Defendant in this case[,]" the court should not award fees contained in those entries.[18] The Morris Declaration clearly states that "[PSZJ has] reviewed the attached invoices and redacted all entries that we concluded were not related to the Action (the "Unrelated Time")" and that "[b]ased on that review, we believe the attached invoices capture and reflect fees properly charged by [PSZJ] to Highland ***with respect to the Action***."[19] The Morris Declaration also clarifies, "for the avoidance of doubt," with respect to each of the detailed invoices attached to the PSZJ Notice as Exhibits B through D, that "Highland does not seek to

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[14] *Mathis*, 302 F.3d at 462.

[15] *Id.* (citing Tex. Civ. Prac. & Rem. Code § 38.003 (Vernon 2002)). Section 38.003 provides, in pertinent part, "It is presumed that the usual and customary attorney's fees for a claim of the type described in Section 38.001 are reasonable."

[16] *Id.* (citing Tex. Civ. Prac. & Rem. Code § 38.004 (Vernon 2002)). Section 38.004 provides, in pertinent part, "The court may take judicial notice of the usual and customary attorney's fees and of the contents of the case file without receiving further evidence in: (1) a proceeding before the court; . . . ."

[17] *See* Objection to Fees, at 3, Part II(A).

[18] *Id.*

[19] Morris Declaration, at 3, ¶11 (emphasis added).

recover any amounts concerning any time entry that is redacted" and that "Highland has copied from Exhibit[s B-D] only those time entries for which compensation is sought in connection with the Action and compiled them on the page preceding each invoice in [the relevant exhibit]."[20] The court believes the Morris Declaration provides sufficient evidence that the PSZJ fees sought to be recovered under, and in connection with, the Proposed Judgment are related to this Action and not another action, and, therefore, this court recommends that the District Court overrule Objections ## 1 and 2 to the reasonableness of the PSZJ fees.

3. *Objection # 3: Argument That Award Should Be Reduced by the Amount of Fees That Are Excessive for the Work Performed*

In its Objection to Fees, Defendant argues that the court should reduce the award for fees relating to Plaintiff's motion for summary judgment in this Action (defined by Defendant as "HCMFA MSJ"), which Defendant describes as "***substantially similar*** in both substance and form to Plaintiff's motion for summary judgment in the companion adversary proceedings [the Five Earlier-Filed Note Actions]."[21] Defendant avers, more specifically, that[22]

> the HCMFA MSJ arguments almost identically mirror those of the Notes MSJ arguments and utilize the same appendix. Because both MSJs utilized the same framework and almost identical legal arguments, Plaintiff's attorneys should not benefit from duplicative billing when the HCMFA MSJ was effectually a "copy-and-paste" version of the Notes MSJ, save two insignificant additional arguments.

Defendant concludes that PSZJ's fees relating to the HCMFA MSJ are "clearly excessive," and that the award should be reduced, presumably by some amount attributable to those fees. However, Defendant does not identify any specific time entry or fee amount that it believes is "duplicative" and therefore excessive. This court, having reviewed the detailed invoices submitted by PSZJ, and having issued the R&R MPSJ

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[20] Morris Declaration, at 2-3, nn. 1-3.

[21] Objection to Fees, at 4, Part II(B). Defendant defines the motion for summary judgment in the Five Earlier-Filed Note Actions as the "Notes MSJ."

[22] *Id.* (internal footnote omitted).

with respect to the Five Earlier-Filed Note Actions and the R&R MSJ in connection with this Action, finds that, although the HCMFA MSJ in this Action may have contained similar legal arguments and a similar appendix, the legal arguments and appendix were not "almost identical" and that the hours spent by PSZJ relating to the HCMFA MSJ in this Action were both necessary and reasonable. Therefore, this court recommends that the District Court overrule Defendant's Objection #3.

4. *Objection # 4: Argument that Award Should Be Reduced by 10% to 20% Because PSZJ Did Not Exercise Billing Judgment*

Defendant suggests that the attorneys' fees award in the Proposed Judgment should be reduced by 10% to 20% because "Plaintiff exercised no billing judgment."[23] Defendant cites to only one case out of the Northern District of Texas district court – *Mauricio v. Phillip Galyen, P.C.*,[24] – in support of this objection. In its short, five-sentence objection, Defendant uses four of the sentences to quote from or cite to *Mauricio* for the following propositions: (1) that "[b]illing judgment refers to the usual practice of law firms in writing off unproductive, excessive, or redundant hours";[25] (2) that evidence of the exercise of billing judgment will "[i]deally [be] reflected in the fee application, showing not only hours claimed, but hours written off";[26] and, (3) that "[t]he proper remedy when there is no evidence of billing judgment is to reduce the hours awarded by a percentage intended to substitute for the exercise of billing judgment;"[27] and, (4) that an appropriate

[23] Objection to Fees, at 4, Part II(C).

[24] 174 F.Supp. 3d 944 (N.D. Tex. 2016). In *Mauricio*, Judge Lindsay adopted the findings and conclusions of Magistrate Judge Ramirez in her report recommending that the district court grant Plaintiffs' application for award of attorney's fees, costs, and expenses after reviewing the record, the report, and conducting a de novo review of each part of the report to which an objection was made (in the district court). *Id.* at 946.

[25] Objection to Fees, at 4 (quoting *Mauricio*, 174 F.Supp. at 950)(citing *Walker v. U.S. Dep't of Hous. and Urban Dev.*, 99 F.3d 761 (5th Cir. 1996)).

[26] Objection to Fees, at 4 (quoting *Mauricio*, 174 F.Supp. at 950 and omitting the citation to the Fifth Circuit case that *Mauricio* quoted: *Alberti v. Kevenhagen*, 896 F.2d 927, 930 (5th Cir. 1990), *vacated in part on other grounds*, 903 F.2d 352 (5th Cir. 1990)).

[27] Objection to Fees, at 4 (quoting *Mauricio*, 174 F.Supp. at 950 and omitting the citation to *Walker*, 99 F.3d at 770 from which the entire quote was taken).

reduction "where no billing judgment is exercised" is "in the range of 10% to 20%."[28] Defendant then concludes, in one sentence and without citing to any specific time entry or to the PSZJ Notice and Backup Documentation at all, "Here, Plaintiff exercised no billing judgment, [sic] therefore the Court should reduce the aggregate claimed amount in any award by 10% to 20%,"[29] implying that *Mauricio* (and the Fifth Circuit in *Walker*) stand for the proposition that a prevailing party in all fee-shifting cases is always required to present evidence that it exercised billing judgment in the specific form of a fee application that shows "hours written off" in addition to the "hours claimed," failing which the court is bound to reduce the fee award by an appropriate percentage. As discussed below, neither *Mauricio* nor *Walker* stands for this proposition, and, more importantly, neither are applicable to the fee award requested in this case.

a) *Mauricio* Is Not Applicable to the Award of Attorneys' Fees in This Case

As noted above,[30] Texas law and the terms of the Pre-2019 Notes govern the award of attorneys' fees in this case, both of which allow for the recovery by Plaintiff of its reasonable attorneys' fees; thus, Texas law governs whether the amount of fees Plaintiff seeks to recover are reasonable. *Mauricio*, the only legal authority cited by Defendant in support of its objection based on the alleged lack of evidence that PSZJ exercised billing judgment, is a federal district court case that deals with an award of attorneys' fees under ***federal*** law (the Fair Labor Standards Act) and that applies ***federal*** law in determining the prevailing party's entitlement to an award of attorneys' fees and the reasonableness of the award. *Mauricio* primarily cites to and quotes from the Fifth Circuit opinion in *Walker v. U.S. Dep't of Hous. and Urban Dev.*, 99 F.3d 761 (5th Cir. 1996) where the Fifth Circuit applied ***federal*** law in addressing the prevailing party's entitlement to

[28] Objection to Fees, at 4-5 (citing *Mauricio*, 174 F.Supp. at 950).

[29] *Id.* at 5.

[30] *See supra* note 13 and accompanying text.

recover reasonable fees under ***federal*** civil rights law, specifically 42 U.S.C. § 1988(b).[31] Thus, the standards applied by the court in *Mauricio* and by the Fifth Circuit in *Walker* with respect to the attorneys' fees proposed by Plaintiff to be included in the Proposed Judgment are not applicable to the court's analysis in ***this*** case in which Plaintiff's entitlement to reasonable attorneys' fees in connection with the Proposed Judgment is governed by ***Texas*** law and the terms of the contracts at issue – the Pre-2019 Notes.[32]

b) Under Texas Law Sufficient Evidence Exists to Support a Finding That PSZJ Exercised Billing Judgment

Under Texas law standards regarding the reasonableness of the attorneys' fees in a breach of contract fee-shifting case, the Morris Declaration and the detailed invoices attached as Backup Documentation constitute sufficient evidence to support a finding that PSZJ exercised billing judgment in this case and that PSZJ's fees are reasonable. There is no requirement under Texas law that evidence must include written detailed invoices that show hours written off in the exercise of billing judgment. Rather, Texas law requires that the evidence simply be sufficient to allow the trial court to conduct a meaningful review of the hours and rates claimed.

In *El Apple I, Ltd. v. Olivas*, the Texas Supreme Court set forth the evidentiary requirements for supporting a trial court's award of attorneys' fees in a fee-shifting situation where the court applied the lodestar method in determining the reasonableness of the attorneys' fees awarded to plaintiff under a fee-shifting provision of the Texas Commission on Human Rights

[31] The Fifth Circuit in *Saizan v. Delta Concrete Prods. Co.*, 448 F.3d 795 (5th Cir. 2006), ten years after *Walker v. HUD* applied ***federal*** standards in reviewing an award of attorneys' fees under the same ***federal*** law at issue in *Mauricio* -- the Fair Labor Standards Act.

[32] *See Mathis*, 302 F.3d at 461-62 (finding Texas law controls the award of attorneys' fees and reasonableness thereof in a breach of contract case under Texas law and looking to Tex. Civ. Prac. & Rem. Code § 38.001(8) (Vernon 2002) for the standard in determining the prevailing party's entitlement to attorneys' fees).

Act.[33] In support of her fee application, Plaintiff had submitted a fee application with affidavits of her attorneys estimating the total hours spent by each attorney on the case.[34] In addition, one of the attorneys had testified at the hearing on the fee application that he had actually spent more hours on the case than was stated in the affidavit but was not seeking compensation for that time because it was duplicative of co-counsel's work.[35]

On appeal the defendant argued that the trial court did not have sufficient evidence to make a reasonableness determination under the lodestar method applied in the case. The Texas Supreme Court first noted that "a party applying for an award of attorney's fees under the lodestar method bears the burden of documenting the hours expended on the litigation and the value of those hours."[36] The defendant argued that a trial court could not calculate the base fee or lodestar without that information and submitted that "the prevailing party's documentation should preferably be in the form of contemporaneous time sheets, which evidence the performance of specific tasks such that the trial court can make a reasoned determination of how much time was reasonably spent pursuing the litigation."[37]

The court observed that the lodestar method was designed to provide a "relatively objective measure of attorney's fees" but "has been criticized . . . for providing a financial incentive for counsel to expend excessive time in unjustified work and for creating a disincentive to early settlement."[38] The court stated that "[t]o avoid these pitfalls, a trial court should obtain ***sufficient***

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[33] 370 S.W.3d 757 (Tex. 2012).

[34] *Id.* at 759.

[35] *Id.*

[36] *Id.* at 761 (citing *Hensley v. Eckerhart*, 461 U.S. 424, 437, 103 S.Ct. 1933, 76 L.Ed.2d 40 (1983)).

[37] *El Apple*, 370 S.W.3d at 761.

[38] *Id.* at 762 (citations omitted).

information to make a meaningful evaluation of the application for attorneys" and that "[c]harges for duplicative, excessive, or inadequately documented work should be excluded."[39] Noting that "[a] meaningful review of the hours claimed is particularly important [in fee-shifting cases] because the usual incentive to charge only reasonable attorney's fees is absent when fees are paid by the opposing party," the court quoted from the United States Supreme Court in *Hensley* with respect to the requirement in fee-shifting cases that attorneys exercise billing judgment:[40]

> Counsel for the prevailing party should make a good faith effort to exclude from a fee request hours that are excessive, redundant, or otherwise unnecessary, just as a lawyer in private practice ethically is obligated to exclude such hours from his fee submission. "In the private sector, 'billing judgment' is an important component in fee setting. It is no less important here. Hours that are not properly billed to one's *client* also are not properly billed to one's *adversary* pursuant to statutory authority."

That the United States Supreme Court under federal standards or the Texas Supreme Court under state standards requires an attorney in a fee-shifting case to exercise the same billing judgment that the attorney would be ethically bound to exercise in billing his own client is not disputed here. The issue here is the legal sufficiency of evidence that must be available for a court to assess the reasonableness of attorneys' fees and, in particular, whether the attorney exercised billing judgment with respect to the fees requested.

As noted above, in its briefing on the billing judgment issue, Defendant did not cite to any of the evidence that PSZJ submitted (or did not submit) that went to the issue of whether PSZJ had provided legally sufficient evidence that it had exercised billing judgment. Rather, Defendant simply makes the conclusory statement that "[h]ere, Plaintiff exercised no billing judgment" and

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[39] *Id.* (emphasis added)(citation omitted).

[40] *Id.* (quoting *Hensley*, 461 U.S. at 434, 103 S.Ct. 1933 (citation omitted)).

"therefore the court should reduce the aggregate claimed amount in any award by 10% to 20%."[41] The Defendant's inartfully drafted, incomplete, and, frankly, illogical argument appears, however, to be that PSZJ did not provide sufficient evidence that it exercised billing judgment in this case because PSZJ's detailed invoices ***did not show*** that time had been written off due to the exercise of its billing judgment – that an attorney's detailed invoices, in ***all*** fee-shifting cases, must show evidence in detailed invoices of time written off due to billing judgment to support a trial court's finding that its attorneys' fees are reasonable – and that, if the attorney does not submit such written evidence, the court ***must*** reduce the fee award by 10% to 20%.

Neither the cases cited by Defendant (which apply federal standards to cases under federal law and are, therefore, inapposite to this case) nor the cases applying Texas standards regarding the entitlement to, and reasonableness of, attorneys' fees (which apply here) have that exacting of an evidentiary standard.

First, the direct quote from *Maurico* regarding evidence of billing judgment is actually a direct quote from the Fifth Circuit *Alberti* case wherein the Fifth Circuit referred to what would be "ideal" evidence to support a finding that the attorney exercised billing judgment: "***Ideally***, billing judgment is reflected in the fee application, showing not only hours claimed, but hours written off."[42] The quoted language certainly does not rise to the level of a requirement under federal law (that is not applicable here) that all fee applications must include detailed invoices showing hours billed and hours written off in order to avoid an across-the-board reduction in fees of an appropriate percentage. The Fifth Circuit's pronouncement quoted by *Mauricio* in no way forecloses the

[41] Objection to Fees, at 4, Part II(C).

[42] *See* Objection to Fees, at 4 (emphasis added)(quoting *Mauricio*, 174 F.Supp. at 950 (citation to the Fifth Circuit's *Alberti* opinion from which it was quoting omitted)).

possibility that other types of evidence can be sufficient to support a trial court's finding of reasonableness and the exercise of billing judgment in fee-shifting cases. Thus, if PSZJ's detailed invoices did not show evidence of time written off in the exercise of billing judgment, that would not preclude a finding by the court that the evidence that was submitted by PSZJ is legally sufficient to support a finding that PSZJ's fees are reasonable and recoverable in the Proposed Judgment.

Second, under the law that ***is*** applicable in this case regarding Plaintiff's entitlement to recover PSZJ's attorneys' fees in the Proposed Judgment – Texas law – there is no requirement whatsoever that a trial judge's finding that a party's fees are reasonable and recoverable in a fee-shifting case must be supported by evidence that includes detailed invoices that show time billed ***and time written off***. Rather, the Texas Supreme Court in *El Apple* (where the attorneys had not submitted contemporaneous, detailed time records of work performed) sets forth the minimum requirements of evidentiary support under Texas standards of review of the reasonableness of attorneys' fees (including whether the attorneys exercised billing judgment) in contested fee-shifting cases using the lodestar approach:[43]

> [W]hen applying for a fee under the lodestar method, the applicant must provide ***sufficient details of the work performed before the court can make a meaningful review of the fee request***. For the purposes of lodestar calculations, ***this evidence includes, at a minimum, documentation of the services performed, who performed them and at what hourly rate, when they were performed, and how much time the work required***.

There is no requirement in *El Apple* that the evidence be in the form of written time records or billing statements and no requirement, if detailed time records are provided, that those records must show hours written off in the exercise of billing judgment (as suggested by Defendant). To

[43] *El Apple*, 370 S.W.3d at 764 (emphasis added).

the contrary, the court notes that the evidence could be in the form of the attorney testifying to the details, but allows that "in all but the simplest cases, the attorney would probably have to refer to some type of record or documentation to provide this information."[44] Indeed, a year later, in *City of Laredo v. Montano*,[45] the Texas Supreme Court rejected the City of Laredo's argument, in objecting to an award of attorneys' fees to Montano, that *El Apple* required the submission of documentary evidence of time records and billing statements (which had not been provided by Montano's attorneys) to support the trial court's award:[46]

> Contrary to the City's argument, *El Apple* does not hold that a lodestar fee can only be established through time records or billing statements. We said instead that an attorney could testify to the details of his work, but that "in all but the simplest of cases, the attorney would probably have to refer to some type of record or documentation to provide this information." For this reason, we ***encouraged*** attorneys using the lodestar method to shift their fee to their opponent to keep contemporaneous records of their time ***as they would for their own client***.

In clarifying what *El Apple* required (or did not require) in terms of evidence, the Texas Supreme Court recalled its observation in *El Apple* "that testimony in generalities about tasks performed in a case ***that did not provide enough information for a meaningful review*** of whether the tasks and hours were reasonable and necessary was an insufficient basis for a lodestar calculation"[47] and that "hours not properly billed to one's client are also not properly billed to one's adversary under a fee-shifting statute."[48]

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[44] *Id.*

[45] 414 S.W.3d 731 (Tex. 2013).

[46] *Id.* at 736 (citing *El Apple*, 370 S.W.3d at 763)(emphasis added)).

[47] *Id.* at 735-736 (citing *id.* at 760)(emphasis added). The Texas Supreme Court in *Montano* ultimately found that one attorney's testimonial evidence was too generalized to meet the minimum information requirements set forth in *El Apple* that would allow the trial court a meaningful review of the reasonableness of hours spent and hourly rates, whereas a second attorney's testimony did provide sufficient evidence/information to support an award by the trial court.

[48] *Id.* at 736 (citing *id.* at 762).

Thus, under Texas law, sufficiency of evidence in fee-shifting cases is determined not by the form of the evidence but the substance of the evidence: whether that substance provides sufficient information for the trial court to make a meaningful review of whether the time spent, and tasks performed, were reasonable and necessary under the lodestar method. And, the Texas Supreme Court has delineated the minimum substantive information required to be included in such evidence, whether in the form of testimony or documentary evidence of time records and billing statements to "include[ ], at a minimum, documentation of the services performed, who performed them and at what hourly rate, when they were performed, and how much time the work required." If the applicant provides this minimum information, "[the] trial court's findings regarding whether prevailing counsel's claimed hours are excessive, redundant, or unreasonable"[49] will be "accord[ed] considerable deference" because "the trial court possesses a superior understanding of the case and the factual matters involved."[50]

Here, PSZJ has provided sufficient evidence under Texas law – including the Morris Declaration and the detailed time records attached thereto as Exhibits B-D as part of the Backup Documentation – to allow the court to make a meaningful review under Texas law of the reasonableness of the PSZJ fees sought to be recovered by Plaintiff in the Proposed Judgment, including whether PSZJ exercised billing judgment in connection with the fees requested in this case. Specifically, the PSZJ Invoices contain detailed time entries that provide documentation of the services performed, who performed them and at what hourly rate, when they were performed, and how much time the work required – meeting *El Apple's* "minimum" evidentiary requirement.[51]

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[49] In other words, whether the attorney exercised billing judgment with respect to the hours included in the invoices submitted in support of its fee application in a fee-shifting situation.

[50] *El Apple*, 370 S.W.3d at 763-64.

[51] *See* Morris Declaration, Ex. B-D [DE # 79].

In addition, PSZJ provided the Morris Declaration in which Mr. Morris declared that he (and others working at his direction) had reviewed the PSZJ Invoices, that the detailed time records contained therein were kept in the ordinary course of business of his firm and that each of the timekeepers recorded billable time in one-tenth of an hour increments and classified their work by task codes "to differentiate between individual tasks conducted for the same client."[52] Mr. Morris further declared, as noted above, that following its review of the PSZJ Invoices, PSZJ "redacted all entries that we concluded were not related to the Action" and that "***the attached invoices capture and reflect fees properly charged by my Firm to Highland with respect to the Action***"[53] – in other words, PSZJ exercised billing judgment. Because this court is intimately familiar with the case and the legal, procedural, and factual matters involved, this court finds that the Morris Declaration, including the PSZJ Invoices, provide sufficient evidence for this court to make a determination of whether PSZJ failed to exercise business judgment and improperly charged fees in the PSZJ Invoices to its client that were "unproductive, excessive, or redundant hours" and thus, not ethically chargeable to its client (or, for that reason, recoverable from Defendant in the Proposed Judgment). In addition, the court notes that Defendant does not point to any evidence, much less any particular time entry in the PSZJ Invoices, in support of its conclusory allegation that PSZJ failed to exercise billing judgment.

Having reviewed the PSZJ Notice, including the Morris Declaration and the detailed time records set forth in the PSZJ Invoices, this court finds PSZJ has produced sufficient evidence under Texas law to support a finding that PSZJ properly exercised billing judgment with respect to the attorneys' fees Plaintiff

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[52] *Id.* at ¶¶ 5-6.

[53] *Id.* at ¶ 11 (emphasis added).

seeks to recover in the Proposed Judgment and, accordingly, recommends that the District Court overrule this objection.

5. *Objection #5: Argument That PSZJ's Hourly Rates Are Not Reasonable*

Defendant argues that PSZJ's hourly rates are unreasonably high because they exceed the rates charged by local firms for similar services. Defendant raised this same objection in this court with respect to the fees Plaintiff sought to recover in connection with its proposed judgment in the First HCMFA Note Action. Ultimately, the bankruptcy court recommended, in its *Supplement to Report and Recommendation Dated July 19, 2022, Transmitting Proposed Forms of Judgment* ("Supplement to R&R MPSJ"),[54] that the District Court overrule HCMFA's objection on this point and enter the form of proposed judgment attached thereto as Exhibit B, because this court had already approved PSZJ's rates in the underlying bankruptcy case, in which the Five Earlier-Filed Notes Actions and this Action are pending, as reasonable under 11 U.S.C. § 330, and under the applicable standard announced by the Fifth Circuit in *Johnson*.[55] Both the Supplement to R&R MPSJ and the underlying R&R MPSJ in the Five Earlier-Filed Note Actions are still pending in the District Court. This court recommends that the District Court overrule Defendant's objection to PSZJ's hourly rates in this Action for the same reason – this court has already found them to be reasonable in the underlying bankruptcy case.

In its Objection to Fees, Defendant acknowledges that this court has already recommended to the District Court in the Supplement to R&R MPSJ in the Five Earlier-Filed Note Actions that

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[54] This supplement was entered on the docket of the First HCMFA Note Action [DE # 186] on November 10, 2022 and transmitted to the District Court [DCT DE # 80] on November 14, 2022.

[55] *See* Bankr. Case No. 19-34054-sgj11, *Fifth and Final Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP* [BC DE #2906], at 37–39 (describing how PSZJ's fees satisfied the *Johnson* factors—*see Johnson v. Ga. Highway Express, Inc.*, 488 F.2d 714 (5th Cir. 1974)); *Order Granting Fifth and Final Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP* [BC DE #3055].

it overrule the objection on the same issue and the basis therefor – the court's previous approval of PSZJ's hourly rates in the underlying bankruptcy case[56] – but argues that "[n]owhere in the Court's order on the application, and nowhere in PSZJ's application, did either the Court or PSZJ make a representation as to or provide evidence of the prevailing rate in . . . Dallas, Texas, and therefore PSZJ's rates should be reduced in this case to meet Dallas rates."[57]

First, Defendant assumes, incorrectly, that the ***federal*** standard of review regarding reasonableness of hourly rates in fee-shifting cases – a standard identified by the Supreme Court in *Blum v. Stenson*[58] and reaffirmed in *Perdue v. Kenny A ex rel. Winn*,[59] under which, for an attorney's hourly rate to be reasonable, it must be in line with "the prevailing market rates in the relevant community"[60] – applies in this adversary proceeding. But, again, Defendant is applying the wrong standard. As noted above in connection with Defendant's "billing judgment" objection, the standard to be applied in determining the reasonable hourly rate for purposes of the lodestar calculation in this action is the ***state*** law standard – that of ***Texas*** – not federal standards under federal fee-shifting statutes. This is, at bottom, a suit on a note governed by Texas contract law. Texas law does not have a requirement that the fee applicant submit evidence that its rates are within the range of rates charged by the relevant legal community. To the contrary, the Texas legislature has specifically codified a presumption "that the usual and customary attorney's fees

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[56] This court also noted – as a factor that militated in favor of finding that PSZJ's rates were reasonable hourly rates in this bankruptcy case and related adversary proceedings, especially those related adversary proceedings where Dondero or Dondero-controlled entities were defendants, such as the Five Earlier-Filed Note Actions, including HCMFA, the Defendant in this Action – that Dondero was the very person who hired PSZJ to be Highland's bankruptcy counsel and "agreed, in writing, to the very fee structure and rates" they were complaining about. Supplement to R&R MPSJ at 16.

[57] Objection to Fees, at 6.

[58] 465 U.S. 886, 895, 104 S.Ct. 1541, 79 L.Ed.2d 891 (1984).

[59] 559 U.S. 542, 551, 130 S.Ct. 1662 (2010)(quoting *id.*).

[60] *Id.*

for a claim of the type described in Section 38.001 are reasonable"[61] and that "[t]he court may take judicial notice of the usual and customary attorney's fees and of the contents of the case file without receiving further evidence in: (1) a proceeding before the court."[62] Thus, under Texas standards, this court can take judicial notice of the usual and customary rates charged in litigation (in the context of complex chapter 11 cases) and of the hourly rates approved already in the underlying bankruptcy case to assess the reasonableness of PSZJ's hourly rates.[63]

Based on the bankruptcy court's (1) knowledge of the hourly rates approved in cases pending in this district and its extensive experience in approving fees in similar complex chapter 11 litigation (and in this particular bankruptcy case and its many adversary proceedings wherein fee-shifting has been approved), (2) knowledge of the usual and customary rates charged for similar legal services by attorneys with the level of skill, competence, and ability of PSZJ's attorneys, (3) intimate familiarity with the legal, procedural, and factual complexities in this Action, and (4) review of the Morris Declaration and the detailed time entries provided by PSZJ in the PSZJ Invoices, this court finds that the hourly rates charged by PSZJ are reasonable and appropriate to be used in calculating the fee award to be included in the Proposed Judgment.

Though, as noted above, Defendant's arguments based on federal standards in fee-shifting cases do not apply to this adversary proceeding (i.e., a suit based on state law, arising in connection with a bankruptcy case), this court feels compelled to note its disagreement with Defendant's assumption that—if a party is required under federal standards to submit evidence to the court that its attorneys' hourly rates are similar to prevailing rates in the "relevant community"—the relevant

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[61] Tex. Civ. Prac. & Rem. Code § 38.003 (West 2021).

[62] Tex. Civ. Prac. & Rem. Code § 38.004 (West 2021).

[63] *See supra* notes 14-16 and accompanying text where the Fifth Circuit in *Mathis* applied these evidentiary rules under Texas law in a fee-shifting case that was pending in federal court.

community is limited to the community of practitioners who practice in the Northern District of Texas, Dallas Division ***and*** who physically office in the geographic location of Dallas, Texas. As noted by the Third Circuit, "The idea that a firm should be restricted to the hourly rate typical in the locale of the case is unduly parochial in this age of national and regional law firms working on larger more complex . . . cases of more than local import."[64] Thus, "[i]n engaging in a market rate comparison, bankruptcy courts are not circumscribed in their analysis by arbitrary geographic limitations,[65] but, instead, "[t]he 'community' of professionals to which a bankruptcy court properly should look for comparison purposes is the community of lawyers capable of performing 'similar work.'"[66] This approach makes sense because the complex chapter 11 cases in which PSZJ participates, including this one, "are often more regional or even national than they are local in scope, so that looking solely to the local community's range of rates would impose an unnecessarily parochial cap on the case.[67] The "relevant community" in this Action should be defined as the community of practitioners who specialize in complex litigation in large chapter 11 bankruptcy cases, frankly, in any district that regularly is the situs for complex business reorganizations.

Defendant solely relies on a comparison of PSZJ's rates to those charged by Plaintiff's local counsel, Hayward, to argue that PSZJ's rates are not in line with the rates charged in the relevant community. This comparison is misplaced. The bankruptcy court observes that large, national bankruptcy practices like PSZJ's (that do not have Dallas offices—PSZJ does happen to

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[64] *Zolfo, Cooper & Co. v. Sunbeam-Oster Co.*, 50 F.3d 253 (3d Cir. 1995)(quotations and citations omitted).

[65] *In re ASARCO, LLC*, 2011 WL 2975716 *18 (Bankr. S.D. Tex., July 20, 2011).

[66] *Id.* (citing *In re Fender*, 12 F.3d 480, 487 (5th Cir. 1994)).

[67] *ASARCO*, 2011 WL 2975716 at *18 (citing *Arbor Hill Concerned Citizens Neighborhood Assoc.*, 522 F.3d 182, 192 (2d Cir. 2008)("The legal communities of today are increasingly interconnected. To define markets simply by geography is too simplistic. Sometimes, legal markets may be defined by practice area.").

have a Houston office) regularly serve as lead counsel for debtors and committees in some of the largest and most complex bankruptcy cases in the country, including, specifically, those pending in the Northern District of Texas – such as this one. A more appropriate comparison of rates (under federal standards, which, again, do not apply in this adversary proceeding) would be to the rates charged and approved by this court of Sidley & Austin LLP ("Sidley"), a firm with a national practice (and that happens to have a Dallas office) who represented the official committee of unsecured creditors in ***this*** case.[68] Comparing the rates of some of Sidley's Dallas-based attorneys to those charged by PSZJ attorneys with similar skill, expertise, and experience reveals that Sidley's rates exceeded those of PSZJ. For example,[69] John Morris, a senior litigation partner at PSZJ who graduated from law school in 1990, charged $1,245 per hour in 2021, while Penny Reid, a Dallas-based Sidley litigation partner and a 1989 law school graduate, charged $1,400 per hour in 2021. PSZJ charged for its associate, Hayley Winograd, who graduated from law school in 2017, $695 per hour in 2021, while Sidley charged $815 per hour for its Dallas-based associate, Juliana Hoffman (a 2017 restructuring associate). This bankruptcy court reviews hundreds of fee applications a year and can take judicial notice of the billing rates charged by many Texas firms (or firms with Texas offices) and, unequivocally, many of them charge rates comparable to those of PSZJ.[70] Thus, even under the federal standard of review (which does not apply here), the court

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[68] *See Twenty-First Monthly and Final Fee Application of Sidley Austin LLP, Attorneys for the Official Committee of Unsecured Creditors, for Compensation and Reimbursement of Expenses for the Monthly Fee Period from July 1, 2021 Through and Including August 11, 2021 and for the Final Fee Period from October 29, 2019 Through and Including August 11, 2021* [BC DE #2904].

[69] The following rate comparisons were identified by PSZJ in its *Brief in Response to Defendants' Objection to the Bankruptcy Court's Supplement to Report and Recommendation to Award Plaintiff Its Attorneys' Fees and Costs* filed in the District Court on December 12, 2022, in the Five Earlier-Filed Note Actions [DCT DE #95].

[70] By way of example, this bankruptcy court takes judicial notice of the attorney billing rates in the following recent, complex chapter 11 cases filed in the Northern District of Texas: *Rockall Energy Holdings, LLC,* Case # 22-90000-MXM-11 (Texas-based law firm Vinson & Elkins served as debtor's counsel; DE #729 reflected an average hourly rate for all attorneys during the case of $867.35 per hour, p. 2, and, among others, a "Restructuring & Reorganization" Partner (2008 law graduate) billing at $1,285 per hour and a "Complex Commercial Litigation" Partner (2005 law graduate) billing at $1,155 per hour, p. 53); *Corsicana Bedding, LLC,* Case # 22-90016-ELM-11 (Texas-based Haynes

finds that PSZJ's hourly rates are reasonable for purposes of the lodestar calculation of the fee award.

Accordingly, this court recommends that the District Court overrule Defendant's objection to PSZJ's hourly rate.

III. Submission of Proposed Form of Judgment to District Court

Having reviewed and considered the Proposed Judgment, the Notices and Backup Documentation regarding the attorneys' fees and costs to be inserted into the Proposed Judgment, and Defendant's Objection to Fees, and for the reasons set forth herein, this court hereby supplements its R&R MSJ and recommends to the District Court that it, after consideration of the R&R MSJ and this supplemental report and recommendation, enter the Proposed Judgment, which is attached hereto as **Exhibit A**.

End of Supplement to Report and Recommendation

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and Boone law firm served as debtor's counsel; DE #504 reflected a blended rate for all attorneys of $840.04 per hour, p.3, and the lead partner billing at $1,150 per hour (a 1991 law graduate)); *Northwest Senior Housing Corporation*, Case # 22-30659-MVL-11 (Polsinelli law firm, with a large Dallas office, serves as debtor's counsel; DE # 39 reflects a range of $505-$1,210 per hour for partners and $380-$740 per hour for associates, pp. 6 & 20); *AiBuy Holdco, Inc.*, Case # 22-31737-SGJ-11 (Texas lawyers from law firm Foley & Lardner serve as debtor's counsel; DE #66, p. 6, reflects lead partner (a 1987 law graduate) charges $990 per hour). *See also* D. Knauth & A. Goudsward, *FTX Could Pay Over $2,100 Per Hour for Bankruptcy Lawyers*, https://www.reuters.com/legal/ftx-could-pay-over-2100-per-hour-bankruptcy-lawyers-2022-12-22/ (discussing rates of certain New York lawyers appearing in the Delaware bankruptcy case). Indeed, other bankruptcy judges in the Northern District of Texas recently have approved PSZJ's rates in complex chapter 11 cases. For example, in *Rockall Energy Holdings, LLC,* Case # 22-90000-MXM-11, Judge Mullin approved PSZJ's rates as counsel to the Official Committee of Unsecured Creditors with a blended hourly rate for attorneys of $1,198.54 per hour and highest hourly rate of $1,525 per hour [DE ## 722, 827], and Judge Hale, in *Tuesday Morning Corp.*, Case # 20-31476-HDH-11, approved PSZJ's rates as counsel to the Official Committee of Equity Security Holders with a blended hourly rate of $900.33 per hour for attorneys and a rate of $1,245 for the lead restructuring partner [DE ## 2068, 2214].

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

HIGHLAND CAPITAL MANAGEMENT, L.P., Plaintiff, vs. HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, L.P., Defendants.	§ § § § § § § § § § § § §	Adv. Proc. No. 21-03082-sgj Case No. 3:21-cv-00881-X

PROPOSED FORM OF JUDGMENT

This matter having come before the Court on *Highland Capital Management L.P.'s Motion for Summary Judgment* [Docket No. 45] (the "Motion") filed by Highland Capital Management, L.P. ("Highland" or "Plaintiff"), the reorganized debtor in the above-captioned chapter 11 case (the "Bankruptcy Case") and plaintiff in the above-referenced adversary proceeding (the "Action"); and the Court having considered (a) Highland's Motion and all arguments and evidence

Exhibit A

admitted into the record in support of the Motion, (b) all responses and objections to the Motion and all arguments and evidence admitted into the record in support of such responses and objections, and (c) the arguments presented by counsel during the hearing held on July 27, 2022 on the Motion (the "Hearing"); and for the reasons set forth in the *Report and Recommendation to District Court Regarding Highland Capital Management, L.P.'s Motion for Summary Judgment Against Highland Capital Management Fund Advisors, L.P.* [Docket No. 73] (the "R&R"), filed by the Court on October 12, 2022; the Court hereby enters the following final judgment (the "Final Judgment"). **IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED** that Plaintiff recover the following:

1. Highland Capital Management Fund Advisors, L.P. ("HCMFA") will owe Highland **$2,169,270.76** in accrued but unpaid principal and interest due under the 2014 Note[1] (issued on February 26, 2014) as of October 31, 2022, after application of all payments to outstanding principal and interest. As of October 31, 2022, interest will continue to accrue on the 2014 Note at the rate of **$115.54** per day and will increase to **$117.82** per day on **February 26, 2023**.

2. HCMFA will owe Highland **$1,012,449.18** in accrued but unpaid principal and interest due under the 2016 Note (issued on February 26, 2016) as of October 31, 2022, after application of all payments to outstanding principal and interest. As of October 31, 2022, interest will continue to accrue on the 2016 Note at the rate of **$71.41** per day and will increase to **$73.28** per day on **February 26, 2023**.

[1] Capitalized terms not defined herein shall have the meanings ascribed to them in the R&R.

3. In addition to the forgoing, and pursuant to the terms of each applicable Note, HCMFA shall pay to Highland the amount of **$387,007.90**, which is the total actual expenses of collection, including attorneys' fees and costs, incurred by Highland.

4. The amounts set forth to be paid in this Final Judgment shall bear interest, pursuant to 28 U.S.C. § 1961, from the date of the entry of this Final Judgment, at a rate of [ ]%. Interest shall be computed daily to the date of payment, except as provided in 28 U.S.C. § 2516(b) and 31 U.S.C. § 1304(b), and shall be compounded annually.

END OF JUDGMENT # #

BTXN 221 (rev. 09/22)

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS

In Re:	§	
Highland Capital Management, L.P.	§	
	§	Case No.: 19−34054−sgj11
Debtor(s)	§	Chapter No.: 11
Highland Capital Management, L.P.	§	
Plaintiff(s)	§	Adversary No.: 21−03082−sgj
vs.	§	
Highland Capital Management Fund Advisors, L.P.	§	Civil Case No.: Civ. Act. No. 3:22−cv−00789
	§	(Consolidated Under Civ. Act. No. 3:21−cv−00881)
Defendant(s)	§	
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
Plaintiff(s)	§	
vs.	§	
HIGHLAND CAPITAL MANAGEMENT FUND	§	
ADVISORS, L.P.,	§	
Defendant(s)	§	

NOTICE OF TRANSMITTAL OF REPORT AND RECOMMENDATION

I am transmitting:

One copy of: Supplement to the October 12, 2022 Report and Recommendation .

DATED: 1/17/23

FOR THE COURT:
Robert P. Colwell, Clerk of Court

by: /s/Sheniqua Whitaker, Deputy Clerk

CLERK, U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS

ENTERED

THE DATE OF ENTRY IS ON
THE COURT'S DOCKET

The following constitutes the ruling of the court and has the force and effect therein described.

Signed January 17, 2023

United States Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re: **HIGHLAND CAPITAL MANAGEMENT, L.P.** **Reorganized Debtor.**	**Case No. 19-34054-sgj11** **Chapter 11**
HIGHLAND CAPITAL MANAGEMENT, L.P., **Plaintiff.** **v.** **HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, L.P.,** **Defendant.**	**Adversary No. 21-03082-sgj** **Civ. Act. No. 3:22-cv-00789** **(Consolidated Under Civ. Act. No. 3:21-cv-00881)**

SUPPLEMENT TO THE OCTOBER 12, 2022 REPORT AND RECOMMENDATION: REGARDING ATTORNEYS' FEES AND TRANSMITTING PROPOSED FORM OF JUDGMENT

I. Introduction and Background

On October 12, 2022, the bankruptcy clerk transmitted this court's *Report and Recommendation to District Court Regarding Highland Capital Management, L.P.'s Motion for*

Summary Judgment Against Highland Capital Management Fund Advisors, L.P. ("R&R MSJ") [DCT DE # 71][1] for filing in the above-referenced consolidated Civ. Act. No. 3:21-cv-881. In the R&R MSJ, this court recommended that the District Court enter summary judgment in favor of plaintiff, Highland Capital Management, L.P. ("Plaintiff" or "Highland"), and against defendant, Highland Capital Management Fund Advisors, L.P. ("Defendant" or "HCMFA"), "holding HCMFA liable for: (a) breach of contract with respect to the Pre-2019 Notes;[2] and (b) turnover of all amounts due under the Pre-2019 Notes, pursuant to Bankruptcy Code Section 542, including the costs of collection and reasonable attorneys' fees as provided for in the Pre-2019 Notes in an amount to be determined." R&R MSJ, at 49.[3] In the last paragraph of the R&R MSJ, this court directed Plaintiff (Highland) "to promptly submit a form of Judgment that calculates proper amounts due pursuant to this Report and Recommendation, including interest accrued to date (and continuing to accrue per diem), as well as costs and attorneys' fees incurred." *Id.* at 50. The court further set forth the procedures for the submission of the proposed form of judgment ("Proposed Judgment") and this court's transmittal of such to the District Court for its consideration in connection with the R&R MSJ:

> The costs and attorneys' fees calculation shall be separately filed as a Notice with backup documentation attached. HCMFA shall have 21 days after the filing of such Notice to file an objection to the reasonableness of the attorneys' fees and costs. The bankruptcy court will thereafter determine the reasonableness in Chambers (unless the bankruptcy court determines that a hearing is necessary) and will promptly submit the form Judgment, along with appropriate attorneys' fees and costs amounts inserted into the form Judgment, to the District Court, to consider along with this Report and Recommendation. This Report and Recommendation is immediately being sent to the District Court.

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[1] The R&R MSJ was entered separately in the underlying adversary proceeding on October 12, 2022, prior to transmittal to the District Court. *See* Adv. Pro. 21-3082 [DE #73].

[2] Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the R&R MSJ.

[3] Section 6 of each of the Pre-2019 Notes provided for the recovery by Plaintiff of "all actual expenses of collection, all court costs and reasonable attorneys' fees and expenses incurred by the holder hereof."

Id.

On October 18, 2022, the parties filed, in both the adversary proceeding[4] and in the District Court,[5] a stipulation (the "Stipulation") regarding the procedures for objecting to the R&R MSJ in the District Court and for the submission of the proposed form of judgment and attorneys' fees and costs to the bankruptcy court pursuant to the directive in the R&R MSJ. In the Stipulation, the parties agreed and stipulated to a briefing schedule as follows:[6]

1. On or before November 2, 2022, (a) Plaintiff shall file its Proposed Judgment and Notice; and (b) pursuant to Federal Rule of Bankruptcy Procedure 9033 ("Rule 9033"), Defendant shall file any objections to the R&R (the "Objection");

2. On or before November 23, 2022, (a) Plaintiff shall file any response to any Objection (the "Response"), and (b) Defendant shall file any objections to the Proposed Judgment and/or Notice; [and,]

3. Defendant shall not file a reply to Plaintiff's Response under Rule 9033 or otherwise.

II. Proposed Form of Judgment and Notices of Attorneys' Fees and Costs

A. Plaintiff Submits Proposed Form of Judgment and Notices of Attorneys' Fees and Costs to Be Included Therein

On November 2, 2022, Plaintiff filed its *Notice of Attorneys' Fees Calculation and Backup Documentation* regarding the fees and costs of Pachulski, Stang, Ziehl & Jones, L.L.P. ("PSZJ"),[7] a separate *Notice of Attorneys' Fees Calculation and Backup Documentation of Hayward PLLC*,[8]

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[4] DE #77.

[5] DCT DE #75.

[6] Stipulation at 3.

[7] DE #79. Plaintiff attached as "Exhibit 1" to the PSZJ Notice a *Declaration of John A. Morris in Support of Highland Capital Management, L.P.'s Proposed Form of Judgment* ("Morris Declaration") regarding the fees and expenses for which Plaintiff seeks recovery under the Proposed Judgment, including Backup Documentation for attorneys' fees charged by PSZJ in this matter attached to the Morris Declaration as **Exhibits A-D**. Exhibit A contained a summary of the fees being requested, and Exhibits B-D were invoices (the "PSZJ Invoices") that included detailed time records maintained in the ordinary course of business of PSZJ.

[8] DE #80.

(together, the "Notices," and, separately, the "PSZJ Notice" and the "Hayward Notice," respectively) and a *Declaration of David Klos in Support of Highland Capital Management, L.P.'s Proposed Form of Judgment* ("Klos Declaration")[9] in support of the calculation of the amount of principal, accrued interest, and per diem interest to be included in the Proposed Judgment. Plaintiff separately uploaded the Proposed Judgment to the bankruptcy court's order processing system in the adversary proceeding.

B. Defendant Objects to (1) Recommendation in the R&R MSJ Pending in the District Court and (2) Highland's Proposed Judgment Awarding Attorneys' Fees and Costs in the Bankruptcy Court

On November 2, 2022, Defendant filed in the District Court *Highland Capital Management Fund Advisors, L.P.'s Objection to the Bankruptcy Court's Report and Recommendation to the District Court Proposing That It Grant Summary Judgment in Favor of the Plaintiff* ("Objection to R&R MSJ"),[10] and on November 23, 2022, Defendant filed in the bankruptcy court *Defendant's Objection to Plaintiff's Proposed Form of Judgment Awarding Attorneys' Fees and Costs* ("Objection to Fees"),[11] objecting to the reasonableness of the attorneys' fees identified in the PSZJ Notice and suggesting that

> [t]he court should reject the proposed award and reduce any award by the amount of any fees (1) incurred in other cases, (2) for which Plaintiff fails to clearly indicate were incurred in this case, (3) that are excessive for the work performed, (4) for which PSZJ exercised no billing judgment, and (5) that exceed customary rates in Dallas, Texas.

Objection to Fees, at 2. In its Objection to Fees, the Defendant did not object to the reasonableness of the attorneys' fees identified in the Hayward Notice.

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[9] DE #81.

[10] *See* DCT DE #78.

[11] *See* DE #83.

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C. This Court Recommends That the District Court Overrule Defendant's Objections to PSZJ's Fees

The bankruptcy court conducted an in-chambers review of the Plaintiff's Notices and Backup Documentation and the Klos Declaration and Defendant's Objection to Fees and, for the reasons set forth below, recommends to the District Court that it overrule Defendant's objections to the reasonableness of PSZJ's fees that Plaintiff seeks to recover in the Proposed Judgment that is attached hereto as **Exhibit A**.

1. Law Governing Award of Attorneys' Fees in This Case

Defendant does not dispute Plaintiff's right to recover its ***reasonable*** attorneys' fees in the Proposed Judgment pursuant to Texas law and the terms of the Pre-2019 Notes. Under Texas law, "A person may recover reasonable attorney's fees from an individual or organization . . . in addition to the amount of a valid claim and costs, if the claim is for . . . (8) an oral or written contract."[12] In addition, both Pre-2019 Notes provide for the recovery of reasonable attorneys' fees by Plaintiff. Specifically, Section 6 of each Note provides:

> **Attorneys' Fees.** If this Note is not paid at maturity (whether by acceleration or otherwise) and is placed in the hands of an attorney for collection, or if it is collected through a bankruptcy court or any other court after maturity, the Maker shall pay, in addition to all other amounts owing hereunder, all actual expenses of collection, all court costs and reasonable attorneys' fees and expenses incurred by the holder hereof.

Thus, the issue before the court is whether the attorneys' fees Plaintiff seeks to recover in connection with the Proposed Judgment are reasonable under Texas law.[13] As noted by the Fifth Circuit in *Mathis*, the trial court's discretion in awarding reasonable fees under Texas law

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[12] Tex. Civ. Prac. & Rem. Code § 38.001(b)(8).

[13] *See Mathis v. Exxon Corp.*, 302 F.3d 448, 461 (5th Cir. 2002)("State law controls both the award of and the reasonableness of fees awarded where state law supplies the rule of decision."); *see also US Foods, Inc. v. Picasso's Pizza, Inc.*, 2021 WL 9385157 *4 (N.D. Tex., Aug. 26, 2021)("[S]tate law controls the reasonableness of attorney's fees awarded where state law supplies the rule of decision.")(citing *Mathis*).

is "guided by two presumptions."[14] "First, there is a rebuttable presumption of reasonableness for fees that are 'usual' or 'customary,'"[15] and, "[s]econd, where the fees are tried to the court . . . the statute authorizes the judge to take judicial notice of the 'usual and customary fees' and the contents of the case file."[16]

2. *Objections ## 1 and 2: Argument That Award Should Be Reduced by the Amount of Fees Incurred in Other Cases, or for which Highland Fails to Clearly Indicate Were Incurred in This Case*

Defendant argues that the majority of PSZJ's time entries fail to clearly identify HCMFA as the particular defendant and that none of them distinguish between this action ("Action"), in which HCMFA is the sole defendant, and the action against HCMFA that was one of the Five Earlier-Filed Note Actions against five Note Maker Defendants (the "First HCMFA Note Action").[17] Thus, Defendant argues that because "Plaintiff has not clearly shown [in its time entries] that it incurred certain claimed fees while litigating against Defendant in this case[,]" the court should not award fees contained in those entries.[18] The Morris Declaration clearly states that "[PSZJ has] reviewed the attached invoices and redacted all entries that we concluded were not related to the Action (the "Unrelated Time")" and that "[b]ased on that review, we believe the attached invoices capture and reflect fees properly charged by [PSZJ] to Highland ***with respect to the Action***."[19] The Morris Declaration also clarifies, "for the avoidance of doubt," with respect to each of the detailed invoices attached to the PSZJ Notice as Exhibits B through D, that "Highland does not seek to

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[14] *Mathis*, 302 F.3d at 462.

[15] *Id.* (citing Tex. Civ. Prac. & Rem. Code § 38.003 (Vernon 2002)). Section 38.003 provides, in pertinent part, "It is presumed that the usual and customary attorney's fees for a claim of the type described in Section 38.001 are reasonable."

[16] *Id.* (citing Tex. Civ. Prac. & Rem. Code § 38.004 (Vernon 2002)). Section 38.004 provides, in pertinent part, "The court may take judicial notice of the usual and customary attorney's fees and of the contents of the case file without receiving further evidence in: (1) a proceeding before the court; . . . ."

[17] *See* Objection to Fees, at 3, Part II(A).

[18] *Id.*

[19] Morris Declaration, at 3, ¶11 (emphasis added).

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recover any amounts concerning any time entry that is redacted" and that "Highland has copied from Exhibit[s B-D] only those time entries for which compensation is sought in connection with the Action and compiled them on the page preceding each invoice in [the relevant exhibit]."[20] The court believes the Morris Declaration provides sufficient evidence that the PSZJ fees sought to be recovered under, and in connection with, the Proposed Judgment are related to this Action and not another action, and, therefore, this court recommends that the District Court overrule Objections ## 1 and 2 to the reasonableness of the PSZJ fees.

3. *Objection # 3: Argument That Award Should Be Reduced by the Amount of Fees That Are Excessive for the Work Performed*

In its Objection to Fees, Defendant argues that the court should reduce the award for fees relating to Plaintiff's motion for summary judgment in this Action (defined by Defendant as "HCMFA MSJ"), which Defendant describes as "***substantially similar*** in both substance and form to Plaintiff's motion for summary judgment in the companion adversary proceedings [the Five Earlier-Filed Note Actions]."[21] Defendant avers, more specifically, that[22]

> the HCMFA MSJ arguments almost identically mirror those of the Notes MSJ arguments and utilize the same appendix. Because both MSJs utilized the same framework and almost identical legal arguments, Plaintiff's attorneys should not benefit from duplicative billing when the HCMFA MSJ was effectually a "copy-and-paste" version of the Notes MSJ, save two insignificant additional arguments.

Defendant concludes that PSZJ's fees relating to the HCMFA MSJ are "clearly excessive," and that the award should be reduced, presumably by some amount attributable to those fees. However, Defendant does not identify any specific time entry or fee amount that it believes is "duplicative" and therefore excessive. This court, having reviewed the detailed invoices submitted by PSZJ, and having issued the R&R MPSJ

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[20] Morris Declaration, at 2-3, nn. 1-3.

[21] Objection to Fees, at 4, Part II(B). Defendant defines the motion for summary judgment in the Five Earlier-Filed Note Actions as the "Notes MSJ."

[22] *Id.* (internal footnote omitted).

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with respect to the Five Earlier-Filed Note Actions and the R&R MSJ in connection with this Action, finds that, although the HCMFA MSJ in this Action may have contained similar legal arguments and a similar appendix, the legal arguments and appendix were not "almost identical" and that the hours spent by PSZJ relating to the HCMFA MSJ in this Action were both necessary and reasonable. Therefore, this court recommends that the District Court overrule Defendant's Objection #3.

4. *Objection # 4: Argument that Award Should Be Reduced by 10% to 20% Because PSZJ Did Not Exercise Billing Judgment*

Defendant suggests that the attorneys' fees award in the Proposed Judgment should be reduced by 10% to 20% because "Plaintiff exercised no billing judgment."[23] Defendant cites to only one case out of the Northern District of Texas district court – *Mauricio v. Phillip Galyen, P.C.*,[24] – in support of this objection. In its short, five-sentence objection, Defendant uses four of the sentences to quote from or cite to *Mauricio* for the following propositions: (1) that "[b]illing judgment refers to the usual practice of law firms in writing off unproductive, excessive, or redundant hours";[25] (2) that evidence of the exercise of billing judgment will "[i]deally [be] reflected in the fee application, showing not only hours claimed, but hours written off";[26] and, (3) that "[t]he proper remedy when there is no evidence of billing judgment is to reduce the hours awarded by a percentage intended to substitute for the exercise of billing judgment;"[27] and, (4) that an appropriate

[23] Objection to Fees, at 4, Part II(C).

[24] 174 F.Supp. 3d 944 (N.D. Tex. 2016). In *Mauricio*, Judge Lindsay adopted the findings and conclusions of Magistrate Judge Ramirez in her report recommending that the district court grant Plaintiffs' application for award of attorney's fees, costs, and expenses after reviewing the record, the report, and conducting a de novo review of each part of the report to which an objection was made (in the district court). *Id.* at 946.

[25] Objection to Fees, at 4 (quoting *Mauricio*, 174 F.Supp. at 950)(citing *Walker v. U.S. Dep't of Hous. and Urban Dev.*, 99 F.3d 761 (5th Cir. 1996)).

[26] Objection to Fees, at 4 (quoting *Mauricio*, 174 F.Supp. at 950 and omitting the citation to the Fifth Circuit case that *Mauricio* quoted: *Alberti v. Kevenhagen*, 896 F.2d 927, 930 (5th Cir. 1990), *vacated in part on other grounds*, 903 F.2d 352 (5th Cir. 1990)).

[27] Objection to Fees, at 4 (quoting *Mauricio*, 174 F.Supp. at 950 and omitting the citation to *Walker*, 99 F.3d at 770 from which the entire quote was taken).

reduction "where no billing judgment is exercised" is "in the range of 10% to 20%."[28] Defendant then concludes, in one sentence and without citing to any specific time entry or to the PSZJ Notice and Backup Documentation at all, "Here, Plaintiff exercised no billing judgment, [sic] therefore the Court should reduce the aggregate claimed amount in any award by 10% to 20%,"[29] implying that *Mauricio* (and the Fifth Circuit in *Walker*) stand for the proposition that a prevailing party in all fee-shifting cases is always required to present evidence that it exercised billing judgment in the specific form of a fee application that shows "hours written off" in addition to the "hours claimed," failing which the court is bound to reduce the fee award by an appropriate percentage. As discussed below, neither *Mauricio* nor *Walker* stands for this proposition, and, more importantly, neither are applicable to the fee award requested in this case.

a) *Mauricio* Is Not Applicable to the Award of Attorneys' Fees in This Case

As noted above,[30] Texas law and the terms of the Pre-2019 Notes govern the award of attorneys' fees in this case, both of which allow for the recovery by Plaintiff of its reasonable attorneys' fees; thus, Texas law governs whether the amount of fees Plaintiff seeks to recover are reasonable. *Mauricio*, the only legal authority cited by Defendant in support of its objection based on the alleged lack of evidence that PSZJ exercised billing judgment, is a federal district court case that deals with an award of attorneys' fees under ***federal*** law (the Fair Labor Standards Act) and that applies ***federal*** law in determining the prevailing party's entitlement to an award of attorneys' fees and the reasonableness of the award. *Mauricio* primarily cites to and quotes from the Fifth Circuit opinion in *Walker v. U.S. Dep't of Hous. and Urban Dev.*, 99 F.3d 761 (5th Cir. 1996) where the Fifth Circuit applied ***federal*** law in addressing the prevailing party's entitlement to

[28] Objection to Fees, at 4-5 (citing *Mauricio*, 174 F.Supp. at 950).

[29] *Id.* at 5.

[30] *See supra* note 13 and accompanying text.

recover reasonable fees under ***federal*** civil rights law, specifically 42 U.S.C. § 1988(b).[31] Thus, the standards applied by the court in *Mauricio* and by the Fifth Circuit in *Walker* with respect to the attorneys' fees proposed by Plaintiff to be included in the Proposed Judgment are not applicable to the court's analysis in ***this*** case in which Plaintiff's entitlement to reasonable attorneys' fees in connection with the Proposed Judgment is governed by ***Texas*** law and the terms of the contracts at issue – the Pre-2019 Notes.[32]

b) Under Texas Law Sufficient Evidence Exists to Support a Finding That PSZJ Exercised Billing Judgment

Under Texas law standards regarding the reasonableness of the attorneys' fees in a breach of contract fee-shifting case, the Morris Declaration and the detailed invoices attached as Backup Documentation constitute sufficient evidence to support a finding that PSZJ exercised billing judgment in this case and that PSZJ's fees are reasonable. There is no requirement under Texas law that evidence must include written detailed invoices that show hours written off in the exercise of billing judgment. Rather, Texas law requires that the evidence simply be sufficient to allow the trial court to conduct a meaningful review of the hours and rates claimed.

In *El Apple I, Ltd. v. Olivas*, the Texas Supreme Court set forth the evidentiary requirements for supporting a trial court's award of attorneys' fees in a fee-shifting situation where the court applied the lodestar method in determining the reasonableness of the attorneys' fees awarded to plaintiff under a fee-shifting provision of the Texas Commission on Human Rights

[31] The Fifth Circuit in *Saizan v. Delta Concrete Prods. Co.*, 448 F.3d 795 (5th Cir. 2006), ten years after *Walker v. HUD* applied ***federal*** standards in reviewing an award of attorneys' fees under the same ***federal*** law at issue in *Mauricio* -- the Fair Labor Standards Act.

[32] *See Mathis*, 302 F.3d at 461-62 (finding Texas law controls the award of attorneys' fees and reasonableness thereof in a breach of contract case under Texas law and looking to Tex. Civ. Prac. & Rem. Code § 38.001(8) (Vernon 2002) for the standard in determining the prevailing party's entitlement to attorneys' fees).

Act.[33] In support of her fee application, Plaintiff had submitted a fee application with affidavits of her attorneys estimating the total hours spent by each attorney on the case.[34] In addition, one of the attorneys had testified at the hearing on the fee application that he had actually spent more hours on the case than was stated in the affidavit but was not seeking compensation for that time because it was duplicative of co-counsel's work.[35]

On appeal the defendant argued that the trial court did not have sufficient evidence to make a reasonableness determination under the lodestar method applied in the case. The Texas Supreme Court first noted that "a party applying for an award of attorney's fees under the lodestar method bears the burden of documenting the hours expended on the litigation and the value of those hours."[36] The defendant argued that a trial court could not calculate the base fee or lodestar without that information and submitted that "the prevailing party's documentation should preferably be in the form of contemporaneous time sheets, which evidence the performance of specific tasks such that the trial court can make a reasoned determination of how much time was reasonably spent pursuing the litigation."[37]

The court observed that the lodestar method was designed to provide a "relatively objective measure of attorney's fees" but "has been criticized . . . for providing a financial incentive for counsel to expend excessive time in unjustified work and for creating a disincentive to early settlement."[38] The court stated that "[t]o avoid these pitfalls, a trial court should obtain ***sufficient***

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[33] 370 S.W.3d 757 (Tex. 2012).

[34] *Id.* at 759.

[35] *Id.*

[36] *Id.* at 761 (citing *Hensley v. Eckerhart*, 461 U.S. 424, 437, 103 S.Ct. 1933, 76 L.Ed.2d 40 (1983)).

[37] *El Apple*, 370 S.W.3d at 761.

[38] *Id.* at 762 (citations omitted).

information to make a meaningful evaluation of the application for attorneys" and that "[c]harges for duplicative, excessive, or inadequately documented work should be excluded."[39] Noting that "[a] meaningful review of the hours claimed is particularly important [in fee-shifting cases] because the usual incentive to charge only reasonable attorney's fees is absent when fees are paid by the opposing party," the court quoted from the United States Supreme Court in *Hensley* with respect to the requirement in fee-shifting cases that attorneys exercise billing judgment:[40]

> Counsel for the prevailing party should make a good faith effort to exclude from a fee request hours that are excessive, redundant, or otherwise unnecessary, just as a lawyer in private practice ethically is obligated to exclude such hours from his fee submission. "In the private sector, 'billing judgment' is an important component in fee setting. It is no less important here. Hours that are not properly billed to one's *client* also are not properly billed to one's *adversary* pursuant to statutory authority."

That the United States Supreme Court under federal standards or the Texas Supreme Court under state standards requires an attorney in a fee-shifting case to exercise the same billing judgment that the attorney would be ethically bound to exercise in billing his own client is not disputed here. The issue here is the legal sufficiency of evidence that must be available for a court to assess the reasonableness of attorneys' fees and, in particular, whether the attorney exercised billing judgment with respect to the fees requested.

As noted above, in its briefing on the billing judgment issue, Defendant did not cite to any of the evidence that PSZJ submitted (or did not submit) that went to the issue of whether PSZJ had provided legally sufficient evidence that it had exercised billing judgment. Rather, Defendant simply makes the conclusory statement that "[h]ere, Plaintiff exercised no billing judgment" and

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[39] *Id.* (emphasis added)(citation omitted).

[40] *Id.* (quoting *Hensley*, 461 U.S. at 434, 103 S.Ct. 1933 (citation omitted)).

"therefore the court should reduce the aggregate claimed amount in any award by 10% to 20%."[41] The Defendant's inartfully drafted, incomplete, and, frankly, illogical argument appears, however, to be that PSZJ did not provide sufficient evidence that it exercised billing judgment in this case because PSZJ's detailed invoices ***did not show*** that time had been written off due to the exercise of its billing judgment – that an attorney's detailed invoices, in ***all*** fee-shifting cases, must show evidence in detailed invoices of time written off due to billing judgment to support a trial court's finding that its attorneys' fees are reasonable – and that, if the attorney does not submit such written evidence, the court ***must*** reduce the fee award by 10% to 20%.

Neither the cases cited by Defendant (which apply federal standards to cases under federal law and are, therefore, inapposite to this case) nor the cases applying Texas standards regarding the entitlement to, and reasonableness of, attorneys' fees (which apply here) have that exacting of an evidentiary standard.

First, the direct quote from *Maurico* regarding evidence of billing judgment is actually a direct quote from the Fifth Circuit *Alberti* case wherein the Fifth Circuit referred to what would be "ideal" evidence to support a finding that the attorney exercised billing judgment: "***Ideally***, billing judgment is reflected in the fee application, showing not only hours claimed, but hours written off."[42] The quoted language certainly does not rise to the level of a requirement under federal law (that is not applicable here) that all fee applications must include detailed invoices showing hours billed and hours written off in order to avoid an across-the-board reduction in fees of an appropriate percentage. The Fifth Circuit's pronouncement quoted by *Mauricio* in no way forecloses the

[41] Objection to Fees, at 4, Part II(C).

[42] *See* Objection to Fees, at 4 (emphasis added)(quoting *Mauricio*, 174 F.Supp. at 950 (citation to the Fifth Circuit's *Alberti* opinion from which it was quoting omitted)).

possibility that other types of evidence can be sufficient to support a trial court's finding of reasonableness and the exercise of billing judgment in fee-shifting cases. Thus, if PSZJ's detailed invoices did not show evidence of time written off in the exercise of billing judgment, that would not preclude a finding by the court that the evidence that was submitted by PSZJ is legally sufficient to support a finding that PSZJ's fees are reasonable and recoverable in the Proposed Judgment.

Second, under the law that ***is*** applicable in this case regarding Plaintiff's entitlement to recover PSZJ's attorneys' fees in the Proposed Judgment – Texas law – there is no requirement whatsoever that a trial judge's finding that a party's fees are reasonable and recoverable in a fee-shifting case must be supported by evidence that includes detailed invoices that show time billed ***and time written off***. Rather, the Texas Supreme Court in *El Apple* (where the attorneys had not submitted contemporaneous, detailed time records of work performed) sets forth the minimum requirements of evidentiary support under Texas standards of review of the reasonableness of attorneys' fees (including whether the attorneys exercised billing judgment) in contested fee-shifting cases using the lodestar approach:[43]

> [W]hen applying for a fee under the lodestar method, the applicant must provide ***sufficient details of the work performed before the court can make a meaningful review of the fee request***. For the purposes of lodestar calculations, ***this evidence includes, at a minimum, documentation of the services performed, who performed them and at what hourly rate, when they were performed, and how much time the work required***.

There is no requirement in *El Apple* that the evidence be in the form of written time records or billing statements and no requirement, if detailed time records are provided, that those records must show hours written off in the exercise of billing judgment (as suggested by Defendant). To

[43] *El Apple*, 370 S.W.3d at 764 (emphasis added).

the contrary, the court notes that the evidence could be in the form of the attorney testifying to the details, but allows that "in all but the simplest cases, the attorney would probably have to refer to some type of record or documentation to provide this information."[44] Indeed, a year later, in *City of Laredo v. Montano*,[45] the Texas Supreme Court rejected the City of Laredo's argument, in objecting to an award of attorneys' fees to Montano, that *El Apple* required the submission of documentary evidence of time records and billing statements (which had not been provided by Montano's attorneys) to support the trial court's award:[46]

> Contrary to the City's argument, *El Apple* does not hold that a lodestar fee can only be established through time records or billing statements. We said instead that an attorney could testify to the details of his work, but that "in all but the simplest of cases, the attorney would probably have to refer to some type of record or documentation to provide this information." For this reason, we ***encouraged*** attorneys using the lodestar method to shift their fee to their opponent to keep contemporaneous records of their time ***as they would for their own client***.

In clarifying what *El Apple* required (or did not require) in terms of evidence, the Texas Supreme Court recalled its observation in *El Apple* "that testimony in generalities about tasks performed in a case ***that did not provide enough information for a meaningful review*** of whether the tasks and hours were reasonable and necessary was an insufficient basis for a lodestar calculation"[47] and that "hours not properly billed to one's client are also not properly billed to one's adversary under a fee-shifting statute."[48]

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[44] *Id.*

[45] 414 S.W.3d 731 (Tex. 2013).

[46] *Id.* at 736 (citing *El Apple*, 370 S.W.3d at 763)(emphasis added)).

[47] *Id.* at 735-736 (citing *id.* at 760)(emphasis added). The Texas Supreme Court in *Montano* ultimately found that one attorney's testimonial evidence was too generalized to meet the minimum information requirements set forth in *El Apple* that would allow the trial court a meaningful review of the reasonableness of hours spent and hourly rates, whereas a second attorney's testimony did provide sufficient evidence/information to support an award by the trial court.

[48] *Id.* at 736 (citing *id.* at 762).

Thus, under Texas law, sufficiency of evidence in fee-shifting cases is determined not by the form of the evidence but the substance of the evidence: whether that substance provides sufficient information for the trial court to make a meaningful review of whether the time spent, and tasks performed, were reasonable and necessary under the lodestar method. And, the Texas Supreme Court has delineated the minimum substantive information required to be included in such evidence, whether in the form of testimony or documentary evidence of time records and billing statements to "include[ ], at a minimum, documentation of the services performed, who performed them and at what hourly rate, when they were performed, and how much time the work required." If the applicant provides this minimum information, "[the] trial court's findings regarding whether prevailing counsel's claimed hours are excessive, redundant, or unreasonable"[49] will be "accord[ed] considerable deference" because "the trial court possesses a superior understanding of the case and the factual matters involved."[50]

Here, PSZJ has provided sufficient evidence under Texas law – including the Morris Declaration and the detailed time records attached thereto as Exhibits B-D as part of the Backup Documentation – to allow the court to make a meaningful review under Texas law of the reasonableness of the PSZJ fees sought to be recovered by Plaintiff in the Proposed Judgment, including whether PSZJ exercised billing judgment in connection with the fees requested in this case. Specifically, the PSZJ Invoices contain detailed time entries that provide documentation of the services performed, who performed them and at what hourly rate, when they were performed, and how much time the work required – meeting *El Apple's* "minimum" evidentiary requirement.[51]

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[49] In other words, whether the attorney exercised billing judgment with respect to the hours included in the invoices submitted in support of its fee application in a fee-shifting situation.

[50] *El Apple*, 370 S.W.3d at 763-64.

[51] *See* Morris Declaration, Ex. B-D [DE # 79].

In addition, PSZJ provided the Morris Declaration in which Mr. Morris declared that he (and others working at his direction) had reviewed the PSZJ Invoices, that the detailed time records contained therein were kept in the ordinary course of business of his firm and that each of the timekeepers recorded billable time in one-tenth of an hour increments and classified their work by task codes "to differentiate between individual tasks conducted for the same client."[52] Mr. Morris further declared, as noted above, that following its review of the PSZJ Invoices, PSZJ "redacted all entries that we concluded were not related to the Action" and that "***the attached invoices capture and reflect fees properly charged by my Firm to Highland with respect to the Action***"[53] – in other words, PSZJ exercised billing judgment. Because this court is intimately familiar with the case and the legal, procedural, and factual matters involved, this court finds that the Morris Declaration, including the PSZJ Invoices, provide sufficient evidence for this court to make a determination of whether PSZJ failed to exercise business judgment and improperly charged fees in the PSZJ Invoices to its client that were "unproductive, excessive, or redundant hours" and thus, not ethically chargeable to its client (or, for that reason, recoverable from Defendant in the Proposed Judgment). In addition, the court notes that Defendant does not point to any evidence, much less any particular time entry in the PSZJ Invoices, in support of its conclusory allegation that PSZJ failed to exercise billing judgment.

Having reviewed the PSZJ Notice, including the Morris Declaration and the detailed time records set forth in the PSZJ Invoices, this court finds PSZJ has produced sufficient evidence under Texas law to support a finding that PSZJ properly exercised billing judgment with respect to the attorneys' fees Plaintiff

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[52] *Id.* at ¶¶ 5-6.

[53] *Id.* at ¶ 11 (emphasis added).

seeks to recover in the Proposed Judgment and, accordingly, recommends that the District Court overrule this objection.

5. *Objection #5: Argument That PSZJ's Hourly Rates Are Not Reasonable*

Defendant argues that PSZJ's hourly rates are unreasonably high because they exceed the rates charged by local firms for similar services. Defendant raised this same objection in this court with respect to the fees Plaintiff sought to recover in connection with its proposed judgment in the First HCMFA Note Action. Ultimately, the bankruptcy court recommended, in its *Supplement to Report and Recommendation Dated July 19, 2022, Transmitting Proposed Forms of Judgment* ("Supplement to R&R MPSJ"),[54] that the District Court overrule HCMFA's objection on this point and enter the form of proposed judgment attached thereto as Exhibit B, because this court had already approved PSZJ's rates in the underlying bankruptcy case, in which the Five Earlier-Filed Notes Actions and this Action are pending, as reasonable under 11 U.S.C. § 330, and under the applicable standard announced by the Fifth Circuit in *Johnson*.[55] Both the Supplement to R&R MPSJ and the underlying R&R MPSJ in the Five Earlier-Filed Note Actions are still pending in the District Court. This court recommends that the District Court overrule Defendant's objection to PSZJ's hourly rates in this Action for the same reason – this court has already found them to be reasonable in the underlying bankruptcy case.

In its Objection to Fees, Defendant acknowledges that this court has already recommended to the District Court in the Supplement to R&R MPSJ in the Five Earlier-Filed Note Actions that

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[54] This supplement was entered on the docket of the First HCMFA Note Action [DE # 186] on November 10, 2022 and transmitted to the District Court [DCT DE # 80] on November 14, 2022.

[55] *See* Bankr. Case No. 19-34054-sgj11, *Fifth and Final Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP* [BC DE #2906], at 37–39 (describing how PSZJ's fees satisfied the *Johnson* factors—*see Johnson v. Ga. Highway Express, Inc.*, 488 F.2d 714 (5th Cir. 1974)); *Order Granting Fifth and Final Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP* [BC DE #3055].

it overrule the objection on the same issue and the basis therefor – the court's previous approval of PSZJ's hourly rates in the underlying bankruptcy case[56] – but argues that "[n]owhere in the Court's order on the application, and nowhere in PSZJ's application, did either the Court or PSZJ make a representation as to or provide evidence of the prevailing rate in . . . Dallas, Texas, and therefore PSZJ's rates should be reduced in this case to meet Dallas rates."[57]

First, Defendant assumes, incorrectly, that the ***federal*** standard of review regarding reasonableness of hourly rates in fee-shifting cases – a standard identified by the Supreme Court in *Blum v. Stenson*[58] and reaffirmed in *Perdue v. Kenny A ex rel. Winn*,[59] under which, for an attorney's hourly rate to be reasonable, it must be in line with "the prevailing market rates in the relevant community"[60] – applies in this adversary proceeding. But, again, Defendant is applying the wrong standard. As noted above in connection with Defendant's "billing judgment" objection, the standard to be applied in determining the reasonable hourly rate for purposes of the lodestar calculation in this action is the ***state*** law standard – that of ***Texas*** – not federal standards under federal fee-shifting statutes. This is, at bottom, a suit on a note governed by Texas contract law. Texas law does not have a requirement that the fee applicant submit evidence that its rates are within the range of rates charged by the relevant legal community. To the contrary, the Texas legislature has specifically codified a presumption "that the usual and customary attorney's fees

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[56] This court also noted – as a factor that militated in favor of finding that PSZJ's rates were reasonable hourly rates in this bankruptcy case and related adversary proceedings, especially those related adversary proceedings where Dondero or Dondero-controlled entities were defendants, such as the Five Earlier-Filed Note Actions, including HCMFA, the Defendant in this Action – that Dondero was the very person who hired PSZJ to be Highland's bankruptcy counsel and "agreed, in writing, to the very fee structure and rates" they were complaining about. Supplement to R&R MPSJ at 16.

[57] Objection to Fees, at 6.

[58] 465 U.S. 886, 895, 104 S.Ct. 1541, 79 L.Ed.2d 891 (1984).

[59] 559 U.S. 542, 551, 130 S.Ct. 1662 (2010)(quoting *id.*).

[60] *Id.*

for a claim of the type described in Section 38.001 are reasonable"[61] and that "[t]he court may take judicial notice of the usual and customary attorney's fees and of the contents of the case file without receiving further evidence in: (1) a proceeding before the court."[62] Thus, under Texas standards, this court can take judicial notice of the usual and customary rates charged in litigation (in the context of complex chapter 11 cases) and of the hourly rates approved already in the underlying bankruptcy case to assess the reasonableness of PSZJ's hourly rates.[63]

Based on the bankruptcy court's (1) knowledge of the hourly rates approved in cases pending in this district and its extensive experience in approving fees in similar complex chapter 11 litigation (and in this particular bankruptcy case and its many adversary proceedings wherein fee-shifting has been approved), (2) knowledge of the usual and customary rates charged for similar legal services by attorneys with the level of skill, competence, and ability of PSZJ's attorneys, (3) intimate familiarity with the legal, procedural, and factual complexities in this Action, and (4) review of the Morris Declaration and the detailed time entries provided by PSZJ in the PSZJ Invoices, this court finds that the hourly rates charged by PSZJ are reasonable and appropriate to be used in calculating the fee award to be included in the Proposed Judgment.

Though, as noted above, Defendant's arguments based on federal standards in fee-shifting cases do not apply to this adversary proceeding (i.e., a suit based on state law, arising in connection with a bankruptcy case), this court feels compelled to note its disagreement with Defendant's assumption that—if a party is required under federal standards to submit evidence to the court that its attorneys' hourly rates are similar to prevailing rates in the "relevant community"—the relevant

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[61] Tex. Civ. Prac. & Rem. Code § 38.003 (West 2021).

[62] Tex. Civ. Prac. & Rem. Code § 38.004 (West 2021).

[63] *See supra* notes 14-16 and accompanying text where the Fifth Circuit in *Mathis* applied these evidentiary rules under Texas law in a fee-shifting case that was pending in federal court.

community is limited to the community of practitioners who practice in the Northern District of Texas, Dallas Division ***and*** who physically office in the geographic location of Dallas, Texas. As noted by the Third Circuit, "The idea that a firm should be restricted to the hourly rate typical in the locale of the case is unduly parochial in this age of national and regional law firms working on larger more complex . . . cases of more than local import."[64] Thus, "[i]n engaging in a market rate comparison, bankruptcy courts are not circumscribed in their analysis by arbitrary geographic limitations,[65] but, instead, "[t]he 'community' of professionals to which a bankruptcy court properly should look for comparison purposes is the community of lawyers capable of performing 'similar work.'"[66] This approach makes sense because the complex chapter 11 cases in which PSZJ participates, including this one, "are often more regional or even national than they are local in scope, so that looking solely to the local community's range of rates would impose an unnecessarily parochial cap on the case.[67] The "relevant community" in this Action should be defined as the community of practitioners who specialize in complex litigation in large chapter 11 bankruptcy cases, frankly, in any district that regularly is the situs for complex business reorganizations.

Defendant solely relies on a comparison of PSZJ's rates to those charged by Plaintiff's local counsel, Hayward, to argue that PSZJ's rates are not in line with the rates charged in the relevant community. This comparison is misplaced. The bankruptcy court observes that large, national bankruptcy practices like PSZJ's (that do not have Dallas offices—PSZJ does happen to

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[64] *Zolfo, Cooper & Co. v. Sunbeam-Oster Co.*, 50 F.3d 253 (3d Cir. 1995)(quotations and citations omitted).

[65] *In re ASARCO, LLC*, 2011 WL 2975716 *18 (Bankr. S.D. Tex., July 20, 2011).

[66] *Id.* (citing *In re Fender*, 12 F.3d 480, 487 (5th Cir. 1994)).

[67] *ASARCO*, 2011 WL 2975716 at *18 (citing *Arbor Hill Concerned Citizens Neighborhood Assoc.*, 522 F.3d 182, 192 (2d Cir. 2008)("The legal communities of today are increasingly interconnected. To define markets simply by geography is too simplistic. Sometimes, legal markets may be defined by practice area.").

have a Houston office) regularly serve as lead counsel for debtors and committees in some of the largest and most complex bankruptcy cases in the country, including, specifically, those pending in the Northern District of Texas – such as this one. A more appropriate comparison of rates (under federal standards, which, again, do not apply in this adversary proceeding) would be to the rates charged and approved by this court of Sidley & Austin LLP ("Sidley"), a firm with a national practice (and that happens to have a Dallas office) who represented the official committee of unsecured creditors in ***this*** case.[68] Comparing the rates of some of Sidley's Dallas-based attorneys to those charged by PSZJ attorneys with similar skill, expertise, and experience reveals that Sidley's rates exceeded those of PSZJ. For example,[69] John Morris, a senior litigation partner at PSZJ who graduated from law school in 1990, charged $1,245 per hour in 2021, while Penny Reid, a Dallas-based Sidley litigation partner and a 1989 law school graduate, charged $1,400 per hour in 2021. PSZJ charged for its associate, Hayley Winograd, who graduated from law school in 2017, $695 per hour in 2021, while Sidley charged $815 per hour for its Dallas-based associate, Juliana Hoffman (a 2017 restructuring associate). This bankruptcy court reviews hundreds of fee applications a year and can take judicial notice of the billing rates charged by many Texas firms (or firms with Texas offices) and, unequivocally, many of them charge rates comparable to those of PSZJ.[70] Thus, even under the federal standard of review (which does not apply here), the court

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[68] *See Twenty-First Monthly and Final Fee Application of Sidley Austin LLP, Attorneys for the Official Committee of Unsecured Creditors, for Compensation and Reimbursement of Expenses for the Monthly Fee Period from July 1, 2021 Through and Including August 11, 2021 and for the Final Fee Period from October 29, 2019 Through and Including August 11, 2021* [BC DE #2904].

[69] The following rate comparisons were identified by PSZJ in its *Brief in Response to Defendants' Objection to the Bankruptcy Court's Supplement to Report and Recommendation to Award Plaintiff Its Attorneys' Fees and Costs* filed in the District Court on December 12, 2022, in the Five Earlier-Filed Note Actions [DCT DE #95].

[70] By way of example, this bankruptcy court takes judicial notice of the attorney billing rates in the following recent, complex chapter 11 cases filed in the Northern District of Texas: *Rockall Energy Holdings, LLC,* Case # 22-90000-MXM-11 (Texas-based law firm Vinson & Elkins served as debtor's counsel; DE #729 reflected an average hourly rate for all attorneys during the case of $867.35 per hour, p. 2, and, among others, a "Restructuring & Reorganization" Partner (2008 law graduate) billing at $1,285 per hour and a "Complex Commercial Litigation" Partner (2005 law graduate) billing at $1,155 per hour, p. 53); *Corsicana Bedding, LLC,* Case # 22-90016-ELM-11 (Texas-based Haynes

finds that PSZJ's hourly rates are reasonable for purposes of the lodestar calculation of the fee award.

Accordingly, this court recommends that the District Court overrule Defendant's objection to PSZJ's hourly rate.

III. Submission of Proposed Form of Judgment to District Court

Having reviewed and considered the Proposed Judgment, the Notices and Backup Documentation regarding the attorneys' fees and costs to be inserted into the Proposed Judgment, and Defendant's Objection to Fees, and for the reasons set forth herein, this court hereby supplements its R&R MSJ and recommends to the District Court that it, after consideration of the R&R MSJ and this supplemental report and recommendation, enter the Proposed Judgment, which is attached hereto as **Exhibit A**.

End of Supplement to Report and Recommendation

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and Boone law firm served as debtor's counsel; DE #504 reflected a blended rate for all attorneys of $840.04 per hour, p.3, and the lead partner billing at $1,150 per hour (a 1991 law graduate)); *Northwest Senior Housing Corporation*, Case # 22-30659-MVL-11 (Polsinelli law firm, with a large Dallas office, serves as debtor's counsel; DE # 39 reflects a range of $505-$1,210 per hour for partners and $380-$740 per hour for associates, pp. 6 & 20); *AiBuy Holdco, Inc.*, Case # 22-31737-SGJ-11 (Texas lawyers from law firm Foley & Lardner serve as debtor's counsel; DE #66, p. 6, reflects lead partner (a 1987 law graduate) charges $990 per hour). *See also* D. Knauth & A. Goudsward, *FTX Could Pay Over $2,100 Per Hour for Bankruptcy Lawyers*, https://www.reuters.com/legal/ftx-could-pay-over-2100-per-hour-bankruptcy-lawyers-2022-12-22/ (discussing rates of certain New York lawyers appearing in the Delaware bankruptcy case). Indeed, other bankruptcy judges in the Northern District of Texas recently have approved PSZJ's rates in complex chapter 11 cases. For example, in *Rockall Energy Holdings, LLC,* Case # 22-90000-MXM-11, Judge Mullin approved PSZJ's rates as counsel to the Official Committee of Unsecured Creditors with a blended hourly rate for attorneys of $1,198.54 per hour and highest hourly rate of $1,525 per hour [DE ## 722, 827], and Judge Hale, in *Tuesday Morning Corp.*, Case # 20-31476-HDH-11, approved PSZJ's rates as counsel to the Official Committee of Equity Security Holders with a blended hourly rate of $900.33 per hour for attorneys and a rate of $1,245 for the lead restructuring partner [DE ## 2068, 2214].

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

HIGHLAND CAPITAL MANAGEMENT, L.P., Plaintiff, vs. HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, L.P., Defendants.	§ § § § § § § § § § § §	Adv. Proc. No. 21-03082-sgj Case No. 3:21-cv-00881-X

PROPOSED FORM OF JUDGMENT

This matter having come before the Court on *Highland Capital Management L.P.'s Motion for Summary Judgment* [Docket No. 45] (the "Motion") filed by Highland Capital Management, L.P. ("Highland" or "Plaintiff"), the reorganized debtor in the above-captioned chapter 11 case (the "Bankruptcy Case") and plaintiff in the above-referenced adversary proceeding (the "Action"); and the Court having considered (a) Highland's Motion and all arguments and evidence

admitted into the record in support of the Motion, (b) all responses and objections to the Motion and all arguments and evidence admitted into the record in support of such responses and objections, and (c) the arguments presented by counsel during the hearing held on July 27, 2022 on the Motion (the "Hearing"); and for the reasons set forth in the *Report and Recommendation to District Court Regarding Highland Capital Management, L.P.'s Motion for Summary Judgment Against Highland Capital Management Fund Advisors, L.P.* [Docket No. 73] (the "R&R"), filed by the Court on October 12, 2022; the Court hereby enters the following final judgment (the "Final Judgment"). **IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED** that Plaintiff recover the following:

1. Highland Capital Management Fund Advisors, L.P. ("HCMFA") will owe Highland **$2,169,270.76** in accrued but unpaid principal and interest due under the 2014 Note[1] (issued on February 26, 2014) as of October 31, 2022, after application of all payments to outstanding principal and interest. As of October 31, 2022, interest will continue to accrue on the 2014 Note at the rate of **$115.54** per day and will increase to **$117.82** per day on **February 26, 2023**.

2. HCMFA will owe Highland **$1,012,449.18** in accrued but unpaid principal and interest due under the 2016 Note (issued on February 26, 2016) as of October 31, 2022, after application of all payments to outstanding principal and interest. As of October 31, 2022, interest will continue to accrue on the 2016 Note at the rate of **$71.41** per day and will increase to **$73.28** per day on **February 26, 2023**.

[1] Capitalized terms not defined herein shall have the meanings ascribed to them in the R&R.

3. In addition to the forgoing, and pursuant to the terms of each applicable Note, HCMFA shall pay to Highland the amount of **$387,007.90**, which is the total actual expenses of collection, including attorneys' fees and costs, incurred by Highland.

4. The amounts set forth to be paid in this Final Judgment shall bear interest, pursuant to 28 U.S.C. § 1961, from the date of the entry of this Final Judgment, at a rate of [ ]%. Interest shall be computed daily to the date of payment, except as provided in 28 U.S.C. § 2516(b) and 31 U.S.C. § 1304(b), and shall be compounded annually.

END OF JUDGMENT # #

Case No. 23-10911

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

In the Matter of: Highland Capital Management, L.P.,

Debtor,

Highland Capital Management, L.P.,

Appellee,

v.

NexPoint Asset Management, L.P., formerly known as Highland Capital Management Fund Advisors, L.P.; NexPoint Advisors, L.P.; NexPoint Real Estate Partners, L.L.C., formerly known as HCRE Partners L.L.C.; Highland Capital Management Services, Incorporated; James Dondero,

Appellants.

In the Matter of: Highland Capital Management, L.P.,

Debtor,

James D. Dondero,

Appellant,

v.

Highland Capital Management, L.P.,

Appellee.

Appeal from the United States District Court for the
Northern District of Texas, the Honorable Brantley Starr
Civ. Act. No. 3:21-cv-00881-X

Consolidated with Case No. 23-10921

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

In the Matter of: Highland Capital Management, L.P.,

Debtor,

Highland Capital Management, L.P.,

Appellee,

v.

NexPoint Asset Management, L.P., formerly known as Highland Capital Management Fund Advisors, L.P.,

Appellant.

Appeal from the United States District Court for the Northern District of Texas, the Honorable Brantley Starr
Civ. Act. No. 3:21-cv-00881-X

APPELLANTS' UNOPPOSED MOTION TO (1) SUPPLEMENT THE RECORD, (2) SUSPEND BRIEFING UNTIL THE SUPPLEMENTAL RECORD IS COMPLETE, AND (3) EXTEND THE LENGTH LIMITS FOR BRIEFS

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Appellants NexPoint Asset Management, L.P., formerly known as Highland Capital Management Fund Advisors, L.P. ("NAM"); NexPoint Advisors, L.P. ("NPA"); NexPoint Real Estate Partners, L.L.C., formerly known as HCRE Partners L.L.C. ("NPREP"); Highland Capital Management Services, Incorporated ("HCMS"); and James Dondero ("Dondero") (collectively "Appellants"), through counsel, respectfully file this unopposed motion (the "Motion") seeking the following relief:

(1) Leave to supplement/correct the record with the record designations currently being compiled by the Bankruptcy Court of the Northern District of Texas, pursuant to Federal Rule of Appellate Procedure 10(e) and 5th Cir. Rule 27.1.11;

(2) A suspension or extension of the briefing schedule, pursuant to Federal Rules of Appellate Procedure 26(b), 5th Cir. Rule 27.1.3, and/or 5th Cir. Rule 27.1.3, pending the compilation and submission of the complete record on appeal by the Bankruptcy Court of the Northern District of Texas; and

(3) An extension of the length limits for briefs set by Federal Rule of Appellate procedure 32(a)(7), pursuant to 5th Cir. Rules 27.1.16 and 32.4.[1]

[1] The relief sought in this Motion is purely procedural. *See* 5th Cir. Rule 27.1 (identifying procedural motions the clerk may rule on, which include motions to "supplement or correct records" (5th Cir. Rule 27.1.11), motions to "extend the time for … filing briefs" (5th Cir. Rule 27.1.3), motions to "stay further proceedings in appeals" (5th Cir. Rule 27.1.3), and motions to "extend the length limits for []briefs" (5th Cir. Rule 27.1.16)). As such, pursuant to 5th Cir. Rule 27.4, Appellants' Motion does not include a certificate of interested persons as described in 5th Cir. Rule 28.2.1.

In support of the Motion, Appellants states as follows:

1. On October 5, 2023, Appellants filed their Unopposed Motion to (1) Consolidate Appeals, (2) Stay Briefing Schedule, and (3) Extend Length Limits for Briefs [DKT 60].

2. On October 10, 2023, a Clerk's Order was entered granting the motion to consolidate appeals, but denying the motions to stay the briefing schedule and to extend the length limits for briefs, further indicating that "[a] motion is required to supplement the record AFTER the briefing notice has issued." [Dkt 65].

3. On October 10, 2023, counsel for Appellants contacted the court clerk's office for clarification and was advised to file a motion to supplement the record, as noted in the Order, and a motion to suspend the briefing schedule pending the motion to supplement the record, both of which follow below, as well as a motion to extend the length limits of briefs, also modified per the advice of the court clerk's office.

A. Unopposed Motion to Supplement the Record.

4. Consolidated Case No. 23-10911[2] is an appeal from certain orders of the District Court for the Northern District of Texas (the "District Court") entered in that court's consolidated matter, Civ. Act. No.3:22-cv-0881-x.[3] The District Court

[2] On October 10, 2023, Case Nos. 23-10911 and 23-10921 were consolidated into the instant appeal [DKT 65].
[3] The District Court's consolidated Civ. Act. No. 3:22-cv-0881-x originated as six adversary proceedings filed in the Bankruptcy Court for the Northern District of Texas (Nos. 21-3003, 21-3004, 21-3005, 21-3006, 21-3007 and 21-3082).

orders appealed from include Amended Final Judgments against Appellants issued on August 3, 2023 resulting from (a) the District Court's July 6, 2023 Order Adopting a Report and Recommendation issued by the Bankruptcy Court on July 19, 2022 (and which was supplemented on December 5, 2022); and (b) the District Court's July 6, 2023 Order Adopting a Report and Recommendation issued by the Bankruptcy Court on October 12, 2022 (which was supplemented on January 17, 2023).

5. The primary subjects of the aforementioned Reports and Recommendations of the Bankruptcy Court were (1) a motion for partial summary judgment filed by Debtor against Appellants (referenced in the July 19, 2022 Report and Recommendation) and (2) a separate motion for summary judgment filed against appellant NAM (referenced in the October 12, 2022 Report and Recommendation). All of the summary judgment pleadings and evidence underlying both Reports and Recommendations were filed in the Bankruptcy Court and oral arguments were held before the Bankruptcy Judge, the Hon. Stacey G.C. Jernigan, who then issued her Reports and Recommendations (and Supplements thereto) to the District Court.

6. Appellants timely filed Objections to the Bankruptcy Court's Reports and Recommendations with the District Court.[4] Related briefing by both Debtor and

[4] *See* Advisory Committee Notes to Federal Rule of Bankruptcy Procedure 9033 ("Section 157(c)(1) of title 28 requires a bankruptcy judge to submit proposed findings of fact and conclusions of law to the district court when the bankruptcy

Appellants followed these Objections. Ultimately, on July 6, 2023, the District Court issued its two Orders Adopting Report and Recommendation and Final Judgment, which lead to its August 6, 2023 Amended Final Judgment against Appellants.

7. Ordinarily, in an appeal from a judgment entered by a District Court exercising original bankruptcy jurisdiction, it would not be necessary to file a designation of the record on appeal. *See* Fed. R. App. P. 6(a), 10(a). The record would automatically include all items entered on the District Court's docket, and any transcripts the parties order. *See*, *generally*, Fed. R. App. P. 10. However, in this appeal, and because the underlying consolidated civil matter originated with six adversary proceedings filed in the Bankruptcy Court, many critical portions of the appellate record are located only on the Bankruptcy Court's docket, not on the District Court's docket.

8. As such, after filing their Notices of Appeal to this Court, and after consultation with the Bankruptcy Court Clerk, Appellants filed a designation of the record on appeal with both the District Court and the Bankruptcy Court, and emailed

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judge has heard a non-core proceeding. This rule, which is modeled on Rule 72 F.R.Civ. P., provides the procedure ***for objecting to, and for review by, the district court*** of specific findings and conclusions.")(emphasis added). See, also 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b).

a copy of the designation to the Bankruptcy Clerk to identify which documents to transmit to the District Court.

9. On September 18, 2023, the Operations Support Specialists for the Bankruptcy Court acknowledged receipt of Appellants' designation of the record. On September 19, 2023, in an email to Appellant's counsel, the Bankruptcy Court's Operations Support Specialists estimated that it may be ***"late December before we can get the record finalized."*** *See* Exhibit 1, attached hereto.

10. On September 22, 2023, a notice was entered in the docket of both of the appeals now consolidated under Case No. 23-10911 indicating that the electronic record on appeal had been filed by the District Court [Case No. 23-10911, DKT 43; Case No. 23-10921, DKT 32].

11. That same day, September 22, 2023, this Court issued a letter in both of the appeals now consolidated under Case No. 23-10911 notifying Appellants' counsel that the "record is complete for the purposes of appeal" and establishing a briefing schedule based on the date of the letter [Case No. 23-10911, DKT 44; Case No. 23-10921, DKT 33].

12. However, as referenced above and detailed below, <u>the record on appeal is not complete</u> and, according to the Bankruptcy Court, may not be complete until December of this year.

13. In both of its July 6, 2023 Orders, the District Court stated that "[h]aving carefully considered (1) [Debtor's] motion and all arguments and evidence admitted into the record in support of the motion, (2) all responses and objections to the motion and all arguments and evidence admitted into the record in support of such responses and objection, and the arguments presented by counsel during the hearing held on […] the motion, and for the reasons set forth in the Report and Recommendation (the 'R&R') filed by the Bankruptcy Court […] and the Supplement to the R&R filed [by the Bankruptcy Court], the Court **ACCEPTS** the report and recommendation. The Court **OVERRULES** the objections to the report and recommendation and **OVERRULES** the objection to the supplement to the report and recommendation."

14. The District Court's July 6, 2023 Orders, while reflecting its decisions on the briefing related to Appellants' Objections to the Bankruptcy Court's Reports and Recommendations (and Supplements thereto), were (or should have been) the result of a *de novo* review of those Reports and Recommendations (and Supplements thereto).[5]

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[5] *See Executive Benefits Ins. Agency v. Arkison*, 573 U.S. 25, 34 (2014) ("If a matter is non-core, and the parties have not consented to final adjudication by the bankruptcy court, the bankruptcy judge must propose findings of fact and conclusions of law. Then, the district court must review the proceeding *de novo* and enter final judgment."); *Rodriguez v. Countrywide Home Loans, Inc.*, 421 B.R. 341, 349 (S.D. Tex. 2009) ("The bankruptcy court makes the initial determination of the core status of the proceedings, however, the district court conducts a *de novo* review of the bankruptcy court's findings") (citing *Mirant Corp. v. The Southern Co.*, 337 B.R. 107, 115 n. 13 (N.D. Tex. 2006), internal footnotes omitted); *In re OCA, Inc.*, No. CIV.A. 06-3811, 2006 WL 4029578, at *3 (E.D. La. Sept. 19, 2006) ("The bankruptcy court is authorized to make findings of facts and law in the non-core matters, but these

15. Critically, because Appellant's Objections were not formal appeals to the District Court (nor were they required to be), no record on appeal was submitted to, or required by, the District Court. As a result, however, many essential portions of the appellate record for the consolidated appeal before this Court are located on the Bankruptcy Court's docket, rather than on the District Court's docket, despite the fact that the District Court undertook a *de novo* review and confirmed that it reviewed "all arguments and evidence admitted into the record in support of the [Debtor's] motion[s] [for summary judgment]."

16. Among other things, the motions for summary judgment themselves and the supporting appendices are all located on the Bankruptcy Court's docket and therefore the District Court did not include them in the record on appeal in its current form.

17. By way of example, as it relates to Debtor's motion for partial summary judgment against Appellants (the subject of the Bankruptcy Court's July 19, 2022 Report and Recommendation), the current record does not include:

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determinations will be subject to *de novo* review by the district court. In this sense, the bankruptcy court acts like a magistrate's court with respect to the proceedings that are related but non-core.") (internal citations omitted); *Taylor v. Comm'r of Soc. Sec. Admin*, 2022 WL 2992877 (N.D. Tex. July 27, 2022); *Van Horne v. Valencia*, 2022 WL 2800878, at *1 (N.D. Tex. July 18, 2022); *Smith v. Smith*, 154 F.R.D. 661, 665 (N.D. Tex. May 10, 1994).

- Debtor's motion for partial summary judgment, its related declaration, its brief in support, its amended brief in support, or the appendix in support;[6]

- Appellants' summary judgment response, brief in opposition or supplemental appendix;[7]

- Debtor's reply and supplemental appendix;[8]

- Briefing related to motions to strike certain summary judgment evidence,[9] or

- the transcript of the hearing on Debtor's motion for partial summary judgment.[10]

18. As it relates to Debtor's motion for summary judgment against appellant NAM (the subject of the Bankruptcy Court's October 12, 2022 Report and Recommendation), the current record does not include:

- Debtor's motion for summary judgment, its brief in support, its declaration in support or appendix in support;[11]

- Appellant NAM's summary judgment response, brief in opposition or supplemental appendix;[12]

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[6] Dkt. 132, 133, 134, 135, 137 and 138 filed in Adv. Proc. 21-03003-sgj (Bankr. N.D. Tex.). The same documents were filed in other adversary proceedings consolidated under District Court Case No. 3:21-cv-0881-x, but with different docket numbers.

[7] Dkt. 45, 46 and 47 filed in Adv. Proc. 21-03082-sgj (Bankr. N.D. Tex.). The same documents were filed in other adversary proceedings consolidated under District Court Case No. 3:21-cv-0881-x, but with different docket numbers.

[8] Dkt. 159 and 160 filed in Adv. Proc. 21-03003-sgj (Bankr. N.D. Tex.). The same documents were filed in other adversary proceedings consolidated under District Court Case No. 3:21-cv-0881-x, but with different docket numbers.

[9] Dkt. 169, 170, 173, 174, 175, 179, 180 and 187 filed in Adv. Proc. 21-03003-sgj (Bankr. N.D. Tex.). The same documents were filed in other adversary proceedings consolidated under District Court Case No. 3:21-cv-0881-x, but with different docket numbers.

[10] Dkt. 189 filed in Adv. Proc. 21-03003-sgj (Bankr. N.D. Tex.). The same document was filed in other adversary proceedings consolidated under District Court Case No. 3:21-cv-0881-x, but with a different docket number.

[11] Dkt. 132, 133, 134, 135, 137 and 138 filed in Adv. Proc. 21-03003-sgj (Bankr. N.D. Tex.). The same documents were filed in other adversary proceedings consolidated under District Court Case No. 3:21-cv-0881-x, but with different docket numbers.

[12] Dkt. 52, 53 and 54 filed in Adv. Proc. 21-03082-sgj (Bankr. N.D. Tex.). The same documents were filed in other adversary proceedings consolidated under District Court Case No. 3:21-cv-0881-x, but with different docket numbers.

- Debtor's reply and supplemental appendix;[13] or
- the transcript of the hearing on Debtor's motion for summary judgment.[14]

19. To adequately brief the orders of the District Court appealed from, which specifically addressed and reviewed, *de novo*, the Bankruptcy Court's Reports and Recommendations on two motions for summary judgment filed by Debtor, Appellants needs the complete summary judgment records from the Bankruptcy Court. Therefore, pursuant to Federal Rule of Appellate Procedure 10(e) and 5th Cir. Rule 27.1.11, Appellants file this motion to supplement the record on appeal with the record already being compiled by the Bankruptcy Clerk to be submitted to this Court by December of this year.

20. Counsel for Appellants conferred with counsel for Appellee specifically addressing this motion to supplement the record. Appellee's counsel confirmed that Appellee does NOT oppose this motion.

B. Unopposed Motion to Suspend Briefing Schedules.

21. As stated above, on September 22, 2023 the Court issued a letter in both of the appeals now consolidated under Case No. 23-10911 notifying Appellants'

[13] Dkt. 62 and 63 filed in Adv. Proc. 21-03082-sgj (Bankr. N.D. Tex.). The same documents were filed in other adversary proceedings consolidated under District Court Case No. 3:21-cv-0881-x, but with different docket numbers.
[14] Dkt. 70 filed in Adv. Proc. 21-03082-sgj (Bankr. N.D. Tex.). The same document was filed in other adversary proceedings consolidated under District Court Case No. 3:21-cv-0881-x, but with a different docket number.

counsel that the "record is complete for the purposes of appeal" and establishing a briefing schedule based on the date of the letter [Case No. 23-10911, DKT 44; Case No. 23-10921, DKT 33]. Under the current schedule, Appellants' brief and record excerpts would be due by November 1, 2023.

22. For the reasons set forth in ¶¶ 4-19 above, Appellants file this motion to suspend the briefing schedule until the complete record on appeal, which includes the critical summary judgment pleadings, evidence and transcripts cited above, can be compiled by the Bankruptcy Clerk and submitted to this Court. Without this suspension, the parties will unable to complete briefing as they will be unable to cite to essential evidence that needs to be in the record and will likely not be in the record until December.

23. Counsel for Appellants conferred with counsel for Appellee specifically addressing this motion to suspend the briefing schedule until the record is completed by the Bankruptcy Court in December of this year. Appellee's counsel confirmed that Appellee does NOT oppose this motion.

C. Unopposed Motion to Extend the Length Limits for Briefs.

24. In their previously-filed motion [DKT 60], Appellants requested, among other things, an extension of the page limits for briefs to 100 pages for

principal briefs and 30 pages for reply briefs. That request was denied as part of the Clerk's Order [DKT 65].

25. On October 10, 2023, Counsel for Appellants contacted the court clerk's office and was advised that the Appellants' sought page length limits for briefs in excess of what the Court typically allows. Therefore, Appellants file this motion to extend the length limits for briefs upon the advice of the court clerk, for the reasons set forth below.

26. The Bankruptcy Court's July 19, 2022 Report and Recommendation recommended that the District Court grant summary judgments in five different adversary cases against five different defendants, the five Appellants in Case No. 23-10911. That Report and Recommendation, adopted by the District Court, is 45-pages long and made numerous findings of fact and law.

27. The Bankruptcy Court's October 11, 2022 Report and Recommendation recommended that the District Court grant summary against NAM, Appellant in Case No. 23-10921. That Report and Recommendation, adopted by the District Court, is 50-pages long and made numerous findings of fact and law.

28. Each Appellant has a right to and seeks to present its argument on the issues on appeal related to the District Court's adoption of the Bankruptcy Court's Reports and Recommendations and overruling Appellants' Objections.

29. In this consolidated appeal, involving complex defenses with over $63 million at stake, Appellants seek to address the issues on appeal in up to two principal briefs with an aggregate of 19,000 words (to be allocated among the Appellants) – substantially shorter than the 100 pages originally requested, and still shorter than the aggregate word limits that Appellants could submit under Federal Rule of Appellate Procedure 32(a)(7) if each submitted its own brief. Additionally, Appellants seek leave to file reply briefs with an aggregate of 9,500 words (to be allocated among the Appellants) – again, substantially shorter than the 30 pages originally requested, and shorter than the aggregate word limits that Appellants could submit under Federal Rule of Appellate Procedure 32(a)(7) if each submitted its own reply.

30. This motion is filed well in advance of the 10-day deadline under 5th Cir. Rule 32.4 to file motions for extra-length briefs, particularly if the above motion to supplement the record and suspend briefing schedule is granted.

31. Counsel for Appellants conferred with counsel for Appellee specifically addressing this motion to extend the length limits for briefs to 19,000 words for principal briefs and 9,500 words for reply briefs. Appellee's counsel confirmed that Appellee does NOT oppose this motion.

WHEREFORE, Appellants respectfully request that the Court grant the following relief, which is unopposed by Appellee:

(1) Leave to supplement the record with the record designations currently being compiled by the Bankruptcy Court of the Northern District of Texas;

(2) A suspension of the briefing schedule pending the compilation and submission of the complete record on appeal by the Bankruptcy Court of the Northern District of Texas; and

(3) An extension of the length limits for briefs under Federal Rule of Appellate procedure 32(a)(7) and 5th Cir. Rule 32 to 19,000 words for principal briefs and 9,500 words pages for reply briefs.

Respectfully submitted this 13th day of October, 2023,

By: */s/Deborah Deitsch-Perez*
Deborah Deitsch-Perez, Esq.
Michael Aigen, Esq.
STINSON LLP
2200 Ross Avenue, Suite 2900
Dallas, TX 75201
Telephone: (214) 560-2201
Facsimile: (214) 560-2203

Davor Rukavina
Julian P. Vasek
MUNSCH HARDT KOPF & HARR, P.C.
500 N. Akard Street, Suite 3800
Dallas, Texas 75202-2790
(214) 855-7500 telephone
(214) 978-4375 facsimile

ATTORNEYS FOR APPELLANTS

CERTIFICATE OF COMPLIANCE

1. This Motion complies with the word limit of FED. R. APP. P. 27(d)(2) because, including footnotes and excluding the parts of the document exempted by FED. R. APP. P. 32(f), this Motion contains 2,332 words.

2. This Motion complies with the typeface requirements of FED. R. APP. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because this Motion has been prepared in a proportionally spaced typeface using Microsoft Word, typeface Times New Roman, 14-point type (12-point for footnotes).

By: */s/ Deborah Deitsch-Perez*
Deborah Deitsch-Perez

CERTIFICATE OF CONFERENCE

I hereby certify that counsel for Appellants has conferred with counsel for Appellee and the foregoing Motion is unopposed.

By: */s/ Deborah Deitsch-Perez*
Deborah Deitsch-Perez

CERTIFICATE OF SERVICE

I hereby certify that on October 13, 2023, the foregoing Motion was electronically filed using the appellate CM/ECF system. I further certify that all participants in this case are registered CM/ECF users and that service will be accomplished via CM/ECF.

By: */s/ Deborah Deitsch-Perez*
Deborah Deitsch-Perez

EXHIBIT 1

From: Juan Blanco
To: Vasek, Julian
Subject: Re: Activity in Case 3:21-cv-00881-X Highland Capital Management LP et al v. NexPoint Asset Management LP Designation of Record on Appeal
Date: Tuesday, September 19, 2023 10:36:35 AM

External Email: Use caution with links and attachments.

Hello all,

Okay, we will look at the designation to make a game plan. Highland documents are a bit hard to work with (color within a document, emails attachments, etc) , with that said, I'm estimating perhaps, late December before we can get the record finalized. However, things can cross our path and that timeframe may change especially since this designation is 66 pages. We will let you know if we need something from you and will keep you posted when we start on the record.

thanks,

Juan Blanco
Operations Support Specialist
U.S. Bankruptcy Court
Northern District of Texas
214-753-2063

From: Vasek, Julian <jvasek@munsch.com>
Sent: Tuesday, September 19, 2023 10:16 AM
To: Sheniqua Whitaker <sheniqua_whitaker@txnb.uscourts.gov>
Cc: Aigen, Michael P. <michael.aigen@stinson.com>; Juan Blanco <Juan_Blanco@txnb.uscourts.gov>
Subject: RE: Activity in Case 3:21-cv-00881-X Highland Capital Management LP et al v. NexPoint Asset Management LP Designation of Record on Appeal

CAUTION - EXTERNAL:

Sheniqua and Juan:

I believe all the transcripts have already been ordered and are on the docket. With respect to the items without a PDF, I think including a copy of the docket sheet itself is sufficient to cover those items. Finally, I am not aware of any deadline from the Fifth Circuit. Please let me know if you need anything else.

Thanks,
Julian

Julian P. Vasek

Munsch Hardt Kopf & Harr, P.C.
500 N. Akard Street, Suite 4000 / Dallas, Texas 75201-6605

Direct: +1.214.855.7528 / jvasek@munsch.com / munsch.com

From: Sheniqua Whitaker <sheniqua_whitaker@txnb.uscourts.gov>
Sent: Monday, September 18, 2023 11:50 AM
To: Vasek, Julian <jvasek@munsch.com>
Cc: Aigen, Michael P. <michael.aigen@stinson.com>; Juan Blanco <Juan_Blanco@txnb.uscourts.gov>
Subject: Re: Activity in Case 3:21-cv-00881-X Highland Capital Management LP et al v. NexPoint Asset Management LP Designation of Record on Appeal

External Email: Use caution with links and attachments.

Hello Julian,

The designations have been received. I have copied Juan who handles the record on appeal. Except for the electronic orders, we are unable to assemble items designated without a PDF, such as hearing held entries. Are you wanting the transcript for these hearings? Also, has the circuit court provided you with a deadline for the record?

Sheniqua Whitaker
Operations Support Specialist
U.S. Bankruptcy Court
Northern District of Texas
214-753-2123

From: Vasek, Julian <jvasek@munsch.com>
Sent: Monday, September 18, 2023 10:52 AM
To: Sheniqua Whitaker <sheniqua_whitaker@txnb.uscourts.gov>
Cc: Aigen, Michael P. <michael.aigen@stinson.com>
Subject: FW: Activity in Case 3:21-cv-00881-X Highland Capital Management LP et al v. NexPoint Asset Management LP Designation of Record on Appeal

CAUTION - EXTERNAL:

Sheniqua:

The record designation we discussed last week is attached. Please let us know if you need anything else.

Thanks,
Julian

Julian P. Vasek

Munsch Hardt Kopf & Harr, P.C.
500 N. Akard Street, Suite 4000 / Dallas, Texas 75201-6605

Direct: +1.214.855.7528 / jvasek@munsch.com / munsch.com
From: ecf_txnd@txnd.uscourts.gov <ecf_txnd@txnd.uscourts.gov>
Sent: Friday, September 15, 2023 12:28 PM
To: Courtmail@txnd.uscourts.gov

Subject: Activity in Case 3:21-cv-00881-X Highland Capital Management LP et al v. NexPoint Asset Management LP Designation of Record on Appeal

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U.S. District Court
Northern District of Texas

Notice of Electronic Filing

The following transaction was entered by Deitsch-Perez, Deborah on 9/15/2023 at 12:27 PM CDT and filed on 9/15/2023

Case Name: Highland Capital Management LP et al v. NexPoint Asset Management LP
Case Number: 3:21-cv-00881-X
Filer: James Dondero
Highland Capital Management Services Inc
NexPoint Advisors LP
NexPoint Asset Management LP
Nextpoint Real Estate Partners LLC
Document Number: 159

Docket Text:
DESIGNATION of Record on Appeal by James Dondero, Highland Capital Management Services Inc, NexPoint Advisors LP, NexPoint Asset Management LP, Nextpoint Real Estate Partners LLC re [158] Notice of Appeal,,,, [153] Notice of Appeal,,,, [157] Notice of Appeal,,,, [155] Notice of Appeal,,,,, [156] Notice of Appeal,,,, [154] Notice of Appeal,,,, (Deitsch-Perez, Deborah)

3:21-cv-00881-X Notice has been electronically mailed to:

Case Admin Sup txnb_appeals@txnb.uscourts.gov

Daniel P Elms elmsd@gtlaw.com, guerrak@gtlaw.com

Davor Rukavina drukavina@munsch.com

Deborah Rose Deitsch-Perez deborah.deitsch-perez@stinson.com, patricia.tomasky@stinson.com

Douglas Draper ddraper@hellerdraper.com, dhepting@hellerdraper.com, gbrouphy@hellerdraper.com, vgamble@hellerdraper.com

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Leslie A Collins lcollins@hellerdraper.com, dhepting@hellerdraper.com

Melissa S Hayward mhayward@haywardfirm.com, mholmes@haywardfirm.com

Michael P Aigen michael.aigen@stinson.com, patricia.tomasky@stinson.com

Stacey G Jernigan sgj_settings@txnb.uscourts.gov, anna_saucier@txnb.uscourts.gov

Zachery Z Annable zannable@haywardfirm.com, zannable@franklinhayward.com

3:21-cv-00881-X Notice required by federal rule will be delivered by other means (as detailed in the Clerk's records for orders/judgments) to:

The following document(s) are associated with this transaction:

Document description: Main Document

Original filename:n/a

Electronic document Stamp:

[STAMP dcecfStamp_ID=1004035775 [Date=9/15/2023] [FileNumber=15032079-0] [4772fb57eb6db60041947489b910c6ed296cddca029e9d0a31c471e11f0b423eacd4ed7bfbf5fca38264196ee79c613c25ea0c5f6c53b2da3c29454bf15bd3e3]]

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United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

TEL. 504-310-7700
600 S. MAESTRI PLACE,
Suite 115
NEW ORLEANS, LA 70130

October 16, 2023

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW:

No. 23-10911 Highland Capital v. NexPoint Asset
USDC No. 3:21-CV-881
USDC No. 3:21-CV-880
USDC No. 3:21-CV-1010
USDC No. 3:21-CV-1378
USDC No. 3:21-CV-1379
USDC No. 3:21-CV-3160
USDC No. 3:21-CV-3162
USDC No. 3:21-CV-3179
USDC No. 3:21-CV-3207
USDC No. 3:22-CV-789

The court has granted the motion to supplement or correct the record in this case. The originating court is requested to add the attached motion and documents to their court's docket and to provide us with a supplemental electronic record. Counsel is reminded that any citations to these documents must cite to the supplemental electronic record.

The court has granted the motion for leave to file principal briefs and reply briefs in excess of word count not to exceed 19,000 words for principal briefs and 9,500 words for reply briefs in excess of 40 pages, but this decision is subject to reconsideration by the merits panel.

The briefing has been suspended pending the filing of the Bankruptcy Court record.

P.S.: Ms. Deborah Rose Deitsch-Perez: Counsel is advised that once the record has been supplemented to call the office or file a letter on the docket advising, so briefing can resume.

Sincerely,

LYLE W. CAYCE, Clerk

Roeshawn Johnson

By: _____
Roeshawn Johnson, Deputy Clerk
504-310-7998

Ms. Deborah Rose Deitsch-Perez